



October 7, 2013

The Honorable Michael E. Horowitz
Inspector General
Office of the Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

AMERICAN CIVIL
LIBERTIES UNION
WASHINGTON
LEGISLATIVE OFFICE
915 15th STREET, NW, 6TH FL
WASHINGTON, DC 20005
T/202.544.1681
F/202.546.0738
WWW.ACLU.ORG

Re: Office of Inspector General Review of FBI Interactions with the Council
on American-Islamic Relations

LAURA W. MURPHY
DIRECTOR

Dear Inspector General Horowitz:

NATIONAL OFFICE
125 BROAD STREET, 18TH FL.
NEW YORK, NY 10004-2400
T/212.549.2500

We write to express our concern that the Department of Justice Office of Inspector General (OIG) conducted a review of the Federal Bureau of Investigation's compliance with its "policy" of restricting non-investigative contacts with the Council on American-Islamic Relations (CAIR) without evaluating the propriety of the policy itself, which smears CAIR and infringes on its First and Fifth Amendment rights.ⁱ Rather than criticize the FBI officials who resisted this policy, the OIG should have applauded them for honoring their oaths to defend the constitutional rights of all Americans, and reprimanded instead the FBI officials who formulated and implemented the policy. The OIG should re-open this review to evaluate the legality and propriety of the FBI's policy of selectively and publicly disparaging a civil rights organization that has not been charged with any criminal activity.

OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

ROBERT REMAR
TREASURER

Over the past several years, the FBI has engaged in an untoward public campaign to vilify CAIR, the United States' largest Muslim civil rights advocacy organization.ⁱⁱ Through its public comments and policy, the FBI, has insinuated that CAIR has vague connections to terrorist organizations, although, of course, the government has never charged CAIR with a crime.ⁱⁱⁱ The centerpiece of the FBI's public campaign against CAIR is its policy of publicly and selectively ostracizing CAIR from its official outreach events with Muslim communities based on the ambiguous assertion that CAIR is not "an appropriate liaison partner." The FBI's public statements and policy appear designed to impair CAIR's ability to organize and advocate

effectively on behalf of American Muslims, which are activities clearly protected by the First Amendment. CAIR has been put in an untenable position: the FBI casts derogatory public aspersions on CAIR and its representatives, while the organization has no forum in which to challenge government-imposed stigma and clear its name.

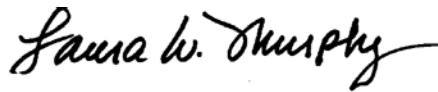
The OIG report repeats the FBI's misleading allegations against CAIR, without explanation or context, and seems to endorse these allegations as an appropriate basis for this stigmatizing policy. According to the OIG report, the FBI's policy began after the Justice Department publicly identified 246 individuals and organizations as "unindicted co-conspirators" during the terrorism-financing prosecution of the Holy Land Foundation for Relief and Development in 2007, in violation of Justice Department policy and settled law. As you know, the government's designation of "unindicted co-conspirators" is not an allegation of criminality against these individuals and groups (hence the term "unindicted"), but is often used as a prosecution tactic to lay the groundwork for the possible admission of hearsay statements pursuant to Rule 801(d)(2)(E) of the Federal Rules of Evidence.^{iv} A court later ruled that the public release of this information, which the government claimed was an "unfortunate oversight," violated the Fifth Amendment rights of the named organizations.^v The OIG report's repeated references to the designation of CAIR as an unindicted co-conspirator without appropriate explanation only contributes to public misperception, and compounds the government's original constitutional error.

Given the OIG's mandate to investigate violations of law by any part of the Department of Justice, the OIG's failure to investigate the FBI's anti-CAIR policy is particularly disconcerting. In an earlier generation, the FBI targeted the ACLU with a similar smear campaign, alleging that our work defending conscientious objectors and labor organizers during World War I was evidence of our involvement in a Bolshevik conspiracy. Such tactics offended American values then, just as they do now. We urge the OIG to reopen its review of FBI interactions with CAIR so that the policy's infringement on CAIR's constitutional rights itself may be investigated.

