Submission to the UN Human Rights Committee Reviewing the U.S. Periodic Report under the International Covenant on Civil and Political Rights (ICCPR)

ASIAN AMERICANS ADVANCING JUSTICE
ASIAN LAW CAUCUS

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I. Introduction

Asian Americans Advancing Justice - Asian Law Caucus (ALC) is a United States based non-profit organization founded in 1972 as the nation's first legal and civil rights organization serving low-income, immigrant, and underserved Asian American and Pacific Islander communities. We remain committed to serving the vast diversity of communities of Asian descent, including Arab, Middle Eastern, and Muslim communities. Our fights for justice and equity are deeply informed by and in solidarity with fights for liberation by and for Black, Indigenous, and Latinx communities.

In this report we examine several, primarily federal, United States government policies and programs which discriminate against and negatively impact the communities we serve in violation of the rights guaranteed under the International Covenant on Civil and Political Rights. We ask that the Committee call attention to these important issues during the United States' review and urge the state party to take the recommended steps outlined herein.

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Specifically, this report outlines several United States policies and programs that are justified on the basis of national security and/or counterterrorism. While maintaining national security can be an important imperative for all states, it does not justify pervasive violations of rights protected under the Covenant. Specifically, Article 4 of the Covenant expressly provides that any derogation due to "public emergency" may "*not* involve discrimination solely on the ground of race, colour, sex, language, religion or social origin."[1] The following policies and practices, however, largely substitute proper intelligence gathering and effective law enforcement activities that respect the privacy and rights of individuals with racial profiling and the targeting of individuals based primarily on their race, religion, ethnicity or country of origin. As a result, these policies and practices consistently and unjustifiably violate several rights guaranteed to individuals under the Covenant. In particular, these practices and programs violate the rights of Arab, Middle Eastern, Muslim, and South Asian (AMEMSA) communities as well as Black and other Asian communities who have long experienced the chilling impacts of mass surveillance, unwarranted investigations, unjust prosecutions and policies of exclusion by the United States government, carried out under the guise of 'protecting national security,' and who, over the past 20 years, and especially since 9/11, have faced even more heightened resurgent waves of xenophobia and scapegoating.

II. National Security, Law Enforcement and Surveillance

A. FBI Visits and 'Voluntary Interviews'

In 2008, the Federal Bureau of Investigation made revisions to guidelines governing the activities and authorities of the agency. The revised guidelines gave federal law enforcement agents expansive authority to conduct investigations without the need for substantiated suspicion of wrongdoing. This expanded authority allows for FBI agents to open what are called "assessments" on specific targets, even in the absence of concrete evidence indicating misconduct or threats to national security. Then, through these assessments, agents are empowered to employ intrusive investigative methodologies, including the deployment of confidential informants, conducting interviews under false pretenses, and unrestricted physical surveillance, typically reserved for investigations supported by a well-founded criminal basis. This expanded authority has resulted in the habitual violation of the rights of many Americans and U.S. residents, but in particular those traditionally targeted by law enforcement and national security policies, including AMEMSA, Black and LGBTQIA+ individuals, as well as activists and protestors.

One manifestation of this expanded federal law enforcement authority is the FBI's practice of conducting 'voluntary interviews.' This practice involves FBI agents approaching individuals unannounced and requesting 'voluntary interviews' with them based on purported national security concerns. Advocates also colloquially term these visits 'fishing expeditions' since, typically, these individuals are not suspected of any criminal behavior or wrongdoing. Instead, FBI agents approach them for their information on and connections to their friends, family, community or fellow worshippers.[2] In these interviews, FBI agents proceed to question

[1] International Covenant on Civil and Political Rights art.4, adopted Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter Covenant].

[2] A study from 2009 found that FBI agents visited the home of a US citizen who had been naturalized for over twenty years and questioned him on where his "loyalty" lay, without providing any specific reason for the intrusion.

them on topics such as their religious beliefs or practices, travel history, and political views or involvement. The types of questions asked reflect the discriminatory premise that certain countries of origin, religious beliefs or political views can predict or indicate disloyalty to the United States and a higher likelihood of terrorist activity.

In ALC's own experience representing clients approached for voluntary interviews, we have consistently seen that federal agents targeting such individuals have stopped such approaches quickly upon learning that they have legal representation, indicating that their interest in speaking to our clients was solely based on protected characteristics such as race or religion rather than suspicion of wrongdoing. In the aftermath of 9/11, the US government questioned over 5,000 young Middle Eastern men.[3]

Compounding the harm is the fact that although such interviews are nominally voluntary, individuals who are targeted by such visits often possess little to no knowledge of their legal rights when approached by federal law enforcement agents. Many interviewees believe they are required to comply with questioning, and agents rarely inform them of their rights or that they may refuse questioning at any time. Furthermore, agents often raise the interviewees' immigration status, or the status of one of their friends or family members to 'encourage' them to be forthright with information. In a study of 113 cases of FBI contact with individual Muslim community members, 63% of respondents who disclosed their citizenship status were US citizens and another 17% were permanent residents or held a green card,[4] meaning 20% were likely involved with the immigration process.

