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9/11 IMPACTS ON MUSLIMS IN PRISON

SpearIt★

It is no understatement to say that September 11, 2001, is the most important date in the history of American Islam. From this day forth, Muslims would become a target for social wrath and become vilified like at no other time in American history. In one fell swoop, Muslims became the most feared and hated religious group in the country. While analysis of the impacts on Muslims tends to focus on Muslims outside of prison,¹ it is critical to recognize that Muslims in prison were no exception to the post-9/11 hostilities directed at Muslims.² They experienced similarly heightened levels of Islamophobia and discrimination. The main goal of this essay is to consider the War on Terror in the prison context in the years following the events of 9/11. The work aims to assess how fear and anger seeped into prisons and became the means of repressing Muslims and casting them as a unique threat to national and institutional security. Although time has proved these attitudes unjustified and alarmist, they have taken a toll on those in prison and made life more difficult for individuals already existing in some of the harshest conditions in the country.

When thinking about the events of 9/11, it is critical to understand that American Muslims were already engaged in cultural struggles at the intersection of race and religion.³ For African-Americans, the years leading up to the 9/11 were traumatic since black males were experiencing unprecedented incarceration rates.⁴ The massive prison growth occurred in part due to policing practices by which police are more likely to

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1. See, e.g., RACHEL M. GILLUM, *MUSLIMS IN A POST-9/11 AMERICA* (Univ. of Michigan Press 2018).

2. See SpearIt, *Muslim Radicalization in Prison: Responding with Sound Penal Policy or the Sound of Alarm?* 49 GONZ. L. REV. 37 (2014) (assessing post-9/11 impacts in prisons).

3. See, e.g., EDWARD CURTIS, *ISLAM IN BLACK AMERICA: IDENTITY, LIBERATION, AND DIFFERENCE IN AFRICAN-AMERICAN ISLAMIC THOUGHT* 6-7 (State Univ. of New York Press 2002). The term “American Muslims” intends to refer to individuals in the U.S. who self-identify as Muslim or Islamic, including immigrants and a sizeable African-American population. *Id.* at 6.

4. See MARC MAUER, *RACE TO INCARCERATE* (1999) (documenting prison growth in these years and disproportional imprisonment of African Americans).

question, seize, and search African Americans.⁵ Prosecutors also factor in since they try and convict more African Americans per capita than any other racial group.⁶ While Blacks were experiencing the heavy hand of the law, followers of the Muslim faith were contending with different social hostilities. Only eight years previously, Muslims bombed the World Trade Center, which occurred against a backdrop of anti-Arab sentiment, bolstered by unfavorable attitudes toward individuals like Ayatollah Khomeini, Saddam Hussein and Muammar Gaddafi, and polling that indicated that at the time, pro-Israel sympathy was considerably larger than pro-Palestinian sympathy.⁷ In fact, by the time the Oklahoma City bombing occurred three years later, officials were quick to float the idea that Muslims might be the culprits in connection with foreign religious extremists.⁸ Such attitudes illustrate that for black Muslims, the hostility was compounded. They experienced dual oppressions at the least, one for being black and one for being Muslim.

In post 9/11 America, attitudes and treatment of Muslims illustrate the modern mechanics of culture war.⁹ To make a case for this war, “U.S. political elites constructed and perpetuated an Islamophobic narrative that featured the larger-than-life Muslim enemy as the most significant threat to U.S. values and freedoms.”¹⁰ In these years there have been anti-Muslim activities at various social sites of contention that pit American rage against all things Islamic. One such is the anti-sharia movement, which saw states enact bills to ban sharia law from state law and construct sharia as “foreign”

5. See generally, Rachel Moran, *Ending the Internal Affairs Farce*, 64 BUFF. L. REV. 837, 847 (2016).

6. See, e.g., GLENN R. SCHMITT & ELIZABETH JONES, OVERVIEW OF FEDERAL CRIMINAL CASES FISCAL YEAR 2016, U.S. Sentencing Comm’n 3 (May 2017), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/FY16_Overview_Federal_Criminal_Cases.pdf. Over 65% of people sentenced in federal court every year are black or Hispanic. *Id.* at 3.

7. Alvin Richman, *A Report: American Attitudes Toward Israeli-Palestinian Relations in the Wake of the Uprising*, 53 THE PUBLIC OPINION QUARTERLY 421 (1989).

8. COUNCIL ON AMERICAN-ISLAMIC RELATIONS, A RUSH TO JUDGEMENT: A SPECIAL REPORT ON ANTI-MUSLIM STEREOTYPING, HARASSMENT, AND HATE CRIMES FOLLOWING THE BOMBING OF OKLAHOMA CITY’S MURRAH FEDERAL BUILDING, APRIL 19, 1995 (Council on American-Islamic Relations 1995), https://www.cairoklahoma.com/wp-content/uploads/2016/07/1995-A_rush_to_judgement.pdf.

