

## **ABSTRACT**

Title of Thesis: Perpetuating Inefficacy: Comparing Counterterrorism Policies in the Bush, Obama, and Trump Administrations

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How have the Bush, Obama, and Trump Administrations' security policies framed the role of liberty in counterterrorism efforts, and what are the implications of such policies on Arab and Muslim Americans' civil liberties? This thesis argues that despite the different approaches of each Administration, due to flawed foundations and a lack of strategic oversight during implementation, their respective leading domestic counterterrorism policies were ineffective and encroached upon Arab and Muslim Americans' liberties. The Bush Administration focused on preemptive measures that removed judicial barriers and expedited the investigation process. The USA PATRIOT Act investigations were disproportionately directed at foreign nationals from Arab and Muslim-majority countries, but this approach resulted in few convictions and restricted basic civil liberties. The Obama Administration shifted its focus away from punishment, and toward partnership with Arab and Muslim American communities by focusing on counter-radicalization efforts with the Countering Violent Extremism (CVE) program. CVE's lack of strategic regulation and reliance on the disproven radicalization theory, however, proved to undermine its objectives and alienate a population. Finally, the Trump Administration's Travel Ban attempts to bar individuals from particular countries from entering the United States. In doing so, the Trump Administration established a counterproductive security effort that creates grounds for terrorist recruitment, alienates Muslims, and undermines relationships with Middle Eastern allies. This thesis compares the efficacy of the Bush, Obama, and Trump Administrations' leading domestic counterterrorism policies, and exposes implications of ineffective security methods.

Perpetuating Inefficacy:  
Comparing Counterterrorism Policies in the Bush, Obama, and Trump Administrations

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## **Chapter 1: Introduction**

### **I. Introduction**

On September 11, 2001, nineteen members of the terrorist organization al-Qaeda hijacked four U.S. planes and conducted the deadliest terrorist attack on American soil. The North and South Towers of the World Trade Center in Manhattan were intentionally struck, both falling within 102 minutes of the first plane hitting. A plane leaving from Virginia flew into the Pentagon in Washington, D.C. The fourth, and final plane, crashed into a field near Shanksville, Pennsylvania; officials believe that the passengers attempted to retake the plane to prevent it from reaching a third target. A total of 2,753 people were killed in the attacks (CNN Library, 2017). This day has come to symbolize both loss and unity for Americans. To support the nation's unity and strength, the government was tasked with a daunting challenge: protect its citizens from another terrorist attack by a seemingly interminable enemy.

In an attempt to conceptualize the motivations for such an attack, the Bush Administration provided the public with a simple, yet powerful reason for why terrorists would attack the United States: “they hate us for our freedoms” (Bush, 2001). Furthering a precedent that began in the 20<sup>th</sup> century, the government portrayed the United States as an innocent actor and Islam as the enemy. The government established a “with us or against us” binary that both neglected the United States' own complicated role in the geopolitical events leading up to 9/11 and ignored the causes of terrorism.

This thesis evaluates the strategy through which the United States government attempted to address terrorism by looking at the Bush, Obama, and Trump Administrations' counterterrorism policies from October 2001 to January 2018. I will answer the questions: How have the Bush, Obama, and Trump Administrations' security policies framed the role of liberty

in counterterrorism efforts, and what are the implications of such policies on Arab and Muslim Americans' civil liberties? I argue that although the strategies of each Administration differed, the respective policies' flawed foundations and lack of oversight during implementation resulted in ineffective security measures that framed Arab and Muslim Americans as a scapegoat in the War on Terror and threatened their liberties.

Almost two decades after the September 11<sup>th</sup> attacks, the War on Terror continues to be at the forefront of American foreign and domestic policy. These counterterrorism policies have evolved throughout the past three presidencies, but have maintained an inefficient and divisive nature. With the Travel Ban to be ruled on by the Supreme Court in June 2018, policymakers must consider the path that the United States has followed since 2001, and whether this is a path that the country should continue on. This thesis offers a lens for evaluating the ineffectiveness of previous counterterrorism policies and their damaging implications on civil liberties. In such an open-ended state of emergency, examining the government's response to terrorism is vital, as it demonstrates that unity is a more powerful tool than incrimination.

This chapter situates the post-9/11 discourses and discussions of terrorism and the Middle East into a larger historical context. First, the chapter analyzes the United States' developing relationship with the Middle East and terrorism in the 20<sup>th</sup> century. It discusses how the government has repeatedly characterized the United States as an innocent actor, Islam as the enemy to be conquered, and counterterrorism as the solution to the problem. The next section briefly explains each administration's counterterrorism approach. The chapter then reviews the current literature on the topic, specifically addressing the role of liberty in security policies and the impact of such policies on the Arab and Muslim American community.

## **II. The United States' Complicated Role in the Middle East During the 20<sup>th</sup> Century**

Examining the United States' involvement in the Middle East in the decades preceding 2001 offers a critical vantage point to understanding the American public and government's responses to 9/11. Throughout the 20<sup>th</sup> century, various administrations neglected to account for the government's persistent military participation in the region and support of Islamist groups, which furthered the narrative of the United States as a blameless actor in geopolitics. The government's continued short-term memory regarding its role in the Middle East, however, has diminished the effectiveness of counterterrorism responses in the War on Terror.

In 1933, President Franklin D. Roosevelt instigated a new wave of Middle East relations by meeting with the Saudi King to gain access to the region's oil. In exchange, the United States pledged to modernize the country's social and security sectors, and Saudi Arabia was able to alleviate some of its dependence on Great Britain (Kumar, 2012). The relationship between the U.S. and the Middle East progressed with the United States' rapid exit from its Middle East campaign at the end of WWII, because it forced Great Britain and the Soviets to withdraw their troops as well (Khalidi, 2005). These interactions were some of the earliest signifiers of the United States' relationship with the Middle East, as they initiated a narrative of the United States as the advanced modernizer and the Middle East as a dependent region founded in tradition (Kumar, 2012). The U.S. government sustained this binary throughout the 20<sup>th</sup> century, and continued to use it as a means of characterizing itself as the benevolent actor in geopolitical events.

In the mid-1940s, the Middle East began to see the United States in a new light. After President Truman's rapid and unrelenting recognition of Israel in 1948, the Middle East grew steadily more disappointed in the United States. This frustration grew through the early stages of

the Cold War when the United States established military bases throughout the Middle East in an effort to contain Soviet advances (Khalidi, 1945). As a result of this Cold War strategy, and in an attempt to maintain access to oil, the Middle East became a solidified focal point in U.S. foreign policy.

This new focus was furthered by the Truman and Eisenhower Doctrines, which provided economic and military assistance to Middle Eastern countries. The United States quietly supported Islamist organizations as a counter to secular nationalism and communism to bolster these doctrines and maintain control of the region's oil. This partnership with Islamism, a militaristic and political ideology derived from Islam that is often referred to as Islamic fundamentalism, thus became a significant feature of American Cold War strategy (Kumar, 2012). Essentially, the American government used Islamist groups to negate Soviet political power and solidify the West as the primary foreign influence in the region. After the Six Day War in 1967, which was a substantial humiliation for major conventional Arab leaders, Islamist groups capitalized on the new power vacuum in the region (Kumar, 2012). With this development, Islamism gained a more public stage on which it could operate, and obtained increased political influence within the region.

Leading up to the 1979 Iranian Revolution, the United States continued to widely support Islamist groups to meet its Cold War objectives. In the 1979 Iranian Revolution, however, the Islamic Republican Party overthrew the U.S.-backed Shah, and 52 Americans in the U.S. Embassy were taken hostage for 444 days (Kumar, 2012). At the time, the Iran Hostage Crisis was the most heavily broadcasted event relating to the Middle East, and was also the first time international terrorism became associated with Islam (McAlister, 2002). A major defeat to American hegemony in the Middle East, the U.S. government developed a new narrative of

fanaticism as being inherently Islamic as the dominant lens through which it understood Middle Eastern policy. This lens, however, neglected to acknowledge the United States' historical role in the Middle East.

Although the 1979 Iranian Revolution produced a heightened suspicion of Islamism in the United States, the government continued to establish relationships with Islamist groups where it was deemed necessary to supplement Cold War efforts. Both the Carter and Reagan Administrations funded and trained the Mujahedeen in Afghanistan to draw the Soviet Union into a lengthy war that would consume the Soviet's attention and resources (Kumar, 2012). While at the time the Soviet-Afghan War seemed vital to maintaining U.S. geopolitical power, the growth of the Mujahedeen led to the emergence of the Taliban and eventually of al-Qaeda (Kumar, 2012). Consequently, the United States' historical policies in the Middle East and support of Islamist groups directly fed into terrorist grievances that motivated the 9/11 attacks. Whether the U.S. supported Islamist groups to advance Cold War interests, or demonized them after 9/11, the government continually neglected to consider how its Middle Eastern policies would affect the United States and its relationship with the international community.

After the end of the Cold War, President George H. W. Bush and President Clinton both remained committed to U.S. geopolitical power and oil interests in light of a new world order. Acting as the world's policeman and dominant power, the United States continually intervened in Middle Eastern affairs to prevent a destabilization of U.S. global influence. Terrorists cited this military engagement and complicated history in the Middle East as justification for multiple terrorist attacks on U.S. diplomatic and military establishments around the world and domestically (Kumar, 2012). Most notable was the 1993 World Trade Center Bombing by al-Qaeda-trained terrorists (Kumar, 2012). These attacks foreshadowed the danger in the

government's dismissal of its involvement with Islamism and its complex role in the Middle East.

Unreceptive to its own historical influence, the U.S. government perpetuated the narrative of American innocence in geopolitics. Coupled with the American public's view and knowledge of terrorism, this dichotomy between the United States and the Middle East strengthened. Such a simplistic understanding of the post-Cold War world was expressed by Bernard Lewis' "Roots of Muslim Rage" article in *The Atlantic*, which pitted Islam against the West, and claimed that Muslims were inherently resentful and oppositional to Western societies (Lewis, 1990). This stance was supported by Samuel Huntington's "clash of civilizations" theory. Huntington maintained that post-Cold War, world conflict would be defined by differences between cultures (1997). Specifically, Islamic extremism would constitute the biggest threat to Western society (Huntington, 1997). Lewis and Huntington's claims became leading narratives in the post-Cold War era that furthered the notion of Islam as a producer of terrorism. With the attacks on September 11, 2001 by al-Qaeda, both the American public and the government adopted this lens in their approach to counterterrorism.

The U.S. government's short-term memory discounts its own complicated role in the region, making the government perceive itself as blameless for developments in terrorism. The United States has repeatedly deployed its military to the Middle East to further its Cold War and post-Cold War interests. The government has even aided the creation of the Mujahedeen and funded other Islamist groups that later formed al-Qaeda and attacked the United States. Blind to its influence on the geopolitics leading up to 9/11, the U.S. government continues to portray itself as an innocent victim. Such a precedent was furthered in the government's interpretation of and response to 9/11.

### **III. Counterterrorism in a Post-9/11 America**

Leading up to 2001, Cold War motivations had a significant role in influencing U.S. responses to and understandings of terrorism and the Middle East. In the face of an unprecedented crisis on 9/11, the Bush Administration was forced to examine the country's security apparatuses. As a part of this re-examination, the government understood 9/11 as resulting from vulnerabilities in the United States' security strategy (Baker, 2003). This vulnerability was comprehended as civil liberties, because they delayed effective responses to threats (Baker, 2003). As such, the government produced a new counterterrorism strategy that brought the "liberty versus security" debate back to the forefront of policy.

The "liberty versus security" debate refers to the notion of liberty and security as being mutually exclusive in states of emergency (Atkin, 2013). To enhance security measures, civil liberties must be at least partially suspended. This chronicle justifies the government's restriction of civil liberties and expansion of security apparatuses and powers (Agamben, 2005). By playing upon the fear of another terrorist attack, the government rationalized its actions with minimal dispute; however, not all Americans accepted this suspension of civil liberties. Opponents of the government's security measures claim that restricting civil liberties is never acceptable, even in times of emergency, because doing so compromises basic democratic values (Etzioni, 2004). Nonetheless, the government insists that those who contest counterterrorism measures on behalf of civil liberties are unpatriotic and inviting of terrorism (Atkin, 2013). The "liberty versus security" debate is dangerous in its insistent dichotomy, because it ceases productive discussion regarding U.S. counterterrorism policy and the War on Terror. Rather, it portrays liberty and security as inherently incompatible in times of crisis, which encourages the sacrificing of liberty despite the limitless trajectory of the War on Terror.

This thesis will evaluate the role of the “liberty versus security” debate in the Bush, Obama, and Trump Administrations’ leading domestic counterterrorism strategies: the USA PATRIOT Act, Countering Violent Extremism, and the Travel Ban. The Bush Administration’s USA PATRIOT Act removed longstanding judicial obstacles to privacy intrusion and investigations in terrorism-related cases, relying heavily upon preemptive detentions and surveillance (Fox, 2013). Essentially, it reduced judicial oversight to accelerate responses to potential threats. The Obama Administration’s Countering Violent Extremism program shifted the government’s counterterrorism strategy to counter-radicalization efforts by emphasizing community outreach and partnerships with local law enforcement. This local government-based initiative aimed to address the forces that influence people living in the United States to turn to violent extremism (Bjelopera, 2012). Finally, President Trump signed an executive order in January 2017 that blocked citizens from seven Muslim-majority countries from entering the United States (Exec. Order 13769, 2017). Each of these three counterterrorism policies prioritizes security and restricts the role of liberty in the War on Terror. These policies will be further evaluated throughout the remainder of this thesis.

#### **IV. Literature Review**

##### *The Liberty vs. Security Debate*

The September 11<sup>th</sup> attacks altered the government’s approach to and understanding of counterterrorism. Building on the heightened demand for security and threat of another terrorist attack, the Bush Administration adopted the USA PATRIOT Act. The government’s actions during the policy’s implementation, such as surveillance, preemptive detentions, and secret trials, introduced the idea of liberty and security as being mutually exclusive: to ensure the security of

the nation, citizens' civil liberties must be restricted. With the War on Terror still ongoing, the debate over liberty and security holds particular salience, because it risks restricting liberties for an unlimited period of time. Such a development threatens citizens' constitutional rights, undermining the very foundation of democracy. This literature review illustrates the current understanding of the role of liberty in security policy, and delves into the prominence of such a debate in the context of the War on Terror. Much of this scholarship examines how counterterrorism policies disparately sacrifice the liberties of Arab and Muslim American communities in the War on Terror. The relevant literature lacks an evaluation on how this precedent was set by the Bush Administration and sustained by the Obama and Trump Administrations. This thesis will investigate the dangers of United States leaders' acceptance of this narrative, and how counterterrorism policies of the past two presidents have motivated the Trump Administration's harsh approach to national security.

The delineation of liberty and security as mutually exclusive in security policy emerges within a state of emergency. This idea is referred to as the "state of exception," which theorizes that the government, or a branch of the government, can use a state of emergency to justify diminishing constitutional rights as an exception to established law (Agamben, 2005). Literature supporting the state of exception theory argues that liberties are a vulnerability to the state and compromise the effectiveness of responses to potential threats (Posner & Vermeule, 2007). As such, this side of the debate maintains that liberty and security cannot simultaneously exist in times of emergency, and that the value gained from the government enhancing security measures outweighs any losses to liberty. A larger portion of the literature, however, critiques prioritizing security over liberty by highlighting the dangers in doing so. These scholars claim that the understanding of freedom as a weakness is both false and threatening, because expanding a

sovereign's power has the potential to indefinitely suspend citizens' civil rights and transform democracies into totalitarian states (Agamben, 2005; Baker, 2003; Etzioni, 2004; Walker, 2012). This literature is especially relevant when considering the open-ended scope of the War on Terror.

When investigating the balance of liberty and security in counterterrorism policy, one must consider that both maintain significance in a democracy, and that neither can be dismissed without serious implications. This thesis contests the claim that liberties must be restricted to ensure security. I argue that granting the government unchecked power compromises the principles of democracy and threatens liberty in the long-term. This thesis will frame how the Bush, Obama, and Trump Administrations have used the state of exception in their respective counterterrorism policies to justify an overreach of governmental powers.

