

Losing the 'War of Ideas' A Critique of Countering Violent Extremism Programs

Rutgers University has made this article freely available. Please share how this access benefits you.
Your story matters. <https://rucore.libraries.rutgers.edu/rutgers-lib/58409/story/>

This work is the **VERSION OF RECORD (VoR)**

This is the fixed version of an article made available by an organization that acts as a publisher by formally and exclusively declaring the article "published". If it is an "early release" article (formally identified as being published even before the compilation of a volume issue and assignment of associated metadata), it is citable via some permanent identifier(s), and final copy-editing, proof corrections, layout, and typesetting have been applied.

Citation to Publisher Aziz, Sahar F. (2017). Losing the 'War of Ideas' A Critique of Countering Violent Extremism Programs. *Texas International law Journal* 52(2), 255-279. <https://heinonline.org/HOL/P?h=hein.journals/tij52&i=279>.

Citation to this Version: Aziz, Sahar F. (2017). Losing the 'War of Ideas' A Critique of Countering Violent Extremism Programs. *Texas International law Journal* 52(2), 255-279. Retrieved from <http://dx.doi.org/doi:10.7282/T38S4TG7>.

Terms of Use: Copyright for scholarly resources published in RUcore is retained by the copyright holder. By virtue of its appearance in this open access medium, you are free to use this resource, with proper attribution, in educational and other non-commercial settings. Other uses, such as reproduction or republication, may require the permission of the copyright holder.

Article begins on next page

Losing the “War of Ideas:” A Critique of Countering Violent Extremism Programs

SAHAR F. AZIZ*

TABLE OF CONTENTS

INTRODUCTION	256
I. THE DUELING DEFINITIONS OF COUNTERING VIOLENT EXTREMISM	258
II. CVE PROGRAMS SECURITIZE MUSLIM COMMUNITIES AND VALIDATE TERRORISTS’ NARRATIVES THAT AMERICA IS AT WAR WITH ISLAM.....	261
III. CVE SIGNALS THAT MUSLIMS ARE A SUSPECT COMMUNITY LEGITIMIZING DISCRIMINATION AND HATE CRIMES	264
IV. CVE PROGRAMS ARE UNNECESSARY TO PREVENT DOMESTIC TERRORISM.....	269
V. CVE PROGRAMS WASTE GOVERNMENT RESOURCES.....	272
VI. FUNDS FOR COMMUNITY DEVELOPMENT AND RESILIENCE SHOULD BE MANAGED BY SOCIAL SERVICE AGENCIES WITHOUT LAW ENFORCEMENT CONTROL.....	276
CONCLUSION	278

* Professor of Law, Texas A&M University School of Law and nonresident fellow at Brookings Doha Center. This Article is based on Congressional testimony I delivered to the United State House of Representatives Homeland Security Committee, Subcommittee on Oversight and Management Efficiency on September 22, 2016. Sahar F. Aziz, Professor of Law, Texas A&M University School of Law, Witness Testimony before the House Oversight and Management Efficiency Subcommittee (Sept. 22, 2016), <https://homeland.house.gov/hearing/identifying-enemy-radical-islamist-terror/> [<https://perma.cc/7MPH-8TNM>]. I thank Professors Shirin Sinnar and Amna Akbar for their insightful feedback. I also thank Kyle Carney, Callie Dodson, and Roxie McCormick for their diligent research assistance.

INTRODUCTION

American national security is a priority that crosses partisan lines. Americans of all races, ethnicities, and religions are equally concerned with ensuring our country is safe from violence—whether politically-motivated terrorism, state violence, or violent crime.¹ And, we all share an interest in preventing violence before it occurs. Toward that end, as citizens and elected officials we have a responsibility to carefully examine whether the methods we use to prevent terrorism are effective.

In 2011, the Obama Administration initiated a Countering Violent Extremism program (CVE) purportedly aimed at tackling the underlying causes that may contribute to terrorism domestically and abroad.² According to the White House, “CVE efforts address the root causes of extremism through community engagement”³ and

[t]he underlying premise of the approach to countering violent extremism in the United States is that (1) communities provide the solution to violent extremism; and (2) CVE efforts are best pursued at the local level, tailored to local dynamics, where local officials continue to build relationships within their communities through established community policing and community outreach mechanisms.⁴

In January 2017, the Trump Administration announced that it would change the name of the program to “Countering Islamic Extremism” to reflect his Administration’s intentions to focus exclusively on terrorism committed by individuals claiming to be Muslim, while excluding terrorism committed by others including white supremacists.⁵ Notwithstanding the outcry surrounding the Trump Administration’s renaming of the program by civil rights advocates, CVE has always been focused on

1. Although there is no single definition of terrorism in U.S. or international law, I define terrorism here as an attack on civilians for larger political objectives, whether couched in religious or secular narratives. See Annual Country Reports on Terrorism, 22 U.S.C. § 2656f(d)(2) (2004) (defining terrorism as “premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents”); DOJ Federal Bureau of Investigation Rules, 28 C.F.R. § 0.85 (2011) (defining terrorism as including “the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives”); U.S. DEP’T OF DEFENSE, Instruction 2000.12, 36 (Mar. 1, 2012), <http://www.dtic.mil/whs/directives/corres/pdf/200012p.pdf> [<https://perma.cc/PBP9-BGWZ>] (defining “terrorist threat” as “[a]n expression of intention, by an individual or group, to commit an act or acts of violence to inflict injury or damage in pursuit of political, religious, or ideological objectives”); Samuel J. Rascoff, *The Law of Homegrown (Counter)Terrorism*, 88 TEX. L. REV. 1715, 1718 n.10 (2010) (explaining the concept of homegrown terrorism); see also Joshua Sinai, *How to Define Terrorism*, 2 PERSP. ON TERRORISM 9, 9–11 (2008) (explaining the difficulty of defining terrorism).

2. Press Release, Office of the Press Secretary, The White House, FACT SHEET: The White House Summit on Countering Violent Extremism (Feb. 18, 2015), <https://www.whitehouse.gov/the-press-office/2015/02/18/fact-sheet-white-house-summit-countering-violent-extremism> [<https://perma.cc/E3PU-V8YZ>] [hereinafter Fact Sheet] (discussing community engagement with religious leaders and communities).

3. *Id.*

4. *Id.*

5. Julia Edwards Ainsley, et al., *Exclusive: Trump to Focus Counter-Extremism Program Solely on Islam – Sources*, REUTERS (Feb. 2, 2017, 10:51 AM), <http://www.reuters.com/article/us-usa-trump-extremists-program-exclusiv-idUSKBN15G5VO> [<https://perma.cc/4QJ7-2KYD>].

Muslim communities in the United States. Trump's actions merely validated what critics of the program claimed all along.⁶

These CVE programs are fundamentally flawed for three reasons: They are counterproductive, unnecessary, and a waste of government resources. Accordingly, this Article addresses four fundamental flaws with CVE: 1) CVE programs securitize Muslim communities and validate terrorists' narratives that America is at war with Islam; 2) CVE programs are unnecessary to prevent domestic terrorism; 3) CVE programs are a waste of government resources; and 4) government funds for community development and resilience should be funded and administered by social service agencies without law enforcement control.

First, CVE programs managed and funded by the U.S. Department of Homeland Security and the U.S. Department of Justice securitize government-community relations such that Muslims are perceived and engaged primarily through a security lens.⁷ Such securitized treatment of an entire religious community is counterproductive. CVE programs put the civil liberties of innocent Americans at risk, signal to the public that Muslims warrant collective suspicion, and confirm international terrorists' narratives that America is at war with Islam.⁸ In turn, terrorists point to such religious profiling and selective targeting of Muslims in their international recruiting efforts to gain followers and sympathy for their perverse political agenda.⁹

Second, CVE programs are unnecessary to preserve American national security. Muslims are no different from other Americans, and need no special government community relations program to encourage reporting of suspicious criminal activity. Indeed, a Duke University report found that Muslim communities across the country have a "positive relationship with their local police or express a willingness to engage with police departments based on principles of fairness and equal treatment."¹⁰ Furthermore, according to the New America Foundation, approximately 60% of

6. See Arun Kundnani, *Spooked! How Not to Prevent Violent Extremism*, INST. OF RACE RELATIONS 6, 35 (2009), <http://s3-eu-west-2.amazonaws.com/wpmedia.outlandish.com/irr/2017/04/26154810/spooked.pdf> [<https://perma.cc/YU3W-B2PN>]; Hina Shamsi, *Will White House Violent Extremism Summit Address Pressing Civil Rights Concerns?*, AM. C.L. UNION (2015), <https://www.aclu.org/blog/national-security/will-white-house-violent-extremism-summit-address-pressing-civil-rights-conce> [<https://perma.cc/4YDX-KGKR>]; Faiza Patel and Meghan Koushik, *Countering Violent Extremism*, BRENNAN CTR. FOR JUSTICE (2017). See generally Sahar F. Aziz, *Policing Terrorists in the Community*, 5 HARV. NAT'L SECURITY J. 147, 147–224 (2014) [hereinafter Aziz, *Policing Terrorists*].

7. See generally ISLAMOPHOBIA IN AMERICA: THE ANATOMY OF INTOLERANCE (Carl W. Enst ed., 2013); JEFFREY L. THOMAS, *SCAPEGOATING ISLAM: INTOLERANCE, SECURITY, AND THE AMERICAN MUSLIM* (2015).

8. See generally Aziz, *Policing Terrorists*, *supra* note 6; Sahar F. Aziz, *Caught in a Preventive Dragnet: Selective Counterterrorism in a Post-9/11 America*, 47 GONZ. L. REV. 429 (2011/12) [hereinafter Aziz, *Caught in a Preventive Dragnet*].

9. See, e.g., Tiffany Ap, *Al-Shabaab Recruit Video with Trump Excerpt: U.S. Is Racist, Anti-Muslim*, CNN (Jan. 3, 2016, 9:20 AM), <http://www.cnn.com/2016/01/02/middleeast/al-shabaab-video-trump/> [<https://perma.cc/GHY8-PZYZ>] (describing an Al Qaeda affiliate recruitment video highlighting U.S.'s history of racism and discrimination of the Muslim community). See generally Aziz, *Caught in a Preventive Dragnet*, *supra* note 8.

10. DAVID SCHANZER ET AL., *THE CHALLENGE AND PROMISE OF USING COMMUNITY POLICING STRATEGIES TO PREVENT VIOLENT EXTREMISM* 3 (2016), <https://sites.duke.edu/tcths/files/2016/05/The-Challenge-and-Promise-of-Using-Community-Policing-Strategies-to-Prevent-Violent-Extremism.pdf> [<https://perma.cc/7BBH-9CP6>].

terrorism plots have been prevented due to traditional investigative methods, including about 18% by initial tips from Muslim communities without the need for costly and counterproductive CVE programs.¹¹

Third, the tens of millions of dollars budgeted for CVE programs would be better spent on programs administered through social services agencies with the expertise to assist the multitude of American communities in need of job training, mental health services, domestic violence prevention, English language training, refugee resettlement, youth after-school programs, tutoring, and other services that promote safe and healthy communities.¹² To the extent that the U.S. government seeks to engage in good faith efforts to support diverse Muslim American communities, resources should be managed by institutions whose missions are to develop communities, not prosecute and incarcerate individuals based on racial and ethnic stereotypes.

I. THE DUELING DEFINITIONS OF COUNTERING VIOLENT EXTREMISM

Countering Violent Extremism is a term often invoked but rarely defined. Proponents and opponents of CVE disagree on its strengths and weaknesses while implicitly assuming there is agreement on the definition of CVE.¹³ As such, a brief summary of the dueling definitions is warranted.

In general, there are two definitions of CVE that influence stakeholders' positions on such programs. The first definition is effectively the soft-arm of counterterrorism that supplements anti-terrorism surveillance, prosecution, and convictions.¹⁴ The second definition treats CVE as separate, though complementary, to counterterrorism insofar as it is more focused on providing long-term social services.¹⁵ Both definitions presume that stopping so-called "radicalization" of

11. PETER BERGEN ET AL., NEW AM. FOUND., DO NSA'S BULK SURVEILLANCE PROGRAMS STOP TERRORISTS? 4-5 (2014), https://static.newamerica.org/attachments/1311-do-nsas-bulk-surveillance-programs-stop-terrorists/IS_NSA_surveillance.pdf [<https://perma.cc/C7BQ-UG5R>] Michael Hirsh, *Inside the FBI's Secret Muslim Network: While Candidates Stoke Fears of Islam, a Little-Known Counterterror Program has been Going Exactly the Other Way*, POLITICO (Mar. 24, 2016), <http://www.politico.com/magazine/story/2016/03/fbi-muslim-outreach-terrorism-213765> [<https://perma.cc/JB3A-N9B9>].

