

April 22, 2016

The Honorable Jennifer Easterly
Senior Director for Counterterrorism
White House
1650 Pennsylvania Avenue, NW
Washington, D.C. 20504

Via Email and Mail

Re: Federal Support for Countering Violent Extremism Programs

Dear Ms. Easterly:

The undersigned human rights, civil liberties and community-based organizations write seeking an update regarding our request that the Obama administration issue a federal guidance on impacts of Countering Violent Extremism (CVE) on religious exercise, freedom of expression and the First Amendment's Establishment Clause.

In December 2014, many of our organizations wrote Ms. Lisa Monaco, Assistant to the President for Homeland Security (see Annex). We noted that while our organizations have diverse perspectives on the wisdom and legality of CVE, we all agree that where the federal government encourages these efforts, it also bears responsibility for their impacts. We emphasized potential impacts on religious exercise and political expression. Among our concerns is that law enforcement may use CVE as a pretext for intelligence gathering and other activities that treat entire communities as suspect.

The current climate of scapegoating and anti-Muslim bigotry underscores this concern, and the need to institutionalize civil liberties and human rights safeguards. It is all too easy to imagine a subsequent administration seizing on CVE programs that are now in development as vehicles for systematic and large-scale profiling, patrolling and surveillance of American Muslim and communities presumed to be Muslim. The CVE Task Force can establish strong precedents and address concerns about current practice by issuing a guidance or directive that sets out principles and legally impermissible conduct. This could be followed by individual agency implementation and planned oversight.

A federal guidance is especially crucial in light of increased funding for federal, state, local, and non-governmental CVE programs. In February 2016, DHS announced funding of nearly \$1 billion for state and local efforts through the Homeland Security Grant Program, with CVE designated as a program priority.¹ President Obama's budget request includes \$50 million for CVE grants. As we stated in our previous letter, while ensuring social services, educational resources and mental health services in these communities is vital, appropriate strategies would treat communities holistically and address a range of needs and social problems, rather than

¹ See Department of Homeland Security, "Fiscal Year (FY) 2016 Funding for State and Local Government Programs for Countering Violent Extremism," February 29, 2016, *available at* <https://www.dhs.gov/sites/default/files/publications/CVE%20HSGP%20Fact%20Sheet%20Final%20FY2016.pdf>.

through the singular lens of national security or law enforcement. In any event, government programs and partnerships cannot target a particular religious community or determine participants by reference to religion and/or national origin. They may not advance a particular set of religious beliefs while suppressing others.

We look forward to working with the CVE Task force to address these and other civil liberties and human rights impacts. Thank you for your attention to these matters.

Sincerely,

Access Now
American-Arab Anti-Discrimination Committee
American Civil Liberties Union
Amnesty International USA
Arab American Institute
ARTICLE 19
Asian Americans Advancing Justice - Asian Law Caucus
Bill of Rights Defense Committee/ Defending Dissent Foundation
Black and Pink
Brennan Center for Justice
CAIR-Minnesota
Center for Constitutional Rights
Center for New Community
Free Press
Interfaith Alliance
Islamic Shura Council of Southern California
Jewish Voice for Peace
Muslim Advocates
Muslim American Women's Policy Forum
Muslim Justice League
Muslim Legal Fund of America (MLFA)
National Coalition to Protect Civil Freedoms
Sikh American Legal Defense and Education Fund
The Sikh Coalition
T'ruah: The Rabbinic Call for Human Rights
United States Council of Muslim Organizations
US Human Rights Network

ANNEX

December 18, 2014

The Honorable Lisa O. Monaco
Assistant to the President for Homeland Security and Deputy National Security Adviser
Office of the Homeland Security Advisor
1650 Pennsylvania Avenue, NW
Washington, DC 20502

Via Email, Mail and Facsimile

Re: Federal Support for Countering Violent Extremism Programs

Dear Ms. Monaco:

The undersigned human rights, civil liberties and community-based organizations write to express our concern about the targeting of American Muslim communities and communities presumed to be Muslim through activities conducted under the auspices of Countering Violent Extremism (CVE).

