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Suspicious People: Profiling and Asian Pacific Islander America

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Abstract

The experience of the Asian Pacific Islander American community was defined by suspicion following the attacks on September 11, 2001. An era of national security has altered the relationship between the government, the public, and minority communities. This article explores the development of the current profiling paradigm and its impact on the APIA community. It offers an assessment of the role the profiling paradigm will play as the APIA community grows over next twenty years and offers perspectives on how changing demographics can be used to address racial and religious profiling.
Suspicous People: Profiling and Asian Pacific Islander America

Reflecting on the outlook for the next twenty years for the growing Asian Pacific Islander American (“APIA”) population, in 1993, William Tamayo said that a challenge for advocates will be “to pierce and thoroughly discredit the ‘racialized patriotism’” which fuels anti-Asian violence.¹ Tamayo’s prediction was prescient,² but when Tamayo was describing the future of APIAs and the challenges they would face due to their population growth, his focus was on the impacts of violence and discrimination arising from an economic and related immigration animus.³ He could not have predicted the events of 9/11, or the terrorist attacks in both Paris and San Bernardino in the last months of 2015. Nor could he predict how the attacks dramatically changed public consciousness, political will, and brought to fore the tensions and treatment of members of the APIA community in the national security era, and renewed civil rights tensions which have their roots in the treatment of “the wartime other” American history.

As the APIA population grows to one in ten in 2040, an entire generation of APIAs will come of age, or have their formative years, only knowing and openly experiencing the construct of profiling and an expanded national security state as an open part of their daily lives and daily consciousness.⁴ Unless reformed, these daily-lived experiences, seen as permissive profiling on the basis of perceived ancestry, faith, or origin, will continue to create barriers to the full participation of the APIA community in the general body politic. Further, these state actions will also justify differential treatment and suspicion of these populations by the public. Conversely, this environment may also inspire a new generation of civil rights activists who may step forward with a vision of
progressive tolerance, acceptance, diversity, and cultural humility, which may create a path forward for uniting the APIA community and shape a larger more diverse American populace.

However, the experience of this younger APIA population in 2040, where the APIA electorate will be split between naturalized citizens and citizens by birth, will mirror the experiences of the current population, which is majority foreign-born. They will continue to be subject to what Erika Lee describes as the “unstable place of Asian America in contemporary America”, a place characterized by “simultaneous acceptance and rejection”.

The APIA community must leverage this growing electoral power, as they become the fastest growing group of voters, more than doubling in size, to change narratives and systems that allow them to be otherized and profiled. As the complexion of America changes in 2040, increased diversity to the political and judicial realms provides a voice to the broader coalition of all people of color through shared experiences of profiling, despite the variations of profiling that occurs. If national security remains the trump card for violating the civil liberties of Americans, then racial profiling will not be eliminated, and xenophobia against those perceived to be foreign will remain. Changing this mentality in American law and policy will be a critical factor in changing the trajectory of racial profiling policies in America in the years to come.

**Racial and Religious Profiling: A Violation of Fundamental Civil Rights**
Racial profiling is targeting an individual based on perceived race, ethnicity, national origin, or religion by law enforcement or a government/state actor. vi Profiling occurs when the protected characteristic is impermissibly used, when it is the sole or motivating factor in policing, when race is a selective factor. vii Legally, profiling is a violation of an individual’s civil rights; the government denies one the right to equal protection and due process based one’s race or religion. viii Morally, it is a loss of individual identity in favor of having the dark caricature of otherness forced upon you by the state.

Examples of impermissible profiling would include “driving while black”, a practice during which African Americans are pulled over more often out a generalized suspicion that persons of that race are more likely to engaged in criminal activity. Another example is the removal of Arab, Middle Eastern, Muslim, Sikh, and South Asian persons from aircraft because their use of a language other than English is combined with a generalized suspicion that individuals or particular ethnicities are more likely to commit terrorist acts.

In this context of impermissible profiling the role of law enforcement and the state or state sanctioned actor is critical. By sanctioning profiling and the use of protected characteristics the state itself is engaging in discrimination and creates a culture that allows others to engage in that discrimination.

A key term is the perceived characteristic. The individual being profiled does not actually have to be a member of the group being profiled. The motivation of the profiler and the role of race or the protected characteristic in that motivation is the concern.
Profiling and discrimination, suspicion based solely on one’s background is not new. America has a history of creating separate legal structures, both de jure and de facto, based on perceptions of race, ethnicity, and national origin. These laws and structures, which promoted disparate treatment, have directly targeted and affected the APIA community. With many of these laws and incidents targeting the economic disempowerment of the APIA community, and contribute to the pattern of an economic animus, it is no wonder that the focus and experience of the APIA community would presuppose a grounding in economic motivated violence. However, there are examples, most notably the forced removal and detention of Japanese Americans during World War II, which laid the precedent for today’s profiling.

The 1942 decision to relocate and intern more than 110,000 West Coast people of Japanese descent (including over 70,000 Japanese Americans) was made on gross generalizations about their lack of loyalty to America and motivations of racial solidarity by the Solicitor General. Despite having evidence to the contrary from the Justice Department, the Navy, and the Federal Communication Commission, the rationale for the internship was, according to the Supreme Court that “there were disloyal members of that population whose number and strength could not be precisely and quickly ascertained.” But this was simply not true. According to the Commission on Wartime Relocation and Internment of Civilians, “[t]he broad historical causes that shaped these decisions were race prejudice, war hysteria, and a failure of political leadership.” This emphasis on political leadership occurred again when the Supreme Court decision convicting Fred
Korematsu in *Korematsu v. United States*, 323 U.S. 214 (1944), was reviewed by a District Court in 1984, the district court observed that when “petty fears and prejudices that are so easily aroused,” politicians and judges, “must be prepared to exercise their authority to protect all citizens.” xiv

Sadly, the politicians in the post 9/11 era have fallen prey to the same types of racial animus that existed against the Japanese during World War II through the rationalization of racism. The racism against the one racial group is rationalized as a means to protect the nation. “The term rational is really important because the way that much of the rhetoric in the civil rights movement and the way that racism was directly countered was by taking racism and characterizing it as an irrational process . . . Instead what we’re doing is protecting national security, that is a very rational process.” xv Based on *Korematsu*, even the Supreme Court did not think the internment was racist, rather a rational national security process. “Korematsu was not excluded because of hostility to him or his race; he was excluded because we are at war with the Japanese empire.” xvi On November 18, 2015, in attempting to rationalize why America should not permit Syrian refugees’ entry into the country, one Virginia mayor compared the sequestering of Japanese Americans after the bombing of Pearl Harbor to the threat posed by the Islamic State in Iraq and Syria (ISIS) and stated that “the threat of harm to America from ISIS now is just as real and serious as that from our enemies then.” xvii

**Threat of the Other: The Terror of Today**
The black-white racial dynamic, which had long defined race relations in America, has evolved to explicitly include other communities and ethnicities. As evidenced by the projections of the growth of the Asian American population in 2040, this growth will continue to change the dynamic and understanding of racial politics and impacts.