9. See JAMES DAVISON HUNTER & ALAN WOLFE, “IS THERE A CULTURE WAR?” ABRIDGED TRANSCRIPT, 4 (The Faith Angle Forum 2006) (“[T]he power of culture is first and foremost symbolic. It’s the power to name things; it’s to define reality, to frame debate”). Culture war refers to the struggle over the elements that define a culture—values, beliefs, artifacts, and practices. *Id.*

10. TODD H. GREEN, THE FEAR OF ISLAM: AN INTRODUCTION TO ISLAMOPHOBIA IN THE WEST 113 (2015).

or “international,” and ultimately, un-American.¹¹ Despite that American Muslims have proved quite content using the court system to settle civil disputes, these laws signaled out Islamic law specifically, nowhere mentioning the Christian or any other faith. This legislation was created out of a false fear that Muslims were trying to replace the legal system with sharia law. “The proposed bills were not stand alone or isolated, but part of a broader movement driven by a partnership between conservative think tanks and politicians, which looked to convert the private Islamophobia saturating the country into structural policies adopted on the state level.”¹²

Even before these struggles, Muslims experienced cultural opposition in prison. They experienced multiple layers of culture war because Muslims in prison overwhelmingly tended to be Black, yet their keepers were usually not.¹³ The cleavage between these groups was wide and resulted in Muslims being constructed as “others” or “strangers” by guards who thought of themselves as superior not just simply for not being imprisoned, but because they were White or Christian. As one scholar notes, “The dominant group creates its own stories as well. The stories of narratives told by the ingroup remind it of its identity in relation to outgroups, and provide it with a form of shared reality in which its own superior position is seen as natural.”¹⁴

The events of 9/11 were catastrophic for incarcerated Muslims. Both Muslims and Black people experienced alterity, but for black Muslims, the persecution was heightened. And this is saying a lot since Muslims have had to struggle for decades to obtain religious rights in prison and be free from extra-legal punishments. For example, in the 1960s Muslims began litigating to establish Islam as a genuine religion and for the right to practice as Muslims.¹⁵ Muslims also sued to have their religion recognized by the prison administration.¹⁶ Often, individuals were put into solitary confinement for their beliefs, as was poignantly illustrated in the ground breaking, *Cooper v. Pate* (1964), instigated by a Muslim who spent multiple stints in solitary due to his faith, and who, along with other Muslims, were

11. Carlo A. Pedrioli, *Constructing the Other: U.S. Muslims, Anti-Sharia Law, and the Constitutional Consequences of Volatile Intercultural Rhetoric*, 22 S. CAL. INTERDISC. L.J. 66-67 (2012).

12. KHALED BEYDOUN, *AMERICAN ISLAMOPHOBIA: UNDERSTANDING THE ROOTS AND RISE OF FEAR*, 107 (California Univ. Press 2018).

13. See, e.g., FEDERAL BUREAU OF PRISONS, *STAFF STATISTICS: STAFF ETHNICITY/RACE* (2021), https://www.bop.gov/about/statistics/statistics_staff_ethnicity_race.jsp.

14. Richard Delgado, *Legal Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2412 (1989).

15. E.g., Sewell v. Pegelow, 291 F.2d 196 (4th Cir. 1961). Muslims at a Virginia facility claimed that they were being punished just for being Muslim. *Id.* at 196-97.

16. Fulwood v. Clemmer, 295 F.2d 171 (D.C. Cir. 1961).

spied on, surveilled and signaled out for differential treatment.¹⁷ The lawsuits show how Muslims lived a dual existence—so invisible that they have to struggle in court to be recognized as followers of faith, yet visible enough to be suspicious and untrustworthy.

BEATING CULTURE-WAR DRUMS

After the events of 9/11, the country was steeped in feelings of shock, vulnerability, and a vehemently negative attitude toward Islam. There was talk of radicalization and violent extremism among so-called “homegrown” extremists, which inspired programs to be created and implemented to counter extremism.¹⁸ Prisons became an integral part of this discussion due to fears that incarcerated Muslims were vulnerable to foreign terror recruitment. Support for this position came from politicians, scholars, and mainstream media.¹⁹

Some of this hysteria and hype derived from a document found in Manchester, England, in 2001, described as an Al-Qaeda training manual. The document provides instruction to consider how Muslims in prison might make the best use of their situation. In one section, Prisons and Detention Centers, the manual instructs, “brothers must take advantage of their presence in prison” and describes, “Brothers should also pay attention to each other’s needs and should help each other and unite vis a vis the prison officers.”²⁰ While these are hardly earth-shattering teachings, for some, this jihad manual with a complete section on how to deal with one’s trial and imprisonment raised red flags about jihadist recruitment in American prisons.

However, getting from this theoretical proposition to actual recruits is not an easy task in an era where foreigners, especially Muslims, are suspicious. Prisons are heavily fortified spaces with high security, including the monitoring of mail, phone calls, and visitors. To think that foreigners with limited American experience could simply start recruiting is faulty,

17. *Cooper v. Pate*, 378 U.S. 546 (1964).

18. U.S. GOV’T EFFORTS TO COUNTER VIOLENT EXTREMISM: HEARING BEFORE THE SUBCOMM. ON EMERGING THREATS AND CAPABILITIES OF THE S. COMM. ON ARMED SERVS., 111th Cong. (2010).