Moreover, in keeping with the OIG's mandate, the OIG should always prioritize allegations of FBI violations of law over violations of internal policy, yet the OIG contravened this straightforward principle by choosing to investigate allegations made by Members of Congress of mere internal policy violations. At the same time, the OIG has refused to initiate an investigation of illegal FBI conduct requested by 22 Members of Congress in June 2012. The ACLU made a similar request in April 2012. These requests included specific evidence that the San Francisco FBI exploited its mosque outreach program to gather intelligence about the First Amendment activities of American Muslims in violation of the Privacy Act.^{vi} We again request that the OIG comply with its mandate and investigate expeditiously these well-supported allegations of FBI violations of American Muslims' rights.

If you would like to discuss this issue further, please contact Michael German at (202)544-1681.

Sincerely,



Laura W. Murphy
Director
Washington Legislative Office



Hina Shamsi
Director, National Security Project



Michael German
Senior Policy Counsel
Washington Legislative Office

cc: The Honorable Eric Holder Jr.
The Honorable James B. Comey

ⁱ Office of the Inspector General, Dep't of Justice, Review of FBI Interactions with the Council on American-Islamic Relations, U.S. Dept. of Justice Office of Inspector General (2013), *available at* <http://www.justice.gov/oig/reports/2013/e0707r.pdf>. Due to excessive redactions in the OIG report, it is unclear whether the FBI “policy” in question was a formal policy promulgated through the Corporate Policy Office, or simply a directive issued from some other entity within the FBI. These redactions, which obscure the name of the entity that issued this unconstitutional “policy” appear designed more to circumvent accountability than to protect any legitimate government interest. Publicly released FBI documents discussing the issue refer to a “current FBI directive” and “HQ guidance,” and the OIG report quotes the Chicago SAC stating he viewed the communications from FBI Headquarters “as ‘guidance’ and not policy.” *Id.* at 24.

The discussions between FBI offices in the OIG report appear to reflect internal debates over agency policy rather than attempts to undermine policy. The OIG is authorized to “investigate[] alleged violations of criminal and civil laws by DOJ employees and also audits and inspects DOJ programs.” It is unclear whether this authority includes delving into internal policies disputes within a particular agency. *See* Justice.gov, Office of the Inspector General: About the Office, <http://www.justice.gov/oig/about/> (last visited Sept. 25, 2013).

ⁱⁱ *See, e.g.*, Letter from James E. Finch, Special Agent in Charge, FBI Oklahoma City Field Office, to invitees of the Muslim Community Outreach Program (Oct. 8, 2008) (on file with author), *available at* <http://www.investigativeproject.org/documents/misc/238.pdf>.

ⁱⁱⁱ *See, e.g.*, Letter from Richard C. Powers, Assist. Dir., FBI Office of Congressional Affairs, to Hon. Jon Kyl, U.S. Senator (Apr. 28, 2009) (on file with author), *available at* <http://www.investigativeproject.org/documents/misc/265.pdf>.

^{iv} Third Party Motion to Appeal, U.S. v. Holy Land Foundation for Relief and Development, et. al, Case No. 09-10875 (N.D. Tex. Oct. 20, 2010), at 3, *available at* http://www.politico.com/static/PPM153_nait.html.

^v *Id.* at 2.

^{vi} Letter from Hon. Fortney Hillman “Pete” Stark, Jr., U.S. House of Representatives, et. al, to Hon. Michael E. Horowitz, Inspector Gen., Dep’t of Justice (June 6, 2012) (on file with author), *available at* http://votesmart.org/public-statement/702335/#.UkHxLvPD_cs. The ACLU has also requested an investigation of these FBI violations of the Privacy Act, but has not yet received any acknowledgement of the request. *See* Letter from Laura W. Murphy, Dir. American Civil Liberties Union Wash. Leg. Office, et. al, to Hon. Michael E. Horowitz, Inspector Gen., Dep’t of Justice (Apr. 26, 2012) (on file with author), *available at* https://www.aclu.org/files/assets/letter_to_oig_re_fbi_privacy_act_violations_and_improper_targeting.pdf.