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THE MUSLIM “VEIL” POST-9/11: RETHINKING WOMEN’S RIGHTS AND LEADERSHIP

Sahar F. Aziz¹, ISPU Fellow

EXECUTIVE SUMMARY

In the post-9/11 era, Muslim women donning a headscarf in the United States find themselves trapped at the intersection of bias against Islam, the racialized Muslim, and women. In contrast to their male counterparts, they often face unique forms of discrimination not adequately addressed by Muslim civil rights advocacy organizations, women’s rights organizations, or civil liberties advocates. From the outset, it is worth emphasizing that there is no singular, unitary “Muslim woman” that can represent the experiences and grievances of the diversity of women who identify as Muslim.² These women come from various racial and ethnic backgrounds, hold diverse political viewpoints, and adopt beliefs ranging from staunch secularism to religious orthodoxy. That said, their Muslim identities often subject them to common adverse experiences because they are falsely stereotyped as meek, powerless, oppressed, or, after 9/11, as sympathetic to terrorism.

Muslim women of all races and levels of religiosity face unique forms of discrimination at the intersection of religion, race, and gender³ because the September 11th terrorist attacks (hereinafter “9/11”) transformed the meaning of the Muslim headscarf (hereinafter “headscarf”).⁴ The debate no longer centers on whether the pejorative “veil” serves to oppress women

by controlling their sexuality and, by extension, their personal freedoms and life choices, or if it symbolizes choice, freedom, and empowerment.⁵ Rather, it now “marks” them as representatives of the suspicious, inherently violent, and forever foreign “terrorist other” in our midst.⁶ Because most Americans view Islam as inherently foreign, most female Anglo converts to Islam are stereotyped as Arab particularly if they wear the headscarf.⁷

Examining the nuances of their experiences exposes the unique challenges they face as Muslims, as women, and as racial or ethnic minorities or those perceived as such. By analyzing the experiences of women who wear a headscarf, a religious gender marker, this policy paper brings gender to the forefront of the discussions on post-9/11 discrimination.

Accordingly, it examines how 9/11 adversely impacted the lives of headscarved Muslim women in ways different than it did Muslim men. Ten years later, there is a plethora of literature about what has become known as “post-9/11 discrimination.” Most of the discussion focuses on the experiences of Muslim men or analyzes law and policy through a masculine paradigm. Amidst pervasive suspicion of Islam, continuing sexism, and bias against particular racial or ethnic groups, however, Muslim women are both visible targets and silent victims.⁸

Not only are their religious freedoms under attack

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in unique ways because the headscarf is unique to women, but they are objectified in ideological and corporal domestic conflicts that profoundly affect their life. Perhaps worse than the gender rights debates of the 1990s, when Muslim women were talked about rather than talked to, their post-9/11 experiences are neglected by mainstream American feminist organizations or used by

male leaders of Muslim organizations to implement a civil rights agenda tailored to the Muslim male experience.⁹ Consequently, Muslim women are caught in the crosshairs of national security conflicts that profoundly affect their lives and receive inadequate support from advocacy groups focused on defending Muslims, women's rights, or civil liberties post-9/11.

Beyond gender subjugation, a number of headscarved women also find their freedom of choice in religious practice restricted due to racial violence and insidious forms of economic discrimination. Furthermore, their safety is threatened as the attacks strike at their self-esteem, individual autonomy, and placement in the family and community power hierarchy. Additionally, physical threats strip them of their fundamental right to safety and religious expression.

As a result, groups involved in Muslim rights, women's rights, and civil liberties, must cast off simplistic views of discrimination that ignore this phenomenon at the intersection of gender, race, and religion. As Muslim women increasingly suffer attacks from those with entrenched anti-Muslim attitudes, the urgency of more holistic strategies becomes obvious. To combat multi-pronged discrimination, advocacy groups must address headscarved women's unique intersectional needs.

Towards that end, a diversity of Muslim women must be included in the leadership ranks of American women's rights groups, civil liberties organizations, and Muslim civil rights organizations to develop a comprehensive anti-discrimination agenda.

INTRODUCTION

Whether guilty by association through her marriage to a presumed terrorist or an active accomplice in secret plots to terrorize Americans, some headscarved Muslim women are perceived as incapable of developing their own beliefs and protestations.¹⁰ Instead, they are viewed as mere extensions of familial relationships with actual or presumed male terrorists. As national security prerogatives filter

perceptions of Muslims through the prism of terrorism, the Muslim “veil” has become a stereotyped symbol of terror.¹¹ This critical shift in perception results in palpable adverse consequences for a Muslim woman’s freedom of religion, freedom of individual expression, and physical safety.

In large part, this shift in meaning is due to a recasting of Islam as a political ideology as opposed to a religion.¹² Once this definitional shift occurs, acts that would otherwise qualify as actionable religious discrimination are accepted as legitimate, facially neutral national security law enforcement measures, or protected political activity by private actors.¹³ Recasting thus serves as the basis for calls to deny Muslims their rights, all of which are protected under the law. Moreover, mundane religious accommodation cases become evidence of stealth, imperialistic designs of a hostile ideology.¹⁴ Contrary to the United States’ traditional deference to religious precepts in personal affairs, opponents of mosque construction and Muslim religious accommodation dismiss religious freedom for Muslims as inapplicable by focusing on extremist Muslims to shift the debate to Islam’s alleged pathological violence.¹⁵

The shift in symbolism of the headscarf results in two notable outcomes. First and foremost, Muslim women continue to be objectified within a larger conflict of ideas among predominantly male decision makers. Heated national security debates about the emergence of “homegrown terrorism,” now code for domestic Muslim terrorists, focus primarily on persecuting or defending male suspects.¹⁶ Stereotypes of the dark-skinned, bearded, Muslim man as representative of the primary threat to national security consume the (predominantly male) government’s anxious attempts to prevent the next terrorist attack. Sparse attention is paid to the impact of the post-9/11 national security era on Muslim women, and specifically on those who wear a headscarf. Irrespective of their place of origin or skin color, the headscarf “marks” women as sympathetic to the enemy, presumptively disloyal, and forever foreign.¹⁷

Further objectifying Muslim women are the predominantly male Muslim spokespersons responding to the polemical, as well as physical, attacks on American Muslims. Notwithstanding that the headscarved woman equally bears the brunt of the government’s harsh counterterrorism tactics and the public’s distrust of Muslims, her voice and perspectives are insufficiently represented in the discourse.¹⁸ Yet again she finds herself an object within a grander political conflict between two patriarchies that are different in form but similar in substance.¹⁹

Second, any meaningful discourse surrounding a woman’s right to wear a headscarf in this country must include the racial subtext of the “terrorist other” associated with her headscarf.²⁰ Debates about her

Sparse attention is paid to the impact of the post-9/11 national security era on Muslim women, and specifically on those who wear a headscarf.

legal right to do so inadequately analyze the issues through the narrow lens of religious freedom,²¹ while, post-9/11, the headscarf has come to symbolize more than a mere piece of cloth worn by a religious minority seeking religious accommodation. It is a visible “marker” of her membership in a suspect group.²² Thus the label “Muslim” is both a religious, racial and ethnic identifier. The shift in symbolism of the “veil” from subjugation to terror(ism) causes palpable discrimination against Muslim women. Indeed, accusations of terrorism and disloyalty accompany many of the documented cases of discrimination that they face.²³

Gone are the days when the worst a Muslim woman could expect were patronizing and condescending allegations about her oppressive religion or wife-beating husband. Now she may need to worry about her own

and her family's physical safety, her ability to obtain employment, and the government's harsh prosecutorial tactics. Many of them also suffer tangible economic harm via termination and demotion because they choose to wear the headscarf.²⁴ In a country that promotes the economic independence of women as a means of preserving their legal and political rights, some Muslim women are forced to forfeit their right to practice their faith in their preferred manner in order to preserve their economic independence and the corresponding benefits. As the costs of wearing the headscarf become prohibitively high, the legal right to wear it rings hollow.

Section I of this report prefaces the report's thesis by highlighting Islam's transition from obscurity to notoriety in the American public's psyche due to the 9/11 attacks. Section II highlights how recasting Islam from a bona fide religion to a political ideology is a necessary precursor for accepting otherwise discriminatory acts as legitimate national security practices. This reclassification is most glaring in the nationwide campaigns against building or expanding mosques, due to the public's fixation on these places of worship as hotbeds of extremism.²⁵ Likewise, as Islam becomes defined as an expression of politics instead of religion, Muslim demands for religious accommodation are deemed stealth Islamic imperialism not protected by law.²⁶ Against this backdrop, Section III examines how the headscarf's meaning was transformed from a symbol of female subjugation into a symbol of terror(ism). Through an analysis of employment discrimination, racial violence, political marginalization, and exclusion from the courthouse, this article demonstrates how wearing it has resulted in palpable and widespread discrimination. Yet discourses on American civil liberties in the national security context are woefully lacking due to the conspicuous absence of her voice.

Notably, internal debates within the Muslim communities about gender rights in Islam are beyond the scope of this report. Nor does this report discuss whether the headscarf is effectively a patriarchal tool that subjugates women, the paradigm of the 1990s

multiculturalism discourse pertaining to Muslim women. While these issues have not yet been fully resolved, this report argues that 9/11 eclipsed internal community grievances of sexism, to the detriment of women's rights within the community, with more existential concerns such as the Muslim woman's ability to obtain employment, right to freedom from physical attack in public spaces, and ability to shape civil rights strategies to counter post-9/11 discrimination. The focus here is on extra-community factors that disparately and uniquely impact Muslim women's individual expressive freedoms, religious freedoms, and gender rights vis-à-vis the American public and government.

FROM OBSCURITY TO NOTORIETY

In a matter of days, Islam went from a relatively obscure religion in the United States to the focal point of public anxiety. The odious acts of nineteen Muslim hijackers thrust the lives of millions²⁷ of ordinary American Muslim citizens and residents under increased government and public scrutiny. More than ten years later, this attention has not waned.²⁸

While other racial and ethnic minorities suffer from public bias, most noticeably in the anti-immigrant sentiment directed primarily at Latinos and in long-standing racial bias against African Americans, animus against Muslims is different in nature and expression. The "race-ed" Muslim lies at the unenviable intersection of preexisting American biases against racial, immigrant, and religious minority groups. Those suspicious of Muslims often contribute to a perceived grand civilizational clash between the inherently violent, oppressive, and blood thirsty Islam of the "East" and the liberal, pluralistic, and free United States of the "West."²⁹ This prejudice is rooted in the essentialist definition of a Muslim as prone to terrorism and disloyalty, coupled with an ingrained aversion to freedom.³⁰ Hence, otherwise discriminatory acts are perceived as rational responses to real threats to the nation's security.³¹

Shortly after 9/11, when the nation was panic-stricken and shocked, commentators concluded that the severe backlash against Muslims, Arabs, and South Asians was merely a rational and temporary response to a traumatic national event.³² Ten years later, however, the resentment and deep distrust of over 4 million people has not abated.³³ Indeed, government policies and practices have institutionalized and normalized the manifestations of such entrenched stereotypes as part of the public's discourse about Muslims.³⁴ As demonstrated in the following section, nationwide opposition to building Muslim community centers, repeated mosque vandalizing, political scapegoating of Muslims in the 2008 and 2010 election cycles, rising employment discrimination, and the acceptance of anti-Muslim sentiment in major media outlets³⁵ are arguably more harmful than random hate crimes or the temporary surge in discrimination immediately following 9/11.

Notably, a significant number of people and institutions have recognized that discrimination against Muslims is inconsistent with fundamental American values. They have called on the nation to uphold its cherished ideals of freedom of religion, equal protection, free speech, and due process principles.³⁶ Some media outlets, among them National Public Radio, have fired commentators whose statements have reinforced the racialization of Muslims as the "terrorist other," although they consequently faced public censure for doing so.³⁷ Similarly, four out of five local newspapers in Oklahoma opposed the constitutional amendment denying Muslims religious accommodations in their personal contractual affairs.³⁸ And Muslims have benefited from these individuals' and institutions'³⁹ laudable, albeit relatively muted, defenses. But within an apparent culture war about the utility of American constitutional values before a citizenry fixated on national security, Muslims (women and men) are relegated to the lowest rung of the racial and religion hierarchy.⁴⁰

RECASTING ISLAM AS A SUSPECT POLITICAL IDEOLOGY

In the aftermath of 9/11, Islam was recast as a hostile political ideology such that anything overtly Muslim becomes an indicia of terrorism.⁴¹ A telling case involved a new mosque construction in Murfreesboro, Tennessee. In September 2010, private citizens sued the Rutherford county government for issuing permits for a local mosque expansion. The claimants boldly asserted that Islam is not a religion entitled to First Amendment protection, because it is a political system or ideology.⁴²

Indeed, ten years later 25 percent of Americans believe that American Muslims are not patriotic.⁴³ Similarly, 68 percent of Americans opposed building the mosque primarily because they associated mosques with the 9/11 terrorists.⁴⁴ While many commentators and some political leaders reminded the public of the country's cherished principle of freedom of religion, many doubted its applicability to the "Ground Zero Mosque."

In the midst of a suspicious public, Islam's perceived status as a hostile political ideology, as opposed to a religion, exempts Muslims' religious practices from constitutional or statutory protections.⁴⁵

Mosques as bastions of political extremism

After 9/11, some Americans no longer perceive mosques as merely houses of worship. Instead, they view them as hotbeds of extremism.⁴⁶ To them mosques are fair game for law enforcement infiltration or public attacks and undeserving of religious protections.⁴⁷ Take, for instance, the furor in the fall of 2010 arising out of the approved plans to build a mosque two blocks from Ground Zero. What should have been a fringe right-wing effort to stop a lawful project exposed the underlying distrust held against Muslims by a significant number of Americans.⁴⁸

In another case, residents of Murfreesboro sought an injunction to stop the construction of a new mosque on the grounds, according to the plaintiffs, that Muslims were implementing a stealth "Shariahization" of the country by

building more mosques.⁴⁹ Without a single citation, they asserted that “Sharia law⁵⁰ is more severe, devastating, and destructive not only to Rutherford County but the entire United States, because its purpose is to replace all other law, including the United States Constitution.”⁵¹ They further stated that “Sharia Law advocates sexual abuse of children, beating and physical abuse of women, death edicts, honor killings, killing of homosexuals, outright lies to Kafirs, Constitutional free zones, and total world dominion[.]”⁵²

Furthermore, mosques across the United States face threats of attack and vandalism. In New York,⁵³ New Jersey,⁵⁴ Tennessee,⁵⁵ Wisconsin,⁵⁶ Connecticut,⁵⁷ Kentucky,⁵⁸ California,⁵⁹ Oklahoma,⁶⁰ and other states where concerted anti-Muslim and anti-mosque campaigns have formed,⁶¹ mosques were flooded with hate emails and threats, including a video of a man destroying a mosque.⁶² These events, among others, illustrate how recasting Islam as a political ideology and Muslims as political actors reinforces public perceptions that otherwise discriminatory acts are morally sanctioned as defending the nation.⁶³ Attacking or surveilling a mosque, unlike a church or a synagogue, is not viewed for these individuals as offensive to the United States’ cherished religious freedom principles. Rather it is a rational defense of national security.

“Homegrown terrorism” as code for muslim terrorists

Recasting Islam as a hostile political ideology is most glaring in the post 9/11 policies on “homegrown terrorism,” a politically charged term containing a racial subtext of “Muslim domestic terrorists.” As law enforcement struggles to prevent the next attack on American soil, many agencies have adopted essentialist definitions of Muslims as inherently prone to terrorism and mundane religious practices as leading indicators of terrorist inclinations.

For example, a highly influential report on terrorism by the New York City Police Department (NYPD) tellingly

states, “In the example of the homegrown threat, local residents or citizens gradually adopt an extremist religious/political ideology hostile to the West.”⁶⁴ While many, if not all, Muslim terrorists are motivated by political objectives, law enforcement’s response effectively recasts Islam as a political ideology, thereby legitimizing harsh investigative and prosecutorial techniques unconstrained by policies that infringe on religious freedoms.⁶⁵

Drawing broad and faulty conclusions based on a mere five case studies, the NYPD report encourages

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policing activity based on religious conduct engaged in by millions of Muslims. For instance, “typical signatures” of homegrown terrorism include “giving up cigarettes, gambling and urban hip-hop gangster cloths,” “wearing traditional Islamic clothing, growing a beard,” and “becoming involved in social activism and community issues.”⁶⁶ The doctrinally mandated five daily prayers are also evidence of radicalization toward terrorism.⁶⁷ In effect, a profile of the archetypes of domestic terrorists is nothing short of designating converts to Islam, orthodox Muslims, and imams as suspect. The NYPD report wrongfully correlates religiosity with violence, thereby reinforcing the false stereotype of Muslims as terrorists. Since this department is viewed as a national leader in local counterterrorism efforts, its flawed policies and practices have a domino effect nationwide.⁶⁸

Also facilitating this recasting is the cottage industry

of self-labeled terrorism experts hired to train law enforcement officers nationwide on how to combat terrorism.⁶⁹ The trainers admit that their objective is to warn state and local police officers of the threat posed by Islam in the United States. For example, Ramon Montijo tells law enforcement officials in Alabama, Colorado, Vermont, California (viz., Los Angeles), Texas, Missouri, and other states that most Muslims in the United States want to impose sharia law upon all Americans. He states, “They want to make this world Islamic. The Islamic flag will fly over the White House—not on my watch! My job is to wake up the public, and first, the first responders.”⁷⁰ Another purported terrorism expert, Walid Shoebet, advises local police to “look at the entire pool of Muslims in a community.”⁷¹ At the first annual South Dakota Fusion Center Conference in June 2010, he advised the police to monitor Muslim student groups and local mosques, as well as to tap their phones to find out about their plans to impose sharia.⁷² These views have become so prevalent that neo-conservative Washington DC-based think tanks are publishing reports on “stealth jihad”⁷³ that lawmakers rely upon while developing policies on “homegrown terrorism” and anti-sharia legislation.⁷⁴

Anti-black bias thinly veiled in anti-Muslim slurs

Shortly before the Ground Zero controversy, a Pew poll found that two years after President Barack Obama’s election, one in five Americans still believed that he was a closeted Muslim.⁷⁵ These same allegations, intended as derogatory racial slurs, were hurled against him in the 2008 presidential election cycle.⁷⁶ The accusations say less about the veracity of Obama’s religious beliefs and more about the affiliation with Islam as a political liability. Calling the President a Muslim is a pejorative label aimed at a President whose drop in the polls is due more to an economic recession and controversial health care reform—both of which have nothing to do with Muslims per se. Yet, tellingly, some voice their displeasure with his governance through derogatory accusations of

Obama being a Muslim. This speaks volumes about the positioning of the “Muslim” as among the most distrusted minority group in America despite repeated efforts by Muslim communities to prove their fidelity to the nation.⁷⁷

Thus, when two American Muslim headscarved women sought to sit in a special section behind the podium during one of Obama’s presidential campaign speeches, a campaign volunteer quickly ushered them away from the cameras.⁷⁸ They later admitted, “Because of the political climate and what’s going on in the world and what’s going on with American Muslims, it’s not good for [the Muslim woman] to be seen on TV or associated with Obama.”⁷⁹ This rejection by staffers of an African-American presidential candidate shows that Muslims, racialized as the terrorist “other”, have secured a place at the bottom of the racial hierarchy.⁸⁰

Using electoral politics to recast religious accommodation as Islamic imperialism

In October 2010, 70 percent of Oklahoma’s voters approved the “Save Our State” amendment to the state constitution, thereby prohibiting state courts from considering Islamic law when deciding cases.⁸¹ The discourse surrounding the amendment further evinces Islam’s recasting as a political ideology.

Political pundits framed the issue as, “Sharia law, in short, is a comprehensive, theo-political law system,”⁸² and lawmakers adopted it wholesale into the legislative record. The author of the bill, Representative Rex Duncan (R-OK), proclaimed that sharia was a “cancer” and that his bill would “constitute a pre-emptive strike against Shariah [sic] law coming to Oklahoma.”⁸³ He believes that Muslims come to the United States to take away “liberties and freedom from our children.... This is a war for the survival of America. It’s a cultural war.”⁸⁴ Similarly, co-author Senator Anthony Sykes (R-OK) stated, “Shariah [sic] law coming to the U.S. is a scary concept. Hopefully the passage of this constitutional amendment will prevent it in Oklahoma.”⁸⁵ At least seven other states are considering similar legislation prohibiting judges from considering

foreign law, including Muslim religious precepts, in legal disputes.⁸⁶

Even those opposed to the Oklahoma amendment on First Amendment grounds, including non-Muslim State Representative Cory Williams (D-OK), are accused of enabling “an international movement, supported by militant Muslims and liberals” to establish Islamic law worldwide.⁸⁷ Indeed, his Republican challenger won votes by sending out mailers showing Williams’ picture next to a suspicious figure in an Arab headdress.⁸⁸ By shifting the debate’s focus from religious freedom to foreign political and cultural imperialism, otherwise discriminatory acts become legitimate acts of American self-preservation.

Many other political candidates in the 2010 elections sought votes by vilifying Islam as a national threat. Representative Allen West (R-FL) unabashedly stated, “Islam is a totalitarian theocratic political ideology, it is not a religion. It has not been a religion since 622 AD.”⁸⁹ In his campaign for governor, Lieutenant Governor Ron Ramsey (R-TN) responded to a question on whether he believed Islam was a threat by questioning whether Islam was a religion or a cult.⁹⁰ Consistent with this anti-Muslim sentiment, Tennessee Republicans passed an “anti-terrorism” bill that permits the governor to label any individual or group a terrorist; the original version of the bill specifically targeted anyone practicing sharia law.⁹¹ Representative Renee Ellmers (R-NC) widely distributed a campaign ad condemning her opponent for not vociferously opposing the Park 51 New York City Islamic Center and showed Muslims conquering the United States through mosque constructions.⁹² Political fear mongering is also propagated by some religious leaders such as Pat Robertson, who rebuked Islam as “a violent political system bent on the overthrow of governments of the world and world domination.”⁹³

These incidents set the stage for the symbolic shift of the headscarf as a marker of terrorism. The Muslim woman cannot simply go about her daily life unaffected by the growing societal conspiracy theories about her religion. She is involuntarily ensnared in a polemic debate that has

serious implications for her physical safety, employment opportunities, and individual expressive rights.