For example, there were multiple congressional hearings on the question of Islamic radicalization of Muslims in prison, as well as media articles and books. *See* PATRICK DUNLEAVY, *THE FERTILE SOIL OF JIHAD: TERRORISM’S PRISON CONNECTION*, 23-34, 29 (2011); MARK S. HAMM, *THE SPECTACULAR FEW: PRISONER RADICALIZATION AND THE EVOLVING TERRORIST THREAT* (2013).¹⁹

20. *DECLARATION OF JIHAD AGAINST THE COUNTRY’S TYRANTS*, MILITARY SERIES (May 2000), https://irp.fas.org/world/para/manualpart1_4.pdf (recovered by Manchester Police from the home of Nazihah Wadiah Raghie, referred to as UK/BM translation).

since prisons walls are not just meant to keep people inside, but also to keep people out.

Nevertheless, such realities did not deter some from propounding the foreign-infiltration thesis. Rep. Peter King was relentless when it came to polemics against Muslims, himself chairing congressional hearings on the radicalization of American Muslims.²¹ One journalist ranked King's absorption in Islamophobic attitudes as the most significant, stating "no legislator did more to demonize American Muslims."²²

Time would eventually call these bluffs. Instead of foreigners radicalizing American Muslims to usher in a new era of terrorism, it turned out that far-right white supremacists were coming to occupy a much greater threat.²³ After some time, King must have gotten tired of waiting for something to happen because he quietly walked away from his doomsday prophecies and eventually left congress. While King may have decided to drop his crusade against Muslims, it says nothing about all the harm he caused along the way. In addition to inciting anti-Islamic sentiment, his alarmism paved a path for prison officials to wield even tighter control over their institutions and implement policies that disrupted religious life behind bars, as described below.

POST-9/11 IMPACT ON PRISONS: RECYCLED ISLAMOPHOBIA

After the attacks, Muslims in the U.S. experienced heightened discrimination. There were increases in hate crimes, workplace discrimination, school bullying, and mosque vandalizations, among other maladies.²⁴ Treatment of incarcerated people was no exception. The events of 9/11 would not spare Muslims in prison from being scorned, harassed, and singled out for differential treatment by prison officials. But, regardless of whether the treatment was inspired by the sort of propaganda Rep. King and others peddled, institutional Islamophobia, or financial or other incentives for the prison, there was a marked shift in the treatment of Muslims. While the shift was new, the tactics used to suppress Muslims in prison were anything but original. Instead, they represented recycled

21. Spencer Ackerman, *Peter King Pioneered the Persecution of American Muslims*, THE DAILY BEAST (Nov. 12, 2019, 5:00 PM), <https://www.thedailybeast.com/peter-king-pioneered-the-persecution-of-american-muslims>.

22. *Id.*

23. See Council on Foreign Relations, Panel on Homeland Security Emerging Threats: Domestic Terrorism and White Supremacy (Dec. 8, 2020), in <https://www.cfr.org/event/homeland-security-emerging-threats-domestic-terrorism-and-white-supremacy>.

24. Sahar Aziz, *'Whosoever Sees an Evil': Muslim Americans' Human Rights Advocacy*, at 11 in OXFORD RESEARCH ENCYCLOPEDIA ON RELIGION (forthcoming Mar. 2022).

strategies of past administrations, who themselves operated in fear and suspicion of Muslims.

Long before 9/11 or the World Trade Center bombings, Muslims faced subjugation by prison officials. Particularly in the 1950s and 60s, Muslims in prison were the target of xenophobic attitudes of prison staff and the institution's policies.²⁵ In these decades, Muslims were put in solitary confinement, doled extra-legal punishments, and denied access to religious leaders, books, and paraphernalia for claiming their religion.²⁶ For prison officials, Muslims in prison represented the ultimate intersectional identity: all at once, he was a criminal, prisoner, black, poor, gangster, and a religious subversive. This era of prison administration must be recognized for what it was—a ground zero for modern American Islamophobia.

Post 9/11 administrations revisited these strategies with an anti-terrorism framework, which provided a pragmatic backbone to policies that treated Muslims as a special threat. In 2007, for example, the Federal Bureau of Prisons instituted the Standardized Chapel Library Project, which sought to inventory all current chapel book holdings and determine their permissibility under the Bureau's new security policies.²⁷ This procedure resulted in books being removed from the Muslim library, deemed inappropriate for prison readership. The move had an uncanny resemblance to the many instances in the past when officials denied Muslims the right to obtain copies of *Muhammad Speaks* or the Qur'an itself. Muslim literature was treated as particularly threatening and capable of inciting violent extremism.

Prisons likewise recycled restrictions on the ability of Muslims to access Muslim leaders. In the past, this was an easily performed trick, essentially because it took decades for prisons to recognize Islam as a genuine religion and for courts to recognize that people in prison retain religious rights. Today Islam is recognized as a genuine religion, but there are other ways to restrict access to leaders of the faith.²⁸ One means was to bar outside imams from entering federal prisons. Such measures were based on the perception that leaders from the outside acted as extreme influences

25. Zoe Colley, "All America is a Prison": *The Nation of Islam and the Politicization of African American Politics, 1955-1965*, J. AM. STUD. 393, 404-08 (2017).

26. See, e.g., *Fulwood v. Clemmer*, 295 F.2d 171, 173 (D.C. Cir. 1961); JAMES B. JACOBS, STATEVILLE: THE PENITENTIARY IN MASS SOCIETY, 58-67 (1977).

