

Reflections on Security, Race, and Rights Twenty-Years After 9/11

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INTRODUCTION

I began the fall of 2001 eager to start law school with a specific professional goal: to support the rule of law and individual rights in Egypt, the country of my birth. Having completed all my schooling in America, I was indoctrinated to believe this country was the land of the free where individual rights were not just embedded in law, but also enforced in practice. I trusted the American legal system in protecting human rights and empowering its people to check abuses of power through democratic means. In cases where the state infringed on those rights, they were anomalies or exceptions that could be rectified through reforms. In short, I was a true believer in the rule of law. For that reason, I was eager to use my law degree to partner with human rights advocates and lawyers in the Middle East to support their indigenous efforts to obtain dignity, equality, and freedom.

Little did I know then, before the largest terrorist attack on U.S. soil, the extent to which my faith in the American legal system would diminish. The ensuing national crisis exposed the ugly underbelly of Western legal systems – they often serve the political objectives of the powerful under the guise of liberalism’s neutrality. In the months and years following the September 11th attacks, I witnessed my Muslim and Arab communities exempted, exceptionalized, and cast out of

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rights regimes under the guise of national security. I was alarmed to discover that their political vulnerability as immigrants, religious minorities, and ethnic minorities made them more prone to abuse, contradicting the values of a nation that boasts a robust civil rights regime for its people, including the immigrants who arrive on its shores each year. Their multiple subordinated identities made Muslims and Arabs easy prey for a nation seeking retribution for the murder of 3,000 civilians on its soil.

My decision to go to law school in that historical moment turned out to be timely, but not for the reasons I expected. That fateful day of September 11, 2001 would be the start of a two-decade journey working alongside other lawyers in defense of the rule of law – not in Egypt – but right here in the United States. It did not take long for me to come to the painful realization that the race and religion of groups targeted by rights-infringing national security practices exempts them from some of the most basic rule of law principles.¹

Laws neutral on their face were weaponized to surveil, investigate, deport, and harass Muslims and Arabs in the United States. International law was flouted to kidnap, assassinate, torture, and indefinitely detain Muslims in an extraordinary rendition program.² Had Guantanamo Bay not been controlled by the United States, we would have unflinchingly called it a gulag. Its Muslim prisoners were othered as terrorists, savages, and “enemy combatants,” cast out of the rights regime of our “civilized world.”³ Within our own borders, tens of thousands of Muslims experienced civil and human rights violations in immigration and counterterrorism enforcement due to an anything but neutral rationale that “our” national security takes precedence over “their” individual rights.

While the scope of national security laws deployed to (over) police Muslim American communities is too far-reaching to exhume here, this essay expounds on three counterterrorism practices that have been most harmful to their civil and dignitary rights: 1) FBI “voluntary” interviews, 2) physical and electronic surveillance, and 3) predatory sting operations led by dubious informants and overzealous undercover agents. All three have been wildly successful in chilling religious freedom, censoring political dissent, and making Muslim-Americans feel like second-class citizens.⁴ My critiques center on both law and selective enforcement because the two cannot be disconnected, whether in national security

1. KATHERYN MONTALBANO, *GOVERNMENT SURVEILLANCE OF RELIGIOUS EXPRESSION: MORMONS, QUAKERS, AND MUSLIMS IN THE UNITED STATES* (2019) (examining various cases where the government subjected religious minorities to heightened surveillance and prosecutions).

2. See Bernard Lewis, *The Roots of Muslim Rage: Why so Many Muslims deeply resent the West, and why their bitterness will not easily be mollified*, ATLANTIC (September 1990), <https://perma.cc/GW2U-KG92>; Robert Johnson, *Extraordinary Rendition: A Wrong Without a Right*, 43 U. RICH. L. REV. 1135 (2009).

3. Remarks at the Chief Executive Officers Summit in Shanghai, II Pub. Papers 1273 (Oct. 20, 2001), <https://perma.cc/E7W2-24ZN>. See generally Sherene Razack, *CASTING OUT: THE EVICTION OF MUSLIMS FROM WESTERN LAW AND POLITICS* (2008) (providing a political and historical context underpinning the failure of law to protect Muslims’ civil rights).

4. Paul Vitello & Kirk Semple, *Muslims Say F.B.I. Tactics Sow Anger and Fear*, N.Y. TIMES (Dec. 17, 2009), <https://perma.cc/UR4V-796C>; see MONTALBANO, *supra* note 1, at 123-127 (describing how

targeting Muslims or criminal justice targeting African Americans. Law alone cannot solve racialized counterterrorism because it is in essence a cultural problem.

Regardless how neutral laws may be on their face, their enforcement will continue to be racist (among other disparate outcomes) so long as racism permeates American society. Hence the motto of the twenty-first century civil rights movement is “Black Lives Matter.” Until that declaration is taken as true by police officers, prosecutors, judges, and the general public, no amount of legal reforms can protect African American communities from the ravages of a facially neutral but anti-Black racist criminal justice system. The same applies to Muslims and Arabs in the national security context. Until FBI agents, the intelligence community, diplomats, prosecutors, immigration officers, and judges understand that terrorism by Muslims arises from individual and localized socio-political causes, the national security apparatus will continue to primarily target Muslims.

I. RACE AND COUNTERTERRORISM

The most distinguishing feature of counterterrorism is its preventive enforcement paradigm. In contrast to traditional crime wherein law enforcement usually become involved after the crime has occurred, terrorism crimes pose such a high risk of human death and massive property destruction that government agents engage in predictive policing as a matter of policy.⁵ On its face, preventing terrorism appears to be a sound security measure, but in practice it has proven to be susceptible to racial politics and anti-Muslim stereotypes.⁶ FBI agents, immigration officials, and local police treat religious and dissident Muslims as presumptively suspect. These fallacies infect how investigative authority and prosecutorial discretion has been exercised since the 9/11 terrorist attacks.

The racial politics of counterterrorism defines success more by the number of Muslim men the government can put in jail or deport (regardless how inept, young, mentally ill, or otherwise incompetent they may be) than preventing real

Muslims were afraid to attend mosques, or speak to others when they did attend, out of fear the government sent informants to spy on them).