Being approached by the FBI also results in significant stigmatic harm. Individuals may be approached at their home, school or place of work unannounced, and many who are approached experience intense feelings of distress, embarrassment, and intimidation. These feelings, along with a lasting stigma and anxiety at the prospect of being revisited, often continue for days and months after such visits.

Ultimately, FBI visits and so-called 'voluntary interviews' facilitate the discriminatory targeting and harassment of AMEMSA communities and others based on their race, religion, and/or politics and violate several rights guaranteed to all by the Covenant.

We ask that the Committee call upon the United States to require federal law enforcement to establish a criminal predicate before any investigation is opened, and the FBI should be required to approach individuals solely in relation to suspected criminal activity, rather than on the basis of a protected characteristic.

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[3] *'We Are Not the Enemy': Hate Crimes against Arabs, Muslims, and Those Perceived to Be Arab or Muslim after September 11*, vol.14, no.6 HUM. RTS. WATCH (2002).

[4] Sabrina Alimahomed-Wilson, *When the FBI Knocks: Racialized State Surveillance of Muslims*, vol. 45, no. 6 CRITICAL SOCIOLOGY, at 871-87 (2018).

B. Joint Terrorism Task Forces (JTTF)[5]

Joint Terrorism Task Forces (JTTFs) further compound the harms that stem from the 2008 expanded authorities and federal law enforcement practice of 'fishing operations' and 'voluntary interviews.'

JTTFs are inter-agency law enforcement collaborations that link federal, state, and local law enforcement. These collaborations are spearheaded by the U.S. Department of Justice (DOJ) and the FBI and housed within FBI facilities. They are tasked with undertaking investigations into potential terrorist threats. Currently, the United States operates approximately 200 such task forces nationwide, with each of the FBI's 56 regional offices hosting at least one JTTF.

JTTFs and their organization and protocols are kept largely secret. For instance, many jurisdictions lack publicly available registries detailing the participating agencies involved in JTTFs. What can be discerned, however, is that JTTFs foster partnerships between federal law enforcement entities, such as the FBI, and local law enforcement bodies, encompassing municipal police departments and sheriff's offices. The former entities extend training, resources, and coordination, deputizing local law enforcement officers as federal field agents carrying out investigative activities and operations. The precise regulations, protocols, and hierarchy governing these deputizations, however, remain ambiguous.

Federal agent participants in a JTTF are subject to the problematic expanded 2008 authorities noted above. It is important to note, however, that these investigative prerogatives often exceed those sanctioned under state and local legal frameworks, policies, and regulations. State and local officers who are deputized as JTTF agents, therefore, are not permitted to participate in many of the "assessments" or investigations initiated by their colleagues who they share an office with at FBI headquarters. However, due to the secrecy surrounding JTTF collaborations, it is nearly impossible to tell when state or local officers may be engaging in conduct that not only runs afoul of state and local law and exceeds their authority, but also violates numerous human rights. It is even more impossible to hold state and local officers accountable for such conduct.

JTTFs facilitate the proliferation of racial profiling, invasive investigatory techniques, unwarranted surveillance, and criminalization of communities that have historically been the focus of counterterrorism inquiries nationwide. Such proliferation is especially insidious when it results in state and local officers, who individuals may expect to be subject to state and local law-based safeguards, violating the privacy and rights of their own state and city residents.

We ask that the Committee call upon the United States to take the following steps in relation to JTTFs:

- The DOJ should dismantle all JTTFs, all of its field offices and collaborative networks,

[5] All information within this section is from UNCONSTITUTIONAL AND UNJUST: DISMANTLING 20 YEARS OF DISCRIMINATORY 'NATIONAL SECURITY' POLICY, ASIAN LAW CAUCUS ET AL. (2021) [hereinafter Unconstitutional and Unjust].

