

ARTICLES

Reframing Radical Religion

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I. INTRODUCTION

Like a thief in the night,¹ politicians have stolen religion for their deceptive vices, using the term “radicalization” or “terrorism” to meet their needs.² They have snatched the power of the church, synagogue, and mosque by framing religion as an attack on American ideals.³ Words matter. The social constructs associated with “radicalization” and “terrorism” matter even more because the terms have been used to justify discriminatory policies and surveillance practices using the pretext of national security.⁴

Masking government discrimination with security concerns is nothing new. The Federal Bureau of Investigation (FBI) responded to the Black Panthers with the Counter-Intelligence Program (COINTELPRO),⁵ an initiative designed to infiltrate Black organizations and subvert leadership.⁶ By framing Black leaders as threats to national security, the FBI gained support to arrest, prosecute, and, in some instances, kill Black Panther, Nation of Islam, and Student Nonviolent Coordinating Committee (SNCC) members.⁷

1. The biblical thief in the night metaphor serves to remind believers that Jesus’ return will come as a surprise, like an unexpected thief entering a house at night. *Matthew* 24:36-43; 1 *Thessalonians* 5:2 (King James). Here, the metaphor represents the gradual erosion of religious freedom under the Trump administration.

2. See Sahar F. Aziz, *Caught in a Preventive Dragnet: Selective Counterterrorism in a Post-9/11 America*, 47 GONZ. L. REV. 429, 481 (2012) (discussing how a police report equates “Muslim religiosity with radicalization toward terrorism”); David A. Bosworth, *American Crusade: The Religious Roots of the War on Terror*, 7 BARRY L. REV. 65, 65 (2006) (noting that American news and popular culture often portray religious people as “narrow-minded bigots out to destroy everything good and decent”); Ned Ryun, *After NYC Terror Attack, Let’s Use Common Sense to Protect Ourselves from Radical Islamic Terrorists*, FOX NEWS (Nov. 3, 2017), <https://www.foxnews.com/opinion/after-nyc-terror-attack-lets-use-common-sense-to-protect-ourselves-from-radical-islamic-terrorists> [https://perma.cc/Q7XK-5LZH] (describing Muslim people as radical and terrorists to advance a conservative agenda).

3. See Amara S. Chaudhry-Kravitz, *The New Facially Neutral “Anti-Shariah” Bills: A Constitutional Analysis*, 20 WASH. & LEE J. CIV. RTS. & SOC. JUST. 25, 33 (2013) (describing the American Public Policy Alliance’s efforts to portray Islamic Shariah Law); Richard M. Esenberg, *You Cannot Lose if You Choose Not to Play: Toward a More Modest Establishment Clause*, 12 ROGER WILLIAMS L. REV. 1, 2 (2006) (noting modern liberals tend to see religion as something to be placed on the “sidelines of public life”) (citation omitted); <https://advance.lexis.com/api/document/collection/analytical-materials/id/4N6N-DY80-00CV-X053-00000-00?cite=12%20Roger%20Williams%20U.%20L.%20Rev.%201&context=1000516>; Ryun, *supra* note 2 (claiming “accurate language” requires stating the United States has “suffered violent assaults in the name of Islam”).

4. See Cyra Akila Choudhury, *Shari’ah Law as National Security Threat?*, 46 AKRON L. REV. 49, 92 (2013); Hilal Elver, *Racializing Islam Before and After 9/11: From Melting Pot to Islamophobia*, 21 TRANSNAT’L L. & CONTEMP. PROBS. 119, 144 (2012); Hugh Handeyside, *Leaked DHS Report Uses Junk Science to Argue for Surveillance of Muslims*, ACLU (Feb. 7, 2018, 3:15 PM), <https://www.aclu.org/blog/national-security/discriminatory-profiling/leaked-dhs-report-uses-junk-science-argue> [https://perma.cc/Y2BA-X4HT].

5. See JEFFREY HAAS, THE ASSASSINATION OF FRED HAMPTON: HOW THE FBI AND THE CHICAGO POLICE MURDERED A BLACK PANTHER 143, 176 (2010); Angela A. Allen-Bell, *A Prescription for Healing a National Wound: Two Doses of Executive Direct Action Equals a Portion of Justice and a Serving of Redress for America & the Black Panther Party*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 1, 2-3 (2015).

6. Allen-Bell, *supra* note 5, at 2-3.

7. HAAS, *supra* note 5, at 82, 143, 159-60, 176-81; see also S. SELECT COMM. TO STUDY GOVERNMENTAL OPERATIONS WITH RESPECT TO INTELLIGENCE ACTIVITIES, INTELLIGENCE ACTIVITIES AND THE RIGHTS OF AMERICANS, S. REP. NO. 94-775, vol. II, at v, 10-11 (2d Sess. 1976).

In city government, former New York mayor Michael Bloomberg stated African Americans and Latinos were more likely to commit violent crimes.⁸ His statement justified the New York Police Department's (NYPD) notorious stop-and-frisk campaign.⁹ This stigmatizing frame led the NYPD to monitor the movement of Bloomberg's black and brown constituents as if they were illegally crossing borders.¹⁰ At one point, stop-and-frisk was used with such frequency that the NYPD annually stopped more Black men than there were Black residents of New York City.¹¹ It was easy for some elected officials to support the discriminatory policing because it aligned with the dominant narrative that Black people are prone to crime and need to be monitored. Media further supports this framing through portrayals of Black people as career criminals, super-predators, thugs, and aggressors.¹²

Effective litigators know that offering a fact-finder a lens to orient a case is an important trial component. Martha Davis analogizes lawyers' framing strategies to the physical structure of a frame—setting boundaries for the information that the frame will embrace.¹³ The mind processes information and subsequently responds to a lawyer's persuasive argument within these boundaries. With the O.J. Simpson trial, for example, the prosecutors used the frame of domestic violence to show Simpson as abusive, while the defense counsel offered a frame of police prejudice to highlight police-manipulated evidence.¹⁴ In a criminal case, a good defense lawyer will reject the prosecutor's guilty or not guilty framing and state that her client is innocent in her opening statement and throughout the trial.¹⁵ Although scholars question the extent to which juries are swayed by opening statements, they recognize

8. Arthur H. Garrison, *NYPD Stop and Frisk, Perceptions of Criminals, Race and the Meaning of Terry v Ohio: A Content Analysis of Floyd, et al. v City of New York*, 15 RUTGERS RACE & L. REV. 65, 101-02 (2014).

9. Samuel R. Gross & Katherine Y. Barnes, *Road Work: Racial Profiling and Drug Interdiction on the Highway*, 101 MICH. L. REV. 651, 747-48 (2002).

10. Even when Bill de Blasio pledged to halt the stop-and-frisk practice and reported a decline in unwarranted stops, the court-appointed monitor, Peter Zimroth, found that an average of seventy-four percent of arrests remained unreported. Al Baker, *City Police Officers Are Not Reporting All Street Stops, Monitor Says*, N.Y. TIMES (Dec. 13, 2017), <https://www.nytimes.com/2017/12/13/nyregion/nypd-stop-and-frisk-monitor.html> [<https://perma.cc/8QPV-G7M5>]. Although in *Floyd v. City of New York*, the court held NYPD's stop-and-frisk violated the Equal Protection Clause, 959 F. Supp. 2d 540, 562 (S.D.N.Y. 2013), subsequent courts would distinguish the holding. See *Nardoni v. City of New York*, 331 F. Supp. 3d 116 (S.D.N.Y. 2018) (finding plaintiff failed to show the unconstitutional NYPD stop-and-frisk practice from 2004 to 2012 continued in 2015 when plaintiff alleged police profiling occurred); *Sullivan v. City of N.Y.*, 17 Civ. 3779 (KPF), 2018 WL 3368706 (S.D.N.Y. July 10, 2018) (finding no proof NYPD racially profiled nor proof that NYPD's failure to correct racial stops amounted to conscious indifference).

11. N.Y.C.L. UNION, STOP-AND-FRISK DATA, <https://www.nyclu.org/en/stop-and-frisk-data> [<https://perma.cc/TC8U-N9HA>] (analyzing NYPD stop-and-frisk reports).

12. See Blanche Bong Cook, *Biased and Broken Bodies of Proof: White Heteropatriarchy, the Grand Jury Process, and Performance on Unarmed Black Flesh*, 85 UMKC L. REV. 567, 569-70, 604 (2017).

13. Martha F. Davis, *Framing Economic, Social and Cultural Rights*, 4 NE. U. L.J. 315, 315 (2012).

14. Steven Lubet, *Story Framing*, 74 TEMP. L. REV. 59, 60-62 (2001).

15. See Noah J. Kores, *A Plan for Closing Arguments*, ABA YOUNG LAWYERS DIV., https://www.americanbar.org/groups/young_lawyers/publications/tyl/topics/litigation/plan-for-closing-argument.html [<https://perma.cc/M8F5-E7EH>]; Lubet, *supra* note 14, at 59.

that the initial phase of a trial may greatly affect jury outcomes.¹⁶ Scholars also largely agree that story framing is an important aspect of a lawyer's ability to persuade jurors.¹⁷ These outcome determinative effects highlight the use of framing in our judicial system.

Legislators and law enforcement similarly use framing principles to justify covert surveillance practices in Muslim communities.¹⁸ Framing Muslims as terrorists has propelled law enforcement agencies to over-police mosques, Islamic schools, and Muslim communities.¹⁹ Other laws and policies, such as the USA PATRIOT Act,²⁰ the National Security Entry-Exit Registration System (NSEERS),²¹ and the Muslim Bans,²² were targeted toward Muslims and justified as a way to protect the nation from potential terrorist attacks. The Muslim terrorism frame has led state legislatures to introduce more than 200 discriminatory anti-Shariah bills, many of which challenge Islamic marriage contracts, but place no equivalent restriction on similar religious practices by those of other faiths.²³ Again, words and framing matter.

Through a framing theory lens, this Article explores the legal ramifications of fabricated frames. I argue that framing Muslims as a national security threat and then asking the "good" Muslims to fight the War on Terrorism relegates religion to hidden spaces and places White nationalism in the forefront. Stigmatizing Muslims as terrorists also emboldens xenophobia, racism, and hate crimes.²⁴ Equally significant,

16. Valerie P. Hans & Krista Sweigart, *Jurors' Views of Civil Lawyers: Implications for Courtroom Communication*, 68 IND. L.J. 1297, 1329-30, (1993); Hans Zeisel, *A Jury Hoax: The Superpower of the Opening Statement*, 14 A.B.A. J. LITIG. 17, 17-18 (1988) (rejecting the proposition that opening statements are determinative of jury outcomes, but supporting that juries decide cases early in the trial process).

17. For an appellate attorney, the "Question Presented" is one of the first opportunities to persuade the court. Usually in less than fifty words, the attorney will frame and influence the lens through which a judge will read the legal analysis. Judith D. Fischer, *Got Issues? An Empirical Study about Framing Them*, 6 J. ASS'N LEGAL WRITING DIRECTORS 1, 2 (2009). See also Ziesel, *supra* note 16, at 18.

18. See generally, ANDREW FERGUSON, *THE RISE OF BIG DATA POLICING* (2017).

19. Gregory C. Sisk & Michael Heise, *Muslims and Religious Liberty in the Era of 9/11: Empirical Evidence from the Federal Courts*, 98 IOWA L. REV. 231, 236-37 (2012); Muslim Cmty. Ass'n v. Ashcroft, 459 F. Supp. 2d 592, 598-601 (E.D. Mich. 2006) (discussing the use of wiretaps and informants to record inside a mosque and Islamic school under the USA PATRIOT Act).

20. 8 U.S.C. § 1182(a)(3)(B)(iii)(V) (2013) (defining terrorist activities that render foreign nationals ineligible for visas or admission); see also ARSHAD AHMED & FARID SENZAI, INST. FOR SOC. POL'Y & UNDERSTANDING, *THE USA PATRIOT ACT: IMPACT ON THE ARAB AND MUSLIM AMERICAN COMMUNITY* 29-34 (2004), https://www.ispu.org/wp-content/uploads/2017/07/the-usa-patriot-act_farid-senzai.pdf [<https://perma.cc/GZ5X-9PLK>] (using Sections 411 and 412 of the PATRIOT Act before its codification as amended in scattered sections of 8 U.S.C., explaining the broad meaning of "terrorist activity" and the effects of the arbitrary nature of the Attorney General's choice to detain and interrogate a potential alien terrorist); ACLU, *Myths and Realities About the Patriot Act*, <https://www.aclu.org/other/myths-and-realities-about-patriot-act> [<https://perma.cc/56M3-S48P>] (detailing two cases in which the legal rights of Muslim professionals were abused under the USA PATRIOT Act).

21. NSEERS affected nationals from select Muslim-majority countries. Males sixteen years and older from Iran, Iraq, Libya, Pakistan, Saudi Arabia, Sudan, Syria, and Yemen were required to register with the Immigration and Naturalization Service (INS). Kareem Shora, *National Security Entry Exit Registration System (NSEERS)*, 2 CARDOZO PUB. L. POL'Y & ETHICS J. 73, 76-77 (2003).

22. Exec. Order No. 13,780, 82 Fed. Reg. 13,209 (Mar. 6, 2017).

23. Swathi Shanmugasundaram, *Anti-Sharia Law Bills in the United States*, SPLC (Feb. 5, 2018), <https://www.splcenter.org/hatewatch/2018/02/05/anti-sharia-law-bills-united-states> [<https://perma.cc/H5GM-9XCZ>].

24. See *infra* Part V, Section D.

by justifying statutes and policies as tools in the War on Terrorism, the executive and legislative branches garner widespread public support and judicial protections for policies that continue to adversely and disproportionately affect Muslims.²⁵

I pursue this theory in six parts. Part II examines the various ways Islam is framed within the national security dialogue. This analysis includes analogizing the terrorism frame to how African Americans are portrayed in social narratives about crime and public safety. Part III provides background on social science's framing theory and the way framing influences behavior, including how fabricated frames are used to justify self-interests. In Part IV, I assess the effects of weaponized language. Specifically, Part IV analyzes the nexus between animus frames and the enactment of the Muslim Ban,²⁶ the USA PATRIOT Act,²⁷ and the NSEERS.²⁸ This section also considers the correlation between animus frames and hate crimes against African Americans, Muslims, and those perceived to be Muslim. Part V offers strategies to reclaim religion and counter the anti-Islam terrorist narrative.

II. WEAPONIZED FRAMES²⁹

Weaponized frames both harm their targets and prevent them from fully participating in society. It was an anti-Native American frame that supported Coloradans' animosity toward their Cheyenne and Arapaho neighbors, leading to the Sand Creek Massacre.³⁰ It was an anti-Black frame that led to the Tulsa Massacre, killing an

25. Kevin R. Johnson, *How Racial Profiling in America Became the Law of the Land: United States v. Brignoni-Ponce and Whren v. United States and the Need for Truly Rebellious Lawyering*, 98 GEO. L.J. 1005, 1072 (2010).

26. Exec. Order No. 13,780, 82 Fed. Reg. 13,209 (Mar. 6, 2017).

27. USA PATRIOT Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (codified as amended in U.S.C. titles 8, 12, 15, 18, 20, 31, 42, 47, 49, and 50) [hereinafter USA PATRIOT Act].

28. 8 C.F.R. § 264.1(f) (2016).

29. The term "weaponized" was commonly used in the 1950's by the military. In this Article, weaponized describes the language used to instill fear in the public. More specifically, the term is used to show the direct correlation between using anti-Black and anti-Muslim rhetoric and justifying war on those communities. Once war is declared, the battle space expands to wherever Muslims and African Americans may travel, live, or pray. See John Herrman, *If Everything Can Be 'Weaponized,' What Should We Fear?*, N.Y. TIMES (Mar. 14, 2017), <https://www.nytimes.com/2017/03/14/magazine/if-everything-can-be-weaponized-what-should-we-fear.html> [<https://perma.cc/EJ2X-CR75>].

30. The controversial November 1864 battle at Sand Creek started with White settlers taking over Cheyenne and Arapaho land. The Cheyenne and Arapaho leaders sought peace and negotiations, but to their surprise, Colonel John Chivington attacked a Cheyenne village along Sand Creek. Accounts vary, but some accounts indicate John Chivington's militia murdered as many as 600 Cheyenne and Arapaho people. See generally STAN HOIG, *THE SAND CREEK MASSACRE* (1961) (chronologizing the Sand Creek massacre). Relatedly, to justify property deprivation through the doctrine of discovery, Chief Justice Marshall dehumanized Indians to heathens and savages, professing, "The tribes of Indians inhabiting this country were fierce savages, whose occupation was war, and whose subsistence was drawn chiefly from the forest . . ." Johnson v. M'Intosh, 21 U.S. (8 Wheat.) 543, 590 (1823); see also, e.g., U.S. DEP'T OF THE INTERIOR, ANN. REP. OF THE SEC'Y OF THE INTERIOR (1883), X-XI, <https://archive.org/details/annualreportofse83unit/page/n17> [<https://perma.cc/J59Z-6KPA>] (describing the government's need to civilize Indian's savage practices of religion, dance, medicine, and marriage); Richard Drinnon, *FACING WEST: THE METAPHYSICS OF INDIAN-HATING & EMPIRE-BUILDING* 501-02 (1997).

estimated 300 Black people and destroying Black Wall Street.³¹ It is a similar anti-Black frame used to justify police shooting unarmed Black men, women, and children.³² Donald Trump also uses an anti-Muslim frame which has led to increased hate crimes against Muslims.³³

Through weaponized language, Donald Trump encourages themes of good-against-evil, us-against-them—themes that have traditionally appeared in bigoted language and narratives of conquest.³⁴ Below, I examine the language and supporting frames used to justify discriminatory laws and policing practices under the auspices of community safety and White security.³⁵ The analysis also illustrates the parallels between government language describing Black communities, calling for a War on Drugs, and government language describing Muslim communities, calling for a War on Terrorism.

A. Framing Crime and Public Safety

During his first presidential debate, Donald Trump would align crime with African Americans and Latinos, stating, “African Americans and Hispanics are living in hell. You walk down the street and you get shot.”³⁶ Trump’s political strategy of associating African Americans with crime and danger has deep roots. Since the

31. “Black Wall Street” consisted of the flourishing Greenwood District and its neighboring areas in Tulsa, Oklahoma in 1921. White militia ravaged the Greenwood District, and the governor summoned military troops to quell raging fires of homes and businesses, as well as jail Black Tulsans. In the end, over 300 residents, most of whom were Black, died and more than 8,000 Black residents were homeless as a result of the destruction. A.G. Sulzberger, *As Survivors Dwindle, Tulsa Confronts Past*, N.Y. TIMES (June 19, 2011), <https://www.nytimes.com/2011/06/20/us/20tulsa.html?mtrref=perma.cc&gwh=DA98791A47EAE246D56DB41B582953E1&gwt=pay> [<https://perma.cc/2RNU-JWX2>].

