The State of freedom
10 years after
the patriot act
Losing
Liberty

 LOSING LIBERTY
THE STATE OF FREEDOM
10 YEARS AFTER
THE PATRIOT ACT

Muslim Advocates
PROMOTING FREEDOM & JUSTICE FOR ALL
Muslim Advocates is a national legal advocacy and educational organization dedicated to promoting freedom, justice, and equality for all, regardless of faith, though legal advocacy, policy engagement, and civic education, and by serving as a legal resource to promote the full and meaningful participation of Muslims in American public life.

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“They who can give up essential liberty to obtain a little temporary safety, deserve neither liberty nor safety.”

~Benjamin Franklin
FORWARD

The weeks after the harrowing attacks on 9/11 were not a proud time for civil liberties in the United States. All over Washington, I witnessed a dangerous and deeply offensive attitude develop: if you wanted to support your country, you had to support the Patriot Act. The political pressure seemed almost overwhelming, and, sadly, even some of our strongest leaders succumbed to the intimidation.

But what I knew at the time, and what many others have come to understand, is that the Patriot Act was not a law narrowly written to address our country’s new realities while preserving the constitutional rights of our citizens. Instead, the Patriot Act was a blatant power-grab that gave unprecedented, unchecked power to the government to arrest, detain, and spy on our nation’s citizens with little or no judicial oversight. It’s a law that does not live up to our American ideals.

Sadly, no Americans have faced more unjust intrusion and harassment from the Patriot Act than our Muslim community. Before casting the lone Senate vote against the Patriot Act, I expressed my concern that the period after 9/11 could follow as another tragic example of civil liberties in America taking a backseat to the exigencies of war; another period when one group of Americans would be singled out and discriminated against under the guise of national security. Unfortunately, in many ways, the years since 9/11 have become just that.

Now, on the tenth anniversary of the passage of the Patriot Act, we must redouble our efforts to rein in the abuses of power that law still allows.

I’m so pleased to see that work being done by organizations like Muslim Advocates. And I’m especially proud of their President and Executive Director, Farhana Khera, my friend and former advisor.

Together, we must all work to honor and restore our common heritage of basic rights.

Russell D. Feingold
Former U.S. Senator (D-WI)
October 26, 2011
LETTER FROM THE EXECUTIVE DIRECTOR

Dear Friend:

Ten years ago, I stood on the Senate floor as our nation’s leaders debated one of the most brazen assaults on constitutional rights and freedoms in the history of our country. The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (“Patriot Act”) gave the government unprecedented, unchecked power to target and monitor law-abiding Americans. The final version of the Patriot Act was introduced in the House on October 23, 2001, where it quickly passed 357-66, and in the Senate on October 25, 2001, where it passed 98-1 (the sole dissenting vote being that of my boss at the time, Senator Russ Feingold). President George W. Bush signed the bill into law the very next day, October 26, 2001.

After the horrific attacks of 9/11 and days after news outlets and members of Congress were targeted by anthrax mailings, our leaders felt an urgent need to do something. Passage of the Patriot Act was paramount. Any debate or criticism of the bill was deemed unpatriotic and “soft” on terrorism. The speed and lack of full debate that led to the passage of this legislation foreshadowed the way in which national security legislation, policies, and practices would unfold over the next decade.

The government would soon focus the Patriot Act’s new powers on law-abiding citizens not based on criminal behavior, but based on race, ethnicity, religion, national origin, or First Amendment protected activities. Law enforcement’s actions would cast a cloud of suspicion over entire faith, ethnic, and racial groups, specifically Muslims, South Asians, Arabs, and Middle Easterners, sowing fear and mistrust among all Americans.

So where are we as a country ten years after the passage of the Patriot Act?

• The government can review your telephone, e-mail, internet activity, medical, educational, banking, and other financial records without any evidence that you’ve done anything unlawful.
• Government agents can visit you at work because of an article you post on Facebook, stop you at the border to seize and search your laptop, and ask you questions such as, “Do you pray?” and “Why do you send your children to a religious school?”
• Donating $150 to a charity that helps needy children can lead to a knock on the door by the FBI.
• Members of Congress speak at hate rallies where protesters scream racial and religious epithets at young children and hold congressional hearings targeting an entire faith community, without official censure or repercussions from their colleagues.

Losing Liberty: The State of Freedom Ten Years After the Patriot Act is a look at how the American Muslim community—a community that has borne the brunt of overly broad, unchecked government powers—and the freedoms guaranteed by the U.S. Constitution have fared in the last ten years since the enactment of the Patriot Act.

It is my hope that this report will not only be a part of the historical record of this important period in U.S. history, but will also be adopted as a blueprint for how government officials can repair the damage and uphold the Constitution once again.

Thank you for reading.

Best regards,

Farhana Y. Khera
President & Executive Director
Muslim Advocates
San Francisco, California
October 26, 2011
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In a climate of rapidly rising fear and suspicion after September 11, 2001, the Patriot Act was quickly signed into law on October 26, 2001, granting unprecedented powers to the federal government to spy on innocent Americans. The freedom to express oneself, to worship, to live, to work, and to travel—free of government interference—are among the freedoms protected by the U.S. Constitution. Yet, the Patriot Act and countless subsequent federal policies and practices violate these very fundamental freedoms by singling out Muslims in America for detention, interrogation, and surveillance. Ten years after passage of the Patriot Act, this report illustrates the reality for Muslims in America today in three different contexts: the surveillance of thoughts, faith, and daily activities; how anti-terrorism financing laws chill the religious and civic duty of giving charity; and everyday manifestations of bigotry and discrimination.

THOUGHTS, FAITH & DAILY ACTIVITIES OF INNOCENT AMERICANS UNDER SURVEILLANCE

In the post-9/11 era, federal agencies have increasingly focused their attention on domestic intelligence gathering. The Federal Bureau of Investigation ("FBI"), a law enforcement agency primarily responsible for investigating crimes, has morphed into an intelligence agency preoccupied with gathering massive amounts of data on innocent Muslim, South Asian, Arab, and Middle Eastern Americans who have nothing to do with criminal activity. The Attorney General Guidelines for Domestic FBI Operations ("AG Guidelines") and the Domestic Investigations and Operations Guide ("DIOG"), along with laws like the Patriot Act and the Foreign Intelligence Surveillance Act ("FISA"), determine the rules by which domestic surveillance operations must comply. Since 9/11, these rules have been relaxed. Today, FBI agents are instructed to view Muslims with suspicion by, for example, looking out for converts to Islam and those who wear “traditional Muslim attire,” attend mosques, and have strong religious beliefs. The FBI routinely sends its agents or informants into mosques and community gatherings to monitor individuals and their activities. The DIOG authorizes massive data gathering on the location, age, and other demographic data of racial and ethnic communities, including ethnic-owned businesses and charitable giving. Consequently, Muslims all over the country have been targeted by law enforcement, not based on wrongdoing, but simply because their religion, ethnicity, or national origin is viewed as a proxy for criminal activity.

This kind of racial, religious, and ethnic profiling occurs daily at U.S. borders and ports of entry where Customs and Border Protection ("CBP") agents single out Muslim travelers for searches, lengthy detentions, and interrogations. Law-abiding Americans from all walks of life have been interrogated about their political views and activities, religious beliefs and practices, and associations with organizations, friends, and relatives—all without any evidence that they are engaged in unlawful activity. Questions have included, “How many gods do you believe in?” and “How many times a day do you pray?” While the government has a legitimate interest in verifying the identity of those entering the country, it has no legitimate interest in inquiring about Americans’ political beliefs, religious beliefs and practices, or lawful associations. These beliefs and activities are protected by the First Amendment and have no bearing on whether an American should be allowed to re-enter the country. Yet, the indignity of having to reveal deeply personal information about their faith and political views to federal officers is a reality for many American Muslim travelers today.

RELIGIOUS & CIVIC DUTY TO GIVE CHARITY FACES HURDLES

Muslims in America also face hurdles to the religious and civic obligation of alms-giving, or zakat, to organizations that feed the hungry, care for the
sick, and aid victims of natural disasters. Decades of overly broad and complicated federal laws and policies have targeted American Muslim donors and charities for federal investigation and prosecution. Instead of focusing on the commission of terrorist acts, the statute criminalizing “material support” to a terrorist organization can prosecute the giving of humanitarian aid, distributing literature, or engaging in political advocacy—even in the absence of specific intent to further an organization’s terrorist activities. To further compound the problem, government lists of prohibited organizations are numerous and constantly changing with no effective notice, thereby failing to provide donors with the information they require to ensure compliance with the law. The current laws also make no exceptions for good faith donors who unintentionally give charity to an organization that has been designated as prohibited. Consequently, the Muslim community has become increasingly fearful and reluctant to donate to charities and to fulfill the religious and civic obligation of giving charity.

ANTIMUSLIM BIGOTRY & DISCRIMINATION THRIVES

The government’s intensified scrutiny of the Muslim community parallels the marked increase in anti-Muslim incidents and the acceptance of anti-Muslim rhetoric and attitudes in public discourse. Hate crimes, employment discrimination, and school bullying against Muslims and those perceived to be Muslim are on the rise. Opposition to building mosques is growing. Anti-Islam hate groups and movements continue to spread falsehoods and misinformation about Muslims and Islam. Recent events include a campaign to oppose the construction of a Muslim community center in lower Manhattan; a quixotic “anti-Sharia” movement that claims Islamic law is on the verge of taking over the U.S. legal and political system; and Florida Pastor Terry Jones’ and copycat Quran burning stunts. Public officials are also responsible for perpetuating ignorant stereotypes about Muslims, the most recent example being Representative Peter King (R-NY) and his hearings as chair of the House Homeland Security Committee on the “radicalization” of the American Muslim community.

Taken together, the experiences of Muslims over the past decade paint a stark picture of the state of freedom in America today. It is time for the President, Congress, and executive branch officials to take action to protect the fundamental rights and freedoms guaranteed to all Americans.

SUMMARY OF KEY RECOMMENDATIONS

The following is a summary of our key recommendations. The full set of recommendations can be found in the Conclusion and Recommendations section of the report.

1) Rein in Unfettered, Baseless Surveillance

- The U.S. Department of Justice (“Justice Department”) and the FBI should revise the AG Guidelines to require a factual predicate before the commencement of an assessment and include heightened levels of supervisory approval and factual predicates for investigations that implicate First Amendment protected activities.
- The Justice Department should fulfill then-candidate Obama’s promise to undertake a comprehensive review of legal surveillance authorities to propose amendments that will protect First Amendment protected activities.
- The Justice Department, U.S. Department of Homeland Security (“DHS”), and the FBI should review training materials and operations to incorporate an understanding of First Amendment protected activities and the risks to civil liberties from overbroad government activities. These agencies should further revise materials that might be used to promote misunderstanding and intolerance of Muslims and incorporate training on non-discrimination, especially against Muslims.
- The Secretary of Homeland Security should prohibit CBP agents from asking questions related
to First Amendment protected activity (e.g., political beliefs, religious practices, associations with and contributions to lawful charitable organizations) of Americans entering the United States.

- The Secretary of Homeland Security should also direct CBP to adopt revisions to the administrative redress system such that individuals seeking explanations for the scrutiny, or removal from illegitimate inclusion on government watch lists, receive due process, including an opportunity to be heard and a transparent decision upon the completion of review.
- Congress should enact legislation, such as the End Racial Profiling Act, which bans racial, ethnic, religious, and national origin profiling by federal, state, and local law enforcement in all law enforcement and intelligence gathering activities, including profiling at the border.

2) Ease Hurdles to Charitable Giving

- Congress should amend the material support for terrorism statute to create an exemption for humanitarian aid, such as food and foodstuffs, water, clothing, shelter, sanitation services, and medical services, which are not protected under existing law.
- The President should require the Office of Foreign Assets Control to promulgate fair procedures for Specially Designated Global Terrorist designation and review.
- The President should direct the Secretary of State to waive the material support prohibition for technical advice and assistance, training, and personnel where intended for humanitarian purposes and not used to carry out terrorist activity, in order to ensure that well-intentioned charities can deliver essential aid such as water and shelter.
- The Justice Department and the U.S. Department of State, which collectively maintain the various prohibited lists, should be directed to create a single, user-friendly, searchable database that compiles all prohibited lists in one central location housed with the Office of Foreign Assets Control at the Treasury Department.

