

Protecting Rights as a Counterterrorism Tool: the Case of American Muslims

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Protecting Rights as a Counterterrorism Tool: The Case of American Muslims

By Sahar Aziz

Developing effective strategies to counter violent extremism (CVE) has proven to be elusive. Despite the plethora of conferences, reports, and expenditures, governments continue to struggle to find the right formula to decrease politically motivated violence.¹ Because the underlying causes of violent extremism are complex and country specific: no one size fits all solution. Each nation must consider its unique economic, political, and social circumstances when seeking to protect its citizens from violence perpetrated by extremists. But government officials should be careful that their CVE strategies do not exacerbate the underlying marginalization, discrimination, and disenfranchisement that create fertile grounds for terrorist recruitment.

This paper argues that America's domestic CVE practices create a paradox: law abiding citizens and residents who openly and legally express their oppositional views or orthodox religious practices are targeted by the state in the form of surveillance, infiltration, investigation, entrapment, and prosecution.² Thus, targeted communities reasonably suspect that the campaign against homegrown terrorism is not so much about public safety as it is about irrational bigotry.³ Members of these communities become less willing to cooperate with law enforcement because they view CVE as merely political scapegoating at the expense of their liberty and livelihoods.⁴ When contextualized within America's aggressive police tactics in the 1960s and 1970s against civil rights, Black Nationalist, and anti-war groups and coupled with the disproportionate focus on African Americans in the ongoing War on Drugs, such suspicions are not far-fetched.⁵

Accordingly, this paper makes three recommendations that address the paradox of punishing the innocent for openly expressing grievances shared by the guilty, or worse merely sharing the same immutable characteristics. First, an effective program to counter violent extremism must prioritize protecting the ability of individuals to exercise civil and human rights without fear of state retribution. Second, the American governments must balance the tight rope between engaging Muslim communities to protect them from hate crimes or bolster public safety and heightened attention to Muslims that signals to the public that Muslims warrant extra scrutiny from the state.⁶ Selective engagement risks a backlash where the majority resents what it perceives as favoritism towards Muslims or interprets engagement efforts as legitimizing suspicion of Muslims. Either response often leads to private acts of discrimination or violence in employment, schools, mosques, and public places.⁷ Third, CVE programs that empower communities as stakeholders in preserving public safety and protection of rights must be careful not to perpetuate existing disparities within Muslim communities along gender, age, class, and race. Insensitivity to internal tensions risks placing the government as an enabler of intra-community gender bias, intra-community ethnic conflicts, and class divisions.

In the end, the legitimacy of CVE policies hangs in the balance. The extent to which governments are able to uphold individual rights while preserving public safety directly contributes to defeating the use of violence as a means of seeking justice.

Defining the Problem

Before solutions can be developed, the problem must be accurately defined. An effective CVE strategy distinguishes between internationally-based violent extremist acts and those that are purely domestic. In the case of post-9/11 violent extremist acts perpetrated by a Muslim in the US, most have a connection to an international actor or entity. In stark contrast, most violent extremism by non-Muslims is purely domestic such as the case of right wing militias, neo-Nazis, White Supremacists, Patriot groups, and anti-abortion violent extremist.⁸

Internationally-based terrorism often arises from conflicts abroad wherein the U.S. is either engaged in hostilities or heavily influential in the domestic affairs of a nation. Opponents of the U.S.'s role seek to expand the theater of conflict to within America's border. Because it is impossible for an insurgency group, militia, or political organization to militarily "defeat" the United States, victory is often defined as extricating America's military or political influence from that particular nation. Thus, terrorism is a tool employed in an asymmetrical conflict to influence government policy and actions.⁹

Because of their familiarity with the country, American residents or citizens are more attractive recruits than a temporary visitor coming from abroad. But whether recruitment efforts are successful depends on domestic factors including, but not limited to, equal opportunity for social mobility, non-violent avenues for expression of dissent and grievances, equal opportunities in employment and education, and the general integration of minority communities. It is highly unlikely, though certainly not impossible, that a gainfully employed, educated, and politically empowered individual will resort to violence in furtherance of a political agenda. Thus, CVE strategies should focus as much on addressing social and economic disparities as they do on policing illegal activity.