12. See Jana Kasperkevic, *Welfare Programs Shown to Reduce Poverty in America*, GUARDIAN (Nov. 12, 2014 1:39 PM), <https://www.theguardian.com/money/us-money-blog/2014/nov/12/social-welfare-programs-food-stamps-reduce-poverty-america> [<https://perma.cc/75TN-FWYT>] (showing that social welfare programs have been successful in improving lives of America's poor).

13. See THE COUNCIL ON AMERICAN-ISLAMIC RELATIONS, BRIEF ON COUNTERING VIOLENT EXTREMISM (2015), <https://www.cair.com/government-affairs/13063-brief-on-countering-violent-extremism-cve.html> [<https://perma.cc/6E5P-U3GQ>] (explaining the disagreement concerning the definition of "CVE").

14. See EXEC. OFFICE OF THE PRESIDENT, STRATEGIC IMPLEMENTATION PLAN FOR EMPOWERING LOCAL PARTNERS TO PREVENT VIOLENT EXTREMISM IN THE UNITED STATES 2 (2016), https://www.dhs.gov/sites/default/files/publications/2016_strategic_implementation_plan_empowering_local_partners_prev.pdf [<https://perma.cc/UNM9-8ERJ>] [hereinafter STRATEGIC IMPLEMENTATION PLAN] ("Fundamentally, CVE actions intend to address the conditions and reduce the factors that most likely contribute to recruitment and radicalization by violent extremists. Where possible, CVE should be incorporated into existing programs related to public safety, resilience, inclusion, and violence prevention.").

15. See John D. Cohen, *The Next Generation of Government CVE Strategies at Home: Expanding Opportunities for Intervention*, 668 ANNALS AM. ACAD. POL. & SOC. SCI. 118, 120 (2016) ("Initially, efforts

individuals to engage in terrorism is the ultimate goal of CVE.¹⁶ Furthermore, both definitions accept that certain communities are targeted by CVE based on those communities’ common identities with perpetrators of terrorism; for example, in the post-9/11 era under both Obama and Trump, those targeted communities have been exclusively Muslim, Arab, and South Asian.¹⁷ This is notwithstanding the documented rise of white supremacist groups in the United States.¹⁸

Implicitly adopting the soft counterterrorism definition, the White House Initiative on Countering Violent Extremism under Obama concluded “family members, friends, or close acquaintances are the most likely to observe activities or behaviors suggesting an individual is being radicalized or has violent intent.”¹⁹ And accordingly, the government’s newly created CVE Interagency Task Force

will coordinate the development and dissemination of resources describing possible warning signs as well as steps families and friends can take if they believe someone close to them is becoming recruited or radicalized to violence. The resources will include information for trusted members of local communities who those families and friends may call upon for guidance or assistance.²⁰

According to John Cohen, former Undersecretary for Intelligence and Analysis and the Counterterrorism Coordinator in the United States Department of Homeland Security:

In most cases, those radicalized to violence exhibit behaviors of concern that are observed by those who associate with that individual. This is why the United States law enforcement and homeland security officials have sought to develop and employ locally based prevention strategies designed to aid authorities in detecting those on the verge of ideologically motivated violence These programs have become known as “countering violent extremism”²¹

Cohen tellingly stated that CVE “is an operational model informed by long-standing behavioral risk assessment and threat management techniques employed by organizations such as the United States Secret Service and involves incorporating CVE

to prevent ideologically motivated violence was a matter to be handled by law enforcement authorities who leveraged traditional investigative strategies to disrupt or investigate after the acts of violence were committed. Over time and based on growing concerns over al-Qaeda-or ISIS-inspired attacks, national CVE efforts expanded to include engagement and outreach campaigns directed at mostly Muslim and Arab American community organizations. The goal of these outreach and engagement activities was to foster greater collaboration in an effort to better detect potential threats from within those communities.”).

16. See Samuel J. Rascoff, *Establishing Official Islam? The Law and Strategy of Counter-Radicalization*, 64 STAN. L. REV. 125, 137 (2012) (characterizing rationalization for counter-radicalism as preventive measure against future terrorist attacks).

17. Muslim Advocates, *Countering Violent Extremism (CVE)*, <https://www.muslimadvocates.org/cve-countering-violent-extremism/> [<https://perma.cc/ZH6X-8FHL>].

18. See Mark Potok, *The Year in Hate and Extremism*, SOUTHERN POVERTY LAW CTR. (Feb. 17, 2016) <https://www.splcenter.org/fighting-hate/intelligence-report/2016/year-hate-and-extremism> [<https://perma.cc/S2NU-FXUT>] (describing the rise in number of hate groups).

19. STRATEGIC IMPLEMENTATION PLAN, *supra* note 14, at 11.

20. *Id.*

21. Cohen, *supra* note 15, at 119.

into community-based, multidisciplinary activities intended to prevent targeted violent activity and mass casualty attacks more broadly.”²²

The second competing definition of CVE proffers that social services should be deployed to address long term challenges facing communities whose members are believed to be more prone to joining terrorist groups or engaging in terrorism as lone wolves.²³ Accordingly, terrorism should not be countered exclusively with intelligence, police, and military means;²⁴ but also through a focus on the “structural causes of violent extremism . . . including intolerance, government failure, and political, economic, and social marginalization.”²⁵ As such, CVE in the domestic context is similar to those working on human rights, development, and peacebuilding in the international conflict resolution context.²⁶ This definition assumes that CVE programs provide opportunities for marginalized communities to bring their concerns to police and federal law enforcement officials.

As a result, engagement between local communities, civil society, and government agencies make communities more resilient and governments more responsive to those communities’ concerns. Such efforts are operationalized through town hall meetings and roundtable discussions. Furthermore, implementing this CVE model provides safe spaces for discussions on sensitive civic and religious topics without fear of stigma or shame. Despite the stated community capacity building goal of this second definition of CVE, the objectives are similar to the first soft counterterrorism definition—to stop terrorism in the short term. In doing so, social service agencies and community members in CVE should engage in 1) intervention to dissuade at-risk youth from engaging in violence; 2) interdiction to stop individuals taking tangible steps toward violent action; and 3) rehabilitation of individuals released into the public after incarceration for a terrorism related crime.²⁷

Former Deputy National Security Advisor Denis McDonough appears to adopt the second definition; however, his rhetoric sends mixed messages. On the one hand, McDonough states that as CVE devotes more resources to research and analytics, the government would also expand “our engagement with local communities that are being targeted by terrorist recruiters,” as well as have other departments such as education, health, and human services join with communities “to better understand and address the social, emotional and economic challenges faced by young people”²⁸ This would occur in addition to U.S. Attorneys “leading a new coordinated federal effort to deepen our partnerships with communities on a host of

22. *Id.* at 120.

23. *See id.* (noting that CVE efforts are best pursued at the community level and tailored to local dynamics).

24. *See* Alejandro J. Beutel et al., *What is CVE (Countering Violent Extremism)?*, PATHEOS (Nov. 1, 2016), <http://www.patheos.com/blogs/altmuslim/2016/11/what-is-cve-countering-violent-extremism/> [<https://perma.cc/R8TL-5P6K>] (stating that the “CVE can be government-led and sourced, it can [be] civil society-led and sourced or it can be some mix of the two”).

25. Owen Frazer & Christian Nünlist, *The Concept of Countering Violent Extremism*, 183 *CSS ANALYSES IN SEC. POL’Y* 1, 1 (2015).

26. *Id.* at 3.

27. Beutel et al., *supra* note 24.

28. Denis McDonough, Deputy Nat’l Sec. Advisor, Remarks on Partnering with Communities to Prevent Violent Extremism in America (Mar. 6, 2011) (transcript available at <http://www.cfr.org/terrorism/remarks-denis-mcdonough-deputy-national-security-advisor-partnering-communities-prevent-violent-extremism-america-march-2011/p24313> [<https://perma.cc/FA8P-EE7M>]).

issues.”²⁹ On the other hand, McDonough highlights that community partnerships are a crucial component of effective counterterrorism that in turn allows the government to “discover and thwart many [terrorist] plots before they could kill.”³⁰ As such, the government should “work[] to empower local communities with the information and tools they need to build their own capacity to disrupt, challenge and counter propaganda, in both the real world and the virtual world.”³¹ McDonough further stated that the federal government is expanding our coordination with state and local governments, including law enforcement, which work directly with communities every day” by developing and expanding “training for law enforcement, counterterrorism fusion centers, and state officials.”³² Hence, CVE programs encourage Muslim communities to support the government’s counterterrorism efforts.

This Article adopts the first definition of CVE—that it is a soft tool in law enforcement’s arsenal of counterterrorism methods ultimately aimed at maximizing the number of individuals investigated, prosecuted, and convicted for terrorism-related crimes. And as a result, it poses a serious threat to targeted communities’ civil liberties.

II. CVE PROGRAMS SECURITIZE MUSLIM COMMUNITIES AND VALIDATE TERRORISTS’ NARRATIVES THAT AMERICA IS AT WAR WITH ISLAM

Terrorists thrive on narratives of oppression and injustice as a means of recruiting vulnerable individuals.³³ The particular narrative selected is context-specific to the political, social, and economic circumstances that give rise to a terrorist group.³⁴ For Al Qaeda and Da’esh (also known as ISIS or ISIL) based in the Middle East, a crucial component of their recruitment narrative is that the West, America in particular, is at war with Islam.³⁵ Terrorists claim that Muslims are victims of Western hegemony in the Middle East through American military intervention and financial support of

29. *Id.*

30. *Id.*

31. *Id.*; see also Hedieh Mirahmadi, *Building Resilience Against Violent Extremism: A Community-Based Approach*, 668 ANNALS AM. ACAD. POL. & SOC. SCI. 129, 137 (2016) (noting how increasing community engagement efforts can serve counterterrorism objectives through early intervention in the radicalization process).

32. McDonough, *supra* note 28.

33. See Edward Newman, *Exploring the “Root Causes” of Terrorism*, STUD. CONFLICT & TERRORISM, 749, 750 (2006) (explaining the tactics terrorists use to recruit others to their cause). See generally CLINT WATTS, *RADICALIZATION IN THE U.S. BEYOND AL QAEDA: TREATING THE DISEASE OF THE DISCONNECTION* (2012), <http://www.fpri.org/article/2012/08/radicalization-in-the-U-S-beyond-al-qaeda/> [<https://perma.cc/Y9GK-5HXS>].

34. Newman, *supra* note 33, at 751 (stating that terrorists used “factors such as poverty, social inequality and exclusion, dispossession and political grievance, oppression and human rights abuse, population explosion, and demographical factors”).

35. See Madiha Afzal, *How We All Reinforce a Narrative of Islam Versus the West*, BROOKINGS: ORDER FROM CHAOS (Aug. 4, 2016), <https://www.brookings.edu/blog/order-from-chaos/2016/08/04/how-we-all-reinforce-a-narrative-of-islam-versus-the-west/> [<https://perma.cc/WQZ3-WPQP>] (explaining how rhetoric of American politicians reinforces the terrorist recruiters’ narrative that America is at war with Islam).

dictators that violently repress their Muslim citizens.³⁶ Da'esh portrays its violence as part of a defensive rather than offensive war where its leaders are the “heroic defenders of the Muslim world . . . against Western colonization.”³⁷ In turn, Da'esh makes a call to arms for Muslims to kill civilians and topple governments that it unilaterally declares as enemies.

