

# BETWEEN INDIGENCE, ISLAMOPHOBIA AND ERASURE: POOR AND MUSLIM IN “WAR ON TERROR” AMERICA

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## ABSTRACT

Nearly half of the Muslim American population is interlocked between indigence and “Islamophobia,” or anti-Muslim animus. Of the estimated 8 million Muslim Americans, 45% earn a household income less than \$30,000 per annum. A figure that clashes with pervasive stereotyping of Muslim Americans as middle class, economically upwardly mobile, or opulently wealthy, but corresponds with the legal poverty line in the United States.

Since 9/11, the legal literature analyzing national security, anti-terror policies, and Muslim American civil liberties has been prolific. The emergence of “counter-radicalization” policing within Muslim American communities drives this scholarly interest forward. However, since 9/11 and still today, Muslim Americans have been framed as similarly situated victims within legal literature, falling short of closely examining vulnerable indigent and working class spaces where public and private Islamophobia is disproportionately unleashed; and injuries are compounded.

This intervention examines these liminal, and overlooked, spaces where indigence and Islamophobia collide. In turn, highlighting how the convergence of poverty, religious profiling and prosecution, and mounting counter-radicalization policing disparately impacts Muslim America’s most vulnerable demographic amid the still escalating “War on Terror.”

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## INTRODUCTION

*“To be a poor man is hard, but to be a poor race in a land of dollars is the very bottom of hardships.”*

– W.E.B. DuBois<sup>1</sup>

*“Since Islam [and Muslims are] ‘against us’ and ‘out there,’ the necessity of adopting a confrontational response of our own toward it will not be doubted.”*

– Edward Said<sup>2</sup>

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“Indigent America”<sup>3</sup> is routinely disconnected and distinguished from “Muslim America.”<sup>4</sup> For reasons linked to dissonant imagining, conflicting “racialization,”<sup>5</sup> and divergent political and popular representations, the two populations are regarded as distinct, non-overlapping, and non-reconcilable blocs. This incompatible caricaturing of indigent Americans and Muslim Americans facilitates the erasure of indigent Muslim Americans in both scholarly and advocacy interventions; and consequently, leaves their distinct struggles ignored and unmitigated. This erasure is never more dangerous than today – when the vulnerability of indigent Muslim Americans to “racialized poverty,”<sup>6</sup> “Islamophobia”<sup>7</sup> and “countering violent extremism (CVE)” policing is at an all-time high,<sup>8</sup> and still on the uptick.

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<sup>1</sup> W.E.B. DUBOIS, *THE SOULS OF BLACK FOLK* 11 (1903).

<sup>2</sup> EDWARD SAID, *COVERING ISLAM* 49 (1981) [hereinafter *COVERING ISLAM*].

<sup>3</sup> In this Article, “indigent America” is used as a reference for the aggregate population of Americans who live at, or below, the poverty line. I adopt the legal definition of indigence, or poverty, set forth by the *United States Department of Health and Human Services*, poverty guidelines. Poverty in the U.S. is contingent upon household size. *2015 Poverty Guidelines*, U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES, available at <http://aspe.hhs.gov/poverty/15poverty.cfm> (last checked on October 1, 2015).

<sup>4</sup> In this Article, “Muslim America” or the “Muslim American community” is a loosely constructed signifier for the Muslim American population. It does not presume, or promote, the notion that the Muslim American population is an integrated, consolidated or monolithic group.

<sup>5</sup> MICHAEL OMI & HOWARD A. WINANT, *RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960S TO THE 1990S* 55 (1994). Omi and Winant describe race as “an unstable and ‘decentered’ complex of social meanings constantly being transformed by political struggle” and racialization as use of race as a basis for distinguishing among human groups.

<sup>6</sup> “Racialized poverty” refers to the converging impact of racism and indigence, and namely, the distinct ways in which minority communities experience poverty in America.

The stereotypes associated with indigent America are, generally, viewed as irreconcilable with the tropes and misrepresentations associated with Muslim American identity. The latter are overwhelmingly caricatured as wealthy, Arab, and immigrant. These tropes brand Muslim Americans as irreducibly and perpetually foreign, racially homogenous, and affluent.<sup>9</sup> These caricatures saturate established American jurisprudence,<sup>10</sup> and are also perpetuated in popular media.<sup>11</sup>

On the other hand, poor Americans are generally viewed in domestic, Black or Brown form. Or alternatively, rigidly colorblind or race-neutral terms, according to “post-race” proponents.<sup>12</sup> Furthermore, although Islam is a religion – and its followers diverse along racial, ethnic and cultural lines – legal and political machinations have constructed Muslims into a *de facto* racial group.<sup>13</sup> Discursively, Muslim identity is imagined along racial lines as frequently – if not more – than it is along religious lines. Islam was treated as

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<sup>7</sup> I define “Islamophobia” as animus toward Islam, Muslims and individuals stereotyped as Muslims. See also CARL W. ERNST, *ISLAMOPHOBIA IN AMERICA: THE ANATOMY OF INTOLERANCE 2* (2013) (for several definitions of “Islamophobia”) and HAMID DABASHI, *BROWN SKIN, WHITE MASKS 9–12* (2010) (for an interdisciplinary analysis of the “making of Islamophobia”). See generally EDWARD W. SAID, *COVERING ISLAM: HOW THE MEDIA AND THE EXPERTS DETERMINE HOW WE SEE THE REST OF THE WORLD* (1981), for what is widely considered the landmark analysis of how the media and political actors manufacture misrepresentations of Islam, Muslims, and the Muslim World.

<sup>8</sup> See Amna A. Akbar, *Policing “Radicalization.”* 3 U.C. IRVINE L. REV. 809, 814 (2013). “[C]ounter-radicalization conforms to the preemptive logic of counterterrorism, which focuses on strategies that minimize the risk and intensity of future terrorist attacks.” Samuel J. Rascoff, *Establishing Official Islam? The Law and Strategy of Counter-Radicalization*, 64 STAN. L. REV. 125, 127 (2012).

<sup>9</sup> Khaled A. Beydoun, *Between Muslim and White: The Legal Construction of Arab American Identity*, 69 N.Y.U. ANNUAL SURVEY OF AMER. L. 29 (2014) [“Between Muslim and White”].

<sup>10</sup> See generally Marie A. Failing, *Islam in the Mind of American Courts: 1800 to 1960*, 32 B.C. J.L. & SOC. JUST. 1, 4–5 (2012), for a comprehensive review of the common stereotypes and flat judicial understandings of Muslim and Islam during from 1800-1960.

<sup>11</sup> See RICHARD JACKSON HARRIS AND FRED W. SANBORN, *A COGNITIVE PSYCHOLOGY OF MASS COMMUNICATION 105* (2013).

<sup>12</sup> Lawrence D. Bobo, *Somewhere Between Jim Crow and Post-Racialism: Reflections on the Racial Divide in America Today*, *DAEDELUS, THE JOURNAL OF THE AMERICAN ACADEMY OF ARTS AND SCIENCES* 13 (2011) [hereinafter Bobo].

<sup>13</sup> “I would suggest that September 11 facilitated the consolidation of a new identity category that groups together persons who appear “Middle Eastern, Arab, or Muslim.” This consolidation reflects a racialization wherein members of this group are identified as terrorists, and are disidentified as citizens.” Leti Volpp, *The Citizen and the Terrorist*, 49 UCLA L. REV. 1575 (2002) [hereinafter Volpp].

an ethno-racial identity” for centuries,<sup>14</sup> and continues to be viewed in these terms today.

This project seeks to reconcile the conflicting imaginings of indigent Americans and Muslim Americans; and subsequently, refocus attention on the liminal junctures where indigent Muslim Americans reside. Particularly amid today’s context of escalating Islamophobia and counter-radicalization policing, which intensifies the vulnerability of indigent Muslim Americans to both. Broadening the aim of my previous work, which examines how American slavery<sup>15</sup> and immigration policy<sup>16</sup> impoverished modern day understandings of Muslim American identity within and without the law, this project analyzes how prevailing dissonance between Muslim and indigent identity intensifies the vulnerability, and exacerbates the civil liberties perils, to those that qualify as both.

First, this project offers a demographic profile of indigent Muslim America. A portrait of indigent Muslim Americans is currently absent from legal and social science literature, an alarming scholarly void given the prolific research and writing around Muslim American identity since the September 11<sup>th</sup> terrorist attacks.<sup>17</sup> Disaggregating the Muslim American population is an essential step toward fostering enhanced scholarly understanding of this group; and subsequently, facilitating narrowly tailored practical interventions that address the specific concerns of poor Muslim American communities.

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<sup>14</sup> Although a religious identity, the mainstreaming of Orientalist baselines combined with political propaganda beginning in the late Eighteenth Century converted Islam into an ethno-racial identity in the image of Arabs. See generally ROBERT J. ALLISON, *THE CRESCENT OBSCURED: THE UNITED STATES AND THE MUSLIM WORLD, 1776-1815*, for a historical account of the U.S. governments political and legal reimagining of Islam (and Muslims) during this time period.

See also *Hassan v. New York*, 3d. 1699, 48 (2015), whereby petitioners challenged the New York Police Department for its surveillance of Muslim communities in the tri-state area (citing *Between Muslim and White*, *supra* note \_\_\_\_).

<sup>15</sup> Khaled A. Beydoun, *Antebellum Islam*, 58:1 HOWARD L.J.141 (2015).

<sup>16</sup> See *Between Muslim and White*, *supra* note \_\_\_\_\_.

<sup>17</sup> The focus on poverty and its relationship with radicalization, and terrorism at large, is building within the social science literatures, where commentators have focused on indigent American and foreign spaces as “breeding ground for radicalism,” contending that “socioeconomic development appears compelling as an effective antidote.” Omer Taspinar, *Fighting Radicalism Not ‘Terrorism:’ Roots of an International Actor Redefined*, 29:2 SAIS REVIEW 75 (2009). See also Karen Von Hippel, *The Role of Poverty in Radicalization and Terrorism*, in *DEBATING TERRORISM AND COUNTERTERRORISM: CONFLICTING PERSPECTIVES ON CAUSES, CONTEXTS AND RESPONSES* 52-68 (ed. STUART GOTTLIEB, 2009), for a perspective from a U.S. State Department on the role indigence plays in the development and recruitment of radicals.

Second, in light of intensifying “American Islamophobia,”<sup>18</sup> and the deployment of CVE policing disproportionately targeting Muslim Americans,<sup>19</sup> this project analyzes the distinct perils these systems pose to indigent Muslim Americans – the most common and frequent targets of CVE policing programs largely deployed in concentrated, urban and economically less-advantaged contexts. Disproportionate CVE policing of indigent Muslim American communities, in turn, endangers (and chills) their constitutionally protected First Amendment activity, including free exercise of religion, political association, and speech rights;<sup>20</sup> and encroaches on their Fourth Amendment protections.<sup>21</sup>

This project is comprised of three sections. Section I provides a missing snapshot of the indigent Muslim American population – which will be a vital addition to legal commentators concerned with national security and civil liberties matters concerning Muslim Americans. Keying in on demographic and statistical data that establishes stronger familiarity with this segment of the broader Muslim American population will not only benefit legal scholarship, but ideally, practical and advocacy interventions in indigent and “near indigent” Muslim American communities.<sup>22</sup>

Section II examines the conceptual and structural frameworks of Islamophobia and CVE, respectively, and their broader and intersecting impact on Muslim America at large. Section III analyzes the distinct threats Islamophobia and CVE policing present to indigent Muslim Americans, which I argue, are compounded by their convergence with racialized poverty in the very spaces where this policing is most commonly deployed.

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<sup>18</sup> Public and private anti-Muslim systems in the U.S., closely discussed in Section II(A). Here, I use “American Orientalism” to refer to the state’s view of Islam and the “Muslim World” that began to take form in the 18<sup>th</sup> Century. This is not to be mistaken by how the term has been deployed more recently by other scholars, most notably Douglas Little, who uses “American Orientalism” as governmental view of the Middle East that began to take shape after 1945. See generally DOUGLASS LITTLE, AMERICAN ORIENTALISM: THE UNITED STATES AND THE MIDDLE EAST SINCE 1945 (2008).

<sup>19</sup> Amna Akbar, *Policing “Radicalization,”* 3 UC IRVINE L. REV. 820 (2013) [hereinafter Akbar].

<sup>20</sup> U.S. CONST. AMEND. I

<sup>21</sup> U.S. CONST. AMEND. IV.

<sup>22</sup> “Because poor people have less privacy and less space—dynamics exacerbated in the city environment—police encounters are less regulated by the Fourth Amendment than when police aim to regulate the middle-class and wealthy.” *State v. Mooney*, 588 A.2d 145 (Conn. 1991) (holding that a homeless person has a reasonable expectation of privacy in his duffel bag and closed cardboard box located under a highway bridge, as these objects constituted his home).

<sup>22</sup> Near indigence refers to an economic status that is not far above the legal poverty line.

## I. PROFILING POVERTY IN MUSLIM AMERICA

In America today, 45.3 million people – or 14.5% of the aggregate population – live below the poverty line.<sup>23</sup> In the midst of a staggering economy, and the “shrinking of an American middle class,”<sup>24</sup> this figure is poised to gradually increase, and the gap between the haves and the have not certain to broaden. Those currently living below the poverty line will generally see their condition spiral further downward, and subsequently, face enhanced threat to the perils associated with poverty.<sup>25</sup>

Illustrated flatly and monolithically, Muslim America is diverse along racial, ethnic and nationality lines.<sup>26</sup> In fact, Muslim Americans hail from “80 nationalities and cultural backgrounds,”<sup>27</sup> moving some to brand it “a ‘microcosm of the Muslim world.’”<sup>28</sup> Overlaid with its racial breadth, generational diversity, multiculturalism, and linguistic breadth,<sup>29</sup> Muslim Americans are also disparately situated along economic lines. Yet, unlike rising research and scholarship examining the racial and cultural diversity of Muslim America, the attention on indigent segments of the population has been virtually non-existent. This is particularly true within legal scholarship, where scrutiny of Muslim American communities and bodies is rising; but genuine understanding of the existential distinctions and diversity within the population remains shallow.

