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State Sponsored Radicalization

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STATE SPONSORED RADICALIZATION

Sahar F. Aziz*

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INTRODUCTION

Where was the FBI in the months leading up to the violent siege on the U.S. Capitol in 2021? Among the many questions surrounding that historic day, this one reveals the extent to which double standards in law enforcement threaten our nation’s security. For weeks, Donald Trump’s far right-wing supporters had been publicly calling for and planning a protest in Washington, D.C. on January 6, the day Congress was to certify the 2021 presidential election results.¹ Had they been following credible threats to domestic security, officials would have attempted to stop the Proud Boys and QAnon from breaching the Capitol perimeter.² Yet when the day came, the mob of pro-Trump extremists seemed to catch law

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1. See Rachel Treisman, *Prosecutors: Proud Boys Gave Leader ‘War Powers,’ Planned Ahead for Capitol Riot*, NPR (Mar. 2, 2021, 4:00 PM), <https://www.npr.org/2021/03/02/972895521/prosecutors-proud-boys-gave-leader-war-powers-planned-ahead-for-capitol-riot>; see also Kyle Daly, *The Capitol siege’s QAnon roots*, AXIOS (Jan. 7, 2021), <https://www.axios.com/capitol-sieges-qanon-roots-acadc659-4d39-4606-96c3-a477c6841fe3.html>.

2. Mazetti et al, *Inside a Deadly Siege: How a String of Failures Led to a Dark Day at the Capitol*, N.Y. TIMES (June 8, 2021), <https://www.nytimes.com/2021/01/10/us/politics/capitol-siege-security.html>.

enforcement by surprise. They seized the Capitol, ransacked congress members' offices, and openly posted photos of their destruction and their weapons online.³

In the preceding two decades, the U.S. government has poured money into a behemoth national security apparatus. The FBI's annual budget ballooned from \$3 billion in 1999 to nearly \$10 billion today.⁴ Much of this 300% increase went to countering terrorism with a mandate to surveil, investigate, and prosecute "homegrown terrorists."⁵ In no uncertain terms, the directive was for the FBI to target Muslim communities.⁶

With bipartisan political support and significant resources backing them, FBI agents are tasked to prey on young, mentally ill, indigent, or otherwise vulnerable Muslim men as targets in government-led sting operations.⁷ Before the ubiquity of social media, agents fished for their targets through the surveillance of mosques, cafes frequented by Muslim customers, online chat rooms, and Muslim community organizations.⁸ The FBI, however, soon discovered the number of Muslims in the U.S. planning legitimate terrorist plots is sparse.⁹ Instead of shifting its attention to burgeoning right-wing extremists seeking to attack minorities and overthrow the government, the FBI deployed its resources towards hiring dubious informants who manipulate and coerce Muslim men in fake terrorist plots.¹⁰

3. Dina Temple-Raston, *Lawyers For 18-Year-Old Capitol Rioter Want Him Released To His Parents*, NPR (Feb. 26, 2021), <https://www.npr.org/sections/insurrection-at-the-capitol>.

4. FBI FY 2019 BUDGET REQUEST AT A GLANCE, <https://www.justice.gov/jmd/page/file/1033146/download#:~:text=Resources%3A,the%20FY%202018%20Continuing%20Resolution;FBI%20BUDGET>, https://www.justice.gov/archive/jmd/1975_2002/2002/html/page96-99.htm.

5. Sahar F. Aziz, *Losing the 'War of Ideas': A Critique of Countering Violent Extremism Programs*, 52 TEX. INT'L L. J. 255, 277 (2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2913571.

6. Sahar F. Aziz, *Caught in a Preventive Dragnet: Selective Counterterrorism in a Post-9/11 America*, 47 Gonz. L. Rev. 429, 433 (2011), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1825662.

7. Trevor Aaronson & Paul Abowd, *FBI Terrorism Stings: Two Decades of National Security Theater*, THE INTERCEPT (Sept. 10, 2021), <https://theintercept.com/2021/09/11/fbi-counterterrorism-stings-two-decades-of-national-security-theater/>; Janet Reitman, 'I Helped Destroy People,' N.Y. TIMES (Sept. 1, 2021), <https://www.nytimes.com/2021/09/01/magazine/fbi-terrorism-terry-albury.html>; TREVOR AARONSON, *THE TERROR FACTORY: INSIDE THE FBI'S MANUFACTURED WAR ON TERRORISM* 241 (2013) (concluding that approximately 1% of so-called 'jihadi' cases present real security threats).

8. Sanya Mansoor, 'Who Else Is Spying on Me?' Muslim Americans Bring the Fight Against Surveillance to the Supreme Court, TIME (Sept. 16, 2021, 1:13 PM), <https://time.com/6097712/muslim-american-surveillance-supreme-court-sept-11/>.

9. Aaronson & Abowd, *supra* note 7.

10. *Id.*

Compare these over-reaching practices with the government's disregard of the well-documented rise in White far right-wing extremism. When a 2009 DHS intelligence report warned of this troubling development, then-Secretary Janet Napolitano was pressured to retract it and apologize in a Congressional hearing.¹¹ And the author of the report was constructively pushed out of DHS.¹²

For the eight years when Barack Obama, the first African American president, governed the nation, far right-wing groups grew.¹³ Little attention, and fewer resources, were directed at preventing violence by these White extremist.¹⁴ Meanwhile, the alt-right media amassed tens of millions of followers.¹⁵ Extremist and anti-democratic ideas became normalized into the mainstream as Donald Trump ran on a xenophobic and Islamophobic platform.

Unsurprisingly, the rise in White Supremacy groups correlated with increased racial violence against Black people, Latinos, Native Americans, Asians and immigrants.¹⁶ Congregants were killed in Jewish synagogues,

11. Brian Montopoli, *DHS Report Warns of Right Wing Extremists*, CBS NEWS (Apr. 14, 2009, 3:38 PM), <https://www.cbsnews.com/news/dhs-report-warns-of-right-wing-extremists/> [https://perma.cc/AM2M-KMYG] (referring to DEP'T OF HOMELAND SEC., RIGHTWING EXTREMISM CURRENT ECONOMIC AND POLITICAL CLIMATE FUELING RESURGENCE IN RADICALIZATION AND RECRUITMENT (2009), <https://irp.fas.org/eprint/rightwing.pdf> [https://perma.cc/D8CM-SV85]); *Homeland Security Chief Apologizes to Veteran Groups*, CNN (Apr. 16, 2009), <https://www.cnn.com/2009/POLITICS/04/16/napolitano.apology/> [https://perma.cc/N9VK-B74J].

12. Spencer Ackerman, *DHS Crushed This Analyst for Warning about Far-Right Terror*, WIRED (Aug. 07, 2012, 5:07 PM), <https://www.wired.com/2012/08/dhs/> [perma.cc/79PSWWZ8]; Daryl Johnson, *I Warned of Right-wing Violence in 2009. Republicans Objected. I Was right.*, WASH. POST (Aug. 21, 2017), <https://www.washingtonpost.com/news/posteverything/wp/2017/08/21/i-warned-of-right-wing-violence-in-2009-it-caused-an-uproar-i-was-right/> [perma.cc/SSK8-NPWL].

13. Chris McGreal, *US Facing Surge in Rightwing Extremists and Militias*, GUARDIAN (Mar. 4, 2010, 12:18 PM), <https://www.theguardian.com/world/2010/mar/04/us-surge-rightwing-extremist-groups>; SETH G. JONES, CTR. FOR STRATEGIC & INT'L STUD., *THE RISE OF FAR-RIGHT EXTREMISM IN THE UNITED STATES* (2018), <https://www.csis.org/analysis/rise-far-right-extremism-united-states>.

14. See *Civil Rights Groups Condemn Recent Rash of Hate Crimes*, MEXICAN AM. LEGAL DEF. & EDUC. FUND (Nov. 24, 2008), <https://www.maldef.org/2008/11/civil-rights-groups-condemn-recent-rash-of-hate-crimes/>; Matthew Bigg, *Election of Obama provokes rise in U.S. hate crimes*, REUTERS (Nov. 28, 2008, 5:41 PM), <https://www.reuters.com/article/us-usa-obama-hatecrimes/election-of-obama-provokes-rise-in-u-s-hate-crimes-idUSTRE4AN81U20081124>; *Obama Win Sparks Rise in Hate Crimes, Violence*, NPR (Nov. 28, 2008, 9:00 AM), <https://www.npr.org/transcripts/97454237>.

15. Charles Sykes, *Donald Trump and the Rise of Alt-Reality Media*, POLITICO (Nov. 25, 2016), <https://www.politico.com/magazine/story/2016/11/donald-trump-conservative-media-charlie-sykes-214483/>.

16. Joe Hernandez, *Hate Crimes Reach The Highest Level In More Than A Decade*, NPR (Sept. 1, 2021, 11:17 AM), <https://www.npr.org/2021/08/31/1032932257/hate-crimes->

Sikh temples, and Black churches.¹⁷ Mosques were vandalized or burned to the ground.¹⁸ Muslims continued to be victims of racial violence by individuals who subscribed to far-right wing extremist ideologies.¹⁹ In 2020, reported hate crimes rose to the highest level in more than a decade.²⁰ These developments should have shifted the FBI's investigative mission to this rising domestic security threat. But instead, the FBI continued its quest to manufacture "Muslim terrorism" through aggressive sting operations and abusive investigative practices.²¹

What we witnessed on January 6, 2021 demonstrates that the threat to our national security from right wing groups is not merely extremist speech, but political violence. So how did a mob of thousands of people premeditate such a criminal attack on our nation's Congress in plain sight? The answer lies squarely in America's post-9/11 racial politics.²² The resources and expertise exist to prevent such violence by White far-right extremists.²³ Unfortunately, the political will does not.

A key component of this system of manufactured homegrown terrorism is the government's reliance on unsubstantiated, pseudo-academic

reach-the-highest-level-in-more-than-a-decade; Dan Mangan, *Hate crimes against Asian and Black people rise sharply in the U.S., FBI says*, CNBC (Aug. 30, 2021, 3:38 PM), <https://www.cnbc.com/2021/08/30/fbi-says-hate-crimes-against-asian-and-black-people-rise-in-the-us.html>; DEP'T OF JUSTICE, HATE CRIME STATISTICS (2020), <https://www.justice.gov/hatecrimes/hate-crime-statistics>.

17. *Poway Attack Illustrates Danger Right-Wing Extremists Pose to Jews, Muslims*, ADL (May 2, 2019), <https://www.adl.org/blog/poway-attack-illustrates-danger-right-wing-extremists-pose-to-jews-muslims>; Joanna Walters & Alvin Chang, *Far-Right Terror Poses Bigger Threat to US Than Islamist Extremism Post-9/11*, GUARDIAN (Sept. 8, 2021, 3:00 PM), <https://www.theguardian.com/us-news/2021/sep/08/post-911-domestic-terror>.

18. See *Nationwide Anti-Mosque Activity*, ACLU, <https://www.aclu.org/issues/national-security/discriminatory-profiling/nationwide-anti-mosque-activity> (last updated Nov. 2021).

19. See IMRAN AWAN & IRENE ZEMPI, OFFLINE AND ONLINE EXPERIENCES OF ANTI-MUSLIM CRIME: FOR THE SPECIAL RAPPORTEUR ON FREEDOM OF RELIGION OR BELIEF (2020), <https://www.ohchr.org/Documents/Issues/Religion/Islamophobia-AntiMuslim/Civil%20Society%20or%20Individuals/ProfAwan-3.pdf>; Ziauddin Sardar, Jordi Serra & Scott Jordan, *Islamophobia and The Rise of the Alt-Right*, in MUSLIM SOCIETIES IN POSTNORMAL TIMES 1, 87 (2019), <https://www.jstor.org/stable/pdf/j.ctv10kmcpb.20.pdf?refreqid=excelsior%3A04a0e9cbf856a304cc2876d2ba9c5387>.

20. Hernandez, *supra* note 16; *What is the Threat to the United States Today?*, NEW AM., <https://www.newamerica.org/international-security/reports/terrorism-in-america/what-is-the-threat-to-the-united-states-today/> (last visited Oct. 25, 2021).

21. Paula Moura, *Are Federal Sting Operations in U.S. Counterterrorism Cases Legal?*, PBS (Aug. 10, 2021), <https://www.pbs.org/wgbh/frontline/article/fbi-sting-operations-terrorism-september-11/>.

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

23. *Id.* at 484.

theories of radicalization as the blueprint for their sting operations.²⁴ Specifically, the government creates a fake group of friends comprised of informants and undercover agents that push the Muslim target from extreme words to illegal action.²⁵ The consequence has been a loss of liberty for hundreds of Muslim men concurrent with awards and accolades for FBI agents and national security prosecutors.²⁶ The inability of scholars to identify what causes terrorism further highlights the determinative role of religious identity in counterterrorism sting operations.

The systematic and aggressive use of sting operations in counterterrorism cases—regardless of whether a case ultimately pleads out or goes to trial—disproportionately target Muslim defendants who are 1) young, with an average age of 33, 2) low income or unemployed, 3) bombastic blowhards who “talk, talk, talk, and do nothing,”²⁷ and 4) generally unsophisticated with a lack of skills or knowledge to conduct a terrorist attack.²⁸ In at least 130 of the 631 cases, there is evidence that the defendant suffers from mental illness, which is sometimes not diagnosed until after his arrest and detention.²⁹ These vulnerable Muslim male targets are easy prey for dubious informants or sophisticated undercover agents who design, plan, and execute the fake terrorist plots.³⁰ The result is a 99% incarceration rate.³¹ Yet, other empirical studies of counterterrorism cases find that

24. Carissa Prevratil, *Creating Terrorists: Issues with Counterterrorism Tactics and the Entrapment Defense* (Sep. 17, 2020) (M.A. thesis, California State University), <https://www.ramapo.edu/law-journal/thesis/>.

25. *Id.*

26. *MCAO Prosecutors Receive FBI Director's Award for Prosecuting Terrorism Case*, MARICOPA CNTY. ATT'Y'S OFF., [https://www.maricopacountyattorney.org/390/MCAO-Prosecutors-Receive-FBI-Directors-Award-for-Prosecuting-Terrorism-Case-MCAO-Prosecutors-Receive-FBI-Directors-Award-for-Prosecuting-Terrorism-Case-Office-in-combatting-international-terrorism](https://www.maricopacountyattorney.org/390/MCAO-Prosecutors-Receive-FBI-Directors-Award-for-Prosecuting-Terrorism-Case-MCAO-Prosecutors-Receive-FBI-Directors-Award-for-Prosecuting-Terrorism-Case-MCAO-Prosecutors-Receive-FBI-Directors-Award-for-Prosecuting-Terrorism-Case-Office-in-combatting-international-terrorism) (last visited Oct. 25, 2021); *Raleigh-Durham Joint Terrorism Task Force Receives FBI Director's Award*, FBI (Sept. 10, 2012), <https://archives.fbi.gov/archives/charlotte/press-releases/2012/raleigh-durham-joint-terrorism-task-force-receives-fbi-directors-award>.

