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CVE and Constitutionality in the Twin Cities: How Countering Violent Extremism Threatens the Equal Protection Rights of American Muslims in Minneapolis-St. Paul

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CVE and Constitutionality in the Twin Cities: How Countering Violent Extremism Threatens the Equal Protection Rights of American Muslims in Minneapolis-St. Paul

Abstract

In 2011, President Barack Obama announced a national strategy for countering violent extremism (CVE) to attempt to prevent the “radicalization” of potential violent extremists. The Obama Administration intended the strategy to employ a community-based approach, bringing together the government, law enforcement, and local communities for CVE efforts. Despite claiming to target extremism in all forms, government-funded CVE programs in the United States have almost exclusively focused on Islamic extremism. One pilot program focused on the Twin Cities in Minnesota—Minneapolis and St. Paul—home to the largest Somali community in the United States, most of whom are Muslim. The Trump Administration has rebranded and refunded the programs, exacerbating ongoing racial discrimination, surveillance, and police brutality in the Twin Cities. Despite their continued use, CVE programs draw criticism for being ineffective and even counterproductive to preventing extremist violence and for driving increased marginalization of American Muslims.

This Comment argues that, as implemented, government-funded CVE programs in the Twin Cities violate American Muslims’ Equal Protection rights under the Fifth and Fourteenth Amendments. Specifically, CVE programs impermissibly target Somalis on the basis of national origin and religion, and many of these programs are not sufficiently narrowly tailored to pass constitutional muster. To effectively and constitutionally prevent violent extremism, the U.S. government must allow communities to meaningfully identify and address their own needs and potential vulnerabilities, without being subjected to heightened surveillance and marginalization.

CVE AND CONSTITUTIONALITY IN THE TWIN CITIES: HOW COUNTERING VIOLENT EXTREMISM THREATENS THE EQUAL PROTECTION RIGHTS OF AMERICAN MUSLIMS IN MINNEAPOLIS-ST. PAUL

SARAH CHANEY REICHENBACH*

In 2011, President Barack Obama announced a national strategy for countering violent extremism (CVE) to attempt to prevent the “radicalization” of potential violent extremists. The Obama Administration intended the strategy to employ a community-based approach, bringing together the government, law enforcement, and local communities for CVE efforts. Despite claiming to target extremism in all forms, government-funded CVE programs in the United States have almost exclusively focused on Islamic extremism. One pilot program focused on the Twin Cities in Minnesota—Minneapolis and St. Paul—home to the largest Somali community in the United States, most of whom are Muslim. The Trump Administration has rebranded and refunded the programs, exacerbating ongoing racial discrimination, surveillance, and police brutality in the Twin Cities. Despite their continued use, CVE programs draw criticism for being ineffective and even counterproductive to preventing extremist violence and for driving increased marginalization of American Muslims.

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This Comment argues that, as implemented, government-funded CVE programs in the Twin Cities violate American Muslims' Equal Protection rights under the Fifth and Fourteenth Amendments. Specifically, CVE programs impermissibly target Somalis on the basis of national origin and religion, and many of these programs are not sufficiently narrowly tailored to pass constitutional muster. To effectively and constitutionally prevent violent extremism, the U.S. government must allow communities to meaningfully identify and address their own needs and potential vulnerabilities, without being subjected to heightened surveillance and marginalization.

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INTRODUCTION

“History teaches that grave threats to liberty often come in times of urgency, when constitutional rights seem too extravagant to endure . . . [W]hen we allow fundamental freedoms to be sacrificed in the name of real or perceived exigency, we invariably come to regret it.”

—Justice Thurgood Marshall¹

Over the course of the nearly two decades since the terrorist attacks of September 11, 2001, the U.S. government has taken measures abroad to attempt to prevent future attacks and quash extremist movements overseas that might threaten U.S. national security. The government has also turned its eye inward, looking to prevent similar threats that could be present within U.S. borders. In the years following the declaration of the “War on Terror,”² the government sought to understand

1. *Skinner v. Ry. Labor Execs.’ Ass’n*, 489 U.S. 602, 635 (1989) (Marshall, J., dissenting).

2. President George W. Bush first used the term “war on terror” in an address to Congress on September 20, 2001. *See* Address Before a Joint Session of the Congress

what motivated a person to become a terrorist and how that person could be identified.³

In 2011, this effort manifested as countering violent extremism (CVE),⁴ a strategy referring to actions that seek to prevent and counter the recruitment and radicalization of potential violent extremists.⁵ CVE initiatives were designed to be the “soft” approach complementing “hard” counterterrorism activities, such as “anti-terrorism surveillance, prosecution, and convictions.”⁶ CVE policing strategies and tactics focus on preventing the “root causes” of radicalization of potential extremists and providing “off-ramps” for individuals in the process of becoming radicalized.⁷ The Obama Administration stated that CVE programs would employ a “community-based approach,” and bring together government, law enforcement, and local communities to prevent violent extremism and radicalization.⁸ The White House’s plan envisioned the involvement of federal law enforcement and national security agencies, including the Federal Bureau of Investigation (FBI), National

of the United States Response to the Terrorist Attacks on September 11, PUB. PAPERS 1140, 1142–43 (Sept. 20, 2001) (“Our 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.”).

3. See, e.g., *infra* note 42 and accompanying text.

4. The Trump Administration has transitioned away from the Obama-era term CVE to “terrorism prevention.” See BRIAN A. JACKSON ET AL., PRACTICAL TERRORISM PREVENTION: APPENDIXES 5 (2019), https://www.rand.org/content/dam/rand/pubs/research_reports/RR2600/RR2647/RAND_RR2647z1.appendixes.pdf [<https://perma.cc/HD4C-3FAM>]. This Comment uses the term “CVE” because the majority of the programs it examines have their roots in the original CVE framework.

5. See EXEC. OFFICE OF THE PRESIDENT, STRATEGIC IMPLEMENTATION PLAN FOR EMPOWERING LOCAL PARTNERS TO PREVENT VIOLENT EXTREMISM IN THE UNITED STATES 1–2 (2016), https://www.dhs.gov/sites/default/files/publications/2016_strategic_implementation_plan_empowering_local_partners_prev.pdf [<https://perma.cc/N5QX-WZP4>] [hereinafter 2016 STRATEGIC IMPLEMENTATION PLAN] (describing violent extremism as a “persistent and dangerous problem in the United States [for which] single instances can have far-reaching consequences”).

6. Sahar F. Aziz, *Losing the “War of Ideas:” A Critique of Countering Violent Extremism Programs*, 52 TEX. INT’L L.J. 255, 258 (2017).

7. George Selim, *Approaches for Countering Violent Extremism at Home and Abroad*, 668 ANNALS AM. ACAD. POL. & SOC. SCI. 94, 95 (2016).

8. WHITE HOUSE, EMPOWERING LOCAL PARTNERS TO PREVENT VIOLENT EXTREMISM IN THE UNITED STATES 3 (2011), https://www.dhs.gov/sites/default/files/publications/empowering_local_partners.pdf [<https://perma.cc/Y5F6-9XQX>] [hereinafter EMPOWERING LOCAL PARTNERS].

Counterterrorism Center (NCTC), Department of Justice (DOJ), and Department of Homeland Security (DHS).⁹

While the initial strategy for CVE claimed to target violent extremism in all forms, it quickly became clear that its main focus was Islamic extremism.¹⁰ This focus was magnified when federal government CVE initiatives spread to Minneapolis and St. Paul, Minnesota (referred to colloquially as “the Twin Cities”), home to the largest Somali community in the United States, most of whom are Muslim.¹¹ Beginning in 2007, a couple dozen Somalis left the Twin Cities to fight overseas with terrorist organizations.¹² The U.S. government stepped in with its CVE pilot program to build “resilience” to recruitment in the community through forging relationships with law enforcement and creating frameworks for “intervention[s]” for at-risk individuals.¹³ Led by the U.S. Attorney for the District of Minnesota, the program involves local law enforcement, the FBI, DHS, and local schools participating in various “community engagement” activities.¹⁴ The initiatives sought to monitor the Somali diaspora community residing in the Twin Cities, due to fears that the community may become radicalized.¹⁵ And while it initially seemed as though the programs would wind down under the Trump Administration,¹⁶ the Department of Homeland Security announced in 2020 that it would be implementing a strategy and administering a grant program similar to the CVE programs designed under the Obama administration.¹⁷

However, radicalization theory and CVE efforts are often criticized as being ineffective and even counterproductive to preventing extremist

9. WHITE HOUSE, STRATEGIC IMPLEMENTATION PLAN FOR EMPOWERING LOCAL PARTNERS TO PREVENT VIOLENT EXTREMISM IN THE UNITED STATES 3–4 (2011), <https://obamawhitehouse.archives.gov/sites/default/files/sip-final.pdf> [<https://perma.cc/YYS3-EV3N>] [hereinafter 2011 STRATEGIC IMPLEMENTATION PLAN].

10. See *infra* notes 31–32 and accompanying text.

11. See *infra* note 89 and accompanying text; see also STEFANIE CHAMBERS, SOMALIS IN THE TWIN CITIES AND COLUMBUS: IMMIGRANT INCORPORATION IN NEW DESTINATIONS 57, 81 (2017).

12. See *infra* notes 95–97 and accompanying text.

13. U.S. ATT’Y’S OFFICE IN THE DIST. OF MINN., BUILDING COMMUNITY RESILIENCE MINNEAPOLIS-ST. PAUL PILOT PROGRAM: A COMMUNITY-LED LOCAL FRAMEWORK 4–5 (2015) [hereinafter BUILDING COMMUNITY RESILIENCE].

14. See *infra* Section I.A.2.

15. See *infra* Section I.A.2.

16. See *infra* notes 74–75 and accompanying text.

17. See *infra* notes 74–85 and accompanying text.

violence,¹⁸ especially in a time when right-wing extremists, not Islamic extremists, perpetuate the vast majority of domestic terrorist attacks in the United States.¹⁹ Furthermore, the programs perpetuate and legitimize Islamophobia in the United States by designating American Muslims as a community that is inherently suspect and tied to criminality.²⁰

While the government might have had good intentions in creating CVE initiatives in the Twin Cities, this Comment argues that, as implemented, the programs violate American Muslims' Equal Protection rights under the Fifth and Fourteenth Amendments. Specifically, this Comment examines the ways that CVE programs impermissibly target Somalis on the basis of national origin and religion and demonstrates that many of these programs are not sufficiently narrowly tailored to be constitutional.

Part I details the creation of CVE programs across the United States and how different federal agencies have implemented the CVE framework. This Part explains how CVE functions in the Twin Cities and the programs' effects on Minnesotan Somalis. Further, this Part describes criticisms of CVE related to its efficacy and its harmful effects on American Muslims. Part I also describes the framework of Equal Protection jurisprudence and examines in particular how it applies to religious discrimination. Part II analyzes CVE programs in the Twin Cities under the Equal Protection framework laid out in Part I. This Part illustrates how the U.S. government impermissibly classifies Somalis in the Twin Cities on the basis of their national origin and religion. Finally, this Part concludes that CVE programs, as implemented, are not sufficiently narrowly tailored to achieve the government's interest in countering violent extremism.

The purpose of this Comment is not to criticize CVE or its proponents and implementers in their entirety. Rather, it seeks to call attention to the ways in which CVE programs, as currently implemented, are problematic. This Comment further aims to critique the programs from a lens of constitutionality, specifically under the Equal Protection Clause of the Fourteenth Amendment and its incorporation into the Fifth Amendment, with the goal of ensuring that the civil liberties and human dignity of American Muslims are guarded in the United States' pursuit of preventing extremist violence.

18. See *infra* notes 132, 135–45 and accompanying text.

19. See *infra* notes 146–51 and accompanying text.

20. See *infra* notes 152–76 and accompanying text.

I. BACKGROUND

Since their inception in 2011, CVE programs in the United States have posed a threat to the Equal Protection rights of American Muslims. Section A explains the creation of CVE programs in the United States, their spread to the Twin Cities, and critiques of the programs. Section B details the elements of an Equal Protection claim and explores the jurisprudence behind the framework's applicability to religious identities.

A. *Countering Violent Extremism*

The definition of CVE is incredibly broad.²¹ CVE refers to preventative actions taken to counter the recruitment, “radicalization,” and mobilization of potential violent extremists.²² Generally, CVE is presented as the “softer” alternative to “hard” counterterrorism and policing tactics, which include surveillance and criminal prosecution.²³ “Hard” or more traditional counterterrorism seeks to neutralize individuals who have taken active steps to commit a terrorist act or join a terrorist organization.²⁴ CVE, on the other hand, targets the ideological recruitment of potential extremists, attempting to focus on and prevent the “root causes” of radicalization and provide “off-ramps” for individuals heading down a path toward potentially committing terrorist acts.²⁵ The federal government has struggled to demonstrate that the United States is any safer since the implementation of these

21. See Selim, *supra* note 7, at 95–96 (noting that there are multiple definitions of CVE, but that they generally lay out “noncoercive, nonkinetic, and . . . voluntary activities”); *Fact Sheet: The White House Summit on Countering Violent Extremism*, WHITE HOUSE 2 (Feb. 18, 2015), <https://obamawhitehouse.archives.gov/the-press-office/2015/02/18/fact-sheet-white-house-summit-countering-violent-extremism> [<https://perma.cc/P7WB-XGCC>] (“CVE encompasses the preventative aspects of counterterrorism as well as interventions to undermine the attraction of extremist movements and ideologies . . . [and] address[es] the root causes of extremism through community engagement.”).

22. See 2016 STRATEGIC IMPLEMENTATION PLAN, *supra* note 5, at 1 n.2, 2 (defining violent extremists as “individuals who support or commit ideologically-motivated violence to further political goals”).

23. See Aziz, *supra* note 6, at 258 (explaining that the concept of CVE accepts that programs will be targeted “based on . . . communities’ common identities with perpetrators of terrorism”).

24. See Selim, *supra* note 7, at 95–96 (“[C]ounterterrorism’ implies countering an individual who, in the eyes of the law, has already taken steps toward committing a terrorist act or joining a terrorist group.”).

25. *Id.*

programs.²⁶ Nevertheless, CVE has become a significant part of the policy discourse²⁷ and has had ramifications in American Muslim communities across the country.

1. *CVE in the United States*

In August 2011, President Barack Obama announced a strategy entitled “Empowering Local Partners to Prevent Violent Extremism in the United States.”²⁸ The strategy represented the inception of CVE in the United States and aimed to “prevent violent extremists . . . from inspiring, radicalizing, financing, or recruiting individuals or groups in the United States to commit acts of violence.”²⁹ The strategy stated that government agencies, law enforcement, and communities should work together and use a “community-based approach” to prevent violent extremism and radicalization.³⁰ When it announced the strategy, the Obama Administration claimed not to target American Muslim communities, but rather to target violent extremism in all forms.³¹

However, the White House’s Strategic Implementation Plan released a few months later said the government would prioritize preventing violent extremism inspired by al-Qaeda and its affiliates.³² The plan

26. See U.S. GOV’T ACCOUNTABILITY OFF., GAO-17-300, COUNTERING VIOLENT EXTREMISM: ACTIONS NEEDED TO DEFINE STRATEGY AND ASSESS PROGRESS OF FEDERAL EFFORTS 16 (2017) [hereinafter GAO REPORT] (stating that the U.S. government’s lack of a “cohesive strategy” for CVE efforts made it impossible for the U.S. Government Accountability Office (GAO) to determine “if the United States is better off today” than when the efforts began); see also Emmanuel Mauleón, *It’s Time to Put CVE to Bed*, JUST SECURITY (Nov. 2, 2018), <https://www.justsecurity.org/61332/its-time-put-cve-bed> [<https://perma.cc/ZW78-M2S4>] (arguing that the lack of a consistent definition of CVE makes it impossible to measure the effectiveness of CVE programs).

27. See generally ARUN KUNDNANI & BEN HAYES, THE GLOBALIZATION OF COUNTERING VIOLENT EXTREMISM POLICIES (2018), https://www.tni.org/files/publication-downloads/the_globalisation_of_countering_violent_extremism_policies.pdf [<https://perma.cc/5WBZ-P842>] (detailing the rise of “violent extremism” and “radicalization” in policy discourses in the United States and its subsequent international proliferation); Benjamin K. Smith et al., *Discourses on Countering Violent Extremism: The Strategic Interplay Between Fear and Security After 9/11*, 12 CRITICAL STUD. ON TERRORISM 151 (2019) (describing the effect of CVE-related discourse on the public’s perception of security).

28. See generally EMPOWERING LOCAL PARTNERS, *supra* note 8.

29. *Id.* at 3.

30. *Id.* at 2–3.

31. *Id.*

32. 2011 STRATEGIC IMPLEMENTATION PLAN, *supra* note 9, at 2; see also JEROME P. BJELOPERA, CONG. RESEARCH SERV., R42553, COUNTERING VIOLENT EXTREMISM IN THE

outlined CVE actions built around three core goals: “(1) enhancing engagement with and support to local communities that may be targeted by violent extremists; (2) building government and law enforcement expertise for preventing violent extremism; and (3) countering violent extremist propaganda while promoting our ideals.”³³ The plan envisioned the involvement of national security and federal law enforcement agencies, including the FBI, NCTC, DOJ, and DHS, and numerous other federal agencies, including the Department of Health and Human Services and the Department of Education.³⁴ Additionally, the plan charged U.S. Attorneys with leading these federal initiatives in their respective districts by discussing issues related to CVE and counterterrorism with local communities, raising awareness about violent extremism, and facilitating CVE partnerships between federal government agencies and local communities.³⁵

The White House released an updated plan in 2016.³⁶ The new plan stated that while progress had been made, violent extremist threats had “continued to evolve,” and it sought to respond to the more current “dynamics” of extremists.³⁷ It included continued involvement from U.S. Attorneys,³⁸ the FBI, NCTC, DOJ, DHS, and local law enforcement,³⁹ despite its assertion that “CVE efforts do not include gathering intelligence or performing investigations for the purpose of criminal prosecution.”⁴⁰

Even before the introduction of the White House’s first CVE Strategic Implementation Plan in 2011, the FBI had developed a

UNITED STATES 4 (2014) (“[T]he radicalization of violent jihadists falls under [the Administration’s] purview and is the key focus.”).