32. Frequently, when police officers interact with Black people, they tend to use unwarranted force because police have been conditioned to expect Black people to be criminals. This public safety threat, or permissive “implicit racial bias,” authorizes police to act violently toward unarmed Black people. Liku T. Madoshi, Comment, *Policing the Police: Implicit Racial Bias & the Necessity of Limiting Police Discretion to Use Militarized Gear Against Civilian Protesters*, 44 S.U. L. REV. 118, 124, 135-36 (2016).

33. See Katayoun Kishi, *Assaults Against Muslims in U.S. Surpass 2001 Level*, PEW RES. CTR (Nov. 15, 2017), <http://www.pewresearch.org/fact-tank/2017/11/15/assaults-against-muslims-in-u-s-surpass-2001-level/> [<https://perma.cc/M3HX-EW9S>]; Lynn Stuart Parramore, *Commentary: The 11 Most Surreal Moments in a Presidential Race from Hell*, REUTERS (Nov. 7, 2016, 11:50 PM), <https://www.reuters.com/article/us-election-recap-commentary/commentary-11-most-surreal-moments-in-a-presidential-race-from-hell-idUSKBN1330BD> [<https://perma.cc/ET4C-GXGT>]. In Supreme Court briefs filed by the Petitioner and members of Congress, as amici curiae, both cited to Donald Trump’s statement of promising to ban all Muslims from the country because of their “great hatred towards Americans.” Members of Congress as Amici Curiae in Support of Respondents at 9, *Trump v. Hawaii*, 138 S. Ct., 2392 (2018); Petition for Writ of Certiorari at 108, *Trump v. Hawaii*, 138 S. Ct., 2392 (2018).

34. Khaled Abou El Fadl, *The Culture of Ugliness in Modern Islam and Reengaging Morality*, 2 UCLA J. ISLAMIC & NEAR E. L. 33, 36-38 (2003).

35. See Victor M. Massie, *Racial Justice Groups Sue Feds for Monitoring Activists in the Movement for Black Lives*, VOX (Oct. 24, 2016), <https://www.vox.com/identities/2016/10/24/13380456/black-lives-activists-surveillance-fbi> [<https://perma.cc/CZ3Q-5J5F>]; Brett G. Stoudt, Michelle Fine & Madeline Fox, *Growing Up Policed in the Age of Aggressive Policing Policies*, 56 N.Y.L. SCH. L. REV. 1331, 1332 (2013).

36. Melissa Chan, *Donald Trump Claims Black and Hispanic People Are ‘Living in Hell’*, FORTUNE (Sept. 27, 2016), <http://fortune.com/2016/09/26/presidential-debate-donald-trump-living-in-hell-black-people/> [<https://perma.cc/LVH7-4QXJ>].

African holocaust,³⁷ various derogatory terms have been used to describe African Americans, including terms supporting a frame that Black people are inferior and dangerous savages needing to be controlled.³⁸

The savagery frame justified various slave codes,³⁹ black incarceration, segregation, and frequent lynchings. During the Jim Crow era of 1889 to 1918, more than 2,500 African American lynchings were reported, with many more murders undocumented.⁴⁰ An anti-Black sentiment continued from 1920 through the 1960s, further supporting law enforcement's reluctance to prosecute mob executions and other crimes against Black people.⁴¹ Racially biased jury nullification⁴² led to the acquittals of the few White defendants that law enforcement arrested and prosecuted.⁴³

The legacy of devaluing Black lives was relentless in the 1970s with Richard Nixon's War on Drugs. Nixon's campaign led to enhanced penalties for certain targeted drug offenses, such as crack cocaine, further supporting the frame to control dangerous Black people.⁴⁴ President Nixon stated to a national audience, "America's public enemy number one in the United States is drug abuse. In order to fight and defeat this enemy, it is necessary to wage a new all-out offensive. . . . It is essential for the American people to be alerted of this danger—to recognize that it is a danger that

37. The term African holocaust is used to describe the brutal slave trade in the 1500's, the death of as many as four million Africans during their middle passage, and the exploitative treatment of Africans as property in the 1800's. See AMERICA'S BLACK HOLOCAUST MUSEUM, *What Is the Black Holocaust?*, <https://abhmuseum.org/what-is-the-black-holocaust/> [<https://perma.cc/YE73-KGR4>].

38. Tukufu Zuberi, *Critical Race Theory of Society*, 43 CONN. L. REV. 1573, 1575 n.1, 1576-78 (2011).

39. KATHERYN RUSSELL-BROWN, THE COLOR OF CRIME 35-37 (Richard Delgado & Jean Stefancic eds., 2d ed. 2009); see also, e.g., STEPHEN A. BERREY, THE JIM CROW ROUTINE: EVERYDAY PERFORMANCES OF RACE, CIVIL RIGHTS, AND SEGREGATION IN MISSISSIPPI 8-12 (2015) (explaining how Erving Goffman's framing theory applies to the roles people assumed in the Jim Crow era).

40. NAT'L ASS'N FOR THE ADVANCEMENT OF COLORED PEOPLE, THIRTY YEARS OF LYNCHING IN THE UNITED STATES 1889-1918, 7 (1969).

41. RICHARD ROTHSTEIN, THE COLOR OF LAW 143-51 (2017). The need to control Black communities existed even when those communities were segregated. See Josie Pickens, *The Destruction of Black Wall Street*, EBONY (May 31, 2013), <https://www.ebony.com/black-history/destruction-of-black-wall-street/> [<https://perma.cc/RN8T-VARA>].

42. Jury nullification is when "[a] jury's knowing and deliberate rejection of the evidence or refusal to apply the law either because the jury wants to send a message about some social issue that is larger than the case itself or because the result dictated by law is contrary to the jury's sense of justice, morality, or fairness." BLACK'S LAW DICTIONARY (10th ed. 2014).

43. See also, e.g., Julia Simon-Kerr, *Systemic Lying*, 56 WM. & MARY L. REV. 2175, 2195 (2015); see Harvie Wilkinson III, *In Defense of American Criminal Justice*, 67 VAND. L. REV. 1099, 1158 (2014).

44. The War on Drugs in the 1970's occurred at the heels of the civil rights movement that declared equal rights for African Americans. Shortly after this seemingly victorious period for Black Americans, during Nixon's War on Drugs, "[n]inety percent of those admitted to prison for drug offenses in many states were black or Latino." Kristine Schanbacher, *Behind the Veil of the War on Drugs: An Institutional Attack on the African American Community*, 16 SCHOLAR: ST. MARY'S L. REV. & SOC. JUST. 103, 106 n.16 (2013) (citing Michelle Alexander for the proposition that a "New Jim Crow" was born with the "War on Drugs," which Schanbacher describes as "a new social control [that] perpetrated against the African American community."); WILLIAM J. BENNETT ET AL., BODY COUNT: MORAL POVERTY . . . AND HOW TO WIN AMERICA'S WAR AGAINST CRIME AND DRUGS 13-14 (1996).

will not pass.⁴⁵ Nixon's domestic policy chief, John Ehrlichman's reflection on the War on Drugs is particularly revealing:

The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and [B]lack people. . . . We knew we couldn't make it illegal to be either against the war or [B]lack[s], but by getting the public to associate the hippies with marijuana and [B]lacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings and vilify them night after night on the evening news.⁴⁶

Nixon's campaign to vilify Black people further justified over-policing Black communities, although during this time, White Americans used illicit drugs at higher rates than Black Americans.⁴⁷

Mobilizing derogatory frames to justify controlling Black people continued into the 1990s. A super-predator frame led to mass incarceration of Black youth in adult detention facilities and increased mandatory sentences.⁴⁸ Hillary Clinton, then a New York Senator, reinforced the need for harsh sentences for juvenile super-predators who lacked any hope for rehabilitation.⁴⁹ The media would promote John J. DiIulio's theory that Black youth lacked proper parental and community guidance.⁵⁰ DiIulio would connect this parental void with a moral

45. Richard Nixon Found., *President Nixon Declares Drug Abuse "Public Enemy Number One,"* YOUTUBE (Apr. 29, 2016), <https://www.youtube.com/watch?v=y8TGLLQID9M> [<https://perma.cc/N9DA-KREX>].

46. Tom LoBianco, *Report: Aide Says Nixon's War on Drugs Targeted Blacks, Hippies*, CNN (Mar. 24, 2016, 3:14 PM), <https://www-m.cnn.com/2016/03/23/politics/john-ehlichman-richard-nixon-drug-war-blacks-hippie/index.html?r=https%3A%2F%2Fperma.cc%2FFKK3-D52E&rm=1> [<https://perma.cc/FFKK3-D52E>].

47. See, e.g., Jerald G. Bachman et al., *Drug Use Among Black, White, Hispanic, Native American, and Asian High School Seniors (1976-1989) Prevalence, Trends, and Correlates*, in MONITORING THE FUTURE, 50 (1990) <http://www.monitoringthefuture.org/pubs/occpapers/occ30.pdf> [<https://perma.cc/V932-NRNL>] (displaying Table 13 that shows by race the percent of illicit drugs ever used over a lifetime, with the White male percentage higher in all illicit drug types except heroin, which shows Black and White males at about the same percentage rate of usage); Jamie Fellner, *Race, Drugs, and Law Enforcement in the United States*, 20 STAN. L. & POL'Y REV. 257, 261-67 (2009). See also generally Sean Esteban McCabe et al., *Race/Ethnicity and Gender Differences in Drug Use and Abuse Among College Students*, 17 J. ETHNICITY IN SUBSTANCE ABUSE 75 (2007) (finding higher drug use by White and Latino college students than African American and Asian students), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2377408/> [<https://perma.cc/L2SJ-824K>].

48. Joseph Margulies, *Symposium: Preventive Detention: Deviance, Risk, and Law: Reflections on the Demand for the Preventive Detention of Suspected Terrorists*, 101 J. CRIM. L. & CRIMINOLOGY 729, 747-52 (2011); see also Perry Moricarty, *Framing Justice: Media, Bias, and Legal Decisionmaking*, 69 MD. L. REV. 849, 862 (2010); Robert Smith & Zoe Robinson, *Constitutional Liberty and the Progression of Punishment*, 102 CORNELL L. REV. 413, 425 (2017).

49. Robert Mackey, *Hillary Clinton on 'Superpredators' in 1996*, C-SPAN (Feb. 25, 2016), <https://www.c-span.org/video/?c4582473/hillary-clinton-superpredators-1996> [<https://perma.cc/BF6V-DKKE>]; see also JOHN R. MILLS, ANNA M. DORN & AMELIA C. HRITZ, PHILLIPS BLACK PROJECT, NO HOPE: RE-EXAMINING LIFETIME SENTENCES FOR JUVENILE OFFENDERS 9-11 (2015), <https://static1.squarespace.com/static/55bd511ce4b0830374d25948/t/5600cc20e4b0f36b5caabe8a/1442892832535/JLWOP+2.pdf> [<https://perma.cc/36AJ-8D9J>]; Robert J. Smith & Zoë Robinson, *Constitutional Liberty and the Progression of Punishment*, 102 CORNELL L. REV. 413, 425 (2017).

50. John J. DiIulio, Jr., *Moral Poverty: The Coming of the Super-Predators Should Scare Us into Wanting to Get to the Root Cause of Crime a Lot Faster*, CHI. TRIB. (Dec. 15, 1995), at 31; BARRY C. FELD, BAD KIDS: RACE AND THE TRANSFORMATION OF THE JUVENILE COURT 208 (1999); Dara Lind, *Boys with Incarcerated*

deprivation frame and a narrative of drugs and other “street” life values driving “thugs” to crime.⁵¹ The general sentiment was that without harsher sentences and extreme policing methods, youth violence would increase exponentially and destroy White communities.⁵² As DiIulio himself would later admit, this fabricated super-predatory frame proved inaccurate.⁵³ Juvenile crimes decreased over the decade, instead of escalating as DiIulio had initially predicted.⁵⁴

Conversely, the panic associated with Black youth increased. The super-predator stereotype continued to support an impulse to purge society of those perceived to wreak havoc in White communities.⁵⁵ Professor Perry Moricarty examined the media’s framing of the super-predator narrative and its effects in the juvenile justice system, including the story of the Central Park Five.⁵⁶ Although there was no forensic evidence to suggest that five Black teenagers raped a White female jogger in Central Park, the super-predator frame was so deeply embedded in community norms that overcoming the frame with facts proved difficult.⁵⁷ Even after the actual rapist admitted to the crime and a judge exonerated the youth for the rape, a panel commissioned by the NYPD still questioned the youth’s innocence.⁵⁸ Referencing the Central Park rape in 1989, Donald Trump exacerbated the problem by spending over \$85,000 on ads in four New York daily newspapers calling for the death penalty against youth offenders.⁵⁹ Framed as a public safety matter, the ads supported controlling not only Black adults, but gradually annihilating an entire community by

Fathers are Screwed Before They Even Get to School, VOX (Apr. 24, 2014), <https://www.vox.com/2014/4/24/5647660/boys-incarcerated-fathers-school-behavior-prison-pipeline> [<https://perma.cc/7VFP-WATG>].

51. Moricarty, *supra* note 48, at 865-67.

52. See generally JAMES ALAN FOX, TRENDS IN JUVENILE VIOLENCE: A REPORT TO THE UNITED STATES ATTORNEY GENERAL ON CURRENT AND FUTURE RATES OF JUVENILE OFFENDING (1996); U.S. DEPT. OF JUST. OFF. OF JUV. JUST. & DELINQ. PREVENTION, 1999 NATIONAL REPORT: CHALLENGING THE MYTH (2000), <https://www.ncjrs.gov/pdffiles1/ojdp/178993.pdf> [<https://perma.cc/Q4G5-2EP3>].

53. Clyde Haberman, *When Youth Violence Spurred “Superpredator” Fear*, N.Y. TIMES (Apr. 6, 2014), <https://www.nytimes.com/2014/04/07/us/politics/killing-on-bus-recalls-superpredator-threat-of-90s.html> [<https://perma.cc/VJH7-QQDM>].

54. Nazgol Ghandnoosh, *Black Lives Matter: Eliminating Racial Inequity in the Criminal Justice System*, in THE SENTENCING PROJECT 12 (2015), <http://www.sentencingproject.org/publications/black-lives-matter-eliminating-racial-inequity-in-the-criminal-justice-system/> [<https://perma.cc/KSN2-W39S>].

55. Robert J. Smith & Zoë Robinson, *Constitutional Liberty and the Progression of Punishment*, 102 CORNELL L. REV. 413; see also ELIZABETH S. SCOTT & LAURENCE STEINBERG, RETHINKING JUVENILE JUSTICE 94-102 (2008); Elizabeth S. Scott, Miller v. Alabama and the (Past and) Future of Juvenile Crime Regulation, 31 LAW & INEQ. 535, 536 (2013); Berrey, *supra* note 39.

56. The “Central Park Five” was the label given to five innocent Black youth whom NYPD wrongfully charged and were subsequently convicted or pled guilty for the rape of a White woman in Central Park. Moricarty, *supra* note 48, at 862-64.

57. *Id.*

58. Robert D. McFadden, *Boys’ Guilt Likely in Rape of Jogger, Police Panel Says*, N.Y. TIMES (Jan. 28, 2003), <https://www.nytimes.com/2003/01/28/nyregion/boys-guilt-likely-in-rape-of-jogger-police-panel-says.html> [<https://perma.cc/7XJP-K5CH>].

59. David A. Love, *Central Park 5 Still Seeking Justice in NYC Jogger Case*, GRIO (May 3, 2011), <https://thegrio.com/2011/05/03/central-park-5-still-seeking-justice-in-nyc-jogger-case/> [<https://perma.cc/Z369-RBPP>] (stating that “[u]nder the headline ‘Bring Back the Death Penalty,’ Trump wrote, ‘They should be forced to suffer and, when they kill, they should be executed for their crimes. They must serve as examples so that others will think long and hard before committing a crime or an act of violence.’”).

promoting the death penalty for Black youth offenders.⁶⁰

In the twenty-first century, associating Black people with crime, regardless of their class, continues. After Cambridge police arrested Harvard University Professor Henry Louis Gates, Jr. for allegedly breaking into his own home, the country again confronted with racial stereotyping and discriminatory policing.⁶¹ President Obama commented, “What I think we know separate and apart from this incident is that there’s a long history in this country of African Americans and Latinos being stopped by law enforcement disproportionately.”⁶² After significant law enforcement backlash, President Obama later softened the blow of his statement and invited Professor Gates and arresting officer, Sergeant James Crowley, to the White House.⁶³ The optics suggested both parties got a little hot under the collar and things escalated. Instead, it was another instance of framing discriminatory policing as a misunderstanding or officer oversight.⁶⁴

As further evidence, in 2017 alone, law enforcement killed over 900 Black people, but only 12 officers were charged.⁶⁵ Mostly White grand juries continue to find police officers justified in shooting unarmed Black suspects—not because the suspects have actual weapons, but because the officers feel threatened. Thus, when White officers claim suspects’ cell phones look like guns, the statements continue to resonate with some jurors’ worldview that Black people are gun-slinging thugs.⁶⁶ Fittingly, the Black Lives Matter movement reminded America of its duplicitous criminal justice system⁶⁷—a system that disproportionately arrests and incarcerates

60. *Id.* Similarly in a March 2018 speech, Trump reiterated his appeal to “get tough” on drug offenses. He said that “[i]f we don’t get tough on drug dealers, we’re wasting our time . . . and that toughness includes the death penalty.” See also Jamelle Bouie, *Kill the Scapegoats*, SLATE (Mar. 20, 2018), <https://slate.com/news-and-politics/2018/03/donald-trump-wants-to-execute-the-black-and-brown-people-he-blames-for-the-opioid-crisis.html> [<https://perma.cc/Y8DM-XBPB>].

61. See Krissah Thompson, *Arrest of Harvard’s Henry Louis Gates Jr. Was Avoidable, Report Says*, WASH. POST (June 20, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/06/30/AR2010063001356.html?noredirect=on> [<https://perma.cc/G4MT-4VUQ>].

62. Brian Montopoli, *Obama: Cops Acted “Stupidly” in Professor’s Arrest*, CBS NEWS (July 22, 2009), <https://www.cbsnews.com/news/obama-cops-acted-stupidly-in-professors-arrest/> [<https://perma.cc/DP94-CDA7>].

63. Thompson, *supra* note 61.

64. See, e.g., *Gibbs-Green shooting: May 15, 1970*, JACKSON ST. U., <http://www.jsu.edu/universitycommunications/gibbs-green-shooting-may-15-1970/> [<https://perma.cc/VQ8G-RWVP>] (recounting the Jackson State University massacre via article and video to show the “unreasonable, unjustified overreaction” of continuous shooting for about half a minute of a women’s student residence hall by police in reaction to student protests, where no arrests for the killings were made).