27. Marc Sageman, *The Stagnation in Terrorism Research*, 26 *TERRORISM & POL.* 565, 575 (2014).

28. The database of terrorism related cases against Muslims is on file with the author.

29. See, e.g., Brief and Special Appendix for Defendant-Appellant at 36, *United States v. Siraj*, 468 F. Supp. 2d 408 (E.D.N.Y. 2007) (No. 07-0224-cr); *United States v. Osmakac*, 868 F.3d 967 (11th Cir. 2017); *United States v. Hamdan*, 2016 WL 9244751, No. 2:14-cr-20232 (E.D. Mich. Apr. 20, 2016). Seventy defendants are documented as suffering from demonstrable mental illness, however, the actual number is likely higher due to a lack of access to health care for diagnosis and the stigma of admitting mental illness.

30. See, e.g., Rozina Ali, *The 'Herald Square Bomber' Who Wasn't*, N.Y. TIMES MAG. (Apr. 13, 2021), <https://www.nytimes.com/2021/04/15/magazine/fbi-international-terrorism-informants.html>.

31. See *United States v. Liban Hussein*, 1:01-cr-10423 (D. Mass. 2001) (acquitted); *United States v. Habis Abdulla Al Saoub*, 02-cr-00399-ha (D. Oregon 2002) (fugitive); *United*

despite the prosecutors' success in court, the percentage of cases against Muslim defendants that represent real security threats range from 9% to as low as 1%.³² These numbers are attributed to coercive and manipulative tactics by informants and undercover agents leading a target from non-violent extremist speech to a (fake) terrorist plot.

States v. Jaber A. Elbaneh, 02-cr-214s (W.D.N.Y. 2002) (fugitive); United States v. Sami Omar Al-Hussayen, 03-cr-048-c-ejl (D. Idaho 2003) (acquitted); United States v. Oussama Ziade, 1:07-cr-10072 (D. Mass. 2005) (acquitted); United States v. Naudimer Herrera, 1:06-cr-20373-jal (S.D. Fla. 2006) (acquitted); United States v. Lyglenson Lemorin, 1:06-cr-20373-jal (S.D. Fla. 2006) (acquitted); United States v. Youssef Mehahed, 2:07-cr-01167-rsc (M.D. Fla. 2007) (acquitted); United States v. Yaser Khareddin Bushnaq, 1:07-00377 (E.D. Va. 2007) (fugitive); United States v. Tahmeed Ahmad, 007-cr-20859 (S.D. Fla. 2007) (acquitted); United States v. Jude Kenan Mohammad, 5:09-cr-00216 (E.D.N.C. 2009) (fugitive); United States v. Omar Hammami, 07-00384-kd (S.D. Ala. 2009) (fugitive); United States v. Cabdulaahi Ahmed Faarax, 09-50-jmr-srn (D. Minn. 2009) (fugitive); United States v. Jihad Serwan Mostafa, 09-cr-3726-whq (S.D. Cal. 2009) (fugitive); United States v. Luqman Ameen Abdullah, 2:09-cr-20549 (E.D. Mich. 2009) (deceased); United States v. Abdul Saboor, 2:09-cr-20549 (E.D. Mich. 2009) (fugitive); United States v. Mujahid Carswell, 2:09-cr-20549 (E.D. Mich. 2009) (has not yet been extradited); United States v. Hodroj Hasssan, 2:09-cr-00744 (E.D. Pa. 2009) (fugitive); United States v. Dib Hani Harb, 2:09-cr-20549 (E.D. Pa. 2009) (fugitive); United States v. Hasan Antar Karaki, 2:09-cr-20549 (E.D. Pa. 2009) (fugitive); United States v. Ahmed Ali Omar, 0:09-cr-00050 (N.D. Ohio 2010) (fugitive); United States v. Khalid Mohamud Abshi, 0:09-cr-00050 (N.D. Ohio 2010); United States v. Mohamed Abdullahi Hassan, 0:09-cr-00050 (N.D. Ohio 2010) (fugitive); United States v. Mustafa Ali Salat, 0:09-cr-00050 (N.D. Ohio 2010) (fugitive); United States v. Fareh Mohamed Beledi, 0:09-cr-00050 (N.D. Ohio 2010) (fugitive); United States v. Abdisalan Hussein Ali, 0:09-cr-00050 (N.D. Ohio 2010) (fugitive); United States v. Abdikadir Ali Abdi, 0:09-cr-00050 (N.D. Ohio 2010) (fugitive); United States v. Mohammed Abdullahi Hassan, 13-cr-00222 (D. Minn. 2010) (fugitive); United States v. Irfan Khan, 1:11-cr-20331 (S.D. Fla. 2011) (charges dismissed); United States v. Izhar Khan, 1:11-cr-20331 (S.D. Fla. 2011) (charges dismissed); United States v. Abdi Nur, 0:14-mj-01024 (D. Minn. 2014) (fugitive); United States v. Yusra Ismail, 14-mj-1047 (D. Minn. 2014) (fugitive); United States v. Reza Niknejad, 1:15-mj-325 (E.D. Va. 2015) (fugitive); United States v. Adam Shafi, 3:15-cr-00582 (N.D. Cal. 2015) (fugitive); United States v. Talha Haroon, 1:16-cr-00376 (S.D.N.Y. 2016) (fugitive); United States v. Russell Salic, 1:16-cr-00376 (S.D.N.Y. 2016) (fugitive); United States v. Mohamed Amiin Ali Roble, 0:16-mj-00584 (D. Minn. 2016) (fugitive); United States v. Noor Zahi Salman, 6:17-cr-00018 (M.D. Fla. 2017) (acquitted); United States v. Omar Ali, *case number unavailable* (E.D. Tex. 2017) (fugitive); United States v. Arman Ali, *case number unavailable* (E.D. Tex. 2017) (fugitive); United States v. Faress Muhammad Shraiteh, 1:18-cr-00490 (N.D. Ill. 2017) (fugitive).

32. Jesse J. Norris & Hanna Grol-Prokopzyk, *Estimating the Prevalence of Entrapment in Post-9/11 Terrorism Cases*, 105 J. CRIM. L. & CRIMINOLOGY 609, 616 (2015) (estimating that 9% of the 580 of so-called "jihadi" cases they analyzed involved real security threats); TREVOR AARONSON, *THE TERROR FACTORY: INSIDE THE FBI'S MANUFACTURED WAR ON TERRORISM* 241 (2013) (concluding that approximately 1% of so-called 'jihadi' cases present real security threats).

Perhaps the most alarming theme is the U.S. government's deliberate replication in sting operations of the so-called "radicalization" process proffered by self-identified terrorism experts in the academic and policy literature.³³ Despite clear scholarly consensus that there is no theoretical model, much less empirical support, that accurately predicts whether a person will engage in political violence, law enforcement unduly relies on dubious radicalization theories.³⁴

Attempting to explain why and how a person becomes a terrorist, scholars and policy makers offer a hodgepodge of unproven theories that effectively profile and criminalize Muslims who hold political or religious beliefs significantly outside prevailing norms.³⁵ Some of these so-called radicalization theories go so far as interpreting an increase in religiosity by young Muslim men as a dangerous sign of "radicalization" on the path toward becoming a terrorist.³⁶

One expert's radicalization theory, the "bunch of guys" by Marc Sageman, appears to be the model informing how government informants and undercover agents execute sting operations targeting Muslims. Sageman contends that "jihadi terrorism" has three components: 1) a socialization process of friendship and kinship; 2) progressive intensification of beliefs leading to acceptance of the Salafi ideology; 3) and a link to know-how and support.³⁷ Sageman's radicalization theory is the basis of his recommendations to federal agencies to prevent terrorism through engagement with Muslim communities and off-ramping aggrieved Muslim extremists.³⁸ These so-called engagement efforts, however, have only served

33. See Sageman, *supra* note 27, at 571 (noting that "neo-jihadi terrorists attacks are extremely rare on their own—without sting operations"); LISA STAMPNITZKY, *DISCIPLINING TERROR: HOW EXPERTS INVENTED "TERRORISM"* (2013) (providing the genealogy of the terrorism industry after the end of European colonialism).

34. Robin L. Thompson, *Radicalization and the Use of Social Media*, 4 J. STRATEGIC SEC. 167, 179 (2011); Randy Borum, *Radicalization into Violent Extremism I: A Review of Social Science Theories*, 4 J. STRATEGIC SEC. 7, 7 (2012); Randy Borum, *Radicalization into Violent Extremism II: A Review of Conceptual Models of Empirical Research*, 4 J. STRATEGIC SEC. 37 (2012); Amna Akbar, *Policing "Radicalization,"* 3 U.C. IRVINE L. REV. 809 (2020); JOHN HORGAN, *THE PSYCHOLOGY OF TERRORISM (POLITICAL VIOLENCE)* 7, 33 (2d ed. 2014) (noting that despite the increase in publications over the past 20 years, few of the articles are rigorous and research-based and are instead narrative or prescriptive); Arun Kundnani, *Radicalisation: the Journey of a Concept*, 54 RACE & CLASS 3 (2012).

35. See, e.g., MIKE GERMAN, *DISRUPT, DISCREDIT, AND DIVIDE: HOW THE FBI DAMAGES DEMOCRACY* 111 (2019); Jamie Bartlett & Carl Miller, *The Edge of Violence: Towards Telling the Difference Between Violent and Non-Violent Radicalization*, 24 TERRORISM & POL. VIOLENCE 1 (2012).

36. See Mitchell D. SILBER & ARVIN BHATT, N.Y.C. POLICE DEP'T, *RADICALIZATION IN THE WEST: THE HOMEGROWN THREAT* 6 (2007), https://seths.blog/wp-content/uploads/2007/09/NYPD_Report-Radicalization_in_the_West.pdf.

37. MARC SAGEMAN, *UNDERSTANDING TERROR NETWORKS* 107-21 (2004).

38. *Id.* at 180-81.

as an additional entry point in which government agents recruit informants who then prey on vulnerable Muslim men to expand the number and scope of sting operations.³⁹

Accordingly, this Article is the first in a series that empirically test the normative claim made in the author's book *The Racial Muslim* that Muslim identity is securitized. Specifically, their religious identity racializes Muslims as a suspect race deserving of selective national security law enforcement, as opposed to a religious minority to be protected from religious persecution by the state or public.⁴⁰ The series of articles interrogate the claim that the Federal Bureau of Investigations (FBI) has been manufacturing a purported "Muslim homegrown terrorism" threat since 2001.⁴¹ The legal and policy claims are based on an empirical review of the author's database of 612 federal terrorism-related cases against Muslim defendants between 2001 and 2021. At least 282 are sting operations.⁴²

The overarching normative claim of the article series is threefold. First, unsubstantiated radicalization theories provide a blueprint for sting operations targeting vulnerable Muslims wherein informants or undercover agents coerce or manipulate him into a government-led fake plot. The US government points to these purportedly academic theories when civil rights advocates and defense attorneys accuse it of religious profiling in counterterrorism enforcement. By exposing the absence of credible, empirically based research, this Article aims to debunk government claims that facially neutral radicalization theory, not racial or religious animus, justifies how they structure sting operations targeting Muslims.

Second, the Muslim men are selected based on their expressions of extremist views on social media, which in turn become the basis for the government proving the Muslim defendant was predisposed to commit terrorism to counter entrapment defenses. Flaws in the entrapment doctrine implicate not only the liberty interests of sting operation targets, but also the First Amendment right to express extremist speech.

Third, racialized counterterrorism leads to over-policing of Muslims and under-policing of far-right wing Whites, thereby subjecting minorities to White supremacist hate crimes and increasing politically motivated

39. Sahar F. Aziz, *Policing Terrorists in the Community*, 5 HARV. NAT'L SEC. J., 147 (2014) [hereinafter *Policing Terrorists in the Community*]; Sahar F. Aziz, 'Losing the War of Ideas': A Critique of Countering Violent Extremism Programs, 52 TEX. INT'L L.J. 255 (2017).

40. See SAHAR AZIZ, *THE RACIAL MUSLIM: WHEN RACISM QUASHES RELIGIOUS FREEDOM* (2021).

41. This normative claim is made by others, including Aaron Treverson and the Coalition on Civil Freedoms. However, this Article is the first to ground its normative claim in an empirical study of 631 federal and state terrorism related prosecutions against Muslims from 2001 to 2021. The second article in the series is Sahar F. Aziz, *Race, Entrapment and Manufacturing "Homegrown Terrorism"* (forthcoming Georgetown L.J. 2023).

42. The database of 631 state and federal terrorism cases is on file with the author.

violent crime against government targets. The consequences have been devastating for Muslim communities, including individuals who lost their liberty and Muslims across the country suspected by co-workers, neighbors, and the general public of being a fifth column sympathetic to foreign terrorist organizations unless they can individually prove their innocence in the court of public opinion. Put simply, Muslims and racial minorities are less safe from private and state violence while our society is less secure from domestic terrorism, arising from far-right wing ideology.