including with state and local agencies and those established internationally, and any future such iterations that may go by other names;
- The DOJ Office of the Inspector General (DOJ OIG) must examine and publish findings on what types of information the JTTF shares and has shared with other federal agencies;
- The DOJ OIG must (1) examine and evaluate the data that the FBI has collected and holds on U.S. and non-U.S. persons and purge all records which did not lead to predicated investigation; (2) evaluate and publish findings regarding violations of state and local law resulting from JTTF collaborations; (3) evaluate and publish findings about how many "assessments" are opened based in whole or in part on First Amendment protected activity; (4) evaluate and publish findings about how many "assessments" JTTFs open into those it classifies as engaging in so-called Black Identity Extremism, Islamic extremism, domestic terrorism, and other such classifications; and (5) evaluate and publish findings regarding the disproportionate impacts of JTTFs on AMEMSA, immigrant, and communities of color;
- The DOJ must publicly publish all Memorandums of Understanding (MOUs) establishing JTTF partnerships between the FBI and local, state, tribal, and other federal agencies, the names of each agency participating in the JTTF across the country, and the number of officers from each agency assigned to the JTTF in a full- or part-time capacity;
- The DOJ must release data regarding funding allocations to local and state agencies, including law enforcement agencies, participating in the JTTF;
- Establish a Congressional Commission or Congressional hearings led by impacted and targeted communities to evaluate and remedy the harms and impacts of the JTTF and its operations.

C. FBI Informants

Another tactic utilized both by the FBI and local police departments is the infiltration of communities and spaces of worship, particularly through the use of confidential informants. Mosques and AMEMSA community spaces are the most often targeted for infiltration and information gathering due to the inherently flawed – and discriminatory – belief that AMEMSA communities are more predisposed to terrorism pervasive across law enforcement.

The FBI uses coercive measures to recruit informants, including the denial or delay of immigration benefits and the threat of deportation. The FBI often relies on collaboration with Immigration and Customs Enforcement (ICE) to lend credibility to these threats.[6] For example, in 2007 the FBI contacted a naturalized US citizen to ask him to become an informant. After he refused, he received a letter stating that his citizenship was being revoked.[7]

Utilizing such coercion, the FBI has compiled a roster of 15,000 spies or informants, many of whom are tasked with infiltrating American Muslim communities.[8] These informants operate within private, religious, and political spaces, gaining the trust of community members while simultaneously reporting to the FBI. For example, in 2006 and 2007, the FBI sent a paid

[6] Kamali, Sara, *Informants, Provocateurs, and Entrapment: Examining the Histories of the FBI's PATCON and the NYPD's Muslim Surveillance Program*, vol. 15, no. 1 SURVEILLANCE & SOC'Y, at 68-78 (2017).
[7] Alimahomed-Wilson, *supra* note 4.
[8] Trevor Aaronson, *The Informants*, MOTHER JONES (Sept. - Oct. 2011).

informant named Craig Monteilh to mosques in Orange County, California. Posing as a convert to Islam, Monteilh gathered names, telephone numbers, and email addresses of community members, as well as information on their religious or political beliefs and conversations. He also suggested that he had access to deadly weapons and asked fellow mosque attendees if they wanted to join him in 'waging jihad.' Monteilh's presence had a chilling impact on Southern California's Muslim communities, deterring many local Muslims from continued attendance at mosques.[9]

There is currently little regulation or judicial oversight over the FBI's use of informants. In 2005, the Inspector General examined FBI compliance with "rules that govern most criminal investigations" and found violations in 104 of 120 cases, amounting to 87%.[10]

The practice of law enforcement using informants has a serious impact on AMEMSA communities. Such a practice is an invasion of privacy. In addition, the awareness of the possibility of covert surveillance by someone who one may believe to be a friend or community member deters religious expression, including attendance at mosques, chills freedom of speech and impacts political activism as well as generally damages interpersonal relationships and sows division within communities.[11]

We ask that the Committee call upon the United States to limit the FBI and other law enforcement's invasive tactics and practices, including the use of informants, to cases in which there is credible criminal predicate that warrants such undercover work.

D. Countering Violent Extremism (CVE) Programs

Countering Violent Extremism (CVE) programs are law enforcement initiatives that involve both government and private entities and are aimed at identifying individuals deemed susceptible to "radicalization" and "violent extremism." Originating first in the U.S. as federal programs led by agencies like the Department of Homeland Security (DHS), DOJ, and FBI, CVE efforts have since expanded globally, also raising worldwide concerns about resulting human rights violations. The term "CVE" now denotes a broader concept, referring to both domestic and international frameworks for addressing extremism that fall under various names.[12] In the U.S., CVE programs most typically involve grants that distribute federal funds to local organizations, including academic institutions and nonprofits that are then partnered with federal and local law enforcement agencies, and receive training to identify "violent extremism" and collect information for those partners.