FROM SUBJUGATION TO TERRORISM: THE MUSLIM “VEIL” POST-9/11

Before 9/11, the minimal attention paid to Islam was often limited to scholarly and activist debates about whether the headscarf undermined Western feminist ideals as a subjugating byproduct of patriarchy, coerced domestication, and oppression.⁹⁴ Discussions were often couched in a broader debate on whether the law should incorporate multiculturalism and, more specifically, whether multiculturalism was bad for women.⁹⁵

The 9/11 attacks made moot the question of whether the “veil” oppressed women. For some Americans, the important issue was not that Muslim women were victims of Muslim male patriarchs, but rather that these same women were conspirators along with the terrorists that victimized Americans.⁹⁶ Overnight, the oppressed Muslim woman became the oppressor of those who, just a few years back, had pledged to liberate her from the tyranny of certain religious practices.

The “veil” as a symbol of subjugation: The debates of the 1990s

In the 1990s debates about multiculturalism’s impact on the rights of women, some Western feminists categorically denounced the headscarf as a symbol of patriarchy. They doubted that a Muslim woman could “choose” to wear it.⁹⁷ Rather, the perception was that she was coerced by male (or female) family members or indoctrinated from youth to accept it as mandatory for her spiritual salvation.⁹⁸ But if given a meaningful choice, according to many western feminists, a Muslim woman seeking liberation would surely reject it.⁹⁹

What started out as an international issue quickly penetrated the domestic American legal discourse. Intellectuals and feminists contested the deference that American society paid to culture, even when certain

cultural practices seemingly oppressed women either physically or psychologically.¹⁰⁰ According to many American feminists, Western liberal ideals of equality took precedence over any foreign cultural practice, notwithstanding that the United States is a nation of immigrants.¹⁰¹ To some, the “veil,” though not as egregious, was comparable to female genital mutilation in that its aim was to control women’s sexuality.¹⁰²

In response, Western multiculturalists as well as some self-identified “Muslim feminists”¹⁰³ argued that the headscarf is not necessarily antithetical to feminist ideals. Many women choose to wear it as a feminist statement that rejects the hyper-sexualization of women’s bodies by male-dominated societies in both the East and

Many women choose to wear it [the headscarf] as a feminist statement designed to reject the hyper-sexualization of women’s bodies by male-dominated societies in both the East and the West.

the West.¹⁰⁴ Proponents of the headscarf argue in favor of choice and contest the conclusion that Muslim women have no choice in the matter.¹⁰⁵ With the exception of a few countries (e.g., Saudi Arabia, Iran, and Afghanistan), they are not required by law to wear it. While not determinative of a particular woman’s circumstances, the legal right of choice provides sufficient assurances to some Muslim feminists and multiculturalists that the headscarf is not necessarily a tool of oppression.¹⁰⁶

After 9/11, nationwide fears of terrorists in our midst who hold American citizenship on paper but have no loyalty to the nation in fact, eclipsed concerns over the individual rights of religious minority women. The question of whether or not Muslim women are oppressed by patriarchy quickly became submerged by suspicions

of their intentions to harm the nation.

Terrorizing the “veil” post-9/11

After 9/11, some headscarved women¹⁰⁷ in the United States found themselves in a precarious position. No longer does the headscarf reflect an individual decision (or lack thereof) about personal faith and dress. Rather, it “marks” her as a member of the enemy and a legitimate target of aggression arising out of societal prejudices against a religion that has been recast as a hostile political ideology. Her personal beliefs and individual behavior are irrelevant to the harsh judgments she faces from a largely suspicious and fearful public.¹⁰⁸

Facing little control over the prohibitively costly consequences of wearing a headscarf that some Muslim women believe is religiously mandated, their legal right to wear it is of little value. Specifically, recent cases show that these women face the false choice between protecting their own physical safety and that of their children,¹⁰⁹ obtaining employment,¹¹⁰ or actively engaging in the political process, and exercising their religious freedom and individual expressive rights.¹¹¹ Like men, women bear the brunt of entrenched stereotypes that portray Muslims as the primary threat to American national security.¹¹² But, unlike her male counterpart, any woman who wears the headscarf is caught at the intersection of discrimination against religion, women, and the racialized “Muslim other.”

AMERICAN MUSLIM WOMEN CAUGHT IN THE CROSSHAIRS OF INTERSECTIONALITY

“Intersectionality aims to provide an account of a whole person whose subjectivity is shaped by different discourses, always in a particular social historical context.”¹¹³ Therefore, the headscarved woman does not face one-dimensional discrimination as a woman, a practicing Muslim, or in many cases a person of color. Rather, she faces a unique type of intersectional

discrimination based on false stereotypes that she is the oppressed, subjugated, and domesticated woman. After 9/11, as this article argues, she now faces another stereotype: a disloyal, anti-American, terrorist or terrorist-sympathizer.¹¹⁴

Positioned at the bottom of the racial, gender, and religion hierarchy

While Muslim women experience some forms of discrimination in ways similar to Muslim men, the headscarf engenders their subordination in ways overlooked by generic strategies against anti-Muslim (male) discrimination. Specifically, to many it marks her as a terrorist sympathizer, an unassimilable foreigner, and an oppressed woman.

Broader societal biases against women coupled with the visibility of the distinctly female headscarf expose women to discrimination that differs, both in form and frequency, from that experienced by men. If a co-worker, neighbor, or other member of the public has never interacted with a headscarfed woman, then the intersectionality theory supports that she is more likely to be treated according to negative stereotypes, namely, that she is associated with terrorists and oppressed by her terrorist husband or father.¹¹⁵

Additionally, the Muslim community largely continues to subject her to cultural norms that mirror mainstream gender stereotypes of the “good Muslim woman” as docile, deferential to male authority figures, and prioritizing her family over her career.¹¹⁶ Hence unlike Muslim men, they are ordained to subordination whether as terrorists, terrorist sympathizers, or victims of male patriarchy.¹¹⁷

Take, for instance, the situation of an educated and ambitious headscarfed woman with an assertive personality. This archetype, which is common among Muslim women in the United States,¹¹⁸ faces multiple stereotypes that implicate her gender, religion, and often race. Thus, the discrimination she faces is so tailored to her intersectional position that there may be Muslim men and non-headscarfed Muslim women, as well as

non-Muslim women who do not experience discrimination in the same context.

Her demonstrably smart, ambitious, and self-confident characteristics do not comport to an American definition of the “good female employee,” who some define as soft-spoken, deferential, and mild-mannered.¹¹⁹ Her male colleagues perceive her as the stereotypical “bitch” who exhibits an inappropriate sense of entitlement. Consequently, she is denied a promotion and a raise, given poor evaluations based on pretextual reasons (e.g., needing to “improve her attitude” and become a better team player). Similar to any woman in her circumstances, except for the headscarf, she is held to a different and more rigorous standard than a similarly situated White man. Placed at the bottom of the gender hierarchy,¹²⁰ she is a victim of gender discrimination.

Meanwhile, some of her colleagues (both men and women) are biased against Muslims for a variety of factors, including personal experiences, national events, and negative stereotypes promoted in the media.¹²¹ These co-workers and supervisors believe that Muslims are disloyal to the country, are probably terrorists, and oppress women.¹²² This is manifested through offensive comments about their being terrorists and misogynists.¹²³ The Muslim woman’s loyalty to the nation and right to be in the workplace, especially in a leadership capacity, is explicitly or implicitly questioned. In general, she feels unwelcome at least partially because of her religion.¹²⁴ Placed at the bottom of the religion hierarchy, she experiences anti-Muslim discrimination.

Her headscarf also marks her as an unassimilable “foreigner” with the attendant suspicions of disloyalty and anti-Americanism.¹²⁵ The dominant assimilationist culture interprets her refusal to uncover herself as unpatriotic and unappreciative of the opportunities available to immigrants and women. In exchange for such opportunities, immigrants are expected to assimilate by adopting the predominant Anglo-Saxon culture, dress, and mannerisms,¹²⁶ and women are expected to uncover to look more “Western.” Refusing to do so becomes a

basis for suspicion. Unlike a Muslim man who can shave his beard without violating what he believes is a religious obligation, she does not have the option of “passing” without abandoning her religious beliefs.¹²⁷ Placed at the lower rungs of the racial hierarchy, she experiences racial or ethnic-origin discrimination.

The headscarved woman remains susceptible to stereotypes that she is oppressed and subjugated by her husband, father, and religion. Her presence is just another reminder of what is “wrong” with Islam and makes her “deserving” of mistreatment for continuing to adhere to what some perceive to be a violent and pathologically dysfunctional ideology.¹²⁸ Hence, she faces gender, race, and religious discrimination in ways that a Muslim man, a non-Muslim woman, non-headscarfed Muslim woman or another racial minority does not face. Facing three levels of subordination, she finds herself caught in a “Catch 22” because she is unable to “pass,” “convert,” or “cover” to avoid discrimination.¹²⁹

Under identity performance theory, a “conversion” in this context is effectively a religious conversion of sorts, as she replaces her orthodox religious beliefs with a secularized interpretation of Islam.¹³⁰ Removing her headscarf, therefore, requires her to abandon a fundamental religious belief.¹³¹ Nor can she “pass” as

Hence, she faces gender, race, and religious discrimination in ways that a Muslim man, a White woman, or another racial minority does not face.

a non-Muslim because there is no acceptable way of wearing a headscarf that circumvents stereotypes¹³² of the terrorist, the terrorist’s wife, the unwelcome foreigner, and the oppressed woman. In the eyes of many Americans, the only “good Muslim woman” is the one that does not cover her hair and secularizes, which brings her back to having to convert out of her religious beliefs.¹³³ So long

as that “cover” is on her head, her differences are on full display, rendering attempts to integrate into American society futile.

Privileging the male perspective in American Muslim leadership

Further exacerbating the marginalization of Muslim women, whether headscarved or not, is the privileging of male perspectives in the American Muslim leadership. Since Muslim women are generally politically subordinated within Muslim communities, especially if community activities center around the mosque, the articulation of political claims for equality by Muslims privileges the experiences of men over those of women.¹³⁴ This intra-group hierarchy further constricts the latter’s agency in the post-9/11 era, for they both live in a community defined and subordinated by the racialized “Muslim” identity and culture and continue to be subjected to varied degrees of patriarchy within their own communities.¹³⁵

Predominantly male perspectives cause resources to be directed toward forms of discrimination common to Muslim men, thereby obscuring the discrimination experienced by Muslim women.¹³⁶ Muslim leaders and spokespersons claim to speak for “Muslims,” but often fail to incorporate the women’s perspectives beyond a superficial defense of their right to wear a headscarf.¹³⁷ Resources often are used to protect the right to build mosques and religious accommodation in the workplace, as well as to counter the media’s negative stereotyping of Muslim men. In contrast, the focus on discrimination unique to women is often limited to a case-by-case basis rather than a more effective systemic approach with women integrated into the anti-discrimination campaign.

The underrepresentation of Muslim women’s issues by Muslim civil rights and cultural organizations takes on additional importance in light of recent governmental efforts to correct culturally insensitive counterterrorist practices.¹³⁸ On February 8, 2012, the FBI’s director of public affairs met with leaders of several Muslim and interfaith organizations to discuss changes in FBI training

materials.¹³⁹ However, government policymakers will not receive an adequate representation of the issues facing all Muslims, women included, unless those representative organizations include women in positions to direct advocacy efforts. While the Muslim organizations that met with Mueller have women in leadership roles, only one has women visibly directing advocacy efforts.¹⁴⁰

Meanwhile, when Muslim civil rights groups focus on the discrimination faced by women, they solely focus on those who wear the headscarf. A woman who chooses not to wear it, yet nonetheless faces discrimination, is unlikely to find community resources expended in her defense.¹⁴¹ If groups do offer to help a headscarved woman, they often do so through agendas based on a male-centric definition of anti-Muslim bias that does not see the issue beyond the right to practice one's faith. Some Muslims may even decide that the woman is to blame for the discrimination because of her "bad attitude," thereby reflecting mainstream American gender stereotypes of the "good woman" as obedient and deferential.¹⁴²

Sacrificing Muslim women's rights to defend muslim (men's) civil rights

Like many women of color in communities experiencing systemic discrimination, some Muslim women are ambivalent about the degree of political and social capital that should be expended on challenging gender barriers within their communities. They are understandably hesitant to compromise the broader Muslim civil rights agenda by challenging the patriarchy within their communities and institutions.¹⁴³ As Muslim communities across the country experience mosque vandalizations,¹⁴⁴ hate crimes,¹⁴⁵ forced exile on "No Fly" lists,¹⁴⁶ profiling in airports,¹⁴⁷ and aggressive law enforcement tactics that border on entrapment,¹⁴⁸ intra-community gender rights are often quickly marginalized. Further complicating their predicament is the likelihood that internal power struggles based on allegations of male domination, even if true, only reinforce negative stereotypes of (male) Muslims as oppressive, pathologically authoritarian, and deserving

of suspicion.¹⁴⁹

Challenging male patriarchy within Muslim communities can also subject a woman to allegations of harming the community's collective interests—additional harms they cannot afford in light of political and physical attacks by the public and the government. These practical concerns deny women the ability to contest gender-biased interpretations of religious doctrine and cultural practices, thereby stifling a healthy evolution of Islam in the United States.¹⁵⁰ Consequently, a significant portion of the new generation of Muslim female leaders may have little choice but to support defensive strategies that collectively marginalize Muslim women as a group.¹⁵¹

Muslim women experiencing discrimination at the intersection of race, religion, and gender tend to postpone their concerns with gender disparities in order to preserve community cohesion during a time of siege.¹⁵² Thus they take on the monumental endeavor of starting their own organizations and competing with legacy organizations, or become surrogates of opponents of mainstream Muslim organizations as a channel for expressing their dissent.

Muslim women leaders have often found it difficult for their voices to be heard within predominately male dominated Muslim civic and advocacy organizations and as a result, some have started their own organizations. Organizations founded and operated by highly educated Muslim women include Muslim Advocates,¹⁵³ Islamic Networks Group,¹⁵⁴ and Karamah.¹⁵⁵ Though not run by a Muslim woman, South Asian Americans Leading Together,¹⁵⁶ also addresses many issues in the Muslim community. These organizations represent the few examples of female leadership at the national level¹⁵⁷ and often approach issues within the Muslim community with a more inclusive and comprehensive agenda than those organizations founded and/or dominated by their male counterparts. While there are certainly other talented Muslim female professionals in leading roles, many of them work for and report to predominantly male executives and male board members.¹⁵⁸

Post-9/11, there has also been a rise of female

dissidents who have left Islam and now ally with far right anti-Muslim organizations. Women such as Ayaan Hirsi Ali,¹⁵⁹ Wafa Sultan,¹⁶⁰ and Nonie Darwish¹⁶¹ present themselves as experts on Islam but proffer views that are highly controversial, if not outright offensive, to the vast majority of Muslims in the United States.¹⁶² Despite their lack of an identifiable Muslim constituency, they are often touted by their benefactors as courageous voices against the oppressive ideology of Islam. While they may hold sincere views, they appear to be exploited to do the bidding of right-wing political groups with clear anti-Muslim agendas, which further objectifies Muslim women within a larger culture war wherein Islam is portrayed as an enemy of the state.¹⁶³ Indeed, many Muslims perceive such women as mere pawns in the larger assault on their civil rights.

To prevent such distorted consequences, American Muslim women should have the opportunity to play meaningful roles in existing institutions established to defend the rights of women, Muslims, or civil liberties in the post-9/11 era. Those roles should not be limited to those associated with traditional gender roles such as mothers, nurses, or teachers. Similarly, mainstream American feminist groups have an obligation to include American Muslim women in their leadership, gender rights agenda, and advocacy campaigns. Civil liberties groups that focus on the adverse consequences of national security laws would also be well served by including such women in their discussions on identifying violations of individual rights within the community. Doing so would make their strategies more informed and more effective in ensuring that all Muslims (as opposed to just the men) caught in the post-9/11 counterterrorism preventive dragnet benefit from advocacy projects.

The failures of American women's rights organizations

Many Western feminists have failed to identify with Muslim women beyond wanting to “liberate” them from oppressive patriarchies originating from their “Eastern”

cultures. At the same time, they fail to recognize how their own “Western” patriarchy prevents some Muslim women from attaining the economic independence necessary for exercising individual rights.¹⁶⁴

Western feminists’ silence exposes their failure to recognize the significance of excluding women, whatever their religion or racial identity, from the courtroom, the work place, and the political process. Instead, the cases are narrowly viewed as anti-Muslim (male) religious discrimination.¹⁶⁵ These cases also highlight these feminists’ double standards, as they criticize “Eastern” practices that subordinate Muslim women while failing to acknowledge that their “Western” society subordinates the same women.¹⁶⁶ Specifically, such feminist groups as the National Organization for Women and the Feminist Majority Foundation have consistently called for banning the burqa and spoken in defense of women’s rights in

Similarly, mainstream American feminist groups have an obligation to include American Muslim women in their leadership, gender rights agenda, and advocacy campaigns.

Iraq, Afghanistan, and other Middle Eastern nations while remaining silent on an American Muslim woman’s right to wear the hijab free of discrimination and violence.¹⁶⁷ While these feminists’ focus on equal pay, abortion rights, and other gender-specific issues certainly benefit Muslim women, the American women’s rights agenda fails to address the unique forms of subordination experienced by American Muslim women.

The supposedly patriarchal “East” can no longer be considered the sole culprit for a Muslim woman’s economic and political marginalization in the United States. It is long past time for those concerned with the gender rights of Muslim women abroad to acknowledge their subordination in the post-9/11 era in the United

States. Many American women's rights groups overlook gender discrimination because they may mistakenly believe the bias is solely on account of the woman's religion and thus not within their mandate.¹⁶⁸ Likewise, American Muslim spokespersons should acknowledge the domination of male voices whose focus on women is limited to her religious right to wear a headscarf within the broader agenda of protecting Muslim (male) civil rights.

Both Muslim civil rights and women's rights groups are likely to overlook one of the two dimensions of the bias: gender or religion. Meanwhile, advocacy groups that defend the civil rights of persons within a particular Muslim woman's racial group will often not recognize the racial component of the discriminatory animus.¹⁶⁹

When one adds the dimension of race or ethnicity, a third layer of intersectionality exacerbates her predicament. For example, Black civil rights groups have rarely, if ever, directly taken on such issues vis-à-vis African-American headscarved women.¹⁷⁰ And while Arab or South Asian groups may be sensitized to the ethnic origin bias underlying the discrimination, they may punt the case as an anti-Muslim or anti-Black case.

In all scenarios, few of the organizations recognize the gender dimension in the same way they would have if the discrimination had occurred within the pre-9/11 subjugation paradigm. Consequently, headscarved women are caught in the crosshairs of intersectionality at their own peril, and any analysis of antidiscrimination that does not take intersectionality of race, religion, and gender into account cannot sufficiently address how Muslim women are subordinated.¹⁷¹

MOVING BEYOND SYMBOLS OF TERROR TO PALPABLE DISCRIMINATION

The shift in the headscarf's meaning has transformed these American women's lives as they face various forms of palpable discrimination.¹⁷² As the headscarf "outs" the woman, she and her family can experience

adverse consequences in various contexts.¹⁷³ According to recent cases, her children are subjected to bullying and derogatory slurs based on the visibility of her Muslim identity.¹⁷⁴ She also fears discrimination in employment,¹⁷⁵ threats to her physical safety,¹⁷⁶ and exclusion from courthouses.¹⁷⁷ Cumulatively, these circumstances can adversely affect her individual expressive right to choose to wear her headscarf as a reflection of her personal beliefs.¹⁷⁸

Consequently, recent news stories seem to indicate an unprecedented number of Muslim women have been compelled to remove the headscarf after 9/11 to end physical harassment, obtain gainful employment, and participate meaningfully in American civic life.¹⁷⁹

*Employment discrimination*¹⁸⁰

Nowhere is the adverse effect of the symbolic shift from subjugation to terrorism more evident than in the employment context. Indeed, the EEOC reported the number of complaints of unlawful discrimination against Muslim employees more than doubled from 697 in 2004 to 1490 in 2009; 425 were filed by Muslim women, many of whom donned a headscarf.¹⁸¹ Of those, 803 formal charges were filed on behalf of Muslim complainants wherein 25 percent alleged religious discrimination.¹⁸²

Recent cases indicate that some women may find themselves unwelcome so long as they choose to practice their faith by covering their hair.¹⁸³ And if outright termination is not the discriminatory act of choice, they may find themselves subjected to ethnic and racial slurs conflating their religion with disloyalty and a basis to question their right to work there.¹⁸⁴

In some cases, employers changed their policies after 9/11 to coerce the women to remove their headscarves. In *Mohamed-Sheik v. Golden Foods/Golden Brands, LLC*,¹⁸⁵ the Somali women plaintiffs began working for the employer before the 9/11 attacks. They were permitted to wear their headscarves, wear their shirts untucked to accommodate their desire for modesty, and pray during their breaks. Despite these workable accommodations,

the employer ended such accommodations after 9/11. The temporal relationship between this changed policy and 9/11 are unlikely to be a coincidence; rather, it reflects the increased intolerance toward Muslim workers, especially those seeking to cover their hair.

In other cases, Muslim women are having difficulty obtaining employment in the first place. In 2008, a 17-year-old Muslim woman applied for a job at an Abercrombie & Fitch Kids store. The store manager, who recommended her “as a very good candidate,” suggested that she wear a different color headscarf that was consistent with the store’s “Look Policy.” After recommending her, he consulted with the district manager, who told her not to hire the applicant because she wore the headscarf.¹⁸⁶ In late 2010, another American-born Arab woman applied to work at Abercrombie & Fitch while wearing the headscarf.¹⁸⁷ After being rejected for not having the “Abercrombie look,” the woman lamented, “[t]he interview crushed me because I never imagined anyone in the Bay Area would reject me because of my headscarf.”¹⁸⁸ Fearing future discrimination from prospective employers, the young woman decided to stop wearing it out of her economic necessity to obtain a job.¹⁸⁹

Racial violence against Muslim women

Another consequence of the terrorization of headscarves results in random acts of violence against Muslim women racially marked as the Terrorist “other.”¹⁹⁰ Racism against racial minorities has historically been expressed through acts of violence that humiliate, maim, or kill the victim. The Muslim woman’s status as a woman deems her an easy target, one presumed incapable of physically defending herself against violence. Such a perception leaves her and any accompanying children vulnerable to physical assault. Violence committed against men is often more lethal, and thus less frequent, because he is assumed capable of punching back. In contrast, she may be more vulnerable to less lethal but more frequent physical assault by individuals viscerally reacting to her headscarf.¹⁹¹ She may also experience more frequent

daily micro-aggressions, such as hostile stares, rude behavior, dismissive statements, or outright disrespect. Cumulatively, these micro-aggressions can have adverse consequences on her psychological well-being.¹⁹²

Shortly after 9/11, several women had their headscarves ripped off and were subjected to acts of violence.¹⁹³ When a Muslim woman reporter for a Seattle newspaper put on the headscarf to investigate how Muslim women were treated, she was pushed into the path of a truck.¹⁹⁴ More than three years later, in 2004, a Muslim woman

The Muslim woman’s status as a woman deems her an easy target, one presumed incapable of physically defending herself against violence.

was stopped in her car by three individuals who, after demanding a lighter, called her “Stupid Muslims, f-cking Muslims,” kicked her car, punched her in the face, and tore off her headscarf.¹⁹⁵

By late 2010, the frequency of violence committed against Muslim women because of racial and religious animus became the subject of a number of news stories.¹⁹⁶ In the span of two months, at least six reported cases of hate crimes across the country were committed against headscarf-wearing women; in one case, a woman’s 4-year-old son was also physically attacked. On October 14, 2010, a pedestrian attacked a Staten Island woman and her toddler, punched her in the face, pulled on her scarf, asked her why she was in the country, and called Muslims and Arabs terrorists.¹⁹⁷

One week later in Seattle, two American citizens of Somali descent were physically attacked at a gas station.¹⁹⁸ The female attacker called them suicide bombers, terrorists, and told them to go back to their country.¹⁹⁹ She then slammed the door on one of the women’s leg, kicked her, and pulled her headscarf. She pushed the other one to the ground. As the women were screaming for help, bystanders took no action.

