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DISCRIMINATION AND THE CIVIL RIGHTS OF THE MUSLIM, ARAB, AND SOUTH ASIAN AMERICAN COMMUNITIES

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES

OF THE

COMMITTEE ON THE JUDICIARY

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTEENTH CONGRESS

SECOND SESSION

TUESDAY, MARCH 1, 2022

Serial No. 117–57

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DISCRIMINATION AND THE CIVIL RIGHTS OF THE MUSLIM, ARAB, AND SOUTH ASIAN AMERICAN COMMUNITIES

Tuesday, March 1, 2022

U.S. HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES

COMMITTEE ON THE JUDICIARY

Washington, DC

The Subcommittee met, pursuant to call, at 10:08 a.m., in room 2141, Rayburn House Office Building, Hon. Steve Cohen [Chair of the Subcommittee] presiding.

Members present: Representatives Nadler, Cohen, Raskin, Ross, Johnson of Georgia, Garcia, Bush, Jackson Lee, Jordan, and Johnson of Louisiana.

Staff present: Aaron Hiller, Chief Counsel and Deputy Staff Director; John Doty, Senior Advisor and Deputy Staff Director; David Greengrass, Senior Counsel; Moh Sharma, Director of Member Services and Outreach & Policy Advisor; Jordan Dashow, Professional Staff Member; Cierra Fontenot, Chief Clerk; Keenan Keller, Senior Counsel; Gabriel Barnett, Staff Assistant; Merrick Nelson, Digital Director; James Park, Chief Counsel for Constitution; Will Emmons, Professional Staff Member/Legislative Aide for Constitution; Ella Yates, Minority Member Services Director; James Lesinski, Minority Counsel; Andrea Woodard, Minority Professional Staff Member; and Kiley Bidelman, Minority Clerk.

Mr. COHEN. The Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Civil Liberties, will come to order.

Without objection, the Chair is authorized to declare a recess of the Subcommittee at any time.

I welcome everyone to today's hearing on Discrimination and the Civil Rights of the Muslim, Arab, and South Asian American Communities.

Before we continue, I would like to remind Members we have established an email address and distribution list dedicated to circulating exhibits or other written materials, motions, or other written matters that Members might want to offer as part of our hearing today. If you would like to submit those materials, please send them to the email address that we previously shared with you, and we will have them distributed.

Finally, I would ask all Members and Witnesses, both those in person and those appearing remotely, to mute your microphones when you are not speaking. This will help prevent feedback, other technical issues, and possible embarrassments. You may unmute yourself anytime you seek recognition.

I will now recognize myself for an opening statement.

To my knowledge, today's hearing is the first congressional hearing exclusively focused on the pervasive discrimination facing the Muslim, Arab, and South Asian American communities. It is the first time since 1986 the House Judiciary has had a hearing focused on any component of that community. We did have a hearing earlier this year on Asian hate and we felt it was very effective. We have had hearings on the ERA, on reparations, and other first-time hearings. So, the Committee has been very active in breaking new ground.

The diversity of the Muslim, Arab, and South Asian American community reflects our history as a Nation of immigrants. It includes Americans who have come here from every part of the world. That includes Americans of many faiths besides Muslims—Christians, they didn't start here, either; Hindus; Sikhs; Buddhists; and Jewish folk.

The history of this community is also one that parallels the experience of many traditionally marginalized communities and is deeply rooted in our history. While they are promised individual liberty and guaranteed the opportunity for a better life, they are subjected, oftentimes, to discrimination and stigmatization, both at the hands of sometimes their own government and some number of their own fellow Americans. We have seen what African Americans experienced in this country through the Jim Crow years; it is still going on, but there was much discrimination sanctioned by the government, Jim Crow laws.

The history of this community I also of resilience. Their stories are of those families and individuals who have struggled for freedom, safety, economic opportunity, or the right to worship—or all the above—according to the dictates of their own conscience.

In that sense, the diverse elements of the Muslim, Arab, and South Asian American community share in common what Americans all share: The common, fundamental belief that, if you work hard, contribute to your community, respect the rights of others as you wish your own rights to be respected, and place your faith in our Constitution and democracy, you belong here.

Too often, people are discriminated against because of acts of other people, and they prejudge people. That has happened with all minorities that have come to this country.

Even though they live in accordance, the immigrants in this country, with the fundamental beliefs of our society, society often stigmatizes immigrants. Muslim, Arab, and South Asian American communities who are the subject of this hearing have been subjected to those prejudices and discriminations as well—that somehow, they are not American. Well, I am not sure who is American, except for Geronimo and other Native American Indians.

We have seen the stigma reflected in individual acts of discrimination and hate. We have seen it continue in the workplace, discrimination against those who wear religious headgear or facial

hair as a sign of their faith. We have also seen it reflected in the current rise of nativism and White supremacy, as individuals or places of worship associated with these communities are increasingly the targets of vandalism and violence. These acts of violence, hate, and discrimination are affront to our sheer values and governing principles, and they have no place in our society.

In the previous Administration, we had a Muslim ban. The first Muslim ban was struck down by the courts as unconstitutional, and it played on prejudices in our community for the benefit of the politicians who proposed it. A second, refined Muslim ban was eventually approved by the Supreme Court, but after much harm was done.

All this should be concerning to all Americans because those flawed policies are not only discriminatory, but they also do not make us safer. I hope that we reckon with and reflect on this history today and come together to ensure this discrimination and stigmatization of Muslim, Arab, and South Asian American communities come to an end.

In Memphis, we have a Ramadan dinner, an annual dinner, where people of all faiths come together. All they do is get together and talk about commonality of interests, and peace and harmony, and good deeds and good things. They talk so long that you get really, really hungry, but it is a beautiful experience, as everybody comes together and shows that American values are not in any one particular race or religion, but all of us.

So, I thank our Witnesses for appearing here today. I would particularly like to welcome our colleagues, Representatives Carson, Chu, Jayapal, and Omar, and look forward to their testimony and that of all the other Witnesses.

I will have to be leaving a bit early because I have a hearing of the Helsinki Commission with concerns with Ukraine. At that time, Ms. Ross will take over. As the Subcommittee Vice Chair, she will take the gavel.

Now, I would like to recognize the Ranking Member of the Subcommittee, the gentleman from Louisiana, my friend, Mr. Johnson, for his opening statement.

Mr. JOHNSON of Louisiana. Thank you, Mr. Chair.

I want to thank our Witnesses and our colleagues and friends for being here this morning. It is, obviously, a very busy day on the Hill. So, we all have a lot going on. So, I appreciate your time.

This hearing is scheduled to discuss discrimination and the civil rights of the Muslim, Arab, and South Asian American communities, as was said. So, let's be clear at the outset, because I think all of us know and agree that discrimination based on race or religion is always wrong, and it is inconsistent with our founding ideals. That is one of the things that makes us American, I would argue.

Our Nation's promise was boldly asserted in our Nation's birth certificate, the Declaration of Independence, that all men are created equal and that we are endowed by our Creator with certain inalienable rights—all of us. America is not perfect, of course, but it is an exceptional country. We are always growing; we are learning; we are striving to be that more perfect union, as the Constitution articulates.

Our Federal civil rights laws recognize these facts, thankfully. It took a long time to get there, but they do, and they have for a long, long time. They make clear that disparate treatment of one individual when compared to another cannot be based on race, religion, or national origin, for example.

However, some advocates today are pushing for really what amounts to a drastic departure from our traditional notions of racism and discrimination and equality, as it existed in American law for decades and generations. Instead of equality of treatment and equal opportunity, these advocates are pushing for what we now call "equity."

Rather than nondiscrimination, equity requires explicit discrimination to achieve an equitable distribution of outcomes. That is not what has been the tradition here, and it is not what we are based on. Let me say that again: Rather than nondiscrimination, equity often requires explicit discrimination to achieve its ends.

Perversely, these ideas have actually caused discrimination against some of the communities that are the subject of today's hearing. At colleges and universities like Harvard, Yale, the University of North Carolina, Asian applicants, for example, face significant hurdles unrelated to academic achievement or merit in the admissions process. Admissions decisions made in the name of equity have also been seen at prestigious high schools across the country and in other institutions.

At Thomas Jefferson High School, for example, a magnet school in Northern Virginia that is considered one of the best public high schools in the country, admissions policies implemented with the goal of equity had the effect of reducing the number of Asian admittees from, roughly, 73 percent to approximately 54 percent. Just last week, a Federal court invalidated the new policy because it failed to treat applicants equally. That is what we are supposed to stand for here. Similar changes and similar legal challenges are playing out right now from New York to San Francisco.

As we have this conversation today, I just think we need to remember that equal treatment and equal opportunity are the foundation of civil rights laws. The American dream is not a zero-sum proposition. We need to not hold anyone back, so that we ensure that everyone can get ahead. The idea is upward mobility. That is the American dream. We want to broaden the pathway out of poverty for more people. We want to give more opportunity. We all agree, I think, on the end goal. We just have very different ideas on how we are supposed to get there.

So, I look forward to hearing from our Witnesses today. I also apologize because I have got multiple hearings going on at the same time. I yield back.

Mr. COHEN. Thank you, Mr. Johnson.

I now recognize the Chair of the Full Committee, Mr. Nadler, for his opening statement.

Chair NADLER. Thank you. I want to begin by informing my friend, Mr. Johnson, that the best public high school in the country is Stuyvesant High School in my district in New York.

Mr. Chair, the Muslim, Arab, and South Asian American communities are an essential part of the American fabric. They are our neighbors, friends, and coworkers. Some of our congressional col-

leagues are Members of these communities, and I am pleased that we will hear testimony from several of them today.

According to the Census Bureau, there are over 7 million Arab Americans and South Asian Americans in the United States, including over 750,000 in New York City. We know that the true size of this population is likely even larger because the Census underreports these groups. Indeed, as we consider our recent experience with the Census, we know that we must make changes to better track the Arab American community.

Even without improved Census figures, we know from personal experience that, from small business owners to healthcare professionals, to public servants, the Muslim, Arab, and South Asian American communities are inextricably woven into the fabric of American society.

It is also important to acknowledge that, while our hearing focuses on some of the common issues confronting these communities as a whole, there is as much diversity among these groups as there is in the rest of America, and they adhere to a range of faiths, including not only Islam, but also Christianity, seekers of Hinduism, Buddhism, Jainism, Baha'i, and Judaism, among others.

A large part of what binds them together, unfortunately, is the shared experience of discrimination targeted at them that stems from the same poisonous tree. Despite their many contributions and long histories in this country, these communities have often been stigmatized as perpetual foreigners, not only by individuals, but often by the policies of their own government.

From the nativism confronting those who arrived in the early waves of migration to this country in the late 18th to early 19th century to those who were scapegoated for the effects of more recent political events, like the oil embargo of the 1970s, Muslim, Arab, and South Asian American communities have faced discrimination rooted in the idea that they are somehow less American than others, despite the fact that their stories are so similar to those of other American families who arrived here as immigrants.

Looming especially large over these communities over the past two decades are the continuing impacts, both in terms of government policy and interpersonal prejudices, of the September 11th terrorist attacks on the United States. Like all Americans, Members of the Muslim, Arab, and South Asian communities recoiled in horror at what happened that day; they shared in the Nation's anger and sorrow.

Many members of these communities were themselves victims of the attacks. Unlike other communities, many Muslim, Arab, and South Asian Americans endured an unjustified wave of interpersonal discrimination and violence at the hands of their fellow Americans—the societal hatred and cultural stigmatization that continues to impact them to this day, a generation later.

Even more concerning, the legacy of 9/11 and national security, counterterrorism, and immigration policies continues to have a disproportionately discriminatory impact on these communities. As Americans, we should all be concerned when the government creates and implements national security and law enforcement policies based on broad-brush assumptions about whole communities of Americans based on their race, religion, ethnicity, or national ori-

gin, rather than on individualized suspicion. Such wholesale discriminatory assumptions are not only unconstitutional, but also un-American to the core, and they do nothing to make us safer.

Finally, we cannot hold this hearing today without examining issues of discrimination as part of a broader context of persistent White supremacist violence and extremism in the United States, a trend that has taken on a recent and disturbing revival. The recent rise in hate crimes across the country has had a significant impact on the Muslim, Arab, and South Asian community, just as it has had on other minority communities. From the violence against mosques to the shooting at the Sikh Temple in Oak Creek, Wisconsin, to the vandalization of Hindu temples, hate crimes and hate incidents continue to significantly target these communities.

For example, according to the Justice Department's 2020 hate crime statistics, there were 87 anti-Arab offenses, 131 anti-Muslim offenses, 94 anti-Sikh offenses, and 11 anti-Hindu offenses. We also know that all these statistics are significantly underreported and that they do not include hate incidents that fall short of the legal definition of hate crime.

For example, children from these communities are often subject to bullying, a reflection of the interpersonal prejudices they face. The Sikh Coalition has reported that 67 percent of Sikh kids who have a turban have been bullied.

The conversation we are having today is long overdue. It appears that the most recent congressional hearing solely focused on issues impacting any part of the Muslim, Arab, or South Asian American communities was held in 1986 in the Crime Subcommittee. It is long past time to shine a light on the needs of these communities once again.

I look forward to hearing from today's excellent panel of Witnesses who will provide insight on the current issues impacting these communities and how we can better ensure that they have the protection, justice, equality, and healing that they deserve.

I thank Chair Cohen for holding this important hearing, and I yield back the balance of my time.

Mr. COHEN. Thank you, Mr. Nadler.

Mr. Jordan, do you have a statement?

Mr. JORDAN. No, Mr. Chair. I look forward to hearing from our Witnesses, from our colleagues.

So, I will yield back. Thank you.

Mr. COHEN. Thank you for your attendance.

We welcome our Witnesses and thank them for participating in today's hearing.

I will now introduce each of the Witnesses, and after each introduction, we will recognize the Witness for his or her oral testimony.

Each of your written statements will be introduced into the record in its entirety, and I ask you to summarize your testimony in five minutes.

To help you stay within that time, for our Witnesses testifying in person, there is a timing light on your table. All of you know what the lights are about. For Witnesses testifying remotely, you have got to find it on your computer somewhere, in some kind of a Zoom view on your screen.

Before proceeding with the testimony, I would like to remind all our Witnesses appearing on both panels that you have a legal obligation to provide truthful testimony and answers to this Subcommittee, and any false statement that you make today may subject you to prosecution under section 1001 of title 18 of the United States Code.

Today, we have two Witness panels. On the first panel, we are joined by four of our colleagues.

Our first colleague is joining us remotely, Representative André Carson. Congressman Carson represents the 7th Congressional District of Indiana, which encompassed the city of Indianapolis, home of the hottest shrimp cocktail sauce in the world. He is serving his seventh term in Congress.

You are recognized for five minutes.

STATEMENT OF HON. ANDRÉ CARSON

Mr. CARSON. Thank you to my good friend, Chair Cohen. I would like to thank you and the Full Committee, and my buddy, the professor, Chair Nadler, for your hard work, as well as the Ranking Member, in all that you do to protect our Constitution, and especially for organizing today's hearing.

Muslims across the country, quite frankly, have asked for this kind of hearing for a very long time. As the longest-serving, currently, Muslim in Congress, it is a tremendous honor to testify today about the persistent discrimination face by Muslim Americans.

I am particularly pleased to join my buddies, my friends, my congressional colleagues: Representative Judy Chu, Representative Jayapal, and my sister and friend, Representative Omar.

As a young, Black teenager, a tall, Black teenager in Indianapolis, I was targeted, the victim of racial profiling, while I was standing outside of a mosque. I was arrested and put behind bars. There was an outcry from the community who saw the injustice that played out. Fortunately, the charges were dropped, and I was released and became a police officer years later. It was my Muslim community and friends that stood with us and fought for my release.

I learned a very critical lesson that day, that being Black and being Muslim put someone like me under double scrutiny. Sometimes that discrimination and profiling can endanger an individual's safety.

On January 6th, a man drove a truck to the Capitol Complex. The truck was loaded with an arsenal of explosives and weapons. The truck also contained a list which included my name and others because I am a Muslim Member of Congress. The man who wrote up that list has finally pled guilty and will serve time for his crimes when he is sentenced next month by a Federal judge.

My experience mirrors so many other Muslim Americans who have been threatened, injured, quite frankly, killed, due to profiling and discrimination. This is a very real threat throughout our daily lives.

I really hope today's hearing helps to raise more awareness of the very life-changing impacts of discrimination against Muslims. There is a notion that the Muslim American community is a new

one in the United States, but the truth is that we have been long before the Declaration of Independence was signed. Enslaved Muslims were taken from their homes and families in Africa and brought to America as slaves. These Muslims brought their religion with them, and they practiced it here in the New World.

America's Founders had high ideals about liberty and freedom, but they were conflicted, too. Many of the Founders owned slaves, as we know. If you look very closely at George Washington's plantation home in Mt. Vernon, you will see evidence of the Muslim slaves who worked for the nation's first President. If you look among the crosses, you will see crescents on a number of grave markers.

Historic Muslim leaders like the great Malcolm X and the great Muhammad Ali are well-known, but far too many other trailblazers are less known. Never doubt that Muslims have been in an integral part of building this nation from the very beginning to the present. We are not new here. Our tapestry has only grown richer, thanks to the arrival of newer generations of Muslim immigrants who have come to build on our American dream. Some fled persecution and some came for educational and economic opportunities.

Muslims have made substantial contributions in every aspect of American life, whether it is the field of medicine or business, law, sports, or entertainment. Unfortunately, the aftermath of 9/11 drastically changed many people's perception of us, and those achievements are not acknowledged as they should be.

Regrettably, our own government contributed to the discrimination experience by Muslims with intensified profiling under the guise of national security. As a former law enforcement officer, someone who has worked in counterintelligence and homeland security in Indiana, I can tell you that most officers strive to carry out their oaths to serve and protect in a very responsible and respectful manner. September 11, 2001, opened a door to a whole new level of widespread profiling that grew out of fear of the other. Federal agencies like TSA and the FBI started a suspect list and no-fly list, many times just because of the way someone's name sounded or how it was spelled. Once someone's name was on those lists; it could be a nightmare to get them removed.

Traveling while a Muslim is challenging. Worshiping while Muslim is a challenge, too. Law enforcement and intelligence personnel monitor mosques, conduct questionable surveillance of Muslim communities. Initiatives that I believe are intended to preserve our national security, like countering violent extremism, or CVE, instead, have been misused with disproportionate targeting of Muslims.

I am honored that Speaker Pelosi appointed me to be the first Muslim to serve on the House Intel Committee. She did this, despite the very racist attacks that a Muslim could or should not be trusted with intelligence data.

So, I thank you for the opportunity for highlighting this growing community and contributors to our society.

I yield back.

[The statement of Mr. Carson follows:]

Testimony
The Honorable André Carson (IN-07)
House Judiciary Committee
Subcommittee on the Constitution, Civil Rights, and Civil Liberties
Hearing on
"***Discrimination and the Civil Rights of the Muslim, Arab and South Asian Communities***"
March 1, 2022

Chairman Cohen, I'd like to thank you and full Committee Chairman Nadler for your hard work to protect our Constitution, and for organizing today's hearing.

Muslims across the country have asked for this kind of hearing for a long time. And as the longest serving Muslim in Congress, it is an honor to testify today about the persistent discrimination faced by Muslim Americans. I'm particularly pleased to join my Congressional colleagues, Rep. Chu, Rep. Jayapal and Rep. Omar.

As a tall Black teenager in Indianapolis, I was the victim of racial profiling while I was standing with a group outside of a Mosque. I was arrested and taken to jail and held behind bars. There was an outcry from a group of people who saw the injustice that played out, and fortunately, the charges were dropped and I was released. It was my Muslim community and friends that stood by me and fought for my release.

I learned a critical lesson that day: that being Black and being a Muslim puts a man like me under double scrutiny. And sometimes, that discrimination and profiling can endanger an individual's safety.

On January 6th, a man drove a truck to the Capitol complex. The truck was loaded with an arsenal of explosive devices and weapons. The truck also contained a hit list, which included my name. Because I am a Muslim Member of Congress. The man who wrote up that hit list has finally pleaded guilty, and will serve time for his crimes when he is sentenced next month by a federal judge. My experience mirrors that of so many other Muslim-Americans who have been threatened, injured or killed due to profiling and discrimination.

This a very real threat throughout our daily lives. I really hope today's hearing helps to raise more awareness of the life-changing impacts of discrimination against Muslims.

There's a notion that the Muslim-American community is a new one in the United States. But the truth is that Muslims were here long before the Declaration of Independence was signed.

Enslaved Muslims were taken from their homes and families in Africa and brought to America as slaves. These Muslims brought their religion with them, and they practiced it here in the New World.

America's Founders had high ideals about liberty and freedom, but they were conflicted too. Many of the Founders owned slaves. If you look closely at George Washington's plantation home at Mount Vernon, you will see the evidence of the Muslim slaves who worked for the nation's first president. If you look among the crosses, you will see crescents on a number of the grave markers.

Historic Muslim leaders like Malcom X and Muhammad Ali are well-known, but far too many other trailblazers are less known. But never doubt that Muslims have been an integral part of building this country – from the very beginning to the present. We are not new here.

Our tapestry has only grown richer thanks to the arrival of newer generations of Muslim immigrants who have come to build on our American dream. Some fled persecution, and some came for educational and economic opportunities.

Muslims have made substantial contributions in every aspect of American life, whether it's the field of medicine or business, law, sports or entertainment. But unfortunately, the aftermath of 9/11 drastically changed many people's perception of us, and those achievements are not acknowledged like they should be.

Regrettably, our own government contributed to the discrimination experienced by Muslims, with intensified profiling under the guise of national security.

As a former law enforcement officer, I can tell you that most officers strive to carry out their oaths to serve and protect in a responsible and respectful manner. But 9/11 opened a door to a whole new level of wide-spread profiling that grew out of a terrible fear of the "other".

Federal agencies – like the FBI and TSA – started suspect lists and "No Fly Lists", many times, just because of the way someone's name sounded or was spelled. And once someone's name was on those lists, it could be a nightmare to get a name removed.

Traveling while Muslim is challenging. Worshipping while Muslim is challenging too. Law enforcement and intelligence personnel monitored mosques and conducted questionable surveillance of Muslim communities. Initiatives that I believe are intended to preserve our national security, like Countering Violent Extremism, instead, have been misused with disproportionate targeting of Muslims.

I am honored that Speaker Pelosi appointed me to be the first Muslim to serve on the House Intelligence Committee. She did this despite the racist attacks that a Muslim could not or should not be trusted with America's Intelligence data, and that I shouldn't be appointed. But despite the racist rhetoric, today I serve as the Chair of the Subcommittee on Counterterrorism, Counterintelligence and Counterproliferation. Through our work on the Intel Committee, I have focused on the growing threat of white supremacist domestic terrorist threats and urged the Intelligence Community to take these threats more seriously and stop ignoring them.

Not nearly enough has been done to address these real threats, particularly when the Muslim victims of violent racist attacks by white supremacists are not prosecuted as bias or hate crimes.

In May of 2020 in my hometown of Indianapolis, bullets were shot into Masjid E-Noor where a handful of worshippers were inside the mosque following a sunset prayer on Eid al-Fitr, a holy day celebrated by Muslims worldwide to mark the end of Ramadan. These horrific events have lasting effects on the Muslim community as a whole.

In 2016, as anti-Muslim rhetoric intensified during that year's Presidential election, three men targeted a mosque and apartment complex in Kansas that housed Somali refugees. These three men were plotting to blow it all up. These three men referred to Muslim migrants as "cockroaches" and their ultimate goal was to slaughter every man, woman and child in the building. The timing for this bomb was to go off the day after the Presidential election. The mastermind behind this hate crime said, "The only good Muslim is a dead Muslim". This is unfortunately the America we live in.

Racism and discrimination against our community is also systemic. In the Bronx, earlier this year, a building caught fire, and nearly all the victims were Muslim. Many more Muslim-Americans live in these types of buildings that are often unsafe. They deserve safe housing, as does every American.

To conclude this terrible litany, earlier this year, news broke about a systematic campaign of spying that touched nearly every prominent Muslim organization in the United States. The Washington Post and other major news media outlets have detailed testimonial and documentary evidence showing an effort to undermine our community's civic and political engagement. This was orchestrated by the so-called Investigative Project for Terrorism (IPT), a non-profit organization, founded and led by an anti-Muslim extremist who has spent years secretly paying "spies" to record Muslim leaders and organizations across America, without their permission.

For the hearing record, I would like to submit a report that provides more details about the worsening threats against Muslim Americans.

Thank you again for the opportunity to testify before you today. Please know that I stand ready to work with you on legislative and policy initiatives that will help end the government and organizational discrimination against Muslim Americans.

Mr. COHEN. Thank you, Representative Carson. Excellent testimony. I appreciate it.

Our next Witness is Representative Judy Chu. Congressman Chu represents the 27th Congressional District of California, has served in Congress since—this says 2009. Did you come in 2009? I thought you were here before I got here. That is okay.

[Laughter.]

Since 2011, she has served as Chair of the Congressional Asian Pacific American Caucus.

Representative Chu, you are recognized for five minutes.

Apparently, your microphone may not be on.

STATEMENT OF HON. JUDY CHU

Ms. CHU. Okay. Well, thank you, Chair Nadler, Ranking Member Jordan, Subcommittee Chair Cohen, and other distinguished Members of the Committee, for the opportunity to join my esteemed colleagues in providing testimony on an incredibly important issue: Discrimination and civil rights of Muslim, Arab, and South Asian communities in the United States.

I especially want to thank my fellow Members on this panel for voicing their personal experiences and uplifting the voices of their communities to the Committee today.

As Chair of the Congressional Asian Pacific American Caucus, or CAPAC, I have spent many years advocating for and defending the civil rights of the entirety of the Asian American and Pacific Islander, or AAPI, community, which includes many of the groups named in this hearing.

As we begin today's hearing, we must understand that anti-Asian hate and discrimination, which has been recently thrust into the spotlight, is not a new phenomenon. Whether it is the Chinese Exclusion Act of 1882, Japanese American incarceration during World War II, or the surveillance of Muslim, Arab, and South Asian communities after 9/11, our history has shown us what happens when Asian Americans are used as scapegoats in times of crisis.

In our more recent history, in the wake of the attacks on our nation on 9/11, the Muslim, Middle Eastern, Arab, Sikh, and South Asian communities became subject to an increasing atmosphere of suspicion, xenophobia, and violence. In fact, just four days after 9/11, Balbir Singh Sodhi, a Sikh father, husband, and brother, was shot while planting flowers outside his Arizona gas station, becoming the first victim of a post-9/11 hate crime. Sadly, he would not be the last.

Since then, the focus on terrorism from abroad also became a political justification for more prejudice at home. From the passage of the Patriot Act to lies about terrorists at the southern border, prejudice has been used to justify cruel immigration policies, Muslim travel bans, and more in the past few years alone. What is even worse is that this rhetoric has actually inspired new domestic terrorist threats and innocent lives have been lost as a result.

This prejudice took a concrete form in the initial days of the Trump Administration, when Donald Trump announced his first Muslim ban. What followed were years of pain for families deliberately separated by this ban, forced to miss weddings, funerals, births, graduations, and more.

While President Biden rescinded this ban on his first day in office, we must ensure that no President has the power to create a ban like this, based solely on religion and xenophobia, ever again. I am proud that the House passed my bill, along with Representatives Lofgren, Carson, Omar, and Beyer, the NO BAN Act, which repeals all iterations of the Muslim ban and ensures that no future President can unilaterally ban an entire group based on their religion.

The Muslim ban wasn't just cruel for its personal impact on families, it was also dangerous in the way it promoted fear of Muslims, which we know leads to more violence. As we have seen with the increase in anti-Asian hate over the past two years, with more than 10,000 incidents since March of 2020, creating fear and fostering prejudice against one group can lead to the harassment, suffering, and even death of innocents.

That is why I am so proud that the bipartisan Jabara-Heyer NO HATE Act, which I led with Representative Don Beyer and others, was included in the COVID–19 Hate Crimes Act, which was signed into law last May. This law provides local organizations and local law enforcement with the resources and training to improve hate crimes tracking and reporting, something we know is necessary in addressing the sharp rise in hate crimes against all minority communities.

Nobody, whether you are Asian, South Asian, Arab, Muslim, Sikh, or any other community, should be targeted simply because of their ethnicity or religion. As Chair of CAPAC, I look forward to working with all my colleagues on this panel and so many of the groups represented today to continue the work of combating discrimination against all our communities.

[The statement of Ms. Chu follows:]

Testimony of Congresswoman Judy Chu (CA-27)
Chair of the Congressional Asian Pacific American Caucus

Before the House Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties

Hearing on "Discrimination and the Civil Rights of the Muslim, Arab, and South Asian American Communities"

March 1, 2022

Thank you Chairman Nadler, Ranking Member Jordan, Subcommittee Chairman Cohen, Ranking Member Johnson, and other distinguished members of the Committee for the opportunity to join my esteemed colleagues in providing testimony on an incredibly important issue: discrimination and civil rights of Muslim, Arab, and South Asian communities in the United States. I especially want to thank my fellow members on this panel for voicing their personal experiences and uplifting the voices of their communities to the Committee today. As Chair of the Congressional Asian Pacific American Caucus, or CAPAC, I have spent many years advocating for and defending the civil rights of the entirety of the Asian American and Pacific Islander, or AAPI, community, which includes many of the groups named in this hearing.

As we begin today's hearing, we must understand that anti-Asian hate and discrimination, which has been recently thrust into the spotlight, is not a new phenomenon. Whether it's the Chinese Exclusion Act of 1882, Japanese American incarceration during World War II, or the surveillance of Muslim, Arab, and South Asian communities after 9/11, our history has shown us what happens when Asian Americans are used as scapegoats in times of crisis.

In our more recent history, in the wake of the attacks on our nation on 9/11, the Muslim, Middle Eastern, Arab, Sikh, and South Asian communities became subject to an increasing atmosphere of suspicion, xenophobia, and violence. In fact, just four days after 9/11, Balbir Singh Sodhi – a Sikh father, husband, and brother – was shot while planting flowers outside his Arizona gas station, becoming the first victim of a post-9/11 hate crime. Sadly, he would not be the last.

Since then, the focus on terrorism from abroad also became a political justification for more prejudice at home. From the passage of the Patriot Act to lies about terrorists at the Southern border, prejudice has been used to justify cruel immigration policies, Muslim travel bans, and more in just the past few years alone. What's even worse is that this rhetoric has actually inspired new domestic terrorist threats, and innocent lives have been lost as a result.

This prejudice took a concrete form in the initial days of the Trump Administration when Donald Trump announced the first Muslim Ban. What followed were years of pain for families deliberately separated by this ban, forced to miss weddings, funerals, births, graduations, and more. While President Biden rescinded this ban on his first day in office, we must ensure that no President has the power to create a ban like this, based solely on religion and xenophobia, ever again. I am proud that the House passed my bill along with Representatives Lofgren, Carson,

Omar, Tlaib, and Beyer, the NO BAN Act, which repeals all iterations of the Muslim Ban and ensures that no future president can unilaterally ban an entire group based on their religion.

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Nobody, whether you're Asian, South Asian, Arab, Muslim, Sikh, or any other community, should be targeted simply because of their ethnicity or religion. To recognize the 20th anniversary of 9/11 last year, I joined with Representatives Pramila Jayapal, Ilhan Omar, and Rashida Tlaib to introduce a resolution acknowledging the government's role in unjustly targeting people following the September 11th attacks and how it contributed to spreading hate, racism, xenophobia, and discrimination. The resolution also calls for congressional hearings like this one to explore this impact and allocates resources to help victims in the Arab, Muslim, Middle Eastern, South Asian, and Sikh communities, so I thank this Committee for taking this important step today.

As Chair of CAPAC, I look forward to working with my colleagues on this panel, many of the experts you will hear from on the next panel, and all of you on this Committee to continue the work of combatting discrimination against all our communities.

Mr. COHEN. Thank you, Representative Chu.

I will now pause for a few minutes because we have technical difficulties—not related to your microphone or your testimony. I think your testimony was—I guess it was heard. Was it? You were a YouTube star, but not a Zoom participant.

[Laughter.]

So, we are trying to synchronize those two groups.

We will take a brief recess.

[Recess.]

Mr. COHEN. Apparently, technical difficulties have been dispensed with.

Our next Witness—and we will go in the order of seniority—is Representative Pramila Jayapal. Congressman Jayapal represents the 7th Congressional District of Washington. I believe it is the city of Seattle—coffee and a big tower, and boats and salmon.

[Laughter.]

She is currently serving in her third term. She is the Chair of the Congressional Progressive Caucus and, also, Chairs the Immigration Task Force of the Congressional Asian Pacific American Caucus and has been a dynamic leader in this particular Congress especially.

You are recognized for five minutes.

STATEMENT OF HON. PRAMILA JAYAPAL

Ms. JAYAPAL. Thank you, Chairs Cohen and Nadler, Ranking Members Johnson and Jordan, and Members of the Subcommittee. Thank you for the opportunity to testify at this important hearing with my wonderful colleagues.

I sit before you as the first and only South Asian American woman elected to the House of Representatives.

September 11, 2001, forever changed what it means to be a Muslim, Arab, or South Asian American in America. On September 11th, a friend on the East Coast woke me up at 5:00 in the morning, calling to ask if I had heard what had happened. I had just moved into a new home. I had to unpack my very tiny television, and I sat amidst boxes watching in horror as the first images of the Twin Towers played on repeat. I knew that life would never be the same again for people who look like us sitting at this table.

In the days and weeks after, I received fearful calls from individuals in the Sikh, Muslim, and Arab American community who were being attacked for wearing turbans or hijabs. I heard from moms and dads who were afraid to send their kids to school—a fear that I shared for my own child. For the first time since I had come to America at the age of 16, I had to think about whether to wear my Indian clothes outside and I didn't want to let my child leave the house.

When I left home, I literally could feel the tension in my body, like I was being constantly watched, and I worried that I would be attacked or that someone would yell hateful things at me, simply for being who I am.

Others had it far, far worse. On September 13th, a man armed with a gun and a tank of gasoline went to a mosque in North Seattle, trying to attack people as they left evening prayers and setting a car on fire.

A few days later, the first Sikh American, Balbir Singh Sodhi, was murdered in Mesa, Arizona, simply because his attacker thought that he looked like Osama bin Laden and should be held responsible for the attacks.

Every single day, I received calls about Muslim women who had been harassed on the streets; women having their hijabs torn off; taxi drivers who were beaten for being Sikh American; Muslim families who withdrew their children from school because they were too afraid to get on the bus or go out in public.

It didn't help when, days after the attacks, President George W. Bush proclaimed, "Either you are with us or you are with the terrorists." For many Arab, Muslim, and South Asian communities, this stark language seemed directed at us, and the words cemented division and had an enormous psychological impact on our communities.

This "us versus them" rhetoric sparked terrible policy decisions that continue to impact the civil rights and civil liberties of Muslim, Arab, and South Asian communities, as well as other communities. Cloaked in national security, the President and Congress advanced policies and laws intentionally designed to criminalize, surveil, police, and deny immigration benefits to these communities.

Just 10 days after 9/11, Congress passed the Patriot Act, with little regard for the enormous problems that it created for civil liberties and privacy protections for all Americans, but, in particular, for those most likely to be targeted—many provisions which still remain and have been used against MASA communities.

There are some beautiful things that come out of crisis as well. I ended up founding a nonprofit civil rights organization named One America to fight the backlash targeting Muslim, Sikh, and South Asian communities, and ended up organizing immigrants across the board for justice for the next decades.

In the months and years that followed, we successfully defeated government efforts to deport about 5,000 Somalis from across the country; we fought back against special registration and detention of 1,200 Arab and Muslim men; we defended Muslim and Somali businesses from unjust attempts by the government to put them out of business. We held hearings to tell our stories, including a 2003 Senate hearing, held at the request of late Senator Ted Kennedy.

I am proud that out of tremendous crisis came courage and resilience of our communities, but I am also aware of how much work there is still to do. I still have constituents who are trying to get their names off discriminatory lists created after 9/11 that have prevented them from getting benefits that they should have.

Twenty years later, here in Congress, I was proud to introduce a resolution on the anniversary of 9/11, with my colleagues, Representatives Ilhan Omar, Rashida Tlaib, and Judy Chu. Our resolution, H.Res. 629, recognizes the climate of hate that Arab, Muslim, Middle Eastern, South Asian, and Sikh communities have experienced since September 11th and calls for action to address the lasting impacts of 9/11.

I hope this hearing becomes one step of many to examine and, ultimately, dismantle 9/11 era policies that have perpetuated and exacerbated discrimination against these communities.

I thank you, Mr. Chair, for holding this very important hearing.
I yield back.
[The statement of Ms. Jayapal follows:]

Congresswoman Pramila Jayapal (WA-07)
Subcommittee on the Constitution, Civil Rights and Civil Liberties
Hearing on "Discrimination and Civil Rights Issues of the Muslim, Arab, and South Asian Community"
Tuesday, March 1, 2022

Testimony

Chairman Cohen, Ranking Member Johnson, and members of the Subcommittee: Thank you for the opportunity to testify at this important hearing. I sit before you as the first South Asian woman in the House of Representatives and the only one currently serving in Congress.

9/11 forever changed what it means to be Muslim, Arab, or South Asian in America. On September 11, a friend on the East Coast woke me up at 5 in the morning, calling to ask if I'd heard what had happened. I had just moved into a new home and had to unpack my tiny television. I sat amidst boxes watching in horror as the first images of the Twin Towers played on repeat and I knew that life would never be the same again for people who looked like us sitting at this table.

In the days and weeks after, I received fearful calls from individuals in the Sikh, Muslim, and Arab-American community who were being attacked for wearing turbans or hijabs. I heard from moms and dads who were afraid to send their kids to school; a fear I shared for my own child. For the first time since I came to America at age 16, I had to think about whether to wear my Indian clothes outside, and I didn't want to let my child leave the house. When I left home, I could feel the tension in my body; like I was constantly being watched and I worried that I would be attacked or that someone would yell hateful things at me simply for being who I am.

Others had it far worse. On September 13, a man armed with a gun and a tank of gasoline went to a mosque in North Seattle trying to attack people as they left evening prayers. A few days later, the first Sikh American—Balbir Singh Sodhi— was murdered in Mesa, Arizona, simply because his attacker thought he looked like Osama bin Laden and should be held responsible for the attacks. Every day, I received calls about Muslim women who had been harassed on the streets, women having their hijabs torn off, taxi drivers who were beaten, Muslim families who withdrew their children from school because they were too afraid to get on the bus or go out in public.

It didn't help when days after the attacks, President George W. Bush proclaimed, "Either you are with us, or you are with the terrorists." For many Arab, Muslim, and South Asian communities, this stark language seemed directed at us. These words cemented division and I cannot overstate the psychological impact it had on our communities.

This us versus them rhetoric sparked terrible policy decisions that continue to impact the civil rights and civil liberties of Muslim, Arab, and South Asian communities as well as other communities. Cloaked in national security, the President and Congress advanced policies and laws intentionally designed to criminalize, surveil, police, and deny immigration benefits to these communities. Just 10 days after 9/11, Congress passed the PATRIOT Act with little regard for

the enormous problems it created for civil liberties and privacy protections for all Americans, but in particular those most likely to be targeted—many provisions of which still remain and have been used against MASA communities.

Amidst all of this, I founded a nonprofit civil rights organization named OneAmerica to fight the backlash targeting Muslim, Sikh, and South Asian communities and to organize immigrants across the board for justice. In the months and years that followed, we successfully defeated government efforts to deport about 5,000 Somalis, fought back against Special Registration of Arab and Muslim men, and defended Muslim and Somali businesses from unjust attempts by the government to put them out of business. We held hearings to tell our stories, including a 2003 Senate hearing held at the request of the late senator Ted Kennedy. I am proud that out of tremendous crisis came the courage and resilience of our communities but I am also aware of how much work there is still to do.

Twenty years later, here in Congress, I was proud to introduce a resolution on the anniversary of 9/11 with my colleagues, Representatives Ilhan Omar, Rashida Tlaib, and Judy Chu. Our resolution, H. Res. 629, recognizes the climate of hate that Arab, Muslim, Middle Eastern, South Asian, and Sikh communities have experienced since September 11 and calls for action to address the lasting impacts of 9/11. I hope this hearing becomes one step of many to examine and ultimately dismantle 9/11-era policies that have perpetuated and exacerbated discrimination against these communities.

Mr. COHEN. Thank you for your testimony and your work on these issues over the years.

Our last Witness on our first panel is Representative Ilhan Omar. She represents the 5th Congressional District of Minnesota, also known as the home of Prince.

[Laughter.]

It includes Minneapolis with the Twins and a big mall and surrounding suburbs.

She was sworn into office in January 2019, making her the first African refugee to become a Member of Congress; the first woman of color to represent the State of Minnesota, and one of the first two Muslim American women elected to Congress.

Representative Omar, you are recognized for five minutes.

STATEMENT OF HON. ILHAN OMAR

Ms. OMAR. Good morning, Chair, Ranking Member, and distinguished Members of this Committee. Thank you for holding this very important hearing.

I am no stranger to discrimination, hate speech, or threats of violence against my family and myself, simply because of my identity. As a Black, visibly Muslim woman who came to this country as a refugee, I have dealt with racist, xenophobic, bigoted comments and threats all my life. Even being elected to offices hasn't stopped me from being "othered." I have received vile remarks from the public, as well as Members of Congress.

Sadly, I am just one of millions of Americans across this country who have experienced discrimination and attacks. In recent years, we have witnessed increased attacks on Asian Americans, immigrant communities, religious minority and spaces, and that is only a fraction of violence.

It is demoralizing to watch acts of such blatant racism and xenophobia—all carried out with complete disregard for the humanity of others. Sadly, our government has a history of sanctioning such hatred and violence.

In 1798, President John Adams signed into law a set of four bills collectively known as the Alien Sedition Act. These four bills increased the residency requirement for American citizenship from five years to 14 years, authorizing the President to imprison or deport foreign nationals considered dangerous to the peace and safety of the United States and restricting speech critical of the government. These laws were designed to restrict the activities of foreign-born Americans, silence minorities, and weaken freedom of speech and the press.

By 1801, three of the Acts were repealed due to their unconstitutional nature or allowed to expire. However, the Alien Enemies Act remains in effect to this day, even though it is unconstitutional, as the other three. The Alien Enemies Act allows the United States President to determine how and if all foreign nationals should be apprehended, restrained, secured, and removed in the event of a war. There are a number of troubling and scary aspects of this law.

First, "war" is not defined in this Act, allowing it to be loosely interpreted.

Second, this Act completely bypasses the judicial process, ignoring due process and the right of appeal.

Lastly, foreign national refers to anyone who is not a U.S. citizen, even if they might be a lawful resident in the United States—meaning, even if you have lived in the United States legally for 20 years, built a community, started a family, for whatever reason, not have gained citizenship, you would be subject to apprehension, detention, or deportation without due process.

I introduced the Neighbors Not Enemies Act to repeat this unjust law. While many might say this 18th century law is outdated and has no impact on modern history, I would like to remind you that, less than 100 years ago, the United States invoked this Act during World War II to retain and, subsequently, deport Japanese, German, and Italian immigrants. Just last week, we marked the 80th anniversary of the Executive Order signed by President Franklin Roosevelt, which led to mass incarceration of nearly 120,000 people of Japanese ancestry.

In the years since, the United States has recognized injustices done to the Japanese Americans, and subsequently, apologized for the cruel internment. Although we promised to never walk down that dark path again, we failed to keep that promise. During the 2016 election, President Trump used the Alien Enemies Act as a justification for the Muslim ban.

Administration after Administration have continuously demonstrated the danger of unchecked executive power and the stain it has on our country decades and centuries later. Whether it is justifying putting hundreds of thousands of people in internment camps, attacking Muslim immigrants and refugees, or separating families at the border, the Alien Enemies Act dangerously permits the President extreme executive powers to unjustly target an entire group of foreign nationals.

This outdated and sinful, bigoted law is an offense to our nation's values. We must learn from historic mistakes, based on fear of the other, and embrace a system of freedom and equality by passing the Neighbors Not Enemies Act.

Thank you, Chair.

Mr. COHEN. Thank you very much.

That completes and concludes our first panel. I thank our four colleagues for joining with us and giving us their testimony, and their work on these issues. We hope to be able to come up with some legislation. Thank you.

Before we go to the second panel, Ms. Ross will take the Chair.

I just want to express all the Members of the next panel are equally important and valuable, and all are very much appreciated.

Particularly, I am going to miss the opportunity to introduce Ms. Zulfat Suara, because she is from Nashville, Tennessee, and that is a city I have spent many years in. It is in my State. It is the home of Vanderbilt University, where I want to college; Tennessee State Senate, where I was sentenced to for 24 years before I was allowed out and given a parole here in the Congress.

[Laughter.]

You are very welcome, and we look forward to your testimony.

Ms. Ross, you are on.

Ms. ROSS. [Presiding.] We will give them a second to set up the panel.

Okay. Welcome, everyone. Our first Witness on the second panel is Maya Berry. Ms. Berry is the Executive Director of the Arab American Institute, a nonprofit, nonpartisan national civil rights advocacy organization founded to nurture and encourage direct participation in political and civic life, to mobilize a strong, educated, and empowered Arab American community.

She previously served as the Legislative Director for House Minority Whip David Bonior, where she managed the Congressman's legislative strategy and developed policies on international relations, human rights, immigration, civil rights and civil liberties, and trade. She also serves as the Co-Chair of the Hate Crime Task Force at their Leadership Conference for Civil and Human Rights.

Ms. Berry, you are recognized for five minutes.

STATEMENT OF MAYA BERRY

Ms. BERRY. Thank you so much. Good morning, Chair Cohen and Vice Chair Ross, Ranking Member Johnson, and Members of the Committee. You have convened an important hearing today because it is the first congressional hearing to examine the civil rights of communities most directly impacted by post-9/11 national security policies and discrimination.

For my community, it comes nearly 36 years after another historic hearing of the House Judiciary Committee in 1986 entitled, "Ethically Motivated Violence Against Arab Americans." The impetus for the hearing was the surge in violent hate crimes targeting Arab Americans, including the tragic 1985 murder of civil rights advocate, Alex Odeh.

The climate was dangerous enough for FBI Director William Webster to warn that "Arab individuals or those supporting of Arab points of view have come within the zone of danger." The importance of a hearing providing congressional oversight for a particular community is clear, but the hearing would also go on to serve as one of the key drivers of the passage of the Hate Crimes Statistics Act of 1990.

Like 1986, we have the opportunity today to make this hearing a beginning, a first step, for much-needed reforms that will protect our Constitution, our civil rights, and our civil liberties—the very charge of this Subcommittee.

This hearing brings together three individual communities, though some overlap, and we have some meaningful shared experiences, and a lot of solidarity—lest we not forget that the first victims of deadly hate crimes post-9/11 were members of the Sikh community. However, the single most unifying factor is that our government has securitized its relationship with all of us by viewing Arab Americans, American Muslims, and Asian Americans through a lens of national security. The relationship becomes one of mitigating external threats, instead of communities deserving of service and protection, as any other group of Americans. As a securitized community, our fellow Americans have come to view us differently, too—sometimes have even targeted us for discrimination and bias-motivated hate.

Nearly three years ago, a man was sentenced to five years in prison, convicted of a hate crime for threatening the life of AAI

President James Zogby and our staff. He is the third man to go to jail for threatening us since 9/11.

Most do not accept that we got here because of animus towards any of these communities, but, rather, because we have to keep America safe in what is commonly referred to as "the War on Terror." Our civil rights and civil liberties being violated in the name of national security, well, that is often used as a necessary price to pay for public safety.

From the Patriot Act and its mass surveillance to the Discrimination Special Registry Program of NSEERS; to rampant profiling; to watchlists of Americans of undetermined size without a redress process; to shockingly ignorant and bigoted FBI training material; to the NYPD spying program; to harmful and ineffective countering violent extremism programs; to flying while Arab or Muslim getting added to the lexicon of driving while black; to denaturalization programs; or finally, to the Muslim ban, our country has put in place practices that have violated fundamental rights and shown a lack of respect for our Constitution.

Let's pause for a moment and consider some historical context. In 1980, Congress established a commission to examine the causes and impact of the shameful incarceration of Japanese Americans during World War II. They found the infamous Executive Order 9066 was not born of military necessity, but, rather, that, "The broad historical causes which shaped those decisions were: Race prejudice, war hysteria, and the failure of political leadership."

Eighty years after this astonishing violation of the rights of nearly 120,000 Americans of Japanese descent, it is useful for us to consider those three factors the report emphasized when examining the topic of our hearing today.

In the case of Arab Americans, the prejudice is evident in the depiction of my community from entertainment to news, and the polling we conduct of American attitudes, regrettably, bears that out.

Second, we can easily arrive at quote, "war hysteria," unquote, through a war on terror that will not end until we defeat terrorism, and as such, can be held as permanent.

Finally, we have seen the failure of leadership in at least two different ways.

(1) When our elected officials so fear by failing to speak out against hate and bigot, and instead, traffic in it; and
(2) when our elected officials fail to provide the necessary oversight to prevent government abuses.

Over the course of the last 20 years, the Federal government's counterterrorism authorities have expanded significantly. My written testimony offers some specific recommendations. Now, 20 years since 9/11, is the right time to revisit, so that we can course correct and pass legislation that provides security for all of us, without compromising the rights of any of us.

The protection of the fundamental rights of securitized communities like Arab Americans is certainly at stake, but so is our ability to protect the constitutional rights of all Americans and to maintain a free society.

Thank you for the opportunity to appear before you today, and I look forward to your questions.

[The statement of Ms. Berry follows:]

Written Statement of Maya M. Berry
Executive Director
Arab American Institute

"Discrimination and the Civil Rights of the
Muslim, Arab, and South Asian American Communities"

Hearing Before the U.S. House of Representatives
Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Civil Liberties

March 1, 2022

Chairman Cohen, Vice Chair Ross, Ranking Member Johnson, and members of the Committee, thank you for convening today's momentous hearing and for including our perspective. My name is Maya Berry and I am the Executive Director of the Arab American Institute (AAI), a national nonpartisan, civil rights advocacy organization that represents the interests of approximately 3.7 million Arab Americans.

A core belief of the Arab American Institute is that for our country to live up to its ideals, we must ensure strong civil rights *and* civil liberties protections for all. For more than thirty-five years, AAI has worked to empower Arab Americans, combat discrimination and bias, improve hate crime data collection and reporting, support efforts to improve government oversight and accountability, and defend the rights of all.

You have convened an important hearing today because it is the first congressional hearing to examine the civil rights of communities most directly impacted by post-9/11 national security policies and discrimination. For my community, it comes nearly thirty-six years after another historic hearing of the House Judiciary Committee. In July 1986, the Subcommittee on Criminal Justice, chaired by John Conyers, held an all-day hearing on "Ethnically Motivated Violence Against Arab-Americans."[1] The impetus for the hearing was the surge in violent hate crimes targeting Arab Americans, including the tragic 1985 murder of civil rights advocate Alex Odeh.[2] The climate was dangerous enough for Federal Bureau of Investigation (FBI) Director William H. Webster to warn

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[1] *Ethnically Motivated Violence Against Arab Americans, Hearing Before the Subcomm. on Crim. Just. of the H. Comm. of the Judiciary*, 99th Cong. (1988).

[2] Alex Odeh was the west coast regional director for the American-Arab Anti-Discrimination Committee (ADC). He was murdered at his ADC office in Santa Ana, California, on October 11, 1985, when a bomb was triggered when he opened the door to his office, tragically killing him and injuring seven others on the same floor. Ed Pilkington, *Renewed Push to Investigate Alex Odeh Murder Begins 28 Years After Bombing*, GUARDIAN (Oct. 15, 2013, 10:07 AM), https://www.theguardian.com/world/2013/oct/15/alex-odeh-bombing-murder-investigation-renewed. The FBI's case into Odeh's murder remains open and no charges have been filed. Gabriel San Román, *Senator Calls for FBI Update on Unsolved Assassination of O.C. Activist Alex Odeh*, L.A. TIMES (Dec. 20, 2021, 6:19 PM), https://www.latimes.com/california/story/2021-12-20/senator-durbin-calls-for-fbi-update-in-alex-odeh-assassination-cold-case.

"that Arab individuals or those supporting of Arab points of view have come within the zone of danger."[3] The importance of a hearing providing congressional oversight for a particular community targeted by violence is clear, but the hearing would also go on to serve as one of the key drivers for the passage of the Hate Crime Statistics Act of 1990.[4]

Among the witnesses who testified at the 1986 hearing was AAI co-founder and President, Dr. James Zogby. His testimony provided concrete examples of the "zone of danger" brought on by a "multi-pronged campaign, the components of which have varied in form and intensity, ranging from vilification and defamation of individual Arab Americans to acts of violence against leaders and institutions."[5] This campaign of targeting what FBI Director Webster called "Arab points of view" was in reference to Arab Americans and others who were expressing support for Palestinian human rights. It is important to note at this time that the specifics of the rights being targeted then and discussed here in this testimony are not about raising foreign policy issues for the sake of discussing American foreign policy. That is another hearing for another time. In the context of this testimony and the discussion of the empowerment of Arab Americans, the issue is about the domestic implications of advocating for Palestinian human rights. And while there have been many negative implications, they have in no way diminished the commitment of Arab Americans to the issue. To be clear, though their right to support Palestinian human rights is undeniable, it has come at a cost—from being blacklisted by some mainstream American Jewish organizations or pro-Israel groups,[6] to being surveilled by their government, to becoming victims of hate crimes. A central importance of the 1986 hearing was that it allowed Arab Americans to explain these threats to the community's well-being and power in the context of exclusion and to seek a remedy.

In the leadup to the hearing, the *New York Times* described it as a briefing on "Arab 'McCarthyism,'" citing an interview in which Zogby referred to the attempted suppression of Arab Americans' political activities as the "new McCarthyism."[7] To advocates working to protect Arab American civil rights, the connection between the active political exclusion of the community and its ability to protect itself from hate crimes was both evident and experienced daily.[8] The Arab American witnesses, and the American Muslim witnesses who also testified at the hearing, from civil rights advocates to members of Congress to hate crime victims directly impacted, made a compelling case for necessary protections—and the rejection of the campaign to silence them.

At the very time this campaign of delegitimization and exclusion was underway, government agencies tasked with protecting constitutional rights, including the FBI, were unjustly surveilling

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[3] Philip Shenon, *F.B.I. Chief Warns Arabs of Danger*, N.Y. TIMES (Dec. 11, 1985), https://www.nytimes.com/1985/12/11/us/fbi-chief-warns-arabs-of-danger.html.
[4] *See* LEGISLATIVE HISTORY OF THE HATE CRIME STATISTICS ACT 3 (1990).
[5] *Ethnically Motivated Violence Against Arab Americans, Hearing Before the Subcomm. on Crim. Just. of the H. Comm. of the Judiciary*, 99th Cong. 129-140 (1986) (statement of Dr. James Zogby, Executive Director, Arab American Institute).
[6] Among the tactics employed by several organizations was the publishing of dossiers on leading Arab American advocates. Based on surveillance and intelligence gathering, the reports were published under different titles by different organizations and distributed as a tool for effective pro-Israel advocacy. *See, e.g.*, Jim McGee, *Jewish Group's Tactics Investigated*, WASH. POST (Oct. 19, 1993), https://www.washingtonpost.com/archive/politics/1993/10/19/jewish-groups-tactics-investigated/96daef6a-a325-4a8a-ba09-da211fc1ba8a (describing 1975 Anti-Defamation League report).
[7] Wayne King & Warren Weaver Jr, *BRIEFING; On Arab 'McCarthyism,'* N.Y. TIMES (July 10, 1986), https://www.nytimes.com/1986/07/10/us/briefing-on-arab-mccarthyism.html.
[8] Dr. James Zogby and Helen Hatab Samhan coined the phrase "political exclusion" to describe these dynamics. Arab Am. Inst., The Politics of Exclusion: A Report on Arab-Baiting in the 1986 Elections (1987); *see also* Helen Hatab Samhan, *Politics and Exclusion: The Arab American Experience*, 17 J. PALESTINIAN STUD. 11 (1987).

Arab Americans. This context is necessary for understanding the anti-Arab animus that informed public perceptions and government policies both before *and* after the terrorist attacks of September 11.

Securitized Communities

The federal government has justified counterterrorism and other law enforcement practices in the name of national security for what is a seemingly endless "war on terror."[9] In the process, the government has viewed specific communities, including Arab Americans and American Muslims, as a threat to national security and in so doing, has securitized their relationship. The government's view of Arab Americans through the lens of national security contributes to framing the community as merely a means of mitigating external threats, instead of a community deserving of service and protection as any other group of Americans.

While not an attempt at a comprehensive list, the following are select examples of government and law-enforcement policies that have targeted Arab Americans (and in some cases, American Muslims and South Asian Americans) or viewed them through a securitized lens. You will note throughout there are references to events in other parts of the world completely unrelated to our community here at home. Though they bear no connection to us, these events have had a direct impact on how we are treated by some of our fellow Americans and our government. We note it as the backlash effect, and it's manifested in ways that include an increase in discrimination, hate crimes, and government profiling. In each of these cases, government or law-enforcement policies can be seen as facilitating discrimination rather than functioning as policies of a state actor obligated to safeguard and defend the rights of its citizens.

- In the wake of the killing of Israeli athletes in a terrorist attack at the 1972 Munich Olympics, the Nixon Administration created the surveillance program known as Operation Boulder.[10] The program sought to silence Arab and Arab American voices within the United States through investigation, surveillance, and harassment.[11] It "specifically targeted Arabs with U.S. citizenship, resident aliens of Arab descent, non-Arab Americans sympathetic to Arab causes, as well as the relatives, neighbors, friends, and employers of Arab individuals."[12] Operation Boulder officially ended in 1975 after it was deemed "not worth it" by law enforcement, though its demise would be announced in a major media outlet as "A Plan to Screen Terrorists Ends."[13]

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[9] On September 20, 2001, President George W. Bush told a joint session of Congress that "[o]ur war on terror begins with al-Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated." *Text: President Bush Addresses the Nation*, WASH. POST (Sept. 20, 2001), https://www.washingtonpost.com/wp-srv/nation/specials/attacked/transcripts/bushaddress_092001.html.

[10] Pamela E. Pennock, *From 1967 to Operation Boulder: The Erosion of Arab Americans' Civil Liberties in the 1970s*, 40 ARAB STUD. Q. 41, 41-42 (2018).

[11] Nadine Naber, *Introduction: Arab Americans and U.S. Racial Formations*, *in* RACE AND ARAB AMERICANS BEFORE AND AFTER 9/11: FROM INVISIBLE CITIZENS TO VISIBLE SUBJECTS 1, 34 (Amaney Jamal & Nadine Naber eds., 2008) (2008).

[12] *Id.*

[13] *A Plan to Screen Terrorist Ends*, N.Y. TIMES (Apr. 24, 1975), https://www.nytimes.com/1975/04/24/archives/a-plan-to-screen-terrorists-ends-us-project-to-block-arabs-was-not.html.

- In 1987, seven Palestinian men and a Kenyan woman were arrested in Los Angeles for distributing a magazine of the Popular Front for the Liberation of Palestine,[14] an organization then considered an advocate for world communism. For the students, known as the "L.A. 8," this was a deportable offense under the McCarthy-era McCarran-Walter Act. In 1989, a federal judge declared the charges unconstitutional and, in 1990, Congress repealed the Act. However, two members of the L.A. 8 faced the continued threat of deportation for decades until the government finally ended their effort to deport them in 2007. FBI Director William H. Webster noted they had not engaged in illegal activity and if they had been U. S. citizens, "there would not have been a basis for their arrest."[15] The *New York Times* called it a "shameful prosecution."[16] The case of the L.A. 8 is well known among Arab Americans. First, it targeted pro-Palestinian activists and raised the question of whether Arab immigrants or Arab Americans who advocated for Palestinian human rights were indeed protected by the same constitutional rights to free speech and association. Further, in proceedings of the case, it was discovered that the DOJ had a plan for a detention camp called, "Alien Terrorists and Undesirables: A Contingency Plan." When admitting the plan into the record during a hearing on his Civil Liberties Act of 1987, then Congressman Norman Mineta, who was forcibly removed from his home with his family as a 10-year-old to be incarcerated during World War II at a Japanese American internment camp, offered the following: "A Department of Justice task force has proposed as legal and appropriate the mass round-up and incarceration of certain nationalities for vague security reasons. A camp has been identified in Louisiana, and rolls of barbed wire, cots, tents, et cetera, are already on the site, waiting for just a round-up. So this bill is not just about the past, it is about today and the future as well."[17]

- Although concerns about hate crimes against Arab Americans motivated the passage of the Hate Crime Statistics Act (HCSA) of 1990,[18] the FBI's hate crime reporting system did not officially include a category for anti-Arab hate crime until 2015.[19] But as AAI discovered in 2018, prototypes for the reporting system developed shortly after the HSCA's passage included a specific anti-Arab hate crime category.[20] Notably, the FBI did not reference this history when it announced the new category in 2015, nor has it provided a public explanation for the category's initial removal.

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[14] The organization was later added to the State Department's list of designated foreign terrorist organizations. *See Foreign Terrorist Organizations*, U.S. DEP'T OF STATE, BUREAU OF COUNTERTERRORISM, https://www.state.gov/foreign-terrorist-organizations (last visited Feb. 28, 2022).
[15] Alisa Solomon, *Remembering the L.A. 8*, VILLAGE VOICE (Oct. 30, 2001), https://www.villagevoice.com/2001/10/30/remembering-the-l-a-8.
[16] Editorial Board, *A Shameful Prosecution*, N.Y. TIMES (Feb. 14, 2007), https://www.nytimes.com/2007/02/14/opinion/14wed3.html.
[17] *Legislation to Implement the Recommendations of the Commission on Wartime Relocation and Internment of Civilians, Hearing Before the Subcomm. on Admin. L. & Governmental Rels. of the H. Comm. on the Judiciary*, 100th Cong. 56-104, 56 (1987) (statement of Rep. Norman Y. Mineta).
[18] *See supra* text accompanying notes 1-5.
[19] *See* Press Release, Fed. Bureau of Investigation, Lates Hate Crime Statistics Released (Nov. 14, 2016), https://www.fbi.gov/news/stories/2015-hate-crime-statistics-released.
[20] *See* ARAB AM. INST. FOUND., UNDERREPORTED, UNDER THREAT: HATE CRIME IN THE UNITED STATES AND THE TARGETING OF ARAB AMERICANS, 1991-2016, at 72-82 (2018), https://www.aaiusa.org/library/under-reported-under-threat.

- Even before the United States entered the combat phase of the Gulf War in January 1991, the FBI was visiting Arab Americans. Concurrent with their response to the surge in hate crimes targeting Arab Americans, the FBI deployed agents to conduct interviews with hundreds of leaders and advocates nationally. According to an official spokesperson, the FBI had "two mandates. One is to protect these people from any ignorant individuals who might try to injure them if hostilities with Iraq would break out. But we also have a mandate to deter terrorism."[21]

- Passed in response to the 1995 Oklahoma City bombing, a terrorist attack perpetrated by anti-government militia members, the Antiterrorism and Effective Death Penalty Act of 1996 established a new court where secret evidence could be used to deport non-citizens the government was accusing of terrorism related charges.[22] A 1998 report found that, of the twenty-five men targeted for deportation, all were Arab or Muslim.[23]

- After the terrorist attacks on September 11, 2001, a series of counter-terrorism policies targeted Arab Americans, including the FBI's interviewing of thousands of Arab Americans without particularized suspicion, and a "Special Registration" program known as National Security Entry-Exit Registration System (NSEERS), which required tens of thousands of male immigrants to be "fingerprinted, photographed and questioned by authorities."[24] Of the twenty-five countries requiring registration (Afghanistan, Algeria, Bahrain, Bangladesh, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, North Korea, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen), all but one was Arab or majority Muslim. By the time NSEERS was suspended in 2011 and finally dismantled in December 2016, 80,000 people were required to register and thousands were deported.[25] The NSEERS program did not result in a single terrorism conviction.[26]

- First issued in 2003[27] and updated in 2014,[28] Department of Justice (DOJ) guidance on law-enforcement profiling creates exceptions in relation to national security, border security, and local law enforcement. Specifically, the loopholes in the guidance allow for continued profiling for screenings at the border, intelligence operations and national security, or state and local law enforcement when not part of federal crime task forces. In addition to being unlawful, we believe profiling to be ineffective, causing harm to the individuals and

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[21] Lisa Belkin, *For Many Arab Americans, F.B.I. Scrutiny Renews Fears*, N.Y. TIMES (Jan. 12, 1991), https://www.nytimes.com/1991/01/12/us/for-many-arab-americans-fbi-scrutiny-renews-fears.html.
[22] *See* Lawrence E. Harkenrider, *Due Process or Summary Justice: The Alien Terrorist Removal Provisions Under the Antiterrorism and Effective Death Penalty Act of 1996*, 4 TULSA J. COMPAR. & INT'L L. 143, 144-46 (1996).
[23] Ronald Smothers, *U.S. Bars or Expels Suspect Immigrants on Secret Evidence*, N.Y. TIMES (Aug. 15, 1988), https://www.nytimes.com/1998/08/15/us/us-bars-or-expels-suspect-immigrants-on-secret-evidence.html.
[24] Andrea Elliott, *After 9/11, Arab-Americans Fear Police Acts, Study Finds*, N.Y. TIMES (June 12, 2006), https://www.nytimes.com/2006/06/12/us/12arabs.html.
[25] Ed Pilkington, *Registry Used to Track Arabs and Muslims Dismantled by Obama Administration*, GUARDIAN (Dec. 22, 2016), https://www.theguardian.com/us-news/2016/dec/22/nseers-arab-muslim-tracking-system-dismantled-obama.
[26] *See id.*
[27] U.S. DEP'T OF JUST., C.R. DIV., GUIDANCE REGARDING THE USE OF RACE BY FEDERAL LAW ENFORCEMENT AGENCIES (June 2003).
[28] U.S. DEP'T OF JUST., GUIDANCE FOR FEDERAL LAW ENFORCEMENT AGENCIES REGARDING THE USE OF RACE, ETHNICITY, GENDER, NATIONAL ORIGIN, RELIGION, SEXUAL ORIENTATION, OR GENDER IDENTITY (Dec. 2014).

communities profiled, while serving to distract officers from proper methods of law enforcement by treating entire groups of people as suspect.

- With the USA PATRIOT Act of 2001 and the FISA Amendments Act of 2008, Congress passed national security legislation empowering the executive branch to conduct mass surveillance of American citizens and lawful permanent residents.[29] A new addition to FISA known as Section 702 increased the government's surveillance capabilities, removing the long-standing requirement that it obtain a warrant to monitor communications between U.S. persons and suspected foreign targets.[30] This form of warrantless surveillance resulted in the "incidental collection" of innocent Americans' communications.[31] While these policies are facially neutral with respect to ethnicity, the National Security Agency has been shown to use similar tools to target Arab Americans and American Muslims alike.[32]

- In 2003, the Terrorist Screening Center was created to monitor potential terrorist suspects and place individuals on a variety of watchlists for surveillance.[33] The fact of a person's presence on a list, and why a person was added, is not provided to listed individuals. Notably, Dearborn, Michigan, a city with approximately 100,000 residents and home to the largest concentration of Arab Americans in the country, was second only to New York City in the number of people on the watchlist.[34] To be clear, we are talking about Americans on watchlists of undetermined size, though some estimates have them at more than one million people,[35] without a process for redress.

- In 2004, it was learned through a Freedom of Information Act request that the Census Bureau had shared demographic data about Arab Americans with the Department of Homeland Security on at least two occasions, in 2002 and 2003. Without a Middle East and North Africa (MENA) category on the Census, it is well documented that Arab Americans are an undercounted community. Yet, DHS was provided with data showing cities with more than 1,000 Arab Americans and zip code-level data broken down by country of

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[29] *See generally* EDWARD C. LIU, CONG. RSCH. SERV., FOREIGN INTELLIGENCE SURVEILLANCE ACT (FISA): AN OVERVIEW (Apr. 6, 2021), https://sgp.fas.org/crs/intel/IF11451.pdf.
[30] As defined in 22 U.S.C. § 6010, "U.S. persons" refers to U.S. citizens, lawful permanent residents, and corporations, organizations, and partnerships organized under U.S. law. *See also* BRENNAN CTR. FOR JUST., REDUCING "INCIDENTAL" COLLECTION UNDER FISA SECTION 702: A CRITICAL PROTECTION FOR AMERICANS (Oct. 2017), https://www.brennancenter.org/sites/default/files/FISASection702ReducingIncidentalCollection.pdf.
[31] For up-to-date information and analysis related to Section 702, see *FISA: Section 702 Collection*, LAWFARE (Apr. 21, 2018), https://www.lawfareblog.com/topic/fisa-702-collection.
[32] David Welna, *FBI, NSA Spied on American Muslims, Report Says*, NPR (July 10, 2014), https://www.npr.org/2014/07/10/330325121/fbi-nsa-spied-on-american-muslims-report-says.
[33] *Terrorist Screening Center*, FED. BUREAU OF INVESTIGATION, https://www.fbi.gov/about/leadership-and-structure/national-security-branch/tsc (last visited Feb. 27, 2022).
[34] Christopher Matias et al., *The City that Bears the Brunt of the National Terror Watchlist*, ARAB AM. NEWS (Oct. 04, 2017), https://www.arabamericannews.com/2017/10/04/the-city-that-bears-the-brunt-of-the-national-terror-watchlist.
[35] *See* Timothy Bella, *The FBI's Terrorism Watchlist Violates the Constitution, Federal Judge Says*, WASH. POST (Sept. 5, 2019), https://www.washingtonpost.com/nation/2019/09/05/fbi-terror-watch-list-unconstitutional.

origin.[36] As a result, the Census Bureau revised its policy on what it called "sensitive populations."[37]

- In 2011, the Associated Press published an investigative report on New York Police Department (NYPD) counterterrorism and surveillance programs that directly targeted Arab American Muslim businesses, mosques, and communities in New York and New Jersey in the immediate aftermath of 9/11.[38] The revelations of the breadth and depth of the NYPD's surveillance program were shocking, with use of widespread "ethnic mapping," and reporting on innocent people going about their daily routines. The NYPD's spying program and others like it are not only unconstitutional, but are also ineffective and significantly harmful to the communities they infiltrate. Not a single lead on terrorist operations resulted from NYPD's spying activities.[39]

- In 2011, the Obama Administration released the "Strategic Implementation Plan for Empowering Local Partners to Prevent Violent Extremism in the United States." The plan was introduced as a domestic counterterrorism strategy and became the foundation for the federal government's Countering Violent Extremism (CVE) programs.[40] In 2016, DHS began the Interagency CVE Task Force, which essentially approached community outreach to American Muslim communities as part of counterterrorism programming. Beyond the serious issue of the lack of an evidence-based foundation for CVE, these programs sought to deputize local community members and organizations to surveil their own communities on behalf of the U.S. government. The FBI itself described CVE as designed to "strengthen our investigative, intelligence gathering, and collaborative abilities to be proactive in countering violent extremism."[41]

- In 2011, a series of reports by an investigative journalist exposed biased FBI counterterrorism training material.[42] Characterizing American Muslims and Arab Americans as prone to violence, some of the material's "highlights" include statements that "mainstream American Muslims are likely to be terrorist sympathizers," comparisons between Islam and the Death Star from Star Wars, and assertions that the "Arab mind" is "swayed more by ideas than facts," and that unlike the "Western Mind" being "even keel,"

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[36] Lynette Clemetson, *Homeland Security Given Data on Arab-Americans*, N.Y. TIMES (July 30, 2004), https://www.nytimes.com/2004/07/30/us/homeland-security-given-data-on-arab-americans.html.
[37] Lynette Clemetson, *Census Policy on Providing Sensitive Data Is Revised*, N.Y. TIMES (Aug. 31, 2004), https://www.nytimes.com/2004/08/31/us/census-policy-on-providing-sensitive-data-is-revised.html.
[38] *See Highlights of AP's Pulitzer Prize-winning Probe into NYPD Intelligence Operations*, ASSOCIATED PRESS, https://www.ap.org/about/awards-and-recognition/highlights-of-aps-pulitzer-prize-winning-probe-into-nypd-intelligence-operations (last visited Feb. 27, 2022); David Crary, *AP Series About NYPD Surveillance Wins Pulitzer*, ASSOCIATED PRESS (Apr. 16, 2012), https://www.ap.org/ap-in-the-news/2012/ap-series-about-nypd-surveillance-wins-pulitzer.
[39] Matt Apuzzo & Joseph Goldstein, *New York Drops Unit that Spied on Muslims*, N.Y. TIMES (Apr. 15, 2014), https://www.nytimes.com/2014/04/16/nyregion/police-unit-that-spied-on-muslims-is-disbanded.html.
[40] EXEC. OFF. OF THE PRESIDENT, STRATEGIC IMPLEMENTATION PLAN FOR EMPOWERING LOCAL PARTNERS TO PREVENT VIOLENT EXTREMISM IN THE UNITED STATES 3 (Dec. 2011), https://obamawhitehouse.archives.gov/sites/default/files/sip-final.pdf.
[41] FAIZA PATEL & MEGHAN KOUSHIK, BRENNAN CTR. FOR JUST., COUNTERING VIOLENT EXTREMISM 23 (2017), https://www.brennancenter.org/sites/default/files/publications/Brennan%20Center%20CVE%20Report_0.pdf.
[42] Spencer Ackerman, *FBI 'Islam 101' Guide Depicted Muslims as 7th-Century Simpletons*, WIRED (July 27, 2011), https://www.wired.com/2011/07/fbi-islam-101-guide.

in the Arab world, "Outbursts and Loss of Control [is] Expected."[43] Various government officials, including then FBI Director Robert Mueller, distanced themselves from the material and asserted they did not represent the government's views accurately. The FBI conducted a review of 160,000 pages of material and more than 1,000 slides or videos and removed 876 documents.[44] Though an important step, it was not clear how the material pulled would be removed or corrected for those who received the bias trainings, including state and local officials, and what steps were being taken to ensure anti-Muslim or anti-Arab material would not be used in the future.

- In 2017, the Department of Transportation issued two guidance documents to address the plentiful examples of discrimination on American airplanes.[45] The year prior, AAI held a congressional briefing entitled, "Flying While Arab, Muslim, Sikh, Italian Economist Doing Math." The briefing discussed the increase in cases of Arabs and Muslims, and those perceived to be either, being removed from airplanes or prevented from boarding. The reference in the title was to a case of an Italian economist whose differential equations were confused for Arabic by the passenger seated next to him and served as the grounds for his removal from plane.[46] The DOT guidance came years after complaints of discriminatory profiling from fellow passengers or airline employees who complained about their presence to the airlines themselves enforcing the discriminatory treatment with the removals. It is important to note these examples are in addition to the Transportation Security Administration's (TSA's) profiling of Arab Americans and American Muslims being subjected to "random" secondary screening.[47]

- In 2018, the Trump Administration announced that it would investigate thousands of decades-old fingerprints to identify and rescind the citizenship of U.S. citizens whose naturalization forms may have included false information.[48] This was an attempt to relaunch Operation Janus, a DHS program disbanded in 2016.[49] Troublingly, the program appeared to target South Asian, Arab, or Muslim men,[50] and between 2017 and 2018, many cases stemming from the operation "involve[d] people whose histories raise no national-security concerns."[51]

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[43] Spencer Ackerman, *FBI Taught Agents They Could 'Bend or Suspend the Law.'* WIRED (Mar. 28, 2012), https://www.wired.com/2012/03/fbi-bend-suspend-law.
[44] *See Oversight of the Federal Bureau of Investigation, Hearing Before the H. Comm. on the Judiciary*, 112th Cong. (2012).
[45] U.S. DEP'T OF TRANSP., GUIDANCE FOR AIRLINE PERSONNEL ON NON-DISCRIMINATION IN AIR TRAVEL (2017), https://www.transportation.gov/airconsumer/guidance-airline-personnel-non-discrimination-air-travel.
[46] Steph Solis, *Professor Suspected of Being a Terrorist Because of a Math Equation*, USA TODAY (May 7, 2016), https://www.usatoday.com/story/news/2016/05/07/professors-airplane-math-leads-flight-delay/84084914.
[47] *See* Michael S. Schmidt & Eric Lichtblau, *Racial Profiling Rife at Airport, U.S. Officers Say*, N.Y. TIMES (Aug. 11, 2012), https://www.nytimes.com/2012/08/12/us/racial-profiling-at-boston-airport-officials-say.html?_r=0.
[48] Nick Miroff, *Scanning Immigrants' Old Fingerprints, U.S. Threatens to Strip Thousands of Citizenship*, WASH. POST (June 13, 2018), https://www.washingtonpost.com/world/national-security/scanning-immigrants-old-fingerprints-us-threatens-to-strip-thousands-of-citizenship/2018/06/13/2230d8a2-6f2e-11e8-afd5-778aca903bbe_story.html.
[49] *Id.*; *see also* U.S. DEP'T OF HOMELAND SEC., OFF. OF INSPECTOR GEN., POTENTIALLY INELIGIBLE INDIVIDUALS HAVE BEEN GRANTED U.S. CITIZENSHIP BECAUSE OF INCOMPLETE FINGERPRINT RECORDS 7 (Sept. 8, 2016), https://www.oig.dhs.gov/assets/Mgmt/2016/OIG-16-130-Sep16.pdf.
[50] *See* Tina Vasquez, *Trump Administration Is Conflating Immigration with Terrorism at the Expense of Domestic Threats*, REWIRE NEWS GRP. (Feb. 15, 2018), https://rewirenewsgroup.com/article/2018/02/15/trump-administration-conflating-immigration-terrorism-expense-domestic-threats.
[51] Seth Freed Wessler, *Is Denaturalization the Next Front in the Trump Administration's War on Immigration?*, N.Y. TIMES (Dec. 19, 2018), https://www.nytimes.com/2018/12/19/magazine/naturalized-citizenship-immigration-trump.html.

- In 2016, as a presidential candidate, Donald Trump advocated for warrantless surveillance of U.S.-based mosques,[52] openly considered a database of American Muslims and Syrian refugees,[53] and called for a "total and complete shutdown of Muslims entering the United States . . . ."[54] During his first week in office, President Trump signed Executive Order 13769, which suspended the entry of all refugees, regardless of nationality, and foreign nationals from six Arab countries and Iran, all of which are majority Muslim.[55] The Muslim Ban saw several revisions and a multitude of legal challenges but was ultimately upheld by the U.S. Supreme Court in *Trump v. Hawai'i*.[56] President Biden repealed the Muslim Ban by Executive Order, but the NO BAN Act has stalled in the Senate.[57]

- In 2021, the Biden Administration established the Center for Prevention Programs and Partnerships (CP3). While appearing to be an extension of the Obama Administration's Countering Violent Extremism (CVE) programs,[58] Biden Administration officials have distanced themselves from previous CVE efforts saying they have taken a new approach. However, like its predecessors, CP3 seems to rest on flawed concepts about "radicalization" that perpetuate stereotypes of communities and undermine public trust in government.[59]

These highlighted policies have served to only entrench suspicion of Arab Americans among their fellow Americans, including policy makers. The fact that a specific community is disparately impacted by such policies seems to be viewed as a necessary outcome of post-9/11 national security practices. This does harm both to the people from these communities and to the rights and liberties of all Americans.

Experiencing the resulting distrust, many Arab Americans have developed a skepticism toward the underlying motivations of government policies and officials, and thus are disincentivized from taking affirmative steps to interact with their government. This applies in cases where they may be the victim of discrimination or hate crimes. According to a 2006 study funded by the National Institute of Justice, "government and public reactions after September 11 have created a particular environment in which some Arab American communities have collectively experienced a form of

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[52] Emily Stephenson & Amanda Becker, *Trump Backs Surveillance of Mosques Despite Criticism of Rhetoric*, REUTERS (June 15, 2016), https://www.reuters.com/article/us-usa-election/ trump-backs-surveillance-of-mosques-despite-criticism-of-rhetoric-idUSKCN0Z12AS.
[53] Jeremy Diamond, *Trump Doubles Down on Calls for Mosque Surveillance*, CNN (June 15, 2016), https://www.cnn.com/2016/06/15/politics/donald-trump-muslims-mosque-surveillance/index.html.
[54] Jessica Taylor, *Trump Calls for 'Total and Complete Shutdown of Muslims Entering' U.S.*, NPR (Dec. 7, 2015), https://www.npr.org/2015/12/07/458836388/trump-calls-for-total-and-complete-shutdown-of-muslims-entering-u-s.
[55] *See Full Executive Order Text: Trump's Action Limiting Refugees into the U.S.*, N.Y. TIMES (Jan. 27, 2017), https://www.nytimes.com/2017/01/27/us/politics/refugee-muslim-executive-order-trump.html; Alan Yuhas & Mazin Sidahmed, *Is This a Muslim Ban? Trump's Executive Order Explained*, GUARDIAN (Jan. 31, 2017), https://www.theguardian.com/us-news/2017/jan/28/trump-immigration-ban-syria-muslims-reaction-lawsuits.
[56] Adam Liptak & Michael D. Shear, *Trump's Travel Ban Is Upheld by Supreme Court*, N.Y. TIMES (June 26, 2018), https://www.nytimes.com/2018/06/26/us/politics/supreme-court-trump-travel-ban.html.
[57] *Biden Has Overturned Trump's 'Muslim Travel Ban.' Activists Say That's Not Enough*, NPR (Mar. 6, 2021), https://www.npr.org/2021/03/06/974339586/biden-has-overturned-trumps-muslim-travel-ban-activists-say-thats-not-enough.
[58] *See* HARSHA PANDURANGA, BRENNAN CTR. FOR JUST., COMMUNITY INVESTMENT, NOT CRIMINALIZATION 3-5 (June 17, 2021), https://www.brennancenter.org/our-work/research-reports/community-investment-not-criminalization.
[59] *Id.*; *see generally* FAIZA PATEL, BRENNAN CTR. FOR JUST., RETHINKING RADICALIZATION (2011), https://www.brennancenter.org/sites/default/files/legacy/RethinkingRadicalization.pdf.

cultural trauma, and in these concentrated communities, fear of being victimized by state-sponsored policies and practices is greater than fear of conventional hate or bias related violence."[60] Like the bigotry, discrimination, and exclusion before it, government targeting of Arab Americans has negative impacts on public safety.

Anti-Arab Bigotry

While this testimony has focused on government policies where the committee has direct jurisdiction, it is important to note that these policies also inform, and are themselves influenced by, anti-Arab bigotry. Negative portrayals of Arabs and Arab Americans are common. Both the entertainment industry and media outlets have played a significant role in either driving these negative portrayals or reinforcing them. Arabs and Muslims, two groups that are often falsely considered interchangeable, continue to be vilified on big and small screens alike. In the words of the late Jack Shaheen, who dedicated his life to examining and combating anti-Arab stereotypes in the media, "Arabs are the most maligned group in the history of Hollywood."[61] While in recent years there have been increased depictions of Arabs as regular people (a decidedly sad threshold for certain), it will take a long time to overcome the harmful stereotypes of the historical depictions of undesirable characters, including dangerous terrorists.

The negative portrayal goes well beyond fiction. What emerges because of these stereotypes is an Arab and Muslim exception to the customary threshold of bigotry deemed appropriate for mainstream outlets. The news media's embrace of anti-Arab commentary is evident. When a commentator declared, "Arabs like to bomb crap and live in open sewage," his bigotry did not disqualify him from appearing on leading American media networks, from CNN to Fox News.[62] In the face of apparent pushback, a television personality lamented that "Forty-eight years ago in this country we could make fun of Arabs. . . . But now we can't. What has changed in America?"[63]

The impact of the normalization of anti-Arab bigotry by the media is sporadically visible in our political discourse as well. For example, during the 2008 presidential election, Republican nominee Senator John McCain was confronted on the campaign trail by a woman who said: "I can't trust Obama, . . . he's an Arab." Senator McCain challenged the bigotry inherent in her statement about then-candidate Barack Obama, and he was rightly acknowledged for it. However, his admirable instinct to defend Obama resulted in him harshly rejecting the "accusation" of Arab identity, stating, "No ma'am, no ma'am. He's a decent family man," without further explanation.[64] The impression left from this exchange was clear: being an Arab and decent were mutually exclusive terms.[65]

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[60] NICOLE J. HENDERSON ET AL., VERA INST. OF JUST., LAW ENFORCEMENT & ARAB AMERICAN COMMUNITY RELATIONS AFTER SEPTEMBER 11, 2001: TECHNICAL REPORT 69 (June 2006), https://www.vera.org/publications/law-enforcement-arab-american-community-relations-after-september-11-2001-technical-report.
[61] *Reel Bad Arabs: How Hollywood Vilifies a People: Transcript*, MEDIA EDUC. FOUND. (2006), http://www.mediaed.org/transcripts/Reel-Bad-Arabs-Transcript.pdf.
[62] Ben Shapiro (@benshapiro), TWITTER (Sept. 27, 2010, 3:06 PM), https://twitter.com/benshapiro/status/25712847277?lang=en.
[63] Adam Serwer, *Loss of Liberty*, AM. PROSPECT (Jan. 19, 2010), https://prospect.org/article/loss-liberty./.
[64] Jane Kim, *Arab or Decent?*, COLUM. J. REV. (Oct. 14, 2008), https://archives.cjr.org/campaign_desk/arab_or_decent.php.
[65] *Id.*

The 2016 presidential election and the candidacy of Donald Trump would bring a newfound, noticeable increase in bigoted campaign rhetoric targeting many communities, particularly American Muslims.