This Section contributes a profile of the indigent Muslim American population currently absent from legal scholarship. Part A offers a statistical snapshot of indigent Muslim America, and Section B grapples with the

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<sup>23</sup> *Income, Poverty and Health Insurance Coverage in the United States: 2013*, U.S. CENSUS BUREAU, September 16, 2014, available at <http://www.census.gov/newsroom/press-releases/2014/cb14-169.html>.

<sup>24</sup> Alicia Parlapano, Robert Gebeloff and Shan Carter, *The Shrinking American Middle Class*, N.Y. TIMES, Jan. 26, 2015, available at [http://www.nytimes.com/interactive/2015/01/25/upshot/shrinking-middle-class.html?\\_r=0](http://www.nytimes.com/interactive/2015/01/25/upshot/shrinking-middle-class.html?_r=0) (last viewed on September 12, 2015).

<sup>25</sup> Jennifer Van Fleet, *The Struggles and Predicaments of Low-Income Families and Children in Poverty*, 1:2 HUMAN ARCHITECTURE: JOURNAL OF THE SOCIOLOGY OF SELF-KNOWLEDGE 6 (2011).

<sup>26</sup> Between Muslim and White, *supra* note 7, at 41-42.

<sup>27</sup> Ashley Moore, *American Muslim Minorities: The New Human Rights Struggle*, HUMAN RIGHTS & HUMAN WELFARE 91 (2010) [hereinafter Moore].

<sup>28</sup> Toni Johnson, *Muslims in the United States*, COUNCIL ON FOREIGN RELATIONS 2 (2011), available at <http://www.cfr.org/united-states/muslims-united-states/p25927#pl> [hereinafter Johnson].

<sup>29</sup> See also Hilal Elver, *Racializing Islam Before and After 9/11: From Melting Pot to Islamophobia*, 21 TRANSNAT'L L. & CONTEMP. PROBS. 119, 124.

misnomer that poverty is exclusively experienced by “indigenous” (versus “immigrant”) Muslim Americans,<sup>30</sup> highlighting that indigence is experienced by discrete segments of the Muslim American population beyond this binary.

A. *Indigent Muslim America: A Snapshot*

Muslim identity is *imagined* far more than its *seen*. Rather than observing its genuine corporeal contours, individual and collective Muslim bodies are frequently visualized through an “Orientalist” prism.<sup>31</sup> This prism mutates the authentic form of Muslim Americans, and renders a perspective that is narrow, rigid, static, and ultimately, misrepresentative.

For centuries and still today, both Islam and Muslims have been envisioned and assigned as the civilizational foil and normative antithesis of the West.<sup>32</sup> In turn, supplanting the genuine and multicultural shape of Muslim American identity with a neatly crafted, distorted, and one-dimensional caricature.<sup>33</sup> Orientalism shaped judicial perceptions and

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<sup>30</sup> SHERMAN A. JACKSON, *ISLAM AND THE BLACKAMERICAN: LOOKING TOWARD THE THIRD RESURRECTION* 23 (2005) [hereinafter JACKSON]. For a recent critique of the “immigrant vs. indigenous binary,” see Khaled A. Beydoun, *Beyond a Binary: Muslim-America More than “Indigenous and Immigrant,”* THE ISLAMIC MONTHLY, July 23, 2014 [hereinafter *Beyond a Binary*].

<sup>31</sup> See generally EDWARD SAID, *ORIENTALISM* (1979) [hereinafter SAID] (landmark work about how the Middle East is positioned as the diametric opposite of the West, classifying the former as the “Orient” and the latter as the “Occident”).

Said defines Orientalism as, “A created body of theory and practice in which, for many generations, there has been a considerable material investment. Continued investment made Orientalism, as a system of knowledge about the Orient, an accept grid for filtering through the Orient into Western consciousness, just as the same investment multiplied - indeed, made truly productive - the statements proliferating out from Orientalism into the general culture.” *Id.* at 6.

<sup>32</sup> See generally SAMUEL P. HUNTINGTON, *CLASH OF CIVILIZATION: REMAKING OF WORLD ORDER* (1996) (for the most cited and popular work arguing that “Western civilization” is at odds with, and poised to clash, with “Islamic civilization.”). For a critique of Huntington, which focuses specifically on deconstructing his “Islamic civilization” construct, see Khaled A. Beydoun, Comment, *Dar al-Islam Meets “Islam as Civilization”: An Alignment of Politico-Theoretical Fundamentalisms and the Geopolitical Realism of this Worldview*, 4 UCLA J. ISLAMIC & NEAR E.L. 143, 159 (2005).

<sup>33</sup> SAID, *supra* note 17, at 2. This discourse is based on a civilizational binary whereby the Occidental sees the Oriental as its diametric foil. Said titled this binary “Orientalism,” which he defines as:

“A system of knowledge about the Orient, but a created body of theory and practice in which, for many generations, there has been a considerable material investment. Continued investment made Orientalism, as a system of knowledge about the Orient, an accepted grid for filtering through the Orient into Western consciousness, just as that



misperceptions of Islam and Muslims through the “Naturalization Era,”<sup>34</sup> which embedded an understanding of Muslims as “irreducibly foreign and inassimilable,”<sup>35</sup> Arab, and un-American. The residual effects and emanations of American Orientalism, which I examine in the subsequent section, perpetuate a flat narrow understanding of Muslim Americans.

This limited and flat view of Muslim Americans, ironically, conceals the fact that a considerable segment of the population is indigent and near-indigent – or dangerously close to the legal poverty line. Although the First Amendment restricts the *U.S. Census Bureau* from collecting religious demographic data, non-governmental research renders a preliminary economic portrait of Muslim America.

A 2011 study by the *Pew Research Center*, titled *Muslim Americans: No Signs of Growth in Alienation or Support for Extremism*, provides invaluable economic data about the Muslim American population.<sup>36</sup> The study found that 45% of the Muslim American population has a household income less than \$30,000 per year. This figure was nine percent higher than the figure for the general public, which stood at 36%.<sup>37</sup> Thus, making Muslim Americans – as a standalone faith-group – comparatively poorer than the broader American polity, and according to available data, poorer than any other American faith group.

For further context, the *U.S. Department of Health and Human Services* draws the poverty line at \$28,410 for a family of five; and \$32,570 for a family of six.<sup>38</sup> Thus, the figure holding that nearly half of Muslim Americans earn a household income of less than \$30,000 per annum is not only staggering, but also demystifies embedded tropes of material excess and “opulent wealth”<sup>39</sup> and modern caricatures of economically upwardly mobile,

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same investment multiplied – indeed, made truly productive – the statements proliferating out from Orientalism into the general culture.” *Id* at 6.

<sup>34</sup> The period from 1790 through 1952, when whiteness was a legal prerequisite for citizenship (excluding Blackness following the abolition of slavery).

<sup>35</sup> Between Muslim and White, *supra* note 7, at 41.

<sup>36</sup> *Muslim Americans: No Signs of Growth in Alienation or Support for Extremism*, PEW RESEARCH CENTER 17 (2011) [hereinafter *Pew Study*].

<sup>37</sup> *Id.*

<sup>38</sup> *2015 Poverty Guidelines*, U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES, available at <http://aspe.hhs.gov/poverty/15poverty.cfm>.

<sup>39</sup> See generally JACK SHAHEEN, *REEL BAD ARABS: HOW HOLLYWOOD VILIFIES A PEOPLE* (2001) (for a comprehensive history of cinematic and television misrepresentations of Arab, MENA and Muslim identity). See also JACK SHAHEEN, *THE TV ARAB* (1984) (for a foundational account of television misrepresentations of Arab and Arab Americans through the early 1980’s); and TIM JON SEMMERLING, “EVIL” ARABS IN AMERICAN POPULAR FILM: ORIENTALIST FEAR (2006) (for a more recent accounting of caricatured portrayals of Arab

model minorities.<sup>40</sup> For example, stereotypes including the extravagantly rich oil sheik come to mind; the wealthy foreigner; or the industrious entrepreneur, pulling himself up by his bootstraps.

Comparatively, 14% and 8% of Muslim Americans boast household incomes greater than \$100,000 and between \$75,000 - \$99,999 per year, respectively. Therefore, although perceived in the mainstream as a middle class or wealthy monolith, nearly half of the Muslim American population lives below, at, or dangerously close to the legal poverty line. Indeed, official statistics clash with embedded stereotypes of Muslim Americans, which raises another dimension of concern during an impasse when the “War on Terror” is fluidly expanding, localizing, and penetrating indigent and working class Muslim American spaces.

### B. Poverty Beyond the “Indigenous/Immigrant” Binary

Mirroring the broader Muslim American population, Indigent Muslim America is a racially diverse mass. Poor Muslim Americans are generally huddled inside or on the outskirts of large metropolises including Detroit and New York City, Minneapolis and Philadelphia. But also centered in medium and small American cities where the perils of Islamophobia may be even greater, and the protections from it more meager.

Lisa Gail Omanson points to income level disparities as a primary threat to the “unity of American Muslims,” which engenders segregated spaces of worship, and social, cultural and political discord.<sup>41</sup> Although racism, tribalism, “colorism,”<sup>42</sup> and ethnocentrism within the Muslim American population are pervasive and profuse,<sup>43</sup> assertions that poverty is

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characters in American cinema). These stereotypes emanate from the conflation of Muslim with Arab identity, and more specifically, discursive understanding of the latter as Saudi or Gulf state Arabs – who are linked to material excess and extreme wealth.

<sup>40</sup> Johnson, *supra* note 15, at 1. A common myth is that, “U.S. Muslims are more affluent, educated, and culturally integrated than Muslims in Western Europe,” demystified by closer scrutiny of indigence within specific segments of the Muslim American population. *Id.*

<sup>41</sup> Lisa Gail Omanson, *African-American and Arab-American Muslim Communities in the Detroit Ummah*, Iowa Research Online (2013), available at <http://ir.uiowa.edu/cgi/viewcontent.cgi?article=4726&context=etd> [hereinafter Omanson].

<sup>42</sup> Colorism is discrimination along lines of skin complexion, where darker skin is stigmatized and lighter skin coveted. Although not exclusively, colorism is generally framed to address intra-racial prejudice.

<sup>43</sup> For a poignant account of anti-Black racism within the Arab and Arab American communities, see Susan Abulhawa, *Confronting Anti-Black Racism in the Arab World*, AL JAZEERA ENGLISH, Jul. 7, 2013, available at <http://www.aljazeera.com/indepth/opinion/2013/06/201362472519107286.html>.

only experienced within “indigenous” Muslim American communities are a misnomer.<sup>44</sup> While the Pew Study did not break down its statistics by race or nationality, social science and case studies of specific Muslim American communities renders a clearer view of how poverty is experienced along these lines – and across the “indigenous” and “immigrant divide.”<sup>45</sup>

### 1. Undoing Stereotypes

The household income figures compiled by the *Pew Research Center* illustrate that indigence is experienced across racial, nationality and generational lines within Muslim America. Indeed, the caricaturing of Muslims as exclusively Arabs renders a myopic and mutated perception of indigence within the Muslim American population,<sup>46</sup> and obfuscates capacity to see the pervasiveness of poverty within various segments of the Muslim American experience. Understanding poverty within Muslim America requires, as a preliminary step, looking beyond, “the ‘Arabification of Muslims, and the ‘Muslimification’ of Arabs.”<sup>47</sup>

Muslim America is distinct from Arab America – the latter being an ethnic group, while the former a population linked by religion.<sup>48</sup> While there is some overlap, the vast majority of Arab Americans are Christians.<sup>49</sup> Close scrutiny of Muslim American demographical figures reveals that the population is richly diverse along racial and ethnic lines:

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<sup>44</sup> The term “indigenous” Muslim Americans generally refers to African American Muslims – a framing I grapple with in subsequent sections of this Article. Sherman Jackson established, and is most prominently associated, with this framing. See JACKSON, *supra* note \_\_\_\_\_, at 17.

<sup>45</sup> *Id.*

<sup>46</sup> “Almost all Muslims are portrayed as Arabs, despite the fact that only about 20 percent of the worldwide Muslim population identify themselves as Arab.” Moore, *supra* note 14, at 91.

<sup>47</sup> Reem Bahdi, *No Exit: Racial Profiling and Canada’s War Against Terrorism*, 41 OSGOODE HALL L.J. 293, 296 (2003).

<sup>48</sup> “At no point in American history have Arabs constituted a majority, let alone the largest plurality, of the Muslim-American population. Nor were Arabs the first Muslims to arrive in North America.” *Between Muslim and White*, *supra* note 7, at 41.

<sup>49</sup> *Arab Americans: An Integral Part of American Society*, ARAB AM. NAT’L MUSEUM 15–16 (2011), available at [http://www.arabamericanmuseum.org/umages/pdfs/resource\\_booklets/AANM-ArabAmericansBooklet-web.pdf](http://www.arabamericanmuseum.org/umages/pdfs/resource_booklets/AANM-ArabAmericansBooklet-web.pdf) (noting that the Christian Arab American population is significantly larger than the Muslim Arab American population, because Christian Arabs have been coming to the United States for a longer period of time). 63% of Arab Americans today identify as Christians. *Id.* at 13. See also ARAB AMERICAN ENCYCLOPEDIA 97 (Anan Ameri & Dawn Ramey eds., 2000).

White Americans comprise 30% and Black Americans 24% of the total Muslim American population. Asian Americans follow at 21%. The remaining population is rounded out by a rapidly rising community of Hispanics (6%) and those who self-describe as “other/mixed.”<sup>50</sup>

At 23%, Arab Americans comprise less than one-fourth of the Muslim American population.<sup>51</sup> Yet, Muslim American identity continues to be discursively conflated with it.

Scholars branded Islam the “fastest growing religion in the United States” more than two decades ago – a claim that still holds true today.<sup>52</sup> This domestic growth maps with Islam’s rapid global expansion.<sup>53</sup> Demographic trends also indicate that, “The Muslim population in the United States... is expected to double because of immigration and higher birth rates.”<sup>54</sup>

This prolific domestic growth and diversity distributes poverty almost equally across racial and generational lines. Forty-seven percent of foreign-born Muslim Americans having a household income of less than \$30,000 per year, compared to 43% of native-born Muslim Americans.<sup>55</sup> Divergence along racial and generational lines is greater at the top, with 18% of foreign-born Muslim Americans holding household incomes greater than \$100,000, compared to 8% of native-born Muslim Americans.<sup>56</sup> This statistic highlight that economic upward mobility is more pronounced among specific immigrant segments of the Muslim American population.

