

Between Indigence, Islamophobia, and Erasure: Poor and Muslim in “War on Terror” America

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Nearly half of the Muslim American population is interlocked between indigence and “Islamophobia,” or anti-Muslim animus. Of the estimated eight million Muslim Americans, 45 percent of this population earns a household income less than \$30,000 per year. While this statistic clashes with pervasive stereotyping of Muslim Americans as middle class, economically upwardly mobile, or opulently wealthy, it does correspond with the legal poverty line in the United States.

Since the September 11th terrorist attacks (9/11), the legal literature analyzing national security, anti-terror policies, and Muslim American civil liberties has been prolific. The emergence of “counterradicalization” policing within Muslim American communities drives this scholarly interest forward. However, since 9/11, Muslim Americans have been framed as similarly situated victims within legal literature. As a result, this body of scholarship fails to closely examine vulnerable indigent and working-class spaces where public and private Islamophobia is disproportionately unleashed. This failure compounds the injuries Muslim Americans already suffer.

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This Essay intervenes to examine these liminal and overlooked spaces where indigence and Islamophobia collide. In turn, it highlights how the convergence of poverty, religious profiling and prosecution, and mounting counter radicalization policing disparately impact Muslim America's most vulnerable demographic amid the still-escalating War on Terror.

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INTRODUCTION

To be a poor man is hard, but to be a poor race in a land of dollars is the very bottom of hardships.

—W.E.B. Du Bois¹

Since Islam is “against us” and “out there,” the necessity of adopting a confrontational response of our own towards it will not be doubted.

—Edward Said²

“Indigent America”³ is routinely disconnected and distinguished from “Muslim America.”⁴ For reasons linked to dissonant imagining, conflicting

1. W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK* 8 (1903).

2. EDWARD SAID, *COVERING ISLAM: HOW THE MEDIA AND THE EXPERTS DETERMINE HOW WE SEE THE REST OF THE WORLD* 48 (1981) [hereinafter *COVERING ISLAM*].

“racialization,”⁵ and divergent political and popular representations, the two populations are regarded as distinct, nonoverlapping, and irreconcilable blocs. This incompatible caricaturing of indigent Americans and Muslim Americans facilitates the erasure of indigent Muslim Americans from both scholarly and advocacy interventions and consequently leaves their distinct struggles ignored and unmitigated. This erasure has never been more dangerous than it is today—the vulnerability of indigent Muslim Americans to “racialized poverty,”⁶ “Islamophobia,”⁷ and “countering violent extremism” (CVE) policing is at an all-time high⁸ (and on the uptick).

The stereotypes associated with indigent America are generally viewed as irreconcilable with the tropes and misrepresentations associated with Muslim American identity. Popular media and legal scholars tend to frame indigent Americans in domestic, Black, or Brown form; or alternatively, they discuss indigent Americans in rigidly colorblind or race-neutral terms, according to proponents of “post-racialism.”⁹ On the other hand, American jurisprudence¹⁰

3. In this Essay, “indigent America” is used as a reference to the aggregate population of Americans who live at or below the poverty line. I adopt the legal definition of indigence, or poverty, set forth by the United States Department of Health and Human Services poverty guidelines. Poverty in the United States is contingent upon household size. *2015 Poverty Guidelines*, U.S. DEP’T. HEALTH & HUM. SERV. (Sept. 3, 2015), <http://aspe.hhs.gov/poverty/15poverty.cfm> [<https://perma.cc/V2YB-6SAX>].

4. In this Essay, “Muslim America” or the “Muslim American community” is a loosely constructed signifier for the Muslim American population. This Essay does not presume or promote the notion that the Muslim American population is an integrated, consolidated, or monolithic group.

5. MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960S TO THE 1990S* 55 (2d ed. 1994). Omi and Winant describe race as “an unstable and ‘decentered’ complex of social meanings constantly being transformed by political struggle,” and they describe racialization as the use of race as a basis for distinguishing among human groups. *Id.*

6. “Racialized poverty” refers to the converging impact of racism, indigence, and the distinct ways in which minority communities experience poverty in America.

7. I define “Islamophobia” as, “the presumption that Islam is inherently violent, alien, and inassimilable and the belief that expressions of Muslim identity are correlative with a propensity for terrorism. It argues that Islamophobia is rooted in understandings of Islam as civilization’s antithesis and perpetuated by government structures and private citizens . . . Islamophobia is also a process—namely, the dialectic by which state policies targeting Muslims endorse prevailing stereotypes and, in turn, embolden private animus toward Muslim subjects.” Khaled A. Beydoun, *Islamophobia: Toward A Legal Definition and Framework*, 116 COLUM. L. REV. ONLINE 1, 4 (2016). For other analyses and definitions of Islamophobia, see HAMID DABASHI, *BROWN SKIN, WHITE MASKS* 9–12 (2010) (providing an interdisciplinary analysis of the “making of Islamophobia”) and CARL W. ERNST, *ISLAMOPHOBIA IN AMERICA: THE ANATOMY OF INTOLERANCE* 2 (2013) (providing several definitions of “Islamophobia”). See generally COVERING ISLAM, *supra* note 2 (discussing what is widely considered the landmark analysis of how the media and political actors manufacture misrepresentations of Islam, Muslims, and the Muslim world).

8. See Amna Akbar, *Policing “Radicalization,”* 3 U.C. IRVINE L. REV. 809, 814 (2013). “[C]ounter-radicalization . . . conforms to ‘the preemptive logic of counterterrorism, which focuses on strategies that minimize the risk and intensity of future terrorist attacks.’” *Id.* at 814 n.19 (quoting Samuel J. Rascoff, *Establishing Official Islam? The Law and Strategy of Counter-Radicalization*, 64 STAN. L. REV. 125, 127–29 (2012)).

9. See generally Lawrence D. Bobo, *Somewhere Between Jim Crow & Post-Racialism: Reflections on the Racial Divide in America Today*, 11 DAEDELUS 13 (2011).

and popular media¹¹ characterize Muslim Americans as wealthy, racially homogenous (Arab), and immigrant.¹² As a result, although Islam is a religion—and its followers diverse along racial, ethnic, and cultural lines—legal and political machinations have constructed Muslims into a de facto racial group.¹³ Islam was treated as an “ethnoracial identity” for centuries,¹⁴ and continues to be viewed in these terms today. Discursively, Muslim identity is imagined along racial lines as frequently—if not more—as it is along religious lines.¹⁵

This Essay seeks to reconcile the conflicting imaginings of indigent Americans and Muslim Americans and to direct attention to the liminal junctures where indigent Muslim Americans reside. This reconciliation is particularly necessary amid today’s context of escalating Islamophobia; fear of “[r]adicalization,” which “suggests that the path from Muslim to terrorist is a predictable one”;¹⁶ and counterradicalization policing. Indeed, the terror attacks in Paris on November 13, 2015;¹⁷ the mass shooting in San Bernardino, California, on December 2, 2015;¹⁸ and the terror attack in Brussels, Belgium,

10. See generally Marie A. Failinger, *Islam in the Mind of American Courts: 1800 to 1960*, 32 B.C. J.L. & SOC. JUST. 1, 4–5 (2012) (presenting a comprehensive review of the common stereotypes and flat judicial understandings of Muslims and Islam during from 1800 to 1960).

11. See RICHARD JACKSON HARRIS, *A COGNITIVE PSYCHOLOGY OF MASS COMMUNICATION* 105 (6th ed. 2013).

12. Khaled A. Beydoun, *Between Muslim and White: The Legal Construction of Arab American Identity*, 69 N.Y.U. ANN. SURV. AM. L. 29 (2014) [hereinafter *Between Muslim and White*].

13. “I would suggest that September 11 facilitated the consolidation of a new identity category that groups together persons who appear ‘Middle Eastern, Arab, or Muslim.’ This consolidation reflects a racialization wherein members of this group are identified as terrorists, and are disidentified as citizens.” Leti Volpp, *The Citizen and the Terrorist*, 49 UCLA L. REV. 1575, 1576 (2002).

14. Although Islam is a religious identity, the mainstreaming of Orientalist baselines, combined with political propaganda beginning in the late eighteenth century, converted Islam into an ethnoracial identity in the image of Arabs. See also *Hassan v. City of New York*, 804 F.3d 277 (2015) (citing *Between Muslim and White*, *supra* note 12) (challenging the New York Police Department for its surveillance of Muslim communities in the tri-state area). See generally ROBERT J. ALLISON, *THE CRESCENT OBSCURED: THE UNITED STATES AND THE MUSLIM WORLD, 1776–1815* (1995) (providing a historical account of the U.S. government’s political and legal reimagining of Islam (and Muslims) during this time period).

15. See generally *Between Muslim and White*, *supra* note 12.

16. Akbar, *supra* note 8, at 809, 811. Radicalization has been defined in a myriad of ways. Principally, it is the process by which an individual adopts an extremist ideology that is linked to terrorist activity. Although not explicitly associated with Islam, the term has been discursively and politically linked to Muslims and Islam. See *id.* at 809; see also Khaled A. Beydoun, *Beyond the Paris Attacks: Unveiling the War Within French Counterterrorism Policy*, 65 AM. U. L. REV. 1273, 1278 (2016) (illustrating how radicalization is conflated with Islam and Muslims beyond the United States).

17. “Shortly after 9:00 PM on that day” terrorists with the Islamic State of Iraq and Syria (ISIS) links carried out three concerted attacks, which killed 129 people and injured 352 others. “The site of the first attack was an international soccer match between the French National Team and Germany at the *Stade de France*, attended by President Francois Hollande. Subsequently, five popular restaurants and cafes were bombed, and the conspiracy concluded with several explosions at the famed Bataclan concert venue.” Beydoun, *supra* note 16, at 1275–76.

18. Michael S. Schmidt & Richard Pérez-Peña, *F.B.I. Treating San Bernardino Attack as Terrorism Case*, N.Y. TIMES (Dec. 4, 2015), <http://www.nytimes.com/2015/12/05/us/tashfeen-malik->

on March 22, 2016,¹⁹ have intensified the political rhetoric invoking Islamophobia and calling for enhanced counterradicalization measures in the United States. This Essay aims to broaden foundational research examining how American slavery²⁰ and formative immigration policy²¹ impoverish modern understandings of Muslim American identity within and without the law.

This Essay also analyzes how prevailing dissonance between Muslim American and indigent American identities intensifies the vulnerability of those people that qualify as both. The analysis focuses on the fluidly shifting and protracting anti-terror landscape that situates Muslim Americans as primary suspects and prospective radicals. In light of intensifying “American Islamophobia,”²² and the deployment of CVE policing disproportionately targeting Muslim Americans,²³ there are distinct perils that these systems pose to the civil liberties of indigent Muslim Americans. This population represents the most frequent targets of CVE policing programs, which are largely deployed in concentrated, urban, and economically disadvantaged contexts. Disproportionate CVE policing of indigent Muslim American communities, in turn, endangers (and chills) their constitutionally protected First Amendment activities²⁴ and encroaches on their Fourth Amendment protections.²⁵

islamic-state.html [https://perma.cc/HN6T-5JVU]; see also Khaled A. Beydoun, *The Ethnicity of San Bernardino Shooters Doesn't Matter*, AL JAZEERA (Dec. 4, 2015), <http://www.aljazeera.com/indepth/opinion/2015/12/ethnicity-san-bernardino-shooters-doesn-matter-california-shooting-151203063729874.html> [https://perma.cc/N3JQ-ABG8] (critiquing how the ethnic or racial identity of the shooters raised the immediate presumption of terrorism, and illustrating a double standard with white culprits of mass shootings); Laura Wagner, *Still No Evidence Linking San Bernardino Shooters to ISIS, FBI Says*, NPR (Dec. 16, 2015), <http://www.npr.org/sections/twotwo-way/2015/12/16/460021165/still-no-evidence-linking-san-bernardino-shooters-to-isis-fbi-says> [https://perma.cc/5G7L-MX72] (reporting that the Federal Bureau of Investigation (FBI) prematurely linked the San Bernardino shooting to a terror attack inspired by ISIS).

19. See Victoria Shannon, *Brussels Attacks: What We Know and Don't Know*, N.Y. TIMES (Mar. 22, 2016), <http://www.nytimes.com/2016/03/23/world/europe/brussels-attacks-what-we-know-and-dont-know.html> [https://perma.cc/Y5D2-5PU6] (examining the airport bombing immediately after it took place).

20. See Khaled A. Beydoun, *Antebellum Islam*, 58 HOW. L.J. 141 (2015) [hereinafter *Antebellum Islam*].

21. See *Between Muslim and White*, *supra* note 12.

22. For public and private anti-Muslim systems in the United States, I use “American Orientalism” to refer to the state’s view of Islam and the “Muslim World” that began to take shape in the eighteenth century. This framing is not to be mistaken with Douglas Little’s use of “American Orientalism,” which illustrates the prevailing American foreign policy view of the Middle East that began to take shape after 1945. See generally DOUGLAS LITTLE, *AMERICAN ORIENTALISM: THE UNITED STATES AND THE MIDDLE EAST SINCE 1945* (3d ed. 2008).

23. Akbar, *supra* note 8, at 820.

24. U.S. CONST. amend. I.

25. U.S. CONST. amend. IV; see Amna Akbar, *National Security's Broken Windows*, 62 UCLA L. REV. 834, 897 n.278 (2015) [hereinafter *National Security's Broken Windows*] (“Because poor people have less privacy and less space—dynamics exacerbated in the city environment—police encounters are less regulated by the Fourth Amendment than when police aim to regulate the middle-class and wealthy.”); cf. *State v. Mooney*, 588 A.2d 145 (Conn. 1991) (holding that a homeless person

This Essay is comprised of three Parts. Part I provides a demographic profile of indigent Muslim America. A portrait of indigent Muslim Americans is currently absent from legal and social science literature, an alarming scholarly void given the prolific research and writing around Muslim American identity since 9/11.²⁶ Disaggregating the Muslim American population is an essential step toward fostering enhanced scholarly understanding of these Muslim American communities and victimhood. Ideally, this understanding will facilitate practical and advocacy interventions in indigent and “near indigent” Muslim American communities that address their unique concerns.²⁷ Part II examines the conceptual and structural frameworks of Islamophobia and CVE, respectively, and their broader and intersecting impact on Muslim America at large. Part III analyzes the distinct threats Islamophobia and CVE policing present to indigent Muslim Americans. I argue that these threats’ convergence with racialized poverty in the very spaces where CVE policing is most commonly deployed compounds their impact.

I.

PROFILING POVERTY IN MUSLIM AMERICA

In America today, 45.3 million people—or 14.5 percent of the aggregate population—live below the poverty line.²⁸ In the midst of a fragile economy and the “shrinking [of an] American middle class,”²⁹ this figure is poised to increase gradually, and the gap between the haves and the have-nots is certain to broaden. Those currently living below the poverty line, including 45 percent of the Muslim American population, will generally see their condition spiral further downward and will in turn face enhanced threats from the perils associated with poverty.³⁰

has a reasonable expectation of privacy in his duffel bag and closed cardboard box located under a highway bridge, as these objects constituted his home).