33. 2011 STRATEGIC IMPLEMENTATION PLAN, *supra* note 9, at 2.

34. *Id.* at 3–4.

35. *Id.* at 8.

36. 2016 STRATEGIC IMPLEMENTATION PLAN, *supra* note 5.

37. *Id.* at 1. The Plan suggests that the updated version is needed to respond to extremists’ ability to recruit people from long distances and encourage them to carry out attacks from afar. *Id.* The plan expresses particular concern with extremists’ use of the internet and social media as means of recruitment. *Id.*

38. *Id.* at 7–8. United States Attorneys are “the nation’s principal litigators” and have the primary responsibility of prosecuting federal criminal cases. *See* 28 U.S.C. § 547 (2018); *Mission*, OFF. U.S. ATT’Y, <https://www.justice.gov/usao/mission> [<https://perma.cc/2VVF-2XF8>].

39. 2016 STRATEGIC IMPLEMENTATION PLAN, *supra* note 5, at 2, 7, 9, 11.

40. *Id.* at 2. *But cf.* BJELOPERA, *supra* note 32, at 4 (“Community engagement is—in part—an effort to make law enforcement authority more accepted within localities.”).

preventative framework to counter “violent *Islamic* extremism.”⁴¹ The FBI’s approach included identifying “early indicators of those who demonstrate the potential for violence” and engaging in outreach to Muslim communities.⁴² It also laid out a four-stage “radicalization” process: “preradicalization, identification, indoctrination, and action.”⁴³ The FBI additionally compiled a list of “indicators” that could show that an individual was being radicalized, including “[w]earing traditional Muslim attire,” “[g]rowing facial hair,” “[f]requent attendance at a mosque or a prayer group,” “[t]ravel to a Muslim country,” and “[i]ncreased activity in a pro-Muslim social group or political cause.”⁴⁴ More recently, the FBI has posited that it is attempting to counter all forms of domestic extremism, not just “radical Islam.”⁴⁵

Various FBI initiatives implemented under the guise of CVE have raised concerns of inappropriate involvement between law enforcement and social services and community members, as well as other harmful

41. Carol Dyer et al., *Countering Violent Islamic Extremism*, 76 FBI L. ENF’T BULL. 3, 3 (2007) (emphasis added), <https://leb.fbi.gov/file-repository/archives/dec07leb.pdf/view> [<https://perma.cc/45WW-76MC>].

42. *Id.* at 4.

43. *Id.* This four-stage process mirrors the controversial approach laid out by the New York Police Department (NYPD) in a lengthy 2007 report. See generally MITCHELL D. SILBER & ARVIN BHATT, N.Y.C. POLICE DEP’T, RADICALIZATION IN THE WEST: THE HOMEGROWN THREAT 19 (2007), <https://www.brennancenter.org/sites/default/files/legacy/Justice/20070816.NYPD.Radicalization.in.the.West.pdf> [<https://perma.cc/7NL7-9MKR>]. The report focuses exclusively on Muslims and cites only a handful of anecdotal cases to support its conclusions about radicalization. See Amna Akbar, *Policing “Radicalization,”* 3 U.C. IRVINE L. REV. 809, 834 (2013) (counting eleven total cited cases, only five of which are American). The report states that “[e]nclaves of ethnic populations that are largely Muslim” can be the breeding grounds of radicalization. SILBER & BHATT, *supra*, at 22. It lists possible indicators of radicalization, including broad expressions of Muslim identity like growing a beard, and, even more absurdly, broad factors such as “[b]ecoming involved in social activism and community issues.” *Id.* at 31. A settlement of a suit brought by the American Civil Liberties Union against NYPD forced the Department to remove the report from its website in 2016. FAIZA PATEL & MEGHAN KUSHIK, COUNTERING VIOLENT EXTREMISM 10–11 (2017), https://www.brennancenter.org/sites/default/files/2019-08/Report_Brennan%20Center%20CVE%20Report_0.pdf [<https://perma.cc/46ST-89SS>].

44. FBI COUNTERTERRORISM DIV., THE RADICALIZATION PROCESS: FROM CONVERSION TO JIHAD 10 (2006), <https://cryptome.org/fbi-jihad.pdf> [<https://perma.cc/NL6H-4NE3>].

45. See, e.g., FBI, PREVENTING VIOLENT EXTREMISM IN SCHOOLS 5 (2016), https://www.aclu.org/sites/default/files/field_document/Preventing-Violent-Extremism-in-Schools.pdf [<https://perma.cc/W8QQ-2ND2>] (recognizing “white supremacists, animal rights and eco-terrorists, and anti-government or radical separatist groups” as domestic violent extremist ideologies).

consequences of the initiatives. For example, in 2016, the FBI launched “Don’t Be a Puppet: Pull Back the Curtain on Violent Extremism,” an online game aimed to educate youth and students about the “destructive nature of violent extremism.”⁴⁶ Teachers and civil rights organizations expressed concern about the game.⁴⁷ The American Federation of Teachers wrote to the FBI stating they were “deeply troubled” by the game and that it would “exacerbate the bullying and profiling of Middle Eastern and Muslim students by creating a culture of animosity and distrust.”⁴⁸

Additionally, the FBI started “beta-testing” “Shared Responsibility Committees” (SRCs), committees of local community and religious leaders, mental health professionals, and teachers to which the FBI would refer potentially violent extremists for “interventions.”⁴⁹ However, the FBI did not specify the criteria it used to identify an individual for investigation or what practices it would use to further an investigation.⁵⁰ Furthermore, the Committees posed significant privacy concerns: the FBI could use notes taken by Committees’ religious leaders and mental health professionals that would normally be protected under various legal privileges, and Committee members could be subpoenaed for suspects’ trials and civilly liable for the actions of the persons under their care.⁵¹ Finally, despite the agency’s stating publicly that the FBI would not use its CVE programs to surveil American Muslims, a declassified internal communication stated plainly that CVE

46. *Don’t Be a Puppet: Pull Back the Curtain on Violent Extremism*, FED. BUREAU OF INVESTIGATION, <https://www.fbi.gov/cve508> [<https://perma.cc/6Q8K-9GVX>].

47. Letter from the Am. Fed’n of Teachers, to James B. Comey, Dir., FBI (Aug. 9, 2016), https://www.aft.org/sites/default/files/ltr_dont_be_a_puppet_aug2016.pdf [<https://perma.cc/YM4B-EGAU>].

48. *Id.*

49. Arjun Singh Sethi, *The FBI Needs to Stop Spying on Muslim-Americans*, POLITICO (Mar. 29, 2016), <https://www.politico.com/magazine/story/2016/03/muslim-american-surveillance-fbi-spying-213773> [<https://perma.cc/EKH7-2VJQ>]; Draft Letter from FBI to Members of SRC, <https://www.documentcloud.org/documents/2815794-FBI-SRC-Letter.html>; see also Cora Currier & Murtaza Hussain, *Letter Details FBI Plan for Secretive Anti-Radicalization Committees*, INTERCEPT (Apr. 28, 2016), <https://theintercept.com/2016/04/28/letter-details-fbi-plan-for-secretive-anti-radicalization-committees> [<https://perma.cc/LS7U-KVJQ>].

50. See Sethi, *supra* note 49 (arguing that the Committees are “an effort to expand and entrench the FBI’s growing network of confidential informants in the Muslim-American community”).

51. *Id.*

initiatives strengthen the FBI's investigative and intelligence gathering capabilities.⁵²

Following the implementation of many of the FBI's policies, an NCTC CVE guide was leaked to the public in 2015.⁵³ The guide raised concerns because it instructed law enforcement, public health workers, teachers, and social workers to rate the individuals and families they worked with on five-point scales of "risk factors."⁵⁴ While the risk factors for individuals include plausibly reliable indicators such as committing violence or talking of harming oneself or others, they also include more problematic categories such as "connection to group identity (race, nationality, religion, ethnicity)," "family connection to identity group (race, nationality, religion, ethnicity)," and "family involvement in community cultural and religious activities."⁵⁵ Based on these scores, law enforcement, teachers, and social service providers are advised to determine risk levels for radicalization and make plans for provision of "services" and "interventions."⁵⁶ The guide does not indicate where these ratings would be documented, what "interventions" would entail, or what measures would be put in place to protect individuals' civil liberties and privacy.⁵⁷ Despite the White House's insistence that CVE efforts do not target any specific group,⁵⁸ the NCTC's guide exclusively cites examples based on Muslim communities.⁵⁹

52. FBI, OFFICE OF PARTNER ENGAGEMENT, ASAC CONFERENCE—COUNTERING VIOLENT EXTREMISM TRAINING (Aug. 13, 2015), <https://www.brennancenter.org/sites/default/files/9D189AFA9E878DF18145FA7D70DE4A5B36CFB1E.pdf> [<https://perma.cc/A3P3-3M4Z>].

53. Murtaza Hussain et al., *Is Your Child a Terrorist? U.S. Government Questionnaire Rates Families at Risk for Extremism*, INTERCEPT (Feb. 9, 2015), <https://theintercept.com/2015/02/09/government-develops-questionnaire-see-might-become-terrorist> [<https://perma.cc/FW2N-987B>].

54. See NAT'L COUNTERTERRORISM CTR., COUNTERING VIOLENT EXTREMISM: A GUIDE FOR PRACTITIONERS AND ANALYSIS 18–22 (May 2014), <https://www.documentcloud.org/documents/1657824-cve-guide.html> [hereinafter CVE GUIDE] (defining "risk factors" as "characteristics or experiences that increase susceptibility to engage in violent extremism").

55. *Id.*

56. *Id.* at 26; see also Hussain et al., *supra* note 53.

57. See generally CVE GUIDE, *supra* note 54.

58. See *supra* notes 31–32 and accompanying text (explaining that the strategy claimed to target violent extremism in all forms and that the government would prioritize preventing violent extremism inspired by al-Qaeda and its affiliates).

59. See CVE GUIDE, *supra* note 54 (citing interventions in the Somali community in Lewiston, Maine, the Saudi Arabian violent extremist rehabilitation program, and Singapore's violent extremist rehabilitation program for Muslims).

DHS has also played a significant role in implementing CVE domestically. DHS's 2016 "Strategy for Countering Violent Extremism" claimed that "[v]iolent extremists have many motivations and are *not limited to any single population, region, or ideology*."⁶⁰ Yet, just a month before, DHS's Office for Community Partnerships Director produced written testimony titled "Identifying the Enemy: Radical Islamist Terror."⁶¹ In the testimony, the Director described CVE as a "key focus of DHS's work to secure the homeland," and stated that American Muslims are the most likely to be targeted by extremist groups and are "best placed to identify potential indicators of ISIL-inspired attacks."⁶²

In 2016, Congress allocated \$10 million to DHS to launch a CVE Grant Program, calling for applications from states, local governments, and non-profits in the United States to implement CVE activities.⁶³ Applicants were invited to apply for funding for projects focused on "developing resilience," "training and engaging with community members," and "managing intervention activities."⁶⁴ In the last remaining weeks of the Obama Administration, DHS announced thirty-one grantees, including law enforcement, academic institutions, and non-profits, that would be receiving funds for CVE activities.⁶⁵

Once President Donald Trump took office in January 2017, U.S. CVE policy shifted significantly. In early 2017, the Trump Administration floated the idea of changing the name of the "Countering Violent Extremism" program to "Countering Islamic Extremism" or "Countering Radical Islam."⁶⁶ A few months later, the Administration froze the funds that

60. U.S. DEP'T OF HOMELAND SEC., DEPARTMENT OF HOMELAND SECURITY STRATEGY FOR COUNTERING VIOLENT EXTREMISM 2 (2016), https://www.dhs.gov/sites/default/files/publications/16_1028_S1_CVE_strategy_0.pdf [<https://perma.cc/MAX8-TEC6>] [hereinafter DHS STRATEGY] (emphasis added).

61. *Identifying the Enemy: Radical Islamist Terror: Hearing Before the Subcomm. on Oversight and Mgmt. Efficiency of the Comm. on Homeland Sec.*, 114th Cong. 15–19 (2016) [hereinafter *Identifying the Enemy*] (statement of George Selim, Director, Office of Community Partnerships, U.S. Department of Homeland Security).

62. *Id.*

63. *Fact Sheet: FY 2016 Countering Violent Extremism (CVE) Grants*, DEP'T HOMELAND SECURITY (July 6, 2016), <https://www.dhs.gov/news/2016/07/06/fy-2016-countering-violent-extremism-cve-grants> [<https://perma.cc/RXT9-K47B>].

64. *Id.*

65. *Statement by Secretary Jeh Johnson Announcing First Round of DHS's Countering Violent Extremism Grants*, DEP'T HOMELAND SECURITY (Jan. 13, 2017), <https://www.dhs.gov/news/2017/01/13/statement-secretary-jeh-johnson-announcing-first-round-dhss-countering-violent> [<https://perma.cc/KF5T-AKX6>].

66. Julia Edwards Ainsley et al., *Trump to Focus Counter-Extremism Program Solely on Islam*, REUTERS (Feb. 1, 2017), <https://www.reuters.com/article/us-usa-trump-extremists->

were initially awarded to the thirty-one organizations under President Obama.⁶⁷ In June 2017, DHS awarded the funds to a revised list of twenty-six different grantees,⁶⁸ most notably excluding Life After Hate, an organization focused on right-wing and white supremacist violence.⁶⁹ The vast majority of the twenty-six grantees that DHS selected target American Muslims and, through the changes, the Administration tripled the amount of CVE funding going to law enforcement.⁷⁰ However, multiple grantees, predominately non-profits, declined the

program-exclusiv-idUSKBN15G5VO. While the name changes never took place, the Trump Administration redirected resources confronting all forms of “domestic extremism” to focus on Islamist extremism. See Vera Bergengruen & W.J. Hennigan, *‘We Are Being Eaten from Within.’ Why America Is Losing the Battle Against White Nationalist Terrorism*, TIME (Aug. 8, 2019), <https://time.com/magazine/us/5647302/august-19th-2019-vol-194-no-6-u-s> (explaining the Trump Administration’s reallocation of resources away from combatting white, nationalist extremism).

67. Julia Edwards Ainsley, *White House Budget Slashes “Countering Violent Extremism” Grants*, REUTERS (May 23, 2017), <https://www.reuters.com/article/us-usa-budget-extremism-idUSKBN18J2HJ>.

68. *DHS Countering Violent Extremism Grants*, DEP’T HOMELAND SECURITY, <https://www.dhs.gov/cvegrants> [<https://perma.cc/8LP2-AYZ9>]. To access the grantees’ project proposals in full, visit *Countering Violent Extremism Grant Applications (Awarded)*, DEP’T HOMELAND SECURITY, <https://www.dhs.gov/publication/cve-grants-awarded> [<https://perma.cc/NX9H-8RG7>].

69. Bethany Allen-Ebrahimian, *DHS Strips Funding from Group that Counters Neo-Nazi Violence*, FOREIGN POL’Y (June 26, 2017), <https://foreignpolicy.com/2017/06/26/dhs-strips-funding-from-group-that-counters-neo-nazi-violence> [<https://perma.cc/5MXV-NEJ4>].

70. Faiza Patel et al., *Countering Violent Extremism in the Trump Era*, BRENNAN CTR. FOR JUST. (June 15, 2018), <https://www.brennancenter.org/our-work/research-reports/countering-violent-extremism-trump-era> [<https://perma.cc/J9FN-P3ZH>].

funding,⁷¹ citing President Trump’s Islamophobic rhetoric⁷² and the Administration’s anti-Muslim policies.⁷³

Initially, the Trump Administration told CVE grant recipients that the grants were “one-time” funding opportunities.⁷⁴ Proponents and critics alike thought that—for better or for worse—the Trump Administration would be the end of CVE programs.⁷⁵ Other federal and local initiatives continued to implement CVE; for instance, DOJ disbursed a CVE grant, and the National Institute of Justice was spending millions of dollars to research CVE.⁷⁶ However, the Administration’s 2018 “National Strategy for Counterterrorism of the United States of America” repeatedly used the term “radical Islamist terrorists,” identifying it as the “primary transnational terrorist threat” to the United States.⁷⁷ Even if the Administration was not taking up the

71. See, e.g., Deepa Bharath, *LA Mayor Turns down \$425k in Federal Funding to Counter Violent Extremism After Opposition from Civil Rights Groups Stalls Process*, L.A. DAILY NEWS (Aug. 16, 2018, 5:23 PM), <https://www.dailynews.com/2018/08/16/la-mayor-turns-down-425k-in-federal-funding-to-counter-violent-extremism-after-opposition-from-civil-rights-groups-stalls-process> [https://perma.cc/W72M-AGLG]; Amy B. Wang, *Muslim Nonprofit Groups Are Rejecting Federal Funds Because of Trump*, WASH. POST (Feb. 11, 2017, 12:40 PM), <https://www.washingtonpost.com/news/post-nation/wp/2017/02/11/it-all-came-down-to-principle-muslim-nonprofit-groups-are-rejecting-federal-funds-because-of-trump> [https://perma.cc/6EUA-RVGU].