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<sup>50</sup> *Id.* at 42-43.

<sup>51</sup> *Muslim Americans: No Signs of Growth in Alienation or Support for Extremism*, PEW RESEARCH CENTER 17 (Aug. 30, 2011), <http://www.people-press.org/2011/08/30/muslim-americans-no-signs-of-growth-in-alienation-or-support-for-extremism/> (last checked on October 25, 2015).

<sup>52</sup> Carol L. Stone, *Estimate of Muslims Living in America*, in *THE MUSLIMS OF AMERICA* 25 (YVONNE YAZBECK e.d., 1991). For a recent study on growth of Muslim American population, see *America’s Changing Religious Landscape*, PEW RESEARCH CENTER 3, May 12, 2015, available at <http://www.pewforum.org/files/2015/05/RLS-05-08-full-report.pdf>.

<sup>53</sup> “Muslims will grow more than twice as fast as the overall world population between 2010 and 2050 and, in the second half of this century, will likely surpass Christians as the world’s largest religious group.” Michael Lipka and Conrad Hackett, *Why Muslims Are the World’s Fastest Growing Religious Group*, PEW RESEARCH CENTER, Apr. 23, 2015, available at <http://www.pewresearch.org/fact-tank/2015/04/23/why-muslims-are-the-worlds-fastest-growing-religious-group/> (last checked on October 25, 2015).

<sup>54</sup> Johnson, *supra* note 15, at 2.

<sup>55</sup> Pew Study, *supra* note 20, at 17.

<sup>56</sup> *Id.*

Unemployment and underemployment are also pervasive within the Muslim American population. Forty percent of Muslim Americans are currently unemployed, while 29% are underemployed.<sup>57</sup> Furthermore, unemployment and underemployment is disparately experienced by native-born Muslim Americans at a higher clip, at rates 6% and 4% greater than their foreign born counterparts, respectively.<sup>58</sup> This gap is likely attributed to higher incidence of racial discrimination, cross-generational poverty, and unequal access experienced by African American Muslims – who established the first Muslim communities in the U.S,<sup>59</sup> but are frequently neglected by mainstream Muslim American advocacy and service organizations.

## 2. African American Muslims

Legal scholarship centering Muslim Americans has largely ignored the rich history and modern experiences of African American Muslims. Although the first Muslims to set foot on American soil,<sup>60</sup> and the first to establish Muslim communities while bonded by slavery, and into the 20<sup>th</sup> Century, transformative religious movements, African American Muslims have contributed greatly to the broader Muslim American narrative.<sup>61</sup> Yet, this segment of the Muslim American population, which ranks as its biggest plurality, remains sidelined from current advocacy and scholarly interventions.<sup>62</sup> In line with this sidelining, the Pew Research Group listed,

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<sup>57</sup> *Id* at 18.

<sup>58</sup> *Id.*

<sup>59</sup> For a history of African American Muslims, starting with the enslaved Muslim population in the Antebellum South, see Antebellum Islam, *supra* note \_\_\_\_\_. See also SYLVIANE A. DIOUF, *SERVANTS OF ALLAH: AFRICAN MUSLIMS ENSLAVED IN THE AMERICAS* (1998).

<sup>60</sup> *Id.*

<sup>61</sup> See generally EDWARD E. CURTIS IV, *ISLAM IN BLACK AMERICA* (2002) (which offers a comprehensive history of the various Muslim movements that originated within, or penetrated into, the African American experience); KAMBIZ GHANEABASSIRI, *A HISTORY OF ISLAM IN AMERICA* (2010) (for a comprehensive history of Islam in the United States, which includes close attention to the major African American Muslim movements); and RICHARD BRENT TURNER, *ISLAM IN THE AFRICAN-AMERICAN EXPERIENCE* (1997) (for a prominent account of the major Muslim movements and traditions within the African American experience).

<sup>62</sup> Legal conception of Muslim identity is complicated when the subjects are not Arab but Black. This elucidates how the legal conception of Islam as an exclusively Arab religion prevents seeing Black subjects as legitimately Muslim – a dissonance that still continues today.

“Native born African American Muslims [as] the most disillusioned segment of the U.S. Muslim population.”<sup>63</sup>

This disillusionment is, in great part, linked to indigence gripping African American Muslim households. African American Muslims still experience poverty at a high clip. Recent figures place 27.4% of the broader African American community are below the poverty line.<sup>64</sup> Lawrence D. Bobo observed that, “The official black poverty rate has fluctuated between two to three times the poverty rate for whites,” since the mid-1960’s through the present day.<sup>65</sup> African American Muslim communities are generally located within concentrated African American urban spaces. Thus, they are not insulated from the machinations that perpetuate poverty within these spaces, in addition to the intersecting scrutiny of racialized community policing and emerging CVE surveillance.<sup>66</sup>

African American Muslims comprise roughly a quarter of the entire Muslim American population,<sup>67</sup> a figure that would be larger if members of the Nation of Islam were included.<sup>68</sup> With the largest numbers in urban centers, including Detroit,<sup>69</sup> Philadelphia,<sup>70</sup> Atlanta,<sup>71</sup> Chicago,<sup>72</sup> and New

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<sup>63</sup> Pew Muslim Study, *supra* note \_\_\_\_\_, at 6.

<sup>64</sup> *Poverty in the United States*, NATIONAL POVERTY CENTER (2015).

<sup>65</sup> Bobo, *supra* note 8, at 19.

<sup>66</sup> CVE programming was launched in three pilot cities – Los Angeles, Minneapolis, and Boston – all of which boast sizable African American Muslim communities, which are largely located within the indigent and working class sections of these cities. In addition, the subsequent set of cities DHS is contemplating implementing CVE programs (Detroit, Chicago, and New York City) also boasts visible African American Muslim populations.

<sup>67</sup> One commentator claimed, “42 percent of [Muslims Americans ten years ago] were said to be Blackamericans.” Sherman A. Jackson, *ISLAM AND THE BLACKAMERICAN: LOOKING TOWARD THE THIRD RESURRECTION* 4 (2005).

<sup>68</sup> Khaled A. Beydoun, *Islam Incarcerated: Religious Accommodation of Muslim Prisoners Before Holt v. Hobbs*, 84 UNIV. OF CINC. L. REV. (forthcoming 2015).

<sup>69</sup> See generally Omanson, *supra* note \_\_\_\_\_.

<sup>70</sup> For a study of conversion among African American Muslim males within Philadelphia, which renders an intimate illustration of the City’s sizable and expanding African American Muslim community, see generally Brian L. Coleman, *Post-Conversion Experience of African American Male Sunni Muslims: Community Integration and Masculinity in Twenty First Century Philadelphia*, UPENN COMMONS (2009) available at <http://repository.upenn.edu/cgi/viewcontent.cgi?article=1076&context=edissertations> (last checked on October 25, 2015).

<sup>71</sup> See Don Terry, *Black Muslims Enter Islamic Mainstream*, N.Y. TIMES, May 3, 1993, available at <http://www.nytimes.com/1993/05/03/us/black-muslims-enter-islamic-mainstream.html?pagewanted=all> (last checked on October 25, 2015), for a 1993 profile of the burgeoning African American Muslim community in Atlanta, and its transition from the Nation of Islam into “orthodox Islam.”

York City,<sup>73</sup> indigent African American Muslims sit at the intersection of poverty, racial profiling, police brutality, CVE policing and the trappings of the “school-to-prison pipeline.”<sup>74</sup> Recent protests throughout the country, dubbed the “Black Lives Matter Movement,” have framed these issues as structural ills perpetuating the subordination, criminality, and impoverishment of African Americans.<sup>75</sup>

While the plight of African American Muslims has been integrated into advocacy initiatives and social movements addressing the civil rights concerns of African Americans at large; their distinct victimhood and vulnerability to discrimination, anti-Muslim animus and police violence has been largely neglected within mainstream Muslim American interventions.<sup>76</sup> Efforts within African American Muslim communities have begun to publicly voice this alienation, citing “unilateral solidarity” and “exploitation of Black

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<sup>72</sup> Elijah Muhammad made Chicago the Nation of Islam’s headquarters in 1942, where it is still strong, and also rooted the growth of Sunni Islam among African Americans in the city. See MARTHA F. LEE, *THE NATION OF ISLAM: AN AMERICAN MILLENARIAN MOVEMENT* 24-26 (1996).

<sup>73</sup> Islam within the African American experience in New York City has a long and established tradition. Although generally associate with Malcolm X, and his stewardship of Harlem’s Moslem Mosque Number 2, African Muslims migrated to the City in the 19<sup>th</sup> Century and fled northward to escape slavery. See Imam Al-Hajj Talib ‘Abdur-Rashid, *African and African American Muslim Presence From Early New York to the Present*, MOSQUE OF ISLAMIC BROTHERHOOD INC., available at <http://www.mibnyc.com/index.php/articles/68-muslims-in-early-ny> (last checked on October 25, 2015).

<sup>74</sup> Nancy Heitzig, *Education or Incarceration: Zero Tolerance Policies and the School to Prison Pipeline*, FORUM ON PUBLIC POLICY 1 (2009).

<sup>75</sup> One of this Movement’s most resonant and compelling voices is writer Ta-Nahisi Coates, columnist for the *Atlantic*. His article, *The Case For Reparations*, outlines many of the structural inequities that underline the protests’ demands, and principal rallying cries. *THE ATLANTIC* (June 2014), available at <http://www.theatlantic.com/features/archive/2014/05/the-case-for-reparations/361631/>. See also Justin Hansford, *Ferguson to Geneva: Using the Human Rights Framework to Push Forward a Vision for Racial Justice in the United States After Ferguson*, 12 *HASTINGS RACE AND POVERTY* L. J. 101 (2015) (for an appeal to prominent international human rights instruments as the legal basis for advancing the civil rights of African Americans).

<sup>76</sup> Zeba Khan, *American Muslims Have a Race Problem*, AL JAZEERA AMERICA, Jun. 6, 2015, available at <http://america.aljazeera.com/opinions/2015/6/american-muslims-have-a-race-problem.html> (last checked on October 25, 2015). In this article, Khan cites how mainstream Muslim American organizations failed to address the killing of two African American Muslims by Boston Police as illustrative of this neglect (“he lack of reaction to the Sheikh-Hussein murder and more recently, the killing of Usaama Rahim – the 26-year-old black Muslim shot by Boston police on June 2 during a terrorism investigation – demonstrate that complacency in response to violence perpetrated against black Muslims may not.”) *Id.*

bodies” to advance non-Black Muslim interests.<sup>77</sup> In turn, exposing indigent African American Muslims to the dangers of converging “broken windows” community policing strategy and violence, CVE policing, and intra-racism and neglect of mainstream Muslim advocacy organizations.

### 3. Recent Immigrant Muslims

Poverty is also comparatively higher among recent Muslim immigrant populations. For instance, 82% of the estimated 80,000 Somalis living in Minnesota are “near or below the poverty line.”<sup>78</sup> Somalis began to heavily migrate to Minnesota – and specifically Minneapolis and St. Paul – following the 1991 civil war.<sup>79</sup> Iraqi households, centered largely in Dearborn and Detroit, Michigan, had an average household income of \$32,075 per year.<sup>80</sup> A considerable segment of these populations are *Shiite* Muslim refugee waves, pushed into the U.S. in the 1990’s and after the 2003 Iraq War.<sup>81</sup>

Similarly, the media income of the Yemeni population is also near the legal poverty threshold, standing at \$34,667 per annum.<sup>82</sup> The Yemeni American population is largely concentrated in large urban centers throughout the nation, principally New York, Detroit, and the Bay Area, California – where the cost of living is greater, and the real value of earned income is lower.<sup>83</sup> However, the Yemeni American real poverty level is lower because, “Yemeni households had the largest average household size among the selected Arab groups, 4.34 people per household.”<sup>84</sup>

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<sup>77</sup> Layla Abdullah-Poulos, *Unilateral Solidarity: Abandoning Blacks in the Quest for Social Justice*, THE ISLAMIC MONTHLY, Sep. 30, 2015, available at <http://theislamicmonthly.com/unilateral-solidarity/> (last viewed on Oct. 26, 2015). See *Why Ferguson is Our Issue: A Letter to Muslim America*, 31 HARVARD J. ON RACE & ETHNIC JUSTICE 2-3 (2015).

<sup>78</sup> Elizabeth Dunbar, *Comparing the Somali Experience in Minnesota to Other Immigrant Groups*, MPR NEWS, January 22, 2010.

<sup>79</sup> See ELLIOT ROBERT BARKAN, IMMIGRANTS IN AMERICAN HISTORY: ARRIVAL, ADAPTATION, AND INTEGRATION (2013) (Table 4, Somalis in the United States).

<sup>80</sup> Maryam Asi and Daniel Beaulieu, *American Community Survey Briefs: Arab Households in the United States: 2006 – 2010*, U.S. CENSUS BUREAU 5 (May, 2013), available at <https://www.census.gov/prod/2013pubs/acsbr10-20.pdf> (last checked on October 25, 2015).

<sup>81</sup> Ishan Bagby, *Strengths, Challenges and Ideology of Detroit Mosques: Reflections on the Detroit Mosque Study (2003)*, JOURNAL OF ISLAMIC L. AND CULTURE 9 (2004).

<sup>82</sup> *Id.* at 5.

<sup>83</sup> NABEEL ABRAHAM, SALLY HOWELL, ANDREW SHYROCK, ARAB DETROIT 9/11: LIFE IN THE TERROR DECADE 49 (2011) [“LIFE IN THE TERROR DECADE”].

<sup>84</sup> Asi and Beaulieu, *supra* note \_\_\_\_\_, at 3.



In addition to African and Arab American Muslim populations, poverty also penetrates deep into the “South Asian” Muslim population.<sup>85</sup> The *Asian American Federation* “found that 53.9% of Bangladeshi’s living in Brooklyn are poor – the highest rate among the city’s eight largest Asian immigrant groups.”<sup>86</sup> 90.4% of Bangladeshis are Muslims,<sup>87</sup> thus making this segment of the broader Muslim American milieu one of its poorest, and in addition, one of its most isolated groups.