Similar to government approaches to Anglo or devout Christian American violent extremists, American Muslims should not be collectively punished because they share the same race, ethnicity, or religion of terrorists.¹⁰ For example, after the horrific September 11th attacks, tens of thousands of Arab and Muslim Americans – as well as non-Arab, non-Muslims thought to "look Muslim" - were collectively punished with arrest, detention, and deportation notwithstanding that the 9/11 hijackers were all temporary visitors to the United States.¹¹ None of them resided in the United States, much less had U.S. citizenship. No US resident was ever charged with aiding them in any way. But because superficial and invidious criteria were used to search for the suspects, a diverse group of communities were lumped together as suspects and punished accordingly.

Beyond the normative non-discrimination principles integral to American values, focusing on individuals rather than communities in anti-terrorism initiatives has a utilitarian benefit. By punishing innocent Arabs, Muslims, and South Asians who prior to 9/11 had negligible collective grievances against the government, US officials made it difficult to obtain the trust and cooperation of communities targeted by foreign groups’ calling for violent extremism inside the United States.¹² Moreover, the government’s discriminatory and selective counterterrorism corroborated terrorists’ narrative that America had declared war on Muslims and Islam both within and outside its borders.

For the most part, foreign groups have been unsuccessful in recruiting American residents and citizens in joining their politically motivated violent agendas.¹³ But this is less attributable to the government’s CVE strategies than to American Muslim communities’ integration within American society and their strong economic and social status prior to 9/11.

Thus, countering violent extremism that do not prioritize civil and human rights jeopardize American Muslims’ hard earned achievements, resulting in an adversarial relationship with the government. Although the past ten years of collective punishment have proven that American Muslims do not resort to violent extremism when faced with such adversity, it has significantly soured relations and trust in the government. Furthermore, CVE efforts suffer from a legitimacy deficit as they become viewed more as biased politics rather than impartial policing in the interest of public safety.¹⁴

Prioritize Civil and Human Rights in Strategies to Counter Violent Extremism

Violent extremism is a tool employed in furtherance of a political agenda often based on perceptions or realities of subjugation, oppression, and marginalization.¹⁵ By suppressing the freedom of religion, speech, and expression, the government enables terrorist recruiters to provide an alternative means for vulnerable recruits to seek justice. Similarly, by failing to meaningfully address inequality in public services, education, and job opportunities, the government creates a cohort of people with little to lose and potential receptivity to extremist recruiters’ claims that hard work and patriotism are self-defeating. Coupled with severe mental health problems or desperate financial straits, the result can be predictably volatile.

Thus, governments should simultaneously refrain from enforcing anti-terrorism laws in such a way that infringes on the rights of individuals, particularly in less empowered minority communities, and proactively mitigate societal inequities based on race, religion, ethnicity or other immutable characteristics. Indeed, the more open, visible expressions of political dissent or Islamic piety that occur, and the more aggressive the state’s defense of Muslims’ civil rights, the more effective the hindrance of extremist recruiting.

Meaningfully Engaging and Defending Muslim Communities

Government officials are both enablers and defenders of post-9/11 discrimination against Muslims, Arabs, and South Asians. On the one hand, they face public pressure to aggressively counter “Islamist” terrorism through an extensive arsenal of national security powers developed in response to 9/11. The government realized soon after 9/11 that it had little understanding of the diverse Muslim communities across the country, resulting in scorched earth detention, deportation, and prosecutorial tactics in the years immediately following 9/11.¹⁶

Meanwhile, the same agencies are legally obligated to protect Muslim communities from hate crimes, discrimination, and violent acts based on unlawful bias. Some of these illegal acts arise from selective counterterrorism enforcement, and ensuing publicity, against Muslims that some members of the public took as signals that Muslims are a disloyal and suspect fifth column thereby deserving discrimination.