### *The Strategic Sacrifice of Liberties in Counterterrorism Policies*

Counterterrorism efforts pose a distinct challenge for democratic states: how to punish and prevent terrorist violence, while simultaneously upholding civil liberties (Cole & Dempsey, 2002; Fox, 2013). The scholarship claims that curtailing civil liberties with the USA PATRIOT Act creates a less secure society by assuming guilt by association to the group that is being regulated, and has done little to eradicate terrorism (Cole & Dempsey, 2002; Fox, 2013). In the context of the War on Terror, Arab and Muslim Americans represent the group being regulated. Further scholarship analyzes the efficacy of the USA PATRIOT Act, and criticizes that the lack of oversight results in a disparate implementation of the policy (Cole & Dempsey, 2002; Etzioni, 2004; Atkin, 2013). Such haphazard execution demonstrates the Bush Administration's indifference to the constitutional rights of Arab and Muslim Americans. This thesis will

demonstrate that the USA PATRIOT Act's implementation inspired a commonplace bias that has exposed itself in the Obama Administration in a new form, but has greatly amplified with the Trump Administration.

Despite a rhetorical change in the Obama Administration's counterterrorism approach, the implementation of the Countering Violent Extremism (CVE) program undermined the Administration's efforts to change the negative connotations associated with the War on Terror. Obama promoted the concept of counter-radicalization, which focused on preventing Muslims from adopting violent extremist ideologies. The discussion of radicalization encouraged policy makers to believe that terrorism could be prevented through the surveillance of the mental and spiritual lives of Muslims, but neither a causal relationship between Islam and violence, nor a distinct path towards violent extremism has factually been demonstrated (Aziz, 2014; Beydoun, 2015; Kundnani, 2015; Patel 2011). Proponents of radicalization theory do not take political motivations for terrorism, such as U.S. military intervention, into account, therefore failing to truly address the causes of terrorism. Rather, CVE links radicalization with devoutness to Islam, posing a distinct threat to observant Muslim Americans and compromising their free-exercise rights. Community policing in the CVE program intensified existing civil liberties violations, making Muslim communities more suspicious of local law enforcement, and thus hindering the mutual relationship required of the program (Aziz, 2014; Beydoun, 2015; Kundnani, 2015; Patel 2011).

Increased focus on Muslim communities by both the Bush and Obama Administrations encouraged the "Muslim terrorist" stereotype, which therefore justified restricting the liberties of a community that was deemed suspicious. I will expand upon that narrative by demonstrating that despite a change in administrative rhetoric, the implementation of community surveillance

further perpetuated systemic bigotry against Arab and Muslim American communities by sacrificing their liberties in the name of national security. This precedent was maintained by both the Bush and Obama Administrations, but has expanded in the Trump Presidency with the Travel Ban. Building upon these ideas and narratives, the Trump Administration instituted a policy founded on the exclusion of a population. I will extend this discussion on the dangers of polarizing a population in the Trump Administration's Travel Ban, and how barring a certain population from entering the United States is an ineffective counterterrorism policy.

### *The Impact of Targeting Muslim and Arab Americans*

The implementation of the USA PATRIOT Act and CVE targeted Arab and Muslim Americans, portraying the community as inherently suspicious and supportive of terrorism. These methods explain terrorism as deriving from Islam, politicizing Arab and Muslim Americans' actions as a manifestation of tradition or religion (Aziz, 2014; Jamal & Naber 2008; Mamdani, 2004). This discourse divides Arab and Muslim Americans into "good" law-abiding Muslims who cooperate with counterterrorism efforts, and "bad" Muslims who demand civil liberties at the cost of security (Aziz, 2014; Jamal & Naber 2008; Mamdani, 2004). Muslims who contest the restriction of their liberties are deemed inviting of terrorism, and the government suggests that restoring their liberties will impede security measures and make the country vulnerable to another attack. Thus, terrorism is tied less to political realities, and instead assumes a religious component.

Justified by the presentation of Arab and Muslim Americans as members of a criminal group whose religion is inclined towards violence, the community is stripped of full national belonging or cultural citizenship (Cainkar & Maira, 2005). Studies conducted in the Chicago and

San Francisco areas in the years following 9/11 demonstrate this exclusion by discussing how a vast majority of Arab and Muslim Americans felt marginalized by the public, subjected to hate crimes, and targeted by local police efforts (Cainkar, 2009; Naber, 2008). Discourses produced in the wake of 9/11 introduced Arab and Muslim American communities to harassment and backlash founded in both societal racism and systemic targeting, instilling a sentiment within the communities that they are outsiders in the nation (Cainkar, 2009; Naber, 2008).

This scholarship criticizes the government’s selective enforcement of counterterrorism laws, and argues that such efforts have marginalized Arab and Muslim American communities as undeserving of full civil rights. By holding the Arab and Muslim American community responsible for the 9/11 attacks, the government’s actions have turned the War on Terror into an open-ended and arbitrary war against a minority. This thesis will further contribute to this scholarship to demonstrate how the biased discourse associated with the implementation of the Bush and Obama Administrations’ counterterrorism policies culminated in an openly racist policy by the Trump Administration.

## V. Methodology

*Table 1. Methodology*

<b>Administration</b>	<b>Bush</b>	<b>Obama</b>	<b>Trump</b>
<b>Domestic Counterterrorism Policy</b>	USA PATRIOT Act	Countering Violent Extremism	Travel Ban
<b>Specific Components Evaluated</b>	Controversial Sections	Three Priority Areas	Evolution Of The Ban
<b>Effectiveness in Combatting Terrorism</b>	Contributions to Terrorism Investigations & Convictions	Report on Progress in Three Priority Areas	Potential Long-Term Consequences
<b>Impact on Arab &amp; Muslim Populations</b>	Discourse Analysis	Discourse Analysis	Discourse Analysis and Short-Term Consequences

I examined the respective foremost domestic counterterrorism policies to evaluate the effectiveness of national security efforts in the Bush, Obama, and Trump Administrations. For the Bush Administration, I chose the most controversial sections of the USA PATRIOT Act in terms of their impact on civil liberties, and used think tank reports and personal narratives to analyze their effectiveness in contributing to terrorist investigations and convictions. For the Obama Administration, I assessed the three priority areas of the Countering Violent Extremism program's Strategic Implementation Plan and the United States Government Accountability Office's report on the progress of the priority areas. For the Trump Administration, I looked at the ban's two primary actions, the exclusion of individuals from certain countries and the refugee cap, and how the Administration released three executive orders in response to legal challenges to the ban. I also proposed potential long-term consequences of the ban on counterterrorism efforts based on various think tank reports and articles. Finally, I relied on anthropological studies and narratives to conduct a discourse analysis that discusses how the policies favored particular groups' interests and impacted Arab and Muslim Americans' civil liberties. Due to the recent and pending nature of the Travel Ban, I also considered the short-term consequences of the ban on Arabs and Muslims entering the United States or living in the country with visas.

## **VI. Conclusion**

The following chapters analyze each Administration's respective counterterrorism policies, the implementations of such policies, and the effects of each policy on Arab and Muslim Americans' civil liberties. Chapter 2 reviews various sections of the USA PATRIOT Act, illuminating concerns with the lack of oversight in its implementation, and illustrating how the policy disparately targeted Arab and Muslim Americans. Chapter 3 examines the CVE program, discusses problems that arise when utilizing counter-radicalization as a primary

strategy, and exposes how unregulated CVE efforts ostracized Arab and Muslim American communities. Chapter 4 explains the Travel Ban in the context of Trump's "America First" approach to politics, highlights the timeline of judicial challenges to the executive order over the first year of his presidency, and proposes potential implications of the ban contingent on the Supreme Court's ruling on the order in June 2018. The final chapter conceptualizes the influence of each policy on the next, as well as the role that liberty plays in post-9/11 America counterterrorism strategy.

## Chapter 2: The Bush Administration and the USA PATRIOT Act

“On September 11, the wheel of history turned and the world will never be the same.”  
– Attorney General John Ashcroft<sup>1</sup>

### I. Introduction

In response to 9/11, the Bush Administration launched a domestic and global War on Terror that pitted security and liberty against one another. This dichotomy conveyed liberty as a vulnerability of security, indicating that liberty must be controlled to ensure the security of the state. What role do both liberty and security play in the Bush Administration’s counterterrorism policies, and what are the implications of such policies on Arab and Muslim Americans’ liberties? This chapter analyzes the mutual exclusivity of liberty and security in the USA PATRIOT Act, and exposes how the government exploited the public’s fear of another terrorist attack to justify restricting Arab and Muslim American’s liberties. I argue that the Bush Administration’s unregulated and expanded government power led to an ineffective counterterrorism policy that limited civil liberties and ostracized Arab and Muslim Americans.

The first section of this chapter introduces the Bush Administration’s approach to counterterrorism both internationally and at home. The chapter then evaluates various controversial sections of the USA PATRIOT Act, and how the purposeful lack of oversight in these sections posed a significant threat to civil liberties and American values. In the absence of regulation, federal law enforcement justified arbitrarily targeting Arab and Muslim Americans by playing upon the narrative that the entire community is inherently guilty and responsible for the actions of a few individuals.

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<sup>1</sup> Ashcroft, J. (2001). “*September 11, 2001: Attack on America.*” Prepared Remarks for the U.S. Mayors Conference of October 25. Washington, D.C.: Department of Justice.

## **II. A New Approach to Counterterrorism**

### *The Bush Doctrine*

The September 11<sup>th</sup> attacks on the U.S. instilled a deep-rooted fear of terrorism in many Americans. In response to the attacks and the public's call for protection, the Bush Administration focused on international security concerns. Just nine days after the attacks, President George W. Bush announced his global fight against terrorism to Congress. The Bush Doctrine, a new approach to foreign policy and counterterrorism, was based on the principles of American primacy and preemptive war (Birkenthal, 2013). Effectively, the Bush Administration viewed the United States as the international hegemon, which included the right to declare war against enemies intending to inflict harm on the United States (Birkenthal, 2013). The government prepared to assert its dominance in the domestic and global arenas by any means possible.

The Bush Administration justified many of its counterterrorism methods by capitalizing on the threat of terrorism. Internationally, the Bush Doctrine undermined democracy, international law, and civil liberties. These methods included the creation of secret CIA prisons and domestic surveillance programs, the use of enhanced interrogation tactics against terrorists, and a directive for the military and CIA to engage in covert operations to assassinate terrorist group leaders using drone strikes (Birkenthal, 2013). The invasions of Afghanistan and Iraq in 2001 and 2003 were further emulations of the Bush Doctrine's aggressive and preemptive global strategy (Birkenthal, 2013). These actions were symbols of the Administration's dismissive attitude towards human rights and international law standards, which normalized the mistreatment of foreign nationals and the suspension of rights in the enduring War on Terror.

Domestically, the Bush Administration carried out its counterterrorism doctrine by capturing more information on terrorists. Operation TIPS was a domestic information-gathering program that encouraged citizens to spy on one another and to report any suspicious activity (Etzioni 2004). In 2004, the Intelligence Reform act furthered intelligence gathering by establishing a new set of intelligence organizations, such as the National Counterterrorism Center (Cole & Dempsey 2006). These domestic intelligence-gathering programs attempted to improve communication among agencies and to identify threats before an attack occurred. Contention over Operation TIPS eventually led to its reversal, but the USA PATRIOT Act, arguably the most publicly scrutinized and controversial domestic counterterrorism law of the Bush Administration, continues today. The USA PATRIOT Act limited civil liberties in the name of security, but the removal of regulation and judicial oversight of these efforts ostracized a minority both abroad and at home.

### **III. An Analysis of The USA PATRIOT Act**

#### *An Introduction*

The USA PATRIOT Act, short for “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism,” removed longstanding judicial obstacles to privacy intrusion and vastly expanded executive authority (Fox, 2013). Passed hastily within mere weeks of September 11<sup>th</sup>, the USA PATRIOT Act was never subjected to an official debate or testimony on the floor of Congress (Cole & Dempsey, 2006). Rather, under immense pressure to prevent further violence, Congress passed the act based on the assumption that the public’s desire for additional security justified compromising democratic values and civil liberties (Fox, 2013). This lack of congressional discussion and removal of judicial oversight set

a precedent for aggressive and unchecked government authority that came to define the Bush Administration's counterterrorism strategy in the years to come.

In an attempt to secure the country, the USA PATRIOT Act employed various measures to supplement heightened airport security. Some of these methods included search and seizures without "probable cause," eased restrictions on the types of documents law enforcement could obtain, interception of private communications, surveillance, deferral of due process, and indefinite extrajudicial detention of non-citizens (Fox 2013). Amidst the confusion of 9/11, a new era was born: an era that prioritized homeland security and dismissed the consequences of curbing civil liberties and American democratic values.

The Bush Administration's rhetoric prior to passing the USA PATRIOT Act demonstrated that although the act was often directed at foreign nationals, it was intended to target Arab and Muslim Americans. A statement by Attorney General John Ashcroft to the U.S. Mayors Conference on October 25, 2001 illustrated the Bush Administration's assertive stance against terrorists. But, in doing so, he took a stance against foreign nationals.

"Let the terrorists among us be warned: If you overstay your visa – even by one day – we will arrest you. If you violate a local law, you will be put in jail and kept in custody as long as possible. We will use every available statute. We will seek every prosecutorial advantage. We will use all our weapons within the law and under the Constitution to protect life and enhance security for America." (Ashcroft, 2001)

In this statement, Ashcroft was strong in his declaration that the Administration was willing and able to employ an aggressive counterterrorism strategy. His reference to foreign nationals, however, was telling of the direction that the USA PATRIOT Act would take. By referencing immigration visas, Ashcroft transformed foreign nationals with visa violations into potential terrorists, feeding into the existing fear of foreign nationals as potential terrorists. He took the alienation of foreign nationals one step further:

“Some will ask whether a civilized nation – a nation of law and not of men – can use the law to defend itself from barbarians and remain civilized. Our answer, unequivocally, is "yes." Yes, we will defend civilization. And yes, we will preserve the rule of law because it makes us civilized.” (Ashcroft 2001)

The rhetoric chosen in this preceding statement exuded the message of the clash of civilizations, equating terrorists to barbarians and democracy to civilization. The danger in this dichotomy lies in his language about foreign nationals. By equating visa violators with terrorists, Ashcroft thus drew a connection between foreign nationals and barbarians. John Ashcroft’s hostile and aggressive rhetoric foreshadowed the trajectory that the USA PATRIOT Act took in the following years: a path of systemic discrimination that undermined homeland security efforts and alienated a population.

#### *Sect. 213: “Sneak and Peek” Searches*

This provision of the USA PATRIOT Act authorized the use of secret searches in criminal investigations. Typically, searches conducted in criminal investigations are subject to a standard procedure known as the “knock and announce” rule, where law enforcement must knock on the door of the place being searched to give the owner notice (Cole & Dempsey, 2006). This procedure provides the owners with the ability to oversee the search, and to ensure that the search does not violate the measures outlined in the warrant (Cole & Dempsey, 2006). Under a “sneak and peek” warrant, this standard does not exist.

Section 213, “Authority for Delaying Notice of the Execution of a Warrant,” allowed federal law enforcement to delay notifying recipients of search and seizure warrants when there was “reasonable cause to believe” that such a notification would have “an adverse result” on the investigation (United States, 2001). These searches have been nicknamed “sneak and peek” warrants, because they do not require the knowledge of the individual being investigated (Cole &

Dempsey, 2006). These warrants allowed federal law enforcement to “search and seize any property or material which constitutes evidence of a criminal offense,” and thus expanded federal law enforcement’s capabilities beyond those of counterterrorism (United States, 2001). The Justice Department has even confirmed that it used Section 213 to justify “sneak and peek” searches in non-violent investigations that were unrelated to terrorism (Cole & Dempsey, 2006). The provision is problematic, because the lack of regulation for the searches allowed federal law enforcement to engage in activities that breached parameters of the warrants.

The Electronic Frontier Foundation conducted an analysis of “sneak and peek” warrants through Freedom of Information Act requests (Timm, 2011). From 2006 to 2009, “sneak and peek” warrants were used 1,755 times, but only 15 of those cases, or 0.8%, were used for terrorist investigations (Timm, 2011). The rest of the warrants were used for drug or fraud related cases (Timm, 2011). These figures demonstrate that “sneak and peek” warrants were not used for extraordinary situations that posed an immediate threat to the nation’s safety, but that they were used to curtail legal obstacles, expedite the investigation process, and further federal law enforcement’s agenda without limit. “Sneak and peek” warrants have become the rule, rather than the exception, thanks to the USA PATRIOT Act.

