

File No. 110255

Committee Item No. _____

Board Item No. 34

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Board of Supervisors Meeting

Date March 8, 2011

Cmte Board

☐	☐	Motion
☐	☒	Resolution
☐	☐	Ordinance
☐	☐	Legislative Digest
☐	☐	Budget Analyst Report
☐	☐	Legislative Analyst Report
☐	☐	Youth Commission Report
☐	☐	Introduction Form (for hearings)
☐	☐	Department/Agency Cover Letter and/or Report
☐	☐	MOU
☐	☐	Grant Information Form
☐	☐	Grant Budget
☐	☐	Ethics Form 126
☐	☐	Subcontract Budget
☐	☐	Contract/Agreement
☐	☐	Award Letter
☐	☐	Application
☐	☐	Public Correspondence

OTHER

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Completed by: Andrea Ausberry Date March 2, 2011

Completed by: _____ Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.

1 [Endorsing Community Concerns of Surveillance, Racial, and Religious Profiling]

2
3
4 **Resolution endorsing "Community Concerns of Surveillance, Racial, and Religious**
5 **Profiling of Arab, Middle Eastern, Muslim, and South Asian Communities (AMEMSA)**
6 **and Potential Reactivation of Police Department's Intelligence Gathering," a report**
7 **published by the San Francisco Human Rights Commission.**

8
9 WHEREAS, San Francisco is home to various immigrant communities that contribute
10 to the social, political, economic and cultural richness of the City; and

11 WHEREAS, The AMEMSA communities in the Bay Area are comprised of diverse
12 religious, economic, ethnic and national communities that represent a substantial portion of
13 the world; and

14 WHEREAS, There are an estimated one-quarter of a million individuals in the Bay
15 Area identifying as Muslim, which does not include individuals who may be perceived as
16 Muslim, but who do not identify as Muslim, or others from the Middle East or South Asia; and

17 WHEREAS, Since September 11, 2001 there has been a steady rise in Islamophobia;
18 and

19 WHEREAS, AMEMSA community members are concerned about the criminalization of
20 their identity and guilt-by-association becoming the standard for policing and national security
21 strategies; and

22 WHEREAS, In the Spring of 2010, the Chief of Police, in a public gathering stated the
23 Hall of Justice may be susceptible not only to an earthquake, but also to members of the
24 City's Middle Eastern community parking a van in front of it and blowing it up; and
25

1 WHEREAS, Members of the AMEMSA community immediately responded by
2 demanding an apology and forming the Coalition for a Safe San Francisco ("Coalition"); and

3 WHEREAS, The Coalition was formed to respond to the community's concerns
4 surrounding racial and religious profiling and surveillance of AMEMSA communities by the
5 San Francisco Police Department and to safeguard the civil liberties and civil rights of San
6 Franciscans from overboard national security policies; and

7 WHEREAS, On September 23, 2010 the Human Rights Commission held a hearing in
8 order to provide a forum to document the community's concerns and to make
9 recommendations to address them; and

10 WHEREAS, On February 24, 2011 the San Francisco Human Rights Commission
11 voted unanimously to adopt and publish "Community Concerns of Surveillance, Racial and
12 Religious Profiling of Arab, Middle Eastern, Muslim, and South Asian Communities and
13 Potential Reactivation of SFPD Intelligence Gathering," a report detailing key testimony from
14 various community members, community organizers, members of the clergy, attorneys, and
15 scholars who testified at the hearing; and

16 WHEREAS, "Community Concerns of Surveillance, Racial and Religious Profiling of
17 Arab, Middle Eastern, Muslim, and South Asian Communities and Potential Reactivation of
18 SFPD Intelligence Gathering," concludes with 31 findings and recommendations to address
19 the concerns of AMEMSA community members; now, therefore be it

20 RESOLVED, That the San Francisco Board of Supervisors recognizes and endorses
21 "Community Concerns of Surveillance, Racial and Religious Profiling of Arab, Middle Eastern,
22 Muslim, and South Asian Communities and Potential Reactivation of SFPD Intelligence
23 Gathering;" and be it

24 FURTHER RESOLVED, That the San Francisco Board of Supervisors encourages the
25 relevant agencies to consider implementing the recommendations and findings detailed in

1 "Community Concerns of Surveillance, Racial and Religious Profiling of Arab, Middle Eastern,
2 Muslim, and South Asian Communities and Potential Reactivation of SFPD Intelligence
3 Gathering;" and be it

4 FURTHER RESOLVED, That the San Francisco Board of Supervisors commends the
5 members of the AMEMSA community and the San Francisco Human Rights Commission for
6 their work in publishing "Community Concerns of Surveillance, Racial and Religious Profiling
7 of Arab, Middle Eastern, Muslim, and South Asian Communities and Potential Reactivation of
8 SFPD Intelligence Gathering."

INTRODUCTION FORM

By a member of the Board of Supervisors or the Mayor

Time Stamp or
Meeting Date

I hereby submit the following item for introduction:

- _____ 1. For reference to Committee:
An ordinance, resolution, motion, or charter amendment.
- X 2. Request for next printed agenda without reference to Committee
- _____ 3. Request for Committee hearing on a subject matter.
- _____ 4. Request for letter beginning "Supervisor _____ inquires..."
- _____ 5. City Attorney request.
- _____ 6. Call file from Committee.
- _____ 7. Budget Analyst request (attach written motion).
- _____ 8. Substitute Legislation File Nos.
- _____ 9. Request for Closed Session
- _____ 10. Board to Sit as A Committee of the Whole

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- | | |
|---|--|
| ☐ Small Business Commission | ☐ Youth Commission |
| ☐ Ethics Commission | ☐ Planning Commission |
| ☐ Building Inspection Commission | |

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a different form.]

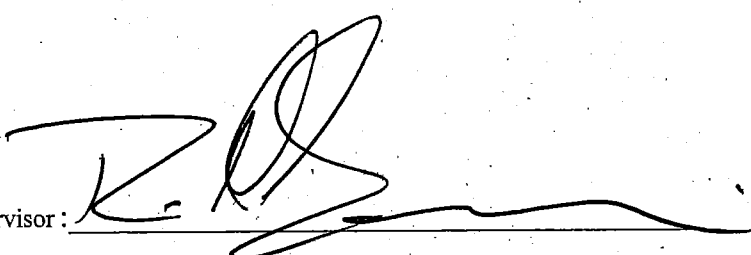
Sponsor(s): Supervisor

Mirkarimi

SUBJECT:

Resolution regarding AMEMSA

The text is listed below or attached: Text is attached..

Signature of Sponsoring Supervisor: 

For Clerk's Use Only:

Community Concerns of Surveillance, Racial and Religious Profiling of Arab, Middle Eastern, Muslim, and South Asian Communities and Potential Reactivation of SFPD Intelligence Gathering



September 23, 2010 Hearing
Adopted February 24, 2011

**CITY AND COUNTY OF SAN FRANCISCO
HUMAN RIGHTS COMMISSION**

Thank you

To the many people who contributed to the preparation of this Report

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I. ABOUT THE HUMAN RIGHTS COMMISSION

In 1963, the modern civil rights movement was brought to life in San Francisco, as demonstrations against hotels, supermarkets, drive-in restaurants, automobile showrooms and automobile repair shops with discriminatory practices aimed at African Americans took place. In response, in early 1964, Mayor John F. Shelley appointed an Interim Committee on Human Relations, which recommended to the Board of Supervisors that a permanent Human Rights Commission (HRC) be established. In July 1964, the Board of Supervisors passed the recommendation and Mayor Shelley signed an ordinance formally establishing the Human Rights Commission and Department.

The HRC works to provide leadership and advocacy to secure, protect and promote human rights for all people. Since 1964, the Department has not only grown significantly in response to City government's mandates, but has also championed the City's fight to address root causes and problems resulting from prejudice, intolerance, bigotry and discrimination.

The work of the HRC has been increasingly recognized and today the Department fulfils a number of responsibilities, including but not limited to:

1. Investigating discrimination complaints in employment, housing, and public accommodations
2. Monitoring City contracts to ensure nondiscrimination in employment as well as equitable participation of local businesses
3. Certifying and promoting locally-owned businesses for City contracts
4. Resolving community disputes involving individual or systemic illegal discrimination
5. Enforcing the City's Equal Benefits Ordinance
6. Providing diversity training to prevent discrimination
7. Working to combat human trafficking
8. Providing technical assistance, information, and referrals to individuals and constituent groups related to human rights

In addition to the Department, today the Commission consists of 11 members, appointed by the Mayor. They are informed by 3 advisory committees whose members represent San Francisco's diverse communities and who are charged with in-depth exploration and study of issues within the jurisdiction of the Commission. Periodically, either HRC staff or the committees plan public hearings to alert and make timely recommendations to the Commission about issues affecting the citizens of San Francisco.

II. BACKGROUND

In the spring of 2010, San Francisco Police Chief George Gascón was reported as publicly stating that the Hall of Justice may be susceptible not only to an earthquake, but also to members of the city's Middle Eastern community parking a van in front of it and blowing it up. He later remarked that he was not referring to all Middle Easterners, but to Yemenis and Afghans. The community responded by demanding an apology and forming the Coalition for a Safe San Francisco ("Coalition").¹

The Coalition is comprised of individuals from various Arab, Middle Eastern, Muslim, and South Asian American ("AMEMSA") communities, as well as civil rights and civil liberties organizations. The Coalition was formed specifically to respond to the community's concerns surrounding racial and religious profiling and surveillance of AMEMSA communities by the San Francisco Police Department ("SFPD") and to safeguard the civil liberties and civil rights of all San Franciscans from overbroad national security policies.

HRC Commissioner, Jamal Dajani, and HRC Executive Director, Theresa Sparks, met with Chief Gascón several times to discuss the community's concerns about the Chief's remarks and were subsequently instrumental in encouraging him to apologize. The Coalition sent a letter thanking the Chief for his apology, but remained concerned about his plans to increase SFPD's intelligence gathering efforts. These concerns prompted the HRC to hold a public hearing in order to provide a forum to document the community's concerns and to make recommendations to address them.

