



## ESSAY

## The Ban and the Borderlands Within: The Travel Ban as a Domestic *War on Terror* Tool

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### Introduction

*"I have so internalized the borderland conflict that sometimes I feel like one cancels out the other and we are zero, nothing, no one."*

~ Gloria Anzaldua<sup>1</sup>

*"Homeland Security is Hometown Security."*

~ Department of Homeland Security website<sup>2</sup>

On December 7, 2015, Donald Trump called for a "total and complete shutdown" of Muslims entering the U.S.<sup>3</sup> The campaign proposal was crafted into executive policy only seven days after Trump was inaugurated as President,<sup>4</sup> followed by an eruption of protests and litigation challenging the constitutionality of the executive order widely dubbed the "Muslim Ban." Trump later signed two revised versions of the order, with the Supreme Court upholding the third and final version on June 26, 2018.<sup>5</sup>

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1. GLORIA ANZALDUA, *BORDERLANDS/LA FRONTERA: THE NEW MESTIZA* 85 (1987).
2. *Information Sharing*, U.S. DEP'T HOMELAND SECURITY, <https://perma.cc/3BW4-UA9V> (archived Feb. 20, 2019).
3. See Jenna Johnson, *Trump Calls For "Total and Complete Shutdown of Muslims Entering the United States"*, WASH. POST (Dec. 7, 2015), <https://perma.cc/47PX-FVR9>.
4. *Protecting the Nation from Foreign Terrorist Entry into the United States*, 82 Fed. Reg. 8977 (Jan. 27, 2017), *revoked by* *Protecting the Nation from Foreign Terrorist Entry into the United States*, 82 Fed. Reg. 13,209 (Mar. 6, 2017).
5. *Trump v. Hawaii*, 138 S. Ct. 2392, 2408 (2018) (holding that "[t]he President lawfully exercised that discretion based on his finding . . . that entry of the covered aliens would be detrimental to the national interest").

Following the ruling in *Trump v. Hawaii*, the Travel Ban was no longer a campaign tactic peddled to mobilize voters.<sup>6</sup> Rather, it became a judicially endorsed War on Terror policy enforced at the border, and was stretched as a counterterrorism tool deep inside Muslim American communities by federal and local law enforcement. The fear that gripped Muslim immigrants abroad and in American airports was just as palpable within communities with thriving and visible Muslim populations, particularly those that housed Muslim populations from the “Travel Ban states.”<sup>7</sup>

Legal literature and media coverage examining the Muslim Ban have centered almost exclusively on it as immigration policy enforced at the border. Specifically, the Ban has been narrowly framed as an executive measure that restricts the entry of “immigrants” from eight nations, including six Muslim-majority countries—Chad, Iran, Libya, Somalia, Syria, and Yemen.<sup>8</sup> The scholarly and popular focus has narrowed in on the Ban’s impact on Muslim immigrants *attempting to come into* the U.S., while neglecting how the Ban imperils immigrants, lawful permanent residents (LPRs), and citizens from the restricted states *inside* the country, namely, Muslim American communities—the heavily policed borderlands within.

This Essay seeks to address this scholarly and discursive void, and, at minimum, commence scholarly investigation into the Travel Ban’s impact beyond the border. It examines the deployment of the Travel Ban as a domestic War on Terror tool, and the counterterrorism risks it poses for Muslim immigrants, residents, and citizens within the U.S. Since the creation of the Department of Homeland Security (DHS) after the 9/11 terror attacks, distinct War on Terror policies have not been enforced on separate tracks, but strategically enmeshed as cogs of an interconnected network of counterterrorism policies that operate in concert. This is especially true for the Travel Ban and the cornerstone domestic War on Terror program, Countering Violent Extremism (CVE)—the anti-terror surveillance program instituted by the Obama Administration in 2011, and inherited and extended by President Trump.<sup>9</sup>

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6. See Khaled A. Beydoun, “Muslims Bans” and the (Re)Making of Political Islamophobia, 2017 U. ILL. L. REV. 1733, 1734-40 (analyzing how (candidate) Trump capitalized on Islamophobia as a full-fledged campaign strategy).

7. The six Muslim-majority states covered by the Travel Ban will be referred to as “Travel Ban states” within this Essay. President Trump later lifted the Travel Ban with respect to Chad. *U.S. Lifts Travel Ban on Chad Citizens: White House*, REUTERS (Apr. 10, 2018, 2:45 PM), <https://perma.cc/G7PD-ELTA>.

8. Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats, 82 Fed. Reg. 45,161, 45,165-67 (Sept. 24, 2017).

9. EXEC. OFFICE OF THE PRESIDENT, EMPOWERING LOCAL PARTNERS TO PREVENT VIOLENT EXTREMISM IN THE UNITED STATES 1-2 (2011) [hereinafter 2011 CVE STRATEGY] (adopting this language and the broader radicalization framing adopted by the Obama

This Essay will proceed in three parts. Part I closely examines the legal design and scope of the Travel Ban and CVE policing, as standalone War on Terror programs. Part II investigates how per se or perceived immigrant status for Muslims is interpreted as a proxy for terrorism, or per CVE parlance, “homegrown radicalization.” Part III explores how the FBI and local law enforcement wield the Travel Ban as a tool to advance discrete and broad CVE policing goals within Muslim American communities.