3) Combat Anti-Muslim Hate & Discrimination

- The administration, particularly the U.S. Department of Education, should conduct civil rights compliance reviews of schools with vulnerable Muslim, Arab, Middle Eastern, Sikh, and South Asian student populations.
- The Justice Department should pursue high profile investigations and prosecutions of anti-Muslim hate crime cases to send a clear, strong message that hate crimes will not be tolerated.
- The Justice Department and all U.S. Attorneys should increase and enhance their engagement with state and local law enforcement to ensure that all bias-motivated crimes are prevented, detected, investigated, and prosecuted.
- The Justice Department Civil Rights Division should create one centralized hotline and portal for the receipt, referral, and tracking of all civil rights complaints to the Division. This data collection and tracking mechanism should include race, ethnicity, national origin, and religion categories and sub-categories to ensure that complaints by Muslim, Arab, Middle Eastern, Sikh, and South Asian Americans can be tracked.
- Members of Congress and all public officials should refrain from making false and inflammatory statements about any religion, or ethnic, racial or religious groups, including Islam and the American Muslim community, and condemn those public officials who engage in hateful rhetoric or actions.
- Congress should make changes to the Hate Crimes Statistics Act to specify additional ethnic groups in the Bias Motivation section, under Ethnicity/National Origin.
I. INTRODUCTION

On October 26, 2001, President George W. Bush signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (“Patriot Act”), granting unprecedented power to law enforcement agencies to scrutinize and monitor Americans. The Federal Bureau of Investigations (“FBI”) could now sweep up enormous amounts of data about telephone calls; e-mails; internet activity; banking, credit, and credit card transactions; and other aspects of the daily lives of millions of Americans, all without requiring any suspicion of wrongdoing. The Patriot Act remains a decade-long example of rampant government power that has gone unchecked as the FBI largely shields its use of the law from the courts and Congress. The passage of the Patriot Act marked the beginning of a new test for democracy in America, not unlike other periods in U.S. history tainted by singling out a racial, religious, or ethnic community for discriminatory treatment that national leaders later came to regret.

Perhaps just as troubling, the passage of the Patriot Act opened the floodgates to a plethora of discriminatory and invasive laws, policies, and practices in the name of national security of which Muslims and those perceived to be Muslim have borne the brunt. This includes the roundup and detention of hundreds of mostly Arab and Muslim men in the weeks after the 9/11 attacks; the abuse of immigration laws and material witness authority to detain individuals for long periods of time; the creation of special detention facilities and units that severely restrict communication to segregate and house primarily Muslim prisoners; a series of interview programs targeting mostly Arab and Muslim men; and the NSEERS Special Registration program. While some of these activities were short-term, certain government efforts to target, monitor, and interrogate the Muslim community, without any suspicion or evidence of criminal behavior, have grown in size and scope. With law enforcement casting its net so unnecessarily wide, it is difficult to find a Muslim today who has not been contacted by law enforcement or affected by these policies.

Since September 11, 2001, Muslims and those perceived to be Muslim—including Arabs, Middle Easterners, Sikhs, and South Asians—have been continuously targeted by federal law enforcement based on religion, race, or ethnicity without suspicion of wrongdoing. This includes FBI assessments, investigations, and interviews; extensive and invasive questioning and searches at the border; the surveillance of community organizations and mosques, often relying on informants and undercover agents; and massive data gathering on law-abiding individuals.

The federal government’s efforts have also focused on America’s charitable sector. Laws that existed prior to 9/11 were modified, executive orders were written, and policies adopted that purport to prevent U.S. financial and other resources from being sent overseas to support...
terrorism. These overly broad policies and practices have created burdens on legitimate philanthropy that especially affect the religious and civic obligation of Muslims of zakat (alms-giving)—a consequence that even the U.S. Department of Treasury concedes. A myriad of Muslim charities have been investigated on suspicion of wrongdoing, and donors face the very real threat of invasive questioning by law enforcement. These onerous policies thwart the development of important social and civic charities here at home, as well as humanitarian relief for crises overseas.

The U.S. Constitution and America’s promise of life, liberty, and the pursuit of happiness are the values that bind us together as Americans. The freedom to express oneself, to worship, to work, and to travel, free of government interference, are among the freedoms protected by the Bill of Rights. Yet, the Patriot Act and countless new federal policies quickly threatened these very fundamental freedoms by singling out Muslims in America for detention, interrogation, and surveillance. As these activities took place, the message was clear to the American people: fear your Muslim neighbor. Hate crimes, vandalism of mosques, and discrimination and harassment in schools and the workplace soon rose. In a poll released in August 2011, nearly half of American Muslims have personally experienced discrimination in the last year, considerably more than Mormons, Jews, Catholics, and Protestants.

While Muslims are targeted by law enforcement, there has been an alarming rise of anti-Muslim rhetoric and incidents throughout the country. This includes irresponsible and dangerous statements by law enforcement and other government officials; a rampant increase in anti-Muslim harassment and discrimination; opposition to mosques; and hate crimes targeting Muslim, Arab, Middle Eastern, Sikh, and South Asian Americans. As a result, American Muslims are anxious about their future in a society that is mainstreaming hatred and suspicion and moving away from our shared values of freedom, truth, and fairness.

Ten years after the Patriot Act was signed into law, this report seeks to highlight the above-mentioned trends; describe the impact on the freedoms of American Muslims who have been unfairly targeted; and offer recommendations to the President, Congress, and executive branch officials on how to protect American Muslims from discrimination on the basis of their race, ethnicity, religion, or national origin.
Within days of September 11, 2001, then-U.S. Attorney General John Ashcroft proposed the first comprehensive anti-terrorism bill to Congress. He called on Congress to act quickly and to pass, within a week of its introduction, a law vastly expanding the government’s ability to collect information on millions of law-abiding Americans, diminishing checks and balances on domestic surveillance. While the U.S. Department of Justice ("Justice Department") proposal contained some reasonable suggestions, for example, to update the law to reflect evolving communications technology, numerous provisions went too far, granting law enforcement powers that encroached on rights and protections guaranteed by the Constitution. A final bill was introduced in the U.S. House of Representatives on October 23, 2001, and passed the very next day with 357 Representatives voting in favor, and merely 66 voting against the measure. In the U.S. Senate, an overwhelming 98 Senators voted in favor of the measure, with Senator Russ Feingold (D-WI) casting the sole ‘no’ vote. After sweeping through Congress with little debate, the Patriot Act was signed into law by President George Bush on October 26, 2001.

The frenzied pace at which the Patriot Act was enacted is symbolic of the widespread fear and urgency that seized the country in the weeks following September 11th. One of the administration's first steps—the Patriot Act—proved the beginning of America’s descent into a time of unchecked executive power and a steady erosion of civil liberties. The Patriot Act passed without much discussion; the usual legislative procedure consisting of public hearings, markup, and floor debate in both chambers was bypassed almost entirely. This did not go unnoticed. In the next few months, civil libertarians, legal scholars, and concerned Americans from all walks of life cautioned the administration and Congress against taking hasty measures that would likely sacrifice the constitutional ideals upon which this country was built. Attorney General Ashcroft angrily dismissed the critics as aiding terrorists.

"To those who pit Americans against immigrants, citizens against non-citizens, to those who scare peace-loving people with phantoms of lost liberty, my message is this: Your tactics only aid terrorists for they erode our national unity and diminish our resolve. They give ammunition to America’s enemies and pause to America’s friends. They encourage people of good will to remain silent in the face of evil.”

– Former U.S. Attorney General John Ashcroft

Ashcroft’s words silenced dissent in Congress, as the administration returned seeking more powers and more abrogations of the Constitution and our justice system.

Meanwhile, the Patriot Act amended over fifteen federal statutes dealing with, among other areas of law, criminal procedure, foreign intelligence, and immigration. It expanded surveillance laws permitting the government to spy on Americans to an unprecedented degree, while diminishing checks and balances that might have prevented abuse of the system. Numerous privacy and civil rights organizations and political leaders have extensively critiqued the Patriot Act’s most troublesome provisions.

The following sections are merely some of the ways in which overly broad surveillance and other tools continue to be a threat to all innocent
Americans who can be targeted by the FBI for monitoring of phone calls, e-mails, online activities, and searches of homes and businesses.\textsuperscript{10}

\textit{Section 215 of the Patriot Act: Business, Telephone, Financial, Medical Records & Other Tangible Items.} This section allows the government to obtain any “tangible thing” (which includes books, records, papers, documents, and other items) in connection with an international terrorism or foreign intelligence investigation and does not require reasonable suspicion or probable cause that the person being investigated or the thing being seized is related to suspected criminal activity.\textsuperscript{11} In other words, compliance with the law only requires that the government claim the items or documents are connected to a terrorism or foreign intelligence investigation, and nothing more. This provision is written so broadly that the FBI now has the power to access a slew of data detailing the private lives of law-abiding Americans, including telephone records, e-mails, bank statements, credit card transactions, medical records, and educational records.

\textit{Section 505 of the Patriot Act: National Security Letters.} In addition to rampant government access to “tangible things” with no connection to criminal activity, the Patriot Act allows FBI field agents to obtain other records using “national security letters (NSLs),” which are a form of administrative subpoenas not requiring any judicial approval or even internal findings of probable cause.\textsuperscript{12} By issuing an NSL, the FBI can force people and institutions—such as telephone companies, banks, credit agencies, and internet service providers—to turn over records on their customers, without their consent. This is allowed as long as there is an internal certification that the records sought are “relevant” to a terrorism or foreign intelligence investigation.

After receiving an NSL, a “gag order” provision forbids the recipient of the letter from disclosing this fact publicly. While some secrecy may be necessary in legitimate law enforcement investigations, the secrecy provisions in the Patriot Act are overbroad and unnecessarily infringe on free speech.

In 2004, the first lawsuit of its kind challenged the gag order provision preventing one such recipient from discussing the NSL with anyone, including his fiancée, his close friends, and his family.\textsuperscript{13} After six years of litigation, plaintiff Nicholas Merrill, the president of a New York-based internet service provider, was finally able to identify himself publicly as an NSL recipient.\textsuperscript{14} Still, Merrill is not allowed to reveal the information he was asked to turn over to the FBI.

Between 2003 and 2006, the FBI is said to have issued more than 192,500 letters, which is almost 50,000 NSLs each year.\textsuperscript{15}

Over the past decade, the issuance of NSLs have resulted in thousands of dossiers about innocent people collected from telephone logs, email addresses of persons with whom they have corresponded, internet accounts, financial records, and credit reports.\textsuperscript{16}

\textit{Section 206 of the Patriot Act: Roving Wiretaps.} The Patriot Act also loosens restrictions that previously required court authorization for wiretapping communication devices such as cell phones and computers to be specific.\textsuperscript{17} In a terrorism or foreign intelligence investigation, this “roving wiretap” provision, which was further expanded in 2002, now permits the government to obtain surveillance orders without identifying the communication device to be tapped, or without naming the individual to be surveilled. Since naming the individual is no longer a requirement, the government could monitor all individuals utilizing the communications device, such as a cell
phone, pay phone or landline, and thus monitor the communications of innocent Americans.

Section 213 of the Patriot Act: “Sneak and Peek.” The “sneak and peek” provision allows law enforcement, in any criminal investigation, to search homes and businesses while the occupants are away, and inform them only after the fact, perhaps weeks or months later. The Act’s proponents argue that this measure is necessary to prevent evidence from being destroyed or concealed, to prevent flight from prosecution, or to prevent threat to life or physical safety of an individual. But the provision goes a step further and includes a “catch-all” provision allowing a “sneak and peek” search so long as the government shows that immediate notice would seriously jeopardize an investigation. This “catch-all” provision essentially swallows the rule. Furthermore, the “sneak and peek” provisions fails to include a time limit (e.g., seven days delayed notice, renewable upon a court order). These deficiencies weaken the Fourth Amendment’s safeguard that law enforcement “knock and announce” their presence and intention to execute a search warrant before entering a home or business. Giving an individual notice of the search (by, for example, presenting the individual with a copy of the search warrant) is a constitutional protection against law enforcement exceeding the scope of its authority.

This expansive power has the potential for abuse, as we have already seen with the analogous “secret search” authority found in terrorism and foreign intelligence investigations under the Foreign Intelligence Surveillance Act (“FISA”). In 2004, shortly after the Madrid train bombings, the FBI quickly targeted as a suspect Brandon Mayfield, an American Muslim lawyer in Portland, Oregon. Based on erroneous evidence and analysis, the FBI arrested and imprisoned Mayfield for weeks. Relying on the FISA “secret search” authority, federal agents entered Mayfield’s home repeatedly for weeks, downloaded data from his computer, and planted listening devices in his home with no notice to him. After Mayfield was eventually released, he filed a successful lawsuit against the FBI, receiving compensation and an apology.

Concern about the Patriot Act is not a partisan issue. While then-Senator Feingold (D-WI), Senator Richard Durbin (D-IL), Congressman John Conyers (D-MI), and Congressman Jerrold Nadler (D-NY) have led efforts to reform the Patriot Act, they have been often joined by Republicans such as (now former) Senators Larry Craig (R-ID) and John Sununu (R-NH) and Senator Lisa Murkowski (R-AK). In a 2003 interview, former Congressman Bob Barr (R-GA) stated his regret at having voted for the Patriot Act: “I was hoping at the time that it would not be used as a floor but as a ceiling. But it’s been a taking-off point for expanded authority in a number of areas . . . the administration seems to be pushing its application as broadly as it can in non-terrorism cases.”

