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Lawsuit Challenges Government's 'Suspicious Activity Report' Program

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FOR IMMEDIATE RELEASE
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SAN FRANCISCO – Civil rights groups filed a lawsuit today challenging the legality of the federal government's controversial Suspicious Activity Reporting (SAR) program. The lawsuit, filed by the American Civil Liberties Union of California, the national ACLU, and Asian Americans Advancing Justice-Asian Law Caucus, was brought on behalf of five Americans who had their information entered into law enforcement databases for innocent things like taking pictures, buying computers, or standing in a train station, and were then subjected to investigation.

"This domestic surveillance program wrongly targets First Amendment-protected activities, encourages racial and religious profiling, and violates federal law," said Linda Lye, staff attorney with the ACLU of Northern California. "The Justice Department's own rules say that there should be reasonable suspicion before creating a record on someone, but the government's instructions to local police are that they should write up SARs even if there's no valid reason to suspect a person of doing anything wrong."

A Justice Department regulation dating to 1978 prohibits the collection and dissemination of "criminal intelligence information" unless there is "reasonable suspicion" of criminal activity. However, the Justice Department's standard for SARs doesn't require reasonable suspicion of wrongdoing, only behavior that "may be indicative" of terrorism planning "or other illicit intention."

The plaintiffs in the lawsuit have learned that such a low bar can cover virtually anything. James Prigoff is an 86-year-old renowned photographer of public art who has lectured at numerous universities and had his work exhibited at the Smithsonian and other museums around the world. In 2004, he was in Boston taking pictures of a famous piece of public art called the Rainbow Swash, which is painted on a natural gas storage tank. Private security guards told him to stop. Several months later, the FBI went to Prigoff's home in Sacramento to question him about his activities in Boston and also contacted at least one neighbor about him – a clear indication that a report identifying him as a suspicious person with a potential connection to terrorism had been written and distributed nationwide.

"All I was doing was taking pictures in a public place, and now I'm apparently in a government terrorism database for decades," said Prigoff. "This is supposed to be a free country, where the government isn't supposed to be tracking you if you're not doing anything wrong. I lived through the McCarthy era, and I know how false accusations, surveillance, and keeping files on innocent people can destroy careers and lives. I am deeply troubled that the SAR program may be recreating that same climate of false accusation and fear today."

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Another plaintiff, Wiley Gill, was the subject of a 2012 SAR that was obtained by the ACLU of California through a Public Records Act request. He was identified as a “Suspicious Male Subject in Possession of Flight Simulator Game.” At the time, he was likely looking at websites on his computer about video games. The SAR identifies Gill as “worthy of note” because he converted to Islam and has a “pious demeanor.”

The SAR was submitted to one of the nation’s 78 “fusion centers,” which are operated by state and local government agencies and are meant to collect and analyze threat-related information. If an analyst believes that a report meets the SAR program’s standards, he or she uploads it to one or more national databases, where it can remain for up to 30 years. In the case of Gill, the SAR was forwarded to the FBI, which then opened a file on him.

“The only reason that someone deemed Mr. Gill ‘suspicious’ is because he is a devout Muslim, not because he has done anything wrong,” said Asian Americans Advancing Justice-Asian Law Caucus attorney Nasrina Bargzie. “With such a lax standard it’s not surprising that the result is religious profiling of this nature. Racial and religious profiling of Arab, Middle Eastern, Muslim and South Asian communities needs to stop.”

Last year, a U.S. Government Accountability Office [investigation](#) found that the SAR program had failed to demonstrate any arrests, convictions, or thwarted threats, even though tens of thousands of SARs have been uploaded to government databases. In 2012, a bipartisan Senate subcommittee [report](#) found that fusion centers have not identified a single terrorist threat, and that similar intelligence reporting “potentially endangered the civil liberties or legal privacy protections of the U.S. persons they mentioned.”

“The SAR program is an intrusion into the privacy of citizens and is unwarranted,” said Jonathan Loeb, co-lead counsel in the lawsuit and a partner at Bingham McCutchen. “Furthermore, the program was implemented without the appropriate notice and opportunity for the public to comment.”

No changes to the SAR program have been made since the GAO and Senate reports were issued, despite repeated calls from a [coalition of civil rights and other organizations](#).

Today’s complaint is at: aclu.org/national-security/gill-v-doj-complaint

Detailed descriptions of the plaintiff’s experiences are at: aclu.org/files/assets/sar_complaint.pdf#page=21

Almost two thousand Suspicious Activity Reports obtained by the ACLU of California and released in 2013 are at: aclu.org/blog/national-security-technology-and-liberty/government-spying-you-aclu-releases-new-evidence



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