Notwithstanding Da'esh and other terrorist groups' attempts to use religion as a justification for their politically-motivated violence, their claims are rejected by many Muslims across the world.³⁸ An oft-overlooked fact that contributes to Da'esh's fringe status among the world's Muslims is that the majority of victims of terrorism are Muslim. According to the National Counterterrorism Center's 2011 *Report on Terrorism*, in cases where the religious affiliation of terrorism casualties could be determined, Muslims suffered between 82% and 97% of terrorism-related fatalities during the prior five years, and Muslim countries bore the brunt of the attacks involving 10 or more deaths.³⁹

Debunking Da'esh's specious claims on the theological merits has already been done by hundreds of credible, mainstream Muslim scholars from across the world in the *Open Letter to Baghdadi*, among other documents.⁴⁰ As a result, among Da'esh's declared enemies are mainstream American Muslim leaders who have openly and repeatedly condemned Da'esh and rebuked its misinterpretation of Islamic principles.⁴¹ Moreover, Muslim communities and leaders across the United States have rejected Da'esh's warped misappropriation of Islamic doctrine for violent political ends.⁴²

36. See Cristina Archetti, *Narrative Wars: Understanding Terrorism in the Era of Global Interconnectedness*, in FORGING THE WORLD: STRATEGIC NARRATIVES AND INTERNATIONAL RELATIONS 218, 218 (Alister Miskimmon et al. eds., 2017) (explaining that Al Qaeda recruiters promote the narrative of “oppression and victimhood”).

37. Alex P. Schmid, *Challenging the Narrative of the “Islamic State”*, in COUNTERING VIOLENT EXTREMISM: DEVELOPING AN EVIDENCE-BASE FOR POLICY AND PRACTICE 67, 69 (Sara Zeiger & Anne Aly eds., 2015) https://www.nla.gov.au/sites/default/files/webform/draft_cve_developing_an_evidence-based_for_policy_and_practice.pdf [<https://perma.cc/G3N3-2N7G>].

38. See Willa Frej, *How 70,000 Muslim Clerics Are Standing Up to Terrorism*, HUFFINGTON POST (Dec. 11, 2015), http://www.huffingtonpost.com/entry/muslim-clerics-condemn-terrorism_us_566adfa1e4b009377b249dea [<https://perma.cc/5JCC-HH8N>] (describing how nearly 1.5 million attendees at an annual gathering of South Asian Sunni Muslims signed a document protesting global terrorist activity).

39. NAT'L COUNTERTERRORISM CTR., 2011 REPORT ON TERRORISM 14 (2012), <https://fas.org/irp/threat/nctc2011.pdf> [<https://perma.cc/SE3U-5C2P>].

40. OPEN LETTER TO DR. IBRAHIM AWWAD AL-BADRI, ALIAS ‘ABU BAKR AL-BAGHDADI’, AND TO THE FIGHTERS AND FOLLOWERS OF THE SELF-DECLARED ‘ISLAMIC STATE’ (2014), <http://www.lettertobaghdadi.com/> [<https://perma.cc/V8AQ-GZ6H>]; see also Zulfiqar Ali Shah, *Muslim Leaders Refute ISIS Ideology*, FIQH COUNCIL OF N. AM., <http://www.fiqhcouncil.org/node/69> [<https://perma.cc/U93A-47CH>] (last visited Apr. 18, 2017) (providing the executive summary of THE OPEN LETTER TO AL-BAGHDADI, signed by more than 120 international scholars of Islam and Muslim leaders refuting the ideology of the terrorist group ISIS); Emily Feldman, *How Muslim Groups, Scholars Have Been Fighting ISIS*, NBC CHICAGO (Dec. 9, 2015), <http://www.nbcchicago.com/news/national-international/Muslim-Scholars-Groups-Against-ISIS-Speal-Out-361309791.html> [<https://perma.cc/2W83-X2T7>] (describing the messaging strategies that counter-ISIS groups have used to speak out against the extremist message of the Islamic State).

41. See Ian Reifowitz, *Anti-ISIS Muslims Face Death threats. Is that ‘Enough’ for Hannity and Trump Lackey Ben Carson?*, DAILY KOS (May 15, 2016), <http://www.dailykos.com/story/2016/5/15/1525349/-Anti-ISIS-Muslims-face-death-threats-Is-that-enough-for-Hannity-and-Trump-lackey-Ben-Carson> [<https://perma.cc/4JKV-AJZ9>] (providing examples of Western Muslim leaders who denounce Da'esh).

42. See, e.g., Stoyan Zaimov, *Muslim-Americans Condemn ISIS in Phoenix Billboard, Say Islam Is*

Thus, the issue before us today is not whether Da’esh represents the 1.6 billion Muslims across the world or the over 3 million Muslims in America⁴³ — the evidence is clear that it does not.

Rather, the issue that should be of concern to the American government and the public is ensuring that the government does not adopt counterproductive policies or practices that validate terrorists’ claims of a “clash of civilization” between the West and Islam.⁴⁴ Religious profiling, racialized counterterrorism enforcement, and discrimination against Muslims not only infringe on the civil rights and liberties of Muslims, but they are also utilized by terrorist groups to claim that Muslims are under attack to generate sympathy for their cause.⁴⁵

This is why America’s CVE programs are highly problematic. The government portrays CVE as a means to build community resilience and development, separate from the dominant prosecution-driven counterterrorism model.⁴⁶ However, the record clearly shows that CVE is an integral part of counterterrorism.⁴⁷ Law enforcement

Religion of Peace, Not Terror, CHRISTIAN POST (Aug. 24, 2016, 11:17 AM), <http://www.christianpost.com/news/muslim-americans-condemn-isis-phoenix-billboard-islam-religion-peace-not-terror-168487/> [https://perma.cc/89XN-UWHE] (describing Muslim-Americans’ anti-ISIS messages, including a billboard reading “hey ISIS, you suck!!!”); Omar Jimenez, *Baltimore Muslims: Islam Condemns ISIS, Terror Attacks*, WBAL-TV (Mar. 23, 2016, 6:16 PM), <http://www.wbal.com/article/baltimore-muslims-islam-condemns-isis-terror-attacks/6946995> [https://perma.cc/93WA-YQEN] (describing the efforts of Baltimore citizens, especially those in the Muslim community, to counter the unfavorable view of Islam caused by the Islamic State’s violent activities); Alexandra Limon, *Muslims Rally Outside White House Condemning ISIS, Terrorism*, FOX 5-DC (Nov. 20, 2015, 11:30 PM), <http://www.fox5dc.com/news/local-news/52446799-story> [https://perma.cc/9S99-2UH] (detailing a rally in the Washington, D.C. area whose message was that American Muslims do not support terrorism and that ISIS does not represent Islam); Tatiana Sanchez, *San Diego Muslims Condemn Paris Attacks*, SAN DIEGO UNION-TRIB. (Nov. 14, 2015, 8:38 PM), <http://www.sandiegouniontribune.com/news/sdut-cair-anniversary-banquet-islamic-2015nov14-story.html> [https://perma.cc/9LKC-B56D] (“Muslim leaders are actively educating the community in order to distinguish Muslims who understand and practice their faith properly from radical criminals who use the Islamic texts as justification to commit acts of terrorism.”); Shanika Gunaratna, *Muslim Americans Rush to Condemn Orlando Massacre*, CBS NEWS (June 13, 2016, 12:52 PM), <http://www.cbsnews.com/news/orlando-shooting-pulse-nightclub-muslims-condemn-attack/> [https://perma.cc/WBL6-9F55] (describing the clear message sent by the Muslim community after the Orlando attack that ISIS does not represent their faith).

43. Michael Lipka, *Muslims and Islam: Key Findings in the U.S. and Around the World*, PEW RESEARCH CTR. (Feb. 27, 2017), <http://www.pewresearch.org/fact-tank/2017/02/27/muslims-and-islam-key-findings-in-the-u-s-and-around-the-world/> [https://perma.cc/B5C7-DJD2].

44. See Schmid, *supra* note 37, at 76 (arguing that the fight against ISIS requires “a concerted and systematic approach, based on synergetic inter-disciplinary team-work, aimed at developing counter-messages, counter-speech, counter-arguments and counter-narratives”); see also Terrence McCoy, *The Apocalyptic Magazine the Islamic State Uses to Recruit and Radicalize Foreigners*, WASH. POST (Sept. 16, 2014), <https://www.washingtonpost.com/news/morning-mix/wp/2014/09/16/the-apocalyptic-magazine-the-islamic-state-uses-to-recruit-and-radicalize-foreigners/> [https://perma.cc/48R3-TNGS] (describing the divisive, apocalyptic rhetoric used in Islamic State propaganda to recruit new members).

45. See ABBAS BARZEGAR, SHAWN POWERS & NAGHAM EL KARHILI, CIVIC APPROACHES TO CONFRONTING VIOLENT EXTREMISM: SECTOR RECOMMENDATIONS AND BEST PRACTICES 22 (Sept. 2016), http://www.britishcouncil.us/sites/default/files/civic_approaches_to_confronting_violent_extremism_-_digital_release.pdf [https://perma.cc/Y6VW-XA EK] (“Extremists groups thrive on the idea that their radical violence is justified because their religion is under attack.”).

46. Amna Akbar, *National Security’s Broken Windows*, 62 UCLA L. REV. 834, 856–857 (2015).

47. See Aziz, *Policing Terrorists*, *supra* note 6, at 211 (“Community policing does not challenge the counterterrorism paradigm; it accommodates it. The exclusive focus on Muslim communities, as opposed to community policing in a particular geography where certain social services are most needed, reinforces that Muslims are a suspect community.”); see also Akbar, *supra* note 46, at 887–88 (“[T]he White House’s

agencies, not social services agencies, are leading and funding CVE nationwide; in fact, Department of Homeland Security (DHS), U.S. Attorneys, and the Federal Bureau of Investigation (FBI) lead government meetings with Muslim communities across the country.⁴⁸ The institutional agendas of FBI agents, federal prosecutors, and DHS officials—not social service agencies—shape CVE programs. For these reasons, the leading agencies of the federal interagency task force on CVE rotate between DHS and Department of Justice (DOJ)—whose missions are to investigate, prosecute, and convict criminal suspects.

U.S. Attorneys leading federal outreach efforts at the local level raises concerns about the relationship between counterterrorism enforcement and community engagement given that U.S. Attorneys are also the lead prosecutors of anti-terrorism laws.⁴⁹ Their participation as lead conveners of CVE meetings aggravates the inherent divergence between Muslim communities' interests in protecting their civil liberties and a prosecutors' mandate to prosecute and show tangible results in the form of convictions. That is, law enforcement-led programs signal to Muslim communities that their community development and resilience is not the government's priority. Rather, the objective appears to be to deputize Muslims to spy on each other, thereby breeding distrust and divisiveness within Muslim communities.⁵⁰

III. CVE SIGNALS THAT MUSLIMS ARE A SUSPECT COMMUNITY LEGITIMIZING DISCRIMINATION AND HATE CRIMES

Like the United Kingdom's (U.K.) Prevent Program, which is the blueprint on which the U.S. CVE program is based, the U.S. CVE programs target Muslim communities based on the false premise that Muslims are a suspect community and fifth column in the United States.⁵¹ The U.K. House of Commons found that the Prevent Programs exclusive focus on Muslims was stigmatizing, alienating, and counterproductive.⁵² The European Parliament also found that soft counterterrorism programs through counter-radicalization initiatives (which effectively describes CVE) are detrimental to fostering community cohesion and fail in their stated objectives to

various counterradicalization, CVE, and community-government partnerships have . . . charg[ed] all American Muslims with the task of protecting the nation against terrorist threats.”).

48. *Don't Be A Puppet: Pull Back the Curtain on Violent Extremism*, FEDERAL BUREAU OF INVESTIGATION, <https://cve.fbi.gov/home.html> [<https://perma.cc/LQ2Y-5JGC>] (last visited Apr. 18, 2017); Hirsh, *supra* note 11; *see also* Akbar, *supra* note 46, at 857 (stating that the “community engagement plan leans heavily on law enforcement”).

