



June 13, 2012

Ms. Josephine Arnold
Chief Counsel, Minority Business Development Agency
Department of Commerce
1401 Constitution Ave, NW, Room 5093
Washington, DC 20230

Docket No. 120517080-2080-01

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Dear Ms. Arnold,

On behalf of the United States Hispanic Chamber of Commerce (USHCC), I am writing you in support of the American-Arab Anti-Discrimination Committee's (ADC) recent petition that requests formal designation for Arab-Americans as a minority group that is socially or economically disadvantaged. This would ensure Arab-Americans have access to Minority Business Development Agency (MBDA) business development services, such as access to capital, contracts, and trade opportunities.

As stated in the ADC's petition, Arab-Americans have faced pervasive discrimination since their arrival to the United States in the late 1800s. In addition to long-standing social discrimination, Arab-Americans have endured economic and workplace difficulties. A study cited by the ADC revealed that the earning potential of Arab-American men dropped considerably between 2000 and 2002 as compared to U.S. born white men. Tighter security measures, such as the National Security Entry Exit Registration System (NSEERS) and 'no-fly' lists have largely affected Arab-Americans, and prevented many of them from flying for business-related purposes.

The MBDA has been instrumental in facilitating entrepreneurial success across the country by actively promoting the growth and competitiveness of minority business enterprises. As a group facing social and economic discrimination that has only worsened in the post 9/11 decade, the Arab-American business community can greatly benefit from MBDA services.

We urge you to approve the petition filed by the ADC. The USHCC advocates not only for Hispanic business, but for the enhancement of America's economy. If given access to MBDA services and opportunities, Arab-American entrepreneurs could contribute greatly towards America's economic recovery and success.

For any questions, please feel free to contact me or Jesse Salazar, USHCC Director of Government Relations, at jsalazar@ushcc.com or (202) 715-0477.

Respectfully Submitted,

Javier Palomarez
President & CEO
USHCC



Fakhoury Law Group, PC

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June 27, 2012

VIA email: AAComments@mbda.gov

Re: Docket No. 120517080-2080-01
Ms. Josephine Arnold, Chief Counsel,
Minority Business Development Agency,
Department of Commerce, 1401 Constitution Avenue N.W.,
Room 5093, Washington, DC 20230

Dear Ms. Arnold,

This is to comment in response to the Notice of Proposed Rulemaking (NORP) and request for comments of the U.S. Department of Commerce, Minority Business Development Agency published in *The Federal Register* Volume 77, Number 104 (Wednesday, May 30, 2012), Proposed Rules, Pages 31765-31767. Those proposed rules consider a Petition for Inclusion of the Arab-American Community in the Groups Eligible for MBDA Services, and we write in favor of that proposed action.

I. Background:

On January 11, 2012, The Department received from the American-Arab Anti-Discrimination Committee (ADC) a petition requesting formal designation of Arab-Americans pursuant to 15 CFR Part 1400.3 as a minority group that is socially or economically disadvantaged pursuant to 15 CFR art 1400. The formal designation of the Arab-American community as a group that is socially or economically disadvantaged would allow access to members of this community to MBDA funded programs. Comment on this matter is due on or before June 29, 2012.

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II. Introduction:

My name is Rami D. Fakhoury, an Arab-American attorney-at-law and Managing Member, Fakhoury Law Group, P.C., (“FLG”) an AV-rated law firm with global headquarters located in Troy, MI. I head a law practice that focuses upon U.S. employment-based immigration and regulatory compliance. Since 1997, FLG has served clients that include some of the very largest global IT consulting firms, along with companies in the automotive field, medical sciences, and universities. For your reference, I attach my personal resume as **Appendix I**.

On behalf of myself and Fakhoury Law Group, P.C., I am pleased to provide this comment and believe that I bring personal and professional experience and knowledge that are valuable to consideration of this subject. Specifically, the issues that will be addressed in this Comment address: (1) the implications on Arab-American professionals, particularly lawyers and legal professionals, related to societal discrimination that present obstacles to their professional advancement and ability to obtain full equity partnership status in law firms on a basis that is consistent with White colleagues and coworkers; and 2) legal and regulatory issues related to economic discrimination that affects Arab-American entrepreneurs and professionals, as well as those employed in the workplace, that prevents access to customers, clients and capital and opportunities for economic advancement on an equal basis with White, non-minority competitors.

Thank you for this opportunity to address this issue of importance.

Sincerely yours,

Rami D. Fakhoury
Managing Member
Fakhoury Law Group, P.C.

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IV. Executive Summary of Comment:

Discrimination can arise in a number of settings -- including employment, housing, lending, and education. We will focus here on barriers faced by Arab-American professionals that prejudice their hiring, promotion, and equity ownership potential within law firms, professional corporations, and similar businesses. Evidence is cited that shows these discriminatory barriers also negatively impact the social and economic advancement to this ethnic group cumulatively and widely within American society.

There is solid evidence in the academic literature that hiring discrimination against Arab-American job applicants is widespread and a substantial barrier to fair employment. The principal mechanism identified is discriminatory pre-screening of resumes, “resume sifting”, by businesses and professional firms, and several studies are cited that show male applicants with ethnic Arabic names are only half as likely to

be called in for job interviews as equally-qualified applicants assumed to be white males.

Even if hired, Arab-Americans like other minorities are statistically far less likely to be promoted to the top of professional firms. We cite a recent survey of 341 law firms surveyed nationwide that shows that minorities make up less than three percent of law firm equity partners. This is contrasted with data that minorities make up over 22 percent of law schools graduates. The chances that a minority Associate makes full partner is only one-seventh that of a white, male attorney who was his classmate.

We note that at present agency recourse for professionals suffering employment discrimination are limited by the statutory and regulatory restrictions upon complaints brought before the Equal Employment Opportunity Commission (EEOC). As a result of the strictures and limits of available administrative redress under Title VII, Arab-American and other professionals must seek alternative civil remedies. In Saint Francis College et al. v. Al-Khazraji, 481 US 604 (1987)¹ the Court considered the Section 1981 claim of a Respondent professor, a United States citizen born in Iraq, filed suit in Federal District Court against his former employer and its tenure committee, alleging that, by denying him tenure nearly three years before, they had discriminated against him on the basis of his Arabian race in violation of 42 U.S.C. 1981. Subsequent to that ruling, Arab-Americans are recognized by the U.S. Supreme Court as a distinct minority group who have suffered discrimination in employment and professional advancement.

It should be similarly noted that Arab-Americans are a recognized minority group by the State of Michigan, and that recognition more than two decades ago has contributed substantially to public health, education, employment and the State economy. Other jurisdictions that similarly recognize Arab-Americans as a distinct minority group include Wayne County, MI and San Francisco, CA.

We conclude that Congress, the courts, federal agencies with subject matter jurisdiction, such as MBDA, and related State and local government entities must make substantial further efforts to insure the employment rights of Arab-Americans and other minorities through strengthening the enforcement mechanisms of the Civil Rights Act and corresponding State and local law. Inclusion of Arab-Americans in the list of socially disadvantaged groups eligible for assistance from the MBDA alongside recognized groups – a list that has included Hasidic Jews, Asian Pacific Americans and Asian Indians – along with categories for Black, Puerto-Ricans, Spanish-speaking Americans, American Indians, Eskimos, and Aleuts, would further the goals of eliminating discrimination and advancing the general economic well-being of all Americans.

¹ See, <http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=us&vol=481&invol=604>

V. Commenter's Statement of Support for the Petition:

A. Jobs Discrimination Against Arab-Americans Underreported

The popular conception of discrimination as a primarily race, religion or nationality-based concept does not fully encompass the subtler but more pervasive and underreported problem of ethnic prejudices faced by some minorities in the United States today, particularly Arab-Americans.

The National Academy of Sciences (NAS) landmark study, *Measuring Racial Discrimination*, notes:²

In most surveys, statistically reliable results are available only for whites and blacks, yet Hispanics and Asians are rapidly increasing their shares of the U.S. population, and Arabs and Muslims have recently become prominent as potential targets of prejudice. . . . Questions need to be refined substantively as well as methodologically to capture subtle and not just explicit discrimination. . . . In this regard, [citation omitted] find that projective measures of employment discrimination (e.g., rating the attitudes or opinions of others) are more valid than direct self-reports.

Like Hispanics, the prejudice faced by most Arab-Americans is due not to apparent skin color as to unassimilated cultural differences within a predominantly white American population. However, unlike Hispanics, who are a recognized minority group in the U.S. Census and other formal categories of population measure such as EEOC discrimination data, Arab-Americans lack their own distinct category as a minority group for which most large employers and institutions that do business with the federal government must provide data and compliance information intended to detect and prevent discriminatory hiring practices.

As a result, the reporting of complaints, along with the awareness of the problem of widespread employment discrimination against Arab-Americans is registered less often than it is for minority groups with their own distinct identifying categories. As Widner and Chicoine recently found, the problem of discrimination against this particular group goes along with a relative lack of systematic study of the employment aspect of their particular discrimination problem³:

² See, [Measuring Racial Discrimination](#), Chapter 11, "*Cumulative Disadvantage and Racial Discrimination*", (National Academy of Sciences Publications, 2005), p. 189 on .pdf set.

³ See, Widner, D. and Chicoine, S. (2011), *It's All in the Name: Employment Discrimination Against Arab Americans*, Sociological Forum, (Wiley, 2011), [It's All in the Name: Employment Discrimination Against Arab Americans1](#)

Previous research has documented the negative attention toward Arab Americans after 9/11 and the effect it has had on this community. However, less research has focused on discrimination against Arab Americans during the process of obtaining employment in the United States. To address this gap in the current literature, we conducted a correspondence study in which we randomly assigned a typical white-sounding name or a typical Arab-sounding name to two similar fictitious résumés. We sent résumés to 265 jobs over a 15-month period. We found that an Arab male applicant needed to send two résumés to every one résumé sent by a white male applicant to receive a callback for an interview by the hiring personnel.

B. Hiring Discrimination Against Resume Applicants with Arabic Names



The above-cited outcome supports similar results to an earlier study of discrimination against applicants with Arabic names and associations in resume-based recruitment by corporations in the U.S. and The Netherlands. Research published in 2009 indicates that this form of pre-employment screening discrimination operates on a subtler basis than overt discrimination, and instead manifested in perceptions by recruiters and HR managers in both countries about the suitability of Arabs for employment in public facing positions of varying complexity:⁴

Individuals of Arab descent have increasingly experienced prejudice and employment discrimination. This study used the social identity paradigm to investigate whether

⁴ See, E. Deros, H.H. Nguyen, "Hiring Discrimination against Arab minorities: Interactions between prejudice and job characteristics," *Human Performance*, (Vol. 22, Issue 4, 2009), [Hiring discrimination against Arab minorities: Interactions between prejudice and job characteristics](#)

greater Arab identification of applicants led to hiring discrimination and whether job characteristics and raters' prejudice moderated this effect. One hundred forty-one American and 153 Dutch participants rated résumés on job suitability. Résumés with Arab name and affiliations negatively influenced job suitability ratings . . . Within the Dutch sample job suitability rating of Arab applicants was lowest when Dutch raters' implicit prejudice was high . . . discrimination may operate in subtle ways, depending on the combined effect of applicant, job, and rater characteristics.

While indicating that further study is needed, these studies show that discrimination in hiring against persons with Arabic names may be more pervasive and insidious than might be indicated by traditionally self-reported racial discrimination and other forms of workplace complaints based in differences of race, sex, age, or sexual orientation. It appears that many Arabs may never complain because they don't even get to the interview stage, and cannot know by themselves, (much less fully document) that discrimination even occurred. This points out the need for wider investigation of this area of employment discrimination by anti-discrimination commissions in coordination with civil rights groups and attorneys. Underreporting is also a fact that favors recognition of Arab-Americans as a discriminated group that warrants federal programs of assistance, including those of the MBDA.

Ethnic name-based discrimination is a particularly widespread, underreported and under-enforced practice. National origin and Arabic ethnicity, and imputed religion, are factors visible to recruiters, who reject certain categories of job applicants by discriminatory "resume sifting" practices. Because hiring for higher-paid positions frequently involves several stages of resume review process, professionals and other upper income occupations are most likely to be negatively impacted.

Another aspect of employment discrimination that hits Arab-Americans particularly hard is the relatively low baseline of numbers of partners of that ethnicity at large U.S. law firms and corporations. At the very upper ends of the professions, hiring and promotions at major law firms, for instance, still follows "country club" practices where new members are carefully courted, promotions are largely internal rather than by lateral hiring, and hiring and promotion of associates tends to be matter of personal selection according to the whims and preferences of senior partners within the firm. Many studies have confirmed that unless challenged by a robust diversity program, partnership decisions remain largely a self-selection process that replicates existing ethnic patterns.

Recent data released by the National Association for Legal Career Professionals (NALP) shows that the percentage of minorities in equity partnership positions at US law firms surveyed is less than 3 percent.⁵

⁵ Leipold, J.G. and Collins, J.N., *The Demographics of Equity*, *NALP Bulletin*, (Nov. 2011), Table 3, http://www.nalp.org/demographics_of_equity

Table 1. Distribution of All Partners by Equity Status and Gender or Minority Status

Total partners	20,238
% equity	61.3%
% men equity	51.7%
% women equity	9.5%
% minority equity	2.9%
% non-equity	38.7%
% men non-equity	28.0%
% women non-equity	10.7%
% minority non-equity	3.2%

[Note: Figures are based on 317 offices/firms that have a tiered partnership and also reported information on equity and non-equity partner counts. A number of firms that otherwise reported information on an office-by-office basis reported the partnership information on a firm-wide basis. Minorities are also counted as men or women, hence percentages add to more than the total.]

The percentage of women in partnership positions is somewhat higher, but still less than 10 percent. Those figures must be compared to the minority and women US law school graduates, a measure which itself shows some declines in recent years for minorities entering the profession. *Corporate Counsel* reports:⁶

According to the most recent statistics from the American Bar Association, minorities received 22.1 percent of all degrees awarded by U.S. law schools in 2009. By comparison, minorities made up about 36 percent of the total U.S. population in the 2010 census. (The peak year for minority law school graduates was 2007, when they made up 22.6 percent of all graduates.)

⁶ Karabin, S., *Workarounds*, *Corporate Counsel* (Mar. 1, 2012), <http://www.law.com/jsp/cc/PubArticleFriendlyCC.jsp?id=1202541469625>

C. Overlapping Categories and Gaps in EEOC Classification Hinder Employment Discrimination Actions Filed by Arab Americans

New Hire EEO-1 Data Sheet

Please complete this New Hire EEO-1 Data Sheet. It will supply us with information we need for federal reporting obligations. Please be advised that this information will be kept confidential, in accordance with applicable laws and regulations. This information will not be used as the basis for any adverse employment decision.

Name: _____ Social Security #: _____
 Address: _____ City: _____
 State: _____ ZIP: _____ Phone #: (____) _____
 How long at present address: _____ Male Female

EEO-1 Self-Identification

We are subject to certain government recordkeeping and reporting requirements for the administration of civil rights laws and regulations. To comply with these laws, we invite you to voluntarily self-identify your race or ethnicity. Submission of this information is voluntary, and refusal to provide it will not subject you to any adverse treatment. The information obtained will be kept confidential and may only be used in accordance with the provisions of applicable laws, executive orders and regulations, including those that require the information to be summarized and reported to the federal government for civil rights enforcement. When reported, data will not identify any specific individual.

Please check the EEO Identification Group that best applies to you:

Hispanic or Latino - A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.
 White (Not Hispanic or Latino) - A person having origins in any of the original peoples of Europe, the Middle East or North Africa.
 Black or African American (Not Hispanic or Latino) - A person having origins in any of the black racial groups of Africa.
 Native Hawaiian or Other Pacific Islander (Not Hispanic or Latino) - A person having origins in any of the peoples of Hawaii, Guam, Samoa or other Pacific Islands.
 Asian (Not Hispanic or Latino) - A person having origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent, including Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.
 American Indian or Alaska Native (Not Hispanic or Latino) - A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.
 Two or More Races (Not Hispanic or Latino) - All persons who identify with more than one of the races above, including Hispanic or Latino.

