

2-2018

Bisecting American Islam? Divide, Conquer, and Counter-Radicalization

Khaled A. Beydoun

Follow this and additional works at: https://repository.uchastings.edu/hastings_law_journal



Part of the [Law Commons](#)

Recommended Citation

Khaled A. Beydoun, *Bisecting American Islam? Divide, Conquer, and Counter-Radicalization*, 69 HASTINGS L.J. 429 (2018).

Available at: https://repository.uchastings.edu/hastings_law_journal/vol69/iss2/1

This Article is brought to you for free and open access by the Law Journals at UC Hastings Scholarship Repository. It has been accepted for inclusion in Hastings Law Journal by an authorized editor of UC Hastings Scholarship Repository.

Articles

Bisecting American Islam? Divide, Conquer, and Counter-Radicalization

KHALED A. BEYDOUN*

The United States Department of State has long employed a sectarian foreign policy strategy to advance its interests in the Mideast. The United States has sided staunchly with Saudi Arabia, the Sunni Muslim superpower in the region, while spurning Iran, the Shia Muslim hegemon that emerged in 1979 after the Islamic Revolution.

This sectarian strategy reaped great benefit in the form of exclusive rights over Saudi oil and staving off Soviet influence in the Mideast. But the State Department's unwavering allegiance to Saudi Arabia today exposes it to foreign attacks and "homegrown radicalization" inspired by terror networks driven by Wahhabism, the extremist Sunni ideology enshrined by its longtime ally. Through its historic at-all-costs support of Saudi Arabia, the U.S. has facilitated the spread of an ideology that spawned Al Qaeda, which coordinated the 9/11 terror attacks; and most recently, the Islamic State of Iraq and Syria ("ISIS")—the terror network that inspires extremism.

Because of its link to Al Qaeda and ISIS, the United States Department of Homeland Security ("DHS") theorizes ISIS radicalization to be a distinctly "Sunni phenomenon." This isolates Shia Muslims, who are systematically targeted and executed by ISIS in the Mideast, as natural allies that could advance counter-radicalization strategy against a common enemy. Which begs the question: what if DHS used the same divide-and-conquer approach here at home?

This Article investigates the budding sectarian strategy employed by DHS to advance its counter-radicalization program, and theorizes how prevailing sectarian tension within Muslim communities facilitates this strategy. In addition to integrating the historic and theological divisions between Sunni and Shia Muslims into legal literature, this Article: first, examines how increased polarization between Shia and Sunni Muslims facilitates DHS's ability to recruit the former to monitor the latter; and second, how a sectarian counter-radicalization strategy makes the State an active participant in exacerbating sectarian tension among Muslim Americans, which raises First Amendment Establishment Clause concerns.

* Assistant Professor of Law, University of Detroit Mercy School of Law; Senior Affiliated Faculty, University of California, Berkeley, Islamophobia Research and Documentation Project ("IRDP"). I would like to thank Amara Majeed for her excellent research in support of this Article.

TABLE OF CONTENTS

INTRODUCTION	431
I. A HOUSE DIVIDED	437
A. THE GENESIS OF SECTARIAN DIVISION	439
1. <i>The First Divide: Succession After Muhammad</i>	439
2. <i>The Second Divide: The Assassination of Hussein</i>	441
B. SHIA AND SUNNI MUSLIM THEOLOGY.....	443
1. <i>Primary Distinctions and Overlap</i>	443
2. <i>Wahhabism: Origins and Ideology</i>	446
C. MUSLIM SECTARIANISM IN THE UNITED STATES.....	449
1. <i>A Demographic Snapshot</i>	449
2. <i>“Shia-phobia” and Sectarian Tension in the United States</i>	451
II. SECTARIANISM AS FOREIGN POLICY STRATEGY.....	453
A. SAUDI ARABIA AND THE U.S.: A COVENANT SOURCED BY OIL	454
B. BETWEEN COLD WAR AND SHIA THREAT.....	457
1. <i>Revolutionary Iran: The Rise of a Shiite Islamic Power</i>	457
2. <i>Saudi Arabia: An Ally on Two Fronts</i>	459
C. MODERN DEVELOPMENTS, SHIFTING AMERICAN SECTARIAN POLICY	461
1. <i>An Investment Gone Wrong: Rise of Wahhabi Terror</i>	461
2. <i>Empowering Shia Rule in Iraq</i>	463
3. <i>Rapprochement with Shia Iran</i>	465
III. SECTARIANISM AS DOMESTIC COUNTERTERROR STRATEGY.....	467
A. RADICALIZATION AS A “SUNNI PHENOMENON”	468
1. <i>Radicalization Theory</i>	468
2. <i>Instituting CVE Policing</i>	470
3. <i>Framing Radicalization as a Sunni Phenomenon</i>	473
4. <i>Policing Sunni Communities</i>	475
B. SECTARIAN TENSION AS STRATEGIC OPPORTUNITY	477
1. <i>Enemy of the State and Shia Muslims</i>	477
2. <i>Sub-Sectarian CVE Strategy: Enlisting Sufi Support</i> ..	479
3. <i>A Sectarian CVE Strategy: Reaching Out to Shia Muslims</i>	482
IV. BISECTING AMERICAN ISLAM AND THE ESTABLISHMENT CLAUSE	485
A. PREVAILING ESTABLISHMENT CLAUSE DOCTRINE.....	486
1. <i>The Lemon Test</i>	486
2. <i>The Endorsement Test</i>	487

3. <i>The Coercion Test</i>	488
B. CONFLICTS AND CONSTRAINTS.....	489
1. <i>A Lemon Test Analysis</i>	490
2. <i>Endorsement Test Analysis</i>	491
3. <i>Coercion Test Analysis</i>	492
C. LOOKING AHEAD.....	494
CONCLUSION.....	495

INTRODUCTION

“The enemy of mine enemy is my friend.”

Ancient Sanskrit proverb¹

Ford Road was a sea of green and black.² The boulevard named after the iconic automaker, on this brisk Tuesday in October 2016, was the site of thousands exalting a visionary and pioneer of a different kind. “We’re with you, oh Hussein!” the believers chanted, in unison.³

Their chorus met with the thudding drum of fists pounding on their chests. Women and men, children and the elderly—marching in remembrance of “Shia Islam’s” martyred saint,⁴ Hussein, son of Ali Ibn-Talib and grandson of the Prophet Muhammad.⁵ The procession unfolded 1336 years after the incident that inspired it, when Hussein was slain in the deserts of Karbala, Iraq, and the Shia-Sunni Muslim split was permanently bled into the sands of time (680 A.D.).⁶

What appeared to be a foreign festival taking place in the American heartland, in fact, was a tradition observed in Dearborn, Michigan, for decades.⁷ It was *Ashura*, “the tenth day of the holy month of Muharram”⁸ An occasion for the black-clad Shia believers to march through the busiest artery of the blue-collar city to mourn Hussein,

1. KAUTILYA, *THE ARTHASHASTRA* 520 (L. N. Rangarajan ed. & trans., Penguin Books India 1992).

2. The colors of the religion of Islam and mourning the dead, respectively.

3. Niraj Warikoo, *Shia Muslims March in Dearborn for Their Faith and Justice*, DETROIT FREE PRESS (Oct. 9, 2016, 5:31 PM), <https://www.freep.com/story/news/local/michigan/2016/10/09/shia-muslims-march-dearborn-their-faith-and-justice/91825602/>.

4. “There are three major branches of Shi’ism: the Zaydis, the Isma’ilis, and the Twelvers. . . . The vast majority of Shi’is are Twelvers. . . .” This Article focuses on Twelver Shia Islam, and uses Shia Muslim to refer to Twelver Shiism. Laith Saud, *Islamic Political Theology, in AN INTRODUCTION TO ISLAM IN THE 21ST CENTURY* 95 (Aminah Beverly McCloud et al. eds., 2013).

5. LESLEY HAZLETON, *AFTER THE PROPHET: THE EPIC STORY OF THE SHIA-SUNNI SPLIT IN ISLAM* 152 (2009).

6. “The Battle of Karbala, in the 7th Century, in which Hussein was killed, is often cited as the moment Shia and Sunni Muslims were cleaved apart.” Aleem Maqbool, *Karbala: History’s Long Shadow*, BBC NEWS KARBALA (May 26, 2013), <http://www.bbc.com/news/world-middle-east-22657029>.

7. VALI NASR, *THE SHIA REVIVAL: HOW CONFLICTS WITHIN ISLAM WILL SHAPE THE FUTURE* 31 (2006).

8. *Id.* at 31. Ashoura is also the Arabic word for tenth.

their “sacrificial icon.”⁹ The assassination of Hussein permanently splintered Islam’s following only forty-eight years after the death of the Prophet Muhammad.¹⁰ That split, combined with Ashura’s indelible, enduring symbolism, is what separates, “the Shia apart from the Sunni most emphatically”¹¹ in the Arab World, and in the American cities and communities Muslim Americans call home.

This was not Teheran, Baghdad or Beirut, the traditional strongholds of Shi’ism, or what some have called “the other Islam,”¹² where the ornaments, spiritual leaders and central figures of Shia Islamic lore are near and native.¹³ It was Dearborn, Michigan—the seat of Ford Motor Company and the brainchild of its founder, Henry Ford¹⁴—a quintessentially American city by every measure.

Beginning in the 1960s, Dearborn also became the gathering point for Shia Muslim immigrants. The first immigrants came from Lebanon,¹⁵ and in the early 1990s, Iraqi Shia Muslims arrived in Dearborn.¹⁶ Celebrated broadly as “America’s Muslim capital,”¹⁷ closer scrutiny reveals that Dearborn is, more accurately, the “heart of Shiism” in the United States.¹⁸ Firmly steeped in the American Midwest, a hemisphere away from the bloody proxy wars between Shia Iran and Sunni Saudi Arabia,¹⁹ which are polarizing the “Mideast”²⁰ more than

9. HAZLETON, *supra* note 5, at 158.

10. The Prophet Muhammad died on June 8, 632 A.D. in Medina. *Id.* at 49.

11. NASR, *supra* note 7, at 44.

12. NASR, *supra* note 7, at 31–61 (Nasr calls Shia Islam the “other Islam” because of its modern status as a demographic minority, and as articulated in the book’s first chapter, the sect denied succession of leadership following the death of the Prophet Muhammad on June 8, 632 A.D.).

13. “The [ornate carved] hand represents the five holy people whom the Shia hold in highest regard: the Prophet Muhammad, his daughter Fatima al-Zahra, his son-in-law and cousin Ali, and his grandsons Hasan and Husayn. The hand and the black flag mark Shia houses, mosques, and processions from India to the Middle East.” NASR, *supra* note 7, at 33.

14. See generally HEATHER B. BARROW, *HENRY FORD’S PLAN FOR THE AMERICAN SUBURB: DEARBORN AND DETROIT* (2015) (examining how the rise of the Ford Motor Company also drove the suburbanization of metropolitan Detroit, and specifically, the development of Dearborn—a suburb so intertwined with the automobile manufacturer).

15. KAMBIZ GHANEABASSIRI, *A HISTORY OF ISLAM IN AMERICA: FROM THE NEW WORLD TO THE NEW WORLD ORDER* 298 (2010).

16. Andrew Shryock et al., *The Terror Decade in Arab Detroit: An Introduction*, in *ARAB DETROIT 9/11: LIFE IN THE TERROR DECADE* 15 (Nabeel Abraham et al. eds., 2011).

17. Porochista Khakpour, *Reality TV Goes Where Football Meets the Hijab*, N.Y. TIMES, (Nov. 10, 2011), <https://mobile.nytimes.com/2011/11/13/arts/television/all-american-muslim-on-tlc-life-in-dearborn-michigan.html>.

18. Rachel Zoll, *American Shias Struggle with Their Future*, ASBURY PARK PRESS, July 19, 2009, at E3.

19. For a concise survey and description of these modern proxy wars in the Mideast, see Khaled A. Beydoun & Hamada D. Zahawi, *Divesting from Sectarianism: Reimagining Relations Between Iran and the Arab Gulf States*, 69 COLUM. J. INT’L AFFAIRS 47, 48–50 (2016).

20. In this Article, I use “Mideast” to refer to the geographic region encompassing the Afghanistan, Bahrain, Egypt, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Oman, Palestine, Qatar, Saudi Arabia, Syria, Turkey, Yemen, and the United Arab Emirates. Mideast is interchangeable with

ever before, Dearborn is the frontline of America's Shia Muslim population.

At a clip of three Shia Muslims for every one Sunni Muslim,²¹ Dearborn's Shia population is a prominent part of the City's identity.²² It boasts five Shia mosques, including the opulent Islamic Center of America on Ford Road,²³ nonprofits and charities championing Shia oriented causes, and during every Muharram, American citizens extoling Hussein and tying his martyrdom story to their current circumstance: these Shia are a "minority within the Muslim [American] community,"²⁴ simultaneously vulnerable to rising "Islamophobia"²⁵ and the indignation of Sunnis, the majority segment of the Muslim population in the United States and globally.²⁶

During Dearborn's Ashura procession of 2016, resounding and recurring condemnations of Saudi Arabia and ISIS,²⁷ and Wahhabism,²⁸

"Middle East," which is a "function of social construction . . . the Middle East was invented from political considerations, not any natural geography." JOHN TEHRANIAN, *WHITEWASHED: AMERICA'S INVISIBLE MIDDLE EASTERN MINORITY* 65 (2009).

21. Sally Howell & Andrew Shryock, *Cracking Down on Diaspora: Arab Detroit and America's War on Terror*, in *ARAB DETROIT 9/11: LIFE IN THE TERROR DECADE 70* (Nabeel Abraham et al. eds., 2011).

22. "Shiism in Dearborn is remarkable for the extent to which it is local (organized along village and clan lines particular to south Lebanon) and universal (with links to a world community of Shia whose political and spiritual centers are in Iran and Iraq)." *ARAB DETROIT: FROM MARGIN TO MAINSTREAM 200* (Nabeel Abraham & Andrew Shryock eds., 2000).

23. The original Islamic Center of America was constructed in 1964 in Detroit, by Mohamad Jawad Chirri. The new Center sits on Ford Road in the heart of Dearborn, and is "one of the largest and more opulent mosques in the United States." GHANEABASSIRI, *supra* note 15, at 298.

24. QAMAR-UL HUDA, *DIVERSITY OF MUSLIMS IN THE UNITED STATES: VIEWS AS AMERICANS* 6 (2006).

25. I define "Islamophobia" as:

[T]he presumption that Islam is inherently violent, alien, and inassimilable. . . . [and] the belief that expressions of Muslim identity are correlative with a propensity for terrorism. It argues that Islamophobia is rooted in understandings of Islam as civilization's antithesis and perpetuated by government structures and private citizens. . . . Islamophobia is also a process—namely, the dialectic by which state policies targeting Muslims endorse prevailing stereotypes and, in turn, embolden private animus toward Muslim subjects.

Khaled A. Beydoun, *Islamophobia: Toward a Legal Definition and Framework*, 116 *COLUM. L. REV. ONLINE* 108, 111 (2016). See generally ERIK LOVE, *ISLAMOPHOBIA AND RACISM IN AMERICA* (2017) (defining Islamophobia focusing on the racialization of Muslim identity).

26. "[A]t least 40% of Sunnis do not accept Shias as fellow Muslims. In many cases, even greater percentages do not believe that some practices common among Shias, such as visiting the shrines of saints, are acceptable as part of Islamic tradition." *The World's Muslims: Unity and Diversity*, PEW RES. CTR. (Aug. 9, 2012).

27. "Various signs at the rally read: 'Muslims Stand Against ISIS,' 'Muslims Against Terror,' and 'Live Free or Die with Dignity!!.' . . . And some signs called for the release of Shia leaders held captive in countries and criticized Israel and Saudi Arabia for what they consider oppression." Warikoo, *supra* note 3.

28. "Saudi Arabia's export of the rigid, bigoted, patriarchal, fundamentalist strain of Islam known as Wahhabism has fueled global extremism and contributed to terrorism. As the Islamic State projects its menacing calls for violence into the West, directing or inspiring terrorist attacks in country after country . . ." Scott Shane, *Saudis and Extremism: Both the Arsonists and the*

were prominent. From the vantage point of the U.S. government and Shia Muslims, Saudi Arabia and ISIS are the very entities that inspire and mobilize the “homegrown radicalization” of Sunni Muslims in the U.S.²⁹ Radicalization among Muslims is generally believed to be a distinctly Sunni phenomenon, a view that steers the DHS “counter-radicalization” program,³⁰ established as the state’s primary counterterrorism program under President Barack Obama.³¹

The spiritual procession unfolding on the streets of Dearborn, and the Shia Muslim population within the city, *still* fit within the discursive stereotypes of the “Muslim or Middle Eastern terrorist.”³² However, in light of the distinctly Sunni extremist elements that drive radicalization and the DHS’s preoccupation with fighting it within Muslim American communities, Shia Muslim strongholds, institutions, and individuals within the U.S. avail DHS with untapped partnership opportunities against the threat of homegrown radicalization. For DHS, Shia Muslims are an attractive alternative to the Muslim sect, Sunnism, that it alleges is disproportionately susceptible to radicalization. And thus, DHS considered Shia Muslims a coveted partner to carry forward counter-radicalization strategy and programming.

Furthermore, considering that extremist Sunni factions like ISIS target the U.S. and Shia Muslims as sworn enemies, the interests of DHS and Shia Muslim Americans converge with regard to countering ISIS’s appeal stateside, and moreover, preventing their potential to

Firefighters, N.Y. TIMES (Aug. 25, 2016), https://www.nytimes.com/2016/08/26/world/middleeast/saudi-arabia-islam.html?_r=0. For an accessible work on Wahhabi and Salafi thought and their contemporary political impact, see DAVID COMMINS, *THE WAHHABI MISSION AND SAUDI ARABIA* (2006).

29. Radicalization is the process by which an individual adopts an extremist ideology that is linked to terrorist activity. Although not explicitly associated with Islam, the term has been discursively and politically linked to Muslims. See Amna Akbar, *Policing “Radicalization”*, 3 U.C. IRVINE L. REV. 809, 811 (2013). See generally Samuel J. Rascoff, *The Law of Homegrown (Counter) Terrorism*, 88 TEX. L. REV. 1715 (2010) (examining the origins of U.S. law and policy addressing homegrown radicalization).

30. “[C]ounter-radicalization conforms to the preemptive logic of counterterrorism, which focuses on strategies that minimize the risk and intensity of future terrorist attacks.” Samuel J. Rascoff, *Establishing Official Islam? The Law and Strategy of Counter-Radicalization*, 64 STAN. L. REV. 125, 127 (2012).

31. See Press Release, White House, Fact Sheet: The White House Summit on Countering Violent Extremism (Feb. 18, 2015); see also WHITE HOUSE, *EMPOWERING LOCAL PARTNERS TO PREVENT VIOLENT EXTREMISM IN THE UNITED STATES* (2011) [hereinafter 2011 DHS COUNTER-RADICALIZATION PROGRAM] (the first document issued by President Obama outlining the strategic framework for counter-radicalization policing).

32. See Leti Volpp, *The Citizen and the Terrorist*, 49 UCLA L. REV. 1575, 1586 (2002). Both historically and more intensely in light of the protracting “war on terror” and rising Islamophobia, “the American public is being instructed that looking ‘Middle Eastern, Arab, or Muslim’ equals ‘potential terrorist.’” *Id.* at 1582. See generally ROBERT J. ALLISON, *THE CRESCENT OBSCURED: THE UNITED STATES AND THE MUSLIM WORLD 1776–1815* (1995) (describing a history of formative perceptions of Islam and Muslims held by American founding fathers, which seeded the popular tropes that prevail today).

“radicalize” Muslims within the U.S. From DHS’s vantage point, if Sunni extremists are the enemy, then Shia Muslims may be a critical ally against the threat they pose. This was very much the case under the Obama Administration, and while President Trump and his administration’s broad demonization of Islam has again blurred these lines, the continued framing of Muslim radicalization as a Sunni phenomenon leaves the door open for strategic recruitment of Shia Muslims to carry forward countering violent extremism (“CVE”) programming under his presidency, and even more so, beyond it.

Moreover, warming relations between the Department of State (“DOS”) and Iran brokered by the Obama Administration, signaled by the lifting of sanctions on the Shia Muslim theocracy in January 2016,³³ opens the door for a domestic rapprochement: namely, with Shia Muslim Americans as prospective partners in the fight against Sunni-inspired radicalization. Indeed, shifting relationships in the Mideast facilitate the possibility of forging new collaborations on home, particularly when the interests of DHS and Shia Muslim Americans converge in the face of a common rival.

Exploitation of sectarian hostility in the Mideast has long played a central role in American foreign policy engagement in the region. If inflaming the Sunni-Shia divide to advance U.S. interests abroad is formal DOS policy, what prevents DHS from capitalizing on Muslim sectarian tension stateside to carry forward national security goals? Sectarian tension is not isolated to the Middle East, and events in the region have the direct effect of inflaming tensions and creating division and discord amongst Shia and Sunni Muslims within the U.S. This has a twofold effect on domestic counterterrorism policing: mounting counterterror programming to prevent “homegrown radicalization” inspired by extremist Sunni groups (most notably Al Qaeda and ISIS), and the strategic counterterror opportunities among segments of the Muslim American population victimized by such groups—most notably, Shia Muslims. While a growing body of legal literature has investigated the former effect, this Article is the first to closely analyze the latter.

Exploiting sectarian tensions has been a staple of American foreign policy engagement in the Mideast. With rising national security concern over homegrown radicalization, the Obama Administration’s expansion of counter-radicalization policing, and the Trump Administration’s extension of it, this Article investigates how DHS may seek to capitalize on sectarian tensions, and abet in the process of stoking it, to carry forward CVE policing.

33. Darren Boyle, *U.S. Lifts Sanctions on Iran After 37 Years in Historic Thaw as UN Atomic Agency Rules It Has Met Conditions of Nuclear Deal*, DAILY MAIL (Jan. 16, 2016, 5:49 PM), <http://www.dailymail.co.uk/news/article-3403039/US-lifts-sanctions-Iran-eight-years-historic-thaw-atomic-agency-rules-met-conditions-nuclear-deal.html>.

Under the Obama Administration, DHS sought to capitalize on Muslim American sectarian (and sub-sectarian) tensions by framing radicalization as a distinctly Sunni phenomenon, which thereby precludes or diminishes the prospect of Shia Muslims being classified as subjects of state interest and prioritizing strategic partnerships with Shia religious leaders, institutions and communities, to function as partners of counter-radicalization policing. More specifically, DHS deputized Shia religious leaders as informants.³⁴ While the Trump Administration's vilification of Islam seems to shift CVE away from a sectarian strategy, the fluidity of his administration—and what may come after it—illustrates that it will hardly be deserted. This Article, written shortly after the transition from the Obama Administration to the Trump Administration, also lays the scholarly groundwork for understanding how sectarian hostility may be exploited to carry forward counterterror strategy, and anticipate how future administrations may seek to exploit it to police Muslim subjects.

The political and constitutional ramifications of a sectarian counter-radicalization strategy are ominous and extensive. Such a strategy will exacerbate already rife tension between Sunni and Shia Muslim Americans. In addition to the polarizing effect the divisive politics of the Mideast have had on cross-sectarian relationships, a counterterror regime that capitalizes on theological fault lines will compound this hostility by giving it an exclusively American dimension.