49. Laura Yuen, *Muslims Fear Anti-Terror Program Could Spy on Their Communities*, MPR NEWS (Jan. 30, 2015, 6:37 AM), <http://www.mprnews.org/story/2015/01/30/anti-terror-program> [<https://perma.cc/AP2D-P27A>]; Mike German, *Is the FBI's Community Outreach Program a Trojan Horse?*, AM. C.L. UNION (Feb. 15, 2013, 3:33 PM), <https://www.aclu.org/blog/fbis-community-outreach-program-trojan-horse> [<https://perma.cc/3V2P-5YQW>]; Paul McEnroe, *Twin Cities Muslim Leaders Challenge Federal Outreach Effort as Cloak for Spying*, MINNEAPOLIS STAR TRIBUNE (Feb. 17, 2015, 11:32 PM), <http://www.startribune.com/area-muslim-leaders-call-federal-outreach-cloak-for-spying/292307031/> [<https://perma.cc/B9QJ-BDDZ>].

50. Aziz, *Policing Terrorists*, *supra* note 6, at 189–90.

51. *See generally* ARUN KUNDNANI, *THE MUSLIMS ARE COMING: ISLAMOPHOBIA, EXTREMISM, AND THE DOMESTIC WAR ON TERROR* (2014).

52. COMMUNITIES AND LOCAL GOVERNMENT COMMITTEE, *PREVENTING VIOLENT EXTREMISM*, 2009–10, HC 65, at 3 (UK).

prevent terrorism.⁵³ Professor Arun Kundnani, an expert on U.K. counterterrorism policy, warns that the U.S. CVE program would “suffer from the same problems, such as drawing non-policing professionals into becoming the eyes and ears of counterterrorism surveillance, and thereby undermining professional norms and relationships of trust among educators, health workers, and others.”⁵⁴

CVE also legitimizes discrimination against Muslims. In the United States, numerous polls show a rise in anti-Muslim bias that is manifesting into tangible hate crimes, mosque vandalism, employment discrimination, and bullying of Muslim kids in schools.⁵⁵ A 2015 poll in North Carolina, for example, reported 72% of Republicans said that a Muslim should not be allowed to be president of the United States and 40% said that Islam should be illegal.⁵⁶ A 2015 study by LifeWay Research found that 27% of Americans believe ISIS represents what the Islamic religion really is—along with 45% of 1,000 “Protestant senior pastors.”⁵⁷ Another survey by the Economist/YouGov poll, found that 52% of Americans think Islam is more likely than other religions to encourage violence.⁵⁸ That same poll also found that three-fourths of Americans—73%—think American Muslims face a great deal or a fair amount of discrimination.⁵⁹

53. *Countering Violent Extremism: Myths and Fact*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/sites/default/files/analysis/102915%20Final%20CVE%20Fact%20Sheet.pdf> [<https://perma.cc/8H3V-XW2E>] (last visited Apr. 19, 2017).

54. Murtaza Hussain & Jenna McLaughlin, *FBI’s “Shared Responsibility Committees” to Identify “Radicalized” Muslims Raise Alarms*, INTERCEPT (April 9, 2016, 10:46 AM), <https://theintercept.com/2016/04/09/fbis-shared-responsibility-committees-to-identify-radicalized-muslims-raises-alarms/> [<https://perma.cc/KB9R-QTHM>]

55. See, e.g., *Islamophobia: Understanding Anti-Muslim Sentiment in the West*, GALLUP, <http://www.gallup.com/poll/157082/islamophobia-understanding-anti-muslim-sentiment-west.aspx> [<https://perma.cc/TJ53-63Q7>] (last visited Apr. 19, 2017) (“In the U.S., about one-half of nationally representative samples of Mormons, Protestants, Catholics, Muslims, and Jews agree that in general, most Americans are prejudiced toward Muslim Americans. Specifically, 66% of Jewish Americans and 60% of Muslim Americans say that Americans in general are prejudiced toward Muslim Americans.”); Jonathan Easley, *SC Exit Poll: 75 Percent Agree with Trump’s Muslim Ban*, HILL (Feb. 20, 2016, 6:17 PM), <http://thehill.com/blogs/ballot-box/presidential-races/270156-sc-exit-poll-75-percent-agree-with-trumps-muslim-ban> [<https://perma.cc/5ZHX-JL7S>] (“Three-fourths of Republicans participating in Saturday’s South Carolina GOP primary say they support presidential hopeful Donald Trump’s proposal to ban all Muslims from entering the U.S., according to an exit poll. A CBS News exit poll of Palmetto State primary voters found that 75 percent said they support Trump’s proposal, while 23 percent said they oppose it.”); Tom Benning, *Most Texas Voters Support Donald Trump’s Border Wall and Muslim Ban, Poll Says*, DALL. MORNING NEWS (June 28, 2016), <http://www.dallasnews.com/news/politics/headlines/20160628-most-texas-voters-support-donald-trumps-border-wall-and-muslim-ban-poll-says.ece> [<https://perma.cc/Z9L4-ZMBB>] (“Nearly 52 percent of respondents said they strongly or somewhat support a wall along the Mexican border, compared with about 40 percent who oppose it. The numbers were similar in response to the idea of banning noncitizen Muslims from entering the U.S.”).

56. PUB. POLICY POLLING, *TRUMP STEADY IN NORTH CAROLINA; BIDEN POLLS WELL 2* (2015), http://www.publicpolicypolling.com/pdf/2015/PPP_Release_NC_92915.pdf [<https://perma.cc/5G3E-YXF4>].

57. *One in Three Americans Worry About Sharia Law Being Applied in America*, LIFEWAY (Feb. 11, 2015), <http://lifewayresearch.com/2015/02/11/1-in-3-americans-worry-about-sharia-law-being-applied-in-america/> [<https://perma.cc/DE6X-FRLH>].

58. Kathy Frankovic, *Muslim Americans Widely Seen as Victims of Discrimination*, YOUNG (Feb. 20, 2015, 7:15 AM), <https://today.yougov.com/news/2015/02/20/muslim-americans-widely-seen-victims-discrimination/> [<https://perma.cc/X56E-ZEMH>].

59. *Id.*

Such pervasive prejudice has produced tangible civil rights violations against innocent Muslims across the country.⁶⁰ A recent report by the Center for the Study of Hate and Extremism at California State University in San Bernardino found that anti-Muslim hate crimes increased 78% from 110 hate crimes in 2014 to 196 in 2015.⁶¹ Anti-Arab hate crimes rose by 219% from 21 in 2014 to 67 in 2015. Similarly, the civil rights organization Muslim Advocates, reported that since the November 2015 Paris attacks, at least 100 hate crimes against Muslims in America have been reported.⁶² However, these stark numbers likely do not reflect the entirety of anti-Muslim discrimination. The U.S. Department of Justice Bureau of Statistics reported that only 44% of hate crimes are reported to the police⁶³, and in 2013, the Bureau found that nearly two-thirds of all hate crimes were unreported.⁶⁴

The following cases from 2015 and 2016 provide a sampling of the types of violence Muslims and those perceived as Muslim are experiencing: 1) Two Muslim women pushing their children in strollers were attacked in Brooklyn by an assailant who spewed anti-Muslim slurs (Sept. 10, 2016);⁶⁵ 2) a man set fire to the Islamic Center of Fort Pierce, Florida (Sept. 12, 2016);⁶⁶ 3) a Muslim man was assaulted and beaten after leaving a mosque resulting in five broken bones, a concussion, and fractured ribs (June 1, 2016);⁶⁷ 4) a delivery driver was brutally beaten by a passenger who called him a “Muslim a—hole” before pulling the driver to the ground and punching and stomping on him (May 21, 2016);⁶⁸ 5) a Sikh temple was vandalized by a man who said he thought it was a mosque and affiliated with terrorists (Mar. 3, 2016);⁶⁹ 6) a Muslim

60. Eric Lichtblau, *Hate Crimes Against American Muslims Most Since Post-9/11 Era*, N.Y. TIMES (Sept. 17, 2016), <http://www.nytimes.com/2016/09/18/us/politics/hate-crimes-american-muslims-rise.html> [https://perma.cc/B49Y-RMX3].

61. CTR. FOR THE STUDY OF HATE & EXTREMISM, CAL. STATE UNIV., SPECIAL STATUS REPORT: HATE CRIME IN THE UNITED STATES 6 (2016).

62. See *Map: Recent Incidents of Anti-Muslim Hate Crimes*, MUSLIM ADVOC., <https://www.muslimadvocates.org/map-anti-muslim-hate-crimes/> [https://perma.cc/CK49-3GHR] (last visited Apr. 19, 2017) (showing map that details the exact location and events of over 100 hate crimes against Muslims).

63. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, HATE CRIME REPORTED BY VICTIMS AND POLICE 4 (2005), <https://www.bjs.gov/content/pub/pdf/hcrvp.pdf> [https://perma.cc/Y2HQ-4SH9].

64. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, NEARLY TWO-THIRDS OF HATE CRIMES WENT UNREPORTED TO POLICE IN RECENT YEARS 1 (2013), <https://ojp.gov/newsroom/pressreleases/2013/ojppr032113.pdf> [https://perma.cc/U3G3-BWWM]. For a theoretical analysis of the myriad ways Muslim women are disproportionately harmed by post-9/11 discrimination, see generally Sahar F. Aziz, *From the Oppressed to the Terrorist: Muslim American Women Caught in the Crosshairs of Intersectionality*, 9 HASTINGS R. & POV. L.J. 1 (2012) [hereinafter Aziz, *Muslim-American Women*].

65. Lauren del Valle, *2 Muslim Women, Babies Attacked in Alleged Hate Crime in New York*, CNN (Sept. 10, 2016, 12:49 AM), <http://www.cnn.com/2016/09/10/us/brooklyn-muslim-women-attacked/> [https://perma.cc/E8TA-3F3Q].

66. Lindsey Bever, *Arrest Made in Arson at Orlando Gunman's Mosque, Authorities Say*, WASH. POST (Sept. 14, 2016), <https://www.washingtonpost.com/news/acts-of-faith/wp/2016/09/12/arson-suspected-in-fire-at-florida-mosque-attended-by-pulse-shooter-omar-mateen/> [https://perma.cc/5MVF-X5EX].

67. Laurel Raymond, *Assault of Muslim Man in NYC Comes amid Rising Islamophobia Nationwide*, THINKPROGRESS (June 6, 2016), <http://thinkprogress.org/justice/2016/06/06/3785049/muslim-man-attackedqueens/> [https://perma.cc/S8VB-YB2Q].

68. Rocco Parascandola, *Bronx Livery Driver Repeatedly Punched in the Face by Passenger Who Called Him 'Muslim Driver A—hole'*, N.Y. DAILY NEWS (May 25, 2016), <http://www.nydailynews.com/newyork/bronx-livery-driver-punched-called-muslim-driver-a-hole-article-1.2648669> [https://perma.cc/GYF3-JWEK].

69. Ajay Ghosh, *Hate Crime Charged Against Pittman for Spokane Gurdwara Vandalism*, UNIVERSAL NEWS NETWORK, (Mar. 15, 2016), <http://theunn.com/2016/03/hate-crime-charged-against-pittman-for->

woman had hot liquid poured on her by another woman shouting “f—ing Muslim trash” (April 21, 2016);⁷⁰ 7) while a Muslim family was shopping for a home, a man in the neighborhood pointed a gun at them saying they “should all die” because they are Muslim (Feb. 21, 2016);⁷¹ 8) an elderly Sikh man was stabbed to death while working at a convenience store;⁷² 9) in two separate incidents, one American Muslim female was shot at as she was leaving an Islamic center, and another woman was nearly run off the road by someone throwing rocks at her car as she left the mosque (Dec. 11, 2015);⁷³ 10) a taxi driver—a 38-year-old Moroccan immigrant—was shot and injured by one of his passengers after being asked about his background (Nov. 26, 2015).⁷⁴

Among the most troubling forms of anti-Muslim discrimination is the bullying of Muslim children taking place in our schools. In 2010, a study in Northern Virginia found that 80% of Muslim youth were subjected to taunts and harassment at school.⁷⁵ In 2014, a survey of Muslim children in third through twelfth grade in Maryland found that nearly one-third “said they had experienced insults or abuse at least once because of their faith.”⁷⁶ That same year, a statewide survey of more than 600 Muslim American students ages 11–18 in California found that 55% of respondents reported being bullied or discriminated against, twice the number of students nationally who reported being bullied.⁷⁷ Additionally, 29% of Muslim female students who wore a headscarf experienced offensive touching or pulling off their hijab.⁷⁸

These findings are consistent with a 2016 report published by Georgetown University finding approximately 180 reported incidents of anti-Muslim violence

spokane-gurdwara-vandalism/ [https://perma.cc/ML4R-VJAS].

