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Hearing on “Identifying the Enemy: Radical Islamist Terror”

September 22, 2016

**U.S. HOUSE COMMITTEE ON HOMELAND SECURITY
Subcommittee on Oversight and Management Efficiency**

**United States House of Representatives
2nd Session, 114th Congress**

¹ The viewpoints expressed here are solely those of the author and do not represent the viewpoints or positions of Texas A&M University School of Law, the Brookings Doha Center, or the Institute for Social Policy and Understanding.

Mr. Chairman and distinguished members of the committee:

Thank you for inviting me to testify before the Subcommittee on Oversight and Management Efficiency in the U.S. Homeland Security Committee. For over fifteen years, I have worked with Muslim, Arab, and South Asian communities in the United States in various capacities including as a community advocate, civil rights lawyer, and Senior Policy Advisor for the Office of Civil Rights and Civil Liberties at the U.S. Department of Homeland Security.

Currently, I am a professor of law at Texas A&M University School of Law,² a nonresident fellow with the Brookings Doha Center, and scholar at the Institute for Social Policy and Understanding. My research focuses on law and policy the intersection of national security and civil liberties.³ In addition, I research the relationship between rule of law, authoritarianism, and terrorism in the Middle East.⁴

My testimony today is based on my extensive experience working with Muslim, Arab, and South Asian communities as well as my academic research examining the myriad ways our national security laws and policies adversely impact these diverse communities' civil rights and liberties. The opinions I am expressing in both my written and verbal testimony are my own.

I want to address four key issues: 1) Countering Violent Extremism (CVE) programs securitize Muslim communities and validate terrorists' narratives that America is at war with Islam; 2) CVE programs are unnecessary to prevent domestic terrorism; 3) CVE programs are a waste of government resources; and 4) government funds for community development and resilience should be funded and administered by social service agencies without law enforcement control.

American national security is a priority that crosses partisan lines. Americans of all races, ethnicities and religions are equally concerned with ensuring our country is safe from violence – whether politically motivated terrorism, state violence, or violent crime.⁵ Furthermore, we all

² See Texas A&M School of Law, Faculty Profiles, Sahar F. Aziz, <http://law.tamu.edu/faculty-staff/find-people/faculty-profiles/sahar-aziz>. See also *Sahar F. Aziz's Scholarly Papers*, SOCIAL SCIENCES RESEARCH NETWORK, http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=1459001.

³ See, e.g., Sahar F. Aziz, *Policing Terrorists in the Community*, 5 Harv. Nat'l Sec. L.J. 147 (2014); Sahar Aziz, *Caught in a Preventive Dragnet: Selective Counterterrorism in a Post-9/11 America*, 47 Gonz. L. Rev. 429 (2011/2012); Sahar Aziz, *Federal Civil Rights Engagement with Arab and Muslim American Communities Post 9/11*, 18 J. Gender Race & Just. 1 (2015); Sahar Aziz, *Security and Technology: Rethinking National Security*, 2 Tex. A&M L. Rev. 7791 (2015); Sahar F. Aziz, *From the Oppressed to the Terrorist: Muslim American Women Caught in the Crosshairs of Intersectionality*, 9 HASTINGS R. & POV. L. J. 1 (2012).

⁴ See, e.g., Sahar Aziz, *Independence Without Accountability: The Judicial Paradox of Egypt's Failed Transition to Democracy*, 120 Penn St. L. Rev. 101 (2016); Sahar Aziz, *Bringing Down an Uprising: Egypt's Stillborn Revolution*, 30 Conn. J. Int'l L. 1 (2014); Sahar Aziz, *Revolution Without Reform? A Critique of Egypt's Election Laws*, 45 George Washington Int'l L. Rev. (2012); Sahar Aziz, *Egypt's Protracted Revolution*, 19 No. 3 Hum. Rts. Brief 1 (2012); Sahar Aziz, *Linking Intellectual Property Rights with Research and Development, Technology Transfer, and Foreign Investment: A Case Study of Egypt's Pharmaceutical Industry*, 10 ILSA J. of Int'l & Comp. L. 1 (2003).

⁵ Although there is no single definition of terrorism in U.S. or international law, I define terrorism here as an attack on civilians for larger political objectives, whether couched in religious or secular narratives.

share an interest in preventing violence before it occurs. Toward that end, as citizens and elected officials we have a responsibility to carefully examine whether the methods we are using to prevent terrorism are effective.

The Obama administration has initiated a “Countering Violent Extremism” program purportedly aimed at tackling the underlying causes that may contribute to terrorism domestically and abroad. According to the White House, “CVE efforts address the root causes of extremism through community engagement” and “the underlying premise of the approach to countering violent extremism in the United States is that (1) communities provide the solution to violent extremism; and (2) CVE efforts are best pursued at the local level, tailored to local dynamics, where local officials continue to build relationships within their communities through established community policing and community outreach mechanisms.”⁶

Despite the lofty rhetoric, these CVE programs are fundamentally flawed for three reasons: they are counterproductive, unnecessary, and a waste of government resources. Government programs seeking to build community resilience are most effective when administered by social service agencies with the requisite expertise, not law enforcement agencies.

First, CVE programs managed and funded by the U.S. Department of Homeland Security and the U.S. Department of Justice securitize government-community relations such that Muslims are perceived and engaged primarily through a security lens. Muslim Americans are potential terrorists first, and citizens second. Such securitized treatment of an entire religious community is counterproductive. Not only does it risk innocent Americans’ civil liberties and signal to the public that Muslims warrant collective suspicion, but CVE focused on Muslims confirms international terrorists’ narratives that America is at war with Islam. In turn, terrorists point to such religious profiling and selective targeting of Muslims in their international recruiting efforts to gain followers and sympathy for their perverse political agenda.⁷

Second, CVE programs are unnecessary to preserve American national security. Muslims – like other Americans – do not need a special program for them to be good Samaritans that report suspicious criminal activity of which they have knowledge. Indeed, a Duke University report found that Muslim communities across the country have a positive relationship with their local police or express a willingness to engage with police departments based on principles of fairness and equal treatment.⁸ And according to the New America Foundation, approximately

⁶ Press Release, Office of the Press Secretary, The White House, FACT SHEET: The White House Summit on Countering Violent Extremism (Feb. 18, 2015), <https://www.whitehouse.gov/the-press-office/2015/02/18/fact-sheet-white-house-summit-countering-violent-extremism>.

⁷ E.g., Tiffany Ap, *Al-Shabaab recruit video with Trump excerpt: U.S. is racist, anti-Muslim*, CNN (Jan. 3, 2016, 9:20 AM), <http://www.cnn.com/2016/01/02/middleeast/al-shabaab-video-trump/>.

⁸ David Schanzer, et al., Triangle Center on Terrorism and Homeland Security, Sanford School of Public Policy, Duke University, *The Challenge and Promise of Using Community Policing Strategies to Prevent Violent Extremism* (2016), <https://sites.duke.edu/tcths/files/2016/05/The-Challenge-and-Promise-of-Using-Community-Policing-Strategies-to-Prevent-Violent-Extremism.pdf>.

60% of terrorism plots have been prevented due to traditional investigative methods, including about 18% by initial tips from Muslim communities without the need for costly and counterproductive CVE programs.⁹

Third, the tens of millions of dollars spent on CVE programs are better spent on programs administered through social services agencies with the expertise to assist the multitude of American communities in need of job training, mental health services, domestic violence prevention, English language training, refugee resettlement, youth afterschool programs, tutoring, and other services that promote safe and healthy communities.¹⁰ To the extent the U.S. government seeks to engage in good faith efforts to support the diverse Muslim American communities, resources should be managed by institutions whose missions are to develop communities, not prosecute and incarcerate individuals based on racial and ethnic stereotypes.

I. CVE Programs Securitize Muslim Communities and Validate Terrorists' Warped Narratives that America is at War with Islam

Terrorists thrive on narratives of oppression and injustice as a means of recruiting vulnerable individuals. The particular narrative selected is context-specific to the political, social, and economic circumstances that give rise to a terrorist group. For Al Qaeda and Da'esh (also known as ISIS or ISIL) based in the Middle East, a crucial component of their recruitment narrative is that the West, and America in particular, is at war with Islam.¹¹ Terrorists claim that Muslims are victims of Western hegemony in the Middle East through American military intervention and financial support of dictators that violently repress their Muslim citizens.¹² Da'esh portrays its violence as part of a defensive rather than offensive war where its leaders are the heroic defenders of the Muslim world against Western colonization.¹³ In turn, Da'esh makes a call to arms for Muslims to kill civilians and governments that it unilaterally declares as

⁹ Peter Bergen, David Sterman, Emily Schneider, & Bailey Cahall, New America Foundation, *Do NSA's Bulk Surveillance Programs Stop Terrorists?* 4-5 (2014), <https://na-production.s3.amazonaws.com/documents/do-nsas-bulk-surveillance-programs-stop-terrorists>; Michael Hirsh, *Inside the FBI's Secret Muslim Network: While candidates stoke fears of Islam, a little-known counterterrorism program has been going exactly the other way*, Politico (Mar. 24, 2016), <http://www.politico.com/magazine/story/2016/03/fbi-muslim-outreach-terrorism-213765>.