72. See, e.g., Brian Klaas, *A Short History of President Trump’s Anti-Muslim Bigotry*, WASH. POST: DEMOCRACYPOST (Mar. 15, 2019, 3:39 PM), <https://www.washingtonpost.com/opinions/2019/03/15/short-history-president-trumps-anti-muslim-bigotry> [https://perma.cc/WT6N-CGWD]; *86 Times Donald Trump Displayed or Promoted Islamophobia*, MEDIUM (Apr. 19, 2018), <https://medium.com/nlrc/86-times-donald-trump-displayed-or-promoted-islamophobia-49e67584ac10>.

73. See Wang, *supra* note 71 (citing the President’s ban on travel from predominately Muslim countries and the Administration’s proposal to change CVE programs to “Countering Islamic Extremism” as reasons for declining funding).

74. John Bowden, *Trump Will Not Renew Obama-Era Program to Fight Domestic Terrorism: Report*, HILL (Nov. 1, 2018, 8:38 PM), <https://thehill.com/policy/defense/414448-trump-will-not-renew-obama-era-program-to-fight-domestic-terrorism-report> [https://perma.cc/BCM7-35NS].

75. See, e.g., Mauleón, *supra* note 26; Eric Rosand & Stevan Weine, *On CVE, the Trump Administration Could Have Been Worse*, BROOKINGS (Apr. 7, 2020), <https://www.brookings.edu/blog/order-from-chaos/2020/04/07/on-cve-the-trump-administration-could-have-been-worse> [https://perma.cc/NW4U-K5WU] (noting that DHS’s willingness to build on some of the “successes” of Obama-era CVE programs is “a far cry from what many expected in January 2017”).

76. Mauleón, *supra* note 26.

77. See WHITE HOUSE, NATIONAL STRATEGY FOR COUNTERTERRORISM OF THE UNITED STATES OF AMERICA 7 (2018), <https://www.whitehouse.gov/wp-content/uploads/2018/10/NSCT.pdf> [https://perma.cc/UHY8-GP8A].

helm of CVE as it existed under Obama, it indicated it would continue to promote policies and implement counterterrorism programming using the same approach—one that targets American Muslims.⁷⁸

As it was winding down the Obama-era CVE grants, the Trump Administration initially renamed the Office of Community Partnerships as the Office of Terrorism Prevention Partnerships (OTPP), slashing its funding and staffing.⁷⁹ Then, on April 19, 2019, DHS announced that OTPP would transition into the Office for Targeted Violence and Terrorism Prevention (OTVTP).⁸⁰ Rather than scale back the Obama Administration's CVE programs, OTVTP merely rebranded and even expanded them, explaining that the Office “*widens the scope* of previous [DHS] efforts” and “build[s] upon the broad range of prevention activities that are currently implemented . . . including grants, community awareness and law enforcement awareness briefings, threat assessments, information sharing, and reporting of tips and leads.”⁸¹ OTVTP's mission is extraordinarily similar to that of its Obama-era predecessor, stating that the heart of its prevention efforts is to “equip and empower local efforts—including [through] peers, teachers, community

78. See *id.* at 21 (emphasis added) (“We will undermine the ability of terrorist ideologies, *particularly radical Islamist terrorist ideologies*, to create a common identity and sense of purpose among potential recruits.”); see also Seamus Hughes & Haroro J. Ingram, *Trump's Domestic Countering Violent Extremism Policies Look a Lot like Obama's*, LAWFARE (Mar. 10, 2019, 10:00 AM), <https://www.lawfareblog.com/trumps-domestic-countering-violent-extremism-policies-look-lot-obamas> [<https://perma.cc/DVP7-G6AY>] (highlighting the similarities between the Trump and Obama Administrations' respective CVE policies, despite the apparent facial and rhetorical differences between the policies).

79. See Peter Beinart, *Trump Shut Programs to Counter Violent Extremism*, ATLANTIC (Oct. 29, 2018), <https://www.theatlantic.com/ideas/archive/2018/10/trump-shut-countering-violent-extremism-program/574237> [<https://perma.cc/DBW3-PB4J>] (noting that the Trump Administration cut OTPP's full-time staff in half and slashed its budget from more than \$21 million to less than \$3 million); Eric Rosand, *When Fighting Domestic Terrorism, You Get What You Pay for*, BROOKINGS (Nov. 2, 2018), <https://www.brookings.edu/blog/order-from-chaos/2018/11/02/when-fighting-domestic-terrorism-you-get-what-you-pay-for> [<https://perma.cc/X3HT-F4DY>] (arguing that the “name change only further complicate[d] the goal of building trust and partnership between the federal government and key communities”).

80. *Acting Secretary McAleenan Announces Establishment of DHS Office for Targeted Violence and Terrorism Prevention*, DEP'T HOMELAND SEC. (Apr. 19, 2019), <https://www.dhs.gov/news/2019/04/19/acting-secretary-mcaleenan-announces-establishment-dhs-office-targeted-violence-and> [<https://perma.cc/RE59-QLB8>].

81. *Id.* (emphasis added).

leaders, and law enforcement—to prevent individuals from mobilizing to violence.”⁸²

On April 21, 2020, DHS designated \$10 million for the Targeted Violence and Terrorism Prevention (TVTP) Grant Program.⁸³ This program will fund programs by state and local governments, nonprofits, and institutions of higher education that further three priorities: (1) “establishing and enhancing local prevention frameworks,” (2) “preventing domestic terrorism,” and (3) “finding innovative solutions for preventing targeted violence and terrorism.”⁸⁴ The program is still in the application process, and grantees will implement their projects from October 2020 to September 2022.⁸⁵ It remains to be seen what programs will be implemented and who they will target. Meanwhile, a group of more than seventy community organizations and civil rights groups sent a letter to DHS, asking the government to discontinue the TVTP grant program as a continuation of CVE initiatives that “discriminatorily target Muslim communities and fail to safeguard the constitutional rights and privacy of participants.”⁸⁶ TVTP’s new grant program runs the risk of targeting American Muslims in the discriminatory way its 2016 counterpart did and should be scrutinized closely.

82. *Targeted Violence and Terrorism Prevention*, DEP’T HOMELAND SEC. (Feb. 24, 2020), <https://www.dhs.gov/tvtp> [<https://perma.cc/YWB8-GBEW>]. *Compare id.* (noting that the primary goal of the OTVTP’s prevention efforts involves equipping and empowering local efforts “to prevent individuals from mobilizing to violence”), *with Identifying the Enemy*, *supra* note 61 (explaining that CVE is a key focus of “DHS’s work to secure the homeland,” and that “[w]ell-informed families and communities” are the “best defense against terrorist ideologies”).

83. *DHS Makes \$10 Million in Funding Available for Targeted Violence and Terrorism Prevention Grants*, DEP’T HOMELAND SEC. (Apr. 21, 2020), <https://www.dhs.gov/news/2020/04/21/dhs-makes-10-million-funding-available-targeted-violence-and-terrorism-prevention> [<https://perma.cc/524S-UPKN>].

84. *Id.*

85. OFFICE OF TARGETED VIOLENCE & TERRORISM PREVENTION (TVTP), FY 20 TARGETED VIOLENCE AND TERRORISM PREVENTION GRANT PROGRAM 5, 8 (2020), https://www.dhs.gov/sites/default/files/publications/20_0414_tvtp_tvtp-grant-program-nofo-rollout-webinar-slides.pdf [<https://perma.cc/AT8Y-WA3X>].

86. Letter from Muslim Advocates et al., to Chad F. Wolf, Acting Sec’y of Homeland Sec., U.S. Dep’t of Homeland Sec. (June 1, 2020), <https://muslimadvocates.org/wp-content/uploads/2020/06/2020.06.01-Letter-to-DHS-Re-TVTP-grants-FINAL.pdf>.

2. *CVE in the Twin Cities*

In 2014, DOJ, in partnership with DHS and NCTC, initiated CVE pilot programs in Boston, Los Angeles, and the Twin Cities.⁸⁷ The Twin Cities program sought to address the root causes of radicalization, specifically in the Somali community, through partnerships among community leaders, law enforcement, and the government.⁸⁸

Minnesota is home to the largest population of Somali immigrants in the United States.⁸⁹ There are an estimated 48,800 Somalis living in Minnesota, nearly half of whom are under the age of twenty-two.⁹⁰ Somalis started migrating to Minnesota following the Somali Civil War in the early 1990s.⁹¹ Given the community's nearly twenty-year history of putting down roots in Minnesota, as of 2018, forty-one percent of Minnesotans with Somali ancestry had been born in the United States.⁹² Unfortunately, eighty percent of Minnesotan Somalis are living below or near the poverty threshold⁹³ due to the structural obstacles posed to Somalis' upward economic mobility.⁹⁴

The Somalia-based terrorist group al-Shabaab began recruiting Minnesotan Somalis to fight overseas in the regional war in East Africa in 2007.⁹⁵ Since then, more than twenty Somalis have been charged in the U.S. District Court for the District of Minnesota for joining, or

87. *Pilot Programs Are Key to Our Countering Violent Extremism Efforts*, U.S. DEP'T JUST. ARCHIVES (Feb. 18, 2015), <https://www.justice.gov/archives/opa/blog/pilot-programs-are-key-our-countering-violent-extremism-efforts> [<https://perma.cc/2VVB-FSFX>] [hereinafter *Pilot Programs*].

88. *Id.*

89. See CHAMBERS, *supra* note 11, at 57–59, 64 (explaining that Somali refugees gravitated toward the Twin Cities for its economic growth, employment opportunities, affordable housing, public benefits, and history of supporting refugees).

90. MINN. STATE DEMOGRAPHIC CTR., *THE ECONOMIC STATUS OF MINNESOTANS 8–9* (2018), https://mn.gov/admin/assets/MNSDC_EconStatus_2018Report_FNL_Access.pdf_tc_m36-362054.pdf [<https://perma.cc/UB73-UNVN>].

91. CHAMBERS, *supra* note 11, at 65–66.

92. MINN. STATE DEMOGRAPHIC CTR., *supra* note 90, at 10.

93. *Id.* at 26.

94. See CHAMBERS, *supra* note 11, at 133–34 (pointing to limited English-language skills and the lack of advanced degrees or non-recognition of advanced degrees obtained in Somalia as barriers to economic mobility, despite the population's economic contributions in cities across the United States).

95. BUILDING COMMUNITY RESILIENCE, *supra* note 13, at 2; ARUN KUNDNANI, *THE MUSLIMS ARE COMING!: ISLAMOPHOBIA, EXTREMISM, AND THE DOMESTIC WAR ON TERROR 211* (2014).

attempting to join, al-Shabaab.⁹⁶ Some Minnesotan Somalis have also “traveled, attempted to travel, or taken steps in preparation to travel to join” the Islamic State of Iraq and the Levant (ISIL).⁹⁷ None of the terrorism prosecutions involved planned attacks within the United States.⁹⁸ Available evidence shows that al-Shabaab’s focus on the regional war in East Africa and local needs in Somalia drove its recruitment, rather than a desire to perpetrate terrorist attacks in the United States.⁹⁹ FBI agents in Minneapolis admitted that “[t]here’s no real information, no credible intelligence that [an al-Shabaab attack on the United States] is in the works, . . . imminently in the plans, or going to take place.”¹⁰⁰

Nevertheless, the federal government took the stance that “to think of al-Shabaab as only engaging in attacks in East Africa was ‘a failure of imagination’” and moved ahead under the assumption that Minnesotan Somalis posed a terrorist threat to the United States.¹⁰¹ Pulling tactics from gang reduction programs, the Twin Cities CVE program aims to build “resilience” to recruitment by extremist groups in the Somali community by establishing relationships with law enforcement and creating frameworks for “interventions” of individuals at risk of “radicalization.”¹⁰²

As laid out in the White House’s Strategic Implementation Plan, the U.S. Attorney for the District of Minnesota was involved in the implementation of the pilot program in the Twin Cities.¹⁰³ As part of the program, the District, led by then-U.S. Attorney Andrew Luger, established the Somali American Task Force, made up of fifteen American Somalis, including imams and local non-profit organizers.¹⁰⁴ The Task Force signed a Memorandum of Understanding with the U.S.

96. BUILDING COMMUNITY RESILIENCE, *supra* note 13, at 2.

97. *Id.*

98. See JACKSON ET AL., *supra* note 4, at 112 (noting that the Minnesotan Somali community itself was the victim of terrorism in a bombing of a local mosque in 2017).

99. KUNDNANI, *supra* note 95, at 211.

100. *Id.*

101. See *id.* (quoting Congressman Peter King at a 2011 committee hearing on Muslim radicalization).

102. BUILDING COMMUNITY RESILIENCE, *supra* note 13, at 4–5.

103. See *supra* notes 35, 38 and accompanying text (noting that the White House’s updated plan charged U.S. Attorneys with leading federal CVE initiatives in their respective districts).

104. Amanda Sperber, *Somalis in Minnesota Question Counter-Extremism Program Targeted at Muslims*, GUARDIAN (Sept. 14, 2015, 8:00 AM), <https://www.theguardian.com/us-news/2015/sep/14/somali-muslims-minnesota-counter-extremism-program> [<https://perma.cc/LW4Y-XCQG>].

Attorney's Office that the government would not use the program for surveillance or intelligence-gathering.¹⁰⁵ However, many in the community, including some Task Force members, were concerned about and suspicious of the U.S. Attorney's involvement in the provision of social services.¹⁰⁶

The White House and several U.S. agencies chose the Twin Cities for the pilot program because of "strong relationships" between local law enforcement and the Somali community.¹⁰⁷ This "strong relationship" may actually refer to local law enforcement's targeting of the Somali community under the umbrella of "counter-radicalization" with backing from the federal government for nearly a decade prior to the creation of the pilot program.¹⁰⁸ For example, through a two-year grant, DOJ funded the St. Paul Police Department's African Immigrant Muslim Coordinated Outreach Program (AIMCOP).¹⁰⁹ In its successful grant proposal to DOJ, AIMCOP claimed it would, in partnership with the FBI and the U.S. Attorney's Office, "first seek to gain the trust of the Somali immigrants" by holding and attending community meetings and youth activities.¹¹⁰ AIMCOP would then "identify radicalized individuals . . . who refuse[d] to cooperate with [its] efforts" and enhance its ability to "maintain up-to-date intelligence on these offenders."¹¹¹ As part of the DOJ program, the Muslim American Society of Minnesota received funding to hire a police liaison.¹¹² The police asked the organization's executive director to "keep track of attendees

105. Memorandum of Understanding Between the U.S. Att'y's Office for the Dist. of Minn. and the Somali Am. Task Force, 1, 4 (May 11, 2015), <https://www.justice.gov/usao-mn/file/764306/download> [<https://perma.cc/W6V3-HDX8>].

106. See Sperber, *supra* note 104 (quoting a Somali parent as saying that she wants more resources available to support the community's youth, but without the tag of "terrorism" or "violence" attached).

107. BUILDING COMMUNITY RESILIENCE, *supra* note 13, at 3.

108. See generally MICHAEL PRICE, BRENNAN CTR. FOR JUSTICE, COMMUNITY OUTREACH OR INTELLIGENCE GATHERING?: A CLOSER LOOK AT "COUNTERING VIOLENT EXTREMISM" PROGRAMS, 1, 5 (2015), https://www.brennancenter.org/sites/default/files/analysis/Community_Outreach_or_Intelligence_Gathering.pdf [<https://perma.cc/M9G3-3LSQ>] (detailing the involvement of Twin Cities' law enforcement in targeting the Somali community since 2004).

109. *Id.* at 5.

110. *Id.*

111. See *id.* at 5–6 ("[T]he AIMCOP team does not appear to have informed the Muslim/Somali community that failure to participate . . . could result in being put on a list of radicalized youth."). The St. Paul Police Department maintains that the "intelligence aspect never came to fruition." *Id.* at 6.

112. Amna Akbar, *National Security's Broken Windows*, 62 UCLAL. REV. 834, 900 (2015).

at outreach meetings,” and later asked him to share the list of participants, which the director refused to do.¹¹³

Around the time of the creation of AIMCOP, the FBI launched a similar strategy through “Specialized Community Outreach Team[s]” (SCOT), which would “strategically expand outreach to the Somali community” in Minneapolis to address counterterrorism issues.¹¹⁴ The Teams gathered intelligence in the community and sent information to the FBI’s Behavioral Analysis Unit to “develop a baseline profile of Somali individuals that [were] vulnerable to being radicalized or participating in extremist activities.”¹¹⁵ Despite the FBI’s own guidelines stating that officers must maintain an “appropriate separation of operational and outreach efforts,” an internal memo stated that the Teams would allow “FBI outreach to support operational programs.”¹¹⁶ Furthermore, even though the government intended the Somali community to lead CVE in Minneapolis, the FBI acknowledged privately that “there was no possibility of the community [having] influenced how the investigations were carried out” and that the FBI’s aim should be to “encourage community leaders to pass information to federal agents about young people.”¹¹⁷

DHS’s CVE grant program¹¹⁸ reached Minnesota when it granted funds to the Hennepin County Sheriff’s Office and the Heartland Democracy Center.¹¹⁹ The Hennepin County Sheriff’s Office implemented

113. *Id.*

114. FBI, IMPLEMENTATION OF SPECIALIZED COMMUNITY OUTREACH TEAM, 1–3, 5 (Jan. 7, 2009), http://www.stopcve.com/uploads/1/1/2/4/112447985/scot_fbi_minneapolis.pdf [<https://perma.cc/H85B-HF7W>] [hereinafter SCOT Communication]; see also Cora Currier, *How Community Outreach Programs to Muslims Blur Lines Between Outreach and Intelligence*, INTERCEPT (Jan. 21, 2015, 11:10 AM), <https://theintercept.com/2015/01/21/spies-among-us-community-outreach-programs-muslims-blur-lines-outreach-intelligence> [<https://perma.cc/6D33-G5AZ>] (noting that the Teams appeared to “run afoul” of the FBI’s community engagement guidelines, which require that officers maintain “appropriate separation of operational and outreach efforts”).