In 2011, the White House released a strategic implementation plan with the overarching goal of “preventing violent extremists and their supporters from inspiring, radicalizing, financing or recruiting individuals or groups in the United States to commit acts of violence.”¹ The plan describes federal support for “community-led efforts to build resilience to violent extremism” and “preventative programming.” It tasks the Department of Homeland Security, Department of Justice and FBI to execute CVE programs and emphasizes the coordinating role of local US Attorneys’ Offices. However, the White House has not described the basic parameters, methods and metrics of CVE, which appear to vary at the local level.

Our organizations have diverse perspectives on the wisdom and legality of CVE and therefore do not take a final position on CVE here; however, we all agree that where the federal government encourages these efforts, it also bears responsibility for their impacts. In this letter, we describe some of these impacts, including on: religious exercise; freedom of expression; government preference for or interference in religion; stigmatization of American Muslims; and ongoing abusive surveillance and monitoring practices. We recommend necessary initial steps toward addressing our concerns.

Impact on Religious Exercise and Political Expression

One purported method of CVE is to provide a space for community discussion of alternative political opinions and religious viewpoints, without the threat of government surveillance and monitoring. Yet CVE may also task community members to expansively monitor and report to law enforcement on the beliefs and expressive or associational activities of law-abiding

¹ Office of the President, Strategic Implementation Plan for Empowering Local Partners to Prevent Violent Extremism in the United States, Dec. 2011, <http://www.whitehouse.gov/sites/default/files/sip-final.pdf>.

Americans. That approach to American Muslim communities—or any belief community—reproduces the same harm as government surveillance and monitoring. The result of generalized monitoring—whether conducted by the government or by community “partners”—is a climate of fear and self-censorship, where people must watch what they say and with whom they speak, lest they be reported for engaging in lawful behavior vaguely defined as suspicious.

Religious exercise and political expression are among the casualties, as individuals may abandon discussions about religion and politics—or avoid mosque and community spaces altogether—to avoid being tracked into CVE programs that brand them as “at risk” or potential “terrorists.” Indeed, insofar as CVE trainings and guidance promote a theory of “radicalization” and malleable “indicators” and “predictors” of violence including patterns of lawful political activism, ideology and religious worship, they are likely to result in law enforcement targeting based on political opinion and religious exercise. These are First Amendment-protected activities—no government-sponsored programs should chill them and law enforcement cannot use them as a basis for action.

Even where the parameters of CVE and community outreach are more narrowly defined, we are concerned based on prior incidents of law enforcement overreach that law enforcement may use them as a pretext for intelligence gathering activities that treat entire communities as suspect. Indeed, in any community roundtable or event, the presence of Justice Department officials and police creates the risk that community members’ participation and statements may be recorded in intelligence databases.

Improper Characterization of American Muslims as a Suspect Community

CVE’s stated goal is to “support and help empower American communities.”² Yet CVE’s focus on American Muslim communities and communities presumed to be Muslim stigmatizes them as inherently suspect. It sets American Muslims apart from their neighbors and singles them out for monitoring based on faith, race and ethnicity.

CVE’s focus on supporting local communities links it to traditional community policing initiatives. Yet federal support for community policing should focus on crime reduction in communities overall—and not succumb to a singular focus on terrorism or American Muslims. The federal government’s support for community policing should also be delinked from “radicalization” theory and related concepts. Empirical studies show that violent threats cannot be predicted by any religious, ideological, ethnic, or racial profiling. The evidence suggests that there is no direct link among religious observance, radical ideas and violent acts.

Moreover, all agencies involved in CVE should be mindful of potential stigmatizing impacts when they publicize and promote their efforts to engage with American Muslim communities. Materials should avoid linking federal engagement with these communities to actions to counter

² *Id.*

armed groups such as ISIS, especially as many federal officials acknowledge ISIS does not pose a credible threat of attack within the United States and the number of Americans who have allegedly traveled to join ISIS—let alone returned—is miniscule.

