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Legalizing Othering

The United States of Islamophobia

by **Elsadig Elsheikh, Basima Sisemore, Natalia Ramirez Lee**

Islamophobia is the belief that Islam is a monolithic religion whose followers, called Muslims, do not share common values with other major faiths; is inferior to Judaism and Christianity; is archaic, barbaric, and irrational; is a religion of violence that supports terrorism; and is a violent political ideology.

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Glossary of Key Terms

Act/Statute

A bill that is enacted into law by a state legislature or the US Congress.

American Laws for American Courts (ALAC) model act

An "anti-Sharia law" model legislation drafted by lawyer and anti-Muslim activist David Yerushalmi. The ALAC model prohibits foreign law, and more specifically Sharia law, from being considered or enforced in state courts as a basis for rulings. According to the ACLU, ALAC and other similar laws that seek to single out Muslims by way of barring the application of Sharia in US courts are in violation of the First Amendment, and undermine the power of courts to fairly consider cases.

Anti-Sharia movement

A movement that came into inception in 2010 inspired by anti-Muslim activists such as David Yerushalmi, Brigitte Gabriel, Frank Gaffney, among others, to embed a fear of "Sharia law" within American society, and to influence lawmakers to introduce anti-Sharia bills that target Muslims in state legislatures. The movement, through anti-Sharia and anti-Syrian refugee advocacy work, is stirring up anti-Muslim sentiment across the US, and by way of enacting ALAC or anti-Sharia bills, legalizes the othering of Muslims. Such laws strip Muslims of their legal rights as afforded by the First Amendment, and further proliferate a culture of fear and intolerance towards Muslim Americans and Muslim communities.

The Birther Movement

A conspiracy theory movement that emerged in the run-up to the 2008 presidential election that fallaciously sought to undermine then-Senator Barack Obama's bid for presidency. The birther movement labeled Barack Obama as "foreign" in an effort to disqualify him from serving as president, bringing into question the legitimacy of his

birth certificate, his place of birth, and US citizenship. Even when Obama's campaign shared his birth certificate on the "Fight the Smears" website to address any speculation surrounding his birth, the birther movement continued to spread unfounded claims about his birth certificate. Donald Trump was a staunch supporter of the birther movement and is credited with reviving the baseless theory that Obama is not a US-born citizen prior to the 2012 and 2016 presidential election campaigns. Only on September 16, 2016, did then-presidential candidate Donald Trump concede that Obama was indeed born in the United States.

Constitutional Amendment

A modification or change to a state or nation's constitution. For each of the 50 states that comprise the United States, each has its own rules and procedures that determine how the constitution of that state can be amended.

Enacted/Not Enacted

A bill that is enacted into law means that the bill becomes law, or is now an Act, statute, or legislation. If a bill is not enacted, the bill is not signed into law.

Extremist/Extremism

Individuals who hold political, social, and/or ideological views at the far ends of the political and social spectrums and who utilize violence as a means to achieve their goals, in the process harming or singling out other social groups in society. In the context of Islamophobia, there exists a belief that extremists and extremism are implicitly attached to Muslims especially disproportionate to other religious or racial/ethnic groups.

Foreign Law

Laws of another jurisdiction, not strictly laws of another country, as a state court could refer to

the judgment of another US state's court as a foreign judgment.

First Amendment

An amendment to the US Constitution that details the limits placed on governmental power, establishing that it is illegal for Congress to enact a law establishing an official religion of the country, or to prohibit the free exercise of religion, protecting the freedom of religion, freedom of speech, freedom of the press, freedom of assembly, and the right to petition the US government.

Islamophobia

Islamophobia is the belief that Islam is a monolithic religion whose followers, called Muslims, do not share common values with other major faiths; is inferior to Judaism and Christianity; is archaic, barbaric, and irrational; is a religion of violence that supports terrorism; and is a violent political ideology. Islamophobia forms the basis of an ideology that views Muslims as a threat to “Western” civilization. Further, Islamophobia is contingent upon the construction and reification of a homogenized Muslim “other” who should be viewed suspiciously, scrutinized, dehumanized, and excluded from Western or Judeo-Christian societies. Islamophobia has been expressed in prejudicial views, discriminatory language, and acts of verbal and physical violence inflicted upon Muslims, and those perceived to be Muslim. Islamophobia has manifested in a policing regime that engages in the profiling, surveillance, torture, and detention of people along racial/ethnic and religious lines, and has justified the militarization of foreign policy as well as an unprecedented expansion of security apparatuses.

Islamophobe

An individual who holds a closed-minded view of Islam and promotes prejudice against, or hatred of, Muslims. This definition derives from the CAIR report *Legalizing Fear* (2013).

Legislation

A bill under consideration by a legislative body, or a bill that the legislature has enacted into law.

Othering/Belonging

The Haas Institute defines Othering as a set of dynamics, processes, and structures that engender marginality and persistent inequality across any of the full range of human differences based on group identities. Othering provides a clarifying frame that reveals a set of common processes and conditions that propagate group-based inequality and marginality.

Belonging means having a meaningful voice and being afforded the opportunity to participate in the design of political, social, and cultural structures. More than just having access, belonging is the right to contribute and make demands upon society and institutions. Belonging entails an unwavering commitment to not simply tolerating and respecting difference, but ensuring that all people are fully seen and included in society.

Senate Bill (SB)/House Bill (HB)

A proposed piece of legislation or bill originating from the Senate, and a proposed piece of legislation or bill originating from the House of Representatives.

Sharia/Sharia law

According to a large majority of Islamic law experts, Sharia is a moral code or guiding principles founded on the teachings of the Quran and the Hadith (the teachings and actions of the prophet Mohammed). The interpretation of Sharia is called “fiqh,” meaning Islamic jurisprudence, however, Sharia is not the equivalent of Islamic law or an Islamic legal system, but rather is an evolving methodology for devout Muslims to discern God’s guidance, to lead an ethical and moral life. Sharia is a part of a Muslim individual’s everyday life as it directs how Muslims engage with the world, ranging from what Muslims eat, how business and personal affairs are conducted, how they treat animals, protect the environment, and more.

The Tea Party movement

The panic that emerged as a result of the financial and housing crisis, combined with fear of economic dispossession, immigration, and the election of a Black president, served as the catalyst that brought forth the Tea Party movement in 2009. The movement operates as a decentralized network of local and state-based groups that pushes for a conservative agenda, and the Tea Party first rose to prominence as a political force as a result of the groups’ resistance to the Affordable Care Act and Obama’s economic policies. The movement has been successful in garnering support from white Americans and those who feel threatened by the changing demographics in the US, and the rise of minorities into positions of cultural and political power, challenging the privileges and power that have long been furnished through white identity. Members of the movement’s constituency identify themselves as “real Americans” who have worked hard throughout their lives for what they’ve earned, view immigrants and many

communities of color as freeloading off of their hard labor and efforts, and the Democratic Party as representing “cultural elitism.”

Terrorist/Terrorism

While there is not a universally agreed upon definition of terrorism, in contemporary usage it means the use of organized and deliberate violence, or the threat of violence, to seize power to achieve political change. Many in Western societies have encapsulated the terms to be synonymous with Muslims and Islam; however, the use of violence as an instrument to obtain power and political gain is not inherent to one social group, religion, people, or state.

US Contemporary Islamophobia Movement

Since 9/11, two major shifts have occurred regarding Islamophobia in the US: (1) Islamophobia became the operationalizing tool to single out Muslims and Islam based on the actions of individual deviants, shifting the blame of a few to be absorbed by all Muslims collectively; and (2) A shift in lone-wolf or individual acts of anti-Muslim sentiment and actions to organized Islamophobia and anti-Muslim efforts, giving rise to groups that organize people around anti-Muslim campaigns and efforts like ACT for America and Stop Islamization of America. Islamophobes are organized (within national and global networks) to institutionalize public policies and legal regimes that are explicitly anti-Muslim/Islam and led by organizations, think tanks, institutes, paid anti-Muslim activists, grassroots organizing campaigns, etc. The contemporary Islamophobia movement came into existence as a product of both major domestic and global events, activities, and movements ranging from the events of 9/11, US foreign wars and military interventions in the Middle East, the global financial crisis, the election of former President Barack Obama, the rise of the Tea Party and birther movements, Peter King’s congressional hearings on the radicalization of Muslim Americans, among other events.

Key Findings

The "anti-Sharia law" movement did not originate within a vacuum, but has been garnering support and influence since 9/11. The movement has taken advantage of, and contributed to, the increasingly volatile climate of anti-Muslim sentiment and racial anxiety, fueled by key political moments and conservative movements, particularly the Tea Party and the birther movements.

The majority of anti-Sharia legislation were introduced in the years prior to midterm and presidential election cycles. For example, 56 bills were introduced in 2011, 35 bills were introduced in 2013, and 35 bills were introduced in 2015. By contrast, 14, 25, 15, and 14 anti-Sharia bills were introduced in the election years of 2010, 2012, 2014, and 2016, respectively. This highlights a trend among lawmakers to push anti-Muslim legislation in the run-up to midterm and presidential election cycles.

Although the target of the anti-foreign law ALAC legislation is Sharia law, the term Sharia, or Sharia law, is omitted entirely from the American Laws for American Courts model act in an attempt to appear "facially neutral," and to avoid specifically naming Sharia law in the text of the bills. There

are, however, several anti-Sharia bills that have been introduced by state legislators that explicitly prohibit courts from considering or applying Sharia law.

Actors and groups advancing the anti-Sharia movement have also been extremely influential in spearheading campaign efforts around anti-refugee legislation, specifically in opposition to Syrian refugee resettlement in the US.

The push for anti-Sharia legislation by lawmakers in the years prior to midterm and presidential election cycles provides a platform to normalize, legitimize, and proliferate Islamophobia and anti-Muslim sentiment in the American public and in political debates.

If anti-Sharia bills are enacted into law they may restrict the freedoms of other religious groups that look to religious arbitration.

A total of 140 bills were introduced that extracted language from the ALAC model act. The American Public Policy Alliance and ACT for America were the two main groups promoting the bills, or were at least the most visible direct supporters of the bills.

The overwhelming majority of state legislators acting as the primary sponsors for anti-Sharia bills were Republican lawmakers: 373 were Republicans, nine were Democrats, and three were independent or nonpartisan.

From 2010 to 2016, 194 anti-Sharia bills have been introduced in 39 states—of these, 18 have been enacted into law, 176 have not been enacted, and 1 bill has been struck down in Oklahoma.

A total of 121 bills included stipulations in their language to exempt corporations, allowing corporations to enter into contracts and agreements that call for the application of a foreign law. An additional 73 bills did not provide for this exemption, or did not specifically mention corporations in their text.

The direct and indirect impacts of anti-Sharia legislation are yet to be fully exposed. There is a need for people to be vocal when issues of bigotry and discrimination arise from anti-Muslim laws.

Almost all of the bills introduced bar courts from enforcing individuals' contracts and agreements that call for the application of foreign law. A total of 191 bills bar the enforcement of individual contracts, and an additional three bills do not include this stipulation.

Thirty-three state lawmakers sponsored two or more anti-Sharia bills in their state. State lawmakers who sponsored multiple anti-Sharia or anti-Muslim bills were all Republican. Overall, 385 lawmakers were the primary sponsors for anti-Muslim bills introduced or enacted in state legislatures across the country.

The discriminatory effects of the anti-Sharia bills introduced, and their affiliated legislative campaigns, were apparent in their aim to: instigate an unfounded and nonviable fear of Sharia law; other Islam and Muslims; foment a climate of intolerance toward Muslims and those perceived to be Muslim; and inhibit Muslims from engaging with their religion.

Introduction

THE CURRENT POLITICAL CLIMATE in the United States reflects a new reality influenced by a populist leadership that occupies the highest office in the land,¹ colluding with a reemergence of white supremacy, that is being (re)used as a tool to drive a wedge between poor white people and people of color on the one hand, and to increase fearmongering and anti-Muslim sentiment in American society on the other hand.² Together, this has given rise to anti-black, Islamophobic, anti-immigrant, and anti-refugee grassroots movements,³ increasing racial prejudice and racial animosity to an unprecedented level.

This report acknowledges that Islamophobia in the US is not new;⁴ however, over the past 16 years, the rapid development and convergence of contemporary Islamophobia movements have brought forth federal measures and state legislation that frame Muslims as untrustworthy and incompatible with American values, further subjecting Muslims to surveillance, profiling, and exclusion along the lines of racial and ethnic discrimination, as determined by their national origin and religion. Additionally, contemporary Islamophobia movements—operating with the shared ambition to scrutinize and dehumanize Muslims—aim to other and undermine Muslim Americans’ citizenry and agency.

Islamophobia is a form of xenophobia and discrimination based on religious and national origin that aims to single out and exploit Muslims as political scapegoats for failed economic and political projects, and functions as a proxy for racial anxiety within the US.⁵ Between 2010 and 2016, 194 anti-Muslim bills were introduced in 39 states, with a total of 18 anti-Muslim bills enacted into law.⁶

Islamophobia is contingent upon the construction of a homogenized Muslim “other” who should be viewed suspiciously, scrutinized, dehumanized, and excluded from “Western” or “Judeo-Christian” societies.

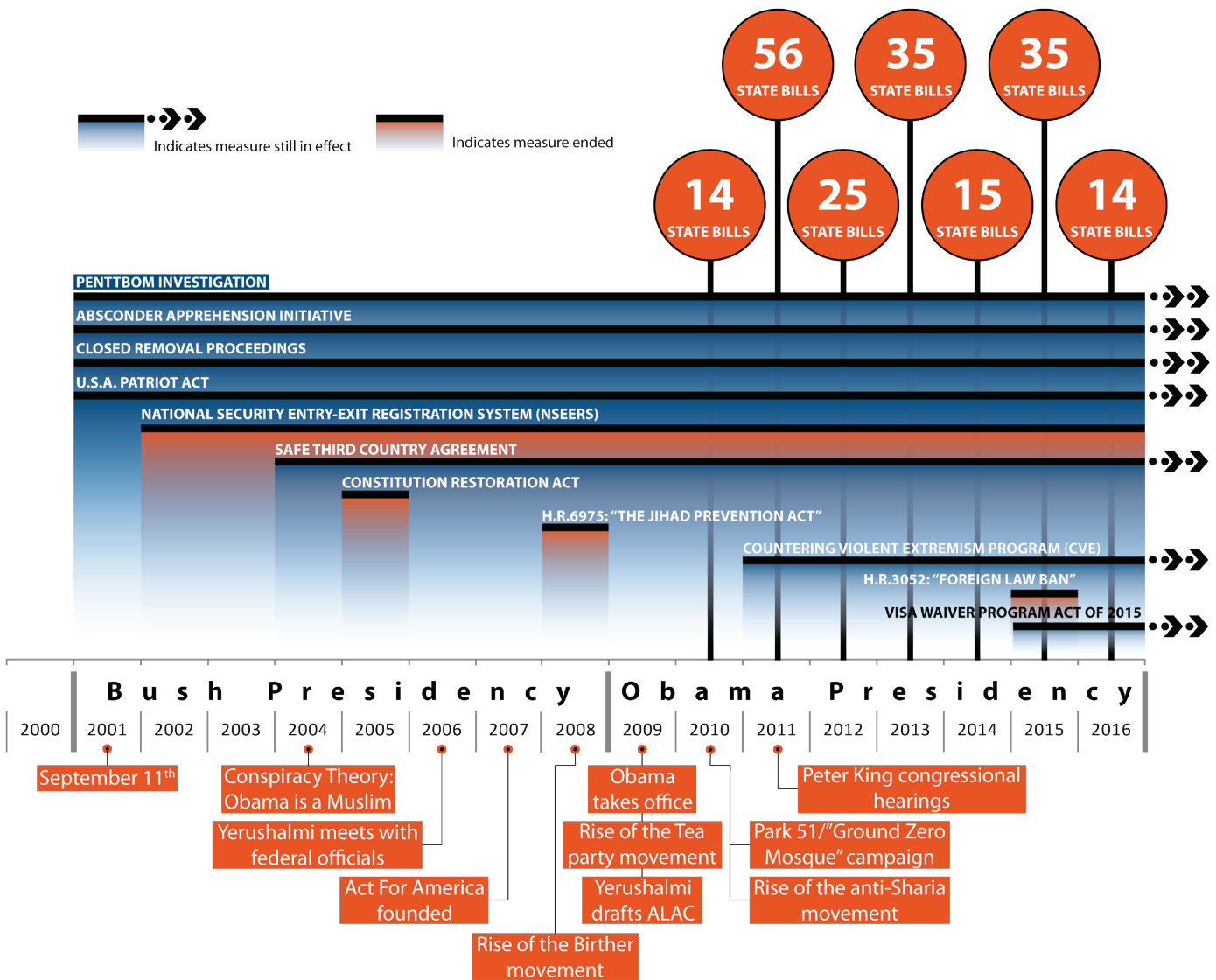
The othering process is not simply an abstract concern—it has profound effects on the lives of millions of Americans.⁷ Othering of Muslims or those perceived to be Muslim has been expressed in acts of violence, prejudicial views, and discriminatory language. In addition, Islamophobic sentiment has led to the exacerbated militarization of foreign policy and an unprecedented expansion of security apparatuses that impact all Americans.⁸ Islamophobia forms the basis of an ideology that views Muslims as a threat to “Western” civilization and justifies their subordination and exclusion.

By 2010, Islamophobia in the US had evolved from compartmentalized, racist, anti-Muslim sentiments and efforts as experienced by individuals into a well-financed, organized, and strategic national movement with a grassroots and legislative agenda. This major shift is largely attributed to the national campaign in 2010 around Park51, the interfaith community spiritual center that was under development in New York City. Pamela Geller and Robert Spencer made national headlines leading an alarmist campaign against Park51, striking up controversy over what they dubbed the “Ground Zero Mosque,” laying the foundations for more well-organized Islamophobic efforts to thrive.⁹ While the movement was advancing its fearmongering agenda among the public on a national scale, the political elite, both Democratic and Republican, and the mainstream media stood on the sidelines without responding or fact-checking the movement’s claims,¹ and by 2010, the anti-Sharia movement was making its way across the nation.

David Yerushalmi, an anti-Muslim lawyer with a

¹ From 2010–16, 385 lawmakers have sponsored 194 anti-Muslim bills in 39 states across the nation, with the overwhelming majority of the sponsors (373) being Republican lawmakers (The United States of Islamophobia Database can be accessed online at haasinstitute.berkeley.edu/islamophobia).