From a legal standpoint, a sectarian counter-radicalization strategy poses serious First Amendment concerns. My past research,³⁵ and the work of other law scholars,³⁶ has analyzed how counter-radicalization policing infringes on core First Amendment Free Exercise and Speech protection.³⁷ Since the bulk of this work has examined infringements on Free Exercise, this Article will shift its focus to how a sectarian CVE policing strategy raises Establishment Clause concerns.

By framing homegrown radicalization as a distinctly Sunni Muslim phenomenon and exploiting sectarian hostilities stateside to develop strategic partnership among Shia Muslims in the U.S. to counter that threat, this Article argues that CVE strategy and policing may be endorsing religion and inflaming religious tension in contravention of

34. DHS outreach into Shia communities is already in progress.

35. See Khaled A. Beydoun, *Between Indigence, Islamophobia, and Erasure: Poor and Muslim in "War on Terror" America*, 104 CALIF. L. REV. 1463 (2016) (focusing on how counter-radicalization policing disproportionately focuses on indigent and working-class Muslim American communities, and consequently, disparately infringes on their First Amendment rights).

36. The work of Aziz Huqq, Amna Akbar, Sahar Aziz, and Samuel P. Rascoff, whose scholarship is cited within this Article, examines the tension between counter-radicalization policing and civil liberties, and mainly, the First Amendment.

37. "[C]ore First Amendment activity, unconnected to any suspicion of criminal activity—becomes a predictor for criminality." Akbar, *supra* note 29, at 835.

the First Amendment Establishment Clause—which is doctrinally in flux under this Supreme Court and inferior courts. Amid this flux, this Article will seek to provide general analysis of under the current state of the Establishment Clause, examining it under preferred tests and doctrine.

This Article proceeds in four parts. Part I synthesizes the historic and theological division between Shia and Sunni Islam and closes with a discussion of sectarian demographics of both groups in the U.S.

Part II examines how the U.S. Department of State, from its bilateral alliance with the Saudi Arabia in 1933 to the Obama Administration’s rapprochement with Iran in 2016, has carefully deployed a sectarian strategy to further its interest in the Mideast.

Part III turns its attention to modern counterterror strategy and the framing of homegrown radicalization as a distinctly Sunni Muslim phenomenon that enables collaborative opportunities with Shia Muslim partners. In turn, DHS sought to cultivate a sectarian national security strategy to prevent terrorism in the U.S., navigated through the CVE framework.

Finally, Part IV provides a general analysis of the constitutionality of a sectarian CVE policing strategy according to prevailing Establishment Clause doctrine.

I. A HOUSE DIVIDED

“Oh God, have pity on those who succeed me.”

The Prophet Muhammad³⁸

“The divide between Shiism and Sunnism is the most important in Islam.”³⁹ It is, at once, the break that bisects Islam along theological lines and the formative fault line that harkens the “passion story” of Shia Muslim martyrdom and marginalization at the hands of Sunni Muslims.⁴⁰ It is a narrative spawned first by the succession debate that emerged after the death of the Prophet Muhammad in 632 A.D.,⁴¹ which concluded with his companion Abu Bakr as the leader instead of Ali, his son-in-law. And nearly four decades later, the dramatic incident in the deserts of Karbala that would intensely deepen the divide within Islam—the assassination of Hussein.

38. HAZLETON, *supra* note 5, at 16.

39. NASR, *supra* note 7, at 34.

40. HAZLETON, *supra* note 5, at 16. Believers analogize the slaying of Hussein to the gruesome execution of Jesus, a revered prophet in Islam, and relate the passion story of Hussein to the precedent “Passion of the Christ.” Hazelton extends this analogy, observing, “[i]hen came the eve of the final day—*ashura*, the tenth of Muharram—the setting for the Shia equivalent of the Last Supper.” HAZLETON, *supra* note 5, at 187.

41. HAZLETON, *supra* note 5, at 10.

Islam is routinely framed as a monolithic creed, both discursively and routinely within legal literature.⁴² Yet, the third of the three Abrahamic faiths is anything but. This myth ignores the volatile relationship between Shia and Sunni Muslims, which is climaxing today with proxy wars in Syria, Yemen, the broader Gulf,⁴³ and unprecedented tensions across sectarian lines among Muslim Americans. Since the initial revelations of Islam to the Prophet Muhammad in 609 A.D.,⁴⁴ the overwhelming course of Islam's history has been marred by theological disunity and, during many impasses, sectarian strife. *A House divided*, the formative and contemporary battles within Islam, defy the deeply embedded trope that Islam is a homogenous creed, united following or a monolithic "civilization."⁴⁵

This Part provides a historical, theological and demographic overview of the sectarian split within Islam. While not intended to be comprehensive, it provides a useful and general primer. Part A examines the genesis of the Shia and Sunni Muslim divide, which began to splinter shortly after the death of the Prophet Muhammad. Part B provides an overview of core Sunni and Shia theological beliefs, focusing most closely on areas of doctrinal dispute and distinction. Finally, Part C provides a demographic survey of Muslim America along sectarian lines, with discussion of Sunni and Shia mosques and rising hostility between the two groups.

42. The George W. Bush Administration stewarded the "redeployment of old Orientalist tropes" following the terror attacks of September 11, 2001, which caricatured Islam and Muslims as savage, violent, and bent on destroying the U.S. See Volpp, *supra* note 32, at 1586 (citing EDWARD SAID, *ORIENTALISM* (1978), describing the landmark work that coins and frames the theory of Orientalism, which positions the West, or "Occident," as the superior counterpoint and antithesis of the inferior Middle East, or "Orient"). These tropes were intensified with the emergence of Islamophobia, and its deployment in the 2016 presidential campaign. See Khaled A. Beydoun, *Viewpoint: Islamophobia Has a Long History in the US*, BBC NEWS (Sept. 29, 2015), <http://www.bbc.com/news/magazine-34385051>.

43. See generally Beydoun & Zahawi, *supra* note 19 (providing a summary of these proxy conflicts and wars as a preface to examining how foreign investment can mitigate tensions).

44. Islam was "revealed to the Arabian trader Muhammad between 609 and 632 . . ." SYLVIANE A. DIOUF, *SERVANTS OF ALLAH: AFRICAN MUSLIMS ENSLAVED IN THE AMERICAS* 4 (1998).

45. See generally SAMUEL P. HUNTINGTON, *CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER* (1996) (the most cited and popular work arguing that "Western civilization," and namely the United States, is at odds and poised to clash with "Islamic civilization"). But see Khaled Ali Beydoun, Comment, *Dar al-Islam Meets "Islam as Civilization": An Alignment of Politico-Theoretical Fundamentalisms and the Geopolitical Realism of This Worldview*, 4 *UCLA J. ISLAMIC & NEAR E.L.* 143, 159 (2005) (critiquing Huntington focusing specifically on discrediting his construction of an "Islamic civilization").

A. THE GENESIS OF SECTARIAN DIVISION

1. *The First Divide: Succession After Muhammad*

There would likely have been no Shia-Sunni divide if the Prophet Muhammad had a son.⁴⁶ The rift centered around succession and who should assume the helm of Islam after the death of the Prophet Muhammad, Islam's final Prophet and whose mission to bring together a people divided by tribal lines through the new faith began to give way instantly at his death at the age of sixty-three.⁴⁷

While Muhammad made overtures as to whom should succeed him, he never "formally appointed a successor" before he succumbed to a high-fever.⁴⁸ The mantle of Islam's leadership was a coveted post, and debate about who should claim it began even before the Prophet was finally laid to rest on June 8, 632 A.D.⁴⁹ The Prophet Muhammad left this question unanswered and his post unfilled, so the pioneering community of Muslims—comprised of his closest companions, family members, and Saudi clans—convened to name a successor in the immediate wake of Islam's holiest man's death.⁵⁰

For the community of original Muslims tasked with the burden to find a solution,⁵¹ the matter of Muhammad's succession hinged on a debate pitting divine lineage against the will of the *ummah*—or community of Muslims.⁵² Would it be Ali, the Prophet Muhammad's "first cousin and the man whose name the Shia were to take as their own[?]"⁵³ Shia Muslims today still staunchly claim that it was the Prophet Muhammad's intent to pass his authority on to Ali.

Or, would authority transfer to one of his companions? As steadfastly maintained by Sunnis, who argued that Islam was chiefly committed to equality across familial or tribal lines, thus mandating that divine lineage be sidestepped for community consensus.⁵⁴ This

46. "If a son had existed, perhaps the whole history of Islam would have been different. The discord, the civil war, the rival caliphates, the split between Sunni and Shia—all might have been averted." HAZLETON, *supra* note 5, at 10.

47. HAZLETON, *supra* note 5, at 7.

48. HAZLETON, *supra* note 5, at 15.

49. HAZLETON, *supra* note 5, at 49.

50. WILFERD MADELUNG, *THE SUCCESSION TO MUHAMMAD: A STUDY OF THE EARLY CALIPHATE* 68 (1997).

51. This was the first council, or *shura* (Arabic), that convened to discuss matters pivotal to Islam after the death of the Prophet Muhammad.

52. Arabic.

53. HAZLETON, *supra* note 5, at 32. In addition to being the Prophet Muhammad's first cousin, Ali was also the first person to accept Islam, and the husband of Muhammad's daughter Fatima. HAZLETON, *supra* note 5, at 36–37. Shia Muslims derived their name from "Shiat-Ali," which means "followers of Ali." HAZLETON, *supra* note 5, at 32.

54. "To Sunnis, the *shura* would be the perfect example of the wisdom of consensus, of a community newly empowered to resolve its disputes and to find the right solution. The Prophet trusted them to find the right leader, they maintained." HAZLETON, *supra* note 5, at 61.

position supported the argument that the Prophet's most senior adviser and "best friend,"⁵⁵ Abu Bakr, should be named next *caliph*.⁵⁶ Sunni Muslims, today, contend that it was the Prophet's aim to pass on the leadership of Islam to his companions, and by doing so, dismantle the institution of divine lineage housed entirely within one clan.

The debate over who should succeed the Prophet Muhammad was turbulent and polarized along the line of lineage and divine right. Fiery "[s]peeches gave way to shouting" and violence ensued, until Abu Bakr—not Ali—was confirmed as Islam's first caliph.⁵⁷

The cohort that would ultimately become Sunni Muslims backed the winner, Abu Bakr, and those who would become Shia Muslims supported Ali, the natural successor stripped of his "divine" claim to leadership, they claim.⁵⁸ The first council of Muslims following the death of the Prophet Muhammad would become a lasting metaphor for Shia Muslims, and most climactically, foreshadowed a bloodier defeat at the hands of Sunnis roughly four decades later.

Ali "would be passed over not once or even twice, but three times" after the Prophet Muhammad's death twenty-five years earlier.⁵⁹ Following Abu Bakr, Omar, and Othman, Ali was named Islam's fourth caliph.⁶⁰ For Shia Muslims, this pattern of passing over and relegating Ali was more a sign of blatant Sunni disrespect of *Ahl al-Bayt* (family of the Prophet Muhammad) that it was a sign of community consensus.⁶¹ Sunni Muslim "disinheritance" of Ali would embed disrespect and relegation into the Shia spiritual and political fabric,⁶² and marked the first sectarian divide within Islam.

55. Saud, *supra* note 4, at 85.

56. Caliph is the Arabic word for successor, and its holds the double-meaning of religious and political leader.

57. HAZLETON, *supra* note 5, at 64–65.

58. HAZLETON, *supra* note 5, at 70–71.

59. HAZLETON, *supra* note 5, at 69.

60. "For Sunnis, the time of these caliphs was Islam's golden age, an era when political authority continued to be informed by the pristine values of the faith and when Muslim society remained close to its spiritual roots." NASR, *supra* note 7, at 35. These four caliphs are jointly remembered as the Rashidun ("righteously guided" in Arabic) by Sunni Muslims, revered because their collective rule was said to be without internal conflict or discord (a point Shias disagree with). See generally TAYEB EL-HIBRI, PARABLE AND POLITICS IN EARLY ISLAMIC HISTORY: THE RASHIDUN CALIPHS (2010) (describing a comprehensive and detailed history of each of the four caliph's leadership).

61. Arabic.

62. HAZLETON, *supra* note 5, at 70–71.

They [Shias] had been disinherited, deprived of what they saw as their rightful place, the leadership of Islam. And this sense of disinheritance would sear deep into Shia hearts and minds, a wound that would fester through to the twentieth century, there to feed off opposition to Western colonialism and erupt first in the Iranian Revolution, then in civil war in Lebanon, and then, as the twenty-first century began, in the war in Iraq. Disinheritance was a rallying cry

Id.

The second, and more pronounced and potent divide, would be by the bloody assassination and martyrdom Ali's son, Hussein, which would become the most definitive and potent event in Shia Muslim history. And an event that remains focal to the religious and political identities of Shia Muslims, all over the world, today.

2. *The Second Divide: The Assassination of Hussein*

Ali reigned as caliph from 656–661 A.D. and became the first of Shia Muslims twelve revered *Imams*.⁶³ Atop his favorite riding camel, Ali died on January 26, 661,⁶⁴ leaving behind two sons, Hasan and Hussein.⁶⁵

Hussein became keen on “bringing the caliphate back where it belonged, to the *Ahl al-Bayt*, the House of Muhammad.”⁶⁶ However, he faced an imposing obstacle. Muawiya was the “undisputed fifth Caliph” after Ali's death⁶⁷ and presided over a dynasty that stood in the way of Hussein's aim of claiming the caliphate. From his political seat in Damascus, Muawiya “commanded a powerful army, but important Muslims were uncomfortable with the new political order—it reminded them of the days before Islam.”⁶⁸ Under Muawiya, the caliphate was riddled with corruption, graft and nepotism, which contravened the very values that inspired the spread of Islam under the Prophet Mohammad.

Furthermore, Muawiya sought to groom his “spoiled” son, Yazid, to become his successor.⁶⁹ Ironically, Muawiya endeavored to install a hereditary succession of the caliphate, the very institution the earliest Sunni Muslims sought to avoid, and which Hussein's father, Ali, fervently argued in favor of at the first council following the Prophet

63. Imam is the Arabic word for spiritual leader. Imams were the divinely inspired figures who inherited the authoritative knowledge and lawmaking authority of the Prophet Muhammad following his death in 632 A.D.

64. HAZLETON, *supra* note 5, at 151–52.

65. Ali's camel carried his dead body into Najaf, in modern Iraq, where he was buried and today the site of “the first great Shi'ite shrine” in his name. Lieutenant Colonel Adam Oler, *A Brief Introduction to the Sunni-Shi'ite Struggle: Six Key Points*, 35 REP. 2, 4 (2008).

66. HAZLETON, *supra* note 5, at 157.

67. HAZLETON, *supra* note 5, at 163.

68. Saud, *supra* note 4, at 90.

69.

[Yazid] was the image of a spoiled scion given to drink and dissipation, the antithesis of the Islamic ideal. ‘A silk-wearing drunkard,’ Hasan once called him. . . . Muawiya's son seemed to be a kind of seventh-century version of a good old boy from Texas, succeeding his father to the highest office in the land.

HAZLETON, *supra* note 5, at 167. Al-Saud characterized Yazid as, “a man totally devoid of character. He not only violated Qur'anic norms, he ridiculed them.” Saud, *supra* note 4, at 92.

Muhammad's death. Yet, the absurdity of this reversal typified the turbulence that is said to characterize Ummayyad Rule, which would devolve into unbridled despotism if Yazid became caliph, Hussein and his followers believed.⁷⁰

Muawiya died in 680 A.D., a year that still lives in infamy for Shia Muslims. The Ummayyad ruler's death opened the door for the despotic Yazid to become caliph, and led to the dramatic faceoff between him and Hussein.⁷¹ Determined to bring back "goodness, justice, and truth" to the Islamic community or die in pursuit of those principles,⁷² Hussein:

The third [Shia Muslim] Imam, son of the first and brother of the second, set out from Mecca for Iraq in September of 680, with his family and just seventy-two armed men, not knowing that he was journeying toward his death—that within the month, he was destined to become forever the Prince of Martyrs.⁷³

That trek across the deserts of Iraq would be his last. On October 10, 680 A.D., Yazid's men massacred Hussein and his small militia in Karbala.⁷⁴ Although Hussein and his seventy-two men fought valiantly against Yazid's army of four-thousand, the odds were too great and the blows striking from every angle too piercing and fatal. At the end, Hussein, the grandson of Islam's messenger and greatest prophet, was left with thirty-three knife and sword wounds and a decapitated head.⁷⁵ His bloody and brutal assassination made Yazid the undisputed caliph, but far more crucially, gave Shia Islam its spiritual martyr and timeless symbol.

Hussein's martyrdom at the hands of the Sunni Ummayyad leadership remains the spiritual and political heartbeat of Shia Islam. It is the crucifixion moment for Shiite Muslims,⁷⁶ an event that simultaneously spawns uncontrollable sadness and inspires devoted reverence. It is an event that is commemorated every year in Dearborn, Michigan, Tehran, Iran, and every other city and town with Shiite Muslims. Mourning the martyrdom of Hussein is a cornerstone of Shia Islamic practice, and even more so, the heartbeat of Shia political identity.

70. "Under the Umayyads the caliphs became both pope and Caesar . . ." NASR, *supra* note 7, at 36.

71. HAZLETON, *supra* note 5, at 157–58.

72. "Consequently al-Husayn rose to fight him [Yazid] in the knowledge that, should he die in the fight, the principle would nonetheless live: goodness, justice, and truth are eternal values to which one gives oneself over fully." SAUD, *supra* note 4, at 92.

73. HAZLETON, *supra* note 5, at 173.

74. HAZLETON, *supra* note 5, 190–91.

75. HAZLETON, *supra* note 5, at 191–92.

76. "The story of what happened so long ago on the banks of the Euphrates has become a symbol, like the crucifixion in Jerusalem for Christians, of the eternal conflict between good and evil." PATRICK COCKBURN, MUQTADA: MUQTADA AL-SADR, THE SHIA REVIVAL, AND THE STRUGGLE FOR IRAQ 17 (2008).

For Islam at large, the massacre of Hussein is the second and bloodiest fault line that *still* divides the world's 1.8 billion Muslims.⁷⁷ For Shia Muslims, as illustrated on the streets of Dearborn, on October 10, 2016, it is a living and potent metaphor for the continued and contemporary injustices inflicted on Shia Muslims by “Sunni oppressors.”⁷⁸ For this sect, all things political start and end with the martyrdom of Hussein. Still, the core doctrinal differences are rooted in the first divide, when Abu Bakr was confirmed as the Prophet Muhammad's first successor at the expense of Ali.

B. SHIA AND SUNNI MUSLIM THEOLOGY

1. *Primary Distinctions and Overlap*

The turbulent events following the Prophet Muhammad's death spawned the core theological differences between Shia and Sunni Islam. The debate over who should succeed the Prophet Muhammad highlights the crux of the spiritual discord between Islam's principal sects: whether Islam's leadership was a matter of divine lineage or community consensus.⁷⁹ Shia Muslims are unequivocal about the importance of divine lineage and hold that Ali, his sons, and their male progeny should hold authority over the Muslim community. Conversely, community consensus regarding matters of succession, law, and authority form the foundation of Sunni Islam.⁸⁰ Before analyzing the theological idiosyncrasies that emanate from the genesis story presented in Part I.A, examination of theological overlap is a critical first step.

“[N]obody . . . should forget that what unites the two main branches of Islam is far greater than (sic) what divides them”⁸¹ First, both Shia and Sunni Islam are rooted in the principal Islamic belief that “none has the right to be worshipped but Allah, and Muhammad—peace and blessings be upon him—is the Messenger of

77. Michael Lipka, *Muslims and Islam: Key Findings in the U.S. and Around the World*, PEW RES. CTR. (Aug. 9, 2017), www.pewresearch.org/fact-tank/2017/08/09/muslims-and-islam-key-findings-in-the-u-s-and-around-the-world/.

78. Sayed Mohammad Jawad Al-Qazwini, a prominent Shia religious leader based out of Los Angeles, California, routinely orates about “the discrimination and violence that Shiite Muslims have suffered at the hands of Sunni Muslims.” Omar Sacirbey, *Shiite Muslims Quietly Establish Foothold in U.S.*, WASH. POST (Oct. 2, 2012), https://www.washingtonpost.com/national/on-faith/shiite-muslims-quietly-establish-a-foothold-in-us/2012/10/02/f21dc568-0cd6-11e2-ba6c-07bd866eb71a_story.html?utm_term=.8cead8205053. This theme is tied to the massacre of Hussein in Karbala, and a focal message delivered over and over again by Shia Imams within and beyond the U.S.

79. “[S]acredness inheres in the Prophet's blood family, as the Shia believe, or in the community as a whole, as Sunnis believe” HAZLETON, *supra* note 5, at 211.

80. Saud, *supra* note 4, at 85.

81. HAZLETON, *supra* note 5, at 211.

Allah.”⁸² Both sects also consider the *Qur’an*, Islam’s Holy Book delivered to the Prophet Muhammad by the angel Gabriel, as the primary and supreme source of divine law.⁸³ These two elements comprise the very core of Islamic belief. But the distinctions outlined below illustrate where Shia and Sunni Muslims depart. Thus, the two share far more in common in terms of religious belief than they do differences.

The “five pillars of Islam” form the framework of core values and obligations for Sunni Muslims. These pillars are: “confession of the faith, prayer, *zakat* (religious tax), fasting [during the holy month of Ramadan], and pilgrimage . . .”⁸⁴ Shia Muslims include these five pillars within their broader set of five principles and ten subsidiary pillars: “[Shia Islam’s] five principles are monotheism, justice, last judgment, prophethood, and imamate. Their subsidiary pillars include prayers, fasting, *zakat*, and pilgrimage, as well as jihad, directing others toward doing what is good, and avoiding what is evil . . .”⁸⁵

As illustrated in Part I.A, Shia Muslims’ faith begins and ends with the divinity of the Prophet Muhammad’s family. Shia cosmology stems from the belief that the Prophet Muhammad explicitly named Ali as his successor.⁸⁶ Although Abu Bakr assumed control of the political community following the Prophet Muhammad’s death, Shia Muslims set that matter aside with regard to the structure of their religious leadership, “the Imamite.”⁸⁷ Premised upon the divinity of the Prophet Muhammad’s family, Shia Muslims hold Ali to be the first of twelve “infallible Imams.”⁸⁸ Ali’s immediate successors were his two sons, Hassan and Hussein, who were followed by nine other figures that tie their familial ancestry back to the Prophet Muhammad in order to claim

82. HAMID ALGAR, WAHHABISM: A CRITICAL ESSAY 54 (2002).

83. “[D]uring the month of Ramadan, in the year 610, Prophet Muhammad received the first in a series of revelations that, together, constitute the Qur’an.” Saud, *supra* note 4, at 83.

84. ABDULLAHI AHMED AN-NA’IM, WHAT IS AN AMERICAN MUSLIM?: EMBRACING FAITH AND CITIZENSHIP 91 (2014).

85. *Id.*

86. Shia scholars cite the Prophet Muhammad’s following support as unequivocal legal authority supporting the matter: “I am from Ali and Ali is from me; he is the guardian of every believer after me’ . . . ‘None but a believer loves Ali, and none but an apostate hates him.” HAZLETON, *supra* note 5, at 35; see also NASR, *supra* note 7, at 37–38 (“The early Shias argued that the Prophet had chosen Ali as his successor and had made a testament to that effect, telling a congregation of Muslims at Ghadir Khumm, during his last pilgrimage to Mecca, that ‘whoever recognizes me as his master will recognize Ali as his master.’”).

87. Imamate is assigned with the role of spiritual leader, who is divinely connected to God and thus can render binding legal decisions, or fatwas (Arabic).

