

## LONE WOLF TERRORISM: TYPES, STRIPES AND DOUBLE STANDARDS

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**ABSTRACT**—The recent spike in mass shootings, topped by the October 1, 2017, Las Vegas massacre, dubbed the “deadliest mass shooting in modern U.S. history,” has brought newfound urgency and attention to lone wolf violence and terrorism. Although a topic of pressing concern, the phenomenon—which centers on mass violence inflicted by one individual—is underexamined and undertheorized within legal literature. This scholarly neglect facilitates flat understandings of the phenomenon, and enables the racial and religious double standards arising from law enforcement investigations and prosecutions of white and Muslim lone wolves.

This Essay contributes a timely reconceptualization of the phenomenon, coupled with a typology adopted from social science, for understanding the myriad forms of lone wolf terrorism. In addition to contributing the theoretical frameworks to further examine lone wolf terrorism within legal scholarship, this Essay examines how the assignment of the lone wolf designation by law enforcement functions as: (1) a presumptive exemption from terrorism for white culprits; and (2) a presumptive connection to terrorism for Muslim culprits. This asymmetry is rooted in the distinct racialization of white and Muslim identity, and it is driven by War on Terror baselines that profile Muslim identity as presumptive of a terror threat.

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*[A]t this point, we believe it is a local individual [not a terrorist], he resides here locally.*

—Clark County Sherriff Joseph Lombardo<sup>†</sup>

*As far as we can tell right now, this is certainly an example of the kind of homegrown extremism that all of us have been so concerned about for a very long time.*

—President Barack Obama<sup>‡</sup>

## INTRODUCTION: A TALE OF TWO LONE WOLVES

### A. *Las Vegas Shooting—October 1, 2017*

Stephen Paddock peered onto the concert hall across the boulevard from the thirty-second floor of the Mandalay Bay Hotel.<sup>1</sup> The illuminated Las Vegas Strip was a familiar sight for the sixty-four-year-old, who for years walked on the very grounds he looked down upon minutes after 10 PM that Sunday evening, October 1, 2017.<sup>2</sup> Thousands of people gathered for the country music festival across Las Vegas Boulevard, celebrating a musical

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<sup>†</sup> Tom Batchelor, *Nevada State Law Defines Law Vegas Mass Shooting as an Act of Terrorism*, INDEPENDENT (Oct. 2, 2017, 10:27 AM), <http://www.independent.co.uk/news/world/americas/las-vegas-shooting-nevada-terrorism-state-law-act-police-stephen-paddock-a7978456.html> [<https://perma.cc/X3PH-TGMC>] (characterizing Stephen Paddock, the culprit of the Las Vegas shooting).

<sup>‡</sup> Julie Hirschfeld Davis, *Obama Says Orlando Gunman Was Probably a Homegrown Extremist*, N.Y. TIMES (June 13, 2016), <https://www.nytimes.com/2016/06/14/us/politics/obama-orlando-shooter-isis.html> [<https://perma.cc/6MLL-PKPD>] (characterizing Omar Mateen, the culprit of the Orlando nightclub shooting).

<sup>1</sup> Jose A. Delreal & Jonah Engel Bromwich, *Stephen Paddock, Las Vegas Suspect, Was a Gambler Who Drew Little Attention*, N.Y. TIMES (Oct. 2, 2017), <https://www.nytimes.com/2017/10/02/us/stephen-paddock-vegas-shooter.html> [<https://perma.cc/R2DX-V5FT>].

<sup>2</sup> *Id.*

genre that Paddock counted among his favorites.<sup>3</sup> One can imagine the scene: inches from the suite's panorama window, Paddock's stare was fixed and his stance frozen, high atop the city where he satisfied his zeal for gambling huge sums of money within the Strip's familiar string of hotels.<sup>4</sup>

However, that evening, Paddock would aim to gratify a different kind of zeal. He stood feet away from his stockpile of twenty-three guns,<sup>5</sup> which he stealthily transported into his suite. Minutes later, he used those guns to kill fifty-eight people and injure over 500 more attending the Route 91 Harvest festival concert.<sup>6</sup> Paddock opened fire on the crowd of 22,000 at 10:05 PM, and continued shooting for the next ten minutes—a time span that probably seemed like an eternity for those below.<sup>7</sup>

The shooting was ultimately dubbed “the deadliest mass shooting in modern U.S. history” by a number of media outlets.<sup>8</sup> Consequently, the city of Las Vegas and Paddock's name will forever be associated with one of the darkest moments in America's recent memory. However, hours after the attack, before an investigation commenced, the Clark County Sheriff disassociated Paddock from terrorism by calling him a “lone wolf,” and the media firestorm covering the tragedy followed suit.<sup>9</sup>

#### B. *The Orlando Nightclub Shooting—June 12, 2016*

Before the Las Vegas massacre, the horrific shooting in Orlando on June 12, 2016, held the designation of the “deadliest mass shooting” in U.S. history.<sup>10</sup> Shortly after midnight that Sunday morning, Omar Mateen opened

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<sup>3</sup> Amy O'Neill and Bob Ortega, *The Unknowable Stephen Paddock and the Ultimate Mystery: Why?*, CNN (Oct. 7, 2017, 9:40 AM), <http://www.cnn.com/2017/10/06/us/unknowable-stephen-paddock-and-the-mystery-motive/index.html> [<https://perma.cc/JP26-YGU4>].

<sup>4</sup> *Id.*

<sup>5</sup> Barbara Liston et al., *Las Vegas Gunman Stephen Paddock Was a High-Stakes Gambler Who 'Kept to Himself' Before Massacre*, WASH. POST (Oct. 2, 2017), <https://www.washingtonpost.com/news/post-nation/wp/2017/10/02/las-vegas-gunman-liked-to-gamble-listened-to-country-music-lived-quiet-retired-life-before-massacre/> [<https://perma.cc/DG4Y-8VSR>].

<sup>6</sup> *Id.*

<sup>7</sup> Matt Pearce, David Montero & Richard Winton, *Las Vegas Gunman Shot Security Guard a Full Six Minutes Before Opening Fire on Concertgoers, Police Reveal*, L.A. TIMES (Oct. 9, 2017, 6:10 PM), <http://www.latimes.com/nation/la-na-vegas-shooting-20171009-story.html> [<https://perma.cc/AB4Q-B8KD>].

<sup>8</sup> See, e.g., Bill Chappell & Doreen McCallister, *Las Vegas Shooting Update: At Least 59 People Are Dead After Gunman Attacks Concert*, NPR (Oct. 2, 2017, 3:15 AM), <https://www.npr.org/sections/thetwo-way/2017/10/02/554976369/section-of-las-vegas-strip-is-closed-after-music-festival-shooting> [<https://perma.cc/5MZA-KEJZ>].

<sup>9</sup> Delreal & Bromwich, *supra* note 1.

<sup>10</sup> Maia Davis, *Orlando Nightclub Mass Shooting Is Deadliest in US History*, ABC NEWS (June 12, 2016, 4:06 PM), [abcnews.go.com/US/orlando-nightclub-mass-shooting-deadliest-us-history/story?id=](http://abcnews.go.com/US/orlando-nightclub-mass-shooting-deadliest-us-history/story?id=)

fire inside Pulse Nightclub, a nightlife hub and “safe space” for the metropolitan Orlando area’s diverse LGBTQ communities.<sup>11</sup> He killed forty-nine people and injured fifty more,<sup>12</sup> during a night when 90% of the club-goers were Latino.<sup>13</sup>

Like Paddock, Mateen, a “deeply disturbed”<sup>14</sup> twenty-nine-year-old American of Afghan heritage,<sup>15</sup> took his own life shortly after opening fire. But unlike Paddock, Mateen was Afghan and Muslim, identities that are routinely conflated with—and inextricably tied to—terrorism.<sup>16</sup> Because of his faith and ethnicity, Mateen fit within the embedded profile of the terrorist, and he was “raced” as such<sup>17</sup>—acting in a purely individual capacity would not change that racial and religious equation. Law enforcement and many voices within mainstream media labeled him a “lone wolf,” but the “radicalized” variety: connected—not exempted—from terrorism.<sup>18</sup>

However, the Federal Bureau of Investigation (FBI) was well acquainted with Mateen, and previously cleared him from terror affiliation or involvement on two occasions. FBI agents interviewed Mateen three times during 2013 and 2014, delving deep into his personal life and assigning an undercover agent to make contact.<sup>19</sup> Ultimately, the FBI closed Mateen’s case, finding that his “connections to terrorism were . . . insubstantial.”<sup>20</sup>

Despite these conclusions, and the lack of material evidence tying Mateen’s murders to a transnational terror network or terrorist ideology,<sup>21</sup> law enforcement and mainstream media outlets swiftly turned to the

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39797486 [https://perma.cc/3VYW-U6TH] (“The 50 deaths, so far, are 18 more than . . . the second most-fatal massacre . . . according to data from Mother Jones that goes back to 1982.”).

<sup>11</sup> Daniel D’Addario, *Orlando Shooting: The Gay Bar as Safe Space Has Been Shattered*, TIME (June 12, 2016, 4:04 PM), <http://time.com/4365403/orlando-shooting-gay-bar-pulse-nightclub/> [https://perma.cc/SX7S-Z5SX].

<sup>12</sup> Hirschfeld Davis, *supra* note 4.

<sup>13</sup> Steven W. Thrasher, *Latino Community Mourns Pulse Shooting Victims: “90% Were Hispanic,”* GUARDIAN (June 14, 2016, 1:36 PM), <https://www.theguardian.com/us-news/2016/jun/14/latino-hispanic-orlando-shooting-victims> [https://perma.cc/Q54J-DVP5].

<sup>14</sup> See Mark Mazzetti, Eric Lichtblau & Alan Blinder, *Omar Mateen, Twice Scrutinized by F.B.I., Shows Threat of Lone Terrorists*, N.Y. TIMES (June 13, 2016), <https://www.nytimes.com/2016/06/14/us/politics/orlando-shooting-omar-mateen.html> [https://perma.cc/AGN3-44E3].

<sup>15</sup> *Orlando Gay Nightclub Shooting: Who Was Omar Mateen?* BBC (June 14, 2016), <http://www.bbc.com/news/world-us-canada-36513468> [https://perma.cc/5S49-JRT9].

<sup>16</sup> See Leti Volpp, *The Citizen and the Terrorist*, 49 UCLA L. REV. 1575, 1586 (2002) (“Very few persons who appear ‘Middle Eastern, Arab, or Muslim’ are terrorists,” however, “[m]any men who fall into this category, including law professors, have been subjected to questioning.”).