65. Kimberly Kindy & Kimbriell Kelly, *Thousand Dead, Few Prosecuted*, WASH. POST (Apr. 11, 2015), https://www.washingtonpost.com/sf/investigative/2015/04/11/thousands-dead-few-prosecuted/?utm_term=.9686995830a8 [<https://perma.cc/3DPN-Y7WP>].

66. Jennifer Eberhardt, *Seeing Black: Race, Crime, and Visual Processing*, 87 J. PERSONALITY & SOC. PSYCHOL. 876, 1173-74 (2004). Sacramento police officers shot Stephon Clark four times in his grandmother’s backyard because they believed his cell phone was a gun. Perhaps law enforcement believes cell phones are guns because of the deeply rooted black savage frame. Perhaps also, law enforcement internalized the history of police abuse against Black people and fears that one day Black people will no longer respond with non-violent protest.

67. See generally Ghandnoosh, *supra* note 54.

African Americans more than any other group.⁶⁸ Despite there being no statistical difference showing Black people committing more crimes than Whites, the stigma continues to prevail.⁶⁹ These results are supported by framing theory and other cognitive science, so the results, although alarming, are not surprising.

B. Framing National Security

Perhaps equally alarming is the Trump administration's demand for extreme actions against Muslims, including banning some Muslims from entering the United States,⁷⁰ with the Supreme Court upholding that agenda in a contentious 5-4 decision.⁷¹ Donald Trump has called for a possible Muslim database registry⁷² and questioned Muslims' loyalties as Americans.⁷³ Steve Bannon, Trump's former advisor, professed the West is "at war with Islam."⁷⁴ Michael Flynn, Trump's former National Security Advisor, referenced Islam as a "vicious cancer inside the body of 1.7 billion people needing to be 'excised.'"⁷⁵ Sebastian Gorka, former Deputy Assistant to President Trump, added to the Administration's anti-Islam frame by asserting that admitting Muslim refugees would be "national suicide."⁷⁶

Although politicians often loosely use the word terrorism, regulations governing FBI operations define it as "the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any

68. See generally MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010) (examining the nexus between mass incarceration and race).

69. Jennifer Eberhardt, *Seeing Black: Race, Crime, and Visual Processing*, 87 J. PERSONALITY & SOC. PSYCHOL. 876 (2004).

70. Exec. Order No. 13,815, 82 Fed. Reg. 50055 (Oct. 24, 2017).

71. *Trump v. Hawaii*, 138 S. Ct. 2392, 2422-23 (2018).

72. Abby Phillip & Abigail Hauslohner, *Trump on the Future of Proposed Muslim Ban, Registry: 'You Know My Plans'*, WASH. POST (Dec. 22, 2016), <https://www.washingtonpost.com/news/post-politics/wp/2016/12/21/trump-on-the-future-of-proposed-muslim-ban-registry-you-know-my-plans/> [<https://perma.cc/GC5A-8TBQ>].

73. See Press Release, White House, "Statement by the President on the Shooting in Chattanooga, TN." (July 16, 2015), <https://obamawhitehouse.archives.gov/the-press-office/2015/07/16/statement-president-shooting-chattanooga-tn> [<https://perma.cc/EF5L-FG8U>]; Mark Arce, *Santorum: Refugee Crisis Raises Questions About "Spread of Islam,"* BUZZFEED NEWS (Sept. 15, 2015), <https://www.buzzfeednews.com/article/markarce/santorum-refugee-crisis-raises-questions-about-spread-of-isl> [<https://perma.cc/U7TX-27RL>]; Washington Post Staff, *Full Transcript: Undercard GOP Debate*, WASH. POST (Sept. 16, 2015), <https://www.washingtonpost.com/news/post-politics/wp/2015/09/16/running-transcript-undercard-gop-debate/> [<https://perma.cc/W2SV-P2GB>].

74. Scott Shane, Matthew Rosenberg & Eric Lipton, *Trump Pushes Dark View of Islam to Center of U.S. Policy Making*, N.Y. TIMES (Feb. 1, 2018), <https://www.nytimes.com/2017/02/01/us/politics/donald-trump-islam.html> [<https://perma.cc/8GXC-27JD>]; Clark Mindock, *Steve Bannon Allegedly Said He 'Believes the West Is at War with Islam,'* INDEPENDENT (Feb. 14, 2017), <https://www.independent.co.uk/news/world/americas/steve-bannon-war-islam-muslims-alt-right-donald-trump-a7580336.html> [<https://perma.cc/Q7JT-RTD6>]; Scott Shane, *Stephen Bannon in 2014: We Are at War with Radical Islam*, N.Y. TIMES (Feb. 1, 2017), <https://www.nytimes.com/interactive/2017/02/01/us/stephen-bannon-war-with-radical-islam.html> [<https://perma.cc/C4YU-RLWQ>].

75. Daniel S. Levine, *WATCH: Michael Flynn Calls Islam a 'Vicious Cancer'*, HEAVY. (Nov. 23 2016), <https://heavy.com/news/2016/11/watch-michael-flynn-calls-islam-a-vicious-cancer-video-islamophobic-donald-trump-national-security-adviser-views/> [<https://perma.cc/TK2W-LNTH>].

76. ERDOAN A. SHIPOLI, *ISLAM, SECURITIZATION, AND US FOREIGN POLICY* 242 (2018).

segment thereof, in furtherance of political or social objectives.”⁷⁷ Based on this definition, White nationalists, Muslims, Christians, Jews, and atheists have all committed terrorist attacks on the United States. Fittingly, the Department of Homeland Security (DHS) acknowledges terrorism can come from various groups, but the section of its website addressing ways to prevent terrorism limits its terrorist organization examples to Islamic groups: “Violent extremist threats come from a range of groups and individuals, including domestic terrorists and homegrown violent extremists in the United States, as well as international terrorist groups like al-Qaeda and ISIL.”⁷⁸ Further, the DHS anti-terrorism budget and strategic plan disproportionately focus on what it references as Islamic extremism.⁷⁹ No similar label is used for Christian or Jewish extremists. Instead, media propaganda, legislative reform, and political statements reinforce the Islamic threat narrative.⁸⁰

The House Committee on Homeland Security similarly promoted the Muslim terrorist frame. In one of its hearings, U.S. Representative Peter King (R-NY) expressed the need to protect against an al-Qaeda threat, minimizing the threat from other terrorist groups:

This committee cannot live in denial, which is what some of us would do when they suggest that this hearing dilutes its focus by investigating threats unrelated to al-Qaeda. The Department of Homeland Security and this committee were formed in response to the al-Qaeda attacks of September 11. There is no equivalency of threat between al-Qaeda and neo-Nazis, environmental extremists, or other isolated madmen. Only al-Qaeda and its Islamist affiliates in this country are part of an international threat to our Nation. Indeed by the Justice Department’s own record, not one terror-related case in the last 2 years involved neo-Nazis, environmental extremists, militias, or antiwar groups.⁸¹

Omitting information is an effective framing technique.⁸² By overlooking neo-Nazi groups’ history of terrorism, the House Committee on Homeland Security

77. 28 C.F.R. § 0.85. The FBI further defines terrorist incident as “a violent act or an act dangerous to human life, in violation of the criminal laws of the United States, or of any state, to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.” U.S. DEPT. OF JUST., FBI, *Terrorism Report - 2002-2005*, https://www.fbi.gov/file-repository/stats-services-publications-terrorism-2002-2005-terror02_05.pdf/view [<https://perma.cc/QU63-WCGA>].

78. U.S. DEPT. OF HOMELAND SECURITY, *Terrorism Prevention Partnerships*, <https://www.dhs.gov/terrorism-prevention-partnerships> [<https://perma.cc/2QTP-RE4J>].

79. Faiza Patel & Meghan Koussik, BRENNAN CTR. FOR JUST., COUNTERING VIOLENT EXTREMISM 1 (2017), <https://www.brennancenter.org/sites/default/files/publications/Brennan%20Center%20CVE%20Report.pdf> [<https://perma.cc/HZ22-XXRD>].

80. Steve Rendall, *Islamophobia Still Rising—With the Right’s Help: The Mainstreaming of Anti-Muslim Conspiracy Theories*, FAIR (Jan. 2012), <https://fair.org/home/islamophobia-still-rising-with-the-rights-help/>, [<https://perma.cc/4VBB-F7KH>].

81. *Compilation of Hearings on Islamist Radicalization — Volume I: Hearings Before the Committee on Homeland Security House*, 112th Cong. 3 (2011) (statement of Rep. Tim King, Chair, H. Comm. on Homeland Security). See also Reid Pillifant, *Peter King Delivers Opening Remarks at Packed Hearing [Updated]*, Observer (Mar. 10, 2011), <https://observer.com/2011/03/peter-king-delivers-opening-remarks-at-packed-hearing-updated/> [<https://perma.cc/3HXV-RGRY>].

82. Robert Entman, *Framing: Toward Clarification of a Fractured Paradigm*, 43 J. COMM. 4, 53-54 (1993).

enhances the Muslim terrorist frame many Americans have created. It appears this framing strategy works. One in five Americans polled view Muslims as a threat to American society, with twenty-five percent supporting Muslim surveillance initiatives to protect national security.⁸³ Despite the prevailing narrative that the government needs to surveil Muslims to combat the threat Islam presents to domestic security, as explained below, the underlying realities simply do not support the framing.

1. Framing Muslims as Foreign Intruders

Part of the Muslim terrorism frame entails depicting Muslims as mostly foreigners. With roots in the Orientalist image, the Muslim foreign intruder frame erases the more than one million American converts to Islam, the American-born Muslims,⁸⁴ and the presence of African American Muslims who have lived in this country for centuries.⁸⁵ At least fifteen to twenty percent of African American's ancestors were Muslims when they were sold as cargo and brought to America during the African holocaust.⁸⁶ Furthermore, African Americans represent one third of the American Muslim population. Thus, when Donald Trump announced to the world, "I think Islam hates us,"⁸⁷ the "us" Trump endeavored to protect did not include the 3.45 million Muslim Americans.⁸⁸ Instead, it would become increasingly apparent that Donald Trump considered all Muslims un-American and foreign intruders.⁸⁹

83. *The Super Survey: Two Decades of Americans' Views on Islam & Muslims*. BRIDGE INITIATIVE (Nov. 19, 2015), <https://bridge.georgetown.edu/> [<https://perma.cc/P54D-X4VL>].

84. Cf. *Demographic Portrait of Muslim Americans*, PEW RES. CTR. (July 26, 2017), <http://www.pewforum.org/2017/07/26/demographic-portrait-of-muslim-americans/> [<https://perma.cc/3FWH-7PGU>] (noting that about a quarter (24%) of U.S. Muslims are U.S. natives with U.S.-born parents (i.e., they are from families who have been in the United States for three generations or longer), which is the case for nearly three-quarters of U.S. adults overall (73%)).

85. Nineteenth century census records show common Islamic names of Fatimah, Muhammad, and Khadijah. Copies of the census records are on file with the author.

86. *Demographic Portrait of Muslim Americans*, PEW RES. CTR. (July 26, 2017), <http://www.pewforum.org/2017/07/26/demographic-portrait-of-muslim-americans/> [<https://perma.cc/HK6Q-ALWS>]. Additionally, there are over 1.8 billion Muslims in the world, and Islam is the second-largest religion worldwide. Michael Lipka, *Muslims and Islam: Key Findings in the U.S. and Around the World*, PEW RES. CTR. (Aug. 9, 2017), <http://www.pewresearch.org/fact-tank/2017/08/09/muslims-and-islam-key-findings-in-the-u-s-and-around-the-world/> [<https://perma.cc/FP6R-3TUN>].

87. Jenna Johnson & Abigail Hauslohner, *I Think Islam Hates Us: A Timeline of Trump's Comments About Islam and Muslims*, WASH. POST (May 20, 2017), https://www.washingtonpost.com/news/post-politics/wp/2017/05/20/i-think-islam-hates-us-a-timeline-of-trumps-comments-about-islam-and-muslims/?utm_term=.cb8c7a0e902a [<https://perma.cc/7A6Z-PJGP>].

88. Besheer Muhammad, *New Estimates Show U.S. Muslim Population Continues to Grow*, PEW RES. CTR. (Jan. 3, 2018), <http://www.pewresearch.org/fact-tank/2018/01/03/new-estimates-show-u-s-muslim-population-continues-to-grow/> [<https://perma.cc/7XDF-HDWE>].

89. See Johnson & Hauslohner *supra* note 87; Salam Al-Marayati, *Why Muslims Don't Need Trump to Tell Them When To Report Criminal Activity*, L.A. TIMES (Oct. 14, 2016), <https://www.latimes.com/opinion/op-ed/la-oe-almariyati-muslims-reporting-muslims-20161014-snap-story.html> [<https://perma.cc/2DMQ-S4S8>].

2. False Frames

An additional government strategy to promote the Muslim-as-terrorist frame is to draw attention to Islamic threats, ignore the acts of other terrorist organizations, and diminish the adverse effect of other issues threatening America's well-being. Although an average of seventy-four people die on U.S. soil each year from a terrorist attack (an average that includes those who died in the 9/11 attack),⁹⁰ the chance of another foreign terrorist attack is comparatively low.⁹¹ In fact, a person is more likely to be shot by a child with a gun than slain by a terrorist.⁹² Additionally, the government's focus is not on daily deaths from health epidemics, such as the 1,620 people who die of cancer each day and are often overlooked for government-supported health care.⁹³ Nor does it appropriately address the 33,594 people who die from gun-related deaths⁹⁴ or the 37,461 people who die in motor vehicle accidents.⁹⁵ Instead, terrorism is commonly promoted as the greatest threat to America's well-being, not guns, motor vehicle accidents, or health-related disparities.⁹⁶

Furthermore, in the thirty-four deadliest mass shootings of modern history, only two of the shooters self-identified as being Muslims.⁹⁷ Twenty-nine-year-old Omar Saddiqui Mateen killed fifty victims at the Pulse night club.⁹⁸ Although Mateen professed to be an ISIS sympathizer, experts doubted he had any ISIS affiliation.⁹⁹ Instead, his ex-wife suggested he was mentally unstable.¹⁰⁰ Others suggested he struggled with

90. Alex Nowrasteh, *Terrorism and Immigration: A Risk Analysis*, 798 CATO INST. POL'Y ANALYSIS 1, 1 (2016), https://object.cato.org/sites/cato.org/files/pubs/pdf/pa798_1_1.pdf [<https://perma.cc/UN5S-2CFZ>].

91. Daniel L. Byman, *How to Fight Terrorism in the Donald Trump Era*, BROOKINGS INST. (Dec. 30, 2016), <https://www.brookings.edu/research/how-to-fight-terrorism-in-the-donald-trump-era/> [<https://perma.cc/9QHF-SX9W>] (citing the statistic that "40 percent of Americans believe the ability of terrorists to launch a major attack on the United States is greater than it was at the time of the 9/11 attacks and another 31 percent believe it is merely the same" and that "[t]errorist groups pose a far greater danger to U.S. interests in the Middle East than they do at home.").

92. Benjamin Powers, *Toddlers Involved in More Shootings Than Terrorists in 2015*, HUFFPOST (Nov. 29, 2015), https://www.huffingtonpost.com/benjamin-powers/toddlers-involved-in-more_b_8650536.html [<https://perma.cc/HSZ9-6AJV>] https://www.huffingtonpost.com/benjamin-powers/toddlers-involved-in-more_b_8650536.html.

93. *Id.*; Lisa Fayed, *Basic Cancer Survival Statistics*, VERY WELL (Mar. 20, 2017), <https://www.verywellhealth.com/how-many-people-die-of-cancer-each-day-513641> [<https://perma.cc/S69U-VP5G>].

94. Kenneth D. Kochanek et al., *Deaths: Final Data for 2014*, 65 NAT'L VITAL STATISTICS REPORTS 1, 12 (2016), https://www.cdc.gov/nchs/data/nvsr/nvsr65/nvsr65_04.pdf [<https://perma.cc/55K4-RYAC>].

95. *Id.*; see also Aria Hangyu Chen, *U.S. Has Highest Car Crash Death Rate, Despite Progress, CDC Says*, CNN (July 7, 2016), <https://www-m.cnn.com/2016/07/07/health/us-highest-crash-death-rate/index.html> [<https://perma.cc/5EHF-FCCM>].

96. Nowrasteh, *supra* note 90.

97. See *Deadliest Mass Shootings in Modern US History Fast Facts*, CNN (May 23, 2018), <https://www-m.cnn.com/2013/09/16/us/20-deadliest-mass-shootings-in-u-s-history-fast-facts/index.html> [<https://perma.cc/9UJK-9S9W>].

98. Lizette Alvarez & Richard Perez-Pena, *Orlando Gunman Attacks Gay Nightclub, Leaving 50 Dead*, N.Y. TIMES (June 12, 2016), <https://www.nytimes.com/2016/06/13/us/orlando-nightclub-shooting.html> [<https://perma.cc/STP4-XE8L>].

99. Mateen was on the FBI's radar as a suspected ISIS sympathizer, but the FBI doubted Mateen had any credible affiliation. *Id.*

100. Evan Perez et al., *Omar Mateen Pledged Allegiance to ISIS, Official Says*, CNN (June 12, 2016, 9:34 PM), <https://www-m.cnn.com/2016/06/12/us/orlando-shooter-omar-mateen/index.html> [<https://perma.cc/>].

his sexual identity and targeted the Pulse nightclub in response to his perceived religious guilt.¹⁰¹ Contrast Mateen's shooting to nineteen-year-old Nikolas Cruz, who killed seventeen classmates at Marjory Stoneman Douglas High School in Parkland, Florida.¹⁰² On social media, Cruz expressed hatred for Blacks, gays, immigrants, and the government, but the media described him as a "broken child," "creepy and weird," and having "troubling behavior."¹⁰³ When inquiries arose about Cruz's affiliation with White supremacist groups, little media attention addressed the contention.¹⁰⁴

Moreover, from 1980 to 2005, the FBI reported 318 terrorist attacks.¹⁰⁵ These attacks include both domestic and foreign attacks where Americans were victims. The al-Qaeda September 11, 2001 assaults on the World Trade Center, Pentagon, and United Airlines Flight 93 resulted in the highest number of deaths of any one domestic terrorist attack.¹⁰⁶ However, the Earth Liberation Front and Animal Liberation Front committed the highest number of terrorist acts than any other group.¹⁰⁷ Although data indicates terrorism comes from many sources, statistics nominally influence the general population, legislators, and perhaps even the courts because values and experiences are grounded in the belief that Muslims are terrorists and a threat to America's security. I say Muslim; you say terrorist. This subconscious thought leads legislators and judges to overlook discriminatory surveillance practices—practices that would alarm most Americans if applied to Anglo-Saxon Christian communities. The next section explores the nexus between framing theory and cognitive processes that lead rational people to support these discriminatory practices.