88. Religious leaders, Shiite Muslims believe, are chosen and divinely inspired by God. See generally MATTHEW PIERCE, TWELVE INFALLIBLE MEN: THE IMAMS AND THE MAKING OF SHI’ISM (2016) (providing a historical overview that profiles the twelve imams Shia Muslims hold in high esteem, with descriptive biographies of each).

divine authority as imams.⁸⁹ The final prophet, Muhammad Al-Mahdi, holds considerable importance. Shia Muslims believe that the final imam is in occultation, or hiding, and will reveal himself and rule for a period of five, seven, nine, or nineteen years before the Day of Judgment.⁹⁰

Rejecting Shia Islam's Imamite, Sunni Muslims believe in the succession and authority of the first four caliphs. Referred to reverently by Sunnis as the "rightly guided" caliphs of Islam, or the *Rashidun*,⁹¹ the successors of the Prophet Muhammad are also a source of divine authority. Reports of their lives, combined with the deeds, declarations, and model of the Prophet Muhammad, comprise the *Sunna*—the supplementary body of law that Sunni Muslims consult for spiritual guidance in conjunction with the Qur'an.⁹² For Sunni Islamic schools of thought, primary divine law starts and stops with the Qur'an and the Sunna. Unlike the Imam in Shia Islam, "[t]he caliph had no authority in and of himself; he only had authority insofar as he implemented the Qur'an and the *sunna*."⁹³

On the other hand, Shia Muslims "see divine knowledge as continuing in the world after the Prophet's death."⁹⁴ Shia Muslims follow the political and religious leadership of the Imam as they would the Prophet Muhammad.⁹⁵ Consequently, Shia Muslims extend considerable authority to Imams to formulate and issue original legal edicts, or "fatwas."⁹⁶ Sunni Muslims consider the Shia concordance of divine and legal authority of the Imamite with the Prophet Muhammad to conflict with the latter's supreme authoritative and divine position.⁹⁷ In fact, many Sunni Muslims view this to be a transgression of the Prophet Muhammad's exclusive role as a divine messenger.

Relatedly, Sunni Muslims maintain that legal revelation ended with the death of the Prophet Muhammad. In line with this view, Sunni imams are not divinely inspired figures like their Shia Muslim counterparts. Rather, they are tasked with leading worship services, occupy the role of community leader, and extend spiritual guidance to mosque congregations and community constituents. Sunni Muslim

89. After Hussein, the subsequent Imams, in order to succession, are: Ali Zainul-Abideen, Muhammad Al-Baqr, Jaafar Al-Saadiq, Musa Al-Kaazim, Ali Al-Raza, Muhammad Ali-Taqi, Ali Al-Naqi, Hasan Al-Askari, and Muhammad Al-Mahdi (the final Mahdi currently in occultation).

90. HEINZ HALM, *THE SHI'ITES—A SHORT HISTORY* 34–37 (Allison Brown trans., Markus Wiener Publishers 2007).

91. Arabic.

92. Sunna is Arabic.

93. Saud, *supra* note 4, at 90.

94. Saud, *supra* note 4, at 85.

95. Saud, *supra* note 4, at 91.

96. Arabic.

97. In addition, "[f]or most Sunnis, worshipping at shrines, deifying Imams, and practicing Ashura rituals constitutes apostasy." Oler, *supra* note 65, at 7.

Imams are mere mortals, while their Shia counterparts are believed to have a connection with God, and thus, afforded with the authority to make law.

Comparatively, Sunni imams exercise considerably less legal authority than their Shia counterparts. This affords Sunni Muslims with greater latitude to interpret Islamic scripture in line with their subjective views relative to Shia Muslims, who are mandated to follow the unilateral interpretation of the Imam. This distinction has important political and religious ramifications.

First, Shia Islam harmonizes political and religious authority, and centralizes both within the institution of the Imamite. The harmonization of faith and politics is manifested most vividly in the Islamic Republic of Iran, a theocracy bestowing supreme religious and governmental authority to its clerics.⁹⁸

Second, Sunni Muslims reject the conflation of political with religious authority. Breaking from the Shia Muslim view that Imams rule by divine right, the Sunni caliphate fundamentally is a secular institution, ordained with the administrative task of implementing divine law.⁹⁹ The consequence of this religious decentralization is considerable, both historically and contemporarily. By virtue of housing complete authority solely within the Imamite, Shia Muslim Imams also function as a moderating force on their followers by preempting countervailing or deviant interpretations of law.

On the other hand, Sunni Islam affords its followers with greater interpretive freedom, and decentralization facilitates deviant or fundamentalist interpretation of Islamic scripture. Wahhabism, a minority Sunni tradition founded by the Arabian scholar Shaykh Ibn ‘Abd al-Wahhab, and the chosen theology of transnational terror networks including Al Qaeda and ISIS, is a prime example.¹⁰⁰

2. *Wahhabism: Origins and Ideology*

Wahhabism, which followers refer to as “the asserters of the divine unity,”¹⁰¹ originated in 18th century Saudi Arabia. Founded by Muhammad ‘Abd al-Wahhab, an Islamic scholar from “the small town of al-’Uyayna in Najd in the eastern part of what is today called the

98. For a concise and well outlined overview of the governmental structure and political system of Iran, see *The Structure of Power in Iran*, PBS, <https://www.pbs.org/wgbh/pages/frontline/shows/tehran/inside/govt.html> (last visited Jan. 20, 2018). For a series of lectures by a prominent Islamic Law scholar examining the theocratic structure of Iran within the context of the Revolution that established it, see HAMID ALGAR, *ROOTS OF THE ISLAMIC REVOLUTION IN IRAN* (rev. ed. 2001).

99. Saud, *supra* note 4, at 90–91.

100. ALGAR, *supra* note 82, at 5.

101. *Id.* at 1. Many Wahhabis reject the Wahhabi designation, because it perceived as “a title given to the movement by those standing outside of it, often with pejorative intent.” *Id.*

Kingdom of Saudi Arabia,¹⁰² this school of Sunni Islamic thought had little influence at its inception. However, al-Wahhab's fortuitous partnership with the rulers of what would become the Kingdom of Saudi Arabia ultimately propelled Wahhabism onto the world stage.¹⁰³

The resonance and reach of Wahhabism today is almost entirely due to the rise and regional hegemony of the modern Saudi state. Wahhabism finds its ideology from two primary sources: first, the Kharijite movement, which originally branched off from both Sunni and Shia Islam; and second, the work of the 14th century Islamic scholar Ibn Taymiyya.¹⁰⁴

Following the Prophet Muhammad's death in 632 A.D., the Kharijite movement established that "true religious authority is located exclusively in the timeless ideals of God and can never be found in humanity."¹⁰⁵ The Kharijites considered all forms of human interpretation of the Qur'an a derivation from faith. Any human beings who sought to interpret God's "unambiguous" word in the Qur'an, including learned scholars, were categorically deemed "heretic" by the Kharijites.¹⁰⁶ This rigid textualism later became a cornerstone of Wahhabi thought.¹⁰⁷ The unbridled violence of Kharijites against non-abiding Muslims is a predecessor of modern analogs like ISIS.¹⁰⁸

In addition to the unwavering textualism of the Kharijites, Wahhab was also influenced heavily by Ibn Taymiyya. Echoing the Kharijites, the fundamentalist thinker unequivocally maintained the "absolute authority of a literal Qur'an, and any Muslim who steps outside that authority"¹⁰⁹ was deemed an apostate. Ibn Taymiyya did not allow human interpretation in matters linked to Islamic jurisprudence, a position al-Wahhab later made his canon's centerpiece. The Qur'an was unambiguous, Ibn Taymiyya argued, and his delight in polemics isolated Shia Muslims, Sufis, and Muslims that deviated from his narrow view to be legal objects of "jihad"—or Islamically sanctioned war.¹¹⁰

Like the Kharijites and Ibn Taymiyya, al-Wahhab mandated a "return to the pure and authentic Islam of the Founder [God], removing and where necessary destroying all the later accretions and

102. *Id.* at 5.

103. MADAWI AL-RASHEED, A HISTORY OF SAUDI ARABIA 17–18 (2002).

104. For a biography of the scholar and a careful analysis of his ideas and works, see 4 STUDIES IN ISLAMIC PHILOSOPHY: IBN TAYMIYYA AND HIS TIMES (Yossef Rapoport & Shahab Ahmed eds., 2015).

105. Saud, *supra* note 4, at 87.

106. Saud, *supra* note 4, at 87.

107. Saud, *supra* note 4, at 88.

108. "The Kharijites raided towns and territories and subjected Muslims to inquisitions and persecutions. If Muslims were found not agreeing with them, they were summarily executed." Saud, *supra* note 4, at 88.

109. Saud, *supra* note 4, at 88.

110. ALGAR, *supra* note 82, at 9.

distortions.”¹¹¹ This call to action empowered al-Wahhab’s followers—both old and contemporary—to attack members of other faiths and Muslims who disagreed with his textual interpretations of the scripture. Shia Muslims were frequent targets of al-Wahhab’s textual reading of the Qur’an, and he branded them “faithless and, therefore, suitable targets for his purifying *jihad*.”¹¹² In short, Wahhabism teaches Muslims to kill Muslims who deviate from his interpretation of the scripture.¹¹³

Therefore, Wahhabism’s categorical prohibition of ritualism manifests Sunni Islam’s displeasure with ritualism at its extreme: “[P]erhaps the most vivid distinction—and one that grates on Sunni sensibilities—is the love of visual imagery evident in Shia popular devotionism. Sunnism tends to frown on the visual arts as possible inducements to, if not outright expressions of, idol worship.”¹¹⁴ In addition to this ritualism, Wahhabis also consider the reverence for Imams to be in violation of the core tenets of the Qur’an.¹¹⁵ Therefore, Shia Muslims are routinely branded as apostates by Wahhabis and are guilty of “innovating” beliefs and practices that lack textual basis.¹¹⁶ Because of this view, Shia Muslims—who comprise fifteen percent of the population in Saudi Arabia—are the subjects of Wahhabi subjugation in Saudi Arabia,¹¹⁷ and the targets of violence inflicted by transnational terror networks driven by the faith.¹¹⁸

Although Wahhabism is a “marginal” tradition among Sunni Muslims,¹¹⁹ it now holds far-reaching geopolitical and critical national security importance. First, as illustrated in Part II, Wahhabism is the religious and “ideological cornerstone of the Saudi movement,”¹²⁰ the regional Sunni Muslim superpower in the Mideast.¹²¹

111. BERNARD LEWIS, *THE CRISIS OF ISLAM: HOLY WAR AND UNHOLY TERROR* 120 (2003).

112. Donald W. Garner and Robert L. McFarland, *Suing Islam: Tort, Terrorism and the House of Saud*, 60 OKLA. L. REV. 223, 225 (2007) (citing AL-RASHEED, *supra* note 103) (emphasis added).

113. See generally ALGAR, *supra* note 82.

114. NASR, *supra* note 7, at 44.

115. ALGAR, *supra* note 82, at 33. Most notably, Wahhabis also consider the Shia belief that Imams, starting with Ali and concluding with al-Mahdi, infringe on the “Seal of All Revelation,” or the foundational Islamic tenet that the Prophet Muhammad is the final messenger of God. MARC SAGEMAN, *UNDERSTANDING TERROR NETWORKS* 4 (2004).

116. *Bid’a* is the Arabic word for innovation, which is used pejoratively by Wahhabis to delegitimize Shia Muslims as authentic believers.

117. Frederic Wehrey, *Saudi Arabia Has a Shiite Problem*, FOREIGN POL’Y (Dec. 3, 2014), <http://foreignpolicy.com/2014/12/03/saudi-arabia-has-a-shiite-problem-royal-family-saud>.

118. ALGAR, *supra* note 82, at 8–9. ISIS classifies Shia Muslims as *rafidun*, the Arabic word for apostate, and because of this, systematically targets and executes Shia Muslims.

119. ALGAR, *supra* note 82, at 2.

120. Saud, *supra* note 4, at 89.

121. The earliest descendant of the House of Saud, which would eventually become the ruling family of the modern Saudi Arabia state, brokered a historic pact with al-Wahhab in 1744. AL-RASHEED, *supra* note 103, at 17–18. This pact had a transformative, twofold impact: first, it

Second, Wahhabi thought inspires the transnational terror networks believed to incite the recent terror attacks in the U.S. and Europe.¹²² DHS counter-radicalization leadership believes that “Radical Islamist Terror” groups deploy this fundamentalist school of Sunni Islam to “inspire individuals to commit acts of violence”¹²³ and launch “warfare” against “disbelievers.”¹²⁴ While deemed a Sunni Muslim phenomenon by DHS, as examined in Part III.A, homegrown radicalization more accurately is a worldview wedded to the rigid tenets of Wahhabism and the transnational terror networks driven by it.¹²⁵

C. MUSLIM SECTARIANISM IN THE UNITED STATES.

1. *A Demographic Snapshot*

Islam is the second largest and fastest growing religion in the world.¹²⁶ At 1.8 billion adherents, Islam is forecasted to surpass the number of Christians in the world “by the end of the century.”¹²⁷ Roughly eighty-seven to ninety percent of the global Muslim population identify as Sunnis, while ten to thirteen percent subscribe to the Shia tradition.¹²⁸ Sunni Muslims are prominent throughout Muslim-majority nations, but “most Shias (between sixty-eight and eighty percent) live in just four countries: Iran, Pakistan, India, and Iraq,”¹²⁹ with a prominent population in Lebanon.¹³⁰ Therefore, Shia Muslims are greatly outnumbered by their Sunni Muslim counterparts, who are also

legitimized the ruling family’s takeover of political rule, which continues in modern Saudi Arabia; and second, it enshrined Wahhabism as the official law of the modern Saudi state. GILLES KEPPEL, *JIHAD: THE TRAIL OF POLITICAL ISLAM* 50–51 (Anthony F. Roberts trans., The Belknap Press of Harv. U. Press 2002).

122. SAGEMAN, *supra* note 115, at 72 (providing an analysis of how *Wahhabi* and *Salafi* thought drive modern terrorist networks, most notably Al Qaeda).

123. *Identifying the Enemy: Radical Islamist Terror, Hearing Before the H. Comm. on Homeland Sec., Subcomm. on Oversight & Mgmt. Efficiency*, 114th Cong. (2016) (written statement of George Selim, Dir., Dep’t of Homeland Sec. Office for Cmty. P’ships).

124. ALGAR, *supra* note 82, at 34. “The corollary of identifying Muslims other than the Wahhabis as mushrikeen [disbelievers] was that warfare against them became not simply permissible but obligatory: their blood could legitimately be shed, their property was forfeit, and their women and children could be enslaved.” ALGAR, *supra* note 82, at 34.

125. Shane, *supra* note 28.

126. Lipka, *supra* note 77.

127. Lipka, *supra* note 77.

128. *Mapping the Global Muslim Population*, PEW RES. CTR. (Oct. 7, 2009), www.pewforum.org/2009/10/07/mapping-the-global-muslim-population/.

129. *Id.*

130. See generally RULA JURDI ABISAAB & MALEK ABISAAB, *THE SHI’ITES OF LEBANON: MODERNISM, COMMUNISM, AND HIZBULLAH’S ISLAMISTS* (2014), which provides a thorough cultural and political history of the Shia in Lebanon, including a contemporary analysis Hizbullah’s role in both domestic and regional politics. Forty percent of the Lebanese population follows Shia Islam. Yusri Hazran, *The Shiite Community in Lebanon: From Marginalization to Ascendancy*, 37 MIDDLE EAST BRIEF 2 (2009).

prominently represented in Muslim-majority nations throughout the world.

Sunni Islam is also the predominant sect observed among Muslim Americans.¹³¹ “Sixty-five percent [of Muslim Americans] identify as Sunnis and 11% as Shias.”¹³² The remainder select the generic, non-affiliated “just a Muslim” title.¹³³ Shia Islam is the minority sect in the U.S., just as it is everywhere else in the world except Azerbaijan, Bahrain, Iran, and Iraq. The demographic dominance of Sunni Muslims feeds the misconception that Sunni Muslim populations, practices and beliefs define the whole of Islam, which oftentimes brings about discursive erasure of Shia Islam and other minority traditions.

In line with sectarian demographics, the vast majority of the 2106 mosques in the U.S. follow the Sunni Muslim tradition.¹³⁴ More often than not, these mosques are also segregated through narrow, specific sectarian schools of thought. While earlier generations of Muslim immigrant populations avoided worshipping in sect-specific mosques, the financial stability of early Shia Muslim Americans combined with “the growth in Shi’ite populations as immigrants flee[ing] persecution in Iraq, Bahrain, Saudi Arabia, Afghanistan, and Pakistan” spurred demand for standalone Shia Muslim mosques.¹³⁵

In light of this unprecedented influx of Shia newcomers, “[o]ver 44% of all Shi’ite mosques were established in the decade of the 1990s,”¹³⁶ which reflects Shia Islam’s comparatively less-established presence in the U.S. The growth of Shia Muslim mosques in the U.S. was a salient development: integrated mosques gradually gave way to mosques segregated along sectarian lines, which engendered division along those very boundaries.

After 9/11, mosques of both sects became a focal point for DHS surveillance and monitoring.¹³⁷ Although both federal and local law enforcement made the wholesale assessment that many mosques were

131. The Pew Research Center estimated that the Muslim American population stood at 3.3 million. Besheer Mohamed, *A New Estimate of the U.S. Muslim Population*, PEW RES. CTR. (Jan. 6, 2016), <http://www.pewresearch.org/fact-tank/2016/01/06/a-new-estimate-of-the-u-s-muslim-population/>. However, that figure is believed to be grossly underestimated, with the highest projections at eight million. Beydoun, *supra* note 35, at 1463.

132. *Muslim-American Demographics Reveal a Diverse Group That Rejects Categorization*, HUFF. POST: RELIGION (Mar. 26, 2014, 10:23 AM), https://www.huffingtonpost.com/2014/03/26/muslim-american-demographics_n_5027866.html.

133. Lipka, *supra* note 77.

134. IHSAN BAGBY, *THE AMERICAN MOSQUE 2011: REPORT NUMBER 1 FROM THE US MOSQUE STUDY 2011* (2012).

135. Sacirbey, *supra* note 78.

136. BAGBY, *supra* note 134, at 4.

137. See Matthew A. Wasserman, *First Amendment Limitations on Police Surveillance: The Case of the Muslim Surveillance Program*, 90 N.Y.U L. REV. 1786, 1791 (2015) (discussing the New York City Police Department’s (“NYPD”) “Muslim Surveillance Program” implemented after the 9/11 terror attacks, which preceded DHS’s national counter-radicalization program).

preaching fundamentalist Islam, the majority of Sunni Muslim mosques in the U.S. follow “the more flexible approach of looking to interpretations of Quran and Sunnah (the normative practice of Prophet Muhammad)”¹³⁸ One to three percent of Sunni Muslim mosques adopt Salafism—the textual iteration of Sunni Islam linked to Wahhabism,¹³⁹ the school of thought enshrined by the Kingdom of Saudi Arabia, and the driving force behind the apocalyptic ambitions of “Radical Islamist Terror” networks like ISIS to inspire, and enlist, homegrown radicals in the U.S.¹⁴⁰ Radicals that not only threaten broader national security concerns,¹⁴¹ but from the perspective of Shia Muslims in the U.S., the safety of their community of followers at home and abroad.¹⁴²

Despite both sects being targets of state suspicion and private backlash after 9/11, the rift between Sunni and Shia Muslims began to intensify during this period. The war in Iraq,¹⁴³ followed by other regional conflicts in the coming years, most notably strife in Syria,¹⁴⁴ exacerbated tensions in the region as well as inflamed the sectarian divide among Muslims in the U.S. Shia Muslims contend that inflamed sectarianism stateside also spurred the spread of Shia-phobia at the hands of Sunni Muslims.

2. “Shia-phobia” and Sectarian Tension in the United States

“Shiaphobia”—the belief that Shia Muslims are illegitimate Muslims or apostates, typically by conservative Sunni Muslim groups—which results in legal subjugation and/or private discrimination of Shia Muslim individuals and populations.¹⁴⁵ Rhetoric scholar Shereen Yousuf defines Shiaphobia by its various deployments on geo-socio-political levels, and then categorizes them into different

138. BAGBY, *supra* note 134, at 4.

139. “The Salafiyya had, after all, certain elements in common with Wahhabism, above all disdain for all developments subsequent to *al-Salaf al Salib*” (“The Righteous Ancestors,” generally taken to be the first two generations of Islam). ALGAR, *supra* note 82, at 47.

140. Selim, *supra* note 123, at 1.

141. Selim, *supra* note 123, at 1.

142. Shia Rights Watch is the leading Shia Muslim American nonprofit organization tracking the incidence of anti-Shia violence in the U.S. and abroad. See SHIA RIGHTS WATCH, www.shiarightswatch.org (last visited Jan. 20, 2018).

143. Neil MacFarquhar, *Iraq’s Shadow Widens Sunni-Shiite Split in U.S.*, N.Y. TIMES (Feb. 4, 2007), <http://www.nytimes.com/2007/02/04/us/04muslim.html>.

144. For a primer on the War in Syria, see *Why Is There a War in Syria?*, BBC NEWS (Apr. 7, 2017), <http://www.bbc.com/news/world-middle-east-35806229>.

145. The judging of whether one is Muslim or not is called *tafkirism* (Arabic); see also Eldar Mamedov, *The Scourge of Shiaphobia*, MUFTAH (Aug. 19, 2014), <https://muftah.org/scourge-shiaphobia/#.Wi92doqnE2w> (defining Shia-phobia as “the religious, political, economic and social discrimination against Shias, followers of a minority Islamic sect who are seen by the Saudi state and Wahhabi religious establishment as heretics, traitors to ‘true Islam,’ and Iranian agents.” *Id.*).

clusters, including “attacks on those perceived to be Shi’i” and attacks on “places that occupy significance to Shi’i theology in particular”¹⁴⁶

While more pervasive in the Mideast and Muslim-majority nations,¹⁴⁷ the intensification of sectarian tension in the U.S., impacted by rising hostilities in the Mideast, has given rise to Shiaphobia stateside. Some forms of Shiaphobia are less menacing and more institutionalized, for example, when “Zaytuna College is becoming a US-accredited liberal arts college that offers a BA in Islamic Law and Theology without including Shi’i jurisprudence in their curriculum,”¹⁴⁸ while more menacing forms involve physical violence inflicted on Shia Muslims or places of worship by Sunni Muslims.¹⁴⁹ Therefore, in addition to being exposed to broader forms of Islamophobia,¹⁵⁰ Shia Muslims in the U.S. are also vulnerable to the Shiaphobic attitudes and discrimination (sometimes) inflicted by extreme Sunni Muslim actors.

Tensions between Sunni and Shia Muslim Americans are fluid. Rising and falling in reflection of political circumstances in the Mideast, which are climaxing to frightening heights with the Iran-Saudi Arabia proxy wars in Iraq, Yemen, and Syria.¹⁵¹ Part II examines how the rising strife between Iran and Saudi Arabia, both attempting to expand their spheres of influence in the Mideast, has intensified hostility among Shia and Sunni Muslims in the U.S. and polarized them more than ever before.

While the rising tide of Islamophobia has left both Sunni and Shia Muslim vulnerable to “private Islamophobia”¹⁵² and to varying degrees,

146. Shereen Yousuf, *Right to Offense, Right to Shiaphobia: A Rhetorical Analysis of Yasir Qadhi’s Framings of Offense*, 9 J. SHI’A ISLAMIC STUD. 39, 43 (2016). Yousuf explains the salience of this cluster of Shiaphobia: “Being targeted for commemorative practices is worthy of being designated its own cluster given the prevalence and degree to which anti Shi’i aggression is centered around them, and is therefore deserving of its own space its own space to discuss the trajectories surrounding these practices, and resistance against them” *Id.* at 44.