<sup>17</sup> See Natsu Taylor Saito, *Symbolism Under Siege: Japanese American Redress and the “Racing” of Arab Americans as “Terrorists,”* 8 ASIAN L.J. 1, 12 (2001).

<sup>18</sup> David K. Li, *FBI Chief: Orlando Gunman Was Self-Radicalized Lone Wolf*, N.Y. POST (June 13, 2016, 1:00 PM), <https://nypost.com/2016/06/13/fbi-chief-orlando-gunman-had-strong-indications-of-radicalization/> [https://perma.cc/5Z77-WVHP].

<sup>19</sup> Mazzetti et al., *supra* note 14.

<sup>20</sup> Spencer Ackerman, *Orlando Gunman Known to FBI Shows Difficulty of “Lone Wolf” Cases*, GUARDIAN (June 12, 2016), <https://www.theguardian.com/us-news/2016/jun/12/florida-gunman-omar-mateen-fbi-lone-wolf> [https://perma.cc/7B4U-FPDD].

<sup>21</sup> *Id.*

presumption and narrative of terrorism.<sup>22</sup> In a span of hours, law enforcement had branded Mateen a terrorist before an investigation into his motives and ties even commenced.

### C. *Two Lone Wolves, But Only One Terrorist*

Two lone wolves, with no established or substantial ties to transnational terror networks, were at the center of the tragic tales of the Las Vegas massacre and the Orlando nightclub shooting. These two incidents, which rank among the deadliest mass shootings in contemporary American history, illustrate how terrorism is instantly presumed when the lone wolf killer is Muslim, and the prospect of terrorism typically dismissed when the actor is white (and non-Muslim). Race and religion stand at the center of any tale involving a lone wolf. More often than not, race and religion are the most salient factors in determining whether law enforcement will conduct a terrorism investigation and prosecution.

The recent list of shootings and mass killing involving white non-Muslim and Muslim culprits has revealed a pattern in which the former are generally designated *lone wolf killers*, and the latter presumptive *lone wolf terrorists*—a critical distinction whereby *killers* are prosecuted criminally outside of the counterterror process,<sup>23</sup> while *terrorists* are prosecuted on both grounds. While discursive understandings of *lone wolf* conceive of the concept exclusively as an exemption from terrorism applied to white culprits,<sup>24</sup> the designation can be tied to terrorism and/or conventional criminal investigations and charges. This Essay argues that these investigations and charges often depend on the racial and religious identity of the culprit.

Although both Paddock and Mateen were *lone wolves*—culprits carrying out mass violence in an individual capacity—their distinct racial and religious identities altered the legal effect of that designation. Furthermore, race and religion steered whether their mass shootings were pursued as acts of terror or merely criminal acts. This Essay investigates the racial and religious dimensions of the lone wolf designation, beginning with a comparative racial analysis of white and Muslim identity, and how deeply rooted tropes assigned to both drive criminal and counterterror framing of

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<sup>22</sup> Mazzetti et al., *supra* note 14.

<sup>23</sup> JEFFREY CONNOR & CAROL ROLLIE FLYNN, REPORT: LONE WOLF TERRORISM, GEO. U. SEC. STUDIES PROGRAM: NAT'L SEC. CRITICAL ISSUE TASK FORCE 9 (2015) (“Absent political motivation, an attack would more closely resemble traditional forms of crime, organized violence, or hate crimes.”).

<sup>24</sup> See, e.g., Chuck Hobbs, “Lone Wolf” Characterization of Mass Murders Is the Epitome of White Privilege, HILL (Oct. 3, 2017, 12:40 PM), <http://thehill.com/opinion/criminal-justice/353627-lone-wolf-characterization-of-murderers-is-the-epitome-of-white> [https://perma.cc/3VGU-Y6SG].

lone wolf culprits. After an examination of the racial roots of this disparate framing, this Essay proceeds to examine how the lone wolf designation deployed by law enforcement functions as a presumption of *terror exemption* when the culprit is white (and non-Muslim), and a presumption of *terror connection* when the culprit is Muslim.

In addition to investigating the racial and religious double standards tied to law enforcement, this Essay theorizes the meaning and distinct types of lone wolf terrorism. Further, it contributes to legal literature a useful typology that highlights lone wolf terrorism's myriad forms. In addition to illustrating that lone wolf terrorism is not a strategic or structural monolith, this typology enables critical analysis of the phenomenon beyond the myopic racial and religious frames that stifle the discourse.

While there is robust legal and interdisciplinary literature examining modern terrorism, generally fixating on Muslim actors and networks,<sup>25</sup> scarce attention has been specifically paid to lone wolf terrorism,<sup>26</sup> a pressing area of scholarly and practical concern. By theorizing lone wolf terrorism in relation to prevailing counterterror programs, and introducing social science frameworks that outline the various types of lone wolf actors, this Essay fills this void. In addition, this Essay sheds light on the origins of a double standard whereby law enforcement presumptively exempts white culprits from terrorism, but connects Muslim culprits, as evidenced by an analysis of the two deadliest mass shootings in recent history.

Part I conceptualizes the meaning of lone wolf terrorism and offers a theoretical framework that highlights the four distinct types. Part II situates law enforcement investigation and prosecution of lone wolves within the Department of Homeland Security's (DHS) primary counterterror program, counter-radicalization policing, that practically frames radicalization as a Muslim phenomenon. Part III analyzes the investigative and prosecutorial presumptions assigned to lone wolf actors, which regularly impute radicalization as the motive if the culprit is Muslim and dismiss the possibility if the culprit is white.

## I. THEORIZING LONE WOLF TERRORISM

Despite becoming an emerging staple of counterterror policing and parlance, "lone wolf terrorism" has no consensus definition. This is due in part to the competing and conflicting definitions of terrorism, defined broadly by U.S. law enforcement and military, and theorized even more

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<sup>25</sup> See, e.g., MARC SAGEMAN, UNDERSTANDING TERROR NETWORKS (2004) (examining terrorism and exclusively concerned with Muslim terror networks, although the title and phrase "terror networks" is religiously neutral; a highly influential book cited widely within legal scholarship).

<sup>26</sup> One of the few law review articles that specifically examines lone wolf terrorism conflates the phenomenon with Muslims, illustrating the scholarly fixation on Muslim terrorists and, relatedly, the failure to theorize lone wolf terrorism as a phenomenon beyond a stereotypical frame. Kendall Coffey, *The Lone Wolf—Solo Terrorism and the Challenge of Preventative Prosecution*, 7 FLA. INT'L U. L. REV. 1 (2011).

broadly by scholars.<sup>27</sup> The term's application drives its multivalence, often giving terrorism distinct legal meanings when assigned to white, minority, or Muslim actors. Moreover, lone wolf terror attacks are a relatively new phenomenon, "increasing from thirty attacks in the 1970s to seventy-three in the 2000s, a growth of 143 percent."<sup>28</sup> Therefore, popular and political uses of the term have outpaced scholarly framing of lone wolf terrorism, and indeed, those uses have preceded formal conceptualization that can guide lawmakers and law enforcement.

Assessing the meaning and types of lone wolf terrorism is the focus of this Part. Section A offers several definitions, while Section B outlines a typology for understanding lone wolf terrorism, an essential first step before examining the presumptive double standards tied to the racial and religious identity of the culprit.

#### A. Defining "Lone Wolf Terrorism"

*Lone Wolf Terrorism*, a 2015 report by the Georgetown University Security Studies Program, provides a useful definition and framework for understanding the phenomenon.<sup>29</sup> It defines lone wolf terrorism as "the deliberate creation and exploitation of fear through violence or threat of violence committed by a single actor who pursues political change linked to a formulated ideology, whether his own or that of a larger organization, and who does not receive orders, direction, or material support from outside sources."<sup>30</sup> This definition's mandate of a "formulated ideology" echoes the FBI definition of terrorism requiring violence tied to "furtherance of political or social objectives."<sup>31</sup> Therefore, this definition does not classify an individual culprit inspired to kill without a motive based on a formulated (terror) ideology as a lone wolf terrorist, but rather as a lone wolf killer—an actor that may be tried and convicted of criminal charges such as conspiracy, murder, and related crimes.

A second definition of lone wolf terrorism focuses centrally on the method of operation instead of the ideological motive. Political scientist Ramon Spaaij defines lone wolf terrorism as "terrorist attacks carried out by persons who (a) operate individually, (b) do not belong to an organized terrorist group or network, and (c) whose *modi operandi* are conceived and

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<sup>27</sup> See generally Cyrille Begorre-Bret, *The Definition of Terrorism and the Challenge of Relativism*, 27 CARDOZO L. REV. 1987 (2006) (providing a theoretical analysis of the series of definitions that U.N. member states, including the U.S., adopt to prevent and counter terrorism).

<sup>28</sup> Connor & Flynn, *supra* note 23, at 10.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 9.

<sup>31</sup> 28 C.F.R. § 0.85(l) (2011).

directed by the individual without any direct outside command or hierarchy.”<sup>32</sup> Spaaij’s definition echoes many of the conceptual and strategic dimensions of the definition offered by the Georgetown Security Studies Report, but it lacks the motive component linking the *actus reus* to a “formulated [political] ideology.”<sup>33</sup>

This Essay proffers a third definition: lone wolf terrorism is premeditated violence unleashed by an individual actor, driven by discretely held views or a cogent ideology espoused by an organization. A lone wolf terrorist may be loosely connected to a (formally designated) terrorist organization or hate group or act entirely in a solitary capacity. This definition enables identification and, subsequently, prosecution, of a lone wolf who originates his own ideology entirely untethered to a terror organization. This archetype therefore gives primacy to ideology and premeditation, instead of the connection to a terror network that drives the narrative of terrorism as a uniquely Muslim phenomenon.

Certainly, there is no objective standard for what qualifies as a formulated political or social ideology. Assessment of motives is deeply politicized, and, indeed, colored, by the racial and religious identity of the culprit. Most definitions of lone wolf terrorism, including that offered by the Georgetown Report, are facially neutral. However, the biases of local law enforcement, as well as the counterterror priorities and objectives of the state, drive distinct and disproportionate application of the term and subsequent investigations of mass killings as acts of terror.<sup>34</sup> Neutral phrasing of lone wolf terrorism must be accompanied by neutral framing and structure, as well as a typology that highlights its myriad types.

### *B. A Typology: Lone Wolves of Many Stripes*

Lone wolf terrorism is not strategically or politically monolithic. A definition is foundational, but it must be accompanied by a theory of its many stripes and forms. This Section provides a useful typology that outlines the four principal forms of lone wolf terrorism: (1) lone soldiers; (2) lone vanguards; (3) loners; and (4) lone followers. and (5) lone wolf killers.