This exploitation of Section 213 was further demonstrated when the FBI used information obtained through a “sneak and peek” warrant against Anser Mehmood, a Pakistani immigrant (Malek, 2011). The FBI and INS questioned Anser on October 3, 2001 about two of his wife’s brothers who were wanted on charges of credit card fraud. Then, after receiving a tip that Anser was tied to terrorist activities from a transportation company that previously worked with him, he was detained by the FBI for being a “high interest” suspected terrorist, and spent months in solitary confinement (Malek, 2011). During this time, government officials informed

Anser's lawyer that the FBI had searched his home while his wife was asleep and unaware. His wife awoke in the middle of the search to find 25 people searching their home and throwing their belongings around; she said her children were shocked at the state of their house when they returned from school. During the search, the FBI reported that they found box cutters, a license to carry hazardous materials, a flight simulator program, and three Pakistani passports in Anser's name. Anser claimed that the box cutters were for his job, the hazardous materials license were for his trucking company, the flight simulator program was a video game for his children, and that two of the three passports were expired. Anser's wife and lawyer could not get in touch with Anser while he was detained. He was later deported back to Pakistan when given the option to either fight in court or be deported on account of having used an unauthorized social security card (Malek, 2011). Anser's story is one of many that followed a "hold until cleared" policy, where foreign nationals who were arrested for visa violations were held until cleared of terrorist charges (Malek, 2011). The investigation of Anser further reveals how the government exploited "sneak and peek" warrants, and that targeting foreign nationals was an ineffective counterterrorism policy that resulted in few terrorist convictions, but multiple deportations.

### *Sects. 215 and 505: Gag Orders*

Section 215, "Access to Records and Other Items Under the Foreign Intelligence Surveillance Act," (FISA) allowed the FBI to order the "production of any tangible things (including books, records, papers, documents, and other items)" for a terrorist investigation (United States, 2001). Under FISA, Section 215 allowed easier access to records by lowering the standard of proof necessary to obtain a FISA order and by expanding the types of items that could be demanded (ACLU, 2009). Most controversially, Section 215 requests were served with

gag orders, making it illegal for people issued with a FISA order to disclose that the FBI was investigating them (Atkin, 2013). These gag orders were additionally presented with unrestricted time limits (Atkin, 2013).

Section 505 used National Security Letters to maintain similar secrecy. Section 505 “Miscellaneous National Security Authorities,” authorized third parties to release telephone toll and transaction records, financial records, and consumer reports upon request by the FBI (United States, 2001). The FBI uses National Security Letters (NSL), which includes nondisclosure provisions for the recipients, to request such information (Atkin, 2013). The FBI does not need court approval to issue an NSL; they only need to certify that the records requested were relevant to an investigation (Atkin, 2013).

Sections 215 and 505 posed enormous threats to the rule of law by enforcing secrecy and the systemic absence of oversight. Left intentionally vague, these sections expanded the government’s ability to demand any and all information that third parties hold (Cole & Dempsey 2006). For instance, rather than asking for a specific individual’s hotel records in an investigation, the vagueness permitted the government to ask the hotel for the records of anyone who had ever stayed in that same room, or for the records of anyone who stayed in the hotel on the same days as the individual being investigated. Essentially, such investigations are boundless, compromising one’s right to privacy.

Issuing gag orders to ensure secrecy only supplemented the government’s reliance on abuse of power. In the past, prosecutors could obtain similar information through grand jury subpoenas that did not require independent judicial review (Cole & Dempsey, 2006). This process required empaneling a grand jury of citizens, and enabled the subpoena to be overseen by both the grand jury and the press, because recipients of the subpoenas were allowed to make it

public. The USA PATRIOT Act's mandate of gag orders halted this process of oversight, because it does not require the empaneling of a grand jury, nor does it allow for the recipient to disclose the gag order to the public or any other individual (Cole & Dempsey, 2006). Thus, gag orders prevent recipients from challenging subpoenas or seeking legal advice. The jump from 8,500 issued NSLs in 2000 to 49,425 issued in 2006 demonstrates a dramatic increase in a tool that has a strong potential for exploitation (ACLU, 2009). Roughly 192,000 NSLs were issued between 2003-2006, but only one of these led to a terrorism conviction (Timm, 2011). Further, the New York Times reported that Section 215 orders may be used to obtain private information about individuals who have no link to a terrorism case (Timm, 2011). The ability for the government to use a section of the USA PATRIOT Act, which is a policy committed to improving homeland security efforts, in non-counterterrorism related cases is a testament to the abuse of power that the government granted itself through its intentional lack of judicial regulation.

The abusive nature of gag orders was addressed legally in 2005 and 2008. In 2005, under the USA PATRIOT Improvement and Reauthorization Act, NSL requirements were modified so that recipients could obtain advice from attorneys (Atkin, 2013). In 2008, the U.S. Second Circuit Court of Appeals found that gag orders violated the First Amendment by placing an undue burden on a recipient's ability to challenge the subpoenas (Atkin, 2013). The ruling also addressed the illegality of the absence of judicial review in obtaining gag orders, and the avoidance of time limits placed on the gag orders (Atkin, 2013). Such legal challenges to gag orders demonstrate that the USA PATRIOT Act allowed law enforcement to engage in unchecked, secretive activities that led to the exploitation of basic civil liberties.

*Sects. 216 and 218: Warrantless Searches and Wiretaps*

Sections 216 and 218 took intelligence gathering through surveillance a step further. Section 216, “Modification of Authorities Relating to Use of Pen Registers and Trap and Trace Devices,” expanded pen register and trap and trace authorities (United States, 2001). Pen registers and trap and trace devices collect information about the phone numbers dialed and received by a tapped phone. Section 216 extended these authorities to “include the contents of any wire or electronic communications,” effectively permitting the monitoring of phone calls (United States, 2001). Section 218 was labeled broadly as “Foreign Intelligence Information” (United States, 2001). This section relaxed the standard for FISA searches and surveillance by only requiring the government to demonstrate that a “significant purpose” of the FISA search is to gather foreign intelligence information, rather than having it as the “primary purpose” of the order (ACLU, 2009).

These sections of the USA PATRIOT Act substantially expanded the government’s authority to collect information. The Fourth Amendment allows searches and wiretaps of individuals only where probable cause that an individual is involved in criminal activity is demonstrated, or in the case where evidence of a crime will be found (Cole & Dempsey, 2006). Section 218 allowed the government to evade this aspect of the Fourth Amendment wherever the government claimed that the investigation had a purpose of gathering foreign intelligence. By lowering the standards for obtaining a Foreign Intelligence Surveillance Court order, the government more than doubled its reliance on these orders, increasing the number from 1012 issued in 2000 to 2370 issued in 2007 (ACLU, 2009). Sections 216 and 218 effectively granted federal law enforcement unprecedented surveillance power.

Amir Sulaiman, a Muslim American from upstate New York, experienced the impact of such surveillance. After performing his poetry on the HBO show Def Poetry Jam in 2004, Amir was met by the FBI in San Francisco (Malek, 2011). Amir learned over the following days that the FBI agents interviewed his friends, family, and the school he taught at in Atlanta about his poetry and whether he was “anti-American.” The FBI also brought a grand jury subpoena to his school to obtain the names, addresses, and phone numbers of the students he had taught. Amir said that he knew that the FBI had, at a minimum, wire tapped his phone, because the FBI constantly knew where he was staying on his way back to Atlanta. After being put on the No-Fly List, Amir was fearful of his safety and took several measures to avoid further surveillance, even going so far as to move, quit his job, and use pay phones. Amir never learned the reasoning for his surveillance (Malek, 2011). Amir’s story demonstrates how the expansion of surveillance powers impacted the lives of many Arab and Muslim Americans by making them anxious about their futures and their civil liberties. It also portrays how lowering the standards for surveillance and obtaining information often do not enhance the safety of the American people, especially when the individual being investigated is only targeted for their faith or political views. As such, this abused government power has not produced the desired outcome of improved security, but rather has resulted in an ineffective counterterrorism effort and has polarized the country by encroaching on a population’s basic civil rights.

#### *Sect. 411: Ideological Exclusion*

Outside of supplemented surveillance authorities, the USA PATRIOT Act also expanded ideological exclusion. Section 411 “Definitions Related to Terrorism” of the USA PATRIOT Act expanded the terrorism-related grounds for which a foreign national could be denied admission

into the United States or deported (United States, 2001). Under the Immigration and Nationality Act, the government was authorized to exclude those individuals who endorse or support domestic or foreign groups that the U.S. has designated as a terrorist group (ACLU, 2009). The USA PATRIOT Act lengthened this list to include individuals who support any political, social, or other group that the Secretary of State declared undermines U.S. counterterrorism efforts (United States, 2001). Additionally, ideological exclusion applies to any subject that has the ability to “persuade others to support terrorist activity or a terrorist organization,” in a way that the Secretary of State deems harmful to U.S. counterterrorism efforts. The USA PATRIOT Act extended this definition to include spouses and children of those who are considered inadmissible (United States, 2001).

The danger with Section 411 arises when considering its potential attack on the First Amendment. Historically, foreign nationals living outside of the United States had no constitutional right to enter the country; and the Supreme Court has long supported this standard (Cole & Dempsey, 2006). Conversely, Section 411 threatened to deny a foreign national’s entry based on political views and speech, rather than on the subject’s actions (ACLU, 2009). The First Amendment protects discussions of all ideologies and views, but Section 411 reduced freedom of speech. Thus, by barring individuals who held views that the government disagreed with, freedom of speech as the pinnacle of American democracy was put at risk.

Excluding or deporting a person based on speech is a dangerous precedent that could lead to the suppression of political opposition. In 2005, Raed Jarrar came to the United States to escape a deteriorating Iraq (Malek, 2011). One year later, he was denied from boarding a JetBlue flight at JFK International Airport for wearing a shirt that said, “We will not be silent” in English and Arabic, in reference to the Iraq War. TSA staff told him that passengers found the shirt to be

offensive (Malek, 2011). Although Raed was not deported, this story reveals the danger in silencing a minority or an unpopular belief. The government's implementation of the ideological exclusion statute was a manipulation of power that targeted foreign nationals and was an attack on one of America's most fundamental rights: freedom of speech and belief.

#### *Sect. 412: Indefinite Detentions*

The mistreatment of foreign nationals was further institutionalized with the introduction of indefinite detentions. Section 412 "Mandatory Detention of Suspected Terrorists; Habeas Corpus; Judicial Review," allowed the Attorney General to detain any foreign national he declared a suspected terrorist, without having to initially charge the subject (United States, 2001). The Attorney General must then verify that he had "reasonable grounds" to believe that the subject was engaged in terrorist activity or threatened national security. He then has seven days to begin criminal proceedings, removal, or release of the foreign national. If the detainee is held, the case must be reexamined every six months. No court has the "jurisdiction to review, by habeas corpus petition or otherwise, any such action or decision," (United States, 2001).

While it seems reasonable to detain terrorists, the preemptive and indefinite nature of these detentions risks detaining those who pose no threat to national security. The USA PATRIOT Act expanded the definition of "terrorist activity" to include a wide range of immigration violations or criminal offenses (ACLU, 2009). Proponents of the section argue that noncitizens are not entitled to the same rights, such as due process, as American citizens (Atkin, 2013). This argument, however, challenges basic human rights principles, because international law declares that all persons must be informed of any charges against them upon arrest (HRW, 2002). Therefore, the right to due process, which is protected in the 5<sup>th</sup> and 14<sup>th</sup> Amendments of

the Constitution, is considered a basic human right rather than a privilege only afforded to American citizens (HRW, 2002). Additionally, by relying on preemptive detentions, the government cannot develop the necessary intelligence and evidence required of a formal investigation (Cole & Dempsey, 2006). Thus, preemptive and indefinite detentions pose significant implications to civil liberties and also undermine terrorism-related investigations.

The right for the government to indefinitely hold foreign nationals for an immigration violation, which is typically a civil and not criminal offense, goes beyond the need for security. In the first two years following 9/11, the government detained over 5,000 foreign nationals, but none of those detained were convicted for terrorist activities (Cole & Dempsey, 2006). Many of these detainees were held without being charged and were barred from contacting the outside world, often preventing defendants from receiving legal advice (Cole & Dempsey, 2006). Preventing proper legal representation carries major consequences, especially when considering that many of the individuals detained were wrongly accused of their crimes with no means of challenging their detentions. This restriction on contact with the outside world also prevented the government's disregard for civil liberties from being exposed to the public. Additionally, the trials were frequently conducted in private proceedings (Cole & Dempsey, 2006). Rather than focus its efforts on true threats to national security, the government justified its use of Section 412 and preemptive, indefinite detentions by exploiting the narrative that foreign nationals are more inclined towards terrorism and violence.

The case of Farid Rodriguez, an Arab and Muslim from Colombia who was previously convicted of possession of narcotics, demonstrates how the government aimed its efforts at foreign nationals by using their immigration status as justification for detention. Farid moved to the United States in 1975, and in May of 2004, was arrested for an unresolved immigration issue

and placed in Passaic County Jail, New Jersey (Malek, 2011). He spoke of his time in jail, and how the atmosphere towards Arabs and immigrants was hostile and violent, stating that they were “treated like animals,” and that the negative comments of elected officials “made the public forget that [foreign nationals] belonged here and that [they] were human,” (Malek, 2011). Farid also mentioned that prison officials moved detainees to other detention centers weekly, but that there was secrecy about where the detainees were being sent. Often, detainees would not be informed of their relocation until it was under way, and did not have the opportunity to notify their families. He believed that the government was acting in such secrecy to prevent their families and lawyers from reopening their deportation case, as visa violations were frequently used to justify detentions. Farid was released in August of 2004, and a judge reinstated his full and permanent residency one year later with the help of the Legal Aid Society (Malek, 2011). Farid’s case reveals that the government justified Section 412 of the USA PATRIOT Act by playing upon the fears of foreign nationals as inherently criminal. His case also testifies to how the Bush Administration’s exploitation of immigration status was a groundless and ineffective counterterrorism method.

#### *Sect. 805: Material Support*

Section 805 “Material Support for Terrorism,” banned material support to individuals and organizations that commit various crimes of terrorism, and expanded such crimes to include providing “expert advice” (United States, 2001). Again, it would appear reasonable for the government to ban the support of terrorist activity; however, the implementation method for material support was overly broad. Under Section 805, material support encompassed any form of support, from aid distribution to supplying weapons (Cole, 2008). The USA PATRIOT Act

defined a terrorist organization as “any group of two or more persons that has used or threatened to use violence,” greatly expanding the scope of the definition to include almost any organization that has ever been involved in a civil war or in criminal violence (Cole & Dempsey, 2006).

Essentially, the expansion of material support criminalized political association, and threatened to persecute individuals who have no previous or planned participation in violence (ACLU, 2009). Material support took the “guilty until proven innocent” precedent one step further by enforcing guilt by association to any group designated as “terrorist” by the government.

The Supreme Court challenged guilt by association during the Cold War, which indicated that the inclusion of guilt by association in the USA PATRIOT Act was an overstepping of government authority. In *Scales v. United States (1961)*, the Supreme Court declared that the government must provide proof of the defendant’s intent to advance the Communist Party’s illegal actions (Cole, 2008). The Supreme Court held that an overly broad definition of material support violated the First Amendment’s right of association, and the Fifth Amendment’s requirement of “personal” guilt (Cole, 2008). With this ruling, the Supreme Court ruled that mere association with a group did not provide enough grounds for arrest, protecting individuals from guilt by association. When applying this standard to the War on Terror, a defendant’s intent to participate in or advance a terrorist organization’s violent or illegal activities must be proven, or it risks undermining the Constitution.

In 2005, the danger of guilt by association became apparent. The REAL ID Act of 2005 made the endorsement of any terrorist activity or membership in any organization, at any time, a deportable offense (Cole & Dempsey, 2006). A few months later, Khader Hamide and Michel Shehadeh were deported for their alleged association with a Palestine Liberation Organization faction in the 1980s. Their political association involved distributing magazines and raising

funds to provide aid for Palestinians in their struggle for liberation. These actions were protected under the First Amendment (Cole & Dempsey, 2006). Federal law enforcement targeted Hamide and Shehadeh over twenty years later for supporting a political group that was legal and accepted at the time. The stories of Hamide and Shehadeh exhibit the arbitrary and subjective nature of the material support statute in War on Terror. This discriminatory behavior calls the government's true intentions into question. Rather than focusing on individuals who pose a threat to the country's security, the government targeted innocent foreign nationals from Arab and Muslim American countries.

#### *An Unsustainable Long-Term Counterterrorism Strategy*

The sections of the USA PATRIOT Act outlined above relied heavily upon preventative strategies. The Bush Administration used the urgency with which the USA PATRIOT Act was passed to intentionally neglect oversight and regulation. As such, the USA PATRIOT Act greatly expanded government power, allowing the Administration to conduct these activities without being held accountable. To justify this unregulated and expanded power, the Bush Administration capitalized on the public's fears and sense of urgency following 9/11.

Amidst the confusion following 9/11, the FBI was pressured to move more quickly in disrupting terrorist attacks, relying on preemptive detentions or deportations rather than gathering substantial evidence and building a defensible case against a suspect (Jackson, 2011). This urgency resulted in the inability of federal law enforcement to successfully prosecute alleged terrorists, which undermined counterterrorism efforts by diverting attention and resources to subjects that were unthreatening to the nation's security (Jackson, 2011).