147. Particularly in nations like Saudi Arabia, where rigid and austere schools of Sunni thought steer government and law, and bring about the subordination and persecution of Shia minority groups within the country.

148. Yousuf, *supra* note 146, at 44–45.

149. One example came out of Dearborn, Michigan:

Shiite mosques and businesses in the Detroit area were vandalized in January, and a Shiite restaurant owner said he’d received a threatening call mentioning his sect. Authorities have yet to identify the vandals. But some Shiite Muslims told local news media they believe Sunnis were behind the broken windows and graffiti because Shiites had celebrated publicly when former Iraqi leader Saddam Hussein, a Sunni, was executed in December by Iraq’s Shiite-led government.

Cathy Lynn Grossman, *Tensions Between Sunnis, Shiites Emerging in USA*, USA TODAY (Sept. 24, 2007, 10:49 PM), http://usatoday30.usatoday.com/news/religion/2007-09-24-muslim-tension_N.htm.

150. Beydoun, *supra* note 25, at 114.

151. Henry Johnson, *This Map Explains the Saudi-Iran Proxy War*, FOREIGN POL’Y (Jan. 16, 2016, 11:34 AM), <http://foreignpolicy.com/2016/01/06/this-map-explains-the-saudi-iran-proxy-war/>.

152. Private Islamophobia is, “the fear, suspicion, and violent targeting of Muslims by individuals or private actors. This animus is generally carried forward by nonstate actors’ use of religious or

“structural Islamophobia,”¹⁵³the galvanizing force of (sectarian-blind) Islamophobia has been eclipsed by the polarizing effect of foreign strife.¹⁵⁴ “We’re good at interfaith work but not intra-faith work,” observes Sayed Mohammad Jawad al-Qazwini, one of the most prominent Shia Imams in the U.S.¹⁵⁵ In the era of counter-radicalization policing, this opens the door for DHS to capitalize on sectarian rifts as counterterrorism opportunity—bisecting American Islam into prospective enemies, for Sunni Muslims; and prospective informants, for Shia Muslims. Furthermore, Shia-phobia also primes Shia Muslims to work against those who perpetuate it, and in some instances, collaborate with law enforcement to push forward CVE policing against them.

As explored below in Part II, the DOS has exploited sectarian divide in the Mideast to push forward an American agenda. A well-suited strategy for advancing domestic national security aims, and as analyzed in Part III, a conducive paradigm for recruiting Muslims to serve on the “front line” in the fight against homegrown terror, or radicalization.¹⁵⁶

II. SECTARIANISM AS FOREIGN POLICY STRATEGY

U.S. foreign policy has long capitalized on sectarian rifts and tensions in the Mideast to expand its sphere of influence in the region and carry forward its economic and political interests. The DOS has also descended upon theatres of sectarian strife to identify new foreign policy opportunities, and in some instances, its maneuvering has intensified sectarian hostilities among Muslim-majority states and non-state actors. For Washington, D.C. officials steering foreign policy in the Mideast, a region imagined to be at perpetual war,¹⁵⁷ sectarian fault lines have been seized as fruitful sources for springing American interests forward. A sectarian strategy has certainly shifted over time, and changes with each presidential administration. Yet, as witnessed in

racial slurs, mass protests . . . or violence against Muslim subjects.” Beydoun, *supra* note 25, at 111.

153. “The fear and suspicion of Muslims on the part of institutions—most notably, government agencies—that is manifested through the enactment and advancement of policies.” Beydoun, *supra* note 25, at 114.

154. “[H]ate crimes against American Muslims were up 78 percent over the course of 2015,” with estimates of 260 hates crimes against Muslims across the country. Eric Lichtblau, *Hate Crimes Against American Muslims Most Since Post-9/11 Era*, N.Y. TIMES (Sept. 17, 2016), <https://www.nytimes.com/2016/09/18/us/politics/hate-crimes-american-muslims-rise.html>. “That was the most since the record 481 documented hate crimes against Muslims in 2001, when the Sept. 11 attacks set off waves of crimes targeting Muslims and Middle Easterners” *Id.*

155. Sacirbey, *supra* note 78.

156. Second Debate, *supra* note 2, at 1 (quoting Hillary Clinton).

157. For a recent illustration of this trope, see *Letters: End Futile Wars in Middle East*, CHI. SUN TIMES (Mar. 27, 2016, 4:22 PM), <https://chicago.suntimes.com/opinion/letters-end-futile-middle-east-wars/> (“That vicious circle of perpetual war promotes and guarantees blowback in the form of suicide bombings or suicidal shooting rampages that can never be completely stopped.”).

the last two decades, sectarian divides and tensions have become a more potent source for the DOS to pit nations in the Mideast against one another, keep the region divided, and carry forward its interests.

This Part provides an overview of U.S. foreign policy strategy in the Mideast, focusing mainly on how that policy navigated and negotiated sectarian dynamics in the region. At the earliest stages, outlined in Subpart A, narrow economic interest in Saudi oil guided DOS intervention in the region, which seeded the more robust and broader engagement that followed. Subpart B examines the subsequent phase, which witnessed the rise of sectarian saber-rattling and strife ushered in by the Shia takeover of Iran, and deepening American allegiance with Saudi Arabia and the fundamentalist brand of Sunni Islam, Wahhabism, it enshrines. Finally, Subpart C analyzes the modern impasse of normalizing relations with Shia Iran under the Obama Administration, and perhaps, retrenching devotion to a Wahhabi Saudi state with ideological and alleged financial ties to Al Qaeda, ISIS and transnational terror networks believed to inspire homegrown radicalization in the U.S.

A. SAUDI ARABIA AND THE U.S.: A COVENANT SOURCED BY OIL

World War II catapulted the U.S. into the global superpower it is today. American engagement on two fronts, particularly Europe, solidified the nation's role and reputation as the "arsenal of democracy that armed the Allies and defeated the Axis."¹⁵⁸ Emerging into the arsenal that helped stave off Nazi fascism in Europe, however, may not have been possible without the nascent monarchy in the Mideast to *fuel* it. The United States needed an endless supply of oil to mount its front against Nazi Germany in Europe and its campaign against Japan in the Pacific, which it eventually found in the very Peninsula where Islam was revealed roughly fourteen centuries earlier.

Six years before the beginning of World War II, American oil companies forged business relations with the Kingdom of Saudi Arabia to extract and refine oil. Two years later, in 1935, "phenomenal reserves of oil were found in Dammam, in the Eastern Province of Saudi Arabia. This was miles away from the future headquarters of the Arabian American Oil Company (Aramco) in Dhahran,"¹⁵⁹ the partnership that forms the foundation of the eighty-one year political alliance between the U.S. and the Kingdom of Saudi Arabia.

At its outset, the Saudi-American covenant bound by oil was purely economic. American oil companies sourced seemingly infinite supplies

158. ARTHUR HERMAN, *FREEDOM'S FORGE: HOW AMERICAN BUSINESS PRODUCED VICTORY IN WORLD WAR II* xiii (2012).

159. Khaled A. Beydoun, *Between Muslim and White: The Legal Construction of Arab American Identity*, 69 N.Y.U. ANN. SURV. AM. L. 29, 69 (2013).

of crude oil to meet escalating demand at home. The Saudis were fortunate to discover the “largest known petroleum reserves in the world”¹⁶⁰ but lacked the human capital and infrastructure to refine, transport and “convert Arabian crude to marketable products,” became completely reliant on the American oil companies.¹⁶¹ The partnership proved wildly lucrative for “the consortium of four American firms (Exxon, Mobil, Chevron, and Texaco) that enjoyed exclusive rights to Saudi oil, [which] reaped three times the profits enjoyed by the Saudi government in 1949.”¹⁶² The economic benefits trickled back to the U.S. government, which “made more off Saudi oil than did the Saudis themselves.”¹⁶³ Consequently, blurring the lines between lucrative economic partnership and political ally, establishing Saudi Arabia’s vitality to broader State Department interests in the region. Oil was not only big business, but at an impasse when American hegemony was met with Soviet competition for the hearts and minds of states in the Mideast (and everywhere else),¹⁶⁴ oil was everything.

This U.S. alliance with Saudi Arabia spawned an early alignment with Sunni Islam and the Wahhabi school of thought enshrined into Saudi law.¹⁶⁵ On February 20, 1945, President Franklin Delano Roosevelt met with Saudi King Abdul Aziz aboard an American warship near Egypt. The meeting marked the “first time a U.S. president met a Saudi king,” which signaled the maturation of a once purely economic partnership into full-fledged political fidelity.¹⁶⁶

Saudi Arabia was, at once, both the leading global supplier of crude oil and a nation-state at the crossroads of Africa, Asia and the Mideast. Indeed, “[the] free flow of oil from the region . . . is a central goal for the United States in the region,”¹⁶⁷ materialized primarily from its alliance with Saudi Arabia. But the Kingdom’s geographic location and geopolitical value was also of great importance to the U.S., particularly because of its adjacency to other oil-producing giants (Iraq and Iran), its unique alliance with Israel, and the threat of Soviet influence creeping into the region.

160. Frank J. Mirkow, *The Nature of Saudi Arabian Strategic Power: Implications for American Foreign Policy*, 17 FLETCHER F. WORLD AFF. 157, 159 (1993).

161. EUGENE ROGAN, *THE ARABS: A HISTORY* 356 (2009).

162. *Id.*

163. *Id.*

164. *Id.* at 321–22 (the Soviet Union established strong relations with Egypt and Syria in the early 1950’s, two pivotal nation in the region that embraced socialism and viewed American capitalism, and interest in the region, with great suspicion).

165. Wahhabism, “prescribes a return to the basic teachings and traditions of Islam as a solution to the Kingdom’s perceived problems.” Mirkow, *supra* note 160, at 161.

166. Adam Taylor, *The First Time a U.S. President Met a Saudi King*, WASH. POST (Jan. 27, 2015), https://www.washingtonpost.com/news/worldviews/wp/2015/01/27/the-first-time-a-u-s-president-met-a-saudi-king/?utm_term=.69568d4a8051.

167. Mirkow, *supra* note 160, at 163–64.

As a result, the Saudi-American partnership evolved into an unwavering seventy-one year alliance between two dramatically different governments. This period witnessed the U.S. indirectly endorsing and facilitating the propagation of Wahhabism within Saudi governmental halls of power. The comprehensive alliance forged by American patronage of Saudi oil bolstered the political influence of ruling Wahhabis, which was particularly visible in their judiciary:

All judges (over 700) are Wahhabi, and the minister of justice is always a senior member of the Wahhabi hierarchy. The courts subject all legal decisions to a narrow and selective interpretation of the Koran and the Sunna, based solely on Wahhabi scholars' interpretation of al-Wahhab and of wider Hanbali Islamic thought.¹⁶⁸

In addition to the courts, Wahhabis exercise dominant influence over the cabinet, Saudi police forces, and the Ministry of Education.¹⁶⁹ Therefore, "Wahhabi clerics are continually indulged as the kingdom's de facto rulers."¹⁷⁰

Wahhabi clerics' unrivaled influence within Saudi Arabia subsequently gave rise to the state's mission to export the fundamentalist Sunni school of thought abroad. If Saudi oil was the cornerstone of its economy, then Wahhabism was the crux of its foreign policy *dawa*,¹⁷¹ or mission to globally export its brand of conservative brand of Islam globally:

[T]he Saudi ministry for religious affairs printed and distributed millions of Korans free of charge, along with Wahhabite doctrinal texts, among the world's mosques, from the African plains to the rice paddies of Indonesia and the Muslim immigrant high-rise housing projects of European cities. For the first time in fourteen centuries, the same books (as well as cassettes) could be found from one end of the Umma to the other; all came from the same Saudi distribution circuits, as part of an identical corpus. Its very limited number of titles hewed to the same doctrinal line and excluded other currents of thought that had formerly been part of a more pluralistic Islam.¹⁷²

The Saudi mission of exporting Wahhabism helped destabilize the region, spur the persecution of Shia Muslims (and other groups) in nations where Wahhabi Islam was introduced, and spawned the growth of transnational terror networks including Al Qaeda and ISIS, which inspires Muslim radicalization in the U.S. and globally.¹⁷³ Saudi's mission to export Wahhabi Islam was also motivated to counter the

168. Mai Yamani, *The Two Faces of Saudi Arabia*, 50 SURVIVAL 143, 146 (2008).

169. "Saudi Arabia's government controls and regulates all education, public and private, in the country. The Saudi educational program is mandatory and explicit—only Sunni Wahhabism can be taught in Saudi schools." Garner & McFarland, *supra* note 112, at 238.

170. Yamani, *supra* note 168, at 146.

171. The Arabic word for the missionary call to Islam, or missionary work.

172. KEPEL, *supra* note 121, at 72.

173. ALGAR, *supra* note 98, at 69.

influence of Iran, which emerged as its chief regional and sectarian rival after the Iranian Revolution of 1979. This rivalry continues today and is probably tenser than ever.¹⁷⁴

B. BETWEEN COLD WAR AND SHIA THREAT

1. *Revolutionary Iran: The Rise of a Shiite Islamic Power*

The Iranian Revolution of 1979 altered the geopolitical landscape in the Mideast.¹⁷⁵ The Shia Islamic theocracy installed by the charismatic Ayatollah Khomeini, who immediately declared “America is the Great Satan” after taking power from the U.S.-backed Shah,¹⁷⁶ elevated Shia Islam into the new image of Islamic evil. For the Ayatollah Khomeini, who “grasped that Karbala was an enormously loaded symbol,” he used the narrative to brand the U.S. and Saudi Arabia as the modern enforcers of oppression on Muslims, in the region and the world at large.¹⁷⁷

The Islamic Revolution in Iran dealt, at once, a double blow to American interests in the region. First, it unseated Shah Mohamed Reza Pahlevi, a monarch keen on steering clear from religion and deepening relations with the U.S., from power.¹⁷⁸

Second, it implemented a Shia Islamic theocracy in his place, marking the first time Shia Muslims had modern control of a nation state. Khomeini’s victory sent deep and transformative reverberations throughout the Shia Muslim world. It also garnered instant allegiance from Shia Muslims populations in between India and Lebanon¹⁷⁹ and from the vantage point of Saudi monarchy sitting across the Persian Gulf, an upstart Shia Muslim power that would rival its regional authority.

174. See Vali Nasr, *The War for Islam*, FOREIGN POL’Y (Jan. 22, 2016, 1:17 PM), <http://foreignpolicy.com/2016/01/22/the-war-for-islam-sunni-shiite-iraq-syria/>.

175. “The Islamic Revolution was one of the most significant events of the Cold War era, for it profoundly altered the balance of power in the Middle East as the United States lost one of its pillars of influence in the region.” ROGAN, *supra* note 161, at 393. For a historic account of the elements that gave rise to the Iranian Revolution, with specific attention to the convergence of distinct elements of Iranian society that formed the popular revolution, most notably secularists and “Islamists,” see KEPEL, *supra* note 121, at 106–13.

176. Ayatollah Ruhollah Khomeini, Speech, American Plots Against Iran (Nov. 5, 1979) (transcript available at <https://web.archive.org/web/20160522133828/http://emam.com/posts/view/15718/Speech/>).

177. HAZLETON, *supra* note 5, at 197.

178. The Shah had been visiting the United States continuously since this accession to power in 1941. “In the American press at that time an interesting series of photographs appeared that showed the Shah in friendly conversation with every American president since Truman.” ALGAR, *supra* note 98, at 121.

179. “The Iranian Revolution and the creation of the Islamic Republic in 1979 transformed Shiite politics in Lebanon. The Shiites of Lebanon were bound to Iran by common religious and cultural ties that spanned the centuries.” ROGAN, *supra* note 161, at 412.

The rise of Khomeini and Iran instantly converted the secular American ally in the region into an Islamic enemy and Shia menace. The months following Iran's transition from Shah-led monarchy to Shia-inspired theocracy elevated Khomeini's stature, and vis-à-vis, his Islamic sect, into principal geopolitical rival:

When the U.S. government allowed the deposed shah into the United States for medical treatment (he was terminally ill with cancer), a group of Iranian students overran the American Embassy in Tehran and took fifty-two American diplomats hostage on November 4, 1979. U.S. President Jimmy Carter froze Iranian assets, applied economic and political sanctions on the Islamic Republic, and even attempted an aborted military rescue mission to relieve the hostage crisis—to no avail. The American government was powerless and humiliated as its diplomats were held captive for 444 days.¹⁸⁰

The Iran hostage crisis cost President Carter the presidency in 1980.¹⁸¹ And by challenging the U.S., it elevated Khomeini's stature within the global Shia Muslim population. Iran's rise in 1979 and expanding influence in the years that followed was the momentous victory that long eluded Shia Muslims, which helped elevate their marginal statuses in their respective homelands and propelled Shia Islam as a political power in the Mideast.

The threat posed by Iran was also felt within the bounds of Saudi Arabia. Inspired by the Iranian Revolution, "Saudi Arabia's Shiite community in the Eastern Province rose in violent demonstrations on November 27 [1979], carrying portraits of the spiritual leader of Iran's revolution, Ayatollah Khomeini, and distributing leaflets calling for the overthrow of the 'despotic' Saudi regime."¹⁸² In three days, the Saudi government violently suppressed the protests, leaving scores of Shia Saudis dead and maimed.¹⁸³ The message from Tehran to Riyadh and Washington, D.C. was loud and clear: Iran was far more than a nation that stood in between American and Saudi interests in the region, it was an orchestrator of a Shia movement that positioned the U.S. and its Sunni ally as sworn enemies.

Consequently, in order to counter expanding Iranian influence in the region, particularly nations with prominent Shia Muslims nations,

180. ROGAN, *supra* note 161, at 413.

181. KEPEL, *supra* note 121, at 114.

182. ROGAN, *supra* note 161, at 394.

183. ROGAN, *supra* note 161, at 394.

the U.S. deepened its allegiance to Saudi Arabia and its broader regional alignment with Sunni Islamic or secular governments. The U.S. publicly backed Saddam Hussein, who helmed a secular state, in Iraq's eight-year-long war with Iran (1980–1988) by financing and arming the dictator.¹⁸⁴ While “Ayatollah Khomeini was urging the Shiis of Iraq to revolt, even to kill him [Saddam Hussein][,]”¹⁸⁵ the U.S. and Saudi Arabia backed (the secularist) Hussein in order to stave off Iranian expansion into the Arab World.¹⁸⁶ The eight-year war, however, would only politically mobilize Shia Muslim communities in Iraq and beyond. Giving rise to proxy militias and parties such as Hezbollah in Lebanon in the early 1980s,¹⁸⁷ and the *Houthis* in Yemen in the 1990s.¹⁸⁸

As a result, the turnover of power in Iraq to a Shia Muslim majority stretched the sphere of Iranian influence as far west as the Levant and into the southernmost reaches of the Arabian Peninsula. The Shia Islamic threat was on the Saudi state's doorstep and firmly steeped in strategic corners that jeopardized American regional interests and propagated the narrative of Shia oppression and the possibility of sectarian strife.

2. Saudi Arabia: An Ally on Two Fronts

The unexpected rise of Iran in the 1980s pushed the DOS to invest even more heavily into Saudi Arabia, its longtime ally and regional Sunni foe. The emergence of Iran and its expanding appeal throughout the region bolstered the DOS “strategy of instrumentalizing sectarian

184. WILLIAM R. POLK, *UNDERSTANDING IRAQ: THE WHOLE SWEEP OF IRAQI HISTORY, FROM GENGHIS KHAN'S MONGOLS TO THE OTTOMAN TURKS TO THE BRITISH MANDATE TO THE AMERICAN OCCUPATION 189* (2005).

185. *Id.* at 129.

186. “[T]op officials in the Reagan administration saw Saddam as a useful surrogate. By going to war with Iran, he could bleed the radical mullahs who had seized control of Iran from the pro-American shah.” Christopher Dickey & Evan Thomas, *How the US Helped Create Saddam Hussein*, GLOBAL POL'Y F. (Sept. 23, 2002), <https://www.globalpolicy.org/component/content/article/167/34978.html>.

187. Robert F. Worth, *Hezbollah's Rise amid Chaos*, N.Y. TIMES (Jan. 15, 2011), <http://www.nytimes.com/2011/01/16/weekinreview/16worth.html?mcubz=3>; see also KEPEL, *supra* note 121, at 123–24 (“The Iranian revolution's heaviest impact . . . [was in] Lebanon.”).

188.

The Huthi movement's origins lie in the Shabab al-Mumanin (the Believing Youth), which began in the early 1990s as a summer school program using modern means—videos and cassette recordings—to promote Zaydism [a branch of Shia Islam] among the literate youth of the north who had largely forgotten their ancestors' religion.

Charles Schmitz, *The Huthi Ascent to Power*, MIDDLE EAST INST. (Sept. 15, 2014), <http://www.mei.edu/content/at/huthi-ascent-power>. “The Believing Youth worked to raise awareness about the Zaydi branch of Shiite Islam, which had dominated Yemen for centuries but was sidelined after a civil war in the 1960s and repressed by the Yemeni government.” Adam Taylor, *Who Are the Houthis, the Group That Just Toppled Yemen's Government?*, WASH. POST (Jan. 22, 2015), <https://www.washingtonpost.com/news/worldviews/wp/2015/01/22/who-are-the-houthis-the-group-that-just-toppled-yemens-government/>.

differences to forge a regional alliance against Iran.¹⁸⁹ Saudi Arabia, the regional fulcrum of Sunni Muslim power, boasted the military,¹⁹⁰ spiritual,¹⁹¹ and economic prowess to contain Iranian influence and Iran's intent to broaden the arc of the "Shia crescent."¹⁹² Through Saudi Arabia, which leveraged petro-dollars and Wahhabism to extend its influence throughout the Arab and Muslim Worlds, American interests were consequently advanced in the face of their mutual Iranian rival.

In addition to jostling with Iran, Saudi Arabia served an integral role in curbing Soviet ambitions in the region. Throughout the 1980s, the Reagan Administration collaborated with the King Fahd-led monarchy of Saudi Arabia to rebuff Soviet aspirations on the outskirts of the Arab World. The U.S. and Saudi Arabia jointly bankrolled Afghan Mujahideen in their war against the Soviet Union.¹⁹³ Afghan jihad was celebrated as noble by Ronald Reagan¹⁹⁴ because it aligned with American geopolitical interests.¹⁹⁵ Yet jihad retained its menacing imagery when tied to the Shia people and government of Iran, illustrating the influence of Saudi Wahhabism on American foreign policy in the 1980s.

American support of Saudi Arabia and its exportation of Wahhabism facilitated the rise of the transnational terror networks that inspire Muslim radicalization today. The Mujahideen, which kept the rival Soviets out of Afghanistan, gave rise to the Taliban—which enshrined Wahhabism as the law of the land in Afghanistan. During the 1990s and the 2000s, the Taliban collaborated closely with Al Qaeda

189. Shireen Hunter, *Sunni-Shia Tensions Are More About Politics, Power and Privilege than Theology*, PRINCE ALWALEED BIN TALAL CTR. MUSLIM-CHRISTIAN UNDERSTANDING, <https://acmcu.georgetown.edu/sunni-shia-tensions> (last visited Jan. 20, 2018).

