

**9/11 AND 11/9:
THE LAW, LIVES AND LIES THAT BIND***

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INTRODUCTION

“Two days American history will never get over: 9/11 [and] 11/9.”

—Nicola Oakley¹

Fifteen years and two months after the terror attacks on 9/11, Donald Trump surprised pollsters, pundits and much of the public by winning the 2016 presidential election.² Shelving the “dog whistle” for the politics of blatant nativism, xenophobia, and racism,³ Trump turned much of his campaign aggression toward Islam: the

* This article is one of six written for CUNY Law Review’s inaugural cross-textual dialogue. The author was invited to write a short piece in response to the following quotation: “When you say racism, they say: it could have been something else. Sometimes you just know when it is racism. It is as tangible as hitting a wall, that the problem is you; that part of you that makes you the person they do not want or expect, the part of you than makes you stand out from the sea of whiteness. Sometimes you are not sure. And you begin to feel paranoid. That is what racism does: it makes you question everything, the whole world, the world to which you exist in relation. Heterosexism and sexism are like that too: are they looking at me like that because of that? Is that why they are passing us over, two women at the table? You are not sure.” Sara Ahmed, *Evidence*, FEMINISTKILLJOYS (July 12, 2016, 2:00 PM), <https://feministkilljoys.com/2016/07/12/evidence/> [https://perma.cc/T39A-28S3].

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¹ Nicola Oakley, “11/9 is the new 9/11”: *Americans Liken Trump’s Win to Most Devastating Day in Country’s History*, MIRROR (Nov. 9, 2016, 3:42 PM), <http://www.mirror.co.uk/news/world-news/119-new-911-americans-liken-9224036> [https://perma.cc/5GKT-VNMP].

² Shane Goldmacher & Ben Schreckinger, *Trump Pulls Off Biggest Upset in U.S. History*, POLITICO (Nov. 9, 2016, 2:57 AM), <http://www.politico.com/story/2016/11/election-results-2016-clinton-trump-231070> [https://perma.cc/J4LY-LVPJ].

³ See generally IAN HANEY LÓPEZ, *DOG WHISTLE POLITICS: HOW CODED RACIAL APPEALS HAVE REINVENTED RACISM AND WRECKED THE MIDDLE CLASS* (2014) (examining how politicians deploy coded messaging against nonwhites to further their objectives or campaigns).

religion adhered to by approximately eight million Americans.⁴

The very thought of the candidate who proposed to “ban Muslims,”⁵ or establish a “Muslim registry,” becoming president was unthinkable for Muslim Americans.⁶ However, the absurd became reality on November 9, 2016, instantly referred to by many as “11/9,”⁷ which took place during a moment that witnessed rising hatred toward Muslims, and the reinstallation of the state’s orientation of Islam as civilizational rival.

While separated by a generation, the election of Donald Trump restored the same fears Muslim Americans had after 9/11.⁸ The scapegoating, rising hostility and hate crimes,⁹ and, most strikingly, an executive branch that subscribed to the worldview that the United States was at war with Islam. Some have argued that, “the profound changes in America’s political culture and values in response to 9/11 created a crack that Trump, the entrepreneur and political opportunist, was able to open wide enough so as to slip into the White House.”¹⁰ The culture of war with Islam main-

⁴ A January 2016 estimate by the Pew Research Center counts the Muslim American population at 3.3 million people. Besheer Mohamed, *A New Estimate of the U.S. Muslim Population*, PEW RES. CTR.: FACTTANK (Jan. 6, 2016), <http://www.pewresearch.org/fact-tank/2016/01/06/a-new-estimate-of-the-u-s-muslim-population> [https://perma.cc/5HZV-JB4Y]. However, underreporting linked to fear and strategic disidentification suggests that this estimate is far too low. Other estimates figure the Muslim American population to be as high as 8 million. See Khaled A. Beydoun, *Between Indigence, Islamophobia, and Erasure: Poor and Muslim in “War on Terror” America*, 104 CALIF. L. REV. 1463, 1481 n.121 (2016), for an article analyzing how counter-radicalization policing disproportionately targets, and compromises the First Amendment rights of, indigent and working class Muslim Americans.

⁵ “Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States until our country’s representatives can figure out what is going on.” Jeremy Diamond, *Donald Trump: Ban All Muslim Travel to U.S.*, CNN POL. (Dec. 8, 2015, 4:18 AM), <http://www.cnn.com/2015/12/07/politics/donald-trump-muslim-ban-immigration> [https://perma.cc/C944-KXRM].