Under the USA PATRIOT Act, attention was on foreign nationals from Arab and Muslim-majority countries. Specifically, in 2002 men between the ages of 16-45 from designated Arab and Muslim countries, without legal permanent residence or refugee status, were required to register with local authorities (Jackson, 2011). Within one year, approximately 85,000 men registered. Deportation proceedings were initiated against over 13,000 of these men, and 2,870 were detained for various violations. Of the 85,000 men registered, only 11 were ever suspected of having ties to terrorist organizations, but none were ever charged with terrorist-related crimes. The registration program was eventually suspended in 2011 due to discrimination allegations (Jackson, 2011).

These figures demonstrate the systemic bigotry generated by the USA PATRIOT Act and by other government initiatives, which were justified by exploiting the narrative of the guilty Arab and Muslim. Government actions furthered this biased narrative, which infiltrated other aspects of American society. In the years following 9/11, there was a significant increase in airport profiling, hate crimes, and vandalism against Arab and Muslim businesses and mosques (Grimes, 2004).

#### **IV. Impact on Arab and Muslim American Communities**

The USA PATRIOT Act's focus on Arab and Muslim Americans created a dangerous narrative of Arabs and Muslims as inherently criminal. Although the Bush Administration declared that the War on Terror was not a war on Islam, the USA PATRIOT Act suggested otherwise. Since 9/11, the government capitalized on existing fears of terrorism, and the disparate nature of its implementation furthered the narrative of an arbitrary "potential terrorist" subject that is connected to Islamic fundamentalism (Naber, 2007). This "potential terrorist"

subject emerged from the interplay of federal law enforcement's targeting of Arab and Muslim foreign nationals and the open-ended scope of the domestic War on Terror.

The government manipulated an existing suspicion of Arab and Muslim American communities from the 20<sup>th</sup> century, which allowed the government to infringe upon liberties of a minority without much contention. A study conducted in the San Francisco Bay Area in the two years following 9/11 found that the public began to associate the War on Terror with certain identifiers of Arab and Muslim Americans (Naber, 2007). The most prevalent identifiers included skin colors associated with Middle Eastern descent, Arab-style clothing, Arab-sounding names, and nation of origin. The public categorized anyone who was perceived to identify with these markers as being a potential terrorist (Naber, 2007). In the War on Terror, these identifiers furthered the narrative of Arabs and Muslims as the terrorist enemy, subjecting these communities to post-9/11 backlash.

This process occurred when the government implemented the USA PATRIOT Act in a manner that targeted the Arab and Muslim American community. The American public assumed that the community deserved to be targeted, reasoning that if the government was focusing on them, then the community must be inherently threatening to national security (Jamal, 2008). The government used this logic to justify the USA PATRIOT Act's restriction of the liberties of foreign nationals and those suspected of being enemy combatants, and in turn stereotyped a minority as a threat to national security.

This stereotyping reflected a climate of hate and discrimination after 9/11. In a study conducted in Chicago in the three years following 9/11, Louise A. Cainkar found that a vast majority of Arab and Muslim Americans felt insecure or unsafe in the United

States (Cainkar, 2009). The government's implementation of the USA PATRIOT Act and language about the War on Terror made many Arab and Muslims Americans feel as if their access to liberty was unduly threatened in comparison to other populations. Often, this insecure access to civil rights became public with hate crimes (Cainkar, 2009). Whether in public or in the privacy of their homes, many Arab and Muslim Americans after 9/11 repeatedly felt as though detention, surveillance, and hate crimes were true threats to their ability to live freely (Cainkar, 2009). Such a climate of animosity is dangerous for a minority, but it is even more threatening to the future of a nation's integrity.

Countless narratives have been documented by individuals who were perceived to be a part of this "potential terrorist" group, and who expressed that they felt as if they were under intense scrutiny by both the government and the American public. The most striking of stories arises with Rana and Balbir Sohdi, brothers who left India in the 1980s to escape persecution for being of the Sikh faith (Malek, 2011). On September 15, 2001, Balbir was singled out, shot, and killed for wearing a turban at the gas station he owned. He was mistaken for being Muslim on account of his turban. Balbir's death was the first recorded hate murder following 9/11 (Malek, 2011). This narrative portrays the danger of stereotyping post-9/11, demonstrating how the public assumed any individual who was observed as a part of the Arab and Muslim American community to be a potential terrorist.

## **V. Conclusion**

In the chaotic aftermath of 9/11, the Bush Administration hastily passed the USA PATRIOT Act to protect the nation from another terrorist attack. Many of its provisions

were logical in the War on Terror, such as anti-money laundering authorities to dissipate terrorist funding. The lack of regulation and oversight explicitly removed by the act, however, opened a door for the government to expand its power without accountability. Without proper oversight or regulations to control these counterterrorism efforts, federal law enforcement abused its authority by projecting the actions of a few individuals onto the entire Arab and Muslim American community. Methods such as ideological exclusion, surveillance, and indefinite detentions made the government's domestic War on Terror a public attempt to ostracize foreign nationals.

Public displays of political scapegoating, coupled with the harsh and isolating discourse of the Bush Administration, furthered an existing fear that Arabs and Muslims were inherently suspicious, supportive of terrorism, and threatening to the nation's security. The issue with the USA PATRIOT Act is that its expanded government authority has not produced its desired outcome of increased safety. Rather, it misplaced its focus on foreign nationals, which undermined counterterrorism efforts.

The Bush Administration's approach to counterterrorism took a new form in the Obama Administration, one that relied on community policing to prevent radicalization. Nonetheless, this inefficiency transmitted through the Bush to the Obama Administration. Almost two decades later, the government's approach to security policy has surely transformed, but its inability to bring an end to the War on Terror and its unjustified pursuance of a population, has not.

## Chapter 3: The Obama Administration and Countering Violent Extremism

“Now, just as those of us outside Muslim communities need to reject the terrorist narrative that the West and Islam are in conflict, or modern life and Islam are in conflict, I also believe that Muslim communities have a responsibility as well.”  
– President Barack Obama<sup>2</sup>

### I. Introduction

After eight years of an aggressive counterterrorism strategy based upon detentions and surveillance under the Bush Administration, the Obama Administration adopted a new technique for its domestic security approach. This mechanism was counter-radicalization, a concept founded on the principles of addressing the causes of terrorism before violent acts occurred. This chapter evaluates the efficacy of this program, known as Countering Violent Extremism (CVE), in establishing security, and exposes the implications that it had on civil liberties. I argue that CVE’s flawed foundations and lack of strategic implementation undermined the Obama Administration’s counterterrorism efforts, encroached on civil liberties, and alienated Arab and Muslim Americans.

The first section of this chapter presents the Obama Administration’s renewed approach to counterterrorism. It then analyzes the counter-radicalization program’s three objectives, and how its lack of a cohesive and coordinated implementation strategy prevented success. Additionally, this chapter exposes the flawed foundation of the CVE program, and its threat to Arab and Muslim American’s civil liberties. I demonstrate how the Obama Administration utilized faulty radicalization narratives to justify the policing of Arab and Muslim American communities, furthering the precedent that began in the Bush Administration, which perpetuates the idea that Muslims are prone to terrorism.

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<sup>2</sup> Obama, B. (2015). *Remarks by the President in Closing of the Summit on Countering Violent Extremism [Transcript]*. Retrieved from <https://obamawhitehouse.archives.gov/the-press-office/2015/02/18/remarks-president-closing-summit-countering-violent-extremism>.

## **II. A Shift in U.S. Counterterrorism Strategy**

### *The Obama Doctrine*

When President Barack Obama took office in 2008, he established a foreign policy doctrine that transitioned away from the Bush Administration's strategy. The Obama Administration conducted its affairs with the vision of a multi-partner world (Birkenthal, 2013). Rather than operate as the world's hegemon, the Obama Doctrine focused on working alongside American allies and within the parameters of multilateral institutions to achieve international legitimacy. In coherence with this world view, the Obama Doctrine relied on "leading from behind" when conducting its international affairs; this refers to the attempt to avoid international entanglements unless unquestionably necessary (Birkenthal, 2013). Essentially, Obama aimed to take a backseat in global leadership by concentrating on diplomatic approaches. This approach extended to the Obama Administration's counterterrorism strategy, as it attempted to shift away from the unilateral nature of Bush's War on Terror (Birkenthal, 2013).

Although Obama attempted to redefine counterterrorism, he faced some obstruction to his foreign policy efforts by Congress. For example, Obama attempted to close the Guantanamo Bay prison (Birkenthal, 2013). While this attempt was blocked by a republican vote, its emphasis on the end of human rights abuses in the War on Terror signaled the Obama Doctrine's commitment to global cooperation and respect for rule of law. Despite this new pledge to international standards and change, the Obama Administration's bolstered military involvement in the Middle East confused the Obama Doctrine's objectives. In 2009, Obama announced a surge in troops in Afghanistan, but when democrats opposed this surge, he included a concessional deadline to begin troop withdrawal (Birkenthal, 2013). Obama supplemented this surge in troops with the increased use of drone strikes in the Middle East for targeted killings of terrorist group leaders

(McCrisken, 2011). Both of these actions were meant to bolster global War on Terror efforts and influence. Hence, Obama's respect for international law, but renewed commitment to military involvement in War on Terror efforts in the Middle East, presented conflicting approaches of the Administration.

Despite this contradictory foreign policy strategy, the Obama Doctrine took a different approach to domestic security efforts than experienced under the Bush Doctrine. CVE was based on addressing the root causes of violent extremism through community engagement to both prevent and undermine the attractiveness of terrorism (The White House, 2015). This new focus on precautionary counter-radicalization and community partnership efforts was a distinct transition away from the Bush Administration's punishment-based approach. Although CVE was an attempt to change the nature of the War on Terror, local law enforcement fell into patterns of surveillance and marginalization of Arab and Muslim Americans, as was experienced under the Bush Administration. The Obama Administration's CVE program addressed both international and domestic counter-radicalization; however, this thesis will focus on the Administration's domestic CVE efforts.

### **III. An Analysis of the Countering Violent Extremism Program**

#### *Motivation for the CVE Program*

With a new approach to the War on Terror, the Obama Administration shifted its domestic counterterrorism strategy away from surveillance and towards counter-radicalization. Radicalization is defined as the process of acquiring and holding radical or extremist beliefs, and terrorism is defined as the violent actions taken on the behalf of such beliefs (Bjelopera, 2012). Thus, counter-radicalization strategies address the forces that influence people living in the United States to acquire and hold certain beliefs that could lead to terrorism (Bjelopera, 2012).

Under the Obama Administration, violent extremists, defined as individuals who support or commit violence to further political goals, became a top priority in the U.S. domestic counterterrorism strategy (Department of Homeland Security, 2011a). The Administration directed its counterterrorism efforts at violent extremists, because they foster ideologies that are rooted in divisiveness and justify violence against innocent people (DHS, 2011a). The U.S. government acknowledged freedom of expression and belief; however, the Obama Administration declared that when these beliefs are furthered through the use of unjustified violence, it is the government's responsibility to protect its people (DHS, 2011a). In August 2011, the Obama Administration announced its "Empowering Local Partners to Prevent Violent Extremism in the United States" program, known as Countering Violent Extremism (CVE), to support this new priority in domestic counterterrorism strategy (DHS, 2011a).

While the Bush Administration neglected the foundations that lead to terrorism and instead used punishment as its primary tactic, CVE attempted to address the root causes of violent extremism before it occurred. As such, the Obama Administration took an approach to domestic security that was dependent on engagement, collaboration, and partnership. The Obama Administration's focus on radicalization as a root cause, however, still overlooked that radicalization was connected to American foreign policy and continued military intervention in the Middle East. Although CVE focused on prevention instead of reaction, the conflicting messages of CVE and the global War on Terror harbored an atmosphere of mistrust and suspicion similar to that created by the USA PATRIOT Act. Despite the Obama Administration's determination to be different, its confused initiatives caused the CVE program to fall into a similar pattern of surveillance and heightened wariness of a minority.

### *Empowering Local Partners to Prevent Violent Extremism in the United States*

“Empowering Local Partners” opened with a letter signed by President Barack Obama, who addressed the threat of al-Qaeda’s ideologies and recruiting of individuals who live in the United States (DHS, 2011a). CVE claimed that the most effective counterterrorism strategy is to combat radicalization. To build resilience against violent extremism, CVE required federal government support and empowerment of local community partners. “Empowering Local Partners” maintained that since the path to radicalization varies greatly, local partners and communities are more capable than the federal government of identifying risks and customizing the most effective responses to such threats in their specific communities. By giving local partners the necessary tools, CVE expected communities to be able to prevent violent extremists from inspiring, radicalizing, or recruiting individuals to commit terrorism in the United States (DHS, 2011a). Effectively, this document gave communities the lead in CVE efforts, but committed the federal government to cultivating this community-based approach.

The Obama Administration’s CVE program outlined three areas of priority action that should guide local efforts. The first priority area referred to “enhancing federal engagement with and support to local communities that may be targeted by violent extremists,” (DHS, 2011a). As a part of this action, it was the federal government’s responsibility to research methods of implementing CVE and identifying violence threats, to share this information with local partners and community leaders, and to provide a space to discuss community grievances and concerns so that the federal government can better supplement local efforts. Much of this work related to sectors not traditionally a part of national security, such as promoting education and civil rights, to enhance local communities’ overall strength (DHS, 2011a).

The second priority area was committed to “building government and law enforcement expertise” (DHS, 2011a). This section involved researching other countries’ CVE programs, identifying what factors make an individual at risk for radicalization, and preparing for potential developments in violent extremism (DHS, 2011a). This priority area accounted for both training local partners to implement CVE programs, as well as preventing local partners from engaging in activities that instigate tensions with their communities.

The final priority area was “countering violent extremist propaganda while promoting our ideals,” (DHS, 2011a). This two-pronged section was vital in disrupting the circulation of narratives that justify the use of violence: the overarching goal of the CVE program (DHS, 2011a). This section claimed that there is no single profile of a radicalized violent extremist. Despite this assertion, research suggested that almost all al-Qaeda-inspired violent extremists believe that that United States is determined to destroy Islam, and that this belief legitimizes their use of violence against Americans (DHS, 2011a). CVE efforts aimed to counter that narrative. The Administration recognized that difficulties arise with this objective, as there is a potential for actions taken within this parameter to inflict suspicion onto an entire community and to divide populations (DHS, 2011a). Thus, “Empowering Local Partners” stated that local law enforcement must be careful to not disparately target Muslims, or CVE risks either being undermined or feeding into violent extremist propaganda (DHS, 2011a).

This program concluded with eight principles to guide local CVE programs so that the strategies were both effective and upheld the rule of law. These principles were based upon basic democratic values. Principles included defending civil rights within counterterrorism efforts, building mutual-trust between communities and law enforcement, respecting religion so that strong beliefs were not confused with violent extremism, and not holding an entire community

responsible for the actions of a few terrorists (DHS, 2011a). This section of “Empowering Local Partners” was a deliberate shift in counterterrorism rhetoric by the Obama Administration, because it attempted to reintroduce civil liberties into the discussion on security. Although the Obama Administration tried to approach Arab and Muslim Americans as partners in the War on Terror to confront the suspicion cast on the community under the USA PATRIOT Act, its reliance on radicalization theory in Muslim American communities still furthered the perception of Islam as a source of violence.

### *Strategic Implementation Plan*

In December of 2011, the Obama Administration followed up with the “Strategic Implementation Plan for Empowering Local Partners to Prevent Violent Extremism in the United States,” also referred to as the SIP (DHS, 2011b). DHS designed the SIP to be an outline for local partners when planning and executing their local CVE initiatives.

The SIP defined four activities that must be included in CVE programs to accomplish its three objectives. The first activity was whole-of-government coordination, which referred to utilizing a multitude of tools, agencies, and partners to organize program efforts (DHS, 2011b). This policy included community partners such as immigration or violence prevention services (DHS, 2011b). As such, counterterrorism measures were to be managed by services outside of the typical security apparatuses, which signaled a commitment to community-led efforts.

Second, the SIP defined the necessity for “leveraging existing public safety, violence prevention, and resilience programming” (DHS, 2011b). In this section, the SIP committed the government to using existing safety and security apparatuses to supplement the new CVE programs.