70. Steve Birr, *Police Release Video of Assault on Muslim Woman Outside DC Starbucks*, DAILY CALLER (May 3, 2016, 9:19 AM), <http://dailycaller.com/2016/05/03/police-release-video-of-assault-on-muslim-woman-outside-dc-starbucks/> [https://perma.cc/456X-YBX9].

71. Kevin Killeen, *Update: Affton Man Charged with Anti-Muslim Hate Crime*, CBS ST. LOUIS (Feb. 29, 2016, 2:15 PM), <http://stlouis.cbslocal.com/2016/02/29/muslims-wait-for-bob-mcculloch-to-file-charges/> [https://perma.cc/VXC4-F6FB].

72. Charles Lam, *Sikh Man Stabbed to Death in Robbery of Central California Convenience Store*, NBC NEWS (Jan. 5, 2016, 3:57 PM), <http://www.nbcnews.com/news/asian-america/sikh-man-stabbed-death-robberycentral-california-convenience-store-n490786> [https://perma.cc/CJ62-7Q3P].

73. Travis Gettys, *Muslim Woman Shot at and Another Nearly Run Off the Road in Tampa After Leaving Mosques*, RAW STORY (Dec. 11, 2015, 2:26 PM), <https://www.rawstory.com/2015/12/muslim-woman-shot-at-and-another-nearly-run-off-the-road-in-tampa-after-leaving-mosques/> [https://perma.cc/DD6X-8F8G].

74. Dan Majors, *Muslim Taxi Driver Shot on Thanksgiving in Hazelwood Calls Attack a Hate Crime*, PITT. POST GAZETTE (Nov. 28, 2015, 11:00 PM), <http://www.post-gazette.com/local/city/2015/11/29/Muslim-taxi-driver-shot-on-Thanksgiving-in-Pittsburgh-calls-attack-a-hate-crime/stories/201511290154> [https://perma.cc/6EAQ-6XYR].

75. *Protecting the Civil Rights of Muslim Americans: Hearing Before the Subcomm. on the Constitution, Civil Rights and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. 15 (2011) (statement of Farhana Khera, President & Executive Director Muslim Advocates).

76. Donna St. George, *During a School Year of Terrorist Attacks, Muslim Students Report Bullying*, WASH. POST (June 14, 2016), https://www.washingtonpost.com/local/education/during-a-school-year-of-terrorist-attacks-muslim-students-report-bullying/2016/06/14/1b066a44-3220-11e6-8758-d58e76e11b12_story.html?utm_term=.093F06FFC5a7 [https://perma.cc/H58Y-MNXC].

77. COUNCIL ON AMERICAN-ISLAMIC RELATIONS, MISLABELED: THE IMPACT OF SCHOOL BULLYING AND DISCRIMINATION ON CALIFORNIA MUSLIM STUDENTS 4 (2015), <https://ca.cair.com/sfba/wp-content/uploads/2015/10/CAIR-CA-2015-Bullying-Report-Web.pdf> [https://perma.cc/VAF2-MR94].

78. *Id.*

between March 2015 and March 2016.⁷⁹ Among the incidents reported are 12 murders, 34 physical assaults, 56 acts of vandalism or destruction of property, 9 cases of arson, and 8 shootings or bombings.⁸⁰

Because of the troubling rise in anti-Muslim discrimination and hate crimes, Muslims believe their public safety concerns are not adequately addressed. At law enforcement led community outreach meetings, law enforcement agents are primarily interested in knowing if Muslims have any knowledge of potential terrorist plots.⁸¹ A comprehensive empirical study published in 2016 by Duke's Center for Terrorism also found that interviewees believed law enforcement agencies have broken communities' trust in the past by violating civil liberties of Muslims who worked with them.⁸²

These broken promises have produced a deep distrust that stifles coordination between civil society and law enforcement. For example, an American Civil Liberties Union (ACLU) Freedom of Information Act (FOIA) request uncovered documents showing that the FBI was keeping records of conversations and activities within mosques and other Muslim organizations from 2004 through 2008, as well as information provided by federal employees engaged in the outreach programs.⁸³ This discovery contradicted multiple statements by law enforcement assuring concerned citizens that intelligence was not being collected at community outreach meetings.⁸⁴ In 2009, an FBI initiative exploited community outreach to collect information on Muslim communities and build a "baseline profile of Somali individuals that are vulnerable to being radicalized."⁸⁵ And in 2012, another ACLU FOIA request uncovered FBI and NYPD systemic surveillance of Middle Eastern and Muslim communities in Michigan, San Francisco, and New York City.⁸⁶

79. ENGY ABDELKADER, BRIDGE INITIATIVE, WHEN ISLAMOPHOBIA TURNS VIOLENT: THE 2016 PRESIDENTIAL ELECTIONS 1–2, 11 (2016).

80. *Id.* at 11.

81. See FED. BUREAU OF INVESTIGATION, 188A-HQ-C1243327, IMPLEMENTATION OF SPECIALIZED COMMUNITY OUTREACH TEAM 2–3 (2009) (detailing using community outreach programs as a cover to conduct investigation of Somali communities for counter-terrorism purposes in seven cities).

82. See DAVID SCHANZER ET AL., TRIANGLE CTR. ON TERRORISM AND HOMELAND SECURITY, THE CHALLENGE AND PROMISE OF USING COMMUNITY POLICING STRATEGIES TO PREVENT VIOLENT EXTREMISM: A CALL FOR COMMUNITY PARTNERSHIPS WITH LAW ENFORCEMENT TO ENHANCE PUBLIC SAFETY 28 (2016) (presenting testimony about alleged issues with entrapment by law enforcement in Muslim communities).

83. See generally German, *supra* note 49.

84. See, e.g., H.G. Reza, *FBI Tries to Reassure Muslims in Irvine*, L.A. TIMES (June 7, 2006), <http://articles.latimes.com/2006/jun/07/local/me-muslim7> [<https://perma.cc/RGK3-GA9E>] (describing statements made by FBI officials at community outreach events with respect to monitoring of Muslim communities); see also Shirin Sinnar, *Institutionalizing Rights in the National Security Executive*, 50 HARV. CIV. RIGHTS-CIV. LIBERTIES. L. REV. 289, 348–52 (2015) (discussing community engagement activity as counterterrorism strategy).

85. Cora Currier & Murtaza Hussain, *Letter Details FBI Plan for Secretive Anti-Radicalization Committees*, INTERCEPT (Apr. 28, 2016, 12:02 PM), <https://theintercept.com/2016/04/28/letter-details-fbi-plan-for-secretive-anti-radicalization-committees/> [<https://perma.cc/6ERC-A5EU>].

86. See generally *Eye on the FBI: Exposing Misconduct and Abuse of Authority*, AM. CIVIL LIBERTIES UNION, <https://www.aclu.org/national-security/eye-fbi-exposing-misconduct-and-abuse-authority> [<https://perma.cc/U4GG-5838>] (last visited Oct. 20, 2016). See also *ACLU EYE on the FBI: The FBI Is Engaged in Unconstitutional Racial Profiling and Racial "Mapping"*, AM. C.L. UNION (Oct. 20, 2011), <https://www.aclu.org/aclu-eye-fbi-fbi-engaged-unconstitutional-racial-profiling-and-racial-mapping> [<https://perma.cc/TCD3-3H3C>] (describing the FBI's unconstitutional and widespread stereotyping, which attributes certain types of crimes to entire racial and ethnic communities); *ACLU Eye on the FBI Alert – Mosque Outreach for Intelligence Gathering*, AM. CIVIL LIBERTIES UNION (Mar. 27, 2012),

Similarly, Muslim community leaders who engaged with law enforcement later discovered they were targets of investigations and surveillance. For example, the emails of Faisal Gill were subject to surveillance from 2006 to 2008 despite his service in the U.S. Navy and as a senior policy advisor in the U.S. Department of Homeland Security under George W. Bush.⁸⁷ Such cases are further evidence that CVE programs are a ruse for counterterrorism practices that cause collective suspicion of millions of Muslims in America for the criminal acts of individuals with whom they have nothing in common.⁸⁸ While prosecution-driven counterterrorism is an integral part of criminal enforcement, it should be conducted in accordance with civil and constitutional rights. Specifically, law enforcement should conduct investigations based on individualized suspicion arising from predicate acts of criminal activity, not a broad (and false) assumption that Muslim communities en masse are “at risk” or “vulnerable” to terrorist recruitment and susceptible to engaging in terrorism.

In sum, purported community engagement and CVE programs by law enforcement agencies have proven to be a failure in their stated objectives. They have alienated and stigmatized Muslim communities and legitimized anti-Muslim prejudice within our society. Consequently, racialized and rights violating government practices are then exploited by terrorists to corroborate their apocalyptic recruitment narrative that America wants to destroy Islam.

IV. CVE PROGRAMS ARE UNNECESSARY TO PREVENT DOMESTIC TERRORISM

Not only are CVE programs counterproductive, they are unnecessary. Like their fellow Americans, Muslim communities report suspicious criminal activity about which they have knowledge without the need for a multi-million dollar government program.⁸⁹ According to Peter Bergen at the New America Foundation, nearly 20% of terrorism plots have been prevented due to initial tips from Muslim communities and family members.⁹⁰ Studies by the Duke Triangle Center on Terrorism and

<https://www.aclu.org/other/aclu-eye-fbi-alert-mosque-outreach-intelligence-gathering?redirect=aclu-eye-fbi-alert-mosque-outreach-intelligence-gathering> [<https://perma.cc/5V7E-4A6N>] (describing the FBI’s “mosque outreach” program through which it compiled intelligence on American Muslim religious organizations and their leaders’ and congregants’ constitutionally protected beliefs and activities, without any suspicion of wrongdoing).

87. James Gordon Meek, Brian Ross & Rhonda Schwartz, *Feds Spied on Prominent Muslim-Americans, Report Claims*, ABC NEWS (July 9, 2014, 7:36 AM), <http://abcnews.go.com/Blotter/feds-spied-prominent-muslim-americans-report-claims/story?id=24370482> [<https://perma.cc/DSR2-6ZNF>]; see also Faisal Gill, *I was Targeted Because of my Faith*, CNN (July 10, 2014, 4:48 PM), <http://www.cnn.com/2014/07/10/opinion/gill-unwarranted-surveillance-muslim> [<https://perma.cc/2EA2-PVD5>] (noting other Muslim leaders subject to surveillance include Asim Ghafoor, a well-known lawyer, Hooshang Amirahmadi, a professor at Rutgers University, and Agha Saeed, a political science professor at California State University).

88. See Waleed S. Ahmed, *Spying on American Muslim Leaders Betrays Advocates of Civic Engagement*, MUSLIM MATTERS (July 16, 2014), <http://muslimmatters.org/2014/07/16/spying-on-american-muslim-leaders-betrays-advocates-of-civic-engagement/> [<https://perma.cc/LGB3-MPS9>] (discussing NSA surveillance based on group identification).

89. JESSICA STERN & J.M. BERGER, *ISIS: THE STATE OF TERROR* 248–49 (2015) (noting that there is “a near-total lack of evidence that [CVE programs] actually prevent violent extremism in any meaningful way”).

90. See PETER BERGEN ET AL., *supra* note 11; Mohammed A. Malik, *I Reported on Omar Mateen to*

Homeland Security also found that American Muslim communities have been a large source of information about terrorist plots since 9/11.⁹¹

Hence, CVE programs, which overtly aim to recruit Muslims to report potential terrorist plots,⁹² are a waste of government resources. Muslim Americans know less about potential plots than law enforcement agencies with a sophisticated array of investigative tools at their disposal.⁹³ Most cases charging Muslims with violating anti-terrorism laws are driven by undercover agents and informants outside the knowledge of community leaders or the individual's family.⁹⁴

A 2016 George Washington Report on Extremism reported that over half of the individuals they researched were arrested after an investigation involving an informant or undercover law enforcement officer.⁹⁵ Out of the 71 individuals charged with ISIS-related activities in 2015, 55% were arrested in an operation involving an informant or undercover agent.⁹⁶ For these reasons, some Muslims worry that their engagement with law enforcement may lead to their youth being targeted for sting operations that put them on the path to prosecution.⁹⁷

Such concerns are not farfetched. A report by Human Rights Watch and Columbia Law School's Human Rights Institute in 2014 found that "in some cases, the Federal Bureau of Investigation may have created terrorists out of law-abiding individuals by conducting sting operations that facilitated or invented the target's willingness to act."⁹⁸ According to the Center on National Security at Fordham University School of Law, approximately 60% of cases against Americans in Da'esh-related charges have involved informants as compared to 30% of all terrorism indictments since 9/11.⁹⁹ These results are unsurprising in light of the FBI's widespread

the FBI. Trump Is Wrong that Muslims Don't Do Our Part, WASH. POST (June 20, 2016), <https://www.washingtonpost.com/posteverything/wp/2016/06/20/i-reported-omar-mateen-to-the-fbi-trump-is-wrong-that-muslims-dont-do-our-part/> [<https://perma.cc/J759-39T2>] (providing a firsthand account of a Muslim American who reported the Orlando shooter, Omar Mateen, to the FBI in 2014 after observing suspicious behavior).