On December 20, 2010, a Muslim woman wearing the headscarf in Columbus, Ohio, was allegedly stalked, verbally harassed, and then pepper-sprayed by a White man shouting religious and ethnic slurs, such as, “Tell all of your Muslims that this is not your country,” “Go back to wherever you came from,” and threatening, “I will kill you.”²⁰⁰ During that same time period, a female convert began wearing the headscarf and received threats and intimidation by a neighbor. The reported verbal threats included, “I’m going to kill you, you f-ing b-ch,” “I’m going to shoot your dog and [rape you] while you pray with your head on the ground.”²⁰¹ The neighbor also physically intimidated her by shoving her against a wall, monitoring her with binoculars, and attempting to unlawfully enter her apartment.²⁰²

On December 24, 2010, a man in Twin Falls, Idaho, harassed a headscarf-wearing woman with her two children.²⁰³ After asking if she was Muslim, the assailant reportedly told her he “spent time in Iraq and my friends were killed by you, I was blown up by you.”²⁰⁴ According to court records, the alleged assailant shouted that the woman “didn’t belong here in the U.S.” and claimed he had killed Muslims and planned to kill more. He also reportedly told her that he had a concealed weapon. A loaded weapon was later found in his car. Around that same time, a female Muslim cashier wearing a headscarf was threatened by a male customer.²⁰⁵ He accosted her with derogatory names and screamed “This is f-ing America, why are you here” and demanded that she leave the country. He threatened to “get her” at the end of her shift.²⁰⁶

On July 6, 2011, a 56-year-old headscarved woman in Harlem was attacked by two women after she had asked one of them to stop taking her photo. One of them called her “a f-ing terrorist” as she punched her in the eye and threatened to kill her. The two attackers pulled off the woman’s headscarf and continued to verbally attack her.²⁰⁷ On July 27, 2011, a Tennessean headscarved convert and her 18-year-old son were threatened with a knife by another motorist who made fun of an Islamic

prayer and threatened to kill the two.²⁰⁸ More recently in August 2011, a motorist in Ann Arbor pulled up to a 21-year-old Palestinian woman while she was stopped at a red light and screamed racial epithets, yelling, “You’re a terrorist,” and, “Your people need to be killed,” as he pointed a handgun at her.²⁰⁹

Unfortunately, for these women and many others whose stories are unreported, their headscarves will continue to expose them to hate crimes and other forms of discrimination, as they symbolize the feared and despised terrorists in our midst. These hate crimes also show how hate speech permeates the public psyche to produce tangible discrimination and violence against persons associated with the hated group. As the headscarf increasingly becomes a symbol of disloyalty and foreignness, the Muslim woman is no longer merely a private citizen free to choose how to practice her faith. Instead, she faces the false choice between freely expressing herself based on religious, cultural, and personal values or protecting herself and her family from violence in public spaces.

School bullying of Muslim children arising from their mother’s “marker” of terrorism

Muslim children across the United States increasingly face threats to their physical and psychological safety upon entering school.²¹⁰ Activists cite the vilification of Muslims and Arabs as a key factor in the rise of school bullying and that bullying is likely to rise as there are more visible signs of “difference”. As a result, the physical safety²¹¹ of a Muslim woman’s children has become a primary concern as the guilt associated with her headscarf is imputed onto her children.²¹²

One Muslim female commentator noted that even after passing anti-bullying laws in New Jersey, “it is important for lawmakers, school administrators, teachers and parents to remain mindful that Arab-American, American-Muslim and Southeast-Asian children are at an especially acute risk for harassment, intimidation and bullying in the public schools.”²¹³ Similarly, some educators note that

a significant number of students come to school with misperceptions (negative stereotypes) about Muslims and Islam. They believe such views may be due to a growing anti-Muslim sentiment in the United States. “A lot of times it involves statements from students: ‘They’re all crazy. They all hate us,’” said Christopher S. Rose (outreach director at the Center for Middle Eastern Studies, the University of Texas at Austin), who works extensively with K-12 teachers. “Kids are no longer coming into the classroom as a blank slate. They have something they’ve been told at home, at church, on Facebook, Twitter.”²¹⁴

This phenomenon likely contributed to a troubling case in April 2011, when a Somali second-grade boy was found unconscious in the bathroom hanging by his neck in the stall.²¹⁵ If not for a security guard’s opportune discovery of his body, he would likely have died from the anti-Muslim bullying.

When faced with such circumstances, it should come as no surprise if Muslim mothers decide to remove their headscarves or never put them on in the first place out of concern for their children’s physical safety. Whatever individual expressive rights are available by law to the Muslim woman are annulled by reality.

A telling example is the response of a Palestinian American woman to 9/11 as she rushed out of her house with her hair uncovered to pick up her son from middle school. Her daughter, who wore the headscarf, noted her shock when she saw her mother for the first time not wearing a headscarf in public. The daughter exclaimed, “I bumped into her. I was: ‘Mom! You forgot to wear your hijab.’ And [her mother] said, ‘We can’t wear it.’ ...My brother looks like a White kid with dark hair and she didn’t want to wear a hijab so that people would not know he was a Muslim. I was speechless.”²¹⁶

Deconstructing Muslim women-led organizations

A more subtle but equally harmful effect of the headscarf’s association with terror is the deconstruction of women-led organizations that tailor to the needs of practicing

Muslim women in contemporary American society. A telling example is the fate of Hip Muslim Moms, a group of over fifty young mothers in the Washington, DC, area, some of whom wear the headscarf. This women’s group and many others like it are natural outgrowths of the coming of age of American-born children of Muslim immigrants who seek to preserve their religious identity as they adopt an American cultural identity. The group clipped coupons, arranged play dates, and planned girls’ nights out to see movies such as “Sex and the City 2.” They self-identified as modern, professional Muslim women who sought an alternative to the moms’ groups run by their older, immigrant mothers.

But when one of their husbands was charged with plotting to bomb the Washington DC Metrorail, the group was suspected of illicit activity. Questions percolated as to whether they were “jihadi” Muslim women married to terrorists. Not only do such suspicions raise the familiar specter of guilt by association, but they also objectify women as mere extensions of their husbands as opposed to free individuals independent of their husband’s actions or beliefs. An onslaught of negative publicity forced the group to disband out of fear for their own physical safety.²¹⁷ “A lot of moms were really sad...that this beautiful, pure group got tainted by this,” commented one of the group leaders. “It’s sad to see our name associated with actions of people we’ve never met.”²¹⁸ They are now forced to either return to the traditional social groups dominated by patriarchal norms or disconnect from other Muslim women, thereby leaving themselves socially isolated.

White Christian women are not collectively blamed for White Supremacist males’ violence committed in the name of Christianity, whether through racial violence by the Klu Klux Klan or terrorist bombings by Timothy McVeigh.²¹⁹ Thus White women-led feminist organizations²²⁰ fail to fully appreciate how national security laws disparately impact Muslim women.²²¹ Any attention paid to Muslim women’s rights is often limited to clichéd and counter-productive anti-burqa campaigns focused on Muslim-majority countries.²²² Unless there is a serious rethinking

by Muslim and feminist organizations, it is unlikely that Muslim women's experiences will be meaningfully redressed any time soon.

RETHINKING POST-9/11 CIVIL AND WOMEN'S RIGHTS STRATEGIES

As the post-9/11 era enters its eleventh year, the persistent discrimination against Arabs, Muslims, and South Asians can no longer be characterized as mere backlash. Public bias is on the rise, and the government continues to ratchet up its aggressive preventative counterterrorism campaign against Muslims.²²³ Given that women bear a significant brunt of the adverse consequences, a rethinking of post-9/11 civil rights strategies is long overdue.

At the conceptual level, the debate can no longer be framed as merely one about the legal right to wear the headscarf as a matter of religious freedom. Doing so has become a psychological and physical hazard for

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Muslim women and their families. It has also impeded the women's ability to obtain employment and become economically independent. Proposed solutions, therefore, must incorporate the multiple levels of subordination faced by headscarved Muslim women.

Four specific strategies would go a long way toward empowering, de-essentializing, and granting agency to Muslim women. First and foremost, the unique forms of discrimination and subordination experienced by Muslim women, particularly those easily identifiable as Muslim, must be acknowledged and incorporated into anti-discrimination campaigns. Toward that end, there needs to be more media coverage about how Muslim women

experience post-9/11 discrimination and are uniquely impacted by anti-Muslim bias in ways that their male counterparts are not. Second, more Muslim women must be included in leadership positions in Muslim advocacy groups, American women's rights groups, and national security advocacy groups. Hate crimes and discrimination against them should be viewed as a woman's rights as well as a national security issue, not just a religious bias issue. Third, Muslim women in advocacy leadership positions should be diverse in order to ensure the various political viewpoints, religious practices, and ethnic backgrounds are represented in all decision-making processes. Fourth, government efforts to prevent post-9/11 backlash through community outreach efforts or civil rights litigation must purposely include a diversity of Muslim women in the relevant meetings and dialogues with the Muslim communities.

Avoiding superficial quotas that tokenize Muslim women

One simple, but flawed, solution to problems examined in this report is to just increase the number of Muslim women in leadership positions in Muslim, civil rights, and women's rights organizations.²²⁴ While this may mitigate the failure to incorporate intersectional experiences into anti-discrimination strategies, a handful of women placed in key decision-making positions cannot single-handedly undo systemic problems, because no singular, unitary "Muslim woman" can represent the experiences and grievances of all women who identify as Muslim.²²⁵ These people come from various racial and ethnic backgrounds, hold diverse political viewpoints, and adopt beliefs ranging from staunch secularism to religious orthodoxy. Focusing only on a quota system will likely result in a token selection of women who, knowingly or not, may simply implement a male-centric vision. If that is the end result, then a complete restructuring of the strategy to incorporate their diverse experiences will never occur. Thus, their inclusion in decision-making capacities within mainstream institutions is merely a first step toward integrating diverse

perspectives into campaigns aimed at combating post-9/11 discrimination.

Equally important is ensuring that these women are high achievers in their professional lives with the requisite authority to apply their expertise to empower the community. This would require Muslim men to share, and in some cases cede, their control of the leadership reins to women who are not only more skilled than they are in certain areas, but also would interject a gendered perspective that addresses Muslim women's unique social, political, and legal challenges.

The more difficult task, however, is de-objectifying women in the psyche and practices of Western feminists and Muslim community life in the United States. As demonstrated in this article, the headscarf has become the insignia of the nation's political enemies, thereby subjecting those who wear it to forms of discrimination that are unique as regards the forms of discrimination experienced by women at large. Women with an intimate knowledge of this complex intersectional experience should be integrally involved in developing civil rights strategies. Over the past few years, an increasing number of Muslim women of diverse political and ethnic backgrounds are publishing op-eds, books, and other literature that offers a window into their post-9/11 experiences.²²⁶ Such work is rarely highlighted in mainstream print and television media, leaving in place specious stereotypes of Muslim women as meek, uneducated, and lacking agency. Thus, there needs to be a concerted effort to increase exposure of such work.

Within Muslim communities, women's meaningful participation is often constrained by the superimposed primacy of their roles as wives, daughters, and mothers over those of executives, lawyers, doctors, and other professional positions. A new generation of women has arisen, one that is increasingly proactive in empowering themselves against such bias and debunking these stereotypes. For example, in the local Chicago-area political race, five women ran for political office. As Maha Hasan, running for library trustee, put it, "[B]eing a Muslim

female running for this, and wearing the headscarf..., it might be difficult in that people will look at me and automatically judge me, but that's part of the process of getting people to know who I am and what I offer."²²⁷ But even those women who reject this ordering of their multiple identities by interacting with the (predominantly

As Maha Hasan, running for library trustee, put it, "[B]eing a Muslim female running for this, and wearing the headscarf..., it might be difficult in that people will look at me and automatically judge me, but that's part of the process of getting people to know who I am and what I offer."

male) Muslim leadership as skilled professionals find themselves marginalized either through subversive tactics by the new generation of Muslim men or explicit rejection by older immigrants. Through this gendered filtering process, the women who have not been either expelled or opted-out due to frustration are often technocrats who use their skills to merely implement male-centric strategies.

Acknowledge the double standards and follow Muslim womens' lead

If Western feminists want to be taken seriously in their call for universal women's rights abroad, they must face the skeletons in their own countries' closets. Their organizations must confront the double standards whereby they adamantly defend the rights of women in the "Muslim East" yet neglect their own society's discrimination against Muslim women. Such subordination is not limited to garden variety discrimination but also occurs in the national security context, which can make it prohibitively hazardous to wear the headscarf. Adopting the banal and patronizing approaches common

in international development programs, where Muslim women are victims with no agency who must be “saved” by Western feminists will not suffice. Similarly, tokenizing a few Muslim women—talking about, rather than to, Muslim women or throwing some money at the problem—would do more harm than good by creating a false impression of progress. American feminists must face the reality that their society has contributed to denying Muslim women their fundamental individual “right to choose” how to express themselves, dress, practice their faith, and define modesty according to their personal beliefs.

Despite having more than ten years to come to this realization, many American women’s rights groups have yet to include “post-9/11 discrimination” in their scholarly and activist agendas because they shortsightedly view it as a national security issue. Although some feminists may feel no loss at the end of the Islamic practice of “veiling,” which they believe does not adhere to the values of liberalism, they cannot escape their own culpability in stripping Muslim women of agency and individuality—two fundamental principles undergirding American feminism.²²⁸ Muslim women in the United States, just like their non-Muslim counterparts, deserve the social and political space to make their own decisions on how to live.²²⁹ But, as shown in this paper, the status quo has made it difficult to do so without paying a potentially unfairly high personal price in the form of unemployment, physical assault, and social and political marginalization.

Western feminists should be looking to Muslim women to take the lead in developing strategies and projects tailored to experiences that only they can articulate. By inviting more Muslim women into women’s rights organizations and campaigns, the inclusion of diverse voices will occur organically. Likewise, non-American Muslim feminists can support existing efforts by Muslim women rather than attempting to lead or speak on their behalf.

As one expert perceptively articulated in the international development context, attempts to empower Muslim women in the United States should look to ordinary

Muslim women to determine how to improve their lives based on their values and personal experiences.²³⁰ It is crucial that their rights go beyond simply the freedom from discrimination and move toward securing their freedom to shape their own religious and cultural communities, as well as broader public policy.²³¹

What is ultimately at stake, both pre- and post-9/11, is Muslim women’s right to avoid a false choice between individual rights, freedom of religion, and physical safety—whether imposed by Muslim men, American feminists, or the public.

CONCLUSION

This paper analyzes the post-9/11 era through the perspective of American Muslim women who wear the headscarf—a population that thus far has been largely ignored in the relevant civil rights and national security law and policy debates. Their visibility as marked Muslims inevitably subjects them to the entrenched anti-Muslim bias. Meanwhile, the disparities she experienced in the past because of her gender did not suddenly wane once her racialized Muslim identity took center stage. Quite the contrary, she now must overcome obstacles arising out of gender bias as well as religious and racial bias. She is caught in the crosshairs of intersectionality of these three characteristics.

Although there is no singular, unitary “Muslim woman” that can represent the diversity of women who identify as Muslim,²³² many Muslim women experience similar adverse consequences because they are collectively stereotyped as meek, powerless, oppressed, or in the post-9/11 era sympathetic to terrorism.

Overt acts of violence and insidious forms of economic discrimination against some headscarved women restrict a woman’s freedom of choice in practicing her religion. The threat this poses to a woman’s life and livelihood should not be taken lightly. The right to work directly impacts a woman’s self-esteem, individual autonomy, and placement in the power hierarchy of her family and

community. Similarly, her inability to feel safe because of the headscarf strips her of a fundamental right to safety and religious expression.

The challenge now rests with Muslim civil rights, American women's rights, and civil liberties advocacy groups to uphold the civil rights of all women and all Muslims, rather than subordinate these women's interests to the dominant group's agenda. The urgency of this project does not stem from merely abstract notions of justice, but from real civil rights violations—headscarved women have increasingly become targets of entrenched anti-Muslim attitudes, and consequently suffered palpable harm. Addressing this challenge is essential not only to restoring their dignity, but also to strengthening American values of religious freedom and gender equality.

ENDNOTES

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2 See Harris, *infra* note 169.

3 See *id.* ("Before Sept. 11, Muslim women who wore head scarves in the United States were often viewed as vaguely exotic. The terrorist attacks abruptly changed that, transforming the head scarf, for many people, into a symbol of something dangerous, and marking the women who wear them as among the most obvious targets."); John Blake, *Muslim Women Uncover Myths About Hijab*, CNN, Aug. 19, 2009, available at [http://articles.cnn.com/2009-08-12/us/generation.islam.hijab_1_hijab-muslim-women-muslim-americans?](http://articles.cnn.com/2009-08-12/us/generation.islam.hijab_1_hijab-muslim-women-muslim-americans?reporting=that+[s]ome+hijab-wearers+say+that+strangers+treat+them+as+if+they're+terrorists.) (reporting that "[s]ome hijab-wearers say that strangers treat them as if they're terrorists."); see also Nadine Naber, "Look, Mohammed the Terrorist Is Coming!" *Cultural Racism, Nation-Based Racism, and the Intersectionality of Oppressions after 9/11*, SCHOLAR & FEMINIST ONLINE (Summer 2008), http://barnard.edu/sfonline/immigration/naber_01.htm (identifying cultural racism as a "process of Othering that constructs

perceived cultural (e.g., Arab), religious (e.g., Muslim), or civilizational (e.g., Arab and/or Muslim) differences as natural and insurmountable" and nation-based racism as a construct that treats certain immigrants as potentially criminal or immoral).

4 Adrien Katherine Wing & Monica Nigh Smith, *Critical Race Feminism Lifts the Veil?: Muslim Women, France, and the Headscarf Ban*, 39 U.C. DAVIS L. REV. 743, 750 (2006) (discussing the origin and significance of the headscarf in Islamic history and in the French headscarf debate); see also Alia Al-Saji, *The Racialization of Muslim Veils: A Philosophical Analysis*, PHIL. & SOC. CRITICISM 875, 888-893 (2010) (discussing the significance of the headscarf in the American context).

5 Wing, *supra* note 4 (discussing why many Muslim women view wearing the headscarf as freedom of expression, religion, and choice).

6 Strossen, *infra* note 8; see also Naber, *supra* note 3 (observing that headscarves mark Muslim women as "daughters or sisters of terrorists").

7 See Jack G. Shaheen, *Arab and Muslim Sterotyping in American Popular Culture*, Center for Muslim-Christian Understanding: History and International Affairs (1997), at 4-5, http://www12.georgetown.edu/sfs/docs/Jack_J_Shaheen_Arab_and_Muslim_Stereotyping_in_American_Popular_Culture_1997.pdf (stating the mistaken identification of Muslims as Arabs by Americans due to common image stereotypes, despite only 12% of Muslim being ethnically Arab); Elkoubaiti Naoual, *Women and Conversion to Islam: The American Women's Experience*, Oriental Women Organization (2010), at 1-3, http://usmba.academia.edu/ELKOUBAITINAoual/Papers/252655/Women_and_Conversion_to_Islam_The_American_Womens_Experience (identifying the huge increase of American women who have converted to Islam since 9/11 and the persecutions they face despite being American); Jenna Henderson, *Nieuwe Moslima's: Gender Discourse, Identity, and Conversion in the Netherlands*, Independent Study Project Collection (2006), at 12, http://digitalcollections.sit.edu/cgi/viewcontent.cgi?article=1364&context=isp_collection (negative Dutch perception of women converts as foreigners when donning headscarf); Jonathan Roberger, *Veiled Women, Symbolic Interaction and The Western Hypocrisy*, Theoretical Currents in Contemporary Sociology, University of Ottawa (2007), see context before endnote brackets 42-44, 16-17, 32-34, 5-7 13, 17, and 33, <http://www.turntoislam.com/forum/showthread.php?t=12154> (general claims as to persecution Anglo converts in North America suffer just for wearing some form of traditional Islamic garb).

8 See Nadine Strossen, *Freedom and Fear Post-9/11: Are We Again Fearing Witches and Burning Women?*, 31 NOVA L. REV. 279, 306 (2007) (citing Neil MacFarquhar, *A Simple Scarf, But*

Meaning Much More Than Faith, N. Y. TIMES, Sept. 8, 2006, at A22).

9 See *infra* note 41, at 272.

10 See Iyiola Solanke, *Putting Race and Gender Together: A New Approach to Intersectionality*, 72(5) Mod. L. Rev. 723 (2009) (highlighting that additive discrimination claims fail “to acknowledge the black woman as ‘an integrated, undifferentiated, complete whole’ with a ‘consciousness and politics’ of her own.” quoting Regina Austin, *Sapphire Bound!*, 1989 Wis. L. Rev. 539, 540 (1989)).

11 See Editorial, *Terrorists Hiding in Hijabs: Muslims Seek Special Treatment to Elude TSA Groping*, WASH. TIMES, Nov. 17, 2010, <http://www.washingtontimes.com/news/2010/nov/17/terrorists-hiding-in-hijabs> (arguing that by granting religious accommodation to Muslim women who wear the headscarf, terrorists will use it to elude security measures).

12 See Mark H. Hunter, *SLU Professor Talks About Significance of Hijab*, THE ADVOCATE, Dec. 5, 2010, <http://www.theadvocate.com/news/latest/111333919.html> (discussing the hijab’s role internationally and in the Muslim experience).