Such stereotypes, particularly emanating from policy makers, are not without consequence. According to AAI polling, half of all Arab Americans have personally experienced discrimination in the past because of their ethnicity or country of origin, and sixty-two percent are concerned about future discrimination. When it comes to Arab Americans who are Muslim, that number jumps significantly, with nearly eight out of ten concerned about facing discrimination in the future.[66]

Given what AAI surveys of American attitudes show, these experiences or feelings are well founded. Since approval ratings have been tracked by AAI polling, the first time that a majority of Americans were found to hold favorable opinions of Arab Americans (52%) was in 2017.[67]

The depiction of Arabs in the entertainment industry, the often-biased reporting of news from the Arab world, and the unrelenting coverage of the indefinite "war on terror," with its ostensibly leading Arab or Muslim main characters, come together to produce a prejudice or distrust of Arab Americans in the most classic understanding of bigotry.

The Backlash Effect

In addition to bigotry, Arab Americans often find themselves as targets because of events wholly unrelated to them and vulnerable to attack—both threats and targeted attacks—in the wake of developments in the Middle East or incidents of mass violence. The incident may be domestic or take place abroad, but if viewed as an issue related to national security, members of Muslim, Arab or South Asian (MASA) communities will feel the backlash effect. Episodic violence against immigrant communities has been evidenced after major events such as intense waves of immigration, World War II, and 9/11.[68] In these instances, hate is "redeployed as patriotic gestures."[69] The aftermath of 9/11, when communities perceived to be Arab or Muslim, including Sikh Americans, endured untold retaliatory violence, is a particularly salient example of the backlash. The violence prompted then FBI Director Robert Mueller to warn, "Such acts of retaliation violate federal law and, more particularly, run counter to the very principles of equality and freedom upon which our nation is founded."[70]

However, similar tides of antipathy, albeit less severe, date back to the 1970s with the oil embargo and the Iran hostage crisis. As one Arab American would explain it, "suddenly we were being held responsible for things we had nothing to do with and no control over and maybe didn't support in the first place."[71]

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[66] ARAB AM. INST., THE ARAB AMERICAN VOTE: IDENTITY AND POLITICAL CONCERNS 14 (Oct. 25, 2016), https://www.aaiusa.org/library/the-arab-american-vote-2016.
[67] ARAB AM. INST., AMERICAN ATTITUDES TOWARDS ARABS AND MUSLIMS 5 (Dec. 5, 2017), https://www.aaiusa.org/library/american-attitudes-towards-arabs-and-muslims-2017.
[68] Muneer Ahmad, *A Rage Shared by Law: Post-September 11 Racial Violence as Crimes of Passion*, 92 CAL. L. REV. 1259, 1284 (2004).
[69] *Id.* at 1307.
[70] *Some Arab-Americans Afraid to Go to Work – 2001-09-17*, VOICE OF AM. NEWS (Oct. 28, 2009, 9:33 AM), https://www.voanews.com/a/a-13-a-2001-09-17-26-some-66961257/378296.html.
[71] David Lamb, *Loyalty Questioned: U.S. Arabs Close Ranks Over Bias*, L.A. TIMES (Mar. 13, 1987). https://www.latimes.com/archives/la-xpm-1987-03-13-mn-5585-story.html.

It was not until 1990 in the aftermath of the Gulf War, and its dramatic increase in hate crime, that the backlash effect, which had been cemented in the Arab American experience, was so severe that President George H.W. Bush spoke out against it. After a meeting with community leaders, President Bush acknowledged the targeting of Arab Americans, stating, "I want this message to go out beyond this room—today some Americans are the victims of appalling acts of hatred. . . . Death threats, physical attacks, vandalism, religious violence, and discrimination against Arab-Americans must end. These hate crimes have no place in free society and we're not going to stand for them."[72]

Decades in the making, the backlash effect became common for Arab Americans, as well as members of the Muslim, Arab, and South Asian communities who would be equally subjected to its destructive impact. But the backlash following the terrorist attacks of September 11, 2001, would prove to be unprecedented. Four days after the terrorist attacks, Balbir Singh Sohdi, a Sikh American, was murdered in a violent hate crime in Arizona—the first of many.[73] According to FBI data, there was a fourfold increase in "Anti-Other Ethnicity" hate crimes, which anti-Arab hate crimes were classified as at the time, reported in 2001.[74] This data demonstrates with clarity the "retaliation" Director Mueller had condemned.

As noted, the backlash effect has meant that communities have continued to face bigotry, hostility, and sometimes violence in the wake of events unconnected to them, and that is not unique to Arab Americans. A contemporary example is found in the surge of hate crimes targeting Asian American and Pacific Islander (AAPI) communities during the COVID-19 pandemic. Another parallel involving AAPI communities can be found in the recently dismantled "China Initiative," a 2018 DOJ program that securitized Asian Americans or Asian immigrants by targeting them for investigation based on their national origin or "nexus to China."[75]

Looking forward

From the perspective of a community that is both targeted by discrimination and government actions ostensibly designed to keep us all safe, we respectfully provide the following concrete recommendations. While not comprehensive, we believe these to be a good starting point.

- From the incarceration of Japanese Americans during World War II to the Trump Administration's Muslim Ban—our country has justified sweeping constraints on civil rights and civil liberties in the name of national security. While the present threat of white supremacist violence is not without precedent, the policy debate over how to address this threat has shifted from the paradigm of civil rights enforcement to a national security framework. As an organization that represents a securitized community,[76] we believe it is

[72] President George H.W. Bush, Remarks at White House Briefing for Representatives of the Arab American Community (Sept. 24, 1990), https://www.presidency.ucsb.edu/documents/remarks-and-question-and-answer-session-white-house-briefing-for-representatives-the-arab.
[73] Harmeet Kaur, *A Sikh Man's Murder at a Gas Station Revealed Another Tragedy of 9/11*, CNN (Sept. 11, 2021), https://www.cnn.com/interactive/2021/09/us/balbir-singh-sodhi-9-11-cec/.
[74] Curt Anderson, *FBI: Hate Crimes vs. Muslims Rise*, ASSOCIATED PRESS (Nov. 25, 2002), https://apnews.com/article/5e249fb6e4dc184720e3428c9d0bd046.
[75] Ryan Lucas, *The Justice Department Is Ending Its Controversial China Initiative*, NPR (Feb. 23, 2022, 9:15 PM), https://www.npr.org/2022/02/23/1082593735/justice-department-china-initiative.
[76] *Responding to White Supremacist Violence: A Securitized Community's Perspective on Domestic Terrorism*, ARAB AM. INST. (Jan. 9, 2021), www.aaiusa.org/library/responding-to-white-supremacist-violence.

imperative to ensure that impacted communities are protected through rigorous civil rights enforcement and not further harmed by historically flawed and discriminatory national security policies. This is why we believe we can respond to this increasing threat without creating a new charge of domestic terrorism.[77]

- Hate crime laws have evolved over time and—because of broad bipartisan and near unanimous support from Congress—now include the COVID-19 Hate Crime Act and the accompanying Khalid Jabara and Heather Heyer NO HATE Act.[78] We believe this is an important first step toward achieving meaningful mandatory hate crime data collection and reporting. Congress must conduct oversight of the FBI's national hate crime reporting system, ensure that the DOJ provides information about the system as required by the Jabara-Heyer Act, and consider additional legislative approaches to improve state and local participation in the reporting process.

- Communities must have trust in their government to be able to report and respond to threats. A significant roadblock to establishing trust is the continued profiling of communities by law enforcement.[79] Past efforts to curb profiling, a practice that is both ineffective and discriminatory, have fallen short. In 2014, Attorney General Eric Holder released a revised Guidance Regarding the Use of Race by Federal Law Enforcement Agencies. The initial guidance was issued by Attorney General Ashcroft in 2003.[80] Yet the revised guidance contained significant loopholes. Specifically, that guidance excluded screenings at the border, intelligence operations and national security, or local law enforcement when not part of federal operations. To be effective, the federal government must finally ban profiling in any context, including but not limited to policing, immigration enforcement, border operations, ports of entry, and intelligence programming.[81] Further, we recommend legislation, such as the End Racial and Religious Profiling Act (ERRPA), which would apply profiling prohibitions to state and local law enforcement in all contexts.[82]

- To promote not only a better understanding of the threats facing communities, but also increased oversight of the federal government's expansive counter terrorism powers, Congress should pass the Domestic and International Terrorism DATA Act (H.R. 3106), which passed the House and was received in the Senate in October 2019.[83] The DATA Act would require DHS, DOJ, and the FBI to share detailed information about their counterterrorism efforts, including data on incidents, investigations, and prosecutions. This

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[77] *See* Letter from Leadership Conf. on Civ. & Hum. Rts. et al. to Members of Congress (Jan. 19, 2021), http://civilrightsdocs.info/pdf/policy/letters/2020/No_Domestic_Terrorism_Charge_1_21_2021.pdf.
[78] *See* Pub. L. No. 117-13, 135 Stat. 265 (2021).
[79] NICOLE HENDERSON ET AL., U.S. DEP'T OF JUST., OFF. OF JUST. PROGRAMS, POLICING IN ARAB-AMERICAN COMMUNITIES AFTER SEPTEMBER 11, at 8 (July 2008), https://www.ojp.gov/pdffiles1/nij/221706.pdf.
[80] *See supra* text accompanying notes 27-28.
[81] *See* Press Release, ACLU, ACLU Response to Revised DOJ Guidance on the Use of Race by Federal Law Enforcement Agencies (Dec. 8, 2014), https://www.aclu.org/press-releases/aclu-response-revised-doj-guidance-use-race-federal-law-enforcement-agencies.
[82] *See End Racial and Religious Profiling Act*, HUM. RTS. CAMPAIGN (Oct. 8, 2021), https://www.hrc.org/resources/end-racial-religious-profiling-act.
[83] H.R. 3106, 116th Cong. (2019). Similar legislation enacted as part of the National Defense Authorization Act of 2020, though a positive start, did not go far enough to ensure accountability and congressional oversight of federal counterterrorism enforcement. *See* National Defense Authorization Act for Fiscal Year 2020, §§ 5601-5602, 133 Stat. 1198, 2153-59 (2020).

legislation has three main requirements: (1) annual reporting on federal counterterrorism efforts, including domestic and international terrorism incidents, investigations, and prosecutions; (2) regular audits of federal reports to promote oversight and accountability of federal agencies; and (3) additional federal research on domestic and international terrorism.

- To ensure existing prevention efforts do not violate civil rights and liberties like the countering violent extremism programs that proceeded them, we recommend increased congressional oversight of DHS, including of the newly launched Center for Prevention Programs and Partnerships (CP3) and Targeted Violence and Terrorism Prevention (TVTP) programs, which have been found to be discriminatory and ineffective. Beyond the efficacy issue requiring measurable metrics for success, compelling congressional testimony and detailed reports from these programs outlining whether, when, and how demographic information, such as race, ethnicity, religion, or national origin, is used is crucial in providing stringent oversight.

- Finally, to reckon with the expansive authorities now in place, Congress should require a complete mapping of post-9/11 era programs and the impact they have had on communities. As has been noted, DHS is "the only government entity that, as part of its regular operations, conducts invasive physical searches of millions of Americans and their belongings each week without any predicate. It is also one of the only government agencies that retains huge amounts of data on individuals, using only 'implied consent' for justification."[84] Mapping of DHS information collected, the purpose of its collection, how it is used within DHS, and if it is shared with local, state, or federal agencies, or foreign governments is critical to understanding the effect of DHS programs on all Americans, particularly those who have faced a disparate impact of counterterrorism policies, including Arab Americans, American Muslims, Black Americans, and Asian Americans.

Conclusion

Many communities have experienced tangible harm from discriminatory government counterterrorism policies, ones that have often compromised our civil rights and civil liberties without increasing our safety. Over the course of the last twenty years, the federal government's counterterrorism authorities have expanded significantly, often with little oversight.[85] We believe the right time to examine the impact and effectiveness of these policies is before they are enacted and after they have been operational. Basically, it is always necessary to provide oversight of profiling, warrantless surveillance, denial of due process, and more. Relying on sunset provisions that ultimately receive insufficient scrutiny before they are reauthorized has not proven successful in response to the granting of overly broad authorities. Now, twenty years since 9/11, is also the right time to revisit policies put in place after a crisis. The protection of the fundamental rights of securitized communities, like Arab Americans, are certainly at stake, but so is our ability to protect the constitutional rights of all Americans and maintain a free society.

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[84] Chappell Lawson & Alan Bersin, *The Future of Homeland* Security, *in* BEYOND 9/11: HOMELAND SECURITY FOR THE TWENTY-FIRST CENTURY 303 (Chappell Lawson et al. eds., 2020).
[85] *See Transparency & Oversight*, BRENNAN CTR. FOR JUST., www.brennancenter.org/issues/protect-liberty-security/transparency-oversight (last visited Feb. 27, 2022).

In January 2002, the *National Review* ran a cover story making the case for profiling.[86] In what they must have thought was a clever spin on the children's book—"Where's Waldo?"—the story declared, in big bold letters, "WHERE'S WALEED?" The illustration on the cover depicted innocent people being subjected to long lines or intrusive searches at an airport while a man in traditional Arab dress with a brief case and a bomb is welcomed by a law enforcement officer. I mention it today because it hangs in my office to remind me of the work we must continue to do and how far we have come. The truth is "Waleed," as representative of a vibrant, proud, and empowered ethnic constituency of Arab Americans is everywhere. She is serving in this body as a member of Congress from Michigan or Minnesota. He is also serving in this body as a member of Congress from Illinois, California, or Louisiana, and as a congressional staffer working tirelessly on our nation's most pressing issues. We are running for office—and winning—to serve on school boards, city councils, as mayors, or state legislatures. We are lawyers working to protect the right to cast our sacred ballot in elections and to protect our First Amendment right to free speech. We have protested in the streets in support of Black lives and American democracy. We are working on the frontlines of our response to COVID-19 as researchers or doctors or nurses or teachers, or on the frontline of protecting our country, serving in our armed forces. We have run for president, served in cabinet positions, and serve in the Biden Administration today. We were victims and first responders on the tragic day of September 11, 2001. And our public service continues today as we demand meaningful reform so that our country lives up to its ideals.

Thank you for the opportunity to testify before your committee today and for the important congressional oversight you are providing by convening this hearing. The Arab American Institute remains ready to offer our support in efforts that protect communities and the civil rights and civil liberties of all Americans.

[86] *See* Rich Lowry, *Profiles in Cowardice*, NAT'L REV. (Jan. 28, 2002), https://www.nationalreview.com/2002/01/profiles-cowardice-rich-lowry.

Ms. ROSS. Thank you very much, Ms. Berry.

Before we take our next Witness, we are going to have another brief technical recess. There is something going on with the Witness microphones, and we want everyone to hear you. So, just briefly. Thank you for your patience.

[Recess.]

Ms. ROSS. Okay. See, that one was quick. You are charmed.

[Laughter.]

Our next Witness is Shoba Wadhia. She is the Associate Dean for diversity, equity, and inclusion; Samuel Weiss Faculty Scholar; and Clinical Professor of Law at Pennsylvania State University School of Law.

Her research focuses on the role of prosecutorial discretion and in immigration law, and the intersections of race, national security, and immigration. She teaches courses in immigration and asylum and refugee law. Prior to joining Penn State, Professor Wadhia was Deputy Director for Legal Affairs at the National Immigration Forum in Washington, DC.

She received her J.D. from Georgetown University Law Center, where she served as a senior notes and comments editor of the Georgetown Immigration Law Journal. She received her A.B. with honors from Indiana University.

Professor Wadhia, you are recognized for five minutes.

STATEMENT OF SHOBA SIVAPRASAD WADHIA

Ms. WADHIA. Chair Cohen, Ranking Member Johnson, and distinguished Members of the Subcommittee, thank you for inviting me to testify at today's hearing.

Discrimination in immigration law is deeply rooted in our history, as seen with the Chinese Exclusion Act and a national origin quota that effectively blocked immigration from Asia. Only in 1965, during the civil rights era, did President Johnson sign a bill amending the immigration statute to end national origin quotas.

The 1965 Act altered the racial landscape of the United States and opened doors for families like mine. My parents were raised in India, and after their marriage, moved to the United States. My father worked at the Dayton, Ohio VA as a physician from the beginning of the AIDS crisis. My mother entered the United States as the spouse of a green card holder.

While the 1965 Act yields a more facially neutral immigration statute, discrimination in Muslim, Arab, and South Asian communities endured. One sharp example is September 11th, 2001. I was working as an immigration attorney in downtown DC. On my way home soon after, I saw spray painted on a wall, "Deport Arabs."

In the post-9/11 era, executive branch agencies used national security as a basis for creating new immigration policies that targeted Muslim, Arab, and South Asian communities.

One significant 9/11 policy change was known as the National Security Entry-Exit Registration System, or NSEERS. It was rolled out in waves—first, in a speech by the former Attorney General, and later, in several publications in the **Federal Register**.

The most controversial piece of NSEERS was a call-in policy that drew more than 80,000 men from Muslim-majority countries to local immigration offices for lengthy interrogations, fingerprints,

and photographs. I recall vividly standing in front of the local migration Office during NSEERS and conducting know-your-rights sessions about the program inside of mosques.

NSEERS failed as a national security program because it relied on a premise that singling out Muslim males residing in the United States would somehow improve national security. The residual effects of NSEERS were striking. Nearly 14,000 Notices to Appear, or charging documents, were issued to those who complied with the program, triggering removal proceedings for the same. Others subject to NSEERS were denied green cards years later. Only in December 2016 did DHS issue a final rule ending the regulatory framework of NSEERS.

History repeats itself. Seven days after his inauguration, former President Trump signed an Executive Order which suspended for 90 days the entry of foreign nationals form seven countries with Muslim populations of over 90 percent. The Executive Order was based on section 212(f) of the immigration statute, which allows the President to suspend the entry of noncitizens if their entry is detrimental to the interests of the United States.

Working with families impacted by the various bans brought me closer to human suffering. Note, it was individuals in a qualifying relationship like my own parents who were being turned away because of where they were born. That is why my co-counsel and I argued in an amicus brief to the Supreme Court how the ban ushers our nation into a pre-1965 era. More than 9,000 spouses and minor children of U.S. citizens were impacted, creating one of the greatest untold stories of family separation.

More than 50 years after the 1965 Act and 20 years after 9/11, immigration laws continue to target MASA communities, as well as broader communities of color, often because of policy choices made by the executive branch, but also due to congressional inaction.

History will continue to repeat itself unless we do something different, and that requires a rejection of categorical exclusions based on national security, a recognition of an already robust statute, and an immigration policy that is guided by principles of family unity, racial equity, and compassion.

Thank you.

[The statement of Ms. Wadhia follows:]

Testimony of

Shoba Sivaprasad Wadhia

Associate Dean for Diversity, Equity and Inclusion
Samuel Weiss Faculty Scholar, Clinical Professor of Law,
Director, Center for Immigrants' Rights Clinic at

Penn State Law
The Pennsylvania State University

Regarding a Hearing on
"Discrimination and the Civil Rights of
the Muslim, Arab, and South Asian American Communities"

Before the
U.S. House of Representatives Committee on Judiciary
Subcommittee on the Constitution, Civil Rights, and Civil Liberties

March 1, 2022

Chairman Cohen, Vice Chairwoman Ross, and distinguished Members of the Committee. Thank you for inviting me to appear before you today. It is an honor.

I currently serve as Associate Dean for Diversity, Equity and Inclusion; Samuel Weiss Faculty Scholar; and the Founding Director of the Center for Immigrants' Rights Clinic at Penn State Law in University Park. My practice, teaching, and scholarship focus on immigration, a field I have worked in for more than twenty years. My testimony was prepared in my individual capacity and does not reflect the views of Pennsylvania State University. My testimony is drawn largely from my published research and my lived experiences as a South Asian American, immigration attorney, and advocate.

The history of Asian exclusion traces back to the nineteenth century.[1] The Page Act of 1875 banned the immigration of Chinese prostitutes and was motivated by stereotypes that they were a moral threat to American society. Seven years later, Congress passed the Chinese Exclusion Act of 1882, which blocked the entry of Chinese laborers into the United States and prohibited Chinese nationals from becoming naturalized citizens. The Act spared those already in the United States who obtained a certificate before leaving the United States, but eventually, even those with certificates were denied entry. These rules became the subject of a legal challenge by Chae Chan Ping, a Chinese laborer who lived in the United States for over a decade, but who was expelled after visiting family in China, despite having a certificate and having followed the rules.[2] The Supreme Court upheld the U.S. government's power to exclude Chinese and in doing so,

[1] *See, e.g.*, Shoba Sivaprasad Wadhia & Margaret Hu, *Decitizenizing Asian Pacific American Women*, 93 U. COLO. L. REV. 325, 339–48 (2022); Shoba Sivaprasad Wadhia, *Discretion and Disobedience in the Chinese Exclusion Era* (September 14, 2021). Asian Am. L.J. forthcoming (2022).
[2] *See* Chae Chan Ping v. United States (*The Chinese Exclusion Case*), 130 U.S. 581, 581–82 (1889).

adopted a principle known as "plenary power," which gives the "political branches"—Congress and the executive branch—the power to regulate immigration, to choose who to include and exclude, in this case based on race.[3]

Congress extended and expanded Chinese exclusion with the Geary Act, by directing all Chinese laborers inside the United States to register with the government for a certificate, or else tell a judge why not, by "reason of accident, sickness or other unavoidable cause," and prove their residence in the United States *by at least one credible white witness*.[4] Applying the plenary power doctrine once again, the Supreme Court in *Fong Yue Ting* upheld the federal government's power to deport Chinese laborers already living in the United States.[5] The Chinese Exclusion cases have never been overturned and are crucial to understanding modern day exclusion.

Exclusion based on nationality and race continued in the 20th century. One of the most significant immigration exclusions occurred in 1924, with the passage of the Johnson-Reed Act. The 1924 Act significantly lowered the number of people who could enter the United States. It also created a national origin-based quota system by excluding any person who by virtue of race or nationality was ineligible for citizenship.[6] Because existing laws prohibited people of Asian lineage from naturalizing, the 1924 Act effectively banned Asian immigration.[7]

Only in 1965, on the heels of the landmark Civil Rights Act and Voting Rights Act, President Lyndon B. Johnson signed a bill into law to amend the immigration statute, or Immigration and Nationality Act, to end national origin discrimination in immigration law.[8]

[3] *See id.* at 609 ("The power of exclusion of foreigners being an incident of sovereignty belonging to the government of the United States, as a part of those sovereign powers delegated by the Constitution, the right to its exercise at any time when, in the judgment of the government, the interests of the country require it, cannot be granted away or restrained on behalf of any one.").
[4] Act of May 5, 1892, ch. 60, § 6, 27 Stat. 25 (1892) ("Geary Act").
[5] Fong Yue Ting v. United States, 149 U.S. 698, 706–07 (1893).
[6] *See* Immigration Act of 1924, ch. 190, § 11, 13, 43 Stat. 153 (1924) ("Johnson-Reed Act").
[7] *See* U.S. Department of State Archive, The Immigration Act of 1924 (The Johnson-Reed Act).
[8] *See* Immigration and Nationality Act of 1965, Pub. L. No. 89-236, 79 Stat. 911 (1965).

Sharing a well-known passage from President Kennedy's Inaugural Address, Johnson observed that "a nation that was built by the immigrants of all lands can ask those who now seek admission: 'What can you do for our country?' But we should not be asking: 'In what country were you born?'"[9] The 1965 Immigration and Nationality Act created a nondiscrimination clause that appears in the immigration statute today: "[N]o person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth, or place of residence."[10]

The 1965 Act altered the racial landscape of the United States, and produced significant increases in Asian immigration, opening the doors for families like mine. My parents were raised in India and after their marriage moved to the United States. My father worked at the Dayton, Ohio VA hospital as a physician from the beginning of the AIDS crisis. My mother entered the United States as the spouse of a green card holder.

Even with the dismantling of the national origin quotas in 1965, however, exclusionary policies persisted. One sharp example is September 11, 2001. My memory of this tragic day and its lasting effects on immigration are vivid. September 11 was a day that normalized a narrative conflating immigration with terrorism, and unleashed a litany of immigration policy changes developed in the name of "national security," but with consequences for Muslim, Arab, and South Asian communities.[11] I was working as an immigration attorney in downtown Washington, D.C., and on a walk home shortly after, I saw spray painted on a wall: "Deport Arabs." These words became a symbol for 9/11's lasting impact on immigration and a defining moment in my career,

[9] President Lyndon B. Johnson, Annual Message to Congress on the State of the Union (Jan. 8, 1964), http://www.lbjlibrary.net/collections/selected-speeches/november-1963-1964/01-08-1964.html; *see also* President Lyndon B. Johnson, Remarks on Signing the Immigration Act of 1965 (Oct. 3, 1965), https://www.learningforjustice.org/classroom-resources/texts/remarks-on-signing-the-immigration-act-of-1965.
[10] 8 U.S.C. § 1152(a)(1)(A).
[11] *See e.g.*, Shoba Sivaprasad Wadhia, Business as Usual: Immigration and the National Security Exception. Penn State Law Review, Vol. 114, No. 4, p. 1485, (2010)

propelling me into immigration policy, which began with being thrown into the legislative debate around the creation of a new cabinet level agency called the Department of Homeland Security. There were impassioned debates about where to place immigration but eventually the functions mostly landed in DHS. Twenty years later, I am struck by the message sent to newcomers who arrive or interact with a department called "Homeland Security."

In October 2001, former Attorney General John Ashcroft spoke at a conference to the U.S. Mayors, analogizing former Attorney General Robert F. Kennedy's belief that arresting mobsters for "spitting on the sidewalk" would help thwart organized crime, to the zealousness with which potential "terrorists" in the wake of September 11, 2001, should be punished.[12] Ashcroft remarked:

> Let the terrorists among us be warned: If you overstay your visa—even by one day—we will arrest you. If you violate a local law, you will be put in jail and kept in custody as long as possible. We will use every available statute. We will seek every prosecutorial advantage. We will use all our weapons within the law and under the Constitution to protect life and enhance security for America.[13]

One significant 9/11 policy was known as the "National Security Entry-Exit Registration System," or NSEERS. In September 2002, former Attorney General Ashcroft rolled out a tracking program known as "special registration." The program was rolled out in multiple phases, beginning first with visiting nonimmigrants from Iran, Iraq, Libya, Sudan, and Syria.[14] Such individuals were

[12] OFFICE OF THE INSPECTOR GENERAL, THE SEPTEMBER 11 DETAINEES: A REVIEW OF THE TREATMENT OF ALIENS HELD ON IMMIGRATION CHARGES IN CONNECTION WITH THE INVESTIGATION OF THE SEPTEMBER 11 ATTACKS, at ch. 2 § I(B) (2003), https://oig.justice.gov/sites/default/files/legacy/special/0306/full.pdf.
[13] *Id.* at ch. 2 § I(B).
[14] Press Release, DOJ, Attorney General Ashcroft Announces Implementation of the First Phase of the National Security Entry-Exit Registration System (Aug. 12, 2002), http://www.justice.gov/opa/pr/2002/August/02_ag_466.htm.

required to register at the port of entry (POE) at which they entered, follow up with an in-person interview after entering the United States, and register again upon exiting the United States.[15]

The NSEERS program was expanded to include a "call-in" component to reach certain males who had already entered the United States. The announcement of, and instructions for, call-in registration was made through four publications in the Federal Register.[16] In sum, the call-in portion of NSEERS applied to certain males from 25 countries.[17] Information collected and interview questions included bank account information, credit card information, and affiliations with political, religious, or social groups on university campuses.[18] The men targeted for call-in registration came from the following countries: Iran, Iraq, Libya, Sudan, Syria, Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morocco, North Korea, Oman, Qatar, Somalia, Tunisia, United Arab Emirates, Yemen, Pakistan, Saudi Arabia, Bangladesh, Egypt, Indonesia, Jordan, and Kuwait.[19]

I recall vividly standing in front of the local immigration office to protest NSEERS and conducting know your rights sessions about the program inside of mosques. I learned a few things at the time. First, that most people do not read the Federal Register. Second, that protest can serve as a form of solidarity. Third, that one must educate a community about their rights and

[15] Registration and Monitoring of Certain Nonimmigrants, 67 Fed. Reg 52,584 (Aug. 12, 2002); *see also* Registration and Fingerprinting, 8 C.F.R. § 264.1(f) (2008).
[16] *See* Registration of Certain Nonimmigrant Aliens from Designated Countries, 68 Fed. Reg. 2363 (Jan. 16, 2003); Registration of Certain Nonimmigrant Aliens from Designated Countries, 67 Fed. Reg. 77,642 (Dec. 18, 2002); Registration of Certain Nonimmigrant Aliens from Designated Countries, 67 Fed. Reg. 70,526 (Nov. 22, 2002); Registration of Certain Nonimmigrant Aliens from Designated Countries, 67 Fed. Reg. 67,766 (Nov. 6, 2002).
[17] *See id.*
[18] Jane Black, *At Justice NSEERS Spells Data Chaos*, BUSINESSWEEK (May 2, 2003).
[19] *See* Registration of Certain Nonimmigrant Aliens from Designated Countries, 68 Fed. Reg. 2363 (Jan. 16, 2003); Registration of Certain Nonimmigrant Aliens from Designated Countries, 67 Fed. Reg. 77,642 (Dec. 18, 2002); Registration of Certain Nonimmigrant Aliens from Designated Countries, 67 Fed. Reg. 70,526 (Nov. 22, 2002); Registration of Certain Nonimmigrant Aliens from Designated Countries, 67 Fed. Reg. 67,766 (Nov. 6, 2002); *see also* AM.-ARAB ANTI-DISCRIMINATION COMM. & CTR. FOR IMMIGRANTS' RIGHTS, PA. STATE UNIV., NSEERS: THE CONSEQUENCES OF AMERICA'S EFFORTS TO SECURE ITS BORDERS 15-16 (2007), http://www.adc.org/wp-content/uploads/2016/12/NSEERS-ADC-Report.pdf.

responsibilities in places where they feel safe and welcome. NSEERS was a full of challenges—the lack of notice to individuals, the limited resources at local offices, the wide range of questions asked to those interrogated.[20] Numbers reported by DHS in 2003 show that 13,799 people who complied with special registration were issued Notices to Appear and placed in removal proceedings.[21]

The NSEERS program also failed as a national security program as it relied on the premise that singling out Muslim males residing in the United States would somehow improve national security. Said counterterrorism expert Juliette Kayyem: "The pure accumulation of just massive amounts of data is not necessarily helpful . . .. Basically, what this has become is an immigration sweep."[22] The *New York Times* also reported on similar comments made by the former INS Commissioner James Ziglar stating that "he and members of his staff had raised doubts about the benefits of the special registration program when Justice Department officials first proposed it. He said he had questioned devoting significant resources to the initiative because he believed it unlikely that terrorists would voluntarily submit to intensive scrutiny."[23] Mr. Ziglar continued, "To my knowledge, not one actual terrorist was identified. But what we did get was a lot of bad publicity, litigation and disruption in our relationships with immigrant communities and countries that we needed help from in the war on terror."[24]

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[20] *See generally* AM.-ARAB ANTI-DISCRIMINATION COMM. & CTR. FOR IMMIGRANTS' RIGHTS, PA. STATE UNIV., NSEERS: THE CONSEQUENCES OF AMERICA'S EFFORTS TO SECURE ITS BORDERS (2007), http://www.adc.org/wp-content/uploads/2016/12/NSEERS-ADC-Report.pdf.

[21] ICE, *Fact Sheet: Changes to National Security Entry/Exit Registration System (NSEERS)*, U.S. DEP'T OF HOMELAND SEC. 4 (Dec. 1, 2003), http://www2.gtlaw.com/practices/immigration/news/2003/12/01a.pdf.

[22] Dan Eggen & Nurith C. Aizenman, *Registration Stirs Panic, Worry*, WASH. POST (Jan. 10, 2003), https://www.washingtonpost.com/archive/politics/2003/01/10/registration-stirs-panic-worry/ad5bedb3-b5ad-47ed-819c-7ba42307fa9d/?utm_term=.883260d415cf.

[23] Rachel L. Swarns, *Program's Value in Dispute as a Tool to Fight Terrorism*, N.Y. TIMES (Dec. 21, 2004), https://www.nytimes.com/2004/12/21/us/programs-value-in-dispute-as-a-tool-to-fight-terrorism.html.

[24] *Id.* (internal quotations omitted).

Even after portions of NSEERS were suspended and the program no longer operational, the lingering effects were pronounced. Reports by the Center for Immigrants' Rights Clinic at Penn State Law on behalf of the American-Arab Anti-Discrimination Committee and the Rights Working Group highlight these effects.[25] Only in December 2016, on the heels of an urgency expressed by community leaders and lawyers inside the White House and on the streets, did the Department issue a final rule ending the regulation giving rise to NSEERS.[26]

Efforts to roll back post 9/11 policies were also made legislatively, with the introduction of the Civil Liberties Restoration Act (CLRA). The CLRA was never enacted into law, but contained a measured set of remedies to post 9/11 immigration policies. The CLRA would have terminated a memo permitting closed immigration hearings; terminated the NSEERS program and provided limited relief to individuals with immediate eligibility for an immigration benefit or relief from removal; and required noncitizens held by DHS beyond 48 hours without charges or notice of charges to see a judge to determine whether prolonged detention is appropriate, among other provisions.[27]

History repeated itself fifteen years later. While a candidate on the campaign trail, former President Trump published a "Statement on Preventing Muslim Immigration" that called for a "total and complete shutdown of Muslims entering the United States."[28] Seven days after his

[25] *See generally* AM.-ARAB ANTI-DISCRIMINATION COMM. & CTR. FOR IMMIGRANTS' RIGHTS, PA. STATE UNIV., NSEERS: THE CONSEQUENCES OF AMERICA'S EFFORTS TO SECURE ITS BORDERS (2007), http://www.adc.org/wp-content/uploads/2016/12/NSEERS-ADC-Report.pdf; RTS. WORKING GRP. & CTR. FOR IMMIGRANTS' RIGHTS, PA. STATE UNIV., THE NSEERS EFFECT: A DECADE OF RACIAL PROFILING, FEAR, AND SECRECY (2012), https://pennstatelaw.psu.edu/_file/clinics/NSEERS_report.pdf.

[26] *See* Removal of Regulations Relating to Special Registration Process for Certain Nonimmigrants, 81 Fed. Reg. 94,231 (Dec. 23, 2016); Shoba Sivaprasad Wadhia, *Understanding the Final Rule Ending NSEERS*, YALE J. ON REGUL. NOTICE & COMMENT (Dec. 23, 2016), https://www.yalejreg.com/nc/understanding-the-final-rule-ending-nseers-by-shoba-sivaprasad-wadhia/.

[27] *See* Civil Liberties Restoration Act of 2005, H.R. 1502, 109th Cong. (2005).

[28] *See* Statement by Donald J. Trump, Statement on Preventing Muslim Immigration (Dec. 7, 2015) (American Presidency Project), https://www.presidency.ucsb.edu/documents/statement-donald-j-trump-statement-preventing-muslim-immigration.

inauguration, former President Trump signed an executive order dubbed as the "Muslim ban" which suspended for 90 days the entry of foreign nationals from seven countries with Muslim populations of over 90%: Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen.[29] The executive order relied on a section of the immigration statute—section 212(f)—which allows a President to suspend the entry of a noncitizen or group of noncitizens if such entry would be detrimental to the interests of the United States.[30] The image and chaos of lawyers, policy makers, and protests at the airports was vivid, as was the uncertainty. No guidance had been delivered to the Customs and Border Protection officials at the airports, green card holders were being turned away, and families were detained.

The chaos spread well beyond the airports. I fielded scores of phone calls from affected individuals and families from around the world. Should I leave the United States? Can my mother come for my graduation? My spouse and I have been apart, how can they get to the United States? The pedagogy for my students became "lawyering in the fire." The first executive order dropped at 4:30 p.m. on a Friday and was followed by a weekend of producing fact sheets to explain what the order means and triaging with our organizational partners and leaders.

The first executive order was blocked by a nationwide injunction, but this did not stop the delivery of a second ban, which this time was issued in March, and blocked the same countries except for Iraq.[31] The second executive order was also challenged and blocked by the courts, but eventually, the administration issued its final ban as a presidential proclamation and indefinitely blocked the entry for certain individuals from eight countries: Iran, Libya, Chad, North Korea,

[29] *See* Exec. Order No. 13,769, 82 Fed. Reg. 8977 (Jan. 27, 2017).
[30] *See* 8 U.S.C. § 1182(f); INA § 212(f).
[31] *See* Exec. Order No. 13,780, 82 Fed. Reg. 13,209 (Mar. 6, 2017).

Syria, Somalia, Venezuela, and Yemen.[32] These countries were ostensibly chosen based on the perceived threat they posed.

Working with families impacted by the Muslim ban and interviewing lawyers brought me close to the human suffering. Note it was individuals in a qualifying family relationship—like my own parents—or with a legal means to be in the United States who were being turned away because of where they were born.

One attorney I spoke to told me:

> The common thread I see among every single person that walks into my office is, I need my Mom because I'm gonna be in labor and I can't do this without her. Or, I'm the first person in my family to get a PhD; it would mean the world to my parents to be there at my graduation ceremony. Or I'm in love and I'm getting married and I'm getting engaged and this is a huge moment in my life and I would like my parents to meet my future husband. They're moments in our lives that we normally share with family. . . . Graduations, birth of a child, engagement, weddings; all of them are destroyed for people [because of the Muslim ban].[33]

In a brief I filed to the Supreme Court as co-counsel on behalf of immigration law scholars, we explained how the 1965 Immigration Act sought to eliminate the national origin quota system's

[32] *See* Proclamation No. 9645, 82 Fed. Reg. 45,161 (Sept. 24, 2017).
[33] SHOBA SIVAPRASAD WADHIA, BANNED: IMMIGRATION ENFORCEMENT IN THE TIME OF TRUMP 7 (2019).

fundamental unfairness, and to prioritize family reunification.[34] We argued that by excluding people from receiving a visa and entering the United States based on race or place of birth, the country was ushering us into a pre-1965 era in defiance of the immigration statute and legislative history leading to the Immigration Act of 1965.[35]

But the Supreme Court in 2018 found the national security justification for the ban reasonable, and the power of the President to exclude broad, and in doing so, upheld the legality of the proclamation.[36] In explaining the breadth of section 212(f) of the immigration statute, the section used to create the ban, Chief Justice Roberts remarked: "By its terms, §1182(f) exudes deference to the President in every clause. It entrusts to the President the decisions whether and when to suspend entry, whose entry to suspend, for how long, and on what conditions."[37]

The proclamation included a waiver process for those impacted if they could prove that denial of entry would result in undue hardship, that entry is in the national interest, and that they pose no security threat.[38] However, many, myself included, were concerned about whether the waiver process really worked, or to echo the words of Justice Breyer during oral arguments, whether the waiver was simply "window dressing."[39]

While public attention to the Muslim ban faded, the human consequences endured. As of January 1, 2019, more than 9,000 spouses and minor children of U.S. citizens had been barred.[40] The Muslim ban is perhaps the greatest untold story of family separation. And in 2020, former

[34] *See* Brief for Scholars of Immigration Law as Amici Curiae Supporting Respondents, Trump v. Hawaii, 138 S. Ct. 2392 (2018) (No. 17-965).
[35] *See id.* at 24–35; *see also* Peter Margulies & Shoba Sivaprasad Wadhia, *How the Travel Ban Resurrects National Origin Quotas Congress Sought to End*, THE HILL (Mar. 30, 2018, 12:07 PM), https://thehill.com/blogs/congress-blog/homeland-security/381002-how-the-travel-ban-resurrects-national-origin-quotas.
[36] *See* Trump v. Hawaii, 138 S. Ct. 2392, 2420–23 (2018).
[37] *Id.* at 2408.
[38] *See* Proclamation No. 9645, 82 Fed. Reg. 45,161, § 3(c) (Sept. 24, 2017).
[39] *See* Transcript of Oral Argument at 35, Trump v. Hawaii, 138 S. Ct. 2392 (2018) (No. 17-965).
[40] David J. Bier, *Travel Ban Separates Thousands of U.S. Citizens from Their Spouses & Minor Children*, CATO INSTITUTE: CATO AT LIBERTY (Jan. 29, 2019, 9:47 AM), https://www.cato.org/blog/travel-ban-separates-thousands-us-citizens-their-spouses-minor-children.

President Trump through a new proclamation added Nigeria, Eritrea, Kyrgyzstan, Myanmar, Sudan, and Tanzania to the existing proclamation, leading to its label as a "Muslim and African ban."[41]

Resistance to the ban was significant and revealed itself inside courts, on the streets, at consulates, and within the halls of Congress with the introduction of the National Origin-Based Antidiscrimination for Nonimmigrants Act (NO BAN Act) which, if enacted, would terminate the Muslim and African ban and set limits to the sections of the immigration statute that were used to create it.[42] As the subcommittee is aware, the NO BAN Act passed in the U.S. House of Representatives, but has yet to pass in the U.S. Senate. On January 20, 2021, President Biden repealed the Muslim and African Ban.[43] But termination of the ban does not replace the lasting human impact on individuals and families, nor does it prevent the potential for similar bans in the future.

Over and over, national security is used as a tool for immigration policies which explicitly discriminate based on race, religion or country of birth, as seen with the Chinese exclusion laws, NSEERS, and the Muslim ban. More than 50 years after the 1965 Act—and 20 years after 9/11—immigration laws continue to target Muslim, Arab, and South Asian communities, as well as broader immigrant communities of color, often because of policy choices made by the executive branch, and because of congressional inaction. History will continue to repeat itself unless we do something different. That requires a rejection of categorical exclusions, it requires changing course when immigration enforcement or discretion produces unequal outcomes, and it requires envisioning an immigration policy that is truly inclusive and one that works for everyone.

[41] *See* Proclamation No. 9983, 85 Fed. Reg. 6699 (Jan. 31, 2020).
[42] *See* NO BAN Act, H.R. 1333, 117th Cong. (2021).
[43] *See* Proclamation No. 10,141, 86 Fed. Reg. 7005 (Jan. 20, 2021).

Ms. ROSS. Thank you very much for that testimony, Professor.

Our next Witness is Zulfat Suara. Ms. Suara is a Council Member at large of the Metropolitan Government of Nashville and Davidson County, Tennessee, a position she was first elected to in 2019. She is the first Muslim elected to the council, the first Muslim woman elected to office in Tennessee, and the first Nigerian immigrant woman elected to any office in the United States.

In addition to serving on the Nashville and Davidson County council, she is Executive Director of grants and contracts at Maharry Medical College. Among many accolades, she was named the 2018 Muslim Policy Advocate of the Year by the Islamic Society of North America and received an award for outstanding service to human rights from the Tennessee Human Rights Commission.

Council Member Suara, you are recognized for five minutes, and welcome.

STATEMENT OF ZULFAT SUARA

Ms. SUARA. Thank you.

Good morning, Chair Cohen, Vice Chair Ross, Chair Nadler, Ranking Members, and other Members of the Committee. Thank you for the opportunity to address you this morning.

My name is Zulfat Suara, as said, and I'm a Council Member at large in Nashville. Prior to my election, I served for six years as Chair of the American Muslim Advisory Council, AMAC, a statewide organization that works in partner with some the community to civic-ended means, community building, and media relations. AMAC was formed in 2012 following a community mobilization against the anti-Sharia bill and the opposition to the building of the Murfreesboro Mosque.

Tennessee is home to large populations of Mexicans, Somalis, Arabs, Saudis, and many more. Despite this rich diversity, our State and in our country remain heavily polarized. There are increased attacks on Asian Americans and the demonization of Muslims continues to grow. This hatred is fueled by actions, or lack thereof, by Federal, State, and local elected officials to protect our rights. It is cultivating environments where my youngest daughter is called a terrorist by her classmates.

I am, therefore, standing before you as a mother, advocate, and elected official, and mostly and above all, an American citizen, to share with you, based on my experiences and interactions, some of the issues facing the Muslim communities.

On the Federal level, issues such as surveillance and profiling have negatively impacted our community. From New York to California, Federal agencies have violated the privacy of Muslims within their places of worship, an injustice that was, essentially, taken up to the U.S. Supreme Court. It also extends to private groups, exemplified by the case in Ohio when an anti-Muslim hate group individual reported on Muslims, surveilling in his own community. Furthermore, TSA backroom interrogations, no travel watchlists, and extra searches are just some of the ways this discrimination raises its ugly head while flying.

From multiple directions, our community continues to have our liberties unprotected and infringed on. Certain marginalized groups

such as ours is unjust and is reflective of the discrimination many minority groups face in this country.

Unfortunately, our children are not immune to this discrimination. Our girls do not have the same access of rights in playing sports. In September 2020, a Muslim girl in Tennessee, Najah Aqeel, was disqualified from a volleyball game because of her hijab. The rule enforced reduced our religious head scarf to a mere device that could only be worn with special permission. Thankfully, due to her courage, all Tennessee athletes and all-American volleyball players can now compete like others while wearing religious headdress without prior permission. Najah's victory was for volleyball. There are still other sports in this country where Muslim girls are not able to participate without giving up their religious beliefs.

Finally, no single policy impacted us more than the Muslim ban. It was discriminatory, tore families apart, and further "otherized" American Muslims. We are grateful that President Biden lifted the ban, but there are still lasting implications that are yet to be resolved.

When it comes to discrimination policy, things are worse at the State level. What started with Tennessee's anti-Sharia bill in 2011 has progressed to relentless attempts to pass other discriminatory bills to marginalize our communities. Attempts to ban lessons in Islamic schools, claims of Islamic indoctrination, the No-Go Zone bill, and more. While most of these bills failed, they continually send a message that our presence and our beliefs are not welcome.

Finally, there is just a blatant double-standard in the response to acts of domestic terrorism. On Christmas Day 2020, a bomb was detonated in downtown Nashville. It was an event that shook our city. While I am grateful to the heroism of our local police officers; it was perplexing that they had been notified the year before about concerns that the perpetrator was building bombs. His residence was never investigated because he was not at home. No law enforcement ever came back to reinvestigate this lead. Had this man been a Muslim, his door would have been kicked down and his community attacked. It is this same double standard that on the national level framed the interrogants in this capital as legitimate political discourse.

This is my home, my country. I am invested in it, and I have invested in its welfare. My heart breaks every time there is a discriminatory bill and action by those in authority. Muslims, Arabs, and South Asian Americans have contributed greatly to this country. We are not asking for preferential treatment. All we ask is to be treated with the same respect and dignity and afforded the same rights as all Americans. I fervently hope that the outcome of this hearing will do just that.

Thank you.

[The statement of Ms. Suara follows:]

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Statement Before the House Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Civil Liberties

March 1, 2022

Chair Cohen, Ranking Member Johnson, and Members of the Committee,

Thank you for the opportunity to address you this morning on the Discrimination against and the Civil Rights of the Muslim, Arab, and South Asian American Communities.

My name is Zulfat Suara, I am a Councilmember-At-Large in the Metro Nashville Government. As an At-Large Councilmember, I have the pleasure of representing more than 700,000 residents. Nashville is a very diverse city, and we boast the largest population of Kurds outside of Kurdistan. Nashville is also home to large populations of Mexican, Somali, Vietnamese, Cambodian, Laotian, Arab, and Bantu communities, as well as a considerable number of Pakistanis, Bangladeshis, and Indians.

Prior to my election, I served as Chair of the American Muslim Advisory Council (AMAC) from its inception on and off for about six years. AMAC is a statewide organization that works with mosques, mosque leaders, and community members across the state. AMAC's mission is to foster mutual trust and respect among all people. This is done through civic engagement, community building, and media relations, with the goal of protecting all Tennesseans from prejudice and targeted violence. AMAC was formed in 2012 following the Muslim community's mobilization against the anti-sharia bill in our state legislature in 2011. It is also a known fact that the bill was a result of the opposition to the building of the Murfreesboro Mosque in 2010, a case that ended in 2014 when the U.S. Supreme Court refused to hear the case that sought to stop the construction.[1]

I am also a mother of five. In 2015 I testified before our Metro Nashville School Board in support of a resolution on anti-Muslim hate. I shared the story of how my daughter, who was in seventh grade at the time, was called "a terrorist" by a classmate.[2] The young girl said she was joking but, to my daughter and me, it was not funny.

Our country is polarized and the otherization of so many is prominent. There are increased attacks on Asian Americans and the demonization of Muslims continues to grow. I, like many in my community, feel that this hatred is fueled by actions (or lack thereof) by our federal, state, and local elected officials to protect our rights.

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[1] https://www.washingtonpost.com/national/religion/murfreesboro-mosque-fight-laid-to-rest-after-supreme-court-ruling/2014/06/03/0da487c0-eb49-11e3-b10e-5090cf3b5958_story.html

[2] https://www.youtube.com/watch?v=glj8EQ1ouCQ

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Continued surveillance, profiling, inequity in access to resources, and passage of targeted and divisive legislation treat us as second-class citizens and continue to infringe on our constitutional rights.

I am therefore standing before you this morning as a mother, an advocate, an elected official, a Muslim, and above all an American citizen to share with you, based on my personal experiences and interactions, some of issues facing the Muslim communities. I have divided these issues into federal, state, and local. It is important to clarify that this is my personal statement and that I am not speaking on behalf of any organization or government.

At the federal level, surveillance of our communities is a major concern. We have heard stories of what happened in New York and in California, a case that went before the Supreme Court last year.[3] We also heard of an individual in Ohio who was surveilling his community, not for the FBI in this case, but for an anti-Muslim hate group. Our community continues to feel that with this surveillance, our privacy is not protected, and we continue to feel like we are being infringed upon in our own homes and in our places of worship. Our hope is that when the Supreme Court renders its decision on the surveillance case in June, our rights will be upheld.

Another issue of concern to the Muslim community is our profiling at the airport. In addition to several innocent people being placed on the no travel/watch lists, there is also the issue of extra searches and surveillance at the airport. For example, I am a graduate of the FBI Citizens Academy. In 2016, I was one of 50 people in the US who received the FBI Director's Award.[4] I've had a lot of background checks, and I also have TSA PreCheck. Despite all of this, and despite being an elected official, almost every time I go to an airport I am subjected to additional searches. For whatever reason, I am almost always one of the people who is "randomly selected" for additional screenings. I wish I were an exception among my fellow Muslims, but I am not. This happens often to minorities and is especially true for people who are visibly Muslims. This is of concern to us because this should not be the case. While I think it's good for our country to have security in place, singling out a certain group as it's been done to me and many others is not fair. If the system is truly random, it should be truly random for everyone and not just targeting a particular group of people.

Another issue of concern in the Muslim community is that Muslims do not have the same access as other citizens. In September of 2020, one of our girls in Tennessee, Najah, was playing volleyball when she was told by the referee that she could not play in her hijab. The law at the time stated that she must have special permission for her to play, something that should not be required. The U.S. Constitution guarantees our freedom of religion and allows for us to dress how we want. Asking Muslim students and their parents to take the extra step that is not required of others is discriminatory. Najah was disqualified from the game and embarrassed in front of her friends and family.

[3] https://www.npr.org/2021/11/08/1052567444/supreme-court-to-hear-arguments-on-fbis-surveillance-of-mosques

[4] https://www.fbi.gov/about/community-outreach/dcla/2015

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Nonetheless, she did not give up. Thanks to her courage and with the help of the ACLU and AMAC, the Tennessee Secondary School Athletic Association (TSSAA) decided to change this rule, not just for volleyball but for all high school sports in Tennessee. In Tennessee, athletes can now compete in any sport while wearing hijabs, Sikh turbans, and Jewish kippahs without getting permission ahead of time. [5]Her case went all the way to the National Federation of State High School Associations (NFHS), where the rule was also changed for volleyball players. While Najah's case resulted in a change for volleyball at the national level, there are still other sports in the country where Muslim girls are not able to participate without giving up on their religious beliefs to do so. These young girls' rights to be able to have fun and play sports like others is taken away by these discriminatory rules. This is a major concern for me as a parent, and for many others in the Muslim community.

Another issue that is a concern to the Muslim community is the disparity in the treatment of and attitude towards crimes involving members of different race at the national, state, and local level. A prime example is the January 6 attack on Capitol Hill. Many minorities believe without a doubt that if the insurgence had been perpetuated by any a minority group, including Muslim, Arabs, Asian, or Blacks, the condemnation would have been unanimous and actions very swift. First, we learned that despite warnings, Capitol Police were told to hold back[6], and then we watched as some members of Congress continued to downplay the attack. What is troubling is that while Black citizens are being jailed for peacefully protesting their rights to vote, the Republican National Committee would characterize the attack on our nations' hall of power, one that traumatized our capitol police officer and terrorized our Congressmen and Congresswomen, as "legitimate political disclosure."[7]

Finally, no single issue impacted the Muslim Arab, South Asian community in the last couple of years more than the Trump Administration "Muslim Ban". Disguised as a travel ban, this policy targeted mostly countries with large Muslim population. The policy was discriminatory, torn several families apart and further "otherize' Muslims Americans. There were spouses that were separated because of the ban. The saddest story for me was that of a young man in Nashville whose aunt could not travel to America for medical attention because of the ban. She ended up passing away. I am grateful that the Biden administration lifted the ban, however there are long lasting implications that are yet to be resolved.[8]

When it comes to policies, things are even worse at the state level. In the past couple of years, some of our legislators have openly shown their hostility towards Islam and Muslims, and cases of false information and narratives were rampant. In 2011, the anti-sharia bill was proposed. Thanks to the mobilization of Muslims

[5] https://www.cnn.com/2021/02/06/us/nashville-volleyball-religious-headwear-rule-trnd/index.html

[6] https://www.nytimes.com/2021/04/13/us/politics/capitol-police-riot-report.html

[7] hthttps://www.aclu.org/news/immigrants-rights/the-enduring-harms-of-trumps-muslim-ban/tps://www.nytimes.com/2022/02/04/us/politics/republicans-jan-6-cheney-censure.html

[8]

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across the state, the ACLU and our interfaith allies, the bill was, in our opinion, defeated. The version of the bill that passed after numerous amendments (thanks to our advocacy) was a watered-down version that basically only repeated what was on the books rather than prohibiting the practice of the religion.

Below are some of the actions at the state level that promote anti-Muslim bigotry and incite hatred against the Muslim Community:

- Appointment of known Islamophobe to the school textbook commission
- HB 1141/SB 1040, a bill to ban a non-existent No-Go Zone[9]
- Uproar over a new bathroom sink for mops that some legislators suggested was for the washing of feet by Muslims[10]
- Hamilton County Sheriff stating that Islam is "communism with a god"
- HB 1418, seeking to ban public schools from teaching religious doctrine
- SB 1929, requiring the Tennessee Office for Refugees to notify the governor about certain refugees and their countries
- Coffee County Commissioner's post on "How to wink at a Muslim"
- HB1905, seeking to stop Islamic "indoctrination" in schools
- HJR-0150, a proposed Constitutional amendment to designate the Bible as state book
- HJR 0752, a proposed Constitutional amendment to designate the Bible the state book (filed February 2, 2022)

While most of these bills failed, the lingering effect is that they continually send the message that Islam is not a religion and Muslims are not welcome. This is a violation of our Constitutional rights to practice our religion and may have led to a series of attacks on our community. A woman in a hijab was verbally accosted and called a terrorist by a man in a truck[11]; two Muslim girls were harassed, and their father attacked while walking home

[9] https://www.huffpost.com/entry/tennessee-no-go-zones_n_6795028

[10] https://www.usatoday.com/story/news/nation/2013/03/26/tennessee-muslims-lawmakers-sharia-law-mops-sink-state-capitol/2020617/

[11] https://www.wgnsradio.com/article/29879/muslim-head-covering-leads-to-road-rage-and-more-in-murfreesboro

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from school[12]; a Tennessee man planned an attack on Islamberg; there were several acts of vandalism against mosques, in Murfreesboro, Chattanooga, and Nashville; and the Islamic Center of Columbia was burned down.

The move to make the Bible the state book was originally passed in 2016 and vetoed by then-Governor Bill Haslam. HJR 150 was passed by the House last year but defeated in the Senate. The sponsor has filed another resolution this year. Annie Laurie Gaylor with the Freedom from Religion Foundation described the move as not only unconstitutional but an affront to true religious freedom.[13] I worry about the message such bill is sending to our Muslim, Jewish, Buddhist, Hindu, other faith traditions, and atheist kids.

Another issue at the state level that I believe is an infringement of the rights of Muslims, Arabs, and South Asians is the driver's license test. Tennessee is home to people of many different cultures and languages. Despite this fact, the Tennessee driver's license test can only be taken in four languages (English, Spanish, Korean, and Japanese). A resolution to add Arabic as a language was defeated. Adding Arabic as a language will not benefit only Muslims but other Arabic speakers. Nashville is home to a large Coptic Christian population. Not being able to have access to those tests in their languages makes it difficult for some members of our community to be able to drive and have access to other resources.

Finally, there are other pieces of legislation by our state legislators that are directed at minorities in general that also impact the Muslim, Arab, and South Asian community. They address laws on voting rights, women's rights, the right to protest, and many other important subjects. The last redistricting plan by the state that splits Nashville into three Congressional districts is another example.[14] For over 200 years, the people of Nashville-Davidson County have had one representative in Washington. This is helpful for the many minorities in Nashville. Splitting the community and having representatives outside of the city will limit access and weaken the voices of minorities

On the local front, Nashville is very diverse. Our current council is 50% women and 25% Blacks. We have our first Muslim elected official, our first Latina member, and five LGBTQ members. The mayor's office has an Office of New Americans and the people of Nashville voted to defeat an "English only" referendum in 2009. I believe the work done by AMAC, the Muslim community, and our allies over the years is the reason I was elected, and for that I am humbled and grateful. Despite all of these, recent votes on license plate readers, a 2017 report on "Driving While Black," and the Christmas Day bombing shows there is still work to be done.

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[12] https://abcnews.go.com/US/wireStory/tennessee-man-admits-hate-crime-attack-muslim-girls-77756602

[13] https://www.tennessean.com/story/opinion/2021/04/15/why-making-bible-tennessees-official-book-bad-idea/7243763002/

[14] https://www.tennessean.com/story/news/2022/01/12/republican-redistricting-plan-would-split-nashville-into-3-districts/9120745002/

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On December 25, 2020, a bomb was detonated in downtown Nashville. It was something that really shook our city and impacted a lot of people. It was also a day that showcased the heroism of six of our police officers. Thanks to their bravery and their quick thinking, lives were saved. The only death that occurred during this attack was the perpetrator himself. However, there was a story that came out of this attack that was a bit perplexing and mirrored the double standards at the national level in how crimes are dealt with based on the perpetrator. A year before the attack, the perpetrator's girlfriend had reported to the police that "he was building bombs in the RV trailer at his residence." [15]

The police went to his house and to the trailer in the back of his house where the bomb was planted. However, because the perpetrator was not home when the police knocked on his door, the officers did not go inside. While I can understand not going inside the first time because they did not have proper warrants, what makes it worse is that no law enforcement (MNPD, TBI, or FBI) came back to check on this man, despite a close witness stating he was involved in this nefarious activity. Had this man not been a white man - if he had been a Muslim, Arab or South Asian person - they would have found a reason to kick down that door and search inside his house, his mosque, his job, his family, etc. I wish they had at least searched the house and the RV, because the loss and destruction that occurred on Christmas Day 2020 would not have happened.

Muslim, Arabs, and South Asian Americans have contributed to this country. We are Americans, too, and we pay taxes. I am originally from Nigeria and came to this country with my family about 30 years ago. My husband was invited to the U.S. by the National Institutes of Health to replicate the research that he did in Africa on maternal immunizations. Three of my five children were born in the US and the oldest two were three years old and one year old when we came. My children have only been to Nigeria once. That is because America is their country and their home. This is our home, my home. I am vested in it and have invested in the well-being of my fellow citizens. I have and will continue to do whatever I can to support every citizen of this country in every place that I find myself. However, my heart breaks every time that there is a discriminatory bill or action by those in authority. I wonder what message it is sending to me, my family, and my community.

American Muslims, Arabs, South Asians, and other minorities are not asking for preferential treatment. We are only asking for the same access, the same protection according to law, and the same rights, as written in the U.S. Constitution, that are afforded to others. I fervently hope that the outcome of this hearing will be just that.

Thank you,

Zulfat Suara

Honorable Zulfat Suara
Councilmember-At-Large, Metropolitan Government of Nashville and Davidson County
Past Chair, American Muslim Advisory Council (AMAC)

[15] https://www.npr.org/2020/12/30/951352737/nashville-bombers-girlfriend-warned-police-about-him-in-2019

Ms. ROSS. Thank you very much, Council Member Suara, and thank you for your service to your community.

Our next Witness is Asra Nomani. She is the Vice President for strategy and investigations for Parents Defending Education. She is a former *Wall Street Journal* correspondent and has written for *The Washington Post, New York Times, Slate Magazine*, and *Time Magazine* about Islam. She has spoken about women's rights in Islam on CNN, PBS, NPR, and the BBC. She has been an advocate for moderation in Islam. She previously was a professor in the practice of journalism at Georgetown University.

Ms. Nomani, you are recognized for five minutes.

STATEMENT OF ASRA NOMANI

Ms. NOMANI. Thank you so much. Thank you to all the distinguished lawmakers that are here today.

Just across the Potomac River, on Sunday, I stood with a group of parents on a back deck, and we were celebrating our triumph against racism, against systemic racism. It wasn't against a White supremacist organization that we had won. We had defeated racism by the 12 school board members in Fairfax County Public Schools—all endorsed, alas, by the Democratic Party.

My testimony is a warning cry about a new racism that is occurring in the United States today. It is targeting South Asians, Muslims, and Arabs, along with many other people. So, many people are now being impacted by divisive ideology that is in our schools also. It replaces the old hierarchy of human value with a new hierarchy of human value. Neither is acceptable. Federal authorities, State and local authorities, are subjecting us to surveillance, harassment, and criminal prosecution, when we, as parents, stand up to this new racism.

Born in India and raised in West Virginia, I moved to Northern Virginia in 2008 because I thought that the State had now voted for President Obama and it was now progressive enough for a minority like myself. I moved there as a single mother with my son just five years old. In Virginia he grew up. In 2017, my son learned that he had gained admission to Thomas Jefferson High School for Science and Technology. It was the realization of the American dream for us.

Then, on June 7, 2020, we received an email from the White principal at the school, and she told us—the mostly Asian, mostly immigrant parents and students at the school—that we needed to check our privileges. She told us that we had to change admission to Thomas Jefferson High School because she wanted a different type of minority. Of course, we want all students to succeed. Of course. All of a sudden, our parents were on the wrong side of Brown.

Let me share with you some of the names from our student directory. They are names of the types of people that this hearing is concerned about, last names like Singh, Patel, Abdul, Malik, and then, my name, Nomani. What are our privileges?

Soverna Detta, a mother, came here with dollars in her pocket to study in Tennessee. Yu Yan Ju, she stood in Tiananmen Square for human rights, and then, when she read this email from the principal, just had traumatic flashbacks to that moment when she

was a child and her teacher made her stand up and take off the red scarf that she had received as a symbol of her privilege in the Communist Party.

School board members, activists, policymakers started calling us slurs like "White-adjacent," "resource hoarders," toxic, racist. I had never before in my decades of my life in the United States experienced so much aggression and hostility against us.

In one text, a school board member said, "We know that this policy is anti-Asian, LOL"—laughing outloud. We all know in this hearing that racism is not a laughing matter.

Guess what? Our brave parents came together, and we created an organization called Coalition for TJ. We went to court with the lawyers of Pacific Legal Foundation, who fight for civil rights. Guess what? Just this Friday, Friday afternoon, we got an email. We won. We won in protecting our families from the racism that is now being perpetuated in our school system. This is a significant victory. This is huge. This is what is a national security issue today, as we compete against China.

How did this happen? How did we go from this ideology of critical race theory that says that we must look at all society through the lens of race, and then become this, "How To Be An Anti-Racist," in which this ideologue says that we can only—we can only; can you imagine this? Correct past discrimination by present discrimination? What kind of a country is this? That is not the kind of country that my father came to: Critical race theory in education. That is why we have this at TJ. Then they are reaching for our little babies. Woke baby, anti-racist baby, what are these concepts? These are concepts for racism.

Ms. ROSS. Ms. Nomani, your time has expired.

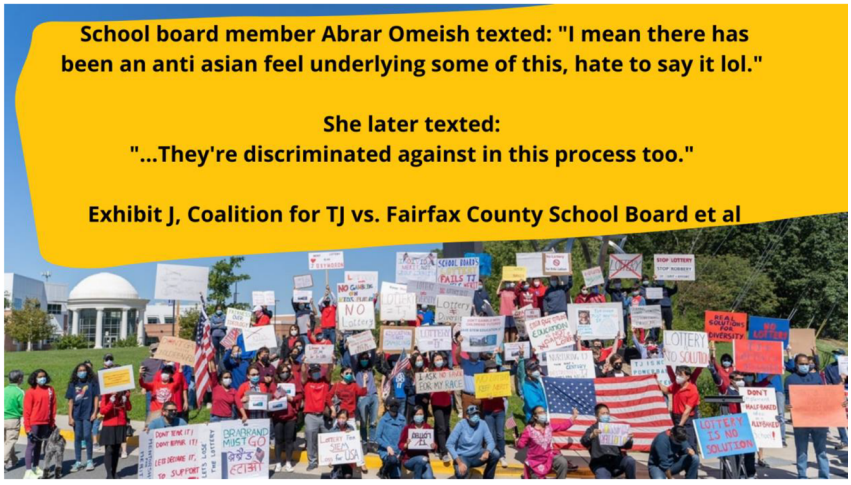
Ms. NOMANI. Thank you. We, the families, we are parents, momma bears and papa bears, we do not want to be called domestic terrorists when we are protecting our baby cubs. We must all stand together for our country.

Thank you so much. Thank you.

[The statement of Ms. Nomani follows:]

Testimony
Asra Q. Nomani
Parents Defending Education | Vice President of Investigations and Strategy
Coalition for TJ | Cofounder
[redacted]

House Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Civil Liberties
"Discrimination and the Civil Rights of the Muslim, Arab,
and South Asian American Communities"
Tuesday, March 1, 2022



Biography – A former reporter for the Wall Street Journal born in India and raised in West Virginia, Asra Q. Nomani is the vice president for strategy and investigations at Parents Defending Education, a national nonprofit. She is also cofounder of Coalition for TJ, a grassroots group of parents and community members in northern Virginia, codirector of the Pearl Project, advocating for justice for her colleague and friend Daniel Pearl, and cofounder of the Muslim Reform Movement, advocating for peace, tolerance and women's rights. She is a former professor in the practice of journalism at Georgetown University. A single mother, she is an outspoken advocate for children and education.

The New Racism: 'anti asian … lol'

WASHINGTON, D.C. – Just across the Potomac River this past Sunday, a group of parents gathered on a back deck in northern Virginia to celebrate our victory against systemic racism. We were South Asian and Chinese. Muslim and Hindu. Mothers and

fathers. We represent families who are Asian, black, Hispanic and multiracial – from over 30 countries around the world.

But we did not face off against a white supremacist organization.

The perpetrators in this drama are none other than the very school officials we have entrusted with our children's education and well-being. (Appendix 1)

My testimony is a clarion call about a new racism that is being perpetuated in America – by illiberal activists and ideologues in the name of "progressivism" – against South Asians, Muslims and Arabs – the subject of this hearing – but also so many, many others including East Asians, Hindus and others – *all* of whom we must care about as defenders of justice – and all of whom should really be included in this hearing. It confounds me why Asians east of South Asia are being excluded from this hearing. Why Muslims are particularly identified in this title, as are Arabs, but Hindus and the many other religions and ethnicities of the region are not. This sectarianism raises many questions.

For us, as parents something transcendent connects us: our value in education.

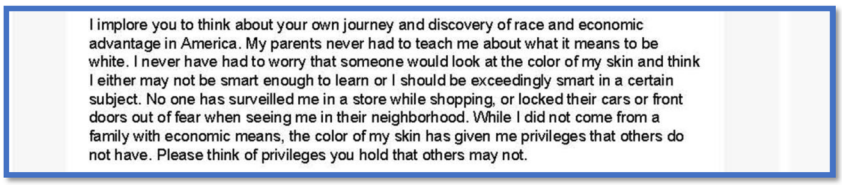
Our children have attended Thomas Jefferson High School for Science and Technology in Fairfax County, Virginia. U.S. News and World Report has designated it the No. 1 high school in America. State and local officials created it in 1985 as a magnet for some of the brightest young minds in northern Virginia in the areas of science, technology, engineering and mathematics – or STEM. TJ, as it is affectionately known, was largely white at the beginning because of the demographics of the time. But as more Asians, Arabs and other immigrants moved to the area, in part for technology work, the demographics switched and the school's population is now 70% Asian, 10% Black, Hispanic and multiracial, and 20% white.

In the winter of 2008, I arrived in northern Virginia as a single mother with my son, then five years old. Virginia had just voted for President Obama and I thought the state was finally progressive enough for a minority like me. In the summer of 1969, I had immigrated to the United States at the age of four as a Muslim girl, my father earning his Ph.D. at Rutgers University. We went through lean times as my parents worked tirelessly at low-paying jobs so that my dad could complete his studies. I attended a fully integrated Martin Luther King Elementary School in Piscataway, N.J., and ate free breakfast for low-income children. I learned English reading *Nancy Drew*. I learned along the way that America was a generous nation, welcoming of strangers like us who appreciated and embraced its values of generosity, hard work and plurality. I worked at the *Wall Street Journal* for 15 years before writing books and teaching journalism.

In 2017, we learned that my son, who had a gift for math and science and honed those gifts with study and discipline, had been accepted for admission to TJ. Walking through the halls of TJ was the realization of the American Dream for not just our family but so many families.

But on Sunday, June 7, 2020, after the tragic murder of George Floyd, we received a shocking email from the principal of our school, Ann Bonitatibus. (Appendix 2)

A white woman, she told our mostly Asian, mostly immigrant families we had to check our "privileges." She told us we had to reconsider our mascot, the Colonials. And most dramatically of all, she said we needed to change admissions to the school so it would reflect the racial composition of the students of Fairfax County to increase a "diversity" that did *not* include us.



I implore you to think about your own journey and discovery of race and economic advantage in America. My parents never had to teach me about what it means to be white. I never have had to worry that someone would look at the color of my skin and think I either may not be smart enough to learn or I should be exceedingly smart in a certain subject. No one has surveilled me in a store while shopping, or locked their cars or front doors out of fear when seeing me in their neighborhood. While I did not come from a family with economic means, the color of my skin has given me privileges that others do not have. Please think of privileges you hold that others may not.

Allow me to share with you our 2020 school directory.

Let me read you some of the names: Kaur – like our witness Amrith Kaur Aakre at the Sikh Coalition.

Chen. Patel. Singh. Jagannathan. Siddiqui. Jain. Verma. Ali. Ahmed. Kim. Lee.

Families whose rights you are trying to protect with this hearing.

What are our "privileges"?

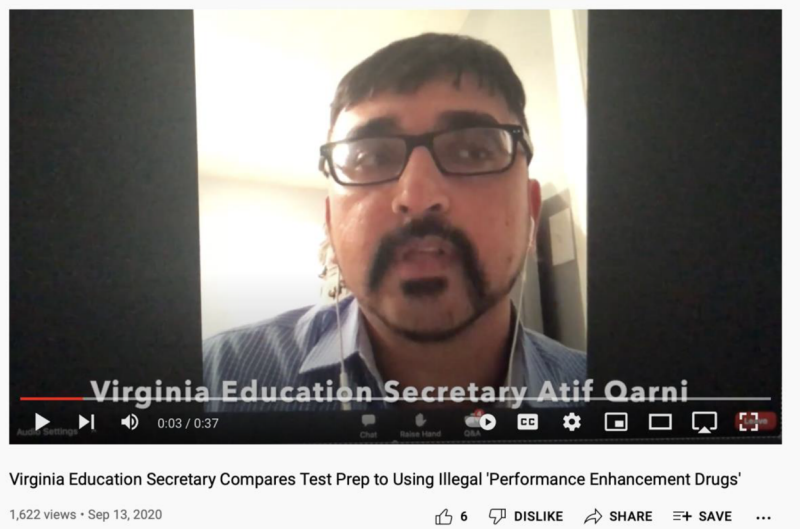
TJ mother Suparna Dutta arrived with dollars in her pocket to get an education in Knoxville, Tennessee. Yuyan Zhou stood in Tiananmen Square to fight communist oppression before arriving in the U.S. When she was a child growing up in China during the Cultural Revolution, her teacher had her stand up in class because her parents had fallen out of favor with local authorities. She was forced to remove a red scarf that was a symbol of her young status in the Communist Party.

Our families and students were on the wrong side of brown for the new so-called "social justice warriors" and "equity warriors."

School board officials, state politicians and local activists all aligned with the Democratic Party launched a campaign to change admissions to TJ with one clear racial goal: to increase the number of black and Hispanic students at any cost – even institutionalized racism against Asians.

The insults from these so-called progressives came in heaps. We were called "white adjacent." We were disparaged as "resource hoarders" because our kids took up too many

slots. One local member of the Virginia PTA board and NAACP later said, “Let them die!” about parents like us. She had to resign her Virginia PTA post.



Atif Qarni, the Virginia education secretary under Gov. Ralph Northam, told our Asian American parents in complete seriousness that test preparation is equivalent to illegal “performance enhancement drugs” by athletes. In other words, we and our kids were corrupt.

Oh, and there was our school board — most of them white, all of them endorsed by the Fairfax Democratic Party. For resisting their campaign to destroy this gem of meritocracy, we were branded as “toxic,” “racist” and even “white supremacist.”

The white Superintendent Scott Brabrand revealed his virulent anti-Asian bias when he laid out race-based goals that purged the school of Asian kids. He told our mostly Asian families that our students were benefiting from alleged “pay-to-play” schemes for which he never gave any evidence.

Meanwhile, Asians were being targeted with brutal violence from New York City to San Francisco.



Retired FCPS Teacher Singles Out Students from India and Calls Parents "Ravenous"

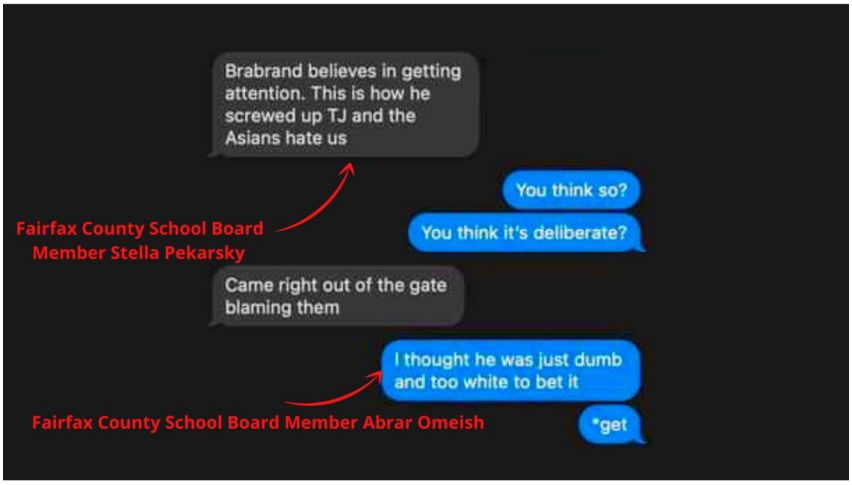
We heard the hurtful testimony from one retired teacher, who is white, promoted by Virginia Democratic lawmaker Scott Surovell, who is also white, telling us that our Indian parents are "ravenous" about academics.

The board members betrayed the liberal principles that my family has embraced our entire lives. Our children were now the inconvenient minority to the narrative of "systemic racism" with which ideologues were trying to define all of America.

Despite our protests, in December 2020, the board scrapped TJ's race-blind, merit-based admissions process and put in place a new race-based process whose goal was clearly aimed at drastically reducing the number of Asian students in attendance.

A board member, Stella Pekarsky, said in a text message: "the Asians hate us."

That's what we had become to them. "The Asians."



Parents with names like Himanshu Verma, Harry Jackson and Julia Ying McCaskill warned board officials they would go down in history for perpetuating the same kind of systemic discrimination condemned in Brown v. Board of Education.

It was also clear the perverse message these illiberal powers were sending: hard work, study, parental involvement, discipline are actually racist, evil and even symbols of white supremacy.

We know that is not true. They are bedrocks of well-functioning schools, well-functioning societies and well-functioning children.

We, the parents, organized a grassroots group called Coalition for TJ and we filed a federal lawsuit with the legal team at Pacific Legal Foundation. In federal court, we alleged the new admissions process is a violation of the 14th Amendment, which guarantees equal protection under the law.

Last Friday afternoon, the verdict arrived.

"WE WON!" the email read from our lawyer, Erin Wilcox, the daughter of a teacher.

Federal district Judge Claude Hilton ruled that the school board, the admissions director, the principal and the superintendent had installed a "system" that is racist and discriminatory against Asians.

He said "the Board defaulted to a system that treats applicants unequally in hopes of engineering a particular racial outcome."

He said: "The Board instituted a system that does not treat all applicants to TJ equally."

What is that? That is systemic racism.

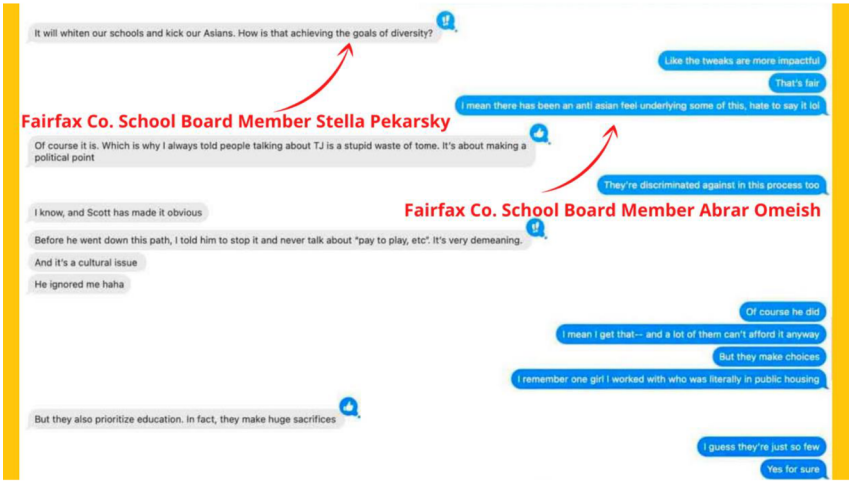
He said this was "racially balancing" and that it is "unconstitutional" and "illegal."

What is even more disturbing?

The board knew it was being racist.

In the fall of 2020, board member Stella Pekarsky said in a text that the new admissions process would "kick ou[t] Asians."

School board member Abrar Omeish responded the new process was "anti asian…hate to say it lol."



LOL. Laugh out loud.

She continued: "They're discriminated against in this process too."

Well, anti-Asian discrimination is no joke. Racism is no laughing matter.

At Parents Defending Education, which I helped start inspired by my lived experience at my son's school, we have documented a pattern of discrimination and racism repeating itself

around the country with a targeted hit on Asian students in higher education and K-12 schools.

Next session, the Supreme Court will hear a case of anti-Asian discrimination by Harvard University and the University of North Carolina at Chapel Hill. Parents in New York City's Stuyvesant High School and the city's advanced academic programs constantly fight anti-Asian campaigns to remove merit-based admissions.

In 2020, the Boston school board installed zip code quotas in to target Asian students at the Boston Latin School. In 2021, the San Francisco school board replaced merit-based admissions to Lowell High School with a lottery, reducing the number of Asian admissions and inspiring the recent recall of three Democratic school board members with a resounding majority of almost 80% of voters.

One of those school board members, Alison Collins, once disparaged Asians as "house n****r" and "the help."



Now she is trying to needle me on Twitter for my advocacy work.

According to FBI data, anti-Asian hate crimes rose 73% between 2019 and 2020. New York City saw a 361% increase. It's said COVID contributed to this spike. But we have something even more diabolical happening.

In the name of "equity," a national network of illiberal activists and ideologues stoke bias against Asians, an inconvenient minority to be white-washed and shamed. In late 2020, North Thurston Public Schools in Washington state, Asian students were not recognized as "students of color" and lumped in with white students.



This is something you must understand. We are unapologetic in our defense of our children — and all children. We are hard-working enterprising contributors to America who understand education is the great equalizer. Our Coalition for TJ families overcame cultural fears of retaliation to speak out. Nobody gets in between a parent and a child's education.

We are mama bears and papa bears in today's parents' movement.

We oppose the new movement called "equity" that has become a Trojan horse for racism. One of the architects of antiracism, Ibram X Kendi, wrote in his book, *How to Be an Antiracist*, "The only remedy to past discrimination is present discrimination."

That is unacceptable. That is illegal. That is unconstitutional.

We cannot replace the old hierarchy of human value with a new hierarchy of human value. We cannot woke-wash racism and bigotry.

The United States Constitution — and common sense — tell us that a just society requires equality of opportunity, regardless of race, ethnicity, gender or social status.

"Equity" is a divisive, illiberal system fundamentally at odds with this ideal, because it preaches that there is a quota of opportunities for every group; children are now shamed and judged for their skin color, not their hard work or the content of their character.

Unfortunately, that is exactly what is happening with the new philosophies that have become ingrained in our school systems. You can assign one of many names to this

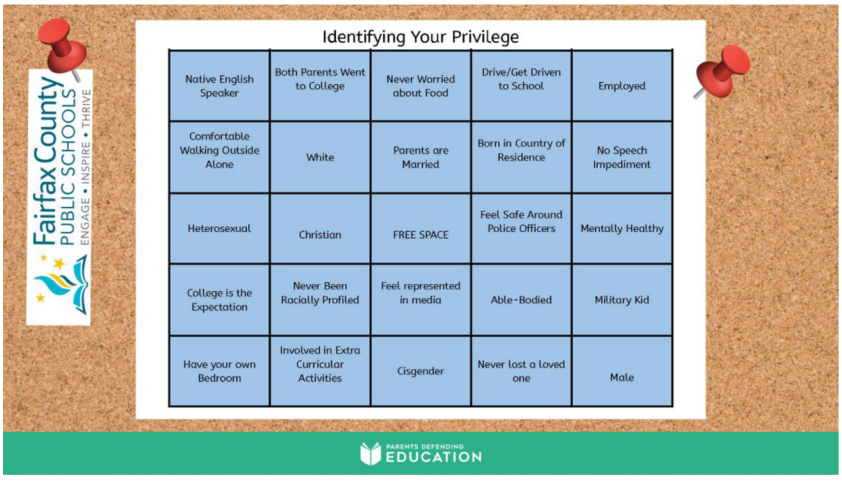
phenomenon. Critical race theory. Culturally responsive pedagogy. Antiracism. Diversity, equity and inclusion. Magical unicorn theory.

By any name, it is racism.