115. SCOT Communication, *supra* note 114, at 2, 4–5.

116. Currier, *supra* note 114.

117. Akbar, *supra* note 112, at 893.

118. See *supra* notes 63–65 and accompanying text (explaining the CVE grant program as a way for states, local governments, and non-profits to fund projects focused on resilience, community engagement, and intervention management).

119. See Stephen Montemayor, *Homeland Security Announces Two Counterextremism Grants for Minnesota*, STAR TRIB. (Jan. 24, 2017), <https://www.startribune.com/homeland-security-announces-two-extremism-grants-for-minnesota/430455753> [<https://perma.cc/BN6J-2UU4>] (noting that the CVE program granted \$347,600 to the Hennepin County Sheriff’s Office and \$423,340 to Heartland Democracy, a

community engagement workshops and expanded its Community Engagement Team, with a focus on Islamist terrorist movements and Somali youth.¹²⁰ Heartland Democracy Center used the funds to expand its existing program working with Somali youth and focus on countering violent extremism by implementing intervention activities and developing “individual or community-level resilience to recruitment and radicalization.”¹²¹ Additionally, since 2010, DHS’s Office for Civil Rights and Civil Liberties has held roundtables with federal, state, and local government officials about thirty times a year in regions with large Muslim, Arab, and South Asian populations, including Minneapolis, to discuss terrorist recruitment issues in those communities.¹²² The discussions regularly include officials from U.S. Citizenship and Immigration Services, U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, and the Transportation Security Administration.¹²³

Minneapolis nonprofit). For the applications themselves, *see* HEARTLAND DEMOCRACY CTR., STRENGTHENING COMMUNITY RESILIENCE IN THE HEARTLAND: COLLABORATION, EDUCATION, AND EMPOWERMENT TO PREVENT VIOLENT EXTREMISM (2016), <https://www.dhs.gov/sites/default/files/publications/EMW-2016-CA-APP-00401%20Full%20Application.pdf> [<https://perma.cc/VZL3-R2CS>] (proposal for \$423,340); HENNEPIN CTY. SHERIFF’S OFFICE, FOCUS AREA 2—COMMUNITY ENGAGEMENT: A FRONTLINE STRATEGY FOR COUNTERING VIOLENT EXTREMISM (2016), <https://www.dhs.gov/sites/default/files/publications/EMW-2016-CA-APP-00081%20Full%20Application.pdf> [<https://perma.cc/VDW2-8RRN>] (proposal for \$500,000). Notably, Ka Joog, a Somali, Minneapolis-based nonprofit, rejected the nearly \$500,000 it had been granted under the Obama Administration after President Trump took office, stating it felt that its efforts were hindered by the Administration’s anti-Muslim sentiments. Montemayor, *supra*.

120. *See* DEP’T OF HOMELAND SEC., EFFECTIVENESS OF THE PROGRAM TO PREPARE COMMUNITIES FOR COMPLEX COORDINATED TERRORIST ATTACKS AND THE COUNTERING VIOLENT EXTREMISM GRANT PROGRAM 23 (2018) [hereinafter EFFECTIVENESS OF GRANT PROGRAM] (reporting to Congress on the progress of the CVE grant programs with a distinct focus on activities targeting Muslims). *But see* HENNEPIN CTY. SHERIFF’S OFFICE, *supra* note 119, at 2 (“The problem of violent extremism is not limited to . . . any one religion, . . . or ethnic group; accordingly, our Agency plans all . . . engagement for *all residents*.”).

121. EFFECTIVENESS OF GRANTS PROGRAM, *supra* note 120, at 21. Heartland Democracy Center notably led the effort to “deradicalize” and rehabilitate Abdullahi Yusuf, a Somali American teenager who was charged with conspiring to join a terrorist organization when he tried to leave Minneapolis to join the Islamic State of Iraq and Syria (ISIS). Miriam Jordan & Tamara Audi, *A Test Case for ‘Deradicalization’*, WALL ST. J. (May 6, 2015, 4:36 PM), <https://www.wsj.com/articles/a-test-case-for-deradicalization-1430944585?alg=y> [<https://perma.cc/2MUB-7593>].

122. Akbar, *supra* note 112, at 864–65.

123. *Id.* at 865 n.132.

In addition to government agencies and law enforcement, Minneapolis public schools have joined CVE efforts targeting Somali students.¹²⁴ An overall growth in surveillance of Minnesotan students makes Minneapolis schools' involvement in CVE efforts even more concerning.¹²⁵ The school program requests that “teachers and other school staff . . . monitor and identify students who they believe are at risk of ‘radicalization’ or engaging in ‘violent extremism’” and calls for students to be monitored “in the lunchroom, non-class environments, and after school.”¹²⁶ Minneapolis public schools planned to hire additional staff to monitor Somali students specifically for CVE purposes.¹²⁷ The Be@School program, implemented in partnership between the Hennepin County Attorney’s Office, Hennepin County school districts, and Ka Joog (a Minneapolis-based Somali nonprofit), tracks unexcused absences of students,¹²⁸ leading to additional concerns that Somali students are being inappropriately targeted.¹²⁹

124. See *Minneapolis Public School CVE Program*, C-SPAN (Feb. 18, 2015), <https://www.c-span.org/video/?c4530677/minneapolis-public-school-cve-program> [<https://perma.cc/7CHB-HV84>] (video of a Minneapolis Public Schools official announcing plans for involvement in addressing radicalization in the Somali community at the White House Summit on Countering Violent Extremism).

125. Ramla Bile & Dominique Diaddigo-Cash, *The Surveillance-Industrial Complex Is Targeting Our Kids*, MINNPOST (January 31, 2020), <https://www.minnpost.com/community-voices/2020/01/the-surveillance-industrial-complex-is-targeting-our-kids> [<https://perma.cc/7YGD-439S>] (highlighting problematic surveillance initiatives in Minnesotan school districts).

126. Anna V. Pinchuk, Note, *Countering Free Speech: CVE Pilot Programs’ Chilling Effect on Protected Free Speech and Expression*, 68 SYRACUSE L. REV. 661, 671–72 (2018); see also Emmanuel Mauleón, Comment, *Black Twice: Policing Black Muslim Identities*, 65 UCLA L. REV. 1326, 1364–66 (detailing that monitoring would take place in “[a]fter-school programs, recreation center classes, [and] sports leagues”).

127. Mauleón, *supra* note 126, at 1365 n.180.

128. *Be@School*, KAJOOG, <https://www.kajoog.org/beschool> [<https://perma.cc/4NZD-ZQQ4>] (defining the program’s mission as increasing school attendance and improving community connections through a “collaborative early intervention providing education and support services” to youth and their families).

129. See Mauleón, *supra* note 126, at 1366 (raising concerns that students may become uncomfortable and change their behavior if they think they are being monitored and subsequently raise false flags of potential radicalization); Bile & Diaddigo-Cash, *supra* note 125 (“Tracking of behavior classification, intervention, and academic performance are now becoming the basis for surveillance of youth with unaddressed needs. Measures like these further distance us from addressing the root causes that fuel crime and incarceration.”); Sperber, *supra* note 104 (explaining that the Somali community is suspicious of the intermingling between law enforcement, surveillance, and social services).

3. *Criticisms of CVE*

Proponents of CVE argue that the programs are critical because they seek to prevent extremist violence rather than merely react to it.¹³⁰ The programs also may provide crucial social services to communities, especially to youths.¹³¹ On the other hand, critics of CVE maintain that the methodology behind the radicalization theory and the CVE programs are ineffective at best and counterproductive at worst.¹³² Its ineffectiveness is exacerbated by the disproportionate way it affects American Muslims in a time where right-wing extremists perpetrate the vast majority of extremist violence in the United States.¹³³ CVE also contributes to the stigmatization of American Muslims, including the Somali community in the Twin Cities, as evidenced by discrimination, harassment, and hate crimes.¹³⁴

CVE critics highlight the instability of the foundations upon which CVE programs are built; the programs presume that extremist ideology is a precursor to terrorism and that there is a “predictable path toward terrorism with clear markers that can be used to identify potential terrorists.”¹³⁵ Since the concept and study of “radicalization” were born to cater to policymakers rather than objective scholars, radicalization has “a number of built-in, limiting assumptions.”¹³⁶ Experts in counterterrorism, psychology, and economics have all found that there

130. See, e.g., BJELOPERA, *supra* note 32, at 2; Selim, *supra* note 7, at 95. This Comment is most focused on *preventative* CVE programs, which should not be conflated with *deradicalization* and *rehabilitation* programs that seek to help individuals who have already taken concrete steps toward criminal activity. For an example of rehabilitation activities, see *supra* note 121.

131. See *infra* note 274 and accompanying text. But see Vanessa Taylor, *Why Minneapolis?: How Deep Surveillance of Black Muslims Paved the Way for George Floyd's Murder*, PROGRESSIVE (June 8, 2020), <https://progressive.org/dispatches/deep-surveillance-black-muslims-taylor-200608> [<https://perma.cc/3MCR-T83K>] (quoting one Minneapolis community organizer and chaplain as saying that CVE was “marketed as a health and human services program . . . but in reality it was an extension of the state-security apparatus”).

132. See, e.g., PATEL & KOUSHIK, *supra* note 43, at 9; Cynthia Gonzalez, *We've Been Here Before: Countering Violent Extremism Through Community Policing*, 74 NAT'L LAW. GUILD REV. 1, 7–8 (2017); Mauleón, *supra* note 126, at 1352. See generally Aziz, *supra* note 6, at 257 (highlighting fundamental flaws of CVE programs).

133. See *infra* notes 146–51 and accompanying text.

134. See *infra* notes 152–57 and accompanying text.

135. PATEL & KOUSHIK, *supra* note 43, at 9.

136. KUNDNANI, *supra* note 95, at 117.

is currently no answer to what drives a person to extremist violence and that research running contrary to popular CVE policy is often ignored.¹³⁷

Not only has research by CVE opponents debunked the assumption that there is a clear path toward violence, but government-issued CVE guides admit it themselves.¹³⁸ Notably, the FBI's declassified Strategic Plan to Curb Violent Extremism stated:

There is neither one path or personality type, which is prone to adopting extremist views or exhibiting violent tendencies, nor is there a singular path or personality that leaves an individual vulnerable to others who may seek to impress these views or tendencies upon them. There are no individually unique behavioral changes for those who mobilize to violent extremism.¹³⁹

Furthermore, the U.S. Government Accountability Office (GAO) conducted an assessment on federal government CVE efforts in a 2017 report to Congress.¹⁴⁰ The report concluded that GAO could not “determine the extent to which the United States is better off today as a result of its CVE effort” since the advent of the program in 2011 because, in part, the federal government has failed to establish a process to evaluate the overall effort's effectiveness.¹⁴¹ The FBI field office in Minneapolis has admitted that they have no credible evidence that an al-Shabaab attack in the United States by Minnesotan Somalis may occur.¹⁴² Nevertheless, federal and local governments have invested resources in Minnesota following misguided methodologies “in the hope of finding the magical indicators of a drift to extremism.”¹⁴³

137. See PATEL & KOUSSHIK, *supra* note 43, at 9 (quoting multiple counterterrorism experts opining that the causal link between “radicalization” and terrorism is unfounded); Matt Apuzzo, *Who Will Become a Terrorist? Research Yields Few Clues*, N.Y. TIMES (Mar. 27, 2016), <https://www.nytimes.com/2016/03/28/world/europe/mystery-about-who-will-become-a-terrorist-defies-clear-answers.html> [<https://perma.cc/5HW5-4FQK>] (citing a Princeton economist's study that found no correlation between “economic distress” and terrorism, even though CVE proponents continue to rely on poverty as an “indicator of radicalization”).

138. See, e.g., DHS STRATEGY, *supra* note 60, at 10 (“Violent extremism is difficult to predict, detect, and disrupt because there is no single cause or pathway to violence.”).

139. FBI, FBI STRATEGIC PLAN TO CURB VIOLENT EXTREMISM 2 (2015), <https://www.brennancenter.org/sites/default/files/16-cv-00672%20-%20FBI%20Strategic%20Plan%20to%20Curb%20Violent%20Extremism.PDF> [<https://perma.cc/XJV7-GX4S>].

140. GAO REPORT, *supra* note 26.

141. *Id.* at 16.

142. See *supra* note 100 and accompanying text (contending that CVE efforts in the Twin Cities are not directed toward a credible threat to the United States).

143. KUNDNANI, *supra* note 95, at 229.

In addition to being ineffective, radicalization theory and CVE programs run the risk of exacerbating the feelings of marginalization of American Muslims that CVE programs identify as indicators of radicalization in the first place. In the Twin Cities, one of the Somalis who al-Shabaab successfully recruited said that initially, joining the group never crossed his mind and he thought it was “a stupid thing.”¹⁴⁴ However, after the FBI and local police escalated their surveillance and interrogation of Minnesotan Somalis in 2008, the recruit’s mindset changed and he said he understood why people would leave Minnesota and join al-Shabaab.¹⁴⁵

In a time when perpetrators of domestic violent extremism are largely right-wing extremists, CVE programs disproportionately target American Muslims. Right-wing extremist violence surpasses Islamist extremism in the United States.¹⁴⁶ From 2009 to 2018, right-wing extremists were responsible for 72.3 percent of extremist-related murders on U.S. soil.¹⁴⁷ Notably, while Islamist extremists perpetrated 23.4 percent of extremist-related killings in the United States during this time, they have committed “far fewer lethal incidents”; the ones that did occur were high casualty.¹⁴⁸ Specifically, “[o]nly [twelve] lethal domestic Islamist extremist incidents have occurred in the past [ten] years, but those incidents have resulted in 100 deaths.”¹⁴⁹ Despite the comparatively fewer deaths that Islamic extremists have caused since 2009, eighty percent of the non-profit groups that have been awarded funding to provide community services under the umbrella of CVE have been focused on Muslims.¹⁵⁰ A 2016 survey of nearly 400 law enforcement agencies across the country found that although the agencies had “serious concerns” about right-wing or anti-government extremism, none of them “had a formal outreach program designed

144. *Id.* at 226.

145. *Id.*

146. ANTI-DEFAMATION LEAGUE CTR. ON EXTREMISM, MURDER AND EXTREMISM IN THE UNITED STATES IN 2018 13–17 (2019), <https://www.adl.org/media/12480/download> [<https://perma.cc/ECZ4-E6RF>].

147. *Id.* at 16. In 2018, only two percent of all domestic extremist-related murders were committed by perpetrators affiliated with Islamist extremism. *Id.* at 13.

148. *Id.* at 16.

149. *Id.* at 17.

150. PATEL & KOUSHIK, *supra* note 43, at 8. Notably, Muslims make up about 1.1 percent of the entire U.S. population. Besheer Mohamed, *New Estimates Show U.S. Muslim Population Continues to Grow*, PEW RES. CTR.: FACT TANK (Jan. 3, 2018), <https://www.pewresearch.org/fact-tank/2018/01/03/new-estimates-show-u-s-muslim-population-continues-to-grow> [<https://perma.cc/SCE4-2SP8>].

to counteract anti-government, racist, or other forms of violence.”¹⁵¹ This disconnect raises serious questions about the efficacy of CVE programs in actually preventing violent extremism in the United States and about the impact the programs have on the civil liberties of American Muslims.

In addition to the programs’ lack of effectiveness, their legitimizing of discrimination against Muslims is a criticism that nonprofits, advocacy groups, and the communities with which CVE programs aim to engage have lodged against the programs.¹⁵² American Muslims are more likely than Americans of other major religious groups to experience racial or religious discrimination.¹⁵³ During 2015, hate crimes against American Muslims spiked by seventy-eight percent, with hundreds of documented attacks including “arsons at mosques, assaults, shootings and threats of violence.”¹⁵⁴

In the Twin Cities, Somalis have been the victims of hate crimes and numerous domestic terrorist attacks themselves. In 2016, a man “shouting obscenities about Islam” shot two Muslim men wearing traditional Muslim attire in Minneapolis.¹⁵⁵ Three members of the racist, anti-government White Rabbit militia bombed the Dar Al-Farooq Islamic Center, a

151. PATEL & KOUSSHIK, *supra* note 43, at 19; *see also* SCHANZER ET AL., THE CHALLENGE AND PROMISE OF USING COMMUNITY POLICING STRATEGIES TO PREVENT VIOLENT EXTREMISM: A CALL FOR COMMUNITY PARTNERSHIPS WITH LAW ENFORCEMENT TO ENHANCE PUBLIC SAFETY 1, 21–23 (2016), <https://www.ncjrs.gov/pdffiles1/nij/grants/249674.pdf> [<https://perma.cc/9FYA-VEH4>] (finding that, although many law enforcement agencies have programs engaging with Muslim communities, “they do not have organized, overt efforts to reach out to non-Muslim communities that may be targeted for recruitment by anti-government, racist, or other extremist movements”).

152. *See, e.g.,* Aziz, *supra* note 6, at 265; Mauleón, *supra* note 126, at 1365 n.179 (“[T]he government leverages these fears . . . into a strategy that serves to stigmatize the community, and presents CVE as the only option for allaying these fears.”).