5. Samuel Knight, Holder Addresses U.N. Counter-Terrorism Symposium, MAIN JUST. (Sept. 19, 2011), <http://perma.law.harvard.edu/OC8oEs6ENSi>; See also Robert S. Mueller, III, Director, Fed. Bureau of Investigation, Statement Before the Senate Committee on Homeland Security and Governmental Affairs (Sept. 22, 2010), <https://perma.cc/ZP5D-MNFP> (stating that the FBI’s number one priority is the prevention of terrorist attacks through working with state and local law enforcement to share information and conduct operations to prevent and dismantle terrorists plots); *Written Testimony of U.S. Department of Homeland Security Secretary Janet Napolitano for a Senate Committee on Homeland Security and Governmental Affairs Hearing Titled “Homeland Threats and Agency Responses,”* HOMELAND SEC. (Sept. 19, 2012), <https://perma.cc/43PN-RQ5V> (stating preventing terrorism is one of DHS’s core missions and describing CVE and community policing as ways of achieving prevention of terrorism at the community and local level); EXEC. OFF. OF THE PRESIDENT, STRATEGIC IMPLEMENTATION PLAN FOR EMPOWERING LOCAL PARTNERS TO PREVENT VIOLENT EXTREMISM IN THE UNITED STATES 16 (2011), <https://perma.cc/CZL8-VUES> (outlining President Obama’s national security strategy).

6. Nancy Murray, *Profiling in the Age of Total Information Awareness*, 52(2) RACE & CLASS, 3 (2010).

terrorist plots. Within the context of systemic racism in the criminal justice system that has been incarcerating black and brown people for generations, this outcome should come as no surprise. Indeed, counterterrorism is implemented by the same law enforcement agencies who criminalize Black men as presumptively dangerous and violent.⁷

The racial double standards in the counterterrorism regime are glaring when aggressive targeting of Muslim communities is compared to the leniency afforded to the White far-right extremists engaging in similar bombastic, extremist rhetoric against Blacks, Latinos, immigrants, Jews, and Muslims.⁸ Indeed, the number of far-right hate groups increased from 497 in 1999 to a peak of 1,018 in 2011, according to the Southern Poverty Law Center (SPLC).⁹ During Donald Trump's presidency, hate groups rose from 917 in 2016 to 1020 in 2018.¹⁰ In 2019, SPLC reported 940 hate groups, of which 155 were white nationalist groups.¹¹ These troubling trends resulted in right wing extremists' involvement in 267 plots or attacks and 91 fatalities since 2015, according to the Washington Post.¹²

And yet, the FBI continued to target Muslims in hundreds of sting operations and prosecutions across the country.¹³ The FBI's failure to take seriously far right-wing extremists for more than a decade culminated in a siege on the Capitol on January 6, 2021 that was intended to halt Congress' certification of Joe Biden as the 46th president of the United States.¹⁴ This begs the question: how could our intelligence and counterterrorism agencies, that have received billions of dollars from Congress, fail to prevent this historic attempted insurgency? I posit that the

7. See generally Margaret Hu, *Algorithmic Jim Crow*, 86 FORDHAM L. REV. 633 (2017) (compares the vetting and screening protocols of citizens and noncitizens to those of the Jim Crow era to demonstrate that they largely fall into the same traditional classifications of race, color, ethnicity, national origin, gender, and religion and create disparate impacts).

8. See, e.g., Janet Reitman, *U.S. Law Enforcement Failed to See the Threat of White Nationalism. Now They Don't Know How to Stop It*, N.Y. TIMES (Nov. 3, 2018), <https://perma.cc/V2CE-G7JH>; Trevor Aaronson, *Terrorism's Double Standard: Violent Far-Right Extremists are Rarely Prosecuted as Terrorists*, INTERCEPT (Mar. 23, 2019, 8:34 AM), <https://perma.cc/9PTY-LXN8>; Sebastian Rotella, *Domestic Terrorism: A More Urgent Threat, but Weaker Laws*, PROPUBLICA (Jan. 7, 2021), <https://perma.cc/345H-D3FB>.

9. Mark Potok, *The Radical Right was More Successful in Entering the Political Mainstream Last Year Than in Half a Century. How Did it Happen?* INTEL. REP. (Feb. 15, 2017), <https://perma.cc/W4RW-DCJJ>.

10. S. POVERTY L. CTR., *THE YEAR IN HATE AND EXTREMISM 2019* 11 (2020), <https://perma.cc/GH8S-BGMQ>.

11. *Id.*

12. Robert O'Harrow Jr., Andrew Ba Tran & Derek Hawkins, *The Rise of Domestic Extremism in America*, WASH. POST (April 12, 2021), <https://perma.cc/TF7Z-92XP>.

13. See SAHAR F. AZIZ, *MANUFACTURING A MUSLIM THREAT: ENTRAPMENT AND STING OPERATIONS* (forthcoming 2022) [hereinafter AZIZ, *MANUFACTURING A MUSLIM THREAT*] (analyzing in depth over 580 terrorism related prosecutions against Muslim defendants).

14. Mark Mazzetti, Helene Cooper, Jennifer Steinhauer, Zolan Kanno-Youngs & Luke Broadwater, *Inside a Deadly Siege: How a String of Failures Led to a Dark Day at the Capitol*, N.Y. TIMES (June 8, 2021), <https://perma.cc/2P3B-SM4F>; see also Andrew Selsky, *Capitol Attack Reflects US Extremism Evolution Over Decades*, AP NEWS (Jan. 23, 2021), <https://perma.cc/PT5W-KP4M>; Ryan Devereaux, *Capitol Attack Was Culmination of Generations of Far-Right Extremism*, INTERCEPT (Jan. 23, 2021), <https://perma.cc/TFQ7-VFXQ>.

race and religion of perpetrators of political violence unduly shapes our government's response.¹⁵

The result is a less safe nation and less free Muslim communities. On the one hand, presumptions that dissent by Whites and Christians is rarely criminal blinds our law enforcement from identifying politically motivated violence by far-right wing groups. On the other hand, presumptions that religious and politically dissident Muslims and Arabs are potential terrorists casts a broad net of suspicion over millions of innocent people. This simultaneous under-policing and over-policing diverts resources towards rights-infringing practices that are ineffective in preventing terrorism. Among the myriad practices deployed by the government, FBI voluntary interviews, terrorist watch listing, physical and online surveillance, and sting operations that criminalize religious practices and political beliefs have been most effective in collectively punishing Muslim communities.

A. *FBI Voluntary Interviews*

Since 9/11, the FBI has conducted tens of thousands of so-called "voluntary interviews" of Muslims at their homes, workplaces, and in public.¹⁶ Despite the U.S. government's claims that they are benign information gathering practices, these interviews are more often a bad-faith tactic used to intimidate and harass Muslims. While FBI voluntary interviews predate 2001, they have been a powerful tool for harassing innocent Muslims who fear that refusal to answer questions places them under more suspicion, not only by the U.S. government, but also in the minds of their co-workers and neighbors watching them.¹⁷ The FBI visits, thus, corroborate negative stereotypes that Muslims are potential terrorists.