The Context of anti-Muslim State Legislation and Federal Measures



history in the right-wing Israeli settlers' movement¹⁰ crafted an anti-Sharia model act known as American Laws for American Courts. This model legislation was the spark that ignited a wave of anti-Muslim laws and proposed legislation that has given rise to the anti-Sharia movement, and the enactment of 18 anti-Muslim laws in 12 states in the US between 2010 and 2016.¹¹ The anti-Sharia movement was established, and continues to thrive, by an unfounded fear of "creeping Sharia," proliferated by fabrications and lies, and intentionally misconstrued information surrounding Muslims and

Islam in the US.¹² Such fear is what propels the anti-Sharia movement, and such beliefs are not the byproducts of innocent, misguided illusions of Muslims and their faith, but rather operate as the scaffolding in a grand strategy designed by the architects of ALAC and the anti-Sharia movement to exploit the American public's limited knowledge of Muslims, Islam, and Sharia with the purpose to utilize Muslims as scapegoats for political, economic, and social challenges facing the country.¹³ Most importantly, this was carried out vis-à-vis the convergence of Islamophobia and the birther movement to distract the public,

and to attack President Obama's agenda.¹⁴ The outcome produced a deep disenfranchisement and undermining of Muslim Americans' agency and citizenship.¹⁵

The anti-Muslim legislation and bills are sweeping, and have the potential to impact the lives of not only Muslims, but all Americans, as such laws undermine the Constitution and sabotage judges' ability to fairly consider foreign law to understand cases before their courts.¹⁶ The far-reaching impact of these anti-Muslim bills and the degree to which, if enacted, they will affect many Americans, is yet to be fully understood and documented, but the underlying reality is that anti-Muslim legislation threatens the civil and constitutional rights of all Americans.¹⁷

Our report and online database (see haasinstitute.berkeley.edu/islamophobia) aim to unmask the multiplicities of anti-Muslim and anti-Islam movements that have propelled the adoption of federal measures (2002-present) and capitalized on electoral politics and state legislatures (2010-2016) to disproportionately legalize the othering of Muslims across the United States. This report is also imperative for understanding the impacts of anti-Sharia legislation, and imagining cross-sectoral and coalition-building efforts, as well as to aid the growth of effective, inclusive movements that bridge across racial/ethnic and religious lines to stand against othering. This report therefore is organized in the following way:

- The "Methodology and Database" section outlines the methods we used to develop our United States of Islamophobia database, which documents all anti-Sharia bills proposed from 2010 to 2016.
- "Impacts of Islamophobia on American Society" examines the impacts of Islamophobia on American society by firstly reflecting on the mutual rise of xenophobia and anti-Muslim sentiment in the US and highlights how anti-Sharia¹⁸ law legislation undermines all people's constitutional rights, affecting the very fabric of American society. This section then traces the emergence of the contemporary Islamophobia movement which emboldened the introduction of anti-Sharia legislation based on the American Laws for American Courts (ALAC) model legislation. This section concludes with a summary of the main recurring themes and discriminatory effects of this legislation.
- "Islamophobia in the Era of Trump" focuses on contextualizing contemporary Islamophobia

and anti-Muslim policies under the current administration in Washington DC by examining the language and the impact of two major Executive Orders issued by President Donald Trump: Executive Order No. 13769, FR 8977 on January 27, 2017; and Executive Order No. 13769, 82 FR 8977, 8980-81 on March 9, 2017, as well as new rules issued by the US Transportation Safety Administration, otherwise known as the "Laptop Ban," on March 20, 2017.

- "Federal Measures" brings to light various federal measures and legislation that have, and continue to target, discriminate against and disenfranchise Muslim communities.
- The "State Legislation" section presents key themes and patterns identified in the findings of our database and repository of all anti-Muslim bills introduced, enacted, or not enacted at the state level between 2000 and 2016. We also highlight the role of fearmongering in enabling the implementation of Sharia in the US, identify the discriminatory effects of anti-Sharia legislation, and draw on key patterns and trends of anti-Sharia legislation to contextualize the complex network of forces behind anti-Muslim legislation and legislative campaigns, as well as their mutual focus on anti-refugee settlement.
- In our "Conclusion" we end the report by offering recommendations to counter Islamophobia through a diverse set of actions by community groups and grassroots movements, as well as policy interventions by different levels of government. We also call for building a global, coordinated network to establish robust social movements capable of proposing and advocating for public policies that combat Islamophobia at home and abroad.

Methodology and Database

THE RESEARCH DEVELOPED to prepare this report includes a *United States of Islamophobia* database and examines federal measures that aim to further exclude Muslims in the US. The purpose of the database is to uncover the impacts and content of anti-Sharia legislation and the movement. The state and federal measures described in the next two sections are summaries of extensive research that further unmask the genealogy of the contemporary Islamophobia movement in the United States.

Collectively these resources provide the tools required to challenge and repeal anti-Muslim state legislation. Content and data within this report were incorporated from a variety of sources, most notably from expert interviews, law journals, academic books, research reports, research institutes, academic articles, news articles, databases, state legislature websites, legislative services, legislative search and tracking engines, as well as the Haas Institute's *United States of Islamophobia* database.ⁱⁱ This section provides an overview of the methodology used to develop the database, as well as our approach to the analysis of the data that informed our identification of key themes and effects relating to anti-Sharia legislation in the US.

An essential component of our research sought to contextualize the political landscape in which the contemporary Islamophobia movement emerged. Major events, activities, and movements created the climate to launch the contemporary Islamophobia movement, ultimately paving the way for the introduction of anti-Sharia legislation. This trajectory illustrates a process of an intensified othering of Muslims in our society today.

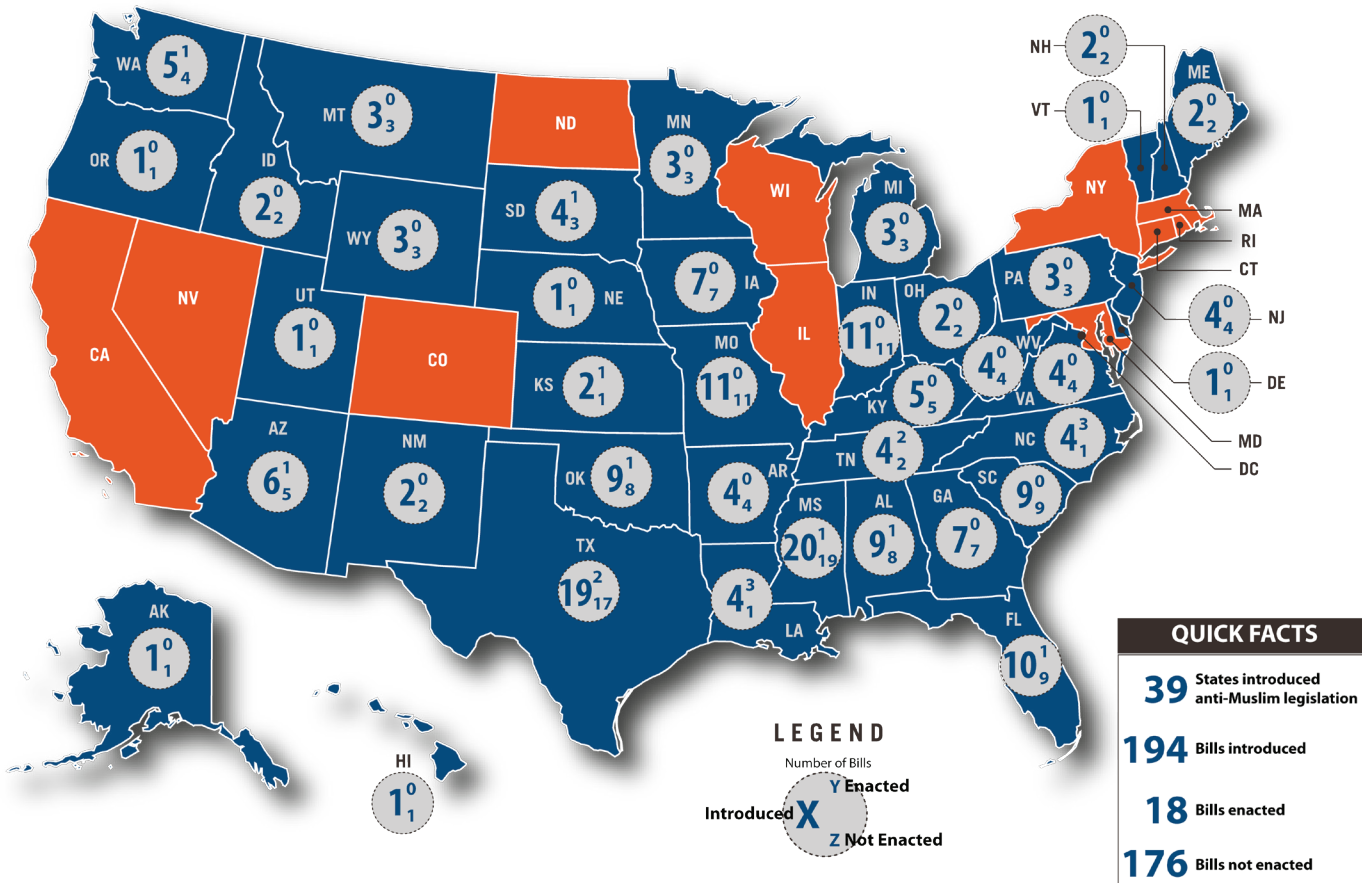
Methodology

The findings of this report are based upon a review of an online search that identified all anti-Sharia and anti-foreign law bills introduced in the 50 US state legislatures, and at the US Congress and Federal Government level as well. This enabled a robust analysis of the anti-Sharia bills that included the extraction of patterns, trends, and the measurement of these bills' impact. This search was accompanied by earlier reports, policy papers, and research produced by the Institute for Social Policy and Understanding (ISPU), the Pew Research Center, and the Council on American-Islamic Relations (CAIR)—invaluable resources that provided data and information on anti-Sharia and anti-foreign law legislation. However, these previous reports and databases remain outdated, and require the documentation of new bills introduced since their publication. To ensure the extensive accountability of all bills we conducted an independent, exhaustive search to identify the anti-Sharia and anti-foreign law bills, populating vital information related to the bills in a comprehensive database for further analysis and documentation.

Our online search for the bills covered the years 2000 to 2016, encompassing the period leading up to and following the national tragedy of 9/11, as well as the duration of both the Bush and Obama administrations.¹⁹ To locate and identify all anti-Sharia bills we conducted a keyword search for the terms "Sharia," "foreign laws," "Islam," and "American Laws for American Courts" on the state legislature or general assembly websites for each of the 50 states. If the bill contained language from the American Laws for American Courts (ALAC) model act or similar language banning the application of foreign or Sharia law, the bill was included in this study as an anti-Sharia bill. To verify the bills that were identified in our research, as well as to confirm new findings or new bills, we compared our search results with research

ⁱⁱ The United States of Islamophobia Database can be accessed at haasinstitute.berkeley.edu/islamophobia.

Anti-Sharia Legislation Introduced in US State Legislatures from 2010- 16



and databases produced by ISPU, CAIR, the Pew Research Center, Open States, as well as online media sources.

Interview excerpts are provided throughout the report offering both expert and personal insights on the anti-Sharia bills, on the impact of such legislation, and the reverberations of Islamophobia and xenophobia in the United States from a legal, historical, political, social, and intersectional perspective. To view the full version of the cited, and additional interviews, visit haasinstitute.berkeley.edu/islamophobia.

The main challenges of identifying, gathering, and organizing information on the anti-Sharia bills included navigating the state legislature or assembly websites, as well as developing a uniform method to accurately display information and data pertain-

ing to the anti-Sharia bills in the database. In some cases, the state legislature or assembly website failed to provide online access to bills introduced in legislative sessions prior to 2010, or the website itself lacked a user-friendly search system that limited the ability to identify the bills. We ascertained additional information and data for these particular states by utilizing ISPU's *Islamophobia 2015: Restrictive Measures Map*, the Pew Research Center's publication on *State Legislation Restricting Judicial Consideration of Foreign or Religious Law, 2010 – 2012*, as well as Open States, an online search engine for state legislation. In order to create cohesive categories for the data and the information in the database, we established standard terminology to describe the final status of the bills. The terminology used for the status of the bills varied by state legislature, listing the bill's status

as “Died in Senate,” “Referred to a Committee,” etc. For purposes of analysis and organization we categorized the bills in the database as “Enacted” or “Not Enacted” to indicate whether or not the bill was enacted into law.

The United States of Islamophobia Database

The *United States of Islamophobia* database is a comprehensive research tool that identifies and provides detailed information on all anti-Sharia bills introduced in the 50 US state legislatures between 2000 and 2016. This interactive database will be updated annually and will serve as the most comprehensive and up-to-date database to monitor anti-Muslim legislation in the US. It is an invaluable resource for policymakers, advocacy groups, researchers, academics, and the public at large to obtain detailed information about the bills introduced in their state, as well as the legislators who are advocating for these bills that aim to single out Muslims. By providing a mechanism to demand accountability from our elected officials, it ensures that our representatives are endeavoring to better the nation by fostering inclusivity within American society, not sowing discriminatory policies and subverting a people’s rights for political gain. Furthermore, the information and data identified in the database can be utilized to: prevent future bills or laws from being introduced in state legislatures; educate and expose the unfounded fear of Sharia and the unconstitutionality of the anti-Sharia, or ALAC bills; engage the media to address laws or bills that have been introduced or enacted in their state to draw attention to anti-Muslim efforts within their state; mobilize groups, individuals, and communities to challenge anti-Muslim efforts in their state; and safeguard all Americans’ rights and protections as afforded by the Constitution.

The database was developed specifically for this research project, functioning as a tool to analyze the extensive information on each anti-Sharia bill. The database aided in the extraction of complex patterns and trends related to the bills and en-

abled us to produce new data, track the status of bills, as well as assess and contextualize the drivers of the discriminatory anti-Muslim legislation within the larger context of US politics and the expanding contemporary Islamophobia movement in the United States. Following an exhaustive search, relevant data and information extracted from the bills’ text and state legislature websites were organized in the database, indicating general information relating to the bills, bill themes, and discriminatory effects of the bills. The filters were carefully selected to assist in the organization, synthesis, and analysis of the information associated with the bills, and to inform the writing and data analysis contained in this report. The database includes the following sections:

- **General:** the criteria established in the database provides an overview of the bills, highlighting specific information pertaining to the state, sponsor, bill, election year, enacted/not enacted, bill synopsis, and advocates.
- **Bill Themes:** based on the thorough review of legislation, three recurring themes, and/or stipulations were identified in the majority of the anti-Sharia and anti-foreign law bills: (i) ALAC model act language, (ii) the exemption of corporations, and, (iii) courts being barred from enforcing individual contracts.
- **Discriminatory Effects:** an analysis of the bills and their legislative campaigns provided insight into how the bills seek to disenfranchise Muslim Americans, ultimately impeding a fair and inclusive society, affecting not just Muslims, but all Americans. The discriminatory effects of the bills and their affiliated campaigns were identified as: the bill promotes an unfounded fear of “Sharia law;” the bill aims to other Muslims; the bill foments a climate of intolerance towards Muslims and those perceived to be Muslim, and, the bill inhibits Muslims from engaging with their religion.

The Impacts of Islamophobia on American Society

IN THIS SECTION, WE SEEK to contextualize anti-Sharia legislation within a broader framework of increasing anti-Muslim sentiment in the US. In reflecting on the mutual rise of xenophobia and anti-Muslim sentiment, the report highlights how anti-Sharia legislation has been enacted within an anti-Muslim political climate and framework. The rise of the anti-Sharia movement, and the creation of ALAC, is situated within this context of Islamophobia, highlighting the role of anti-Muslim sentiment in setting the foundations for the introduction and enactment of anti-Sharia legislation in the US. Finally, the negative impacts of this discriminatory legislation in undermining constitutional rights, and affecting not just Muslim Americans, but the very fabric of American society, are exemplified.

The Rise of Anti-Muslim Sentiment

The inception of the anti-Sharia movement in the US did not emerge within a vacuum. Rather, it was the outcome of a series of interconnected political events, initiatives, shifting public sentiment, and targeted rhetoric. The current political debates that depict Muslims as “others” who do not belong in “our” society, are not isolated instances, nor are they new, but rather, are part of a historical rhetoric rooted in the demonization of Islam and Muslims that pre-dates²⁰ the tragedy of 9/11.²¹ In a widely circulated article in the *Atlantic Monthly* from 1990, Bernard Lewis wrote about what he viewed to be “The Roots of Muslim Rage,” offering an analysis of the perceived conflict between “Islam” and “the West,” framing this relationship as a “clash of civilizations.”²² Lewis’ analysis assumes a position that both Islam and “the West” constitute monolithic social, political, and cultural entities. Lewis presented an “us vs. them” dichotomy for Islamophobic rhetoric to be normalized in the US political discourse post-9/11, creating

a platform from which Islamophobia has risen to its current state. His article set the stage for a “clash of civilizations” narrative that has since been seized by academics, notably Samuel Huntington,²³ media pundits like Bill Maher²⁴ and Bill O’Reilly,²⁵ legislators such as Congressman Peter King,²⁶ political figures such as Ben Carson,²⁷ and demagogues such as Donald Trump.²⁸

The core of these beliefs are based on a lens that views Muslims as an undifferentiated group with fixed characteristics, behaviors, and ideas. The identification of Muslims is not only a matter of religious difference, but also relies on judgments and associations related to skin color, nationality, language, naming, and attire. This extends to the US media and film industry, as anti-Muslim and anti-Arab stereotypes have a powerful history in American pop-culture, dating back to the early 1900s with the release of the film *Tarzan of the Apes* where American audiences were first introduced to racialized depictions of Muslims and Arabs.²⁹ Over the decades, stereotyped images of Muslims and Arabs have remained largely unchanged in the US, manipulating viewers and cementing biased thoughts and feelings towards Arabs and Muslims.³⁰ In pre-9/11 America, anti-Muslim and anti-Arab imagery was interwoven with the “background noise of American bigotry,” however, post-9/11, Arabs and Muslims became “the chief bogeys of our most paranoid fantasies,” a shift which occurred overnight and remains prevalent to this day.³¹

Since 2001, a constellation of events have created the ripe conditions for the formation of an aggressive Islamophobic movement in the US, particularly at the grassroots level where anti-Sharia legislation has been introduced in 39 state legislatures across the United States. The 9/11 attacks and a series of events in the years following them, including President George W. Bush’s declaration of the “war on terror,” height-

