

Fear, Crime, and Community Trust: Community Perspectives on Immigration Enforcement by Local Police

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On behalf of the American-Arab Anti-Discrimination Committee (ADC), I wish to thank the Police Foundation for this valuable opportunity. As key stakeholders and community partners, we welcome the positive efforts already undertaken by the Police Foundation in coordination with key local law enforcement agencies in addressing the vital issues of trust, fear and crime prevention. My statement will highlight some of the challenges encountered by the Arab- and Muslim-American communities in the area of civil rights and liberties as a result of certain U.S. government policies that have involved local law enforcement agency enforcement of federal immigration law and the impact this has had on the ability of our communities to actively participate, as members of civil society, in reaching our full potential in assisting legitimate efforts aimed at combating crime in all its forms.

ADC is the largest grassroots organization in the United States dedicated to protecting the civil rights and liberties of Arab Americans. ADC was established in 1980 by a former U.S. senator and has grown into a national organization with headquarters in Washington D.C., fully staffed regional offices in Massachusetts, New York, New Jersey, Michigan, and California, as well as 38 volunteer-based chapters throughout the United States.

The unfortunate, ineffective, and cosmetic actions undertaken by the U.S. government in the days, weeks, and months following the horrific September 11, 2001, terrorist attacks on our nation left a bitter taste within the Arab, Muslim, and South Asian American communities and a mark of shame on the fabric of our American society. To be just, in the past several years some government agencies have undertaken constructive proactive steps at regular dialogue with the ADC and the Arab, Muslim, and South Asian American communities. Many local police agencies have taken the lead, utilizing the time proven method of “community policing” to build trust and work with the communities to protect and serve everyone regardless of race, religion, gender, age, or ethnicity.

Security cannot be assessed in a vacuum and must be addressed in light of the challenges encountered by members of most communities in the areas of civil and human rights and liberties as a result of some government domestic policies with mandates to combat terrorism. We also cannot ignore popular culture’s and the media’s portrayal of Muslims and Arabs, as well as some of the recent hateful rhetoric made by some of our elected officials. One cannot ignore practices which have involved some U.S. government agencies—practices that violate international human rights standards and U.S. constitutional standards—such as extraordinary rendition and secret detentions, the continuing controversy of the Guantanamo enemy combatant detentions, or the Abu Ghoraib torture scandal, all of which are factors in drumming up hate targeted against Arabs and Muslims.

The need for such an assessment is vital in understanding the negative perceptions and stigmas

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associated with anti-Muslim discrimination and the impact this has had on the relationship between these communities and local law enforcement. We must acknowledge and understand that some U.S. government policies designed to combat terrorism have both proven ineffective in fulfilling their mandates and have had a devastating impact on the ability of the Arab and Muslim communities to actively participate, as members of their communities, in reaching our full potential as full partners with the police.

Some of the policies the U.S. government undertook following the horrific September 11, 2001, terrorist attacks on our nation and some more recent decisions made in the name of combating terrorism have made it easier for those who promote hate, perpetuate violent extremism and radicalization, and others who engage in hate and anti-Muslim discrimination to operate regardless of the legal protections often afforded later to their respective victims.

I would like to highlight a few challenges that have involved local police and the enforcement of federal immigration law, challenges that have caused additional strain on already overburdened police agencies and, at the same time, served to negatively impact the trust and communication that is required to maintain a safe and law abiding community that is free of crime. These policies include targeted immigration enforcement measures such as the National Security Entry-Exit Registration System (NSEERS), also known as “special registration;” perceived racial profiling in the approach to conduct voluntary interviews by the FBI in partnership with local police agencies; the increased reliance on the “watch” and “no fly” lists (also known as the “terrorism watch list”); the Immigration Absconder Apprehension Initiative which, in 2002, targeted immigration absconders based specifically on national origin; and, most damaging to local police, the deeply flawed and now discredited reports by local law enforcement agencies, including the New York City Police Department (NYPD), advocating increased scrutiny of Muslims in the U.S. based on cultural affiliation and religious practices.

As you might have read or heard in recent high-profile media reports, some accounts have claimed that the U.S. government “terrorism watch list” now contains over one million names or records. Anecdotal examples suggest that Arab, Muslim, and South Asian Americans are more likely to be flagged by this watch list. Local police agencies are required to enforce this list when they conduct routine traffic enforcement, given that the list is maintained as part of the National Crime Information Center (NCIC) database operated by the FBI and accessed by all local law enforcement agencies. Although the U.S. government’s position states that it does not profile individuals based on race, ethnicity, or religion, the “watch” and “no fly” list challenges, and the involvement of local police with this controversy, have created a tremendous level of mistrust and the perception of ethnic and racial profiling in Arab, Muslim, and South Asian American populations. It is clear that local police agencies have inherited, sometimes involuntarily, the mistakes born out of the federal government.