Third, the SIP focused on the coordination of domestic and international efforts (DHS, 2011b). Although “Empowering Local Partners” and the SIP were designed specifically for domestic CVE efforts, the Obama Administration recognized that its counterterrorism program operated in a globalized world. Terrorists overseas had access to the Internet, and could therefore radicalize Americans (DHS, 2011b). Additionally, events both internationally and in the United States had the capacity to influence violent extremist propaganda (DHS, 2011b). Specifically, the Administration’s use of drone strikes and military presence in Afghanistan supplemented terrorist propaganda by feeding into political grievances. As such, the SIP acknowledged that domestic and international CVE efforts must be coordinated to account for all potential influences. This connection to the global community directly accounts for the necessity of the SIP’s final activity, technology and virtual space in CVE (DHS, 2011b). The SIP addressed the need to combat online recruitment. These four methods worked together to support the success of the Empowering Local Partners’ three objectives.

### *Efficacy of the CVE Program*

In April 2017, the United States Government Accountability Office (USGAO) conducted a report on the CVE program after Congress asked them to review its domestic efforts (United States Government Accountability Office, 2017). The report evaluated the extent to which DHS, DOJ, and other partners implemented the 2011 SIP, the degree to which the federal government developed a strategy for implementing SIP activities, and how effectively the CVE Task Force had assessed the program’s progress. The USGAO found that there were no measurable outcomes of the 2011 SIP, because after five years the federal government still had not developed a cohesive strategy for implementation (DHS, 2011b).

The USGAO found that of the 44 domestic tasks outlined in the 2011 SIP, 19 were implemented fully, 23 were in progress, and no action had been taken on 2 (USGAO, 2017). A further evaluation of the status of these tasks is later detailed. DHS and DOJ officials maintained that the Assessment Working Group, which is responsible for measuring the progress and effectiveness of CVE, had not been formed (USGAO, 2017). As of the end of 2016, there had been no official evaluation of the efficacy of the federal government's CVE. Therefore, the USGAO could not establish whether the United States was safer than it was in 2011 as a result of CVE efforts. Neither the 2011 SIP, nor the updated 2016 version, established a definitive strategy for CVE partner coordination or for measuring the effectiveness of these methods (USGAO, 2017). The federal government never established a plan to efficiently distribute information on local CVE program guidelines, so the lack of accountability and oversight produced disorganized implementation across the country that tainted CVE objectives and undermined partnerships and trust. This disorganization resulted in methods and narratives that both perpetuated the "Muslim terrorist" stereotype and legitimized the reduction of Arab and Muslim Americans' civil liberties. An evaluation of the SIP's three objectives follows.

*Objective 1: Federal Engagement and Community Outreach*

The first goal of enhancing federal engagement and outreach involved two sub-objectives: improve the strength and scope of federal government engagement, as well as foster community partnerships and preventative programs (DHS, 2011b). A National Task Force on CVE was established in 2010, led by the DOJ and DHS, to coordinate community engagement at the national level. In December of 2010, the National Counterterrorism Center and 32 U.S. Attorneys' Offices further expanded their outreach to hear concerns, raise awareness about

violent extremism, and seek input for improvements (DHS, 2011b). The SIP declared that these programs would be used to aid future efforts. Future efforts included establishing an FBI-led CVE Coordination Office to work alongside the National Task Force on CVE, creating an online portal to share information and build community cooperation among government officials and law enforcement, and establishing a Faith-Based Community Information-Sharing Working Group to help DHS better distribute information to faith-based communities (DHS, 2011b). The SIP's first objective, federal engagement and community outreach, portrayed Arab and Muslim American communities as allies in the domestic War on Terror, expressing the Obama Administration's commitment to collaboration rather than punishment. CVE partnerships ultimately failed, however, because the SIP's disregard for enforced regulation triggered misplaced efforts. These misdirected efforts caused the government to resort to surveillance of the community, which exploited Arab and Muslim Americans' civil liberties.

As of December 2016, the USGAO found that of the 17 federal engagement and community outreach tasks outlined for this SIP objective, 8 tasks were implemented and 9 remain in progress (USGAO, 2017). CVE has made progress in identifying ways to increase community CVE activities through a series of outreach meetings, but DHS maintains that the main priority going forward is focusing on online outreach (USGAO, 2017).

Aside from the lagging implementation process, there are considerable concerns that arise with community outreach programs. A study sponsored by the National Institute of Justice on community policing of Arab and Muslim Americans after 9/11 denoted four key obstacles to good relations between law enforcement and the community. The four obstacles include distrust between the community and law enforcement, language barriers, law enforcement officers' lack of cultural awareness, and fears about immigration status (Henderson et al., 2008). If the

foundation of the relationship between law enforcement and Arab and Muslim American communities is shaky, communities become more wary of reaching out to law enforcement when an issue arises. Thus, CVE efforts risk being counterproductive. Further concerns arise when community outreach is used as a mask for intelligence gathering, which risks undermining relations between the community and law enforcement.

Such concerns came to fruition when the FBI manipulated The Twin Cities' Somali community outreach efforts. Community outreach efforts began in 2004 and were widely respected and successful (Price, 2015). After a surge of Somali-Americans joined the terrorist organization al-Shabab between 2007 and 2009, the FBI expanded the existing outreach to prevent further radicalization (Price, 2015). A Freedom of Information Act memo, obtained by the Brennan Center for Justice, exposed that in 2009 the FBI directed its Minneapolis agents, as well as agents in five other U.S. cities, to use community outreach with Somali communities as a cover for intelligence gathering on radicalization and terrorist recruitment methods (McEnroe, 2015). The 2009 directive, known as the "African Immigrant Muslim Coordinated Outreach Program," included a specific intelligence gathering function that intended to exploit the trust built with Muslim and Somali communities (Price, 2015). The Minneapolis FBI field office refused to follow the spying directive by claiming that it would have severely hindered the trust they had already built (McEnroe, 2015). In 2010, the Obama Administration ordered the FBI to stop the spying operations, and established a new initiative based on improving public trust in the FBI to secure community cooperation in counterterrorism efforts (Price, 2015).

Although the Obama Administration took definitive actions to end spying within preexisting partnership programs, the event caused Arab and Muslim Americans' fear of community outreach to persist. After the announcement of the SIP, the Twin Cities were chosen

as one of the federal government's three pilot cities for the CVE program (Patel, 2015). In 2015, the Minnesota chapter of the Council on American-Islamic Relations (CAIR), alongside other civil rights organizations, voiced its concerns over this pilot program (CAIR, 2015). Specifically, CAIR cited the FISA documents obtained by the Brennan Center for Justice to demonstrate that community outreach was previously used as a mask for surveillance. Concerns were also raised about Andrew Luger, who would lead the CVE pilot program, because he had not yet addressed the civil rights abuses that occurred under his watch as the U.S. Attorney for the District of Minnesota. These abuses included the surveillance of Muslim communities, FBI informants in mosques, and the profiling of Muslims at the airport (CAIR, 2015). The 2009 incident, although prior to the implementation of CVE, subsequently tainted CVE objectives by exposing that previous outreach efforts regressed to the surveillance of Arab and Muslim Americans.

As such, fears arose that the CVE pilot program would again act as a guise for intelligence gathering, ultimately serving to further ostracize the Muslim community by undermining their trust and partnership. At the inception of the CVE pilot program in 2015, Arab and Muslim American communities were already wary of the program due to the government's previous exploitation of community outreach in Minnesota. Alongside civil rights groups, the community expressed fears of marginalization, spying, and restriction of their civil rights. Although the Obama Administration portrayed the narrative of Arab and Muslim Americans as partners in CVE, previous actions taken by the FBI generated mistrust and contradicted that message.

*Objective 2: Building Government and Law Enforcement Expertise*

The second CVE objective involved building expertise through research, information sharing, and training (DHS, 2011b). In 2011, existing activities involved DHS Science and Technology-sponsored research on violent extremism, discussing case studies of existing suspected terrorists with local partners, and the training of law enforcement officials on CVE and cultural awareness. Future activities involved expanding the scope of analysis and research to incorporate information such as single-actor terrorism, the improvement of information sharing with local law enforcement, and refining the breadth and quality of training (DHS, 2011b). These research efforts were intended to prevent radicalized individuals from committing acts of terrorism by providing local partners with tools to identify vulnerable populations.

The USGAO determined that of the 19 future activities listed under the SIP's second objective, 9 had been implemented, 9 were in progress, and no progress had been made on 1 (USGAO, 2017). The SIP declared that the most essential task to make progress on was improving the quality of law enforcement training to avoid arbitrarily misplacing CVE efforts (DHS, 2011b). As of 2016, there was a lack of guidance and standards in CVE training, which left many offices susceptible to inadequate training that violated the core principles of "Empowering Local Partners" (DHS, 2011b). The local law enforcement officials currently being trained on identifying risk factors are the personnel responsible for executing CVE operations. A lack of quality training for these officials risks operations deviating from the democratic and culturally aware guiding principles of CVE. Misinformed law enforcement officials threaten the success of CVE efforts, and also risk ostracizing the Arab and Muslim American community by directing efforts onto the community on false grounds.

CVE is fundamentally flawed in its reliance on radicalization theory. Radicalization theory is the idea that the evolution of terrorism follows a predictable path (Patel, 2011).

Misunderstandings of what the radicalization process actually encompasses, however, influences local actors to wrongly identify potential terrorists and ostracize innocent members of the community. Scholars have repeatedly asserted the falsehood of radicalization theory by claiming that predicting which individuals will turn to violent extremism is difficult (Patel, 2011). Even the SIP declared that there is no single profile of a radicalized terrorist (DHS, 2011b). Multiple government studies have also refuted radicalization theory.

A DHS-sponsored study found that there were 12 separate mechanisms that influence radicalization (McCauly & Moskalenko, 2008). These mechanisms operate in a variety of ways, but they do not follow a single trajectory (McCauly & Moskalenko, 2008). The Department of Defense supported the complexity of pathways to terrorism by claiming that it is challenging to predict individuals that will engage in violent behavior, because few individuals that have multiple risk factors actually commit violence (Department of Defense, 2010). Essentially, government research determined that there are mechanisms that influence radicalization, but that these mechanisms are fluid and do not follow a linear course. Even with solid evidence against it, elements of radicalization theory persist in law enforcement agencies' CVE models, particularly in the NYPD and FBI.

Further scholarship testifies to the difficulty in prescribing a singular terrorist profile or trajectory. Government agencies have put millions of dollars into research on radicalization, but there is still little consensus on what turns an individual towards violent extremism (Apuzzo, 2016). The backgrounds of the dozens of Americans who have been arrested for aiding ISIS are vastly diverse. As a result, researchers were unable to draw commonalities among them (Apuzzo, 2016). Despite the findings of multiple independent researchers and those sponsored by government agencies, the FBI and NYPD continued to ignore these results. The SIP declared that

improving the quality of law enforcement training was a necessity, but if the FBI and NYPD enforce misperceptions about radicalization, training efforts are moot (DHS, 2011b).

The NYPD and FBI offered conflicting models to the scholarly research that disproved radicalization theory. The NYPD and FBI maintained that radicalization towards violent extremism can be disrupted in its early stages when law enforcement is trained and equipped to identify the signs (Patel, 2011). An NYPD report inspired many local law enforcement agencies to adopt CVE approaches based on the impression that radicalization is linear (Patel, 2011). The NYPD concluded that there is a four-step predictable path towards radicalization (Silber & Bhatt, 2007). These phases are: pre-radicalization, self-identification, indoctrination, and jihadization<sup>3</sup> (Silber & Bhatt, 2007). The FBI adopted an almost identical model of radicalization to that of the NYPD, asserting that there are four stages towards violent extremism: pre-radicalization, identification, indoctrination, and action (Patel, 2011). While the NYPD report admitted that not all of the individuals who begin on this path reach its climax of violent extremism, it maintained that there is a pattern towards radicalization, and that this process can be interrupted to prevent terrorism.

The NYPD report is concerning, because the faulty methodology with which it was conducted undermines the legitimacy of its results. The study relied on only 10 case studies, and these cases were hand-selected by those conducting the study. The sample set is both limited and biased. By introducing a bias into the sample set, it is anticipated that the findings are consistent with their proposed hypothesis of a singular, predictable path. Therefore, the study imposed its hypothesis rather than proved it. Further, the report contradicts itself by claiming that there is no profile of a potential terrorist, but then identifies signature markers for each stage of the radicalization process.

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<sup>3</sup> “Jihadization” refers to the operational planning of a terrorist attack (Silber & Bhatt, 2007).

The NYPD's report also disseminated misperceptions about radicalization to be used by other law enforcement officials in local CVE efforts. The NYPD advocated increased surveillance and monitoring of Muslim American communities as a solution to radicalization (Silber & Bhatt, 2007). The recommendation of community policing and intelligence gathering decreased the trust required of partnerships between law enforcement and the community, and therefore undermined the community engagement provision of the SIP. This solution to radicalization is especially dangerous with the NYPD's declaration that religious belief is the most telling indicator of violent extremism (Silber & Bhatt, 2007). By portraying religiosity as a symptom of radicalization, the NYPD indirectly claimed that more devout Muslims needed to be more highly monitored. This First Amendment concern was evident when the FBI ordered the spying of mosques in the Twin Cities.

Reliable training is the first step to ensuring that CVE efforts are accurately focused and supportive of law enforcement and community relationships, because the circulating radicalization theory justified biases. By representing radicalization as a singular path, and claiming that strong religious beliefs are a precursor to terrorism, the idea that devout Muslims are inclined towards violence spread.

### *Objective 3: Countering Violent Extremist Narratives*

The third objective, countering violent extremist narratives, emphasized improving local communities' capacity to challenge violent narratives, improving communication to the public about the national security strategy and misunderstandings of violent extremist radicalization, and building technologies to counter online radicalization (DHS, 2011b). Previously existing activities included consulting technology experts and media interviews (DHS, 2011b). The SIP

stressed focusing on building a public website about CVE and community engagement, speaking with former violent extremists, assessing the role of the Internet in radicalization, and creating technologies to empower communities (DHS, 2011b). The USGAO found that of the 8 future tasks included in this section, agencies implemented 2 tasks, 5 were in progress, and 1 task had not yet been addressed (USGAO, 2017). Due to legal barriers, action had not been taken on discussing online radicalization methods with former violent extremists (USGAO, 2017).

The 2011 SIP declared that countering narratives that justify the use of violence is the most challenging area of CVE efforts, since it requires specific attention to First Amendment concerns (DHS, 2011b). Extremist ideologies influence radicalization, so how is this ideology effectively challenged without infringing on civil liberties? The ACLU raised concern about the potential for the government to censor Internet content to prevent violent extremist propaganda from reaching Americans (Gosset, 2011). Further, the United States Constitution is based upon free discussion and the marketplace of ideas, so citizens are free to promote their own speech and beliefs (Bjelopera, 2012). The federal government cannot outlaw a particular form of speech, in this case violent extremist narratives, so it must work to create a counter-narrative that is strong enough to challenge terrorist propaganda.

The second challenge of this objective is how to define “violent extremist narratives.” The SIP defined violent extremism, but did not differentiate between the ideologies that this category does and does not encompass. Without the government having defined exactly what “violent extremist narrative” meant, local CVE programs were confused on which ideologies to focus their efforts. The SIP also did not officially assign the job of determining which ideologies were dangerous, but insinuated that the federal government would establish which ideologies were defined as violent extremist propaganda. Despite this insinuated responsibility, the federal

government never denoted which ideologies were designated as violent extremist propaganda. This portion of the SIP was ambiguous and without a systematic plan for definition or application. Deprived of a defined concept for the federal government to empower local communities against, this objective remained fruitless.

Creating a counter-narrative rooted in American ideals was also left intentionally vague and ill-defined. This vagueness raised the question of whether creating an effective counter-narrative is even possible. The language of CVE's third objective was overbroad and confused the responsibilities of different agencies and the strategy for implementation. This confusion was reflected in the USGAO's determination that only 2 of the 8 tasks for this section of the SIP had been fully implemented, demonstrating a need for more specified methods to execute this objective.

#### *The Lack of a Defined CVE Strategy*

Despite the majority of CVE tasks having been at least partially implemented, the USGAO could not determine the effect of such efforts on security. Although the SIP outlined future actions and specific tasks for CVE, it omitted any form of timeline, definitive implementation plan, or potential methods of evaluating progress. As such, the absence of a cohesive strategy, which includes measurable outcomes, stalled the progress made and left local actors who were responsible for establishing CVE programs uninformed about the scope that their programs should cover. The lack of oversight of a multi-agency and multi-partner effort failed to address potential gaps in progress or inefficiencies in methods. Thus, the 2011 SIP did not develop a cohesive strategy among partners that provided both implementation regulations and quantifiable outcomes, which therefore weakened the potential of an effective CVE program.

Without a defined and cohesive strategy for whole-of-government implementation, local law enforcement was left to determine which methods to employ. Up to their own discretion, many law enforcement agencies adopted the NYPD model for radicalization, further perpetuating the stereotype that Muslims are inclined towards terrorism.