¹⁰ See Jana Kasperkevic, *Welfare programs shown to reduce poverty in America*, Guardian (Nov. 12, 2014 1:39 PM), <https://www.theguardian.com/money/us-money-blog/2014/nov/12/social-welfare-programs-food-stamps-reduce-poverty-america>.

¹¹ Madiha Afzal, *How we all reinforce a narrative of Islam versus the West*, Brookings (Aug. 4, 2016), <https://www.brookings.edu/blog/order-from-chaos/2016/08/04/how-we-all-reinforce-a-narrative-of-islam-versus-the-west/>.

¹² Matt Olson, *Why ISIS Supports Donald Trump*, Time (Sept. 8, 2016 9:31 AM), <http://time.com/4480945/isis-donald-trump/>; Tierney Sneed & Lauren Fox, *Why Some Jihadists Consider Donald Trump To Be The Perfect Enemy*, Talking Points Memo (June 30, 2016, 6:00 AM), <http://talkingpointsmemo.com/dc/trump-extremist-web-forums>.

¹³ Alex P. Schmid, *Challenging the Narrative of the "Islamic State"*, in *Countering Violent Extremism: Developing an Evidence-base for Policy and Practice* 67 (Sara Zeiger & Anne Aly eds. 2015), https://www.nla.gov.au/sites/default/files/webform/draft_cve_developing_an_evidence-based_for_policy_and_practice.pdf.

enemies. Among Da'esh's declared enemies are mainstream American Muslim leaders who have openly and repeatedly condemned Da'esh and rebuked its misinterpretation of Islamic principles.¹⁴

Notwithstanding Da'esh and other terrorist groups' attempts to use religion as a justification for their politically-motivated violence, their claims are rejected by nearly all of the 1.5 billion Muslims across the world.¹⁵ Another often overlooked fact that contributes to Da'esh's fringe status among the world's Muslims is that the vast majority of victims of terrorism are Muslim. According to the National Counter-terrorism Center's 2011 Report on Terrorism, in cases where the religious affiliation of terrorism casualties could be determined, Muslims suffered between 82% and 97% of terrorism-related fatalities during the prior five years and Muslim countries bore the brunt of the attacks involving 10 or more deaths.¹⁶

Debunking Da'esh's specious claims on the merits is beyond the scope of my testimony, and already has been done by hundreds of credible, mainstream Muslim scholars from across the world in the Open Letter to Baghdadi.¹⁷ Moreover, Muslim communities and leaders across the United States have rejected Da'esh's warped misappropriation of Islamic doctrine for violent political ends.¹⁸ Thus, the issue before us today is not whether Da'esh represents the 1.5 billion Muslims across the world or the 3 to 6 million Muslims in America—the evidence is clear that it does not.

Rather, the issue that should be of concern to members of this committee is ensuring that the American government does not adopt counterproductive policies or practices that validate

¹⁴ Patrick Goodenough, *ISIS Urges Supporters to Kill Muslim 'Infidels' in West, Including Congressman and Top Clinton Aide*, cnsnews.com (Apr. 13, 2016), <http://www.cnsnews.com/news/article/patrick-goodenough/isis-urges-supporters-kill-named-muslim-infidels-west-rep-ellison>; See also Ian Reifowitz, *Anti-ISIS Muslims face death threats. Is that 'enough' for Hannity and Trump lackey Ben Carson?*, Daily Kos (May 15, 2016), <http://www.dailykos.com/story/2016/5/15/1525349/-Anti-ISIS-Muslims-face-death-threats-Is-that-enough-for-Hannity-and-Trump-lackey-Ben-Carson>.

¹⁵ Willa Frej, *How 70,000 Muslim Clerics Are Standing Up To Terrorism*, HUFFINGTON POST (Dec. 11, 2015), http://www.huffingtonpost.com/entry/muslim-clerics-condemn-terrorism_us_566adfa1e4b009377b249dea

¹⁶ The Nat'l Counterterrorism Ctr., *Report on Terrorism 14 (2011)*, <https://fas.org/irp/threat/nctc2011.pdf>.

¹⁷ *Open Letter to Al-Baghdadi (2014)*, <http://www.lettertobaghdadi.com/>.

¹⁸ *E.g.*, Stoyan Zaimov, *Muslim-Americans Condemn ISIS in Phoenix Billboard, Say Islam Is Religion of Peace, Not Terror*, Christian Post (Aug. 24, 2016, 11:17 AM), <http://www.christianpost.com/news/muslim-americans-condemn-isis-phoenix-billboard-islam-religion-peace-not-terror-168487/> (Muslim-Americans post billboard reading "HEY ISIS, YOU SUCK!!!"); Omar Jimenez, *Baltimore Muslims: Islam condemns ISIS, terror attacks*, WBAL-TV (Mar. 23, 2016, 6:16 PM), <http://www.wbaltv.com/news/baltimore-muslims-islam-condemns-isis-terror-attacks/38661300>; Alexandra Limon, *Muslims rally outside White House condemning ISIS, terrorism*, (Nov. 20, 2015 11:30 PM), <http://www.fox5dc.com/news/local-news/52446799-story>; Tatiana Sanchez, *San Diego Muslims condemn Paris attacks*, San Diego Union Tribune (Nov. 14, 2015, 8:38 PM), <http://www.sandiegouniontribune.com/news/sdut-cair-anniversary-banquet-islamic-2015nov14-story.html>; Shanika Gunaratna, *Muslim Americans rush to condemn Orlando massacre*, CBS News (June 13, 2016 12:52 PM), <http://www.cbsnews.com/news/orlando-shooting-pulse-nightclub-muslims-condemn-attack/>.

terrorists' claims of a "clash of civilization" between the West and Islam.¹⁹ Religious profiling, racialized counterterrorism enforcement, and discrimination against Muslims not only infringes on civil rights and liberties of Muslims, but is also exploited by terrorist groups to claim that Muslims are under attack and generate sympathy for their cause.²⁰

This is where current CVE programs are highly problematic. The government portrays CVE as a means to build community resilience and development, separate from the dominant prosecution-driven counterterrorism model. However, the record clearly shows that CVE is an integral part of counterterrorism. Law enforcement agencies, not social services agencies, are leading and funding CVE nationwide. DHS, U.S. Attorneys, and the FBI lead government meetings with Muslim communities across the country.²¹ The institutional agendas of FBI agents, federal prosecutors, and DHS officials – not social service agencies – shape CVE programs. For these reasons, the leading agencies of the federal interagency task force on CVE rotate between DHS and DOJ – whose missions are to investigate, prosecute, and convict criminal suspects.

That U.S. Attorneys are leading federal outreach at the local level raises further questions as to the relationship between counterterrorism enforcement and community engagement given that U.S. Attorneys are also the lead prosecutors of anti-terrorism laws.²² Their participation as lead conveners of CVE meetings aggravates the inherent divergence between Muslim communities' interests in protecting their civil liberties and prosecutors' mandate to prosecute and show tangible results in the form of convictions. That is, law enforcement led programs signal to Muslim communities that their community development and resilience is not the government's priority. Rather the objective appears to be to deputize Muslim leaders to spy on each other, thereby breeding distrust and divisiveness within Muslim communities.²³

¹⁹ See Schmid, *supra* note 13; Terrence McCoy, *The apocalyptic magazine the Islamic State uses to recruit and radicalize foreigners*, Wash. Post (Sept. 16, 2014), <https://www.washingtonpost.com/news/morning-mix/wp/2014/09/16/the-apocalyptic-magazine-the-islamic-state-uses-to-recruit-and-radicalize-foreigners/>.

²⁰ See Abbas Barzegar, Shawn Powers, & Nagham El Karhili, *Civic Approaches to Confronting Violent Extremism: Sector Recommendations and Best Practices* (Sept. 2016), http://www.britishcouncil.us/sites/default/files/civic_approaches_to_confronting_violent_extremism_-_digital_release.pdf.

²¹ *Community Outreach*, FBI, <https://www.fbi.gov/contact-us/field-offices/losangeles/community-outreach-1> (last visited Sept. 20, 2016); Michael Hirsh, *Inside the FBI's Secret Muslim Network: While candidates stoke fears of Islam, a little-known counterterror program has been going exactly the other way*, Politico (Mar. 24, 2016), <http://www.politico.com/magazine/story/2016/03/fbi-muslim-outreach-terrorism-213765>.

²² Laura Yuen, *Muslims fear anti-terror program could spy on their communities*, MPR News (Jan. 30, 2015), <http://www.mprnews.org/story/2015/01/30/anti-terror-program>; Mike German, *Is the FBI's Community Outreach Program a Trojan Horse?*, ACLU (Feb. 15, 2013, 3:33 PM), <https://www.aclu.org/blog/fbis-community-outreach-program-trojan-horse>; Paul McEnroe, *Twin Cities Muslim leaders challenge federal outreach effort as cloak for spying*, Star Tribune (Feb. 17, 2015, 11:32 PM), <http://www.startribune.com/area-muslim-leaders-call-federal-outreach-cloak-for-spying/292307031/>.