Harmful associations with ISIS and other armed groups play into fear-mongering about American Muslim communities. They are amplified and distorted by the media and can be exploited by individuals and groups who promote anti-Muslim rhetoric. Government and law enforcement authorities have the power to significantly shape public discourse and send a strong message to the American public that fundamental rights such as equal protection and religious liberty must be defended. Singling out one community for special interventions and enhanced monitoring may have the effect of aggravating existing prejudices and reinforcing intolerance.

CVE's Relationship to Abusive Counterterrorism Practices

In assessing CVE and urging basic safeguards, we are mindful of the larger context of ongoing abuse in federal counterterrorism practices. CVE programs are certainly bound to fail unless the government ends abusive counterterrorism practices that fuel distrust in law enforcement. Specifically, the mutual trust and respect for rights that ought to form the basis for community policing of any kind have been jeopardized, if not extinguished, by the FBI's practice of pressuring law-abiding American Muslims to become informants against their own communities, often in coercive circumstances. The FBI's use of community outreach to gather intelligence has also severely undermined confidence in its assurances of openness and cooperation.

The FBI and local law enforcement have also broken community trust by deploying undercover employees and informants to infiltrate mosques and community centers in the absence of particularized suspicion of wrongdoing. Terrorism sting operations, which the FBI and US Attorneys' Offices publicly tout as thwarting would-be terrorists, too often target youth and other individuals who appear to have little or no capacity or pre-existing intent to engage in criminal activity. The involvement of the FBI and US Attorneys' Offices thus taints CVE and will reasonably lead to fears that it is a thin veil for prosecutions. Indeed, some American Muslims fear that engaging with these agencies could lead them to be targeted—either to become an informant or be prosecuted.

Furthermore, we are concerned that by encouraging law-abiding Americans to provide information on their communities to law enforcement, CVE may further these abuses. The FBI and local law enforcement could feed information they gather in CVE and community outreach settings into ongoing surveillance and monitoring practices—including the demographic mapping of American Muslim communities, pressuring individuals to become informants and placing people on the No-Fly List and other watchlists based on loose standards. Indeed, in recent weeks, many of our organizations have received reports that the FBI is approaching community members, individually and in group settings, with requests for information about any individuals who have discussed the politics of military actions in Syria and Iraq. This amounts to

a law enforcement fishing expedition on political viewpoints, which is anathema to a robust democracy. Local community members could become unwitting partners in the abusive activities that the government implies CVE is intended to replace.

In the end, the lead involvement of the FBI and US Attorneys' Offices in CVE—agencies that have been responsible for abuses that have left deeply rooted distrust of law enforcement in American Muslim communities—is inappropriate and counter-productive to the government's own stated goals. Moreover, to the extent that individuals in American Muslim communities would benefit from improved social services or community mental health resources, such efforts should be undertaken by other actors, not federal law enforcement agencies and should not be a conduit for law enforcement surveillance.

CVE Funding of Private Organizations and Individuals

Another potential CVE method is to build capacity within communities for social services, educational resources and mental health services. These are admirable goals but they are more appropriate to strategies that treat communities holistically and address a range of needs and social problems, rather than through the singular lens of national security or law enforcement.

In any event, government programs, whether administered by the government itself or by partner organizations, cannot target a particular religious community or determine participants by reference to religion—or they risk running afoul of the Constitution and statutory civil rights protections. These programs must employ neutral, secular criteria. Thus, grants cannot lawfully be made to organizations that are solely from the Muslim community or because they predominantly serve that community. These constitutional and statutory strictures contradict the premise of CVE when it is focused almost exclusively on American Muslim communities.

Perhaps even more troubling would be CVE methods that favor one ideology over another. A government program cannot, directly or indirectly, choose which views within Islam or particular imams and community leaders are worthy of support and which are not. We caution that in choosing partners, CVE programs could have the constitutionally impermissible effect of advancing a particular set of religious beliefs and suppressing others.

Recommendations

We urge that the White House and relevant agencies take the following measures as a first step to addressing the concerns outlined here:

- **White House Guidance on CVE:** The White House should immediately issue guidance to address impacts on religious exercise, freedom of expression and the First Amendment's Establishment Clause. The guidance should:
 - Prohibit federal employees from sponsoring, directing or participating in CVE programming that has the purpose or effect of encouraging private organizations

or individuals to collect and provide to law enforcement information about religious activities, speech, association and other First Amendment protected activity—including noncriminal behavior and associations—in the absence of reasonable suspicion that the concerned individual is involved in criminal conduct or activity.