#### *1. Lone Soldiers*

Lone wolf terrorists may be “lone soldiers” acting alone to further “the ideological and political objectives of a larger terrorist organization.”<sup>35</sup> Lone soldiers are formally enlisted members of a terror organization, who fully adopt its mandate and accept its formal ideology, but commit a terror attack

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<sup>32</sup> Ramón Spaaij, *The Enigma of Lone Wolf Terrorism: An Assessment*, 33 *STUD. CONFLICT & TERRORISM* 854, 856 (2010).

<sup>33</sup> Connor & Flynn, *supra* note 23, at 9.

<sup>34</sup> See generally Beau D. Barnes, *Confronting the One-Man Wolf Pack: Adapting Law Enforcement and Prosecution Responses to the Threat of Lone Wolf Terrorism*, 92 *B.U. L. REV.* 1613 (2012) (offering an analysis of lone wolf terrorism within the prevailing American counterterror framework).

<sup>35</sup> Connor & Flynn, *supra* note 23, at 29.



in an individual capacity *with* the consent and/or support of that organization. In short, lone soldiers may act alone, but they do so as agents of that terror network, holding that network vicariously responsible for the attack.

Mark Stroman, “a lifelong criminal with connections to the Aryan Brotherhood,” who shot three South Asian men in Dallas, Texas, in 2001 as “revenge for 9/11,”<sup>36</sup> meets the definition of the lone soldier lone wolf terrorist. He was a member of the Aryan Brotherhood and carried out the murders of two of the three men, perceived to be Muslims, at the direction of the organization with its consent and support.<sup>37</sup> Because Stroman committed the murders by himself but with the backing of the Brotherhood and in furtherance of its white supremacist mission, he is classified as a lone wolf of the lone soldier variety.

This typology presumes Muslim culprits of violence, or “radicals,” who are geographically isolated from terror networks based in the Arab World, North, and Sub-Saharan Africa to be “lone soldiers” of a group. Syed Farook and Tafsheen Malik, the two shooters who killed fourteen people inside of the Inland Regional Center in San Bernardino, California, on December 2, 2015,<sup>38</sup> are two examples. For Farook and Malik, their violence was instantly tied to the Islamic State of Iraq and Syria (ISIS) on the strength of tenuous evidence,<sup>39</sup> and they were presumed to be lone followers of the terror network.

## 2. Lone Vanguard

A “lone vanguard” is a lone wolf terrorist that chooses to “act alone to advance [an] individual ideology, which makes him or her less likely to possess ties to formal terrorist organizations though he or she has the requisite social skills to form relationships.”<sup>40</sup> Lone vanguards are steered by individually crafted ideas or views that may be inspired or tied to external ideologies but are fundamentally idiosyncratic, separate, and standalone. Thus, lone vanguards are not tied to an external terror organization or

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<sup>36</sup> Ben Mathis-Lilley, *The Long List of Killings Committed by White Extremists Since the Oklahoma City Bombing*, SLATE (Aug. 14, 2017, 3:15 PM), [http://www.slate.com/blogs/the\\_slatest/2015/06/18/white\\_extremist\\_murders\\_killed\\_at\\_least\\_60\\_in\\_u\\_s\\_since\\_1995.html](http://www.slate.com/blogs/the_slatest/2015/06/18/white_extremist_murders_killed_at_least_60_in_u_s_since_1995.html) [https://perma.cc/KLW8-3KE5].

<sup>37</sup> *Id.*

<sup>38</sup> See Krishnadev Calamur, Marina Koren & Matt Ford, *A Day After the San Bernardino Shooting*, ATLANTIC (Dec. 3, 2015), <https://www.theatlantic.com/national/archive/2015/12/a-shooter-in-san-bernardino/418497/> [https://perma.cc/52KB-QPYU].

<sup>39</sup> Laura Wagner, *Still No Evidence Linking San Bernardino Shooters to ISIS*, NPR (Dec. 16, 2015), <https://www.npr.org/sections/thetwo-way/2015/12/16/460021165/still-no-evidence-linking-san-bernardino-shooters-to-isis-fbi-says> [https://perma.cc/X82C-JYBZ].

<sup>40</sup> Connor & Flynn, *supra* note 23, at 30.

ideology, and they instead shape their own ideology and function as one-man organizations.<sup>41</sup>

Anders Breivik, who carried out two terrorist attacks that resulted in the death of ninety-two people in Oslo, Norway, on July 22, 2011,<sup>42</sup> is an archetypal example of a lone vanguard. Breivik was fueled by a self-authored manifesto, titled *2083: A European Declaration of Independence*, that blamed Islam and feminism, among other entities, for the decline of Europe.<sup>43</sup> While loosely inspired by other nativist and white supremacist groups, Breivik pioneered his movement and ideology, and on July 22, carried out its vision in an individual capacity.<sup>44</sup> He was both leader and follower, driven by an ideology authored by himself, thus making him a lone vanguard lone wolf.

### 3. *Loners*

“Loner” lone wolf terrorists are individuals that “act alone to advance the goals of their individualized ideology, but their low social competence suggests they may also lack the ability to build relationships with peers or mobilize others to their cause.”<sup>45</sup> Therefore, loners may have a strong desire to become part of a terror organization or network, but unlike lone vanguards that choose to rebuff these networks, loners are rebuffed *by them* because of their low social competency. They are loners as a matter of circumstance, not choice.

Ted Kaczynski, popularly known as the “Unabomber,” fits the profile of the loner lone wolf. A former mathematics professor, Kaczynski wrote a manifesto, *Industrial Society and Its Future*,<sup>46</sup> outlining his hatred for modern society and his designs to thwart it. Widely regarded as “brilliant” for his achievements as a scholar,<sup>47</sup> Kaczynski was also known to be an introvert and recluse who lacked the personality, charisma, or perhaps desire, to enlist and mobilize followers. He acted entirely alone, and from 1978 to 1995, sent explosives in the mail that took “a leap in sophistication” and became more threatening over time.<sup>48</sup> Beyond his mode of operation and the

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<sup>41</sup> *Id.* (describing the ideology of the Norwegian lone wolf terrorist, Anders Breivik).

<sup>42</sup> Peter Beaumont, *Norway Attacks: At Least 92 Killed in Oslo and Utøya Island*, *GUARDIAN* (July 23, 2011), <https://www.theguardian.com/world/2011/jul/23/norway-attacks> [https://perma.cc/XDA8-PFAP].

<sup>43</sup> *See* ANDERS BREIVIK, *2083: A EUROPEAN DECLARATION OF INDEPENDENCE* (2011), [https://fas.org/programs/tap/\\_docs/2083\\_-\\_A\\_European\\_Declaration\\_of\\_Independence.pdf](https://fas.org/programs/tap/_docs/2083_-_A_European_Declaration_of_Independence.pdf) [https://perma.cc/PAD2-VB7F].

<sup>44</sup> *See generally* Magnus Ranstorp, “Lone Wolf Terrorism:” *The Case of Anders Breivik*, 31 *SECURITY AND PEACE* 87 (2013) (examining how Breivik fits the definition of lone wolf terrorism, and, implicitly, also the definition of a lone vanguard).

<sup>45</sup> Connor & Flynn, *supra* note 23, at 31.

<sup>46</sup> *See* TED KACZYNSKI, *THE UNABOMBER MANIFESTO: INDUSTRIAL SOCIETY AND ITS FUTURE* (2008).

<sup>47</sup> Alston Chase, *Harvard and the Making of the Unabomber*, *ATLANTIC* (June 2000), <https://www.theatlantic.com/magazine/archive/2000/06/harvard-and-the-making-of-the-unabomber/378239/> [https://perma.cc/RWV2-E6TU].

<sup>48</sup> *Id.*

ideology he crafted, perhaps the most salient fact that highlights Kaczynski's status as a loner was his decision in the 1970s to flee the "industrializing" society he so detested for the Montana wilderness,<sup>49</sup> which furnished him with the isolation he coveted as well as disconnectedness from everyone, including a potential following that might have shared his vision.

#### 4. Lone Followers

"Lone followers" are lone wolf terrorists that "seize the ideology of an existing organization but lack the social competence needed to gain acceptance into the group."<sup>50</sup> They may be ideologically tied to a group, but they do not possess the social ability to become formal members of that group. Lone followers are similar to loners on account of their kindred social incompetence, but lone followers seek to be rank-and-file members or soldiers of a group instead of leading their own. Unlike loners, lone followers would prefer to be part of an existing group, though they lack the social skills to do so.

Dylann Roof, who killed nine African Americans inside the Emanuel African Methodist Episcopal Church in Charleston, South Carolina, on June 17, 2015, fits the profile of a lone follower. Roof was driven by an ideology built upon white supremacy and anti-Black racism, as evidenced by his manifesto where he writes, "Niggers are stupid and violent."<sup>51</sup> Roof's views were shaped by the Council of Conservative Citizens (CCC), a white supremacist organization that holds that "God is the author of racism. God is the One who divided mankind into different types. . . . Mixing the races is rebelliousness against God."<sup>52</sup> Notably, this language echoes Justice Brown's dicta in *Plessy v. Ferguson* justifying the "separate but equal" doctrine.<sup>53</sup>

CCC member and spokesman Jared Taylor shared that CCC stood by Roof's ideology but condemned the shooting, noting that "CCC members had never heard of Roof and that he never attended a meeting."<sup>54</sup> Roof, who a neighbor characterized as "uncomfortably quiet, strangely quiet . . . [and]

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<sup>49</sup> *Id.*

<sup>50</sup> Conner & Flynn, *supra* note 23, at 31.

<sup>51</sup> *Dylann Roof's Manifesto*, N.Y. TIMES (Dec. 13, 2016), <https://assets.documentcloud.org/documents/3237779/Dylann-Roof-manifesto.pdf> [<https://perma.cc/D76Q-R8FA>].

<sup>52</sup> *Council of Conservative Citizens*, S. POVERTY LAW CTR., <https://www.splcenter.org/fighting-hate/extremist-files/group/council-conservative-citizens> [<https://perma.cc/CN7L-6J2R>] (last visited Jan. 3, 2018).

<sup>53</sup> 163 U.S. 537, 548 (1896) ("[E]nforced separation of the races, as applied to the internal commerce of the State, neither abridges the privileges or immunities of the colored man, deprives him of his property without due process of law, nor denies him the equal protection of the laws.")

<sup>54</sup> Josh Sanburn, *Inside the White Supremacist Group that Influenced Charleston Shooting Suspect*, TIME (June 22, 2015), <http://time.com/3930993/dylann-roof-council-of-conservative-citizens-charleston/> [<https://perma.cc/8EPF-DP4S>].

really strange,<sup>55</sup> likely lacked the social competence and skill to become a formal or active member of the CCC, and consequently, followed their segregationist ideology and mandate from afar as a lone follower.

