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Black Twice: Policing Black Muslim Identities

Emmanuel Mauleón

ABSTRACT

In a political moment that includes various iterations of a “Muslim Ban,” and a resurgent mainstreaming of white nationalism, race and religion clearly remain hotly contested in American life. And yet, in much of the recent scholarship and public debate on these issues, the intersecting experiences of Black Muslims are often elided, if not entirely forgotten.

This Article focuses in on the experiences of policing faced by Somali Muslims, within a larger Black Muslim community. In it, I examine the ways in which the federal “Countering Violent Extremism” program has been mobilized against this particular group of Black Muslims—not only as a technology of surveillance, but a racializing one as well. I seek to center this case study within the broader historical context of Black Muslims in America, as an example of how religion and race have often been co-constitutive of Black Muslims’ racial experience. Examining the intersectional racial experience of Black Muslims reveals that which might otherwise be missed—the inherent racialization of religion, and the antiblack origins of American Islamophobia.

AUTHOR

Senior Staff Editor, *UCLA Law Review*; Chief Developmental Editor, *UCLA Chicana Latinx Law Review*, Volume 35. I studied “Creative Expression & Social Justice” at the University of Minnesota and NYU Gallatin, before graduating with a BFA in Painting from the Rhode Island School of Design. I graduated with a J.D. from UCLA Law in 2018, with specializations in Critical Race Studies and International and Comparative Law. This comment could not have been written without the illuminating discussions and input from Tendayi Achiume, Aslı Ü. Bâli, Byron Barahona, Anisha Gandhi, Jorge Guerreiro, Cheryl L. Harris, Gina Hong, Jaylani Hussein, Karen Ng, Sarah Kim Pak, Kabita Parajuli, Lizzy Shramko, Aisha Sleiman, Sina Sohrab, Muneeba Talukder, Hassan Zaarour, and my colleagues in the Fall 2016 CRT and Spring 2018 Advanced CRT courses. Much credit is also due to Professor Amna Akbar, whose recent work served as an inspiration for this piece. I would also like to thank the *UCLA Law Review* staff, particularly Quemars Ahmed, Brianna Flores, Sean Flores, Tate Harshbarger, Brianne Holland-Stergar, Ashley King, Janelle Li-A-Ping, Sarah Rahimi, and Jeff Vides for their invaluable edits. I would like to extend special thanks to Devon Carbado for his guidance through several drafts, and for helping me understand what it was that I was writing about.

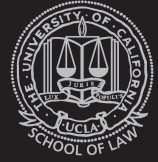


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INTRODUCTION

I moved to St. Paul, Minnesota, from Puebla, Mexico, at the age of five. This shift not only required rapid adjustment to a dramatically different climate, but to a radically different culture. Though I had moved into what was a predominantly black neighborhood, I was at first unaware of “Black” as a category. I did not know that phenotypical differences between myself, my mother, my father, or my uncle and cousin were anything other than variants on a spectrum.¹ When I arrived in Minnesota, I knew I looked different, but those differences held little meaning for me.²

It was not until I started kindergarten that I was inculcated into race, with the requisite job of sorting all of my acquaintances into categories: I was mixed, but definitely not white—either Mexican, or Latino, or sometimes Hispanic; my mother, who I had believed to be a Mexican-American, was simply a white American who had lived in Mexico; my father was Mexican, and sometimes

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1. This is not to say I was “colorblind,” only that I did not yet understand the social and historical significance that was embedded in these differences. To me, the differences were not yet codified as race—they had yet to be *racialized*—“the process by which social, economic, and political forces determine the content and importance of racial categories, and by which they are in turn shaped by racial meanings.” See MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES* 61, 68 (1986) (arguing that racialization posits race as “an unstable and ‘de-centered’ complex of social meanings constantly being transformed by political struggle”). This is also not to suggest that racism and colorism doesn’t exist in Mexico—but it undoubtedly operates differently, as the social, historical, and political pressures regarding race are different. See generally RICHARD T. SCHAEFER, *ENCYCLOPEDIA OF RACE, ETHNICITY AND SOCIETY* 898–1100 (2008) (describing racial formation in the Mexican and Latin American context).
 2. Perhaps my racial ignorance was an attribute of youth, though I doubt it. Both personal experience and empirical research have shown that even very young children who grow up in the United States understand not only phenotypical difference, but racial significance. See generally, e.g., Stephen M. Quintana, *Children’s Developmental Understanding of Ethnicity and Race*, 7 *APPLIED & PREVENTIVE PSYCHOL.* 27, 31–34 (1998) (reviewing research which, in part, indicates that children as young as three “develop racial attitudes (including racial prejudices) before they develop the ability to classify the physical features of race,” and that “[t]here is evidence suggesting that children’s racial attitudes and early prejudices reflect the pervasive racial attitudes embedded within the larger society.”); Erin N. Winkler, *Children Are Not Colorblind: How Young Children Learn Race*, *PACE: PRAC. APPROACHES FOR CONTINUING EDUC.*, no. 3, 2009, at 1 (reviewing research on children’s attitudes on race, including one finding that “[t]oddlers as young as two years use racial categories to reason about people’s behaviors . . .”).

called an indio,³ because of his darker skin; my uncle Luis and cousin “Bicho,” my best friend before I moved, were black, though not “*black-black*,” as a friend of mine put it when Bicho came to visit me several years later. My new friend Stefon, who lived in the basement apartment of our building, was black.⁴

Navigating race was a constant struggle until, suddenly, it was not. I internalized the system, turning blind to its everyday operation, speaking race as though with a native tongue, without necessarily understanding its grammar. When I began attending a magnet school⁵ in the fourth grade, I recognized the shift in my classmates’ racial composition. I learned that, when the white parents of my white classmates argued against reserving some seats for the sake of diversity, they were talking about race. I understood that when a different ESL teacher would pull me out of the classroom at the beginning of each year, despite my having spoken English as long as I had Spanish, my race was operating. I recognized that my race was not static—depending on the language I spoke or if I was returning to school after a summer spent in the sun, my race seemed to shift, while others—white and black—seemed entrenched. I believed that over time I had come to understand this system, though I did not comprehend its purpose.

In the seventh grade, Musy, the son of immigrants from Somalia, transferred into our school. He was boisterous, charismatic, and often irritated my teachers. One day, while I was playing basketball at the Martin Luther King Recreation Center, Musy walked into the gym. We played basketball until he got into an argument with one of the older kids. During the exchange, I recall Musy saying, “Listen, my nigga,” right before another kid pushed him hard onto his back. He stood over Musy, and simply stated, “You’re not black.” At that moment, all of my racial alarms went off, as I tried to understand: Why not?

After college, I briefly returned to Minnesota where I taught art and mural classes out of recreation centers in Minneapolis and St. Paul.⁶ One of these classes,

3. Spanish for “Indian,” it often refers to the indigenous descendants of pre-Columbian Mexicans.

4. Here, I do not assert a formal racial categorization—as you may note, each of these categories, except for my mother’s whiteness, and my neighbor’s blackness, provided room for slippage—an uneasy footing in a racial hierarchy.

5. This school, Capitol Hill, required students to pass a test—which led to my first experience of accusations that my presence was clearly a result of affirmative action.

6. In the span of these fifteen years the attacks of September 11th and the escalating War on Terror took place, dramatically altering the legibility of Somali identity in America. See *infra* Subpart II.A.2.

co-taught with a friend, was at the Brian Coyle Community Center, where all of our students were second-generation Somali Americans who had been raised in the Cedar-Riverside neighborhood. In each of my classes, the students were responsible for the planning of the murals we would paint. The instructors would ask what imagery they wanted to use to represent themselves, their communities, and the challenges that they faced, and through this process we arrived at two designs, one featuring a background of the American flag with images of Somalis in profile and the word “Unity” in bold letters above.

The second proposal was more symbolically loaded. Throughout planning, our students shared that one of the hardest things that they dealt with on a day-to-day basis was the constant suspicion they faced—from non-Somali students and teachers in their classrooms, from strangers in their communities, and from law enforcement. Mohamed,⁷ a boy no older than thirteen, described an incident where he and a few of his friends were approached by a man who introduced himself as an FBI agent, and then aggressively proceeded to ask the boys if they had seen any suspicious activity in their neighborhood, amongst their friends, or in their homes. Though they all denied having such knowledge, he continued to press them for information and eventually took down their names, addresses, and phone numbers, ending the conversation by handing them his card. As Mohamed told his story, his eyes began to tear.⁸ He was still afraid.

The class decided to paint a design responsive to these fears: a jaguar, lifted from the coat of arms of Somalia,⁹ sliced into segments—modeled after the serpents on Benjamin Franklin’s colonial “Join, or Die” cartoon.¹⁰ The segments were labeled “Family,” “Community,” “Friends,” and “Allies,” with the same “Unity” tagline at the top. The kids chose that image to represent both their proud heritage, but also to caution against letting different segments of their community become factions, broken apart through mutual suspicion. The day we began

7. I have changed the names throughout, for the purpose of anonymity.

8. This experience is not uncommon. A study of Somali youth in Minneapolis found that many feel they are “unfairly stereotyped as potential terrorists—or respected at most as informational tools in the war on terror—by law enforcement, the media and the general public.” TAYO CONSULTING GRP., PATHWAYS TO DIGNITY: A HUMAN SECURITY APPROACH TO UPLIFT MINNESOTA’S SOMALI YOUTH 5 (2016), <http://www.tayocg.com/images/Pathways%20To%20Dignity.pdf> [<https://perma.cc/V78A-57A6>]; see also Kyle Almond, *Somalis Finding Their Place in Minnesota*, CNN, <http://www.cnn.com/interactive/2017/02/us/somali-minnesota-photos> [<https://perma.cc/32CG-QP46>].

9. Coat of Arms of Somalia, WIKIPEDIA (Mar. 29, 2013), https://en.wikipedia.org/wiki/Somalia#/media/File:Coat_of_arms_of_Somalia.svg [<https://perma.cc/L2CZ-B6T9>].

10. Benjamin Franklin, *Join, or Die*, PA. GAZETTE, May 9, 1754, illus., at 2.

preparing the wall for the mural, an administrator for the community center pulled my co-instructor aside. When my co-instructor returned, he told us to stop working—the funding had been pulled from the project.

This Article focuses in on the experiences of Somali Muslims within a larger Black Muslim community. In it, I examine the ways in which the federal “Countering Violent Extremism” program has been mobilized as a policing tool against this particular group of Black Muslims—not only as a technology of surveillance, but a racializing one as well.¹¹ I seek to center this story in the broader historical context of Black Muslims in America, as an example of how religion and race have often been co-constitutive of Black Muslims’ racial experience.

Black Muslims find themselves at an intersection fraught with scrutiny and policing. Both Black Americans¹² and Muslim Americans have been the targets of overpolicing and mass surveillance,¹³ with various threats attributed to each group by the police. This has led to the mass-criminalization of Black Americans, experienced as *Terry* stops, excessive driving citations, drug arrests, and mass incarceration. For Muslim Americans, the experience manifests as mass surveillance, invasive TSA screenings, secret wiretaps, and mapping of Muslim communities, all reinforcing the perception of these communities as inherently violent and threatening.¹⁴

Unfortunately, the particular experiences of Black Muslims are often overlooked,¹⁵ though these individuals simultaneously carry two targets: black

11. See *infra* Subpart II.B.

12. I utilize “Black Americans” throughout in lieu of “African Americans” to refer to descendants of black Africans brought to the United States through the trans-Atlantic slave trade. While perhaps inelegant, its function in this piece is especially necessary to avoid confusion between recent African immigrants, and those with significantly longer histories in the Americas. The function of “Black Americans” is similar to Sherman Jackson’s neologism “Blackamericans,” recognizing that “the force of American history has essentially transformed these erstwhile Africans into a new people.” See SHERMAN A. JACKSON, *ISLAM AND THE BLACKAMERICAN* 17 (2005). “The Blackamerican, in short, is not a biological reality; he is a sociohistorical one. And no amount of scientific theorizing will undo him as an ontological, sociohistorical fact.” *Id.* at 14.

13. See *infra* Part II.

14. See Hakimeh Saghaie-Biria, *American Muslims as Radicals? A Critical Discourse Analysis of the US Congressional Hearing on ‘The Extent of Radicalization in the American Muslim Community and That Community’s Response’*, 23 *DISCOURSE & SOC’Y* 508, 510 (2012).

15. Jackson notes that the relatively recent influx of nonblack Muslim immigrants to the United States has obscured American Black Muslims’ role in shaping American Islam. “[G]iven their presumed mastery over this intellectual legacy, immigrant Muslims came into a virtual monopoly over the definition of a properly constituted ‘Islamic’ life in America.” See JACKSON, *supra* note 12, at 4. In this way, Jackson argues, “[i]mmigrant

and Muslim. The population is uniquely situated, yet rarely addressed in conversations on the vulnerable positions of Black Americans or Muslim Americans. I argue that the treatment of Black Muslims mirrors the experiences of both groups, but that it reflects a unique interpolation. Throughout American history, their Muslim identity, like their black identity, has been categorized as antithetical to whiteness and therefore outside the bounds of national belonging. This has contributed to a racialized experience¹⁶ that aggregates both their black and Muslim identities, and cannot be fully described through a single facet, only understood together.

Examining the intersectional racial experience of Black Muslims reveals that which might otherwise be missed—the inherent racialization of religion, and the antiblack origins of American Islamophobia. I am hardly the first to note that Muslims have been racialized as “nonwhite” through a process of state intervention—from laws governing naturalization to targeted policing and counterterrorism initiatives.¹⁷ My conceptual departure is not to simply reiterate that “Muslim” has been marked religiously as non-Christian, and therefore nonwhite, but that it is marked as anti-Christian, and therefore the American conception of the opposite of white—religiously black. In this way, Black Muslims are then marked as black twice,¹⁸ and placed into a racialized doublebind.¹⁹

In Part I of this piece I examine the ways in which religion has operated as both a cultural and legal proxy for race, beginning with a discussion of the religious justifications utilized to enslave Africans in the Americas, and the subsequent alignment of Christians with whiteness and of non-Christians with

Islam embodies the habit of universalizing the particular.” *Id.* at 12. Likewise, James L. Conyers Jr. notes that when Black Muslims and their movements have been studied, they have been presented as “practitioners of a polytheistic dogma of terrorism or as naïve nationalists who are antiwhite.” See James L. Conyers Jr., *The Nation of Islam: A Historiography of Pan Africanist Thought and Intellectualism*, in *AFRICANA ISLAMIC STUDIES* 77, 82 (James L. Conyers Jr. & Abul Pitre eds. 2016).

16. For a definition of “racialization,” see *supra* note 1.

17. See, e.g., *infra* note 108 and related text.

18. I use “black twice” to acknowledge the ways in which blackness was constructed as both a racial marker and religious marker, see *infra* Part I, and to echo the sentiments of Black Muslims I encountered throughout my research. They described their experience as “being black twice.” See, e.g., Hatem, *infra* note 48, at 95 (“A young African-American man suggested that being an African-American Muslim was like being black twice.”); *Blacks in U.S. Drawn to Islam Despite Radicals*, WASH. TIMES (Oct. 31, 2009), <http://www.washingtontimes.com/news/2009/oct/31/blacks-in-us-drawn-to-islam-despite-radicals> [<https://perma.cc/563Q-C5WP>] (“‘It’s kind of a double whammy to be African-American and Muslim’ ‘You’re going to be judged.’”).

19. See *infra* Subpart II.C.3.

blackness. I then trace how different non-Christians—utilizing their religious identities—achieved varying proximities to whiteness by leveraging anti-Islamic sentiment—casting Muslims as the opposite of Christians and in corresponding contraposition to whiteness.

In Part II, I delve into the modern policing of Somali Muslims within the larger group of Black Muslims. I begin with a brief history of Black Muslims in the United States, then turn my lens toward a community of Somali Americans in Minnesota, using it as a case study to discuss the ways in which they have been specifically targeted by local and federal law enforcement in the War on Terror, with a focus on the Countering Violent Extremism program. Lastly, I examine how the policing of Somali Muslims aligns with—and diverges from—the experiences of nonblack Muslims and non-Muslim Black Americans. I discuss how these differing experiences with law enforcement racializes Somalis' Black Muslim identity, creating a unique racial experience that cannot be neatly disaggregated.

Finally, in Part III, I review some of the benefits that calling attention to this vulnerable population might have, including informing some of the responses to executive actions such as the Trump administration's ongoing Travel Bans²⁰ and the rumored rebranding of the Countering Violent Extremism (CVE) program.²¹ I close with a discussion of the activism and organizing work of young Black Muslims by examining the strategies they employ to disrupt and dispute these inherently-flawed and stigmatizing police strategies, and their negative racializing effects.

I. RELIGION AS RACIALIZATION

*I have often been asked by Arabs who hear me speak Arabic if I am an Arab. I have never been asked by a white person who heard me speak English if I was white.*²²

Since the attacks of September 11, 2001, several commentators have asserted that Muslims are the new blacks.²³ These statements are a clear

20. See *infra* Part III.

21. For an extensive discussion of CVE, see *infra* Part III.

22. JACKSON, *supra* note 12, at 111.

23. See, e.g., Olivia Blair, *Samuel L Jackson Calls Muslims 'The New Black Kids in America'*, INDEPENDENT (Dec. 12, 2016, 12:58 PM), <http://www.independent.co.uk/news/people/samuel-l-jackson-muslims-black-kids-america-us-dubai-film-festival-comments-racism-a7469691.html> [https://perma.cc/CYB8-KRAS]; McKenna Ewen et al., *Muslims*

example of how, in the United States, the categories of race and religion are often conflated: If Muslim is the new black, then religion must inform race. However, to say that Muslims are the “new black” elides the way in that—at least in the United States—“Muslim” was historically a black category.²⁴

The intertwining relationship of law, race, and religion predates the founding of the United States.²⁵ Before the racial categories of white and black were conceived as a justification for slavery, the contrariety of Christian and Heathen did much of the same work.²⁶ Though some Africans were first brought to what would become the United States as indentured servants,²⁷ the emerging transatlantic slave trade demanded a different rationale in order to justify lifetime enslavement. This was largely accomplished by denying the humanity of those enslaved due to their non-Christian status, or alternatively portraying slavery as having a broader civilizing mission, which promoted the spread Christianity.²⁸ When African bondage shifted from a designation of

Reflect on the Divisive Rhetoric of the 2016 Election, WASH. POST (Oct. 25, 2016, 8:57 AM), https://www.washingtonpost.com/video/politics/muslims-reflect-on-the-divisive-rhetoric-of-the-2016-election/2016/10/26/0d72fa90-9acc-11e6-b552-b1f85e484086_video.html?utm_term=.72c1420fa80b [https://perma.cc/L2JE-HL2H]. But see, e.g., Carol Kuruville, *Mahershala Ali: Discrimination Is 'Not New' for Black Muslims*, HUFFPOST: BLACK VOICES (Feb. 23, 2017, 3:30 PM), http://www.huffingtonpost.com/entry/mahershala-ali-islamophobia-racism_us_58adef7de4b01406012f4de5 [https://perma.cc/4DHK-M9YU] (describing how Black Muslim converts are likely not to view discrimination against them as something unique to their Muslim identity); Jordan Elgrably, *Are Muslims the New Blacks? "Native Believer" Rips Open the Post-9/11 World*, L.A. REV. BOOKS (Oct. 3, 2016), <https://lareviewofbooks.org/article/muslims-new-blacks-native-believer-rips-open-post-911-world> [https://perma.cc/34VT-JGR2] (describing that though violence against Muslims has increased post-9/11, the analogy between discrimination against blacks and Muslims is not necessarily salient).

24. Aside from missing the historical American correlation of these two groups, asserting that Muslims are “the new black,” as an effort to describe Muslim experiences of discrimination, disregards the ongoing racial traumas of Black Americans, their continually imbricated position within the “black” category, and obfuscates the existence of Black Muslims.
25. See Paul Finkelman, *Defining Slavery Under a “Government Instituted for Protection of the Rights of Mankind”*, 35 HAMLINE L. REV. 551, 560–63 (2012); Kimberly Sambol-Tosco, *The Slave Experience: Religion*, THIRTEEN: SLAVERY AND THE MAKING OF AMERICA, <http://www.pbs.org/wnet/slavery/experience/religion/history.html> [https://perma.cc/XH9G-U28A].
26. See Finkelman, *supra* note 25, at 562. Some captured and enslaved Africans came from parts of Northern Africa, where Christianity was already practiced, and were likely Christians before their enslavement. Most of those enslaved, however, were likely not exposed to the religion until their capture. More on this *infra* Subpart II.A.
27. See Finkelman, *supra* note 25, at 556–57.
28. See MICHAEL L. CONNIFF & THOMAS J. DAVIS, *AFRICANS IN THE AMERICAS: A HISTORY OF THE BLACK DIASPORA* 128 (2002) (“Christians long used paganism to justify slavery as a means of conversion. Thus, Christian Europeans claimed that wrenching Africans from

servitude to one of property, the justification for slavery followed suit, changing from a system which located the difference between those free and those enslaved in their religious practices to one that asserted a fundamental difference between master and slave in a new construction of race.²⁹

Accompanying this shift was a conflation of whiteness with Christians, as well as blackness with non-Christians.³⁰ The term “Christian,” at least in the context of slavery, did not connote the practice of Christianity, but was instead used to mean “non-African” at first, and then “nonblack.”³¹ Converted blacks were never considered true Christians by the master class,³² as the label functioned as an early stand-in for whiteness.³³

their homeland and enslaving them in the Americas served to advance Christianity.”). This “civilizing mission” rationale would prove long lasting, with Senator John Calhoun trumpeting the same argument in a speech, stating that, “Never before has the black race of Central Africa, from the dawn of history to the present day, attained a condition so civilized and so improved, not only physically, but morally and intellectually.” John C. Calhoun, *Slavery a Positive Good* (Feb. 6, 1837), in TEACHINGAMERICANHISTORY.ORG, <http://teachingamericanhistory.org/library/document/slavery-a-positive-good> [<https://perma.cc/CD5J-H87F>].

29. See Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1716–18 (1993) (arguing that the rationale for chattel slavery helped to construct *race* as we recognize it, by designating whites as “free” and blacks as “slaves”). In part, the rationale for slavery shifted as it became difficult to determine the status of servitude for Africans who converted to Christianity. Some early Virginia statutes seem to imply that “Christians could not be slaves, and thus conversion might emancipate a slave.” Finkelman, *supra* note 25, at 560. “Slaves grasped the liberation that Christian baptism proclaimed and reached for the freedom Christianity preached. Settlers, however, hastened to sever any connection that allowed slaves to lay claim to European entitlements. The developing idea was simple: what separated slave and settler was not Christianity, but color and culture.” CONNIFF, *supra* note 28, at 129.
30. “If being a non-Christian meant being a slave, then being Christian meant not being a slave.” CONNIFF, *supra* note 28, at 128.
31. Virginia narrowed access to freedom by crafting slave statutes barring blacks from attaining Christian status. These statutes assured that “[a]ny African brought to Virginia was presumptively a slave, even if baptized, because that person could have come from a non-Christian country. Whether these slaves were people or property was unclear, but their status was now defined.” Finkelman, *supra* note 25, at 563.
32. Jackson has postulated that the Christianity practiced by Black Americans does indeed vary significantly from that of white Christians, which he embeds into a larger practice he calls “Black Religion.” See JACKSON, *supra* note 12, at 29–38 (“The central preoccupation of Black Religion is the desire to annihilate or at least subvert white supremacy and anti-black racism.”).
33. Viewing the Christian/non-Christian divide as an analog for later racial categorization may help us understand that, though white/black has often been constructed as the primary racial binary, much of the legal construction of race has centered on a binary of white or nonwhite. This was made explicit in *People v. Hall*, 4 Cal. 399 (1854), in which the California Supreme Court announced that the term “black” did not indicate “negro,” but instead encompassed all nonwhites, articulating binaries of white/nonwhite and black/nonblack.