Reasonable Accommodation

In the event you believe there is a reasonable accommodation that will assist you in performing the essential functions of your job, please contact your manager or Human Resources.

Employee Signature: _____ Date: ____/____/____

To Be Completed by Employer

From the EEO job categories listed below, which one best describes the employee's position:

Executive/Senior Level Officials & Managers Sales Workers Operatives
 First/Second Level Officials & Managers Administrative Support Workers Laborers and Helpers
 Professionals Craft Workers Service Workers
 Technicians

Notes: _____
 Completed by: _____ Date: ____/____/____

To be filed separately from employment applications.

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Most U.S. firms with more than 100 employees are required by law to annually file the Form EEO-1 with the U.S. Equal Opportunity Employment Commission (EEOC). That reporting form entails enumeration of employees according to a set of four racial (White, Black and Asian, and mixed race), and four ethnic (Hispanic, Pacific Islander, Native Indian and Aleut) categories.

Revised EEO-1 Categories (2005)

- Hispanic or Latino – includes all employees who answer "Yes" to the question, are you Hispanic or Latino?
- White (not Hispanic or Latino)
- Black or African American (not Hispanic or Latino)
- Native Hawaiian or Other Pacific Islander (not Hispanic or Latino)
- Asian (not Hispanic or Latino)
- American Indian or Alaska Native (not Hispanic or Latino)
- Two or More Races (not Hispanic or Latino)

For years before 2005, when OMB finally revised the reporting form that had been in use essentially unchanged for decades, questions were raised about the efficacy of the existing categories on the EEO-1 as well as the Census that also omits a separate

category for Arab American ethnicity. The National Academy of Sciences report *Measuring Racial Discrimination* provides the historical background to that controversy:⁷

By the 1990 census, questions had been raised about the continued relevance of the 1977 standards. Many population changes had occurred since 1977, and the population of disadvantaged racial groups had grown considerably. In fact, the rate of population increase for blacks, American Indians, Eskimos, and Aleuts, as well as for Asians and Pacific Islanders, between 1980 and 1990 had been higher than the rate for the white population. In addition, questions began to be raised about how to enumerate race for children born of interracial unions. Statistical agencies had initiated research on the effects of differences in question wording and placement. **They believed research was required on how to define race and ethnicity, which labels to attach to the various categories, and what to do about the rising number of multiracial individuals. The issues addressed in that research were discussed widely with many population groups (e.g., Arabs, Cape Verdeans, Muslim West Asians, and Creoles) who wanted separate categories for population groups not yet included in the census categories and increased detail about countries of origin and languages used. These groups actively campaigned to add their categories to the census. Congressional hearings were held in 1993 (by the House Subcommittee on Census, Statistics, and Postal Personnel), and OMB decided to undertake a complete review of the 1977 standards.**

Of the changes sought, only the Native American, Aleut and mixed-race issues were addressed by changes in the form. Kezelian, who traces the OMB decision to continue to use the 1977 categories, Asia/Pacific was split into Asian and Pacific Islander. Despite other changes, the recommendation of an interagency committee was NOT to add a separate Arab/Middle Eastern category.⁸

Problems with federal classification of Arab-Americans goes back to the broader problem of racial classifications associated with Chinese Exclusion Act of 1886. According to Kezelian:⁹

Arab-Americans had been legally considered white for naturalization purposes ever since *Dow v. U.S.* (1915) which declared “Syrians” to be white and *Ex parte Mohriez* (1944) which declared “Arabians” to be white. Before 1952, an immigrant had to be either a “free white person,” according to the original immigration statute, or else African in descent, in order to be naturalized as a citizen, but Asians and other races not contained within “white” or “black” were barred from becoming naturalized. In the 40s, “races native to the Western Hemisphere” was added. Arab-Americans successfully argued in court that they were “white” and entitled to the right become naturalized. Now, in 1978, the peoples of the Middle East and North Africa were as a whole included as “white”, not just for immigration but for all government purposes, starting with the census.

⁷ *Ibid.*, at 226.

⁸ Kezelian, H., “Arab Minority Status”, unpublished paper.

⁹ *Ibid.*

The problem of inadequate classification of Arab-Americans is further compounded by the polyglot nature of discrimination according to present measures used by the EEOC and many state agencies seeking to measure and enforce existing anti-discrimination laws.

What is actually, in many cases, a generalized ethnic prejudice based in the victim's Middle Eastern or South Asian origin¹⁰ – and, ethnic national origins discrimination is illegal -- nonetheless, EEOC enforces anti-discrimination laws largely based upon data from an employment reporting system that does not match up to specific categories of persons who might be discriminated against due to the factor of ethnicity.

Instead of providing accurate categories for ethnicities, the EEOC requires aggrieved parties to specify how the national origins, racial or religious categories apply, and document discriminatory activities within the four corners of those categories. EEOC thus enforces Federal law that ban certain enumerated categories of discriminatory employment practices, only those highlighted as follows are potentially relevant to establishing a case of ethnicity-based discrimination:

- harassment on the basis of **race, color, religion**, sex, **national origin**, disability, **genetic information**, or age;
- retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices;
- **employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain sex, race, age, religion, or ethnic group**, or individuals with disabilities, **or based on myths or assumptions about an individual's genetic information**; and
- **denying employment opportunities to a person because of marriage to, or association with, an individual of a particular race, religion, national origin**, or an individual with a disability. **Title VII also prohibits discrimination because of participation in schools or places of worship associated with a particular racial, ethnic, or religious group.**

The purpose of the EEO-1 form is expressly “enforcement of civil rights laws”. The Form Instructions provide the following notice to employees as to why data related to race and ethnicity is being gathered:

"The employer is subject to certain governmental recordkeeping and reporting requirements for the administration of civil rights laws and regulations. In order to comply with these laws, the employer invites employees to voluntarily self-identify their race or

¹⁰ This points out how Arab ethnicity is often mischaracterized as religion-based, when that is not an entirely common feature of the group discriminated against. Since the Middle East and South Asia is a region with many nation-states and religions, animus toward a particular nationality is also often not an identifiable factor appropriate for this category.

ethnicity. Submission of this information is voluntary and refusal to provide it will not subject you to any adverse treatment. The information obtained will be kept confidential and may only be used in accordance with the provisions of applicable laws, executive orders, and regulations, including those that require the information to be summarized and reported to the federal government for civil rights enforcement. When reported, data will not identify any specific individual."

It is therefore peculiar that the categories of ethnicity often reporting discrimination should be omitted in the federal government's principal data reporting instrument. The categories of racial and ethnic types reported on the EEO-1 are changed by agency rulemaking, and EEOC may change this form without Congressional authorization. See, 2005 changes to current form, **Appendix II**.

Furthermore, the specified types of discrimination specifically banned by the Civil Rights Act and related laws that potentially apply to Arabic ethnics – discrimination based upon religion, national origin, race, color, genetic information -- may or may not apply in a specific instance of employment discrimination. That creates a major gap in reporting and enforcement, a hole in the regulations that allow many cases of ethnic discrimination to go either unreported or inadequately undocumented, which may amount to the same thing – unfair enforcement of the Act.

The EEOC system thus creates a situation where a particular category of victims cannot readily document employment discrimination based upon existing categories of data normal EEOC reporting picks up on the Form EO-1. This allows mid-size and large employers to discriminate with less chance of detection or enforcement action, a situation that can be remedied by agency rulemaking.

The peculiar omission of a category for (non-Hispanic, non-Pacific Island, non-Native American, non-Aleutian) ethnics seems to be based in a system that ignores immigrant groups. There are more than 1.7 million Arab-Americans whose arrival began no later than 1854 – yet, like Creoles, and some other sizable, long established ethnic groups, there is no distinct EEOC reporting category that applies to them.

The decision to omit these ethnic groups seeking recognition may have been grounded, itself, in ethnic prejudices or an overly-narrow conception of relevance to include only discrimination against ethnic groups present inside the territory of the United States and its possessions before the U.S., itself, achieved national statehood. The reasoning behind that is not clear.

This lack of reporting of major ethnic groups handicaps enforcement of the 1964 Civil Rights Act. It may also force some Arab-Americans to document discrimination according to false categories of proof, frustrating many efforts at detecting and obtaining successful enforcement actions against employers who carry out ethnic discrimination. In legal statistics, this might be identified as a problem involving a "Type II error." This type of miscategorization problem (squeezing the facts into overly narrow but

overlapping categories) can be seen in the following excerpts, case citations and examples given in the EEOC Compliance Manual:¹¹

Title VII's prohibition against religious discrimination may overlap with Title VII's prohibitions against discrimination based on national origin, race, and color. Where a given religion is strongly associated – or perceived to be associated – with a certain national origin, the same facts may state a claim of both religious and national origin discrimination.^[212] All four bases might be implicated where, for example, co-workers target a dark-skinned Muslim employee from Saudi Arabia for harassment because of his religion, national origin, race, and/or color.^[213]

^[212] *EEOC v. WC&M Enter., Inc.*, 496 F.3d 393 (5th Cir. 2007) (evidence was sufficient for employee to proceed to trial on claim that he was subjected to hostile work environment harassment based on both religion and national origin where harassment motivated both by his being a practicing Muslim and by having been born in India); *Vitug v. Multistate Tax Comm'n*, 88 F.3d 506, 515 (7th Cir. 1996) (Catholic Filipino employee made out a prima facie case of national origin and religious discrimination, although he did not prevail on the merits).

^[213] *Raad v. Fairbanks N. Star Borough Sch.*, 323 F.3d 1185 (9th Cir. 2003) (employer's summary judgment motion denied on Lebanese Muslim substitute school teacher's discrimination claim because a reasonable jury could conclude that preconceptions about her religion and national origin caused school officials to misinterpret her comment that she was angry but did not want to "blow up"); *Tolani v. Upper Southampton Township*, 158 F. Supp. 2d 593 (E.D. Pa. 2001) (employee from India who was Asian stated a claim of discriminatory discharge based on race, religion and national origin because employer mocked the way Indian people worship).

Large Law firms and other professional corporations are likely to have sophisticated hiring, personnel and promotions policies in place that avoid the grosser kinds of overt discrimination, illustrated above, which might trigger an EEOC enforcement action. The EEOC Compliance Manual includes the following example of such easily avoidable sorts of discriminatory practices:

EXAMPLE

1

Employment Decisions Based on "Religion"

An otherwise qualified applicant is not hired because he is a self-described evangelical Christian. A qualified non-Jewish employee is denied promotion because the supervisor wishes to give a preference based on religion to a fellow Jewish employee. An employer terminates an employee based on his disclosure to the employer that he has recently converted to the Baha'i Faith. Each of these is an example of an employment decision based on the religious affiliation of the applicant or employee, and therefore is based on "religion" within the meaning of Title VII.

¹¹ See, EEOC Compliance Manual, Section 12, http://www.eeoc.gov/policy/docs/religion.html#_Toc203359548

D. National Origin Discrimination – Categorical Recognition of Arab Ethnicity, but a “Mixed Motives” Loophole Limits Potential Ethnicity-based Discrimination Awards

Section 13 of the Manual, outlining the Commission’s approach to nationality-based claims, offers a more promising approach to recognition of claims on the basis of Arab ethnicity or Middle Eastern/South Asian area origins than the preceding section. Subsection 13-11, addresses the question, “What is National Origin Discrimination?” as follows¹²

Title VII prohibits discrimination against a person because he or she is associated with an individual of a particular national origin.⁽¹⁷⁾

A. Employment Discrimination Based on Place of Origin

National origin discrimination includes discrimination because a person (or his or her ancestors) comes from a particular place. The place is usually a country or a former country, for example, Colombia or Serbia. In some cases, the place has never been a country, but is closely associated with a group of people who share a common language, culture, ancestry, and/or other similar social characteristics, for example, Kurdistan.

B. Employment Discrimination Against a National Origin Group

A "national origin group," often referred to as an "ethnic group," is a group of people sharing a common language, culture, ancestry, and/or other similar social characteristics.⁽¹⁸⁾ Title VII prohibits employment discrimination against any national origin group, including larger ethnic groups, such as Hispanics and Arabs, and smaller ethnic groups, such as Kurds or Roma (Gypsies).⁽¹⁹⁾ National origin discrimination includes discrimination against American Indians or members of a particular tribe.⁽²⁰⁾

Employment discrimination against a national origin group includes discrimination based on:

- **Ethnicity: Employment discrimination against members of an ethnic group, for example, discrimination against someone because he is Arab. [emphasis added]** National origin discrimination also includes discrimination against anyone who does *not* belong to a particular ethnic group, for example, less favorable treatment of anyone who is not Hispanic.
- **Physical, linguistic, or cultural traits:** Employment discrimination against an individual because she has physical, linguistic, and/or cultural characteristics closely associated with a national origin group, for example, discrimination against someone based on her traditional African style of dress.⁽²¹⁾
- **Perception:** Employment discrimination against an individual based on the employer's belief that he is a member of a particular national origin group, **for**

¹² See, <http://www.eeoc.gov/policy/docs/national-origin.html>

example, discrimination against someone perceived as being Arab based on his speech, mannerisms, and appearance, regardless of how he identifies himself or whether he is, in fact, of Arab ethnicity.

C. Related Forms of Discrimination Prohibited by Title VII

Title VII's prohibition against national origin discrimination often overlaps with the statute's prohibitions against discrimination based on race or religion. The same set of facts may state a claim of national origin discrimination and religious discrimination when a particular religion is strongly associated, or perceived to be associated, with a specific national origin.⁽²²⁾ Similarly, discrimination based on physical traits or ancestry may be both national origin and racial discrimination. If a claim presents overlapping bases of discrimination prohibited by Title VII, each of the pertinent bases should be asserted in the charge.

Relevant case examples offered at that Section to illustrate national origins discrimination in hiring and promotions include the following:

Customer Preference

In addition, employers may not rely on coworker, customer, or client discomfort or preference as the basis for a discriminatory action. If an employer takes an action based on the discriminatory preferences of others, the employer is also discriminating.

EXAMPLE 4 EMPLOYMENT DECISION BASED ON CUSTOMER PREFERENCE

Alexi, a Serbian-American college student, applies to work as a cashier at a suburban XYZ Discount store. Although Alexi speaks fluent English, the manager who conducts the routine interview comments about his name and noticeable accent, observing that XYZ's customers prize its "all-American image." Alexi is not hired. XYZ has subjected Alexi to unlawful national origin discrimination if it based the hiring decision on assumptions that customers would have negative perceptions about Alexi's ethnicity.

Assignment

Employers may not assign applicants or employees to certain positions based on national origin.⁽²⁸⁾

EXAMPLE 5 UNLAWFUL ASSIGNMENT BASED ON NATIONAL ORIGIN

XYZ Pizza Palace decides to open a restaurant at a suburban shopping mall. It runs an advertisement in local newspapers recruiting for positions in food preparation, serving, and cleaning. Carlos, an Hispanic man with a few years of experience as a server at other restaurants, applies for a position with XYZ and states a preference for a server position. Believing that Hispanic employees would be better suited for positions with limited public contact at this location, XYZ offers Carlos a position in cleaning or food preparation even though he is as well qualified for a server position as many non-

Hispanic servers employed by XYZ. Under the circumstances, XYZ has unlawfully assigned Carlos to a position based on his national origin.

Similarly, employers may not limit promotional opportunities based on national origin.

EXAMPLE 6
UNLAWFUL LIMITATION OF PROMOTIONAL OPPORTUNITIES BASED ON NATIONAL ORIGIN

Raj, who is Indian, is a computer programmer for XYZ Information Technology Consultants. Raj applies for a slot in XYZ's management development program and is rejected. Raj files an EEOC charge alleging that the rejection was based on his national origin. The employer states that Raj was not selected because he was not as qualified as other applicants. The investigation reveals that, based on XYZ's written criteria, Raj had superior qualifications to three non-Indian candidates selected for the program. The investigation also reveals that since XYZ initiated the management program, only one out of the fifteen candidates selected for the program has been South Asian, even though nearly one-third of the applicants and nearly one-half of the programming staff are South Asian. The evidence establishes that XYZ unlawfully rejected Raj for its management program based on his national origin.