The lone follower lone wolf designation is regularly applied to Muslim culprits, including the “Boston Bombers,” Tamerlan and Dzhokhar Tsarnaev. The brothers Tsarnaev killed three people and injured 264 more on April 15, 2013,<sup>56</sup> in a premeditated attack centering on the Boston Marathon.<sup>57</sup> Investigators sought to confirm speculation that the elder brother, Tamerlan, was radicalized during a visit to Dagestan, Chechnya, where, his mother said, “He was reading, always in front of the computer—he was taking classes on the Koran.”<sup>58</sup> Law enforcement officials argued that Tamerlan was instrumental in radicalizing his younger brother, Dzhokhar, while “[p]rosecutors claim he was a self-radicalized jihadist who pored over militant writings, including an article, ‘How to Build a Bomb in the Kitchen of Your Mom.’”<sup>59</sup>

Although the brothers may have aspired to be more formally linked to an existing terror network, and they posed in front of a black flag “not unlike the kind used by extremist groups like al-Qaeda and ISIS,”<sup>60</sup> the two lacked the social competency, the knowhow, or, most likely, the desire to enlist. From the vantage point of law enforcement, they are lone followers of ISIS or another terror network.

##### 5. *Lone Wolf Killers*

Outside of the framework of this four-part typology of lone wolf terrorists is a fifth and final classification, that of the “lone wolf killer.” This is an actor that law enforcement does not investigate as a possible terrorist, or, after a formal investigation, concludes that there are no terror ties or motives. The terrorist killer may be liable for criminal charges, but is prosecuted beyond the parameters of terrorism.

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<sup>55</sup> Rachel Kaadzi Ghansah, *A Most American Terrorist: The Making of Dylann Roof*, GQ (Aug. 21, 2017), <https://www.gq.com/story/dylann-roof-making-of-an-american-terrorist> [https://perma.cc/QZE5-JCC5].

<sup>56</sup> Leti Volpp, *The Boston Bombers*, 82 FORDHAM L. REV. 2209, 2209 (2014).

<sup>57</sup> See Khaled A. Beydoun, *Boston Explosions: ‘Please Don’t Be Arabs or Muslims,’* AL JAZEERA (Apr. 16, 2013), <http://www.aljazeera.com/indepth/opinion/2013/04/201341681629153634.html> [https://perma.cc/WN74-B53Q].

<sup>58</sup> Alissa de Carbonnel & Stephanie Simon, *Special Report: The Radicalization of Tamerlan Tsarnaev*, REUTERS (Apr. 23, 2013), <https://www.reuters.com/article/us-usa-explosions-radicalisation-special/special-report-the-radicalization-of-tamerlan-tsarnaev-idUSBRE93M0CZ20130423> [https://perma.cc/6J9Q-7FFB].

<sup>59</sup> Ann O’Neill, *The 13th Juror: The Radicalization of Dzhokhar Tsarnaev*, CNN (Mar. 30, 2015), <http://edition.cnn.com/2015/03/27/us/tsarnaev-13th-juror-jahar-radicalization/index.html> [https://perma.cc/VA7X-ZE22].

<sup>60</sup> Ashley Collman, *Inside the Bedroom of the Boston Bomber: Dzhokhar Tsarnaev Poses with Jihadi Black Banner in the Home Where He and His Brother Hatched Terrorist Attack*, DAILY MAIL (Mar. 18, 2015), <http://www.dailymail.co.uk/news/article-2998654/Boston-Marathon-bombing-trial-focus-suspects-arrest.html> [https://perma.cc/F2KT-5MRC].

Many white male mass killers, who account for 62% of mass shootings since 1982,<sup>61</sup> are designated as lone wolf killers because, in great part, the organizations or ideologies that inspired their violence are not pegged as terrorist groups. Alternatively, these killers receive this designation because the racial and religious presumption of terror assigned to Muslim culprits is not extended to white culprits of the very same or similar acts.

However, despite this double standard, “a tally kept by the Southern Poverty Law Center indicates that the murder of law enforcement officials and innocent civilians by race obsessives, anti-government paranoiacs, and other believers in white fringe movements has been depressingly common” since the Oklahoma City bombing of April 19, 1995.<sup>62</sup>

Although the majority of lone wolf killers are white males, counter-radicalization—the cornerstone of modern counterterror policing—has institutionalized the presumption that lone wolf *terrorism* is disproportionately linked to Muslim culprits. Shifting from the prevailing conception of terrorists as foreign agents formally tied to a terror network, counter-radicalization conceptualizes Muslim threats as homegrown and looming in the form of Muslim citizens and residents that are not soldiers or followers of a terror network, but may be inspired by them from afar. Consequently, mainstream structural Islamophobic policy facilitates the presumption, investigation, and prosecution of Muslim culprits—who may be acting in an entirely individual capacity inspired by motives not related to terrorism—as lone wolf terrorists.

## II. LONE WOLVES AND RADICALIZATION

In line with the shifting concern from foreign terrorists to “homegrown terrorism,”<sup>63</sup> President Barack Obama formally implemented Countering Violent Extremism (CVE) in 2011. CVE, the cornerstone of DHS’s counter-radicalization program, has been referred to as the “signature counterterrorism policy of the Obama Administration.”<sup>64</sup> Beyond the Obama Administration, counter-radicalization remains the crux of Donald Trump’s

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<sup>61</sup> *US Mass Shootings, 1982–2017: Data from Mother Jones’ Investigation*, MOTHER JONES (Oct. 2, 2017), <http://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data/#https://perma.cc/EHE3-LZ39>.

<sup>62</sup> Mathis-Lilley, *supra* note 36.

<sup>63</sup> See Sahar Aziz, *Caught in a Preventive Dragnet: Selective Counterterrorism in a Post-9/11 America*, 47 GONZ. L. REV. 429, 432 (2012).

<sup>64</sup> Samuel J. Rascoff, *Establishing Official Islam? The Law and Strategy of Counter-Radicalization*, 64 STAN. L. REV. 125, 127 (2012).

domestic counterterror strategy, which he is poised to focus entirely on “radical Islam.”<sup>65</sup>

This Part investigates the theoretical ties that bind radicalization with lone wolf terrorism. It also examines the counterterror enforcement that presumes that Muslims, and specific expressions of Muslim identity and expression, are predictive of terrorism. Section A provides a summary of radicalization theory and counter-radicalization policing, while Section B examines the potent role whiteness and the “racialization” of Muslim identity plays in shaping and enabling the respective presumptions tied to lone wolf terrorism.<sup>66</sup>

### A. Radicalization and Counter-Radicalization

#### 1. Radicalization Theory

Radicalization is built upon the tenet that Muslims living the U.S. may be inspired to adopt a terrorist ideology and take action from a catalyst located within the country or beyond its borders. Therefore, lone wolves may be moved to attempt or commit violent acts without ever enlisting in a terrorist organization or fully adopting its ideology.

The 9/11 terror attacks spurred the restructuring of the state’s national security institutions, most notably the creation of DHS, and shifted the state’s counterterror philosophy “from reactive to proactive, from response to prevention.”<sup>67</sup> Law scholar Aziz Huq writes, “The authors of ‘radicalization’ literature attempt to construct a descriptive taxonomy of terrorist motivations and interactions to enable prediction of future acts of violence. ‘Radicalization’ so defined appears to be a new object of state scrutiny and epistemological investment.”<sup>68</sup>

Predicting who may develop into a terrorist and preventing them from committing the act are the pillars of this new counterterror approach. Essentially, “[r]adicalization suggests that the path from Muslim to terrorist is a predictable one.”<sup>69</sup> This radicalization process is broken up into four stages: (1) “preradicalization,” (2) “identification,” (3) “indoctrination,” and (4) “action.”<sup>70</sup> Therefore, the objective is intervention before a subject

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<sup>65</sup> Julia Edwards Ainsley, Dustin Volz & Kristina Cooke, *Exclusive: Trump to Focus Counter-Extremism Program Solely on Islam*, REUTERS (Feb. 1, 2017, 5:17 PM), <https://www.reuters.com/article/us-usa-trump-extremists-program-exclusiv/exclusive-trump-to-focus-counter-extremism-program-solely-on-islam-sources-idUSKBN15G5VO> [<https://perma.cc/3NTT-SWP3>].

<sup>66</sup> “Racial construction” or “racialization” is defined as “an unstable and ‘decentered’ complex of social meanings constantly being transformed by political struggle.” MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960S TO THE 1990S* 55 (1994). For an analysis of the legal origins of Muslim racialization in the U.S., see Nagwa Ibrahim, *The Origins of Muslim Racialization in U.S. Law*, 7 UCLA J. ISLAMIC & NEAR E.L. 121 (2008).

<sup>67</sup> U.S. DEP’T OF JUSTICE, COUNTERTERRORISM SECTION, COUNTERTERRORISM WHITE PAPER 3 (2006).

<sup>68</sup> Aziz Z. Huq, *Modeling Terrorist Radicalization*, 40 DUKE F. L. & SOC. CHANGE 39, 41 (2010).

<sup>69</sup> Amna Akbar, *Policing “Radicalization,”* 3 U.C. IRVINE L. REV. 809, 811 (2013).

<sup>70</sup> *Id.* at 820.

identifies a terror ideology, is indoctrinated by it (or a terror group), and takes material steps toward committing an act of terror. In short, the earlier law enforcement acts, the better.

Radicalization theory was framed to grapple exclusively with Muslim threats. Although its baselines, ideas, and arguments are articulated in racial and religious terms, radicalization philosophy is driven by four principal ends: (1) identifying Islamic ideas or elements that inspire radicalization; (2) identifying Muslim radicals or probable radicals; (3) preventing the radicalization of vulnerable Muslim communities; and (4) preventing acts of terrorism. The law enforcement programming that converts radicalization theory into robust War on Terror policing, while not patently clear in the language of the theory, reveals this fixation on Islam.

## 2. Counter-Radicalization Policing

Ten years after the 9/11 terror attacks, the creation of the DHS,<sup>71</sup> and enactment of the USA PATRIOT Act,<sup>72</sup> Obama implemented a collaborative, community-based approach to keep tabs on Muslims in the U.S. Counter-radicalization policing, dubbed “Countering Violent Extremism” (CVE) by DHS,<sup>73</sup> would become the new counterterror paradigm and lead policing program.

CVE is built upon a collaborative structure whereby federal counterterror agencies, most notably the FBI, work closely and collaboratively with local law enforcement departments in communities of concern, or more specifically, concentrated Muslim communities. CVE seeks to “empower local partners to prevent violent extremists and their supporters from inspiring, radicalizing, financing, or recruiting individuals or groups in the United States to commit acts of violence,”<sup>74</sup> and, namely, to enlist members of Muslim communities as informants to gather data and keep tabs on subjects of interest. These informants may be religious leaders and clergy,<sup>75</sup> family members, classmates, colleagues, neighbors,

<sup>71</sup> DHS was created pursuant to the Homeland Security Act of 2002, § 101, 6 U.S.C. § 111 (2003).