These statistics vividly demystify the stereotypes that: first, “immigrant Muslim America” is a monolith.<sup>88</sup> Second, the common trope that immigrant Muslim Americans are a similarly situated, economically upwardly mobile, well-to-do bloc.<sup>89</sup> And third, widespread belief that “immigrant” Muslim Americans are perpetually foreign regardless of legal or generational status; a framing that curbs recognition of these group as citizens.<sup>90</sup> My past legal scholarship analyzes the racial complexity and asymmetry within Muslim America,<sup>91</sup> and looking forward, this topic deserves greater attention within the social science and humanities literatures, but especially, legal scholarship.<sup>92</sup>

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<sup>85</sup> South Asian American identity is a sociopolitical construct, codified into law by the US Bureau of the Census.

<sup>86</sup> Simone Weichselbaum, *New Face of Poverty? Brooklyn’s Bangladeshi Community Poorer than Blacks and Latinos*, DAILY NEWS, May 9, 2012.

<sup>87</sup> Bangladesh (Country Profile), *Central Intelligence Agency - The World Factbook*, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/bg.html#People>.

<sup>88</sup> See JACKSON, *supra* note 16.

<sup>89</sup> Muslim identity is frequently linked to foreignness, outsider, and alien status. This is true for both longstanding Arab and South Asian residents and citizens. The monolithic designation of “immigrant,” to non-Black Muslim Americans, perpetuates the stereotype that these segments of the Muslim American population are foreign, newcomers, and ultimately, not citizens. This, among other critiques discussed within this Article, illustrate another shortcoming with Sherman Jackson’s indigenous/immigrant Muslim American binary:

“When does one cease from becoming an “immigrant?” Is “indigenous Muslim” identity attainable for the children of immigrants? Or alternatively, is there an intermediate status for the children of immigrants, such as a fourth generation Muslim-American from Turkey, for instance?” Beyond a Binary, *supra* note 16, at 1.

<sup>90</sup> *Id* at 1.

<sup>91</sup> For a recent article that signals racism and racial division within the Muslim American population, see Khaled A. Beydoun, *Why Ferguson Is Our Issue: A Letter to Muslim America*, HARVARD J. ON RACE & ETHNIC JUSTICE (forthcoming 2015).

<sup>92</sup> However, one rising threat linked to more comprehensive statistical data about Muslim Americans are fears linked to how this data may facilitate surveillance of these communities. I address this concern in relation to the Arab American community, with regard to the proposed “Middle Eastern or North African” classification on the 2020 United States Census. See generally *A Demographic Threat? Proposed Reclassification of Arab Americans on the 2020 Census*, 12 MICH. L. REV. ONLINE 465 (2015).

The demographic profile offered by this section is a first step toward building a stronger foundation of knowledge about the indigent Muslim American community - particularly within legal scholarship, a forum of special significance given the law's status as the foundation and fulcrum of anti-terror policing. Indeed, further scholarly attention on indigent Muslim American communities is needed, particularly as private and public Islamophobia continues to intensify at a far faster rate within these vulnerable and oft targeted spaces.

## II. PRIVATE AND PUBLIC ISLAMOPHOBIA

*"It cannot be expected that as a class [Muslims] would readily intermarry with our population and be assimilated into our civilization."*

- Judge Arthur J. Tuttle, Eastern District Court of Michigan, in *In re Ahmed Hassan* - December 15, 1942<sup>93</sup>

*"I would not advocate that we put a Muslim in charge of this nation... Islam is [in]consistent with the Constitution."*

- Ben Carson, Republican candidate for U.S. President - September 20, 2015<sup>94</sup>

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Anti-Muslim animus is deeply rooted in American halls of power and popular consciousness. Springing from its precedent system of Muslim misrepresentation and demonization, Islamophobic ideas and images find their core meanings from Orientalist baselines. Both private and public actors perpetuate Islamophobia. Whether citizens or state agencies, corporations or police departments, a "shared rage" toward Islam and Muslim Americans characterizes the state of Islamophobia in America today.<sup>95</sup>

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<sup>93</sup> 48 F. Supp. at 845 (1942).

<sup>94</sup> Statement made by Republican Presidential candidate Ben Carson, on NBC's "Meet the Press." See Hope Yen, *Ben Carson Says No to Muslim President*, US NEWS AND WORLD REPORT, Sep. 20, 2015, available at <http://www.usnews.com/news/politics/articles/2015/09/20/gop-candidate-carson-muslims-shouldnt-be-elected-president> (last checked on October 1, 2015).

<sup>95</sup> See generally Muneer I. Ahmad, *A Rage Shared by Law: Post-September 11 Racial Violence as Crimes of Passion*, 92 CAL. L. REV 1259, 1264 (2004) [hereinafter Ahmad].

Islamophobia is not fixed or static. But a fluid and dynamic system whereby lay actors and law enforcement target Muslim Americans based on irrational fear and hatred.<sup>96</sup> Indeed, societal and state-sponsored Islamophobia seldom operate on distinct tracks, but rather, converge to magnify the damages wrought on Muslim Americans. The perils engendered by private and public Islamophobia are greater within indigent and working class spaces, where local and federal police overwhelmingly concentrate their surveillance resources and anti-Muslim bigots tend to target and mobilize in.<sup>97</sup> While exposed to greater animus and violence, indigent Muslim Americans also lack the resources to defend themselves, and comparatively, are more reluctant to report incidents of hate and violence to police for fear of retribution, mistrust of law enforcement, and fear of surveillance on the part of police.

This Section examines the primary private and *per se* manifestations of Islamophobia.<sup>98</sup> Given the ample body of legal scholarship addressing the sweeping anti-terror and national security reforms after 9/11,<sup>99</sup> this Section focuses exclusively on emergent Islamophobic systems and frameworks that impact Muslim Americans - and specifically, indigent Muslim American

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<sup>96</sup> See generally Wajahat Ali et al., *Fear, Inc.: The Roots of the Islamophobia Network in America*, CENTER FOR AM. PROGRESS (Aug. 26, 2011) (a pivotal study outlining the complex systems that form, facilitate and dispense anti-Muslim bigotry in the U.S.).

<sup>97</sup> The recent wave of anti-Muslim protests, in early October 2015, mounted actions in places such as New York, Detroit and Phoenix, choosing mosques and other concentrated Muslim American communities. For an opinion discussing the threat posed by this wave of anti-Muslim protests, see Arsalan Iftikhar, *Freedom of Religion Requires Freedom From Fear*, THE ATLANTIC, Oct. 9, 2015, available at <http://www.theatlantic.com/politics/archive/2015/10/protesting-american-mosques-at-gunpoint/409987/> (last checked on October 25, 2015).

<sup>98</sup> "Two forms of racial violence swept across the United States in the aftermath of September 11. The first involved what traditionally would be classified as private violence: violence enacted by one (or more) private actor upon another, without direct state participation. The thousands of physical attacks carried out by individuals against Arabs, Muslims, and South Asians after the terrorist attacks typify this. The second form of violence is traditionally deemed public, because of the direct involvement of state actors. After September 11, this took the form of a broad range of governmental policies that targeted "Muslim-looking" people." *Id* at 1265.

<sup>99</sup> See Susan M. & Kevin R. Johnson, *Race, Civil Rights, and Immigration Law After September 11, 2001: The Targeting of Arabs and Muslims*, 58 NYU ANNUAL SURVEY OF AMERICAN LAW 300 (2002); RACE AND ARAB AMERICANS BEFORE AND AFTER 9/11: FROM INVISIBLE CITIZENS TO VISIBLE SUBJECTS (Amaney Jamal & Nadine Naber eds., 2008); and Sahar Aziz, *Caught in a Preventative Dragnet: Selective Counterterrorism in a Post-9/11 America*, 47 GONZAGA L. REV. 429 (2012) (for an account of how post-9/11 preventative counterterrorism programs disparately focus on specific racial and religious groups).

groups. The establishment and expansion of “American Islamophobia” will be the focus Part A; and the rise of CVE, or counter-radicalization policing, examined Part B.

### A. *American Islamophobia*

While framed as a new phenomenon, the seeds that give rise to contemporary Islamophobia are old and embedded, but never more potent.<sup>100</sup> These rooted baselines are:

“[T]ightly knit into the American fabric, and deeply rooted in its legal, political and popular imagination. Whenever a terror attack takes place in America, many quickly turn to tropes of an “Islamic menace” or “violent foreigner.” While these tropes have taken on new forms and frames, they are conceptually identical to their predecessors.”<sup>101</sup>

In short, modern Islamophobia finds its epistemological roots in systems of Orientalism that precede the formation of this new danger, and predate the creation of the United States itself. Seeded deep, they reemerge during moment of crisis, and drive modern conceptions of Muslim suspicion and threat.

In the wake of 9/11, law scholar Leti Volpp observed, “We are witnessing the redeployment of old Orientalist tropes,”<sup>102</sup> or the reemergence of deeply entrenched misrepresentations that color Muslims as unyieldingly warmongering, violent, and bent on conquering the West.<sup>103</sup> Modern animus toward Islam, and Muslims, is rooted in these Orientalist caricatures and discursive misperceptions about the faith and its following. In short,

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<sup>100</sup> “Islamophobia is what it’s called today. But the rising fear, hate and discrimination that currently threatens eight million Muslim Americans stems from a long and established tradition of branding Islam as un-American, and demonizing Muslim bodies as threat.” Khaled A. Beydoun, *Viewpoint: Islamophobia Has A Long History in the US*, BBC MAGAZINE, Sep. 29, 2015, available at <http://www.bbc.com/news/magazine-34385051> (last checked on October 1, 2015) [hereinafter *Islamophobia Has a Long History in the US*].

<sup>101</sup> *Id.* at 2.

<sup>102</sup> Volpp, *supra* note 8, at 1586.

<sup>103</sup> See *Ross v. McIntyre* 140 U.S., 463 (1891), citing the “[t]he intense hostility of the people of Muslim faith.” See also *In re Halladjian*, 174 F. 834, 839 (C.C.D. Mass. 1909). “[T]he Turks and the Saracens did not exterminate the people they conquered. Conversion to Mohammedanism and tribute were usually offered as alternatives to the sword.” *Karamian v. Curran*, 16 F.2d 958 (2d. Cir. 1927). “[H]e [Yerwand Karamian] and other boys of his race were most cruelly treated by the Turks, and he himself ‘burned from the hip to the knee with a hot steel rod, because they wanted [him] to be a Mohammedan.’” *Id.* See also *Reid v. Covert*, 354 U.S. 1, 58 (1957).

Islamophobia is the progeny of Orientalism, the precedent (and contemporaneous) system that positioned Islam and Muslims as subordinate,<sup>104</sup> geopolitical antithesis, and always-looming threat.<sup>105</sup>

Highlighting Volpp's observation, the re-deployment of Orientalist tropes is vividly exhibited today in almost every sphere of American life. Through political talking points and strategy,<sup>106</sup> television and cinematic representations,<sup>107</sup> social media conversations and Twitter trends,<sup>108</sup> "Draw the Prophet Mohammed cartoon contests,"<sup>109</sup> and reoccurring waves of "anti-Muslim protests and rallies,"<sup>110</sup> which replicate the very banal ideas and echo the harmful images transmitted centuries ago.<sup>111</sup> Thus, to reduce Islamophobia to "anti-Muslim animus," and nothing more, overlooks its expansion and penetration into American culture, news media, law, and low and high-level political parlance.

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<sup>104</sup> "[O]rientalism depends for its strategy on this flexible positional superiority, which puts the Westerner in a whole series of possible relationships with the Orient without ever losing him the relative upper hand." SAID, *supra* note \_\_\_\_\_, at 7.

<sup>105</sup> The influence of Orientalism was evidence in late 19<sup>th</sup> and early 20<sup>th</sup> Century American case law, see *x parte* Caldwell v.State, 118 N.W. 133, 135 (Neb. 1908). See also *In re Ahmed Hassan*, 48 F. Supp. 843 (E.D. Mich., 1942), "It cannot be expected that as a class [Arabs] they would readily intermarry with our population and be assimilated into our civilization. The small amount of immigration of these peoples to the United States is in itself evidence of that fact. Arabia, moreover, is not immediately contiguous to Europe or even to the Mediterranean." *Id* at 845.

<sup>106</sup> Editorial Board, *The Republican Attack on Muslims*, N.Y. TIMES, May 22, 2015, available at <http://www.nytimes.com/2015/09/23/opinion/the-republican-attack-on-muslims.html> (last checked on October 1, 2015).

<sup>107</sup> See Footnote 32.

<sup>108</sup> For instance, #FuckIslam is a popular Twitter hashtag that has spawned a series of additional hashtags, mobilized a loyal following, and led to the creation of specially designated users bearing that - or some iteration of that - name.

<sup>109</sup> An event organized by staunch anti-Muslim activist, Pamela Geller, in Garland Texas on May 3, 2015. See Lindsey Bever, *The Incendiary Organizer of Texas 'Prophet Muhammad Cartoon Contest'*, WASH. POST, May 4, 2015, available at <http://www.washingtonpost.com/news/morning-mix/wp/2015/05/04/why-a-woman-named-pamela-geller-organized-a-prophet-muhammad-cartoon-contest/> (last checked on October 1, 2015).

<sup>110</sup> See generally Iftikhar, *supra* note \_\_\_\_\_.

<sup>111</sup> "Americans regarded Muhammad as a dangerous false prophet and as the creator of an evil and religious political system . . . Islam, as the Americans saw it, was against liberty, and being against liberty, it stopped progress. Both Republicans like Mathew Lyon and Thomas Jefferson, who welcomed the progressive libertarianism of the French Revolution, and Federalists like John Adams, who feared the consequences of unchecked democracy, agreed that liberty and human progress were good things and the unbridled despotism of the Muslim world was a bad thing for preventing it." ALLISON, *supra* note \_\_\_\_\_, at 45-56.