26. The focus on poverty and its relationship with radicalization, and terrorism at large, is building within the social science literatures, where commentators have focused on indigent American and foreign spaces as a “breeding ground for radicalism” and contended that “socioeconomic development appears compelling as an effective antidote.” Ömer Taşpınar, *Fighting Radicalism Not ‘Terrorism’: Root Causes of an International Actor Redefined*, 29 SAIS REV. 75, 75 (2009); see also Karen Von Hippel, *The Role of Poverty in Radicalization and Terrorism*, in DEBATING TERRORISM AND COUNTERTERRORISM: CONFLICTING PERSPECTIVES ON CAUSES, CONTEXTS AND RESPONSES 52–68 (Stuart Gottlieb ed., 2d ed. 2014) (explaining the perspective of a U.S. State Department official on the role indigence plays in the development and recruitment of radicals).

27. “Near indigence” refers to an economic status that is not far above the legal poverty line.

28. *Income, Poverty and Health Insurance Coverage in the United States: 2013*, U.S. CENSUS BUREAU (Sept. 16, 2014), <http://www.census.gov/newsroom/press-releases/2014/cb14-169.html> [https://perma.cc/66ZT-H64R].

29. Alicia Parlapiano, Robert Gebeloff & Shan Carter, *The Shrinking American Middle Class*, N.Y. TIMES (Jan. 26, 2015), <http://www.nytimes.com/interactive/2015/01/25/upshot/shrinking-middle-class.html> [https://perma.cc/ZGQ6-38KU].

30. Jennifer VanFleet, *The Struggles & Predicaments of Low-Income Families & Children in Poverty*, 1 HUM. ARCHITECTURE 37, 38 (2002).

Muslim America is diverse along racial, ethnic, and nationality-based lines.³¹ In fact, Muslim Americans hail from “nearly 80 nationalities and cultural backgrounds,”³² moving some to brand the Muslim American population “a ‘microcosm’ of the Muslim world.”³³ Overlaid with their racial, generational, cultural, and linguistic diversity,³⁴ Muslim Americans are also disparately situated along economic lines. Yet, attention to indigent segments of the Muslim America has been virtually nonexistent, as research and scholarship continue to focus on the racial and cultural diversity of the population. This is particularly true within legal scholarship, where scrutiny of Muslim American communities and bodies is rising, but genuine understanding of the existential distinctions and diversity within the population remains shallow.³⁵

This Section presents a profile of the indigent Muslim American population that is currently absent from legal scholarship. Part I.A offers a statistical snapshot of indigent Muslim America. Part I.B grapples with the misconception that poverty is exclusively experienced by “indigenous” (versus “immigrant”) Muslim Americans.³⁶ And in so doing, Part I.B highlights how discrete segments of the Muslim American population experience indigence beyond this binary.

A. *Indigent Muslim America: A Snapshot*

Muslim identity is *imagined* far more than it is *seen*. Rather than observing the genuine corporeal contours of the Muslim American population, Americans frequently visualize individual and collective Muslim bodies

31. *Between Muslim and White*, *supra* note 12, at 41–42.

32. Ashley Moore, *American Muslim Minorities: The New Human Rights Struggle*, HUM. RTS. & HUM. WELFARE 91 (2010).

33. Toni Johnson, *Muslims in the United States*, COUNCIL ON FOREIGN REL. (2011), <http://www.cfr.org/united-states/muslims-united-states/p25927#pl> [<https://perma.cc/A4UB-MNHF>].

34. See also Hilal Elver, *Racializing Islam Before and After 9/11: From Melting Pot to Islamophobia*, 21 TRANSNAT’L L. & CONTEMP. PROBS. 119, 124 (2012).

35. Legal scholarship, after 9/11 and today, addressing Muslim Americans tends to conflate “Muslim” with “Arab” and “Middle Eastern,” in turn, paying little attention to the racial, socioeconomic, or sectarian diversity within Muslim American communities. My scholarship seeks to dismantle these confluents, engaged first by MOUSTAFA BAYOUMI, *HOW DOES IT FEEL TO BE A PROBLEM?: BEING YOUNG AND ARAB IN AMERICA* (2008). With regard to CVE policing, the work of Amna Akbar and Sahar Aziz, whose work is central to this Essay, implicitly addresses the socioeconomic and racial distinctions within Muslim American communities, signaling a gradually evolving understanding and critical engagement of the panoply of distinctions and diversity within Muslim America.

36. SHERMAN A. JACKSON, *ISLAM AND THE BLACKAMERICAN: LOOKING TOWARD THE THIRD RESURRECTION* 23 (2005). For a recent critique of the “immigrant vs. indigenous binary,” see Khaled A. Beydoun, *Beyond a Binary: Muslim-America More than “Indigenous and Immigrant,”* ISLAMIC MONTHLY (July 23, 2014), <http://theislamicmonthly.com/beyond-a-binary-muslim-america-more-than-indigenous-and-immigrant> [<https://perma.cc/M7QH-TBPK>] [hereinafter *Beyond a Binary*].

through an “Orientalist” prism.³⁷ Orientalism shaped judicial perceptions and misperceptions of Islam and Muslims through the “Naturalization Era,”³⁸ thereby embedding an understanding of Muslims as “irreducibly foreign and inassimilable,”³⁹ Arab, and un-American. Scholars have continued to portray Islam and Muslims as both the civilizational foils and normative antithesis of the West.⁴⁰ This, in turn, has supplanted the true multicultural shape of Muslim American identity with a neatly crafted, distorted, and one-dimensional caricature.⁴¹ Such residual effects and emanations of American Orientalism⁴² perpetuate a flat and narrow understanding of Muslim Americans.

This limited view of Muslim Americans conceals the fact that a considerable segment of that population is indigent or near indigent. Although the First Amendment restricts the U.S. Census Bureau from collecting religious demographic data, nongovernmental research has rendered an invaluable preliminary economic portrait of Muslim America.⁴³ For context, the U.S. Department of Health and Human Services draws the poverty line at \$28,410 for a family of five and \$32,570 for a family of six.⁴⁴ A 2011 study by the Pew Research Center (Pew Study) found that 45 percent of the Muslim American

37. See generally EDWARD W. SAID, *ORIENTALISM* (1979) (asserting that the Middle East is positioned as the diametric opposite of the West, classifying the former as the “Orient” and the latter as the “Occident”). Said defines Orientalism as:

[A] created body of theory and practice in which, for many generations, there has been a considerable material investment. Continued investment made Orientalism, as a system of knowledge about the Orient, an accept grid for filtering through the Orient into Western consciousness, just as the same investment multiplied—indeed, made truly productive—the statements proliferating out from Orientalism into the general culture.

Id. at 6.

38. The Naturalization Era is the period from 1790 through 1952, during which time naturalization law mandated whiteness as a prerequisite for citizenship (excluding Blackness following the abolition of slavery). See IAN HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* xiv (1996). Whiteness, during the Naturalization Era, vacillated between narrow and broader constructions, whereby judges subjectively drew upon a range of criterion—eugenics, physical appearance, language, geographic origin, religion, and other factors—to find an immigrant petitioner within or beyond the statutory definition of whiteness.

39. *Between Muslim and White*, *supra* note 12, at 47.

40. See generally SAMUEL P. HUNTINGTON, *THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER* (1996) (arguing that “Western civilization” is at odds with, and poised to clash, with “Islamic civilization”). For a critique of Huntington, which focuses specifically on deconstructing his “Islamic civilization” construct, see Khaled A. Beydoun, Comment, *Dar al-Islam Meets “Islam as Civilization”: An Alignment of Politico-Theoretical Fundamentalisms and the Geopolitical Realism of this Worldview*, 4 *UCLA J. ISLAMIC & NEAR E. L.* 143, 159 (2005).

41. SAID, *supra* note 37, at 2. This discourse is based on a civilizational binary whereby the Occidental sees the Oriental as its diametric foil. Said titled this binary “Orientalism.” *Id.* at 6.

42. See discussion *infra* Part I.B.

43. The study, among other matters, closely examines the socioeconomic standing and stratification within the broader Muslim American population. See *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> [<https://perma.cc/MH9C-5XXZ>] [hereinafter 2011 Pew Study].

44. *2015 Poverty Guidelines*, *supra* note 3. Figures represent household income earned per year.

households reported household income of less than \$30,000 per year, compared to 36 percent for the general American public.⁴⁵ It is staggering that 45 percent of the Muslim American population lives at or below the legal poverty line while only fourteen percent of Muslim Americans boast of annual household incomes greater than \$100,000 and only 8 percent of Muslim Americans boast annual household incomes of between \$75,000 and \$99,999.⁴⁶

Thus, Muslim Americans—as a standalone faith group—are comparatively poorer than the broader American polity and, according to available data, poorer than any other American faith group.⁴⁷ These statistics clash with embedded stereotypes of Muslim Americans having material excess, “opulent wealth,”⁴⁸ and economically upward mobility.⁴⁹ This reality raises another dimension of concern as the “War on Terror” is fluidly expanding, localizing, and penetrating indigent and working-class Muslim American spaces.

B. Poverty Beyond the “Indigenous-Immigrant” Binary

Mirroring the broader Muslim American population, indigent Muslim America is a racially diverse mass, consisting of both indigenous and immigrant Muslim Americans. Poor Muslim Americans are generally huddled inside or on the outskirts of large metropolises, including Detroit, New York City, Minneapolis, and Philadelphia.⁵⁰ But indigent Muslim American communities are also found in medium and small American cities where the perils of Islamophobia may be even greater, and the protections from it more meager.⁵¹

A primary threat to the “unity of American Muslims” is income level disparities, which engender segregated spaces of worship, as well as social,

45. 2011 Pew Study, *supra* note 43.

46. *Id.*

47. *Id.*

48. See also JACK G. SHAHEEN, *THE TV ARAB* (1984) (setting out a foundational account of television misrepresentations of Arab and Arab Americans through the early 1980s); TIM JON SEMMERLING, “EVIL” ARABS IN AMERICAN POPULAR FILM: ORIENTALIST FEAR (2006) (presenting a more recent accounting of caricatured portrayals of Arab characters in American cinema). These stereotypes emanate from the conflation of Muslim with Arab identity and, more specifically, from a mistaken association of the latter with Saudi or Gulf State Arabs, who are linked to material excess and extreme wealth. See generally JACK G. SHAHEEN, *REEL BAD ARABS: HOW HOLLYWOOD VILIFIES A PEOPLE* (2001) (presenting a comprehensive history of cinematic and television misrepresentations of Arab, Middle East and North African, and Muslim identity).

49. Johnson, *supra* note 33. A common myth is that “U.S. Muslims are more affluent, educated, and culturally integrated than Muslims in Western Europe.” *Id.* This proposition is demystified by closer scrutiny of indigence within specific segments of the Muslim American population. *Id.*

50. This was deduced from the statistics availed by the 2011 Pew Study, *supra* note 43, combined with the findings in MARYAM ASI & DANIEL BEAULIEU, U.S. CENSUS BUREAU, *ARAB HOUSEHOLDS IN THE UNITED STATES: 2006–2010*, at 4–5 (May 2013), <https://www.census.gov/prod/2013pubs/acsbr10-20.pdf> [<https://perma.cc/Z79P-TCCM>].

51. 2011 Pew Study, *supra* note 43.

cultural, and political discord.⁵² Although racism, tribalism, “colorism,”⁵³ and ethnocentrism within the Muslim American population are pervasive and profuse,⁵⁴ assertions that only “indigenous” Muslim American communities experience poverty are erroneous and shortsighted.⁵⁵ While the Pew Study did not break down its statistics by race or nationality, social science literature and case studies of specific Muslim American communities render a clearer view of how poverty is experienced along these lines and across the indigenous Muslim and immigrant Muslim binary.⁵⁶

1. *Undoing Stereotypes*

Understanding poverty within Muslim America requires looking beyond, “the ‘Arabification’ of Muslims, and the ‘Muslimification’ of Arabs.”⁵⁷ The household income figures compiled by the Pew Research Center illustrate that Muslim Americans experience indigence across racial, national, and generational lines. So, the caricaturing of Muslims as exclusively Arabs renders a myopic and mutated perception of indigence within various segments of the Muslim American population.⁵⁸

Muslim America is distinct from Arab America—the latter is an ethnic group, while the former is a population linked by religion.⁵⁹ Indeed, the vast majority of Arab Americans are Christians.⁶⁰ Close scrutiny of Muslim

52. Lisa Gail Omanson, *African-American and Arab American Muslim Communities in the Detroit Ummah*, IOWA RES. ONLINE 21 (2013), <http://ir.uiowa.edu/cgi/viewcontent.cgi?article=4726&context=etd> [https://perma.cc/R8TY-UQ6X].

53. “Colorism” is discrimination along lines of skin complexion, where darker skin is stigmatized and lighter skin coveted. Colorism generally, though not exclusively, refers to intraracial prejudice. *See generally* Angela P. Harris, *From Color Line to Color Chart: Racism and Colorism in the New Century*, BERKELEY J. AF.-AM. L. & POL’Y 52, 54 (2008) (framing and analyzing colorism and its effects).

54. For a poignant account of anti-Black racism within the Arab and Arab American communities, see Susan Abulhawa, *Confronting Anti-Black Racism in the Arab World*, AL JAZEERA (July 7, 2013), <http://www.aljazeera.com/indepth/opinion/2013/06/201362472519107286.html> [https://perma.cc/VF7Z-642L].

55. The term “indigenous” Muslim Americans generally refers to African American Muslims—a framing discussed *infra* Part I.B.2. Sherman Jackson established, and is most prominently associated with, this framing. *See* JACKSON, *supra* note 36, at 17.

56. *Id.* The Muslim American population is, within scholarship, regularly viewed in terms of an immigrant versus indigenous binary—the latter being the African American population and the former comprised of ethnic groups emigrating to the United States beginning in 1965 (after the dissolution of immigration quotas imposed on Muslim-majority nations).

57. Reem Bahdi, *No Exit: Racial Profiling and Canada’s War Against Terrorism*, 41 OSGOODE HALL L.J. 293, 296 (2003).

58. “Almost all Muslims are portrayed as Arabs, despite the fact that only about 20 percent of the worldwide Muslim population identify themselves as Arabs.” Moore, *supra* note 32, at 91.

59. “At no point in American history have Arabs constituted a majority, or even a plurality, of the Muslim American population. Nor were Arabs the first Muslims to arrive in North America.” *Between Muslim and White*, *supra* note 12, at 41.

60. ARAB AM. NAT’L MUSEUM, ARAB AMERICANS: AN INTEGRAL PART OF AMERICAN SOCIETY 15–16 (2011), <http://www.arabamericanmuseum.org/umages/>

American demographical figures reveals that the population is richly diverse along racial and ethnic lines: “White Americans comprise 30% and Black Americans 24% of the total Muslim American population. Asian Americans follow at 21%. The remaining population is rounded out by a rapidly rising community of Hispanics (6%) and those who self-describe as ‘other/mixed.’”⁶¹ At 23 percent, Arab Americans comprise less than one-fourth of the Muslim American population.⁶² Yet, Muslim American identity continues to be improperly conflated and used interchangeably with Arab identity.

The rapid increase in the Muslim American population has served as a primary catalyst in its socioeconomic stratification. Scholars branded Islam the “fastest growing religion in the United States” more than two decades ago—a claim that still holds true today.⁶³ This domestic growth tracks with Islam’s rapid global expansion.⁶⁴ Demographic trends also indicate that “[t]he Muslim population in the United States . . . is expected to double by 2030 because of immigration and higher birth rates.”⁶⁵

This prolific domestic growth and diversity has made poverty pervasive across racial and generational lines within the Muslim American population. Forty-seven percent of foreign-born Muslim Americans have a household income of less than \$30,000 per year, compared to 43 percent of native-born Muslim Americans.⁶⁶ Divergence along racial and generational lines is greater at the top, with 18 percent of foreign-born Muslim Americans holding household incomes greater than \$100,000, compared to 8 percent of native-born Muslim Americans.⁶⁷ These statistics indicate that economic upward mobility is more pronounced among specific immigrant segments of the Muslim American population, particularly established Levantine Arab and South Asian segments.

pdfs/resource_booklets/AANM-ArabAmericansBooklet-web.pdf [https://perma.cc/938C-WCQH] (noting that the Christian Arab American population is significantly larger than the Muslim Arab American population because Christian Arabs have been coming to the United States for a longer period of time). 63 percent of Arab Americans today identify as Christian. *Id.* at 13; see also ARAB AMERICAN ENCYCLOPEDIA 97 (Anan Ameri & Dawn Ramey eds., 2000).