The early linking of Christianity and legally designated whiteness has since been repeatedly invoked,³⁴ with pertinent examples in early immigration and naturalization cases. Beginning with the Naturalization Act of 1790,³⁵ whiteness became a prerequisite for citizenship, that statute only allowing “free white persons” to naturalize.³⁶ As the statute did not, however, further define “free white person,” it left case-by-case determinations to the courts, which utilized a variety of criteria to determine who was white, including phenotype, national origin, historical precedents, popular conception, and anthropology.³⁷ Religion often became a determinative factor in litigating whiteness or was weighed as an important factor in several other cases.³⁸

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34. Some might argue that instead of being a proxy for whiteness, Christianity is a cultural marker to determine assimilability. But assimilating into a culture as a prerequisite for citizenship—when that culture is already raced and made religious—makes this distinction relatively moot. Cf. Enid Trucios-Haynes, *The Legacy of Racially Restrictive Immigration Laws and Policies and the Construction of the American National Identity*, 76 OR. L. REV. 369, 388 (1997) (“Those who focus on race believe that white Christians alone founded and built this nation, and therefore, only white Christians should immigrate because only they are eligible to become ‘American.’”); see also John Tehranian, *Performing Whiteness: Naturalization Litigation and the Construction of Racial Identity in America*, 109 YALE L.J. 817 (2000) (examining several cases where the litigants sought to achieve formal whiteness in order to be eligible for naturalization).
 35. An Act to Establish a Uniform Rule of Naturalization, ch. 3, 1 Stat. 103 (1790) (repealed 1795). Though rewritten several times, most notably after the Civil War to extend naturalization rights to “aliens of African nativity and to persons of African descent” by the Naturalization Law of 1870, explicit racial exclusion in naturalization and immigration was not completely removed until the Immigration and Nationality Act of 1965. See An Act to Amend the Naturalization Laws and to Punish Crimes Against the Same, and for Other Purposes, ch. 254, 16 Stat. 254 (1870); An Act to Amend the Immigration and Nationality Act, and for Other Purposes, Pub. L. No. 89-236, 79 Stat. 911 (1965).
 36. “That any alien, being a free *white* person, who shall have resided within the limits and under the jurisdiction of the United States for the term of two years, may be admitted to become a citizen . . .” An Act to Establish a Uniform Rule of Naturalization at 103 (emphasis added).
 37. See, e.g., *Hall*, 4 Cal. 399.
 38. See, e.g., *United States v. Bhagat Singh Thind*, 261 U.S. 204, 206 (1923) (stressing Thind’s status as a “high caste Hindu” as part of the determination that, though technically *Caucasian*, he was not white); *United States v. Ali*, 7 F.2d 728, 731–32 (E.D. Mich. 1925) (denying naturalization to a high-caste Hindu, distinguished from Thind as a full-blooded Arabian); *United States v. Cartozian*, 6 F.2d 919, 920 (D. Or. 1925) (determining that Armenians were white, in part because of their early adoption of Christianity); *In re Halladjian*, 174 F. 834, 841 (C.C.D. Mass. 1909) (holding that “the Armenians are not to be excluded from naturalization by reason of their race” and “[s]o far as the test by race is applicable, they are to be classed as Caucasian or white” in part because, “of their Christianity, they generally ranged themselves against the Persian fire worshippers, and against the Mohammedans”); *In re Naturalization of John Minook*, 2 Alaska 200, 218 (D. Alaska 1904) (explaining that a half-Russian, half-Inuit man was eligible for citizenship, due to a previous treaty with Russia which held that “those settled tribes who embraced the Christian faith” were citizens, compared to “the

Slowly, conceptions of whiteness expanded to include Italians, Irish, and Jews from various regions—a status previously reserved for descendants from mostly northern European countries.³⁹ But the correlation between whiteness and religion continued to align along “Judeo-Christian” fault-lines.⁴⁰ Many of the courts in the naturalization cases not only stressed a losing plaintiff’s status as non-Christian, and therefore outside of whiteness, but additionally discussed the plaintiff’s proximity to or distance from Islam when determining the plaintiff’s race.⁴¹ These comments make clear that, of those non-Christians hoping to gain recognition as white, those who either practiced or were believed to practice Islam were viewed as especially racially unqualified.⁴² The

independent tribes of pagan faith”); *In re Rodriguez*, 81 F. 337, 340–41 (W.D. Tex. 1897) (affirming the eligibility of Mexicans for citizenship, noting that “[t]heir tribal or wild state has been for centuries abandoned. Under most adverse conditions, they have displayed an ability to advance modern Christian civilization along the lines of its best traditions,—truly remarkable when those conditions are considered.”). Christian status was not, however, enough of a factor to win a plaintiff white status. When Takao Ozawa, a Japanese man seeking to assert his whiteness in order to naturalize, wrote his brief to the U.S. Supreme Court, he stressed not only his own practice of Christianity, but underscored that he raised his children as Christians as well. Devon W. Carbado, *Yellow by Law: The Story of Ozawa v. United States*, in *RACE LAW STORIES* 175, 189, 190 (Rachel F. Moran & Devon W. Carbado eds., 2008). Though Ozawa was ultimately denied white status, the court acknowledged that his attendance at “American churches” was a positive factor in determining citizenship. *Ozawa v. United States*, 260 U.S. 178, 189 (1922). Similarly, though the plaintiff in *Ex parte Shahid* was a Christian, the court appears to question his Christian-bona-fides, similar to those enslaved African converts, betraying an Islamophobic attitude by noting that Shahid wrote and spoke in Arabic as factors in his denial. *Ex parte Shahid*, 205 F. 812 (E.D. S.C. 1913). For more on “Christianity as a pathway to whiteness,” see Khaled A. Beydoun, *Between Muslim and White: The Legal Construction of Arab American Identity*, 69 N.Y.U. ANN. SURV. AM. L. 29, 49–61 (2013).

39. Jackson notes that the enticement of legal whiteness was “so powerful” that “the initial exclusion of Jews, Slavs, Armenians, Syrians, Irishmen, and others would only result in a redoubling of efforts to gain admission rather than oppose white supremacy on substantive or moral grounds.” See JACKSON, *supra* note 12, at 80–81.
40. Iqbal Akhtar, *Race and Religion in the Political Problematicization of the American Muslim*, 44 PS: POL. SCI. & POL. 768, 769 (2011).
41. In Douglas Coulson’s analysis of *United States v. Cartozian*, 6 F.2d 919 (D. Or. 1925), he notes that the defendant leveraged not only his Christianity to gain citizenship, but also “appealed to anti-Islamic sentiment by explicitly framing Armenian Christianity as superior to the Islamic faith of the Turks, Kurds, and Syrian Muslims of Asia Minor.” Douglas M. Coulson, *Persecutory Agency in the Racial Prerequisite Cases: Islam, Christianity, and Martyrdom in United States v. Cartozian*, 2 U. MIAMI RACE & SOC. JUST. L. REV. 117, 156–57 (2012).
42. See, e.g., *In re Halladjian*, 174 F. at 841 (showing the court’s evaluation of Muslims as a negative factor toward establishing legal whiteness, by asserting that Armenians qualified for naturalization in part because “[b]y reason of their Christianity, they generally ranged themselves . . . against the Mohammedans.”); *In re Akhay Kumar*

court in *In re Ahmed Hassan* was perhaps the most explicit in collapsing race, culture, and Islam in arguing against Hassan's naturalization:

Apart from the dark skin of Arabs, it is well known that they are part of the Mohammedan world and that a wide gulf separates their culture from that of the predominately Christian peoples of Europe. It cannot be expected that as a class they would readily intermarry with our population and be assimilated into our civilization.⁴³

Although Arab Americans have been legally classified as white since 1944, the continued conception of Muslims as nonwhite and inassimilable can be at least partially traced to their earlier exclusion from a legal designation of whiteness.⁴⁴

Many locate the nonwhite racialization of Muslims to post-9/11 America,⁴⁵ especially with their additional perceived status as enemy "terrorists,"⁴⁶

Mozumdar, 207 F. 115, 116–17 (E.D. Wash. 1913) (finding that an Indian applicant who had distinguished himself from their Muslims "invaders" could naturalize).

43. *In re Ahmed Hassan*, 48 F. Supp. 843, 845 (E.D. Mich. 1942).

44. See Khaled A. Beydoun, *Boxed In: Reclassification of Arab Americans on the U.S. Census as Progress or Peril?*, 47 LOY. U. CHI. L.J. 693, 710–11 (2016). Though the U.S. Census has changed, allowing some Middle Easterners to identify as something other than white, very few obliged, preferring to retain their hard-won white status. Many recognize the continuing benefits of white status, as illustrated in a recent Ninth Circuit Asylum application, where the petitioner described himself as "something (curiously feline or libationary?) called 'White Persian.'" John Tehranian, *Compulsory Whiteness: Towards a Middle Eastern Legal Scholarship*, 82 IND. L.J. 1, 22 (2007). Even rhetorically, it is useful to note that "Muslim-American" like other hyphenated "American" signifiers, utilizes a religious identity in ways not done for Christians. "[This] labels a person not only as an American who happens to be Muslim, but defines that person by religion rather than nationality or ethnicity or any other way in which he or she wishes to be defined or described." Cynthia White Tindongan, *Negotiating Muslim Youth Identity in a Post-9/11 World*, 95 HIGH SCH. J. 72, 77 (2011). Despite legal recognition, "the fact that scientists, anthropologists, and even the Supreme Court might confer legal whiteness upon Muslim immigrants tends to obstruct from view an equally operative element in the long history of racial negotiation: 'common knowledge,' or what the average white person thinks." Sherman Jackson, *Islam, Muslims and the Wages of Racial Agnosia in America*, 13 J. ISLAMIC L. & CULTURE 1, 7 (2011).

45. See JACKSON, *supra* note 12, at 95 ("Given their new status as a 'suspect class,' it might not be unreasonable to hazard that their chances of penetrating the southernmost border of American whiteness are now, and for the foreseeable future, severely limited if not nil.").

46. Of course, modern racialization of Muslims cannot be understood without reference to their popular association with terrorism—without this imagined connection, the rapid shift in understanding Muslim racial identity is illegible. See JASBIR K. PUAR, *TERRORIST ASSEMBLAGES: HOMONATIONALISM IN QUEER TIMES* 37 (2007) ("At this historical juncture, the invocation of the terrorist as a queer, nonnational, perversely racialized other has become part of the normative script of the U.S. war on terror.").

presenting them as both physical and cultural threats.⁴⁷ President George W. Bush utilized religious tropes which pitted Christianity against Islam when he described the war against terrorism as a “crusade,”⁴⁸ and described the enemy as “evil.”⁴⁹ When a mass-shooting or bombing occurs on American soil, often the religion and race of the perpetrator appear to determine whether they will be treated sympathetically—described as a troubled lone-wolf who kept to themselves,⁵⁰ or as an evil foreign invader, a Muslim jihadist, or a permanent outsider.⁵¹ After the Boston Marathon Bombing in 2013, debates as to whether

47. “[S]ome mainline conservative and almost all evangelical denominations (who constitute ‘slightly more than one in five’ of all Americans promoted the image of Islam as the enemy of Christianity and the embodiment of evil, echoing the rhetoric of medieval Christendom.” Akhtar, *supra* note 40, at 771 (citations omitted).

48. Mervat F. Hatem, *Discourses on the “War on Terrorism” in the U.S. and Its Views of the Arab, Muslim, and Gendered “Other”*, 11/12 ARAB STUD. J. 77, 81 (2004).

49. *Id.* at 80.

50. After Dylann Roof shot and killed nine Black Americans in a Charleston church, many were outraged at the gentle treatment he received and the ways in which he was portrayed in the media, noting that white perpetrators of politically and racially motivated attacks are often described more sympathetically than their victims. See, e.g., *Charleston Shooting Suspect’s Burger King Meal Gets National Attention*, CHARLOTTE OBSERVER (June 24, 2015, 11:56 AM), <http://www.charlotteobserver.com/news/local/article25394389.html>. Former FBI Director James Comey gained the ire of many by “telling reporters he didn’t see the murders ‘as a political act,’” despite Roof having published a White Supremacist manifesto that portrayed his murders as the beginning of a race war. See Jenna McLaughlin, *Why Wasn’t Dylann Roof Charged With Terrorism?*, INTERCEPT (July 22, 2015, 2:43 PM), <https://theintercept.com/2015/07/22/departments-justice-didnt-charge-dylan-roof-domestic-terrorism> [<https://perma.cc/XZ5Z-WB2H>]. “[U]nlike in terrorism prosecutions of Muslims where the least interest in Al Qaeda or ISIS is enough to brand an act part of a global threat, there was no attempt to place Roof’s crime in the context of the right wing threat that state and local law enforcement officials have identified as the biggest terrorism risk in their communities.” Faiza Patel & Adrienne Tierney, *The Reasons Why Dylann Roof Wasn’t Charged With Terrorism*, JUST SECURITY (July 30, 2015), <https://www.justsecurity.org/25071/reason-dylann-roof-charged-terrorism> [<https://perma.cc/KF2X-PA2V>]. The description of white male terrorists as lone-wolves, soft-spoken, kind, gentle, having troubled pasts, suffering from mental illness, or simply being misunderstood are yet another type of gendered, racial, religious, and national-identity reinforcement, serving to “recuperate [attackers] into the . . . national project.” Dominique Grisard, *History of Knowledge, Terrorism and Gender*, 39 HIST. SOC. RES. 82, 86–87 (2014) (noting that feminizing Swiss white male terrorists served to reconcile their acts with their identities).

51. See Gene Demby, *Ethnicity, Religion and the Tsarnaev Brothers*, NPR: CODE SWITCH (Apr. 22, 2013, 4:39 PM), <http://www.npr.org/sections/codeswitch/2013/04/22/178461447/ethnicity-religion-and-the-tsarnaev-brothers> (“[Those] who are demanding that prosecutors treat Mr. Tsarnaev differently from Mr. McVeigh are not even trying very hard to disguise the fact that they’re drawing distinctions based on religion and ethnicity.”). On December 2, 2015, immediately after the mass shooting in San Bernardino, CA, media outlets were confounded with the question of whether to call the attack an act of terrorism—a decision which often relies less on the act and more on the identity of

the Tsarnaev brothers were white proliferated and—if they were white—how that racial identification would change the context of their violent acts.⁵² While the rhetoric around the war on terror has significantly increased the perception of Muslims as racialized outsiders, it remains important to trace how Muslims have been excluded from the public imagination as to what constitutes a citizen—and a “free white person”—since the founding of the nation.⁵³ If the white/black paradigm illustrates the two poles of racial possibility in America, the Christian/Muslim dichotomy seems to act most closely as a racialized anamnesis.⁵⁴ I do not venture to claim that all Muslim experiences of

the actor. See, e.g., FBI: ‘We Do Not Know’ If San Bernardino Mass Shooting Is Linked to Terrorism, CBS L.A. (Dec. 2, 2015, 9:41 PM), <http://losangeles.cbslocal.com/2015/12/02/fbi-we-do-not-know-if-san-bernardino-mass-shooting-is-linked-to-terrorism> [<https://perma.cc/LRZ5-TS3E>].

52. See, e.g., Sarah Kendzior, *The Wrong Kind of Caucasian*, AL JAZEERA (Apr. 21, 2013), <http://www.aljazeera.com/indepth/opinion/2013/04/2013421145859380504.html> (noting that, when pictures showed the Tsarnaevs to be white, excuses for their terrorism—“mental illness, anti-government grudges, frustrations as home”—supplanted speculation about their possible identity as terrorists, “until the next day, when they became the wrong kind of Caucasian [Muslim/Chechen], and suddenly they were not so ‘white’ after all.”); see also Wajahat Ali, *I Am Not the Tsarnaevs*, SALON (Apr. 22, 2013, 8:19 AM), http://www.salon.com/2013/04/22/i_am_not_the_tsarnaevs [<https://perma.cc/A4EE-FJG7>] (“The emotional press conference with Ruslan Tsarni, the suspects’ estranged uncle, proved that the privileges of whiteness are lost when the individual is Muslim or born abroad A reporter . . . asked, ‘What do you think of America?’—a question never posed to family members of white criminals.”). Descriptions of the Tsarnaev brothers as enemies of the state or as terrorist sleeper-cells serve to push their public profile outside of the realm of their actual citizenship. See Andrew Rosenthal, *What’s the Difference Between McVeigh and Tsarnaev?*, N.Y. TIMES: TAKING NOTE (Apr. 22, 2013, 1:25 PM), <https://takingnote.blogs.nytimes.com/2013/04/22/whats-the-difference-between-mcveigh-and-tsarnaev> [<https://perma.cc/P9ER-MVP5>]; David Sirota, *Let’s Hope the Boston Marathon Bomber is a White American*, SALON (Apr. 16, 2013, 4:24 PM), http://www.salon.com/2013/04/16/lets_hope_the_boston_marathon_bomber_is_a_white_american [<https://perma.cc/4VPN-Z4ND>] (arguing that if the Boston Bombers were white, the acts would not cast suspicion on all white Americans—not true if the bombers were of any other race); Joan Walsh, *Are the Tsarnaev Brothers White?*, SALON (Apr. 22, 2013, 4:45 AM), http://www.salon.com/2013/04/22/are_the_tsarnaev_brothers_white [<https://perma.cc/98E2-Z8BN>] (“So why are the Tsarnaev brothers not white, at least to right-wingers? Is it only because they’re Muslim? Muslim immigrants? Or is it because they’re ‘bad,’ and whiteness must be surrendered when white people are bad?”).
53. “Can the American Muslim be religiously and racially written into ‘ascriptive Americanism’? That is to say the normative popular definition of what it means to be an American sans-qualifications, as it has come to be in the case of those of European lineage and ‘Judeo-Christian’ heritage.” Akhtar, *supra* note 40, at 768 (citation omitted).
54. The divide between Christianity and Islam in the United States cannot be understood fully without an understanding of the pre-colonial and colonial narratives that preceded the colonization of the Americas. See Tindongan, *supra* note 44, at 72–75. Regrettably, this is beyond the scope of this article. For a primer on the relationship between

discrimination in the United States are motivated by antiblackness *per se*, but—as discussed in the following Part—that at least part of the fervent anti-Islamic sentiment in the United States is rooted in antiblackness.

II. THE RACIALIZED POLICING OF BLACK MUSLIMS

A. Black & Muslim

1. A Brief History

*[B]efore Muslim America was “Arab” or “South Asian,” “immigrant” or foreign, it was Black.*⁵⁵

Black Muslims have populated the United States before either “black” or “the United States” were cognizable designations.⁵⁶ Some estimate that between 10–20 percent of all enslaved Africans in the Americas may have been Muslim—approximately 2.25–3 million people.⁵⁷ Evidence of this sizable population comes from studies on the influence of Islam in the African regions from which enslaved peoples were sold,⁵⁸ to examinations of advertisements in colonial newspapers for runaway slaves, which regularly included Muslim names such as Bilali, Mustapha, Abu Bakr, and Mamadu.⁵⁹ Some ads explicitly referenced runaways hailing from the

precolonial to postcolonial narratives surrounding Islam, see generally EDWARD W. SAID, *ORIENTALISM* (1978).

55. Khaled A. Beydoun, *Why Ferguson Is Our Issue: A Letter to Muslim America*, 31 HARV. J. ON RACIAL & ETHNIC JUST. 1, 2 (2015).

56. At least some scholars place the arrival of the first Black Muslims in the Americas *before* the start of the slave trade, beginning as early as 1312. See Conyers Jr., *supra* note 15, at 90, tbl.5.4 (charting “African American History with the Islamic Faith”).

57. See Allison Keyes, *A History of Black Muslims in America*, NPR (Aug. 23, 2005, 12:00 AM), <http://www.npr.org/templates/story/story.php?storyId=4811402>; see also Andrew F. Clark, Book Review, 86 J. AM. HIST. 1752, 1753 (2000); but see ALLAN D. AUSTIN, *AFRICAN MUSLIMS IN ANTEBELLUM AMERICA* 22 (1997) (claiming the number of African Muslims in the United States in 1860 to be closer to 40,000). The large discrepancy in estimates goes to illustrate the difficulty of keeping adequate records within a community forced to experience “the twin elements . . . of forced exodus and forced illiteracy.” See JACKSON, *supra* note 12, at 33.

58. See Michael A. Gomez, *Muslims in Early America*, 60 J. S. HIST. 671, 682 (1994) (noting that, of the 400,000–523,000 slaves brought to the U.S. colonies, nearly half came from regions of Africa influenced by Islam).

59. *Id.* at 685.

“Moorish country”⁶⁰ or of “Moorish breed.”⁶¹ Some enslaved Africans continued to practice Muslim prayer, speak in and instruct on writing Arabic,⁶² and observe aspects of Islam, though without naming it as such.⁶³ While many enslaved Africans formally converted to Christianity, many practiced Christianity as interpreted through Islamic precepts.⁶⁴ Though Islam was forced underground, it likely continued to be practiced by enslaved blacks for generations.⁶⁵ Some argue that Frederick Douglass was likely a descendant of African Muslims,⁶⁶ while others speculate that the same might be true of Elijah Muhammad, founder of the Nation of Islam.

60. *Id.* at 686.

61. *Id.* at 687.

62. *See id.* at 695.

63. “It has been generally assumed that at such times slaves practiced their own brand of Christianity or even traditional African religions, but there is absolutely no reason to preclude Muslims from such activity.” *Id.* at 693.

64. It is important to remember that conversion to Christianity occurred under the coercive force of slavery. It is difficult to gauge how many of these forced-conversions may have been genuine, and which were simply a matter of survival. *See id.* at 707–08.

65. Some formerly-enslaved people and their children were interviewed in the 1930s and described their families’ Islamic practices, including “observing Friday prayers, veiling, using prayer beads, and avoiding foods forbidden by their religion.” Livia Gershon, *The Lost History of Early Muslim Americans*, JSTOR DAILY (Nov. 8, 2016), <https://daily.jstor.org/the-lost-history-of-early-muslim-americans> [<https://perma.cc/5QP4-8WVE>]. It is likely that there were many more Muslims than those who self-reported—“If they were practicing Muslims, they certainly would not have volunteered such information to whites in the rural South of the 1930s.” *Id.* Others dispute this narrative, claiming that any real practice of Islam could not have sustained through the antebellum south. *See, e.g.*, JACKSON, *supra* note 12 at 38–45. “While non-Muslim slaves had to contend with the overriding stigma of color, Muslim slaves had to weather the much older and more deeply rooted stigma of religion.” *Id.* at 39.

66. Gomez, *supra* note 58, at 671.

A second wave of Black Muslims in America emerged with the founding of the Nation of Islam.⁶⁷ Elijah Muhammad⁶⁸, who would succeed W. Fard Muhammad as the head of the Nation of Islam from 1934 until his death in 1975, preached a form of Islam rooted in Black Nationalism,⁶⁹ trading on already existing parallels between blacks and Muslims, linking whites with Judeo-Christian practices, and posing “Islam and Christianity as racially exclusive religious spheres that respectively served the separate interests of African Americans and whites.”⁷⁰ Upon Elijah Muhammad’s death, his

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67. It is possible that the Noble Drew Ali, né Timothy Drew, the black man who founded the first Moorish Science Temple in North Carolina in 1912 was himself a direct descendant of enslaved Muslims. W. Fard Muhammed, the founder of the Nation of Islam, was inspired in part by Drew Ali’s religious nationalism. See *A History of African American Muslims*, WASH. POST (Nov. 5, 2011), <http://www.washingtonpost.com/wp-srv/metro/african-american-muslims-timeline.html> [https://perma.cc/UHL5-K2B5]. Additionally, it is likely that Fard “was able to partially capitalize on the growing disillusionment with Christianity among southern-born African American migrants. Fard had posed Christianity as a religion for slaves that had been deliberately imposed on African Americans by whites for the purpose of reducing African American agency and self-awareness.” MALACHI D. CRAWFORD, *BLACK MUSLIMS AND THE LAW* 11 (2015). That the rise of the Nation of Islam occurred in tandem with the national (and largely northern-state) resurgence of the Ku Klux Klan in the 1920s may illuminate why Protestant Christianity—and its terror-inspiring cross burnings—was viewed as anathema to Black Muslim survival. See CRAWFORD, *id.*, at 12–13; LINDA GORDON, *THE SECOND COMING OF THE KKK* 15 (2017) (“In Klanspeak, “white” sometimes meant “Protestant”).
68. Elijah Muhammad’s father, Wali Poole, was a Baptist minister and may have been a Muslim descendant. “The term *wali* means ‘holy man’ or ‘saint’ in Arabic and refers to individuals noted for pious living and miraculous feats.” Gomez, *supra* note 58, at 709–10. Crawford notes that Muhammad’s ideology was influenced in part by his father’s occupation. “Muhammad came to see the hypocrisy in the treatment of Blacks in American and white America’s professed adherence to the principles of Christianity. This led to his disillusionment with Christianity and its viability as a means to the achievement of Black independence.” Malachi Crawford, *Understanding Elijah Muhammad: An Intellectual Biography of Elijah Muhammad*, in *AFRICANA ISLAMIC STUDIES* 103 (James L. Conyers Jr. & Abul Pitre eds. 2016).
69. See *id.*; Rupert Cornwell, *Warith Deen Mohammed: Imam Who Preached a Moderate Form of Islam to Black Americans*, INDEPENDENT (Sept. 14, 2008, 11:00 PM), <http://www.independent.co.uk/news/obituaries/warith-deen-mohammed-imam-who-preached-a-moderate-form-of-islam-to-black-americans-930887.html>. Jackson has argued that these early Black American Muslims were “not so much interpreting Islam as they were appropriating it.” JACKSON, *supra* note 12, at 43.
70. See CRAWFORD, *supra* note 67, at 7. Elijah Muhammad’s focus on Black Nationalism was often characterized as “racists [sic] and absurd. But was it more absurd than the language of European, Jewish, and Arab religious and academic scholars who had relegated black people to be the wretched of the earth?” See Jinaki Abdullah, *Bismillah—Message to the Blackman Revisited*, in *AFRICANA ISLAMIC STUDIES* 61, 59–76 (James L. Conyers Jr. & Abul Pitre eds. 2016) (arguing that “[b]efore the coining of the term

youngest son, Warith Deen Mohammed was elected the Supreme Minister of the Nation of Islam and quickly denounced Black Nationalism, and instead founded the American Society of Muslims.⁷¹ He worked to bring Black Muslims into Sunni-branch orthodoxy, and to unite Black Muslims with the growing population of immigrant Muslim communities.⁷² At the time of Warith Deen Mohammed's death in 2008, it was estimated that his Black Muslim followers ranged from several hundred thousand to two million.⁷³ Nationally recognized Black Muslim figures, including Elijah Muhammad, Malcom X,⁷⁴ and Muhammad Ali—and their various commitments to black liberation—created a popular perception, at least for some time, that in the United States, Islam was a black religion.⁷⁵

Today, Black Muslims make up an estimated 35–42 percent of all American Muslims.⁷⁶ Though Islam is often imagined as a primarily Arab religion in the United States, Black Muslims outnumber both Arab and South Asian Muslims and are “the fastest growing demographic of the faith’s domestic population.”⁷⁷ Though mention of blacks is often muffled in the

‘critical race theory,’ African American Muslim leaders were conceptualizing many of its components.”).