91. CHARLES KURZMAN, TRIANGLE CTR. ON TERRORISM & HOMELAND SECURITY, SANDFORD SCH. OF PUB. POLICY, DUKE UNIV., MUSLIM-AMERICAN TERRORISM IN 2013 (Feb. 5, 2014), https://sites.duke.edu/tcths/files/2013/06/Kurzman_Muslim-American_Terrorism_in_20131.pdf [<https://perma.cc/YC2K-EUE4>].

92. See, e.g., Fact Sheet, *supra* note 2 (discussing community engagement with religious leaders and communities).

93. See PEW RESEARCH CTR., MUSLIM AMERICANS: NO SIGNS OF GROWTH IN ALIENATION OR SUPPORT FOR EXTREMISM 1 (2011), <http://www.people-press.org/files/legacy-pdf/Muslim%20American%20Report%2010-02-12%20fix.pdf> [<https://perma.cc/8DLR-JWR6>] (noting that only about 20% of Muslims even perceive support for extremism among the American Muslim community).

94. Eric Lichtblau, *F.B.I. Steps Up Use of Stings in ISIS Cases*, N.Y. TIMES (June 7, 2016), <https://www.nytimes.com/2016/06/08/us/fbi-isis-terrorism-stings.html> [<https://perma.cc/BRC8-MMP8>].

95. LORENZO VIDINO & SEAMUS HUGHES, GEO. WASH. UNIV., PROGRAM ON EXTREMISM, *ISIS IN AMERICA: FROM RETWEETS TO RAOQA* 7 (2015), <https://cchs.gwu.edu/sites/cchs.gwu.edu/files/downloads/ISIS%20in%20America%20-%20Full%20Report.pdf> [<https://perma.cc/M9HF-SLXX>].

96. *Id.* at xi.

97. Glenn Greenwald, *Why Does the FBI Have to Manufacture Its Own Plots if Terrorism and ISIS Are Such Grave Threats?*, INTERCEPT (Feb. 26, 2015), <https://theintercept.com/2015/02/26/fbi-manufacture-plots-terrorism-isis-grave-threats/> [<https://perma.cc/9NAY-TN3P>].

98. HUM. RTS. WATCH & HUM. RTS. INST., ILLUSION OF JUSTICE: HUMAN RIGHTS ABUSES IN US TERRORISM PROSECUTIONS 2 (2014), <https://www.hrw.org/report/2014/07/21/illusion-justice/human-rights-abuses-us-terrorism-prosecutions> [<https://perma.cc/BX56-Y7US>].

99. Nicole Hong, *In U.S. ISIS Cases, Informants Play a Big Role*, WALL ST. J. (Apr. 21, 2015, 7:08 PM),

use of informants, estimated at 15,000 domestically as of 2008, which is reportedly 10 times the number of informants active during the era of J. Edgar Hoover and COINTELPRO.¹⁰⁰

In the cases where a Muslim (often a young male) is targeted by bona fide Da’esh recruiters, the process occurs online, in secret, and without the knowledge of the community leaders and family members.¹⁰¹ A New America Foundation report found that of the 62 cases examined, there was no evidence of physical recruitment by a militant operative, cleric, returning foreign fighter, or radicalization in prison.¹⁰² Moreover, studies of terrorism suspects show Da’esh recruits’ knowledge of Islam is negligible. A 2008 study of hundreds of individuals involved in terrorism and terrorism finance by the British intelligence agency MI-5 found that most of them were “religious novices,” and that a “well-established religious identity actually protects against violent radicalization.”¹⁰³ A recent leak of Da’esh documents showed that 70% of recruits had a remedial understanding of Islam, and often were alienated from mainstream Muslim communities.¹⁰⁴ And yet, Director of Community Partnerships at DHS George Selim’s statement in a Reuters article that “[g]iven the current scope of the threat, we believe family members, friends, coaches, teachers are best placed to potentially prevent and intervene in the process of radicali[z]ation” is unsupported by the evidence.¹⁰⁵ Unless the government wants Muslims to actively spy on each other’s online activities in contravention of fundamental American values, CVE programs will only waste government resources and alienate otherwise well integrated American communities.¹⁰⁶

<http://www.wsj.com/articles/in-u-s-isis-cases-informants-play-a-big-role-1429636206> [https://perma.cc/Z9JT-9HJ2].

100. Cora Currier & Murtaza Hussain, *supra* note 85.

101. See *The Rise of Radicalism: Growing Terrorist Sanctuaries and the Threat to the U.S. Homeland: Joint Hearing Before the U.S. House Comm. on Homeland Security and the House Comm. on Foreign Affairs*, 114th Cong. (2015) (testimony by Peter Bergen), <http://docs.house.gov/meetings/FA/FA00/20151118/104199/HRG-114-FA00-Wstate-BergenP-20151118.pdf> [https://perma.cc/XGY4-AQH4] (“Around nine out of 10 American militants are active in online jihadist circles.”). See generally David Talbot, *Fighting ISIS Online*, MIT TECH. REV. (Sept. 30, 2015), <https://www.technologyreview.com/s/541801/fighting-isis-online/>; Rukmini Callimachi, *ISIS and the Lonely Young American*, N.Y. TIMES (June 27, 2015), http://www.nytimes.com/2015/06/28/world/americas/isis-online-recruiting-american.html?_r=0 [https://perma.cc/G65T-YRBC].

102. *Texas Shooting Sign of Lone Wolf Attacks to Come in US - Experts*, REUTERS (May 7, 2015), <http://www.reuters.com/article/usa-shooting-texas-socialmedia-idINKBN0NS1Z020150507> [https://perma.cc/W36R-6H8M] (“The New America Foundation identified 62 people . . . [o]f those, he said, there were no clear cases of physical recruitment by a militant operative, radical cleric, returning foreign fighter or radicalisation in prison.”).

103. Alan Travis, *MI5 Report Challenges Views on Terrorism in Britain*, GUARDIAN (Aug. 20, 2008, 2:01 PM), <https://www.theguardian.com/uk/2008/aug/20/uksecurity.terrorism1> [https://perma.cc/KR7Z-P7EV].

104. Claire Bernish, *Religion of Terror? Leaked ISIS Docs Show 70% of Recruits Don’t Even Know What Islam Is*, FREE THOUGHT PROJECT (Aug. 15, 2016), <http://thefreethoughtproject.com/isis-docs-recruits-ignorant-islam/> [https://perma.cc/VJ5N-66WA].

105. Yasmeen Abutaleb & Kristina Cooke, *A Teen’s Turn to Radicalism and the U.S. Safety Net that Failed to Stop It*, REUTERS (June 6, 2016, 2:20 PM), <http://www.reuters.com/investigates/special-report/usa-extremists-teen/> [https://perma.cc/3VDF-57RG].

106. See Hirsh, *supra* note 11 (noting Harvard terrorism expert Jessica Stern’s conclusion that the relative prosperity and assimilation of American Muslims starkly contrasts with Muslims in Europe, where the latter experience disparities in employment and wages as well as over policing).

In the end, irrational prejudices animate the false assumption that each Muslim has knowledge of and is responsible for all other Muslims' actions. Like all other Americans, Muslims deserve to be presumed innocent and treated as individuals, not collectively guilty based on the criminal acts of a few individuals who misappropriate religious doctrine to engage in politically-motivated violence.¹⁰⁷

V. CVE PROGRAMS WASTE GOVERNMENT RESOURCES

Senior government officials have gone on the record stating that the threat of Americans joining Da'esh is diminishing. According to Francis Taylor, Undersecretary of the Office of Intelligence and Analysis for DHS, in 2015 there was no specific, credible, imminent threat to the homeland from Da'esh.¹⁰⁸ In October 2015, FBI Director James Comey testified before Congress that fewer Americans are attempting to travel to Syria to join Da'esh.¹⁰⁹

Moreover, the data does not corroborate a sufficient security threat to warrant a nationwide CVE program. The FBI estimates that approximately 200 Muslim Americans (out of 3 to 6 million)¹¹⁰ have attempted to join Da'esh in Syria and Iraq.¹¹¹ In 2015, a George Washington University report by the Project on Extremism estimated that out of 25,000 foreign fighters worldwide, the total number of Americans who have traveled to Syria and Iraq since 2011 was 250, whereas over 5,000 fighters came from Europe.¹¹²

In the United States, there has only been one reported case of a fighter returning and allegedly plotting an attack.¹¹³ Speaking to the Council on Foreign Relations in March 2015, Director of National Intelligence James Clapper stated that approximately 40 individuals have returned from Syria, and: "we have since found they went [home] for humanitarian reasons or some other reason that don't relate to plotting."¹¹⁴ Similarly, the New America Foundation found that no American fighter

107. See ELLIOT FRIEDLAND, THE CLARION PROJECT, SPECIAL REPORT: THE ISLAMIC STATE 6 (2015), <http://www.clarionproject.org/sites/default/files/islamic-state-isis-isil-factsheet-1.pdf> [<https://perma.cc/5GZJ-VF84>] (explaining that Da'esh is a political organization that uses religion to justify its goals).

108. *Countering Violent Islamist Extremism: The Urgent Threat of Foreign Fighters and Homegrown Terror: Before the H. Comm. on Homeland Sec.*, 114th Cong. (2015) (statement of Francis Taylor, Under Secretary for Intelligence and Analysis, Department of Homeland Security) ("At present, we are unaware of any specific, credible, imminent threat to the Homeland . . .").

109. Del Quentin Wilber, *FBI Says Fewer Americans Now Try to Join Islamic State*, L.A. TIMES (May 11, 2016, 2:49 PM), <http://www.latimes.com/nation/la-na-comey-fbi-20160511-snap-story.html> [<https://perma.cc/Y59C-PPR3>].

110. S. POVERTY L. CTR., *American Muslims in the United States*, TEACHING TOLERANCE, <http://www.tolerance.org/publication/american-muslims-united-states> [<https://perma.cc/L3FM-FMW5>].

111. See Julian Hattem, *FBI: More than 200 Americans Have Tried to Fight for ISIS*, HILL, (July 8, 2015, 4:36 PM), <http://thehill.com/policy/national-security/247256-more-than-200-americans-trying-to-fight-for-isis-fbi-says> [<https://perma.cc/P98Q-SUL8>] ("The head of the FBI told Senate lawmakers on Wednesday that more than 200 Americans have tried to join Islamic extremists in Iraq and Syria.").

112. VIDINO & HUGHES, *supra* note 95, at 3–6.

113. *ISIS Online: Countering Terrorist Radicalization & Recruitment on the Internet & Social Media: Hearing Before the Permanent Subcomm. on Investigations of the S. Comm. on the Homeland Sec.* 114th Cong., at 3–4 (2016) (testimony by Peter Bergen), http://www.hsgac.senate.gov/download/bergen-testimony_psi-2016-07-05 [<https://perma.cc/FA9S-D87Z>].