The dynamic of racialized fear and suspicion has evolved in the national consciousness to explicitly encompass the “Brown other”– those perceived as Latino and Arab, Middle Eastern, Muslim, Sikh, or South Asian\textsuperscript{xviii} – as the other and inherently worthy of suspicion. Brownness has come to symbolize both the “foreign other”, who is in the United States to take jobs – the lingering economic motivation – or to promote the drug trade, and the “terrorist other” bent on destroying American values, the American way of life, the American government and killing Americans in the homeland.

The racialization of hate is not limited to perceived background based on skin color alone. In the present day, religious articles and practice, such as the Sikh turban or the Muslim hijab, stand in as markers of otherness.\textsuperscript{xix}

**Civil Rights and National Security: A Conflict Between Two Aims?**

Since the 9/11 attacks, America has struggled to protect its national security and simultaneously, protect the civil rights of all the people who live within this nation. The practice of racial profiling, targeting one racial group for increased scrutiny because of increased suspicion of criminality represents a conflict between those two aims. It is instructive to look at how the balance between those aims changed around 9/11 and how
they persist fifteen years later to project their rootedness in the public psyche and actions of the state over the next twenty years.

In November of 2000, the United States Department of Justice denounced the use of racial profiling on the grounds that it violated important principles of democracy and equality. Less than a year following the Department of Justice statements, any aspiration of eliminating race as a factor in law enforcement investigations had vanished.

Days after 9/11, the Justice Department “launched the first large-scale detention of persons based on race and country of origin since the internment of Japanese Americans in World War II.” Thousands of immigrants were secretly incarcerated, and over 700 Arab or Muslim foreign nationals were arrested for investigation by order of the Attorney General. xx

The Department of Justice ordered 5,000 Middle Eastern men to be questioned regarding their links to terrorist organizations and implemented a “Special Registration” program resulting in the detention of several thousand Middle Easterners. xxi Not a single terrorism conviction resulted from this program. The specifics of NSEERS revealed it to be a clear example of discriminatory and arbitrary profiling. xxii

As the APIA population increases to one in ten Americans, they will occupy more spaces across the United States. The community will continue to have a significant foreign-born population, which implies that transnational ties will continue to play a significant role for the community. Accordingly, an examination of the border and travel reveals a different experience for members of profiled communities, which will impact more and more APIAs as their ties and needs grow.
South Asians frequently encounter additional searches and questioning by U.S. Customs and Border Protection (CBP) officials at U.S. ports of entry upon returning from trips abroad and even for domestic travels. On either of these tracks, CBP agents may select a traveler for a secondary enhanced screening that can include an intrusive body and baggage searches, extensive questioning, and detention. xxiii

The scrutiny is even higher for those with religious attire such as Muslim hijabs or Sikh turbans as they passed through the nation’s airports. Approximately one-third of Muslim Americans have South Asian heritage and almost all Sikh Americans trace their roots to South Asia.xxiv “In the wake of 9/11, law enforcement officials across the nation detained and mistreated hundreds of innocent Americans because of their appearance. Others were forced off planes by pilots or crew members for the same reasons.”xxv In 2007, following the implementation of new rules by the Transportation Security Administration (TSA), Sikh Americans were forced to remove their turbans in a practice akin to a strip search in view of the public and place their article of faith on the conveyor belt with objects like shoes and laptops in order to fly.xxvi

In addition to the typical screening process, travelers with religious attire have additional screenings and stand in plain view of all other passengers while an officer waves a metal detecting wand over their religious attire (turban/hijab) and have it swabbed to check for chemical or explosive residue. Often there is a complete pat down or removal of the garment. xxvii If you have never been through it, it is difficult to imagine living the life of a “false positive,” and being not so-randomly stopped at airports, train stations, and borders. Think about the time, the inconvenience, the insult to your dignity. Think about trying to calm your children bewildered and frightened by
armed men pulling you aside. Frank Wu argues that the effect of government action on marginalized groups defies measurement. “Even the suggestion that people should tolerate modest impositions is galling,” he argues, because “[w]hat looks like a light touch to observers can feel like an awfully heavy hand to those who feel it.”

As one Sikh civil rights advocate with a turban and a beard wrote “I am concerned about what the majority of people think when they see me—a man with brown skin, a beard, and a turban—pulled aside for additional screening. One time a young boy came up to me as I was being secondarily screened and he asked a question that broke my heart: “Why are you in time-out? Did you do something wrong?”

Brown Skin: Permission for Hate Crimes and Vandalism

Since the 9/11 terrorists were brown skinned Muslim men, it created a situation where not only are Muslims are targets, but anyone who is perceived to be Muslim is a target. Native Americans, Hispanic, anyone with brown skin is suspicious. In the immediate eight weeks of the post-September 11 violence were the murders of as many as nineteen people, including Balbir Singh Sodhi, Waqar Hasan, Adel Karas, Saed Mujtahid, Jayantilal Patel, Surjit Singh Samra, Abdo Ali Ahmed, Abdullah Mohammed Nimer, and Vasudev Patel. In addition, these incidents have included the fire bombings of mosques, temples, and gurdwaras; assaults by fist, gun, knife, and Molotov cocktail; acts of vandalism and property destruction against homes, businesses, and places of worship; and numerous instances of verbal harassment and intimidation. The actual
number of incidents is impossible to know, as racial shame, uncertain immigration status, and language barriers inhibit many victims of hate crimes from ever reporting them.\textsuperscript{xxxii}

When the government profiles against a group in the interests of national security, companies will do the same because they too want to be safe. When the general public sees the government and companies treating one racial group differently, it legitimizes their private biases.\textsuperscript{xxxiii}

In late 2015, after the Paris and San Bernadino terrorist attacks, when the leading Republican nominee for President suggested that all travelling Muslims be barred from entering the United States, hatred and suspicion followed.\textsuperscript{xxxiv} Legislative proposals were made to exclude Syrian refugees and place restrictions on the visa waiver program, programs that benefitted the APIA community, justified by national security. In the days that followed those attacks and the subsequent political rhetoric suspicion of brown skin, hate crimes, and vandalism are as prevalent as ever.\textsuperscript{xxxv} Accounts indicate that almost two major hate incidents a day happened in the month following the attacks, creating an environment of hate worse than the days following 9/11.\textsuperscript{xxxvi}

\textbf{Implications for a Growing Population: 2040 Recommendations & Strategies for Change}

As the APIA population, and the Arab, Muslim, Sikh, and South Asian segment, grows they will continue to be impacted on an individual and group identity level by the impacts of profiling and state sanctioned otherness. Communities are subject to the nature of the political environment.
For the next two decades, national security will likely continue to be a defining concern of the body politic and the reorientation of law enforcement at all levels of government will continue. What regions of the world and which specific groups are in the public consciousness will change, but the underlying themes, treatments, and impacts will not, ensuring that members of the APIA community will be impacted. As the APIA population grows, their daily lived interactions with law enforcement and the state will increase. This increase in interactions, barring appropriate steps, will create more opportunities for impermissible profiling. The recommendations and strategies to help end racial profiling in the future and/or affect positive changes of the dire trajectory that the AAPI population faces are as follows:

- **Enforceable federal prohibitions on profiling to prevent the reoccurrence and expansion of targeting of AAPI communities.**

The Department of Justice must revise and improve its 2014 “Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity.” xxxvii (“2014 Guidance”). xxxviii The 2014 Guidance is merely guidance. It is not binding on the federal government, is open to different interpretation by departments like the Department of Homeland Security, and has no legal effect on state and local law enforcement. Therefore, for racial and religious profiling to end in the future, the community must use its increasing political and voting power to urge the passage of laws like the End Racial
Profiling Act (S.1056, 2015, and H.R.1933, 2015), which would put in place a ban on profiling and condition the receipt of federal funds by local law enforcement agencies on their implementation of bans on profiling. It would also create a cause of action for victims of profiling.