153. *Islamophobia: Understanding Anti-Muslim Sentiment in the West*, GALLUP, <https://news.gallup.com/poll/157082/islamophobia-understanding-anti-muslim-sentiment-west.aspx> [<https://perma.cc/P277-NMNX>] (reporting that the proportion of American Muslims reporting discrimination is on par with Hispanic Americans and African Americans).

154. Eric Lichtblau, *Hate Crimes Against American Muslims Most Since Post-9/11 Era*, N.Y. TIMES (Sept. 17, 2016), <https://www.nytimes.com/2016/09/18/us/politics/hate-crimes-american-muslims-rise.html> [<https://perma.cc/RF77-ZWXT>]. More recently, the FBI’s 2018 hate crime statistics indicated that hate crimes against Muslims accounted for 14.5 percent of 1,550 total reported hate crimes motivated by religious bias, or approximately 225 incidents. FBI, UNIFORM CRIME REPORT: HATE CRIME STATISTICS, 2018 3 (2019), <https://ucr.fbi.gov/hate-crime/2018/topic-pages/incidents-and-offenses.pdf> [<https://perma.cc/NY7P-LSDZ>].

155. Lichtblau, *supra* note 154.

mosque just outside of Minneapolis that mainly serves Somalis, in 2017.¹⁵⁶ In September 2019, a man vandalized several Somali businesses in Minneapolis, telling police after his arrest that he hates “the Somalis.”¹⁵⁷

One former FBI crime analyst believes the spike in hate crimes against Muslims is caused in part by American politicians’ “raising the specter that radical Islam is at our doorstep.”¹⁵⁸ In the case of Minnesota, Congresswoman Ilhan Omar, a Democratic congresswoman who came to the United States as a refugee from Somalia in her childhood, has been the target of Islamophobic and racist rhetoric by American political leaders, including President Trump.¹⁵⁹ In July 2019, President Trump tweeted about Congresswoman Omar and four other congresswomen of color,¹⁶⁰ stating they should “go back and help fix the totally broken and crime infested places from which they came.”¹⁶¹ At a rally, when President Trump spoke about Congresswoman Omar, the crowd chanted “send her back.”¹⁶² Anti-Muslim rhetoric and stereotypes are a regular part of recent political discourse, and critics argue that CVE “facilitates Islamophobia on the ground and, for many political candidates, creates political incentives for fear-mongering.”¹⁶³

156. Andrew Hay, *Three Men Indicted for Minnesota Mosque Bombing*, REUTERS (June 21, 2018), <https://www.reuters.com/article/us-minnesota-blast-indictment/three-men-indicted-for-minnesota-mosque-bombing-idUSKBN1JH3DJ>; Stephen Montemayor, *How Alleged Minnesota Mosque Bomber Tried to Build Militia in Rural Ill.*, STAR TRIB. (Mar. 18, 2018), <http://www.startribune.com/fbi-says-alleged-minnesota-mosque-bomber-tried-to-build-a-militia-in-rural-illinois/477182203> [<https://perma.cc/TQW7-2NH8>].

157. Mukhtar M. Ibrahim, *Charges: Prejudice Drove Mpls. Man to Vandalize East African-Owned Shops*, MPR NEWS (Sept. 27, 2019), <https://www.mprnews.org/story/2019/09/27/charges-bias-drove-minneapolis-man-vandalize-east-african-owned-shops> [<https://perma.cc/4E6B-VQZ2>].

158. Lichtblau, *supra* note 154.

159. Merrit Kennedy, *Rep. Ilhan Omar Receives Resounding Welcome Home amid Trump Attacks*, NPR (July 19, 2019), <https://www.npr.org/2019/07/19/743326091/rep-ilhan-omar-receives-heros-welcome-home-amid-trump-attacks> [<https://perma.cc/BD2X-SM7G>].

160. *Id.*

161. Donald J. Trump (@realdonaldtrump), TWITTER (July 14, 2019, 8:27 AM), <https://twitter.com/realdonaldtrump/status/1150381395078000643>.

162. Kennedy, *supra* note 159.

163. See Khaled A. Beydoun, “Muslim Bans” and the (Re)Making of Political Islamophobia, 2017 U. ILL. L. REV. 1733, 1755 (2017) (detailing the roots of Islamophobia in American law and politics dating back to the Naturalization Act of 1790).

The targeting and surveillance of Minnesotan Somalis by law enforcement does not exist within a vacuum. For centuries, law enforcement agencies in the Twin Cities have been accused of racially profiling subjects and using excessive force against people of color.¹⁶⁴ On May 25, 2020, a white Minneapolis Police Department officer, Derek Chauvin, killed George Floyd, a Black man, by kneeling on his neck for eight minutes and forty-six seconds.¹⁶⁵ Floyd had been accused of using a counterfeit twenty-dollar bill to buy cigarettes.¹⁶⁶ The brutal killing of George Floyd sparked protests around the globe,¹⁶⁷ which police forces, including in Minnesota, confronted by “using tear gas and firing rubber bullets into the crowds.”¹⁶⁸ On June 7, 2020, the

164. See J. J. Wiley, *WESTERN APPEAL* (St. Paul & Minneapolis), Oct. 15, 1887, at 4 (describing the arrest of a Black woman in St. Paul by police after she was harassed by white men); Tommy Beer, *Minneapolis Police Are 7 Times More Likely to Use Force Against Black People*, *FORBES* (June 3, 2020 2:48 PM), <https://www.forbes.com/sites/tommybeer/2020/06/03/minneapolis-police-are-7-times-more-likely-to-use-force-against-black-people/#224e55af1321> [<https://perma.cc/PNR6-EUYP>] (“Although [B]lack people make up less than 20% of the population in Minneapolis, nearly 60% of the time that police use force, the individual subjected to that force is [B]lack.”); Ianna Oatis et al., *Race and Policing in the Twin Cities*, *MNOPEDIA* (June 2, 2020), <https://www.mnopedia.org/race-and-policing-twin-cities> [<https://perma.cc/MX4H-37JL>] (listing incidents of racially-discriminatory law enforcement since the nineteenth century); Melissa Olson, *Indigenous Minnesotans—Key Voice on Racial Profiling—Split on Future of Minneapolis Police Department*, *MINN. REFORMER* (June 30, 2020), <https://minnesotareformer.com/2020/06/30/indigenous-minnesotans-key-voice-on-police-brutality-and-racial-profiling-split-on-future-of-minneapolis-police-department> [<https://perma.cc/5Y6G-D33D>] (explaining the disproportionately high rates at which indigenous Americans are stopped, searched, arrested, and killed by police, including in Minnesota); *Philando Castile Death: Police Footage Released*, *BBC* (June 21, 2017), <https://www.bbc.com/news/world-us-canada-40357355> [<https://perma.cc/FGT7-CLMY>] (recounting the fatal shooting by police of Black Minnesotan Philando Castile during a traffic stop).

165. *What We Know About the Death of George Floyd in Minneapolis*, *N.Y. TIMES* (May 27, 2020), <https://www.nytimes.com/2020/05/27/us/george-floyd-minneapolis-death.html> [<https://perma.cc/S84V-RQ3Q>] (noting that three additional officers stood by and watched, even as Floyd became unresponsive for two minutes and fifty-three seconds).

166. *Id.*

167. See *Protests Across the Globe After George Floyd’s Death*, *CNN* (June 13, 2020, 3:22 PM), <https://www.cnn.com/2020/06/06/world/gallery/intl-george-floyd-protests/index.html> [<https://perma.cc/BXE9-27AC>] (displaying photos from protests across the world, including in Brazil, Hong Kong, England, Tunisia, and South Africa).

168. Matt Furber et al., *Minneapolis Police, Long Accused of Racism, Face Wrath of Wounded City*, *N.Y. TIMES* (May 29, 2020), <https://www.nytimes.com/2020/05/27/us/minneapolis-police.html> [<https://perma.cc/7GRZ-V7KD>]. Over 100 law enforcement agencies in cities across the United States used tear gas against civilians

Minneapolis city council pledged to disband the Minneapolis Police Department and to “recreate systems of public safety that actually keep [citizens] safe.”¹⁶⁹

Some, but not all, American Somalis identify as Black.¹⁷⁰ In the United States, Somalis “experience interlocking systems of oppression because of their intersecting minority statuses” as Black people, refugees or immigrants, and Muslims.¹⁷¹ Somali youth “increasingly incorporat[e] [B]lack identity rather than seeing themselves almost exclusively as Somalis, which some of their parents did.”¹⁷²

As with most people, American Somalis do not view their own identities and cultures as monolithic. However, external preconceptions, particularly by white people, can affect how American Somalis are treated

in the protests following George Floyd’s death. See K.K. Rebecca Lai et al., *Here Are the 100 U.S. Cities Where Protesters Were Tear-Gassed*, N.Y. TIMES (June 18, 2020), <https://www.nytimes.com/interactive/2020/06/16/us/george-floyd-protests-police-tear-gas.html?auth=login-google> [<https://perma.cc/7VGN-NPQB>] (compiling a list of incidents where tear gas was used against protesters).

169. Sam Levin, *Minneapolis Lawmakers Vow to Disband Police Department in Historic Move*, GUARDIAN (June 7, 2020, 10:24 PM), <https://www.theguardian.com/us-news/2020/jun/07/minneapolis-city-council-defund-police-george-floyd> [<https://perma.cc/CS2E-2PYZ>] (quoting Lisa Bender, the Minneapolis city council president).

170. Habesha Gaaffaa-Geeska Yäafrika, *Are Eritreans, Ethiopians, Habeshas, Somalis, Horn of Africa People, and Other East Africans “Black?”*, MEDIUM (Oct. 10, 2018), <https://medium.com/@habeshaunion/are-eritreans-ethiopians-habeshas-somalis-horn-of-africa-people-and-other-east-africans-9400dfbd616e> [<https://perma.cc/X2L2-WYAZ>] (explaining that while East Africans, including Somalis, are Black, “[n]o one in these cultures and countries use the term ‘Black’ to identify themselves” because being Black is a “Western and Eurocentric concept”). Compare Nnenna Lindsay, *Racial Identity Development of Somali Refugees in the Midwest* 45 (Jan. 2018) (unpublished Ph.D. dissertation, University of North Dakota), <https://commons.und.edu/cgi/viewcontent.cgi?article=3272&context=theses> [<https://perma.cc/Y6XW-7Y2E>] (interviewing a 31-year-old Minnesotan Somali woman who said, “I identify myself as a Somali American, and I identify myself as a Black Muslim woman. That is my identity and that is my strength”), with Lindsay, *supra*, at 41 (reporting that “elders in the Somali community do not identify as African-Americans or Black; they identify as Somali”).

171. Lindsay, *supra* note 170, at 17.

172. Ibrahim Hirsi, *Young Minnesota Somalis, Asserting Their Blackness, Take Center Stage in Floyd Protests*, MPR NEWS (June 3, 2020, 5:00 AM), <https://www.mprnews.org/story/2020/06/03/young-minnesota-somalis-asserting-their-blackness-take-center-stage-in-floyd-protests> [<https://perma.cc/PA6Y-9APL>].

by employers, fellow citizens, the government, and law enforcement.¹⁷³ “When it comes to the cops,” a young Minnesotan Somali recently said, “we’re all the same thing.”¹⁷⁴ The intersection of CVE and institutional racism must be taken into account when assessing the programs’ harms. One young Minnesotan Somali man said that “[e]very Muslim in America lives in fear,” and this fear leads to the feeling that they “don’t have that so-called freedom of speech.”¹⁷⁵ Muslims feel that law enforcement is primarily focused on ferreting out terrorism, rather than protecting them from hate crimes and discrimination, and these communities feel law enforcement agencies have broken their trust by violating their civil liberties in the past.¹⁷⁶ The critiques of CVE programs in the Twin Cities highlight how the harms inflicted on American Muslims outweigh the programs’ benefits and present obstacles to the equality of the Somali community.

B. *Equal Protection Jurisprudence*

The Equal Protection Clause of the Fourteenth Amendment declares that “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”¹⁷⁷ The Supreme Court has said that “[a]t the heart of . . . equal protection lies the simple command that the Government must treat citizens as *individuals*, not as simply components of a racial, religious, sexual or national class.”¹⁷⁸ The Court has created a framework for assessing the validity of an Equal Protection claim, asking whether there was a government classification¹⁷⁹

173. See Lindsay, *supra* note 170, at 60–61 (quoting a Minnesotan Somali woman saying, “how we identify is very, very important, but being in the [United] States I learned that before I’m Somali I’m [B]lack . . . they don’t care what type of Black I am”).

174. Hirsi, *supra* note 172 (quoting another youth as saying, “[i]f you look [B]lack, [i]f your skin is dark, you’re going to be profiled”).

175. KUNDNANI, *supra* note 95, at 230–31.

176. See SCHANZER ET AL., *supra* note 151; Aziz, *supra* note 6, at 268 (citing testimonies given by Muslims about concerns regarding entrapment and discrimination in law enforcement).

177. U.S. CONST. amend. XIV, § 1.

178. *Metro Broad., Inc. v. Fed. Comm’n Comm’n*, 497 U.S. 547, 602 (1990) (O’Connor, J., dissenting) (internal quotation marks omitted) (quoting *Ariz. Governing Comm. for Tax Deferred Annuity & Deferred Comp. Plans v. Norris*, 463 U.S. 1073, 1083 (1983) (per curiam)), *overruled by* *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995); see also *Plyler v. Doe*, 457 U.S. 202, 216 (1982) (“[A]ll persons similarly circumstanced shall be treated alike.” (citation omitted)).

179. See *infra* Sections I.B.1–2.

and, if so, whether the government's classification has a sufficient justification to survive the level of scrutiny that courts apply.¹⁸⁰

1. *State action*

First, a valid Equal Protection claim requires a state action. The Equal Protection Clause of the Fourteenth Amendment only applies to states and not the federal government.¹⁸¹ However, the Supreme Court determined that the Equal Protection standards of the Fourteenth Amendment would apply to the federal government through the due process protections that the Fifth Amendment mandates the federal government provide.¹⁸²

2. *Government classification*

A government classification may be impermissible on its face when the classification explicitly singles out a group for different treatment.¹⁸³ Alternatively, a classification that is facially neutral may still violate Equal Protection standards as applied if it is an "obvious pretext for racial discrimination"¹⁸⁴ and "motivated by a discriminatory purpose."¹⁸⁵

The disproportionate impact of a facially neutral government action is "an important starting point" to show a discriminatory purpose, but it is not sufficient.¹⁸⁶ "Proof of racially discriminatory intent or purpose" is

180. See *infra* Section I.B.3.

181. U.S. CONST. amend. XIV, § 1; *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954).

182. U.S. CONST. amend. V; see *Bolling*, 347 U.S. at 500 ("[I]t would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government [than on state governments]."); see also *Adarand Constructors, Inc.*, 515 U.S. at 227 (holding that "all racial classifications, imposed by whatever federal, state, or local governmental actor," are subject to strict scrutiny).

183. *Hassan v. City of New York*, 804 F.3d 277, 294 (3d Cir. 2015); RONALD D. ROTUNDA & JOHN E. NOWAK, 3 TREATISE ON CONSTITUTIONAL LAW: SUBSTANCE AND PROCEDURE § 18.4 (2019).

184. *Pers. Admin'r of Mass. v. Feeney*, 442 U.S. 256, 272 (1979). As detailed below, for the purposes of Equal Protection standards, courts tend to treat discrimination on the basis of alienage or national origin the same as racial discrimination. See *infra* notes 192–93 and accompanying text.

185. *Crawford v. Bd. of Educ.*, 458 U.S. 527, 544 (1982).

186. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977); see also *Pers. Admin'r of Mass.*, 442 U.S. at 283 (Marshall, J., dissenting) ("To discern the purposes underlying facially neutral policies, this Court has therefore considered . . . any disproportionate impact."); *Washington v. Davis*, 426 U.S. 229, 242 (1976) (holding that the disproportionate impact of a written personnel test on Black applicants to a police department did not, on its own, violate Equal Protection principles); *Yick Wo v. Hopkins*, 118 U.S. 356, 373–74 (1886) ("Though the law itself

required to show an Equal Protection violation.¹⁸⁷ This intent or purpose, in turn, requires that the government actor *meant* to single out someone based on a protected characteristic.¹⁸⁸

3. *Levels of scrutiny*

Based on the character of the government classification, the court must determine the appropriate standard of review to apply.¹⁸⁹ Courts generally presume a classification is constitutional if it is “rationally related to furthering a legitimate state interest.”¹⁹⁰ This is referred to as rational basis review and is the most lenient standard of review, giving substantial deference to government actions.¹⁹¹ However, this general presumption of constitutionality under rational basis gives way to a stricter standard of review if the classification is based on either a suspect class or the infringement of a fundamental right.¹⁹² These classifications trigger a form of heightened scrutiny; the most rigid form of heightened scrutiny, strict scrutiny, states that a classification is constitutional only if it is narrowly tailored to further a compelling state interest.¹⁹³

The first type of classification that triggers heightened scrutiny is that based on a suspect class. The Supreme Court has specifically stated

be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations . . . , the denial of equal justice is still within the prohibition of the Constitution.”).

187. *Vill. of Arlington Heights*, 429 U.S. at 265.

188. *See Hassan*, 804 F.3d at 297–98 (citing *Snyder v. Louisiana*, 552 U.S. 472, 485 (2008)).

189. *See, e.g., Att’y Gen. of N.Y. v. Soto-Lopez*, 476 U.S. 898, 906 n.6 (1986) (“The logical first question to ask when presented with an equal protection claim . . . is what level of review is appropriate.”).