Mixed-Motives Cases

While the national origins category offers recognition of the elusive ethnic discrimination category and injunctive relief under the Commission's enforcement of Title VII, at the same time the 1991 Act severely limited the range and effective amount of money damage awards that individual victims can obtain through law suits in many cases. The Act created an exception to compensatory and punitive damages where the defendant company can show that it had "mixed motives" in discriminatory hiring, pay, promotions or discharges.

Employment decisions that are motivated by *both* national origin discrimination and legitimate business reasons violate Title VII. However, remedies in such "mixed-motives" cases are limited if the employer would have taken the same action even if it had not relied on national origin. The charging party may receive injunctive relief and attorney's fees but is not entitled to reinstatement, back pay, or compensatory or punitive damages.⁽²⁹⁾

EXAMPLE 7
MIXED MOTIVES: LIMITATIONS ON REMEDIES

Jane, a Chinese-American, was hired to fill a temporary position as an assistant professor of philosophy at a major private university. Several years later, she was rejected for a permanent position in the Philosophy Department. A colleague tells Jane that at the board meeting at which the permanent position and the relative qualifications of the candidates were discussed, the Department Chair, one of the five people on the hiring committee for the position, stated, "I don't care how brilliant she is - one Asian in

the Department is enough." Jane files an EEOC charge alleging national origin discrimination based on this evidence.

The EEOC investigation reveals that the Department Chair did, in fact, make the reported statement and that the other hiring committee members generally defer to his hiring recommendations. The investigation also reveals that Jane was less qualified than the selectee. The selectee had numerous well-received publications and lectures recently, but Jane had only published one academic article in three years and had not spoken at conferences in her field. Because the evidence establishes that the university would have made the same decision even absent discrimination, Jane is entitled to injunctive relief and attorney's fees, but not reinstatement, back pay, or compensatory or punitive damages.

The limitation on awards for "mixed motive" discrimination offers firms and corporations another major loophole that seriously compromises the remedial potential of the 1991 Amendment to the Act that authorized jury awards in civil actions for employment discrimination cases

Thus, all that an employer needs to do to escape compensatory or punitive damages for national origins discrimination is to offer proof that there is some other objective, reasonable basis for its decision to preferentially hire or promote others. For instance, a law firm that has a pattern of discriminatory promotions of minority associates would merely need to show that the white male Associate X generated a greater number of dollars of revenue while Associate Y, an Arab-American, was not offered equity partnership because his revenues were inferior.

However, the courts have interpreted the exception to mean that the alternative basis cited for the decision was itself legitimate and free of prejudice. For instance, upon discovery it is determined that Associate Y was not put in charge of the largest revenue-generating client account because of the expressed preference of that client for a non-Arabic lead attorney. The prejudice of the client cannot itself form the basis for defense against a discrimination charge, the fact that Attorney Y generated objectively less revenues as result of prejudice, which should prompt the court to award compensatory and punitive damages if it finds the discrimination was intentional.

E. Statutory Caps on Compensatory and Punitive Damages in Title VII Awards - \$300,000 award limit inadequate deterrent

Another major drawback to Title VII actions¹³ are the statutory upper limits placed on the award of compensatory and punitive damages in discrimination cases brought under the 1964 Act. The 1991 Amendment set exclusions on compensatory awards and limits on punitive damages that can only be described as so ungenerous and insubstantial – the combined top limit for both is a mere \$300,000 per person aggrieved by a large company -- that they barely present a serious hindrance to the discriminatory employment preferences of firms that are so inclined by the steadfast prejudice of their top management.

This is a problem that is most likely to manifest in privately-held firms and Limited Liability Partnerships, where there is no consideration of the equity and fiduciary interests of outside shareholders.¹⁴ Small firms of less than 14 employees are altogether exempt from Title VII enforcement.

Section 1981(a) of Title VII, as amended, states:¹⁵

(b) Compensatory and punitive damages

(1) Determination of punitive damages

A complaining party may recover punitive damages under this section against a respondent (other than a government, government agency or political subdivision) if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual.

(2) Exclusions from compensatory damages

Compensatory damages awarded under this section shall not include backpay, interest on backpay, or any other type of relief authorized under section 706(g) of the Civil Rights Act of 1964 [[42 U.S.C. 2000e-5 \(g\)](#)].

(3) Limitations

The sum of the amount of compensatory damages awarded under this section for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and the amount of punitive damages awarded under this section, shall not exceed, for each complaining party—

¹³ The Civil Rights Act of 1964 is [Pub. L. 88-352](#), July 2, 1964, [78 Stat. 241](#), as amended. Title VII of the Act is classified generally to subchapter VI (§ 2000e et seq.) of this chapter.

¹⁴ Publicly-listed companies that engage in discrimination, particularly willful discrimination, would also be subject to shareholder suits and potential enforcement action by the SEC as a known undisclosed compliance risk under Sarbanes-Oxley and similar public corporation anti-corruption laws.

¹⁵ [USC Title 42 Chapter 21 Subchapter I](#) › §1981a, <http://www.law.cornell.edu/uscode/text/42/1981a>

(A) in the case of a respondent who has more than 14 and fewer than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$50,000;

(B) in the case of a respondent who has more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$100,000; and

(C) in the case of a respondent who has more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$200,000; and

(D) in the case of a respondent who has more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$300,000.

F. Burden Shifting in “Mixed-Motive” Discrimination Cases

While defendant corporations and firms may raise the “mixed-motive” defense to avoid paying compensatory and punitive damages, altogether, the burden of evidence in Title VII cases generally favors the plaintiff. The two-prong mixed-motive case requires the employee to demonstrate that a protected characteristic (e.g., race, sex, national origin, ethnicity) was a substantial factor in an employer's adverse action. If that is established, the employer then has the burden of proving that the decision would have been made in any event, regardless of the employee's protected characteristic.

In essence, under the mixed-motive discrimination standard established by *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), a Title VII sex discrimination case in which the plaintiff alleged that both permissible and impermissible considerations played a part in her failure to make partner. In such a mixed-motive situation, the U.S. Supreme Court reasoned, if a plaintiff can show that unlawful discrimination plays a motivating or substantial factor in the employment decision at issue, the burden of persuasion shifts to the employer to prove that it would have made the same adverse decision regardless of the discriminatory factor.

Unlike age discrimination suits brought under ADEA, a plaintiff bringing a claim under Title VII does not need to show by a preponderance of the evidence that ethnicity was the “but for” cause of the employer’s adverse employment decision, and an employer must prove that it would have made the same decision regardless of national origins. The employee need only produce some evidence that ethnic discrimination may have been a contributing factor in the decision. Thus, the burden-shifting framework in mixed motive Title VII cases applies to nationality, whereas the U.S. Supreme Court found in 2009 it does not extend to age discrimination claims under the Age Discrimination in Employment Act (ADEA), a different statute, in a 5-4 decision delivered by Justice Clarence Thomas, [*Gross v. FBL Financial Services, Inc.*](#)

The Supreme Court reached a similar decision favoring employers in age and gender discrimination suits in the notorious *Lilly Ledbetter* decision, strictly construing the 180-day filing requirement, the effect of which for equal pay purposes was overturned by Act of Congress in 2009. In *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), a (5-4) decision, Justice Alito held for the majority that employers cannot be sued under Title VII of the Civil Rights Act over race or gender pay discrimination if the claims are based on decisions made by the employer 180 days or more previously. The Lilly Ledbetter Fair Pay Act of 2009 was the first legislation President Barack Obama signed into law on January 29, 2009. The bill amends the Civil Rights Act of 1964 stating that the 180-day statute of limitations for filing an equal-pay lawsuit regarding pay discrimination resets with each new discriminatory paycheck.

In Title VII cases where there is a corresponding State or local anti-discrimination statute, that period is extended out to 300 days.

G. “Section 1981” Claims – The Alternative to Title VII for Obtaining Compensatory and Punitive Damages in Cases of Ethnic Discrimination Against Arab Americans

Title VII of the 1964 Civil Rights Act is not the only statute that opens the federal courts to Arab Americans who suffer employment discrimination due to racial or ethnic animus.¹⁶ Section 1981 of the Civil Rights Act of 1866, 42USC Sec. 1981 (“Section 1981”) provides in most relevant part:

(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined

For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) Protection against impairment

¹⁶ See, generally, Friedman, L., Relationship Between TITLE VII, TITLE VI, SECTION 1981, 1983, ADEA, ADA, The Equal Pay Act and State Causes of Action for Employment Discrimination, http://files.ali-aba.org/thumbs/datastorage/skoobesruoc/pdf/02FriedmanRelationshCG083_thumb.pdf

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

As illustrated in the *Ledbetter* case, a serious problem that often arises in Title VII cases is the comparatively short statute of limitations that apply under that Act compared to the standard 4 years limit in most federal civil limitation. The period allowed for filing a Title VII discrimination complaint can be as short as 180 days from the date the discrimination occurred. Often the discriminatory act is not discovered and reported to EEOC during that period, which effectively nullifies enforcement action.

In addition, as Tarantolo points out¹⁷, Title VII protection is dependent upon the existence of an employer-employee relationship, and employers of contract workers (contingent workers) have been held to be not subject to Title VII, thus Sec. 1981 protections better meet their needs.

Another problem with Title VII claims is that they depend upon the concurrence of a Commission panel to find that a *prima facie* case of recognizable discrimination occurred. Under Section 1981, a protected group member plaintiff can go directly to U.S. District Court which will make that ruling along with the merits of the case and damages.

As has already been explained above, Title VII contains a number of exemptions and limits on awards, including a “mixed motives” clause used by many employers to escape paying compensatory and punitive damages that would be otherwise awarded in a civil judgment under Section 1981.

A Section 1981 discrimination suit may also be pressed against any party that unlawfully denies the right to contract – which includes contractors and potential partners, as well as discriminatory employment action in hiring, pay and benefits, promotions, tenure, retirement -- of any member of a protected racial or ethnic group on account of their protected status.

H. Arab-Americans are a protected group under Section 1981 recognized under U.S. Supreme Court decision.

The scope of the recognized groups protected under the Civil Rights Act of 1868 has been extended to include Arab-Americans. In *Saint Francis College et al. v. Al-*

¹⁷ Tarantolo, D., “From Employment to Contract: Section 1981 and Antidiscrimination Law for the Independent Contractor Workforce”, Yale Law Journal (116:170, 2006) , <http://www.yalelawjournal.org/pdf/116-1/Tarantolo.pdf>

Khazraji, 481 US 604 (1987)¹⁸ the Court considered the Section 1981 claim of a Respondent professor, a United States citizen born in Iraq, filed suit in Federal District Court against petitioners, his former employer and its tenure committee, alleging that, by denying him tenure nearly three years before, they had discriminated against him on the basis of his Arabian race in violation of 42 U.S.C. 1981.

The decision is notable in several ways. It found that discrimination on account of Arab ethnicity is a form of racial discrimination within the meaning of Section 1981. Thus, as the respondent proved that he was subjected to intentional discrimination based on the fact that he was born an Arab, rather than solely on the place or nation of his origin or his religion, he made out a 1981 case. Pp. 609-613. 784 F.2d 505, affirmed.

In addition, it should be noted, the respondent was supported in his action to the U.S. Supreme Court by briefs of *amici curiae* urging affirmance filed for the American-Arab Anti-Discrimination Committee; the Anti-Defamation League of B'nai B'rith et al.; and by the Mexican American Legal Defense and Educational Fund et al., as each of these groups recognize the significance of the case for their own protected status under Section 1981. Indeed, there was a companion case handed down the same day with a similar holding regarding the effects of Jewish ethnicity under Sec. 1981, *Shaare Tefila v Cobb*, 481 U.S. 615 (1987).

Jews in *Shaare Tefila*, like the Arab respondent in *Al Khazraji*, the Court held are considered not a separate race by modern standards but are nonetheless a group of people whom Congress intended to protect in passage of the 1868 Civil Rights Act. Jews and Arabs were among the peoples considered in the 1860s as "distinct races" and within the protection of the statute. Jews and Arabs are therefore not foreclosed from stating a cause of action against other members of what today is considered to be part of the Caucasian race.

The unanimous *Al Khazraji* decision written by Justice White held with the Court of Appeals in the following:

[R]espondent had alleged discrimination based on race and that although under current racial classifications Arabs are Caucasians, respondent could maintain his 1981 claim. 2 Congress, when it passed what is now 1981, had not limited its protections to those who today would be considered members of a race different from the race of the defendant. Rather, the legislative history of the section indicated that Congress intended to embrace "at the least, membership in a group that is ethnically and physiognomically distinctive." 784 F.2d 505, 517 (1986). Section 1981, "at a minimum," reaches "discrimination directed against an individual because he or she is genetically part of an ethnically and physiognomically distinctive sub-grouping of homo sapiens." Ibid.

The Court's decision also clearly states that discrimination against Arab-Americans is forbidden not because of any visibly racial characteristic, but because they are among those ethnic immigrant groups subject to discrimination. The 1868 Civil Rights Act was intended to cover all immigrant groups with their own distinct ethnicity.

¹⁸ See, <http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=us&vol=481&invol=604>

In tracing the original intent of Congress in passing Section 1981, White observes the following:

The history of the 1870 Act reflects similar understanding of what groups Congress intended to protect from intentional [481 U.S. 604, 613] discrimination. It is clear, for example, that the civil rights sections of the 1870 Act provided protection for immigrant groups such as the Chinese. This view was expressed in the Senate. Cong. Globe, 41st Cong., 2d Sess., 1536, 3658, 3808 (1870). In the House, Representative Bingham described 16 of the Act, part of the authority for 1981, as declaring "that the States shall not hereafter discriminate against the immigrant from China and in favor of the immigrant from Prussia, nor against the immigrant from France and in favor of the immigrant from Ireland." *Id.*, at 3871.

Based on the history of 1981, we have little trouble in concluding that Congress intended to protect from discrimination identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics. Such discrimination is racial discrimination that Congress intended 1981 to forbid, whether or not it would be classified as racial in terms of modern scientific theory. ⁵ The Court of Appeals was thus quite right in holding that 1981, "at a minimum," reaches discrimination against an individual "because he or she is genetically part of an ethnically and physiognomically distinctive subgrouping of homo sapiens." **It is clear from our holding, however, that a distinctive physiognomy is not essential to qualify for 1981 protection. [emphasis added]**

The logic of the *St. Francis* decision suggests that all forms of economic discrimination against members of distinct ethnic immigrant groups is forbidden by the 1868 Civil Rights Act -- and that extends to all immigrant groups who can show a distinct ethnicity that are the subject of discrimination, rather than solely on the place or nation of origin or religion alone -- and they can make out a 1981 case. Furthermore, since Section 1981 protection extends to "all persons within the jurisdiction of the United States", which includes ethnic immigrants and nonimmigrants, alike, who are equally entitled "to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other", there is yet another important implication that follows.

Finally, since the anti-discrimination provisions of the 1868 Civil Rights Act has been held by the courts to extend to the Federal Government as well as to the States and private persons, it follows from the plain language of the statute that no federal agency may discriminate in contracting and permitting matters in a way that prejudices immigrants and non-immigrants who are members of these distinct ethnic groups, such as Arab-Americans. These aggrieved parties may go to federal court and seek injunction and damages for the actions of federal personnel who discriminate against them with real or potential economic effect for improper reasons. The Federal Torts

Claims Act (FTCA) allows suits against federal agencies for discriminatory contracting or enforcement. The bottom-line of this is to forbid federal agencies and personnel from practices such as ethnic profiling and preferential contracting for U.S. Citizens.

The FTCA waives the sovereign immunity of the United States to permit claims for damages based on acts or omissions of federal employees within the scope of their employment. Generally, but with important exceptions, the FTCA makes the United States liable for tortious acts to the same extent that a private individual would be liable under state law. Civil Division attorneys defend FTCA cases involving allegations of discrimination other than federal hiring, which is under the statutory jurisdiction of the EEOC. Before an FTCA suit can be filed in federal court, an administrative claim must be filed with the federal agency involved, if such an administrative redress mechanism exists.

There are, of course, exceptions to Sec. 1981 coverage for the federal government. The United States may continue to discriminate according to national origins in its exercise of its powers over national defense and foreign policy. Under the Civil Service Reform Act (CSRA) federal employment protections specifically were exempted for the Department of Defense, intelligence agencies, and federal law enforcement. In addition, other federal, state, and local governments are not altogether barred from imposing citizenship requirements for hiring, but these have been limited in a series of court decisions to discrimination with rational bases.