13 See Scott Shane, *In Islamic Law, Gingrich Sees a Mortal Threat to U.S.*, N.Y. TIMES, Dec. 21, 2011, http://www.nytimes.com/2011/12/22/us/politics/in-shariah-gingrich-sees-mortal-threat-to-us.html?_r=1 (statement of Mr. Newt Gingrich) (“I believe Shariah is a mortal threat to the survival of freedom in the United States and in the world as we know it.”).

14 Dana Milbank & William M. Arkin, *Monitoring America*, WASH. POST, Dec. 20, 2010, at A1 (showing trend among self-labeled terrorism experts training law enforcements of portraying Muslims as seeking to impose sharia law in America); Robert Spencer, *Stealth Jihad* (Reginery Publishing, Inc. 2008); Andrea Elliott, *The Man Behind the Anti-Shariah Movement*, N.Y. TIMES, July 30, 2011, <http://www.nytimes.com/2011/07/31/us/31shariah.html> (“Shariah, the Islamic code that guides Muslim beliefs and actions, is not just an expression of faith but a political and legal system that seeks world domination.”); Gladkov Vladimir, *America against the Sharia law*, THE VOICE OF RUSSIA, Aug. 2, 2011, <http://english.ruvr.ru/2011/08/02/54090646.html> (“Driven by the belief that Sharia is not just an expression of faith and a code of behavior but a political and legal system that seeks world domination.”).

15 See *Islam inherently violent?: New Blockbuster ‘Religion of Peace?’ Reveals Disturbing Facts*, WORLD NEWS NET, Nov. 02, 2006, <http://www.wnd.com/?pagelid=38666> (relying primarily on Islam’s own sources, “*Religion of Peace? Islam’s War Against the World*” attempts to show that Islam is a vio-

lent, expansionary ideology that seeks the subjugation and destruction of other faiths, cultures and systems of government, and further, that the jihadis that Westerners have been indoctrinated to believe are extremists, are actually in the mainstream); see also Op-Ed., Christopher Brauchli, *Muslims and Intolerance*, HUFFINGTON POST (Nov. 11, 2010), http://www.huffingtonpost.com/christopher-brauchli/muslims-and-intolerance_b_775141.html (“the good citizens of murfreesboro, putting their worst instincts on display for all to see, oppose the construction for, among other reasons, “islam is not a valid religion but instead a political cause to force the u.S. To adopt muslim laws.” Newt Gingrich “compared those proposing the islamic center, whom he referred to as ‘radical islamists,’ to ‘nazis.’”); see also Shahnaz Khan, *MUSLIM WOMEN: CRAFTING A NORTH AMERICAN IDENTITY* 21 (University Press of Florida, 2000) (arguing that views about Islam are often influenced by populist political Islamist movements).

16 See, e.g., Letter from 51 American Advocacy Groups to Nancy Pelosi, House Minority Leader, and John Boehner, Speaker of the House (Feb. 1, 2011) available at <http://www.muslimadvocates.org/Coalition%20Ltr%20re%20King%20hearings%2C%202-1-11.pdf> (raising concerns that hearings on “homegrown terrorism” focused primarily on American Muslims stigmatizes the communities and facilitates discrimination in various forms); see also 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> (highlighting that in place of the typical portrait of a terrorist driven by ideology, Andrew Joseph Stack III was described as generally easygoing, a talented amateur musician with marital troubles and his act of smashing an aircraft into an IRS building in Austin, Texas, a maddening grudge against the tax authorities); see also, *Man With Explosives Nabbed Outside Michigan Mosque*, N.Y. POST (Jan. 30, 2011), http://www.nypost.com/p/news/national/man_with_explosives_nabbed_outside_lo2fpMwSdyEq7vCmqqeoiP (failure to label him as a terrorist in the mainstream media is further evidence of the racial association with the phrase “homegrown terrorism”).

17 See Robert A. Kahn, *The Headscarf As Threat: A Comparison of German and U.S. Legal Discourse*, 40 VAND. J. TRANSNAT’L L. 417, 419 (2007) (finding that Judge Thorpe repeatedly identified the headscarf as the means for accomplishing terrorist acts in her ruling and discussed the idea that an “insincere” terrorist could threaten national security by falsely posing as a religious Muslim at the department of motor vehicles stating that “wearers of full face cloaks would ‘pretend to ascribe to religious beliefs in order to carry out activities that would threaten lives.’”); see also Kathleen M. Moore, *Visible through the Veil: The Regulation of Islam in American Law*, 68 Soc. OF RELIGION. 269 (2007) (While most

Muslim women in the United States choose not to wear the *hijab*, the visibility of it as a focal point for controversy influences American perceptions about what constitutes Islam. Such cases as the Florida driver's license case of Sulthaana Freeman putatively pit a benighted image of Islam against the necessities of national security, and only serve to entrench already polarized opinions about the nature of Islam. Worse, such a binarism posits gender relations as an essential point of divergence between the Islamic world and secular democracies, and promotes the simplistic view that cultures are set on an unavoidable collision course, a clash of civilizations. Not only is the *hijab* a volatile emblem that can be viewed as a symbol of male oppression or of modesty and religious or cultural identity, it is also intertwined with discussions about the assimilability of Muslims in western societies.)

18 See Eman Hashim, *Increasing Muslim Women's Significance Through Mediatization, Part I*, MUSLIM MEDIA WATCH (Dec. 14, 2010), <http://muslimahmediawatch.org/2010/12/increasing-significance-through-increasing-mediatization-part-i/> ("The dominance of male actors is a trend in such shows, there're [sic] high barriers for female voices in political talk shows." She continues: "The concept of public sphere empowerment is highly connected to the female almost-absent appearance and involvement in talk shows."). While female representation at the leadership level remains disproportionately low, a few notable exceptions include Daisy Khan and Ingrid Mattson.; see also Michael M. Grynbaum, Daisy Khan, *An Eloquent Face of Islam*, N.Y. TIMES, (Nov. 12, 2010), available at <http://www.nytimes.com/2010/11/14/fashion/14khan.html?pagewanted=all>.

19 See Nadine Strossen, *Leo C. Goodwin Symposium: Tipping the Scales: The Changing Rules of Women in the Law and Legal Practice*, 31 NOVA L. REV. 279, 307 n.178 (2007) (citing Neil MacFarquhar, *A Simple Scarf, But Meaning Much More Than Faith*, N.Y. TIMES, Sept. 8, 2006, at A22.).

20 See Volpp, *The Citizen and the Terrorist*, 49 UCLA L. REV. 1575, 1585–86 (2002) (discussing the failure of racial profiling and the notion of "others" in American society).

21 See Keith S. Blair, *Better Disabled Than Devout? Why Title VII Has Failed to Provide Adequate Accommodations Against Workplace Religious Discrimination*, 63 ARK. L. REV. 515, 516 (2010) (discussing a religious discrimination suit filed by the Department of Justice against Essex County, New Jersey, on behalf of a county employee prevented from wearing her headscarf at work); see also *President Cites CAIR Hijab Case*, THE SOP (Sept. 3, 2009), <http://thesop.org/story/usa/2009/09/03/president-cites-cair-hijab-case.php> (In his address during last night's White House Iftar, President Obama said: "One of those values is the freedom to practice your religion a right that is enshrined in the First Amend-

ment of the Constitution. Nashala Hearn, who joins us from Muskogee, Oklahoma, took a stand for that right at an early age. When her school district told her that she couldn't wear the hijab, she protested that it was a part of her religion. The Department of Justice stood behind her, and she won her right to practice her faith. She even traveled to Washington to testify before Congress."); see also, *Anti-Hijab Discrimination: Some Legal Advice From CAIR*, THEMODERNRELIGION.COM (last visited Feb. 20, 2012), <http://www.themodernreligion.com/women/hijab-legal.htm> (framing the issue of discrimination against women who wear the hijab to bring a claim on ground of religious discrimination).

22 See Kathleen M. Moore, *Visible Through the Veil: The Regulation of Islam in American Law*, 68 SOC. OF RELIGION 237 (2007) (discussing the extensive line of litigation around discrimination on the basis of hijab as argued under the First Amendment religious freedom clause). Especially after 9/11, the heightened daily concern over an "Islamic threat" to the United States has made objects associated with Muslimness, such as the *hijab*, the displaced locus of debates over the social reality of contemporary America and the global war on terrorism.

23 See notes 195-207 for a list of cases wherein headscarved Muslim women are physically attacked while called terrorists.

24 See Jerry Markon, *Justice Department Sues on Behalf of Muslim Teacher, Triggering Debate*, WASH. POST. (Mar. 22, 2011), http://www.washingtonpost.com/politics/justice-department-sues-on-behalf-of-muslim-teacher-triggering-debate/2010/07/28/ABfSPtEB_story.html (recounting the story of a Muslim teacher who was placed in a position to choose her job or her religious obligation even with qualified substitutes available for seeking three weeks' vacation in order to make the obligatory pilgrimage to Mecca); see also Javier Lavagnino, *Muslim Police Officer Kimberlie Webb Loses Discrimination Claims Based on Headscarf Ban: Workplace Dresscodes and Discrimination*, FINDLAW (April 13, 2009) http://blogs.findlaw.com/law_and_life/2009/04/muslim-police-officer-kimberlie-webb-loses-discrimination-claims-based-on-headscarf-ban-workplace-dr.html (suffering discipline and loss of employment due to the Police Department's refusal to accommodate Ms. Webb's religious practice or wearing the hijab); see also Debra Cassens Weiss, *Suit: Abercrombie & Fitch Told Muslim Job Seeker Scarf Not Part of Look*, ABA JOURNAL (Sept. 2, 2010), http://www.abajournal.com/news/article/suit_abcrombie_fitch_told_muslim_job_seeker_scarf_not_part_of_the_look/ (refusing to hire a Muslim job seeker due to her headscarf not being part of the "Abercrombie look").

25 See, e.g., *Misguided and Counterproductive*, TANENBAUM, (Feb. 11, 2011), <https://www.tanenbaum.org/blog/02/>

11/%E2%80%9Cmisguided-and-counterproductive%E2%80%9D-news-roundup (citing Representative Peter King's assertion that "80% of mosques in America are run by extremists, implying that they are hotbeds of extremism. To the contrary, experts have concluded that mosque attendance is a significant factor in the prevention of extremism."); see also Jaja Atenra, *Park 51 Lower Manhattan (Ground Zero) Mosque—A National Security Threat?*, EXAMINER.COM, Sept. 2, 2010, <http://www.examiner.com/foreign-policy-in-san-diego/park-51-lower-manhattan-ground-zero-mosque-a-national-security-threat> (highlighting that opponents of the Park 51 Lower Manhattan Mosque argue that they are opposed to the building of a mosque controlled by "radical" Islamists); see also Blake Farmer, *In Tenn., Mosque Location Isn't the Issue: Religion Is*, NPR, August 19, 2010, available at <http://www.npr.org/templates/story/story.php?storyId=129302961> (reporting that the building of a new Islamic Center in Murfreesboro, Tennessee, has faced opposition from people who fear the center will breed extremism); see also John Del Signore, *Anti-Mosque Protesters In SI Bring Out NYC's Inner Bigot*, GOTHAMIST, June 21, 2010, http://gothamist.com/2010/06/21/anti-mosque_protesters_on_si_bring.php (citing a turnout of 175 locals in opposition to plans to turn a former Catholic convent on Staten Island into a mosque with signs reading, "Mosques breed terrorism, I'm sorry.").

26 See *supra* note 22 and accompanying text.

27 Estimates of the number of Muslims in America range from 2.6 million to 6 million. See, e.g., *About Islam and American Muslims*, CAIR, <http://www.cair.com/AboutIslam/IslamBasics.aspx> (last visited Feb. 20, 2012) (citing 6 million Muslims in America); see also Farid Senzai, *Engaging American Muslims: Political Trends and Attitudes*, ISPU REPORT (2012), available at http://ispu.org/pdfs/ISPU%20Report_Political%20Participation_Senzai_WEB.pdf (noting that the size of the Muslim community in the United States has been a debated issue, estimated to range from 2 to 10 million, with American Muslim leaders and advocacy groups estimating the population to be between 6 and 10 million).

28 See *Public Top Stories of the Decade—9/11 and Katrina*, PEW RESEARCH CENTER., Dec. 30, 2010, <http://pewresearch.org/pubs/1841/publics-top-news-stories-2001-2010-september-11-katrina> (finding that the 9/11 terrorist attacks drew more public interest than any other story in the past decade, with 78% of people following the stories around the attacks closely).

29 Compare Samuel P. Huntington, *The Clash of Civilizations?*, 72 FOREIGN AFFAIRS 22 (1993) (hypothesizing a clash between "Western civilizations" and the "Eastern world" focusing on the "Islamic civilization" as a major force with "bloody borders" spiraling towards an inevitable clash) with

Marc Lynch, *Why the Clash of Civilizations Won't Go Away*, FOREIGN POLICY, July 22, 2010, http://lynch.foreignpolicy.com/posts/2010/07/22/resilient_narratives_about_islam (discussing the resilience of the "clash of civilizations" narrative especially as it played out in Ground Zero context).

30 Liaquat Ali Khan, *The Essentialist Terrorist*, 45 WASHBURN L. J. 47, 52–54 (2006), available at <http://washburnlaw.edu/wlj/45-1/articles/khan-liaquat.pdf>.

31 See Ronald Sievert, *A New Historical Perspective on National Security Law Policies During the Bush Administration and Their Implications for the Future: Constitutional in Conception, Problematic in Implementation*, 7 RUTGERS J.L. & PUB. POL'Y 35, 99 (2009) (discussing the various government actions taken during the Bush administration that led to widespread perception that the American government put national security concerns ahead of civil rights); Muqtedar Khan, *American Response A Threat to Freedom*, GLOCAL EYE, Sept. 20, 2011, <http://www.glocaleye.org/threatfreedom.htm> (concluding that "American leadership ha[d] resolved the tensions between security and freedom by privileging the former over the latter. Without a debate over how far we can jeopardize our freedom in pursuit of security, we seem to be inclined towards doing 'whatever it takes.'").

32 See Editorial, Michelle Malkin, *Racial Profiling: A Matter of Survival*, USA TODAY (Aug. 16, 2004), http://www.usatoday.com/news/opinion/editorials/2004-08-16-racial-profiling_x.htm ("[W]hen our national security is on the line, 'racial profiling'—or more precisely, threat profiling based on race, religion or nationality—is justified" and "targeted intelligence-gathering at mosques and in local Muslim communities, for example, makes perfect sense when we are at war with Islamic extremists").

33 See, e.g., Los Angeles City Council Resolution, *infra* note 37 (documenting "a marked nationwide increase in acts of violence, discrimination, and hostility directed at American Muslims on the basis of their religious identity including here in Southern California" and that "this rise in anti-Muslim sentiment, commonly called Islamaphobia, has contributed to opposition to the lawful construction and expansion of religious centers across the United States, including in Tennessee, Wisconsin, Illinois, Connecticut, and California"); see Senzai, *supra* note 27, at *Engaging American Muslims: Political Trends and Attitudes*, ISPU REPORT (2012) available at http://ispu.org/pdfs/ISPU%20Report_Political%20Participation_Senzai_WEB.pdf.

34 See Peter Siggins, Cal. Chief Deputy Att'y Gen., Address at the Markkula Center for Applied Ethics Forum (March 12, 2002) (transcript available at <http://www.scu.edu/ethics/publications/ethicalperspectives/profiling.html>) (stating that

after the September 11 attacks, law enforcement investigations concluded that this crime was committed by a group of foreign nationals of middle eastern descent and that “immediately law enforcement officials focused special investigative efforts upon foreign nationals from middle eastern countries, often in disregard of any other factors warranting suspicion.”); see also *Sanctioned Bias: Racial Profiling Since 9/11*, ACLU REPORT (ACLU), available at <http://www.aclu.org/FilesPDFs/racial%20profiling%20report.pdf> (reporting that, “since the 9/11 terrorist attacks, it has been the official policy of the United States government to stop, interrogate and detain individuals without criminal charge—often for long periods of time on the basis of their national origin, ethnicity and religion” and that “the very inclusion of a national security exception in the guidelines is an admission by the Department of Justice that it relies upon racial and ethnic profiling in its domestic counterterrorism efforts”).

35 Alexander Zaitchik, *Glenn Bleck rises again*, SALON (Sep. 23, 2009, 06:22 ET), http://www.salon.com/news/feature/2009/09/23/glenn_beck_three; see Sheryll Cashin, *To Be Muslim or “Muslim-Looking” In America: A Comparative Exploration of Racial and Religious Prejudice in the 21st Century*, 2 DUKE F. FOR L. & SOC. CHANGE 125, 126–130 (2010) (citing evidence that bias against Muslims is more likely to be expressed explicitly and accepted without public outrage in contrast to bias expressed against other minority groups).

36 See, e.g., Irene Khan, Sec’y Gen., *We Must Stand Up for Human Rights*, AMNESTY INTERNATIONAL (Sept. 26, 2001), available at <http://www.amnesty.org/en/library/asset/ACT30/023/2001/en/0535aaf9-d8e0-11dd-ad8c-f3d4445c118e/act300232001en.html> (highlighting the wave of racist attacks directed against people because of their appearance or religion while calling upon the government to “take a strong action against racist attacks directed at the Muslim, Asian and Middle Eastern populations in their countries, whether they are citizens or foreigners.” She ends with the reminder that, “You cannot claim to speak in the name of freedom if all those on your territory do not feel equally protected.”); see also Laura Murphy, *White Man’s Pass: the Heightened Danger of racial profiling in the Post 9/11 World*, in *THE PARADOX OF LOYALTY: AN AFRICAN AMERICAN RESPONSE TO THE WAR ON TERRORISM*, 175 (Julianne Malveaux & Reginna A. Green eds., 2002) (essays offering the Black perspective on the attacks of 9/11 and the American “War on Terror”); Anita L. Allen, *Undressing Difference: The Hijab in the West*, 23 BERKLEY J. GENDER L. & JUST. 208, 211–13 (2008 (book review) (noting the American justice system’s tendency to defend religious expression despite its contrary willingness to restrict some practices “loathed by and threatening to the majority”); Nadine Strossen, *The Real ACLU*, 2 YALE J.L. & FEMINISM 161, 161-87 (1989); Los Angeles City Council Resolution,

10-002 S103, *Islamaphobia and Repudiate Random Acts of Violence Against American Muslims*, Dec. 15, 2010 (adopting a city resolution opposing Islamaphobia and repudiating random acts of violence against American Muslims), available at http://clkrep.lacity.org/onlinedocs/2010/10-0002-S103_ca_12-15-10.pdf.

37 See Farmer, *supra* note 25

38 See *Oklahoma “Sharia Law Amendment”*, *State Question 755 (2010)*, *Media Endorsements*, BALLOT PEDIA, (last visited March 30, 2011); see also Martha F. Davis & Johana Kalb, *Oklahoma State Question 755 and An Analysis of Anti-International Law Initiatives*, AM. CONST. SOC’Y L. & POL’Y ISSUE BRIEF, (Am. Const. Soc’y L. & Pol’y, Washington, D.C.) available at http://www.acslaw.org/files/Davis%20and%20Kalb_Anti-International%20Law.pdf, January 2011, at 4 (detailing the legal and political developments around the Oklahoma “Sharia Law” Amendment and the negative media coverage supporting its passage as an efforts to “prevent the takeover of Oklahoma by Islamic extremists who want to undo American from the inside out.”).

39 Organizations such as the Open Society Institute, American Civil Liberties Union, Center for Constitutional Rights and the National Lawyers Guild have all spoken out against the post-9/11 backlash against the Arab/South-Asian/Muslim community and have served as legal defense for various criminal charges as well as having asserted their civil rights in other arenas. See, e.g., *Protecting the Religious Freedom of Muslims*, ACLU, <http://www.aclu.org/protecting-religious-freedom-muslims> (last visited Dec. 25, 2011).

40 See Natsu Taylor Saito, *Alien and Non-Alien Alike: Citizenship, “Foreignness,” and Racial Hierarchy in American Law*, 76 OR. L. REV. 261 (1997) (discussing the theory of racial hierarchy as it relates to immigrants); see also Lisa C. Ikemoto, *The Racialization of Genomic Knowledge*, 27 SETON HALL L. REV. 937, 943-950 (1997) (discussing racial identity and the Genome Project).

41 See Muneer I. Ahmad, *A Rage Shared by Law: Post-September 11 Racial Violence as Crimes of Passion*, 92 CAL. L. REV. 1259, 1278 (2004) (“The logic of post-September 11 profiling turns on an equation of being Muslim with being a terrorist.”); see also Volpp, *supra* note 20, at 1582 (“[T]he American public is being instructed that looking ‘Middle Eastern, Arab, or Muslim’ equals ‘potential terrorist.’”).

42 See Brief of the United States as Amicus Curiae at 2, *Estes v. Rutherford County*, No. 10cv-1443 (Chancery Court for Rutherford County Oct. 18, 2010 (citing Pl.’s Trial Tr. Vol. 3, 77, Sept. 29, 2010, “Q. Can you show me where the United States of America’s government has recognized Islam as a religion? ...Q. I’m telling you it needs to be decided.”) available

at http://www.muslimadvocates.org/USDOJ_Murfreesboro-Brief.pdf; see also *Am. COMPL.* at 8, Sept. 22, 2010 (alleging that the County failed to investigate whether the ICM intended to promote the “political practice of ‘Jihad’” or “establish a caliphate”).

43 *TIME Poll Results: Americans’ Views on the Campaign, Religion and the Mosque Controversy*, *TIME*, Aug. 18, 2010, <http://www.time.com/time/politics/article/0,8599,2011680-2,00.html>.

44 *CNN Opinion Research Poll*, *CNN*, Aug. 11, 2010, <http://i2.cdn.turner.com/cnn/2010/images/08/11/rel11a.pdf>.

45 See Eric Eckholm, *General Withdraws From West Point Talk*, *N.Y. TIMES*, Jan. 30, 2012, http://www.nytimes.com/2012/01/31/us/lt-gen-william-boykin-known-for-anti-muslim-remarks-cancels-west-point-talk.html?_r=1 (detailing the backlash caused when the United States Military Academy invited Lt. Gen. William G. Boykin to speak at the West Point Prayer Breakfast. Numerous groups protested his invitation because of Boykin’s outspoken belief that Islam is a political ideology undeserving constitutional protection. Boykin subsequently withdrew from the engagement).