71. See JACKSON, *supra* note 12, at 49–50.

72. See Cornwell, *supra* note 69; Douglas Martin, *W. Deen Mohammed, 74, Top U.S. Imam, Dies*, N.Y. TIMES (Sept. 9, 2008), <http://www.nytimes.com/2008/09/10/us/10mohammed.html>. After W. D. Muhammad rejected Black Nationalism and shepherded the majority of its followers into Sunnism, Louis Farrakhan created a “resurgent” Nation of Islam, which remains today, and it is currently listed as a Black Nationalist Hate Group by the Southern Poverty Law Center. See *Nation of Islam*, S. POVERTY L. CTR., (last visited March 17, 2018), <https://www.splcenter.org/fighting-hate/extremist-files/group/nation-islam>.

73. Cornwell, *supra* note 69.

74. As perhaps the Nation of Islam’s most recognized spokesperson, Malcolm X may remain the most iconic representation of Black Muslims, for good or bad. See generally Charles Allen, *Martin L. King Jr. and Malcolm X*, in *AFRICANA ISLAMIC STUDIES* 131–39 (James L. Conyers Jr. & Abul Pitre eds. 2016) (comparing the legacies of Martin Luther King Jr. and Malcolm X, and the public’s continuing perception of the two figures).

75. “This single-minded commitment to the black cause, together with the legacy of the Nation of Islam’s success at reforming America’s unwanted, had earned Islam a place of respect in the collective Blackamerican psyche.” JACKSON, *supra* note 12, at 59. For more on

76. Compare *Blacks in U.S. Drawn to Islam Despite Radicals*, *supra* note 18 (putting estimates on Black Muslims at 35 percent), with JACKSON, *supra* note 12, at 23 (putting estimates of Black Muslims at 42 percent).

77. Beydoun, *supra* note 55, at 3. Most American converts to Islam are black—while many white Americans “view Islam as foreign,” some blacks are drawn to the religion because “[i]t moves them away from Christianity they saw as a slave religion, as the religion that legitimized their slavery.” *Blacks in U.S. Drawn to Islam Despite Radicals*, *supra* note 76.

dialectic on Muslims in post-9/11 America,⁷⁸ for most of the history of this country, Muslim identity was a black identity as sure as Christian identity was white identity.

2. Black Ethnicities: Somali Americans

*Black Muslims are not a monolith . . .*⁷⁹

Somali Americans have recently been the subject of intense scrutiny within the greater population of Black Muslims.⁸⁰ Recent events have led to the perception that, within the already-villainized group of Muslim-Americans—and even Black Muslims—Somalis are inherently more suspect.⁸¹ These include the recent convictions of nine young men in Minnesota, charged with attempting to join ISIS,⁸² along with earlier incidents of young Somali men allegedly traveling abroad to take up arms with al-Shabaab.⁸³ I focus my

78. See, e.g., *A History of African American Muslims*, *supra* note 67 (Post-9/11 “African American Muslim communities have been marginalized in post-9/11 debates about Islamic extremism. As an example, [the] ‘Islam: Questions & Answers’ episode on ABC’s 20/20 . . . aired during the Ground Zero mosque debate without any African American Muslims.”). Jackson has described a battle that arose between Black American Muslims and Arab and Southeast Asian Muslim immigrants over who possessed authority over American Islam in the wake of mass Muslim immigration. See JACKSON, *supra* note 12, at 67–97. “[V]irtually every [Black American Muslim] indigenous insight, proclivity or ambition would be impugned or marginalized via a *prima facie* presumption that all that was alien or meaningless to the immigrant Muslim was alien or meaningless to Islam.” JACKSON, *id.* at 70.

79. Mohamud Awil Mohamed, *Islam and Blackness: A Crossroads*, HUFFPOST (Jan. 10, 2017), http://www.huffingtonpost.com/entry/islam-and-blackness-a-crossroads_us_57eb4a84e4b07f20daa0fe28 [https://perma.cc/48HR-N46R].

80. Nearly all Somalis are Muslim, with a Pew Research Center poll placing the number at 99.8 percent. PEW RESEARCH CTR., *THE GLOBAL RELIGIOUS LANDSCAPE* 49 (2012).

81. See *infra* Subpart II.B.

82. See Jack Healy & Matt Furber, *Justice or ‘Conspiracy’? Terrorism Trial Divides Somalis in Minneapolis*, N.Y. TIMES (June 5, 2016), https://www.nytimes.com/2016/06/06/us/justice-or-conspiracy-terrorism-trial-divides-somalis-in-minneapolis.html?_r=0; Mukhtar Ibrahim & Laura Yuen, *3 Minnesota Men Found Guilty of Plotting to Join ISIS*, MPRNEWS (June 3, 2016, 4:10 PM), <https://www.mprnews.org/story/2016/06/03/isis-trial-minnesota-men-verdict> [https://perma.cc/FT6Q-6JKW]; David Schimke, *Witness for the Prosecution: U.S. Attorney Andrew Luger on ISIL Verdict, the Somali Community, and the Media*, MINNPOST (June 27, 2016), <https://www.minnpost.com/politics-policy/2016/06/witness-prosecution-us-attorney-andrew-luger-isis-verdict-somali-community-a> [https://perma.cc/MR49-NGPN].

83. See Steven R. Morrison, *The System of Domestic Counterterrorism Law Enforcement*, 25 STAN. L. & POL’Y REV. 341, 377 (2014); Schimke, *supra* note 82.

discussion on Somali Muslims in the Twin Cities⁸⁴ to illuminate how surveillance and policing informs and constructs their racial identity.

Minnesota is home to the largest population of Somali immigrants in the United States, with population estimates ranging from 43,300 to more than 150,000.⁸⁵ The highest concentration of Somali immigrants reside in Minneapolis and St. Paul, with many estimates putting those populations at close to 50,000.⁸⁶ Most Somalis in Minnesota arrived as refugees of the Civil War in Somalia, which has contributed to the over one million Somali refugees spread around the world.⁸⁷ Though Somali refugees and immigrants have lived in Minneapolis since the 1980s, the number of refugees greatly increased in the early 2000s, with the first wave of 12,000 Somali Bantus arriving in the United States in 2003.⁸⁸

Because Somali immigrants come from a country where clan and ethnic differences are more familiar than any system of race, arriving immigrants and refugees are often surprised to learn that they are racially classified as black.⁸⁹ Somali immigrants quickly come to understand that blacks occupy the lowest position in the racial hierarchy in the United States,⁹⁰ and some have sought to distance themselves from Black Americans.⁹¹ Some have utilized their religious

84. Minneapolis and St. Paul, Minnesota, are colloquially known as the Twin Cities. See Our Estimates, MINN. STATE DEMOGRAPHIC CTR., <https://mn.gov/admin/demography/data-by-topic/population-data/our-estimates> [<https://perma.cc/2PSU-KEEW>] (noting demographics of “Twin Cities Area” in “Key Findings”).

85. Kyle Almond, *supra* note 8.

86. Katja M. Guenther et al., *The Impact of Intersecting Dimensions of Inequality and Identity on the Racial Status of Eastern African Immigrants*, 26 SOC. F. 98, 103 (2011).

87. Wangari P. Gichiru, *Challenges and Prospects of Providing Critical Educational Opportunities for Somali Refugees in the United States*, 427 INT’L STRUGGLES FOR CRITICAL DEMOCRATIC EDUC. 49, 55 (2012).

88. See UN REFUGEE AGENCY, POPULATION STATISTICS, <http://popstats.unhcr.org/en/demographics> (follow “All Years” checkbox; then follow “Somalia” checkbox) (data also on file with author); Gichiru, *supra* note 87, at 55–56 (reporting that the Civil war in Somalia is primarily caused by ethnic discrimination against Bantus).

89. Though East Africa experienced European colonialism, they did not develop a racialized system of slavery as in the Americas, and therefore race was not “a significant axis of differentiation . . . where clan, religious, and/or ethnic groupings are the major social cleavages.” Guenther et al., *supra* note 86, at 101.

90. Jackson notes that, in the American context of race, “American whiteness has always reigned as the most prized public asset a citizen could own.” JACKSON, *supra* note 12, at 15. To use Professor Derrick Bell’s metaphor, blacks are the faces at the bottom of the well, that even poor whites can look down on from a position of superiority. See DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL* (1993).

91. Guenther et al., *supra* note 86, at 110 (“[O]nly through differentiation from African Americans are eastern African immigrants able to envision a future of upward mobility.”). Jackson notes that for many recent Muslim immigrants from the Middle

identities as Muslims as a way of asserting their difference,⁹² as well as performative differences, such as continuing to wear traditional and religious dress.⁹³

Part of the project of assimilation requires adapting to a new system of race, as well as other Americans' understanding of where Somali Americans fit into the matrices of race.⁹⁴ For men, the reported sites of racism tend to be in public, such as in instances of street harassment,⁹⁵ while for women they occur primarily in private, often in the workplace.⁹⁶ As both white and black Americans may not have familiarity with either Somali culture or heritage, understanding and navigating these racialized interactions can be challenging.⁹⁷

East and Asia, coming to America “represented...a chance to participate in whiteness—real whiteness, like that of the colonial masters...” and although the currency of whiteness proved to be elusive, these immigrants quickly understood the importance of distinguishing themselves from blacks. See JACKSON, *supra* note 12, at 15–16 (“Muslim immigrants all understood (or soon learned to understand) the term ‘nigger.’ And they would all take great pains...to distance themselves from this negative category.”).

92. *Id.* at 102.

93. *Id.* at 110.

94. See *id.* at 101 (noting that Eastern African immigrants are clustering in smaller cities like Minneapolis, which have less experience integrating nonwhite immigrants).

95. *Id.* at 108; see also TAYO CONSULTING GRP., *supra* note 8, at 23 (reporting that 96 percent of Somali youth said they faced racial discrimination “frequently or occasionally”). More on Somali experiences with police *infra* Subpart II.B.

96. Guenther et al., *supra* note 86, at 108. The complex of race, ethnicity, and religion becomes even more fraught when applying a gendered lens. For example, gendered narratives by Muslim women show the harassment they face from Americans who imagine Muslim women as “oppressed,” and lash out at both women and men for perceived backwardness in imagined gender roles. See Hatem, *supra* note 48, at 90–95. Somali women additionally “express[] frustration and anger at not being able to determine whether the discrimination” they face is rooted in antiblackness, Islamophobia, their immigration status, or misogyny—a classic dilemma of attribution that those who embody intersectional identities often face. Guenther et al., *supra* note 86, at 109. That policing and surveillance have disparately affected Black Muslim men and women, with men often being the central focus of the conversation, masks the ways in which Black Muslim women have historically borne an extraordinary burden from the direct and secondary effects of surveillance and stigmatization of their communities. See generally CRAWFORD, *supra* note 67, at 29–42 (describing how, in the context of the Nation of Islam, women were “critical to the institutional viability and social legitimacy... during the periods of instability precisely because the organization’s men were the principal targets of dissident, malcontent, and local and federal governmental attempts to disrupt or disband the group”).

97. “[E]astern African immigrants are much more likely than Caribbean immigrants to practice Islam rather than Christianity or indigenous religions. In U.S. society, where white Christians dominate, eastern African immigrants are dually marginalized as

As illustrated in the first story in the introduction,⁹⁸ instances of conflict between Black Americans and Somalis have been common throughout the last two decades, including in-school fights,⁹⁹ anti-Muslim attacks,¹⁰⁰ and the shared sentiment of many Somalis that they experience overall high levels of prejudice from Black Americans.¹⁰¹ These conflicts demonstrate that blackness is not unitary—the racial experience of these two groups is varied, with black identity not necessarily perceived to be Somali Muslims’ “master status.”¹⁰²

The differences between black ethnicities often collapse when Somali Americans discuss their treatment by white Americans. “If you are black, you’re black. [White Americans] don’t care whether you came to America six years ago or six hundred years ago.”¹⁰³ But the increasing perception that Somalis are especially susceptible or inherently prone to terrorism, as well as negative portrayals in media and in popular entertainment¹⁰⁴ have precipitated

blacks and as Muslims. Simultaneously, their status as Muslims increases their social distance from African Americans.” Guenther et al., *supra* note 86, at 102.

98. *Supra*, Introduction.

99. See, e.g., Allie Shah, *Minneapolis South High Clash Exposes Somali- and African-American Student Rift*, STAR TRIB. (Feb. 23, 2013, 6:11 AM), <http://www.startribune.com/south-high-clash-exposes-somali-and-african-american-student-rift/192633391> [<https://perma.cc/6GZM-W66Q>]. See also JACKSON, *supra* note 12, at 99 (“For at least a century, there has existed in Blackamerica a cultural/political orthodoxy dedicated to policing the boundaries between blacks and ‘pseudoblacks.’ Pseudoblacks have traditionally been identified as those who are of questionable cultural authenticity and or political loyalty to the black community.”).

100. See, e.g., Guenther et al., *supra* note 86, at 112 (describing a post-9/11 incident where a Black American attempted to hit a Somali woman with his car, yelling, “You stinking Muslims that burn our buildings and our country!”). The racialized experience of Somalis “complicates the color line not as simply the race-based line of white/nonwhite, but as an African-American/non-African American line that involves the intersection of racial, ethnic, and religious differences.” *Id.* at 100.

101. See Jessica Stern, *Muslims in America*, 113 NAT’L INTEREST 38, 43 (2011).

102. See Guenther et al., *supra* note 86, at 112 (“For this [black and Muslim] respondent, being Muslim becomes a master status when he wears his kurtah. . . . [H]e believes others view him negatively as a Muslim . . .”). It should be noted that for many Somali Muslims, an additional and significant category of difference—immigrant—lends substantial work to racializing their identities. Unfortunately, every article has its limitations, and examining the “black + immigrant + Muslim” fulcrum of difference extends beyond the bounds of this project, though deserving of its own extensive analysis.

103. Guenther et al., *supra* note 86, at 109. Many Somalis believe that white Americans could distinguish and sometimes do distinguish between themselves and Black Americans, but actively choose to ignore the complex of identities within blackness. *Id.*

104. The only major studio release prominently featuring Somali actors to date was *Captain Phillips*, a movie about Somali pirates. CAPTAIN PHILLIPS (Columbia Pictures 2013). All three of the primary Somali cast members in the film were first-generation immigrants

a shift in the way that Somalis are read—not just as black, but as black twice. Somalis in Minneapolis have expressed their belief that they are perceived as “pirates and terrorists,”¹⁰⁵ and note that “[w]henver they show Somalis on TV they show the worst parts, starving children with legs like sticks . . . Skinny teenagers carrying huge guns. These images hurt us. They think we are all either starving or fighting each other.”¹⁰⁶ These violent depictions have incited fear of Somali Muslims around the country, and especially in the Twin Cities.¹⁰⁷ These fears have been mobilized as intrusive forms of policing, which scrutinize various aspects of Somalis’ black and Muslim identities.

B. Policing Black Muslims

Recent examinations of the ways in which policing and surveillance have targeted Black Americans and Arab- and Middle Eastern-Muslims have been enlightening.¹⁰⁸ Unfortunately, the experiences of Black Muslims are

and refugees of the Civil War in Somali who resided in Minneapolis. THE WALT DISNEY COMPANY, CAPTAIN PHILLIPS PRODUCTION NOTES 38–39 (2013).

105. TAYO CONSULTING GRP., *supra* note 8, at 23.

106. *Id.*

107. *See id.* (“These images of Somali youth attacking American soldiers or riding around in armored pickups in an *us v. them* context creates ethnic tension and the risk of violence. . . . Thus, Somalis are a marked community by their color, religion, and their history of conflict with the United States.”).

108. For more on black racial construction and policing, see generally Devon W. Carbado, *(E)Racing the Fourth Amendment*, 100 MICH. L. REV. 946 (2002) (discussing the diminishing protections afforded by the Fourth Amendment to Black Americans, and how this contributes to their racialization); Devon W. Carbado & Patrick Rock, *What Exposes African Americans to Police Violence?*, 51 HARV. C.R.-C. L. L. REV. 159 (2016) (describing how discriminatory policing exposes nonwhites and particularly Black Americans to police violence, contributing to their racialization); Jeremy I. Levitt, “*Fuck Your Breath*”: *Black Men and Youth, State Violence, and Human Rights in the 21st Century*, 49 WASH. U. J.L. & POL’Y 87 (2015) (discussing police violence against Black Americans, and how it forms a part of their racialized identities). For more on Muslim and Arab racial construction and counterterrorism policing, see generally Amna Akbar, *National Security’s Broken Windows*, 62 UCLA L. REV. 833 (2015) (analogizing nonwhite experiences of policing under “broken windows” policing to Muslim experiences under counterterrorism policing) [hereinafter, *National Security’s Broken Windows*]; Amna Akbar, *Policing “Radicalization”*, 3 U.C. IRVINE L. REV. 809 (2013) (describing the racializing effects of CVE on Muslims) [hereinafter, *Policing “Radicalization”*]; Susan M. Akram & Kevin R. Johnson, *Race, Civil Rights, and Immigration Law After September 11, 2001: The Targeting of Arabs and Muslims*, 58 N.Y.U. ANN. SURV. OF AM. L. 295 (2002); Sahar F. Aziz, *Policing Terrorists in the Community*, 5 HARV. NAT’L SEC. J. 147 (2014) (describing the harmful dichotomies of “Good Muslims” and “Bad Muslims” inscribed by counterterrorism community policing); Cassidy Pitt, *U.S. PATRIOT Act and Racial Profiling: Are There Consequences of Discrimination?*, 25 MICH. SOC. REV. 53 (2011) (examining whether the racializing

often overlooked.¹⁰⁹ By examining the ways in which Somali Muslims are variously targeted by both policing and counterterrorism efforts, I discuss how this targeting both isolates the population and defines this group's identity in racial terms. Using the experiences of some Somali Americans as a case-study, I call attention to an often neglected group that faces dual marginalization as a consequence of its intersectional identity.¹¹⁰

The Twin Cities were selected as pilot cities by the Obama administration¹¹¹ for a program known as Countering Violent Extremism (CVE).¹¹² The CVE

effects of racial-profiling and discriminatory policing on Muslims lead to increased support for terrorism).

109. I do not suggest that the efforts which describe policing in these communities have not been robust or have intentionally turned a blind eye to the unique issues that arise in Black Muslim communities. On the contrary, these separate inquiries into policing blacks and Muslims often articulate issues that arise for Black Muslims as well, though without addressing their confluence explicitly.
110. Here I rely on the definitions of intersectionality provided by Professor Kimberlé Crenshaw's *Demarginalizing the Intersection of Race and Sex*, and Professor Carbadó's expansion in *Colorblind Intersectionality*, which name the ways in which two identities (woman and black for example) co-constitute the experiences of those who exist at their intersections, which cannot be disaggregated from either identity, and which are not allowed to stand-in for either category at large. See generally Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (1989) (proposing the framework of intersectional theory); Devon W. Carbadó, *Colorblind Intersectionality*, 38 SIGNS 811 (2013) (naming the dominant-position quieted intersections, and therefore relocating intersectionality as both a product and theory of critical race theory).
111. The other pilot cities were Boston and Los Angeles. U.S. DEP'T JUST., U.S. ATT'Y OFFICE FOR THE DIST. OF MINN., BUILDING COMMUNITY RESILIENCE MINNEAPOLIS-ST. PAUL PILOT PROGRAM A COMMUNITY-LED LOCAL FRAMEWORK 2 (2015) [hereinafter BUILDING COMMUNITY RESILIENCE].
112. The Obama administration first announced CVE in August of 2011, in a strategy report titled *Empowering Local Partners to Prevent Violent Extremism*. The report asserts that "the best defenses against violent extremist ideologies are well-informed and equipped families, local communities, and local institutions." THE WHITE HOUSE, EMPOWERING LOCAL PARTNERS TO PREVENT VIOLENT EXTREMISM IN THE UNITED STATES 1 (2011), https://www.dhs.gov/sites/default/files/publications/empowering_local_partners.pdf [<https://perma.cc/P6EJ-AB7S>] [hereinafter EMPOWERING LOCAL PARTNERS]. The second part of the strategy was released in December of the same year, which envisioned "a comprehensive approach to countering violent extremism (CVE) in the United States." EXEC. OFFICE OF THE PRESIDENT OF THE U. S., STRATEGIC IMPLEMENTATION PLAN FOR EMPOWERING LOCAL PARTNERS TO PREVENT VIOLENT EXTREMISM IN THE UNITED STATES (2016), https://www.dhs.gov/sites/default/files/publications/2016_strategic_implementation_plan_empowering_local_partners_prev.pdf [<https://perma.cc/96T6-L52X>] [hereinafter STRATEGIC IMPLEMENTATION PLAN]. This strategic guide named the U.S. Attorneys in each district to run the programs, with support from FBI field offices and the Department of Homeland Security. *Id.* at 7–8. For more on the facilitation of CVE, see generally *Fact Sheet: FY 2016 Countering Violent Extremism (CVE) Grants*, DEP'T OF HOMELAND SEC. (July 6,

program was based upon the premise that certain populations are at risk for breeding terrorists, on a theory of radicalization developed in part in the United Kingdom¹¹³ and by the New York City Police Department.¹¹⁴ CVE was designed to proactively identify, interrupt, and intervene in the process of radicalization through community engagement, outreach, social services, and embedded monitoring.¹¹⁵

2016) <https://www.dhs.gov/news/2016/07/06/fy-2016-counteracting-violent-extremism-cve-grants> [<https://perma.cc/V48V-JG3U>].