Dalia Mogahed

on the negative impacts of Islamophobia on democracy

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Islamophobia affects democracy in at least three ways. Firstly, the anti-Sharia legislation is really part of a larger problem, as the same lawmakers that are targeting Muslims are targeting other minorities as well, and what the legislation does is it restricts people's rights, and fosters a political climate that makes it easier to restrict those rights. With that, the rights of Muslim Americans are then restricted and the rights of other minorities are also restricted, and Islamophobia creates the political climate to make that possible, thus affecting democracy. Secondly, Islamophobia hurts our democracy in that it scares people, as Islamophobia is fueled by fear. Fear makes people more accepting of authoritarianism, conformity, and prejudice, and those three things undermine democratic principles, and it makes people less likely to dissent, to speak out, and to hold their government accountable. And thirdly, it manipulates people, and manipulates the public to consent to policies that they would otherwise not agree to. Without the influence of Islamophobia and the increase of fear that was documented in the run-up to the Iraq war, would the American people have consented to it? Would the majority of Americans have agreed that the US should go to war? Interestingly, polls show that the day before the invasion, the majority of Americans believed that there was a direct connection between 9/11 and Iraq, leading to public consent by false information. The public's fear was fueled to an irrational extent that they were agreeing to things and believing in things that weren't true, and then a few years later the vast majority of Americans believe that the Iraq war was a mistake. Islamophobia hurts democracy because it manipulates the public, and the fundamental condition of democracy is an informed, rational citizenry, and when you have a citizenry that is manipulated, lied to, and irrationally afraid, then you no longer have a democracy.

ened securitization throughout the country, the rise of racial anxiety and racial animosity³² and the subsequent inception of conservative movements in reaction to President Obama's election,³³ the Park51 or 'Ground Zero Mosque' campaign,³⁴ and the Peter King congressional hearings,³⁵ all constitute foundational layers that gave rise to the contemporary Islamophobia movement, and anti-Muslim sentiment in the United States today.³⁶

The national tragedy of 9/11 and the Bush administration's immediate response to the attacks permanently transformed the political and social landscape of the United States, and to a larger extent, has defined the world we live in today. In the wake of the 9/11 attacks, on September 20, 2001, President Bush gave an address to the joint session of the 107th Congress announcing the dawn of a lengthy military campaign known as the "war on terror," launching invasions and occupations of predominantly Muslim countries, while subjecting Muslims inside the United States to extreme scrutiny and suspicion.³⁷

The US-led "war on terror" or the "global war on terrorism" (from 2001 – present) raged globally into prolonged military and ideological wars in predominantly Muslim nations—including Afghanistan, Iraq, Yemen, and Syria³⁸—and extended to the domestic front, normalizing a culture of fear and othering of Muslims, and depicting Muslims and their beliefs as a monolithic danger to the "American" way of life.³⁹

Immediately following September 11, 2001 a number of federal measures were framed within this "war on terror" ideology to strengthen US national security, but which disproportionality targeted and affected Muslims.^{40,41} The federal measures facilitated a process of heightened securitization and selective enforcement, which legitimized surveillance and racial profilingⁱⁱⁱ of Mus-

iii The discriminatory practice of racial profiling of Muslims has become so prevalent and normalized, that since 9/11 there have been numerous accounts of Muslims being removed from planes simply because of how they look, or the language they speak, manifests apprehension

lims and those perceived to be Muslim. Despite President Bush's post-9/11 emphasis that America's enemy was not Islam, Muslims, Arabs, or Middle Easterners, his remarks failed to convince the public of a distinction between the citizen and the terrorist, while his policies simultaneously failed to reflect his rhetoric.⁴² Anti-Muslim sentiment and violence were inflamed by the US government's engagement in promoting the "war on terror," proliferating anti-terrorism rhetoric, racial profiling, and fomenting an environment that tolerates the criminalization of Muslims as they are seen as less "American," or even less human.⁴³ The federal government's actions and statements espoused an implicit bias in the American public that a Middle Easterner, Arab, or Muslim should be regarded as a "potential terrorist."⁴⁴ Consequently, this fostered a culture of fear and othering of Muslims, granting federal and state governments the power to disregard the rights and protections afforded to Muslim Americans as expendable, in order to protect American values and freedoms from a supposed enemy.⁴⁵ Legal scholar Leti Volpp explains that in American society, individuals who are Muslim, Middle Eastern, or Arab in theory possess legal rights as citizens, and yet are distinctly identified in society as the other, juxtaposed as the antithesis of the American citizen's identity.⁴⁶ Thus, Muslims are citizens by law entitled to legal rights, but the boundaries of citizenship do not extend beyond the legal, excluding such groups from social, cultural, political as well as legal benefits, and privileges associated with being a fully included member and citizen of society. Lacking such protections, access, and rights associated with being a "citizen" further complicates one's capability to engage with their rights as citizens in political and legal matters.⁴⁷

This construction of Muslim Americans and Islam as a homogenized Other that poses a threat to "our" way of life, particularly Judeo-Christian American values and white-American national identity, has ultimately legitimized the increased securitization and scapegoating of Muslims.⁴⁸

in fellow passengers or crewmembers. (Holley, Peter, "Muslim couple says they were kicked off Delta flight for using phone, saying, 'Allah,'" The Washington Post, August 7, 2016.

Excerpt of the September 20, 2001 Address by President George W. Bush to Joint Session of Congress

"Tonight we are a country awakened to danger and called to defend freedom. Our grief has turned to anger, and anger to resolution. Whether we bring our enemies to justice, or bring justice to our enemies, justice will be done.

The enemy of America is not our many Muslim friends; it is not our many Arab friends. Our enemy is a radical network of terrorists, and every government that supports them. Our war on terror begins with al Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated. Americans are asking, why do they hate us? They hate what we see right here in this chamber — a democratically elected government. Their leaders are self-appointed. They hate our freedoms — our freedom of religion, our freedom of speech, our freedom to vote and assemble and disagree with each other.

Our response involves far more than instant retaliation and isolated strikes. Americans should not expect one battle, but a lengthy campaign, unlike any other we have ever seen. It may include dramatic strikes, visible on TV, and covert operations, secret even in success. We will starve terrorists of funding, turn them one against another, drive them from place to place, until there is no refuge or no rest. And we will pursue nations that provide aid or safe haven to terrorism. Every nation, in every region, now has a decision to make. Either you are with us, or you are with the terrorists. From this day forward, any nation that continues to harbor or support terrorism will be regarded by the United States as a hostile regime.

This is not, however, just America's fight. And what is at stake is not just America's freedom. This is the world's fight. This is civilization's fight. This is the fight of all who believe in progress and pluralism, tolerance and freedom.

Fellow citizens, we'll meet violence with patient justice — assured of the rightness of our cause, and confident of the victories to come. In all that lies before us, may God grant us wisdom, and may He watch over the United States of America."

Citations for the above sidebar are on p. 64.

The congressional hearings on “American Muslim radicalization” provide further example of this under the guise of national security. In 2011 the chairman of the House Committee on Homeland Security, Rep. Peter King (R-NY), organized panels on what he saw to be “growing numbers of Muslim American radicals,” arguing that the Muslim-American community needs to do more to combat terrorism.⁴⁹ During the hearings King collaborated with anti-Muslim extremists⁵⁰ such as Steve Emerson, a “self-styled terrorism expert,”⁵¹ and founder of The Investigative Project on Terrorism (IPT),⁵² who provided misleading information on Muslim terrorism to back the congressional hearings.⁵³ As such, Peter King’s congressional hearings not only shaped public perception of Muslims as inherently linked or sympathetic to terrorism, but they also created a sense of obligation for Muslims living in the US to prove their patriotism and loyalty to the nation by supporting xenophobic policies and practices against fellow Muslims⁵⁴ in order to be deemed the “good Muslims.”⁵⁵ “Good Muslims” assist in the self-surveillance, policing, and criminalization of their own communities, and until proven otherwise, all Muslims are assumed to be “bad Muslims,”⁵⁶ further framing the 19 September 11 hijackers and their actions as representative of an estimated 3.3 million Muslims⁵⁷ living in the US.⁵⁸

In 2010, a year prior to the Peter King congressional hearings, Pamela Geller, the executive director and co-founder with Robert Spencer of Stop Islamization of America (SIOA), also known as the Freedom Defense Initiative, led an alarmist campaign⁵⁹ against the proposed Park51⁶⁰ community and interfaith spiritual center⁶¹ scheduled for development in an abandoned building two blocks north of the World Trade Center site.⁶² Over the years, Geller has built her own reputation as the “anti-Muslim

David Yerushalmi: The Creator of ALAC

The leading figure behind the anti-Sharia law movement is David Yerushalmi, an American lawyer and anti-Muslim activist known for drafting the American Laws for American Courts Model Act, and for providing legal representation to anti-Muslim extremists like Pamela Geller of Stop Islamization of America (SIOA).²

Yerushalmi, a “veteran of the right-wing Israeli settlers movement,”³ developed an interest in Sharia law following the 9/11 attacks while residing outside of the United States in the Ma’ale Adumim Jewish settlement in the occupied West Bank.⁴ Following the attacks, Yerushalmi moved to Brooklyn, and in 2006 established the Society of Americans for National Existence (SANE), a nonprofit organization that became his channel for opposing Sharia.⁵ Through the organization’s website he proposed a law that likened the observance of Islamic law to sedition, making any observance of Islamic law a felony punishable by 20 years in prison.⁶

In a 2007 commentary titled “War Manifesto—The War Against Islam,” Yerushalmi was quoted as saying that “any Muslim in America who adopts historical and traditional Shari’a will be subject to deportation. Mosques, which adhere to Islamic law, will be shut down permanently. No self-described or practicing Muslim, irrespective of his or her declarations to the contrary, will be allowed to immigrate to this country.”⁷

SANE’s work connected Yerushalmi to Frank Gaffney Jr., an instrumental conspiracy theorist and propagandist for the Islamophobia movement,⁸ who is also the founder and president of the neoconservative/anti-Muslim think tank Center for Security Policy in Washington DC. Through Gaffney, Yerushalmi gained access to a network of government officials, political organizations, and security analysts, and in 2008 Gaffney coordinated meetings with high-level government officials in the US Department of Treasury, where Yerushalmi warned the officials about the dangers of “Shariah-compliant finance.”⁹

Stuart A. Levey, the Under Secretary for Terrorism and Financial Intelligence in the US Department of Treasury, later described Yerushalmi’s presentation of Sharia as “sweeping and ultimately unconvincing.”¹⁰ The ineffective meetings with federal officials led Yerushalmi to a realization that he was incapable of advancing his anti-Muslim agenda at the federal level, and that he would have to shift his strategy and focus to the state level. As he stated in a New York Times profile, “If you can’t move policy at the federal level, well, where do you go? You go to the states.”¹¹

Citations for the above sidebar are on p. 64.

movement's most visible and influential figurehead,"⁶³ and, alongside Robert Spencer in their campaign against the ominously-dubbed "Ground Zero Mosque,"⁶⁴ drew national attention and controversy regarding the project. In further perpetuating Muslims and Islam as antitheist and a danger to the "American" way of life, Geller has been instrumental in the campaign against the Park51 project which vilified the cultural center as an Islamic "victory mosque" that celebrated the 9/11 attacks. In a 2015 Breitbart news article Geller claimed that the project was a "middle finger to the American people" and if the project had succeeded, it would have served as a symbol of Islamic conquest.⁶⁵ Geller's successful campaign against Park51 brought to light the rise in anti-Muslim sentiment in the US public, and reflected the anxieties around Muslim spatial presence in public and national spaces.

The Rise of Xenophobia vis-à-vis Islamophobia

The irresponsible media coverage and unscrupulous political discourse of 9/11 events reignited the recurrent Orientalist trope of the West as modern, epitomizing democracy and freedom, juxtaposed with the East as primitive, uncivilized, and comprised of dictatorial regimes that nurture terrorism.⁶⁶ The smear campaign against Park51 effectively seized on this imagined dichotomy, turning the project

Park 51 Community Center: The Myth and the Controversy

There was no reason why the Park51 project (the community and interfaith spiritual center that was under development in Lower Manhattan beginning in 2009) should have become a national news story, nor a national controversy.¹ In 2009 the chairman and CEO of Soho properties, Sharif El-Gamal, purchased the five-story building on 45 Park Place and offered the space for temporary use as an overflow prayer space on Fridays for the TriBeCa Al Farah Mosque, where Imam Feisal Abdul Rauf was the spiritual leader.²

By December of 2009 El-Gamal and Rauf had larger plans for the building, with the idea to repurpose it as a cultural center with a mosque or spiritual center.³ Prior to the Park51 project, originally named Cordoba House, mosques had existed in the same neighborhood for years.⁴ The building itself had been abandoned since the attacks on the World Trade Center,⁵ and the local community board voted in favor of the project,⁶ with then-New York City Mayor Michael Bloomberg defending it.⁷

The debate surrounding the initiative began as a local zoning dispute, but suddenly mushroomed into a national controversy that centered on Islam and the 9/11 attacks.⁸ The controversy was largely propelled by right-wing, anti-Muslim activist Pamela Geller who first posted about the Park51 project, or Cordoba House initiative, on her blog Atlas Shrugs, following a front-page story in the *New York Times* that showcased the project back in 2009.⁹ The *Times* later ran an article on May 6, 2010 stating that the New York City Community Board Committee approved of the "WTC Mosque," which played a pivotal role in spreading misleading and harmful information about Park51.¹⁰ A day later the group Stop Islamization of America (SIOA)—founded by Geller and Robert Spencer (one of America's most active anti-Muslim propagandists, and the director of the anti-Muslim website Jihad Watch)¹¹—launched a drive called "Campaign Offensive: Stop the 911 Mosque!"¹² SIOA immediately called for its first protest against the "911 monster mosque," and on May 13, the *New York Post* published a piece titled "Mosque Madness at Ground Zero" which cited Geller throughout the article.¹³

These episodes marked the beginning of the construction and propagation of the fallacious "ground zero mosque" narrative. From then on, the "mosque controversy" successfully spread through both conservative and mainstream media outlets, and within the following months prominent politicians such as Rudy Giuliani, Peter King, Newt Gingrich and Sarah Palin were speaking out against Park51, further garnering national attention to the project.¹⁴ Geller and Spencer were active in mobilizing efforts to block the Park51 project, as well as generating media attention to fuel the controversy, and leading efforts against the planners behind the project, labeling them radical extremists.¹⁵ By 2011, the Park51 project had been abandoned due to public pressure, and the building is now being developed for luxury condos.¹⁶

Citations for the above sidebar are on p. 64.

Nour Bouhassoun

on intersectional experiences of anti-Muslim discrimination in education

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Youth are exposed to Islamophobia in school since they spend most of their time there. At school, Muslim students experience harassment and microaggressions that result from Islamophobia. They find themselves in a weird position where they have to explain themselves, their beliefs, or the way they dress. It's exhausting when you have to do a presentation every day on who you are, and what you are not, especially when you see that other youth your age are far removed from the struggles you are experiencing. Arab and Muslim students also get suspended when schools fail to address their needs or fail to take their personal struggles into account along with their academic struggles. Teachers in some schools are somehow trained to avoid discussing with students anything outside of class "material," as if personal accounts of racism and Islamophobia are not significant enough to be considered academic or worthy of discussion. Students are more likely to internalize racism and Islamophobia when schools lack resources that teach them about unapologetic self-compassion, and self-empowerment, or when schools lack the kind of education that links our personal issues with the larger political issues people of color have been fighting against for decades. This education is needed, and it's inaccessible at many San Francisco public schools, particularly when these schools isolate themselves from Arab and Muslim community organizations that can collaborate with teachers to offer education sessions, along with real alternatives to punishment and suspensions.

We have also seen how students are even getting killed on the streets, in public, for being Muslim. The thing about being Muslim, black, brown, trans, or queer in this country is that you can experience anything, anywhere. It's also important to remember that experiences of Islamophobia are not isolated, they blend with experiences of sexism, racism, and homophobia that Muslim and Arab youth are subjected to on a daily basis.

into a major news story, successfully spotlighting the project for national controversy and debate, and prompting the nation to weigh in on the "ethics, morals, and safety" of building an Islamic cultural and community center in proximity to Ground Zero.⁶⁷ The anti-Muslim, anti-mosque objectives of the campaign embellished the idea of Muslims and Islam as inherently contradictory to all that is "America" or "American." Such debates highlighted the popularized belief that Muslim bodies, activities and institutions are essentially a threat to, and incompatible with the American social fabric, and thus must be spatially separated from "sacred national sites" like Ground Zero.

This campaign led by Geller and Spencer against Park51 is credited as being the spark that instigated organized Islamophobia efforts in the United States.⁶⁸ With Islamophobia having been institutionalized by federal government measures

and laws like the Patriot Act, and with public fear and demonization of Muslims on the rise through such campaigns, the next order of business for the far-right was to exploit these sentiments for political purposes.^{69,70} Specifically, major players in the Islamophobia movement teamed-up with the Tea Party during the 2010 midterm elections to back candidates committed to reversing or halting financial reforms and regulations created or proposed in the wake of the 2008 financial and mortgage loan crisis.⁷¹ Through this alliance, and with the help of wealthy, right-wing donors, the Islamophobia movement succeeded in having a host of their-favored candidates win elections, including Rep. Michele Beckmann (R-Minn.), Rep. Allen West (R-Fla.), and Rep. Paul Bourn (R-Ga.), among others.

The institutionalization of organized Islamophobia normalized a space for anti-Islam and anti-Muslim

activism, campaigns and efforts against Syrian refugee resettlement, mosque construction,⁷² how knowledge of Islam is taught in schools, and ultimately the advancement of anti-Sharia legislation. The organized Islamophobia movement built momentum in 2010, with the inception of anti-Muslim hate groups, and emotive anti-Muslim extremists making a name for themselves and their cause.⁷³ This was accompanied by a festering undercurrent of racial anxiety and animosity in the United States. Dating back to Barack Obama's presidential campaign in 2008, a correlation is observed between the rise of racial anxiety and animosity, and the advent of the anti-Sharia movement.