“The Patriot Act we know has nothing to do with Patriotism; they always name it the opposite of what it is. The Patriot Act is literally the destruction of the Fourth Amendment—that’s what it’s all about.” – Republican presidential candidate and Congressman Ron Paul (R-TX)

The FBI Exceeds & Abuses Its Authority. As concerns were raised, the Bush administration took a “just trust us” approach. In the last ten years, however, it has become clear that the FBI abused that trust. While Congress and advocacy groups have sought information about the full extent of
the FBI’s use of its newfound powers, the FBI has largely operated in secrecy.

One of the only independent examinations of the FBI’s use of its Patriot Act authority was a 2007 investigation by the Justice Department Office of the Inspector General (“IG”). The IG conducted a review of the FBI’s use of its NSL authority under the Patriot Act. The subsequent IG report showed widespread abuses, including the FBI’s provision of false information to Congress, and obtaining records of persons without evidence that such persons were suspected of wrongdoing. Between 2003 and 2005, the FBI sought numerous telephone records in violation of necessary standards, citing non-existent emergency situations to letter recipients. The FBI was also found to have severely underreported to Congress the number of NSLs requested by more than 4,600. FBI agents repeatedly “ignored or confused” the statutory requirements and used the letters to obtain private information “against individuals two or three times removed from” the subjects of FBI investigations, using the authority in exactly the way critics of this provision had feared.

The IG’s report was a much-needed and long overdue oversight of the FBI’s use of the Patriot Act. But as important as this review was, it only focused on one provision of the Patriot Act: the NSL authority. Congress has either not pushed the FBI, or when it has, it has not received the full, candid responses that it deserves on the NSL, Section 215 and other Patriot Act powers. To date, there still has not been a full, public, and independent accounting and review of the Patriot Act surveillance powers granted by Congress to the FBI. The problem is so critical that earlier this year, Senator Ron Wyden said in an interview, “We’re getting to a gap between what the public thinks the law says and what the American government secretly thinks the law says.”

The Patriot Act has come to symbolize unchecked executive power and the erosion of civil liberties in violation of the Constitution. The Patriot Act would soon pave the way for a deluge of discriminatory law enforcement policies and practices to which Muslims and those perceived to be Muslim are now subject.
LOSING LIBERTY: THE STATE OF FREEDOM 10 YEARS AFTER THE PATRIOT ACT

III. THOUGHTS, FAITH & DAILY ACTIVITIES OF INNOCENT AMERICANS UNDER SURVEILLANCE

A. The New FBI Adopts Biased, Bad Policing

Prior to 9/11, the FBI’s mission was primarily focused on investigating crimes and potential criminal activity. In the aftermath of 9/11, however, there has been a radical shift towards a preemptive counterterrorism model—one that focuses on collecting and sharing intelligence information as a means of preventing a future terrorist attack. FBI Director Robert Mueller has described this as a “paradigm shift in the FBI’s cultural mindset.”

Unfortunately, while 9/11 was a wakeup call for law enforcement and intelligence agencies to direct resources and attention to terrorism, the FBI’s new cultural mindset has been largely shaped by biased policing practices and distorted information about Islam and Muslims. This biased approach has resulted in bad policing.

The FBI now gathers massive amounts of data on innocent Muslims, Arabs, Middle Easterners, and South Asians throughout the country. Individuals in these communities have been targeted for questioning and surveillance without any individualized suspicion of wrongdoing. Their religion, ethnicity, race, or national origin is being used as a proxy for indicators of potential future criminal activity. A recent study examining the FBI’s operations has revealed that since 9/11, much of the agency’s budget—$3.3 billion—is devoted to maintaining its counterterrorism infrastructure, including a nationwide network of informants. The FBI now maintains a staggering 15,000 “official” spies and informants, many of whom are tasked with infiltrating the Muslim community specifically, and as many as another 45,000 “unofficial” informants.

According to one former senior FBI counterterrorism official, the FBI conducted nearly 500,000 such “voluntary” interviews by the end of 2005, and not a single one of those interviews led to information that would have allowed the government to detect or prevent the 9/11 attacks.

FBI Counts Mosques, Tracks Attire, Religious Practice. Shortly after 9/11, Director Mueller and senior FBI officials insisted that they were not engaging in racial, ethnic and religious profiling, and that biased policing was not an FBI policy or practice. They claimed that the FBI would not target Muslim, Arab, Middle Eastern, and South Asian Americans for arrest, interrogation or surveillance based on their race, ethnicity or religion. Those proclamations would soon change. In the last ten years, Muslims all over the country have been targeted by law enforcement, not based on wrongdoing, but simply because of their religion.

In early 2003, Director Mueller directed all 56 FBI Field Offices to count the number of Muslims, mosques, and Islamic charities in their region to create demographic profiles. This data would then be used to “set specific numerical goals for counterterrorism investigations and national security wiretaps in each region.” Shortly after 9/11, the FBI also directed that each of the Joint Terrorism Task Forces (“JTTF”), which are based out of each of the FBI Field Offices, target Muslim, Arab, Middle Eastern and South Asian non-citizen males residing in their region for questioning.

According to one former senior FBI
counterterrorism official, the FBI conducted nearly 500,000 such “voluntary” interviews by the end of 2005, and not a single one of those interviews led to information that would have allowed the government to detect or prevent the 9/11 attacks.35

The FBI has conflated religious beliefs and practice with criminal activity. In an intelligence assessment issued in 2006, the FBI listed converts to Islam and the following distinct expressions of religious practice as indicators of potential violent activity:

- “Wearing traditional Muslim attire”
- “Growing facial hair”
- “Frequent attendance at a mosque or a prayer group”
- “Travel to a Muslim country”
- “Increased activity in a pro-Muslim social group or political cause”36

The FBI encourages the public to report to law enforcement individuals who have views that are critical of U.S. foreign policy, or who have strongly held (Islamic) religious beliefs.37

In late 2008, the FBI would codify these practices. During the waning days of the Bush administration, the Justice Department and FBI issued the new rules of surveillance, the Attorney General Guidelines for Domestic FBI Operations (“AG Guidelines”) and the FBI agent manual implementing the AG Guidelines, the Domestic Investigations and Operations Guide (“DIOG”).38

The DIOG authorizes massive data gathering on the location and other data of racial and ethnic communities, including ethnic-owned businesses and charitable giving, travel, financial and work activities of those community members. Notably, much of this financial, travel, charitable giving and other data can be obtained using authority granted to the FBI by the Patriot Act.

The revised guidelines also expanded the FBI’s scope of domestic intelligence gathering, and allowed FBI agents to conduct “assessments,” a surveillance stage before opening an investigation. This essentially authorizes information gathering on individuals without any factual basis for suspected wrongdoing—a far more lenient standard than previously required.39 The ease with which FBI agents can now conduct broad assessments is further facilitated by the intrusive information-collecting techniques they can utilize in this phase, as permitted by the current AG Guidelines. Agents may use informants to attend community meetings and events; to conduct pretext interviews with people while hiding their true identity; and to engage in indefinite physical surveillance of homes, offices, and individuals.40 Civil rights groups have pointed out how this is a stark contrast from past FBI practice.41 Under the current AG Guidelines’ invasive techniques, innocent Americans are subject to constant government intrusion into their daily lives without objective evidence to suspect illegal activity or wrongdoing.42 Even more disturbing is that the AG Guidelines do not require any oversight, supervisory approval, or reporting during the assessment phase.43

The DIOG not only mirrors many of the problems apparent in the AG Guidelines, but also includes additional expansion of FBI activities.44 It authorizes massive data gathering based on troubling assumptions and stereotypes about minority ethnic communities and allows for the “geomapping” of “ethnic/racial demographics.”45 Investigative activities based “partially” on the exercise of First Amendment rights or on race, ethnicity, or religion are permitted,46 and the FBI is authorized to collect information regarding ethnic and religious behavior if it is “reasonably believed to be associated with a particular criminal or terrorist element of an ethnic community.”47 This collection of data based on geographic concentrations of
minority communities and focusing on their behavior can only be classified as ethnic, racial, and religious profiling.

It is important to note that the above-described tactics are not restricted to the realm of federal law enforcement. Local police departments have replicated the FBI’s mapping of the Muslim community across the country. In 2007, the Los Angeles Police Department (“LAPD”) scrapped a controversial plan to map its local Muslim population after an outcry from concerned community and civil liberties groups. In August 2011, it was revealed that a similar mapping program by the New York Police Department (“NYPD”) has been in existence since 2002. Working with officials from the Central Intelligence Agency (“CIA”), the NYPD established a surveillance unit that mapped the daily life of Muslims in New York, sending undercover agents and informants to monitor restaurants, cafes, bookstores, community centers, mosques, and other places where Muslims congregate and/or work.

Monitoring Prayer and Political Views. The DIOG authorizes the surveillance of millions of Americans in First Amendment protected spaces, such as houses of worship and religious and political gatherings and organizations, without evidence of wrongdoing. This new authority is reminiscent of past FBI surveillance abuses of civil rights leaders, anti-war activists, and other political and religious organizations and leaders. While restrictions on domestic surveillance powers were instituted after this dark period in the FBI’s history, the safeguards were all but eradicated by guidelines issued in 2002 under then-Attorney General John Ashcroft and in 2008 under then-Attorney General Michael Mukasey.

Today, the FBI has 15,000 spies and informants targeting the Muslim community and as many as another 45,000 “unofficial” informants.

The full extent of the FBI’s authority to conduct this type of surveillance is unknown, since the entirety of the DIOG remains undisclosed to the public. FBI Director Robert Mueller, however, admitted during testimony before the U.S. Senate Judiciary Committee in 2010 that the FBI believes that it can send undercover agents or informants into houses of worship, political meetings and other First Amendment sensitive spaces without evidence of wrongdoing, stating: “The FBI must have a proper purpose before conducting surveillance, but suspicion of wrongdoing is not required.”

The FBI’s use of informants and other undercover tactics has led to several high profile and
controversial investigations and arrests that often appear to target youth, vulnerable individuals, or members of the Muslim community exercising First Amendment protected activities. Law-abiding citizens—who range from public servants to students to professionals—are frequently approached by law enforcement not because they are the subject of an investigation, but, rather, because of a perception that—by virtue of their religion, ethnicity, race, or national origin—they are either engaged in, or will be able to provide information about, criminal activity.

In certain cases, individuals have been coerced into becoming informants under threat of a criminal charge or being deprived of an immigration benefit.

The FBI’s broad authority and tactics have resulted in the unfair scrutiny and baseless surveillance of the Muslim American community, causing fear, concern, and uncertainty. Some examples include:

- FBI agents routinely attend cultural events hosted by an Arab American organization in the San Francisco Bay Area, without invitation, and interview employees and participants, sometimes without disclosing their identity. The FBI has also sought to meet with the organization’s employees outside regular business hours and without consulting with the executive director or other leadership. The FBI’s tactics have the effect of intimidating community members and leaders, who are afraid that speaking out about the surveillance will result in increased targeting and scrutiny of the organization, its members and activities.
- A young professional and Muslim American in Northern California was approached for questioning, in his workplace, by the FBI after posting political articles from mainstream news sources on his Facebook page. His Facebook page had privacy settings limiting viewers of his posts to only those in his circle of Facebook

Muslim community leaders in Houston, Texas, were invited to a meeting with the FBI, during which they were told that the FBI was seeking information on the Muslim community in the area. Leaders were told to report any Muslims in their communities who were espousing conservative ideologies or adopting conservative religious practices, as that was evidence that the individuals were engaged in suspicious behavior. These requests appear to have been made based on generalized suspicion of an entire faith and ethnic community, not in response to a particular investigation nor based on evidence of wrongdoing by individuals in that community.

Imam Foad Farahi from North Miami Beach, Florida, was first approached by FBI agents in 2004. He was told to act as an informant in return for guaranteed U.S. residency, as well as financial assistance to pursue an education. Being a trusted leader in the community, Farahi declined, but was approached again two years later with the same offer. Upon declining once again, he discovered the repercussions of refusing to comply with an FBI order to spy on his community. Soon after, he went to attend a routine hearing on his political asylum case and was told that the government had evidence that he was involved in terrorist activity. He was told to either drop his asylum case and leave the U.S. voluntarily or be charged as a terrorist. Farahi’s case is currently on appeal.
friends. Although this young man had no criminal background and was not the subject of a criminal investigation, the FBI contacted him, approaching him at work, in front of his colleagues and managers. The FBI intimidated this young man and jeopardized his job.

As a result of these policies and practices, individuals feel chilled from speaking and worshipping freely because they are afraid that their mosques or other community gatherings and members are under surveillance and that their speech or religious practices may be the basis for government scrutiny.