27. U.S. DEP'T OF JUST. OFF. OF THE INSPECTOR GEN., A REVIEW OF THE FEDERAL BUREAU OF PRISONS' SELECTION OF MUSLIM RELIGIOUS SERVICES PROVIDERS, 55 (2004), <https://oig.justice.gov/reports/review-bureau-prisons-selection-muslim-religious-services-providers> (recommending that the Bureau of Prisons conduct an inventory of chapel books to "confirm they are permissible under security policies").

28. This trend continues today. See Dalia Faheid, *There are 11,073 Muslims in Federal Prisons But Just 13 Chaplains to Minister to Them*, NPR (July 12, 2021), <https://www.npr.org/2021/07/12/1014823399/muslim-chaplains-federal-prisons-islam-religion-shortage>.

that would incite or radicalize Muslims behind bars. The shortage of outside help was compounded internally because the Bureau effected a de facto hiring freeze on imams to service the federal Muslim population.²⁹ At one point, the Bureau had fallen well below what the Chaplaincy Services Branch defined as a “critical shortage” of chaplaincy when it was operating at a ratio of one Muslim chaplain for every 900 Muslims in prison.³⁰ There was likewise a gap in state prisons, as one Pew survey on chaplains identified Muslims as the most underserved religious group in prisons.³¹

The implementation of communication management units (CMU) was another tool that disproportionately impacted Muslims. Although Muslims in the early years were often put into solitary confinement based on their religion or as a response to demands for religious freedom, the CMU was created with terrorists in mind. The CMU severely restricts, manages, and monitors an individual’s external communications, including telephone, mail, and visitation.³² It took only a short time to realize that Muslims were bearing the brunt of these facilities. Reporting on the first year at the first CMU facility showed that of the 213 individuals in the prison’s CMU, all but two were Muslims.³³ In another facility, the CMUs were predominantly occupied by Muslims as well.³⁴

SURVEILLING MUSLIMS, CASTING A BLIND EYE TO CHRISTIANS

In prison, the heavy gaze on Muslims necessarily meant that other groups were overlooked, resulting in disparate treatment. There was a deep chasm between the treatment of Muslim and Christian inmates. Christians held most advantages, including better treatment by guards, greater resources, better jobs or more favorable policies. Christians enjoyed even greater freedoms with Muslims under the microscope, including engaging in the very conduct for which Muslims were suspected. Indeed, while domestic Christian radicals and white supremacists attacked a federal

29. SPEARIT, *FACTS AND FICTIONS ABOUT ISLAM IN PRISON: ASSESSING PRISONER RADICALIZATION IN POST-9/11 AMERICA* 6 (Inst. for Soc. Pol’y and Understanding 2013), https://www.ispu.org/wp-content/uploads/2012/12/ISPU_Report_Prison.pdf.

30. *Id.*

31. *Religion in Prisons – A 50-State Survey of Prison Chaplains*, PEW RESEARCH CENTER (Mar. 22, 2012), <https://www.pewforum.org/2012/03/22/prison-chaplains-exec/>.

32. Dan Eggen, *Facility Holding Terrorism Inmates Limits Communication*, WASH. POST (Feb. 25, 2007), <https://www.washingtonpost.com/wp-dyn/content/article/2007/02/24/AR2007022401231.html>.

33. *Id.*

34. Carrie Johnson & Margot Williams, *‘Guantanamo North’: Inside Secretive U.S. Prisons*, NPR (Mar. 3, 2011, 1:09 PM), <https://www.npr.org/2011/03/03/134168714/guantanamo-north-inside-u-s-secretive-prisons>.

building, doctors' offices, and committed mass shootings in the years before 9/11, they did not fill the CMUs and were not seen as the primary threat. This was a role reserved for Muslims.

Christians enjoy better treatment by prison staff and policy. For example, when it came to religious freedom and holidays, Christians obtain special privileges by default.³⁵ A Muslim may lose his religious status if he attended or failed to attend congregational events, yet there was no such rule in place for Christians.³⁶ In addition, it is somewhat common for prisons to force Muslims to worship as a solitary group, with all the denominations combined, while Christians are afforded different services for Protestants, Catholics, and other Christian-based groups.³⁷

When it came to resources, Christians were at the top as well. They were often afforded more resources for religious purposes, including more services, recognized holidays, greater access to religious leadership, and better book collections and facilities. To get a sense of how that gulf looks today, in 2020, it was reported that 199 of 236 federal prison chaplains or eighty-four percent were Protestant Christian, even though Protestants make up only thirty-four percent of the incarcerated population claiming a faith preference.³⁸

The attention paid to Muslims and the blind eye turned to Christians tells us that something more than developments in law and policy were occurring. Instead, it represented a full-fledged culture war, where Islam and Muslims were vilified and cast as outsiders, while the most reprehensible conduct from Christians got explained away. In these cultural struggles, more was at stake than simply criminal conduct. Instead,

35. For example, while special holiday accommodations have been made for Christian holidays, Muslims continue to fight for the ability to observe Ramadan. See Sanya Mansoor, *'I Don't Think You're Going to Be Eating Tonight.'* *Muslims Describe Ramadan in U.S. Prisons*, TIME (May 12, 2021, 7:17 PM), <https://time.com/6048056/muslims-ramadan-prisons/>. There was also the "God pod" phenomenon. "God pods" were religiously themed wings that typically gave Christian followers perks and privileges over other religious followers. See Matthew Barakat, *Virginia Jail Ends 'God Pod' After Muslim Inmates Sue*, ABC NEWS (Sept. 20, 2019, 5:37 PM), <https://abcnews.go.com/US/wireStory/virginia-jail-ends-god-pod-muslim-inmates-sue-65750517>.