CVE is grounded in the discredited[13] "radicalization theory," which identifies political dissent, cultural and religious expressions, and feelings of alienation as potential signs of

[9] Alimahomed-Wilson, *supra* note 4.
[10] Associated Press, *Inspector General: FBI Ignores Informant Rules*, NBC News (Sept. 12, 2005).
[11] Diala Shamas & Nermeen Arastu, *Mapping Muslims: NYPD Spying and Its Impact on American Muslims, Long Island City, NY*, MUSLIM AM. CIVIL LIBERTIES COAL. & CREATING LAW ENFORCEMENT ACCOUNTABILITY & RESPONSIBILITY (CLEAR) PROJECT (2013).
[12] Unconstitutional and Unjust, *supra* note 5.
[13] Faiza Patel, *Rethinking Radicalization*, BRENNAN CTR. FOR JUSTICE (2011), https://www.brennancenter.org/sites/default/files/legacy/RethinkingRadicalization.pdf.

radicalization and extremism. This theory categorizes everyday activities as potential precursors to terrorism, warranting arrest and prosecution. Behavioral indicators under this theory include expressing distress, altering routines, experiencing isolation, facing economic stress, settling debts, or displaying intense focus on a person, place, belief, or cause. These indicators are mundane, usually harmless, and often readily explainable. Other examples of indicators under CVE frameworks include wearing religious attire, increased religious attendance, international travel, heightened political or social activism, and criticism of U.S. policies. Unfortunately, these general indicators continue to play a pivotal role in grant allocations. Nearly 80 percent of 2020 recipients of CVE type grants and over 50 percent of 2021 recipients utilized these indicators,[14] despite the fact that they result in the disproportionate targeting of Muslim, Black, and LGBTQ communities, perpetuate racial bias and ultimately fail to address underlying issues.[15]

Despite claims of "empowering local partners," CVE programs effectively amount to racial or religious profiling masquerading as counterterrorism policy. Under the Obama administration, DHS awarded $10 million in grants, with most going to Muslim-serving groups. Often promoted as "community-led," they are in fact federal intelligence gathering operations that predominantly target historically marginalized communities. The CATO Institute[16] has studied the numerous adverse effects of unfounded surveillance on freedom of association and speech. There is a pronounced chilling effect experienced by targeted communities as well as being stigmatized as inherently more predisposed to violence and terrorism.

Additionally, unlike traditional law enforcement surveillance, CVE disseminates a surveillance model that targets communities without the need for the physical presence of an agent or officer. This use of community organizations and educators to surveil their communities and youth is incredibly insidious. It fosters distrust not only between targeted communities and government institutions but also with the service providers, teachers, and community leaders who are tasked with implementing CVE frameworks.

Finally, CVE is ineffective. No single government agency has ever been able to provide evidence of its success in "preventing" or "countering " violent extremism. Therefore, we call for the abandonment of CVE frameworks even as CVE supposedly expands to address "domestic violent extremism." In recent years, both the Trump and Biden administration have attempted to rebrand these harmful CVE programs and policies due to the widespread criticism. Both have claimed the new focus of such programs and grants to be white supremacists. Under the Trump administration, the CVE program was rehoused under the Office of Terrorism and Targeted Violence Prevention (TVTP) in 2019. The grant program was similarly renamed to TVTP as well. Ironically, the office eventually rescinded the few grants that had, in fact, focused on white supremacism. Then, as a candidate, President Joe Biden promised to end this biased program altogether. Instead, it was rebranded once again, while left virtually unchanged. It is now known as the Center for Prevention Programs and Partnerships (CP3). CP3 continues to administer the

[14] José Guillermo Gutiérrez & Alia Shahzad, *DHS Rebrands and Expands Biased, Ineffective Countering Violent Extremism Program*, BRENNAN CTR. FOR JUSTICE (Apr. 27, 2023), https://www.brennancenter.org/our-work/research-reports/dhs-rebrands-and-expands-biased-ineffective-countering-violent-extremism
[15] Unconstitutional and Unjust, *supra* note 5.
[16] Patrick G. Eddington, *GAO Weighs In On "Countering Violent Extremism,"* CATO INST. (Apr. 13, 2017), https://www.cato.org/blog/gao-weighs-countering-violent-extremism.

same TVTP grant program and the claimed pivot to white supremacist violence is not supported by the 2021 grants. Whatever it is called, the harmful and problematic CVE program persists unchanged. We remain concerned that any funding and resources set aside for law enforcement to run these programs involve the risk of intensifying the already extreme targeting of Muslim, Black, and other communities by counterterrorism agencies while leaving the systemic and expanding issue of white supremacist rhetoric and violence unaddressed.[17]

We ask that the Committee urge the United States to end such problematic programs, whatever their name or iteration, as they have and continue to violate the rights of many Americans and U.S. residents.

E. Section 702 of the Foreign Intelligence Surveillance Act (FISA)[18]

Section 702 of the Foreign Intelligence Surveillance Act (FISA) constitutes yet another government surveillance tool. This section grants the government the ability to access the internet-based communications of overseas targets, who, unlike U.S. citizens and those in the United States, are not protected by the Fourth Amendment of the U.S. Constitution. The government may therefore inspect electronic communications of overseas targets without probable cause as long as there is a reasonable belief that the target is a foreigner outside the United States who is likely to communicate "foreign intelligence information." This term has been since defined so broadly as to encompass virtually any information relating to the foreign affairs of the United States.