190. "Saudi Arabia possesses one of the most technologically advanced armed forces in the region, if not the world. It has drawn high technology armaments from powers such as the United States and France in addition to Silkworm missiles from the People's Republic of China." Mirkow, *supra* note 160, at 158.

191. The Kingdom of Saudi Arabia's title as "Custodian of the Two Holy Places [Mecca and Medina] . . . [is] an essential instrument of hegemony over Islam." KEPEL, *supra* note 121, at 75.

192. Yamani, *supra* note 168, at 151. "[A] term first articulated by Jordan's King Abdullah in 2003," to explain Iran's expanding influence in the region, particularly Iraq after the downfall of Saddam, and the bridge the subsequent Shia-majority government of Iraq established with the Shia populations in the Levant. *Id.* (citing Robin Wright & Peter Baker, *Iraq, Jordan See Threat to Election from Iran*, WASH. POST (Dec. 8, 2004), <http://www.washingtonpost.com/wp-dyn/articles/A43980-2004Dec7.html>).

193. Shane, *supra* note 28.

194. "President Ronald Reagan famously welcomed to the Oval Office a delegation of bearded 'Afghan freedom fighters' whose social and theological views were hardly distinguishable from those later embraced by the Taliban[.]" which the U.S. declared war against after 9/11. Shane, *supra* note 28.

195. *See generally* Michael Rubin, *Who Is Responsible for the Taliban?*, MIDDLE EAST REV. INT'L AFF. (Mar. 2002), <http://www.washingtoninstitute.org/policy-analysis/view/who-is-responsible-for-the-taliban>, which provides a throughout analysis of U.S. support of the Mujahideen, who fended off their common foe of the Soviet Union in Afghanistan, and ultimately mutated into the Taliban.

and provided safe-haven to Bin Laden in exchange for soldiers that supported its internal war against the North Alliance:

Bin Laden brought with him to Afghanistan a well-equipped and fiercely loyal division of fighters—perhaps numbering only 2,000. While many of these trained in al-Qa’ida’s camps for terrorism abroad or protected bin Laden and his associates at their various safe-houses, bin Laden made available several hundred for duty on the Taliban’s frontline with Masud, where they assured the Taliban of at a minimum continued balance and stalemate. While the Taliban suffered a high international cost for hosting bin Laden, this was offset by the domestic benefits the regime gained. The war with the Northern Alliance—not recognition by Washington or even the Islamic World—was the Taliban’s chief priority.¹⁹⁶

The Taliban seized the Afghan capital of Kabul on September 26, 1996, giving it control over much of the nation and its most important city.¹⁹⁷ As a result, Afghanistan became a fertile soil where Wahhabi Islam was enforced and a land that harbored Bin Laden and Al Qaeda fighters from all over the world. The American foreign policy objectives of countering Soviet expansion in the Mideast and curbing Iranian influence, which drove greater investment in Saudi Arabia, also had a direct impact on spawning, and facilitating, the emergence of the very terror networks that menace it today by way of terror attacks and inspiring radicalization.

C. MODERN DEVELOPMENTS, SHIFTING AMERICAN SECTARIAN POLICY

1. *An Investment Gone Wrong: Rise of Wahhabi Terror*

“It is now beyond serious dispute that the ideology that old king Saud used to conquer Arabia is now being used by the *jihadists* to wage religious war against the West.”¹⁹⁸

“The struggle over the two banks of the Gulf since the Iranian Revolution in 1979” is still a geopolitical reality in the region.¹⁹⁹ Iran and Saudi Arabia are still jostling and jockeying for regional supremacy in the Mideast,²⁰⁰ and the United States stands loyally alongside its Saudi allies. However, the 9/11 terror attacks spurred renewed suspicion of Saudi Arabia from policymakers, and began to erode Washington, D.C.’s allegiance to it:

196. *Id.*

197. For a descriptive history of the origins of and incidents around the Afghan Civil War, which lasted from 1996–2001, see OLIVIER ROY, *AFGHANISTAN: FROM HOLY WAR TO CIVIL WAR* (1995).

198. Garner & McFarland, *supra* note 112, at 227–28.

199. Muhammad ibn Al-Mokhtar Al-Shinqiti (Mohamed Ghilan trans.), *Sunnis and Shias: Between Engagement & Disconnection*, MOHAMED GHILAN BLOG (Aug. 30, 2015), <https://mohamedghilan.com/2015/08/30/sunnis-and-shias-between-engagement-disconnection/>.

200. See Thom Poole, *Iran and Saudi Arabia’s Great Rivalry Explained*, BBC NEWS (Jan. 4, 2016), <http://www.bbc.com/news/world-middle-east-35221569>.

In the days following 9/11 many eyes turned to Saudi Arabia after it was reported that all of the bombers were committed to Wahhabism, Saudi Arabia's particular brand of Islam. Fifteen of the 9/11 *ihadists* were Saudi nationals. Osama bin Laden was born and schooled in the desert Kingdom and there acquired not only his wealth but religious zealotry as well.²⁰¹

In the aftermath of 9/11, Saudi Arabia was no longer merely the source of oil—but from the vantage point of the state, and a growing segment of the American public, also the source of Muslim terror. The transnational terror network that orchestrated the 9/11 terror attacks, Al Qaeda, which was helmed by bin Laden and was driven by Wahhabism,²⁰² the interpretation of Sunni though that founds its roots in Saudi Arabia. “From 1932 to 9/11 the heirs to the Saud/Wahhab pact maintained their absolute fidelity to Wahhabist principles.”²⁰³ From 1932 to present day, the Wahhabism enshrined and exported by its rulers has made “Saudi Arabia [] the engine of Jihad,”²⁰⁴ or the “fountainhead of the world’s Islamic terrorism.”²⁰⁵

The U.S. alliance with Saudi Arabia has deep roots. Spanning eight decades, the ties that bind Washington, D.C. to Riyadh were evident in more than simply economics or politics. The tens of thousands of Saudi students that enroll in American universities every year,²⁰⁶ and the Ivy League buildings bearing the names of Saudi royalty attest to the depth and breadth of that relationship. Siding with Sunnism and Saudi Arabia paid enormous dividends to the U.S. and cemented its foothold in the Mideast. Over this time span, “U.S. policy in the Middle East [has been] inextricably tied to Saudi Arabia’s diplomatic course.”²⁰⁷ However, the 9/11 terror attacks—and specifically, the identity of the culprits and the brand of Sunni Islam that drove them—seeded doubt and debate about the U.S.’s fidelity to Saudi Arabia.

Legal scholars have argued that Saudi Arabia, which “fosters terrorist ideology should be liable to pay for the damages caused when that ideology seeps across its borders.”²⁰⁸ Initially a scholarly argument,

201. Garner & McFarland, *supra* note 112, at 223–24.

202. Garner & McFarland, *supra* note 112, at 224.

203. Garner & McFarland, *supra* note 112, at 237.

204. Rod Nordland et al., *Surge of Suicide Bombers*, NEWSWEEK, Aug. 13, 2007, at 30–32 (internal quotations omitted).

205. Garner & McFarland, *supra* note 112, at 237.

206. Many Saudi citizens who earn their undergraduate and/or graduate educations in the United States or Europe are becoming an “opposing force in Saudi society,” keen on “advocat[ing] more modern social and governmental structures,” as an alternative to the conservative and austere measures maintained by the ruling Wahhabists. Mirkow, *supra* note 160, at 161. This element generally pushes for a more inclusive and pluralist form of government, “[which encourages] diversity among Sunnis and between Sunnis and Shi’ites,” both of which are stifled by the Wahhabis. Yamani, *supra* note 168, at 144.

207. Mirkow, *supra* note 160, at 163.

208. Garner & McFarland, *supra* note 112, at 228. *See generally id.* (articulating that “Saudi

this argument developed into a case filed in civil court, which catapulted it into a matter debated by mainstream media,²⁰⁹ presidential candidates,²¹⁰ and the public at large. As a result, rising suspicion of Saudi Arabia within government were also mainstreamed in the broader polity.

The state has also linked a series of incidents of mass violence to Wahhabi-inspired terrorism. On December 2, 2015, two “ISIS-inspired” culprits shot and killed fourteen innocent people at the Inland Regional Center in San Bernardino, California.²¹¹ On June 12, 2016, Omar Mateen, an Afghan American with alleged ties to ISIS, executed forty-nine and wounded fifty-three people in the Pulse nightclub in Orlando, Florida.²¹² The “Orlando attack” is considered the “deadliest [terror] attack” since 9/11.²¹³ While ties to ISIS, in both instances, were tenuous, media and state narratives latched onto the idea that the culprits were radicalized by ISIS, despite having no material connection to the terror network aside from reading online literature or making social media statements.

However, staunch alignment with Saudi Arabia, and Sunnism, started to gradually retrench during with the War in Iraq, which witnessed the empowerment of a Shia Muslim government.

2. Empowering Shia Rule in Iraq

For the Bush Administration, the 9/11 terror attacks opened the door to pursue regime change in Iraq. After the War in Afghanistan, the Bush administration looked to protract its foreign war on terror into Iraq, “U.S. policy was driven by a belief that Iraq posed a security threat

Arabia’s dedication to building Wahhabism globally should make Saudi Arabia civilly liable for at least some small part of the harm caused by Wahabist-inspired terrorists.”)

209. For example, see Editorial Board, *Should We Let 9/11 Victims Sue Saudi Arabia? Not so Fast.*, WASH. POST (Sept. 15, 2016), https://www.washingtonpost.com/opinions/should-we-let-911-victims-sue-saudi-arabia-not-so-fast/2016/09/15/fo067338-791f-11e6-bd86-b7bbd53d2b5d_story.html? (articulating opposition to a precedent that could expose the U.S. government to challenges of the same kind from citizens in states the U.S. has engaged in war, proxy war, or aggression of some kind).

210. See John Hudak, *What the 2016 U.S. Presidential Election Means for the Middle East*, BROOKINGS (Feb. 22, 2016), <https://www.brookings.edu/research/what-the-2016-u-s-presidential-election-means-for-the-middle-east>.

211. “Syed Farook and Tashfeen Malik had gone on an ISIS-inspired rampage, killing 14 and injuring 22.” Esmé E. Deprez, *Violence Across American Weighs on Voters’ Minds*, BLOOMBERG (Oct. 19, 2016, 2:00 AM), <https://www.bloomberg.com/news/articles/2016-10-19/in-cities-struck-by-mayhem-election-framed-by-still-raw-wounds>. For an immediate and local account of the “San Bernardino Shootings,” see Paloma Esquivel et al., *Obama: This Was an Act of Terrorism Designed to Kill Innocent People*, L.A. TIMES (Dec. 6, 2015, 5:27 PM), <http://www.latimes.com/local/lanow/la-me-ln-san-bernardino-terror-probe-widens-as-obama-set-to-speak-20151206-story.html>.

212. See Ana Swanson, *The Orlando Attack Could Transform the Picture of Post-9/11 Terrorism in America*, WASH. POST (June 12, 2016), <https://www.washingtonpost.com/news/wonk/wp/2016/06/12/the-orlando-attack-could-transform-the-picture-of-post-911-terrorism-in-america>.

213. *Id.*

through its alleged stockpile of Weapons of Mass Destruction (“WMD”). The U.S. subsequently targeted Iraq in a full-scale military invasion under the banner of ‘Freedom’ within the context of the U.S.’s post-9/11 global ‘War on Terror.’²¹⁴ After toppling Saddam Hussein, the U.S. installed a transitional legal system that expunged the *Ba’ath Party* structure installed by the longtime dictator.²¹⁵ In addition, the new Iraqi government witnessed the empowerment of the nation’s Shia Muslim majority, a group persecuted under Hussein, as the de facto leaders of the new government.²¹⁶

The Iraq War’s aftermath proved transformative for the region. It ushered in two developments that would radically intensify the sectarianism currently gripping the Mideast. First, the postwar tumult in Iraq created the political vacuum that spawned ISIS, the Wahhabi driven terror network that devastates the region and inspires radicalization abroad.²¹⁷ The installation of a Shia Muslim majority government in Iraq also facilitated the emergence of ISIS, a fundamentalist Sunni group.²¹⁸ Second, it opened the door to a Shia majority government in post-war Iraq, marking the first time an Arab nation was effectively controlled by the minority sect.²¹⁹

The political ascendancy of Shia Muslims in Iraq furnished Iran with an allied government within a state it engaged in a bloody eight year with. In addition, Shia Iraq furnished Shia Iran with a direct geography pathway into the Levant, which greatly facilitated its ability to arm and support its proxies alongside the Mediterranean:

The integration of Iraq into the alliance between Tehran, Damascus and Beirut will also influence the balance of power, provide more political, financial and military support and greater strategic depth to Syria. The alliance is also likely to provide more support for Islamic groups such as Hezbollah . . . [in Lebanon].²²⁰

The U.S. sectarian strategy of empowering Iraq’s Shia Muslim majority in postwar Iraq understated the new government’s affinity for the Shia clerical authority in Iran. “U.S. officials believed that Iraq was

214. Hamada Zahawi, *Redefining the Laws of Occupation in the Wake of Operation Iraqi Freedom*, 95 CALIF. L. REV. 2295, 2296 (2007).

215. For discussion of Iraq’s Transitional Administrative Law (“TAL”) in the context of its immediate implementation, see Noah Feldman & Roman Martinez, *The International Migration of Constitutional Norms in the New World Order: Constitutional Politics and Text in the New Iraq: An Experiment in Islamic Democracy*, 75 FORDHAM L. REV. 883 (2006).

216. *Id.* at 907.

217. FAWAZ A. GERGES, *ISIS: A HISTORY*: ISIS 50 (2016).

218. This Article will analyze the emergence of ISIS in Part III.C.1.

219. “The war in Iraq has produced a tremendous change in the Middle East and in the Muslim world at large. For the first time in history, an Arab country is controlled by the Shia.” Ely Karmon, *Iran’s Role in the Radicalization of the Sunni-Shia Divide*, in *SHIA POWER: NEXT TARGET IRAN?* 273, 273 (Michel Korinman & John Laughland, eds., 2007).

220. *Id.* at 285.

far more secular than the Iranian theocracy, and that in any case the traditionally quietist Iraqi clergy would choose to remain outside the political sphere.”²²¹ This presumption, however, proved false. Shia clerics played a pivotal role in the postwar restructuring process²²² and subsequently leveraged their influential role to formalize stronger ties with their Shia Muslim counterparts in Iran.

Consequently, the U.S.’s remaking of the Iraqi government spawned an unprecedented geopolitical shift: two Shia-controlled governments, side-by-side, in the Mideast. Turnover of Iraq from a Sunni-controlled secular state to a Shia-governed state stretched the breadth of the Shia Iran’s arc to unprecedented lengths, and the magnitude of Iranian power to unreached heights. This shift intensified fear of Iranian power in Washington, D.C., and particularly, the menace it posed to its allies in the region. Mounting fear of expanding Iranian regional hegemony made the next domino possible—disarmament of Iranian nuclear capabilities followed by rapprochement between Tehran and Washington, D.C.

3. *Rapprochement with Shia Iran*

Thirty-seven years after the Iranian Revolution ejected a principal U.S. ally and implemented a primary enemy in his place, normalized relations with Iran again seems possible. On January 16, 2016, President Obama brokered a “historic compromise” with Iran that put an end to the latter’s nuclear weapons program.²²³ In turn, this compromise with the longtime rival opened the door for “the U.S. and international community [to] begin the next phase . . . [of] lifting its nuclear-related sanctions on Iran.”²²⁴

The deal between Washington, DC and Tehran also signals the possibility of “wider rapprochement” between the longtime rivals.²²⁵ Relations would enhance the economic interests of both states, but more urgently, enable a coalitional effort against a common enemy in the region: ISIS specifically and Wahhabi-inspired terror networks generally.

221. Feldman & Martinez, *supra* note 215, at 893.

222. Feldman & Martinez, *supra* note 215, at 893–97.

223. “The State Department . . . agreed to pay the Iranian government \$1.7 billion—settling a case that had been tied up at the Hague Tribunal since 1981 after \$400 million in Iranian assets were frozen along with diplomatic relations in 1979. The two countries agreed on a \$1.3 billion compromise on interest.” Eric Bradner, *The Week that Changed U.S.-Iran Relations, Explained*, CNN (Jan. 18, 2016, 8:39 AM), <http://www.cnn.com/2016/01/18/politics/iran-obama-what-happened/index.html>.

224. *The Historic Deal that Will Prevent Iran from Acquiring a Nuclear Weapon*, WHITE HOUSE, <https://obamawhitehouse.archives.gov/node/328996> (last visited Jan. 20, 2018).

225. David Crist, *Burying the Hatchet with Iran*, FOREIGN POL’Y (Mar. 25, 2015, 9:15 AM), <http://foreignpolicy.com/2015/03/25/burying-the-hatchet-with-iran-nuclear-negotiations/>.

With the Iraq War as a cautionary tale, and the fears of putting boots on the ground in Syria or again in Iraq, experts contend that “[t]he United States needs Shia Iran to fight the extremist Sunnis of the Islamic State”²²⁶ Siding with Iran against ISIS presents the DOS with the lone regional power willing to battle the terror network on the ground in Syria and Iraq, since U.S. government officials suspect that Turkey and Saudi Arabia—the Sunni powers in the region—sponsor ISIS, and other Wahhabi-inspired terror groups.²²⁷

Furthermore, beyond the short-term interest of dismantling ISIS, rapprochement with Iran may have more long-term benefits. First, a common ideological thread, Wahhabism, binds the most menacing terror networks in the Mideast. Iran stands in direct opposition to Wahhabism, which inspires ISIS and other kindred terror networks, which stand as “the single greatest threat to the United States emanating from the Middle East.”²²⁸ Choosing Iran, over Saudi Arabia, will enlist a longtime ally against Al Qaeda, ISIS and their ideological progeny, which aligns with DOS’s interest in the region, and as analyzed in Part III, the DHS counterterror objective of countering homegrown radicalization.

Second, anti-Americanism is on the decline in Iran: “an American-Iranian détente has all the force of culture behind it. Anti-Americanism has been in retreat in Iran for decades. Shia Iran is partially democratic and far more sophisticated, enlightened, and Westernized than benighted, culturally sterile Wahhabi Saudi Arabia.”²²⁹

Bisecting Islam, as a foreign policy strategy, experienced a three-phase transition: first, from siding staunchly with Sunni Saudi Arabia; second, isolating Shia Iran as primary geopolitical threat; and third, and during the protracted war on terror that marks Wahhabi inspired terrorism as principal nemesis, the beginnings of a pivot toward détente with Shia Iran.

Indeed, “[t]he United States’ lifting of sanctions in Iran offers optimism for retrenching the rife and politicized sectarianism” gripping

226. Robert D. Kaplan, *Warming to Iran*, ATLANTIC (Jan./Feb. 2015), <https://www.theatlantic.com/magazine/archive/2015/01/warming-to-iran/383512/>.

227. For critical statements from Vice President Joe Biden against Turkey and Saudi Arabia, and their support of ISIS, Al Qaeda and other terror networks, see Adam Taylor, *Behind Biden's Gaffe Lie Real Concerns About Allies' Role in Rise of the Islamic State*, WASH. POST (Oct. 6, 2014), <https://www.washingtonpost.com/news/worldviews/wp/2014/10/06/behind-bidens-gaffe-some-legitimate-concerns-about-americas-middle-east-allies>.

228. Fareed Zakaria, Opinion, *The United States Shouldn't Take Sides in the Sunni-Shiite Struggle*, WASH. POST (Jan. 7, 2016), https://www.washingtonpost.com/opinions/the-united-states-shouldnt-take-sides-in-the-sunni-shiite-struggle/2016/01/07/a992713c-b56f-11e5-a842-0feb51d1d124_story.html.

229. Kaplan, *supra* note 226.

the Mideast.²³⁰ More accurately, the DOS's sectarian shift in the Mideast away from Sunni Saudi Arabia and toward Shia Iran, in fact, aligns with the strategic logic of DHS's domestic counterterror strategy—partnering with Shia Muslims in the U.S. to combat Wahhabi inspired, homegrown radicals. In the global war on terror, where threat is said to be fluid and transnational, foreign policy and domestic policy may be one in the same.

The future of American relations with Iran during the Trump Administration is unclear. President Trump has made public statements about undoing the deal the Obama Administration struck with Iran,²³¹ but at the time of this Article, has yet to do so. Regardless of how the Trump Administration proceeds, it seems likely that the general trajectory of engagement with Iran is moving more in the direction of rapprochement, particularly as the threat of ISIS and offshoot terror networks loom, faring well for a sectarian CVE strategy stateside. A trend that will cool relations with Shia Muslims in the U.S., and in turn, heighten the prospect of enlisting them as domestic allies in the campaign against homegrown radicalization.

III. SECTARIANISM AS DOMESTIC COUNTERTERROR STRATEGY

“If two parties of the faithful fight each other, then conciliate them. Yet if one is rebellious to the other, then fight the insolent one until it returns to God’s command.”

- The Holy Qur’an²³²

“Fighting over the past is a type of crowding over the doors to the future.”

- Muhammad ibn Al-Mokhtar Al-Shinqiti²³³

DHS has prioritized countering homegrown radicalization as its primary counterterror objective. Homegrown radicalization is the process by which Muslims in the U.S. are ideologically inspired by a transnational terror network, such as Al Qaeda or ISIS, and mobilized to commit a terror act. As discussed in Part II.C, the rise of Wahhabi extremism—embodied by the two transnational terror organizations identified above—has been framed by “radicalization theorists” as a brand of “Sunni extremism.” DHS and subsidiary counterterror arms have adopted this baseline, and therefore, profiled homegrown radicalization as a Sunni phenomenon.

230. Beydoun & Zahawi, *supra* note 19, at 60.

231. See Fred Kaplan, *Brace Yourselves for Iran Deal Repeal*, SLATE (July 27, 2017, 3:28 PM), http://www.slate.com/articles/news_and_politics/war_stories/2017/07/trump_may_soon_try_to_kill_the_iran_deal.html.

232. Saud, *supra* note 4, at 87 (citing 49:9 of the Qur’an).

233. Al-Shinqiti, *supra* note 199.

The state presumption that radicalization is a distinctly Sunni Muslim threat opens the door for collaboration with Shia Muslims as partners in counter-radicalization policing. Facilitated by the theological differences examined in Part I and the modern political rivalry analyzed in Part II, DHS is certain to employ both in outreach efforts to resonate with and recruit Shia Muslim as tactical partners and counterterrorism informants. Bisecting Muslims in America, therefore, will be an integral part of counter-radicalization strategy. Although DHS counter-radicalizations programs and policies are facially neutral with regard to framing radicalization as a Sunni phenomenon, let alone Muslim,²³⁴ DHS outreach efforts and community policing take on a distinctly Muslim and sometimes sectarian form.²³⁵

This Part scrutinizes the emerging sectarian strategy deployed by DHS and its local interlocutors to advance the goals of counter-radicalization policing. Subpart A investigates the state's acceptance of homegrown radicalization as a predominantly Sunni phenomenon, while Subpart B reveals the strategic opportunities that framing creates within Shia Muslim communities. By capitalizing on existing sectarian division within the Muslim American population, this per se bisection of American Islam abets the intensification of sectarian hostilities amongst Shia and Sunni Muslims.