36. See, e.g., *Mayweathers v. Terhune*, 328 F. Supp. 2d 1086, 1096 (E.D. Cal. 2004) (inmate penalized for attending Muslim services); Complaint for Declaratory, Injunctive and Monetary Relief at 4–5, *Holt v. Kelley*, No. 5:19-cv-81-BSM-JTK (E.D. Ark. Mar. 1, 2019) (suing an Arkansas prison which stripped one of the plaintiffs of religious privileges for failing to attend congregational services) (involving the same plaintiff as in *Holt v. Hobbs*, 574 U.S. 352 (2015) *infra* note 42).

37. See, e.g., John Moritz, *Muslims in Arkansas Prison Sue Over Services*, ARK. DEMOCRAT GAZETTE (Mar. 2, 2019, 4:30 AM), <https://www.arkansasonline.com/news/2019/mar/02/muslims-in-prison-sue-over-services-201/>.

38. U.S. DEP'T OF JUST. OFF. OF THE INSPECTOR GEN., AUDIT OF THE FEDERAL BUREAU OF PRISONS' MANAGEMENT AND OVERSIGHT OF ITS CHAPLAINCY SERVICES PROGRAM (July 2021), <https://oig.justice.gov/sites/default/files/reports/21-091.pdf>.

the invective indicates that the real target was not extremists or terrorists but rather the religion of Islam.

IGNORING A LONG LEGACY OF LITIGATION AND REHABILITATION

These developments were unfortunate because they negatively impacted the day-to-day religious life of Muslims in prison, but this was not all. The demonizing of Islam also undermined a longstanding pedigree of Muslims suing prisons for civil rights and helping to shape prison law jurisprudence and prison culture. Moreover, Muslims in prison have been positively associated with better prospects for rehabilitation. Even before Malcolm X converted to Islam in prison in the 1950s, Muslims have organized outreach efforts focused on prisons, determined to help individuals exit prison and stay out.

Starting in the 1960s, Muslims began litigating for civil rights. They started a legal trend that would see Muslims engaging in civil litigation and embracing courts as a means of resisting their treatment and conditions of confinement. The watershed case that opened the courts to prisoners was *Cooper v. Pate* (1964), which involved a Muslim convert seeking to obtain religious reading materials.³⁹ *Cooper* is recognized as the first Supreme Court decision to address whether a prisoner-petitioner had a viable cause of action. By ruling in the affirmative, the Court ushered in a new era of litigation since now, incarcerated individuals had an unequivocal avenue to seek remedy in federal court for violations in state prisons. Another case, *O'Lone v. Estate of Shabazz* (1987), involved Muslim plaintiffs claiming that the prison's work policies prevented them from attending Friday prayer services.⁴⁰ Although the plaintiffs lost, the case remains the prevailing standard for determining the scope of free exercise claims under the First Amendment of the U.S. Constitution. More recently, the case *Holt v. Hobbs* (2015) involved a Muslim who sued so that he could wear a one-half-inch beard to comply with the Islamic practice of keeping a beard.⁴¹ This case resulted in a victory for Muslims that had wide-reaching consequences, including that prisons nationwide, both state and federal, would have to accommodate individuals wishing to keep a beard for religious purposes.

These and numerous other state and federal cases helped to shape the development of prison law and culture. To understand the enormity of influence, one need only consider that Muslims make up just over one percent of the American population. Yet, when it comes to lawsuits, they

39. *Cooper v. Pate*, 378 U.S. 546 (1964).

40. *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 343 (1987).

41. *Holt v. Hobbs*, 574 U.S. 352, 352 (2015).

are the plaintiff in a disproportionate number of cases. The years after 9/11 put the situation for Muslims into full relief as illustrated by a 2008 report from the U.S. Commission on Civil Rights on Religious Freedom in U.S. Prisons. The report indicated that Muslims submitted the largest number of religious discrimination complaints of any religious group between 2005 and 2007, made the largest number of religious accommodation requests from 1997 to 2008; and initiated the largest number of federal lawsuits (74 out of 250) under the Religious Land Use Institutionalized Persons Act from 2001 to 2006.⁴²

Overlooking these litigation efforts ignores a legal history that tempers notions about radicalization and violent extremism among Muslims in prison. The facts show that Muslims are not interested in installing sharia law or other such machinations but instead are interested in justice and are quite content using courts to achieve their goals. Moreover, the massive litigation trend depicts that Muslims, far from being extremists, are deeply vested in the legal system and the Rule of Law.