- **Enforceable State and Local Prohibitions**

  Federal laws are limited in their ability to define rules for state and local law enforcement agencies. In lieu of and to supplement federal action, the APIA community must leverage its political power by organizing on the state and local level to, including within coalitions, to get the passage of prohibitions on profiling with enforceable and effective remedies for those agencies and officials who engage in impermissible profiling. If our future has any chance for ending racial profiling, crafting local remedies is key.

- **Effective Implementation**

  The practical reality of politics is that a body can pass laws, but if they are not effectively implemented they have limited value. The APIA community must ensure that there is sustained training on racial profiling prevention and funding to engage in such training. The community must hold officials accountable for effectively implementing anti-profiling programs and policies.

- **Diversity in Law Enforcement and Policy Makers**
In addition to laws and policies, APIA must be part of the forces, which are likely to profile, to bring a culture of diversity and acceptance inside the organization. Law enforcement and policy makers must reflect the populations they serve, especially where populations are majority minority. APIAs must ensure that law enforcement and policy makers reflect and are mindful of the diversity of the communities they serve to ensure that 2040 addresses the injustices of APIA racial profiling in 2015; and then racial and religious equality for APIA in 2040 can look very different than 2015.

**Conclusion**

The national security environment will define the experience of the APIA community over the next twenty-five years, until 2040, vis a vis profiling. As the APIA population grows the nature and number of their interactions with law enforcement at all levels will increase, and the biases perpetuated by law enforcement will heavily influence the way the next generation of APIAs defines their relationship with government, particularly Arab, Middle Eastern, Muslim, Sikh, and South Asians. And the actions of government will, in turn, define what is permissible for the rest of society.

The history of APIAs in America and the lessons of the forced relocation and detention of Japanese Americans continue to color the lens through which the community evaluates and experiences profiling in the post-9/11 era. The lesson is clear, without vigilance and developing political power – political power that is capable of producing structural change, the APIA community is subject to the continued indignity of suspicious people.
As Justice Antonin Scalia said to law students in Hawaii, “[O]f course, Korematsu was wrong… But you are kidding yourself if you think the same thing will not happen again….Inter arma enim silent leges … In times of war, the laws fall silent… It was wrong, but I would not be surprised to see it happen again…It's no justification but it is the reality.”

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ii No discussion of the impacts of the post-9/11 era would be complete without fully reflecting the experiences of the Arab, Middle Eastern, Muslim, Sikh, and South Asian communities, and treating them as a collective due to their shared experience, perception of their communities, and coalition work. For the purposes of this article, the Arab experience will be explicitly included and implicitly understood to be part of the described groups due to their intertwined nature in the post-9/11 context. However, out of respect for the community and steps by advocates to explicitly define the distinct and separate identity of the community, as evidenced by the steps to create a separate ethnic category in the Census for ‘Middle Eastern/North African’ persons, it should be remembered that the Arab/Middle Eastern population is a separate and distinct group from those who also identify as part of APIA. See, e.g., Wiltz, Teresa. 2014. “Lobbying for a ‘MENA’ category on the U.S. Census.” USA Today, 7 October.

iii Tamayo, 1993. “The fear of more ‘yellow and brown hordes’ being absorbed into an unstable and declining economy will have great social implications” (p. 155); and his discussion of the impact of the economic outlook driving race relations and the civil rights policy agenda through 2020 (pp. 156-157).


vii *Id.*

viii *Id.* U.S. Department of Justice (DOJ), “Guidance for Federal Law Enforcement Agencies Regarding The Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity.” 2014. (“DOJ 2014 Guidance.”) In *Whren v. United States*, 517 U.S. 806 (1996), the Supreme Court only said that race cannot be the sole factor in conducting a stop; there may be other pretextual factors which allow the stop to occur.
Consider the fact that the U.S. Constitution as originally enacted stated that black lives were the equivalent of \( \frac{3}{5} \) of a white person. Other examples of racially based enforcement and legal structures include the treatment of APIAs in immigration, as evidenced by their admissions interviews during the early 20\(^{th}\) century or laws like the Chinese Exclusion Act, and the treatment of African Americans by law enforcement and courts prior to the achievements of the Civil Rights era.

Examples include the Alien Land Laws passed in states like California, fears of the “Yellow Peril” and the “Tide of Turbans” of late 19\(^{th}\) and early 20\(^{th}\) century, the Bellingham Riots in 1907, and the murder of Vincent Chin in 1982. See, e.g., Lee 2015.


Id.

Id. at 694 fn 46

Id. at 695 citing Korematsu v. United States, 584 F. Supp. 1406, 1419 (N.D. Cal. 1984).


Id.

The authors will refer to the Arab, Middle Eastern, Muslim, Sikh, and South Asian communities as a collective whole throughout this article. While of differing ethnic, racial, and religious backgrounds, it is most useful to treat them as a united cohort given their broad brush treatment and perceived unity of background and practice, by the public, the media, and the state. These groups have explicit and directly shared experiences, and are the populations that organized and continue to organize together in the post-9/11 era.


Id. at 1533-5.

In April 2011, the Department of Homeland Security (DHS) ended the program, but has maintained the program’s regulatory structure, ready to be revived if DHS so chooses. Rights Working Group. See Rights Working Group. 2012. “NSEERS Policy Update: April 2012 DHS Memo.”


South Asian travelers returning to or entering the U.S. for the first time have been targeted for detailed interrogation about political views, family, friends, financial transactions and religious beliefs. Their cell phones, computers, personal papers, business cards and books are searched and copied with virtually no evidence that an individual
poses a threat; and they are often subjected to prolonged detention and referral to immigration authorities. Part of the reason why this occurs is the result of a 2008 guidance issued by CBP which states that “in the course of a border search, and absent individualized suspicion, officers can review and analyze the information transported by any individual attempting to enter, reenter, depart, pass through, or reside in the U.S.” In addition, the year prior to the issuance of this guidance, CBP lowered the threshold for invading passengers’ privacy from a “probable cause” to a “reasonable suspicion” standard. See South Asian Americans Leading Together (SAALT). 2012. In Our Own Words, Narratives of South Asian New Yorkers Affected by Racial and Religious Profiling. http://saalt.electricembers.net/wp-content/uploads/2012/09/In-Our-Own- Words-Narratives-of-South-Asian-New-Yorkers-Affected-by-Racial-and-Religious- Profiling2.pdf (accessed August 15, 2015).