III. OBJECTIVES

The objectives of the September 23, 2010 hearing were:

- A. To solicit testimonies regarding concerns of undue surveillance and racial and religious profiling experienced by AMEMSA communities;
- B. To create a record documenting those concerns;
- C. To prepare findings derived from the testimonies;
- D. To propose appropriate recommendations and solutions to address community concerns; and
- E. To assist in the implementation of the proposed recommendations.

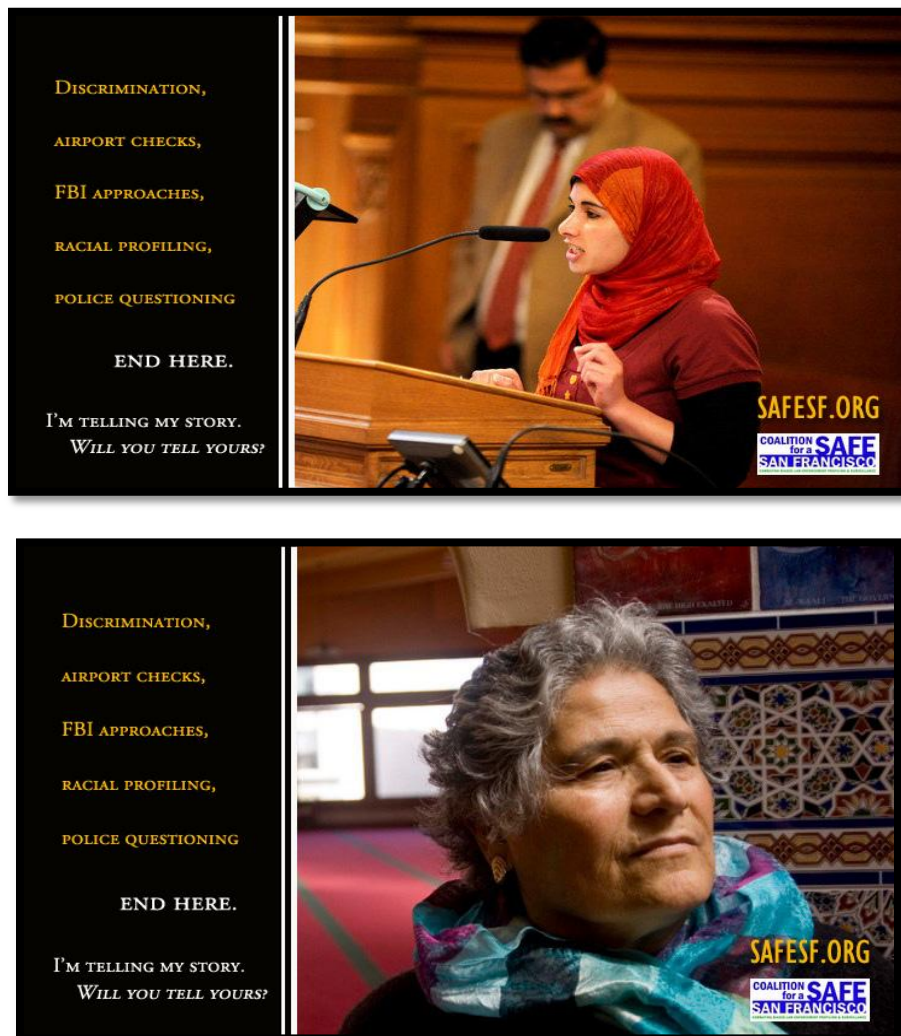
IV. PLANNING AND LOGISTICS

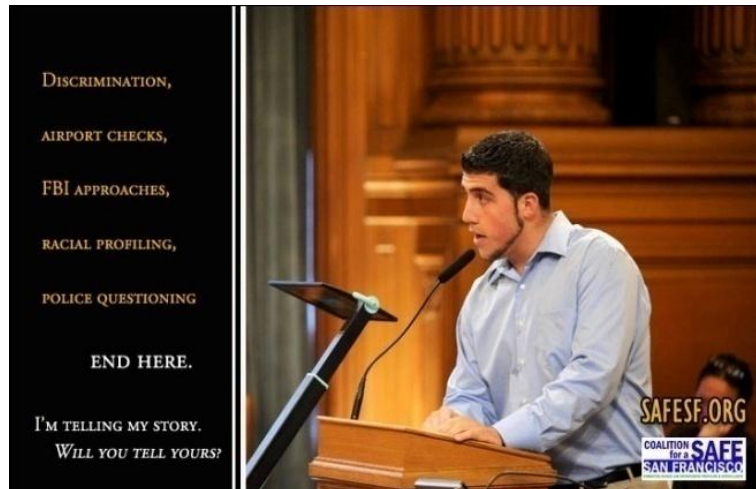
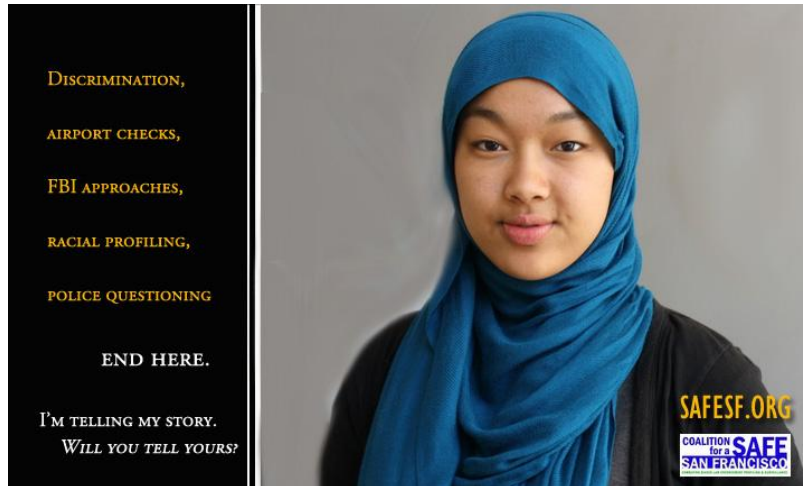
Starting in May of 2010, HRC Commissioner, Jamal Dajani, and HRC staff member, Nadia Babella, met with community members to plan the hearing. Meetings were held in locations throughout the City, including the Arab Community and Cultural Center, Arab

Resource and Organizing Center, and the Asian Law Caucus. Community leaders, impacted community members, public officials, and experts on racial and religious profiling, civil rights and surveillance issues were contacted to provide testimony.

Prior to the hearing, extensive outreach was conducted urging AMEMSA community members and civil rights and civil liberty organizations to attend the hearing and testify. Two separate press releases were issued, one by the HRC and the other by the Coalition. The Coalition initiated an outreach poster campaign to encourage impacted community members to come forward. The hearing was held in City Hall, in the usual Commission meeting room. In addition, two overflow rooms were reserved. The hearing was videotaped by a private professional videographer, who will produce an edited version of the hearing.

Sample of Outreach Posters (Front Images)





Sample of Arabic Version



Sample of Back Image

HAVE YOU EXPERIENCED:

- FBI questioning or approaches
- Airport, border, or travel harassment
- Intrusive questioning & searches
- Police discrimination
- Being stopped or detained

THEN CALL US TODAY -

PLEASE CONTACT ASAP (SEPT. 18 END)

Summer Hararah 415.848.7714
Nour Chammas 415.861.7444
summerh@asianlawcaucus.org

Visit www.safesf.org for more info
Testimony is confidential and may be anonymous.
Sponsored by Coalition for a Safe San Francisco,
whose members include:

CAIR, ARA, BAAML, CTA, NLG, and others.

TELL CITY HALL **SEPTEMBER 23**

Members of the local San Francisco Bay Area Arab, Muslim, Central and South Asian community are needed to come testify before the SF Human Rights Commission about any experiences of being profiled or discriminated against by FBI, Police and US Airport/Border customs agents because of their race, religion or national origin. If you have experienced such treatment or the scenarios listed to the left, please contact us today to sign up to testify or get free legal help.

DOCUMENT your story & CHALLENGE biased policies.

END THE DISCRIMINATION.

SEPT. 23, 2010
- **COMMUNITY HEARING** -
SAN FRANCISCO CITY HALL
ROOM 416 6 P.M.

V. ATTENDANCE

Approximately 150 people attended, including community members, community organizers, members of the clergy, attorneys, and scholars. City officials in attendance included Supervisors David Chiu, John Avalos, David Campos, Carmen Chu, Eric Mar and Ross Mirkarimi. Supervisors Chiu and Mirkarimi spoke about the importance of the issue. In addition, Commissioner Petra de Jesus and Commissioner Angela Chan (Police Commission), Commission Chair Angus McCarthy, Commissioner Samer Danfoura, and Commissioner Vera Haile (Immigrant Rights Commissioners), Mike Farrah (Mayor's Office), Charles Gallman (Office of Citizens Complaints), and Adrienne Pon (Office of Civic Engagement and Immigrant Affairs) also attended the hearing.

VI. EXCERPTS FROM PUBLIC TESTIMONY

Opening Remarks

Commissioner Chung opened the hearing with a reminder of the importance of the HRC holding hearings like this one to address the needs of groups whose civil and human rights are in jeopardy. She cautioned:

In times of hysteria and panic, history has shown that it is almost natural for governments and those in power to use the fear created by real or imagined threats to abuse their power and infringe on the rights of those who are politically or otherwise vulnerable. This can lead to intrusion on the lives of the targeted group, curtailing of their freedoms, and in the worst cases widespread persecution of the targeted group. This hysteria can be used by governments or people in power for their own purposes: to curtail dissent, however unrelated to the panic. It can also be used to target minority groups as scapegoats for other ills, or in extreme cases, to target and control the entire society. This is not a rational process, as governments and those in power use hysteria and fear to take actions that would be illogical in a rational climate. It is the job of all people, public or private, in a hearing such as this to inject rationality and common sense in these times, and to act as a check to safeguard and make sure that actions taken by government and people in power have a rational nexus to problems, so that a widespread abuse of targeted groups, whether they be political groups, ethnic groups, or religious groups, does not take place.