⁶ See Dara Lind, *Donald Trump’s Proposed “Muslim Registry,” Explained*, VOX (Nov. 16, 2016, 11:40 AM), <http://www.vox.com/policy-and-politics/2016/11/16/13649764/trump-muslim-register-database> [https://perma.cc/X5VA-TU5R].

⁷ See Christina Capatides, *Anti-Trump Social Media Users Draw Surprising Comparisons Between 11/9 and 9/11*, CBS NEWS (Nov. 9, 2016, 1:00 PM), <http://www.cbsnews.com/news/people-are-saying-the-date-of-trumps-win-11-9-is-the-new-9-11-september-11th> [https://perma.cc/B3DS-KG4W].

⁸ Oakley, *supra* note 1.

⁹ Eric Lichtblau, *Hate Crimes Against American Muslims Most Since Post-9/11 Era*, N.Y. TIMES (Sep. 17, 2016) <https://www.nytimes.com/2016/09/18/us/politics/hate-crimes-american-muslims-rise.html> [https://perma.cc/T7XP-5BRR].

¹⁰ Chauncey Devega, *From 9/11 to 11/9: Is Donald Trump’s Election Collateral Damage From the “War on Terror”?*, SALON (Nov. 16, 2016, 11:59 AM), <http://www.salon.com/2016/11/16/from-9-to-11-to-11-9-is-donald-trumps-election-collateral-damage-from-the-war-on-terror> [https://perma.cc/5RK6-863W].

streamed after 9/11,¹¹ and the government restructuring that endorsed and fomented it, enabled the rise of Trump.

Unlike President Obama, who disavowed the Bush Administration's civilizational binary for rapprochement that touted, "America and Islam are not exclusive and need not be in competition[,]"¹² Trump reinstated the rigid binary pitting the U.S. against Islam as formal state policy. This was most vividly illustrated by the Executive Order, popularly called the "Muslim Ban," signed into law on January 27, 2017.¹³

But unlike his neoconservative predecessors, Donald Trump matched the stridency of his policy proposals with the zeal of his rhetoric.¹⁴ The Trump campaign fully showcased his Islamophobia bona fides, through the ejection of Muslim Americans from his raucous rallies and his frequent demonization of Islam.¹⁵ It can be said that Trump channeled and repackaged the anti-Muslim climate after 9/11 into a cogent and potent campaign strategy, which enabled him to win over "white conservative and right-leaning independent voters" to secure the presidency.¹⁶

During and after the campaign, Muslim Americans always knew where they stood with Trump. Shifting from Presidents Bush and Obama,¹⁷ who juxtaposed counterterror programs that profiled Muslims as presumptive national security threats with laudatory speeches holding that "Islam is peace,"¹⁸ Trump explicitly

¹¹ See Tom Engelhardt, *14 Years After 9/11, the War on Terror Is Accomplishing Everything bin Laden Hoped It Would*, NATION (Sept. 8, 2015), <https://www.thenation.com/article/14-years-after-911-the-war-on-terror-is-accomplishing-everything-bin-laden-hoped-it-would/> [<https://perma.cc/7STP-4KHZ>].

¹² President Barack Obama, Remarks by the President on a New Beginning (June 4, 2009), <https://obamawhitehouse.archives.gov/the-press-office/remarks-president-cairo-university-6-04-09> [<https://perma.cc/BC3X-SSL4>].

¹³ President Trump enacted an executive order on January 27, 2017, that restricted the entry of refugees and visa holders from seven Muslim-majority countries (Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen) and put a halt on incoming refugees. See Exec. Order No. 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017); *Full Executive Order Text: Trump's Action Limiting Refugees Into the U.S.*, N.Y. TIMES (Jan. 27, 2017), <https://www.nytimes.com/2017/01/27/us/politics/refugee-muslim-executive-order-trump.html> [<https://perma.cc/34K7-KGP3>].

¹⁴ See Khaled A. Beydoun, "Muslims Bans" and the (Re)Making of Political Islamophobia, U. ILL. L. REV. (forthcoming 2017) (analyzing how Islamophobia was crafted and deployed by a number of presidential candidates, most notably by the Trump campaign, as full-fledged campaign strategy).