Id.

According to Professor Ahmad, “despite the seeming conformity of post-September 11 hate violence to the hate crime prototype, several important distinctions exist in how the violence against Arabs, Muslims, and South Asians has been comprehended. Unlike prototypical hate crimes, the perpetrators of post-September 11 hate violence have not been understood as acting out of personal bias, but instead out of bias which resonated with much of the country. Because the perpetrators' emotional reactions of anger and desire for retribution were shared by much of the public, the perpetrators' bias was not understood to be deviant or irrational, even though their actions may have been so
understood. And finally, whereas in the prototypical hate crime the perpetrator is understood to be enacting violence for the sole purpose of telegraphing harm to a target group, here the perpetrators' motives were understood to be both revenge and intimidation. As such, they were subject to a different, and lesser, moral scrutiny.”


attacks-in-paris-san-bernardino_567428bbe4b0b958f6564f3d (accessed December 21, 2015).


xxxviii When the updates to the 2003 Guidance were released, a national coalition of 82 organizations, including leading APIA and AMEMSSA groups, expressed their “serious concerns” around the guidance, despite the fact that it dramatically expanded the number of protected classes. The 2014 Guidance retains broad national and border security exemptions, allowing the Transportation Security Administration and the Customs and Border Patrol the latitude to continue the previously described profiling. It creates clear opportunities or surveillance and mapping of communities.


They're Watching Us Pray: The Ramifications of Religious Racial Profiling and Counter Veiling Extremist (CVE) Programs  

By: Navdeep Singh and Jasbir K. Bawa

The dynamic of racialized fear and suspicion has evolved in the national consciousness to explicitly encompass the “Brown other” – those perceived as Latino and Arab, Middle Eastern, Muslim, Sikh, or South Asian – as the other and inherently worthy of suspicion. Brownness has come to symbolize both the “foreign other”, who is in the United States to take jobs – the lingering economic motivation – or to promote the drug trade, and the “terrorist other” bent on destroying American values, the American way of life, the American government and killing Americans in the homeland.

The racialization of hate is not limited to perceived background based on skin color alone. In the present day, religious articles and practice, such as the Sikh turban or the Muslim hijab, stand in as markers of otherness. “The experiences of the Sikh, Muslim, South Asian, and Arab American communities after 9/11 have offered convincing evidence of an ongoing process in which religious identity has become racialized. In each of these communities, race and religion have commingled to form indispensable aspects of an othered identity which is not only clearly outside of the nation’s mainstream, but one that has been criminalized by the state. What has resulted is a phenomenon in which visible religious identity becomes the determining factor which renders individuals vulnerable to the phenotypically based social degradation – and potential violence – normally reserved for racialized minorities in this nation’s history.”

Since the 9/11 attacks, America has struggled to protect its national security and simultaneously, protect the civil rights of all the people who live within this nation. The practice of racial profiling, targeting one racial group for increased scrutiny because of increased suspicion of criminality represents a conflict between those two aims. The events of September 11 changed everything as the new focus became national security and protecting our borders from any potential threats. The increased public tolerance for racial and ethnic profiling as a legitimate law enforcement and anti-terrorism tool was very significant. The change in public sentiment coincided with a similar change in the official government stance on racial profiling. In November of 2000, less than a year before the 9/11 terrorist attacks, the United States Department of Justice denounced the use of racial profiling on the grounds that it violated important principles of democracy and equality. Less than a year following the Department of Justice statements, any aspiration of eliminating race as a factor in law enforcement investigations had vanished.

Days after 9/11, the Justice Department “launched the first large-scale detention of persons based on race and country of origin since the internment of Japanese Americans in World War II,” even after the U.S. Congress passed legislation officially apologizing for the internment policy… Although the detention of Arabs and Muslims following September 11 did not parallel the internment of the Japanese, it was quite significant. Thousands of immigrants were secretly

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1 The authors will refer to the Arab, Middle Eastern, Muslim, Sikh, and South Asian communities (alternatively, AMEMSSA groups) as a collective whole throughout this article. While of differing ethnic, racial, and religious backgrounds, it is most useful to treat them as a united cohort given their broad brush treatment and perceived unity of background and practice, by the public, the media, and the state. These groups have explicit and directly shared experiences, and are the populations that organized and continue to organize together in the post-9/11 era.


incarcerated, and over 700 Arab or Muslim foreign nationals were arrested for investigation by order of the Attorney General. 4

The Department of Justice ordered 5,000 Middle Eastern men to be questioned regarding their links to terrorist organizations and implemented a “Special Registration” program resulting in the detention of several thousand Middle Easterners. 5

The National Security Entry-Exit Registration System (NSEERS), a counterterrorism program, required non-immigrant males who were 16 years of age and older from 25 countries to register themselves at ports of entry and local immigration offices for fingerprinting, photographs, and lengthy interrogations. Other than North Korea, each of the listed countries had predominantly Muslim populations. Many individuals were deported through secret proceedings that took place without due process of law. More than 80,000 men underwent registration and thousands were subjected to lengthy interrogations and detention, wasting taxpayer dollars through this counterproductive response to September 11th. Not a single terrorism conviction resulted from this program. The specifics of NSEERS revealed it to be a clear example of discriminatory and arbitrary profiling. 6

An important question to consider is what the terrorist profile looks like. Because all nineteen of the September 11 hijackers were Middle Eastern Muslim men, there is a sense in the United States that the group to be targeted for profiling should be Middle Eastern Muslims. 7 Indeed, many of the measures taken or recommended by the Department of Justice immediately after the attacks targeted young male Muslims. It would not be difficult for terrorist groups to change the demographics of their attackers and in fact, that is precisely what has happened in years after 9/11 as a diverse group of individuals cutting across gender, race, citizenship, and ethnicity have been caught in terror attack attempts. 8