²³ Sahar F. Aziz, *Policing Terrorists in the Community*, 5 Harv. Nat'l Sec. L.J. 147 (2014).

While prosecution-driven counterterrorism is an integral part of criminal enforcement, it should be conducted in accordance with civil and constitutional rights. Specifically, law enforcement should conduct investigations based on individualized suspicion arising from predicate acts of criminal activity, not a broad (and false) assumption that Muslim communities en masse are “at risk” or “vulnerable” to terrorist recruitment and susceptible to engaging in terrorism.

II. CVE Signals to the Public that Muslims are a Suspect Community Leading to More Discrimination and Hate Crimes

Like the United Kingdom’s (UK) Prevent Program, which is the blueprint on which the US CVE program is based, CVE programs target Muslim communities based on the false premise that Muslims are a suspect community and fifth column in the United States.²⁴ The UK House of Commons found that Prevent’s exclusive focus on Muslims was stigmatizing, alienating, and counterproductive. The European Parliament also found that soft counter terrorism programs through counter-radicalization initiatives (which is effectively what CVE is) are detrimental to fostering community cohesion and do not succeed in their stated objectives to prevent terrorism.²⁵ Professor Arun Kundnani, an expert on U.K. counterterrorism policy, warns that the U.S. program would “suffer from the same problems, such as drawing non-policing professionals into becoming the eyes and ears of counterterrorism surveillance, and thereby undermining professional norms and relationships of trust among educators, health workers, and others.”²⁶ CVE also legitimizes discrimination against Muslims.

In the United States, numerous polls show a rise in anti-Muslim bias that is manifesting into tangible hate crimes, mosque vandalizations, employment discrimination, and bullying of Muslim kids in schools.²⁷ A 2015 poll in North Carolina, for example, reported 72% of

²⁴ See Arun Kundnani, *THE MUSLIMS ARE COMING: ISLAMOPHOBIA, EXTREMISM, AND THE DOMESTIC WAR ON TERROR* (2015).

²⁵ BRENNAN CENTER FOR JUSTICE, *Countering Violent Extremism: Myths and Fact*, <https://www.brennancenter.org/sites/default/files/analysis/102915%20Final%20CVE%20Fact%20Sheet.pdf>.

²⁶ Murtaza Hussein and Jenna McLaughlin, *FBI’s “Shared Responsibility Committees” to Identify “Radicalized” Muslims Raise Alarms*, *THE INTERCEPT* (April 9, 2016).

²⁷ *E.g.*, *Islamophobia: Understanding Anti-Muslim Sentiment in the West*, Gallup, <http://www.gallup.com/poll/157082/islamophobia-understanding-anti-muslim-sentiment-west.aspx> (last visited Sept. 2, 2016) (“In the U.S., about one-half of nationally representative samples of Mormons, Protestants, Catholics, Muslims, and Jews agree that in general, most Americans are prejudiced toward Muslim Americans. Specifically, 66% of Jewish Americans and 60% of Muslim Americans say that Americans in general are prejudiced toward Muslim Americans.”); Jonathan Easley, *SC exit poll: 75 percent agree with Trump’s Muslim ban*, Hill (February 20, 2016, 6:17 PM), <http://thehill.com/blogs/ballot-box/presidential-races/270156-sc-exit-poll-75-percent-agree-with-trumps-muslim-ban>. Rebecca Shabad, *CBS News projects Donald Trump win in South Carolina primary*, CBS (Feb. 20, 2016, 5:20 PM), <http://www.cbsnews.com/news/results-from-south-carolinas-gop-primary-to-soon-trickle-in/> (“Three-fourths of Republicans participating in Saturday’s South Carolina GOP primary say they support presidential hopeful Donald Trump’s proposal to ban all Muslims from entering the U.S., according to an exit poll.”); Tom Benning, *Most Texas voters support Donald Trump’s border wall and Muslim ban, poll says*, *Dall. Morning News* (June 28, 2016, 11:53 AM), <http://www.dallasnews.com/news/politics/headlines/20160628-most-texas-voters-support-donald-trumps-border-wall-and-muslim-ban-poll-says.ece> (last updated June 28, 2016, 4:18 PM) (“Nearly 52 percent of respondents said they strongly or somewhat support a wall along the Mexican border,

respondents said that a Muslim should not be allowed to be president of the United States and 40% said that Islam should be illegal.²⁸ A 2015 study by LifeWay Research found that 27% of Americans believe ISIS represents what the Islamic religion really is—along with 45% of 1,000 “senior Protestant pastors.”²⁹ Another survey by the Economist/YouGov poll, found that 52% of Americans think Islam is more likely than other religions to encourage violence.³⁰

Such pervasive prejudice has produced tangible civil rights violations against innocent Muslims across the country.³¹ A recent report by the Center for the Study of Hate and Extremism at California State University in San Bernadino found that anti-Muslim hate crimes increased 78% in 2015 at 196 as compared to 110 hate crimes in 2014.³² Anti-Arab hate crimes rose by 219% from 21 in 2014 to 67 in 2015. Similarly, the civil rights organizations Muslim Advocates, reported that since the November 2015 Paris attacks, at least 100 hate crimes against Muslims in American have been reported.³³

However, these stark numbers likely do not reflect the entirety of anti-Muslim discrimination. The U.S. Department of Justice Bureau of Statistics reported that only 44% of hate crimes are reported to the police, and in 2013, the Bureau found that nearly two-thirds of all hate crimes are unreported.³⁴

Examples of hate crimes against Muslims and those perceived to be Muslim that occurred in 2015-2016 include:

compared with about 40 percent who oppose it. The numbers were similar in response to the idea of banning noncitizen Muslims from entering the U.S.”); Jesse Hellmann, *Poll: Americans split on Trump's proposed Muslim ban*, Hill (June 16, 2016, 5:00 PM), <http://thehill.com/blogs/ballot-box/presidential-races/283789-poll-americans-split-on-trumps-muslim-ban-proposal> (“The NBC News/SurveyMonkey poll shows 50 percent of those surveyed support Trump's proposed Muslim immigration ban, while 46 percent are opposed.”); Kristina Wong, *Poll: Half of American voters back Trump's Muslim ban*, Hill (Mar. 29, 2016, 5:30 AM), <http://thehill.com/policy/defense/274521-poll-half-of-american-voters-back-trumps-muslim-ban> (“A ‘virtual majority’ of American voters — 49 percent — also agrees with Cruz's call for additional law enforcement patrols of Muslim neighborhoods in the U.S., the poll showed.”);

²⁸ *September 24-27, 2015 Survey of 576 Republican primary voters*, Pub. Policy Polling (Sept. 29, 2015), http://www.publicpolicypolling.com/pdf/2015/PPP_Release_NC_92915.pdf.

²⁹ *One in Three Americans Worry About Sharia Law Being Applied in America*, LifeWay (Feb. 11, 2015), <http://lifewayresearch.com/2015/02/11/1-in-3-americans-worry-about-sharia-law-being-applied-in-america/>.

³⁰ Kathy Frankovic, *Muslim Americans widely seen as victims of discrimination*, YouGov (Feb. 20, 2015), <https://today.yougov.com/news/2015/02/20/muslim-americans-widely-seen-victims-discriminatio/>. That same poll also found that three-fourths of Americans — 73% — think American Muslims face a great deal or a fair amount of discrimination. *Id.*

³¹ Eric Lichtblau, *Hate Crimes Against American Muslims Most Since Post-9/11 Era*, N.Y. Times (Sept. 17, 2016), <http://www.nytimes.com/2016/09/18/us/politics/hate-crimes-american-muslims-rise.html>.

³² Ctr. for the Study of Hate & Extremism, Cal. State Univ., *Special Status Report: Hate Crime in the United States 6* (2016), <https://www.documentcloud.org/documents/3110202-SPECIAL-STATUS-REPORT-v5-9-16-16.html>.

³³ *Recent Incidents of Anti-Muslim Hate Crimes*, MUSLIM ADVOCATES (2016), <https://www.muslimadvocates.org/map-anti-muslim-hate-crimes/>.

³⁴ *Nearly Two-Thirds of Hate Crimes Went Unreported to Police in Recent Years*, U.S. DEP'T OF JUSTICE (Mar. 21, 2013), <http://ojp.gov/newsroom/pressreleases/2013/ojpr032113.pdf>.