A. RADICALIZATION AS A "SUNNI PHENOMENON"

1. *Radicalization Theory*

Counter-radicalization is "built upon the presumption that Muslim identity is associated with a national security threat, and while . . . framed in a facially neutral fashion,"²³⁶ is "cloaked in expertise about the process by which Muslims become terrorists."²³⁷ Radicalization itself is "a social-psychological process through which non-radical Muslims come to a religious worldview that is tolerant, perhaps even supportive, of terrorist violence."²³⁸ Therefore, the process of radicalization is, generally, directly proportional with a Muslim's degree of religiosity or political dissidence²³⁹ and conspicuous

234. The word "Muslim," let alone "Sunni," is not mentioned once in EXEC. OFFICE OF THE PRESIDENT STRATEGIC IMPLEMENTATION PLAN FOR EMPOWERING LOCAL PARTNERS TO PREVENT VIOLENT EXTREMISM IN THE UNITED STATES (2016), the updated report outlining the Obama Administration's reformed strategy and framework for counter-radicalization moving forward.

235. Akbar, *supra* note 29, at 811. Although not explicitly associated with Islam, the term has been linked to Muslims, and counter-radicalization efforts are primarily focused on Muslim communities. Akbar, *supra* note 29, at 811.

236. Beydoun, *supra* note 25, at 114 (including counter-radicalization policing as a form of structural Islamophobia).

237. Akbar, *supra* note 29, at 817.

238. Rascoff, *supra* note 30, at 140.

239. "Marking religious and political activities as the indicators of radicalization, the discourse

expression of religious observance may signal the prospect of a subject becoming radicalized.²⁴⁰ Further, “[r]adicalization [theory] suggests that the path from Muslim to terrorist is a predictable one”²⁴¹

Therefore, the predictive pathway toward radicalization makes it preventable. Prevention is at the core of radicalization theory, which centers exclusively on “Muslim subjects and geographies as presumptive sources of terrorism.”²⁴² Foundational radicalization theory links the propensity for radicalization with “certain religious and political cultures within Muslim communities.”²⁴³ It constructs “an identifiable and predictable process by which a Muslim becomes a terrorist,”²⁴⁴ broken down into four stages: “(1) preradicalization,’ (2) identification,’ (3) indoctrination’ and (4) action.”²⁴⁵

Thus, radicalization theory echoes the baseline that “terrorists are always Muslim”²⁴⁶ because it is almost entirely focused on Islam, and the religion’s capacity to inspire extremism or endorse the belief that “terrorist violence [is] religiously sanctioned.”²⁴⁷ Furthermore, counterterror policing models based on this theory adopted that baseline, and have shaped counter-radicalization policing strategies that prioritize Muslim extremism as the primary, if not the exclusive, concern. In short, radicalization focuses almost exclusively on Islamic threat,²⁴⁸ and in line with contemporary transnational threats, Al Qaeda and ISIS, principally framed as a Sunni Muslim phenomenon.

CVE is the formal counter-radicalization program adopted by the DHS in 2011.²⁴⁹ Adopting the baselines and structure of counter-radicalization theory, the Obama Administration installed CVE as the cornerstone of its domestic war on terror efforts. CVE, structurally, connects federal policing agents with local law enforcement, with the principal objective of identifying prospective radicals in local

links religious and political practices in Muslim communities with the likelihood of terrorism—inviting state scrutiny into the halls of Muslim communities, and changing the terms of engagement with the state for Muslims.” Amna Akbar, *National Security’s Broken Windows*, 62 UCLA L. REV. 834, 879 (2015).

240. Khaled A. Beydoun, *Acting Muslim*, 52 HARV. C.R.-C.L. L. REV. (forthcoming 2018).

241. Akbar, *supra* note 29, at 811.

242. Beydoun, *supra* note 25, at 118.

243. Akbar, *supra* note 29, at 814.

244. Akbar, *supra* note 29, at 820.

245. Akbar, *supra* note 29, at 820.

246. See generally Caroline Mala Corbin, *Terrorists Are Always Muslim but Never White: A Critical Race Approach to Propaganda*, 86 FORDHAM L. REV. 455 (2017) (examining the embedded imagining and counterterror pursuit of terrorism as phenomenon exclusive to Muslims, and not associated with whites).

247. Rascoff, *supra* note 30, at 141.

248. “At the heart of radicalization discourse is the idea that Muslims and Islam are responsible for terrorism. Radicalization discourse creates false and stigmatizing equivalences: between Islam, Muslims, and terrorism, and between Islam, Muslims, and violence.” Akbar, *supra* note 239, at 895.

249. DHS COUNTER-RADICALIZATION PROGRAM, *supra* note 31.

communities, and ideally, arresting them and preventing them from partaking in terrorist acts. The program is almost exclusively focused on Muslim subjects and geographies.

Community engagement is central to CVE. Law enforcement relies heavily on informants within the community to gather information on a radicalization subject,²⁵⁰ and when he or she is graduating toward action, “turning” that individual. DHS and local enforcement seek to partner with civil organizations, religious centers and leaders, private businesses, high-profile community members, students, and more. “Therefore, individuals immersed and respected in the community are the best conduit for communicating with local law enforcement.”²⁵¹

By building these community relationships and inroads within spaces where Muslims worship, congregate and frequent, CVE relies upon its community interlocutors and informants to monitor and gather information about subjects of interest, and in many instances, identify and tip law enforcement about new subjects purported to be prone to radicalization. CVE Policing followed in the footsteps of the theory, and focused almost entirely on Muslims.

2. *Instituting CVE Policing*

In August of 2011, in the midst of his first term in the White House, President Obama established what would become the “signature counterterrorism policy” of his administration.²⁵² Ten years after the 9/11 terror attacks, and creation of DHS²⁵³ and enactment of the US PATRIOT ACT,²⁵⁴ Obama implemented a collaborative, community approach to keep tabs on Muslims in the U.S. Counter-radicalization policing, dubbed “Countering Violent Extremism” by DHS,²⁵⁵ would become the new counterterror paradigm and program.

In its formal rolling out of CVE, DHS explicitly identified Wahhabi inspired terror networks, with a focus on Al-Qaeda, as the

²⁵⁰.

[T]he local police are in significant respects well positioned to tap into their relationships with the local community to useful effect. These relationships are a natural fit for local departments that have been practicing a form of community policing for over a generation. Not only do these long-term, multifaceted relationships have the effect of potentially restraining the impulses towards overly aggressive counterterrorism measures, they form the backbone of a robust intelligence network.

Rascoff, *supra* note 29, at 1734.

²⁵¹. Khaled A. Beydoun, *Beyond the Paris Attacks: Unveiling the War Within French Counterterrorism Policy*, 65 AM. U. L. REV. 1273, 1321 (2016).

²⁵². Rascoff, *supra* note 30, at 127.

²⁵³. DHS was created pursuant to section 111 of The Homeland Security Act of 2002. 6 U.S.C. § 111 (2003).

²⁵⁴. See *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001*, Pub. L. No. 107-56, 115 Stat. 274 (2001).

²⁵⁵. See generally 2011 DHS COUNTER-RADICALIZATION PROGRAM, *supra* note 31.

“challenge.”²⁵⁶ The memo articulated the threat “inspired or directed by al-Qai’ida and its affiliates and adherents,” in addition to neo-Nazis, hate groups, racial supremacists, and “international and domestic terrorist groups” generally.²⁵⁷ However, in light of the resources dedicated to track and assassinate Osama Bin Laden, the threat posed by Al-Qaeda and its sympathizers, and the fear of “lur[ing] Americans to terrorism in order to create support networks and facilitate attack planning” from inside the U.S.,²⁵⁸ the specific brand of violent extremism DHS sought to counter was of the Muslim variety.

DHS’s framing of Wahhabi-inspired terror networks as the principal counterterror challenge, by extension, made Muslims in the U.S. vulnerable to state suspicion and surveillance. Following the community policing model, DHS structured its “community-based approach” to rely heavily on “families, local communities, and local institutions” as CVE partners and informants.²⁵⁹

Therefore, the community-based model ushered in by CVE profiled Muslims in the U.S. as both the ideal counterterror informant and the archetypal radicalization suspect. This paradox was vividly evident in the words of President Obama, who stated, “[a]s extremists try to inspire acts of violence within our borders, we are responding with the strength of our communities, with the respect for the rule of law, and with the conviction that Muslim Americans are part of our American family.”²⁶⁰ While CVE strategy and policing poses immediate challenges for Muslim Americans, President Obama’s rhetoric of reassurance facilitated the aim of establishing partnerships with them. “Engaging” Muslim American partners, both at the institutional and individual level,²⁶¹ is vital for deputizing individuals that hold trusted relationships with prospective radicals. The first and front line of monitoring

256. 2011 DHS COUNTER-RADICALIZATION PROGRAM, *supra* note 31, at 1–2.

257. 2011 DHS COUNTER-RADICALIZATION PROGRAM, *supra* note 31, at 1.

258. 2011 DHS COUNTER-RADICALIZATION PROGRAM, *supra* note 31, at 2.

259. 2011 DHS COUNTER-RADICALIZATION PROGRAM, *supra* note 31, at 2. “Their awareness of the threat and willingness to work with one another and government is part of our long history of community-based initiatives and partnerships dealing with a range of public safety challenges.” 2011 DHS COUNTER-RADICALIZATION PROGRAM, *supra* note 31, at 2–3.

260. 2011 DHS COUNTER-RADICALIZATION PROGRAM, *supra* note 31, at 3 (quoting Barack H. Obama, President of the U.S., Remarks by the President in State of Union Address (Jan. 25, 2011)).

261.

Engagement is essential for supporting community-based efforts to prevent violent extremism because it allows government and communities to share information, concerns, and potential solutions. Our aims in engaging with communities to discuss violent extremism are to (1) share sound, meaningful, and timely information about the threat of radicalization to violence with a wide range of community groups and organizations, particularly those involved in public safety issues; (2) respond to community concerns about government policies and actions; and (3) better understand how we can effectively support community-based solutions.

2011 DHS COUNTER-RADICALIZATION PROGRAM, *supra* note 31, at 5.

prospective radicals would be those closest to the suspected radicals, in turn, converting the most private spaces—one's living quarters, place of worship, business and cultural affiliations, telephone and computer activity—susceptible to investigation by friends, family, and community stakeholders.

Local law enforcement is the second line of CVE surveillance. “Government and law enforcement at the local level have well-established relationships with communities, developed through years of consistent engagement, and therefore can effectively build partnerships and take action on the ground.”²⁶² “Action on the ground” encompasses facilitating relationships with mosques, community leaders, and other stakeholders, conducting “knock and talk” interviews,²⁶³ and arrests. Community engagement is pivotal to CVE strategy and success,²⁶⁴ and the Obama Administration effectively navigated inroads into Muslim American communities by way of progressive rhetoric toward Muslims, an administration that hired Muslims,²⁶⁵ and a presidency that symbolically touted tolerance for Islam—despite protracting war on terror policy. Certainly, the election of Donald Trump, and the Islamophobia he capitalized on to win the presidency, was a marked shift that seems poised to materially alter CVE policing, and erode community engagement with it.

President Trump has proposed a reform of CVE strategy and policing. Echoing the Obama Administration, he prioritizes “expos[ing] the networks in our society that support radicalization.”²⁶⁶ Therefore, President Trump subscribes to the core of radicalization theory; but unlike the Obama Administration, he has discussed shifting radicalization theory and meshing it with his “clash of civilizations” worldview,²⁶⁷ which spawns counterterror policy that heightens the

262. 2011 DHS COUNTER-RADICALIZATION PROGRAM, *supra* note 31, at 6.

263. See generally Shirin Sinnar, *Questioning Law Enforcement—The First Amendment and Counterterrorism Interviews*, 77 BROOK. L. REV. 41 (2011) (analyzing the process and free speech encroachments posed by national security, knock and talk interviews).

264. “DOJ engages in extensive community engagement efforts through many of its offices and divisions. DOJ’s community engagement efforts have included its Community Relations Service (“CRS”), Civil Rights Division, U.S. Attorneys’ offices, and Office of Justice Programs. The FBI undertakes its own efforts through its Community Outreach Program.” Akbar, *supra* note 239, at 859.

265. “Examples include the recently developed position of Special Representative to Muslim Communities within the State Department” (Rascoff, *supra* note 30, at 156), and the White House Muslim Community Liaison, created and staffed by the Obama Administration in May 2016. See Antonia Blumberg, *Meet the White House’s New Muslim American Community Liaison*, HUFF. POST (May 26, 2016, 5:10 PM), http://www.huffingtonpost.com/entry/white-house-muslim-community-liaison-zaki-barzinji_us_57462d15e4b03ede4413d236.

266. See Editorial Board, *Mr. Trump’s Foreign Policy Confusions*, N.Y. TIMES (Aug. 16, 2016), <https://www.nytimes.com/2016/08/16/opinion/mr-trumps-foreign-policy-confusions.html> (internal quotations omitted).

267. See generally Samuel P. Huntington, *The Clash of Civilizations?*, 72 FOREIGN AFF. 22, 22–23 (1993) (espousing the theory that the primary source of state conflict will stem from

presumption that Muslim identity, in all forms, is correlative with terrorism. Trump's counter-radicalization program is, "likely to be renamed Countering Radical Islam or Countering Violent Jihad."²⁶⁸ However, at time of this Article, the Trump Administration had not formally implemented significant reforms to Obama's CVE program.

3. *Framing Radicalization as a Sunni Phenomenon*

Radicalization is framed as a Sunni phenomenon. This framing forms the crux of the CVE Policing model formally adopted by the Obama Administration in 2011, and despite overtures made by President Trump to restructure the program, continues at the time of this Article. The counter-radicalization theory forming the foundation of CVE Policing can be simplified accordingly:

1. If transnational terror networks (Al Qaeda, ISIS) subscribe to Wahhabism; and,
2. Wahhabism is a branch of, and theologically linked to, Sunni Islam; and,
3. Because (at least) fifty-five percent of Muslim Americans observe some brand of Sunni Islam;²⁶⁹ then,
4. That Muslim American demographic is susceptible to becoming radicalized and terror recruitment; which,
5. Compels DHS to marshal its resources to prevent and counter the radicalization of these elements.

Therefore, while counter-radicalization theory driving CVE policing in the U.S. hones in on Islam at large, contemporary manifestations of terror threats, as designated by the Executive, have tailored policing strategies that focus almost entirely on Sunni Muslim populations. This makes these communities, and individuals within and adjacent to them, the primary subjects of surveillance concern. It makes other Muslim populations, including the Shi'a communities, prospective allies and interlocutors. Before examining how Shiite communities figure into CVE recruitment strategy, grappling with counterterror conflation of Sunni Muslims and Wahhabism, a fringe segment of the broader sect, must be examined first.

The DHS presumption that radicalization is a Sunni phenomenon creates far-reaching First Amendment concerns. As examined by a range of scholars and my previous work, the over-inclusive profile of homegrown radicalization as a Sunni phenomenon—instead of a

cultural differences between societies). *But see* Beydoun, *supra* note 45, at 144–45 (critiquing Samuel Huntington's theory, which assumes that Islam is monolithic, by highlighting sectarian division and in-fighting among Muslim groups, indicative of heterogeneity and division).

268. Michael Crowley, *Trump's Terror-Fighting Team Yet to Take Shape*, POLITICO (Dec. 20, 2016, 7:17 PM), <http://www.politico.com/story/2016/12/donald-trump-terrorism-232870>.

269. Lipka, *supra* note 77.

specifically Wahhabi (or Salafi) phenomenon—chills and violates a range of First Amendment concerns, most notably, the Free Exercise of Religion and Speech.

Research illustrates that Wahhabism and conservative Salafi traditions are not often practiced by Sunni Muslims in the U.S. While the majority of Muslim Americans subscribe to Sunni Islam, only one to three percent worship at a Salafi mosque.²⁷⁰ Further, while state and media illustration of Salafi Islam is often distorted and caricatured as anti-American, research provides a different portrait. A survey of Salafi mosques in America uncovers how the tradition may spawn political rigidity and at extreme, subversion. “[O]ver 57% of [Salafi mosque leaders] agree that America is immoral as opposed to 23% of all the other leaders.”²⁷¹

Moreover, ten years after 9/11, twenty-five percent of mosque leaders—many of them also Salafi—responded that “American society is hostile to Islam,”²⁷² a belief central to the apocalyptic worldview fueling ISIS, and pervasive in the propaganda it uses to enlist disaffected Sunni Muslims in war-torn Muslim-majority states, Europe, and the U.S. This evidence counters the inflated number frequently volleyed by conservative sources, like the *Clarion Project*, who conflate Sunni mosques with Wahhabi mosques and distort the statistics collected by surveys of American mosques.²⁷³

To argue that Sunni Islam, as a broad and diverse sect, spawns radicalization is over-simplistic. However, Wahhabism—the brand of Salafi Islam enshrined by Saudi Arabia—promotes a rigid and austere interpretation of Islamic scripture that facilitates extremist views, and as illustrated by the gruesome designs of ISIS in the Arab World and beyond, extreme action:

...Saudi Arabia’s export of the rigid, bigoted, patriarchal, fundamentalist strain of Islam known as Wahhabism has fueled global extremism and contributed to terrorism. As the Islamic State projects its menacing calls for violence into the West, directing or

270. BAGBY, *supra* note 134, at 19.

271. *Id.* at 24.

272. *Id.* at 4.

273. “A large majority of mosques in the United States are led by Wahhabi clerics. Wahhabism is an extreme brand of Islam practiced dominantly in Saudi Arabia. According to Muslim estimates, up to 80 percent of mosques in the U.S. are owned, operated and led by Wahhabis.” KeyLargo, *U.S. Mosques (Wahhabis)*, CLARION PROJECT (Apr. 23, 2013), <http://www.freerepublic.com/focus/bloggers/3011315/posts>.

inspiring terrorist attacks in country after country, an old debate over Saudi influence on Islam has taken on new relevance.²⁷⁴

As discussed in Part II, the global distribution of Saudi Wahhabism has been greatly facilitated by its close alliance with the U.S. Osama bin Laden and Al-Qaeda subscribe to Wahhabism, as does ISIS, which, “adopted official Saudi textbooks for its schools until the extremist group could publish its own books in 2015.”²⁷⁵ Saudi Arabia has financed, or helped finance 16 mosques in the U.S.,²⁷⁶ the majority of which preach and proselytize the literal brand of Sunni Islam espoused by Al-Qaeda and ISIS.²⁷⁷ Yet these mosques are scarce and attended by a small minority of Sunni Muslims.

To stereotype all Sunni Muslims as Wahhabi, or alternatively, believe that non-Wahhabi Sunni Muslims are inclined to attend or adopt views unique to this tradition, demonstrates shallow knowledge of the demographic diversity and jurisprudential heterogeneity within Sunni Islam, or fear.

4. Policing Sunni Communities

DHS and its partners are steered by the presumption that homegrown radicalization is a predominantly Sunni phenomenon. However, this presumption has not fully extinguished the possibility that Shia Muslims may also be susceptible to radicalization. This possibility became more likely under the Trump Administration, which cooled relations with Iran and threatens to undermine the Iran deal struck by the Obama Administration.²⁷⁸ Yet, considering that Shia Muslims are considered apostates by the transnational networks that inspire radicalization, the state’s accompanying presumption is that Shia Muslim radicalization is remote.²⁷⁹ Therefore, the sectarian profile that shapes counter-radicalization policing, and guides the specific demographics to be prioritized, isolates Sunni Muslims as prospective radical threats.

274. Shane, *supra* note 28. In addition to the 9/11 terror attacks in the U.S., Europe has been victimized by a string of Wahhabi-inspired attacks since the 1990s, most notably the Paris Attacks of November 13, 2015. See Beydoun, *supra*, note 251, at 1290–96.

275. Shane, *supra* note 28. “Out of 12 works by Muslim scholars republished by the Islamic State, seven are by Muhammad ibn Abd al-Wahhab, the 18th century founder of the Saudi school of Islam, said Jacob Olidort, a scholar at the Washington Institute for Near East Policy.” Shane, *supra* note 28.

276. Shane, *supra* note 28.

277. For an analysis of how Wahhabi and Salafi thought drive modern terror transnational networks, most notably Al Qaeda, see SAGEMAN, *supra* note 115, at 72.

278. See Andrew Exum, *If Trump Undermines the Iran Deal*, ATLANTIC (July 22, 2017), <https://www.theatlantic.com/international/archive/2017/07/trump-iran-nuclear/534597/>.

279. The prevailing belief is that Shia Muslims tend to be steeped in their beliefs, and less likely to convert. Particularly amid today’s sociopolitical climate, which has reawakened the historical and theological divides outlined in Part I.

This profile dictated which states would become DHS's counter-radicalization policing pilot programs.²⁸⁰ In 2014, DHS announced that Boston, Los Angeles, and Minneapolis would be the first cities assigned with hardline Countering Violent Extremism policing programs.²⁸¹ Boston was prioritized because of the 2013 Boston Marathon Bombings, committed by the Tsarnaev brothers.²⁸² DHS chose Los Angeles as a pilot CVE city because of its proximity to the Mexican border, and California housing a larger population of Muslims than any another state. Finally, Minneapolis is home to a concentrated and large Somali population, which is largely a recent-immigrant community with strong ties to their homeland.²⁸³

While distinct factors motivated DHS to prioritize these pilot cities, the three were bound by: first, were overwhelmingly Sunni Muslim; and second, presumptively connected and vulnerable to transnational terror networks. My previous work examines CVE Policing's priority with Sunni Muslim communities, and most specifically, communities comprised of largely (recent) immigrant, poor and working class populations.²⁸⁴

280. A precedent to federal counter-radicalization policing is the NYPD "Spying on Muslims" Program, employed as early as 2002 by way of, "seeding informants in Muslim communities, most notably mosques and community centers, in the tri-state area." Beydoun, *supra* note 25, at 119.

281. *Countering Violent Extremism (CVE): A Resource Page*, BRENNAN CTR. FOR JUSTICE (Feb. 12, 2015), <https://www.brennancenter.org/analysis/cve-programs-resource-page>.

282. Tamerlan and Dzhokar Tsarnaev, who are of Chechen origin and Sunni Muslims, carried out the "Boston bombings" on April 15, 2013, killing three people and injuring 264. See Nina Burleigh, *The Brothers Who Became the Boston Marathon Bombers*, NEWSWEEK (Apr. 6, 2015, 12:02 PM), <http://www.newsweek.com/brothers-who-became-boston-marathon-bombers-319822>. Tamerlan was killed in the aftermath of the attack, while Dzhokar was imprisoned and sentenced to death. *Id.* For a critique of the "casual racism launched at Chechens" after the Boston Bombings, see Sarah Kendzior, *The Wrong Kind of Caucasian*, AL JAZEERA ENGLISH (Apr. 21, 2013), <http://www.aljazeera.com/indepth/opinion/2013/04/2013421145859380504.html>.

283. Beydoun, *supra* note 35, at 1477.

284. See generally Beydoun, *supra* note 35.

B. SECTARIAN TENSION AS STRATEGIC OPPORTUNITY

“Every day is Ashura, and every land is Karbala.”