Furthermore, agencies of the federal government undeniably give preference to U.S. Citizens over non-U.S. persons for the awarding of contracts and licenses, but unless there is a rational basis such as national security, that as well appears to be barred under Section 1981.

Inadequate Past MBDA Action to Address Discrimination Against Arab Americans

In addition, among the federal agencies set up to address overcoming the problems of discrimination and minority business development, the US Department of Commerce Minority Business Development Agency (MBDA) does not visibly address discrimination against Arab Americans in their public documents. A search of the MBDA website conducted in March, <http://www.mbda.gov/> revealed no documents referencing the terms: “Sec. 1981”, “ethnic discrimination”, “nationality”, or “Arab”. The term “Indian”, however returned at least 60 references in the site’s search engine.

Where Not Otherwise Proscribed by Law, Private Enforcement Action Complements Administrative Mechanisms to Correct Federal Discrimination Against Minorities

In some areas, such as federal employment, Congress has created certain administrative remedies for discrimination complaints, and the courts have upheld that their availability effectively voids Section 1981 relief through the courts. The U.S. Supreme Court found that in the context of federal employment that Sec. 1861 relief would not apply, and held in *Brown v. General Servs. Admin.*, 425 U.S. 820, 834-35, 96 S.Ct. 1961, 1969, 48 L.Ed.2d 402 (1976) that Congress had expressly intended that the “carefully constructed” administrative and judicial processes for federal employment discrimination cases described in Chapter 717 of Title VII to be the sole available remedy:¹⁹

[While] federal employment discrimination clearly violated both the Constitution, *Bolling v. Sharpe*, [347 U. S. 497](#) (1954), and statutory law, 5 U.S.C. § 7151, before passage of the 1972 Act . . .

Held: Section 717 [of Title VII] provides the exclusive judicial remedy for claims of discrimination in federal employment, and, since petitioner failed to file a timely complaint under § 717(c), the District Court properly dismissed his complaint. Pp. [425 U. S. 824-835](#).

(a) The legislative history indicates that Congress, which was persuaded that federal employees who were treated discriminatorily had no effective judicial remedy, intended by the 1972 legislation to create an exclusive, preemptive administrative scheme for the redress of federal employment discrimination. Pp. [425 U. S. 824-829](#).

Nonetheless, that decision notes *Brown*'s citation of decisions that hold, as a general matter – absent such expressed Congressional intent to the contrary – Title VII and Sec. 1981 continue to coexist and complement each other in addressing other areas of discrimination. The Federal Civil Service laws offer a scheme for review of adverse employment decisions is a type of “narrowly tailored employee compensation scheme” that the Court held “pre-empts the more general tort recovery statutes.” [834-35] Indeed, the Court acknowledges in its discussion in *Brown* that it had just held such in its previous term, Congress intended that Title VII and Sec. 1981 continue to complement each other, and the Court has never ruled that the federal government action is altogether outside the scope of Sec. 1981:

The petitioner relies upon our decision *Johnson v. Railway Express Agency*, [421 U. S. 454](#) (1975), for the proposition that Title VII did not repeal preexisting remedies for

¹⁹ See, <http://supreme.justia.com/cases/federal/us/425/820/>

employment discrimination. In *Johnson*, the Court held that, in the context of private employment, Title VII did not preempt other remedies. But that decision is inapposite here. In the first place, there were no problems of sovereign immunity in the context of the *Johnson* case. Second, the holding in *Johnson* rested upon the explicit legislative history of the 1964 Act which

"manifests a congressional intent to allow an individual to pursue independently his rights under both Title VII and other applicable state and federal statutes."

421 U.S. at [421 U. S. 459](#), quoting *Alexander v. Gardner-Denver Co.*, [415 U. S. 36](#), [415 U. S. 48](#) (1974). Congress made clear

"that the remedies available to the individual under Title VII are coextensive with the individual's right to sue under the provisions of the Civil Rights Act of 1866, 42 U.S.C. § 1981, and that the two procedures augment each other and are not mutually exclusive."

421 U.S. at [421 U. S. 459](#), quoting H.R.Rep. No. 92-238, p. 19 (1971). See also *Jones v. Alfred H. Mayer Co.*, [392 U. S. 409](#), [392 U. S. 415-417](#) (1968). There is no such legislative history behind the 1972 amendments. Indeed, as indicated above, the congressional understanding was precisely to the contrary.

Section 1981 and Section 1983 also act in tandem. On their faces, Title 42 U.S.C. Sections 1981 and 1983 only provide a cause of action against state actors and 1981 is further limited to private persons. However, the right to sue federal officials under 1983 was recognized at common law in *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971). While in recent years, the right to bring *Bivens* actions has been limited, there is no inherent reason why a federal agency official could not be sued under both Civil Rights Sections, and Title VII, in the same action.

Section 1983 provides²⁰:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States **or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law**, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Bivens involved a case of unlawful entry and search by federal DEA officers in a drug case. The U.S. Supreme Court applied the following analysis in *Bivens* in reaching its

²⁰ §1983, [Title 42](#) › [Chapter 21](#) › [Subchapter I](#) › § 1983 <http://www.law.cornell.edu/uscode/text/42/1983>

decision that Sec. 1983 protections reach federal authority as well as that of persons acting under state law for violations of constitutional protections or federal laws.

First. Our cases have long since rejected the notion that the Fourth Amendment proscribes only such conduct as would, if engaged in by private persons, be condemned by state law... if the Fourth Amendment reached only to conduct impermissible under the law of the State, the Amendment would have had no application to the case. Yet this Court held the Fourth Amendment applicable and reversed petitioners' convictions as having been based upon evidence obtained through an unconstitutional search and seizure... In light of these cases, respondents' argument that the Fourth Amendment serves only as a limitation on federal defenses to a state law claim, and not as an independent limitation upon the exercise of federal power, must be rejected.

Bivens does not only apply to the fourth Amendment searches and seizures. The Civil Rights Acts, which include Sections 1981 and 1983, have been found to extend to rights protected under the First, Second, Fourth, Fifth, Sixth, Eighth, Thirteenth, and Fourteenth Amendments.²¹ The courts, should they apply the *Bivens* doctrine to the circumstances of denial of contract rights in federal contracting and licensing, would similarly find that the constitutional right to equal protection would extend Sec. 1981 consequences to acts carried out under federal authority as well as state law by public officials and private persons, alike, and that federal officials have no special immunity to the consequence of acts of discriminatory interference with the right of contract, just as a "*Bivens* Action" brings them under the coverage of Sec. 1983 for denial of all rights and protections guaranteed by the U.S. Constitution and federal laws.

²¹ For an example of a complex discrimination Civil Rights Acts complaint reliant upon a number of underlying constitutional grounds survived defendant agency's efforts at dismissal, see, *Wynder v. McMahon*, 360 F.3d 73 (2nd Cir. March 1, 2004), <http://caselaw.findlaw.com/us-2nd-circuit/1241825.htm> In that case, the civil rights complaint alleged discriminatory state action had deprived him his rights under the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments in violation of 42 U.S.C. §§ 1981, 1983, 1985, 1986, and Title VII of the *Civil Rights Act* of 1964.

I. Section 1981 presents a solution to several problems with Title VII, and should be the preferred remedy in a combined action filed concurrently with a Title VII claim in cases where intentional discrimination can be shown.

The language of 42 USC § 1981a - Damages in cases of intentional discrimination in employment, states:²²

In an action brought by a complaining party under section 706 or 717 of the Civil Rights Act of 1964 [42 U.S.C. 2000e-5, 2000e-16] against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) prohibited under section 703, 704, or 717 of the Act [42 U.S.C. 2000e-2, 2000e-3, 2000e-16], and **provided that the complaining party cannot recover under section 1981 of this title, the complaining party may recover compensatory and punitive damages as allowed in subsection (b) of this section, in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent.**

An action filed under this part of the 1868 Civil Rights Act offers specific advantages that make it a more attractive alternative in many cases.

A plaintiff who suffers employment discrimination has more time to file suit directly in federal court under Section 1981, which has a statute of limitations of 4 years. Prior to 1991, where claims were brought pursuant to Section 1981, the Supreme Court stated that federal courts should apply “the most appropriate of analogous statute of limitations.” *Goodman v. Lukens Steel Co.*, 482 U.S. 656, 660 (1987). Some state laws contain a statute of limitations on bringing civil suit that is shorter than the federal standard of four years, set in 1991. For instance, the applicable California statute of limitations is two years. However, in 1991, Congress passed a catchall four (4) year statute of limitations for actions arising under any “Act of Congress”. 28 U.S.C. Section 1658(a) (“Section 1658”).

²² §1981a, *ibid.*, <http://www.law.cornell.edu/uscode/text/42/1981a>

J. Arab Americans Suffer Systematic Cumulative Discrimination

Once considered along with Asians to be an example of an immigrant group that has achieved relative economic success and fair assimilation in American society, Arab Americans today are experiencing serious setbacks. In the past several decades, while some minorities have made remarkable strides toward widespread acceptance at the top levels of American society and business, Arab-Americans have aggregated an increasing political and social stigma that makes them especially vulnerable targets for discrimination affecting their long-term ability to compete for positions at all levels of the economy. This makes them subject to the multitude of aggregating disadvantages due to the sort of “cumulative discrimination” described in the NAS report.

Cumulative discrimination is rooted in several decades of widespread hostility against persons of Middle Eastern origin -- Arabic, Chaldean, Persian and Turkic people, alike -- as well as religious-based discrimination and outright paranoia about Muslims. The intensity of these stereotypes and prejudices were telegraphed many-fold in the period following September, 2001. Davila and Mora found that had a direct impact upon employability and earnings for persons of identifiable Arab ethnicity:²³

[W]e find that Middle Eastern Arab men and Afghan, Iranian, and Pakistani men experienced a significant earnings decline relative to non-Hispanic whites between 2000 and 2002. Further analyses based on the Juhn–Murphy–Pierce wage decomposition technique as well as quantile regression indicate that this earnings decline is not explained by changes in the structure of wages or in observable characteristics beyond ethnicity. Our interpretation is that the unanticipated events of September 11th, 2001 negatively affected the labor-market income of the groups most closely associated with the ethnicity of the terrorists.

While the above researchers also report that the number of employment discrimination complaints received by the American Arab Anti-Discrimination Committee (ADC) quadrupled during that period, this still may not capture the actual magnitude of heightened hiring discrimination faced by professionals of Arab ethnicity, as much of it goes either undetected pre-employment due to “resume sifting” at the recruitment level. Even if hired, Arab-Americans like other minorities in the professions are far less likely to make it to the top of their firm. New associates who are minorities are only one-seventh as likely to be promoted into an equity partnership position as their white, male law school classmates. Further obscuring these problems is the particular difficulty associated with measuring the extent of specific anti-Arab discrimination because EEOC compliance and other official employment-related data has no separate category

²³ A. Davila and M. Mora, Journal of Population Economics, “Changes in the earnings of Arab men in the US between 2000 and 2002”, (Vol. 18 587-621, 2005), [Changes in the earnings of Arab men in the US between 2000 and 2002](#)

for this group that might capture the subtler patterns of hiring and promotions discrimination faced by Arab-Americans.

Even before 9/11, Arab-Americans carried a stigma attributable to stereotypes in popular culture and widespread political antipathies toward Muslim peoples of the Middle East. One 1997 study concluded that as overt racism and discrimination against other minorities has become more socially unacceptable, the intensity of prejudice against Arab-Americans has increased and discrimination against immigrants from that region may even be increasingly tolerated.²⁴ Sadly, more than a decade into the 21st Century, deep prejudices against Middle Eastern peoples persist, continuing to cause problems for their advancement within the professions and in corporate America.

K. Ethnic Discrimination Against Arab Immigrants: A Local, National and Global Problem

While this Comment has primarily dealt with employment discrimination against Arab-American professionals, we want to reinforce that ethnic prejudice is not a problem of assimilation that is unique to the United States. MBDA's mission is also to promote minority-owned business globally. We will therefore complete this paper with research and analysis from the European Union Agency for Fundamental Rights that finds exactly the same types of discrimination issues throughout the EU:²⁵

Overwhelming majority do not report their experiences of racism

On average, 79% of Muslim respondents, particularly youths, did not report their experiences of discrimination. This means that thousands of cases of discrimination and racist crime remain invisible, and are therefore not recorded in official complaints and criminal justice data collection mechanisms. People without citizenship and those who have lived in the country for the shortest period of time are less likely to report discrimination.

Regarding the reasons for not reporting incidents, 59% of Muslim respondents believe that 'nothing would happen or change by reporting', and 38% say that 'it happens all the time' and therefore they do not make the effort to report incidents.

[. . .]

²⁴ Faragallah, ME, Schumm, WR, Webb, J, "Acculturation of Arab-American immigrants: An exploratory study", *Journal of Comparative Family Studies*, Vol. 28, 1997, [Acculturation of Arab-American immigrants: An exploratory study](#)

²⁵ EUAFR, http://fra.europa.eu/fraWebsite/eu-midis/eumidis_muslims_en.htm

► Ethnicity is the main reason for discrimination

Of those Muslim respondents who experienced discrimination in the past 12 months, the majority believed that this was mainly due to their ethnic background. Only 10% stated that they thought that the discrimination they experienced was based solely on their religion. However, 51% of Muslims compared to 20% of non-Muslim ethnic minorities surveyed believe that discrimination on grounds of religion or belief is “very” or “fairly” widespread.

The European study illustrates an alternative conception of the ethnic discrimination paradigm, and it reinforces the imperative that EEOC introduce a more complete and accurate range of categories for Minorities than the existing system limited to four race categories: Hispanic or Latino, White (not of Hispanic origin), Asian, Black or African-American, or Two or more Races; along with just four ethnic categories - Native Hawaiian or Other Pacific Islander (not Hispanic or Latino), and American Indian or Alaska Native.

L. CONCLUSION: The MBDA Mission Statement includes creating a fully fair and inclusive roster of client disadvantaged minorities, including Arab Americans

Since MBDA works in tandem with other federal agencies and commissions, including the EEOC, and a parallel set of State and local anti-discrimination laws and commissions, it is incumbent upon these bodies to create a fully fair and inclusive roster of disadvantaged minority groups, including Arab Americans. MBDA’s Mission statement is:²⁶

MBDA’s Mission is to foster the growth and global competitiveness of U.S. businesses that are minority- owned.

The groups considered “socially and economically disadvantaged,” listed in Executive Order 11625, are “Black, Puerto-Ricans, Spanish-speaking Americans, American Indians, Eskimos, and Aleuts.” As noted in the NOPR, Hasidic Jews, Asian Pacific Americans and Asian Indians have been included in the list of the groups who are socially or economically disadvantaged and thus eligible for assistance from the MBDA in 15 CFR part 1400.1(c).

As the agency specifically charged with promoting minority contracting worldwide, there is no rational basis as to why MBDA should not include Arab Americans in that list of groups eligible for such assistance. Therefore, the Agency should now grant this petition.

²⁶ See, Director Hinson's Presentation on MBDA's Strategic Direction August 27, 2009, <http://www.mbda.gov/node/421>

Appendix I: Resume with Selected Publications of Rami D. Fakhoury

RAMI D. FAKHOURY

EDUCATION:

J.D. - Cum Laude, Michigan State University (International Law Concentration), 1993

B.A. - B.S., Wayne State University (Finance/ Economics), 1989

PROFESSIONAL LICENSES:

State Bar of Michigan, 1994

Federal District Court

- U.S. District Court of the Eastern District of Michigan, 1994
-

PROFESSIONAL ORGANIZATIONS:

American Bar Association

American Immigration Lawyers Association (AILA)

State Bar of Michigan, International Law Section

Information Technology Association of America (ITAA), Immigration Law Committee

International Business Association, Immigration Law Committee;

Fellow, Center of International Legal Studies, Salzburg Austria

PROFESSIONAL ACHIEVEMENTS:

Martindale-Hubbell, Rated AV

Immigration Attorney of the Year (2011) – *Detroit Lawyer Monthly*

Top Lawyer - *D Business* and *Hour* magazines

International Who's Who of Corporate Immigration Lawyers

AREAS OF PRACTICE:

Corporate Immigration Law

PROFESSIONAL EMPLOYMENT HISTORY:

2006 – Present, Equity Partner, [Fakhoury Global Immigration](#)
102, Mahavir Estate,
Off Mahakali Caves Road,
Andheri (E), Mumbai 400093 INDIA

1997 – Present, Managing Attorney, [Fakhoury Law Group](#), PC,
3290 West Beaver Road, Suite 510, Troy, MI 48084

LEGAL TREATISES AND SELECTED PUBLICATIONS:

Editor - *The Consular Posts Book*, (2009-2010 Edition), *USCIS immigration procedures and US State Dept. consular procedures*, (ILW Publications, 2009)(ISBN 0-9769529-2-0),
<http://www.ilw.com/books/ConsularPosts.pdf>.