In response to Obama's presidential campaign and subsequent election as president, the US witnessed the rise of two conservative-led movements: the birther movement and the Tea Party movement. On June 3, 2008, Obama became the Democratic presidential nominee, making history as the first black presidential candidate leading a major party ticket.⁷⁴ As Obama edged closer to claiming presidential victory, rumors undermining his eligibility to serve as president brought into question his US citizenship and place of birth.⁷⁵ On June 13, 2008⁷⁶ Obama's campaign posted his birth certificate on their "Fight the Smears" website in order to debunk all speculation surrounding his birth—however, the posting had the opposite effect, and only brought more pushback challenging the authenticity of the birth certificate, which served to further fuel the movement.⁷⁷

Famously, current President Donald Trump was a staunch "birther," propelling the movement, with the help of conservative media, from a fringe movement to a major issue that the Obama White House was forced to continuously address.⁷⁸

Trump is also known for his skepticism of Obama's Christian faith, at times suggesting he was in fact a secret Muslim.⁷⁹ The conspiracy theory alleging President Obama to be a Muslim can be traced back as far as 2004,⁸⁰ when, as a state senator from Illinois, Obama delivered the keynote address for the Democratic National Convention which moved him into a position of national prominence and recognition.⁸¹

The birther movement and questions around Obama's religion served as a vehicle to subvert the former president's identity, legitimacy, and national loyalty to the US, highlighting a "political dementia and bigotry" stemming from racism.⁸² As Martin A. Parlett articulates in his book *De-*

monizing a President: The "Foreignization" of Barack Obama,

"the frames applied to Obama... [were applied to] dehumanize and scourge the first African American president. These disgraceful ad hominem attacks were (and are) structured to cast Barack Obama—and by extension his family—as outside of the comfortable and accepted normalcy of the upright, patriotic, democratic, heterosexual, and Judeo-Christian American paragon."⁸³

Such accusations promoted a "foreignization" of Obama, labeling him as an outsider, or the "other" who needed to be scrutinized.⁸⁴

While the birther movement sought to delegitimize a newly-elected president by touting conservative conspiracy theories, zealous efforts by the rising Tea Party pushed the Republican Party further to the right, sparking conservative activism against Obama's health and economic policies at the time. According to a study by Robb Willer, et al., the inception of the Tea Party movement in late 2008 and early 2009 is irrefutably linked to the rise of racial anxiety felt among white Americans, prompted by the election of the nation's first non-white president, and a growing population of non-white citizens.⁸⁵ The demographic shift had been interpreted as a threat to the standing hierarchy of whites in the US and their political power, and ensuing racial resentment helped fuel popular support for the Tea Party movement.⁸⁶

These events, initiatives, and shifting public sentiment were layered with issues of racial insecurity felt by white Americans, inducing and exacerbating a climate of fear of Muslims or those perceived to be Muslim. Consequently, many in the US have been engaged in a fierce struggle to preserve an "American" way of life by stifling anything that is fundamentally "un-American." Justified by the validation and manipulation of this religious and racial anxiety by political and cultural leaders, a new wave of Islamophobia transpired, ushering in the American Laws for American Courts (ALAC), and the rise of the anti-Sharia movement.

The Rise of the anti-Sharia Movement and the Creation of ALAC

Following the election of the nation's first Black president in 2008, the US was fraught with political and racial anxieties. Within this political

Mark Potok

on connections between the rise of anti-Muslim groups and the draft anti-Sharia bill ALAC, and on anti-Muslim hate crimes from 2009 to 2010

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In 2010, we saw what appeared to be at first almost inexplicable – a 50% rise in anti-Muslim hate crimes from 2009 to 2010, following a fairly steady decline ever since 2001. When we think back to 2010 there really wasn't any objective in terms of terrorism that could explain that sharp rise. There weren't any Jihadist attacks in the United States that year, there were no Islamic State horror stories coming in from abroad, there were no attacks in Paris or Brussels, or anything that would get a lot of attention in the United States. It seems to me that two things happened. One, Pamela Geller and Robert Spencer ginned up a giant controversy over the so-called Ground-Zero Mosque in NY City, which of course was neither at Ground Zero, nor a mosque. They made a big deal out of it, and managed to create a massive demonstration against the Islamic Center, sending the message that it was, as Geller called it, a 'Victory Mosque,' a triumphal monument to the people who slaughtered Americans on 9/11. The man behind Park51 was accused of all kinds of things, including being tied to terrorists, and the fact that it was in New York, the largest media market in the world, helped it become a national story, and very quickly that spilled out into other controversies around mosque construction in places like Murfreesboro, Tennessee. That was one thing, the mosque controversies, which began in New York and spread around the country that year.

The other big thing that happened in 2010 is that David Yerushalmi came out as one of the authors of a report alleging that Muslims were involved in a conspiracy to impose Sharia Law in American criminal courts. Yerushalmi also drafted that year the American Laws for American Courts legislation, the model anti-Sharia legislation that he got a lot of press attention for. Obviously, it's not possible to impose Sharia Law on American courts under the Constitution. That was simply propaganda. So, he created a fearmongering, hate-generating tactic, aimed at Muslims in America, that was very effective, and now a number of states have actually adopted the anti-Sharia legislation, beginning with Oklahoma.

a need to protect American citizens specifically from Sharia serves a problematic dual purpose: firstly to perpetuate the idea that Muslims and their Islamic faith are an inherent threat to American individuals' constitutional rights and democracy, and secondly, to bolster the toxic rhetoric that Islam and Sharia are inherently discriminatory, misogynistic, and oppressive towards women, contributing to misinformation and fear that helps advance anti-Sharia campaigns throughout the US.

The Context of anti-Sharia State Legislation

The anti-Sharia movement did not originate within a vacuum, but was rather built upon mobilizations, political, and racial resentments that led to

measures being enacted at the federal and state levels. Our findings connect these measures to a number of events that took place in the United States from 2001 to 2016, ranging from the 9/11 attacks, the election of former President Barack Obama, the rise of the Tea Party and birther movements, and Congressman Peter King's congressional hearings on the radicalization of Muslim Americans—all of which helped to shape and foment a climate for a new wave of Islamophobia. Drawing on these connections, the foundations of the anti-Sharia movement can be linked to the rise of racial animosity/anxiety in the United States, which emerged as a response to Obama's election as president. An increased visibility of a non-Christian population in the US has been perceived as a threat to the standing hierarchy and

political power of conservative, white Americans, consequently leading to the rise of racial resentment and anxiety among certain white conservatives, as well as the establishment of the Tea Party and birther movements.⁹²

The organized, contemporary Islamophobia movement piggybacked on the economic anxiety against the backdrop of the 2007-08 subprime mortgage and financial crisis, and racial resentments in reaction to the election of the first Black President. Collectively, a climate of economic uncertainty and the perceived threats of a changing demographic, created the ripe conditions that led many conservative Americans to be susceptible of scapegoating others for the economic and social challenges.⁹³ While these explanations aren't mutually exclusive, the growing influence of these converging movements, the anti-Sharia movement launched its efforts in 2010 when the birther movement and Tea Party had created the welcoming climate and public sentiment required for xenophobia and Islamophobia to thrive. Immediately following President Obama's inauguration in 2010 and the Park 51/'Ground Zero Mosque' campaign, the first anti-Sharia bills were enacted in the United States.

Recurring Themes and Discriminatory Effects of the Anti-Sharia Bills

The beginning of the anti-Sharia movement can be traced to 2010, following the creation of the American Laws for American Courts model act (ALAC) drafted by the lawyer David Yerushalmi. In 2009, Yerushalmi received over \$153,000 in consulting fees from Frank Gaffney's Center for Security Policy to draft the ALAC model act, and in 2010 the first bills modeled after ALAC were introduced.⁹⁴ From 2010 to 2016, 194 anti-Sharia bills were introduced in 39 state legislatures across the US.⁹⁵ Eighteen bills were enacted into law, and lawmakers in Louisiana, North Carolina, Texas, and Tennessee enacted multiple anti-Sharia legislation in their states.⁹⁶

The American Public Policy Alliance claims that ALAC was crafted to "protect American citizens' constitutional rights against the infiltration and incursion of foreign laws and foreign legal doctrines, especially Islamic Shariah Law."⁹⁷ The bills are championed as a means to protect American freedoms and liberties, however, opponents of the legislation argue that these bills and their legislative campaigns represent a solution in search of a problem, highlighting the reality that Sharia

law or foreign law do not constitute a threat to American freedoms or liberties.⁹⁸ In addition, anti-Sharia bills are unconstitutional and violate the First Amendment of the Constitution.⁹⁹ The argument for ALAC as a defense against the infiltration of Sharia is a fallacy, as the Constitution establishes that foreign law or Sharia law cannot replace or supersede American law, with the Constitution specifying the applicability of foreign law.¹⁰⁰ Additionally, Yerushalmi admits to an ulterior motive behind writing ALAC, which is the promotion of fear and scrutiny around the term Sharia. Yerushalmi claimed that if the bills passed in every state without any friction, then ALAC would not have served its purpose, as he wanted people to ask the question, "What is Shariah?"¹⁰¹ The question intended to proliferate a fear of "creeping" Sharia, as well as the enactment of anti-Muslim legislation across the US.

Our analysis of Yerushalmi's model act identifies several recurring themes and discriminatory effects that encapsulate the bills' language or intent.

Recurring Themes

- Most of the bills in our database adopt language or employ provisions contained in the ALAC model act. For example, of the 194 bills introduced, 140 bills used ALAC model language, while an additional 54 anti-Sharia bills did not.
- Most bills exempt corporations, explicitly allowing them to enter into contracts and agreements that call for the application of a foreign law. Of the 194 bills introduced, 121 bills exempt corporations, while a total of 73 bills do not exempt corporations, or do not reference corporations in the text of the bill. The bills set a double standard, allowing for corporations to enter into business contracts without restrictions, while simultaneously infringing on the rights of individuals to enter into contracts.
- Most bills bar courts from enforcing individuals' contracts and agreements that call for the application of foreign law. Of the 194 bills introduced, 191 bills bar courts from enforcing individuals' contracts and agreements, while an additional three bills do not bar courts from enforcing individuals' contracts, or the text of the bill does not reference individual contracts. This stipulation violates the Establishment Clause and the Free Exercise Clause of the First Amendment of the Constitution, and clearly establishes the bills' unconstitutionality.

Discriminatory Effects

At its core, the anti-Sharia movement aims to undermine Muslim Americans' belonging in American society by establishing an un-equal standard for religious freedom. The discriminatory effects, although not exhaustive,¹⁰² draw on every anti-Sharia bill introduced, and establish the intent of the anti-Sharia bills and/or the intent of their legislative campaigns (see the "State Legislation" section for a more detailed analysis of the discriminatory effects). The anti-Sharia bills and their legislative campaigns:

- Instigate an unfounded and nonviable fear among American society that Sharia will infiltrate the US legal system.
- Increase mistrust, fearmongering, and othering of Islam/Muslims.
- Foment a climate of intolerance, which increases the likelihood of hate crimes being perpetrated against Muslims and those perceived to be Muslim.
- Negatively impact and inhibit Muslims from engaging with their religion as related to marriage contracts, business contracts, trusts, and estates.

Islamophobia in the Era of Trump

FROM THE FIRST DAY IN OFFICE and under the pretext of keeping his election campaign promises, President Trump has put force behind his campaign rhetoric of “calling for a total and complete shutdown of Muslims entering the United States until our country’s representatives can figure out what the hell is going on.”¹⁰³

This section provides an overview of two key executive orders, and a Laptop Ban measure issued by President Trump in 2017 that have targeted and discriminated against Muslim communities.

Muslim Ban 1.0

Islamophobia has manifested in a policing regime that engages in the profiling, surveillance, torturing, and detention of people along racial and religious lines, and has allowed for the militarization of local police departments, as well as an unprecedented expansion and implementation of security measures. The “clash of civilizations” narrative fathered by Bernard Lewis and proliferated by Samuel Huntington is not only relevant and influential today, but serves as a political and ideological backbone for anti-Muslim rhetoric and demagoguery in the Trump administration.¹⁰⁴ What began as outlandish, unconstitutional and almost unfathomable proposals in Trump’s campaign statements calling for a Muslim registry, and banning all Muslims from entering the United States, have since become actual policy goals that are being worked towards,¹⁰⁵ as evidenced by Trump’s Executive Order 13769¹⁰⁶ and Executive Order 13780,¹⁰⁷ commonly known as the Muslim Ban 1.0 and 2.0.

The stated objective of the first EO (No. 13769, FR 8977), issued by Trump on January 27, 2017 titled “Protecting The Nation From Foreign Terrorist Entry Into The United States,”¹⁰⁸ is to prevent terrorism. It focuses on the regulation of immigration as a means of curbing terrorism, mainly through the modification of processes related to

the admission of noncitizens and visa issuance.

The EO mentioned that visa issuance plays a crucial role in detecting individuals with terrorist ties and cites September 11, 2001, adducing that at the time of the attacks, State Department policy prevented consular officers from properly scrutinizing the visa applications of several of the foreigners who perpetrated the attacks.¹⁰⁹ Additionally, the Order mentioned an intent to reduce bigoted practices like “honor killings” and gender violence through the denial of admission to those who engage in such acts of bigotry and hatred.¹¹⁰ The order temporarily suspended entry of foreigners from seven Muslim-majority countries: Iraq, Syria, Sudan, Iran, Somalia, Libya, and Yemen.¹¹¹ Additionally, the EO temporarily suspended USRAP (the US Refugee Program),¹¹² capped the entry of refugees at 50,000 for the 2017 fiscal year,¹¹³ indefinitely suspended the entry of Syrian refugees,¹¹⁴ and called for the prioritization of claims of religious persecution in asylum cases if the person is a religious minority in their home country.¹¹⁵ The EO announced the implementation of new screening practices¹¹⁶ and suspended visa interview waiver programs, requiring in-person interviews for all visa petitioners.¹¹⁷ It also called for the revision of all visa reciprocity programs to ensure they are actually reciprocal.¹¹⁸ Lastly, the EO called for the publication of negative information about immigrants. Specifically, it required the Secretary of DHS and the Secretary of State to make public information on foreign nationals that are charged with terrorism-related offenses or removed for terrorism-related offenses,¹¹⁹ radicalized after entering the US,¹²⁰ who commit gender-based violence or honor killings,¹²¹ or charged with other major offenses.¹²²

Several lawsuits against President Trump and the DHS were initiated in federal court. The plaintiffs argued that the EO was based on animus towards Muslims and violated domestic and international

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on connections between the nineteenth and twentieth century anti-Asian movement and contemporary Islamophobia

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Perhaps the closest historical parallel to contemporary Islamophobia is the anti-Asian movement of the late-19th and early-20th centuries. During the 19th century, whites viewed Chinese immigrants as “the other” - perpetual foreigners incapable of assimilating into American society. Chinese immigrants were portrayed by hate mongers as threats to white labor and as bearers of disease and immorality. They were targeted by mob violence and driven out of many Western cities and towns. The anti-Chinese movement finally triumphed in 1882, when the US Congress passed the Chinese Exclusion Act, the first US law to bar entry to the US on the basis of race or country of origin. The Japanese, who succeeded the Chinese as immigrants to the US starting in the 1880s, were also viewed as “foreign” and unassimilable. In response to anti-Japanese sentiment, Congress passed legislation in 1918 and 1924 that barred immigration from the entire Asian subcontinent and denied the right of Asian immigrants to become naturalized citizens. When World War II broke out, it was an easy step to view Japanese-Americans, even those born in the US, as disloyal enemy aliens and as potential fifth columns. Rationalized at the time as a wartime necessity, the federal government rounded up 120,000 Americans of Japanese ancestry living on the West Coast of the United States and interned them in concentration camps.

Race and national origin were finally removed as criteria for entry with the passage of the 1965 Immigration and Naturalization Act. However, nearly 50 years later, calls for new bars have arisen, but now targeting Muslims. In 2017, President Trump carried out his campaign promise to keep potential Muslim terrorists out of the US by issuing an Executive Order to bar entry from six predominantly Muslim countries. As with the case of Japanese-Americans during World War II, the “War on Terrorism” has been used as an excuse by some Americans to call for similar extreme measures to deal with American Muslims. Kris Kobach, Secretary of State of Kansas and member of Donald Trump’s transition team, stated in 2016 that the new administration might reinstate a registry of US Muslims from countries where terrorists are active. Not long after Trump’s election victory, a spokesperson for a right-wing super PAC and supporter of Trump, Carl Higbee, appeared on Fox News to promote the creation of a Muslim registry, citing the registration and internment of Japanese-Americans as a precedent.

law, including the Constitution, the Administrative Procedure Act (APA) and the principle of non-refoulement, which establishes that states cannot return asylum seekers to a country where they will likely be harmed.¹²³ Several federal courts, including the US District Court for the Eastern District Of Virginia,¹²⁴ the US District Court of Massachusetts,¹²⁵ the US District Court for the Eastern District of New York¹²⁶ and the US District Court For The District Of Hawai'i,¹²⁷ issued temporary restraining orders based on a likelihood of success of the cases on their merits. The Trump administration challenged the District Courts’ decisions but

the Ninth Circuit upheld the temporary restraining orders in a unanimous decision.¹²⁸

Muslim Ban 2.0

Following vigorous litigation and a rebuke of the January 27 executive order by the federal courts, on March 6, 2017 President Trump issued a new executive order (EO No. 13780, 82 FR 8977, 8980-81) entitled “Protecting the Nation From Foreign Terrorist Entry Into the United States” which revoked and replaced the January 27 EO.¹²⁹ Citing judicial concerns,¹³⁰ the new EO maintains the ban on persons entering from Iran,

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on the importance of social justice coalitions and organizations for defending the rights of ‘Othered’ communities

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In 1942, there was conflict within the Japanese-American community regarding the incarceration. Fred Korematsu was vilified from the time he entered the Tanforan Detention Assembly Center in San Bruno, California by his own community because he took a stand against the government. The Japanese-American leaders felt that if they associated with Fred some harm might come to them. Internees had been told by the Japanese-American Citizens League (JACL) that they should go along with the government's orders for incarceration to prove that they were good Americans. Many believed that Fred, by standing up for what he believed in, was putting the whole community at risk of government backlash. Fred and his family were ostracized by the Japanese-American community even after the war until his case was re-opened by his *coram nobis* (the legal order of a court to correct its original judgment's proceedings) legal team in 1983. This experience led Fred Korematsu to speak out after September 11th, 2001 when the government cited *Korematsu v United States* as a possible reason to round up Muslim and Arab-Americans and put them in American concentration camps. In 1942, there were none of the organizations of voice or power that could influence political scapegoating that was occurring at that time. Now we are seeing that many social justice organizations are coming together to speak up and defend Muslim, Arab, Sikh, and South Asian communities from political scapegoating. These coalitions have more power and influence over the discourse than any organizations in 1942. It's more important now than ever that people become civically engaged and reach across communities by becoming part of the solution and not the problem.