Furthermore, Section 702 authorizes the government to access U.S. persons' communications with foreigners whom they have chosen to target. Any and all international communications of persons within the U.S. are thus potentially subject to warrantless surveillance, including domestic corporations and associations. If, however, the government accidentally targets domestic communications, they may even retain and share this purely domestic communication data if they determine that the communications contain "significant foreign intelligence information," or evidence of a crime. Thus, domestic communications that are collected without a warrant are frequently queried for the communications of particular, known Americans. This bait and switch tactic is known as 'backdoor searching,' and has immense, detrimental consequences for Americans' privacy rights.

Without requiring a finding of probable cause, improper considerations like the race, religion, politics and opinions of individuals are more likely to become the proxy, with government officials' own conscious or subconscious prejudices or political leanings determining who should be regarded as suspicious. Backdoor searches therefore disproportionately impact America's Black and AMEMSA communities, as well as LGBTQ+ communities, civil rights activists and other groups historically targeted by law enforcement for surveillance, harassment and intimidation.

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[17] Unconstitutional and Unjust, *supra* note 5.

[18] *See generally*, FISA Amendments Act of 2008, Pub. L. No. 110-261, 122 Stat. 2436 (2008) (codified as amended at 50 U.S.C. § 1881a (2012)).

For example, in June of 2020, the FBI ran a 'batch query' of raw FISA data using the identifiers of 133 individuals arrested "in connection with civil unrest and protests between approximately May 30, and June 18, 2020" to determine whether the FBI had "any counter-terrorism derogatory information on the arrestees," who were Black Lives Matter protestors. The FBI was not aware of "any specific potential connections to terrorist related activity." The Foreign Intelligence Surveillance Court determined in a heavily-redacted court order that this batch query was an instance of the FBI repeatedly violating its own, already extremely low, standards in connection with FISA Section 702.[19] In several other notable cases, FBI agents ran queries on known Americans and American organizations including a U.S. congressman, a local political party, and multiple other current and former United States Government officials, journalists, and political commentators.[20]

Although these examples are significant, on their own, they represent only a drop in the bucket. In 2021 alone, the FBI performed up to *3.4 million* U.S. person queries of Section 702 data.[21] Although this may be an overcount due to the FBI running multiple queries with different identifiers in order to target the same individual, even if the number is off by an order of magnitude, this still represents nearly 1,000 warrantless searches for Americans' communications each day.[22] These searches not only represent a tremendous invasion of individuals' right to privacy and freedom of speech but create a very real danger of over-prosecution and law enforcement harassment, especially for marginalized communities and activists.

We ask that the Committee urge the United States to either not reauthorize section 702, or that it only do so with significant amendments that close these loopholes and respect our human right of protection from arbitrary interference with our privacy. These include (among others):

- A warrant be required before accessing Americans' communications and other personal data;
- The power for judicial review by the Foreign Intelligence Surveillance Court be bolstered; and
- Reasonable limits be placed on the scope of surveillance.

F. Human Rights Violations

All of the law enforcement practices programs discussed herein either explicitly mark religious, racial and ethnic identities as proxies for criminality and susceptibility to violent extremism, or lack sufficient standards and procedural safeguards to prevent federal and local law enforcement agents and officers from improperly substituting racial, religious and ethnic profiling for legitimate intelligence gathering, surveillance and law enforcement tactics that rely on actual evidence of criminal activity. As a result, Black, AMEMSA, LGBTQIA+ and other

[19] *See generally* FISC Mem. Op. & Order, Foreign Intelligence Surveillance Ct. (May 19, 2023), https://www.intel.gov/assets/documents/702%20Documents/declassified/21/2021_FISC_Certification_Opinion.pdf.
[20] Dell Cameron, *The FBI's Most Controversial Surveillance Tool Is Under Threat*, WIRED (Feb. 10, 2023), https://archive.ph/r7wYt#selection-511.0-511.62.
[21] Elizabeth Goitein, *An Opportunity to Stop Warrantless Spying on Americans*, BRENNAN CTR. FOR JUSTICE (Feb. 14, 2023).
[22] *Id*.

communities historically regarded as inherently suspect and targeted by law enforcement for invasive surveillance and tactics, continue to experience violations of their human rights at an alarming rate. Such discriminatory targeting generally violates these communities' rights to equal protection under the law as embodied in Article 26 of the Covenant. The extensive surveillance of these communities, often on the basis of little more than their religious, racial or ethnic identities, further threatens their rights to freedom of religion and interferes with their rights to privacy in violation of Article 18 and Article 17 of the Covenant.