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6 “In April 2011, the Department of Homeland Security (DHS) announced that the 25 countries listed under the NSEERS program would be delisted and non-immigrants from those countries would no longer need to comply with the program. Rather than acknowledge the civil and human rights violations resulting from the discriminatory program, DHS cited practical considerations for this policy shift: ‘Since NSEERS was created, DHS has implemented several automated systems that capture arrival and/or exit information, making the manual entry of this data via the NSEERS registration process redundant, inefficient and unnecessary.’ Individuals continue to face harsh immigration consequences resulting from the program, including deportation and denial of immigration benefits for which they are otherwise eligible. In April 2012, DHS released a new memorandum about individuals impacted by the NSEERS program. Although DHS’ own Office of Inspector General called for the full termination of NSEERS, DHS offered only limited relief to some individuals negatively impacted by this discriminatory program and maintained the program’s regulatory structure, ready to be revived if DHS so chooses.” Rights Working Group. NSEERS Policy Update: April 2012 DHS Memo. Available at: http://www.rightsworkinggroup.org/sites/default/files/NSEERS.PolicyUpdate.2012.pdf
8 “Richard Reid, the “shoe bomber” who attempted to board a plane with explosives in his shoes, had a British mother and Jamaican father. John Walker Lindh, the American-born Taliban soldier raised in Marin County, California, was convicted based on his activities with Al Qaeda. Aafia Siddiqui, a mother of three with a degree from MIT, was on the FBI’s most wanted terrorist list until her capture in 2008. In 2009, a black Nigerian man named Umar Farouk Abdulmutallab was arrested for attempting to blow up a Detroit-bound transatlantic airliner. Colleen LaRose, a white, blond American woman nicknamed JihadJane, was arrested for her involvement in a terrorist assassination plan. Consider also local domestic terrorists such as the Atlanta Centennial Olympic bomber,
South Asians frequently encounter additional searches and questioning by U.S. Customs and Border Protection (CBP) officials at U.S. ports of entry upon returning from trips abroad and even for domestic travels. On either of these tracks, CBP agents may select a traveler for a secondary enhanced screening that can include an intrusive body and baggage searches, extensive questioning, and detention.

South Asian travelers returning to or entering the U.S. for the first time have been targeted for detailed interrogation about political views, family, friends, financial transactions and religious beliefs. Their cell phones, computers, personal papers, business cards and books are searched and copied with virtually no evidence that an individual poses a threat; and they are often subjected to prolonged detention and referral to immigration authorities. Part of the reason why this occurs is the result of a 2008 guidance issued by CBP which states that “in the course of a border search, and absent individualized suspicion, officers can review and analyze the information transported by any individual attempting to enter, reenter, depart, pass through, or reside in the U.S.” In addition, the year prior to the issuance of this guidance, CBP lowered the threshold for invading passengers’ privacy from a “probable cause” to a “reasonable suspicion” standard.9

The scrutiny is even higher for those with religious attire such as Muslim hijabs or Sikh turbans as they passed through the nation’s airports. “In the wake of 9/11, law enforcement officials across the nation detained and mistreated hundreds of innocent Americans because of their appearance. Others were forced off planes by pilots or crew members for the same reasons.”10 In 2007, following the implementation of new rules by the Transportation Security Administration (TSA), Sikh Americans were forced to remove their turbans in a practice akin to a strip search in view of the public and place their article of faith on the conveyor belt with objects like shoes and laptops in order to fly.11

In addition to the typical screening process, travelers with religious attire have additional screenings and stand in plain view of all other passengers while an officer waves a metal detecting wand over their religious attire (turban/hijab) and have it swabbed to check for chemical or explosive residue. Often there is a complete pat down or removal of the garment. 12 If you have never been through it, it is difficult to imagine living the life of a “false positive,” and being not so-randomly stopped at airports, train stations, and borders. Think about the time, the inconvenience, the insult to your dignity. Think about trying to calm your children bewildered and frightened by the Oklahoma City Bomber, and the Unabomber. All of these are white American males whose combined terrorist acts have resulted in hundreds of deaths.

The stereotype of the terrorist on American soil can no longer be simplified as Muslim Middle Eastern males. Therefore, even if we could conclude that ethnic profiling “worked,” its success as a law enforcement strategy would be short-lived. Terrorist organizations would recruit members from demographic groups that did not align with the stereotypical profile.”


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11 SALDEF reports and memoranda.
armed men pulling you aside. Frank Wu argues that the effect of government action on marginalized groups defies measurement. “Even the suggestion that people should tolerate modest impositions is galling,” he argues, because “[w]hat looks like a light touch to observers can feel like an awfully heavy hand to those who feel it.” As one Sikh civil rights advocate with a turban and a beard wrote “I am concerned about what the majority of people think when they see me—a man with brown skin, a beard, and a turban—pulled aside for additional screening. One time a young boy came up to me as I was being secondarily screened and he asked a question that broke my heart: “Why are you in time-out? Did you do something wrong?”

**Surveillance and AMEMSSA Community**

Surveillance of the Muslim community occurs on both the state level and the federal level. One particularly egregious example of the state level surveillance was the New York Police Department’s (NYPD) Intelligence Division’s “Demographics Unit.” The stated purpose of which, in its own words, are of “[i]dentify[ing] and map[ping] ethnic residential concentrations within the Tri-State area,” “[i]dentify[ing] and map[ping] ethnic hot spots,” and “[m]onitor[ing] current events and investigations and puls[ing] the identified hot spots as appropriate.” To effectuate these efforts, the NYPD employs both undercover agents and informants. The NYPD has essentially “monitored every aspect of Muslim life and built databases on where innocent Muslims eat, shop, work and pray.” Places that have invited NYPD scrutiny include Mosques, work places, Internet cafes, and bookstores, as have student groups and individual Muslims who have “Americanized” their names.

Muslim college students have been a special target of NYPD surveillance. Not only have police undercover agents infiltrated student groups at “Yale; Columbia; the University of Pennsylvania; Syracuse; New York University; Clarkson University, the Newark and New Brunswick campuses of Rutgers; and the State University of New York campuses in Buffalo, Albany, Stony Brook and Potsdam; Queens College, Baruch College, Brooklyn College and LaGuardia Community College,” but one undercover agent went on a student rafting trip “where he recorded students’ names and . . . how many times they prayed.”

The NYPD used an ambiguous standard to determine what leads they are following in determining who and what to surveil. A lead according to the NYPD is “information that indicates the possibility of unlawful activity.” In determining how the NYPD decided to infiltrate Muslim student associations, NYPD spokesperson Paul Browne “provided a list of 12 people arrested or convicted on terrorism charges in the United States and abroad who had once been members of Muslim student associations . . . .” Based upon this low threshold for surveillance, the NYPD could

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16 Id.

