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THE USA PATRIOT ACT: ROVING WIRETAP AND ITS UNINTENDED IMPACT ON AMERICAN MUSLIMS

Dr. Ahmed Al-Saeed
College of Business Administration, Northern Border University, Arar, Saudi Arabia

Abstract: *This paper investigates the impact of the USA Patriot Act of 2001 and related policies on the American Muslim and Arab communities. It highlights the consequences of these policies, including the arrest and deportation of thousands of individuals without proper due process. The research sheds light on the measures taken by the U.S. government post-9/11 and their implications for the affected communities.*

Keywords: *USA Patriot Act, American Muslim community, Arab community, Immigration policies, Homeland Security Department*

Introduction

The United States government adopted a variety of policies that resulted in the arrest of Arabs and Muslims without just cause. These policies were based on little more than suspicions about their behaviors. The USA Patriot Act of 2001 was introduced (Introduced as the Provide Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001) in order to arrest and deport U.S. citizens and non-U.S. citizens without due process of law (Tirman, 2004). One of the policies requires nonimmigrant males from 24 Muslim countries to register their whereabouts in the United States. As a result, more than 14 thousand Muslims and Arabs were deported (Bayoumi, 2008 p .4).

The Patriot Act was one of the first laws that was passed by the Congress and signed by the President in the last week of October 2001. This act was expanded by the executive branch to include arresting people without evidence. One year later, in 2002, the Department of Homeland Security was formed. Its emphasis was on controlling the U.S. border and immigration policies, instead of focusing on terrorism and safety issues (Tirman, 2004 p. 9).

The Patriot Act was the direct result of 9/11. Immediately after the bombings, there was great public support for extreme security measures. There were also noticeable changes in the government policies towards the American Muslim community in the U.S. Both Republicans and Democrats were united to face the threat. And the

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On Monday February 14th, the House of Representative passed a 10-month extension of the U.S.A PATRIOT Act that was going to expire at the end of February 28th. The next day, the Senate also passed the extension. There were three important provisions, 215, 206 and section 601, which mainly dealt with the use of the surveillance tactics that were discussed in particular.

They allowed authorities to conduct surveillance without identifying the person or location to be wiretapped; permitted surveillance of “non – US” citizen who did not belong to a terrorist group, and let the government gain access to “many tangible things during investigation”(Dlan). In the end, they

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were passed without any changes. However the debate over the legality and abuse of civil rights of those bills continued.
The PATRIOT Act drew heavy criticism from Democrats – Obama once said it needed to be changed during the Bush administration. But experts suggested that several stopped terrorist plots over the past year and the Democrats falling rating due to the health care debate slowed any move to reform the act, which was passed after 9/11 (Farrell). On May 15th the amended provisions were passed till 2013 with the support of both parties. However, the wiretapping surveillance procedures were largely left the same.

The impact on the Muslim Americans of the surveillance measures of the Patriot Act has been great. As the part of the American public which is directly affected, they are becoming an important part of the policy making process.

Background

Section 206 of the Patriot Act, also known as the "roving wiretap authority or the John Doe wiretap, is controversial because it goes further than any of the existing wiretapping provisions available to the police or to Foreign Intelligence Surveillance Act authorities (FISA). The FISA powers were established in 1978 and they deal with the physical and electronic surveillance of foreign agencies, but which can include American citizens and can be used in the U.S. The Patriot Act of 2001 was an amendment to the FISA, and it was later further expanded in 2008 to cover any counter terrorism measures in the U.S. The basic differences between these special powers and the normal criminal procedures are the way the agents get permission or warrants, and also the scope of the wiretapping powers. This is important because many of the 2011 proposed amendments to Provision 206 involved making the powers closer to the existing civil laws.
As a group that is directly affected by the Patriot Act, the Muslim American community shares one common characteristic, which is Islam. Islam is the fastest growing religion in the United States today. The Muslim population in the United States is estimated between two to five million (Ayers187). In another estimation, the population of Muslim in the U.S. is six to seven million (Gaskew347). This means that number is at least 5% of American population, which is still a minority in the U.S population. According to Hacking, there are 1.5 million Muslims who are over eighteen years old and 850,000 who are minors (918). This has a growing implication on the voting power of the Muslim community, which has traditionally voted for the Democrats. According to Hacking, 63% of the American Muslims vote for the Democrats (920)
According to Leonard, the Muslim American population in the United States can be broken down into 42% African Americans, 24.4 % south Asians, 12,4% Arabs , 6.2% Africans , 3.6% Iranians and 9% Europeans and others. The first major group the African Americans, have found Islam an alternative to Christianity and the white American culture. The Arabs usually come from countries such as Lebanon, Syria, Egypt, Jordan, Palestine, Iraq,
Morocco, North Africa and Saudi Arabia. The third group is south Asian Muslims who are from India, Pakistan, Bangladesh and Afghanistan (2294). All these groups were affected by the 9/11 events, but the diversity of background and interests is so great that it is difficult to talk about a Muslim American community as a coalition or power block.
However, there are several thinks tank and interest groups that have supported the American Muslim interests, such as the North American Islamic Trust and the Council on American- Islamic relation (CAIR). These groups have not been as organized or effective as groups such as the pro-Israeli lobbies, so before the Patriot Act issues, Muslim American problems rarely made it into the policy making process. In competition of Israeli group lobby, which contributed $ 41.3 million in 2007, the pro- Arab group only contributed $ 297 thousand to political candidates. Recently, CAIR has been documenting cases of discrimination against Muslim Americans and helping carry them into courts. In 2008, CAIR filed 2,652 civil rights cases (Hacking 923).
The Muslim community is mostly organized through the mosques, which also manage the Muslim charity groups because "zakat," or tithing, is one of the central pillars of Islam. These charity groups were affected by provisions of the Patriot Act, including the electronic surveillance policies, and they