III. FRAMING THEORY

Framing theory maintains that how messages are structured guides people's thinking and the conclusions they draw.¹⁰⁸ Like any communication, the message involves

LZ5D-LRJU]. Mateen's widow, Noor Salman, was subsequently charged with aiding and abetting the commission of a terrorist act and of obstruction of justice. Patricia Mazzei, *Noor Salman Acquitted in Pulse Nightclub Shooting*, N.Y. TIMES (Mar. 30, 2018), <https://www.nytimes.com/2018/03/30/us/noor-salman-pulse-trial-verdict.html> [https://perma.cc/2MBA-KWPW]. After being detained for two years, a jury acquitted her of the charges. *Id.*

101. Charlotte Alter, *Ex-Wife Says Orlando Shooter Might Have Been Hiding Homosexuality from His Family*, TIME (June 15, 2016), <http://time.com/4369577/orlando-shooting-sitora-yusufiy-omar-mateen-gay/> [https://perma.cc/3K59-P2BM].

102. Alan Blinder, *Florida Will Seek Execution of Nikolas Cruz in Parkland Shooting Trial*, N.Y. TIMES (Mar. 13, 2018), <https://www.nytimes.com/2018/03/13/us/nikolas-cruz-death-penalty.html> [https://perma.cc/VL63-HZBR].

103. Andres Viglucci et al., *"Filled with rage": How a Scrawny Misfit Turned into Florida's Worst School Shooter*, MIAMI HERALD (Feb. 25, 2018, 1:25PM), <https://www.miamiherald.com/news/local/community/broward/article201911289.html> [https://perma.cc/M9HM-H6WH].

104. Julie Turkewitz, Patricia Mazzei & Audrad S. Burch, *Suspect Confessed to Police that He Began Shooting Students in the Hallways*, N.Y. TIMES (Feb. 15, 2018), <https://www.nytimes.com/2018/02/15/us/florida-shooting.html> [https://perma.cc/6EAP-SN6Y].

105. *Terrorism 2002-2005*, FBI, <https://www.fbi.gov/stats-services/publications/terrorism-2002-2005> [https://perma.cc/MGT3-N4RD].

106. *Id.*

107. *Id.*

108. *See id.* at 38-39.

a sender and receiver of information.¹⁰⁹ The sender often molds the message to fit the receiver's prior knowledge and values.¹¹⁰ The receiver then filters the information, building a cognitive frame to understand the message.¹¹¹ Effective framing can amplify an existing belief.¹¹²

There are various approaches to studying framing theory, including examining how individuals process information and act upon the information received.¹¹³ Although the theory is prominent in the social sciences, concepts differ in the respective branches of the field.¹¹⁴ For example, in assessing verbal communications, applied behavioral scientists often use relational frame theory to gain insight into how language and communication skills develop.¹¹⁵ Although relational frame theory focuses on acquiring new language skills, the theory also applies to how language stimuli influence a listener's acceptance and response to a message.¹¹⁶ Cognitive science suggests that when the brain receives a stimulus, it compartmentalizes the new information, identifies patterns, and realigns the information to determine an appropriate action.¹¹⁷ Because of prior information storage, it is less taxing for the brain to process unconscious thought, particularly when those thoughts align with one's world-view.¹¹⁸ This method allows the brain to reach certainty, by sorting the familiar information.¹¹⁹ The cognitive process of framing information begins before the words are uttered because prior knowledge, experiences, and values mold how we respond to words we will hear.

109. Entman, *supra* note 82, at 52-3; cf. Dermot Barnes-Holmes, Yvonne Barnes-Holmes, & Veronica Cullinan, *Relational Frame Theory and Skinner's Verbal Behavior: A Possible Synthesis*, 23 BEHAV. ANALYST 69, 70 (2000).

110. Cf. James N. Druckman, *On the Limits of Framing Effects: Who Can Frame?*, 63 J. POL. 1041, 1061 (2001) ("Framing effects may occur, not because elites seek to manipulate citizens, but rather because citizens delegate to credible elites for guidance. In so doing, they choose which frames to follow in a systematic and sensible way. Far from being a sign of freewheeling manipulation, framing effects may be evidence of citizens seeking guidance from credible elites.")

111. See ERVIN GOFFMAN, *FRAME ANALYSIS: AN ESSAY ON ORGANIZATION OF EXPERIENCE* 26 (1974).

112. According to Entman, "[t]o frame is to select some aspects of a perceived reality and make them more salient in a communicating text, in such a way as to promote a particular problem definition, causal interpretation, moral evaluation, and/or treatment recommendation for the item described." Entman, *supra* note 82, at 52 (emphasis original). Application of framing is often based on how people organize and interpret information they receive. GOFFMAN, *supra* note 111, at 21.

113. Entman, *supra* note 82, at 51-52.

114. Amy C. Gross & Eric J. Fox, *Frame Theory Relational: An Overview of the Controversy*, 25 ANALYSIS OF VERBAL BEHAV. 87, 88 (2009); Robert D. Benford & David Snow, *Framing Processes and Social Movements: An Overview and Assessment*, 26 ANN. REV. SOC. 611, 611 (2000).

115. Although some behavior scientists have criticized the reliability of relational frame theory research, some of the concepts are instructive. See e.g., Gross, *supra* note 114, at 88. (surveying relational frame theory articles and their support of language, stimuli, and cognition); Barnes-Holmes, *supra* note 109, at 70; John T. Blackledge, *An Introduction to Relational Frame Theory: Basics and Applications*, 3 BEHAV. ANALYST TODAY 4, 429-31 (2003).

116. See Gross, *supra* note 114, at 89.

117. See Bill Kennedy, Emily Fisher & Colin Bailey, *Framing in Race-Conscious, Antipoverty Advocacy: A Science-Based Guide to Delivering Your Persuasive Message*, 43 CLEARINGHOUSE REV. J. POV. L. & POL'Y 408, 408-10 (2010).

118. *Id.* at 410.

119. *Id.*

Conversely, cognitive dissonance may occur when new information fails to align with prior knowledge and values, leading the receiver of an information frame to alter the message or rationalize the new information.¹²⁰ As a result, audiences may perceive the same frame of information differently. This phenomenon explains why some jurors disregard facts during a trial and why people will often reject factually accurate information.¹²¹

A. Framing Techniques

The government frequently uses framing principles to justify controversial positions and dramatic position shifts. For example, the opioid epidemic gained renewed attention and funding support when the issue expanded to White middle-class households. Appropriately, drug addicts are no longer perceived as the dregs of society, but people needing treatment.¹²² The issue is now framed as a health crisis, not a War on Drugs—a frame that justified punitive sentences against African Americans addicted to heroin, instead of treatment.¹²³

Significantly, a framing paradigm often consists of four steps to create meaning: (1) define a problem; (2) diagnose causes of the problem; (3) make a moral judgment about the problem; and (4) suggest remedies.¹²⁴ These four dominant framing phases have appeared in various forms in the criminal justice system and government operations. In framing crime, the government often defines the problem as a need to maintain community safety.¹²⁵ It diagnoses the crime problem as thugs and career criminals coming from Black crime-ridden neighborhoods, with then-candidate Donald Trump describing African Americans and “Hispanics” as “living in hell.”¹²⁶ Various judgments about the problem exist, including DiIulio’s moral deprivation theory.¹²⁷ As a remedy, legislatures enact statutes, which result in the disproportionate arrests of African Americans and harsher sentencing guidelines for certain crimes.¹²⁸

120. CAMILLE MORVAN & ALEXANDER J. O’CONNOR, AN ANALYSIS OF LEON FESTINGER’S A THEORY OF COGNITIVE DISSONANCE 10-11 (2017).

121. Entman *supra* note 82, at 52.

122. WHITE HOUSE, *How We Will Win the War on Opioids*, (Mar. 1, 2018), <https://www.whitehouse.gov/articles/will-win-war-opioids/> [<https://perma.cc/Q4CB-BPKP>]; see generally *A Brief History of the Drug War*, DRUG POL’Y ALLIANCE, <http://www.drugpolicy.org/issues/brief-history-drug-war> [<https://perma.cc/V6CT-3Y9N>]; HUM. RTS. CTR., *Targeting Blacks: Drug Law Enforcement and Race in the United States* (May 4, 2008), <https://www.hrw.org/report/2008/05/04/targeting-blacks/drug-law-enforcement-and-race-united-states> [<https://perma.cc/WE76-5CF3>].

123. U.S. DEP’T HEALTH & HUMAN SERVS., *About the U.S. Opioid Epidemic* (Sept. 19, 2018), <https://www.hhs.gov/opioids/about-the-epidemic/index.html> [<https://perma.cc/ZW9G-ADDM>].

124. Entman, *supra* note 82, at 52.

125. Cf. Robert P. Mosteller, *New Dimensions in Sentencing Reform in the Twenty-First Century*, 82 OR. L. REV. 1, 7-8 (2003).

126. Chan, *supra* note 36.

127. Tamar R. Birkhead, *The Radicalization of Juvenile Justice and the Role of the Defense Attorney*, 58 B.C. L. REV. 379, 409-10 (2017).

128. Jamie Fellner, *Race, Drugs, and Law Enforcement in the United States*, 20 STAN. L. & POL’Y REV. 257, 261-65 (2009).

For Black families living in poverty, financial status is often framed as a crime as well.¹²⁹ For example, with welfare reform in 1996, the problem was defined as poor women abusing the welfare system.¹³⁰ Causes of the problem were attributed to women on welfare being lazy and lacking motivation to pull themselves up by their proverbial bootstraps.¹³¹ As a remedy to the problem, welfare reform shifted a public entitlements program to public benefits system that ushered in work requirements and time limits for cash assistance. Even the program name change from Aid to Families with Dependent Children (AFDC) to the Temporary Assistance for Needy Families (TANF) reinforced the framing message.¹³²

To implement framing functions effectively, the most memorable frames bolster key words and phrases and stereotyped images that align with the receiver's prior knowledge.¹³³ Pairing words is another common persuasive framing technique.¹³⁴ The earlier section of this Article explored the words and phrases used to stigmatize Black crime—thug, super-predator, threat, aggressor, and career criminals.¹³⁵ Perhaps the most memorable frame for low-income Black families receiving public assistance was the welfare queen image.¹³⁶ The welfare queen frame stereotyped Black women as stealing taxpayers' dollars and defrauding the public benefits system to purchase furs and Cadillacs.¹³⁷ The frame reinforced the legacy narrative of Black people as criminals who are lazy and self-inflict poverty.¹³⁸ However, in all states, TANF monthly cash benefits for a family of three remain at least sixty percent below the federal poverty guidelines—with a family of three in South Carolina receiving monthly cash assistance of only \$286.¹³⁹ The frame that Black women living on public benefits are defrauding “the system” to live lavish lifestyles is false. Although White families represented the majority of TANF benefits recipients in seventeen states,¹⁴⁰ the Black welfare queen image still resonates with many policy makers and

129. See generally PETER EDELMAN, NOT A CRIME TO BE POOR: CRIMINALIZATION OF POVERTY IN AMERICA (2017).

130. Gene Demby, *The Truth Behind the Lies of the Original “Welfare Queen,”* NPR (Dec. 20, 2013, 5:03 PM), <http://www.npr.org/sections/codeswitch/2013/12/20/255819681/the-truth-behind-the-lies-of-the-original-welfare-queen> [https://perma.cc/429P-ZEK3].

131. *Id.*

132. *Id.*

133. See discussion *infra* Part IV, Section C.

134. Entman, *supra* note 82, at 53-54.

135. See discussion *infra* Part III, Section A.

136. Demby, *supra* note 130.

137. *Id.*

138. Charles J. Ogletree, Jr., *The Burdens and Benefits of Race in America*, 25 HASTINGS CONST. L.Q. 219, 245 (1998).

139. Ashely Burnside & Ife Floyd, *TANF Benefits Remain Low Despite Recent Increases in Some States*, CTR. BUDGET & POL'Y PRIORITIES (Jan. 22, 2019), <https://www.cbpp.org/research/family-income-support/tanf-cash-benefits-have-fallen-by-more-than-20-percent-in-most-states> [https://perma.cc/DQH4-MGAX]. Significantly, states with high African American poverty rate have lower monthly TANF payments than states with predominately White TANF recipients. See *id.*

140. Patricia Cole & Sarah M. Buel, *Safety and Financial Security for Battered Women: Necessary Steps for Transitioning from Welfare to Work*, 7 GEO. J. POVERTY LAW & POL'Y 307, 315 (2000).

the general public.¹⁴¹ Using these fabricated frames as a tool to support political agendas is explored below.

B. Fabricated Frames

To create and align a message with the receiver's experiences, messages are often distorted or fabricated.¹⁴² In his landmark book, *Frame Analysis*, Erving Goffman distinguishes fabricated frames into three categories: benign fabrications, understandable error, and exploitive fabricated frames.¹⁴³ Exploitive frames are most relevant to this Article: This frame promotes private interests by creating a definition that leads a third party into false beliefs about a second party.¹⁴⁴ Using an exploitive frame to damage political candidates is common and usually protected under the First Amendment.¹⁴⁵ However, using inaccurate or incomplete information extends beyond political elections into other aspects of politics. The technique is commonly used to influence public opinion about various political issues and interests—such as framing Muslims as terrorists and African Americans as thugs.¹⁴⁶

Another technique of fabricated framing is to highlight information and intentionally withhold contradictory information.¹⁴⁷ News coverage and government concerns about terrorism focus almost exclusively on groups professing to be Muslims,¹⁴⁸ omitting information about White extremists and other terrorist groups, such as Vanguard America¹⁴⁹ and the National Socialist Movement.¹⁵⁰ Because the influence of framing relies on values and understandings, targeting key words that align with a social group's tenets can easily sway opinions.¹⁵¹ Thus, when the House

141. Michele E. Gilman, *The Return of the Welfare Queen*, 22 U.B. J. GENDER, SOC. POL'Y & L. 247, 262-63 (2014); see Arthur Delaney & Ariel Edwards-Levy, *Americans Are Mistaken About Who Gets Welfare*, HUFFPOST (Feb. 5, 2018), https://www.huffingtonpost.com/entry/americans-welfare-perceptions-survey_us_5a7880cde4b0d3df1d13f60b [<https://perma.cc/44MX-ZEFA>].

142. GOFFMAN, *supra* note 111, at 26.

143. *Id.*

144. *Id.* at 103.

145. *Id.*

146. See Khaled A. Beydoun & Aysha M. Nour, *Fear of a Black and Brown America*, AL JAZEERA (Sept. 2, 2016), <https://www.aljazeera.com/indepth/opinion/2016/09/fear-black-brown-america-160902131836236.html> [<https://perma.cc/L4XD-MMXQ>].

147. GOFFMAN, *supra* note 111, at 100; Entman, *supra* note 82, at 54.

148. See Daniel L. Byman, *Should We Treat Domestic Terrorists the Way We Treat ISIS? What Works—and what Doesn't*, BROOKINGS INST. (Oct. 3, 2017), <https://www.brookings.edu/articles/should-we-treat-domestic-terrorists-the-way-we-treat-isis-what-works-and-what-doesnt/> [<https://perma.cc/FD82-ANYX>]; Miriam Valverde, *A Look at the Data on Domestic Terrorism and Who's Behind It*, POLITIFACT (Aug. 16, 2017, 10:00 AM) <https://www.politifact.com/truth-o-meter/article/2017/aug/16/look-data-domestic-terrorism-and-whos-behind-it/> [<https://perma.cc/4Z6M-VQWA>] (citing data from the U.S. Extremist Crime Database that from 9/11 to the end of 2016, the number of terrorist incidents resulting in death by far-right violent extremists was more than 2.5 times more than that of radical Islamist violent extremist incidents, although the death toll is thirteen people higher as a result of radical Islamist violent extremists versus far-right violent extremists).

149. See generally *Vanguard America*, ANTI-DEFAMATION LEAGUE, <https://www.adl.org/resources/backgrounders/vanguard-america> [<https://perma.cc/WW6K-AT3X>].

150. See generally *National Socialist Movement*, SPLC, <https://www.splcenter.org/fighting-hate/extremist-files/group/national-socialist-movement> [<https://perma.cc/7YSN-S3EL>].

151. PAUL M. SNIDERMAN ET AL., REASONING AND CHOICE: EXPLORATIONS IN POLITICAL PHILOSOPHY 52 (1991).

Committee on Homeland Security promotes information about al-Qaeda, but fails to address White supremacy groups' terrorist threats, the omission enhances the message about Muslims as terrorists.¹⁵² Analogously, when law enforcement agencies withhold information about crime rates in certain demographics, but promote the need to derail crime in Black communities, the omission supports the Black crime stigma.

Law enforcement agencies have consistently applied these framing principles to justify over-policing Muslims and African Americans. Additionally, the Trump administration has promoted inaccurate and incomplete information about Muslims to uphold discriminatory surveillance and immigration practices. When the government serves as the proponent of frames that defame race, religion, or ethnicity, it hinders full exercise of constitutional freedoms. The next section explores the effects of government stigmata.

IV. THE EFFECTS OF WEAPONIZED FRAMES

Contemporary scholars have extensively analyzed the correlation between race and bigoted policing, including frequent arrests, guilty verdicts, stricter sentences, and other punitive application of laws to Black people.¹⁵³ Undeniably, a crime and danger frame has consistently legitimized monitoring African American's movements in colonized America.¹⁵⁴ In *Utah v. Strieff*, Justice Sotomayor, in her dissent, reminded the nation of the systemic impact of discriminatory policing.¹⁵⁵ "[F]or generations, black and brown parents have given their children 'the talk'—instructing them never to run down the street; always keep your hands where they can be seen; do not even think of talking back to a stranger—all out of fear of how an officer with a gun will react to them."¹⁵⁶ These community responses and practices are some of the many effects of the stigmatizing Black crime frame.

The Trump administration's Muslim terrorism frame also has life-threatening effects. Research suggests there is a nexus between the administration's Muslim animus and an increase in hate crimes against Muslims.¹⁵⁷ Additionally, civil rights

152. See generally Paul D'Angelo, *News Framing as a Multiparadigmatic Research Program: A Response to Entman*, 52 J. COMM. 870 (2002).

153. In state prisons, African Americans are incarcerated 5.1 times more frequently than whites, although their crime rate is no higher. SENTENCING PROJECT, THE COLOR OF JUSTICE RACIAL AND ETHNIC DISPARITY IN STATE PRISONS 3 (2016). There is also a significant disparity in sentencing. Letter from ACLU to Inter-American Commission on Human Rights (Oct. 27, 2014), https://www.aclu.org/sites/default/files/assets/141027_iachr_racial_disparities_aclu_submission_0.pdf [<https://perma.cc/A6G9-TTZU>]; Michael Harriot, *I Know What a Thug Black Guy Looks Like: Jury Deliberates in Trial of White Man Who Killed Black Man Over \$50: Update*, ROOT (June 23, 2017 10:57AM), <https://www.theroot.com/i-know-what-a-thug-black-guy-looks-like-jury-deliberat-1796340710> [<https://perma.cc/23Q7-2BHN>].