- Prominent Shia Muslim chant²⁸⁵

1. *Enemy of the State and Shia Muslims*

Modern Shia Muslim political identity is, in great part, shaped by its turbulent engagement with Sunni Muslim entities and institutions. More specifically, the experience and grand narrative of marginalization in a global Muslim community where they are the minority, and within the vast majority of Muslim-majority states where their populations are second in size to Sunni Muslims, is the crux of Shia Muslim political identity. Indeed, their origin story, discussed in Part I, aligns perfectly with this modern experience and narrative, as “Shias have often invoked the Husayn story to define their conflicts in modern times[,]” and “identify their both their domestic and contemporary rivals.”²⁸⁶

These contemporary rivals are nations-states that subordinate Shia Muslims. For instance, countries like Pakistan and Saudi Arabia, but as discussed in Part II, also include transnational terror networks that victimize Shias, like ISIS. Shia Muslims are heavily persecuted in Saudi Arabia, and this circumstance may move Shia Muslims in the U.S. to function as informants against extremists “radicalized by Wahhabism.” Indeed, the very tradition that drove Saudi Arabia to execute scores of Shia dissidents, including “top Shia cleric,” Nimr al-Nimr on January 2, 2016;²⁸⁷ the tradition that restricts “Shia Muslims to lobby for legislation based on their religious beliefs,”²⁸⁸ and most notably, ISIS and its near war on Shia Muslim populations in the Levant and Gulf regions of the Mideast.²⁸⁹ Shia Muslim opposition to Sunni aggression, in the form of national governments and terror networks, has primed them to support policies against these entities regarding domestic policy within these nation states (in states where they have adequate or

285. A common chant recited among Shia Muslims, particularly during Ashura processions and after Shia communities, or sites, are the targets of Sunni or state aggression. See *Every Day Is Ashura, and Every Land Is Karbala*, ALMANAR (May 12, 2011, 6:17 PM), <http://archive.almanar.com.lb/english/article.php?id=37126>. The chant is also common among Shia American youth, who in concentrated Shia communities like the metropolitan Detroit area, can be found wearing T-shirts showcasing the slogan. Hishaam D. Aidi, *Let Us Be Moors: Race, Islam, and “Connected Histories,”* in BLACK ROUTES TO ISLAM 133 (Manning Marable ed., 2009).

286. NASR, *supra* note 7, at 43.

287. *Sheikh Nimr al-Nimr: Saudi Arabia Executes Top Shia Cleric*, BBC NEWS (Jan. 2, 2016), <http://www.bbc.com/news/world-middle-east-35213244>. Nimr “was a prominent, outspoken cleric who articulated the feelings of those in the country’s Shia minority who feel marginalised and discriminated against. This was a figure active on the sensitive Sunni-Shia sectarian fault line that creates tension in the Kingdom and far beyond.” *Id.*

288. AN-NA’IM, *supra* note 84, at 31.

289. GERGES, *supra* note 217.

even nominal representation within government), and within regard to CVE Policing in the U.S., a group of coveted CVE Policing allies and interlocutors.

Political tension, combined with the framing of radicalization as a Sunni phenomenon, creates opportunity for DHS to build strategic alliances with Shia Muslims to carry forward CVE Policing. For example, DHS adopted counter-radicalization theory. If deconstructed more closely, counter-radicalization theory reveals a connected theoretical basis for enlisting Shia Muslim partners and informants:

1. Since Wahhabism is a branch of and is theologically linked to, Sunni Islam; and,
2. A deeply rooted theological rift divides Shia from Sunni Muslims; which,
3. Motivates transnational terror networks that subscribe to Wahhabism (Al Qaeda, ISIS) to designate Shia Muslim as apostates and propagate their persecution; then,
4. Shia Muslims, who comprise approximately sixteen percent of the Muslim American population,²⁹⁰ are highly unlikely to become radicalized; and,
5. Likely to collaborate with DHS against a kindred enemy that persecutes Shia Muslims abroad.

Capitalizing on divisions with the broader Muslim population, as examined in Part II, has been central to U.S. foreign policy. Regarding CVE, capitalizing on these divisions has been an emerging strategy within Muslim communities.

Shia Muslims do not have to be in the same spaces as Sunnis to monitor them. Shia and Sunnis in the U.S., as outlined in Part I.C.2, are more than likely to worship in their own mosques. However, this does not preclude the possibility of Shias frequenting Sunni mosques in the interest of monitoring a CVE designated subject. Furthermore, the seeding of CVE informants is hardly tethered to mosques. Shias may be deployed to a range of physical spaces, including community centers, political organizations, student organizations, businesses, homes, and entirely secular spaces to monitor a CVE subject of interest. However, CVE programming is also becoming more focused on the Internet and virtual spaces: “[f]or Sunni extremists, social media has revolutionized recruitment opportunities. Fundamentalists no longer have to infiltrate mainstream mosques to attract recruits surreptitiously, but can now disseminate their call to jihad and wait for potential recruits to contact them.”²⁹¹ Therefore, instead of assuming the risks of penetrating

290. Lipka, *supra* note 77.

291. *The Sunni-Shia Divide*, COUNCIL ON FOREIGN REL., https://www.cfr.org/interactives/sunni-shia-divide?cid=otr-marketing_url-sunni_shia_infoguide#!/sunni-shia-divide?cid=otr-marketing_url-sunni_shia_infoguide (last visited on Jan. 20, 2018).

physical and potentially hostile spaces, Shias can simply engage and monitor prospective Sunni radicals on Facebook, Twitter, and other Internet platforms.

Indeed, significant Shia cooperation with DHS to carry forward CVE programming raises considerable security and legal concerns. First, it amplifies the notion among ISIS-inspired individuals and prospective radicals that Shia Muslims are in fact “the spying enemy” by collaborating with the U.S., the other principal enemy.²⁹² Consequently, making Shia Muslims in the U.S. enhanced targets, and therefore, exposing them, Shia mosques, and other visible Shia spaces and institutions vulnerable to the attack of ISIS-inspired radicals.

Second, it formally makes the U.S. government, through the work of DHS and specifically its Office of Community Outreach, a formal participant in the intensification of sectarian tension among Sunni and Shia Muslims. Strategic recruitment of Shias to collaborate with CVE programming against ISIS-inspired Sunnis in the U.S. propagates the “good” versus “bad” Muslim discourse employed by the state after 9/11.²⁹³ But instead of relying on monolithic conceptions of Muslim identity, actions bisect Muslims in the U.S. along political, religious, and sectarian lines to capitalize on that binary. Before examining this budding strategy within the Shia Muslim community, let us examine DHS’s strategic engagement with Sufi Muslim elements to facilitate CVE programming and initiatives in the U.S. In relation to CVE policing, “[t]he phenomenon of engagement is also connected to the selection of specific interlocutors within various Muslim communities—a choice which necessarily implicates ‘theological criteria[,]’”²⁹⁴ and more specifically, perceives the distinct theologies of some groups, including Sufi Muslims, as convergent with domestic counterterror strategy and goals.

2. *Sub-Sectarian CVE Strategy: Enlisting Sufi Support*

Like Shia Muslims, Sufis are a segment of the Muslim population that has also experienced aggression from Wahhabi actors, particularly ISIS.²⁹⁵ Sufism is a tradition within Islam where search for an inner, deeper identity, and developing a “personal relationship with God,”²⁹⁶ is the touchstone. Omid Safi, a leader American scholar on Sufism, writes, “[t]he mystically oriented among Muslims take the emulation a bit

292. GERGES, *supra* note 217, at 82 (quoting al-Zarqawi, the founder of ISIS).

293. See Karen Engle, *Constructing Good Aliens and Good Citizens: Legitimizing the War on Terror(ism)*, 75 U. COLO. L. REV. 59 (2004).

294. Rascoff, *supra* note 30, at 154.

295. Peter Gottschalk, *Who Are the Sufis and Why Does Isis See Them as Threatening?*, CONVERSATION (Feb. 26, 2017, 4:44 PM), <https://theconversation.com/who-are-the-sufis-and-why-does-isis-see-them-as-threatening-73431>.

296. *Id.*

more literally: If Muhammad arose to have his own face-to-face encounter with the Divine, they too aspire to rise in the footsteps of the Prophet, to have their own meeting with God.”²⁹⁷

Broadly dubbed “mystical Islam,” Sufism is a diverse tradition that encompasses a range of orders, which jointly emphasize the importance of self-reflection, the honoring of saints, and collective worship. Primarily Sunnis, Sufis are targeted by Wahhabi as apostates because of their spiritual values and rituals, and perhaps mainly, their veneration for saints.²⁹⁸

Although an approximate figure is unknown, Sufism is commonly practiced by Muslims throughout the U.S. It has been dubbed a “moderate” version of Islam that offers an alternative to the more conservative Sunni traditions,²⁹⁹ particularly Salafism and Wahabbism, for DHS and other state agencies. Abetted by Wahabbi aggression toward Sufis in the Mideast and beyond, DHS strategized to build ties with Sufi leadership in the U.S. to carry forward CVE programming shortly after its inception in 2011. In short, capitalizing on sub-sectarian tension within Sunni Islam to enlist partners, interlocutors and informants in furtherance of CVE strategy.

DHS and DOS found an ally in Hisham Kabbani, a Lebanese American Sufi that helped, “establish the foundation of the Naqshbandiyya-Nazimiyya Sufi Order of America.”³⁰⁰ A vocal critic of mainstream Sunni Muslim American organizations, most notably the Islamic Society of North America and the Council of American-Islamic Relations (“CAIR”), Kabbani infamously stated that “extremism has been spread to 80 percent of the Muslims in the U.S.” and that “there are more than 2,000 mosques in the U.S. . . . and 80 percent of them are being run by extremist ideologies.”³⁰¹ Kabbani’s statement endorsed the stereotype that conflates Sunni Islam with its conservative and extremist strands, Salafism and Wahhabism, and two years before the Obama Administration formally adopted a CVE Policing strategy, supported DHS surveillance and monitoring of Sunni Muslim

297. Omid Safi, *Is Islamic Mysticism Really Islam?*, HUFF. POST: BLOG (May 20, 2011, 12:35 PM), http://www.huffingtonpost.com/omid-safi/is-islamic-mysticism-real_b_841438.html.

298. See generally CARL W. ERNST, *SUFISM: AN INTRODUCTION TO THE MYSTICAL TRADITION OF ISLAM* (1997), for an accessible primer on the history, core value system, and demographics of Sufi Muslims.

299. William Dalrymple, Opinion, *Sufis: The Muslims in the Middle*, N.Y. TIMES (Aug. 16, 2010), <http://www.nytimes.com/2010/08/17/opinion/17dalrymple.html>.

300. *About: Shayka Hisham Kabbani*, HISHAM KABBANI, <http://hishamkabbani.com> (last visited Jan. 20, 2018).

301. Richard H. Curtiss, *Dispute Between U.S. Muslim Groups Goes Public*, WASH. REP. MIDDLE EAST AFF. (June 22, 2009, 3:59 PM), <https://www.wrmea.org/1999-april-may/dispute-between-u.s.-muslim-groups-goes-public.html>.

communities, mosques, and civic institutions as spaces where radicalization, or the prospect of it, looms.³⁰²

Kabbani, joined by other Sufi leaders, formed the World Organization for Resources Development and Education (“WORDE”).³⁰³ WORDE, according to its mission statement, furnishes, “networks with the right resources to build community resilience against extremism [which] is a requisite component to any long-term development strategy for building communities.”³⁰⁴ Its stated objective of “building communities” is proxy language for its principal mission of supporting CVE programming.³⁰⁵ and WORDE spearheaded the creation of the CVE Program in Montgomery County, Maryland,³⁰⁶ led by lawyer and Kabbani acolyte, Hedieh Miarahmadi.³⁰⁷ By developing networks and building relationships with Muslims in the metropolitan Washington, D.C. area, WORDE was able to identify and enlist individuals to serve as eyes and ears on the ground for law enforcement.

The Montgomery County CVE Program, situated in the heart of a metropolitan area with sizable and scattered Muslim communities, furnished DHS with a foothold and endorsement from Sufi Muslims to carry forward CVE Policing. It sponsored “soft” CVE programming, such as workshops, community lectures, and concerts. In his critically acclaimed book, *Rebel Music: Race, Empire, and the New Muslim Youth Culture*, political scientist Hisham Aidi writes, “[m]usic featured prominently at the Sufi Council’s public events as well, with performances by the Naqshbandi Ensemble, who often traveled with Shiekh Kabbani.”³⁰⁸ Cultural, educational and music, “a key component of the Sufi counteroffensive[.]”³⁰⁹ laid the groundwork for the hardline CVE Policing that followed, enabling the recruitment of informants,

302. Furthermore, Kabbani includes, “records of meetings with President Bush, Vice President Cheney, Secretary of State Powell, and Prime Minister Tony Blair’s staff, as well as appearances at various Prevent-sponsored events [British counter-radicalization program] in the United Kingdom,” as “Recent Accomplishments” on his official website. See Rascoff, *supra* note 30, at 155.

303. Elements of the Sufi Muslim community developed formal relationships with the state after 9/11 to counter terrorism in the Mideast, laying the groundwork for engagement domestically. This was, in part, facilitated by the classification of Sufi Islam as “peaceful Islam,” particularly among Orientalist scholars like Bernard Lewis. See Zeyno Baran, *Understanding Sufism and Its Potential Role in U.S. Policy*, NIXON CTR. CONFERENCE REP. (Mar. 2004), http://www.worde.org/publications/commentary/empowering_asj_sufi_muslim_networks/understanding-sufism-and-its-potential-role-in-u-s-policy/.

304. *About Us*, WORDE, <http://www.worde.org/about/> (last visited Jan. 20, 2018).

305. “One of the greatest challenges of the 21st century is to overcome radical ideologies that play a role in social conflict, political instability, and terrorism.” *Id.*

306. Aaron Miguel Cantú, *In Maryland, Faith Leaders and Law Enforcement Fight Radicalization*, AL JAZEERA ENG. (Sept. 12, 2015, 5:30 AM), <http://america.aljazeera.com/articles/2015/9/12/in-maryland-a-new-way-of-policing-radical-ideology.html>.

307. *Id.*

308. HISHAM AIDI, *REBEL MUSIC: RACE, EMPIRE, AND THE NEW MUSLIM YOUTH CULTURE* 75 (2014).

309. *Id.*

identification of key community partners, and build community support around the idea of (Sufi) Muslims being involved in the process of fighting homegrown radicalization.

The Montgomery County CVE Program joined the three pilot programs launched in Boston, Los Angeles, and Minneapolis, but most vividly, displayed how DHS seized upon sectarian tensions and rivalry to carry forward its CVE Policing vision. The targeting and persecution of Sufis, by ISIS and by nation states including Saudi Arabia, its Gulf neighbors, and Pakistan, among others, opened the door for DHS to build a strategic alliance to combat a common rival. A sectarian blueprint it followed with Shia Muslim, evidenced by its attempt to build a program similar to the Montgomery County CVE Program in Dearborn, Michigan—the capital of Shia Islam in the U.S.

3. *A Sectarian CVE Strategy: Reaching Out to Shia Muslims*

In Muslim American communities, the Obama Administration dangled huge sums of money, access to government, government jobs or prospect of government jobs to those who were willing to endorse CVE Policing and to facilitate its implementation and enforcement in Muslim American communities. Again, in order for CVE policing to work to its optimal effect, robust Muslim American support was necessary.

Scores of Muslim American organizations participated, including a “Dearborn group led by Lebanese-Americans”³¹⁰ that changed its name from the Lebanese American Heritage Club to Leaders Advancing and Helping Communities (“LAHC”), a decision motivated, in large part, to access CVE funds from DHS. Led by its Executive Director Wassim Mahfouz, the community organization that limited much of its previous activity to local political and cultural events, received \$500,000 in 2017 to lay the groundwork for CVE Policing in Dearborn, Michigan—home to a concentrated and sizable Muslim American population.³¹¹

Almost overnight, the LAHC converted from local cultural organization into a de facto policing outfit, laced with the resources to lay the groundwork for CVE Policing in Dearborn area schools, community centers, and meeting places. The makeover would create a slew of new jobs for their staff, higher salaries, and just as importantly, direct reach into Washington, DC. Headquartered in the heart of Dearborn, Michigan, LAHC leadership had strong ties with the Shia Muslim establishment and leadership in the city, and leveraged this appeal to DHS, and furnished CVE with the Shia Muslim partner it

310. Niraj Warikoo, *Dearborn Group Gets \$500,000 Grant from DHS to Counter Extremism*, DETROIT FREE PRESS (Jan. 19, 2017, 7:42 PM), <http://www.freep.com/story/news/local/michigan/wayne/2017/01/19/lebanese-american-grant-extremism/96789812/>.

311. *Id.*

coveted, in the most populous Shia Muslim community in the country. Furthermore, intensifying sectarian tension in the Mideast and shifting relations with Iran (who backed the Lebanese Shia Muslim group Hezbollah, which is widely supported by Shia Muslim community in the city³¹²) was key in LAHC seeking to be a primary partner of Dearborn's CVE program.

While Mahfouz stated that "[t]he funding will be specifically used to sustain existing programming . . . [including] youth development, nurturing parenting, substance abuse prevention,"³¹³ these seemingly benign programs were given greater clarity by DHS Secretary, who released a statement the week before it was made public that LAHC received the funding, clarifying, "In this age of self-radicalization and terrorist-inspired acts of violence, domestic-based efforts to counter violent extremism have become a homeland security imperative. . . . The funding will go for activities that include intervention, developing resilience, challenging the narrative, and building capacity."³¹⁴ And schools, under the Trump Administration, would be the terrain where LAHC would have carried out the project of identifying and preempting radicalization.

However, the funds were awarded after the election of Donald Trump, who castigated Islam through rhetoric and policy. Therefore, LAHC was expected to carry forward programming in elementary, junior and high schools in Dearborn that centered on signaling forms of Islamic extremism, reporting suspicious activity of classmates, and developing informants and deputizing teachers as watchdogs within schools under a candidate that declared, "Islam hates us."³¹⁵

CVE policing in a setting like Dearborn would have capitalized on already profuse tensions between Shia and Sunni Muslims to push forward CVE strategy. For example, Lebanese or Iraqi Shiites would have been sought after as informants against Yemeni or Palestinian Sunnis, considering that radicalization is generally understood and enforced as a Sunni phenomenon by the state. The LAHC's identity as a largely Lebanese Shiite organization, again, made it an attractive partner for CVE policing, and the large sum of money it was set to receive would be compensation for stirring sectarian divide to facilitate the state's witch hunt for Muslim radicals among young students. While LAHC, like the Muslim Public Affairs Council ("MPAC") and other

312. "On the streets of Dearborn, Hezbollah is not seen as a terrorist group but as a heroic resistance force." E.A. Torriero, *They're 100% American, and Pro-Hezbollah*, CHI. TRIB. (July 27, 2006), http://articles.chicagotribune.com/2006-07-27/news/0607270148_1_hezbollah-israeli-terrorist-organization.

313. Warikoo, *supra* note 310.

314. Warikoo, *supra* note 310.

315. Jose A. DelReal, *Trump: 'I Think Islam Hates Us,'* WASH. POST (Mar. 9, 2016), <https://www.washingtonpost.com/news/post-politics/wp/2016/03/09/trump-i-think-islam-hates-us>.

groups, garnered ample criticism for carrying forward CVE programming under the Obama Administration, doing so under a Trump Administration was untenable, opening the floodgates for public shaming and outright condemnation.

News of LAHC receiving the funds instantly spread through the metropolitan Detroit community and soon after, the whole country. Activists took action, using social media to critique the organization's subcontracted role in pushing CVE Policing, particularly under a Trump Administration that openly vilified Muslims, proposed a range of damaging policies, and claimed the White House, in large part, was under the banner of brazen Islamophobia.

Abed Ayoub, a Dearborn native and acting Legal Director of the American Arab-Discrimination Committee ("ADC") in Washington, DC, critiqued LAHC on Facebook on January 13, 2017: "Lebanese American Heritage Club. Will say it publicly. This is beyond disappointing. I've always respected the organization and the work you do. But this requires some explanation," he wrote, posting a photo of the DHS press release naming LAHC as one of the CVE grant recipients, for all to see. He later stated, "LAHC's seat in the heart of Shia Dearborn is a major reason why they received the grant. They were going to be used to build resilience programs, similar to the one in Montgomery County [Maryland], and look to recruit Shia youth and adults to monitor Sunnis."³¹⁶

By way of social media shaming, op-eds, and behind-the-scenes phone calls, LAHC declined its CVE grant nine days later.³¹⁷ And in the process, it stifled DHS's attempt to carry forward a sectarian CVE program in metropolitan Detroit. It was a major victory against CVE policing in Detroit, but a slew of other organizations in "locations across the country such as Boston, Minneapolis, Los Angeles," cities with already established hardline CVE Policing programs, and other cities tapped for similar programs, accepted the funding.³¹⁸ Although put to a stop, DHS's efforts to build a formal CVE partnership program within the Shia Muslim community signals the will to continue this strategy moving forward, and indeed try again. While the patent Islamophobia of the Trump Administration was key in undermining DHS efforts with the LAHC, future administrations that veer away from explicitly Islamophobic rhetoric and policy, like the Obama Administration, will

³¹⁶ Interview with Abed Ayoub, Legal Dir., Am. Arab-Discrimination Comm. (Feb. 15, 2017) (on file with Author).

³¹⁷ Associated Press, *US Nonprofits Reject Funds to Fight Extremism Due to Trump*, FOX NEWS (Feb. 2, 2017), <http://www.foxnews.com/us/2017/02/02/us-nonprofits-reject-funds-to-fight-extremism-due-to-trump.html>.

³¹⁸ Press Release, Dep't of Homeland Sec., Statement by Secretary Jeh Johnson Announcing First Round of DHS's Countering Violent Extremism Grants (Jan. 13, 2017), <https://www.dhs.gov/news/2017/01/13/statement-secretary-jeh-johnson-announcing-first-round-dhss-countering-violent>.

likely successfully formalize a CVE partnership in the heart of Shia America, Dearborn, and Shia communities beyond it.

Therefore, enlisting LAHC, a de facto Lebanese Shia Muslim with deep reach and resonance with Shia Muslim leadership and the community, to carry forward CVE policing in the most concentrated Muslim community in the country, would have been successful if not for the election of Trump. If they would have received the funds under an Obama Administration, or a Clinton Administration had Hillary Clinton defeated Trump in the 2016 presidential election, LAHC would of undeniably kept the funds, and moved forward with facilitating DHS's sectarian CVE strategy. A possibility that still looms in the metropolitan Detroit area, and other areas where Shia Muslims live alongside or nearby Sunni Muslim communities.

In *National Security's Broken Windows*, law scholar Amna Akbar writes, “[i]n large metropolitan centers, there are certainly physically contiguous neighborhoods where Muslims of similar racial or class backgrounds reside. In the rest of the country, however, Muslims of different classes, races, nationalities, and linguistic and ethnic groups are more dispersed.”³¹⁹ In addition, communities within major metropolitan areas are also home to communities that are heterogeneous along sectarian lines. Detroit and New York, for instance, house several communities where Shia and Sunni Muslim populations live within the very same neighborhoods, or adjacent to one another. Thus, in addition to examining how class, race and political disposition may influence CVE strategy and engagement, sect is also a vital area law enforcement that seeks to exploit to further its counterterror programs in communities where Shia Muslims live alongside, or proximate to, Sunni Muslim communities.

IV. BISECTING AMERICAN ISLAM AND THE ESTABLISHMENT CLAUSE

A sectarian CVE strategy conflicts with the spirit of the First Amendment's Establishment Clause. However, the current state of Establishment Clause jurisprudence is very much in flux, with the Supreme Court and lower courts divided along lines regarding how to interpret the doctrine. Michael McConnell, a leading First Amendment scholar, frankly stated that “[i]t is a mess.”³²⁰ This mess is one where the Supreme Court and lower courts currently apply several tests to assess whether a state action infringes on the Establishment Clause, most notably, the “Lemon Test,” the “Coercion Test,” and the “Endorsement Test,” all of which are closely examined below.