Thus, the government needs avenues for gathering intelligence about Muslim communities as well as a means to protect these communities from bias-motivated crime. Community engagement, also called community outreach, has become the mechanism of choice. Under the auspices of improving government-community relations, government officials convene regular meetings with (primarily male) Muslim leaders to discuss grievances and obtain community support for countering terrorism. Although community engagement is a good governance tool, few of the communities’ systemic civil rights and liberties concerns are meaningfully addressed through changes in policies and practices. Indeed, litigation or public censure in elite media outlets is far more effective in reforming policy than community engagement meetings.¹⁷ Moreover, government officials do not seem to make the connection between the legitimizing effect of their selective counterterrorism efforts and public acts of discrimination, or worse they do not care.

For community engagement to be an effective aspect of countering violent extremism strategies, the government must stop using the meetings as intelligence gathering exercises as well as produce tangible reforms to policies that disparately impact Muslims. Otherwise, government officials will be engaging with purported leaders of no repute within the communities and willing to tell the government whatever it wants to hear to be part of the “in group” of invitees.

Incorporate the Diversity of Muslim Communities Along Gender, Race, Class, and Age

CVE programs that empower communities as stakeholders in public safety and protection of rights must be careful not to perpetuate existing disparities within Muslim communities along gender, age, and race. The experiences of new immigrants as opposed to third or fourth generation Americans are starkly different irrespective of a shared religious or ethnic background. Similarly, class differences and educational levels contribute to people’s worldview and perceptions of their government. And many Muslim communities are still lead primarily by

males. Thus, insensitivity to these circumstances risks making the government an unwitting enabler of gender bias, intra-community ethnic conflicts, and political disputes.

An effective community engagement component of countering violent extremism must proactively include adequate representation of women, racial and ethnic groups, ages, and socio-economic classes that reflect the demographic of that particular community. The result will be robust and engaging discussions among two equal stakeholders – the government and its constituency.

Conclusion

In developing its countering violent extremism strategy, the U.S. government should focus on three key policies: 1) shift from a traditional heavy-handed policing approach to a more rights-based approach that creates political space for airing grievances free of government retaliation; 2) actively protect Muslim communities from hate crimes and bias-based violence through prosecution and public condemnation of anti-Muslim bias ; and 3) reform community engagement programs to require proof of tangible reform based on communities' expressed concerns, include women, youth, and various ethnicities, and prohibit government intelligence gathering in community engagement meetings.

Absent these reforms, among others, CVE programs will be dismissed as pretext for invidious discrimination to scapegoat politically vulnerable minorities for the failings of the state. And that will blunt their effectiveness, to the detriment of all Americans.

¹ See, e.g., Andrew Johnson & Emily Dugan, *Wealthy, Quiet, Unassuming: The Christmas Day Bomb Suspect*, THE INDEPENDENT (Dec. 27, 2009), <http://www.independent.co.uk/news/world/americas/wealthy-quiet-unassuming-the-christmas-day-bomb-suspect-1851090.html> (reporting that when a suspect's father informed the U.S. embassy in Nigeria of his son's activities, the official briefing the case confirmed that the United States had known of the suspect's terrorist ties for at least two years prior to the attempted attack); see, e.g., Michael Brick, *Man Crashes Plane into Texas I.R.S. Office*, N.Y. Times, Feb. 19, 2010, at A14, available at <http://www.nytimes.com/2010/02/19/us/19crash.html>; see Joan Walsh, *Why so Little Attention to Vernon Hunter?*, Salon.com (Feb. 22, 2010, 7:23 PM), http://www.salon.com/2010/02/23/vernon_hunter/ (reporting that Joseph Stack's victim was a Vietnam veteran and IRS employee). But see *Strategic Implementation Plan for Empowering Local Partners to Prevent Violent Extremism in the United States*, THE WHITE HOUSE (December 2011) available at <http://www.whitehouse.gov/sites/default/files/sip-final.pdf> (outlining broad principles for countering violent extremism). Despite the issuance of a national strategic implementation plan, there is yet to be a coherent and consistently applied CVE plan on the ground that addresses violent extremism both by Muslims and non-Muslims such as neo-Nazis, White Supremacists, and Patriot militia groups. See, e.g., Spencer Ackerman, *DHS Crushed This Analyst for Warning About Far-Right Terror*, WIRED (Aug. 7, 2012) available at <http://www.wired.com/dangerroom/2012/08/dhs/all/>.