114. Karl Vick, *New Study Says U.S. Threat from Returning Jihadis Is Low*, TIME (Mar. 25, 2016), <http://time.com/4272307/isis-foreign-jihadis-threat/> [<https://perma.cc/RM2L-NXMC>] (alteration in original); Julian Hattem, *Spy Chief: No Threat From Americans Who Aided Militants in Syria*, HILL (Mar.

who fought in the conflict in Somalia returned to plot an attack in the United States; most either died there or were taken into custody upon their return to the United States.¹¹⁵

To be sure, domestic terrorism is a security issue that must be taken seriously. And our law enforcement agencies have myriad legal and investigative tools at their disposal to counter terrorism based on individualized suspicious activity indicative of criminal wrongdoing. Casting a wide net of suspicion, surveillance, and investigation on Muslim communities, however, is a waste of resources that distracts agents from real security threats—not to mention a violation of constitutional and civil rights.

Furthermore, CVE programs are likely to be as wasteful as fusion centers. In 2012, a bipartisan investigation by the U.S. Senate Permanent Subcommittee on Investigations found that “DHS’s support of fusion centers has little, if any, benefit to federal counterterrorism efforts.” Specifically, the Permanent Committee found that intelligence produced by fusion centers was of “uneven quality—oftentimes shoddy, rarely timely, sometimes endangering citizens’ civil liberties and Privacy Act protections, occasionally taken from already-published public sources, and more often than not unrelated to terrorism.”¹¹⁶ There was no evidence that fusion centers assisted in disrupting or preventing terrorism. The same government waste and civil liberties violations are likely to occur with CVE programs.

Government resources and policies, therefore, should be guided by the degree of the threat based on credible data. Between 9/11 and June 2015 there have been an estimated 50 fatalities as a result of terrorist attacks conducted by Muslim-Americans against targets in the United States,¹¹⁷ compared with 279,976 violent gun deaths that occurred between 2005 and 2013.¹¹⁸ In 2015 alone, 475 people were killed in mass shootings in the United States.¹¹⁹ According to the Combating Terrorism Center at West Point, the risk of death at the hands of terrorists in the United States approaches lottery-winning odds.¹²⁰ Meanwhile, the Southern Poverty Law Center has found that there have been at least 100 plots, conspiracies and racist rampages since 1995 aimed at waging violence against the United States government.¹²¹ The National Consortium

2, 2015 1:52 PM), <http://thehill.com/policy/defense/234322-spy-chief-no-threat-from-returning-americans-who-fought-in-syria> [<https://perma.cc/4AZK-2AKF>].

115. *The Impact of ISIS on the Homeland and Refugee Resettlement: Hearing Before the Sen. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. 13 (2015) (testimony of Peter Bergen), <http://www.hsgac.senate.gov/hearings/lessons-from-the-paris-terrorist-attacks-ramifications-for-the-homeland-and-refugee-resettlement> [<https://perma.cc/G8GW-QJEH>].

116. *Id.*

117. CHARLES KURZMAN & DAVID SCHANZER, LAW ENFORCEMENT ASSESSMENT OF VIOLENT EXTREMISM THREAT 7–9 (2015), https://sites.duke.edu/tcths/files/2013/06/Kurzman_Schanzer_Law_Enforcement_Assessment_of_the_Violent_Extremist_Threat_final.pdf [<https://perma.cc/F7QS-CQZF>].

118. Linda Qiu, *Fact-Checking a Comparison of Gun Deaths and Terrorism Deaths*, POLITIFACT (Oct. 5, 2015, 11:55 AM), <http://www.politifact.com/truth-o-meter/statements/2015/oct/05/viral-image/fact-checking-comparison-gun-deaths-and-terrorism/> [<https://perma.cc/L99E-LM3D>].

119. Abbey Oldham, *2015: The Year of Mass Shootings*, PBS NEWSHOUR (Jan. 4, 2016, 11:30 AM), <http://www.pbs.org/newshour/rundown/2015-the-year-of-mass-shootings/> [<https://perma.cc/KY5J-392P>].

120. Brian Michael Jenkins, *Fifteen Years On, Where Are We In the “War on Terror”?*, CTC SENTINEL 1, 8 (2016), https://www.ctc.usma.edu/v2/wp-content/uploads/2016/09/CTC-SENTINEL_Vol9Iss92.pdf [<https://perma.cc/6KUL-FW7U>].

121. *Terror From the Right: Plots, Conspiracies, and Racist Rampages Since Oklahoma City*, S. POVERTY LAW CTR. (2015), <https://www.splcenter.org/20100126/terror-right> [<https://perma.cc/5C6W->

for the Study of Terrorism and Responses to Terrorism found that between 1990 and 2014, far-right domestic extremists perpetrated nearly four times as many ideologically based homicidal incidents than extremists associated with Al Qaeda and associated groups.¹²²

From 2000 to 2015, the number of hate groups has increased by 56%, which include a large number of anti-immigrant, anti-LGBT, anti-Muslim, and anti-government “Patriot” groups. And from 2014 to 2015 the number of radical right-wing groups increased by 14%.¹²³ For example, Ku Klux Klan chapters increased from 72 in 2014 to 190 in 2015. Self-described “Patriot” groups with an anti-government agenda grew from 874 in 2014 to 998 in 2015.¹²⁴ Stormfront, a White Nationalist online hate forum, had more than 300,000 registered members in 2015 with an average annual increase of 25,000 new users.¹²⁵ White supremacist online forums also radicalized Dylann Roof, the shooter in the massacre of nine African Americans at Charleston’s Emanuel African Methodist Episcopal Church on June 17, 2015.¹²⁶ And yet we are not seeing government CVE programs targeting single white males in their thirties and forties who are the most common demographic committing mass murder.¹²⁷ Nor are we seeing CVE programs for Christians due to right wing groups’ misappropriation of Christian doctrine in furtherance of their violent political ends. Government hearings are not being held to debate whether violence perpetrated by the Ku Klux Klan, the Army of God, or the Lord’s Resistance Army” should be called “radical Christian terrorism.”¹²⁸

The rise in right-wing violent extremism has resulted in 337 attacks per year in the decade after 9/11, causing a total of 254 fatalities, according to a study by Arie Perliger, a professor at the United States Military Academy’s Combating Terrorism Center.¹²⁹ One chilling case in January 2011 involved a neo-Nazi who hid a bomb

B5NJ].

122. WILLIAM S. PARKIN, STEVEN M. CHERMAK, JOSHUA D. FREILICH, & JEFF GRUENEWALD, TWENTY-FIVE YEARS OF IDEOLOGICAL HOMICIDE VICTIMIZATION IN THE UNITED STATES OF AMERICA, REPORT TO THE OFFICE OF UNIVERSITY PROGRAMS, SCIENCE AND TECHNOLOGY DIRECTORATE, U.S. DEP’T OF HOMELAND SEC. 7 (2016), https://www.start.umd.edu/pubs/START_CSTAB_ECDB_25YearsofIdeologicalHomicideVictimizationUS_March2016.pdf [<https://perma.cc/WS6Q-PD58>].

123. Potok, *supra* note 18.

124. *Id.*

125. *Id.*

126. Morris Dees & J. Richard Cohen, *Opinion: White Supremacists Without Borders*, N.Y. TIMES (June 22, 2015), <http://www.nytimes.com/2015/06/22/opinion/white-supremacists-without-borders.html> [<https://perma.cc/3DQU-QMHK>].

127. See N.R. Kleinfeld et al., *Mass Murders Fit Profile, as Do Many Others Who Don’t Kill*, N.Y. TIMES (Oct. 3, 2015), <http://www.nytimes.com/2015/10/04/us/mass-murderers-fit-profile-as-do-many-others-who-dont-kill.html> [<https://perma.cc/3EHG-ZAH6>] (discussing the difficulty with the profile of a mass shooter that fits a majority class).

128. See generally Harry J. Bentham, *ISIS Isn’t Islamic as the Lord’s Resistance Army Isn’t Christian*, BELIEF NET, <http://www.beliefnet.com/columnists/lordre/2014/11/isis-islam-lords-resistance-army-christianity-extremism.html> [<https://perma.cc/PL3H-GUX6>] (last visited June 3, 2017). See also Julia Edwards Ainsley, et al., *supra* note 5 (explaining that the Trump Administration has changed the CVE program to focus purely on Muslim individuals, and that organizations such as the KKK have been removed from these programs).

129. See ARIE PERLIGER, CHALLENGERS FROM THE SIDELINES: UNDERSTANDING AMERICA’S VIOLENT FAR-RIGHT, COMBATING TERRORISM CENTER AT WEST POINT 100 (2012); Charles Kurzman & David Schanzer, *The Growing Right Wing Terror Threat*, N.Y. TIMES (June 16, 2015), <http://www.nytimes.com/2015/06/16/opinion/the-other-terror-threat.html> [<https://perma.cc/S7LC-MELY>].

packed with fishing weights coated with rat poison in a backpack on the route of the Martin Luther King Day parade in Spokane, Washington.¹³⁰ In June 2014, a violent extremist associated with the right wing Sovereign Citizens movement shot police officers with an assault rifle during an attack in a courthouse in Forsyth County, Georgia.¹³¹ That same year in Nevada, anti-government militants associated with the Sovereign Citizens movement shot two police officers in a restaurant and placed over their bodies a “Don’t Tread on Me” flag, a swastika-stamped manifesto, and a note that read “This is the start of the revolution.”¹³² In early 2016, 150-armed white Christian “militia” members occupied a federal building and took over several acres of federal land.¹³³

In comparison, an average of nine Muslims per year—out of 3 to 6 million—have been involved in an annual average of six terrorism-related plots against targets in the United States.¹³⁴ While most were disrupted, the 20 plots that were carried out accounted for 50 fatalities between 2001 and 2014, excluding the 9/11 terrorist attacks.¹³⁵ Thus, it comes as no surprise that a 2015 Duke University research study found that over 74% of 382 local and state agencies rated anti-government extremism as one of the top three terrorist threats in their jurisdiction.¹³⁶ This is compared to 39% rating Al Qaeda or like-minded terrorists as a top threat.¹³⁷ When asked to rank 1 to 5 the terrorist threat in their jurisdiction, 45% of the jurisdictions surveyed ranked “other” forms of terrorism as a higher threat than Al Qaeda and associated terrorism.¹³⁸ Similarly, only 3% identified the threat of Muslim violent extremists as a severe threat, as compared to 7% for anti-government and other forms of violent extremists.¹³⁹

When Duke University researchers asked law enforcement agencies why they did not have a CVE program tailored for right wing extremist groups, agents noted it would be a waste of time because the right wing extremists live in the shadows and do

[hereinafter Kurzan & Schanzer, *Right-Wing Terror*].

130. *Official: Bomb Found on King Day in Spokane had Rat Poison, Pellets*, CNN (Jan. 27, 2011, 3:49 PM), <http://www.cnn.com/2011/CRIME/01/27/washington.mlk.parade.bomb/> [<https://perma.cc/5BTQ-S7RZ>]; Bill Morlin, *The Spokane Bomb Attempt: Who is Kevin William Harpham*, S. POVERTY LAW CTR. (Mar. 10, 2011), <https://www.splcenter.org/hatewatch/2011/03/10/spokane-bomb-attempt-who-kevin-william-harpham> [<https://perma.cc/MR9Y-W5JJ>].

131. *See generally Forsyth Deputy Shot, Suspect Dead, Courthouse Evacuated*, ATLANTA J.-CONST. (June 6, 2014, 9:20 PM), <http://www.ajc.com/news/news/police-activity-around-forsyth-courthouse/ngFsZ> [<https://perma.cc/P84V-HSVE>].

132. JJ MacNab, *What Las Vegas Police Killings Show about Evolving Sovereign Movement*, FORBES (June 13, 2014), <http://www.forbes.com/sites/jjmacnab/2014/06/13/what-las-vegas-police-killings-show-about-evolving-sovereign-movement/#2e27c38d57be> [<https://perma.cc/8UQF-J2NC>].

133. Carissa Wolf, et al., *Armed Men, Led by Bundy Brothers, Take Over Federal Building in Rural Oregon*, WASH. POST (Jan. 3, 2016), https://www.washingtonpost.com/news/post-nation/wp/2016/01/03/armed-militia-bundy-brothers-take-over-federal-building-in-rural-oregon/?utm_term=.72d2b63a4e19 [<https://perma.cc/2YKE-WPG5>].

134. Kurzman & Schanzer, *Right-Wing Terror*, *supra* note 130.

135. *Id.*

136. KURZMAN & SCHANZER, *supra* note 118, at 3.

137. *Id.*

138. *Id.* at 5.