Author - Two other immigration books and hundreds of policy articles, professional and trade group presentations, and white papers. In partnership with other ABIL attorneys, and the prestigious LexisNexis legal publishing company, Mr. Fakhoury is Chapter Author on the H-1B, EB-1, EB-5 and TN categories in the upcoming book, *Global Business Immigration Guide*.

2011 – Present, Columnist (Global IT Industry and US Immigration) for India's *The Financial Times*.

PROFESSIONAL EXPERIENCE:

Over 3,500 immigration cases prepared per year with a 98 percent approval rate (FY 2010)

Appendix II: 2005 Changes to Form EEO-1

Private sector employees with 100 or more employees and companies that are not an affirmative action employer with 50 or more workers are required to submit an EEO-1 Report with the Equal Employment Opportunity Commission (EEOC).

Qualifying employers must file demographic data each year by September 30th that tells the government the makeup of their workforce by sex and race/ethnicity. This is further divided into occupational categories called EEO-1 Groups.

The EEO-1 Report is one of several Standard Form 100 reports created by the government to amass statistics about America's workforce. EEO-1 contains information from private sector employers (public and private companies). The EEOC began collecting employer data in 1966 under the authority given to it by the Civil Rights Act of 1964. Little changed on the EEO-1 until last revised on November 28, 2005.

Changes in EEO-1

Several changes were made in the race/ethnic categories for which reporting is required.

Pre-2005 EEO-1 Categories

- Hispanic
- White (not of Hispanic origin)
- Black (not of Hispanic origin)
- Asian or Pacific Islander
- American Indian or Alaskan Native

Revised EEO-1 Categories

- Hispanic or Latino – includes all employees who answer "Yes" to the question, are you Hispanic or Latino?
- White (not Hispanic or Latino)
- Black or African American (not Hispanic or Latino)
- Native Hawaiian or Other Pacific Islander (not Hispanic or Latino)
- Asian (not Hispanic or Latino)
- American Indian or Alaska Native (not Hispanic or Latino)
- Two or More Races (not Hispanic or Latino)

[For an official set of definitions and instructions for completing the new EEO-1 form go to: [EEO-1 Instruction Booklet](#)]

APPENDIX III

The Demographics of Equity

Leipold, J.G. and Collins, J.N., *The Demographics of Equity*, *NALP Bulletin*, (Nov. 2011), http://www.nalp.org/demographics_of_equity

Are equity partners in law firms disproportionately white men? It turns out that the answer is probably yes, and no.

There has been considerable speculation about and consternation over the prospect that the ranks of non-equity partners were filled disproportionately with women and minority lawyers. Until now there has not been good industry data available to help answer this question.

For the first time, in 2011 NALP included reporting of equity and non-equity partner information in the *NALP Directory of Legal Employers*. Many firms with multi-tier partnership structures reported on the demographics of their equity and non-equity partners, and, as a result, we are now able to say something about the disparities that do or do not exist. The findings are many, but the bottom line is that while partners in general continue to be disproportionately both male and white, among women lawyers and minority lawyers who are partners, there is not a dramatic skew toward non-equity status.

This new data is by no means definitive, but it is the beginning of being able to say something meaningful about the ranks of equity and non-equity partners as to race and gender. Although many firms with multi-tier partnerships did not provide equity/non-equity demographics in this first year, many did, accounting for just over 20,000 partners, or about half of the partners in the directory who are at firms with multi-tier partnerships. Tables 1-3 provide several perspectives on the initial findings.

- Overall, based on those offices that provided information, 65% of male partners were equity partners as of February 2011, while just under half (47%) of both women partners and minority partners were equity partners, a differential of 18 percentage points. See [Table 1](#).
- Among equity partners, about 84% were men, 16% were women, and just under 5% were racial/ethnic minorities. (The minority figures include both men and women, so the three figures add to more than 100%.) Among non-equity partners, the respective figures were 72% men, 28% women, and 8% racial/ethnic minorities. See [Table 2](#).
- Finally, among all partners, the equity/non-equity split is about 61%/39%. Just over half of partners were male equity partners; not quite 10% were women equity partners; and almost 3% were minority equity partners (Again, minorities are also included in the counts by gender.) See [Table 3](#).

Given the fact that law firm partners are still overwhelmingly white and mostly male — about 94% of all partners are white and about 81% are men according to NALP's most recent figures — these new findings do not paint a picture as gloomy as many feared. In other words, only

19% of all partners are women while 47% of women partners are equity partners, nearly 16% of all equity partners are women, and nearly 10% of all partners are women with equity. Similarly, only 6% of all partners are minority lawyers while 47% of minority partners are equity partners, nearly 5% of all equity partners are minority, and more than 3% of all partners are minorities with equity. The disparities by race and gender are stark, to be sure, but the proportion of women and minorities who are equity partners is not dramatically worse than the overall numbers of women and minorities who are partners. Many industry observers feared that the disparities would be greater than they appear to be.

Any conclusions drawn from this data must be stated very tentatively, however. Given how closely some firms hold the information about equity and non-equity demographics, we were pleased to receive the information for half of all partners in multi-tier firms listed in the directory in the first year of this data collection effort. Whether the findings based on those who did report can be extrapolated to the larger group of offices with multi-tier partnerships, however, is not known. We do not know the characteristics of those offices that did not report and there is no other publicly available data set to use for comparison purposes, so these data must stand on their own until more data can be gathered.

We are hopeful that, as with most of NALP's data collection efforts, a larger percentage of law firms will provide the information as time goes by. Going forward, law students and other constituencies will likely push additional law offices to report on their equity/non-equity partner demographics, and law firms will likely grow more comfortable reporting this data in a variety of settings. As a result, hopefully a broader and even more representative data set can be built.

To determine whether an individual law firm or law office is a multi-tier firm, and to determine if multi-tier demographic data were submitted, you can review an individual law office's NALP form at www.nalpdirectory.com.

Table 1. Percent of Partners Reported as Equity Partners by Gender or Minority Status

Men partners	16,134
% equity	64.9%
Women partners	4,104
% equity	47.0%
Minority partners	1,229
% equity	47.1%

Table 2. Distribution of Equity and Non-equity Partners by Gender or Minority Status

Equity partners	12,396
% men	84.4%
% women	15.6%
% minority	4.7%
Non-equity partners	7,842
% men	72.3%

% women	27.7%
% minority	8.3%

Table 3. Distribution of All Partners by Equity Status and Gender or Minority Status

Total partners	20,238
% equity	61.3%
% men equity	51.7%
% women equity	9.5%
% minority equity	2.9%
% non-equity	38.7%
% men non-equity	28.0%
% women non-equity	10.7%
% minority non-equity	3.2%

Note: Figures are based on 317 offices/firms that have a tiered partnership and also reported information on equity and non-equity partner counts. A number of firms that otherwise reported information on an office-by-office basis reported the partnership information on a firm-wide basis. Minorities are also counted as men or women, hence percentages add to more than the total.

[SIDEBAR: Minority Enrollment]

2.23.12 [The Chronicle of Higher Education](#) highlights some of the most recent census results around minority gains higher education. According to the paper, “From 2001 to 2011, the number of Hispanics 25 and over with a bachelor’s degree or higher rose by 80 percent, the figures show. Among blacks, the increase was 47 percent, and among non-Hispanic whites, it was 24 percent.”]



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TTY USERS CALL VIA MD RELAY

June 27, 2012

Josephine Arnold
Chief Counsel, Minority Business Development Agency
Department of Commerce
1401 Constitution Avenue, NW, Room 5093
Washington, DC 20230

Dear Ms. Arnold:

I am writing regarding the petition filed by the American-Arab Anti-Discrimination Committee (ADC), seeking the designation of Arab Americans as a disadvantaged minority under the Department of Commerce's Minority Business Development Agency (MBDA). Here in Maryland, we understand that diversity strengthens all of our communities, and recognize the need to explore different ways in which all of our citizens can enjoy equal access and opportunities.

As I have travelled throughout our state, I have heard from Arab Americans about the daily challenges they face. I have met with business owners who have shared their struggles in dealing with customers and clients who refuse their services because of prejudice or fear. Many of these proprietors feel isolated within their communities, and worry for the survival of their businesses and their children's futures -- a concern which we can all share.

In 2007, Governor O'Malley created the Governor's Commission on Middle Eastern American Affairs, and since then, we have been working closely with the Commission to understand the needs and concerns of the entire Arab American community in Maryland. Last year, Governor O'Malley became the first sitting Maryland Governor to travel to the Middle Eastern Gulf Region when he travelled to Qatar to strengthen relationships with the business community there and to promote opportunities for businesses throughout our state.

It is our goal in the O'Malley-Brown administration to make opportunities available for all Marylanders, and to level the playing field so that all of our citizens have a chance to pursue the American Dream. We are strongly committed to expanding opportunities for minority businesses throughout our state, and believe that small businesses, which are woven into the fabric of our communities, deserve our support. With that in mind, we support the ADC's efforts to address discrimination against Arab Americans.

Sincerely,

A handwritten signature in black ink that reads "AGB Brown".

Anthony G. Brown

AGB/rc



PEOPLE. PROCESS. TECHNOLOGY.

3290 West Big Beaver, Suite 220, Troy, Michigan 48084 ▶ P 313.962.9000 ▶ F 313.962.9001 ▶ optechus.com

June 29, 2012

Submission by email: AAComments@mbda.gov

Re: Docket No. 120517080-2080-01
Ms. Josephine Arnold, Chief Counsel,
Minority Business Development Agency,
Department of Commerce, 1401 Constitution Avenue N.W.,
Room 5093, Washington, DC 20230

Dear Ms. Arnold,

This company wishes to comment in response to the Department's request for comments submitted by the Minority Business Development Agency (MBDA), as published in *The Federal Register* Volume 77, Number 104 (Wednesday, May 30, 2012), Proposed Rules, Pages 31765-31767.

The Agency has issued proposed rules considering a Petition submitted by the American-Arab Anti-Discrimination Committee (ADC) for Inclusion of the Arab American Community in the Groups Eligible for MBDA Services, and we write in favor of that petition and a positive action by the Agency.

As President and CEO of OpTech, I am pleased to provide MBDA with information about emerging issues of concern to Arab American-owned small businesses, and to support the action sought by the ADC petition. We are particularly concerned about discrimination in contracting, and note that measures to record, report and enforce existing anti-discrimination laws need to be strengthened, and further corrective measures are required, so that Arab American owned businesses can fully and fairly compete both in domestic markets and in exports of goods and services around the world.

As a woman-owned business, OpTech is a supporter of small businesses including minority and women-owned businesses, and strives to conduct business with these diverse groups. In fact, approximately 35% of OpTech's business to suppliers goes to minority and women-owned businesses. We note that this company has benefited from its designation as a women-owned business and point out that we can see no good public policy reason why federal recognition and benefits should not also be made available on an equal basis to similar Arab American-owned businesses.



OpTech is an SBA 8(a)-certified technology consulting and business solutions firm based in Troy, Michigan, with partners across the country allowing us to provide services to commercial and government clients. We hold GSA Contract #GS35F-0136S. Our services include professional consulting services, business process re-engineering, application maintenance outsourcing, enterprise resource planning solutions, and eBusiness solutions. OpTech strives to exceed its client's expectations by offering exceptional and cost-effective services in accordance with the highest moral and ethical standards. We owe a measure of our success to federal and public sector contracting where we enjoy status as a woman-owned small business.

We also note that companies that contract with the federal government employ 22 percent of the entire U.S. workforce. In addition, the American-Arab Anti-Discrimination Committee (ADC) has found a pattern of continuing discrimination and elevated levels of hate crimes against Arab Americans years after 9/11.¹ Federal contracting is extremely important to the advancement of minority groups. Despite these facts, we are dismayed to note that the last major study undertaken into discrimination and disparities in minority contracting by the US Commission on Civil Rights (2006)² did not deal with the subject of Arab Americans and failed to even once mention the words Arab or Arab Americans. By comparison, racial discrimination and discrimination in contracting against Blacks, Hispanics, and women-owned businesses was referenced at multiple portions of the same document. Furthermore, when we looked at the archives of the Commission, we found that of the hundreds of publications compiled in the last five decades, not a single title dealt with a nationwide study of discrimination against Arab Americans, and the topic of discrimination against this group was the subject of only five state-wide studies, most of these dealing with the immediate impact of post-9/11 Civil Rights issues.³ We believe that the problems facing Arab American and Muslim-owned businesses has been understudied and underestimated, and that more needs to be done by the federal government so this community can perform to its full potential. Discrimination has resulted in long-standing disadvantages and disparities for many of these concerns. As an ethnic minority that has experienced both social and economic discrimination, this community would greatly benefit from designation as a disadvantaged group with access to MBDA funded programs.

¹ See, ADC, "**Report on Hate Crimes and Discrimination Against Arab Americans.**" The report spanning four years (2003-2007) examines hate crimes against the Arab American community, employment discrimination in private and public sector as well as continuing challenges associated with government watch lists and media bias. It also focuses on discrimination and bias in primary and secondary educational institutions; discrimination and political harassment campaigns in higher education.

² See, CR1.2006/12 **Disparity Studies as Evidence of Discrimination in Federal Contracting: Briefing Report.** U.S. Commission on Civil Rights. Washington, DC. May, 2006. [PDF]

³ See, **Historical Publications of the United States Commission on Civil Rights** - SuDoc Number List, <http://www.law.umaryland.edu/marshall/usccr/sudoclist.html>



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On behalf of OpTech, an SBA 8(a) certified woman-owned business, and as an Arab American, I welcome this opportunity to express support for the ADC petition and urge positive action on it by the MBDA.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Ronie Kruse". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ronia Kruse

CEO

June 29, 2012

Via Electronic Mail to

Ms. Josephine Arnold
Chief Counsel - Minority Business Development Agency
Department of Commerce
1401 Constitution Avenue NW., Room 5093
Washington, DC 20230

Docket No. 120517080-2080-01

Dear Ms. Arnold:

I am writing this letter in support of the petition filed by the American-Arab Anti-Discrimination Committee (ADC), requesting that the Arab-American community be designated as a "disadvantaged minority." I have worked diligently over the years on this project after witnessing first hand for several decades the social and economic discrimination faced by the Arab American community.

Indeed, the name you will read signed at the bottom of the page is not my given name. After immigrating to the US at an early age of 17, I quickly changed my name from Jihad to Jay, knowing that I would never succeed otherwise. Time would prove me unequivocally correct.

The deep-rooted social and economic discrimination faced by Arab Americans have been well documented over the decades. You will read about some of these cases in the petition submitted by the ADC; most others are buried in books and memories. Sadly, the heinous attacks of 9/11 only served to deepen the prejudice faced by Arab-Americans.

Still, if you study figures, the Arab American community has consistently been among the highest educated and most peaceful communities in this rich social fabric we call the United States of America. We take tremendous pride in being a part of this great nation, and in giving so much back in return.

I respectfully ask that the Commerce Department approve this petition, in order to start the process of overturning several years of discrimination faced by our community.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jay Salkini", with a stylized flourish at the end.