¹⁵ *Id.*

¹⁶ Devega, *supra* note 10.

¹⁷ While philosophically and rhetorically dissimilar to the counterterror visions of his predecessor and successor, President Obama's counterterror program carried the war on terror forward.

¹⁸ President George W. Bush, Remarks by the President at Islamic Center of Wash-

declared that, “Islam hates us.”¹⁹ In the words of Sara Ahmed, Muslim Americans “just [knew that] it is racism” when Trump addressed them and their faith.²⁰

11/9 felt like 9/11, with the same clash of civilizations paradigm, the same Muslim American targets, and the same counterterror presumption that held Muslim identity presumptive of terror threat. Never again, fifteen years later, is happening all over again for Muslim Americans.

This Article focuses on the law, lives, and lies that bind 9/11 and 11/9. Part I analyzes the law, Part II highlights the lives that will be impacted by the Trump Administration, and Part III examines the lies on which this link rests.

I. THE LAW

The philosophy that drove counterterror policies implemented after 9/11 and 11/9 were rooted in a binary that envisioned Islam as the civilizational nemesis of the U.S. In short, the hardline national security programs enforced by the Bush and Trump Administrations profiled Islam, and the religion’s adherents, as presumptive enemies of the state. The “Clash of Civilizations,”²¹ a flawed theory built upon Orientalist and racist baselines, became the backbone of counterterror policy under Bush and Trump.²²

In 1993, Harvard University Political Scientist Samuel P. Huntington observed a “new phase” of geopolitical rivalry.²³ His primary attention turned to the theorized clash between the West and Islam: “The underlying problem for the West is not Islamic fundamentalism. It is Islam, a different civilization whose people are convinced of the superiority of their culture and are obsessed with

ington, D.C (Sept. 17, 2001), <https://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010917-11.html> [https://perma.cc/9VVL-Q65Z].

¹⁹ Jose A. DelReal, *Trump: “I Think Islam Hates Us.”*, WASH. POST (Mar. 9, 2016), <https://www.washingtonpost.com/news/post-politics/wp/2016/03/09/trump-i-think-islam-hates-us> [https://perma.cc/VTA9-PFJL].

²⁰ Sara Ahmed, *Evidence*, FEMINISTKILLJOYS (July 12, 2016, 2:00 PM), <https://feministkilljoys.com/2016/07/12/evidence/> [https://perma.cc/CG47-SZ6A].

²¹ See generally SAMUEL P. HUNTINGTON, *THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER* (1996) (arguing in this landmark work that the West is at war with the civilization of Islam, positing that both are monolithic blocs).

²² Michael Hirsh, *Team Trump’s Message: The Clash of Civilizations is Back*, POLITICO MAG. (Nov. 20, 2016), <http://www.politico.com/magazine/story/2016/11/donald-trump-team-islam-clash-of-civilizations-214474> [https://perma.cc/QE3T-DPJ5]; DelReal, *supra* note 19; see also HUNTINGTON, *supra* note 21.

²³ Samuel P. Huntington, *The Clash of Civilizations?*, FOREIGN AFF., Summer 1993, at 22, 22.

the inferiority of their power.”²⁴ Huntington’s theory, dubbed the “clash of civilizations,” did not narrowly pit the U.S. against “Islamic fundamentalism,” but the entire whole of Islam:²⁵ a faith practiced by 1.6 billion people globally and at least 3.3 million American citizens.²⁶

Huntington’s theory guided the counterterror policies of the neoconservative Bush administration, furnishing the state with the worldview to launch two wars abroad, with Afghanistan and Iraq, and domestically, to establish the Department of Homeland Security (“DHS”) and enact the USA PATRIOT Act.²⁷ The Bush Administration’s counterterror policies ushered in an unprecedented degree of suspicion of Muslim Americans, “redeploy[ing] . . . Orientalist tropes” that drove state surveillance and profiling measures that eroded core First Amendment liberties for Muslim Americans.²⁸

President Trump revitalized the clash of civilizations binary that steered the state during the post-9/11 era. On December 7, 2015, the Trump campaign released a statement declaring, “Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States until our country’s representatives can figure out what is going on.”²⁹ Popularly dubbed the Muslim Ban, Trump’s proposal characterized a central theme of his presidential campaign, which deployed “Islamophobia” and the clash of civilizations worldview that undergirded it as core campaign strategy.³⁰

In addition to the Muslim Ban, Trump’s declaration that “Islam Hates Us,”³¹ signaled a marked departure from the philosophy

²⁴ HUNTINGTON, *supra* note 21, at 217.