190. *See, e.g., Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307, 312, 315 (1976) (per curiam); *see also Vance v. Bradley*, 440 U.S. 93, 97 (1979) (holding that a classification is presumed constitutional unless its “varying treatment of different groups . . . is so unrelated to the achievement of any . . . legitimate purposes that [the court] can only conclude that the legislature’s actions were irrational”).

191. *See City of Dall. v. Stanglin*, 490 U.S. 19, 26 (1989) (defining rational basis review as the “most relaxed and tolerant form” of scrutiny); *Exxon Corp. v. Eagerton*, 462 U.S. 176, 195–96 (1983) (describing rationality review as a “lenient standard”); *Murgia*, 427 U.S. at 314 (characterizing rational basis review as a “relatively relaxed standard”).

192. *See infra* notes 194–98 and accompanying text.

193. *See, e.g., Grutter v. Bollinger*, 539 U.S. 306, 326 (2003); *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995); *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 440 (1985).

that government classifications based on “race, alienage, or national origin” are suspect;¹⁹⁴ such classifications are subject to strict scrutiny.¹⁹⁵ More broadly however, whether a classification is suspect can be gleaned from several other factors, including “the history of societal discrimination, the history of political powerlessness, the presence of a discrete and insular minority, and, most importantly, the fact of immutability.”¹⁹⁶

The second type of classification to warrant strict scrutiny is a classification that infringes upon a fundamental right. A right is fundamental when it is “explicitly or implicitly guaranteed by the Constitution.”¹⁹⁷ A classification amounts to an infringement when it deters the exercise of a right or makes the exercise substantially more difficult.¹⁹⁸ Thus, a government classification is subject to strict scrutiny if it infringes upon the rights protected by the First Amendment. Infringement may take the form of “chilling” the exercise of First Amendment freedoms.¹⁹⁹ A chilling effect “occurs when individuals seeking to engage in activity protected by the [F]irst [A]mendment are deterred from doing so by governmental regulation not specifically

194. See *City of Cleburne*, 473 U.S. at 440. The Supreme Court has also recognized gender and illegitimacy as suspect classes, but, for the purposes of this Comment, the focus will be on the standard of review applicable to race, ethnicity, and national origin.

195. See *Oyama v. California*, 332 U.S. 633, 640 (1948) (holding that a trial court’s decision to escheat an American citizen’s land to the state because it had been paid for by the citizen’s father, who was ineligible for naturalization, violated the citizen’s equal protection rights on the basis of his national origin); *Korematsu v. United States*, 323 U.S. 214, 216 (1944) (stating that classification of individuals of Japanese ancestry were “immediately suspect” and subject to “the most rigid scrutiny”), *abrogated by Trump v. Hawaii*, 138 S. Ct. 2392 (2018).

196. See Margaret Chon & Donna E. Arzt, *Walking While Muslim*, 68 L. & CONTEMP. PROBS. 215, 247 (2005) (citing ERWIN CHEMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES § 9.3.2 (2d ed. 2002)); see also *Watkins v. U.S. Army*, 875 F.2d 699, 724 (9th Cir. 1989) (Norris, J., concurring) (analyzing similar factors to determine whether LGBTQ status was a suspect class). An explanation of “discrete and insular minorities,” specifically in the context of religious groups, is explored below. See *infra* notes 231–35 and accompanying text.

197. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 33–34 (1973).

198. See, e.g., *Shapiro v. Thompson*, 394 U.S. 618, 643–44 (1969) (“[T]o justify the deterrent effect . . . on the free exercise . . . of their constitutionally protected right . . . ‘a . . . subordinating interest of the State must be compelling.’” (alteration in original) (quoting *NAACP v. Alabama*, 357 U.S. 449, 463 (1958))), *overruled in part by Edelman v. Jordan*, 415 U.S. 651 (1974).

199. Frederick Schauer, *Fear, Risk and the First Amendment: Unraveling the “Chilling Effect,”* 58 B.U. L. REV. 685, 693 (1978).

directed at that protected activity.”²⁰⁰ In the religious context, First Amendment Free Exercise rights may be chilled when individuals “downplay their religious identity” and “fear becoming too active in the religious activities of a [religious] community.”²⁰¹

Counterterrorism activities have been found to chill Muslims’ exercise of religious freedom. For example, a 2013 report²⁰² by several civil rights organizations interviewed American Muslims affected by the New York Police Department (NYPD) surveillance program at issue in *Hassan v. City of New York*.²⁰³ From 2001 to 2011, NYPD mapped American Muslim communities in New York City, New Jersey, Connecticut, and Pennsylvania by sending undercover officers into “hot-spots” (such as restaurants, halal meat shops, and hookah bars) in Muslim neighborhoods, as well as mosques.²⁰⁴ The officers would document everything they heard and the details of people they spoke with in daily reports.²⁰⁵ They also engaged in a tactic called “create and capture,” where they would instruct informants to engage with Muslims in the community in conversations about terrorism, record their responses, and report back to NYPD.²⁰⁶ The report on the program found that surveillance of American Muslims’ “quotidian activities” created an atmosphere of fear and suspicion and chilled American Muslims’ exercise of their constitutional rights.²⁰⁷ Victims of the surveillance reported that they felt that “appearing Muslim” would subject them to law enforcement attention and, as such, they sometimes changed their appearance and how they practiced their religion.²⁰⁸ The Third Circuit later found the City of New York’s argument that it did not violate the

200. *Id.*

201. Sahar F. Aziz, *Policing Terrorists in the Community*, 5 HARV. NAT’L SEC. J. 147, 181 (2014).

202. See generally MUSLIM AM. CIVIL LIBERTIES COAL. ET AL., MAPPING MUSLIMS: NYPD SPYING AND ITS IMPACT ON AMERICAN MUSLIMS (2013), <https://www.law.cuny.edu/wp-content/uploads/page-assets/academics/clinics/immigration/clear/Mapping-Muslims.pdf> [<https://perma.cc/3FCX-S7KZ>] [hereinafter MAPPING MUSLIMS].

203. 804 F.3d 277 (3d Cir. 2015).

204. MAPPING MUSLIMS, *supra* note 202, at 10.

205. *Id.* at 11.

206. *Id.*

207. *Id.* at 4.

208. *Id.* at 15, 17.

Muslim plaintiffs' First Amendment rights unpersuasive and dismissed the argument.²⁰⁹

4. *Narrow tailoring*

Requiring that a government classification is sufficiently narrowly tailored ensures that “the means chosen ‘fit’ th[e] compelling goal so closely that there is *little or no possibility* that the motive for the classification was illegitimate racial prejudice or stereotype.”²¹⁰ When deciding whether a government program is narrowly tailored, courts look to factors such as the program’s duration and flexibility; harm, specifically to innocent third parties, that the program causes; and the efficacy of “neutral” alternatives.²¹¹

First, the Court has held that a program making a suspect classification may not be sufficiently narrowly tailored if it lacks durational limitations.²¹² Additionally, to be considered narrowly tailored, a program should be flexible so as to treat those affected as individuals, rather than as a category of individuals.²¹³ A program may be overly rigid if it “erect[s] race as the sole criterion in an aspect of public decisionmaking.”²¹⁴

Second, a program may not be sufficiently narrowly tailored if there is an impermissible degree of harm inflicted on “innocent” third parties that “impose[s] the entire burden” of a program’s effects “on particular individuals, often resulting in serious disruption of their lives.”²¹⁵ Harm need not be physical or material; importantly, the Supreme Court has held that “non-material injuries” can cause the harm necessary to

209. *Hassan v. City of New York*, 804 F.3d 277, 307–08 (3d Cir. 2015) (holding that a lack of subjective animus of NYPD against the Muslim plaintiffs was not sufficient to overcome the claim of a violation of the First Amendment).

210. *Grutter v. Bollinger*, 539 U.S. 306, 333 (2003) (alteration in original) (emphasis added) (quoting *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493 (1989) (plurality opinion)).

211. *United States v. Paradise*, 480 U.S. 149, 171 (1987) (plurality opinion); *see also Grutter*, 539 U.S. at 339–42.

212. *See, e.g., Grutter*, 539 U.S. at 342 (holding that “race-conscious [university] admissions policies must be limited in time”); *Paradise*, 480 U.S. at 183 (holding that an affirmative action program was narrowly tailored because its race-based classifications were temporary).

213. *See Grutter*, 539 U.S. at 309 (reasoning that an affirmative action program was sufficiently flexible because it did not “make[] race or ethnicity the defining feature” of admissions decisions).

214. *J.A. Croson Co.*, 488 U.S. at 493.

215. *See Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 283 (1986) (plurality opinion) (reasoning that a preferential-layoffs scheme was not sufficiently narrowly tailored because it placed “too intrusive” a burden on non-minority employees).

establish a constitutional violation.²¹⁶ As early as the nineteenth century in the case of *Strauder v. West Virginia*,²¹⁷ the Court recognized that singling individuals out based on their race was “practically a brand upon them, affixed by the law, an assertion of their inferiority.”²¹⁸ Subsequent Supreme Court cases have recognized reinforcement of stereotypes, feelings of inferiority, and stigmatization as harms violating the Equal Protection Clause.²¹⁹ Cognizable injuries under the Equal Protection Clause are not merely the denial of some benefit.²²⁰ The harm can manifest as discrimination and microaggressions against the classified group, the internalization of stigmas and anxiety by individuals, and the inability of individuals to participate in a community with others.²²¹

Third, courts may determine a program is not sufficiently narrowly tailored if there are effective, “neutral” alternatives that would allow for

216. See William D. Araiza, *No Cake for You: Discrimination, Dignity, and Refusals to Serve*, 19 MARQ. BENEFITS & SOC. WELFARE L. REV. 115, 119 (2018) (arguing that “a concern with non-material harms pervades the Supreme Court’s . . . discrimination jurisprudence . . . since the early years of the Fourteenth Amendment”).

217. 100 U.S. 303 (1879), *abrogated by* Taylor v. Louisiana, 419 U.S. 522 (1975).

218. *Id.* at 308 (striking down a law prohibiting African Americans from jury service).

219. See, e.g., Obergefell v. Hodges, 135 S. Ct. 2584, 2602 (2015) (reasoning that the prohibition of same-sex marriage “impose[d] stigma and injury” and “demean[ed]” same-sex couples in a constitutionally impermissible way); Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet, 512 U.S. 687, 728 (1994) (Kennedy, J., concurring) (arguing that “[t]he danger of stigma and stirred animosities” is present in “religious line-drawing”); Shaw v. Reno, 509 U.S. 630, 650 (1993) (explaining that the “reinforc[ing] [of] racial stereotypes” was a cognizable injury distinct from vote dilution); Columbus Bd. of Educ. v. Penick, 443 U.S. 449, 509 (1979) (Rehnquist, J., dissenting) (recognizing that “stigma and other harm[s]” inflicted by racially-motivated government classifications “offend the Constitution”); Brown v. Bd. of Educ., 347 U.S. 483, 494 (1954) (famously reasoning that segregation in public schools “generate[d] a feeling of inferiority as to [children’s] status in the community”); see also R.A. Lenhardt, *Understanding the Mark: Race, Stigma, and Equality in Context*, 79 N.Y.U. L. REV. 803, 836 (2004) (suggesting that racial stigma is “an injury that prevents the stigmatized individual and the group with which they are identified from fully belonging to, and participating in, our society”).

220. See, e.g., Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville, 508 U.S. 656, 666 (1993) (arguing that an injury for the purposes of standing in Equal Protection cases may be the “denial of equal treatment resulting from the imposition of [a] barrier, not the ultimate inability to obtain the benefit” itself).

221. See Lenhardt, *supra* note 219, at 836, 839, 844 (arguing that between the two poles of group harm and individual harm, there exists “citizenship harm” that impedes individuals’ abilities to participate in society).

the government to further its compelling interest without making suspect classifications.²²² In other words, the state cannot choose “the way of greater interference” if there are reasonable and less burdensome ways to achieve its goal.²²³

5. *Religion under the Equal Protection Clause*

The Supreme Court has not explicitly recognized religion as a classification protected under the Equal Protection Clause.²²⁴ Most often, cases concerning the violation of religious freedoms are evaluated through the lens of the Establishment Clause or Free Exercise Clause²²⁵ of the First Amendment.²²⁶ However, this Comment is not alone in arguing that religion should be—and in practice has been—a classification defended by the Fourteenth Amendment.²²⁷

222. *United States v. Paradise*, 480 U.S. 149, 171 (1987) (plurality opinion). *Compare Grutter v. Bollinger*, 539 U.S. 306, 340 (2003) (holding that a law school sufficiently considered neutral alternatives before implementing its flexible affirmative action program because the alternatives would require “dramatic sacrifice[s]” in the school’s diversity and academic quality), *with City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 507 (1989) (plurality opinion) (reasoning that a city’s program was not narrowly tailored because it did not seem to consider any neutral alternatives before implementing a race-based quota).

223. *See Dunn v. Blumstein*, 405 U.S. 330, 343, 353 (1972) (holding that state durational residence requirements for voters were not the “least restrictive means” to prevent voter fraud and were therefore not narrowly tailored).

224. *See Hassan v. City of New York*, 804 F.3d 277, 299 (3d Cir. 2015) (“Perhaps surprisingly, neither our Court nor the Supreme Court has considered whether classifications based on religious affiliation trigger heightened scrutiny under the Equal Protection Clause.”); *see also* Steven G. Calabresi & Abe Salander, *Religion and the Equal Protection Clause: Why the Constitution Requires School Vouchers*, 65 FLA. L. REV. 909, 911 (2013); Susan Gellman & Susan Looper-Friedman, *Thou Shalt Use the Equal Protection Clause for Religion Cases (Not Just the Establishment Clause)*, 10 U. PA. J. CONST. L. 665, 666 (2008).

225. U.S. CONST. amend. I (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”).

226. *See Chon & Arzt*, *supra* note 196, at 218–19 (“In the U.S., the law of religious freedom has been compartmentalized into a narrow First Amendment box. Relatively few cases have explored religious tolerance via the intersection of the First and Fourteenth Amendments.”).

227. *See, e.g.*, Gellman & Looper-Friedman, *supra* note 224, at 666 (calling on courts to employ the Equal Protection Clause in cases where government actions interfere with or coerce religious practice); Michael A. Paulsen, *Religion, Equality, and the Constitution: An Equal Protection Approach to Establishment Clause Adjudication*, 61 NOTRE DAME L. REV. 311, 331 (1986) (arguing the Establishment Clause *Lemon* test can be “revamped” into a workable approach based on the Equal Protection Clause).

The Supreme Court has combined Equal Protection language and frameworks with classifications pertaining to religion on multiple occasions.²²⁸ Justice Stone, in his famous Footnote Four in *United States v. Carolene Products Co.*,²²⁹ stated that heightened scrutiny should be employed in cases of classification of “particular religious, . . . national, or racial minorities.”²³⁰ The Footnote further states that “prejudice against *discrete and insular minorities*” could warrant a “more searching judicial inquiry” when that prejudice “tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities.”²³¹ In other words, “discrete and insular minorities” are groups that have tended to be isolated or disenfranchised politically and have been made scapegoats by the majority.²³²

Justice Stone furthered the notion that the Equal Protection Clause should protect religious minorities in his dissent in *Minersville School District v. Gobitis* two years later,²³³ where the Supreme Court ruled against Jehovah’s Witnesses claiming that the state violated their rights through a law requiring public school students to say the pledge of allegiance.²³⁴ In his dissent, Justice Stone cited his Footnote Four in *Carolene Products Co.* and argued that the discrimination at hand “seem[ed] . . . no less than the surrender of the constitutional protection of the liberty of small minorities to the popular will.”²³⁵

228. See, e.g., *Morris Cty. Bd. of Chosen Freeholders v. Freedom from Religion Found.*, 139 S. Ct. 909, 909 (2019) (asserting that governmental discrimination against religious persons, organizations, and speech violates the Free Exercise Clause and the Equal Protection Clause); *City of New Orleans v. Duke*, 427 U.S. 297, 303 (1976) (per curiam) (emphasis added) (explaining that rational basis review applies to an Equal Protection claim unless the classification “is drawn upon inherently suspect distinctions such as race, religion, or alienage”); *Walz v. Tax Comm’n*, 397 U.S. 664, 696 (1970) (Harlan, J., concurring) (opining that the neutral application of the Establishment Clause “requires an equal protection mode of analysis”); see also Paulsen, *supra* note 227, at 327 (noting that the Supreme Court has tended to use Equal Protection language in religion cases, but does not apply its methodology).

229. 304 U.S. 144 (1938).

230. *Id.* at 152–53 n.4 (citations omitted); see also Calabresi & Salander, *supra* note 224, at 919.

231. *Carolene Prods. Co.*, 304 U.S. at 152–53 n.4 (emphasis added).

232. Aviam Soifer, *On Being Overly Discrete and Insular: Involuntary Groups and the Anglo-American Judicial Tradition*, 48 WASH. & LEE L. REV. 381, 391 (1991).

233. 310 U.S. 586 (1940), *overruled by* *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943).

234. *Id.* at 591–92.

235. *Id.* at 606 (Stone, J., dissenting).

