



ACLU

AMERICAN CIVIL LIBERTIES UNION

THE TEN MOST DISTURBING THINGS YOU SHOULD KNOW ABOUT THE FBI SINCE 9/11

As Congress considers the nomination of James B. Comey to lead the FBI for the next ten years, lawmakers should examine measures to rein in a bureau that has undermined civil liberties in the name of fighting terrorism. This is a false trade off: we can be both safe and free.

1

USA PATRIOT ACT ABUSE

The recent revelation about the FBI using the Patriot Act's "business records provision" to track all U.S. telephone calls is only the latest in a long line of abuse. Five Justice Department Inspector General audits documented widespread FBI misuse of Patriot Act authorities and a federal district court recently struck down the National Security Letter (NSL) statute because of its unconstitutional gag orders. The IG also revealed the FBI's unlawful use of "exigent letters" that claimed false emergencies to get private information without NSLs, but in 2009 the Justice Department secretly re-interpreted the law to allow the FBI to get this information without emergencies or legal process. Congress and the American public need to know the full scope of the FBI's spying on Americans under the Patriot Act and all other surveillance authorities enacted since 9/11, like the FISA Amendments Act that underlies the PRISM program.

2

2008 AMENDMENTS TO THE ATTORNEY GENERAL'S GUIDELINES

Attorney General Michael Mukasey re-wrote the FBI's rulebook in the final months of the Bush administration, giving FBI agents unfettered authority to investigate people without any factual basis for suspecting wrongdoing. The 2008 Attorney General's Guidelines created a new kind of intrusive investigation called an "assessment," which required no "factual predicate" before FBI agents could search through government or commercial databases, conduct overt or covert FBI interviews, and task informants to gather information about people or infiltrate lawful organizations. In a two-year period from 2009 to 2011, the FBI opened over 82,000 "assessments" of individuals or organizations, less than 3,500 of which discovered information justifying further investigation.

3

RACIAL AND ETHNIC MAPPING

The 2008 Attorney General's Guidelines also authorized "domain management assessments" which allow the FBI to map American communities by race and ethnicity based on crass stereotypes about the crimes they are likely to commit. FBI documents obtained by the ACLU show the FBI mapped entire Chinese and Russian communities in San Francisco on the theory that they might commit organized crime, all Latino communities in New Jersey and Alabama because a street gang has Latino members, African Americans in Georgia to find "Black separatists," and Middle-Eastern communities in Detroit for terrorism investigations. The FBI's racial and ethnic mapping program is simply racial and religious profiling of entire communities.

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UNRESTRAINED DATA COLLECTION AND DATA MINING

The FBI has claimed the authority to secretly sweep up voluminous amounts of private information from data aggregators for data mining purposes. In 2007 the FBI said it amassed databases containing 1.5 billion records, which were predicted to grow to 6 billion records by 2012, or equal to "20 separate 'records' for each man, woman and child in the United States." When Congress sought information about one of these programs, the FBI refused to give the Government Accountability Office access. That program was temporarily defunded, but its successor, the FBI Foreign Terrorist Tracking Task Force, currently has 360 staff members running 40 separate projects. Records show analysts are allowed to use data mining tools to establish "risk scores" for U.S. persons. A 2013 IG audit questioned the task force's effectiveness, concluding it "did not always provide FBI field offices with timely and relevant information."

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SUPPRESSING INTERNAL DISSENT: THE FBI WAR ON WHISTLEBLOWERS

The FBI is exempt from the Whistleblower Protection Act. Though the law required it to establish internal mechanisms to protect whistleblowers, it has a long history of retaliating against them. As a result, a 2009 IG report found that 28 percent of non-supervisory FBI employees and 22 percent of FBI supervisors at the GS-14 and GS-15 levels "never" reported misconduct they have seen or heard about on the job. The FBI has also aggressively investigated whistleblowers from other agencies, leading to an unprecedented increase in Espionage Act prosecutions under the Obama administration, almost invariably targeting critics of government policies.