## I. The War on Terror, Within and Without

“Our war on terror,” coined by President George W. Bush ten days after the 9/11 terror attacks,<sup>10</sup> knocked down the structural walls between federal agencies. The dissolution of boundaries was a central tenet of this new War, built upon the belief that terrorism was a porous threat that required the state to entirely remake its counterterror structures and liberalize traditional divides across federal agencies.<sup>11</sup> This new paradigm enables the lines between distinct War on Terror policies, such as the Travel Ban and CVE policing, to be blurred and blended in line with specific counterterror objectives.

This Section investigates the principal cornerstones of the current phase of the War on Terror: Subpart A surveys the Travel Ban, and Subpart B provides an overview of CVE surveillance.

### A. Policing Borders: Trump’s Travel Ban

The introductory version of the Travel Ban comprised exclusively Muslim-majority nations and was introduced by a President who promised to deliver on a “Muslim Ban” on the campaign trail. The third version included non-Muslim majority states in order to diminish its facially discriminatory appearance and evade more exacting judicial scrutiny. This proved a successful strategy, with the Supreme Court finding that the Travel Ban—despite the rhetoric of (candidate and President) Trump<sup>12</sup>—was *not* a Muslim Ban.

The Travel Ban impacts more than just immigrants from the restricted states. But the impact of the Ban disproportionately affects Muslims from six Muslim-majority nations, with fear seeping into Muslim immigrant

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Administration and local state actors); *see also* MITCHELL D. SILBER & ARVIN BHATT, N.Y.C. POLICE DEP’T, *RADICALIZATION IN THE WEST: THE HOMEGROWN THREAT* 5-10 (2007).

10. *Text of George Bush’s Speech*, *GUARDIAN* (Sep. 21, 2001), <https://perma.cc/S9TF-USWA>.

11. For a brief analysis supporting dissolved boundaries between federal agencies and enhanced cooperation written approximately a half a year after 9/11, *see generally* DANA DILLON, *HERITAGE FOUND.*, *BREAKING DOWN INTELLIGENCE BARRIERS FOR HOMELAND SECURITY* (2002), <https://perma.cc/T5GB-VF9T>.

12. *See* Greg Sargent, *Is This a ‘Muslim Ban?’ Look at the History—and at Trump’s Own Words*, *WASH. POST* (Jan. 31, 2017), <https://perma.cc/9NMS-3QRG>.

populations that hail from other nations. Therefore, discussion of the Travel Ban has to be divided along two fronts: (1) the immediate, or its direct, legal impact on “immigrants” and “nonimmigrants” from the Travel Ban states;<sup>13</sup> and (2) its comprehensive and collateral effects, specifically, how the Travel Ban is deployed by law enforcement as a tool of intimidation and a proxy for “homegrown radicalization” within Muslim communities.

First, the Ban imposes a blanket restriction on immigrants from Syria, the Levantine nation ravaged by a brutal civil war that spawned a global population of nearly 13 million refugees,<sup>14</sup> restricting all immigrant and nonimmigrant visas. Iran, a nation maligned by the Trump Administration, has the next most sweeping prohibitions, with the Ban restricting all forms of immigrant and nonimmigrant visas except student visas.<sup>15</sup> For Chad, Libya, and Yemen, the Ban restricts all immigrant visas, and does not allow nonimmigrants to come to the U.S. on business or tourist visas.<sup>16</sup>

Finally, the Ban imposes a blanket suspension on immigrants from Somalia. Extreme vetting, or “additional scrutiny to determine if applicants are connected to terrorist organizations or otherwise pose a threat to the national security or public safety of the United States,” is also applied to *all* nonimmigrants—with no visa exceptions made.<sup>17</sup> Figure 1, below, provides a useful visual illustrating how the Travel Ban impacts immigrants and nonimmigrants from the six Muslim-majority states.

**Figure 1 | Muslim-Majority States Restricted by the Travel Ban<sup>18</sup>**

<b>Country</b>	<b>Immigrants</b>	<b>Nonimmigrants</b>
<b>Chad</b>	Blanket Prohibition	Business & Tourist Visas Prohibited
<b>Libya</b>	Blanket Prohibition	Business & Tourist Visas Prohibited
<b>Iran</b>	Blanket Prohibition	All Visas, except Student Visas, Prohibited
<b>Somalia</b>	Blanket Prohibition	“Additional

13. Immigrants are foreign nationals that come to the U.S. seeking to become lawful permanent residents or citizens, while nonimmigrants enter the country on a short-term basis, and intend to return to their home countries.

14. Phillip Connor, *Most Displaced Syrians Are in the Middle East, and About a Million Are in Europe*, PEW RES. CTR. (Jan. 29, 2018), <https://perma.cc/ES45-TUS7>.

15. Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats, 82 Fed. Reg. 45,161, 45,166 (Sept. 24, 2017).

16. *Id.* at 45,165-67.

17. *Id.* at 45,167.