Post 9/11 Atmosphere: Islamophobia and Guilt by Association

Current Backdrop: Rise in Islamophobia

Commissioner Dajani provided the backdrop for the hearing as he spoke about the alarming increase in Islamophobia since 9/11: “Forty-seven percent of Americans said they had a fair attitude towards Islam according to an ABC-Washington Post poll released October 9, 2001, less than a month after the attacks of 9/11. Nine years later, the number is lower by ten points. Since 9/11 there has been a steady rise in Islamophobia in this country; however, recent months have seen the exponential rise of anti-Islamic and anti-Muslim bigotry. Anti-Islam rhetoric has reached a fever pitch as talks around the supposed ‘Ground Zero Mosque’ have been punctuated by threats of

Qur'an burning, and as Obama's alleged allegiance to Islam continues to be a central topic of debate.” The rise in Islamophobia is no surprise since, “Americans are hit with a barrage of anti-Islamic rhetoric on an almost daily basis.”

Dr. Hatem Bazian, Senior Lecturer at the University California, Berkeley Department of Near Eastern Studies and Professor of Islamic Law and Arabic at Zaytuna College of California, defined Islamophobia as, “aggregating members of the AMEMSA community into a threatening, homogeneous and undifferentiated community. Islamophobia are words, deeds and actions that malign the entire faith.” He contextualized the March 2010 statement by Police Chief Gascón as a symptom of unbridled Islamophobia in public discourse. He explained that, “Today it is undisputed that the AMEMSA communities have been cast as a threat, enemies of the state . . . and guilt-by-association [has] become the effective standard policing and national security strategy.”

Islamophobia can be defined as the aggregating of members of the AMEMSA community into a threatening, homogeneous and undifferentiated community. Islamophobia are words, deeds and actions that malign the entire faith. Dr. Hatem Bazian

Dr. Bazian testified, “Our mosques are monitored, community members are visited by the FBI, either late at night or early in the morning, [and their] financial transactions are subject to monitoring. Demonstrations are recorded, community monitoring is undertaken, entrapment is deployed, pressure of recruitment in exchange for green cards [is used] and student organizations are [also] criminalized.”



Summer Hararah, Program Coordinator of the National Security & Civil Rights Program at the Asian Law Caucus, testified on the dehumanizing impact of Islamophobia, “I was in high school when 9/11 occurred and even then I immediately felt the criminalization of myself, my identity, and my community. Now that I do civil rights work on a daily basis, and have been for the past three years in the Bay Area, I am too familiar with the severe undermining and the destruction of humanity and dignity of the AMEMSA community by law enforcement and government targeting.”



Conflating National Origin and Political Dissent with Terrorism

Michel Shehadeh, a member of the infamous “Los Angeles 8” and Director of the Arab Film Festival of San Francisco, testified that he was targeted by the government because of his political opinion and national origin. He immigrated to the US in 1975 to begin his higher education. He became politically active and spoke out on issues including the US intervention in Central America, apartheid in South Africa, and gay rights. He also spoke tirelessly about the Middle East and Palestinian issues. “But in 1987 someone didn’t want me to speak about these issues; someone somewhere didn’t want my voice to be heard,” Mr. Shahedah relayed. He along with six other Palestinians and one Nigerian national were arrested. The case became known as the Los Angeles 8 and was dubbed by the American Civil Liberties Union (“ACLU”) as the civil rights case of the 80s and 90s.

Mr. Shehadeh recalled that during his arrest, twelve civilian agents from different agencies and three police cars aimed guns at his house, while helicopters hovered over top. He was arrested in front of his three-year-old son, and charged with belonging to a terrorist organization, under the McCarran-Walter Act, a 1952 McCarthy-era law designed to target activist immigrants.

This here is not imaginary, and I advise our Commissioners and the public to familiarize themselves with what has recently happened in Pennsylvania, where information about anti-BP [British Petroleum] candle-light vigil, an LGBT festival and other peaceful gatherings became the focus of anti-terrorist pamphlets being distributed by Pennsylvania's homeland security office, prompting its governor to publicly apologize.

Commissioner Jamal Djani

His ordeal lasted for 20 years (1987-2007). In 2007 the government finally concluded that he and the other seven politically active immigrants did nothing wrong. The evidence the government had gathered was that they wore terrorist clothes (traditional Palestinian clothes), sang terrorist songs (Palestinian songs), performed terrorist dances (Palestinian dances). Their expressions of political thought and national identity was viewed as subversive, criminalized, and conflated with terrorism. Their conversations had been recorded, their garbage searched, and they and their families had been followed for years to build the case. In the end, the government concluded the eight defendants had done nothing wrong and apologized for their ordeal. Mr. Shehadeh urged that we should not repeat the same mistake and target people because of their associations and beliefs.

Similar to Mr. Shehadeh, many political dissent groups have been under surveillance and branded as terrorists. Andrea Meyer, Legislative Director of ACLU of Oregon, presented written testimony of such instances. In Denver, the following groups appeared in “Denver Intelligence Unit - Joint Terrorist Task Force Active List” files:

- Denver Cop Watch
- American Friends Service Committee (founded by the Quakers)
- Chiapas Coalition
- End the Politics of Cruelty
- The Human Bean Company
- American Indian Movement of Colorado
- Dandelion Center
- Rocky Mountain Peace and Justice Center²

"You can make an easy kind of a link that if you have a protest group protesting a war where the cause that's being fought against is international terrorism you might have terrorism at the [protest]...You can almost argue that a protest against that is a terrorist act."

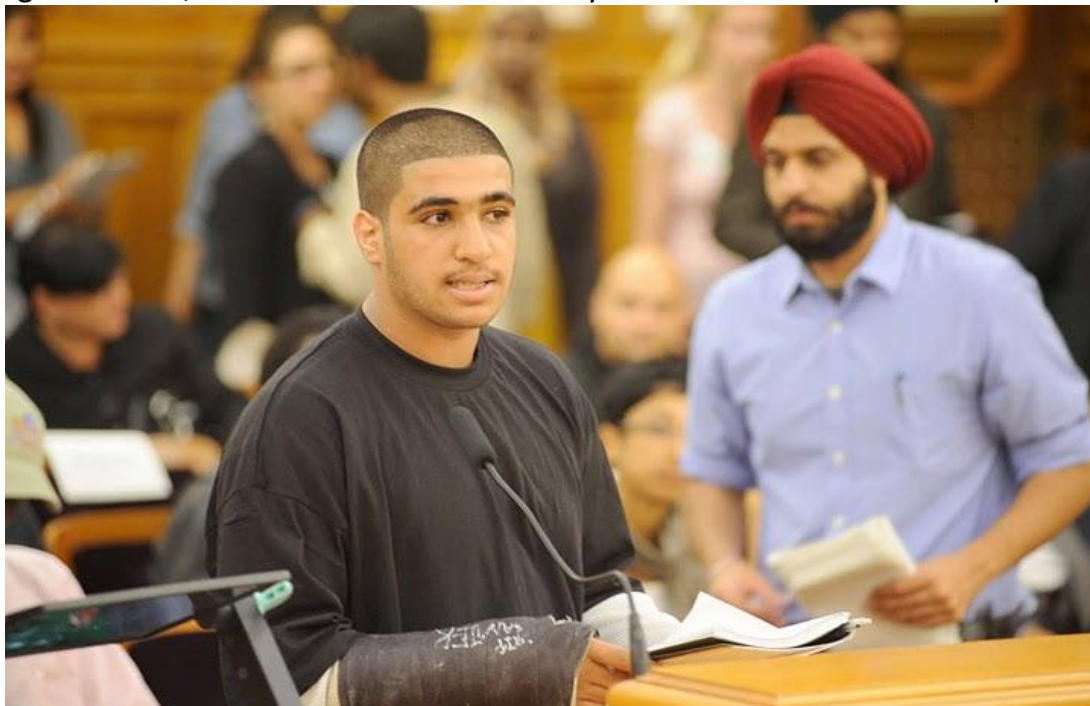
Spokesperson for California Anti-Terrorism information Center

Referring to similar such surveillance in Pennsylvania, Commissioner Dajani stated that the fears of the AMEMSA community of unwarranted surveillance are not unfounded. Citing news articles published just one week before the Hearing, Commissioner Dajani warned, “This here is not imaginary, and I advise our Commissioners and the public to familiarize themselves with what has recently happened in Pennsylvania, where information about anti-BP [British Petroleum] candle-light vigil, an LGBT festival and other peaceful gatherings became the focus of anti-terrorist pamphlets being distributed by Pennsylvania's Homeland Security Office, prompting its governor to publicly apologize.” The list also included anarchists and Black Power radicals, deportation protesters, mountaintop removal mining protestors, and animal rights

protestors. On September 15, 2010, Pennsylvania Governor Ed Rendell stated that he was “appalled” by how his Office of Homeland Security had monitored activists and offered the following apology: “I am deeply embarrassed and I apologize to any of the groups who had this information disseminated on their right to peacefully protest.”³

Here in California, the spokesperson for the California Anti-Terrorism Information Center (CATIC) equated anti-war protests with terrorism: “You can make an easy kind of a link that if you have a protest group protesting a war where the cause that's being fought against is international terrorism you might have terrorism at the [protest]...You can almost argue that a protest against that is a terrorist act.”⁴

Community members testified that San Francisco is not immune from monitoring and arresting AMEMSA anti-war activists. Lily Haskell, an organizer for the Arab Resource and Organizing Center who was arrested in San Francisco in an anti-war rally testified, “I really believe that we were arrested, myself and youth who are leaders in the community, . . . and targeted [by the SFPD] because of our political activity. These were the same officers that had seen us at a number of protests, they'd seen us in meetings, and they picked us out of the crowd based on our activities, at which point they charged us with felonies that were all dropped, but the repercussions of which were thousands of dollars lost and nights spent in jail and turning over our DNA to the state.” A 16-year-old Arab youth arrested at the same anti-war protest testified that SFPD officers referred to him as “you people” and “you terrorists” and that they needed to “go back to our country and stop protesting.” He testified that all of the charges were dropped against them, but that he and other Arab youth are now too scared to protest.