113. Based in part on Britain's Preventing Violent Extremism (Prevent) program, U.S. officials studied Britain's theory of "soft" counter-radicalization, their aims, and the strategies they deployed. See Aziz, *supra* note 108, at 164. In Prevent, organizations which accepted funding from the government "in a good faith effort to protect their youth from being exploited by terrorist recruiters found themselves pressured to serve as providers of information to the police." *Id.* at 192. Critics of Prevent note that it relied on no evidence that the program reduced terrorism—their stated goal—and instead morphed into a program of "outright censorship." Letter from Brennan Ctr. for Justice at NYU Sch. of Law et al., to Chairman of the House Comm. on Homeland Sec. et al., 1 (July 10, 2015).
114. The N.Y.P.D. released a report which outlined a four-step radicalization process: "Pre-radicalization," "Self-Identification," "Indoctrination," and "Jihadization". See NEW YORK CITY POLICE DEPARTMENT, RADICALIZATION IN THE WEST 6–7 (2007). Following all but the last category of the N.Y.P.D. report, the December 2007 F.B.I. bulletin named the four stages of radicalization as "preradicalization," "identification," indoctrination," and "action." See UNITED STATES DEP'T JUST., 76 FBI LAW ENFORCEMENT BULLETIN 1, 4–7 (Dec. 2007). For more background tracing the development of radicalization theory, see *National Security's Broken Windows*, *supra* note 108, at 848; Mitch Silber & Adam Frey, *Detect, Disrupt, and Detain: Local Law Enforcement's Critical Roles in Combating Homegrown Extremism and the Evolving Terrorist Threat*, 41 FORDHAM URB. L.J. 127, 137–38 (2013).
115. "Incorporating this framework, government counterradicalization and CVE programs aim to monitor and influence the political and religious cultures of Muslim communities so as to prevent radicalization and violent extremism." *National Security's Broken Windows*, *supra* note 108, at 842. CVE, which employs a preemptive strategy to combat domestic terrorism, follows a broader pattern of U.S. counterterrorism strategy that stretches back to the language of "pre-emptive strikes" in Iraq, and the questionable use of deterrence theory in combatting terrorism abroad, though a thorough discussion is beyond the scope of this article. See Alex Wilner, *Contemporary Deterrence Theory and Counterterrorism: A Bridge Too Far?*, 47 N.Y.U. J. INT'L L. & POL. 439, 449–58 (2015). Additionally, CVE traces the shift in the Obama administration's definition of the enemy-threat, which changed focus from international to domestic threats. Boaz Ganor, *Identifying the Enemy in Counterterrorism Operations—A Comparison of the Bush and Obama Administrations*, 90 INT'L L. STUD. 341, 350 (2014). CVE strategies mirror the ever-increasing scope of terrorism, helping to create a "wider and wider sphere of potential dangers with [a] smaller and smaller evidentiary base for each expansion of the threat." Stefanos Xenofontos, *Agamben's State of Exception in Context: A Critical Analysis With Regard to Post-9/11 Jurisprudence*, 4 LEGAL ISSUES J. 113, 123 (2016). For examples of embedded monitoring, see *supra* Subpart II.B.3.

CVE programs have been criticized for the lack of evidence supporting radicalization theory;¹¹⁶ for the lack of meaningful community-input into community-centered programs;¹¹⁷ for the chilling effect they have on Muslim political expression and behavior;¹¹⁸ for further blurring the lines between social services, civil rights, policing, and intelligence gathering;¹¹⁹ for the lack of

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116. See Letter from Brennan Ctr. for Justice at NYU Sch. of Law et al., *supra* note 113, at 2 (“Despite years of federally-funded efforts, researchers have not developed reliable criteria that can be used to predict who will commit a terrorist act.”). The N.Y.P.D. report on which radicalization theory relies is based “on an incredibly small number of case studies—eleven cases total, with five American cases as the focus—for the ambitious conclusions it draws,” and “the report purports to model behavior for *terrorism* based on a number of cases where the defendants were not even charged with committing a violent terrorist act.” *Policing “Radicalization”*, *supra* note 108, at 837–38. In essence, the N.Y.P.D. radicalization report makes the error of identifying supposedly shared qualities within a (miniscule) dataset, and makes the leap that anyone exhibiting those qualities are predestined to become terrorists. In contrast, terrorism experts assert that the only unifying characteristics of terrorists is their normality. PUAR, *supra* note 46, at 54. Although the evidence supporting radicalization theory is dubious, it does not unseat its champions who insist its interventions are necessary. See generally Stevan Weine, *Building Community Resilience to Violent Extremism*, 14 GEO. J. INT’L AFF. 81 (2013) (arguing the necessity of CVE, and dismissing its criticisms).
 117. *National Security’s Broken Windows*, *supra* note 108, at 843–44. Community engagement “tends to empower those who want more policing at the expense of those who want more control of the police . . . [and] to exclude those whose interests are in less aggressive policing.” *Id.* at 901 (noting that community policing and CVE community engagement strategies both lack a meaningful opportunity for community engagement, especially when police hand-pick their community partners (citing Mary I. Coombs, *The Constricted Meaning of “Community” in Community Policing*, 72 ST. JOHN’S L. REV. 1367, 1372–73 (1998))).
 118. Letter from Brennan Ctr. for Justice at NYU Sch. of Law et al., *supra* note 113, at 3 (“[I]f religious and political views are identified as markers of pre-terrorism that must be reported to the government, the public spaces for discussion and engagement will simply be shut down . . .”).
 119. See PUAR, *supra* note 46, at 154–55 (describing how post-9/11 legislation collapsed distinctions between policing and intelligence gathering in many Muslim communities, shifting focus from redressing crimes to the anticipatory criminalization of entire populations); Shirin Sinnar, *Institutionalizing Rights in the National Security Executive*, 50 HARV. C.R.-C. L. L. REV. 289, 355 (2015) (describing how the Department of Homeland Security Office for Civil Rights and Civil Liberties’ (CRCL) shift from redressing civil rights violations to engaging communities through CVE programs “reproduces narratives that community members may be seeking to dispel—such as the idea that certain communities are uniquely and collectively responsible for violence”). At times, the antagonism expressed by national security leaders toward Muslim civil rights has been blunt. See Emily Berman, *Regulating Domestic Intelligence Collection*, 71 WASH. & LEE L. REV. 3, 40 (2014) (quoting the Director of National Intelligence, who claims that civil liberties groups “prevent the intelligence community from doing its job as well as it otherwise could”).

a clear and cohesive directive;¹²⁰ and for alienating the very communities that they claim to assist.¹²¹ Some community leaders and activists have suggested that CVE is preferable to more invasive forms of surveillance and policing. However, this proposition is a false trade-off¹²²—FBI sting-operations,¹²³ mapping of Muslim communities,¹²⁴ and other forms of covert and intrusive surveillance persist alongside CVE. Nor does CVE serve to repeal any existing federal legislation which allow these invasive forms of surveillance.¹²⁵ CVE's promise of addressing community concerns in lieu of harsh counterterrorism tactics belies its implementation as only another layer of scrutiny¹²⁶. Community policing and other sites of surveillance serve as just another path for information-gathering and sharing across law-enforcement agencies.¹²⁷ CVE is not, in the government's own words, "a feel-good exercise . . . [It] is an exercise in protecting America."¹²⁸

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120. See Aziz, *supra* note 108, at 167; *Policing "Radicalization"*, *supra* note 108, at 814 ("There is no singular, official, government-wide understanding of radicalization. Indeed, more often than not, government officials and documents refer to 'radicalization,' 'radical' and 'radicalized' Muslims, 'radical Islam,' 'violent extremists,' and so on, without explanation of what precisely these terms mean.").
 121. See, e.g., Geneve Mantri, *Homegrown Terrorism: Is There an Islamic Wave?*, 33 HARV. INT'L REV. 88, 94 (2011) ("Muslim Americans are not a threat, but a vital part of the response; attempts to label them will only serve to alienate an entire population of patriotic citizens.").
 122. See Aziz, *supra* note 108, at 149–50 ("Community policing in counterterrorism as currently envisioned betrays its rhetoric of empowerment and mutual trust, and serves as another weapon in the federal government's toolkit that perpetuates the 'Terrorist Other' stereotype.").
 123. See *infra* notes 176–177 and accompanying text.
 124. "FBI policy . . . embraces 'community mapping'—the practice of collecting and storing information about particular ethnic communities." See Berman, *supra* note 119, at 24. For more on mapping practices, see Subpart II.B.3.
 125. See Aziz, *supra* note 108, at 211 (highlighting the government's "nearly unfettered discretion to spy on Muslim communities").
 126. See *id.* at 150.
 127. See *National Security's Broken Windows*, *supra* note 108, at 895. In an internal memo discussing "a community engagement push by federal law enforcement with Minnesota Somali communities . . . [an] FBI private acknowledged, there was no possibility of the community [having] influenced how the investigations were carried out." *Id.* at 893 (noting that, in private, the FBI acknowledged that the charge of these programs was to "encourage community leaders to pass information to federal agents about young people") (citations omitted).
 128. Sinnar, *supra* note 119, at 352 (quoting Rep. Jane Harman, Chair of the Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment, who reprimanded Margo Schlanger, officer for the Department of Homeland Security's Civil Rights and Civil Liberties, for Margo's use of CVE to primarily develop communities of trust rather than develop leads on future acts of terrorism). The Minneapolis CVE program was rebranded as "Building Community Resilience," in an effort to quell

1. Targeting Black Muslims

Though President Obama and various administrators of CVE repeatedly assured those communities involved that CVE would not portray Muslim communities as uniquely susceptible to the influence of terrorism,¹²⁹ CVE strategic guides focused almost exclusively on Muslims and utilized language around radical Islam. Furthermore, in Minnesota, the CVE program guidelines explicitly targeted only Somali Muslims within the broader Muslim community. The official strategic plans for CVE at the federal and local level begin with preambles which avoid naming Muslims as a specific threat, then proceed to exclusively elaborate on perceived threats in Muslim communities.¹³⁰

Two high-profile incidents of recruitment in the Twin Cities—both the disappearance of several men thought to have returned to Somalia to join

critics. “[W]e did call our effort CVE at the outset—which is a widely regarded term among the anti-radicalization community—but it was quickly, and correctly, pointed out to us that CVE is not really the right way to talk about what the community here is trying to do.” Schimke, *supra* note 82 (quoting U.S. Attorney Andrew Luger). Apart from the new name, the underlying motives remained unchanged.

129. See *National Security’s Broken Windows*, *supra* note 108, at 850. See generally EMPOWERING LOCAL PARTNERS, *supra* note 112 (beginning with a discussion of various “extremist” groups, including neo-Nazis and White Supremacists, yet focusing all strategies for countering violent extremism in Muslim communities). “At the heart of radicalization discourse is the idea that Muslims and Islam are responsible for terrorism. [It] creates false and stigmatizing equivalences: between Islam, Muslims, and terrorism, and between Islam, Muslims, and violence.” *National Security’s Broken Windows*, *supra* note 108, at 895.
130. See Letter from Council on Am.-Islamic Relations et al., to U.S. Dep’t of Just. et al. (May 2015), <http://files.ctctcdn.com/bd15115b001/d068ad69-9ad8-46a0-bdcd-b9d57454ed20.pdf> [<https://perma.cc/N9J5-77SQ>] (“These CVE programs seek to do something unprecedented: combine policing and counter-terrorism efforts with social services and outreach *targeting only one religious and ethnic community*. This runs roughshod over the line between community outreach and intelligence gathering, a tactic which President Obama expressly criticized at the White House CVE Summit.”) (emphasis added). In the DOJ’s plan for CVE in Minnesota, the program is granularly targeted at the Somali community, discussing outreach solely to Somali Imams and in Somali communities, and training officers in “Somali culture.” BUILDING COMMUNITY RESILIENCE, *supra* note 111, at 3. The DOJ’s grant agreement for organizations participating in CVE initiatives in Minnesota explicitly draws a line connecting al-Shabaab, the Islamic State of Iraq and the Levant (ISIL), and the Somali community. It requires that “[t]he prevention and intervention programs must *specifically* serve and support [Somali] residents.” U.S. DEP’T JUST. U.S. ATT’Y OFFICE FOR THE DISTRICT OF MINN., ET AL., COOPERATIVE AGREEMENT FOR IMPLEMENTATION OF THE BUILDING COMMUNITY RESILIENCE PLAN, 1 (Sept. 2015) (on file with the author).

al-Shabaab¹³¹ and the recent conviction of nine Somali youth charged with conspiring to support a foreign terrorist organization¹³²—have contributed to the perception that Somali youth are particularly vulnerable to terror-recruitment. Unfortunately, these high-visibility cases often provide the only national media portrayals of Somalis in the Twin Cities, leading to the perception that the entire community is a hotbed for terrorism.¹³³ Norm

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131. See Schimke, *supra* note 82 (quoting U.S. Attorney Andrew Luger—“Al Shabaab was recruiting people in the Somali community back then, and now ISIL is recruiting from the same community.”); Michel Martin & Dina Temple-Raston, *Somali Teens Go Missing in Minneapolis*, NPR: TELL ME MORE (Feb. 2, 2009, 12:00 PM), <http://www.npr.org/templates/story/story.php?storyId=100135879>.
 132. See Schimke, *supra* note 8265; see generally Providing Material Support or Resources to Designated Foreign Terrorist Organizations, 18 U.S.C. § 2339B (a)(1) (2012). The argument advancing aggressive “material support” prosecutions rests less on cutting off meaningful financial support, and more on rooting out those who may engage in future terrorism. See Timothy Scahill, *The Domestic Security Enhancement Act of 2003: A Glimpse Into a Post-PATRIOT Act Approach to Combating Domestic Terrorism*, 6 CR: NEW CENTENNIAL REV. 69, 79, 83 (2006). Critics note that many material-support convictions are based on the accused’s words and thoughts, not actions. During the recent trial, the defense attorney stressed that the defendants were just “teens caught on tape slamming America and talking big about fighting in Syria, but nothing more.” Ibrahim & Yuen, *supra* note 65. The extremely low evidentiary threshold in material-support cases necessary to garner a possible life sentence is unparalleled and fails to respond to the nuances of each case. See Morrison, *supra* note 83, at 377. “If they can convict them on words and thoughts, it’s over. . . . People will not feel safe in our communities.” Healy & Furber, *supra* note 82 (quoting Mr. Mohamed, a community member and supporter of the three defendants).
 133. See Samuel J. Rascoff, *Establishing Official Islam? The Law and Strategy of Counter-Radicalization*, 64 STAN. L. REV. 125, 142 (2012) (“[T]he U.S. government has devoted significant energies to the Somali-American community in cities like Minneapolis on the theory that that community is uniquely vulnerable to certain strains of radical ideation and activities.”). Since 9/11, rhetoric linking domestic Muslim Americans and terrorism has been steadily increasing, “and perhaps, yet to reach its apex.” See Beydoun, *supra* note 44, at 697; see also Sunaina Maria, *Imperial Feelings: Youth Culture, Citizenship, and Globalization*, in M.M. SUAREZ-OROZCO & D.B. QIN-HILLIARD, GLOBALIZATION: CULTURE AND EDUCATION IN THE NEW MILLENNIUM 203–34 (2004) (citing the rise in public support for racial profiling post-9/11, with 80 percent of the public opposed pre-9/11, shifting to 60 percent in support afterward, “as long as it was directed at Arabs and Muslims”). A congressional hearing on American Muslims provides a recent example of the type of rhetoric surrounding Muslims that, though contested, has become acceptable in public discourse. Representative Peter King asserted that “[o]ver 80 percent of the mosques in this country are controlled by radical imams,” that “85 percent of American Muslim community leaders are an enemy living amongst us,” and that “no (American) Muslims cooperate in the war on terror.” Stern, *supra* note 101, at 38. These recent statement continue in a line of anti-Muslim (and antiblack Islamophobia) by congressional representatives. See CRAWFORD, *supra* note 67, 92–93 (detailing how, in the early 1960s, there were calls for “a congressional investigation into the ideology, purposes, and activities of a society known as the Nation of Islam,” and comments

Coleman, the former mayor of St. Paul and former U.S. Senator, wrote an op-ed in the Minneapolis Star Tribune which called Minnesota the land of “10,000 terrorists.”¹³⁴ He declared that “Minnesotans need to know of the evil that is lurking among us and what can and should be done to defeat it.”¹³⁵ That Somalis are a “lurking evil” is an oft-expressed sentiment, which casts suspicion over an entire community for the actions of a miniscule fraction.¹³⁶ A similar effect can be seen in Boston, another CVE pilot city, where responses to the Boston Marathon bombing by the Tsarnaev brothers emphasized their ethnicity over their individual choices, casting suspicion over the entire Chechen-American community.¹³⁷ When local civil rights organizations, such as the Council on American-Islamic Relations in Minnesota (CAIR-MN), spoke out against CVE for feeding into this stigmatizing language, they were criticized for either exacerbating or failing to control extremism within their

alleging that Black Muslims are “subversive to our form of government and pose a growing threat to our internal security”) (quotations omitted).

134. Norm Coleman, *Norm Coleman: On Battling Recruitment in the Land of 10,000 Terrorists*, STAR TRIB. (Apr. 23, 2015, 11:10 PM), <http://www.startribune.com/norm-coleman-on-battling-recruitment-in-the-land-of-10-000-terrorists/301153401> [https://perma.cc/KBR7-LM2Y]. In the article, Coleman portrays the Somali community as a breeding ground for “10,000 terrorists,” a play off the state nickname, the “Land of 10,000 Lakes.” *Id.* This irresponsible exaggeration casts nearly 20 percent of Minnesota’s Somali population as potential terrorists, while the percentage of those charged with recruitment or material support for terrorism is closer to 0.018 percent. *See supra* notes 85–86. This type of xenophobic mass-suspicion of nonwhite Americans is not new: In *Korematsu v. United States*, the Supreme Court allowed for the mass incarceration of Japanese Americans, asserting that the rationale for their internment was not racism, but pragmatism—“Korematsu was not excluded from the Military Area because of hostility to him or his race. He was excluded because we are at war with the Japanese Empire.” 323 U.S. 214, 223 (1944). This “pragmatism” crucially pivots on who the Court imagines as encapsulated in the “we” that is at war—it does not include Fred Korematsu, despite his American citizenship. As with the War on Terror, when Coleman writes that we must be pragmatic with the threat that “is taking place in our own back yard, in the heartland of America,” he is trading on similar “us” versus “them” tropes that deny the shared *American* identity of Somali Muslims. Coleman, *supra*. He imagines Somali Muslims as forever outside of the “heartland of America.”

135. Coleman, *supra* note 134.

136. When addressing a crowd of supporters in Minnesota, then-candidate Donald Trump spoke disparagingly of the Somali community, painting their presence as a “disaster taking place in Minnesota.” Ben Jacobs & Alan Yuhas, *Somali Migrants Are ‘Disaster’ For Minnesota, Says Donald Trump*, GUARDIAN (Nov. 7, 2016, 2:42 AM), <https://www.theguardian.com/us-news/2016/nov/06/donald-trump-minnesota-somali-migrants-isis> [https://perma.cc/586Z-WYFE].

137. By portraying ethnicity as barbaric and violent, the media creates an image of a people destined by their names and their “culture of terror” to kill. There are no people in Chechnya, only symbols. There are no Chechen Americans, only threats. *See* Kendzior, *supra* note 52.

communities,¹³⁸ and for being disconnected from the communities they purported to serve.¹³⁹

Aside from casting suspicion on the entire Somali Muslim community, the myopic focus of CVE ignores bountiful research that suggests that those most likely to commit domestic terror attacks are white-nationalists and right-wing extremists.¹⁴⁰ Even within Muslim communities, often the biggest threats come from white-Christian converts to Islam.¹⁴¹ CVE, therefore, cannot be guided only by pragmatic counterterrorism goals, as evidenced by this disconnect, but is at least in part motivated by preconceived notions which inform whose identities must be policed.¹⁴²

138. See Saghaye-Biria, *supra* note 14, at 522–23 (describing a congressional hearing on radicalization in the Muslim Americans: “[W]hile individual Muslim Americans were repeatedly defended as loyal, peaceful, cooperative citizens, Islamic organizations were blamed for exacerbating the radicalization of Muslim Americans.”).

139. CAIR-MN, along with fifty additional organizations, sent a letter expressing deep disapproval of CVE to the DOJ, asserting that “CVE is based on the premise that religion or nationality (Somali) determines an individual’s propensity toward violence. . . . It will further stigmatize and marginalize the Somali/Muslim community by treating all of its members as suspects and by holding an entire community responsible for the actions of others.” Letter from Council on Am.-Islamic Relations et al., *supra* note 130, at 1. U. S. Attorney Andrew Luger responded by implying that CAIR misunderstood Somali community concerns, because “CAIR is not a Somali organization, it’s a Muslim organization.” Schimke, *supra* note 82. This, despite the fact that nearly 100 percent of the Somali population is Muslim, that CAIR’s executive director is a Somali immigrant, and that the vast majority of CAIR-MN’s clients come from the Somali community. See PEW RESEARCH CTR., *supra* note 80, at 49 (showing that 99.8 percent of the Somali population identifies as Muslim). See *About Us*, CAIR MINN., <https://www.cairmn.com/about-us.html> [<https://perma.cc/778E-Y3Y5>] (last updated Feb. 21, 2015); *About Us: Our Staff*, CAIR MINN., <https://www.cairmn.com/about-us/cair-mn-staff.html> [<https://perma.cc/2FAQ-6SWE>] (last updated Jan. 24, 2017).

140. See Ron Nixon et al., *Pointing to Trump, Groups Reject U.S. Aid to Fight Extremism*, N.Y. TIMES (Feb. 2, 2017), <https://www.nytimes.com/2017/02/02/us/politics/trump-muslim-groups-aid-extremism.html>.

141. See Pitt, *supra* note 108, at 61. See generally Stern, *supra* note 101, at 40–42; Morrison, *supra* note 83 (discussing the cyclical problem of creating false-positives through overconfidence on mass surveillance, and missing false-negatives by ignoring nonprofiled sources).

142. “A distorted perception of the enemy and threat could negatively affect the entire decision-making process by focusing efforts on an irrelevant enemy or granting too much importance to a marginal threat.” Ganor, *supra* note 115, at 343 (describing how a leader’s worldview influences an organization’s decisionmaking process).

2. Policing Performance

*Visibility is a trap.*¹⁴³

Since the attacks of 9/11, Somali Americans have been subjected to ever-increasing scrutiny by law enforcement.¹⁴⁴ CVE intensifies this scrutiny by empowering the FBI, DHS, Hennepin County and Ramsey County sheriffs' departments, the St. Paul and Minneapolis police departments, Minneapolis Public Schools and other educators, social-workers, and mental-health professionals, and a host of others to intervene at the earliest stages of radicalization.¹⁴⁵ In a leaked guide directed at practitioners and analysts

143. MICHEL FOUCAULT, DISCIPLINE & PUNISH 200 (Alan Sheridan trans., Vintage Books 2d ed. 1995) (1977).

144. See Guenther et al., *supra* note 86, at 111–12. While this paper focuses on the experiences of policing faced by Somali Muslims in the Twin Cities, it is important to note that though they comprise the largest group of East African immigrants in Minneapolis, they are part of a larger cohort of African immigrants, including Liberian and Oromo immigrants. See WILDER RESEARCH, SPEAKING FOR OURSELVES: HMONG, KAREN, LATINO, LIBERIAN, AND SOMALI COMMUNITIES IN THE TWIN CITIES: POPULATIONS AT A GLANCE 11–16 (2016), <https://www.wilder.org/Wilder-Research/Publications/Studies/Speaking%20for%20Ourselves/Hmong,%20Karen,%20Latino,%20Liberian,%20and%20Somali%20Communities%20in%20the%20Twin%20Cities%20-%20Populations%20at%20a%20Glance.pdf> [<https://perma.cc/YDS8-HYD2>] (estimating that Minnesota is home to 16,000 Liberians, and 40,000 Somalis) see also Kristoffer Tigue, *Effort to Engage Minnesota's Oromo Community Starts With a Not-So-Simple Task: Figuring Out How Many Oromo There are in Minnesota*, MINNPOST (May 19, 2016), <https://www.minnpost.com/new-americans/2016/05/effort-engage-minnesotas-oromo-community-starts-not-so-simple-task-figuring-ou> [<https://perma.cc/J8U5-6W42>] (reporting on the Oromo community in Minnesota). Unlike most Somalis, Oromo practice a mix of Christianity and Islam. Frederick Melo, *Minnesota's Oromo Look to U.S. for Help*, PIONEER PRESS (Jan. 31, 2016, 1:59 PM), <http://www.twincities.com/2015/12/25/minnesotas-oromo-look-to-u-s-for-help> [<https://perma.cc/UA7E-ZYX2>]. Minnesota Oromo are often mistaken as Somali due to similar names, style of dress, and geographic overlap with Somali communities in the Cedar-Riverside neighborhood. See Tigue, *supra*. As such, law enforcement strategies targeted at Somalis often catch Oromo in the mix. See, e.g., Kenneth Kjer, Comment to *Effort to Engage Minnesota's Oromo Community Starts With a Not-So-Simple Task: Figuring Out How Many Oromo There are in Minnesota*, MINNPOST (May 22, 2016, 9:40AM), <https://www.minnpost.com/new-americans/2016/05/effort-engage-minnesotas-oromo-community-starts-not-so-simple-task-figuring-ou> [<https://perma.cc/J8U5-6W42>] (“[N]ot only was I [a] police officer in Hennepin and Anoka County, but after retirement I held several jobs in Human Resources[,] one in the general area of The Riverside area and I never heard of the Oromo people.”).