- Sept. 10, 2016: Two Muslim women pushing their children in strollers were attacked in Brooklyn by an assailant who spewed anti-Muslim slurs.³⁵
- Sept. 12, 2016: A man set fire to the Islamic Center of Fort Pierce, Florida.³⁶
- June 1, 2016: A Muslim man was assaulted and beaten after leaving a mosque. He suffered at least 5 broken bones, a concussion, and fractured ribs.³⁷
- May 21, 2016: A delivery driver was brutally beaten by a passenger who called him a “Muslim a—hole.” He was punched multiple times before trying to escape the vehicle, and then later pulled to the ground and was punched and stomped on.³⁸
- Mar. 3, 2016: A Sikh temple was vandalized by a man who said he thought it was a mosque and affiliated with terrorists.³⁹
- April 21, 2016: A Muslim woman wearing a headscarf had hot liquid poured on her by another woman shouting “Muslim piece of trash.”⁴⁰
- Feb. 21, 2016: While a Muslim family was shopping for a home, a man in the neighborhood pointed a gun at them saying they “should all die” because they are Muslim.⁴¹
- Jan. 1, 2016: An elderly Sikh man was stabbed to death while working at a convenience store.⁴²
- Dec. 11, 2015: In two separate incidents, one American Muslim female was shot as she was leaving an Islamic center. Another woman was nearly run off the road by someone throwing rocks at her car as she left the mosque.⁴³

³⁵ Lauren del Valle, *2 Muslim women, babies attacked in alleged hate crime in New York*, CNN (Sept. 10, 2016, 12:49 AM), <http://www.cnn.com/2016/09/10/us/brooklyn-muslim-women-attacked/>.

³⁶ Lindsey Bever, *Arrest made in arson at Orlando gunman’s mosque, authorities say*, Wash. Post (Sept. 14, 2016), <https://www.washingtonpost.com/news/acts-of-faith/wp/2016/09/12/arson-suspected-in-fire-at-florida-mosque-attended-by-pulse-shooter-omar-mateen/>.

³⁷ Laurel Raymond, *Assault of Muslim Man in NYC Comes Amid Rising Islamophobia Nationwide*, THINKPROGRESS (June 6, 2016), <http://thinkprogress.org/justice/2016/06/06/3785049/muslim-man-attackedqueens/>.

³⁸ Rocco Parascandola, *Bronx Livery Driver Repeatedly Punched In the Face By Passenger Who Called Him ‘Muslim Driver A--hole,’* N.Y. DAILY NEWS (May 25, 2016), <http://www.nydailynews.com/newyork/bronx-livery-driver-punched-called-muslim-driver-a-hole-article-1.2648669>.

³⁹ Ajay Ghosh, *Hate Crime Charged Against Pittman for Spokane Gurdwara Vandalism*, UNIVERSAL NEWS NETWORK, (Mar. 15, 2016), <http://theunn.com/2016/03/hate-crime-charged-against-pittman-forspokane-gurdwara-vandalism/>.

⁴⁰ Steve Birr, *Police Release Video of Assault on Muslim Woman Outside DC Starbucks*, THE DAILY CALLER (May 3, 2016), <http://dailycaller.com/2016/05/03/police-release-video-of-assault-on-muslimwoman-outside-dc-starbucks/>.

⁴¹ Kevin Killeen, *Affton Man Charged With Anti-Muslim Hate Crime*, CBS ST. LOUIS (Feb. 29, 2016), <http://stlouis.cbslocal.com/2016/02/29/muslims-wait-for-bob-mcculloch-to-file-charges/>.

⁴² Charles Lam, *Sikh Man Stabbed to Death in Robbery of Central California Convenience Store*, NBC NEWS (Jan. 5, 2016), <http://www.nbcnews.com/news/asian-america/sikh-man-stabbed-death-robberycentral-california-convenience-store-n490786>.

⁴³ Travis Gettys, *Muslim Woman Shot At and Another Nearly Run Off the Road in Tampa After Leaving Mosques*, RAW STORY (Dec. 11, 2015), <https://www.rawstory.com/2015/12/muslim-woman-shot-at-andanother-nearly-run-off-the-road-in-tampa-after-leaving-mosques/>.

- Nov. 26, 2015: A taxi driver - a 38-year-old Moroccan immigrant – was shot and injured by one of his passengers after being asked about his background.⁴⁴

Among the most troubling forms of anti-Muslim discrimination is the bullying taking place in our schools. In 2010, a study in Northern Virginia found that 80% of Muslim youth were subjected to taunts and harassment at school. In 2014, a survey of Muslim children in third through twelfth grade in Maryland found that nearly one-third “said they had experienced insults or abuse at least once because of their faith.”⁴⁵ That same year, a statewide survey of more than 600 Muslim American students ages 11-18 in California found that 55% of respondents reported being bullied or discriminated against, twice the number of students nationally who reported being bullied. Additionally, 29% of Muslim female students who wear a headscarf experienced offensive touching or pulling off their hijab.⁴⁶

These findings are consistent with a 2016 report published by Georgetown University finding 180 reported incidents of anti-Muslim violence between March 2015 and March 2016. Among the incidents reported are 12 murders, 34 physical assaults, 56 acts of vandalism or destruction of property, 9 arsons, and 8 shootings and bombings.⁴⁷

Despite the troubling rise in anti-Muslim discrimination and hate crimes, Muslims believe their public safety concerns are not adequately addressed. At law enforcement led community outreach meetings, law enforcement agents are primarily interested in knowing if Muslims have any knowledge of potential terrorist plots.⁴⁸ A comprehensive empirical study published in 2016 by Duke’s Center for Terrorism also found that interviewees believed law enforcement agencies have broken communities’ trust in the past by violating civil liberties of Muslims who worked with them.

These broken promises have produced a deep distrust that in turn has stifled coordination between civil society and law enforcement. For example, an American Civil Liberties Union (ACLU) Freedom of Information Act (FOIA) request uncovered documents showing that the FBI

⁴⁴ Dan Majors, *Muslim Taxi Driver Shot on Thanksgiving in Hazelwood Calls Attack a Hate Crime*, PITT. POST GAZETTE (Nov. 29, 2015), <http://www.post-gazette.com/local/city/2015/11/29/Muslim-taxi-drivershot-on-Thanksgiving-in-Pittsburgh-calls-attack-a-hate-crime/stories/201511290154>.

⁴⁵ Donna St. George, *During a school year of terrorist attacks, Muslim students report bullying*, Wash. Post (June 14, 2016), https://www.washingtonpost.com/local/education/during-a-school-year-of-terrorist-attacks-muslim-students-report-bullying/2016/06/14/1b066a44-3220-11e6-8758-d58e76e11b12_story.html.

⁴⁶ Tatiana Sanchez, *Muslim students report bullying at twice the rate of non-Muslim peers, survey shows*, L.A. Times (Oct. 31, 2015, 4:00 AM), <http://www.latimes.com/local/california/la-me-1031-bullying-20151031-story.html>.

⁴⁷ Engy Abdelkader, Bridge Initiative, Special Report, *When Islamophobia Turns Violent: The 206 U.S. Presidential Elections 1-2 (2016)*, <http://bridge.georgetown.edu/wp-content/uploads/2016/05/When-Islamophobia-Turns-Violent.pdf>.

⁴⁸ David Schanzer, Charles Kursman, Jessica Toliver & Elizabeth Miller, *The Challenge and Promise of Using Community Policing Strategies to Prevent Violent Extremism: A Call for Community Partnerships with Law Enforcement to Enhance Public Safety*, Triangle Center on Terrorism and Homeland Security, Sanford School of Public Policy, Duke University (2016), <https://sanford.duke.edu/sites/sanford.duke.edu/files/documents/2015-full-report-FINAL1.pdf>.

was keeping records of conversations and activities within mosques and other Muslim organizations from 2004 through 2008 and information provided by federal employees engaged in the outreach programs.⁴⁹ This discovery contradicted multiple statements by law enforcement assuring concerned citizens that intelligence was not being collected at community outreach meetings.⁵⁰

In 2009, an FBI initiative exploited community outreach to collect information on Muslim communities and build a “baseline profile of Somali individuals that are vulnerable to being radicalized.”⁵¹ And in 2012, another ACLU FOIA request uncovered FBI and NYPD systemic surveillance of Middle Eastern and Muslim communities in Michigan, San Francisco, and New York City.⁵²

Similarly, Muslim community leaders who engaged with law enforcement later discovered they were targets of investigations and surveillance. For example, the emails of Faisal Gill were subject to surveillance from 2006 to 2008 despite his service in the U.S. Navy and as a senior policy advisor in the U.S. Department of Homeland Security under George W. Bush.⁵³ Such cases are further evidence that CVE programs are a ruse for counterterrorism practices that impose collective suspicion of millions of Muslims in America for the criminal acts of individuals with whom they have nothing in common.⁵⁴

⁴⁹ Mike German, *Is the FBI's Community Outreach Program a Trojan Horse?*, ACLU (Feb. 15, 2013, 3:33 PM), <https://www.aclu.org/blog/fbis-community-outreach-program-trojan-horse>; Michael Price, Brennan Ctr. for Justice, *Community Outreach or Intelligence Gathering? A Closer Look at “Countering Violent Extremism” Programs*, https://www.brennancenter.org/sites/default/files/analysis/Community_Outreach_or_Intelligence_Gathering.pdf (last visited Sept. 20, 2016).

⁵⁰ *E.g.*, H.G. Reza, *FBI Tries to Reassure Muslims in Irvine*, (June 7, 2006), <http://articles.latimes.com/2006/jun/07/local/me-muslim7>.