18. The Travel Ban was lifted with respect to Chad last year. *See supra* note 7.

		Scrutiny” of All Visas
<b>Syria</b>	Blanket Prohibition	Blanket Prohibitions, No Visas Excepted
<b>Yemen</b>	Blanket Prohibition	Business & Tourist Visas Prohibited

B. Policing Borderlands Within: Countering Violent Extremism

President Obama formally established CVE policing in 2011.<sup>19</sup> The program’s aim fused the resources of DHS and the FBI with the community reach of local law enforcement, collaborating to keep tabs on the theorized threat of “homegrown radicalization” looming within Muslim American communities.<sup>20</sup> Although the majority of mass killings are perpetrated by white (non-Muslim) culprits, “Muslims and other minority groups are explicitly targeted in 85 percent of Homeland Security Department grants devoted to [CVE].”<sup>21</sup> Like the Travel Ban, CVE policing adopts the premise that terrorism is fundamentally a Muslim concern, despite statistics showing otherwise.

Structurally, hardline CVE policing programs rely on the following strategic network: FBI agents collaborate closely with local police departments, which thereby look to develop interlocutors within Muslim American communities, and most vitally, informants that function as on-the-ground watchdogs and data gatherers. These informants are planted in spaces where Muslims regularly congregate, including community centers, civic groups, student organizations, and most predominantly, mosques.<sup>22</sup> The most coveted informants are known and influential commodities; most notably they may be mosque imams,<sup>23</sup> community leaders, or individuals with compromised criminal or immigration records.

Hardline CVE policing programs focus heavily on concentrated immigrant Muslim communities. In 2014, DHS piloted three hardline CVE

19. 2011 CVE STRATEGY, *supra* note 9, at 2-3.

20. Aziz Z. Huq, *Modeling Terrorist Radicalization*, 2 DUKE F. FOR L. & SOC. CHANGE 39, 41 (2010) (“The authors of ‘radicalization’ literature attempt to construct a descriptive taxonomy of terrorist motivations and interactions to enable prediction to future acts of violence.” (footnote omitted)).

21. *Countering Violent Extremism Programs in the Trump Era*, BRENNAN CTR. FOR JUST., <https://perma.cc/X3CJ-QE9M> (archived Feb. 4, 2019) [hereinafter *CVE in the Trump Era*].

22. Amna Akbar, *Policing “Radicalization,”* 3 U.C. IRVINE L. REV. 809, 862 (2013).

23. See Dawud Walid, *The Danger of Imams Being Involved in CVE*, AL-MEDINA INST. (Sept. 7, 2016), <https://perma.cc/YFT2-TAS4> (analyzing the community risks associated with imams becoming CVE interlocutors or informants).

policing programs in Los Angeles, Boston, and Minneapolis/St. Paul,<sup>24</sup> all home to disparate and sizable Muslim populations. These cities are also hosts to diaspora communities from many of the Muslim-majority nations restricted by the Travel Ban: Los Angeles hosts the biggest population of Iranians in the U.S.; Boston is home to visible Syrian and Somali populations; and with an estimated 74,000 Somalis, the Twin Cities (Minneapolis and St. Paul) are home to the largest Somali community in North America.<sup>25</sup> What also ties these communities together is class, with the majority falling within the class of Muslim Americans below, or dangerously close to, the legal poverty line,<sup>26</sup> compounding the vulnerability of indigent Muslims to the overreach of law enforcement.<sup>27</sup>

## II. Islamophobia and Immigration

The War on Terror, and the foundational baseline that ties Muslim identity to terrorism, is furiously policed at the border and the surrounding borderlands. However, the creation of DHS integrated the state's immigration and domestic counterterrorism efforts under one roof. Fending off "Islamic terrorism" from beyond and preventing "homegrown radicalization" from within became a fused mandate after 9/11.<sup>28</sup> Both aims are built upon the same presumption that ties Muslim identity—whether encountered at the border or within American communities—to terrorism. This presumption was made explicit by Trump's rhetoric, particularly before he won the 2016 presidential election, and is vividly manifested by the Travel Ban.

This Part examines how the strategic deployment of explicit Islamophobia pronounces the threat of Muslim terrorism from the vantage point of law enforcement, particularly among (real or perceived) immigrants. Subpart A provides a legal framing of Islamophobia, while Subpart B analyzes how immigrant status is a proxy for terror suspicion for Muslims.

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24. *Fact Sheet: The White House Summit on Countering Violent Extremism*, WHITE HOUSE (Feb. 18, 2015), <https://perma.cc/GTR9-JK2R>.

25. Benny Carlson & Stefanie Chambers, *A Tale of Twin Cities and Somalis Being Trumped*, MINN. POST (May 23, 2017), <https://perma.cc/3EG8-K6EF> (citing American Community Survey figures).

26. DAHLIA MOGAHED & YOUSSEF CHOUHOUD, INST. FOR SOC. POL'Y & UNDERSTANDING, *AMERICAN MUSLIM POLL 2017: MUSLIMS AT THE CROSSROADS 9* (2017), <https://perma.cc/U223-RLU4>.

27. See Khaled A. Beydoun, *Between Indigence, Islamophobia, and Erasure: Poor and Muslim in "War on Terror" America*, 104 CAL. L. REV. 1463, 1495 (2016).