I. STATE MANUFACTURED TERRORISM CASES

The literature on radicalization theory falls into two analytical frames—structural root causes and individual psychological cases. Among the cacophony of articles, terrorism scholars agree that radicalization theory remains speculative and uncorroborated by methodologically sound empirical research.⁴³ Nevertheless, the FBI has effectively weaponized radicalization research by deploying informants and agents to befriend Muslim men who post videos and articles on social media glorifying terrorism, Al Qaeda, Osama Bin Laden, Anwar Al-Awlaki, and the Islamic State of Iraq and Syria (ISIS). Before the ubiquity of social media, the government fished for their targets through physical surveillance of cafes frequented by Muslim customers, mosques, and Muslim community organizations.⁴⁴ Starting in 2007, agents and informants shifted their search for sting operation targets to social media, online chat rooms, and websites promoting political violence against civilians and Western military forces.⁴⁵

In an overzealous and misguided effort to keep America safe, the FBI resorts to deploying its formidable resources towards creating fake terrorists out of bombastic and hapless men who spew extremist rhetoric. With each

43. See BRIAN A. JACKSON, ASHLEY L. RHOADES, JORDAN R. REIMER & NATASHA LANDER, HOMELAND SECURITY OPERATIONAL ANALYSIS CENTER, PRACTICAL TERRORISM PREVENTION: REEXAMINING U.S. NATIONAL APPROACHES TO ADDRESSING THE THREAT OF IDEOLOGICALLY MOTIVATED VIOLENCE 1, 69 (2019) [hereinafter *Practical Terrorism Prevention*]; Jessica Stern, *Radicalization to Extremism and Mobilization to Violence: What Have We Learned and What Can We Do about It?*, ANNALS AM. ACAD. POL. & SOC. SCI., 102 (2016); NAT'L CONSORTIUM FOR THE STUDY OF TERRORISM AND RESPONSES TO TERRORISM, FINAL REPORT: EMPIRICAL ASSESSMENT OF DOMESTIC RADICALIZATION 7 (Dec. 2016); see also Paul Gill, *Towards a Scientific Approach to Identifying and Understanding Indicators of Radicalization and Terrorist Intent: Eight Key Problems*, 2 J. THREAT ASSESSMENT AND MGMT. 187 (2015); Randy Borum, *Radicalization into Violent Extremism I: A Review of Social Science Theories*, 4 J. STRATEGIC SECURITY 7 (2011).

44. ACLU, FACTSHEET: THE NYPD MUSLIM SURVEILLANCE PROGRAM, <https://www.aclu.org/other/factsheet-nypd-muslim-surveillance-program> (last visited Oct. 25, 2021); Mansoor, *supra* note 8.

45. This conclusion is based on the analysis of the 256 sting operations cases in the author's database of 631 state and federal terrorism cases against Muslim defendants.

fake terrorist the government creates, it justifies demands for more public funds to combat a supposed homegrown terrorist threat inflated by the same entity asking for the funding. Moreover, the government's sting operations demonstrate that their stated objective in 'preventing terrorism' is neither rehabilitative nor remedial. Instead, counterterrorism is predatory—at the expense of Muslims' collective civil liberties.⁴⁶

The racial politics of counterterrorism defines success not by the prevention of real terrorist plots, but rather the number of Muslim men the government can put in jail regardless of how socially isolated, young, mentally ill, or otherwise incompetent they may be. In light of the broader systemic racism in the criminal justice system that has been incarcerating black and brown people for generations,⁴⁷ this outcome should come as no surprise. Indeed, counterterrorism is implemented by these same law enforcement agencies. As a result, the government's stated goals of protecting national security should be met with skepticism and rigorous analysis of the underlying facts of each case.

The double standards are more glaring when compared to the leniency afforded to the tens of thousands of White far-right extremists engaging in similar bombastic, extremist rhetoric against Blacks, Latinos, Asians, Jews, and Muslims.⁴⁸ Such leeway granted for over a decade culminated in a siege on the Capitol on January 6, 2021 intended to halt Congress' certification of Joe Biden as the 47th president of the United States.⁴⁹ It is only after a white extremist kills Black or Jewish congregants that law

46. Jesse J. Norris, *Accounting for the (Almost Complete) Failure of the Entrapment Defense in Post-9/11 US Terrorism Cases*, 45 L. & SOC. INQUIRY 194, 194-96 (2020).

47. See generally, MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2012).

48. Janet Reitman, *U.S. Law Enforcement Failed to See the Threat of White Nationalism. Now They Don't Know How to Stop It*, N.Y. TIMES (Nov. 3, 2018), <https://www.nytimes.com/2018/11/03/magazine/FBI-charlottesville-white-nationalism-far-right.html>; Trevor Aaronson, *Terrorism's Double Standard: Violent Far Right-Extremists are Rarely Prosecuted as Terrorists*, THE INTERCEPT (Mar. 23, 2019), <https://theintercept.com/2019/03/23/domestic-terrorism-fbi-prosecutions/>; Sebastian Rotella, *Domestic Terrorism: A More Urgent Threat, but Weaker Laws*, PROPUBLICA (Jan. 7, 2021), <https://www.propublica.org/article/domestic-terrorism-a-more-urgent-threat-but-weaker-laws>.

49. Mark Mazzetti, Helene Cooper, Jennifer Steinhauer, Zolan Kanno-Youngs & Luke Broadwater, *Inside a Deadly Siege: How a String of Failures Led to a Dark Day at the Capitol*, N.Y. TIMES (Jan. 10, 2021), <https://www.nytimes.com/2021/01/10/us/politics/capitol-siege-security.html>; see also Andrew Selsky, *Capitol Attack Reflects US Extremism Evolution over Decades*, AP NEWS (Jan. 23, 2021), <https://apnews.com/article/capitol-siege-riots-coronavirus-pandemic-b7123f0a223c6ed8098a03b459120c83>; Ryan Devereaux, *Capitol Attack Was Culmination of Generations of Far-Right Extremism*, INTERCEPT (Jan. 23, 2021), <https://theintercept.com/2021/01/23/capitol-riot-far-right-extremism/>.

enforcement gets involved, reflecting a myopic view of racial violence as outside the purview of preventive policing.⁵⁰

As America experiences a racial awakening, the American public is realizing law's potency in furthering systems of oppression based on nefarious stereotypes of racial minorities as inferior, less intelligent, lazy, foreign, and dangerous.⁵¹ A national anti-racism movement is challenging blind acceptance of legal doctrines, such as qualified immunity, that fail to take into account the racial disparities arising from enforcement of facially-neutral laws.⁵² Counterterrorism law and policy are not exempt from structural racism. For nearly two decades, anti-terrorism resources have been deployed in a way that securitizes, stigmatizes, and incarcerates Muslims who hold 'extremist' political views—as well as religious Muslims who merely refuse to fully assimilate how they practice their faith into Anglo-Saxon Christian normativity.⁵³

While racialized law enforcement erodes the rule of law for all, the consequences are grave for the four to six million Muslims in the United States who experience myriad derivative harms from the collective stigma.⁵⁴ Even if a Muslim is not directly targeted in a sting operation, the continuous confirmation of stereotypes that Muslims are terrorists subjects them to hate crimes, hateful speech, and discrimination in their lived experiences.⁵⁵ The pseudo-science of radicalization has played an outsized, legitimizing role in the racial politics of counterterrorism.

50. Edward McAllister, Luciana Lopez & Alana Wise, *Mourning Shooting Victims, Charleston Anguishes over 'Freshness of Death,'* REUTERS (June 20, 2015), <https://www.reuters.com/article/us-usa-shooting-south-carolina/mourning-shooting-victims-charleston-anguishes-over-freshness-of-death-idUSKBN0OY06A20150621>; see also Rachel Kaadzi Ghansaha, *A Most American Terrorist: The Making of Dylann Roof*, GQ (Aug. 21, 2017), <https://www.gq.com/story/dylann-roof-making-of-an-american-terrorist>; Nicole Chavez, Emanuella Grinberg & Elliott C. McLaughlin, *Pittsburgh Synagogue Gunman Said He Wanted All Jews to Die, Criminal Complaint Says*, CNN (Oct. 31, 2018), <https://www.cnn.com/2018/10/28/us/pittsburgh-synagogue-shooting/index.html>.

51. See generally, Julianna Menasce Horowitz, Anna Brown & Kiana Cox, *Race in America 2019*, PEW RES. CTR. (Apr. 9, 2019), <https://www.pewresearch.org/social-trends/2019/04/09/race-in-america-2019/>.

52. Emily Cochrane & Luke Broadwater, *Here Are the Differences Between the Senate and House Bills to Overhaul Policing*, N.Y. TIMES (June 17, 2020), <https://www.nytimes.com/2020/06/17/us/politics/police-reform-bill.html>.

53. See generally SAHAR AZIZ, *THE RACIAL MUSLIM: WHEN RACISM QUASHES RELIGIOUS FREEDOM* (2021) (providing a theoretical frame for the racialization of Muslims that produces a hierarchy of Racial Muslims wherein religious and dissident Muslims are most likely to be targeted by the government's sting operations).

54. Laura Silver, Moira Fagan, Aidan Connaughton & Mara Mordecai, *Views about National Identity Becoming More Inclusive in U.S., Western Europe*, PEW RES. CTR. 29 (May 5, 2021) <https://www.pewresearch.org/global/2021/05/05/3-discrimination-in-society/>.

55. Sahar F. Aziz, *Policing Terrorists in the Community*, 5 Harv. Nat'l Sec. L.J. 147, 187 (2014); Sahar F. Aziz, *A Muslim Registry: The Precursor to Internment?*, 2017 BYU L. REV

II. THE RACIAL POLITICS OF PREVENTIVE COUNTERTERRORISM

Exposing the racialization of law entails debunking the myth that enforcement of facially neutral law cannot produce racist outcomes—a fundamental principle of critical race theory.⁵⁶ In practice, dominant groups receive the fullest protections of the law while minorities experience a fraction of such rights.⁵⁷ Conversely, when it comes to laws that prohibit or criminalize certain behaviors, minorities bear the brunt of maximum enforcement while dominant groups' infringements are treated as less serious, if not outright overlooked, and when enforced the penalties are more lenient.⁵⁸ The result is a maximization of freedom, opportunity, and dignity for White Christians (the current dominant group) and incremental denial of such rights for minorities depending on their similarity to Whiteness, Judeo-Christian identity, and cisgender maleness.⁵⁹

Applying this critical race theory frame to counterterrorism law and policy reveals glaring contradictions between the U.S. government's treatment of Muslims and White Christians. Despite a reported sharp rise in

779, 783 (2017); Sahar F. Aziz, *Coercive Assimilation: The Perils of Muslim Women's Identity Performance in the Workplace*, 20 MICH. J. RACE & L., 1, 17 (2014).

56. DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (2018); see also PAUL BUTLER, *CHOKEHOLD: POLICING BLACK MEN* 45 (2017).

57. *Id.*

58. See, e.g., *United States v. Jessica Louise Bustle*, No. 1:21-cr-00238 (D.D.C.) (charged with violating 40 U.S.C. §§ 5104(e)(2)(D), (G) and 18 U.S.C. §§ 1752(a)(1), (2), convicted of 40 U.S.C. §§ 5104(e)(G) and sentenced to twenty-four months probation with sixty days of home confinement); *United States v. Andrew Ryan Bennett*, No. 1:21-cr-227 (D.D.C.) (charged with violating 40 U.S.C. §§ 5104(e)(2)(D), (G) and 18 U.S.C. §§ 1752(a)(1), (2), convicted of 40 U.S.C. §§ 5104(e)(G) and sentenced to twenty-four months probation); *United States v. Michael Curzio*, No. 1:21-cr-41 (D.D.C.) (charged with violating 40 U.S.C. §§ 5104(e)(2)(D), (G) and 18 U.S.C. §§ 1752(a)(1), (2), convicted of 40 U.S.C. §§ 5104(e)(G) and sentenced to six months in prison); *United States v. Karl Dresch*, No. 1:21-cr-71 (D.D.C.) (charged with violating 40 U.S.C. §§ 5104(e)(2)(D), (G) and 18 U.S.C. §§ 1512(c)(2), 1752(a)(1), (2), convicted of 40 U.S.C. §§ 5104(e)(G) and sentenced to time served after spending eight months in pretrial detention); *United States v. Paul Allard Hodgkins*, No. 1:21-cr-188 (D.D.C.) (charged with violating 40 U.S.C. §§ 5104(e)(2)(D), (G) and 18 U.S.C. §§ 1752(a)(1), (2), convicted of 18 U.S.C. § 1512(c)(2) and sentenced to eight months prison); *United States v. Valerie Elaine Ehrke*, No. 1:21-cr-97 (D.D.C.) (charged with violating 40 U.S.C. §§ 5104(e)(2)(D), (G) and 18 U.S.C. §§ 1752(a)(1), (2), convicted of 40 U.S.C. §§ 5104(e)(G) and sentenced to three years probation); *United States v. Robert Maurice Reeder*, No. 1:21-cr-166 (D.D.C.) (charged with violating 40 U.S.C. §§ 5104(e)(2)(D), (G) and 18 U.S.C. §§ 1512(c)(2), 1752(a)(1), (2), convicted of 40 U.S.C. §§ 5104(e)(G) and sentenced to three months prison).

59. The legal academic literature is replete with examples in the criminal justice context wherein Black men and women are over-policed and criminalized at a systemic level, resulting in significant over-representation of minorities in prison. See, e.g., ALEXANDER, *supra* note 47; BUTLER, *supra* note 56; ANGELA J. DAVIS, *POLICING THE BLACK MAN: ARREST, PROSECUTION, AND IMPRISONMENT* (2017).

far-right extremist groups, radio stations, websites, and leaders with tens of millions of White followers, the government did not allocate sufficient resources toward the consequent politically motivated violence.⁶⁰ Indeed, when a U.S. Department of Homeland Security intelligence report in 2009 warned of the rise in right-wing extremism, conservative politicians condemned it as an assault on the freedom of speech and association.⁶¹

In stark contrast, the Federal Bureau of Investigation (FBI)'s budget has more than tripled from \$3 billion in 1999 to \$10 billion in 2021. The influx in funds has facilitated the FBI's primary focus on Muslim communities over the past twenty years.⁶² In 2019, the FBI spent nearly \$3.7 billion on counterterrorism, which after 9/11 became a top priority to its 564 field offices and thousands of agents throughout the country.⁶³ In 2021, the FBI's total annual budget for domestic and international

60. See SETH G. JONES, CATRINA DOXSEE & NICHOLAS HARRINGTON, *The Escalating Terrorism Problem in the United States*, CSIS BRIEFS (June 2020), https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/200612_Jones_DomesticTerrorism_v6.pdf; Vincent A. Auger, *Right-Wing Terror: A Fifth Global Wave?*, 14 PERSPS. ON TERRORISM 87 (2020); Nadia Banteka, *The Rise of the Extreme Right and the Crime of Terrorism: Ideology, Mobilization, and the Case of the Golden Dawn*, 29 DUKE J. OF COMP. & INT'L L. 127 (2019); but see FED. BUREAU OF INVESTIGATION & DEP'T OF HOMELAND SEC., SECURITY STRATEGIC INTELLIGENCE ASSESSMENT AND DATA ON DOMESTIC TERRORISM (May 2021), <https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-strategic-report.pdf/view>.