⁵¹ Cora Currier & Murtaza Hussain, *Letter Details FBI Plan for Secretive Anti-Radicalization Committees*, Intercept (Apr. 28, 2016, 12:02 PM), <https://theintercept.com/2016/04/28/letter-details-fbi-plan-for-secretive-anti-radicalization-committees/>.

⁵² See *Eye on the FBI*, AM. CIVIL LIBERTIES UNION, <https://www.aclu.org/national-security/eye-fbi-exposing-misconduct-and-abuse-authority> (last visited Sept. 20, 2016); *ACLU Eye on the FBI: The FBI is Engaged in Unconstitutional Racial Profiling and Racial “Mapping”*, Am. Civil Liberties Union, <https://www.aclu.org/aclu-eye-fbi-fbi-engaged-unconstitutional-racial-profiling-and-racial-mapping> (last visited Sept. 20, 2016); *ACLU Eye on the FBI Alert – Mosque Outreach for Intelligence Gathering*, Am. Civil Liberties Union, <https://www.aclu.org/other/aclu-eye-fbi-alert-mosque-outreach-intelligence-gathering?redirect=aclu-eye-fbi-alert-mosque-outreach-intelligence-gathering> (last visited Sept. 20, 2016).

⁵³ James Gordon Meek, Brian Ross, & Rhonda Schwartz, *Feds Spied on Prominent Muslim-Americans, Report Claims*, ABC News (July 9, 2014), <http://abcnews.go.com/Blotter/feds-spied-prominent-muslim-americans-report-claims/story?id=24370482>; Faisal Gill, *I was targeted because of my faith*, CNN (July 10, 2014, 4:48 PM), <http://www.cnn.com/2014/07/10/opinion/gill-unwarranted-surveillance-muslim/>. Other Muslim leaders subject to surveillance are Asim Ghafoor, a well-known lawyer; Hooshang Amirahmadi, a professor at Rutgers University; and Agha Saeed, a political science professor at California State University. *Id.*

⁵⁴ Waleed S. Ahmed, *Spying on American Muslim Leaders Betrays Advocates of Civic Engagement*, Muslim Matters (July 16, 2014), <http://muslimmatters.org/2014/07/16/spying-on-american-muslim-leaders-betrays-advocates-of-civic-engagement/>.

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

III. CVE Programs are Unnecessary to Prevent Domestic Terrorism

Not only are CVE programs counterproductive, they are unnecessary.

Like their fellow Americans, Muslim communities report suspicious criminal activity about which they have knowledge without the need for a multi-million dollar government program.⁵⁵ According to Peter Bergen at the New America Foundation, nearly 20% of terrorism plots have been prevented due to initial tips from Muslim communities and family members.⁵⁶ Studies by the Duke Triangle Center on Terrorism and Homeland Security also found that American Muslim communities provided a large source of information about terrorist plots since 9/11.⁵⁷

Hence, CVE programs, which overtly aim to recruit Muslims to report potential terrorist plots,⁵⁸ are a waste of government resources. Muslim Americans know less about potential plots than law enforcement agencies with a sophisticated array of investigative tools at their disposal.⁵⁹ Most cases charging Muslims of violating anti-terrorism laws are driven by undercover agents and informants outside the knowledge of community leaders or the individual's family.

⁵⁵ Jessica Stern & J.M. Berger, *ISIS: THE STATE OF TERROR* 248-49 (2015) (noting that there is “a near-total lack of evidence that [CVE programs] actually prevent violent extremism in any meaningful way”).

⁵⁶ Peter Bergen, David Sterman, Emily Schneider, & Bailey Cahall, New America Foundation, *Do NSA's Bulk Surveillance Programs Stop Terrorists?* 4-5 (2014), <https://na-production.s3.amazonaws.com/documents/do-nsas-bulk-surveillance-programs-stop-terrorists>; see also Mohammed A. Malik, *I reported Omar Mateen to the FBI. Trump is wrong that Muslims don't do our part.*, Wash. Post (June 20, 2016), https://www.washingtonpost.com/posteverything/wp/2016/06/20/i-reported-omar-mateen-to-the-fbi-trump-is-wrong-that-muslims-dont-do-our-part/?utm_term=.0dfd4ce3b782 (authored by a Muslim American who reported the Orlando shooter Omar Mateen to the FBI in 2014 after observing suspicious activity).

⁵⁷ Charles Kurzman, Triangle Center on Terrorism and Homeland Security, Sanford School of Public Policy, Duke University, *Muslim-American Terrorism in 2013* 4 (2014), https://sites.duke.edu/tchths/files/2013/06/Kurzman_Muslim-American_Terrorism_in_20131.pdf.

⁵⁸ See, e.g., Press Release, Office of the Press Secretary, The White House, *FACT SHEET: The White House Summit on Countering Violent Extremism* (Feb. 18, 2015), <https://www.whitehouse.gov/the-press-office/2015/02/18/fact-sheet-white-house-summit-countering-violent-extremism> (discussing community engagement with religious leaders and communities).

⁵⁹ See Pew Research Center, *Mainstream and Moderate Attitudes Muslim Americans: No Signs of Growth in Alienation or Support for Extremism* 1 (2011), <http://www.people-press.org/files/legacy-pdf/Muslim%20American%20Report%2010-02-12%20fix.pdf> (noting that only about 20% of Muslims even perceive much support for extremism among the American Muslim community).

A 2016 George Washington Report on Extremism reported that over half (39) of the individuals they researched were arrested after an investigation involving an informant or undercover law enforcement officer.⁶⁰ Out of the 500 anti-terrorism cases studied, nearly 250 involved an informant or undercover agent.⁶¹ For these reasons, some Muslims worry that their engagement with law enforcement may lead to their youth being targeted for sting operations.⁶²

A report by Human Rights Watch and Columbia Law School's Human Rights Institute in 2014 found that "in some cases, the Federal Bureau of Investigation may have created terrorists out of law-abiding individuals by conducting sting operations that facilitated or invented the target's willingness to act."⁶³ According to the Center on National Security at Fordham University School of Law, approximately 60% of cases against Americans in Da'esh-related charges have involved informants as compared to 30% of all terrorism indictments since 9/11.⁶⁴ These results are unsurprising in light of the FBI's widespread use of informants, estimated at 15,000 domestically as of 2008, which is reportedly 10 times the number of informants active during the era of J. Edgar Hoover and COINTELPRO.⁶⁵

In the cases where a Muslim (often a young male) is targeted by bona fide Da'esh recruiters, the process occurs online, in secret, and without the knowledge of the community leaders and family members.⁶⁶ A New America Foundation report found that of the sixty-two cases examined, there was no evidence of physical recruitment by a militant operative, cleric,

⁶⁰ Lorenzo Vidino & Seamus Hughes, George Washington Univ., Program on Extremism, *ISIS in America: From Retweets to Raqqa ix* (2015), <https://cchs.gwu.edu/sites/cchs.gwu.edu/files/downloads/ISIS%20in%20America%20-%20Full%20Report.pdf>.

⁶¹ *Id.*

⁶² Glenn Greenwald, *Why Does the FBI Have to Manufacture its Own Plots if Terrorism and ISIS Are Such Grave Threats?*, THE INTERCEPT (Feb. 26, 2015), <https://theintercept.com/2015/02/26/fbi-manufacture-plots-terrorism-isis-grave-threats/>

⁶³ Human Rights Institute, *Illusion of Justice Human Rights Abuses in US Terrorism Prosecutions 2* (2014), http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/final_report_-_illusion_of_justice_0.pdf.

⁶⁴ Nicole Hong, *In U.S. ISIS Cases, Informants Play a Big Role*, Wall St. J. (Apr. 21, 2015, 7:08 PM), <http://www.wsj.com/articles/in-u-s-isis-cases-informants-play-a-big-role-1429636206>.

⁶⁵ Cora Currier & Murtaza Hussain, *Letter Details FBI Plan for Secretive Anti-Radicalization Committees*, THE INTERCEPT (Apr. 28, 2016), <https://theintercept.com/2016/04/28/letter-details-fbi-plan-for-secretive-anti-radicalization-committees/>.