#### **IV. Impact on Arab and Muslim American Communities**

After the Bush Administration focused on surveillance and detentions, the Obama Administration embraced the concept of counter-radicalization as a new medium for counterterrorism. Radicalization indicates a psychological process where Muslims begin to adopt extremist views (Kundnani, 2014). Thus, radicalization assumes an Islamic origin.

In turn, the policing of the Muslim American community communicated to them that law enforcement agencies regard their community as suspect (Patel & Koushik, 2017). Such attention on one religious community thus became counterproductive to CVE efforts, because it increased the fear that law enforcement would exploit the trust of the community, and made the community less likely to consult authorities when needed (Patel, 2011). Further, CVE efforts created a contradiction: devout law-abiding Muslims who express their disdain for violence or radicalism were still investigated by local law enforcement due to their religion (Aziz, 2014). Thus, members of the Muslim American community assumed that CVE efforts were less about preventing terrorism, and more rooted in bigotry (Aziz, 2014). Individuals from Muslim American communities have stated that disparate community policing has led them to believe that the government perceives them as suspects, rather than as partners, in the War on Terror (Aziz, 2014).

CVE's spreading of radicalization theory also influenced how Muslim American's understood their access to civil liberties. The narrative that there is an identifiable path towards

terrorism is founded in two false suggestions. The first false suggestion is that there is a singular profile of those vulnerable to violent extremism, and secondly, that Islam is a producer of terrorism (Patel & Koushik, 2017). CVE outreach efforts perpetuated these false notions and insinuated a strong link between devout Muslims and violence. Therefore, Muslim Americans have indicated a fear that more observant Muslims' free exercise rights are significantly compromised in CVE (Beydoun, 2015). Focusing on observant Muslims further threatened recent Muslim American immigrants, who are more likely to hold onto traditions from their country of origin. These recent immigrants are much more prone to live in urban settings that maintain higher levels of poverty. Additionally, Muslim American civic institutions are often mainly concerned with political and civil rights issues, such as preventing hate crimes and government surveillance (Beydoun, 2015). By adding poverty into the equation, poorer Muslim Americans are forced to manage heightened exposure to hate crimes, second-class citizenship, and diminished access to basic necessities on their own. Thus, there is a convergence of religious profiling and poverty in CVE efforts, which causes Muslim Americans to disparately receive the brunt of community policing and hate crimes.

## **V. Conclusion**

With the Obama Administration's new way of thinking about the War on Terror, an alternative counterterrorism strategy emerged. The Administration's strategy for implementing its counter-radicalization policy, however, was vague and poorly coordinated. Although the 2011 SIP provided an outline for future efforts, it lacked a definitively scheduled plan for implementing and coordinating these efforts, and gave no criteria for measuring the effectiveness of the program. Without a cohesive strategy for implementing a whole-of-government

counterterrorism approach or an oversight mechanism, CVE remained ineffective in making this state more secure.

Although the CVE program was well intentioned in its aims to improve relationships between Arab and Muslim Americans and law enforcement and to foster community resilience, the premise of the program was built on faulty grounds. Repeatedly, researchers have concluded that there is no linear path towards radicalization, but CVE programs were intended to identify individuals at risk of terrorism. It is a daunting task when the intentions of CVE and the capability of executing such intentions are paradox. As such, CVE introduced the narrative that the path to radicalization is indeed possible to stop, despite claiming that there is no singular profile of a terrorist.

The notion that there is a linear and identifiable path towards radicalization, coupled with CVE efforts' emphasis on Muslim American communities, established a narrative of Muslims as inherently more inclined towards adopting violent extremism. CVE's lack of regulation again resulted in a climate of mistrust and suspicion. This representation of Muslims as potential terrorist subjects through community policing climaxed in an executive order by President Trump, which explicitly denoted that Muslims were a danger to the security of the American people.

## Chapter 4: The Trump Administration and the Travel Ban

“Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States until our country’s representatives can figure out what the hell is going on,”  
– President Donald J. Trump, reading a statement released by his campaign<sup>4</sup>

### I. Introduction

The Bush and Obama Administrations both utilized the “potential Muslim terrorist” stereotype to justify their security measures, but the Trump Administration adopted one of the most controversial counterterrorism approaches yet. The Travel Ban, rooted in Trump’s “America First” Doctrine, prohibits the entry of individuals from particular countries into the United States. The Trump Administration maintains that the ban is keeping terrorists out of the country (Exec. Order 13769, 2017). This claim, however, serves as a cover for excluding Muslims. This chapter examines the legality of the Travel Ban, and discusses how the ban both exploits and perpetuates the conflation of Islam with terrorism.

I argue that the Travel Ban’s reliance on barring individuals from certain countries from entering the United States is a counterproductive security measure that creates grounds for terrorist recruitment, alienates Muslims as inherently violent, and undermines U.S. relationships with allies. I will demonstrate how the Trump Administration has manipulated Americans’ fear of another terrorist attack to justify excluding a religion from the country. The first section of this chapter presents the Trump Administration’s “America First” Doctrine and its influence on counterterrorism policy. I then analyze the evolution of the three Travel Bans in the first year of Trump’s presidency, and the legal challenges made against each. Finally, this chapter evaluates the potential short and long-term issues that arise from the Travel Ban, and how the ban both undermines security objectives and marginalizes Arabs and Muslims. I demonstrate that the

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<sup>4</sup> Johnson, J. (2015). *Trump Calls for ‘Total and Complete Shutdown of Muslims Entering the United States.’* Washington, D.C.: The Washington Post.

Trump Administration serves to exploit fears of the “potential Muslim terrorist” while simultaneously fostering that narrative to justify its undemocratic and ineffective policy.

## **II. A Controversial Counterterrorism Policy**

### *The Trump Doctrine*

During his election campaign, President Donald Trump established the slogan “Make America Great Again.” This campaign strategy later became the Administration’s guiding foreign policy doctrine (Easley, 2017). According to senior officials of the Trump Administration, “America First” is a commitment to protecting and furthering American interests while also strengthening partnerships with allies. “America First” denotes the renewal of American global leadership, a notion previously sanctioned by the Bush Administration, to endorse American security and prosperity (McMaster & Cohn, 2017). The Administration views the world not as a global community, but as an “arena” where countries compete for their own benefit (Wittes, 2017). “America First” is based upon three principles: that each country should prioritize the needs of its own citizens above all others, that leaders should implement policies that enhance their sovereignty, and that foreign actors will intervene and exploit countries where the government fails to prioritize their own sovereign interests (Turner, 2017). The Trump Administration commits itself to protecting and furthering American interests first.

This commitment to American interests was immediately present in many of Trump’s foreign policy actions. In exiting the Paris Climate Accords, Trump announced that he was putting working class men and women of America before foreign interests (Easley, 2017). Additionally, in a controversial move, President Trump declared Jerusalem as the capital of Israel and will be moving the U.S. Embassy from Tel Aviv (Libermann, 2017). This declaration was an assertion of Trump’s commitment to challenging the existing political order and

advancing his interests, rather than acting as a global mediator. Additionally, Trump's nine-day visit to the Middle East and Europe, which aimed to bolster trade and commerce, demonstrated the Trump Administration's promise to everyday Americans to improve the economy (McMaster & Cohn, 2017). Each of these actions signaled the Trump Administration's commitment to changing political norms and putting American interests above those of foreign interests.

Although Trump's foreign policy agenda has been both contentious and widely debated among the American public and global community, his pledge to prioritizing citizens is also reflected in the Travel Ban.

In the first few days of his presidency, Trump signed an executive order that barred foreign nationals from specified Muslim-majority Middle Eastern countries from entering the United States (Exec. Order 13769, 2017). Known as the Travel Ban, it was intended to protect the American people from a terrorist attack committed by foreign nationals who were admitted into the United States (Exec. Order 13769, 2017). Trump's Travel Ban adheres to his "America First" Doctrine by putting the interests of American citizens above those of foreign nationals and immigrants, and takes a hard stance against Muslims that both capitalizes on existing stereotypes and advances them.

### **III. An Analysis of the Travel Ban**

#### *Is the Travel Ban a Muslim Ban?*

Early in Trump's election campaign, he introduced the prospect of enacting a "Muslim Ban" to prevent terrorism. Announced in December 2015, Campaign Manager Corey Lewandowski stated that Trump proposed a Muslim Ban that would apply to all Muslims, including immigrants and tourists (Johnson, 2015). The announcement followed a mass shooting in Southern California, which the FBI believed had been inspired by ISIS ideology. In response,

Trump called for more scrutiny of Muslims, including those individuals who were already legal residents (Johnson, 2015).<sup>5</sup>

While previously on the campaign trail, Trump called for additional measures to be taken against Muslims. Some of these measures included surveillance of mosques, barring Syrian refugees from entering the United States, and creating a database that tracks Muslim Americans who are already in the country (Johnson, 2015). The barring of all Muslims from entering the country, however, was his most harsh stance. Ibrahim Hooper, the National Communications Director for the Council on American-Islamic Relations, voiced his concern over the dangers and biases the announcement would generate (Johnson, 2015). He warned, “One has to wonder what Donald Trump will say next as he ramps up his anti-Muslim bigotry. Where is there left for him to go? Are we talking internment camps? Are we talking the final solution to the Muslim question? I feel like I’m back in the 1930s” (Johnson, 2015).

From May 2016 to December 2016, Trump referred to the ban as a “travel” ban, and repeatedly explained how his newly proposed “travel” ban was an “expansion” of the previously publicized “Muslim Ban” (Bier, 2017). Trump’s campaign offered two reasons for the change in name of the ban: the negative reaction by the American public and government officials to the explicitly “Muslim Ban”, and the constitutional concerns expressed. In response, he stated that the “Constitution does not give us the right to commit suicide,” to express that although the ban’s constitutionality is in question, the ban should be permitted to prevent another devastating attack (Bier, 2017).

As such, Trump reformed the ban to be based on geography, rather than an outright ban on religion. Particularly, he introduced “extreme vetting” as his new approach. Extreme vetting

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<sup>5</sup> This statement was removed from Trump’s campaign website, perhaps indicative of the Administration’s attempt to dissipate accusations of bigotry (Horton, 2016).

refers to the suspension of individuals from certain countries until the government established a more effective vetting system that would identify those individuals who believed in Sharia law and supported the use of terrorism against the United States (Bier, 2017). Such an emphasis on extreme vetting insinuated that a vetting system did not exist, despite the long and arduous vetting process that refugees were already subjected to prior to entering the United States. It also capitalized on the fear of Sharia law as a threat to democratic values and freedom. Trump continued to use the notion of extreme vetting as an explanation for his executive orders in the coming months (Bier, 2017). His recurring harsh anti-Muslim rhetoric throughout his campaign demonstrated that his Travel Ban is an alternative form of his proposed “Muslim Ban” that manipulates Americans’ fear of terrorism to justify its implementation.

#### *Executive Order 13769 and its Legal Challenges*

On January 27, 2017 President Trump signed Executive Order 13769, “Protecting the Nation from Foreign Terrorist Entry into the United States.” More commonly known as the Travel Ban, Executive Order 13769 attempted to prevent those with hostile attitudes towards the United States and its democratic values from entering the country to reduce the risk of terrorism. (Exec. Order 13769, 2017). Executive Order 13769 claimed that the visa issuance process played a significant role in counterterrorism efforts, and it aimed to improve this process to more accurately identify threatening or dangerous individuals (Exec. Order 13769, 2017).

Section 3 of Executive Order 13769 suspended the entry of individuals from Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen for 90 days. This suspension was intended to give the Secretary of Homeland Security, the Secretary of State, and the Director of National Intelligence ample time to review and submit a report of countries that are deemed incapable of or unwilling

to provide the United States with additional information on its foreign nationals attempting to enter the United States (Exec. Order 13769, 2017). Effectively, this section prohibited foreign nationals from those countries from entering the U.S.

Section 5 of Executive Order 13769 adjusted the U.S. Refugee Admissions Program for 2017 (Executive Order 13769, 2017). This section suspended the entry of Syrian refugees into the United States until declared otherwise by President Trump, and claimed that the entry of Syrian refugees was detrimental to U.S. security interests (Exec. Order 13769, 2017).

Additionally, under the Obama Administration, the average number of refugees admitted yearly was 110,000 (Carlsen et al., 2017). The Travel Ban reduced this number 50,000 for 2017, but gave refugees the opportunity be admitted into the United States on a case-by-case basis (Exec. Order 13769, 2017). Executive Order 13769 conveyed the notion that refugees, in particular those from Syria, and individuals from the seven listed countries, pose a threat to U.S. national security.

In the weeks following the announcement of the Travel Ban, protestors gathered at airports in multiple cities across the United States (Ellis, 2017). In New York City's JFK Airport, large crowds protested the detention of two Iraqis on the basis of the executive order. Both were later released. In Portland, people carried signs that read "Portland coffee comes from Yemen," to expose the hypocrisy of the ban. Demonstrators in multiple cities, including Boston, Newark, San Francisco, and Dallas, stood in solidarity with those individuals barred from entry into the United States (Ellis, 2017).

Government officials also took prompt action against the order. In New York, a federal judge blocked part of Executive Order 13769 by ruling that authorities could not remove individuals who arrived in U.S. airports from the seven barred countries after the order had been

signed (DeVogue & Watkins, 2017). Federal Judge Ann M. Donnelly stated that the removal of individuals from the airport is a violation of Due Process and Equal Protection guaranteed by the Constitution (DeVogue & Watkins, 2017).

Two Massachusetts federal judges, Burroughs and Dein, capitalized on the power federal judges maintain within the checks and balances system to enforce a seven-day restraining order against Executive Order 13769. The judges' ruling prohibited federal law enforcement from detaining or deporting immigrants and refugees with valid visas or green cards, barred extra security screenings of such individuals on the basis of the Travel Ban, and ordered Customs and Border Protection to instruct foreign airlines to allow immigrants on flights to the United States (Sachetti, 2017). The verdict permitted entry into the United States of lawful immigrants from the seven Muslim-majority countries included in the ban (Sachetti, 2017). Effectively, judges challenged the government's ability to detain and deport legal permanent residents under Executive Order 13769. The Massachusetts federal judges made the decision based on a lawsuit filed by the ACLU on behalf of two Massachusetts professors, both of whom were Muslim green card holders from Iran (Sachetti, 2017). The two were detained and interrogated for three hours after arriving back in the United States from an academic conference (Sachetti, 2017).

The next day, Attorney Generals from 15 states and Washington, D.C. condemned the ban as "un-American" and "unconstitutional" (Dovere, 2017). In a joint statement, they pledged to support the court orders that were issued the previous night by the two Massachusetts judges. The Attorney Generals were all from Democratic states (Dovere, 2017). On January 30, 2017, Senate Republicans blocked Democrats from debating a bill that would rescind Trump's executive order (Barrett & Cohen, 2017). Two days later, the White House announced through a memo that the Travel Ban no longer required legal permanent residents of the United States to

obtain a waiver (Gerstein & Nussbaum, 2017). This amended exemption of green card holders, along with the federal judges' rulings on the unconstitutionality of the ban, demonstrated that there were major legal obstacles and widespread opposition to the ban.

On the same day, Attorney General of Washington, Bob Ferguson, filed a lawsuit against Trump, DHS, and high-ranking Administration officials (Washington State, Office of the Attorney General, 2017). Ferguson declared provisions of Executive Order 13769 unconstitutional and filed a temporary restraining order that immediately blocked the ban nationwide. Ferguson maintained that the order violated the federal Immigration and Nationality Act, and the Equal Protection, Establishment, and Due Process clauses of the Constitution. Attorney General Ferguson asked the court to declare major sections of the executive order illegal and to bar the Trump Administration from enacting the policy (Washington State, Office of the Attorney General, 2017). Judge Robart of the Federal District Court in Seattle then banned the Administration from enforcing the 90-day suspension of entry and the refugee limit in *Washington v. Trump* (Liptak, 2017a).

The government submitted a request to the Ninth Circuit Court to resume the ban, but the court denied the request and upheld Judge Robart's suspension of the Travel Ban (Jarrett, 2017). The Ninth Circuit Court ordered Washington and the DOJ to file legal papers before issuing a ruling on the case (Liptak, 2017a). The three-judge panel of the Ninth Circuit then unanimously decided to temporarily block the ban on the basis of the violation of due process (Savage, 2017). These legal challenges to Executive Order 13769 validate that the original Travel Ban unjustifiably targeted foreign nationals from Muslim-majority countries, and threatened basic civil liberties.