**Anti-Muslim Training by FBI Breeds Biased Policing.** The problem of FBI agents infiltrating Muslim community spaces and surveilling innocent people is compounded by recent revelations that the FBI’s counterterrorism training uses presentations and materials that perpetuate gross stereotypes and falsehoods about Islam and the Muslim community. Anti-Muslim biased trainers and training materials have permeated vast components of the FBI and JTFF training system, including training sessions at the FBI academy in Quantico, VA, the FBI intranet, and the FBI library. FBI agents have been taught, for example, that:

- “[a]ccommodation and compromise between [Islam and the West] are impermissible and fighting [for Muslims] is obligatory”
- The Islamic practice of zakat, alms-giving, is characterized as a “funding mechanism for combat”
- Prophet Muhammad is a “cult leader”
- Mainstream Muslims are “likely to be terrorist sympathizers”
- The more “devout,” the more likely the Muslim is to be “violent”
- Islamic law prevents Muslims from being loyal Americans

These revelations follow documents released by the FBI earlier this year in response to a Freedom of Information Act (“FOIA”) request. That FOIA disclosure exposed training materials from 2009 that referred to Islam as a religion that “transforms [a] country’s culture into 7th-century Arabian ways.” In response, the FBI has pledged to conduct an internal review of its religious and cultural training materials. Even assuming the FBI conducts a genuine examination and overhaul of its counterterrorism training, serious damage has already been done. The pervasive existence of these biased training materials helps to explain why the FBI views the Muslim community with suspicion, believes that religion is an indicator of propensity to commit violence, and targets the Muslim community for sweeping, unfettered surveillance. Yet, as former experienced FBI agents and al Qaeda investigators have noted, biased policing is bad policing.

The net impact of these tactics is a chill on the privacy, equal protection, due process and free speech, religious practice and association rights of American Muslims. Unfettered surveillance motivated by anti-Muslim bias is not only eroding the rights of these community members, but it is eroding the trust between the community and law enforcement and between community members and community organizations.

**B. Thought Police at the Border**

Lawrence Ho, a Chinese-American Muslim convert, was traveling back home to New Jersey after attending a conference in Toronto when his car was stopped at the U.S.-Canada border. Lawrence and the friend with whom he was traveling were asked to step out of the car and into the border facility, where a Customs and Border Protection (“CBP”) agent asked Lawrence, “When did you convert to Islam?” Lawrence had no idea how the agent knew he was a Muslim or had converted.

Lawrence was held in the facility for over four hours where the questioning continued, this time...
by four armed agents. Lawrence was asked again when he converted to Islam, what mosques he visits, and how often he attends the mosque. After the questioning was over, Lawrence and his friend went out to retrieve their car. Lawrence watched while an officer repeatedly hit the remote entry key on his friend’s car. When another officer asked why he kept hitting the key, the officer laughed and said, “Just seeing if it’d blow up.”

Lawrence filed a complaint about his experience with CBP and in response was told by a border agent, “In 2001, the U.S. was attacked by Islamist extremists. If a CBP Officer inquires as to a person’s religious beliefs in order to uncover signs of extremist tendencies, that Officer is well within his authority.”

The sad reality is that Lawrence’s story is illustrative of a pattern facing travelers today. Muslim travelers returning home from international travel are regularly stopped, detained, searched, and interrogated by CBP agents. Law-abiding Americans from all walks of life have been interrogated about their political views and activities, religious beliefs and practices, and associations with organizations, friends and relatives—all without any evidence that they are engaged in unlawful activity.

American Muslims have also been asked about donations to, or affiliations with, lawful U.S. charitable entities and mosques. This type of questioning suggests that travelers are being targeted at borders and airports for invasive questioning not based on suspicious behavior, but based on race, ethnicity, or religion and First Amendment protected beliefs and activities.

Unfortunately, CBP’s official policy on the issue of overbroad interviews targeting First Amendment protected activities is unclear. The agency has not released any public information about the authorized scope of questioning and whether internal constraints and accountability mechanisms to deal with First Amendment infringements exist. In response to numerous complaints from civil liberties groups, the U.S. Department of Homeland Security (“DHS”) Office of Civil Rights and Civil Liberties opened an investigation into the inappropriate First Amendment questioning of citizens. While the investigation process has been initiated, complaints from individuals subject to unnecessary interrogations at the border continue unabated.

In addition to personal and intrusive questioning
on First Amendment protected beliefs and activities, travelers returning home from international travel are subject to invasive searches at the border of their person and belongings, including electronic devices, without any individualized suspicion of wrongdoing. CBP agents look through pictures on digital cameras, documents on computers, and contacts and information in cell phones and smartphones for no reason at all. The invasive nature of these searches—and the government’s claim that it can search travelers’ belongings without reasonable suspicion—highlights the broad, unchecked power being asserted by agents at our nation’s borders.

A young father, returning home to the U.S. from a trip to Canada with his wife, one-year-old daughter, and other relatives, was asked to step out of the car and to put his hands behind his back. Officers handcuffed him in front of his family, patted him down, and took him to a waiting room in the CBP facility. After a two hour wait, he was asked highly intrusive and personal questions, including: “What mosque do you attend?”; “How often do you attend the mosque?”; “So you don’t consider yourself a religious person?”; “Do you give donations?”; and “Who do you give it [charity] to?” He was embarrassed and humiliated about being questioned regarding his associations and religious, beliefs, practices, and charitable activities. He has since declined several requests from his employers to travel for work because he fears being detained and interrogated again.
IV. RELIGIOUS & CIVIC DUTY TO GIVE CHARITY FACES HURDLES

Alms-giving, or zakat, is a central religious and civic obligation for American Muslims, as it is for many Americans of faith and goodwill. Like charities for other ethnic and religious communities in the United States, charitable, community-based organizations are the backbone of the American Muslim community and are a necessary tool for civic engagement. These organizations feed the hungry, care for the sick, fulfill spiritual needs, and serve as ambassadors for international aid and humanitarian efforts. As Secretary of State Hillary Clinton recently stated, “supporting civil society groups is a critical part of our work to advance democracy.” Yet, for a decade now, convoluted and overly broad federal laws and policies have targeted American Muslim donors and charities for federal investigation and prosecution.

In his June 2009 Cairo speech, President Obama acknowledged “rules on charitable giving have made it harder for Muslims to fulfill their religious obligation,” and promised to work with the Muslim community to ease hurdles to charitable giving and to protect religious freedom.

The heart of these hurdles is the material support for terrorism statute; the ability of the government to freeze assets of a charity indefinitely, without charge; and an archaic and confusing list-checking system donors must navigate prior to giving.

**Good Faith Donors Face Potential Criminal Prosecution.** The material support statute prohibits the provision of “material support or resources” to certain foreign organizations that engage in terrorist activity, as designated by the Secretary of State. “Material support” has been statutorily defined to include money and tangible items, as well as personnel, training, and expert advice or assistance. There are only two narrow exceptions to this prohibition: medicine and religious materials.

The Supreme Court’s most recent interpretation of the statute has caused even more fear and uncertainty within the American Muslim community. In 2010, the Court held that material support, whether in the form of humanitarian aid, literature distribution, or political advocacy, is fungible and therefore supports a terrorist organization in any form. Consequently, one can be guilty of materially supporting a terrorist organization even in the absence of specific intent to further the organization’s terrorist activities. This means that many activities that are necessary for the purposes of humanitarian aid and relief can be prosecuted as “material support.” This can include the provision of food aid, latrines, blankets, clothing, or tents.

Under current law, good faith donors can be liable even when they do not intend to violate the law and face scrutiny for constitutionally protected activity. For example:

- A donor can face liability, including criminal prosecution, for a donation to an organization that is designated as a terrorist organization after the donation is made.
- A donor can be liable for donating to a group that is not designated as a terrorist organization but where the donation is later transferred to a prohibited party.
- A donor can face invasive questioning about legitimate religious donation practices by CBP
at the border or by the FBI, which has been directed to gather data on mosques and Muslim charities, all without evidence of wrongdoing.

As the current famine crisis in Somalia demonstrates, providing humanitarian aid frequently involves donating funds to countries amidst political crises and social upheaval. The worst effects of the famine are concentrated in southern Somalia, a region that is controlled by al-Shabab, which has been designated by the U.S. government as a terrorist organization. That means that if an aid organization were to work with al-Shabab to facilitate the transfer of humanitarian assistance, that organization—and any donors to that organization—would likely be in violation of U.S. criminal laws banning the provision of material support to terrorist organizations. Members of Congress are increasingly recognizing that the material support laws have created unintended consequences that thwart urgent humanitarian aid. For example, Senator Patrick Leahy (D-VT), chair of the Senate Judiciary Committee, has called on the Justice Department to create prosecutorial guidelines to remove uncertainty about how the law might be used and to create a process to ensure that legitimate donors and other good faith actors can seek exemptions.

Therefore, laws and regulations need to be reformed to protect good faith donors and to ensure the continued, essential role of charity in civil society.

**Good Faith Donors Also Face Potential Civil Penalties for Humanitarian Assistance.** In 2001, pursuant to Executive Order 13224, the U.S. government increased the use of the International Emergency Economic Powers Act (“IEEPA”) to target, designate, and sanction individuals and organizations associated with terrorists and terrorist organizations, including individuals and organizations located within the United States. Under EO 13224, there are essentially no protections for well-intentioned donors. The order permits the Secretary of Treasury to block the assets of any individual found to have assisted in, sponsored, or provided financial, material, or technological support for, or financial or other services for, acts of terrorism or organizations or individuals on the Specially Designated Global Terrorist (“SDGT”) list. The SDGT list is one of a number of “prohibited lists” maintained by the U.S. government. Additionally, the order allows the Secretary of Treasury to block the assets of any individual found to be “otherwise associated with” organizations or individuals on the SDGT list. There is no intent requirement necessary to violate this provision.

**The Government’s List of Prohibited Entities and Individuals is Unreasonably Difficult to Navigate.** The proliferation of such prohibited lists presents additional challenges. The government’s lists of prohibited parties are confusing, difficult to navigate, and constantly changing, and thus fail to provide donors and organizations effective notice of prohibited parties. These massive prohibited lists currently reside on two different agency websites (Treasury and State) in a format that is not easily searchable. In addition, the government asserts that publication of the State Department’s decision to designate an entity as a Foreign Terrorist Organization (“FTO”) in the Federal Register is sufficient notice to hold an individual criminally liable for transacting with that organization. Yet, it is unreasonable for individual donors, small charities, and mosques to be expected to navigate the Federal Register exhaustively to check for designated FTOs. As a result, publication in the
Federal Register is essentially futile and provides no real notice to individual donors.

**American Muslim Donors Have Faced Often-Baseless Investigation and Even Prosecution for Alleged Violations of the Anti-Terrorism Financing Laws.** In an extensive study of Muslim donors, the American Civil Liberties Union (“ACLU”) found that hundreds of Muslim donors in Texas, Michigan, New York, Virginia, Florida, Louisiana, California, Minnesota, Missouri, and Wisconsin had been targeted by law enforcement. They were asked personal and invasive questions about donations made to lawful charities. These interviews are often “coercive, intrusive and intimidating,” with many individuals characterizing the interviews as harassment. The FBI has even secured donor lists to target individuals who have donated to certain charities prior to when those charities were designated terrorist organizations and added to the prohibited lists.

While in certain cases, the FBI may be investigating potential violations of the law, it is also clear that the FBI no longer believes it needs evidence of wrongdoing before monitoring and questioning individuals about their donations to and associations with charitable entities, including lawful U.S.-based charities. In addition, the FBI’s surveillance of mosques and other community organizations has created a significant chill on charitable giving. The use of informants in houses of worship spreads fear amongst the congregation, causing many donors to reduce donations or give in cash to avoid attracting government attention.

In its prosecution of the Holy Land Foundation, the federal government labeled 246 individuals and organizations as unindicted co-conspirators. This list of alleged co-conspirators was made public in violation of the Justice Department’s own policies. It was so overly broad that it targeted people and entities without any allegations of specific intent to engage in terrorism. The list smeared these individuals and groups, without giving them notice of the allegations or the ability to challenge the “unindicted co-conspirator” designation in a court of law.

Man retroactively charged with material support of HLF before the organization’s official designation as a terrorist entity

Mohamed Shorbagi, a Palestinian-American and former imam at a mosque in Rome, Georgia, was charged in August 2006 with providing material support to terrorists for his donations to Holy Land Foundation for Relief and Development (HLF). Mr. Shorbagi was charged with transactions between 1997 and 2001 during a period of time when HLF was legally operating and not known to be under suspicion. Shorbagi ultimately pled guilty to providing material support to a foreign terrorist organization. His 15-year prison sentence was commuted to seven years and eight months.

Justice Department publicly labels 246 people and organizations unindicted co-conspirators in violation of its own policy

In its prosecution of the Holy Land Foundation, the federal government labeled 246 individuals and organizations as unindicted co-conspirators. This list of alleged co-conspirators was made public in violation of the Justice Department’s own policies. It was so overly broad that it targeted people and entities without any allegations of specific intent to engage in terrorism. The list smeared these individuals and groups, without giving them notice of the allegations or the ability to challenge the “unindicted co-conspirator” designation in a court of law.