139. *Id.*

not communicate their criminal activity to white communities.¹⁴⁰ The same reality applies to terrorism plotters who claim to be Muslims—they do not tell Muslim community leaders or family members about their criminal plans, nor do they become recruited by international terrorists in open forums where interventions by civilians are a possibility.¹⁴¹ Indeed, Muslims interviewed in the Duke University study were asked about the efficacy of CVE programs, and respondents expressed frustration that the government and fellow Americans expected them to have knowledge of every fringe element that claims to share their faith, whereas other faith traditions are not imposed with the same burden.¹⁴² Not only are such expectations impractical, they are un-American. We are a country founded on the rule of law where each individual is responsible for her individual acts, not for the acts of others who happen to share the same race, ethnicity, gender, religion, or other characteristics. CVE programs contravene this fundamental American principle.

To be sure, we should not be creating CVE programs based on religious identities—whether Christian, Muslim, Jewish, or otherwise. But the unabashed focus on Muslims in government efforts to counter politically motivated violence in America demonstrates the government’s disparate treatment of faith communities.

VI. FUNDS FOR COMMUNITY DEVELOPMENT AND RESILIENCE SHOULD BE MANAGED BY SOCIAL SERVICE AGENCIES WITHOUT LAW ENFORCEMENT CONTROL

Muslims communities are among the most diverse in America. Comprised of various races and ethnic backgrounds, the diversity of Muslim American communities is a testament to America’s rich cultural heritage. About 63% of Muslim Americans are foreign born and 20% are African American.¹⁴³ For decades, Muslim engineers, doctors, lawyers, professors, and other professionals have contributed their skills and strong work ethic toward America’s economic prosperity.¹⁴⁴ Similarly, Muslims are entrepreneurs who operate businesses, which create jobs and grow our economy.¹⁴⁵

As a result, 14% of Muslims earn a household income over \$100,000 compared to 16% of the general population and 13% of Muslim households earn \$50,000 to \$74,999 compared to 15% of the general population.¹⁴⁶ Accordingly, a Pew Research Center study found that Muslims are mostly mainstream and well-integrated into American society.¹⁴⁷

140. SCHANZER ET AL., *supra* note 82, at 21–22.

141. *Id.* at 20.

142. *Id.*

143. PEW RESEARCH CTR., *supra* note 93, at 13.

144. *See, e.g.*, Daniel Pipes & Khalid Durán, *Muslim Americans in the United States*, CTR. FOR IMMIGRATION STUD. (Aug. 2002), <http://cis.org/USMuslimImmigrants> [<https://perma.cc/4DGV-VPKV>] (“Immigrant Muslims tend to concentrate in the professional and entrepreneurial vocations, and especially in engineering and medicine, which jointly employ about one-third of Muslims in the United States. With such high educational levels, it comes as no surprise that many members of this community have done well; average income for Muslims appears to be higher than the U.S. national average.”).

145. *Id.*

146. PEW RESEARCH CTR., *supra* note 93, at 6.

147. *Id.* at 33.

However, like many other American communities, Muslim American communities include low income families. In 2001, the Pew Research Forum found that 45% of Muslim households earned less than \$30,000 compared to 36% of the general public and only 33% of Muslims were homeowners compared to 58% of the general public.¹⁴⁸ With the poverty line at approximately \$28,000 for a family of five and \$32,000 for a family of six,¹⁴⁹ a third of Muslims in America are on the verge of poverty. Moreover, 29% of Muslims were unemployed or working part-time compared to 20% of the general public.¹⁵⁰

At a time when Islamophobia has reached unprecedented levels the treatment of low income Muslims in America demonstrates the need for social services in many Muslim American communities.¹⁵¹ Professor Khaled Beydoun notes that “Muslim Americans—as a standalone faith group—are comparatively poorer than the broader American polity.”¹⁵² In some Muslim communities, the poverty rate is alarmingly high. For example, 82% of the estimated 30,000 to 80,000 Somali Americans living in Minnesota are near or below the poverty line.¹⁵³ In Brooklyn, nearly 54% of Bangladeshi Americans are low-income or below the poverty line, and many Yemeni American families who live in high cost cities such as New York, Detroit, and the Bay Area are low income.¹⁵⁴

The consequent social and economic challenges faced by some Muslims in America should determine how we spend government resources, rather than inflated terrorism threats based on fear and prejudice. For example, some Muslim leaders such as Los Angeles-based cleric Jihad Saafir believe “local gangs pose the most immediate threat to community safety, not homegrown violent extremists.”¹⁵⁵ As such, government resources are more wisely spent on investing in education, employment, health, and other social services that empower diverse Muslim communities to thrive and prosper. Funds currently allocated to CVE should be redirected to social service agencies with the expertise and institutional mission to assist new immigrant and low income communities. Law enforcement should only get involved if there is individualized suspicion of predicate criminal acts.¹⁵⁶ Decoupling law enforcement

148. *Id.* at 13, 18.

149. Annual Update to the HHS Poverty Guideline, 82 Fed. Reg. 19 (Jan. 31, 2017).

150. PEW RESEARCH CTR., *supra* note 93, at 18.

151. See Khaled A. Beydoun, *Between Indigence, Islamophobia, and Erasure: Poor and Muslim in “War on Terror” America*, 104 CAL. L. REV. 1463, 1501 (2016) (“Addressing the dire shortage of Muslim American organizational work within poor and working-class spaces, prominent Islamic scholar Sherman Jackson commented, “[t]he plight of poor people in America, even poor Muslims in America, has not been on the radar screen of the immigrant Muslim community. They have been much more interested in monument-building.”).

152. *Id.* at 1471.

153. *Id.* at 1477.

154. *Id.* at 1478.

155. Alejandro Beutel, *Using Local Public-Private Partnerships to Reduce Risk of Violent Extremism*, BRINK NEWS (Aug. 6, 2015), <http://www.brinknews.com/using-local-public-private-partnerships-to-reduce-risk-of-violent-extremism/> [<https://perma.cc/U4JZ-MTUU>].

156. See *Permanent Provisions of the Patriot Act: Hearing Before the H. Subcomm. on Crime, Terrorism, and Homeland Sec. of the H. Comm. on the Judiciary 112th Cong.* 4–5 (2011) (statement of Michael German, Senior Policy Counsel, American Civil Liberties Union), https://www.aclu.org/files/assets/ACLU_Testimony_Before_the_HJC_Regarding_the_Patriot_Act.pdf [<https://perma.cc/P8G7-4Y74>] (arguing that the government should not arbitrarily involve itself unless there is a violation of constitutional rights).

from community development is consistent with Pentagon officials' determination that civilian programs abroad led by the U.S. Agency for International Development were more effective in mitigating the circumstances that may lead some vulnerable youth to being recruited by terrorist groups.¹⁵⁷

Government programs funded and controlled by state and federal social service agencies, such as the departments of education and health and human services, will also facilitate community involvement by setting the agenda based on the needs of diverse communities; thereby bolstering community-government partnerships. Communities can focus on working with qualified social services experts in addressing community development challenges rather than worry that their involvement will be exploited by law enforcement to surveil their communities, violate their civil liberties, and legitimize discrimination by private actors.

CONCLUSION

We live in a world where opportunities and conflicts cross borders with ease. New technologies and advances in international travel have created unprecedented possibilities for citizens across the world to interact and exchange ideas for the common good.

Violent non-state actors with political agendas are exploiting new technologies and seamless borders to manipulate vulnerable individuals.¹⁵⁸ They use myriad ideological doctrines to lend credence to their perverse political motivations. In confronting these violent actors, we cannot afford to adopt an "us versus them" approach. We must unite as Americans to ensure we are all safe and secure from both state and non-state violence. Doing so entails staying true to our fundamental American values. The most pertinent of which is our commitment to individual responsibility for individual wrongdoing, regardless of one's religion, race, or creed.

Unfortunately, CVE programs undermine rather than promote these values. The securitization of Muslim communities as potential terrorists legitimizes the pervasive anti-Muslim prejudice and bigotry infecting our society today. Consequently, private actors are emboldened to harass, assault, and even kill fellow citizens who are or perceived to be Muslim.¹⁵⁹ Meanwhile, CVE programs have yet to address the rise of right wing extremists—who often target Muslims in hate crimes.¹⁶⁰ All of which is exploited by Da'esh to validate its twisted narrative that America is at war with Islam.

157. See James Stavridis & John R. Allen, *Expanding the U.S. Military's Smart-Power Toolbox*, WALL ST. J. (June 9, 2016, 12:03 PM), <http://www.wsj.com/articles/expanding-the-u-s-militarys-smart-power-toolbox-1465425489> [<https://perma.cc/Q7B9-2MGQ>] (noting that civilian programs lead by the U.S. Agency for International Development "were clearly reducing support for violent extremism").

158. See, e.g., Alexander Tsesis, *Terrorist Speech on Social Media*, 70 VAND. L. REV. 651, 654–62 (forthcoming 2017) (outlining the dangers of terrorist speech and new terrorist recruitment approaches made through social media).

159. See, e.g., Aziz, *Muslim-American Women*, *supra* note 64, at 245–46 (arguing that Muslims, especially women, face increased discrimination in the wake of the 9/11 attacks).

160. See PETER ROMANIUK, DOES CVE WORK? LESSONS LEARNED FROM THE GLOBAL EFFORT TO COUNTER VIOLENT EXTREMISM 2 (2015), http://www.globalcenter.org/wp-content/uploads/2015/09/Does-CVE-Work_2015.pdf [<https://perma.cc/G5MG-VZAP>] ("CVE objectives will be high on the agenda for future counterterrorism practitioners. Governments across the globe face complex blends of terrorism and insurgency, especially in the developing world, along-side FTFs and homegrown threats, social media-savvy religious extremists, and resurgent right-wingers, all of which require flexible and innovative

In addition, the data does not support the need for a law enforcement-led CVE program targeting Muslim communities. Long before the White House CVE initiative in 2010, Muslims in America have informed law enforcement when they have knowledge of criminal activity. Indeed, Muslims have also actively stopped attempted terrorism by other Muslims. For example, a Muslim vendor in New York City was the first to spot smoke coming out of an SUV in the Times Square attempted bombing.¹⁶¹ His immediate communication with other vendors who alerted law enforcement was instrumental in preventing the loss of life.¹⁶² Thus, spending tens of millions of dollars on CVE programs especially for Muslim communities is not only stigmatizing, it is unnecessary and wasteful.

Independent of flawed CVE programs and specious radicalization theories, our government resources are better spent investing in new immigrant and low income communities who face unique social and economic challenges. As a country that prides itself in offering the opportunity for social mobility to citizens willing and able to work hard, investing in community development is a worthy endeavor.

Funds that would otherwise be wasted on ill-fated CVE programs instead should be given to social services agencies with the expertise to support the diverse Muslim American communities in need of job training, physical and mental health services, youth programs, educational opportunities, and other services that build community resilience. And rather than making such programs available only to a particular religion or race, they should be available to communities based on need.

Fifteen years after the tragic 9/11 attacks, most Muslims in America are actively and constructively engaged in American society.¹⁶³ They welcome working with their government and fellow citizens to ensure all Americans have equal opportunity to thrive and be safe. But they are thwarted from doing so by racialized government programs that treat them as outsiders and fifth columns rather than partners and equal citizens.

Rethinking our counterterrorism policies and practices to make them less discriminatory and more compliant with our constitution is long overdue. Failing to do so not only impedes America's relative success in integrating communities of all faiths, races, and immigrant status; it also puts us on the losing end of the terrorists' "war of ideas."

responses For these reasons, one might expect that the uptick of interest in CVE will continue into the future and that the role of civil society actors will be extended and refined over time.").

161. Anjali Kamat & Alioune Niass, *Muslim Vendor, in Times Square Gets No Credit In Helping to Foil Times Square Bomb Plot*, DEMOCRACY NOW (May 6, 2010), http://www.democracynow.org/2010/5/6/muslim_vendor_gets_no_credit_in [<https://perma.cc/MA25-ZJEN>].

162. *Id.*

163. See generally Amaney Jamal, *The Political Participation and Engagement of Muslim Americans: Mosque Involvement and Group Consciousness*, 33 AM. POL. RES. 521, 521–44 (2005).