⁶⁶ See David Talbot, *Fighting ISIS Online*, MIT Tech. Rev. (Sept. 30, 2015), <https://www.technologyreview.com/s/541801/fighting-isis-online/>; Rukmini Callimachi, *ISIS and the Lonely Young American*, N.Y. Times (June 27, 2015), http://www.nytimes.com/2015/06/28/world/americas/isis-online-recruiting-american.html?_r=0. See also *ISIS Online: Countering Terrorist Radicalization & Recruitment on the Internet & Social Media: Hearing Before the Permanent Subcomm. on Investigations*, 114th Cong. 10 (2015) (testimony by Peter Bergen), http://www.hsgac.senate.gov/download/bergen-testimony_psi-2016-07-05 ("Around nine out of 10 American militants are active in online jihadist circles.").

returning foreign fighter, or radicalization in prison.⁶⁷ Moreover, studies of terrorism suspects show Da'esh recruits' knowledge of Islam is negligible. A 2008 study of hundreds of individuals involved in terrorism and terrorism finance by the British intelligence agency MI-5 found that most of them were "religious novices," and that a "well-established religious identity actually protects against violent radicalization."⁶⁸ A recent leak of Da'esh documents showed that seventy percent of recruits had a remedial understanding of Islam, and often were alienated from mainstream Muslim communities.⁶⁹

Thus, Director of Community Partnerships at DHS George Selim's statement in a Reuters article that "[g]iven the current scope of the threat, we believe family members, friends, coaches, teachers are best placed to potentially prevent and intervene in the process of radicalization" is unsupported by evidence.⁷⁰ Unless the government wants Muslims to actively spy on each other's online activities in contravention of fundamental American values, CVE programs will only waste government resources and alienate otherwise well integrated American communities.⁷¹

In the end, irrational prejudices animate the false assumption that each Muslim has knowledge of and is responsible for all other Muslims' actions. Like all other Americans, Muslims deserve to be presumed innocent and treated as individuals, not collectively guilty based on the criminal acts of a few individuals who misappropriate religious doctrine to engage in politically-motivated violence.⁷²

IV. CVE Programs are a Waste Government Resources

⁶⁷ *ISIS Online: Countering Terrorist Radicalization & Recruitment on the Internet & Social Media: Hearing Before the Permanent Subcomm. on Investigations*, 114th Cong. 4 (2016) (testimony by Peter Bergen), file:///C:/Users/Staff/Downloads/Bergen%20Testimony_PSI%202016-07-06.pdf.

⁶⁸ Alan Travis, *MI5 Report Challenges Views on Terrorism in Britain*, THE GUARDIAN (Aug. 20, 2008), <https://www.theguardian.com/uk/2008/aug/20/uksecurity.terrorism1>.

⁶⁹ *Leaked ISIS Docs Show 70% of Recruits Don't Even Know What Islam Is*, OffGuardian (Aug. 22, 2016), <https://off-guardian.org/2016/08/22/leaked-isis-docs-show-70-of-recruits-dont-even-know-what-islam-is/>.

⁷⁰ Yasmeen Abutaleb & Kristina Cooke, *A teen's turn to radicalism and the U.S. safety net that failed to stop it*, Reuters (June 6, 2016, 2:20 PM), <http://www.reuters.com/investigates/special-report/usa-extremists-teen/>.

⁷¹ Michael Hirsh, *Inside the FBI's Secret Muslim Network*, Politico Magazine (March 24, 2016), <http://www.politico.com/magazine/story/2016/03/fbi-muslim-outreach-terrorism-213765> (noting Harvard terrorism expert Jessica Stern conclusion that the relative prosperity and assimilation of American Muslims starkly contrasts with Muslims in Europe where the latter experience disparities in employment and wages as well as overpolicing).

⁷² See The Clarion Project, *Special Report: The Islamic State 6* (2015), <http://www.clarionproject.org/sites/default/files/islamic-state-isis-isil-factsheet-1.pdf> (explaining that Da'esh is a political organization that uses religion to justify its goals).

Senior government officials have gone on the record stating that the threat of Americans joining Da'esh is diminishing. According to Francis Taylor, Undersecretary of the Office of Intelligence and Analysis for DHS, in 2015 there was no specific, credible, imminent threat to the homeland from Da'esh.⁷³ In October 2015, FBI Director James Comey testified before Congress that fewer Americans are attempting to travel to Syria to join Da'esh.⁷⁴

Moreover, the data does not corroborate a sufficient security threat to warrant a nationwide CVE program. The FBI estimates that approximately 200 Muslim Americans (out of 3 to 6 million)⁷⁵ have attempted to join Da'esh in Syria and Iraq.⁷⁶ In 2015, a George Washington University report by the Project on Extremism estimated the total number of Americans who have traveled to Syria and Iraq since 2011 was 250 out of 30,000 foreign fighters worldwide and over 5000 from Europe.⁷⁷

In the United States, there has only been one reported case of a fighter returning and allegedly plotting an attack.⁷⁸ Speaking to the Council on Foreign Relations in March 2015, Director of National Intelligence James Clapper stated that approximately 40 individuals have returned from Syria, and: "We have since found they went for humanitarian purposes or some other reason that don't relate to plotting."⁷⁹ Similarly, the New America Foundation found that no American fighter who fought in the conflict in Somalia returned to plot an attack in the United

⁷³ See *The Impact of ISIS on the Homeland and Refugee Resettlement: Hearing Before the U.S. Senate Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. 10 (2015) (testimony of Peter Bergen), <http://www.hsgac.senate.gov/hearings/lessons-from-the-paris-terrorist-attacks-ramifications-for-the-homeland-and-refugee-resettlement>.

⁷⁴ Del Quentin Wilber, *FBI says fewer Americans now try to join Islamic State*, L.A. Times (May 11, 2016, 2:49 PM), <http://www.latimes.com/nation/la-na-comey-fbi-20160511-snap-story.html>.

⁷⁵ Besheer Mohamed, *A new estimate of the U.S. Muslim population*, Pew Research Ctr. (Jan. 6, 2016), <http://www.pewresearch.org/fact-tank/2016/01/06/a-new-estimate-of-the-u-s-muslim-population/> (stating that Pew Research Center estimates that 3.3 million Muslims lived in the United States in 2015).

⁷⁶ Julian Hattem, *FBI: More than 200 Americans have tried to fight for ISIS*, The Hill, (July 8, 2015), <http://thehill.com/policy/national-security/247256-more-than-200-americans-tried-to-fight-for-isis-fbi-says>; *How many Americans have joined ISIS*, CBS News (August 22, 2014), <http://www.cbsnews.com/news/how-many-americans-have-joined-isis/> (reporting that as of August 2014, fewer than 12 Americans have been confirmed to have joined ISIS in Syria and Iraq).

⁷⁷ Lorenzo Vidino & Seamus Hughes, George Washington Univ., Program on Extremism, *ISIS in America: From Retweets to Raqqa ix* (2015), <https://cchs.gwu.edu/sites/cchs.gwu.edu/files/downloads/ISIS%20in%20America%20-%20Full%20Report.pdf>.

⁷⁸ *ISIS Online: Countering Terrorist Radicalization & Recruitment on the Internet & Social Media: Hearing Before the Permanent Subcomm. on Investigations*, 114th Cong. 14 (2016) (testimony by Peter Bergen), <file:///C:/Users/Staff/Downloads/Testimony-Bergen-2015-11-19-REVISED.pdf>.

⁷⁹ Karl Vick, *New Study Says U.S. Threat from Returning Jihadis Is Low*, Time (Mar. 25, 2016), <http://time.com/4272307/isis-foreign-jihadis-threat/>; Julian Hattem, *Spy chief: No threat from Americans who aided militants in Syria*, The Hill (Mar. 2, 2015 1:52 PM), <http://thehill.com/policy/defense/234322-spy-chief-no-threat-from-returning-americans-who-fought-in-syria>.

States. Most either died there or were taken into custody upon their return to the United States.⁸⁰

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

Furthermore, CVE programs are likely to be as wasteful as fusion centers. In 2012, a bi-partisan investigation by the U.S. Senate Permanent Subcommittee on Investigations found that “state and local intelligence fusion centers had not yielded significant useful information to support federal counterterrorism intelligence efforts.”⁸¹ Specifically, the Permanent Committee found that intelligence produced by fusion centers was of “uneven quality – oftentimes shoddy, rarely timely, sometimes endangering citizens’ civil liberties and Privacy Act protections, occasionally taken from already-published public sources, and more often than not unrelated to terrorism.”⁸² Ultimately, there was no evidence that fusion centers assisted in disrupting or preventing terrorism. The same government waste and civil liberties violations are likely to occur with CVE programs.

Our resources and policies, therefore, should be guided by the degree of the threat based on credible data. Fatalities from terrorism were 69 since 9/11,⁸³ compared with 220,000 deaths from murders over the same period.⁸⁴ In 2015 alone, 475 people were killed in mass

⁸⁰ *The Impact of ISIS on the Homeland and Refugee Resettlement: Hearing Before the U.S. Senate Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. 13 (2015) (testimony of Peter Bergen), <http://www.hsgac.senate.gov/hearings/lessons-from-the-paris-terrorist-attacks-ramifications-for-the-homeland-and-refugee-resettlement>.

⁸¹ Permanent Subcomm. on Investigations, *Federal Support for and Involvement in State and Local Fusion Centers*, Majority and Minority Staff Report, <https://www.hsgac.senate.gov/subcommittees/investigations/media/investigative-report-criticizes-counterterrorism-reporting-waste-at-state-and-local-intelligence-fusion-centers>.

⁸² *Id.*

⁸³ Charles Kurzman & David Schanzer, Triangle Center on Terrorism and Homeland Security, Sanford School of Public Policy, Duke University, *Law Enforcement Assessment of Violent Extremism Threat 7-9* (2015), https://sites.duke.edu/tcths/files/2013/06/Kurzman_Schanzer_Law_Enforcement_Assessment_of_the_Violent_Extremist_Threat_final.pdf.