61. *Between Muslim and White*, *supra* note 12, at 42–43.

62. 2011 Pew Study, *supra* note 43.

63. Carol L. Stone, *Estimate of Muslims Living in America*, in *THE MUSLIMS OF AMERICA* 25 (Yvonne Yazbeck Haddad ed., 1991). For a recent study on growth of Muslim American population, see PEW RESEARCH CTR., *AMERICA’S CHANGING RELIGIOUS LANDSCAPE* 3 (May 12, 2015), <http://www.pewforum.org/files/2015/05/RLS-08-26-full-report.pdf> [https://perma.cc/5XCR-473P].

64. “Muslims will grow more than twice as fast as the overall world population between 2010 and 2050 and, in the second half of this century, will likely surpass Christians as the world’s largest religious group.” Michael Lipka & Conrad Hackett, *Why Muslims Are the World’s Fastest Growing Religious Group*, PEW RESEARCH CTR. (Apr. 23, 2015), <http://www.pewresearch.org/fact-tank/2015/04/23/why-muslims-are-the-worlds-fastest-growing-religious-group> [https://perma.cc/7DW2-2N33].

65. Johnson, *supra* note 33.

66. 2011 Pew Study, *supra* note 43.

67. *Id.*

Unemployment and underemployment are pervasive within the Muslim America, contributing to the indigence of the population. In general, 40 percent of Muslim Americans are currently unemployed, while 29 percent are underemployed.⁶⁸ But unemployment and underemployment are disparately experienced by native-born Muslim Americans at a higher clip, at rates of 6 percent and 4 percent greater than their foreign-born counterparts, respectively.⁶⁹ These gaps are likely attributed to a higher incidence of racial discrimination, crossgenerational poverty, and unequal access to educational and employment opportunities suffered by native-born African American Muslims, who established the first Muslim communities in the United States,⁷⁰ but are frequently neglected by mainstream Muslim American advocacy and service organizations that are overwhelmingly led and staffed by Arab and South Asian American Muslims.⁷¹

2. African American Muslims

Legal scholarship concerning Muslim Americans has largely ignored the rich history and modern experiences of African American Muslims. Because they were the first Muslims to set foot on American soil⁷² and establish Muslim communities—first while bonded by slavery—African American Muslims have contributed greatly to the broader Muslim American narrative.⁷³ Yet, this segment of the Muslim American population, which ranks as its largest plurality, remains sidelined from advocacy, political, and scholarly interventions.⁷⁴

68. *Id.*

69. *Id.*

70. For a history of African American Muslims starting with the enslaved Muslim population in the Antebellum South, see *Antebellum Islam*, *supra* note 20. See also SYLVIANE A. DIOUF, *SERVANTS OF ALLAH: AFRICAN MUSLIMS ENSLAVED IN THE AMERICAS* (1998).

71. “National Muslim organizations and advocacy groups largely led by South Asian and Arab Americans have made important gains and victories in the struggle for civil liberties and media representation, however many have left a wake of disgruntled Black American Muslims former employees, volunteers, and community members.” Margari Hill, *Islamophobia and Black American Muslims*, HUFFINGTON POST (Dec. 15, 2015), http://www.huffingtonpost.com/margari-hill/islamophobia-and-black-am_b_8785814.html [<https://perma.cc/Z5R3-CRAK>].

72. *Id.*

73. See generally EDWARD E. CURTIS IV, *ISLAM IN BLACK AMERICA: IDENTITY, LIBERATION, AND DIFFERENCE IN AFRICAN-AMERICAN ISLAMIC THOUGHT* (2002) (offering a comprehensive history of the various Muslim movements that originated within, or penetrated into, the African American experience); KAMBIZ GHANEABASSIRI, *A HISTORY OF ISLAM IN AMERICA: FROM THE NEW WORLD TO THE NEW WORLD ORDER* (2010) (offering a comprehensive history of Islam in the United States, which includes close attention to the major African American Muslim movements); RICHARD BRENT TURNER, *ISLAM IN THE AFRICAN-AMERICAN EXPERIENCE* (1997) (offering a prominent account of the major Muslim movements and traditions within the African American experience).

74. Legal conception of Muslim identity is complicated when the subjects are not Arab but Black. This elucidates how the legal conception of Islam as an exclusively Arab religion prevents seeing Black subjects as legitimately Muslim—a dissonance that still continues today. For a recent article discussing how the political process and politicians overlook African American Muslims, see

Consistent with this sidelining, the Pew Research Group listed “native-born African American Muslims [as] the most disillusioned segment of the U.S. Muslim population.”⁷⁵ This disillusionment is, in great part, linked to the indigence that grips African American Muslim households. Recent figures place 27.4 percent of the broader African American community below the poverty line.⁷⁶ Lawrence D. Bobo observed that “[t]he official black poverty rate has fluctuated between two to three times the poverty rate for whites” since the mid-1960s through the present day.⁷⁷ African American Muslim communities are generally located within concentrated African American urban spaces.⁷⁸ Thus, they face the machinations that perpetuate poverty within those spaces in addition to the intersecting scrutiny of racialized community policing and emerging CVE surveillance.⁷⁹ These machinations include decaying school systems, enhanced vulnerability to racial profiling and police brutality, and disproportionate incarceration rates for Black men and women.⁸⁰

African American Muslims comprise roughly one quarter of the entire Muslim American population,⁸¹ a figure that would be larger if members of the

Maushaun D. Simon, *Racial and Religious Identities Collide Leaving Black Muslims Overlooked*, NBC NEWS (Dec. 13, 2015), <http://www.nbcnews.com/news/nbcblk/religious-racial-identities-collide-leaving-black-muslims-overlooked-n479066> [<https://perma.cc/S7PN-V4LW>].

75. PEW RESEARCH CTR., *MUSLIM AMERICANS: MIDDLE CLASS AND MOSTLY MAINSTREAM* 6 (2007), <http://www.pewresearch.org/files/old-assets/pdf/muslim-americans.pdf> [<https://perma.cc/2EHR-U6Q7>].

76. *Poverty in the United States*, U. MICH. NAT’L POVERTY CTR. (2015), <http://www.npc.umich.edu/poverty> [<https://perma.cc/TC2Q-X9ZF>].

77. Bobo, *supra* note 9, at 19.

78. For example, the established and thriving African American Muslim community in Philadelphia is located within the heavily concentrated African American sections of the city:

Kahera (2002) identified Philadelphia as one of the main urban areas in which large Muslim populations have been found. In fact, most urban areas along the east coast have been identified as having large Muslim populations including New York, Newark, and Washington, DC (Kahera, 2002). According to Carter (2003) the practice of the Sunni tradition in the African American community in general can be traced back to at least 1938.

Brian L. Coleman, *Post-Conversion Experiences of African-American Male Sunni Muslims: Community Integration and Masculinity in Twenty-First Century Philadelphia* (2009) (Ph.D. Dissertation, Univ. of Penn.), <http://repository.upenn.edu/cgi/viewcontent.cgi?article=1076&context=edissertations> [<https://perma.cc/H4LL-2AY4>] (citing Akel I. Kahera, *Urban Enclaves, Muslim Identity and the Urban Mosque in America*, 22 J. MUSLIM MINORITY AFF. 369–80 (2002)).

79. CVE programming was launched in three pilot cities—Los Angeles, Minneapolis, and Boston—all of which boast sizable African American Muslim communities that are largely located within the indigent and working-class sections of those cities. In addition, the subsequent set of cities in which the Department of Homeland Security is contemplating implementing CVE programs—Detroit, Chicago, and New York City—also boasts visible African American Muslim populations.

80. For a comprehensive and landmark work on these crises within inner city communities, with particular emphasis on the disproportionate incarceration rates of poor, Black people—facilitated by the erosion of race-conscious programs in education, see generally MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010).

81. One commentator claimed that “42 percent of [Muslims Americans ten years ago] were said to be Blackamericans.” See JACKSON, *supra* note 36, at 4.

Nation of Islam were included.⁸² With their largest numbers in urban centers, including Detroit,⁸³ Philadelphia,⁸⁴ Atlanta,⁸⁵ Chicago,⁸⁶ and New York City,⁸⁷ indigent African American Muslims sit at the intersection of poverty, racial profiling, police brutality, CVE policing, and the “school to prison pipeline.”⁸⁸ Recent protests throughout the country, dubbed the “Black Lives Matter Movement,” have framed these issues as structural ills that perpetuate the subordination, criminality, and impoverishment of African Americans.⁸⁹

While the plight of African American Muslims has been integrated into advocacy initiatives and social movements addressing the civil rights concerns of African Americans at large, their distinct victimhood and vulnerability to discrimination, anti-Muslim animus, and police violence has been largely neglected by mainstream Muslim American interventions.⁹⁰ African American

82. See Khaled A. Beydoun, *Islam Incarcerated: Religious Accommodation of Muslim Prisoners Before Holt v. Hobbs*, 84 U. CIN. L. REV. (forthcoming 2016) [hereinafter *Islam Incarcerated*].

83. See generally Omanson, *supra* note 52.

84. For a study of African American males’ conversion to Islam in Philadelphia, which renders an intimate illustration of the city’s sizable and expanding African American Muslim community, see generally Coleman, *supra* note 78.

85. See Don Terry, *Black Muslims Enter Islamic Mainstream*, N.Y. TIMES (May 3, 1993), <http://www.nytimes.com/1993/05/03/us/black-muslims-enter-islamic-mainstream.html> [<https://perma.cc/F65B-H33L>] (profiling the 1993 burgeoning of the African American Muslim community in Atlanta and that community’s transition from the Nation of Islam to “orthodox Islam”).

86. Elijah Muhammad made Chicago the Nation of Islam’s headquarters in 1942. That community is still strong, but it also spurred the growth of Sunni Islam among African Americans in the city. See MARTHA F. LEE, *THE NATION OF ISLAM: AN AMERICAN MILLENARIAN MOVEMENT* 24–26 (1996).

87. Islam within the African American experience in New York City has a long and established tradition. Although generally associated with Malcolm X and his stewardship of Harlem’s Moslem Mosque Number 2, African American Muslims migrated to the city in the nineteenth century when they fled northward to escape slavery. See Imam Al-Hajj Talib Abdur-Rashid, *African and African American Muslim Presence from Early New York to the Present*, MOSQUE ISLAMIC BROTHERHOOD INC., <http://www.mibnyc.com/index.php/articles/68-muslims-in-early-ny> [<https://perma.cc/M724-CQE9>].

88. See Nancy Heitzig, *Education or Incarceration: Zero Tolerance Policies and the School to Prison Pipeline*, F. ON PUB. POL’Y (2009).

89. One of this movement’s most resonant and compelling voices is writer Ta-Nahisi Coates, columnist for *The Atlantic*. His article, *The Case for Reparations*, outlines many of the structural inequities that underline the movement’s demands and principal rallying cries. Ta-Nahisi Coates, *The Case For Reparations*, ATLANTIC (June 2014), <http://www.theatlantic.com/features/archive/2014/05/the-case-for-reparations/361631> [<https://perma.cc/FGS5-4XRP>]; see also Justin Hansford & Meena Jagannath, *Ferguson to Geneva: Using the Human Rights Framework to Push Forward a Vision for Racial Justice in the United States After Ferguson*, 12 HASTINGS RACE & POVERTY L.J. 121 (2015) (voicing an appeal to prominent international human rights instruments as the legal basis for advancing the civil rights of African Americans).

90. Zeba Khan, *American Muslims Have a Race Problem*, AL JAZEERA (June 16, 2015), <http://america.aljazeera.com/opinions/2015/6/american-muslims-have-a-race-problem.html> [<https://perma.cc/Y2QJ-W6ED>]. As illustrative of this neglect, Khan cites how mainstream Muslim American organizations failed to address the killing of two African American Muslims by Boston police. *Id.* (“While overt racism may become less common . . . the lack of reaction to the Sheikh-Hussein murder and more recently, the killing of Usaama Rahim—the 26-year-old black Muslim shot

Muslim communities have begun to publicly voice this alienation, citing “unilateral solidarity” and “exploitation of Black bodies” to advance non-Black Muslim interests.⁹¹

3. Immigrant Muslims

Poverty is comparatively higher among immigrant Muslim populations than Muslim Americans as a whole. For instance, 82 percent of the thirty to eighty thousand Somalis living in Minnesota are “near or below the poverty line.”⁹² Somalis began to heavily migrate to Minnesota—specifically to Minneapolis and St. Paul—following the 1991 Somali Civil War.⁹³ Iraqi households centered largely in Dearborn and Detroit, Michigan, have an average household income of \$32,075 per year.⁹⁴ Many of those Iraqi Muslims migrated to Michigan as a result of the 2003 Iraq War.⁹⁵ A considerable segment of these Somali and Iraqi immigrant populations are Shiite Muslim refugees.⁹⁶

Similarly, the median income of the Yemeni population is also near the legal poverty threshold, standing at \$34,667 per year.⁹⁷ The Yemeni population is largely concentrated in large urban centers throughout the United States—principally in New York, Detroit, and the Bay Area of California—where the cost of living is greater and the real value of earned income is lower.⁹⁸ Moreover, the Yemeni immigrant real poverty level is even lower because

by Boston police on June 2 during a terrorism investigation—demonstrate that complacency in response to violence perpetrated against black Muslims may not.”).

91. Layla Abdullah-Poulos, *Unilateral Solidarity: Abandoning Blacks in their Quest for Social Justice*, ISLAMIC MONTHLY (Sept. 30, 2015), <http://theislamicmonthly.com/unilateral-solidarity> [https://perma.cc/2YLG-T6FH]; see Khaled A. Beydoun, *Why Ferguson is Our Issue: A Letter to Muslim America*, 31 HARV. J. RACIAL & ETHNIC JUST. 1, 2–3 (2015).

92. Elizabeth Dunbar, *Comparing the Somali Experience in Minnesota to Other Immigrant Groups*, MPR NEWS (Jan. 22, 2010), <http://www.mprnews.org/story/2010/01/25/comparing-the-somali-experience-in-minnesota-to-other-immigrant-groups-of-immigrants-> [http://perma.cc/X44T-XM2Y].

93. See Solomon A. Getahun, *Africans and African Americans from East Africa, 1940–Present*, in IMMIGRANTS IN AMERICAN HISTORY: ARRIVAL, ADAPTATION, AND INTEGRATION 696 (Elliot Robert Barkan ed., 2013) (looking at Table 4, summarizing Somalis in the United States).