Finally, many individuals within these communities feel compelled to hide the aspects of their identities that may increase the risk of surveillance or targeting by these secretive and pervasive programs and government officials. Many such individuals feel pressured to avoid attending their places of worship, to not wear certain religious or traditional clothing, and even avoid expressing personal or political beliefs or attending political protests or religious gatherings. These federal counterterrorism programs thus threaten communities' rights to freedom of thought, conscience and religion (Article 18 of the Covenant), freedom of assembly and association (Articles 21 and 22 of the Covenant), and freedom of opinion and expression (Article 19 of the Covenant).

III. Discriminatory Profiling of AMEMSA Travelers at the United States Border[23]

Many individuals across AMEMSA communities have unfortunately come to anticipate harassment and discriminatory treatment when traveling and especially when entering the United States. Since 2007, the Asian Law Caucus has received well over 40 complaints from individuals who have endured invasive interrogations and searches at U.S. land borders and international airports. These accounts include U.S. citizens and immigrants from diverse backgrounds, including distinguished professors, human rights advocates, respected religious leaders, corporate attorneys, and successful entrepreneurs. The common thread is that the overwhelming majority of those who have shared these experiences identify as Muslim or have South Asian or Middle Eastern roots. The cases brought to ALC's attention also represent just a fraction of the many similar stories reported to other community organizations and civil rights groups nationwide. There is a strong and demonstrable pattern of profiling and discrimination at U.S. borders.

This practice of intrusive questioning and searches conducted by U.S. Customs and Border Protection (CBP) raises many concerns. It not only infringes upon individuals' privacy rights but also discourages the exercise of individuals' freedom of religion, speech, and association given that the invasive questioning and discriminatory treatment sends the message that the U.S. government targets specific beliefs or communities for harassment and delay rather than those actually suspected of unlawful activities.

CBP has adopted policies that grant border officers extensive authority to search travelers' written materials and electronic devices, without any suspicion of wrongdoing. More

[23] All information included within this section is from ASIAN LAW CAUCUS ET AL., RETURNING HOME: HOW U.S. GOVERNMENT PRACTICES UNDERMINE CIVIL RIGHTS AT OUR NATION'S DOORSTEP (2009) (on file with author).

notably, CBP lacks any policy limiting officers' ability to ask individuals deeply personal questions about their religious beliefs and political affiliations. U.S. citizens and lawful immigrants returning to the United States from international trips *often* encounter this kind of deeply personal questioning concerning their religious beliefs, political opinions, and other matters that directly affect their rights to religious freedom, freedom of speech, and freedom of association. The questions posed by CBP officers may encompassing topics such as:

- Opinions on events in Syria and Israel;
- Views on Iran's president;
- Attitudes toward the U.S. government;
- Places of worship;
- Participation in political activism;
- Volunteering at religious institutions;
- Perspectives on Jews and the state of Israel;
- Assessments of public figures like Barack Obama;
- Contributions to religious organizations;
- Thoughts on "Wahhabism."

CBP questioning also carries an inherently coercive element, given that individuals at the border cannot enter the United States unless they comply with border agents' requests. By contrast to individuals within the U.S. who can choose to leave police or FBI voluntary interviews, travelers at U.S. borders lack this option. Although U.S. citizens possess the right to enter the country and are not subject to the admissibility requirements imposed on foreign nationals, even citizens who decline to answer questions may face threats of extended detention, more intrusive searches, or other consequences for non-cooperation. Non-citizens could be denied entry altogether, and those who opt to return to their home countries instead of undergoing the questioning cannot simply depart from the international arrivals terminal of an airport without CBP approval. Within the ambiguous territory of the U.S. border, CBP officers wield ultimate authority over arriving travelers.

Questioning only certain individuals about their faith and politics marks those subjected to such inquiries as unequal before the law. Muslims, Arabs, and other minority communities are marked as inherently suspect and treated differently than other travelers, in violation of their right to equal protection (Article 26). The delay and questioning of specific travelers regarding their religious practices, political views, and lawful affiliations also has a chilling effect on guaranteed rights such as the rights to freedom of thought, conscience and religion (Article 18 of the Covenant), freedom of assembly and association (Articles 21 and 22 of the Covenant), and freedom of opinion and expression (Article 19 of the Covenant).

We ask that the Committee urge the United States to adopt policies limiting CBP's ability to search personal papers, cell phones etc. at the border and ask deeply personal questions about one's religious beliefs, politics and more without any suspicion of wrongdoing.