145. U.S. DEP'T JUST., U.S. ATT'Y OFFICE FOR THE DIST. OF MINN., BUILDING COMMUNITY RESILIENCE MINNEAPOLIS-ST. PAUL PILOT PROGRAM: FACT SHEET 1 (2015).

marked “for official use only,”¹⁴⁶ these newly deputized counterterrorism partners were tasked with ranking targets on a scale of one to five to determine their risk for radicalization.¹⁴⁷ Categories included “Expressions of Hopelessness, Futility,” “Talk of Harming Self or Others,” and “Connection to Group Identity (Race, Nationality, Religion, Ethnicity).”¹⁴⁸ These ranking systems provide a sweeping basis for criminalizing mundane behaviors and group identities that have no real connection to criminality¹⁴⁹ and conscript community partners into reporting to local and federal authorities.¹⁵⁰ If the Minneapolis CVE program seems diffuse and hard to pin down, that is because it is.¹⁵¹ I attempt to piece together an accounting of how the program operates from the information made publicly available.

Those captured by CVE are targeted through different performative aspects of their identities, including names, clothing, religious practices, political ideologies, and maintaining ties to their home countries. Because CVE specifically targets Somali Muslims, markers and supposed markers of that

146. NAT'L COUNTERTERRORISM CTR., *COUNTERING VIOLENT EXTREMISM: A GUIDE FOR PRACTITIONERS AND ANALYSTS* (May 2014).

147. Murtaza Hussain et al., *Is Your Child a Terrorist? U.S. Government Questionnaire Rates Families at Risk for Extremism*, INTERCEPT (Feb. 9, 2015, 9:39 AM) <https://theintercept.com/2015/02/09/government-develops-questionnaire-see-might-become-terrorist> [<https://perma.cc/SZN3-QB9L>].

148. *Id.* “The idea that the federal government would encourage local police, teachers, medical and social service employees to rate the communities, individuals and families they serve for their potential to become terrorists is abhorrent on its face.” *Id.* (quoting former FBI agent Mike German). As a precursor to CVE, the U.S. Department of Justice created Specialized Community Outreach Teams (SCOT) which were tasked with outreach to the Somali community to address counterterrorism, and to “develop a baseline profile of Somali individuals that are vulnerable to being radicalized.” *National Security’s Broken Windows*, *supra* note 108, at 864. The FBI has been engaged in the demonization of Black Muslims since at least the early 1960s, producing a report which stated that “[b]ased upon an analysis of the *rabid teachings* of [the Nation of Islam] . . . it is definitely considered that these people present a threat to the internal security of the United States.” See CRAWFORD, *supra* note 67, at 96.

149. See generally *Policing “Radicalization”*, *supra* note 108 (describing the tenuous basis for radicalization theory). Radicalization theory’s shaky foundation means that “[r]ather than articulate anything nearing a description of a discrete stage in a multi-step process, . . . preradicalization’s circumference [is defined as] spatial and cultural, gendered, classed, and aged. The immigrant Muslim neighborhood becomes a site of suspicion.” *Id.* at 834.

150. For more information on ranking and reporting, see *infra* notes 172–173 and related discussion.

151. “The Minneapolis Framework also anticipates an intervention component, but does not provide details on how subjects will be identified. . . . The framework does not address the issue of when or how law enforcement should become involved.” See THE BRENNAN CTR., *COUNTERING VIOLENT EXTREMISM* 30–31 (2017), available at https://www.brennancenter.org/sites/default/files/publications/Brennan%20Center%20CVE%20Report_0.pdf.

identity become intertwined with imagined threats.¹⁵² For example, names like “Mohammed” can become triggers for additional scrutiny, where “less familiar configurations of vowels and consonants always blur into words like ‘Badguy.’”¹⁵³

Donning traditional African garments or clothing associated with Muslims, such as a kurtah, hijab, or chador may all lead to increased visibility,¹⁵⁴ and, as dictated by CVE guidelines, donning any of these may be interpreted as

152. Law enforcement training both produces, exports, and reintegrates crude stereotypes of Muslims, cyclically reinforcing a perceived threat. “[In training materials, FBI] [a]gents learned that Islam is a highly violent radical religion, [and] that mainstream American Muslims are likely to be terrorist sympathizers.” Andrew Rosenthal, *Liberty and Justice for Non-Muslims*, N.Y. TIMES: TAKING NOTE (Mar. 30, 2012, 12:32 PM), https://takingnote.blogs.nytimes.com/2012/03/30/liberty-and-justice-for-non-muslims/?_r=0 [<https://perma.cc/T626-VXQ2>] (internal quotations omitted). It is unsurprising when agencies, primed through this crude training, propagate stereotypes and begin to read all Muslim identity-performance as a threat.

153. Amy Davidson Sorkin, *The N.S.A.’s Spying on Muslim-Americans*, NEW YORKER (July 10, 2014), <http://www.newyorker.com/news/amy-davidson/the-n-s-a-s-spying-on-muslim-americans> (discussing how government training materials utilize racist and stereotypical names like “Mohamed Raghead” and “Mohamed Badguy” as stand-ins for potential targets). As more recent Muslim immigrants have come to be understood as the identity-center of the Muslim community in the United States, it is possible that previous identity markers for Black American Muslims have *lost* some of their connotations with Muslim identity. See JACKSON, *supra* note 12, at 72 (“Even a name like ‘Malcolm,’ which had to this point connoted Islam—or at least ‘Black Muslim’—now all but lost its Islamic connotation and resonance.”). This naming and unnamings takes on additional significance when one considers the role that radical reappellation played in the Nation of Islam. See CRAWFORD, *supra* note 67, at 10.

154. See Guenther et al., *supra* note 86, at 112. Guenther quotes a Somali Muslim man from Minneapolis:

Before September 11th, I was the type of guy who wears [a] kurtah and turban to flaunt being Muslim and I used to be very proud of doing that . . . [I] still . . . do because I am not afraid of anybody—but somehow I feel that I am not [as] happy as I was yesterday or the day before September 11th . . . I mean, it feels as though you are guilty somehow. . . . People look at you because you are Muslim and everybody, when they see you, they picture September 11th.

Id. This concern over unwanted scrutiny due to dressing in Muslim identified clothing has long been a debate in the Black Muslim community. “Hijab is an Arabic custom. Most African Americans do not want to attract attention to themselves. Wearing hijab would attract attention.” See C. S’thembile West, *Take Two: Nation of Islam Women Fifty Years After Civil Rights*, in AFRICANA ISLAMIC STUDIES 37 (James L. Conyers Jr. & Abul Pitre eds. 2016) (describing black women’s differing relationships with Muslim dress and hijab within the Nation of Islam in the 1960s and 1970s). It should be noted that various uniforms have signified Black Muslims in different contexts. See Crawford, *supra* note 67 at 104, tbl.6.2 (noting that women followers of Noble Drew Ali’s Moorish Science Temple wore optional turbans, no makeup, pants or long dresses; the men sported a fez, beards or mustaches, and optional suits, while the early women followers of the Nation of Islam wore a head covering of some sort, no makeup, and long dresses, while the men wore dark suits and ties, and were to be clean-shaven).

a sign of pre-radicalization. What might previously be understood as explicit racial or ethnic profiling is now “cloaked in expertise about the process by which Muslims become terrorists.”¹⁵⁵ Expressions of religious piety, such as growing a beard, may also arouse suspicion,¹⁵⁶ despite plentiful research indicating that religious views and practices have little-to-no correlation with radicalization.¹⁵⁷

For Somalis, sending cash remittances to family and friends in Somalia, a common practice amongst all diasporic immigrants in the United States, has also become a red flag.¹⁵⁸ “[F]ollowing [9/11] . . . federal agencies investigated some Somali businesses in the Twin Cities that were suspected of sending money to Al Qaeda operatives. Several well-known agencies that help immigrants wire money home were temporarily or permanently closed, attracting media attention to the Somali community and linking Somalis to terrorism.”¹⁵⁹ As remittances and contact with those still in Somalia become suspect under the microscope of counterterrorism, and aggressive prosecutions for providing material support to terror organizations increase,¹⁶⁰ many

155. *Policing “Radicalization,”* *supra* note 108, at 817.

156. “Official expressions regarding how individuals become ‘radicalized’ actually identify certain religious activities—such as Muslim men growing beards—as potential precursors to violent extremism.” Berman, *supra* note 119, at 24. *Accord Policing “Radicalization,”* *supra* note 108, at 869.

157. “If Scripture is a constant but the behavior of its followers is not, then one should look elsewhere to explain why some Muslims engage in terrorism.” William McCants, *Islamic Scripture Is Not the Problem*, 94 FOREIGN AFF. 46 (2015) (arguing that Muslim communities become stigmatized when the state promotes some religious practices as acceptable, and not others). *See generally* Tom R. Tyler et al., *Legitimacy and Deterrence Effects in Counterterrorism Policing: A Study of Muslim Americans*, 44 L. & SOC’Y REV. 365 (2010) (arguing that lack of procedural justice, not religious views, contribute to Muslims’ feelings of alienation from America).

158. PUAR, *supra* note 46, at 149. Puar writes:

[T]he privilege of transnational identification, that is, the ability to sustain political and economic ties to sites of belonging and social reproduction that are not American . . . has been . . . the first casualty of the War on Terror. . . . [S]ending cash wedding gifts to Iran, for example—become suspect, while business practices are monitored to reward and punish Arab entrepreneurs and the diasporas they support.”

Id. (inner quotations omitted).

159. Guenther et al., *supra* note 86, at 111–12.

160. *See, e.g.,* Randy Furst, *Two Rochester Women Get 10, 20 Years for Aiding Somalia Terrorists*, STAR TRIB. (May 17, 2013, 10:07 AM), [http://www.startribune.com/two-rochester-women-get-10-20-years-for-aiding-somalia-terrorists/207699791\[https://perma.cc/H6BU-7BU7\]](http://www.startribune.com/two-rochester-women-get-10-20-years-for-aiding-somalia-terrorists/207699791[https://perma.cc/H6BU-7BU7]). For more on Material Support prosecutions, *see supra* note 132; 18 U.S.C. § 2339B (2012).

Somalis are now torn between helping support family members living abroad, or avoiding accrual of suspicion.¹⁶¹

Lastly, Somalis are made to perform patriotism by asserting and constantly reaffirming their American identities. CVE initiatives utilize language of good citizenship to thwart radicalization¹⁶² and can pressure Somalis to play down their Muslim identities and boost their “American” attributes.¹⁶³ Performances that serve to normalize Muslim identities not only include heightened patriotic expressions, such as openly displaying American flags,¹⁶⁴ but curbing dissent or criticism of American foreign policy, criticism of Islamophobia, or criticism of discrimination against Muslims.¹⁶⁵ Absurdly, criticism of discrimination is explicitly named as warning sign of radicalization in CVE guides.¹⁶⁶

161. See *How U.S. Regulation May Keep Remittances from Some Somali Families* (PBS NewsHour broadcast July 18, 2015, 1:05 PM), <http://www.pbs.org/newshour/bb/u-s-terrorism-policy-keeping-remittances-somali-families> [https://perma.cc/R6YS-GPB2] (quoting Somali American Abdi Salad as saying, “We’re not terrorists. We’re not supporting terrorists. We just want to send money to our families.”).

162. See *National Security’s Broken Windows*, *supra* note 108, at 867. Many Somali youths’ formal status as citizens occludes their exclusion from the full citizenship of rights, freedom of political activity, and of identity and solidarity. See Leti Volpp, *The Citizen and the Terrorist*, 49 UCLA L. REV. 1575, 1592 (2002). These youths are made to play up their good citizenship as CVE simultaneously casts it into doubt. “[O]ne may formally be a U.S. citizen and formally entitled to various legal guarantees, but one will stand outside of the membership of kinship/solidarity that structures the U.S. nation.” *Id.* at 1594.

163. See *National Security’s Broken Windows*, *supra* note 108, at 891.

164. “[T]hese flags and other patriotic symbolism may function as both defensive and normalizing gestures.” See PUAR, *supra* note 46, at 43. Puar critically notes that, following September 11th, “the work of numerous national advocacy groups for Arab, Muslim, and Sikh Americans who presented their communities as established by upright, *proper* citizens, and the ubiquitous appearance of American flags in immigrant communities, indicate the extent to which normative multiculturalism helped actively produce . . . renewed nationalism.” *Id.* at 41. This nationalism was bolstered by Muslims while they were simultaneously excluded from its unifying project. Representative Peter King, during a congressional hearing on Muslim Americans and their connections to extremism made it clear that he imagined the group as outside of the patriotic American project. See Stern, *supra* note 101, at 38. (“When a war begins, we’re all Americans. But in this case, this is not the situation.” (quoting King)). But cf. *National Security’s Broken Windows*, *supra* note 108, at 894 (“Muslims are made responsible not for their own condition but for the welfare of the entire nation—and for protecting the nation against terrorists.”).

165. See *Policing “Radicalization”*, *supra* note 116, at 871.

166. NAT’L COUNTERTERRORISM CTR., *supra* note 146, at 19. “[A]lienation, discrimination, racism[—]real or perceived—and exposure to international conflicts involving Muslims trigger [the second radicalization] stage. Becoming involved in social activism and community issues is a signature factor.” *Policing “Radicalization”*, *supra* note 108, at 835 (quotations omitted). It is an unfortunate irony that CVE targets Somalis who

By categorizing each of these types of identity performance as markers of radicalization, CVE and its related subordinate policing programs make the bodies of Somali Muslims contested sites—demanding explanations for a variety of innocent behaviors, making visible the control that surveillance imposes on identity performance.¹⁶⁷

3. Policing Geographies

Though often championed as prosperous and liberal enclaves, Minneapolis and St. Paul remain two of the most racially segregated cities in the United States.¹⁶⁸ Most Somalis live in neighborhoods of high Somali density, the largest being the neighborhood of Cedar-Riverside in Minneapolis—known as “Little Mogadishu.”¹⁶⁹ This racial and ethnic segregation makes the Somali

speak against racial and religious discrimination, but not right-wing extremists, though in a recent poll more than 40 percent of Republicans believed “revolutionary violence against the government might soon be needed.” See Jesse J. Norris, *Why the FBI and the Courts Are Wrong About Entrapment and Terrorism*, 84 MISS. L.J. 1257, 1278 (2015).

167. “He who is subjected to a field of visibility, and who knows it, assumes responsibility for the constraints of power.” See FOUCAULT, *supra* note 143, at 200–03 (theorizing “Panopticism,” wherein a subject’s mere visibility creates conformity).

168. See Taylor Gee, *Something is Rotten in the State of Minnesota*, POLITICO (July 16, 2016), <http://www.politico.com/magazine/story/2016/07/minnesota-race-inequality-philando-castile-214053> [https://perma.cc/M7HQ-7V9N] (reporting that Minnesota also has the worst financial inequality amongst racial groups in the country); Jessica Nickrand, *Minneapolis’s White Lie*, ATLANTIC (Feb. 21, 2015), <https://www.theatlantic.com/business/archive/2015/02/minneapolis-white-lie/385702> [https://perma.cc/3H5E-4DD8] (finding that the push-back against liberal policies that helped Minnesota become prosperous has declined as the state’s minority population has risen); Alana Semuels, *Segregation in Paradise?*, ATLANTIC (July 12, 2016), <https://www.theatlantic.com/business/archive/2016/07/twin-cities-segregation/490970> [https://perma.cc/X8YL-LZP8] (reporting that segregation in the Twin Cities has been on the rise since the 1980s); INST. ON METRO. OPPORTUNITY, U. MINN. LAW SCH., *WHY ARE THE TWIN CITIES SO SEGREGATED?* (2015), <https://www.minnpost.com/sites/default/files/attachments/WhyAretheTwinCitiesSoSegregated22615.pdf> [https://perma.cc/ DUK5-P8YM]; Peter Callaghan, *Why Are the Twin Cities So Segregated? A New Report Blames Housing Policies—And Education Reforms*, MINNPOST (Mar. 5, 2015), <https://www.minnpost.com/politics-policy/2015/03/why-are-twin-cities-so-segregated-new-report-blames-housing-policies-and-edu> [https://perma.cc/R4ZZ-3G5N].

169. See generally Allie Shah, *Go Inside ‘Little Mogadishu,’ the Somali Capital of America*, STAR TRIB. (Mar. 2, 2017, 2:56 PM), <http://www.startribune.com/inside-little-mogadishu-no-one-is-an-outcast/414876214> [https://perma.cc/RD58-DDAZ].

community particularly vulnerable to surveillance and mapping¹⁷⁰—practices amplified by CVE.¹⁷¹

The Minnesota Department of Public Safety's request for CVE implementation proposals called for training community members to recognize and rate signs of Somali youths' vulnerability to terror recruitment, and to establish a process to refer those deemed at-risk for further interventions.¹⁷² It called for partners to monitor youths in schools, places of worship, as well as conscripting social workers and doctors, all under the auspices of outreach.¹⁷³ By deputizing those in positions of authority and with intimate protected relationships to monitor these youth across a wide range of physical sites from classrooms to doctors' offices, CVE manages to police not only the body, but the surrounding geographies that compose one's identity.¹⁷⁴

Somali Americans have constructed several mosques and Islamic cultural centers¹⁷⁵ where they worship in relative isolation from other primarily South Asian Muslim communities in the Twin Cities, making Somalis especially easy to monitor and surveil. While mosques have earned reputations as sites of

170. See generally Berman, *supra* note 119, at 24 (describing FBI policies which embrace "community mapping").

171. See *Policing "Radicalization"*, *supra* note 116, at 816–17 (arguing that radicalization theory constitutes Muslim gathering spaces as inherently suspicious).

172. MINN. DEP'T OF PUB. SAFETY, REQUEST FOR PROPOSALS: TERRORISM RECRUITMENT PREVENTION 2 (2016), <https://dps.mn.gov/divisions/ojp/Documents/Recruitment%20Prevention%20RFP%20Final.docx>

173. *Id.*

174. See *National Security's Broken Windows*, *supra* note 108, at 885–86 ("[S]urveillance creates a different kind of geography out of the places where Muslims gather: the mosque, the halal butcher, or the Indian or Somali grocery store. And visiting these places makes you vulnerable to police scrutiny."). The racial and religious policing of these geographies can sweep non-Muslim blacks into the system of surveillance as well. While researching, I heard stories not only of Oromo Americans and Black Americans confused for Somali Muslims by the police as they pass through "Little Mogadishu," but also stories of misidentifying Native Americans and Latinos as Muslims who traversed the same spaces. I recently experienced firsthand the effects of Islamophobic policing when I visited Minneapolis during the winter break after my first semester in law school. A Minneapolis police officer approached me in Minneapolis's North East neighborhood, and began to question me about where I was from, until finally accusing me of being an "Afghanistani terrorist." It appears at least anecdotally that, though Somali Americans are the explicit targets of CVE, its mandates are causing some discriminatory spillover. Likewise, defensive assertions that one has been racially misrecognized—"I'm no Muslim"—instead of a disavowal of the underlying discriminatory practices, may only serve to legitimize the profiling of Black Muslims. See Volpp, *supra* note 162, at 1590–91 (noting that claims of racial misrecognition are "reminiscent of the actions of Chinese Americans who wore buttons during World War II that read 'I'm Chinese, not Japanese.'").

175. See Guenther et al., *supra* 86, at 115.

covert government surveillance,¹⁷⁶ CVE incentivizes community members and imams to act as additional funnels of information to law enforcement, perhaps unwittingly acting as eyes and ears for those same agencies that continue to covertly embed themselves into the same places of worship.¹⁷⁷ These partners are primed through government training and materials to view the activities and behaviors of Somali youth through the framework of counter-radicalization,¹⁷⁸ anxious to interpret signs of disconformity. CVE leverages fears of the disappearances and trials of “radicalized” youths to coopt community members into functioning as part of the surveillance apparatus.¹⁷⁹

In-school monitoring represents a particularly insidious site for interpreting signs of radicalization. Minneapolis Public Schools are a public partner of CVE,¹⁸⁰ in a city where the majority of teachers and staff lack the requisite familiarity with immigrant and refugee populations to meaningfully understand the nuances of a different culture.¹⁸¹ “Many refugee students arrive

176. “There is reason to believe that there are informants at each and every mosque in the United States.” *Policing “Radicalization”*, *supra* note 108, at 862. Muslim leaders have reported decreased mosque attendance and a general erosion of trust in the Muslim community as a result of undercover agents in mosques. See Berman, *supra* note 119, at 23.

177. “This information sharing happens knowingly and unknowingly, directly and indirectly, and with varying degrees of consent and coercion.” *National Security’s Broken Windows*, *supra* note 108, at 895. CVE mirrors the generalized information gathering employed by FBI informants, who are tasked with collecting information “in the broadest possible sense, without any nexus to suspected criminal activity.” *Policing “Radicalization”*, *supra* note 108, at 863.

178. See generally MINN. DEP’T OF PUB. SAFETY, *supra* note 172.

179. Of course, some community members have indeed been personally impacted by these disappearances and trials. The point I make, however, is that the government leverages these fears and losses into a strategy that serves to stigmatize the community, and presents CVE as the only option for allaying these fears. See, e.g., Schimke, *supra* note 82 (interviewing U.S. Attorney Andrew Luger, who brushes off criticisms of CVE by giving examples of community member fears).

180. Minneapolis Public Schools planned to hire additional staff to specifically monitor Somali youth, and expressed that they are “very proud to participate in [CVE].” Kadra Abdi et al., *The ‘Countering Violent Extremism’ Program Institutionalizes Injustice Against Somalis*, MINNPOST (May 1, 2015), <https://www.minnpost.com/community-voices/2015/05/countering-violent-extremism-program-institutionalizes-injustice-against-so> [<https://perma.cc/67VL-VPG4>]. The DOJ description of these new policies provides that “[t]he school model will expand a current model [which] connects youth workers from the community, bridging the gap between youth, their parents and the school system. These workers will spend time in the lunch-room and in non-classroom settings, building relationships and trust at school.” BUILDING COMMUNITY RESILIENCE, *supra* note 111, at 5.

181. See Gichiru, *supra* note 87, at 60 (“[T]eachers said they did not know enough about their Somali students’ culture. This was also seen in their (mis)interpretations of students and their families’ culturally inappropriate attempts to succeed in their new

in the US to find a relatively homogenous teaching population comprised primarily of white, middle class females...an overwhelming presence of whiteness.”¹⁸² This threat of mass-suspicion and stigmatization increases as teachers who lack cross-cultural understanding are primed by CVE materials to look for evidence of radicalization amongst their Somali students.¹⁸³ The CVE ranking system lists a variety of common teenage behaviors, such as expressions of hopelessness, talk of harming self or others, and connection to one’s group identity as indicators of pre-radicalization.¹⁸⁴ “Be@School,” a program spearheaded by the county attorney’s office which tracks Somali students’ unexcused absences, has raised concerns that CVE outreach programs are funneling school data to the police.¹⁸⁵ Knowing that their teachers and school staff are engaged in CVE monitoring may increase youths’ discomfort and shift their behavior in classrooms, raising additional false flags.¹⁸⁶

After-school programs, recreation center classes, sports leagues, and other out-of-school activities are also included in the CVE community engagement framework. While the meaningful programming that these organizations provide should not be minimized, there are fears that their relationships with

environment.”); Nickrand, *supra* note 168 (noting that Minnesota is one of the worst states in the nation for nonwhite students); INST. ON METRO. OPPORTUNITY, *supra* note 168, at 6 (noting that segregation in Minnesota schools rose dramatically in 2000–2009, coinciding with the wave of Somali refugees).

182. Gichiru, *supra* note 87, at 50 (citation omitted).

183. Even prior to programs like CVE, multicultural awareness in these classrooms was often weak, resulting in “sombbrero hung on the classroom wall tokenism.” *Id.* at 53 (internal quotations omitted). This poor understanding of multiculturalism trades on and perpetuates existing stereotypes, and may result in skewed disciplinary standards and othering of Somali students. *See id.* “Parents entrust the district with providing their children a good education; they do not send their sons and daughters to school for racial profiling.” Abdi et al., *supra* note 180.

184. Hussain et al., *supra* note 147. The criteria for the ratings has been called “subjective and specious.” *Id.* (quoting Mike German, former FBI agent and expert on CVE).

185. *See* Amanda Sperber, *Somalis in Minnesota Question Counter-Extremism Program Targeted at Muslims*, GUARDIAN (Sept. 14, 2015, 8:00 AM), <https://www.theguardian.com/us-news/2015/sep/14/somali-muslims-minnesota-counter-extremism-program> [<https://perma.cc/P792-CJKA>].