²⁵ *Id.* at 13-14; Huntington, *supra* note 23.

²⁶ Michael Lipka, *Muslims and Islam: Key Findings in the U.S. and Around the World*, PEW RES. CTR.: FACTTANK (Feb. 27, 2017), <http://www.pewresearch.org/fact-tank/2016/07/22/muslims-and-islam-key-findings-in-the-u-s-and-around-the-world/> [<https://perma.cc/EM5D-9MHL>].

²⁷ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272.

²⁸ Leti Volpp, *The Citizen and the Terrorist*, 49 UCLA L. REV. 1575, 1586 (2002).

²⁹ Press Release, Donald J. Trump Statement on Preventing Muslim Immigration (Dec. 7, 2015), <https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration> [<https://perma.cc/69QG-49LG>]; Diamond, *supra* note 5.

³⁰ Islamophobia is “the presumption that Islam is inherently violent, alien, and inassimilable. Combined with this is the belief that expressions of Muslim identity are correlative with a propensity for terrorism.” Khaled A. Beydoun, *Islamophobia: Toward A Legal Definition and Framework*, 116 COLUM. L. REV. ONLINE 108, 111 (2016).

³¹ DelReal, *supra* note 19.

of coexistence and collaboration championed by President Obama,³² and a return to the post-9/11 binary pitting Islam against America.³³ This was further illustrated in Trump's policy agenda, which outlined the hardline counterterror mandate to, "Defeat the ideology of radical Islamic terrorism, just as we did in order to win the Cold War."³⁴ "Radical Islamic extremism" was not merely a national security threat, but for Trump, a broader existential, civilizational war with an enemy faith.³⁵

Trump's domestic counterterror program integrates the signature facets of the two previous administrations. While Trump adopted Obama's counter-radicalization program, he simultaneously revitalized the "crusade" against Islam that the Bush Administration launched after 9/11.³⁶ In the process, he mutated the Obama Administration's counter-radicalization policing into a hardline counterterror program that makes even the most benign expressions of Muslim identity presumptive of terror suspicion,³⁷ further endangering the civil liberties of Muslim Americans.

II. THE LIVES

Trump capitalized on Islamophobia and converted it into a full-fledged campaign strategy. Mobilizing voters to the ballot box with brazen anti-Muslim fear-mongering and scapegoating. Instead of coded appeals, "[Trump] embraced the hateful language of Quran-burning rallies, anti-mosque protests, and perhaps most violently, the ugly underbelly that is the comments' sections of news articles. Trump sounded more like the Islamophobes on-the-ground torching mosques, instead of Islamophobes in political of-

³² Obama, *supra* note 12.

³³ See generally Khaled Ali 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 (2005) (providing an analysis of the Bush Administration's deployment of the clash of civilization framework to carry forward its war on terror campaign).

³⁴ Press Release, Donald J. Trump's Plan to Defeat ISIS and Make America Safe Again (Oct. 29, 2016), <https://www.donaldjtrump.com/press-releases/donald-j-trumps-plan-to-defeat-isis-and-make-america-safe-again> [<https://perma.cc/5TVS-Y74N>].

³⁵ See Julia Edwards Ainsley et al., *Exclusive: Trump to Focus Counter-Extremism Program Solely on Islam – Sources*, REUTERS (Feb. 2, 2017, 10:51 AM), <http://www.reuters.com/article/us-usa-trump-extremists-program-exclusiv-idUSKBN15G5VO> [<https://perma.cc/W828-2GEZ>].

³⁶ MAHMOOD MAMDANI, GOOD MUSLIM, BAD MUSLIM: AMERICA, THE COLD WAR, AND THE ROOTS OF TERROR 15 (2004).