94. ASI & BEAULIEU, *supra* note 50, at 4–5.

95. For a comprehensive study, including statistics of the resettlement of Iraqi refugees in the metropolitan Detroit area, see GEORGETOWN UNIV. LAW CTR., HUMAN RIGHTS INSTITUTE, REFUGEE CRISIS IN AMERICA: IRAQIS AND THEIR RESETTLEMENT EXPERIENCE (2009), http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1001&context=hri_papers [https://perma.cc/487V-2S4F]. For an intimate media depiction of the Iraqi refugee community in metro-Detroit, see Bobby Gosh, *For Iraqi Refugees, A City of Hope*, TIME (Sept. 24, 2009), <http://content.time.com/time/nation/article/0,8599,1925150,00.html> [https://perma.cc/R6G2-TWW7].

96. See Ihsan Bagby, *Strengths, Challenges and Ideology of Detroit Mosques: Reflections on the Detroit Mosque Study (2003)*, 9 J. ISLAMIC L. & CULTURE 87, 102 (2004).

97. ASI & BEAULIEU, *supra* note 50, at 4–5.

98. Kim Schopmeyer, *Arab Detroit After 9/11: A Changing Demographic Portrait*, in ARAB DETROIT 9/11: LIFE IN THE TERROR DECADE 49 (Nabeel Abraham, Sally Howell, & Andrew Shryock eds., 2011).

“Yemeni households had the largest average household size among the selected Arab groups, 4.34 people per household.”⁹⁹

In addition to African and Arab American Muslim populations, poverty also penetrates deep into the South Asian Muslim population.¹⁰⁰ The Asian American Federation “found that 53.9% of Bangladeshis living in Brooklyn [were] poor—the highest rate among the city’s eight largest Asian immigrant groups.”¹⁰¹ Approximately 89 percent of Bangladeshis (at large) are Muslims,¹⁰² meaning this segment of the broader Muslim American milieu is one of the poorest and most isolated groups.

These statistics vividly demystify three stereotypes: first, that “immigrant Muslim America” is a monolith;¹⁰³ second, that immigrant Muslim Americans are a similarly situated, economically upwardly mobile, well-to-do bloc;¹⁰⁴ and third, that “immigrant” Muslim Americans are perpetually foreign regardless of legal or generational status—a framing that curbs recognition of these groups as citizens.¹⁰⁵

The demographic profile offered by this Section is a first step toward building a stronger foundation of knowledge about the indigent Muslim American community. The racial complexity and economic asymmetry within Muslim America¹⁰⁶ deserves greater attention, particularly within legal scholarship, a forum of special significance given the law’s status as the foundation and fulcrum of anti-terror policing. An increased focus on Muslim American communities is especially important as private and public Islamophobia continues to intensify.

99. ASI & BEAULIEU, *supra* note 50, at 3.

100. South Asian American identity is a sociopolitical construct codified into law by the U.S. Census Bureau.

101. Simone Weichselbaum, *New Face of Poverty? Brooklyn’s Bangladeshi Community Poorer than Blacks and Latinos*, N.Y. DAILY NEWS (May 9, 2012), <http://www.nydailynews.com/new-york/brooklyn/new-face-poverty-brooklyn-bangladeshi-community-poorer-blacks-latinos-article-1.1075313> [<http://perma.cc/QD2V-HX8M>].

102. *The World Factbook: Bangladesh*, CIA, <https://www.cia.gov/library/publications/the-world-factbook/geos/bg.html#People> [<https://perma.cc/EDD4-28WQ>].

103. See JACKSON, *supra* note 36.

104. Muslim identity is frequently linked to foreign, outsider, or alien status. The monolithic designation of “immigrant” to non-Black Muslim Americans perpetuates the stereotype that these segments of the Muslim American population are foreign newcomers and not citizens. This illustrates another shortcoming of Sherman Jackson’s indigenous-immigrant Muslim American binary: “When does one cease from becoming an ‘immigrant?’ Is ‘indigenous Muslim’ identity attainable for the children of immigrants? Or alternatively, is there an intermediate status for the children of immigrants, such as a fourth generation Muslim-American from Turkey, for instance?” *Beyond a Binary*, *supra* note 36.

105. *Id.*

106. See *Islam Incarcerated*, *supra* note 82 (discussing racism and racial division within the Muslim American population).

II.
PRIVATE AND PUBLIC ISLAMOPHOBIA

It cannot be expected that as a class [Muslims] would readily intermarry with our population and be assimilated into our civilization.

—Judge Arthur J. Tuttle, Eastern District Court of Michigan,
in *In re Ahmed Hassan*, December 15, 1942¹⁰⁷

[Islam is] [in]consistent with the [C]onstitution. . . . I would not advocate that we put a Muslim in charge of this nation.

—Ben Carson, Republican candidate for
U.S. President, September 20, 2015¹⁰⁸

Islamophobia is a fluid and dynamic system whereby lay actors and law enforcement target Muslim Americans based on irrational fear and hatred.¹⁰⁹ From a legal standpoint:

Islamophobia [is] the presumption that Islam is inherently violent, alien and inassimilable, and expressions of Muslim identity correlative with a propensity for terrorism. Islamophobia is rooted in understandings of Islam as civilizational antithesis, and perpetuated by government structures and private citizens. Finally, Islamophobia is also process, and namely, the dialectic by which state policies targeting Muslims endorse prevailing stereotypes, and in turn, embolden private animus toward Muslim subjects.¹¹⁰

Islamophobia is not a novel phenomenon, but is deeply rooted in the American halls of power and popular consciousness. Through its precedent system of Muslim misrepresentation and demonization, Islamophobic ideas and images find their core meanings from Orientalist baselines.¹¹¹ Whether it be

107. 48 F. Supp. 844, 845 (E.D. Mich. 1942).

108. *Meet the Press*, NBC NEWS (Sept. 20, 2015), <http://nbcnews.to/1KZnjUQ> [<http://perma.cc/2M6A-G5XR>] (statement made by Republican presidential candidate Ben Carson); see Hope Yen, *Ben Carson Says No to Muslim President*, U.S. NEWS & WORLD REP. (Sept. 20, 2015), <http://www.usnews.com/news/politics/articles/2015/09/20/gop-candidate-carson-muslims-shouldnt-be-elected-president> [<https://perma.cc/U585-2PGT>].

109. See generally Wajahat Ali et al., *Fear, Inc.: The Roots of the Islamophobia Network in America*, CTR. FOR AM. PROGRESS (Aug. 26, 2011), <https://www.americanprogress.org/issues/religion/report/2011/08/26/10165/fear-inc> [<https://perma.cc/AN9W-QCPC>] (presenting a pivotal study outlining the complex systems that form, facilitate, and dispense anti-Muslim bigotry in the United States).

110. Khaled A. Beydoun, *Islamophobia: Toward A Legal Definition and Framework*, COLUM. L. REV. ONLINE (forthcoming 2016).

111. *Id.* at 4.

from citizens or state agencies, corporations or police departments, a shared rage toward Islam and Muslim Americans characterizes the state of Islamophobia in America today.¹¹²

Islamophobia is not fixed or static. While “structural”¹¹³ or “private” Islamophobia seldom operate on distinct tracks,¹¹⁴ they converge to magnify the damages wrought on Muslim Americans. The perils engendered by private and public Islamophobia are greater within indigent and working-class Muslim American communities, where local and federal law enforcement overwhelmingly concentrates their surveillance resources and where anti-Muslim bigots tend to target and mobilize.¹¹⁵ Not only are they exposed to greater animus and violence than middle- and upper-class Muslim Americans, but indigent Muslim Americans also lack the resources to defend themselves. They are more reluctant than nonindigent Muslim Americans to report incidents of hate and violence to police due to mistrust of law enforcement, fear of police retribution and surveillance, and the looming threat of police informants.¹¹⁶

This Section examines the primary private and public manifestations of Islamophobia.¹¹⁷ Given the ample body of legal scholarship addressing the

112. See generally Muneer I. Ahmad, *A Rage Shared by Law: Post-September 11 Racial Violence as Crimes of Passion*, 92 CALIF. L. REV. 1259, 1264 (2004).

113. Structural Islamophobia:

[F]ear and suspicion of Muslims executed by institutions through the enactment and advancement of policies, most notably government agencies. These policies are built upon the presumption that Muslim identity is associated with national security threat, and while usually framed in a facially neutral fashion, disproportionately target Muslim subjects and disparately jeopardize, chill, and curtail their civil liberties.

Islamophobia: Toward A Legal Definition and Framework, supra note 110, at 4.

114. “Private Islamophobia—the fear, suspicion and violent targeting of Muslims by individuals, or private actors. This animus is generally carried forward by use of religious or racial slurs, mass protests or rallies, or violence and hate crimes inflicted on Muslim subjects by non-state actors.” *Id.* at 7.

115. In early October 2015, a recent wave of anti-Muslim protests took place throughout the country, including in New York, Detroit, and Phoenix. These protests were held near mosques and other concentrated Muslim American communities. For an opinion piece discussing the threat posed by this wave of anti-Muslim protests, see Arsalan Iftikhar, *Freedom of Religion Requires Freedom from Fear*, ATLANTIC (Oct. 9, 2015), <http://www.theatlantic.com/politics/archive/2015/10/protesting-american-mosques-at-gunpoint/409987> [<https://perma.cc/5F58-VR2R>].

116. For a careful analysis of the manifold fear engendered by the New York Police Department’s (NYPD) surveillance program, widely regarded as the domestic model for the now expanded CVE policing program, see Conor Friedersdorf, *The Horrifying Effects of NYPD Ethnic Profiling on Innocent Muslim Americans*, ATLANTIC (Mar. 28, 2013), <http://www.theatlantic.com/politics/archive/2013/03/the-horrifying-effects-of-nypd-ethnic-profiling-on-innocent-muslim-americans/274434> [<https://perma.cc/74Y8-RZX7>].

117. For example:

Two forms of racial violence swept across the United States in the aftermath of September 11. The first involved what traditionally would be classified as private violence: violence enacted by one (or more) private actor upon another, without direct state participation. This is typified by the thousands of physical attacks carried out by individuals against Arabs, Muslims, and South Asians after the terrorist attacks. The second form of violence is

sweeping anti-terror and national security reforms after 9/11,¹¹⁸ this Section focuses exclusively on emergent Islamophobic systems and frameworks that impact Muslim American groups—specifically, indigent Muslim Americans. Part II.A focuses on the establishment and expansion of “American Islamophobia.” Part II.B examines the rise of CVE, or counterradicalization policing.

A. *The Roots of American Islamophobia*

While framed as a new phenomenon, modern Islamophobia finds its epistemological roots in systems of Orientalism that predate the creation of the United States itself. Orientalism positions Islam and Muslims as a subordinate civilization,¹¹⁹ geopolitical antithesis, and ever-looming threat.¹²⁰ Seeded deep, these systems reemerge during moments of crisis and drive modern conceptions of Muslim suspicion and threat. These rooted baselines, which have never been more potent,¹²¹ are:

[T]ightly knit into the American fabric, and deeply rooted in its legal, political and popular imagination. Whenever a domestic terrorist attack takes place in America, many quickly turn to tropes of an “Islamic menace” or “violent foreigner”. While these tropes have taken on new forms and frames, they are conceptually identical to their predecessors.¹²²

traditionally deemed public, because of the direct involvement of state actors. After September 11, this took the form of a broad range of governmental policies that targeted “Muslim-looking” people.

Ahmad, *supra* note 112, at 1265.

118. See Susan M. Akram & Kevin R. Johnson, *Race, Civil Rights, and Immigration Law After September 11, 2001: The Targeting of Arabs and Muslims*, 58 N.Y.U. ANN. SURV. AM. L. 295 (2002); RACE AND ARAB AMERICANS BEFORE AND AFTER 9/11: FROM INVISIBLE CITIZENS TO VISIBLE SUBJECTS (Amaney Jamal & Nadine Naber eds., 2008); see also Sahar F. Aziz, *Caught in a Preventative Dragnet: Selective Counterterrorism in a Post-9/11 America*, 47 GONZ. L. REV. 429 (2012) (examining the disparate focus on specific racial and religious groups of various post-9/11 preventative counterterrorism programs).

119. “Orientalism depends for its strategy on this flexible *positional* superiority, which puts the Westerner in a whole series of possible relationships with the Orient without ever losing him the relative upper hand.” SAID, *supra* note 37, at 7.

120. The influence of Orientalism was evident in late-nineteenth and early-twentieth centuries American case law. See, e.g., *In re Ahmed Hassan*, 48 F. Supp. 843, 845 (E.D. Mich. 1942) (“It cannot be expected that as a class [Arabs] would readily intermarry with our population and be assimilated into our civilization. The small amount of immigration of these peoples to the United States is in itself evidence of that fact. Arabia, moreover, is not immediately contiguous to Europe or even to the Mediterranean.”); *Ex parte Caldwell*, 118 N.W. 133, 135 (Neb. 1908).

121. “‘Islamophobia’ is what it’s called today. But the rising fear, hate and discrimination that currently threatens [sic] eight million Muslim Americans stems from a long and established American tradition of branding Islam as un-American, and demonizing Muslim bodies as threat.” Khaled A. Beydoun, *Viewpoint: Islamophobia Has A Long History in the US*, BBC MAG. (Sept. 29, 2015), <http://www.bbc.com/news/magazine-34385051> [https://perma.cc/QMU4-25HL].

122. *Id.*

In the wake of 9/11, law scholar Leti Volpp observed, “We are witnessing the redeployment of old Orientalist tropes”¹²³ that color Muslims as unyieldingly warmongering, violent, and bent on conquering the West.¹²⁴ Consistent with Volpp’s observation, the redeployment of Orientalist tropes is vividly exhibited today in almost every sphere of American life: political talking points and messaging,¹²⁵ television and cinematic representations,¹²⁶ social media conversations and Twitter trends,¹²⁷ “Prophet Mohammed cartoon contest[s],”¹²⁸ and reoccurring waves of “anti-Muslim rallies” and demonstrations.¹²⁹ These tropes replicate the very banal ideas and echo the harmful images transmitted during the formation of the United States as a sovereign nation, which seeded the notion that Islam cannot be reconciled with liberty, democracy, and human progress.¹³⁰

To reduce Islamophobia to “anti-Muslim animus” and nothing more overlooks its expansion and penetration into American culture, news, media, law, and political parlance. Pundits and scholars have defined Islamophobia in

123. Volpp, *supra* note 13, at 1586.

124. See *Ross v. McIntyre*, 140 U.S. 453, 463 (1891) (citing the “intense hostility of the people of Moslem faith”); see also *Reid v. Covert*, 354 U.S. 1, 57–58 (1957); *Ex rel. Karamian v. Curran*, 16 F.2d 958, 959 (2d Cir. 1927) (“[H]e [Yerwand Karamian] and other boys of his race were most cruelly treated by the Turks, and he himself ‘burned from the hip to the knee with a hot steel rod, because they wanted [him] to be a Mohammedan.”); *In re Halladjian*, 174 F. 834, 839 (C.C.D. Mass. 1909) (“The Turks and the Saracens did not exterminate the people they conquered. Conversion to Mohammedanism and tribute were usually offered as alternatives to the sword.”).

125. Editorial Bd., *The Republican Attack on Muslims*, N.Y. TIMES (Sept. 22, 2015), <http://www.nytimes.com/2015/09/23/opinion/the-republican-attack-on-muslims.html> [<https://perma.cc/5T3K-XXGR>].

126. See *supra* note 48.

127. For instance, #FuckIslam is a popular Twitter hashtag that has spawned a series of additional hashtags, mobilized a loyal following, and led to the creation of specially designated users bearing that—or some iteration of that—name. For the Twitter timeline for the #FuckIslam hashtag, see <https://twitter.com/search?q=%23Fuckislam&src=typd> [<https://perma.cc/L5W2-6FEU>] (last visited Apr. 14, 2016).