San Francisco Police Department – History and Safeguards

The Gerard Scandal

On October 21, 1993, twelve civil rights and social justice organizations and seven individuals filed a lawsuit against several defendants, including the City and County of San Francisco and Tom Gerard, a former Inspector of the San Francisco Police Department. The complainants alleged that Former SFPD Inspector Gerard, who had been assigned as a “liaison” to the Arab-American community infiltrated and collected information on Arab-American and anti-apartheid organizations and sold it to intelligence agents of foreign governments. Gerard maintained computer files on approximately 7,011 individuals and organizations.⁵

The plaintiffs charged the SFPD with the dissemination and disclosure of confidential, privileged and other information in violation of the plaintiffs’ First and Fourteenth Amendment rights to freedom of speech and assembly and right to be free from race-based and invidious discrimination. The plaintiffs included: American-Arab Anti-Discrimination Committee, American Indian Movement, Association of Arab-American University Graduates, Inc., Bay Area Anti-Apartheid Network, Coalition against Police Abuse, Committee in Solidarity with the People of El Salvador, Global Exchange, International Jewish Peace Union, National Association of Arab Americans, National Conference of Black Lawyers, National Lawyers Guild, and Palestine Solidarity Committee.⁶

Plaintiffs also alleged that Gerard acted under color of law and that the SFPD acted with deliberate indifference and/or intent to interfere with the effectiveness of the plaintiffs’ and the plaintiffs’ members constitutionally protected activities, expression, and association. Plaintiffs argued that defendants’ actions caused distrust among the organizational plaintiffs’ members and leaders, and made less effective the work and recruitment efforts the plaintiff organizations were established to undertake.⁷

Supervisor Mirkarimi was an aide to Supervisor Terence Hallinan who at the time led the effort to expose the activities of the then SFPD’s intelligence unit. Supervisor Hallinan’s office worked with the DA’s office to prosecute the wrongdoing. Supervisor Mirkarimi warned against the resurrection of activities that San Francisco citizenry worked so hard to dismantle.

San Francisco Police Department General Order (DGO) 8.10 – Strengthening Audits

The Gerard Scandal brought to light the need to strengthen DGO 8.10, which protected SF citizens from unwarranted police intrusions in areas of political and religious activity.⁸

Julia Mass, Staff Attorney at the ACLU of Northern California, gave an overview of the history of DGO 8.10. “General order 8.10 was adopted in 1990 and it places restrictions on the Police Department's investigation of constitutionally protected activity such as picketing, marches, etc. It limits the opening of criminal investigations to situations where the police can articulate actual facts that give a reasonable suspicion that there is criminal activity afoot; it can't be a mere hunch, it can't be a mere sense that 'this group is dangerous,' it has to be actual fact that gives rise to suspicion, so when first amendment activity is involved, that's what's required.”

As a result of the Gerard Scandal, DGO 8.10 was amended in 1994 to require audits to ensure compliance with the General Order. “Under the current General Order,” Ms. Mass explained, “the SFPD has to request general authority to investigate any activity that comes under First Amendment protections and specify in the request what the facts are that give rise to this suspicion of criminal activity. Those requests are reviewed monthly by someone on the Police Commission and there are also annual audits of the SFPD files to monitor compliance with the General Order.”

Ms. Mass raised concerns about the low number of such written requests. “After a review of the audits from the past ten or so years, it reveals that authorization for investigations has been pretty rarely requested. *While the public cannot know for sure, the really low number of requests for authorized investigations raises some questions about whether those requests are being made in compliance with the general order.*”

She concluded by recommending that the Human Rights Commission and the Police Commission look carefully at the audits and relevant police files to make sure the requests are being made as required. “It's important that the Police Commission expands its audit. The ACLU wants to urge the Police Commission to affirm the City's commitment to protecting civil liberties, and General Order 8.10 is exactly the kind of policy we should have, the kind that prevents law enforcement from engaging in surveillance, racial profiling and just a dragnet approach that undermines civil liberties, instead we want to have smart law enforcement that's focused on actual criminal activities.”

Community Concerns of Improper Surveillance, Profiling, and Infiltration by Federal Authorities

Lack of Accountability to Local and State Law

Ms. Mass expressed concerns that General Order 8.10 may also be compromised when SFPD works with the federal government in Joint Terrorism Task Forces (JTTF).

“[P]ressure from SFPD’s federal partners may make it difficult to comply with DGO 8.10 and [place] limits on involvement with Joint Terrorist Task Forces. Because San Francisco's federal partners are so heavily involved in surveillance there is going to be pressure on SFPD to do the same; but General Order 8.10 should limit San Francisco's involvement in the Joint Terrorism Task Force, as well.”

Andrea Meyer, Legislative Director of ACLU of Oregon, testified regarding the Portland City Council’s withdrawal from the FBI JTTF because Portland required greater oversight than the FBI would agree to. She explained

The reality is that by agreeing to participate in the JTTF, the City abdicates both civilian and police bureau responsibility over the individual police officers participating in the JTTF. To do so those local law enforcement officers are deputized as special law enforcement officers and given FBI security clearance. Day-to-day operations of the JTTF are the responsibility of the FBI and investigations are subject only to the federal law. As representatives to the FBI they have a very high level of clearance, no one else in Portland has the same level of clearance. Everyone in the chain of command should have a higher level and it didn't happen in Portland. The result is to create a system entirely inconsistent with the way that law enforcement agencies are structured. This is not just a question of appearances, but it undermines the chain of command and proper oversight in compliance with Oregon laws.

Oregon law forbids law enforcement from collecting and maintaining information about political or religious beliefs unless there is suspicion of criminal activity. Furthermore, to safeguard compliance with this law, Oregon police officers consult with the City Attorney who reviews the files that officers create to make sure they do not violate the law. Ms. Meyer explained, “But what happens is that when we turn over these officers, they not only *cannot* seek the City Attorney's advice but they do not have to comply with Oregon law. Oregon law prohibits the collection of this information unless it is

criminal activity and requires the purging of that information if there is no criminal activity. Brannan Mayfield is an example of someone whose data was collected, he was exonerated, but because it was a federal case his files remain today. If Portland had joined the JTTF, Portland police officers would create FBI files, which would not be subject to review or to purging.”



Ms. Meyer quoted Portland’s Mayor, Tom Potter, who was a former Chief of Police, stating, “I realize that we have terrorists in our country and that it would be foolish to not take steps necessary to protect us. But I also want to take steps to make sure that our civil rights are protected, particularly for those of the Muslim-American community. It is apparent in light of the Patriot Act that rights are in need of protecting.”

Lack of Federal Safeguards

Veena Dubal, Staff Attorney in the National Security and Civil Rights Program at Asian Law Caucus, testified at the hearing to share her concerns about the harrowing accounts of McCarthyite tactics used by the FBI and JTTF against political activists and the Muslim community at large. She spoke of the lack of oversight in federal government and asked for greater transparency of local government’s involvement with the federal government.

“This week the Inspector General, not some external watchdog agency, our very own federal government made public a report that stated that since 9/11 the FBI has made some troubling decisions, and in fact some of their probes have been improper,” explained Ms. Dubal.⁹ The Inspector General’s report concluded that in some cases agents began investigations of people affiliated with activist groups for factually-weak

reasons and in others it extended probes without adequate basis and kept information on activist groups in its files. Former FBI agent, Michael German was quoted stating that, “the FBI was improperly spying on people's First Amendment protected activity and that the FBI did not have enough internal controls to prevent abuse.”

Ms. Dubal testified that the findings of this report came as no surprise to national security and human rights attorneys who had watched as the situation worsened since December 2008 when FBI Director Mukasey introduced new guidelines which significantly expanded the FBI's investigative techniques. These new guidelines:

- allow agents to initiate assessments without a factual basis,
- recruit informants without a preliminary investigation,
- profile individuals on the basis of race and religion,
- conduct investigations at the request of foreign agencies—on U.S. Citizens, foreign agencies, and
- data-mine personal information, all without oversight.

Ms. Dubal was especially concerned about federal agents’ ability to initiate assessments without any factual basis, opening the door to religious and racial profiling. She explained, “[b]ecause individual agents no longer have to report opening or closing assessments to the FBI headquarters or the Department of Justice, there is no oversight and there is incredible room for abuse.”

San Francisco has felt the repercussions of these new guidelines. According to Dubal, the National Security and Civil Rights Program at the Asian Law Caucus has seen dozens of clients, “normal everyday Americans, who live in the Bay Area, who are regularly visited by the FBI.” She illustrated, “I have clients who are small business owners, American citizens who are regularly visited by the FBI at their place of work, in San Francisco. I have clients who are university students who are visited by FBI right outside of campus; I know an educator who is regularly visited by FBI agents. What do all these people have in common? Nothing, except that they are all innocent Americans who pay taxes, contribute to their community and the economy and who have immaculate criminal records, no criminal records --- they just happen to be Muslims.”

Surveillance and Infiltration of Mosques: Chilling Effect on Practice of Religion

“Imagine going to a place of worship, thinking you are in a sanctuary, where you just want to focus on your spirituality but not knowing if you're in danger from the person next to you, if the leadership of that mosque is in collaboration with the FBI,” appealed Zahra Billoo, a civil rights attorney and the Director of the San Francisco Bay Area office of the Council on American Islamic Relations (CAIR).

The result is a chilling effect on the practice of religion. Ms. Billoo testified, “I've been with CAIR a full year now and I want to share the stories of a few individuals I've come across who as a result of this targeting of organizations are afraid to get involved, who are afraid to go to the mosques. One of the things we hear most often is that people are afraid that federal and local law enforcement are collaborating to infiltrate mosques. So they're less willing to exercise their religious duty to go to the mosque to participate in group prayers because they don't know if they can trust the people they are praying with. A lot of the times in the course of working with individuals to make sure that they know their rights are protected and that they really feel at home in this country, we're also [hearing], ‘Well that person looks suspicious. They're targeting our mosque, they've made threats.’”