154. ALEXANDER, *supra* note 68, at 28 (2010).

155. See *Utah v. Strieff*, 136 S. Ct. 2056, 2069-70 (2016) (Sotomayor, J., dissenting).

156. *Id.* at 2070 (citing MARIE GOTTSCHALK, CAUGHT: THE PRISON STATE AND THE LOCKDOWN OF AMERICAN POLITICS 119-38 (2015); TA-NEHISI COATES, BETWEEN THE WORLD AND ME (2015); ALEXANDER, *supra* note 68, at 95-136 (2010); see generally JAMES BALDWIN, THE FIRE NEXT TIME (1963); W.E.B. DU BOIS, THE SOULS OF BLACK FOLK (1903)).

157. See Kishi, *supra* note 33; Creede, *supra* note 33 (reporting that hate crimes against African Americans, Jews, and Muslims increased ten percent from 2014 to 2015; that in 2016, almost sixty percent of

advocates argue that Congress passed the USA PATRIOT Act¹⁵⁸ and the courts have upheld NSEERS¹⁵⁹ and the Muslim Ban¹⁶⁰ as constitutional under the guise that Muslims are a potential national security threat.¹⁶¹ However, the Supreme Court has reasoned that it defers to the executive branch when there is a legitimate basis for the national security policy.¹⁶² Regardless of the rationale, the effect erodes human dignity, increases hate crimes, and promotes discriminatory surveillance practices against Muslims.

A. Discriminatory Policing Against Muslims

Like other industries, technology has enhanced law enforcement agencies' capabilities.¹⁶³ Although surveillance has always been an important aspect of police investigations, technology has significantly shifted how law enforcement operates. Now, surveillance is policing, including clandestine data collection practices, such as monitoring Internet use and emails.¹⁶⁴ Coupled with heightened public concern for domestic terrorism, technological developments create convenient and socially acceptable methods for both local and federal law enforcement agencies to monitor Muslims in ways law enforcement agencies have historically profiled and monitored African Americans.¹⁶⁵

Convincingly, immediately after 9/11, Congress justified rushing to enact the USA PATRIOT Act,¹⁶⁶ which amended the Foreign Intelligence Surveillance Act (FISA).¹⁶⁷ Promoting a national security frame, Section 218 of the USA PATRIOT Act eliminated the FISA primary purpose warrant standard, allowing government surveillance or searches if intelligence gathering is a "significant" purpose of the

hate crime violence had a racial bias; and that over half of those crimes were targeted at Black people); Karsten Müller & Carlo Schwarz, *Making America Hate Again? Twitter and Hate Crime under Trump*, SSRN ELECTRONIC J. (2018), <https://ssrn.com/abstract=3149103> [<https://perma.cc/ES5Z-ZL3Z>].

158. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (codified as amended in scattered sections of 8, 12, 15, 18, 20, 31, 42, 47, 49, 50 U.S.C.).

159. *See* *Rajah v. Mukasey*, 544 F.3d 427, 433-39 (2d Cir. 2008).

160. *See Trump v. Hawaii*, 138 S. Ct. 2392, 2392 (2018).

161. Khaled A. Beydoun, *On Islamophobia, Immigration, and the "Muslims Bans,"* 43 OHIO N.U. L. REV. 443, 449-52 (2017).

162. *See, e.g., Trump v. Hawaii*, 138 S. Ct. at 2421-22.

163. FERGUSON, *supra* note 18, at 28-31.

164. When NSA contractor Edward Snowden revealed the NSA surveillance practices included warrantless searches of U.S. citizens emails and other data collection practices, the role of technology and privacy was at the forefront. *See* Abigail Geiger, *How Americans Have Viewed Government Surveillance and Privacy Since Snowden Leaks*, PEW RES. CTR., (June 4, 2018), <http://www.pewresearch.org/fact-tank/2018/06/04/how-americans-have-viewed-government-surveillance-and-privacy-since-snowden-leaks/> [<https://perma.cc/JD34-BV6W>].

165. *See* Richard Winton, Teresa Watanabe & Greg Krikorian, *LAPD Defends Muslim Mapping Effort*, L.A. TIMES, (Nov. 10, 2007), <https://www.latimes.com/local/la-me-lapd10nov10-story.html#> [<https://perma.cc/8H7Z-BA2Y>].

166. The USA PATRIOT Act amended various foreign intelligence and privacy laws including FISA. *See* USA PATRIOT Act, Pub. L. No. 107-56, 115 Stat. 272 (codified as amended in scattered sections of 8, 12, 15, 18, 20, 31, 42, 47, 49, 50 U.S.C.).

167. 50 U.S.C. §§ 1801-1885c (2018).

surveillance or search.¹⁶⁸ The USA PATRIOT Act eased the burden for law enforcement and intelligence-gathering agencies seeking to infiltrate Muslim communities with various surveillance initiatives.¹⁶⁹ Mosques, Muslim human service organizations, Islamic schools, and Muslim associations all experienced the amendment's effect.¹⁷⁰ In many instances, Muslim stereotypes associated with terrorism supported detaining suspected terrorists without adequate due process and other humanitarian standards.¹⁷¹ The flurry of litigation surrounding the USA PATRIOT Act consistently argued the expanded surveillance authority was targeted toward Muslims¹⁷² and violated Muslims' freedom of association.¹⁷³ Courts commonly dismissed constitutional claims because plaintiffs lacked standing.¹⁷⁴ However, if plaintiffs established standing, the government's professed national security interest often justified intrusive action, with one court providing, "Congress intended a lesser showing of probable cause when activities related to foreign powers or agents of foreign powers are at issue because of the difficulties in surveilling those types of crimes."¹⁷⁵ Other courts reason that, with respect to the Fourth Amendment, protecting the nation from terrorists is different from ordinary law enforcement.¹⁷⁶

168. *Id.*

169. See generally INST. FOR SOC. POL'Y & UNDERSTANDING, THE USA PATRIOT ACT: IMPACT ON THE ARAB AND MUSLIM COMMUNITY (2004), https://www.ispu.org/wp-content/uploads/2017/07/the-usa-patriot-act_farid-senzai.pdf [<https://perma.cc/8M7G-Z399>].

170. See *id.* at 4, 11-15; Muslim Community Ass'n of Ann Arbor v. Ashcroft, 459 F. Supp. 2d 592, 598-601 (E.D. Mich. 2006) (planting informants to record inside a mosque and Islamic school).

171. See Hawaii v. Trump, 138 S. Ct., at 2434 (2018) (Sotomayor, J., dissenting); Jonathan K. Stubbs, *The Bottom Rung of America's Race Ladder: After the September 11 Catastrophe Are American Muslims Becoming America's New N . . . S?*, 19 J.L. & RELIGION 115, 138-47 (detailing the facts and procedural history of two cases relating to the orientalist frame, Rumsfeld v. Padilla, 542 U.S. 426 (2010), and Hamdi v. Rumsfeld, 542 U.S. 507 (2004)).

172. In *Ziglar v. Abbasi*, petitioners challenged the system-wide policy to confine and abuse hundreds of Muslim and Arab detainees after the 9/11 attack. 137 S. Ct. 1843, 1851 (2017). Although Ziglar addressed whether petitioners had a *Bivens* remedy, the Court emphasized the federal government disproportionately targeted Muslims in its monitoring practices. *Id.*

173. *Muslim Cmty. Ass'n*, 459 F. Supp. 2d at 601.

174. See *Mayfield v. United States*, 599 F.3d 964, 971 (9th Cir. 2010) (holding plaintiff lacked standing to challenge the constitutionality of FISA, as amended by the USA PATRIOT Act, because a declaration that FISA is unconstitutional would not redress any of plaintiff's injuries); *Fikre v. FBI*, 142 F. Supp. 3d 1152, 1167 (D. Ore. 2015); *Joiner v. Dep't of Justice*, No. 15-00861-BAJ-RLB, 2016 U.S. Dist. LEXIS 83331, at *11 (M.D. La. June 24, 2016) (dismissing plaintiff's case because the plaintiff "failed to allege how he has been injured by any provision of the Patriot Act which might be found to be unconstitutional.").

175. *United States v. Sherif*, 793 F. Supp. 2d 751, 759 (E.D.N.C. 2011).

176. Due process protections are minimal under the national security frame. See *United States v. Abu-Jihaad*, 630 F.3d 102, 123 (2d Cir. 2010) (holding FISA, as amended by the USA PATRIOT Act, significant purpose requirement is reasonable under the Fourth Amendment because a different standard of probable cause applies to obtaining security intelligence); *United States v. Ning Wen*, 477 F.3d 896, 898 (7th Cir. 2007) ("Under 50 U.S.C. § 1805(a)(3), an order may be based on probable cause to believe that the target is an agent of a foreign power and that the conversations to be intercepted concern the agent's dealings with that foreign power; the judge need not find probable cause to believe that the foreign agent probably is violating the law of this nation"); see *United States v. Shnewer*, Crim. No. 07-459, 2008 U.S. Dist. LEXIS 112001, at *45 (D.N.J. Aug. 14, 2008) ("Congress is constitutionally permitted to set different standards for probable cause in the context of foreign intelligence surveillance than in ordinary criminal surveillance."); *United States v. Mubayyid*, 521 F. Supp. 2d 125, 139-40 (D. Mass. 2007) (concluding FISA's significant purpose requirement is constitutional under the Fourth Amendment because it "comes close" to the Fourth

These judicial protections enabled the FBI to collect data on U.S. citizens, often without targets knowing they were subject to FBI surveillance. However, Brandon Mayfield, a Muslim attorney and former army officer, is one USA PATRIOT Act story that is both well-known and documented. Under the FISA material witness provision, the FBI arrested Mayfield after mistakenly connecting Mayfield's fingerprints to bomb detonators in the Madrid commuter train bombing.¹⁷⁷ After the Spanish government concluded Mayfield's prints were an unlikely match, the FBI still seized Mayfield's computer and legal files, before imprisoning him for two weeks.¹⁷⁸ The FBI would subsequently issue Mayfield a letter of apology and settle the case for two million dollars.¹⁷⁹ Mayfield stated, "The bias against me was symptomatic of a larger institutionalized effort to target and profile ethnic and religious minorities without probable cause."¹⁸⁰ As a White U.S. citizen, Mayfield became the symbol of the USA PATRIOT Act gone awry.¹⁸¹

Mayfield's book, recounting his arrest and detention, reads like a novel rather than a legal analysis of the flaws of the USA PATRIOT Act.¹⁸² His book does not analyze how the USA PATRIOT Act facilitates cooperation between various federal law enforcement agencies in the War on Terror or its overarching material witness provision. Instead, the book humanizes the overlooked effect terrorist framing has on Muslim citizens, particularly one whom we would least expect to be its victim—a White male attorney living in Oregon with his wife and three children. Mayfield's everyman story contradicts the otherness frame often associated with terrorism and questions the USA PATRIOT Act and other stigmatizing surveillance practices. Although the Act's purpose was to address foreign committed by groups such as Al-Qaeda, law enforcement has expanded that scope. As further examined, creating a national security legal shield that justifies over-policing Muslims simply expands discriminatory policies.¹⁸³

Amendment warrant requirements); *United States v. Holy Land Found.*, No. 3:04-CR-240-G, 2007 U.S. Dist. LEXIS 50239, at *21 (N.D. Tex. 2007) ("The amended version of FISA does not violate the Fourth Amendment.").

177. *Mayfield*, 599 F.3d at 966-68.

178. The Office of Inspector General concluded that searches of Mayfield prior to his arrest resulted from a FISA warrant and that the searches after his arrest were the result of criminal warrants. It further concluded that none of the searches was an abuse of the USA PATRIOT Act. See OFFICE OF THE INSPECTOR GEN., DEP'T. OF JUSTICE, REPORT TO CONGRESS ON IMPLEMENTATION OF SECTION 1001 OF THE USA PATRIOT ACT 12 (Mar. 8, 2006), <https://oig.justice.gov/special/s0603/final.pdf> [<https://perma.cc/HP79-3VUB>].

179. See Statement on Brandon Mayfield Case, FBI (May 24, 2004), <https://archives.fbi.gov/archives/news/pressrel/press-releases/statement-on-brandon-mayfield-case> [<https://perma.cc/5AQM-2Y7B>]. As part of his settlement, Mayfield retained his right to challenge the constitutionality of the USA PATRIOT Act. Larry Abramson, *The Patriot Act: Alleged Abuses of the Law*, NPR (July 20, 2005 12:00 AM), <https://www.npr.org/templates/story/story.php?storyId=4756403> [<https://perma.cc/DRK5-SEPK>]. The Court of Appeals subsequently dismissed his claim for lack of standing. See *Mayfield*, 599 F.3d at 971.

180. Bryan Denson, *Q & A with Brandon and Sharia Mayfield*, OREGONIAN (Feb. 17, 2016), https://www.oregonlive.com/opinion/2016/02/q_a_with_brandon_and_sharia_ma.html [<https://perma.cc/PQ6H-57TS>].

181. See, e.g., *Id.*

182. See generally BRANDON MAYFIELD & SHARIA MAYFIELD, *IMPROBABLE CAUSE: THE WAR ON TERROR'S ASSAULT ON THE BILL OF RIGHTS* (2016).

183. Courts will rarely intervene in matters of national security. See *Winter v. Nat'l Res. Def. Council, Inc.*, 555 U.S. 7, 24, 26 (2008); *Christopher v. Harbury*, 536 U.S. 403, 417 (2002).

B. National Security Entry-Exit Registration System

As the USA PATRIOT Act enhanced police surveillance authority over U.S. citizens, the Department of Homeland Security used the NSEERS to enhance surveillance and profiling of Muslim immigrants. Former Attorney General John Ashcroft reinforced the Muslim terrorism frame, stating, “[T]oday I am announcing the National Security Entry-Exit Registration System. This system will expand substantially America’s scrutiny of those foreign visitors who may pose a national security concern and enter our country. And it will provide a vital line of defense in the war against terrorism.”¹⁸⁴ The Department of Justice initiated NSEERS, requiring men from twenty-four Muslim-majority countries and North Korea to report to a local immigration office or face deportation.¹⁸⁵ The DHS would later take over the program.

During the fifteen months of NSEERS, over 82,000 men complied with reporting requirements.¹⁸⁶ DHS deported over 13,000 men, many for minor immigration violations, such as not reporting a change of address.¹⁸⁷ After ten years of policing under the NSEERS, DHS announced it would “end” the NSEERS program, acknowledging that no terrorism convictions resulted from the initiative.¹⁸⁸ The infrastructure for the program remained in effect, albeit dormant.¹⁸⁹ With coordinated advocacy, led by the American Arab Anti-Discrimination Committee, President Obama suspended NSEERS as one of his final acts in office.¹⁹⁰ However, the NSEERS continues to traumatize the Muslim community and remind it of the discriminatory immigration system.¹⁹¹ Significantly, the Trump administration would recommend reinstating a similar Muslim registry because of the heightened concern over the War on Terrorism.¹⁹²

184. John Ashcroft, Attorney General Prepared Remarks on the National Security Entry-Exit Registration System (June 6, 2002), <https://fas.org/irp/news/2002/06/doj060502.html> [<https://perma.cc/P5N3-V3BU>]. NSEERS was part of a comprehensive immigration reform that came under the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRAIRA). Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009. The enhanced reporting requirement for men from the twenty-four Muslim-majority countries came in response to terrorism concerns. 67 Fed. Reg. 52584, 52585 (Aug. 12, 2002).

185. In addition to in-country reporting standards, NSEERS included reporting requirements at the port of entry and exits. 8 C.F.R. §§ 214, 264 (sections of the C.F.R. regulating immigration requirements and processes).

186. N.Y. ADVISORY COMM. TO THE U.S. COMM’N ON CIVIL RIGHTS, CIVIL RIGHTS IMPLICATIONS OF POST-SEPTEMBER 11 LAW ENFORCEMENT PRACTICES IN NEW YORK, 3 (Mar. 2004).

187. *Id.*

188. Kevin Liptak & Shachar Peled, *Obama Administration Ending Program Once Used to Track Mostly Arab and Muslim Men*, CNN (Dec. 22, 2016), <https://www.cnn.com/2016/12/22/politics/obama-nseers-arab-muslim-registry/index.html> [<https://perma.cc/Q7UX-LRHC>].

189. *Id.*

190. Removal of Regulations Relating to Special Registration Process for Certain Nonimmigrants, 81 Fed. Reg. 94231 (Dec. 23, 2016).

191. See Bill Ong Hing, *Entering the Trump Ice Age: Contextualizing the New Immigration Enforcement Regime*, 5 TEX. A&M L. REV. 253, 263 (2018) (comparing Trump’s anti-immigrant policies with other administrations including the fear those policies create in the immigrant community).

192. Sabrina Siddiqui, *Trump and a Muslim Registry: Does He Want One—and Is It even Possible?*, GUARDIAN (Nov. 27, 2016, 8:00 AM), <https://www.theguardian.com/us-news/2016/nov/27/donald-trump-muslim-registry-policy-possibility> [<https://perma.cc/RD8P-8JM8>].

C. *The Muslim Bans*

By stigmatizing Muslims, the USA PATRIOT Act and NSEERS legitimized policing Muslims living in the United States. Moreover, the Trump administration intensified the Muslim animus by banning Muslims from ever entering the United States.¹⁹³ After just seven days in office, Donald Trump issued Executive Order 13769, *Protecting the Nation from Foreign Terrorist Entry into the United States*.¹⁹⁴ The order instantaneously closed entry into the United States of anyone with visas from Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen for three months, banned the entrance of refugees from Iran, Iraq, Libya, Somalia, Sudan, and Yemen for six months, and put a hold on refugees from Syria for an indefinite time.¹⁹⁵ On March 6, 2017, more than one month after courts granted preliminary injunctions against the first order, Donald Trump issued Executive Order 13780, which superseded Executive Order 13769. The new order denied entry to nationals from Iran, Libya, Somalia, Sudan, Syria, and Yemen, eliminating Iraq from the previous list of countries.¹⁹⁶ This new order attempted to correct some of the discriminatory language and implementation embedded in the first. President Trump stated that the new order was not “motivated by animus toward any religion, but was instead intended to protect the ability of religious minorities—whoever they are and wherever they reside—to avail themselves of the [United States Refugee Admissions Program] in light of their particular challenges and circumstances.”¹⁹⁷ Civil rights advocates challenged both orders, prevailing in the first challenge,¹⁹⁸ but with mixed results on the second order.¹⁹⁹

In October 2017, the Executive invoked a third version, Executive Order 13815, *Resuming the United States Refugee Admissions Program with Enhanced Vetting Capabilities*, which blocked travel into the United States for refugees and immigrants from six Muslim-majority countries: Chad, Iran, Libya, Somalia, Syria, and Yemen. The order also barred entry for refugees and immigrants from North Korea and certain Venezuelan government leaders.²⁰⁰

Ultimately, in *Trump v. Hawaii*, the Supreme Court upheld the last executive order holding, “[T]he government has set forth a sufficient national security

193. Abed Ayoub & Khaled Beydoun, *Executive Disorder: The Muslim Ban, Emergency Advocacy, and the Fires Next Time*, 22 MICH. J. RACE & L. 215, 217-18 (2017).