319. Akbar, *supra* note 239, at 886.

320. Michael W. McConnell, *Religious Freedom at a Crossroads*, 59 U. CHI. L. REV. 115, 120 (1992).

While the court does not have a firmly established test for assessing whether a state or federal policy violates the Establishment Clause, this Part analyzes the possible legal constraints of a sectarian CVE policing strategy in line with prevailing jurisprudence. In part, it is designed to set in motion a broader scholarly discourse and investigation of a sectarian CVE policing strategy, particularly as it adjusts and develops with coming administrations and, with transitions on the Supreme Court, greater uniformity with regard to Establishment Clause jurisprudence. Subpart A provides a snapshot of prevailing Establishment Clause jurisprudence, while Subpart B analyzes the conflicts CVE Policing has with this doctrine.

A. PREVAILING ESTABLISHMENT CLAUSE DOCTRINE

The First Amendment holds that “Congress shall make no law respecting an establishment of religion . . .”³²¹ What qualifies as establishment of religion has been interpreted diversely and distinctly, particularly by the Supreme Court, which currently applies a range of tests to assess whether a state policy or program violates the Establishment Clause. While there are a number of applied tests, the most common three are the Lemon, Endorsement, and Coercion Tests.

1. *The Lemon Test*

In *Lemon v. Kurtzman*, the Court established a three-part test to assess whether the law or policy at issue violates the Establishment Clause.³²² The law at issue: (1) must have a primary secular purpose, (2) may not have the principal effect of advancing or inhibiting religion, and (3) may not foster excessive entanglement with religion.³²³ If the law violates any of these three prongs, the state action will be deemed unconstitutional under the Establishment Clause.

The Lemon Test, ushered in by the Burger Court, has been widely criticized by conservative justices since its inception in 1971. Justice Scalia, among its most ardent critics, famously analogized the Lemon Test to a “ghoul in a late-night horror movie that repeatedly sits up in its grave and shuffles abroad, after being repeatedly killed and buried,” in 1993,³²⁴ indicating its declining favor within the Supreme Court. Several scholars, most notably Michael McConnell, have also criticized the Lemon Test, stating that the test’s ambiguity has led “lower federal courts and state courts [to give] the test widely different and seemingly contradictory interpretations, and they often ignore it altogether to

321. U.S. CONST. amend I, art. III.

322. See *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

323. *Id.* at 612–13.

324. *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 398 (1993).

avoid undesirable results.”³²⁵ Therefore, although *Lemon* has not been expressly overruled by the Supreme Court, the test has fallen out of favor among current Supreme Court justices. Still, it remains the favored test—or at least a doctrinal starting point among the lower courts.

2. *The Endorsement Test*

Frustration with the *Lemon* Test opened the door for another instrument to assess the meaning of the Establishment Clause. In 1984, Justice Sandra Day O’Connor introduced what came to be known as the Endorsement Test.³²⁶ The test has been framed as an extension of the *Lemon* Test by some,³²⁷ while also treated as an entirely separate and standalone metric in other cases.

Per its name, the Endorsement Test investigates and asks whether a specific state action amounts to an endorsement of (or against) a particular religion.³²⁸ By using the reasonably prudent person (“RPP”) inquiry, a standard widely applied in other areas of law, the test assesses whether a reasonable observer would view the state action or policy as endorsing a specific religion or religious practice. If the answer is yes, courts applying the Endorsement Test will find the state action to be in violation of the Establishment Clause. Justice O’Connor writes, “[endorsement] sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.”³²⁹

In 2004, in *Elk Grove Unified School District v. Newdow*, Justice O’Connor identified additional relevant factors including: (1) history and ubiquity; (2) absence of worship and prayer; (3) absence of reference to a particular religion; and (4) minimal religious content.³³⁰

The Endorsement Test is also declining in support in courts.³³¹ The retirement of Justice O’Connor in 2005,³³² the original author and chief

325. Michael W. McConnell, *Stuck with a Lemon: A New Test for Establishment Clause Cases Would Help Ease Current Confusion*, 83 A.B.A. J. 46 (1997).

326. See generally *Lynch v. Donnelly*, 465 U.S. 668 (1984). The Endorsement Test was adopted by a majority of Supreme Court in *Cty. of Allegheny v. Am. Civil Liberties Union*, 492 U.S. 573 (1989).

327. See, e.g., Kyle Langvardt, *The Lawless Rule of the Norm in the Government Religious Speech Cases*, 20 WASH. & LEE J. C.R. & SOC. JUST. 405, 425 (2014).

328. *Id.* at 419–21.

329. *Id.* at 419 n.6 (quoting *Lynch*, 465 U.S. at 690 (O’Connor, J., concurring)).

330. *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 37–43 (2004).

331. The test also has detractors within the legal academy. For an analysis of the Endorsement Test’s shortcomings, see Jesse H. Choper, *The Endorsement Test: Its Status and Desirability*, 18 J.L. & POL. 499, 510–35 (2002); see also Langvardt, *supra* note 327, at 436–40 (characterizing Endorsement, along with the other predominant Establishment tests, as a thin mask for judicial fact-finding when applied to government religious speech).

332. Richard W. Stevenson, *O’Connor, First Woman Supreme Court Justice, Resigns After*

proponent of the Endorsement Test, signaled a decline in the test being used as the principal tool for testing the bounds of the Establishment Clause by the Supreme Court. However, it is regarded by some as the “reigning standard by which potential Establishment Clause violations are judged.”³³³ Thus, the Court, depending on its composition, may very well examine a sectarian CVE strategy using the Endorsement Test if a claim were to reach the Supreme Court.

3. *The Coercion Test*

A 1992 Supreme Court decision addressing whether public schools can sponsor faith group leaders to lead prayer on campus introduced a third test used to assess the bounds of the Establishment Clause. In *Lee v. Weisman*, Justice Anthony Kennedy wrote the majority opinion that included the framing and articulation of the “Coercion Test.”³³⁴ Within the factual context of the case, Kennedy defined government coercion as placement of:

[S]ubtle and indirect public and peer pressure on attending students to stand as a group or maintain respectful silence during the invocation and benediction. A reasonable dissenter of high school age could believe that standing or remaining silent signified her own participation in, or approval of, the group exercise, rather than her respect for it. And the State may not place the student dissenter in the dilemma of participating or protesting.³³⁵

Beyond the public school context, Justice Kennedy offered a broader articulation of coercion, writing “[i]t is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way which ‘establishes a [state] religion or religious faith.’”³³⁶

Justice Scalia, among others, critiqued a softer version of the Coercion Test,³³⁷ by arguing that the established tradition of permitting non-sectarian prayer at public schools conflicted with the test and the ruling in *Weisman*. In essence, Justice Scalia was arguing for a harder articulation of coercion that made it very difficult to bring Establishment Clause claims against a state actor. Justice Scalia’s critique, and more conservative conception of coercion, again signaled the great division within the Supreme Court with regard to how to

24 Years, N.Y. TIMES (July 1, 2005), <http://www.nytimes.com/2005/07/01/politics/oconnor-first-woman-supreme-court-justice-resigns-after-24-years.html>.

333. Rascoff, *supra* note 30, at 170.

334. *Lee v. Weisman*, 505 U.S. 577 (1992). Kennedy’s variation on the coercion test is idiosyncratic; he is the only one who believes that peer pressure can count as coercive. Kennedy clarified that the peer-pressure rationale does not extend to adults in *Town of Greece v. Galloway*, 134 S. Ct. 1811, 1827 (2014).

335. *Weisman*, 505 U.S. at 578.

336. *Id.* at 587.

337. *Id.* at 631–47.

interpret the Establishment Clause and which test to apply in claims alleging violations, which continues today even after his passing in February of 2016.³³⁸

This has created great confusion within the Supreme Court today, and a scattered and unpredictable jurisprudential landscape with regard to resolving claims involving the Establishment Clause—including CVE policing. The following section will highlight the most compelling Establishment Clause claims against CVE policing within the framework of these three tests. Although the future trajectory of the Establishment Clause jurisprudence is unclear, the analysis provides general guidance as to the nature of the claims that may be advanced within a Court divided along jurisprudential lines.

B. CONFLICTS AND CONSTRAINTS

In *Constructing Good Aliens and Good Citizens: Legitimizing the War on Terrorism*, Karen Engle argues that the war on terror is enabled by an underlying binary that classified Muslim citizens as either “good” and “bad.”³³⁹ More specifically, “the good Muslim category provides a means . . . to support the United States’ internal as well as external attempts to fight the war on terrorism [against bad Muslims], thus reinforcing the war’s legitimacy.”³⁴⁰

After 9/11, citizens performed the role of “good Muslims” by denouncing terrorism, supporting the war on terror, and waving the American flag.³⁴¹ However, in the counter-radicalization era, being a good Muslim citizen is manifested by endorsement of the CVE Program, partnering with DHS as a community stakeholder to carry it forward in designated communities, and perhaps most optimally, serving as an informant.³⁴² Muslims who support CVE programming, and moreover, observe a sect or interpretation of Islam that is believed to be insulated from the dangers of radicalization, are presumptively good Muslims. Those who do not, and worship a sect that is linked, or within the penumbra, of an interpretation or tradition linked to radicalization, are conceived of as bad Muslims.

This good/bad binary, which has driven war on terror policy and engagement of Muslim communities following 9/11, has taken on greater sectarian implications with the formal institution of CVE programming and policing. By pursuing and framing radicalization as a Sunni phenomenon, the state is tacitly classifying Sunni Islam as the

338. Adam Liptak, *Antonin Scalia, Justice on the Supreme Court, Dies at 79*, N.Y. TIMES (Feb. 13, 2016), <https://www.nytimes.com/2016/02/14/us/antonin-scalia-death.html>.

339. See Engle, *supra* note 293.

340. Engle, *supra* note 293, at 62.

341. Engle, *supra* note 293, at 101.

342. See Beydoun, *supra* note 240.

source inspiring homegrown radicals, and thus, the sect responsible for mobilizing bad Muslims (with regard to radicalization).

In *Establishing Official Islam?: The Law and Strategy of Counter-Radicalization*, Samuel Rascoff analyzes whether the counterterror program meets the constitutional parameters of prevailing First Amendment Establishment Clause doctrine.³⁴³ His analysis, however, does not grapple specifically with endorsement or castigation of specific sects, but instead, grapples generally with sweeping and stereotypical iterations of Islam adopted by state agencies, and their civic organization interlocutors. Though several of these civic organizations, such as MPAC and CAIR, are in part motivated by sect, Rascoff does not engage with sectarianism and its impact. By providing a general analysis of how prevailing CVE policy and policing may infringe on the Establishment Clause, this Article extends the analysis and enables future examination along lines of sect.

1. A Lemon Test Analysis

Under the Lemon Test, an Establishment Clause challenge against CVE under a sectarian theory must prove that it: (1) does not have a primary secular purpose, (2) may have the principal effect of inhibiting religion; and (3) may foster excessive entanglement with religion.³⁴⁴ CVE strategy and policing, as it currently stands, has the principal objective of countering terrorism, and specifically, preventing homegrown radicalization. Although the definition of radicalization, as applied and pursued by DHS, aligns with Islam, the fundamental purpose of the program is secular in nature.

Moving on to the second prong, CVE policing strategy does have the effect of inhibiting the practice of Islam, and although in its infancy, a sectarian CVE policing strategy may inhibit the free exercise of Sunni Islamic traditions. “Through its enforcement, CVE marks radicalization as an identity crime assigned to Sunni Muslim Americans[,]”³⁴⁵ therefore, Sunni Muslims may fear outward expression or observation of their faith for fear of the prospect of inviting CVE surveillance.

Furthermore, whether a sectarian CVE policing strategy violates the second prong of the Lemon Test hinges on whether inhibiting the practice of Sunni Islam is the program’s “principal” effect.³⁴⁶ In the program’s current form, courts will likely rule against a challenge stating a sectarian theory, largely because of the uncertainty of CVE’s future direction under the Trump Administration, and also because a sectarian strategy is still in its embryonic stages. However, the more

343. See Rascoff, *supra* note 30, at 162–79.

344. *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971).

345. Beydoun, *supra* note 240, at 34.

346. *Lemon*, 403 U.S. at 612.

DHS seeks to partner up with Shia, Sufi and other minority sects and sub-sects against Sunni traditions it profiles as vulnerable to radicalization, the riper and resonant an inhibition of religion argument becomes.

The third prong of the Lemon Test, investigating state entanglement with a religious institution, sheds more light on a sectarian CVE strategy. Entanglement arises when the relationship between a state actor and religious institution requires, “comprehensive, discriminating, and continuing state surveillance”³⁴⁷ Thus, the first order of inquiry is into the character of the institution partnering with DHS to carry forward CVE policing, or receiving funds from DHS to partake in CVE programming. If the organization is a secular civic organization, then the prospect of entanglement is minimal. However, if it is a religious organization, such as a Shia Muslim mosque or educational center, then the prospect of entanglement rises.

Therefore, instead of partnering with and distributing CVE grants to religious organizations, DHS will seek to partner with proxy actors in order to circumvent entanglement. This is illustrated by the case study cited in Part III, whereby DHS allocated funds to the LAHC, a civic organization while outwardly and legally secular in nature, has deep and intimate ties with the Shia Muslim religious establishment. By partnering with LAHC, instead of religious leadership at the Islamic Center of America, for instance, DHS is able to stave off the appearance of direct entanglement, and as articulated below, the appearance of endorsement. In sum, entanglement raises the greatest concerns for a sectarian CVE strategy, thus making the Lemon Test—if applied by a court—an attractive test for those challenging it.

2. Endorsement Test Analysis

Does a sectarian CVE policing strategy endorse Shia Islam as a preferred or “moderate” form Islam while branding Sunni Islam a sect that inspires radicalization? This is the fundamental query attached to an Endorsement Test analysis of a sectarian CVE policing strategy. More specifically, will an RPP finding that CVE, in its current form, endorses one sect of Islam over the other?³⁴⁸

Framing and pursuing CVE as a Sunni Muslim phenomenon is tantamount to a negative endorsement. Fearing that Sunni Muslims, of various traditions, may radicalize, and pursuing subjects that fit within this profile, as discussed in Part III, opens the door for collaboration with Shia Muslims that if not internally, but publicly, may amount to an

347. *Id.* at 619.

348. *See Lynch v. Donnelly*, 465 U.S. 668 (1984).

endorsement of Shia Islam. Again, since Shia Islam is at odds with Sunni Islam, and (extremist) Sunni Islam is the sect adopted by Al Qaeda, ISIS and other terror networks that (are purported to) inspire radicalization, then collaboration with Shia Muslim institutions and individuals may amount to a de facto endorsement of the sect. And, particularly as a sectarian CVE strategy mounts and expands, the impression held by a reasonable person.

In essence, the Endorsement Test “looks at violations of the Establishment Clause in terms of political equality and the recognition of religious pluralism.”³⁴⁹ This mandate of equality and commitment to religious pluralism is infringed upon by the idea that a state agency has effectively cast one sect, Sunni Islam, as a source of radicalization, while another, Shia Islam, an exempt from and opposed to this threat. Furthermore, since CVE is a form of “structural Islamophobia,”³⁵⁰ framing radicalization as a Sunni phenomenon, and Shia Islam as exempt from susceptibility to radicalization, are messages filtered to the broader polity, which brands the latter with a negative endorsement and the former sect with a positive one in regard to domestic counterterror policy.³⁵¹ However, as articulated above, DHS will seek to circumvent this appearance by drafting formal CVE memoranda that frames radicalization, or the prospect of it, in broad non-sectarian terms, and second, avoid working directly with per se religious institutions.

With its emphasis on endorsement, or the appearance of it, over material engagement and entanglement with a religious institution, the Endorsement Test offers a favorable basis for arguing that a sectarian CVE policing strategy violates the Establishment Clause.

3. Coercion Test Analysis

The primary query under the Coercion Test is whether a sectarian CVE policing strategy “coerce[s] anyone to support or participate in religion or its exercise, or otherwise act in a way which ‘establishes a [state] religion or religious faith’”³⁵² Framed more specifically: first, does a sectarian CVE policing strategy compel Muslims support or observe Islamic traditions that are not associated with radicalization, and second, does it establish a specific sect (of Islam) as the state’s preferred tradition?

349. Rascoff, *supra* note 30, at 170.

350. Beydoun, *supra* note 25, at 115.

351. I call this process “dialectical Islamophobia,” whereby state policy, “shapes, reshapes, and confirms popular views or attitudes about Islam and Muslim subjects inside and outside of America’s borders.” Beydoun, *supra* note 25, at 119.

352. *Lee v. Weisman*, 505 U.S. 577, 587 (1992) (quoting *Lynch*, 465 U.S. at 678).

In *Establishing Official Islam*, Rascoff writes that “the state is more likely to underwrite liberal Muslim voices, putting pressure on groups and individuals to reconfigure their belief systems to suit the temper of the times.”³⁵³ “Reconfiguration” may be along broad religious lines, for instance, pushing individuals from a position of devoutness to that of a secular disposition. Or, internally, from an Islamic sect marked as being prone to radicalization to one that is deemed “liberal” or “moderate,” such as Sufi or Shia Islam.

Since the “core intuition behind counter-radicalization is that the prevention of future violence requires official involvement in shaping the ideational currents that are thought to underpin that violence,”³⁵⁴ this process of shaping what qualifies as “moderate” Islam and “Islamic extremism” has the effect of incentivizing Muslims to practice sects or traditions the state has sanctioned as moderate in relation to counterterrorism (Sufism, Shia Islam), and pressures against observing iterations DHS links to radicalization (Salafi, Wahabbis Sunnism).

This pressure from the state has the effect of sanctioning non-threatening Islamic traditions, while casting those linked to radicalization as pariahs. In turn, giving rise to state action that veers in the direction of establishing specific forms of Islam as traditions preferred by the state, and those branded as pariahs castigated by the state.

Beyond the three most prominent tests, dicta from a notable Establishment Clause case in 2005 may provide more guidance for state action that exacerbates sectarian tension. In *Van Orden v. Perry*, a Supreme Court case involving a display of the Ten Commandments in on the grounds of the Texas State Capitol building in Austin,³⁵⁵ Justice Breyer’s concurrence provides persuasive authority against a CVE sectarian strategy that not only exploits tensions between Sunni and Shia Muslims, but indeed, exacerbates them. Quoting Justices Goldberg and Harlan, Breyer writes that, “[G]overnment must ‘neither engage in nor compel religious practices,’ that it must ‘effect no favoritism among sects”³⁵⁶

Within the framework of CVE strategy, which ties radicalization to Sunni Islam and, in the interim, viewed Shia Muslims as insulated from radicalization, the pursuit of the latter may be tantamount to the favoritism Breyer, and the justices he echoes, warned against. Which, considering the turbulence marring Establishment Clause jurisprudence, provides persuasive guidance for a legal critique of a sectarian CVE strategy.

353. Rascoff, *supra* note 30, at 177.

354. Rascoff, *supra* note 30, at 127.

355. See *Van Orden v. Perry*, 545 U.S. 677, 698–705 (2005).

356. *Id.* at 698.

C. LOOKING AHEAD

As illustrated above, there are still many questions to be answered with regard to the future of Establishment Clause jurisprudence—an area of constitutional concern that has been dismembered and divided for decades. This lack of clarity also pervades the future of CVE strategy and policing. However, President Trump and the Republican Party at large have demonstrated a commitment to counter-radicalization,³⁵⁷ and it is highly likely that a future administration run by a Democrat would restore the philosophy and strategy employed by the Obama Administration.³⁵⁸ Thus, it is my position that counter-radicalization is here to stay, and will form the foundation of DHS's counterterrorism program for many years to come.

Furthermore, it is also possible that the Supreme Court, divided along lines of Establishment Clause jurisprudence, may favor DHS and push it to take risks in regard to carrying forward a sectarian CVE strategy. A divided court and an absence of clear and uniform Establishment Clause guideposts create less rigidity. Therefore, DHS may very well explore partnerships with Shia Muslim elements more aggressively amid this constitutional flux, emboldened by ambiguity and the ability to make justifications in line with constitutional standards that favor them.

Finally, with sectarian tensions more hostile than ever in the Mideast and this culture of Sunni-Shia rivalry festering stateside, this rift provides too attractive and potent an opportunity for DHS to overlook as an expedient to push CVE forward. While the Trump Administration has dealt a blow to the community engagement dimension of CVE, given that Muslim American organizations of all stripes are resistant to work with a DHS controlled by his administration, the counterterrorism program's short-term future is largely unclear. Ironically, it is likely the case that a sectarian CVE strategy would be more robust under a Democratic Administration, like the Obama Administration, or under a less reactionary and traditional

357. See Julia Edwards Ainsley et al., *Exclusive: Trump to Focus Counter-Extremism Program Solely on Islam-Sources*, REUTERS (Feb. 1, 2017, 3:17 PM), <https://www.reuters.com/article/us-usa-trump-extremists-program-exclusiv/exclusive-trump-to-focus-counter-extremism-program-solely-on-islam-sources-idUSKBN15G5VO?il=0>.

358. Counter-radicalization policing, the signature national security program implemented by the Obama Administration, was strongly supported by Hillary Clinton during her candidacy for the presidency in 2016. However, CVE under Obama and, if Clinton were elected, would be built around the community partnership model cultivated from 2011–2016, which mandates rhetoric and outreach efforts that divide Islam into “moderate” and “radical,” instead of the categorical castigation employed by Trump. This philosophy is held by most members of the Democratic Party, and in my opinion, would be the counter-radicalization program adopted by (most) Democratic Party candidates vying for the presidency in 2020.

conservative president. One of which is surely to follow the Trump Administration.

CONCLUSION

The U.S. State Department has long employed a sectarian foreign policy strategy to advance its interests in the Mideast. Until recently, Washington, D.C. stood staunchly with Saudi Arabia, the Sunni Muslim superpower in the region, while spurning Iran, the Shia Muslim hegemon that emerged in 1979 after the Islamic Revolution.

The DOS's sectarian strategy reaped early benefits, in the form of exclusive rights over Saudi oil and staving off Soviet influence in the Mideast. But the DOS's unwavering allegiance to Saudi Arabia, today, exposes it to foreign attacks and "homegrown radicalization" inspired terror networks driven by the extremist Sunni ideology enshrined by its longtime Sunni ally. Through an at all costs support of Saudi Arabia, the U.S. has abetted the spread of an ideology that spawned Al Qaeda, which coordinated the 9/11 terror attacks; and most recently, the Islamic State of Iraq and Syria—the terror network inspiring homegrown radicals in the U.S. to commit acts of terror in American cities, and abroad.

A sectarian strategy employed by DHS to advance its counter-radicalization program was emerging under the Obama Administration. In addition to integrating the historic and theological divisions between Sunni and Shia Muslims into legal literature, this analyzed how: first, increased polarization between Shia and Sunni Muslims facilitates DHS's ability to recruit the former to monitor the latter; and second, how a sectarian counter-radicalization strategy makes the State an active participant in exacerbating sectarian tension among Muslim Americans, which may infringe on the First Amendment Establishment Clause. The seeds of this sectarian CVE strategy were planted by the Obama Administration, and with sectarian tension increasing in Muslim communities abroad and stateside, it will provide a source of strategic exploitation for DHS during the protracted war on terror.

Despite the lack of programmatic and strategic clarity ushered in by the Trump Administration, CVE is poised to remain the cornerstone of DHS's domestic counterterror program. While specific administrations may tweak the philosophy in line with political view, the crux of it, and the theory, seems to be well in place. Therefore, for as long as radicalization is exclusively or deeply associated with Islam, and sectarian tensions and divides continue to mar Muslims, DHS will actively seek to exploit whatever openings, and indeed the most heated ones, to develop partnerships, plant informants, and extend policing deep in the heart of Muslim communities in the U.S. Indeed, one element's tension and division is another's opportunity.