Jay Salkini
President & CEO

ROBERT E. ANDREWS
FIRST DISTRICT, NEW JERSEY
COMMITTEES:
EDUCATION AND THE WORKFORCE
RANKING MEMBER, SUBCOMMITTEE ON
HEALTH, EMPLOYMENT, LABOR
AND PENSIONS (HELP)
MEMBER, SUBCOMMITTEE ON HIGHER EDUCATION
AND WORKFORCE TRAINING
ARMED SERVICES
MEMBER, SUBCOMMITTEE ON EMERGING THREATS
AND CAPABILITIES
RANKING MEMBER, PANEL ON DEFENSE ACQUISITION REFORM
MEMBER, SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS

Congress of the United States
House of Representatives
Washington, DC 20515-3001

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(856) 546-5100
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June 28, 2012

Ms. Josephine Arnold
Chief Counsel, Minority Business Development Agency
Department of Commerce
1401 Constitution Avenue, NW, Room 5093
Washington, DC 20230

Docket No. 120517080-2080-01

Dear Ms. Arnold,

I write to you in support of the Arab-American Anti Discrimination Committee's (ADC) petition to gain recognition for their community as an economically and socially disadvantaged minority by the Minority Business Development Agency (MBDA).

The MBDA, in accordance with Executive Order 11625, funds businesses owned and controlled by individuals who are part of a group that is labeled as socially and economically disadvantaged. The Arab-American community fits this criterion for a number of reasons.

In the wake of 9/11, the Arab-American community has experienced a rise in discrimination marked by a decrease in employment, work hours, and earnings. Arab-Americans also face challenges in maintaining social parity; Thomas E. Perez, Assistant Attorney General for the Civil Rights Division, in his 2011 Congressional testimony, stated that cases of discrimination against Arab-Americans have risen 1,600 percent since September 11, 2001.

Granting the Arab-American community the financial assistance they deserve will not only bolster business development, but also create jobs for fellow Americans. Under E.O. 11625 and 15 CFR part 1400, the Arab-American population is entitled to the same equal treatment that other minorities under this status enjoy.

Sincerely,



M.C.

Robert E. Andrews
Member of Congress

14210 Sullyfield Circle, Suite D, Virginia 20151, Phone (703) 766-5215, Fax: (703) 766-5216

June 29, 2012

Submitted via electronic mail to AAComments@mbda.gov

Ms. Josephine Arnold
Chief Counsel, Minority Business Development Agency
Department of Commerce
1401 Constitution Avenue, NW, Room 5093
Washington, DC 20230

Re.: Docket No. 120517080-2080-01

Dear Ms. Arnold,

I am writing this letter in support of the petition filed by the American-Arab Anti-Discrimination Committee (ADC), requesting that the Arab-American community be designated as a "disadvantaged minority." Since our arrival to this great nation members of the Arab American community have faced discrimination in many forms. The result of this discrimination, as is indicated in the brief filed by ADC, has led many Arab American business owners to struggle financially.

The social and economic hardships suffered by the minorities already designated as "disadvantaged" that justly warrants them this status by no means exceed those we face. In fact, as opposed to the other "disadvantaged minorities" our discrimination begins the moment our Arab names are seen on an application or heard, before we are even met in person. The opportunity of making a first impression is a privilege we rarely have since a detrimentally negative stereotype always precedes us. While our community has faced discrimination since our ancestors immigrated in the early 1800's, it has reached astounding levels after the heinous attacks of 9/11. The sad irony is that even a Christian like me cannot escape the "Islamofascist terrorist" mold every member of our community is cast in.

I immigrated to this country as a young man and have pursued the American Dream ever since. In my earlier years here I worked hard to obtain the key to success; an education. But for me even that was not as simple as it is for most. While I had excelled in all courses offered, one professor insisted on failing me without offering a shred of evidence or even showing me the exam that I had allegedly failed. Complaints to the Dean and administration fell on deaf ears in what was an institutionalized form of discrimination. Naturally I had to transfer to a new university where I would not be discriminated against purely due to my ethnicity, and graduated successfully. Later in my years here I successfully established several companies, facing racial hardships at every juncture. Therefore I respectfully request that the Commerce Department approve this petition in the hope that fellow and future Arab-Americans do not face the unjust discrimination I had to endure.

Sincerely,



Saad Dorgham, MS, PE
Executive Manager

AMERICAN TASK FORCE FOR LEBANON

The Hon. Thomas A. Nassif *
Chairman and
Chief Executive Officer

Mr. Peter J. Tanous *
President and
Chief Operating Officer

Ray R. Irani, Ph.D. *
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Mr. Nijad I. Fares *
Vice Chairman

28 June 2012

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Vice Chairman

F. Paul Maloof, Esq. *
Secretary and
Legal Counsel

George T. Cody, Ph.D.
Executive Director

Ms. Josephine Arnold
Chief Counsel
Minority Business Development Agency
Department of Commerce
1401 Constitution Avenue, NW
Room 5093
Washington DC 20230

Gibran Circle

Mr. Habib Debs
Mr. Nijad I. Fares
Mr. William A. Hanna
Ray R. Irani, Ph.D.
The Hon. Darrell Issa
Mr. James J. Kassouf
Mr. Sam Moore

Re: Public Comment - 15 CFR Part 1400.3
Docket No. 120517080-2080-01
Comment sent via email to AAComments@mbda.gov

Dear Ms. Arnold:

The American Task Force for Lebanon (ATFL) supports the 4 January 2012 American Arab Anti-Discrimination Committee (ADC) petition to the United States Department of Commerce, Minority Business Development Agency (MBDA) for formal recognition of the Arab-American community as a minority group that is socially or economically disadvantaged. ATFL understands this recognition would make it easier for Arab-Americans to seek benefits of MBDA programs and opportunities, providing greater support to Arab American businesses, such as the MBDA Business Center program.

We welcome any questions you may have regarding ATFL's support for this petition.
Thank you.

Sincerely,

The Hon. Thomas A. Nassif
Chairman

Baalbek Circle

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Mr. Tallal A. Turfe

* Executive Committee

**ATFL members are listed
on the reverse side**

[REDACTED]

From: Albert Mokhiber <albert.mokhiber@verizon.net>
Sent: Friday, June 29, 2012 5:11 PM
To: AACComments
Subject: Arab- American Minority Designation Status (MBDA) Docket No. 120517080-2080-01
Attachments: MBDA_ADC_Notice.pdf

June 29, 2012

RE: Docket No. 120517080-2080-01

Ms. Josephine Arnold, Chief Counsel,
Minority Business
Development Agency,
US Department of Commerce

Dear Ms. Arnold:

As you know, on January 11, 2012 the American-Arab Anti-Discrimination Committee (ADC) filed a brief with the US Department of Commerce requesting formal designation of Arab-Americans as a socially or economically disadvantaged minority group pursuant to 15 CFR Part 1400. This designation would allow members of the Arab-American community to receive assistance from MBDA funded programs. On May 30, 2012 the US Department of Commerce issued a notice on the Federal Register explaining their acceptance of the petition for consideration and welcoming public commentary on the propriety of the designation.

At this time, I respectfully submit my comments in support of the ADC brief.

I do so as a member, former Director of Legal Services and past President of ADC. I also do so as a fourth generation American of Arab descent and a husband and father of four Arab-American children. Finally, I write as a practicing attorney who has counseled thousands of Arab-Americans over the past 28 years.

The very fact that we were obliged to establish an anti-discrimination organization to safeguard the civil and constitutional rights of Arab-Americans in 1980 speaks volumes about the social and economic disadvantage that this community has faced. In fact, ADC founder, former US Senator James Abourezk of South Dakota, felt compelled to form ADC when the discrimination against the community in the late 1970's became institutionalized, including at least one federal agency.

Over the years, ADC has recorded hate crimes and issued various reports documenting the same. Copies of these reports can be found at www.adc.org

While there seems to be a steady stream of reports over the past three decades since record collection began, we have noticed spikes or backlashes relating to upheavals in the Middle East or other tragedies, the worst of which was the terrorist attacks against our country on September 11, 2001. The Arab-American community was impacted doubly by 9-11; first as all Americans and the with the backlash specifically against person of Arab ethnicity. This despite the fact that we, like all sane Americans, condemned 9-11, lost loved ones, assisted in the rescue efforts and fought in the military to safeguard our country.

Prior to 9-11, ADC was itself attacked by terrorists on three separate occasions in 1985 when its offices were bombed in Boston, Washington, DC and Santa Ana, California. The California bombing was particularly dreadful as the West Coast Director, Alex Odeh, a well respected peace activist was assassinated by a sophisticated trip wire bomb that was

attached to the ADC office door. It detonated upon Alex's entry, killing him on the spot. He was survived by a young wife and three small children. While his killers remain at large, the FBI still has a webpage dedicated to his murder with a \$1 million reward.

Obviously, the less visible acts of discrimination, which surely result from stereotyping, xenophobia and politically motivated backlash, result in social and economic discrimination against the community. Examples from my practice include: Non-profit organizations receiving calls from their bank that the charities account was closed because it offers assistance in the Arab World. Many individuals and companies are routinely denied credit, loans, contracts and employment without any stated reasons; often times they are illegally asked about their national origin or the etymology of their names. Like me, many are 3rd or 4th generation US citizens. Most tend to be new immigrants who are more vulnerable given their reluctance to "rock the boat" and therefore suffer in silence.

As the noted scholar and author, Dr. Jack Shaheen, the stereotypes of Arabs are of "belly dancers, billionaires and bombers". In his seminal book, "Reel Bad Arabs", Dr. Shaheen reviewed 100 years of US cinema where these misconceptions were introduced, permeated and instilled into the minds of viewers. In reality, the vast majority of Arab-Americans are like most Americans; concerned about family, education, jobs, health care, etc. The crime rate among Arab-Americans, myths to the contrary, are lower than most while our graduation rates are among the highest. Hence, the frustration when faced by inordinate amounts of social and economic opportunities.

Discrimination aside, Arab-Americans are at a strange disadvantage with regards to minority business opportunities since person from all of Africa, except North Africa and most of Asia, except southwest Asia are specifically designated as eligible for minority status.

Once, at an ADC national convention, a senior official from the SBA was asked by an African-American gentleman about his eligibility for the 8a program. The representative without hesitation said, of course you would be eligible. However, that was not true, as he was from North Africa, and although clearly indistinguishable by her observation, he was ineligible by an arbitrary line on the map.

The examples could fill pages, and in fact have filled books, documentaries and reports. That the Arab-American community suffers social and economic disadvantage is without question. One small way the USG and the Department of Commerce can assist in offsetting this current condition would be to grant the ADC request.

Should further evidence or testimony be required, I will be happy to comply.

Sincerely,

Albert Mokhiber

Law Offices of Mokhiber & Moretti, LLC

2100 Reston Parkway, Suite 300

Reston, Virginia 20191-1219 USA

Tel: (703) 391-9898 ext 101

Fax: (703) 391-9897

E-mail: Albert.Mokhiber@verizon.net

From: MBDA Web Portal <no-reply@mbda.gov>
Sent: Friday, June 29, 2012 4:27 PM
To: AACComments
Subject: Form submission from: Petition for Inclusion of the Arab-American Community in the Groups Eligible for MBDA Services

Submitted on Friday June 29th, 2012 4:26PM Submitted by user:
Submitted values are:

Name: Jerry Quatrano

Company/Organization Name:

Email Address: prospect5225@msn.com

Comment: This is just what this country needs is another protected class.

This is insane!

Upload File(s) Optional:

From: MBDA Web Portal <no-reply@mbda.gov>
Sent: Friday, June 29, 2012 3:38 PM
To: AAComments
Subject: Form submission from: Petition for Inclusion of the Arab-American Community in the Groups Eligible for MBDA Services

Submitted on Friday June 29th, 2012 3:38PM Submitted by user:
Submitted values are:

Name: Geoff Matthews

Company/Organization Name:

Email Address: vodyanoi@yahoo.com

Comment: Please do not do this. There is little evidence that AA has improved the integration of minorities into the mainstream. We do not need to further isolate Arab Americans.

Upload File(s) Optional:

From: MBDA Web Portal <no-reply@mbda.gov>
Sent: Friday, June 29, 2012 2:02 PM
To: AACComments
Subject: Form submission from: Petition for Inclusion of the Arab-American Community in the Groups Eligible for MBDA Services

Submitted on Friday June 29th, 2012 2:02PM Submitted by user:
Submitted values are:

Name: Michael Sullivan

Company/Organization Name:

Email Address: wirsuchenweiter@yahoo.es

Comment: Don't expand affirmative action: end it! Discrimination IN FAVOUR of someone is always discrimination AGAINST someone else.

Upload File(s) Optional:

AMERICAN TASK FORCE FOR LEBANON

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Chief Executive Officer

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Mr. Tallal A. Turfe

* Executive Committee

ATFL members are listed
on the reverse side



28 June 2012

Ms. Josephine Arnold
Chief Counsel
Minority Business Development Agency
Department of Commerce
1401 Constitution Avenue, NW
Room 5093
Washington DC 20230

Re: Public Comment - 15 CFR Part 1400.3
Docket No. 120517080-2080-01
Comment sent via email to AAComments@mbda.gov

Dear Ms. Arnold:

The American Task Force for Lebanon (ATFL) supports the 4 January 2012 American Arab Anti-Discrimination Committee (ADC) petition to the United States Department of Commerce, Minority Business Development Agency (MBDA) for formal recognition of the Arab-American community as a minority group that is socially or economically disadvantaged. ATFL understands this recognition would make it easier for Arab-Americans to seek benefits of MBDA programs and opportunities, providing greater support to Arab American businesses, such as the MBDA Business Center program.

We welcome any questions you may have regarding ATFL's support for this petition.
Thank you.

Sincerely,

A handwritten signature in black ink that reads "Thomas A. Nassif". The signature is written in a cursive, flowing style.

The Hon. Thomas A. Nassif
Chairman

From: MBDA Web Portal <no-reply@mbda.gov>
Sent: Friday, June 29, 2012 1:29 PM
To: AAComments
Subject: Form submission from: Petition for Inclusion of the Arab-American Community in the Groups Eligible for MBDA Services

Submitted on Friday June 29th, 2012 1:29PM Submitted by user:
Submitted values are:

Name: M. George
Company/Organization Name:
Email Address:
Comment:

I am writing to support the petition filed by Mr. Abed Ayoub of the American-Arab Anti-Discrimination Committee (ADC) seeking the designation of "disadvantaged minority status" for the Arab American community. For many years members of the Arab American community have faced discrimination in many forms. This discrimination has impacted our ability to adequately compete in the private business sector. I have personally lost many clients simply for the fact I am of Arab descent. Within a year after 9/11 my law practice seen a 60% drop in the number of clients. Within 2 years my small law practice was forced to shut down, as most of my clients went elsewhere. Shortly thereafter I was forced to move and depend on support from Arab American community members for the success of my practice.

I commend ADC for this initiative, and I want to publicly commend and thank Mr. Abed Ayoub for not only pursuing this matter, but also for working with business owners for over the past few years. He did a diligent job at understanding our problem and the circumstances facing Arab American business owners. His foresight and vision in pursuing this is a testament to his leadership and understanding of the community he represents. The community could not ask for a better and more reliable representative on this matter.

I strongly support the petition filed by Mr. Abed Ayoub on behalf of ADC and the entire Arab American community, and urge the Department of Commerce to approve the request.

Thank you,
M. George
Upload File(s) Optional:

From: MBDA Web Portal <no-reply@mbda.gov>
Sent: Friday, June 29, 2012 1:15 PM
To: AAComments
Subject: Form submission from: Petition for Inclusion of the Arab-American Community in the Groups Eligible for MBDA Services

Submitted on Friday June 29th, 2012 1:14PM Submitted by user:
Submitted values are:

Name: Nicholas Legendre

Company/Organization Name:

Email Address: nplegendre@gmail.com

Comment:

I just want to note that according to the Arab American Institute Foundation:

Median income for Arab American households in 2008 was \$56,331 compared with \$51,369 for all households in the United States. Mean individual income is 27% higher than the national average of \$61,921. 13.7% of Arab Americans live below the poverty line, though the figure increases to over 28% for single mothers.

And: 73% of working Arab Americans are employed in managerial, professional, technical, sales or administrative fields. 14% of Americans of Arab decent are employed in service jobs compared to 17% for Americans overall. Most Arab Americans work in the private sector (88%), though 12% are government employees.