² See Chris Hawley & Matt Apuzzo, *NYPD Infiltration of Colleges Raises Privacy Fears*, ASSOCIATED PRESS (Oct. 11, 2011) available at <http://www.ap.org/Content/AP-In-The-News/2011/NYPD-infiltration-of-colleges-raises-privacy-fears>; Jeanne Theoharis, *The Legal Black Hole in Lower Manhattan: The Unfairness of the Trial of Muslim Activist Syed Fahad Hashmi*, SLATE MAGAZINE (Apr. 27, 2010, 11:05 AM), <http://www.slate.com/id/2252117/> (Fahad Hashmi was placed in pretrial solitary confinement for three years based on charges that he had aided a friend in storing "military gear," such as raincoats, ponchos, and waterproof socks, in his London apartment, which later delivered to al-Qaeda, political statements he made at Brooklyn College in 2002 (reportedly calling America "the biggest terrorist in the world"), and his membership in a New York-based political group, Al Muhajiroun.); see also Larry Neumeister, *Syed Hashmi, American Student, Pleads Guilty to Helping Al Qaida*, Huffington Post (April 27, 2010, 8:32 PM), <http://www.huffingtonpost.com/2010/04/27/syed-hashmi-american->

[stud_n_554211.html](#) (Hashmi accepted a plea bargain on the eve of trial due in part to his concerns he could not get a jury untainted by the pervasive stereotypes of Muslims as terrorists.).

³ Adam Goldman & Matt Apuzzo, 'NYPD: Muslim Spying Led to No Leads, Terror Cases', *Associated Press* (Aug. 21, 2012) (reporting that despite extensive resources spent on spying on Muslim student associations, Muslim-owned businesses, and mosques, NYPD did not produce any leads or terror cases).

⁴ See Shaya Tayefe Mohajer, 'FBI Mosque Spying Case: Judge Dismisses Part of Lawsuit Against the FBI', *Huffington Post* (August 16, 2012, 8:37 PM), http://www.huffingtonpost.com/2012/08/14/fbi-mosque-spying-case-ju_n_1777645.html (FBI informant hired to act as Muslim convert, infiltrate Muslim community, record conversations and attempt to solicit terrorist sentiments); Documents Show NY Police Watched Devout Muslims, *Wall St. J.* (Sept. 6, 2011, 6:32 PM), <http://online.wsj.com/article/APfd1a04fa820c44bd820aae6bc75d33e3.html>; see also Joe Coscarelli, NYPD Even Spied on the Muslim Leaders Who Were Helping Them, *N.Y. Mag.* (Oct. 6, 2011, 10:36 AM), http://nymag.com/daily/intel/2011/10/nypd_even_spied_on_the_muslim.html (reporting that an imam was the target of New York City Police Department surveillance at the same time that he was welcoming officers into his mosque and attending hearings with Mayor Bloomberg and Commissioner Kelly).

⁵ Stephen Dycus, Arthur L. Berney, William C. Banks, Peter Raven Hansen, 'National Security Law', Aspen Publishers (August 17, 2011) (summarizing the history of COINTELPRO and the FBI's targeting of political groups engaged in political dissent).

⁶ See Sahar F. Aziz, 'Caught in a Preventive Dragnet: Selective Counterterrorism in a Post-9/11 America', 47 *Gonz. L. Rev.* 429, 492 (2011) citing, Initiative to Combat Post-9/11 Discriminatory Backlash: Enforcement and Outreach, U.S. Dep't of Justice, <http://www.justice.gov/crt/legalinfo/discrimupdate.php> (last visited Jan. 9, 2012) ("Since September 11, 2001, the Civil Rights Division has engaged in an extensive program of outreach to Muslim, Sikh, Arab, and South-Asian American organizations. This outreach has included meetings of senior Civil Rights Division officials with community leaders to address backlash-related civil rights issues").