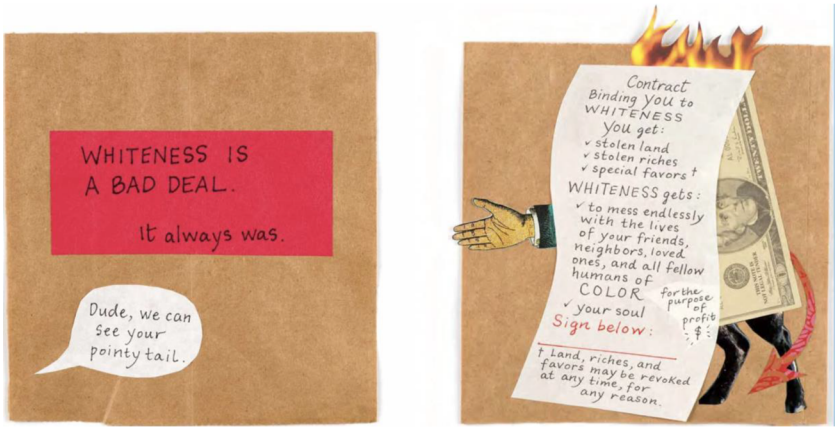
OPPRESSION MATRIX

TYPE OF OPPRESSION	PRIVILEGED SOCIAL GROUP	BORDER SOCIAL GROUPS	OPPRESSED SOCIAL GROUPS	SOCIAL IDENTITY CATEGORY
RACISM	White People	Biracial People	Asian, Black, Latina/o, Native People	Race
SEXISM	Male assigned at birth	Intersex People	Female assigned at birth	Sex
TRANSGENDER OPPRESSION	Gender conforming CIS- men and women	Gender ambiguous CIS- men and women	Transgender, Genderqueer, Intersex People	Gender
HETEROSEXISM	Heterosexuals	Bisexuals	Lesbians, Gay men	Sexual Orientation
CLASSISM	Rich, Upper Class People	Middle Class People	Working Class, Poor People	Class
ABLEISM	Able-bodied People	People with Temporary Disabilities	Disabled People	Ability/Disability
RELIGIOUS OPPRESSION	Protestants	Roman Catholic (historically)	Jews, Muslims, Hindus, Sikhs	Religion
AGEISM/ADULTISM	Adults	Young Adults	Elders, Young People	Age



It is a bigotry not only against Asians but anyone who is out of favor in the "Oppression Matrix." Or "Privilege Bingo," as children must now play in schools, shaming even the "Military Kid." It teaches a culture of victimhood to the groups that this hearing is addressing – Arabs, Muslims and South Asians – placing us in a perpetual state of being "oppressed."

I have here this book, *Not My Idea*, read to kindergarteners, that states, "Whiteness is a bad idea." The book compares "whiteness" to a contract with the devil. You can see here the pointy tail of the devil.



We are up against a machine that is promoting systemic racism.

Some of our country's biggest civil rights organizations, like the NAACP Legal Defense Fund, are participating in this discrimination, saying they were "appalled" at the judge's decision making anti-Asian discrimination illegal. They virtue signal with hashtags like #StopAsianHate but they turn a blind eye to the very real practices of anti-Asian discrimination that is making our children in schools the target of systemic racism.

Ours is a community everyone should take seriously.

When the all-Democrat school board ignored and belittled Suparna Dutta, she became a leader in a parents' coalition for Glenn Youngkin, supporting the Republican nominee for the Virginia governor's race. She helped get him elected.

If illiberal progressives continue to ignore the legal and moral ramifications of what their harmful, racist policies are doing to school children – then they should look at the political optics of their actions. In San Francisco, in Fairfax County and Loudoun County, Virginia,

and in dozens of states in between, parents – many of them Asian, Muslim and Arab – are forging a movement against the new, race-based hierarchy of human value.

Yesterday, an Egyptian Coptic Christian father wrote to me from Michigan, distressed about a sectarianism he thought he had left behind in Egypt now taught in his daughter's elementary school, as white children are shamed for their "whiteness." Last night, another father from India in Montgomery County, Maryland, wrote to us at Parents Defending Education, saying his daughter is being sexually harassed by boys but the school is turning a blind eye, as school officials play identity politics.

"Montgomery County Public Schools bureaucrats have been criminally contemptuous of our daughter's pain and our parental angst," he wrote, "and have gladly thrown our sweet little Indian girl under the bus, even though her outstanding teachers, across all races, were always supportive or our efforts."

We are Democrat, Republican and independent. We are the party of parents. For expressing our voices, as you know, the National School Board Association accused parents in fall 2021 of "domestic terrorism" and, in an unprecedented move, U.S. Attorney General Merrick Garland dispatched the FBI against parents.

Former New York City mayor and Democratic presidential candidate Michael Bloomberg recently warned that Democrats are "headed for a wipeout" in the midterm elections this November if the party does not take an "immediate course correction" that prioritizes quality education over "political correctness" and fighting "culture wars." Democrat James Carville said "wokeism" led to the defeat of Democratic candidate Terry McAuliffe in the Virginia governor's race. After the San Francisco recall, Democratic advisor David Axelrod said that the Democratic party has to listen to parents.

Before you dismiss them as white men trying to protect the status quo, know that a movement of parents – including Asian, immigrant, Black and Hispanic parents – feel the same way.

New discrimination as an answer to old discrimination is wrong for our children and wrong for our country. Politicians and education officials should heed these warnings and advance polices that remove politics, political correctness, and racist lessons from classrooms.



On Sunday, when our mama bears and papa bears gathered on Suparna's back deck to celebrate, the judge's decision ending systemic racism against Asian kids, I pulled out from my bag a silk scarf I had been saving for our mom Yuyan Zhou ever since she shared with me her childhood story of her red scarf removed.

We thanked her for everything that she has done for not only our country's Asian American children but *all* children, because in equality, all of society progresses, and I tied the scarf over her shoulders, tears of joy falling from Yuyan's eyes.

I thank the committee for the opportunity to be heard today and I welcome your questions.

Appendix 1

In March 2021, a coalition of parents, students, alumni, and community members filed a lawsuit, Coalition for TJ v. Fairfax County School Board, challenging admissions changes at Thomas Jefferson High School for Science and Technology (TJ). Pacific Legal Foundation represents the Coalition for TJ in the case, filed in the United States District Court for the Eastern District of Virginia, Alexandria Division.

Link to the decision: http://pacificlegal.org
http://coalitionforTJ.net

In a 31-page ruling released on Friday, Feb. 25, 2022, federal Judge Claude Hilton ruled that Fairfax County school officials violated the law by changing admissions requirements at the nation's top public school to deliberately reduce the number of Asian-American students enrolled. Judge Hilton granted the Coalition's motion for summary judgment, giving them a win in the case.

Until last year, admission to TJ was race-blind and merit-based; requirements included a standardized test, grade-point average, completion of certain math classes, and teacher recommendations. Last year, the Fairfax County Public Schools' board and superintendent adopted an admissions policy aimed at balancing the racial groups at TJ by eliminating the admissions test, guaranteeing seats for 1.5 percent of each middle school's eighth grade class, and awarding bonus points for various factors such as attendance at a middle school previously underrepresented at TJ. The intended result: dramatically reducing the number of Asian-American students admitted to TJ.

Some of the important findings:

- Hilton wrote that "emails and text messages between Board members and high-ranking FCPS officials leave no material dispute that, at least in part, the purpose of the Board's admissions overhaul was to change the racial makeup to TJ to the detriment of Asian-Americans."
- "The proper remedy for a legal provision enacted with discriminatory intent is invalidation," Hilton wrote and issued this scathing order: "Defendant Fairfax County School Board is enjoined from further use or enforcement of" its revised admissions system.
- Hilton agreed with the Coalition for TJ on almost every count. He wrote that throughout the revision process, Fairfax school board members and the superintendent made clear that their goal was "to have TJ reflect the demographics of the surrounding area, described primarily in racial terms." Hilton wrote that this aim amounts to "racial balancing for its own sake," and as such is "patently unconstitutional."
- "The discussion of TJ admissions was infected with talk of racial balancing from its inception," Hilton wrote.
- Hilton said that Fairfax County's use of racial data and attempt to consider the racial composition of TJ's student body demonstrates "discriminatory intent."

- "Discriminatory intent does not require racial animus," he wrote. "What matters it that the Board acted at least in part because of, not merely in spite of, the policy's adverse effects upon an identifiable group….The Board's policy was designed to increase Black and Hispanic enrollment, which would, by necessity, decrease the representation of Asian-Americans at TJ."
- He said Asian American students have been "disproportionately deprived of a level playing field."
- "Throughout this process, Board members and high-level FCPS officials expressed their desire to remake TJ admissions because they were dissatisfied with the racial composition of the school," Hilton wrote.
- In his ruling, Judge Hilton stated, "The Board's main problem is its focus on the goal to have TJ reflect the demographics of the surrounding area, described primarily in racial terms. Far from a compelling interest, racial balancing for its own sake is 'patently unconstitutional'...The Board cannot transform racial balancing into a compelling interest "simply by relabeling it 'racial diversity.'"

Appendix 2

Message from the Principal

Fairfax County Public Schools sent this bulletin at 06/07/2020 08:44 PM EDT

Having trouble viewing this email? View it as a Web page.

Thomas Jefferson HS
for Science and Technology

Dear TJHSST Students and Families:

While the world has been quietly hibernating in quarantine the past few months, we recognize the personal isolation, health fears, and academic challenges you have endured. Our homes have been familiar yet bustling enterprises of work and school as we awaited our world to return to normal.

However, disturbing and painful actions in our country have jarred us from our COVID-19 slumber. We are awakened to see that our country's normal continues to be laced with racism that has plagued our nation since its founding. The recent events in our nation with black citizens facing death and continued injustices remind us that we each have a responsibility to our community to speak up and take actions that counter racism and discrimination in our society.

I implore you to think about your own journey and discovery of race and economic advantage in America. My parents never had to teach me about what it means to be white. I never have had to worry that someone would look at the color of my skin and think I either may not be smart enough to learn or I should be exceedingly smart in a certain subject. No one has surveilled me in a store while shopping, or locked their cars or front doors out of fear when seeing me in their neighborhood. While I did not come from a family with economic means, the color of my skin has given me privileges that others do not have. Please think of privileges you hold that others may not.

As we engage in self-reflection, children and adults can experience a range of emotions including hurt, anger, confusion, discomfort, defensiveness, hopelessness, humility, resolve and advocacy. These feelings are normal.

Our teachers, too, are processing everything while continuing to create classrooms that are safe and welcoming spaces. We encourage students to connect with teachers, counselors and administrators, particularly if they are struggling with how to cope with their range of emotions and ideas. Also, FCPS has several resources on countering racism and stigma you may find here on the district website.

Thank you for taking time to personally reflect. Give yourself the gift of feeling vulnerable as you process emotions individually and collectively. Reach out to trusted professionals and access resources that will help you.

During this reflection period, I would like to simultaneously call the TJ community to action in three areas.

First, our school is a rich tapestry of heritages; however, we do not reflect the racial composition in FCPS. Our 32 black students and 47 Hispanic students fill three classrooms. If our demographics actually represented FCPS, we would enroll 180 black and 460 Hispanic students, filling nearly 22 classrooms. The most recent TJ admissions trend, unfortunately, does not close the equity gap. Do all FCPS children who have high interest and aptitude for STEM enjoy the same privileges that put them on a path to TJ? Do the TJ admissions outcomes affirm that we believe TJ is accessible to all talented STEM-focused students regardless of race or personal circumstance?

Second, consider colonialism's role in our country's history where certain classes exerted power over others as a means to economically exploit, oppress and enslave them. During the Colonial period, there were leaders who believed those with black or brown skin were uncivilized and not capable of being educated. I speak for us all when I assert this is not a value we share as a TJ community. Yet, our mascot is a Colonial. Can our community support dismantling a symbol that perpetuated racism in our country?

Finally, the heart of public education is in the classroom. This is where students learn to become ethical and global citizens as espoused in the FCPS Portrait of a Graduate. Our students learn to understand and accept, not merely tolerate, diverse cultures and perspectives. Curriculum will need to be adapted to better equip our TJ students. As expressed by TJ alumni who have written to me, "STEM alone is not enough." Can our community support the new conversations, lessons and activities that will need to be infused across our entire TJ program of study in all content areas?

I acknowledge some of the questions I am asking may not equally resonate with everyone as we examine our school's place within FCPS and the world. I also know that my words may not always be eloquent, my ideas may miss the mark, and I will make mistakes. I also know that I have enjoyed growing with you these past three years and have immense trust and faith in our community to pull together and do what is right, particularly for those in our community experiencing the most pain right now.

By evaluating the racial equity at our school, dismantling a long-held symbol of racism, and embracing curricula to better prepare TJ graduates for a truly diverse and culturally responsive world, you will play a role in how TJHSST continues to lead the nation as a public school that prepares students for the shared interests of humanity. Thank you for joining in this important work.

Sincerely,

Ann N. Bonitatibus, Ed.D.

TJHSST Principal

6560 Braddock Rd, Alexandria, VA 22312 | Main Office: 703.750.8300
Attendance: 703.750.8315 | Web | Twitter

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Ms. ROSS. Yes, thank you for your testimony.

The Witnesses will be reminded that they need to keep to five minutes because we have so many Witnesses and we want to get all of you in. So, thank you so much for that.

We will now move to Hammad Alam, a staff attorney and program manager for national security and civil rights at Asian Americans Advancing Justice, Asian Law Caucus.

Mr. Alam's work at the Asian Law Caucus focuses on protecting communities, and, in particular, Arab, Middle Eastern, Muslim, and South Asian communities, from government surveillance and policing in the name of national security and counterterrorism. His work also includes advocating for an end to surveillance and policing programs that disproportionately and unjustly target communities on the basis of their religion, ethnicity, and national origin.

Mr. Alam has a law degree from the University of California, Los Angeles, School of Law, and a master's in theological studies from Harvard Divinity School.

Mr. Alam, you are recognized for five minutes.

STATEMENT OF HAMMAD ALAM

Mr. ALAM. Thank you. Good morning, Chair Cohen, Ranking Member Johnson, Members of the Subcommittee. Thank you for convening this important hearing and inviting me to testify today.

For decades, the Federal government has unjustly and disproportionately subjected AMEMSA—Arab, Middle Eastern, Muslim, and South Asian—communities to persistent profiling, surveillance, and criminalization. These policies have created a climate of fear and distrust among the communities, and they have inflicted perhaps irreparable damage—compelling these communities to chill their free expression, the languages they speak, the practices of their religious faiths, and so much more.

Today, I share some examples of the destructive impacts of Federal government policy on AMEMSA communities to demonstrate how so-called counterterrorism policies and practices have unjustly marked community members as, quote, "extremists, terrorists, and national security threats," unquote, based on nothing more than their religion, ethnicity, race, or national origin.

I start with experiences from my own community of southern California, where I grew up. There, Muslim community members unknowingly welcomed an FBI informant posing as a new convert to Islam. The informant canvassed half a dozen mosques across southern California under the direction of FBI agents, but the agents instructed him that the goal was to gather as much information on Muslims, and only Muslims.

As part of the operation, the informant befriended several community members, at times making explosive references to violence, in an effort to elicit a similar response he did not receive. Rather, in an ironic turn of events, community leaders reported the informant to the FBI. Their complaints went unanswered, however, because the individual was an informant the FBI themselves had planted into the community.

Several years later, community members learned about the FBI's activities in their sacred places of worship. The impact was severe. Congregants became fearful of attending prayer or mosque events.

Many were afraid to make new friends or welcome newcomers. Some even questioned their existing friends and wondered if they, too, were informants. As Imam Yassir Fazaga, an Imam of one of the mosques targeted by the informant, has said, "Not only did the spying break the trust between the community and the FBI, but broke the trust within the community."

The impacts of the FBI surveillance in southern California can still be felt today. I am, however, proud to say that our community did not stay silent. We sued the FBI, and the case *FBI* v. *Fazaga* is now before the Supreme Court. The case is an example of the U.S. Government's disregard for the civil rights of Muslim communities.

It is worth noting that no terrorism-related convictions, let alone arrests, resulted from the FBI's operations in southern California. The facts seen in that case, however, are part of a broader pattern and history of government surveillance targeting AMEMSA communities for decades.

Around the same time the FBI informant was operating in southern California, the FBI was also gathering information on Bay Area Muslims under the ostensibly friendly guise of, "mosque outreach." Muslim communities granted the FBI access to their communities, believing the FBI when they said they were merely protecting communities at risk of hate crimes.

Instead of receiving protection, these communities fell victim to FBI monitoring. Their sermons, conversations in prayer halls, and other persons under protected speech were all recorded by the FBI, which marked the records they compiled as "positive intelligence."

Our communities should not be burdened with the stain of guilt by association. Being Arab, Middle Eastern, Muslim, or South Asian, among other markers, cannot be the primary indicator of potential criminality. This is unacceptable and unlawful.

Policymakers must understand that our communities have been treated as suspects simply for being who they are. While interpersonal acts of violence and increase in bias-based prejudice, xenophobia, and Islamophobia are important to consider, what is so often missed in these conversations is how the Federal government itself has contributed to and exacerbated the very biases that lead to the harms these communities face.

So, if we are, indeed, serious about civil rights, civil liberties, and our Constitution, we must examine more deeply the bias, suspicion, and distrust of AMEMSA communities that underlie the so-called national security and counterterrorism infrastructure, both here and abroad. A necessary part of that is also examining our government's role in contributing to the culture that justifies it.

For the communities subjected to such systematic and persistent surveillance and policing, the harms are long-lasting and perhaps irreversible. I know this because I have been, and remain, a part of the same communities that have been and are still vulnerable to the Federal government's surveillance operations, merely on the basis of our religious identities.

I prayed at the very mosques that were at the center of the FBI's surveillance in southern California. My family, my friends, my classmates, all of us have prayed at Imam Fazaga's mosque. We broke bread there. We worshiped there and celebrated moments of

joy and grief there. After learning that our trust and sacred spaces were violated, our communities, and perhaps our nation, may never truly be the same.

Thank you for giving me the opportunity to be here and to share these stories with you today. Thank you.

[The statement of Mr. Alam follows:]

Written Statement of Hammad A. Alam
Staff Attorney and Program Manager, National Security and Civil Rights, Asian-Americans Advancing Justice-Asian Law Caucus

Submitted to the U.S. House of Representatives Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Civil Liberties

For a Hearing on Discrimination and the Civil Rights of the Muslim, Arab, and South Asian American Communities

March 1, 2022

Thank you to the U.S. House Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties for holding this important hearing. I submit this written statement to highlight long-standing and continuing government policies and practices that have subjected Black, African, Arab, Middle Eastern, Muslim, and South Asian ("BAMEMSA") communities to unjust policing, surveillance, and criminalization under the guise of national security and counterterrorism. I urge the committee to examine these policies, evaluate the impacts of these policies on communities they have disproportionately targeted, and to consider the recommendations provided.

The sections which follow are excerpted from a memorandum co-published by Asian Americans Advancing Justice-Asian Law Caucus (ALC), American-Arab Anti-Discrimination Committee (ADC), Center for Constitutional Rights (CCR), Creating Law Enforcement Accountability & Responsibility (CLEAR), and Partnership for the Advancement of New Americans (PANA) in September 2021. The full memorandum is submitted into the record as a supplement to this written statement.

I. *Policing, Surveillance and Criminalization*

A. Joint Terrorism Task Forces

Joint Terrorism Task Forces (JTTFs) are collaborative and multi-agency law enforcement efforts between federal, state, and local law enforcement agencies led by the U.S. Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI). JTTFs are housed in FBI facilities and, together with state and local agencies, conduct investigations into terrorist threats. Today, there are about 200 task forces around the country, including at least one in each of the FBI's 56 field offices, with hundreds of networks of collaborations between JTTFs and state, local, and other federal agencies, including the U.S. Department of Homeland Security (DHS).[1]

[1] The DHS's Homeland Security Investigations (HSI), by its own account, "represents the largest federal contributor of personnel outside of the FBI to the JTTFs. HSI special agents and intelligence personnel are directly embedded within the FBI's Counterterrorism Division's operational and command elements." *See* U.S. Citizenship and Immigration Services, *Joint Terrorism Task Force: Supporting the Global Fight Against Terrorism, available at* https://www.ice.gov/partnerships-centers/jttf. HSI is the principal investigative arm of the U.S. Department of Homeland Security.

JTTFs, their structure, and their activities are shrouded in secrecy. For instance, there is no publicly available list of agencies that participate in JTTFs in many jurisdictions. What we do know is that JTTFs involve collaborations between federal law enforcement agencies like the FBI and local law enforcement, including local police departments and sheriff's offices, with the former providing training, resources, and coordination. Local law enforcement officers are in turn deputized as federal field agents tasked with carrying out investigations and operations. The rules, protocols and chain of command governing these deputizations are unclear.[2]

In 2008, then Attorney General Mukasey rewrote the guidelines that govern the conduct of FBI and JTTF agents, giving them unfettered authority to investigate anyone without any factual basis for suspected wrongdoing.[3] Under these guidelines, FBI and JTTF agents have the power to open what are called "assessments" on individuals, even without any factual indication of wrongdoing or threat to national security.[4] Through such assessments, agents may use intrusive investigative techniques, including confidential informants, interviews under false pretenses, and unlimited physical surveillance typically reserved for investigations supported by a factual criminal predicate.[5] These investigative authorities are often broader than those permitted under state and local law, policies, and regulations.

That such techniques can be diffused throughout the country through the FBI's JTTF collaborations with support from local law enforcement agencies indicates the all-encompassing and dragnet nature of policing, surveillance, and potential criminalization of communities traditionally targeted by counterterrorism investigations. These include Black activists and others engaged in anti-policing, civil rights, animal rights, environmental justice, and other protest and resistance movements, including those the FBI has previously marked as "Black Identity Extremists," as well as those among BAMEMSA communities. Given the DHS's involvement in JTTFs, immigrants from these and other communities are particularly vulnerable to profiling and surveillance without suspicion.

JTTFs inflict harm on local communities through racial profiling, harassment, suspicionless surveillance and investigations, and exploitation of immigration enforcement, all of which are authorized under federal guidelines loosened after September 11, 2001. The White House and leading federal agencies, including the DOJ, FBI, and DHS, must take the steps outlined below to begin addressing the harms inflicted by this abusive and harmful program.

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[2] *See, e.g.*, *Standard Memorandum of Understanding Between the Federal Bureau of Investigation and the San Francisco Police Department*, *available at* https://www.brennancenter.org/sites/default/files/analysis/SFPD%20MOU-JTTF.pdf; *Standard Memorandum of Understanding Between the Federal Bureau of Investigation and the City of Portland and the Portland Police Bureau*, *available at* https://www.brennancenter.org/sites/default/files/analysis/PORTLAND%20JTTF%20MOU%20Draft.pdf; *Standard Memorandum of Understanding Between the Federal Bureau of Investigation and the Oakland Police Department*, *available at* https://cao-94612.s3.amazonaws.com/documents/Sept.-5-Agenda-Packet.pdf.

[3] U.S. DEP'T OF JUSTICE, *The Attorney General's Guidelines for Domestic FBI Operations* (Oct. 2008), *available at* https://www.justice.gov/archive/opa/docs/guidelines.pdf.

[4] *Id.* at 17-18.

[5] *Id.* at 19-20.

Recommendations

- The DOJ should dismantle the JTTF, all of its field offices and collaborative networks, including with state and local agencies and those established internationally, and any future such iterations that may go by other names;
- The DOJ Office of the Inspector General (DOJ OIG) must examine and publish findings on what types of information the JTTF shares and has shared with other federal agencies, including DHS, DHS Fusion Centers, and other components of DHS, and how these agencies have used this information;
- The DOJ OIG must (1) examine and evaluate the data that the FBI has collected and holds on U.S. and non-U.S. persons and purge all records which did not lead to predicated investigation; (2) evaluate and publish findings regarding violations of state and local law resulting from JTTF collaborations; (3) evaluate and publish findings about how many "assessments" are opened based in whole or in part on First Amendment protected activity; (4) evaluate and publish findings about how many "assessments" JTTFs open into those it classifies as engaging in so-called Black Identity Extremism, Islamic extremism, domestic terrorism, and other such classifications; and (5) evaluate and publish findings regarding the disproportionate impacts of JTTFs on BAMEMSA, immigrant, and communities of color;
- The DOJ must publicly publish all Memorandums of Understanding (MOUs) establishing JTTF partnerships between the FBI and local, state, tribal, and other federal agencies, the names of each agency participating in the JTTF across the country, and the number of officers from each agency assigned to the JTTF in a full- or part-time capacity;
- The DOJ must release data regarding funding allocations to local and state agencies, including law enforcement agencies, participating in the JTTF;
- Establish a Congressional Commission or Congressional hearings led by impacted and targeted communities to evaluate and remedy the harms and impacts of the JTTF and its operations.

B. Countering Violent Extremism

Countering Violent Extremism (CVE) constitutes a series of government and private sector programs, policies, and frameworks designed to ostensibly identify individuals perceived to be susceptible to "radicalization" and "violent extremism." While CVE in the U.S. is rooted in programs and policies initially developed and implemented by the federal government, including DHS, DOJ, and FBI, CVE programs and frameworks are disseminated globally, with concerns of human rights violations echoed worldwide.[6] The term "CVE" itself has now transformed into a broader reference for domestic and international frameworks intended to address violent extremism and radicalization, now with multiple iterations that go by varied names.[7]

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[6] *See, e.g.*, The Transnational Institute, *The Globalisation of Countering Violent Extremism Policies: Undermining Human Rights, Instrumentalising Civil Society*, *available at* https://www.tni.org/en/publication/the-globalisation-of-countering-violent-extremism-policies.

[7] CVE's varied names and identifications pose a considerable impediment to grassroots and community mobilization and public recognition of these programs, which all fall under the general framework of CVE. *See, e.g.*, U.S. Dep't of Homeland Sec., *DHS Countering Violent Extremism Grant*, *available at* https://www.dhs.gov/cvegrants; U.S. Dep't of Homeland Sec., *DHS Targeted Violence and Terrorism*

CVE's theoretical foundations lie in the controversial and empirically questionable "radicalization theory."[8] Under the theory, CVE frameworks mark expressions of political dissent, cultural and religious saliency, and feelings of alienation as indicators of potential radicalization and violent extremism, thus casting everyday activities and expressions as indicators of "pre-terrorism" warranting potential arrest and prosecution. Some examples of activities and expressions that have served as indicators of extremism under CVE frameworks include wearing traditional religious attire; increased attendance of a house of worship or prayer group; travel abroad; increased political or social activism; and critique of U.S. domestic or foreign policy. While these indicators may appear neutrally applicable, given long-standing federal law enforcement targeting of Muslim, Black, and other communities traditionally perceived to be suspect, as well as empirical evidence that past CVE programs have almost exclusively targeted Muslim, Black, and LGBTQ groups, the indicators themselves reveal a racialized focus that leaves targeted communities vulnerable to surveillance and criminalization under CVE frameworks.[9] CVE thus reinforces the racialized fallacy that people from a particular religious, racial or ethnic group are more likely to commit acts of terrorism or violent extremism, while doing nothing to address the systemic barriers hampering their progress and wellbeing.

CVE frameworks claim to "empower local partners to prevent violent extremism,"[10] but in effect constitute little more than racial or religious profiling under the guise of "counterterrorism" policy. Often billed as "community-led" programs, they are, in fact, intelligence gathering operations resulting in the disproportionate if not exclusive targeting of Muslim, Black, and other communities historically regarded as suspect and criminal.[11] Unlike traditional surveillance employed by law enforcement, CVE disseminates surveillance models throughout targeted communities without the physical presence of agents. In the U.S., CVE has often taken the form of grant programs distributing federal funding to local organizations, including academic institutions and non-profit organizations, and partnering grant recipients with federal and local law enforcement agencies who in turn provide training to help identify "violent extremism" and collect information on the communities and individuals such grant recipients

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Prevention Grant Program (TVTP), *available at* https://www.dhs.gov/tvtpgrants ("The TVTP Grant program is an evolution of the FY16 CVE Grant Program."); Fed. Bureau of Investigation, *Preventing Violent Extremism in Schools*, *available at* https://rems.ed.gov/Docs/FBI_PreventingExtremismSchools.pdf (noting the "FBI's Countering Violent Extremism (CVE) program"); U.S. Dep't of Homeland Sec., *DHS Center for Prevention Programs and Partnerships (CP3)*, *available at* https://www.dhs.gov/CP3 (listing both the DHS TVTP grant program and the CVE grant program).

[8] *See Why Countering Violent Extremism Programs are Bad Policy*, Brennan Center for Justice, Sept. 9, 2019, *available at* https://www.brennancenter.org/our-work/research-reports/why-countering-violent-extremism-programs-are-bad-policy ("CVE programs are designed around the erroneous idea that there is a discernible process of radicalization that results in terrorist violence. The key assumption of radicalization theory is that individuals who adopt 'extremist' ideologies start down a conveyor belt that leads inexorably toward becoming a terrorist.").

[9] *See* Faiza Patel, *Countering Violent Extremism Programs in the Trump Era*, Brennan Center for Justice, June 15, 2018, *available at* https://www.brennancenter.org/our-work/analysis-opinion/countering-violent-extremism-programs-trump-era.

[10] *See* U.S. Dep't of Homeland Sec., *Empowering Local Partners to Prevent Violent Extremism in the United States* (Aug. 2011), *available at* https://www.dhs.gov/sites/default/files/publications/empowering_local_partners.pdf.

[11] *See* Michael Price, *Community Outreach or Intelligence Gathering?*, Brennan Center for Justice, Jan. 29, 2015, *available at* https://www.brennancenter.org/our-work/research-reports/community-outreach-or-intelligence-gathering.

serve. Some examples of grant recipients and their grant focus include non-profit organizations providing "terrorism-prevention" training to teachers who are then tasked with identifying violent extremism amongst primarily students of color; community-based organizations providing social services, including mental health services, to Arab and Muslim refugees who have fled conditions of violence; and academic institutions esstablishing programs to monitor and report online "extremist" content. Under the Obama administration, DHS awarded 31 grants totaling $10 million, all to Muslim-serving groups save one.[12] This disproportionate focus on Muslim communities, despite widespread community opposition, underscores the biased nature of counterterrorism policing which has almost exclusively targeted Muslim and Black communities.

CVE's law enforcement underpinnings have an undeniably chilling effect on the communities such programs target, as well as their exercise of civil rights and liberties. It also has the practical effect of both stigmatizing individuals from "suspect communities"--particularly Muslim and other communities--and unwittingly placing them into referral networks where they are in turn more likely to be the targets of unwarranted law enforcement interdiction. Finally, because of the so-called "community-led" approach to surveillance under CVE frameworks, CVE programs foment distrust not only between targeted communities and government institutions and actors, but also service providers, teachers, community leaders and others tasked with implementing CVE frameworks in their communities.

CVE has been shown to be ineffective, and no government agency to date has provided any evidence that CVE frameworks are successful at "preventing" or "countering" violent extremism.[13] Community groups have called for an end to such programs, however, not only because of their ineffectiveness, but because of the premises they fundamentally rely on.[14] Given CVE's flawed assumptions that certain communities may be especially susceptible to violent extremism and that any such violent extremism can be predicted and prevented through the identification of so-called indicators, opposition to CVE has called for an abandonment of CVE frameworks altogether, citing them as deeply stigmatizing and corrosive.[15] This is the case even with the alarming expansion of CVE frameworks to address what policymakers name as "domestic violent extremism," with community groups raising concerns that more funding and resources for law enforcement to engage in CVE programs risks inevitably intensifying the long-standing targeting of Muslim, Black and other communities by the counterterrorism law enforcement apparatus, while doing nothing to address systemic white supremacy, whether

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[12] *Supra* note 14.
[13] *Id.*
[14] For additional resources, background, and community demands regarding CVE frameworks and programs, *see* StopCVE Coalition, http://www.stopcve.com/; *see also* Muslim Justice League, *StopCVE Primer*, available at https://www.muslimjusticeleague.org/wp-content/uploads/2020/09/MJL-StopCVE-Primer-2020.pdf. The recommendations to end all CVE frameworks and programs, establish Congressional hearings and community forums, and reallocate all CVE funding have been drafted by the StopCVE Coalition through an iterative, grassroots process.
[15] *See* Lydia Wilson, *Gone to Waste: The 'CVE' Industry After 9/11*, Newlines Magazine, Sept. 10, 2021, *available at* https://newlinesmag.com/argument/understanding-the-lure-of-islamism-is-more-complex-than-the-experts-would-have-you-believe/ (arguing that CVE frameworks, methodologies, and programs are all part of a "flawed industry" that stigmatizes "entire communities as terrorist-producing").

across America's law enforcement agencies,[16] its institutions, or its social and economic structures.[17]

Recommendations

- End all CVE frameworks and programs, including DHS's Center for Prevention Programs and Partnerships (CP3), federal grant programs like the Targeted Violence and Terrorism Prevention (TVTP) Grant Programs, State Homeland Security Grant Program, Urban Areas Security Initiative, and all grants addressing "domestic violent extremism" (DVE);
- End all DHS, FBI, and DOJ programs based on the "radicalization theory" and the use of community-policing frameworks designed to counter or prevent so-called "radicalization";
- Establish Congressional hearings and community forums led by impacted communities on the harms of CVE, including reparations;
- Reallocate all CVE-related funding under DHS and DOJ to other non-law enforcement federal agencies under the guidance of impacted and targeted communities;
- Direct the DHS's Office of Inspector General to conduct an evaluation of past and ongoing CVE programs, including the FY2016 CVE Grant Program, the FY2020 TVTP Grant Program, and the FY2021 TVTP Grant Program, and the work of the DHS CP3 and any programs and initiatives involving training, collaboration, or advisement provided by DHS officials to state and local government agencies implementing local CVE programs, including investigating the nature and extent of any information and data collected by DHS from grant recipients.

C. FBI Informant Recruitment and Coercion Practices

The FBI has aggressively recruited informants within Muslim, Arab, and South Asian communities. The deployment of informants in these communities' private, religious and political spaces has had devastating impacts. Moreover, the recruitment of informants is stigmatizing and often coercive. FBI agents' unfettered access to a growing arsenal of coercive measures include the ability to delay or withhold immigration benefits, interrogate individuals at the border, and place people on watch-lists.[18] They can thus derail individuals' ability to travel, be with family, or secure important immigration benefits in exchange for information or affirmative information gathering.[19] These recruitment efforts have gone virtually unregulated,

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[16] *See* Michael German, *Hidden in Plain Sight: Racism, White Supremacy, and Far-Right Militancy in Law Enforcement*, Brennan Center for Justice, Aug. 27, 2020, *available at* https://www.brennancenter.org/our-work/research-reports/hidden-plain-sight-racism-white-supremacy-and-far-right-militancy-law.

[17] For additional information regarding the limitations and critique of the supposed utility of CVE and similar policing programs even as to white supremacist violence, *see* Nicole Nguyen & Yazan Zahzah, *Why Treating White Supremacy as Domestic Terrorism Won't Work and How to Not Fall for It*, Vigilant Love (2021), *available at* https://static1.squarespace.com/static/593f2dbaebbd1a0b706908ea/t/5fa0518556b08d66e6c5d4e8/1604342152141/white_supremacy_toolkit.pdf.

[18] Sana Sekkarie, Note, *The FBI Has a Racism Problem and it Hurts Our National Security*, Geo. Sec. Stud. Rev (2020).

[19] *See, e.g.*, Nina Totenberg, *Supreme Court Says Muslim Men Can Sue FBI Agents in No-Fly List Case*, NPR, Dec. 10, 2020, *available at* https://www.npr.org/2020/12/10/945000341/supreme-court-says-muslim-men-can-sue-fbi-agents-in-no-fly-list-case (describing how three Muslim men, who were not "suspected of illegal activity," were put on a

unrestrained, and present limited avenues for judicial oversight.[20] While many of these coercive measures, including watchlisting and coercive border searches, are addressed elsewhere in this memorandum, the practice of FBI informant coercion is of paramount concern to Muslim, Arab, South Asian and other immigrant communities.

Recommendations

- The FBI's Domestic Investigations and Operations Guide (DIOG) should be amended to prohibit the deployment of informants into religious and community spaces;
- The DOJ OIG should investigate FBI abusive informant coercion and recruitment practices and publish its findings and recommendations. This should include an assessment of the scope and impact of these practices, and the FBI's compliance with even the minimal existing FBI Guidelines[21];
- Congress should consider legislation giving a right of action to anyone who has been threatened, blackmailed, or otherwise coerced into providing information to the federal government and provide reparations to victims of entrapment and coercion;
- The CARRP program, the No-Fly List and the Selectee List must be abolished to prevent their abuse by FBI agents from interfering with individuals' rights;
- The FBI should be prohibited from rewarding FBI agents for their cultivation of Confidential Human Sources amongst particular ethnic or religious groups.[22]

II. *Immigrants' Rights and National Security*

A. Denaturalization

For most of the country's history since the passage of legislation authorizing denaturalization, this extraordinary measure has been reserved for former Nazis and other war criminals. The Obama and Trump Administrations, however, expanded the use of denaturalization. The Trump Administration ramped up denaturalization efforts and widely publicized them, instilling fear in immigrant communities and raising concerns that the

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No-Fly list for years and were unable to travel for work or to visit family when they refused to become FBI informants).

[20] This issue is not new. A 2005 DOJ OIG special report on the FBI's compliance with its own Manual of Investigative Operations and Guidelines "found one or more Guidelines deficiencies in 104 of the 120 confidential informant files [reviewed], or 87 percent of those we examined." OFFICE OF THE INSPECTOR GEN., U.S. DEP'T OF JUSTICE, The Federal Bureau of Investigation's Compliance with the Attorney General's Investigative Guidelines (2007), *available at* https://oig.justice.gov/sites/default/files/archive/special/0509/chapter3.htm.

[21] Directorate of Intelligence, Fed. Bureau of Investigation, Confidential Human Source Policy Guide (Sept. 21, 2015), *available at* https://theintercept.com/document/2017/01/31/confidential-human-source-policy-guide/.

[22] Decl. of Marc Sageman in Opposition to Defs.' Cross- Motion for Summary Judgement, Latif v. Lynch, No. 3:10-cv-00750-BR (D. Or. Aug. 7, 2015), ECF No. 268, *available at* https://www.aclu.org/sites/default/files/field_document/268_declaration_of_marc_sageman_8.7.15.pdf ("FBI special agents are promoted and rewarded—even with monetary bonuses—based on providing derogatory information on U.S. persons, while admission of error or new information that exonerates someone from suspicion tends not to be rewarded. In other words, the incentive in the system is to report suspicious activity but not correct the information when it turns out to have been a false alarm."); *see also supra* note 25 ("FBI special agents are promoted and rewarded based on the negative information they provide on the communities they are monitoring. Information that exonerates people from suspicion is not similarly rewarded.").

government would target them for minor mistakes in paperwork. In 2017, the Trump Administration announced the beginning of Operation Second Look, a program to investigate the pursuit of denaturalization against at least 1,600 citizens.[23] Between 2008 and 2020, 40% of the 228 denaturalization cases filed by the DOJ were filed after 2017.[24] Additionally, in 2020, the Trump Administration created an office within the DOJ focused exclusively on denaturalization efforts.

Denaturalization can have disastrous consequences for the targeted individual and their family members. Numerous U.S. Supreme Court decisions recognize the importance of citizenship, that its loss may result in the loss "of all that makes life worth living."[25] The law permits automatic denaturalization of spouses and children of individuals who derived citizenship from the individual and where denaturalization was as a result of willful misrepresentation.[26] This essentially constitutes guilt by association – putting at risk the citizenship of individuals who had no involvement in any attempt to procure naturalization by willful misrepresentation. It is clear that the Trump Administration pursued denaturalization in order to further pursue deportation, and the DOJ has admitted as much.[27] Because there is no statute of limitations with respect to civil denaturalization, citizens who have lived decades in the United States, establishing families and working here, can suddenly become subject to banishment.

Resolving a denaturalization case through settlement is encouraged as a way for the government to efficiently secure denaturalizations. A review of closed denaturalization cases as of May 2019 revealed that 77% of denaturalization cases ended in a plea or settlement agreement.[28] Settlement demands have put targeted individuals in coercive situations where they must agree to waive immigration protections, relinquish immigration statuses, and/or agree to deportation, in exchange for the government's decision not to strip the citizenship of derivative U.S. citizen children or spouses.[29] The government's settlement tactics are especially concerning in light of the procedural safeguards that are lacking in civil denaturalization proceedings. For civil denaturalization, there is no statute of limitations, right to appointed counsel, right to trial by jury, or any requirement of personal service to guarantee against involuntary *in absentia* denaturalizations.

A review of denaturalization suits filed in the first two years of the Trump Administration revealed that the DOJ had filed nearly three times as many civil denaturalization suits than the

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[23] U.S. Dep't of Justice, *Justice Department Secures First Denaturalization as a Result of Operation Janus*, Jan. 9, 2018, *available at* https://www.justice.gov/opa/pr/justice-department-secures-first-denaturalization-result-operation-janus.
[24] Katie Benner, *Justice Dept. Establishes Office to Denaturalize Immigrants*, N.Y. TIMES, Feb. 26, 2020, https://www.nytimes.com/2020/02/26/us/politics/denaturalization-immigrants-justice-department.html.
[25] *Knauer v. United States*, 238 U.S. 654, 659 (1946).
[26] 8 U.S.C. § 1451(d).
[27] Anthony D. Bianco, Paul Bullis & Troy Liggett, *Civil Denaturalization: Safeguarding the Integrity of U.S. Citizenship*, U.S. Att'ys' Bull., July 2017, at 5, 16-17, https://www.justice.gov/usao/page/file/984701/download [https://perma.cc/MSB6-P6CQ] ("Typically, the government does not expend resources on civil denaturalization actions unless the ultimate goal is the removal of the defendant from the United States.").
[28] Open Society Justice Initiative ("OSJI"), *Unmaking Americans: Insecure Citizenship in the United States*, at 106 (Sept. 2019), *available at* https://www.justiceinitiative.org/uploads/e05c542e-0db4-40cc-a3ed-2d73abcfd37f/unmaking-americans-insecure-citizenship-in-the-united-states-report-20190916.pdf.
[29] *Id.*

average over the previous eight administrations.[30] At least a third of these cases appeared to fall within Operation Janus/Operation Second Look – using digital records of fingerprints to identify potential cases for denaturalization.[31] The same review determined that 49% of all civil denaturalization cases filed targeted citizens whose country of origin is a "special interest country"–a label often used as a proxy for Muslim-majority countries or countries with significant Muslim populations–which includes India, Nigeria, Bangladesh, and Pakistan.

One key tool for the government in identifying targets for denaturalization has been ATLAS – a screening functionality that is incorporated into the U.S. Citizenship and Immigration Services' (USCIS) primary case management system.[32] ATLAS receives information from the individual's form submission and biographic and biometric-based checks and then screens that through a predefined set of secret rules and, according to pattern-based algorithms and predictive analytics, determines whether the individual presents *potential* fraud, public safety, or national security concerns.[33] When ATLAS finds something derogatory according to its secret list of rules, the software sends out a "System Generated Notification," which is then triaged and elevated for further review or investigation.[34] Upon investigation, that individual can potentially be subject to immigration or criminal enforcement actions, including denaturalization.[35] Given the role of ATLAS in denaturalization operations[36], ATLAS must be part of any review of denaturalization practices.

Additionally, both the Obama and Trump Administrations have pursued denaturalization in cases where an individual accepted a guilty plea relating to conduct in the five year statutory period prior to naturalization without receiving constitutionally adequate advice concerning the consequences of their plea. Many of these individuals pled guilty not knowing that someday, years down the line, the government could seek to denaturalize them based on their guilty plea, implicating their constitutional right to receive effective assistance of counsel.

Given the stakes at issue, and because individuals are not entitled to free representation in civil denaturalization proceedings, a review of current denaturalization priorities is of paramount importance.

Recommendations

- Halt denaturalization efforts and dismantle the denaturalization operations that were institutionalized at DHS, DOJ, and the State Department during the Obama and Trump administrations, including disbanding the denaturalization units within USCIS and DOJ;
- Support legislation designed to limit denaturalization and institute procedural protections for those subject to civil denaturalization. Support legislation to

[30] *Id.* at 10.
[31] *Id.* at 11.
[32] Privacy Impact Assessment for the ATLAS, DHS Reference No. DHS/USCIS/PIA-084 (Oct. 30, 2020), https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis084-atlas-october2020_0.pdf.
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] For more information on ATLAS's nexus to denaturalization, *see* Sam Biddle & Maryam Saleh, *Little-Known Federal Software Can Trigger Revocation of Citizenship*, The Intercept, Aug. 25, 2021, https://theintercept.com/2021/08/25/atlas-citizenship-denaturalization-homeland-security/.

impose a statute of limitations in civil denaturalization (there is currently a ten-year statute of limitations for criminal denaturalization); right to appointed counsel, right to trial by jury, heightened personal service requirement, and heightened evidentiary standard of "clear, unequivocal and convincing" evidence; and require proof of intentional fraud. Pursue legislative reform to prohibit denaturalization in any case where it would result in statelessness and in cases involving derivative denaturalization;

- Impose a moratorium on filing new civil and criminal denaturalization (8 U.S.C. § 1451 and 18 U.S.C. § 1425) suits until adequate independent oversight by DOJ Office of Inspector General is in effect and the Administration has fully assessed and dismantled the current operations across the DOJ, DHS, and the State Department and placed appropriate safeguards as discussed above;
- Dismiss civil and criminal denaturalization cases that are currently being litigated or, alternatively, place in abeyance or seek stays until such review is complete;
- Publish a DHS and DOJ policy limiting investigations potentially leading to denaturalization;
- Publish clear and limiting DOJ guidance to U.S. Attorney's offices on appropriate cases for denaturalization. Preclude denaturalization litigation where an individual is facing denaturalization due to admitted facts in a guilty plea and in criminal denaturalization cases where an individual is seeking to vacate a conviction on the grounds that they did not receive constitutionally adequate advice concerning the risk of denaturalization and deportation at the time of a guilty plea;
- Halt the use of ATLAS pending a disparate impact review and public disclosure of:
    - The rules that ATLAS is using to flag individuals for further investigation;
    - The population being flagged by ATLAS, disaggregated by race, country of origin, etc.; and
    - The number of screenings and flags, and the outcome of those flags, including data on how many flags end up in denaturalization investigation and prosecutions.
- Institute a process for reviewing all denaturalizations since 2016 with the aim of reinstating citizenship of denaturalized individuals and their derivatives, including by permitting such individuals to re-apply for citizenship *nunc pro tunc* and waiving fees;
- Publish the results of the review undertaken by Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans as it relates to denaturalization (Section 5(a)(v)). Ensure that the review encompasses the investigation, prosecution, and impact of denaturalization cases, and includes the following:
    - The policies, procedures, and priorities under which DHS, DOJ, and/or the State Department investigate and prosecute U.S. citizens for denaturalization;
    - Staff and funding deployed for denaturalization from each relevant operational component;
    - The number of denaturalization cases reviewed or investigated, referred for prosecution, filed in federal court, placed in removal proceedings,

leading to removal, and leading to statelessness. Case data should be disaggregated by country of origin, religion, gender, manner of entry (including port of entry and immigration status upon entry), referring agency, and alleged denaturalization grounds; and

- The number of Americans with derivative citizenship denaturalized due to their sponsor's denaturalization.

B. Passport Revocations

In the past decade, the U.S. government has pursued a policy of arbitrary passport denials and revocations among primarily Yemeni-Americans. A similar policy has been adopted for the last two decades among Mexican-Americans, primarily along the southern border.[37]

In January 2016, two organizations filed a request with the State Department's Office of the Inspector General to investigate a pattern of passport confiscations and revocations at the U.S. Embassy in Sana'a, Yemen.[38] The report detailed a specific pattern that occurred primarily between 2012 – 2014 at the Sana'a Embassy. American citizens of Yemeni descent would visit the Embassy for routine consular services, such as renewing a passport or obtaining a passport or Consular Report of Birth Abroad for a child. Embassy employees would then subject the individual to hours long interrogations, threatening them with arrest or denaturalization, and coercing them into signing statements that purported to admit that the names on their Certificates of Naturalization were not their "true" names. It appeared that these Embassy employees assumed that all Yemeni-Americans engaged in some type of fraud to immigrate to the United States.

At the end of the coercive interrogations, the Embassy employees would then confiscate the passport and refuse to inform the individual how they might return to the United States. Many individuals were stuck in Yemen for a year or longer, until the Embassy finally provided them with appropriate instructions for how to apply for a limited validity passport, notice of revocation of their passport, and instructions on how to challenge the revocation. In effect, the U.S. government left these individuals in limbo for more than a year, denying them their rights to any type of due process, simply on the basis of their national origin.

In these cases, the Embassy employees were arguably taking action inconsistent with the Foreign Affairs Manual by deciding to revoke a passport by claiming there was fraud in obtaining the Certificate of Naturalization, even though no denaturalization proceedings had taken place.[39] The DOS Office of the Inspector General issued a report in October 2018 that laid out its findings, including key recommendations regarding improvement to systems of records, the burden of proof for passport revocation, and procedures related to passport confiscation.[40]

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[37] The practices along the Southern border involve separate but related issues around the assumption of fraud in recording births of predominantly Mexican-Americans. *See supra* note 46, at 124-36.
[38] Asian Americans Advancing Justice – Asian Law Caucus & Creating Law Enforcement Accountability and Responsibility, *Stranded Abroad: Americans Stripped of Their Passports in Yemen* (Jan. 2016), *available at* https://bit.ly/2Rwpt8C.
[39] 8 FAM § 301.8-3(d) (2018).
[40] U.S. Dep't of State, Office of the Inspector Gen., *Review of Allegations of Improper Passport Seizures at Embassy in Sana'a, Yemen*, OIG-ESP-19-01, at 2 (Oct. 2018), *available at* https://www.stateoig.gov/system/files/esp-19-01_0.pdf.

Even after these individuals returned home and challenged their passport revocations, they continued to experience significant difficulty, as the State Department continued to proceed as though it had the power to indefinitely refuse to issue an individual a passport with a currently valid Certificate of Naturalization on the ground that they believed the name on the Certificate was not the name they were born with.[41] This practice also affected family members of those who had had their passports revoked, and continues to this day. This has meant that for years, many citizens residing in the United States with valid Certificates of Naturalization were unable to obtain passports and therefore unable to live and travel on the same terms as any other citizen – solely because of their country of origin.

Recommendations

- Review all current pending passport revocation/issuance decisions and cease proceedings in cases where the sole basis for revocation or refusal to issue is a claim that the individual's birth name is different from the name on their Certificate of Naturalization or Certificate of Citizenship;
- Review any final passport revocation decisions not currently in litigation in which the basis is the same as above and reverse the decision;
- Cease refusal to issue a passport solely where DOS believes the individual holds a name other than the name on a valid Certificate of Naturalization;
- Direct the DOS Office of the Inspector General to conduct a review of all passport revocations and confiscations from 2005 - 2021 to ensure an accurate accounting of all passports or Consular Reports of Birth Abroad improperly revoked or confiscated:
    - At the U.S. Embassy in Sana'a, Yemen or as a result of coercive interrogations at the Embassy (including family members of those who were coerced into signing statements at the U.S. Embassy);
    - Involving the authenticity of birth certificates issued near the U.S. - Mexico border.
- Review litigation posture in any pending cases involving passport revocation or passport issuance to ensure that passports are not being unfairly revoked or denied;
- Publish the results of the review undertaken by Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans as it relates to passport revocations (Section 5(a)(v)).

[41] In August 2020, the Second Circuit held that this was not an acceptable practice. *Alzokari v. Pompeo*, 973 F.3d 65, 72 (2d Cir. 2020) ("If the Department suspects that a citizen's certificate of naturalization was fraudulently obtained, it can institute denaturalization proceedings . . . What the Department cannot do is circumvent these proceedings by revoking a citizen's passport.").

III. *Border Rights and National Security*

A. Discriminatory Searches and Seizures Targeting BAMEMSA Travelers

BAMEMSA travelers are disproportionately stopped, searched, and interrogated at our international borders,[42] in part because of policies and procedures implemented post-9/11 that target BAMEMSA communities based on perceived ethnicity and religion, and in part because of the so-called "border search exception" to the Fourth Amendment.[43] These stops often result in seizures of forensic data from smartphones and other electronic devices containing information that the Supreme Court has agreed is "private" and "intimate."[44]

Policing or surveillance based solely on protected characteristics like race or religion violates equal protection guarantees.[45] In the context of border surveillance, courts have made clear that officers cannot rely on factors like a traveler's "race, without more," or "Arab ethnicity alone" when deciding to detain and interrogate individuals.[46] While DHS's own nondiscrimination policy "prohibit[s] the consideration of race or ethnicity in … screening … activities, in all but the most exceptional circumstances," it is silent on religion as a basis for scrutiny, and broadly permits consideration of nationality in "anti-terrorism, customs, or immigration activities" at the border, thus allowing border agents to rely solely on such characteristics.[47] As a consequence, many BAMEMSA travelers face higher levels of scrutiny when entering the United States based on their national origin or perceived religious identity and are often forced to hand over their phones and other digital devices. They also experience prolonged detention and interrogations regarding their personal and professional relationships, religious practices, and political opinions.[48] For many, entering the country can feel like a hostile experience. Nearly one-in-five Muslim-Americans who participated in a 2017 Pew Research survey have been called offensive names or singled out by airport security.[49]

The frequency of electronic device searches at the border more than doubled between fiscal year 2015 and 2016.[50] CBP and ICE officers utilize digital forensic searches using

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[42] Br. for Asian Americans Advancing Justice – Asian Law Caucus, *Alasaad v. Mayorkas*, No. 20-1077 (1st Cir. Aug. 7, 2020), *available at* https://www.eff.org/files/2020/08/14/2020-08-07_amicus_brief_asian_americans_advancing_justice_-_asian_law_caucus_et_al.pdf.

[43] The "border search exception" allows officers to conduct routine searches and seizures at the border when a person is attempting to enter or is suspected to have entered the United States at the international border. *United States v. Flores-Montano*, 541 U.S. 149, 152-53 (2004). Routine searches, such as inquiring about name and citizenship, do not require reasonable suspicion, probable cause, or a warrant. *United States v. Montoya de Hernandez*, 473 U.S. 531, 538 (1985). Non-routine searches, however, such as those involving extended detention or an intrusive body search, require "reasonable suspicion." *United States v. Bravo*, 295 F.3d 1002, 1006 (9th Cir. 2002). Courts are divided as to the scope of digital forensic searches that fall within the "border search exception."

[44] *Riley v. California*, 573 U.S. 373 (2014).

[45] *Whren v. United States*, 517 U.S. 806, 813 (1996).

[46] *Farag v. United States*, 587 F. Supp. 2d 436, 464 (E.D.N.Y. 2008).

[47] U.S. Dep't of Justice, *Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity* 2, no. 2 (Dec. 2014), *available at* https://www.dhs.gov/sites/default/files/publications/use-of-race-policy_0.pdf.

[48] *Supra* note 75.

[49] Pew Research Ctr., *U.S. Muslims Concerned About Their Place in Society, But Continue to Believe in the American Dream* (July 26, 2017), https://www.pewforum.org/2017/07/26/findings-from-pew-research-centers-2017-survey-of-us-muslims/.

[50] Chloe Meade, Note, *The Border Search Exception in the Modern Era: An Exploration of Tensions Between Congress, the Supreme Court, and the Circuits*, 26 B.U. J. Sci. & Tech. L. 189, 192 (2020), *available at* http://www.bu.edu/jostl/files/2020/04/6.-Meade.pdf.

sophisticated software and algorithms to search for information contained in the device including active files, deleted files, metadata related to activities, and password-protected encrypted data. Both agencies allow their agents to "perform 'basic' searches of electronic devices without reasonable suspicion and 'advanced' searches only with reasonable suspicion."[51] "Advanced" searches encompass forensic searches of digital services; they are "nonroutine border searches . . . [that] may be conducted only with reasonable suspicion of activity that violates the customs laws or in cases raising national security concerns."[52] Restricting searches, and the discretion afforded to federal agents, to simply reasonable suspicion, however, poses a number of problems, not least of which is that the articulation of such reasonable suspicion depends mainly on the agents' individualized and potentially biased judgment. However, courts are divided as to the extent of the forensic search when only reasonable suspicion exists and the search is conducted pursuant to the "border search exception." The lack of a uniform, nationwide rule leads to inconsistent outcomes depending on where the travelers are entering the country and makes it hard for travelers to know their rights. For example, in the Ninth Circuit, a forensic search supported by reasonable suspicion "is restricted in scope to searches for contraband."[53] A warrant is required if the officer seeks "evidence of past or future border-related crimes."[54] In contrast, in the First Circuit, an officer can conduct an advanced search that extends to searching "for contraband, evidence of contraband, or for evidence of activity in violation of the laws enforced or administered by CBP or ICE."[55]

Body searches at the international border also fall within the "border search exception." Searches of "outer clothing, luggage, a purse, wallet, pockets [that] do not substantially infringe on a traveler's privacy rights" are considered routine and therefore do not require suspicion.[56] The "level of intrusion into a person's privacy determines" the nature of the search.[57] Officers need reasonable suspicion to conduct non-routine, more intrusive searches. While travelers, including those wearing religious head coverings, may request a pat-down or removal of their covering to be conducted "by a person of [their] gender and that it occur[] in a private area,"[58] humiliating practices have been reported. In particular, BAMEMSA women have described being forced to remove their headscarves in front of male officers, in violation of their religious beliefs.[59] The result has been a chilling impact on BAMEMSA travelers, with some unwilling to travel altogether or avoid travel unless it is absolutely necessary, and special concerns as they relate to foreign travelers, with the risk of denial of entry in case of refusal to acquiesce to a demand for search or seizure of a traveler's property. Additional precautions are now widespread amongst BAMEMSA travelers, including traveling with separate devices which contain limited data and allow for basic communicative functions, backing up and then erasing data from existing devices to maintain privacy, and letting family members and acquaintances know of the possibility of prolonged detention when attempting to enter the country.

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[51] *Alasaad v. Mayorkas*, 988 F.3d 8, at 12 (1st Cir. 2021).
[52] *United States v. Kolsuz*, 890 F.3d 133, 146 (4th Cir. 2018) (citing U.S. CUSTOMS AND BORDER PROT., CBP Directive No. 3340-049A, BORDER SEARCH OF ELECTRONIC DEVICES (2018)).
[53] *United States v. Cano*. 934 F.3d 1002, 1018 (9th Cir. 2019).
[54] *Id.* at 1018.
[55] *Alasaad*, 988 F.3d, at 21.
[56] *Tabbaa v. Chertoff*, 509 F. 3d 89, 98 (2d Cir. 2007) (citation omitted).
[57] *Id.*
[58] ACLU, Know Your Rights: Enforcement at the Airport, *available at* https://www.aclu.org/know-your-rights/what-do-when-encountering-law-enforcement-airports-and-other-ports-entry-us/ (last visited Mar. 5, 2021).
[59] Carrie Decell, *"Dehumanized" at the Border, Travelers Push Back*, Knight First Amendment Inst. (Feb. 2, 2018), *available at* https://knightcolumbia.org/content/dehumanized-border-travelers-push-back.

Recommendations

- Modify existing DHS policy to explicitly prohibit agents from considering religion as a basis for consideration of further scrutiny, including the basis of searches and seizures of devices;
- Modify existing DHS policy to explicitly prohibit consideration of nationality in the examination of anti-terrorism, customs, or immigration activities at the border;
- Ensure that officers are properly trained to interact with BAMEMSA travelers, with DHS policy explicitly prohibiting questioning regarding religious practice or beliefs;
- Provide for efficient, prominently advertised methods (for instance at airports and other points of entry) to report incidents, including agents' misconduct or instances of policy violations.

B. Controlled Application Review and Resolution Program

The USCIS created the Controlled Application Review and Resolution Program (CARRP) in 2008 to investigate and adjudicate applications the agency deems to present undefined national security concerns. When a case is subjected to CARRP, it results in discriminatory background check delays and inordinate and unlawful delay in adjudication of the application. Thousands of applicants, including those married to United States citizens and seeking naturalization, have faced delays which, for many, last indefinitely. The CARRP program discriminates based on factors such as country of origin, religion, travel history, charitable donations, law enforcement and FBI visits and questioning, and other arbitrary factors. Between 2008 and 2013, USCIS applied CARRP to over 41,800 immigration applications, primarily impacting Muslim immigrants from Iran, Iraq, Yemen, India, and Pakistan.[60]

Little to no recourse exists for individuals whose immigration applications are subjected to CARRP. While individuals may schedule appointments with USCIS to inquire about the status of the application, USCIS at most only confirms that the application is being held in background checks. Individuals may also reach out to their congressional representatives to request a status update from USCIS on behalf of a constituent, but no documented cases to date have resulted in faster adjudication due to congressional outreach. Often, the only meaningful recourse available for impacted applicants is to file a mandamus suit in federal court which, if granted after often lengthy litigation, compels the government to take action on the application. Still, even if a court grants a plaintiff's petition for writ of mandamus and orders USCIS to take action on the application, USCIS may still deny the application without any other opportunity given to the applicant to cure any defects, address any issues, or be told the reasons for the denial, leaving open the possibility that the denial is on the basis of the factors mentioned above, including national origin and religion.

The Administrative Procedure Act (APA), 5 U.S.C. § 500 *et seq.*, requires USCIS to carry out its duties within a reasonable time. Specifically, the APA provides that, "[w]ith due

[60] CARRP was a secret policy until the ACLU of Southern California, the Council on American-Islamic Relations Greater Los Angeles Chapter, and the National Immigration Law Center filed a Freedom of Information Act request in 2012 and obtained thousands of documents exposing CARRP. The policy is also subject to ongoing litigation in the Western District of Washington, *Wagafe v. Trump*, 2:17-cv-00094-RAJ.

regard for the convenience and necessity of the parties or their representatives and *within a reasonable time, each agency shall proceed to conclude a matter presented to it.*" 5 U.S.C. § 555(b) (emphasis added). Congress has also directed USCIS to process immigration benefit applications, including for adjustment of status, within 180 days under 8 U.S.C. § 1571(b). During this time, individuals' and families' lives are placed on hold with no explanation for the delay and no indication about when to expect a final answer. Not knowing if they will be able to stay in the country, travel, buy property, or plan their lives results in tremendous anxiety and emotional distress. And while the fact that the CARRP policy exists and continues to be actively implemented by USCIS is no longer unknown to the public and to advocates, USCIS's own consideration and review of applications subject to CARRP, as well as the factors determining whether an application is to be delayed or denied after being marked for CARRP, remain secret and undisclosed even to affected applicants' attorneys.

Recommendations

- End the CARRP program;
- Direct the Secretary of Homeland Security to ensure that all field officers cease applying CARRP and factors used under the program to pending and future immigration benefit applications;
- Expedite consideration of and adjudicate with final decisions immigration benefit applications currently pending and subject to CARRP, including all those subject to litigation;
- Reconsider or reopen, if possible, the immigration benefit applications of those previously denied under CARRP and expedite the renewed or newly filed applications of previously denied applicants;
- For those applications that will be reopened or reconsidered, provide the grounds for denial so that applicants know whether the application was denied based on statutory criteria and, if so, can prepare to address these grounds. As prior immigration benefit denials may harm an individual's future applications, DHS should instruct USCIS officials to prevent prior CARRP-based denials from adversely impacting any future applications.

Ms. ROSS. Thank you very much for your testimony, Mr. Alam.

Our next Witness is Devon Westhill. He is the President and General Counsel of the Center for Equal Opportunity. Immediately prior to his current role, Mr. Westhill served as the top civil rights official at the United States Department of Agriculture in the Administration of President Donald J. Trump.

He has also worked at the United States Department of Labor, at the Federalist Society, and as a criminal trial lawyer in private practice.

Mr. Westhill earned his B.A. in philosophy from the University of North Carolina at Chapel Hill—go, Heels—and his J.D. from the University of Florida.

Mr. Westhill, you're recognized for five minutes.

STATEMENT OF DEVON WESTHILL

Mr. WESTHILL. Thank you very much.

Chair Nadler, Chair Cohen, Ranking Member Johnson, and distinguished Members of the Subcommittee, it's an honor to be here. I thank you for the opportunity to provide my testimony.

I'll begin by commenting on the vicious physical attacks on Asian Americans that have been reported in the media in the last couple of years. I then turn to affirmative discrimination against Asian Americans by educational institutions.

I close by appealing to those who desire to address these issues not to do so in a way that focuses on "equity of outcome" at the expense of the principle of equality under law.

Christina Yuna Lee. Ms. Lee was an Asian-American creative content producer living and working in New York City. In the early morning hours of February 13th, just two weeks ago, the 35-year-old was stalked and stabbed to death in her apartment building.

Michelle Alyssa Go. Ms. Go was an Asian-American professional services manager and advocate for those experiencing homelessness. On the morning of January 15th of this year, the 40-year-old was murdered when she was shoved from a subway platform into an oncoming train.

Yao Pan Ma. Last year, Mr. Ma, an Asian immigrant chef experiencing financial hardship during the throes of the COVID–19 pandemic, was brutally beaten, his face and head stomped. Mr. Ma later died of the bleeding this attack caused in his brain.

I could go on. These attacks did not discriminate against Asians of any particular ethnicity or hailing from any particular geographic region of the world.

It is no surprise to learn then, as a recent Pew Research Center poll revealed, that 32 percent of Asian-American adults fear being threatened or attacked, a proportion of respondents that surpassed any similar concern of other racial or ethnic groups.

Because as a result of their ethnicity Asian Americans may be at a heightened risk to become victims of violent crime, lawmakers and others must establish and maintain a hard line against all crime.

A failure to prioritize and fund effective policing and to State publicly and often that crime will be punished swiftly and severely will only lead to more tragedies like the ones I've stated.

The organization that I head, the Center for Equal Opportunity, has participated as amicus curiae in numerous Supreme Court cases regarding disparate treatment on the basis of race or ethnicity, including now in the case of *Students for Fair Admission* v. *Harvard*, consolidated with a case challenging a similar racial preferences scheme at the University of North Carolina.

In reviewing the evidence in these cases, one is struck by how clearly and shamelessly both schools discriminate in their admissions based on the race or ethnicity of the applicant, particularly against highly-qualified Asian Americans.

The evidence presented in the Harvard case indicates how extraordinarily well-qualified Asian-American applicants are routinely downgraded via character and fitness ratings assigned by admissions officials.

This process makes a mockery of merit-based admissions and is a naked pretense for simple racial balancing that intentionally decreases Asian-American representation and that of other applicants on the basis of their skin color and ethnicity that is reminiscent of 20th century efforts by the same institution to limit enrollment of Jewish students.

Notwithstanding this insidious discrimination against Asian Americans, the present Administration has not only failed to address it, but it has also actively worked to preserve it.

One of the first actions this Administration took in February 2021 was to dismiss a Justice Department lawsuit launched against Yale University during the Trump Administration for illegally discriminating against undergraduate applicants based on their race and national origin.

When later given the opportunity by the Supreme Court to State its position on the Harvard litigation, the Administration once again betrayed the Asian-American community by opposing the Supreme Court reviewing the case. Luckily, the court disregarded this suggestion and will render its judgment.

The discrimination in college admissions is only the tip of the iceberg. Even grade schools, such as nearby Thomas Jefferson High School for Science and Technology, which we have heard about today, are implementing efforts plainly targeted at reducing enrollment of disfavored races and ethnicities, specifically Asian Americans.

Just last week, the judge in the case challenging this racial balancing wrote a stinging rebuke, calling the practice patently unconstitutional. I'm relieved that the courts and other institutions appear to be serious about addressing what has become all too common discrimination in American society.

Congress can steel these efforts by demanding respect for its civil rights decrees stating plainly that racial discrimination is illegal. We have to carefully and thoughtfully work to eliminate racial discrimination in a country that in so many ways over its history have sanctioned it, not just for preferred races but for every single individual.

This is good and serious work, and I'm both professionally and personally committed to it. I've, clearly, focused my remarks on Asian-American discrimination because it's near and dear to my heart.

My mother-in-law came to this country in the 1960s as a Vietnamese refugee. My wife is part Vietnamese. My daughter, my son, my brother-in-law, my family, is multiracial, like so many other families in this beautiful country.

I want to remove any impediments any of them may, for immutable characteristics such as ethnicity, face to equal opportunity. I want that for every other man, woman, and child in this country.

We will never achieve that, however, by focusing on what is euphemistically referred to as equity. That concept requires explicit and overt discrimination and a disregard for the enlightenment and, therefore, American fundamental principle of equality under law.

The insistence that we must produce equal outcomes among groups defined by skin color, national origin, or gender perverts the American understanding of justice based on individual rights.

Thank you very much. I look forward to your questions.

[The statement of Mr. Westhill follows:]

Opening Statement of Devon Westhill
President and General Counsel
Center for Equal Opportunity

House Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Civil Liberties

Hearing of March 1, 2022 - Discrimination and the Civil Rights of the Muslim, Arab, and South Asian American Communities

Chair Cohen, Ranking Member Johnson, and distinguished Members of the subcommittee, thank you for the opportunity to provide my testimony on "Discrimination and the Civil Rights of the Muslim, Arab, and South Asian American Communities."

My name is Devon Westhill and I am the president and general counsel of the Center for Equal Opportunity. CEO is a non-partisan, non-profit research and educational organization that for more than 25 years has conducted studies and produced reports, monitored and advised on government action, and educated the public with the singular goal of promoting colorblind equal opportunity and nondiscrimination in America.

I will begin by commenting on the vicious physical attacks on Asian Americans that have been reported in the media in the last couple of years. I then turn to affirmative discrimination against Asian Americans by educational institutions. I close by appealing to those who desire to address these issues not to do so in a way that focuses on "equity of outcome" at the expense of the principle of equality under law.

I. RISE IN VIOLENT PHYSICAL ATTACKS AGAINST ASIAN AMERICANS

Christina Yuna Lee.

Ms. Lee was an Asian American creative content producer living and working in New York City. In the early morning hours of February 13th, just two weeks ago, the 35-year-old was stalked and stabbed to death in her apartment building.

Michelle Alyssa Go.

Ms. Go was an Asian American professional services manager and advocate for those experiencing homelessness. On the morning of January 15th, the 40-year-old was murdered when she was shoved from a subway platform into an oncoming train.

Yao Pan Ma.

Last year, Mr. Ma an Asian-immigrant chef experiencing financial hardship during the throes of the COVID-19 pandemic was brutally beaten—his face and head stomped. Mr. Ma later died of the bleeding this attack caused in his brain.

I could go on.

These attacks did not discriminate against Asians of any particular ethnicity or hailing from any particular geographic region of the world. It is no surprise to learn then, as a recent Pew Research Center poll revealed, that 32% of Asian American adults fear being threatened or attacked—a proportion of respondents that surpassed any similar concern by other racial or ethnic groups.[1]

[1] Khadijah Edwards et al., *One-third of Asian Americans fear threats, physical attacks and most say violence against them is rising*, (April 21, 2021), https://www.pewresearch.org/fact-tank/2021/04/21/one-third-of-asian-americans-fear-threats-physical-attacks-and-most-say-violence-against-them-is-rising/.

Because, as a result of their ethnicity, Asian Americans may be at heightened risk to become victims of violent crime, lawmakers and others must establish and maintain a hardline against all crime. A failure to prioritize and fund effective policing and to state publicly and often that crime will be punished swiftly and severely will only lead to more tragedies like the ones I have stated.

II. OFFICIAL DISCRIMINATION AGAINST ASIAN AMERICANS

The organization that I head, the Center for Equal Opportunity, has participated as amicus curiae in numerous Supreme Court cases regarding disparate treatment on the basis of race or ethnicity including now in the case of *Students for Fair Admissions v. Harvard*—consolidated with a case challenging a similar racial preferences scheme at the University of North Carolina.[2]

In reviewing the evidence in these cases, one is struck by how clearly and shamelessly both schools discriminate in their admissions based on the race or ethnicity of the applicant—particularly, against highly qualified Asian Americans. The evidence presented in the Harvard case indicates that extraordinarily well qualified Asian American applicants are routinely downgraded via character and fitness ratings assigned by admissions officials. This process makes a mockery of merit-based admissions and is a naked pretense for simple racial balancing that intentionally decreases Asian American representation, and that of other applicants, on the basis of their skin color and ethnicity that is reminiscent of 20th century efforts by the same institution to limit enrollment of Jewish students.

Notwithstanding this insidious discrimination against Asian Americans, the present administration has not only failed to address it, it has actively worked to preserve it. One of the first actions this administration took in February 2021 was to dismiss a Justice Department lawsuit launched against Yale University during the Trump administration for illegally discriminating against undergraduate applicants based on race and national origin.[3]

When later given the opportunity by the Supreme Court to state its position on the Harvard litigation, the administration once again betrayed the Asian American community by opposing the Supreme Court reviewing the case. Luckily, the Court disregarded the suggestion and will render its judgment.

The discrimination in college admissions is only the tip of the iceberg. Even grade schools such as nearby Thomas Jefferson High School for Science and Technology are implementing efforts plainly targeted at reducing enrollment of disfavored races and ethnicities—specifically, Asian Americans. Just last week the judge in the case challenging this racial balancing wrote a stinging rebuke calling the practice patently unconstitutional.

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[2] *See also Ricci v. DeStefano*, 557 U.S. 557 (2009); *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007); *Grutter v. Bollinger*, 539 U.S. 306 (2003).

[3] Devon Westhill, *New Study on Costs of Racial Preferences as DOJ Drops Yale Suit*, Nat. Rev. (Feb. 5, 2021, 5:53 PM), https://www.nationalreview.com/corner/new-study-on-costs-of-racial-preferences-as-doj-drops-yale-suit/.

I am relieved that the courts and other institutions appear to be serious about addressing what has become all too common discrimination in American society. Congress can steel these efforts by demanding respect for its civil rights decrees stating plainly that racial discrimination is illegal.

III. CONCLUSION

We ought to carefully and thoughtfully work to eliminate racial discrimination in a country that in so many ways over its history has sanctioned it. Not just for preferred races, but for every single individual.

This is good and serious work and I am both professionally and personally committed to it. I have clearly focused my remarks on Asian American discrimination because that is near and dear to my heart.

My mother-in-law came to this country in the 1960s as a Vietnamese refugee. My wife is part-Vietnamese. My daughter, my son, my brother-in-law, my family is multiracial like so many other families in this beautiful country. I want to remove any impediments any of them may for immutable characteristics such as ethnicity face to equal opportunity. I want that for every other man, woman, and child in this country.

We will never achieve that, however, by focusing on what is euphemistically referred to as "equity." That concept requires explicit and overt discrimination and a disregard for the Enlightenment and therefore, American fundamental principle of equality under law

The insistence that we must produce equal outcomes among groups defined by skin color, national origin, or gender perverts the American understanding of justice based on individual rights. It is achievable only by substituting totalitarian methods that trample those rights.

That precisely is what has gotten us to a state where the issues I have noted today are a reality.

Again, I thank you for the opportunity to provide my testimony and look forward to your questions.

Ms. ROSS. Thank you very much, Mr. Westhill.

I hope the Witnesses understand that because we have so many we just have to keep to the time. I'm going to keep the Members to the time, too.

Okay. Next, we have Amrith Kaur Aakre, and please tell me if I've mispronounced your name. She's the Legal Director of the Sikh Coalition, a role that she's held since 2017.

In this role, she focuses on high-impact litigation and oversees all legal work while managing initiatives to protect the civil rights of all Americans in areas such as workplace discrimination, hate crimes, school bullying, racial and religious profiling, and general religious rights policy issues.

Under her leadership, the Sikh Coalition's legal team has successfully litigated religious accommodation and bias-based school bullying cases, advocated on behalf of hate crime victims, and provided rapid response legal services.

They've also submitted public comment to numerous Federal agencies regarding fair interpretations of their policies, as well as testimony before the EEOC regarding emerging employment discrimination issues, including those arising from the COVID–19 pandemic.

Prior to joining the Sikh Coalition, she served as Cook County Assistant State's Attorney in Chicago for 11 years. She received her J.D. from the University of Illinois at Chicago John Marshall School of Law and her B.A. from George Washington University.

Ms. Aakre, you are recognized for five minutes.

STATEMENT OF AMRITH KAUR AAKRE

Ms. AAKRE. Chairs Nadler and Cohen, Ranking Member Johnson, Vice Chair Ross, and distinguished Members of this Subcommittee, thank you for welcoming me here today to testify.

My name is Amrith Kaur Aakre, and I am a dedicated public servant and former prosecutor, and today I join you in my capacity as the legal director for the Sikh Coalition.

When 9/11 happened, however, I was a college student, serving as the President of the George Washington University's Sikh Students Association. I'll never forget the fear, anger, and disbelief that I felt while watching the Pentagon burn from my rooftop.

As soon as I realized the hijackers' pictures depicted them with brown skin, turbans, and beards, just like my father and so many other relatives, I felt something else, too—an immediate recognition that the Sikh American community would be targeted with backlash.

As a minority religious group, Sikhs understand the intersection of violence, trauma, and discrimination. Its impact is great and paralyzing, and I knew that we didn't have a voice to combat it.

From September to October of 2001, the Sikh Coalition tracked more than 300 incidents of bias and bigotry impacting Sikhs across the nation. In fact, as you've heard today, the first person killed in a post 9/11 hate crime was a turbaned Sikh man shot to death in Arizona on September 15th, and while we can never stop focusing on the urgent threat of hate crimes, they are only part of the story.

Since 9/11, our country has seen discrimination continue to permeate every aspect of our society. Workplace discrimination harms

Sikhs in a range of public and private sector jobs, including transportation, entertainment, healthcare, the military, and law enforcement, by allowing for the biased interpretation and application of government policies and laws.

We have seen Sikhs willing to put their lives on the line in defense of their cities and country, only to be told that uniform and grooming policies prohibit their articles of faith.

We have seen Sikhs ordered to cut their hair for work-related drug testing, even when alternative means are readily available, and we have seen Sikh first responders in the fight against COVID–19 pressured to shave their religiously-mandated beards instead of being given appropriate safe personal protective equipment that doesn't interfere with their faith.

Regardless of the details, time and again these policies are interpreted in a way which disproportionately impacts minority communities, and our system allows it to keep happening. We also receive Sikh travelers' reports of inappropriate demands to remove articles of faith, discriminatory comments by TSA agents, and other profiling in our airports.

This is a humiliating hindrance for Sikhs and other religious and racial minorities, members of the transgender community and others, and additional discriminatory practices like no-fly lists and the lingering effects of the previous Administration's Muslim ban continue to perpetuate profiling against too many people.

Sadly, even our children are not exempt. Per a 2014 Sikh Coalition study, six students who maintained turbans, other head coverings or unshorn hair are bullied at a rate twice the national average.

Students have been called slurs like terrorists by their peers and teachers alike, and many are subject to physical violence. Worse, families are often left without recourse when administrators refuse to respond.

School discrimination can take other forms as well, including keeping Sikh students from participating in sports or going on field trips because of their articles of faith.

Now, I want to be clear. Anti-Sikh bias and discrimination existed well before 9/11. The events of that day, the way our politics and culture changed in response, and the manner in which our government policies and regulations continue to be interpreted have all institutionalized that discrimination, and Congress must take action.

First, you can fight workplace discrimination by equalizing the title VII legal standard that currently allows employers to discriminate against workers who require religious accommodations if the request pose more than a de minimis cost.

Second, you can pass the End Racial and Religious Profiling Act and the NO BAN Act, both of which will reduce profiling against Sikhs and other marginalized groups.

Third, you can amend title 6 to ensure that the Department of Education prevents religious-based bullying. Additionally, we must continue to bring new perspectives to the halls of power, including elected office, agency appointments, and the judiciary, which all lack Sikh voices, to affect the creation, implementation, and fair interpretation of our laws.

Finally, we must continue to confidently assert the value of diversity and inclusion in our society, despite controversy and backlash.

I thank you for the opportunity to testify today and I look forward to your questions.

[The statement of Ms. Aakre follows:]

Amrith Kaur Aakre

Legal Director, The Sikh Coalition

March 1, 2022

"Discrimination and the Civil Rights of the Muslim, Arab, and South Asian American Communities"

Testimony of Amrith Kaur Aakre
before the

UNITED STATES HOUSE OF REPRESENTATIVES

Subcommittee on Constitution, Civil Rights, and Civil Liberties

Committee on the Judiciary

on

"Discrimination and the Civil Rights of the Muslim, Arab, and South Asian American Communities"

March 1, 2022

Chairman Cohen, Ranking Member Johnson, and distinguished members of the subcommittee: Thank you for welcoming me here to testify.

My name is Amrith Kaur Aakre. I am a dedicated public servant and former prosecutor, and today, I join you in my capacity as the Legal Director for the Sikh Coalition. When 9/11 happened, however, I was a college student, serving as the President of the George Washington University's Sikh Students' Association.

I'll never forget the fear, anger, and disbelief I felt while watching the Pentagon burn from my rooftop. But as soon as I realized the hijackers' pictures depicted them with brown skin, turbans, and beards--just like my father and so many other relatives--I felt something else too: an immediate recognition that the Sikh American community would be targeted with backlash. As a minority religious group, Sikhs understand the intersection of violence, trauma, and discrimination; its impact is great and paralyzing, and I knew that we didn't have a voice to combat it.

From September to October of 2001, the Sikh Coalition tracked more than 300 incidents of bias and bigotry impacting Sikhs across the nation. In fact, the first person killed in a post-9/11 hate crime was a turbaned Sikh man, shot to death in Arizona on September 15. And while we can never stop focusing on the urgent threat of hate crimes, they are only part of the story. Since 9/11, our country has seen discrimination continue to permeate every aspect of our society.

Workplace discrimination harms Sikhs in a range of public and private sector jobs--including transportation, entertainment, healthcare, the military, and law enforcement--by allowing for the biased interpretation and application of government policies and laws. We have seen Sikhs willing to put their lives on the line in defense of their cities and country, only to be told that uniform and grooming policies prohibit their articles of faith. We have seen Sikhs ordered to cut their hair for work-related drug testing, even when alternative means are readily available. And we have seen Sikh first responders in the fight against COVID-19 pressured to shave their religiously-mandated beards instead of being given appropriate, safe personal protective equipment that doesn't interfere with their faith. Regardless of the details, time and again, these

policies are interpreted in a way which disproportionately impacts minority communities, and our system allows it to keep happening.

We also receive Sikh travelers' reports of inappropriate demands to remove articles of faith, discriminatory comments by TSA agents, and other profiling in our airports. This is a humiliating hindrance for Sikhs and other religious and racial minorities, members of the transgender community, and others--and additional discriminatory practices like no-fly lists and the lingering effects of the previous administration's Muslim Ban continue to perpetuate profiling against too many people.

Sadly, even our children are not exempt. Per a 2014 Sikh Coalition study, Sikh students who maintain turbans, other head coverings, or unshorn hair are bullied at a rate twice the national average. Students have been called slurs like "terrorist" by their peers and teachers alike, and many are subject to physical violence. Worse, families are often left without recourse when administrators refuse to respond. School discrimination can take others forms as well, including keeping Sikh students from participating in sports or going on field trips because of their articles of faith.

I want to be clear: anti-Sikh bias and discrimination existed before 9/11. But the events of that day, the way that our politics and culture changed in response, and the manner in which our government policies and regulations continue to be interpreted have all institutionalized that discrimination. And Congress must take action.

First, you can fight workplace discrimination by equalizing the Title VII legal standard that currently allows employers to discriminate against workers who require religious accommodations if their request poses more than a "de minimis cost." Second, you can pass the End Racial and Religious Profiling Act and the NO BAN Act--both of which will reduce profiling against Sikhs and other marginalized groups. And third, you can Amend Title VI to ensure that the Department of Education prevents religious based bullying.

Additionally, we must continue to bring new perspectives into the halls of power--including elected office, agency appointments, and the judiciary, which all lack Sikh voices--to affect the creation, implementation, and fair interpretation of our laws. Finally, we must continue to confidently assert the value of diversity and inclusion in our society despite controversy and backlash.

I thank you for the opportunity to testify today, and I look forward to your questions.

Ms. ROSS. Thank you very much.

Our final Witness is Annetta Seecharran. She is the Executive Director of the Chhaya Community Development Corporation, a housing and economic justice organization serving Indo-Caribbean and South Asian New Yorkers.

Previously, she was the director for policy and advocacy at United Neighborhood Houses advocating on behalf of 500,000 low-income New Yorkers served by New York City's settlement houses.

From 2001–2009, she served as the Executive Director of South Asian Youth Action, a pioneering organization dedicated to ensuring success of low income South Asian and Indo-Caribbean youth in New York City.

A Guyanese—please correct me if my pronunciation is not right—immigrant, she holds an M.A. in international political economy and development from Fordham University, a B.A. in political science from Manhattanville College, and executive management certificates from Harvard and Columbia Business Schools.

You are recognized now for five minutes.

Please unmute.

STATEMENT OF ANNETTA SEECHARRAN

Ms. SEECHARRAN. My apologies.

Chair Cohen, Ranking Member Johnson, and Members of the Subcommittee, my name is Annetta Seecharran. I am an immigrant from Guyana and the Executive Director of Chhaya Community Development Corporation.

Thank you for the opportunity to speak before you today. My testimony is based on my work with South Asian communities in New York City over the past two decades, through two formidable crises.

When 9/11 happened, I was the Executive Director of South Asian Youth Action—SAYA—and over the course of the pandemic, I have been serving as the Executive Director of Chhaya Community Development Corporation, a Queens-based nonprofit serving South Asian and Indo-Caribbean New Yorkers.