Additionally, on their own, the Establishment Clause and Free Expression Clause are inadequate to fully protect religious minorities. First Amendment protections, while useful in protecting individual religious freedoms, are less effective when used to protect on the grounds of group religious discrimination.²³⁶ Judicial tests measuring Establishment Clause violations center around “proselytization, coercion, religious purpose, or entanglement of government and religion—not on equality.”²³⁷ Being a member of a religious group—or a perceived member of that group—may make one vulnerable to discrimination even when not engaging in the performative aspects of one’s faith. For example, since September 11, 2001, Arabs, Muslims, South Asians, and others who appear “Middle Eastern” have faced more traffic stops than before, are frequently profiled at airports, and are increasingly monitored in operating their businesses.²³⁸ American Muslims are more likely to be afforded adequate protection and remedies if the law treats discrimination against them on the basis of a suspect class rather than solely on the basis of exercising religion.²³⁹

Further, some minorities’ religious affiliations have been racialized, making them akin to immutable characteristics.²⁴⁰ Immutability is not a condition precedent for an equal protection violation but may be taken into consideration when determining whether a classification is

236. See Chon & Arzt, *supra* note 196, at 220, 247 (“[M]inority religious affiliation can lead to group discrimination, particularly when the cultural distinctiveness of the minority religion is perceived as threatening to the majority.”); Gellman & Looper-Friedman, *supra* note 224, at 668 (“[T]he Equal Protection Clause, designed . . . to address disparate treatment by the government, is a better tool for the job of analyzing a government religious expression case than an Establishment Clause ‘retrofitted’ to reach these religious equality issues.”).

237. Gellman & Looper-Friedman, *supra* note 224, at 672.

238. AMNESTY INT’L, THREAT AND HUMILIATION: RACIAL PROFILING, DOMESTIC SECURITY, AND HUMAN RIGHTS IN THE UNITED STATES 5, 8, 15 (2004), https://www.amnestyusa.org/wp-content/uploads/2017/04/rp_report.pdf [<https://perma.cc/9P7L-NMGT>].

239. See Gellman & Looper-Friedman, *supra* note 224, at 702 (arguing that in cases of religious discrimination, the Equal Protection Clause “speaks to the harm that is actually suffered”).

240. See Chon & Arzt, *supra* note 196, at 228 (“Like most aspects of culture, [religion] is connected to ancestry in that family and community often influence or direct children’s religious choices.”). Racialization of religion is the process by which “certain phenotypical features associated with an ethnic group and attached to race . . . become associated with the religion.” See Khyati Y. Joshi, *The Racialization of Hinduism, Islam, and Sikhism in the United States*, 39 EQUITY & EXCELLENCE EDUC. 211, 216 (2006).

suspect.²⁴¹ As stated above, whether a classification is suspect can be measured by a history of societal discrimination or political powerlessness, the presence of a discrete and insular minority,²⁴² and immutability.²⁴³ However, courts have recognized that the term “immutable” should not always be taken literally for Equal Protection purposes; rather it encompasses characteristics that are so fundamental to one’s identity that one should not be compelled to change it.²⁴⁴ Religious belief is not immutable in the literal sense; one can certainly convert to another religion or renounce any religious affiliations altogether. However, religious beliefs are considered so deeply connected with one’s identity and fundamental to constitutional rights that they should be treated as an immutable characteristic.²⁴⁵ As such, courts should view classification on the basis of religion, especially that of a “discrete and insular minorit[y],” as suspect and subject to heightened judicial scrutiny.²⁴⁶

II. ANALYSIS

Government-funded CVE programs in the Twin Cities threaten the Equal Protection rights of Minnesotan Somalis because, as implemented,

241. See ERWIN CHEMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES § 9.3.2 (2d ed. 2002) (noting that other factors indicating whether a classification is suspect include whether there is a history of societal discrimination and political powerlessness or a discrete and insular minority).

242. See *supra* notes 229–32 and accompanying text (noting that prejudice against discrete and insular minorities may prevent those minorities from accessing political processes needed to protect themselves from prejudice).

243. See *supra* note 196 and accompanying text.

244. *Hassan v. City of New York*, 804 F.3d 277, 301–02 (3d Cir. 2015); see also *Baskin v. Bogan*, 766 F.3d 648, 655 (7th Cir. 2014) (describing an immutable characteristic as one that requires “a deep psychological commitment” such as religious belief and is distinct from a characteristic that is easy to change, such as the “length of his or her fingernails”); *Watkins v. U.S. Army*, 875 F.2d 699, 726 (9th Cir. 1989) (Norris, J., concurring) (“It is clear that by ‘immutability’ the [Supreme] Court has never meant strict immutability in the sense that members of the class must be physically unable to change or mask the trait.”). Similarly, in the immigration and asylum law context, an immutable characteristic is not literally something that cannot be changed; rather, it includes characteristics that a person “should not be required to change because [they are] fundamental to their individual identities or consciences.” *Matter of Acosta*, 19 I. & N. Dec. 211, 233 (BIA 1985), *overruled in part by Matter of Mogharrabi*, 19 I. & N. Dec. 439 (BIA 1987).

245. See *Watkins*, 875 F.2d at 726 (Norris, J., concurring) (noting that the Supreme Court treats traits as “immutable” if altering that trait would “involve great difficulty, such as requiring a major physical change or a traumatic change of identity”).

246. *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152–53 n.4 (1938).

the programs cannot survive strict scrutiny. First, CVE programs involve state action and thereby trigger the Equal Protection Clause. Second, the programs classify Somalis both facially and as applied. Third, CVE initiatives should be evaluated under the standard of strict scrutiny because they classify Minnesotan Somalis on the bases of national origin and religion and infringe on their fundamental First Amendment rights. Finally, as implemented, CVE programs in the Twin Cities do not meet strict scrutiny because they are not sufficiently narrowly tailored to further a compelling government interest.

A. *CVE Programs, Including in the Twin Cities, Involve Government Action at the Federal, State, and Local Levels.*

For an Equal Protection violation to occur, there must first be a government action. The Equal Protection Clause of the Fourteenth Amendment applies directly to states' actions.²⁴⁷ The due process protections of the Fifth Amendment apply the Fourteenth Amendment's Equal Protection standards to federal government actions.²⁴⁸

The federal government spearheads CVE programs in the United States and therefore must abide by Equal Protection principles.²⁴⁹ The White House, along with several executive branch agencies, laid out its approach to CVE in its Strategic Implementation Plan and repeatedly mentions the federal government agencies' role in the programs.²⁵⁰ The plan states that one of its objectives is to "enhanc[e] Federal engagement with and support to local communities that may be targeted by violent extremists."²⁵¹ The FBI,²⁵² NCTC,²⁵³ DHS,²⁵⁴ and DOJ,²⁵⁵ among others, have all implemented CVE activities pursuant to the Strategic Implementation Plan.

247. U.S. CONST. amend. XIV, § 1; *Bolling v. Sharpe*, 347 U.S. 497, 498 (1954).

248. *See supra* note 182.

249. *See supra* Sections I.A.1–2.

250. 2011 STRATEGIC IMPLEMENTATION PLAN, *supra* note 9, at 1, 3.

251. *Id.* at 7.

252. *See supra* notes 41–52 and accompanying text (discussing the FBI's "preventative framework" to counter "violent Islamic extremism").

253. *See supra* notes 53–59 and accompanying text (explaining NCTC's CVE Guide, which instructs government workers on evaluating extremism "risk factors").

254. *See supra* notes 63–65 and accompanying text (examining DHS's CVE Grant Program for implementing CVE activities).

255. *See supra* note 76 and accompanying text (surveying DOJ's allocation of CVE program grants).

All levels of government, as well as the private sector through government funding, have had a hand in CVE efforts in the Twin Cities. The U.S. Attorney for the District of Minnesota designed and implemented the CVE pilot program in the Twin Cities.²⁵⁶ The FBI²⁵⁷ and local law enforcement²⁵⁸ have participated in engaging the Somali community for the purposes of countering violent extremism. DHS is involved through its grant program funding the Hennepin County Sheriff's Office and Heartland Democracy Center, as well as through the roundtables it holds.²⁵⁹ Minneapolis public schools participate in CVE initiatives that monitor Somali students for signs of "radicalization."²⁶⁰ All of these government actors, whether at the federal or state level, must therefore abide by the standards set forth in the Equal Protection Clause and are subject to its prohibitions when making impermissible classifications.

B. CVE Programs Classify Somalis in the Twin Cities Both Facially and As Applied.

A government classification may be made on its face where the government explicitly singles out a group for different treatment.²⁶¹ Alternatively, a classification may exist as applied if the government uses facially neutral language as a pretext obscuring a discriminatory purpose.²⁶² CVE programs make classifications of Minnesotan Somalis both facially and as applied.

256. See *supra* notes 103–06 and accompanying text.

257. See *supra* notes 114–17 and accompanying text (discussing FBI's "Specialized Community Outreach Teams" in Minneapolis).

258. See *supra* notes 108–13, 119–20 and accompanying text (discussing, for example, local law enforcement's partnership with the federal government in the African Immigrant Muslim Coordinated Outreach Program (AIMCOP)).

259. See *supra* notes 118–19, 122 and accompanying text. While the Equal Protection Clause itself does not apply to private entities, Title VI of the Civil Rights Act of 1964 states that "[n]o person . . . shall, on the ground of race, color, or national origin, . . . be subjected to discrimination under *any program or activity receiving Federal financial assistance.*" 42 U.S.C. § 2000d (2012) (emphasis added). Thus, even though Heartland Democracy is not itself a government actor, it is still subject to similar prohibitions of discrimination since it receives federal funding from DHS.

260. See *supra* notes 124–29 and accompanying text (discussing, for example, Hennepin County school districts' Be@School program).

261. See *supra* note 183 and accompanying text.

262. See *supra* notes 184–85 and accompanying text.

1. *Facial classifications*

CVE initiatives in the Twin Cities often explicitly identify the Somali community as their target.²⁶³ The U.S. Attorney for the District of Minnesota created a framework for the pilot program that identifies Minnesotan Somalis as its focus in the first sentence.²⁶⁴ This mirrored DOJ's initial announcement of the pilot program identifying the Somali community in the Twin Cities explicitly and exclusively for engagement in its CVE program.²⁶⁵ Other government actors in the Twin Cities have followed suit, explicitly identifying the Somali community as the focus of CVE.²⁶⁶ In these instances, the government has made facial classifications that explicitly single out Minnesotan Somalis for different treatment than other Americans.

2. *As-applied classifications*

A classification that is facially race-neutral may still be subject to strict scrutiny if the classification, as applied, is an "obvious pretext for racial discrimination" and is shown to be motivated by a discriminatory intent.²⁶⁷ Showing the disproportionate impact of a facially neutral state action is "an important starting point" to show discriminatory intent.²⁶⁸ CVE programs disproportionately impact American Muslims; American Muslims make up just over one percent of the U.S. population,²⁶⁹ but the vast majority of CVE programs in the United States target them as a group.²⁷⁰ Somalis make up 0.9 percent of the

263. See, e.g., BUILDING COMMUNITY RESILIENCE, *supra* note 13, at 2 (identifying the recruitment of Minnesotan Somalis specifically by terrorist organizations); *Pilot Programs*, *supra* note 87 (explicitly and exclusively referring to the Minnesotan Somali community in the announcement of the CVE pilot programs).

264. BUILDING COMMUNITY RESILIENCE, *supra* note 13, at 2 ("Minnesota is home to the largest number of Somali immigrants in the United States.").

265. *Pilot Programs*, *supra* note 87; see also Mauleón, *supra* note 126, at 1354 ("The official strategic plans for CVE at the federal and local level begin with preambles which avoid naming Muslims as a specific threat, then proceed to exclusively elaborate on perceived threats in Muslim communities.").

266. See, e.g., EFFECTIVENESS OF GRANTS PROGRAM, *supra* note 120, at 21, 23 (reporting to Congress that DHS's grants to Heartland Democracy Center and the Hennepin County Sheriff's Office went toward projects "focus[ing] on ISIS, Al-Shabaab, and other Islamist terrorist movements, most often targeting Somali-American youth"); Sperber, *supra* note 104 (noting the U.S. Attorney's creation of the *Somali American Task Force*).

267. See *supra* notes 184–85 and accompanying text.

268. See *supra* note 186 and accompanying text.

269. Mohamed, *supra* note 150.

270. See *supra* Section I.A.

population in Minnesota, yet most CVE programs in the state target them.²⁷¹

However, disproportionate impact alone is not enough to establish an Equal Protection violation. The classification must be shown to be tied to a discriminatory purpose or intent.²⁷² Proving discriminatory intent requires showing that the government actor *meant* to single out someone on the basis of that protected characteristic, though it does not require showing a malicious motive behind the classification.²⁷³ Many of the implementers of CVE programs in the United States, including in the Twin Cities, have good intentions and want to provide crucial social services to the populations they work with.²⁷⁴ Nevertheless, the implementers' intentional targeting of Somalis in the Twin Cities, even if motivated by good intentions, requires the classification to meet the strict scrutiny standard.

Discriminatory intent can be proven through an analysis of the totality of the circumstances, namely through variations of the substantive or procedural status quo.²⁷⁵ In addition to analyzing disproportionate impact, the court should examine the historical background of the decision, the specific sequence of events leading up to the decision, and the legislative or administrative history of the government actor.²⁷⁶

271. MINN. STATE DEMOGRAPHIC CTR., *supra* note 90, at 8.

272. See *supra* note 186–88 and accompanying text.

273. *Hassan v. City of New York*, 804 F.3d 277, 297–98 (3d Cir. 2015) (citing *Snyder v. Louisiana*, 552 U.S. 472, 485 (2008)) (holding that intentional discrimination of Muslim plaintiffs by NYPD did not require NYPD to be “motivated by ‘ill will, enmity, or hostility’” to violate the Equal Protection Clause).

274. See, e.g., “About Us,” KA JOOG, <https://www.kajoog.org/about-us> [<https://perma.cc/P4PX-S4X8>] (explaining the Somali nonprofit’s mission of “creat[ing] a better world by providing community-based, culturally specific programs and services to Somali youth and their famil[ies]”); Nadim Houry, *Trump’s CVE Program: Going from Bad to Worse*, JUST SECURITY (Feb. 22, 2017), <https://www.justsecurity.org/37866/good-vs-bad-extremists> [<https://perma.cc/KL2D-UCXB>]. Many CVE programs, especially those that non-governmental organizations provide, are well meaning and provide important community-level social services and funding opportunities. However, critics contend that the “feel-good intentions of CVE cease . . . when the framework assumes the latent criminality of an entire community.” Mauleón, *supra* note 126, at 1369–70; see also Nabeela Barbari, *Reconsidering CVE: The Unintended Consequences of Countering Violent Extremism Efforts in America* 75 NAVAL POSTGRADUATE SCHOOL (Dec. 2018) (unpublished Master’s thesis), <https://www.hsdl.org/?view&did=821438> [<https://perma.cc/U7AE-BRKY>].

275. *Vill. of Arlington Heights v. Metro Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977).

276. *Id.* at 267–68.

For example, the White House's National Strategy referenced Islamic terrorism and al-Qaeda, indicating a focus on this "brand" of extremism motivating the programs.²⁷⁷ Furthermore, under the Trump Administration, evidence that CVE programs are specifically targeting American Muslims has grown even more apparent. The Administration has considered rebranding the program as "Countering Islamic Extremism"²⁷⁸ and rescinded a CVE grant given to a nonprofit dedicated to de-radicalizing right-wing extremists.²⁷⁹ Therefore, even for CVE programs that are facially neutral, there is significant evidence to suggest they are still discriminatory as applied.

C. *The Constitutionality of CVE Programs in the Twin Cities Should Be Reviewed Under the Standard of Strict Scrutiny.*

Courts must evaluate government classifications under the standard of strict scrutiny when the classification is based on either a suspect class or the infringement of a fundamental right.²⁸⁰ CVE programs in the Twin Cities require strict scrutiny analysis first because the programs classify Somalis on the bases of their national origin and religion, both of which, this Comment argues, are suspect classes.²⁸¹ Second, CVE programs impermissibly infringe on Somalis' First Amendment rights.²⁸²

1. *CVE programs target the Somali community as suspect classes based on national origin and religion.*

A classification is based on a suspect class when it "classifies by race, alienage, or *national origin*."²⁸³ As discussed above, federal, state, and local governments are classifying the Somali community in the Twin

277. EMPOWERING LOCAL PARTNERS, *supra* note 8, at 1.

278. See Ainsley, *supra* note 66 (describing the Trump Administration's consideration of changing "Countering Violent Extremism" to "Countering Islamic Extremism" or "Countering Radical Islamic Extremism").

279. Editorial Board, *Trump's Homeland Security Department Gives Right-Wing Extremists a Pass*, WASH. POST (Aug. 31, 2017), https://www.washingtonpost.com/opinions/trumps-homeland-security-department-gives-right-wing-extremists-a-pass/2017/08/31/a0164ab4-8455-11e7-ab27-1a21a8e006ab_story.html [<https://perma.cc/6FL4-E9DQ>].

280. See *supra* notes 192–93 and accompanying text.

281. See *infra* Section II.C.1 (discussing how Somalis, and American Muslims generally, are discrete and insular minorities in the United States).

282. See *infra* Section II.C.2 (discussing the chilling effects of CVE programs on American Muslims' practicing and associating with Islam).

283. *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 440 (1985) (emphasis added).

Cities on the grounds that they are from Somalia or of Somalian ancestry (i.e., their national origin).²⁸⁴

Because Minnesotan Somalis, and American Muslims generally, are “discrete and insular minorit[ies],” government policies classifying them should receive heightened scrutiny. American Muslims have experienced “violence, discrimination, defamation and intolerances” for their 100-year history in the United States.²⁸⁵ After the terrorist attacks of September 11, 2001, discrimination, harassment, and abuse of Muslims (or individuals perceived as being Muslim) skyrocketed.²⁸⁶ The prejudice against Somalis in the Twin Cities—in this case, through the implementation of discriminatory CVE programs—“tends seriously to curtail the operation of those political processes” that they should be able to rely upon to protect them as a minority.²⁸⁷ Heightened and targeted law enforcement surveillance, infiltration of community activities, and monitoring in public schools all impermissibly impact American Somalis’ safety and religious freedom.²⁸⁸

As discussed above, the Equal Protection Clause does not explicitly recognize religion as a protected classification.²⁸⁹ However, American Muslims, including those in the Somali community in the Twin Cities, could plausibly claim that the government classifies them based on their religious affiliation and that the classification is one that the Equal Protection Clause protects.