As previously mentioned, CBP agents have also joined the fray, interrogating American Muslims returning from overseas travel about their donations to and associations with lawful, U.S.-based charities—questions that have nothing to
do with the purpose of their travel abroad. These questions intrude on First Amendment speech and association protections and give donors pause as they contemplate giving to and associations with charities in the future.

Law enforcement scrutiny of the charitable giving of the American Muslim community is ongoing and continues to expand, significantly contributing to the fear of giving in the American Muslim community. Heightened scrutiny by the IRS of charitable giving to Islamic organizations has had a chilling effect on donations. Furthermore, donors fear a visit from the FBI at their home or workplace, or getting questioned at the border.

For example, Dr. Rafil Dhaifir, a U.S. citizen and oncologist led a charity called Help the Needy, which provided humanitarian aid, including food and medicine, to people suffering from sanctions in Iraq. Dr. Dhaifir was arrested in February 2003 in a raid at his home in Central New York, and labeled a suspected terrorist by then-Attorney General John Ashcroft. Dr. Dhaifir was convicted and sentenced to 22 years for violating the Iraq sanctions program by assisting the needy. His indictment did not include charges of terrorism, yet Dr. Dhaifir was placed in a Communications Management Unit (“CMU”), a maximum federal prison facility, in which prisoners are allowed one 15-minute phone call per month with immediate family only; one hour-long, non-contact visit per month with immediate family only; and one sent letter per week consisting of three pieces of paper only.

Close to 150 people from Dr. Dhaifir’s local community who had donated to Help the Needy were harassed and intimidated during the course of the government’s investigation. Donors were asked questions unrelated to the investigation, including whether they were born Muslim, how often they prayed, and their citizenship status. One individual reported that federal agents reviewed his bank records going back 20 years after he was found to have made a $150 donation to Help the Needy.

Many donors find themselves asking whether they should abandon their charitable wishes out of fear of government scrutiny. According to one Dearborn, Michigan, accountant, donor and business owner, “[c]ontributions across the board have been drastically reduced because of the fear; people associate contributions with risk and they don’t want that.” Similarly, some donors are afraid of writing checks for humanitarian aid for fear of ending up on a government database of suspected supporters of terrorism.
V. ANTI-MUSLIM BIGOTRY & DISCRIMINATION THRIVES

While the government has increasingly viewed the American Muslim community with suspicion, the last decade has also seen a marked uptick in anti-Muslim attitudes, hate crimes, and discrimination. The public appears to be taking cues from government policies—like those discussed earlier in this report—that paint the entire Muslim community with one broad brush as a security threat. During the summer of 2010, we began to see anti-Muslim rhetoric and activities accelerate rapidly, spilling into mainstream media and attacking the fundamental freedoms guaranteed by the Constitution to all Americans, regardless of faith.

This dangerous trajectory of anti-Muslim hatred began with a campaign to oppose the construction of a Muslim community center in lower Manhattan. This soon became a media frenzy, with politicians across the country weighing in, blaming collectively the American Muslim community for the acts of a criminal few. Then, with anti-Muslim vitriol already in high gear, Florida Pastor Terry Jones announced plans to conduct Quran burnings on the anniversary of 9/11, which he called “International Burn a [Qu]ran Day.” While that Quran burning did not take place, copycat incidents of planned and actual Quran burnings were recorded across the country. By summer’s end, a Muslim cab driver in New York City had been stabbed repeatedly after answering affirmatively when his passenger inquired if he was Muslim. A few months later, we would also see the launch of an “anti-Sharia” movement, which promotes the canard that Islamic law is on the verge of taking over the U.S. legal and political system. These anti-Muslim activities and incidents have continued unabated in 2011.

A. Hate in the Public Discourse

Recent studies show that anti-Muslim sentiment is increasing amongst the American public. A survey on American values recently conducted by the Public Religion Research Institute found that 45% of Americans believe that the values of Islam are at odds with the American way of life. Another study reports that a majority of Americans (53%) say their opinion of Islam is either “not too favorable” (22%) or “not favorable at all” (31%). More than 4 in 10 Americans (43%) admit to feeling at least “a little” prejudice toward Muslims, which is more than twice the number who say the same about Christians, Jews, and Buddhists.

The Southern Poverty Law Center (“SPLC”) has found that there has been a dramatic resurgence of anti-muslim bigotry & discrimination.

Americans say their opinion of Islam is
“Not too favorable” 22%
“Not favorable at all” 31%
of hate groups in the U.S.\textsuperscript{111} For the first time ever, SPLC has designated Pam Geller’s Stop Islamization of America (“SIOA”)—the group behind the initial campaign to stop construction of the mosque in lower Manhattan—as an active anti-Muslim hate group.\textsuperscript{112} It has also designated at least three other groups as anti-Muslim hate groups: Right Wing Extreme in Georgia, Christian Phalange in North Carolina, and 9/11 Christian Center at Ground Zero in New York.\textsuperscript{113} It describes anti-Muslim hate groups as typically holding “conspiratorial views regarding the inherent danger to America posed by its Muslim-American community.”\textsuperscript{114} Disturbingly, SIOA has won much recognition and support from white supremacist groups such as Stormfront, Council of Conservative Citizens, and American Renaissance, a group that publicly stated that black people are incapable of sustaining civilization.\textsuperscript{115}

Another anti-Muslim organization, ACT! For America, which in early 2011 promoted a vicious hate rally in Southern California, now has a staff of eight that includes a full-time federal lobbyist, a detailed legislative agenda, and a television program, all of which are apparently dedicated to spreading fear, bigotry and misinformation about Islam and Muslims.\textsuperscript{116} The ACT! For America founder and CEO Brigitte Gabriel has said that she may be creating a political action committee (PAC) or a 527 organization to get directly involved in campaigns and elections.\textsuperscript{117}

These hate groups seek to both generate and capitalize on the fear and paranoia about Muslims and Islam. A recent Center for American Progress report reveals the intricate channels of funding that are the lifeblood of these groups.\textsuperscript{118} The report names seven charitable groups that have provided a staggering $42 million-plus to anti-Muslim organizations between 2001 and 2009.\textsuperscript{119} In addition, prominent religious and military leaders are feeding the misinformation and fear-mongering campaign. For example, the Rev. Franklin Graham has repeatedly called Islam “evil and wicked,”\textsuperscript{120} and U.S. Army Lieutenant General (ret.) and former senior Defense Department official William Boykin has stated, “We need to remember that Islam is not a religion, but a totalitarian way of life with a religious component. Yet we protect the entire thing under the [F]irst [A]mendment . . . Islam’s objective in America is to replace our Constitution with Sharia law.”\textsuperscript{121}

Perhaps most frightening is that the extremist and once fringe ideology of these hate groups has now infiltrated the mainstream and government agencies. For some years after 9/11, their hate agenda was primarily relegated to the remote reaches of the blogosphere or media, but in the last year, they have begun to emerge in mainstream media, appearing in such outlets as CNN and The New York Times.\textsuperscript{122} As described in Section III of this report, the FBI has been teaching its counterterrorism agents many of the same distortions and falsehoods that the anti-Muslim groups promote—misguided and inflammatory statements like Prophet Muhammad is a “cult leader” and that Islamic law prevents Muslim from being loyal Americans.\textsuperscript{123} At the local level, NYPD officers being trained in counterterrorism measures were required to watch an inflammatory, grossly misleading film about Muslims and Islam with footage of bombings and American flags and churches being
burned. The narrator of the film informs the audience, “Americans are being told that most of the mainstream Muslim groups are moderate . . . when in fact if you look a little closer you’ll see a very different reality. One of their primary tactics is deception.” After public outcry, the NYPD acknowledged that the film was “wacky” and “inappropriate,” and Commissioner Ray Kelly stated that the film is no longer being used.

Suspicion and hostility towards American Muslims manifests themselves in many ways with serious consequences for our society and public safety. Discrimination, harassment, bullying of children, acts of bias-driven violence, or opposition to mosques and community centers have become a haunting reality in the lives of many American Muslims today.

B. Divisive Rhetoric & Fear-Mongering by Public Officials

Public officials have an important responsibility to promote freedom, respect, truth and fairness. This is not about “political correctness” or free speech; it is about the responsibility of elected officials to uphold the Constitution and to promote unity and social cohesion.

Public officials should lead by their actions and words and ensure that, as President Obama said, “we are talking with each other in a way that heals, not a way that wounds.”

All too often, however, public officials do not heed this call, particularly when the topic is Muslims and Islam.

Ten years after the tragic events of 9/11, public officials appear to be increasing their offensive and dangerously misinformed statements about Muslims [See next page]:

New York Police Department officers being trained in counterterrorism measures were required to watch an inflammatory, grossly misleading film about Muslims and Islam with footage of bombings and American flags and churches being burned. The narrator of the film informs the audience, “Americans are being told that most of the mainstream Muslim groups are moderate . . . when in fact if you look a little closer you’ll see a very different reality. One of their primary tactics is deception.” After public outcry, the NYPD acknowledged that the film was “wacky” and “inappropriate,” and Commissioner Ray Kelly stated that the film is no longer being used.
In February 2011, former Arkansas governor, 2008 presidential candidate, and ordained minister Mike Huckabee exhibited his woeful lack of knowledge about Islam and maligned Muslims, as he criticized two Protestant churches that allowed local Muslims to worship in their facilities on occasion:

“As much as I respect the autonomy of each local church, you just wonder, what are they thinking? . . . If the purpose of a church is to push forward the gospel of Jesus Christ, and then you have a Muslim group that says that Jesus Christ and all the people that follow him are a bunch of infidels who should be essentially obliterated, I have a hard time understanding that.”

In January 2011, U.S. Representative Allen West (R-FL) appeared on the South Florida-based program The Shalom Show where he was asked how he would manage working with U.S. Representative Keith Ellison (D-MN), a Muslim. He responded that Ellison represents the “antithesis of the principles upon which this country was established.”

In August 2010, during the controversy over the Muslim community center in lower Manhattan, former Speaker of the House and aspiring presidential candidate Newt Gingrich said that the proposed mosque would be a symbol of Muslim “triumphalism” and compared the building of a Muslim community center two blocks from the site of the 9/11 attacks to “putting a Nazi sign next to the Holocaust Museum . . . [i]t’s profoundly and terribly wrong.”

In 2007, Peter King stated, “we have too many mosques in this country. There are too many people who are sympathetic to radical Islam . . . [a]nd it’s a real threat here in this country.”
In February 2011, U.S. Representatives Gary Miller (R-CA) and Ed Royce (R-CA) attended and spoke at an anti-Muslim rally in Orange County, California where protesters shouted hateful comments at American Muslim families attending a fundraiser to support women’s shelters and charitable efforts to curb hunger and homelessness. At the rally, protesters yelled, “You are stupid terrorists! Go home! Go home! Go home!” Villa Park Councilwoman Deborah Pauly went so far as to make a death threat, speaking from the stage, “I know quite a few Marines who will be very happy to help these terrorists to an early meeting in paradise.”

On July 17, 2011, Republican presidential candidate Herman Cain insisted during a Fox News Sunday interview that Islam is different from all other religions because it “is both a religion and... Sharia law.” He stated his opposition to the building of a mosque in Murfreesboro, Tennessee, firmly stating that communities have the right to ban the construction of mosques in their neighborhoods, and that such opposition does not constitute discrimination based on religion. He has also said that he would require a special loyalty test for any Muslim serving in his administration, should he be elected.

While Cain later apologized for “caus[ing] offense to Muslim Americans and their friends,” he stood by his opposition to the mythical threat of Sharia law to the U.S. legal system.
Perhaps more disturbing has been the use of government power by public officials to promote fear and suspicion toward a faith community. Earlier this year, U.S. Representative Peter King (R-NY), chair of the House Homeland Security Committee, launched a series of hearings on the “radicalization” of the American Muslim community, suggesting that Muslims are somehow uniquely prone to violence. It is, in fact, this wrongful conflation of religion and violence that formed the basis for the hearing in the first place. In 2007, King stated, “we have too many mosques in this country. There are too many people who are sympathetic to radical Islam . . . and it’s a real threat here in this country.”

Leading up to the hearing earlier this year, Representative King also insinuated that American Muslims are not American. The hearing singled out the American Muslim community as uniquely susceptible to violence, a notion that is unfair, false and ignores the range of grave threats to the security of our nation. As the tragic shootings in Oslo on July 22, 2011, and in Tucson, Arizona, on January 11, 2011, painfully remind us, those who engage in extremist violence reflect a range of race, ethnicity, religious affiliation, or political leanings.

These examples demonstrate a breakdown in the norms of civility and respect that Americans expect from our elected officials. There should be no place in political discourse for vitriol and open displays of bias and hatred. The American public is deeply influenced by its public officials, and these statements promote the troubling message that it is acceptable to engage in bigotry and hatred against a group of Americans based on their faith. Regardless of political party, it is wrong and not who we are as Americans to spread falsehoods, fear, and hate of any religious, ethnic, or racial group. As President Obama recently noted, “American Muslims are part of our American family.” And as former Secretary of State Colin Powell courageously asked in 2008 in response to the anti-Muslim rhetoric of members of his own political party: “Is there something wrong with being a Muslim in this country? The answer's no, that’s not America.”