IV. Immigration, Citizenship & National Security

A. CARRP

For more than a decade, the United States Citizenship and Immigration Services (USCIS) has implemented the Controlled Application Review and Resolution Program (CARRP), a secret program which primarily targets AMEMSA immigration benefit applicants for heightened national security scrutiny, resulting in protracted delays in community members obtaining citizenship and immigration benefits. The USCIS created the CARRP program in 2008 to investigate and adjudicate applications the agency deems constitute undefined national security concerns.[24] When a case is subjected to CARRP, it results in discriminatory background check delays and inordinate and unlawful delay in adjudication of the application. Thousands of applicants, including those married to United States citizens and seeking naturalization, have faced delays which, for many, last indefinitely. The CARRP program discriminates based on factors such as country of origin, religion, travel history, charitable donations, law enforcement and FBI visits and questioning, and other arbitrary factors. Between 2008 and 2013, USCIS subjected over 41,800 immigration applications to CARRP, primarily impacting Muslim immigrants from Iran, Iraq, Yemen, India, and Pakistan.[25] As of 2018, more than 4,800 immigrants were subject to CARRP and deemed to present national security and public safety concerns.[26]

Little to no recourse exists for individuals whose immigration applications are subjected to CARRP. While individuals may schedule appointments with USCIS to inquire about the status of the application, USCIS at most only confirms that the application is being held in background checks. Individuals may also reach out to their congressional representatives to request a status update from USCIS on behalf of a constituent, but no documented cases to date have resulted in faster adjudication due to congressional outreach. Often, the only meaningful recourse available for impacted applicants is to file a mandamus suit in a United States federal court which, if granted after often lengthy litigation, compels the government to take action on the application. Still, even if a court grants a plaintiff's petition for writ of mandamus and orders USCIS to take action on the application, USCIS may still deny the application without any other opportunity given to the applicant to cure any defects, address any issues, or be told the reasons for the denial, leaving open the possibility that the denial is on the basis of the factors mentioned above, including national origin and religion.

Federal law requires USCIS to carry out its duties within a reasonable time. Specifically, the Administrative Procedure Act provides that, "[w]ith due regard for the convenience and necessity of the parties or their representatives and *within a reasonable time, each agency shall proceed to conclude a matter presented to it*." 5 U.S.C. § 555(b) (emphasis added). Congress has also directed USCIS to process immigration benefit applications, including for adjustment of status, within 180 days (cite to 8 U.S.C. § 1571(b)). During this time, individuals' and families' lives are placed on hold with no explanation for the delay and no indication about when to expect

[24] Jennie Pasquarella, *Muslims Need Not Apply: How USCIS Secretly Mandates the Discriminatory Delay and Denial of Citizenship and Immigration Benefits to Aspiring Americans*, ACLU SoCal (Aug. 21, 2013), https://www.aclusocal.org/en/publications/muslims-need-not-apply.
[25] Daniel Burke, *A Shadowy Federal Program is Ensnaring Thousands of Muslim Immigrants*, CNN (Oct. 3, 2019), https://www.cnn.com/2019/10/03/us/muslim-immigrants-carrp-program/index.html.
[26] *Id*.

a final answer. Not knowing if they will be able to stay in the country, travel, buy property, or plan their lives results in tremendous anxiety and emotional distress. And while the fact that the CARRP policy exists and continues to be actively implemented by USCIS is no longer unknown to the public and to advocates, USCIS's own consideration and review of applications subject to CARRP, as well as the factors determining whether an application is to be delayed or denied after being marked for CARRP, remain secret and undisclosed even to affected applicants' attorneys.

Accordingly, ALC urges the Committee to call on the U.S. Government to dismantle and end the CARRP program.

B. Denaturalization[27]

Denaturalization is the process by which naturalized citizens lose their citizenship and its inherent rights and privileges. Denaturalization occurs when the federal government claims naturalized citizens do not qualify for citizenship or that naturalization was granted in error.

For most of the country's history since the passage of legislation authorizing denaturalization, this extraordinary measure has been reserved for former Nazis and other war criminals.[28] The Obama and Trump Administrations, however, expanded the use of denaturalization. The Trump Administration ramped up denaturalization efforts and widely publicized them, instilling fear in immigrant communities and raising concerns that the government would target them for minor mistakes in paperwork.[29] In 2017, the Trump Administration announced the beginning of Operation Second Look, a program to investigate the pursuit of denaturalization against at least 1,600 citizens.[30] Between 2008 and 2020, 40% of the 228 denaturalization cases filed by the DOJ were filed after 2017.[31] The same review determined that 49% of all civil denaturalization cases filed targeted citizens whose country of origin is a "special interest country"–a label often used as a proxy for Muslim-majority countries or countries with significant Muslim populations–which includes India, Nigeria, Bangladesh, and Pakistan.[32]

Denaturalization can have disastrous consequences for the targeted individual and their family members. Numerous U.S. Supreme Court decisions recognize the importance of citizenship, that its loss may result in the loss "of all that makes life worth living." The law permits automatic denaturalization of spouses and children of individuals who derived citizenship from the individual and where denaturalization was as a result of willful misrepresentation. This essentially constitutes guilt by association – putting at risk the citizenship of individuals who had no involvement in any attempt to procure naturalization by willful misrepresentation. It is clear that the Trump Administration pursued denaturalization in order to further pursue deportation, and the DOJ has admitted as much. Because there is no