Libya, Somalia, Sudan, Syria and Yemen, justifying the ban on the basis of national security risks that arise from the presence of terrorist groups in each of these six countries.¹³¹ However, it eliminates Iraq from the ban, arguing that Iraq is a special case due to efforts by the US and Iraqi governments to reduce ISIS' influence in the country as well as steps the Iraqi government has taken to improve travel documentation, information-sharing and the return of Iraqi nationals subject to removal orders.¹³² However, while the EO eliminated Iraq from the ban, it calls for additional screening practices for Iraqi visa applicants.¹³³ The new EO limits the scope of the previous ban, specifying that it applies to those outside the US who do not have a valid visa.¹³⁴ Additionally, the EO explicitly states that it does not apply to Legal Permanent Residents, those paroled into the US, dual nationals, diplomats and those already granted asylum or refugee status.¹³⁵ The new EO maintains the temporary suspension of USRAP and the cap on the entry of refugees¹³⁶ established by the previous EO.¹³⁷ The new EO also maintains the suspension on the Visa Interview Waiver Program¹³⁸ and the

review of reciprocity programs.¹³⁹

Several parties that had originally filed actions against the first version of the travel ban amended their complaints to include the second version of the travel ban¹⁴⁰ and several federal courts issued injunctions, ordering the temporary suspension of the ban.¹⁴¹ On June 26, 2017, the Supreme Court stayed the lower courts' injunctions for those who had no "bona fide relationship with a person or entity in the United States," effectively leaving the ban in place for those who could not demonstrate a "bona fide relationship." However, the Supreme Court did not define what constituted a bona fide relationship. A few days later, the State Department sent a diplomatic cable to embassies and consulates, attempting to explicitly define "bona fide relationship."¹⁴² The cable explicated that connections with resettlement agencies were not a basis of a bona fide relationship and neither were connections with family members like "grandparents, grandchildren, aunts, uncles, nieces, nephews, cousins, brothers-in-laws and sisters-in-law, [and] fiancés."¹⁴³ Shortly after, a federal court in Hawaii found that the parameters of bona

vide relationships imposed by the State Department were too limiting and violated the Supreme Court's order.¹⁴⁴ On July 19, 2017, the Supreme Court left the Hawaii court's order on family definitions in place but stayed the part of the injunction regarding refugee resettlement agencies. Therefore, at the time of publication of this report, refugees whose only US tie was to a resettlement agency were not permitted to travel on that basis. The Supreme Court granted certiorari to review the travel ban and oral arguments in the case are scheduled for October of 2017.¹⁴⁵

Laptop Ban

In March of 2017, the US Transportation Safety Administration (TSA) banned most electronic devices, including tablets, laptops, and communication devices larger than smartphones in cabins on flights traveling to the US from 10 airports in eight Muslim-majority countries.¹⁴⁶ While the Trump administration asserts the new rules were introduced based on terrorism concerns, some affected by the ban contend that the ban is a form of protectionism in disguise. The ban singled out Muslim-majority countries despite the fact that electronic devices could be used by anyone to do harm, as such a threat is not specific to a

handful of Middle Eastern airlines, nor is it specific to Muslim-majority nations.¹⁴⁷ Critics of the ban purport that it was introduced to target foreign airlines that have been criticized by their US competitors for receiving government subsidies; in particular, Emirates, Etihad Airways and Qatar Airways. Among these criticisms was speculation that the rule specifically targeted lucrative business and first class travelers, who often work on flights, and would likely prefer to travel on US airlines to access their electronic devices while in flight.¹⁴⁸ However, David Lapan, Acting Deputy Assistant Secretary for DHS, insisted the ban was implemented due to terrorism concerns,¹⁴⁹ and DHS published a Q&A sheet citing concerns about the smuggling of explosive devices in consumer items.¹⁵⁰ The Department of Homeland Security confirmed on July 20, 2017¹⁵¹ that the restrictions on personal electronic devices had been lifted as a result of the nine airlines and 10 airports impacted by the ban complying with new DHS security standards.¹⁵²

Federal Measures

THE SEPTEMBER 11 ATTACKS marked a new chapter in US immigration enforcement, framing immigration as a national security issue. This resulted in the creation of the Department of Homeland Security and the assignment of immigration functions to this cabinet department.¹⁵³ Additionally, the background of the hijackers led to the demonization, distrust and othering of those perceived to be Muslim, Middle Eastern, or Arab. The federal government proceeded with using perceived ethnicity, race, national origin and religion as a tool of law enforcement; implementing terrorism prevention programs that were discriminatory and ineffective. This section provides an overview of several federal programs and initiatives implemented since 2001 that have violated the rights of many individuals believed to be Muslim.

Federal Programs and Initiatives

Absconder Apprehension Initiative

In the aftermath of 9/11, one particularly contentious concern was the backlog of fugitive aliens: those ordered deported by an immigration judge but who failed to comply with their removal order and were still present in the US.¹⁵⁴ As a result, the Absconder Apprehension Initiative was announced through an internal memo by former Attorney General Larry Thompson directing agents from the INS, FBI, and US Marshals Service to locate, apprehend, interview and deport approximately 314,000 people described as “absconders” or “alien fugitives.”¹⁵⁵ As part of the effort to locate absconders, the personal information of 300,000 “fugitive aliens” was entered into the National Crime Information Center database, made available to federal, state and law enforcement agencies.¹⁵⁶ Overall, the program sought to broaden the breadth of domestic criminal law enforcement through increased access to immi-

gration information.

Justified by the September 11 hijackers being Muslim, heightened scrutiny was assigned to those who were Muslim or perceived to be Muslim.¹⁵⁷ Rather than targeting all absconders equally, the government concentrated its efforts on those who originated from countries in which there had been Al Qaeda terrorist presence or activity. From early 2002 to May of 2003, over 1,100 alleged absconders, almost all Arab or Muslim men, had been arrested and over two-thirds of them were deported.¹⁵⁸ The program now exists as part of the US Immigration and Customs Enforcement’s National Fugitive Operations Program, which is not nationality-specific.¹⁵⁹

PENTTBOM (Pentagon/Twin Towers Bombing Investigation)

The Pentagon and Twin Towers Bombing Investigation (PENTTBOM) is the name of a substantial September 11th investigation that involved the participation of more than 4,000 special agents and 3,000 professional employees.¹⁶⁰ Within two months of the attacks, more than 1,200 citizens and aliens had been detained as part of the investigation, with many being released without charge for any criminal or immigration offense. However, many were charged for a violation of immigration laws¹⁶¹ and preventively detained as “special interest” persons who could potentially be useful to the investigation.¹⁶² This violated immigration laws which held that persons could only be detained pending a removal proceeding, if it was determined that they were a danger to the community or flight risk.¹⁶³

While the PENTTBOM investigation attempted to gain information about potential terrorist activity, most detainees were never linked to terrorist activity and the process of determining suspects was largely biased. Most alleged suspects were

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Islamophobia and the parallel US-driven militarism in Muslim countries across the globe have created a political and legal framework to alienate and stigmatize Muslim communities, which in turn has led to a subtle, but systematic practice to surveil, intimidate, harass, and ultimately criminalize Muslim communities. In its response to 9/11, the US engaged in a number of extralegal practices that turned on a presumption that Muslim men, albeit men who were believed to be hostile to the United States, were not entitled to the barest human rights protections, a position not taken by the US—despite the traditional escalation of executive power in times of war and other horrific acts of wartime aggression—in previous conflicts, including WWII and Vietnam. The United States developed a secretive, offshore prison in Guantanamo Bay, Cuba, to house a new category of human, an “enemy combatant,” seeking to hold them incommunicado, and indefinitely without any international human rights protections and in order to evade courts and the law. The US suspended the most elementary human rights guarantees against torture, and held dozens of men in secret CIA detention sites across the globe to freely engage in torture. The US also engages in a practice of targeted killings by drone strikes, including outside conventional war zones in Pakistan, Yemen, and Somalia, and while some drone strikes are particularly directed at individuals—including US citizen Anwar Al-Awlaqi—many are so-called “signature strikes” that drop massive bombs on groups of men who fit an imagined profile of a terrorist profile, killing hundreds of innocent people. Then there is Abu Ghraib.

These external facing government practices, as they often do—see, e.g. McCarthyism and Red Scares—turn inward. National security narratives are deployed, in this case, by domestic law enforcement agencies, to control the asserted domestic threat from Muslims. Though domestic law enforcement cannot use blunt tools of warfare, they also did not use, for this asserted threat, the traditional tools of law. A range of sub-judicial practices emerged – based on areas of asserted law enforcement discretion and largely unsupervised by courts – to surveil, control, harass and ultimately criminalize Muslims. One can observe a pipeline of criminalization; call it a “Mosque to Prison” pipeline of increasing leverage and range of inputs along the pipeline.

rounded up through arbitrary law enforcement encounters with male Muslim foreigners, or suspects were singled out based on neighborhood suspicions.¹⁶⁴ PENTTBOM detainees were held in a range of federal, local and private detention facilities across various locations in the US.¹⁶⁵

Shortly after these detentions took place, allegations of mistreatment among detainees surfaced. These allegations included reports that detainees were not being informed of the charges against them, not permitted contact with their attorneys, families and embassy officials, and remained in detention despite failure to prove any involvement in terrorist activities.¹⁶⁶ Five detainees filed a class action lawsuit alleging they were physically and

verbally abused, and held without a legitimate immigration or law enforcement purpose long after they received final removal or voluntary departure orders.¹⁶⁷ Human Rights Watch issued a report arguing that the program instituted arbitrary detention, violated due process rights and the principle of presumption of innocence.¹⁶⁸ On July 22, 2004 the National Commission on Terrorist Attacks Upon the United States (known informally as the “9/11 Commission”) issued a final report which relied on the PENTTBOM investigation and detailed the events leading up to the September 11 attacks.¹⁶⁹ In 2004, PENTTBOM was down to a staff of 10 people.¹⁷⁰

Closed Removal Proceedings

Although immigration judges may decide to conduct secret or closed removal hearings to protect sensitive information or to protect vulnerable people, removal proceedings are usually open to the public.¹⁷¹ Following the September 11 attacks, the longstanding practice of conducting immigration proceedings that were open to the public shifted to many immigration proceedings being held behind closed doors,¹⁷² with more than 600 closed immigration proceedings held from 2001 to mid-2003.¹⁷³ The underlying justification was the premise that these designated persons of “special interest” could be potentially linked to terrorist activity and opening up proceedings could compromise the investigation. A July 2002 Human Rights Watch Report asserted that none of these detainees who had been designated as persons “of special interest” and subject to closed immigration proceedings had been charged with terrorism offenses.¹⁷⁴ Detainees, members of the press, and the ACLU filed lawsuits alleging that these closed removal proceedings implicated the due process rights of detainees and the First Amendment rights of the press. However—citations are limited due to immigrants’ due process rights and protections in immigration trials—courts have held that any liberty interests in making immigration proceedings open to the public are outweighed in cases that pose significant national security concerns.¹⁷⁵

National Security Entry-Exit Registration System (NSEERS)

NSEERS was a registration program that fingerprinted, photographed, and attempted to track all non-citizen males over 16 years of age from predominantly Arab and Muslim countries.¹⁷⁶ The program not only required registration at ports of entry for those entering and leaving the country, but also required those already inside the US to periodically report to immigration officials.¹⁷⁷ The program was championed by John Ashcroft, Attorney General during the Bush administration,¹⁷⁸ and went into effect in 2002 in response to 9/11.¹⁷⁹ The program was implemented as a mechanism to identify and eventually capture potential terrorists. It is now largely considered a failure, due to zero terrorism convictions resulting from the program.¹⁸⁰ In 2009, a letter to the Obama Administration from the U.N. Committee on the Elimination of Racial Discrimination (CERD) urged the government to review NSEERS as a form of racial profiling in

immigration policies.¹⁸¹ The “special registration” portion of the program, which required registration of those already present in the country, was suspended in 2003. The rest of the program was suspended in 2011, with the program’s regulatory framework remaining in effect until 2016.¹⁸²

Canada-US Safe Third Country Agreement

In 2002, Canada and the US signed the “Smart Border Declaration and Action Plan” which went into effect in 2004.¹⁸³ and included a “Safe Third Country Agreement” as a means of reducing migration flows across their borders.¹⁸⁴ The agreement requires persons seeking refugee protection at land-border ports of entry to make a claim for asylum in the first country in which they arrive, whether that be the US or Canada, unless they qualify for an exception,¹⁸⁵ making it almost impossible for refugees to enter Canada by land.¹⁸⁶ The main premise of the program is that conditions in both the US and Canada are sufficiently equivalent, and therefore there is no need to undergo the same asylum process in both countries. However, in response to President Trump’s Executive Order 13769, which suspended the US Refugee Admissions program,¹⁸⁷ many Canadian civil rights groups called for the suspension of the agreement citing differences in Canadian and US refugee policy, which undermine its purpose.¹⁸⁸ Specifically, civil rights groups argue that many refugees would have a valid asylum claim in Canada in the absence of this agreement. At the time of publication of this report, the agreement remains in effect.¹⁸⁹

Change in Visa-Waiver Program

The visa waiver program is a reciprocity program implemented in 1986, which allows citizens of participating countries, including the US, to travel to other participating countries without obtaining a visa.¹⁹⁰ Prompted by the Paris and San Bernardino attacks,¹⁹¹ Congress modified the program in 2015 through the enactment of the “Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015,”¹⁹² passed as part of an omnibus spending bill.¹⁹³ The newly-modified Visa Waiver Program targets people who have visited Iran, Iraq, Sudan or Syria since March 1, 2011, making them ineligible to participate in the program with few exceptions.¹⁹⁴ Further, the bar also applies to dual-nationals who are citizens of a country that participates in the program and are also citizens of Iran, Iraq, Sudan or Syria.¹⁹⁵ The

ACLU has labeled the bill arbitrary and discriminatory, specifying that it applies to those who had never stepped foot in Iran, Iraq, Sudan or Syria and obtained citizenship through descent.¹⁹⁶ At the time of publication of this report, the modified Visa Waiver Program remains in effect.¹⁹⁷

Targeting of Muslim Charities

One of the Federal Government's first responses to the September 11 attacks was President Bush's signing of Executive Order 13224 entitled "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism" (the "Executive Order").¹⁹⁸ The Executive Order, issued on September 23, 2001 prohibited transactions with any person or organization deemed by the government to be associated with terrorist activity and allowed for the blocking of assets of people or organizations believed to be associated with terrorist activity. This Executive Order was later strengthened through the promulgation of Terrorism Sanctions Regulations by the Treasury Department¹⁹⁹ and the enactment of the U.S.A. Patriot Act by Congress.²⁰⁰

These legal actions provide for the imposition of civil liability and even criminal sanctions for organizations that provide "material support"²⁰¹ to organizations designated as Foreign Terrorist Organizations.²⁰² However "material support" is defined broadly and does not exempt humanitarian or peace building aid.²⁰³ This obscure definition of material support is particularly problematic given that international organizations may be particularly vulnerable to prosecution because their humanitarian missions compel them to work with communities that exist within "hotspots" of terrorism.²⁰⁴ As of 2011, the United States had shut down seven US-based Muslim charities.²⁰⁵ The ACLU has challenged these actions as "violating the due process rights of organizations" attributed to lack of notice, probable cause and opportunity for meaningful judicial review.²⁰⁶ In 2009, in a landmark ruling, a federal court sided with KindHearts, a charity whose assets had been frozen by the Treasury Department, holding that the Treasury's actions violated the Constitution.²⁰⁷ However, at the time of publication of this report, the USA PATRIOT Act, including its broad material support provision, remains in effect.²⁰⁸

Countering Violent Extremism (CVE)

In 2011, the Obama administration announced the "National Strategy for Empowering Local Partners

to Prevent Violent Extremism in the United States" which aimed to supplement and strengthen the law enforcement counterterrorism efforts in place.²⁰⁹ In 2014, the federal government introduced local pilot programs through the Countering Violent Extremism (CVE) initiative.²¹⁰ The programs were aimed at deterring US residents from joining violent extremist groups through the granting of funds to community organizations, US attorneys' offices and police departments.²¹¹ In turn, grantees were expected to collaborate with law enforcement to identify those "at risk" of engaging in terrorist activity.²¹² While the federal government denied that CVE was an intelligence gathering mechanism,²¹³ FOIA requests made by the Brennan Center revealed that the programs were being used to gather intelligence on Muslims and social activists.²¹⁴ While on its face, the CVE initiative focuses on curbing violent extremism in all its forms, the program in practice has almost exclusively targeted Muslim-American communities²¹⁵ and made little effort to counter violence by other groups, including right-wing extremists.²¹⁶ In fact, the Trump Administration has expressed that it would like to rename the program "Countering Radical Islam" or "Countering Violent Jihad," to clarify that it targets American Muslims.²¹⁷ The ACLU has been highly critical of the initiative, claiming that it incentivizes spying on community members, hindering "First Amendment-protected beliefs and activity."²¹⁸ The CVE initiative was still in effect at the time of the publication of this report.²¹⁹

Federal Legislation

As was the case for federal programs and initiatives, the federal government proceeded with using perceived ethnicity, race, national origin and religion as a tool of law enforcement. What follows is an overview of three pieces of submitted federal legislation since 2001—none of which have been enacted—that aimed to violate the rights of individuals believed to be Muslim in the US.

S. 520—The Constitution Restoration Act

The Constitution Restoration Act was introduced in the US Senate on March 3, 2005 by Richard Shelby, a Republican senator from Alabama, and was co-sponsored by nine other Republican senators.²²⁰ The bill sought to strip federal courts' authority to review actions by the government or government officials that acknowledge God as a source of law, liberty or government. The content

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on the historical genesis of Islamophobia in the US and the importance of countering Islamophobia

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Islamophobia has been in the making for quite some time as evidenced in *Covering Islam* by Edward Said, and Jack Shaheen's *Reel Bad Arabs*. The systematic targeting of Muslims and Arabs, and Palestinians in particular, took shape during the Reagan Administration, which fused immigration and national security policies, and was followed by President Clinton's adoption of the 1996 Anti-Terrorism and Effective Death Penalty Act, which codified into law the targeting and exceptional treatment of Muslims and Arabs.

Certainly the Islamophobia phenomenon witnessed a drastic spike post 9/11. The "war on terror" was forged with Muslim and Arab identities attached to it, which structurally led to the re-shaping of governmental institutions, and a focus on these targeted groups. "The US was not at war with Islam," was positive on one level, but the adoption of the Patriot Act, the heavy securitization and infiltration of Muslim, Arab, and Palestinian organizations and spaces tarnished the efficacy of the statement.

The response to Islamophobia begins by reclaiming every aspect of civil society and countering the marginalization and silencing of Muslims, Arabs, and Palestinians. Best practices include coalition building among civil rights organizations, interfaith partners, and immigrant rights groups at the local level with a focus on city councils and mayoral offices to adopt inclusive legislation. More critically, civic leaders and institutions must double their efforts and provide ample space for Muslim, Arab, and Palestinian voices as well as provide access and visibility across all areas connected to institutions managed by cities and counties. Coalitions in Berkeley, San Francisco, Oakland, Portland, Seattle, New York, and countless other locations are important to examine and to investigate their successes, so as to foster the needed push-back against Islamophobia and Countering Violent Extremism (CVE) programs.