Community member Adel Samaha testified, “The FBI agent I spoke with informs me that his department spies on my mosque on a regular basis. I told him and his department that our mosques are places of worship, not spy stations. I conducted a survey in multiple mosques around the Bay Area to understand the level of surveillance conducted; the majority of people I asked told me their stories verbally but were too afraid to write them down.”

Under DGO 8.10, SFPD surveillance of mosque and other places of worship without criminal suspicion would be prohibited. ACLU attorney Julia Mass stressed that, “[G]iven the current law enforcement climate, it's important that SFPD understands that this general order [General Order 8.10] applies to religious activity, religious gathering, and religious organizations and groups.”

Surveillance and Infiltration of Organizations: Chilling Effect on Political Association

In addition to mosques, the federal government is targeting AMEMSA political and civic organizations. Ms. Billoo recounted, “The first to be targeted in this way was the Holy Land Foundation; they were at that time the largest Muslim charity in North America. Many Muslims consider giving charity a part or a tenet of their faith, and so were giving to this organization. Their offices were raided, their assets were frozen, everything was seized and it took at least six to seven years for them to even make it to trial, and the first trial resulted in a hung jury, but the impact had already happened. The negative ramifications on the community and our ability to engage and to give in philanthropy had already been damaged.”



Ms. Billoo continued, “Following the Holy Land Foundation case another Muslim charity, Kind Hearts, was targeted and through this process the government issued a list of unindicted co-conspirators. It was a technical process to bring in testimony from individuals and organizations that they didn't have [evidence] to indict, and this list was over 300 organizations. It included organizations like CAIR, like the Islamic Society of North America, an umbrella organization which hosts a convention that brings 40,000 Muslims to Chicago every year, and has been in the U.S. for 40 years. It included individuals like Imams from across the country, high ranking religious scholars, and really had a chilling effect.”

Stephen Downs, attorney with Project SALAM explained through written testimony read at the hearing, “By expansive interpretation of the material support for terrorism statutes the government has also created ideological or thought crimes. Ghassan Elashi, the director of the Holy Land Foundation, one of the largest charities in America, was sentenced to 65 years in jail for giving money to build schools and hospitals in Palestine. The US government argued that although none of Holy Land’s money went to support terrorism, the schools and hospitals enhanced the prestige of Hamas, the de facto government in Palestine, and so constituted ‘material support of terrorism.’ Using such twisted logic numerous Muslims have been sentenced to long prison terms for essentially charitable or hospitable acts that were not intended to support terror in any way.”

Ms. Billoo further testified, “We come across individuals on a regular basis and get complaints from individuals who donate money one week and then are visited the next week and asked about their donation and they don't know where the leak is. That

makes them suspicious and less likely to get involved. We come across individuals who want to make donations but they don't want to write a check because they are scared of creating a paper trail, which is funny because from a financial perspective my advice is to always create a paper trail. But I can't tell these people that because they are scared that if they give anything other than cash they'll be traced."

Julia Mass echoed, "Communities feel under siege because of the law enforcement surveillance they're experiencing from the FBI. This inhibits how they express their religious beliefs and how they engage civically."

FBI Coercion and Denial of Immigration

Attorney and civil rights activist, Wazhma Mojaddidi, testified that her Muslim clients face coercion and intimidation that her other clients do not. She reported that the system had failed her clients and that their lives had been forever affected by their very own government. Her clients were too afraid to come forward for fear that telling their stories would make it worse for them. In their stead, she provided their stories:

[Client 1] I am a legal permanent resident . . . I've lived in the U.S. with my wife and children for over 20 years. My adult son had a green card application pending when I was contacted by the FBI. . . .The agents told me if I wanted my son to get the green card then I needed to become an informant for the FBI. I told them I would think about it. They arranged another meeting. . . I told them at that time that I didn't want to become an informant. They then told me that if I did not agree to becoming an informant that they would prevent my son from receiving his green card. Now, years later, my son is still waiting for his green card. He should have received it; but the reason he has not received it is his case is caught up in 'security clearances.' There's no reason why my son's case should be delayed. I believe that the FBI is punishing my son because I refused to become an informant for the FBI.

[Client 2] I am a legal permanent resident and I am also Muslim. My wife and I applied for naturalization so that we could become citizens . . . five years ago. The process typically takes only six months. . . [J]ust months [after we applied], my wife and I went in for the interview; we answered all of their questions and gave them all the documents they requested. My wife received her naturalization certificate soon after. My case was delayed. I was told it was caught up in "security clearances." I had to hire an attorney and pay thousands of dollars to file a complaint in federal court about the delay. The U.S. Citizen and Immigration Office then agreed

to proceed with adjudication of my case and called me in for another interview... two years after I'd first applied. . .While I was waiting for a decision to be made two FBI agents visited me. They told me that they could arrange for my application to be quickly processed if I became an informant. I told them I was not interested. Soon after their visit I received notice that my application was denied because the government claimed I did not have 'good moral character' because of a small tax error in one of my tax filings that I had already cleared with the IRS. My attorney filed another lawsuit in federal court; after I testified in a deposition about my experience with the five year delay, the visit from the FBI agents and my impeccable moral character, the U.S. Attorney agreed to grant my naturalization and my case was dismissed in court.

Ms. Mojaddidi testified that the FBI continues to offer immigration or similar benefits to Muslims if they become FBI informants and threaten negative consequences to deny those benefits if they do not agree to become informants. The requirement of “good moral character” for certain benefits has become a vehicle of abuse, harassment, and racial profiling against Muslim applicants. Ms. Mojaddidi reported that a recent discussion forum of immigration attorneys across the country revealed that it is only Muslims who are suffering from this level of scrutiny.

Profiling and Surveillance at Borders and Airports.

Shirin Sinnar, Law Fellow at Stanford University focusing on First Amendment and national security scholarship, testified that US border officials interrogate AMEMSA community members regarding their religious practices and political views and repeatedly ask questions which few Americans expect to hear from armed, uniformed federal officers. Such questions include: “Where do you worship? What groups do you support? Why did you donate money to your mosque? Do you hate the US?” She spoke about how unwarranted surveillance and interrogation are not mere inconveniences, but rather they breed anxiety, fear, and insecurity in the community. This, in turn, makes the community much less likely to cooperate with law enforcement.



A report by the Asian Law Caucus and the Stanford Immigrant Rights Clinic entitled “Returning Home: How U.S. Government Practices Undermine Civil Rights at Our Nation's Doorstep” identified three particular concerns:

- 1) The intrusive questioning and searches of individuals, particularly those based on their exercise of First Amendment rights, stigmatize individuals and communities and chill entirely lawful political and religious protection.
- 2) Customs and borders protection has explicitly profiled travelers, including U.S. citizens, on the basis of their national origin and has insufficient policies to prevent profiling on the basis of race and religion.
- 3) The agencies' use of a mismanaged and bloated “terrorist watch list” subjects entirely innocent individuals to humiliation and stigma, while diverting law enforcement attention from others who might present an actual threat.¹⁰

Ms. Sinnar testified that, “In compiling the report we were struck by how so many of the individuals who came forward with stories of [being] mistreated were respected community leaders who had devoted their lives to building bridges. “

Imam Zaid Shakir conveyed his story, “I knew inevitably, when I came back to my country, after easily, without any stops or checks going into Britain or Canada or wherever, that I would be stopped and I would miss a flight and I would be asked a series of meaningless questions. One time I became so frustrated that I took out this card. This is a Department of Veteran Affairs card that U.S. military veterans get. I earned this by serving four and a half years in the Air Force. I was on the verge of just throwing this to the officer saying ‘Take this, because it doesn't mean anything as far as I'm concerned.’ It doesn't mean anything to not have a criminal record, to have served your country, to sacrifice, to struggle both with yourself and others, to make yourself a

“There's no beeping sound when I walk through the special door but every time the cops stop me and put me in a glass cage. . . They do not even tell me why I am the only kid put in the glass cage. Why aren't the other kids put in the glass cage?” Eight-year-old Sikh boy

more responsible citizen, if just because you're a Muslim you're exposed to this humiliation.”



“So, why is this important? Is it just a minor inconvenience for Sikhs and Muslims who wear headwear? No. It breeds a culture of suspicion and hate to the broader public. Every time I walk by and I'm subjected to greater scrutiny, people look, and wonder, 'What did he do?'

Prabhjot Singh, Chairman of the Board of the Sikh Coalition

Eight-year-old Sikh boy Josh Singh also testified about his harrowing experiences while traveling, “There's no beeping sound when I walk through the special door but every time the cops stop me and put me in a glass cage. . . They do not even tell me why I am the only kid put in the glass cage. Why aren't the other kids put in the glass cage?” Josh’s father, J.J. Singh, provided the story of his other son: “My teenage son who's 17 travelled around the country last year as part of his high school debate team. He [was] pulled out every time [the group went through airport security]. There was a specific incident at the airport which I want to relate to you, as relayed by Jenny Savage, the high school debate coach of Palo Alto High School. She says, and I quote: ‘I watched as he was taken to the bullpen again, and subjected to the lengthy, humiliating process of being interrogated. The rest of our team watched. Through the plexiglass I tried to make eye contact to reassure him. Trying to lift his spirits I lifted my camera and said, ‘Smile!’ Three TSA agents took my camera away and erased the photographs.’”

Mr. Singh ended his testimony declaring that he did not want his kids to “grow up in a country where they are pulled aside for the way they look. This is not the American way. I think we can make it better.”