Over the past 20 years, I have Witnessed how our communities confront a myriad of challenges layered on top of crisis after crisis. Looking back at the 9/11 attacks and its aftermath brings up many emotions for me.

One of my cousin's lost her husband in the South Tower. Yet, at a time of heart-wrenching grief, my family was also targets of verbal abuse and attacks. Days following the collapse of the towers, my family went to St. Vincent's Hospital with the hope of finding my cousin's husband. There, people shouted at us, "This is your fault." Later, at a 9/11 memorial service, my mother was told, "Get out of this country."

Our experiences reflect the double grieving that many South Asians, Muslims, Arabs, and Sikhs endured in the hours, days, and months after 9/11. We grieved for the terrible losses on that day, and we grieved because we knew that a backlash was on its way, targeting and scapegoating our communities.

This backlash manifested in different ways, from interpersonal violence to State policies that led to arrests, detentions, and deportations. Young Hindus, Muslims, and Sikhs who visited science community centers shared how they were being followed by law en-

forcement, how they were afraid to take the subway or fly, or how they were being bullied at school.

People became worried about doing the most routine activities—going to places of worship, eating at South Asian restaurants, going to Muslim schools, and visiting public parks.

The cumulative impact of two decades of interpersonal and State violence is profound and, as a result, young people made different educational and vocational choices because of their outsider status. Many experiences heightened isolation, depression, and anxiety, which are still sources of trauma today, two decades later.

There is a through line between the post-9/11 environment and today. Government agencies did not invest the necessary resources in our communities to ensure our well-being despite the tremendous need in the wake of 9/11.

Instead, government resources were allocated towards profiling and surveillance. This is true even as South Asians are one of the fastest growing immigrant groups in the country.

There are 5.4 million South Asians living in the United States with ancestry from Bangladesh, Bhutan, India, Nepal, Pakistan, Sri Lanka, Maldives, and the diaspora including Trinidad and Tobago, my country, Guyana, Fiji, Tanzania, and Kenya.

There is immense socio-economic and educational diversity within the South Asian community. For example, in New York City, Nepali immigrants have the highest rate of uninsurance.

Bangladeshis and Pakistani immigrants have some of the highest rates of poverty at 32 and 29 percent, respectively. In the pandemic, an already challenging such became much worse.

In the wake of national crises, we must move through several phases—recovery, redress, reinvestment, and reconciliation. When it comes to 9/11, however, we seem to have barely scratched the surface even though it's been 20 years.

Congress can take steps, including investing in the well-being of communities affected by the 9/11 backlash, by making long-term investments towards social services, recreation, education, as well as neighborhood programs and cultural community spaces.

Additionally, implementing equitable immigration policies, such as a pathway for citizenship for undocumented immigrants, temporary protective status for Nepalis, and providing supports to Afghan refugees.

Our community groups have been responding with care and solidarity for two decades. We call for more hearings like this around the country to fully understand the depth of the impact on our communities.

Further recommendations are in my written testimony. Thank you very much.

[The statement of Ms. Seecharran follows:]



Testimony of Annetta Seecharran
Executive Director
Chhaya CDC
Before the House Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties

"Discrimination and the Civil Rights of the Muslim, Arab, and South Asian American Communities"

March 1, 2022

Chairman Cohen, Ranking member Johnson, and members of the Constitution, Civil Rights, and Civil Liberties Subcommittee, my name is Annetta Seecharran. I am the Executive Director of Chhaya CDC.

Thank you for the opportunity to speak before you today on "Discrimination and the Civil Rights of the Muslim, Arab, and South Asian American Communities." I am grateful to the countless individuals and organizations who advocated for this hearing to take place today. This hearing must be the first of many that occur in the halls of Congress and in state legislatures around the country to understand the full breadth of the issues facing our diverse communities.

I am an immigrant from Guyana who moved to the United States at a young age and have always been actively involved with South Asian and Indo-Caribbean communities in New York City. My testimony today is based on my work with South Asian communities in New York City over the past two decades through two formidable crises. When 9/11 happened, I was the executive director of South Asian Youth Action (SAYA!), the only youth development organization in the country dedicated to serving South Asian youth. Over the course of the pandemic, I have been serving as the executive director of Chhaya CDC, a Queens-based nonprofit that advocates for systemic changes that remove barriers to housing stability, economic mobility and well-being for South Asian and Indo-Caribbean New Yorkers. Over the past twenty years, I have witnessed how our communities are confronting a myriad of challenges, layered on top of crisis after crisis.

Looking back at the 9/11 attacks and its aftermath brings up many emotions for me. As a New Yorker, the attacks left me stunned and shaken to my core. I had multiple family members who worked in or near the World Trade Center. My cousin was nearby when the plane hit the South Tower, where her husband, Alfred, worked. She rushed towards the building with the hope of rescuing him but then saw the building collapse in front of her. She ran for blocks without her shoes to save her own life, hoping that her husband had survived. For days, we searched hospitals to find Alfred. We never did.

Yet, at a time of heart wrenching grief, we found that we were also targets of verbal abuse and attacks. Days following the collapse of the towers, my family went to Saint Vincent's Hospital with the hope of finding Alfred. There, people shouted "This is your fault" at us. Later, at the Yankee Stadium memorial service for 9/11 victims, my mother was told, "Get out of this country."

Our experiences reflect the double grieving that many South Asians, Muslims, Arabs and Sikhs endured in the hours, days and months after 9/11. We grieved for the terrible losses on that day. And, we grieved because we knew that a backlash was on its way, targeting and scapegoating our communities for the attacks, rooted in Islamophobia, white supremacy and xenophobia.

This backlash manifested in different ways, from interpersonal violence to state policies that led to arrests, detentions, and deportations. Young Hindus, Muslims and Sikhs who visited SAYA!'s community center shared how they were being followed by law enforcement, how they were afraid to take the subway or fly, and how they were being bullied at school. Muslim girls attending our programs expressed how their hijabs were touched and grabbed in school.

But this wasn't all. Our communities also experienced targeting by the state and federal government during the War on Terror. Across New York City, we heard about how our safe spaces - gurdwaras, mosques and temples, small businesses, and local community gathering places – were under scrutiny. As policies such as special registration, interrogations and surveillance began to unfold in New York City and around the country, our communities felt even greater fear and anxiety. As a result, small businesses in places like Coney Island Avenue in Brooklyn shut down. Mothers had to hold their families together as husbands, brothers and sons were deported. Community members experiencing hate violence on the streets or bullying in schoolyards were hesitant to report to law enforcement because they were afraid they would get caught up in a terrorist investigation. People became worried about doing the most routine activities - eating at South Asian restaurants, going to Muslim schools and visiting public parks to play cricket - because of the New York Police Department's surveillance infrastructure.

There is a myth that the post 9/11 backlash was limited to the weeks and months immediately following the attacks. This is simply not true. In fact, in a report on South Asian New Yorkers published by South Asian organizations in 2012 - more than ten years after the attacks - young people shared their stories of being targeted by interpersonal and state violence[1]. An 18 year old Hindu male from Jackson Heights, Queens recalled the impact of being singled out at his school. He said: "I was arrested by a School Safety Agent in Flushing, Queens, in 2009. I was searched ... [and] questioned. The tone of the conversation was aggressive and hostile. I was scared." A Bangladeshi 18 year old shared his worries about being arrested: "While it was happening, I was just always scared of the outcome, like, would I go with them and sit in [the] back of the car in handcuffs? And it would go up on my record as I'm trying to get a job."

These two stories reveal just the surface of the large-scale effects of what happened in the wake of 9/11. The cumulative impact of two decades of interpersonal and state violence is tremendous. The general feeling of being an outsider in America increased disproportionately for South Asians and Indo-Caribbeans in the wake of 9/11. As a result, young people made different educational and vocational choices. Many experienced heightened isolation, depression and anxiety which are still sources of trauma today, two decades later.

Echoes of the 9/11 backlash reverberated in the lead-up to the 2016 election. During that time, then presidential candidate Donald Trump used divisive language to describe immigrant and Muslim communities. It had a direct impact. At Chhaya CDC, we received a threatening letter and our staff were concerned for their safety. We weren't alone. In a 2018 report, South Asian Americans Leading Together (SAALT) documented 207 incidents of hate violence and xenophobic rhetoric aimed at South Asian, Muslim, Sikh, Hindu, Middle Eastern, and Arab communities in the year leading up to the 2016 election[2]. Even after the election, our community

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[1] *In Our Own Words: Narratives of South Asian New Yorkers Affected by Racial and Religious Profiling*, South Asian Americans Leading Together, with Desis Rising Up and Moving, The Sikh Coalition, UNITED SIKHS, South Asian Youth Action, Coney Island Avenue Project, Council of Peoples Organization (2012), https://saalt.org/wp-content/uploads/2012/09/In-Our-Own-Words-Narratives-of-South-Asian-New-Yorkers-Affected-by-Racial-and-Religious-Profiling.pdf

[2] *Power, Pain and Potential: South Asian Americans at the Forefront of Growth and Hate in the 2016 Election Cycle*, South Asian Americans Leading Together (2017), https://saalt.org/wp-content/uploads/2017/01/SAALT_Power_rpt_final3_lorez.pdf.

members continued to experience harm at multiple levels. The Muslim ban, the denial of rights to LGBTQ communities, the immigration raids and the mistreatment of asylees and refugees all exacerbated the outsider status that South Asian immigrants were already experiencing in the United States.

There is a through-line between the post 9/11 environment and the current status of many South Asian immigrants in New York City and around the country. Government agencies did not invest adequate resources in South Asian communities to ensure our well-being, economic security and access to critical social services despite the tremendous needs in the wake of the 9/11 attacks. Instead, government resources and funds were allocated towards profiling and surveilling our communities. These decisions have caused devastating consequences.

Today, even as South Asians are one of the fastest growing immigrant groups in the country, many continue to confront tremendous challenges. The model minority myth, often used to prop up our communities as a racial wedge, erases the real disparities and vulnerabilities many members face. According to census data, there are 5.4 million South Asians living in the United States with ancestry from Bangladesh, Bhutan, India, Nepal, Pakistan, Sri Lanka, the Maldives, and the diaspora, including Trinidad and Tobago, Guyana, Fiji, Tanzania, and Kenya[3]. The New York City metropolitan area, where I live and work, is home to the largest South Asian population in the country. In New York City, the fastest growing Asian groups are from Bangladesh and Pakistan, and Indians are the second largest Asian population.

There is great socioeconomic and educational diversity within the South Asian community which means that it should not be treated as a monolith for purposes of programs and policies. For example, in New York City, Nepali immigrants have the highest rate of uninsurance and have the highest share of people living in households with mixed immigration statuses.[4] Bangladeshi and Pakistani immigrants have the highest poverty rates (32% and 29%, respectively) compared to groups with the lowest poverty rates.[5] Our work at Chhaya CDC supports census data that Bangladeshi and Pakistani immigrants are more than twice as likely to live in overcrowded housing (46% and 44%, respectively).[6]

I have seen this first-hand at Chhaya CDC where we counsel and organize community members around housing and economic justice issues. Every day, we hear stories of community members dealing with unscrupulous landlords, struggling to pay rent, losing their jobs and small businesses - all the while navigating a climate of bigotry and experiences of isolation. In the wake of the pandemic, an already challenging situation became much worse. In my neighborhood of Jackson Heights, which became the epicenter of the pandemic in 2020, clothing and grocery stores were shuttered. The sounds of lively conversations were replaced with the

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[3] *Demographic Snapshot of South Asians in the United States,* South Asian Americans Leading Together (April 2019), https://saalt.org/wp-content/uploads/2019/04/SAALT-Demographic-Snapshot-2019.pdf

[4] *A Demographic Snapshot: New York City's Asian and Pacific Islander (API) Immigrant Population*, Mayor's Office of Immigrant Affairs (June 2021), https://www1.nyc.gov/assets/immigrants/downloads/pdf/Fact-Sheet-NYCs-API-Immigrant-Population.pdf

[5] *Id.*

[6] *Id.*

sirens of emergency vehicles. Over the past two years, our staff at Chhaya CDC have counseled and supported community members to navigate the morass of local, city, state and federal regulations around health and safety, loans, restaurant revitalization, paycheck protection and more. Given the large numbers of Bangladeshi and Pakistani immigrants living in overcrowded housing, COVID-19 infection rates spread quickly, and yet, it was difficult to receive timely and appropriate attention from government agencies.

As a result, community service providers and organizers have had to step in. Even though South Asian organizations are under-resourced in New York City, we have had to provide the support that our communities need, from crisis to crisis. In Queens, Desis Rising Up and Moving organizes working class South Asian and Muslim immigrants, Adhikaar works with Nepali-speaking communities, and Jahajee Sisters address issues facing Indo-Caribbean communities. Yet, this patchwork of South Asian organizations is insufficient to address the vast challenges in our communities, particularly because we are often on the frontlines of crises.

In the wake of national crises, we must move through several phases: recovery, redress, reinvestment, and reconciliation. When it comes to 9/11 however, we seem to have barely scratched the surface of this process, even though it's been 20 years. Congress can take steps including:

Changing the political discourse. It is vital for elected leaders in particular to raise your voices against hateful policies and rhetoric at every turn, and instead model the type of discourse that we should be utilizing in a country that is more diverse than ever before in its history.

Providing Opportunities to Repair and Redress. Our communities deserve redress from our government, from acknowledgments to investments in the long-term well-being of community members. We have a strong precedent in the way that the US government began to make amends for its mistreatment of Japanese Americans during World War II. Redress can take many forms but it is a vital component of the process of repairing and rebuilding. Legislators and government agencies must acknowledge the harms that have been done to our communities over the past two decades due to the War on Terror. Legislators must investigate local and federal law enforcement agencies to better understand how surveillance mechanisms were utilized to target community members - and put an end to them. Government agencies must invest in restorative justice and preventative practices that address the root causes of interpersonal violence.

Invest in the Well-Being of Communities Affected by the 9/11 Backlash. We know that in the aftermath of 9/11, local, state and federal authorities allocated resources towards policing, surveillance and profiling of South Asian, Muslim, Sikh and Arab communities. Instead, government agencies should make long-term investments towards social services, recreation, education, and neighborhood programs, cultural and community spaces, health clinics, senior centers and parks, all planned and designed with the involvement of community members.

Ensure that Services are Accessible for Immigrant Communities. At every level, government agencies must provide culturally and linguistically appropriate and accessible services for our community members. Instead of solely relying on community-based organizations, government agencies must shoulder the responsibility of enacting and implementing equitable policies that

secure access to health care, education, restorative justice programs, affordable housing, and mental health services.

Change and Implement Equitable Immigration Policies. Congress must find pathways for citizenship for undocumented immigrants. South Asian communities are affected by every aspect of immigration law, from DACA youth to H1B workers. Congress must ensure that Nepali immigrants must be covered by temporary protected status and be placed on a pathway to citizenship and that Afghan refugees are able to build lives in the United States. We must also end the criminalization of all immigrant communities and pass a national domestic worker bill of rights.

Ms. ROSS. Thank you very much for your testimony and thank all the panelists for joining us today. We will now proceed with questions from the Committee under the five-minute rule and I will begin by recognizing myself for five minutes.

Again, this has been very powerful testimony from all our panelists and from our Members of Congress who led off this morning's proceedings.

For too long Muslim, Arab, and South Asian American communities in the United States have been the targets of unfair and unwarranted suspicion, scapegoating, and stigmatization.

In the aftermath of the attacks on our country on 9/11, these groups faced intense interpersonal discrimination and violence as well as discriminatory government policies that were implemented at the Federal and State levels.

These policies have subjected Muslim and Arab communities to intense government surveillance and investigation under the guise of counterterrorism and national security.

For instance, following a policy change in 2002 requiring all aliens to register their change of address within 10 days of moving, a Palestinian legal immigrant was pulled over in my home State of North Carolina for driving four miles over the speed limit. He was detained for two months and eventually charged with a misdemeanor for failing to report his change of address.

Between 2000 and 2009, hate crimes against Muslims in the United States increased by 500 percent and rates of attacks against these groups remain troublingly high to this day.

Unfortunately, in my home State of North Carolina, we are familiar with violent attacks against Muslims. In 2015, three young Muslim university students were brutally murdered by their neighbor when they were sitting down to have dinner.

While the perpetrator ultimately pled guilty to first degree murder, he was never charged with a hate crime.

In recent years, there have been numerous reports across the State of verbal and physical assaults on Muslim women who wore head coverings.

The Muslim, Arab, and South Asian American populations in my district continue to grow and these groups are an essential part of the diverse and rich culture of the Research Triangle area of North Carolina.

It's critical that we continue to examine the experiences of these communities in the United States and do everything we can to prevent unwarranted acts of discrimination and hatred against them.

My first question is for our councilwoman from Tennessee. How has government surveillance of Muslim communities, including mosques and Muslim organizations, undermined the relationship between community members and law enforcement?

Ms. SUARA. Thank you. That's a very good question, because part of the work that AMAC was doing was actually trying to work within the law enforcement and the Muslim community, and we actually have meetings with new recruits to talk about how to deal with the Muslim community as a way to make sure that there's cooperation on all sides.

Every time there's a surveillance, every time that there's a profiling, then it sets our community back because it feels as if here we are again, and no matter what we do it's never enough.

So, these types of surveillance is something that we—it's counterproductive to the work that we all want to do. If the intent is security, if the intent is making everybody safe, then it's important for law enforcement to work with the community rather than spying on them and going behind their back.

So, in my community what I've seen is that people don't want to cooperate, people don't want to speak up, people don't want to come to the mosque, because they feel like their privacy is being violated.

So, it is very detrimental to the work that my organization, AMAC, was trying to do, and it's still very detrimental to the citizens in my community.

Ms. ROSS. Thank you very much for that response.

Maya Berry—and I know we only have a minute left, because I'm adhering to the time, too, but how have the United States immigration policies fed into this discrimination and this systemic abuse of people who are here illegally and just our citizens and neighbors?

Ms. BERRY. I think one of the most deeply impactful way that it's been negative is that it views our communities as this existential other, continuously foreign or otherized, in a way that's just not consistent with both the history of our country, given we're all immigrants to this wonderful nation, and it's important that we understand it as not also keeping us safe.

Like, part of—what you'll hear from many of our—the Witnesses today is that these policies put us in some ways more at risk rather than protect us.

Ms. ROSS. Thank you very much. I am now going to turn the gavel over to Congresswoman Jackson Lee to preside because I have to be somewhere else, and then we'll hear from our Ranking Member.

Thank you all for your testimony and for your time today. I now recognize the Ranking Member for five minutes so he can talk while Ms. Jackson Lee comes up.

Mr. JOHNSON of Louisiana. Thank you, Madam Chair.

Ms. Nomani, in recent years, equality has been replaced with equity as the central focus of the modern civil rights movement, and we have seen the—how this has played out in a number of contexts. You've testified today, it's been very compelling, about how this has had a real effect in the public education context.

Your testimony was really amazing. I mean, so, the local school officials actually went to your minority community, and simply because you expressed your views as concerned parents about the curriculum they said—and these are your quotes, "we need a different kind of minority." They said, "you must check your privileges at the door," whatever in the world that means, and that you're "white adjacent." I mean, how offensive is that?

Yet, you took a stand. All of you got together. You took a stand, and you rounded up the parents group. You started the Coalition for TJ, the Thomas Jefferson High School in Northern Virginia, and you just won in court, as you said, against this really insidious racism of critical race theory-centered policies that are a scourge on the nation right now.

So, here's the question. How can other parent groups organize and stand together like you all have? Because I think this is very inspiring and instructional for other people.

Ms. NOMANI. Thank you so much, Representative Johnson, and thank you to all the representatives on the House Judiciary Committee that have actually had the backs of parents. We are ordinary moms and dads, and we did not choose to have fights with our school boards or with principals, in fact, we have decided that there are positions of value that matter to us and what we want to encourage every parent is to have courage, have moral courage.

Everybody who wants to shut us down needs to understand that nobody comes between parent and their baby. Nobody comes between a parent and the child's education. So, what we want to do as Parents Defending Education, we invite people to register their parent groups, come to us, and get tips on how to speak to the school board, how to file a Freedom of Information Act request.

What I want to encourage your Democratic lawmakers also to do is to take the letter that the Republican leaders, the Committee sent just yesterday, asking serious questions about the new oversight surveillance and monitoring that is happening of parents.

Every single thing that was said here today is now being done to parents. That is unconstitutional and illegal. I really hope that your Democratic lawmakers will also team up with you to understand that parents are our friends. They are not the enemy.

Mr. JOHNSON of Louisiana. Absolutely, and showing moral courage inspires courage in others and that is what is so important. It is a big part of what it means to be an American to stand against this kind of stuff. The Republicans in our Committee stood together and we are very concerned about the weaponization of the Department of Justice. No one lower than the Attorney General himself, the source of your t-shirt, they labeled concerned parents as domestic terrorists for expressing their views about what is happening in their curriculum. So, we are on top of that. We are seeking some oversight. We will make sure that we don't weaponize the Federal government against concerned parents at least at the next election cycle.

Mr. Westhill, I have got to move on to you. I don't have a lot of time, but I wanted to ask you, you began to explain how the new advancement of equity as the benchmark is inconsistent with our civil rights laws and constitutional protections. You used the word or the phrase affirmative discrimination. Could you unpack that just a little bit more in a minute and a half here?

Mr. WESTHILL. Sure. Thank you very much for the question, Ranking Member Johnson.

Affirmative discrimination is essentially plain old discrimination like we have known in this country for many, many years. It just happens to be the case that it is being used in an official format at educational institutions, in contracting, in businesses, and it is the sort of thing that is the overt racial discrimination of the past that we were hoping we would get past in this country at some point, come back on steroids. That is what I mean.

Mr. JOHNSON of Louisiana. Well, that is right. There are elements in our politics and in the culture right now, the radical left, they are recasting racism and discrimination and equality for the

zeal of equal outcomes, this Quixotic quest is not going to happen. Equity is dangerous. It is a poison to our system. It impedes actual progress in improving race relations and opportunity in the United States. I think parents, citizens, people are beginning to recognize this, and they need more avenues to express their outrage.

We have election cycles. There is one component of that. I am really grateful for the work that both of you are doing at organizations that you lead and others like it because this is the way we effect change in America. So, thanks for being here, thanks for your time, all our Witnesses for your time today. I yield back.

Ms. JACKSON LEE. [Presiding.] Thank you to the Ranking Member. Your time has expired. It is my pleasure now to yield to the Chair of the Full Committee, Chair Nadler, for five minutes.

Chair NADLER. Thank you, Madam Chair. Ms. Seecharran, how is the legacy of the 9/11 attack continue to impact South Asian communities in New York?

Ms. SEECHARRAN. Thank you, Representative Nadler, for that question and I want to thank you for your leadership. What I have Witnessed over the pandemic is that the already weak and disenfranchised circumstances in which our community members found themselves, that it is directly tied to the lack of investment in our communities after 9/11, made them that much more vulnerable to the pandemic.

Members of our community such as in southeast Queens that experienced the highest infection rates, yet it was impossible to get appropriate health and attention during the pandemic.

In their rebuilding and recovery process, they have our small businesses. While our small businesses are trying to rebuild, they still struggle with discrimination and cultural isolation, language barriers, et cetera.

Chair NADLER. Thank you. Ms. Aakre, your testimony noted that Sikhs continue to face difficulty in accessing workplaces in a range of sectors and industries. What kind of barriers do religious minorities face in workplaces when title VII fails to protect their civil rights and civil liberties?

Ms. AAKRE. Thank you, Congressman. As you know, under title VII of the Civil Rights Act, employers are prohibited from discriminating against employees on the basis of religion. The biggest issue is that the threshold under title VII for employers to deny the provision of a religious accommodation is extremely low. All they have to do is show that there is a de minimis cost, often interpreted as any cost associated with providing the request and then they can successfully overcome that title VII standard.

It is really the lowest legal standard for any civil rights provision and leaves religious minorities out on an island of isolation, segregation, and failure to hire. I believe that that is one of the largest issues that comes to the core when we are talking about workplace discrimination against Sikhs and other religious minorities.

Chair NADLER. What standard would you suggest?

Ms. AAKRE. Well, under the ADA, for example, there is a higher threshold which is the undue hardship standard. It is much more difficult for employers to overcome that burden. The balancing test is much more in favor of employees that are seeking an accommodation.

I believe that that is the standard that would be more appropriate for religious accommodations as well.

Chair NADLER. Thank you. Professor Wadhia, I want to ask you to elaborate on some of your testimony, Ms. Suara says Ms. Berry about the same thing, your testimony describes how in the years following 9/11 the Federal Government developed several new immigration policies in the name of national security.

Can you describe how these policies impacted Muslim, Arab, and South Asian communities?

Ms. WADHIA. Thank you for the question and really, the history predates 9/11, but in the 9/11 context, I have spoken in my oral testimony about the special registration program and the immigration consequences included, for example, someone receiving a charging document and being placed in deportation proceedings; an individual because of an overstay being deported; an individual because of a failure to register because maybe they did not even know about the special registration program, being denied an immigration benefit or a green card years later while sitting in an immigration office during an adjustment interview.

We had other 9/11 policies that were in the name of the national security, but in fact, immigration changes. So, some of those consequences included, for example, the detention of 1,200 men who were broadly labeled as September 11 detainees coming largely from MASA communities.

We also saw an absconder initiative where individuals who had orders of removal were identified, targeted, and punished by the Federal government.

So, these are some of the examples, if you connect the dots, in which national security is used as a proxy for immigration policy and then led to serious immigration consequences.

What we didn't see is a great gain in finding the next terrorist. So, that the fallout and collaborative damage was in the immigration space.

Chair NADLER. Thank you. My time has expired. I yield back.

Ms. JACKSON LEE. The gentleman's time has expired. Let me call on Mr. Jordan for his five minutes, the Ranking Member of the Full Committee.

Mr. JOHNSON of Louisiana. He is not here for now, so we can go forward if the Chair has other Members of her party.

Ms. JACKSON LEE. So, continuing with our membership, thank you so very much, Mr. Johnson.

Now, I am pleased to call the gentleman from Maryland, Mr. Raskin, for five minutes.

Mr. RASKIN. Thank you so much, Madam Chair. A couple of my colleagues have referred to discrimination and something that has taken place in the past. For those of us who lived through January the 6th, we saw old fashioned White nationalism and racism alive and well at our front door. There were members of extremist groups, including the Aryan Nations, and Klansman, and the militia groups that came to smash our windows, beat the daylights out of our police officers, knock down our doors, and interrupt the counting of electoral college votes for the first time in American history. I am just surprised to hear people referring to racism as something that took place in the past when we are seeing the evi-

dence of it all around us today, including most recently at the gathering of Nick Fuentes with the radical right, a known anti-Semite, and he was visited by none other than a couple of our colleagues, Marjorie Taylor Greene being one of them, and they were there just a few days ago.

Let me start with Ms. Suara. Can you tell me how government surveillance of Muslim communities including mosques and Muslim groups has undermined relationships between community members and law enforcement, and is that still taking place?

Ms. SUARA. Thank you. Yes, surveillance of the Muslim communities is counterproductive, and it is very dangerous. Basically, when the line of surveillance in our community, it makes our community members feel as the other, un-American as they were called. The government does not trust us because this is not something that is happening everywhere. It is happening in our own community.

So, every time that happens, it makes the job of someone like myself very difficult. Because when I am talking to people, I try to tell members of my community we are Americans. We pay taxes. We deserve the same rights and we deserve compensation from our government. We deserve the respect and the privacy like everyone else, but every time the surveillance happens or profiling of a community, it sets the clock back. It leads to lack of trust in the government and that is counterproductive to what we want to do as government.

Mr. RASKIN. Thank you. I have a question for Dean Wadhia. Can you explain what the civil liberties and human consequences of President Trump's Muslim ban that he began his Administration with?

Ms. WADHIA. Thank you for the question. There were significant human consequences and policy harms that are the various versions of the Muslim ban. I will share a few. One included sort of vast, invisible family separation, a policy that continues to this day. So, people in qualifying family relationships, a U.S. citizen married to a Yemeni and they are unable be together and were otherwise excluded; a Syrian student courted by a university for a Ph.D. program could be denied and not be enrolled in the program because of the ban; an Iranian mother, who was seeking to visit the United States to see the birth her first grandchild, unable to travel to the United States because of the ban.

So, those were some of the harms that were direct. There are also lasting harms, right? There are procedural impediments that still make it impossible for individuals who were separated or affected to be reunited even after the ban has been repealed because of costs, because of bureaucracies, and so on. Finally—

Mr. RASKIN. If I can interrupt one second. Are you finding the discriminatory immigration policies and law enforcement policies are the things that are of major concern to the communities that we are talking about today or are people more upset about what is called critical race theory and I am not even quite sure what they mean by that. Are people most concerned about policies like the Muslim ban and discriminatory policies and law enforcement or are they more concerned about the thing called critical race theory?

Ms. WADHIA. I am very concerned about the people and that includes those who have been harmed and continue to be harmed by policies that the government has a choice to change. It whittles down to choices.

Mr. RASKIN. Thank you, and I yield back, Madam Chair.

Ms. JACKSON LEE. The gentleman yields back. It is my pleasure to yield to the Ranking Member of the Full Committee, Mr. Jordan, for five minutes.

Mr. JORDAN. Thank you, Madam Chair. Professor Wadhia, are you a proponent of critical race theory?

Ms. WADHIA. I teach with the statute of my centerpiece, so I start with the immigration statutes. I do think it is important to also talk about the history of how the statute has evolved, so my students are able to connect the dots between the history of the immigration statutes which have been compared second in complication to the U.S. tax code.

Mr. JORDAN. Let me ask it this way, Professor, I am sorry. Do you support critical race theory being taught in our K–12 schools or in higher education?

Ms. WADHIA. It is a term that has had many meanings. I do support teaching history and I do support—

Mr. JORDAN. Well, we all support that.

Ms. WADHIA. So, that is how I would answer the question, Congressman.

Mr. JORDAN. Well, you believe discrimination based on race is wrong, right?

Ms. WADHIA. I do.

Mr. JORDAN. Okay, I just wanted to keep opponents of critical race theory, Ibram X. Kendi said this, "the defining question is whether the discrimination is creating equity or inequity. If discrimination is creating equity, then it is okay."

Do you agree with that statement?

Ms. WADHIA. I believe that if we have and I will speak as an immigration expert, if we have immigration policies that explicitly target people based on their country of birth or their religion, I think that is a problematic policy.

Mr. JORDAN. No, that is not what I asked you. I asked you if equity is achieved through discrimination, is that discrimination okay because the key proponent of critical race theory says it is. I just want to know if you think it is. If equity is achieved through discrimination, is that discrimination, okay?

Ms. WADHIA. I consider the question of equity only and in a different way because I answer these questions through the lens of immigration. So, if you want me to answer about where I stand on immigration, I would say that if we had immigration policy—

Mr. JORDAN. Let me do this then. Mr. Westhill, do you think Asian Americans who have been denied entrance into certain institutions, do you think they are okay with equity being achieved—so called equity being achieved at some of these schools of higher learning through discrimination? Do you think they are okay with that?

Mr. WESTHILL. Thank you, Congressman Jordan. No, I don't.

Mr. JORDAN. No, because it is real to them, isn't it?

Mr. WESTHILL. Yes, it is. I will add that I don't know when racial or ethnic discrimination in any form became controversial, but my testimony here should clearly not be controversial, but it is.

Mr. JORDAN. I know. For the life of me, I don't know why it is, is either—let me just quickly go to Ms. Nomani. Thank you for being here.

So, I noticed your shirt. It says I am a mom, not a domestic terrorist. This is an issue that this Committee has—or at least the Republicans have. Once we learned about the memorandum from the Attorney General, memorandum targeting, you got it right there. Well, you got the letter right there from the school board association, but I am just curious, do you think as someone who has been active in defending the rights of parents, moms, and dads, in our schools, are you nervous about this now becomes a whistleblower who came forward and gave us the email send from the FBI to agents around the country talking about this threat tag label being placed on parents. Are you nervous that designation, that label, that tag may be now associated with your name?

Ms. NOMANI. I know that we are now under surveillance as parents. We are seeing it in local authorities, State authorities, and Federal authorities. If everybody here is in agreement that they do not want surveillance and undue persecution of any human being, that should include parents.

I applaud you all for just being there for the mama bears and papa bears because you know what, we are in the trenches and we are fighting and it was a mom, a mom in Fairfax County, Virginia who revealed to us that Attorney General Merrick Garland's son-in-law is benefiting from the big tech company contracts of school boards. So, what I want to encourage parent to do is be a Nancy Drew, Hardy Boy, whichever way it is in your school district, file those Freedom of Information Act requests and that is how we got the emails that traced exactly this school board letter to the White House.

Mr. JORDAN. Madam Chair, let me just reiterate the numerous times that Republicans have asked to have the Attorney General back, remember his testimony that day said in no way were they treating parents as domestic terrorists when in fact the day before he made that statement that email went out to FBI agents around the country that said put this designation on moms and dads.

So, once again, we need the Attorney General back here to answer some critical questions and, frankly, what we really need is for him to rescind the memorandum and stop this process he has put in place that is targeting moms and dads. With that, I yield back.

Ms. JACKSON LEE. The gentleman yields back. I ask Members who wish to question to turn on their cameras so that we might be able to call on you appropriately because you are very much a part of this hearing.

With that in mind, it is my privilege to yield to the Vice Chair of—oh, I think I am in my other Committee—but be able to yield to the gentlelady from Missouri for her five minutes, Congresswoman Bush. I have given you two Vice Chairs, but I am delighted to share the Vice Chair of the Crime Subcommittee. So, you are recognized for five minutes.

Ms. BUSH. Thank you so much.

Ms. JACKSON LEE. Thank you.

Ms. BUSH. Thank you, Chair, St. Louis and I thank you for this important hearing. The surveillance and criminalization of Muslims is older than this nation's founding. Many seem to forget that enslaved Black people were forcibly brought to this country starting in 1519 from across the African continent, including regions that were predominantly Muslim which meant that thousands of people who came to this country through the slave trade over 400 years ago were Muslims.

Enslaved Black Muslims practiced their faith in secret out of fear of retaliation. They resisted slavery. They fought for our liberation, and many recorded their experiences in Arabic or other languages to avoid suspicion.

The history of Black Muslims in this country is American history and I sit here as a Congresswoman and lawmaker to say our history will not be erased. Our history, including the history of mass surveillance of Muslims, and that extends much further than September 11th, to the targeting of Black nationalists in the 1920s and then the Nation of Islam by the FBI's COINTELPRO, surveillance, intimidation, and targeting based primarily on the perception that Black Muslim Americans in pursuit of Black liberation somehow pose a threat to society because of their religious and racial identity.

Today Black people make up 20 percent of our country's Muslim population and are facing surveillance and criminalization. In documentation that was recovered from the New York Police Department's mapping and surveillance of Muslims, American Black Muslims were included in the list of ancestries of interest.

Ms. Suara, can you talk about the impact of post-9/11 policies on Black Muslims?

Ms. SUARA. Thank you so much for that question. Black Muslims are facing attack two ways, [inaudible] Black and they face all the discrimination that comes from being Black in America, but also being Muslim.

We have policies at the State level that marginalize Black Americans and Muslim Americans, a couple of legislation in my State ban—talks about indoctrination in schools, talks about no-go zones that are non-existent. There is a report about driving while Black in my State that talks about how people that Black or Brown are targeted and profiled and stopped in different ways more than any other member of the community. Because of all that and when I talk about discrimination policy, I always look at it from what is being taught to our children that are born here, that are citizens here, that see all this being thrown against them that says the government is telling them that they do belong or they do not have the same rights.

So, a lot of policies, as a Black American, as a Muslim American, tells me that I do not belong, tells me that I do not belong in this space with my other colleagues and that is very discriminatory. So, a lot of them, there is a lot in my statement about examples of some of those policies that we have had at the national and at the State level.

Ms. BUSH. Thank you for making that very clear for everyone. Thank you so much.

Professor Alam, can you talk about the ways in which surveillance against Muslim communities is used to target other communities and protesters, more generally?

Mr. ALAM. Ms. Bush, I am not certain if you meant Professor Wadhia or myself?

Ms. BUSH. Yes, to you.

Mr. ALAM. Thank you, Representative Bush. There are several connections to be made across surveillance of other communities. What we have seen is ones you mentioned, starting with surveillance of Black Muslim groups in the 20th century, the Moorish Science Temple, Nation of Islam, which was seen as foreign and suspect, and much of it has continued to this day.

The same methods of policing and surveillance and using race, ethnicity, and national origin as a proxy, as the primary indicator for suspicion continues today. I detailed some of that in my testimony. I detailed some of that in my written statement, but it is also happening, for instance, with Chinese Nationals in this country. Chinese students, for instance, are being marked with suspicion, and that is something that we have worked on, and we have worked persistently to actually dismantle that entire system by which the Federal government essentially uses its policing and surveillance powers to mark communities on the basis of their race or national origin and seeing them as suspect simply on those bases. That is happening across communities. That is happening with Asian American communities, Muslim American communities, and has been happening, of course, with Black communities in America for a very long time.

Ms. BUSH. Thank you. Just really briefly, according to a 2019 study released by Muslim advocates, Muslims make up nine percent of those incarcerated in State prisons, but they only make up one percent of the U.S. population.

Chair, I ask for unanimous consent to introduce the Muslim Advocates study mentioned above into the record. Thank you and I yield back.

Ms. JACKSON LEE. Without objection, so ordered. The gentlelady's time has expired. Thank you very much for your questioning.

[The information follows:]

MS. BUSH FOR THE RECORD

MUSLIM ADVOCATES

FULFILLING THE PROMISE OF FREE EXERCISE FOR ALL:

Muslim Prisoner Accommodation in State Prisons

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EXECUTIVE SUMMARY

In my opinion the conscientious scruples of all men should be treated with great delicacy and tenderness: and it is my wish and desire, that the laws may always be as extensively accommodated to them, as due regard for the protection and essential interests of the nation may justify and permit. -George Washington[1]

Freedom of religion is a core American value, and religious free exercise is enshrined in the Constitution's First Amendment. But these essential rights and liberties have not always been extended equally to all faiths, or to all members of society. Prisoners, and Muslim prisoners in particular, have faced multiple hurdles in obtaining basic accommodations for their devotional practices, holidays, burial practices, and religious diet requirements.

The U.S. Congress twice reiterated America's commitment to religious liberty for *all*, including prisoners, by passing two pieces of bipartisan legislation: the Religious Freedom Restoration Act (1993) and the Religious Land Use and Institutionalized Persons Act (2000). These laws were a direct response to Supreme Court decisions that weakened some of the religious exercise protections the First Amendment offered. But even after Congress passed RFRA and RLUIPA, courts applied the protections unevenly and did not always rigorously question government burdens on religious exercise, as the statutes demanded. In *Holt v. Hobbs* in 2015, the Supreme Court confirmed that the statutes are extremely demanding and require strict scrutiny of prison polices that block religious practice.

Until now, little information has been compiled about the numbers of state prisoners who identify with any particular faith, and there have been few state-by-state comparisons of accommodation policies and practices. Muslim Advocates therefore submitted records requests to 49 states and the District of Columbia to learn more about prisoners' religious preferences and to compare levels of religious accommodation available to Muslims. We also analyzed more than 160 recent Muslim prisoner free exercise cases in which there was a federal court decision or order over a 15-month period.

First, our research shows that within the 34 states that provided data in response to our requests, Muslims are overrepresented in state prisons by a factor of eight relative to the general population. In some state systems, Muslims are overrepresented by a factor of closer to eighteen, with more than 20 percent of prisoners identifying as Muslim. The absolute number of Muslim prisoners has

also increased over time, even as prison populations in many states have tended to decrease in the last few years. Despite Muslims constituting a significant and growing share of prisoners, many state departments of correction still have policies that are outdated, under-accommodating, or non-accommodating of Muslim prisoners.

Second, we analyzed Muslim prisoner cases brought in federal court to identify the free exercise areas that are of most frequent concern to Muslim prisoners. The most commonly litigated problems were difficulties obtaining an adequate religiously compliant diet, as well as problems worshipping in groups.

Third, we compiled each state's religious services policies. We discovered that the level of accommodation of Muslim practices is highly variable across states, even though the same strict legal standard imposed by RLUIPA applies to all states. Our Report highlights the most- and least- accommodating policies with regard to specific Muslim practices. In most cases, the non-accommodating policies are unnecessarily burdensome and not connected to any "compelling" prison interest, and hence, are in violation of federal law.

Muslim Advocates and other Muslim civil rights organizations have sought to halt discriminatory and arbitrary restrictions on prisoners' religious practice, including by representing Muslim prisoners and detainees. But the number of meritorious Muslim prisoner accommodation cases has not abated, and there are far more non-accommodating prisons and detention centers where Muslims cannot practice the basic tenets of their faith.

Given the significant presence of Muslim believers in state prisons, state departments of correction should seek to understand this population's needs and should ensure that their accommodation policies are consistent with the strict standards set by Congress. The patterns of arbitrary restriction of Muslim religious practice identified in this report highlight the need to take steps to fix these systemic problems. Prisoners, institutional actors, legislators, and advocates can and should work together to realize the promise of religious liberty for all. In particular, prisons should take measures to:

- Permit individual, group, and weekly congregational prayer, and train officers on how to facilitate this common Muslim practice.
- Pre-approve work holidays and allow for additional holiday requests and for religious work exemptions.

- Treat the funerary beliefs of prisoners and their family members with respect, and have clear policies allowing prisoners to indicate their burial beliefs.
- Allow religious head coverings throughout the facility and train officers on how to respectfully search religious garments.
- Provide a *halal*-designated meal option and not erect unreasonable obstacles to obtaining and maintaining a religious diet.
- Provide access to common religious property, especially Qur'ans, prayer rugs, head coverings, and prayer beads.
- Not strip prisoners of fundamental religious exercise rights as a form of punishment.

Part I of this Report describes the methodology of the Report, in particular our multifaceted examination of free exercise conditions in state prisons, which was sourced from fifty state records requests and a survey of free exercise cases brought by Muslim prisoners. **Part II** provides background on the history of Muslim prisoners seeking religious accommodation and an overview of the current legal regime governing religious accommodation in prison. **Part III** presents the key findings of the Report, including our findings on: the numbers of Muslim prisoners by state; trends in Muslim prisoners' (largely pro se) litigation efforts; and the most- and least- accommodating state policies by religious practice issue area. **Part IV** concludes with recommendations that, if followed, would enable departments of corrections to meaningfully address the patterns of non-accommodation and bias identified in the Report.

I. METHODOLOGY: A Multi-Faceted Examination of Free Exercise Conditions in State Prisons

A. State Religious Preference Data: 35-Jurisdiction Response

In order to assess the current state of religious observance in prisons, Muslim Advocates sent records requests seeking prisoner religious preference data—i.e., the numbers of prisoners identifying with different faith traditions—to 49 states and the District of Columbia. Thirty-four states and the District of Columbia provided useable data, which forms the basis for most of the findings in Part III.A of the Report.

The religious preference statistics are, necessarily, of limited quality, because the format of data provided was highly variable across states. For example, some states provided a "snapshot" of religious preference on a particular day. Other states provided religious preference statistics at intake, or alternately, provided all religious designation requests for the entire year. Some data were from 2017 and some from 2018. Some states utilize just one label for all Muslims, whereas other states distinguish between different Muslim faith traditions in their labeling systems. Despite all these differences, the data, once compiled and compared, provides an important new look at the share of Muslim prisoners in state prisons, and the distribution of Muslim prisoners across state prison systems in the United States.

B. Database of 163 Recent Federal Cases Brought by Muslim Plaintiffs Alleging Free Exercise Violations

In addition to the records requests, Muslim Advocates identified and reviewed 163 Muslim prisoner federal lawsuits over a 15-month period, from October 10, 2017 to January 23, 2019. Our purpose was to gain an understanding of which issues were most important to Muslim litigants, who are typically self-represented, and to discern trends in geography, decision points, and case outcomes over this time period.

In order to find these cases, we used Westlaw alerts and search terms.[2] This resulted in mostly relevant cases, but also a few cases brought by plaintiffs from other religions or cases from outside the prison context. After screening out those cases, we developed an extensive list of recently-decided free exercise cases

brought by Muslim plaintiffs in federal courts. For each case, we tracked basic information, including the jurisdiction and procedural posture of the case.[3]

We labeled nine general areas where Muslim prisoner plaintiffs sought court assistance. The general issues we coded included restrictions related to: 1) Ramadan practice; 2) the ability to grow facial or head hair; 3) access to religious texts; 4) access to prayer and worship services; 5) clothing; 6) *halal* meals; 7) access to religious property; 8) access to a religious leader; and 9) discriminatory behavior. We also had a general "other" category to capture any issues that did not fall into one of the preceding categories. A single case could bring up multiple issues (e.g. both Friday prayer and *halal* meals).

These cases provide a useful starting point for understanding whether some states are disproportionately represented in Muslim prisoner litigation relative to the total number of individuals who self-identify as Muslim; whether certain accommodation issues or concerns predominate over others; and what religious free exercise burdens Muslim prisoners experience most frequently.

C. Religious Services Policies and Handbooks: 50-State Survey

As part of our state records requests, we also asked each Department of Corrections ("DOC") to provide copies of their religious programs policy directives and guidance. Forty-three of fifty jurisdictions provided some kind of responsive record. For non-responsive jurisdictions and jurisdictions that provided only incomplete records, we pulled and analyzed policies that were available online.

II. BACKGROUND: Muslim Free Exercise History and Today's Legal Regime

Muslim prisoners have changed the course of prison conditions litigation, especially with regard to religious free exercise. From the first Muslims in America to today, Muslims have sought to maintain their faith and freedom to worship even when faced with dehumanizing conditions of extreme control and restraint.

In the earliest cases on Muslim prisoners' free exercise rights, courts oftentimes failed to protect Muslim prisoners, in large part because of a lack of familiarity and comfort with Muslim practices. More recently, even as Congress sought to reverse the weakening of First Amendment protections by mandating strict scrutiny of restrictions on religious practice, some courts have failed to apply this standard equally to prisoners of all faiths. Notwithstanding a protective legal standard on paper, the reality today is that Muslim prisoners still struggle to vindicate their fundamental rights to worship, in an environment where many prisons and courts provide few accommodations.

A. Early America and the Preservation of African Muslim Practices Under Conditions of Slavery

Muslims have been part of the American story since the beginning.[4] Today about 1 percent of the U.S. population identifies as Muslim.[5] But the Smithsonian Institution estimates that in the late 1700s, Muslims accounted for closer to 5 percent of the population, due to the significant percentage of African Muslims captured and sold into slavery.[6] The early presence of Muslims is not surprising given the religious make up of West Africa at the time. When the first Africans were brought forcibly to the "New World," Islam was prevalent in West Africa, in territories governed by both Muslim and non-Muslim rulers.[7]

As a result of the transatlantic slave trade, the first examples of Muslims in America seeking to practice their faith from a position of severe restriction was in this context of slavery. Under these conditions, Muslims strove to preserve their distinctive religious beliefs and practices, both within the larger, majority Christian society and within the enslaved community itself.[8]

European and American observers noted characteristic Muslim practices among some slaves.[9] The most noticeable and frequently commented upon distinctions were: retention of Muslim dress codes (including a tradition of both men and women wearing skull caps, turbans, or veils, and not seeking out western

clothes)[10]; maintenance of Muslim names[11] (Moustapha was popular in the Carolinas[12]); and observance of dietary rules regarding pork and alcohol, *halal* requirements, and fasting during Ramadan.[13] Enslaved Muslims were sometimes literate and wrote in Arabic to preserve their faith, to leave messages for their children, and to promote values of self-discipline and education.[14]

B. Muslim Prisoners Spearhead Prison Conditions Litigation in the 1960s and 1970s

In more recent history, pathbreaking litigation by Muslim prisoners resulted in the recognition of important religious free exercise rights for state prisoners of all faiths. Muslims deprived of their liberty through incarceration challenged the legality of their conditions of confinement. But courts initially refused to consider whether certain state practices—such as the use of isolation to prevent the spread of prisoner religious activity—violated religious free exercise rights. In fact, the idea that federal rights applied to state prisoners at all was not taken for granted and was something for which Muslim prisoners had to fight.

For example, in a 1961 California Supreme Court decision,[15] the Court found that Black Muslim state prisoners were not covered by the State Constitution's guarantee of religious freedom. In addition to finding the California Constitution's protections inapplicable, the State Supreme Court found that the prisoners could not rely on federal constitutional guarantees of free exercise.[16] In that case, ten Black Muslim prisoners at Folsom State Prison sought the removal of restrictions on their religious activities and the right to communicate with their attorney.[17] Prison officials openly admitted that restrictions—including the lack of a place for worship, a ban on religious meetings, a ban on discussing religious doctrine, and confiscation of religious literature—were enforced *only* against Muslim inmates. The prison claimed the overbroad measures were needed, because the prisoners, "by their acts in rejecting the authority of members of the white race . . . present a problem in prison discipline and management."[18] The Court upheld those discriminatory practices despite that admission.

Eventually the tide began to turn, and in a series of subsequent cases, Muslim prisoners succeeded in gaining federal antidiscrimination and free exercise protections. First, in *Sewell v. Pegelow*, nearly forty Muslim plaintiffs charged that all Muslims in the U.S. Reformatory at Lorton, Virginia were put in isolation and deprived of food and medical attention even though they had violated no disciplinary rules.[19] The court's language in describing the prisoners evinced a lack of familiarity with Muslim history in the United States.[20] The

"Negroes professing Islam and . . . known as Muslims" complained that they could not wear religious medals, were denied access to religious advisors, could not recite prayers, and finally, that officials suppressed their grievance letters to prevent litigation.[21] The District Court dismissed the complaint on the grounds that the state executive had sole jurisdiction over jail conditions. But the Fourth Circuit reversed, finding that the Muslims' complaint required at least a hearing.[22]

The same year, in *Pierce v. La Vallee*,[23] the law inched further towards federal protections for state prisoners. In this case, the Second Circuit ruled in favor of three members of the Nation of Islam, who complained that the Dannemora State Prison in New York denied their requests to purchase Qur'ans, and further, imposed solitary confinement and denied them good time solely based on their religious beliefs.[24]

In *Pierce*, the district court had refused to look at the prisoners' claims regarding solitary confinement, on the theory that federal courts do not have jurisdiction over state law questions involving unreasonable restrictions on the liberty of prisoners. The Second Circuit reversed and ordered the district court to consider the prisoners' claims about solitary confinement on the merits.[25] The impact of the case was to extend federal jurisdiction over conditions at state correctional facilities, though the district court would ultimately find in favor of the prison again on remand.[26]

One of the prisoner plaintiffs in *Pierce*, Martin Sostre or "Sostre X", would eventually succeed in another solitary confinement case, in which he argued that he was held in solitary confinement for a year at Green Haven prison in New York based only on his legal and political activities and beliefs.[27] The judge authored a scathing opinion deeply critical of the prison. Sostre went on to file several subsequent legal challenges. In addition to shedding light on the rampant nature of religious discrimination in prisons, his litigation efforts highlighted universal difficulties faced by prisoner litigants when correctional officers intercept legal mail to disrupt challenges to officer behavior and to prison policy[28]—difficulties that continue to exist to this day.[29]

In another influential case, *Cooper v. Pate*, the Supreme Court ruled in favor of a Muslim prisoner, Thomas Cooper, allowing him to sue the state prison in federal court under the 1871 Civil Rights Act.[30] This time, the prisoner was in Illinois, and had alleged that the prison prevented him from purchasing religious literature and denied him other privileges solely on the basis of his religion.

Together, *Cooper* and *Pierce* helped kickstart a tradition of federal courts scrutinizing whether state prison conditions violate federal rights guarantees.[31] In subsequent years, Muslims gained limited accommodation for additional religious practices, and they brought judicial and public attention to the issue of free exercise rights for all.[32] Their efforts advanced the rights of many other religions deemed "unfamiliar" to prison administrators and jailors.[33] During the Attica prisoner "uprising" in 1971, for example, a prisoner collective would generate a list of fifteen "practical proposals" or requests, including "[g]ive us true religious freedom."[34] And in 1972, the Supreme Court cited *Cooper v. Pate* in allowing religious discrimination claims by a Buddhist inmate to move forward.[35]

Before Muslim prisoners brought these pathbreaking cases, the courts had treated state prisoners as largely falling outside the protections of the Constitution, and were reluctant to intervene even when outrageous violations of federal rights were alleged. Muslim prisoners' early litigation helped shift the tides and gain greater protections for the religious rights of prisoners of all faiths.

C. Courts Reduce Prisoners' Free Exercise Protection in the 80s and Early 90s

Throughout the 60s, 70s, and 80s, the settled Supreme Court interpretation of the free exercise clause was that serious government burdens on religious practice would be subject to "strict scrutiny."[36] The strict scrutiny standard is the highest level of constitutional protection, and provides an important check against government abuses. But starting in 1987, the U.S. Supreme Court took steps to limit prisoners' rights generally, including in the area of religious free exercise.

In a 1987 decision, *Turner v. Safely*, the Court decided that a restriction on religious exercise would be legal as long as it was based on a reasonable justification—a flexible standard prisons will almost always meet, compared to the previous requirement of "strict scrutiny." In the words of the Court, a prison regulation related to any "legitimate penological interest" would be found constitutional.[37] The same year, in *O'Lone v. Estate of Shabazz*, the court further weakened free exercise protections.[38] There, the prison blocked Muslims from attending weekly Friday congregational prayer because of their work assignments. The Supreme Court found that preventing Friday prayer on this basis was constitutional.[39] Finally, in a seminal decision in 1990, *Employment Division v. Smith*, the Supreme Court held that government laws that seriously burden religious practice are constitutional as long as they are not specifically directed at religion and are generally applicable.[40]

In the prison context, these decisions had a detrimental effect on prisoners' ability to practice their faith. This is especially true because the Court held that *any* justification related to a prison's interest, however minor, could outweigh prisoners' most fundamental religious concerns. The result of these cases was that prisoners' religious free exercise complaints would receive the least searching form of constitutional scrutiny from courts. These decisions halted and reversed much of the progress Muslim prisoner litigants had made in the preceding decades.

D. Congress Responds to the Deterioration of Free Exercise Rights by Passing RFRA, Then RLUIPA

In two successive bipartisan bills, Congress resuscitated the Constitution's guarantee of religious liberty for all, specifically seeking to counter the impact of the Supreme Court's decision in *Employment Division v. Smith*. The surprising result of these efforts is that federal statutory law now provides greater free exercise protections than the First Amendment as interpreted by the Supreme Court.[41]

Under the Religious Freedom Restoration Act (RFRA) of 1993[42] and a similar law that applies to states, the Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000,[43] prisons and jails must provide a "compelling" instead of a merely "legitimate" penological interest if they wish to "substantially burden" religious exercise.[44] Furthermore, even if a prison's interest in burdening religious exercise is compelling, the burden imposed must be "the least restrictive means" of furthering that interest.[45] If there is a less restrictive alternate policy available, then the prison must use that policy instead of the more restrictive option. The effect of these laws was to return free exercise protections to the level enjoyed prior to the Supreme Court's decision in *Smith*.

Court applications of RFRA and RLUIPA in the prison context have varied widely, and have not always provided the most extensive protections available under the plain terms of the statute. Courts did not generally agree on how the new standard should apply. Some courts tended towards a more deferential review of prison directives, despite Congress's expressed intent and straightforward language requiring otherwise.[46] In 2015, however, in *Holt v. Hobbs*, the Supreme Court clarified the application of the "substantial burden" and "least restrictive means" prongs of the strict scrutiny test.[47] The Court concluded that an

Arkansas policy violated RLUIPA, because it needlessly banned Muslims from growing beards longer than a half inch.

Muslim claimants have generally not benefited equally from the protections these statutes offer. A comprehensive 2012 study of federal court decisions where plaintiffs raised free exercise claims found that, when other variables were held constant, claimants from other religious communities were twice as likely to receive religious accommodations as Muslims.[48] The disparity in outcome tended to increase in appellate court cases.[49] And if the claimant was a Muslim *prisoner*, the disparity increased significantly: non-Muslim prisoners were three times more successful than Muslim prisoners in vindicating their religious liberty rights.[50]

Related findings of the U.S. Commission on Civil Rights confirm that Muslim prisoners encountered more frequent violations of their rights than other religious groups. The study found that Muslim prisoners filed 42 percent of administrative remedy requests at the prison level, and ultimately litigated 29 percent of RLUIPA cases over the periods of study, strongly suggesting that they receive less accommodation and must resort to grievance mechanisms and litigation at higher rates.[51]

E. Conclusion

Muslim prisoners painstakingly fought for and improved their access to religious freedom in prison in the 1960s and 70s, only to have the Supreme Court weaken those protections via *Turner v. Safely* in 1987. Although Congress responded by restoring religious protections for all, Muslim prisoners have not always been able to benefit from those protections. Muslim prisoners are forced to grieve and litigate their accommodation claims at a greater rate than their counterparts from other faith traditions, with lower rates of success.

As the remainder of this Report will show, these problems continue to this day. While some states do allow a greater measure of religious free exercise in prison, many Muslims in prison continue to struggle to maintain their religious practices, and face obstacles that range from diet to religious dress to particular forms of worship and devotion.

III. FINDINGS: Numerous Muslim Prisoners Face Obstacles to Practicing Faith and Face Discrepancies in Accommodation from State to State.

As detailed in this Part, our findings give rise to three overall conclusions . First, a large share of state prisoners self-identify as Muslim, and the share of prisoners who identify as Muslim is growing. Second, Muslim prisoners litigate most frequently over violations of their religious dietary beliefs and their ability to pray. Finally, Muslim prisoners face a great discrepancy in levels of accommodation from state to state, and many states have facially arbitrary and needlessly restrictive policies regarding Muslim religious exercise.

A. Muslims in State Prison by the Numbers

Until now, little information has been made available about religious preference data of state prisoners, due to the difficulty of obtaining this information. The data we obtained shows that in some state systems, over 20 percent of prisoners identify as Muslim. The overall share of Muslim prisoners, including Muslim women, also appears to be increasing over time in most of the states that provided religious preference data for multiple years.

Across the 35 jurisdictions that responded to our data requests, around 9 percent of prisoners identified as Muslims—a slightly lower figure than the 12 percent of federal prisoners who self-identify as Muslim.[52] But without data for all states, including large states like California, no firm conclusions can be drawn about the national average. It is also possible that reported numbers are low, because some prisoners might not self-report their religion despite identifying with or practicing a particular faith tradition. The incentives for self-reporting may vary from state to state.[53]

1. Muslims Are Overrepresented in State Prisons.

About 9 percent of the state prison population is Muslim, at least among D.C. and the 34 state DOCs that responded to our data request.[54] The share of Muslim prisoners across states is also highly variable. In Pennsylvania, Maryland, New Jersey, and D.C., more than twenty percent of prisoners identified with a Muslim group.[55] Pennsylvania, Texas, and Michigan housed the largest absolute numbers of prisoners identifying as Muslim, each with more than 7,000 Muslims in custody. The significant presence of Muslims in prison stands in stark contrast to Muslims' share of the U.S. population as a whole, which is just 1 percent.[56]

2. For Most States, the Share or Number of Muslim Prisoners Is Increasing.

The data also showed that in many states, either the share of incarcerated Muslims or their absolute number is increasing.[57] This trend is surprising, given that the prison population overall has decreased in recent years in many states, in part due to state efforts to curb mass incarceration.[58]

3. Muslim Women Are Also Overrepresented in Prison.

Although most Muslim prisoners are men, Muslim women are also present in state prisons in significant numbers. In Pennsylvania, about 8 percent of female prisoners identify as Muslim.[59] In Texas and Wisconsin—states where Muslims account for about 1 percent of the population[60]—Muslim women account for more than 2.5 percent of female prisoners.[61] And anecdotal data from at least one state suggest that the number of Muslim women in prison is increasing dramatically: in Kansas, the number of Muslim women in prison more than tripled in just eight years.[62]

4. Conclusion

Muslims are overrepresented by a factor of about eight in the thirty-five jurisdictions that provided data. And in recent years the share of prisoners who identify as Muslim, the absolute number of Muslim prisoners, or both has steadily been increasing. That increase makes it all the more important that prisons and jails provide robust accommodation for religious practices that heretofore may have been unfamiliar to many prison administrators.

B. Recent Muslim Prisoner Litigation Database

In addition to requesting religious preference data, Muslim Advocates compiled 163 recent Muslim prisoner lawsuits over a 15-month period.[63] The cases were filed in federal court, but came from a mix of federal prisons, state prisons, and state and local jails. Claims from federal prisons were included to provide a holistic view of the kinds of free exercise complaints Muslim prisoners most frequently raise in court filings. These cases vividly illustrate some of the burdens on practice endured by Muslim prisoners. And in the aggregate, they provide important insight into the religious free exercise issues that give rise to the most prevalent sources of grievance.

1. Background: Challenges To Filing a Lawsuit While in Prison

Roughly every three days, one Muslim prisoner is sufficiently aggrieved by the lack of accommodation he or she faces to file a federal lawsuit.[64] To file such a lawsuit, a prisoner must pay fees and overcome other serious obstacles to litigating, including the inability to obtain legal representation, fear of retaliation, difficulty conducting legal research, and lack of materials for mailing.

Prisoners must pay significant fees to file a federal lawsuit, and must therefore be highly motivated by a free exercise violation to seek assistance from a federal court. Under the Prison Litigation Reform Act (PLRA),[65] prisoners must pay full fees even if they are proceeding *in forma pauperis*—a status that ordinarily allows indigent persons to proceed in court without the usual fees. In New York, for example, this means that penniless prisoners must commit to a $350 filing fee, and then another $450 if they wish to appeal. These fees are paid in installments which may be garnished from their commissary accounts.[66] The average minimum daily wages paid to imprisoned workers for non-industry prison jobs is 86 cents.[67] In purely financial terms, the burden of litigation for many is extremely significant.

2. California Is the Source of the Largest Share of Prisoner Complaints.

The largest share of cases came from California, which was the source of 20 of 163 cases or over 12 percent. California's San Quentin State Prison in particular was a frequent source of free exercise grievances.[68]

The prevalence of California cases suggests a lack of accommodating policies, a large absolute number of Muslim prisoners, or both. California's DOC did not provide Muslim Advocates with religious preference data, and does not have a detailed religious services handbook or policy to guide state prisons on best practices for accommodating prisoners of diverse faiths.[69]

3. The Top Two Accommodation Problem Areas Are Diet and Prayer.

i. Muslim Prisoners Have Trouble Obtaining a Religious Diet.

The most common accommodation problem identified by Muslim prisoners in their federal lawsuits was difficulty receiving a diet accommodation. In the 163 cases identified, more than 39 percent involved food.[70] Of these diet cases, over 46 percent succeeded, in that they were allowed to proceed to a

subsequent phase of review, for example by surviving PLRA screening, a Motion to Dismiss, or Summary Judgement.

In *Stewart v. Sheahan*,[71] a prisoner alleged that the prison failed to provide him religious meals for four consecutive days during the month of Ramadan (during which Muslims refrain from food and drink during daylight hours and break their fast at night). In another diet case, a disabled prisoner explained he had to submit 15 requests for *halal*, or religiously permissible meals, over a period of about nine months before ultimately receiving any accommodation.[72]

Some Muslim inmates believe they can accept kosher certified meals as sufficiently similar to *halal* certified meals. However, these prisoners often have difficulties obtaining kosher food. Correctional officers in Florida and New York have allegedly denied Muslim inmates kosher meals for not being Jewish, even though there was no *halal* option available at that facility.[73] In another recent case, a Muslim prisoner had to wait five months for approval of a kosher diet, after being transferred from a facility where he had already received approval for a religious diet.[74]

Another common meal issue is the denial of requests to observe the feast of *Eid ul-Fitr*, an important Muslim holiday that marks the conclusion of the month of Ramadan. The frequency of claims brought by Muslim inmates about this feast demonstrates the importance of this religious occasion.[75] Considering that Christian holiday meals and festivity requests are routine or easily granted approval, these claims signal disparate treatment of Muslim prisoners.

ii. Muslims Face Obstacles to Prayer and Worship.

Obstacles to prayer and worship were the second most common complaint by Muslim prisoner litigants. Fifty-seven of the 163 cases, or 35 percent, related to restrictions on the ability to pray or worship. Just over a third of those complaints, or 36 percent, were allowed to proceed to the next phase of litigation.

At one institution, Muslim inmates were banned from praying inside the chapel, even though other religious groups were permitted to do so.[76] The Plaintiff in that case explained that this rule forced him and other Muslim inmates to pray outside in extreme weather conditions including cold, snow, and rain. In another case, a prison banned Muslim prayer in the prison dayroom,[77] and sent a prisoner to administrative segregation when he attempted to pray with others. In a third,

the prison prohibited Muslim prayer in the outdoor yard.[78] One prison even went so far as to prohibit Muslim inmates from praying in their own cells.[79]

Finally, in two recent cases, prisoners referenced a rule limiting Muslim inmates to one religious service per week as a form of punishment.[80]

4. Conclusion

Despite the significant hurdles to litigating, Muslim prisoners across the country are still motivated to seek court assistance in overcoming practices and regulations that inhibit free exercise. Courts have allowed a significant proportion of those cases to proceed, confirming that many of these claims are meritorious.

C. State Prison Religious Accommodation Policy[81] Survey

Not all prisoners will have the grit, money, endurance, or resolve to pursue a federal lawsuit against the institutions or officials controlling nearly every aspect of their day-to-day life. As a result, we looked beyond recent cases to compare and contrast general correctional policies and directives regarding religious practice across all 50 states and the District of Columbia.

Through this review, we found that the level of accommodation provided to Muslims is highly inconsistent, even though the same RLUIPA standard applies equally to all prisoners. Some states provide an appropriate level of accommodation in their policies, and others seemingly ignore or downplay the basic religious needs of Muslim prisoners. Our review of the policies reveals numerous examples of restrictions on Muslim practice that are needless, excessive, and without any legitimate justification.

Huge discrepancies in the level of accommodation invite an obvious question: If some prisons have allowed or facilitated Muslim practices, why have other prisons not done the same? With RLUIPA's strict scrutiny test, this is exactly the question that Congress instructs courts to ask. Under RLUIPA, the burden is on the prison to show that it has a "compelling" interest that is advanced by burdening a given religious practice.[82] The prison must also show that it is pursuing its compelling interest in the way that is "least restrictive" of the prisoner's religious practice.[83] In other words, if there is an alternative policy that would achieve the prison's interest—and would impose a lesser burden on the prisoner—then that alternative is less restrictive and should be adopted. The

prison is required to use the *least* restrictive, or most accommodating, of available options that satisfy its compelling interests. This outcome aligns with the intent of Congress in providing for the maximum religious freedom possible, even in a restrictive setting like prison.[84]

Our statewide survey documents that there are many "less restrictive" and even fully accommodating prison policies that successfully facilitate Muslim practices around prayer, diet, and dress, without compromising compelling government interests in safety. Unfortunately, the survey also reveals examples of cruelly restrictive directives and policies.

In what follows, we compare the most and least restrictive state polices in six areas of common free exercise regulation: group prayer; work exemptions and proscriptions; religious rights at death; head covering; diet and fasting; religious property; and the religious rights of prisoners in administrative housing or segregation.

1. Daily Prayer, in Groups

Muslims generally believe they are required to perform five daily prayers at specified times, which vary slightly from day to day depending on the time of year. The daily prayers take just a few minutes each, and should be performed under certain conditions including: in a ritually pure state and in modest clothing; in a clean place that is preferably quiet; and facing towards Mecca. Finally, the daily prayers should be performed in a group if other Muslims are present.

The daily prayer obligations of Muslims have no exact analogue in Christianity. Perhaps as a result, prisons sometimes have difficulty understanding the practice. State correctional departments vary in their accommodation of Muslim daily prayer generally and of group prayer in particular. Many policies and handbooks fail to mention this widespread Muslim practice. Other states, however, do provide guidance to prison administrators.

On the more accommodating end of the spectrum, seven state religious handbooks recognize the importance of group prayer in Muslim daily practice and instruct that daily group prayer be allowed where possible.[85] For example, Indiana's general policy allows prisoners to "gather for religious discussion and/or prayer" provided it is during leisure or recreation periods and is not disruptive, and that no one is coerced into praying.[86] The Indiana policy further acknowledges with regard to Muslims that "although [a] Muslim may perform

religious duty individually, the main thrust of Islam is to show religious life in community."[87] The policy further notes that preferably the five daily prayers "will be said with the congregation" and even explains that some of the prayers may be vocalized.

Similarly, the New Jersey policy states that daily prayers can be performed "individually or in congregation" at the prescribed times. The policy also notes that prayers can be made at work sites, school, or housing units during break times.[88]

South Carolina's written policy is that prisoners may be allowed to meet as a group for "some" of the daily prayers "depending on space, controlled movement, and level of security."[89] The South Carolina policy is one of the few that also recognizes, correctly, that it is not polite to walk in front of a Muslim person while he or she is praying, and that the area for prayer should be quiet and clean.[90]

Other state policies are not as accommodating. They include overbroad policies that require any faith group activity to be directly supervised and pre-authorized,[91] even when they do not typically impose the same requirements on secular group activities such as sports games, card matches, or watching the television. Sometimes, states even target Muslim group practice for special surveillance. In Arizona, the written policy requires a security officer to be present for Muslim weekly congregational service on Fridays, but there is no such requirement for other groups' weekly congregational prayer. [92]

Other states have adopted a mixed approach that does not ban group prayer entirely but instead tailor inmate-led group prayer supervision rules to the security level and particularities of each housing unit. In Idaho, for example, inmate-led activity, whether religious or secular, receives different levels of scrutiny depending on the housing unit classification. Thus, prisoner-led activity in minimum security facilities requires periodic supervision that is either direct (in person) or indirect (direct line of sight through video or window), but supervision is increased in more secure units.[93] Exceptions can be approved by the facility head. [94] Other states allow prayer leaders who have received prior written permission to lead daily group prayers. [95]

2. Work Exemptions and Work Proscriptions

The Thirteenth Amendment outlawed slavery and involuntary servitude, "except as punishment for a crime whereof the party shall have been duly convicted."[96] As a result of this exception, forced labor is still practiced in the United States. Prisoners may be forced to work full time under threat of punishment and without any compensation (or meager compensation), in fields, factories, or kitchens.[97] Courts have ruled that prison laborers are not protected by workers' rights statutes like the Fair Labor Standards Act or the National Labor Relations Act.[98]

There is no compelling reason that prison laborers should not—at the very least—be protected by RLUIPA and RFRA from working jobs that may conflict with their beliefs (for example handling or serving pork or alcohol), or why they should not be permitted time off to complete mandatory religious observances (holidays, daily prayers, etc.).

It should go without saying that a prisoner of faith does not have to work on certain religious holidays. But surprisingly, a few state correctional departments do not explicitly provide for work exemptions or identify days of work proscription for Muslims. In other states, it is unclear the extent to which Muslim workers are able to fulfil their religious obligations while on the job, or whether they are permitted work exemptions.

In Alabama, for example, the official policy is that there are no work exemptions at all.[99] The policy as written is facially overbroad and not narrowly tailored. Arkansas and Colorado[100] do not even provide an exemption for Ramadan, a month of fasting during which Muslim prisoners do not eat or drink during daylight hours. Depending on how physically demanding a prisoner's work assignment is, the lack of a work exemption could result in serious pressure on prisoners to break their fast. In Ohio, "no specific work proscriptions are noted" for Muslims, though members of other groups get work holidays.[101] In Vermont, the policy notes that "there are no work proscriptions required" for Muslims.[102]

By contrast, many other states do provide at least some days of work proscription to Muslim prisoners, though the specific holidays recognized—and the procedures for requesting the day off—vary from place to place. In Arizona, prisoners are apparently likely to receive pre-approved work proscription days, and can additionally request work exemptions that recur on a weekly basis.[103] Florida allows work breaks during Ramadan if the individual so requests.[104] The other states with some kind of work break for holidays include Indiana[105]; Kentucky[106]; Maryland[107]; New Jersey[108]; New Mexico[109]; North Carolina[110]; New

York[111]; Oklahoma[112]; Pennsylvania (in "rare cases" only)[113]; Virginia [114]; Washington[115]; and Wisconsin.[116] The Illinois policy also recognizes that certain work assignments may violate individuals' beliefs, and considers on a case-by-case basis whether to provide an alternative assignment.[117]

3. Religious Rights and Burials for Prisoners Who Die in Prison

State policies regarding prisoner death and dying also demand renewed scrutiny. Serious religious liberty violations are likely to occur when state prisons and jails have death and burial policies that do not accommodate religious beliefs in that context.

A recent Supreme Court stay decision dramatically highlighted the indignities and discrimination that may be endured by Muslim prisoners who die in prison or who are killed by the State. In *Dunn v. Ray*,[118] a black Muslim prisoner on Alabama's death row, Domineque Ray, wanted an imam to attend his execution. But Alabama refused his request, even though it regularly allowed a Christian chaplain to attend executions. The Eleventh Circuit stayed Mr. Ray's execution, finding it substantially likely that Alabama violated Ray's First Amendment rights.[119] But in a terse stay decision, a 5-4 majority led by Justice Thomas ruled against Ray's religious rights at death.[120] The state of Alabama killed Mr. Ray shortly after, without the presence of his spiritual advisor. The decision drew immediate bipartisan backlash. Many were shocked by the result, since the Court's conservative majority has shown great solicitude to religious belief in many other contexts.[121] However, that concern has not been steadfastly applied to Muslims.[122]

A lesser-known aspect of Mr. Ray's case is that he had also requested that he not be subjected to an autopsy, because it conflicted with his religious beliefs. That request was also denied[123] and the Supreme Court failed to even mention it when it allowed him to be executed.[124] This reflects a systematic problem across state prisons and jails. Although the principle of honoring the dead and making respectful arrangements for the disposition of mortal remains has well-established roots in U.S. common law,[125] that principle is sorely neglected in many state correctional policies.

For example, Muslim burial practices typically forbid mutilation of the body.[126] Despite this widely shared belief, half of all 38 publicly available policies automatically conduct or request autopsies, or allow the state medical examiner the discretion to conduct one. The other half make no mention of autopsies, but it

is unclear what procedures are followed in practice. And while most states allow next of kin to coordinate burial arrangements, several states only allow this after an autopsy has been performed, simply disregarding any lack of consent from either the deceased or next of kin.[127]

Funerary practices often serve as the final connection between a person and the afterlife. In Islam, a prompt burial is typically required, and most Muslims would regard cremation as a serious violation of their beliefs.[128] With respect to unclaimed mortal remains—another sensitive but overlooked topic—out of the 38 publicly available state correctional policies, six have no stated burial procedures, nine opt for cremation by default, and twelve either provide the explicit option to cremate or provide the facility full discretion to make arrangements for the disposition of the remains.[129] The states that cremate by default are almost certainly violating the beliefs and dying wishes of prisoners who do not believe in cremation. And the six states with no burial procedures at all similarly run the risk of serious free exercise violations.

Some state correctional departments do have written policies that recognize religious beliefs regarding burial. Massachusetts[130] and Minnesota[131] either require consent to cremate or allow prisoners to opt out of default cremation. Florida details which religions forbid cremation.[132] Maine will not cremate if the inmate is a member of a religious faith that prohibits it.[133] Kentucky[134] and Ohio[135] note the cremation restriction and include key components of Islamic burial practices such as washing and time of burial. North Carolina allows burial prayer service for Muslim inmate deaths.[136] Washington's religious handbook details a highly respectful process that abides by Muslim burial practices.[137] Arkansas[138] and California[139] make passing mention of religious faith in the burial rites.

4. Head Covering

Under religious principles of modesty or dress, many Muslims believe they should cover their heads while praying or in public. Depending on the tradition followed, men may wear a kufi or topi—a knit, brimless, round cap—or in some cases a turban or fez. Women, similarly, may wear a hijab—a veil which typically covers the hair, neck, and chest—or other similar forms of head covering.

Prisons around the country recognize the importance of head covering in different faiths, but have chosen to regulate head-covering in inconsistent and at times confounding ways. For example, an Alabama policy allows the "Koofie" to be worn only during religious services, and fails to mention the hijab at all.[140]

Idaho permits religious head covering only during religious ceremonies or within the cell.[141] Under an odd rule in Colorado, head coverings are allowed outside of the cell, but only if they are covered with another head covering such as a stocking or baseball cap and are "not visible." [142] In Texas, prisoners can carry their religious head coverings out of their cells but cannot wear them outside of their cells or the chapel.[143] Other states, such as Illinois, go so far as to require "written verification" that the head covering is required by the individual's religion in order for the person to be permitted to wear them, even in their "immediate sleeping area during prayer" and in the chapel.[144] Hawai'i has a similar requirement.[145]

These restrictions on head covering are arbitrary. As the Colorado policy shows, non-religious headgear is allowed outside of cells. Indeed, numerous prisons actually issue caps or toboggans depending on weather or season. There is no reason to treat secular head covering differently. A baseball cap brim surely obscures the face more so than most Muslim headgear, which is brimless and, with the exception of a face veil, leaves the face unobstructed.

In contrast with these restrictive – and at times ridiculous – policies limiting headgear outside of cells, numerous state policies allow religious headgear throughout the facility: Alaska,[146] Connecticut,[147] Florida,[148] Georgia,[149] Kansas,[150] Kentucky,[151] Maryland,[152] Nevada,[153] New Hampshire,[154] North Carolina,[155] North Dakota,[156] New York,[157] Oklahoma,[158] Rhode Island,[159] South Carolina,[160] Utah,[161] and Wyoming.[162] Not all these states recognize the same types of Muslim headgear, however. For example, Utah specifically mentions the kufi, fez, and turban, but does not mention the hijab, [163] and thus leaves open the possibility that officers will confiscate hijabs as contraband or prevent them from being worn.

As these seventeen accommodating policies show, prisons can adjust to Muslim or other religious head covering practices without compromising order and security. Indeed, under these more accommodating policies, headgear is often subject to color limitations and to search, although the better policies also note that such searches should be respectful.

For example, Washington State instructs its employees that depending on the context, "[a]sking a woman to remove her hijab publicly is tantamount to asking someone to undress in public."[164] The policy requires that such searches be conducted by a member of the same sex outside the view of members of the opposite sex, unless no same-sex staff is available *and* there is an "urgent legitimate need" for the search to take place.[165] A Maryland policy similarly recognizes the sensitive nature of hijab searches and instructs the officer to conduct first a

"simple pat search" while the hijab is still on. If there is a need to search further, then a female officer conducts the search in a private place. The prisoner removes the headgear herself and puts it back on.[166]

States also vary in the number of religious head coverings allowed in a prisoner's personal property. For prisoners who wear the head covering at nearly all times, it is concerning that some facilities only allow one head covering.[167] Other states allow up to three.[168]

Finally, some prisons appear to restrict head covering during transportation outside of the prison,[169] while others do not.[170] For example, New York State transports detainees wearing religious head coverings.[171] It is not clear why other states could not provide the same accommodation.

5. Diet

For persons with religious beliefs about food, the denial of a religious diet is a daily barrier to carrying out an obligation at the heart of religious exercise. And as previously discussed, diet is the most common accommodation problem identified by Muslim prisoners in their federal lawsuits. While non-accommodation at a single meal may appear trivial, the cumulative impact of frequent variance from dietary standards over weeks, months, or an entire sentence is substantial.

As the Missouri diet policy recognizes, many religions consider the human body a "repository for the divine."[172] Compliance with dietary norms may be essential to atonement or even end-of-life repentance through heightened levels of observance.[173] And as previously noted, Muslims in America have sought to preserve these practices going back hundreds of years.[174] The desire to observe a fully *halal* diet may also be indicative of strengthened or deepening religious practice.[175] This process is particularly important as a manifestation of religious exercise in the prison context, where prisoners may feel separated from their broader faith communities.

Many state policies do provide for full accommodation of Muslim diet requests. Others, however, provide diminished diet substitutes or no substitutes at all, and thus dip below the legal floor set by RLUIPA. And in some cases, the paucity of diet accommodations may coerce individuals into violating their dietary beliefs.

A few key differences among states are worth highlighting. First, some facilities provide designated-*halal* diets and even *halal* meat, while others do not. Second, some prisons impose extremely burdensome procedures on detainees who wish to request any diet accommodation. Third, many prisons fail to specify that diet accommodations should follow a prisoner who is transferred, forcing prisoners to go through a burdensome request process at each new facility.

The result in many states is predictable, recurrent, and entirely avoidable rights deprivations that can last for weeks, months, or even an entire sentence.

i. Halal-Designated v. "Pork-Free" Diets

Nearly all Muslim traditions prohibit the consumption of pork or pork by-products, as well as the consumption of alcohol. But many Muslims understand the rules for *halal* or "permissible" food to be more complex than a simple exclusion of pork and alcohol. In order to be a *halal* source of meat, for example, animals must be slaughtered a certain way. And even non-flesh and vegetable food sources must be processed in a way that avoids contamination or contact with religiously prohibited substances.[176]

Prisons can provide certified *halal* diet plans to satisfy the religious needs of their Muslim prisoners. Approximately nine states do have policies explicitly requiring *halal* diet accommodation in some form. Other state policies do not pre-designate a *halal* option but have a process for inmates to request *halal* diets and explicitly recognize in their handbooks that *halal* requirements go beyond the simple avoidance of pork.[177] Most states, however, continue to force Muslims to eat simple "non-pork" vegetarian or vegan diets which may fall short of *halal*, or require Muslims to get special permission to eat a kosher diet, which many but not all Muslims agree is an acceptable alternative to *halal*.

The state polices recommending "pork-free" diets for Muslims merit special discussion.[178] These diets usually do not satisfy the full conception of *halal* observed by many Muslims. Pork-free diets may still include non-*halal* meats or flavoring. And even vegetarian and vegan meals can be problematic for some, who have sincere beliefs that they are not to be vegetarian. Other Muslims simply find the prison version of vegetarian or vegan options to be so nutritionally unvaried and inedible that they are effectively coerced into eating non-*halal* food items that violate their beliefs.

Georgia provides one egregious example of a deeply flawed "pork-free" policy. Despite the name, the accommodation available includes pork products. The diet simply requires that there be "no more than one" pork entrée served per day.[179] Utensils used to prepare pork could still come into contact with non-pork meals, and the pork entrée could cross-contaminate other items in the serving line or kitchen. Meanwhile, "non-pork ham seasoning" can be used on "non-pork" trays.[180] Thus, Muslims can be compelled to eat ham-flavored food and to forgo a meat entrée up to once a day under this "accommodation."

Fortunately, an increasing number of prisons have policies calling for *halal*-designated diets. Colorado policy lists vegetarian, vegan, and *halal* diets as acceptable Muslim dietary choices.[181] The religious diet request form includes a *halal* option.[182] In Maryland, the *halal* diet "shall" be offered to those designated as Shi'ite, Sunni, members of the Nation of Islam, members of the Moorish Science Temple, and members of other groups with the "same basic tenets that require the Halal diet."[183] Traditional Ramadan foods like dates for breaking fast must be available for purchase and prisoners must be notified of how to obtain them 60 days in advance of the holiday.[184] Massachusetts[185] and Michigan policies also appear to have *halal*-designated options available, though the Michigan option is also vegan and so may coerce some into violating their beliefs.[186] New Hampshire specifies both a pork-free diet and "Halal or Kosher" diet prepared "under a certified process for the practice of . . . Muslim[s]." [187] Similarly, Oklahoma diet policy suggests that a *halal* diet is available.[188]

The examples do not end there. Rhode Island provides *halal* meat both during and outside of Ramadan.[189] South Dakota policy provides *halal* as an example of a "religious or alternative diet" that "shall normally be provided to approved inmates."[190] Wyoming does not require *halal* meat but allows it: meat that is "*halal* or *zabahah*" may be utilized if "immediately available through a regular Department approved vendor at a price comparable to Kosher."[191] Although New York state does not specify a *halal* option, [192] New York City Corrections has had a *halal* meal program on the books since the 1980s.[193]

The Washington State policy is one of the most accommodating on the books. First, the chaplain's handbook sets out a fulsome view of *halal* requirements that goes beyond mere avoidance of pork.[194] The handbook states that "Shi'a Muslims are only allowed to eat Halal meats. They are not allowed to eat kosher meats nor are they allowed to eat any other meat not slaughtered according to the methods prescribed by the Qur'an and Sunnah of the prophet."[195] The food preparation policy explains in detail the "requirements for obtaining wholesome

meat."[196] And accordingly, "halal" is included among the recognized individual diets in the religious programs policy.[197] At reception and diagnostic centers, individuals select an "initial" religious diet at no cost,[198] and the diet remains in place until otherwise changed.[199]

The Wisconsin religious diet policy, as written, is also highly accommodating. It explains that "halal meat meals [are to be] served four times per week, as well as fish entrees (scale fish only)."[200] Documentation of *halal* certification must be maintained.[201] The diet "excludes foods identified in accordance with the strictest interpretation of Islamic law" as both "*Haraam*" (unlawful/forbidden) and "*Mushbooh*" (food which is doubtful or suspect).[202] The policy also includes a safety valve: it is still possible for prisoners to request a form of *halal* or any other religious diet not already offered by the facility.[203]

ii. Burdensome Procedures to Obtain Religious Diets

Another common diet problem is that prisons create burdensome procedures for anyone who wants to request a religious diet, rather than providing a religious meal option automatically.