That doesn't sound like a, "a minority group that is socially or economically disadvantaged".

Upload File(s) Optional:

<http://www.mbda.gov/sites/default/files/webform/Arab%20American%20Institute.pdf>

From: MBDA Web Portal <no-reply@mbda.gov>
Sent: Friday, June 29, 2012 12:51 PM
To: AAComments
Subject: Form submission from: Petition for Inclusion of the Arab-American Community in the Groups Eligible for MBDA Services

Submitted on Friday June 29th, 2012 12:51PM Submitted by user:
Submitted values are:

Name: Brian Edmonston
Company/Organization Name: iCODING
Email Address: brian@icoding.com
Comment:

I urge you to decline to designate Arab-Americans as a minority group that is socially or economically disadvantaged pursuant to 15 CFR Part 1400.

America is based on equal treatment under the law. By definition, giving Arab Americans this designation would violate that tenet.

While in extreme circumstances it may be necessary to treat people unequally, such actions should be taken only reluctantly and only when the evidence that such treatment is necessary is overwhelming.

This is clearly not the case for Arab Americans, who have done very well in American society. I am aware of several highly successful Arab American owned businesses in my area alone. I am also aware of many wealthy Arab Americans in my area.

Indeed, the CEO of perhaps the most successful company in the last decade - Steve Jobs - has an Arab American background.

There are lists of successful Arab Americans that go back decades. Such a list is available in Wikipedia, for example.

Such successes would strongly suggest that a decision to give preferential treatment to this community would be unjustified. In fact, such a decision would be grossly unfair to any other Americans not entitled to similar access under the program.

It could also open a tidal wave of similar applications from other groups who feel they can claim similar levels of discrimination, since the level of discrimination experienced by the Arab community has been very low (if existent at all).

I hope you will show restraint in your decision process and deny this request.

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From: MBDA Web Portal <no-reply@mbda.gov>
Sent: Friday, June 29, 2012 11:52 AM
To: AAComments
Subject: Form submission from: Petition for Inclusion of the Arab-American Community in the Groups Eligible for MBDA Services

Submitted on Friday June 29th, 2012 11:51AM Submitted by user:
Submitted values are:

Name: Martin Gerd Schrick

Company/Organization Name: U.S.A.

Email Address: martins65@yahoo.com

Comment: There is no need for further handouts and special treatment for minority groups, especially Arabs. 95% of Arabs living in the U.S. have come here during the last few decades and did not experience any discrimination. If an Arab from 1907 can prove there was descrimination against their person, they should come forward and perhaps receive compensation. The government is waging a war on white people in the U.S.A. by policies like th MBDA assistance for Arabs.

Upload File(s) Optional:

From: MBDA Web Portal <no-reply@mbda.gov>
Sent: Friday, June 29, 2012 10:56 AM
To: AAComments
Subject: Form submission from: Petition for Inclusion of the Arab-American Community in the Groups Eligible for MBDA Services

Submitted on Friday June 29th, 2012 10:56AM Submitted by user:

Submitted values are:

Name:

Company/Organization Name:

Email Address:

Comment:

If it is alright for the government to treat people differently based on their race, then surely it is the prerogative of the common citizen to practice their own excuse-laden bigotry.

What goes around, comes around.

Upload File(s) Optional:

From: MBDA Web Portal <no-reply@mbda.gov>
Sent: Friday, June 29, 2012 9:52 AM
To: AAComments
Subject: Form submission from: Petition for Inclusion of the Arab-American Community in the Groups Eligible for MBDA Services

Submitted on Friday June 29th, 2012 9:52AM Submitted by user:
Submitted values are:

Name: John Wheelock

Company/Organization Name: Citizen

Email Address: john.wheelock@yahoo.com

Comment: I have a novel idea - how about we just treat every group/citizen equally and extend these nice benefits to everyone? It's 2012 - no group has been so stigmatized that they can be considered "socially and economically disadvantaged" - this is ridiculous.

Upload File(s) Optional:

From: MBDA Web Portal <no-reply@mbda.gov>
Sent: Friday, June 29, 2012 9:23 AM
To: AAComments
Subject: Form submission from: Petition for Inclusion of the Arab-American Community in the Groups Eligible for MBDA Services

Submitted on Friday June 29th, 2012 9:22AM Submitted by user:
Submitted values are:

Name: Bernard Sullivan
Company/Organization Name:
Email Address: Sullivan@bernardsullivan.com
Comment:
To Whom it May Concern:

I am writing in opposition to the petition to include Arab-Americans as eligible for MBDA services.

Since their arrival in significant numbers in the United States at the beginning of the 20th Century, Arab-Americans--the majority of whom are Christian--have excelled in a variety of fields, from business to politics. Generations later, they have, like other immigrant groups of Caucasian background, assimilated into the American mainstream. They are simply put, NOT economically disadvantaged: their per-capita income is greater than the US average,

I urge MBDA to concentrate its scarce resources only on groups that face considerable social discrimination in this country, and to reject this petition.

Sincerely,

Bernard Sullivan, Ph.D.
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From: MBDA Web Portal <no-reply@mbda.gov>
Sent: Wednesday, June 27, 2012 3:05 PM
To: AACComments
Subject: Form submission from: Petition for Inclusion of the Arab-American Community in the Groups Eligible for MBDA Services

Submitted on Wednesday June 27th, 2012 3:05PM Submitted by user:
Submitted values are:

Name: Rehab and Ahmed Amer

Company/Organization Name: Civil Right Foster Care Child Advocate Email Address: raamer1@aol.com

Comment: We are in full Support of the ADC petition for Minority Status seeking Justice to all who are being discriminating against, we live in a land of the free with that all rights of everyone is preserved that's what makes this country a great one who stands and believes in Justice for All..

Upload File(s) Optional:

From: MBDA Web Portal <no-reply@mbda.gov>
Sent: Wednesday, June 27, 2012 2:51 PM
To: AAComments
Subject: Form submission from: Petition for Inclusion of the Arab-American Community in the Groups Eligible for MBDA Services

Submitted on Wednesday June 27th, 2012 2:50PM Submitted by user:
Submitted values are:

Name: Arsalan Iftikhar
Company/Organization Name: Attorney-At-Law Email Address: arsalan@gmail.com
Comment:
Dear MBDA,

I am writing today to express my strong support for Arab Americans to be categorized as a disadvantaged minority group by the Department of Commerce.

I appreciate your consideration of this matter which affects millions of Americans living in the United States today.

Most sincerely,
Arsalan Iftikhar, Esq.
Licensed to Practice Law in Washington DC Upload File(s) Optional:

From: MBDA Web Portal <no-reply@mbda.gov>
Sent: Tuesday, June 26, 2012 12:48 PM
To: AAComments
Subject: Form submission from: Petition for Inclusion of the Arab-American Community in the Groups Eligible for MBDA Services

Submitted on Tuesday June 26th, 2012 12:47PM Submitted by user:

Submitted values are:

Name:

Company/Organization Name: Michigan Department of Civil Rights Email Address: levyd@michigan.gov

Comment: Please see the attached, the original of which was placed in today's US Mail.

Upload File(s) Optional:

<http://www.mbda.gov/sites/default/files/webform/DCR%20to%20MBDA-Commerce.pdf>



STATE OF MICHIGAN
DEPARTMENT OF CIVIL RIGHTS
EXECUTIVE

RICK SNYDER
GOVERNOR

DANIEL H. KRICHBAUM, PhD
DIRECTOR

June 22, 2012

Ms. Josephine Arnold, Chief Counsel
Minority Business Development Agency
US Department of Commerce
1401 Constitution Avenue NW, Room 5093
Washington, DC 20230

Re: Docket Number 120517080-2080-01

Attorney Arnold,

I write, on behalf of the Michigan Department of Civil Rights, to **support the request that Arab-Americans be added to the Department of Commerce list of persons considered to be “socially and economically disadvantaged”** pursuant to E.O. 11625 and CFR part 1400.

Article I, Section 2 of Michigan’s Constitution declares: “No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin.” The Michigan Constitution also created the Michigan Civil Rights Commission, directing at Article V, Section 29: “It shall be the duty of the commission in a manner which may be prescribed by law to investigate alleged discrimination against any person because of religion, race, color or national origin in the enjoyment of the civil rights guaranteed by law and by this constitution, and to secure the equal protection of such civil rights without such discrimination.”¹

The Michigan Department of Civil Rights (MDCR), provides the staff complement to the policy-making responsibilities of the Commission. The Department’s powers and responsibilities are detailed in the Elliott Larsen Civil Rights Act (MCL 37.2101 et. seq.) The Department works both to enforce discrimination by investigating complaints, and to prevent it through outreach efforts that include workplace trainings and educational programs.

The solicitation by the Minority Business Development Agency requests comments from those who can speak to several specific issues. MDCR’s work puts us a position where we can definitively address MBDA’s third question: “Is there evidence that demonstrates Arab-Americans have been subject to employment or educational discrimination?” We know the answer to be “yes.”

¹ *Public Acts 220 and 453 of 1976* and subsequent amendments have added sex, age, marital status, familial status, height, weight, arrest record, genetic information, and physical and mental disabilities to the original four protected categories.

As noted above, MDCR receives and investigates complaints from individuals who believe they have been discriminated against because of their national origin. Our jurisdiction includes not only the areas of Education and Employment, but also Housing, Public Accommodations, and Public Service. Looking at the numbers of anti-Arab discrimination complaints filed with MDCR, two things stand out, such discrimination has always been present and it has greatly increased.

Particularly since 2001, following tragic events of 9-11, and subsequently exasperated by the wars in Afghanistan and Iraq, we have seen Arab-Americans subjected to increased levels of discrimination (in the workplace and generally), and more hate crimes. Arab-Americans disproportionately report incidents of law enforcement profiling by local law enforcement. Even when legally appropriate and truly necessary, homeland security concerns can present additional burdens on Arab-Americans not faced by others.

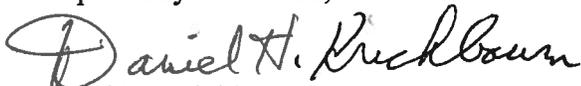
MDCR saw the national origin related discrimination complaints filed by Arab-Americans nearly triple in the aftermath of 9-11. They have remained double what they were before that ever since.

In addition to having to endure direct acts of harassment or discrimination from fellow workers, MDCR has observed that Arab-Americans too often face workplace management that is quick to dismiss the acts as having somehow been made acceptable by world events. One recent example of this can be seen in a case recently resolved by the Department in which an Arab-American secured an award against his former employer totaling more than \$450,000 based upon the employer's failure to properly address workplace harassment when it occurred. (See attached article).

Arab-Americans are a protected class under Michigan's Elliott-Larsen Civil Rights Act, and they are equally protected by Federal Civil Rights Acts. In spite of such protections, Arab-Americans are subjected to discrimination based upon their national origin, a fact that should be recognized by the Department of Commerce, Minority Business Development Agency as it considers whether to add Arab-Americans to the list of groups the Agency (and other entities that refer to the Agency's list) recognize as socially and economically disadvantaged.

Thank you for your consideration of this important question,

Respectfully submitted,



Daniel H. Krichbaum

Director, Michigan Department of Civil Rights

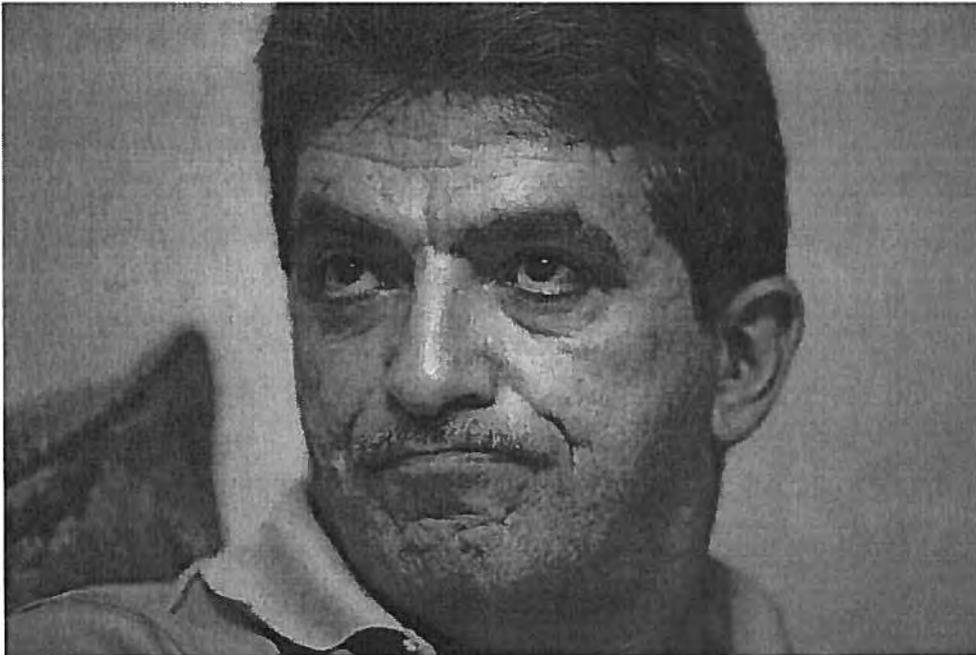
Ex-SMART worker of Iraqi descent wins \$450,000 for racial slurs

June 2, 2012 | 15 Comments

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You recommend Ex-SMART worker of Iraqi descent wins \$450,000 for racial

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The Michigan Civil Rights Commission awarded Mazyn Barash of Farmington Hills \$450,000.

By Niraj Warikoo
Detroit Free Press Staff
Writer

FILED UNDER

Local News
Metro Detroit

Eight years after he filed a complaint, a Farmington Hills man of Iraqi descent has been awarded \$450,000 by the Michigan Civil Rights Commission for racial abuse and threats he suffered while working at the SMART bus system.

In its decision, the commission also ordered that SMART stop "discriminating against any employee" and to not create "a hostile work environment." Mazyn Barash, now 55, was subjected to ethnic slurs such as "sand n-----" and "rag head." The slurs against Barash -- a bus mechanic who is Chaldean (Iraqi Catholic) -- started after the Sept. 11, 2001, terrorism attacks and increased around the time the Iraq war began in 2003. One time, the report

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said, he received a letter at work with a racial epithet warning he would be "hit," the commission found.

Barash said Friday that he "felt relief" at the order announced last week. At the same time, he's upset that it took so long. SMART's attorneys strongly contested Barash's complaints, putting Barash through 17 days of hearings that took place over a year and a half. The hearing officer assigned to the case, Bloomfield Hills attorney Barry Goldman, took 18 months to release his decision.

In 2010, he ruled against Barash, saying that the slurs Barash suffered were understandable because America was at war. But the commission overturned his decision in October. The damages were announced last week. "SMART showed absolutely no remorse and was still trying to justify the discrimination," Barash said. He believes SMART wasted public resources in fighting the case rather than ending the abuse.

A spokeswoman for SMART, Beth Gibbons, did not comment Friday. Goldman was not available for comment. SMART, the suburban bus system in metro Detroit, has 30 days to appeal the case to a Michigan court.

Barash left SMART in 2004. The commission's order awards Barash \$150,000 for mental and emotional distress, \$68,000 for lost wages and \$124,000 in fees for his attorneys. With interest from the time Barash filed the initial complaint in June 2004, that comes to more than \$450,000.

The commission report says the abuse started in fall 2001, when a colleague stapled a photo of Mohammed Atta, one of the 9/11 hijackers, to Barash's time card. It got worse in 2003 as the U.S. turned its focus on Iraq. One co-worker talked in front of Barash about killing all Iraqis.

"I was embarrassed, and I was afraid," Barash said.

In his 2010 decision, Goldman wrote that the racial abuse Barash suffered was not an issue because: "The United States was in a war. ... Many Americans had strong feelings about that war and the right to express those feelings."

Contact Niraj Warikoo: 313-223-4792 or nwarikoo@freepress.com



Christine Frederick arrested on drug charges

Apr 28, 2012

PHOTO GALLERIES



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From: Martine Scorza <milanzadesigns@gmail.com>
Sent: Sunday, June 24, 2012 3:03 AM
To: AAComments
Subject: Arab American Petition

I believe in fairness, but Arab-Americans are the first to scream they are white/caucasian...., and many of them look caucasian, although many are dark-skinned. I don't think they are discriminated against except by some...and historically have not had the struggles and systematic exclusion, like blacks or Natives...just my opinion.