128. An event organized by staunch anti-Muslim activist, Pamela Geller, in Garland, Texas, on May 3, 2015. See Lindsey Bever, *Pamela Geller, the Incendiary Organizer of Texas ‘Prophet Muhammad Cartoon Contest,’* WASH. POST (May 4, 2015), <https://www.washingtonpost.com/news/morning-mix/wp/2015/05/04/why-a-woman-named-pamela-geller-organized-a-prophet-muhammad-cartoon-contest> [<https://perma.cc/XQ44-KRCS>].

129. See Iftikhar, *supra* note 115.

130. For example:

Islam, as the Americans saw it, was against liberty, and being against liberty, it stopped progress. Both Republicans like Mathew Lyon and Thomas Jefferson, who welcomed the progressive libertarianism of the French Revolution, and Federalists like John Adams, who feared the consequences of unchecked democracy, agreed that liberty and human progress were good things and that the unbridled despotism of the Muslim world was a bad thing for preventing it.

ALLISON, *supra* note 14, at 46; see also DENISE A. SPELLBERG, *THOMAS JEFFERSON’S QUR’AN: ISLAM AND THE FOUNDERS* (2013) (providing a historical account of how Islam was viewed not only as civilizational foil, but also as a political wedge regarding the breadth of American democracy, by the founding fathers—with special attention on Thomas Jefferson).

a myriad of ways.¹³¹ The most compelling iterations frame it as an intricate system by which both state and private actors dispense animus.¹³² State actors endorse the fear, hate, and violence executed by private actors in America.¹³³ This dynamic was evidenced by the execution of three Muslim American students in Chapel Hill on February 10, 2015—an incident that cannot be entirely divorced from the broader culture and context of anti-Muslim bigotry pervading the United States.¹³⁴ Such escalating Islamophobia and anti-Muslim violence is driven by misperceptions of Muslims as threatening and suspicious—ideas that the state, through programs like CVE policing, both endorses and mainstreams.¹³⁵

As it continues to expand, Islamophobia is legally fluid and adaptive across cultures—its structural and ideological contours are molded by its host country and context. For instance, American culture, politics, and legal systems are distinct from their British and French counterparts,¹³⁶ which renders American Islamophobia different from its British¹³⁷ and French analogs.¹³⁸ Although variant strands of Islamophobia share common characteristics and emanate from the very same Orientalist baselines, the way by which Islam and Muslim communities are profiled, policed, imagined, and assailed is anything but identical across nations.

131. This Essay defines “Islamophobia” as animus toward Islam, Muslims, and individuals stereotyped as Muslims, bolstered by legal, scholarly, and popular representations of Islam and Muslims. This definition also sees Islamophobia as a system of animus and fear, embedded within American halls of power and institutions. For additional definitions, see also ERNST, *supra* note 7 and DABASHI, *supra* note 7. See generally COVERING ISLAM, *supra* note 2.

132. *Islamophobia: Toward A Legal Definition and Framework*, *supra* note 110, at 2.

133. I name this process “dialectical Islamophobia,” which occurs when “state policies legitimize prevailing misconceptions, misrepresentations and tropes widely held by private citizens.” *Id.*; see also Jennifer Bogdan, *Islamic School of Rhode Island Vandalized*, PROVIDENCE J. (Feb. 15, 2015), <http://www.providencejournal.com/article/20150215/News/150219457> [<https://perma.cc/KVZ4-5PFE>].

134. See Jonathan M. Katz & Richard Pérez-Peña, *In Chapel Hill Shooting of 3 Muslims, A Question of Motive*, N.Y. TIMES (Feb. 11, 2015), <http://www.nytimes.com/2015/02/12/us/muslim-student-shootings-north-carolina.html> [<https://perma.cc/DY5Y-SJ2L>]; see also Nadia El-Zein Tonova & Khaled A. Beydoun, *Why Muslim Lives Don't Matter*, AL JAZEERA (Feb. 11, 2015), <http://www.aljazeera.com/indepth/opinion/2015/02/muslim-lives-don-matter-150212052018920.html> [<https://perma.cc/RA5K-MGLF>].

135. See discussion *infra* Part II.B.

136. For a comparative assessment of how contrasting religious freedom laws (with specific focus on the Islamic headscarf) in the United States and France shape and reflect their differing systems of Islamophobia, see generally Khaled A. Beydoun, *Laïcité, Liberalism and the Headscarf*, 10 J. ISLAMIC L. & CULTURE 188 (2008).

137. “For British and American audiences, the menace of Islam existed at a variety of different levels. Politically, socially, religiously, and theologically, Muslims and their religion were seen to threaten in varying degrees and in different ways.” ERNST, *supra* note 7, at 27.

138. For a historical analysis of the development of anti-Muslim animus in the United States, see generally ALLISON, *supra* note 14. For a historical analysis of Christian interaction with Muslims in the United States through the modern era, see generally THOMAS S. KIDD, *AMERICAN CHRISTIANS AND ISLAM: EVANGELICAL CULTURE AND MUSLIMS FROM THE COLONIAL PERIOD TO THE AGE OF TERRORISM* (2009).

En masse targeting of Muslim Americans in the United States began well before the 9/11 attacks, but rose to formal state policy with the establishment of the Department of Homeland Security (DHS) on November 25, 2002.¹³⁹ The DHS consolidated the state's immigration and emigration regimes and functioned as the institutional fulcrum for the sweeping federal and local anti-terror surveillance and policing sanctioned by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (U.S.A. P.A.T.R.I.O.T Act or the Patriot Act).¹⁴⁰ The Patriot Act multiplied state suspicion and surveillance of Muslim American communities and initiated a "War on Terror" that viewed this population as presumptive or prospective terrorists.¹⁴¹

State action against Muslims protected by the Patriot Act and endorsed by DHS emboldened private animus against Muslim Americans. If government agencies and laws deemed Muslim Americans as a dangerous "fifth column,"¹⁴² then it is only logical that private citizens would mimic that violence against a subset of the polity designated as an enemy group.¹⁴³ For example, "[i]n 2007, CAIR [Council on American Islamic Relations] reported receiving about 1,900 complaints of abuse and noted that anti-Muslim physical violence increased by 52 percent between 2003 and 2004."¹⁴⁴ Many believed that anti-Muslim animus and violence would gradually diminish after 9/11's immediate aftermath.¹⁴⁵ However, unfolding events and statistics have proven otherwise.

139. Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (codified in scattered sections of 5, 6, 18, 44, & 49 U.S.C.).

140. Pub. L. No. 107-56, 115 Stat. 272 (2001). *See also* U.S.A. P.A.T.R.I.O.T Improvement and Reauthorization Act of 2005, Pub. L. No. 109-177, 120 Stat. 192 (2006) (codified in scattered sections of 8, 15, 18, 21, 28, & 42 U.S.C.).

141. *See Hamdan v. Rumsfeld*, 548 U.S. 557, 634–35 (2006) (holding that military tribunals created by the Bush administration violated the law); *Hamdi v. Rumsfeld*, 542 U.S. 507, 509 (2004) (holding that a U.S. citizen held as an "enemy combatant" held a right to a hearing to challenge that designation); *see also Rumsfeld v. Padilla*, 542 U.S. 426 (2004) (highlighting policies adopted by the Bush administration in the war on terror). The sweeping legislation and reforms that followed 9/11—the concern of the preceding cases—initiated an international and domestic war against terrorism, hereinafter referred to in this Essay as the "War on Terror."

142. Khyati Y. Joshi, *The Racialization of Hinduism, Islam and Sikhism in the United States*, 39 EQUITY & EXCELLENCE EDUC. 211, 217 (2006).

143. *See Ahmad, supra* note 112, at 1321–25.

144. Moore, *supra* note 32, at 92–93.

145. Muslim American media pundit Dean Obeidallah represents the surprise of many, who observed on the thirteenth anniversary of the 9/11 attacks that:

Once we learned that al Qaeda was responsible for the attack, I knew there would be a backlash against Muslim and Middle Eastern Americans. Once we learned that al Qaeda was responsible for the attack, I knew there would be a backlash against Muslim and Middle Eastern Americans. But what I could've never predicted was that, 13 years later, my fellow Americans would view Muslims far worse today than in the months after 9/11.

Dean Obeidallah, *13 Years After 9/11, Anti-Muslim Bigotry Is Worse Than Ever*, DAILY BEAST (Sept. 11, 2014), <http://www.thedailybeast.com/articles/2014/09/11/13-years-after-9-11-anti-muslim-bigotry-is-worse-than-ever.html> [<https://perma.cc/4CZA-E24F>].

Recent events indicate a frightening uptick in private Islamophobic violence. The attack on the Islamic School of Rhode Island,¹⁴⁶ the targeted arson of a mosque in Houston,¹⁴⁷ the execution of three Muslim American students in Chapel Hill,¹⁴⁸ and waves of armed and unarmed anti-Muslim rallies and protests¹⁴⁹ all indicate that currently unfolding Islamophobia is superseding the degree of anti-Muslim bigotry that immediately followed 9/11. While other forms of racial and religious animus continue to decline, the Federal Bureau of Investigation (FBI) statistics show an “increasing anti-Islamic sentiment” and propensity towards violence since 2011.¹⁵⁰

The policing paradigm shift from the Patriot Act to CVE policing, which is enforced in the heart of Muslim American communities and centers, foreshadows even greater escalation of anti-Muslim animus, suspicion, and violence. This is particularly apparent in urban areas where Muslim American communities are concentrated and poverty prevails.

B. Countering Violent Extremism (CVE)

Islamophobia’s ascent is highlighted by its integration into community policing strategy. The base logic of Islamophobia, which recognizes Muslim identity as a presumptive threat,¹⁵¹ is the cornerstone of CVE—the emergent model of anti-terrorism and national security policing sweeping through American cities, especially communities with concentrated Muslim American populations.¹⁵² CVE’s salient structures, strategies, and processes have resulted in the erosion of Muslim American civil liberties.¹⁵³

146. Bogdan, *supra* note 133.

147. Wilson Dizard, *Arson Eyed in Houston-Area Mosque Fire*, AL JAZEERA (Feb. 13, 2015), <http://america.aljazeera.com/articles/2015/2/13/arson-eyed-in-houston-area-mosque-torching.html> [<https://perma.cc/6WBF-32HQ>].

148. Terrence McCoy, *Chapel Hill Killings: Why Hate Crimes Are So Hard to Prove*, WASH. POST (Feb. 12, 2015), <http://www.washingtonpost.com/news/morning-mix/wp/2015/02/12/chapel-hill-murders-why-hate-crimes-are-so-hard-to-prove> [<https://perma.cc/XA7E-HDG6>].

149. Halima Kazem & Tom Dart, *US Muslim Leaders Brace for Protests with Potentially Armed Demonstrators*, GUARDIAN (Oct. 9, 2015), <http://www.theguardian.com/world/2015/oct/09/us-muslim-community-phoenix-oklahoma-city-protests-mosques> [<https://perma.cc/JP4C-DG5Z>].

150. *Id.*

151. Critiques of CVE center on this presumption and contend that it distracts attention and resources from more common forms of mass violence committed by non-Muslims. *See generally* Sahar F. Aziz, *Policing Terrorists in the Community*, 5 HARV. NAT’L SEC. J. 147 (2014) [hereinafter *Aziz, Policing Terrorists*].

152. *See also National Security’s Broken Windows*, *supra* note 25, at 842 (“Incorporating this framework, government counterradicalization and CVE programs aim to monitor and influence the political and religious cultures of Muslim communities so as to prevent radicalization and violent extremism.”).

153. Law scholars Amna Akbar, Sahar Aziz, Aziz Haq, and Samuel Rascoff have made notable contributions to the burgeoning CVE literature. *See, e.g., Aziz, Policing Terrorists*, *supra* note 151; *see also National Security’s Broken Windows*, *supra* note 25.

1. CVE Structure and Strategy

The meaning and scope of “CVE” and “counterradicalization”—terms used synonymously by the U.S. government—are still ambiguous and underdeveloped. Rascoff observes:

Unlike “counterterrorism” or “counterinsurgency,” which have rich (if not entirely satisfying) conceptual foundations, “counter-radicalization” remains almost completely undertheorized. To its proponents, counterradicalization begins with the uncontroversial proposition that manifestations of violent extremism are rooted in ideas and social-behavioral processes. Understanding and addressing those ideas and processes will help prevent future attacks and thus should play an important role in American counterterrorism policy. But these basic assumptions give rise to a wide range of theoretical possibilities about what counter-radicalization is, how it should be conducted, and how the government can best devote its resources to address the contemporary security threat.¹⁵⁴

Because of CVE’s strategic ambiguity and “theoretical possibilities,” considerable deference is given to law enforcement personnel executing CVE initiatives.¹⁵⁵

CVE, per its name, is committed to identifying and preventing “violent extremists” from committing terrorist acts.¹⁵⁶ Aziz observes, “Operationally, the objective is to stop people from embracing extreme beliefs (an inherently subjective and vague term) that might lead to terrorism, as well as to reduce active support for terrorist groups.”¹⁵⁷ Subjects-of-interest are defined as “individuals who support or commit ideologically-motivated violence to further political goals.”¹⁵⁸ As a result, CVE extends the reach of the National Security Agency’s surveillance powers and operates in communities considered havens for “Homegrown Violent Extremists.”¹⁵⁹ Despite its conceptual and structural ambiguity, DHS,¹⁶⁰ Congress,¹⁶¹ and the White House have been unambiguous

154. Samuel J. Rascoff, *Establishing Official Islam? The Law and Strategy of Counter-Radicalization*, 64 STAN. L. REV. 125, 137 (2012).

155. *Id.*

156. *Countering Violent Extremism*, U.S. DEP’T HOMELAND SECURITY, <http://www.dhs.gov/topic/countering-violent-extremism> [https://perma.cc/RYP7-RHLE].

157. Aziz, *Policing Terrorists*, *supra* note 151, at 164 (citation omitted).

158. EXEC. OFFICE OF THE PRESIDENT, EMPOWERING LOCAL PARTNERS TO PREVENT VIOLENT EXTREMISM IN THE UNITED STATES 1 (2011), http://www.whitehouse.gov/sites/default/files/empowering_local_partners.pdf [https://perma.cc/ZN8C-WGVR] [hereinafter EMPOWERING LOCAL PARTNERS].

159. *Countering Violent Extremism*, *supra* note 156 (“A person of any citizenship who has lived or operated primarily in the United States or its territories who advocates, is engaged in, or is preparing to engage in ideologically-motivated terrorist activities (including providing material support to terrorism) in furtherance of political or social objectives promoted by a terrorist organization, but who is acting independently of direction by a terrorist organization.”).

160. JOSEPH I. LIEBERMAN & SUSAN M. COLLINS, U.S. SENATE COMM. ON HOMELAND SEC. & GOVERNMENTAL AFFAIRS, A TICKING TIME BOMB: COUNTERTERRORISM LESSONS FROM THE

about their plans to push CVE forward and roll it into more cities with large Muslim American populations.¹⁶²

2. *CVE's Disparate Impact on Muslim Americans*

CVE disparately focuses on Muslim Americans. A leaked FBI Intelligence Assessment framed the prevailing CVE model¹⁶³ by “asserting the existence of an identifiable and predictable process by which a Muslim becomes a terrorist.”¹⁶⁴ This process is broken down into four stages: “[1] preradicalization,’ [2] identification,’ [3] indoctrination,’ and [4] action.”¹⁶⁵ A subject is viewed as a greater threat at each successive stage, and the CVE program’s preventive logic seeks to seize the subject at the early stages of the process before full-fledged indoctrination takes place and, most critically, before terrorist action is pursued.¹⁶⁶ During the first and second stages suspicion largely arises in response to religious or political activity that law enforcement perceives to be linked with radical activity, short of evidence of involvement.