46 See, e.g., Nonie Darwish, *Why I left Islam*, *YOUTUBE* (Jun. 29, 2008), <http://www.youtube.com/watch?v=Y7zGcYaNKTI&feature=related> (interview with Nonie Darwish, where a commentator on a Christian channel calmly concludes that mosques are a breeding ground for terrorists); Debra Goldschmidt, *CNN Poll: Most Americans ‘okay’ with a Mosque in their community*, *CNN* (March 24, 2011), <http://politicalticker.blogs.cnn.com/2011/03/24/cnn-poll-most-americans-okay-with-a-mosque-in-their-community/> (69% of Americans okay with mosque in their community, however, half of rural Southerners disapprove of mosque in their community); Kathleen F. Foley, *The American Mosque: Behind the Controversy*, *ISPU* (2012), at 4-5, http://www.ispu.org/pdfs/ISPU_Brief_Foley_revised.2.pdf (identifying the American fears of mosques as focal points of extremist instruction and suspicion of funding for mosques from abroad).

47 See William G. Boykin, *Sharia Law or The Constitution? America Must Choose*, 3 *CENTENNIAL REV.*, no.1, Feb. 2011, at 1 (laying out detailed reasons why Islam is a political ideology not deserving First Amendment protection).

48 *Muslim Community Center in Lower Manhattan (Park51)*, *N.Y. TIMES* (last updated March 30, 2011) (detailing the spiraling of the Ground Zero mosque controversy to the point where “two-thirds of New York City residents wanted the project to be relocated to a less controversial site farther away from ground zero in Lower Manhattan”); Jon Cohen and Kyle Dropp, *Most Americans object to planned Islamic center near Ground Zero, poll finds*, *WASH. POST*, September

9, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/09/08/AR2010090806231.html> (two-thirds polled objected to the prospective Muslim Community Center in new York; poll further showed nearly one-third of all Americans see mainstream Islam as encouraging violence); *CBS News/New York Times Poll, Assessing Security and the Threat of Terrorism Ten Years Later*, *CBS NEWS* (2011), <http://www.cbsnews.com/stories/2011/09/08/politics/main20103610.shtml> (one in four Americans harbor negative feelings towards Muslims).

49 See Donna Leinwand, *More States Enter Debate on Sharia Law*, *USA TODAY*, Dec. 9, 2010, http://www.usatoday.com/news/nation/2010-12-09-shariaban09_ST_N.htm (citing seven states other than that of Oklahoma as having proposed legislation that, as stated by Newt Gingrich, “clearly and unequivocally states that we’re not going to tolerate any imported law.”).

50 See Justin Elliott, *What Sharia Law Actually Means*, *SALON*, http://www.salon.com/news/politics/war_room/2011/02/26/sharia_the_real_story/index.html (discussing the lack of understanding about what sharia Law means, along with how it is used in American courts and that all of these proposed legislations appear to be driven by an agenda infused with hate, ignorance, and Islamophobia intent on dehumanizing an entire religious community); see also Julie Macfarlane, *Shari’a Law: Coming to a Courthouse Near You?: What Shari’a Really Means to American Muslims*, *ISPU REPORT* (2012) available at http://ispu.org/pdfs/ISPU%20Report_Marriage%20Macfarlane_WEB.pdf (demonstrating that the “moral panic” over sharia is overblown and for most American Muslims, sharia law is primarily focused on marriage and divorce rituals); Asifa Quraishi-Landes, *Understanding Sharia in an American Context*, *ISPU REPORT* (2011) available at http://ispu.org/pdfs/649_PB_shariaevent%20handout.pdf (explaining that a Muslim’s choice to practice sharia is a freedom of religion issue, and “Sharia does not direct Muslims to take over the political realm, especially when living as minorities in non-Muslim societies”).

51 *Pl.’s Br.* ¶ 20

52 *Pl.’s Resp. to Def. [’s] Mot. to Require Pl. to Post Bond and Mot. for Relief*, Case No. 10CV-1443, Chancery Court, Rutherford County, Tennessee, Oct. 6, 2010.

53 Goodwin, *New York mosque vandalized with racial slur*, *YAHOO NEWS* (Sep. 9, 2010), <http://news.yahoo.com/blogs/upshot/york-mosque-vandalized-racial-slur.html> (reporting vandalization of a mosque in Hudson, NY on Sept. 8, 2010 with “F-cking Sand Niggers” spray-painted on the side of the building).

54 See *The Muslim News, Three teens charged in vandalizing of Ocean County mosque* (Apr. 4, 2004), <http://www.muslim->

news.co.uk/news/news.php?article=7251 (detailing vandalism at a mosque site under construction in Toms River, NJ defaced with Nazi graffiti); see also NewsMax.com, *Beheadings Fuel Backlash Against Muslims* (June 27, 2004), <http://archive.newsmax.com/archives/articles/2004/6/27/84123.shtml> (reporting the throwing of beer and liquor bottles at a Union City mosque in NJ while congregants were inside mourning an Arab-American teenager who had been killed in a car crash).

55 *Arson Reported at Tennessee Mosque Construction Site*, USATODAY (Aug. 28, 2010), http://www.usatoday.com/news/religion/2010-08-29-arson28_ST_N.htm (covering the attack on the much disputed construction of an Islamic center and mosque in Murfreesboro, Tennessee, leading to the pouring of flammable liquid on four pieces of construction equipment in August, 2010, at the site of construction).

56 Barabara Abel and Julia Lieblich, *Rural Controversy: A Mosque in Sheboygan*, TIME (Aug. 19, 2010), <http://www.time.com/time/nation/article/0,8599,2011842,00.html?xid=rss-mostpopular@email> (documenting the town of Wilson's strong and racist opposition to the conversion of an abandoned health store into a mosque).

57 *Hamden Mosque Vandalized*, WFSB EYEWITNESS NEWS (Feb. 25, 2011) <http://www.wfsb.com/story/14807873/hamden-mosque-vandalized-2-25-2011> (reporting on the defacing of a Hamden mosque spray-painted with profanity and graffiti, one of four instances of vandalism in the past two years).

58 *Democracy Now: Islamic Center Vandalized in California: Kentucky Board Rejects Mosque* (DemocracyNow.org online broadcast Aug. 26, 2010) available at http://www.democracynow.org/2010/8/26/headlines/islamic_center_vandalized_in_california_kentucky_board_rejects_mosque (reporting on the rejection of a building permit for a new mosque in the town of Mayfield, KY, with cheers after the decision was announced to a packed hearing).

59 See *id.* (documenting a report of vandalism at Masjid Madera center in Madera, CA with signs reading, "No Temple for the God of terrorism at Ground Zero" and "Wake up America, the Enemy is here.").

60 See Carla Hinton, *Oklahoma City Muslim community prepares for holiday in aftermath of vandalism*, NEWS OK, August 18, 2012, <http://newsok.com/vandalism-draws-groups-together/article/3701680> (Oklahoma City mosque vandalized with drive-by paintball shooting at front door of the mosque); Associated Press, *Oklahoma City mosque hit by vandals*, SAN FRANCISCO CHRONICLE, August 13, 2012, <http://www.sfgate.com/news/article/Oklahoma-City-mosque-hit-by-vandals-3784117.php> (mosque vandalism with paintballs just prior to end of Ramadan).

61 See *Controversies Over Mosques and Islamic Centers Across the U.S.*, PEW RESEARCH CENTER'S FORUM ON RELIGION AND PUBLIC LIFE (Aug. 30, 2011), <http://features.pewforum.org/muslim/assets/mosque-map-all-text-8-30.pdf> (documenting thirty-seven known cases); Kara L. Richardson, *Bridgewater Looking for Bigger Venue to Fit Crowd to Hear Mosque Application*, MYCENTRALJERSEY.COM (Jan. 25, 2011), <http://www.mycentraljersey.com/article/20110125/NEWS/101250355/Bridgewater-looking-bigger-venue-fit-crowd-hear-mosque-application> (reporting that 400 people arrived at the Planning Board meeting regarding the application to convert an a closed Redwood Inn into a mosque where residents find that the mosque represents "a coming in and taking over an entire community by the Islamic World."); see also Leinwand, *supra*, note 49.

62 See James C. McKinley, Jr., *OKLAHOMASURPRISE: ISLAM AS AN ELECTION ISSUE*, N.Y. TIMES, Nov. 15, 2010, at A12 (highlighting backlash against Oklahoma City mosques in connection with the anti-sharia constitutional amendment in Oklahoma).

63 See Greg Bates, *Back with a Vengeance: The Return of Racial Profiling*, COUNTERPUNCH, Aug. 20, 2010, <http://www.counterpunch.org/bates08202004.html> (summarizing a statement by Rudy Maxa, the travel expert in residence on the public radio program Marketplace from Aug. 11, 2004, that, "No subject is more controversial right now than racial or ethnic profiling. Paying special attention to passengers of Middle East descent can get an airline in trouble. Pull more than two such passengers aside per flight for special scrutiny, and an airline risks a lawsuit. But captured al Qaeda documents show that Arab men are probing for weaknesses in U.S. security. So, is secondary profiling at airports a civil rights violation? I say no. Not if done efficiently and with respect and courtesy. Political correctness mustn't get in the way of security"); see The Boks Man, Dan Fanelli Ad, YOUTUBE (May 6, 2010), <http://www.youtube.com/watch?v=umTITWQuXwY> (documenting an ad campaign by Dan Fanelli, a Republican nomination to challenge Rep. Alan Grayson in Florida, speaking against "political correctness" and explicitly supporting racial profiling).

64 *Id.* at 16.

65 See U.S. DEP'T J., CIV. RTS. DIV., GUIDANCE REGARDING THE USE OF RACE BY FEDERAL LAW ENFORCEMENT AGENCIES (June 2003) (allowing officers to consider race and ethnicity "only to the extent that there is trustworthy information, relevant to the locality or time frame, that links person of a particular race or ethnicity to an identified criminal incident, scheme, or organization" and in the context of National Security and Border Integrity officers may consider race to the extent permitted by the Constitution and laws of the United States); see also Memorandum from Tom Ridge, Secretary, U.S. Dep't Home-

land Security, The Department of Homeland Security's Commitment to Race Neutrality in Law Enforcement Activities (Jun. 1, 2004) (prohibiting the reliance on race or ethnicity unless a compelling governmental interest is present and when information is specific to particular suspects or incidents, or ongoing criminal activities, schemes or enterprises). National security is a compelling governmental interest, as stated with in these directives themselves; thus, creating no real ban on racial profiling. At present, there is no law prohibiting the use of racial profiling in law enforcement activities; however, Congressmen John Conyers, Jr. and Jerrold Nadler introduced H.R. 5748, End Racial Profiling Act of 2010 (ERPA) to eliminate law enforcement practices of racial profiling; see also, Sonia Chopra, Anti-Arab and Anti-Muslim Sentiment Amongst Potential Jurors: Underlying Psychological Constructs and Tools for Identification, address before the American Society of Trial Consultants Annual Conference (June 2008), available at <http://www.njp.com/articles/AntiArabSentiment.pdf> (noting there "was significantly greater prejudices against Arabs than Blacks" and that "those who had heavy media exposure were significantly more prejudiced overall as compared to those in the light exposure category.").

66 N.Y. POLICE DEP'T INTELLIGENCE DIV., N.Y. POLICE DEP'T, RADICALIZATION IN THE WEST: THE HOMETOWN THREAT (2007) (A 90-page report hailed as the first to measure "homegrown" terror in the United States, concluding that young Muslim men aged 15-35 are particularly vulnerable to "radicalization").

67 *Id.* at 39, 77.

68 See Richard A. Falkenrath, *Prepared Statement Before the Comm. on Homeland Security and Governmental Affairs*, UNITED STATES SENATE (Sept. 12, 2006) available at http://hsgac.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=1b242c82-3428-41f1-8b9a-0183defa44fb (touting the New York Police Department's outreach to public safety agencies in other states and Canada).

69 Dana Milbank & William M. Arkin, *Monitoring America*, WASH. POST, Dec. 20, 2010, at A1, available at <http://projects.washingtonpost.com/top-secret-america/articles/monitoring-america/print/> (finding that law enforcement agencies, seeking to learn more about Islam and terrorism, have hired as trainers self-described experts whose extremist views on Islam and terrorism are considered inaccurate and counter-productive by the FBI and U.S. intelligence agencies.").

70 *Id.*

71 *Id.*

72 *Id.*

73 See Lisa Miller, *The Misinformants: What 'Stealth Jihad' Doesn't Mean*, NEWSWEEK (Aug. 28, 2010), <http://www.news->

[week.com/2010/08/28/stealth-jihad-conveys-paranoia.html](http://www.newsweek.com/2010/08/28/stealth-jihad-conveys-paranoia.html) (documenting the systematic use of the term "stealth jihad" by Newt Gingrich, Robert Spencer, the Center for Security Policy, Fox News commentators and the like, to fuel a sense of fear against Islam by stating that "'stealth jihad' is an effort 'to replace Western civilization with a radical imposition of Sharia.'"); see also *American Exposed to 'Stealth Jihad' Threat, Security Report Warns*, FOXNEWS.COM, Sept. 15, 2010, <http://www.foxnews.com/politics/2010/09/15/america-threatened-stealth-jihad-security-report-warns/> (referencing a report sponsored by the Center for Security Policy which asserts that "this form of warfare includes multi-layered cultural subversion, the co-opting of senior leaders, influence operations and propaganda and other means of insinuating Shariah into Western societies," the study said.).

74 See Milbank & Arkin, *supra* note 69 (finding that law enforcement agencies, seeking to learn more about Islam and terrorism, have hired self-described experts with extremist views on Islam to train officials on fighting domestic terrorism); see also Max Blumenthal, *The Great Islamophobic Crusade*, CBSNEWS.COM (Dec. 20, 2010), <http://www.cbsnews.com/stories/2010/12/19/opinion/main7166626.shtml> (hysteria about Muslims and Islamophobia has increased since 9/11.); see also Geore Zornick, *Peter King: It's Not Enough For Muslims To 'Denounce All Terrorism,' They Must Also Denounce Muslims*, THINK PROGRESS (Feb. 15, 2011), <http://thinkprogress.org/2011/02/15/king-attacks-muslims/> (citing various statements made by Rep. Peter King establishing a different standard of guilt for all Muslims).

75 See Editorial, *This Just In...*, N.Y. TIMES, Feb. 20, 2011, at WK9 (reporting that during a recent focus group conducted by Frank Luntz, approximately half of a group of Iowa Republicans said they believed that President Obama is a Muslim); see also *Growing Number of Americans Say Obama is a Muslim*, PEWRESEARCHCTR., Aug. 19, 2010, available at <http://pewresearch.org/pubs/1701/poll-obama-muslim-christian-church-out-of-politics-political-leaders-religious> (finding that nearly one-in-five Americans (18%) say Obama is a Muslim).

76 See Michael Conlon, *Smears Against Obama Energized Muslim Voters: Experts*, REUTERS, Nov. 6, 2008, <http://www.reuters.com/article/2008/11/06/us-usa-election-muslims-idUSTRE4A57ZC20081106> (discussing the impact of the wide-spread campaign to link Obama to Islamic extremists); see also Nicholas D. Kristof, Op-Ed, *Obama and the Bigots*, N.Y. TIMES, March 9, 2008, <http://www.nytimes.com/2008/03/09/opinion/09kristof.html> (stating that the ugliest prejudices in the 2008 presidential campaign were campaigns alleging that "Mr. Obama is a secret Muslim planning to impose Islamic law on the country.").

77 See Editorial, *Proving Patriotism*, DAILY FREEMAN, March 9, 2011, <http://www.dailyfreeman.com/articles/2011/03/09/opinion/doc4d7548b408419453082523.txt?viewmode=fullstory>; see also David A. Fahrenthold & Michelle Boorstein, *Rep. Peter King's Muslim Hearing: Plenty of Drama, Less Substance*, WASH. POST, March 10, 2011, http://www.washingtonpost.com/politics/peter-king-tempers-rhetoric-on-muslims-as-congressional-hearing-gets-under-way/2011/03/10/ABh-V3BQ_story.html (discussing Rep. Keith Ellison, one of two Muslims in the House, telling a “story about a Muslim paramedic who died responding to the terrorist attacks of Sept. 11, 2001” in his testimony at Rep. King’s hearing, characterizing the paramedic as a “fellow American who gave his life for other Americans”). Statements from Muslim-Americans, leading Muslim-American organizations and Muslim-American leaders came pouring in immediately after the September 11 attacks denouncing the actions and expressing grief. See *Statements from Leading American Muslim Organizations*, Colgate University, <http://groups.colgate.edu/aarislam/response.htm#Statements%20from%20Leading%20American%20Muslim%20Organizations>: (extensively documenting responses from within the Muslim-American community in response to the September 11, 2001, attacks); Ben Forer, *Hate Groups on the Rise in U.S., Report Says*, ABC NEWS, March 8, 2012, <http://abcnews.go.com/blogs/headlines/2012/03/hate-groups-on-the-rise-in-u-s-report-says/> (article references a study by the Southern Poverty Law Center about the increase in hate groups showing that from 2000-2011 anti-Muslim groups saw the largest increase, from 10 to 30); Yasmin Amer and Moni Basu, *Spate of attacks near Ramadan trouble U.S. Muslims*, CNN, August 22, 2012, <http://www.cnn.com/2012/08/18/us/ramadan-violence/index.html> (article addressing the recent hate crimes against Muslims such as the mosque burning in Joplin, Missouri, Muslim school incidents in Chicago, and acts of vandalism and protest against opening of Mosque in Tennessee; one Muslim leader cited the recent acts against Muslims as the worst since 9/11 and the immediate aftermath of the Oklahoma City bombing when Muslim extremists were still the main suspects).

78 Deepa Iyer & Priya Murthy, *Courting the South Asian Vote: One Step Forward, Two Steps Back*, 24 ST. JOHN’S J. LEGAL COMMENT. 281, 294 (2009).

79 *Id.*

80 See Saito, *supra* note 40, at 312 (discussing racial stratification).

81 See H.J. Res. 1056, 52nd Leg., Reg. Sess. (Okla. 2010).

82 Brigitte Gabriel & Lauren Losawyer, *Sharia Law Question Merits Support*, NEWSOK (Oct. 16, 2010), <http://newsok.com/sharia-law-question-merits-support/article/3504712>.

83 Mark Schlachtenhaufen, *Sharia Law, Courts Likely on 2010 Ballot*, EDMONDSUN.COM (Jun. 4, 2010), <http://www.edmondsun.com/local/x1996914371/Sharia-law-courts-likely-on-2010-ballot>.

84 McKinley, Jr., *supra* note 62.

85 Christopher Brauchli, *Sharia Leaves Oklahoma*, HUFFINGTON POST (Nov. 5, 2010), http://www.huffingtonpost.com/christopher-brauchli/sharia-leaves-oklahoma_b_779081.html.

86 Donna Leinwand, *More states enter debate on sharia law*, USA TODAY (Dec. 9, 2010), http://www.usatoday.com/news/nation/2010-12-09-shariaban09_ST_N.htm.

87 McKinley, Jr., *supra* note 62; see also Kathleen Parker, *Who Will Lead the Centrists*, WASH. POST, Nov. 28, 2010 at A21 (noting Republican Rep. Bob Inglis lost because he would not demonize Barack Obama by refusing to say Obama is a Muslim or that he was not born in the United States).

88 McKinley, Jr., *supra* note 62.

89 Kara L. Kraemer, *Allen West “Never pick a fight with a guy that knows how to fight”*, EXAMINER.COM (Feb. 4, 2011), <http://www.examiner.com/conservative-in-yakima/allen-west-never-pick-a-fight-with-a-guy-that-knows-how-to-fight?render=print>.

90 Brian Montopoli, *Tennessee Lt. Gov. Ron Ramsey Questions Whether Islam is a Religion*, CBS NEWS (July 26, 2010), http://www.cbsnews.com/8301-503544_162-20011712-503544.html.

91 Andrea Zelinski, *Republicans Broaden Anti-Terrorism Bill*, TENN. REP. (April 27, 2011), <http://www.tnreport.com/2011/04/republicans-broaden-anti-terrorism-bill/>.

92 See Brian Montopoli, *Renee Ellmers Ad: No Muslim “Victory Mosque” at Ground Zero*, CBS NEWS (Sept. 22, 2010), http://www.cbsnews.com/8301-503544_162-20011712-503544.html.

93 Michelle Boorstein, *MUSLIMS IN MILITARY SEEK A BRIDGE BETWEEN WORLDS*, WASH. POST (Nov. 11, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/11/10/AR2009111018598.html>.

94 See, e.g., Cyra Akila Choudhury, *Empowerment or Estrangement?: Liberal Feminism’s Visions of the “Progress” of Muslim Women*, 39 U. BALT. L. FORUM. 153, 164 (2009) (describing the Feminist Majority Foundation’s strategy of showing the powerlessness and oppression of women caused by the burka to garner public support for Muslim women’s rights in Afghanistan); see also Cashin, *supra* note 35, at 131–133 (noting that when participants in implicit bias surveys are asked open-ended questions about what they knew or heard

about Muslims through the media, common responses included discrimination against women).

95 Compare Doriane Lambelet Coleman, *Individualizing Justice through Multiculturalism: The Liberals' Dilemma*, 96 COLUM. L. REV. 1093, 1165-67 (1996), available at <http://adwww2.americanbar.org/sections/criminaljustice/Public-Documents/Unit%209%20Willing.pdf> (arguing that although America should embrace multiculturalism, the cultural defense “permits gender-motivated violence to escape the full sanction of the criminal law”), with Leti Volpp, *Feminism versus Multiculturalism*, 101 COLUM. L. REV. 1181, 1214-18 (2001) available at <http://www.ces.uc.pt/ficheiros2/files/genderworkshopmulticulturalismo.pdf>, (calling for “a more careful examination of the particularity of women’s relationships to specific patriarchies, as well as to geopolitical and economic relationships” and an examination of particular contexts in order to determine whether justifications of practices based on culture should be supported or not).

96 See Lynn Olanoff, *Lehigh Valley Muslims Share American Experiences*, LEHIGHVALLEYLIVE.COM (Jan. 10, 2012), http://www.lehighvalleylive.com/breaking-news/index.ssf/2012/01/lehigh_valley_muslims_share_am.html (sharing their post-9/11 experiences at an interfaith gathering, Muslims discussed the increased prejudice they experienced in the wake of the September 11, 2001 attacks).

97 See Choudhury, *supra* note 94.

98 See Katha Pollitt, *Whose Culture?*, in IS MULTICULTURALISM BAD FOR WOMEN? 30 (Princeton Univ. Press 1999) (women would be forced to wear a headscarf unless protected by the law).

99 See Choudhury, *supra* note 94.

100 See, e.g., Madhavi Sunder, *Piercing the Veil*, 112 YALE L.J. 1401, 1427 (2003) (critiquing multiculturalism in the international human rights context on the basis that “deference to religious leaders’ arguments elides the claims of women dissenters within these religious communities”).