Civil rights groups have also raised concerns that FBI interviews are abused to coerce Muslims into serving as informants by intentionally ensnaring the person in a lie.¹⁸ The law permits law enforcement agents to lie and deceive those interviewed. But if the interviewee makes a false statement to the federal agent, he is in violation of 18 U.S.C. § 1001 which carries a five-year prison sentence plus an

15. Sahar F. Aziz, *THE RACIAL MUSLIM: WHEN RACISM QUASHES RELIGIOUS FREEDOM* (2021) [hereinafter AZIZ, *THE RACIAL MUSLIM*]. See Sahar F. Aziz, *Policing Terrorists in the Community*, 5 HARV. NAT'L SEC. L.J. 147 (2014) [hereinafter Aziz, *Policing Terrorists*].

16. *FBI Ends Interviewing of U.S. Iraqis; No Spies Found*, BALT. SUN (Apr. 18, 2003, 3:00 AM), <https://perma.cc/44WR-3WKV>; See Mary Beth Sheridan, *FBI Interviews Muslims Throughout Nation*, S. FLA. SUN SENTINEL (July 19, 2004), <https://perma.cc/FVW8-AEUV?type=image>; *ACLU Hot Line to Offer Advice on FBI Interviews*, BALT. SUN (Dec. 18, 2001), <https://perma.cc/BWW2-C7TP> (FBI announced 5,000 voluntary interviews in October 2001); Terry Frieden, *Mueller: FBI Interviews Useful to War in Iraq*, CNN (Mar. 27, 2003, 5:46 PM), <https://perma.cc/QVL8-5DZS>; Diala Shamas, *Where's the Outrage When the FBI Targets Muslims?*, NATION (Oct. 31, 2013), <https://perma.cc/8F2U-2QGZ>.

17. David Olson, *Terrorism Arrests: Mosque Members, Neighbors React*, PRESS ENTER. (Nov. 21, 2012, 11:34 AM), <https://perma.cc/KUN5-P9K8>.

18. Katie Mettler, *FBI Questioned American Muslims in 8 States Over Weekend About Possible Pre-election Terrorism, Says Civil Rights Group*, WASH. POST (Nov. 7, 2016), <https://perma.cc/5FDK-MQDH>.

additional three-year sentence if the statement is related to domestic or international terrorism.¹⁹

In countless cases, a Muslim who is understandably anxious by an FBI visit naively agrees to meet with the agents without a lawyer present in hopes of proving he has nothing to hide.²⁰ The FBI agents often ask questions about his religious practices, political beliefs, travels, and associations, and past statements with the aim of catching him in a lie. A materially false statement, even if not directly terrorism related, gives the FBI leverage to coerce Muslim interviewees into serving as informants or else face criminal charges.²¹ As a result, voluntary interviews have been successful in recruiting Muslims to spy on other Muslims who are then added to the government's dragnet.²²

B. Terrorist Watch Lists

Another counterterrorism measure that has imposed significant burdens and reputational harms on tens of thousands of Muslims are terrorist watch lists. Because the "War on Terror" has been focused nearly exclusively on Muslim-majority countries and their diasporas, the more than one million names on terrorist watchlists are mostly Muslim and Arab names.²³ The Department of Justice Office of the Inspector General, along with numerous civil society watchdog organizations, found the watch lists to be highly inaccurate due to erroneous name spellings, false positives, and a general lack of quality control in the nomination process.²⁴

The consequences have been devastating for Muslims ensnared in a web from which it is nearly impossible to escape—and without any due process rights.²⁵ No notice is sent to someone when they are added to a terrorist watch list. Only when his bank account is closed, he is subjected to secondary screening at the airport each time he travels, or he is barred altogether from air travel does a person discover he may be on a watchlist. No evidence is provided of why the person is on the watch list. And attempts to challenge the listing are futile.²⁶

19. 18 U.S.C § 1001 (1964).

20. David Kroman, *Local Muslims Feel Targeted in FBI Cold Calls*, CROSSCUT (Feb. 22, 2017), <https://perma.cc/G27X-HRG6>.

21. Collin Poirot, *The Anatomy of a Federal Terrorism Prosecution: A Blueprint for Repression and Entrapment*, 5 HRLR ONLINE 61 (2020).

22. Mazin Sidahmed, *How the FBI Coerced This Muslim Immigrant Into Working as an Informant*, DOCUMENTED (Dec. 22, 2020, 7:00 AM), <https://perma.cc/U64J-X8HK>.

23. Evan Simon, *How 'the Terrorist Watch List' Works*, ABC NEWS (June 17, 2016, 6:45 PM), <https://perma.cc/6J4H-XARD>.

24. *The Terrorist Screening and Watchlist Process*, 110th Cong. (2007) (statement of Glenn A. Fine, Inspector Gen., U.S. Dep't of Just.), <https://perma.cc/KTE3-H6U7>.

25. Charlie Savage, *Even Those Cleared of Crimes Can Stay on F.B.I.'s Watch List*, N.Y. TIMES (Sept. 27, 2011), <https://perma.cc/UH6U-BK3E>.

26. Kim Zetter, *How Does the FBI Watch List Work? And Could It Have Prevented Orlando?*, WIRED (June 17, 2016, 7:00 AM), <https://perma.cc/GSS3-UQRZ>; See also Ryan Devereaux, *Secret Terrorism Watchlist Found Unconstitutional in Historic Decision*, INTERCEPT (Sept. 6, 2019, 9:14 AM), <https://perma.cc/SK62-63B7>.

Persons who seek to know the basis for being watch listed are rebuked with the government's refusal to admit or deny, also known as the Glomar response, whether the person is even on the watch list. On the rare occasions when a listee has the resources to go to court, she faces judges who are largely deferential to federal agencies.²⁷ As a result, the mostly Arab and Muslim persons mistakenly placed on a terrorist watch list find themselves in a rule of law free zone. But this is just the tip of the iceberg in the broader regime of surveillance aimed at tracking, regulating, and detaining Muslim bodies in the post-9/11 era.

C. Public Scrutiny and Government Surveillance

For twenty years, Muslim communities have been under heightened scrutiny by the government and the public.²⁸ Names or physical traits resembling Osama Bin Laden, the Taliban, Abu Bakr Al Baghdadi, Anwar Al-Awlaki or the thousands of media images of terrorists in the Middle East trigger suspicions about Muslims by their American coworkers and neighbors. The public's suspicions lead to thousands of groundless calls to the FBI and local police accusing innocent Muslims of terrorism, which in some cases are the basis for FBI voluntary interviews.²⁹

Pervasive Islamophobia has also caused thousands of anti-Muslim hate incidents, of which 763 took place between 2012 and 2018.³⁰ Rather than condemned, violence against Muslims is often legitimized by elected officials' irresponsible and Islamophobic statements.³¹ Two months after the September 11th attacks, then Attorney General John D. Ashcroft during an interview on a conservative radio station described Islam as "a religion in which God requires you to send your son to die for him."³² In 2004, New York Congressman Peter King falsely asserted extremism had spread to 80 percent of the American Muslim population.³³

Islamophobic rhetoric grew dramatically once Donald Trump began his presidential campaign on an anti-Muslim and anti-immigrant platform. At a campaign rally on December 7, 2015, he declared that "Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States until our

27. Dep't of Homeland Sec. v. Ibrahim, 140 S.Ct. 424 (2019) (cert denied).

28. Nausheen Husain & Morgan Greene, *A Suburban Filmmaker Sued to Find Out Why the FBI Was Watching Her Muslim Community: 'It's Weird to Read How They Wrote About Us,'* CHI. TRIBUNE (Jan. 30, 2020, 6:50 AM), <https://perma.cc/HE9Z-88GD>.