CVE links radicalization—or propensity for radicalization—with Islamic piety. Therefore, CVE is acutely and disparately threatening to observant Muslim Americans,¹⁶⁷ particularly those transitioning from secular to devout lifestyles, members of the community holding “critical politics,”¹⁶⁸ and

U.S. GOVERNMENT’S FAILURE TO PREVENT THE FORT HOOD ATTACK 17 (2011), http://www.hsgac.senate.gov/imo/media/doc/Fort_Hood/FortHoodReport.pdf [<https://perma.cc/5FMK-563B>].

161. “In Congress, for example, both the House and Senate Homeland Security Committees have devoted considerable resources to the development of the radicalization discourse, emphasizing the need for the government to monitor and respond to radicalization.” Akbar, *supra* note 8, at 821.

162. EMPOWERING LOCAL PARTNERS, *supra* note 158. This Executive Order established the CVE Working Group, comprised of government personnel and stakeholders. The White House held a CVE Summit in February 2015, which was opposed by nine major civil rights and advocacy organizations, including the American-Arab Anti-Discrimination Committee and the Arab American Association of New York. *See Arab Am. Ass’n of New York, Joint Statement Regarding Upcoming Summit on Countering Violent Extremism* (Feb. 17, 2015), <http://www.arabamericanny.org/jointstatementoncve> [<https://perma.cc/6S88-4UYN>]; James Zogby, *CVE in the US: More Harm Than Good*, HUFFINGTON POST (July 25, 2015), http://www.huffingtonpost.com/james-zogby/cve-in-the-us-more-harm-t_b_7868180.html [<https://perma.cc/5VBX-6JW9>]; *see also* Ali Jakvani, *On the Ground in LA and as a Delegate to CVE*, ISLAMIC MONTHLY (Mar. 11, 2015), <http://theislamicmonthly.com/on-the-ground-in-la-and-as-a-delegate-to-cve> [<https://perma.cc/7ARF-VWMU>] (providing a Muslim American perspective in support of CVE, from a person who attended the CVE Summit at the White House).

163. FBI COUNTERTERRORISM DIV., *THE RADICALIZATION PROCESS: FROM CONVERSION TO JIHAD* 1–2 (2006), <https://cryptome.org/fbi-jihad.pdf> [<https://perma.cc/6TBH-2NJH>] (leaking a confidential FBI report to the public).

164. Akbar, *supra* note 8, at 817–20 (citation omitted).

165. *Id.* at 870.

166. *Id.*

167. “Muslim religious practice—core First Amendment activity, unconnected to any suspicion of criminal activity—becomes a predictor for criminality.” *Id.* at 835.

168. “Radicalization’s concern is predicated on a false belief in the teleological character of Islam—that if Muslims [sic] communities witness conservative religious practice and critical politics,

individuals that express their faith conspicuously. CVE is specifically threatening to urban-dwelling, recently immigrated, and indigent Muslim American communities, which tend to latch onto religious traditions more tightly and have comparatively stronger ties with their countries of origin.¹⁶⁹ Overt focus on the religious views and lifestyles of Muslim Americans poses broad threats to constitutionally protected free-exercise rights.

In addition to religious activity, CVE policing monitors subjects' political speech and associations. Subjects with perspectives critical of American foreign or domestic policy or with views sympathetic to issues or people that conflict with a formal government stance may trigger suspicion, or enhanced suspicion, of radicalization.¹⁷⁰ Policing CVE subjects based on such constitutionally protected free-exercise and speech rights not only compromises the subjects' First Amendment rights, but also places the subjects' Fourth Amendment protection against "unreasonable searches and seizures" at risk.¹⁷¹

CVE programs tap prominent community leaders as individual informants and seek to build strategic alliances with advocacy, cultural, and religious organizations, including mosques and community centers.¹⁷² These community elements equip law enforcement with on-the-ground allies and watchdogs and, more importantly, with the programmatic legitimacy only native informants can provide.¹⁷³ Problematically, these leaders and institutions with whom law

they will view such currents as acceptable and gravitate toward radicalism." *National Security's Broken Windows*, *supra* note 25, at 877.

169. Law enforcement considers both of these factors to signal the prospect of, or likelihood for, radicalization. For instance, a significant number of Somalis in the United States send remittances to friends and family in their native country to assist them financially. This demonstrates a close connection to their country of origin and, in turn, enhances suspicion of CVE policing actors (because of perceived or suspected links with terror networks, most notably Al-Shabab). See Keith Ellison, *Don't Block Remittances to Somalia*, N.Y. TIMES (Apr. 10, 2015), <http://www.nytimes.com/2015/04/11/opinion/dont-block-remittances-to-somalia.html> [<https://perma.cc/SG5B-C838>].

170. See *National Security's Broken Windows*, *supra* note 25, at 856.

171. See U.S. CONST. amend. IV.

172. The Department of Homeland Security outlines "supporting local communities" as one of its three main objectives: "Bolster efforts to catalyze and support non-government, community-based programs, and strengthen relationships with communities that may be targeted for recruitment by violent extremists . . ." See Janet Napolitano, *How DHS Is Countering Violent Extremism*, DEP'T OF HOMELAND SEC. (Aug. 8, 2011, 1:31 PM), <https://www.dhs.gov/blog/2011/08/08/how-dhs-countering-violent-extremism>. Identifying and building partnerships with advocacy groups, like the Muslim Public Affairs Council (MPAC) in Los Angeles and Imams (heads of mosques), is vital to the success of CVE. *Countering Violent Extremism*, *supra* note 156. For an article discussing Muslim American community organizations and elements of partnership with the state on CVE policing initiatives, see Alejandro J. Beutel, *Community-Led Approaches to Countering Violent Extremism in the United States*, BROOKINGS INST. (May 30, 2015), <http://www.brookings.edu/blogs/markaz/posts/2015/05/28-countering-violent-extremism-beutel> [<https://perma.cc/H5E7-6NN2>].

173. "The way the Los Angeles Police Department's counterterrorism head Michael Downing sees it, American Muslims could be the city's most effective tool in guarding against homeland threats by the violent extremist group known as the Islamic State." Brenda Gazzar, *Los Angeles Picked for Pilot Program to Counter Homegrown Jihadists*, L.A. DAILY NEWS (Sept. 23, 2014), <http://www.dailynews.com/general-news/20140923/los-angeles-picked-for-pilot-program-to-counter-homegrown-jihadists> [<https://perma.cc/AKL8-J84B>].

enforcement builds strong ties may assert that an individual subject is a prospective or actualized “radical” based on purely personal, political, or arbitrary grounds. Moreover, the CVE informant structure is especially dangerous since the most coveted informants are known figures or leaders with influence in the community whom young, poor and working-class men—the most common targets of CVE policing—believe they can trust.¹⁷⁴ In addition to using informants within physical spaces, CVE programs commonly deploy them in virtual spaces where political speech, religious views, and connected collateral activity are easier to monitor, track, and compile.¹⁷⁵

Although CVE has garnered some support from Muslim American civil society elements,¹⁷⁶ many Arab, Middle East and North African (MENA), and Muslim Americans “fear it is profiling disguised as prevention and worry it could compromise civil liberties and religious freedoms.”¹⁷⁷ Muslim American opposition to CVE is gradually mounting, particularly as the program steeps itself further in pilot cities and expands into new ones, including Hamtramck¹⁷⁸ and Dearborn, Michigan;¹⁷⁹ New York City;¹⁸⁰ and Detroit, where police

174. “Informants are widespread in Muslim communities, stationed within mosques, Muslim student groups, social networks, and so on.” See *National Security’s Broken Windows*, *supra* note 25, at 853.

175. See Quintan Wiktorowicz, *Working to Counter Online Radicalization to Violence in the United States*, WHITE HOUSE BLOG (Feb. 5, 2013, 10:02 AM), <http://www.whitehouse.gov/blog/2013/02/05/working-counter-online-radicalization-violence-united-states> [https://perma.cc/26VU-M4YN].

176. Most notably MPAC, an ardent supporter of CVE since its inception. Many of MPAC’s former employees have assumed leadership positions furthering the program. See MPAC, <http://www.mpac.org> [https://perma.cc/YQ84-4F2E]; see also Aziz, *Policing Terrorists*, *supra* note 151, at 173; Ahmed Shaikh, *MPAC, Countering Violent Extremism and American Muslim Astroturf—A Critical Review*, PATHEOS (June 9, 2015), <http://www.patheos.com/blogs/altmuslim/2015/06/mpac-countering-violent-extremism-and-american-muslim-astroturf-a-critical-review> [https://perma.cc/93JL-PHEN].

177. Tami Abdollah & Philip Marcelo, “*It Sets People Off*”: *Some Muslims See Profiling in U.S. Anti-Terror Program*, NBC (Apr. 20, 2015), <http://www.nbclosangeles.com/news/local/Obama-Muslims-Countering-Violent-Extremism-SoCal-civil-liberties-300678641.html> [https://perma.cc/RU8S-G2WM]; see also Margari Aziza Hill, *Logging It All: CVE and Schisms in the Muslim Community*, ISLAMIC MONTHLY (Mar. 4, 2015), <http://theislamicmonthly.com/logging-it-all-cve-and-schisms-in-the-muslim-community> [https://perma.cc/547Y-SDKF] (highlighting the debates and divisions within the Muslim American population regarding CVE).

178. Hamtramck, which is entirely surrounded by the city of Detroit, is the first official Muslim-majority in the country. See Sarah Pulliam Bailey, *In the First Majority-Muslim City in the U.S., Residents Tense About Its Future*, WASH. POST (Nov. 21, 2015), https://www.washingtonpost.com/national/for-the-first-majority-muslim-us-city-residents-tense-about-itsfuture/2015/11/21/45d0ea96-8a24-11e5-be39-0034bb576eee_story.html [https://perma.cc/ZQ45-3REL].

179. Dearborn, Michigan, is home to the most concentrated Arab and Muslim American communities in the country. The east side of the city is home to concentrated indigent and working class groups. This concentration has led to the community being frequently called the “Arab Capital of North America.” See Nicole Crowder, *Starting over in Dearborn, Michigan: The Arab Capital of North America*, WASH. POST (Mar. 15, 2015), <https://www.washingtonpost.com/news/insight/wp/2015/03/05/starting-over-in-dearborn-michigan-the-arab-capital-of-north-america> [https://perma.cc/Y6LP-SN8E].

surveillance to “fight terrorism” is an established practice.¹⁸¹ This mounting opposition is spearheaded by both advocacy groups and grassroots efforts and addresses the grave threats CVE policing poses to the civil liberties of poor Muslim American communities.¹⁸²

In order to dutifully confront the dangers posed by the convergence of poverty and state-sponsored and private Islamophobia, these efforts must become more robust and better resourced. This is particularly important as CVE extends its reach into new cities and deepens its footing in “marginalized” Muslim American communities, where “[c]ommunity policing allows the police to expand their power and reach into already marginalized communities, without giving subject communities the opportunity to meaningfully influence or determine policing priorities or strategies.”¹⁸³ The brunt of CVE’s impact on civil liberties is much greater where the defenses against it are weak—within the boundaries of poor Muslim American communities.

III.

WHEN INDIGENCE AND ISLAMOPHOBIA CONVERGE

[W]here justice is denied, where poverty is enforced, where ignorance prevails . . . neither persons nor property will be safe.

—Frederick Douglass, *Strong to Suffer, and Yet Strong to Strive*¹⁸⁴

The plight of America’s poor is ignored as frequently as their bodies are unseen by the pedestrians that pass them by. Perceived as victims of an economic system that preordains poverty, indigent Americans are broadly cast

180. 21 Groups Oppose “Strong Cities” CVE Initiative in New York, Citing Civil Liberties Concerns, BRENNAN CTR. FOR JUST. (Sept. 21, 2015), <https://www.brennancenter.org/analysis/21-groups-oppose-strong-cities-cve-initiative-new-york-citing-civil-liberties-concerns> [<https://perma.cc/USE9-ZL3W>].

181. For instance:

For nearly a decade, the Michigan State Police has had secretive cellphone tracking devices that were bought to fight terrorism but instead are used to solve everyday crimes, internal documents show. More than 250 pages of emails, invoices and other documents show the state police in 2006 acquired cellphone simulator technology, which lets police collect large amounts of data including the location of users. The equipment was upgraded in 2013 and an internal memo indicates it was used last year on 128 cases ranging from homicide to burglary and fraud, but not terrorism.

Joel Kurth, *Michigan State Police Using Cell Snooping Devices*, DETROIT NEWS (Oct. 23, 2015), <http://www.detroitnews.com/story/news/local/michigan/2015/10/22/stingray/74438668> [<https://perma.cc/W29V-JA73>].

182. Khaled A. Beydoun, *Poor and Muslim in “War on Terror” America*, ISLAMIC MONTHLY (May 25, 2015), <http://theislamicmonthly.com/poor-and-muslim-in-war-on-terror-america> [<https://perma.cc/N55G-3TLD>] [hereinafter *Poor and Muslim in “War on Terror” America*].

183. *National Security’s Broken Windows*, *supra* note 25, at 843.

184. FREDERICK DOUGLASS, *Strong to Suffer, and Yet Strong to Strive*, in 5 THE FREDERICK DOUGLASS PAPERS, SERIES ONE: SPEECHES, DEBATES, AND INTERVIEWS 1881–1895, at 229 (John W. Blassingame & John R. McKivigan eds., 1992).

as drug users, idle and lazy, “public charge[s],”¹⁸⁵ and “undeserving” burdens on society.¹⁸⁶ And while communities of color have higher rates of poverty than white Americans, poverty is frequently discussed along colorblind or race-neutral terms.

Critical scholars, particularly within the legal academy, have used an “intersectional analysis” to examine how racism, patriarchy, policing, and law enforcement interacts and intersects with poverty.¹⁸⁷ An intersectional analysis enables investigation of each of the liminal positions held by communities who identify with two (or more) disadvantaged groups, such as the community on which this Essay is focused: indigent Muslim Americans.

In the same way American society perceives Muslim America as a racial and socioeconomic monolith, it conceives Muslim American victimhood in flat and uniform terms. But gender, race, and economic status impact how Islamophobia is experienced; oftentimes, these characteristics determine who law enforcement suspects of radicalization. Thus, indigent Muslim Americans are disparately profiled, policed, and prosecuted, and they are frequently overlooked victims of both public and private Islamophobic violence.¹⁸⁸

This Section investigates the disregarded intersections where indigence and Islamophobia converge. First, Part III.A highlights the customary challenges associated with poverty, giving specific attention to how the rising tide of American Islamophobia has resulted in lack of access to adequate housing, education, and employment. Next, Part III.B analyzes the disparate impact CVE has on indigent Muslim Americans. Finally, Part III.C addresses the rift between indigent Muslim Americans and legal representation—a matter of dire concern given the rapid rise of American Islamophobia and CVE policing.

185. A public charge is an individual deemed to be a financial burden or tax liability on society and the state. This fear is generally associated with indigents and, specifically, indigent immigrants. See Lisa Sun-Hee Park, *Perpetuation of Poverty Through “Public Charge,”* 78 DENV. U. L. REV. 1161 (2001).