Islamophobia has been defined in a myriad of ways.<sup>112</sup> The most compelling iterations frame it as an intricate system, by which animus is dispensed by both the state and private actors. The former of which, endorses the fear, hate and violence executed by private actors in America. This dynamic is evidenced by the execution of the three Muslim American students in Chapel Hill on February 10, 2015 – an incident that cannot be entirely divorced from the broader culture and context of anti-Muslim bigotry pervading the nation.<sup>113</sup>

In addition to its expansion, Islamophobia is legally fluid and adaptive. Thus, its structural and ideological contours are molded by its host country and context. American culture, politics and legal systems are distinct from their British or French counterparts, for instance.<sup>114</sup> Consequently, rendering American Islamophobia different from its British<sup>115</sup> and French analogs.<sup>116</sup> Although variant strands of Islamophobia share common characteristics, and indeed, emanate from the very same Orientalist baselines,

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<sup>112</sup> I define “Islamophobia” as animus toward Islam, Muslims and individuals stereotyped as Muslims, bolstered by legal, scholarly and popular representations of Islam and Muslims. My definition also sees Islamophobia as a system of animus and fear, embedded with American halls of power and institutions. For additional definitions, see also CARL W. ERNST, *ISLAMOPHOBIA IN AMERICA: THE ANATOMY OF INTOLERANCE 2* (2013), for several definitions of “Islamophobia;” and HAMID DABASHI, *BROWN SKIN, WHITE MASKS 9-12* (2010), for an interdisciplinary analysis of the “making of Islamophobia.” See generally COVERING ISLAM, *supra* note 2.

<sup>113</sup> See Jonathan M. Katz and Richard Perez-Pena, *In Chapel Hill Shooting of 3 Muslims, A Question of Motive*, N.Y. TIMES, Jan. 11, 2015, available at <http://www.nytimes.com/2015/02/12/us/muslim-student-shootings-north-carolina.html> (last checked on April 5, 2015). See also Khaled A. Beydoun and Nadia El-Zein Tona, *Why Muslim Lives Don’t Matter*, AL-JAZEERA ENGLISH, Feb. 12, 2015, available at <http://www.aljazeera.com/indepth/opinion/2015/02/muslim-lives-don-matter-150212052018920.html> (last checked on April 6, 2015).

<sup>114</sup> For a comparative assessment of how contrasting religious freedom laws (with specific focus on the Islamic headscarf) in the U.S. and France shape, and reflect, their differing systems of Islamophobia, see generally Khaled A. Beydoun, *Laïcité, Liberalism and the Headscarf*, 10 J. OF ISLAMIC L. & CULTURE 188 (2008).

<sup>115</sup> “For British and American audiences, the menace of Islam existed at a variety of different levels. Politically, socially, religiously and theologically, Muslims and their religion were seen to threaten in varying degrees and in different ways.” Carl W. Ernst, *Introduction: The Problem of Islamophobia*, in *ISLAMOPHOBIA IN AMERICA: THE ANATOMY OF INTOLERANCE 27* (CARL W. ERNST, ed., 2013).

<sup>116</sup> For a historical analysis of the development of anti-Muslim animus in the United States, see generally ROBERT J. ALLISON, *THE CRESCENT OBSCURED: THE UNITED STATES AND THE MUSLIM WORLD 1776-1815* (1995) [hereinafter ALLISON]. See also THOMAS S. KIDD, *AMERICAN CHRISTIANS AND ISLAM: EVANGELICAL CULTURE AND MUSLIMS FROM THE COLONIAL PERIOD TO THE AGE OF TERRORISM* (2009), for a historical analysis of Christian interaction with Muslims in the United States through the modern era.

how Islam and Muslim bodies are profiled and policed, imagined and assailed, is anything but identical in different nations.

State actors and private elements perpetuate American Islamophobia. *En masse* targeting of Muslim Americans began well before the September 11<sup>th</sup> attacks, but rose to formal state policy with the establishment of the Department of Homeland Security (DHS) on November 25, 2002.<sup>117</sup> DHS consolidated the state's immigration and emigration regimes, and functioned as the institutional fulcrum for the sweeping federal and local anti-terror surveillance and policing sanctioned by the US PATRIOT Act.<sup>118</sup> The PATRIOT Act multiplied state suspicion and surveillance of Muslim American communities, and initiated a "War on Terror" that viewed this population as presumptive or prospective terrorists.<sup>119</sup>

State action against Muslims endorsed and emboldened private animus against Muslim Americans. If government agencies and laws, such as DHS and the PATRIOT Act, deemed Muslim Americans as a dangerous "fifth column,"<sup>120</sup> then it is only logical that private citizens would not only follow suit, but also mimic that violence against a subset of the polity designated as an enemy group.<sup>121</sup> "In 2007, CAIR [The Council on American Islamic Relations] reported receiving about 1,900 complaints of abuse and note that anti-Muslim physical violence increased by 52% between 2003 and 2004."<sup>122</sup>

Many believed that anti-Muslim animus and violence would gradually diminish after 9/11 immediate aftermath. However, unfolding events and statistics prove otherwise.

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<sup>117</sup> Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (codified in scattered sections of 5, 6, 18, 44, and 49 U.S.C.).

<sup>118</sup> Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Patriot Act), Pub. L. No. 107-56, 115 Stat. 272. See also Patriot Improvement and Reauthorization Act of 2005, Pub. L. No. 109-177, 120 Stat. 192 (2006) (codified in scattered sections of 8, 15, 18, 21, 28, and 42 U.S.C.).

<sup>119</sup> See *Hamdan v. Rumsfeld*, 126 S. Ct. 2749, 2786 (2006) (which held that military tribunals created by the Bush administration violated the law); see *Hamdi v. Rumsfeld*, 542 U.S. 507, 509 (2004) (which held that a U.S. citizen held as an "enemy combatant" held a right to a hearing to challenge that designation); see also *Rumsfeld v. Padilla*, 542 U.S. 426, 451 (2004) (that highlighted policies adopted by the Bush administration in the war on terror). These cases, along with the sweeping legislation and reforms that followed 9/11, initiated the international and domestic war against terrorism, hereinafter referred to in this Article as the "War on Terror."

<sup>120</sup> Khyati Y. Joshi, *The Racialization of Hinduism, Islam and Sikhism in the United States*, 39 EQUITY AND EXCELLENCE IN EDUCATION 217 (2006).

<sup>121</sup> See Ahmad, *supra* note 55.

<sup>122</sup> Moore, *supra* note 14, at 92-93.

Recent events indicate a frightening uptick in private Islamophobic violence. The February 2015 attack on the Islamic School of Rhode Island,<sup>123</sup> the targeted arson of a mosque in Houston during the same week,<sup>124</sup> the execution of three Muslim-American students in Chapel Hill,<sup>125</sup> and waves of armed and unarmed anti-Muslim rallies and protests,<sup>126</sup> indicate that unfolding Islamophobia is superseding the degree of anti-Muslim bigotry immediately after 9/11. While other forms of racial and religious animus continue to decline, according to FBI statistics, 2011 and the following years witnessed an “intensification of anti-Muslim rhetoric” and violence.<sup>127</sup>

Looking forward, the policing paradigm shift toward CVE policing, enforced in the heart of Muslim American communities and centers, foreshadows even greater escalation of anti-Muslim animus, suspicion and violence. Particularly in urban contexts, where Muslim American communities are concentrated and poverty prevails.

### B. Countering Violent Extremism (CVE)

A dynamic system of private and public animus, American Islamophobia is certainly on the rise. In addition to intensifying in fervor, its ascent is also highlighted by its integration into community policing strategy. The base logic of Islamophobia, which reads and recognizes Muslim identity as presumptive threat,<sup>128</sup> is the cornerstone of CVE – the emergent model of

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<sup>123</sup> Jennifer Bogdan, *Islamic School of Rhode Island Vandalized*, PROVIDENCE JOURNAL, February 15, 2015, available at <http://www.providencejournal.com/article/20150215/News/150219457>.

<sup>124</sup> Wilson Dizard, *Arson Eyed in Houston-Area Mosque Fire*, AL-JAZEERA AMERICA, February 13, 2015, available at <http://america.aljazeera.com/articles/2015/2/13/arson-eyed-in-houston-area-mosque-torching.html>.

<sup>125</sup> Terrence McCoy, *Chapel Hill Killings: Why Hate Crimes Are So Hard to Prove*, WASHINGTON POST, Feb. 12, 2015, available at <http://www.washingtonpost.com/news/morning-mix/wp/2015/02/12/chapel-hill-murders-why-hate-crimes-are-so-hard-to-prove/>.

<sup>126</sup> Halima Kazem and Tom Dart, *US Muslim Leaders Brace For Potentially Armed Demonstrators*, THE GUARDIAN, Oct. 9, 2015, available at <http://www.theguardian.com/world/2015/oct/09/us-muslim-community-phoenix-oklahoma-city-protests-mosques> (last checked on Oct. 14, 2015).

<sup>127</sup> *Id.* at 2.

<sup>128</sup> Critiques of CVE center on this presumption, and contend that it distracts attention, and deters resources, from more common forms of mass violence committed by non-Muslim culprits:

“As studies by Southern Poverty Law Center, The Brennan Center, the Center for American Progress and a number of university research programs have demonstrated, we have a problem with violence in America that goes well beyond the Muslim community. For



anti-terrorism and national security policing sweeping through American cities, and most notably, communities with concentrated Muslim American populations.<sup>129</sup> Law scholars Amna Akbar, Sahar Aziz and Samuel J. Rascoff have made notable contributions to the burgeoning CVE literature, whose work has shed considerable light about its salient structures, strategy, processes, and resultant erosion of Muslim American civil liberties.<sup>130</sup>

### 1. CVE Structure and Strategy

The meaning and scope of CVE or counter-radicalization, synonyms both used by the state, are still ambiguous and underdeveloped. Rascoff observes:

Unlike “counterterrorism” or “counterinsurgency,” which have rich (if not entirely satisfying) conceptual foundations, “counter-radicalization” remains almost completely undertheorized. To its proponents, counterradicalization begins with the uncontroversial proposition that manifestations of violent extremism are rooted in ideas and social-behavioral processes. Understanding and addressing those ideas and processes will help prevent future attacks and thus should play an important role in American counterterrorism policy. But these basic assumptions give rise to a wide range of theoretical possibilities about what counter-radicalization is, how it should be conducted, and how the government can best devote its resources to address the contemporary security threat.<sup>131</sup>

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example, since the 2012 murders in Aurora, Colorado, there have been 78 mass killings in the US, in which 387 were killed - only a handful of these were carried out by Muslims. Annually, we have over 300 acts of "mass violence", involving the use of guns-in which four or more are killed or wounded. And since 2009, 63 "lone wolf" actions were carried out or stopped by law enforcement agencies. The overwhelming majority of all of these involved non-Muslims." James Zogby, *CVE in the US: More Harm than Good*, HUFFINGTON POST, Jul. 25, 2015.

<sup>129</sup> “Incorporating this framework, government counterradicalization and CVE programs aim to monitor and influence the political and religious cultures of Muslim communities so as to prevent radicalization and violent extremism.” Amna Akbar, *National Security’s Broken Windows*, 62 UCLA L. REV. 842 (2015) [hereinafter *National Security’s Broken Windows*].

<sup>130</sup> Sahar Aziz, *Policing Terrorists in the Community*, 5 HARVARD NATIONAL SECURITY LAW JOURNAL 147 (2014) [hereinafter *Aziz*]. See also *National Security’s Broken Windows*, *supra* note \_\_\_\_.

<sup>131</sup> Samuel J. Rascoff, *Establishing Official Islam? The Law and Strategy of Counter-Radicalization*, 137 STANFORD LAW REVIEW 127 (2012).

Thus, because of its strategic ambiguity and “theoretical possibilities,”<sup>132</sup> considerable deference is given to law enforcement personnel executing CVE initiatives – a natural byproduct of a (still) structurally and strategically amorphous program.

CVE, per its name, is committed to identifying and preventing “violent extremists” from committing terrorist acts.<sup>133</sup> Aziz observes, “Operationally, the objective is to stop people from embracing extreme beliefs (an inherently subjective and vague term) that might lead to terrorism, as well as to reduce active support for terrorist groups.”<sup>134</sup> Subjects-of-interest are defined as “individuals who support or commit ideologically-motivated violence to further political goals.”<sup>135</sup> Extending the reach of NSA surveillance powers, CVE operates in the very communities considered havens for “Homegrown Violent Extremists,” or HVE’s.<sup>136</sup> Despite its conceptual and structural ambiguity, DHS,<sup>137</sup> Congress,<sup>138</sup> and the White House have been unambiguous about their plans to push CVE forward, and roll it into more cities with large Muslim American populations.<sup>139</sup>

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<sup>132</sup> *Id.*

<sup>133</sup> *Countering Violent Extremism*, OFFICIAL WEBSITE OF THE DEPARTMENT OF HOMELAND SECURITY, available at <http://www.dhs.gov/topic/countering-violent-extremism> (last checked on April 19, 2015).

<sup>134</sup> Aziz, *supra* note \_\_\_\_\_, at 164.

<sup>135</sup> *Id.*

<sup>136</sup> “A person of any citizenship who has lived or operates primarily in the United States or its territories who advocates, is engaged in, or is preparing to engage in ideologically-motivated terrorist activities (including providing material support to terrorism” in further of political or social objectives promoted by a terrorist organization, but who is acting independently of direction by a terrorist organization.” *Id.*

<sup>137</sup> STAFF OF S. COMM. O HOMELAND SEC. & GOVERNMENTAL AFFAIRS, 112<sup>TH</sup> CONG., A TICKING TIME BOMB: COUNTERTERRORISM LESSONS FROM THE U.S. GOVERNMENT’S FAILURE TO PREVENT THE FORT HOOD ATTACK 17 (2011), available at [http://www.hsgac.senate.gov//imo/media/doc/Fort\\_Hood/FortHoodReport.pdf](http://www.hsgac.senate.gov//imo/media/doc/Fort_Hood/FortHoodReport.pdf) (last checked on April 12, 2015).

<sup>138</sup> “In Congress, for example, both the House and Senate Homeland Security Committees have devoted considerable resources to the development of the radicalization discourse, emphasizing the need for the government to monitor and respond to radicalization.” Akbar, *supra* note 11, at 821.