29. *Anti-Muslim Activities in the United States in 2012-2018*, NEW AM., <https://perma.cc/YFB5-9QKX>.

30. *Id.*

31. Hannah Allam & Talal Ansari, *State and Local Republican Officials Have Been Bashing Muslims. We Counted.*, BUZZFEED NEWS (Apr. 10, 2018, 8:05 AM), <https://perma.cc/GM8Y-YA7D>. See also Julia Manchester, *Pollster says Anti-Muslim Sentiment Follows Rhetoric of Politicians*, HILL (Oct. 25, 2018), <https://perma.cc/H4PH-C7G9>.

32. Dan Eggen, *Ashcroft Disputes Report on Islam Views*, WASH. POST (Feb. 12, 2002), <https://perma.cc/B4UK-BRDU>.

33. Robert Kolker, *Peter King's Muslim Problem*, N.Y. MAG. (Mar. 4, 2021), <https://perma.cc/RH6E-DDJQ>.

country's representatives can figure out what is going on."³⁴ State legislators followed suit in 2016 when, for example, New Hampshire lawmaker Kenneth Weyler said giving public benefits to "any person or family that practices Islam is aiding and abetting the enemy."³⁵ That same year, Jason Rapert, a state senator in Arkansas, said on Facebook that Muslims "wait for every opportunity to convert Americans to Islam or kill the infidels — that is what their holy book the Koran instructs them to do."³⁶

Public suspicion is accompanied with stealth government surveillance as well as intelligence gathering in plain sight. In so-called community engagement' programs, Muslim communities agree to engage with federal and local agents for purposes of resolving systemic civil rights violations arising from national security practices and anti-Muslim racism.³⁷ But instead of finding good faith partners, they eventually discover the government is there to spy or recruit informants, not to take seriously Muslims' grievances.

In my role as a Senior Policy Advisor at the Office for Civil Rights and Civil Liberties at the U.S. Department of Homeland Security, I worked on the community engagement team tasked with addressing Muslim, Arab, and South Asian communities' civil rights concerns. It did not take long for me to realize these meetings were a combination of public relations maneuvers aimed to diffuse Muslims' justifiable distrust of the U.S. government as well as create opportunities for FBI agents and police to infiltrate local Muslim communities. Under the guise of seemingly benign community outreach, law enforcement was building their rolodex of potential informants (official or unofficial) as they mapped Muslim communities within their jurisdictions. Few resources, much less political will, was committed to solving repeated complaints about the terrorist watch lists, intimidating FBI visits, unduly delayed immigration applications, surveillance, and sting operations targeting mosques and imams.³⁸

Thus, it came as no surprise to many of us in the trenches of combating post-9/11 discrimination when the Associated Press broke the story in 2011 that the New York Police Department (NYPD) had a special surveillance unit for Muslim student groups, mosques, and Muslim-owned businesses across the Tri-State area.³⁹ Systemic surveillance of Muslims, started in 2002, was part of the NYPD's counterterrorism program staffed with 1,000 police officers and operating with a \$100

34. 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://perma.cc/25WY-Q4XV>.

35. Allam & Ansari, *supra* note 31.

36. *Id.*

37. Azmat Khan, *Docs Reveal FBI Used Muslim Outreach As Guise to Collect Intel*, PBS (Mar. 28, 2021), <https://perma.cc/V5QV-J6NA>; See also AZIZ, *THE RACIAL MUSLIM*, *supra* note 15.

38. For a comprehensive critique of the U.S. government's community engagement initiatives, later renamed to Countering Violent Extremism under the Obama administration, see Aziz, *Policing Terrorists*, *supra* note 15.

39. Matt Apuzzo & Adam Goldman, *Documents: NYPD Gathered Intelligence on 250-Plus Mosques, Student Groups in Terrorist Hunt*, ASSOCIATED PRESS (Sept. 6, 2011), <https://perma.cc/V26L-WDLT>. See also MONTALBANO, *supra* note 1, at 120-121.

million budget.⁴⁰ Likewise, in the first decade after September 11th, the U.S. Department of Justice issued more than 250 press releases boasting indictments of Muslim men on terrorism related charges.⁴¹ A majority of these cases involved surveillance by informants, undercover agents, and electronic surveillance authorized by the Foreign Intelligence Surveillance Act (FISA).

The PATRIOT Act, passed after an unprecedented 45 days of Congressional deliberation, amended FISA to grant the FBI expanded surveillance powers.⁴² Consequently, the FBI and federal prosecutors aggressively use FISA to conduct surveillance on tens of thousands of Muslims. Indeed, the number of FISA warrants more than doubled from 1,012 in 2000 to 2,370 in 2007.⁴³ Between 2008 and 2017, the annual number of FISA warrants ranged from 2,083 to 948.⁴⁴

The most significant statutory amendment to FISA is Section 218 of the PATRIOT Act. It expands the applicability of FISA to investigations where foreign intelligence gathering is merely “a significant” purpose of the investigation. This new criterion is intentionally easier to satisfy than the previous narrower (and higher) standard of “the sole or primary purpose.”⁴⁵ Furthermore, Section 206 extends the government’s ability to “follow the target” for purposes of surveillance rather than tie the surveillance to a particular facility and provider. If a FISA warrant target uses someone else’s phone or computer, that person’s communications may be collected. Among immigrant Muslims whose friends and families are predominantly Muslim, Section 206 increases the number of innocent Muslims ensnared in a counterterrorism investigation.

The duration of surveillance is also lengthened. Section 207 permits electronic surveillance and physical search of certain agents of foreign powers and nonresident alien members of international groups for 120 days, with extensions for periods of up to one year. Finally, Section 216 of the PATRIOT Act allows the FBI to obtain a pen/trap order by merely certifying “that the information likely to be obtained is foreign intelligence information not concerning a United States person or is *relevant* to an investigation to protect against international terrorism or clandestine intelligence activities.” Prior to this amendment, the government had to prove the surveillance target is “an agent of a foreign power”—a standard intended to protect U.S. citizens from government surveillance authorized by a secret FISA court in secret proceedings.⁴⁶

40. MONTALBANO, *supra* note 1, at 137.

41. In the author’s database of 586 terrorism-related court cases against Muslim defendants, 263 were filed between 2001 and 2010.