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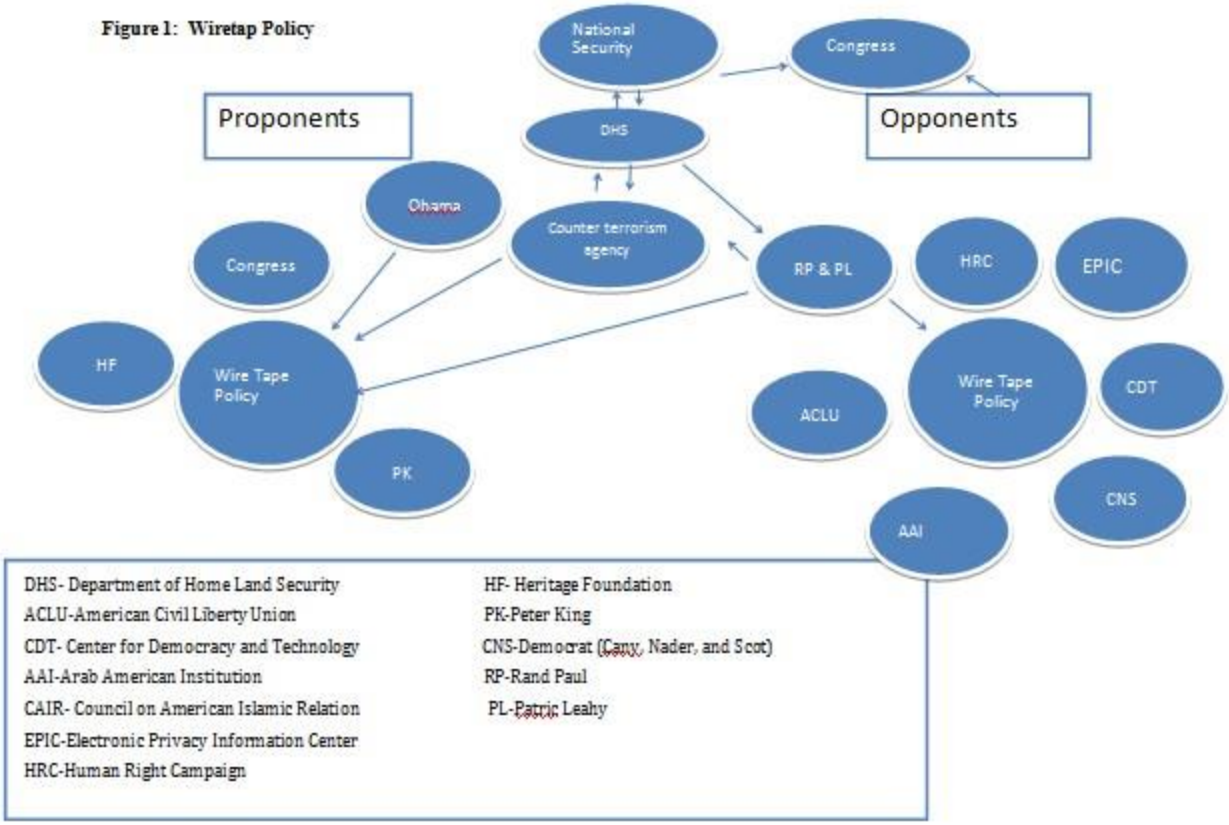
have also been the groups who have recently filed anti-discrimination suits against the government, although they have not been very successful (Hacking 934).