--

Martine C. Scorza
Principal
Milanza Designs/MWBE
9903 Santa Monica Blvd
#905
Beverly Hills, CA 90212
323-253-5823
milanzadesigns@gmail.com
www.casamedicidesigns.com

From: Roger Clegg <rclegg@ceousa.org>
Sent: Thursday, June 21, 2012 1:20 PM
To: AAComments
Subject: Comment from CEO re Arab-American proposal

Importance: High

June 20, 2012

To: U.S. Department of Commerce
From: Center for Equal Opportunity
Re: "Petition for Inclusion of the Arab-American Community in the Groups Eligible for MBDA Services"

The Center for Equal Opportunity opposes the addition of Arab-Americans to the list of those eligible for MBDA services (see 77 FR 31765, May 30, 2012). In our view, in 2012 it makes no sense to address racial and ethnic discrimination by compiling an ever-longer list of groups eligible for special government programs. As Chief Justice Roberts wrote, "The way to stop discrimination on the basis of race is to stop discriminating on the basis of race." Even if a remedial predicate of racial discrimination is shown, the narrowly tailored way to combat it is by addressing that discrimination directly, not by piling another discriminatory program on top of it; it is generally unconstitutional for the government to show favoritism or even use classifications based on race, ethnicity, or sex. See *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995) ("all racial classifications ... must be analyzed by a reviewing court under strict scrutiny"); see also Title VI of the 1964 Civil Rights Act, 42 U.S.C. 2000d (prohibiting discrimination on the basis of race, color, and national origin in federally funded programs). Indeed, such classifications and favoritism are "presumptively invalid" (see *Personnel Administrator v. Feeney*, 442 U.S. 256 (1979)).

This is particularly so when the alleged discrimination, as it is in this case, supposedly comes from other government programs. Finally, it is especially dubious that the discrimination here has jeopardized the progress of this particular group to anything like the extent that, for example, the progress of African Americans was jeopardized by discrimination when the relevant underlying executive orders were signed in 1969 and 1971. See Alexander Kazam, "Are Arab-Americans Disadvantaged?," *National Review Online* (June 20, 2012) [link: <http://www.nationalreview.com/articles/303245/are-arab-americans-disadvantaged-alexander-kazam>].



From: shani hammond <shammond031@gmail.com>
Sent: Wednesday, June 20, 2012 4:51 AM
To: AAComments

I do not agree with including the Arab American Community into groups eligible for MBDA's services. The majority of these individuals applying for this assistance do not qualify as socially or economically disadvantaged, & may even be in some way attempting to take advantage of the system. 80-85% of the nations' convenient stores & gas stations are Arab American owned & typically are initially funded through overseas accounts & international financing. That doesn't demonstrate economic disadvantage.

Brian Mosallam, QPFC
Financial Consultant



June 6, 2012

Ms. Josephine Arnold
Chief Counsel, Minority Business Development Agency
Department of Commerce
1401 Constitution Avenue, NW, Room 5093
Washington, DC 20230

Docket No. 120517080-2080-01

Dear Ms. Arnold,

I was recently notified that the Department of Commerce has undertaken a petition for inclusion of the Arab-American community in the groups eligible for Minority Business Development Agency (MBDA) services. This letter is in support of the American-Arab Anti-Discrimination Committee's (ADC) petition.

I believe that Arab Americans fall within a formal designation as a minority. In order to characterize a community within the MBDA's minority status, the community must prove it is a socially and economically disadvantaged minority group. The usefulness and benefits of a minority designation would be of tremendous help to the Arab American community.

Pursuant to Executive Order 11625, the MBDA funds business centers that provide business development services to businesses that are owned and controlled by individuals who fall within a designated socially or economically disadvantaged group. The agencies assistance and the ability to apply for minority centered grants would materially change the lives of small business owners. From being able to purchase a suitable and sustainable office building to emotionally feeling the support of the government, the designation would allow small business owners around the United States to expand their ventures and businesses.

Arab Americans are socially and economically disadvantaged and have been since their initial arrival to the United States. As ADC stated, beginning in the late 1800s and escalating in the 1910s when certain immigrant communities from Arab countries were capped at entering the United States, the discrimination Arab Americans have faced in the United States is longstanding and pervasive. Disadvantages associated with being Arab American have persisted in the United States and continue to worsen post-9/11.

The named individual offers securities and investment advisory services through AXA Advisors, LLC (NY, NY 212-314-4600), member FINRA, SIPC, and offers annuity and insurance products through AXA Network, LLC and its subsidiaries.

6 Parklane Blvd Suite 135, Dearborn, MI 48126 Cell: (313) 712-5300 Fax: (313) 914-7732
brian.mosallam@axa-advisors.com



www.brianmosallam.com

Brian Mosallam, QPFC
Financial Consultant



As a financial advisor, I have witnessed first hand how discrimination can impact ones business. This discrimination has affected many business owners in the Arab-American community, both economically and socially.

If granted the designation, the MBDA programs will help Arab Americans overcome the hardships that discrimination and prejudice has placed upon us as business owners. I kindly urge the Department of Commerce to designate Arab Americans as a minority that qualifies for MBDA services and support.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Mosallam".

Brian Mosallam
Financial Consultant

The named individual offers securities and investment advisory services through AXA Advisors, LLC (NY, NY 212-314-4600), member FINRA, SIPC, and offers annuity and insurance products through AXA Network, LLC and its subsidiaries.

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www.brianmosallam.com



June 6, 2012

G. H. Alwan
Retirement Benefits Specialist
Tax Sheltered Plans

Retirement Benefits Group

Ms. Josephine Arnold
Chief Counsel, Minority Business Development Agency
Department of Commerce
1401 Constitution Avenue, NW, Room 5093
Washington, DC 20230

Docket No. 120517080-2080-01

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Retirement Benefits Group, a specialized division of **AXA Advisors, LLC**
24440 Fairmount Dr, Dearborn, MI 48124

Tel: (313) 506-0456 Fax: (248) 641-2788 gehad.alwan@axa-advisors.com

The named individual offers securities through AXA Advisors, LLC (NY, NY 212-314-4600), member FINRA, SIPC, and as an agent of AXA Network, LLC and its subsidiaries offers annuity and insurance products of affiliate, AXA Equitable Life Insurance Company (NY, NY 10104), and unaffiliated insurance companies.



G. H. Alwan
Retirement Benefits Specialist
Tax Sheltered Plans

Retirement Benefits Group

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Sincerely,

A handwritten signature in blue ink, appearing to read 'Gehad Alwan', written over a light blue horizontal line.

Gehad Alwan
Retirement Benefits Specialist

Retirement Benefits Group, a specialized division of **AXA Advisors, LLC**
24440 Fairmount Dr., Dearborn, MI 48124

Tel: (313) 506-0456 Fax: (248) 641-2788 gehad.alwan@axa-advisors.com

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June 6, 2012

Via Electronic Mail to

Ms. Josephine Arnold
Chief Counsel - Minority Business Development Agency
Department of Commerce
1401 Constitution Avenue NW., Room 5093
Washington, DC 20230

Docket No. 120517080-2080-01

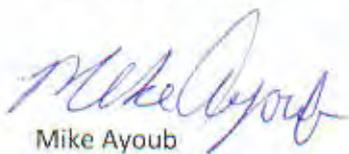
Dear, Ms Arnold

I am writing this letter in support of the petition filed by the American-Arab Anti-Discrimination Committee (ADC), requesting that the Arab-American community be designated as a "disadvantaged minority." Over the course of the past decade members of the Arab American community have faced discrimination in many forms. The result of this discrimination, as is indicated in the brief filed by ADC, has led many Arab American business owners to struggle financially.

Many Arab-Americans in the Real Estate Market can attest to the findings by ADC. As a result of anti-Arab sentiment, many realtors of Arab heritage have found themselves isolated in markets consisting of heavy Arab-American concentration. Many professionals in the field found it extremely difficult to gain employment outside of markets with high Arab concentration – this limits the potential for growth in the field and implements a glass ceiling for professional and career development.

I urge you to approve the petition filed by ADC. This will provide much needed assistance and benefits to many in the community who are struggling as a result of discrimination. The members of the Arab American community are hardworking individuals, who for decades have been part of the social fabric of the United States. The granting of this petition will ensure that the community as a whole can overcome the impact of the discriminatory policies and actions that have been facing the community for decades.

Thank you for your consideration and we look forward to a favorable decision,



Mike Ayoub

RE/MAX Team 2000
22823 Michigan Avenue, Dearborn, Michigan 48124
Office: (313) 561-0900
Fax: (313) 561-0468

Michigan Office

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Dearborn, Michigan 48126
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*Imad Hamad, Senior National Advisor,
Regional Director*

**National Office**

1732 Wisconsin Avenue, NW
Washington, DC 20007
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Fax: 202.244.7968
www.adc.org

June 6, 2012

Via Electronic Mail to AACComments@mbda.gov

Ms. Josephine Arnold
Chief Counsel, Minority Business Development Agency
Department of Commerce
1401 Constitution Avenue, NW, Room 5093
Washington, DC 20230

Docket No. 120517080-2080-01

Dear Ms. Arnold,

On behalf of the American-Arab Anti-Discrimination Committee – Michigan office (ADC-MI), I am writing to support the petition filed by the National office of the ADC, requesting disadvantaged minority status for the Arab-American community. The ADC-MI office is based in Dearborn, Michigan, home of the largest concentration of Arab Americans in the country. Over the course of the past two decades the ADC-MI office has witnessed the direct impact discrimination can have on the business community, and the limitations it imposes on all community members.

The petition outlines the problems facing the community, with an emphasis on the past decade. Also true is that the community has been facing discrimination for a period prior to 2001, which is also described in the brief. The culmination of discrimination has led to many Arab Americans feeling a direct economic and social impact. One such example could be found in the impact employment discrimination has had on community members. As a result of employment discrimination, community members are forced out of the general workforce, and into finding their own opportunities within the city of Dearborn.

Service providers and professionals, such as real estate agents and doctors, have been forced to business opportunities within areas of high Arab American concentrations. The ADC-MI office has handled thousands of cases of discrimination since 9/11 and many of those cases involve business owners being forced to close their practice and move into or closer to Dearborn, the reason is simple – non-Arab community members did not feel comfortable using the services of an Arab American.

Granting the petition will provide the support Arab American business owners need to be successful. By approving the petition the Department of Commerce will play a major and positive role in providing community members the tools needed to overcome discrimination and its impact.

Truly yours,


Imad Hamad
Regional Director and Senior National Advisor
ADC Michigan





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June 6, 2012

Ms. Josephine Arnold
Chief Counsel, Minority Business Development Agency
Department of Commerce
1401 Constitution Avenue, NW, Room 5093
Washington, DC 20230

Docket No. 120517080-2080-01

Dear Ms. Arnold,

I am writing this letter in support of the petition filed by the American-Arab Anti-Discrimination Committee (A.D.C.), seeking the designation of the Arab American community as a "disadvantaged minority". A formal designation will allow Arab Americans throughout the United States to receive assistance from Minority Business Development Agency (M.B.D.A.) funded programs.

A.D.C. maintains that, pursuant to E.O. 11625 and 15 CFR Part 1400, Arab Americans are socially and economically disadvantaged. If formally designated as socially and economically disadvantaged, the community will be provided the benefits the M.B.D.A. offers to minority owned and operated businesses. Beginning in the late 1800s and escalating in the 1910s when certain immigrant communities from Arab countries were capped at entering the United States, the discrimination Arab Americans have faced in the United States is longstanding and pervasive. Disadvantages associated with being Arab American have persisted in the United States and continue to worsen post-9/11.

There are designated "Minority Businesses" with populations in the tens of millions that are recognized as minority businesses. The Arab American community in totality is less than 7 million. The Arab American business community most likely is only in the thousands, which is far smaller than any other designated minority business community.

Midamar Corporation has been in business since 1975 and has been recognized by both the State of Iowa and federal government with various business accomplishments. With that said, Midamar's business has been restricted in competing in not only U.S. government contracts and provisioning but has also been denied minority business opportunities to State and Federal institutions. As a domestic and international supply chain company, we are working to meet the Administration's mandate of doubling exports within the five year period previously designated. Again, Midamar not being a minority designated company, has not had the designation to source and supply from major U.S. corporations to export more U.S.A. products. This is a fact. Midamar's exports representing USA quality products would be greatly enhanced with a status of "Minority Business Ownership".



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The Arab American community has been affected economically. During the past decade, which was not previously manifested, some U.S.A. companies have expressed concern with working with a company exporting to growing G.C.C. and North African markets because of close bonds with Arab Americans because of F.B.I. or C.I.A. involvement. This has prevented partnerships with some businesses and business relationships from forming. This creates an atmosphere in which Arab American businesses are sometimes limiting their ability to expand their businesses.

Within the last decade and more, there has been an influx of immigrants from the Arab region who are trying to develop new small businesses in the food and transportation sectors. With the assistance of benefits being opened up as "Minority Businesses" just as other minority communities with millions of citizens, this new small minority will help foster economic growth domestically, which is needed for job creation.

In closing, I would like to point out we receive the publication M.B.E., Minority Business Entrepreneur. With the Arab American community being far smaller than the Asian, Hispanic, African American communities designated as Minority Businesses, why has there never been an Arab American on the front of M.B.E.? Often it is disappointing, discouraging to see the contents featured which could have application and open up opportunities for business development for the greater benefit of job creation if Arab Americans were given the same designation with race, gender, and ethnicity as the currently designated "Minority" groups. Granting "Business Minority" status to the Arab American business community will not negatively affect our society or economy. It will only enhance business development without giving privilege or priority over any other sector of our society and economy.

If granted the designation, the M.B.D.A. programs will help both existing and new Arab Americans entrepreneurs overcome the barriers that have limited their business opportunities. I urge you to approve the petition filed by A.D.C..

Respectfully submitted,



Bill Aossey, Sr.
Senior Director

Submission #424

Published on MBDA Web Portal (<http://www.mbda.gov>)

Submission #424

Submission information

Form: [Petition for Inclusion of the Arab-American Community in the Groups Eligible for MBDA Services](#)

Submitted by Guest (not verified)

Wednesday June 6th, 2012 3:01PM

68.33.223.103

Name: Darlene Hider

Company/Organization Name: Hider Family Dentistry

Email Address:

Comment: I commend the Department of Commerce and the MBDA for taking up this petition. It is our hope that the ADC petition is approved. The discrimination faced by the Arab American community has led to a number of businesses being forced out of non-Arab a neighborhood, denial of loans/funding, and other negative impacts. The stories are real and very common - Arab Americans are not able to penetrate markets outside of predominately concentrated enclaves such as Dearborn, MI, or Patterson, NJ. Doctors, such as my very own family members, began losing patients shortly after 9/11, and within a matter of a few months there was a complete shutdown of business, and if lucky enough relocation to Dearborn --- closer to the community.

Approval of this notice will have great benefits. We are all encouraged that MBDA has taken this step and we look forward to assistance that will help us overcome the impact discrimination has had on our community.

Upload File(s) Optional:

Source URL (retrieved on 06/11/2012 - 1:33pm):

<http://www.mbda.gov/node/1475/submission/424>

Submission #421

Published on MBDA Web Portal (<http://www.mbda.gov>)

Submission #421

Submission information

Form: [Petition for Inclusion of the Arab-American Community in the Groups Eligible for MBDA Services](#)

Submitted by Guest (not verified)

Monday June 4th, 2012 2:09PM

74.88.16.9

Name: Maureen McCormack

Company/Organization Name:

Email Address: Lovetoreadalways@gmail.com

Comment: We can NOT afford another minority group being labeled a privileged class who can now receive subsidies. They have every advantage that any other immigrant or citizen has. If they are different, then why not Irish-Americans, or Mongolian-Americans, or Tanzanian-Americans? This is absurd!!! It is using the system as if it were already socialist. Maybe it is.

Upload File(s) Optional:

Source URL (retrieved on 06/11/2012 - 1:38pm):

<http://www.mbda.gov/node/1475/submission/421>