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Is the FBI's Domestic Spying Out of Control?

A new ACLU report shows how the Bureau's domestic surveillance program has exploded since 9/11

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The FBI has vastly expanded its domestic spying powers since 9/11, often justifying surveillance and infiltration of activist or religious communities under the banner of fighting terrorism, according to a new report by the ACLU. Requirements for opening investigations into groups or individuals have been repeatedly watered-down over the past decade, and the report documents many examples of FBI investigations based on what seems to be protected First Amendment activity.

"Before 9/11, the FBI operated within rules designed to focus its investigative efforts on people reasonably suspected of wrongdoing. These rules didn't always prevent abuse, but at least when abuse was discovered the agency could be held to account," says Mike German, the former FBI agent who authored the ACLU report. "What has changed since 9/11 is that Congress and successive administrations loosened the rules and at the same time increasing secrecy demands reduced oversight opportunities."

With the creation of the FBI Office of Intelligence in 2003, the FBI began a massive new intelligence-gathering project with the stated goal of preventing terrorist attacks before they occurred. With this new mandate came new powers, such as the ability to issue National Security Letters (NSLs), authorized under the Patriot Act – which author Tim Weiner's FBI history

Enemies describes as having "the combined power of a subpoena and a gag order." The use of NSLs remains controversial today, and the constitutionality of their gag order element has been called into question by a federal judge.

Another significant tool the FBI has employed in the past decade is the use of informants to infiltrate Muslim communities. Trevor Aaronson, an investigative reporter with Al Jazeera Media Network and author of *The Terror Factory: Inside the FBI's Manufactured War on Terrorism*, has previously reported that there are 10 times as many informants working for the FBI today than during the 1960s' COINTELPRO program, often regarded as a low point in the FBI's history. "Today the bureau has 15,000 registered informants – and these informants are inserted into U.S. Muslim communities to gather information," Aaronson says. "Informants have testified in court that they have spent months trolling Muslim communities without a specific target." Of 508 federal terrorism trials in the decade after 9/11, 158 defendants were targeted through an informant, according to Aaronson, who writes in *The Terror Factory* that nearly all of the rest were small-time violations that didn't pose an actual risk to U.S. citizens.

It's not only Muslim communities that were the subject of increased suspicion – political groups and activists have been targeted as well. A Freedom of Information Act lawsuit brought by the Partnership for Civil Justice Fund found that the FBI began investigating the Occupy movement in August 2011, even before the establishment of the encampment in New York's Zuccotti Park. The activist and anarchist Scott Crow requested his own files from the FBI, and was given 440 heavily redacted pages, though as *The New York Times* reported, he had "never been convicted of anything more serious than trespassing."

One of the most powerful new tools the FBI has had at its disposal since 9/11 is a program called Domain Management, which Aaronson says "allows the FBI to map the United States along ethnic and religious lines, and then assign agents and informants to those communities." The ACLU report notes that the FBI's field office in Detroit, for instance, stated in a memo that "many [State Department-designated terrorist] groups come from the Middle-East and Southeast Asia." The memo continues: "because Michigan has a large Middle-Eastern and Muslim population, it is prime territory for attempted radicalization and recruitment by [State Department-designated] terrorist groups."

The FBI denies that Domain Management works the way critics allege. "Domain management efforts are intended to address specific threats, not particular communities," says spokesperson Christopher Allen. "These efforts seek to use existing, available government data to locate and better understand the communities that are potential victims of the threats."

Asked about recent reports that the FBI increased surveillance of Syrians in the United States in a run-up to a possible air strike against Syrian President Bashar al-Assad, Allen says, "I would not assume the details of that story are accurate."

Interviewing people in the U.S. based on nationality prior to a U.S. military strike would not be without precedent for the Bureau, however. In 2003, then-FBI director Robert Mueller confirmed that his agents sought to interview roughly 11,000 Iraqis living in the United States, "to protect

them from hate crimes and to elicit information on any potential operations of Iraqi agents or sympathizers."

Some of the FBI tactics employed since 9/11 seem to resemble tactics the controversial NYPD Intelligence Division has used, including mapping communities based on ethnic, racial and religious identities. Both organizations also have similar guidelines, adopted post-9/11, that allow officers to attend political meetings that are open to the public, often without disclosing their status as law enforcement. However in some cases, such as the investigation of alleged terrorist Ahmed Ferhani, the NYPD has used tactics that could be construed as entrapment, which were beyond the pale for the FBI. The ACLU is currently suing the NYPD on behalf of several Muslim plaintiffs who say NYPD policies infringe on their Constitutional rights.