42. *Oversight of the USA Patriot Act, Hearings Before the S. Comm. on the Judiciary*, 109th Cong. (2005) (statement of Alberto R. Gonzales, U.S. Att’y Gen., and Robert S. Mueller, Director, Fed. Bureau of Investigation), <https://perma.cc/SU4L-GK9Y>; *See also Surveillance Under the USA/Patriot Act*, ACLU, <https://perma.cc/ASY4-N36E>.

43. *Foreign Intelligence Surveillance Act Court Orders 1979-2017*, ELEC. PRIV. INFO. CTR., <https://perma.cc/HZ7S-9QAM>.

44. *Id.*

45. *USA Patriot Act*, ELEC. PRIV. INFO. CTR., <https://perma.cc/S6SN-G6CR>.

46. *Id.*

Not coincidentally, these provisions had been proposed before 2001 and rejected by Congress, on reasonable grounds that expanded surveillance authorities threatened Americans' civil liberties.⁴⁷ Only when justifications for such laws emphasized securing the nation from "Muslim terrorists" did elected officials (and the public), agree to legal changes that ultimately weaken the rule of law.

II. MANUFACTURING "MUSLIM TERRORISM" THROUGH PREDATORY STING OPERATIONS

Surveillance is integral to another investigative tactic aggressively used against Muslims—sting operations. Findings from my database of five hundred and seventy-six terrorism related cases against Muslims since 2001 brings into sharp relief the extent to which the FBI targets Muslims for the purpose of boosting anti-terrorism prosecutions. Two hundred and fifty cases entailed sting operations targeting young, vulnerable Muslim men in fake terrorist plots. Dubious informants and undercover agents played leading roles in developing and implementing the fake plot. In many cases, there were plots that would not have occurred but for the government operative identifying, contacting, and manipulating the Muslim male target. Manufactured illegal activities range from giving money to an undercover agent the target believes is an ISIS or Al Qaeda member and planning to travel abroad to fight for ISIS, Al Qaeda, or Al Shabab, to planning to bomb a civilian or military location within the United States.⁴⁸

Because the number of Muslims in the US who are real terrorists is sparse, the FBI has resorted to deploying its formidable resources towards creating fake terrorists out of bombastic and hapless men who spew extremist rhetoric. Despite clear scholarly consensus that there is no theoretical model, much less empirical support, that accurately predicts whether a person will engage in political violence, law enforcement unduly relies on dubious radicalization theories in identifying their targets.⁴⁹ Attempting to explain why and how a person becomes a terrorist, scholars and policy makers offer a hodgepodge of unproven theories that effectively profile and criminalize Muslims who hold dissident political beliefs outside prevailing norms.⁵⁰ Some of these so-called radicalization theories

47. Jeffrey Rosen, *The Patriot Act Gives Too Much Power to Law Enforcement*, N.Y. TIMES (Sept. 8, 2011, 11:54 AM), <https://perma.cc/F9H7-HEDX>; ACLU, *supra* note 42.

48. *Trial and Terror*, INTERCEPT, <https://perma.cc/76Y2-JT5W>, (data last updated May 14, 2021). See also AZIZ, MANUFACTURING A MUSLIM THREAT, *supra* note 13.

49. See, e.g., Robin L. Thompson, *Radicalization and the Use of Social Media*, 4 J. STRATEGIC SEC. 167 167 (2011); Randy Borum, *Radicalization into Violent Extremism I: A Review of Social Science Theories*, 4 J. STRATEGIC SEC. 7 (2011); Randy Borum, *Radicalization into Violent Extremism II: A Review of Conceptual Models of Empirical Research*, 4 J. STRATEGIC SEC. 37 (2011); Amna Akbar, *Policing "Radicalization,"* 3 U.C. IRVINE L. REV. 809 (2020); JOHN HORGAN, *THE PSYCHOLOGY OF TERRORISM* 7, 33 (2d ed. 2014) (noting that despite the increase in publications over the past 20 years, few of the articles are rigorous and research-based and instead narrative or prescriptive); Arun Kundnani, *Radicalisation: The Journey of a Concept*, 54 RACE & CLASS 3 (2012).

50. MIKE GERMAN, *DISRUPT, DISCREDIT, AND DIVIDE: HOW THE FBI DAMAGES DEMOCRACY* 111–12 (2019); Jamie Bartlett & Carl Miller, *The Edge of Violence: Towards Telling the Difference Between Violent and Non-Violent Radicalization*, 24 TERRORISM & POL. VIOLENCE 1, 3 (2012).

go so far as interpreting an increase in religiosity by young Muslim men as a dangerous sign of ‘radicalization’ on the path toward becoming a terrorist.⁵¹

In a typical sting operation, informants and undercover agents manipulate, coerce, or trick the Muslim male targets.⁵² Persistent correspondence and befriending aims to create a social network of a small number of people who criticize the US government, glorify ISIS and Al Qaeda, and exchange bombastic, extremist ideas.⁵³ Left to their own devices, most of these inept, indigent, and socially marginalized men would merely post extremist content and spew extremist speech on social media accounts that are eventually shut down by the hosts.⁵⁴ However, the FBI sting operations induce these Muslims into fake plots that range from outright terrorist attacks on U.S. soil to providing material or financial assistance to government operatives pretending to be members of ISIS or Al Qaeda.

Prior to the ubiquitous use of social media, informants and undercover agents identified targets by attending mosques, Muslim student association meetings, and Muslim-owned cafes; hence the importance of the government’s community outreach programs.⁵⁵ In the past decade, government operatives have identified their targets mostly online. Undercover agents then develop a relationship through in-person meetings during which they meticulously ensnare him into a fake terrorist act.⁵⁶ With each manufactured plot, the Department of Justice justifies demands for more public funds to combat a supposed homegrown terrorist threat inflated by the same entity asking for the funding.

When there is no evidence of terrorism, the FBI charges a suspect with making a false statement or possession of a firearm by a convicted felon, which coupled with terrorism enhancements can result in a hefty prison sentence.⁵⁷ This charging of lesser offenses is not unique to the counterterrorism context. Indeed, law enforcement call it the “Al Capone approach” where suspected criminals are “taken off the street” on minor offenses, much as the famous gangster was finally imprisoned for tax evasion.⁵⁸ The consequence of these various bad faith tactics

51. See generally MITCHELL D. SILBER & ARVIN BHATT, N.Y. POLICE DEP’T, *RADICALIZATION IN THE WEST: THE HOMEGROWN THREAT* (2007), <https://perma.cc/PK57-R65Q>.

52. John Horgan, *WALKING AWAY FROM TERRORISM: ACCOUNTS OF DISENGAGEMENT FROM RADICAL AND EXTREMIST MOVEMENTS* 13 (2009).