Another example is NSEERS or “special registration.” NSEERS is a poorly constructed program that has outlived any constructive purpose it may have once served and is in need of replacement by the more extensive and reliable US-VISIT program. US-VISIT relies on biometric technology to obtain information about anyone entering the United States. While the port-of-entry phase of this program has been implemented, we are hopeful that the U.S. government, namely the United States

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Congress, will provide the necessary funding for US-VISIT so that it can be fully implemented at ports of departure.

The U.S. Department of Justice (DOJ) created NSEERS, also known as “special registration,” in 2002 allegedly as an anti-terrorism program that required male visitors from certain countries—and others whom an immigration inspector decides meet certain confidential criteria—to be fingerprinted, photographed, and questioned by immigration officers. The most controversial part of this program, known as the “domestic call-in” phase, required men from twenty-five predominantly Muslim and Arab countries to report to immigration offices around the country for fingerprints, photographs, and lengthy questioning by officers. There are criminal and civil penalties associated with NSEERS, including arrest, detention, monetary fines, and/or removal from the United States.

Although initially portrayed by the Department of Justice (and, in turn, understood by those who voluntarily complied with the program) as a tool to combat terrorism following the devastating terrorist attacks against our country on September 11, 2001, NSEERS has apparently become just another tool used in immigration law enforcement, and law enforcement more generally. NSEERS raises serious constitutional issues since the program discriminates on the basis of national origin and it further burdens local police with enforcing yet another federal program without receiving additional funding or resources.

Indeed, like the “watch list,” NSEERS is also part of the National Crime Information Center (NCIC) database maintained by the FBI and routinely enforced by local police. A system designed to arrest those who are alleged to have committed serious crimes, such as bank robberies, murder, child molestation, and rape, is now using limited police resources to arrest or detain civil immigration violators. Ironically, it was those who complied with NSEERS that were subject to penalty. Nearly 14,000 men who complied with call-in registration were placed in removal proceedings. If a goal of special registration was to track possible terrorists, deporting those who complied with the program undermines this aim, by reducing future compliance and serving to destroy trust between the police and the community.

Because of the poor implementation of NSEERS, thousands of men who were required to register failed to do so—many no doubt due to lack of notice—and are therefore now vulnerable to NSEERS penalties. Although the NSEERS program was modified in December 2004, many elements remain and are subject to abuse, including departure registration, registration at ports of entry, as well as the potential for the re-initiation of domestic “call-ins” and enforcement action based on information collected through the program.

While some Bush administration officials have expressed apprehension about the continued use of NSEERS, the program is still being utilized. In fact, Asa Hutchinson, former Undersecretary of Border and Transportation Security at DHS, recognized the problems with NSEERS and has gone on record as saying “It is our hope to completely end this special registration program because our long-term goal is to treat everybody the same way and not based upon where you come from” (June 11, 2004, speech to ADC National Convention, Washington, D.C.).

It should be noted that the perceived injustice of singling out people based on national origin (and ultimately religion) and, in turn, penalizing them for their cooperation with a government pro-

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gram may have significantly harmed the relationship of trust between law enforcement and the Arab and Muslim American and immigrant communities—a relationship that is vital to the national security of the United States.

ADC has diligently sought to cast a public light on the NSEERS program and has maintained a dialogue with DOJ and DHS in hopes of curbing abuses of the program and ultimately seeing it retired. However, ADC's repeated efforts to obtain information on implementation and use of the NSEERS program and resulting databases have been rebuffed and multiple FOIA requests have gone unanswered, either under the guise of the "law enforcement exception" or have simply been ignored.

More recently, the U.N. Committee on the Elimination of Racial Discrimination (CERD) stated, in its February 2008 recommendations to the United States, that "Measures taken in the fight against terrorism must not discriminate, in purpose or effect, on the grounds of race, color, descent, or national or ethnic origin." The CERD urged the U.S. "to put an end to the National Security Entry-Exit Registration System (NSEERS) and to eliminate other forms of racial profiling against Arabs, Muslims, and South Asians."