⁷ See Spencer Ackerman, 'Justice Department Official: Muslim 'Juries' Threaten 'Our Values', *Wired* (Oct. 5, 2011, 6:30 AM), <http://www.wired.com/dangerroom/2011/10/islamophobia-beyond-fbi/all/1> (reporting that Justice Department officials communicated that the "U.S. is at war with the Islamic religion"); See Jaihyun Park et al., Implicit Attitudes Toward Arab-Muslims and the Moderating Effects of Social Information, 29 *Basic & Applied Soc. Psychol.* 35 (2007) (noting implicit bias among Americans in favor of white-and black-sounding names over Arab-and Muslim-sounding names); See Barry Leibowitz, Anti-Muslim Hate Crime? Woman Says She Was Followed by Car, Pepper-Sprayed Near Ohio Mosque, *CBS News* (Dec. 21, 2010, 4:05 PM), http://www.cbsnews.com/8301-504083_162-20026330-504083.html (reporting that a Muslim woman was "attacked with pepper spray outside an Ohio mosque," while "the attacker told her to leave the country").

⁸ See, e.g., Alex Dobuzinskis, 'Southwest Apologizes to Muslim Booted off Plane', *Reuters* (Mar. 16, 2011, 7:13PM), (reporting that a Muslim woman was kicked off an airplane because a crew member mistook her as saying "It's a go" to someone on her cell phone when she in fact said "I've got to go"); *Hate Map*, S. Poverty Law Ctr., <http://www.splcenter.org/get-informed/hate-map> (last visited Jan. 10, 2012) (detailing the number of organizations in the United States that are dedicated to anti-Muslim activities); Jerry Markon, 'Justice Department Sues on Behalf of Muslim Teacher, Triggering Debate', *Washington Post* (Mar. 22, 2011) (reporting the case of an Illinois school district that refused to grant a Muslim woman time off to make pilgrimage to Mecca).

⁹ Ekaterina Stepanova, 'Terrorism in an Asymmetrical Conflict: Ideological and Structural Aspects', Stockholm International Peace Research Institute Research Report No. 23 (2008) <http://books.sipri.org/files/RR/SIPRIRR23.pdf>.

¹⁰ Office of Intelligence & Analysis, U.S. Dep't of Homeland Sec., Pub. No. IA-0257-09, (U//FOUO) 'Rightwing Extremism: Current Economic and Political Climate Fueling Resurgence in Radicalization and Recruitment' (2009), available at <http://www.fas.org/irp/eprint/rightwing.pdf>; see also Audrey Hudson & Eli Lake, Napolitano Stands by Controversial Report, *Wash. Times* (Apr. 16, 2009), <http://www.washingtontimes.com/news/2009/apr/16/napolitano-stands-rightwing-extremism/?page=all>.

¹¹ For a general description of the distinctions between the Arab, Muslim, Middle Eastern, Sikh, and South Asian communities, see Sahar F. Aziz, *Sticks and Stones, the Words that Hurt: Entrenched Stereotypes Eight Years After 9/11*, 13 *N.Y. City L. Rev.* 33, 43-48 (2009).

¹² See John Doyle et al., 'Anti-Terror Program "Kept New York Safe", NYPD Says', N.Y. Daily News (Aug. 24, 2011), http://articles.nydailynews.com/2011-08-24/local/29943085_1_terror-plots-cia-nypd-s-intelligence-unit. For example, after news media reports exposed the New York City Police Department's pervasive spying on mosques, one New York City mosque-goer responded by stating "from now on, I can't feel safe in my own mosque because someone might be sitting behind me spying." Id; Colin Miner et al., F.B.I. Says Oregon Suspect Planned "Grand" Attack, N.Y. Times, Nov. 28, 2010, at A1, available at <http://www.nytimes.com/2010/11/28/us/28portland.html?scp=2&sq=Mohamed%20Osman%20Mohamed&st=cse>; Trevor Aaronson, The Informants, Mother Jones, Sept./Oct. 2011, at 41, available at <http://motherjones.com/politics/2011/08/fbi-terrorist-informants> ("The Portland case [of Mohamed Osman Mohamud] has been held up as an example of how FBI stings can make a terrorist where there might have been only an angry loser. "This is a kid who, it can be reasonably inferred, barely had the capacity to put his shoes on in the morning,' [a former FBI agent] says."); Thomas Watkins, Suit Claims FBI Violates Muslims' Rights at Mosque, ABC News (Feb. 23, 2011), <http://abcnews.go.com/US/wireStory?id=12977749> ("Plaintiffs in a lawsuit against the FBI said ... that the agency's use of a paid informant to infiltrate California mosques has left them and other Muslims with an enduring fear that their phones and e-mails are being screened and their physical whereabouts monitored.").