Prabhjot Singh, Chairman of the Board of the Sikh Coalition, testified that San Francisco Airport is one of the worst offenders. “The Sikh Coalition's national report cards have judged SFO International Airport as one of the worst airports in the country in terms of the percentage of Sikhs profiled. I myself fly frequently and have flown thirteen times in SFO in the last year and have been pulled aside for secondary screening all thirteen times. While the TSA is busy checking my turban, others can walk by with just about anything under their sweatshirts, shirts, skirts.”

Mr. Singh asked, “So, why is this important? Is it just a minor inconvenience for Sikhs and Muslims who wear headwear? No. It breeds a culture of suspicion and hate to the broader public. Every time I walk by and I'm subjected to greater scrutiny, people look, and wonder, ‘What did he do?’ . . . The City of San Francisco must tell the TSA that we will not tolerate such discriminatory practices, not in our backyard, not now.”

Entrapment and Preemptive Prosecution

Stephen Downs, attorney and one of the founders of Project SALAM, a group formed to document and protest against the entrapment and preemptive prosecution of Muslims urged the Commission to listen carefully to the stories and statement of members of the Muslim community and to ask how such intolerant, hostile, and illegal acts by our own government can occur in America when the rule of law is supposed to protect everyone equally. He also urged the Commission to ask Congress to implement the recommendations of the Inspector General and appoint a special prosecutor to review all of the terrorism cases to determine the prosecution is valid and fair.

- Preemption Doctrine

Mr. Downs testified that the US government prosecutes innocent people to prevent them from possibly supporting crime in the future. He explained that this approach to law enforcement was adopted by the FBI and the Justice Department after 9/11 as the “new paradigm” of law enforcement that would focus on preventing terrorism rather than merely punishing it.

“Project SALAM grew out of the 2006 prosecution of an Imam in Albany, New York, Yassin Aref, on terrorism-related charges.” Mr. Downs was a member of the defense team and recalled that, “The evidence at the trial indicated that Mr. Aref was a peaceful man who never said anything to show he was aware of a terrorist plot or wanted to be part of it. He was essentially framed in a sting operation by the government for a crime he had not committed and was convicted by a jury and sentenced to 15 years.”

Mr. Downs testified that the prosecution held a press conference on March 8, 2008 to try to convince the media, which had been critical of the lack of evidence in the *Aref* case, that the government had a basis to proceed against Mr. Aref. “When a reporter asked if the government believed Mr. Aref was actually a terrorist, the prosecutor made this response: ‘Did he actually himself engage in terrorist acts? Well we didn’t have the evidence of that, but he had the *ideology*... Our investigation was concerned with what he was going to do here and in order to *preempt* anything else we decided to take the steps that we did.’”

Mr. Downs testified that this startling statement confirmed what they had come to believe, that “[b]y profiling Muslim ‘ideology’, the U.S. government targets Muslims who might be security risks to be prosecuted for faked or contrived crimes in order to preempt them from possibly supporting criminal activity in the future. Project SALAM was formed to document this abuse of law, and on the Project SALAM web site we have compiled a database of hundreds of such preemptive prosecution cases.”

- Agent Provocateur Cases

Mr. Downs gave the example of the Newburgh Four Case in which, “an agent provocateur hung out in a mosque parking lot in Newburgh, New York, offering thousands of dollars, cars and other inducements to anyone who would join him in jihad. With his offers he eventually induced three down-and-out men to join, including one with serious mental problems, a homeless man, and a drug addict. None of them had any ability to engage in jihad without the agent providing all the money, materials and initiative – none of them even had a car or a driver’s license. The recruits were

recent prison converts to Islam, knew little about the religion and were interested in money not jihad. For what he was offering, the agent provocateur could have easily entrapped a similar selection of people in any part of the City, but he chose to focus on the mosque where his money could create ‘Muslim terrorists.’”

Mr. Down testified that there are dozens of similar entrapment cases all across the country as detailed on the Project SALAM website.

Mapping/Tracking of AMEMSA Communities

Shakeel Syed, Executive Director of the Islamic Shura Council of Southern California, provided written testimony regarding the Los Angeles Police Department’s practice of “mapping” geographic areas in which large percentages of Muslims live. He opposes the LAPD’s counterterrorism program that called for mapping (tracking) of Muslim communities for the following five reasons:

1. The mapping and surveillance of Muslim communities is premised on the faulty notion that Muslims are more likely to commit violent acts than people of other faiths.
2. Singling out individuals and gathering data on them based on their religion constitutes religious profiling, which is unlawful.
3. Religious profiling engenders fear and distrust in the community and hampers legitimate law enforcement efforts in the future.
4. Mapping any faith community would also violate equal protection and burden the free exercise of religion.
5. Exclusive mapping of Muslims to gather intelligence based on their identity and ethnicity advances the idea in the larger community that Muslims are near-perpetual suspects that cannot be trusted.

Mr. Syed also opposed the Los Angeles Police Department’s mapping program because it resulted in the belief that “unemployed Muslims, those who read religious literature, and those who watch non-mainstream media [were] considered “risk factors” and [are susceptible to] extremist ideology and inclination.”

Mr. Syed concluded by stating that, “While preventing violence and terrorism is a goal that we all share, it is something that must be pursued in a manner respectful of the rights of the hundreds of thousands of American Muslims living in the greater San Francisco Area, just as in the Los Angeles area.” He urged the Commission to advise the SFPD “not to emulate the ill-conceived programs of mapping Muslims or any other community based on ethnicity or religion.”

Tracking techniques were also used by the FBI on Japanese-Americans. Andrea Meyer, of ACLU Oregon, provided a copy of the testimony of Henry Sakamoto, survivor of the internment camps. In his testimony Mr. Sakamoto referred to the FBI's accumulation of a list of all the Japanese and Japanese-Americans living in Hood River, Oregon from 1937-1942.

History Repeating Itself: COINTELPRO and the Church Commission

A number of speakers placed current concerns in a historical context. Speakers drew parallels to the repression of Japanese Americans and the history of FBI attacks on the civil rights movement and other social justice movements through the counter intelligence program, referred to as COINTELPRO. COINTELPRO, an acronym for **C**ounter **I**ntelligence **P**rogram, referred to FBI infamous campaigns from 1957 – 1971, in which FBI Director J. Edgar Hoover issued directives ordering FBI agents to "expose, disrupt, misdirect, discredit, or otherwise neutralize" the activities of domestic political movements and their leaders, including the civil rights movements.¹¹ One of the FBI's stated motivations at the time was protecting national security.^{12 13} COINTELPRO tactics ranged from planting false reports in the media to assassinations of movement leaders, including Fred Hampton, national spokesperson for the Black Panther Party.^{14 15}

Sanyika Bryant, a civil engagement organizer with Malcolm X Grassroots Movement testified at the HRC Hearing, "Our South-Asian, Muslim, and Arab communities are being subjected to interrogation, surveillance and infiltration of their social and political organizations by federal law enforcement agencies in ways that are reminiscent and recall the historic and current repression of black communities. These repressive tactics come out of the history of the U.S. government's repression of mass movements fighting for social and political justice. This was the infamous COINTEL[PRO] program, the illegal program was spearheaded by J. Edgar Hoover, with the backing of military and police agencies nationwide. The goal of this program was to destroy leaders and organizations and to plant the seeds of division and mistrust in the community."



In response to community outrage and leaked reports documenting the abuses, the “Church Committee” was created to investigate the abuses. The Final Report of the Select Committee concluded:

Many of the techniques used would be intolerable in a democratic society even if all of the targets had been involved in violent activity, but COINTELPRO went far beyond that...the Bureau conducted a sophisticated vigilante operation aimed squarely at preventing the exercise of First Amendment rights of speech and association, on the theory that preventing the growth of dangerous groups and the propagation of dangerous ideas would protect the national security and deter violence.¹⁶

According to the Church Committee:

While the declared purposes of these programs were to protect the "national security" or prevent violence, Bureau witnesses admit that many of the targets were nonviolent and most had no connections with a foreign power. Indeed, nonviolent organizations and individuals were targeted because the Bureau believed they represented a "potential" for violence -- and nonviolent citizens who were against the war in Vietnam were targeted because they gave "aid and comfort" to violent demonstrators by lending respectability to their cause.¹⁷

Witnessing alarming parallels, Japanese American community members have spoken out against the collective criminalization of the AMEMSA community. “On a personal note, I’m honored to be part of this conversation. I came to the ACLU in part because what was happening after 9/11 and the way that AMEMSA communities were

scapegoated. My own mother was in the Japanese internment camps during World War II and these communities are the Japanese-Americans of today, and so it's very meaningful for me to be here today,” testified Julia Mass, ACLU Northern California attorney.



Karen Korematsu, daughter of Fred Korematsu, recalled her father’s commitment to speaking on behalf of the AMEMSA community to ensure that the fundamental freedoms of an ethnic group are not compromised. “He [Fred Korematsu] received the nation's highest civilian honor in 1988, the Presidential Medal of Freedom. After 9/11 my father was one of the first to speak up against the dangers of targeting the AMEMSA community, as it was alarming and too similar to the institutional racism that had happened to the Japanese-American community in 1942. It took courage for my father to fight against this government twice, and when they agreed to reopen his case in 1983 one of his main reasons was that so that the violation of civil and human rights will not happen again to another ethnic group, here, in America. It took almost forty years for my father to receive justice and almost forty-six years for the government to formally apologize to Japanese-Americans that were incarcerated in World War Two. We should not allow the violation of civil and human rights to happen under our watch.”

Social and Political Impact of Profiling and Surveillance

Mistrust of Law Enforcement

Supervisor David Chiu spoke to the importance of law enforcement and community cooperation. “In San Francisco we pride ourselves on our diversity, on the amazing international community that we are and we also pride ourselves on doing everything we can to foster cooperation between our diverse communities and law enforcement. I can tell you as a former criminal prosecutor that without that level of cooperation, that level of trust, everything falls apart. But unfortunately, we also know that surveillance only serves to continue to drive wedges when cooperation is what is needed most.”