<sup>139</sup> EXEC. OFFICE OF THE PRESIDENT, EMPOWERING LOCAL PARTNERS TO PREVENT VIOLENT EXTREMISM IN THE UNITED STATES (2011) available at [http://www.whitehouse.gov/sites/default/files/empowering\\_local\\_partners.pdf](http://www.whitehouse.gov/sites/default/files/empowering_local_partners.pdf) (last checked on April 12, 2015). The Executive Order established the Countering Violent Extremism (CVE) Working Group, comprised of government personnel and stakeholders. The White House held a “CVE Summit in February 2015, which was opposed by nine major civil rights and advocacy organizations, including ADC and the Arab American Association of New York. See *Joint Statement Regarding Upcoming Summit on Countering Violent Extremism*, Arab

## 2. CVE's Disparate Impact on Muslim Americans

CVE disparately focuses on Muslims and Muslim Americans. The program is, “cloaked in expertise about the process by which Muslims become terrorists.”<sup>140</sup> An FBI Intelligence Assessment, *The Radicalization Process: From Conversion to Jihad*, framed the prevailing CVE model.<sup>141</sup> The FBI report, “assert[ed] the existence of an identifiable and predictable process by which a Muslim becomes a terrorist,”<sup>142</sup> broken down into four stages: “[1] preradicalization, [2] identification, [3] indoctrination and [4] action.”<sup>143</sup> A subject is viewed as a greater threat at each successive stage, and the Program’s preventive logic seeks to seize the subject at the early stages before full-fledged indoctrination takes place, and most critically, before terrorist action is pursued.<sup>144</sup> During the first stage, and variably the second, suspicion is largely linked to religious or political activity perceived to be linked with radical activity, short of evidence of involvement.

CVE links radicalization – or propensity for radicalization – with Islamic piety. Therefore, CVE is acutely and disparately threatening to observant Muslim Americans,<sup>145</sup> particularly those transitioning from secular to devout lifestyles, members of the community holding “critical politics,”<sup>146</sup> or individuals that express their faith conspicuously. For reasons linked to religious expression and geography, CVE is specifically threatening to urban-dwelling, recent immigrant, and indigent Muslim American communities, who not only tend to latch onto religion traditions more tightly, but also

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American Association of New York, February 12, 2015, available at <http://www.arabaericanny.org/jonitstatementoncve/> (last checked on April 13, 2015). See also Ali Jakvani, *On the Ground in LA and as a Delegate to CVE*, March 11, 2015, THE ISLAMIC MONTHLY, March 11, 2015, available at <http://theislamicmonthly.com/on-the-ground-in-la-and-as-a-delegate-to-cve/> (last viewed on April 29, 2015) (for a Muslim American perspective in support of CVE, and who attended the CVE Summit at the White House).

<sup>140</sup> Akbar, *supra* note 11, at 817.

<sup>141</sup> FBI COUNTERTERRORISM DIV., THE RADICALIZATION PROCESS: FROM CONVERSION TO JIHAD 1-2 (2006). This confidential report was leaked to the public.

<sup>142</sup> Akbar, *supra* note 11, at 820.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> “Muslim religious practice – core First Amendment activity, unconnected to any suspicion of criminal activity – becomes a predictor for criminality.” *Id.*

<sup>146</sup> “Radicalization’s concern is predicated on a false belief in the teleological character of Islam – that if Muslim communities witness conservative religious practice and critical politics, they will view such currents as acceptable and gravitate toward radicalism.” National Security’s Broken Windows, *supra* note 75, at 44.

have comparatively stronger ties with their countries of origin.<sup>147</sup> Overt focus on the religious views and lifestyle of Muslims poses broad threats to constitutionally protected free-exercise rights.

In addition to religious activity, CVE policing monitors the political speech and associations of targets. Subjects with critical perspectives of American foreign policy, domestic policy, or sympathetic views on issues or people that conflict with the formal government stance may trigger suspicion, or greater suspicion, of radicalization.<sup>148</sup> Policing of CVE subjects, based on constitutionally protected free-exercise and speech rights, not only compromises their First Amendment rights, but also places their 4<sup>th</sup> Amendment protection against “unreasonable searches and seizures” in the balance.<sup>149</sup>

In addition to tapping individual informants, building strategic alliances with advocacy, cultural, and religious organizations is of paramount importance to police departments coordinating CVE programs.<sup>150</sup> These community elements equip law enforcement with on-the-ground allies and watchdogs, but more importantly, the programmatic legitimacy only native informants can provide.<sup>151</sup> Therefore, building strong ties with individuals and institutions in the community, including mosques, community centers, and even prominent leaders, who may base their assessments that an individual is a prospective or actualized “radical” on purely personal, political or arbitrary grounds, furthers CVE profiling and prosecution. Moreover, the CVE informant structure is especially dangerous since the most coveted informants are known figures or leaders with reach in the community, whom young, poor and working class men – the most common targets of CVE

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<sup>147</sup> Both of these factors are considered factors that signal the prospect, or likelihood, for radicalization.

<sup>148</sup> National Security’s Broken Windows, *supra* note \_\_\_\_\_, at 856.

<sup>149</sup> U.S. CONST. AMEND. IV.

<sup>150</sup> “Support Local Communities – Bolster efforts to catalyze and support community-based programs, and strengthen relationships with communities that may be targeted for recruitment by violent extremists.” *Countering Violent Extremism*, OFFICIAL WEBSITE OF THE DEPARTMENT OF HOMELAND SECURITY, available at <http://www.dhs.gov/topic/countering-violent-extremism> (last checked on April 19, 2015).

<sup>151</sup> “The way the Los Angeles Police Department’s counterterrorism head Michael Downing sees it, American Muslims could be the city’s most effective tool in guarding against homeland threats by the violent extremist group known as the Islamic State.” Brenda Gazzar, *Los Angeles Picked For Pilot Program to Counter Homegrown Jihadists*, L.A. DAILY NEWS, Sep. 23, 2014, available at <http://www.dailynews.com/general-news/20140923/los-angeles-picked-for-pilot-program-to-counter-homegrown-jihadists> (last checked on April 14, 2015).

policing – believe they can trust.<sup>152</sup> In addition to the use of informants within physical spaces, their deployment is also common in virtual spaces – where political speech, religious views, and connected collateral activity (triggering suspicion and otherwise) are easier to monitor, track, and compile.<sup>153</sup>

Although CVE has garnered support from some Muslim American civil society elements,<sup>154</sup> many Arab, MENA, and Muslim Americans “fear it is profiling disguised as prevention and worry it could compromise civil liberties and religious freedoms.”<sup>155</sup> Muslim American opposition against CVE is gradually mounting, particularly as the Program steeps itself further in pilot cities and steers its expansion into new ones – including Dearborn,<sup>156</sup> Detroit, where police surveillance to “fight terrorism” is an established practice,<sup>157</sup> and New York City.<sup>158</sup> Increasing opposition, spearheaded by both

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<sup>152</sup> “Informants are widespread in Muslim communities, stationed within mosques, Muslim student groups, social networks, and so on.” National Security’s Broken Windows, *supra* note \_\_\_\_\_, at 853.

<sup>153</sup> See Quintan Wiktorowicz, *Working to Counter Online Radicalization to Violence in the United States*, WHITE HOUSE BLOG (Feb. 5, 2013, 10:02 AM), available at <http://www.whitehouse.gov/blog/2013/02/05/working-counter-online-radicalization-violence-united-states>.

<sup>154</sup> Most notably the Muslim Public Affairs Council (MPAC), an ardent supporter of CVE since its inception. In addition, many of its former employers have assumed leadership positions furthering the Program. See MPAC website, available at <http://www.mpac.org/> (last checked on October 4, 2015). See also Aziz, *supra* note \_\_\_\_\_, at 173.

<sup>155</sup> Tami Abdollah & Philip Marcelo, “It Sets People Off:” Some Muslims See Profiling in U.S. Anti-Terror Program, NBC L.A., Apr. 20, 2015, available at <http://www.nbclosangeles.com/news/local/Obama-Muslims-Countering-Violent-Extremism-SoCal-civil-liberties-300678641.html>. See also Margari A. Hill, *Logging it All: CVE and Schisms in the Muslim American Community*, THE ISLAMIC MONTHLY, Mar. 4, 2015, available at <http://theislamicmonthly.com/logging-it-all-cve-and-schisms-in-the-muslim-community> (last checked on October 2, 2015) (highlighting the debates and divisions with the Muslim American population regarding CVE).

<sup>156</sup> Dearborn, Michigan is home to the most concentrated Arab and Muslim American community in the country. The eastside of the City is home to concentrated indigent and working class groups.

<sup>157</sup> For nearly a decade, the Michigan State Police has had secretive cellphone tracking devices that were bought to fight terrorism but instead are used to solve everyday crimes, internal documents show. More than 250 pages of emails, invoices and other documents show the state police in 2006 acquired cellphone simulator technology, which lets police collect large amounts of data including the location of users. The equipment was upgraded in 2013 and an internal memo indicates it was used last year on 128 cases ranging from homicide to burglary and fraud, but not terrorism.” Joel Kurth, *Michigan State Police Using Cell Phone Snooping Devices*, DETROIT NEWS, Oct. 23, 2015, available at <http://www.detroitnews.com/story/news/local/michigan/2015/10/22/stingray/74438668/> (last checked on October 25, 2015).

advocacy groups and grassroots efforts, is gradually beginning to address the distinct and graver civil liberties perils faced within poor Muslim American communities.<sup>159</sup>

In order to dutifully confront the dangers posed by the convergence of poverty and state-sponsored and private Islamophobia, these efforts will have to become more robust and better resourced. Particularly as CVE extends its reach into new cities, and deepens its footing in “marginalized” Muslim American communities: “Community policing allows the police to expand their power and reach into already marginalized communities, without giving subject communities the opportunity to meaningfully influence or determine policing priorities or strategies.”<sup>160</sup> The brunt of CVE’s impact on civil liberties is much greater where the defenses against it are far weaker – within the boundaries of poor Muslim American communities.

### III. WHEN INDIGENCE AND ISLAMOPHOBIA CONVERGE

*“Where justice is denied, where poverty is enforced, where ignorance prevails... neither persons nor property will be safe.”*

– Frederick Douglass, *The Nation’s Problem*<sup>161</sup>

The plight of America’s poor are ignored as frequently as their bodies are unseen by the pedestrians that pass them by. Perceived as victims of an economic system that preordains poverty, indigent Americans are also broadly cast as drug users, idle and lazy, “public charges,”<sup>162</sup> and “undeserving” burdens on society.<sup>163</sup> While communities of color have higher

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<sup>158</sup> 21 Groups Opposed “Strong Cities” CVE Initiative in New York, Citing Civil Liberties Concerns, BRENNAN CENTER FOR JUSTICE, Sep. 21, 2015, available at <https://www.brennancenter.org/analysis/21-groups-oppose-strong-cities-cve-initiative-new-york-citing-civil-liberties-concerns> (last checked on October 4, 2015).

<sup>159</sup> Khaled A. Beydoun, *Poor and Muslim in “War on Terror” America*, THE ISLAMIC MONTHLY, May 25, 2015, available at <http://theislamicmonthly.com/poor-and-muslim-in-war-on-terror-america/> (last viewed on October 4, 2015).

<sup>160</sup> National Security’s Broken Windows, *supra* note \_\_\_\_\_, at 843.

<sup>161</sup> THE RACE PROBLEM: GREAT SPEECHES BY FREDERICK DOUGLASS (1890).

<sup>162</sup> A public charge is an individual deemed a financial burden, or tax liability, on society and the state. This fear is generally associated with indigents, and specifically, indigent immigrants. See generally Lisa Sun-Hee Park, *Perpetuation of Poverty Through Public Charge* 78 DENV. U. L. REV. 1161 (2001).

<sup>163</sup> See generally Noah Zatz, *Poverty Unmodified?: Critical Reflections on the Deserving/Undeserving Distinction*, 59 UCLA L. REV. 550 (2012) (Article that analyses the

rates of poverty than white Americans, poverty is frequently discussed along colorblind or race-neutral terms.

Critical scholars, particularly within the legal academy, have used an “intersectional analysis” to examine how racism, patriarchy, policing and law enforcement interacts and intersects with poverty.<sup>164</sup> An intersectional analysis enables investigation of the liminal positions held by communities betwixt between two (or more) disadvantaged positions, such as the focus of this project, indigent Muslim Americans.

In the same vein that Muslim America is perceived as a racial and socioeconomic monolith, Muslim American victimhood is also conceived of in flat and uniform terms. Gender, race and economic status impact how Islamophobia is experienced, and oftentimes, determine who law enforcement suspect of radicalization. Indigent Muslim Americans, therefore, are disparately profiled, policed and prosecuted, and frequently, overlooked victims of both public and private Islamophobic violence.

This Section investigates the disregarded intersections where indigence and Islamophobia converge. Section A highlights the customary challenges associated with poverty, with specific attention to how the rising tide of American Islamophobia pronounces lack of access to adequate housing, education, and employment. Section B analyzes the disparate impact CVE has on indigent Muslim Americans. Finally, Section C addresses the rift between indigent Muslim Americans and legal representation – a matter of dire concern given the rapid rise of American Islamophobia and CVE policing.

#### A. Customary Perils Associated With Poverty

The core concerns of indigent Muslim Americans are not entirely distinct from the challenges faced by the broader population of poor Americans. Like indigents of other faith communities, poor Muslim Americans are primarily concerned with accessing adequate housing for their families, suitable education for their children, better employment opportunities, and basic healthcare. However, private and public

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deserving versus undeserving binary, by challenging the “deservingness analytic” that brands the poor as not worthy of broader state aid. The logic of this binary saturates rhetoric that brands government social welfare as “entitlements,” which connotes that indigents have not earned, and thus do not deserve, items such as subsidized housing, welfare, or healthcare.

<sup>164</sup> See Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1282–83 (1991) (Crenshaw framed “intersectionality” to highlight and illustrate the compounded discrimination endured by individuals who belonging to two or more marginalized groups).

Islamophobia poses an additional set of challenges, and exacerbates the customary perils posed by poverty. Poverty for poor Muslim Americans, therefore, spells diminished access to core necessities and second-class citizenship.<sup>165</sup> But also exposure to heightened threat to violence, bigotry and federal and local policing.