<sup>72</sup> See *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001* (USA PATRIOT Act), Pub. L. No. 107-56, 115 Stat. 272.

<sup>73</sup> See generally *Empowering Local Partners to Prevent Violent Extremism in the United States*, WHITE HOUSE (Aug. 2011), [https://www.dhs.gov/sites/default/files/publications/empowering\\_local\\_partners.pdf](https://www.dhs.gov/sites/default/files/publications/empowering_local_partners.pdf) [<https://perma.cc/T84E-VW6P>] [hereinafter 2011 DHS Counter-Radicalization Program].

<sup>74</sup> FBI NAT'L SEC. BRANCH, *A New Approach to Countering Violent Extremism: Sharing Expertise and Empowering Local Communities*, L. ENFORCEMENT BULL. (Oct. 7, 2014), <https://leb.fbi.gov/articles/featured-articles/a-new-approach-to-countering-violent-extremism-sharing-expertise-and-empowering-local-communities> [<https://perma.cc/EFM4-N56V>].

<sup>75</sup> See Dawud Walid, *The Danger of Imams Being Involved in CVE*, AL MADINA (Sept. 7, 2016), <http://almadinainstitute.org/blog/the-danger-of-imams-being-involved-in-cve/> [<https://perma.cc/UEF2-9KXP>].

acquaintances, or anyone who has an established rapport, or can easily build one, with a subject of interest.

By infiltrating Muslim places of worship, community centers, student groups, neighborhoods, and households, the most intimate proxies deputized as informants engage in surveillance and data collection simultaneously. This, in turn, relieves law enforcement agents from these tasks, which are often compromised, if not wholly undermined, by the culture of mistrust between Muslims and local and federal police during the War on Terror. By *deputizing Muslims to spy on Muslims*, CVE strategy policing brings with it the perils of dividing communities, intensifying sectarian tension, and carrying forward baseless investigations and prosecutions.

“[W]hile purportedly aimed at rooting out all violent extremism, [CVE programs] have previously focused only on Muslims, stigmatizing them as a suspect community.”<sup>76</sup> The founding document outlining CVE policing explicitly identified Wahhabi-inspired terror networks, with a focus on Al-Qaeda, as the “challenge.”<sup>77</sup> Furthermore, the memo stated that threats were “inspired or directed by al-Qai’ida and its affiliates and adherents,” in addition to neo-Nazis, hate groups, racial supremacists, and “international and domestic terrorist groups” generally.<sup>78</sup> However, in light of the threat posed first by Al-Qaeda and its sympathizers, and then ISIS,<sup>79</sup> the concern with “lur[ing] Americans to terrorism in order to create support networks and facilitate attack planning” from inside the bounds of American communities, particularly those populated by Muslims,<sup>80</sup> DHS marshaled the bulk of its resources and manpower to combat Muslim radicalization. And, as examined in Section II.B.2, CVE policing has turned a blind eye to the non-Muslim variety, particularly domestic white terror groups.

CVE’s fixation on Muslims was, again, evidenced by the cities DHS chose to pilot its policing programs. In 2014, DHS announced that Boston, Los Angeles, and Minneapolis would be the first cities to have hardline CVE policing programs.<sup>81</sup> Contrary to the motives provided to the public for its choices,<sup>82</sup> DHS locked in on these cities on the grounds of their geographic

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<sup>76</sup> *Countering Violent Extremism (CVE): A Resource Page*, BRENNAN CTR. FOR JUSTICE (Dec. 5, 2017), <https://www.brennancenter.org/analysis/cve-programs-resource-page> [<https://perma.cc/G4PB-3DC6>].

<sup>77</sup> 2011 DHS Counter-Radicalization Program, *supra* note 73, at 1–2.

<sup>78</sup> *Id.* at 1.

<sup>79</sup> For a comprehensive and recent history of ISIS, examining its origins and ideological departure and distinctions from Al-Qaeda, the terror organization that preceded it, see FAWAZ GERGES, *ISIS: A HISTORY* (2016).

<sup>80</sup> 2011 DHS Counter-Radicalization Program, *supra* note 73, at 2.

<sup>81</sup> *See Pilot Programs Are Key to Our Countering Violent Extremist Efforts*, DEP’T OF JUSTICE (Feb. 18, 2015), <https://www.justice.gov/archives/opa/blog/pilot-programs-are-key-our-countering-violent-extremism-efforts> [<https://perma.cc/4NFA-NCN4>] (listing the public motive for selecting these three cities).

<sup>82</sup> *See id.*



proximity, experience of a recent attack or (perceived) vulnerability to an attack, and most of all, Muslim demographics.

Boston may have been chosen as a result of the 2013 Boston Marathon bombings, committed by the Tsarnaev brothers.<sup>83</sup> There was growing concern among law enforcement after the bombings that the incident might inspire local radicalization and drive subsequent attacks.

Second, Los Angeles may have been selected as a pilot because of its proximity to the Mexican border, believed to be an entryway for terrorists. There are also 246 mosques scattered across the state of California, including scores in metropolitan Los Angeles.<sup>84</sup> Notably, these mosques are situated in communities that the Los Angeles Police Department began “mapping” seven years before it formally piloted its CVE program in 2014.<sup>85</sup>

Finally, Minneapolis and the metropolitan Twin Cities area is home to the largest Somali population in the country, largely a recent-immigrant and Sunni (Muslim) population with strong ties to their homeland and perceived connections to the terror network Al-Shabaab.<sup>86</sup> The largest number of CVE-based prosecutions has involved Somali youth and men from the metropolitan Minneapolis area, with ten prosecutions conducted in 2016 alone.<sup>87</sup>

Reflecting CVE’s purchase across political lines, President Trump has maintained and promised to intensify counter-radicalization against Muslim communities in the U.S. Furthermore, Trump traded in the CVE name used by the Obama Administration for a program that is “likely to be renamed Countering Radical Islam or Countering Violent Jihad.”<sup>88</sup> President Trump’s rejiggered counter-radicalization program will be based on the very “clash

<sup>83</sup> Tamerlan and Dzhokar Tsarnaev, Sunni Muslims of Chechen origin, carried out the Boston Marathon bombing on April 15, 2013, killing three people and injuring 264. Tamerlan was killed in the aftermath of the attack, while Dzhokar was imprisoned and sentenced to death. See Nina Burleigh, *The Brothers Who Became the Boston Marathon Bombers*, NEWSWEEK (April 6, 2015, 12:02 PM), <http://www.newsweek.com/brothers-who-became-boston-marathon-bombers-319822> [https://perma.cc/M6NV-DHUE].

<sup>84</sup> Richard Ostling, *U.S. Muslims: Where? How Many?*, PATHEOS (May 14, 2013).

<sup>85</sup> See Richard Winton, Teresa Watanabe & Greg Krikorian, *LAPD Defends Mapping Effort*, L.A. TIMES (Nov. 10, 2007), <http://www.latimes.com/local/la-me-lapd10nov10-story.html> [https://perma.cc/SET6-FYKY].

<sup>86</sup> Khaled A. Beydoun, *Between Indigence, Islamophobia and Erasure: Poor and Muslim in “War on Terror” America*, 104 CALIF. L. REV. 1463, 1496 (2016).

<sup>87</sup> See Julia Edwards, *Exclusive: White House Plans Community-Based Prevention of Violent Ideologies*, REUTERS (Oct. 19, 2016), <https://www.reuters.com/article/us-usa-justice-counterterrorism/white-house-plans-community-based-prevention-of-violent-ideologies-idUSKCN12J15A> [https://perma.cc/HA79-49U2].

<sup>88</sup> Michael Crowley, *Trump’s Terror-Fighting Team Yet to Take Shape*, POLITICO (Dec. 20, 2016, 7:17 PM), <https://www.politico.com/story/2016/12/donald-trump-terrorism-232870> [https://perma.cc/UQ3H-XHDA].

of civilizations” worldview that views Islam as a monolithic bloc and a sworn rival to the U.S.<sup>89</sup> As evidenced by his rhetoric and policies toward Muslims, this demonization of Islam is, in part, driven by an Orientalist blend of racial and religious animus.<sup>90</sup>

## B. Radicalization and Racialization

### 1. Radicalization as a Muslim Phenomenon

Following the 9/11 terrorist attacks and the beginning of the “War on Terror” days later,<sup>91</sup> law scholar Natsu Saito marked this critical juncture as the moment Muslims were “‘raced’ as ‘terrorists’: foreign, disloyal, and imminently threatening.”<sup>92</sup> Law scholar Leti Volpp echoed Saito, stating, “We are witnessing the redeployment of old Orientalist tropes. Historically, Asia and the Middle East have functioned as phantasmic sites on which the U.S. nation projects a series of anxieties regarding internal and external threats to the coherence of the national body.”<sup>93</sup> Thus, individuals from (or believed to be from) these regions—even if citizens<sup>94</sup>—are regularly raced as Muslims, and hence, (possible) radicals.

This racialization of Muslims as terrorists echoes what is commonly understood today as Islamophobia, that is, the “presumption that Islam is inherently violent, alien and inassimilable [tied to] . . . the belief that expressions of Muslim identity are correlative with a propensity for terrorism.”<sup>95</sup>

However, the racialization of Muslims as terrorists did not arise after the 9/11 terror attacks. Rather, the demonization of Islam as a rival civilization or race is meticulously critiqued in Edward Said’s magnum opus *Orientalism*,<sup>96</sup> and evident during the earliest stages of American political

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<sup>89</sup> SAMUEL P. HUNTINGTON, *THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER* 4 (1998) (Huntington’s theory, dubbed the “clash of civilizations,” did not narrowly pit the U.S. against “Islamic fundamentalism,” but the entire whole of Islam.)

<sup>90</sup> See Khaled A. Beydoun, “*Muslims Bans*” and the (Re)Making of Political Islamophobia, 2017 U. ILL. L. REV. 1733, 1737 (2017) (“Extending the Orientalism framework, Islamophobia is based upon the beliefs that Islam is a hostile faith, and that Muslims—even while citizens—are a foreign, violent, and unassimilable people.”).

<sup>91</sup> See *Text of George’s Bush Speech*, GUARDIAN (Sep. 21, 2001, 11:31 AM), <https://www.theguardian.com/world/2001/sep/21/september11.usa13> [<https://perma.cc/Y7DP-WJPT>] (quoting President Bush’s declaration that “[o]ur war on terror begins with al Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated.”).