194. Significantly, the ban included visa and green card holders, which heightened chaos the day the administration issued the order. Exec. Order No. 13769, 3 C.F.R. 272 (2018); Michael Shear, Nicholas Kulish, & Alan Feuer, *Judge Blocks Trump Order on Refugees Amid Chaos and Outcry Worldwide*, N.Y. TIMES, (Jan. 28, 2017), <https://www.nytimes.com/2017/01/28/us/refugees-detained-at-us-airports-prompting-legal-challenges-to-trumps-immigration-order.html> [<https://perma.cc/R3WG-KWXJ>]. See generally, BARRY FRIEDMAN, THE WILL OF THE PEOPLE (2010) (examining how public opinion influences the Court’s legitimacy).

195. Exec. Order No. 13769, 3 C.F.R. 272 (2018).

196. Exec. Order No. 13780, 3 C.F.R. 301 (2018).

197. *Id.*

198. See *Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017) (denying the governments appeal to stay the lower court’s injunction).

199. See ACLU, TIMELINE OF THE MUSLIM BAN, <https://www.aclu-wa.org/pages/timeline-muslim-ban> [<https://perma.cc/2QX6-2DUU>].

200. Exec. Order No. 13815, 3 C.F.R. 13815 (Oct. 24, 2017).

justification to survive rational basis review.”²⁰¹ The Court’s decision was a day of mourning for Muslims, allies, and civil rights advocates because Donald Trump stated that he would “ban Muslims from entering the country” and repeatedly referenced Islam as a threat to national security.²⁰² Although the majority briefly referenced the extrinsic evidence concerning the Executive’s statements, the Court found it was not “impossible to discern a relationship to legitimate state interest or that the policy is inexplicable by anything but animus.”²⁰³ Justice Sotomayor disagreed. In a heartfelt dissent, which Justice Sotomayor read from the bench, she recounted Donald Trump’s animus-revealing statements.²⁰⁴ She wrote, in part:

[A] cursory review of the Government’s asserted national-security rationale reveals that the Proclamation is nothing more than a “religious gerrymander”

[T]he Proclamation just like its predecessor, overwhelmingly targets Muslim-majority nations. Given the record here, including all the President’s statements linking the Proclamation to his apparent hostility toward Muslims, it is of no moment that the Proclamation also includes minor restriction on two non-Muslim majority countries . . . or that the Government has removed a few Muslim-majority countries. . . . [T]he removal of other countries, simply reflect[s] subtle efforts to start “talking territory instead of Muslim.”²⁰⁵

As Justice Sotomayor inferred, despite the Executive’s explicit religious animus, the national security shield ultimately allowed the Executive to overcome the Court’s rational basis standard of review by simply checking the right boxes to establish a risk assessment. However, Justice Sotomayor emphasized that, “[T]he President campaigned on a promise to implement a total and complete shutdown of Muslims entering the country, translated that campaign promise into a concrete policy, and made several statements linking that policy (in its various forms) to anti-Muslim animus.”²⁰⁶ It is a promise that seemed legally insignificant to the majority of the Court but amplifies anti-Muslim sentiments and continues to affect Muslims detrimentally.

D. Hate Crimes

Justice Sotomayor’s cue to hold the Executive accountable for its anti-Muslim animus is appropriate. The residual effect of *Trump v. Hawaii* is the perpetuation of fabricated frames about Muslims—frames that have not only destroyed constitutional

201. *Trump v. Hawaii*, 138 S. Ct. at 2423.

202. Jenna Johnson, *Trump Calls for Total and Complete Shutdown of Muslims Entering the United States*, WASH. POST (Dec. 7, 2015), <https://www.washingtonpost.com/news/post-politics/wp/2015/12/07/donald-trump-calls-for-total-and-complete-shutdown-of-muslims-entering-the-united-states/> [https://perma.cc/HSN9-7867].

203. *Trump v. Hawaii*, 138 S. Ct. at 2420-21 (internal quotations omitted).

204. Catie Edmondson, *Sonia Sotomayor Delivers Sharp Dissent in Travel Ban Case*, N.Y. TIMES (June 26, 2018), <https://www.nytimes.com/2018/06/26/us/sonia-sotomayor-dissent-travel-ban.html> [https://perma.cc/C3EZ-F72W].

205. *Trump v. Hawaii*, 138 S. Ct. at 2442 (Sotomayor, J., dissenting).

206. *Id.* at 2443 (internal quotation omitted).

protections but also emboldened violence against Muslims.²⁰⁷ Although the anti-Muslim language that followed the 9/11 attack increased Muslim hostility, it was a relatively slow boil compared to hate crimes surrounding the Trump election.²⁰⁸ Throughout the Trump presidential campaign and immediately following his election, hate crimes toward Muslims rapidly escalated seventy-eight percent—an even higher rate than immediately after 9/11.²⁰⁹ The hate crime boom aligns with empirical data showing a correlation between animus-based language and aggressive behavior toward outsider groups.²¹⁰

Within the ten days following the Trump election, the Southern Poverty Law Center recorded almost 900 reports of harassment and 50 “anti-Muslim” hate crimes.²¹¹ One mother reported, “My 12-year-old daughter is African American. A boy approached her and said, ‘Now that Trump is president, I’m going to shoot you and all the black[s] I can find.’”²¹² Another testimonial revealed, “We have just cleared the white house of niggers! Do not bring niggers in our neighborhood. . . . We will kill them.”²¹³ In Kansas, three men were convicted of plotting to bomb an apartment building where Somali Muslims lived. As part of their defense, their attorney described their alleged threats as idle talk that the Trump campaign had inspired.²¹⁴

Other documented hate crimes include the fatal shooting of two men in Oregon for defending a Muslim woman and her African American friend from a heckler on public transportation.²¹⁵ Another disturbing case involved the murder of three youths in Chapel Hill, North Carolina. When Craig Stephen Hicks shot Deah Shaddy Barakat, Yusor Mohammad Abu-Salha, and Razan Mohammad Abu-Salha, North Carolina law enforcement attributed the brutal murders to a parking dispute. Hicks had posted various anti-religious statements on social media, including, “I hate Islam, just as much as I hate Christianity.”²¹⁶ However, Chapel Hill law

207. Kishi, *supra* note 33; Newton, *supra* note 33 (reporting that hate crimes against African Americans, Jews, and Muslims increased dramatically to ten percent from 2014 to 2015 and that in 2016, almost sixty percent of hate crime violence had a racial bias, and over half of those crimes were targeted at Black people).

208. President Bush publicly denounced a correlation between Muslims and the 9/11 attacks but would frequently pair extremist and terrorist with Islam.

209. Leticia Juarez, *Hate Crimes Against Muslims up 78%; Experts Blame Political Leaders*, ABC7 (Sept. 21, 2016), <https://abc7.com/news/hate-crimes-against-muslims-up-78-percent-experts-blame-political-leaders/1520951/> [<https://perma.cc/357J-R644>].

210. *Id.*; Müller & Schwarz, *supra* 157.

211. SPLC, *Ten Days After: Harassment and Intimidation in the Aftermath of the Election* (Nov. 29, 2016), <https://www.splcenter.org/20161129/ten-days-after-harassment-and-intimidation-aftermath-election> [<https://perma.cc/JC4T-LN2T>] [hereinafter SPLC, *Ten Days After*].

212. *Id.*

213. *Id.*

214. Mitch Smith, *Kansas Trio Convicted in Plot to Bomb Somali Immigrants*, N.Y. TIMES (Apr. 18, 2018), <https://www.nytimes.com/2018/04/18/us/kansas-militia-somali-trial-verdict.html> [<https://perma.cc/334M-B55K>].

215. Amy Wang, *Final Act of Bravery: Men Who Were Fatally Stabbed Trying to Stop Anti-Muslim Rants Identified*, WASH. POST (May 27, 2017), <https://www.washingtonpost.com/news/post-nation/wp/2017/05/27/man-fatally-stabs-2-on-portland-ore-train-after-they-interrupted-his-anti-muslim-rants-police-say/> [<https://perma.cc/N49N-246L>].

216. Margaret Talbot, *The Story of a Hate Crime*, NEW YORKER (June 22, 2015), <https://www.newyorker.com/magazine/2015/06/22/the-story-of-a-hate-crime> [<https://perma.cc/6DY5-5JHC>].

enforcement maintained that the murders were not hate crimes but a dispute over a parking space.²¹⁷ The hate crime stories are many, but the prosecutions are few, making hate crime legislation seem largely symbolic.

Despite the prosecution gap, four important hate crime statutes create a legal framework for prosecutors to indict defendants: The Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act of 2009,²¹⁸ Damage to Religious Property Act,²¹⁹ Church Arson Prevention Act,²²⁰ and Violent Interference with Federally Protected Rights Act.²²¹ Despite the existing legal framework, prosecutors are reluctant to pursue criminal cases as hate crimes because of the additional motive element.²²² In addition to meeting a reasonable doubt standard for the underlying crime, prosecutors must also establish that but-for the bias, the attack would not have happened.²²³ Prosecutors have found it difficult to establish this bias motive, which has served as a barrier to prosecuting these cases.²²⁴

In addition to inadequate prosecution, hate crimes are underreported in part because the FBI largely relies on inconsistent state reporting.²²⁵ The details and effects of this neglect are multi-faceted and will not be fully explored in this Article. However, hate crimes are visible reminders of racial, religious, gender, and ethnic domination and oppression. Group stigma is highlighted, and the crimes signal to members of the protected class that they are increasingly vulnerable.²²⁶ The effect of that vulnerability is that victims are often coerced to assimilate by masking race, culture, language, and religion.²²⁷ However, even those who attempt to prove that they are both good Americans and good Muslims are stopped at airports, intimidated by the FBI to support countering violent extremism, and attacked on streets because of their religious identity.²²⁸ When law enforcement fails to prosecute these attacks as hate crimes, majority conquest is uplifted and communities feel betrayed—leaving victims twice wronged.

217. *Id.*

218. 18 U.S.C. § 249 (2009) (The Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act subsequently expanded the definition of a hate crime).

219. 18 U.S.C. § 247(a)(2) (2002) (This Act would make it possible to prosecute hate crimes when the Act was directed to places of worship for religious minorities).

220. *Id.* at (a)(1) (2002) (Prosecutors would be able to bring a case against those who “deface, damage, or destroy” religious property).

221. 18 U.S.C. § 245 (1996) (A person who interferes with the use or enjoyment of federally protected activities like voting, education, serving on a jury, receiving government financial assistance, or travelling, can be prosecuted).

222. SPLC, *Ten Days After*, *supra* note 210.

223. Harbani Ahuja, *The Vicious Cycle of Hate: Systemic Flaws in Hate Crime Documentation in the United States and the Impact on Minority Communities*, 37 CARDOZO L. REV. 1867, 1870-71 (2016).

224. Matthew Trout, *Federalizing Hate: Constitutional and Practical Limitations to the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009*, 52 AM. CRIM. L. REV. 131, 152 (2015); Avlana Eisenberg, *Expressive Enforcement*, 61 UCLA L. REV. 858, 881-95 (2014).

225. Eisenberg, *supra* note 223, at 866.

226. *Id.* at 899-901.

227. Dan Rodríguez-García, *Intermarriage and Integration Revisited: International Experiences and Cross-Disciplinary Approaches*, 662 ANNALS 8, 11 (2015).

228. See generally PAUL M. BARRETT, *THE GOOD BLACK: A TRUE STORY OF RACE IN AMERICA* (2000).

E. Countering Violent Extremism and Divided Loyalties

Another effect of the terrorism frame is the government holding all Muslims accountable for the political views and actions of violent Muslims. This view was manifested through the Obama administration initiating the Countering Violent Extremism (CVE) program, an initiative that presupposes Muslim communities are breeding grounds for homegrown terrorists.²²⁹ Under CVE, the Obama administration funded Muslim organizations and mosques as partners to derail terrorism.²³⁰

Although the Obama administration developed the controversial CVE program, the Trump administration heightened the debate by proposing changing the program title to “Countering Radical Islam or Countering Violent Jihad.”²³¹ Many advocates opposed the name change, but they recognized the suggested change reflected CVE’s true purpose—opposing Islam by over-policing Muslims and their communities.²³² The Trump administration temporarily halted the CVE name modification, but the program focus remained on targeting Muslim organizations and individuals—not white supremacist organizations or other breeding grounds for domestic terrorism.²³³

The funding distribution for CVE grants further substantiates its true focus. Under the Obama administration, twenty-six community organizations received funding to support the government’s efforts to counter violent extremism.²³⁴ Eighty percent of the projects funded were designed to address anti-Muslim terrorism.²³⁵

229. In August 2011, President Obama signed the National Strategy for Empowering Local Partners to Prevent Violent Extremism in the United States. Exec. Office of the President, Empowering Local Partners to Prevent Violent Extremism in the United States (Aug. 2011), https://www.dhs.gov/sites/default/files/publications/empowering_local_partners.pdf [<https://perma.cc/ZD35-B3QQ>].

230. The DOJ, DHS, and the FBI all have Countering Violent Extremism (CVE) policing programs designed to use Muslim leaders and organizations as partners in reporting terrorism. The FBI defines violent extremism as “encouraging, condoning, justifying, or supporting the commission of a violent criminal act to achieve political, ideological, religious, social or economic goals.” COUNTERTERRORISM DIVISION, NATIONAL JOINT TERRORISM TASK FORCE, *FBI Strategic Plan to Curb Violent Extremism Office* (declassified Mar. 12, 2015), <https://www.brennancenter.org/sites/default/files/1318911-0%20-%20FBI%20Strategic%20Plan%20to%20Curb%20Violent%20Extremism-Section%201-Imported%20Media.PDF> [<https://perma.cc/9Y7K-2KB8>].

231. Julia Ainsley, Dustin Volz & Kristina Cooke, *Exclusive: Trump to Focus on Counter-extremism Program Solely on Islam*, REUTERS (Feb. 2, 2017), <https://www.reuters.com/article/us-usa-trump-extremists-program-exclusive/exclusive-trump-to-focus-counter-extremism-program-solely-on-islam-sources-idUSKBN15G5VO> [<https://perma.cc/YYH6-SWA4>].

232. *Id.*

233. Press Release, Jeh Johnson, Sec’y of Homeland Sec., Statement by Secretary Jeh Johnson Announcing First Round of DHS’s Countering Violent Extremism Grants (Jan. 13, 2017), <https://www.dhs.gov/news/2017/01/13/statement-secretary-jeh-johnson-announcing-first-round-dhss-countering-violent> [<https://perma.cc/56BA-TX5B>].

234. Dep’t of Homeland Sec., DHS-16-OCP-132-00-01, Notice of Funding Opportunity: Fiscal Year 2016 Countering Violent Extremism (CVE) Grant Program 4 (June 6, 2016), https://www.fema.gov/media-library-data/1467814173660-58024ff00713060a31e54a2b0b54deb9/FY16_CVE_NOFO_Final.pdf [<https://perma.cc/XE5B-S7YJ>]. When Donald Trump took office and expressed his anti-Islam view, some grantees rejected the CVE funding. Ron Nixon, Adam Goldman & Matt Apuzzo, *Pointing to Trump Groups Reject U.S. Aid to Fight Extremism*, N.Y. TIMES (Feb. 2, 2017) <https://www.nytimes.com/2017/02/02/us/politics/trump-muslim-groups-aid-extremism.html> [<https://perma.cc/5ZHG-5WHY>].

235. Of the ten million designated to the twenty-six grantees, eighty percent of the projects are designed to address anti-Muslim terrorism. Patel, *supra* note 79.

Although government funding of religious organizations can raise Establishment Clause questions, in this instance, CVE professed to build upon the tradition of using religious organizations to provide services, often better than government because of community relationships.²³⁶ David Cole, now Executive Director of the ACLU, previously argued that the “normative and legitimating authority that religion can provide because of its independence from the state may be threatened if religion becomes too closely aligned with the state through government funding.”²³⁷ Professor Cole’s focus was on whether such government funding violates the Establishment Clause, asserting that neither a separationist nor assimilationist approach resolves the issue,²³⁸ but the principles he raises are instructive of the CVE approach. Cole highlights, “Government money may come with explicit and implicit strings attached, and the lure of the funds may tempt religious institutions to alter their practices.”²³⁹

Civil rights allies, Muslim organizations, and parishioners rightfully question whether CVE grantees compromise the communities they represent²⁴⁰ and if law enforcement agencies are using these funding opportunities for intelligence gathering.²⁴¹ To add to the controversy, the Department of Justice and the FBI criticized Muslims for failing to support the FBI in its efforts to identify terrorism cells.²⁴² Congress further promoted, “Muslim community leaders and religious leaders must play a more visible role in discrediting and providing alternatives to violent Islamist ideology.”²⁴³ However, the government strategy to infiltrate mosques and Islamic schools, to solicit the “good” Muslims to help battle the “War on Terrorism,” is largely ineffective and has fractured Muslim communities—perhaps as designed.²⁴⁴

Muslim CVE grantees are ostracized from some communities because they are perceived as collaborating with law enforcement to police other Muslims. In some instances, mosques host meet-and-greets with local attorneys general and FBI agencies after

236. See generally David Cole, *Faith and Funding: Toward an Expressivist Model of the Establishment Clause*, 75 S. CAL. L. REV. 559 (2002).

237. *Id.* at 577.

238. *Id.* at 578.

239. *Id.* at 579.

240. *DHS Grant of Half-Million Dollars To Masjid Muhammad A Mistake*, TENN. STAR (June 27, 2017), <https://tennesseestar.com/2017/06/27/commentary-dhs-grant-of-half-million-dollars-to-masjid-muhammad-a-mistake/> [<https://perma.cc/9U56-YUXP>].

241. Brandon Mayfield & Sharia Mayfield, *IMPROBABLE CAUSE: THE WAR ON TERROR’S ASSAULT ON THE BILL OF RIGHTS*, 44-46 (2016); Kristina Cooke & Joseph Ax, *FBI to Trump: You’re Wrong About Muslims Reporting Extremist Threats*, REUTERS (June 16, 2016), <https://www.businessinsider.com/r-us-officials-say-american-muslims-do-report-extremist-threats-2016-6> [<https://perma.cc/DW6A-QWBK>]; Scott Shane, *Congressional Hearing Puts Muslim Civil Rights Group in the Hot Seat Again*, N.Y. TIMES (Mar. 11, 2011), <https://www.nytimes.com/2011/03/12/us/politics/12muslims.html?mtref=www.google.com&mtref=undefined> [<https://perma.cc/9M5V-ZA7L>].