Description of key players

The key players that framed the wiretapping issue can be seen in Figure 1. The supporters of provisions of 206, also called the "roving wiretap" provision, framed their arguments in terms of national security and the "War on Terror." The Obama administration seems to have followed the Bush administration on the need to continue with strong security measures to protect the American public.

Figure 1: Wiretap Policy



Heritage Foundation, said "we have stopped 28 terrorist attacks since 9/11, and the Patriot Act has been a big part of it." (Carafano, 2012)

Other supporters emphasized the continuing threat as a frame for their support of the provisions. Senator Jeff Sessions (Republican) said, "Recent terror attacks, such as those at Fort Hood and on Christmas day, demonstrate just how severe the threat we are facing." According to the Associated Press, "These extensions keep the Patriot Act"s security measures in place and demonstrate that there is a growing recognition that these crucial provisions must be preserved."(Andrew C. McCarthy, 2010). Peter King has gone to the extreme of framing the issues as part of a clash of cultures between American Muslims, as potential terrorists, and the rest of the Americans. In the Peter King"s opinion, the wiretapping, warrantless searches and other surveillance measures are fully justified in order to protect the nation (Tirman).

On the other hand, the opponents to aspects of the Patriot Act and provision 206, frame their arguments as violation of civil liberties, loss of constitutional rights and, in some cases, fear of a police state. Most of the opponents don"t want this provision to go away. As the American Civil Liberty Union(ACLU) has said, "All we want are some common sense checks and balances in there"(Farrell).

The ACLU legislative counsel, Michell Richard, said that while Senate Leahy"s bill added some important oversight to the Patriot Act "it unfortunately allows many dangerous provisions that have been used improperly again and again by law enforcement to invade American"s privacy and violate their constitutional rights" (Farrell).

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The ACLU wrote a report called "Reclaiming Patriotism" in which the organization frames the debate in terms of a need for individuals to fight back against a government that has "sweeping authority to spy on individual inside the U.S. and in some cases, without any suspicions of wrongdoing." The report explains that section 206: Permits the government to obtain intelligence surveillance orders that identify neither the person nor the facility to be tapped. This provision is contrary to traditional notions of search and seizure, which require government to state with particularity what it seeks to search or seize. Section 206 should be amended to mirror similar and longstanding criminal laws that permit roving wiretaps, but require the naming of specific target (www.reformthepatriotact.gov).

Part of the problem of section 206 is that the wiretapping occurs without warrants, and instead there are secret subpoenas, called National Security letters (NSLs). The NSLs allow the FBI to act without any independent oversight or judicial review and to seize private information about any American. Recipients of NSLs are forbidden, or "gagged", from ever revealing the letters existence to their coworkers, to their friends or to their family members. The ACLU said that is FBIs systemic abuse of power.

Congressmen Conyers, Nadler, and Scott were against the part of the "roving John Doe" provision because it does not specify a person, and many people could end up having their private correspondence and phone calls wiretapped. They proposed measures to protect the privacy of information of individuals. They proposed a new bill which would require the government to name either the person or the place.

However, Senator Rand Paul, a Republican from Kentucky, warned that extending the Patriot Act, including 206, in any form could turned America into a "police state." Paul has been a strong proponent of the Patriot Act, and he is against provision 206 and the use of national security letters because this would create a "situation that similar to the abuse of the British government against the American colonists in the 1776."Senator Paul recently joined forces with senator Patrick Leahy (D-VT) to propose a bipartisan reform that would establish new privacy and civil liberties safeguards and would end the use of National Security Letters, mandate public reporting requirements and create other protections (www.epic.org).

One think tank that has published extensively against the surveillance measures is the Electronic Privacy Information Center. EPIC has obtained over 15,000 pages of government documents obtained through a related freedom of data act lawsuit against the Department of Justice concerning Patriot Act abuse (www.epic.org). They use these documents to publish articles and updates to the situation and to try to raise awareness in the general public. As far as the effect of the surveillance measures on an important key player, the Muslim American community, O"Neill who is the leader of Arab American Institution, stressed that the "draconian" Patriot Act has targeted the minorities in the U.S. and especially Muslim Americans. He said that, "The extended powers of search and seizure and increased domestic surveillance have alienated a community that is really eager to participate in and protect this country" (www.muslims.net).