### *Executive Order 13780 and its Legal Challenges*

On March 6, 2017, President Trump signed Executive Order 13780, which replaced and nullified Executive Order 13769 (Exec. Order 13780, 2017). The order referenced how the implementation of the original travel ban had been delayed by litigation and legal challenges (Exec. Order 13780, 2017). This ban differed from the first in a few ways. In Section 1, the order removed Iraq from the list of barred countries, but maintained a 90-day suspension of individuals from Iran, Libya, Somalia, Sudan, Syria, and Yemen (Exec. Order 13780, 2017). The order stated that Iraq presented a special case, because despite having multiple active combat zones, the Iraqi government had taken steps to improve information sharing and travel documentation. The executive order exempted U.S. citizens who held citizenship in any of the six countries, as well as legal permanent residents. The ban on Syrian refugees was declared no longer indefinite, but the previous 50,000-refugee cap and 120-day suspension of refugee entry remained (Exec. Order 13780, 2017).

On March 15, 2017, U.S. District Judge Derrick Watson issued a temporary restraining order against Executive Order 13780, which prevented two sections of the ban from going into effect (*Hawaii v. Trump*, 2017). Specifically, *Hawaii v. Trump* prohibited the government from instituting its 90-day suspension on individuals from the six barred countries as well as from suspending the refugee admittance (Gonzales et al., 2017). Judge Watson ruled that the executive order violated protection against religious discrimination, and claimed that the order would hurt state businesses, universities, and tourism (Gonzales et al., 2017). *Hawaii v. Trump* claimed that the new Travel Ban was a violation of the Fifth Amendment's Equal Protection, Substantive Due Process, and Procedural Due Process Clauses (*Hawaii v. Trump*, 2017). The case also declared that the ban violated the First Amendment's Establishment Clause and the Religious Freedom

Restoration Act (*Hawaii v. Trump*, 2017). Watson declared that when considering the President's previous statements, "a reasonable, objective observer... would conclude that the executive order was issued with a purpose to disfavor a particular religion," (Gonzales et al., 2017). Effectively, Judge Watson challenged Executive Order 13780 by asserting that it intentionally and unduly discriminated against Muslims.

Attorney Generals from four other states, New York, Oregon, Massachusetts, and Washington, supported Hawaii's case, using temporary restraining orders to halt the revised ban. They also challenged the ban on the basis that it equated to a ban on Muslims (Wilson, 2017). Ferguson, of *Washington v. Trump*, cited quotes from New York City Mayor Giuliani, who claimed that President Trump had asked him to come up with a legal way to ban Muslims (Wilson, 2017). These states supported Hawaii's claim that the revised Travel Ban was an alternative form of the Muslim Ban that Trump had promoted throughout his campaign.

In mid-June, the Ninth Circuit Court largely upheld Judge Watson's ruling from March, which declared Sections 2 and 6 of the revised order in violation of the Constitution (Jarret & deVogue, 2017). This ruling was another loss for the Administration, since the court ruled that the revised ban's primary purpose was still to disfavor Muslims. The panel used the President's tweets, which former White House Press Secretary Sean Spicer previously declared to be official statements by the President, to support how specific countries were dangerous, but that its citizens were not. The Ninth Circuit Court used the federal Immigration and Nationality Act to determine that the President did not hold the grounds to suspend the entry of over 180 million people on the basis of their nationality. The court maintained that the President could only exercise this authority if the government determined that the entry of a person or group of people was a threat to U.S. security (Jarret & deVogue, 2017). These rulings established that the revised

travel ban excessively burdened Muslim Americans, while also having wrongly defamed Islam as a producer of terrorism.

A few weeks later, however, the Supreme Court allowed for a limited version of Executive Order 13780 to take effect (Barnes & Zaptosky, 2017). The Supreme Court implied that the lower circuit courts had been too drastic in their rulings by completely halting the order, but also attached conditions for the government to its decision. The court declared that the government was prohibited from barring individuals with a “bona fide” connection to the United States, including family members, job offers, or college admission (Barnes & Zaptosky, 2017). The Supreme Court announced that it would hear arguments on the case in October before issuing a final ruling. The ACLU maintained that the decision only allowed for the “narrowest” implementation, but Amnesty International USA warned that the ban would rip families apart (Barnes & Zaptosky, 2017).

The Trump Administration interpreted the ruling to include American residents’ spouses, fiancés, children, siblings, parents, and in-laws, but excluded grandparents (Liptak, 2017b). The Supreme Court upheld Judge Watson’s ruling, however, and defined grandparents as qualifying as “bona fide” relationships, which therefore negated the government’s ban on grandparents. Along with this ruling, the Supreme Court allowed the refugee ban to take effect while the legal cases against the executive order ensued (Liptak, 2017b). In September, after the Ninth Circuit Court declared relationships between refugees and resettlement agencies as “bona fide” relationships, the Supreme Court supported the Trump Administration’s objection and ruled that “bona fide” relationships did not include those with resettlement agencies (“Trump Travel Ban Can Continue,” 2017).

### *Presidential Proclamation 9645 and its Legal Challenges*

On September 24, 2017, President Trump signed the “Presidential Proclamation Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats” (Proclamation 9645, 2017). The Proclamation was a response to Executive Order 13780’s mandate for a review to identify which countries had inadequate identity-management protocols, information-sharing practices, and risk factors (Proclamation 9645, 2017). As a result of this review, the Proclamation identified Chad, Iran, Libya, North Korea, Syria, Venezuela, and Yemen as the new set of barred countries. The Proclamation identified Iraqis as needing additional scrutiny, but the country was not barred due to the Iraqi government’s cooperation efforts (Proclamation 9645, 2017). The Proclamation also differed from the previous two Travel Bans in its indefinite suspension of the entry of most or all individuals from the listed countries, rather than limiting the suspension to 90 days (Proclamation 9645, 2017).

The government’s inclusion of non-Muslim majority countries, however, did not remedy its civil rights threats. The Trump Administration possibly included North Korea and Venezuela to ease religious discrimination-based challenges to the ban, but the ban still negatively impacted individuals from the barred Muslim-majority countries more than individuals from either North Korea or Venezuela. The United States receives almost no immigrants from North Korea, because the North Korean government forbids emigration (Somin, 2017). Additionally, the Venezuelan restriction only applies to a small number of government officials and their families. Virtually all of the people that will be largely affected by the revised ban are those from the six barred Muslim-majority countries (Somin, 2017). As such, the Trump Administration’s inclusion

of Venezuela and North Korea in the ban is a distraction from its still-present discriminatory nature.

The day after the revised ban was signed, the Supreme Court canceled its hearings on the previous ban in response to the issuing of the new ban (Shear et al., 2017). The Supreme Court dismissed one of the two cases against the Travel Ban, but did not act on the broader Hawaii case, which dealt with both the travel and refugee ban (DeVogue, 2017).

One week later, Federal Judge Watson of Hawaii, blocked the Proclamation and prevented the indefinite ban on travelers from the barred countries (“Hawaiian Judge Blocks,” 2017). Hawaii argued that the revised ban was still a continuation of Trump’s intention to ban Muslims from the United States (“Hawaiian Judge Blocks,” 2017). In response, the DOJ filed an emergency stay application with the Ninth Circuit Court that would allow the Proclamation to go into full effect (Gerstein, 2017). The Ninth Circuit Court of Appeals allowed the Proclamation to take effect, but exempted visa applications with “bona fide” relationships to U.S. residents, schools, companies, or organizations (Gerstein, 2017). The DOJ then brought the stay application to the Supreme Court (Gerstein, 2017).

On December 4, 2017, the Supreme Court ruled that the Trump Administration’s new ban could go into full effect, pending any legal challenges (“Trump Travel Ban: Supreme Court,” 2017). This edict was the Trump Administration’s largest legal victory in regard to the Travel Ban. In January 2018, the Supreme Court announced that it would take up the *Hawaii v. Trump* case that challenged the latest version of the Travel Ban (“Supreme Court Announces...” 2018). Arguments before the Supreme Court are scheduled to begin in April 2018, and a final ruling on the ban is expected by June (“Supreme Court Announces...” 2018).

### *Potential Influences in the Pending Travel Ban Case*

While awaiting a decision, the Proclamation's ability to stand up in court must be considered. First, the Proclamation was produced after the Administration conducted a security review of various countries to justify their inclusion in the ban. The Trump Administration maintained that the countries on this list failed to meet "objective criteria," and will be included on the list until they demonstrate their ability and willingness to provide the U.S. with additional information (Shear et al., 2017). This official evaluation of the countries could be deemed as an improvement to the screening process, which may provide the Administration with legitimacy in court for its selection of countries. Skeptics of the ban, however, conclude that the new restrictions are still based on countries and not individuals, which would present as evidence against the Administration's case (Shear et al., 2017).

Additionally, deciding the case on establishment grounds could prove challenging. In federal court, "injury in fact" must exist to prove religious discrimination or establishment of religion (Epps, 2017). "Injury in fact" means that it must be verifiable that the government discriminated against a particular individual, such as jailing or fining that one individual (Epps, 2017). In establishment cases, "injury in fact" can be difficult to substantiate, because establishing religion can, in theory, unduly burden everyone equally instead of only discriminating against one individual (Epps, 2017). The Supreme Court has occasionally bent this rule when it deemed that the government's actions either promoted or harmed a particular faith, but has done so less in the past twenty years (Epps, 2017). Muslims outside of the U.S. and without legal residency cannot make the constitutional claim against the government establishing religion, so current cases have relied on citizens to make complaints about the ban preventing close family members from entering the United States (Epps, 2017). Whether the Supreme Court

will deem these complaints a significant enough circumstance to rule that the Travel Ban is establishing religion is questionable.

Further, the original Travel Ban included a provision that allowed for the acceptance of religious minorities from the designated Muslim-majority countries into the United States (Epps, 2017). The Administration hinted at the acceptance of Christians from these countries, but the exclusion of Muslims. This provision was a major point of contestation in the first ban, and was used as grounds for proving religious discrimination (Epps, 2017). Conversely, the Proclamation avoids such language and includes two non-Muslim majority countries, which could negate “illicit motive.” As previously noted, Trump had repeatedly stated that the updated bans were simply an expansion of his originally proposed “Muslim Ban.” Thus, it would be hard for lawyers to resolve that the most recent Travel Ban was not intended to exclude Muslims. Dissenters in the lower courts, however, have condemned the use of Trump’s campaign statements and tweets to prove his motive for the ban, claiming that elected officials’ policies are not necessarily reflective of their rash declarations as candidates (Epps, 2017). Despite the inclusion of the two non-Muslim majority countries as a distraction from religious discrimination, the ban has the potential to stand up to establishment challenges due to the difficulty of verifying “injury in fact” and “illicit motive.” The Supreme Court’s decision in the coming months will likely have a significant impact on the civil liberties of Muslim Americans, as well as on the way the American public views terrorism and Islam.

#### **IV. Impact of the Travel Ban**

##### *Short-term Consequences*

Over the course of President Trump’s first year in office, the Travel Ban has taken three separate forms. Each version of the ban has been met with various legal challenges. Despite

these legal challenges, each ban has greatly affected individuals who were entering, or attempting to enter the United States. Figures on the number of people denied entry once they arrived in the U.S. were disputed, but as of January 30, 2017, that number was believed to be 735 people (Kessler, 2017). As of February 1, 2017, one week after Executive Order 13769 went into effect, the number of people that were denied from boarding planes headed to the U.S. was 940. Finally, as of February 3, 2017, the State Department announced that the number of valid 2016 visas that would be affected by the executive order was roughly 60,000 (Kessler, 2017). Effectively, the first and second travel bans prevented any visa holders from traveling to or leaving the United States for 90 days.

The Travel Ban also had a significant impact on refugees. Prior to the ban, over 2,000 refugees were admitted weekly into the United States (Carlsen et al., 2017). In the first week of the ban, just fewer than 850 refugees were admitted into the United States. On average since 2016, about 1,800 refugees from the seven countries included in the original Travel Ban arrived weekly in the United States. In the week of Trump's original ban, only two refugees from those seven countries were allowed entry into the United States. Additionally, 45 percent of refugees admitted weekly in 2016 were Muslim, but once the ban was in place, only 15 percent of the 843 refugees that were admitted were Muslim (Carlsen et al., 2017). The Travel Ban had a significant impact on restricting the number of refugees entering the United States, and dramatically decreased the number of Muslims admitted within the first week of its implementation. The Trump Administration justified these restrictions by exploiting the public's fear of terrorism, but the ban also further perpetuated the stereotype of the dangerous Muslim refugee by explicitly excluding them from entering the U.S.

### *Potential Long-term Consequences*

The Travel Ban has strong potential to undermine counterterrorism efforts by feeding into terrorist propaganda. One of ISIS's main strategies for recruitment is shrinking the "gray zone" of moderate Islam (Stern, 2017). The "gray zone" refers to the portion of moderate Muslims that ISIS attempts to recruit. To shrink the "gray zone," ISIS focuses on making moderate Muslims feel as unsafe as possible living in the United States (Stern, 2017). ISIS manipulates the narrative that the U.S. is at war with Islam to make Muslim Americans and Muslims abroad feel victim to prejudice and more accepting of terrorist propaganda (Stern, 2017). The Travel Ban's focus on Muslim-majority countries perpetuates hostility towards Islam, furthering the terrorists' narrative. This effect of the ban has serious long-term consequences of undermining U.S. counterterrorism efforts, as well as isolating Muslim Americans.

The Travel Ban also targets countries that are not responsible for terrorist attacks in the U.S. The 9/11 attackers were primarily from Saudi Arabia, Egypt, Lebanon, and the United Arab Emirates (Byman, 2017). None of these countries, however, were included in the Travel Ban as barred states. Additionally, since 2001, 10 fatal attacks in the U.S. have been deemed terrorism or tied to extremist Islamic ideologies, according to the Global Terrorism Database (Berman, 2017). None of the attackers were from any of the countries barred by the ban, and most of the attackers were born in the United States (Berman, 2017). Other terrorists responsible for those 10 attacks were from Egypt, Kuwait, Pakistan, and Kyrgyzstan (Berman, 2017). A New America report determined that the overwhelming majority of extremist Islamic terrorists in the United States have been U.S.-born citizens or legal residents (Bergen et al., 2017). As such, the Travel ban arbitrarily targets certain Muslim-majority countries, rather than focusing on the actual sources of threats to U.S. security.

The Travel Ban's counterproductive security efforts do not address the issue of homegrown terrorism, which was a central objective of the Obama Administration's CVE program. One of the United States' biggest post-9/11 terrorist threats comes from a small number of radicalized Muslim Americans, known as "lone wolves" (Byman, 2017). Lone wolves have been radicalized with little direct guidance from ISIS, relying on online propaganda and grievances (Byman, 2017). The Travel Ban does little to address this issue, and its attack on Muslims perpetuates the idea that the United States is at war with Islam (Byman, 2017). Thus, the Travel Ban does not tackle the primary terrorist threat, but it further alienates Muslims without valid reasoning and fuels terrorist propaganda.

The ban also wrongly targets refugees. Syrian refugees have not been linked to a single terrorist attack in the United States (Byman, 2017). Of the 858,628 refugees admitted from 2001-2015, only three have been convicted of planning attacks on targets outside of the United States, but none were successful (Nowrasteh, 2015). According to a CATO Institute paper, the chance of being killed in a terrorist attack committed by a refugee is one in 3.64 billion a year (Nowrasteh, 2016). These figures demonstrate that the vetting procedures in place prior to the ban were working. Trump's discussion on the necessity for extreme vetting, however, gave the impression that adequate and effective vetting procedures were not in place. Rather, screening for refugees is an 18-24 month process, which is the most intensive screening process for those seeking admission to the United States (Jawetz & Gude, 2015). The entire process involves 21 steps, and many of these steps contain multiple procedures. Some of the most notable procedures include several in-person interviews, multiple biographic and biometric checks, verifying the application with intelligence communities and law enforcement, health screenings, two security

checks, and even cultural orientation classes (Jawetz & Gude, 2015). Each step was carefully crafted to ensure that the applicants did not pose a security threat.

Refugees admitted into the United States already face an intensive vetting process, but the Travel Ban further targets them for coming from places where terrorism is common, implying that all individuals from those countries are potential terrorists. Although many of these countries have a large terrorist presence, it does not mean that all of the people leaving the countries are terrorists. Rather than attempting to perpetuate terrorism, most of the refugees are fleeing from these countries to escape terrorist violence and suffering (Byman, 2017). Without a concrete explanation for why these individuals should be barred, the Travel Ban sends a message to Muslims in the United States and abroad that the U.S. does not like Islam (Byman, 2017). This misplaced effort again feeds into terrorist narratives that the U.S. is at war with Islam, further alienating Muslims and creating more grounds for terrorist groups to recruit.