<sup>92</sup> Saito, *supra* note 17, at 12.

<sup>93</sup> Volpp, *supra* note 16, at 1586.

<sup>94</sup> Immigration law scholar Linda Bosniak writes that Muslim Americans “may now enjoy nominal citizenship status, but their members are, in fact, afforded less in the way of substantive citizenship than others in society.” LINDA BOSNIAK, *THE CITIZEN AND THE ALIEN: DILEMMAS OF CONTEMPORARY MEMBERSHIP* 30–31 (2008).

<sup>95</sup> Khaled A. Beydoun, *Islamophobia: Toward a Legal Definition and Framework*, 116 COLUM. L. REV. ONLINE 108, 111 (2016).

<sup>96</sup> See generally EDWARD SAID, *ORIENTALISM* (1979) (examining how the work of Western scholars, artists, and politicians spawned a master discourse whereby the “Occident” (or the West) was defined in

and legal history. In fact, from 1790 until 1944, civil courts viewed Islam as irreconcilable with American identity, and Muslims were prohibited from becoming naturalized citizens.<sup>97</sup> This prohibition was rooted in Orientalist baselines that cast Muslims as backwards, subversive, violent, and threatening to American values and life,<sup>98</sup> tropes that form the foundation of the modern terrorist stereotype and what Saito and Volpp call the racialization of Muslim as terrorists following 9/11.

The formative racialization of Islam and Muslims, propelled by Orientalism, drives the modern racing of Muslims as terrorists during the War on Terror. This racialization forms the crux of Islamophobia by tethering expressions of Muslim identity to terrorism—initially in the form of a foreign, organized threat, and increasingly in the mold of the “radicalized” homegrown lone wolf. Therefore, if Muslim identity is correlative with a propensity for terrorism, radicalization theory echoes the idea that the inchoate process leading up to terrorism can be tied to specific expressions of Muslim identity—namely, “radical” or “suspicious expressions” that suggest that the radicalization process is imminent or already underway.

## 2. *Of Sheep, Lone Wolves, and Good/Bad Muslims*

The modern War on Terror is built upon pitting Muslims against one another, as sheep whose religion has been “hijacked” by the wolves that carry forward terrorism.<sup>99</sup> This binary spawns rivalries among Muslims, as evident in CVE policing, and ties specific expressions of religion or political speech as “radical” or “moderate.”

Counter-radicalization and the broader War on Terror create a system whereby Muslims that perform behavior palatable to the state are tabbed unsuspecting, while those that freely exercise their faith and unabashedly

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mirror opposite of the “Orient” (or the Muslim World), which was cast in disparaging terms in relation to the glowing terms applied to Europe, and subsequently, the U.S.).

<sup>97</sup> Khaled A. Beydoun, *Between Muslim and White: The Legal Construction of Arab American Identity*, 69 N.Y.U. ANN. SURV. AM. L. 29, 31–35 (2013).

<sup>98</sup> See Nagwa Ibrahim, *The Origins of Muslim Racialization in U.S. Law*, 7 UCLA J. ISLAMIC & NEAR E. L., 121, 131 (2009) (There “is [a] fictitious, crude narrative produced by the West projecting itself as civilized, democratic, modern, rational, and all that is good, while the East is projected as uncivilized, barbaric, violent, undemocratic, and in need of being saved and transformed by the West through conquest.”). For a thorough history of the political vilification of Islam during the embryonic stages of American nationhood, see ROBERT J. ALLISON, *THE CRESCENT OBSCURED: THE UNITED STATES AND THE MUSLIM WORLD, 1776–1815* (1995).

<sup>99</sup> This rhetoric is not unique to politicians and law enforcement agents. It is also used by Muslims that subscribe to the good versus bad Muslim binary, including the prominent religious leader Hamza Yusuf, who said a month after 9/11, “Islam has been hijacked by a discourse of anger and a rhetoric of rage.” Kate Goldberg, *Islam ‘Hijacked’ by Terror*, BBC NEWS (Oct. 11, 2001, 12:16 PM), <http://news.bbc.co.uk/2/hi/americas/1591024.stm> [<https://perma.cc/GNL2-7K2Q>].

express their devotion to Islam are vulnerable to surveillance and suspicion.<sup>100</sup> CVE capitalizes on a binary understanding of Muslims as “moderate” or “suspicious,” pitted against one another, to further its strategy. “Moderate Muslims” are willing to perform their religious identities in ways that align with positive counterterror stereotypes, either conforming or concealing Muslim identity traits and behavior in ways that mitigate suspicion and underscore patriotism.<sup>101</sup>

For instance, a Muslim American woman that dons an American flag as a headscarf<sup>f102</sup> transforms a symbol of perceived subversion or subordination into an article signifying allegiance or assimilation. Another example is a Muslim that “continually condemn[s] terrorism while avoiding discussion of United States foreign policy in the Middle East,”<sup>103</sup> simultaneously heeding calls from the state and mainstream media for more “Muslims to denounce terrorism”<sup>104</sup> and endorsing the War on Terror abroad and domestically.

On the other hand, “suspicious Muslims” are subjects that exercise their faith and express their Muslim identities in ways that raise the presumption of radicalization. They are the very subset of people feared to be lone wolves in the making. This suspicion of radicalization is often linked to constitutionally protected activity, most notably, free exercise of religion, free speech, or association rights protected by the First Amendment,<sup>105</sup> and linked to Muslim subjects that engage in “identity-affirming expression of Muslim identity that comports with a Muslim American actor’s religious convictions and sense of self.”<sup>106</sup>

Therefore, suspicious Muslims are not only those individuals with bona fide ties to terrorism, but, according to radicalization theory and counter-radicalization policing, any Muslim that engages in religious or political expression that raises the FBI’s interest. Political expressions, and

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<sup>100</sup> See generally Khaled A. Beydoun, *Acting Muslim*, 53 HARV. C.R.-C.L. L. REV. (forthcoming 2018) (theorizing about the myriad ways Muslim Americans exercise their faith and perform their religious identities in the face of prevailing counterterror stereotypes and presumptions).

<sup>101</sup> *Id.*

<sup>102</sup> Consider the case of Saba Ahmed, head of the Muslim Republican Coalition, who famously wore an American flag headscarf, or hijab, on Fox News during the 2016 presidential campaign season, stating, “I just wanted to show that Muslim Americans celebrate our patriotism, too.” Alexander Klausner, *Republican Defends Her Decision to Wear an American Flag Hijab and Says, ‘I Just Wanted to Show that Muslim Americans Celebrate Our Patriotism, Too,’* DAILY MAIL (Nov. 18, 2015, 6:32 PM), <http://www.dailymail.co.uk/news/article-3324466/Republican-defends-decision-wear-American-flag-hijab-says-just-wanted-Muslim-Americans-celebrate-patriotism-too.html> [<https://perma.cc/86PZ-32GC>].

<sup>103</sup> Karen Engle, *Constructing Good Aliens and Good Citizens: Legitimizing the War on Terror(ism)*, 75 U. COLO. L. REV. 59, 63 (2004).

<sup>104</sup> Colby Itkowitz, *With Prejudice Spreading, Muslims Find Heartening Ways to Show Solidarity with Paris*, WASH. POST (Nov. 19, 2015), [https://www.washingtonpost.com/news/inspired-life/wp/2015/11/19/after-paris-muslims-around-the-world-forced-to-deny-theyre-terrorists/?utm\\_term=.3baee3d0eb09](https://www.washingtonpost.com/news/inspired-life/wp/2015/11/19/after-paris-muslims-around-the-world-forced-to-deny-theyre-terrorists/?utm_term=.3baee3d0eb09) [<https://perma.cc/UL52-W636>].

<sup>105</sup> U.S. CONST. amend. I.

<sup>106</sup> Beydoun, *supra* note 100.

particularly religiosity, have become a “proxy for terrorism.”<sup>107</sup> In turn, there now exists a landscape, particularly within concentrated Muslim American communities, where large swaths of Muslims could be, and have been, investigated as homegrown, lone wolf radicals.<sup>108</sup>

### 3. Counterterror Neglect of White Radicals

Whereby whiteness generally insulates white culprits of violence, like Paddock, from the presumption of terror conspiracy and the reciprocal burden of collective guilt, Muslim culprits of violence—and those who have not engaged in any affirmative act at all—are bound to this presumption and burden, even when the evidence is nonexistent or tenuous. This law enforcement presumption that casts white lone wolves as being untied to a terror network, or not motivated by a terror ideology, is rooted in the very construction of whiteness itself.

Even before the independence of the U.S. as a sovereign nation, statesmen began to craft and construct whiteness as the gateway toward not only citizenship and the rights and privileges attached to it, but also the highest status in society (de jure historically, and today, de facto) “racial hierarchy.”<sup>109</sup> In the seminal article *Whiteness as Property*, law scholar Cheryl Harris writes:

Whiteness defined the legal status of a person as slave or free. White identity conferred tangible and economically valuable benefits and was jealously guarded as a valued possession, allowed only to those who met a strict standard of proof. Whiteness—the right to white identity as embraced by the law—is property if by property one means all of a person’s legal rights.<sup>110</sup>

As the racial pinnacle, whiteness extended the full range of rights—and the positive presumptions and privileges that emanate from these rights—to those who were deemed to be included within it.

Non-white groups, Black, Native, Asian, and Muslim (as a racialized group),<sup>111</sup> were not only denied those rights and what came with them, but for much of American history, were enslaved, displaced, decimated, and denied entry into the country or its citizenry. As observed by author and activist Bryan Stevenson, in addition to the pages of history and the letter of the law, “[t]he demographic geography of this nation was shaped by racial

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<sup>107</sup> Aziz, *supra* note 63, at 434.

<sup>108</sup> See generally Beydoun, *supra* note 86 (examining how CVE is disparately enforced in indigent, working class and immigrant-heavy Muslim communities, and consequently, disproportionately threatens the civil liberties of these segments of the Muslim American population).

<sup>109</sup> See Khaled A. Beydoun & Erika Wilson, REVERSE PASSING, 64 UCLA L. REV. 282, 288 (2017).

<sup>110</sup> Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1776 (1993).

<sup>111</sup> Beydoun, *supra* note 97, at 31–35.

terrorism,<sup>112</sup> and enabled by the enshrinement of white supremacy, its modern residual effects, and its practical incidents. Law scholar Ian Haney Lopez states, “Whatever the language used, it is clear that White identity is tied inextricably to non-White identity as its positive mirror, its superior opposite,<sup>113</sup> a binary that persists today.