³⁷ See generally Amna Akbar, *Policing "Radicalization"*, 3 U.C. IRVINE L. REV. 809, 811 (2013) (describing counter-radicalization theory, policing, and its disproportionate impact on Muslim Americans).

fices supporting surveillance of mosques.”³⁸ The message that vilified Islam on the campaign trail, and profiled Muslims as presumptively terrorists and non-Americans, ushered in a period of rising hate violence toward Muslim subjects in the U.S.³⁹

Trump’s profiling of Muslim Americans as terrorists, and dis-identification of them as citizens, mirrors the process that unfolded after 9/11.⁴⁰ The war on terror launched after 9/11 drew a sharp divide between Muslim and American identity. By virtue of their religious identity, Muslims were viewed as non-citizens, manifesting the civilization divide the Bush Administration enshrined into its counterterror philosophy. In *The Citizen and the Terrorist*, Leti Volpp observed that, “September 11 facilitated the consolidation of a new identity category that . . . reflects a racialization wherein members of this group are identified as terrorists, and are disidentified as citizens.”⁴¹ The process of dis-identifying an individual as a citizen, and branding him or her a terrorist, justifies state encroachment on their civil liberties, and during times of heightened crisis, temporary revocation of citizenship.⁴²

Muslim Americans were the disproportionate victims of post-9/11 counterterror policies as a consequence of this process, and are slated for the same fate with the Trump administration. However, Trump’s targeting of Muslim Americans did not commence at the beginning of his Administration, but was kicked off during

³⁸ Khaled A. Beydoun, Opinion, *Donald Trump: The Islamophobia President*, AL JAZEERA (Nov. 9, 2016), <http://www.aljazeera.com/indepth/opinion/2016/11/donald-trump-islamophobia-president-161109065355945.html> [<https://perma.cc/9TDG-SWCZ>].

³⁹ Lichtblau, *supra* note 9.

⁴⁰ Volpp, *supra* note 28, at 1576.

⁴¹ *Id.*

⁴² Many legal scholars, including David Cole, Natsu Taylor Saito, and Leti Volpp, among others, have likened the current treatment of Muslim Americans to Japanese Americans during World War II, analogizing the internment of Japanese Americans and legal residents with the counterterror policing and dragnets deployed against Muslim Americans en masse. See, e.g., David Cole, *Why Trump’s Proposed Targeting of Muslims Would be Unconstitutional*, JUST SECURITY (Nov. 21, 2016, 9:05 AM), <https://www.justsecurity.org/34682/trumps-proposed-targeting-muslims-unconstitutional/> [<https://perma.cc/YKJ3-LPJM>]; Natsu Taylor Saito, *Symbolism under Siege: Japanese American Redress and the “Racing” of Arab Americans as “Terrorists”*, 8 ASIAN L.J. 1 (2001); Volpp, *supra* note 28, at 1590-91; see also *Korematsu v. United States*, 323 U.S. 214 (1944) (upholding, in a landmark decision, an Executive Action ordering the internment of at least one-hundred Japanese citizens and residents under the pretense of it being a compelling national security interest); Khaled A. Beydoun, *Fred Korematsu: An Unsung “Muslim-American” Civil Rights Hero*, ISLAMIC MONTHLY (Feb. 2, 2015, 12:05 PM), <http://theislamicmonthly.com/fred-korematsu-an-unsung-muslim-american-civil-rights-hero/> [<https://perma.cc/3CUG-V2L2>].

his polarizing presidential campaign, priming Muslim citizens and residents for the formal state targeting to come in January 2017.

Trump's campaign emboldened bigotry and a frightening rise in hate violence against Muslim Americans. In fact, the incidence of hate crimes and attacks on Muslim American individuals and institutions reached levels that rivaled the year following 9/11.⁴³ Women with headscarves were attacked, students bullied, and mosques vandalized and set on fire by those that heeded the words of Trump.⁴⁴ In addition to emboldening violent Islamophobia, Trump's strident rhetoric and policy proposals arguably authorized this activity.

The California State University-San Bernardino's Center for the Study of Hate and Extremism reported a 78% increase in "anti-Islam" incidents in 2015.⁴⁵ The report stated, "Last year's increase was so precipitous, that even if no other anti-Muslim hate crimes are recorded in the remaining unanalyzed states, 2015's partial numerical total would still be the highest since 2001 and the second highest on record."⁴⁶ Brian Levin, the report's author stated, "I don't think we can dismiss contentions that rhetoric is one of the significant variables that can contribute to hate crimes."⁴⁷

Like 9/11, the Trump campaign's demonization of Islam spurred a frightening degree of hate violence inflicted on Muslim Americans. However, this hate violence did not begin following Trump's election, or after his formal takeover of the White House. But well before it, foreshadowing that the violent Islamophobia his rhetoric emboldened on the campaign trail will be compounded by the Islamophobic policies his administration will enact into law.