⁸⁴ Linda Qiu, *Fact-checking a comparison of gun deaths and terrorism deaths*, Politifact (Oct. 5, 2015, 11:55 AM), <http://www.politifact.com/truth-o-meter/statements/2015/oct/05/viral-image/fact-checking-comparison-gun-deaths-and-terrorism-/>.

shootings.⁸⁵ According to the Combating Terrorism Center at West Point, the risk of death at the hands of terrorists in the United States approaches lottery-winning odds.⁸⁶

And yet we are not seeing government CVE programs targeting single white males in their thirties and forties who are the most common demographic committing mass murder.⁸⁷ Nor are we seeing CVE programs for Christians due to right wing groups' misappropriation of Christian doctrine in furtherance of their violent political ends. Government hearings are not being held to debate whether violence perpetrated by the Klu Klux Klan, the Army of God, or the Lord's Resistance Army" should be called "radical Christian terrorism."⁸⁸

The Southern Poverty Law Center found at least 100 plots, conspiracies and racist rampages since 1995 aimed at waging violence against the United States government. The National Consortium for the Study of Terrorism and Responses to Terrorism found that between 1990 and 2014, far-right domestic extremists perpetrated four times as many ideologically based homicidal incidents than extremists associated with Al Qaeda and associated groups.⁸⁹

From 2000 to 2015, the number of hate groups has increased by 56%, which include a large number of anti-immigrant, anti-LGBT, anti-Muslim, and anti-government "Patriot" groups. And from 2014 to 2015 the number of radical right-wing groups increased by 14 percent.⁹⁰ For example, Klu Klux Klan chapters increased from 72 in 2014 to 190 in 2015. Self-described "Patriot" groups with an anti-government agenda grew from 874 in 2014 to 998 in 2015. Stormfront, a White Nationalist online hate forum, had more than 300,000 registered members in 2015 with an average annual increase of 25,000 new users.⁹¹ White supremacist online

⁸⁵ *Mass Shootings – 2015*, Gun Violence Archive (2015), <http://www.pbsgunviolencearchive.org/newshour/rundown/2015-the-year-of-reports/mass-shootings/2015?page=13>.

Brian Michael Jenkins, *Fifteen Years On, Where Are We In the "War on Terror"?*, CTC SENTINEL, September 2016, at 7. Text from: https://www.ctc.usma.edu/v2/wp-content/uploads/2016/09/CTC-SENTINEL_Vol9Iss92.pdf.

⁸⁷ R. Kleinfeld, Russ Buettner, David W. Chen, & Nikita Stewart, *Mass Murders Fit Profile, as Do Many Others Who Don't Kill*, N.Y. Times (Oct. 3, 2015), http://www.nytimes.com/2015/10/04/us/mass-murderers-fit-profile-as-do-many-others-who-dont-kill.html?_r=0 (discussing the difficulty with the profile of a mass shooter that fits a majority class).

⁸⁸ *Racial Equality*, White Camelia Knights of the Ku Klux Klan (2011), <http://www.wckkkk.org/eql.html>; Army of God, <http://www.armyofgod.com/>; Harry J. Bentham, *ISIS isn't Islamic as the Lord's Resistance Army isn't Christian*, BELIEF NET, <http://www.beliefnet.com/columnists/lordre/2014/11/isis-islam-lords-resistance-army-christianity-extremism.html>.

⁸⁹ Parkin, William S., Steven M. Chermak, Joshua D. Freilich, & Jeff Gruenewald, Office of University Programs, Science and Technology Directorate, U.S. Department of Homeland Security, *Twenty-Five Years of Ideological Homicide Victimization in the United States of America* (2016), https://www.start.umd.edu/pubs/START_CSTAB_ECDB_25YearsofIdeologicalHomicideVictimizationUS_March2016.pdf.

⁹⁰ Mark Potok, *The Year in Hate and Extremism*, S. Poverty L. Ctr. (Feb. 17, 2016), <https://www.splcenter.org/fighting-hate/intelligence-report/2016/year-hate-and-extremism>.

⁹¹ *Id.*

forums also radicalized Dylaan Roof, the alleged shooter in the massacre of nine African Americans at Charleston’s Emanuel African Methodist Episcopal Church on June 17, 2015.⁹²

The rise in right-wing violent extremisms has resulted in 337 attacks per year in the decade after 9/11, causing a total of 254 fatalities, according to a study by Arie Perliger, a professor at the United States Military Academy’s Combating Terrorism Center.⁹³ One chilling case in January 2011 involved a neo-Nazi who hid a bomb packed with fishing weights coated with rat poison in a backpack in the route of the Martin Luther King Day parade in Spokane, Washington.⁹⁴

In June 2014, a violent extremist associated with the right wing Sovereign Citizens movement shot police officers with an assault rifle during his attack on a courthouse in Fortyth County, Georgia.⁹⁵ That same year in Nevada, anti-government militants associated with Sovereign Citizens shot two police officers in a restaurant and placed over their bodies a “Don’t Tread on Me” flag, a swastika-stamped manifesto, and note that read “This is the start of the revolution.”⁹⁶ In early 2016, 150-armed white Christian “militia” members occupied a federal building and took over several acres of federal land.⁹⁷

In comparison, an average of nine Muslims per year—out of 3 to 6 million—have been involved in an annual average of six terrorism-related plots against targets in the United States. While most were disrupted, the 20 plots that were carried out accounted for 50 fatalities between 2001 and 2014, excluding the 9/11 terrorist attacks.⁹⁸

⁹² Morris Dees & J. Richard Cohen, *White Supremacists Without Borders*, N.Y. Times (June 22, 2015), <http://www.nytimes.com/2015/06/22/opinion/white-supremacists-without-borders.html>.

⁹³ Arie Perliger, Combating Terrorism Center at West Point, *Challengers From the Sidelines: Understanding America’s Violent Far-Right* (2012), <https://www.ctc.usma.edu/v2/wp-content/uploads/2013/01/ChallengersFromtheSidelines.pdf>; Charles Kurzman & David Schanzer, *The Growing Right Wing Terror Threat*, N.Y. Times (June 16, 2015), <http://www.nytimes.com/2015/06/16/opinion/the-other-terror-threat.html>.

⁹⁴ Arie Perliger, Combating Terrorism Center at West Point, *Challengers From the Sidelines: Understanding America’s Violent Far-Right* (2012), <https://www.ctc.usma.edu/v2/wp-content/uploads/2013/01/ChallengersFromtheSidelines.pdf>.

⁹⁵ *Forsyth deputy shot, suspect dead, courthouse evacuated*, *ajc.com* (June 6, 2014), <http://www.ajc.com/news/news/police-activity-around-forsyth-courthouse/ngFsZ/>.

⁹⁶ JJ MacNab, *What Las Vegas Police Killings Show About Evolving Sovereign Movement*, *Forbes* (June 13, 2014), <http://www.forbes.com/sites/jjmacnab/2014/06/13/what-las-vegas-police-killings-show-about-evolving-sovereign-movement/#2e27c38d57be>.

⁹⁷ Carissa Wolf, Peter Holley, & Wesley Lowery, *Armed men, led by Bundy brothers, take over federal building in rural Oregon*, *Wash. Post* (Jan. 3, 2016), https://www.washingtonpost.com/news/post-nation/wp/2016/01/03/armed-militia-bundy-brothers-take-over-federal-building-in-rural-oregon/?utm_term=.72d2b63a4e19.

⁹⁸ Charles Kurzman & David Schanzer, *The Growing Right-Wing Terror Threat*, N.Y. Times (June 16, 2015), http://www.nytimes.com/2015/06/16/opinion/the-other-terror-threat.html?_r=0.

A 2015 Duke University research study found that over 74% of 382 local and state agencies rated anti-government extremism as one of the top three terrorist threats in their jurisdiction.⁹⁹ This is compared to 39% rating Al Qaeda or like-minded terrorists as a top threat.¹⁰⁰ When asked to rank 1 to 5 the terrorist threat in their jurisdiction, 149 departments out of 170 ranked “other” forms of terrorism as a higher threat than Al Qaeda and associated terrorism. Similarly, only 3 percent identified the threat of Muslim violent extremists as severe, as compared to 7 percent for anti-government and other forms of violent extremists.¹⁰¹

When Duke University researchers asked law enforcement agencies why they did not have a CVE program tailored for right wing extremist groups, agents noted it would be a waste of time because the right wing extremists live in the shadows and do not communicate their criminal activity to white communities.¹⁰² The same reality applies to terrorism plotters who claim to be Muslims. They do not tell Muslim community leaders or family members about their criminal plans. Nor do they become recruited by international terrorists in open forums where interventions by civilians are a possibility.

Indeed, Muslims interviewed in the Duke University study were asked about the efficacy of CVE programs, respondents expressed frustration that the government and fellow Americans expected them to have knowledge of every fringe element that claims to share their faith whereas other faith traditions are not imposed with the same burden.¹⁰³ Not only are such expectations impractical, they are un-American. We are a country founded on rule of law where each individual is responsible for her individual acts, not for the acts of others who happen to share the same race, ethnicity, gender, religion, or other characteristics. CVE programs contravene this fundamental American principle.