The supreme status and complete corpus of rights extended to whites also extended a range of positive tropes and presumptions. In popular culture, most notably cinema, “whiteness is often associated with innocence and goodness,<sup>114</sup> and these tropes trickle down into the law and its enforcement. Furthermore, if the law has long cast whiteness and classed whites as the very embodiment of good citizens and archetypal Americans, then the presumptions attached to the foundational caricatures will likewise be positive—in the popular imagination, and indeed, through law enforcement.

Whiteness extends the presumption of innocence to the entire collective, but also the individual—even after he or she has committed a criminal or violent act. Meanwhile, Blackness infers the presumption of criminal deviance onto an individual because of the negative trope applied to the entire group, and Muslim identity creates the presumption of terrorism onto an individual because of the stereotype assigned to the entire group.

The distinct racialization of whites and non-whites, and how it informs the modern framing of terrorism, is vividly illustrated by the underpolicing of white hate and terrorist groups. In a 2015 study, titled *Terror From the Right*, the Southern Poverty Law Center (SPLC) detailed the list of mass shootings, violent acts, and terrorism by white non-Muslim culprits since Timothy McVeigh and Terry Nichols, two white men, conspired to bomb the Alfred Murrah Federal Building in Oklahoma City, and killed 168 people.<sup>115</sup> With one hundred plots outlined in the study, the SPLC highlights that the vast majority of foiled and completed violent attacks in the U.S. in the two decades after the Oklahoma City bombing were committed by some strand of white male terrorism.<sup>116</sup>

Despite murders driven by neo-Nazi National Alliance members,<sup>117</sup> a foiled Ku Klux Klan “plot to blow up a natural gas refinery . . . [where authorities claimed] as many a 30,000 might have died,”<sup>118</sup> and the arrest of two white supremacists for “plotting to assassinate Barack Obama and

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<sup>112</sup> Kai Wright, *On White Identity Politics and American Terrorism*, NATION (Sept. 12, 2017), <https://www.thenation.com/article/on-white-identity-politics-and-american-terrorism/> [https://perma.cc/B5HN-W48K].

<sup>113</sup> IAN HANEY LOPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* 29 (2006).

<sup>114</sup> RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL RACE THEORY: AN INTRODUCTION* 85 (2017).

<sup>115</sup> *Terror From the Right: Plots, Conspiracies and Racist Rampages Since Oklahoma City*, S. POVERTY LAW CTR. 2 (Nov. 1, 2015).

<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 5.

<sup>118</sup> *Id.* at 9.

murder more than 100 black people” in 2008,<sup>119</sup> no CVE programs have been piloted or implemented in neo-Nazi, KKK, or white supremacist strongholds despite their heavy presence across the country.<sup>120</sup> Further, there has been little manpower and attention marshaled to fighting this brand of terrorism, as the groups are oftentimes not even viewed by law enforcement as bona fide terrorist organizations, but hate groups.

Despite the documented uptick in white male terrorism, the counterterror apparatuses of the state have instead marshaled the vast bulk of their energy and resources to deter and defeat Islamic terrorism. Moreover, the War on Terror has shifted its focus to combating homegrown radicalization solely of the Muslim variety, not the types of organizational and lone wolf incidents unleashed by white culprits.

### III. POLICING LONE WOLF TERRORISM

Although lone wolf terrorism is fueled by a range of ideologies and carried out in a myriad of ways, investigation and prosecution of it by law enforcement generally fixates on (nominal or bona fide) Muslim actors. This is, in large part, driven by embedded and institutionalized stereotypes that tie Muslim identity to terrorism, and, most potently, the prevailing counterterror priorities of the War on Terror.<sup>121</sup>

Race and religion, as illustrated in Section II.B, become the principal loci whereby the lone wolf designation is extended as a presumptive exemption from terrorism when the culprit is white, and a presumptive connection to terrorism when the culprit is Muslim. This is most evident in the immediate aftermath of mass killings, including the Las Vegas and Orlando shootings, whereby Paddock was swiftly presumed to be a *lone wolf killer*, while Mateen was immediately suspected of being a *lone wolf terrorist*. For Paddock, the lone wolf designation was applied as a presumptive exemption from terrorism, while it was assigned as a presumptive connection to terrorism in the case of Mateen. Section A examines the former, while Section B investigates the latter.

#### A. *Lone Wolf as a Terrorism Exemption*

Within the popular discourse, the lone wolf tag is generally understood as an exception assigned to white culprits of violence to disconnect them

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<sup>119</sup> *Id.* at 32.

<sup>120</sup> *Id.* at 45 (providing a map and distribution of where the KKK, neo-Nazi, white nationalist, racist skinhead, Christian Identity, and neo-Confederate groups are located).

<sup>121</sup> See Beydoun, *supra* note 95, at 111 (defining Islamophobia as “the presumption that Islam is inherently violent, alien, and inassimilable . . . [which drives] the belief that expressions of Muslim identity are correlative with a propensity for terrorism”).

from culpability of terrorism.<sup>122</sup> In this vein, the “lone wolf” designation is regarded as one of many “excuses” afforded to white culprits to sustain their individuality, and it propagates the narrative that terrorism is largely a Muslim phenomenon. Although in line with the lone wolf typology outlined in Section II.B, this is technically not true; the framing of radicalization as a Muslim phenomenon has aligned the discursive understanding of lone wolf to be virtually congruent with terror investigation and prosecution realities. Because Muslim identity *alone* raises the presumption of radicalization, the racial identity of a white (non-Muslim) culprit tends to diminish the possibility, and, in turn, the investigation, into terrorism.

This is most manifest in cases where evidence of a terrorist connection is absent or tenuous, such as those of Paddock and Mateen. However, while the FBI carried forward an extensive investigation into Mateen’s case, the formal inquiry into Paddock’s possible organizational or ideological ties with terrorism were stunted hours after his dead body was found on the thirty-second floor of the Mandalay Bay Hotel on October 1, 2017.

Several hours after the incident, Clark County Sherriff Joseph Lombardo identified Paddock as a “lone wolf.”<sup>123</sup> Here, Lombardo’s classification of Paddock aligned with the popular definition of “lone wolf”,<sup>124</sup> exempting Paddock from connections to any terror organization or ideology.<sup>125</sup> A day after the incident, Aaron Rouse, FBI Las Vegas Special Agent in Charge, echoed Lombardo, stating that Paddock, “to this point, [had] no connection with an international terrorist group.”<sup>126</sup>

It is likely that Paddock’s motive was not tied to a specific terrorist ideology or inspired by a hate or terror group. But, the statements made by Lombardo and Rouse in the immediate aftermath of the attack illustrated the force of the presumptive exemption from terrorism applied to white culprits. To investigate this presumption more closely, Lombardo’s use of “local” was used to negate the possibility of terror involvement.<sup>127</sup> Although Muslims suspected of radicalization are dubbed “homegrown,” a synonymous term, the designation of “local” is not extended to Muslim suspects or culprits of violence.<sup>128</sup>

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<sup>122</sup> Laila Lalami, *The Color of Terrorism and the Whiteness of the Lone Wolf*, NATION (Oct. 11, 2017), <https://www.thenation.com/article/the-color-of-terrorism-and-the-whiteness-of-the-lone-wolf/> [https://perma.cc/ZJQ3-UZLE].

<sup>123</sup> See Moustafa Bayoumi, *What’s a ‘Lone Wolf’? It’s the Special Name We Give White Terrorists*, GUARDIAN (Oct. 4, 2017, 7:19 PM), <https://www.theguardian.com/commentisfree/2017/oct/04/lone-wolf-white-terrorist-las-vegas> [https://perma.cc/SCU2-Q79E].

<sup>124</sup> *Id.*

<sup>125</sup> Las Vegas Metropolitan Police Department Undersheriff Kevin McMahill, according to NPR’s Leila Fadel, “described the shooting as an act of ‘domestic terrorism.’” Chappell & McCallister, *supra* note 8.

<sup>126</sup> *Id.*

<sup>127</sup> Batchelor, *supra* note †.

<sup>128</sup> Khaled A. Beydoun, *‘Lone Wolf’: Our Stunning Double Standard When It Comes to Race and Religion*, WASH. POST (Oct. 2, 2017), <https://www.washingtonpost.com/news/acts-of-faith/wp/2017/>



A day following the Las Vegas shooting, I made that very observation in the *Washington Post*:

But why is one person “homegrown” while someone else [Paddock] is a “lone” or “local wolf”? An extensive list of exemptions has become available to white culprits of mass violence, most notably “lone wolf” or “insane,” and the Las Vegas shooting adds the status of being a “local individual” to the roster. Certainly, many of the Muslim Americans pursued as prospective radicals in Minneapolis, Boston, Los Angeles or Washington, D.C.—cities where counter-radicalization programs are robustly enforced—are tied to specific communities. They, too, are local.<sup>129</sup>

However, the practical effect of being a “local” person invites suspicion and possible surveillance for Muslim actors. If Paddock were Muslim, his status as a local would be emblematic of imminent threat, and “the motive of ‘Islamic terrorism’ or ‘jihad’ would likely be immediately assumed, even without any evidence.”<sup>130</sup>

As counter-radicalization theory outlines, and CVE policing enforces, all Muslim radicals are homegrown, and, hence, local. For Muslims, however, being a *local* is not an exemption, but rather a connector, to homegrown radicalization and terrorism.

## *B. Lone Wolf as a Terrorism Connection*

### *1. Lone Wolf Terrorists*

Muslim culprits of violence are routinely presumed to be, and subsequently investigated as, lone wolf terrorists. Again, a lone wolf terrorist is a culprit carrying out an ideologically-motivated attack in an individual capacity, and second, falls within one of the four types outlined in Section I.B: (1) lone soldiers, (2) lone vanguards, (3) loners, or (4) lone followers.

Hours after Mateen killed forty-nine people inside Pulse Nightclub, the FBI and President Obama pegged his actions as “homegrown extremism,”<sup>131</sup> effectively concluding that he was a lone wolf terrorist before conducting an official investigation.<sup>132</sup> FBI officials, who were the first people to call the massacre an “act of terror,” did not issue particulars about Mateen’s motive.<sup>133</sup> However, his intentions were seemingly apparent on account of

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10/02/lone-wolf-our-stunning-double-standard-when-it-comes-to-race-and-religion/  
[<https://perma.cc/4PY2-9C5S>].

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> Hirschfeld Davis, *supra* note ‡.

<sup>132</sup> Ackerman, *supra* note 20.

<sup>133</sup> *Id.*

Mateen’s ethnic heritage, and, most potently, his religious identity as a Muslim.