53. See generally Jesse J. Norris & Hanna Grol-Prokopczyk, *Estimating the Prevalence of Entrapment in Post-9/11 Terrorism Cases*, 105 J. CRIM. L. CRIMINOLOGY 609 (2015).

54. Criminal Complaint at 8, *United States v. Jonathan Xie*, 2:19-mj-03676 (D.N.J. May 21, 2019) (noting the defendant’s extensive lists of anti-American and anti-Semitic videos on social media); see also Criminal Complaint, *United States v. Jones*, 1:17-cr-00236 (N.D. Ill. Apr. 11, 2017) (noting that Schimenti’s accounts had numerous red flags and were subsequently shut down).

55. See Aziz, *Policing Terrorists*, *supra* note 15; see also Sahar F. Aziz, *Losing the ‘War of Ideas’: A Critique of Countering Violent Extremism Programs*, 52 TEX. INT’L L.J. 255 (2017).

56. FED. BUREAU OF INVESTIGATION, *COUNTERTERRORISM POLICY DIRECTIVE AND POLICY GUIDE* 52–83 (2015).

57. 18 U.S.C.A. § 922(g)(1) (2015).

58. JEROME P. BELOPIERA, CONG. RSCH. SERV., R41780, *THE FEDERAL BUREAU OF INVESTIGATION AND TERRORISM INVESTIGATIONS* 19 (2013).

is an inflation of terrorism convictions and an exaggerated sense of an “Islamic terrorism” threat.⁵⁹

The glaring contradictions between the U.S. government’s treatment of Muslim and White Christian extremists further evince how race infects counterterrorism. Despite an exponential rise in far-right groups, radio stations, websites, and leaders with tens of millions of White Supremacist followers, the government appears unperturbed.⁶⁰ Indeed, when a U.S. Department of Homeland Security intelligence report in 2009 warned of the rise in right-wing extremism, then-Secretary Janet Napolitano was pressured to retract the report and apologize in a Congressional hearing.⁶¹

The Trump era exposed and mainstreamed White nativism while continuing anti-Muslim counterterrorism practices. Only then, did many Americans finally realize their nation is not immune from the fear-mongering often deployed by authoritarian regimes to strip citizens of their liberty under the auspices of preserving the nation’s security.

III. INSIGHTS FOR FUTURE POLICY MAKERS

The racialized national security practices described above do not encompass all the myriad ways in which Muslims as a group have been subordinated over the past two decades.⁶² Nor is racialized law enforcement unique to Muslims. Some of the same police officers, federal agents, judges and prosecutors who racially profile, investigate, prosecute, and sentence African Americans and Latino/as enforce the national security regime.⁶³ They are acculturated—in society, school, and work—to associate specific criminal activity with certain minority groups.

59. See Norris & Grol-Prokopczyk, *supra* note 53, at 617–21 (“This results, in their view, in convictions that ostensibly justify the FBI’s vast counterterrorism budget, but which in fact do nothing to advance public safety.”).

60. SETH G. JONES, CATRINA DOXSEE, & NICHOLAS HARRINGTON, CSIS, *THE ESCALATING TERRORISM PROBLEM IN THE UNITED STATES* (2020), <https://perma.cc/9USW-9ZUD>; See also Vincent A. Auger, *Right-Wing Terror: A Fifth Global War?*, 14 PERSPECTIVES ON TERRORISM 87 (2020); Nadia Banteka, *The Rise of the Extreme Right and the Crime of Terrorism: Ideology, Mobilization, and the Case of the Golden Dawn*, 29 DUKE J. OF COMP. & INT’L L. 127 (2019).

61. Brian Montopoli, *DHS Report Warns of Right Wing Extremists*, NBC NEWS (Apr. 14, 2009, 3:38 PM), <https://perma.cc/AM2M-KMYG> (referring to DEP’T OF HOMELAND SEC., *RIGHTWING EXTREMISM: CURRENT ECONOMIC AND POLITICAL CLIMATE FUELING RESURGENCE IN RADICALIZATION AND RECRUITMENT* (2009), <https://perma.cc/D8CM-SV85>); *Homeland security chief apologizes to veteran groups*, CNN (Apr. 16, 2009), <https://perma.cc/N9VK-B74J>. See also Spencer Ackerman, *DHS Crushed This Analyst for Warning about Far-Right Terror*, WIRED (Aug. 07, 2012), <https://perma.cc/79PS-WWZ8>; Daryl Johnson, *I warned of right-wing violence in 2009. Republicans objected. I was right.*, WASH. POST. (Aug. 21, 2017), <https://perma.cc/SSK8-NPWL>.

62. For additional articles on the disparate impact of racialized national security practices, see Aziz, *Policing Terrorists*, *supra* note 15; Sahar F. Aziz, *Fear of a Black and Brown Internet: Policing Online Activism*, 100 B.U. L. REV. 1151 (2020); Sahar F. Aziz, *A Muslim Registry: The Precursor to Internment?*, 2018 B.Y.U. L. REV. 779 (2018); Sahar F. Aziz, *Caught in a Preventive Dragnet: Selective Counterterrorism in a Post-9/11 America*, 47 GONZ. L. REV. 429 (2011).

63. James Forman Jr., *Exporting Harshness: How the War on Crime Helped Make the War on Terror Possible*, 33 N.Y.U. REV. L. & SOC. CHANGE 331 (2009).

While changing this reality requires an intergenerational, multi-pronged effort to upend White Judeo-Christian dominance from law and society, I offer three modest reforms that if practiced can bolster the rule of law: 1) depoliticize national security enforcement, 2) improve hiring standards and qualifications of national security professionals to include language and cultural competency, 3) racially and ethnically diversify national security agencies.

A. *Be a Professional, Not a Politician*

In every country, national security is easily (and often) politicized.⁶⁴ Politicians invoke national security when attempting to push through unpopular policies or distract the public from their governance failures. Fear and doomsday scenarios of war scare citizens into acquiescing to unnecessary wars, erosions of civil liberties, and scapegoating minorities.⁶⁵ The inherently political nature of national security, therefore, imposes significant pressures on bureaucrats, law enforcement, prosecutors, and judges to err on the side of over-policing—especially when the targets are approximately 5 million powerless Muslims in a country of 330 million with a Christian majority. For many elected officials and the legal elites, the political calculus of ensnaring an innocent person is worth the cost of possibly missing one guilty person who commits terrorism. This approach, however, is antithetical to the rule of law.

As a result, policy makers should bolster processes that shield enforcers of national security from political pressure while simultaneously acculturating them to prioritize the basic tenets of the rule of law. No one is above the law, meaningful due process is granted to those accused of wrongdoing, laws are applied consistently and transparently, and disputes are adjudicated by impartial arbiters. All of this requires a high level of professionalism that prioritizes ethics, fairness, and

64. Rachel Kleinfeld, *The Politicization of Our Security Institutions*, JUST SEC. (April 25, 2018), <https://perma.cc/B6W9-K4PD>.