28. See Samuel J. Rascoff, *Establishing Official Islam? The Law and Strategy of Counter-Radicalization*, 64 STAN. L. REV. 125, 127 (2012) (analyzing radicalization theory and policy and the state taking a turn towards countering homegrown terrorism a decade after 9/11).

A. The Rise of Islamophobia

“I think *Islam* hates us,” Donald Trump proclaimed on primetime television eight months before becoming President.<sup>29</sup> Trump capitalized fully on the explicit barrage against Islam and Muslims, hallmarked by his promise to deliver on a “Muslim Ban,”<sup>30</sup> which drove many—including myself—to cast him as the nation’s “first Islamophobia president.”<sup>31</sup> Trump did not usher in Islamophobia in the U.S., but his blatant overtures helped mainstream it within the prevailing political and popular discourse.

How is Islamophobia, as an epistemological and rhetorical current, related to the Travel Ban? Islamophobia, as I have defined it, is the “the presumption that Islam is inherently violent, alien, and inassimilable together with the belief that expressions of Muslim identity are correlative with a propensity for terrorism.”<sup>32</sup> The progeny of Orientalism,<sup>33</sup> Islamophobia is “rooted in understandings of Islam as civilization’s antithesis and [a form of animus] perpetuated by government structures and private citizens.”<sup>34</sup> Islamophobia is both “private,” carried out by individuals not directly connected to the state, and “structural,” extended by way of state policy, law, and action.<sup>35</sup> This presumption is fueled by the trope that “all terrorists are Muslims,”<sup>36</sup> which is affirmed by damning portrayals of Muslims in mass media,<sup>37</sup> and as articulated by Caroline Mala Corbin, the potent political propaganda of politicians<sup>38</sup>—propaganda that casts Muslims as threatening, and Muslim immigrants as especially threatening.

In addition to brazen rhetoric from President Trump and others, “structural Islamophobia” is rapidly intensifying. This is represented most ominously by the deployment of the Travel Ban as a War on Terror tool. As exhibited by his explicit overtures, and swift signing of the Ban a week after

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29. Jenna Johnson & Abigail Hauslohner, “I Think Islam Hates Us”: A Timeline of Trump’s Comments About Islam and Muslims, WASH. POST (May 20, 2017) (emphasis added), <https://perma.cc/X4X9-VKRC>.

30. See David Bier, *A Dozen Times Trump Equated His Travel Ban with a Muslim Ban*, CATO INST. (Aug. 14, 2017, 12:06 PM), <https://perma.cc/VV78-JF9B>.

31. Khaled A. Beydoun, *Donald Trump: The Islamophobia President*, AL JAZEERA ENG. (Nov. 9, 2016), <https://perma.cc/9TJF-VFU2>.

32. Khaled A. Beydoun, *Islamophobia: Toward a Legal Definition and Framework*, 116 COLUM. L. REV. ONLINE 108, 111 (2016) [hereinafter Beydoun, *Islamophobia*].

33. EDWARD SAID, *ORIENTALISM* 1-9 (1978) (introducing and exploring the meaning of “Orientalism”).

34. Beydoun, *Islamophobia*, *supra* note 32, at 111.

35. *Id.*

36. Caroline Mala Corbin, *Essay, Terrorists Are Always Muslim But Never White: At the Intersection of Critical Race Theory and Propaganda*, 86 FORDHAM L. REV. 455, 456 (2017).

37. For a critical examination of the most prominent stereotypes of Muslim men and women after the 9/11 terror attacks, see generally EVELYN ALSULTANY, *ARABS AND MUSLIMS IN THE MEDIA: RACE AND REPRESENTATION AFTER 9/11* (2012).

38. Corbin, *supra* note 36, at 473-79.

claiming the presidential office, Trump's focus on immigration (as both a primary campaign platform and presidential priority) has centered on Muslims entering through airports. Trump's branding of Muslim immigrants as terrorists disguised as refugees is a message that plays on the already embedded trope that immigrant status, for Muslims, is a proxy for terror suspicion.

## B. Immigrant Status as a Proxy for Terror Suspicion

While Islamophobia is driven by the baseline that expressions of Muslim identity are correlated with terrorism, this presumption is heightened when the Muslim subject is an immigrant.<sup>39</sup> This suspicion was evident in the rhetoric of Trump when pushing the Travel Ban on the campaign trail,<sup>40</sup> and indeed is a variable that radicalization theory and CVE policing hone in on as a predictor of terrorism.<sup>41</sup> Immigrant status, both in terms of technical status and the popular perception that "dis-identifies" Muslim citizens as bona fide citizens on account of racial or religious status,<sup>42</sup> augments suspicion of terror affiliation on the part of the state.

This suspicion is enhanced by the stigma and fear assigned to those that hail from the six Muslim-majority Travel Ban states. In addition to the explicit rhetoric of President Trump singling out these nations as hotbeds of terrorism, the Travel Ban itself endorses a broader perception, within and beyond state agencies, that Muslim newcomers, LPRs, and citizens from Chad, Libya, and Iran, and especially Somalia, Syria, and Yemen, are of heightened concern.<sup>43</sup> Sunni Muslim-majority populations, given their sheer size and perceived link to homegrown radicalization, are of greatest concern.<sup>44</sup>

Furthermore, Islamophobia, as I have theorized, is also a fluid and ongoing dialectic,<sup>45</sup> whereby formal policy has the effect of endorsing perceptions that some populations are to be policed more closely. In short,

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39. See Natsu Taylor Saito, *Symbolism Under Siege: Japanese American Redress and the "Racing" of Arab Americans as "Terrorists,"* 8 ASIAN L.J. 1, 16-17 (2001).