At the academic and scholarly levels, a shift in focus must take place. Research and academic initiatives must be supported, and more resources directed to address critical questions in the emerging Islamophobia Studies field. Both the media and the internet are where Islamophobia has long had an influential presence. Time and effort must be dedicated to crack the code that facilitates the mass distribution of bigotry and xenophobia through media and internet channels.

of the bill closely mirrored the content of anti-Sharia bills, restricting federal courts from relying upon international law or the laws of foreign countries when interpreting the Constitution. It proposed strict penalties for judges who violated the terms of the law, subjecting them to removal from office. Mark V. Tushnet, a Georgetown legal scholar, suggested that if passed, the bill would have violated impeachment law by allowing Congress to remove federal judges from office on the basis of a disagreement with a judge's rulings.²²¹ The bill was drafted by Roy Moore, the Chief Justice of the Alabama State Supreme Court,²²² who gained notoriety when he installed and refused to remove

a granite monument of the Ten Commandments in an Alabama state courthouse in 2001.²²³ Roy Moore grew into an important figure of the "dominionist movement" - a movement that aims to reassert the US as a Christian nation through the control of its cultural and political institutions."²²⁴ The bill was not passed.²²⁵

H.R. 3052 – Foreign Law Ban

On July 14, 2015 Tennessee Congresswoman Diane Black introduced a federal anti-Sharia bill.²²⁶ The bill's language mirrors that of the model legislation provided by the American Laws for American Courts and aims to prohibit the use of

foreign law in federal courts. In a press release, Representative Black stated that “we must ensure our judicial system is protected from an ideology [Sharia] that has no place within civilized society.”²²⁷ At the time of publication of this report, the federal anti-Sharia bill had not been enacted.²²⁸

H.R. 6975 – Jihad Prevention Act

On September 18, 2008, Colorado Congressman Thomas G. Tancredo introduced a federal bill entitled “The Jihad Prevention Act.”²²⁹ The bill aims to amend the Immigration and Nationality Act to require non-citizens to attest they will not attempt to implement Sharia within the US in order to be eligible for entry. The law would also make advocating for Sharia a ground for revocation of visas and citizenship.²³⁰ At a Conservative Political Action Committee gathering, Congressman Tancredo referred to multiculturalism as a “cult,”²³¹ and has expressed his concerns about Muslims being unable to assimilate and posing a threat due to Sharia.²³² At the time of publication of this report, “The Jihad Prevention Act” has not been enacted.²³³

State Legislation

THIS SECTION HIGHLIGHTS key themes, patterns and trends identified in the findings of our exhaustively-researched public database and repository of all anti-Muslim bills introduced, enacted, or not enacted, at the state level between 2000 and 2016. In discussing the discriminatory intent, and effects of anti-Sharia legislation, this section highlights the negative impact of this legislation on all communities in American society. Further, in drawing on key patterns and trends of the anti-Sharia legislation, the complex network of forces behind anti-Muslim legislation and legislative campaigns, and their mutual focus on anti-refugee settlement, are exposed.

A Solution in Search of a Problem

The *American Laws for American Courts* (ALAC) model legislation prevents state judges from considering foreign laws in their rulings,²³⁴ emphasizing that:

*Any court, arbitration, tribunal, or administrative agency ruling or decision shall violate the public policy of this State and be void and unenforceable if the court, arbitration, tribunal, or administrative agency bases its rulings or decisions in the matter at issue in whole or in part on any law, legal code or system that would not grant the parties affected by the ruling or decision the same fundamental liberties, rights, and privileges granted under the U.S. and [State] Constitutions...*²³⁵

The anti-Sharia bills are championed by their supporters as a defense for American constitutional protections and liberties against foreign laws, specifically Sharia.²³⁶ Proponents of the bills argue that the “infiltration” of Sharia in US courts represents the Islamization of the West,

and that Sharia is fundamentally in conflict with the United States Constitution and state public policy.²³⁷ A common and inflammatory misconception by such proponents is the belief that Muslim Americans want to replace US legal systems and US law with Sharia, forcing all Americans to abide by Sharia.²³⁸ However, despite what proponents might claim, the anti-Sharia bills are discriminatory, bigoted, and unconstitutional, and as many have observed, are a solution in search of a problem.²³⁹

Abed Awad, an attorney and expert on Sharia and foreign law, specifies that in addition to fueling Islamophobia, anti-Sharia statutes will also have a negative impact on the US legal system, ultimately transforming the everyday decisions made in US courtrooms by the enactment of such laws.²⁴⁰ One such example of this includes when a husband and wife, who are married in accordance to Sharia and possess an Islamic marriage contract, seek to divorce one another. In the marriage contract there is typically a clause that states the agreed-upon *mahr*, or dowry amount, that the wife would receive if she and her husband were to divorce. If the couple seeking a divorce resides in Alabama—a state that has enacted anti-Sharia legislation—an Alabama judge would not be able to enforce the marriage contract and honor the dowry as stipulated in the marriage contract. This is solely because the contract applies Sharia, despite this marriage contract not contradicting with the state law of Alabama or the Constitution. In this case, the wife would not receive the dowry that was legally guaranteed to her, infringing on the Muslim woman’s freedom to contract, free exercise of religion, and her right to equal protection.²⁴¹ In addition to opponents arguing the unfounded fear of Sharia, or the unsubstantiated need to enact the bills, further opposition stems from the hypocrisy that the legislation would en-

Hassan Shibly

on the Islamophobic Objectives of anti-Sharia Legislation

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The best description of the anti-Sharia legislation are “solutions in search of a problem,” or even “non-sense in search of a problem.” There’s no probable court enforcing or applying foreign laws or foreign principles. This isn’t something we’ve seen, there’s already this principle in the law that courts cannot enforce agreements that are unconscionable, or completely contrary to the rules of justice. A court isn’t going to enforce an agreement saying that a woman can never see her children, or a husband can never see his children, not unless there is a justifiable safety reason to have that agreement. Generally, a court would come to a conscionable agreement. There’s already sufficient protection where a judge can’t simply enforce any laws they wish, they can only enforce the state law, and the state law already provides that unconscionable agreements shall not be enforced, but it also provides that people are free to enter into contracts of their own choosing. The anti-Sharia laws started out with the intent to completely outlaw the entire Muslim faith. They couldn’t do that, so then they were trying to stop Muslims from having their contracts honored by the courts, and that would generally fall into areas of divorce, business transactions, and wills. The anti-Sharia laws themselves are blatantly contrary to the Constitution and freedom of religion enshrined in the Bill of Rights.

danger the same liberties and freedoms the laws are supposedly designed to protect. In 2013, Governor Jeremiah Nixon of Missouri pointedly disapproved of SB 267, or the Civil Liberties Defense Act, vetoing the bill on the grounds that the “Senate Substitute for Senate Bill No. 267 seeks to introduce a solution to a problem that does not exist,” and that the legislation would unnecessarily interfere with Missouri’s legal system.²⁴² He continued, stating that:

*All foreign legal systems can be argued to be “inconsistent” with our state and federal constitutions, Senate Substitute for Senate Bill No. 267 would needlessly cast doubt upon important legal instruments including wills, trusts, marriage and divorce decrees and contracts that involve foreign law... [the bill] is misguided, unnecessary and needlessly undermines certainty in important areas of the law. Missourians expect and deserve a judicial system that is both fair and predictable. Senate Substitute for Senate Bill No. 267 fails to meet that very basic standard and does not receive my approval.*²⁴³

The anti-Sharia movement undermines the US constitutional system and the authority vested in US state judges by claiming that anti-Sharia leg-

islation is needed to prevent court decisions from being influenced by Sharia, when in reality the applicability of foreign law is always determined by American law.²⁴⁴ The Constitution establishes that foreign law does not supplant state law or American law, as American law dictates how, and if, foreign law can be applied, meaning, foreign law cannot supersede or replace the United States Constitution.²⁴⁵ This de-legitimizes the American Laws for American Courts legislation and, as explained by Laila Abdelaziz, Legislative & Government Affairs Director of CAIR, Florida, “proponents of anti-Sharia laws or foreign law bans have failed to cite any instance of a US judge applying Islamic or foreign law in a way that violates an American’s rights. These laws are not necessary because there simply is no history or record of Islamic or foreign law trumping US constitutional rights in US courts.”^{246,iv}

iv Anti-Sharia advocates consistently refer to the New Jersey case *S.D. v M.J.R.* to evidence the danger of Sharia law in the US. In the case, a Moroccan-Muslim woman sought a restraining order against her Moroccan-Muslim husband, alleging that her husband had repeatedly raped and physically abused her, while her husband claimed that he had a right to do so because it was in accordance with their religion. The judge refused to issue a restraining order based on his view that there had been no sexual assault as a result of the husband’s religious beliefs, however—and this is what goes unmentioned by anti-Sharia proponents—the appellate court reversed the ruling

Although the focus of the ALAC legislation is "Sharia law," the term Sharia is omitted entirely from the American Laws for American Courts model act. However, a number of state legislatures such as Oregon (SB 176),²⁴⁷ Missouri (HJR 31),²⁴⁸ New Mexico (SJR 18),²⁴⁹ and others have drafted their own anti-foreign law bills or constitutional amendments that explicitly prohibit courts from considering or applying Sharia.²⁵⁰ Yerushalmi intentionally avoided mentioning Sharia in the ALAC model legislation, and focused the legislation more broadly on foreign law, using "facially neutral" language to produce the same results while "avoiding the sticky problems of our First Amendment jurisprudence."²⁵¹ By using superficially harmless language and by abstaining from naming the real target of the law, it would appear as if the strategy for ALAC was to quickly enact as many anti-Sharia bills in as many states as possible, yet, Yerushalmi had an ulterior motive greater than introducing or enacting the model legislation. As he explains it, "if this thing [ALAC] passed in every state without any friction, it would have not served its purpose... The purpose was heuristic – to get people asking this question, 'What is Shariah?'"²⁵²

Yerushalmi strategically used the bills and their affiliated legal campaigns as a means to create friction, and influence public sentiment and opinion regarding Sharia, Islam, and ultimately Muslims. This propelled Islamophobia into cities and towns across the US that had never heard of Sharia, let alone perceived Sharia as a threat to their constitutional rights or way of life. In doing so, the legislative campaigns have fostered a fear of "creeping Sharia," repurposing that fear towards Muslims who are framed as suspects, and a threat to non-Muslim Americans for practicing their faith.²⁵³

Themes of anti-Sharia legislation

Based on the facts that reveal the discriminatory intent and motivation of the anti-Sharia legislation, an analysis of the common threads and language that comprise these bills was conducted in order

and the husband was later charged with rape. The trial judge's decision was incorrect, under state law and Sharia (Awad, *The True Story of Sharia in American Courts*), and was later rectified, as the court's initial decision was made without authorization from American Law. (Volokh, Eugene. "Religious Law (Especially Islamic Law) In American Courts". *Oklahoma Law Review* volume 66, no. 3 (Spring 2014): 20. <http://www2.law.ucla.edu/volokh/religiouslaw.pdf>).

to further expose the reality that the bills are not concerned—as proponents claim—with protecting American rights and freedoms, but rather are deeply vested in disempowering Muslim Americans. Through a detailed reading and analysis of the 194 anti-Sharia bills introduced between 2010–16, three common themes were identified among the majority of the anti-Sharia bills. These common themes help solidify and ground the premise that the American Laws for American Courts and other versions of the anti-foreign law bill are in nature, anti-Muslim bills. The bills, backed by anti-Muslim campaigns, seek to incite a culture and politic that normalizes scapegoating, hate, fear, and the denial of constitutional rights and protections of Muslim Americans.

The bill uses ALAC language

Of the 194 bills introduced, 140 bills used ALAC model language, while an additional 54 anti-Sharia bills do not. The sponsors of the bills that used ALAC model language replicated sections of the ALAC model act in their adapted version of the bill, as demonstrated in the Alabama Senate Bill 40 introduced in 2012 by Senator Gerald Allen, entitled, "American and Alabama Laws for Alabama Courts Amendment,"²⁵⁴ as well as many others. ALAC at its core is anti-Muslim, given the intent of the legislation, which seeks to single out Muslims and to strip them of their legal rights and protections. The prevalence and use of the anti-Muslim model act by lawmakers has been a successful strategy in framing Sharia as a totalitarian threat, centering Sharia as an issue of national security despite any evidence to the contrary.²⁵⁵

The bill allows courts to exempt corporations

*[5] Without prejudice to any legal right, this act shall not apply to a corporation, partnership, limited liability company, business association, or other legal entity that contracts to subject itself to foreign law in a jurisdiction other than this state or the United States.*²⁵⁶

A total of 121 anti-Sharia bills have been introduced that exempt corporations, while 73 bills do not exempt corporations or do not reference corporations in the text of the bill. The legislation imparts a double standard by allowing corporations to enter into contracts that look to foreign laws, while simultaneously denying Muslim Americans the right to freedom of contract without govern-

Saeed Khan

on the Role of Political Fearmongering around ‘Creeping Sharia’ in Advancing anti-Sharia Bills

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The anti-Sharia bills are enacted by politicians who want to demonstrate that they are on the vanguard of erecting preemptive firewalls against a purported foreign threat from within the country. Of course, it is predicated upon the false premise that Muslims are in fact seeking not only to have Sharia implemented, but that Sharia is somehow incompatible and threatening to the US Constitution and even the entire American judicial system. Oftentimes, Sharia is accused of being a ‘Trojan Horse’ whereby Muslims will first seek the implementation of its more benign elements and then slowly seek to subvert society by having it codified in its entirety. The fear mongering comes when Islamophobes cite examples of the hudud (corporal and capital punishment) aspects of Sharia as well as the provisions that describe the treatment of non-Muslims who are subject to Sharia. It also creates a chilling effect for Muslims who may seek recognition of some aspect of religious law, e.g. family law, estate planning matters, etc. by the courts in the same manner as religious accommodations are made for other faith traditions, e.g. divorce for Jewish communities, kashrut dietary regulations, etc.

ment restrictions, and thus infringes on Muslims’ civil liberties. This exemption stems from pressure by business lobbyists expressing a concern about the possible ramifications of the statutes, and states wanting to remain favorable to business, as corporations oftentimes opt for foreign laws in contracts or tort disputes.²⁵⁷ Yerushalmi admits that providing a loophole in the anti-Sharia legislation for corporations to conduct business-as-usual is “not preferable,” however, “is it an acceptable political compromise? Of course it is.”²⁵⁸ Despite this stipulation in the overwhelming majority of the bills, states that enact ALAC or ALAC-inspired anti-Sharia legislation are creating a hostile environment for arbitration, and enabling consequences for business transactions.²⁵⁹

The bill bars courts from enforcing individuals’ contracts and agreements

[3] A contract or contractual provision (if severable) which provides for the choice of a law, legal code or system to govern some or all of the disputes between the parties adjudicated by a court of law or by an arbitration panel arising from the contract mutually agreed upon shall violate the public policy of this State and be void and unenforceable if the law, legal

*code or system chosen includes or incorporates any substantive or procedural law, as applied to the dispute at issue, that would not grant the parties the same fundamental liberties, rights, and privileges granted under the U.S. and [State] Constitutions, including but not limited to due process, freedom of religion, speech, or press, and any right of privacy or marriage as specifically defined by the constitution of this state.*²⁶⁰

Of the 194 bills introduced, 191 bar courts from enforcing individuals’ contracts and agreements, while an additional three bills do not bar courts from enforcing individuals’ contracts or the text of the bills do not reference individual contracts.

This stipulation of the bills, found in the ALAC model act, violates the Establishment Clause²⁶¹ and the Free Exercise Clause²⁶² of the First Amendment of the Constitution, and clearly attests to the bills’ unconstitutionality. The provision infringes on an individual’s right to freedom of contract, preventing contracts and agreements that call for the application of foreign law—such as a marriage contract or a business contract that was drawn up in accordance to Sharia—from being enforced because the legislation bars state courts from interpreting and

applying foreign law in order to recognize the contracts.²⁶³ Sharia contracts are, and will continue to be, enforced by US courts as long as they are not in violation of the established law or public policy; however, as was evidenced, an anti-Sharia ban would strip judges of their ability to fully and fairly consider these cases.²⁶⁴

Discriminatory Effects of anti-Sharia Legislation

In addition to the common themes that were extracted solely from an analysis of the language found in the bills, our research identified discriminatory effects of the bills that apply to all anti-Sharia legislation introduced in the United States between 2010 and 2016. Building from the common themes, these discriminatory effects were established by analyzing the larger implications and intent of the bills as well as the intent of the bills' legislative campaigns. This section of the report analyzes the following effects of anti-Sharia legislation:

- Instigates an unfounded and nonviable fear among the American society that Sharia will infiltrate the US legal system.
- Increases mistrust, fearmongering, and othering of Islam/Muslims.
- Fosters a climate of intolerance, which increases the likelihood of hate crimes being perpetrated against Muslims and those perceived to be Muslim.
- Negatively impacts and inhibits Muslims from engaging with their religion as related to marriage contracts, business contracts, trusts, and estates.