65. As George W. Bush stated in his radio address to the nation, “The attacks of September the 11, 2001 showed what the enemies of America did with four airplanes. We will not wait to see what terrorists or terror states could do with weapons of mass destruction. We are determined to confront threats wherever they arise. And, as a last resort, we must be willing to use military force. We are doing everything we can to avoid war in Iraq. But if Saddam Hussein does not disarm peacefully, he will be disarmed by force.” PRESIDENT’S RADIO ADDRESS, 39 WEEKLY COMP. PRES. DOC. 313. As George W. Bush stated in his address to the nation on the signing of the USA Patriot Act of 2001, “Good morning and welcome to the White House. Today, we take an essential step in defeating terrorism, while protecting the constitutional rights of all Americans. With my signature, this law will give intelligence and law enforcement officials important new tools to fight a present danger. The changes, effective today, will help counter a threat like no other our nation has ever faced. We’ve seen the enemy, and the murder of thousands of innocent, unsuspecting people. They recognize no barrier of morality. They have no conscience. The terrorists cannot be reasoned with.” PRESIDENTIAL STATEMENT ON SIGNING THE USA PATRIOT ACT OF 2001, 37 WEEKLY COMP. PRES. DOC. 1550. Trump on his desire to enact a Muslim Ban during the 2016 presidential campaign, “I think Islam hates us. There is something – there is something there that is a tremendous hatred there. There’s a tremendous hatred. We have to get to the bottom of it. There’s an unbelievable hatred of us. . . we can’t allow people coming into this country who have this hatred of the United States and of people who are not Muslim.” Theodore Schleifer, *Donald Trump: ‘I think Islam hates us,’* CNN (Mar. 10, 2016, 5:56 PM), <https://perma.cc/EE65-8FHR>.

equity above political agendas. Relatedly, rewards and disincentives should clearly communicate the types of behavior that is discouraged, such as racial profiling, inflating investigative and conviction rates, and exploitation of communities' vulnerabilities. Because wrongdoing is more often observed by insiders, whistleblower laws also must be strengthened to protect professionals who attempt to hold co-workers or supervisors accountable.⁶⁶

Only when those entrusted with preserving our nation's security are professionals, not mere politicians chasing votes, campaign donations, or public accolade can counterterrorism enforcement adhere to the rule of law. Toward that end, the standards and qualifications for hiring such professionals warrant strengthening.

B. Improve Standards and Qualifications in Hiring National Security Professionals

On September 11, 2001, the FBI had only a handful of agents fluent in Arabic or Dari.⁶⁷ Deep knowledge of the Middle East, North Africa, and Muslim societies was also in short supply. Language and cultural competency only worsened at the state and local level. Agents did not understand the differences between Shi'a and Sunni, Hamas and Hezbollah, Iraq and Iran, the Muslim Brotherhood and Al Qaeda, resulting in disastrous counterterrorism strategies. Politicians revealed their own ignorance when alleging Saddam Hussein, a staunch secular Ba'athist, supported Osama Bin Laden, a staunch pan-Islamist.⁶⁸ Government officials sloppily conflated Salafism and Wahhabism with terrorism.

Analysts' lack of fluency in the dialects of the Middle East, North Africa, and Afghanistan further constrained their ability to conduct primary source research, which allowed Islamophobic pundits to unduly influence counterterrorism enforcement.⁶⁹ Such pervasive ignorance within powerful government agencies coupled with the heightened politicization of counterterrorism resulted in systemic rights abuses against Muslim, Arab, and South Asians. For counterterrorism to adhere to the rule of law, the government officials who wield enforcement power must be professionals conversant in the diverse cultures, history, and languages of one of the most complex regions in the world.

As such, intelligence analysts and counterterrorism agents should be required to hold graduate degrees in regional studies, possess fluency in at least one language spoken in the region, and have lived in Muslim societies for an extended period. Current formal education in Middle East, Central Asian, and South Asian

66. BRENNAN CTR. FOR JUST., NATIONAL SECURITY WHISTLEBLOWING: A GAP IN THE LAW, <https://perma.cc/8ZV3-KHD8>.

67. Dan Eggen, *FBI Agents Still Lacking Arabic Skills 33 of 12,000 Have Some Proficiency*, WASH. POST (October 11, 2006), <https://perma.cc/DX97-ZWTE>.

68. Linda Feldmann, *The Impact of Bush Linking 9/11 and Iraq*, CHRISTIAN SCI. MONITOR (March 14, 2003), <https://perma.cc/UMQ8-WS2L>.

69. Tabassum Zakaria, *U.S. Spy Agencies Struggle With Post-9/11 Languages*, REUTERS (Sept. 19, 2011, 2:15 PM), <https://perma.cc/TA8J-HFVZ>; See also Scott Shane, Mathew Rosenberg & Eric Lipton, *Trump Pushes Dark View of Islam to Center of U.S. Policy-Making*, N.Y. TIMES (Feb. 1, 2017), <https://perma.cc/8EH5-XZUL>.

studies in universities is under-funded, and as a result superficial. Making matters worse, the limited professional training offered to government agents tends to be provided by Islamophobes with no formal training or expertise.⁷⁰ Their only qualification is often a personal relationship with the government employee tasked with hiring trainers, who may also hold biased views about Islam and Muslims.

At some point, counterterrorism agencies realized their staff lacked the needed expertise, causing them to seek to hire American Muslims of Middle Eastern or South Asian origin as if their identities axiomatically made them experts in the religions, cultures, and languages of the region.⁷¹ This led to another common phenomena in a racialized national security regime—token hiring of minorities.

C. Do Not Tokenize Muslims and Arabs in Government

When faced with accusations of racial or religious bias, government agencies tend to either reject outright the criticism, or pursue superficial changes they misrepresent as real reform. Rarely are officials willing to engage in the harder work of changing the structures and people who perpetuate deeply entrenched systemic bias.⁷²

In counterterrorism, rather than hire experts with the years of education and training necessary to effectively perform their duties, the government hired primarily White Americans whose racial identity bestowed on them a presumption of loyalty.⁷³ But as the media exposed more civil rights violations against Muslim communities, the government begrudgingly hired more Muslim and Arab Americans. While this cohort of new hires accepted these positions with the expectation of reforming rights-infringing policies and practices from within, some found themselves treated as tokens paraded in front of their communities for public relations.⁷⁴

70. Spencer Ackerman, *FBI Teaches Agents: 'Mainstream' Muslims Are 'Violent, Radical.'* WIRED (Sept. 14, 2011, 8:45 PM), <https://perma.cc/2KCU-BGPD>. See also ACLU, *ACLU EYE ON THE FBI: THE FBI'S USE OF ANTI-ARAB AND ANTI-MUSLIM COUNTERTERRORISM TRAINING MATERIALS*, (Oct. 20, 2011), <https://perma.cc/L75S-GKN9>; Al-Jazeera Investigative Unit, *Ex-FBI agent caught teaching police Islamophobic ideas*, AL-JAZEERA (May 14, 2018), <https://perma.cc/9RCL-SXVD>.