Shakeel Syed expressed the following concern regarding Joint Terrorist Task Forces. “The mandates of local and federal law enforcement organizations are different and hence call for different approaches. For example, traditional local enforcement attempts to foster an environment of community involvement, like neighborhood watch. Such an approach engenders a common goal to keep communities safe. The FBI's traditional goal is to conduct covert surveillance which is dramatically different from engendering trust among the community and working with the community as partners. The federal and local partnership in the context of counter-terrorism [turns] the community from partners into suspects; treating Muslims as inherent suspects by advocating for policies and programs such as mapping, is exactly the opposite; it undermines and impedes the safety of all citizens.”

At such a time government policies that sanction discriminatory treatment, whether at the border or in the U.S., legitimize private bias and discrimination and contribute to the stigmatization of whole communities. Nor is San Francisco immune to such violence, or to aggressive surveillance of minority immigrant communities; some individuals who shared their experience with us noted that they experienced their worst treatment at SFO.

Undermining of Democratic Values and Fundamental Freedoms

Veena Dubal posed, “If peace activists feel unsafe, if Muslim-Americans feel unsafe in their homes, their places of worship, at work, then all our fundamental freedoms are at risk. The freedom of each of us to live in a society where we can think, say and do as we please is under attack.” The culture of our city is affected, she explained. “Unchecked

power begets abuse; we as citizens stand in protest of these abuses, demand local government accountability and a shift in the divisive culture of profiling, biased policing surveillance that undermines and dissolves the democratic glue that holds us together as a democratic state and city.”

Anxiety, Fear, and Sense of Not Belonging

Profiling and unwarranted surveillance instill a sense of anxiety and fear in the AMEMSA community. Shirin Sinnar gave the example of Nabila Mango, a mental health therapist who counsels low-income residents in the Tenderloin. Ms. Mango is the founder of an Arabic-language choir, a teacher, and a champion of the arts. “After 40 years in the U.S. [Ms. Mango] first questioned her place in this country when border officials in San Francisco interrogated her about her travels to the Middle East—asking her to tell them where she stayed every night of her travels, what degrees she has, what her background was, the name and occupations of family members, and so forth. That was only the first of several detentions. Like many other community members she described these experiences as much more than a source of delay or inconvenience. Rather they cause her deep anxiety, fear, and insecurity, causing her to question her very place in the U.S. as an Arab and a Muslim.”

Dr. Jess Ghannam, Professor of Psychiatry and Global Health Science in the School of Medicine at the University of California San Francisco, testified that “People are fearful, anxious and deeply concerned about their safety and do not have the confidence that local officials, including the police, are taking these concerns seriously and as a result, people in the community have retreated, become isolated, and are exhibiting the classic symptoms of stress disorders.”

A specific trend he has seen among many women, even some who are prominent community leaders, is an increasing fear to continue wearing their hijab (religious scarf) in public due to fear that they might be targeted and attacked. In an alarming note, Dr. Ghannam testified that the level of fear and anxiety he is seeing and treating “far exceeds the levels that [he] witnessed after 9/11” and that it is “affecting [the community] at all levels – from community leaders to children who have to be subject to this climate in schools. “

Fueling Hostility towards AMEMSA Communities, Increase in Hate Violence

Ms. Sinnar relayed, “When even the most civically-engaged, undeniably mainstream, respected members of a community are singled out at-will, it sends the message that the government views the Muslim community as a whole, as a threat. We live in a time

of sharply rising hostility to Muslim-Americans. Many prominent politicians have fueled such hostility, while others have stayed silent and only a brave few have condemned it. We know that such hostility has already led to resurgent hate violence, employment discrimination, and renewed efforts to exclude Muslims from worshipping and living in their communities. At such a time government policies that sanction discriminatory treatment, whether at the border or in the U.S., legitimize private bias and discrimination and contribute to the stigmatization of whole communities. Nor is San Francisco immune to such violence, or to aggressive surveillance of minority immigrant communities; some individuals who shared their experience with us noted that they experienced their worst treatment at SFO.”

A mother of three Sikh boys, Dr. Sharan Singh related her family experience when traveling, “I see people whisper and stare as though they [her sons] have done something wrong. I see that my little one is not smiling, my older ones are stoic and heroic, even though they are humiliated, obviously. They also know that people are staring and pointing at them.” The virtually guaranteed secondary inspection which her sons and husband experience feeds mistrust and suspicion by fellow passengers. Dr. Singh asked, “Why are we creating suspicion in the minds of everyday citizens about people who look different? I am tired of seeing my family harassed 100% of the time. I would like to stop this racial profiling.”

Disintegration of Community

Stephen Downs pled, “The actions of the government in profiling and targeting the Muslim community for preemptive prosecutions are devastating. Hundreds of innocent Muslim men who used to provide support for their families have been locked up for decades or longer, leaving immigrant wives with no means of support with which to raise their children. Community life is shattered as the government often forces Muslim immigrants to spy on their own communities or give false testimony with the threat that the Muslim’s immigration status will be “revised” if the Muslims do not cooperate. Such practices generate fear and alienation in the Muslim community and diminish our security rather than enhance it.”

Community member, Adel Samaha testified regarding the effect of surveillance. “The fear of investigation impacts the communities by causing them fear, stress, hampering development and growth. These acts of discrimination are attacking our identity, our dignity, and they deny our existence in the U.S. community.”

The Need for Transparency and Accountability: Unanswered Questions

Supervisor Mirkarimi underscored the importance of operating in the open and with accountability and that the current situation, “requires us to be that much more sensitive and clear as to exactly what our law enforcement is intending to do, and should they do it, to do it with a mindfulness and respect that reflects the values and the outlooks of the people of San Francisco.”

In order to protect politically scapegoated communities, questions must be answered.

The problem here is not merely surveillance of a particular community, it is the derogation of the Fourth Amendment's requirement that individualized suspicion be established before any person, of any race, color, or creed, be investigated, stopped, searched or monitored.

Dr. Hatem Bazian asked: “What role does the SFPD play in all of the above? What resources, budgetary, or otherwise, provide for this dragnet approach? In the Joint Terrorism Task Force are the SFDP offering hands to the above strategies? To whom do they answer in case of violations or when they witness violations by federal officers? Who is providing training and what are the archetypal images for such training, video, or otherwise, or photographs? Do we have private agencies that contribute to the collection of data on the impacted communities, and if we do what are the conflicts of interest in relations to the communities they target systematically? Last question, do we have any federal resources, government or otherwise that are engaged in training or offering a model for policing the targeted communities?”

Veena Dubal asked, “While we know the FBI has free range to investigate anyone and while we know of these troubling abuses, San Francisco, a City which prides itself on its progressive values, just hired 60 new terrorist liaisons, according to Chief Gascón's 1-year report. And none of us really know what that means. We have a memorandum of understanding with the FBI and few of us know what that looks like. There is little to no transparency of our local government's complicity with the federal government.”

Lily Haskell added, “We need disclosure of information related to the funding or establishment of national security or anti-terrorism initiatives that are begun by the SFPD or the city of SF, as well as disclosure and documentation related to any and all SFPD collaborations with outside agencies, this is included but not limited to the FBI, Immigration and Border Control, Customs Enforcement and any other agencies that we've heard about tonight. Really what we're asking for you to do is help us maintain

transparency of the SFPD so that we can all feel safer and more comfortable exercising our rights as a community.”



Summary and Closing Testimony

Shahid Buttar, a civil rights attorney and the Executive Director of the Bill of Rights Defense Committee provided the following closing testimony:

You heard from Khurshid Khoja earlier tonight about the existing policy that is not being enforced, that screams out for intervention and correction by this body.

You heard just now about the public safety imperative to end profiling and ensure accountability, the need to restore community trust that is eroded by profiling.

You heard from Veena Dubal of the Asian Law Caucus about the FBI's widespread abuse of rights documented this very week in a report by the Office of the Inspector General of the Justice Department. I'll just note very briefly about that report, it included findings that the FBI was lying both to Congress and the press about specific instances of political profiling. The court excused those particular violations and found they were not systemic; they were merely the result of bureaucratic incompetence. This City need not submit itself to the 'incompetence' of federal officials who abuse and prey upon the rights of law-abiding people.

You also heard from Summer Hararah of Asian Law Caucus who noted that models are available. I'll just note that there's a bill pending in the Hartford, Connecticut City Council which might be a suitable remedy. It includes demographic data collection requirements, and just to note a couple demands of the Coalition for a Safe San Francisco, one is that this body require comprehensive

demographic data collection during any law enforcement activity. And I would just broaden this to include any community, I would urge you to consider not just a carve-out for a particular community but to consider and protect the civil rights of all San Franciscans, the African-American community, the Latino community, are equally if not even more at risk.

The problem here is not merely surveillance of a particular community, it is the derogation of the Fourth Amendment's requirement that individualized suspicion be established before any person, of any race, color, or creed, be investigated, stopped, searched or monitored. Thanks again for your leadership.

Saqib Keval - a Muslim American and member of the activist organization the Alliance of South Asians Taking Action - vividly encapsulated community concerns: “We face harassment, surveillance and live in fear of being targeted not only by our neighbors, but by elected officials and policing units of the FBI and SFPD. We cannot thrive, we cannot peacefully gather, cannot practice our faith without being hatefully targeted. Even our Holy Book is being publicly burned and left on the doorstep of our mosques, here, in our City. And now Police Chief Gascón wants to increase this overt profiling and hate that we experience by restarting the SFPD's spying program, targeting AMEMSA members of SF's community. We've already seen what can happen—what has happened—when SFPD has this type of spying program . . . We are a city that sets a national tone. If this spying program gets your support and does get started there's no telling what other police departments across the nation will roll out, especially during this climate of hate and intolerance.”