17 Id.

18 Id.


20 Id.

target every student association in America if an expectation of a similar outcome was the only basis for an investigation.22

According to the Complaint in *Raza v. New York*: [t]he NYPD’s program, dedicated to the total suspicionless surveillance of Muslims in the greater New York City area, operates under the unconstitutional premise that Muslim beliefs and practices are a basis for law enforcement scrutiny. It has deployed NYPD officers and informants to infiltrate mosques and other institutions to monitor the conversations of Muslim New Yorkers, including religious leaders, based on their religion without any suspicion of wrongdoing. It has conducted other forms of suspicionless surveillance of Muslims, including the monitoring of websites, blogs, and other online forums. The results of these unlawful spying activities are entered into NYPD intelligence databases, which have amassed information about thousands of law-abiding Americans. A police representative has admitted that the mapping activities have not generated a single lead or resulted in even one terrorism investigation. 23

The NYPD has also instructed and trained informants to bait Muslim New Yorkers into making inflammatory remarks, which are then reported to the police. One such technique is known as “create and capture,” by which an informant “creates” a conversation with a Muslim New Yorker about jihad or terrorism and then “captures” and reports that individual’s response to the NYPD. For example, in January 2012, a plainclothes NYPD officer recruited nineteen year-old Shamiur Rahman to serve as an informant following his third arrest on misdemeanor drug charges. Rahman was instructed to use the “create and capture” technique. The NYPD paid Rahman as much as $1,500 a month to: monitor conversations in mosques and among Muslim youths; listen for buzz words such as “jihad” and “revolution” and report any “radical rhetoric”; photograph imams and congregants inside mosques; collect congregants’ cell phone numbers; and collect and photograph the names of people attending study groups and classes on Islam. Rahman provided all of this information to the NYPD, even though none of it pertained to actual or suspected criminal activity of any kind. 24

While the Demographics unit of the NYPD was disbanded in April 2015, the ACLU cautions that this is not the end of Muslim surveillance in NYC.25 Practices that continue include the use of informants, continued use of radicalization theory by NYPD, discriminatory surveillance by other units, the designation of entire mosques “terrorism enterprises,” and the discriminatory use of surveillance cameras outside mosques and community events to record community members’ comings and goings and collect license plate numbers of congregants and attendees. 26

The federal authorities have not been much better in respecting the civil rights of the Muslim community. Similar techniques have been employed at the federal level with government agents

22 *Id.*
23 Complaint, *Raza v. City of New York*
https://www.aclu.org/sites/default/files/field_document/nypd_surveillance_complaint_-_final_06182013_1.pdf
https://www.aclu.org/sites/default/files/field_document/nypd_surveillance_complaint_-_final_06182013_1.pdf
coercing innocent Muslims to act as informants against their own community or risk being placed on or not being removed from the dreaded “no fly list.”

A twenty year old college student, Yasir Afifi, discovered he was being watched by the FBI after a technician doing an oil change noticed a strange box attached to Afifi’s car. After Afifi posted a picture of it on the internet, he learned it was a GPS tracker. He was later visited by FBI agents who asked him about his finances and travel to Yemen. They also demanded return of the device. The resulting lawsuit was ultimately dismissed, despite a recent Supreme court decision that states that law enforcement cannot warrantlessly apply GPS tracking devices to cars. The judge found that the precedent did not exist at time of surveillance, so it was inapplicable and ultimately upheld the FBI’s actions.

In another instance that entered the media and involved a lawsuit against the FBI, the litigants claim the FBI violated their civil liberties by the FBI’s employing an undercover informant, identified as Craig Monteilh, in a dragnet operation that targeted individuals on the basis of their religious beliefs. Monteilh, who was convicted of passing fraudulent checks being placed on the FBI’s payroll to infiltrate Orange County mosques and installed bugging devices in offices, homes and places of worship. He was instructed to have sex with a Muslim woman and record the pillow talk, reveal which congregants had secrets such as affairs or sexual orientation or drug abuse, that the FBI could use to recruit those individuals as FBI informants. The lawsuit was dismissed despite the judge being “disturbed” by elements of this case, ultimately the judge found that the intelligence revealed would “significantly compromise national security.”

In July 2014, after Edward Snowden’s surveillance revelations, two reporters, Glenn Greenwald and Murtaza Hussain, claimed to have evidence that the FBI and NSA used covert surveillance on the email accounts of 202 American Muslims, including a prominent Muslim civil rights leader.

The harms of being under constant watch are numerous but some of the specific harms articulated in the complaint from Raza v. New York are particularly insightful.

As a result of unlawful NYPD spying, each of the Plaintiffs’ religious goals, missions, and practices have been profoundly harmed. For example, Plaintiffs who are religious leaders and mosques have curtailed the religious and personal guidance that they provide to congregants for fear that this guidance might be misconstrued by NYPD officers or informants, resulting in additional unjustified scrutiny, or worse. Religious leaders and mosques have also had to record sermons for fear that NYPD officers or informants will take their statements out of context, or accuse them of saying things that they did not say. Plaintiff religious leaders’ ministry, expression, and study have been significantly chilled. Knowledge and justifiable fear of NYPD surveillance have diminished congregants’ attendance at the Plaintiff mosques, prompted distrust of newcomers out of concern that they are NYPD informants, and prevented the mosques from fulfilling their mission of

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32 https://firstlook.org/theintercept/2014/07/09/under-surveillance/
serving as religious sanctuaries. Knowledge and justifiable fear of NYPD surveillance have also diminished the ability of a Plaintiff charity and one of its leaders to raise funds, and interfered with their mission of promoting and providing charity to needy New Yorkers in fulfillment of one of Islam's primary tenets.\footnote{Complaint, \textit{Raza v. City of New York}, \url{https://www.aclu.org/sites/default/files/field_document/nypd_surveillance_complaint_-final_06182013_1.pdf}}

While countering violent extremism (CVE) is a laudable government aim, the goal is not equally applied to right-wing extremists or racists who massacre people. Extremists were responsible for the Oak Creek Massacre of August 5, 2012, in which such an extremist killed 6 people at the Sikh place of worship, the gurudwara in Oak Creek, Wisconsin, at the time the deadliest attack on American house of worship in almost fifty years, and the June 2015 Charleston Massacre where nine African Americans were killed in their church by a 21 year old who wanted to start a “race war.” \footnote{http://www.cnn.com/2015/06/19/us/charleston-church-shooting-suspect/}

The undeniable assumption behind CVE programs is that certain communities are suspect and particularly vulnerable to becoming terrorists. However, the problem with CVE programs is their reliance on simplistic theories of terrorist radicalization that have been discredited. “The overwhelming consensus from these studies is that there is no profile for terrorists, no discernible pattern or pathway that individuals follow to becoming terrorists, and no reliable indicators that can be used to predict who will become violent. Yet these CVE programs pretend there are, based on flawed theories promulgated by the FBI and others.” These CVE programs incorrectly identify religious practices or political beliefs as terrorism indicators. “The FBI’s theory of terrorist radicalization claims that the commonplace activities of many American Muslims, including wearing traditional religious attire, frequent attendance at mosques, participating in a pro-Muslim social group or political cause, or even growing facial hair, are “indicators” in a four-step process toward becoming a terrorist.” \footnote{Michael German, Stigmatizing Boston’s Muslim Community is No Way to Build Trust. October 9, 2014. \url{https://www.brennancenter.org/analysis/stigmatizing-boston-muslim-community-no-way-build-trust}}

In a cost-benefits analysis of racial profiling, it appears that the social costs to those who are profiled or surveilled are deep and scarring, while the benefits have yet to be seen. In the instance of the NYPD, while post – 9/11 investments in counterterrorism programs have been substantial, however, “we have very little evidence demonstrating whether the methods the NYPD chooses to implement are actually making the city safer. And unfortunately, we know a cost has been imposed on all who live in or visit New York City in terms of our privacy. Suspicionless surveillance and infiltration of communities of Muslim, Arab, and South Asian descent have sown dissension and fear instead of security.” \footnote{Mike German. \textit{Written Statement of Michael German, Fellow, Brennan Center for Justice at New York University Law School, Before the New York City Council Committee on Public Safety and Committee on Fire and Criminal Justice,} November 12, 2014. \url{https://www.brennancenter.org/analysis/testimony-effectiveness-nypd-counterterrorism-programs}}