186. For an article that analyzes the deserving versus undeserving binary by challenging the “deservingness analytic” that brands the poor as not worthy of broader state aid, see generally Noah D. Zatz, *Poverty Unmodified?: Critical Reflections on the Deserving/Undeserving Distinction*, 59 UCLA L. REV. 550, 558 (2012). The logic of this binary saturates rhetoric that brands government social welfare as “entitlements,” which connotes that indigents have not earned, and thus do not deserve, items such as subsidized housing, welfare, or healthcare. See generally *id.*

187. See, e.g., Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1282–83 (1991) (using “intersectionality” to highlight and illustrate the compounded discrimination endured by individuals who belong to two or more marginalized groups).

188. See, e.g., Sahar F. Aziz, *From the Oppressed to the Terrorist: Muslim-American Women in the Crosshairs of Intersectionality*, 9 HASTINGS RACE & POVERTY L.J. 191 (2012) (demonstrating how Muslim women face discrimination at the intersection of gender, religion, and race in unique ways).

A. *Customary Perils Associated with Poverty*

The core concerns of indigent Muslim Americans are not entirely distinct from those of the broader population of poor Americans. Like indigents of other faith communities, poor Muslim Americans are primarily concerned with accessing adequate housing for their families, suitable education for their children, better employment opportunities, and basic healthcare. However, private and public Islamophobia poses an additional set of challenges and exacerbates the customary perils posed by poverty. Poverty for poor Muslim Americans, therefore, spells diminished access to core necessities; second-class citizenship;¹⁸⁹ and exposure to heightened threats of violence, bigotry, and federal and local policing.

These core concerns are excluded from the prevailing set of Muslim American institutional priorities. Mainstream Muslim American civic organizations are generally concerned with acutely political and civil rights matters—most notably, combatting hate crimes, challenging FBI surveillance, and speaking to international crises in Muslim-majority countries.¹⁹⁰ Furthermore, Muslim American civic organizations largely prioritize the concerns and interests of middle- and upper-class Muslim Americans, who tend to be Levantine Arab and South Asian.¹⁹¹ These civic organizations' programmatic agendas seldom register the concerns of African American Muslims;¹⁹² immigrant Muslim communities, such as the Iraqi and Somali diasporas; or indigent and working-class segments of the population. In some instances, “[m]ainstream Muslim American organizations have done more to vilify the poor than to address their distinct concerns.”¹⁹³

The inability to procure adequate housing or employment is a serious problem faced by many Muslim Americans. Adequate housing, for instance, becomes less accessible when discriminatory landlords refuse to rent property to Muslim Americans.¹⁹⁴ This brand of religious discrimination also extends into the workplace, where some employers refuse to hire skilled or competent

189. LINDA BOSNIAK, *THE CITIZEN AND THE ALIEN: DILEMMAS OF CONTEMPORARY MEMBERSHIP* 31 (2006) (“[T]here is often a gap between possession of [formal] citizenship status and the enjoyment or performance of citizenship in substantive terms.”).

190. These predominant concerns are in great part dictated by donors and foundation grants. However, Muslim American institutions' broader shift away from grassroots organizing also impacts the neglect of indigent Muslim American communities.

191. Many Muslim American organizations are composed of largely Arab and South Asian leadership, boards, and employees. A long history of gatekeeping pervades these organizations, leading to underrepresentation of African American, indigent, and working-class Muslims.

192. See generally Hill, *supra* note 71.

193. *Poor and Muslim in “War on Terror” America*, *supra* note 182.

194. On April 3, 2013, the U.S. Department of Housing and Urban Development issued a press release that announced a campaign focusing on religious discrimination toward Muslims (featuring an advertisement including a Muslim American woman wearing a headscarf). See Press Release, U.S. Dep't of Hous. and Urban Dev., HUD Kicks Off Fair Housing Month with Launch of National Media Campaign (Apr. 3, 2013), http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2013/HUDNo.13-048 [<https://perma.cc/N3Q4-W3CC>].

Muslim Americans on account of religion, race, or ethnicity. Statistics compiled by the Equal Employment Opportunity Commission (EEOC) document the staggering number of employment discrimination claims filed by Muslim Americans: “Astonishingly, while Muslims make up only 2 percent of the U.S. population, they compose[d] nearly one quarter of religious discrimination claims filed by the EEOC in 2010.”¹⁹⁵

Indigent and working-class Muslim Americans also face an underexamined strand of employment discrimination, a problem that perpetuates their cycle of poverty. After 9/11, almost all of the attention to and analysis of employment discrimination focused on professional middle-class and affluent Muslim Americans.¹⁹⁶ Scholars dedicated scarce attention to the employment discrimination endured by indigent and working-class Muslim Americans—in particular, the hiring and employment discrimination faced by medium-wage workers, undocumented Muslim residents, Muslim American men and women with felonies, and blue-collar Muslim workers.¹⁹⁷

Federal laws like Title VII functionally extend lesser protection to low-skill workers, and, arguably, those laws extend no protection to workers paid under the table.¹⁹⁸ Therefore, indigent and working-class Muslim American communities have narrower forms of redress against discrimination at the workplace.¹⁹⁹

195. Moore, *supra* note 32, at 93 (noting that employment discrimination claims by Muslim Americans increased by nearly 60 percent from 2005 to 2010).

196. See generally Sahar F. Aziz, *Sticks and Stones, The Words That Hurt: Entrenched Stereotypes Eight Years After 9/11*, 13 N.Y. CITY L. REV. 33 (2009) (illustrating the broader attention given to employment discrimination within white-collar, professional spaces).

197. The “hazardous working conditions” Bangladeshi Muslims face in New York City restaurants are an illustrative example of the specific dangers indigent Muslim workers face:

Over the past several years, with the huge influx of Bangladeshis, New York City has seen an increase in the number of ‘Indian’ restaurants staffed by Bangladeshis, primarily in the Jackson Heights area. Restaurant Opportunities Center organizes workers throughout the city and has had a number of successes advocating for better working conditions in individual restaurants. Hazardous working conditions, however, are still rampant.

DRUM & CMTY. DEV. PROJECT OF THE URBAN JUSTICE CTR., WORKERS’ RIGHTS ARE HUMAN RIGHTS: SOUTH ASIAN IMMIGRANT WORKERS IN NEW YORK CITY 8 (2012), <http://www.drumnyc.org/wp-content/themes/wpaid/images/wc-report.pdf> [<http://perma.cc/JM5E-4A5C>] [hereinafter WORKERS’ RIGHTS ARE HUMAN RIGHTS].

198. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e (2012). Low-skilled laborers, generally, are more reluctant to pursue Title VII discrimination suits against employers for a myriad of factors, most notably, a lack of alternative job options for legally employed individuals, and entirely no protections for workers paid under the table—which includes many undocumented Muslim Americans. For a detailed study of the unequal legal protections availed to low-skilled workers via Title VII, and most specifically women, see generally Equal Rights Advocates, *Part Three: A Gender Wage Gap That Won’t Close*, in MOVING WOMEN FORWARD ON THE 50TH ANNIVERSARY OF TITLE VII OF THE CIVIL RIGHTS ACT: A THREE-PART SERIES (2014), <http://www.equalrights.org/wp-content/uploads/2015/04/ERA-Moving-Women-Forward-Part-Three-Equal-Pay.pdf> [<https://perma.cc/UA6E-39SG>].

199. “Moreover, the culture of hate and discrimination that surrounds these policies has recently led to hate crimes aimed at Muslim low-wage immigrant workers, such as the stabbing of a Bangladeshi Muslim cab driver in New York City.” WORKERS’ RIGHTS ARE HUMAN RIGHTS, *supra*

Linguistic barriers also curb, or undermine, employment opportunities for indigent Muslim Americans.²⁰⁰ The experience of the Somali Muslim population in Minneapolis vividly highlights how language functions as a barrier toward economic upward mobility:

A number of barriers exist to getting a better job, first and foremost being lack of sufficient language skills and education. In answer to what employers are looking for, one connector to Somali refugees in Minneapolis said, “The people I deal with it’s language, language language.” Even low-paying jobs that historically required little or no English are now demanding some language skills. This is especially true in cities where the job market is tight, like Minneapolis.²⁰¹

The Somali American population—as a Black and immigrant population—exposes the limitations with the immigrant-indigenous Muslim American binary.²⁰² Indeed, Somali American communities illustrate that “immigrant” and “Black” are not opposable categories, but markers that overlap. Consequently, scholars and practitioners must look beyond that framework when assessing the plight of indigent Muslim Americans, particularly as CVE encroaches into their households, places of worship, and most intimate community spaces.

B. Policing Poverty and Profiling “Radicals”—CVE’s Disparate Impact

Marketed as a program that targets radicalization across racial and religious lines, CVE disproportionately threatens indigent Muslim Americans given their concentration in urban enclaves.²⁰³ This is because CVE integrated

note 197, at 2 (referencing Karen Zraik & Andy Newman, *Student Arraigned in Anti-Muslim Stabbing of Cab Driver*, N.Y. TIMES: CITY ROOM (Aug. 25, 2010, 12:34 PM), <http://cityroom.blogs.nytimes.com/2010/08/25/cabbie-attacked> [<https://perma.cc/YD9S-8M5Q>]).

200. ROBERT WOOD JOHNSON FOUND., *LIVING IN AMERICA: CHALLENGES FACING NEW IMMIGRANTS AND REFUGEES* (2006), <http://research.policyarchive.org/21623.pdf> [<https://perma.cc/99C8-JDSV>].

201. *Id.* at 9.

202. See JACKSON, *supra* note 36.

203. Indeed:

[R]adicalization creates geographies of suspicion. While the geography of broken windows theory was effectively one of class and race—hoisting the specter of the poor Black neighborhood—the sphere of radicalization is religious and cultural (though of course inflected by race and class as well). In large metropolitan centers, there are certainly physically contiguous neighborhoods where Muslims of similar racial or class backgrounds reside. . . . In these places, government surveillance creates a different kind of geography out of the places where Muslims gather: the mosque, the halal butcher, or the Indian or Somali grocery store. And visiting these places makes you vulnerable to police scrutiny.

National Security’s Broken Windows, *supra* note 25, at 886; see also Akbar, *supra* note 8, at 819–20 (“Radicalization and counter-radicalization programs are primarily if not almost exclusively concerned with Muslim communities.”); Debi Kar, *Countering Violent Extremism*, MUSLIM ADVOC. (Mar. 9, 2015), <http://www.muslimadvocates.org/cve-countering-violent-extremism> [<https://perma.cc/9EJL-HDDJ>] (presenting a formal position from one of the leading Muslim American civil rights and legal defense organizations in the United States; the position asserts that CVE creates “[a] false perception [and that] many members of the public have come to regard their own Muslim neighbors with

the community-policing paradigm into its strategy: “[T]he federal government anchors its community engagement with Muslim communities in a broader history and language: that of community policing with marginalized groups in the ordinary criminal context, calling on principles of communication, collaboration, and trust building.”²⁰⁴ The geography of community policing dedicates the bulk of its resources, manpower, and programming to poor communities, including indigent Muslim American communities.²⁰⁵ So while trust building is core to CVE, it is disparately deployed in Muslim American communities where police mistrust is strongest and government suspicion rife.²⁰⁶

As a community marginalized on at least three tracks—poverty, religion, and race (either real or constructed)²⁰⁷—indigent Muslim Americans confront the brunt of both CVE and customary community policing. This was vividly evident in the New York Police Department’s stricken down “Stop and Frisk Program,” which disproportionately targeted Black and Hispanic men and women.²⁰⁸ Many of those targeted were Black and Hispanic Muslims,²⁰⁹ in addition to Arab or South Asian Muslims racially profiled by police as Black or Hispanic.²¹⁰ Although not identical, CVE “Knock and Talk” interviews operate under the same profiling logic as stop and frisk,²¹¹ linking religion (or culture

suspicion, often voicing bigoted, anti-Muslim views and, sometimes, carrying out anti-Muslim hate crimes”).

204. *National Security’s Broken Windows*, *supra* note 25, at 838 (citations omitted).

205. Akbar, *supra* note 8, at 869–72 (examining the specific policing of Muslim American religious expression, worship and spaces—or geographies).

206. *Id.*

207. For a legal analysis of racialization of Muslim identity, see Nagwa Ibrahim, Comment, *The Origins of Muslim Racialization in U.S. Law*, 7 UCLA J. ISLAMIC & NEAR E. L. 121, 125 (2008).

208. *Stop-and-Frisk Data*, NYCLU (2013), <http://www.nyclu.org/content/stop-and-frisk-data> [<https://perma.cc/R5NQ-8NHB>]; see *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013) (holding that stop and frisk violated the Fourth and Fourteenth Amendments rights of Black and Latino residents who were disproportionately affected by the program).

209. Hispanics, or Latinos, “are one of the fastest growing segments of the Muslim community. About six percent of U.S. Muslims are now Latino—and as many as a fifth of new converts to Islam nationwide are Latino.” Tim Padgett, *Why So Many Latinos Are Becoming Muslims*, WLRN (Oct. 9, 2013), <http://wlrn.org/post/why-so-many-latinos-are-becoming-muslims> [<https://perma.cc/2XP7-L3YE>].

210. Although stop and frisk was formally terminated in 2014, CVE and other community law enforcement programs employ “stop-and-frisk”-like tactics, which continue to expose indigent, urban-dwelling Muslim Americans to the dangers of both CVE and customary criminal policing.

211. Under “knock and talk”:

Police go to people’s residences, with or without probable cause, and knock on the door to obtain plain views of the interior of the house, to question the residents, to seek consent to search, and/or to arrest without a warrant, often based on what they discover during the “knock and talk.” When combined with such other exceptions to the warrant requirement as “plain view,” consent, and search incident to arrest, “knock and talk” is a powerful investigative technique.

Craig M. Bradley, “*Knock and Talk*” and the Fourth Amendment, 84 INDIANA L.J. 1099, 1099 (2009).

or race) to a perceived national security threat.²¹² For Muslim Americans, particularly within poor and working-class communities, knock and talks are the new stop and frisk.²¹³

Pilot CVE programs extending federal policing tools to local law enforcement were introduced in Boston, Minneapolis, and Los Angeles in 2014.²¹⁴ These three cities are not only home to sizeable Muslim American communities generally, but are also home to large indigent Muslim American communities. For instance, 82 percent of the estimated eighty thousand Somalis living in Minneapolis are “near or below the poverty line.”²¹⁵ This community has faced greater federal anti-terror surveillance and CVE scrutiny since twenty young men were recruited by transnational terrorist groups, such as Somalia’s Al-Shabaab and the Islamic State of Iraq and Syria.²¹⁶ As Black men and women, Somalis are also vulnerable to the racial profiling and policing the broader African American community experiences. Consequently, Somali Americans are doubly exposed to community and CVE policing.

In Los Angeles,²¹⁷ the Los Angeles Police Department (LAPD) works closely with the politically moderate Muslim Public Affairs Council (MPAC). MPAC launched the “Safe Spaces Program,” an institutional extension of CVE through which MPAC employees and community partners identify “radicals” within the Muslim American community. In addition, MPAC provides the

212. See generally Shirin Sinnar, *Questioning Law Enforcement: The First Amendment and Counterterrorism Interviews*, 77 BROOK. L. REV. 41 (2011) (analyzing the processes and free speech encroachments posed by knock and talks).

213. “Interviews are regularly geared toward collecting information on religious and political opinions, whether individual or collective, or cultivating informants, both formal and informal.” *National Security’s Broken Windows*, *supra* note 25, at 853.