For example, to obtain a simple meat-substitute diet in Nevada—which is neither expensive nor unusual—a prisoner must pass a diet accommodation interview.[204] Similarly, Iowa prisoners who require anything more complex than a meat substitute diet must obtain chaplain sign-off, and chaplains must report regularly to the food service directors. These Iowa special diet requests must be "complete, furnished in writing" and "*rewritten monthly*."[205] In Florida, to obtain a "certified food option" meal, prisoners have to pass an oral sincerity assessment with the chaplain, who may then investigate the prisoner's activity and interview other prisoners and staff about the requesting prisoner's beliefs and conduct.[206] These policies are unduly burdensome for prison administrators and prisoners alike, and create serious risks that prisoners will be denied religious meals for extended periods.

North Dakota has a uniquely problematic policy that essentially guarantees deprivation of religious food. There is a "60-day sincerity test" for anyone who changes their religious preference to a religion with a dietary requirement. "During the sixty days of the sincerity test, the inmate will not be provided the new chosen religious special dietary obligation or tenets. After the sixty days, if the inmate continues to demonstrate sincerity and commitment to the new religion, the dietary obligation or tenets may be accommodated."[207]

Prisoners, especially those with medical issues, may face a choice between adequate nutrition and a religious diet. Some institutions, for example in Nevada,[208] require prisoners who have been prescribed a medical diet to sign medical releases if they wish to obtain a religious diet. Prisoners who elect a non-religious diet do not have to sign such releases. The medical release appears to be a tacit acknowledgement that even though vegetarian, vegan, or other special diets are "certified" by a dietician, they may in fact be inadequate, nutritionally deficient, or even dangerous for some prisoners. The elements of many alternate and religious diets do not vary according to a weeks-long "cycle" like the main line meals. Instead, prisoners on the religious diet might get the same meal two or three times a day.

iii. Failure to Transfer Diet Preference with the Prisoner

Under the sincerity investigations and procedures outlined above, obtaining a religious diet can take weeks or months, and sometimes involves waiting periods, interviews, and full-fledged background investigations. A fact which makes matters worse, in many states, is that prisoners must start the meal-accommodation request process from the beginning every time they are transferred to a new facility.

Some states allow diet preference approvals to move with the prisoner. For example, Massachusetts requires that "[s]pecial diets . . . continue *without break* upon transfer to another facility."[209] Colorado also has a specific policy for diet continuation upon transfer to another facility.[210]

Other state policies do not include this commonsense rule. And in Pennsylvania, where more than 20 percent of prisoners identify as Muslim,[211] prisoners transferred out of and returned to the *same* facility must still re-apply through a burdensome process, which includes a facility chaplain director consultation with a faith group leader for "unusual" diet requests. [212]

6. Religious Property: Access to Devotional Items and Items Used in Prayer

Without clear religious property policies, Muslim prisoners face the challenge of having their devotional items desecrated or mishandled,[213] or even confiscated repeatedly as contraband.[214]

The most universally important devotional items for Muslims are prayer rugs and schedules, Qur'ans, and head coverings. Other important items include prayer beads and scented oil. Some Muslim believers might require additional or different items. State policies vary widely in their default acceptance of Muslim religious property. On the unduly restrictive side, Kansas requires all religious item requests to be approved through the chaplain, even for something as basic as a Bible or Qur'an.[215]

On the more accommodating end of the spectrum, some states allow any prisoner to access any religious property, regardless of their designated faith group.[216] More thoughtful policies also recognize that correctional officers may not be familiar with the diversity of religious property for each faith and so may confiscate approved items as contraband. To avoid this problem, facilities in Indiana issue laminated cards or memoranda to prisoners that note their authorized religious items to avoid confiscation. Individual property moves with prisoners when they transfer, unless the new facility prohibits a specific item.[217]

Recognizing the importance of daily prayer in a clean space, Massachusetts requires an extra towel to be issued to Muslims for use as a prayer mat,[218] while Maryland allows diverse types of religious clothing to be worn at weekly congregational prayer.[219] Such accommodations could be provided at prisons across the country, but are not.

7. Administrative Segregation and Free Exercise Deprivation as a Form of Punishment

When a state places a prisoner in restrictive or disciplinary housing, do state policies typically mandate that baseline levels of accommodation change? Not all states specify, but a guiding principle is that the removal of religious services and access cannot be used as a form of punishment. Religious exercise is not a discretionary benefit that prisons may offer, but is a right they can only restrict after passing RLUIPA's stringent test.

At least one state actively seeks to prevent prisoners in segregation from becoming Muslim. South Carolina requires extra verifications for someone in restricted housing who wishes to convert to Islam. The state places this extra requirement on no other religious group.[220]

Some states have a directive specifically protecting access to religious services for prisoners in segregation. A District of Columbia directive specifies that

inmates in restrictive housing "shall" have access to religious guidance.[221] Hawai'i specifies that the chaplain may have "one-on-one contact" with special housing prisoners who desire counseling, with approval from the warden.[222] Arizona has a policy requiring the senior chaplain to ensure that "inmates in detention or disciplinary detention have access to and are visited by chaplains as often as possible."[223]

i. Diet

When it comes to diet, New Hampshire notes that the prison "may not sanction an individual by suspending or terminating their religious diet."[224] A New Mexico policy explains that "food shall not be withheld as a disciplinary measure" and generally that special diets for prisoners with beliefs that require adherence to dietary laws shall be available.[225]

ii. Property

In many states, prisoners in segregation can access essential religious items, unless there is a compelling reason, for example that a particular item is being abused or poses an articulable threat to safety. Connecticut has onerous rules for obtaining items but provides that the items—including Kufis, beads, and prayer shawls—shall be allowed at *all* security classification levels, except for men on death row.[226]

New York State's special housing unit policy provides that "within 72 hours" of admission, each prisoner will be permitted personally owned religious items, including a book, a prayer rug, a prayer shawl, and a kufi or khimar.[227] Arkansas specifically allows religious literature even in "punitive isolation" but makes no mention of other items and thus overlooks many prisoners' needs in this context.[228] Kentucky policy suggests prisoners might not be able to access their prayer rugs while in special housing, but should at minimum be given towels that can be used instead, and that a prayer rug or rug substitute should be "clean and used only for this purpose."[229]

California policy allows determinations regarding personal property in special housing to be made on a case-by-case basis, but it has a default rule that medallions, headgear, prayer rugs and prayer shawls are allowed.[230] Washington also takes a case-by-case approach that requires decisions to restrict property to be based on "the offender's behavior and security concerns."[231]

Under Oregon's restrictive policy, prisoners in special housing can have only "an" emblem or "other religious item" in the cell as long as it is not around the neck,[232] but those in Administrative Segregation or Death Row cannot.

iii. Weekly Congregational Prayer

Michigan allows group weekly services within the same custody level of an institution, except for administrative segregation, where group activity is banned.[233] Maryland recognizes that groups in protective custody should still have opportunities for weekly congregate worship.[234] New York allows prisoners in "keeplock or confinement" status to submit a written request to attend regularly scheduled congregate services.[235] A separate request is necessary for each service.[236]

Some states have overbroad policies categorically forbidding all group activities. Oregon has a complete bar on special housing prisoners participating in group religious activities with other inmates.[237]

iv. Conclusion

Some states are clear that it is not acceptable to arbitrarily cut back on prisoners' access to religious services and accommodation just because individuals are in restricted or disciplinary housing. Other states appear to treat certain fundamental free exercise rights as a discretionary privilege, and actively seek to prevent Muslim free exercise in segregation. Although prisons may have different compelling interests in the context of disciplinary segregation, they have an obligation under RLUIPA to provide the greatest religious liberty possible to all prisoners, including in segregation.

IV. RECOMMENDATIONS: Best Practices for State DOCs and Benchmarks for Prisoner Rights Advocates

In light of these findings, we make the following recommendations to state Departments of Corrections, and provide the following guidelines to prisoners' rights advocates monitoring conditions of confinement around the country or working with Muslim clients:

A. Prayer: Prisons should permit individual, group, and weekly congregational prayer, and should train officers on how to facilitate this common Muslim practice.

- Ensure that there is a clean dry place available five times a day, for individual and group prayer.
- Instruct administrators on the importance of daily prayer, and provide information on the daily prayer schedule and prayer direction. Post this information in dormitories and units where Muslims live.
- Note the importance of group prayer in a religious services handbook created in consultation with Muslim chaplains or imams.
- Design a policy to facilitate group prayer in dormitories, work sites, and recreation yards.
- Narrowly tailor any restrictions on group prayer to each unit or individual security designation and documented history. Do not allow an outright ban on group prayer.

B. **Work Proscriptions and Exemptions: Prisons should pre-approve work holidays and allow for additional holiday requests and for religious work exemptions.**

- Provide a yearly work proscription calendar that grants Muslims days off on appropriate holidays. Allow individuals to request additional work proscription days depending on their beliefs.
- Allow Muslim prisoners to leave work to attend weekly Friday prayer in congregation. Allow a few hours off each Friday for the weekly congregational prayer.
- Allow Muslims at work to pause for a few minutes to complete their daily prayers, in groups.
- Provide prisoners the option of reduced hours or no hours during Ramadan, in light of the physical strain of fasting.
- Do not require Muslims to do work that violates their beliefs.

C. **Burial: Prisons should treat the funerary beliefs of prisoners and their family members with the utmost respect, and should have clear policies allowing for prisoners to indicate their burial beliefs.**

- Provide a clear method for prisoners or next of kin to opt out of default burial or autopsy policies.
- With regard to autopsies, clarify specific circumstances where there may be a compelling state interest in conducting an autopsy.

- Do not automatically cremate Muslim dead, and institute a policy of recording and respecting prisoners' end of life preferences.

D. **Head Covering: Prisons should allow religious head coverings throughout the facility and should train officers on how to respectfully search religious garments.**
   - Allow religious head coverings throughout the facility.
   - Instruct corrections officers on how to conduct respectful searches of all religious property, including modest garments and head coverings.
   - Allow more than one head covering to be maintained in a prisoner's property.
   - Allow head coverings to be worn on trips and during transfers outside of the prison.
   - Base any restrictions on head covering on specific, documented, and compelling concerns with regard to a given individual or unit.

E. **Diet: Prisons should provide a halal-designated meal option and should not erect unreasonable obstacles to obtaining and maintaining that special diet.**
   - During Ramadan, provide double-portioned meals at dinner, and the same breakfast that would otherwise be available. Do not reduce the amount or quality of food.
   - Allow prisoners to organize special meals for religious feast days, either by using an authorized vendor or by allowing authorized volunteer groups to provide such meals.
   - Provide *halal*-certified diets to Muslims who request them, and implement a policy recognizing that Muslim dietary requirements often go beyond being merely "pork-free."
   - Design religious diets with a reasonable meal cycle and level of nutrition.
   - Do not refuse Muslim requests for a kosher diet.
   - Make obtaining a religious diet easy or automatic.
   - If a religious diet is retracted for a compelling reason, provide a justification to the prisoner and after a reasonable period of time, allow the prisoner to reapply for the diet.
   - Transfer diet approvals with the prisoner, even as he or she is moved to new facilities.

F. **Religious Property: Prisons should provide access to common religious property, especially Qur'ans, prayer rugs, head coverings, and prayer beads.**

- Once a prisoner is designated as belonging to a particular faith, make permission to keep appropriate faith items automatic, absent a specific documented safety concern at a unit or with a particular prisoner.
- Use property cards to prevent accidental or malicious confiscation of religious property as contraband.
- Transfer an individual's religious property when prisoner is moved to a different location.
- Instruct corrections officers on how to conduct a respectful search of religious items.
- Issue regularly laundered towels or sheets that can be used as prayer rugs, for Muslim prisoners who cannot afford to purchase a rug.
- Reach out to local and national Muslim organizations for donations of Qurans, head coverings, and rugs, and provide them for free to inmates who request them.
- Provide access to common religious items through commissary or outside vendors, and allow family members to send devotional items to loved ones.

G. **Administrative Segregation and Restrictive Housing: Prisons should not strip prisoners of fundamental religious exercise rights as a form of punishment.**

- Do not take away religious property or cut off religious programming to punish or control prisoners.
- Allow inmates to access showers every day and wash facilities at any time, for ritual ablutions.
- Ensure there is a clean dry place for prayer available five times daily.
- Allow group prayer within the same security level.
- If group activity is not possible for an inmate or unit, offer indirect participation in key congregational activities, for example through closed circuit television.

V. APPENDIX A: Religious Preference Statistics

A. TABLE 1: Prisoners Identifying with a Muslim Group, by State

State Year and method	All Muslims for Period	All Prisoners for Period*	% Muslim Prisoners
Arizona Snapshot 2018[238]	1,291	41,599	*3.1*
Arkansas Snapshot 2018[239]	1,970	17,283	*11.4*
Colorado Total in 2017[240]	283	6,002	*4.7*
Connecticut Snapshot 2013[241]	1,675	17,191	*9.7*
D.C. (jail only) Total in 2017[242]	1,232	5,219	*23.6*
Delaware Snapshot 2018[243]	516	5,235	*9.9*
Florida Snapshot 2018[244]	4,907	94,278	*5.2*
Georgia Snapshot 2019 reported at entry, active inmates[245]	1,485	23,876	*6.2*
Idaho Total Admits 2017[246]	19	3,009	*0.6*
Illinois Snapshot 2018[247]	5,377	62,964	*8.5*
Indiana Snapshot 2018[248]	1,490	26,329	*5.7*
Kansas Snapshot 2018[249]	419	7,789	*5.4*
Kentucky Snapshot 2018[250]	791	24,261	*3.3*
Maryland Snapshot 2018[251]	5,084	18,562	*27.4*
Massachusetts Snapshot 2018[252]	774	7,919	*9.8*
Michigan Snapshot 2017[253]	7,416	39,666	*18.7*
Minnesota Snapshot 2018[254]	483	9,849	*4.9*
Mississippi	685	19,284	*3.6*

Snapshot 2018[255]			
Missouri Snapshot 2018[256]	3,160	31,216	*10.1*
Nebraska Snapshot 2018[257]	333	4,829	*6.9*
Nevada Snapshot 2015[258]	648	15,760	*4.1*
New Hampshire Snapshot 2018[259]	157	2,027	*7.7*
New Jersey Snapshot 2018[260]	4,033	19,950	*20.2*
New York Total Admits 2018[261]	7,838	40,533	*19.3*
North Carolina Unclear, 2018[262]	5,275	98,937	*5.3*
North Dakota Total Admits 2017[263]	23	1,499	*1.5*
Ohio Snapshot 2018[264]	3,406	40,542	*8.4*
Pennsylvania Snapshot 2017[265]	10,264	48,438	*21.2*
Rhode Island Total Admits 2017[266]	196	9,817	*2.0*
South Carolina Anytime 2017[267]	1,806	27,591	*6.6*
South Dakota Snapshot 2017[268]	43	3,984	*1.1*
Texas Snapshot 2018[269]	8,715	145,022	*6.0*
Utah Total Admits 2017[270]	136	6,252	*2.2*
Vermont Snapshot 2018[271]	30	920	*3.3*
Wisconsin Snapshot 2018[272]	2,922	23,488	*12.4*
TOTAL	**84,882**	**951,120**	*8.9*

* The endnote for each state indicates with greater specificity how the totals were calculated. Where some prisoners were marked affirmatively as having "no preference" (and the like), they are included in the total. But if state data included labels for both "no preference" and "unknown," then the unknown prisoners were omitted from the total in this Table. We assume many of the "unknown" do have a preference, but were not asked. Also note that some states provided preference data of prison admits only for the year, so those totals do not represent the total incarcerated population in those states. Finally, some states provided data that amalgamated prisoners and individuals under other forms of state supervision (jail, probation, parole). Where there is a marked disparity between our total

and the approximate prisoner population according to other sources, we add comparison population data in the relevant endnote.

B. TABLE 2: Muslim Share of Prisoners Over Time in Select States that Provided Longitudinal Data

Note: Seventeen states provided longitudinal data for at least five years

ARIZONA[273] (increasing share and number of Muslim prisoners, as the total number of prisoners increases)

Year	Muslim Share of Population (%)	Number of Muslim prisoners / Total Prisoners
2010	*2.7*	1,079 / 39,992
2011	*2.7*	1,091 / 39,829
2012	*2.7*	1,086 / 39,845
2013	*2.7*	1,117 / 40,969
2014	*2.7*	1,131 / 42,097
2015	*2.8*	1,195 / 42,484
2016	*2.9*	1,199 / 41,968
2017	*3.0*	1,256 / 41,613
2018	*3.1*	1,291 / 41,599

COLORADO[274] (increasing share and number of Muslim prisoners in running total each year, as the total number of prisoners increases)

Year	Muslim Share of Bookings that Year (%)	Total Muslims that Year / Total that Year
2010	*2.5*	100 / 4,066
2011	*3.2*	122 / 3,827
2012	*3.3*	120 / 3,684
2013	*3.9*	161 / 4,133
2014	*4.1*	192 / 4,744
2015	*3.8*	168 / 4,394
2016	*3.6*	172 / 4,827
2017	*4.7*	283 / 6,002
2018	*5.0*	174 / 3,517

D.C.[275] (increasing share and number of Muslims booked, as the total number booked slightly increases)

Year	Muslim Share of Population (%)	Total Muslims Booked that Year / Total Booked that Year

2010	*19.7*	980 /4,973
2011	*20.3*	1,013 /4,989
2012	*20.5*	951 /4,641
2013	*21.5*	943 / 4,395
2014	*22.0*	886 /4,030
2015	*21.6*	879 /4,074
2016	*21.2*	1109 / 5,219
2017	*20.7*	1232 / 5,946
2018	*25.5*	1115 / 4,378

GEORGIA[276] (sharply increasing share and number of Muslim admissions as the total number of admissions decreases)

Year	**Muslim Share of Admissions (%)**	**Number of Muslim Admissions / Total Admissions**
2010	*2.8*	309 (10 women) / 11,226
2011	*2.2*	109 (11 women) / 4,852
2012	*3.0*	149 (10 women) / 4,986
2013	*2.7*	119 (12 women) / 4,432
2014	*3.9*	221 (20 women) / 5,730
2015	*4.7*	333 (9 women) / 7,025
2016	*4.8*	388 (18 women) / 8,017
2017	*5.8*	409 (17 women) / 7,050
2018	*6.8*	478 (24 women) / 6,996

INDIANA[277] (increasing share and number of Muslim prisoners, as the total number of prisoners decreases)

Year	**Muslim Share of Population (%)**	**Number of Muslim Prisoners / Total Prisoners**
2010	*4.2*	1,125 (9 women)/ 26,610
2011	*4.3*	1,146 (4 women)/ 26,866
2012	*4.6*	1,270 (9 women)/ 27,484
2013	*4.6*	1,291 (10 women)/ 27,985
2014*	*4.7*	1,309 (8 women)/ 28,005
2015	*5.0*	1,371 (11 women)/ 27,246
2016	*5.4*	1,389 (9 women)/ 25,691
2017	*5.6*	1,433 (13 women)/ 25,403
2018	*5.7*	1,490 (10 women)/ 26,329

* snapshot taken in January 2014 (for all other years the snapshot was taken in July).

KANSAS[278] (increasing share and number of Muslim prisoners, as total number of prisoners increases)

Year	Muslim Share of Population (%)	Number of Muslim Prisoners / Total Prisoners
2010	*4.5*	318 (15 women)/ 7,043
2011	*5.0*	359 (15 women)/ 7,188
2012	*5.2*	384 (14 women)/ 7,339
2013	*5.2*	385 (22 women)/ 7,466
2014	*5.0*	376 (27 women)/ 7,516
2015	*5.2*	399 (33 women)/ 7,690
2016	*5.1*	390 (37 women)/ 7,615
2017	*5.2*	397 (44 women)/ 7,625
2018	*5.4*	419 (51 women)/ 7,789

KENTUCKY[279] (increasing share and number of Muslim prisoners, as the total number of prisoners also increases)

Year	Muslim Share of Population (%)	Number of Muslim Prisoners / Total Prisoners
2010	*3.0*	628 / 20,928
2011	*3.0*	656 / 21, 779
2012	*2.9*	651 / 22,099
2013	*3.2*	674 / 20,879
2014	*3.2*	680 / 21,473
2015	*3.3*	715 / 21,967
2016	*3.3*	767 / 23,580
2017	*3.3*	803 / 24,055
2018	*3.3*	791 / 24,261

MICHIGAN[280] (sharply increasing share and number of Muslim prisoners, as the total number of prisoners is decreasing)

Year	Muslim share of Population (%)	Absolute Number of Muslim prisoners / Total Prisoners
2010	*14.6*	6,455 / 44,113
2011	*15.2*	6,518 / 42,904
2012	*14.1*	6,146 / 43,594
2013	*13.9*	6,068 / 43,704

2014	*16.4*	7,108 / 43,359
2015	*17.3*	7,376 / 42,628
2016	*18.0*	7,387 / 41,122
2017	*18.7*	7,416 / 39,666

MINNESOTA[281] (increasing share and number of Muslim prisoners, as the total number of prisoners is slightly increasing)

Year	Muslim Share of Population (%)	Absolute Number of Muslim Prisoners
2010	*3.8*	369 / 9,619
2011	*4.1*	387 / 9,429
2012	*4.5*	416 / 9,345
2013	*4.1*	385 / 9,452
2014	*4.0*	387 / 9,768
2015	*4.6*	454 / 9,943
2016	*4.5*	459 / 10,105
2017	*4.4*	439 / 9,869
2018	*4.6*	458 / 9,963
2019	*5.1*	480 / 9,479

MISSOURI[282] (increasing share and number of Muslim prisoners, as the total number of prisoners is slightly increasing)

Year	Muslim Share of Population (%)	Number of Muslim Prisoners / Total Prisoners
2010	*7.5*	2,302 /30,622
2011	*8.1*	2,490 / 30,832
2012	*8.6*	2,683 /31,247
2013	*9.2*	2,889 / 31,535
2014	*9.3*	2,971 /31,939
2015	*9.1*	2,954 / 32,329
2016	*9.6*	3,101 /32,461
2017	*9.6*	3,131 /32,600
2018	*10.1*	3,160 /31,216

NEW YORK[283] (increasing share but decreasing number of Muslim prisoners admitted, as the total number of prisoners admitted decreases)

Year	Muslim Share of Population (%)	Total Muslims Admitted that Year / Total Admitted that Year
2010	*18.5*	9,354 / 50,690

2011	*18.4*	8,916 / 48,573
2012	*17.7*	8,265 / 46,724
2013	*17.7*	8,163 / 45,997
2014	*17.6*	7,952 / 45,246
2015	*17.8*	7,943 / 44,569
2016	*18.2*	7,973 / 43,866
2017	*19.0*	8,141 / 42,865
2018	*19.3*	7,838 / 40,533

PENNSYLVANIA[284] (increasing share and number of Muslim prisoners, as the total number of prisoners decreases)

Year	Muslim Share of Population (%)	Number of Muslim Prisoners / Total Prisoners
2010	*19.5*	9,991 / 51,321
2011	*19.6*	10,100 /51,638
2012	*19.9*	10,177 / 51,184
2013	*20.5*	10,542 / 51,512
2014	*21.0*	10,636 / 50,756
2015	*20.7*	10,342 / 49,914
2016	*20.6*	10,176 / 49,301
2017	*21.2*	10,264 / 48,438

SOUTH CAROLINA[285] (slightly decreasing share and number of Muslim prisoners, as the total number of prisoners in custody per year decreases).

Year	Muslim Share of Population (%)	Number of Muslim Prisoners / Total Prisoners
2010	*6.6*	2,249 / 33,913
2011	*6.7*	2,163 /32,289
2012	*6.8*	2,122 / 31,016
2013	*6.8*	2,058 / 30,161
2014	*6.5*	1,931 /29,519
2015	*6.6*	1,865 / 28,473
2016	*6.5*	1,857 /28,523
2017	*6.5*	1,806 / 27,591

SOUTH DAKOTA[286] (slightly increasing share and number of Muslim prisoners, as the total number of prisoners increases)

Year	Muslim Share of Population (%)	Number of Muslim Prisoners / Total Prisoners
2013	*1.0*	36/3654
2014	*1.0*	36/3584
2015	*1.1*	40/3566
2016	*1.2*	47/3819
2017	*1.1*	43/3984

TEXAS[287] (increasing share and number of Muslim prisoners, as the total number of prisoners decreases)

Year	Muslim Share of Population (%)	Number of Muslim Prisoners / Total Prisoners
2010	*4.5*	6,896 / 154,795
2011	*4.5*	7,022 / 156,522
2012	*4.5*	6,928 / 152,303
2013	*4.5*	6,811 / 150,784
2014	*4.7*	7,041 / 150,361
2015	*5.0*	7,478 / 148,146
2016	*5.6*	8,189 / 147,053
2017	*5.9*	8,537 / 145,341

UTAH[288] (slightly decreasing share and increasing number of Muslim admits, with alarming increase in 2017, as total number of admits increases)

Year	Muslim Share of Population (%)	Total Muslims Booked that Year / Total Booked that Year
2010	*2.2*	74 / 3,392
2011	*1.6*	52 / 3,267
2012	*2.2*	69 / 3,152
2013	*1.9*	60 / 3,107
2014	*2.0*	59 / 2,937
2015	*1.8*	50 / 2,816
2016	*1.7*	56 / 3,311
2017	*2.2*	136 / 6,252

WISCONSIN[289] (relatively stable share and increasing number of Muslim prisoners, as number of prisoners increases.)

Year	Muslim Share of Population (%)	Number of Muslim Prisoners / Total Prisoners

2013	*12.5*	2,783 / 22,292
2014	*12.9*	2,907 / 22,538
2015	*13.4*	2,990 / 22,307
2016	*13.0*	2,976 / 22,918
2017	*12.4*	2,890 / 23,251

C. TABLE 3: Muslim Women in State Prisons

YEAR / STATE	Number of Muslim Women	Muslim Share of Women (%)	Number of Muslim Men	Muslim Share of Men (%)
2018 / Colorado[290]	5	*0.9*	169	*5.7*
2018 / Delaware[291]	9	*2.7*	507	*10.3*
2019 / Georgia[292]	43	*1.7*	1,442	*6.8*
2018 / Kansas[293]	51	*6.7*	368	*5.2*
2018 / Missouri[294]	33	*0.1*	3,127	*11.2*
2018 / Nebraska[295]	18	*5.0*	315	*7.1*
2018 / New Hampshire[296]	3	*2.6*	151	*8.1*
2017 / Pennsylvania[297]	228	*7.9*	10,036	*22.0*
2017 / South Carolina[298]	40	*1.7*	1766	*7.0*
2018/ Texas[299]	279	*2.3*	8,436	*6.3*
2017 / Utah[300]	10	*1.1*	126	*2.4*
2018 / Wisconsin[301]	40	*2.6*	2,589	*13.7*

VI. APPENDIX B: Analysis of 163 Muslim Prisoner Cases in Federal Court

A. TABLE 1: Prevalence of States as a Source of Muslim Free Exercise Complaints

Muslim Litigants from October 10, 2017 - January 23, 2019
*only states with 8 or more cases for the period are shown

State	Cases	Percentage of all cases gathered	Number of Muslim Prisoners[302]
CA	20	*12.3*	unknown
NY	13	*8.0*	7,838
VA	10	*6.1*	unknown
GA	9	*5.5*	1,485
NC	8	*4.9*	5,275
TX	8	*4.9*	8,715
WI	8	*4.9*	2,922

B. TABLE 2: Procedural Posture of the 163 Cases

Muslim Litigants from October 10, 2017 - January 23, 2019

Posture	Cases	Percentage
Summary Judgement	59	*36.2*
PLRA screening	41	*25.2*
Motion to Dismiss	37	*23.0*
Other	10	*6.1*
Injunction	9	*5.5*
Appeal	7	*4.3*

C. TABLE 3: Accommodation Requests Raised in 163 Cases and Likelihood of Success*

Muslim Litigants from October 10, 2017 - January 23, 2019

Issue	Total Cases	Survived**	Percent Survived	Dismissed	Percent Dismissed
Ramadan	34	16	*47.1*	18	*52.9*

Facial Hair	15	5	*33.3*	10	*66.7*
Religious Text	8	1	*12.5*	7	*87.5*
Prayer	57	20	*35.1*	37	*64.9*
Clothing	16	2	*12.5*	14	*87.5*
Dietary Restrictions	64	30	*46.9*	34	*53.1*
Ritual Items	20	7	*35.0*	13	*65.0*
Discriminatory Behavior	16	4	*25.0*	12	*75.0*
Access to Religious Leaders	11	4	*36.4*	7	*63.6*
Other	18	7	*38.9*	11	*61.1*

* Some plaintiffs sough accommodation of more than one religious practice (e.g. a single prisoner's case could seek accommodation of group prayer and also of *halal* diet).

** The "survived" column indicates whether the claim for accommodation on that issue was allowed to proceed to the next stage of the pretrial litigation process, but does not indicate whether the accommodation sought was ultimately granted.

D. TABLE 4: Institutions Producing the Highest Number of Complaints

Note: the top eight facilities were state, not federal, prisons. Together they account for 17 percent of the 163 cases.

Institution	Cases	Percentage
Chippewa Correctional Facility (MI)	4	*2.5*
Red Onion State Prison (VA)	4	*2.5*
San Quentin State Prison (CA)	4	*2.5*
Franklin Correctional Facility (NY)	3	*1.8*
Green Bay Correctional Institution (WI)	3	*1.8*
Lanesboro Correctional Institution (NC)	3	*1.8*
Richard J. Donovan Correctional Facility (CA)	3	*1.8*
Wallens Ridge State Prison (VA)	3	*1.8*

ENDNOTES

[1] Letter to the Religious Society Called Quakers, Oct. 1789, *in* 30 THE WRITINGS OF GEORGE WASHINGTON FROM THE ORIGINAL MANUSCRIPT SOURCES, 1745-1799, at 416 (John C. Fitzpatrick ed., 1940).
[2] The search used was "(RLUIPA or RFRA) AND (prison or immigration or jail) AND (muslim! or moslem! or islam! or moors or "five percent" or "5% nation" or Sunni! or Shia! or Shiite! or Sufi!)."
[3] The procedural postures are: (1) Prison Litigation Reform Act (PLRA) pre-screening, (2) motion to dismiss, (3) summary judgment, (4) injunctive relief, (5) appeal, or (6) other. First, the Prison Litigation Reform Act of 1995 intended to decrease the number of frivolous lawsuits brought by prisoners, and implemented a screening procedure whereby prisoners must first exhaust the administrative remedies outlined by their respective correctional facilities before bringing any claims to the court. In this phase of litigation, courts first examine whether the plaintiff has exhausted their administrative remedies. If he has, the court will allow the case to proceed. After this point, the plaintiff could face motions to dismiss or motions for summary judgment brought by the defendants. A motion to dismiss is granted if the court determines that even if all of the plaintiff's allegations were found to be true, they would not be legally sufficient to state a claim upon which relief can be granted. Summary judgment is granted when the court finds there is no dispute of material fact to send to trial. Finally, the court can issue an order granting a preliminary injunction, temporary restraining order, or final injunction, in which would the defendant is being ordered to change its practices in some way. After the case has been heard by the district court, either party may try to appeal the case to the federal court of appeals.
[4] This fact frequently comes as a surprise both to non-Muslims and to recently-arrived Muslims. SYLVIANE A. DIOUF, SERVANTS OF ALLAH 2 (2d ed. 2013).
[5] *Demographic Portrait of Muslim Americans*, PEW RESEARCH CENTER (July 26, 2017), http://www.pewforum.org/2017/07/26/demographic-portrait-of-muslim-americans.
[6] Sidedoor Podcast Ep. 17: Enslaved and Muslim in Early America, SMITHSONIAN INSTITUTION, at 3:40 (Jan. 30, 2018); *African Muslims in Early America: Religion, Literacy and Liberty*, SMITHSONIAN NAT'L MUSEUM OF AFRICAN AMERICAN HISTORY & CULTURE (Jan. 11, 2019), http://nmaahc.si.edu/explore/stories/collection/african-muslims-early-america.
[7] DIOUF, *supra* note 4, at 21.
[8] DIOUF, *supra* note 4, at 18.
[9] DIOUF, *supra* note 4, at 100.
[10] DIOUF, *supra* note 4, at 102-04.
[11] For example, a list compiled from records from all over the United States contained about 150 names of Arabic origin amid 12,000 African names. DIOUF, *supra* note 4, at 298 nn.48-50 (2013).
[12] DIOUF, *supra* note 4, at 298 n.51 (2013).
[13] DIOUF, *supra* note 4, at 119-123 (citing numerous reports of plantation owners in the U.S. and Brazil).
[14] DIOUF, *supra* note 4, at 7; *see also* ALA ALRYYES, A MUSLIM AMERICAN SLAVE: THE LIFE OF OMAR IBN SAID (2011); MUHAMMED ABDULLAH AL-AHARI, BILALI MUHAMMAD: MUSLIM JURISPRUDIST IN ANTEBELLUM GEORGIA (2010).
[15] In re Ferguson, 361 P.2d 417, 418 (Cal. 1961) (describing tensions between Black Muslim prisoners and guards, and summarizing how Muslim prisoners had been segregated into an "old and filthy part of Folsom prison," and that physical force was used without just cause).

[16] *Id.*
[17] *Id.*
[18] 361 P.2d at 420.
[19] Sewell v. Pegelow, 291 F.2d 196, 197 (4th Cir. 1961).
[20] DIOUF, *supra* note 4, at 132-134 (noting how the American system of racial classification did not recognize intermediate strata between black and white, and how Americans often confused Muslim Africans with Arabs, Turks, and other groups).
[21] 291 F.2d at 197.
[22] 291 F.2d at 198 ("It has been argued to us that if a hearing is ordered in this instance it will encourage a flood of such petitions, but our answer must be the same as that given by the Second Circuit: 'We must not play fast and loose with basic constitutional rights in the interest of administrative efficiency.'") (citation omitted).
[23] 293 F.2d 233 (2d Cir. 1961).
[24] 293 F.2d at 234.
[25] 293 F.2d at 236.
[26] Unfortunately, however, the District Court held that the evidence established the deprivation of good time and segregation was not imposed in violation of constitutional rights to religious freedom. Pierce v. LaVallee, 212 F. Supp. 865, 870 (N.D.N.Y. 1962), *aff'd*, 319 F.2d 844 (2d Cir. 1963) (expressing the Court's view that "such an organization is a likely fomenting point for the unrest and frustration of confined inmates"). *See also* Joseph Shapiro, *How One Inmate Changed the Prison System from the Inside*, NPR CODE SWITCH (Apr. 14, 2017) (detailing the life and revolutionary activism of one of the plaintiffs in *Pierce*, Martin Sostre).
[27] Sostre v. Rockefeler, 312 F. Supp. 863, 866 (S.D.N.Y. 1970) (in which Judge Constance Baker Motley recognizes that Sostre's prior legal activity "resulted in the elimination of some of the more outrageously inhumane aspects of solitary confinement in some of the state's prisons"), *aff'd in part, rev'd in part sub nom* Sostre v. McGinnis, 442 F.2d 178 (2d Cir. 1971).
[28] *See* sources cited *supra* note 27.
[29] *See generally* Brief of Muslim Advocates as Amicus Curiae in Support of Plaintiff-Appellee's Brief and Affirmance, Mayfield v. Muhammad (8th Cir. Nov. 28, 2018) (No. 18-2396), http://www.muslimadvocates.org/files/Final-Amicus-brief-with-file-stamp.pdf.
[30] 378 U.S. 546 (1964).
[31] Christopher E. Smith, *Black Muslims and the Development of Prisoners' Rights*, 24 J. BLACK STUDIES 131, 141 (1993).
[32] *Id.* at 140.
[33] *Id.*
[34] HEATHER A. THOMPSON, BLOOD IN THE WATER: THE ATTICA PRISON UPRISING OF 1971 AND ITS LEGACY 79 (2016).
[35] Cruz v. Beto, 405 U.S. 319 (1972). In *Cruz*, a Buddhist incarcerated in a Texas prison claimed that prison officials had retaliated against him for sharing his religious beliefs with other inmates. He also charged that prison officials had denied him access to his religious adviser and in general discriminated against Buddhists by not making provisions for Buddhist inmates similar to those provided for Christian and Jewish inmates.
[36] Employment Div., Dep't of Human Res. of Oregon v. Smith, 494 U.S. 872, 909 (1990) (Blackmun, J., dissenting).

[37] The case actually involved a mail restriction and marriage restriction, but the holding impacted the level of constitutional review available to prisoners generally. 482 U.S. 78, 89 (1987) ("[W]hen a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests.").
[38] 482 U.S. 342 (1987).
[39] 482 U.S. at 350-51.
[40] 494 U.S. 872 (1990).
[41] In fact, Congress has passed more than 200 laws or amendments to provide protection for religious groups, often in reaction to controversial cases. JOHN WITTE, JR. & JOEL A. NICHOLS, RELIGION AND THE AMERICAN CONSTITUTIONAL EXPERIMENT 149-153 (2016) (also arguing that these laws are ultimately created by a political majority and so can be reversed, and are no substitute for a robust First Amendment that protects religious minorities).
[42] 42 U.S.C. §2000bb.
[43] 42 U.S.C. §2000cc.
[44] 42 U.S.C. §2000bb-1; 42 U.S.C. §2000cc-1.
[45] *Id.*
[46] James D. Nelson, *Incarceration, Accommodation, and Strict Scrutiny*, 95 VA. L. REV. 2053, 2054 (2009) (noting a divide in the circuits in their application of the strict scrutiny test).
[47] 135 S. Ct. 853 (2015).
[48] Gregory C. Sisk & Michael Heise, *Muslims and Religious Liberty in the Era of 9/11: Empirical Evidence from the Federal Courts*, 98 IOWA L. REV. 231 (2012).
[49] *Id.*
[50] *Id.* at 276-77 (Muslims succeeded in federal court at a rate of 15.5% in prison cases and 17.9% in non-prison cases; by contrast other claimants succeeded in federal court at a rate of 44.8% in prisoner cases and 37.8% in non-prison cases).
[51] *Enforcing Religious Freedom in Prison*, U.S. Commission on Civil Rights, tbl.3.8, at 70; tbl.4.1, at 82 (Sept 2008).
[52] *Inmate Religion Stats*, BOP FOIA Records Available Online (June 2016), http://www.bop.gov/foia/docs/inmatereligionstatsjune2016.pdf (1.4% identified as "Moorish," 6.5% identified as "Muslim," and 1.9% as "Nation").
[53] For example, if one must be designated as "Muslim" to participate in Ramadan but there is no such requirement for Friday prayer, this would tend to incentivize reporting by only the most practicing. But if someone wished only to attend Friday prayers and didn't participate in Ramadan, perhaps they would not self-report.
[54] The percentages in each state are summarized and compiled in the Appendix to this Report. *See infra* Appendix A, Table 1.
[55] *Id.*
[56] Besheer Mohamed, *New Estimates Show U.S. Muslim Population Continues to Grow*, PEW (Jan. 3, 2018), http://www.pewresearch.org/fact-tank/2018/01/03/new-estimates-show-u-s-muslim-population-continues-to-grow.
[57] *See infra* Appendix A, Table 2.
[58] Nicole Lewis, *The U.S. Prison Population is Shrinking*, THE MARSHALL PROJECT (Apr. 24, 2019), http://www.themarshallproject.org/2019/04/24/the-us-prison-population-is-shrinking (reporting that the number of people in U.S. prisons fell to a nine year low of just under 1.5

million last year, a 1.3 percent decrease, but that in some states, rates of incarceration increased over the last year).
[59] *See infra* Appendix A, Table 3.
[60] *Muslims by State*, PEW RESEARCH CENTER (2019), http://www.pewforum.org/religious-landscape-study/religious-tradition/muslim.
[61] *See infra* Appendix A, Table 3
[62] The number increased from 15 to more than 50 in eight years. *See infra* Appendix A, Table 2, Kansas.
[63] *See infra* Appendix B.
[64] We counted 163 federal cases from October 10, 2017 to January 23, 2019 (a period of 470 days).
[65] 28 U.S.C. § 1915(b).
[66] For a more comprehensive discussion of PLRA filing and fee requirements, see *Chapter 14, The Prison Litigation Reform Act, in* A JAILHOUSE LAWYER'S MANUAL (2017).
[67] Wendy Sawyer, *How Much Do Incarcerated People Earn in Each State?*, PRISON POLICY INITIATIVE (Apr. 10, 2017), http://www.prisonpolicy.org/blog/2017/04/10/wages.
[68] *See infra* Appendix B, Table 4: Institutions Resulting in Highest Number of Complaints; *see also* Evans v. Brown, No. 16-cv-07318-YGR (PR), 2018 WL 3219418 (N.D. Cal. July 2, 2018); Smith v. Cruzen, No. 14-CV-04791 LHK (PR), 2017 WL 4863565 (N.D. Cal. Oct. 26, 2017); Saif'ullah v. Cruzen, No. 15-CV-01739 LHK (PR), 2017 WL 4863601 (N.D. Cal. Oct. 26, 2017); Saif'ullah v. Albritton, No. 15-CV-05600 LHK (PR), 2017 WL 6558719 (N.D. Cal. Dec. 21, 2017).
[69] Letter from Charles Richley, Comty. Res. Manager, Cal. Div. Adult Insts., to Joseph (Yusuf) Saei, Legal Fellow, Muslim Advocates, at 1 (Jan. 7, 2019) (responding to California public records request by stating "CDCR does not have a 'Religious Services Manual'" and instead "operate[s] from the California Code of Regulations").
[70] *See infra* Appendix B, Table 1 (noting 64 of 163 cases involved dietary restriction complaints)
[71] No. 2018 WL 5634869, 2018 WL 5634869 (W.D.N.Y. Oct. 29, 2018).
[72] Lewis v. Cates, No. 15cv791-DMS-MDD, 2017 WL 6422578 (S.D. Cal. 2017); *see generally* Complaint Under the Civil Rights Act § 1983, Lewis v. Cates, 2018 WL 5634869 (W.D.N.Y. Oct. 29, 2018) (No. 15cv791-DMS-MDD), ECF No. 1.
[73] *See* Sims v. Wegman, No. 1:14–cv–00415–AWI–EPG (PC), 2018 WL 1806461 (E.D. Cal. filed Apr. 17, 2018); Savastano v. LaClair, No. 9:17-CV-0364 (TJM/DEP), 2018 U.S. Dist. LEXIS 93435 (N.D.N.Y. May 31, 2018); Hall v. Annucci, No. 9:17-CV-1069 (GTS/DEP), 2018 WL 1635023 (N.D. N.Y. Apr. 4, 2018).
[74] Green v. Paramo, No. 18-cv-00480-BAS-AGS, 2018 WL 6062359 (S.D. Cal. Nov. 20, 2018).
[75] *See* Shakur v. Thomas, No. 9:14-CV-00427 (MAD/TWD), 2018 WL 3217170 (N.D.N.Y. July 2, 2018; Watford v. Harner, No. 18–cv–1313–MJR, 2018 WL 3427805 (S.D. Ill. July 16, 2018); Johnson v. Lopez, No. 2:15-cv-00884-JAD-NJK, 2018 WL 1567351 (D. Nev. Mar. 30, 2018); Muhammad v. Barksdale, No. 7:16-cv-00328, 2018 WL 3371123 (W.D. Va. July 10, 2018); Abd-Ali v. Sibanda, No. 16-1643 Pittsburgh, 2019 WL 244554, (W.D. Pa. Jan. 17, 2019).
[76] Soriana v. Spearman, No. 2:17-cv-1617 DB P, 2018 WL 4292270 (E.D. Cal. filed Sept. 7, 2019).
[77] Sterling v. Sellers, No. 5:16-CV-00013-MTT-MSH, 2018 WL 4689462 (M.D. Ga. Sept. 29, 2018).
[78] Wright v. Stallone, No. 9:17-CV-0487 (LEK/TWD), 2018 WL 671256 (N.D.N.Y. Jan. 31, 2018.
[79] Knott v. McLaughlin, No. 5:17-cv-36-MTT-CHW, 2017 WL 6820151 (M.D. Ga. Nov. 1, 2017).

[80] *See* Hargrove v. Frisby, No. 1:17-cv-748, 2018 WL 2937466 (S.D. Ohio filed June 12, 2018); Hardy v. Agee, No. 16-2005, 2018 U.S. App. LEXIS 5648 (6th Cir. filed Mar. 5, 2018).
[81] This part of the report focuses on written policies. It is possible that accommodating written policies are not fully implemented or followed in some places, or that some places with non-accommodating written policies in fact provide higher levels of accommodation.
[82] 42 U.S.C. § 2000bb; 42 U.S.C. § 2000cc. Compelling interests must be demonstrated and not merely asserted and typically include security and order. Spratt v. R.I. Dep't Corr., 482 F.3d, 33, 39 (1st Cir. 2007); Kroger v. Bryan, 523 F.3d 789, 800-01 (7th Cir. 2008). Less-than-compelling interests include cost reduction or convenience. *See e.g.*, Shalkur v. Schriro, 514 F.3d 878, 890 (9th Cir. 2008) (rejecting cost reduction as a compelling interest); Lovelace v. Lee, 472 F.3d 174, 190 (4th Cir. 2006) (rejecting notion that administrative convenience is a compelling interest).
[83] 42 U.S.C. § 2000bb-1(b)(2); 42 U.S.C. § 2000cc-(a)(1)(B).
[84] Brief of Muslim Advocates as Amicus Curiae in Support of Plaintiff-Appellee's Brief and Affirmance, Mayfield v. Muhammad, at 15 (8th Cir. Nov. 28, 2018) (No. 18-2396), http://www.muslimadvocates.org/files/Final-Amicus-brief-with-file-stamp.pdf.
[85] *Chaplaincy Handbook of Religious Beliefs and Practices*, Ill. Dep't Corr., at 133 (Mar. 2018); *Handbook of Religious Beliefs and Practices*, Ind. Dep't Corr., Sec. X-3, at 23-24 (Jan. 2018); *Religious Services Handbook*, Mass. Dep't Corr., at 63 (Jan. 2018); *Religious Profiles, Al-Islam/Muslim*, Mo. Dep't Corr., at 1 (Aug. 2018); *Religious Practices Reference Manual*, N.C. Dep't Corr. Div. Prisons, at 93 (Apr. 18, 2012); *Inmate Religion*, S.C. Dep't Corr. PS-10.05, at 17 (Aug. 6, 2015); *Handbook of Religious Beliefs and Practices*, Wash. Dep't Corr., at 42 (2013).
[86] *Development and Delivery of Religious Services*, Ind. Dep't Corr. No 01-03-101, at 16 (Jan 1, 2018).
[87] *Handbook of Religious Beliefs and Practices*, Ind. Dep't Corr., Sec. X-3, at 23 (Jan. 2018).
[88] *Scheduling of Religious Activities and Use of Ritualistic Elements for Islam*, N.J. Dep't Corr. PCS.002.REL.004.ISLAM, at 5 (May 1, 2015) (applies only to level 1 areas).
[89] *Inmate Religion*, S.C. Dep't Corr. PS-10.05, at 17 (Aug. 6, 2015).
[90] *Id.*
[91] *See e.g., Faith-Based Programming and Chaplaincy Services*, Ala. Dep't Corr., 816.01, at 3 (Aug. 20, 2014); *Religious Programs*, Kans. Dep't Corr. IMPP10-110D, at 3 (Jan. 30, 2018) (requiring permission for two or more prisoners to meet as a group and hold a religious service); *Religious Services*, Conn. Dep't Corr., Dir. 10.8, at 4 (Dec. 3, 2018) (noting that "all" collective religious activity "shall" be conducted and supervised by chaplain or volunteer with the same religion as the group, and under no circumstances may an inmate conduct a collective activity, and targeting even individual religious displays in directing that "there shall be no demonstrative public individual prayer that would disrupt the orderly operation of the institution, such as in the work or school area, recreation area, day room, etc. All such prayer must be done privately in one's cell or by one's bed.").
[92] *Id.*
[93] *Religious Activities*, Idaho Dep't Corr. 403.02.01.001, at 7 (Sept. 22, 2017).
[94] *Id.*
[95] *Religious Program*, Haw. Dep't Corr., Pol. No. COR 12.05, at 7 (May 3, 2017).
[96] U.S. CONST. amend. XIII §1.
[97] *See generally* Whitney Benns, *American Slavery, Reinvented*, THE ATLANTIC (Sept. 1, 2015), http://www.theatlantic.com/business/archive/2015/09/prison-labor-in-america/406177.

[98] *Id.*
[99] Ala. Dep't Corr. AR 462, at 6 (Aug. 11, 2015).
[100] Ark. Dep't Corr. Policy & Proc. – Rel. Servs. No. 550, at 76 (Aug. 1, 2017) ("Inmate participants in Ramadan will go about their assigned jobs as usual."); *Offender Pastoral Care*, Colo. Dep't Corr. AR 800-01E, at 5 (Mar. 15, 2018) (allowing proscription for Eid-Ul-Fitr, Eid-Ul-Adha, and during *Jumah* prayer, but not for Ramadan).
[101] *Muslim Religious Practices*, Ohio Dep't Rehab & Corr., DRC 1362, at 3 (Dec. 26, 2012).
[102] *Religious Services Guide*, Vt. Dep't Corr., at 32 (Mar. 2017).
[103] *Inmate Religious Activities/Marriage Requests*, Ariz. Dep't Corr. DO 904, at 7 (June 11, 2016) (explaining that inmates may "request to be excused from work on specified holy days, documented as 'no-work' days for the religion in question," and that weekly/recurring no work day requests are entertained by Senior chaplains).
[104] But unclear which days and whether it extends to Ramadan if the adherent wishes. *Chaplaincy Service: Religion Technical Guide for Selected Religious Groups*, Fla. Dep't Corr., at 24 (2015).
[105] *Development and Delivery of Religious Services*, Ind. Dep't Corr. No 01-03-101, at 27 (Jan. 1, 2018) (instructing that missing work for observance can be approved on written request two weeks in advance, and that extra work details cannot be required on a religiously restricted day).
[106] *Kentucky Department of Corrections Religious Reference Manual*, Ky. Dep't Corr., at 9 (May 2, 2008) (recognizing a work break only for "Eid-Ul-Fitr" and "Eid-Ul-Adha," and requiring written request in advance).
[107] Allows accommodation to miss work or school programs, but notification required in advance. *Religious Services Manual*, Md. Dep't Pub. Safety & Corr. Servs. OPS.140.0002, at 30 (Mar. 20, 2017).
[108] *Scheduling of Religious Activities and Use of Ritualistic Elements for Islam*, N.J. Dep't Corr. PCS.002.REL.004.ISLAM, at 4-5 (May 1, 2015) (establishing work breaks at *Jumah* prayer times, and on the two Eids in level 1 areas).
[109] *Religious Programs*, N.M. Corr. Dep't, CD-101300, attach., at 5 (Apr. 10, 2018) (requiring day off from work for Eids, and up to two hour observance for Ramadan group gatherings and *Jumah* prayer).
[110] *Religious Practices Reference Manual*, N.C. Dep't Corr. Div. Prisons, at 89, 95 (Apr. 18, 2012) (noting Ramadan cannot interfere with work assignments).
[111] *Religious Holy Day Calendar 2018*, N.Y. State Dep't Corr. & Comm. Supervision, at 16 (Dec. 8, 2017) (instructing that inmates are off work and programs all day for the "Day of Ghadir", "Mubahilah," "Eidul Fitr," and "Eidul Adha," but for other holy days, inmates should return to work and programs after the holiday prayer).
[112] *Religious Services*, Okla. Dep't Corr., OP-030112, at 9-10 (Apr. 9, 2019) (explaining that there are generally no exceptions unless "mandated" by faith to abstain for a day or participate in a service at a specific time that conflicts, and that work hours must be made up); *Id.* at attach. D "Authorized Religious Work Restrictions" (recognizing only *Jumah*, an hour at sunset and at sunrise in Ramadan, and for community prayer on *Eid ul-Adha*).
[113] *Religious Activity Procedures Manual*, Penn. Dep't Corr. DC-ADM 819, at 4-18 (Feb. 1, 2013).
[114] *Offender Religious Programs*, Va. Dep't Corr., No. 841.3, attach. 2 "Master Religious Calendar" (June 1, 2019) (noting that work is prohibited for certain Muslim holidays).

[115] *Religious Programs*, Wash. Dep't Corr., DOC 560.200, at 10 (Feb. 17, 2014) (noting that unless it interrupts order of facility, prisoners "will be excused weekly from mandated programs or work to attend a religious activity of their choice" but not more than once per week).
[116] *Religious Beliefs and Practices,* Wisc. Dep't Corr., DAI Policy 309.61.01, at 8 (Oct. 24, 2016) (explaining that generally "[f]acilities shall make reasonable effort to accommodate an inmate's observance of days of special significance" and all inmates, including those in "involuntary unassigned status" must request proscription 30 days in advance).
[117] Ill. Admin. Code tit. 20, § 425.100 ("[P]ersons shall be relieved from a work assignment, without pay, on a recognized religious holiday or celebration which prohibits work *or if the work assignment violates the specific requirements of the committed person's faith* subject to concerns regarding safety, security, rehabilitation, institutional order, space, and resources.")(emphasis added).
[118] Dunn v. Ray, 586 U.S. __ (Feb. 7, 2019).
[119] 586 U.S. at __ (Kagan, J., dissenting).
[120] *Id.*
[121] Matthew S. Schwartz, *Supreme Court Halts Execution Of 'Texas 7' Inmate Denied Buddhist Spiritual Adviser*, NPR (Mar. 29, 2016), http://www.npr.org/2019/03/29/707884682/supreme-court-halts-execution-of-texas-7-inmate-denied-buddhist-spiritual-advise.
[122] Sirine Shebaya, *The Supreme Court's Ruling in Ray: A Broken Promise of Religious Liberty for All*, ACS BLOG (Feb. 12, 2019), http://www.acslaw.org/expertforum/the-supreme-courts-ruling-in-dunn-a-broken-promise-of-religious-liberty-for-all.
[123] Ray v. Comm'r, Ala. Dep't Corr., 915 F.3d 689 (11th Cir. 2019) (noting that the warden denied the request, stating she had no decisional authority over the autopsy), http://media.ca11.uscourts.gov/opinions/pub/files/201910405.ord.pdf.
[124] *Dunn*, 586 U.S. at __.
[125] *See generally* U.S. v. Hammer, 121 F.Supp.2d 794 (M.D. Pa. 2000); Kickapoo Traditional Tribe of Tex. v. Chacon, 46 F.Supp.2d 644 (W.D. Tex. 1999); You Vang Yang v. Sturner, 750 F.Supp. 558 (D.R.I. 1990); Montgomery v. Cty. of Clinton, 743 F.Supp. 1253 (W.D. Mich. 1990); Kohn v. U.S., 591 F. Supp. 568 (E.D.N.Y. 1984), *aff'd*, 760 F.2d 253 (2d Cir. 1985).
[126] Abdallah S. Daar & A. Khitamy, *Bioethics for clinicians: 21. Islamic bioethics*, 164(1) *CMAJ* 60 (2001).
[127] *Death of a Prisoner*, Alaska Dep't Corr., 104.04 (July 2018); *Notification of Inmate Hospitalization or Death,* Ariz. Dep't Corr., 711 § 4.4.4 at 4 (May 30, 2013); *Religious Services Policy & Procedure Manual*, Ark. Dep't Corr., No. 655 at 100 (Aug. 1, 2017); *Rules and Regulations of Adult Institutions, Programs, and Parole Department of Corrections and Rehabilitation,* Cal. Dep't Corr., § 3999.417 (July 5, 2019); *Offender Death,* Conn. Dep't Corr., 8.2 (Dec. 15, 2005); *Procedure in the Event of an Offender Death*, Del. Dep't Corr., 11-A-09 (July 16, 2010); *Chaplaincy Service: Religion Technical Guide for Selected Religious Groups*, Fla. Dep't Corr., at 81 (2015); *Offender Death and Mortality Reviews,* Ga. Dep't Corr., 507.04.67 (Sept. 25, 2018); *Procedure in the Event of an Inmate Death*, Haw. Dep't Corr., COR.10.1A.10 (Dec. 29, 2008); *Death: Procedure in the Event of an Offender's*, Idaho Dep't Corr., 401.06.03.011 (June 11, 2012); *Administration: Deceased Offenders: Notifications and Required Procedures*, Kan. Dep't Corr., 01-114D (Dec. 10, 2015); *Kentucky Department of Corrections Religious Reference Manual*, Ky. Dep't Corr., at 9 (May 2, 2008); *Prisoner Death,* Me. Dep't Corr., 18.21 (July 17, 2017); *Death Procedures*, Mass. Dep't Corr., 103 DOC 622 (Jan. 2019); *Deaths: Natural, Accidental, Suicide, Homicide*, Mich. Dep't Corr.,

04.06.110 (May 28, 1984); *Death of an Incarcerated Offender*, Minn. Dep't Corr., 203.230 (Mar. 5, 2019); *Offender Death*, Mont. Dep't Corr., DOC 4.5.34 (Jan. 4, 2012); *Serious Illness or Injury, Advance Directives & Death*, Neb. Dep't Corr., 115.13 (Oct. 31, 2018); *Inmate Organ and Blood Donation*, Nev. Dep't Corr., 659 (May 15, 2018); *Inmate Death or Serious Injury Procedure*, Nev. Dep't Corr., 420 (Mar. 7, 2017); *Notification to Designated Individuals in Case of Inmate Serious Illness, Injury, Death*, N.H. Dep't Corr., 6.40 (Dec. 15, 2007); *Notification of Serious Illness, Injury or Death of an Inmate and Procedure in the Event of an Inmate Death*, N.M. Dep't Corr., CD-172100 (Oct. 24, 2018); *Religious Practices Reference Manual*, N.C. Dep't Corr. Div. Prisons, at 96 (Apr. 18, 2012); *North Dakota Correctional Facility Standards*, N.D. Dep't Corr., Standard 58 at 20 (June 1, 2018); *Muslim Religious Practices*, Ohio Dep't Rehab & Corr., DRC 1362, at 5 (Dec. 26, 2012); *Inmate Death, Injury and Illness Notification and Procedures*, Okla. Dep't Corr., OP-140111 (Apr. 10, 2018); *Management and Administration of Health Care*, Pa. Dep't Corr., 13.1.1 at 9-1 (Nov. 16, 2016); *Death of an Offender or Unresponsive Offender*, S.D. Dep't Corr., 1.4.E.6 (May 13, 2019); *Procedure to be Followed in Cases of Offender Death*, Tex. Dep't Corr., A-11.1 (Oct. 2018); *Disposition of Deceased Inmate Remains*, Utah Dep't Corr., FI14/03.04 (May 1, 2014); *Terminal Illness and Inmate Death - Facilities*, Vt. Dep't Corr., Dir. 353 (Mar. 29, 2006); *Notification of Serious Injury, Illness, or Death*, Va. Dep't Corr., 038.4 at 8 (Dec. 1, 2018); *Handbook of Religious Beliefs and Practices*, Wash. Dep't Corr., at 47 (2013); *Death of an Inmate*, Wis. Dep't Corr., No. 300.00.09 (Aug. 20, 2018).

[128] A. R. Gatrad, *Muslim Customs Surrounding Death, Bereavement, Postmortem Examinations, and Organ Transplants*, 309 BMJ 521 (1994).

[129] *Death of a Prisoner*, Alaska Dep't Corr., 104.04 (July 2018); *Religious Services Policy & Procedure Manual*, Ark. Dep't Corr., No. 655 at 100 (Aug. 1, 2017); *Rules and Regulations of Adult Institutions, Programs, and Parole Department of Corrections and Rehabilitation*, Cal. Dep't Corr., § 3999.417 (July 5, 2019); *Offender Death*, Conn. Dep't Corr., 8.2 (Dec. 15, 2005). *Procedure in the Event of an Offender Death*, Del. Dep't Corr., 11-A-09 (July 16, 2010); *Procedure in the Event of an Inmate Death*, Haw. Dep't Corr., COR.10.1A.10 (Dec. 29, 2008); *Death: Procedure in the Event of an Offender's*, Idaho Dep't Corr., 401.06.03.011 (June 11, 2012); *Administration: Deceased Offenders: Notifications and Required Procedures*, Kan. Dep't Corr., 01-114D (Dec. 10, 2015); *Deaths: Natural, Accidental, Suicide, Homicide*, Mich. Dep't Corr., 04.06.110 (May 28, 1984); *Offender Death*, Mont. Dep't Corr., DOC 4.5.34 (Jan. 4, 2012); *Serious Illness or Injury, Advance Directives & Death*, Neb. Dep't Corr., 115.13 (Oct. 31, 2018); *Inmate Organ and Blood Donation*, Nev. Dep't Corr., 659 (May 15, 2018); *Inmate Death or Serious Injury Procedure*, Nev. Dep't Corr., 420 (Mar. 7, 2017); *Notification to Designated Individuals in Case of Inmate Serious Illness, Injury, Death*, N.H. Dep't Corr., 6.40 (Dec. 15, 2007); *Notification of Serious Illness, Injury or Death of an Inmate and Procedure in the Event of an Inmate Death*, N.M. Dep't Corr., CD-172100 (Oct. 24, 2018); *North Dakota Correctional Facility Standards*, N.D. Dep't Corr., Standard 58 at 20 (June 1, 2018); *Inmate Death, Injury and Illness Notification and Procedures*, Okla. Dep't Corr., OP-140111 (Apr. 10, 2018); *Management and Administration of Health Care*, Pa. Dep't Corr., 13.1.1 at 9-1 (Nov. 16, 2016); *Death of an Offender or Unresponsive Offender*, S.D. Dep't Corr., 1.4.E.6 (May 13, 2019); *Disposition of Deceased Inmate Remains*, Utah Dep't Corr., FI14/03.04 (May 1, 2014); *Notification of Serious Injury, Illness, or Death*, Va. Dep't Corr., 038.4 at 8 (Dec. 1, 2018).

[130] *Death Procedures*, Mass. Dep't Corr., 103 DOC 622 (Jan. 2019).

[131] *Death of an Incarcerated Offender*, Minn. Dep't Corr., 203.230 (Mar. 5, 2019).

[132] *Chaplaincy Service: Religion Technical Guide for Selected Religious Groups*, Fla. Dep't Corr.,

at 81 (2015).
[133] *Prisoner Death*, Me. Dep't Corr., 18.21 (July 17, 2017).
[134] *Kentucky Department of Corrections Religious Reference Manual*, Ky. Dep't Corr., at 9 (May 2, 2008).
[135] *Muslim Religious Practices*, Ohio Dep't Rehab & Corr., DRC 1362, at 5 (Dec. 26, 2012).
[136] *Religious Practices Reference Manual*, N.C. Dep't Corr. Div. Prisons, at 96 (Apr. 18, 2012).
[137] *Handbook of Religious Beliefs and Practices*, Wash. Dep't Corr., at 47 (2013).
[138] *Religious Services Policy & Procedure Manual*, Ark. Dep't Corr., No. 655 at 100 (Aug. 1, 2017).
[139] *Rules and Regulations of Adult Institutions, Programs, and Parole Department of Corrections and Rehabilitation*, Cal. Dep't Corr., § 3999.417 (July 5, 2019); Cal. Penal Code § 5061 (West).
[140] *Religious Program Services*, Ala. Dep't Corr. AR 462, at 22 (curiously, there is no "Koofie" limitation for non-orthodox Muslim groups according to the policy. E.g. NOI and MSTA can wear kufis throughout the facility).
[141] *Property: Religious*, Idaho Dep't Corr. 320.02.01.002, at 3 (Sept. 25, 2017).
[142] *Offender Pastoral Care*, Colo. Dep't Corr. AR 800-01, at 10 (Mar. 15, 2018).
[143] *Notice to Offenders: Change in General Rules*, Tex. Dep't Crim. Justice (Dec. 1, 2017) (on file with Muslim Advocates) (you may carry, but not wear, your approved religious headgear to and from religious programming); *Offender Property*, Tex. Dep't Crim. Justice, AD-03.72, at 4, 29 (June 3, 2015) (mentioning hijab and kufi).
[144] Ill. Admin. Code tit. 20, § 425.90(e) ("wearing of religious headgear, including but not limited to fezzes, kufis, and yarmulkes, shall be limited only to the committed person's immediate sleeping area during prayer and to the area of religious service provided that verification is submitted that the wearing of the religious headgear is required by the committed person's designated faith").
[145] *Religious Program*, Haw. Dep't Corr., Pol. No. COR 12.05, at 11 (May 3, 2017) (written request is needed to wear garment outside of religious services, and verification is needed from the "head of the offender's affiliated church").
[146] *Faith-Based Programming and Chaplaincy Services*, Ala. Dep't Corr., 816.01, at 4 (Aug. 20, 2014) (approved head coverings may be worn "throughout the institution but shall be subject to search").
[147] *Inmate Property*, Conn. Dep't Corr., Dir. 6.10, at 17 (June 26, 2013) ("All headwear shall be removed upon demand for inspection."). Hawai'i apparently has a similar policy. *Religious Program*, Haw. Dep't Corr., Pol. No. COR 12.05, at 11 (May 3, 2017) (written request is needed to wear garment outside of religious services, and verification is needed from the "head of the offender's affiliated church").
[148] *Chaplaincy Service: Religion Technical Guide for Selected Religious Groups*, Fla. Dep't Corr., at 24, 87 (2015) (must be white only for men, scarfs may be white or blue and women can have two of each color. Can be "non-issue" headgear).
[149] *Islamic (Muslim) Guidelines*, Ga. Dep't Corr. VA01-008 SOP 106.08, at 3 (July 15, 2010) (Kufis can be worn "at anytime" provided it is white, and women can cover as appropriate).
[150] *Religious Programs*, Kans. Dep't Corr. IMPP10-110D, at 6 & attach. A, at 2 (Jan. 30, 2018) (policy does not specifically mention hijab, just "yarmulkes, koofi, and tams").

[151] *Religious Programs*, Ky. Dep't Corr. Policy 23.1, at 4-5 (Nov. 16, 2018) (headwear, including kufis and hijab, may be worn "in the institution" without apparent limitation) (policy also distinguishes between ceremonial and day-to-day headwear).
[152] *Religious Services Manual*, Md. Dep't Pub. Safety & Corr. Servs. OPS.140.0002, at 51-52 (Mar. 20, 2017) (can be any color but can be changed if needed for safety; can be worn at "all times except when a photo ID is being taken" ; staff searches "should have a reasonable cause"… with regard to female population, "when searching the (Hijab, scarf), the officers shall conduct a simple pat search while the headgear (Hijab, scarf) is on the offender's head"… if there is concern, a female officer conducts the search in a private place. Only the offender removes the headgear and puts it back on). The policy's appendix also references the Khimar and Jilbab (formless dress that covers arms and body to ankles). *Id.* (Faith Group Accommodations attachment, app. 4, at 26).
[153] *Religious Practice Manual*, Nev. Dep't Corr., at 23 (Sept. 5, 2017) ("Only AR 810 recognized religious head covers are allowed. Such head covers may be worn anywhere and at any time in the institution/facility.").
[154] *Religious Programming and Diets*, N.H. Dep't Corr. PPD 7.17, at 6 (Oct. 15, 2017) (stating that "[i]ndividuals under DOC custody are permitted to wear religious head coverings at any time on DOC property or inside all facilities" but the head coverings must be removed "during all formal standing and emergency facility counts," must be removed for search if requested, and "are not permitted inside temporary holding cells"). Note however the list of permissible inmate property seems unclear and includes kufis but fails to include other religious headgear. *Issuance and Control of Inmate Property*, N.H. Dep't Corr. 9.02, at 7 (Mar. 1, 2013).
[155] *Religious Practices Reference Manual*, N.C. Dep't Corr. Div. Prisons, at 91, 96 (Apr. 18, 2012) ("Kufis and scarves may be worn at all times except when ordered to remove them for searches.").
[156] *Religious Programs*, N.D. Dep't Corr. & Rehab., 5E-1, at 5, 17-19 (Dec. 19, 2017) (stating that religious head coverings "shall be allowed," and that religious head coverings, "with the exceptions of bandanas and fezzes" may be worn at religious services. Person may be asked to have covering searched and may be "directed to unfold or unwrap" the item for inspection. Muslim head coverings "may" be limited to use during services and in living quarters).
[157] *Religious Holy Day Calendar 2018*, N.Y. State Dep't Corr. & Comm. Supervision, at 16, 23, 25, 47-48, 57 (Dec. 8, 2017) (on file with Muslim Advocates) (also allowing kufi with tassel for adherents of the Nation of Gods and Earths).
[158] *Religious Services*, Okla. Dep't Corr., OP-030112, attach. B, at 3 (Apr. 9, 2019) (noting that while color and style must be approved, religious headgear "may be worn at all times"). *Cf. id.* attach. A, at 2 (noting the fez is only to be worn during religious ceremonies and stored at all other times).
[159] Memorandum from Matthew Kettle, Ass't Dir., Insts. & Ops., to All Staff (Nov. 6, 2017) (on file with Muslim Advocates) (permitting adherents to Islam and the Nation of Gods and Earths to wear kufis). Memorandum from Matthew Kettle, Ass't Dir., Insts. & Ops., to All Staff (Apr. 9, 2018) (on file with Muslim Advocates) (noting that in addition to kufis and yarmulkes for men, hijabs can be worn "anywhere within the secure facilities except for correctional industries").
[160] *Inmate Religion*, S.C. Dep't Corr. PS-10.05, at 19 (Aug. 6, 2015) (mentioning kufis and "scarves" for Muslim women, which may be worn throughout the facility, indoors and outdoors" and noting that RHU prisoners can have one kufi only, instead of two. The kufi must be white).

[161] *Access to Religious Programs*, Utah Dep't Corr., FH03/04.06, 4.08, at 22, 23 (Aug. 27, 2012) (noting that "approved religious head apparel" may be worn at "any time or in any area of the institution").
[162] *Inmate Religious Activities*, Wyo. Dep't Corr., Policy and Procedure # 5.600, at 19 (July 1, 2018) (stating that head coverings approved "for religious purposes" may be worn "throughout the facility, indoors and outdoors" and warden can restrict use of head covering if there is "specific articulable" reason or circumstance).
[163] *Access to Religious Programs*, Utah Dep't Corr., FH03/04.06, 4.08, at 22, 23 (Aug. 27, 2012).
[164] *Handbook of Religious Beliefs and Practices*, Wash. Dep't Corr., at 41 (2013).
[165] *Id.*
[166] *Religious Services Manual*, Md. Dep't Pub. Safety & Corr. Servs. OPS.140.0002, at 51-52 (Mar. 20, 2017) (stating that staff searches "should have a reasonable cause"… with regard to female population). The policy appendix also references the Khimar and Jilbab (formless dress that covers arms and body to ankles). *Id.* (Faith Group Accommodations attachment, app. 4, at 26).
[167] *Religious Programs*, N.M. Corr. Dep't, CD-101300, Attachment, at 5 (Apr. 10, 2018) (stating that prisoners may possess one hijab or one kufi).
[168] *Muslim Religious Practices*, Ohio Dep't Rehab. & Corr., DRC 1362, at 3-4 (Dec. 26, 2012) (mentioning that Muslim men may have one "white or beige kufi" and Muslim women may have up to three white or beige headscarves).
[169] *See e.g., Religious Activity Procedures Manual*, Penn. Dep't Corr. DC-ADM 819, at 3-7 (Feb. 1, 2013); ("Inmates scheduled for transport are not permitted to wear religious headgear in accordance with Department policy 6.3.1, Section 22.").
[170] *See e.g., Transferring Inmate Property*, N.Y. State Dep't Corr. & Comm. Supervision, No. 4917, at 4 (Apr. 25, 2019) (noting approved religious head covering such as khimar or kufi can be worn during transport).
[171] *Id.*
[172] *Dietary Provisions and Religious Practices*, Mo. Dep't Corr., at 1 (Feb. 28, 2012).
[173] FEBE ARMANIOS & BOĞAÇ ERGENE, HALAL FOOD: A HISTORY 6, 249 (2018).
[174] *See supra* Part II(A).
[175] ARMANIOS, *supra* note 173, at 249.
[176] *Id.* at 146.
[177] States acknowledging the complexity of halal requirements generally note the requirements for halal meat, and note other contaminants and processing prohibitions. *See e.g. Chaplaincy Handbook of Religious Beliefs and Practices*, Ill. Dep't Corr., at 135 (Mar. 2018); *Handbook of Religious Beliefs and Practices*, Ind. Dep't Corr., Sec. X-3, at 24 (Jan. 2018); *Kentucky Department of Corrections Religious Reference Manual*, Ky. Dep't Corr., at 7 (May 2, 2008).
[178] The following policies evince a limited "pork free" conception of halal requirements (i.e. a view that if there's no pork in it, it is halal compliant): Ala. Dep't Corr. AR 701 (Mar. 19, 2014); Ark. Dep't Corr. Policy & Proc. – Rel. Servs. No. 630 (Aug. 1, 2017); *Chaplaincy Service: Religion Technical Guide for Selected Religious Groups*, Fla. Dep't Corr., at 24 (2015); *Islamic (Muslim) Guidelines*, Ga. Dep't Corr. VA01-008 SOP 106.08, at 5 (July 15, 2010); *Religious Services, General Guidelines*, Me. Dep't Corr. Policy 24.3, at 4 (Feb. 15, 2009) (FSM "shall" provide pork free and vegetarian diets to meet the request); *Dietary Provisions and Religious Practices*, Mo. Dep't Corr.

(Feb. 28, 2012); *Inmate Religion*, S.C. Dep't Corr. PS-10.05, at 18 (Aug. 6, 2015); *Religious Diet Program for Inmates*, Wyo. Dep't Corr., Policy and Procedure # 5.601, at 18-19 (Apr. 15, 2018).
[179] *Islamic (Muslim) Guidelines*, Ga. Dep't Corr. VA01-008 SOP 106.08, at 5 (July 15, 2010).
[180] *Id.*
[181] *Offender Pastoral Care*, Colo. Dep't Corr. AR 800-01E, at 23 (Mar. 15, 2018).
[182] *Medical and Religious Diets*, Colo. Dep't Corr. AAR 1550-15F, at 15 (Apr. 15, 2018).
[183] *Religious Services Manual*, Md. Dep't Pub. Safety & Corr. Servs. OPS.140.0002, at 44 (Mar. 20, 2017).
[184] Md. Code Regs. 12.03.02.10 (2019).
[185] *Religious Services Handbook*, Mass. Dep't Corr. at 63 (Jan. 2018).
[186] *Religious Beliefs and Practices of Prisoners*, Mich. Dep't Corr., PD 05.03.150, at 6 (Oct. 15, 2015).
[187] *Religious Programming and Diets*, N.H. Dep't Corr. PPD 7.17, at 5 (Oct. 15, 2017).
[188] *Religious Services*, Okla. Dep't Corr., OP-030112, at 10-11 (Apr. 9, 2019); *Id.* attachment C.
[189] Memorandum from Michael Bonneau, Assoc. Dir., R.I. Dep't Corr., to "Distribution" (May 1, 2018) (on file with Muslim Advocates) (noting that with regard to the evening meal portions are to be "larger than the regular portion" during Ramadan but "the portion size of halal meat remains the same.").
[190] *Inmate Religious and Alternative Diets*, S.D. Dep't Corr. 1.5.F.2, at 3 (Dec. 2017).
[191] *Religious Diet Program for Inmates*, Wyo. Dep't Corr., Policy and Procedure # 5.601, at 18-19 (Apr. 15, 2018).
[192] *Food Service Operations Manual*, N.Y. State Dep't Corr. & Comm. Supervision, No. 4310 at 20 (Apr. 2018), http://www.doccs.ny.gov/directives/FSOM.pdf.
[193] *Kosher/Halal Meal Program*, City of N.Y. Dep't Corr., Directive #3250 (Dec. 2, 1981); *Preparation/Processing of Kosher/Halal Meals*, City of N.Y. Dep't Corr., Classification #3254R-A (Sept. 15, 1986).
[194] *Handbook of Religious Beliefs and Practices*, Wash. Dep't Corr., at 45-46 (2013).
[195] *Id.* at 46.
[196] *Id.*
[197] *Religious Programs*, Wash. Dep't Corr., DOC 560.200, at 6 (Feb. 17, 2014); *Food Services Program*, Wash. Dep't Corr., DOC 240.100, at 4 (Apr. 6, 2015).
[198] *Id.*
[199] *Id.*
[200] *Religious Diets*, Wis. Dep't Corr., DAI policy 309.61.03, at 2 (July 1, 2017).
[201] *Id.* at 2.
[202] *Id.* at 2.
[203] *Id.* at 4.
[204] *Inmate Common Fare/Religious Diet*, Nev. Dep't Corr. AR 814, at 3 (June 17, 2012).
[205] *General Food Service Operations*, Iowa Dep't Corr., IS-FS-01, at 3 (Dec. 2015).
[206] *Religious Diet Program*, Fla. Dep't Corr., Procedure No. 503.006, at 4-5 (May 22, 2013) (outlining sincerity assessment requirements; *See also*, United States v. Sec'y, Fla. Dep't of Corr., No. 12-22958-CIV, 2013 WL 6697786, at *5 (S.D. Fla. Dec. 6, 2013) (describing Procedure No. 503.006, which is available at ECF No. 55-12), *judgment vacated, appeal dismissed*, 778 F.3d 1223 (11th Cir. 2015) (granting preliminary injunction as the policy likely substantially burdens prisoners' free exercise rights) (subsequently dismissed as moot); *Chaplaincy Service: Religion Technical Guide for*

Selected Religious Groups, Fla. Dep't Corr., at 24 (2015) (noting that "[t]his edition includes reference to the Department's new Religious Diet Program," continuing to incorporate by reference Procedure No. 503.006, and misstating the outcome of *Sec'y, Fla. Dep't Corr.* by noting "[i]n the process, the Federal Courts have validated the department's sincerity assessment of inmates getting into and remaining in the Religious Diet Program" (the case was dismissed as moot and the policy was not validated)). The Florida diet program provides that the chaplain may verify inmate responses by interviewing staff, inspecting records, conducting internet searches to learn about diet requirements of other religions, and telephoning and emailing clergy. *Religious Diet Program*, Fla. Dep't Corr., Procedure No. 503.006, at 4-5 (May 22, 2013).

[207] *Religious Programs*, N.D. Dep't Corr. & Rehab., 5E-1, at 5 (Dec. 19, 2017).

[208] *Inmate Common Fare/Religious Diet*, Nev. Dep't Corr., AR 814, at 5-6 (June 17, 2012).

[209] *Religious Services Handbook*, Mass. Dep't Corr., at 10 (Jan. 2018) (emphasis added).

[210] *Medical and Religious Diets*, Colo. Dep't Corr., AAR 1550-15, at 6-7 (Apr. 15, 2018).

[211] *See infra* Appendix A, Table 1.

[212] *Religious Activity Procedures Manual*, Penn. Dep't Corr., DC-ADM 819, at 1-10, 4-17 (Feb. 1, 2013).

[213] *See e.g.*, Harris v. Escamilla, 736 Fed. App'x 618 (9th Cir. 2018) (in which a California corrections officer threw an inmate's Qur'an to the floor, stomped on it with his boot, and kicked it under a bunk bed).

[214] Complaint for Violation of Civil Rights (Prisoner Complaint) at 5, Ealom v. United States, 2018 WL 1899125 (D. Kan. Feb. 28, 2018) (No. 5:18-cv-03045); *Muslim Civil Rights Group Raises Concerns with Leavenworth Prison for Harassment and Discrimination*, MUSLIM ADVOCATES (Sept. 12, 2018), http://muslimadvocates.org/2018/09/muslim-civil-rights-group-raises-concerns-with-leavenworth-prison-harassment-and-discrimination.

[215] Kans. Dep't Corr., IMPP10-110D, at 4 (Jan. 30, 2018).

[216] *Religious/Spiritual Programming*, Mo. Dep't Corr., IS17-1.1, at 12-13 (Jan. 18, 2015). Nevada in contrast only allows folks with declared faith via declaration form keep personal religious property allowed for that faith. *Religious Practice Manual*, Nev. Dep't Corr., at 27 (Sept. 5, 2017).

[217] *Development and Delivery of Religious Services*, Ind. Dep't Corr., No 01-03-101, at 29 (Jan. 1, 2018).

[218] *Religious Services Handbook*, Mass. Dep't Corr., at 63 (Jan. 2018).

[219] *Religious Services Manual*, Md. Dep't Pub. Safety & Corr. Servs., OPS.140.0002, app. 4, at 27 (Mar. 20, 2017) (Faith Group Accommodations Overview).

[220] *Inmate Religion*, S.C. Dep't Corr., PS-10.05, at 16, 19 (Aug. 6, 2015).

[221] *Religious Programs*, D.C. Dep't Corr., PP 4410.1H, at 1 (Jan. 31, 2019).

[222] *Religious Program*, Haw. Dep't Corr., Pol. No. COR 12.05, at 16 (May 3, 2017).

[223] *Inmate Religious Activities/Marriage Requests*, Ariz. Dep't Corr. DO 904, at 2 (June 11, 2016).

[224] *Religious Programming and Diets*, N.H. Dep't Corr., PPD 7.17, at 3 (Oct. 15, 2017).

[225] *Food Service Procedures*, N.M. Corr. Dep't, CD-150900, at 3, 5-6 (Oct. 31, 2018).

[226] *Male Property Matrix*, Conn. Dep't Corr., Dir. 6.10 attach. C/3 (Dec. 29, 2014), http://portal.ct.gov/-/media/DOC/Pdf/Ad/ad0610attcmalepdf.pdf?la=en; *Female Property Matrix*, Conn. Dep't Corr., Dir. 6.10 attach. B/2 (Dec. 29, 2014), http://portal.ct.gov/-/media/DOC/Pdf/Ad/ad0610attbfemalepdf.pdf?la=en; *Religious Services*, Conn. Dep't Corr., Dir. 10.8, at 3 (Dec. 3, 2018).

[227] *Special Housing Units*, N.Y. State Dep't Corr. & Comm. Supervision, No. 4933, at 7 (Apr. 18, 2019).
[228] *Literature*, Ark. Dep't Corr., Policy & Proc. – Rel. Servs. No. 705 (Aug. 1, 2017).
[229] *Kentucky Department of Corrections Religious Reference Manual*, Ky. Dep't Corr., at 8 (May 2, 2008).
[230] *Religious Personal Property Matrix*, Cal. Div. Adult Ops. (June 27, 2013), http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/DOM/DOM%202018/RELIGIOUS-PERSONAL-PROPERTY-MATRIX-12-9-13.pdf.
[231] *Religious Programs*, Wash. Dep't Corr., DOC 560.200, at 10 (Feb. 17, 2014).
[232] *Inmate Religious Items*, Or. Admin. R. 291-143-0110 (Nov. 1, 2017).
[233] *Religious Beliefs and Practices of Prisoners*, Mich. Dep't Corr., PD 05.03.150, at 4 (Oct. 15, 2015); *Segregation Standards*, Mich. Dep't Corr., PD 04.05.120, at 6 (Sept. 27, 2010).
[234] *Religious Services Manual*, Md. Dep't Pub. Safety & Corr. Servs., OPS.140.0002, at 27 (Mar. 20, 2017).
[235] *Religious Programs and Practices*, N.Y. State Dep't Corr. & Comm. Supervision, No. 4202, at 7 (Oct. 19, 2015).
[236] *Id.*
[237] *Religious Activities*, Or. Admin. R. 291-143-0080(3) (2017).
[238] The numbers provided are a snapshot of July 31, 2018. *Frequency of Religion of Confined Population as of 31 Jul 2018*, Ariz. Dep't Corr. (Oct. 16, 2018) (on file with Muslim Advocates) (identifying 1291 prisoners with "Islam Muslim").
[239] The numbers provided are a snapshot of October 25, 2018. *ADC Inmates by Religion as of 10-25-2018*, Ark. Dep't Corr. (on file with Muslim Advocates) (identifying 1193 prisoners with "Islam" and 777 with "Muslim"). Note that the total in Table 1 omits 582 prisoners with unknown preferences.
[240] "Demographics CY2017," *Religion Data Final*, Colo. Dep't Corr. (on file with Muslim Advocates) (identifying 26 inmates as "Moorish Science Temple of America" and 257 as "Islam/Muslim"). *Cf. Detailed State Data*, SENTENCING PROJECT (2019), http://www.sentencingproject.org/the-facts/#detail, (pinning the state prison population at close to 20 thousand in 2017).
[241] Memo from Anthony J. Bruno, Dir. of Religious Servs., Conn. Dep't Corr., to Monica Rinaldi, Dir. of Programs and Treatment, Conn. Dep't Corr. (Oct. 8, 2013) (on file with Muslim Advocates). 18 percent of the prison population declared "no religion" or refused to provide any information. This population is included in the total population figure. Also note the responsive record provided may include the Connected jail population. *Cf. Detailed State Data*, SENTENCING PROJECT (2019), http://www.sentencingproject.org/the-facts/#detail, (pinning the state prison population at close to 12 thousand in 2013).
[242] The numbers provided were labeled "total for the year." We add together Muslim (365) Moorish (150) and Sunni Muslim (717). *Count of PCP*, D.C. Dep't Corr. (July 23, 2018). For comparison purposes, the average daily population in the DOC and the Central Detention Facility in 2017 was 3,181. *DC Department of Corrections Facts and Figures*, D.C. Dep't Corr. 5 (Apr. 2017), http://doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/DC%20Department%20of%20Corrections%20Facts%20and%20Figures%20April%202017.pdf.