186. *See* Pitt, *supra* note 108, at 57 (discussing how racial profiling and discrimination has been found to increase in-school violence, coincides with increased feelings of anger and depression, and may lead to diminished mental health and violent behavior). *See generally* Tindongan, *supra* note 44 (discussing how policing and anti-Muslim sentiment can have a harmful effect on adolescents).

the U.S. Attorneys, who administer and facilitate CVE outreach through these programs, leaves Somali youths vulnerable to future criminal prosecutions.¹⁸⁷

Keep in mind that CVE does not exist in a vacuum of counterterrorism strategies. The blurring line between community-outreach, passive and active monitoring of young Somalis, and more intrusive forms of surveillance—such as embedded surveillance, cultivating informants, or police interrogations—makes these strategies difficult to disaggregate. Community models like those utilized by CVE have the veneer of community approval; however, “while relative elites may partner with law enforcement to facilitate access, those that suffer the most acute consequences are more likely more vulnerable.”¹⁸⁸ CVE follows mass-suspicion models already in use by the FBI,¹⁸⁹ and casts entire communities as inherently suspect, despite little evidence of criminal activity.¹⁹⁰ There are legitimate concerns that those who are identified as vulnerable to radicalization will be referred for intervention not only to community leaders, but to local and federal law enforcement,¹⁹¹ that CVE will become a coercive

187. When the MinnPost raised the question of whether it was possible that, in a criminal context, a social-worker or business that worked with young people might be subpoenaed and compelled to “violate the intimate nature of their relationship,” U.S. Attorney Andrew Luger replied, “I don’t even know what that means,” dodging the question while championing the purchase of soccer equipment. See Schimke, *supra* note 82. Critics point out the inherent conflict of interests in having U.S. Attorneys as the managers of counter-radicalization programs while also acting as the lead prosecutors in radicalization cases. See Aziz, *supra* note 108, at 172.

188. *National Security’s Broken Windows*, *supra* note 108, at 898–902 (noting that community policing strategies tend to partner only with those who approve of more policing, and to shut out those who want less).

189. Some mass suspicion models include covert surveillance of entire communities and community spaces, mapping of ethnic enclaves, and using broad suspect models which characterize innocuous or commonplace activities as suspicious. *Cf. id.* at 899.

190. In the FBI context, the switch from reactive to preemptive investigations was a direct response to fears about failing to intercept terrorists before they acted. Previous FBI guidelines required a certain threshold of criminal nexus be met before beginning or proceeding with the next step of an investigation. See Berman, *supra* note 119, at 39–41 (noting that the FBI lacks meaningful structural checks, causing agents to undervalue the rights of those they investigate). New guidelines provide that “[n]o suspicion of criminal wrongdoing is required before an ordinary agent can deploy these investigative powers.” *National Security’s Broken Windows*, *supra* note 108, at 856. Additionally, “FBI agents have been inundated with bigoted training materials that falsely portray Arabs and Muslims as inherently violent.” Norris, *supra* note 166, at 1288 (quoting former FBI agent Michael German). Receiving the green-light for baseless investigations, coupled with bigoted training, primes the FBI, like CVE partners, to see potential terrorism everywhere.

191. It is easy to fathom that community leaders and others who perceive signs that a Somali youth registers along the stages of radicalization will contact the various CVE law-enforcement partners. One must suspend disbelief to believe that, when a tip came from a community-centered outreach program, local or federal law enforcement agencies

recruiting tool for FBI informants,¹⁹² and that it will lead to an increase in cases of government entrapment.¹⁹³

Research suggests that programs which presuppose vulnerability to radicalization of an entire religious or ethnic community, such as CVE, decrease trust in the police and government, and marginally increase support

would not pursue an investigation or question an identified individual. See Aziz, *supra* note 108, at 217 (“[P]rosecutors are likely to exploit their relationships with Muslim community leaders to ask them to persuade their communities that the indictment was necessary based on classified information unavailable to them.”).

192. This concern is not without precedent. See Morrison, *supra* note 83, at 345–46 (discussing how mass surveillance may use dubious evidence of finding suspects with “terroristic criminal intent,” and induce them into becoming “material witnesses” or informants). The recent Minneapolis convictions of ten Somali men hinged on the testimony and surreptitious evidence gathered by a former friend, who was coerced into becoming an informant after exhibiting “radicalization” behaviors that CVE programs track. See Oliver Laughland, *Somali Americans Divided as FBI Informant Testifies Against Friends*, GUARDIAN (May 27, 2016, 10:30 AM), <https://www.theguardian.com/us-news/2016/may/27/somali-americans-trial-isis-fbi-informant-minneapolis>, [https://perma.cc/6PXT-QY5K]. The threshold difference between terrorism sting operations and other common FBI stings is troubling. “Drug and prostitution stings are meant to ensnare people who have already habitually engaged in these crimes but have eluded detention. Terrorism stings, in contrast, are meant to stop people who would have engaged in terrorism in the future.” Norris, *supra* note 166, at 1322. In 2009 the FBI’s Minneapolis branch office was ordered to spy on the Somalis through preexisting community outreach programs, though at that time the office pushed back. See Paul McEnroe, *Minneapolis FBI Refused to Use Somali Outreach for Spying*, STAR TRIB. (Jan. 28, 2015, 11:20 PM), <http://www.startribune.com/minneapolis-fbi-refused-to-use-somali-outreach-for-spying/290150151> [https://perma.cc/7MUX-EGXL].

193. Since 9/11, of the 340 prosecutions of “jihadi” defendants, nearly 60 percent involved an informant and a large proportion show indicators of government entrapment. See Norris, *supra* note 166, at 1282. Many in the Somali community suggested that the defendants in the recent Minneapolis prosecutions were goaded into “prais[ing] terrorism by a onetime friend.” Healy & Furber, *supra* note 82. Despite having been a target in a terrorism sting and coerced into working for the FBI, this informant was trusted to record, translate, and testify against the defendants. In exchange, he was offered immunity for his acts and was paid over \$100,000. See Laughland, *supra* note 192 (reporting that, upon discovering the amount of money the FBI had paid the informant, a courtroom observer whispered, “Shit man, nobody gets paid that much.”). Abdihamid Farah Yusuf, the father of one of the defendants, doubted the evidence against his son. “It was entrapment by the government. A set-up.” *Id.* Accord Norris, *supra*, at 1315 (“[I]t seems probable that misdirected terrorism stings contribute significantly toward eroding Muslim-American trust of the government.”). But see Jack Healy & Matt Furber, *3 Somali-Americans Found Guilty of Trying to Join Islamic State*, N.Y. TIMES (June 3, 2016), <https://www.nytimes.com/2016/06/04/us/somali-americans-verdict-minneapolis-isis.html> (“Federal officials . . . rejected criticisms of one of their witnesses, a friend of the men . . . who worked as a paid informant for federal investigators.”). “‘They were not misled by a friend or tricked into becoming terrorists,’ said [U.S. Attorney Andrew Luger]. ‘Rather, they made a deeply personal decision.’” *Id.*

for terrorism.¹⁹⁴ It is important to recognize that some threats which are identified through CVE programs are not evidence of an underlying predisposition, but may arise as a result of stereotyping, stigmatization, and a perceived lack of procedural justice.¹⁹⁵ Communities recognize that when the government makes comparisons between CVE initiatives and drug and gang reduction programs the Somali community is labeled as an inherently similar or greater threat as those already proven to be engaging in illicit activity.¹⁹⁶ The

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194. Pitt, *supra* note 108, at 59 (“[It is hypothesized] that those of lower socio-economic status, lower education, and Black Muslims will have greater support for terrorism when they experience racial profiling.”). Considering that the Minnesota Somali community is comprised of Black Muslims with the highest rate of poverty of any ethnic group in the state, this would indicate that racial profiling has a profound effect on them. See Laughland, *supra* note 192. But despite high levels of reported discrimination, support for terrorism remains low—although CVE programs will likely alienate the affected communities from the police or the government, overall support of terrorism is unlikely to fluctuate greatly. See Pitt, *supra*, at 61 (comparing data tracking factors such as “experiences of discrimination,” and support for terrorism). For the tiny percentage already sympathetic to terrorist causes, however, this type of profiling may exacerbate their sympathies.
 195. The Somali community’s perception of lack of meaningful procedural justice extends beyond CVE. Many were critical of the fact that the makeup of the jury for the trial of three of the ten men convicted of attempting to join ISIL was entirely white. See Randy Furst & Stephen Montemayor, *Black Defendants, White Jurors: Does Race Make a Difference in the Courtroom?*, STAR TRIB. (May 15, 2016, 8:51 PM), <http://www.startribune.com/black-defendants-white-jurors-does-race-make-a-difference-in-the-courtroom/379597921> [<https://perma.cc/U8MC-Y4E4>]; Morrison, *supra* note 83, at 375 (discussing the importance of drawing jurors for terrorism related cases from the local community, to allow for a nuanced interpretation of cultural indicators, and to provide the community with a sense of true justice); Healy & Furber, *supra* note 193 (quoting Omar Jamal, a Somali community activist, as saying, “This decision will reinforce the perception in the community that the system is rigged.”). See also Norris, *supra* note 166, at 1312–13 (“While the mainstream media rarely criticizes terrorism prosecutions, Muslim and other alternative media sources have carried numerous stories ridiculing these convictions, and decrying them as violations of Muslims’ human rights.”). Racially targeting Somali populations, and then weighing a perceived sense of procedural unfairness or discrimination as an indicator of their radicalization has eerie precedents in the Japanese Internment cases. See, e.g., *Hirabayashi v. United States*, 320 U.S. 81, 96–97 (1943) (arguing that previous policies which discriminated against and stereotyped Japanese Americans contributed to their isolation and, in turn, their isolation justified additional suspicion, scrutiny, and a curfew for Japanese Americans). “There is support for the view that social, economic, and political conditions which have prevailed since the close of the last century . . . have intensified [Japanese-American] solidarity and have in large measure prevented their assimilation as an integral part of the white population.” *Id.* CVE becomes a self-feeding ouroboros.
 196. “The framework . . . borrow[s] elements from long-standing successful public safety models including the Office of Juvenile Justice and Delinquency Prevention’s Gang Reduction Model.” BUILDING COMMUNITY RESILIENCE, *supra* note 111, at 4 (comparing CVE to a gang-reduction program that works with youth who have already committed violent acts or been in contact with the juvenile justice system). It appears that this distinction

feel-good intentions of CVE cease to feel good when the framework assumes the latent criminality of an entire community.¹⁹⁷ In this way, CVE's community partnerships are self-defeating.

Though touted as a softer and less intrusive form of counterterrorism policy, CVE acts in tandem with the very forms of policing it pretends to reject.¹⁹⁸ In the Twin Cities, CVE insidiously reifies the same racialized and Islamophobic practices widespread in other forms of counterterrorism policy, obscuring their use by pivoting the rhetoric to "Building Community Resilience." By framing the Somali population as a site of potential violent extremism in need of intervention and manufactured resilience, and by monitoring their behaviors and their environment for signs of radicalization, CVE becomes a "racially productive"¹⁹⁹ policing strategy that helps construct the unique racial identity of these Black Muslims.

C. Black Twice: Blacks, Muslims, and Black Muslims

Somali Black Muslims occupy a unique position at a racialized intersection²⁰⁰ between marginalized identities, leaving them vulnerable to racialized violence, political violence, xenophobic violence, and subject to policing strategies separately employed against both groups.²⁰¹ CVE and its partner forms of policing both incorporate and cleave from the experiences of policing

between "at risk" communities is not apparent to everyone. See Schimke, *supra* note 82 (quoting U.S. Attorney Andrew Luger, responding to CVE criticism, as saying, "[T]he government is involved in many communities in trying to prevent crime. Why not this one? I haven't gotten a good answer to that question.").

197. Past experiences with law enforcement do little to allay concerns. In 2009, "efforts to address community concerns about access to social services . . . quickly turned into making a list of 'radicalized youth' and keeping it on a [local] police database shared with the FBI." Abdi et al., *supra* note 180 (citations omitted).

198. "FBI agents who have attended 'community events under the guise of community outreach are recording . . . the names, identifying information, and opinions of attendees; and information about the community groups, the names and positions of leaders, and the racial, ethnic and national origin of members.'" *Policing "Radicalization"*, *supra* note 108, at 866–67 (quoting *Ending Racial Profiling in America: Hearing Before the Subcomm. on the Constitution, Civil Rights and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. 22 (2012) (statement of Anthony D. Romero, Executive Director, American Civil Liberties Union)).

199. One fundamental premise of Critical Race Theory is that the law and legal structures not only take race into account—but have helped produce the racial categories which are cognizable to us. In this way "[t]he law makes race." See Michael Omi & Howard Winant, *Foreword: The Unfinished Business of Race*, in *RACE LAW STORIES*, *supra* note 38 at ix.

200. See *supra* note 110, for a definition of intersectionality.

201. See Akram & Johnson, *supra* note 108, at 302–03.

in Black American communities and nonblack Muslim communities, racializing Somali Black Muslims as distinct from either of these discrete identities so that they cannot be racially understood solely as black or solely as Muslim—only as an amalgam of both.²⁰² In this Subsection, I parse the ways in which Somali Black Muslims are uniquely racialized by examining how they are policed in comparison to Black Americans and nonblack Muslims.

1. Proximity to the Policing of Nonblack Muslims

As discussed in Part I, Muslim-American identity not only functions as a religious designation, but as a racial one.²⁰³ Though a tension between Muslim identity and white identity has marked the experience of many Muslims throughout American history, the attacks of September 11th precipitated a rapid shift in both the ways Muslims racially self-identified, as well as how they were identified by others.²⁰⁴ The aftermath not only led to state sanctioned dragnet surveillance policies which presumed the culpability of all Muslims,²⁰⁵ but included questioning the allegiance of Muslim Americans on a working assumption of disloyalty.²⁰⁶ Muslims were painted as a threat, and in turn became threatened.²⁰⁷

Arab-American and Middle-Eastern-American Muslims have found that their relatively recent census designation as white has failed to protect them from the types of policing generally reserved for nonwhite citizens.²⁰⁸ Black

202. “If racialization is understood not as a biological or cultural descriptor, but as a conglomerate of socio-political relations that discipline humanity into full humans, not-quite-humans, and nonhumans, then blackness [and here, Muslimness] designate[] a changing system of unequal power structures that apportion and delimit which humans can lay claim to full human status and which cannot.” ALEXANDER G. WEHELIYE, *HABEAS VISCUS: RACIALIZING ASSEMBLAGES, BIOPOLITICS, AND BLACK FEMINIST THEORIES OF THE HUMAN* 3 (2014) (alterations added).

203. See *supra* Part I.

204. See Tindongan, *supra* note 44, at 75.

205. See Akram & Johnson, *supra* note 108, at 335.

206. See *id.* at 335.

207. See Tindongan, *supra* note 44, at 78 (“[Muslims] are not only under attack by the dominant culture, but are also perceived as a threat to its well-being.” (citations omitted)).

208. See Beydoun, *supra* note 44, at 695 (“Arab Americans currently find themselves interlocked between formal classifications as white, and discursive recognition as nonwhite.”). NSA whistleblower Edward Snowden has described how racial and religious othering are huge and underreported factors in deciding who is subject to surveillance and to an intrusion on their civil rights. DeRay McKesson, *Pod Save the People: BONUS Pod with Edward Snowden*, CROOKED MEDIA 23:59 (May 12, 2017)

Muslims, however, had their status as nonwhite cemented long before 9/11. Though Arab and Middle Eastern Muslims may cloak their identities, playing down their heritage and passing for Italian, French, Greek, or other ethnic identities, phenotypic realities mean that Black Muslims generally cannot enjoy the protections that white ethnicities provide.²⁰⁹ Nonblack Muslims have changed their behaviors since 9/11 in response to law enforcement scrutiny by, for instance, limiting mosque attendance and changing their style of dress.²¹⁰ While Black Muslims, including Somali Muslims, may also engage in these tactics, they cannot escape their black identity, which is also highly visible and policed—performing what may be a lateral move at best.²¹¹

The different experiences of policing between Black Muslims and other Muslim communities diverge in other meaningful ways. Though Muslim immigrants in the United States are wealthier than the general population as a rule,²¹² Black Muslims—especially Somalis—are more likely to live in poverty than the general population, including non-Muslim blacks.²¹³ This income disparity alone leaves Black Muslims more at risk than their nonblack counterparts to broken-windows policing.²¹⁴

(downloaded using iTunes) (“You never see these powers being used against the most privileged members of society.”).

209. See Tehranian, *supra* note 34, at 19 (“Largely due to the existence of distinctive phenotypic characteristics, most African Americans cannot pretend to be anything but African American. . . . However, many Middle Easterners can opt out of their racial categorization.”).
210. See Shirin Sinnar, *Questioning Law Enforcement: The First Amendment and Counterterrorism Interviews*, 77 BROOK. L. REV. 41, 70 (2011).
211. See *infra* Subpart II.C.3.
212. Stern, *supra* note 101, at 40.
213. See Laughland, *supra* note 192 (noting that Somalis have the highest rate poverty of any ethnic group in the state of Minnesota); DALIA MOGAHED & YOUSSEF CHOUHOUD, INST. FOR SOC. POLICY & UNDERSTANDING, AMERICAN MUSLIM POLL 2017: MUSLIMS AT THE CROSSROADS 9 (2017), <http://www.ispu.org/wp-content/uploads/2017/03/American-Muslim-Poll-2017-Report.pdf> [<https://perma.cc/7XCZ-6JV5>] (finding that Black Muslims report the lowest income levels among all Muslim Americans).
214. See generally *National Security’s Broken Windows*, *supra* note 108 (examining the parallels between the “broken windows” policing framework, and national security’s CVE); Barbara Ehrenreich, *Is It Now a Crime to Be Poor?*, N.Y. TIMES (Aug. 8, 2009), <http://www.nytimes.com/2009/08/09/opinion/09ehrenreich.html> (“By far the most reliable way to be criminalized by poverty is to have the wrong-color skin. . . . [F]or decades whole communities have been effectively ‘profiled’ for the suspicious combination of being dark-skinned and poor”). Cf. generally NAT’L LAW CTR. ON HOMELESSNESS & POVERTY, HOMES NOT HANDCUFFS (2009) (reporting that homelessness and activities such as loitering are more and more heavily criminalized and policed, effectively criminalizing poverty).

Recently, there have been debates in the Arab-American community regarding the costs and benefits of obtaining formal racial recognition as “Arab” instead of “white” on the United States census.²¹⁵ Though this categorization might make it easier to identify and profile Arabs en masse in programs such as CVE, racial recognition also allows for studies of disparate impact, making fighting discrimination against Arabs—and by proximity, Muslims—an easier task.²¹⁶ While Black Muslims do not face the additional exposure posed by a specifically tailored racial category, this lack of recognition is a barrier toward identifying and addressing experiences that diverge from non-Muslim black communities.

A similar dynamic plays out in popular culture: Though media portrayals tend to demonize and marginalize nonblack Muslims as members of terrorist-cells or untrustworthy citizens,²¹⁷ the absence of Black Muslims from these depictions obscures the ways in which Islamophobia affects these communities.²¹⁸ Limited depictions of Muslims solely as villains is problematic, but the near-complete absence of Black Muslims in entertainment and news media deprives them of representation, obfuscating their lived experiences as a vilified population.²¹⁹ This absence stymies efforts to organize around a community that many do not know exists.

2. Proximity to the Policing of Non-Muslim Blacks

Blackness is often perceived as an immutable racial designation, even if coupled with other racial identifiers. To be sure, Black Americans and Black

215. See generally Beydoun, *supra* note 44.

216. See Beydoun, *supra* note 44, at 724–27. Queer-theorist Jasbir Puar writes at length about how categories of difference within Muslim populations collapsed in response to the attacks of September 11th, queered-away from conceptions of multiculturalism and religion to reemerge as “the Muslim Race.” See PUAR, *supra* note 46, at 160–61. This “queering” of Muslim from a religious to racial designation unfortunately failed to encompass the already-queered assemblage of Black Muslim identity. *Id.*

217. “The current hostility toward Arabs and Muslims . . . is reflected in and reinforced by on-screen portrayals that haven’t evolved much over the years.” See generally Hannah Allam, *Muslim Stereotyping in Pop Culture is Worse Than Ever*, MCCATCHY D.C. BUREAU (Apr. 26, 2016, 4:49 PM), <http://www.mcclatchydc.com/news/nation-world/national/article73969887.html> [https://perma.cc/62YM-P8F9] (quoting Jack Shaheen, expert on media representations of Arabs and Muslims).

218. For an example of scholarly literature about Islamophobia that fails to mention Black Muslims, see Akram & Johnson, *supra* note 108, at 308–11.

219. See, e.g., *A History of African American Muslims*, *supra* note 67 (noting that Black Muslims were conspicuously absent in an ABC 20/20 program titled “Islam: Questions & Answers”).

Muslims experience similar racial loads—experiences of discrimination, policing, and cultural markers that are attributed to their race. Both have historically been the subjects of covert government surveillance and infiltration, including FBI surveillance of activists of the Civil Rights Movement, such as Martin Luther King Jr. and Malcolm X, and groups such as the Black Panthers and the Nation of Islam, who were targeted for their political views and ideologies perceived as outside of the mainstream.²²⁰ Additionally, both groups are subjected to racial profiling and institutional discrimination, as they play out in CVE or stop-and-frisk, not only flattening racial identities into imagined threats, but reinforcing and lending a sense of justification for private actors to discriminate.²²¹ Programs such as CVE and broken-windows policing shift the object of policing from one of crime to identity,²²² and state-sanctioned

220. See generally FBI, FREEDOM OF INFORMATION AND PRIVACY ACTS, SUBJECT: (COINTELPRO), BLACK EXTREMIST, <https://vault.fbi.gov/cointel-pro/cointel-pro-black-extremists> [<https://perma.cc/UJN4-8STF>] (detailing the extent of the counter intelligence programs aimed at black civil rights groups and the Black Panther Party). Today, many organizations fighting against police violence are subjected to similar monitoring. See, e.g., Julia Craven, *Surveillance of Black Lives Matter Movement Recalls COINTELPRO*, HUFFPOST (Aug. 20, 2015), http://www.huffingtonpost.com/entry/surveillance-black-lives-matter-cointelpro_us_55d49dc6e4b055a6dab24008 [<https://perma.cc/Z6R9-87TL>] (reporting that FBI tactics used to disrupt civil rights groups in the 1960s are reemerging to monitor Black Lives Matter activists). Though comparisons between previous FBI surveillance and CVE provide insight into the development of new methods and modes of surveillance, the activities of COINTELPRO targeted discrete political groups, not the entire population of Black Americans, as CVE does of Somali Muslims. See *National Security's Broken Windows*, *supra* note 108, at 864.

221. Private discrimination is not isolated from public discrimination—rather, the two inform one another. See, e.g., Akram & Johnson, *supra* note 108, at 353 (“The federal government’s profiling of Arabs and Muslims in . . . criminal investigation[s] . . . promotes the legitimacy of racial profiling. It also has undermined federal efforts to pressure state and local law enforcement agencies to end [racial profiling].” (footnote omitted)). The state-sanctioned violence of slavery and Jim Crow was both enforced by racist and White Supremacist attitudes, but concurrently lent state justification and legitimacy to a racial hierarchy. In this way, private displays of violence, such as cross-burning, could be seen as in-line with the state, as opposed to hateful aberrations. Anti-Islamic discrimination is similarly fed by state rhetoric and policies, which portray Muslims as a threat. “[P]rivate actors appear to believe they are protecting public safety by vandalizing mosques with anti-Muslim graffiti and dead pigs, burning down children’s play centers, and throwing firebombs to scare ‘those’ Muslim terrorists away from ‘our’ country.” Aziz, *supra* note 108, at 186 (footnotes omitted). CVE goes even a step further, by directly conscripting citizens into gathering information on “suspicious” activities, see Beydoun, *supra* note 44, at 742–43, which can often become a vehicle for racial profiling with tenuous—if any—connections to observed criminal activities.

222. By shifting the object of policing from crimes to identities, CVE, like broken windows, “constructs the out-of-place person as someone who needs to be surveilled and controlled by the state.” *National Security's Broken Windows*, *supra* note 108, at 882.

profiling helps to create a supposed dichotomy between “good” and “bad” blacks, or “good” and “bad” Muslims, which in turn informs the ways each of these communities are policed.²²³

For non-Muslim blacks, the experience of being racially profiled often is the result of police assumptions of black criminality—assigning group responsibility for property crime, drug crime, and violent crime. This exerts a racial pressure on blacks to counteract these assumptions, by making oneself available to police intervention, or at a minimum by complying with such interventions, in order to avoid being labeled a “bad” black.²²⁴ In response to extreme incidents of rights infringement of blacks—from police brutality, to police shootings—even sympathetic media coverage often rehearses this “good” and “bad” dichotomy, emphasizing a victims’ status as a good kid, or utilizing other evidence of their innocence.²²⁵ The factual innocence of the victim is not enough—they must prove their racial innocence as well.²²⁶ This

223. See *id.* at 885–86 (applying Carbado’s theory of racialized policing to the counterterrorism context).

224. Carbado describes the process by which racial profiling and the subsequent police contact require that Black Americans make themselves available to searches in order to dispute their perceived criminality. See Carbado, *supra* note 108, 1041. The experience of police discrimination, while perhaps new for some Muslims, had been a constant in the lives of Black Americans. See Hatem, *supra* note 48, at 88.