The negative portrayals of Muslims also ignored decades worth of Islamic outreach that has worked to lower recidivism rates and helped to keep Muslims from returning to prison. Studies have shown that religious involvement is associated with successful rehabilitation and that involvement with Islam is particularly successful. Although there is a need for further research on Islam's influences on the correctional setting, the available scholarship points to positive links between Islam and inmate rehabilitation. Early studies of Islamic beliefs in prisons in the 1960s claimed that recovering alcoholics and drug addicts could cope in prison more effectively after converting to Islam.⁴³ A 1978 study found that involvement in Muslim programming helped individuals with morale, discipline, and rehabilitation.⁴⁴ Other research describes Muslims as a "stabilizing force in many prisons," often assuming leadership roles in periods of crisis.⁴⁵ Other examples include a study of U.S. prison riots between 1971 and 1986, which found that by the early 1980s prison officials viewed Muslims as "model inmates," disinclined to riot.⁴⁶ On the contrary, Muslims are credited with preventing violence and deaths in the

42. U.S. COMM'N ON CIVIL RIGHTS, ENFORCING RELIGIOUS FREEDOM IN PRISON 13, 26, 69, 82 (2008), <http://www.usccr.gov/pubs/STAT2008ERFIP.pdf>.

43. See C. ERIC LINCOLN, *THE BLACK MUSLIMS IN AMERICA* 24-25, 29-30, 82-83 (1961).

44. Keith Butler, *The Muslims Are No Longer an Unknown Quantity*, CORRECTIONS MAG., June 1978 at 55, 56, 60.

45. JOHN IRWIN, *PRISONS IN TURMOIL 196-97* (1980).

46. See BERT USEEM & PETER KIMBALL, *STATES OF SIEGE: U.S. PRISON RIOTS, 1971-1986*, 214 (1989).

Attica (1971) and Sing Sing (1983) prison riots.⁴⁷ Involvement in Islam is also reported to improve inmates' prison adjustment, self-esteem,⁴⁸ and reformatory potential,⁴⁹ as well as reduce recidivism rates more than other groups statewide⁵⁰ and nationwide.⁵¹

As these achievements suggest, Islamic efforts at rehabilitation similarly counter concerns about Muslim radicalization and violence. Rather than moving individuals toward criminality, these narratives show Muslims as quite orderly and disciplined, with a longstanding pedigree of steering people away from violence and crime. This point is underscored by the fact that many come to Islam in the name of peace in the first place and may thus see violence as antithetical to their quest.

REPAIRING DAMAGE AND MOVING THE NEEDLE FORWARD

Like their religious predecessors who embraced courts as a means of resisting mistreatment, Muslims in the post-9/11 era continue to carry the torch. Some issues are remnants of a fierce cultural war that reached an apex in the years after 9/11. While the incense toward Muslims may have lessened since the immediate aftermath, new assaults against Muslims, particularly those launched in the Trump administration's Muslim Ban policies, forcefully indicate the war is still ongoing.

One recent case involved a Muslim, Dominique Ray, who was put to death by Alabama without a spiritual advisor in the execution chamber.⁵² He petitioned a federal court for the right to have an imam present for his execution since, at his institution, only Christian chaplains were certified to be present in the chamber.⁵³ Thus, while Christians were

47. PATRICK DUNLEAVY, *THE FERTILE SOIL OF JIHAD: TERRORISM'S PRISON CONNECTION* 28 (2011).

48. Tony A. Barringer, *Adult Transformations Inside a Midwest Correctional Facility: Black Muslim Narratives of Their Islamic Conversion* 125 (1998) (Ph.D. dissertation, Northern Illinois University) (on file with author).

49. Felecia Dix-Richardson & Billy Close, *Intersections of Race, Religion and Inmate Culture: The Historical Development of Islam in American Corrections*, in *RELIGION, THE COMMUNITY, AND THE REHABILITATION OF CRIMINAL OFFENDERS* 87, 102-07 (Thomas P. O'Connor & Nathaniel J. Pallone eds., 2003).

50. Byron R. Johnson, David B. Larson & Timothy C. Pitts, *Religious Programs, Institutional Adjustment, and Recidivism among Former Inmates in Prison Fellowship Programs*, 14 *JUST. Q.* 145 (1997), <http://www.leaderu.com/humanities/johnson.html>.

51. Stephen Seymour, *The Silence of Prayer: An Examination of the Federal Bureau of Prisons' Moratorium on the Hiring of Muslim Chaplains*, 37 *COLUM. HUM. RTS. L. REV.* 523, 532 (2006) (finding that the recidivism rate for Muslims was about 8% compared to 40% for Catholics and Protestants).

52. *Dunn v. Ray*, 139 S. Ct. 661 (2019).

53. *Id.* at 661 (Kagan, J. Dissenting).

able to have an advisor in the room at death, a Muslim had to accept either a person of a different faith or die alone.

Ray's legal fate mirrored that of most Muslim litigants in prison—they typically lose their court case. Yet unlike most litigants who return to their cell in defeat, he was heading to the execution chamber to face death alone. Given that it would be easy for the prison to certify the imam, it seems that more was going on than institutional concerns about security. Instead, it has the appearance of the state singling out Muslims to make a statement of cultural dominance: that Christians are preferred, and Muslims despised.