[243] The numbers provided are a snapshot of the Level V (Incarceration) Population on July 10, 2018, does not include Level IV ("quasi incarceration"). *Response to Items #5 and* #8, Del. Dep't Corr. (July 19, 2018) (on file with Muslim Advocates).
[244] The numbers provided are a snapshot of March 31, 2018. *Religious Preference Statewide*, Fla. Dep't Corr. (June 5, 2018) (on file with Muslim Advocates) (identifying 12 prisoners with "Muslim, Sufi"; 23 with "Muslim, Shiite"; 40 with "Moorish Science"; 205 with "Muslim, Sunni"; 658 with "Nation of Islam"; and 3,969 with "Muslim"). *Cf. Detailed State Data*, Sentencing Project (2019), http://www.sentencingproject.org/the-facts/#detail, (pinning the state prison population at close to 98 thousand in 2017).
[245] The numbers provided are a snapshot of February 1, 2019, self-reported at entry to prison, all active inmates. *See Inmate Statistical Profile: All Active Inmates*, Ga. Dep't Corr. 8 (Feb. 1, 2019) (identifying 1,485 prisoners with "Islam."), http://www.gdc.ga.gov/sites/all/themes/gdc/pdf/Profile_all_inmates_2019_01.pdf. Note that 1,638 prisoners reported "None" as a religious affiliation, while a total of 30,994 prisoners either were not asked or for some reason failed to report on their religious preferences. We include in the total those reporting "none" but omit the unreported prisoners from the total. *Cf. Detailed State Data*, SENTENCING PROJECT (2019), http://www.sentencingproject.org/the-facts/#detail, (pinning the state prison population at close to 53 thousand in 2017).
[246] *IDOC Religious Activities 2010-2017*, Idaho Dep't Corr. (on file with Muslim Advocates) (identifying 7 prisoners with "Islam"; and 12 with "Black Muslim"). Note that the total in the Table omits unreported data for 4,628 prisoners. *Cf. Detailed State Data*, SENTENCING PROJECT (2019), http://www.sentencingproject.org/the-facts/#detail, (pinning the state prison population at close to 8 thousand in 2017).
[247] The numbers provided are as of June 27, 2018. *Resident Characteristics by Religion*, Ill. Dep't Corr. (on file with Muslim Advocates) (identifying 3,579 prisoners with "Al Islam"; 300 with "Al-Islam (Muslim)"; 807 with "Moorish Science Temple"; 1 with "Mrish Sci Tmpl Amer Rein" (sic); 338 with "Nation of Islam"; and 352 with "Nation of God and Earth"). The responsive record provided may include the Illinois jail population. *Cf. Detailed State Data*, Sentencing Project (2019), http://www.sentencingproject.org/the-facts/#detail, (pinning the state prison population at roughly 41 thousand and the jail population at 21 thousand in 2017).
[248] The numbers provided are as of July 2, 2018. *Religion and Select Demographics by Snapshot Date*, Ind. Dep't Corr. (2018) (Excel spreadsheet on file with Muslim Advocates) (identifying 2,057 prisoners as "Muslim" and 837 prisoners as "MSTA/Moor").
[249] The numbers provided are from a snapshot at the end of fiscal year June 30, 2018. *Fiscal Year 2018 Population Incarcerated: Gender by Religion Preference (self-reported)*, Kan. Dep't Corr. (2018) (on file with Muslim Advocates). Note that the total in the Table omits prisoners whose religious tradition is marked "unknown." *Cf. Detailed State Data*, SENTENCING PROJECT (2019), http://www.sentencingproject.org/the-facts/#detail, (pinning the state prison population at close to 10 thousand in 2017).
[250] *2018 Religion Count*, Ky. Dep't Corr. (Dec. 17, 2018) (on file with Muslim Advocates) (identifying 673 prisoners as "Islam"; 70 as "Muslim"; and 48 as "Nation of Islam").
[251] The numbers provided are from a snapshot of August 6, 2018. *Religious Preference Totals for Department*, Md. Dep't Pub. Safety & Corr. (Aug. 2018) (on file with Muslim Advocates) (identifying 5 prisoners as "Islam Supreme Grand Res. Moorish"; 2,973 as "Islam Sunni"; 5 as

"Islam Shi'a"; 235 as "Islam Nation of Islam - Lost-Found"; 1,038 as Islam Nation of Islam - Farrakhan; 33 as "Islam Nation of Islam - Caliph Muhammad"; 513 as Islam Moorish Temple of America"; 183 as "Islam Moorish Small Circle"; and 99 as "Islam"). Note that the total in the Table omits unlisted data for 58 prisoners.

[252] The numbers provided are from a snapshot of March. 26, 2018. *Active Population Religions 3-26-2018*, Mass. Dep't Corr. (identifying 579 prisoners as "Islam"; 114 as "Nation of Islam"; and 81 as "Nation of Gods and Earth"). Note that the total in the Table omits unreported data for 86 prisoners.

[253] *2017 Total Prisoner Faith Preferences*, Mich. Dep't Corr. (on file with Muslim Advocates) (identifying 2,406 prisoners as "Moorish Science Temple"; 2,163 as "Islam"; and 2,847 as "Nation of Islam").

[254] The numbers provided are as of July 1, 2018. *Adult Prison Population Summary*, Minn. Dep't Corr. (2018), http://mn.gov/doc/assets/Minnesota%20Department%20of%20Corrections%20Adult%20Prison%20Population%20Summary%207-1-2018_tcm1089-347924.pdf.

[255] The numbers provided are as of June 23, 2018. *Active Inmate Population by Religious Preference*, Miss. Dep't Corr. (June 23, 2018) (on file with Muslim Advocates) (identifying 684 prisoners as "Islam" and 1 as "Suni" (sic)).

[256] The numbers provided are as of September 7, 2018. *Declared Religion of Incarcerated Offenders by Gender*, Mo. Dep't Corr. (2018) (on file with Muslim Advocates) (identifying 1840 prisoners as "Al-Islam/Muslim"; 70 as "Moorish"; 780 as "Moorish Science Temple of America"; 120 as "Muslim"; 348 as "Nation of Islam"; and 2 as "Sufi").

[257] The numbers provided are as of August 15, 2018. *NDCS Religions*, Neb. Dep't Corr. (2018) (on file with Muslim Advocates) (identifying 1 prisoner as "Al-Islam"; 155 as "Islam/Muslim"; 19 as "Moorish Science Temple"; 157 as "Muslim/Islam"; and 1 as "Nation of Islam"). Note that the total in the Table omits unlisted data for 348 prisoners.

[258] *Faith Groups 2014 & 2015*, Nev. Dep't Corr. (on file with Muslim Advocates) (identifying 632 prisoners as "Islam" and 16 as "Moorish Science Temple"). Note that the total in the Table omits unlisted data for 1070 prisoners. *Cf. Detailed State Data*, SENTENCING PROJECT (2019), http://www.sentencingproject.org/the-facts/#detail, (pinning the state prison population at close to 14 thousand in 2017).

[259] The numbers provided are as of August 7, 2018. *NH Correctional Facility for Women – Client Religion Report*, N.H. Dep't Corr. (Aug. 7, 2018) (on file with Muslim Advocates) (identifying 3 inmates as "Muslim" out of 170 total prisoners, though of the total population, 56 had "unknown" religious preferences); *NH State Prison for Men – Client Religion Report*, N.H. Dep't Corr. (Aug. 7, 2018) (on file with Muslim Advocates) (identifying 91 inmates as "Muslim" and 5 inmates as "Nation of Islam" out of 1,391 total prisoners, though of the total population, 117 had "unknown" religious preferences); *Northern NH Correctional Facility – Client Religion Report*, N.H. Dep't Corr. (Aug. 7, 2018) (on file with Muslim Advocates) (identifying 52 inmates as "Muslim" and 3 inmates as "Nation of Islam" out of 640 total prisoners, though of the total population, 53 had "unknown" religious preferences); *Secure Psychiatric Unit – Client Religion Report*, N.H. Dep't Corr. (Aug. 7, 2018) (on file with Muslim Advocates) (identifying 3 inmates as "Muslim" out of 75 total prisoners, though of the total population, 23 had "unknown" religious preferences). The New Hampshire Department of Corrections also operates three Transitional Housing Units and

One Transitional Work Center. *Community Corrections*, N.H. Dep't of Corrections, http://www.nh.gov/nhdoc/divisions/community/index.html (last visited Feb. 26, 2019). As of August 7, 2018, there were 291 individuals incarcerated in these facilities, 13 of whom are identified as Muslim, though of the total population, 51 had "unknown" religious references. *Community Corrections – Client Religion Report*, N.H. Dep't Corr. (Aug. 7, 2018) (on file with Muslim Advocates). Because New Hampshire is the only state for which Muslim Advocates has religious preference data on individuals in such transitional units, the figure has little comparison value and is not included in the total figures listed in this report.

[260] The numbers provided are as of June 21, 2018. *Inmate Management Religion Report*, N.J. Dep't Corr. (June 21, 2018) (on file with Muslim Advocates).

[261] *Security Level and Facility by Religious Affiliation*, N.Y. Dep't Corr. (on file with Muslim Advocates) (identifying 6015 prisoners as "Islam" and 1823 as "Nation of Islam"). Note that the total in the Table omits 6,926 prisoners listed as having unknown preferences. *Cf. Detailed State Data*, SENTENCING PROJECT (2019), http://www.sentencingproject.org/the-facts/#detail, (pinning the state prison population at close to 50 thousand in 2017).

[262] It is unclear what the numbers provided to our record request represent, but it could be total admits over many years, or could be a snapshot that includes parolees. The state's responsive records on religious preference are dated Dec. 31, 2018 and also report a "frequency missing" of about 75 thousand. *Statistics Request: Offender Religious Preferences 2018* N.C. Dep't Public Safety (Feb. 21, 2019) (on file with Muslim Advocates) (identifying 1417 prisoners as "Moorish Science" and 3858 as "Islamic"). Note also that the total in the Table omits 9,884 prisoners whose preferences were unknown. *But see Detailed State Data*, SENTENCING PROJECT (2019), http://www.sentencingproject.org/the-facts/#detail, (pinning the state prison population at close to 35 thousand in 2017).

[263] The number provided is total admissions for the year. *Admissions 2010 through 2018*, N.D. Dep't Corr. (June 7, 2018) (on file with Muslim Advocates) (identifying 20 admissions as "Muslim" and 3 as "Islam." Note that the total in the Table omits 18 prisoners for whom religious preference data was unavailable.

[264] *Religious Preference Counts 2018*, Ohio Dep't Corr. (2018) (on file with Muslim Advocates) (identifying 263 prisoners as "Islam-Formerly Black Muslim"; 30 as "Islam (Shiite)"; 1804 as "Islam"; 52 as "Islam (Hanafi)"; 209 as "Islam (Moorish Science)"; 278 as "Islam (Nation of Islam)"; and 770 as "Islam (Sunni)"). Note that the total in the Table omits 8,556 prisoners whose preferences were unavailable. *Cf. Detailed State Data*, SENTENCING PROJECT (2019), http://www.sentencingproject.org/the-facts/#detail, (pinning the state prison population at close to 51 thousand in 2017).

[265] The number provided is as of year-end. *See Response to Items 5 and 6*, Penn. Dep't Corr. (2018) (on file with Muslim Advocates).

[266] Admissions for 2017 captures the self-identified religion of prisoners admitted in 2017, not all prisoners in custody in 2017. *Copy of Sent Commits 1-10 to 8-18*, R.I. Dep't Corr. (Aug. 2018) (on file with Muslim Advocates). Rhode Island reports show a significant number of releases each year, *see generally Fiscal Year 2017 Annual Population Report*, R.I. Dep't Corr. (Oct. 2017), which helps explain why the total prison population is closer to 2,000, *see Detailed State Data*, SENTENCING PROJECT (2019), http://www.sentencingproject.org/the-facts/#detail, (pinning the state prison population at close to 2 thousand in 2017).

[267] The numbers provided are for all prisoners in SCDC custody at any time for any length of stay between Jan. 1 2017 to Dec. 31, 2017. *FOIA for Records Request Item 6*, S.C. Dep't Corr. (2018) (on file with Muslim Advocates). Note that the total in the Table may include parolees, jail, or other populations, as the number provided appears high given state numbers available through the Sentencing Project. *Cf. Detailed State Data*, SENTENCING PROJECT (2019), http://www.sentencingproject.org/the-facts/#detail, (pinning the state prison population at close to 20 thousand in 2017).
[268] The numbers provided are as of December 31, 2017. Letter from Denny Kaemingk, Cabinet Sec'y, S.D. Dep't Corr., to Joseph Saei, Legal Fellow, Muslim Advocates (Aug. 14, 2018).
[269] The numbers provided are as of June 30, 2018. *Texas DOC Records Request*, Tex. Dep't Crim. Justice (2018) (on file with Muslim Advocates). *Cf. Detailed State Data*, SENTENCING PROJECT (2019), http://www.sentencingproject.org/the-facts/#detail, (pinning the state prison population at close to 158 thousand in 2017).
[270] *Religion Data by Several Variables – 2010 through July 12, 2018*, Utah Dep't Corr. (2018) (Excel spreadsheet on file with Muslim Advocates) (identifying 136 prisoners as "Islamic/Muslim").
[271] The numbers provided are as of approximately August 14, 2018. *Current Population, Religion*, Vt. Dep't Corr. (Aug. 14, 2018) (on file with Muslim Advocates) (identifying 20 prisoners as "Islam"; 1 as "Islam-Nation of Islam, Lost-Found"; 3 as "Islam-Other"; 1 as "Islam-Shi's" (sic); and 5 as "Islam Sunni"). Note that the total in the Table omits 834 prisoners for whom religious preference is unlisted.
[272] The numbers provided are as of June 30, 2018. *DAI-Wide Religious Preference over Time*, Wisc. Dep't Corr. (June 30, 2018) (on file with Muslim Advocates).
[273] *Frequency of Religion 2010-2018*, Ariz. Dep't Corr. (Oct. 16, 2018) (on file with Muslim Advocates).
[274] The numbers provided are the running total for 2017 (not total Muslim prisoners in custody, but total submitted as "Muslim" or "Moorish Science" for that year). *Religion Data Final*, Colo. Dep't Corr. (on file with Muslim Advocates).
[275] For purposes of this chart, we lump together Muslim, Moorish, and Sunni Muslim prisoners. *Count of PCP*, D.C. Dep't Corr. (July 23, 2018) (on file with Muslim Advocates).
[276] The numbers provided reflect religious affiliation self-reported at entry to prison during that calendar year only. *Profiles of Inmate Admissions: Archived Annual Reports*, Ga. Dep't Corr. (2016), http://www.dcor.state.ga.us/Research/Annual_CY_profile_inmate_admissions (click "archived annual reports").
[277] *Religion and Select Demographics by Snapshot Date*, Ind. Dep't Corr. (2018) (Excel spreadsheet on file with Muslim Advocates) (identifying prisoners as "Muslim" and "MSTA/Moor").
[278] *Fiscal Year 2010- 2018 Population Incarcerated: Gender by Religion Preference (self-reported)*, Kan. Dep't Corr. (2018) (on file with Muslim Advocates). Note that the total in the Table omits prisoners whose religious tradition is marked "unknown."
[279] *2010-2018 Religion Count*, Ky. Dep't Corr. (Dec. 17, 2018) (on file with Muslim Advocates).
[280] *2010-2017 Total Prisoner Faith Preferences*, Mich. Dep't Corr. (on file with Muslim Advocates).
[281] The numbers provided snapshots for each year on January 1st. *Historical Offender Population Summary Reports*, Minn. Dep't Corr. (2019), http://mn.gov/doc/data-publications/offender-statistics/historical-population-summary-reports.

[282] *Declared Religion of Incarcerated Offenders 2010-2017*, Mo. Dep't Corr. (on file with Muslim Advocates). For the 2018 row, *see supra* note 256.
[283] *Security Level and Facility by Religious Affiliation*, N.Y. Dep't Corr. (on file with Muslim Advocates). Note that the total in the Table omits prisoners whose preferences are marked "unknown" or "missing."
[284] The numbers provided were marked year-end. *Response to Items 5 and 6*, Penn. Dep't Corr. (2018) (on file with Muslim Advocates).
[285] The numbers provided are for all prisoners in SCDC custody at any time for any length of stay between Jan. 1, 2017 to Dec. 31, 2017. *FOIA for Records Request Item 6*, S.C. Dep't Corr. (2018) (on file with Muslim Advocates).
[286] The numbers provided are as of December 31, 2017. Letter from Denny Kaemingk, Cabinet Sec'y, S.D. Dep't Corr., to Joseph Saei, Legal Fellow, Muslim Advocates (Aug. 14, 2018).
[287] *Texas DOC Records Request*, Tex. Dep't Crim. Justice (2018) (on file with Muslim Advocates).
[288] *Religion Data by Several Variables – 2010 through July 12, 2018*, Utah Dep't Corr. (2018) (Excel spreadsheet on file with Muslim Advocates).
[289] The numbers provided are snapshots from November 18, 2013, September 14, 2014, December 31, 2015 December 31, 2016, and December 31 2017. *DAI-Wide Religious Preference over Time*, Wisc. Dep't Corr. (June 30, 2018) (on file with Muslim Advocates).
[290] "Demographics CY2018," *Religion Data Final*, Colo. Dep't Corr. (on file with Muslim Advocates) (identifying 5 inmates who are women as "Islam/Muslim," 159 inmates who are men as "Islam/Muslim," and 10 inmates who are men as "Moorish Science Temple of America" out of 571 total prisoners who are women and 2,946 total prisoners who are men.)
[291] The numbers provided are a snapshot of the Level V (Incarceration) Population on July 10, 2018, does not include Level IV ("quasi incarceration"). *Response to Items #5 and #8*, Del. Dep't Corr. (July 19, 2018) (on file with Muslim Advocates).
[292] The numbers provided reflect self-reported preference at entry to prison. *See Inmate Statistical Profile: All Active Inmates*, Ga. Dep't Corr. 8 (Feb. 1, 2019), http://www.gdc.ga.gov/sites/all/themes/gdc/pdf/Profile_all_inmates_2019_01.pdf; *see supra* note 245.
[293] The numbers provided reflect snapshots at the end of the fiscal year, June 30, 2018. The percentage of Muslim-identifying women increased from 3.09% in 2010 to 6.72% in 2018, while the absolute number of Muslim women jumped from 15 to 51 in the same period. *See Fiscal Year 2010-18 Population Incarcerated: Gender by Citizenship/Nationality (Self-Reported)*, Kan. Dep't Corr. (2018) (on file with Muslim Advocates).
[294] The numbers provided are as of September 7, 2018. *Declared Religion of Incarcerated Offenders by Gender*, Mo. Dep't Corr. (2018) (on file with Muslim Advocates) (identifying 1840 prisoners as "Al-Islam/Muslim";70 as "Moorish"; 780 as "Moorish Science Temple of America"; 120 as "Muslim"; 348 as "Nation of Islam"; and 2 as "Sufi").
[295] *NDCS Religions*, Nebraska Dep't Corr. (Aug. 15, 2018) (due to summary purpose of this chart, I lump together "Al-Islam" "Moorish Science Temple" "Muslim/Islam" and "Nation of Islam" subgroups) (on file with Muslim Advocates).
[296] The numbers provided are as of August 7, 2018. *NH Correctional Facility for Women – Client Religion Report*, N.H. Dep't Corr. (Aug. 7, 2018) (on file with Muslim Advocates) (identifying 3 inmates as "Muslim" out of 170 total prisoners, though of the total population, 56 had

"unknown" religious preferences). Note that the total in the Table omits prisoners whose preference is marked "unknown." Also note that the Table does not include inmates held in the Secure Psychiatric Unit, as that unit holds both men and women and the report does not separate inmates by sex.

[297] The numbers provided were marked year-end. The percentage of Muslim-identifying women slightly decreased from 9.6% in 2010 to 7.89% in 2018. *See Response to Items 5 and 6*, Penn. Dep't Corr. (2018) (on file with Muslim Advocates).

[298] The numbers provided are for all prisoners in SCDC custody at any time for any length of stay between Jan. 1 2017 to Dec. 31, 2017.The percentage of Muslim women increased from 1.6% in 2010 to 1.83% in 2018. *FOIA for Records Request Item 6*, S.C. Dep't Corr. (2018) (on file with Muslim Advocates).

[299] The numbers provided are as of June 30, 2018. The percentage of Muslim women decreased slightly from 2.74% in 2010 to 2.33% in 2018. *Texas DOC Records Request*, Tex. Dep't Crim. Justice (2018) (on file with Muslim Advocates).

[300] *Religion Data by Several Variables – 2010 through July 12, 2018*, Utah Dep't Corr. (2018) (Excel spreadsheet on file with Muslim Advocates).

[301] *Religious Preference by Site*, Wisc. Dep't Corr. (June 30, 2018) (on file with Muslim Advocates). The men's number only includes "male institutions" not "male centers."

[302] *See supra* Appendix A, Table 1.

Ms. JACKSON LEE. Let me determine whether Mr. McClintock is ready, Mr. Roy. Mr. Fischbach. Mr. Owens. I just wanted to make sure we thanked them for being part of the Committee and did not want to—I now give them an opportunity for their five minutes. So, it is my privilege now to five minutes to the gentlelady from Texas, Ms. Garcia.

Ms. GARCIA. I apologize. Had to rush to the floor to make some remarks and I rushed back because I did want to have my opportunity to ask a few questions.

I want to thank, Madam Chair, the Chair, Mr. Cohen and everyone involved in putting this together because this, of course, is a very important topic and one that has been in the forefront and a lot of attention and use.

Also want to thank all the Witnesses and also our Members of Congress who are here in the panel before you who shared your very, very personal stories.

Hate crimes, racial profiling, and harassment have become widespread in our innately diverse nation because of hateful, racist, and divisive rhetoric stemming from our own political and governmental institutions. Racial profiling is patently unconstitutional, but because of vague or over-broad statutes law enforcement authorities and other government agencies have a de facto [inaudible] check to persecute people of color under the color of law.

I sympathize deeply with our Muslim, Arab, and South Asian communities. I know that for me in my district, that is overwhelmingly Latino, we have and continue to experience systematic and interpersonal violence because of how we vote and who we are.

For those of you who have mentioned people wrongfully getting on no-fly lists, for the record let me say I was on the no-fly list probably for two or three years and it took me probably another two or three years to get off that list because somehow there was a Sylvia Rodriguez Garcia somewhere that was suspect or had a same or similar name to mine and mine got picked up. So, I have experienced this.

So, I want to start there with Mr. Amrith Kaur Aakre. Do you have specific recommendations on how TSA can avoid infringing on traveler's civil rights and civil liberties while simultaneously protecting our nation, which of course is our mission?

Is he still on? Did I mispronounce the name. I am so sorry. It's for Amrith Kaur Aakre.

Ms. AAKRE. Oh, thank you, Congresswoman. Thank you for that question. TSA profiling for Sikh Americans and other minority groups has always been a problem. Bias against travelers is probably in every stage of the traveling process and it starts with the fact that the TSA agents do not receive adequate training on TSA policies or cultural competencies, which is evident from the moment many stigmatized groups arrive at the airport and have to go through behavioral detection before reaching security. It continues as these passengers pass through security, proceed past the security screening area, and in many cases even as those individuals are boarding flights.

TSA needs better technology. They need clearer and more transparent screening standards, they need increased oversight, and they need mechanisms in place to ensure that civil rights compli-

ance takes place. Right now, there's a lot of ambiguous discretion that contribute to profiling, even where the technology says an individual is not a threat. The overly broad discretion that's provided to TSA agents to screen travelers without clear or articulable thresholds and standards of review that are required by a lot of other law enforcement agencies—travelers are often going to feel profiled without any real basis for why they were selected.

Ms. GARCIA. Right. Do you have concerns about bias and the algorithms bias in the coding in some of the technology that further perpetuates discrimination?

Mr. AAKRE. Yes, Congresswoman, that's right. In 2012, we created a tool called FlyRights that allows for people to file complaints against TSA in a more accessible way. Once that tool was launched, we realized that there were a number of people that were sort of being screened and provided with additional sort of levels of heightened security and screening in matters that were related both to the way the technology is used and in matters of discretion that TSA agents had in implementing and applying the technology.

Now, the reality is the technology that exists is only as good as the people that are manning it and monitoring it. In this case, while the algorithms might also include levels of bias; and I'm sure they do, what we've also recognized is that inadequate training on the parts of the TSA agents when they're implementing that technology. Those algorithms will always lead to secondary screening for minority communities, especially by minorities like Sikhs, who have really visible articles of faith.

Ms. GARCIA. Right, because like in my case the name that I was—got a hit with my name was frankly really very different. It wasn't even Garcia. The first name wasn't even Sylvia. So, whoever coded it or whatever algorithm they used it was really about every third or fourth letter that was the same. So, it took me forever to get off it. Fortunately, I did. So, this really concerns me in terms of our technology and the algorithms and some of the stuff that we have seen even in banking and other services. So, thank you so much.

Thank you to all the Witnesses.

Thank you, Madam Chair. I yield back.

Ms. JACKSON LEE. The gentlelady's time has expired. Thank you so very much.

Let me thank all of the Members who are here, and I do want to acknowledge Mr. Johnson and other Members who are here, and thank Mr. Cohen and the Committee for this hearing, which I am part of.

Let me now address my questions, and I yield myself five minutes, the time that may be called on to finish my questioning, because I do want to open with—that we are a few days away from crossing the Edmund Pettus Bridge, which reflected the shedding of blood for the right to vote by African Americans and other diverse Americans that ultimately joined Dr. King after Bloody Sunday, where our dear friend, late colleague John Lewis shed blood, as others did on that bridge. I am always moved by the emotion of that moment of the shedding of blood for freedom.

So, let me say that I don't hold Ms. Nomani or to Mr. Westhill any form of discrimination, nor do I think the Members of my Democratic colleagues, the Members of the Democratic Party as well. We do believe as John has taught us and Dr. King in the beloved community but let me try to set the record straight so that this continued miscalculation and politicalization and campaign rhetoric that has really hurt more than helped can be set.

Now, there are many definitions to what we have been discussing, but let me put into the record I think a reasoned definition of which if someone has a rebuttal they can—when I say rebuttal, if they have another definition, the record is open for you to submit it.

Critical race theory is a cross-disciplinary intellectual and social movement of civil rights scholars and activists who seek to examine the intersection of race and law in the United States and to challenge mainstream American liberal approaches to racial justice. For example, the CRT conceptual framework is one way to study how and why U.S. courts give more lenient punishments to drug dealers from some races than to drug dealers of other races.

The word "critical" in its name is an academic term that refers to critical thinking, critical theory, and scholarly criticism rather than criticizing or blaming people. It first arose in the 1970s. The other critical schools of thought such as critical legal studies, which examined how legal rules protect the status quo.

It has nothing to do with teaching anyone in elementary school, middle school, or any place else. It is a scholarly effort to address the question of the intersection of law and race. Any books that have been done that have used it is because the author is unclear, imprecise, and without knowledge about that. Parents certainly have the right to engage with their school districts on what they believe is effective for their students, however, I will not accept the abuse of that term to come before us in this hearing that is talking about the absolute discrimination against people who cannot speak for themselves.

So, let me just show why this African American young person had to have his hair cut off so that he could effectively participate in sports. My friends decided to vote against something called the CROWN Act, which means that whatever style hair you have is protected under the Constitution.

Maybe you're not familiar with the story of Emmett Till. This is what his mother had to confront: This bloody and mutilated head of a 14-year-old who went to Mississippi, an African American who suffered the indignities of violence.

So, I think this hearing that talks about discrimination and the civil rights of Muslim, Arab, and South Asian American communities is focused on how discrimination laws have undermined over the period of their time here in the United States in ways that we can try and fix. We are problem solvers. We are grateful that the courts have responded to perceive discrimination, but in any event what I would clearly say—and you need to put down your camera, please.

You need to put down your camera. You need to put down your camera.

I understand that, but I need the Witness to [inaudible].

Ms. NOMANI. Why do I have to put down my camera?

Ms. JACKSON LEE. Because I am already on video, so I don't need to be on yours.

Ms. NOMANI. I mean, this is free speech.

Ms. JACKSON LEE. I have asked respectfully, and you choose not to be respectful, and so I will allow you to continue. Thank you so very much.

In any event, I believe that this hearing deals with the impact of discrimination on the groups who have suffered discrimination in such a large way. So, I would like to make sure that we are focused on that.

I am disappointed that CRT has been politicized to attack people who simply want to ensure that our children have an opportunity to be engaged in diversity.

I know that this—words that I am saying now in the most calm way will be mutilated by the right wing media. That is all they do. They do not Act in truth, and they do not try to provoke truth; they try to provoke people.

We have been so busy trying to step away from that we saw what happened on January 6. As Congressman Raskin said, "they came, they beat, they attacked, they called names, and they made a mockery of democracy." They attack the citadel of democracy. That is not what we are doing here in this hearing.

So, may I ask, Ms. Berry, the Trump Muslim ban, various other discriminatory aspects that impact the Asian American community—I want to simply ask you the question: What kind of violence has been generated against Asian Americans and Arab Americans in particular? The Muslim ban that you have seen that has come out of the utilization of the Trump Muslim ban, the attack on how some Muslims may be attired, students in school, how has that atmosphere generated from your perspective violent acts against Muslim Americans?

Ms. Berry?

Ms. BERRY. Thank you, Congresswoman, for the question. In the immediate aftermath of 9/11 we saw a significant surge in hate crimes in our country. One of the key things that we do at the Arab American Institute is try to increase hate crime data collection and reporting. We believe that data drives policy and it's incredibly important that we have the accurate data on that.

After the last year, we have FBI hate crime data for is 2020, and it is literally the second year, the second highest year post-9/11. So, from the 2016 presidential election to today we have seen a marked increase in anti-hate against pretty much all communities. We really do believe—and while there's not—I'm not here to make a direct correlation between speech and hate, but when it emanates from our lawmakers, when it emanates from the Presidential pulpit, it has a very real impact on communities and how they're targeted.

If I may, Congresswoman, I would love to take this opportunity because of what we're talking about here today—one of the most important things—Congresswoman Garcia pointed out that she was able to—

Mr. JOHNSON of Louisiana. Excuse me. Just a moment. Just a moment.

Madam Chair, since we have gone so far, would you permit me an additional time period to ask a—

Ms. JACKSON LEE. The Ranking Member always has an additional time period.

Mr. JOHNSON of Louisiana. Thank you. Thank you. I yield back.

Ms. JACKSON LEE. Then the Chair will close. Thank you so very much.

Mr. JOHNSON of Louisiana. Thank you.

Ms. BERRY. Thank you. Congresswoman Garcia was able to remove her name from a no-fly list because the no-fly list actually has a better redress process than the watch list. I think that's a pretty extraordinary thing. The watch list, we don't even know the size of it, so you don't know you're on it. There are estimations it could be well over a million people. That's a problem. We need to have a better due process practices in place.

Then the final point I want to make, because I do think it's—this is a historical hearing. This is important that we're examining 20 years later the rights of Arab Americans and American Muslims and South Asians. One of the most important things we can do as we reflect on that is to actually address the issue of profiling in a very meaningful way.

In 2003, then Attorney General Ashcroft issued profiling guidance that said we will not profile—

Ms. JACKSON LEE. Ms. Berry, if you can summarize?

Ms. BERRY. We will not profile in 2003. Regrettably those loopholes were so big that we issued new guidance in 2014 saying we will not profile. We continue to have a loophole that exists for national security, border security, and local law enforcement. Until we find a remedy for that, regrettably the policies that we're talking about here today that impact our communities directly, but I would argue all Americans, they will find their way to all Americans.

Ms. JACKSON LEE. Thank you.

Ms. BERRY. We need to do better.

Ms. JACKSON LEE. Thank you. I would appreciate it if you would submit in writing why is a detailed demographic data about the Arab American community important and what work has your organization been doing to increase such data collection efforts. If you could submit that in writing, I would appreciate it.

Ms. BERRY. Happy to do so. Thank you.

Ms. JACKSON LEE. I would be interested just in this follow up to the Sikh community. I know the tragedy that has occurred in the Sikh family and religion in Minnesota, but can you describe some of the Sikh Coalition's findings regarding bullying of Sikh youth and whether or not that also generates into violence against the Sikh community?

Ms. AAKRE. Thank you, Congresswoman, for your question. According to multiple surveys that the Sikh Coalition has taken, Sikh American students experience high rates of bullying and harassment in our nation's public schools, and we continue receiving and documenting nationwide reports of school bullying.

Ms. JACKSON LEE. Thank you.

Ms. AAKRE. Sikh boys who wear turbans are called terrorists and girls are teased for having long hair and many of these children are

subjected to violence. Our research shows that the majority of Sikh children, just over 50 percent of which have endured school bullying. Over two-thirds, or 67 percent, reported that they were bullied in school and turbaned Sikh children experience bullying at more than double the national rate.

We know that it occurs not just on school grounds but also on buses and increasingly on social media such as Facebook, Twitter, and anonymous mobile phone apps. Despite the growing recognition of bullying as a national problem, lawmakers and school officials are not collecting comprehensive bullying data and their enforcement of these anti-bullying policies that exist are completely inconsistent.

We also know that title IV is being used to enforce religious bullying by the Department of Justice. However, religious discrimination is not explicitly investigated by the Department of Education because it's not a protected category under title VI. So, that's an area where bullied kids are left without full access to recourse when they've suffered.

Ms. JACKSON LEE. Thank you very much. Appreciate those questions. We will have other questions submitted into the record.

It is my pleasure to yield some time to the Ranking Member.

Mr. JOHNSON of Louisiana. Thank you, Madam Chair.

As is often our custom when we have Witnesses—take their time and come to appear before us and we see them champing at the bit, we know there may be something they would like to add to the testimony or what has been said. So, I would yield to Ms. Nomani for that.

Ms. NOMANI. Thank you so much, Representative Johnson.

I just think that it is unconscionable, but completely predictable what we have just Witnessed today, because while there has been serious conversation about the need to address issues of discrimination surveillance and other issues of privacy and constitutionality, not one person from the Democratic side has taken seriously the very real discrimination that is happening now in the name of critical race theory. Instead, I was ridiculed.

Then when I dared to try to take a video of this, I was intimidated just like parents face in school boards and school districts all across the country. Do you know what, a Federal judge has validated what we have said to our school board for two years.

Mr. JOHNSON of Louisiana. Right.

Ms. NOMANI. We have been ignored. The one thing that I think every Democratic lawmaker should recognize as a word of advice is that the parents spoke up in Virginia and they elected Governor Glenn Youngkin. The parents spoke up in San Francisco and they recalled three school board members. Who was one of those school board members? She was this woman who dared to use the N-word about Asians, calling us the house N-word. She has now lost her job.

There's a very real discrimination with the privilege matrix, the oppression matrix, that is targeting Brown and Black parents and children. Then also we must care about all children.

This is a very real book, "Not My Idea," and it's certainly not my idea. It says Whiteness is a bad deal, and then a contract with the devil. No child in America should ever feel shame. No child should

ever feel discrimination. It is unconscionable that we do not recognize that we cannot replace one hierarchy of human value with another hierarchy of human value. We must protect the integrity of humanity.

Mr. JOHNSON of Louisiana. That is so well said. I will just close with this and I will yield back, but we used to all agree on Dr. King's admonition that we be judged by the content of our character, not the color of our skin. This has now gone full circle the other way. People are being discriminated against because of what they look like. I thought that was what we were all against, but CRT is doing this. It is insidious. They are putting it in the curriculum.

However well-intended some people may think that it was at its origin, Madam Chair, it has turned into a weapon that is being used against children. That is detestable, and we will stand against it at every turn. I yield back.

Ms. NOMANI. Thank you.

Ms. JACKSON LEE. Thank you to the Ranking Member. This Committee is well-poised to respond to discrimination against any child in whatever form it takes. This Committee is noted as the truth sayer for the Constitution, and so I think it is important that we make sure that our facts are accurate and not distorted. We embrace all people who come to stand against discrimination.

Mr. Johnson, we have worked together on some issues. I take no back seat to that, nor do I have any reason to take any suggestion that my Democratic colleagues do not stand against discrimination in any form.

So, I again refer as I close this hearing to the beloved community. I cited what critical race theory is. It has obviously had many different changes. It has been reinterpreted in the wrong way. I hope that the more we get to understand each other, even starting in early education, that we are a better nation, we are unified, and that we become the beloved community. Seeing us juxtaposed against each other in high tension, misinterpreting comments as maligning or misrepresenting is unfortunate.

Again, this hearing has been productive. We will find ways to respond to the pain that has been expressed here and we will find ways to do it under the umbrella of Dr. King's admonition of our character and who we are, but certainly of that of my friend and the late—and colleague, the late colleague John Lewis. That is the beloved community. I remain as that.

Let us hope that the recounting of this hearing takes everyone's facts in a way that would be appropriate, does not distort them, misuse them, try to edit them, which is what typically happens, but to let our words come out as we have said with the continuity of our words.

If that is the case, including, Mr. Johnson, you and your Members and all the Witnesses, we may find a way to come together.

So, in the name of the beloved community, thanking all of you for coming today. I want to thank all our Witnesses for appearing today. Each one's testimony has been recorded into this hearing.

Without objection, all Members will have five legislative days to submit additional written questions for the Witness or additional materials for the record.

This hearing is now adjourned.
[Whereupon, at 12:54 p.m., the Subcommittee was adjourned.]

APPENDIX

SALDEF
Sikh American Legal Defense and Education Fund

The Honorable Steve Cohen
Chairman
Subcommittee on the Constitution,
Civil Rights, and Civil Liberties
U.S. House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Mike Johnson
Ranking Member
Subcommittee on the Constitution,
Civil Rights, and Civil Liberties
U.S. House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515

March 1, 2022

Dear Chairman Cohen, Ranking Member Johnson, and members of the U.S. House Constitution, Civil Rights, and Civil Liberties Subcommittee:

On behalf of the Sikh American Legal Defense and Education Fund (SALDEF) and the Sikh American community, thank you for the opportunity to submit this written statement to the Subcommittee. SALDEF is a national Sikh American media, policy, and education organization based in Washington, DC. Founded in 1996, SALDEF's mission is to empower Sikh Americans by building dialogue, deepening understanding, promoting civic and political participation, and upholding social justice and religious freedom for all Americans.

Unfortunately, 25 years on, we find ourselves testifying about the problems our community faces trending in the wrong direction. We are grateful that the subcommittee has convened this hearing on Discrimination and the Civil Rights of the Muslim, Arab, and South Asian American Communities, because our communities are in the fight of our lives on two fronts: navigating how the pandemic has unrolled hard-earned economic gains, and in the resurgence of hate crimes.

Observant Sikhs are distinguished by *dastaars* (Sikh Turbans), uncut hair, and other conspicuous articles of faith - articles that have too often been lightning rods for acts of hate rooted in ignorance and fear. **According to an analysis of population size, Sikh Americans are the most disproportionately targeted group in the United States - at a rate of four times the national average.**[1]

The Federal Bureau of Investigation (FBI) released the annual report on hate crimes showing that 8,052 single-bias incidents involving 11,126 victims occurred in 2020.[2] Nearly 62% of victims were targeted because of the offenders' bias against the race/ethnicity/ancestry of the victims. **Anti-Sikh hate crimes also hit a record high of 89 documented incidents, reflecting an 82% increase over 2019**, despite an overall decrease in the number of anti-religious hate crimes.

[1] https://bit.ly/3BY2GWC
[2] https://www.justice.gov/crs/highlights/2020-hate-crimes-statistics

It is probably not news to any members of this committee that the pandemic has exacerbated the socioeconomic gaps and inequities between white Americans and ethnic minorities.[3] It is likely also not news to any members of the committee that anti-Asian violence has ratcheted up during the pandemic, with much of the violence occurring in "blue-state" cities - places Asian Americans have called home for generations and considered safe.[4]

SALDEF continues to urge all federal agencies and reporting to fully disaggregate data about our communities. To better understand the Sikh American community's experiences, we have conducted surveys to paint a picture of our nationwide community. One survey, the National Sikh American Survey, involved reaching out to over 2000 Sikh individuals around the country during 2020. The survey built on understanding from our pioneering work on attitudes towards Sikh Americans, Turban Myths.

The Sikh American Survey revealed some disheartening figures: 15% of respondents said they only sometimes felt safe practicing Sikhism, with respondents living in the South feeling the least safe. 58% of respondents reported being bullied or harassed because of their Sikh identity, with 60% of respondents living in the Midwest reporting such mistreatment. 63% of turbaned respondents reported being discriminated against for wearing one. When sorted regionally, 70% of turbaned respondents living in the South experienced turban-related discrimination.

It is unsurprising that these figures were so high. Despite SALDEF and other Sikh advocacy organizations collaborating more closely with law enforcement and policymakers at all levels over the past decade, ignorance, fear, and xenophobia persist and are often politically leveraged. In the wake of the 9/11 attacks, Sikhs around the country were misidentified as Muslims and attacked. Some, like Balbir Singh Sodhi, were violently killed.[5] While there are many cases of bias and hate reported against our community, and countless more unreported cases, few are as burned into our collective memory as the tragedy at the Sikh Temple of Wisconsin in Oak Creek.

This summer will mark ten years since an avowed white supremacist opened fire with a semi-automatic weapon on volunteers preparing a communal meal at the *gurdwara* (Sikh house of worship) in Wisconsin. The six fatalities and three hospitalizations made the attack the deadliest on any house of worship on American soil since the 1964 Birmingham church bombing, until the 2015 mass shooting at the Emanuel African Methodist Episcopal Church in Charleston and then the 2018 mass shooting at the Tree of Life synagogue in Pittsburgh. Law enforcement correctly categorized and investigated this incident as a hate crime, and SALDEF

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[3] https://jsri.msu.edu/publications/nexo/vol/no-2-spring-2021/the-covid-19-pandemics-socio-economic-impact-on-minority-racial-ethnic-groups

[4] https://theconversation.com/anti-asian-violence-spiked-in-the-us-during-the-pandemic-especially-in-blue-state-cities-176501

[5] https://www.nytimes.com/2001/09/17/us/sikh-owner-of-gas-station-is-fatally-shot-in-rampage.html?

remains committed to working with law enforcement, every level of government, and other community organizations to prevent, address, and combat hate crimes and domestic extremism.

However, in the pursuit of that goal, there are policy-based solutions that have not yet been pursued. We would like to refer the subcommittee to a recent Homeland Security Advisory Council Report, particularly the recommendation that the **Department of Homeland Security should install a central point of contact for Faith-Based Organizations (FBOs)**.[6] Specifically, this role should be at the Assistant Secretary level (or higher) to serve as Director of all DHS faith-based programs and representing DHS within the Interagency. The report also recommends that the Assistant to the President for National Security Affairs creates an FBO working group oriented around improving security of houses of worship, to be convened at the National Security Council to support policy formulation within the Interagency and across the federal government.

We also strongly agree with the report's recommendations that DHS takes the lead to **establish a package approach to FBO security** in conjunction with state and local officials, and that DHS **encourages FBOs to work with local first responders to develop real-time information sharing systems**. We urge DHS to work with the Department of State to earmark **additional funding to increase connectivity with FBOs, particularly in rural areas.**

DHS should also focus efforts, as the report recommends, on **enhancing the role of Protective Security Advisors (PSAs)** with specific requirements and additional funding to increase the numbers of PSAs as needed. Similarly, DHS should work with state and local officials to **standardize and uplift Fusion Centers** to these communities. Fusion Centers should all be organized around the principle of proactive outreach to all houses of worship within the Fusion Center's area of responsibility, and evaluate all Fusion Centers to identify areas to improve effectiveness, increase transparency in procedures and guidelines, and reinforce the expectation that Fusion Centers and PSAs are to collaborate as a team to protect local FBOs.

The report makes excellent recommendations around Federal Emergency Management Agency (FEMA) grants. DHS should **seek additional funding for FBO security grants, and establish an office dedicated to assisting applicants**, particularly from small or poorly staffed FBOs struggling to navigate the federal grants process. The responsibility for the Nonprofit Security Grant Program should be added to the portfolio of the new DHS Director, and the office of grant application assistance should be separate from grant-awarding arms of the agency to minimize conflicts of interest.

Finally, the report finds a critical gap: **the lack of a domestic terrorism statute.** This is a real threat disproportionately faced by minority communities like Sikh Americans, manifesting in ways both large and small as highlighted earlier in my testimony. Congress, working with DHS and the Department of Justice, **must pass a statute defining acts of domestic terrorism and**

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[6] https://www.dhs.gov/sites/default/files/publications/preventing_targeted_violence_against_faith-based_communities_subcommittee_0.pdf

funding the monitoring of these acts so law enforcement can better monitor, understand, investigate, and prosecute acts of domestic terrorism. Domestic terrorism has been painfully real for our community for much longer than ten years, and it is our hope that today's hearing represents a meaningful step toward naming and fighting it as such.

Despite the closer collaboration we have enjoyed with law enforcement since Oak Creek, the absence of these policy measures have meant attacks against the Sikh community and our institutions have not abated. Here are some specific hate incidents in just the last two years that have affected the Sikh community across the country, in states that range politically from deep red to purple to deep blue:

On April 29, 2020 in Lakewood, Colorado, a Sikh man named Lakhwant Singh was attacked by a man identified as Eric Breemen.[7] Breemen entered Lakhwant Singh's store and began harassing Mr Singh and his wife. He damaged numerous items, shouted profanity, and repeatedly told the couple to "go back to your country." When Breemen finally left the store, Mr. Singh followed him outside to take a photo of his license plate so that he could report the abuse. Breemen then struck Mr. Singh with his vehicle, throwing him several feet across the parking lot, causing multiple injuries. Breemen then continued his spree, attacking two additional minority individuals in the area.

In June 2020, a Sikh-owned Indian Restaurant called India Palace in Sante Fe, New Mexico, was vandalized with hate messages scrawled on its walls including words like "white power", "go home [to your country]", and other profanities.[8]

On September 20, 2021, the Khalsa Gurmat Center gurdwara, a significant Sikh community center near Seattle, was vandalized and burglarized.[9] A/V equipment was stolen and numerous objects, including musical instruments, were smashed to pieces.

This year, on January 3rd, a Sikh taxi driver was attacked at John F Kennedy International Airport.[10] Mr. Singh parked his cab curbside and collected a customer, but was blocked in by another cab driver. When he asked the other driver to move his car briefly so he could depart, the driver hit Mr. Singh with his car door before physically assaulting him. Mr. Singh's turban became unraveled and fell off as the man attacking him repeatedly used slurs and told him to "go back to [his] country."

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[7] https://coloradosun.com/2020/07/23/eric-breemen-hate-crime-lakewood-colorado/

[8] https://www.santafenewmexican.com/news/local_news/india-palace-vandalized-in-racist-attack/article_40b1d3c2-b558-11ea-b1e6-e7f1a85ed099.html

[9] https://www.seattletimes.com/seattle-news/law-justice/police-investigating-after-federal-way-sikh-center-vandalized/

[10] https://www.nbcnews.com/news/asian-america/suspect-anti-sikh-attack-jfk-airport-arrested-charged-hate-crime-rcna12658

In each of these cases, Sikhs attempting to do nothing more than conduct their day-to-day lives were met with spasms of racist violence for having the courage to wear the articles of their faith in keeping with the First Amendment. Unfortunately, while most of these incidents did not involve loss of life, the pandemic era does include another mass shooting that disproportionately affected our community.

On April 15, 2021, a gunman launched an attack on a FedEx ground facility in Indianapolis, IN.[11] The facility was widely known for employing a high concentration of Sikh workers. In the shooting, eight innocent people were killed, four of whom were Sikhs in the Indianapolis Sikh community.

In our work in Indianapolis, we encountered many of the same structural issues that we saw in the aftermath of the Oak Creek shooting. The nine gurdwaras in the area, which primarily serve immigrant and limited English speaking populations, were largely not connected to local and state governments investigating and responding to the incident. Thus, government attempts to share information went largely through the English language media. There was no centralized point of contact or central source of information to distribute information to the community to answer questions or explain what was happening. This largely fell on national organizations, with limited local government contacts and primarily federal relationships, to act as intermediaries.

The lack of relationships and language fluency presented other problems when seeking to obtain services and support for the impacted community along three major lines: victim services, outside organizations, and youth response.

Government service providers did not have the relationships or cultural and language fluency to provide their full range of support services to impacted families or the larger community in Indianapolis. Victim services were not available and the community was dependent on the national organizations to leverage a network of providers and share information in Punjabi and facilitate the relationships and continuing needs. For example, SALDEF worked with AAPI mental health professionals around the country to identify Punjabi speaking providers from across the country who could virtually support victims or would be willing to travel to Indianapolis to work with victims, understanding years of support may be needed.

Other non-governmental organizations and parties encountered similar challenges. The lack of fluency and trust within the community created suspicion. For example, when the Red Cross came in and tried to speak with older family members, it was unclear if they were working on behalf of the victims or on behalf of FedEx. Thus, there was hesitancy about working with organizations outside of the Sikh community and the national Sikh American organizations were called in to mediate issues and serve as trusted go-betweens and organizers.

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[11] https://www.npr.org/2021/04/16/987929888/9-killed-others-injured-in-shooting-at-fedex-warehouse-in-indianapolis

It is important to note that meaningful steps have been taken to address many of these concerns in recent years. We have been proud to see the Department of Justice (DOJ) publish information on their hate crimes page in Punjabi, and that there is a real and ongoing commitment at DOJ to collaborate with community advocates to produce resources that are not only translated but are actually thoughtfully designed to be useful to our community. We have also had success in persuading the FBI to disaggregate its hate crime statistics and report specific anti-Sikh numbers, which it began to do in 2015. We continue to advocate for closer relationships between local law enforcement and Sikh community centers in their jurisdictions, as well as training officers in recognizing the distinct articles of the Sikh faith.

We underscore that the experiences our community has faced are not unique to us, but shared by others throughout the Arab, Muslim, Sikh, and South Asian community. We face continuing common problems of cultural fluency, bias, language accessibility, and lack of trust due to years of neglect and/or perceived hostility and profiling. However, many agencies and individuals have engaged in models of bridge building and community-oriented outreach that should be highlighted and replicated throughout all levels of government across the country.

We are happy the Subcommittee is paying closer attention to the struggles, discrimination, and hate that our community has faced. We look forward to continuing our work striving together with the members of the Subcommittee and all of your colleagues to build an America where Sikh Americans are celebrated for our contributions, our resilience, and the depth of our faith in our country's better angels.

Respectfully submitted,

Kiran Kaur Gill
Executive Director

June 1, 2020

The Honorable Chad F. Wolf
Acting Secretary of Homeland Security
U.S. Department of Homeland Security
2707 Martin Luther King Jr Avenue, SE
Washington, DC 20528

The Honorable Meghann Peterlin
Acting Assistant Secretary for Threat Prevention and Security Policy
U.S. Department of Homeland Security
2707 Martin Luther King Jr Avenue, SE
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Peter T. Gaynor
Administrator
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Via Email

Re: 2020 Targeted Violence and Terrorism Prevention Grant Program

Dear Acting Secretary Wolf, Assistant Secretary Newmann, and Administrator Gaynor,

We the undersigned human rights, civil liberties and community organizations write to express our opposition to the U.S. Department of Homeland Security ("DHS") 2020 "Targeted Violence and Terrorism Prevention" ("TVTP") grant program. The new TVTP grant program replicates the Department of Homeland Security's previous 2016 Countering Violent Extremism ("CVE") grant program.[1] We remain opposed to the CVE framework that TVTP grants operate within, and have new concerns regarding the administration of the 2020 TVTP grant program.[2]

[1] Office for Targeted Violence and Terrorism Prevention, *Fiscal Year 2016 Countering Violent Extremism Grant Program: Preliminary Report on Programmatic Performance*, U.S. Department of Homeland Security (Mar. 26, 2020), https://www.dhs.gov/sites/default/files/publications/20_0326_tvtp_preliminary-report-programmatic-performance-fy16-cve-grants_1.pdf.

[2] Letter to Lisa Monaco Re: Federal Support for Countering Violent Extremism Programs (Dec. 18, 2014); Joint Statement Regarding Upcoming Summit on Countering Violent Extremism (Feb. 17, 2015); Letter to Jennifer Easterly Re: Federal Support for Countering Violent Extremism Programs (Apr. 22, 2016).

For the past six years, our organizations have written to the Department, members of Congress, and the general public about the harms of CVE programs. In addition to being ineffective and fundamentally flawed, CVE programs discriminatorily target Muslim communities and fail to safeguard the constitutional rights and the privacy of participants. In renewing these programs for an additional $10 million, the DHS replicates and continues these harms.

I. CVE Remains an Ineffective Intervention

As we have continuously noted, there is no documented evidence that CVE programs prevent terrorism or violence.[3] CVE programs are a solution in search of a problem. Despite $10 million of funding provided, the 2016 CVE grant program failed to produce evidence they thwarted future violence. A study by Duke University's Triangle Center on Terrorism and Homeland Security found that the 2016 CVE initiative was a failure for its top-down approach and vague goals.[4] The report also found that like its British corollary, the United Kingdom's Prevent program, CVE programs alienate the Muslim communities that it seeks to engage. Neither the 2016 CVE grants nor the 2020 TVTP grants provide meaningful metrics for measuring "success" in achieving its primary goal--preventing violence.

II. CVE Programs Target Muslims and Communities of Color

CVE programs are built on the false premise that Muslims are predisposed towards violence and require government interventions to prevent them from committing violence and terrorism. These baseless assumptions stigmatize and harm already-vulnerable minority racial, ethnic, and faith communities, and legitimize federal law enforcement intrusion into community spaces. Unsurprisingly, despite using facially neutral language in its call for proposals, nearly all recipients of the 2016 CVE grants focused its programming on Muslim communities.

The CVE and TVTP grant programs expose overpoliced communities to additional law enforcement contact. In interviews about CVE programs, Muslim participants felt that "counterextremism efforts made them and many others like them feel as though they were suspicious until proven innocent."[5] CVE and TVTP grant programs operate alongside coercive

[3] Faiza Patel and Meghan Koushik, *Countering Violent Extremism*, Brennan Center for Justice, note 61, (2016) https://www.brennancenter.org/publication/countering-violent-extremism.
[4] David Schanzer and Joe Eyerman, *Engaging with Communities to Prevent Violent Terrorism*, Triangle Center on Terrorism and Homeland Security (Aug. 2019), https://drive.google.com/file/d/1JSzVa3owPUEXXbGYmaBfTAKkr6yJ_WTr/view.
[5] Julia Harte, *Inside Trump's Divisive Mission to Identify and Deter Potential Extremists*, The Nation (Mar. 2, 2020), https://www.thenation.com/article/society/trump-extremism-muslim-wellness/.

law enforcement techniques that are being challenged, such as the FBI's attempts to coerce individual Muslims to become informants.[6] The 2020 TVTP grant program has failed to address or ameliorate any of our concerns about the targeting of Muslim communities.

Further, the undersigned oppose the expansion of CVE and TVTP grant programs to include other groups, such as white nationalists. CVE frameworks, like those deployed in the TVTP grant program, remain ineffective, waste resources, and disproportionately focus on Muslim communities, regardless of who else is incorporated by name.

III. CVE Programs are Fundamentally Flawed

"Radicalization," the theoretical basis for CVE programs, remains an unproven and harmful theory. After years of federally funded research, there is no credible criteria for what behavioral "indicators" identify individuals at risk of committing future violence.[7] Ignoring these flaws, CVE programs provide funding to law enforcement agencies to pursue engagement with communities to disrupt a non-existent "radicalization" process. As a result, CVE programs encourage law enforcement to monitor people with mental health issues, lower socio-economic status, and people who have had previous interactions with law enforcement and the legal system--individuals already vulnerable to systemic abuse. The TVTP grants do not address these issues by providing mental health or financial support; instead, it imposes law enforcement interventions as a catch-all solution.

Training law enforcement and community groups to follow this broken and disproven theory criminalizes Musim communities and subjects vulnerable individuals to ongoing, unnecessary and potentially harmful law enforcement contact.

IV. CVE Programs Threaten First Amendment Activities

The "risk factors" and "indicators" identified by CVE programs coincide with activities that are protected under the First Amendment. According to the radicalization theories implemented by CVE programs, signs of "radicalism" encompass common, lawful behaviors taken by Muslims, such as attending a mosque, or expressing political dissent; and these behaviors require law enforcement scrutiny. By categorizing First Amendment rights of religious exercise, expression and beliefs as precursors to criminal acts, CVE programs have a chilling effect on the speech and religious practice in communities where they are

[6] *See e.g.*, *Fazaga v. FBI*, 916 F.3d 1202 (9th Cir. 2019); *FNU Tanzin v. Tanvir*, 140 S. Ct. 550, 205 L. Ed. 2d 353 (2019).
[7] Faiza Patel, *Rethinking Radicalization*, Brennan Center for Justice (Mar. 8, 2011), https://www.brennancenter.org/our-work/research-reports/rethinking-radicalization.

operationalized. For instance, the 2016 CVE frameworks in Boston, Massachusetts, Los Angeles, California, and Montgomery County, Maryland all asserted that frustration with U.S. foreign policy is an indicator for violent extremism, and Black activists have been classified as "Black Identity Extremists" by the FBI.[8]

We object to CVE programs classified as community interventions, when, in reality, they are opportunities for law enforcement to gather intelligence on constitutionally-protected activities. Despite multiple requests, the new TVTP grant program does not provide guidance on how to protect First Amendment expression from additional investigation and monitoring.[9] Rather, these programs encourage building community "relationships" to expand the ability for law enforcement to surveil individual actions and expression under the guise of violence prevention.

V. The TVTP Grant Application Process Violates Individual Privacy

The 2016 CVE and 2020 TVTP grant programs are non-transparent, and pose significant privacy risks to individuals when organizations apply for grants. The 2016 CVE grantees were not required to identify the DHS funding source for the programming individuals participated in, obfuscating the relationship between the grantee and the Department of Homeland Security.[10]

The 2020 TVTP grants pose new and alarming privacy risks due to the DHS security review requirement. The security review the DHS conducts on applicants is not limited to the organization; the investigation can include the organization's board, its staff, officers, and "associates." The investigation can subject anyone connected to an organization to an assessment of their public and private information, including social media profiles and financial assets.[11] The DHS justifies its investigation into any person who has publicly represented the organization because "individuals who have otherwise published or permitted the publication of their personal information publicly have tacitly accepted the possibility that their publicly

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[8] *A Framework for Prevention and Intervention Strategies: Incorporating Violent Extremism into Violence Prevention Efforts*, U.S. Attorney's Office, District of Massachusetts at 3 (2015), https://www.justice.gov/sites/default/files/usao-ma/pages/attachments/2015/02/18/framework.pdf; Alice Speri, *Fear of a Black Homeland*, The Intercept (Mar. 23, 2019), https://theintercept.com/2019/03/23/black-identity-extremist-fbi-domestic-terrorism.

[9] Letter to Lisa Monaco *supra* n.2 ("The White House should immediately issue guidance to address impacts on religious exercise, freedom of expression and the First Amendment's Establishment Clause" and "Direct each agency to establish meaningful safeguards against using information gathered through CVE and community outreach as intelligence").

[10] Harte, *supra.* n.5.

[11] Dena Kozanas, *Privacy Impact Assessment for the Targeted Violence and Terrorism Prevention Grant Program*, U.S. Department of Homeland Security at 3,4 (Apr. 8, 2020), https://www.dhs.gov/sites/default/files/publications/privacy-pia-dhs083-tvtp-april2020.pdf.

available information may be used for a variety of purposes on behalf of the organization."[12] This egregious and overbroad reading of organizational affiliation as a basis for investigation is a violation of the First Amendment right to freely affiliate.

The DHS conducted a Privacy Impact Assessment of the TVTP grant program and found that an entire investigation may take place without an individual's explicit consent. According to the DHS, the grant program's Notice of Funding Opportunity acts as sufficient notice to applicants that any individuals associated with the applicant's organization, including board members and supporters may be subjected to a security investigation. By contrast, in the 2016 CVE grant application process, the DHS provided prior written notice that a security review would be conducted on an applicant, and allowed for an applicant to withdraw their submission before such an investigation took place.[13] For the 2020 TVTP grant program, there is no such individualized notice or opportunity to withdraw provided to applicants in advance of a security review. The security investigation would be conducted by DHS Intelligence and Analysis and the results can then be shared with other offices within the Department of Homeland Security. Though DHS claims that the TVTP grant program provides adequate notice from which it can infer consent to conduct a security review, the investigation of a broad number of private individuals who may not even be aware of the grant application is an alarming privacy violation, further undermining any semblance of a fair, transparent TVTP grant application process.

In allocating $10 million in funding for the 2020 TVTP grant programs, the federal government dangerously perpetuates the lasting harms of CVE programs. These harms we have listed have gone unaddressed and are exacerbated by the 2020 TVTP grant program. Today, at a time of severe economic crisis, when community organizations are struggling for financial survival, it is especially disturbing to learn that the federal government is moving forward with government funds conditioned on Muslim communities collaborating with law enforcement and national security entities, not for the health, social service and educational services direly needed.

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[12] *Id.* at 7.

[13] Johnathan R. Cantor, *Privacy Impact Assessment for the Countering Violent Extremism Grant Program*, U.S. Department of Homeland Security at 3 (Dec. 7, 2016), https://www.dhs.gov/publication/dhsallpia-057-countering-violent-extremism-grant-program.

We urge you to discontinue the operation and funding of the 2020 TVTP grant program and all CVE efforts. Questions should be directed to Nabihah Maqbool, Muslim Advocates at nabihah@muslimadvocates.org, or Fatema Ahmad, Muslim Justice League at fahmad@muslimjusticeleague.org.

Sincerely,

Muslim Advocates
Muslim Justice League
ACCESS
Action Center on Race and the Economy
American Arab Anti Discrimination Committee
American Civil Liberties Union
American Friends Service Committee
American Muslim Empowerment Network (AMEN)
American-Arab Anti-Discrimination Committee (ADC)
Arab American Civic Council
Arab American Institute
Asian American Advocacy Fund
Asian Americans Advancing Justice
Believers Bail Out
Bend the Arc: Jewish Action
Brennan Center for Justice at NYU School of Law
California Immigrant Policy Center
Carceral Tech Resistance Network
Center for Disability Rights
Center for Security, Race and Rights
CLEAR project
Coalition for Civil Freedoms
Color Of Change
Council on Amerian-Islamic Relations (CAIR)
Council on American-Islamic Relations (CAIR)-California
Council on American-Islamic Relations (CAIR)-Chicago
Council on American-Islamic Relations, New York (CAIR-NY)
Defending Rights & Dissent
Equality Labs
Fight for the Future
Friends of Human Rights
ICNA Council for Social Justice

Interfaith Alliance
Japanese American Citizens League Pacific Southwest District
Jetpac
Jewish Voice for Peace - NC Triangle Chapter
Justice For Muslims Collective
MLK Coalition of Greater Los Angeles
Montgomery County Civil Rights Coalition
Motivation Motivates
Movement to End Racism and Islamophobia
MPower Change
MSA West
Muslim American Society-Public Affairs and Civic Engagement
National Council of Jewish Women
National Immigration Law Center
Nikkei Resisters
Oakland Privacy
OneAmerica
Palestinian Youth Movement
Partnership for the Advancement of New Americans (PANA)
Pillars of the Community
Project South
Restore The Fourth
Revolutionary Love Project
RootsAction.org
San Fernando Valley JACL
Secure Justice
South Asian Americans Leading Together (SAALT)
Stand With Kashmir
Stop CVE Chicago
Stop LAPD Spying Coalition
The Black Alliance for Just Immigration (BAJI)
The Leadership Conference on Civil and Human Rights
Unitarian Universalist Service Committee
United We Dream
United Women of East Africa
Veterans For Peace
Vigilant Love
Washington State Religious Campaign Against Torture
Yemeni Alliance Committee

In the name of God, the Most Compassionate, the Most Merciful.
All praise and thanks belong to God, the Lord of the Worlds.
May peace and prayers be upon Prophet Muhammad and his family.



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March 1, 2022

The Honorable Steve Cohen
Chairman
House Subcommittee on Constitution, Civil Rights, and Civil Liberties
U.S. House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable Mike Johnson
Ranking Member
House Subcommittee on Constitution, Civil Rights, and Civil Liberties
U.S. House Committee on the Judiciary
2142 Rayburn House Office Building
Washington, DC 20515

RE: CAIR Statement for the Record: Addressing American Muslim Discrimination and Civil Rights Concerns

Dear Chairman Cohen and Ranking Member Johnson:

On behalf of the Council on American-Islamic Relations (CAIR), the nation's largest Muslim civil rights and advocacy organization, we thank the House Subcommittee on Constitution, Civil Rights, and Civil Liberties for hosting today's hearing on "Discrimination and the Civil Rights of the Muslim, Arab, and South Asian American Communities."

As the House Subcommittee on Constitution, Civil Rights, and Civil Liberties today explores the interrelated issues of discrimination and the civil rights of American Muslim, Arab American, and South Asian American communities – we request that you consider several of CAIR's recommendations on how committee can:

1) Repair the damage done by the Muslim ban.
2) Investigate the funding sources of anti-Muslim hate groups promoting Islamophobia
3) Support calls for the DOJ to investigate an anti-Muslim hate group accused of spying on American Muslim community organizations, and elected Muslim officials.
4) Reform the unconstitutional, discriminatory, and ineffective Federal Terrorism Watchlist.

1) Repair the damage done by Muslim and African Bans

First authorized on January 27, 2017, the Muslim ban was amended several times to place varying levels of discriminatory travel restrictions on mostly Muslim and African citizens and government officials from Burma, Eritrea, Kyrgyzstan, Libya, Nigeria, Iran, North Korea, Somalia, Sudan, Syria, and Tanzania, Venezuela, and Yemen.

In January 2020, CAIR welcomed President Joe Biden's termination — on his first day in office — of the previous administration's discriminatory Muslim and African Bans. However, CAIR believes that it is now the responsibility of the Biden administration and Congress for determining how to holistically address the damage already done by the Muslim ban and how to help those who were denied entry into the United States.

CAIR believes that the U.S. State Department's follow-up review of immigration processes, mandated by the executive order President Biden signed repealing the Muslim Ban, could have still done more to undo the damage caused by the Muslim Ban.

Over 41,000 visa applicants from the banned countries were denied as a result of the prior administration's travel bans. People who won their diversity visa were denied this once-in-a-lifetime opportunity for themselves & their families. They need new chance to claim their lost diversity visas.

Following the Biden administration's overturning of the Muslim Ban, the State Department should have automatically reconsidered, reopen, and expedite all immigrant and non-immigrant visa applications subject to the Muslim and African Bans that have not yet been granted, including those denied during FY 17 - FY 20.

These impacted visa applicants should have also been provided a new opportunity to supplement their previous applications, if necessary, for a complete review, and granted a final outcome of the review.

The State Department also failed to waive all new application fees for non-immigrant visas impacted by the Muslim and African Bans, treating these applications as not constituting final denials as of January 20, 2020, and reimburse travel expenses for those rejected under PP 9645.

That is why CAIR welcomed the House of Representatives' November 2021 adoption of the Build Back Better Act, which among other accomplishments would have:

- included $100 billion to reduce visa backlogs;
- recaptured diversity visas lost to the Muslim ban and COVID travel restrictions; and,
- recaptured about 300,000 unused Family-Sponsored and Employment-Based visas from Fiscal Years 1992-2021.

That legislation remains stuck in the U.S. Senate awaiting consideration – just like the House passed "National Origin-Based Antidiscrimination for Nonimmigrants Act" or the "NO BAN Act."

Introduced by Congresswoman Judy Chu and co-sponsored by 159 congressional Democrats, the NO BAN Act would also ensure no future president has the same authority to create another discriminatory travel ban like the prior administration's Muslim and African bans.

CAIR, the American Muslim community, and immigrant rights organizations remain disappointed that Republican leadership in the Senate continue to block consideration of both these bills.

We recommend that members of the House Subcommittee on Constitution, Civil Rights, and Civil Liberties continue to press their Senate colleagues on the importance of adopting the Build Back Better Act, its Muslim ban visa solutions, and the NO BAN Act.

In the meantime, we urge members of this committees to work with the Biden administration and State Department to grant humanitarian parole to those who won the diversity visa lottery from FY 17 through FY 22, but whose visas were not issued as a result of these bans.

2) Investigate the funding sources of anti-Muslim hate groups promoting Islamophobia

In January, CAIR released a new Islamophobia report titled "*Islamophobia in the Mainstream*," listing 35 charitable institutions and foundations that funneled almost $106 million to 26 anti-Muslim groups between 2017-2019.[1] A copy of CAIR's report can be found here.

This report shows that Islamophobic organizations remain active and continue to receive large sums of money through private family foundations and mainstream donor-advised funds that are ultimately used to spread misinformation and perpetuate stereotypes about Muslims and Islam.

The funders include household names such as Fidelity and Schwab and other faith based. They also include private family foundations such as the Adelson Family Foundation which contributes millions of dollars to support anti-Muslim activity.

Anti-Muslim hate groups listed in the report include: The American Center for Law and Justice (ACLJ), Gatestone Institute, Center for Security Policy, Middle East Forum, Middle East Media Research Institute, David Horowitz Freedom Center, Clarion Project, and the Investigative Project on Terrorism, among many others.

In 2010, ACLJ supported Oklahoma's "Save our State" Amendment, which aimed to prohibit state courts from considering foreign law or Sharia when constructing procedures. The amendment was later struck down in federal court and was found to be unconstitutional based on its potential to do harm to Muslims, a ruling that was upheld by the Tenth Circuit Court of Appeals in January 2012.

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[1] Council on American-Islamic Relations, "Islamophobia in the Mainstream," CAIR's 2021 Islamophobia Report, by CAIR Research & Advocacy Coordinator Huzaifa Shahbaz. January 11, 2022. Website Link: https://www.cair.com/wp-content/uploads/2022/01/islamophobiainthemainstream.pdf

The report also outlines the landscape of Islamophobia between 2019 – 2020 by detailing more than a dozen anti-mosque incidents and anti-Muslim activity in schools, American politics, and social media. Between 2019-2020, CAIR identified 16 anti-mosque incidents including incidents of damage, destruction, and vandalism (DDV), intimidation, and harassment. During this period, CAIR also identified 40 instances in which institutional leaders shared or posted anti-Muslim content online. CAIR's report defined institutional leaders as individuals who hold a position of influence or power within our trusted institutions — for example, a school board member or a police chief.

CAIR encourages the House Subcommittee on Constitution, Civil Rights, and Civil Liberties and its staff to read the findings of this report.

We also request the committee to schedule a future hearing to investigate the prevalence of U.S. charitable institutions channeling and granting funds to major anti-Muslim bigots and far-right extremists, including U.S. Islamophobia Network groups, that promote anti-Muslim sentiment and policies in local communities and across the nation.

3) Supporting Muslim group calls on the DOJ to investigate anti-Muslim hate group Investigative Project on Terrorism's spying on Muslims

On January 31, 83 Muslim civil society organizations and mosques sent a joint community letter to the Justice Department[2] urging it to investigate the actions of the Investigative Project on Terrorism (IPT), an anti-Muslim hate group founded by Steven Emerson, who has been described as an "anti-Muslim activist" by the Southern Poverty Law Center.

Specifically, Muslim groups are asking the DOJ to investigate whether IPT violated any federal laws by using paid spies to infiltrate, record and undermine Muslim organizations, houses of worship and leaders, including then-Rep. Keith Ellison, for the benefit of a foreign government.

In December 2021, CAIR-Ohio announced that its director, Romin Iqbal, had been terminated for passing information about CAIR's civil rights work to IPT.

In the weeks following Iqbal's exposure, a Virginia Muslim voluntarily came forward to admit and apologize for working as a paid IPT spy from 2008 to 2012. In addition, the IPT whistleblower who first alerted CAIR to IPT's efforts to target the community released a public statement and participated in an interview with The Washington Post.

The whistleblower provided evidence showing that the hate group had spent years surveilling, spying on national Muslim leaders and organizations in an effort to protect the Israeli government from criticism.

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[2] Muslim Community Letter, "Request that Justice Department Investigate Anti-Muslim Hate Group's Systemic Spying on American Muslim Community," January 31, 2022. Website Link: https://www.cair.com/wp-content/uploads/2022/02/Muslim-Community-Letter-to-DOJ-January-31-2022-2.pdf

CAIR has released a statement from the IPT whistleblower, a statement from the Virginia Muslim who once worked as a paid spy for IPT, a tax form showing that Emerson's for-profit corporation paid the latter individual over $30,000 for one of his years of spying, an excerpt from a dossier that the hate group compiled on former Rep. Keith Ellison, and an excerpt of an IPT transcript of a private meeting that national Muslim leaders held to discuss the Park51 controversy in 2010.

CAIR previously released evidence showing that IPT was communicating, collaborating with and providing assistance to Israeli intelligence officials working in the office of then-Prime Minister Benjamin Netanyahu.

Sadly, IPT's conspiracy to spy on American mosques and Muslim organizations was not surprising. Civil rights advocates have been targeted by infiltrators and saboteurs for decades. It is long past time for this behavior to come to an end. That is why we urge members of the Subcommittee on Constitution, Civil Rights, and Civil Liberties to support our call on the DOJ to investigate this serious – and possibly illegal – breach of the Muslim community's trusted and private spaces.

4) Reforming the unconstitutional, discriminatory, and ineffective federal terrorism watchlist

For the past twenty years, the United States government has adopted national security policies and programs under the Biden, Trump, Obama, and Bush administrations that led to the discriminatory profiling and targeting of American Muslims by state and federal law enforcement. Now is the time for Congress to adopt new laws that better protect and respect the rights of all U.S. citizens and residents, including Muslims.

One of the greatest violations of the American Muslim community's civil rights by federal law enforcement agencies – with little to no oversight by Congress – are the abuses committed under the federal government's unconstitutional Terrorist Screening Database (TSDB), commonly referred to as the "terrorism watchlist."

Just two weeks ago, CAIR held a news conference at its Capitol Hill headquarters in Washington, D.C.,[3] to announce an American Muslim's lawsuit against U.S. Customs and Border Protection (CBP) and its agents at Dulles International Airport for repeatedly seizing his electronic devices. The lawsuit asserts that CBP agents take these actions, not because of any suspicion of illegal activity but only because a computer told them to.

The automated screening practices challenged here—the federal government's watchlisting system—are based on secret statuses assigned to more than one million people. The federal

[3] Council on American-Islamic Relations, "DC: CAIR to Announce Federal Lawsuit Challenging Secret Watchlist's Role in CBP Seizures of Muslim Traveler's Electronics at Dulles Airport," February 16, 2022. Website Link: https://www.cair.com/press_releases/cair-to-announce-federal-lawsuit-challenging-secret-watchlists-role-in-cbp-seizures-of-muslim-travelers-electronics-at-dulles-airport/

government disseminates those statuses to private companies, hospitals, universities, every law enforcement agency in the US, and even to foreign governments.

After almost two decades, the watchlisting system has demonstrated no ability to thwart terrorism. Rather, the terrorism watchlist has been used as a tool to target innocent Muslims secretly and systematically for extrajudicial consequences without any due process or accountability. The success of this extrajudicial program depends upon secrecy and eliminating due process protections to individuals the government seeks to target; and, as such, the watchlisting system must be fundamentally reformed. At minimum, the government must adopt a TSDB inclusion standard that precludes innocent people --persons who have not been arrested, charged, or convicted of a terrorism-related offense --from being listed.

In 2003, then-President George W. Bush issued executive order HSPD-6. This executive order led to the creation of the Terrorism Screening Database (TSDB) — colloquially known as the "watchlist." The watchlisting system is comprised of a set of interlocking national security programs throughout the federal government that primarily acts as a "stop-and-frisk" program that targets Muslims with enhanced screening and interrogations. The watchlisting system spans the entire country and much of the world.

American Muslims that are targeted by the watchlisting system are designated as "known or suspected terrorists" without any semblance of due process. Their designation in the TSDB subjects them to segregated and enhanced processes and interrogations while traveling, places their safety at risk during routine encounters with law enforcement, results in indefinite delays in the processing of immigration applications and visas, makes them ineligible to obtain various permits, licenses, and employment opportunities, and restricts them from seeking certain kinds of employment or government benefits.

The watchlisting system has demonized and stigmatized the Muslim community. Federal agents have arrested and handcuffed many listees, often at gunpoint and sometimes in front of their children. Customs officers have searched and seized their phones and computers as a matter of policy. At the airport, federal agents repeatedly disrupt listees' travel plans with prolonged, frightening, and invasive detentions, screenings, and interrogations. Some Muslims targeted by the watchlisting system have been denied the right to even board their flights. Others have been subjected to intrusive interrogations about their religious beliefs and practices. All these consequences are attributable to the watchlist and the various annotations that accompany the entries on it.

CAIR encourages the House Subcommittee on Constitution, Civil Rights, and Civil Liberties to work with the Biden Administration to:

- **Adopt a TSDB inclusion standard that precludes innocent people - persons who have not been arrested, charged, or convicted of a terrorism-related offense - from being listed in the TSDB.**
- **The federal government should also implement due process protections for individuals listed in the TSDB.**

It is surprising that, to be included on a "terror" watchlist, a criminal designation, one need not be even suspected of a terrorism-related offense. The TSDB inclusion standard that the federal government uses to populate its watchlist is satisfied whenever a person is reasonably suspected of doing something "related to" or "associated with" terrorism. We know that the federal government considers travel to most Muslim-majority countries, performing prayers at a masjid, and studying the Arabic language as conduct that is "related to" terrorism. Indeed, of the more than one million people considered for placement on the watchlist, the FBI has satisfied the watchlist's inclusion standard more than 99 percent of the time.

CAIR proposes an inclusion standard focused on actual criminal conduct that requires individuals to be arrested, charged, or convicted of a terrorism-related offense. This standard would allow the federal government to place people on the watchlist when there is some judicial process that approves of a warrant or an indictment. By adopting this standard, the federal government could ensure that innocent people are excluded from the watchlist. Moreover, religious beliefs and practices cannot serve as a basis for inclusion on the TSDB. CAIR notes that changing the watchlist's inclusion standards would also minimize how many individuals will be negatively impacted by USCIS's application of the Controlled Application Review and Resolution Program (CARRP), which imposes additional rules and review criteria that delay and deny applicants immigration benefits, with little to no public transparency, review, or accountability.

CAIR also encourages the House Subcommittee on Constitution, Civil Rights, and Civil Liberties to support legislation that would prohibit the dissemination of the TSDB to foreign governments, private individuals and corporations, and state and local police officers.

The watchlist is disseminated to more than 60 foreign governments, more than 500 private companies, and to each of the more than 18,000 state, local, and tribal law enforcement entities across the country. It is an indiscriminate dissemination that makes none of us any safer.

The federal government does not even know how these entities are using their access to the watchlist. In particular, the designation of Americans listed on the TSDB is disseminated to foreign governments that are known for committing international crimes and human rights abuses. Nonetheless, dissemination to these governments is completely unmonitored, and foreign governments have detained and even tortured American citizens who have traveled to their countries.

This dissemination must be ended. The federal government should impose a ban on the international dissemination of the watchlist. It should also ban the dissemination of the watchlist to private companies. Tens of thousands of state and local law enforcement agencies should not have access to what is supposed to be highly sensitive watchlist information.

Conclusion

Since its establishment in 1994, CAIR has worked to promote a positive image of Islam and Muslims in America. CAIR's mission is to enhance understanding of Islam, protect civil rights, promote justice, and empower American Muslims.

We believe that today's hearing represents another opportunity for this committee, Congress, and the federal government to recommit itself to protecting the civil rights of all Americans, including American Muslim, Arab American, and South Asian American communities.

We encourage you to continue to address and advance the concerns that were raised in today's hearing by American Muslim, Arab American, and South Asian American community organizations.

Discrimination can be overcome by unity and by upholding the civil rights of all Americans. CAIR and the resources of the American Muslim community are ready and available to this committee and Congress to achieve this goal.

Sincerely,



Robert S. McCaw
CAIR Director of Government Affairs Department

Written Statement of Shirin Sinnar

Professor of Law and John A. Wilson Faculty Scholar, Stanford Law School

Submitted to the U.S. House of Representatives Committee on the Judiciary Subcommittee on the Constitution, Civil Rights and Civil Liberties

For a Hearing on Discrimination and the Civil Rights of the Muslim, Arab, and South Asian American Communities

March 1, 2022

I thank the U.S. House Judiciary Subcommittee on the Constitution, Civil Rights and Civil Liberties for holding this important hearing on discrimination affecting Muslim, Arab, and South Asian American communities. I submit this written statement to urge the committee to reexamine a set of policies that have long subjected these communities to profiling, surveillance, and prosecution in the name of counterterrorism.

I am a law professor at Stanford University. I research and teach on national security law, civil rights and liberties, and civil procedure. My scholarly work addresses the legal treatment of political violence, including terrorism and hate crimes, and national security oversight through courts and executive agencies.[1] Prior to my initial appointment at Stanford Law School in 2009, I served as a civil rights lawyer for the Asian Law Caucus and the Lawyers' Committee for Civil Rights in San Francisco, where I primarily addressed discrimination facing U.S. Muslim, South Asian, and Middle Eastern communities.

I. Flawed Counterterrorism Policies Affecting U.S. Communities

For over two decades, U.S. policies undertaken in the name of preventing terrorism have undercut the liberty and equality of U.S. Muslim, South Asian, and Middle Eastern individuals and communities. After twenty years of use by security agencies against communities long racialized as a threat, many of these policies now appear to be a normal feature of the security landscape. But it is long past

[1] For examples, please see Shirin Sinnar & Beth A. Colgan, *Revisiting Hate Crimes Enhancements in the Shadow of Mass Incarceration*, 95 N.Y.U. L. REV. ONLINE 149 (2020); Shirin Sinnar, *Separate and Unequal: The Law of "Domestic" and "International" Terrorism*, 117 MICH. L. REV. 1333 (2019); Shirin Sinnar, *Procedural Experimentation and National Security in the Courts*, 106 CAL. L REV. 991 (2018); Shirin Sinnar, *Rule of Law Tropes in National Security*, 129 HARV. L. REV. 1566 (2016); and Shirin Sinnar, *Protecting Rights from Within? Inspectors General and National Security Oversight*, 65 STAN. L. REV. 1027 (2013).

time for policymakers and the public to reconsider them—and end practices that treat racial and religious communities as dangerous, subject individuals to scrutiny without an adequate factual basis or opportunity to clear their names, or target for "anticipatory" prosecution individuals deemed to present a future threat.