Gaskew (2009) used ethnographic research methodology through participant observation and ethnographic interview "reveal an increased climate of alienation, mistrust, anger, and fear toward law enforcement agencies, and concern on the part of some of that the USA PATRIOT Act has diminished the likelihood of Muslim Americans cooperating with police agencies regarding potential terrorism"(345). His paper explores the need for an active dialogue between the government and Muslim community based on respect, dignity and social justice. Gaskew, argues that there are two tactical concepts: "(1) the global war on terrorism cannot be won without the cooperation of Muslim in the United State. (2) Muslim Americans are the key to successfully defeating extremism and the potential growth and practice of radical Islam within the United States" (361). He think that the United State government should be more understanding, work and cooperate with the American Muslim community instead of using draconian tactics such as multiple arrest and deportation.

Models

At the agenda level, the Patriot Act was made in an emergency situation. There was little formulation and legitimation of goals and programs before the act was implemented. Ten years later, however, the controversial provisions such as the surveillance measures are being discussed again. The Act was passed in May 2011 until 2013, and during this time all the key players will continue to build their sides.

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The government must continue to consider this issue and decide whether or not to extend, terminate or limit the powers in some way. Deborah Stone‟s polisbased model of non-rational policy processes applies to the Patriot Act. The initial agenda setting was based on an emotional reaction to a sudden incident and any discussions and analysis of amendments face continuing fears of terrorism (Smith and Larimer 216).
President Obama‟s administration was not able to alter the Patriot Act provisions, even thought he had promised to do so before being elected because of this emotional element. “People do not make decision based on policy outputs; they make decision on the basis of emotion and the preferences of their group, however they define „group‟” (Smith and Larimer 216). In this case the group interests involve the Muslim American community against the government institutions. The Muslim American community could be seen as a “deviant” group, according to the classification of Schneider and Ingram because they “lack political power and a positive social construction” (Smith and Larimer 195). Especially after the 9/11 attack, the Muslim community felt it was placed in this position.
However, advocacy coalition is happening at the congressional level. In May 2011 Republican Senator Paul joined with Democrat Leahy to try to come up with an agreement to reform Provision 206 and other aspects of the Patriot Act to terminate the use of National Security Letters for wiretapping and to create better privacy and civil liberty safeguards (www.epic.org). By changing the framework from a War on Terror to a discussion of violation of constitutional rights of all Americans, this coalition is a way to move the Muslim American community into the perception that it is deserving of the same protection as any other American. The Muslim organizations are also working at this level to advocate for a better perception of the rights of the Muslim American groups. These coalitions help distribute the “costs and benefits” of the Patriot Act to the general American public as a deserving group (Smith and Larimer 197).

Policy Consequences

The two main frames for discussing government surveillance of American citizen have very different policy and political consequences. One of the consequence of looking at the situation as “War on Terror” is that it makes the Patriot Act a permanent necessity. This is seen in how in Peter King argued to eliminate the expiration date. This mean that there will continue to be laws and policies that allow the government many secret powers by removing controls and eliminating appropriate procedures. The wiretapping policy opens the door to electronic surveillance of “innocent” people.
More specifically the impact on the American Muslim community will be very negative. Many Muslim Americans have been affected by the Patriot Act policies. It has made all Muslim in the United State believe that they were in danger “as a group that is dangerous and potentially subversive.” This was expansion of the concept guilty by association. The expanded surveillance has made about 39% of Muslim American report anti-Muslim discrimination since 9/11. The council on American Islamic Relation(CAIR) find that 57% of the Muslim in the United State have faced bias or discrimination since 9/11 and 87% said that they “knew of a fellow Muslim who experienced verbal abuse, religious profiling and workplace discrimination”(Ayers 189). Participants in the Gaskew Survey think that the USA Patriot Act and other counterterrorism policies were directed against Muslim Americans, who suffered “deep feelings of shame, guilt, and humiliation” because they were forced to endure what many Muslim Americans perceived as a “government supported Islam phobic social environment”(348).
According to Tirman , the American civil right community criticized the U.S government for over-stepping its legitimate power, especially in terms of violating freedom of speech and other civil liberties. Tirman argued that the post-9/11 racial profiling of Muslims labeled them the “suspected other.” Also he made the point that U.S. governmental officials should challenge the notion of a “war on terrorism” (239).The political consequences on American culture will be extreme especially in the loss of openness and freedom of expression and religion.
On the other hand, one of the first consequences of framing the discussion as a violation of human right and civil liberty is that the Patriot Act must expire or change. One of the recommended changes to 206 was to include the name of the specific target and limit wiretapping and other surveillance. Another change was to have NSLs be authorized by judges in the same way normal criminal warrants are processed. These safe guards would change the 206 so much that the laws would be similar to current laws. President Obama‟s administration has been against the policy of calling the other culture the “evil