C. Violations of American Muslim Rights & Freedoms

Increasingly, America’s promise of life, liberty and the pursuit of happiness is not enjoyed by all. As they go about their everyday lives, American Muslims face threats to their guaranteed rights and freedoms. These threats and violations include hate crimes, bullying and harassment in schools, discrimination in the workplace, increased levels of vandalism against mosques and community centers, and concerted community opposition against mosque construction proposals. As U.S. Attorney General Eric Holder, the nation's top law enforcement official, stated in 2010, anti-Muslim hate is “the civil rights issue of our time.” To meet this challenge, Congress, government officials, and all Americans need to uphold our commitment to freedom, justice, and equality for all, regardless of faith.

Hate Crimes

The threat of being harassed, assaulted or even killed because of one's faith, race or ethnicity has become an increasing concern for Muslim, Arab, Middle Eastern, Sikh, and South Asian Americans. During the period from January 2010 to August 2011 alone, there have been numerous cases of alleged hate-motivated physical violence or threats of physical violence to individuals across the country [see map for a sample of incidents].
The number of reported hate crimes remains substantially above pre-2001 levels.

A Muslim woman in Idaho was screamed at in a grocery store by a man who said he had a concealed weapon and had killed Muslims and would kill more.\(^{153}\)

Two Muslim women in Seattle were called “terrorists” and “suicide bombers” before being physically assaulted at a gas station.\(^{150}\)

A Sikh store clerk in Seattle was punched in the head and told “You’re not even American, you’re [al Qaida]. Go back to your country.”\(^{146}\)

A Muslim cab driver in NYC was stabbed after telling his passenger that he was Muslim.\(^{145}\)

A Muslim woman in Portland was threatened by a neighbor that he would shoot her dog and rape her while she was praying.\(^{152}\)

A Muslim woman in Ohio was followed by a man to a local Islamic Center, where he threatened to kill her and pepper-sprayed her.\(^{151}\)

A Muslim high school student in Staten Island was punched, spat on and harassed at school for approximately one year before coming forward to report the abuse.\(^{149}\)

A Sikh store clerk in Seattle was punched in the face while staffing a booth to answer questions about Islam and Muslims.\(^{147}\)

A Muslim teenager in Iowa was called a “raghead” and a “sand nigger,” and had his jaw broken.\(^{148}\)

In March 2011, in Elk Grove, California, two elderly Sikh men in traditional garb were out walking near their homes one afternoon when a truck drove by and shot at them both, killing one instantly; the other died approximately one month later after succumbing to his injuries.\(^{155}\) With no apparent motive, and the Sikh appearance of the men, law enforcement officials stated the circumstances increasingly raise the possibility that the attack was a hate crime.\(^{156}\)

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A Muslim woman in Portland was threatened by a neighbor that he would shoot her dog and rape her while she was praying.\(^{152}\)
These incidents are just some recent tragic examples of the very real life and death consequences of the increasing climate of anti-Muslim hate. Pursuant to the Hate Crimes Statistics Act, the FBI attempts to track hate crimes incidents, which includes a sub-category of religion bias based crimes segregated for “anti-Islamic” hate crimes. The FBI has reported during the period from 2001 to 2009, 1,552 incidents of hate crimes based on “anti-Islamic” bias, resulting in 1,785 offenses. Despite widespread underreporting—also acknowledged by the Attorney General—the number of reported incidents remains substantially above pre-2001 levels. The data for 2010, a year when anti-Muslim bigotry spiked in other areas, has not yet been released.

As stark as these numbers are, however, they do not paint the full scope of the problem. No government agency collects accurate, comprehensive data on hate crimes motivated by anti-Muslim hate targeting Muslim, Arab, Middle Eastern, Sikh, and South Asian Americans. The FBI does not separately track victims who may be subjected to racial, ethnic, or national origin bias motivated crimes based on their Arab, Middle Eastern, South Asian or other ethnic background. Moreover, the FBI’s hate crimes tracking system, which relies on voluntary reporting by local police departments, is deeply flawed. The Justice Department’s Bureau of Justice Statistics has found that the FBI hate crime statistics are inaccurate and woefully undercount the full number of hate crimes. The study also found that only 44% of hate crimes are reported to the police. There are other reasons hate crimes may not be recorded by the FBI: police may fail to record crimes as hate crimes, police departments may fail to report hate crimes to their state reporting agencies, and those agencies in turn may not report the full data to the FBI. In fact, the real number of hate crimes may be fifteen times higher than the FBI’s statistics, according to the Southern Poverty Law Center. Even Attorney General Holder has pointed out the gaps in relying solely on current FBI hate crime statistics:

“Many police agencies throughout the country, including in major cities, do not participate in the FBI’s reporting system, and many victims do not report the hate crimes perpetrated against them. In fact, the Bureau of Justice Statistics puts the actual annual number of hate crimes in the tens of thousands. This fact is enough to make one’s blood run cold.”

Furthermore, Muslim, Arab, Middle Eastern, Sikh, and South Asian communities do not always know where to turn and how to report hate-motivated violence and threats of violence. Regrettably, trust between law enforcement and these affected communities, which is needed to encourage the reporting of crimes, has eroded since 9/11. These communities may fear bringing themselves to law enforcement’s attention, which could result in unrelated investigations or surveillance. Affected communities also fear public retaliation, experience language barriers, or believe the police can do nothing.

The Justice Department, under both Republican and Democratic administrations, has made an effort to investigate and prosecute crimes motivated by anti-Muslim hate, but more needs to be done. The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009 gave the federal government increased authority to engage in hate crimes investigations and prosecutions that local authorities do not or cannot pursue and to assist state and local agencies that take the lead in investigating and prosecuting hate crimes. Significantly, the law has eliminated the requirement that the victim be engaged in one of six enumerated federally protected activities at the time of the crime. This requirement had greatly narrowed the circumstances under which the federal government could intervene. Now, the Justice Department and FBI can do more to tackle hate crimes. According to Attorney General
Holder, the Justice Department has convicted more hate crime defendants in 2010 than in any other year since 2000. These activities underscore the federal government’s stepped-up commitment to protecting all Americans from hate-motivated violence and discrimination. Still, there is more work to be done to ensure the safety of all Americans.

Opposition to Mosques

The controversy over the Muslim community center in New York City in 2010 was just one example of increasing hostility towards mosques and Islamic centers. Existing and proposed mosque sites across the country have been targeted for vandalism and other criminal acts. Anti-Muslim graffiti on mosques and protests include statements such as “wake up America, the enemy is here,” “U.S. military is going to kill you all,” “murderers,” and “Jesus hates Muslims.”

There have also been efforts to block necessary zoning permits for the construction and expansion of mosques and Muslim community centers. In some cases, the opposition takes the guise of neighbors’ concerns about traffic, noise, parking and property values. In others, however, opponents of mosques and community spaces also cited unfounded fears about Islam, Sharia law, and terrorism.

With this heightened level of opposition to American Muslim institutions, Congress and the federal government should be reminded of its historical commitment to religious freedom. In 2000, Congress enacted the Religious Land Use and Institutionalized Persons Act (“RLUIPA”) to prevent local governments from enacting land use regulations that impose substantial burdens on the free exercise of religion, including religious institutions. It did so, in part, because it found that zoning authorities were frequently placing excessive or unreasonable burdens on the ability of congregations to exercise their faith with little to no justification in violation of the Constitution.

American Muslims today face exactly this kind of subtle and overt discrimination, threatening the right to practice religion guaranteed by the Constitution. A particularly egregious example of opposition to mosque construction involved a proposed mosque in Murfreesboro, Tennessee. After the Islamic Center of Murfreesboro announced plans to build a new mosque to accommodate its growing congregation, local Muslims were stunned at the outpouring of anti-Muslim sentiment. Mosque opponents went to court not only to seek an injunction against construction, but to argue that Islam is not a religion and therefore not deserving of First Amendment protections. Both signs the Center erected at the construction site were vandalized—the first had “not welcome” spray-painted across it; the second was smashed in two. Even after the Center gained official County approval, there were aggressive protests.

Underscoring the level of fear-mongering and ignorance, Ron Ramsey, Tennessee’s lieutenant governor and a gubernatorial candidate, wondered publicly “whether being a Muslim is actually a religion, or is it a nationality, a way of life or cult, whatever you want to call it.”

Congressional candidate Lou Ann Zelenik declared that the mosque was “a

Murfreesboro, Tennessee

Marchers walked in opposition to a mosque being constructed in Murfreesboro, Tennessee. Many carried signs with hostile messages about mosque leaders supporting the killing of converts.
political movement designed to fracture the moral and political foundation of Middle Tennessee."176 Opponents of the mosque asked Frank Gaffney, another leading Muslim-basher, to testify on their behalf. Feeding the fear and hysteria, he argued that Sharia is a real and imminent threat to the Constitution and that most mosque leaders preach Sharia.177 In October, the Justice Department filed an amicus brief citing RLUIPA and supporting the community’s right to construct a mosque, making clear that Islam is a religion entitled to protection under the First Amendment.178 In fact, U.S. Attorney for the Middle District of Tennessee Jerry E. Martin publicly stated, “To suggest that Islam is not a religion is quite simply ridiculous.”179 The court denied the plaintiffs’ request for temporary injunctive relief halting the mosque’s construction,180 but the lawsuit proceeds.181 Public protests against the construction or expansion of community spaces and mosques continue unabated. The ACLU has tracked over 60 incidents of anti-mosque activity throughout the country in the past five years.182 The Pew Forum on Religious and Public Life has indicated that in the past two years alone, there have been at least 35 proposed mosques and Islamic centers that have encountered community resistance.183 And according to the Justice Department’s own data on RLUIPA cases, of the 24 RLUIPA cases involving mosques opened since the law was passed in 2000, fourteen—one-half—have been opened since May 2010, which the Justice Department believes “reflects a regrettable increase in anti-Muslim sentiment.”184

Employment Discrimination

Amid growing anti-Muslim sentiment, American Muslims are also facing increased discrimination in the workplace. Complaints range from experiencing a hostile work environment, with co-workers hurling epithets such as “camel jockey,” “terrorist” or “Osama,” to not being able to wear headscarves (hijab) or take prayer breaks.185

Title VII of the Civil Rights Act of 1964 prohibits employers from engaging in discrimination, including harassment and retaliation, on the basis of race, sex, color, religion, and national origin.187 Since 2001, the Equal Employment Opportunity Commission (“EEOC”) has been tracking the number of charges received under Title VII alleging employment discrimination specifically based on race, religion and national origin due to 9/11. Between 9/11/2001 and 9/11/2010, 1,026 charges were filed under Title VII alleging post-9/11 backlash employment discrimination.188 In addition, during this same period, the EEOC received 5,750 charges of discrimination based on the complainant’s Muslim faith. For a comparable period of time prior to 9/11/2001 (9/11/1992 to 9/10/2001 (nine years)), the EEOC received 2,186 charges of discrimination based on the complainant’s Muslim faith. Between September 2008 and September 2009, the EEOC received a record 803 complaints alleging anti-Muslim bias, which
was a 20% increase from the previous year. Muslims are approximately two percent of the American population, yet, according to this most recent data, anti-Muslim bias in the workplace complaints accounted for 25% of the total number of complaints received by the EEOC. Mary Jo O’Neill, regional attorney of the EEOC's Phoenix office, expressed shock at the level of discrimination: “I’ve been doing this for 31 years, and I’ve never seen such antipathy toward Muslim workers.”

At the same time, dangerous gaps in federal law are emerging. Two federal courts have recently interpreted Title VII to allow employers to segregate their visibly religious employees from the public and from customers. In one case, the court found that the employer was not in violation of the law when it offered a turbaned Sikh a position that kept him out of the public eye. In another, the court held that an employer's segregation of an employee—a Muslim woman wearing hijab—did not constitute an actionable adverse employment action.

Harassment and Bullying of Children

Muslim, Arab, Middle Eastern, Sikh, and South Asian American children have not been spared from anti-Muslim hate. Children of all ages are vulnerable to discrimination, harassment, and bullying because of their faith. According to one education advocate, children from these communities face “ongoing harassment and bullying in classrooms, hallways, the lunch room, recess and on the bus which can make the life of a child or youth miserable, with little recourse.” Community and civil rights groups have complained that school administrators and teachers either downplay such abuse and perhaps even share the prejudice, or do not know the appropriate response.

No federal agency collects data on harassment and discrimination experienced by children based on their religion. Muslim and Sikh community groups, however, are increasingly documenting cases of harassment and bullying. In one such egregious instance, a Muslim high school student in Staten Island was subjected to a harrowing ordeal in which he was frequently labeled a “terrorist,” punched in the groin, and spat on by fellow teenagers. He was beaten so severely that there was blood in his urine, and he suffered from headaches and memory loss afterwards.