61. DEP'T OF HOMELAND SEC., RIGHTWING EXTREMISM: CURRENT ECONOMIC AND POLITICAL CLIMATE FUELING RESURGENCE IN RADICALIZATION AND RECRUITMENT (Apr. 7, 2009), <https://fas.org/irp/eprint/rightwing.pdf>; Brian Montopoli, *DHS Report Warns of Right Wing Extremists*, CBS NEWS (Apr. 14, 2009), <https://www.cbsnews.com/news/dhs-report-warns-of-right-wing-extremists>; *Homeland Security Chief Apologizes to Veteran Groups*, CNN (Apr. 16, 2009), <https://www.cnn.com/2009/POLITICS/04/16/napolitano.apology>; 155 CONG. REC. 10415-10422 (2009) (statement of Rep. John Carter); Brett Murphy, Will Carless, Marisa Kwiatkowski & Tricia L. Nadolny, *A 2009 Warning about Right-Wing Extremism Was Engulfed by Politics. There Are Signs It's Happening Again*, USA TODAY (Jan. 25, 2021), <https://www.usatoday.com/story/news/investigations/2021/01/25/twelve-years-before-capitol-riot-warning-right-wing-extremism-buried/6658284002>.

62. See U.S. DEP'T OF JUST., BUDGET TREND DATA 1975 – 2003 97 (Spring 2002), https://www.justice.gov/archive/jmd/1975_2002/2002/pdf/BudgetTrand.pdf; FED. BUREAU OF INVESTIGATION, FY 2019 BUDGET REQUEST AT A GLANCE (2018), <https://www.justice.gov/jmd/page/file/1033146/download>; FED. BUREAU OF INVESTIGATION, FY 2022 BUDGET REQUEST AT A GLANCE, <https://www.justice.gov/jmd/page/file/1399031/download>.

63. See GERMAN, *supra* note 35, at 4–5; AARONSON, *supra* note 7, at 44 (noting that there may be 40,000 informants working for the FBI); see also FED. BUREAU OF INVESTIGATION, FY 2020 BUDGET REQUEST AT A GLANCE (2020), <https://www.justice.gov/jmd/page/file/1142426/download>.

counterterrorism and counterintelligence surpassed \$4 billion. That is forty percent of its total \$10 billion budget.⁶⁴

The Department of Justice requested an additional \$100 million in 2022 for domestic counterterrorism enforcement, of which \$45 million will be added to the FBI's current \$292 million annual budget for domestic terrorism.⁶⁵ The FBI's counterterrorism priority remains to ferret out (Muslim) "Homegrown Violent Extremism" in the homeland; and only after the U.S. Capitol was seized by White far-right wing extremists did the FBI take more seriously the threat of what it calls "Domestic Violent Extremism" (DVE).⁶⁶ Tellingly, the agency requested and increase of merely \$45 million to counter DVE.⁶⁷

The skewed allocation of counterterrorism funds has predictably translated into massive government surveillance and sting operations targeting mosques, charities, and Muslim leaders for nearly twenty years.⁶⁸ Eventually, the FBI discovered there were few Muslim terrorists to be found in the United States.⁶⁹ Instead of shifting their resources accordingly, the cases in the author's database show that the FBI resorted to manufacturing terrorist plots using dubious informants and over-zealous undercover agents looking for "radicalized" young Muslim men in internet chat rooms and social media forums to ensnare in a sting operation.⁷⁰ And when they could not find them, government agents enticed them into a fake plot.

64. FED. BUREAU OF INVESTIGATION, FY 2022 BUDGET REQUEST AT A GLANCE (2021), <https://www.justice.gov/jmd/page/file/1399031/download>; <https://www.justice.gov/jmd/page/file/1399031/download>; *Federal Bureau of Investigation Budget Request for Fiscal Year 2022: Hearing Before the Subcomm. on Com., Just., Sci., and Related Agencies of the Sen. Comm. on Appropriations*, 117th Cong. (June 23, 2021) (statement of FBI Director Christopher Wray), <https://www.appropriations.senate.gov/imo/media/doc/Wray%20Witness%20Testimony3.pdf>.

65. FED. BUREAU OF INVESTIGATION, FY 2022 BUDGET REQUEST AT A GLANCE (2021), <https://www.justice.gov/jmd/page/file/1399031/download>; see generally U.S. DEP'T OF JUST., FY 2022 BUDGET REQUEST AT A GLANCE (2021), <https://www.justice.gov/jmd/page/file/1398931/download>.

66. *Federal Bureau of Investigation Budget Request for Fiscal Year 2022: Hearing Before the Subcomm. on Com., Just., Sci., and Related Agencies of the Sen. Comm. on Appropriations*, 117th Cong. 2 (2021) (statement of Director Christopher Wray), <https://www.appropriations.senate.gov/imo/media/doc/Wray%20Witness%20Testimony3.pdf>.

67. *Id.* at 6.

68. See Sahar F. Aziz, *Caught in a Preventive Dragnet: Selective Counterterrorism in a Post-9/11 America*, 47 GONZ. L. REV. 429 (2011).

69. See JONES et. al, *supra* note 60.

70. It is no coincidence that the government's tactics mirror explanations by popular counterterrorism experts, such as Marc Sageman's, about how homegrown terrorism arises from computer-mediated communication such as chat rooms and social media messaging forums. See, e.g., MARC SAGEMAN, *LEADERLESS JIHAD: TERROR NETWORKS IN THE TWENTY-FIRST CENTURY* 113–14 (2008) (claiming online radicalization occurs in chat rooms, listservs, and forums) [hereinafter LEADERLESS JIHAD].

The political economy of counterterrorism coupled with specious radicalization theories has resulted in the prosecution of at least 630 Muslims (all male except for four female defendants) from 2001 to 2021.⁷¹ To be sure, some of the cases are legitimate sting operations wherein, for example, a defendant had committed a predicate act prior to the initiation of the sting operation or the defendant was actively searching to join a terrorist organization when the informant or undercover agent made contact.⁷² However, at least 345 cases raise concerns with the criminalization of “extremist” speech and ideas.⁷³ That is, the defendant was not taking any action nor was he in a realistic position to do so but for the government actor’s actively leading him into a fake plot designed and implemented by the government. This manufacturing of crime is explained in part by the racial politics of preventive counterterrorism.

Terrorism prevention has proven both lucrative for the FBI and professionally advantageous for its agents after the September 11th terrorist attacks. Annual budgetary increases, agent promotions, and fame incentivize aggressive counterterrorism enforcement, at the expense of Muslims’ collective civil liberties. Similar to drug and gun criminal enforcement against African American communities, the more money is funneled to counterterrorism, the more agents will find what they are looking for.⁷⁴ And if they can’t find real security threats, the agents manufacture them.⁷⁵ The billions of dollars spent over two decades on these fake terrorist plots have yielded at least 612 federal indictments of Muslims, in addition to thousands of counterterrorism investigations.⁷⁶ While this may facially

71. The database of these 631 state and federal cases is on file with the author.

72. See, e.g., *United States v. Ahmed*, 1:10-cr-00413 (E.D. Va. 2010); *United States v. Grecula*, 4:05-00257 (S.D. Tex. 2005); *United States v. Edmonds*, 1:15-cr-00149 (N.D. Ill. 2015).

73. According to the author’s coding of cases, approximately 300 cases appear to be legitimate based on the following criteria: 1) defendant engaged in predicate acts without coercion or manipulation by a government operative; 2) informant or undercover agent followed the lead of the defendant rather than leading, creating, and implementing the fake plot; and 3) defendant rebuked explicit offers to withdraw from the plot.

74. Jesse J. Norris, *Explaining the Emergence of Entrapment in Post-9/11 Terrorism Investigations*, 27 *CRITICAL CRIMINOLOGY* 467, 470 (2019) (citing KAI T. ERIKSON, *WAYWARD PURITANS: A STUDY IN THE SOCIOLOGY OF DEVIANCE* (1966) for the proposition that “[s]ociologists observed long ago that the amount of deviance discovered rises in proportion to the number of those employed to find it”).

75. Trevor Aaronson, *THE TERROR FACTORY: INSIDE THE FBI’S MANUFACTURED WAR ON TERRORISM* 16-17 (2013).

76. *Trial and Terror*, INTERCEPT, <https://trial-and-terror.theintercept.com/> (last visited Jan. 31, 2021) (noting there have been 975 defendants prosecuted by the U.S. Department of Justice since the 9/11 attacks). The author’s database shows at least six hundred and thirty terrorism related cases have been brought against Muslims. *Practical Terrorism Prevention*, *supra* note 43, 215 n.30 (citing various media reports between 2011 and 2018

appear to be an indication of success, a closer look at the cases reveals a troubling trend. Most Muslim male targets are young, easily manipulated, and otherwise vulnerable due to mental illness, indigence, unemployment, recent release from prison, or social isolation.⁷⁷ Easy targets combined with tremendous political pressures and financial incentives to prevent terrorism produces a predictable outcome that repeats the FBI's checkered history of racial profiling against minorities and dissidents.⁷⁸

Long before 2001, the FBI's mission encompassed countering domestic terrorism. J. Edgar Hoover infamously targeted African Americans, Jews, and immigrants that effectively criminalized their political dissent.⁷⁹ After more than three decades of systematic deployment of informant infiltrators and agents provocateurs in sting operations against so-called radicals in COINTELPRO, these abuses were exposed in the 1975 Church Committee Hearings.⁸⁰ What followed was a series of legislative reforms that constrained the federal government's ability to surveil and sabotage political groups.⁸¹ After 9/11, the FBI's authorities were expanded by the PATRIOT Act and the FBI's Domestic Investigations and Operation Guide (DIOG), prompting civil liberties groups to decry a regression to the criminalization of political dissent.⁸²

While an extensive critique of the PATRIOT Act is beyond the scope of this article, it is worth highlighting how the 2008 changes to the FBI's DIOG granted the agency license to racially and religiously profile Muslims in aggressive sting operations that have posed grave threats to their liberty interests.⁸³ In section 4 of the DIOG, the FBI stated that it would

estimating counterterrorism threat assessments between 10,000 to 20,000 annually and investigations between 2,000 and 3,000 annually).

77. Jessica Stern, *Radicalization to Extremism and Mobilization to Violence: What Have We Learned and What Can We Do about It?*, 668 ANNALS AM. ACAD. POL. & SOC. SCI., 102, 109 (noting that underemployment is a risk factor cited in multiple studies of ISIS recruits).

78. S. REP. NO. 94-755 (1976); see generally NELSON BLACKSTOCK, *COINTELPRO: THE FBI'S SECRET WAR ON POLITICAL FREEDOM* (1988) (examining how the FBI's COINTELPRO targeted political dissidents and Black nationalists).

79. Virgie Hoban, 'Discredit, Disrupt, and Destroy': FBI Records Acquired by the Library Reveal Violent Surveillance of Black Leaders, Civil Rights Organizations, BERKELEY LIBR. NEWS (Jan. 18, 2021), <https://news.lib.berkeley.edu/fbi>.

80. S. REP. NO. 94-755 (1976).

81. Thomas Young, *40 Years Ago, Church Committee Investigated Americans Spying on Americans*, BROOKINGS (May 6, 2015), <https://www.brookings.edu/blog/brookings-now/2015/05/06/40-years-ago-church-committee-investigated-americans-spying-on-americans/>.

82. ACLU, UNRELEASED AND UNACCOUNTABLE: THE FBI'S UNCHECKED ABUSE OF AUTHORITY 4-7, 14 (2013).

83. Anik Joshi, *The United States Doesn't Need Another Rushed Patriot Act*, FOREIGN POL'Y (Jan. 19, 2021), <https://foreignpolicy.com/2021/01/19/us-capitol-fbi-new-patriot-act-security-state/>; Brad Polumbo, *Tulsi Gabbard Warns Against the Danger of New 'Domestic Terrorism' Laws*, FEE (Jan. 27, 2021), <https://fee.org/articles/tulsi-gabbard-warns-against-the-danger-of-new-domestic-terrorism-laws/>; Jack Kelly, *A Consequence of COVID-19 Could Be*

use the least intrusive methods to protect the American people, and that “no investigative activity, including assessments, may be taken *solely* on the basis of activities that are protected by the First Amendment or on the race, ethnicity, national origin or religion of the subject.”⁸⁴ In the same breath, the DIOG provides guidance on the use of race or ethnicity, explicitly permitting the use of ethnicity in evaluating whether an individual is or is not “a possible associate of a criminal or terrorist group that is known to be comprised of members of the same ethnic grouping”⁸⁵ When it comes to using race or ethnicity in communities, the DIOG allows broad collection and analyzing of demographics, geo-mapping ethnic/racial demographics, collection of general ethnic/racial behavior as long as there is a “rational relationship” to an investigation or analytical need, among other broadly defined parameters.⁸⁶

Equipped with broad investigative authority and pressured by elected officials to show results from their increased budgets, FBI agents have successfully incarcerated hundreds of Muslim men using sting operations. Moreover, as Jesse Norris’ research shows, former FBI agents admit that an agent involved in counterterrorism operations gets a “gold star by their name that . . . they were a great terrorist hunter.”⁸⁷ Agents also noted the importance of receiving a press release for their cases as a means of bolstering their careers.⁸⁸ Similarly, a terrorism expert interviewed by Norris stated that agents need to “work a terrorism case “ in order to be promoted and become a “golden boy “ in the department eligible for fast-track promotions.⁸⁹ These perverse incentives have caused defense counsel to accuse the FBI of engaging in sentencing entrapment wherein agents

A Loss of Civil Liberties – Resulting In Career Restrictions, FORBES (Apr. 24, 2020), <https://www.forbes.com/sites/jackkelly/2020/04/24/a-consequence-of-covid-19-could-be-a-loss-of-civil-liberties-and-the-implementation-of-career-restrictions/?sh=4b3f10ae3f29>.

84. FBI, FBI DOMESTIC INVESTIGATIONS AND OPERATIONS GUIDE (DIOG) 2008 VERSION TRAINING MATERIAL AND RELATED DOCUMENTS PART 04 OF 05 at 22 (2008), <https://vault.fbi.gov/FBI%20Domestic%20Investigations%20and%20Operations%20Guide%20%28DIOG%29/diog-section-4-2008-version-training-material-and-related-documents/fbi-domestic-investigations-and-operations-guide-diog-2008-version-training-material-and-related-documents-part-04-of-05/view> (stating that whether an FBI agent’s conduct is intrusive is evaluated by five factors: the nature of the information sought, the scope of the information sought, the scope of the use of the investigative method, the source of the information sought, and the risk of public exposure) (emphasis added).

85. *Id.* at 25.

