



The American-Arab Anti-Discrimination Committee

Comments & Recommendations to the

Privacy and Civil Liberties Oversight Board's

Mid-term and Long-term Agenda

Abed A. Ayoub, Esq., ADC Legal & Policy Director

Yolanda C. Rondon, Esq., ADC Staff Attorney

American-Arab Anti-Discrimination Committee

1990 M Street NW Suite 610

Washington, DC 20036

Phone: (202) 244-2990

Fax: (202) 333-3980

E-mail: legal@adc.org

Web: www.adc.org



American-Arab Anti-Discrimination Committee

To: Peter Winn
Acting General Counsel
Privacy and Civil Liberties Oversight Board

I am writing to you on behalf of the American-Arab Anti-Discrimination Committee (ADC), the country's largest Arab-American organization. ADC has protected the Arab-American community for over thirty years against defamation, discrimination, racism, and stereotyping.

The privacy and civil liberties rights of Americans are more than ever at stake in the Arab and Muslim communities. ADC respectfully takes this opportunity to address the Privacy and Civil Liberties Oversight Board (PCLOB) with recommendations and comments of civil liberties issues the PCLOB should address in its mid-term and long-term agenda.

Watch-List Program Concerns

ADC has serious concerns with the Watch-List Programs (WatchLists) including but not limited to the no-fly lists, Terrorist Identities Datamart Environment (TIDE), Terrorist Screening Database (TSDB), Selectee lists, Customs and Border Patrol lists, and the list for secondary security screening selection (SSS). In light of the recent reports that a great percentage of persons placed on the TSDB have no recognized terrorist group affiliation, ADC strongly encourages the PCLOB to recommend the development and implementation of substantive redress policies and procedures for persons designated to the Watch Lists, addressing the concerns highlighted in *Latif v. Holder*.

The Watch-Lists have a number of due process issues that are compiled and problematic to our civil rights and liberties. First, persons placed on the Watch-List have no notice of placement on



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the list. Second, person placed on the Watch-List have no substantive way to contest placement and/or be removed off the list. Third, federal law enforcement agencies do not apply a probable cause standard, but a reasonable suspicion standard. Fourth, persons placed on the Watch-List do not have a right to know the secret evidence used against them.

Surveillance Concerns

ADC is appalled at recent reports that confirm that federal law enforcement targeted and conducted intrusive electronic surveillance of Arab American communities, and civil rights organizations dedicated to serving the Arab population. Over the past decade, ADC has increasingly received reports by Arab Americans that federal law enforcement was monitoring their phone calls, emails, and other electronic communications after being subject to secondary screening at United States airports' or border crossings.

In conjunction with the due process issues discussed above, ADC strongly encourages the PCLOB to recommend the implementation of procedures that ensure that persons placed on the Watch-Lists are not automatically subject to surveillance without due process. ADC also strongly encourages the PCLOB to recommend the implementation of substantive mechanisms that provide accountability for surveillance discriminatorily motivated based on race, religion, and/or country of origin. The PCLOB continue to work on addressing concerns of surveillance under sections 215 and 702.

ADC strongly encourages the PCLOB take an active role in scrutinizing and analyzing: 1) the implementation of Executive Order 12333, specifically Section 2.4 *Collection Techniques* and



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any disparate impact on particular communities; 2) bulk data collection by the FBI, NSA, CIA, and the National Counterterrorism Center (NCTC); and 3) NSA's minimization practices.

Racial, Religious, and Country of Origin Profiling Concerns

For several years the United States Department of Justice has professed that it is working on revising the DOJ Guidance on Racial Profiling Ban to be inclusive and prohibit profiling based on religion and country of origin, but has not come to fruition. ADC and other civil rights groups have received reports that federal law enforcement rely on generalized Arab and Muslim stereotypes when conducting investigations and making investigative decisions. Namely, the use of Arab and Muslim stereotypes as determinative factors in terrorism related matters.

As such, ADC strongly encourages the PCLOB take an assertive role in combating racial, religious, and ethnic profiling by recommending to the Executive Branch: 1) increased scrutiny and oversight over federal law enforcement decision making in regard to terrorist identification and watch-list decisions; 2) that federal law enforcement decision making based on religious and country of origin profiling be prohibited and actively enforced; 3) the removal of loopholes that permit profiling based on race, national origin, ethnicity and religion at U.S. borders and for reasons of national security; and 4) development and implementation of substantive redress police and procedures for persons placed on the Watch-Lists due to racial and religious profiling.

The PCLOB's recommendations if substantively implemented will reinforce a more rigorous standard of probable cause, tangible evidence that directly links persons of a particular national origin or religion to the identified criminal incident.

Federal Law Enforcement Training Concerns

Training is a crucial component of active prevention of violations of privacy and civil liberties. While federal law enforcement agencies have received training, ADC has been informed that the counterterrorism training programs and materials used to educate agents and officers employed anti-Arab and anti-Muslim bias or stereotypical language, imagery, and/or beliefs. This counteracts the purpose of training, by perpetuating the discrimination and profiling of Arab and Muslim Americans as automatic suspects of terrorism.

ADC recommends the PCLOB not only recommend to the Executive Branch, but actively institute re-training of federal law enforcement on illegal profiling, upholding civil rights and liberties, interacting with Arab, Muslim, and South Asian populations, and their cultures, beliefs, and practices, with the assistance, input, and collaboration of the appropriate civil rights organizations. The revision of counterterrorism training programs and materials is both necessary and intertwined to the effectiveness of any preemptive training measures.

Conclusion

In summation the American-Arab Anti-Discrimination Committee recommends to the Privacy and Civil Liberties Oversight Committee mid-term and long-term agenda:

1. Developing and implementing of substantive redress policies and procedures for persons designated to the Watch Lists:
 - a. provide notice to persons placed on the Watch Lists;
 - b. procedures for persons to contest placement and/or be removed off the list;
 - c. requiring probable cause before placement on the Watch Lists;

- d. procedures for persons to obtain any secret evidence used against them.
2. Implementing procedures that ensure that persons placed on the Watch-Lists are not automatically subject to surveillance without due process;
3. Implementing substantive mechanisms that provide accountability for surveillance discriminatorily motivated based on race, religion, and/or country of origin;
4. Exercising a high degree of oversight on the implementation and impact of Executive Order 12333 §2.4 on particular communities;
5. Exercising a high degree oversight on bulk data collection by the FBI, NSA, CIA, NCTC;
6. Examining NSA's minimization practices;
7. Re-training of federal law enforcement on illegal profiling, upholding civil rights and liberties, interacting with Arab, Muslim, and South Asian populations, and their cultures, beliefs, and practices;
8. Increasing scrutiny and oversight over terrorist identification and watch-list decisions;
9. Prohibiting profiling based on religion and country of origin and actively enforcing;
10. removing loopholes that permit profiling based on race, national origin, ethnicity and religion at U.S. borders and for reasons of national security; and
11. Developing and implementing substantive redress police and procedures for persons placed on the Watch-Lists due to racial and religious profiling.