I would like to describe a case example of the negative impact and fear the enforcement of federal immigration law by local police has had on the Arab, Muslim, and South Asian communities. In February of 2004, ADC was contacted by Mr. X. Mr. X is a United States citizen who lives in Tennessee and owns a small business. In February of 2004, Mr. X drove to a neighboring town in Mississippi to park one of his driver's cars and pick up his personal vehicle. When he arrived, Mr. X noticed a police car shining the lights on his vehicle. When Mr. X got out of the car while speaking on his cell phone, the officer pulled a gun and asked him not to move. The officer allegedly started screaming and asking Mr. X to put his cell phone down. Mr. X allegedly complied and within minutes three more sheriff cars arrived and with guns drawn the officers shouted, "Don't move or we will kill you. Any sudden moves, we will kill you!"

Complying with police orders, Mr. X got on the ground and placed his hands behind his back. The police handcuffed him and threw his money and wallet on the ground. Mr. X allegedly heard one of the officers using a cell phone, calling what appeared to be the FBI and saying, "We got him, we got him!" Mr. X alleged that while he was handcuffed and on the ground the other three officers continued to point their guns at him shouting, "If you move, we will kill you!"

Mr. X alleged that one of the sheriff deputies said, "I want to see your nose touching the ground. I know your kind of people; I worked for the CIA for ten years," all the while pointing his weapon at him and saying, "If you breathe wrong, I will kill you!" Mr. X alleged that the same officer said, "You need to go back to whatever Sand Ni**er country you came from," and he then allegedly called Mr. X a terrorist and a baby killer. Mr. X further alleged that the officer asked him if he was scared and then added, "Your kind of people don't care if they die. I want to see your nose touching the ground, you terrorist!" The officer allegedly kept walking back and forth, repeating his threats and racial epithets.

Mr. X reported that while this was taking place, the other officers were on their phones saying that his name came up on a terrorist watch list. The older officer who initially stopped Mr. X found a handgun permit in his wallet. He walked to Mr. X with his gun drawn and said, "I found a gun permit; don't

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let me find a gun or I will shoot you with it.” Mr. X then alleged that a third officer walked to him and asked whether the car is “going to blow up in my face” if he turns on the ignition. Mr. X was then allegedly asked by the same officer whether Mr. X knew how to fly airplanes.

After over an hour on the ground, Mr. X saw his driver, the owner of the car approach. He later told Mr. X that he saw him on the ground and heard one of the police officers call him a baby killer. The driver also reported that he was asked by the police, “Why did you let him use your car? He is a well known terrorist. His information came up on our computer.”

Finally, the officers took Mr. X’s handcuffs off and permitted him to collect his belongings. One of the officers asked, “Do you know why we stopped you?” Mr. X said, “No, it doesn’t make any sense to me, what you did does not make any sense to me.” Mr. X then walked to the officer that called him a baby killer to ask why he was treated in this fashion, and the officer allegedly responded by yelling, “If you don’t get out of (Mississippi) we will take you in!” and a second officer allegedly yelled, “If I see you back in Mississippi, I will personally kill you!”

Mr. X was permitted to leave with no federal agents being involved and without being read his Miranda rights or being arrested or charged with anything. When Mr. X got in his car he called the FBI in Memphis and gave them a description of the incident and the officers involved. He then called the FBI office in Jackson, Tennessee, and provided the same information. After a week, an FBI special agent interviewed both Mr. X and his witness and recommended that Mr. X file an internal affairs complaint with the same sheriff’s department whose officers allegedly were involved in the incident. The sheriff’s department failed to investigate the incident or address Mr. X’s concerns. Unfortunately, when ADC filed a complaint with the DOJ Civil Rights Division, asking for an investigation, and when Mr. X followed up with the FBI on this matter, he received a letter from the DOJ Civil Rights Division, Criminal Section, stating that no further action would be taken by the DOJ and telling him he may wish to pursue the matter in civil court.

In conclusion, government agencies, including law enforcement agencies, have taken many proactive steps at constructive dialogue and communication in the past few years. These steps have gone a long way in improving trust and in turn effectively combating crime. However, the unfortunate policies I have mentioned here continue to reverberate with their negative and destructive effects on the Arab, Muslim, and South Asian communities and on the relationship between those communities and local police.

The lesson we have learned as a people is not to strip the most valuable treasure we have as a nation by ignoring the basic rights and liberties and inherently weakening the great American values of freedom, fairness, and equality we have championed for decades. With the exception of our friends in the Native American nations, we are indeed a nation of immigrants. Our African-American communities are primarily here as a result of another historical injustice, namely slavery, a form of cruel involuntary immigration. Most of the rest of us are here because of the great immigration tradition that has crafted this mosaic we hold so dear.

Thank you.