These core concerns are excluded from the prevailing set of Muslim American institutional priorities. Mainstream Muslim American civic organizations are generally concerned with acutely political and civil rights matters, most notably combatting hate crimes, challenging FBI surveillance, and speaking to international crises in Muslim-majority states.<sup>166</sup> While important, Muslim American civic organizations largely prioritized the concerns and interests of middle and upper class Muslim Americans, who tend to be Levantine Arab and South Asian.<sup>167</sup>

On the other hand, the concerns of African American Muslims, recent immigrant communities such as the Iraqi and Somali Diasporas, and indigent and working class segments of the population, are seldom registered into their programmatic agendas. In some instances, “[m]ainstream Muslim American organizations have done more to vilify the poor than to address their distinct concerns.”<sup>168</sup>

The inability to procure adequate housing, or employment, perpetuates the cycle of poverty for indigent Muslim Americans. As a result, making discrimination endured along these intersecting tracks acutely debilitating. Adequate housing, for instance, becomes less accessible when discriminatory landlords refuse to rent property to Muslim Americans.<sup>169</sup> This brand of religious discrimination also extends into the workspace, where

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<sup>165</sup> LINDA BOSNIAK, *THE CITIZEN AND THE ALIEN: DILEMMAS OF CONTEMPORARY MEMBERSHIP* 30–31 (2006) (“[T]here is often a gap between possession of [formal] citizenship status and the enjoyment or performance of citizenship in substantive terms.”).

<sup>166</sup> These predominate concerns are in great part dictated by donors, and also foundation grants. However, the neglect of indigent Muslim American communities is also impacted by a broader shift away from grassroots organizing by Muslim American institutions, which have generally shifted away from the constituent and community organizational model.

<sup>167</sup> Many Muslim American organizations are composed of largely Arab and South Asian leadership, boards, and employees. A long and recent history of gatekeeping pervades these organizations, leading to underrepresentation of groups including African American, indigent and working class Muslims.

<sup>168</sup> Poor and Muslim in “War on Terror” America, *supra* note \_\_\_\_\_, at 1.

<sup>169</sup> On April 3, 2013, the U.S. Department of Housing and Urban Development issued a Press Release that announced a campaign focusing on religious discrimination toward Muslims (featuring an advertisement including a Muslim American woman wearing a headscarf). *Press Release*, HUD, April 3, 2013, available at [http://portal.hud.gov/hudportal/HUD?src=/press/press\\_releases\\_media\\_advisories/2013/HUDNo.13-048](http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2013/HUDNo.13-048).



employers may refuse hiring a skilled or competent Muslim American on account of race or ethnicity. Statistics compiled by the Equal Employment Opportunity Commission document the staggering employment discrimination claims filed by Muslim Americans: “Astonishingly, while Muslims make up only 2 percent of the U.S. population, they compose nearly one quarter of religious discrimination claims filed by the EEOC in 2010.”<sup>170</sup>

Indigent and working class Muslim Americans also face an under-examined strand of employment discrimination. During the post-9/11 period, scholars and practitioners have focused on employment discrimination suffered by professional and educated, middle class and affluent Muslim Americans.<sup>171</sup> However, scarce attention was dedicated to the plight of indigent and working class Muslim Americans; and in particular, hiring and employment discrimination faced by medium-wage workers, undocumented Muslim residents, Muslim American men and women with felonies, and blue-collar workers.<sup>172</sup> Federal laws, like Title VII, functionally extend lesser protection to low-skill workers; and arguably, no protection to workers paid under the table.<sup>173</sup> Therefore, placing indigent and working-class Muslim American communities with narrower forms of redress against discrimination at the workplace, and in exposed workspaces such as taxi-driving, violence and hate crimes.<sup>174</sup>

For many Muslim Americans, indigence intersects with racism, patriarchy, and per the focus of this paper, Islamophobia. Indeed, these

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<sup>170</sup> Moore, *supra* note 14, at 93. Employment discrimination claims by Muslim Americans increased by nearly 60% in 2010 since 2005. *Id.*

<sup>171</sup> Sahar F. Aziz, *Sticks and Stones, The Words That Hurt: Entrenched Stereotypes Eight Years After 9/11*, 13 NEW YORK CITY L. REV. 33 (2009).

<sup>172</sup> The “hazardous working conditions” Bangladeshi Muslims face in New York City restaurants are an illustrative example of the specific dangers indigent Muslim workers face: “Over the past several years, with the huge influx of Bangladeshis, New York City has seen an increase in the number of “Indian” restaurants staffed by Bangladeshis, primarily in the Jackson Heights area. Restaurant Opportunities Center organizes workers throughout the city and has had a number of successes advocating for better working conditions in individual restaurants. Hazardous working conditions, however, are still rampant.” *Workers Rights are Human Rights: South Asian Immigrant Workers in New York City*, a joint Report by DRUM and the Community Development Project (2012), available at <http://www.drumnyc.org/wp-content/themes/wpaid/images/wc-report.pdf> (last checked on October 26, 2015).

<sup>173</sup> Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e.

<sup>174</sup> “Moreover, the culture of hate and discrimination that surrounds these policies has recently led to hate crimes aimed at Muslim low-wage immigrant workers, such as the stabbing of a Bangladeshi Muslim cab driver in New York City.” *Workers Rights Are Human Rights*, *supra* note \_\_\_\_\_, at 2, referencing Karen Zraik and Andy Newman, *Student Arraigned in Anti-Muslim Stabbing of Cab Driver*, N.Y. TIMES CITY ROOM BLOG, Aug. 25, 2010.

systems of animus, among others, oftentimes function in concert and bring about greater injury. In addition, linguistic barriers also curb, or undermine, employment opportunities for indigent Muslim Americans such as the specific groups outlined above.<sup>175</sup> The experience of the Somali Muslim population vividly highlights how language functions as a barrier toward economic upward mobility:

A number of barriers exist to getting a better job, first and foremost being lack of sufficient language skills and education. In answer to what employers are looking for, one connector to Somali refugees in Minneapolis said, “The people I deal with it’s language, language, language.” Even low-paying jobs that historically required little or no English are now demanding some language skills. This is especially true in cities where the job market is tight, like Minneapolis.<sup>176</sup>

Furthermore, the Somali American population – as a Black and immigrant population – exposes the limitations with the immigrant/indigenous Muslim American binary.<sup>177</sup> A framework scholars and practitioners must look beyond when assessing the plight of indigent Muslim Americans, particularly as CVE encroaches into their households, places of worship, and most intimate community spaces.

#### B. *Policing Poverty, Profiling “Radicals”*

Marketed as a program that targets radicalization across racial or religious lines, CVE is primarily concerned with policing Muslims and Muslim Americans.<sup>178</sup> In *National Security’s Broken Windows*, Amna Akbar outlines the adoption of the community-policing paradigm into the CVE model:

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<sup>175</sup> *Living in America: Challenges Facing New Immigrants and Refugees*, ROBERT WOOD JOHNSON FOUNDATION 9 (2006), available at <http://research.policyarchive.org/21623.pdf>.

<sup>176</sup> *Id.*

<sup>177</sup> See JACKSON, *supra* note 16.

<sup>178</sup> Akbar, *supra* note 11, at 819-820 (“Radicalization and counter-radicalization are primarily if not almost exclusively concerned with Muslim communities.”) See also Junaid Sulahry, *Countering Violent Extremism*, MUSLIM ADVOCATES, March 9, 2015, available at <http://www.muslimadvocates.org/cve-countering-violent-extremism/> (last viewed on April 29, 2015) (for a formal position from one of the leading Muslim American civil rights and legal defense organizations in the U.S., which states that CVE creates “the false perception [that] sends a dangerous signal to members of the public that their Muslim neighbors are a threat, worsening the environment of anti-Muslim bigotry and hate crimes”).

The federal government anchors its community engagement with Muslim communities in a broader history and language: that of community policing with marginalized groups in the ordinary criminal context, calling on principles of communication, collaboration, and trust building.<sup>179</sup>

A community anti-terror policing model stands to threaten indigent Muslim Americans the most, given their disproportionate presence in concentrated Muslim American urban enclaves. While “trust building” is core to CVE, it is disparately deployed in Muslim American communities where police mistrust is strongest, and government suspicion rife.

Akbar observes that the “geography” of community policing dedicates the bulk of its resources, manpower, and programming to poor communities. CVE policing, which is modeled after the community-policing paradigm, follows suit:

Indeed, radicalization creates geographies of suspicion. While the geography of broken windows theory was effectively one of class and race—hoisting the specter of the poor Black neighborhood—the sphere of radicalization is religious and cultural (though of course inflected by race and class as well). In large metropolitan centers, there are certainly physically contiguous neighborhoods where Muslims of similar racial or class backgrounds reside... In these places, government surveillance creates a different kind of geography out of the places where Muslims gather: the mosque, the halal butcher, or the Indian or Somali grocery store. And visiting these places makes you vulnerable to police scrutiny.<sup>180</sup>

A community marginalized on, at least, three tracks: poverty, religion, and race (either real or constructed),<sup>181</sup> indigent Muslim Americans confront the brunt of both CVE and customary community policing. This was vividly evident with the NYPD’s stricken down “Stop and Frisk Program,” which disproportionately targeted Black and Hispanic men and women.<sup>182</sup> Many of

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<sup>179</sup> National Security’s Broken Windows, *supra* note 75, at 5.

<sup>180</sup> National Security’s Broken Windows, *supra* note \_\_\_\_\_, at 886.

<sup>181</sup> For a legal analysis of racialization of Muslim identity, see Nagwa Ibrahim, Comment, *The Origins of Muslim Racialization in U.S. Law*, 7 UCLA J. ISLAMIC & NEAR E. L. 121, 125 (2008).

<sup>182</sup> Stop-and-Frisk Data, New York Civil Liberties Union (NYCLU) (2013), available at <http://www.nyclu.org/content/stop-and-frisk-data>. See *Floyd v. City of New York*, 959 F.Supp.2d 540 (2013), where the Second Circuit court ruled that Stop-and-Frisk violated the 4<sup>th</sup> and 14<sup>th</sup> Amendments of Black and Latino residents of New York, disproportionately effected by the Program.

those targeted were Black and Hispanic Muslims,<sup>183</sup> in addition to Arab or South Asian Muslims racially profiled by police as Black or Hispanic.<sup>184</sup> Although not identical, CVE “Knock and Talk” interviews operate under the same profiling logic of Stop and Frisk,<sup>185</sup> linking religion (and/or culture and race) to perceived national security threat.<sup>186</sup> For Muslim Americans, particularly within poor and working class communities, Knock and Talks are the new Stop and Frisk.<sup>187</sup>

Pilot CVE programs extending federal policing tools to local law enforcement were introduced in Boston, Minneapolis, and Los Angeles in 2014 – to be followed by additional cities with concentrated Muslim American in the coming years.<sup>188</sup> These three cities are not only home to

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<sup>183</sup> Hispanics, or Latinos, “are one of the fastest growing segments of the Muslim community. About six percent of U.S. Muslims are now Latino – and as many as a fifth of new converts to Islam nationwide are Latino.” Tim Padgett, *Why So Many Latinos Are Becoming Muslims*, WLRN, October 9, 2013, available at <http://wlrn.org/post/why-so-many-latinos-are-becoming-muslims> (last checked on October 26, 2015).

<sup>184</sup> Although Stop and Frisk was formally terminated in 2014, CVE and other community law enforcement programs employ “stop-and-frisk” like tactics, which perpetually expose indigent, urban dwelling Muslim Americans to the dangers of both CVE and customary criminal policing.

<sup>185</sup> A *New York Times* article, a year after *Floyd*, reported that NYPD policemen were still practicing Stop and Frisk type tactics: “Many who live and work in the neighborhoods say they see scant evidence of change, and some say the police are simply not reporting some or all of their stops. The police did not respond to requests for comment.” Mike Bostock and Ford Fessende, *‘Stop-and-Frisk’ Is All But Gone From New York*, N.Y. TIMES, Sep. 19, 2014, available at [http://www.nytimes.com/interactive/2014/09/19/nyregion/stop-and-frisk-is-all-but-gone-from-new-york.html?\\_r=0](http://www.nytimes.com/interactive/2014/09/19/nyregion/stop-and-frisk-is-all-but-gone-from-new-york.html?_r=0) (last checked on October 20, 2015).

<sup>186</sup> See generally Shirin Sinnar, *Questioning Law Enforcement: The First Amendment and Counterterrorism Interviews*, 77 BROOK. L. REV. 41 (2011) (article analyzes the process and free speech encroachments posed by national security, knock and talk interviews).

<sup>187</sup> “Interviews are regularly geared toward collecting information on religious and political opinions, whether individual or collective, or cultivating informants, both formal and informal.” National Security Broken Windows, *supra* note \_\_\_\_\_, at 853.

<sup>188</sup> Akbar, *supra* note 11, at 845-868 (where author closely examines the new radicalization policing tactics used by federal and local law enforcement). Counter-radicalization parlance and policing is almost exclusively focused on Muslim communities, which sometimes overlap and are frequently conflated with Arab American communities. “Radicalization suggests that the path from Muslim to terrorist is a predictable one produced by or correlated with religious and political cultures of Muslim communities. Government radicalization discourses and programs are almost entirely fixated on Islam and Muslims.” *Id* at 811. See also Shelley Murphy, *Boston To Host Anti-Extremist Pilot Program*, BOSTON GLOBE, September 24, 2014, available at <http://www.bostonglobe.com/metro/2014/09/23/boston-site-program-prevent-residents-from-joining-extremist-groups/YpEppq2cYvITZ6u8AFkbarL/story.html> (last checked on April 15, 2015).

sizeable Muslim American communities, but more specifically, indigent Muslim American communities.

For instance, 82% of the estimated 80,000 Somalis living in the Twin Cities are “near or below the poverty line.”<sup>189</sup> This community faces greater federal anti-terror surveillance and CVE scrutiny after young men were “recruited by transnational terrorist groups,” such as Somalia’s *Al-Shabaab* and the Islamic State of Iraq and Syria (ISIS).<sup>190</sup> In addition, as Black men and women, Somalis are also vulnerable to the racial profiling and policing the broader African American community is exposed to. Consequently, doubly exposing Somali Americans to community and CVE policing.