242. Shane, *supra* note 240.

243. Press Release, Homeland Security Committee, King Opens Committee on Homeland Security Hearing on Radicalization (Mar. 10, 2011), <https://homeland.house.gov/press/king-opens-committee-homeland-security-hearing-radicalization> [<https://perma.cc/22UJ-HZQP>]. The Council on American Islamic Relations (CAIR) developed a community campaign advising Muslims not to talk to the FBI without a lawyer present, which resulted in Congressional reprimand and an informal Department of Justice directive to sever any communications with the organization. Shane, *supra* note 240.

244. Al-Marayati, *supra* note 89.

Friday prayer service.²⁴⁵ The events are promoted as a way for attendees to learn about the operations of federal prosecutors, including resources available to keep the Muslim community safe from hate crimes.²⁴⁶ Although one grantee, an African American mosque, focused its CVE grant on changing the terrorism narrative of Islam,²⁴⁷ the mosque too became a target of scrutiny in the larger Muslim community. Whether the mosque's efforts are worthwhile is questionable: promoting positive Muslim narratives has proven ineffective in derailing the well-established anti-Muslim frame.²⁴⁸

In many ways, the CVE initiative resembles community policing practices. Law enforcement agencies often describe community-policing programs as a way to collaborate with community members to prevent crime.²⁴⁹ These programs should also ultimately identify and enhance services in those communities, where there may have been gaps. Although data suggest community policing is an effective strategy to deter crime, a comprehensive community policing program is grounded in law enforcement building trusting relationships with community leaders and residents.²⁵⁰ However, community-policing programs, by design, heighten police presence in the same neighborhoods with disproportionate arrest rates.²⁵¹ Policing practices continue to denigrate Black men and women, preventing them from freely walking in their neighborhoods. With COINTELPRO, the FBI used informants to build insider relationships and undermine Black leadership and community cohesion.²⁵² Similarly, stop-and-frisk programs erode trust between communities of color and law enforcement.²⁵³ Policing practices do the same to Muslims.²⁵⁴

245. See generally Khaled A. Beydoun, *Bisecting American Islam? Divide, Conquer, and Counter-Radicalization*, 69 HASTINGS L.J. 429, 482-484 (2018).

246. *Id.*

247. Greene Street Communications, *Greene Street Communications & Masjid Muhammad Partner on \$450,000 DHS Countering Violent Extremism Grant Award*, <https://www.gstreetgroup.com/dhscounteringextremismgrant> [<https://perma.cc/6J6W-YSR4>].

248. Felicia Schwartz, *U.S. Targets Would-Be Terrorists Overseas with New Ad Campaign*, WALL ST. J. (Oct. 20, 2016), <https://www.wsj.com/articles/u-s-targets-would-be-terrorists-overseas-with-new-ad-campaign-1476973216> [<https://perma.cc/6BZW-JB64>].

249. Amna Akbar, *National Security's Broken Windows*, 62 UCLA L. REV. 834, 838 (2015).

250. See generally, *id.* at 869 n.149.

251. *Id.*

252. Natsu Taylor Saito, *Individual Liberties, State Security, and the War on Terrorism: Whose Liberty? Whose Security? The USA PATRIOT Act in the Context of COINTELPRO and the Unlawful Repression of Political Dissent*, 81 OR. L. REV. 1051, 1083 (2002).

253. In recounting the backlash after Michael Brown's death in Ferguson, the DOJ indicates the trust between African Americans and Ferguson law enforcement was damaged. See U.S. DEP'T OF JUST., C.R. DIV., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 80 (2015), <https://www.courts.mo.gov/file.jsp?id=95274> [<https://perma.cc/E4LG-52G5>]; Jared Wadley, *Negative News about Muslims Fuels Public Policy Support Against Them*, MICH. NEWS (Jan. 4, 2016), <https://news.umich.edu/negative-news-about-muslims-fuels-public-policy-support-against-them/> [<https://perma.cc/G8GG-ZZVK>]. Paul Butler effectively explores the "virtues of noncooperation" with law enforcement, particularly in the African American community. PAUL BUTLER, LET'S GET FREE: A HIP-HOP THEORY OF JUSTICE 99 (2009).

254. Although in *Floyd v. City of New York*, the U.S. District Court for the Southern District of New York held the stop-and-frisk program violated the Equal Protection Clause, the policing practice continues and is justified under the states policing power. See 959 F. Supp. 2d 540, 562 (S.D.N.Y. 2013); Vanita Saleema Snow, *From the Dark Tower: Unbridled Civil Asset Forfeiture*, 10 DREXEL L. REV. 69 (2018).

The CVE program employs an analogous community policing strategy, with comparable troublesome results.²⁵⁵ Trust is eroded because the communities are skeptical about law enforcements' intentions.²⁵⁶ Thus, the CVE strategy to collaborate with community groups, mosques, Islamic schools, and Muslim leaders to derail terrorism was doomed to fail. However, its adverse effects remain and continue to hinder religious freedom for Muslims who operate within a paradigm that deems them responsible for Islamic "radicalization." Ultimately, the Trump administration has proposed to stop future CVE funding, but CVE's divisive effect continues.

V. RECLAIMING RADICAL²⁵⁷

Reframing radical religion begins with reclaiming what radicalization is.²⁵⁸ Although radicalization is generally defined as extreme behavior in one's beliefs and action, its full range includes social justice advocacy, where individuals and organizations have pushed against the status quo.²⁵⁹ Religious leaders have used this kind of grassroots-based change to challenge biases in the laws, biases that have perpetuated generational poverty and discrimination against communities of color.²⁶⁰

During the civil rights movement, Reverend Martin Luther King's church pulpit was a vehicle to mobilize his congregation and community to disengage from the law—Jim Crow laws designed to oppress African Americans and other marginalized populations. Although revisionists often romanticize Dr. King's message as the dream that would unify Americans, his movement was one of resistance, defying laws and court orders.²⁶¹ His sermons extended beyond the walls of the church, but they remained rooted in faith, not fear. His profound *I Have a Dream* speech elucidated how religion could support the movement and change oppression:

With this faith we will be able to work together, to pray together, to struggle, to go to jail together, to stand up for freedom together, knowing that we will be free one day. This will be the day when all of God's children will be able to sing with new meaning, 'My country 'tis of thee, sweet land of liberty, of thee I sing. Land where my fathers died, land of the Pilgrims' pride, from every mountainside, let freedom ring. . . .'²⁶²

Just as David had defeated Goliath, with faith as their anchor, the disenfranchised, along with their allies, would challenge Jim Crow, leading J. Edgar Hoover to describe King as, "the most dangerous man in America."²⁶³

255. JEFFREY HAAS, *THE ASSASSINATION OF FRED HAMPTON* 77-82, 176-81 (2010).

256. DAVID COLE, *NO EQUAL JUSTICE: RACE AND CLASS IN THE AMERICAN CRIMINAL JUSTICE SYSTEM* 206-07 (1999).

257. The title for this section was inspired from the Getting Radical in the South (GRIT) Conference at the University of Texas, where the author presented on the topic with other speakers.

258. Amna A. Akbar, *Policing "Radicalization,"* 3 U.C. IRVINE L. REV. 809, 872 (2013).

259. Spearit, *Spectacular or Specious? A Critical Review of the Spectacular Few: Prisoner Radicalization and the Evolving Threat,* 39 T. MARSHALL L. REV. 225, 226-27 (2014).

260. *Id.*

261. *Id.*

262. Martin Luther King Jr., *Speech at the March on Washington* (Aug. 28, 1963).

263. BALLARD C. CAMPBELL, *DISASTERS, ACCIDENTS, AND CRISES IN AMERICAN HISTORY: A REFERENCE GUIDE TO THE NATION'S MOST CATASTROPHIC EVENTS* 335 (2008).

A unifying message of equality allowed Christians, Jews, and Muslims to march side-by-side using protest movements to influence courts.²⁶⁴ Locked arm-in-arm with Dr. King, Rabbi Abraham Joshua Heschel marched from Selma to Montgomery, Alabama.²⁶⁵ Rabbi Heschel later wrote, “For many of us the march from Selma to Montgomery was about protest and prayer. Legs are not lips and walking is not kneeling. And yet our legs uttered songs. Even without words, our march was worship. I felt my legs were praying.”²⁶⁶ Rabbi Heschel was also one of sixteen rabbis arrested in St. Augustine, Florida, where rabbis joined other civil rights activists to protest St. Augustine’s racial segregation.²⁶⁷ Reflecting on St. Augustine, Rabbi Allen Secher stated, “We came as Jews who remember the millions of faceless people who stood quietly, watching the smoke rise from Hitler’s crematoria. . . . We came because we know that, second only to silence, the greatest danger is loss of faith in man’s capacity to act.”²⁶⁸ Over fifty years later, eighteen rabbis were arrested when they joined protests to defy the Muslim ban.²⁶⁹ The rabbis’ actions are part of the legacy of Jewish activism in the civil rights movement, with synagogues used to galvanize support against anti-Semitism and other forms of bigotry.²⁷⁰

Muslim leaders have similarly used the mosque to spur communities to address social justice ills, including police brutality. El Hajj Malik Shabazz stated in a 1964 interview with Mike Wallace, “The police commissioner feeds the type of statistics to the white public to make them think that Harlem is a complete criminal area where everyone is prone towards violence. This gives the police the impression that they can then go and brutalize the Negroes, or suppress the Negroes. . . .”²⁷¹ El Hajj Malik Shabazz’s sentiments were moving a community of African Americans to self-determination. Other indigenous African American Muslim leaders, such as Wallace Deen Muhammad, would continue to use the mosque to lead their communities

264. See Lani Guinier & Gerald Torres, *Changing the Wind: Notes Toward a Demosprudence of Law and Social Movements*, 123 YALE L.J. 2740, 2781–82 (2014) (illustrating how the Montgomery Bus Boycott story began with a social movement and influenced the courts); Robert C. Post, *Foreword: Fashioning the Legal Constitution: Culture, Courts, and Law*, 117 HARV. L. REV. 4, 8 (2003) (“[C]onstitutional law and culture are locked in a dialectical relationship, so that constitutional law both arises from and in turn regulates culture.”).

265. PETER DRIER, *THE 100 GREATEST AMERICANS OF THE 20TH CENTURY: A SOCIAL JUSTICE HALL OF FAME* 226 (2012).

266. *Id.*

267. *16 Rabbis Arrested as Pool Dive-In Sets Off St. Augustine Rights Clash*, N.Y. TIMES (June 19, 1964), <https://www.nytimes.com/1964/06/19/archives/16-rabbis-arrested-as-pool-divein-sets-off-st-augustine-rights.html> [<https://perma.cc/367U-LGAQ>].

268. Lynnette Hintze, *Rabbi Part of Pivotal Pool Protest in Florida in 1964*, DAILY INTER LAKE, (June 15, 2014), <https://www.dailyinterlake.com/archive/article-535fd35a-f42c-11e3-9aaf-001a4bcf887a.html> [<https://perma.cc/9THZ-96V9>].

269. Danya Ruttenberg, *I’m a Rabbi Who Was Arrested Protesting Trump’s Travel Ban. It Was a Holy Act*, WASH. POST (Feb. 9, 2017), <https://www.washingtonpost.com/posteverything/wp/2017/02/09/im-a-rabbi-who-was-arrested-protesting-trumps-travel-ban-it-was-a-holy-act/> [<https://perma.cc/42L3-JUQS>].

270. *Id.*

271. Interview of El Hajj Malik Shabazz by Mike Wallace of CBS News (June 8, 1964), <https://www.youtube.com/watch?v=WDEL96igPAA> [<https://perma.cc/6LCN-ASKY>] (uploaded by user named 1stGenRefugee).

and other allies to address social inequality.²⁷²

These religious leaders—Reverend Martin Luther King, Rabbi Abraham Joshua Heschel, Rabbi Allen Secher, El Hajj Malik Shabazz, Wallace Deen Muhammad, and many others—such as Rabbi Danya Ruttenberg and Franciscan Sister Antona Ebo²⁷³—defied laws to abolish discrimination and create systemic change through reforms, such as the enactment of the Civil Rights Act of 1964.²⁷⁴ However, in the process, law enforcement beat, arrested, and charged these leaders with disturbing the peace, disorderly conduct, and trespassing. And, yes—the religious leaders’ behavior was deemed radical.²⁷⁵

At the other end of the radicalization definition is behavior that erodes human dignity, civil rights, and even destroys life. White nationalists promulgate their racial superiority with anti-normative propaganda and murders. More commonly, however, the media, government, and political fire used the term radicalization as a code word for Islamic terrorism.²⁷⁶ More specifically, radicalization has become a condemnatory term synonymous with non-secular Muslims who strictly adhere to their religion.²⁷⁷ However, there is no correlation between religious beliefs, no matter how extreme, and violent behavior.²⁷⁸ While the 9/11 religious extortionists justified their violence under the pretext of Islam, “global terrorist” recruits are often not practicing the religion of Islam, and they have vast shortcomings in their education—both secular and religious.²⁷⁹

Additionally, the assumption that Muslims adhere to the same political beliefs is unfounded and rarely applied to other acts of violence or religions. Because a counter-narrative is ineffective in combatting the Muslim terrorist frame, in addition to re-appropriating the term,²⁸⁰ other strategies are proposed.²⁸¹ Specifically, this section identifies three strategies to reclaim radical religion and return it to what it has been—a social justice tool to destroy racial, economic, and religious oppression.

272. Don Terry, *W. Deen Mohammad: A Leap of Faith*, CHI. TRIB. (Oct. 20, 2002), <https://www.chicagotribune.com/news/chi-021020-mohammedprofile-story.html> [<https://perma.cc/3QT9-4TRQ>].

273. Gloria Ross, *Obituary: Sister Mary Antona Ebo, One of the Sisters of Selma*, ST. LOUIS PUBLIC RADIO (Nov. 13, 2017), <https://news.slpbpublicradio.org/post/obituary-sister-mary-antona-ebo-one-sisters-selma#stream/0> [<https://perma.cc/SA7H-K7VM>].

274. 42 U.S.C. § 2000(e) (2018).

275. Symposium, *Symposium: Martin Luther King’s Lawyers: From Montgomery To the March On Washington To Memphis*, 10 NW. J.L. & SOC. POL’Y 494, 554-56 (2016).

276. The Honorable Sheila Jackson Lee highlighted the ramifications of categorizing Muslims as a monolithic national security threat. “People who commit acts of domestic terrorism cannot be identified by any religious, ideological, ethnic, economic, educational, or social profile, and holding hearings that suggest otherwise is counterproductive to keeping America safe from real terrorist threats.” *Islamic Radicalization: Hearing Before the Committee on Homeland Security*, H.R. Rep. No. 112-9, at 10 (2011).

277. *Id.*

278. Jennifer Williams, *Why Average People Become Terrorists*, VOX (June 14, 2016), <https://www.vox.com/2016/6/14/11923514/terrorist-radicalization-orlando> [<https://perma.cc/PET2-4SFW>].

279. Patel, *supra* note 79.

280. See generally Kath Browne, *Challenging Queer Geographies*, 38 ANTIPODE: A RADICAL J. OF GEOGRAPHY 885, 893 (2006). Various groups have re-appropriated what were once seen as exclusively pejorative terms. For example, “queer” was once used to ostracize and ridicule, but now an accepted term of the LGBTQ movement. The appropriation has become a powerful identity marker.

281. Schwartz, *supra* note 247.

A. Coalition Building

In an iconic open letter to Angela Davis, James Baldwin reminded readers of the connectedness of oppressed people: “For, if they take you in the morning, they will be coming for us that night.”²⁸² Baldwin’s literary activism primarily focused on the racism in the criminal justice system, but he also highlighted White Americans’ attempts to divide various groups to uphold their White power. Changing power dynamics is at the root of most social justice disparities, including law enforcement’s relationship with African Americans and Muslims. Although challenging the constitutionality of police action through litigation may appear to be an appropriate focus when considering legal outcomes, this approach overlooks law enforcement’s historical purpose—to ensure public safety by protecting majority communities against minority threats. The approach also overlooks that American jurisprudence is grounded in protecting the status quo.²⁸³ Coalition building, however, has proven effective in shifting power and increasing equity in disempowered communities.²⁸⁴

In the Muslim community, the power of coalition building was noticeable when—within hours of Donald Trump announcing the first Muslim Ban—thousands rushed to airports and courthouses.²⁸⁵ The diverse coalition of Muslims, non-Muslims, immigrant advocates, civil rights lawyers, and religious leaders reminded courts that the world was watching and would hold the Executive accountable.²⁸⁶ The Ban was quickly fracturing families and communities, destroying fundamental human and constitutional rights, and uplifting “whiteness.”²⁸⁷

Regrettably, before 9/11, like other religious groups, Muslim communities were racially fractured.²⁸⁸ Many non-Black Muslims adopted the Black-crime frame, believing that policing of Black communities was both necessary and appropriate. In many ways, 9/11 led non-Black Muslims to realize they were the new “N” in the room.²⁸⁹ America would now consider all Muslims outsiders as it had considered African Americans. Non-Black Muslims were feeling the connection to African Americans and, in particular, their African American Muslim brothers and sisters—perhaps more out of necessity than compassion. The intersection between religious

282. James Baldwin, *An Open Letter to My Sister, Miss Angela Davis* (Nov. 19, 1970).

283. See Derrick Bell, *Racial Realism*, 24 CONN. L. REV. 363, 364 (1992).

284. Snow, *supra* note 254, at 103-11 (2017); Tomiko Brown-Nagin, *Does Protest Work?*, 56 HOW. L.J. 721, 734–36 (2013).

285. Adam Liptak, *Court Refuses to Reinstate Travel Ban, Dealing Trump Another Legal Loss*, N.Y. TIMES (Feb. 9, 2017), <https://www.nytimes.com/2017/02/09/us/politics/appeals-court-trump-travel-ban.html> [<https://perma.cc/DD65-GW88>].

286. Michael Shear, Nicholas Kulish & Alan Feuer, *Judge Blocks Trump Order on Refugees Amid Chaos and Outcry Worldwide*, N.Y. TIMES (Jan. 28, 2017), <https://www.nytimes.com/2017/01/28/us/refugees-detained-at-us-airports-prompting-legal-challenges-to-trumps-immigration-order.html> [<https://perma.cc/KZJ4-MVP4>]. See generally, FRIEDMAN, *supra* note 193.

287. See generally, Cheryl Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993) (focusing on how white privilege is related to benefits in the law).