Despite the attempt to identify these effects, direct and indirect impacts of the anti-Sharia legislation have yet to be fully exposed. There is a need for individuals and companies to not only document, but also vocalize issues of bigotry and discrimination when they arise from these anti-Muslim laws.²⁶⁵

The bill instigates an unfounded fear among the American society that Sharia will infiltrate the US legal system

The term "Sharia law" has been appropriated as a "scare-word," that many have little or no understanding of in order to escalate the public's fear of Muslims.²⁶⁶ Proponents of the anti-Sharia measures, such as former US House Speaker Newt

Gingrich, has been quoted stating that, "Shariah is a mortal threat to the survival of freedom in the United States and in the world as we know it."²⁶⁷

Another staunch supporter of the anti-Muslim bills, Florida Republican Senator Alan Hays has sponsored four bills in his home state and likened Sharia to a disease, claiming that his anti-Sharia bills would serve—much like a vaccine—as a preventative measure to protect American citizens' constitutional rights from being violated by a foreign law.²⁶⁸

Throughout the US, politicians, lawmakers, and advocates of anti-Sharia bills are consenting to, and spreading the baseless fear of a "creeping Sharia,"²⁶⁹ and the belief that Muslims seek to "Islamize America" via the infiltration of Sharia in US courts.²⁷⁰ Consistently, lawmakers, legal experts, and civil rights groups have made the fact-driven argument that Sharia poses absolutely no threat to the United States, to the US legal system, or to the American public. In fact, the American Civil Liberties Union (ACLU) identifies the court cases that have been overwhelmingly cited by anti-Muslim law advocates to evidence the so-called "Sharia threat" as "red herrings."²⁷¹ The ACLU explains that such cases²⁷² are a mere distraction from the real intent of the anti-Sharia legislation, which is to unfairly criticize the Islamic faith, and to concurrently deny Muslim Americans equal access and protection through the judicial system as is afforded to people of other faiths.²⁷³

The bill increases mistrust and fear-mongering of Islam and Muslims

Lawmakers including South Carolina Representative Chip Limehouse have sponsored anti-Sharia bills, stating that "Sharia law is completely inconsistent with our culture."²⁷⁴ Oddly, legislators introduced nine anti-Sharia bills between 2010 and 2016 in South Carolina, and yet they could not reference a single case where an individual attempted to use Sharia within the state.²⁷⁵ Carl Gatto, Alaska Republican Representative and sponsor of anti-Sharia bill HB 88, grew up in an Italian neighborhood in New York City and argued in defense of his bill that "the world of other immigrants is different... I'm more concerned about cultures that are vastly different from European immigrants, who come here and prefer to maintain their specific laws from their previous countries, which are in violent conflict with American law."²⁷⁶ Such policies, instead of promoting safety and defending American citizens' rights, serve to further stigmatize and single out a minority group.²⁷⁷ International

Abed Awad

on the negative impacts of anti-Sharia bills on American civil and constitutional rights

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There is at least one example where a state legislature enacted an anti-Sharia law that interfered with a judge's ability to adjudicate fairly. In the state of Kansas, there was a trial level decision in which the trial judge said he was prohibited from considering Sharia because of the anti-Sharia legislation adopted in Kansas. The actual impact on the civil and constitutional rights of American citizens and legal residents is far more extensive than the Kansas case. The vast majority of court decisions go unreported, and most of the unreported cases are trial-level cases. It will take many years before these unreported trial-level cases reach the appellate courts. Even here, this does not take into account the litigants that accept unreasonable settlements because of the defense of the anti-Sharia ban. In the next few years, we will start to see the problems and defects of the anti-Sharia legislation come to the surface and start to see the undermining of the civil and constitutional rights of Americans and legal residents. The logical conclusion of the anti-Sharia ban will result in prohibiting judges from considering Jewish law, Canon law, and other religious laws. The problem is that American law permits courts to consider religious law to the extent it does not violate American public policy and as long as the court is not engaging in doctrinal interpretation. Furthermore, religious law, culture, and custom may be considered by an American court not for purposes of applying religious law but rather as parole evidence to assist the court to better understand the expectations of the parties to a contract or the cultural/religious context to a dispute or to clarify an ambiguity or discover a fraud. I predict that the anti-Sharia bans will be found to be unconstitutional; and, even if such ban would withstand unconstitutional scrutiny, courts will create exceptions to the applicability of the ban that eventually would swallow the rule.

human rights lawyer Arsalan Iftikhar writes that the individuals pushing for anti-Muslim laws are exploiting and taking advantage of Americans who know little to nothing about Islam, as well as the general public's "limited understanding of the country's constitutional laws and guiding democratic principles."²⁷⁸ Ignorance, compounded with misinformation, and unsubstantiated beliefs, undoubtedly feed into the exacerbated fear and othering of Muslim Americans. However, putting discrimination and civil and constitutional rights violations aside, it remains difficult to grasp the urgent need to enact anti-Sharia policies when the alleged "Muslim threat" is drawn from roughly 1% of the US population, with Muslim Americans numbering roughly 3.35 million²⁷⁹ of the country's total population of 325 million.²⁸⁰ Southern states provide the most striking examples of this unfounded fear of Muslims based on demographic statistics. For example, Mississippi has introduced the highest number of anti-Muslim bills (20) in the nation,²⁸¹ yet is home to one of the smallest Muslim communities in the country,

with Muslim Americans making up less than 1% of the state's population.²⁸²

The bill foments a climate of intolerance against Muslims

In line with espousing fear and othering of Muslim communities, anti-Muslim laws create a climate of intolerance, and contribute to the rise of Islamophobic attitudes among the American public. FBI hate crime statistics released in 2016²⁸³ indicate that hate crimes targeting Muslims are on the rise, with a 67% increase from 2014 to 2015.²⁸⁴ Accordingly, an analysis conducted by the Pew Research Center of the recent FBI data demonstrates that the amount of physical assaults perpetrated against Muslims rose to an unsettling level, closely reflecting record high numbers following the 9/11 attacks.²⁸⁵ These statistics reflect and quantify the new wave of Islamophobia in the United States, including the anti-Muslim measures enacted by the Trump administration—all of which are disturbingly reminis-

cent of the intolerant policies and practices that incarcerated 120,000 Japanese Americans,²⁸⁶ and banned Chinese, Jewish, and Iranian immigrants, as well as HIV-positive persons, from immigrating to the US at different periods of the country's history.²⁸⁷

The consequences of introducing or enacting anti-Muslim laws extend beyond the conspicuous intent to undermine Muslim Americans' citizenship and civil liberties, emboldening individuals and groups to publicly act on xenophobic and anti-Muslim sentiments, fostering a climate of intolerance in communities across the United States. For example, in June of 2017 the group Act for America, a staunch supporter of the ALAC anti-Sharia bills, organized "march against Sharia" rallies, or as counter-protesters described them, "marches against Muslims,"²⁸⁸ in 28 cities in 21 states across the nation.²⁸⁹ One of the organizers for the Phoenix, Arizona²⁹⁰ rally encapsulated the central message of the protests, stating that, "Islam is our enemy. And I don't care, they can call me a hater, they can call me a whatever. ... Islam's our enemy. Sharia law is not for America."^{291,292} Speakers at the march in Phoenix claimed erroneously that honor killings, child brides, and Female Genital Mutilation (FGM) are all permissible and in accordance with Sharia,²⁹³ while at a rally in Harrisburg, Pennsylvania, a protester indicated that he joined the rally due to his belief that ISIS is "trying to impose Sharia law in America."²⁹⁴

The anti-Sharia bills have been utilized to fuel anti-Muslim sentiment and build anti-Muslim bases at the community level, even in locales where organized Islamophobia groups hadn't existed before.²⁹⁵ The anti-Sharia movement has also empowered lawmakers to introduce other versions of discriminatory anti-Muslim legislation, such as the 2016 Georgia House Bill 3 sponsored by Republican Representative Jason Spencer which proposed the prohibition of Muslim women from wearing a veil in public places.²⁹⁶

The bill negatively impacts and inhibits Muslims from engaging with their religion as related to marriage contracts, business contracts, trusts, and estates

If a state legislature enacts an anti-Sharia bill into law, a judge of that state cannot enforce a contract that is based on Sharia principles.²⁹⁷ This strips judges of their ability to enforce marriage contracts, business contracts, divorce contracts,

wills, etc., that are written in accordance with Sharia principles. This results in an unequal treatment of Muslims, and violates their freedom to contract, as well as their religious liberty protections as afforded by the First Amendment of the United States Constitution.²⁹⁸ With reference to the infamous court case *Muneer Awad v. Paul Zirriax, Oklahoma State Board of Elections, et al.*, the lawsuit serves as a paramount example of how anti-Sharia bills impact and inhibit Muslims from engaging with their religion. Mr. Awad, the executive director of the CAIR Oklahoma Chapter, filed a lawsuit challenging the Oklahoma "Save Our State Amendment," a ballot initiative that was approved by 70%²⁹⁹ of the voters during the November 2010 statewide general election.³⁰⁰ The ballot measure prohibited state courts from explicitly applying or considering Sharia or international law in their decision-making processes. According to the American Civil Liberties Union (ACLU) and the Council on American-Islamic Relations (CAIR)—the legal representatives for Mr. Awad—the constitutional amendment was "sending an unmistakable message that Muslims are religious and political outsiders."³⁰¹ The lawsuit filed by Mr. Awad challenged the "Save Our State Amendment," or SQ755, on the premise that the amendment violated his right to religious liberty as afforded by the Constitution, arguing that:

By barring state courts from "look[ing] to" or "considering or using Sharia law," the "Save Our State Amendment" imposes on Muslims a special disability not faced by persons of any other faith. Under the amendment, Muslims seeking relief from a state court will have to ensure that their claims, defenses, evidence, and legal arguments are scrubbed of all references to Islamic law and beliefs. Otherwise, courts will be unable to adjudicate their disputes or perform routine judicial functions, such as probating wills.³⁰² ... While citizens of other faiths need not scrub religious expression and terms from their legal documents to protect their enforceability, Muslims must.³⁰³

The enactment of the "Save Our State Amendment" meant that Mr. Awad, along with every other Muslim living in Oklahoma who wished to have their will reflect their Islamic religious beliefs (burial instructions, charitable donations, etc.), were denied the right to do so, with Oklahoma state courts deeming such contracts unenforceable under the constitutional amendment.³⁰⁴ Con-

versely, other domestic and family matters were impacted by the amendment such as judicial recognition of divorce, child custody, and marriage if the contracts or agreements were based on Sharia principles.³⁰⁵ The Oklahoma “Save our State Amendment” was later struck down in August of 2013 by a federal court,³⁰⁶ and to date, remains the only anti-Sharia act or amendment to have been struck down.³⁰⁷

In another example, just one month after the Kansas state legislature enacted Senate Bill 79 in 2012, an anti-Sharia bill disguised as an anti-foreign law bill was used as the basis for state refusal to enforce the dowry of Elham Soleimani who would be owed \$677,000 as specified in her Islamic marriage contract, if she and her husband were to divorce.³⁰⁸ The court ruled not to enforce the Islamic contract, as it would have violated the law following the enactment of SB 79, which resulted in Elham losing her dowry.³⁰⁹ Ironically, SB 79 was introduced by Kansas State Senator Susan Wagle as “a vote to protect women,” yet in reality, as reflected in the experience of Ms. Soleimani, the law accomplished the exact opposite.³¹⁰ The anti-Sharia legislation intentionally singles out Muslims by specifically naming Sharia, however, if such a bill is enacted into law it may restrict the freedoms of other minority religious groups who look to religious arbitration.³¹¹

Patterns and Trends Related to anti-Sharia Legislation

As ALAC and offshoots of the anti-Muslim model act continue to provoke an unjustifiable fear of Sharia in state legislatures across the US, a network of anti-Muslim politicians and organizations are being exposed in the process. A number of lawmakers have proven themselves adamant in the establishment of anti-Muslim laws, as evidenced by their multiple attempts to enact anti-Sharia measures within their home state.

Noteworthy patterns as related to anti-Muslim legislation, election cycles, and anti-refugee efforts, demonstrate the extent to which anti-Muslim sentiment and fear, are being exploited by politicians to advance discriminatory laws and political agendas, while drawing attention to the collaboration between anti-Muslim and anti-immigrant efforts in the United States. These patterns bring to the forefront the far-reaching impact of Islamophobia and the anti-Sharia movement that affect Muslim Americans and American society.

Anti-Muslim Advocates and Groups Supporting anti-Sharia Legislation

Our research identified several groups with strong anti-Muslim views that supported the enactment of anti-Sharia bills and/or have expressed their approval of enacting anti-Sharia legislation. This complex network of organizations ranges from explicitly anti-Muslim groups, to religious leaders and/or those who have provided more covert forms of support that may not be explicit in their mission. The key anti-Muslim advocates and groups reviewed in this report include: ACT for America; American Public Policy Alliance; Center for Security Policy; Christian Family Coalition; Church of all Nations; Florida Family Association; Florida Family Policy Council; HomeSchool Legal Defense Association; Stop Islamization of America; and the Tea Party Network.

ACT for America. Lebanese-born Brigitte Gabriel is the founder of ACT for America, the largest national security grassroots organization in the US with 750,000 members and 12,000 volunteer activists to date.³¹² With a discernible anti-Islam agenda, ACT spreads propaganda to, engages with, and mobilizes both the public and elected officials to drive anti-Muslim legislative outcomes regarding national security issues and Sharia.³¹³ ACT's grassroots network has actively supported the enactment of 12 federal and 84 state national security-related bills in 32 states addressing a range of issues including the Boycott, Divestment and Sanctions (BDS) movement, female genital mutilation, the tightening of anti-terror laws, Iranian divestment, the Free Speech Defense Act, and terror finance.³¹⁴ Most significantly, ACT helped pass 13 anti-Sharia bills modeled after ALAC which prohibit state judges from applying foreign law, including Sharia.³¹⁵

American Public Policy Alliance (APPA) is a non-partisan 501 c4 advocacy organization that works with legislators nationwide on policies and initiatives that restrict the use of international and foreign law in court opinions.³¹⁶ Primarily concerned with the threat of Sharia as foreign law, APPA's advocacy work targets the threat of transnationalism, freedom of speech/expression and the press, foreign influence on US higher education, and female genital mutilation. Grounded in these areas of focus, APPA promotes ALAC legislation to prevent the use of Sharia in court decisions.³¹⁷ APPA also endorses and advocates for legislation that “protect against terrorism” and demand greater government transparency with foreign gifts, particularly from Muslim-majority

governments (Higher Education Foreign Gifts Disclosure).³¹⁸ According to the APPA website, their proposed anti-Sharia legislation was signed into law in Tennessee, Louisiana, Arizona, and Kansas, and the group successfully introduced state-level anti-terrorism legislation in Tennessee.³¹⁹

The Center for Security Policy (CSP) is a neo-conservative think tank founded in 1988 by Frank J. Gaffney Jr., former Deputy Assistant Secretary of Defense for Nuclear Forces and Arms Control Policy in the Ronald Reagan administration.³²⁰ The CSP is among the pioneers of the anti-Muslim movement in the United States, leading conspiracies around “creeping Sharia,” framing “Islamic law” as a threat to American democracy, and accusing the Muslim Brotherhood of infiltrating all levels of government.³²¹ CSP focuses on demonizing Islam and Muslims under the guise of national security, producing a wide range of conspiratorial publications and articles, including the report titled “Shariah: The Threat to America.”³²² The report concluded with a number of concerning recommendations, including a warning to imams that they will be charged with sedition should they advocate for Sharia in America.³²³ David Yerushalmi, Esq., CSP’s general counsel, drafted the anti-Sharia model act (ALAC) that has been introduced in dozens of state legislatures across the country.³²⁴ His anti-Sharia campaign was launched in 2006, founding the Society of Americans for National Existence (SANE)—an anti-Muslim organization devoted to advancing the notion that Sharia is a “criminal conspiracy to overthrow the government.”³²⁵ In early 2012, Yerushalmi co-founded the American Freedom Law Center (AFLC) which launched an “American Laws for American Courts” citizens’ awareness drive to advance the model anti-Sharia legislation in statehouses across the country.³²⁶

Christian Family Coalition (CFC) is focused on mobilizing and introducing pro-family legislation at the state and local levels of government. With a focus on protection of religious liberties, the CFC aims to inform, educate, and train citizens on legislative issues affecting the traditional family unit, including abortion, homosexuality, and health-care.³²⁷ The CFC has also promoted anti-Sharia legislation, encouraging legislators to support HB 351/SB 58 in 2013, a bid to prohibit the application of any foreign law, legal code, or system in family law within the state of Florida. HB 351, commonly referred to as an anti-Sharia bill was sponsored by Republican Representative Larry Metz, modeled after other anti-Muslim legislation

introduced throughout the nation.³²⁸

Church of all Nations: Rev. Mark Boykin, a senior pastor at the Church of all Nations in Boca Raton, has been a public figure of support for anti-Sharia legislation, and a leader of protest against Muslim activities in the region. Rev. Boykin reportedly praised the passing of HB 1209—a 2012 anti-Sharia bill,³²⁹ and led the Church of all Nations’ involvement in the protest against the Margate Mosque, which was accused of financing the Taliban in 2011.³³⁰ The Church of all Nations was among the several community organizations in southern Florida that demanded the mosque be shut down after its imam was charged with conspiracy to finance the Taliban, and demanded the government investigate the mosque’s finances.³³¹ Rev. Boykin’s mobilization of the Church of all Nations in this protest against the Margate Mosque represents the pivotal role of religious leaders as key figures in garnering community support for the anti-Sharia movement.

Florida Family Association (FFA), founded by David Caton in 1987, is a Tampa, Florida-based non-profit organization classified as a hate group by the Southern Poverty Law Center.³³² The FFA is regularly involved in homophobic and anti-Muslim campaigns involving the media, education, and state legislators. In harnessing online citizen activism via its sizeable email list, the FFA encourages its members to apply pressure on corporations, educational institutions, media outlets, and legislators they suspect are sympathetic to “Islamist agendas.”³³³ In one recent example of the FFA’s actions, the organization on March 27 had their members flood the inboxes of the judges on the 4th US Circuit Court of Appeals, demanding they reinstate President Trump’s second Executive Order that banned immigrants from six Muslim-majority countries. In posting an email template and instructions on their website, the FFA was able to have an estimated 7,500 emails sent to each judge, according to the National Law Journal.³³⁴ A notable, earlier example of the FFA’s anti-Muslim campaigns was their infamous push against advertisers of the TLC television show “All-American Muslim,” pressuring the hardware chain Lowe’s to pull its ads.³³⁵ In addition, the FFA has supported the introduction of anti-Sharia legislation in various states, including Kansas (2012), influenced the Pennsylvania Judicial Board to rebuke Judge Mark Martin for invoking Sharia in his court (2012), and opposed the right of petitioning a court of redress for grievances when such action interferes with blocking Sharia.³³⁶

Florida Family Policy Council (FFPC), founded in 2004, is a 501c3 flagship organization whose primary purpose is to advance pro-life and pro-family values in the public. The FFPC raises hundreds of thousands of dollars annually to support their work opposing gay rights, abortion rights, and Islam.³³⁷ The FFPC lobbies for and against various legislative issues relating to the family via Florida Family Action - a 501c4 social advocacy organization. In 2009, FFPC attorney John Stemberger represented Rifqa Bary, a Florida teenager who converted from Islam to Christianity, and often expressed anti-Muslim sentiment in his statements. For example, in his complaint to the *Orlando Sentinel's* coverage regarding the Bary case, Stemberger espoused fears around Islam, stating that "there is a growing minority of Muslims in our country who are radical and dangerous."³³⁸

Home School Legal Defense Association (HSLDA) is a nonprofit advocacy organization that provides homeschooling-related legal advice, resources and representation to their member families, while promoting homeschool-friendly legislation at both state and federal levels.³³⁹ Although not explicitly stated in the overall HSLDA mission, the organization has supported anti-Sharia legislation including SB 4, prohibiting the application of foreign law in violation of citizens' constitutional rights, which passed in Alabama in 2013.³⁴⁰

Stop Islamization of America (SIOA), also known as the American Freedom Defense Initiative, was co-founded in 2010 by current leaders Pamela Geller and author Robert Spencer as the American affiliate to "Stop the Islamisation of Europe."³⁴¹ As an anti-Muslim, pro-Israel organization, SIOA is known for espousing public fears around the Islamic faith, pushing an anti-Muslim agenda justified by their stated fight against "radical Islam" and their conspiracy that Islam in America will destroy American values.³⁴² Categorized in 2011 as an anti-Muslim hate-group and "propaganda powerhouse" by SPLC, SIOA has led a number of public campaigns against Islam including protests against the New York City Park51 community center (deliberately mislabeled by Geller as the Ground Zero Mosque), and a series of controversial Islamophobic advertisement campaigns in public transit systems in New York City in 2010,³⁴³ as well as anti-Palestinian messages across San Francisco in 2016.³⁴⁴ SIOA has actively supported anti-Sharia legislation, with member David Heckert testifying in support of the HB 88, Use of Foreign Law bill, in 2011 that would

have prohibited the use of Sharia in Alaska.³⁴⁵

Tea Party network is a decentralized network that consists of local and state-based Tea Party groups that have vigorously pushed, and at times collaborated with, Islamophobic grassroots organizations in advancing their anti-Islam agenda. Despite national groups identifying closely with libertarianism, local Tea Party members and chapters hold nationalistic, right-wing beliefs, oppose public education, and promote anti-Muslim political messaging and opposition to mosque developments, accusing key Islamic figures of financing terrorist groups.³⁴⁶

Anti-Sharia and anti-Refugee Movements

In addition to campaigning for anti-Muslim laws, anti-Muslim groups and prominent anti-Muslim actors within the anti-Sharia movement are advocating for anti-refugee policies, combining anti-Muslim and anti-refugee efforts to further discriminate and disenfranchise marginalized populations in the US.³⁴⁷ In November of 2015, following the November 13 Paris attacks, two-thirds of US governors issued statements announcing that they would bar Syrian refugees from resettling in their states.³⁴⁸ The governors expressed concern for the overall safety of the American public and feared that terrorists would disguise^v themselves as Syrian refugees to enter the United States.³⁴⁹ Mainstreaming this idea of "fake" refugees—terrorists posing as innocent refugees—stigmatizes Syrian refugees as dangerous, and feeds into the wider issue of security paranoia³⁵⁰ that further emboldens xenophobic attitudes, efforts, and policies at the local, state, and federal levels of government. Groups like ACT for America have been active in proliferating this narrative, and as early as 2011, ACT has been involved in advancing anti-refugee legislation across the US.³⁵¹

In the summer of 2015 ACT launched a Refugee

v A Syrian passport was found near the body of one of the suicide bombers involved in the November 2015 Paris attacks, with US governors pointing to the case to justify their opposition to Syrian refugee resettlement in the United States (Faiola, Anthony. "The mystery surrounding the Paris bomber with a fake Syrian passport." *The Washington Post*. November 18, 2015, https://www.washingtonpost.com/world/europe/the-mystery-surrounding-the-paris-bomber-with-a-fake-syrian-passport/2015/11/17/88adf3f4-8d53-11e5-934c-a369c80822c2_story.html?utm_term=.167f90b11496). The alleged Syrian passport was later found to be a fake, and the true identity of the bomber has yet to be revealed (ibid).