40. See Ben Jacobs & Tom McCarthy, "They Could Be Isis." Donald Trump Warns Against Taking Syrian Refugees, *GUARDIAN* (Oct. 1, 2015, 4:20 AM EDT), <https://perma.cc/X5J2-PZ74>.

41. Akbar, *supra* note 22, at 834.

42. In addition, Muslim citizens that are suspected of terrorism or radicalization are often "dis-identified as citizens." Leti Volpp, *The Citizen and the Terrorist*, 49 UCLA L. REV. 1575, 1576 (2002).

43. Radicalization has been predominantly framed and policed as a Sunni Muslim phenomenon, making subjects of these three nations a greater priority to CVE policing strategy. See generally Khaled A. Beydoun, *Bisecting American Islam? Divide, Conquer, and Counter-Radicalization*, 69 HASTINGS L.J. 429 (2018) [hereinafter Beydoun, *Bisecting American Islam*].

44. See generally *id.*

45. I have coined this phenomenon "dialectical Islamophobia," the "process by which state policies legitimize prevailing misconceptions, misrepresentations, and tropes widely held by private citizens." Beydoun, *Islamophobia*, *supra* note 32, at 119.



state action can authorize private violence. This has the effect of emboldening FBI agents and local law enforcement to interpret benign activity on the part of Muslims as suspicious, particularly in communities concentrated with immigrant, Sunni Muslim populations.<sup>46</sup>

### III. The Travel Ban as a Counterterrorism Tool

“I am afraid that I will be deported,” shared Hussein, a resident of Hamtramck. “I’ve been in this country for many years and my country is at war.”<sup>47</sup> Hussein’s story is not a unique one in his adopted Michigan town, home to thousands of Yemeni residents and immigrants. His country of ancestry, ravaged by war and spiraling into a “chaos state,”<sup>48</sup> is one of the six Muslim-majority Travel Ban states. Hussein’s hometown, the country’s first Muslim-majority city, is also terrain where FBI surveillance is pervasive.

Hussein is not alone, as scores of Muslims occupy the perilous intersection of coming from a Travel Ban state and living within a heavily-surveilled Muslim community. I heard this story over and over during emergency workshops in the immediate aftermath of the Travel Ban in Hamtramck<sup>49</sup> and Dearborn, Michigan, and too many times after it, signifying the fear born from the furious convergence of surveillance and the Travel Ban.

This Part examines how the Travel Ban figures into CVE policing within Muslim communities. Subpart A analyzes the state of CVE policing under the Trump Administration, and Subpart B examines the myriad ways in which the FBI, local law enforcement, and their proxies wield the Travel Ban as a domestic War on Terror tool.

#### A. Tailoring Surveillance Toward Travel Ban Targets

The future of CVE policing was up in the air after Trump won the election. Shortly after his inauguration, Trump announced that he would tweak the program to focus explicitly on Islam and rename it “Countering Islamic Extremism” or “Countering Radical Islamic Extremism,” doing away with the facially neutral title that enabled the Obama Administration to

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46. Akbar, *supra* note 22, at 834-35.

47. Interview with Hussein, in Hamtramck, Michigan (Sept. 28, 2018). This was a private interview conducted during anti-CVE trainings sponsored by the Open Society Foundation. Hussein’s name is changed to protect his anonymity.

48. See Ben Watson, *The War in Yemen and the Making of a Chaos State*, ATLANTIC (Feb. 3, 2018), <https://perma.cc/X2NF-9WNJ>.

49. Muath Ben Jabal Masjid, *Travel Ban—Muslim Ban Emergency Town Hall Meeting*, YOUTUBE (Dec. 6, 2017), <https://perma.cc/A9TK-85S4>.

penetrate deep into Muslim communities and build strategic partnerships with Muslim organizations.<sup>50</sup>

While the outlook for CVE is in flux, the Trump Administration has funneled more funding toward hardline policing. According to the Brennan Center, “the Trump administration has nearly tripled the amount of CVE funding that directly flows to law enforcement agencies (from approximately \$764,000 to \$2,340,000), opening the door to increased intelligence gathering under the guise of community-based programs.”<sup>51</sup> In addition to increased funding, the Trump Administration has directed much of the finances away from Muslim community organizations, and into police departments. In doing so, Trump is shifting CVE policing focus away from the Obama Administration’s emphasis on a “soft” community building strategy and toward a more hardline policing approach.<sup>52</sup>