In fact, the immediate conclusion that Mateen was a lone wolf terrorist conflicted with three FBI interviews that cleared Mateen of any involvement or affiliation with terror groups. These interviews were all held in 2014 and 2013—one and two years, respectively, before the Orlando shooting—and were closed when FBI agents were “unable to verify any suspicious ties.”<sup>134</sup> Although Mateen exhibited symptoms of volatility and reports alleged that he may have been a “closet homosexual,”<sup>135</sup> which his ex-wife confirmed,<sup>136</sup> numerous FBI interviews and investigations cleared him of any connections to terrorism.

Yet, despite being cleared of terrorism on two separate occasions, FBI brass and President Obama *still* characterized Mateen’s violent shooting as a terror attack, and labeled his actions as homegrown extremism the day after.<sup>137</sup> This illustrates the force of the presumptive connection to terrorism when the actor is Muslim, particularly when the evidence establishing a motive—in the form of being inspired by a specific ideology or a nexus to a terror group—is meager.

The FBI investigated Mateen in the way they routinely investigate Muslim culprits: in reverse. They designated him a lone wolf terrorist with alleged ties to ISIS based on Internet activity<sup>138</sup> and a pledge he made for the first time by phone before taking his life.<sup>139</sup> But the facts around this connection were vague, and, moreover, it was isolated from any contextual or corroborating evidence that established, or even implicated, a material connection to the terror network. In fact, “ISIS also made it clear that the shooting had not been commissioned by senior commanders in the Middle East, as was the case in with the Paris attacks in November.”<sup>140</sup> However, the

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<sup>134</sup> *Id.*

<sup>135</sup> Harriet Alexander et al., *Orlando Shooting: Gunman Omar Mateen Was a Closet Homosexual, Say Friends—As Wife Faces Charges After “Helping Him Scope Out Attack,”* TELEGRAPH (June 15, 2016), <http://www.telegraph.co.uk/news/2016/06/14/orlando-gunman-was-a-regular-at-lgbt-nightclub-pulse-before-atta/> [<https://perma.cc/FFH8-E6WD>].

<sup>136</sup> “She [Sitora Yusifiy] said that Mr. Mateen might have been gay but chose to hide his true identity out of anger and shame.” Mazzetti et al., *supra* note 14.

<sup>137</sup> Hirschfeld Davis, *supra* note †.

<sup>138</sup> Del Quentin Wilber, *The FBI Investigated the Orlando Mass Shooter for 10 Months—and Found Nothing. Here’s Why*, L.A. TIMES (July 14, 2016, 3:00 AM), <http://www.latimes.com/nation/la-na-fbi-investigation-mateen-20160712-snap-story.html> [<http://perma.cc/8M24-QZRS>] (“After the shooting, the FBI determined that Mateen’s laptop computer had been used in recent years to view extremist videos online, including grisly beheadings.”).

<sup>139</sup> Jason Burke, *Was Pulse Nightclub Shooter Omar Mateen Directed by ISIS?*, GUARDIAN (June 13, 2016), <https://www.theguardian.com/us-news/2016/jun/12/orlando-nightclub-shooter-omar-mateen-isis-affiliation> [<http://perma.cc/KC8J-NUJJ>].

<sup>140</sup> *Id.*; see also Khaled A. Beydoun *Beyond the Paris Attacks: Unveiling the War Within French Counterterror Policy*, 65 AM. U. L. REV. 1273–76 (2016) (describing the Paris attacks of November 13, 2015, and the counterterror response of the French government).

FBI persisted, seeking to draw a connection with ISIS that established the theory that he was in fact an “Islamic State fighter.”<sup>141</sup>

Again, three FBI interviews before Mateen fired shots in Pulse Nightclub found otherwise.<sup>142</sup> Nothing in the years between those interviews and the shooting suggested that Mateen enlisted in ISIS or informally developed relationships with ISIS leadership or rank-and-file members. In fact, evidence before and after the attack demonstrated otherwise. However, the FBI continued a thorough and prolonged investigation seeking to deliver on the hasty conclusion they rendered on the morning after the Orlando shooting, reaching far for any piece of evidence that could justify a theory that Mateen was a loner<sup>143</sup> or lone follower<sup>144</sup> lone wolf.

However, as the investigation dragged on and failed to unearth evidence that Mateen was a loner or follower tied to ISIS, it became patently clear that the conclusion made by the FBI and President Obama was driven, almost entirely, by the racial and religious identity of Mateen. His identity as Afghan and Muslim stood as the only evidence of terrorism, which, in turn, revealed the force of the presumptive connection to (lone wolf) terrorism assigned to Muslim culprits during the War on Terror. Further highlighting the dubiousness of his terror ties, the FBI indicated that “[w]hen Mateen said he was a member of Hezbollah, a Shiite group, and had family ties to Al Qaeda, a Sunni group, it was clear he didn’t know or care they were bitter [sectarian] rivals.”<sup>145</sup>

The force of the immediate presumption of terrorism tied to Muslim lone wolves is vividly evident in Mateen’s case. Despite the scant evidence, law enforcement still persisted in its attempts to uncover terror ties that investigation after investigation failed to reveal. “If terrorism is defined as ideological violence . . . should an attacker who has merely ranted about religion, politics or race be considered a terrorist?”<sup>146</sup> wrote Scott Shane of the *New York Times*, arguing that the threshold for an ideological motive is far higher than a scattered set of statements that may be elevated and embellished to deliver the conclusion rendered well before an investigation commenced, as in the case of a Muslim lone wolf like Mateen.

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<sup>141</sup> Burke, *supra* note 139.

<sup>142</sup> See Ackerman, *supra* note 20.

<sup>143</sup> Connor & Flynn, *supra* note 23, at 31.

<sup>144</sup> *Id.*

<sup>145</sup> Wilber, *supra* note 138.

<sup>146</sup> Scott Shane, *Homegrown Extremists Tied to Deadlier Toll Than Jihadists in U.S. Since 9/11*, N.Y. TIMES (June 24, 2015), <https://www.nytimes.com/2015/06/25/us/tally-of-attacks-in-us-challenges-perceptions-of-top-terror-threat.html> [<https://perma.cc/EQ65-UFAK>].

## 2. *Lone Wolf Radicals*

Muslims that commit no crime, let alone an act of violence, are routinely presumed to be lone wolf radicals. Lone wolf radicals have not committed an act of violence and oftentimes have not exhibited a material threat of violence, and thus are not yet terrorists, but are believed to “hold extremist or radicalized views” that foreshadow terrorism.<sup>147</sup>

Thus, as outlined in Section II.A, radicalization theory drives the double standards associated with lone wolf terrorism in an additional, more damaging, regard. By holding specific expressions of Muslim identity as predictive of radicalization, Muslim subjects are presumptively guilty based on their mere free exercise of religion and other core First Amendment rights, even when no criminal or violent acts have been undertaken by the subject.<sup>148</sup>

In short, the possibility of (terror) guilt looms with Muslims just because they are Muslim, juxtaposed with the reality that white, non-Muslim culprits of violence—like Paddock—are seldom guilty of terrorism even after they commit an act of violence. This absurd state of affairs indicates that the predictive logic of counter-radicalization is, in essence, a new brand of religious and racial profiling which, like its predecessors, taps whiteness as the ultimate exemption from terror suspicion, and holds Muslim identity as the very essence, and evidence, of terror suspicion.

## CONCLUSION

The tales of Paddock and Mateen, lone wolves that unleashed two of the greatest mass killings in modern American history, are more similar than distinct. The force of the facts reveals that both men were troubled and volatile; one loved country music while the other “loved Afghan music.”<sup>149</sup> Ultimately, both possessed characters riddled with contradiction, driven to commit violence of a horrific scale.

Depending on the denotation used, both very well could be branded terrorists, or otherwise. Yet, their racial and religious identities—Paddock a white male, and Mateen an Afghan Muslim—relegate the importance of the definition of terrorism in favor of law enforcement’s fixation on racial and religious identity, which is evidently in the driver’s seat when the lone wolf designation is assigned as a presumptive exemption or connection to terrorism.

The lone wolf terrorism double standards this Essay highlights not only impact individual actors, but also have a spillover effect for Muslim Americans that exposes them to private backlash and state surveillance.

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<sup>147</sup> Connor & Flynn, *supra* note 23, at 9.

<sup>148</sup> See Akbar, *supra* note 69, at 868–81. As a result, “[Muslims] cannot [be] guarantee[d] confidential space in their mosques or cannot be sure who is an informant, and Muslim student groups have banned political discussions from their campus offices. Muslims feel the stigma in their bodies, and in their ability to move and speak in the world.” *Id.* at 870.

<sup>149</sup> Mazzetti et al., *supra* note 14.

Essentially, “[t]he burden of collateral and collective guilt has become a central component of the modern Muslim American experience,”<sup>150</sup> while the broader white population is never tied to the misdeeds and violence of culprits like Paddock, Roof, Kaczynsky, and the extensive yet neglected string of lone wolf culprits.

This collateral and collective guilt is vividly highlighted during the War on Terror and most strikingly after a terror attack. “Days after the terrorist attack by Syed Farook and Tashfeen Malik in San Bernardino, California, for example, Donald Trump, then still a presidential candidate, called for ‘a complete and total shutdown of Muslims entering the United States.’”<sup>151</sup> Since proposing the “Muslim Ban” on the campaign trail, President Trump has passed three renditions of the travel ban, most recently an order calling for “enhanced vetting” on September 24, 2017.<sup>152</sup>

Yet, the institutional response to assign collective guilt to all Muslim Americans precedes Trump and supersedes political lines. President Barack Obama visited a Baltimore mosque on February 3, 2016—his first visit to a U.S. mosque since becoming President in 2008—to ratchet up support for CVE policing.<sup>153</sup> Therefore, the racial and religious conflation of terrorism with Muslim identity that enables the immediate presumption that any and every Muslim lone wolf is a terrorist does not only affect the individual culprit, but stigmatizes Muslim Americans as an entire class and opens the floodgates for private backlash and enhanced state surveillance.

Muslim lone wolves, from the vantage point of the state, rise from a flock of rabid and radical wolves, while others, like Stephen Paddock, act entirely alone and apart from the flock they resemble.

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<sup>150</sup> Beydoun, *supra* note 128.

<sup>151</sup> Lalami, *supra* note 122.

<sup>152</sup> *Trump Signs New Travel Ban with Enhanced Vetting*, CBS NEWS (Sept. 24, 2017, 7:40 PM), <https://www.cbsnews.com/news/donald-trump-new-travel-ban-enhanced-vetting/> [http://perma.cc/7PW8-WC78].

<sup>153</sup> See Khaled A. Beydoun, *Un-Mosquing Obama’s First U.S. Mosque Visit*, AL JAZEERA ENGLISH (Feb. 4, 2016), <http://www.aljazeera.com/indepth/opinion/2016/02/mosquing-obama-mosque-visit-160204094052554.html> [https://perma.cc/WSQ6-FEM9].