101 See Louise Michele Newman, *WHITE WOMEN’S RIGHTS: THE RACIAL ORIGINS OF FEMINISM IN THE UNITED STATES* (Oxford Univ. Press 1998) (analyzing how white women’s rights proponents viewed their work as part of a larger mission to civilize, where converting savages to Christianity meant “Americanizing” Indians and uplifting Negroes. Because this mission was underlined by an assumption of white superiority and the victimization of people of color, the ideology of racism cast the black woman, for example, in the role of “debased victim,” while portraying the free white woman in the role of “an empowered, sanctified uplifter.”); see also Catherine Powell, *Lifting Our Veil of Ignorance: Culture, Constitutionalism, and*

Women’s Human Rights in Post-September 11 America, 57 HASTINGS L.J. 331, 345-46 (2005) (noting that Western liberal ideals even appear in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) where Western states are portrayed as good actors and non-Western states as bad actors). Powell further notes that “the notion that women’s human rights are inherently Western . . . undermines the work of non-Western feminists, who are seen as mere agents of their Western counterpart, even when the work on non-Western feminists draw on local or indigenous resources.”

102 See, e.g., Maryam Namazie, *Unveiling the Debate on Secularism and Rights*, MARYAMNAMAZIE.COM (Jan. 19, 2004), http://www.maryamnamazie.com/articles/on_ban_religious_symbols_veil.html (“‘My Hijab, My Right’ is like saying ‘My FGM (Female Genital Mutilation), My Right’!!! The veil is an instrument to control a woman’s sexuality, like FGM.”).

103 See Azizah Y. Al-Hibri, *Is Western Patriarchal Feminism Good For Third World/Minority Women?*, in IS MULTICULTURALISM BAD FOR WOMEN? 41 (Princeton Univ. Press 1999).

104 See Pamela K. Taylor, *France, Spain and Syria: To ban or not to ban the burqa?*, WASH. POST (Jul. 23, 2010), http://onfaith.washingtonpost.com/onfaith/modernmuslim/2010/07/france_spain_and_syria_to_ban_or_not_to_ban_the_burqa.html (seeing the “hijab (the headscarf and long, loose clothes) as the ultimate “up yours” to the cult of causal sexuality that seemed to have overtaken American youth, the abusiveness of the beauty industry, and the objectification of women by Hollywood and advertisers that had spawned an epidemic of anorexia and bulimia among young women and its flip side, an epidemic of obesity, which left practically no woman happy with her body” and felt the “hijab was delightfully freeing, a way of stepping outside that game and rejecting it utterly.”); see also Cecile Laborde, *Female Autonomy, Education and the Hijab*, 9 CRITICAL REV. OF INT’L SOC. & POL. PHIL. 351, 365, available at <http://www.sss.ias.edu/files/pdfs/Laborde-Female-Autonomy.pdf> (discussing that the hijab liberates them from the perceived dictates of Western fashion and from the pervasive sexualization of women’s bodies).

105 See Al-Hibri, *supra* note 103 at 46; but see Sunder, *supra* note 100, at 1401-1427 (critiquing international human rights laws’ deference to traditional (male) religious authority as a cause of subordination of women’s rights, seeing the subordination of women’s rights is a common outcome to efforts to preserve minority cultures and religions because it de facto privileges male perspectives).

106 See Al-Hibri, *supra* note 103; see also Cass R. Sunstein, *Should Sex Equality Law Apply to Religious Institutions?*, in IS MULTICULTURALISM BAD FOR WOMEN? 85 (Princeton Univ. Press 1999).

107 Admittedly, one cannot speak of the “Muslim woman” or “Muslim women” as a singular, monolithic category. Women who are Muslim originate from various racial, ethnic, and immigrant backgrounds. Moreover, they hold diverse political, social, and religious views that cannot be summed up in one term. When I use the term “Muslim woman,” I assume and accept such diversity.

108 See *Southwest Airlines apologized on Wednesday to a Muslim Woman removed from one of the carrier’s jets before a flight out of Lindbergh Field*, CAIR (Mar. 16, 2011), http://ca.cair.com/sandiego/news/outrage_after_california_muslim_removed_from_plane (Irum Abassi, a Muslim graduate student at San Diego University, wearing a headscarf, was removed from a Southwest plane before a flight “due to concerns about a comment she made while awaiting takeoff” and the flight attendant’s feeling that she was “suspicious”). But see M. Imran Hayee, *For Muslim Women, Wearing a Veil Isn’t Oppression*, STAR TRIBUNE (Aug. 17, 2011), <http://www.startribune.com/opinion/otherviews/127972598.html> (The author, a male Muslim, justifies use of the headscarf as a religious marker, notably omitting his wife’s narrative and thereby exemplifying her denial of agency within the community); Eric Marrapodi, *Poll: Many Americans uncomfortable with Muslims*, CNN (September 6, 2011), <http://religion.blogs.cnn.com/2011/09/06/poll-many-americans-uncomfortable-with-muslims/> (poll says nearly half of Americans would be uncomfortable with a woman wearing a burqa, a mosque being built in their neighborhood or Muslim men praying at an airport. 41% would be uncomfortable if a teacher at the elementary school in their community was Muslim. 47% of survey respondents said the values of Islam are at odds with American values); Seth Brohinsky and Mark Schulman, *Americans View Ground Zero as No Place for Mosque; Many Hold Resentment Toward Muslims*; АБТ SRBI (August 19, 2010), http://www.srbi.com/Religion_Poll.html (poll says 25% of Americans consider Muslims “not patriotic” as well as addresses opposition to Ground Zero Mosque).

109 See, e.g., Tarice Gray, *Muslim American Girls Taunted, Assaulted at School for Wearing Hijab*, CHANGE.ORG (Dec. 21, 2010), http://education.change.org/blog/view/muslim_american_girls_taunted_assaulted_at_school_for_wearing_hijab (reporting that “The Greater Los Angeles office of the Council on American-Islamic Relations (CAIR-LA) says it’s hearing from students and their parents saying that children are being verbally harassed and tagged with labels like “terrorist” or “jihadi,” just for being Muslim and that girls have reported being physically assaulted for wearing hijab, the traditional headscarf worn by Muslim women.”); see also Engy Abdelkader, *In Post-9/11 World, Anti-Bullying Bill Carries Special Significance*, N.J. L.J., Dec. 20, 2010 (reporting that post-9/11 harassment of American-Muslim and South-

Asian youths has dramatically worsened including derogatory name-calling and physical threats and violence); see also Felicia Sonmez & Michelle Boorstein, *Few fireworks at hearing examining civil rights of American Muslims*, WASH. POST (Mar. 29, 2011), http://www.washingtonpost.com/politics/few-fireworks-at-hearing-examining-civil-rights-of-american-muslims/2011/03/29/AFykZtvB_story.html (testifying that evidence indicates that religiously-inspired bullying of youth also is increasing.); see also John Doyle, *New ‘Bias’ Attack on SI Muslim*, N.Y. POST (Oct. 14, 2010), http://www.nypost.com/p/news/local/staten_island/new_bias_attack_on_si_muslim_1OLCBmqaQg0loZigplufsO (reporting that a man was arrested for punching a headscarf-wearing woman and her four-year-old son from Staten Island).

110 See Tracy Clark-Flory, *Abercrombie Hates Your Hijab*, SALON (Feb. 25, 2010), http://www.salon.com/life/broadsheet/feature/2010/02/25/hijab_abcrombie_hollister_discrimination (discussing a Muslim employee of Abercrombie & Fitch Co.’s allegation that she was fired for not removing her headscarf when she was initially told she could wear a hijab, or headscarf. She was later told by a visiting district manager that scarves were not allowed during work hours. She said that she was fired when she refused to take it off.); see also Amy Joyce, *External Symbols of Faith Can Unfairly Add to Interview Stress*, WASH. POST, Sept. 25, 2005, at F6 (telling the challenges in obtaining employment faced by a Muslim woman who wears the headscarf due to employers discomfort with her headscarf).

111 A similar debate grips the French dialogue. Veiled Muslim women are the “targeted other,” seen as both subjugated and loyal to the terrorist threat as they face the banning of the full-face veil (the niqab), which went into effect on April, 11, 2011. A recent report undertaken by the Open Society Foundations shows that women wearing it face high levels of verbal and physical assault. The French government, along with other supporters of its prohibition, argue that the law is aimed at protecting women who are forced by male members of their families and their religious communities into wearing the niqab. However, the findings and conclusions of this report show that the majority of women interviewed chose to wear it freely despite strong family opposition and without the role of religious organizations and individuals as a factor in their decision. Women interviewed for the report stated they found public verbal abuse to have increased after the controversy over the veil began, finding the law to have failed to advance the cause of women’s rights or dignity. “The law banning full-faced coverings is a strong indicator of the growing tensions in France, and across Europe, over perceived national identity and values and the acceptance of increasingly diverse populations, in which Muslims play a large part.” Although there exists a difference between the full-face

veil and the headscarf, the perceptions of the two are often conflated in the eyes of the stereotyper. See *Unveiling the Truth: Why 32 Women Wear the Full-Face Veil in France*, OPEN SOCIETY FOUNDATIONS (2011), http://www.soros.org/initiatives/home/articles_publications/publications/unveiling-the-truth-20110411/a-unveiling-the-truth-20100510.pdf.

112 See Tara Bahrapour, *TSA Procedures Offend Followers of Many Faiths*, WASH. POST, Dec. 23, 2010, at A1 (reporting on consistent Muslim women donning headscarves' subjection to secondary screening when they travel by plane).

113 Anastasia Vakulenko, *'Islamic Headscarves' and the European Convention on Human Rights: An Intersectional Perspective*, 16(2) SOCIAL & LEGAL STUDIES 183, 186 (2007).

114 See Gowri Ramachandran, *Intersectionality As "Catch 22": Why Identity Performance Demands Are Neither Harmless Nor Reasonable*, 69 ALB. L. REV. 299, 302 (2006) (noting that intersectionals "experience a qualitatively different kind of subordination").

115 See Solanke, *supra* note 10, at 735 (discussing how stereotypes, in the absence of personal experiences, inform a person's perception of groups to which he or she does not belong); Katherine Bullock, *Rethinking Muslim Women and the Veil: Challenging Historical and Modern Stereotypes*, THE INTERNATIONAL INSTITUTE OF ISLAMIC THOUGHT (2002), at XXII-XXIV, <http://www.iiituk.com/docs/pdf/preamble-veiling-v3.pdf> (addresses educated Muslim women recapturing the veil as their own in the 1970s and the attempt to take away the negative terrorist stereotype); Sahar F. Aziz, *From the Oppressed to the Terrorist: Muslim American Women Caught in the Crosshairs of Intersectionality*, 9 HASTINGS RACE & POVERTY L.J. 191, 216-223 (2012) (women viewed by Americans as oppressed and ethnically stereotyped as potential extremist).

116 See, e.g., Maryam Amir-Ebrahimi, *Wifhood and Motherhood are Not the Only Ways to Paradise*, SUHAIBWEBB.COM (Oct. 7, 2011, 5:00 AM), <http://www.suhaiwebb.com/relationships/marriage-family/wifhood-and-motherhood-%E2%80%93-not-the-only-ways-to-paradise/> (discussing the experience of a young woman pressured to marry by her family and quoting her as saying "I'm already twenty-six," another sister lamented. "I'm expired. My parents are going crazy. They think I'm never going to get married and they pressure me about it daily. My mom's friends keep calling her and telling her I'm not getting any younger. She keeps crying over it and says she'll never be a grandma. It's not like I don't want to get married; I've been ready since college! I just can't find the right guy.").

117 See Vakulenko, *supra* note 113, at 191 (using the court's narrow interpretation in *Sahin v. Turkey*, 2005-XI Eur. Ct. H.R. 173, to highlight the necessity of considering gender in cases

of religious discrimination against Muslim women on the basis of their headscarf).

118 See *Muslim Americans Exemplify Diversity, Potential*, GALLUP, Mar. 2, 2009 (noting that Muslim women are among the most highly educated religious groups in the United States); Homa Hoodfar, *The Veil in Their Minds and On Our Heads: The Persistence of Colonial Images of Muslim Women*, RESOURCES FOR FEMINIST RESEARCH 22, nos. 3-4 (1993), at 5-6 and 13-15, <http://www.umass.edu/wost/syllabi/spring06/hoodfar.pdf> (speaks as to North American veiled Muslims (focuses mostly on Canada, but speaks to the view of veiled women seeking higher education as oppressed despite the fact they are seeking highly competitive education).

119 See *Price Waterhouse v. Hopkins*, 490 U.S. 228, 234-35 (1989) (discussing Price Waterhouse's rejection of a female partnership candidate due to her "masculine" demeanor; the very demeanor that won her high praise as an effective executive); Siham Ouazzif, *Veiled Muslim Women in Australian Public Space: How do Veiled Women Express their Presence and Interact in the Workplace?*, Master of Applied Anthropology, at 25-30, http://www.antropologi.info/blog/anthropology/pdf/Veiled_Muslim_Women_in_Australian_Public_Space.pdf (although focused on veiled women in the workplace in Australia, references the effect of 9/11 and the negative stereotypes of the veil. However, most accounts veiled women report improvements in the workplace from being veiled in their perspectives); Jawad Syed and Edwina Pio, *Veiled Diversity? Workplace Experiences of Muslim Women in Australia*, ASIA PACIFIC JOURNAL OF MANAGEMENT, 27 (1) (2010), pp. 115-137, <http://ideas.repec.org/a/kap/asiapa/v27y2010i1p115-137.html>; Shefali Patil, *Perceptions of Female Managers in Male-Dominated Industries: Effects of Gender Rarity, Performance, and Diversity Justification*, THE MICHIGAN JOURNAL OF BUSINESS (2008), <http://michiganjb.org/issues/21/text21b.pdf> (talks about the perception of women as "dominant" in work places where there are not too many females).

120 See Frank Rudy Cooper, *Against Bipolar Black Masculinity*, 39 U.C. DAVIS L. REV. 853, 859 (2006) (noting the absence of guilt by Whites for putting nonassimilating bad Black men in jails or permanently within the lower classes). See *Price Waterhouse*, 490 U.S. at 242-44 (noting that comments submitted stemming from sex stereotyping played an important role in the decision of whether or not to hire a female employee as partner in a law firm. The female plaintiff was seen as being "overbearing and aggressive and curt," rather than "kind and considerate and patient." The court decided that although complaints of the woman's behavior may have been justified, reactions of some of the partners were reactions to her as a woman. The Supreme Court stated, "An employer who objects to aggressiveness in women but whose positions

require this trait places women in an intolerable and impermissible catch 22: out of a job if they behave aggressively and out of a job if they do not...”).

121 See generally Wajahat Ali et al., *Fear, Inc.: The Roots of the Islamophobia Network in America*, CENTER FOR AMERICAN PROGRESS (Aug. 26, 2011), <http://www.americanprogress.org/issues/2011/08/pdf/islamophobia.pdf> (discussing the proliferation of anti-Muslim organizations and the ways these organizations feed American Islamophobia).

122 See Alex Seitz-Wald, *Fox News Watchers Consistently More Likely to Have Negative Views of Muslims*, THINK-PROGRESS (Feb. 16, 2011, 8:00 pm), <http://thinkprogress.org/media/2011/02/16/144856/fox-news-watchers-consistently-more-likely-to-have-negative-views-of-muslims/> (citing a Public Religion Research Institute poll highlighting conservative media’s effect on many Americans who distrust Muslims); see also *Muslim Americans: No Signs of Growth in Alienation or Support for Extremism*, PEW RESEARCH CENTER (Aug. 30, 2011), <http://www.people-press.org/2011/08/30/muslim-americans-no-signs-of-growth-in-alienation-or-support-for-extremism/> (indicating that, while there has been no appreciable change in alienation among Muslims, 50% of Muslims reported being treated with suspicion or being called an offensive name—up from 41% in 2007); *In U.S., Religious Prejudice Stronger Against Muslims*, GALLUP (Jan. 21, 2010), <http://www.gallup.com/poll/125312/Religious-Prejudice-Stronger-Against-Muslims.aspx> (indicating that 43% of Americans feel at least “a little” prejudice towards Muslims).

123 See generally Sahar F. Aziz, *Sticks and Stones, Words That Hurt: Entrenched Stereotypes Eight Years After 9/11*, 13 N.Y.C. LAW REV. 33 (2009) (examining a line of employment cases where Muslim employees experience workplace harassment through racial slurs and accusations of terrorism).

124 See Devon W. Carbado, Mitu Gulati, *Conversations at Work*, 79 OR. L. REV. 103 (2000) (analyzing the repressive impact that stereotypes have on identity performance in the workplace).

125 See Allen, *supra* note 36, at 221–22 (noting the same view of headscarved Muslim women as unassimilable contributed to France’s hijab ban). Allen further notes that, if not for the ban, concerns over the hijab would likely have faded over time in the same way that concerns over feminine dress among female lawyers in the 1980s faded as firms and clients got accustomed to “having competent women around.”

126 Kenzo S. Kawanabe, *American Anti-Immigrant Rhetoric Against Asian Pacific Immigrants: The Present Repeats the Past*, 10 GEO. IMMIGR. L. J. 681, 686–87 (1996) (noting the “failure to assimilate arguments often focus on race or culture and incorporate themes of racism and bigotry”); see also Bill

Ong Hing, *Beyond the Rhetoric of Assimilation and Cultural Pluralism: Addressing the Tension of Separatism and Conflict in an Immigration-Driven Multiracial Society*, 81 CAL. L. REV. 863, 887–88 (recognizing “the dangers and the narrow-mindedness of race and cultural assimilationists who demand an exclusive Euro-centric vision of America”. Failure to assimilate arguments often focus on race or culture and incorporate themes of racism and bigotry”).

127 See Kenji Yoshino, *Covering*, 111 YALE L.J. 769, 772 (2002) (discussing the three means by which minorities attempt to assimilate into a culture: conversion, passing, and covering). Conversion involves altering a person’s underlying identity. Passing involves hiding one’s underlying identity. Covering involves downplaying, but not hiding, one’s underlying identity. While some groups can pass without betraying their true identity (Yoshino identifies homosexuals as such a group), headscarved Muslim women cannot because the headscarf is a critical aspect of their Muslim faith.

128 See Frank Rudy Cooper, *Against Bipolar Black Masculinity*, 39 U.C. DAVIS L. REV. 853, 859 (2006) (noting the absence of guilt by whites for putting nonassimilating bad Black men in jails or permanently within the lower classes).

129 See Gowri Ramachandran, *Intersectionality as “Catch 22”: Why Identity Performance Demands are Neither Harmless Nor Reasonable*, 69 ALBANY L. REV. 299, 324 (2006) (examining the “Catch 22” experienced by African American women facing discrimination as a lazy black worker or a bad housewives and mothers blamed for raising lazy, criminal black children).

130 See Suhaib Webb, *Is Hijab an Obligation? Don’t Religious Rules Change?*, SUHAIBWEBB.COM (Mar. 2, 2009), <http://www.suhaibwebb.com/islam-studies/is-hijab-and-obligation-dont-religious-rules-change/> (noting that orthodox Muslim scholars consider the hijab as a fixed obligation); see also Yoshino, *supra* note 127 (describing conversion as changing one’s underlying identity).

131 See Sunita Patel, *Comment, Performative Aspects of Race: “Arab, Muslim, and South Asian” Racial formation after September 11*, 10 ASIAN PAC. AM. L.J. 61, 84 (2005) (discussing the gender and religious considerations at play in “covering” by removing the hijab).

132 Yoshino, *supra* note 127.

133 Jen’nan Ghazal Read and John P. Bartkowski, *To Veil or Not to Veil?: A Case Study of Identity Negotiation among Muslim Women in Austin, Texas*, 14 GENDER & SOCIETY 395, 406–07 (2000), http://www.soc.duke.edu/~jgr14/pdfs/g_s_pub.pdf (shows a struggle between what society deems good or appropriate and what the individual who wishes to be veiled views as good).

134 *Id.*; Jehanzeb Dar, *Part 1: Time to End Gender Segregation in Mosques*, ALTMUSLIMAH.COM (Nov. 30, 2011), www.altmuslimah.com/a/b/mca/3413 (discussing the various ways in which Muslim men are privileged within the American Muslim community).

135 See Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (examining the failure of anti-discrimination law to account for the multiple influences of racism and sexism on the lives of black women); see also M. Imran Hayee, *For Muslim Women, Wearing a Veil Isn't Oppression*, STAR TRIBUNE (Aug. 17, 2011), <http://www.startribune.com/opinion/otherviews/127972598.html> (The author, a male Muslim, justifies use of the headscarf as a religious marker, notably omitting his wife's narrative and thereby exemplifying her denial of agency within the community).

136 In nearly every joint national press conference called by Muslim organizations, the individuals speaking in a representational role are consistently males despite their 50 percent female constituency. One of many examples includes the joint press conference responding to President Obama's speech on May 18, 2011, about democracy in the Middle East and North Africa. The Council on American Islamic Relations issued a joint statement citing the following Muslim leaders of the largest American Muslim organizations, all of whom are males: "Those who watched or spoke following the president's speech included CAIR National Executive Director Nihad Awad, Naeem Baig of the Islamic Circle of North America, Mahdi Bray of the Muslim American Society Freedom Foundation, Dr. Mohammed Elsanousi of the Islamic Society of North America, Mouaz Moustafa of the Libyan Council of North America, and Dr. Louay Safi of the Syrian American Council." Press Release, CAIR: Obama's 'Arab Spring' Address Sets the Right Tone, CAIR (May 19, 2011, 4:15 pm), <http://www.cair.com/ArticleDetails.aspx?mid1=777&&ArticleID=26779&&name=n&&currPage=2>; Press Release, CAIR: CAIR Calls for Reform of FBI's Training on Islam, Muslims, CAIR (Sept. 21, 2011, 6:15 pm), <http://www.cair.com/ArticleDetails.aspx?mid1=777&&ArticleID=26881&&name=n&&currPage=3>.

137 See Crenshaw, *supra* note 135, at 160 (highlighting a similar situation with Black leaders and spokespersons).

138 See *Joint Statement on Meeting with FBI Director Robert Mueller*, AMERICAN-ARAB ANTI-DISCRIMINATION COMMITTEE (Feb. 15, 2012), <http://www.adc.org/media/press-releases/2012/february-2012/joint-statement-on-meeting-with-fbi-director-robert-mueller/> (detailing a meeting between FBI Director, Robert Mueller, and a number of Muslim and interfaith organizations to discuss changes in FBI counterterrorism training materials to remove materials containing "falsehoods and negative

connotations of the Muslim American community."); One notable case is CAIR's successful effort to stop the usage of a target depicting a Muslim woman wearing a religious headscarf (hijab) and verses from the Quran to train Navy SEALs, PRNewswire: CAIR Welcomes Navy Decision to Remove Target of Muslim Woman, Quran (June 30, 2012) <http://www.prnewswire.com/news-releases/cair-welcomes-navy-decision-to-remove-target-of-muslim-woman-quran-160943305.html>.