Trump’s increased funding focused on the same Muslim demographics targeted by the Travel Ban. This was not coincidence, but a strategic way to double down on Muslim populations the Trump Administration believes are of heightened concern. The Hennepin County Sheriff’s Office in Minneapolis, home to the biggest Somali community in the U.S., received \$347,600 to expand its existing CVE program.<sup>53</sup> The police department of Dearborn, Michigan, the Detroit suburb that boasts the most concentrated Arab community in the country, a rising Syrian refugee population, and a network of vibrant Yemeni communities, received funding to finance “at least 22 officer-led trainings to teach civilians to effectively respond to threatening situations,” and to hold trainings in city schools.<sup>54</sup>

Boston, also home to a visible Somali population and scattered communities of Muslims from other Travel Ban states, was a priority for the Trump Administration. The Boston Police Foundation received a renewable grant of \$484,835<sup>55</sup> to deepen community outreach, enlist informants, and strengthen policing. The Massachusetts Office of Public Security and Safety

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50. Julia Edwards Ainsley et al., *Exclusive: Trump to Focus Counter-Extremism Program Solely on Islam—Sources*, REUTERS (Feb. 1, 2017, 3:17 PM), <https://perma.cc/9CM4-GQHZ>.

51. *CVE in the Trump Era*, *supra* note 21 (capitalization altered).

52. “Soft” CVE refers to resources and emphasis being directed at building alliances between Muslim groups and law enforcement through direct DHS funding of Muslim organizations. FAIZA PATEL & MEGHAN KOUSHIK, BRENNAN CTR. FOR JUSTICE, COUNTERING VIOLENT EXTREMISM 2 (2017), <https://perma.cc/7G7G-5FPE>.

53. *Minneapolis, MN (Hennepin County Sheriff’s Office)*, BRENNAN CTR. FOR JUST., <https://perma.cc/W8GK-W6SS> (archived Feb. 4, 2019).

54. *Dearborn, MI (Dearborn Police Department)*, BRENNAN CTR. FOR JUST., <https://perma.cc/3MRN-TAYS> (archived Feb. 4, 2019).

55. *Boston, MA (Police Foundation)*, BRENNAN CTR. FOR JUST., <https://perma.cc/DPV9-NAF4> (archived Feb. 4, 2019).

received \$500,000 in renewable support, to be sub-granted to stifle Muslim radicalization in prisons and enhance mental health efforts.<sup>56</sup>

Police departments—in Los Angeles and Oakland, California, home to large Yemeni communities; Denver, Colorado, Las Vegas, Nevada, and Arlington, Texas, home to Muslim communities; and Seattle, Washington, home to the second largest Somali community in the U.S.—received sizable grants, signaling the structural shift toward hardline CVE policing under the Trump Administration.<sup>57</sup> The focus was clear: Direct increased resources into Muslim communities composed of the same demographics restricted by the Travel Ban, opening the door to the converging suspicions of Travel Ban policy and CVE policing.

## B. Stretching the Travel Ban into the Community

There are many ways in which the Travel Ban is directly or indirectly deployed to carry forward CVE policing. Below, I examine three of the most common forms.

### 1. Flipping Immigrants into Informants

It is established practice for the FBI to target Muslim immigrants, particularly undocumented immigrants or those looking to improve their status, as prospective informants. “If they have immigration problems, then that becomes a key pressure point” for FBI agents to prey on and use to flip Muslim immigrants into informants assigned to spy on members of their own communities.<sup>58</sup>

Immigrant Muslims, under the Trump Administration, are more vulnerable than ever. Ali, a Shiite Muslim resident of Dearborn,<sup>59</sup> shared, “I was approached several times to spy on [Sunni Muslim] Yemenis and go to their mosques.”<sup>60</sup> Mosques are spaces where law enforcement capitalizes on sectarian divides within Muslim communities to advance the CVE objective of turning specific Muslim groups against targeted demographics<sup>61</sup> and subsequently, looks to isolate (Sunni Muslim) Yemenis that might be removable on grounds of the Travel Ban.<sup>62</sup> In exchange, Muslim informants

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56. *Boston, MA (Massachusetts Office of Public Safety and Security)*, BRENNAN CTR. FOR JUST., <https://perma.cc/7R4B-DA7V> (archived Feb. 4, 2019).

57. For a list of individual grants in different cities, see *CVE in the Trump Era* above at note 21.

58. Trevor Aaronson, *When Informants Are No Longer Useful, the FBI Can Help Deport Them*, INTERCEPT (Jan. 31, 2017, 4:14 AM), <https://perma.cc/4DRJ-NPMZ>.

59. Shiite Islam is the minority branch of Islam, while Sunni Islam is more broadly observed, in the U.S. and globally.

60. Interview with Ali, in Dearborn, Mich. (Sept. 15, 2018).

61. Beydoun, *Bisecting American Islam*, *supra* note 43, at 478.

62. See George Joseph, *Draft DHS Report Called for Long-Term Surveillance of Sunni Muslim Immigrants*, FOREIGN POL’Y (Feb. 5, 2018, 4:53 PM), <https://perma.cc/5R5T-MFJ2>.

like Ali or Ibrahim Souden, both from Lebanon, are dangled promises of a green card or citizenship as collateral to collect data from fellow Muslim community members, and particularly Sunni Muslims that hail from Muslim-majority states restricted by the Travel Ban.<sup>63</sup>