86. *Id.*

87. See Norris, *supra* note 74, at 476.

88. *Id.*

89. *Id.*

manipulate their vulnerable Muslim targets to commit the most serious (fake) terrorist plot in order to maximize the potential sentence.⁹⁰

The politics of preventive counterterrorism puts FBI agents and prosecutors in the position of determining how to go about finding terrorists in the United States. As a former prosecutor noted, “There isn’t a business of terrorism in the United States... You’re not going to be able to go to a street corner and find someone who’s already blown something up ... The . . . goal is not to find somebody who’s already engaged in terrorism but find somebody who would jump at the opportunity if a real terrorist showed up in town.”⁹¹ This is where radicalization theories not only inform counterterrorism sting operations, but serve as a blueprint for the FBI to replicate those theories with little regard for the scholarly consensus that they are unsubstantiated, and therefore unreliable.⁹²

III. THE PSEUDO-SCIENCE OF RADICALIZATION

Radicalization theory developed from scholars’ attempts to understand the causes of terrorism, especially transnational terrorism. According to former CIA analyst and oft-cited terrorism expert Marc Sageman, transnational terrorism has undergone three waves.⁹³ The first wave was comprised of hierarchical organizations engaging in asymmetrical conflict with nation-states.⁹⁴ Well-funded, geographically focused, and consisting of local fighters trained to conduct violent operations against civilians, organizations such as Hizbullah, Hamas, Tamil Tigers, and Laishkar-e-Taeba presented counterterrorism researchers with a variation of other terrorist organizations such as the Irish Republican Army, the Italian Red Brigades, and the Spanish ETA (Euskadi Ta Askatasuna).⁹⁵

90. See *U.S. v. Siraj*, 468 F. Supp. 2d 408, 414 (E.D.N.Y. 2007); *U.S. v. Cromitie*, 781 F. Supp. 2d 211, 215–20 (S.D.N.Y. 2009); *U.S. v. Osmakac*, 868 F.3d 937, 958–60 (11th Cir. 2017); *U.S. v. Hamzeh*, No. 16-CR-21, 2019 WL 1331639, at *1 (E.D. Wis. Mar. 25, 2019); see also Norris, *supra* note 74, at 476.

91. David K. Shipler, *Terrorist Plots, Hatched by the F.B.I.*, N.Y. TIMES (Apr. 29, 2012), <https://www.nytimes.com/2012/04/29/opinion/sunday/terrorist-plots-helped-along-by-the-fbi.html> (quoting David Raskin, former federal terrorism prosecutor).

92. See SAGEMAN, *supra* note 27, at 575 (noting the “ocean of false alarms” that overwhelm law enforcement agencies trying to find so-called jihadi plots which then incentivizes agents to use sting operations); HORGAN, *supra* note 34, at 3.

93. LEADERLESS JIHAD, *supra* note 70, at 48–50.

94. *Id.* at 48.

95. See *id.* at 49–49; see also Kali Robinson, *What is Hezbollah?*, COUNCIL ON FOREIGN REL. (Oct. 26, 2021, 4:00 PM), <https://www.cfr.org/background/what-hezbollah> (detailing structure and funding); see also Zachary Laub & Kali Robinson, *What is Hamas?*, COUNCIL ON FOREIGN REL. (Aug. 17, 2021, 1:30 PM), <https://www.cfr.org/background/what-hamas> (detailing structure and funding); see also STAN. CTR. INT’L SECURITY & COOPERATION, LIBERATION TIGERS OF TAMIL ELAM (July 8, 2015), <https://>

The second wave of transnational terrorism began in the 1990s when organizations such as Al Qaeda recruited both local and foreign fighters to be trained in terrorist attacks across borders for the purpose of creating a transnational Caliphate – in contrast to the first wave groups’ ethno-nationalist secession or creation of an independent state within a nation-state.⁹⁶ From its headquarters in Afghanistan, Al Qaeda leaders coordinated attacks against civilians in Muslim-majority countries and their Western state allies, which culminated in the September 11, 2001 terrorist attacks.⁹⁷

The third wave emerged after 2003 when the US unlawfully invaded Iraq and continued its offensive against Al Qaeda in Afghanistan and Pakistan.⁹⁸ As Al Qaeda leaders were killed, detained, or constantly on the run, they relied on an individual or small group of individuals to self-train and independently plan a terrorist attack inspired by the organization’s propaganda and ideology.⁹⁹ This third wave has come to be known as ‘home-grown terrorism’ and lone wolf terrorism in the counterterrorism parlance.¹⁰⁰ Western nations’ responses to third wave transnational terrorism has generated a cottage industry of radicalization experts and pseudo-intellectual theories that psycho-analyze and dissect Muslim diaspora communities like rats in a lab experiment—all under the guise of preventing

web.stanford.edu/group/mappingmilitants/cgi-bin/groups/print_view/225#:~:text=Overseas%20funding%20is%20mainly%20provided,%2C%20Europe%2C%20and%20North%20America (detailing structure and funding); see also STAN. CTR. INT’L. SECURITY & COOPERATION, LASHKAR-E-TAIBA (NOV. 2018), [HTTPS://CISAC.FSI.STANFORD.EDU/MAPPINGMILITANTS/PROFILES/LASHKAR-E-TAIBA#HIGHLIGHT_TEXT_12559](https://cisac.fsi.stanford.edu/mappingmilitants/profiles/lashkar-e-taiba#highlight_text_12559) (detailing structure and funding).

96. See *id.* at 49 (The congregation of foreign fighters from various countries to Afghanistan ultimately culminated in a push for an Islamic caliphate to protect against perceived Western Christendom’s persecution of Muslim diasporas and imperialism of Muslim-majority countries.).

97. *Id.* at 134–35.

98. See generally Mark Shulman & Lawrence J. Lee, *The Legality and Constitutionality of the President’s Authority to Initiate an Invasion of Iraq*, 41 COLUM. J. TRANSNAT’L L., 15 (2002); see also Andreas Paulus, *The War Against Iraq and the Future of International Law: Hegemony or Pluralism?*, 25 MICH. J. INT’L L. 691, 692, 695–713 (2004) (noting that “by acting without the blessing of the Security Council, the U.S.-led coalition was in breach of international law and the U.N. Charter. . .”).

99. *C.f.* *Al Qaeda*, ADL, <https://www.adl.org/resources/profiles/al-qaeda> (“Following the toppling of the Taliban in 2001 by the U.S., and its subsequent military campaigns in Afghanistan, Al Qaeda’s operational methods and capabilities became more decentralized and its ties to other groups became a correspondingly larger aspect of its operations.”) (last visited Mar. 27, 2022).

100. LEADERLESS JIHAD, *supra* note 70, at 133–35; see also Khaled A. Beydoun, *Lone Wolf Terrorism: Types, Stripes and Double Standards*, 112 NW. L. REV. 187, 194 (2018) (defining “lone wolf terrorism” as “premeditated violence unleashed by an individual actor, driven by discretely held views or a cogent ideology espoused by an organization. A lone wolf terrorist may be loosely connected to a (formally designated) terrorist organization or hate group or act entirely in a solitary capacity.”).

terrorism. This Article's critique of radicalization schemas focuses on this third wave.

Notwithstanding the hubris and fearmongering surrounding home-grown terrorism, the fact remains that a tiny percentage of people who hold 'radical' views engage in terrorism.¹⁰¹ Yet, the literature is awash in theories, models, and concepts attempting to explain what causes terrorism, who becomes a terrorist, and why people engage in terrorism. Due to the complexity and heterogeneity of terrorism across time, space, and cultures, there exists no overarching theoretical frame. As a result, U.S. law enforcement seeking to winnow down which individuals warrant investigation often rely on negative racial stereotypes and political expedience—an entrenched practice in the American criminal justice system—that prompts a focus on Muslim men as terrorist suspects.¹⁰²

Radicalization theory plays an outsized role in shaping counterterrorism enforcement. Commonly described as “what goes on before the bomb goes off,”¹⁰³ radicalization is purportedly “the social and psychological process of incrementally experienced commitment to extremist political or religious ideology.”¹⁰⁴ While law enforcement officials are quick to point out that radicalization does not necessarily lead to violence, they nevertheless structure their sting operations to target Muslims who express views outside the mainstream.¹⁰⁵ Worse yet, the objective of informants and undercover agents apparently is to transition their Muslim targets who express “extremist” political views toward violence through involvement with a (fake) member of a terrorist group or engaging in lone wolf violence through a (fake) terrorist plot. Put simply, the state is sponsoring violent radicalization.

What the sting operations demonstrate is that the government cultivates the Muslim targets throughout fake terrorist plots to produce a ‘fully fledged’ terrorist ripe for indictment, prosecution, and incarceration. The methodical means by which these predatory law enforcement schemes are conducted alarmingly mirror the processes offered by scholars in the radicalization literature,¹⁰⁶ the radicalization literature has become a blueprint for counterterrorism sting operations. When coupled with weak

101. JOHN HORGAN, WALKING AWAY FROM TERRORISM: ACCOUNTS OF DISENGAGEMENT FROM RADICAL AND EXTREMIST MOVEMENTS 3 (2009); Randy Borum, *Radicalization into Violent Extremism II: A Review of Conceptual Models and Empirical Research*, 4 J. STRATEGIC SECURITY 37, 38 (2011) (noting that most people who hold radical views do not engage in terrorism).

102. See generally ALEXANDER, *supra* note 47; see also BUTLER, *supra* note 56.

103. Mark Sedgwick, *The Concept of Radicalization as a Source of Confusion*, 22 TERRORISM & POL. VIOLENCE 479, 479 (2010).

104. John Horgan & Kurt Braddock, *Rehabilitating the Terrorists? Challenges in Assessing the Effectiveness of Deradicalisation Programs*, 22 TERRORISM & POL. VIOLENCE 267, 279 (2010).

105. Aaronson & Abowd, *supra* note 7.

106. See *id.* at 144–45 (2009); see also SAGEMAN, *supra* note 37, at 107–21.

entrapment law (the topic of the next article in the series), the government has been wildly successful in convicting 99% of the 631 Muslims charged in terrorism related cases.¹⁰⁷

To describe radicalization theory as still nascent and under-developed is an understatement.¹⁰⁸ Indeed, some scholars describe it as more pseudo-intellectual than empirically grounded.¹⁰⁹ Before 2001, the term radicalization was only occasionally referenced in academia. Instead, researchers focused on the causes of terrorism in the context of civil wars, anti-colonialist wars, domestic insurgencies, or inter-state conflicts. Despite Western scholars' publications of hundreds of articles, chapters and books attempting to explain why and how individuals become terrorists, neither law enforcement nor scholars can predict who is more or less likely to engage in political violence.¹¹⁰

After the September 11th terrorist attacks, researchers offered myriad speculative theories attempting to explain how a person is 'radicalized' to join a terrorist organization or conduct a "lone wolf" terrorist act.¹¹¹ The few research projects grounded in empirical data are case studies with limited explanatory insights that can be translated into a reliable predictive theory or empirical model.

As Arun Kundnani notes, the study of radicalization is not so much about the search for the cause of terrorism, but more precisely, why "some individual Muslims support an extremist interpretation of Islam that leads to violence?"¹¹² The emphasis on Muslims and the individual de-emphasizes the wider political, economic, and social circumstances—what is often referred to as the root causes—and makes Muslims an axiomatically suspect community. Meanwhile, the government gives broad leeway to White Christian individuals and groups who spew equally extremist, politically

107. See AZIZ, Race, Entrapment, and Manufacturing "Homegrown Terrorism," *supra* note 41 (examining how weak entrapment doctrine across federal circuits facilitates the use of predatory sting operations against Muslims).

108. Borum, *supra* note 34, at 38 (noting that few radicalization studies have been subject to rigorous or systematic study).

109. HORGAN, *supra* note 101, at 5.

110. Cf. ALEX PETER SCHMID & RONALD D. CRELINSTEN, WESTERN RESPONSES TO TERRORISM 11 (1993) (noting that terrorists seek to exploit people's emotions by causing them extreme anxiety so that they may become a victim of arbitrary violence).

111. See RONALD D. CRELINSTEN, COUNTERTERRORISM 196–97 (2009) (noting that an international panel of leading terrorism experts in 2003 could not agree on the root causes of terrorism and whether they were socio-economic-political structures or individual psychological); see also Jonathan Githens-Mazer & Robert Lambert, *Why Conventional Wisdom on Radicalization Fails: the Persistence of a Failed Discourse*, 86 INT'L AFF. 889, 889–91 (2010) (noting how radicalization theory is "plagued by assumption and intuition, unhappily dominated by 'conventional wisdom' rather than systematic scientific and empirically based research.").

112. Kundnani, *supra* note 34, at 5.

dissident rhetoric under the guise of freedom of speech and expression.¹¹³ One need only look at the attempted insurgency on January 6, 2021 by White extremists to find the glaring racialized double standards.¹¹⁴

Lacking empirical evidence, so-called radicalization experts make unfounded and biased assumptions about Muslim diasporic youth that merge disparate concepts of “disaffection, radical dissent, religious fundamentalism, and propensity for violence” to justify surveilling Muslim communities within the broader preventive counterterrorism regime.¹¹⁵ For example, the popular “staircase to terrorism” model proffered by Fathali Moghaddam argues that feelings of discontent, perceived adversity or deprivation, and frustrations from individuals’ unsuccessful attempts to improve their situation are the first and second steps on the path to terrorism.¹¹⁶ As a result, Lee Jarvis bluntly critiques radicalization theories as a means for criminalizing “those who espouse alternative theories of political legitimacy,” resulting in over-inclusive national security practices.¹¹⁷ Despite documented limitations, radicalization theories continue to contribute to a systematic criminalization of Muslims with extreme political beliefs and speech as potential terrorists.

Radicalization theories fall under two analytical frames: 1) structural analysis focused on the socio-economic-political contexts where terrorism occurs, also known as the root causes model, and 2) psychological models focused on the individual mindset and life of terrorists.¹¹⁸ A few scholars, such as John Hogan and Max Taylor, combine the two models to assert that the reasons a person becomes involved in terrorism lie within the

113. See S. POVERTY L. CTR., INTELLIGENCE REPORT: RAGE AGAINST CHANGE: WHITE SUPREMACY FLOURISHES AMID FEARS OF IMMIGRATION AND NATION’S SHIFTING DEMOGRAPHICS 1, 14-16, 32, 39 (Spring 2019), https://www.splcenter.org/sites/default/files/intelligence_report_166.pdf; see also Rashawn Ray, *What the Capitol Insurgency Reveals About White Supremacy and Law Enforcement*, BROOKINGS (Jan. 12, 2021), <https://www.brookings.edu/blog/how-we-rise/2021/01/12/what-the-capitol-insurgency-reveals-about-white-supremacy-and-law-enforcement/>; Walter Griffin, Report: ‘Dirty Bomb’ Parts Found in Slain Man’s Home, BANGOR DAILY NEWS (Feb. 10, 2009, 10:22 PM), <http://new.bangordailynews.com/2009/02/10/politics/report-dirty-bomb-parts-found-in-slain-mans-home/>; Michael Brick, *Man Crashes Plane into Texas I.R.S. Office*, N.Y. TIMES (Feb. 19, 2010), <http://www.nytimes.com/2010/02/19/us/19crash.html>; Joan Walsh, *Why So Little Attention to Vernon Hunter?*, SALON (Feb. 23, 2010, 3:23 AM), https://www.salon.com/2010/02/23/vernon_hunter/.