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[27] All information contained in this section is from Unconstitutional and Unjust, *supra* note 5, unless otherwise noted.
[28] Dara Lind, *Denaturalization, Explained: How Trump Can Strip Immigrants of Their Citizenship*, VOX (July 18, 2018), https://www.vox.com/2018/7/18/17561538/denaturalization-citizenship-task-force-janus.
[29] Unconstitutional & Unjust, *supra* note 5, at 15.
[30] *Id*.
[31] *Id*.
[32] *Id*., at 16.

statute of limitations with respect to civil denaturalization, citizens who have lived decades in the United States, establishing families and working here, can suddenly become subject to banishment.

Resolving a denaturalization case through settlement is encouraged as a way for the government to efficiently secure denaturalizations. A review of closed denaturalization cases as of May 2019 revealed that 77% of denaturalization cases ended in a plea or settlement agreement.[33] Settlement demands have put targeted individuals in coercive situations where they must agree to waive immigration protections, relinquish immigration statuses, and/or agree to deportation in exchange for the government's decision not to strip the citizenship of derivative U.S. citizen children or spouses.[34] The government's settlement tactics are especially concerning in light of the procedural safeguards that are lacking in civil denaturalization proceedings. For civil denaturalization, there is no statute of limitations, right to appointed counsel, right to trial by jury, or any requirement of personal service to guarantee against involuntary in absentia denaturalizations.

Historically, denaturalization cases are rare. The intent to exponentially increase the number of denaturalization cases follows the Trump administration's campaign to restrict both legal and illegal immigration to the United States. As such, the very pursuit of denaturalizing individuals appears to serve an obsessive political and discriminatory agenda rather than a national security or public safety concern. To illustrate, from 1990 to 2017, only a mere 300 denaturalization cases were pursued, equating to an average of 11 cases per year; by contrast, from 2017 to 2020, 94 denaturalization cases were pursued, raising the annual average to 31 per year.[35] These increased efforts came as a result of the emergence of a new "denaturalization task force," headed by the Department of Homeland Security's USCIS and Immigration and Customs Enforcement. Its objective is to revoke the citizenship of more than twenty million naturalized U.S. citizens.

For its part, the Biden Administration and its Department of Justice released a new denaturalization policy in December 2022.[36] Instead of reverting back to the decades-long practice of reserving denaturalization for only the most egregious cases, the policy legitimizes the denaturalization apparatus that the Trump administration initiated. The policy fully ignores concerns and recommendations that a broad coalition of advocacy organizations has repeated consistently since President Biden stepped into office. Alarmingly, under this policy, broad categories of people will continue to face the threat of their citizenship being taken away.

ALC urges the Committee to call on the U.S. Government to halt denaturalization operations and dismantle the denaturalization apparatus that was further institutionalized under the Trump administration. This includes dismantling the "Denaturalization Section" within the Office of Immigration Litigation (OIL) at the Department of Justice.

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[33] *Unmaking Americans: Insecure Citizenship in the United States*, OPEN SOC'Y JUSTICE INITIATIVE, at 106 (Sept. 2019), https://www.justiceinitiative.org/uploads/e05c542e-0db4-40cc-a3ed-2d73abcfd37f/unmaking-americans-insecure-citizenship-in-the-united-states-report-20190916.pdf.
[34] *Id.*
[35] *Id*.
[36] U.S. DEP'T OF JUSTICE, JUSTICE MANUAL §§ 4-7.010–.200 (Dec. 2022).

C. Human Rights Violations

The aforementioned immigration and naturalization related policies are both highly discriminatory and lack transparency. As such, they carry a high risk that they will primarily target those communities historically targeted by national security policies and exclusion measures, including Asian, Black and AMEMSA communities. Although there is no requirement that any person be granted citizenship, policies and practices surrounding the immigration and naturalization process may not discriminate against individuals on the basis of their race, ethnicity, religion or country of origin. These policies and practices violate individuals' rights to equal protection under the law as embodied in Article 26 of the Covenant. Furthermore, due to the discriminatory targeting of individuals on the basis of their faith or political activities for holds on their application or even revocation of their citizenship, individuals may be deterred from expressing their faith or political opinions among other things, thus implicating their right to freedom of thought, conscience and religion (Article 18), expression (Article 19) and association (Article 22) under the Covenant.

V. Conclusion

We appreciate the Committee's time and attention to these issues. If there are further questions regarding the information presented herein, please contact Asian Law Caucus at +1(415) 896-1701 or at ICCPRShadowReport@advancingjustice-alc.org.