288. See Jonathan K. Stubbs, *The Bottom Rung of America’s Race Ladder: After the September 11 Catastrophe are American Muslims Becoming America’s New N. . . . s?*, 19 J.L. & RELIGION 115, 115-17 (2003).

289. *Id.*

and racial discrimination became increasingly apparent and essential to weaken the group vilification.

That same coalition building is needed to weaken the Executive's denouncing of religious and racial minorities. Recognizing shared oppression is also a necessary step to combat weaponized words that seek to destroy African American and Muslim communities through discriminatory policing and immigration practices. In her dissent, Justice Sotomayor acknowledged in *Trump v. Hawaii*, "[C]itizens allege that the Executive has violated the Establishment Clause by issuing a sweeping executive order motivated by animus."²⁹⁰ These coalition strategies amplify citizens' voices and can effectively influence courts to conform to "will of the people," ensuring the courts retain their legitimacy.²⁹¹ It is a legitimacy that reduces judicial backlash and upholds public confidence in the courts.²⁹²

B. Creating a New Legal Framework

Another strategy for reclaiming radical religion is recognizing that the government's weaponized language constitutes hate speech that erodes fundamental rights and causes severe emotional distress to its victims. Over thirty years ago, Robert Delgado assessed pursuing a tort action based on racially biased speech.²⁹³ Subsequent scholars have also explored using tort law to remedy the harm hate speech causes to its victim.²⁹⁴ Morris Dees, founder of the Southern Poverty Law Center, prevailed in hate crime cases on the theory that hate groups were vicariously liable for crimes committed as a result of hate speech promulgated.²⁹⁵ Despite these novel theories and narrow victories, the challenge with litigating a hate speech case is balancing individual harms against individual liberties.²⁹⁶ The Supreme Court, however, has consistently held that the First Amendment does not protect speech "of such slight social value as a step to truth that any benefit that may be derived from

290. *Trump v. Hawaii*, 138 S. Ct. at 2442 (Sotomayor, J., dissenting).

291. FRIEDMAN, *supra* note 193.

292. Snow, *supra* note 254, at 111-13.

293. Robert Delgado, *Words that Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling*, 17 HARV. C.R.-C.L. L. REV. 133 (1982).

294. See generally Damon Henderson Taylor, *Civil Litigation Against Hate Groups Hitting the Wallets of the Nations Hate Monger*, 18 BUFF. PUB. INTEREST L.J. 95 (2000). See generally Paul T. Hayden, *Outrageous Conduct: Intentional Infliction of Emotional Distress as a Weapon Against Other People's Faiths*, 34 WM. & MARY L. REV. 579 (1993).

295. See, e.g., *Wiggs v. Courshon*, 355 F. Supp. 206 (S.D. Fla. 1973); *Agarwal v. Johnson*, 603 P.2d 58 (Cal. 1979); see Morris Dees & Ellen Bowden, *Hate: Taking Hate Groups to Court*, Trial, (Feb. 1995); Amended Complaint at 7, *Keenan v. Aryan Nations* (Jan. 25, 1999) (No. CV-99-441), https://www.splcenter.org/sites/default/files/d6_legacy_files/keenanyannations_amcomplaint.pdf [<https://perma.cc/R4M4-QR3Y>] (on file with Kootenai County Courthouse, First Judicial District, State of Idaho).

296. See *Snyder v. Phelps*, 562 U.S. 443, 460 (2011) (holding anti-war picketing near soldier's funeral was protected First Amendment speech despite the defendant's speech). *But see*, *Turley v. ISG Lackawanna Inc.*, 774 F.3d 140, 151 (2d Cir. 2014) (finding element of extreme and outrageous conduct existed when a Black steel worker endured daily racial epithets and threats from White employees that caused him to transition from a man "full of confidence" to a "broken and dispirited" shell of a man); Deana Pollard Sacks, *The Supreme Court's Speech-Tort Jurisprudence, and Normative Considerations*, 120 YALE L.J. ONLINE 193 (2010), <https://www.yalelawjournal.org/forum/snyder-v-phelps-the-supreme-courts-speech-tort-jurisprudence-and-normative-considerations> [<https://perma.cc/9VGC-2AHQ>].

them is clearly outweighed by social interest in order and morality.”²⁹⁷ Although with government hate speech the First Amendment challenges are not a concern, courts have not fully settled the scope of government immunity when government speech results in extreme harm with no social value.

The Executive’s widespread and bigoted statements should spark renewed interest in Robert Delgado’s tort theory of racial epithets. Because of sovereign immunity barriers to government actions,²⁹⁸ one approach in reclaiming radical religion is holding the government accountable through the Federal Tort Claims Act (FTCA).²⁹⁹ Under the FTCA, unless barred by an exception, the government waives sovereign immunity for torts arising out of government employees’ negligent or wrongful acts.³⁰⁰ The intentional infliction of emotional distress (IIED) is not listed as a barred exception,³⁰¹ but circuits seem to provide mixed results when litigants bring IIED claims. For example, when an IIED claim is linked to an excluded FTCA tort, such as libel, slander, misrepresentation, deceit, or interference with contract,³⁰² courts often dismiss the case.³⁰³ Additionally, recasting an excluded tort as an IIED claim does not overcome the immunity exceptions.³⁰⁴ Despite these challenges, using IIED to address government hate speech remains an opportunity not fully explored. I propose that a sufficient record exists to establish the Executive’s actions as extreme and outrageous conduct that has caused severe harm to its victims.

1. Extreme and Outrageous Conduct

In most jurisdictions, to prevail in an IIED claim, a litigant must show that the defendant intentionally or recklessly engaged in extreme and outrageous conduct that caused the plaintiff severe emotional disturbance.³⁰⁵ In assessing extreme and outrageous conduct, courts generally require that the conduct goes “beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.”³⁰⁶ Additionally, the conduct must exceed the limits of “insult, indignities, threats, or annoyance.”³⁰⁷ However, to assess whether an actor’s conduct

297. *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942).

298. *See United States v. Lee*, 106 U.S. 196 (1882); *Alden v. Maine*, 527 U.S. 706 (1999); *Hans v. Louisiana*, 134 U.S. 1 (1890).

299. 28 U.S.C. §§ 2671–80 (2018).

300. 28 U.S.C. § 1346(b) (2018).

301. 28 U.S.C. § 2680(h) (2018).

302. *Id.*

303. *See Trujillo v. United States*, 313 F. Supp. 2d 1146 (D.N.M. 2003) (dismissing IIED claim arising out of FTCA excluded claims of assault and battery under § 2680). *But see Mundy v. United States*, 983 F.2d 950 (9th Cir. 1993) (distinguishing failure to process a security clearance from an interference with contract claim barred under § 2680 of FTCA).

304. *See, e.g., Laird v. Nelms*, 406 U.S. 797, 802 (1972) (dismissing a reframed trespass claim under the FTCA); *see Edmonds v. United States*, 436 F. Supp. 2d 28, 35 (D.C. Cir. 2006) (dismissing a reframed libel and slander claim under FTCA).

305. Restatement (Third) of Torts: Phys. & Emot. Harm § 46 (AM. LAW INST. 2018); *Snyder v. Phelps*, 562 U.S. 443 (2011) (citing to Maryland standard for IIED).

306. *Bernstein v. Fernandez*, 649 A.2d 1064, 1075 (D.C. 1991).

307. *Waldon v. Covington*, 415 A.2d 1070, 1076 (D.C. 1980).

is extreme is largely fact dependent, including assessing the position of authority the actor has over the person harmed.³⁰⁸

The Office of the President is arguably the most powerful position in the United States.³⁰⁹ It is a position of power, which Donald Trump has demonstrated may immediately determine who is worthy of entry into the country.³¹⁰ The Executive has repeatedly and for a prolonged period vilified and devalued African Americans³¹¹ and Muslims.³¹² The Executive proposed that all Muslims should register in a special database and referenced Islam as a “vicious cancer inside the body of 1.7 billion people needing to be excised.”³¹³ Donald Trump stated that he would “strongly consider” closing mosques.³¹⁴ Similar verbal attacks on African Americans prevailed.³¹⁵ Donald Trump tweeted that “the overwhelming amount of violent crime in our cities is committed by blacks and Hispanics.”³¹⁶ Such bigoted government language also included his contention that Mexico sends rapists to the United States, that African American youth have no spirit, and that Judge Gonzalo Curiel’s Mexican heritage is a conflict with his ability to be fair concerning Trump University.³¹⁷

These actions by a high-level government official and his agents are beyond all possible “bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community.”³¹⁸ A reasonable person would expect the President to uphold the laws and Constitution of the United States, including the First and Fourteenth Amendments. She would also expect the President to neither promote nor use bigoted speech, particularly speech that repeatedly sparks violence against target groups.³¹⁹ In discussing the Executive’s “Muslim ban,” Justice Sotomayor indicated, “[A] reasonable observer would conclude that the Proclamation was motivated by anti-Muslim animus.”³²⁰ Justice Sotomayor also analyzed how the Proclamation inflicts “pain and suffering” on families and individuals, including United States citizens.³²¹ As noted below, the Executive’s repeated intentional and reckless use of hate speech continues to cause pain and suffering resulting in severe emotional harm to its victims.

308. Cf. *Kotsch v. District of Columbia*, 924 A.2d 1040, 1045 (D.C. 2007) (finding police officer had probable cause to arrest and any harm to the plaintiff cannot serve as the basis for extreme and outrageous conduct).

309. See *Trump v. Hawaii*, 138 S. Ct. at 2410.

310. *Id.*

311. See discussion *supra* pp. 7-12.

312. See discussion *supra* pp. 14-17.

313. Shane, *supra* note 240.

314. Johnson, *supra* note 25.

315. See discussion *supra* Part II, Section A.

316. Donald J. Trump (@realDonaldTrump), TWITTER (June 5, 2013, 1:05 AM), <https://twitter.com/realdonaldtrump/status/342190428675796992?lang=en> [<https://perma.cc/8VC6-T7LH>].

317. Brent Kendall, *Trump Says Judge’s Mexican Heritage Presents ‘Absolute Conflict’*, WALL ST. J. (June 3, 2016), <https://www.wsj.com/articles/donald-trump-keeps-up-attacks-on-judge-gonzalo-curiel-1464911442> [<https://perma.cc/5YLN-VVL9>].

318. See *Bernstein v. Fernandez*, 649 A.2d 1064, 1075 (D.C. 1991).

319. See discussion *supra* Part IV, Section D.

320. *Trump v. Hawaii*, 138 S. Ct. at 2433 (Sotomayor, J., dissenting).

321. *Id.*

2. Intentional or Reckless Conduct Causes Severe Emotional Harm

Often the extreme character of a defendant's actions infers that the harm has occurred, but a plaintiff may need additional evidence to establish the severity of the emotional harm.³²² With racially motivated hate speech, the direct and collateral harm of racism is extensive and a subject social scientists and psychologists explored in *Brown v. Board of Education*.³²³ Substantial doctrine has also developed to show the effects of racial verbal attacks and discriminatory policing include community trauma.³²⁴ This community trauma has impacted African American Muslims even more because they experience discrimination based on race and religion.³²⁵

Significantly, IIED is an emotional tort that seeks to restore the harm caused by loss of dignity. Although IIED is not generally designed to protect behavior directed at extreme sensitivity or susceptibility,³²⁶ Executive hate speech goes beyond victims having their feelings hurt. Instead, when paired with governmental influence and power, government hate speech creates an environment that emboldens others to engage in violence against a protected class.³²⁷ Pointedly, Justice Sotomayor reminded the Court that "government actions that favor one religion 'inevitabl[y]' foster 'the hatred, disrespect, and even contempt of those who [hold] contrary beliefs.'"³²⁸ Morris Dees's vicarious liability theory for crimes committed as a result of hate speech should equally apply to government actors. Equally harmful of government hate speech is the perpetual fear of violence potential victims endure and the perpetual lack of psychological security.³²⁹

Anticipating opponents' criticisms, I concede that isolated government speech that causes emotional harm would not meet the IIED standard. Instead, the government speech must be part of a pattern, as is the case with the Executive's speech toward Muslims. It is the pattern and the President's position of authority that remove presidential statements from the category of insulting language to outrageous conduct. I also concede that IIED claims are difficult to establish.³³⁰ However, a

322. See e.g., *Kennedy v. Town of Billerica*, 617 F.3d 520 (1st Cir. 2010).

323. The often-referenced footnote 11 in *Brown* accentuates the harm caused by stigmatizing and isolating African American children. Footnote 11 includes citations to various social scientists' and psychologists' reports addressing the effects of segregation. 347 U.S. 483, 494 n.11 (1954).

324. Collective trauma is the result of communities feeling "they have been subjected to a horrendous event that leaves indelible marks upon their group consciousness, marking their memories forever and changing their future identity in fundamental and irrevocable ways." Jeffrey C. Alexander et al., *CULTURAL TRAUMA AND COLLECTIVE IDENTITY 1* (2004); see generally Thomas W. Simon, *Group Harm*, 26 J. SOC. PHIL. 3, 123-38 (1995).

325. Trauma in African American communities has been well documented. See, e.g., *Resources for Clinicians on Racial Trauma, Violence, & Islamophobia*, PENN. PSYCHOL. ASS'N, http://www.papsy.org/page/PPAGS_Resources [https://perma.cc/J48H-96VT].

326. Frank J. Cavico, *The Tort of Intentional Infliction of Emotional Distress in the Private Employment Sector*, 21 HOFSTRA L. REV. 138-39 (2003).

327. See generally ALEXANDER BROWN, *HATE SPEECH LAW: A PHILOSOPHICAL EXAMINATION* 66-98 (2009).

328. *Trump v. Hawaii*, 138 S. Ct. at 2434 (Sotomayor, J., dissenting) (citing *Engel v. Vitale*, 370 U.S. 421, 431 (1962)).

329. *Id.* at 66-68.

330. *Semper v. N.Y. Methodist Hosp.*, 786 F. Supp. 2d 566, 586 (E.D.N.Y. 2011).

favorable judgment is only one aspect of a comprehensive strategy to erode bigotry because a loss can galvanize allies,³³¹ enhance visibility of issues, and often move prevailing parties to reassess the economic and relational harm of a win.³³² Thus, an adverse judgment may have residual benefits and may not always be a social justice defeat. Accordingly, even an IIED loss could lead the Executive to put down its arms, so that it is no longer authorized to use weaponized words that cause both community trauma and undermine civil rights.

C. *Changing the Frame*

Perhaps an even easier remedy to reclaim radical religion is for the Executive to change its stigmatizing frames. Ironically, the CVE program seeks Muslim partners to help fight terrorism, with one grantee working to combat the anti-Muslim sentiment with a positive counter-narrative.³³³ The government need not delegate this task to Muslim non-profit organizations. Instead, as the perpetrator of the animus-motivated language, the government can simply change the frame. Stop pairing the word Muslim with terrorist. Stop omitting information about White supremacists and other domestic terrorist groups. Stop elevating the Islamophobia world-view. Openly disclose the number of White supremacist groups and their acts of domestic terrorism. Such changes begin to reframe, realign, and reclaim religion—Islam in particular.

VI. CONCLUSION

The adage that a picture is worth a thousand words remains true. Images often last longer, and they are more impactful. The law, however, is built upon words that create the frame for a legal issue. It is also within these boundaries the government has used language that stigmatizes Muslims as outsiders and threats to American ideals, questioning the practicality of religious freedom. Likewise, Black people continue to experience the vestiges of the African holocaust and a stigmatizing Black crime frame—being excluded from economic opportunities and victimized by discriminatory policing. But what does it mean to be unapologetically African American, Jewish, Christian, or Muslim? Is it a bundle of rights that comes with both duties and responsibilities? I assert that it is not. The right does not come with duties to justify the crimes of those who share the same faith or race. Instead, being able to unapologetically pronounce and practice one's religion or live comfortably in one's skin are embedded in the First and Fourteenth Amendments.

Despite established fundamental constitutional principles, Muslims are often forced to tackle the rebuttable presumption that the Muslim faith associated with

331. The acquittal of Roy Bryant and J.W. Milam for the murder of Emmett Till was not a total defeat. Their confession and Mamie Till-Mobley's decision to have an open casket funeral united civil right activist from around the world. See generally CHRISTOPHER BENSON & MAMIE TILL-MOBLEY, *DEATH OF INNOCENCE: THE STORY OF THE HATE CRIME THAT CHANGED AMERICA* (2003).

332. See generally Brett Garland & Pete Simi, *A Critique of Using Civil Litigation to Suppress White Supremacist Violence*, 36 CRIM. JUST. REV. 4 (2011); see also Rubiniowitz, *supra* note 274, at 555-56.

333. Schwartz, *supra* note 247.

terrorism, until proven otherwise. With over one billion Muslims in the world, Muslims' global presence and broad cultural diversity are as diverse in their views as the rest of the country.³³⁴ Muslims are judges, lawyers, professors, mechanics, doctors, caregivers, NBA stars, engineers, Congresswomen, Congressmen, Olympic athletes, and virtually every profession in society.³³⁵ Even when the government has a compelling governmental interest, such as national security, its power should not destroy individual liberties.³³⁶ Yet, the government's Muslim terrorist frame continues to justify group vilification.³³⁷ The language to support the prototype—terrorist, national security threat, foreign intruder—harms both Muslims' physical and psychological safety. Using weaponized language in a national security context also legitimizes discrimination, which results in a denigration and disempowerment of religion. Instead, Muslims are multifaceted. Words do in fact matter, and how they are paired may matter even more!

334. Hannah Allam, *Tired of Negativity, Muslims Take on Stereotypes*, DET. FREE PRESS (May 1, 2016), <https://www.freep.com/story/news/world/2016/05/01/muslims-take-media-stereotypes/83805252/> [<https://perma.cc/HJH2-RK4J>].

335. See Sarah Mahone, *The Growing Muslim-American Market*, ALLIED MEDIA CORP., <http://www.allied-media.com/AM/> [<https://perma.cc/E69P-F5F2>].

336. See, e.g., *Hamdi v. Rumsfeld*, 542 U.S. 507, 527–37 (2004). Media stereotypes of Muslims as terrorists have enhanced the government's terrorism narrative and proven to increase public support for policies that limit Muslim's civil liberties. See also Yasir Ali, *Shariah and Citizenship – How Islamophobia Is Creating a Second-Class Citizenry in America*, 100 CALIF. L. REV. 1027, 1043–46 (2012).

337. U.S. Representative. Sheila Jackson Lee highlighted the ramifications of categorizing Muslims as a monolithic national security threat. "People who commit acts of domestic terrorism cannot be identified by any religious, ideological, ethnic, economic, educational, or social profile, and holding hearings that suggest otherwise is counterproductive to keeping America safe from real terrorist threats." *Islamic Radicalization: Hearing Before the Committee on Homeland Security*, 112th Cong. 8-9 (Mar. 10, 2011).