114. See Select Committee to Investigate the January 6th Attack on the United States Capitol, *About*, <https://january6th.house.gov/about> (last visited Nov. 20, 2021).

115. Kundnani, *supra* note 34, at 9; see also *id.*

116. Fathali M. Moghaddam, *The Staircase to Terrorism: A Psychological Exploration*, 60 AM. PSYCHOLOGIST 161, 162-64 (2005).

117. Charlotte Heath-Kelly, *Counter-terrorism: The Ends of a Secular Ministry*, in CRITICAL PERSPECTIVES ON COUNTER-TERRORISM 41, 50-51 (Lee Jarvis & Michael Lister eds., 2015).

118. HORGAN, *supra* note 101, at 3.

“psychological and emotional context of the individual on which the bigger and essentially non-psychological forces of opportunity and context operate.”¹¹⁹ Although both the structure and psychological models aim to predict who is most likely to become a terrorist for purposes of assisting law enforcement in preventive counterterrorism, neither set of theories is substantiated by empirical research beyond small numbers of case studies in dissimilar political and social contexts.¹²⁰

Nevertheless, law enforcement adopts the radicalization framework to identify their sting operation targets based on the unproven premise that if an undercover agent does not recruit him, then a real terrorist will.¹²¹ Before turning to the logical and factual flaws of this position, a review of the radicalization literature reveals the internal justifications for the FBI’s predatory and racialized sting operations. Any legal reforms aimed to protect defendants’ constitutional rights in terrorism related prosecutions, therefore, must also expose the speciousness of the radicalization theories on which post-911 preventive counterterrorism in general, and sting operations in particular, are built.

A. Socio-Economic-Political Structural Models

Structural counterterrorism looks at the root causes of terrorism to understand why an individual partakes in political violence.¹²² These models examine the social, economic, and political factors of a terrorist’s environment. Accordingly, poverty, lack of education, authoritarianism, human rights violations, political repression, an absence of the rule of law, and inequality allegedly contribute to political violence by non-state actors and their followers.¹²³

119. Max Taylor & John Horgan, *A Conceptual Framework for Addressing Psychological Process in the Development of the Terrorist*, 18 *TERRORISM & POL. VIOLENCE* 585, 588 (2006) (identifying personal factors, setting events, and the social, political, and organizational context as the three critical process variables that affect the development of the terrorist).

120. Derek M.D. Silva, *Police and Radicalization*, in *THE HANDBOOK OF SOCIAL CONTROL* 249, 250 (Mathieu Deflem ed., 2018).

121. *Id.* at 251; Sageman, *supra* note 27, at 567.

122. David Rapoport argues there are four waves of terrorism since the late 1870 that include 1) anarchists, 2) anticolonialists, 3) leftists, and 4) religious fundamentalists. DAVID C. RAPOPORT, *THE FOUR WAVES OF MODERN TERRORISM* 6-7 (2004); *see also* JOHN HORGAN, *PSYCHOLOGY OF TERRORISM* 85 (2004) (listing fourteen root causes frequently cited by terrorism experts such as lack of democracy, civil liberties and the rule of law; failed or weak states; rapid modernization; illegitimate or corrupt governments; repression by foreign occupation or colonial powers; and historical antecedents of political violence, civil wars, revolutions, dictatorships or occupation).

123. Quan Li & Drew Schaub, *Economic Globalization and Transnational Terrorism: A Pooled Time-series Analysis*, 48 *J. CONFLICT RESOL.* 230, 237 (2004) (posing multiple critiques of Kruger and Malečková’s 2002 study that found no correlation between poverty and

The rational actor theory examines terrorism in conflict zones or countries experiencing insurgencies to posit that non-state actors fighting an asymmetrical war with a nation-state, organizations such as Hamas, Hezbollah, Al Qaeda, and ISIS choose terrorism to achieve specific military objectives or political concessions from the state.¹²⁴ In his book *Dying to Win*, Robert Pape argues that modern suicide missions are an extreme, strategic rational decision in pursuit of national liberation or other political goals.¹²⁵ To use economic parlance, a terrorist groups' cost-benefit analysis results in the use of limited resources to maximize its goal of defeating its enemy.¹²⁶ Other scholars posit that ideological factors such as religious fundamentalism, anti-capitalism, Marxism, xenophobia, hyper-nationalism, or racism drive political violence.¹²⁷

Which model a country follows influences its counterterrorism strategy, especially in its international counterterrorism efforts. For example, adoption of the socio-economic theories tends to produce a development and rights-based approach to preventing terrorism, while the ideological theories lead to a militarized response to foreign terrorist organizations.¹²⁸

terrorism at the individual level in Hezbollah suicide missions); Katerina Dalacoura, *Democracy as Counter-Terrorism in the Middle East: A Red Herring?*, 32 *ULUSLARARASI İLİŞKİLER KONSEYİ İKTİSADİ İŞLETMESİ* 101, 103 (2012) [hereinafter *Democracy as Counter-Terrorism*] (arguing that materialist or structural factors drive Islamic terrorism because ideas are epiphenomenal to the underlying reasons); see also KATERINA DALACOURA, *ISLAMIST TERRORISM AND DEMOCRACY IN THE MIDDLE EAST* 24–52 (2011) (noting ideational, material, and structural causes of terrorism).

124. Martha Crenshaw, *The Logic of Terrorism: Terrorist Behaviour as a Product of Strategic Choice*, in *ORIGINS OF TERRORISM: PSYCHOLOGIES, IDEOLOGIES, THEOLOGIES, STATES OF MIND* 7, 16 (WALTER REICH ED., 1998); *Democracy as Counter-Terrorism*, *supra* note 123, at 106.

125. ROBERT PAPE, *DYING TO WIN: THE STRATEGIC LOGIC OF SUICIDE TERRORISM* 23 (2006); see also JOHN HORGAN, *THE PSYCHOLOGY OF TERRORISM* 13 (2014) (explaining that the immediate aim of terrorist violence is creating a general climate of fear and uncertainty through intimidation, injury, or death but that the ultimate aim is political change as espoused by the terrorist group's ideology or political aspirations).

126. See ARIE W. KRUGLANSKI, JOCELYN J. BÉLANGER, & ROHAN GUNARATNA., *THE THREE PILLARS OF RADICALIZATION: NEEDS, NARRATIVES, AND NETWORKS* 77 (2019).

127. See CRELINSTEN, *supra* note 111 (listing the ideological influences); see also ALAN KREUGER, *WHAT MAKES A TERRORIST: ECONOMICS AND ROOTS OF TERRORISM* 12 (2007) (arguing that the rich are as likely as the poor to participate in terrorist acts); Quan Li, *Does Democracy Promote or Reduce Transnational Terrorist Incidents?*, 49 *J. CONFLICT RESOL.* 278, 294 (2005) (“[D]emocratic participation reduces transnational terrorist incidents in a country. Government constraints, subsuming the effect of press freedom, increase the number of terrorist incidents in a country”).

128. U.N., *Security Council Open Debate on “Security, Development and the Root Causes of Conflicts”* (Nov. 17, 2015), <https://www.un.org/counterterrorism/events/security-council-open-debate-security-development-and-root-causes-conflicts>; see generally Isabelle Duyvesteyn, *Great Expectations: the Use of Armed Force to Combat Terrorism*, 19 *SMALL WARS & INSURGENCIES* 328 (2008).

Neither the socio-economic-political nor ideological model can predict with sufficient certainty why terrorism occurs and who among the millions of people living under such aggrieved conditions will resort to violence.¹²⁹

Notably, most of the terrorism literature focuses on terrorist organizations and their members who reside in conflict zones or under foreign occupation. Whether it is the Irish Republican Army, the Italian Red Brigades, the Tamil Tigers, Hamas, Hizbullah, Al Qaeda, or ISIS, the case studies examine environments starkly different than the United States where there is no civil war, internal insurgency movement, or interstate war taking place on its soil.¹³⁰ Moreover, the macro-level structural models of radicalization are so general and broad that they are of little use in guiding law enforcement tasked with operationalizing counterterrorism.¹³¹ Whatever preliminary conclusions can be made from the literature have limited applicability to US domestic counterterrorism.

For these reasons, individualized psychological models are relied upon for preventing terrorism in the absence of an organized terrorist organization on US soil.¹³² Among the various individualized radicalization theories, the social network theory is the most salient within the FBI, which in turn explains how and why sting operations are purposefully designed to target Muslims.

B. Psychological Models

Dissatisfied with structural models' inability to predict which few of the large numbers of poor, oppressed, uneducated, or ideologically zealous people will become terrorists, some scholars turn to individual psychological models to predict radicalization. Through case studies and interviews of terrorists, these scholars attempt to develop psychological profiles of a

129. A number of large-scale empirical studies have known no relationship between poverty and terrorism, both at the individual and aggregate level of country of origin. Alan B. Krueger & Játka Maleckova, *Education, Poverty, and Terrorism: Is There a Causal Connection?*, 17 J. OF ECON. PERSPECTIVES Summer 2003, at 119; SAGEMAN, *supra* note 37, at 69, 99-136 (noting movements and Robert Pape's Dying to Win); HORGAN, *supra* note 101, at 3; LEADERLESS JIHAD, *supra* note 70, at 48 (noting that most terrorists come from middle class families but claim to fight on behalf of their poor brethren).

130. See, e.g., JAMES DINGLEY, *THE IRA: THE IRISH REPUBLICAN ARMY* (2012); JOHN CASERTA, *THE RED BRIGADES: ITALY'S AGONY* (1978); MATTHEW LEVITT, *HAMAS: POLITICS, CHARITY, AND TERRORISM IN THE SERVICE OF JIHAD* (2006); AMAL SAAD-GHORAYEB, *HIZBULLAH: POLITICS AND RELIGION* (2015); FAWAZ A. GERGES, *THE RISE AND FALL OF AL-QAEDA* (2011); BRIAN L. STEED, *ISIS: THE ESSENTIAL REFERENCE GUIDE* (2019).

131. HORGAN, *supra* note 101, at 5

132. John Horgan, *From Profiles to Pathways and Roots to Routes, Perspectives on Psychology on Radicalization into Terrorism*, 618 ANNALS AM. ACAD. POL. & SOC. SCI. 80, 84 (2008).

typical terrorist as part of what scholars Max Taylor and John Hogan call “personal factors.”¹³³ Consequently, three psychological approaches undergird radicalization theory: psychoanalytic, psychological profiling, and social psychology.

The psychoanalytic approach argues that identity, narcissism, and paranoia theories explain why a person may turn to violence in response to frustration, disappointment, or humiliation experienced in their lives.¹³⁴ Under this analytical frame, terrorists are presumed to possess psychopathic disorders, which in the 1970s and 1980s was the predominant view in terrorism studies.¹³⁵ Some scholars contend that terrorists possess authoritarian-extremist personalities that increase their ambivalence toward authority, emotional detachment from the consequences of their actions, magical thinking, destructiveness, and adherence to violent subcultures.¹³⁶ In 1981, researchers who studied 227 German terrorists proffered two types of terrorist leaders: 1) an extroverted personality that is “unstable, uninhibited, inconsiderate, self-interested and unemotional,” and 2) a neurotically hostile person who “rejects criticism, and is intolerant, suspicious, aggressive and defensive.”¹³⁷ Another study of the Irish context argued that authoritarian personality types are attracted to conflict-oriented groups such as terrorist groups (and police forces).¹³⁸

By the late 1980s, theories that terrorists are psychopathic or clinically disordered in some way fell out of favor, as the empirical research did not support these psychoanalytic theories.¹³⁹ After decades of research, it became clear there was no single “terrorist mindset” that could explain the

133. Max Taylor & John Horgan, *A Conceptual Framework for Addressing Psychological Processes in the Development of the Terrorist*, 18 *TERRORISM AND POL. VIOLENCE* 585, 588 (2006). Narcissism theory posits that chronic abuse or humiliation during childhood causes an absence of morality and empathy in adulthood such that if they experience “narcissistic injury” or ego-threat, their response is to eliminate the source of injury as necessary. KRUGLANSKI, ET AL., *supra* note 126, at 70.

134. KRUGLANSKI ET AL., *supra* note 126, at 70.

135. FRANCO FERRACUTI & FRANCESCO BRUNO, *Psychiatric Aspects of Terrorism in Italy*, in *THE MAD, THE BAD, AND THE DIFFERENT* 209 (1981); *Analysen zum Terrorismus 3: Gruppenprozesse* (W. von Baeyer-Katte, D. Claessens, H. Feger & F. Neidhart eds., Darmstadt: Westfeutscher Verlag, 1982).

136. See generally Franco Ferracuti, *A Sociopsychiatric Interpretation of Terrorism*, 463 *ANNALS AM. ACAD. POL. & SOC. SCI.* 129 (1982); see also FRANCO FERRACUTI & FRANCESCO BRUNO, *PSYCHIATRIC ASPECTS OF TERRORISM IN ITALY*, in *THE MAD, THE BAD, AND THE DIFFERENT* 209 (1981); see also KRUGLANSKI ET AL., *supra* note 126, at 71.

137. HORGAN, *supra* note 34, at 52. (quoting *Analysen zum Terrorismus 3: Gruppenprozesse* (W. von Baeyer-Katte, D. Claessens, H. Feger & F. Neidhart eds., Darmstadt: Westfeutscher Verlag, 1982).