The metropolitan Detroit area, home to the most densely populated Arab and Muslim American communities in the US, is slated to be included in the next round of cities to take on a formal CVE policing program.<sup>191</sup> Like Somali Americans in the Twin Cities, the vast majority of metropolitan Detroit’s indigent and working class Muslim American communities live in concentrated urban and suburban spaces.

These communities include: Arab and African American Muslims on Detroit’s west side; Iraqi and Lebanese American packed within the working class enclaves of East Dearborn and Detroit’s Warrendale neighborhood; the Yemeni American stronghold on Dearborn’s south end; and concentrated Yemeni, Bosnian, and Bengali Muslim communities in Hamtramck.<sup>192</sup> In a city long associated with domestic terrorism and “homegrown terrorists,”<sup>193</sup> a CVE program rolled out in metropolitan Detroit stands to further chill and

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<sup>189</sup> Elizabeth Dunbar, *Comparing the Somali Experience in Minnesota to Other Immigrant Groups*, MPR NEWS, January 22, 2010.

<sup>190</sup> Dina Temple-Raston, *For Somalis in Minneapolis, Jihadi Recruiting is a Recurring Nightmare*, NPR, Feb. 18, 2015, available at <http://www.npr.org/2015/02/18/387302748/minneapolis-st-paul-remains-a-focus-of-jihadi-recruiting>. See also Aziz, *supra* note \_\_\_\_\_, at 207 (“Somali communities in Minneapolis, St. Paul, and other cities, for example, have been under intense government scrutiny for alleged ties to Al-Shabab. This designated terrorist group in Somalia recruited approximately twenty American young men to fight in the Somali civil war. This led to a spike in indictments for material support of terrorism charges against individuals who provided humanitarian aid to Somalia.”)

<sup>191</sup> I attended a formal CVE presentation in Dearborn, Michigan on March 3, 2015, convened by DHS officials, representatives from the Dearborn Police Department Detroit Police Department, and Muslim American community leaders. The presentation was steered by Haroon Azar, DHS Strategic Engagement Regional Director.

<sup>192</sup> Khaled A. Beydoun, “Let’s Get the Muslims Out:” *Islamophobia in Local Political Campaigns*, RACE LAW PROFS BLOG, Oct. 21, 2015, available at <http://lawprofessors.typepad.com/racelawprof/2015/10/islamophobia-in-local-political-campaigns.html#> (last checked on October 25, 2015).

<sup>193</sup> Aziz, *supra* note 75, at 147.

erode the civil liberties of the city's indigent and working-class Muslim American communities - which are scattered throughout the metropolitan area, and for decades, targets of federal national security policing.

Furthermore, since conspicuous expressions of religiosity tend to be more pronounced among indigent and immigrant Muslim communities, CVE disparately endangers indigent Muslim Americans whether within urban or suburban spaces. CVE, "Mark[s] religious and political activities as the indicators of radicalization, [and] the discourse links religious and political practices in Muslim communities with the likelihood of terrorism."<sup>194</sup> Therefore, donning a beard, a headscarf, or espousing support for Palestinian self-determination, among a host of other constitutionally protected free exercise of religion and speech rights,<sup>195</sup> are far more dangerous propositions when demonstrated within the Southside of Chicago - where police are more prone to react more hastily and violently to individuals perceived to be national security threats, or radicals - versus Orange County, per example. Therefore, CVE threatens the constitutionally protected First Amendment free-exercise, speech and assembly rights of indigent Muslim Americans far more because of its disparate focus on the very spaces where these communities reside.

The Los Angeles Police Department (LAPD), one of the three cities chosen to launch a pilot CVE program,<sup>196</sup> works closely with the politically

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<sup>194</sup> National Security's Broken Windows, *supra* note 75, at 46.

<sup>195</sup> Aziz observes the chilling and debilitating effect CVE Policing has on the constitutionally protected free exercise and speech rights of Muslim Americans: "As a consequence, Muslims are pressured to downplay their religious identity while attempting to assimilate by adopting local accents, remaining deferential and cheerful in the face of government targeting, and engaging in hyper-patriotic acts such as displaying American flags in their homes and businesses. In addition, they fear becoming too active in the religious activities of a Muslim community because this will be viewed as anti-assimilationist and indicative of terrorist inclinations. Muslims cease engaging in identity performance expressed through public prayer, wearing headscarves, attending Muslim community events, or other activities that foster a Muslim group identity. Instead of being welcomed as an act of citizenship, Muslims' civic participation is discredited as disingenuous at best, or duplicitous at worst." Aziz, *supra* note \_\_\_\_\_, at 181.

<sup>196</sup> Brian Bennett, Joel Rubin and Victoria Kim, *L.A. Chosen for Pilot Program For Dissuading Militant Recruits*, L.A. TIMES, September 22, 2014, available at <http://www.latimes.com/local/la-me-terror-jihad-program-20140923-story.html> (last checked on November 14, 2014) [hereinafter "LA Chosen for CVE Pilot Program]. Boston and Minneapolis were the other two cities chosen by the White House to launch pilot CVE programs. See also Samantha Masunga, *Homeland Security Aims to Build Trust in L.A. Muslim Community*, L.A. TIMES, Nov. 12, 2014, available at <http://www.latimes.com/local/california/la-me-1114-mosque-visit-20141114-story.html> (last checked on May 10, 2015).

moderate Muslim Public Affairs Council (MPAC). MPAC launched the “Safe Spaces Program,” an institutional extension of CVE whereby its employees, and community partners, take on the role of identifying “radicals” within the Muslim American community. In addition, MPAC provides the LAPD with access to other civil society organizations within the Arab, MENA and Muslim American community, including, “Muslim student groups and mosques.”<sup>197</sup>

While focusing centrally on Arab, MENA, and Muslim American communities, CVE efforts are also being deployed within American prisons – which are viewed as centers of Islamic conversion,<sup>198</sup> and potentially, radicalization.<sup>199</sup> CVE programming in prisons allows prisons and law enforcement to monitor Muslims targets while incarcerated, and after release, deploy collected information to continue to monitor them after release. Since most incarcerated Muslim Americans come from indigent backgrounds,<sup>200</sup> and are largely African American, the divide between CVE programming in prisons and “on the outside” often blurs.

### C. Lack of Access to Legal Representation

Marred by indigence and insolvency, accessing legal representation for poor Muslim Americans is a distinct challenge. Indigent Muslim Americans are less aware of their legal rights, the breadth of their constitutional protections, and often lack the resources to procure legal representation when wronged by private citizens or state actors.<sup>201</sup> Lack of

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<sup>197</sup> Staff, *MPAC Joins LAPD in Answering Community Questions*, MPAC, April 7, 2014, available at <http://www.mpac.org/programs/government-relations/mpac-joins-lapd-in-answering-community-questions.php> (last checked on April 14, 2015).

<sup>198</sup> For a legal history of the legal strides Black Muslims procured for prisoners at large, how prisons functioned as a space for Islamic conversion, see Khaled A. Beydoun, *Islam Incarcerated: Religious Accommodation of Muslim Prisoners Before Holt v. Hobbs*, 84 U. CIN. L.R. \_\_\_\_\_ (forthcoming 2015).

<sup>199</sup> See generally SpearIt, *Muslim Radicalization in Prison: Responding With Sound Penal Policy or the Sound of Alarm?*, 49 GONZ. L. REV. 37 (2014) (for a focused analysis of counter-radicalization policing within American prisons, and the disparate targeting of Muslim inmates).

<sup>200</sup> Scholar SpearIt alludes to the poverty the majority of released prisoners face when their bids end, “Ex-prisoners are doubly disadvantaged when returning from prison, because they return to communities already struggling with high rates of poverty and unemployment.” *Id* at 79.

<sup>201</sup> Khaled A. Beydoun, *Many Faces of Hate: The Distinct Forms of Anti-Arab Bigotry and Violence*, TAKE ON HATE: WHITE PAPER SERIES (April 2015) available at

access to adequate legal representation is not a problem unique to indigent Muslim Americans. However, the rising tide of state and societal Islamophobia and criminalization of Muslim identity makes access to lawyers especially critical.

The inability to procure legal counsel leads to innocent indigent Muslim Americans being unjustly convicted and sentenced at far higher rates. Following the trend of indigent Americans at large, “As a result of inadequate representation, many [poor] people have been illegally convicted and sentenced.”<sup>202</sup> The expansion of CVE policing, and preexisting federal surveillance and community policing, exposes indigent Muslim Americans to far greater threat of unjust arrest and detention. Furthermore, unjust anti-terror prosecutions, which come with far harsher penalties, are an acute danger to indigent Muslim Americans – given the enhanced focus of federal and local anti-terror policing strategies on poor and working class, concentrated Muslim American enclaves where law enforcement presence is strongest.

Consequently, selective prosecution and harsher sentencing of indigent Muslim Americans amid the still escalating War on Terror is enhanced by lack of access to specialized attorneys. By “specialized,” I am referring to attorneys that understand the intersection between criminal justice system, national security and anti-terror policies, and immigration enforcement systems, which in concert function to target indigent and working class Muslim American communities. The work of *Muslim Advocates* within this realm is notable,<sup>203</sup> but is hardly robust enough to adequately address the pervasive targeting and dire shortage of skilled counsel available to indigent Muslim Americans suspected of terrorism or radicalization.

If the War on Terror is a battle being fought against Muslim America – the most aggressive fronts are taking place within the impoverished spaces indigent Muslim Americans call home. As such, scholarly and legal interventions addressing CVE must take into consideration the communities they are disparately being rolled into. Otherwise, such interventions will render incomplete analyses, assessments, and advocacy. Or, as is often the case, wholesale neglect.

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[http://www.takeonhate.org/many\\_faces\\_of\\_hate\\_the\\_distinct\\_forms\\_of\\_anti\\_arab\\_bigotry\\_and\\_violence](http://www.takeonhate.org/many_faces_of_hate_the_distinct_forms_of_anti_arab_bigotry_and_violence) (last checked on October 2, 2015).

<sup>202</sup> Equal Justice Society, *Counsel for the Poor* (2014), available at <http://www.eji.org/raceandpoverty/counsel>.

<sup>203</sup> The National Association of Muslim Lawyers founded Muslim Advocates in 2005. It functions as a legal defense fund, but also engages in civic engagement and policy work in Washington, DC. Muslim Advocates mission is available at <http://www.muslimadvocates.org/about/> (last checked on October 1, 2015).



## CONCLUSION

*“Intersectionality alone cannot bring invisible bodies into view. Mere words won’t change the way that some people – the less-visible members of political constituencies – must continue to wait for leaders, decision-makers and others to see their struggles.”*

– Kimberle Crenshaw<sup>204</sup>

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Millions of Muslim Americans are interlocked between indigence and Islamophobia. This intersection exposes indigent Muslim Americans to the hardships linked to poverty, the dangers posed by private and public Islamophobia, and the compounded injury inflicted when the two converge. Indigence and Islamophobia do not unfold in distinct and separate chambers, but rather, come together to bring about the greatest harm in America’s most impoverished spaces. The lack of analysis of these liminal spaces has brought about the erasure of indigent Muslim Americans from legal scholarship.

In addition to filling the scholarly void, this project’s focus on indigent Muslim Americans – and the unique challenges they confront amid rising societal and state-sponsored Islamophobia – is also a call to action. A shrill call demanding greater acknowledgement and advocacy on the part of Muslim American civic organizations, which have fallen short of addressing the pronounced plight of their indigent and working constituents. Amid an impasse when Islamophobia, in both public and private form, is rising; and CVE policing expanding, addressing the concerns of indigent Muslim Americans – to echo Kimberle Crenshaw’s demand – “can’t wait.”<sup>205</sup>

Neglect of indigent Muslim American communities is not only evident in scholarship, but also, the agendas and work of Muslim American civil rights and advocacy organizations.<sup>206</sup> ACCESS in Detroit,<sup>207</sup> and

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<sup>204</sup> *Why Intersectionality Can’t Wait*, WASH. POST, Sep. 24, 2015.

<sup>205</sup> *Id.*

<sup>206</sup> Here, I use “Muslim American organizations” loosely, focusing mainly on organizations that serve this population. Not those necessarily guided by an Islamic mission, or agenda.

<sup>207</sup> ACCESS’s services to indigent and working class communities in the metropolitan Detroit area are robust. In addition to extending social services, including “basic needs” programming, ACCESS spearheaded the creation of the National Network for Arab

Chicago's *Inner-City Muslim Action Network (IMAN)*,<sup>208</sup> are among the few organizations work within indigent and working class communities. Addressing the dire shortage of Muslim American organizational work within poor and working class spaces, prominent Islamic scholar Sherman Jackson commented, "The plight of poor people in America, even poor Muslims in America, has not been on the radar screen of the immigrant Muslim community. They have been much more interested in monument-building."<sup>209</sup>

While a harsh critique, Jackson is accurate in his observation that mainstream Muslim American organizations - which operated far from indigent Muslim American spaces - have prioritized prestige over the poor. And, have demonstrated greater commitment to erecting gaudy structures instead of eroding structural poverty (and racism) within their constituencies.

The first step toward mitigating this emaciated record of outreach is highlighting the faces, experiences and narratives, and pressing perils faced by indigent and near-indigent Muslim Americans - which comprise 45% of the entire population. Recognizing the struggles of indigent Muslim Americans, amid a critical impasse of proliferating state and societal Islamophobia and CVE, will mark a shift from "monument building" to community building, in the assailed, relentlessly policed and over-policed impoverished spaces that need it most.

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American Communities (NNAAC) - an umbrella organization that encompasses 24 social services, cultural and arts institutions nationally.

<sup>208</sup> Inner-City Muslim Action Network (IMAN), *Official Website* (2015), available at <http://www.imancentral.org/about/>.

<sup>209</sup> Margaret Ramirez, *Rami Nashashibi: Muslim Confronts Needs of City*, THE CHICAGO TRIBUNE, May 3, 2006 available at [http://articles.chicagotribune.com/2006-05-03/news/0605030211\\_1\\_muslim-leaders-muslim-americans-american-islam](http://articles.chicagotribune.com/2006-05-03/news/0605030211_1_muslim-leaders-muslim-americans-american-islam) (last checked on October 25, 2015).