While the loss was nothing new, it was unlike most cases involving Muslims because it grabbed national attention and sparked public outcry.⁵⁴ The voices included religious and other public figures who condemned Alabama's policy.⁵⁵ Thus, even though he lost his bid in court, the case made national headlines and reverberated internationally.⁵⁶ The issue's magnitude was evident in a Supreme Court ruling handed down just two months after the execution, which showed a Court suddenly willing to address a similar question about Texas' execution protocol.⁵⁷ In that case, the Court halted the execution of a Buddhist who was not allowed to have a spiritual advisor of his faith be present in the killing chamber. Texas revised the policy, but the Court stayed his execution again and determined that the petitioner could not be executed until his late appeal was considered or unless the prison allowed his Buddhist spiritual advisor into the death chamber.

Soon after, in *Dunn v. Smith*, it became evident that states could not remedy the problem by banning all religious personnel from the execution room.⁵⁸ Symbolically enough, it was in Alabama, the same state that executed Ray. After Ray's execution, the prison system changed its policy

54. See, e.g., Jeremy Hobson, *Executed Muslim Inmate In Alabama Brings National Attention To Prisoners' Religious Rights*, WBUR (Feb. 13, 2019), <https://www.wbur.org/hereandnow/2019/02/13/executed-muslim-inmate-alabama-religious-rights>; Carol Zimmerman & Catholic News Service, *U.S. Bishops Condemn Court's Denial of Imam's Presence at Execution*, NAT'L CATH. REP. (Feb. 12, 2019), <https://www.ncronline.org/news/justice/us-bishops-condemn-courts-denial-imams-presence-execution>.

55. Alexandra Hutzler, *Supreme Court Is 'Unspeakably Cruel' for Denying Muslim Death Row Inmate's Request for Imam, Ex-Obama Official Says*, NEWSWEEK (Feb. 8, 2019, 12:17 PM), <https://www.newsweek.com/supreme-court-unspeakably-cruel-denying-muslim-inmate-imam-presence-1324571>.

56. See, e.g., Eric Lewis, *Dominique Ray died alone on death row — if he hadn't been a Muslim, it would never have happened*, INDEP. (Feb. 11, 2019, 8:20 PM), <https://www.independent.co.uk/voices/dominique-ray-execution-muslim-alabama-death-row-inmate-religion-christian-a8774526.html>.

57. *Murphy v. Collier*, 139 S. Ct. 1111 (2019).

58. *Dunn v. Smith*, 141 S. Ct. 725 (2021).

of allowing only Christian chaplains in the execution and decided to adopt Texas' system of not allowing anyone in the room. The Court struck down the policy and mandated that individuals who are to be executed must have a religious leader present in the execution chamber.⁵⁹ The decision handed down a clear victory for religion, because rather than deny a religious leader to all individuals condemned to die, the Court upheld the right to have the leader present.

Other litigation involves the right to observe specific holidays, like Ramadan, or maintain an Islamic diet.⁶⁰ Muslims have gone on hunger strikes in some institutions, and in others, they have sued for prisons failing to provide adequately nutritious meals.⁶¹ Sometimes the nutritional shortage is due to the prison not accommodating meal schedules; other times, it is due to the prison using pork to make various non-meat dishes, which reduces dietary options for Muslims.⁶² When these problems operate in tandem, it seems almost impossible to both stay compliant to one's faith and stay healthy.

The struggle for women to wear a hijab in jail or prison is a relatively new area of contention in the twenty-first century.⁶³ In previous decades, males in prison struggled to wear kufi, fez caps, and other headwear.⁶⁴ Muslim women have found themselves in the same predicament for desiring to wear religiously-mandated headscarves in jails and prisons.⁶⁵ In one case, a Muslim woman took her son to visit his father at Columbia Correctional Institution. At the gatehouse, the guard on duty told her she would have to remove her headscarf to check for weapons. She was

59. *Id.* at 725.

60. *See, e.g.,* Walker v. Blackwell, 411 F.2d 23, 24 (5th Cir. 1969) (regarding Muslims in federal prison petitioning to be served a halal-compliant meal during the month of Ramadan).

61. *See* Verified Complaint for Declaratory and Injunctive Relief, Dowl v. Williams, No. 3:15-cv-00119-JWS (D. Ak. 2018), 2018 WL 2392498; Agnes Constante, *Michigan Corrections Department Settles Suit Over Lack of Nutrition in Ramadan Meals*, NBC NEWS (Jan. 13, 2017, 6:41 PM), <https://www.nbcnews.com/news/asian-america/michigan-corrections-department-settles-suit-over-lack-nutrition-ramadan-meals-n706771>.

62. Barnett v. Rodgers, 410 F.2d 995 (D.C. Cir. 1969) (one of the earliest cases describing that pork grease was used to prepare hamburgers, meatloaf, chili con carne and gravies, and was present in macaroni and cheese, hot dogs, cold-cuts and other luncheon meats).

63. *See* Aliah Abdo, *The Legal Status of Hijab in the United States: A Look at the Sociopolitical Influences on the Legal Right to Wear the Muslim Headscarf*, 5 HASTINGS RACE & POVERTY L.J. 441, 484-89 (2008) (discussing cases involving restrictions on hijab for women in prison as well as for women who visit the prison).