225. For instance, in the aftermath of the fatal police shooting of John Edwards, a fifteen-year-old black teenager shot outside of Dallas while driving home from a party, many news outlets emphasized his high grades and academic achievements, presumably to show his complete innocence. This highlights the working assumption of criminality that Black Americans must counteract, even as the victims of unwarranted police violence. See, e.g., Jennifer Emily et. al., *15-year-old’s Brothers Watched Him Die After Balch Springs Police Shooting, Family Says*, DALL. NEWS (May 2, 2017), <https://www.dallasnews.com/news/dallas/2017/04/30/officer-fatally-shoots-15-year-old-balch-springs> [<https://perma.cc/PBL4-2YUU>]. The assumption of criminality also affects the way in which black children are read by others. One experiment revealed that police officers viewed black children as an average of five-years older than their actual age, and less innocent than their white counterparts of the same age. See Christopher Ingraham, *Why White People See Black Boys Like Tamir Rice as Older, Bigger and Guiltier Than They Really Are*, WASH. POST: WONKBLOG (Dec. 28, 2015), https://www.washingtonpost.com/news/wonk/wp/2015/12/28/why-prosecutors-keep-talking-about-tamir-rices-size-36-pants/?utm_term=.9d4ee8e0a0fa [<https://perma.cc/29DJ-C3QB>]. There are fears that programs such as CVE will cause a compounded presumption of guilt and misidentification of Black Muslim children: “What I don’t want to see is an innocent child, who grew up here, who was born here, this is what they know, to be leveled by whatever ideology we have. . . . I’m basically afraid that the generation to come will be a target of misunderstanding or just defamation of character.” Sperber, *supra* note 185 (quoting concerned Somali American mothers on the possible effects of CVE).

226. Carbado, *supra* note 108, at 1034–35 (“Although the constitutionality or moral legitimacy of racial profiling is arguably independent of whether the individual is

pressure only reinforces the notion that blackness is an identity of inherent guilt.²²⁷

Similarly, the profiling of Muslims operates on an assumption of shared responsibility for terrorism. This creates pressure for “good” Muslims to counteract their perceived culpability; they are called upon to denounce or acknowledge the presumed role of their communities in creating terrorists.²²⁸ In CVE and other community-policing contexts, attempts to distance oneself from “bad” Muslims requires accepting general culpability and participating in government counterterrorism initiatives by engaging in self-reporting, surveillance, and the monitoring of other Muslims.²²⁹ They are pressured to prove their innocence by participating in programs which cast their community as a threat.

committing or has committed a crime, the public campaign against racial profiling invariably calls upon notions of innocence.” (footnote omitted)).

227. See *id.* at 1043. “[A]ny approach to racial profiling that reflects (implicitly or explicitly) the idea that there are ‘good’ and ‘bad’ blacks entrenches the idea of blackness as a crime of identity.” *Id.* at 1041.

228. See, e.g., Alex Swoyer, *Trump Adviser Calls on Muslims to Denounce Nice Terrorist Attack*, BREITBART (July 15, 2016), <http://www.breitbart.com/2016-presidential-race/2016/07/15/trump-adviser-calls-muslims-denounce-nice-terrorist-attack> [https://perma.cc/WXC8-CR9D] (quoting Michael Flynn, the now ousted national security adviser to President Trump, after terrorist attacks in Nice: “I have called out for the leaders of Iran . . . and the leaders of the Muslim world . . . to step up and call this what it is They know they have a problem inside of their own system.”); see generally Mary Kate Cary, *Pressing a Muslim Reformation*, U.S. NEWS & WORLD REP. (Dec. 18, 2015, 6:00 AM), <https://www.usnews.com/news/the-report/articles/2015-12-18/yes-moderate-muslims-do-denounce-terrorism-though-the-media-ignores-it> [https://perma.cc/R66H-PX2Q] (noting that, since 9/11, Muslims have been called on repeatedly to denounce terrorist violence); Kelly James Clark, *Why Don’t Moderate Muslims Denounce Terrorism?*, HUFFPOST: THE BLOG (Dec. 4, 2015, 4:55 PM), http://www.huffingtonpost.com/kelly-james-clark/why-dont-moderate-muslims_b_8722518.html [https://perma.cc/3G5G-YXUY] (noting that utilizing the term ‘moderate Muslims’ when making calls for Muslims to denounce terrorism reinforces the idea that Islam is somehow inherently violent); Marc Schneier, *Why Don’t More Moderate Muslims Denounce Extremism?*, WASH. POST: POSTEVERYTHING (Jan. 2, 2015), <https://www.washingtonpost.com/posteverything/wp/2015/01/02/why-dont-more-moderate-muslims-denounce-extremism> [https://perma.cc/8NB2-2U7N] (noting that, though underreported, Muslims continuously and vehemently denounce terrorist attacks). Racial guilt is not evenly spread; rarely are there calls for white communities to denounce the attacks of White Nationalists or of white extremists, indicating that racial culpability may only apply to already marginalized populations. See Volpp, *supra* note 162, at 1585 (“Timothy McVeigh did not produce a discourse about good whites and bad whites, because we think of him as an individual deviant, a bad actor.” (footnote omitted)).

229. See Aziz, *supra* note 108, at 190.

CVE relies in part on community policing models first utilized in black communities, such as broken-windows,²³⁰ and anti-gang programs.²³¹ These programs imagine additional surveillance and police cooperation as a tradeoff for safer communities and prosperity.²³² Unfortunately, in both broken-windows policing and CVE programs, warning-signs of criminality include behaviors associated with underemployment, lack of educational access, or poverty—leading to the additional criminalization of an already vulnerable population.²³³ But whereas drug or gang intervention programs in black neighborhoods have generally imagined the community as a partner in policing against criminals, the CVE context “co-opts Muslims into participating in a preventive counterterrorism regime that perpetuates Muslim communities’ subordination . . .” by labeling the entire community as the suspect.²³⁴ And,

230. See generally Akbar, *supra* note 108 (examining the links between community and broken windows-policing of black communities and CVE programs).

231. See Rascoff, *supra* note 133, at 139 (“[CVE] programs are of a piece with police department programs targeting children and teenagers at risk for gang membership or other criminal activity.”).

232. This trade-off is often an illusion. These communities are subjected to additional surveillance and scrutiny, without the commensurate increase in safety, privacy, or liberty. “[T]he privacy losses [people of color] experience are not the price they pay for effective crime prevention and detection, but a cost of race.” Carbado, *supra* note 108, at 969 (describing how the Fourth Amendment operates primarily as “a technology of surveillance rather than as a constitutional guardian” for people of color); see also Levitt, *supra* note 108, at 118 (“Black youth have sacrificed more than any other group to uphold and protect America’s security and values, even when it has not safeguarded theirs.”).

233. See *National Security’s Broken Windows*, *supra* note 108, at 889. Akbar writes:

[R]adicalization discourse may serve to pathologize complex social problems, displace focus from the role of government activity in creating those problems, and place the burden of solving them on already marginalized communities. Broken windows theory could be criticized along the same lines: The underlying roots of ordinary crime—poverty, joblessness, mass incarceration, disenfranchisement—disappear under the discourse of ‘disorder.’

Id. The risk of assigning pathologies to underlying social problems is especially present in the Somali community. “[I]f a young Somali youth doesn’t attend after-school programming, doesn’t have a job, if you live in an impoverished neighborhood and if you aren’t going to college you are a target for radicalization.” Keno Evol, *Counter Terrorism Programs Are Targeting Somali Youth. We Need to Talk About It*, TWIN CITIES DAILY PLANET (Sept. 22, 2016), <https://www.tcdailyplanet.net/counter-terrorism-programs-are-targeting-somali-youth-we-need-to-talk-about-it> [<https://perma.cc/ME9M-XLT9>] (describing how the signs of radicalization encompass many non-criminal behaviors).

234. Aziz, *supra* note 108, at 180. While many Black Americans are subject to over-criminalization in similar arenas as Black Muslims, such as schools (see the school-to-prison pipeline), Black Muslims tend to be monitored in community spaces which are generally safer for Black Americans, such as churches. See, e.g., Carla Amurao, *Fact Sheet: How Bad Is the School-to-Prison Pipeline?*, PBS; TAVIS SMILEY REPORTS (Mar. 28, 2013, 11:40 PM), <http://www.pbs.org/wnet/tavissmiley/tsr/education-under-arrest/school->

whereas Black Americans often face pressure to take full responsibility for gang violence and drug crimes within black communities,²³⁵ Muslims are made responsible not only for the safety of their own communities, but for protecting the entire nation from threats of terrorism as well.²³⁶

to-prison-pipeline-fact-sheet [https://perma.cc/7GFC-WWTJ] (noting that blacks comprise 40 percent of all expelled students in the U.S.; that 70 percent of students arrested in-school or referred to law enforcement are black or Latinx; are 3.5 times more likely to be suspended than whites; and are twice as likely not to graduate high school when compared to whites, all of which leads to an increase in incarceration rates of blacks). The pervasive nature of programs like CVE blurs the lines between public and private in Somali communities, turning traditionally secure spaces, like mosques, community centers, and social workers' and doctors' offices into sites of government surveillance. Whereas monitoring in spaces such as airport security lines may reinforce feeling of social-exclusion from the greater population, CVE also strains a community's internal cohesion, leading to a feeling of complete societal isolation. See *Policing "Radicalization"*, *supra* note 108, at 881 ("The ever-present gaze of the state heavily weighs on, defines even, contemporary American Muslim identity performance. That its ever-presence is brokered by other Muslims—or those who appear to be Muslim—causes profound individual and communal harm." (footnote omitted)); Subpart II.B.3, *supra*.

235. See *National Security's Broken Windows*, *supra* note 108, at 880 ("[T]he politics of respectability of each group is distinct—with the pressure on African Americans to disavow and respond to black-on-black crime, and for American Muslims to disavow and respond to terrorism."). Most recently, as activist groups such as Black Lives Matter have heightened public awareness of police violence exerted on black victims, a common deflection by those resistant to police-accountability is, "But what about Black on Black crime?" See, e.g., Aaron Bandler, *7 Statistics You Need to Know About Black-On-Black Crime*, DAILY WIRE (July 13, 2016), <http://www.dailywire.com/news/7441/7-statistics-you-need-know-about-black-black-crime-aaron-bandler#> [https://perma.cc/86V4-PAY4]; Emily Schultheis, *Giuliani: Blacks Must Say "What They're Doing Among Themselves About the Crime Problem"*, CBS NEWS: FACE THE NATION (July 10, 2016, 12:12 PM) <http://www.cbsnews.com/news/giuliani-blacks-crime-problem-dallas-police-rap-music-chicago> [https://perma.cc/RM9P-YABE]. But see, e.g., Josh Hafner, *Why Black Lives Matter Doesn't Focus on 'Black-on-Black' Crime*, USA TODAY (July 27, 2016, 9:18 PM), <https://www.usatoday.com/story/news/nation-now/2016/07/27/why-doesnt-black-lives-matter-doesnt-focus-talk-about-black-black-crime/87609692> [https://perma.cc/Z682-67V9]; Michael Harriot, *Open Letter to White People Who Are Obsessed With Black-on-Black Crime*, ROOT (Aug. 4, 2016, 9:53 AM), <https://www.theroot.com/open-letter-to-white-people-who-are-obsessed-with-black-1790856298> [https://perma.cc/LQ75-LHQQ].
236. Though often wielding different language, both Democrats and Republicans have called on American Muslims to be on the front-lines of the war against terror. Cast as political opposites, when Secretary Hillary Clinton and then-candidate Donald Trump debated on Oct. 9, 2016, and were asked a question about the rise of Islamophobia in the U.S., both candidates seemed to agree on one point, with Trump saying, "[W]hether we like it or not, there is a problem. And we have to be sure that Muslims come in and report when they see something going on." Clinton seemingly agreed, stating, "We need American Muslims to be part of our eyes and ears on our front [lines]. . . . I've heard how important it is for them to feel that they are wanted and included and part of our country. Part of our homeland security." See *Full Transcript: Second 2016 Presidential*

3. The Racial Double-Bind

Black Muslims' dual vulnerability to the policing strategies prevalent in black and Muslim communities may cause some internal confusion as to which aspect of their identity leaves them racially exposed at any moment.²³⁷ While some evidence indicates that a high percentage of non-Muslim blacks supported racial profiling of Muslims after the attacks of September 11th, as policing resources shifted from black and Latinx neighborhoods to Muslim enclaves, some Black Muslims likely experienced this only as parallel family of discrimination under the same order.²³⁸ Black Muslims may face an uncomfortable choice in deciding which identity to emphasize or repress in order to lessen their exposure—at any given moment, they must decide which identity may make them more palatable to police or federal law-enforcement,

Debate, POLITICO (Oct. 10, 2016), <https://www.politico.com/story/2016/10/2016-presidential-debate-transcript-229519> [<https://perma.cc/QXF5-PZMW>].

237. Some Black Muslims identify different forms of policing as targeting different aspects of their identity. In a study of the Somali community in Minneapolis, a Somali man noted that “[O]ne thing that happens to me is that whenever police stop me and realize that I am black, even if I did not do anything wrong, they give me a ticket,” thus locating his exposure point as his blackness. See Guenther, *supra* note 86, at 108 (noting that half the Somali men reported or personally experienced questionable police practices). Navigating this divide becomes even more complex with Black Muslim immigrants. See *id.* at 107 (“[E]astern Africans believe that their status as outsiders unfamiliar with U.S. customs and systems limits their ability to identify racist acts and to negotiate racial inequality.”). It should be noted that this racial exposure to policing was heavily gendered, with the “public arena of the street” as the primary site of racism for men. *Id.* at 108.
238. See PUAR, *supra* note 46, at 133 (“[A]dvocacy groups [may proceed] as if terror suspects shield Blacks . . . from state racism, thus perpetuating racial divisions.” (quotation omitted)). The animosity between some Black Americans and American Muslims preceded the attacks of 9/11, with some Black Americans reporting that recent Muslim immigrants would often internalize America’s antiblack sentiment and employ it as an assertion of rank while assimilating into American culture. “For non-black Muslims . . . it’s easy ‘to internalize many of the poisonous notions about the black community that . . . diminish the pain of those communities.’” See Emma Green, *Muslim Americans Are United by Trump—and Divided by Race*, ATLANTIC (Mar. 11, 2017), <https://www.theatlantic.com/politics/archive/2017/03/muslim-americans-race/519282> [<https://perma.cc/GF2B-C6SN>] (quoting Imam Omar Suleiman). Many Black Muslims also point to antiblackness within Muslim communities as well. See, e.g., *id.* (“[I]f I have to contend with anti-Muslim bigotry outside of the Muslim community, and within my own community, I’m having to push back on anti-black racism, I’m kind of fighting a war on two fronts.”); Mansour Jamal Ibrahim, Opinion, *Racism in the Muslim Community: Are We Really One?*, MVSLIM (May 18, 2017), <http://mvslim.com/racism-in-the-muslim-community-are-we-really-one> [<https://perma.cc/N5NX-3TU4>] (arguing that Islam preaches against racism, but that antiblackness persists).

and at which junctures?²³⁹ This creates an externally imposed racial-double bind, in which playing-up or diminishing either identity may instigate further suspicion or exposure, causing a “checking” of innocent identity expressions.²⁴⁰ Simply put, diminishing Muslim identity performance may only serve to make them more vulnerable to policing that captures blacks, and diminishing black identity performance may only serve to make them more exposed as Muslims.

In the past, Black Muslims have used their adherence to Islam as a way to denote racial distance from Black Americans, whereas Middle Eastern immigrants have often understood their ties to Islam to racialize them as nonwhite.²⁴¹ The racial instability evident in leveraging one’s Muslim identity becomes additionally precarious when that identity is linked to counter-terrorism. CVE makes this perspicuous, using “Connection to Group Identity (Race, Nationality, Religion, [and] Ethnicity)” as indicators of possible radicalization.²⁴² Emphasizing a connection to blackness, to one’s country-of-origin, or to Islam all are made into possible indicators of criminality, labeling Black Muslims as suspects at each pivot.²⁴³ Political expression is scrutinized as

239. Carbado recites the rapid-fire questions that may run through the minds of blacks during a police encounter: “How will I make the officers comfortable? Should I? Will I have time—the racial opportunity—to demonstrate my respectability? Should I have to? Will they perceive me to be a good or bad black?” Carbado, *supra* note 108, at 952 (footnote omitted). The burden on Black Muslims is being forced to simultaneously hedge two vulnerable identities.

240. “[I]n the context of a police encounter, a black person’s behavior is structured by a racial incentive system. Likely [they] will always be concerned about, and thus be constrained by, the question of whether a particular course of conduct or identity performance will confirm or negate assumptions about [their] criminality.” *Id.* at 1023. One can imagine Carbado’s argument about racial incentive systems as highly relevant to Black Muslim’s experiences with CVE. In the United Kingdom, where the predecessor of CVE was first implemented, researchers noted that Muslims responded to surveillance with a broad form of “checking behaviors . . . those where self-inspection leads to the conscious performance of self-restraint,” leading to concerns about chilling effects and community homogenization. Gabe Mythen et al., ‘Why Should We Have to Prove We’re Alright?’: Counter-terrorism, Risk and Partial Securitities, 47 *SOCIOLOGY* 383, 391 (2012).

241. See Guenther et al., *supra* note 86, at 102, 111. “Even in the face of discrimination and harassment, [Somali Black Muslims] indicated that they were proud of their religion and used it as a point of differentiation from African Americans.” *Id.* at 114.

242. Hussain et al., *supra* note 147.

243. See *National Security’s Broken Windows*, *supra* note 108, at 881 (“Muslims are forced to carry the stigma borne of such intense scrutiny and are powerless to escape it . . .”). Increased scrutiny has caused Black Muslims to avoid traveling to majority Muslim countries, to discontinue remittances, and to cut-off ties with family and friends that remain abroad, for fear that this will be read as suspicious activity. See Aziz, *supra* note 108, at 207–08; *National Security’s Broken Windows*, *supra* note 108, at 884.

well, with criticisms of U.S. foreign policy,²⁴⁴ such as denouncing drone-strikes in Pakistan,²⁴⁵ attending protests, making donations to Muslim charities or civil rights organizations,²⁴⁶ or simply dissenting to CVE itself all read as expressions of burgeoning radicalism.²⁴⁷ CVE programs and community surveillance initiatives make down-playing one's Muslim identity equally risky, as making changes to one's appearance, such as shaving off a beard, removing a hijab or turban, or anglicizing one's name have all be read as signs of masking Muslim identity, and may lead to additional surveillance or police scrutiny.²⁴⁸

The inability to perform different aspects of their identity may trap Black Muslims in a racialized space apart from both Black Americans and other Muslim-Americans. For Black Muslims, it appears that the only way to lessen their perceived criminality and exposure to policing and counterterrorism programs is to adopt a form of identity stasis—not being too Muslim, but not abandoning their Muslim identity; not being too black, but not using Islam to distance oneself from the Black American community. We can understand CVE and related forms of policing and surveillance as not only seeking to target Somali Black Muslims, but additionally as constructing a fragment of Black Muslim racial identity. This is accomplished by delimiting the realm of acceptable identity performance and designating behaviors outside of this

244. That the United States government, particularly its law enforcement arms of the FBI and DOJ, uses criticism of foreign policy as an excuse to disrupt Black Muslim groups is nothing new. "In the spring of 1942, the Justice Department—using intelligence reports gleamed from informants working for the Federal Bureau of Investigation—launched a series of raids and arrests intent on silencing the [Nation of Islam]'s criticism and objection to fighting in World War II. See CRAWFORD, *supra* note 67, at 21.

245. See *National Security's Broken Windows*, *supra* note 108, at 852. The Obama administration, who pushed CVE, also implemented more targeted killings and an increase in drone strikes—more than any other president in modern history. Many of these strikes and bombings occurred in zones that affected the families of American Muslims, in effect rendering concern for one's family as suspicious behavior. See generally David Rohde, *The Obama Doctrine*, 192 FOREIGN POL'Y 64 (2012) (examining the Obama administration's increase of targeted killings).

246. Upon discovering that he was under surveillance by the N.S.A. for his work as a Muslim-rights activist the founder of the Council for American-Islamic Relations, Nihad Awad, wrote, "[I]f disagreement with government policy is viewed as subversive, no wonder the government has decided to vacuum up the communications of all Americans. We are an opinionated nation." Nihad Awad, Opinion, *I Am a Muslim-American Leader, and the NSA Spied on Me*, TIME (July 9, 2014), <http://time.com/2970573/muslim-american-nsa-spies> [<https://perma.cc/NE3Y-E9XQ>]. By casting Muslim political dissent as suspicious, "[l]egitimate differences of opinion—rooted in different conceptions of the world, political and economic realities—are reduced to irrational pathology." *Policing "Radicalization"*, *supra* note 108, at 869.

247. See *National Security's Broken Windows*, *supra* note 108, at 885.

248. See *Policing "Radicalization"*, *supra* note 108, at 879.

constructed norm as suspicious. Race and religion conjugate into a new racialized experience, incapable of being parsed into aggregate parts: distinct from non-Muslim Black Americans or other Muslim-Americans, targeted in tandem by the policing and surveillance strategies that subjugate these halves—not just through antiblackness or Islamophobia, but experienced as a form of antiblack-Islamophobia. This may be encapsulated by these two comments from Somali men: “The [police] officers [are] racist, 100 percent, still. I won’t drive after 11 o’clock [at night] at the moment because of what happened [on] September 11th. [Because of] my religion, and second of all, my race.” Another stated that in response to a police-shooting of a mentally ill Somali man, “People say [the shooting] was because he was Somali and if he was white, it wouldn’t have happened . . . It’s illegal and it’s hatred because of religion.”²⁴⁹

III. LOOKING AHEAD

A. Black Muslim Futures²⁵⁰

Both during his campaign and after his election, President Donald Trump made statements that may be described as Islamophobic at best, and anti-Islamic at worst.²⁵¹ While certainly not the first president to pin the problem of global terrorism on Muslim communities, his language differed from both President George W. Bush²⁵² and President Barack

249. See Guenther, *supra* note 86, at 113 (alterations in original). “In [these] comments, nationality, race, and religion congeal . . . recogniz[ing] the simultaneity of the categories Somali, nonwhite/black, and Muslim. In this man’s discussion of the shooting, the independent effects of race, nationality, and religion are indistinguishable.” *Id.* at 113–14.

250. I take the title of this Subpart from an article by Black Lives Matter activist and Somali American Miski Noor. See Miski Noor, *Black Muslim Futures Matter*, HUFFPOST (Feb. 6, 2017, 10:53 AM), http://www.huffingtonpost.com/entry/black-muslim-futures-matter_us_589894fde4b09bd304bc5291 [<https://perma.cc/2MLM-P6AL>].

251. See Akhtar, *supra* note 40, at 771 (“Islamophobia is too benign a term to describe the more extreme hatred directed toward American Muslims; rather, these sentiments are a form of *anti-Islamism*.”).

252. “President Bush . . . pointed to the fact that these terrorist groups share the same ideology and radical, religious, Islamist worldview. However, he immediately took pains to emphasize that these radical Islamist elements do not represent the spirit of Islam and even contradict the religion’s values . . .” Ganor, *supra* note 115, at 346–47 (detailing how President Bush identified the perceived enemy in the war on terror). Both Presidents Bush and Obama, as well as other leaders sought to cast “real Islam” as contrary to “radical” Islam. While politically appealing and perhaps facially commendable, this state-sponsored “official” Islam raises Establishment Clause concerns. See generally Rascoff, *supra* note 133.

Obama,²⁵³ who went out of their way not to directly alienate Muslims in their speech, if not through their actions. In contrast, President Trump has stated that he believes that “Islam hates us,”²⁵⁴ that immigrant Muslims in America are a Trojan Horse for terrorists,²⁵⁵ and has called for a “Muslim registry.”²⁵⁶ Steve

253. See Ganor, *supra* note 115, at 349 (describing how, despite attempting to avoid alienating Muslims, President Obama still managed to link Muslim communities to violent extremists).

254. When asked whether his comments addressed radical Islam or Islam as a whole, Trump replied, “[I]t’s very hard to define, it’s very hard to separate because you don’t know who’s who,” implying perhaps that he views all Muslims—extremist or not—in the same light. Jose A. DelReal, *Trump: ‘I Think Islam Hates Us.’*, WASH. POST (Mar. 9, 2016), https://www.washingtonpost.com/news/post-politics/wp/2016/03/09/trump-i-think-islam-hates-us/?utm_term=.8d04c3067a37.