⁴³ See Matt Zaptosky, *Hate Crimes Against Muslims Hit Highest Mark Since 2001*, WASH. POST (Nov. 14, 2016), https://www.washingtonpost.com/world/national-security/hate-crimes-against-muslims-hit-highest-mark-since-2001/2016/11/14/7d8218e2-aa95-11e6-977a-1030f822fc35_story.html [https://perma.cc/2EZB-PF8L]. Zaptosky cites FBI data finding that 257 "anti-Muslim incidents" were reported in 2015, a 67% increase from 2014. See Press Release, FBI, FBI Releases 2015 Hate Crime Statistics (Nov. 14, 2016), <https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-2015-hate-crime-statistics> [https://perma.cc/LS4W-8MD8].

⁴⁴ Lichtblau, *supra* note 9.

⁴⁵ BRIAN LEVIN, CTR. FOR THE STUDY OF HATE AND EXTREMISM, SPECIAL STATUS REPORT: HATE CRIME IN THE UNITED STATES 5 (2016) <https://assets.documentcloud.org/documents/3110202/SPECIAL-STATUS-REPORT-v5-9-16-16.pdf> [https://perma.cc/NTY3-LFY8].

⁴⁶ *Id.* at 15 (reporting on data from twenty states).

⁴⁷ Clare Foran, *Donald Trump and the Rise of Anti-Muslim Violence*, ATLANTIC (Sept. 22, 2016), <https://www.theatlantic.com/politics/archive/2016/09/trump-muslims-islamophobia-hate-crime/500840> [https://perma.cc/4FCL-22RG].

III. THE LIES

Islamophobia rests upon the lie that the primary source of terrorism is Islam, and that anything, and everything, connected to Islam must be closely policed by the state. In a previous Article, I define Islamophobia as “the presumption that Islam is inherently violent, alien, inassimilable; [tied to] . . . the belief that expressions of Muslim identity are correlative with a propensity for terrorism.”⁴⁸ This presumption, and strategically manufactured and mobilized lie, drove the state’s sweeping counterterror reforms that targeted Muslim Americans after 9/11, and helped deliver the presidency to Trump on 11/9.

Although a presumption built upon myths and misrepresentations, Islamophobia is a wildly potent and powerful lie. It benefits from being a modern extension of Orientalism, which envisions Islam as the antithesis of the West, and furthermore, Islam as a monolithic, unchanging, and war-mongering creed.⁴⁹ Confronting specific terror threats that exploit Islam for discrete, rational ends, the Bush and Trump Administrations institutionalized this Orientalist binary, pitting Islam against the U.S. to justify counterterror policies that criminalized Islam on the home front.

Thus, Islamophobia is a lie that spawns additional lies by the state that erode the civil liberties of Muslim Americans. Although the culprits of the 9/11 terror attacks were all Wahhabis—a fringe sect of Islam with origins in Saudi Arabia practiced by less than 1% of the globe’s Muslim population—the Bush Administration callously conflated Wahhabism with the whole of Islam.⁵⁰ This dangerous conflation led the state and private actors to believe that al-Qaeda had some sort of connection, or resonance, with Muslim Americans—an intensely diverse population along lines of race, sect, school of thought, and ancestry.

Abetted by the structure and strategy of President Obama’s Countering Violent Extremism (“CVE”) program, the counter radi-

⁴⁸ Beydoun, *supra* note 30, at 111.

⁴⁹ See generally EDWARD W. SAID, *ORIENTALISM* (1979) (referring to the West as the “Occident” and the East, the subject of study and definition, as the “Orient”).

⁵⁰ Wahhabism is the textual and fundamentalist interpretation of Sunni Islam established by the 18th Century Arabia Scholar Muhammad b. ‘Abd al-Wahhab, which preaches a return of the form of Islam practiced during the era of the Prophet Muhammad. Saudi Arabia enshrines Wahhabism, and the tradition drives the violent ideology and civilizational worldview of Al Qaeda and ISIS. For an excellent overview of the history, theology, and modern-day relevance of Wahhabism, see generally HAMID ALGAR, *WAHHABISM: A CRITICAL ESSAY* (2002).

calization program instituted in 2011,⁵¹ Trump took the state conflation of Islam with the Islamic State of Iraq and Syria (“ISIS”) three steps further.⁵² As a result, mirroring the post-9/11 Era, Muslim Americans of all sects and schools of thought were viewed with suspicion by the state, and branded with the presumption of terror threat by virtue of faith and expression of faith. However, Trump has shelved the CVE title used by the Obama Administration, for a program that is “likely to be renamed Countering Radical Islam or Countering Violent Jihad.”⁵³ The name is more hardline and aggressive than its predecessor, and built upon the very lie that views the whole of Islam, and its adherents, as either subscribers or susceptible to the fringe interpretation of Islam that inspired al Qaeda and ISIS.