- Prohibit federal employees from using or promoting CVE training and CVE training materials that single out expressive conduct, including through alleged indicators or predictors of violent extremism or “radicalization” that focus on patterns of religious observance, political activism or religious beliefs.
- Prohibit federal employees from implementing any program, directly or indirectly, that has the effect of defining participants by reference to religion. This includes selecting partners and making grants.
- Require that all CVE trainings and training materials be assessed for their impact on religious exercise, freedom of expression and First Amendment Establishment Clause concerns.
- Be binding on all federal employees. Compliance with the guidance should also be a condition on state and local government agencies’ receipt of federal funds for CVE and counterterrorism programs.
- Direct each agency to establish meaningful safeguards against using information gathered through CVE and community outreach as intelligence. Limit the retention and dissemination of this information to other agencies, which must themselves be subject to the same prohibition and safeguards.
- Direct each agency to foster transparency by making all regulations, guidance, documents, policies and training materials that govern or are used in CVE be made publicly available. Direct each agency to also make publicly available documents needed to receive and maintain funding, including requests for proposals, grants, contracts and assurances; names of organizations receiving funding; and information about meetings.
- **Justice Department Civil Rights Division Investigation & Assessment:** The Civil Rights Division of the Justice Department should investigate and assess the impact of DOJ and FBI community outreach and CVE programs on religious exercise and freedom of expression in minority communities, including American Muslim communities.
- **US Attorneys’ Offices & FBI roles:** In light of their responsibilities for criminal investigations and prosecutions, these agencies should not have lead involvement in CVE programs.
- **Justice Department Guidance on Race:** Our concerns outlined above are heightened by recent changes to the Guidance Regarding the Use of Race by Federal Law Enforcement Agencies. The changes do not close loopholes that have long permitted the use of profiling in the national security context. In fact, the Guidance explicitly permits practices we have long identified as abusive, discriminatory and stigmatizing.

We continue to believe that a crucial step toward ending the abusive counterterrorism practices we have described, are further, meaningful, comprehensive changes to the Guidance to establish uniform, national standard against profiling in all its forms.

DOJ should also release the full current version of the FBI Domestic Intelligence and Operations Guide (DIOG) and require the FBI to amend it to completely prohibit profiling in all contexts, require at least an articulable factual basis to open investigations and prohibit the recruitment or tasking of informants when there is no reasonable suspicion of wrongdoing.

Furthermore, the Department of Homeland Security should revise its April 2013 memorandum to component heads regarding its commitment to non-discriminatory law enforcement and screening activities, which incorporates the Justice Department's Guidance by reference, accordingly.

As organizations that support this administration's commitment to equal protection and freedom of religion, we look forward to working with you to strengthen civil liberties and human rights safeguards for all. Thank you for your attention to these matters.

Sincerely,

American Civil Liberties Union
American-Arab Anti-Discrimination Committee
Amnesty International USA
Arab American Institute
Asian Americans Advancing Justice - Asian Law Caucus
Black and Pink
Brennan Center for Justice
Center for Constitutional Rights
Council on American-Islamic Relations
Defending Dissent Foundation
DRUM - South Asian Organizing Center
Interfaith Alliance
Islamic Circle of North America
Jewish Voice for Peace Boston
Muslim Advocates
Muslim American Society
Muslim Legal Fund of America
National Council of Churches
National Religious Campaign Against Torture
New Evangelical Partnership for the Common Good

Shoulder to Shoulder Campaign
Sikh American Legal Defense and Education Fund
The Sikh Coalition
T'ruah: The Rabbinic Call for Human Rights
UNITED SIKHS
United States Council of Muslim Organizations
United Voices for America

cc: The Honorable Eric Holder, Attorney General
The Honorable Jeh Johnson, Secretary of Homeland Security
The Honorable James Comey, Director of the FBI