This is common practice in cities like Minneapolis, Boston, and Los Angeles, where hardline CVE policing is robust. Law enforcement actively recruits informants from the Travel Ban states to track down undocumented and out-of-status immigrants, mobilizing CVE strategy to do the work of Immigration and Customs Enforcement (ICE). In my book, *American Islamophobia: Understanding the Roots and Rise of Fear*, I present the story of a Somali teen from Minneapolis named Ahmed:

Ahmed had no idea he was a suspect until one Saturday morning . . . . The officers were acting with the help of an informant, a school acquaintance who kept tabs on Ahmed in exchange for reduced probation time for a crime he had committed. Ahmed had done no wrong, he had no prior convictions, no criminal record at all, and yet he was deemed . . . a prospective radical on account of his nationality, neighborhood, and especially, his spiritual evolution from secular to devout Muslim.<sup>64</sup>

In addition to Muslim informants collecting data about subjects of interest for law enforcement, they have been mobilized under Trump's War on Terror to give tips about undocumented and out-of-status individuals from the Travel Ban restricted states. Suhaib Al-Hanooti, a Palestinian American and Detroit community leader shared, "People at our mosque [Islamic Center of Detroit] are frequently approached by people about their immigration status. I have no doubt that many of them are spies, especially because we have many people from Syria and Yemen."<sup>65</sup>

Law enforcement also approaches Muslims whose names appear on the No Fly Lists to serve as informants. According to Dawud Walid, the Executive Director of the Council on American Islamic Relations—Michigan, the converse is also true: "One of our clients, who did not appear on the [No Fly] List, was placed on it after he refused to serve as an informant."<sup>66</sup> The man, a native of Yemen, a restricted Travel Ban state, is, according to Walid, pondering litigation.

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63. *Local Lebanese Man to Be Deported After Serving as FBI Informant*, ARAB AM. NEWS (Oct. 26, 2018, 5:50 AM), <https://perma.cc/V8KW-YJE6>.

64. KHALED A. BEYDOUN, AMERICAN ISLAMOPHOBIA, UNDERSTANDING THE ROOTS AND RISE OF FEAR 129 (2018) [hereinafter BEYDOUN, AMERICAN ISLAMOPHOBIA].

65. Interview with Suhaib Al-Hanooti, in Detroit, Mich. (Oct. 26, 2018).

66. Interview with Dawud Walid, Exec. Dir., Council on Am. Islamic Relations, Mich., in Dearborn, Mich. (Nov. 4, 2018).

## 2. Policing Political and Religious Expression

Engagement of the Travel Ban as a surveillance tool has suppressed and chilled the First Amendment activity of Muslims. Again, radicalization theory is based upon an informal algorithm that ties, among other factors, religious piety and conservatism, critical politics and dissident speech, and specific political associations and affiliations with suspicion of homegrown radicalization. This, as examined in my article *Acting Muslim*, oftentimes pressures Muslims to conform, cover, or conceal religious practices that align with the state's conception of Muslim suspicion to evade state suspicion, and the surveillance it summons.<sup>67</sup>

Fear is pronounced for Muslim immigrants from Travel Ban states. "It shapes everything about how I structure and approach political work," shared Yusef, a twenty-three-year-old Syrian man, who continued that he only attends mosque only on Fridays because of his fear of CVE policing.<sup>68</sup> For Hussein, an LPR from Syria, a state ravaged by war and restricted by the Travel Ban, the conjoined War on Terror policies have emaciated his political life, and deterred him from engaging in political relief work in his native country. The looming threat of being dubbed a "radical" because of perceived terror affiliations, for Yusef, might spell investigation, disruption of his citizenship application, or preemption of it. "I am not involved with the political organizations I used to be a part of, especially those that have a presence in Syria."<sup>69</sup>

This chilling effect also unfolds on virtual platforms. "[Surveillance] has made me wary of joining political organizations [and] I keep a low profile on social media," shared eighteen-year-old Neda of Pomona, California, illustrating the phenomenon of chilled political expression on social media for younger Muslims.<sup>70</sup> Neda, an immigrant from Iraq, believed that her country was *still* restricted by the Travel Ban, even though it was removed from the list of states prohibited on the third and standing version of the executive order. She shared that after Trump was elected and the "Muslim Ban became legal" she began attending Ahlul-Bay Mosque, her community mosque, only "twice a month" instead of every Friday and on weekends out of fear of "spies/informants."<sup>71</sup>

Within a landscape where their identities are simultaneously policed on grounds of religion and national origin, Yusuf and Neda have traded in their First Amendment speech and assembly rights to diminish their vulnerability

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67. 53 HARV. C.R.-C.L. L. REV. 1, 2-9 (2018).

68. Workshop Questionnaire, SOS Workshop, Arab American Museum, Dearborn, Mich. (Sept. 23, 2019).

69. *Id.*

70. Workshop Questionnaire, Community SOS: Stamping Out Surveillance, Pomona, Cal. (Aug. 24, 2018).

71. *Id.*

to surveillance. Law enforcement and their on-the-ground informants have seized this fear and ignorance as ways to stifle political involvement and alter the religious lives of Muslim immigrants.