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

⁹⁹ Charles Kurzman & David Schanzer, Triangle Center on Terrorism and Homeland Security, Sanford School of Public Policy, Duke University, Law Enforcement Assessment of Violent Extremism Threat 4 (2015), https://sites.duke.edu/tcths/files/2013/06/Kurzman_Schanzer_Law_Enforcement_Assessment_of_the_Violent_Extremist_Threat_final.pdf.

¹⁰⁰ *Id.*

¹⁰¹ Charles Kurzman & David Schanzer, *The Growing Right-Wing Terror Threat*, N.Y. Times (June 16, 2015), http://www.nytimes.com/2015/06/16/opinion/the-other-terror-threat.html?_r=0.

¹⁰² David Schanzer, et al., Triangle Center on Terrorism and Homeland Security, Sanford School of Public Policy, Duke University, *The Challenge and Promise of Using Community Policing Strategies to Prevent Violent Extremism* 21-22 (2016), <https://sites.duke.edu/tcths/files/2013/06/2015-full-report-FINAL1.pdf>.

¹⁰³ *Id.* at 19.

V. Funds for Community Development and Resilience Should be Managed by Social Service Agencies without Law Enforcement Control

Muslims communities are among the most diverse in America. Comprised of races and ethnic backgrounds, the diversity of Muslim American communities is a testament to America's rich cultural heritage. Nearly 70% of Muslims are foreign born and 20% are African American.¹⁰⁴ For decades, Muslim engineers, doctors, lawyers, professors, and other professionals have contributed their skills and strong work ethic toward America's economic prosperity. Similarly, Muslims are entrepreneurs who operate businesses that create jobs and grow our economy.

As a result, 14% of Muslims earn a household income over \$100,000 compared to 16% of the general population and 13% of Muslim households earn \$50,000 to \$74,999 compared to 15% of the general population. Accordingly, a Pew Research Center study in 2011 found that Muslims are mostly mainstream and well integrated into American society.¹⁰⁵

However, like many other American communities, Muslim American communities include a significant number of low income families. The Pew Research Forum found that in 2011 45% of Muslim households earned less than \$30,000 compared to 36% of the general public and only 33% of Muslims were homeowners compared to 58% of the general public.¹⁰⁶ With the poverty line at approximately \$28,000 for a family of five and \$32,000 for a family of six,¹⁰⁷ a third of Muslims in America are on the verge of poverty. Moreover, 17% of Muslims were unemployed compared to 12 percent of the general public and 29 percent were under-employed compared to 20 percent of the general public.¹⁰⁸

Professor Khaled Beydoun's research on the experiences of low income Muslims in America at a time when Islamophobia has reached unprecedented levels demonstrates the need for social services in many Muslim American communities.¹⁰⁹ Indeed, as a standalone faith-group – Muslims are comparatively poorer than the broader American polity.¹¹⁰ In some Muslim

¹⁰⁴ According the Pew Forum on Religious and Public Life, 65% of Muslims are foreign born, 35% are U.S. born, and approximately 20% all Muslims are African Americans. *Section 1: A Demographic Portrait of Muslim Americans*, Pew Research Ctr. (Aug. 30, 2011), <http://www.people-press.org/2011/08/30/section-1-a-demographic-portrait-of-muslim-americans/>.

¹⁰⁵ *Id.*

¹⁰⁶ *Muslim Americans: No Signs of Growth in Alienation or Support for Extremism*, Pew Research Ctr. (Aug. 30, 2011), <http://www.people-press.org/2011/08/30/muslim-americans-no-signs-of-growth-in-alienation-or-support-for-extremism/>.

¹⁰⁷ *Poverty Guidelines*, U.S. Department of Health & Human Services (Jan. 25, 2016), <https://aspe.hhs.gov/poverty-guidelines>.

¹⁰⁸ *Muslim Americans: No Signs of Growth in Alienation or Support for Extremism*, Pew Research Ctr. (Aug. 30, 2011), <http://www.people-press.org/2011/08/30/muslim-americans-no-signs-of-growth-in-alienation-or-support-for-extremism/>.

¹⁰⁹ See Khaled A. Beydoun, *Between Indigence, Islamophobia, and Erasure: Poor and Muslim in "War on Terror" America*, CALIFORNIA LAW REVIEW (forthcoming 2016), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2685840.

¹¹⁰ *Id.*

communities, the poverty rate is alarmingly high. For example, 82% of the estimated 80,000 Somali Americans living in Minnesota are near or below the poverty line. In Brooklyn, nearly 54% of Bangladeshi Americans are low income or below the poverty line and many Yemeni American families who live in high cost cities such as New York, Detroit and the Bay Area are low income.¹¹¹

The consequent social and economic challenges faced by some Muslims in America—not inflated terrorism threats based on fear and prejudice—should determine how we spend government resources. For example, some Muslim leaders such as Los Angeles-based cleric Jihad Saafir, believe local gangs pose the most immediate threat to community safety, not homegrown violent extremists.¹¹² As such, government resources are more wisely spent on investing in education, employment, health, and other social services that empower diverse Muslim communities to thrive and prosper.

In doing so, funds currently allocated to CVE should be redirected to social service agencies with the expertise and institutional mission to assist new immigrant and low income communities. Law enforcement should only get involved if there is individualized suspicion of predicate criminal acts in accordance with the U.S constitution and civil rights.

Indeed, the proposal to decouple law enforcement from community development is consistent with Pentagon officials’ determination that civilian programs abroad led by the U.S Agency for International Development were more effective in mitigating the circumstances that may lead some vulnerable youth to being recruited by terrorist groups.¹¹³

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

VI. Conclusion

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

¹¹¹ *Id.*

¹¹² Alejandro Beutel, *Using Local Public-Private Partnerships to Reduce Risk of Violent Extremism*, BRINK NEWS (Aug. 6, 2015), <http://www.brinknews.com/using-local-public-private-partnerships-to-reduce-risk-of-violent-extremism/>.

¹¹³ James Stavridis & John R. Allen, *Expanding the U.S. Military’s Smart-Power Toolbox*, Wall St. J. (June 9, 2016, 12:03 PM), <http://www.wsj.com/articles/expanding-the-u-s-militarys-smart-power-toolbox-1465425489>.

However, violent non-state actors with political agendas are exploiting new technologies and seamless borders to manipulate vulnerable individuals. They use myriad ideological doctrines to lend credence to their perverse political motivations.

In confronting these violent actors, we cannot afford to adopt an “us versus them” approach. We must unite as Americans to ensure we are all safe and secure from both state and nonstate violence. Doing so entails staying true to our fundamental American values. The most pertinent of which is our commitment to individual responsibility for individual wrongdoing, regardless of one’s religion, race, or creed.

Unfortunately, CVE programs undermine rather than promote these values as well as American security. The securitization of Muslim communities as potential terrorists legitimizes the pervasive anti-Muslim prejudice and bigotry infecting our society today. Consequently, private actors are emboldened to harass, assault, and even kill fellow citizens who are or perceived to be Muslim. Meanwhile, CVE programs ignore the rise of right wing extremists—who often target Muslims in hate crimes.¹¹⁴ All of which is exploited by Da’esh to validate its twisted narrative that America is at war with Islam.

In addition, the data does not support the need for a law enforcement-led CVE program targeting Muslim communities. Long before the White House CVE initiative in 2010, Muslims in America have informed law enforcement when they have knowledge of criminal activity. Indeed, Muslims have also actively stopped attempted terrorism by other Muslims. For example, a Muslim vendor in New York City was the first to spot smoke coming out of an SUV in the Times Square attempted bombing. His immediate communication with law enforcement was instrumental in preventing the loss of life.¹¹⁵ Thus, spending tens of millions of dollars on CVE programs especially for Muslim communities is not only stigmatizing, it is unnecessary and wasteful.

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

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

¹¹⁴ Peter Romaniuk, Global Center on Cooperative Security, *Does CVE Work? Lessons Learned from the Global Effort to Counter Violent Extremism*, Global Center on Cooperative Security (September 2015), http://www.globalcenter.org/wp-content/uploads/2015/09/Does-CVE-Work_2015.pdf.

¹¹⁵ *Muslim Vendor Gets No Credit in Helping to Foil Times Square Bomb Plot*, Democracy Now! (May 6, 2010), http://www.democracynow.org/2010/5/6/muslim_vendor_gets_no_credit_in.

make such programs available only to a particular religion or race, they should be available to communities based on need.

Fifteen years after the tragic 9/11 attacks, most Muslims in America want nothing more than to be actively and constructively engaged in American society. They welcome working with their government and fellow citizens to ensure all Americans have equal opportunity to thrive and be safe. But they are thwarted from doing so by racialized government programs that treat them as outsiders and fifth columns rather than partners and equal citizens.

It is long overdue to rethinking our counterterrorism policies and practices to make them less discriminatory and more compliant with our constitution to continue America's relative success in integrating communities of all faiths, races, and immigrant status.