Stephen Piggott

on the connections between anti-Muslim and anti-refugee movements

STEPHEN PIGGOTT IS A SENIOR RESEARCH ANALYST WITH THE SOUTHERN POVERTY LAW CENTER. SEE OUR FULL INTERVIEW WITH PIGGOTT AT HAASINSTITUTE.BERKELEY.EDU/ISLAMOPHOBIA

There are many, many, examples to point to, where anti-Muslim groups are pushing for anti-refugee legislation. ACT for America in the past couple of years set up a refugee resettlement working group, which essentially functions as pockets of activists who will resist the relocation of specifically Syrian refugees, and the relocation of refugees in general, to smaller locales throughout the country. ACT has been pushing people to introduce anti-refugee legislation, and there are examples of this. Like in the Flathead Valley of Montana, a county council meeting was scheduled to discuss the relocation of refugees to their area by the federal government, and the local ACT chapter organized a huge meeting about 10 days before the council meeting was supposed to take place, and nearly 500 people showed up. Ten days later the county council buckled and published a letter to the federal government opposing refugee resettlement in Flathead Valley. Brigitte Gabriel, head of ACT for America, later sent around an email titled “The Victory in Montana,” affirming that they defeated the possibility of refugee relocation.

Looking at the Center for Security Policy [CSP], if you look at CSP, David Yerushalmi, who’s credited for being the Godfather of this anti-Sharia legislation, he is on the general council for Center for Security Policy, acting as their lawyer. Over the years, there have been several examples of CSP figures going around the county and encouraging elected officials to introduce anti-Sharia or anti-refugee legislation, and it’s been successful in some places. Kansas is one such example of this. There was an anti-refugee bill introduced by a legislator by the name of Peggy Mast, and when she was asked why she was introducing an anti-refugee bill, she publically stated that she had been consulting with Center for Security Policy on the bill, so there’s no way to hide the fact that CSP is working to pass these bills. Another example was in January 2016, when Christopher Holton—the same Center for Security Policy member who was consulting with Peggy Mast in Kansas—went to Idaho and set up a legislative forum with Shahram Hadian, a very outspoken pastor and ex-Muslim Christian convert who speaks against Islam. Both Holton and Hadian spoke at this legislative forum in Idaho, imploring people to introduce an anti-refugee bill. Their efforts were unsuccessful as the legislators in Idaho did not introduce the bill, but in March of 2016 a representative who attended the legislative forum introduced an anti-Sharia bill in Idaho [there was no anti-Sharia activity in Idaho prior to this] and when he introduced the bill he cited some material from Center for Security Policy, which again is another direct example of how these anti-Muslim groups are helping to consult lawmakers who have introduced anti-refugee or anti-Sharia bills, as well as helping to build support for these bills. This is really the role that ACT for America plays in a lot of ways, because they have a large grassroots following of activists who really want to get these kind of bills passed.

Awareness Coalition to restrict the number of refugees admitted to the United States under the Obama administration.³⁵² The only text, front and center on the coalition’s webpage, reads, “Refugee Resettlement is a serious problem, just look at Europe. Protect your community. We need you now more than ever.”³⁵³ In November of 2015, ACT organized a meeting for congressional staff members on Capitol Hill featuring Ann Corcoran,

an anti-refugee activist and founder of the blog Refugee Resettlement Watch³⁵⁴ who, on the topic of Muslim resettlement to the US, has been quoted as saying that “over time, this migration will be more devastating to your children and grandchildren—and to our country—than any terrorist attack could ever be.”³⁵⁵ At the time of publication of this report, ACT is currently supporting house resolutions that relate to domestic policy and refugee

resettlement, notably H.R. 2826, H.R. 81 and H.R. 80 of the 115th Congress.³⁵⁶

The Center for Security Policy (CSP) has also been a key driving force behind anti-refugee efforts in the United States, and in 2015—along with ACT for America—CSP led working groups with anti-Muslim activists across the US to oppose Syrian refugee resettlement.³⁵⁷ The think tank has also crafted anti-Syrian refugee model legislation to be introduced at the state and local levels, and anti-refugee bills utilizing CSP’s model language have been enacted in two counties in South Carolina.³⁵⁸ In accordance with opposing Syrian refugee settlement, the Center for Security Policy is leading a targeted strategy to influence state and federal policies, mostly related to limiting refugee resettlement to Christians only.³⁵⁹ In efforts to join forces with Ann Corcoran, the “face of the anti-refugee movement in America,” the Center for Security Policy published Corcoran’s pamphlet entitled “Refugee Resettlement and the Hijra to America,”³⁶⁰ that encourages everyday Americans to take action to support a moratorium on Muslim immigration to the US by supporting the enactment of ALAC legislation.³⁶¹

There are several examples of legislators who introduced anti-Sharia bills while also sponsoring legislation to halt or limit Syrian refugee resettlement to the US. In addition to Kansas Representative Peggy Mast,³⁶² Mississippi Senator Chris McDaniel sponsored three anti-Sharia bills,³⁶³ followed by an anti-refugee bill in 2016 that was not enacted into law.³⁶⁴ In 2011 Representative Judd Matheny from Tennessee sponsored anti-Sharia bill HB 1353 as well as anti-refugee bill HB 1632, both of which became laws. It is worthy to note that HB 1632 is listed on the ACT for America website as legislation they helped to enact into law, highlighting the support network between anti-Muslim hate groups and senators in driving the anti-Sharia, and anti-refugee movement.³⁶⁵

Anti-Sharia legislation and Midterm and Presidential Election Cycles

Research conducted by Dalia Mogahed, Director of Research at the Institute for Social Policy and Understanding, indicates that spikes in anti-Muslim sentiment are influenced more by trends in US politics and election cycles than by acts of violence carried out by Muslims on US or international soil.³⁶⁶ This connection between Islamophobia and US politics is most notably demonstrated in the 2016 presidential election campaign, where a number of Republican

presidential candidates capitalized on blatant anti-Muslim rhetoric to garner public support.³⁶⁷ The strategic application of Islamophobia in Donald Trump’s campaign meant that his views resonated with a sizable demographic of American voters, and afforded him a “winning strategy” to scoop-up votes in battleground states such as Ohio, North Carolina, and Florida.³⁶⁸

This entangled correlation between anti-Muslim sentiment and US election cycles is also reflected in patterns of introducing and/or enacting anti-Sharia legislation. Our research suggests that the greatest number of anti-Sharia bills to have been introduced in US state legislatures were in the years leading-up to a midterm or presidential election, with data showing far fewer anti-Sharia bills being introduced and/or enacted during midterm or presidential election years.³⁶⁹

The push for anti-Sharia legislation by lawmakers in a year prior to midterm and presidential election cycles provides a mechanism to normalize, legalize, and proliferate Islamophobia and anti-Muslim sentiment among the American public. The advancement of anti-Sharia bills has been exploited as an opportunity to “reinforce a concern for United States’ sovereignty and national security”³⁷⁰ while the media as well as politicians have been successful in hyperbolizing and “misconstruing the reality and place of Sharia in the US”³⁷¹ These intentions exacerbate the public’s fear³⁷² and misunderstanding of Sharia, Islam, and Muslims, bolstering a platform for politicians to exploit and scapegoat Muslims during elections to gain voter support and to advance their political agendas.³⁷³

Part of Donald Trump’s abhorrent anti-Muslim rhetoric was in reference to Sharia, where he referred to “Sharia law” as, “a mortal threat to the

Anti-Sharia Legislation Introduced and Enacted Between 2010–2016

Year	Bills Introduced	Bills Enacted
2010	14	3
2011	56	4
2012	25	3
2013	35	4
2014	15	1
2015	35	3
2016	14	0

survival of freedom in the United States,”³⁷⁴ stating verbatim phrasing used by Newt Gingrich during his presidential bid in 2012.³⁷⁵

Prominent politicians and leaders espousing anti-Sharia rhetoric is no coincidence—it illustrates the power and influence that anti-Muslim activists and the anti-Sharia movement carry in US politics, specifically in shaping the campaigns of major politicians.

Anti-Muslim hate groups such as Act for America—an organization that helped to enact 13 anti-Sharia bills in 13 states³⁷⁶—prides itself in building close relationships with, and having an influence on, government officials. In early 2017 the organization’s founder Brigitte Gabriel met with a legislative staff member at the White House.³⁷⁷

³⁷⁸ President Trump himself has often cited the Center for Security Policy to vindicate his anti-Muslim policies,³⁷⁹ and his former White House chief strategist Steve Bannon has praised Frank Gaffney as “one of the senior thought leaders” fighting against “Islamic radical jihad.”³⁸⁰ These groups and individuals have direct access to, and ability to influence, some of the most powerful individuals in our nation, and arguably some of the most powerful people in the world. Their malicious efforts to promote anti-Muslim legislation emboldens politicians and presidential candidates to harness the fearmongering of Muslims for political gain, depicting the “intimate nexus between the law and politics of American Islamophobia.”³⁸¹

Strategies and Policies to Combat Islamophobia

THE CONTEXTUALIZATION OF anti-Sharia legislation within the rising tide of Islamophobia suggests that Islamophobia has entered a second phase since the tragic events of September 11, 2001. This research is supported by the findings of our United States of Islamophobia database. Islamophobia now also serves to scapegoat Muslims for failed political and economic programs in the US, similar to how other marginalized groups such as undocumented immigrants are blamed for problems in the country. The rise of Donald Trump to power is directly connected to the connection and exploitation of this racial resentment and economic anxiety.

Protecting national security from potential terrorist attacks and protecting the constitutional rights of all Americans, including Muslim Americans, are not mutually exclusive. The Islamophobia movement in the US is motivated by an extreme political discourse that houses unfounded religious and racial biases against Muslim Americans and communities (and this movement extends beyond the geographical boundaries of the US).

In order to combat Islamophobia and protect the constitutional rights of all Americans, there is a critical need to devise strategies and policy interventions that combat the othering of Muslims at all levels. We offer the following recommendations to generate meaningful and effective solidarity across different racial/ethnic, religious, and social groups.

Grassroots Level

In our research and analysis, we found that the core objective of the anti-Sharia movement is to undermine Muslim Americans' citizenship by establishing an unequal notion of religious freedom and belonging that has many expressions. These discriminatory expressions came in the form of instigating an unfounded fear among the Ameri-

can people that Sharia will infiltrate the US legal system, increasing mistrust and fearmongering of Muslims. That has led to inhibiting Muslims from engaging with their religion as related to marriage contracts, business contracts, trusts, and estates, and has fomented a climate of intolerance, which increases the likelihood of hate crimes being perpetrated against Muslims and those perceived to be Muslim. To challenge these discriminatory expressions at the grassroots and community level, we offer the following recommendations:

- » **Seek the implementation of a local ordinance that protects the rights of all individuals living in your community to exercise their religious and cultural rights as afforded and ingrained in the US Constitution.**
- » **Raise social awareness and educate communities on (i) how Muslims come from many different cultural/ethnic/racial/linguistic backgrounds, (ii) understanding the meaning of Sharia, and why courts may legitimately use Sharia in court decisions for Muslim communities, e.g. family law and marriage contracts, and, (iii) the dangers of treating Muslims as a monolithic entity that is incapable of adapting to new realities.**
- » **Challenge Islamophobia and Islamophobic propaganda through education and training across various settings including places of worship, the workplace, academic institutions, and in the media.**
- » **Expose the nature of the "anti-Sharia law" movements that aim to single out Muslim Americans and Muslim communities, and use them as**

scapegoats for our collective political, social, and economic challenges, which simultaneously seek to preclude refugee resettlement in the US.

- » **Build cross-sectoral coalitions and strengthen societal opposition based on our common humanity and constitutional rights and civil liberties.**
- » **Reject politics of fear, and seek solidarity with other marginalized social/ethnic groups based on common grounds.**

National Level

As we have highlighted, the anti-Sharia movement in the US is the outcome of a series of interconnected political events, initiatives, shifting public sentiment, and targeted rhetoric. The increasingly misguided political debates that depict Muslims as “others” who do not belong in “our” society have been ongoing for decades, and are intensified in the wake of Muslim-linked terrorist attacks.

Anti-Muslim acts do not occur as isolated cases, nor are they new. They are rooted in a historical rhetoric that has been demonizing Islam and Muslims prior to the tragedy of 9/11. But since the 9/11 attacks, a constellation of events, including the “war on terror,” and the holding of special congressional hearings to “stop the radicalization of Muslim American youth,” have created the ripe conditions for a proliferation of political scapegoating and anti-Muslim sentiment and hate crimes in the US. This is particularly true at the grassroots level where mosque construction has been presented as a threat to American society. In their totality, these negative portrayals of Muslim Americans in political debates and media coverage have equipped anti-Muslim movements with an arsenal to advocate for anti-Sharia legislation across state legislatures.

The US Constitution requires that federal and state legislators respect the rights and freedoms of “all persons,” regardless of race, religion, ethnicity, or national origin. The Constitution affords to citizens, and dictates to policy makers, to respect our institutions, policies and practices from unfounded fear and prejudice. Should our representatives overlook or disregard the Constitution by supporting and advocating for legislation that seeks to discriminate, profile, or alienate our fellow countrymen, we offer the following recom-

mendations at the national level:

- » **Mandate that the federal government protect the rights of Muslim individuals as enshrined in our Constitution and rule of law, and to consider Islamophobia as a form of religious discrimination and discrimination based on national origin.**
- » **File amicus briefs (friend of the court) with the Supreme Court to support the rights of Muslim Americans who are subjected to differential treatment based on their religious background by locality, state, or federal agency.**
- » **Use our electoral power to deny our votes to those who run for public office on a platform of Islamophobia and oppose the political scapegoating of Muslims for campaign slogans before and during local, midterm, and presidential election cycles.**
- » **Use our community and organizing power, including the right to assemble and protest, to demand respect and dignity for Muslim Americans and Muslim communities.**
- » **Work across sectors to create accountable voting blocs against Islamophobes and those who run for public office that seek to single out Muslim Americans and Muslim communities, and unmask the Islamophobia network in every US electoral district, both state and nationally, that aims to drive a wedge between people of color and poor white people.**
- » **Hold media outlets accountable for spreading double standards when it comes to Muslim Americans vis-à-vis terrorist attacks and violence against Muslims within and beyond the United States. To prevent normalizing fear and alienation of Muslim Americans, we must act, and call out the bigotry, prejudice, and xenophobia in the mainstream media.**

Global Level

Islamophobia continues to emerge as a political scapegoating tool in the United States and other

parts of the world, shaped by a global Islamophobia network that coordinates its activities and provides financial and intellectual support to its members across national boundaries, such as Stop Islamization of America and Stop Islamisation of Europe. This growing global Islamophobia movement necessitates the urgent need for convergence of a global, robust, anti-Islamophobia network of solidarity that is capable of organizing and mobilizing global citizens to challenge and combat Islamophobia. To achieve that, we offer the following recommendations:

- » **Support and institutionalize a global network to advance research and education on Islamophobia, and cultivate synergies and implement strategies to combat Islamophobia in the United States, Europe, and elsewhere.**
- » **Advocate and include research-based evidence and inclusive narratives that share the diverse and rich realities of Muslim communities in the US and around the world.**

- » **Seek to establish a coalition of cities united against Islamophobia and xenophobia in the US, Europe, and other countries where Islamophobia is taking hold.**
- » **Incorporate the work of community organizations and initiatives, particularly Muslim-led, across global advocacy to better facilitate civic engagement and social integration.**
- » **Support and publish research materials to expose unfounded propaganda against Muslims, and unmask their funding sources.**

The tide of rising Islamophobia in the United States, along with the well-documented rise in hate crimes and violence against Muslim Americans or those perceived to be Muslim, is not only tragic and alarming, but is also a fundamental threat to our commitment to a pluralistic, democratic society, enshrined in the Constitution.

Islamophobia must be exposed and challenged at every level, and the legalization of the othering of Muslim Americans must not be allowed, in order to uphold the fundamental American principles of equality before the law, our faith in democratic institutions and democracy, and our commitment to transformational change towards a fair and inclusive society where all belong. ■

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