255. Trump asserted that Muslim immigrants are radicalizing “[n]ot only their children . . . they’re trying to take over our children and convince them how wonderful ISIS is and how wonderful Islam is and we don’t know what’s happening.” Ryan Teague Beckwith, *Read Donald Trump’s Speech on the Orlando Shooting*, TIME (June 13, 2016, 4:36 PM), <http://time.com/4367120/orlando-shooting-donald-trump-transcript> [<https://perma.cc/RE2K-WDWY>]. Trump’s conflation of ISIS and Islam in this sentence illustrates that he does not parse extremism from Islam as attempted by Bush and Obama.

256. The call for registering Muslims raised alarms with many commentators and citizens, with comparisons made to Nazi Germany. See Maggie Haberman & Richard Pérez-Peña, *Donald Trump Sets Off a Furor With Call to Register Muslims in the U.S.*, N.Y. TIMES, Nov. 20, 2015, <https://www.nytimes.com/2015/11/21/us/politics/donald-trump-sets-off-a-furor-with-call-to-register-muslims-in-the-us.html>. Others have noted, however, that Muslim registries were already enacted in the United States, both under President Bush and President Obama, including the National Security Entry-Exit Registration System (NSEERS), and various iterations of the No-Fly list. See IMMIGRATION AND NATURALIZATION SERV., SPECIAL REGISTRATION PROCEDURES (2002), <https://www.ice.gov/doclib/nseers/SRProc.pdf> [<https://perma.cc/MSP5-FF4L>] (including requirements for Muslims to register upon arrival and departure from U.S.; interviews by the INS office; and updating INS on any changes to place of residence, employment, or education). See generally Asli Ü. Bâli, *The U.S. Already Tried ‘Extreme Vetting’ for Muslims. It Didn’t Work*, WASH. POST: MONKEY CAGE, (Jan. 26, 2017), https://www.washingtonpost.com/news/monkey-cage/wp/2017/01/26/the-u-s-already-tried-extreme-vetting-it-doesnt-work/?utm_term=.527747517ccd [<https://perma.cc/RUV4-2MSH>] (“[NSEERS] proved highly ineffective at its intended counterterrorism goals, yielding not a single terrorism-related prosecution over the decade it remained . . .”); Kaveh Waddell, *America Already Had a Muslim Registry*, ATLANTIC (Dec. 20, 2016), <https://www.theatlantic.com/technology/archive/2016/12/america-already-had-a-muslim-registry/511214> [<https://perma.cc/3QMH-Q9AW>]. Facing pressure from activists who were concerned that President Trump would utilize the NSEERS database for his Muslim registry, President Obama dismantled the program before he left office. Advisers to Trump, however, have suggested reviving the program nonetheless. See J. David Goodman & Ron Nixon, *Obama to Dismantle Visitor Registry Before Trump Can Revive It*, N.Y. TIMES, Dec. 22, 2016, <https://www.nytimes.com/2016/12/22/nyregion/obama-to-dismantle-visitor-registry-before-trump-can-revive-it.html>. Even before NSEERS, the FBI and federal government created an ever-increasing registry of Black Muslim leaders. See CRAWFORD, *supra* note 67, at 91 (“[A]t the behest of J. Edgar Hoover, the

Bannon, the president's former chief strategist, has claimed that Islam is not a religion of peace, and embattled General Michael Flynn, his former national security adviser, has said that fear of Muslims was "rational."²⁵⁷ Indeed, immediately after President Trump's election, hate crimes against Muslims spiked, similar to the months following September 11th,²⁵⁸ with nearly 42 percent of all hate crimes documented following the election "includ[ing] specific references to Trump, his election, or his policies."²⁵⁹

During his campaign, President Trump promised a "total and complete shutdown of Muslims entering the United States."²⁶⁰ On the seventh day of his presidency, President Trump signed Executive order 13769,²⁶¹ known as the

FBI placed increasing numbers of [Nation of Islam] members on federal detention lists in case of a national emergency, regardless of the fact that the Department of Justice had forwarded memos to that agency stating that the [Nation of Islam] as a religious body was not in violation of any federal or state law.").

257. See Nixon et al., *supra* note 140.

258. *Compare Hate Crime Reports Up in Wake of Terrorist Attacks*, CNN (Sept. 17, 2001, 7:15 AM) <http://edition.cnn.com/2001/US/09/16/gen.hate.crimes> [<https://perma.cc/C2JL-FETW>], with Carol Kuruvilla, *Anti-Muslim Hate Crimes Are Spiking in the U.S. Donald Trump Won't Speak Up.*, HUFFPOST (Feb. 27, 2017, 12:21 PM), http://www.huffingtonpost.com/entry/trump-islamophobia-anti-semitism_us_58b08debe4b0780bac2938b4 [<https://perma.cc/DJ6T-CL2R>].

259. See Jack Jenkins, *ThinkProgress Has Been Tracking Hate Crimes Since Trump's Election. Here's What We Found*, THINKPROGRESS (Feb. 10, 2017, 1:44 PM), <https://thinkprogress.org/thinkprogress-has-been-tracking-hate-since-trumps-election-here-s-what-we-found-e0288ed69869> [<https://perma.cc/Q45N-CVPP>]. President Trump has been widely criticized for provoking and even promoting anti-Islamic hate crimes, and yet he has remained silent when asked to comment. After an attack on a Canadian mosque on the same weekend that Trump rolled out his first travel-ban, the White House used the attack to stress the importance of its new ban—believing the attacker to be Muslim. After the suspect was named as a white advocate of Donald Trump, "the murders ceased to be a matter of political concern" for the White House. See Eric Levitz, *Trump's Silence on White Supremacist Terror Is Political Correctness Run Amok*, N.Y. MAG. (Feb. 2, 2017, 2:13 PM), <http://nymag.com/daily/intelligencer/2017/02/trumps-silence-on-radical-racist-terror-is-p-c-run-amok.html> [<https://perma.cc/DW6M-SFYV>].

260. See Patrick Healy & Michael Barbaro, *Donald Trump Calls for Barring Muslims From Entering U.S.*, N.Y. TIMES: FIRST DRAFT (Dec. 7, 2015, 4:36 PM), <https://www.nytimes.com/politics/first-draft/2015/12/07/donald-trump-calls-for-banning-muslims-from-entering-u-s>. After much criticism, Trump revised his call to a "territory ban," almost all but acknowledging that the change in language was a palliative legal maneuver for an animus-based ban. See, e.g., Amy B. Wang, *Trump Asked For a 'Muslim Ban,' Giuliani Says—And Ordered a Commission to Do It 'Legally'*, WASH. POST: THE FIX (Jan. 29, 2017), https://www.washingtonpost.com/news/the-fix/wp/2017/01/29/trump-asked-for-a-muslim-ban-giuliani-says-and-ordered-a-commission-to-do-it-legally/?utm_term=.40f8b8072cfe (quoting Rudy Giuliani as saying that President Trump asked him the "right way" to do a Muslim ban "legally").

261. Exec. Order No. 13,769, *Protecting the Nation From Foreign Terrorist Entry Into the United States*, 82 Fed. Reg. 8977 (Jan. 27, 2017).

“Muslim Ban.”²⁶² This order targeted travelers from seven Muslim-majority countries—Iran, Iraq, Libya, Somalia, Syria, and Yemen—as well as suspending the U.S. Refugee Admissions Program for 120 days.²⁶³ Massive airport disruption and accompanying protests ensued, and eventually a temporary restraining order blocking the initial ban was granted by the Western District of Washington and upheld by the Court of Appeals for the Ninth Circuit in *Washington v. Trump*,²⁶⁴ with various litigation developing since then, and promising to continue.²⁶⁵ Despite the enormous backlash and criticism of these

262. See, e.g., Editorial Board, *President Trump’s Muslim Ban Lite*, N.Y. TIMES (Mar. 6, 2017), <https://www.nytimes.com/2017/03/06/opinion/president-trumps-muslim-ban-lite.html>.

263. See Exec. Order 13,769, *supra* note 261, at 8979.

264. See 847 F.3d 1151 (9th Cir. 2017) (per curiam).

265. On March 15, 2017, a district court judge in Hawaii blocked the second iteration of the ban before it took effect. See *Timeline of the Muslim Ban*, ACLU WASH., (last visited Mar. 17, 2018), <https://www.aclu-wa.org/pages/timeline-muslim-ban>. On March 16, 2018, “[a] federal court in Maryland blocked the new Executive order on a 90-day ban on immigration from six Muslim-majority countries.” See *id.* The Trump administration appealed the Maryland decision the following day. See *id.* The preliminary injunction was affirmed by the Fourth Circuit in *International Refugee Assistance Project v. Trump*, 857 F.3d 554 (4th Cir. 2017), which the administration appealed to the Supreme Court. See Camila Domonoske, *4th Circuit Court Ruling Keeps Trump’s Travel Ban on Hold*, NPR: THE TWO-WAY (May 25, 2017, 2:30 PM), <http://www.npr.org/sections/thetwo-way/2017/05/25/530051807/4th-circuit-court-ruling-keeps-trumps-travel-ban-on-hold>. On June 27, 2017, the Supreme Court agreed to hear a challenge to the ban but allowed the government to move forward with a narrow portion of the ban. See *supra*, *Timeline of Muslim Ban*. On July 19, 2017, the Supreme Court “left in place a lower-court order exempting grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews and cousins of people in the United States from the Muslim ban.” *Id.* On September 24, 2017, President Trump signed the third version of the ban, but this time included North Koreans and certain Venezuelan officials from traveling as well. *Id.* On October 17, 2017, “[a] federal court temporarily blocked” version three of the ban “in a case brought by the state of Hawaii.” *Id.* On December 4, 2017, the Supreme Court granted the Trump administration’s request to “temporarily allow the . . . Muslim ban to take full effect” while the case was litigated. *Id.* On January 19, 2018, the Supreme Court announced that it would consider *Trump v. Hawaii*, but “its order included a request for the parties to brief the Court on a legal issue not considered in those cases: Whether the latest [Travel Ban] violates [the Establishment Clause].” Garrett Epps, *The Supreme Court’s Travel Ban Dilemma*, ATLANTIC, (Jan. 28, 2018), <https://www.theatlantic.com/politics/archive/2018/01/travel-ban-supreme-court/551669> [https://perma.cc/8WGV-79LR]. “Professor Ira C. Lupu of George Washington University Law School attributed the order to a desire ‘to resolve all the challenges’ at one time.” *Id.* Regardless of how it plays out, the travel ban has already affected tens of thousands of travelers. See Glenn Kessler, *The Number of People Affected by Trump’s Travel Ban: About 90,000*, WASH. POST: FACT CHECKER, (Jan. 30, 2017) <https://www.washingtonpost.com/news/fact-checker/wp/2017/01/30/the-number-of-people-affected-by-trumps-travel-ban-about->

travel bans, however, the ways in which these policies made foreign Black Muslims particularly vulnerable was overlooked.²⁶⁶ Two of the countries banned from travel were not only majority Muslim, but majority-black, including Somalia,²⁶⁷ and several of the remaining countries have substantial Black Muslim populations.²⁶⁸

While speaking at a campaign rally in Minnesota, Trump called Somalis a “disaster,” and that blocking Somali refugees from entry in to the United States would be “the least [the government could] do for you”²⁶⁹—the “you” Trump imagined seemed not to include the Minnesota Somali population. Additionally, Trump planned to modify the Countering Violent Extremism program to exclusively target Muslims,²⁷⁰ and would completely eliminate the already-minimal resources directed at fighting white supremacist terrorism.²⁷¹ His administration even proposed changing the name to “Countering Islamic Extremism” or “Countering Radical Islamic Extremism.”²⁷² But after the focus

90000/?utm_term=.08df49f406e4 [https://perma.cc/83TH-9HGN] (counting the number of people affected in the immediate aftermath of only the first travel ban).

266. “[D]espite the clear anti-black nature of these U.S. American policies of exclusion, and the anti-blackness that contributed to the addition of Somalia and Sudan to the travel ban list, black identity has been carefully eliminated from the debates and popular resistance movements . . .” Ashley Rahimi Syed, *Fellow Brown Muslims, Why Aren’t We Challenging Anti-Blackness?*, GAL-DEM (Feb. 27, 2017), <http://www.gal-dem.com/brown-muslims-anti-blackness> [https://perma.cc/P8GJ-YXDA].

267. *See id.*

268. *See* Noor, *supra* note 250 (“Nearly half of the countries named in Trump’s executive order fact sheet are Muslim-majority *African* countries, from which none of the 9/11 attackers hailed.”).

269. *See* Jacobs & Yuhas, *supra* note 136. Shortly after taking office, Trump issued a directive declaring parts of Somalia an “area of active hostilities,” giving a 180-day window for war-zone targeting and decreasing civilian protections—signaling that Trump believes that both Black Muslims at home and abroad are a threat. *See* Charlie Savage & Eric Schmitt, *Trump Eases Combat Rules in Somalia Intended to Protect Civilians*, N.Y. TIMES (Mar. 30, 2017), <https://www.nytimes.com/2017/03/30/world/africa/trump-is-said-to-ease-combat-rules-in-somalia-designed-to-protect-civilians.html>.

270. *See* BRENNAN CTR., COUNTERING VIOLENT EXTREMISM, *supra* note 151, at 1 (“[CVE’s] flaws are only exacerbated when CVE programs are run by an administration that is overtly hostile toward Muslims, and that includes within its highest ranks individuals known for their frequent and public denunciations of a faith that is practiced by 1.6 billion people around the world.”).

271. *See* Stephen Montemayor, *Citing Trump, Minneapolis Somali Nonprofit Rejects \$500,000 Counterextremism Grant*, STAR TRIB. (Feb. 3, 2017), <http://www.startribune.com/citing-trump-minneapolis-somali-nonprofit-rejects-500-000-counterextremism-grant/412514513> [https://perma.cc/R25L-JGKG].

272. *See* Julia Edwards Ainsley et al., *Exclusive: Trump to Focus Counter-Extremism Program Solely on Islam—Sources*, REUTERS (Feb. 1, 2017, 3:17 PM), <http://www.reuters.com/article/us-usa-trump-extremists-program-exclusive-idUSKBN15G5VO> [https://perma.cc/QM6C-3SW8]. A critic of CVE said that Trump’s

on Trump's language expressing religious animus in the travel ban, it appears the administration may have decided against the name switch.²⁷³ Nevertheless, on November 30, 2017, the Acting Secretary of Homeland Security, Elaine Duke, announced that the Office for Community Partnerships (OCP), in which CVE was housed, has transitioned to the Office of Terrorism Prevention Partnerships, signaling at least a naming convention away from "community" to "terrorism."²⁷⁴

Notably, before the Trump administration switched course, community activists and youth leaders managed to pressure many of the community groups in Minnesota that had been awarded CVE grant money to denounce the program.²⁷⁵ Youthprise, a nonprofit which acted as an intermediary between the federal government and the grantees, issued an apology to the Somali community for its role in disbursing CVE funds, noting that many believe that CVE "perpetuates dangerous stereotypes about the Somali community in Minnesota, and casts suspicion on Muslim communities...negatively impacting Muslim youth."²⁷⁶ In Minneapolis, second-generation Somali youth have been leading the fight against CVE,²⁷⁷ simultaneously drawing

proposed changes only "makes explicit what was already implied Now all of that window dressing goes out the door." See Nixon et al., *supra* note 140 (quoting Faiza Patel, co-director of the Liberty and National Security Program at the Brennan Center for Justice); Hussain et al., *supra* note 147 ("Though [Obama] has insisted that Countering Violent Extremism is not directed at any specific group, the NCTC guide [to CVE] only cites examples drawn from Muslim communities."). This renaming may have a substantial effect—though Obama claimed that Muslims may be vulnerable to targeting by foreign recruiters, he never named American Muslims "an internal enemy." See Ganor, *supra* note 115, at 355.

273. See Shai Franklin, Opinion, *Since When Is 'Countering Violent Extremism' a Bad Thing?*, FORWARD (May 24, 2017), <http://forward.com/opinion/world/372933/since-when-is-countering-violent-extremism-a-bad-thing> [<https://perma.cc/N645-V5GT>].

274. See *Office of Terrorism Prevention Partnerships*, DEP'T OF HOMELAND SEC., (last published Dec. 7, 2017), <https://www.dhs.gov/terrorism-prevention-partnerships>.

275. See Montemayor, *supra* note 271. Ka Joog, a Somali community organization that primarily works with Somali youth in Minneapolis, announced that it would decline nearly a half-million dollars, stating that it had "been hindered by the Trump administration to instill fear, uncertainty and anti-Muslim sentiments." Nixon et al., *supra* note 140.

276. Youthprise acknowledged the role that young activists played in shifting their stance, noting that "[w]hen they protested a Somali Youth Development Fund grant information session at our offices . . . we heard their sense of urgency." Statement from Youthprise Denying Funding from the Countering Violent Extremism Initiative (Apr. 2017), <https://youthprise.org/wp-content/uploads/2015/12/CVEStatement.pdf> [<https://perma.cc/CJG3-DQPL>] (committing to no longer accept "funding that is tied to deficit-driven anti-radicalization purposes").

277. "[CVE] directly affects my community, because of the pilot programs that were brought into my community and into the nonprofits that directly affect my

connections between counterterrorism programs and antiblackness, and calling for coalitions between nonblack Muslims, non-Muslim blacks, and Black Muslims.²⁷⁸ Many draw a direct line between the protest movement of Black Lives Matter and organizing against CVE initiatives—with some straddling both movements.²⁷⁹ As with Black Lives Matter, many of the organizers and

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- community System[ic] Islamophobia . . . has affected my whole life, in regards to just me day to day being questioned and being asked . . . why I am in America” See generally Kaaha Kaahive, *These Teens Are Making Their Voices Heard Against the Countering Violent Extremism Program*, TEEN VOGUE, (Sep. 7, 2017, 9:00am), <https://www.teen-vogue.com/story/teens-voices-heard-countering-violent-extremism-program> (alteration in original). (quoting Anti-CVE Campaign leader Mahamed Salad, a high school senior).
278. See, e.g., Mohamud Awil Mohamed, *Islam and Blackness: A Crossroads Part II*, HUFFPOST (Jan. 25, 2017, 11:23 AM), http://www.huffingtonpost.com/entry/islam-and-blackness-a-crossroads-part-ii_us_587c29f8e4b077a19d180f23 [<https://perma.cc/7FL3-8K9D>] (“[I]n the age of Trump Muslims will need to build bridges across racial and ethnic lines, we must elevate Black Muslims [sic] voices for their unique perspectives and the intersections that allow them to see the bigger picture in ways immigrant Muslim’s many times cannot.”); Evol, *supra* note 233 (“From leading a forum on CVE . . . to refusing the “Mogadishu, Minnesota” TV series from HBO and K’naan, [Somali youth] are carving their space and protecting their narrative.”). Some nonblack Muslims and non-Muslim blacks are also calling for coalitions with Black Muslims, highlighting their particular vulnerability. See Beydoun, *supra* note 55, at 4 (“Black Muslims, who sit at the intersection of anti-Black racism and Islamophobia, endure compounded mistreatment from the state and private citizens. . . . The emergence of [CVE] . . . adopts the very draconian strategies COINTELPRO deployed decades ago against African Americans.”); *Islamophobia & Anti-Blackness Confronted at #OurThreeBoys Rally*, UNICORN RIOT (Mar. 2, 2016), <http://www.unicornriot.ninja/?p=4716> [<https://perma.cc/3G75-AL7Q>] (quoting Javaris Bradford, president of the Black Student Union at the University of Minnesota, saying: “Before I see a hijab, I see blackness. Before I hear an Arabic accent, I see blackness. Us understanding our differences and being able to respect each other despite those differences: That’s how we can unify against oppression.”). These coalitional possibilities recognizing the similar struggles against policing were noted by the Nation of Islam during the Civil Rights era. See, e.g., Charles P. Howard, Sr., *World Aftermath of the Fire Hose . . . and the Dogs!*, MUHAMMAD SPEAKS, June 7, 1963, at 11–13; *Grievances of the Two Are the Same*, MUHAMMAD SPEAKS, June 21, 1963, at 1 (showing two photographs, side by side, with the captions, “Cops Beat and Kill Muslims in L.A.” and “Police Beat and Club Christians in Birmingham”).
279. Miski Noor, a Somali American based in Minneapolis, is the communications strategist for the Black Lives Matter global network. She recently wrote of Black Muslim erasure, stating that “[i]f we claim our Blackness, we lose our other identities, but if we claim our other identities, we lose our Blackness.” Noor, *supra* note 250. The coalitional possibilities for Black Muslims and non-Muslim Black Americans are evident, and have historical precedents. See, e.g., CRAWFORD, *supra* note 67, at 111 (noting that the Nation of Islam’s newspaper, *Muhammad Speaks*, published the first interview with civil rights activist Angela Davis after her arrest, and was “instrumental in garnering support for her release . . .”).

leaders of the young Black Muslim movement are the most marginalized voices in the Black Muslim community—queer, trans, undocumented, and women.²⁸⁰

Young Black Muslims appear more comfortable embodying both their Black American identity and Muslim identity, avoiding the divides illustrated in my first story.²⁸¹ By inhabiting both identities, these youth-led movements are pushing other civil-rights organizations and leaders to look across ethnic, racial, religious, and generational divides.²⁸² Recognizing that blackness encompasses not only racial, but cultural, political, and religious aspects of their identities,²⁸³ young Black Muslims are utilizing their multifaceted racialized identities to push against the stigmatizing forms of policing that helped to shape those selfsame identities.

280. These groups insist on leading the conversation against CVE and antiblackness on their own terms. See *id.* (“Today, I demand to be seen for all of who I am, for I am part of a movement anchored by Black people who literally put our bodies on the line for our liberation.”). Arun Saldanha describes this ownership of identities as a necessary rupture against “machinic connection[s]” between phenotype, and forms of segregation—a positive leveraging of racializing force. “This is the ruptural moment in which to intervene. Race should not be eliminated, but *proliferated*, its many energies directed at multiplying racial differences so as to render them joyfully cacophonous.” See Arun Saldanha, *Reontologising Race: The Machinic Geography of Phenotype*, 24 ENV’T & PLAN. D: SOC’Y & SPACE 9, 20–21 (2006). Cf. JACKSON, *supra* note 12, at 32 (“Subversion, resistance, protest, opposition: These are all key to the constitution of Black Religion.”).

281. In an NPR interview, Sudanese rap artist Oddisee noted the differing generational attitudes to inhabiting a Black Muslim identity—“I think that when many of the older generation come here, they realize that if they don’t identify as black, America will do it for you.” See Akinyi Ochieng, *Black Muslims Face Double Jeopardy, Anxiety in the Heartland*, NPR: CODE SWITCH (Feb. 25, 2017, 6:01 AM), <http://www.npr.org/sections/codeswitch/2017/02/25/516468604/black-muslims-face-double-jeopardy-anxiety-in-the-heartland>.

282. See *id.* (noting that the Council for American-Islamic Relations has been a vocal advocate of Black Lives Matter, and prominent Black Lives Matter activists have called for solidarity with Muslims). “[T]he slow acknowledgement of blackness within older generations has lead [sic] to an active embrace of African-American identity among [young Black Muslims].” *Id.* See also, e.g. Martina Guzmán, *Activists, On Overdrive to Respond to Trump’s Immigration Plans, Are Making New Alliances in Detroit*, PRI: THE WORLD, (Feb. 15, 2017), <https://www.pri.org/stories/2017-02-15/activists-overdrive-respond-trump-s-immigration-plans-are-making-new-alliances> [<https://perma.cc/2P8A-2EDP>] (reporting on how reactions to the “Muslim Ban” sparked new, cross-cultural coalitions of Black Muslims, Mexicans, West Africans, and many others, including Somali Activist Asha Noor, who stated “We still have to address the daily issues of police brutality, mass incarceration and surveillance on blacks and Muslims. . . . We still have to address those issues, and fight the ban.”).

283. See *id.*

CONCLUSION

Recognizing the ways that religion has operated not just as an ethnic, cultural, or spiritual marker—but a historically racialized one—is necessary for understanding the roots of Islamophobia in America. The surveillance, mistreatment, and mass-suspicion cast over Black Muslims must not be cabined-off as either Islamophobic or antiblack. Instead, by tracing the black roots of Muslims in America, the antiblack roots which served to racialize Muslims as nonwhite, and the continued targeting of Black Muslims through both CVE programs and other counterterrorism measures, we can begin to better understand aspects of the Black Muslim identity as one of double-difference—racialized as nonwhite, non-national, and as an ever-permanent threat. By specifically naming this intersection, I hope to have helped open a path for the stories and experiences of Black Muslims to occupy a more central place in the legal discourse surrounding black and Muslim experiences of racialized policing.