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doers" and has avoided using the idea of "War on Terror." Obama rejected these ideas and "terrorism mongering" tactics. Peter King‟s idea of holding congressional hearings to explore potential radicalization of Muslim groups in America is an example of this terrorism mongering. So Obama as President has been looking for new ways to deal with the Muslim community. He made a clear speech in Ankara and Cairo where he said: Our nation seeks a new beginning with Muslims around the world, a relationship based on mutual interest and mutual respect. It‟s a relationship that requires us to listen, share ideas, and find areas of common ground in order to expand a peaceful, prosperous future (www.state.gov). That speech shows us that the Obama Administration is looking for ways to counter terrorism by opening the door for Muslims instead of using military force and negative propaganda.
Another political consequence of reframing the issue has been the formation of new offices. The Obama administration created an office of special representation to the Muslim community under the Department of State. This office is currently headed by special representative Farah Anwar Pandith, who is responsible for executing Secretary Clinton‟s vision for engagement with Muslims. This office invited Muslim institutions inside the U.S. for roundtable discussions, conferences, and receptions (www.State.gov).

Effects on Muslim communities in the U.S.

In the United States, Muslims believe they have been discriminated not only after 9/11 but also before that. There are many incident that American Muslims were discriminated. According to Nimer, American Muslims were affected by several incidents such as the bomb in Oklahoma City in 1995 and the Trans world Airlines crash in 1996 (23). These incidents made American Muslims facing discrimination, violence and harassment every time any incident happened, when traveling, working or carrying out daily activities. Unfortunately, American Muslims faced after 9/11 attacks the most difficult time of discrimination and harassment from the United State Government and the public.
Since 9/11, both the Bush and Obama administrations made policy changes that affected the American Muslim community. The policy changes involved legislative measures. One major legislative measure was the Patriot Act. This act restricted visas. Also it allowed the federal government to arrested suspected terrorist through the use of racial profiling. The FBI was authorized to increase the surveillance of Muslim American citizens. These measures negatively affected the Muslim American communities. The effects included the violation of rights. All these measures were demeaning and demoralizing to the American Muslim community.
The American Muslim community has had different treatments after 9/11 from the Bush and Obama administrations. The Bush administration had negative effects on the Muslim community and made Muslims react in the form of not supporting the Republican Party in the last election. The American Muslim community chose President Obama as a hope for positive change to their status.
The Bush administration responded to the 9/11 attacks by focusing on the Muslims communities inside the U.S. The Bush administration developed strategies through the Homeland Securities Department and the Patriot Act to monitor and attempt to control Muslim communities inside the U.S. One of the controls involved monitoring charitable donation and other financial matters. The Muslim communities did not have anything to do with the attack. The people who hijacked the planes were foreigner invaders. The Bush administration responded by arresting many American Muslims whose where residents and had families and businesses. According to Tirman, more than 100.000 Muslims were arrested and held in secret locations. Their terms of detention were indefinite. The FBI used other measures such as wiretapping. All of these actions did not produce any evidence that the Muslim communities inside the U.S. were related to the 9/11 attacks.
According to Ayers, Muslims in the United States did not benefit from the Bush administration and they negatively effect from the Republican Party policies from both the congress and president faced with "what have you done for me lately" (195).

Conclusion

As argued, through the Patriot Act, the government of the United States has abused its power by coming down so hard on the Muslim American community. The policy making process in this case was based on an emergency, but now the situation has changed.
Therefore, changes must be seriously considered. Aspects of the Patriot Act and 206 should change, rewritten or terminated. The Muslim American community needs to become educated about how to

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affect governmental policies through their elected officials and how to effectively use the American mass media in order to make the general public more aware of the issues they face. In addition, more advocacy coalitions with civil rights groups and congressional members need to be formed. Until the Muslim American community is more unified and able to define itself in positive terms, the Patriot Act and the wiretapping provisions will probably stay the same.

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