There have also been a series of incidents in Minnesota, where, for example, Muslim students of Somali origin have been targeted by another high school student who created a Facebook group called “I hate the Somalians [sic] at Tech High.” Two Somali students expressed no surprise at this, and said that students making disparaging remarks about Muslim classmates was entirely common: “They always make fun of us and they say, ‘Go back to your countries,’ and, ‘You guys stink,’ and, ‘This is our country, and we don’t need black people,’ so it’s every single day . . . [i]t’s not several times, it’s all the time.”

78 Northern Virginia Muslim children ages 12 to 17:

80% responded that they had been subjected to bigoted taunts, epithets, and harassment.

75% indicated the epithets had occurred more than once.

50% reported being called names in front of teachers and school administrators. The harassment includes being called “terrorist,” “raghead,” “tower takers,” “bomber,” and “pirate” (referring to Somali children).
In March 2010, Muslim Mothers Against Violence, a community organization, surveyed 78 Muslim male and female youth between 12 and 17 years of age in Northern Virginia about their experiences in school. Eighty percent (80%) responded that they had been subjected to bigoted taunts and epithets and harassment, with three-quarters indicating the epithets had occurred more than once. Fifty percent (50%) report being called names in front of teachers and school administrators. The harassment includes being called “terrorist,” “raghead,” “tower takers,” “bomber,” and “pirate” (referring to Somali children). One youth said, “other minorities are protected but not us.” One student reported the following experience at school: “My principal saw me wearing a kufi (headcap) and asked what kind of a Muslim I was. I told him I was regular, and he said if I wore it again, I would get in school suspension. My dad told me not to wear it to school again, we don’t need trouble.” That is a snapshot of the new reality of growing up Muslim in America today, where one’s classmates and teachers wield anti-Muslim attitudes and messages that they learn at school, at home, and from the media.

Anti-Muslim hate also deeply affects non-Muslim Arab, Middle Eastern, Sikh, and South Asian children. Importantly, the Sikh Coalition has issued five reports in the last four years documenting ugly and persistent abuse and bullying experienced by Sikh children particularly in New York City and the San Francisco Bay area. Sikhs are called names such as “Arab” and “terrorists,” which is clearly rooted in the climate of anti-Muslim bigotry. Sikh children, who often do not cut their hair for religious reasons, are regularly threatened with hair-cutting or with having their turbans pulled off, and in certain cases have had their hair forcibly cut and turban lit on fire.

Under federal laws enforced by the Justice Department and U.S. Department of Education, schools must protect students from harassment and discrimination on the basis of race, color, or national origin. While Title VI does not prohibit discrimination based solely on religion, the Education Department has found that “groups that face discrimination on the basis of actual or perceived shared ancestry or ethnic characteristics may not be denied protection under Title VI on the ground that they also share a common faith.” During the last year, the administration has begun to recognize the urgent need to address harassment and bullying of children and has taken steps to encourage efforts to prevent harassment and bullying, including launching a designated website with resources for children, parents and educators, and providing guidance to educators and communities about the legal obligations of schools to prevent and address bullying.

These are significant steps forward. However, given that these issues have risen to a crisis point, the federal government needs to increase and tailor its prevention and enforcement activities and resources to address specifically the harassment and bullying experienced by Muslim, Arab, Middle Eastern, Sikh, and South Asian American children and youth. It is important that the administration and Congress work tirelessly to ensure that our children feel safe in their schools and communities.
As a nation, we should not allow our children, America’s future, to be subject to hatred and discrimination.

**Using Sharia to Incite Fear**

Anti-Muslim activists have taken their campaign to the public, particularly state legislatures, with an especially absurd new movement to spread fear and misinformation about Muslims, focusing on Islamic religious law called Sharia. These activists claim that Sharia—whose definition they also distort—is about to take over the U.S. legal and political system. They have gone so far as to introduce bills or ballot initiatives in at least a dozen states to ban the use of Sharia law. Several of these initiatives have passed, regardless of the fact that the Supremacy Clause ensures that the Constitution, not any religious or foreign law, is the law of the land.

The first anti-Sharia measure to pass was in November 2010, when Oklahoma adopted a voter-approved constitutional amendment prohibiting state and federal courts from using international law or Sharia law when making rulings. The author of the proposal, Representative Rex Duncan, declared the necessity of preventing the “hideous invasion” of Sharia. 207 A Muslim in Oklahoma successfully challenged the ban on First Amendment grounds, and the case is currently on appeal in the U.S. Court of Appeals for the Tenth Circuit. Meanwhile, in Tennessee, an amended bill, removing all specific references to Sharia, also passed unanimously in March 2011. 208 In April 2011, Arizona passed a bill prohibiting the enforcement of all foreign law. 209 Earlier versions of the bill specifically banned the implementation of Sharia law, but references to specific religious law were removed so the bill would pass constitutional muster.

The Free Exercise Clause and Establishment Clause of the First Amendment allow a wide array of religious practice in America. 210 If enacted and allowed to stand, anti-Sharia laws would affect the ability of American Muslims to practice their faith. Marriages under religious law would not be recognized, and Muslims would not be allowed to congregate and pray (as the proposed Tennessee bill in its original form envisioned), rights enjoyed by every other faith community in America. 211 These bills are surely unconstitutional, as one federal court has already ruled, since they would abridge the free exercise of religion and suggest a preference
by government of one religion over another. Yet, the fear-mongering continues, preying on the ignorance of the American people to level suspicion and hate against their fellow Americans.
In the ten years since passage of the Patriot Act, constitutionally protected freedoms of ordinary Americans have been drastically curtailed. Intelligence gathering and the scrutiny of individuals and organizations based on race, religion, ethnicity and First Amendment protected activity are widespread. The blanket of suspicion cast on the American Muslim community by law enforcement in turn has increased fear and hatred throughout the country, leading to a significant uptick in hate crimes, bullying and discrimination. The quality of public discourse has degenerated to the point where political, civic and religious leaders can unapologetically make hateful, bigoted comments about a group of Americans based on their faith.

While there are numerous challenges, and much work to do to uphold our nation’s founding values, it is heartening to see some government officials beginning to take action. In the summer of 2010, the U.S. House of Representatives Judiciary Committee, Subcommittee on the Constitution, held a hearing on racial profiling by law enforcement, where witnesses testified about the corrosive result of federal, state and local law enforcement targeting communities based on race, ethnicity and religion. This hearing was the first congressional hearing held on this important issue since September 11th. In March of 2011, the Senate Judiciary Committee, Subcommittee on the Constitution, held the first ever congressional hearing on the civil rights of American Muslims.

Congressional hearings are important to probe and publicly acknowledge the ways in which Americans have been affected by law enforcement policies and practices since September 11th and the passage of the Patriot Act. However, they are only the first step. There has to be a serious undertaking by our nation’s leaders to thoroughly examine discriminatory laws and policies, amend laws, and hold government officials responsible for policies and practices that trample fundamental rights and freedoms. Ten years after passage of the Patriot Act, it is time for our nation to pause and reflect about the state of freedom today.
**POLICY RECOMMENDATIONS**

1. REIN IN UNFETTERED, BASELESS SURVEILLANCE

*The Executive Branch*

- The Justice Department should fulfill then-candidate Obama’s promise to undertake a comprehensive review of legal surveillance authorities to propose amendments that would protect First Amendment-protected activities.
- The FBI should withdraw the 2006 FBI Intelligence Assessment, “The Radicalization Process: From Conversion to Jihad,” and issue revised guidance clearly stating that religious practices and political advocacy are protected activities under the First Amendment and are not indicators of future violence.
- The Justice Department, DHS, and the FBI should review training materials and operations to incorporate an understanding of First Amendment protected activities and the risks to civil liberties from overbroad government activities. These agencies should further revise materials that might be used to promote misunderstanding and intolerance of Muslims and to incorporate training on non-discrimination, especially against Muslims.
- The U.S. Attorney General should strengthen the Department of Justice’s 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies (“Guidance”) to include religion and national origin as protected classes; remove the national security and border integrity exception; and explicitly state that the ban on profiling applies to intelligence activities carried out by law enforcement agencies subject to the Guidance.
- The Attorney General and the FBI should review the AG Guidelines and DIOG, respectively, to require a factual predicate before the commencement of an assessment and include heightened levels of supervisory approval and factual predicates for investigations that implicate First Amendment protected activity, including the use of undercover agents or informants in places of worship. Both the AG Guidelines and the DIOG should clarify that race, ethnicity, national origin or religion should not be considered in deciding upon the scope and substance of domestic intelligence or other law enforcement activity, except when there is trustworthy information, relevant to the locality and timeframe, that links a person of a particular race, ethnicity, national origin, or religion to an identified criminal incident or scheme.
- The administration should order an extensive review of all federal agencies, including the FBI and its counter-terrorism program, to purge all use of bigoted materials and stereotypical depictions of Muslims and Islam. All such programs should be genuinely examined and overhauled to reassure Congress and the public that corrective steps have been taken.
- The Secretary of DHS should:
  - Prohibit CBP from asking questions related to First Amendment-protected activity (e.g., political beliefs, religious practices, associations with and contributions to lawful charitable organizations) of travelers entering the United States;
  - Prohibit CBP from using travel patterns as a pretext for profiling according to race, religion, national origin or ethnicity;
  - Revise the CBP border search policy to require reasonable suspicion to search an electronic device and probable cause to seize or copy data from it;
  - Require CBP to develop a training module for all agents and supervising field officers on these new policies, ensuring that they understand the limits of their authority and permissible bases for extensive interrogations and searches;
- Adopt revisions to the administrative redress system such that individuals seeking explanations for the basis of their scrutiny, or removal from illegitimate inclusion on government watch lists, receive due process, including an opportunity to be heard and a transparent decision upon the completion of review. Relevant agencies should also remedy overbroad and opaque watch lists by improving redress processes to allow effective assessments of individual designations, strengthening internal oversight to prevent initially overbroad designations, and purging designations lacking a defensible basis; and

- Collect, track and publicly report data on the race, ethnicity, religion (as perceived by the CBP agent) and national origin of individuals selected for questioning, as well as a random sample to enable statistical comparison. CBP should also record and track the specific facts in each instance giving rise to individualized suspicion and the basis for the extensive questioning.

**Congress**

- Congress should amend Section 215 of the Patriot Act—the “sneak and peek” provision—to require that notice be given within seven days, unless a court is convinced that more time should be permitted, and to limit the grounds upon which notice can be delayed to risk of: (1) endangering the life or physical safety of an individual; (2) flight from prosecution; or (3) destruction or tampering of evidence.

- Congress should conduct rigorous oversight of all Patriot Act surveillance powers to prevent abuse and misuse.

- Congress should enact the End Racial Profiling Act, which bans racial, ethnic, religious and national origin profiling by federal, state and local law enforcement in all investigatory activities, including intelligence gathering and profiling at the border.

- Congress should conduct oversight and enact legislation, such as the Travelers Privacy Protection Act, that includes:
  - Suspicion standards to limit arbitrary scrutiny by CBP (e.g., requiring reasonable suspicion before allowing a search or intelligence-gathering interrogation; probable cause before seizing an electronic device or copying data from it);
  - Subject matter limits on interrogations, making clear that questions about religious beliefs, political views and associations with lawful persons and organizations are neither legitimate subjects for scrutiny, nor related to security concerns; and
  - Measures to stop, monitor and prevent potential future profiling according to race, religion, ethnicity or national origin, such as demographic data about individuals selected for scrutiny, reporting requirements, a mandated audit and public report, and a private right of action based on a disparate impact standard.

- Congress should amend section 213 of the Patriot Act—the “sneak and peek” provision—to require that notice be given within seven days, unless a court is convinced that more time should be permitted, and to limit the grounds upon which notice can be delayed to risk of: (1) endangering the life or physical safety of an individual; (2) flight from prosecution; or (3) destruction or tampering of evidence.