139 *Id.*

140 The Arab American Institute website lists several women among its leadership team, including Executive Director Maya Berry, but Muslim women's issues are not listed among the issues on which it focuses. See *Our Team*, ARAB AMERICAN INSTITUTE, <http://www.aaiusa.org/pages/our-team/> (last visited Feb. 25, 2012). The Interfaith Alliance website lists several women among its leadership team, but Muslim women's issues are not listed among the issues on which it focuses. See *Meet our Board*, INTERFAITH ALLIANCE, <http://www.interfaithalliance.org/about/board> (last visited Feb. 25, 2012). While the Islamic Society of North America's (ISNA) website includes information on domestic violence, there is no mention of its advocacy efforts concerning Muslim women's civil rights. Additionally, the ISNA Board of Directors only has one woman, Asma Mirza, in an "at large" position. See *ISNA Executives and Board of Directors*, ISLAMIC SOCIETY OF NORTH AMERICA, <http://www.isna.net/ISNAHQ/pages/Board-of-Directors.aspx>. The Muslim Public Affairs Council (MPAC) is the lone standout with several women in director positions. Additionally, MPAC has published a policy paper on women's rights, albeit not dealing with Muslim women's rights in America. See Dina Chehata, Safiya Ghorri-Ahmed, & Aziza Hasan, *Abusing Women, Abusing Islam: Re-Examining Sharia Court Rulings in Contemporary Times* (Muslim Public Affairs Council, 2009), available at <http://www.mpac.org/assets/docs/publications/abusing-women-abusing-islam.pdf>.

141 See Volpp, *supra* note 95 at 1187 (2001) ("Culture is invoked to explain forms of violence against Third World or immigrant women while culture is not similarly invoked to explain forms of violence that affect mainstream Western women."). A good example of this is the support for an article written by a headscarf-wearing Muslim woman who criticizes "dehijabized" Muslim women for taking it upon themselves to interpret Islam for themselves, rather than relying on male Muslim religious leaders who proclaim that wearing the headscarf is mandatory. Darah Rateb, *The Dehijabization Phenomenon*, ALTMUSLIM.ORG (March 30, 2009), <http://www.altmuslim.com/a/a/a/2999>. It is common for male-run Muslim organizations to promote those women who perpetuate their male-centric interpretations of Islam and visions of how

Muslim communities should function. Lisa Blaydes and Drew A. Linzer, *The Political Economy of Women's Support for Fundamentalist Islam*, (2007), <http://blaydes.bol.ucla.edu/Women.pdf> (“[S]ome of the strongest support for the Islamist movement is among extremely well-educated women, such as doctors and university educators, who may see the opportunity for prestigious employment . . . for serving in a leadership capacity for the mass Islamist movement”) (citing VALENTINE M. MOGHADEM, *MODERNIZING WOMEN: GENDER AND SOCIAL CHANGE IN THE MIDDLE EAST* (American University in Cairo Press, 1993).

142 See Op-Ed., Fazeela Siddiqui, *Ten Muslim Women Every Person Should Know*, HUFFINGTON POST (Mar. 24, 2012), http://www.huffingtonpost.com/fazeela-siddiqui/10-muslim-women-you-should-know_b_1348903.html (noting that the phrase “Muslim woman” may “conjure an image of a demure un-empowered woman sheltered by her burqa,” and citing examples of historical Muslim women who were ridiculed for their strength and activism); Shabana Mir, “*You can't really look normal and dress modestly: the Problem of Dress & American Muslim Women College Students*,” at 6 and 15, http://pluralism.org/affiliates/student/mir/mir_paper.pdf.

143 See, e.g., Sunder, *supra* note 100, at 1410-11 (arguing that a similar phenomenon occurs in the United States with regard to Muslim civil rights: religious freedoms are protected at the expense of Muslim women's empowerment within their communities and the public at large, and those seeking reform (i.e., cultural dissenters) are forced to vote with their feet by leaving the community altogether and “covering” their Muslim identity to the public to avoid the wrath of anti-Muslim bias).

144 See, e.g., *Hamden Mosque Vandalized*, EYEWITNESSNEWS3 (Feb. 25, 2011), <http://www.wfsb.com/news/26998327/detail.html> (reporting that a mosque in Hamden, Connecticut, was marred with spray-painted profanity and graffiti. Such vandalism had been experienced four times in the past two years.); see also, John Doyle, Frank Rosario & Jessica Simeone, ‘*Drunk*’ desecration at mosque, N.Y. POST (Aug. 26, 2010), http://www.nypost.com/p/news/local/queens/drunk_desecration_at_mosque_fA7FZKYh59hx3Bjika6UGN?CMP=OTCRSS&FEEDNAME#ixzz0xjJJ5Jgi (reporting on a man who barged in, began cursing the mosque attendees, and ultimately urinated on the prayer rugs before he was able to be escorted out); see also CAIR: *Southern California Mosque Vandalized*, CAIR-CA (Dec. 13, 2009), http://ca.cair.com/los-angeles/news/cair_southern_california_mosque_vandalized (reporting the vandalism of a mosque in Los Angeles where vandals shattered its windows and glass doors and broke into the donation boxes, and further commenting that an Oregon mosque was previously targeted with hate graffiti reading, “Allah is a pig”).

145 See Robert Koenig, *Discrimination, hate crimes against Muslim Americans rising, officials say*, ST. LOUIS BEACON (Mar. 29, 2010), <http://www.stlbeacon.org/issues-politics/280-washington/109204-discrimination-against-muslims-on-the-rise> (documenting that “while Muslims represent less than 1 percent of the U.S. population, officials said about a quarter of religion-related workplace discrimination cases involve Muslims, as well as more than 14 percent of the overall number of federal religious discrimination cases” with the Anti-Defamation League reporting ‘an intensified level of anti-Muslim bigotry”).

146 See Press Release, *ACLU Files Lawsuit Challenging Unconstitutional “No Fly List”*, ACLU (Jun. 30, 2010), <http://www.aclu.org/national-security/aclu-files-lawsuit-challenging-unconstitutional-no-fly-list>.

147 See *Wrong Then, Wrong Now: Racial Profiling Before & After September 11, 2001*, Leadership Conference on Civil Rights Education Fund, Feb 21, 2003, at 27 (documenting and critiquing “terrorism profiling” specifically the profiling of Arabs, South-Asians, and Muslims at airports).

148 See *Democracy Now!: Entrapment or Foiling Terror? FBI's Reliance on Paid Informants Raises Questions about Validity of Terrorism Cases* (radio broadcast Oct. 6, 2010) (questioning the law enforcement tactics of using paid informants directed at Muslim communities to arrest members on terror charges when no terrorist crime was actually committed, particularly as it relates to the case of the Newburgh Four, the Fort Dix Five, and a case in Albany focusing on whether this constitutes entrapment).

149 The same occurs within communities of color when women complain about domestic violence; rather than focusing on their needs, society interprets the complaints as evidence that black men are uncontrollably violent and therefore as consistent with stereotypes. See Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1252-53 (1991).

150 See Sunder, *supra* note 100, at 1441.

151 See Richard Delgado, *Rodrigo's Sixth Chronicle: Intersections, Essences, and the Dilemma of Social Reform*, 68 N.Y.U. L. REV. 939, 652-53 (1993) (discussing the dangers in joining a social movement that does not perfectly align with the goals sought by minority members); see also Crenshaw, *supra* note 135, at 162. However, note the increase in women who claim to be experts on Muslims or Islam but proffer views highly controversial, if not outright offensive, to a broad group of American Muslims. See, e.g., Samer Araabi, *Apostate Politics: How Some Recanted Muslims Have Bolstered Militarist U.S. Policies*, INST. POL'Y STUD. (Dec. 18, 2010), *avail-*

able at http://www.rightweb.irc-online.org/articles/display/apostate_politics_how_some_recanted_muslims_have_bolstered_militarist_us_po. I posit that this phenomenon is partially attributable to the exclusion of women from leadership positions, especially those who hold controversial views or are exceptionally talented. Hence, Muslim women stuck at the intersectionality of race, religion, and gender tend to either suffer in silence to preserve community unity, start their own organizations with varying success, or become adamant opponents of mainstream Muslim organizations exploited by groups holding anti-Muslim biases.

152 Jen'nan Ghazal Read and John P. Bartkowski, *To Veil or Not to Veil?: A Case Study of Identity Negotiation among Muslim Women in Austin, Texas*, 14 *GENDER & SOCIETY* 395, 406-07 (2000), http://www.soc.duke.edu/~jgr14/pdfs/g_s_pub.pdf (shows a struggle between what society deems good or appropriate and what the individual who wishes to be veiled views as good).

153 MUSLIM ADVOCATES, <http://www.muslimadvocates.org> (having emerged in 2005 as a non-profit sister entity to the National Association of Muslim Lawyers (NAML), Muslim Advocates is a professional association of approximately 500 Muslim lawyers, law students, and other legal professionals). Muslim Advocates was founded and is headed by Farhana Khera.

154 ING, <http://www.ing.org> (working to counter prejudice and discrimination against American Muslims by teaching about their traditions and contributions in the context of this country's history and cultural diversity, while building relations between American Muslims and other groups). ING is headed by Maha Elgenaidy.

155 KARAMAH, <http://www.karamah.org/> (working to build this global network of informed, empowered advocates in two ways—first, by creating and sharing knowledge about the rights Islamic law grants to women, and second, by educating Muslim women in Islamic jurisprudence, leadership, and conflict resolution so that they may become the leading agents of change within their communities). Karamah was founded and is headed by Azizah Al-Hibri.

156 SAALT, www.saalt.org. This civil rights and civic engagement organization, founded and still led by Deepa Iyee, a non-Muslim South Asian woman, has a large South Asian Muslim constituency.

157 Similar examples exist at the local level, where Muslim women have founded female-focused and led organizations to address social, economic, and political issues that they face and are ignored by male-dominated mosques or other community organizations. See, e.g., Texas Muslim Women's Foundation, <http://www.tmwf.org/website/index.php> (discuss-

ing with the author the basis for their starting the organization, primarily their frustration with the lack of female representation in existing Muslim organizations and, as a consequence, the community's neglect of the issues most important to them).

158 See, e.g., CAIR-Greater Los Angeles Area (CA) Staff, CAIR-CA, <http://ca.cair.com/losangeles/about>; see also Muslim Public Affairs Council (MPAC) Staff and Board, MPAC, <http://www.mpac.org/about/staff-board.php>.

159 See Rogier Van Batel, *The Trouble is the West*, REASON.COM (Nov. 2007), <http://reason.com/archives/2007/10/10/the-trouble-is-the-west/singlepage> ("I think that we are at war with Islam. And there's no middle ground in wars. Islam can be defeated in many ways. For starters, you stop the spread of the ideology itself; at present, there are native Westerners converting to Islam, and they're the most fanatical sometimes. There is infiltration of Islam in the schools and universities of the West. You stop that. You stop the symbol burning and the effigy burning, and you look them in the eye and flex your muscles and you say, 'This is a warning. We won't accept this anymore.' There comes a moment when you crush your enemy."). Although Ms. Ali is a self-avowed atheist, her views by some in the American public are interpreted as representative of Muslim women.

160 John M. Broder, *For Muslim Who Says Violence Destroys Islam, Violent Threats*, N.Y. TIMES (Mar. 11, 2006), <http://www.jihadwatch.org/2006/03/for-muslim-who-says-violence-destroys-islam-violent-threats.html> (finding that "Dr. Sultan said the world was not witnessing a clash of religions or cultures, but a battle between modernity and barbarism, a battle that the forces of violent, reactionary Islam are destined to lose.").

161 See Mark Medley, *Cruel and Usual Punishment: The Terrifying Global Implications of Islamic Law by Nonie Darwish* (Feb. 17, 2009) (book review), available at <http://network.nationalpost.com/np/blogs/afterword/archive/2009/02/17/book-review-cruel-and-usual-punishment-the-terrifying-global-implications-of-islamic-law-by-nonie-darwish.aspx> (discussing that, "she writes that Islam is a 'sinister force' that must be resisted and contained").

162 See Ida Lichter, *MUSLIM WOMEN REFORMERS: INSPIRING VOICES AGAINST OPPRESSION* (Prometheus Books 2009) (citing the above mentioned women as courageous Muslim reformers whom barely receive any notice and are women who are prepared to challenge institutionalized persecution, risking derision, arrest, physical harm, and even death; thus, further legitimizing their highly controversial, if not offensive, views).

162 See e.g., *When does Fox News' Ugly Muslim Bashing Become the Story?* MEDIA MATTERS (Aug. 19, 2010), <http://mediamatters.org/blog/201008190011> (highlighting Fox News'

history of making controversial assertions about Islam, branding all Muslims as terrorists, and insisting that there is a war with Islam); see also Robert Spencer, *Stealth Jihad: Islam's War Against the West*, YOUTUBE (Jun. 9, 2009) <http://www.youtube.com/playlist?list=PLB55A8794DA0EC909> (American author of the blog jihadwatch.org gives a series of lectures on the basis of his blog and claims that Islam is an inherently violent religion and is a threat to the safety of the U.S.).

163 Western feminists have consistently called for banning the burqa and defending women's rights in Iraq, Afghanistan and other Middle Eastern nations, but have largely remained silent on a Muslim woman's right to wear hijab along with other gender rights in the United States. See, e.g., MADRE: Demanding Rights, Resources & Results for Women Worldwide, <http://www.madre.org/index/meet-madre-1/our-projects-20.html> (an international organization calling for greater women's rights in Iraq and Afghanistan, but completely silent on women's issues post-9/11 in the "Western" world); see also, ASSOCIATION FOR WOMEN'S RIGHTS IN DEVELOPMENT, <http://www.awid.org/Our-Initiatives> (focusing primarily on combating hijab enforcement internationally); see also FEMINIST MAJORITY FOUNDATION, <http://feminist.org/welcome/index.html> (focusing on women's rights issues primarily in Afghanistan and Iran, more specifically on banning the burqa in Afghanistan and changing discriminatory laws in Iran). Organizations such as Vital, CODE Pink and EQUALITY NOW all focus primarily on international women's rights efforts in Iraq, Iran, Afghanistan, and other countries of the Global South; however, they are largely silent on the issue of domestic women's rights issues, particularly the issues of Arab/South-Asian/Muslim women.

164 *Id.*

165 See, e.g., David Beasley, *Muslim Woman Sues Georgia City Over Headscarf Arrest*, REUTERS (Dec. 14, 2010), <http://www.reuters.com/article/2010/12/14/us-headscarf-lawsuit-idUSTRE6BD6LL20101214?feedName=OutloudFeed&feedType=RSS&rpc=1120> (discussing that Lisa Valentine's suit argues that by prohibiting her from wearing a headscarf in court, the city violated her constitutional rights to free expression of religion.); see also Clark-Flory, *supra* note 110 (framing her legal claim around religious discrimination).

166 See Volpp, *supra* note 95, at 1190 ("[The West identifies] sexual violence in immigrant of color and Third World communities as cultural, while failing to recognize the cultural aspects of sexual violence affecting mainstream white women. This is related to the general failure to look at the behavior of white persons as cultural."); see also 2009 ANNUAL CONFERENCE NATIONAL ORGANIZATION FOR WOMEN, <http://www.now.org/organization/conference/2009/workshops.html> ("Female infanticide and sexual slavery are just a few of the barbaric practices that are used to oppress Islamic women and girls. Within Islamic

fundamentalism, extreme misogyny is a disturbingly common mindset that is physically, mentally and spiritually damaging for women and children. Workshop panelists include the executive director of Women's Freedom Forum, who has worked with women in the Middle East to promote freedom and democracy. Also, Feminist Majority Foundation (FMF) President and former NOW president Eleanor Smeal will address the plight of women and girls in Afghanistan, where hundreds of girls' schools have been bombed and violence against women is increasing daily. FMF has launched a new campaign in the U.S. to promote the expansion of peace-keeping efforts and support the leadership of Afghan women and rebuild schools. Come learn how you can help.").

167 See *Code Pink in Iraq*, CODE PINK, <http://www.codepink.org/section.php?id=19> (last visited Dec. 24, 2011); *Discrimination in Law*, EQUALITY NOW, <http://www.equalitynow.org/our-work/discrimination-law> (last visited Dec. 24, 2011) (listing nations in which EQUALITY NOW is working; the United States is not on the list).

168 See Volpp, *supra* note 95, at 1185 ("The discourse of feminism versus multiculturalism presumes that minority cultures are more patriarchal than Western liberal cultures.").

169 Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585-90 (1990) (arguing that traditional feminist thought views issues from the perspective of the ideal (White) woman).

170 After a thorough search of these organizations' agendas and strategies, the author could not find evidence of their inclusion of discrimination against Muslim women. But see Moni Basu, *Woman jailed over scarf gets support*, ATLANTA METRO NEWS (Dec. 20, 2008), <http://www.ajc.com/search/content/metro/stories/2008/12/20/mettrail.html> (noting that CAIR and the NAACP appeared together at an anti-Muslim discrimination rally outside the Douglasville, Georgia, courthouse in response to the arrest of a woman for refusing to follow a judge's order to remove her headscarf in court); see also David Beasley, *Georgia City Revises Headscarf Policy After Lawsuit*, REUTERS (Oct. 6, 2011) (<http://www.reuters.com/article/2011/10/06/us-georgia-headscarf-idUSTRE7957L020111006>) (reporting on a Georgia Muslim woman's arrest and jailing after she refused to remove her hijab before entering a Georgia court).

171 See Crenshaw, *supra* note 135 (arguing that the failure to address the intersection of race and gender in antidiscrimination and anti-racist politics against Black men marginalizes the experiences of Black women).

172 See *Discrimination Against Muslim Women*, ACLU, <http://www.aclu.org/pdfs/womensrights/discriminationagainst-muslimwomen.pdf> (last visited Dec. 17, 2011) (highlighting

the increase in discrimination claims by Muslim women and enumerating the laws protecting a woman's right to wear a headscarf).

173 See *Americans' Perceptions of Woman Wearing Shawl Decline Compared to Previous Study*, MEDIA CURVES.COM (Oct. 6, 2010), <http://www.mediacurves.com/Culture/Headressovertime2010/> (surveying various participants' opinion of a woman depicted in two pictures, one with and one without a headscarf). Conducted annually from 2008 to 2010, the most recent survey indicated that 62% of those surveyed would prefer to have the woman wearing the headscarf live next door or in their neighborhood, compared to 83% for the woman without the headscarf. Additionally, respondents rated the headscarved woman lower on the educational scale, more likely to be married, and more likely to be a stay-at-home mother. Most significantly, only 23% thought the headscarved woman was an American, compared to 73% for the woman without a headscarf.

174 See *Legal Advocacy & Policy Review: Significant Increase in Legal Complaints*, ADC LEGAL REPORT (ADC) (Mar. 3, 2010) (documenting that after a minor car accident, a young man was questioned by police in a hospital bedroom about what had happened. When his mother arrived at the hospital and began to complain about the way the officers were treating her son, in retaliation to her complaints, it is alleged that the police officers began beating her son while yelling discriminatory comments such as "your mother is a Muslim bitch!"); Yildiz Atasoy, *Governing women's morality: A study of Islamic veiling in Canada*, EUROPEAN JOURNAL OF CULTURAL STUDIES (2006), at 212, http://www.tara.tcd.ie/jspui/bitstream/2262/52237/1/PEER_stage2_10.1177%252F1367549406063164.pdf (speaks to one Muslim girls bullying and growing up as an outcast because of her being identified as a Muslim.); Iftikhar Ahmad and Michelle Y. Szpara, *Muslim children in urban America: The New York city schools experience*, JOURNAL OF MUSLIM MINORITY AFFAIRS, Vol. 23, No. 2 (2003), <http://www.tandfonline.com/doi/abs/10.1080/1360200032000139938#preview>; Jasmin Zine, UNVEILED SENTIMENTS: GENDERED ISLAMOPHOBIA AND EXPERIENCES OF VEILING AMONG MUSLIM GIRLS IN A CANADIAN ISLAMIC SCHOOL, Routledge Taylor & Francis Group (2006), http://www.interfaithjustice.org/pdf/zine_unveiled_sentiments_2008.pdf.

175 See Subir Ghosh, *Study: US Muslim women who wear headscarves face discrimination*, DIGITAL JOURNAL (Oct. 4, 2010), <http://www.digitaljournal.com/article/298488> (finding that "almost a third of Muslim women in the US who wear hijabs (headscarves) are concerned about applying for work, and that almost two-thirds say they are aware of instances where women wearing hijabs have been refused work).

176 See, e.g., Gray, *supra* note 109.

177 See John Amis, *U.S. Judge Jails Muslim Woman Over Head Scarf*, ASSOCIATED PRESS (Dec. 17, 2008), www.msnbc.com/id/28278572; see also *Valentine v. City of Douglasville*, Case No. 1:10-mi-99999-UNA (N.D. Georgia, filed Dec. 14, 2001) (alleging violations of First and Fourth Amendments and the Religious Land Use and Institutionalized Person Act arising out of Ms. Valentine's allegedly unlawful detention and forced removal of her headscarf); U.S. DEP'T JUST. CIV. RTS. Div., 40 Religious Freedom in Focus (2009), *available at* http://www.justice.gov/crt/spec_topics/religiousdiscrimination/newsletter/focus_40.html (reporting "The Civil Rights Division's Coordination and Review Section opened the compliance review on January 30, 2009, after receiving several complaints that Muslim women were barred from wearing headscarves in courtrooms, including a complaint that a woman was found to be in contempt of court for failing to remove her headscarf and ordered to serve ten days in jail.").

178 See, e.g., Karen Gardner, *Headscarf Causes Controversy at Basketball Game*, FREDERICK NEWS POST (Jan. 18, 2011), <http://www.fredericknewspost.com/sections/news/display.htm?storyid=115397>. The article reports on a middle school basketball player who was benched because she wore the headscarf during the game. As more of such incidents occur, young Muslim women will either be deterred from wearing it or decide not to participate in athletics despite their personal interest and desire to do so; see also Vakulenko, *supra* note 113, at 194 (citing Judge Tulkens's dissenting opinion in *Sahin v. Turkey* (challenging a ban on headscarves in universities), concluding that the European Court of Human Rights paternalistically denied the Muslim woman applicant's right to personal autonomy).