\textit{Hate Crimes and Vandalism}

Since the 9/11 terrorists were brown skinned Muslim men, it created a situation where not only are Muslims targets, but anyone who is perceived to be Muslim is a target. Native Americans, Hispanic, anyone with brown skin is suspicious. In the immediate eight weeks of the post-September 11 violence were the murders of as many as nineteen people, including Balbir Singh Sodhi, Waqar Hasan, Adel Karas, Saed Mujtahid, Jayantilal Patel, Surjit Singh Samra, Abdo Ali
Ahmed, Abdullah Mohammed Nimer, and Vasudev Patel. In addition, these incidents have included the fire bombings of mosques, temples, and gurdwaras; assaults by fist, gun, knife, and Molotov cocktail; acts of vandalism and property destruction against homes, businesses, and places of worship; and numerous instances of verbal harassment and intimidation. The actual number of incidents is impossible to know, as racial shame, uncertain immigration status, and language barriers inhibit many victims of hate crimes from ever reporting them. When the government profiles against a group in the interests of national security, companies will do the same because they too want to be safe. When the general public sees the government and companies treating one racial group differently, it legitimizes their private biases.

Racial profiling against Muslims and those perceived as Muslim, South Asians, Sikhs, those with brown skin – often with the narrative of “mistaken identity,” but that suggests that “we got the wrong guy” as the wrongful act, not the harm itself as the wrongful act. In the brief media coverage of the Oak Creek massacre, members of the media indicated that the congregation of that gurudwara (house of worship) were targeted because the gunman mistakenly believed that they were Muslim. This explanation has been heavily criticized.

In particular, some have urged a “retir[ing]” of the “mistaken identity” explanation on the grounds that, “to say that Page made a ‘mistake’ in targeting Sikhs … or that Sikhs are ‘unfairly’ targeted as Muslims … is to imply that it would be ‘correct’ to attack Muslims.” This argument, grounded in undue sensitivities, impedes a full accounting for why the shooting occurred. In the aftermath of 9/11, observant Sikh males—who wear turbans and beards, and typically have brown skin—have been the target of violence and discrimination due to their appearance and the perception that they may be Muslim. This is fact. To separate the Oak Creek incident from that context would be to ignore the reality of post-9/11 discrimination and elevate niceties over the established post-9/11 circumstances in which Muslims and those perceived to be Muslim have been targeted.

Often the reaction appears to be that if it is in response or retaliation to 9/11, that the hate crime is understandable or justified as a response to that terrorist act. America’s response to

39 Id.
40 According to Professor Ahmad, “despite the seeming conformity of post-September 11 hate violence to the hate crime prototype, several important distinctions exist in how the violence against Arabs, Muslims, and South Asians has been comprehended. Unlike prototypical hate crimes, the perpetrators of post-September 11 hate violence have not been understood as acting out of personal bias, but instead out of bias which resonated with much of the country. Because the perpetrators’ emotional reactions of anger and desire for retribution were shared by much of the public, the perpetrators’ bias was not understood to be deviant or irrational, even though their actions may have been so understood. And finally, whereas in the prototypical hate crime the perpetrator is understood to be enacting violence for the sole purpose of telegraphing harm to a target group, here the perpetrators’ motives were understood to be both revenge and intimidation. As such, they were subject to a different, and lesser, moral scrutiny.” Muneer I. Ahmad, A Rage Shared by Law: Post-September 11 Racial Violence As Crimes of Passion, 92 Cal. L. Rev. 1259, 1294 (2004).
41 http://www.nytimes.com/2012/08/11/us/if-the-sikh-temple-had-been-a-muslim-mosque-on-religion.html?_r=0
42 Dawinder S. Sidhu, Lessons on Terrorism and “Mistaken Identity” from Oak Creek, with A Coda on the Boston Marathon Bombings, 113 Colum. L. Rev. Sidebar 76, 84 (2013).
terrorism, has been to terrorize its own people; those deemed suspicious because of their appearance.

The state and the media are complicit in creating an environment that perpetuates the bias underlying these attacks, discriminatory treatment, and even micro-aggressions, and gives permission for these acts to occur and for these communities to be targeted. The public portrayals and treatment of individuals reinforce conditional feedback loops of conscious and unconscious bias, which can only be broken through deliberate “conditional realignment” and “proactive behavioral interventions”. The cases of Balbir Singh Sodhi and Sher Singh are particularly instructive.

Balbir Singh Sodhi was killed on September 15, 2001, in Mesa, Arizona, and is recognized as the first fatal victim of post-9/11 racial and religious backlash. Sodhi was a turbaned Sikh American who kept a beard in accordance with his faith and was killed by a man seeking revenge against those who attacked the United States days earlier. However, despite the fact that Sodhi was killed due to his appearance and its linkage to the 9/11 attacks, “news reports rarely offered the public a photo of Mr. Sodhi” and regularly failed to include fully acknowledge the violence against those targeted due to their appearance.

Compare that with the case of Sher Singh, who was taken off a train in Rhode Island for appearing ‘suspicious’. His image appeared in major news outlets and across televisions screens around the world for days even after all charges had been dropped against him and it was clear he had no association with the attacks. In fact, as Dr. Jaideep Singh found: “Media misrepresentations of Sher Singh’s arrest added further animus to the prejudice already being engendered against bearded and turbaned individual...By showing Sher Singh being led away in handcuffs, and mentioning that the train was stopped because of the presence of ‘suspicious’ individuals, the media managed to firmly associate Sher Singh – and those who looked like him – with the terrorist attack.”

Confounding the impact was the open affirmation by law enforcement by participating in the arrest, parading Singh head down, in front of cameras, demonstrating to the American public that they had caught someone worthy of suspicion due to his perceived racial and religious background. Profiling worked, so the public should participate in these actions to keep America safe.

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43 See Navdeep Singh, Giovanni Rodriguez, and Margarita Quihuis. *Turban Myths: The Opportunities and Challenges for Reframing Sikh American Identity in Post-9/11 America*. Sikh American Legal Defense and Education Fund (SALDEF) and Stanford Peace and Innovation Lab (2013). “Bullying in schools, denials of public accommodation, employment discrimination, and subtle forms of micro-aggression find their roots in the confluence of a lack of knowledge, conscious, and unconscious bias. The results also reaffirm the feedback loop of bias, that lack of knowledge and stereotypes can reinforce themselves, whether due to images seen in the media or observing a man with a turban always subject to extra-screening at the airports.”