¹³ See, e.g., Charles Kurzman, *Muslim-American Terrorism Since 9/11: An Accounting* 3 (2011), available at http://sanford.duke.edu/centers/tcths/about/documents/Kurzman_Muslim-American_Terrorism_Since_911_An_Accounting.pdf ("There were ... more than 20 terrorist plots by non-Muslims in the United States in 2010, including attacks by Joseph Stack, who flew a plane into an IRS building in Austin, Texas; Larry Eugene North, who is suspected of placing bombs in mailboxes across eastern Texas; and George Jakubec, who was accused of manufacturing explosives in his home in Escondido, California.")

¹⁴ See, e.g., William Glaberson, *Newburgh Terrorism Case May Establish a Line for Entrapment*, N.Y. TIMES, June 16, 2010, at A25, available at <http://www.nytimes.com/2010/06/16/nyregion/16terror.html> (reporting that an FBI informant allegedly entrapped four young Muslim men with "promises of a \$ 250,000 payment and a BMW," convincing them to plan synagogue bombings and military-plane shootings, despite the four men being "so ill-equipped to plan an attack that none had a driver's license or a car"); Amanda Ripley, The Fort Dix Conspiracy, TIME, Dec. 17, 2007, at 46, available at <http://www.time.com/time/nation/article/0,8599,1691609,00.html> (commenting on allegations that an FBI informant "brainwashed" and tricked six young men accused of plotting an attack on Fort Dix: "if the rumors of entrapment become so corrosive that no one in the Muslim-American community feels safe talking to the FBI, then the government has lost its best potential ally"); see also Ctr. for Human Rights & Global Justice, N.Y. Univ. Sch. of Law, Targeted and Entrapped: Manufacturing the "Homegrown Threat" in the United States pp. 19-38 (2011), available at <http://www.chrgj.org/projects/docs/targetedandentrapped.pdf> (documenting multiple cases where government informants played a leading role in planning and implementing attempted terrorist acts, thereby raising concerns of de facto entrapment of Muslim targets).

¹⁵ Marc Sageman, *Understanding Terror Networks*, UNIVERSITY OF PENNSYLVANIA PRESS (April 16, 2004); Marc Sageman, *Leaderless Jihad: Terror Networks in the Twenty-First Century*, UNIVERSITY OF PENNSYLVANIA PRESS (January 3, 2008); Marc Sageman, *Unmasking Terror: A Global Review of Terrorist Activities*, JAMESTOWN FOUNDATION (March, 31, 2007).

¹⁶ See Sahar F. Aziz, *Sticks and Stones, the Words that Hurt: Entrenched Stereotypes Eight Years After 9/11*, 13 N.Y. CITY L. REV. 33, 33-40 (2009) (summarizing the various ways in which the government selectively targeted Muslims, Arabs, and South Asians in the months after 9/11).

¹⁷ See ACLU.org, *Latif v. Holder*, *ACLU Challenges Government No Fly List* (July 30, 2012) <http://www.aclu.org/national-security/latif-et-al-v-holder-et-al-aclu-challenges-government-no-fly-list> (Ninth Circuit unanimously rules that trial should go forward regarding secret no fly list without reasons given to persons placed on the list); see also Ryan Singel, *Judge Halts NSA Snooping*, WIRED, (August 17, 2006) <http://www.wired.com/politics/law/news/2006/08/71610> (Court rules warrantless wiretapping unconstitutional in *ACLU v. NSA*); see also Marks, Alexandra, *Privacy Advocates Fight for Ground Lost After 9/11*, THE CHRISTIAN SCIENCE MONITOR, (April 3, 2007), p. USA2 (Bush administration suspended program during appeal); see also Rubin, Alissa J.; Rahimi, Sangar, *Bagram Detainees Named by U.S.*, *New York Times*, (January 17, 2010) <http://www.nytimes.com/2010/01/17/world/asia/17afghan.html? r=1> (names of detainees at GITMO released because of Freedom of Information Act lawsuit initiated by the ACLU).