179 *Lifting the Veil*, NATIONAL PUBLIC RADIO (Apr. 21, 2011), <http://www.npr.org/2011/04/21/135413427/lifting-the-veil> (documenting the stories of twelve Muslim women who wore the headscarf and the political and social reasons why they decided to stop wearing it in public—specifically that the price was too high in terms of loss of economic opportunity and physical harassment); see also Christine Pomatto, *Behind the veil of Islam, Muslim students face significant obstacles*, THE BREEZE (Jan. 17, 2012), http://www.breezejmu.org/news/article_a7f4d412-40cc-11e1-ae9-001a4bcf6878.html (chronicling the accounts of several students' experiences with post-9/11 discrimination, including one student's account of her mother's rejection of the hijab out of concern for her personal safety); see also John Tehranian, *Whitewashed: America's Invisible Middle Eastern Minority* 79 (N.Y. Univ. 2010). These stories are representative of thousands of Muslim women across the United States with similar experiences. *But* see Leslie Scrivener, *Shaila Kibria made a painful but liberating decision to give up the Muslim hijab*, THE TORONTO STAR (Oct. 1, 2011), <http://www.thestar.com/news/article/1063072> (quoting a

woman that ultimately removed her headscarf but not necessarily because of its terrorism association. After 9/11 her hijab became a symbol of defiance. “To me it became a political statement.... People were calling us terrorists. I thought, ‘I’m going to wear this in your face. This is my country. I was born here. My kids were born here.’”).

180 Nathan Bader, *Hats Off to Them: Muslim Women Stand Against Workplace Religious Discrimination in GEO Group*, 56 ST. LOUIS U. L.J. 261 (2011), http://slu.edu/Documents/law/Law%20Journal/Archives/LJ56-1_Bader_Article.pdf (article on the *EEOC v. GEO Group, Inc.* case regarding Title VII action to allow exception to dress code for head covering).

181 See *Religious Freedom Has a Place in the Workplace*, FINDLAW (Nov. 9, 2010), <http://knowledgebase.findlaw.com/kb/2010/Nov/208334.html>; see also Marisol Bello, *Controversy Shrouds Muslim Women’s Head Coverings*, USA TODAY, (Apr. 15, 2010), http://www.usatoday.com/news/nation/2010-04-14-headscarves-muslim_N.htm; *Discrimination Against Muslim Women-Fact Sheet*, ACLU (May 29, 2008), <http://www.aclu.org/religion-belief-womens-rights/discrimination-against-muslim-women-fact-sheet> (article with statistically backed numbers as to discrimination or harassment complaints that stemmed from head covering); Elizabeth K. Dorminey, *Veiled Meaning: Tolerance and Prohibition of the Hijab in the U.S. and France*, THE FEDERALIST SOCIETY FOR LAW AND PUBLIC POLICY STUDIES (May 29, 2012), <http://www.fed-soc.org/publications/detail/veiled-meaning-tolerance-and-prohibition-of-the-hijab-in-the-us-and-france> (addresses the EEOC statistics for 2010: “In FY 2010 the EEOC reported receiving 3790 charges from individuals alleging religious discrimination or harassment. Of these, the EEOC reported that 3782 were resolved. Following an investigation, the EEOC issued “no cause” determinations—a finding by the agency that there was no evidence from which they could conclude that discrimination or harassment had occurred—in 2309 cases. Seventy-three cases were successfully resolved through conciliation; there were 847 “merit resolutions,” which means that the case was probably resolved through litigation, and more than \$10 million in monetary benefits were paid to employees by employers. An unscientific review of reported cases in which plaintiffs has completed the EEOC process and filed lawsuits suggest that the vast majority of religious discrimination or harassment cases in recent years have been brought by, or on behalf of, Muslims.” Further, also addresses the *EEOC v. GEO Group, Inc.* case and brings up another case, *EEOC v. Kelly Services*).

182 See Brian Murphy, *Stop the Hate—Anti Muslim Discrimination Complaints at Record Levels*, SUBMITYOURARTICLE.COM (Nov. 12, 2010), <http://www.submityourarticle.com/articles/Brian-Mahany-8446/employment-discrimination-lawyer-123783.php>.

183 See Debra J. Groom, *Former Pulaski Health Center worker files federal complaint stating he was fired because he is Muslim*, THE POST-STANDARD (Feb. 7, 2011), http://www.syracuse.com/news/index.ssf/2011/02/former_pulaski_health_center_w.html; see also *Abercrombie & Fitch* (SFDO) filed 9/1/10—Charging Party is Muslim. She was denied a reasonable accommodation (hijab) and denied hire into a stockroom position because of her religion; *Abercrombie & Fitch* (SLDO) filed 9/29/09—Charging Party is Muslim. She was not hired by defendant because she wore a headscarf to her interview; *Kaze Japanese Steakhouse* (CTDO) filed 9/7/10—Charging Party converted to Islam. She was denied the reasonable accommodation of wearing a hijab and discharged from her servicer position because of her religion; *Imperial Security* (PHDO) filed 9/16/10—Charging Party is Muslim. She was denied the reasonable accommodation of wearing a Khimar and discharged from her security guard position because of her religion; *White Lodging Services Corp.* (INDO) filed 7/4/06, resolved 7/21/10 (\$40,000)—A Marriott hotel did not hire four Muslim women for housekeeping jobs because the women wore religious head coverings; *Ivy Hall Assisted Living* (ATDO) filed 9/30/08, resolved 1/28/10 (\$43,000)—Charging Party, a housekeeper, was denied a religious accommodation to wear a traditional religious head covering, a hijab, and was discharged for violating defendant’s dress code; *The Geo Group* (PHDO) filed 9/27/07, summary judgment to defendant 5/18/09, affirmed on appeal 10/12/10—A Muslim nurse in a correctional institution was denied a reasonable accommodation to defendant’s dress code for her religious headdress and was terminated for violating the dress code; *Kelly Services* (CHDO) filed 9/26/07, summary judgment to defendant 10/9/08, affirmed on appeal 3/25/10—a temporary firm did not hire a Muslim applicant for a printing press job when the applicant refused to remove her religious head covering; *AAA Parking* (ATDO) filed 9/21/06, resolved 6/7/07 (\$29,500)—Charging Party is Muslim. She was fired from her cashier job after showing up to work wearing a head covering in recognition of the religious holiday of Ramadan.

184 *Project Group of Illinois* (CHDO) filed 3/29/07, resolved 10/9/08 (\$25,000)—a Palestinian Muslim was subjected to derogatory remarks about her head covering and was referred to as a terrorist.

185 *Mohamed-Sheik v. Golden Foods/Golden Brands, LLC*, 2006 WL 709573 (W.D. Ky. Mar. 16, 2006).

186 *EEOC v. Abercrombie and Fitch, Co.*, No. 09-CV-602-GKF-FH (N.D. Okla. July 13, 2011).

187 See Tracy Clark-Flory, *supra* note 110.

188 *EEOC v. Abercrombie and Fitch, Co.*, No. CV10-3911-HRL (N.D. Cal. 2010).

189 First Amended Complaint and Demand for Jury Trial, *EEOC v. Abercrombie & Fitch, Co.*, No. CV10-3911-HRL (N.D. Cal. Oct. 7, 2010), 2010 WL 4638269.

190 Sahar F. Aziz, *Time to address violence against Muslim women*, HUFFINGTON POST (November 2, 2011), http://www.huffingtonpost.com/sahar-aziz/violence-again-muslim-women_b_1072529.html (article cites recent violence against Muslim women).

191 See Naber, *supra* note 3; see also Julie M. Cohen, *Police: Women called 'Muslim terrorists'*, WICKED LOCAL ROSLINDALE (Nov. 29, 2011), <http://www.wickedlocal.com/roslindale/news/x1525678704/Police-Women-called-Muslim-terrorists#axzz1gq80ywFN> (detailing the story of a Muslim woman and her relatives being physically accosted and called “Muslim terrorists” while entering an Islamic worship center).

192 See Daniel Solorzano et al, *Keeping Race in Place: Microaggressions and Campus Racial Climate at the University of California, Berkeley*, 23 CHICANO-LATINO L. REV. 15, 17 (2002) (“Micro-aggressions are subtle verbal and non-verbal insults directed toward non-Whites...based on one’s race, gender, class, sexuality, language, immigration status, phenotype, accent, or surname.”); see generally, Peggy C. Davis, *Law as Microaggression*, 98 YALE L.J. 1559 (1989).

193 See Mackenzie Carpenter, *Muslim Women Say Veil is More About Expression than Oppression*, PITTSBURGH POST-GAZETTE (Oct. 28, 2001), <http://www.post-gazette.com/headlines/20011028muslimwomennat3p3.asp>; see also Franchesca Benzant, *Donning the Hijab: My Day As an Undercover Muslim Woman*, CLUTCH (Dec. 9, 2011), <http://www.clutchmagonline.com/2011/12/donning-the-hijab-my-day-as-an-undercover-muslim-woman/2/> (detailing the author’s experience as part of an outreach effort by the Muslim Women of Maryland challenging women to wear a hijab for a day. The author also recounted another participant’s post-9/11 experience, stating, “One girl who was Muslim admitted that this was her first time wearing the hijab since 9/11. She used to be teased to the point students would yank her hijab off of her head and once it was even thrown in the toilet.”); see also Naber, *supra* note 3 (citing incidents of school children having their headscarf pulled off while commuting to school).

194 *Id.*

195 *Id.*

196 *Lifting the Veil*, NATIONAL PUBLIC RADIO (Apr. 21, 2011), <http://www.npr.org/2011/04/21/135413427/lifting-the-veil> (reporting on Samia Nasseem’s experience being physically attacked because of her headscarf, which caused her to remove it out of concern for her physical safety); see also Asma Uddin, *A Response to “The de-hijabization phenomenon,”*

ALTMUSLIM.ORG (May 12, 2009) (discussing the increasing trend of American Muslim women removing their headscarves post-9/11); but see Darah Rateb, *The Dehijabization Phenomenon*, ALTMUSLIM.ORG (March 30, 2009), available at <http://www.altmuslim.com/a/a/a/2999> (“Post 9-11, many women felt the need to show their solidarity and oneness with the Muslim ummah. Donning of the hijab—formerly a spiritual act—achieved that political end.”); see also Scott Henson, *Hijab reveals more than it conceals*, TRUMAN STATE UNIVERSITY INDEX, Oct. 6, 2011, available at <http://www.trumanindex.com/hijab-reveals-more-than-it-conceals-1.2632453?pagereq=1#TuV8-nNcluc> (detailing one student’s choice to wear the hijab in order to deepen her faith despite suffering verbal abuse implying that she was a terrorist).

197 See John Doyle, *New ‘bias’ attack on SI Muslim*, N.Y. POST (Oct. 14, 2010 1:14 am), http://www.nypost.com/p/news/local/staten_island/new_bias_attack_on_si_muslim_1OLCBmqaQg0loZigplufsO.

198 See Janet I. Tu, *woman charged with hate crime against two Muslim women*, THE SEATTLE TIMES (Oct. 22, 2010), http://seattletimes.nwsources.com/html/localnews/2013220695_muslimwomen22m.html.

199 *Id.*

200 Gina Potthoff, *FBI Investigates Reported Assault on Local Muslim*, THE COLUMBUS DISPATCH (Dec. 20, 2010), http://www.dispatch.com/live/content/local_news/stories/2010/12/21/columbus-muslim-reports-harassment-assault.html?sid=101.

201 *Harassment Allegedly Began After Victim Began Wearing Islamic Scarf*, NOVANEWS (Dec. 22, 2010), <http://www.shoah.org.uk/2010/12/23/harassment-allegedly-began-after-victim-began-wearing-islamic-scarf/>; see CAIR: *FBI Asked to Probe Bias Motive for Harassment of Ore. Muslim*, PR NEWSWIRE (Dec. 21, 2010), <http://www.prnewswire.com/news-releases/cair-fbi-asked-to-probe-bias-motive-for-harassment-of-ore-muslim-112274619.html>.

202 *Id.*

203 See Ben Botkins, *Twin Falls man arrested for allegedly harassing Muslim*, MAGIC VALLEY NEWS (Dec. 24, 2010), http://www.magicvalley.com/news/local/twin-falls/article_cc705188-c402-534f-8d71-7e5f64fe9283.html.

204 *Id.*

205 Levi Pulkkinen, *Hate Crime Charge Filed in Seattle Grocery Store Attack*, SEATTLEPI (Jan. 4, 2011), available at <http://http://blog.seattlepi.com/seattle911/2011/01/04/hate-crime-charge-filed-in-seattle-grocery-store-attack/> (reporting the man was charged with a hate crime of malicious harassment); see also CAIR: *Seattle Muslim Targeted in Bias Attack*, BRE-

ITBART.COM (Jan. 5, 2011), http://www.breitbart.com/article.php?id=xprnw.20110105.DC25496&show_article=1.

206 Pulkkinen, *supra* note 204.

207 Jamie Schram and Maura O'Connor, *Muslim Gal assaulted in Harlem*, N.Y. POST (July 8, 2011), http://www.nypost.com/p/news/local/manhattan/muslim_gal_assaulted_in_harlem_tpbqmgjLNjIRdJzTtcpnKO.

208 Editorial, *Tennessee Knife-Wielding Driver Shouts "I'll Kill You," Spews Religious Slurs at Muslim Mother and Son*, AL-JAZEERAH (July 28, 2011), <http://www.aljazeera.com/info/News/2011/August/1%20n/Tennessee%20Knife-Wielding%20Driver%20Shouts%20I'll%20Kill%20You,%20Spews%20Religious%20Slurs%20at%20Muslim%20Mother%20and%20Son.htm>.

209 "CAIR-MI Asks FBI to Probe Threat Against Muslim Driver," PR NEWSWIRE (August 7, 2011), <http://www.prnewswire.com/news-releases/cair-mi-asks-fbi-to-probe-threat-against-muslim-driver-127096513.html>.

210 *Protecting the Civil Rights of American Muslims: Hearing Before the S. Comm. on the Judiciary*, 112th Cong. 9, 15 (2011) (statement of Farhana Khera, Executive Director of Muslim Advocates) ("A Muslim teenager in Iowa was called a "raghead" and a "sand nigger," and had his jaw broken; A Muslim high school student in Staten Island was punched, spat on and harassed at school for approximately one year before coming forward.... In March 2010, Muslim Mothers Against Violence, a community organization, surveyed 78 Muslim male and female youth between 12 and 17 years of age in Northern Virginia about their experiences in school. Eighty percent (80%) responded that they had been subjected to bigoted taunts and epithets and harassment, with three-quarters indicating the epithets had occurred more than once. Fifty (50%) report being called names in front of teachers and school administrators. The harassment includes being called "terrorist," "raghead," "tower takers," "bomber," and "pirate" (referring to Somali children). One youth said, "other minorities are protected but not us," while another said, "well, it's hard to avoid."); see also Pia Britto, *Global Battleground or School Playground: The Bullying of America's Muslim Children*, ISPU POLICY BRIEF No. 49 (2011) available at http://ispu.org/pdfs/ISPU_Policy%20Brief_Britto_WEB.pdf (noting that the underlying cause for bullying among Muslim and non-Muslim children differ and "Muslim children report peer rejection, victimization, and social ostracism and isolation because of their religious affiliation").

211 See, e.g., Jerry Wofford, *Tulsan Accused of Hate Crime Should Be Committed, Witnesses Testify*, TULSA WORLD (Jan. 12, 2011), http://www.tulsaworld.com/news/article.aspx?sobjectid=298&articleid=20110112_1_0_hrimgs501076 (re-

porting on the delivery of threatening anti-Muslim messages and videos sent to an Islamic school in Tulsa Oklahoma); see also Press Release, OFF. PUB.AFF., DEP'T. OF JUST., *Texas Man Pleads Guilty to Federal Hate Crime in Connection with Mosque Arson in Arlington, Texas*, (Oct. 18, 2010), available at <http://www.justice.gov/opa/pr/2011/February/11-crt-228.html> (The Justice Department announced that Henry Clay Glaspell, of Arlington, Texas, pleaded guilty today to a hate crime charge stemming from the ethnically-motivated arson of a children's playground at the Dar El-Eman Islamic Center in Arlington in July 2010).

212 Cases of student bullying include a young man in Indiana was taunted and harassed at school for a year, called "Little Osama" and "terrorist." Betsy Schlikerman, *Parents Sue over Bullying of Teen*, L.A. TIMES, Nov. 15, 2011, at A19. He alleged that at least seven bullies taunted him because of his Middle Eastern heritage, culminating in a brutal attack by a student while other students watched. *Id.* A junior high student in Katy, Texas, suffered severe injuries at the hands of another student. CAIR: *Texas Muslim Student Targeted by Slurs Has Broken Jaw*, PR NEWSWIRE (Feb. 4, 2010), <http://www.prnewswire.com/news-releases/cair-texas-muslim-student-targeted-by-slurs-has-jaw-broken-83579987.html>. Over the course of several weeks, the assailant subjected the victim to a series of verbal assaults, accusing the latter of being a terrorist and blowing up buildings. The attacks culminated when the assailant punched the victim in the face, breaking his jaw in two places. Surgery and internal pins were required to repair the injuries. In another case, four bullies at a Staten Island high school subjected a teenaged Muslim to almost daily verbal and physical assault. This went on for nearly a year and included accusations of the student being a "f---in' terrorist." Justin Tinker, et. al., *Muslim teen beaten, called a 'terrorist' by classmates says he stayed silent out of fear*, NYDAILYNEWS (Oct. 11, 2010), http://articles.nydailynews.com/2010-10-11/news/27077883_1_abuse-victim-trinidadian. The physical assaults took place in and out of class. One particular physical assault was so severe that he had to see a doctor due to blood in his urine. Aside from the physical toll, the assaults emotionally traumatized the victim, who once was a promising student and piano player.

213 EngyAbdelkader, *In Post-9/11 World, Anti-Bullying Bill Carries Special Significance*, N.J.L.J. (Dec. 20, 2010), <http://www.law.com/jsp/nj/PubArticleNJ.jsp?id=1202476472974>.

214 *Majority of States Have Yet to Write 9/11 Into Social Studies Standards*, CHARLESTON DAILY MAIL (Sept. 2, 2011), <http://www.dailymail.com/ap/ApTopStories/201109020569?p age=2&build=cache>.

215 Hortense M. Barber, *Bullies Hang Boy in Bathroom Stall*, BET.COM (April 1, 2011), <http://www.bet.com/news/national/2011/04/01/bullies-hang-boy-in-bathroom-stall.html>.

216 Paul Harris, *Living With 9/11: The Muslim American*, THE GUARDIAN (Sept. 5, 2011), <http://www.guardian.co.uk/world/2011/sep/05/living-with-911-muslim-american>.

217 See Tara Bahrapour, *Hip Hop Moms Group Undone by D.C. Metro Bomb Plot*, WASH. POST, Oct. 29, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/10/29/AR2010102902600.html>.

218 *Id.*

219 See generally Michael J. Whidden, *Unequal Justice: Arabs in America and United States Antiterrorism Legislation*, 69 FORDHAM L. REV. 2825, 2849 (2001) (“FBI statistics indicate that most acts of domestic terrorism are not committed by Muslim or Arab groups. Indeed, from 1984 to 1998, 95 percent of the terrorist incidents in the United States were attributed to domestic groups.”) (internal citations omitted). See also Volpp, *supra* note 20, at 1584 (noting that despite the Oklahoma City bombing “there was little consolidation of a national identity in opposition to Timothy McVeigh’s terrorist attack.”); see also Russell Jacoby, *The terror from within*, N.Y. TIMES, July 25, 2011, <http://www.nytimes.com/2011/07/26/opinion/26jacoby.html> (noting that most threats and violence tend to emerge from within a society, not from outside it. “We prefer, however, to imagine threats as emanating from aliens and foreigners. Talk of a ‘clash of civilizations’ is, while inaccurate, oddly reassuring because it suggests that the enemies are outsiders who can be easily identified.”).

220 Terry O’Neill, President, National Organization for Women (Anglo); Arcelia Hurtado, Executive Director, Equal Rights Advocates (Hispanic); Serrin M. Foster, President, Feminists for Life (Anglo); Eleanor Smeal, President, Feminist Majority (Italian); Elisabeth MacNamara, President, League of Women Voters (Anglo); Nancy Northup, President, Center for Reproductive Rights (Anglo).

221 Similar to domestic violence programs that do not gain White support until it is viewed as affecting the white community, the collective punishment of Muslim women arising out of terrorist acts by Muslim (men or women) that undermine gender rights is ignored unless white women experience an analogous context. See Crenshaw, *supra* note 149, at 1258–59 (discussing the prerequisite for domestic violence to affect White communities before domestic violence programs that affect minority communities are supported by mainstream White communities).

222 Shikha Dalmia, *The French Anti-Burqa Jihad*, FORBES.COM (March 19, 2010), <http://www.forbes.com/2010/05/19/burqa-france-clothing-women-opinions-columnists-shikha-dalmia.html>.

223 See Aziz, *supra* note 123.

224 See, e.g., Ben Smith & Byron Tau, *Muslim Groups Nervous About King Hearings*, POLITICO, Jan. 18, 2011, <http://www.politico.com/news/stories/0111/47756.html> (quoting Khaled Abou El Fadl, a well known Islamic studies professor who stated, “Nearly all Muslim organizations need...new political leadership, simply because most of the leadership continues to be from the immigrant community. English continues to be not their first language, and their primary education was obtained elsewhere, before they came to the United States.”).

225 See Harris, *supra* note 169.

226 See, e.g., altmuslimah.org for numerous articles by women or about topics that affect Muslim women. Also see the work of Amina Wadud, Nadia Mohamed, Asma Uddin, Sheila Musaji, Sahar Aziz, Zahra Billoo, Edina Leckowicz, Farhana Khera, and Linda Sarsour.

227 Kane Farabaugh, *Seven Muslim Americans on Ballot in Chicago*, VOICE OF AMERICA (April 4, 2011), <http://www.voanews.com/english/news/usa/Seven-Muslim-Americans-on-Ballot-in-Suburban-Chicago-119217129.html>.

228 See Rosa Vasilaki, *‘Victimization’ versus ‘resistance’: feminism and the dilemmatics of Islamic agency*, (Apr. 27-29, 2011), available at http://www.bisa.ac.uk/index.php?option=com_bisa&task=view_public_papers&Itemid=126 (discussing the dilemma faced by feminists faced with Muslim women’s choice to wear the headscarf).

229 See Dalia Mogahed, *Perspectives of Women in the Muslim World*, GALLUP MUSLIM THINKFORUM, Jun. 6, 2006 (finding that “One of the most pronounced themes to emerge from the study was the great importance Muslims attach to their faith, both for personal guidance and for the progress of society at large” and that “Muslim women clearly tend to agree that Islamic principles should guide public policy”).

230 See Choudhury, *supra* note 94, at 168–70.

231 Sunder, *supra* note 100, at 1413 (highlighting in the international human rights context the need for Muslim women’s claims to move beyond freedom from violence to freedom to make the world).

232 See Harris, *supra* note 169.

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