### 3. Roaming Data: From the Border to the Block

The Travel Ban's legal effect supersedes the restriction of tens of thousands of Muslim immigrants entering the U.S. In addition to border checkpoints being sites of denial and entry, they are active sites for data collection, where layers of information from Muslim immigrants and citizens are accumulated, stored, and disseminated to further counterterrorism objectives beyond the border. In line with the War on Terror's collaborative culture, the data collected by Customs & Border Protection (CBP) is freely shared with ICE, the FBI, and local law enforcement to maximize DHS's ability to identify potential terrorists.<sup>72</sup>

Close attention is given to Muslim immigrants and citizens traveling to and from Muslim-majority Travel Ban states. Per the logic of the Ban, these six states were prioritized as high national security concerns, marking Chadians, Libyans, Iranians, Syrians, Somalis, and Yemenis who travel back to their home states as prospective subjects of concern. While immigrant status, as articulated in Part II.A, is often interpreted as a proxy for terror suspicion with Muslims, so is *migration* back (and forth) for citizens and LPRs traveling to their countries of origin.

Thus, while the Travel Ban has the effect of restricting Muslim immigrants from the six states, it also has immediate effects on Muslim citizens and LPRs from these states who are branded as terror suspects at checkpoints by CBP and in their communities by the FBI and law enforcement. Below, I introduce three of these effects, commencing an investigation that will be expanded in future work.

First, the Travel Ban has a chilling effect that makes immigrants refrain from traveling back home—and particularly dissuades them from recurring or frequent travel, which increases suspicion of terror affiliation and radicalization. For LPRs and citizens from Travel Ban states that return home, particularly for extended stays, travel back home opens the door for extreme vetting upon their return to the U.S.<sup>73</sup> This vetting oftentimes prompts secondary inspection at the border, providing CBP with an opportunity to question, inspect the property of the traveler (particularly computer and

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72. For a report examining the nuances of this inter-agency data sharing, see generally U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-10-41, INFORMATION SHARING: FEDERAL AGENCIES ARE SHARING BORDER AND TERRORIST INFORMATION WITH LOCAL AND TRIBAL LAW ENFORCEMENT AGENCIES, BUT ADDITIONAL EFFORTS ARE NEEDED (2009).

73. For a comprehensive analysis of the "extreme vetting" policies ushered in by the Travel Ban, see generally HARSHA PANDURANGA ET AL., BRENNAN CTR. FOR JUSTICE, EXTREME VETTING & THE MUSLIM BAN (2017), <https://perma.cc/W4UE-95KL>.

cellular phone property), and accumulate data that is openly shared with FBI and local enforcement. This data can be misconstrued or politicized by law enforcement to build a radicalization case, particularly for travelers that return from Travel Ban states to Muslim communities closely tracked by the FBI.<sup>74</sup>

Second, the Travel Ban instills fear in immigrants that communication with those back home will lead to questioning at the border when they enter or exit the country—and consequently spurs diminished communication between immigrants and their friends, family members, and particularly political and religious contacts in Travel Ban states. Prompted by fear of the strand of radicalization theory that ties suspicion to communication and contacts with particular entities abroad, many citizens and LPRs from such states are actively severing or minimizing these engagements to avoid the specter of suspicion.<sup>75</sup> For LPRs from the Travel Ban states, or visa holders permitted to be within the U.S., the fear is compounded. Namely, their avoidance of such contacts is also driven by their desire to carry forward their citizenship prospects, and stave off revocation of their visas.

Third, the Travel Ban deters immigrants from sending financial remittances back home for fear of being suspected of supporting a terror financial “pipeline.”<sup>76</sup> This fear is pronounced amongst citizens or LPRs with family (or friends) receiving funds that may wrongly be associated with a terror group, like Al-Shabaab in Somalia or the Al-Nusra Front in Syria. Oftentimes, immigrants who become subjects of interest believe the suspicion against them is influenced by pressures from local law enforcement seeking to produce quantifiable results by following the money to build cases against citizens or LPRs from Travel Ban states.<sup>77</sup> Fear of tracked remittances, or finances ending up in the hands of unintended individuals through subsequent action, prevents individuals from sending remittances back home.

### **Conclusion**

The future of the Travel Ban and CVE policing is unclear and contingent upon political developments and, more ominously, the incidence of terror attack. For Muslim immigrants and citizens, those living beyond and within American borders, the most perilous threat is not mere speculation under a President who has already delivered on the most pernicious of his campaign

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74. *Id.* at 11-12 (discussing information shared between federal agencies and international agencies).

75. This observation is based on my community work as an Open Society Foundation Fellow.

76. See Press Release, Dep’t of Justice, Fourteen Charged with Providing Material Support to Somalia-Based Terrorist Organization Al-Shabaab (Aug. 5, 2010), <https://perma.cc/9FYU-6QJP>.

77. This observation is based on my community work as an Open Society Foundation Fellow.

promises, but is the threat that is only and always “one attack away.”<sup>78</sup> This is the delicate tightrope Muslims, both citizens and immigrants, must perpetually walk atop with the awareness that it only takes one moment, one attack, to deepen and intensify restrictive immigration and surveillance policies that collapse the withering walls standing between the borders and the borderlands within.

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78. BEYDOUN, *AMERICAN ISLAMOPHOBIA*, *supra* note 64, at 193.