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2. EASE HURDLES TO CHARITABLE GIVING

- Congress should amend the material support for terrorism statute to create an exemption for humanitarian aid, such as food and foodstuffs, water, clothing, shelter, sanitation services and medical services, which are not protected under existing law.
- By Executive Order, the President should require the Office of Foreign Assets Control to promulgate fair procedures for Specially Designated Global Terrorist designation and review.
- The President should direct the Secretary of the U.S. Department of State to use her authority under 18 USC § 2339B(j) to waive the material support prohibition for technical advice and assistance, training and personnel where intended for humanitarian purposes and not used to carry out terrorist activity, in order to ensure that well-intentioned charities can deliver essential aid, such as water and shelter.
- The Justice Department and the Treasury Department should issue agency orders providing a safe-harbor for well-intentioned donors. These orders should specify that donors will not be subject to federal investigation or prosecution provided that the donor makes the contribution of money, items or services to a party that is not on the Prohibited Lists at the time of contribution. The government can rebut the presumption by showing beyond a reasonable doubt that the donor had actual knowledge that the intended beneficiary was on a Prohibited List at the time of the contribution of money, items or services.
- The Treasury Department and the State Department, which collectively maintain the various Prohibited Lists, should be directed to create a single, user-friendly, searchable database that compiles all Prohibited Lists in one central location housed with the Office of Foreign Assets Control at the Treasury Department. The database shall be created to ensure ease and accessibility to the prohibited lists by donors and the public. This database shall generate a receipt to the user at the conclusion of a search that a search was conducted and the results of that search.
- The Treasury Department should withdraw its vague and quasi-voluntary Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S. Based Charities, which chill the delivery of critical humanitarian aid and provide charities with no protection from legal sanction even if the Guidelines are painstakingly followed.
- The Treasury Secretary should implement policies to ensure frozen charitable funds held by the Department are released to donors or used for their charitable purpose according to the original donor’s intent.
- The Attorney General should enforce Justice Department policies requiring that federal prosecutors not disclose the identities of unindicted co-conspirators, given the chilling effect overbroad designations and public disclosure of charitable entities has had on civic participation.
3. COMBAT ANTI-MUSLIM HATE & DISCRIMINATION

The Executive Branch

- The administration, particularly the U.S. Department of Education, should increase and tailor its bullying prevention resources and enforcement to the needs of Muslim, Arab, Middle Eastern, Sikh, and South Asian youth, by:
  - Developing tools and mechanisms to educate parents about their rights and the process for filing complaints;
  - Continuing to provide state boards of education with guidance regarding federal protections for students;
  - Identifying state resources available for complaints not eligible for federal intervention;
  - Conducting civil rights compliance reviews of schools with vulnerable Muslim, Arab, Middle Eastern, Sikh, and South Asian student populations;
  - Collecting data, especially separate data for race, national origin and religion, to fully understand the depth and scope of the problem experienced by Muslim, Arab, Middle Eastern, Sikh, and South Asian American youth.214

- The Justice Department should pursue high profile investigations and prosecutions of anti-Muslim hate crime cases to send a clear, strong message that hate crimes will not be tolerated.

- The Justice Department and all U.S. Attorneys should increase and enhance their engagement with state and local law enforcement to ensure that all bias-motivated crimes are prevented, detected, investigated and prosecuted.

- The Justice Department should encourage and incentivize state and local law enforcement agencies to report all bias-motivated crimes to the FBI in order to facilitate federal investigations and prosecutions when local authorities are unable to do so and to ensure comprehensive tracking of all hate crimes incidents.

- The Attorney General and Justice Department should continue playing a leadership role with other Justice Department components and federal agencies, including the Community Relations Service (CRS), Department of Housing and Urban Development, EEOC, and Department of Education, to create a coordinated federal response to the rise in anti-Muslim hate activities. The AG should also direct CRS offices to act immediately to defuse tensions where incidents have already occurred and in areas where incitement activities are expected to take place.

- The Justice Department Civil Rights Division should create one centralized hotline and portal for the receipt, referral and tracking of all civil rights complaints to the Division. This data collection and tracking mechanism should include race, ethnicity, national origin and religion categories and sub-categories to ensure that complaints by Muslim, Arab, Middle Eastern, Sikh, and South Asian Americans can be tracked. The Justice Department should report this comprehensive data on civil rights complaints to Congress and the public annually.

Congress

- Members of Congress and all public officials should refrain from making false and inflammatory statements about any religious, racial, and/or ethnic groups, including Islam and the American Muslim community, and condemn those public officials who do.

- Congress should explore amending Title VI of the Civil Rights Act of 1964 to include religion as a protected class to ensure that religious communities with diverse racial and ethnic compositions, such as Muslim and Sikh
communities, can be fully protected from discrimination and harassment in schools.

- Congress should require the Justice Department to collect and track complaints received alleging a violation of RLUIPA, including the basis for the complaint, whether an investigation was opened and its outcome, and to report this data in six months and annually thereafter to Congress and the public. (The first report should include a report to Congress and the public on all the RLUIPA complaints received by the Justice Department since the law was enacted in 2010.)

- Congress should require the Justice Department to report in six months and then annually thereafter on the above steps and all other actions it has taken to stem civil rights violations rooted in anti-Muslim hate.

- Congress should make the following crucial changes to the Hate Crimes Statistics Act to promote comprehensive and more accurate reporting of hate crimes:
  - Mandate state and local authorities to report the occurrence of hate crimes to the FBI.
  - Specify additional ethnic groups in the Bias Motivation section, under Ethnicity/National Origin. Currently, the statistics only track “Anti-Hispanic” and “Anti-Other Ethnicity.” This does not take into account ethnicities at high risk of being targeted for hate crimes because they are perceived to be Muslims. There should be a section tracking “anti-Arab” crimes and “anti-South Asian” crimes.
  - Provide additional specificity in the Bias Motivation section under the “Religion” section. Sikh Americans, for instance, are frequent targets of hate crimes because they are perceived to be Muslim.
After the Patriot Act’s passage, we continued to see arbitrary and unconstitutional practices.


At least six U.S.-based Muslim charities run by American Muslims, including KinderUSA (Texas), Life for Relief and Development (Michigan), Al-Mabarrat (Michigan), Child Foundation (Oregon), Help the Needy (New York), and Care International (Massachusetts) have been raided by a Department of Justice Joint Terrorism Task Force (JTTF) and in some cases declared under investigation. Blocking Faith, Freezing Charity: Chilling Muslim Charitable Giving in the “War on Terrorism Financing” (ACLU, New York, NY), June 2009 at 64, available at http://www.aclu.org/pdfs/humanrights/blockingfaith.pdf [hereinafter Blocking Faith, Freezing Charity].


Throughout the history of the Patriot Act, the government has hampered the ability to uncover potential terrorists and has thus prevented the foiling of terrorist activities. This has occurred on several high-profile occasions.

The last three years have been marked by significant civil liberties abuses, including the ongoing surveillance of Muslims in the United States.


3 At least six U.S.-based Muslim charities run by American Muslims, including KinderUSA (Texas), Life for Relief and Development (Michigan), Al-Mabarrat (Michigan), Child Foundation (Oregon), Help the Needy (New York), and Care International (Massachusetts). These charities have been raided by the Department of Justice Joint Terrorism Task Force (JTTF) and in some cases declared under investigation. Blocking Faith, Freezing Charity: Chilling Muslim Charitable Giving in the “War on Terrorism Financing” (ACLU, New York, NY), June 2009 at 64, available at http://www.aclu.org/pdfs/humanrights/blockingfaith.pdf [hereinafter Blocking Faith, Freezing Charity].


9 See, e.g., Reclaiming Patriotism: A Call to Reconsider the Patriot Act, (ACLU, New York, NY), Mar. 2009, available at http://www.aclu.org/pdfs/safereef/patriot_report_20090310.pdf (examining widespread abuses that have occurred under the Patriot Act and providing more information on parts of the Patriot Act that need to be amended).

10 After the Patriot Act’s passage, we continued to see arbitrary and excessive surveillance by the government. In one particularly high profile revelation, the Bush administration had begun wiretapping international electronic communications without court authorization, including wiretapping the communications of American citizens. Once the program became public and its legality was questioned, the administration scrambled to have Congress retroactively approve its actions. Congress essentially obliged, enacting the FISA Amendments Act in 2008. The FISA Amendments Act allows the government to tap all telephone calls and e-mails coming in and out of the United States involving a U.S. person abroad for up to seven days, without a warrant, and involving non-U.S. persons abroad for up to a year, without a warrant. The law also legitimizes years of illegal wiretapping facilitated by major telephone companies for the government that had taken place prior to 2008. Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008, Pub. L. No. 110-261, 122 Stat. 2436 (2008), available at http://www.gpo.gov/ids/sys/pkg/PLAW-110publ261/pdf/PLAW-110publ261.pdf.

11 Patriot Act, supra note 1, Sec. 215.

12 Patriot Act, supra note 1, Sec. 505.


14 Doe v. Mukasey, 549 F.3d 861 (2d Cir. 2008); Nakashima, supra note 13.

15 Nakashima, supra note 13.


17 Patriot Act, supra note 1, Sec. 206.

18 Patriot Act, supra note 1, Sec. 213.


20 Id.


24 Id.; see also supra note 9 at 16.


26 Id.


33 Id.

34 Isikoff, supra note 30.

36 Federal Bureau of Investigation, Counterterrorism Division, Intelligence Assessment: The Radicalization Process: From Conversion to Jihad (May 10, 2006).


40 Id.

41 Brennan Center Report, supra note 30.

42 Id.

43 Id.

44 On September 16, 2009, after months of pressuring the Department of Justice to release the documents pursuant to a previously-filed request under the Freedom of Information Act, Muslim Advocates filed suit seeking the public release of the DIOG. Muslim Advocates and other civil rights groups were able to view a draft version of the DIOG in late November of 2008, but the final version was never released publicly. Shortly after the suit was filed, a heavily redacted version was released to the public on September 25, 2009.

45 DIOG, supra note 38, § 4.3(C)(2)(b).

46 Id. § 5.3; See also Brennan Center Report, supra note 30, at 27.

47 DIOG supra note 38, at § 4.3(D).


50 Id.


52 Aaronson, supra note 31.


54 Id.

55 Id.

56 Id.

57 Id.

58 Id.


60 Id.

61 Id.


63 Ackerman, supra note 59.

64 Id.


67 Ackerman note 59.

68 Id.


72 Blocking Faith, Freezing Charity, supra note 4, at 39.


74 18 U.S.C. §§ 2339A(b), 2339B(g)(4).


77 Blocking Faith, Freezing Charity, supra note 4, at 10.


82 Id.

83 “Prohibited lists” refers collectively to the Foreign Terrorist Organization (FTO), Specially Designated Global Terrorist (SDGT), Specially Designated National (SDN), Terrorist Exclusion List (TEL), and Office of Foreign Assets Control (OFAC) Country Sanction Program lists.


85 See U.S. DEP’T OF JUSTICE, UNITED STATES ATTORNEYS’ MANUAL, § 9-27.760 (‘Federal prosecutors should remain sensitive to the privacy and reputation interests of uncharged third-parties’); id. at §9-11.130 (instructing U.S. Attorneys to not disclose the identities of unindicted co-conspirators during or in preparation for the trial); see also United States v. Briggs, 514 F.2d 794 (5th Cir. 1975) (criticizing the practice of naming individuals as unindicted co-conspirators in an indictment charging a criminal conspiracy).

86 Blocking Faith, Freezing Charity, supra note 4, at 69.

87 Id.

88 Id.

89 Id. at 69-70.
90 DIOG, supra note 38, at § 4.3(C)(2)(d).
92 Id.
98 Iraqi-American Doctor Convicted of Violating Iraq Sanctions, supra note 94.
99 Id.
102 Id.
110 Id.
115 White Supremacists Find Common Cause with Pam Geller’s Anti-Islam Campaign, supra note 112.
119 Ackerman, supra note 59.
121 Id.

134 Id.

135 Id.


137 Id.

138 Id.


141 Secure Freedom Radio With Frank Gaffney, Jan. 6, 2011 (stating “[w]hen a war begins, we’re all Americans. But in this case, this is not the situation. And whether it’s pressure, whether it’s cultural tradition, whatever, the fact is the Muslim community does not cooperate anywhere near to the extent that it should. The irony is that we’re living in two different worlds.”).


144 Attorney General Eric Holder, Remarks During Meeting with Muslim Advocates and Faith Leaders (Sept. 7, 2010).


156 Id.


156 Id. at 4.


162 Id.


171 Id.


173 Id.

175 Id.

176 Id.


179 Id.


182 ACLU, supra note 172.


186 Id.


188 Charges related to the events of 9/11/01, by an individual who is or is perceived to be Muslim, Arab, Afghan, Middle Eastern or South Asian or individuals alleging retaliation related to the events of 9/11/01. See Fact Sheet: Backlash Employment Discrimination Charges (U.S. Equal Employment Opportunity Commission) related to the events of 9/11/2001, against individuals who are, or are perceived to be, Muslim, Arab, Afghan, Middle Eastern or South Asian, September 11, 2010.

189 Id.

190 Id.


199 Id.

200 Copy on file with author at Muslim Mothers Against Violence.

201 Id.


211 TN State Sen. Bill Ketron, who introduced the bill, recently stated that he would amend the bill to remove its offensive and discriminatory provisions; however, we have been unable to locate a copy of the purported amendment to verify the claim. See Tennessee State Senate, Press Release, March 22, 2011, available at http://www.capitol.tn.gov/legislature/members/Ketron/052211.pdf.

212 “Donor” means any United States citizen, individual residing in the United States, church (as defined by the Internal Revenue Code), or U.S. nonprofit entity recognized under Section 501(c) (3) of the Internal Revenue Code, that provides money, items or services to a charitable entity.

213 Comments on Department of Education Agency Plan for White House Initiative on Asian Americans and Pacific Islanders, Sikh Coalition et. al., (Feb. 17, 2011) (Copy available from Sikh Coalition or Muslim Advocates.)
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