71. See, e.g., National Security Diversity and Inclusion Workforce Act of 2021, H.R. 1225, 117th Cong. (1st Sess. 2021).

72. Dorothy E. Roberts, *Constructing a Criminal Justice System Free of Racial Bias: An Abolitionist Framework*, 39 COLUM. HUM. RTS. L. REV. 261 (2007-2008).

73. Democracy in National Security Network, *Bringing More Diversity to the National Security Arena*, NEW AM. (Dec. 13, 2018), <https://perma.cc/HN2G-PCZ3>; Rep. Bennie G. Thompson (D-Miss.), *Commitments to Diversity in National Security Must go Beyond Black History Month*, HILL (Feb. 28, 2020, 9:30 AM), <https://perma.cc/EZ37-RK7E>; Jack Detsch, *Demonstrations Prompt National Security Community Push for Diversity*, FOREIGN POL'Y (June 9, 2020, 11:00 AM), <https://perma.cc/TD8T-XFYQ>; Ursula Knudsen-Latta, *Lack of Diversity Among America's Diplomats is a National Security Crisis*, FRIENDS COMM. ON NAT'L LEGIS. (Mar. 18, 2021), <https://perma.cc/6UMK-M5T8>.

74. Amani Al-Khatahtbeh, *Rumana Ahmed on Working in the White House as a Muslim Woman*, TEEN VOGUE (Mar. 27, 2017), <https://perma.cc/4LG5-6NFA>; Rumana Ahmed, *I was a Muslim in Trump's White House*, THE ATLANTIC, (Feb. 23, 2017), <https://perma.cc/JMM7-73SU>.

Few Muslims and Arabs were in senior positions with any real influence, and those who attempted to change policies were purged or marginalized.⁷⁵ This reality only exacerbates the lack of expertise in the government, which contributes to more misguided domestic and international counterterrorism policies. Working for DHS or the FBI soon became stigmatized, as Muslim communities increasingly discredited the U.S. government's stated commitment to the civil liberties and the rule of law. Reform, they concluded, could only be implemented from the outside through litigation, public advocacy, and boycotting government outreach.⁷⁶

Perceptions of illegitimacy is a predictable consequence of authoritarian regimes abroad who abuse law to mistreat their citizens. America is no different—whether in the case of African Americans subjected to excessive force and mass incarceration or Muslim Americans subjected to surveillance, predatory investigative practices, and selective counterterrorism enforcement.⁷⁷

CONCLUSION

With each passing year after 9/11, my optimism faded that anti-Muslim practices were a short-term backlash. One egregious government program, such as massive roundups of Muslim and Arab immigrants in 2001, would be replaced with another equally egregious program, such as initiation of the National Security Entry-Exit Special Registration system (NSEERs). Each time a terrorist attack occurred in a European city, Islamophobic rhetoric by elected and government officials would reach new heights and surveillance of Muslim communities would ratchet up.⁷⁸ Each time the U.S. military invaded a Middle Eastern country or surged its troop deployment in Iraq, another round of FBI voluntary interviews would befall Muslims across the country. And Guantanamo Bay has become America's permanent Muslim gulag.⁷⁹

Ironically, these are precisely the types of rights-infringing practices I expected to confront in preparation for my international work, not here in the United

75. Elizabeth Shakman Hurd, *Muslims Need Not Apply*, BOS. REV. (Jan. 24, 2013), <https://perma.cc/TVY8-JXZS>.

76. INST. FOR SOC. POL'Y AND UNDERSTANDING, DEBATING CVE ENGAGEMENT WITH LAW ENFORCEMENT, HARM OR BENEFIT?, (Sept. 7, 2019), <https://perma.cc/RT56-CMW5>; BRENNAN CTR. FOR JUST., WHY COUNTERING VIOLENT EXTREMISM PROGRAMS ARE BAD POLICY, (Sept. 9, 2019), <https://perma.cc/7S8J-AY3Q>; *CVE = Anti-Muslim Discrimination*, MUSLIM ADVOCATES, <https://perma.cc/YE3F-GPLP>.

77. Sahar F. Aziz, *The Authoritarianization of U.S. Counterterrorism*, 75 WASH. & LEE L. REV. 1573 (2018).

78. Vikram Dodd & Sarah Marsh, *Anti-Muslim Hate Crimes Increase Fivefold Since London Bridge Attacks*, GUARDIAN (June 7, 2017, 4:03 PM), <https://perma.cc/P5E8-T7UC>; Conor Gaffey, *Muslim Woman in Hijab Attacked by Madrid Mob in Possible Hate Crime Following Barcelona Attack*, NEWSWEEK (Aug. 25, 2017, 4:31 AM), <https://perma.cc/P33Q-V4CU>; Hagar Jobse, *Spain's Muslims See Hatred Spike Since Barcelona Attacks*, DW (Aug. 30, 2017), <https://perma.cc/NLK9-BJTS>; Constant Méheut, *After Terror Attacks, Muslims Wonder About Their Place in France*, N.Y. TIMES (Oct. 29, 2020), <https://perma.cc/J3XY-D3XL>.

79. Hum. Rts. Watch, *Guantanamo*, <https://perma.cc/3ZM4-WQ9R>.

States. Stopping such civil and human rights violations in the United States, however, has proven harder than I expected—due in large part to the myth of American exceptionalism. Americans’ engrained belief that they live in a democratic country that upholds the rule of law impedes their ability to acknowledge that the problems in our legal system are not merely opportunities for reform, but indicia of two disparate legal regimes—one for the majority and another for the minority.⁸⁰ So long as the majority of names on the watch list are Muslims and Arabs, discovered problems are merely mistakes that can be fixed. So long as expanded surveillance authorities are exercised primarily against racial minorities and immigrants, there is no reason to worry about the loss of civil liberties. And so long as Muslims, not Whites or Christians, are preyed upon in sting operations that manufacture terrorism, the system is working as it should. Whatever due process, religious freedom, or political rights may be compromised; national security interests prevail.

Two decades since I began law school, I more fully appreciate the wisdom of critical race legal scholar Derrick Bell’s convergence of interest theory.⁸¹ When counterterrorism laws and practices are applied to Whites, Christians, and the political majority, the elites will finally take seriously civil rights violations against Muslims. Until then, we must continue to sound the alarm and combat government overreach in defense of the rule of law in America.

80. Maryam Jamshidi, *The Discriminatory Executive and the Rule of Law*, 92 COLO. L. REV. 77 (2021).

81. Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARVARD L. REV. 518 (1980).