138. See generally KEN HESKIN, *NORTHERN IRELAND: A PSYCHOLOGICAL ANALYSIS* (1980).

139. HORGAN, *supra* note 34, at 48-49.

psychology of individuals drawn to violent political action. Indeed, most serious scholars acknowledge that terrorists are for the most part not psychopaths that suffer from serious personality abnormalities.¹⁴⁰ Structural theorists point this out when emphasizing that environmental and situational factors substantially affect a person's decision to engage in political violence, which should prompt states to focus on social, economic, and political inequities that may attract certain populations to terrorist groups.¹⁴¹ Another problem with psychological accounts of terrorism is that they cannot take into account the heterogeneity of terrorism across countries, regions, and continents.¹⁴² As Taylor and Quayle point out, most of the studies of terrorists offer broad, common-sense explanations that lack the specificity required to be translated into psychological concepts.¹⁴³

Some terrorism researchers have focused on developing a profile of a typical terrorists in terms of gender, age, nationality, citizenship status, education levels, employment status, profession, or religion.¹⁴⁴ These researchers have attempted to create data-driven terrorist profiles.¹⁴⁵ However, such profiling encourages a one-size-fits-all approach to terrorism management and a response that is easy for terrorists to evade by sending people who do not fit the profiles.¹⁴⁶ The few qualitative empirical studies of interviews of convicted terrorists confirm what skeptics already knew—there simply is no “terrorist profile.”¹⁴⁷

Other scholars have created lists of ‘risk factors’ that purportedly put a person on the ‘pathway to terrorism.’ However, these factors are ad hoc, untested, and vastly overinclusive. Tomas Precht identifies three sets of risk factors he argues motivate a Muslim to become radicalized. The first are background factors such as personal struggles with religious identity, experiences with discrimination, and lack of social integration.¹⁴⁸ The

140. TED ROBERT GURR, *THE ROOTS OF TERRORISM ECONOMIC FACTORS* 97-114 (2013); see also MAX TAYLOR, *THE TERRORIST* (1988); see generally MAX TAYLOR & ETHEL QUAYLE, *TERRORIST LIVES* (1994).

141. GURR, *supra* note 140.

142. See generally Marc Sageman, *The Stagnation in Terrorism Research*, 26 *TERRORISM & POL. VIOLENCE* 565 (2014).

143. TAYLOR, *supra* note 140; TAYLOR & QUAYLE, *supra* note 140.

144. HORGAN, *supra* note 34, at 67.

145. See generally AARON MANNES, *PROFILES IN TERROR: A GUIDE TO MIDDLE EAST TERRORIST ORGANIZATIONS* (2004).

146. HORGAN, *supra* note 101, at 4.

147. Randy Borum, *Radicalization into Violent Extremism II: A Review of Conceptual Models and Empirical Research*, 4 *J. OF STRATEGIC SEC.* 37, 37-62 (2012).

148. TOMAS PRECHT, DANISH MINISTRY OF JUSTICE, *HOME GROWN TERRORISM AND ISLAMIST RADICALISATION IN EUROPE* 6 (2007), https://www.justitsministeriet.dk/sites/default/files/media/Arbejdsomraader/Forskning/Forskningspuljen/2011/2007/Home_grown_terrorism_and_Islamist_radicalisation_in_Europe_-_an_assessment_of_influencing_factors__2_.pdf.

second are trigger factors that include people and events that provoke or incite either antipathy or activism.¹⁴⁹ And the third are opportunity factors that include physical and virtual spaces such as the Internet, mosques, penal institutions, and social groups.¹⁵⁰ All of these risk factors inform FBI sting operations where informants and undercover agents identify individuals experiencing personal struggles and angry about the US military's interventions in Muslim-majority countries.¹⁵¹ Once they find their targets, the government operatives proceed to manipulate the target to transform his grievances into terrorist action.

Forensic psychologist John Horgan lists multiple risk factors that may radicalize an individual, including emotional vulnerability, dissatisfaction with current political or social events, perceptions that nonviolent political action will not effectuate change, identification with victims of a real or perceived grievance, belief that engaging in violence against the state is not inherently immoral, belief they can achieve more in death than in life, and their kinship and social ties with others with similar experiences or already involved in terrorist activities.¹⁵² Horgan contends these factors provide “a powerful framework for an openness to socialization into terrorism, or a nurtured predisposition for involvement.”¹⁵³ While terrorists may exhibit some of these factors, so too do millions of people who are not terrorists. The risk factors are so overinclusive as to make them nearly useless.

C. Social Network Theory and the Lone Wolf Pack

Having failed to provide a reliable predictive theory based on specific psychology or environmental factors, terrorism experts latched on to the latest fad in terrorism studies—the ‘pathways to terrorism’ model. Attention is now on the gradual process by which a person gets involved and socialized to become a terrorist.¹⁵⁴ The last risk factor in Horgan’s list—kinship, social ties, and social networks—centers this analysis. Horgan’s work merges with Marc Sageman’s social network theory to produce the

149. *Id.*

150. *Id.*

151. See, e.g., *United States v. Rezwana Ferdous*, 1:11-cr-10331 (D. Ma 2011); *United States v. Antonio Martinez*, 1:10-cr-00798 (D. Md. 2010); *United States v. Mohamud*, 3:10-cr-00475 (D. Or. 2010); *United States v. Sheikh*, 5:13-cr-00305 (E.D.N.C. 2013); *United States v. Calloway*, 1:17-cr-00089 (D.D.C. 2017); *United States v. Alam*, 1:19-cr-00280 (E.D.N.Y. 2019); *United States v. Langhorne*, 3:19-cr-00218 (M.D. Fl 2019).

152. Horgan, *supra* note 132, at 84–85.

153. HORGAN, *supra* note 101, at 13.

154. HORGAN, *supra* note 101, at 1–7; Clark McCauley & Sophia Moskalenko, *Mechanisms of Political Radicalization: Pathways Toward Terrorism*, 20 *TERRORISM & POL. VIOLENCE* 418 (2008).

claim that radicalization and collective political action are closely related to interpersonal relationships and connections to others already radicalized.¹⁵⁵

According to Sageman, social contagion among friends and social networks increases the likelihood of engaging in risky behavior, including political violence.¹⁵⁶ A person's proclivity toward engagement with terrorism is "the power of the group, the content and process of ideology (or ideological control), the influence of a particular leader and feedback from experiences both inside and outside the movement."¹⁵⁷ Terrorism as a network, therefore, is comprised of degrees of interrelatedness among its people (e.g. the density) and the centrality of certain individuals actors (e.g. hubs of influence) within the organization. When applied to radicalization of Muslim youth diaspora in Western countries, Sageman contends they are usually "small groups of friends and relatives, who spontaneously self-organize into groups that later turn to terrorism."¹⁵⁸

This decentralized theory attempting to explain the few terrorists acts by Muslim diaspora is what Sageman calls "leaderless jihad."¹⁵⁹ Sageman posits that after 2001 violent political extremism in the West has been orchestrated by small, informal social groups rather than hierarchical paramilitary organizations.¹⁶⁰ Informal social networks purportedly radicalize members into ideological extremism as the precursor to engaging in political violence. Sageman calls these groups a lone wolf pack or a 'bunch of guys' that self-organize into a group supportive of Al Qaeda or ISIS and then later commit terrorism.¹⁶¹

Accordingly, the radicalization process is bottom-up in four stages comprised of 1) a sense of moral outrage, 2) the outrage is based on the belief there is a war against Islam, 3) a resonance of the moral outrage with a personal experience, and 4) acting on the moral outrage through social network resulting in further radicalization due to intra-group dynamics.¹⁶²

155. MARC SAGEMAN, UNDERSTANDING TERRORIST NETWORKS 128 (2004); see also Vincenzo Ruggiero, *Brigate Rosse: Political Violence, Criminology and Social Movement Theory*, 43 CRIM., L & SOC. CHANGE 289 (2005) (finding that a sizeable number of Italian left-wing militants who joined an underground group were friends with at least one member before joining).

156. KRUGLANSKI, ET AL., *supra* note 126, at 78.

157. HORGAN, *supra* note 101, at 13.

158. *Violent Islamist Extremism – 2007 Hearing Before the S. Comm. on Homeland Sec. & Gov't Affairs*, 110th Cong. 123 (2007) (statement of Marc Sageman, M.D., Ph.D., Principal, Sageman Consulting, LLC).

159. LEADERLESS JIHAD, *supra* note 70.

160. *Id.* at 172.

161. *Id.* at 65–67, 69; Raffaello Pantucci, *A Typology of Lone Wolves: Preliminary Analysis of Lone Islamist Terrorists*, in DEVELOPMENTS IN RADICALISATION AND POLITICAL VIOLENCE 25 (International Centre for the Study of Radicalisation and Political Violence ed., 2011).

162. KRUGLANSKI ET AL., *supra* note 126, at 79.

Sage man goes on to argue that the theological radicalism within a group dynamic is the cause of the group's radicalization.¹⁶³ However, this lone wolf pack will not necessarily take the final step of making contact with operational terrorists. This is where the FBI comes in.

A closer look at the anatomy of a sting operation demonstrates how the FBI structures its sting operations to apply the social network theory. Informants and undercover agents create the social ties and foster trust necessary to manipulate and pressure their Muslim targets to join a fake terrorist plot.¹⁶⁴ Government operatives spend months, and sometimes years, to radicalize the Muslim target.¹⁶⁵ They create a secret (fake) terrorist cell with targets that triggers a strong sense of cohesion among the group members.¹⁶⁶ And because most targets know nothing about building bombs or planning a terrorist attack, the informants and undercover agents play an outsized role in planning and executing the plot.¹⁶⁷ When the defendant later alleges he was entrapped, the law fails to protect him from the government's predatory practices because proof of radicalization is all the government needs to prove predisposition.¹⁶⁸ The defendant's posts on social media and in chat rooms, though otherwise protected by the First Amendment, is often the basis on which the government proves his disposition to commit a terrorism act.

For sting operations to withstand an entrapment defense, the FBI targets Muslim men who express dissident views, ideally on the fringes of the political spectrum. Agents and informants find them by scouring the internet and social media. They look for individuals posting, consuming, or verbally supporting extremist content online that includes bombast, puffery, and blowhard statements commending Al Qaeda and ISIS.¹⁶⁹ But the FBI provides more than the means and opportunity for these "radical" Muslims to engage in a fake terrorist plot. Informants and undercover agents manipulate, coerce, and encourage the targeted individual to take

163. LEADERLESS JIHAD, *supra* note 70, at 86-87.

164. Aaronson & Abowd, *supra* note 7.

165. *Id.*

166. See McCauley & Moskalenko, *supra* note 154, at 417, 421-23 (describing the different means by which individuals 'radicalize' within small groups of friends and comrades).

167. *Id.*

168. See generally *Sorrells v. United States*, 287 U.S. 435 (1932); *Sherman v. United States*, 356 U.S. 369 (1958); *United States v. Russell*, 411 U.S. 423 (1973); *Matthews v. United States*, 485 U.S. 58 (1988); *Jacobson v. United States*, 503 U.S. 540 (1992). See also Aziz, *supra* note 41.

169. Sahar F. Aziz & Khaled Beydoun, *Fear of a Black and Brown Internet: Policing Online Activism*, 100 B.U. L. REV. 1153, 1157-75 (2020).

action. And when the target is indicted, government officials proudly announce their success in defeating “homegrown Muslim terrorism.”¹⁷⁰

IV. RADICALIZATION THEORY AND “MUSLIM HOMEGROWN TERRORISM”

In their search for homegrown terrorism, FBI agents look for distribution of extremist ideas instead of predicate acts of an ongoing or impending crime to initiate a sting operation.¹⁷¹ FBI Director Robert Mueller’s comments before the Judiciary Committee in 2011 tellingly concluded: “We also confront the increasing use of the Internet for spreading extremist propaganda, and for terrorist recruiting, training, and planning. . . . Thousands of extremist websites promote violence to an online worldwide audience predisposed to the extremist message. They are posting videos on how to build backpack bombs and bio-weapons. They are using social networking to link terrorist plotters and those seeking to carry out these plans.”¹⁷²

To be sure, the volume of propaganda published online by foreign terrorist organizations has proliferated in the past two decades.¹⁷³ In the

170. See Press Release, U.S. Dep’t of Justice, Florida Man Convicted at Trial of Attempting to Use a Weapon of Mass Destruction and Providing Material Support to ISIL (Jan. 31, 2017), <https://www.justice.gov/opa/pr/florida-man-convicted-trial-attempting-use-weapon-mass-destruction-and-attempting-provide> (announcing conviction of Harlem Suarez); Press Release, U.S. Dep’t of Justice, Jury Convicts Former Police Officer of Attempting to Support ISIS (Dec. 18, 2017), <https://www.justice.gov/opa/pr/jury-convicts-former-police-officer-attempting-support-isis> (announcing conviction of Nicholas Young); Press Release, FBI Nat’l Press Office, FBI Director Robert Mueller and Department of Homeland Security Secretary Tom Ridge Announce the Filing of a Criminal Complaint Charging Hemant Lakhani (Aug. 13, 2003), <https://archives.fbi.gov/archives/news/pressrel/press-releases/fbi-director-robert-mueller-and-department-of-homeland-security-secretary-tom-ridge-in-washington-announced-the-filing-of-a-criminal-complaint-charging-hemant-lakhani>; Press Release, U.S. Attorney’s Office S.D.N.Y., Three Men Each Sentenced in Manhattan Federal Court to 25 Years in Prison for Plotting to Bomb Bronx Synagogues and Shoot Down U.S. Military Planes (June 29, 2011), <https://www.justice.gov/archive/usao/nys/pressreleases/June11/cromitieetalsentencingspr.pdf> (announcing sentences of Newburgh Four); Press Release, U.S. Dep’t of Justice, Union County Man Is Sentenced To Five Years In Prison For Making A False Statement To The FBI (July 30, 2020), <https://www.justice.gov/usao-wdnc/pr/union-county-man-sentenced-five-years-prison-making-false-statement-fbi> (announcing conviction of Alexander Samuel Smith).

171. See Derek M.D. Silva, *Police and Radicalization*, in THE HANDBOOK OF SOCIAL CONTROL, *supra* note 120, at 249, 257.

172. *Hearing on the Oversight of the Fed. Bureau of Investigation Before the Judiciary Comm. of the H.R.*, 112th Cong. 2-3 (2011) (statement of Robert S. Mueller, III, Director, Federal Bureau of Investigation).