In the weeks after September 11, 2001, the U.S. government adopted an aggressively preventative approach to terrorism both within and beyond the United States. Within the United States, law enforcement agencies redefined their mission to focus on preventing rather than prosecuting acts of terrorism.[2] Beyond our borders, our government launched a global "war on terror" against al Qaeda and other groups, relying on new doctrines of "preemption" to justify lethal force to prevent possible terrorist attacks, even when they were not imminent.[3] The executive branch embraced the idea that preempting terrorism required exceptional deviations from ordinary law,[4] including torture, indefinite detention, and warrantless surveillance. The costs of this approach for human rights, civilian lives, and our economy are becoming increasingly clear. For instance, last fall, the Costs of War Project at Brown University estimated that U.S. post-9/11 wars and counterterrorism operations have led to the direct deaths of at least 897,000 people, including over 364,000 civilians, and at the cost of $8 trillion.[5]

Policies adopted in the name of preventative counterterrorism have several fundamental flaws, despite the intuitive appeal of focusing on prevention. First, these policies have long defined the threat in racial and religious terms that subject U.S. Muslim communities to sweeping surveillance and investigation. Racial and religious profiling characterized the response to 9/11 from the beginning. In the months following the attacks, federal officials detained hundreds of Muslim immigrants for months as terrorist suspects, despite the fact that racially based tips, rather than individual grounds for suspicion, had prompted many arrests.[6] None of the hundreds of detainees were charged with any connection to the

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[2] Robert M. Chesney, *The Sleeper Scenario: Terrorism-Support Laws and the Demands of Prevention*, 42 HARV. J. ON LEGIS. 1, 26–28 (2005).

[3] LISA STAMPNITZKY, DISCIPLINING TERROR: HOW EXPERTS INVENTED "TERRORISM" 173-75 (2013).

[4] *See* Kim Lane Scheppele, *Law in a Time of Emergency: States of Exception and the Temptations of 9/11*, 6 U. OF PA. J. CONST. L. 1001, 1051-52 (2004).

[5] Neta C. Crawford, Co-Director, Costs of War Project, The U.S. Budgetary Costs of the Post-9/11 Wars (Sept. 1, 2021); Stephanie Savell, et. al, Co-Director, Costs of War Project, United States Counterterrorism Operations 2018–2020 (Feb. 2021); Costs of War Project, Human Cost of Post-9/11 Wars, at https://watson.brown.edu/costsofwar/figures/2021/WarDeathToll (Sept. 1, 2021).

[6] OFFICE OF THE INSPECTOR GEN., U.S. DEP'T OF JUSTICE, THE SEPTEMBER 11 DETAINEES:A REVIEW OF THE TREATMENT OF ALIENS HELD ON IMMIGRATION CHARGES IN CONNECTION WITH THE INVESTIGATION OF THE SEPTEMBER 11 ATTACKS (2003); Shirin Sinnar, *The Lost Story of Iqbal*, 105 GEO. L. REV. 379, 388 (2017).

attacks.[7] In 2002 and 2003, the Bush administration required thousands of immigrant men from a list of twenty-five countries—almost all majority-Muslim—to report to government offices to be registered, interrogated, and fingerprinted.[8] Although these dragnet measures did not lead to terrorism convictions, they resulted in significant deportations and fear in immigrant Muslim communities, in addition to sending the public message that these communities at large presented a threat.[9]

This focus on Muslim communities, writ large, did not end with the immediate post-9/11 period. Nor is it a partisan problem, limited to the Bush or Trump administrations. Rather, the intense scrutiny of these communities has defined U.S. counterterrorism for the past twenty years. The Federal Bureau of Investigation, New York Police Department, and other law enforcement agencies have mapped the location and institutions of Muslim communities, recruited legions of informants to report on their activities, solicited intelligence through community outreach programs, conducted wide-scale "voluntary interviews," and extensively monitored Internet activity—all with precious little oversight.[10] As Professor Amna Akbar has described, law enforcement agencies institutionalized theories of radicalization that "transformed the project of counterterrorism intelligence gathering into one squarely focused on gathering as much information as possible about Muslim life in the United States, with a particular emphasis on political and religious cultures of Muslim communities."[11]

Although the FBI claims that its activities are limited to investigating specific threats, its own agents and paid informants have at times attested to sprawling surveillance of Muslim communities. In a case now before the U.S. Supreme Court on the state secrets privilege and the Foreign Intelligence Surveillance Act, a former FBI informant declared under oath that the FBI directed him to spy on the Southern California Muslim community at large. He asserted that FBI agents told him that Islam threatened national security and instructed him to "gather information on people who practice Islam in Orange County—not terrorists, spies,

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[7] *See* Shirin Sinnar, *The Lost Story of Iqbal*, 105 GEO. L. REV. 379, 423-25 (2017) (addressing absence of terrorism convictions arising out of post-9/11 immigrant detentions).
[8] *See* RIGHTS WORKING GROUP & PENN STATE LAW CENTER FOR IMMIGRANTS' RIGHTS, THE NSEERS EFFECT: A DECADE OF RACIAL PROFILING, FEAR, AND SECRECY 4 (2012).
[9] For more on the failure of these programs to generate terrorism convictions, *see, e.g.*, Sinnar, *The Lost Story of Iqbal*, *supra* note 7, at 414–27 (2017) (addressing post-9/11 detentions); Rights Working Group, *supra* note 8, at 31 (addressing NSEERS).
[10] Amna Akbar, *Policing "Radicalization,"* 3 U.C. IRVINE L. REV. 809, 854–68 (2013).
[11] Akbar, *supra* note 10, at 845.

or even ordinary criminals."[12] The informant recorded thousands of hours of conversations with hidden recording devices, encouraged community members to visit "jihadist" websites, and spoke of his interest in violence—leading alarmed Muslim community members to obtain a restraining order against him and, ironically, report him to the FBI.[13]

In a similar vein, Terry Albury, a 16-year FBI counterterrorism agent who worked in the San Francisco Bay Area and Minneapolis, described how he and other agents routinely surveilled mosques and Muslim institutions, interrogated travelers at airports on the basis of their national origin, protracted investigations despite finding no threat, and pressured people into becoming informants.[14] Albury described a culture of Islamophobia and anti-Black racism within the FBI, along with professional incentives to demonstrate high numbers of informants and investigations.[15]

Importantly, the FBI's internal guidelines license many of these practices, such as investigating activity without an individualized basis for suspicion or using race as a factor in investigations. For instance, the FBI has the explicit authority to conduct "assessments" of potential criminal activity with "no particular factual predication."[16] Thus, without demonstrating any specific basis for suspicion, agents can take steps including tracking the movements of individuals or deputizing undercover informants to report on their activities.[17] In addition, FBI guidelines permit the use of race or ethnicity as factors in collecting intelligence and opening investigations, so long as they are not the "sole" factor, and permit field offices to identify and map the demographics of ethnic communities in their localities.[18]

Beyond treating racial and religious communities as a threat, a second problem with the government's counterterrorism programs is that they flag people as

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[12] Brief for the Respondents at 10, FBI v. Fazaga, No. 20-828 (U.S. argued Nov. 8, 2021), 965 F.3d 1015 (9th Cir. 2020), *cert granted by* 141 S. Ct. 2720 (U.S. June 07, 2021).
[13] Id. at 11-12.
[14] Janet Reitman, *'I Helped Destroy People,'* N.Y.T. MAGAZINE, Sept. 1, 2021. Albury pled guilty to leaking classified documents about the FBI's counterterrorism practices to the media, an action he said he took because "the reality of what I was a part of hit me in a way that just shattered my existence. There is this mythology surrounding the war on terrorism, and the F.B.I., that has given agents the power to ruin the lives of completely innocent people based solely on what part of the world they came from, or what religion they practice, or the color of their skin. And I did that."
[15] Id.
[16] DEP'T OF JUSTICE FED. BUREAU OF INVESTIGATION, DOMESTIC INVESTIGATIONS AND OPERATIONS GUIDE 5.1 (as released Mar. 2, 2016 and updated Sept. 28, 2016) [DIOG], https://www.justsecurity.org/wp-content/uploads/2019/03/FBI.DIOG_.pdf
[17] Id. at 5.9.1. Assessments require an "authorized purpose" and "clearly defined objective" but no specific factual predication.
[18] Id. at 4.3.1, 4.3.3.2.1, and 4.3.3.2.2.

dangerous based on expansive standards and little opportunity for redress. The best example of this is the terrorist watchlisting system, which affects hundreds of thousands of people who can do little to contest their inclusion. The government's Terrorist Screening Database, the largest centralized watchlist, reportedly lists 1.2 million people including 4,600 U.S. citizens or lawful permanent residents.[19] Depending on which subset of the centralized watchlist applies, people on these lists can be barred from flying, detained at airports and land borders, denied visas to unite with family in the United States, interrogated in the course of routine police traffic stops, and scrutinized by public and private employers.[20]

In one example, U.S. Customs and Border Protection officials detained Abdisalam Wilwal, Sagal Abdigani, and their four children, all U.S. citizens, for eleven hours at the Canadian border after Wilwal's name apparently appeared on a terrorist watchlist.[21] During the encounter, border officials pointed guns at the family, interrogated Wilwal about his religious beliefs and practices, told the 14-year-old to strip for a search, and denied food to the four children (ages 5, 6, 8, and 14) for six hours.[22] Handcuffed, isolated, and terrified, Wilwal passed out four hours into the detention.[23]

Despite these potentially serious consequences, the standard for inclusion in the terrorist watchlist is both exceedingly low and riddled with exceptions.[24] The general standard requires only "reasonable suspicion" of a "relationship" to terrorist

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[19] *Elhady v. Kable*, 391 F. Supp. 3d 562, 568 (E.D.Va., 2019) (noting approximate numbers as of June 2017), *rev'd and remanded*, 993 F.3d 208 (4th Cir. 2021). The Terrorist Identities Datamart Environment, an intelligence database that houses classified and unclassified information from which names are "exported" to the TSDB, contained a significantly larger number of U.S. citizens and permanent residents (16,000 as of February 2017). Nat'l Counterterrorism Ctr., Terrorist Identities Datamart Environment 1-2 (2017), at https://www.dni.gov/files/NCTC/documents/features_documents/TIDEfactsheet10FEB2017.pdf.

[20] *See* Elhady v. Kable, 391 F. Supp. 3d at 569-70 (describing agencies that use watchlists for various purposes).

[21] Abigail Hauslohner, *U.S. Family Suing Federal Government After 11-Hour Detention On Canadian Border*, WASH. POST, July 13, 2017.

[22] Complaint at 3, 7, 8, 14, 17, Wilwal v. Nielsen (D. Minn. July 13, 2017), 346 F. Supp. 3d 1290 (D. Minn. 2018).

[23] Id. at 13. The family settled the case for damages and a change in certain CBP practices. Wilwal v. Nielsen – Lawsuit Challenging Abusive Border Detention Of American Family, ACLU, Updated Sept. 29, 2020, https://www.aclu.org/cases/wilwal-v-nielsen-lawsuit-challenging-abusive-border-detention-american-family. For other examples of serious watchlisting encounters, see Elhady v. Kable, 993 F.3d 208, 216–17 (4th Cir. 2021).

[24] *See* Shirin Sinnar, *Rule of Law Tropes in National Security*, 129 HARV. L. REV. 1566, 1592-97 (2016); Jeffrey Kahn, *The Unreasonable Rise of Reasonable Suspicion: Terrorist Watchlists and* Terry v. Ohio, 26 WM. & MARY BILL RTS. J. 383 (2017).

activities, not articulable suspicion of any crime.[25] Security officials within the FBI's Terrorist Screening Center (TSC), not judges or neutral decision-makers, decide whether a person meets that standard, and the TSC accepts into the database 99% of the names submitted to them by intelligence agencies.[26] For non-citizens being screened for visas or immigration purposes, the government's Watchlisting Guidance dispenses with the "reasonable suspicion" requirement altogether. Instead, it allows the watchlisting of people merely "described by sources as 'terrorists,' 'extremists,' 'jihadists,'" or other similar labels, even without corroboration.[27] Reviewing watchlisting criteria, one district court observed that "it is not difficult to imagine completely innocent conduct serving as the starting point for a string of subjective, speculative inferences that result in a person's inclusion on the No Fly List."[28]

Moreover, cases regularly suggest that the government is using the threat of watchlisting to pressure people into informing on community members. In Tanzin v. Tanvir, a damages case that the Supreme Court permitted to move forward under the Religious Freedom Restoration Act, three Muslim men alleged that FBI agents added them to the No Fly List because they refused to spy on their religious communities.[29] Other lawsuits over the years arising in various parts of the country have made similar allegations.[30] Rather than a targeted tool to exclude

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[25] *See* Declaration of Timothy P. Groh, Dep. Dir. of Terrorist Screening Ctr. (Mar. 11, 2019) at 8, Elhady v. Kable, 993 F.3d 208 (4th Cir. 2021) (stating standard for TSDB inclusion as requiring "articulable intelligence or information which, based on the totality of the circumstances and, taken together with rational inferences from those facts, creates a reasonable suspicion that the individual is engaged, has been engaged, or intends to engage, in conduct constituting, in preparation for, in aid or in furtherance of, or *related to*, terrorism and/or terrorist activities") (emphasis added).

[26] Elhady v. Kable, 993 F.3d 208, 214 (4th Cir. 2021).

[27] Sinnar, *Rule of Law Tropes*, *supra* note 24, at 1594. This information is based on the leaked 2013 Watchlisting Guidance, the last version to be made public. A more recent declaration filed in the Elhady litigation confirms that the government continues to use exceptions to the reasonable suspicion standard for certain immigration purposes. Declaration of Timothy P. Groh, Dep. Dir. of Terrorist Screening Ctr. (Mar. 11, 2019) at 7, Elhady v. Kable, 993 F.3d 208 (4th Cir. 2021).

[28] Mohamed v. Holder, 995 F. Supp. 2d 520, 532 (E.D. Va. 2014).

[29] Tanzin v. Tanvir, 141 S. Ct. 486, 487 (2020) (interpreting the Religious Freedom Restoration Act to permit damages suits against federal officials in their individual capacities). *See also* Adam Liptak, *At Supreme Court, a Case on Abuse of the No-Fly List*, N.Y. TIMES, Feb. 24, 2020 (describing Muhammad Tanvir's allegation that, after he refused to become a government informant, FBI agents placed him on the No Fly List, preventing him from flying home from his job making deliveries as a long-haul truck driver and from visiting his sick mother).

[30] *See, e.g.*, Charlie Savage, *Testing an Opaque Security Power, Michigan Man Challenges 'No-Fly List,'* N.Y. TIMES, Apr. 6, 2021 (alleging that U.S. citizen was placed on the No Fly List after refusing to become an FBI informant); Jeffrey Kahn, *Terrorist Watchlists*, *in* THE CAMBRIDGE HANDBOOK OF SURVEILLANCE LAW 71, 90 (David Gray & Stephen E. Henderson, eds., 2017) (citing additional cases involving allegations of FBI agents offering to remove people from watchlists if they agreed to become government informants).

known threats, such as those who threaten airline safety, the watchlists have become a bloated infrastructure for harassment and coercion.

Furthermore, most people on the terrorist watchlist have no meaningful procedure to get off the list. While the government marginally improved notification procedures for U.S. citizens and permanent residents on the No Fly List after a court struck down the prior procedures as unconstitutional, those revised procedures do not apply to the broader terrorist watchlist.[31] In other words, even U.S. citizens who suffer an ordeal like Abdisalam Wilwal and Sagal Abdigani have a limited ability to contest their inclusion in the Terrorist Screening Database. If they file a complaint through the congressionally established DHS Traveler Redress Inquiry Program (DHS TRIP), they will not be told whether they are on the watchlist, let alone why.[32] If a false allegation made its way into intelligence files, they would never know. It is nearly impossible to contest the basis for a watchlisting decision that remains entirely secret.

A third critical flaw with counterterrorism practices affecting Muslim, Arab, and South Asian communities is that they rely on "anticipatory prosecution"—the preemptive targeting of individuals whom the FBI alleges may present a threat in the future. In a signature move, the FBI sends confidential informants and undercover agents to approach people whom they deem sympathetic to terrorism, often as a result of their online speech, and then furnishes opportunities and inducements to act upon those sympathies. Prosecutors then charge those who take the bait with material support to terrorism or other criminal offenses.[33] These sting operations have frequently targeted individuals who are young, mentally ill, financially insecure, or otherwise vulnerable, and informants have offered financial rewards, fake religious guidance, and psychological pressure to overcome these

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[31] Latif v. Holder, 28 F. Supp. 3d 1134 (D. Or. 2014) (holding that existing procedures for contesting No Fly List status violated due process); Elhady v. Kable, 993 F.3d 208, 218-19 (4th Cir. 2021) (observing that district court asked parties to brief whether procedures required by Latif v. Holder should be extended to parties on TSDB, while reversing decision).

[32] Elhady v. Kable, 993 F.3d 208, 215, 218 (4th Cir. 2021).

[33] One quantitative study of terrorism prosecutions concluded that 55% of 580 post-9/11 terrorism prosecutions "involved an informant or undercover agent in some capacity before the crime was committed," and that "[p]articularly with regard to jihadi and left-wing defendants, the average case involving informants has numerous indicators of possible entrapment or outrageous government conduct." Jesse J. Norris & Hanna Grol-Prokopczyk, *Estimating the Prevalence of Entrapment in Post-9/11 Terrorism Cases*, 105 J. CRIM. L. & CRIMINOLOGY 609, 673 (2015). *See also* CENTER ON NAT. SEC. AT FORDHAM LAW, THE AMERICAN EXCEPTION: TERRORISM PROSECUTIONS IN THE UNITED STATES: THE ISIS CASES 24 (2017) (stating that 62% of ISIS-related prosecutions from March 2014 to August 2017 are known to have used undercover agents or informants).

individuals' reluctance.[34] The question, of course, is whether the government is preempting real threats or leading manipulable individuals to embrace criminal actions they never would have taken on their own.[35]

Federal judges have expressed concern about the FBI's role in generating some of these cases. At the sentencing of James Cromitie, an impoverished New Jersey man who was offered $250,000 by an informant in a persistent 11-month campaign to instigate a terrorist plot, a federal judge observed, "I suspect that real terrorists would not have bothered themselves with a person who was so utterly inept." Despite sentencing Cromitie to a mandatory minimum sentence of 25 years, she opined, "Only the government could have made a terrorist out of Cromitie, whose buffoonery is positively Shakespearean in scope."[36] In spite of the government's role in facilitating these crimes, defendants have little chance of proving unlawful entrapment at trial: inflammatory evidence related to their speech or beliefs, procedural irregularities in informant tactics, and racialized fears of terrorism together "result in the almost complete incapacitation of a key procedural protection against government abuses."[37]

U.S. tolerance for entrapment stands in sharp contrast to the approach of several European countries, which typically prohibit undercover operations in which the

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[34] HUMAN RIGHTS WATCH, ILLUSION OF JUSTICE: HUMAN RIGHTS ABUSES IN US TERRORISM PROSECUTIONS 27-41 (2014) (describing cases involving defendants with intellectual disabilities, mental health impairments, and financial trouble); United States v. Cromitie, 727 F.3d 194, 211 (2nd Cir. 2013) (describing informant's offer of incentives including "$250,000, a barber shop at a cost of $70,000, a BMW, and an all-expense-paid, two-week vacation to Puerto Rico"); United States v. Daoud, 980 F.3d 581, 585-86 (7th Cir. 2020) (describing undercover agent's provision of fake religious guidance purporting to endorse violence); United States v. Hayat, 2019 WL 176342, at *2 (E.D. Cal. Jan. 11, 2019) (describing paid informant's pressure on individual to attend a terrorist training camp in decision recommending vacating criminal conviction on the basis of ineffective assistance of counsel).

[35] One terrorism researcher points out that terrorist attacks are "very low base rate events" that generate "an enormous number of false positives," but that "special agents and juries cannot fully appreciate the ramifications of introducing older and authoritative FBI agents provocateurs that influence impressionable young men to do things such as detonating bombs that they would never have done on their own." Marc Sageman, *The Stagnation in Terrorism Research*, 26 TERRORISM & POL. VIOLENCE 565, 575 (2014).

[36] Graham Rayman, *Newburgh 4 Terror Case: Judge Sentences Three to 25 Years in Prison, U.S. Constitution Shivers*, VILLAGE VOICE (June 29, 2011); United States v. Cromitie, 727 F.3d 194, 210-12 (2nd Cir. 2013) (finding that informant's efforts to persuade Cromitie to commit a crime qualified as inducement, but sustaining conviction, in a 2-1 decision, under a broad interpretation that defendant was "predisposed" to commit the crime).

[37] Jesse J. Norris, *Accounting for the (Almost Complete) Failure of the Entrapment Defense in Post-9/11 US Terrorism Cases*, 45 L. & SOC. INQUIRY 194, 218 (2020).

government contrives offenses and steers criminal activity, partly because of historical concern about state surveillance of political dissidents.[38]

Across these and other counterterrorism practices, an overarching problem is that courts too often insulate these programs from real scrutiny. Courts often refuse to hear constitutional challenges to national security policies or apply a deferential standard of review, claiming that judges should not second-guess political judgments in national security matters.[39] In part because of such reasoning, the U.S. Supreme Court has ruled that human rights groups lack standing to challenge a National Security Agency surveillance program, that immigrants detained after September 11, 2001, cannot seek damages against high-level government officials responsible for the detentions, and that the Trump administration's travel ban does not violate the First Amendment Establishment Clause—despite evidence of animating hostility towards Muslims.[40] The Supreme Court is now considering whether the "state secrets" doctrine shields the government in cases stemming from torture at a secret CIA "dark site" abroad and FBI surveillance of Muslims.[41] In a society professing commitment to the rule of law, neither courts nor Congress should give carte blanche to the national security decisions of executive agencies.

II. Impact on Muslim, South Asian, and Middle Eastern Communities

Two decades after the onset of the U.S. wars on terror, Muslim, South Asian, and Middle Eastern Americans continue to face high levels of discrimination. In a 2017 Pew Research Center national survey of U.S. Muslims, about half of respondents reported experiencing at least one act of discrimination in the prior year, including nearly one in three who reported being "treated with suspicion" and one in five who reported being "singled out by airport security."[42] Those numbers rose for U.S. Muslim women and among those who say their appearance identifies them as

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[38] Jacqueline Ross, *Anti-Terror Stings and Human Subjects Research: The Implications of the Analogy for Notions of Entrapment and for the Pursuit of Strategic Deterrence*, 47 N.Y.U. J. INT'L L. & POL. 379, 388-89 (2015).

[39] Shirin Sinnar, *Procedural Experimentation & National Security in the Courts*, 106 CAL. L. REV. 991, 993 (2018). *See also* Shirin Sinnar, *Courts Have Been Hiding Behind National Security for Too Long*, Brennan Ctr. for Justice (Aug. 11, 2021), at https://www.brennancenter.org/our-work/analysis-opinion/courts-have-been-hiding-behind-national-security-too-long.

[40] Clapper v. Amnesty Int'l USA, 568 U.S. 398 (2013); Ziglar v. Abbasi, 137 S.Ct. 1843 (2017); Trump v. Hawaii, 138 S.Ct. 2382 (2018).

[41] United States v. Husayn (Abu Zubaydah), No. 20-827 (U.S. argued Oct. 6, 2021), 938 F.3d 1123 (9th Cir. 2019), *cert granted by* 141 S.Ct. 2564 (U.S. Apr. 26, 2021); FBI v. Fazaga, No. 20-828 (U.S. argued Nov. 8, 2021), 965 F.3d 1015 (9th Cir. 2020), *cert granted by* 141 S. Ct. 2720 (U.S. June 07, 2021).

[42] Pew Research Ctr., *U.S. Muslims Concerned About Their Place in Society, but Continue to Believe in the American Dream* (July 26, 2017).

Muslim.[43] Other national polling shows consistently high levels of U.S. Muslims reporting religious discrimination, and that half of Muslim families say their children in public school faced bullying in the past year because of their religion.[44]

The pervasive racialization of Muslim, South Asian, and Middle Eastern communities as "terrorists" over the past two decades has also magnified fears of hate violence for those communities, including for Sikh Americans. In 2012, a white supremacist who had been active in a neo-Nazi skinhead gang shot dead six Sikh worshippers at the Sikh Temple of Wisconsin.[45] Between 2015 and 2017, multiple reports documented a surge in hate violence directed at South Asian, Muslim, and Arab communities.[46] The advocacy group South Asian Americans Leading Together observed that this "wave of hate violence against South Asian, Muslim, Sikh, Hindu, Middle Eastern, and Arab communities" occurred at a level "not seen since the year after the attacks of September 11, 2001," amid anti-immigrant and racial rhetoric that created a "palpable and unparalleled atmosphere of hate and suspicion."[47]

Discrimination and hate violence affecting Muslim, South Asian, and Middle Eastern communities in schools, work, and on the streets have a relationship to government counterterrorism policies. Academic studies suggest that government rhetoric and policies towards particular groups can affect private discrimination and hate violence.[48] For instance, hostile rhetoric from elites targeting particular racial groups can embolden people to engage in hate violence against those

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[43] Id.

[44] Institute for Social Policy and Understanding, American Muslim Poll, Fifth Anniversary Collection 2015-2020 87-89 (2021).

[45] A.C. Thompson, *Sikhs in America: A History of Hate*, PROPUBLICA, Aug. 4, 2017.

[46] Eric Lichtblau, *Hate Crimes Against American Muslims Most Since Post-9/11 Era*, N.Y. TIMES, Sept. 17, 2016 (noting highest level of anti-Muslim hate crimes since the post-9/11 aftermath, based on police department data analyzed by the Center for the Study of Hate and Extremism at California State University-San Bernardino).

[47] SOUTH ASIAN AMERICANS LEADING TOGETHER, COMMUNITIES ON FIRE: CONFRONTING HATE VIOLENCE AND XENOPHOBIC POLITICAL RHETORIC 3 (2018).

[48] *See* Laura Dugan & Erica Chenoweth, *Threat, Emboldenment, or Both? The Effects of Political Power on Violent Hate Crimes*, 58 CRIMINOLOGY 714 (2020). Dugan and Chenoweth studied the relationship between U.S. federal government speech and policies supporting or opposing racial minorities and federal violent hate crime statistics between 1992 and 2012. They found support for two hypotheses drawn from earlier literature: the "political threat hypothesis," which "predicts that violent backlash against specific groups is triggered by political gains made by those groups," and the "emboldenment hypothesis," which predicts increases in hate crimes "triggered by government elites who signal supremacy over those groups, emboldening some members of the dominant group to commit violent action." Id. at 716. The study concluded that, in their data, federal actions against immigrants and Latinx persons emboldened violent hate crimes committed against them, but that federal speech and actions supporting Black people catalyzed violent backlash. Id. at 742.

communities.[49] Studies have also shown an increase in hate crimes following political events that change perceptions of social norms, such as the acceptability of anti-immigrant or racist views.[50] As legal scholars have long argued, government speech and policies that treat racial, ethnic, or religious communities as suspicious or dangerous encourage ordinary people to do the same.[51]

III. Moving Forward

Congress must revisit and roll back discriminatory counterterrorism policies. Restoring rights and liberties is not simply a job for the courts. Indeed, courts often insist that it is Congress, not the courts, which should assess the value of security policies against their harm.[52] While courts very much have a role to play, *all* branches of government have an independent responsibility to ensure that security policies align with democratic principles and rights and liberties.

As a first step, Congress should ensure that neither it, nor the administration, expands harmful counterterrorism policies in the name of addressing domestic terrorism. Much of the policy discussion on responding to new terrorist threats fails to consider, let alone correct, the excesses of prevention that have characterized U.S. counterterrorism. Although addressing political violence from white supremacists, anti-government militias, and others requires leadership and prioritization from a range of government agencies, it does not call for establishing

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[49] Id. at 743 ("Indeed, our results confirm evidence from other studies suggesting that hate speech among elites can motivate hate crimes among constituents.").

[50] For example, a number of empirical studies attributed a spike in hate crimes in England and Wales to the unexpected "Brexit" referendum vote to leave the European Union, which was associated with anti-immigrant sentiment. *See, e.g.*, Daniel Devine, *Discrete Events and Hate Crimes: The Causal Role of the Brexit Referendum*, 102 SOC. SCI. Q. 374, 374, 383 (2021); Joel Carr et. al, *Love Thy Neighbour? Brexit and Hate Crime*, IZA Institute of Labor Economics 2-5 (Nov. 2020), http://ftp.iza.org/dp13902.pdf; Facundo Albornoz et al, *The Brexit Referendum and the Rise in Hate Crime; Conforming to the New Norm*, Nottingham Interdisciplinary Centre for Economic and Political Research Working Paper (Nov. 9, 2020), https://www.nottingham.ac.uk/research/groups/nicep/documents/working-papers/2020/nicep-2020-06.pdf. *See also* Karsten Müller and Carlo Schwarz, *From Hashtag to Hate Crime: Twitter and Anti-Minority Sentiment* at 3-4 (July 24, 2020), available at SSRN: https://ssrn.com/abstract=3149103 (finding a "strong time series correlation between Trump's tweets on Islam-related topics and the number of anti-Muslim hate crimes after the start of his presidential campaign, even after controlling for general attention paid to topics associated with Muslims.").

[51] Legal scholars have theorized a relationship between the over 1,000 hate crimes targeting Muslim, South Asian, Sikh, and Arab communities in the months after September 11, 2001 and the explicit racial profiling of the U.S. government. *See* Muneer I. Ahmad, *A Rage Shared By Law: Post-September 11 Racial Violence as Crimes of Passion*, 92 CAL. L. REV. 1259, 1265 (2004); Leti Volpp, *The Citizen and the Terrorist*, 49 UCLA L. REV. 1575, 1582-83 (2002).

[52] *See, e.g.*, Elhady v. Kable, 993 F.3d 208, 225-27 (4th Cir. 2021).

new federal terrorism crimes, penalties, surveillance authorities, or "countering violent extremism" programs that expand law enforcement surveillance.

Second, Congress should conduct a holistic review of counterterrorism policies affecting U.S. Muslim, South Asian, and Middle Eastern communities, including FBI surveillance measures, terrorist watchlisting, and the use of informants and sting operations. That review should address not only oversight and accountability mechanisms, such as audits and complaint processes, but also fundamental questions related to the value of individual programs. It is long past time to undo the harm of preventative counterterrorism programs in favor of approaches to public safety that do not sacrifice the equality, well-being, and rights and liberties of these and other communities.



saalt south asian americans leading together

MUSLIM ABOLITIONIST FUTURES

February 25, 2022

Dear Chairman Nadler and Ranking Member Jordan,

As organizations that work within Muslim, Arab and South Asian communities at the local and national level, we are pleased to see the House Judiciary Committee holding an important March 1st Hearing on Discrimination and Civil Rights of Muslim, Arab, and South Asian communities. We recognize the tremendous work organizations have done to advocate for congressional hearings that center the erosion of civil liberties for our communities.

However, as organizations who are working with impacted communities, we are concerned about the framing of the hearing. We write to offer recommendations for future hearings pertaining to our communities. Such hearings are part of the official historical record and often end up painting a narrative and pushing policy recommendations that fail to clearly name state violence, structural Islamophobia, and the War on Terror policies as the drivers of individual acts of interpersonal violence. South Asian Americans Leading Together (SAALT) issued reports in 2017 and 2018 documenting the direct correlation between political rhetoric, federal policies, and the increase in incidents of hate violence, which continues today.

Increasingly, we have found that the limited framework of civil rights and civil liberties that often focuses exclusively on security and discrimination does not adequately capture the broad impacts of systemic violence on our communities, which include economic, health, housing, and education, among other social determinants. This limitation has continued to fail in comprehensively and substantively addressing the scope and magnitude of the violence our communities have experienced in the twenty years after 9/11.

We reiterate the requests in our statement for the record to the House Judiciary Committee in response to your April, 2019 Hearing on Hate Crimes and White Nationalism to once again take the following recommendations in planning hearings:

- Broaden the frame of "civil rights and liberties" to better understand how state violence, structural Islamophobia, and the War on Terror policies are the drivers of individual acts of interpersonal violence.
- Engage more directly and much further in advance with community-based organizations, grassroots and advocacy organizations at the local level in developing the framework for a hearing and identifying witnesses.
- Hold multiple panels that center survivors, impacted community members, and community-based organizations.

- Ensure such hearings are not government platforms for Islamophobes, bigots, and racists to promote their hateful agendas as if they are a legitimate juxtaposition to community-based testimony.
- Offer more lead time for organizations to submit statements for the record.
- Create space to hear directly from one group rather than grouping Muslim, Arab, and South Asian identities together. Often in such groupings, important racial, gender, ethnic, class, caste, and religious identities are erased.
- Invite grassroots and community-based groups to speak who hold an abolitionist and transformative justice framework to address state, institutional, and interpersonal forms of violence. We want to amplify the Muslim Abolitionist Futures grassroots policy agenda calling for abolishing the War on Terror and building communities of care and hope such hearings moving forward include progressive policy recommendations that tie together the various, intersecting, and complex root causes of violence rather than privileging narrow, reformist policy agendas.

As groups on the frontlines of defending our communities targeted by punitive government policies, our organizations hope there is a radical shift in how such hearings are carried out. Survivors of state violence, hate violence, and bigotry deserve honest inquiries and true justice from their elected officials. Congress must hold subsequent hearings that comprehensively and substantively confront and address these issues.

Signed,

Justice For Muslims Collective
South Asian Americans Leading Together (SAALT)
Muslim Abolitionist Futures Network

Muslim Community Network (MCN) statement for House Judiciary Hearing on Discrimination and the Civil Rights of the Muslim, Arab, and South Asian American Communities

February 25, 2022

Dear Members of The House Judiciary Committee,

First, we want to thank you for scheduling this important hearing focused on addressing the civil rights and liberties of Muslim, Arab, and South Asian American Communities. Founded in 2003, the Muslim Community Network (MCN) is NYC's go-to civil-society Muslim organization engaged in interfaith and civic-education work. MCN's mission, which emerged following the rise in Islamophobia and discrimination against Muslims in the United States after September 11, 2001, is to shape the public's understanding of Islam and what it means to be Muslim in the United States through civic education, leadership development, and advocacy. MCN's main policy and advocacy priorities includes: **1) hate crime prevention work to collect data on anti-religious hate crimes against Muslim communities in NYC and inform anti-discrimination laws and policies**; **2) diversity education to build bridges between the large Muslim-American population and other faith communities through speaker series and workshops at institutions such as schools, hospitals, government agencies, and private companies**; and **3) raising awareness on and advocating for policies and issues impacting the Muslim community on the city, state, and federal level.**

As part of our hate crime prevention work, MCN created a **Hate Crime Prevention Survey** in 2019, that was distributed in schools, Mosques, and other institutions across New York City. The survey collected data on how Muslims experience hate crimes by asking for age, gender, race, ethnicity of survivors, and the location of the incident. Additionally, the survey asks survivors to indicate the degree or severity of the crime committed by asking survivors to list the types of crime or bias committed, and a narrative of the incident. Lastly, the survey allows survivors to make proposals that will inform advocacy for hate crime prevention. In MCN's survey of 116 Muslims in NYC, the results showed that:

- **42.24% experienced anti-religious hate crimes in the form of verbal abuse**
- **41.38% were harassed based on their religion and ethnicity**
- **23.28% experienced hate crimes in the form of dangerous threats**
- **20.69% experienced cyberbullying**
- **17.24% were victims of physical assault**
- **7.76% experienced damage to their property**

In addition to this alarming data about the many ways that hate crimes are experienced in our communities, the survey results also revealed that the majority of Muslims who experience hate crimes in NYC are young people from ages 10-18 years old. However, college-aged Muslims are also experiencing hate crimes. For example, on March 17, 2021, 21-year-old Hofstra University student, Nafiah Ikram, spent 15 days in the hospital after the attacker threw acid on her face. Ikram suffered severe burns to her face, eyes, chest and arms, and may be permanently blind due to her contact lenses being burned into her eyes.

And while our work is primarily focused on NYC and the US, there is also a rise in hate crimes against Muslims in other countries as well. For example, just two weeks ago on February 9, 2021, Hoda Al-Jamaa, a 17-year-old student at Otago Girls High in New Zealand, who wears hijab (head scarf) suffered a concussion and ended up in the hospital after she was brutally beaten and had her head scarf ripped off by three non-Muslim students. The attackers spewed racial, ethnic, and religious slurs including, "terrorists" and "Muslim b*tches" at her and her other Muslim friends.

In order to reduce the number of hate crimes experienced by young people, MCN along with a broad coalition of faith leaders, civic institutions, educators, and community activists proposed for the passage of **Resolution 1257,** which called on the NYC Department of Education to include age-appropriate religious diversity courses in its curriculum and provide professional development training to educators in that area. We strongly urge members of this committee to also introduce and support legislation that condemns discrimination and bullying based on religion. Specifically, we join our colleagues in asking for the passage of the **Safe School Improvement Act** to mandate codes of conduct that prohibit bullying and harassment based on religion and all other protected categories. This will ensure the safety and protection of children of all ethnic backgrounds who practice different religions.

Without a doubt, now more than ever we need strong policy and legislation to immediately curtail any more devastating harm such as the incidents and statistics shared above. We join the numerous organizations, public servants, and elected officials who also strongly support the passage of both the **NO BAN Act** (H.R.1333 S.1891) and the **End Racial and Religious Profiling Act** (ERRPA Act H.R. 1280; S. 597). The **NO BAN Act** will require actual evidence of a threat before there can be any broad bans like the Muslim Ban. The **NO BAN Act** will help to ensure that future US presidents will not be permitted to ban individuals solely based on their religion. As you know, the **ERRPA Act** would prohibit federal, state, and local law enforcement from targeting a person based on actual or perceived race, ethnicity, national origin, religion, gender, gender identity, or sexual orientation without trustworthy information that is relevant to linking a person to a crime.

In addition to implementing the **ERRPA Act** and the **NO BAN Act,** we encourage the federal government to include grassroots Muslim organizations as part of organizations receiving funding to support the arrival of Muslim refugees. On November 9, 2022, MCN hosted a stakeholder meeting with over **30 Muslim Civil Society** organizations and national and international organizations such as the International Rescue Committee and Catholic Charities. The convening allowed for an exchange of cultural competency training on how to provide services to the large number of Afghan Muslim refugees fleeing the conflict in Afghanistan, the CBOs collectively identified how their services and focus intersect with the needs of the Muslim refugees, and thirdly, assisted in sharing resources to create a welcome booklet for Muslim refugees arriving in the United States. The stakeholders provide services such as culturally sensitive shelters for Muslim women and children, covid-19 vaccine education campaigns, job referrals and economic empowerment programs, food drives for hunger relief, assisting with access to medical insurance, providing language access, assisting with humanitarian parole applications, providing

services to IDPs coming from Haiti and so much more. It is crucial that federal funding for refugees does not only go to big national organizations, but also support the work that grassroots civil society organizations are doing.

The last issue we want to raise is regarding the National September 11 Museum. We recently sent a coalition letter to the Subcommittee on National Parks, Forests, and Public Lands to raise express our concern with the Museum asking for Federal funding, once again, and raise awareness on how it perpetuates hate and demonizes Islam and Muslims in the United States through the language and imagery used in some of the Museum's exhibits. We urge members of this Subcommittee to prevent Federal and taxpayer money from funding institutions that fuel hate and discriminate against minority groups.

We at the Muslim Community Network firmly believe that those of us closest to the problem are indeed closest to the solution, however, we remain furthest from the power and resources necessary for sustainable systemic change. We ask for your support in shifting this narrative. Once again, we thank the House Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties for holding this important hearing and allowing us to submit a statement on behalf of the Muslim Community. We are looking forward to strengthening this partnership to better serve and advocate for the rights, freedoms, and protection of all communities.

For any questions or inquiries, please feel free to reach out to us.

Sincerely,

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Home - Muslim Community Network NY (mcnny.org)

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Sources

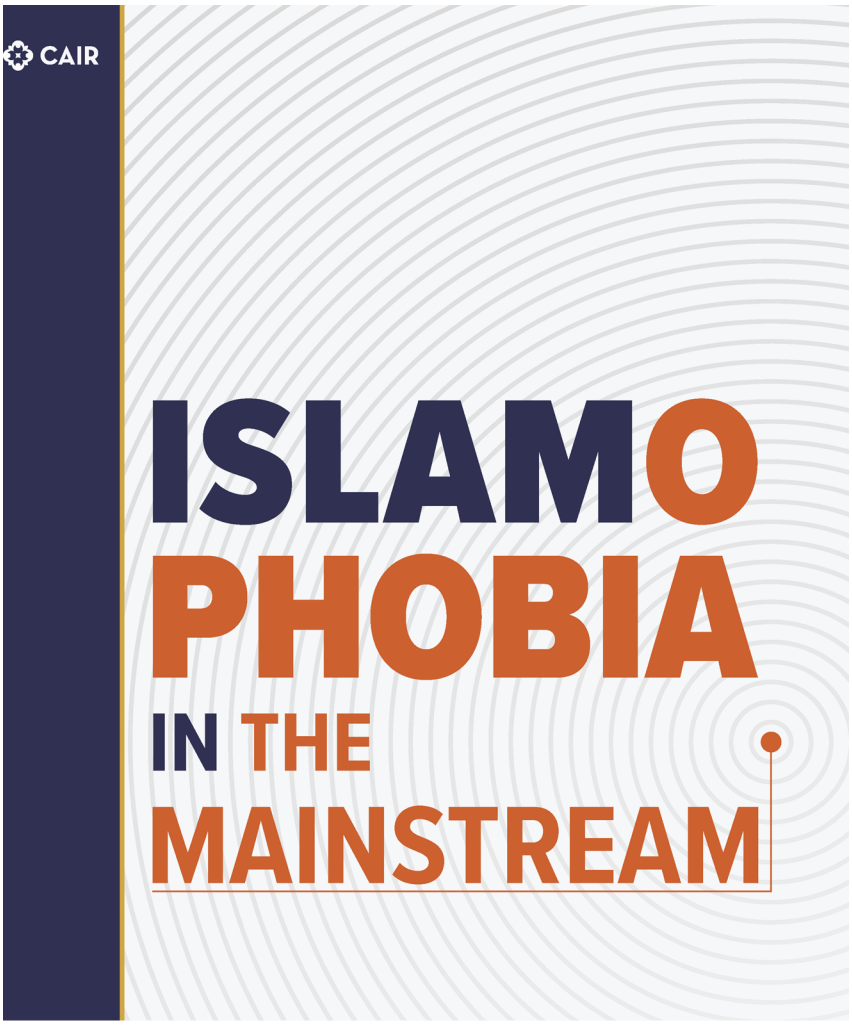
MCN Survey: MCN Hate Crime Prevention Survey (google.com)

MCN 2019 Survey Report: MCN HATE CRIME REPORT.pdf

Sources: https://www.nbcnews.com/news/asian-america/muslim-college-student-badly-burned-acid-attack-new-york-police-n1264950; https://www.cair.com/press_releases/cair-ny-welcomes-20k-fbi-reward-for-info-on-acid-attack-targeting-nafiah-ikram-in-nassau-county/

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Coalition Letter on 9/11 Museum Advocacy: Coalition Letter Regarding 9-11 Museum Advocacy (1).pdf


CAIR
ISLAMOPHOBIA
IN THE
MAINSTREAM

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CAIR is America's largest Muslim civil liberties and advocacy organization. Its mission is to enhance the understanding of Islam, encourage dialogue, protect civil liberties, empower American-Muslims, and build coalitions that promote justice and mutual understanding.

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ACKNOWLEDGMENTS: The primary author of this report is Huzaifa Shahbaz. A special thank you to Zai Rutter, a contributor to the CAIR research team, for his statistical analysis of the funding in the Islamophobia Network, which included producing graphs found in this report.

We wish to thank the following interns whose research assistance was invaluable during the production of this report: Chezliah Osman, Yasmeen McGettrick and Nyla Samee.

Design: Omar Alsaray

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EXECUTIVE SUMMARY

What would you do with $105,865,763? That's how much money was poured into 26 Islamophobia Network groups between 2017-2019 to spread misinformation and conspiracy theories about Muslims and Islam. Unfortunately, Islamophobia is still an acceptable form of bigotry in America.

This report builds off our previous work and exposes the funding behind U.S. Islamophobia Network groups between 2017-2019 by charitable institutions and foundations. Over the past few years, the Council on American-Islamic Relations (CAIR) has produced multiple reports documenting and exposing the funding stream behind the Islamophobia Network and its activities. ***Hijacked by Hate***, our most recent report found 1,096 organizations responsible for funding 39 groups in the Islamophobia Network between 2014 and 2016. Moreover, the report also revealed the total revenue capacity of the Islamophobia Network during this period to reach at least $1.5 billion.

The following report examines Islamophobia in 2019 and 2020. To assess the extent of Islamophobia, we look at five different aspects: funding of the Islamophobia Network, school bullying statistics from 2019 – 2020, anti-mosque incidents, the spread of Islamophobia on social media by institutional leaders, and Islamophobia within American politics.

What would you do with $105,865,763? That's how much money was poured into 26 Islamophobia network groups between 2017-2019 to spread misinformation and conspiracy theories about Muslims and Islam.

Contrary to popular opinion, these Islamophobic groups are not in the margins. They are fed millions of dollars to spread misinformation about Muslims and Islam, support anti-Muslim policies like the Muslim Ban using legal tools, and Lobby Special Interest Hate Groups. The first section of the report details which foundations and charitable institutions have funneled money into Islamophobia Network groups between 2017-2019. In addition, we document which groups have received these funds and how that money impacts American-Muslims.

Immediately following the first section, we discuss how widespread school bullying is for Muslim students. We draw on CAIR's school bullying reports from Texas, California, and Massachusetts to shed light on the lived experiences of Muslim students. Next, we detail anti-mosque incidents from 2019-2020. We place these incidents into the following categories; Damage, Destruction, Vandalism (DDV), Harassment, and Intimidation.

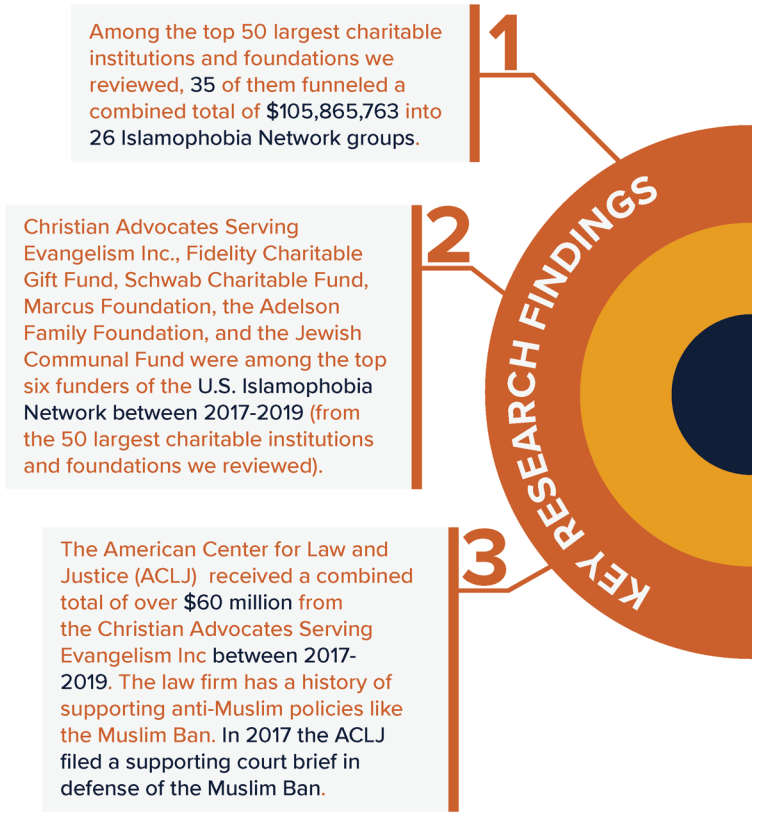
We then transition into a section titled Islamophobia and Social Media, identifying how institutional leaders have used social media to spread Islamophobia online. We define institutional leaders as ***individuals who hold a position of influence or power within our trusted institutions — for example, a school board member or a police chief.***

Furthermore, we document how multiple individuals with a history of Islamophobia were either appointed or nominated to serve in the Trump administration. Lastly, we detail anti-Muslim activities in American politics between 2019-2020. We hope this report illustrates how mainstream Islamophobia is and how foundations normalize anti-Muslim animus by pouring millions into organizations that produce misinformation.

Note to Reader

Although this report focuses on Islamophobia in the five areas mentioned above, we acknowledge the increasing levels of hate crimes and anti-Muslim bias incidents targeting American-Muslims. Though we do not go in-depth into this in the report, a few figures are worth noting. **In 2019, CAIR released a report documenting over 10,000 anti-Muslim bias incidents from 2014-2019. Moreover, in 2020, CAIR recorded over 6,000 complaints nationwide** ranging from discrmination, immigration and travel, incarceree rights, hate and bias incidents, and school incidents. Of these complaints, **241 accounted for hate and bias incidents**. Moreover, **CAIR documented over 500 complaints of anti-Muslim bias incidents in the first half of 2021** and four anti-mosque incidents in May alone.

CAIR will continue to protect civil rights in and out of the courtroom to ensure that American-Muslims receive the dignity and respect they deserve.



1

Among the top 50 largest charitable institutions and foundations we reviewed, 35 of them funneled a combined total of $105,865,763 into 26 Islamophobia Network groups.

2

Christian Advocates Serving Evangelism Inc., Fidelity Charitable Gift Fund, Schwab Charitable Fund, Marcus Foundation, the Adelson Family Foundation, and the Jewish Communal Fund were among the top six funders of the U.S. Islamophobia Network between 2017-2019 (from the 50 largest charitable institutions and foundations we reviewed).

3

The American Center for Law and Justice (ACLJ) received a combined total of over $60 million from the Christian Advocates Serving Evangelism Inc between 2017-2019. The law firm has a history of supporting anti-Muslim policies like the Muslim Ban. In 2017 the ACLJ filed a supporting court brief in defense of the Muslim Ban.



4 CAIR school bullying reports from select states demonstrate that students continue to face physical and verbal abuse for being Muslim and do not feel comfortable expressing their Muslim identity and engaging in classroom discussions about Muslims and Islam.

5 CAIR identified many anti-mosque incidents between 2019-2020, including incidents of damage, destruction, and vandalism (DDV), intimidation, and harassment.

6 Between 2019-2020, CAIR identified 40 instances where institutional leaders shared or posted anti-Muslim content online. *We define institutional leaders as individuals who hold a position of influence or power within our trusted institutions — for example, a school board member or a police chief.*

7 Seven individuals with a history of Islamophobia were either appointed or nominated to serve in the Trump administration.

METHODOLOGY

SECTION 1: THE ISLAMOPHOBIA INDUSTRY. TRACKING THE FUNDING BETWEEN 2017-2019

This section examines the top 50 funders of anti-Muslim bigotry documented in CAIR's previous report titled ***Hijacked by Hate*** (page 28). We were primarily concerned with the top 50 charitable institutions and foundations because they represented the largest sums of money ($100,000 – $32,400,000) donated to Islamophobia Network groups. Among the 50 foundations investigated, 35 poured money into Islamophobic groups. The remaining 15 did not contribute to Islamophobia Network groups or include their contributions in the 990 tax form. The top 50 foundations were organized into a single database.

The financial data was acquired by screening each charitable institution's and foundation's publicly available tax documents for 2017, 2018, and 2019. The 990 form is publicly available online approximately two years after filing. However, some tax forms filed for 2019 were not made public until later in the year. We obtained 990 forms from three primary sources; 1) Foundation Directory Online, 2) GuideStar, and 3) ProPublica. If a 990 form could not be identified on Foundation Directory Online for a particular year, we then moved to check GuideStar and so on. To ensure the accuracy of the compiled database, the grants were reviewed thrice by multiple researchers.
The graphs in this report were created using the computational software R. Most functions were performed in its base programming language with the exception of the graphic content, which was created in the tidyverse. Other libraries were used, such as cowplot, readxl, and viridis, to enhance the legibility of the plots.

To preserve the legibility of the graphs, we chose to omit Christian Advocates Serving Evangelism Inc. from the grand total plot. Since this foundation's scale superseded the rest of the donors, when plotted, it rendered the other bar graphs invisible. Christian Advocates Serving Evangelism Inc. is represented in a stand-alone graph to address this issue. This issue occurred again in the Top 10 organizations plot. Here, American Center for Law and Justice was omitted and printed in a separate graph.

The 990 forms for Fidelity Charitable Gift Fund (July 2016 – June 2017) had over 17,000 pages. Because this document was unsearchable and not alphabetized, we did not include it as part of our calculations for 2017.

A select few foundations whose tax documents began in July of 2016 and ended in June 2017 were included in our 2017 calculations because they accounted for January – June 2017. Those foundations include Combined Jewish of Greater Boston Inc, Jewish Communal Fund, Jewish Community Federation of San Francisco the Peninsula, Marin and Sonoma Counties, Schwab Charitable Fund, the Hellen Diller Family Foundation, the Jewish

Community Foundation. We included orange asterisks next to the appropriate foundation (pages 15-16) to signify this note.

Some names for the foundations were abbreviated in the graphs to preserve legibility and spacing. Lastly, the code used to create these graphs was reviewed for its accuracy by faculty at the University of Pennsylvania.

SECTION 2: SCHOOL BULLYING

For this section, we obtained key data from CAIR's school bullying reports from 2019 – 2020. We examined three reports from Texas, California, and Massachusetts to show just how pervasive Islamophobia was in the school system.

SECTION 3: ANTI-MOSQUE INCIDENTS

To obtain data on anti-mosque incidents from 2019-2020, we did a media analysis of two years worth of CAIR's press releases (2019 and 2020). CAIR's communications team has a consistent track record of identifying anti-mosque and anti-Muslim bias incidents immediately after they happen. We investigated each press release month by month to see when anti-mosque incidents occurred. Each incident was placed into the following three categories:

- **DDV:** Incidents involving property damage, destruction, or vandalism.
- **Harassment:** Demonstrations or acts that involve Islamophobic slurs.
- **Intimidation:** Threats of violence or other acts not involving property damage that are apparently intended to cause fear in those targeted by the act.

SECTION 4&5: ISLAMOPHOBIA AND SOCIAL MEDIA & ISLAMOPHOBIA AND POLITICS

Similarly to section three, we conducted a media analysis of two years worth of CAIR's press releases (2019 and 2020) for sections four and five. Section four lists anti-Muslim comments made by institutional leaders on social media platforms. We investigated each press release month by month to see when these posts were discovered and what was posted online. To determine whether a post was anti-Muslim, we used the definition of Islamophobia detailed in the following section of this report.

Note: We define ***institutional leaders*** as individuals who hold a position of influence or power within our trusted institutions — for example, a school board member or a police chief.

DEFINING ISLAMOPHOBIA

Although there are many competing definitions of Islamophobia, this report defines Islamophobia as the following:

Islamophobia is a fear, hatred, or prejudice toward Islam and Muslims that results in a pattern of discrimination and oppression. Islamophobia creates a distorted understanding of Islam and Muslims by transforming the global and historical faith tradition of Islam, along with the rich history of cultural and ethnic diversity of its adherents, into a set of stereotyped characteristics most often reducible to themes of violence, civilizational subversion, and fundamental otherness. Islamophobia must also be understood as a system of both religious and racial animosity that is perpetuated by private citizens as well as cultural and political structures.[1]

> Islamophobia is a fear, hatred, or prejudice toward Islam and Muslims

IDENTIFYING ISLAMOPHOBIA

An organization or individual is considered a part of the Islamophobia Network if it does any of the following or if it funds, partners with, or presents individuals or groups that:

1. Allege that Islam and Muslims are inherently or uniquely violent, misogynistic, inferior, intolerant, primitive, devious, or that Islam is the antithesis of civilization.

2. Allege that Islam is an existential threat to the U.S. and/or the "West" and that Muslims, or their representative institutions, are part of a plot to overthrow the "West" or America.

3. Support unequal treatment under the law for Islam or Muslims.

4. Allege that violent groups which falsely and perversely claim a religious cover possess the correct understanding of Islam.


SECTION 1
THE ISLAMOPHOBIA INDUSTRY TRACKING THE FUNDING BETWEEN 2017-2019

SECTION 1: THE ISLAMOPHOBIA INDUSTRY TRACKING THE FUNDING BETWEEN 2017-2019

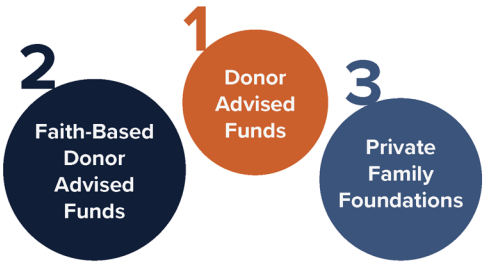
OVERVIEW

What would you do with $105,865,763? That's how much money was poured into the Islamophobia network between 2017-2019. The Islamophobia Network, also known as the Islamophobia Industry, is an interdependent network of politicians, think tanks, scholars, religious groups, and activists that distort Islam and Muslims for monetary and political gain. They share an ideology of extreme anti-Muslim hate and work with one another to negatively influence public opinion and government policy about Muslims and Islam.

What would you do with

$105,865,763?

Over the past several years, CAIR has produced reports to show how philanthropic institutions and foundations have funneled hundreds of millions of dollars into the activities of the Islamophobia Network. These institutions include household names such as Fidelity Charitable Gift Fund and Schwab Charitable Fund. In 2019, CAIR researchers found 1,096 organizations responsible for funding 39 groups in the Islamophobia Network between 2014 and 2016.[2] The report titled ***Hijacked by Hate*** also revealed the total revenue capacity of the Islamophobia Network during this period to reach an estimated $1.5 billion.[3] These funds were funneled by foundations into anti-Muslim, media, and educational institutions. Foundations are broken into three categories:



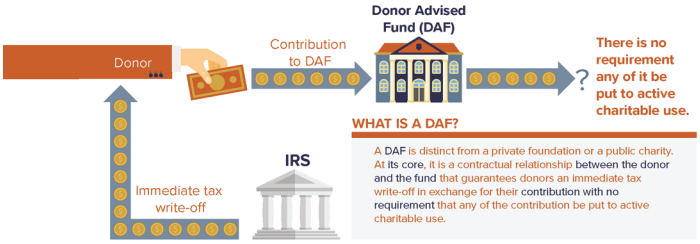
While some funds and private family foundations are ideologically aligned with anti-Muslim hate groups, like the Adelson Family Foundation, it is important to recognize that donor-advised funds (DAF's) are being exploited and abused by donors who seek to anonymize their contributions to anti-Muslim special interest groups and receive tax benefits. Although there has been an effort to raise awareness about this abuse, including the *Hate is Not Charitable Campaign*[4], some have argued that DAF's have exacerbated the problem of hate funding and have done little to implement best vetting practices of their participating donors.[5]

Others have also argued that although contributions to hate groups may be minuscule, it still contributes to a normalization of dangerous rhetoric and activity.[6] Some have called for Donor Advised Funds to adopt hate group policies and for the Internal Revenue Service (IRS) to have better vetting processes before giving an organization a "501c3" status.

> **Among the 50 largest charitable institutions and foundations we reviewed, 35 of them funneled a combined total of $105,865,763 into 26 Islamophobia Network groups.**

For this section, we examined the top 50 charitable institutions and foundations documented in ***Hijacked by Hate*** to see how much money was poured into the network between 2017-2019. We were particularly concerned with the top 50 charitable institutions and foundations because they represented the largest sums of money ranging from $100,000 – $999,999 and over $1,000,000. **Among the 50 largest charitable institutions and foundations we reviewed, 35 of them funneled a combined total of $105,865,763 into 26 Islamophobia network groups**. This section shows how much money was funneled into the Islamophobia Network from 2017 to 2019, which organizations provided funding to anti-Muslim groups, the top recipients of these grants, and its potential impact on American-Muslims. Lastly, we include graphs to illustrate the overall funding to Islamophobic groups between 2017-2019.

WHAT IS A DONOR ADVISED FUND?

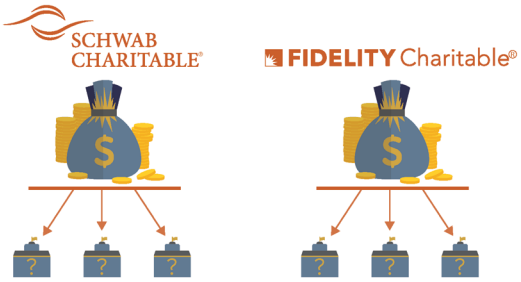


WHAT IS A DAF?

A DAF is distinct from a private foundation or a public charity. At its core, it is a contractual relationship between the donor and the fund that guarantees donors an immediate tax write-off in exchange for their contribution with no requirement that any of the contribution be put to active charitable use.

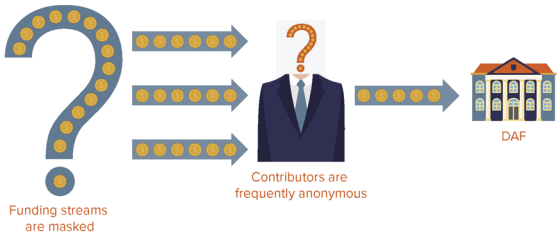
WHO HAS THE ULTIMATE AUTHORITY?

The largest DAFs in the country are administered through the charitable arms of major investment firms such as Fidelity and Schwab. Although a donor can suggest where they would like the money to be directed, the fund has ultimate authority on how to dole out the assets as each DAF has distinct criteria regarding which organizations it chooses to fund.



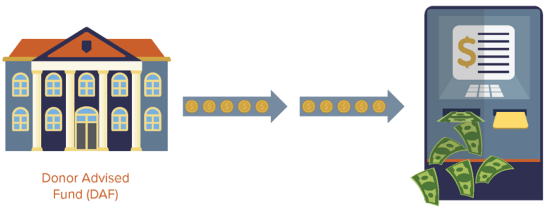
WHERE DOES THE MONEY COME FROM?

With a DAF, the contributor is frequently anonymous and thus impervious to scrutiny of their support of unsavory causes. In this way, a donor is able to *mask their funding streams*, making it nearly impossible to track charitable funding to its ultimate source. This lack of transparency poses a paradox: while DAFs ensure the secrecy of donor sources, they also impact public life by supporting charities that serve broad human and social services.



THE DARK MONEY ATM

Every year, millions of dollars are channeled through this "dark money ATM" brushed clean of fingerprints, and straight into the coffers of anti-Muslim groups. Also alarming is that donors contribute to Donor Advised Funds without knowing what other types of organizations the DAF is funding. Good-faith donors, then, may ot know that their DAF also funnels money to hate groups.



IMPACT OF THE NETWORK

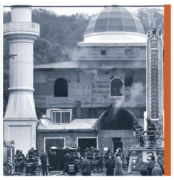
1 Spreading false information about Muslim communities in the United States and beyond through social media, the press, public hearings, and other avenues.



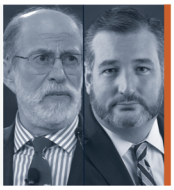
2 Supporting policies that negatively impact Muslim communities in the United States and overseas, such as the Muslim Ban.



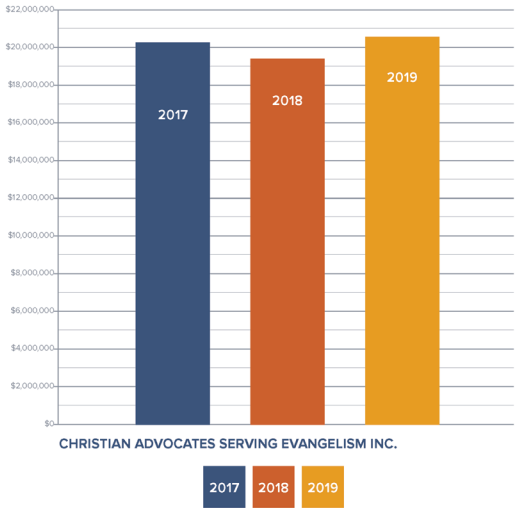
3 Violent targeting of local Muslim communities (anti-Sharia demonstrations and anti-mosque attacks).



4 Special interest lobbying by leaders of anti-Muslim hate groups. Frank Gaffney, the founder of The Center for Security Policy, a designated anti-Muslim hate group by the Southern Poverty Law Center, was appointed to Ted Cruz's National Security Coalition in 2016.



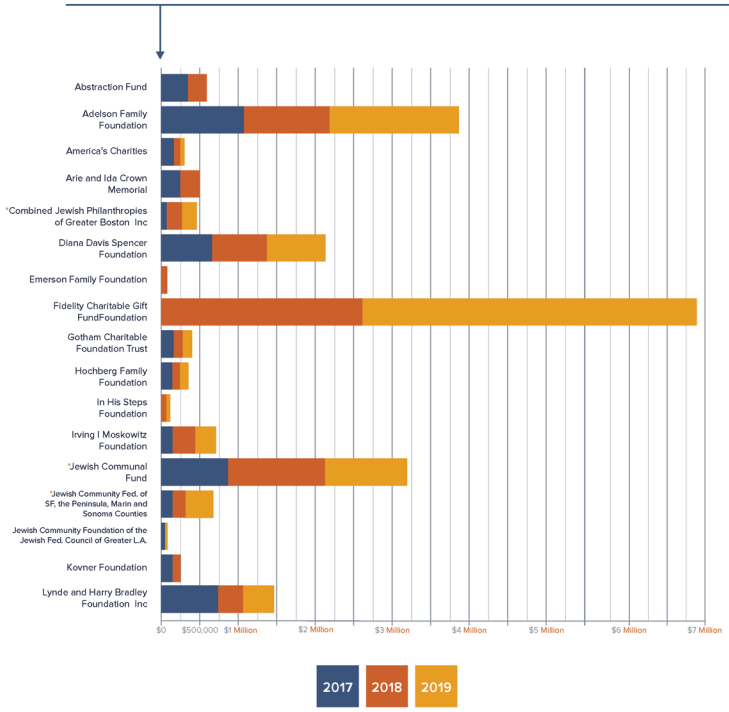
FUNDERS OF ANTI-MUSLIM BIGOTRY



Note: For purposes of clarity, we included Christian Advocates Serving Evangelism, Inc. in a separate graph due to its large funding amount.

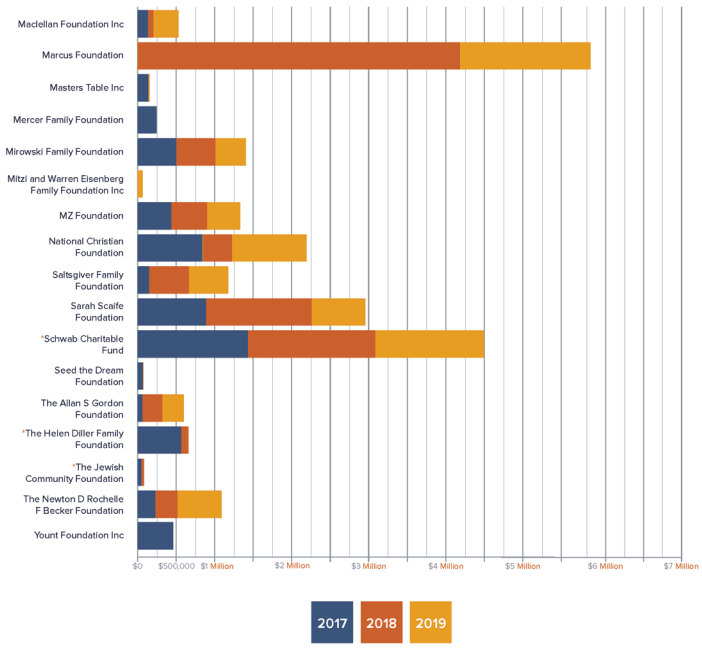
Note: Appendix A provides an example of contributions listed on a 990 tax form.

FUNDERS OF ANTI-MUSLIM BIGOTRY



*= Includes a part of 2016. Some tax documents began in July 2016 and ended in June 2017.

GRAND TOTAL: $105,865,763

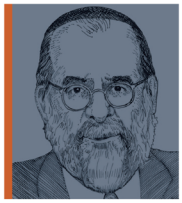


*= Includes a part of 2016. Some tax documents began in July 2016 and ended in June 2017.

QUICK FACTS:

1. Christian Advocates Serving Evangelism, Inc. funneled over $60 million into the American Center for Law and Justice between 2017-2019, a law firm with a history of supporting anti-Muslim policies like the Muslim Ban. In 2010, the ACLJ filed a lawsuit to prevent the construction of the Park51 Center, objecting to its two-block proximity to the site of the World Trade Center.[7]

2. The Fidelity Charitable Gift Fund poured close to $7 million into Islamophobia Network groups between 2017 and 2019. Between July 2017-June 2018, it gave the American Freedom Law Center (AFLC) $1,200,370. The organization was founded by attorneys David Yerushalmi and Robert J. Muise in 2012. In August 2017, the AFLC filed an amicus curiae brief in the U.S. Supreme Court supporting President Trump's Muslim Ban. According to a 2017 report released by the Haas Institute at UC Berkeley, Yerushalmi's 2010 draft of "American Laws for American Courts (ALAC)" has served as the model for the enactment of 18 anti-Muslim laws in states in the U.S. between 2010 and 2016.[8]



David Yerushalmi

3. The Adelson Family Foundation gave nearly $4 million to Islamophobia Network groups between 2017-2019. The foundation gave a combined $3 million to the Middle East Media Research Institute (MEMRI) between 2017-2019. MEMRI has an established reputation for distributing highly selective, distorted, and inaccurate translations of Arabic and Persian media. Through these selections, the organization attempts to portray Muslims and Arabs as inherently irrational and violent. CNN's Arabic department also found "massive problems" with MEMRI's translation of the program.[9]

The Fidelity Charitable Gift Fund poured close to $7 million into Islamophobia Network groups between 2017 and 2019. Between July 2017-June 2018, it gave the American Freedom Law Center (AFLC) $1,200,370.

4. The Jewish Communal Fund funneled over $3 million into Islamophobia Network groups between 2017-2019. In July 2017-June 2018, they gave the American Freedom Defense Initiative (AFDI) $50,000. The organization has been characterized as an extremist anti-Muslim hate group, known for its demeaning print media advertising that has likened Muslims to savages. The president of the organization is Pamela Geller. The group protested the construction of Park51, stating that the project would "insult the victims of 9/11" and "establish a beachhead for political Islam and Islamic supremacism in New York." In 2015, the organization held a "Muhammad Art Exhibit and Cartoon Contest" in Garland, Texas, attempting to counteract an anti-Islamophobia event hosted by CAIR at an earlier date.[10]



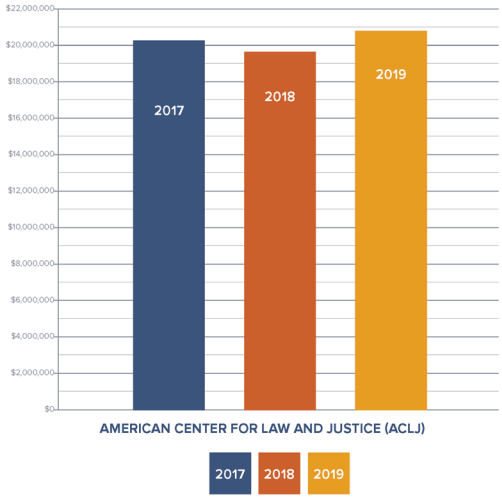
Pamela Geller

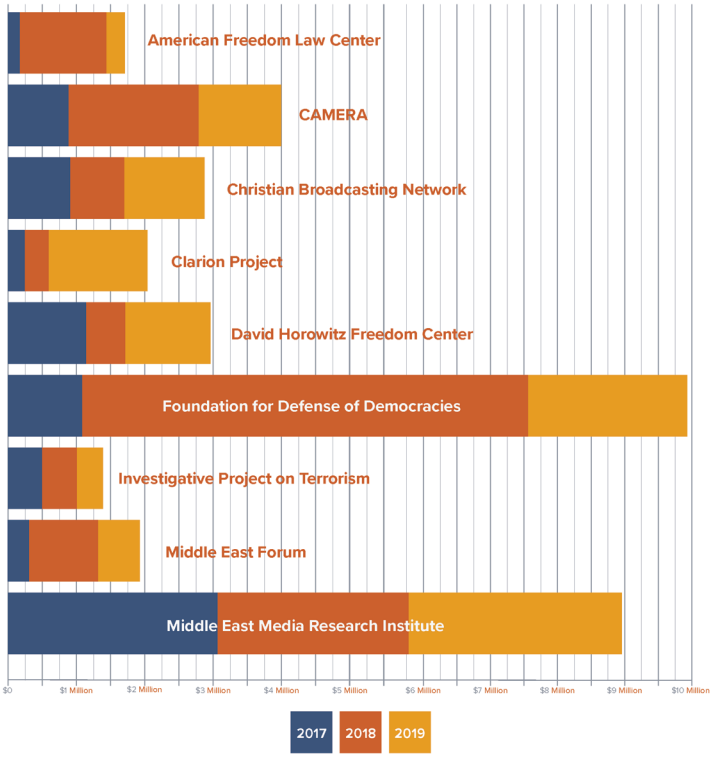
5. The Diana Davis Spencer Foundation poured more than $2 million to anti-Muslim groups between 2017-2019. It gave a combined total of $80,000 to the Gatestone Institute between 2017-2019. A report titled "Fear Inc" by the Center for American Progress found that the fund is one of the "top seven contributors to promoting Islamophobia in our country" and has put forth $2.8 million to "organizations that fan the flames of Islamophobia" since 2000. The Gatestone Institute employs false information regarding Muslim refugees in Europe to stoke fear and hatred of Muslims in the West, including the fabricated idea of "no-go zones."[11]

"top seven contributors to promoting Islamophobia in our country" and has put forth $2.8 million to "organizations that fan the flames of Islamophobia" since 2000.

TOP TEN RECIPIENTS OF GRANTS

Note: For purposes of clarity, we included the ACLJ in a separate graph due to its large revenue amount.




American Freedom Law Center
CAMERA
Christian Broadcasting Network
Clarion Project
David Horowitz Freedom Center
Foundation for Defense of Democracies
Investigative Project on Terrorism
Middle East Forum
Middle East Media Research Institute
$0
$1 Million
$2 Million
$3 Million
$4 Million
$5 Million
$6 Million
$7 Million
$8 Million
$9 Million
$10 Million
2017
2018
2019

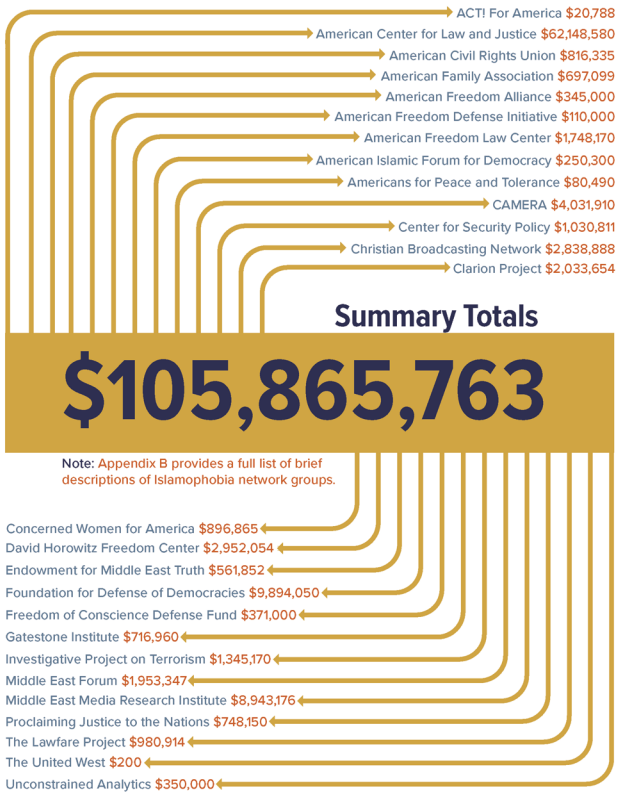
QUICK FACTS:

1. The Committee for Accuracy in Middle East Reporting in America (CAMERA) received more than $4 million in grants between 2017 – 2019. CAMERA cites the work of notoriously Islamophobic individuals to discredit American-Muslims and Muslim organizations. In 2012, CAMERA published a report called The Islamic Society of North America: Active, Influential and Rooted in the Muslim Brotherhood. The report accuses multiple American-Muslim organizations and individuals to be front groups for terrorism.[12]

2. The Middle East Forum received close to $2 million between 2017 – 2019. The Middle East Forum (MEF) is an independent 501c3 non-profit organization founded by Daniel Pipes that uses its platform to portray Islam as an inherently violent ideology and "imperialist faith." In a 2016 blog post criticizing President Obama's visit to a mosque, Pipes wrote that it is reasonable for "non-Muslims [to] worry that a co-worker will behead them or attack them at a party, that they'll be bombed attending a sporting event, or rammed into by planes when working at their offices." In a 1990 article for the *National Review*, he referred to Muslims as "brown-skinned peoples cooking strange foods and maintaining different standards of hygiene."[13]

The Committee for Accuracy in Middle East Reporting in America (CAMERA) received more than $4 million in grants between 2017 – 2019.

3. The Foundation for Defense of Democracies (FDD) obtained close to $10 million in grants between 2017-2019. FDD is a neoconservative lobbying group that advances the Islamophobic "war on terror" narrative and associated policies and practices. In November 2007, FDD Senior Fellow Andrew McCarthy wrote in *National Review* that the Bush administration, in trying to forge a two-state solution, was "hellbent on granting statehood to savages who worship 'martyrdom.'"[14]


ACT! For America $20,788
American Center for Law and Justice $62,148,580
American Civil Rights Union $816,335
American Family Association $697,099
American Freedom Alliance $345,000
American Freedom Defense Initiative $110,000
American Freedom Law Center $1,748,170
American Islamic Forum for Democracy $250,300
Americans for Peace and Tolerance $80,490
CAMERA $4,031,910
Center for Security Policy $1,030,811
Christian Broadcasting Network $2,838,888
Clarion Project $2,033,654
Summary Totals
$105,865,763
Note: Appendix B provides a full list of brief descriptions of Islamophobia network groups.
Concerned Women for America $896,865
David Horowitz Freedom Center $2,952,054
Endowment for Middle East Truth $561,852
Foundation for Defense of Democracies $9,894,050
Freedom of Conscience Defense Fund $371,000
Gatestone Institute $716,960
Investigative Project on Terrorism $1,345,170
Middle East Forum $1,953,347
Middle East Media Research Institute $8,943,176
Proclaiming Justice to the Nations $748,150
The Lawfare Project $980,914
The United West $200
Unconstrained Analytics $350,000

RECOMMENDATIONS

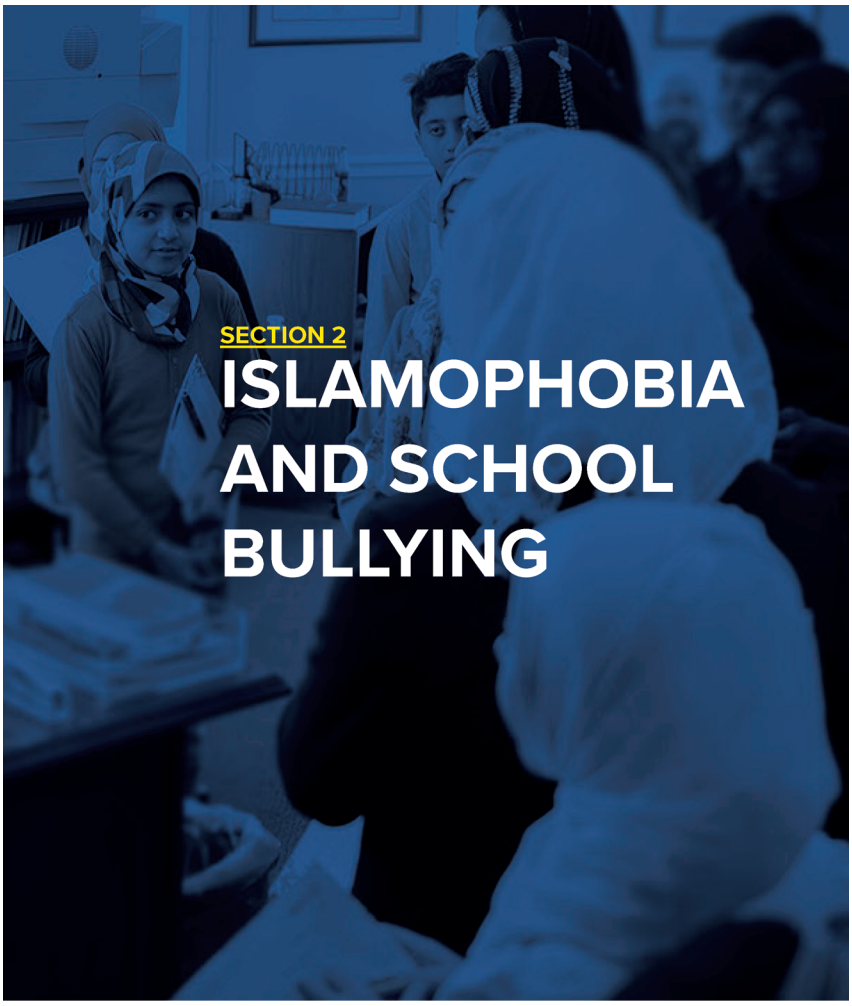
1. Charitable institutions should implement clear anti-hate policies and procedures to ensure funds are not granted to hate groups.

2. Interfaith communities and religious institutions should design and implement faith-based programs dedicated to marginalizing hate speech and anti-Muslim bigotry in local communities.

3. Philanthropic institutions should familiarize staff and stakeholders with the major actors and influencers in the Islamophobia Network.

4. Organizations should investigate their grantmaking procedures to learn if they are intentionally or unintentionally funneling money to Islamophobia network groups.

5. Philanthropic and religious institutions should hold educational initiatives for staff and board members to understand the scope of anti-Muslim bigotry and what constitutes Islamophobia.



SECTION 2

ISLAMOPHOBIA AND SCHOOL BULLYING

SECTION 2: ISLAMOPHOBIA AND SCHOOL BULLYING

Bullying incidents against Muslim students continue to remain high. Every year around the anniversary of September 11, CAIR receives a spike in reporting from parents whose children have experienced bullying in and out of the classroom from either a peer, teacher, or administrator. CAIR chapters across the country have issued surveys to better understand the lived experiences of American-Muslim students. Below, you will find some of the key findings and lived experiences of American-Muslim students from these reports in 2019-2020. Moreover, you'll learn about the appointment of anti-Muslim activist Laurie Cardoza-Moore to the Tennessee State Textbook and Instructional Materials Quality Commission.

2019-2020

Leader of Anti-Muslim Hate Group Appointed as the Tennessee State Textbook and Instructional Materials Quality Commissioner:

In November 2020, Tennessee House Speaker Cameron Sexton appointed anti-Muslim activist Laurie Cardoza-Moore to the Tennessee State Textbook and Instructional Materials Quality Commission.[15]

> Cardoza-Moore is the founder of Proclaiming Justice to the Nations (PJTN), which the Southern Poverty Law Center designated as an anti-Muslim hate group.

Cardoza-Moore is the founder of Proclaiming Justice to the Nations (PJTN), which the Southern Poverty Law Center designated as an anti-Muslim hate group. Cardoza-Moore led opposition to a mosque in Murfreesboro, Tenn., and opposed a mosque in New York City. On "The Daily Show," she claimed that "30 percent" of Muslims "are terrorists" and that there are already "35 training camps in America."[16]

CAIR-Texas (Dallas Fort-Worth) Reporting

A survey conducted by the CAIR-DFW office covering the Greater Dallas Fort-Worth areas reached a total of 321 Muslim students between the ages of 11 and 18 who were enrolled in public and private schools statewide.[17] Findings from the survey found that:

1. 48% of respondents experienced some type of bullying including verbal insults, physical abuse, and cyberbullying.

2. 25% of respondents did not respond that they felt welcome and respected in school. Additionally, 41% of Muslim students did not respond that they feel comfortable engaging in class discussions about Islam and Muslims.

3. 42% of the survey respondents reported that students from their school make offensive statements and posts about Islam and Muslims online.

4. 15% reported having their hijab tugged, pulled, or other forms of offensive touching. In addition to showing peer-to-peer bullying, the survey results show bullying and discrimination from teachers, administrators, and other officials at 18%.

5. 23% reported being victims of cyberbullying.[18]

CAIR-Massachusetts Reporting

CAIR-Massachusetts administered a survey to 190 students in grades 6-12 across the Commonwealth between 2019-2020.[19] Findings from the survey found that:

1. 61% report being made fun of, verbally insulted or abused for being Muslim.

2. 40% have heard of someone who wears a hijab being physically harassed at their school.

3. 17% report having their hijab tugged, pulled on, or other forms of offensive touching.

4. 33% have altered their appearance, behavior, or names to hide the fact that they are Muslim.

5. 43% have witnessed another student being bullied for being Muslim.[20]

Muslim Students in Their Own Words:[21]

"They [teachers and administrators] know what's going on but they try and cover it up. My freshman year I got bullied a lot and an administrator told my mom we should move to Cambridge."

"I was in middle school, one guy tugged on my hijab and I was too scared to tell anyone."