45 See Turban Myths, p. 43.

Conclusion

The national security environment will define the experience of the APIA community, vis a vis profiling. As the APIA population grows the nature and number of their interactions with law enforcement at all levels will increase, and the biases perpetuated by law enforcement will heavily influence the way the next generation of APIAs defines their relationship with government, particularly Arab, Middle Eastern, Muslim, Sikh, and South Asians. And the actions of government will, in turn, define what is permissible for the rest of society.

The history of APIAs in America and the lessons of Japanese Internment continue to color the lens through which the community evaluates and experiences profiling in the post-9/11 era. The lesson is clear, without vigilance and developing political power – political power that is capable of producing structural change, the APIA community is subject to the continued indignity of suspicious people.

As Justice Antonin Scalia said to law students in Hawaii, “[O]f course, Korematsu was wrong... But you are kidding yourself if you think the same thing will not happen again,...Inter arma enim silent leges ... In times of war, the laws fall silent... It was wrong, but I would not be surprised to see it happen again...It's no justification but it is the reality.”

CVE programs organize meetings between DOJ, DHS, FBI, US Attorneys’ Offices, and sometimes local law enforcement with Muslim community leaders to “counter violent extremism.”

Timeline
- Strategy to Empower Local Partners to Prevent Violent Extremism in the United States was issued in 2011
- Summer of 2015, 11 departments and agencies’ review made concrete recommendations for improvement of the objectives of the 2011 strategy and identified 4 key needs:
  - An infrastructure to coordinate and prioritize CVE activities;
  - Accountability and communication across government and with the public;
  - Participation of relevant departments and agencies outside of national security; and
  - A process to assess, prioritize and allocate resources to maximize impact.
- The CVE Task Force will be a permanent interagency task force under and housed at the Department of Homeland Security (DHS) led by DHS and DOJ, with additional support from the FBI, National Counterterrorism Center and other departments and agencies.
  - Synchronization of whole-of-government CVE programs and activities;
  - New CVE efforts,
  - Ongoing strategic planning; and
  - Assessment of CVE programs and activities.
- CVE Task Force federal efforts categorized into Research and Analysis, Engagements and Technical Assistance, Communications, and Interventions
- September 28, 2015: Office of Community Partnerships to coordinate partners at federal, state, local, tribal and territorial levels
- H.R.2899 (Countering Violent Extremism Act of 2015 would amend the Homeland Security Act of 2002 to authorize Office of CVE and was introduced by Rep Michael McCaul [R-TX] on 06/25/15)
- At the White House Summit on CVE in February 2016, UN senior officials and foreign leaders came together to discuss challenges to CVE
- July 6, 2016: FY 2016 Countering Violent Extremism (CVE) Grant Program will give federal funding to NGOs and institutions of higher learning to carry out CVE programs
- Criticism from Civil Rights Advocates, including Muslim Advocates:
  - CVE programs do not actually prevent terrorism and do wrongfully target the Muslim American community, which can cause acts of violence against its members. Law enforcement becomes more biased and increases religious and racial profiling. These programs don’t rely on community engagement like they are advertised and actually undermine community trust by stigmatizing communities and monetizing relationships. CVE programs in other countries have been proved to be ineffective and counterproductive because they erode community cohesion.
Federal Cases Involving Profiling on Basis of Religion

Raza v. City of New York

From ACLU website:
- Challenged NYPD’s discriminatory and unjustified surveillance of New York Muslims.
- Plaintiffs included three religious and community leaders, two mosques, and one charitable organization, all of whom were subject to the NYPD's unconstitutional religious profiling program.
- In January 2016, a settlement to the lawsuit was announced after the NYPD agreed to reforms barring investigations on the basis of race, religion, or ethnicity.
- Settlement is subject to court approval in this lawsuit, in the U.S. District Court for the Eastern District of New York.
- charity

Turkmen v. Ashcroft

CCR website:
- Filed in 2002 on behalf of class of Muslim, South Asian, and Arab non-citizens impacted by the INS and FBI in connection with the 9/11 investigation.
- Response to hundreds of men detained as “terrorism suspects” and held in brutal detention conditions for months until the FBI and CIA cleared them of any connection to terrorism. They were then deported.
- Targets high-level Bush administration officials, including former-Attorney General John Ashcroft and former-FBI Director Robert Mueller, for role in ordering racial and religious profiling and abuse in detention (violation of First, Fourth, and Fifth Amendments).
- Current status: Defendants filed petitions for cert with the Supreme Court in May 2016.
- http://ccrjustice.org/home/what-we-do/our-cases/turkmen-v-ashcroft

Hassan v. New York

CCR website:
- Federal lawsuit filed in 2012 against the City of New York by group of Muslim Americans
- Challenges New York Police Department’s surveillance of Muslim Americans in New Jersey solely because of their Muslim identity
• Arose out of Pulitzer-Prize-winning series of Associated Press stories in 2011 that revealed that post-9/11, NYPD built a secretive human mapping and surveillance program that targeted Muslim American communities in New York, New Jersey, etc.
• First case brought on behalf of Muslim Americans unlawfully targeted and surveilled under NYPD surveillance program that produced zero to terrorist activity after more than a decade in operation
• Current status: Pre-trial litigation in District Court after remand from Third Circuit Court of Appeals in favor of plaintiffs.
• https://www.muslimadvocates.org/endspying/
• http://ccrjustice.org/home/what-we-do/our-cases/hassan-v-city-new-york

Tanvir v. Lynch (formerly Tanvir v. Holder)

CCR website:
• Federal lawsuit filed against the FBI, Department of Justice, and Department of Homeland Security
• Challenges the FBI’s abuse of No-Fly List to coerce law-abiding American Muslims into spying on their own communities.
• Plaintiffs in the case are four Muslim American men (with no criminal records) who were approached by the FBI in an effort to recruit them as informants
• As a result of placement on the No-Fly List and the FBI’s unwarranted scrutiny, some of the men were not able to see family members overseas for years.
• Current status: Damages claims against individual FBI officers were dismissed by the district court in September, 2015. While plaintiffs were taken off No-Fly List, some are appealing dismissal of damage claims.
• http://ccrjustice.org/home/what-we-do/our-cases/tanvir-v-holder

Ibrahim v. Department of Homeland Security

CCR website:
• Plaintiff, Rahinah Ibrahim, is a Muslim woman (with no criminal records or links to terrorism) and a citizen of Malaysia who was a doctoral student at Stanford University writing her thesis on affordable housing
• She was included on the No-Fly list, supposedly based on secret evidence. As a result of her presence on the No-Fly list, she was arrested in front of her young daughter when she showed up for a flight to visit Malaysia; eventually she was released and allowed to board.
• Her placement on No-Fly list was used to justify revoking her student visa and she was prohibited from returning to Stanford to complete her degree.
• Current status: Court of Appeals heard case in May, 2011 and remanded for further arguments in 2012.
• http://ccrjustice.org/home/what-we-do/our-cases/ibrahim-v-department-homeland-security-amicus
• http://www.reuters.com/article/us-usa-noflylist-idUSBREA2O1BM20140325