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TARGETING JOURNALISTS

The FBI's overzealous pursuit of government whistleblowers has resulted in the inappropriate targeting of journalists for investigation, potentially chilling press freedoms. Recently, the FBI obtained records from 21 telephone lines used by over 100 Associated Press journalists, including the AP's main number in the U.S. House of Representatives' press gallery. And an FBI search warrant affidavit claimed Fox News reporter James Rosen aided, abetted, or co-conspired in criminal activity because of his news gathering activities, in an apparent attempt to circumvent legal restrictions designed to protect journalists. In 2010, the IG reported that the FBI unlawfully used an "exigent letter" to obtain the telephone records of seven New York Times and Washington Post reporters and researchers during a media leak investigation.

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THWARTING CONGRESSIONAL OVERSIGHT

The FBI has thwarted congressional oversight by withholding information, limiting or delaying responses to members' inquiries, or worse, by providing false or misleading information to Congress and the American public. Examples include false information regarding FBI investigations of domestic advocacy groups, misleading information about the FBI's awareness of detainee abuse, and deceptive responses to questions about government surveillance authorities.

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TARGETING FIRST AMENDMENT ACTIVITY

Several ACLU Freedom of Information Act requests have uncovered significant evidence that the FBI has used its expanded authorities to target individuals and organizations because of their participation in First Amendment-protected activities. A 2010 IG report confirmed the FBI conducted inappropriate investigations of domestic advocacy groups engaged in environmental and anti-war activism, and falsified public responses to hide this fact. Other FBI documents showed FBI exploitation of community outreach programs to secretly collect information about law-abiding citizens, including a mosque outreach program specifically targeting American Muslims. Many of these abuses are likely a result of flawed FBI training materials and intelligence products that expressed anti-Muslim sentiments and falsely identified religious practices or other First Amendment activities as indicators of terrorism.

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PROXY DETENTIONS

The FBI increasingly operates outside the U.S., where its authorities are less clear and its activities much more difficult to monitor. Several troubling cases indicate that during the Bush administration the FBI requested, facilitated, and/or exploited the arrests and detention of U.S. citizens by foreign governments, often without charges, so they could be interrogated, sometimes tortured, then interviewed by FBI agents. The ACLU represents two victims of such activities. Amir Meshal was arrested at the Kenya border by a joint U.S., Kenyan, and Ethiopian task force in 2007, subjected to more than four months of detention, and transferred between three different East African countries without charge, access to counsel, or presentment before a judicial officer, all at the behest of the U.S. government. FBI agents interrogated Meshal more than thirty times during his detention. Similarly, Naji Hamdan, a Lebanese-American businessman, sat for interviews with the FBI several times before moving from Los Angeles to the United Arab Emirates in 2006. In 2008, he was arrested by U.A.E. security forces and held incommunicado for nearly three months, beaten, and tortured. At one point an American participated in his interrogation; Hamdan believed this person to be an FBI agent based on the interrogator's knowledge of previous FBI interviews. Another case in 2010, involving an American teenager jailed in Kuwait, may indicate this activity has continued into the Obama administration.

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USE OF NO FLY LIST TO PRESSURE AMERICANS ABROAD TO BECOME INFORMANTS

The number of U.S. persons on the No Fly List has more than doubled since 2009, and people mistakenly on the list are denied their due process rights to meaningfully challenge their inclusion. In many cases Americans only find out they are on the list while they are traveling abroad, which all but forces them to interact with the U.S. government from a position of extreme vulnerability, and often without easy access to counsel. Many of those prevented from flying home have been subjected to FBI interviews while they sought assistance from U.S. Embassies to return. In those interviews, FBI agents sometimes offer to take people off the No Fly List if they agree to become an FBI informant. In 2010 the ACLU and its affiliates filed a lawsuit on behalf of 10 American citizens and permanent residents, including several U.S. military veterans, seven of whom were prevented from returning home until the suit was filed. We argue that barring them from flying without due process was unconstitutional. There are now 13 plaintiffs; none have been charged with a crime, told why they are barred from flying, or given an opportunity to challenge their inclusion on the No Fly List.