"Bullying is something that is taken lightly in our school. Though there might not be physical bullying, there is bullying in regard to comments and teasing from classmates. In my opinion I feel like bullying against Muslim students is

not taken as serious as it should. I think that we should have lessons in class regarding Islamophobia."

"Last year a teacher made fun of me for fasting, another teacher exclaimed that a brown student with a beard looked "like a terrorist."

"I was in 10th grade when it happened, it was [the anniversary of] 9/11 ... one of the students associated me with the attacks and kept on following me and calling me Osama's daughter. I told my parents and the school and they took care of it, although no one has said that to me since I still get glares and snickers and snarky remarks."

CAIR-California Reporting

CAIR-California's 2018-2019 survey was conducted by the four CAIR-CA offices covering the Greater Los Angeles, Sacramento Valley, San Diego, and the San Francisco Bay Area regions. It surveyed approximately 1,500 Muslim students between the ages of 11 and 18 who were enrolled in public and private schools statewide.[22] Findings from the survey found that:

1. 30% of respondents reported not feeling welcomed and respected in school, compared to 31% in 2016.

2. 28% of Muslim students reported not feeling comfortable letting others know that they are Muslim.

3. 35% of the 2018 survey respondents reported that their peers make offensive statements and posts about Islam and Muslims online.

4. In the 2018-2019 survey, 40% of respondents reported that students at school were bullied for being Muslim.

5. CAIR-CA also considered gender-based differences in survey responses. More female students reported experiencing bullying, with 44% of female respondents reporting being bullied compared to 37% of male respondents.[23]



SECTION 3

ANTI-MOSQUE INCIDENTS FROM 2019-2020

SECTION 3: ANTI-MOSQUE INCIDENTS FROM 2019-2020

From vandalism to harassment to intimidation, anti-mosque incidents continue to rise across the country despite increasing levels of security. 2015 accounted for the most ever cases in the Damage, Destruction, Vandalism and Intimidation categories and Intimidation category.[24] New America, a think tank based in Washington DC, conducted a study of anti-Muslim hate, which found 763 separate incidents from 2012-2018.[25] Of these incidents, over 170 accounted for hate incidents against mosques and Islamic centers.[26] Using a media analysis approach, we provide a detailed breakdown of anti-mosque incidents from 2019-2020. Lastly, it's important to note that many incidents go unreported due to fear of retaliation. Anti-mosque incidents are categorized into three categories; Damage, Destruction, Vandalism (DDV), Harassment, and Intimidation.

Definitions:

- **DDV:** Incidents involving property damage, destruction, or vandalism.
- **Harassment:** Demonstrations or acts that involve Islamophobic slurs.
- **Intimidation:** Threats of violence or other acts not involving property damage that are apparently intended to cause fear in those targeted by the act.

Islamic Center of Grand Junction



2020 ANTI-MOSQUE INCIDENTS

DDV

Charleston, South Carolina, February 2020 - A College of Charleston student was arrested and charged for vandalizing the Islamic Center of Charleston. The words "Utterly Blessed" and an indistinguishable symbol were painted on the wall at the Islamic Center of Charleston.[27]

Minneapolis, Minnesota, March 2020 - Masjid Al Nur and a Muslim-owned business in Minneapolis were vandalized with hate messages including "F**** Allah" outside their buildings.[28]

Cape Girardeau, Missouri, April 2020 - Nicholas J. Proffitt set the Cape Girardeau Islamic Center on fire. Proffitt was charged with damaging religious property because of the property's religious character, using fire to commit a federal felony, and damaging a building used in interstate commerce through the use of fire.[29]

Indianapolis, Indiana, May 2020 - Bullets were shot into Masjid-E-Noor narrowly missing worshippers inside the mosque. A handful of worshippers were inside the mosque following a sunset prayer on Eid al-Fitr, a holy day celebrated by Muslims worldwide to mark the end of Ramadan.[30]

Calcium, New York, June 2020 - There was a burglary at the Islamic Center of Northern New York where equipment was stolen and religious items.[31]

Warren, Michigan, July 2020 - The Al Ihsaan Islamic Center was vandalized resulting in several broken windows and a hammer left at the scene. The executive director of CAIR-MI stated there has been opposition to the expansion of Islamic centers in Warren and other locations and says there have been threats against local mosques.[32]

HARASSMENT

Riverside, California, January 2020 - A Riverside resident made threats and derogatory statements about Muslims at the Islamic Center of Riverside and assaulted a security guard. He was booked into Robert Presley Detention Center on suspicion of four misdemeanors: assault, violation of civil rights, vandalism in the court of violating civil rights, and trespassing.[33]

INTIMIDATION

Nashville, Tennessee, June 2020 - A sign at the Islamic Center of Nashville was vandalized. An unidentified man changed the lettering on a marquee from "Black Lives Matter" to "All Lives Matter."[34]

2019 ANTI-MOSQUE INCIDENTS

DDV

Katy, Texas, January 2019 - Shots were fired into the Muslim American Society-Katy Center mosque. Bullet holes were found in the windshield of a contractor's truck parked at the mosque and in one of the mosque's front walls.[35]

New Haven, Connecticut, May 2019 - A New Haven mosque was intentionally set on fire as determined by the New Haven Fire Department.[36]

Grand Junction, Colorado, September 2019 - A man vandalized the sign of Two Rivers Mosque with "nondescript designs" and destroyed the flower bed around it.[37]

HARASSMENT

No data found.

INTIMIDATION

Baltimore, Maryland, March 2019 - The Maryum Islamic Center in Howard County received an online threat that read "You know the only thing you don't want us to do is really show up right. And here's what I say I got your address now mother*****s maybe you'll be next." The phrase "maybe you'll be next" was taken as a possible reference to the mosque massacres in New Zealand.[38]

Phoenix, Arizona, March 2019 - Noel Thomas Becht, 40, was taken into custody and booked into Maricopa County Jail on charges of threatening and intimidating the United Islamic Center of Arizona. Becht made a sawing motion against his throat while speaking to a leader of the United Islamic Center of Arizona. "The vice imam said, 'What does that mean? Why are you doing that?' [Becht] said that 'you will know later.'"[39]

Miami Gardens, Florida, May 2019 - A man used social media posts that threatened to "kill Muslims one by one" at the Islamic Center of Greater Miami-Masjid Gardens. One posting read "(Expletive) the Muslim who stole my phone. (Masjid 183) I'm going to have your hand, with no trial, no due process. #TRYME."[40]

Petersburg, Virginia, May 2019 - A Dinwiddie, VA woman was charged for making a bomb threat to the Muslim Center in Petersburg.[41]

Los Angeles, California, July 2019 - A suspicious package was found near the Islamic Center of Northridge, Granada Hills Masjid. The bomb squad responded and discovered a pressure cooker in a paper bag.[42] The bomb squad detonated the package. The pressure cooker was determined to have been empty.

A couple of hours before the package was discovered, the mosque had reported a YouTube personality, known as "Furry Potato," who was harassing worshippers.

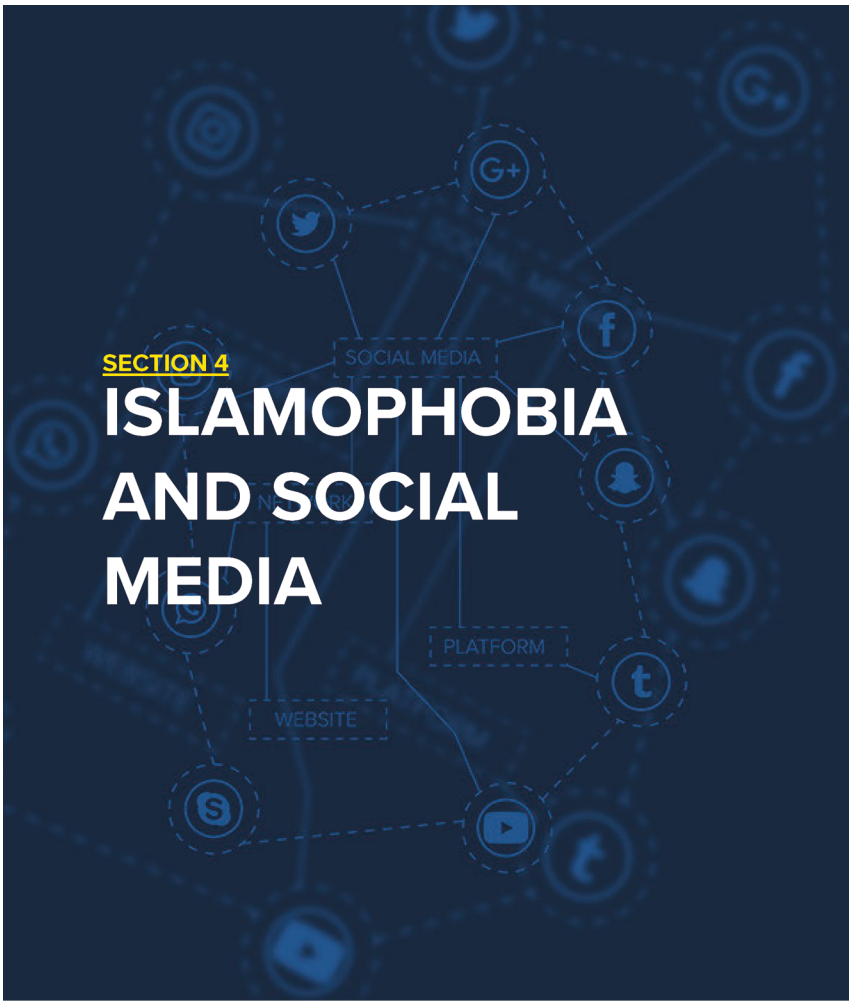
The man posted two videos – more than two hours in length – outside the mosque, filming worshippers coming in and outside of the mosque.

Breakdown of Anti-mosque Incidents 2019-2020

DDV: 9
Harassment: 1
Intimidation: 6
Grand Total: 16 anti-mosque incidents

Diyanet Mosque of New Haven





SECTION 4

ISLAMOPHOBIA AND SOCIAL MEDIA

SECTION 4: ISLAMOPHOBIA AND SOCIAL MEDIA

Islamophobia has not only plagued our societies but our social media platforms as well. Studies show that following the 2016 election, Muslims experience Islamophobia "more frequently online than face to face."[43] Muslim Advocates, an advocacy and civil rights group, even sued Facebook executives for failing to remove anti-Muslim hate speech.[44] Facebook's own civil rights audit found that the website "created an atmosphere where Muslims feel under siege."[45] Israeli lobby groups have also used Facebook ads to target Congresswoman Ilhan Omar by associating her Muslim identity with terrorism.[46] In this section, we expose how institutional leaders use social media platforms to spread anti-Muslim animus.

We define institutional leaders as individuals who hold a position of influence or power within our trusted institutions. For example, a school board member or a police chief.

Below, you'll find a list of anti-Muslim posts CAIR identified between 2019-2020 by leaders of civic institutions. Although some anti-Muslim content was produced on social media before 2019, they weren't discovered until 2019 and 2020.

ANTI-MUSLIM COMMENTS DISCOVERED IN 2020

Kokomo, Indiana, January 2020 – Common Council member Gregery Jones resigned from his position after racist social media posts were discovered on his Facebook page. The posts called Muslims "goat humpers."[47]

Muscatine, Iowa, April 2020 – Muscatine County Jail Administrator Dean Naylor characterized Muslims as "the beast" in an 11,500-word treatise entitled "End Times – We Are Here!!" He writes in part "The people following the Muslim faith are nothing more than pawns to the devil … Allah is Satan, no doubt. Christians need to wake up and understand this. The Muslim world is bowing five times a day to the devil and they don't know it … Islam has 2 billion followers, they hate Jews and Christians (and) they can have a 200-million-man army … Our fellow servants will turn on us and rat us out to the Satanically led Muslims who will be hunting us."[48]

Jersey City, New Jersey, May 2020 – Jersey City Republicans tweeted against newly-appointed Jersey City Councilman Yousef Saleh, claiming Saleh is hiding "his plans to implement #ShariaLaw into #NewJersey. . .#islamicterrorism." Another tweet stated in part, "unelected #muslim vows to implement #ShariaLaw in #newjersey by taking oath on the Koran."[49]

California's 10th District, California, May 2020 – Ted Howze, a Republican challenging Democratic Rep. Josh Harder in a battleground district in California in 2020 deleted social media posts and retweets that described Islam as "a death cult" and prophet Muhammad as a "rapist" and a "pedophile."[50]

New York City, New York, June 2020 – In a Facebook post, Rockaway Community Board 14 member Eddy Pastore suggested that the candidate for Democratic District Leader Tory Schnupp has alternative motives due to her Middle East origins and family relations. He wrote "she is a Muslim and her husband was born in Lebanon and grew up in Kuwait. Her whole family born in the Middle East. I don't think it was fate that they found one another in America. I'm not so fast to stand behind people who probably have alternative reasons. As far as being a homeowner, we'll [well] you can learn that one on your own."[51]

Whittier, California, June 2020 – Whittier City Council Member Jessica Martinez made repeated racist and Islamophobic tweets targeting Muslims, Asians, and indigenous people. On June 2, Martinez replied to a conservative pundit who shared a story about Rep. Ilhan Omar saying the Minneapolis police should disband: "So that they can institute a muslim [sic] sharia law community patrol?"[52]

On Sept. 17, 2019, Martinez replied to a conservative blogger who posted about Rep. Omar that Omar "can go back to wherever she came from and REALLY be a victim."

San Jose, California, June 2020 – On a private Facebook group named 10-7ODSJ, a retired SJPD police officer posted a link about a Los Angeles police officer pulling off a woman's hijab. Mark Pimentel, an active SJPD officer who was recently documented policing protests while refusing to wear a mask, commented on the post "Hell, I would have pulled it over her face." When another retired police officer posted about Black Lives Matter, calling them "racist idiots," "un-American" and "enemies", Mark Pimentel, again, chimed in and replied, "black lives really don't matter."[53]

***In 2015**, Sergeant Chris Sciba posted a graphic image on his Facebook page which stereotyped all Muslims as being terrorists. He is currently an SJPD trainer on race-bias policing. The author of the *Medium* article writes, "They (SJPD) hired Sciba to teach on the very subject of race-bias policing, we have to ask if SJPD shares the same view that Sciba has on Muslims, and allows such racist stereotypes to exist."

Baltimore, Maryland, July 2020 – In a social media post, then Calvert County Board of Education candidate Dawn Keen claimed that "equity stuff was planned by terrorists, and [the constituent who challenged her false interpretation of equity was] hoodwinked by Islamist terrorism."[54]

Keen also commented that people "whose skin is Black work less" than people "whose skin is white", and that "equity is racism."

Maywood, California, July 2020 – Maywood City Clerk Gerardo Mayagoitia posted an image on Facebook of the 2001 attack on the World Trade Center with the caption:

"I Haven't Forgotten 9-11 Have You??

"Congresswoman Ilhan Abdullahi Omar has No Problem with what happened on 911 as a Matter of fact she belongs to CAIR an Organization that supports Terrorist who were involved on the attack of the World Trade Center." Other Facebook posts showed conspiracies linked to the Black Lives Matter movement and Reps. Omar, Rashida Tlaib, Ayanna Pressley, and Alexandra Ocasio-Cortez, dubbed "The Squad."[55]

Washington, D.C., July 2020 – Trump retweeted a July 21st post by Paul Sperry, who wrote, "BREAKING: Biden wishes public schools taught more about Islam; promises Muslims he will end terrorism-related ban on immigration from high-risk Islamic nations "on Day One."

According to Georgetown University's Bridge Initiative, Sperry has blamed Islam for the spread of the Ebola virus, called former President Barack Obama the "defender-in-chief of Islam," warned of an "Islamic fifth column" growing inside America, accused tax reform activist Grover Norquist of "ties to militant Muslim activists," and written multiple debunked books attacking Islam and Muslims.[56]

Lafayette, Louisiana, July 2020 – Lafayette Parish Mayor-President appointed Connie Boyer to the Heymann Performing Arts & Frem Boustany Convention Center Advisory Commission. In a "repost" from July 25, Ms. Boyer referred to President Obama as a "Muslim President" who created "Muslim districts so those 4 Muslims could have seats in our Congress."[57]

Grand Chute, Wisconsin, August 2020 – Fox Valley Technical College's spokesman, Chris Jossart, commented "Islam is all over the world infiltrating every nation, and (Joe) Biden wants their beliefs in our already tainted public school curriculum." to a *Jerusalem Post* article shared on LinkedIn.[58]

He also "liked" a post that included a photo of Michael Brown accompanied by text reading, "I'm Michael Brown. I'm dead. Shot by a cop while I was trying to grab his gun. Right after I stole from a convenience store. To Democrats, I'm a martyr."

Berkeley County, South Carolina, August 2020 – Berkeley County Councilman Tommy Newell posted a photo of himself as "Shiek of Berkeley County" on Facebook. The photo included people wearing a traditional Arab "kaffiyeh" headscarf, as well as an Islamic "kufi" (skullcap) and "niqab" (face veil). He also stated in part "I had ultimate and absolute honor of playing a terrorist..."[59]

Indianapolis, Indiana, November 2020 – John Jacob, a Republican from Indianapolis posted comments on Facebook saying that Islam cannot coexist in the United States and that Muslims are traitors who should be deported. He also mentioned that the Roman Catholic Church is a cult of Satan and that its parishioners should repent and leave the Church.[60]

Austin, Texas, September 2020 – Texas assistant attorney general Nick Moutos made racist a series of tweets one in which he called Islam a "virus." He also threatened Black Lives Matter protesters and has regularly referred to the organizers as "terrorists."[61]

Cambridge, Massachusetts, September 2020 – An unidentified Cambridge police officer made a tweet stating "They are willing to crash the economy and hurt millions of hard working people to get Trump out. Today's Democrats are American Jihadists."[62]

Brentwood, Tennessee, December 2020 – Jerry Morgan, a Tennessee legal watchdog, made a series of anti-Muslim comments on Twitter praising President Donald Trump for "stopping Muslims" and "talking big against Muslims," according to a Nov. 24 court filing. Morgan said Islam was not a peaceful religion and made comments linking the faith with violence and "Muslim terrorists."[63]

Chicago, Illinois, December 2020 – John Catanzara, president of the Fraternal Order of Police Lodge 7, said "Savages they all deserve a bullet" in reference to Muslims in a statement on Facebook.[64]

ANTI-MUSLIM COMMENTS DISCOVERED IN 2019

Winkler County, Texas, January 2019 - Winkler Co. Commissioner showed a dislike of Muslims in a Facebook post. Hope Fernandez Williams wrote, "How about building a Bar-B-Que next door, maybe a gay strip club, and then see how tolerant they are!"[65]

Sangamon County, Illinois, January 2019 - Anti-Muslim post appears on the Sangamon County circuit clerk's Facebook page. Former presidential candidate Michele Bachmann said that Muslims are out to destroy Christianity briefly appeared on the Facebook page of Sangamon County circuit clerk Pal Palazzolo on Tuesday night.[66]

Chicago, Illinois, February 2019 - Chicago Cubs patriarch, Joe Ricketts, included comments in an email about Muslims being natural enemies in one email stating: "Christians and Jews can have a mutual respect for each other to create a civil society. As you know, Islam cannot do that. Therefore, we cannot ever let Islam become a large part of our society. Muslims are naturally my (our) enemy due to their deep antagonism and bias against non-Muslims."[67]

Hamilton Township, New Jersey, February 2019 - Hamilton Republicans shared anti-Muslim Facebook posts. Robert DiPastina, who works for the township public works department, and his wife Colleen DiPastina, who works as a civilian Hamilton Police secretary, both shared anti-Muslim content on Facebook. Content included an anti-Muslim image depicting a bearded man in a Kufi skullcap sitting on a toilet seat, with the Starbucks logo. "This is a Muslim. They don't use toilet paper. They use their hand. This is Starbucks. They vow to hire 10,000 Muslims," the post said.[68]

Pittsburgh, Pennsylvania, February 2019 - Plum School Board member Brian Wisniewski caused outrage by sharing a post of a picture of a man holding a gun with the American flag as a backdrop with the words: "Does it worry anybody that we have three devout Muslims in Congress who have unlimited access to our TOP SECRET GOVERNMENT DOCUMENTS?"[69]

Philadelphia, Pennsylvania, March 2019 - Frank Scavo is the president of Old Forge School Board in Lackawanna County, as well as a Republican candidate for state representative. In social media posts, Mr. Scavo portrayed Muslims as terrorists, pedophiles, and rapists on his personal Facebook and Twitter accounts during the last four years.[70]

White Hall, Arkansas, March 2019 - Mark Jelks, an Arkansas school principal, shared social media posts stating, "Kick Islam out of America. You cant [sic]walk with God holding hands with the devil."[71]

Yucaipa County, San Bernardino, April 2019 - Bobby Duncan, who has served on the Yucaipa City Council since 2012 and was appointed mayor in December, peppers his Facebook wall with memes carrying anti-Islamic and anti-undocumented immigrant messages. "I don't know about you, but I am 100% anti-Islam and anti-Sharia! Who else is with me and feels the same way?" "Islamophobic: A bulls— term invented to vilify and silence anyone being honest about mankind's most violent supremacist culture.[72]

N/A, April 2019 - A tweet by former President Trump included a snippet from a speech Congresswoman Ilhan Omar gave to the Council on American-Islamic Relations, in which she described the Sept. 11, 2001, terrorist attack on the World Trade Center as "some people did something," along with news footage of the hijacked airplanes hitting the Twin Towers. Mr. Trump vowed in the tweet that "WE WILL NEVER FORGET!"[73]

San Bernardino, California, April 2019 - Fontana Police Department's Twitter account called U.S. Rep. Rashida Tlaib "un-American" and a "disgrace" and also mentioned an eating disorder. The tweet was a result of hacking, a police spokesman said.[74]

St. Lawrence County, New York, April 2019 - St. Lawrence County lawmaker Rita Curran posted an Islamophobic post featuring a 9/11 image of the North Tower burning at the World Trade Center as a second plane is about to hit the South Tower. Above the image, Curran wrote "Every time a Muslim stand up (sic) in Congress and tells us they are going to change the Constitution, impeach the president, or vote for socialism, remember you swore you would never forget. They swore they would destroy us from within."[75]

St. Louis, Missouri, May 2019 - One post by Lewis & Clark Community College Board of Trustees Chairman David Heyen refers to Muslim Congresswoman Ilhan Omar (D-MN) as a "snake you are allowing in the Country."[76]

Coffee County, Tennessee, May 2019 - Tennessee's Coffee County District Attorney Craig Northcott wrote in a Facebook comment that being Muslim is "no different than being part of the KKK, Aryan Nation, etc" and that the Islam belief system is "evil, violent and against God's truth."[77]

Philidelphia, Pennsylvania, June 2019 - Former officers created Facebook posts including images of the Confederate flag, call for immigrants to speak English, criticize Islam, encourage violence, and more.

Dallas, Texas, June 2019 - Dallas officers shared a post of every terrorist incident initiated by Muslims to target them, "the shoe bomber was Muslim" and "the Bellway [Beltway] snipers were Muslim."

N/A, June 2019 - President Trump retweeted renowned Islamophobe Katie Hopkins who once called for a "final solution" on Islamic terrorism.[78]

Tulsa, Oklahoma, September 2019 - A police academy graduate by the name of Wayne Brown shared a post stating, "I pledge to my family, flag, and country. When the day comes I will fight to my last breath before I submit to Islam." He was then terminated for this troubling post.[79]

Sikeston, Missouri, September 2019 - An officer with the Sikeston Department of Public Safety made comments against Muslims on social media, including: "I get to choose whom I dislike and it just so happens to be all muslims [sic] and their beliefs."[80]

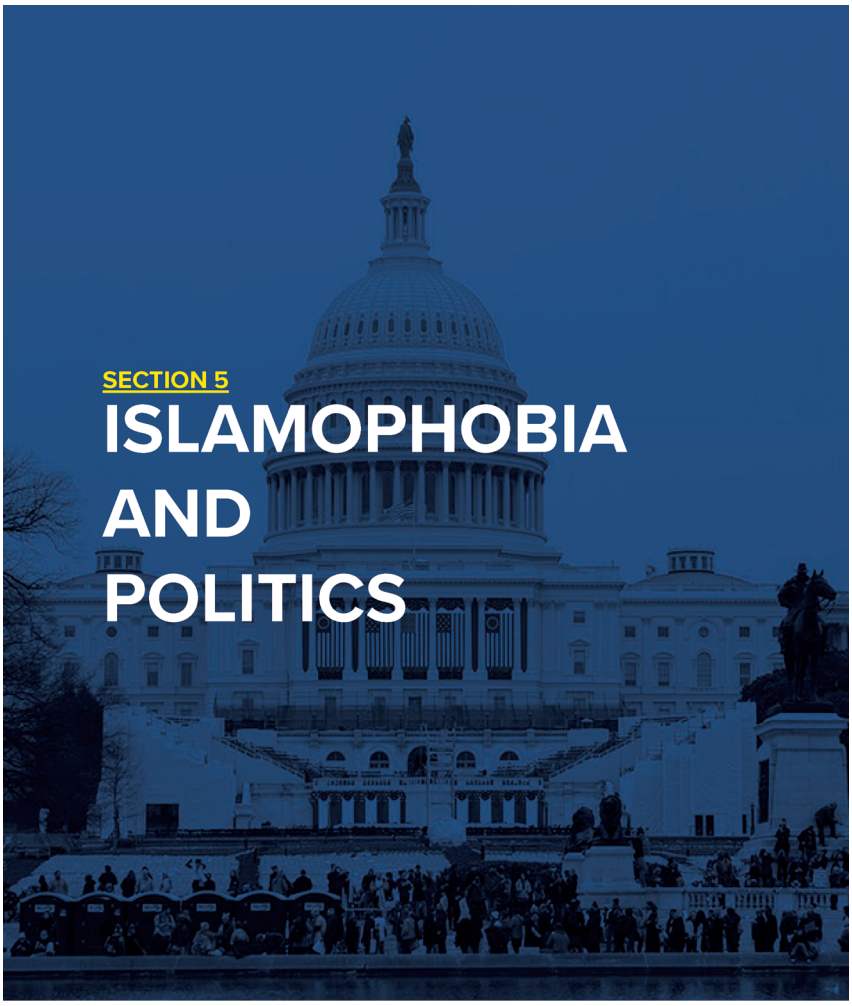
Minneapolis, Minnesota, September 2019 - President Trump retweeted a video falsely claiming Congresswoman Ilhan Omar danced on the anniversary of 9/11.[81]

Douglas County, Colorado, September 2019 - Douglas County GOP shared a Facebook post attacking Muslims. The post states, "Every time a Moslem (sic) stands up in Congress and tells us they will change the Constitution, impeach our President, or vote for Socialism, remember you said you would never forget. They said they would destroy us from within."[82]

Raritan Township, New Jersey, October 2019 - Lou Reiner resigned as deputy mayor of Raritan Township for a post he shared on his Facebook page that called Islam a cancer that "must be treated with radiation."[83]

Portland, Maine, October 2019 - Hal Pierce, chairman of the Combat Sports Authority of Maine made Islamophobic posts including the word "infidel" superimposed over an American flag and an image of bacon with the text "Pork Fact #76: People who eat bacon are less likely to blow themselves up."[84]

Total = CAIR identified 40 instances between 2019 and 2020 where institutional leaders used social media platforms to spread anti-Muslim animus.


SECTION 5
ISLAMOPHOBIA
AND
POLITICS

SECTION 5: ISLAMOPHOBIA AND POLITICS



Marjorie Taylor Greene

Islamophobia has both interpersonal and institutional manifestations. We have observed that individuals who hold anti-Muslim attitudes have been given positions of power and influence over policy and international relations over several presidential administrations. Therefore, we can see the state endorsing and pushing anti-Muslim policies such as the Muslim Ban, refusal to close Guantanamo Bay prison, and producing egregious surveillance policies. This section highlights individuals who served in the Trump administration who have a history of anti-Muslim sentiment. We also shed light on Representative Marjorie Taylor Greene's history of Islamophobia, attacks on Muslim Congressional members, anti-Islam legislation, and how particular members of the GOP have normalized relations with anti-Muslim politicians overseas such as Geert Wilders.

REPRESENTATIVE MARJORIE TAYLOR GREENE'S HISTORY OF ISLAMOPHOBIA

Representative Greene is no stranger to Islamophobia. The Congresswoman from Georgia has been exposed multiple times for her anti-Muslim rhetoric. Greene has suggested that Muslims do not belong in government, thinks black people "are held slaves to the Democratic Party,"; and called George Soros a Nazi. In reference to the 2018 midterms, she stated that it was part of "an Islamic invasion of our government" and that "anyone that is a Muslim that believes in Sharia law does not belong in our government."

In 2018, Greene also agreed with a Facebook commenter who claimed that 9/11 "was done by our gov[ernment]" and that "none of the school shootings were real or done by the ones who were supposedly arrested for them." She also stated that the Parkland school shooting was actually "a deep state warning to the pocket puppets in the house and senate" and that Sandy Hook was a "**STAGGED [sic] SHOOTING.**"

Moreover, a February 2019 video resurfaced on social media showing Greene attempting to force Ilhan Omar and Rashida Tlaib to retake their congressional oaths on the Bible. She stated, "We're going to explain about how you can't swear in on the Quran," Greene said in the footage. "We're going to have the Bible and ask them if they would swear in on the Bible ... I think that's important."

ATTACKS ON MUSLIM CONGRESSIONAL MEMBERS

Whether running for a school board, city council, state legislature, or Congress, working as an elected public official as an American-Muslim is no easy task. Muslim elected officials have faced a wave of attacks for their identities and have been consistently targeted because of their advocacy of Palestinian human rights. More notably, Muslim members of Congress have been hit by a wave of Islamophobic attacks.

In December 2019, a Guardian investigation found that Congresswoman Rashida Tlaib and Congresswoman Ilhan Omar, both Muslim elected officials, were targeted by a vast international operation that exploits far-right pages on Facebook to inflame Islamophobia for profit. The Guardian stated, "A mysterious Israeli-based group uses 21 Facebook pages to churn out more than a thousand coordinated fake news posts per week to more than a million followers around the world. It milks the traffic for revenue from digital advertising." The investigation also noted that Representative Omar was the most frequent target and that she was mentioned in more than 1,400 posts since the network began two years ago. Tlaib has been mentioned nearly 1,200 times.

Representative Omar and Tlaib are not alone; Representative Carson has also been a target of Islamophobia. In January 2021, a handwritten note of a Capitol Hill coup terrorist suspect was discovered. The note contained a "good guy" and "bad guy" list. Although the handwritten note does not explicitly label Carson as a "good" or "bad" guy, it indicates he is one of a small number of Muslims serving in the House. The note also included Judge David Hamilton of the United States Court of Appeals for the Seventh Circuit as a "bad guy" and described conservative media personalities as "good guys."

Lonnie Coffman, the suspect, was arrested after the deadly Capitol coup attempt. Officials discovered 11 Molotov cocktails, explosive devices, an M4 carbine assault rifle, ammo, and two handguns, along with the handwritten messages in his truck.

ANTI-MUSLIM ACTIVITY IN 2020


Kayleigh McEnany

Washington, D.C, April 2020 – President Trump appointed Kayleigh McEnany as White House press secretary, who has a long history of defending and promoting anti-Muslim bigotry.

In 2014, McEnany participated in a Fox Business news segment titled "How big of a threat is Islam?" during which she sat alongside white supremacist Proud Boys co-founder Gavin McInnes. McEnany repeatedly hyped the threat of extremism among Muslims, while McInnes argued that Muslims are prone to violence because of genetic defects caused by "inbreeding."[85]

In 2016, McEnany wrote on Twitter: "Obama endlessly preaches tolerance of Islam but never mentions this — 'Genocide: Christian Population in Iraq Drops 80% in a Decade.'[86]

In 2017, McEnany wrote an op-ed for The Hill decrying "far-left" German Chancellor Angela Merkel and European nations allowing Muslim refugees

to enter their borders, which McEnany claimed, "resulted in a culture in crisis – a culture without democratic, freedom-loving identity and constantly under murderous attack from cancers within."[87]

In March 2019, while working as Trump's 2020 presidential campaign national press secretary, McEnany downplayed the president's past anti-Muslim comment, "I think Islam hates us," by mentioning that Trump "had many Muslim friends."[88]

Pella, Iowa, April 2020 – Rick Phillips, then-candidate for the U.S. House of Representatives District IA-02, stated on his campaign website that "Islam should be recognized as a hostile ideology antithetical to the United States Constitution" and that "It should have its religious status revoked." He also falsely claimed that a "mosque is nothing more than a military outpost where the seeds of hatred are sown against our country."[89]

In an interview with a local television station, Phillips claimed Islam is not a faith that is protected by the First Amendment, which he claims applies only to Christianity.

He also attacked Muslim members of Congress Reps. Ilhan Omar (D-MN) and Rashida Tlaib (D-MI) and claimed, "they moved 70,000 Somalians in up there to vote for her [Omar]."[90]

Washington, D.C., April 2020 – President Trump nominated anti-Muslim conspiracy theorist Ret. Army Brig. Gen. Anthony J. Tata to the position of Undersecretary of Defense for Policy. In 2019, Tata authored a novel titled "Double Crossfire" that falsely claimed young Muslim men in Great Britain engage in the "gang-raping [of] British women as part of their transition to manhood" and such crimes are covered up by the government and media. This anti-Muslim trope is widely used by Islamophobic far-right groups and white supremacists in Europe.

In 2018, Tata also said on Fox News that "there is intent to harm Western society by Islam" and "it's a truism that has to be built into policy so we can strengthen our borders."[91]

Washington, D.C, May 2020 – In May 2020, The United States Agency for International Development (USAID) appointed Mark Kevin Lloyd, who has a history of anti-Muslim comments, as the new Religious Freedom Advisor. In 2016, while working as the Virginia Field Director for then-candidate Trump, Lloyd came under fire for sharing several bigoted posts, including one that referred to Islam as "a barbaric cult" and another characterizing Islam as inherently violent.[92]

In the aftermath of the Orlando nightclub shooting, Lloyd shared a Facebook meme suggesting potential gun buyers eat bacon before being allowed to purchase a firearm.[93]

Washington, D.C., July 2020 – Brandon Bolling was hired by the Justice Department to be an assistant chief immigration judge in Texas in July 2020. Bolling previously worked for the Thomas More Law Center, which is known for its litigation against the religious rights of Muslims in the United States.[94]

According to the Center, American-Muslims are using litigation to perform a "stealth jihad" in to [sic] transform America into an "Islamic nation." The Center's work involves litigation and propaganda warfare against the religion of Islam, American-Muslims and their civil rights, including lawsuits against Michigan public schools that held a diversity training focused on Muslim culture and religious competency.[95]

Washington, D.C., July 2020 – President Trump appointed former Breitbart writer, white supremacist sympathizer, and anti-Muslim bigot Sebastian Gorka to the National Security Education Board. According to the main website of the NSEP, the "NSEP plays an ever-increasing role in creating a workforce ready to serve 21st century national security needs. NSEP is a major federal initiative designed to build a broader and more qualified pool of U.S. citizens with foreign language and international skills."



Sebastian Gorka

Gorka has been criticized for his Islamophobic views, including once calling religious profiling of Muslims "common sense" and declining on several occasions to say whether President Trump believes Islam is a real religion. Gorka also served as a frequent guest at events and on a radio show hosted by Gaffney, the founder of the Center for Security Policy, a D.C.-based anti-Islam think tank.

Washington, D.C., August 2020 – President Trump appointed Retired Army Col. Douglas Macgregor to become the US ambassador to Germany. Macgregor claimed that Muslim migrants were coming to Europe "with the goal of eventually turning Europe into an Islamic state." He criticized Germany for giving "millions of unwanted Muslim invaders" welfare benefits rather than providing more funding for its armed services.[96]

ANTI-MUSLIM ACTIVITY IN 2019

Washington, D.C., January 14, 2019 - The Trump Administration appointed Charles M. Kupperman, an individual with close ties to known Islamophobes and anti-Muslim organizations, as deputy national security adviser. Kupperman had close ties with Frank Gaffney, founder of the Center for Security Policy (CSP), which was designated as an anti-Muslim hate group by the Southern Poverty Law Center (SPLC) in 2015. In addition to serving on CSP's board for almost a decade, Kupperman postulated in a 2009 article in The Washington Times that former President Barack Obama might secretly be a Muslim.[97]

Washington, D.C., January 31, 2019 - Former President Donald Trump considered Herman Cain, a former Republican presidential candidate, and American businessman, for a seat on the Federal Reserve Board. In an interview with a journalist for the news website, Think Progress, Cain was asked, " Would you be comfortable appointing a Muslim, either in your cabinet or as a federal judge?". To which Cain answered, "No, I will not. And here's why. There is this creeping attempt ... to gradually ease Sharia law and the Muslim faith into our government. It does not belong in our government."[98]

Washington, D.C., February 1, 2019 - Anti-Muslim legislation, Senate Bill 29, was proposed by South Carolina Republican State Senator Larry Grooms. This bill, modeled on other Islamophobic legislation, would ban the application of foreign law in South Carolina. While Senate Bill 29 did not mention Sharia law by name, anti-foreign laws such as this target Islamic religious principles and exacerbate the public's fear about Muslim-Americans.[99]

Washington, D.C., February 4, 2019 - Former President Donald Trump chose former Fox News host Heather Nauert to serve as U.S. Ambassador to the United Nations (UN). Nauert advanced unfounded Sharia law conspiracy theories in a 2009 Fox News special webcast entitled, " Terror from Within," which hosted known anti-Muslim activists Frank Gaffney, Robert Spencer, and Tarek Fatah. She introduced the 2009 webcast program as exploring "a school of thought that there is a stealthy jihad taking place within the US. And the theory is that some in our country want to destroy our America from within." She stated that individuals would achieve this destruction "by using our own legal system against us, by undermining our financial system and even taking away our holidays." In 2013, the former host for "Fox and Friends" also stated on air that "Sharia law is now changing everything" while covering a story on a religiously accommodated YMCA swim class for Muslim girls.[100]

Washington, D.C., June 13, 2019 - Anti-Islam legislation, Senate Bill 99, was put forth before the Delaware Senate Judicial Committee. The bill, drafted by notorious Islamophobe David Yerushalmi, declared it the public policy of Delaware to protect citizens from the application of "foreign law." The bill's sponsor, Republican Senator Dave Lawson had also previously publicly expressed anti-Muslim sentiment. In 2017 following a Senate invocation led by two Muslim faith leaders, Senator Lawson stated, "We just heard from the Quran, which calls for our very demise. I fought for this country, not to be damned by someone that comes in here and prays to their God for our demise. I think that's despicable."[101]

Washington, D.C., June 19, 2019 - Islamophobe Tony Perkins, was appointed to become chairman of the U.S. Commission on International Religious Freedom (USCIRF). Perkins has a long history of making Islamophobic comments and supporting anti-Muslim rhetoric and movements.[102] In 2014 Perkins stated on a radio show, "We are a nation that was founded on Judeo-Christian principles, that's the foundation of our nation, not Islam, but the Judeo-Christian God." In a 2015 email, he wrote, "What most people either

don't realize or willfully ignore is that only 16 percent of Islam is a religion — the rest is a combination of military, judicial, economic, and political system. Sharia is not a religion in the context of the First Amendment." Additionally, Perkins' organization, the Family Research Council, called for a ban on mosques.[103]

Washington, D.C., November 7, 2019 - Former President Donald Trump appointed Steven Menashi as judicial nominee for the United States Court of Appeals for the Second Circuit. Menashi advanced the anti-Muslim pig blood bullet myth put forth and supported by President Trump throughout his presidential campaign. The myth that the U.S. General John Pershing executed 50 captured Muslim insurgents in the Philippines using bullets dipped in pigs' blood was further advanced in a book review Menashi wrote in 2002. He stated that "Pershing's approach is probably no longer in the army's counterterrorism repertoire, but the result was that guerrilla violence ended" and that "the American response to Islamic extremism has not always been so harsh—or as effective." Menashi's harmful comments insinuated that such war crimes could be a useful tactic in America's current war against Islamic terrorism.

Minneapolis, Minnesota, October 11, 2019 - Former President Donald Trump attacked Democratic Representative Ilhan Omar and Somali immigrants at a Minneapolis campaign rally. Trump asked the crowd, "How do you have such a person representing you in Minnesota?" and stated, "She is a disgrace to our country and she is one of the big reasons I am going to win," in reference to Representative Omar. This is not the first time that the former President has attacked the Congresswoman and Somali immigrants. Notably, at a North Carolina rally, the past summer Trump encouraged his supporters in a racist "Send her back" chant. Additionally, days before his victory in the 2016 presidential election, Trump labeled Somali immigrants the beneficiaries of a "filthy" policy of admitting refugees.[104]

Cernobbio, Italy, September 9, 2019 - South Carolina Senator Lindsey Graham took a photo smiling beside far-right, Dutch politician Geert Wilder at the Ambrosetti Forum, an annual security conference in Italy. Wilder tweeted the photo of the two, which was quickly deleted, with the caption, "Great to meet with U.S. Senator @LindseyGrahamSC."[105] Wilders is renowned for his controversial views on Islam and for his call for a ban of Muslim immigration to the Netherlands. He has labeled Moroccans "scum" and was convicted last year of inciting mass discrimination against them. Wilders has even compared the Quran to Hitler's autobiography, "Mein Kampf."[106]



Lindsey Graham and Geert Wilders

CONCLUSION

This report was an attempt to examine the landscape of Islamophobia in 2019 and 2020. To assess the extent of Islamophobia, we looked at five different aspects: funding of the Islamophobia Network, school bullying statistics from 2019 – 2020, anti-mosque incidents, the spread of Islamophobia on social media by institutional leaders, and anti-Muslim figures in the Trump administration.

Our findings demonstrated just how mainstream and acceptable Islamophobia has become. We uncovered the enormous funding poured into the U.S. Islamophobia Network groups by mainstream charitable institutions and foundations. We discovered that more than $105 million was funneled into 26 anti-Muslim groups between 2017 and 2019 to spread misinformation and conspiracy theories about Muslims and Islam.

We then examined how pervasive the issue of school bullying against Muslims is. A survey conducted by CAIR-Texas found that 48% of respondents experienced some type of bullying, including verbal insults, physical abuse, and cyberbullying.

Next, we investigated how institutional leaders, defined as individuals who hold a position of influence or power within our trusted institutions, use social media to spread racist stereotypes about Muslims and Islam. In total, we found 40 instances where institutional leaders shared or posted anti-Muslim content online. This illustrated just how mainstream Islamophobia has become to a point where trusted leaders of our institutions feel that it is acceptable to post anti-Muslim comments about the communities they promise to serve equally. Furthermore, our discovery of 16 anti-mosque incidents between 2019 and 2020 underscores how difficult it is for mainstream Muslim communities to practice their faith without fear of being attacked, harassed, or intimidated.

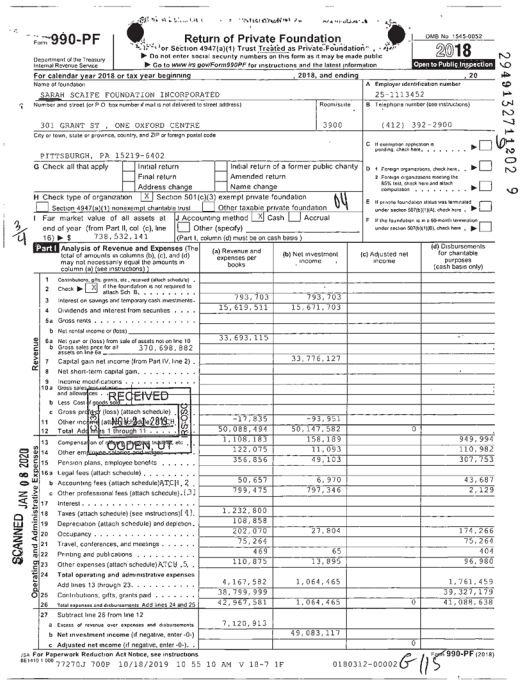
As demonstrated by the evidence above, Islamophobia is not going anywhere soon. It continues to operate all around us institutionally, socially, and politically. Although Islamophobia may not be over, Muslim communities in the United States, India, Israel, and elsewhere are working together to combat racial, ethnic, and religious discrimination. For example, Muslim communities, along with a range of community advocacy groups, worked together to ensure President Biden ended the Muslim Ban on day one of his administration.

In better news, American-Muslims are running for office in high numbers. A total of 181 Muslim candidates in 28 states and Washington D.C. ran for public office in 2020, the highest number we have recorded. Forty-Seven Muslims ran for state legislatures in 22 states, with 23 winning. At least six made history as the first-ever elected to a state office in their state. And 23 Muslims ran for Congress in 14 states in 2020. These figures exemplify resilience and hope for our communities in a time when the Islamophobia Network remains active and widespread. We will continue to work with our communities and our allies to ensure the Islamophobia Network will come to an end once and for all.

APPENDIX A:

Sample Tax Filing

A page from the 2018 Sarah Scaife Foundation Tax Return documents.



Form **990-PF**
Department of the Treasury
Internal Revenue Service

Return of Private Foundation
or Section 4947(a)(1) Trust Treated as Private Foundation
▶ Do not enter social security numbers on this form as it may be made public
▶ Go to www.irs.gov/Form990PF for instructions and the latest information.

OMB No 1545-0052
2018
Open to Public Inspection

For calendar year 2018 or tax year beginning , 2018, and ending , 20

Name of foundation
SARAH SCAIFE FOUNDATION INCORPORATED

A Employer identification number
25-1113452

Number and street (or P O box number if mail is not delivered to street address) | Room/suite
301 GRANT ST , ONE OXFORD CENTRE | 3900

B Telephone number (see instructions)
(412) 392-2900

City or town, state or province, country, and ZIP or foreign postal code
PITTSBURGH, PA 15219-6402

G Check all that apply: Initial return; Initial return of a former public charity; Final return; Amended return; Address change; Name change

H Check type of organization: [X] Section 501(c)(3) exempt private foundation; Section 4947(a)(1) nonexempt charitable trust; Other taxable private foundation

I Fair market value of all assets at end of year (from Part II, col (c), line 16) ▶ $ 738,532,141

J Accounting method: [X] Cash; Accrual; Other (specify)
(Part I, column (d) must be on cash basis)

C If exemption application is pending, check here

D 1 Foreign organizations, check here
2 Foreign organizations meeting the 85% test, check here and attach computation

E If private foundation status was terminated under section 507(b)(1)(A), check here

F If the foundation is in a 60-month termination under section 507(b)(1)(B), check here

Part I Analysis of Revenue and Expenses (The total of amounts in columns (b), (c), and (d) may not necessarily equal the amounts in column (a) (see instructions))

		(a) Revenue and expenses per books	(b) Net investment income	(c) Adjusted net income	(d) Disbursements for charitable purposes (cash basis only)
Revenue	1 Contributions, gifts, grants, etc., received (attach schedule)				
	2 Check ▶ [X] if the foundation is not required to attach Sch B				
	3 Interest on savings and temporary cash investments	793,703	793,703		
	4 Dividends and interest from securities	15,619,511	15,671,703		
	5a Gross rents				
	b Net rental income or (loss)				
	6a Net gain or (loss) from sale of assets not on line 10	33,693,115			
	b Gross sales price for all assets on line 6a 370,698,882				
	7 Capital gain net income (from Part IV, line 2)		33,776,127		
	8 Net short-term capital gain				
	9 Income modifications				
	10a Gross sales less returns and allowances				
	b Less Cost of goods sold				
	c Gross profit (loss) (attach schedule)				
	11 Other income (attach schedule)	-17,835	-93,951		
	12 Total Add lines 1 through 11	50,088,494	50,147,582	0	
Operating and Administrative Expenses	13 Compensation of officers, directors, etc	1,108,183	158,189		949,994
	14 Other employee salaries and wages	122,075	11,093		110,982
	15 Pension plans, employee benefits	356,856	49,103		307,753
	16a Legal fees (attach schedule)				
	b Accounting fees (attach schedule) ATCH 2	50,657	6,970		43,687
	c Other professional fees (attach schedule) ATCH 3	799,475	797,346		2,129
	17 Interest				
	18 Taxes (attach schedule) (see instructions) ATCH 4	1,232,800			
	19 Depreciation (attach schedule) and depletion	108,858			
	20 Occupancy	202,070	27,804		174,266
	21 Travel, conferences, and meetings	75,264			75,264
	22 Printing and publications	469	65		404
	23 Other expenses (attach schedule) ATCH 5	110,875	13,895		96,980
	24 Total operating and administrative expenses. Add lines 13 through 23	4,167,582	1,064,465		1,761,459
	25 Contributions, gifts, grants paid	38,799,999			39,327,179
	26 Total expenses and disbursements. Add lines 24 and 25	42,967,581	1,064,465	0	41,088,638
	27 Subtract line 26 from line 12				
	a Excess of revenue over expenses and disbursements	7,120,913			
	b Net investment income (if negative, enter -0-)		49,083,117		
	c Adjusted net income (if negative, enter -0-)			0	

For Paperwork Reduction Act Notice, see instructions. Cat No 11289X Form **990-PF** (2018)

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This page:

A page from 2018 Sarah Scaife Foundation Tax Return documents. The highlighted row contains a grant to the Center for Security Policy, a well-known anti-Muslim hate group.

SARAH SCAIFE FOUNDATION INCORPORATED 2018 FORM 990-PF 25-1113452

FORM 990PF, PART XV - GRANTS AND CONTRIBUTIONS PAID DURING THE YEAR

ATTACHMENT 14 (CONT'D)

RECIPIENT NAME AND ADDRESS	RELATIONSHIP TO SUBSTANTIAL CONTRIBUTOR AND FOUNDATION STATUS OF RECIPIENT	PURPOSE OF GRANT OR CONTRIBUTION	AMOUNT
CENTER FOR EQUAL OPPORTUNITY [redacted] LEESBURG PIKE, SUITE 231 [redacted] CHURCH, VA 22043	NONE PC	GENERAL OPERATING SUPPORT	150,000
CENTER FOR GROWTH AND OPPORTUNITY 5525 OLD MAIN HILL LOGAN, UT 84322	NONE PC	PROJECT SUPPORT	145,200
CENTER FOR IMMIGRATION STUDIES, INC 1629 K STREET, NW, SUITE 600 WASHINGTON, DC 20006	NONE PC	GENERAL OPERATING SUPPORT	200,000
CENTER FOR INDIVIDUAL RIGHTS 1100 CONNECTICUT AVENUE, NW, SUITE 625 WASHINGTON, DC 20036	NONE PC	GENERAL OPERATING SUPPORT	110,000
CENTER FOR SECURITY POLICY INC 2020 PENNSYLVANIA AVENUE, NW, SUITE 189 WASHINGTON, DC 20006	NONE PC	GENERAL OPERATING AND PROJECT SUPPORT	250,000
CENTER FOR STRATEGIC AND BUDGETARY ASSESSMENTS 1667 K STREET, NW, SUITE 900 WASHINGTON, DC 20006	NONE PC	PROJECT SUPPORT	350,000

[redacted]

ATTACHMENT 14

APPENDIX B
Brief Descriptions of U.S. Islamophobia Network Groups

ACT! For America
This organization is the largest anti-Muslim hate group in the U.S. ACT advances harmful conspiracy theories about Muslim Americans, supports anti-Muslim politicians, and advocates for anti-Muslim policies. Founder Brigitte Gabriel once told the Australian Jewish News: "Every practicing Muslim is a radical Muslim." Gabriel has also said, "America and the West are doomed to failure in this war unless they stand up and identify the real enemy: Islam."

American Center for Law and Justice
The ACLJ is an anti-Muslim, constitutional law firm established by televangelist Pat Robertson and Jay Sekulow. This organization is known for disseminating anti-Muslim propaganda.

American Civil Rights Union
This organization advances anti-Muslim statements, briefs, and lawsuits. It posits itself as the conservative alternative to the ACLU.

American Family Association
The AFA is a lobbying hate group that supports anti-Muslim policies. The group's tenets are centered around nativist and Islamophobic ideologies. President and founder Timothy Wildmon has claimed that "[Islam] is, in fact, a religion of war, violence, intolerance and physical persecution of non-Muslims."

American Freedom Alliance
This organization is a lobbying hate group that promotes anti-climate change and anti-Muslim misinformation. In 2016, the group hosted a conference in Los Angeles featuring many prominent anti-Muslim activists.

American Freedom Defense Initiative
The AFDI is a hate group led by anti-Muslim activist Pamela Geller. It is renowned for its racist public ad campaigns and was behind the manufactured controversy about New York's Park 51 mosque. According to the group's website, they act "against the treason being committed by national, state and local government officials, the mainstream media, and others in their capitulation to the global jihad and Islamic supremacism, the ever-encroaching and unconstitutional power of the federal government and the rapidly moving attempts to impose socialism and Marxism upon the American people."

American Freedom Law Center
This anti-Muslim law firm was co-founded by renowned Islamophobe David Yerushalmi. The AFLC describes itself as a "public interest law firm" aiming to "defend our Nation's Judeo-Christian heritage in courts." It acts as the Islamophobia Network's legal counsel and advocates for the enactment of anti-Muslim legislation. The AFLC is also known for its lawsuits seeking to compel public transportation systems to display AFDI's inflammatory ads.

American Islamic Forum for Democracy
This organization is an anti-Muslim lobby group founded by Zhudi Jasser. While the group's mission is to "advocate for the preservation of the founding principles of the United States Constitution," AIFD has allied itself with institutions and legislative efforts that attempt to limit Muslims' access to enumerated freedoms in the Bill of Rights. The group also claims to battle the phenomenon of "Islamo-fascism."

Americans for Peace and Tolerance
This lobby group based in Boston proliferates misinformation and conspiracy theories about Islam and Muslim-Americans. It is dedicated to undermining mainstream Muslim institutions and promoting Islamophobia within the media.

CAMERA - Committee for Accuracy in Middle East Reporting
This organization serves as a lobbying and media-monitoring group that spreads misinformation pertaining to Muslim Americans. Its overall mission is to undermine the credibility of Muslim American individuals and organizations. Dexter Van Zile, CAMERA's designated Christian Media Analyst, is notorious for his inflammatory and Islamophobic rhetoric. In 2010, Van Zile described violent extremists as "much more similar to what Muhammad and his follower engaged in, during the founding of Islam." In 2012 at an event, he publicly stated, "For the past many centuries, fourteen centuries, essentially Islam has offered up a very persistent message of dominance and intolerance towards the infidels, non-Muslims. And this has had a huge impact on the Arab-Israeli conflict, it's one of the important aspects of the conflict."

Center for Security Policy
This Washington, D.C.-based anti-Muslim propaganda and think tank was founded by known Islamophobe, Frank Gaffney. Gaffney is a key propagandist and conspiracy theorist for the Islamophobia movement. CSP seeks to advance anti-Muslim sentiment in both policy and society and predicates Islam as an existential threat to America.

Christian Broadcasting Network
This organization is founder and televangelist, Pat Robertson's, main media platform for the spread of anti-Muslim prejudice. Robertson is a notable Islamophobe who has repeatedly come under fire for Islamophobic comments on his program the "700 Club." In 2013 he made claims about Islam stating "it's almost like its demonic" and "it's a religion of chaos."

Clarion Project
This non-profit organization creates and disseminates anti-Muslim propaganda films in an effort to influence politics. One of the films released is entitled, "Obsession: Radical Islam's War Against the West and The Third Jihad: Radical Islam's Vision for America."

Concerned Women for America

CWA is a public policy women's group that has actively been engaged in anti-Islam legislative efforts in Florida and North Carolina. This group regularly hosts anti-Islam speakers at their events. In 2017, the organization's Missouri chapter hosted an event alleging "The influence of Islam in the Common Core standards is now undeniable." The event flyer explained, "Make plans to attend this event to learn more about how to identify the Islamic influence and what you can do to stop it."

David Horowitz Freedom Center

This organization engages in a range of Islamophobic efforts including anti-Muslim lobbying, media, and misinformation. It also hosts many anti-Muslim and xenophobic projects including, Jihad Watch, FrontPage MAgazine, TruthRevolt.com, Israel Security Project, Discoverthenetworks.com, Students for Academic Freedom, and Individual Rights Foundation. The Southern Poverty Law Center, a group that tracks hate movements in the United States, labels the center's founder, David Horowitz, "the godfather of the modern anti-Muslim movement."

Endowment for Middle East Truth

EMET is a policy center and lobbying group that furthers anti-Muslim misinformation. EMET leader Sarah Stern, is a former employee of Steven Emerson's Investigative Project on Terrorism, which has been designated an anti-Muslim hate group. In 2014, Stern alleged that Muslim student groups want to destroy America from within. EMET's board of advisors features prominent U.S. Islamophobes such as Frank Gaffney and Daniel Pipes.

Foundation for Defense of Democracies

This neoconservative lobbying group encourages the Islamophobic "war on terror" narrative and policies. In 2007, when discussing the possibility of a two-state solution to the Arab-Israeli conflict, an FDD Senior Fellow wrote that the Bush administration was "hellbent on granting statehood to savages who worship 'martyrdom."

Freedom of Conscience Defense Fund

This legal group litigates against Muslim American causes, most notably a school-wide anti-Islamophobia initiative. In 2017, the FCDF filed a lawsuit against the San Diego Unified School District's (SDUSD) "Anti-Islamophobia" Initiative, which sought to protect Muslim students from bullying.

Gatestone Institute

This organization is an anti-Muslim hate group, based in New York, that produces and spreads anti-Muslim narratives and hysteria. In 2015, Gatestone took out a full page advertisement in the New York Times that called on Muslims to codnemn worldwide violence, thereby implying that Islam was the cause of global violence.

Investigative Project on Terrorism
This hate group, founded and operated by Steve Emerson, claims to investigate the activities and finances of radical terrorist groups. However, in doing so Emerson renders all of Islam culpable. The organization curates and proliferates anti-Muslim propaganda and prejudiced content. Its founder is also known for repeated inaccurate claims such as the existence of so-called "no-go zones" in Europe.

Middle East Forum
The Middle East Forum is an anti-Muslim policy center that produces and perpetuates hate speech, propaganda, and misinformation. It also provides financial support to anti-Muslim hate groups. The group's founder and director is Daniel Pipes, known as the grandfather of Islamophobia in the United States.

Middle East Media Research Institute
MEMRI is a pseudo-research organization that carefully selects and purposefully inaccurately translates news from Muslim-majority organizations to provide justification for anti-Muslim propaganda. The organization's translations have been widely criticized for inaccuracy and inflammatory representation.

Proclaiming Justice to the Nations
This self-purported "educational" organization spreads lies about Islamic beliefs and practices and promotes prejudicial conspiracy theories. The group is linked to efforts to censor Islam from school textbooks. According to a flyer announcing a PJTN sponsored event, the organization has been mobilizing against, "instructional material being used to indoctrinate children into Islam, not merely teaching its history but its religious tenets."

The Lawfare Project
This anti-Muslim hate group advances Islamophobic conspiracy theories and propaganda. It is also founded by the former director of the Legal Project at the Middle East Forum, another designated hate group within the Islamophobia Network.

The United West
The United West is a designated anti-Muslim hate group based in Florida. The organization's stated goal is to unite Western countries against Islam and it has painted Muslims as "the enemy."

Unconstrained Analytics
This organization is a pseudo-think tank that creates Islamophobic material related to national security. In 2016, a document published by Unconstrained Analytics described the Islamic threat to the West through the metaphor of "a house engulfed in a crucible of flames."

END NOTES

1. This definition was developed by drawing on two existing definitions: One by UC Berkeley's Islamophobia Research and Documentation Project and the second by Professor Khaled Beydoun in his paper, "Islamophobia: Toward a Legal Definition and Framework." UC Berkley's definition reads: "Islamophobia is a contrived fear or prejudice fomented by the existing Eurocentric and Orientalist global power structure. It is directed at a perceived or real Muslim threat through the maintenance and extension of existing disparities in economic, political, social and cultural relations, while rationalizing the necessity to deploy violence as a tool to achieve "civilizational rehab" of the target communities (Muslim or otherwise). Islamophobia reintroduces and reaffirms a global racial structure through which resource distribution disparities are maintained and extended."

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MUSLIM ADVOCATES

Written Testimony of
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Muslim Advocates

Hearing on
Discrimination and the Civil Rights of the Muslim, Arab, and South Asian American Communities

United States House of Representatives
Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Civil Liberties

Tuesday, March 01, 2022

I. Introduction

On behalf of Muslim Advocates, we welcome the opportunity to submit this testimony on discrimination and the civil rights of Muslim, Arab and/or South Asian American communities. We are gratified to see the Subcommittee hold this unprecedented hearing to address issues our communities face, and recognize that the topics of "discrimination and civil rights" are extraordinarily vast and impossible to fully address in a single hearing. Indeed, these issues are at the heart of extensive scholarship, conflicting court opinions, ongoing debate and relentless advocacy and we hope this panel and others continue to probe this pressing issue. We also hope the Subcommittee continues to reach out to American Muslim communities, which continue to face danger and discrimination amidst an escalating atmosphere of hate and discrimination.

Muslim Advocates is a national civil rights organization working to ensure that American Muslims and all Americans may live free from hate and discrimination. To that end, we monitor anti-Muslim hate attacks, provide support to affected communities, and pursue solutions to promote community safety and hold perpetrators accountable.

II. Racial and Religious Profiling by Federal Law Enforcement

One of the lasting legacies of the post-9/11 policy landscape is the systematic targeting and criminalization of American Muslims and those who are perceived to be Muslim. While American Muslims, particularly Black Muslims, have been targeted by law enforcement long before 9/11, the extensive policy shifts post-9/11 caused a dramatic increase in massive, dragnet surveillance and large-scale spying operations on Muslim communities based specifically on their religious affiliation. We have been mapped, entrapped, infiltrated and routinely monitored. Muslims all over the country have been targeted by law enforcement—not based on wrongdoing—but simply because their religion, race, ethnicity and/or national origin has been used as a proxy for criminal activity.[1] The FBI's own training materials, produced in 2011 in response to Freedom of Information Act requests, demonstrate that its actions were guided by stereotypes rather than sound policing: counterterrorism training materials about Muslims and Islam were rife with grossly inaccurate and inflammatory assertions.[2]

No discussion of contemporary discrimination against Muslim, Black, South Asian and Arab communities is complete without a full reckoning with these discriminatory policies. Because we anticipate that the Subcommittee will receive testimony covering many of these policies, we want to highlight the U.S. Department of Homeland Security program that has been a focus of our advocacy for years (in its current and prior iterations): the Targeted Violence and Terrorism Prevention ("TVTP") grant program, house at the Center for Prevention Programs and Partnerships ("CP3"). We are including our June 1, 2020, letter to Acting DHS Secretary Chad Wolf, supported by more than 70 civil rights, civil liberties and community organizations, which outlines our concerns about TVTP in detail—including that the program views American Muslims as predisposed to violence.[3] President Biden pledged to eliminate TVTP, but in 2021 the program received double the previous year's funding.[4] We reiterated our concerns in a memo to the Biden administration in November, 2020,[5] and hope to hear soon about next steps to ensure that American Muslims will no longer be unfairly considered inherently suspect.

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[1] Muslim Advocates, "Losing Liberty, https://muslimadvocates.org/wp-content/uploads/2019/06/Losing_Liberty_The_State_of_Freedom_10_Years_After_the_PATRIOT_Act.pdf; see also https://theintercept.com/2020/06/25/defund-police-dhs-cve-program/.

[2] See Muslim Advocates, "Letter to DOJ Inspector General on Use of FBI Training Materials," September 15, 2011, https://muslimadvocates.org/2011/09/letter-to-doj-inspector-general-on-use-of-fbi-training-materials/.

[3] Coalition Letter to Acting Secretary and Acting Assistant Secretary for Threat Prevention and Security Policy of the U.S. Department of Homeland Security, Administrator of the Federal Emergency Management Agency, RE: 2020 Targeted Violence and Terrorism Prevention Grant Program, June 1, 2020, available at https://muslimadvocates.org/wp-content/uploads/2020/06/2020.06.01-Letter-to-DHS-Re_-TVTP-grants-FINAL.pdf.

[4] Harsha Panduranga, "Community Investment, Not Criminalization," June 17, 2021, https://www.brennancenter.org/our-work/research-reports/community-investment-not-criminalization.

[5] Muslim Advocates, "Presidential Power," November 2020, https://muslimadvocates.org/wp-content/uploads/2020/11/Muslim-Advocates-Transition-Memo_FINAL.pdf.

Many other counterterrorism policies implicate similar civil liberties concerns and demonstrate an ever-present institutional bias against American Muslim communities.[6] Not only does this approach unjustly target American Muslims, but it also diverts federal attention and resources from many real threats, including those of white supremacist violence, climate change and our country's eroding democracy. We ask Congress to fulfill its duty to evaluate national security laws and policies, assess their efficacy and discriminatory impacts, and develop proposals for reform.

III. Attacks on Muslims and Muslim Institutions

According to FBI data, hate crimes are at a 12-year high—and the actual number of crimes is certainly higher since FBI data is notoriously under-reported.[7] Many factors contribute to this, including verbal attacks against minority communities by public officials,[8] racial scapegoating vis-a-vis COVID-19, backlash and misinformation about the national movement for racial justice, fear-mongering about Afghan refugees following the U.S. withdrawal from Afghanistan and the encouragement of white nationalism—which federal officials acknowledge is the greatest domestic terror threat to Americans today.[9] In fact, white nationalist messaging reverberates throughout our country now, causing an even larger increase in hate crimes and bigotry targeted at many marginalized groups.

American Muslims regularly experience anti-Muslim hate and bias. A recent national survey found that 50 percent of Muslims in the United States experienced anti-Muslim bias in just the past 12 months.[10] Religious minorities and houses of worship are among the primary targets of white supremacist violence.[11] Therefore, it is no surprise that Muslim institutions have

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[6] See, e.g., Shirin Sinnar, "Rethinking our Counterterrorism Framework: How to Address Domestic Terrorism Twenty Years after 9/11," September 2021, https://www.acslaw.org/wp-content/uploads/2021/09/Sinnar-ACS-Issue-Brief-Final.pdf.

[7] Reuters, "Hate Crimes Hit 12-Year High in United States in 2020," August 30, 2021, https://www.usnews.com/news/top-news/articles/2021-08-30/hate-crimes-hit-12-year-high-in-united-states-in-2020-fbi.

[8] William Cummings, "Trump tells congresswomen to 'go back' to the 'crime infested places from which they came,'" July 14, 2019, https://www.usatoday.com/story/news/politics/2019/07/14/trump-tells-congresswomen-go-back-counties-they-came/1728253001/.

[9] Eileen Sullivan and Katie Benner, "Top law enforcement officials say the biggest domestic terror threat comes from white supremacists," May 12, 2021, https://www.nytimes.com/2021/05/12/us/politics/domestic-terror-white-supremacists.html.

[10] Othering & Belonging Institute, Islamophobia Through the Eyes of Muslims, September 2021, https://belonging.berkeley.edu/sites/default/files/2021-10/Islamophobia%20Through%20the%20Eyes%20of%20Muslims.pdf.

[11] Robert O'Harrow Jr., Andrew Ba Tran, and Derek Hawkins, "The rise of domestic extremism in America," *The Washington Post*, April 12, 2021, available at https://www.washingtonpost.com/investigations/interactive/2021/domestic-terrorism-data/.

experienced increased attacks, often correlated to foreign policy events or anniversaries of terror attacks.

Over the past 12 months, anti-Muslim incidents with threats of physical violence have included:

- Last month, a young man traveled to Chicago with explosives and allegedly planned to bomb "a mosque and possibly a synagogue."[12]
- A bloody pig's head mask was placed at an Austin mosque on the 20th anniversary of 9/11, alongside a sign proclaiming, "Muslims: you are as unclean to God as a pig is to you. Have your idolatry washed clean by the blood of Jesus Christ."
- "Death to Palestine" was found spray painted on a Brooklyn mosque on Eid.[13]
- A religious flag was burned and "Trump" was spray painted at a mosque in Long Island, NY.[14]

It is important to note that hate motivations are often not officially acknowledged: three young Muslims were murdered in execution-style cruelty by their neighbor seven years ago, but law enforcement refused to treat the killings as a hate crime, referring to the murders as a "parking dispute."[15]

This official reluctance to name hate is partly why the vast majority—87.5 percent—of Muslims who experience anti-Muslim hate do not report it.[16] When Muslims are attacked by civilians who hold the same biases underpinning the laws and policies that hold all Muslims presumptively suspect, it stands to reason that Muslims will be wary of approaching law enforcement for solutions. For Black Muslims, who make up one-fifth to one-third of all American Muslims, the ongoing reality of unjustified police violence is a longstanding barrier to approaching law enforcement for solutions.[17] In addition, Muslims of all races may believe that inviting law enforcement's attention will result in increased investigations or surveillance; they

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[12] Associated Press, "Maine teen with explosives discussed attacking mosque in Chicago, houses of worship, prosecutors say," February 24, 2022, https://chicago.suntimes.com/2022/2/24/22950030/maine-teen-with-explosives-discussed-attacking-mosque-in-chicago-houses-of-worship-prosecutors-say.

[13] WABC-TV, "'Death to Palestine' spray painted on Brooklyn mosque," May 13, 2021, https://abc7ny.com/tayba-islamic-center-mosque-vandalism-ramadan-eid-al-fitr/10626345/.

[14] WABC, "Long Island mosque vandalism: Religious flag burned, base spray painted with pro-Trump graffiti," May 20, 2021, https://abc7ny.com/islamic-center-of-suffolk-county-shah-e-najaf-mosque-vandalized-hate-crime/10667203.

[15] Umar A. Farooq, "Chapel Hill shooting anniversary: Muslim community continues healing process," February 10, 2022, https://www.middleeasteye.net/news/chapel-hill-shooting-murders-muslim-community-healing-process.

[16] Othering & Belonging Institute, Islamophobia Through the Eyes of Muslims, September 2021, https://belonging.berkeley.edu/sites/default/files/2021-10/Islamophobia%20Through%20the%20Eyes%20of%20Muslims.pdf.

[17] https://time.com/5884176/islam-black-lives-matter-policing-muslims/ ; https://www.npr.org/sections/codeswitch/2017/02/25/516468604/black-muslims-face-double-jeopardy-anxiety-in-the-heartland.

may face language barriers, fear public retaliation, and/or believe that law enforcement will not take their concerns seriously, or be able to help even if they do.[18]

IV. Other forms of discrimination

Anti-Muslim sentiment gives rise to many other forms of discrimination, including:

- Zoning Discrimination: Mosques and Muslim institutions are often targeted before they've even broken ground, due to a long history of public opposition to Muslim spaces.[19] Muslim Advocates has represented Muslim groups facing bigoted community opposition and discriminatory zoning decisions in their efforts to build mosques and even cemeteries.[20]
- Incarceration: Muslim prisoners face systemic barriers to their religious expression, whether they are held in local,[21] state,[22] federal[23] or ICE[24] institutions.
- Workplace: American Muslims often face discrimination in the workplace based on their identity and faith. In 2019, for example, Amazon workers filed a discrimination complaint alleging that Amazon failed to accommodate Muslim employees' religious needs, failed to promote Somali workers, and retaliated against workers who protested discrimination.[25]
- Financial institutions and fintech providers engage in a number of practices that harm Muslims and impede Muslims' abilities to engage in commerce. These practices include:
    - Banks abruptly closing accounts of Muslims. Muslim Advocates has received over a dozen reports from Muslims who have been told that their bank will no longer work with them and they must remove all their funds before their accounts close within 30 days. Such closures appear to target Muslims or those with roots in Muslim-majority countries. This practice extends to Muslim nonprofit organizations, such as the National Association of Muslim Lawyers, whose bank account was closed unexpectedly just

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[18] Beverly McPhail, Hating Hate: Policy Implications of Hate Crime Legislation, 74 THE SOCIAL SERVICE REVIEW, 74(4), at 641 (Dec. 2000).

[19] Jennifer Merolla, "Freedom from Religion? Public Opposition to Mosques," August 20, 2010, https://www.huffpost.com/entry/freedom-from-religion-pub_b_687554.

[20] Muslim Advocates, "VICTORY: After Lawsuit, VA County Lifts Block on Muslim Cemetery," https://muslimadvocates.org/2020/10/victory-after-lawsuit-va-county-lifts-block-on-muslim-cemetery/.

[21] Lauren Padgett, "ACLU Settlement Grants Religious Accommodations at Pierce County Jail for Muslim Inmates," October 24, 2012, https://patch.com/washington/puyallup/should-muslim-inmates-at-pierce-county-jail-receive-r857742ec98.

[22] Muslim Advocates, "Virginia Prisons Warned of Illegal Policies Preventing Inmates from Observing Ramadan," https://muslimadvocates.org/2019/05/virginia-prisons-warned-of-illegal-policies-preventing-inmates-from-observing-ramadan/.

[23] Muslim Advocates, "Federal Court Sides with Incarcerated Muslim Forced to Shave Beard," https://muslimadvocates.org/2021/08/federal-court-sides-with-incarcerated-muslim-forced-to-shave-beard/.

[24] Muslim Advocates, "Intercept – Muslim Immigrants Sue ICE for Getting in the Way of Religious Observance," https://muslimadvocates.org/2019/02/the-intercept-muslim-immigrants-sue-ice-for-getting-in-the-way-of-religious-observance/.

[25] Muslim Advocates, "Muslim Workers File Religious Discrimination Charges Against Amazon," https://muslimadvocates.org/2019/05/muslim-workers-file-religious-discrimination-charges-against-amazon/

weeks before its 2019 national conference. Neither the individuals nor the entities targeted have ever been given an explanation as to why a bank suddenly refuses to work with them, even after decades of uneventful patronage of these banks.

- Wire transfer services closing accounts and/or denying transfers to Muslim-majority countries. For example, in 2018, the Yemeni American Merchants Association made a phone complaint to the FTC on behalf of ten Yemeni Americans who had experienced account closures or transfer denials from MoneyGram (and had received reports of many more). The FTC did not respond. Muslim Advocates publicly called on MoneyGram to address its sudden crackdown on Yemenis using its services but MoneyGram declined to take any action in response to our advocacy.[26]
- Many charities that either are run by Muslims, receive donations largely from Muslims and/or do charitable work in Muslim majority countries experience significant difficulties in finding banks that will work with them, even when the charities voluntarily adhere to disclosure practices that vastly exceed both those required by law and those followed by the vast majority of non-Muslim charities.[27]
- Many financial tech companies create automated filters that flag huge swaths of innocuous material.[28] For example, Venmo routinely delays transfers with keywords "Persian," "Iranian" or “Palestine relief.” Last year, LaunchGood, a major crowdfunding platform focused on the Muslim community, was warned by online payment system WePay and its partner Chase Bank that it was “high risk” and would be cut off from service. In stark contrast, civil rights organizations have pressured fintech companies for years to disrupt services for established hate groups, with little success.[29]

V. Anti-Muslim rhetoric from public officials contributes to a climate of hate that can and does result in physical attacks, including the attempted assassination of one of the three sitting American Muslim Congresspeople.

Given the venue for this testimony, we would be remiss not to mention the crucial role that elected officials play in alleviating or exacerbating this problem. Our representatives in Congress can choose to promote hate, or to promote respect, truth, freedom and fairness. This is not about “political correctness” or free speech; it is about the responsibility of elected officials to uphold the Constitution and the values of the Declaration of Independence, respect the dignity of their office and ensure the basic safety of American Muslims and all communities.

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[26] Muslim Advocates, “MoneyGram Illegally Blocks Money Transfers from Americans to Family & Loved Ones Abroad,” January 24, 2019, https://muslimadvocates.org/2019/01/moneygram-illegally-blocks-money-transfers-from-americans-to-family-loved-ones-abroad/.

[27] Charity & Security Network, “Financial Access for U.S. Nonprofits,” February 2017, https://gisf.ngo/wp-content/uploads/2020/02/2148-Charity-and-Security-Network-Feb-2017-Financial-Access-for-Nonprofits.pdf.

[28] National Iranian American Council, “NIAC Sends Letter to Venmo and PayPal After Discriminatory Account Freezes,” March 17, 2021, https://www.niacouncil.org/news/niac-letter-to-venmo-and-paypal-for-freezing-accounts-after-using-keywords/.

[29] Olivia Solon and Leticia Miranda, “'Too little, too late': Extremism experts criticize payment companies,” January 13, 2021, https://www.nbcnews.com/business/business-news/too-little-too-late-extremism-experts-criticize-payment-companies-n1253982.

Sadly, Representatives Lauren Boebert (R-CO) and Marjorie Taylor Greene (R-GA) have chosen to do the opposite. Recently, they have taken to referring to their Muslim colleagues in Congress as the "Jihad Squad," cracking jokes about suicide bombers[30] and accusing Muslim Representative Ilhan Omar (D-MN) of wanting to "force the entire world to submit to Islam."[31] While these actions were met with condemnation from Democratic leaders, Republican leadership was silent, and no official sanctions have been pursued to date, sending a clear message to Americans that this type of hateful rhetoric is worthy of our highest institutions.

Evidence shows that these kinds of actions (and failures to act) by Congress have real-world consequences. Hateful comments from elected officials have been found to directly connect to incidents of hate speech.[32] When members of Congress use their platforms to encourage hate and fear of an entire religion, their supporters listen and send hate and threats that include targeting Muslim members of Congress, their staff, and anyone who appears Muslim. For years, Representatives Omar and Rashida Tlaib (D-MI) have regularly received death threats specifically singling them out and targeting them because they are Muslim. When congressional leaders fail to hold fellow members of Congress accountable for hate-mongering, those members are permitted to double down on their bigotry. By doing so, they normalize and encourage anti-Muslim hate among their supporters.

Lonnie Coffman's actions are a chilling example of the harms that hateful rhetoric can cause. On the day of the January 6, 2021 insurrection, Coffman drove to Washington, D.C. with bombs, guns and a list that singled out Rep. André Carson (D-IN) as a Muslim.[33] Coffman was arrested before he was able to achieve any of his apparent plans, but he was permitted to plead to relatively minor charges that carry a maximum penalty of less than nine years.[34]

IV. Conclusion and Recommendations

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[30] Jason Lemon, "Marjorie Taylor Greene Attacks Ilhan Omar, 'Jihad Squad' After Boebert Apology," November 27, 2021, https://www.newsweek.com/marjorie-taylor-greene-attacks-ilhan-omar-jihad-squad-after-boebert-apology-1653686.

[31] Muslim Advocates, Screenshot of @Mtgreenee Twitter account posting, December 14, 2021, https://muslimadvocates.org/wp-content/uploads/2022/01/Greene-Screenshot.png.

[32] Liz Zhou, "There need to be consequences for Rep. Lauren Boebert's Islamophobic comments," December 4, 2021, https://www.vox.com/22814386/lauren-boebert-islamophobic-comments-omar-house-republicans.

[33] Lawrence Andrea, "Man arrested in D.C. with explosives had threatening note mentioning Rep. André Carson," January 12, 2021, https://www.indystar.com/story/news/crime/2021/01/12/lonnie-coffman-included-rep-andre-carson-threatening-note/6644525002/.

[34] Carol Robinson, "Lonnie Coffman pleads guilty in Jan. 6 riots: Says Molotov cocktails were old; complains about jail conditions," November 12, 2021, https://www.al.com/news/2021/11/lonnie-coffman-pleads-guilty-in-jan-6-riots-says-molotov-cocktails-were-old-complains-about-jail-conditions.html.

Anti-Muslim fear-mongering and bigotry has been on the rise in the United States. Public officials are increasingly fanning the flames of hate and abandoning their responsibility to promote freedom, truth and fairness. As a result, today, it is becoming increasingly acceptable to demonize Muslims and vandalize mosques. Because of systematized anti-Muslim bias in the system, American Muslims are hesitant to rely on law enforcement to protect our communities and institutions.

Importantly, anti-Muslim hate does not just affect American Muslims. Indeed, the first casualty of post-9/11 racialized backlash was Sikh American Balbir Singh Sodhi.[35] Many Americans who fit the generalized profile of a non-white "other" may find themselves the target of anti-Muslim hate. In addition, anti-Muslim hate interacts with xenophobia, white Christian nationalism and antisemitism in a toxic mix that is reflected in many of today's most pressing civil rights concerns: for instance, the movements to ban racial justice education in schools is very much informed by the same playbook deployed by the discriminatory "Sharia ban" activist movement.[36] American Muslims may be early victims of those who oppose broad and equal freedoms for the most marginalized, and the targeting of our communities serves as a warning sign to all who would stand up for liberty. [37]

To combat rising anti-Muslim discrimination, harassment and hate incidents particularly targeting our religious and civic institutions, Muslim Advocates makes the following recommendations for members of Congress:

1) Take Action to Stop Racial and Religious Profiling.
   Congress must address the failures of past and present federal law enforcement programs that have mischaracterized and criminalized American Muslims' religious expression, perpetuated patently false stereotypes about Muslims, and permitted racial and religious profiling, ultimately resulting in harmful federal policing. Specifically, we ask Congress to:
   a. Request an audit of all federal law enforcement and intelligence gathering training and educational materials to identify information that is factually inaccurate or misleading or exhibits bias against any race, ethnicity, religion or national origin—and hold a hearing to share the findings and examine the impacts of these materials.

[35] BBC News, "'My dad was killed in first hate crime after 9/11,'" September 13, 2021, https://www.bbc.com/news/av/world-us-canada-58514967.
[36] Wajahat Ali, "The GOP's Sharia Law Liars Are Hyping Critical Race Theory Now," June 28, 2021, https://www.thedailybeast.com/the-gops-sharia-law-liars-are-hyping-critical-race-theory-now
[37] Muslim Advocates, "On Jan 6, Listen to Marginalized Communities," January 6, 2022, https://muslimadvocates.org/2022/01/muslim-advocates-on-jan-6-listen-to-marginalized-communities/.

b. Condition homeland security funding on a mandatory retraining program for all federal, state and local law enforcement officials who have been subjected to biased and discriminatory training provided by the federal government or with federal funds.
c. Require that DHS condition law enforcement and homeland security funding for state and local governments (including TVTP grants) on carrying out training or otherwise using federal funds in a manner that upholds our nation's commitment to equal treatment and equal justice under the law and barring the use of trainers or materials that exhibit bias against any race, ethnicity, religion or national origin.
d. Demand accountability from federal agencies for permitting racial and religious profiling in law enforcement intelligence activities.
e. Discontinue funding of, and demand transparency from, the Targeted Violence and Terrorism Prevention grant program and Center for Prevention Programs and Partnerships.

    i. Aside from messaging, it is not clear to us whether either of these programs are anything but a reformulation of previous, flawed federal government countering violent extremism programs.
    ii. There is no indication that current grantees are pursuing evidence-based approaches.
    iii. There are no publicly available assessments of the effectiveness of past grants and whether these experiences contain any lessons for future efforts.[38]
    iv. CP3 must specifically address the concerns Muslim Advocates outlined in our June 1, 2020, letter to Acting DHS Secretary Chad Wolf.[39]

2) Review and Revisit the USA PATRIOT Act. To date, there still has not been a full, public and independent accounting and review of the PATRIOT Act and other surveillance powers granted by Congress to the FBI and other institutions within the Executive branch. The Judiciary Committee should initiate this public reckoning.

3) Zero Tolerance for Hate Speech by Congresspersons.

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[38] In a February 2021 report, DHS concurred with a recommendation by the GAO that DHS implement evaluation measures for TVTP, stating that its Targeted Violence and Terrorism Prevention Grant Program Evaluation Plan documents its planned evaluation method. Copies of this Plan are not readily available, and no results have been published. https://www.gao.gov/assets/720/712452.pdf.

[39] Muslim Advocates, "Civil Rights and Community Groups Ask DHS to Halt Discriminatory Surveillance Grant Program," June 1, 2020, https://muslimadvocates.org/2020/06/civil-rights-and-community-groups-ask-dhs-to-halt-discriminatory-surveillance-grant-program/.

Members of Congress must refrain from engaging in hate speech about Islam and Muslims and must be united in condemning and holding accountable any colleagues who do make such hateful comments. Rather than continuing to sow the division that threatens the fabric of American society, members of Congress must foster and model to the American public how to communicate with mutual respect to collectively address the many challenges we face.

4) Curb White Nationalism. Ensure that law enforcement resources are targeting the biggest domestic threat to Americans, which is white nationalism. Profiling and surveilling American Muslims not only violates our constitutional rights and liberties: it dilutes law enforcement attention to real and actual threats, stigmatizes our communities, and damages trust, all of which make our nation less safe.

5) Invest in Communities. Direct federal resources to community approaches to safety: invest in our communities' self-determination by redirecting grants from Department of Homeland Security programs to community-based security approaches that do not rely on law enforcement.

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