VII. FINDINGS

Based on the September 23, 2010 public hearing the San Francisco Human Rights Commission hereby concludes:

1. San Francisco is home to various immigrant communities that contribute to the social, political, economic and cultural richness of the City.
2. AMEMSA communities in the Bay Area are comprised of diverse religious, economic, ethnic and national communities and represent a substantial portion of the world.
3. There are an estimated one-quarter of a million individuals in the Bay Area identifying as Muslims, and that does not include individuals who may be perceived as Muslim, but not identify as Muslim, or others from the Middle East or South Asia.
4. Since 9/11 there has been a steady rise in Islamophobia. Recent examples include the hostile public discourse arising from the “ground zero” mosque debate and Quran burning threats. In San Francisco, a Quran was burned and left at the mosque door.
5. AMEMSA community members are concerned about the criminalization of their identity and guilt-by-association becoming the standard for policing and national security strategies.
6. Muslim women are afraid to wear their hijab (religious scarf) for fear of harassment or attack.
7. School children are subjected to anti-AMEMSA harassment in schools.
8. Federal and State terrorist task forces and homeland security offices have spied on peaceful political dissent groups and placed them wrongfully on “terrorist watch” lists.
9. The SFPD “Gerard Scandal” and history of spying on activists continues to loom in the mind of AMEMSA community members and organizations, as well as other diverse multi-racial organizations, and creates concern that renewed SFPD efforts to gather intelligence will result in future abuses.
10. DGO 8.10 was designed to protect communities from undue surveillance and infiltration of First Amendment activity and limits surveillance and infiltration to instances where there is reasonable suspicion of criminal activity.

11. Civil rights attorneys and community members are concerned about the accuracy of the low number of requests for authorized investigations and the lack of detail in DGO 8.10 annual audits.
12. Civil rights attorneys and community members are concerned that working with federal partners in Joint Terrorism Task Forces can compromise SFPD's compliance with DGO 8.10.
13. Civil rights attorneys routinely hear from AMEMSA community members who are regularly visited by the FBI and who are intimidated and coerced by them.
14. Muslim community members are afraid that their mosques are infiltrated by the FBI. This infiltration creates a sense of mistrust in the community of fellow practitioners, particularly of new comers.
15. Community members are afraid of being unjustly targeted by law enforcement for giving money to AMEMSA charitable organizations. Many are afraid to voice their political opinions and even to attend their mosque.
16. Immigration attorneys find that the requirement of "good moral character" is disparately applied to Muslim applicants trying to immigrate or naturalize.
17. Immigration and civil rights attorneys are visited by Muslim clients who allege they were coerced by the FBI to become informants and their immigration applications were denied if they refuse to become informants.
18. At airports and borders, a disparate number of AMEMSA community members undergo intrusive searches and questioning, in particular questions about their First Amendment activity, including their religious and political beliefs and practices. This results in the stigmatization of AMEMSA individuals and communities and has a chilling effect on the practice of political and religious beliefs.
19. At airports, Sikh community members of all ages are routinely singled out and subjected to secondary inspection.
20. The Sikh Coalition's national report cards have judged San Francisco International Airport as one of the worst airports in the country in terms of the percentage of Sikhs profiled in other airports.
21. Community organizations and community members are concerned that the FBI encourages and entraps AMEMSA individuals to engage in terrorist plots. These individuals would otherwise be incapable or unwilling to engage in such plots.

22. Mapping or tracking of Muslims communities in the US creates fear and mistrust in the community and is based on the faulty premise that Muslim people are more likely to commit violent acts than people of other faiths.
23. Profiling and/or perception of profiling creates mistrust of local law enforcement and impedes the safety of all citizens.
24. Unwarranted and/or the perception of unwarranted surveillance of non-violent individuals and groups creates mistrust of law enforcement and impedes the safety of all citizens.
25. Concerns of profiling and unwarranted searches and surveillance create anxiety and fear among AMEMSA community members and a sense of not belonging.
26. AMEMSA community members and civil rights organizations are concerned that government policies, such as airport profiling, fuel public suspicion and mistrust of the community and lead to an increase in hate violence towards AMEMSA community members.
27. AMEMSA community members are concerned that overbroad and misguided national security government policies attack the identity and dignity of the community and hamper the community's development and growth.
28. Communities previously and/or currently targeted by surveillance and profiling – e.g., Japanese American and African American communities – draw parallels between their experiences and the experience of the AMEMSA community.
29. Post 9/11 intelligence gathering laws have undercut the protections provided by the Church Committee in response to FBI abuses in the COINTELPRO era.
30. Community members and civil rights advocates seek greater transparency from local and federal government to avoid law enforcement abuses.
31. San Francisco is a City of Refuge and is looked to nationwide for setting the tone on developing legislation to protect civil rights and civil liberties.

VIII. RECOMMENDATIONS

The HRC recommends that:

1. The Board of Supervisors (“BOS”), the Immigrant Rights Commission, and the HRC work to enhance community relations with the Arab, Middle Eastern, Muslim, and South Asian communities in San Francisco and to advocate for policies that protect, promote, and secure human rights for AMEMSA communities in San Francisco.
2. The BOS urge Congress to establish a Commission, similar to the historic Church Commission, to review potential abuses of government surveillance and First and Fourth Amendment rights.
3. The BOS urge Congress to implement the recommendations of the Inspector General and appoint a special prosecutor to review all of the terrorism cases to determine if these prosecutions were valid and fair.
4. The BOS evaluate the need to establish a series of legal safeguards that enforce the rights enumerated in the California Constitution.
5. The HRC, BOS and Police Commission develop greater mechanisms that ensure transparency and oversight of the San Francisco Police Department.
6. The BOS evaluate the need to pass more comprehensive protective ordinances that would ensure the SFPD’s compliance with the California Constitution and other state privacy protections and that would protect San Francisco communities from undue search, surveillance, profiling, detention, or arrest at the hands of local law enforcement.
7. The BOS install a permanent ombudsperson at San Francisco airport to provide oversight for arriving travelers. This ombudsperson would monitor interrogations and secondary inspections.
8. The Human Rights Commission reaffirm the importance of the Sanctuary Ordinance.
9. The San Francisco Police Commission amend General Order 5.17 to include all categories listed in Federal, California State, and City and County of San Francisco nondiscrimination laws as categories protected from biased policing.
10. The San Francisco Police Commission require that in addition to a monthly review by a rotating designated Police Commissioner, the review of written requests and

authorizations for initiation and continuance of an investigation pursuant to Section VI of the DGO 8.10 be conducted by the entire Commission on a quarterly basis.

11. The Office of Citizens complaints conduct more detailed yearly audits of non-criminal investigations in conducting their DGO 8.10 audits.
12. The HRC, BOS, and Police Commission ensure that all SFPD officers, including those deputized to the Joint Terrorism Task Force, follow and comply with local and state privacy laws, including DGO 8.10.
13. The HRC and BOS require the SFPD to provide transparency regarding SFPD's involvement and collaborations with outside agencies, such as the Federal Bureau of Investigation, the Department of Homeland Security, Customs and Border Patrol, Immigration and Customs Enforcement.
14. The HRC and BOS require the SFPD to provide transparency regarding SFPD's involvement and collaborations with private agencies involved in surveillance and infiltration of political and religious organizations.
15. The HRC, BOS, and/or the Police Commission hold a hearing to require the SFPD to disclose information concerning their own or joint national security or anti-terrorism programs and activities and the funding sources used for those programs and activities.
16. The City support efforts to oversee and advocate against federal government profiling and targeting of our communities.

Endnotes

¹ See Tucker, Jill. S.F. *Chief George Gascón apologizes to Muslims*. 4 3, 2010.

http://articles.sfgate.com/2010-04-03/news/20833862_1_gasc-n-middle-easterners-apology (accessed 12 23, 2010).

² *The FBI's Joint Terrorism Task Force: Meet Our Clients*. (n.d.). Retrieved 12 22, 2010, from American Civil Liberties Union of Colorado: <http://aclu-co.org/our-work/litigation-legal-advocacy/the-fbis-joint-terrorism-task-force/meet-our-clients> . For examples of surveillance in other states throughout the country see the ACLU report available at http://www.aclu.org/files/assets/policingfreespeech_20100929_0.pdf.

³ Levy, Marc. *Pennsylvania Protest Reports: Governor 'Appalled,' Shuts Down Practice*. 9 15, 2010. http://www.huffingtonpost.com/2010/09/15/pennsylvania-protest-repo_n_717393.html (accessed 12 23, 2010).

⁴ Ian Hoffman, Sean Holstage and Josh Richman. *Oakland Tribune*. June 1, 2003. <http://web.archive.org/web/20050121090658/http://www.oaklandtribune.com/Stories/0,1413>, (accessed 12 22, 2010).

⁵ Center for Human Rights and Constitutional Law, Executive Summary for American-Arab Anti-Discrimination Committee, et al. v. Anti-Defamation League of the B'Nai B'rith, et al. Page 5.

⁶ *Ibid.*, p. 1.

⁷ *Ibid.*, p. 5.

⁸ San Francisco General Orders can be found at <http://sf-police.org/index.aspx?page=1720>.

⁹ U.S. Department of Justice, A Review of the FBI's Investigations of Certain Domestic Advocacy Groups (2010), available at <http://www.justice.gov/oig/special/s1009r.pdf> .

¹⁰ Asian Law Caucus, *Returning Home: How U.S. Government Practices Undermine Civil Rights at our Nation's Doorstep* (2009), available at <http://www.asianlawcaucus.org/alc/publications/us-border-report-returning-home/> .

¹¹ See Glick, Brian. *The War At Home: Covert Action Against U.S. Activists and What We Can Do About It*. Boston: South End Press, 1989 and *COINTELPRO*. <http://www.webcitation.org/5uKqNOQFD>.

¹² See Churchill, Ward, and Jim Vander Wall. *The COINTELPRO Papers: Documents from the FBI's Secret Wars Against Domestic Dissent*. Boston: South End Press, 1990 pp. xii, 303.

¹³ United States Senate. *Final report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities, United States Senate : together with additional, supplemental, and separate views*. Washington : U.S. Govt. Print. Off., 1976. Available at <http://www.archive.org/details/finalreportofsel03unit>.

¹⁴ *Ibid.*

¹⁵ See *supra* at 11.

¹⁶ See *supra* at 12.

¹⁷ *Ibid.*

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