To further weaponize this lie into counterterror policy that will infringe on the Free Exercise rights of Muslim Americans, and threaten their civil liberties at large,⁵⁴ Trump has assembled a team of cabinet leaders that believe in this fundamental lie. He appointed Michael Flynn, a retired U.S. Army lieutenant general, to serve as head of the NSA. In his book, *Field of Fight*, Flynn writes, “The countries and movements that are trying to destroy us have worldviews that may seem to be in violent conflict with one another. But they are united by their hatred of the democratic West and their conviction that dictatorship is superior.”⁵⁵

In addition to Flynn, Trump chose Jeff Sessions as Attorney General, Mike Pompeo for the role of Director of the Central Intelligence Agency (“CIA”), and John F. Kelly to head DHS.⁵⁶ During the Bush Era, Sessions “defended Mr. Bush’s authority to conduct wiretapping [of Muslim Americans] without a warrant after the

⁵¹ See generally OFFICE OF THE PRESIDENT, EMPOWERING LOCAL PARTNERS TO PREVENT VIOLENT EXTREMISM IN THE UNITED STATES (2011), https://obamawhitehouse.archives.gov/sites/default/files/empowering_local_partners.pdf [<https://perma.cc/GPY5-W499>].

⁵² See generally FAWAZ A. GERGES, *ISIS: A HISTORY* (2016) (providing a historiography of the terror network, focusing on its origins, worldview, and political strategy).

⁵³ Michael Crowley, *Trump’s Terror-Fighting Team Yet to Take Shape*, POLITICO (Dec. 20, 2016, 7:17 PM), <http://www.politico.com/story/2016/12/donald-trump-terrorism-232870> [<https://perma.cc/4X64-CVZF>].

⁵⁴ The Free Exercise Clause of the First Amendment holds that, “Congress shall make no law . . . prohibiting the free exercise” of religion. U.S. CONST. amend. I.

⁵⁵ MICHAEL T. FLYNN & MICHAEL LEDEEN, *THE FIELD OF FIGHT* 103 (2016).

⁵⁶ Jerry Markon & Dan Lamothe, *Retired Marine Gen. John F. Kelly Picked to Head Department of Homeland Security*, WASH. POST (Dec. 7, 2016), https://www.washingtonpost.com/world/national-security/retired-marine-gen-john-f-kelly-picked-to-head-department-of-homeland-security/2016/12/07/165472f2-bbe6-11e6-94ac-3d324840106c_story.html [<https://perma.cc/9QLL-7E55>].

Sept. 11 attacks.”⁵⁷ He also referred to Islam as a “toxic ideology,” similar to phrasing by Flynn who called Islam a “malignant cancer,” and tweeted in February 2016 that “Fear of Muslims is RATIONAL.”⁵⁸ Pompeo held that Muslim American organizations that do not explicitly denounce acts of terror (both in the U.S. and beyond) are “potentially complicit.”⁵⁹ Kelly, who likewise subscribes to a civilizational war on terror worldview, stated that the U.S. is interlocked with a “savage enemy” inside and outside of the U.S.⁶⁰

Many of the faces in Trump’s counterterror inner-circle are staunch advocates of the clash of civilizations worldview that guided the Bush Administration after 9/11.⁶¹ While the new faces brought into the fold fully subscribe to the civilizational binary that envisions the U.S. as “crusade[r]” against a unified Islamic threat,⁶² which looms in the Middle East and within Muslim American communities throughout the country. This lie, originating in Orientalism and enabled today by Islamophobia, is a foundational bind tying the 9/11 and 11/9 moments. Moreover, this fundamental lie has become a foundation of the law that gripped the country from 9/11 onward.