The Travel Ban also has the potential to hurt U.S. relations with the countries included in the ban. The global War on Terror relies heavily on American allies, such as Jordan, Iraq, Saudi Arabia, and other Muslim-majority countries, to combat ISIS (Byman, 2017). The more hostile the United States acts towards these countries and their populations, the less willing they may be to cooperate with War on Terror efforts or with document release for vetting purposes (Byman, 2017). It also alienates individuals abroad and individuals living in the United States who are from the barred countries, because it feeds into ISIS' "grey zone" propaganda and makes them less receptive to local counterterrorism partnerships and efforts (Somin, 2017). Again, the Travel Ban carries severe long-term implications for U.S. counterterrorism efforts by threatening to undermine relationships with our allies and alienating Muslim populations, both at home and abroad.

## **V. Conclusion**

President Trump's harsh rhetoric against Muslims began on his campaign trail, but its significant impact was recognized within days of his inauguration when he signed an executive order known as the Travel Ban. Throughout the first year of his presidency, the Travel Ban was updated and replaced two more times due to legal challenges. Each ban faced multiple court cases and rulings that questioned its constitutionality and discriminatory undertones. The Trump Administration's current security strategy focuses on preventing the entry of immigrants from multiple Muslim-majority countries, and greatly reduces the refugee admissions cap. The Administration both relies on and feeds into existing fears of Muslims and terrorism to justify its discriminatory policy.

The most recent Travel Ban is currently in full effect, and the Supreme Court is set to make a final ruling on the ban's legality in June 2018. With hearings beginning in April, it is unclear whether the Court believes the ban holds legal legitimacy. Either way, the tumultuous path that the ban has taken over the past year, coupled with Trump's harsh rhetoric, ostracizes Muslims and Muslim-majority countries and threatens to undermine U.S. counterterrorism efforts.

## **Chapter 5: Conclusion**

### **I. Introduction**

The previous chapters have reviewed the Bush, Obama, and Trump Administrations' respective leading domestic counterterrorism policies. Thus far, I have delineated each Administration's approach to counterterrorism, exposed the shortcomings of the policies' implementations, and the implications of such policies on Arab and Muslim Americans' civil liberties. Amidst the confusion and urgency of 9/11, the Bush Administration enacted a policy that relied on punishment and preemptive investigative measures. The Obama Administration focused on addressing the perceived causes of terrorism. Although both Administrations had aims of securing the country, their policies undermined counterterrorism efforts and polarized the state by restricting the civil liberties of a minority. The Trump Administration capitalized on that polarized environment and ordered the Travel Ban, which prevents refugees and individuals from certain countries from entering the United States.

This chapter offers a more comprehensive comparison of the three Administrations' respective security policies and the implications of those policies. First, I compare the fallible foundations and implementations of each policy, and how these factors influence the efficacy of the policies in providing security. Next, I draw attention to particular factors that policymakers must consider when drafting counterterrorism policies to ensure that the policies achieve their desired outcomes. Finally, I offer concluding remarks on the future of counterterrorism policy and the Travel Ban.

### **II. Comparison of the Security Policies**

#### *Inefficacy of the Three Policies*

In all three cases, an abuse of government power has resulted in ineffective counterterrorism efforts, restrictions on basic civil liberties, and divisions within the country. While each Administration has differed in its approach to counterterrorism, their approaches have all failed to produce their desired outcomes of increased national security. These efforts have been unsuccessful due to two factors: flawed foundations and lack of strategic oversight during implementation.

### *Flawed Foundations*

Flawed foundations refer to the idea that the substance of a policy is ungrounded and inherently futile. Essentially, policies with flawed foundations are incapable of producing their desired results, because they are dependent on a concept that is fundamentally misleading. By misdirecting efforts onto individuals who do not pose a threat to security, the policies' objectives never properly develop or operate. I demonstrate that the Bush, Obama, and Trump Administrations' respective counterterrorism approaches distracted local law enforcement from securing the nation by spreading distorted perceptions of where efforts should be directed. To ensure successful and effective policies that prevent terrorism, efforts must be accurately guided toward the true threats to the country.

Prior to passing the USA PATRIOT Act, members of the Bush Administration, specifically U.S. Attorney General John Ashcroft, made assertions that threatened foreign nationals as the government's principal target in counterterrorism efforts. The USA PATRIOT Act relied on indefinite extrajudicial detentions, warrantless wiretaps, and ideological exclusion to direct its efforts at foreign nationals. Often, federal law enforcement utilized minor visa violations as justification for these investigations and detentions. Further, in the two years

following 9/11, the government detained over 5,000 foreign nationals, the majority of whom were from Arab and Muslim-majority countries. The government, however, convicted none of those individuals detained under the USA PATRIOT Act of terrorism-related activities (Cole & Dempsey, 2006). The exploitation of immigration status was a groundless and ineffective counterterrorism method. Rather than focus on true threats to national security, the Bush Administration misplaced its efforts against foreign nationals from Arab and Muslim-majority states, which undermined security and civil liberties. This focus on foreign nationals from Arab and Muslim-majority countries subsequently had many negative implications on Arab and Muslim Americans as well. Law enforcement directed its policing efforts onto Arab and Muslim American communities, which heightened public suspicion of the communities and often left the communities subjected to hate crimes.

When President Obama took office in 2008, his Administration attempted to shift the War on Terror away from punishment and surveillance by taking an approach to domestic security dependent on community partnership. To do so, the Obama Administration enacted the Countering Violent Extremism (CVE) program to address the root causes of terrorism. CVE included building expertise to help local law enforcement and communities recognize the signs of radicalization. Radicalization theory is flawed, however, because it relies on the notions of a singular path towards terrorism and of Islam as a producer of terrorism (Patel & Koushik, 2017). Rather, government-sponsored studies found that there is no patterned trajectory towards radicalization, and devoutness does not indicate vulnerability to extremism. Thus, CVE overly focused its attention on Muslim American communities, which both advanced the perception of Islam as linked to violence and ostracized Muslim American communities. Further, the Obama Administration's focus on radicalization as a root cause still disregarded the link of radicalization

to U.S. actions, particularly its military intervention and foreign policy stances towards the Middle East. Therefore, counter-radicalization as the foundation of CVE was inherently unreliable, both undermining the community's trust in counterterrorism efforts and polarizing the state.

Finally, the Trump Administration's Travel Ban was established on the notion that excluding individuals from seven barred countries and limiting refugee intake will reduce the threat of terrorism. The Travel Ban is flawed, however, because it focuses on individuals who do not pose a significant threat to national security. Firstly, the ban targets the wrong set of countries. The countries of origin of the 9/11 attackers, such as Saudi Arabia, Egypt, The United Arab Emirates, and Lebanon, were not included on the list of barred states (Byman, 2017). The list additionally does not include the countries of origin of any of the terrorists that successfully carried out an attack on U.S. soil since 2001, nor does it address the issue of homegrown terrorism (Berman, 2017). For instance, from 2001 to 2017, there were 85 homegrown violent extremist attacks, 62 of which were conducted by far right-wing violent extremists, and 23 of which were conducted by radical Islamist violent extremists (USGAO, 2017). According to a New America Report, 85% of jihadist terrorists in the United States were American citizens or legal residents (Bergen et al., 2017). Violent extremist attacks have also been increasingly more deadly since 2009 (Bergen et al., 2017). Secondly, the ban was wrongly directed at refugees as the individuals responsible for committing acts of terrorism in the United States. Of the 859,629 refugees admitted since 2001, only three, or 0.0000035%, have been convicted of planning attacks where the targets were *outside* of the United States (Nowrasteh, 2016). Thus, the Trump Administration founded the ban on the false assumption that individuals from the barred Muslim-majority countries were threats to national security. The Trump Administration's Travel

Ban has flawed foundations that feed into the terrorist narrative that the United States is at war with Islam, therefore undermining its counterterrorism objectives while ostracizing Arab and Muslim Americans.

Due to the flawed foundations, the Bush, Obama, and Trump Administrations' respective policies were all incapable of producing their desired objectives. Rather than focus on the true threats to national security, each Administration guided its efforts at the wrong populations. The Bush Administration failed to convict an overwhelming majority of the foreign nationals that it detained. CVE relied on the disproven theory of radicalization, which caused local law enforcement to wrongly place its attention on devout Muslim Americans. Finally, the Trump Administration's Travel Ban did not address the issue of homegrown terrorism, but instead excluded refugees and immigrants from particular countries that have no substantial history of committing terrorism against the United States. Comparatively, each of the administration's domestic counterterrorism policies were based on faulty concepts that misdirected law enforcement efforts and caused the policies to be ineffective.

#### *Lack of Strategic Oversight During Implementation*

Similarly to how the flawed foundations of these three policies produced ineffective counterterrorism efforts and divisions within the country, the lack of strategic oversight during implementation of the USA PATRIOT Act and CVE also contributed to such results. The lack of strategic oversight during implementation refers to the absence of consistent regulation or evaluation of the policy's effectiveness. Without proper review of the execution of the policies, the government continued to sanction ineffectual counterterrorism methods. By providing proper

oversight, however, agencies are able to address the issues and inefficiencies that arise during implementation of counterterrorism programs, and therefore improve the programs' capabilities.

The USA PATRIOT Act focused on expanding executive authority and removing longstanding judicial obstacles to privacy intrusion and investigations. Removing judicial barriers allowed federal law enforcement to conduct counterterrorism-related activities more easily and quickly, which the Bush Administration deemed necessary in the urgency of 9/11. Without regulation or accountability, however, law enforcement efforts often disparately affected foreign nationals from Arab and Muslim-majority countries. The Bush Administration intentionally dismissed judicial oversight to increase the promptness of counterterrorism investigations, but in doing so, the Bush Administration permitted federal law enforcement to conduct their efforts in the manners that they saw suitable. Without oversight to evaluate the procedures, federal law enforcement relied on its own biases to routinely direct its efforts at Arab and Muslim Americans. These actions marginalized a population as inherently guilty, restricted civil liberties, and diverted the government's attention away from true threats to national security. Additionally, a lack of oversight prevented the government from improving its investigation process and from convicting more terrorists. Therefore, the Bush Administration's abuse of executive power and removal of judicial barriers during investigations produced an ineffective security policy and damaged public perceptions of Arab and Muslim Americans.

Although the Obama Administration did not explicitly remove oversight from its counterterrorism efforts, its implementation strategy was overly broad and unregulated. In 2017, the U.S. Government Accountability Office (USGAO) found no measurable outcomes of the 2011 or 2016 Strategic Implementation Plan (SIP), because the government had failed to develop a definitive strategy for implementation. The USGAO maintained that the country was no safer

since the announcement of CVE, due to its lack of strategies for partnership coordination or for measuring effectiveness of its procedures (USGAO, 2017). This failure was especially present in the SIP's lack of organized strategy for the first and third priority areas. These priority areas were dedicated to community outreach and countering violent extremist narratives. First, due to the lack of strategic planning, secret surveillance and intelligence-gathering initiatives tainted community outreach programs by undermining trust and partnerships among the community and local law enforcement. Additionally, the language of the third priority area, countering violent extremist narratives, was vague and did not establish a plan or assign responsibility for implementing that plan. Therefore, the Obama Administration's attempt to portray Arab and Muslim Americans as partners in the War on Terror ultimately failed, as its lack of cohesive strategy or evaluation of the local programs caused CVE to fall into patterns of surveillance and mistrust.

Both the USA PATRIOT Act and CVE lacked explicit oversight, which contributed to the policies' ineffectiveness. The Trump Administration's Travel Ban, however, has received more extensive scrutiny from the judicial system. Various federal judges have continually checked the Travel Ban's unconstitutionality. Major cases such as *Washington v. Trump* and *Hawaii v. Trump* have placed temporary restraining orders that blocked the ban from taking effect by claiming that it violated the First and Fifth Amendments. Currently, the Travel Ban is in effect and awaiting a final ruling in June 2018 by the U.S. Supreme Court on whether it is constitutional. As such, the judicial system is assuming its role as a check on executive power by disputing a discriminatory and groundless ban.

Without a proper oversight mechanism, the USA PATRIOT Act and CVE continued to employ ineffective and counterterrorism methods. The Bush Administration explicitly removed

judicial oversight of its investigations, but this lack of oversight caused federal law enforcement to abuse its unchecked power and biasedly implement its investigations. It also prevented the federal government from exploring why investigations were not producing terrorist convictions. The USGAO found that CVE's lack of defined implementation plan and absence of evaluation resulted in unproductive programs. Both the USA PATRIOT Act investigations and the CVE programs had little positive effect on establishing security or convicting terrorists. The judicial system's role in the Travel Ban, however, demonstrates that proper oversight can address issues that arise with counterterrorism policies and can ensure that they are not repetitively unsuccessful during implementation.

### **III. Factors for Policymakers to Consider**

In examining the USA PATRIOT Act, CVE, and the Travel Ban, major concerns that arise regarding their inability to combat terrorism and their implications on basic civil rights. This thesis provides insight into the different factors that influence counterterrorism efforts so that policymakers can better identify potential complications and can enhance the effectiveness of counterterrorism policy while balancing the need to preserve basic civil rights. Each policy discussed in this thesis comes up short when examining their primary objective of making the United States safer. As such, there are factors that security policies currently neglect that must be considered to improve the quality of domestic War on Terror efforts.

First, counterterrorism policies must not neglect the weight of civil liberties and democratic values. Policy cannot curtail the Constitution or rule of law simply to expedite counterterrorism investigations. Checks and balances, such as judicial oversight of congressional laws and executive policies, exist to ensure that all Americans are guaranteed access to their basic freedoms. While much of the initial debate centered on whether foreign nationals and non-

citizens also deserved access to civil liberties, as a result of the Bush, Obama, and Trump Administrations' policies, the line blurred to include Arab and Muslim American citizens as undeserving of civil liberties as well. I also argue that liberties, such as due process, are a universal human right and not a privilege only afforded to American citizens. The value of national security cannot be negated, but impeding on the basic civil liberties of citizens or non-citizens is not the solution to terrorism. Rather, sacrificing civil liberties only serves to undermine the foundations of American democracy, making the state less secure.

Policymakers must also consider the need for a clearly defined implementation strategy. This strategy must include clear objectives, methods to achieve those objectives, and a timeline for implementation and program completion. Implementation strategies must also assign a specific government agency or establish a committee for proper regulation and oversight. This oversight includes holding the agency accountable by regularly measuring the effectiveness of their methods. Without a cohesive implementation strategy, particular activities and objectives are abandoned in the confusion and urgency of counterterrorism efforts.

Next, policymakers need to be attentive of the potential for security policies to disparately affect a minority. As seen in the Bush, Obama, and Trump Administrations, counterterrorism efforts were overwhelmingly directed at Arab and Muslim Americans. Focusing activities on citizens, foreign nationals, and refugees from Arab and Muslim majority countries, however, is ungrounded and ineffectual. Explicit implementation plans also come into play here, as they serve to guide efforts and prevent local and federal law enforcement officers from arbitrarily projecting their own biases onto their activities. Policymakers must be aware of the potential for counterterrorism policies to demonize a population.

Finally, policymakers cannot overlook the factors that drive terrorism. Government officials must examine the various influences that push individuals toward radicalization. How do U.S. foreign policy positions influence individuals from other countries or violent extremists' attitudes toward the United States? What are the causes of homegrown terrorism, and how can they be addressed? These questions only begin to shed light on the complexities that influence terrorism, but they must be considered to ensure that counterterrorism efforts are effective and encompassing.

#### **IV. Implications for the Future**

As explored throughout this thesis, each of the Bush, Obama, and Trump Administrations' respective domestic counterterrorism policies fall short in their foremost priority of improving national security. Their flawed foundations, coupled with the lack of cohesive oversight and regulation during implementation, both disparately targets Arab and Muslim Americans and undermines counterterrorism efforts. As such, the counterterrorism policies since 9/11 have been ineffectual and counterproductive.

Although it is easy to demonize the Bush, Obama, and Trump Administrations for the faults in their approaches, there is no easy solution to terrorism or to ensuring national security. Rather, policymakers must look at the shortcomings of U.S. counterterrorism policy to identify how to improve current policies, and to better guide future counterterrorism strategies. Recognizing the various factors outlined in this thesis that influence the efficacy of security policy is the best way to achieve War on Terror objectives and to make the country more defensible against terrorism in the short- and the long-term.

While the country awaits the Supreme Court's decision on the pending Travel Ban, Americans and government officials must reflect on the future they envision. Since the 20<sup>th</sup> century, the government has repeatedly been blind to its own contribution to security threats against the United States. Rather than hold itself accountable, the government has assumed its own innocence in geopolitics, and has continued to feed into the grievances that terrorists propagate. Attention must be paid to the government's historic imprudence in its foreign policy strategy to end the cycle of a boundless and interminable War on Terror.

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