214. Law enforcement also expects to introduce these tools to additional cities with concentrated Muslim American populations in the coming years. See Akbar, *supra* note 8, at 845–68 (examining the new radicalization policing tactics used by federal and local law enforcement); see also Shelley Murphy, *Boston To Host Anti-Extremist Pilot Program*, BOS. GLOBE (Sept. 24, 2014), <http://www.bostonglobe.com/metro/2014/09/23/boston-site-program-prevent-residents-from-joining-extremist-groups/YpEpq2cYvITZ6u8AFkbarL/story.html> [<https://perma.cc/6XGN-DU68>].

215. Dunbar, *supra*, note 92.

216. See Dina Temple-Raston, *For Somalis in Minneapolis, Jihadi Recruiting Is a Recurring Nightmare*, NPR (Feb. 18, 2015), <http://www.npr.org/2015/02/18/387302748/minneapolis-st-paul-remains-a-focus-of-jihadi-recruiting> [<https://perma.cc/3FDV-8K7Q>]; see also Aziz, *Policing Terrorists*, *supra* note 151, at 207 (“Somali communities in Minneapolis, St. Paul, and other cities, for example, have been under intense government scrutiny for alleged ties to Al-Shabab. This designated terrorist group in Somalia recruited approximately twenty American young men to fight in the Somali civil war. This led to a spike in indictments for material support of terrorism charges against individuals who provided humanitarian aid to Somalia . . .”) (citations omitted).

217. Brian Bennett, Joel Rubin & Victoria Kim, *L.A. Chosen for Pilot Program for Dissuading Militant Recruits*, L.A. TIMES (Sept. 22, 2014), <http://www.latimes.com/local/la-me-terror-jihad-program-20140923-story.html> [<https://perma.cc/EK9D-BYQA>]. Boston and Minneapolis were the other two cities chosen by the White House to launch pilot CVE programs. See Samantha Masunaga, *Homeland Security Head Aims to Build Trust in L.A. Muslim Community*, L.A. TIMES (Nov. 13, 2014), <http://www.latimes.com/local/california/la-me-1114-mosque-visit-20141114-story.html> [<https://perma.cc/Q4A8-PA2B>].

LAPD with access to other civil society organizations within the Arab, MENA, and Muslim American communities, including “Muslim student groups and mosques.”²¹⁸

The metropolitan Detroit area, home to the most densely populated Arab and Muslim American communities in the United States, is slated to be included in the next round of cities to adopt a formal CVE policing program.²¹⁹ Like Somali Americans in Minneapolis, the vast majority of metropolitan Detroit’s indigent and working-class Muslim American communities live in concentrated urban and suburban spaces.²²⁰ These communities include: Arab and African American Muslims on Detroit’s west side; Iraqi and Lebanese Americans packed within the working-class enclaves of East Dearborn and Detroit’s Warrendale neighborhood; the Yemeni American stronghold on Dearborn’s south end; and the concentrated Yemeni, Bosnian, and Bengali Muslim communities in Hamtramck.²²¹ The proposed CVE program in Detroit, a city long associated with domestic terrorism and “homegrown terrorists,”²²² stands to further chill and erode the civil liberties of the city’s indigent and working-class Muslim American communities. Such communities are scattered throughout the metropolitan area and have been targets of federal security policing for decades.

Furthermore, since conspicuous expressions of religiosity tend to be more pronounced among indigent and immigrant Muslim communities, CVE disparately endangers indigent Muslim Americans in both urban and suburban spaces. Indigent Muslim American communities tend to be densely populated within immigrant communities, which tend to maintain closer ties to their home countries and, thus, their religious identities. CVE “mark[s] religious and

218. MPAC Joins LAPD in Answering Community Questions, MPAC (Apr. 7, 2014), <http://www.mpac.org/programs/government-relations/mpac-joins-lapd-in-answering-community-questions.php> [https://perma.cc/ZZ22-9Q3W].

219. The Department of Homeland Security held a community meeting at the University of Michigan, Dearborn, led by Secretary Jeh Johnson, who led a presentation calling Islam as a “religion of peace” and lauding the CVE Program. In response to critiques of CVE policing, Johnson stated:

No, not at all. The program does not focus on Muslims per se. The Islamic State is targeting Muslims. Therefore, we have an obligation to respond to that, to work with the communities that the Islamic State is itself targeting in our homeland, to help them develop a counter message, to build bridges to these communities.

Niraj Warikoo, *Homeland Security Reaches Out in Dearborn to Muslims*, DETROIT FREE PRESS (Jan. 13, 2016), <http://www.freep.com/story/news/local/michigan/wayne/2016/01/13/homeland-security-reaches-out-dearborn-muslims/78755158> [https://perma.cc/35H4-PKK6].

220. The two most concentrated Muslim American communities in the metropolitan Detroit are East Dearborn, which is generally comprised of working class Lebanese, Iraqi and Yemeni Muslims; and the working class city Hamtramck, Michigan, the first “majority-Muslim” city in the United States, which is entirely surrounded by the city of Detroit. See Bailey, *supra* note 178.

221. Khaled A. Beydoun, “Let’s Get the Muslims Out:” *Islamophobia in Local Political Campaigns*, L. PROFESSORS BLOG NETWORK (Oct. 21, 2015), <http://lawprofessors.typepad.com/racelawprof/2015/10/islamophobia-in-local-political-campaigns.html#> [https://perma.cc/YLJ4-KD3D].

222. Aziz, *Policing Terrorists*, *supra* note 151, at 147.

political activities as the indicators of radicalization, [and] the discourse links religious and political practices in Muslim communities with the likelihood of terrorism.”²²³ Sahar Aziz observes the chilling and debilitating effect CVE policing has on the constitutionally protected free exercise and speech rights of Muslim Americans:

As a consequence, Muslims are pressured to downplay their religious identity while attempting to assimilate by adopting local accents, remaining deferential and cheerful in the face of government targeting, and engaging in hyper-patriotic acts such as displaying American flags in their homes and businesses. In addition, they fear becoming too active in the religious activities of a Muslim community because this will be viewed as anti-assimilationist and indicative of terrorist inclinations. Muslims cease engaging in identity performance expressed through public prayer, wearing headscarves, attending Muslim community events, or other activities that foster a Muslim group identity. Instead of being welcomed as an act of citizenship, Muslims’ civic participation is discredited as disingenuous at best, or duplicitous at worst.²²⁴

Therefore, donning a beard, headscarf, or other traditional Islamic garb—among a host of other constitutionally protected free exercise of religion and speech rights²²⁵—may be a dangerous proposition when demonstrated in certain areas. For instance, on the South Side of Chicago, police may be more prone to react more hastily and violently to individuals perceived to be national security threats, or radicals.²²⁶ As such, CVE disproportionately threatens the First Amendment free-exercise, speech, and assembly rights of indigent Muslim Americans because of the program’s disparate focus on the very spaces where these communities reside.

While focusing centrally on Arab, MENA, and Muslim American communities, CVE efforts are also being deployed within American prisons, which are viewed as centers of Islamic conversion²²⁷ and potential

223. *National Security’s Broken Windows*, *supra* note 25, at 879.

224. *Aziz, Policing Terrorists*, *supra* note 153, at 181 (citations omitted).

225. *Id.*

226. Police violence in Chicago toward perceived criminals, mainly Black men, justifies the position that Chicago police—armed with the responsibility to carry forward counterterrorism programming—may be just as aggressive and violent with perceived or suspected radicals. The problems posed by police violence within the Chicago Police Department were brought to national attention after the killing of Laquan McDonald, a seventeen-year-old Black teen shot sixteen times on the City’s south side. *See generally* Ben Austen, *Chicago After Laquan McDonald*, N.Y. TIMES (Apr. 20, 2016), <http://www.nytimes.com/2016/04/24/magazine/chicago-after-laquan-mcdonald.html> [https://perma.cc/9BAH-264Q].

227. For a history of the legal strides Black Muslims procured for prisoners at large, and how prisons functioned as a space for Islamic conversion, see *Islam Incarcerated*, *supra* note 82.

radicalization.²²⁸ CVE programming in prisons allows prison officials and law enforcement to monitor Muslim targets while they are incarcerated, collect information on them, and continue to monitor them after release.²²⁹ Since most incarcerated Muslim Americans come from indigent backgrounds²³⁰ and are largely African American, the divide between CVE programming in prisons and “on the outside” often blurs.

C. *Lack of Access to Legal Representation*

For indigent Muslims Americans, accessing legal representation is a distinct challenge. Indigent Muslim Americans are less aware of their legal rights and the breadth of their constitutional protections, and they often lack the resources to procure legal representation when wronged by private citizens or state actors.²³¹ Lack of access to adequate legal representation is not a problem unique to indigent Muslim Americans. However, the rising tide of state and societal Islamophobia and criminalization of Muslim identity makes access to lawyers especially critical.

The inability to procure legal counsel leads to innocent indigent Muslim Americans being unjustly convicted and sentenced at far higher rates than middle- or upper-class Muslim Americans. Following the trend of indigent Americans at large, “[a]s a result of inadequate representation, many [poor] people have been illegally convicted and sentenced.”²³² The combination of expanding CVE policing and preexisting federal surveillance and community policing exposes indigent Muslim Americans to serious risk of unjust arrest and detention. Furthermore, unjust anti-terror prosecutions, which come with far harsher penalties, are an acute danger to indigent Muslim Americans due to the enhanced focus of federal and local anti-terror policing strategies on poor and working-class Muslim American enclaves.

This selective prosecution and harsher sentencing of indigent Muslim Americans amid the still-escalating War on Terror is exacerbated by lack of access to specialized attorneys—those who understand the intersection between the criminal justice system, national security and anti-terror policies, and immigration enforcement systems, which in concert function to target indigent

228. See generally SpearIt, *Muslim Radicalization in Prison: Responding with Sound Penal Policy or the Sound of Alarm?*, 49 GONZ. L. REV. 37 (2014) (analyzing counterradicalization policing within American prisons and the disparate targeting of Muslim inmates).

229. *Id.*

230. Scholar SpearIt alludes to the poverty the majority of released prisoners face when their terms end: “Ex-prisoners are doubly disadvantaged when returning from prison, because they return to communities already struggling with high rates of poverty and unemployment.” *Id.* at 79.

231. Khaled A. Beydoun, *Many Faces of Hate: The Distinct Forms of Anti-Arab Bigotry and Violence*, in TAKE ON HATE: WHITE PAPER SERIES 9 n.22 (Mar. 2015), http://www.takeonhate.org/many_faces_of_hate_the_distinct_forms_of_anti_arab_bigotry_and_violence [<http://perma.cc/9GZG-H7UH>].

232. *Counsel for the Poor*, EQUAL JUST. INITIATIVE (2014), <http://www.eji.org/raceandpoverty/counsel> [<https://perma.cc/K2FQ-WKA4>].

and working-class Muslim American communities. The work of Muslim Advocates within this realm is notable,²³³ but hardly robust enough to adequately address the pervasive targeting and dire shortage of specialized attorneys available to indigent Muslim Americans suspected of terrorism or radicalization.

To the extent that the War on Terror is a battle being fought against Muslim America, the most aggressive fronts are within the impoverished spaces indigent Muslim Americans call home. As such, scholarly and legal interventions addressing CVE policing must analyze this broadening brand of community surveillance within the very geographies where it is being disproportionately deployed—indigent and working class Muslim American communities. Otherwise, such interventions will continue to produce incomplete analyses, assessments, and advocacy. Or, as is often the case, wholesale neglect.

CONCLUSION

Intersectionality alone cannot bring invisible bodies into view. Mere words won't change the way that some people—the less-visible members of political constituencies—must continue to wait for leaders, decision-makers and others to see their struggles.

—Kimberlé Crenshaw²³⁴

Millions of Muslim Americans are interlocked between indigence and Islamophobia. This intersection exposes indigent Muslim Americans to the hardships linked to poverty, the dangers posed by private and public Islamophobia, and the compounded injury inflicted when the two converge. Indigence and Islamophobia do not unfold in distinct and separate chambers, but instead come together to bring about greater harm in America's most impoverished spaces. The lack of analysis of these liminal spaces removes indigent Muslim Americans from the purview of legal scholarship and minimizes recognition of the distinct perils they face.

In addition to addressing the scholarly void, this Essay's focus on indigent Muslim Americans—and the unique challenges they confront amid rising societal and state-sponsored Islamophobia—is also a call to action. It demands greater acknowledgement and advocacy on the part of Muslim American civic organizations that have fallen short of addressing the pronounced plight of their

233. The National Association of Muslim Lawyers founded Muslim Advocates in 2005. It functions as a legal defense fund, but also engages in civic engagement and policy work in Washington, D.C. Muslim Advocates's mission is available at <http://www.muslimadvocates.org/about> [<https://perma.cc/CR9U-E2UG>].

234. Kimberlé Crenshaw, *Why Intersectionality Can't Wait*, WASH. POST (Sept. 24, 2015), <https://www.washingtonpost.com/news/in-theory/wp/2015/09/24/why-intersectionality-cant-wait> [<https://perma.cc/Z4MP-5KBM>].

indigent and working constituents. Addressing the concerns of indigent Muslim Americans—to echo Kimberlé Crenshaw’s demand—cannot wait.²³⁵

Neglect of indigent Muslim American communities is evident not only in scholarship, but also in the agendas and work of Muslim American civil rights and advocacy organizations.²³⁶ ACCESS in Detroit²³⁷ and Chicago’s Inner-City Muslim Action Network²³⁸ are among the few organizations that work within indigent and working-class communities. Addressing the dire shortage of Muslim American organizational work within poor and working-class spaces, prominent Islamic scholar Sherman Jackson commented, “[t]he plight of poor people in America, even poor Muslims in America, has not been on the radar screen of the immigrant Muslim community. They have been much more interested in monument-building.”²³⁹

While a harsh critic, Jackson is accurate in his observation that mainstream Muslim American organizations—which have historically operated far from indigent Muslim American spaces—have prioritized prestige over the poor. That is, they have demonstrated a greater commitment to erecting gaudy structures than to eroding structural poverty (and racism) within their constituencies.

The first step toward mitigating this paltry record of outreach is highlighting the faces, experiences and narratives, and pressing perils of indigent and near-indigent Muslim Americans who comprise 45 percent of the aggregate Muslim American population. Recognizing the struggles of indigent Muslim Americans will mark a shift from “monument building” to community building in the assailed, overpoliced impoverished spaces that need it most.

235. *Id.*

236. Here, “Muslim American organizations” is used loosely, focusing mainly on organizations that serve this population and not those necessarily guided by an Islamic mission or agenda.

237. ACCESS’s services to indigent and working class communities in the metropolitan Detroit area are robust. In addition to extending social services, including “basic needs” programming, ACCESS spearheaded the creation of the National Network for Arab American Communities, an umbrella organization that encompasses twenty-four social services, cultural, and arts institutions nationally.

238. INNER-CITY MUSLIM ACTION NETWORK, <http://www.imacentral.org/about> [<https://perma.cc/62CD-8HUR>].

239. Margaret Ramirez, *Muslim Confronts Needs of City*, CHI. TRIB. (May 3, 2006), http://articles.chicagotribune.com/2006-05-03/news/0605030211_1_muslim-leaders-muslim-americans-american-islam [<https://perma.cc/NP8Y-484E>]. Jackson is suggesting that Muslim American organizations have been far more committed to erecting brick and mortar institutions, such as mosques, instead of helping to remedy or alleviate poverty within Muslim American communities.