173. Kees Van Den Bos, *Why People Radicalize: How Unfairness Judgements are Used to Fuel Radical Beliefs, Extremist Behaviors, and Terrorism*, in *Persp. on Just. and Morality*, at 44-85

case of Al Qaeda, its leaders have published magazines, created websites and bomb construction manuals, and produced videos for the purpose of encouraging Muslims in the United States and Western Europe to engage in domestic terrorism.¹⁷⁴ This strategy arose in part from Al Qaeda's inability to send trained operatives to Western nations after 2001. The heightened security measures in the US coupled with Al Qaeda's defensive posture in the face of military attacks in Afghanistan, Iraq, and Yemen made online recruitment a necessary alternative.¹⁷⁵ Fortunately, these efforts have been a massive failure because implementing instructions on how to build a bomb requires expertise and access to high explosives or blasting caps, which are nearly impossible to obtain in the US without government detection.¹⁷⁶

While real terrorists' efforts to persuade Muslims to commit 'lone wolf' terrorist attacks most certainly should be foiled by law enforcement, the state's response has been an over-reaching counterterrorism regime that categorically treats Muslims' political dissent as a security threat. Opposition by Muslims to America's occupation of Iraq, drone strikes in Afghanistan, and imperialistic policies in the Middle East has triggered thousands of investigatory visits by FBI agents to Muslims' workplaces, homes, and mosques.¹⁷⁷ Ironically, the systemic targeting of Muslims has bolstered Al

(Carolyn Hafer & Mario Gollwitzer eds., Oxford Univ. Press 2018); Karen J. Greenberg, *Counter-Radicalization Via the Internet*, 668 ANNALS AM. ACAD. POL. & SOC. SCI. 165, 165 (2016); BRIAN A. JACKSON, ASHLEY L. RHOADES, JORDAN R. REIMER, NATASHA LANDER, KATHERINE COSTELLO & SINA BEAGHLEY, HOMELAND SEC. OPERATIONAL ANALYSIS CTR., PRACTICAL TERRORISM PREVENTION: REEXAMINING U.S. NATIONAL APPROACHES TO ADDRESSING THE THREAT OF IDEOLOGICALLY MOTIVATED VIOLENCE 69 (2019) ("At its peak, ISIS's social media campaign consisted of between 40,000 and 90,000 individuals—including active propagandists and participants in the group's larger "social media echo chamber," which aims to reinforce and spread the group's messages.").

174. RAFFAELLO PANTUCCI, A TYPOLOGY OF LONE WOLVES: PRELIMINARY ANALYSIS OF LONE ISLAMIST TERRORISTS 3, 7 (2011), https://icsr.info/wp-content/uploads/2011/04/1302002992ICSRPaper_ATypologyofLoneWolves_Pantucci.pdf; MARK S. HAMM & RAMON SPAAIJ, THE AGE OF LONE WOLF TERRORISM 152 (2017).

175. PANTUCCI, *supra* note 174, at 10; LEADERLESS JIHAD, *supra* note 70, at 132-33.

176. David C. Benson, *Why the Internet is Not Increasing Terrorism*, 23 SEC. STUD. 293, 306 (2014).

177. See, e.g., Petra Bartosiewicz, *To Catch a Terrorist: The FBI Hunts for the Enemy Within*, HARPER'S MAG. 37 (Aug. 2011), <https://harpers.org/archive/2011/08/to-catch-a-terrorist> ("[I]n November 2001, the Department of Justice began conducting 'voluntary interviews' with 5,000 Middle Eastern noncitizens. Hundreds of FBI agents were dispatched across the country to conduct the interviews, with standard questions like 'Are you aware of anybody who reacted in a surprising way about the terrorist attacks?'); Mary Beth Sheridan, *Interviews of Muslims to Broaden: FBI Hopes to Avert a Terrorist Attack*, WASH. POST (July 17, 2004), <https://www.washingtonpost.com/wp-dyn/articles/A56080-2004Jul16.html>; Shirin Sinar, *Questioning Law Enforcement: The First Amendment and Counterterrorism Interviews*, 77 BROOK L. REV. 41 (2011) (discussing "voluntary" interviews and their consequences for interviewees); ADC Requests DHS Civil Liberties Investigation Into: Operation Frontline

Qaeda and ISIS's recruitment narrative that the Christian West is conducting a war on Muslims.¹⁷⁸ The more the U.S. government imputes a criminal connotation to the term "Islamist," the more members of foreign terrorist organizations believe their violent acts are a form of legitimate revolt against state oppression.¹⁷⁹ The US government's myopic labeling of terrorism as "Islamist jihad" thus validates terrorist groups' propaganda.¹⁸⁰

Even more problematic is the FBI and large police departments' wholesale adoption of dubious radicalization theories to manufacture terrorists. The clearest example is found in the New York Police Department's report entitled *Radicalization in the West: The Homegrown Threat* published in 2007 and the FBI's intelligence analysis entitled *The Radicalization Process: From Conversion to Jihad* published in 2006.¹⁸¹ Building on the work of Sageman, the report concludes radicalization is cultivated within kinship and social networks thereby warranting police search for and infiltration into these small, informal groups.¹⁸²

The NYPD report lists four phases of radicalization that purport to explain how an unremarkable person becomes "quite likely to be involved in the planning or implementation of a terrorist act."¹⁸³ Not coincidentally mirroring the social network theory, the phases are 1) pre-radicalization, 2) self-identification with Salafi Islam as a result of a 'cognitive opening'

Targeting Muslims in 2004, AL JAZEERAH: CROSS CULTURAL UNDERSTANDING (Feb. 28, 2009), <http://www.ccun.org/Opinion%20Editorials/2009/February/28%20o/ADC%20Requests%20DHS%20Civil%20Liberties%20Investigation%20into%20Operation%20Frontline%20Targeting%20Muslims%20in%20the%20US%20in%202004.htm>; Seth Cline, *The 1993 World Trade Center Bombing: A New Threat Emerges*, U.S. NEWS & WORLD REP. (Feb. 26, 2013), <https://www.usnews.com/news/blogs/press-past/2013/02/26/the-1993-world-trade-center-bombing-a-new-threat-emerges> (discussing a Triangle Center on Terrorism Homeland Security Study which noted Muslim Americans caused only 33 of the over 300 post-9/11 deaths by acts of political violence or mass shooting).

178. Christopher M. Blanchard, *Al Qaeda: Statements and Evolving Ideology*, CONG. RESEARCH SERV. (July 9, 2007), <https://sgp.fas.org/crs/terror/RL32759.pdf>.

179. See FRANCOIS BURGAT, ISLAMISM IN THE SHADOW OF AL-QAEDA 8 (2008) (discussing the impact of the American narrative on terror).

180. See also Sahar F. Aziz, *Losing the 'War of Ideas': A Critique of Countering Violent Extremism Programs*, 52 TEXAS INT'L L.J. 255, 261 (2017) (describing the recruiting narrative of violent American military intervention and support of dictators).

181. Randy Borum, *Radicalization into Violent Extremism II: A Review of Conceptual Models and Empirical Research*, 4 J. STRATEGIC SEC. 37, 37-62 (2012); Federal Bureau of Investigation, *The Radicalization Process: From Conversion to Jihad* (May 10, 2016), available at <https://hope-radproject.org/wp-content/uploads/2021/12/FBI-2006-The-radicalization-process-From-conversion-to-jihad.pdf>.

182. See Derek M.D. Silva, *Police and Radicalization*, in THE HANDBOOK OF SOCIAL CONTROL, *supra* note 120, at 249, 252.

183. MITCHELL D. SILBER & ARVIN BHATT, N.Y.C. POLICE DEP'T, RADICALIZATION IN THE WEST: THE HOMEGROWN THREAT 6 (2007), https://seths.blog/wp-content/uploads/2007/09/NYPD_Report-Radicalization_in_the_West.pdf.

that leads to association with like-minded others,¹⁸⁴ 3) indoctrination through a progressive intensification of beliefs, and 4) jihadization or the acceptance of an individual duty to participate in jihad.¹⁸⁵ Indicia of phase two, for example, include lawful activities of increased religiosity characterized by frequent attendance at mosques, wearing traditional Muslim attire, growing a beard, and involvement in a pro-Muslim social group or political cause.¹⁸⁶ Expressing grievances of anti-Muslim discrimination and human rights violations are indicators of phase three.¹⁸⁷ The outcome is a presumption of terrorist inclinations imputed on religious dissident Muslim men.

An influential European report mirroring the NYPD's report and published the same year concludes:

[r]adicalisation often starts with individuals who are frustrated with their lives, society or the foreign policy of their governments. A typical pattern is that these individuals meet other like-minded people, and together they go through a series of events and phases that ultimately can result in terrorism. However, only a few end up becoming terrorists. The rest stop or drop out of the radicalisation process at different phases.¹⁸⁸

The claims in both reports have been adopted as orthodoxy among the federal agencies tasked with countering domestic terrorism. And here is where the FBI's sting operations intentionally make the few into many through intensive psychological manipulation of Muslim males in fake terrorism plots who would have remained merely blowhards and armchair ideological extremists—offensive but legal. These practices have become so abusive that Marc Sageman, the same scholar who proffered the social network theory emulated by the FBI, has concluded “[a]fter over a decade

184. The ‘cognitive opening’ concept was introduced by Quintan Wiktorowicz’s Radicalization Theory that argues a psychological crisis such as a death in the family, experiences of discrimination or political repression, or an identity crisis shakes the person’s previously accepted beliefs to make him more receptive to other views and perspectives. QUINTAN WIKTOROWICZ, *RADICAL ISLAM RISING: MUSLIM EXTREMISM IN THE WEST* 127 (2005).

185. SILBER & BHATT, *supra* note 183, at 36-37, 43-46. The same radicalization theory was adopted by the Danish Ministry of Defense in its assessment of Islamist radicalization in Europe. PRECHT, *supra* note 148, at 34-37.

186. SILBER & BHATT, *supra* note 183, at 31.

187. RUTGERS CTR. FOR SEC., *RACE AND RIGHTS*, *supra* note 181; MIKE GERMAN, *DISRUPT, DISCREDIT, AND DIVIDE: HOW THE FBI DAMAGES DEMOCRACY* 110 (2019).

188. PRECHT, *supra* note 148, at 5.

of intense search, there still has been no discovery of any single spotter-recruiter—except for FBI undercover agents.”¹⁸⁹

CONCLUSION

While sting operations and the use of informants can be effective law enforcement tools, their use becomes illegitimate when they manufacture crime that otherwise would not have occurred but for the government’s predatory practices. What often determines whether the government will abuse these investigative practices is the racial and religious identities of the target communities. In counterterrorism, the result is an over-policing of Muslims and an under-policing of right-wing Whites and Christians.

Rather than stopping true threats, federal agents are entrapping young Muslim men.¹⁹⁰ The absence of empirically grounded theories on how to prevent terrorism is causing the FBI to rely on false stereotypes that religious and dissident Muslims are prone to becoming terrorists in determining how to spend its billion-dollar counterterrorism budget. Meanwhile, a cottage industry of conjecture clothed in the pseudo-science of ‘radicalization’ literature has provided a blueprint for how to create a Muslim terrorist through state manufactured terrorist plots. The result is a large number of terrorism related cases against hapless, bombastic, indigent, and socially isolated Muslim individuals who otherwise would likely have been armchair extremists on social media whose accounts are frequently shut down by social media companies, mirroring their counterpart right wing extremists left largely untouched by the counterterrorism regime prior to January 2021.¹⁹¹

The manufactured plot follows a predictable playbook taken straight from the pseudo science of radicalization. First, the government agents spend months building a bond of friendship and trust with the Muslim target. Then, the agents progressively intensify the target’s beliefs that the United States is an oppressive nation conducting a war on Muslims and encourage him to do something about it in the name of defending Islam. The agent invests significant time psychologically manipulating the target to feel angry, indignant, and motivated to act. Finally, the government agent or informant connects the target to other undercover agents who can

189. Marc Sageman, *The Stagnation in Terrorism Research*, 26 *TERRORISM & POL.* 565, 567 (2014) (denoting that a spotter-recruiter refers to an individual who spots a potential recruit).

190. JOHN MUELLER & MARK G. STEWART, *CHASING GHOSTS: THE POLICING OF TERRORISM* 31 (2015).

191. *Practical Terrorism Prevention*, *supra* note 43, at 81; Greenberg, *supra* note 173, at 167 (summarizing social media companies’ efforts to shut down accounts propagating terrorist propaganda).

teach him how to build a (fake) bomb, travel to join a terrorist group, or purchase the equipment for the fake plot. In each phase of the sting operation, the agent or informant plays a pivotal role in steering the target from expressing lawful extremist speech to planning for unlawful action that is meticulously planned by a counterterrorism team behind the scenes.

Compared to European countries, the United States is unique insofar as its broad legal protections of speech on the extreme fringes of society. Short of posing an imminent threat of harm to others, hateful or offensive speech is not criminalized. One need only look at the broad leeway granted to the burgeoning masses of right-wing extremist organizations who unflinchingly support a race war.¹⁹² And yet, these broad free speech protections do not appear to apply to racial minorities, especially Muslims in the post-9/11 era. Posting content that praises ISIS, Al Qaeda, or other designated terrorist groups places the person on the state sponsored radicalization assembly line. Informants and undercover agents are deployed to ensnare him in a sting operation with a specific purpose—to strip him of his liberty through terrorism related charges.

If the goal is compiling as many terrorism-related convictions as possible—without regard for the real threat of violence—then the FBI’s racialized counterterrorism strategy has been wildly successful. But this success has come at a high price to the safety of racial minorities and American democracy, both of which have been attacked by the right-wing extremists left untouched by the multi-billion-dollar counterterrorism apparatus.

This Article exposes the flaws in radicalization theory on which the US government has relied upon to define its domestic counterterrorism investigations and prosecutions. The result is a manufacturing of a so-called Muslim homegrown threat that puts in jeopardy Muslims’ liberty interests. The next article in the series examines in depth the underlying facts of the 282 sting operations against Muslim defendants since 2001 as well as entrapment doctrine to demonstrate how law has been woefully inadequate in protecting defendants from government over-reach.¹⁹³ The third article then compares the disparities in investigative methods, charging, and sentencing between prosecution of Muslims and White right-wing extremists accused of politically motivated criminal activity.¹⁹⁴

192. Aaron Morrison, *Analysis: A Race War Evident Long Before the Capitol Siege*, AP NEWS (Feb. 5, 2021), <https://apnews.com/article/donald-trump-us-news-race-and-ethnicity-conspiracy-theories-philanthropy-f8f793b94b0dd7e8ec62957dcbeb53d8>; but see FBI, *Confronting White Supremacy: Examining the Biden Administration’s Counterterrorism Strategy* (Sept. 29, 2021), <https://www.fbi.gov/news/testimony/confronting-white-supremacy-examining-the-biden-administrations-counterterrorism-strategy-langan-092921>.29, 2021).

193. Sahar F. Aziz, *Race, Entrapment and Manufacturing “Homegrown Terrorism”* (forthcoming GEORGETOWN L.J. 2023).

194. Article forthcoming.

When our society confronts the racialized double standards that continue to infect our criminal justice system, we can take seriously the government's promises to protect our security and freedom. Until then, victims of right-wing extremists will remain less safe and Muslims will be less free.