⁵⁷ Matt Apuzzo & Mark Landler, *With National Security Choices, Trump Builds Team to Bulldoze Status Quo*, N.Y. TIMES (Nov. 18, 2016), <https://www.nytimes.com/2016/11/19/us/politics/flynn-sessions-trump-administration.html> [https://perma.cc/ZAC6-T5TE].

⁵⁸ *Id.*; see also @GenFlynn, TWITTER (Feb. 26, 2016, 9:14 PM), <https://twitter.com/GenFlynn/status/703387702998278144> [https://perma.cc/A7W4-CMZ9].

⁵⁹ Greg Miller, *Trump’s CIA Pick Is Seen as Both a Fierce Partisan and Serious Student of National Security Issues*, WASH. POST (Nov. 18, 2016), https://www.washingtonpost.com/world/national-security/trumps-cia-pick-is-seen-as-both-a-fierce-partisan-and-serious-student-of-national-security-issues/2016/11/18/5b089f0e-ad9a-11e6-8b45-f8e493f06fcd_story.html [https://perma.cc/65TP-N9B4].

⁶⁰ Markon & Lamothe, *supra* note 56.

⁶¹ President Trump has enlisted a corps of likeminded cabinet appointees to carry forward his hardline counter-radicalization program. In addition to Flynn, Sessions, and Pompeo, on January 28, 2017, President Trump made an unprecedented structural reform to the National Security Council (“NSC”), creating a permanent seat for Stephen Bannon, the White House Chief Strategist. See Zeke J Miller, *Donald Trump Ups Stephen Bannon to National Security Role*, TIME (Jan. 29, 2017), <http://time.com/4652842/donald-trump-national-security-stephen-bannon/> [https://perma.cc/VWN5-4U7K]. In a “staff reshuffling” a few months later, Bannon was removed from this post. Robert Costa & Abby Phillip, *Stephen Bannon Removed from National Security Council*, WASH. POST (Apr. 5, 2017), <https://www.washingtonpost.com/news/post-politics/wp/2017/04/05/stephen-bannon-no-longer-a-member-of-national-security-council/> [https://perma.cc/Y5UM-ELG6].

⁶² MAMDANI, *supra* note 36, at 15.

CONCLUSION

Fifteen years, a distinct presidential administration, and a shifting national landscape sit between 9/11 and 11/9. However, the foundational baseline that envisions the U.S. to be interlocked in a crusade against Islam, the presumption that Muslim identity is tied to terrorism, and the scapegoating and victimization of Muslim Americans, are commonalities that overwhelm the distinctions.

Another notable similarity between the 9/11 and 11/9 eras is the exclusion of Muslim American involvement within the respective administrations. The virtual absence of any Muslim American involvement in the Trump campaign, or transition team, signaled what was to come with the Trump administration.⁶³ This further signals that Muslim Americans are a pariah, a fifth pillar to be excluded from state halls of power, unless they are willing to conform their views in line with the “good” or “moderate” Muslim stereotype manufactured by the state,⁶⁴ and conform their spiritual and political views in line with state objectives. “Acting Muslim” during the Trump Era may be just as perilous as it was following 9/11.⁶⁵

⁶³ The only visible Muslim American who actively supported the Trump campaign was Sajid Tarar, who led the Muslim prayer at the Republican National Convention and appeared in a series of television segments voicing support for Trump. See Abigail Hauslohner, *Meet the Muslim Guy Who Took the Convention Stage and Prayed for Trump*, WASH. POST (July 19, 2016), <https://www.washingtonpost.com/news/post-politics/wp/2016/07/19/meet-the-muslim-with-an-unusual-record-praying-in-arabic-at-the-rnc-tonight> [<https://perma.cc/4EHH-QBA5>].

⁶⁴ Karen Engle, *Constructing Good Aliens and Good Citizens: Legitimizing the War on Terror(ism)*, 75 U. COLO. L. REV. 59 (2004) (discussing various identity markers of “good” and “bad” Muslims propagated by the state); see also MAMDANI, *supra* note 36, at 15-16.

⁶⁵ See generally Khaled A. Beydoun, *Acting Muslim*, 53 HARV. C.R.-C.L. L. REV. (forthcoming 2017) (theorizing how expression of Muslim identity that confirms counterterrorism stereotypes endangers the Free Exercise rights of Muslim Americans, while those that negate those stereotypes may insulate the actor from state suspicion).