64. St. Claire v. Cuyler, 481 F. Supp. 732, 737-38 (E.D. Pa. 1979), *rev'd*, 634 F.2d 109 (3d Cir. 1980).

65. *See generally* Ali Ammoura, *Banning the Hijab in Prisons: Violations of Incarcerated Muslim Women's Right to Free Exercise of Religion*, 88 CHI. KENT L. REV. 657 (2013).

ultimately forced to remove her headpiece in front of male guards and others. “I felt naked,” she described, “I felt I disgraced my family and my religion.”⁶⁶ Her lawsuit for injunctive relief was ultimately dismissed because the prison changed its policy banning headgear, so long as it does not conceal the wearer’s identity.⁶⁷

There is also the issue of wearing a hijab while being booked and photographed for jail. For example, one woman sued Louisville Metro Corrections, a jail where booking officers made her remove her hijab in front of dozens of male officers and individuals in jail for her jail photo to be taken. Like the case above, the prison changed its policy and now allows for “male and female detainees to retain religious headwear while incarcerated, and specifically during booking photography.”⁶⁸ In another case, a Minnesota Muslim woman alleged she was forced to strip in jail and remove her hijab for a booking photo. This case not only saw the jail change its booking policy to accommodate wards with religious headwear when taking booking photos, but the jail settled the case for 120,000 dollars.⁶⁹ More recently, the Council on American-Islamic Relations (CAIR) filed a lawsuit against the Michigan Department of Corrections for forcibly removing a woman’s hijab for a booking photo shoot.⁷⁰

More than anything, litigation in the post-9/11 era reveals the ways Muslims continue to experience degrading and humiliating treatment at the hands of state officials. In some situations, the treatment is particularly invidious. This is the case when it comes to hijabs because the actions do not simply disenfranchise religious adherents. Instead, these are acts that get straight to the core of Muslim modesty and strike in ways that leave

66. *Muslim Woman Sues Prison for Forcing Her to Remove Headscarf in Front of Male Guards and Prisoners*, ACLU (May 25, 2005), <https://www.aclu.org/press-releases/muslim-woman-sues-prison-forcing-her-remove-headscarf-front-male-guards-and-prisoners>.

67. *Wisconsin Prisons Change Policy to Accommodate Religious Headscarf* PLURALISM PROJECT ARCHIVE (May 27, 2005), <https://hwpi.harvard.edu/pluralismarchive/news/update-wisconsin-prisons-change-policy-accommodate-religious-headscarf>; *Rhouni v. Wisconsin Dep’t of Corr.*, No. 05-C-300-S, 2005 WL 2860282, *1, *2 (W.D. Wis. Oct. 28, 2005) (observing that her claim for injunctive relief was moot).

68. Sarah Ladd, *Muslim Woman Sues Louisville Over Jail Photo Taken Without Her Hijab*, USA TODAY (July 31, 2019, 9:03 PM), <https://www.usatoday.com/story/news/nation/2019/07/31/muslim-woman-sues-over-louisville-jail-photo-taken-without-her-hijab/1885131001/>.

69. David M. Reutter, *\$120,000 Settlement for Minnesota Woman Forced to Remove Hijab for Booking*, PRISON LEGAL NEWS (May 1, 2020), <https://www.prisonlegalnews.org/news/2020/may/1/120000-settlement-minnesota-woman-forced-remove-hijab-booking/>.

70. Ibrahim Hooper, *CAIR-Michigan Announces Federal Civil Rights Lawsuit Against City of Detroit, Michigan Department of Corrections for Woman Who Had Hijab Forcibly Removed for Booking Photo*, CAIR MICHIGAN (Oct. 6, 2020, 11:08 AM), https://www.cair.com/press_releases/cair-michigan-announces-federal-civil-rights-lawsuit-against-city-of-detroit-michigan-department-of-corrections-for-woman-who-had-hijab-forcibly-removed-for-booking-photo/.

women feeling vulnerable, threatened, and as one woman described, was “one of the most humiliating and harmful experiences of my life.”⁷¹ Hence, these actions are a unique form of oppression because they involve cultural practices, of which the hijab functions as a buffer against the gaze of males. In these instances, however, the women are forced to uncover themselves directly in front of male officers or males incarcerated, making the state action particularly heinous and reflecting the depth of cultural dominance.

Moving forward, it will be critical to recognize the positive impacts that Muslims have had in prison. Whether it be expanding prisoners’ rights, helping individuals rehabilitate from prison, or holding prison officials accountable to the Rule of Law, the contributions are positive. The work performed by Muslims is crucial because it tempers attempts to demonize adherents in prison. But, more critical is that it reveals that sometimes roles can be reversed in prison—with the ones in prison, the alleged criminals, going to great troubles to make sure the law is followed, while prison officials play the role of the lawbreaker. In these instances, Muslims ensure that no one is above the law, especially the state itself, which instead of setting the example for those in prison, often engages in the most heinous transgressions of the law.

71. Tim Nelson, *Ramsey County Settles Lawsuit Over Hijab Removal*, MPR NEWS, (Dec. 17, 2019, 4:19 PM), <https://www.mprnews.org/story/2019/12/17/ramsey-county-settles-lawsuit-over-hijab-removal>.