First, the Supreme Court has used Equal Protection language and frameworks in examining classifications pertaining to religion.²⁹⁰ As suggested by Justice Stone in Footnote Four, heightened scrutiny should be employed in evaluating the validity of classifications of religious minorities, such as American Muslims.²⁹¹ In the 2015 case *Hassan v. City*

284. See *supra* notes 262–64 and accompanying text.

285. Amaney Jamal, *Civil Liberties and the Otherization of Arab and Muslim Americans*, in *RACE AND ARAB AMERICANS BEFORE AND AFTER 9/11: FROM INVISIBLE CITIZENS TO VISIBLE SUBJECTS* 114, 115 (Amaney Jamal & Nadine Naber, eds., 2008).

286. See, e.g., Kristin Moyé Pruszynski, *Living in a Post 9/11 World: Religious Discrimination Against Muslims*, 2 PHX. L. REV. 361, 363–64 (2009) (explaining that less than a week after the September 11, 2001 attacks, the Council on American-Islamic Relations (CAIR) had received over 300 reports of harassment and abuse, half the number of reports CAIR had received in the entire prior year).

287. *United States v. Carolene Prod. Co.*, 304 U.S. 144, 153 n.4 (1938).

288. See *supra* Section I.A.2 (noting the concentration of CVE programs in the Somali community, particularly in the Twin Cities).

289. See Gellman & Looper-Friedman, *supra* note 224, at 666–67.

290. See *supra* notes 228–35 and accompanying text.

291. *Carolene Prod. Co.*, 304 U.S. at 152–53 n.4.

of *New York*,²⁹² the Third Circuit held that police surveillance of American Muslim communities under the guise of counterterrorism and national security violated the Equal Protection Clause, given the discrimination based on *religious affiliation*.²⁹³ The CVE programs in the Twin Cities are similarly discriminatory on the basis of religion and should be subject to strict scrutiny analysis under Equal Protection principles.

Second, the First Amendment's Establishment and Free Exercise Clauses alone may not be adequate to protect American Muslims as a religious minority.²⁹⁴ Freedom to practice religion is a clearly protected constitutional right, but, in the context of discrimination against American Muslims as a group, the "focus is not the individual right to practice Islam."²⁹⁵ The Fourteenth Amendment is needed to protect "the right to claim freedom from discrimination based on group religious affiliation."²⁹⁶ CVE programs in the Twin Cities not only target Somalis in their places of worship or in other religious contexts; the programs engage and monitor Somalis in their public schools,²⁹⁷ in their interactions with law enforcement,²⁹⁸ and at community gatherings.²⁹⁹ Additionally, Muslim plaintiffs have struggled to win Free Exercise violation claims in court; research suggests that Christian plaintiffs are more likely to win cases based on Free Exercise violations than plaintiffs of other faiths in U.S. Courts of Appeals.³⁰⁰

Third, in the context of American Muslims, including in the Twin Cities, religion, national origin, and race are conflated in a way that should make religion viewed as an immutable characteristic and thereby

292. 804 F.3d 277 (3d Cir. 2015).

293. *Id.* at 299 (reasoning that the Supreme Court has long implied that religion should be treated like other classifications subject to heightened scrutiny); *see also* Gonzalez, *supra* note 132, at 5–7 (providing a detailed analysis of *Hassan v. City of New York*).

294. *See supra* notes 236–37 and accompanying text.

295. Chon, *supra* note 196, at 247.

296. *Id.*

297. *See supra* notes 124–29 and accompanying text.

298. *See supra* notes 108–17, 120 and accompanying text.

299. *See supra* note 121 and accompanying text.

300. *See* James C. Brent, *An Agent and Two Principals: U.S. Court of Appeals Responses to Employment Division, Department of Human Resources v. Smith and the Religious Freedom Restoration Act*, 27 AM. POL. Q. 236, 250–51 (1999) (explaining that "Catholic and Protestant sects were more likely to win than were claimants who belonged to other religions (38.9% vs. 24.5%)").

a suspect classification.³⁰¹ While immutability is not a condition precedent for an Equal Protection violation, courts may consider it when determining if a classification is suspect.³⁰² Religion is not *literally* immutable in the way one's skin color is. However, the law has recognized religious affiliation as an immutable characteristic, viewing it as something that individuals "ought not be compelled to change because it is fundamental to their identities."³⁰³ Individuals in the Twin Cities being targeted by CVE are identified through different "performative" aspects of their identities, such as their "names, clothing, religious practices, political ideologies, and maintaining ties to their home countries."³⁰⁴ Being of Somali ancestry is clearly immutable. Somalis' decision to practice Islam or identify as Muslim is similarly so. Somalis, or any other individual identifying as Muslim in the United States, should not be compelled to change that fundamental part of their identity. This immutability supports the conclusion that Minnesotan Somalis should be regarded as a suspect class.

2. *CVE programs infringe on the fundamental rights of Somalis in the Twin Cities.*

A classification can trigger heightened scrutiny if it deters the exercise of a constitutionally guaranteed right, or if it makes the exercise of that right substantially more difficult.³⁰⁵ CVE programs can have chilling effects³⁰⁶ on American Muslims' participation in and association with Islam.³⁰⁷ Broadly speaking, the chilling effect on Muslims'

301. For the definition of racialization, see *supra* note 240. Since September 11, 2001, "Arabs" and "Muslims" have been conflated in the United States, "even though most Arabs in America are not Muslim and most of the world's Muslims are not Arabs." Thomas W. Joo, *Presumed Disloyal: Executive Power, Judicial Deference, and the Construction of Race Before and After September 11*, 34 COLUM. HUM. RTS. L. REV. 1, 33 (2002).

302. CHEMERINSKY, *supra* note 241, § 9.3.2.

303. *Hassan v. City of New York*, 804 F.3d 277, 301–02 (3d Cir. 2015); see also *supra* note 244.

304. See Mauleón, *supra* note 126, at 1359, 1361 (noting that what would have once been seen as "racial or ethnic profiling is now 'cloaked in expertise about the process by which Muslims become terrorists'").

305. See *supra* notes 197–98 and accompanying text.

306. See *supra* note 200 and accompanying text.

307. See Akbar, *supra* note 43, at 831 (explaining the so-called "Muslim exemption" to the First Amendment); Aziz, *supra* note 201, at 180–82 (detailing the ways American Muslims feel inclined to suppress their religious identities in the face of government and law enforcement scrutiny); Khaled A. Beydoun, *Acting Muslim*, 53 HARV. C.R.-C.L. L. REV. 1, 9–11 (2018) (explaining how "[a]ffirming or negating Muslim identity has distinct implications on the free exercise of religion"); Mauleón, *supra* note 126, at

exercise of their First Amendment rights manifests itself in their “downplay[ing] [of] their religious identity” and “fear[s] [of] becoming too active in the religious activities of a Muslim community because this will be viewed as anti-assimilationist and indicative of terrorist inclinations.”³⁰⁸ Muslims may stop praying publicly, wearing headscarves or growing beards, or attending Muslim community events.³⁰⁹

While CVE programs may not include the exact intensive police surveillance like that done by NYPD³¹⁰ under the guise of counterterrorism, the programs’ entanglement with law enforcement likely has the same chilling effect on American Muslims’ expression of their First Amendment rights. For example, individuals with “precarious immigration statuses or other legal concerns” may forgo attending mosque to avoid “the risk of . . . being featured in a police file.”³¹¹

Even if the government intends CVE programs to be more benign than “hard” counterterrorism efforts, it is reasonable to infer that American Muslims may refrain from engaging in their religious practices when they see law enforcement targeting their community. In fact, Somalis in the Twin Cities have expressed their fears of speaking out and how they have been restrained from exercising their First Amendment rights.³¹² Somali community activists wrote in the

1352 (noting that “CVE programs have been criticized for . . . the chilling effect they have on Muslim political expression and behavior”); Romtin Parvaresh, Note, *Prayer for Relief: Anti-Muslim Discrimination as Racial Discrimination*, 87 S. CALIF. L. REV. 1287, 1288 (2014) (opining that police surveillance of Muslims “chills religious participation and casts innocent Muslims as potential terror suspects”). See generally Pinchuk, *supra* note 126 (examining how the CVE program has a chilling effect on free speech and expression); Matthew A. Wasserman, Note, *First Amendment Limitations on Police Surveillance: The Case of the Muslim Surveillance Program*, 90 N.Y.U. L. REV. 1786, 1791–92 (2015) (discussing the chilling effect of Muslim surveillance programs on free speech and association).

308. Aziz, *supra* note 201, at 181.

309. *Id.*; see also Mauleón, *supra* note 126, at 1359–61 (providing examples of “different performative aspects” of the Muslim identity used to target Muslims captured by CVE).

310. See *supra* notes 202–09 and accompanying text.

311. See Wasserman, *supra* note 307, at 1797 (citing MAPPING MUSLIMS, *supra* note 202, at 14).

312. See, e.g., KUNDNANI, *supra* note 95, at 231; Kadra Abdi et al., *The ‘Countering Violent Extremism’ Program Institutionalizes Injustice Against Somalis*, MINNPOST (May 1, 2015), <https://www.minnpost.com/community-voices/2015/05/countering-violent-extremism-program-institutionalizes-injustice-against-so> [https://perma.cc/4RD2-KUTF]; Vanessa Taylor, *Police Surveillance Concerns US Muslims amid BLM Protest Crackdown*, MIDDLE EAST EYE (July 3, 2020, 3:15 PM),

online newspaper MinnPost that people in the community were afraid to challenge the programs for fear of government retaliation.³¹³ One young Somali in the Twin Cities said, “[e]very Muslim in America lives in fear.”³¹⁴ These apprehensions indicate a chilling effect on Minnesotan Somalis’ First Amendment rights and warrant a review of the government’s CVE programs under strict scrutiny.

D. As Implemented, CVE Programs in the Twin Cities Do Not Meet the High Bar Set by Strict Scrutiny and Are Thereby Unconstitutional.

To survive strict scrutiny, a government classification must be narrowly tailored to further a compelling government interest.³¹⁵ Although the nation’s security from domestic terrorism is a compelling government interest, CVE programs in the Twin Cities are not sufficiently narrowly tailored to further that interest and therefore do not survive strict scrutiny.

1. National security is a compelling government interest but should be approached with caution.

The U.S. government has a compelling interest in the nation’s security and in preventing domestic terrorism.³¹⁶ However, American history has shown that this interest can misguidedly “sanction a discriminatory policy motivated by animosity toward a disfavored group, all in the name of a

<https://www.middleeasteye.net/news/us-surveillance-black-lives-matter-muslims-coronavirus-pandemic> [<https://perma.cc/56EL-EDTC>] (quoting a young Muslim woman as arguing that the purpose of CVE programs is “[t]o instill fear in the heart of communities and paralyse them from advocating for themselves or dissenting from the unjust systems this country is grounded in”).

313. Kadra Abdi et al., *supra* note 312.

314. KUNDNANI, *supra* note 95, at 230.

315. *See supra* note 193.

316. *See, e.g.*, Trump v. Int’l Refugee Assistance Project, 137 S. Ct. 2080, 2088 (2017) (per curiam) (quoting Holder v. Humanitarian Law Project, 561 U.S. 1, 28 (2010)) (“The interest in preserving national security is ‘an urgent objective of the highest order.’”); Gardiner Harris & Michael D. Shear, *Obama Says of Terrorist Threat: “We Will Overcome It,”* N.Y. TIMES (Dec. 6, 2015), <https://www.nytimes.com/2015/12/07/us/politics/president-obama-terrorism-threat-speech-oval-office.html> (reporting President Barack Obama’s emphasis during an Oval Office address after a domestic terrorism attack in California that the “threat from terrorism is real”). *But see* Ziglar v. Abbasi, 137 S. Ct. 1843, 1862 (2017) (quoting Mitchell v. Forsyth, 472 U.S. 511, 523 (1985)) (“[N]ational-security concerns must not become a talisman used to ward off inconvenient claims—a ‘label’ used to ‘cover a multitude of sins.’”).

superficial claim of national security.”³¹⁷ Infamously, in *Korematsu v. United States*,³¹⁸ the Supreme Court, acknowledging that racial discrimination warrants strict scrutiny, held that concentration camps for individuals of Japanese ancestry in the United States were permissible because of the government’s duty to protect the country in times of war.³¹⁹ Rather than learn from history’s lessons about “the danger of excessive deference to the Executive,” the War on Terror has seen repeated “unquestioning unity with the President.”³²⁰

While the factual context of CVE programs in the Twin Cities is obviously different from that of *Korematsu*, the lesson remains that national security concerns should not give the U.S. government *carte blanche* to infringe upon the rights of the law-abiding individuals within its borders. Whatever compelling interest the government has in preventing the radicalization of Somalis in the Twin Cities does not immediately exempt it from recognizing the Equal Protection rights of that population.

2. *The CVE programs in the Twin Cities are not sufficiently narrowly tailored to further the government’s interest in countering terrorism and promoting national security.*

To survive strict scrutiny, a government classification must be narrowly tailored to further a compelling government interest.³²¹ When deciding whether a government program is narrowly tailored, courts will look to factors such as the program’s duration and flexibility; harm, specifically to innocent third parties; and the efficacy of “neutral” alternatives.³²²

317. See *Trump v. Hawaii*, 138 S. Ct. 2392, 2436, 2448 (2018) (Sotomayor, J., dissenting) (arguing against the majority’s decision to permit the Trump Administration’s “Muslim ban”).

318. 323 U.S. 214 (1944), *abrogated by Trump*, 138 S. Ct. 2392.

319. *Id.* at 216, 219–20; *cf. id.* at 233 (Murphy, J., dissenting) (“Such exclusion goes over ‘the very brink of constitutional power,’ and falls into the ugly abyss of racism.”). See generally Stephanie Howell, *In the Shadow of Korematsu: Precedent & Policy Considerations for Trump’s Muslim Registry*, 27 S. CAL. INTERDISC. L.J. 593, 596 (2018) (comparing *Korematsu*’s history with Trump’s Muslim ban with similarities in national security arguments).

320. See Joo, *supra* note 301, at 44 (citing the Bush Administration’s expansion of power with little Congressional resistance in the immediate aftermath of September 11, most notably with the USA PATRIOT Act).

321. See *supra* note 193.

322. *United States v. Paradise*, 480 U.S. 149, 171 (1987) (plurality opinion).

a. *CVE programs are overly broad in terms of their duration and flexibility.*

First, the programs' lack of a clear end date and their overbroad reach indicate the programs are not sufficiently narrowly tailored to further the government's interest. The Supreme Court has often held that programs making race-based classifications were not narrowly tailored when they lacked durational limitation.³²³ Here, the government never designed CVE efforts with a clear end date or goal in mind. The War on Terror itself has been criticized for its never-ending scope because it is "impossible to defeat an ideological movement militarily."³²⁴ Similarly, deradicalization theory focuses on preventing the development of certain extremist ideologies, which many have suggested is unrealistic.³²⁵ While this fact alone does not automatically make the programs unconstitutional, it indicates that they may not be sufficiently narrowly tailored to survive strict scrutiny.

Additionally, CVE programs are implemented inflexibly in that they are applied largely on the basis of one's ancestry, national origin, or religion,³²⁶ making these suspect characteristics the "sole criterion in an aspect of public decisionmaking."³²⁷ Many of the programs operate on the misguided assumption that there is a "fixed, singular entity called Somali culture which could be an object of police knowledge."³²⁸ With the underlying aim of "develop[ing] a baseline profile of Somali individuals that are vulnerable to being radicalized or participating in extremist activities,"³²⁹ law enforcement and CVE programs target tens of thousands of people merely for sharing the same ancestry as a couple of dozen individuals who joined an extremist organization overseas.³³⁰

323. See *supra* note 212.

324. The War on Terror has been criticized as one that is never-ending and impossible to win. See, e.g., Katherine Zimmerman, *The Never-Ending War on Terror: Why the U.S. Keeps Fighting the Wrong Battle*, FOREIGN AFF. (May 11, 2018, 12:00 AM), <https://www.foreignaffairs.com/articles/2018-05-11/never-ending-war-terror> [<https://perma.cc/B5LC-DJLJ>].

325. See *supra* notes 22, 135–43 and accompanying text.

326. See *supra* Section II.C (noting the need for a higher standard of scrutiny when classifications include suspect classes).

327. *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493 (1989) (plurality opinion).

328. KUNDNANI, *supra* note 95, at 220.

329. SCOT Communication, *supra* note 114, at 5.

330. See Mauleón, *supra* note 126, at 1351 (positing that CVE is "based upon the premise that certain populations are at risk for breeding terrorists").

The rigidity with which CVE programs identify their “beneficiaries” ends up casting a net that is both too wide and too narrow. A Somali community organizer in the Twin Cities said that the indicators employed by CVE programs were flawed and missed the targets they intended to capture: “In fact, I could be a friend of a radicalized individual and never have to know. Which . . . actually [happened]. I never knew they were radicalized until they left and did what they did.”³³¹ On the other end of the spectrum, it is unlikely the Twin Cities’ CVE programs, even if they were effective, would have picked up on Troy Kastigar, a young white man who grew up in the suburbs, converted to Islam, and later left to fight for al-Shabaab.³³² The programs, as implemented, almost certainly would not have identified and “de-radicalized” the three men from the racist, anti-government White Rabbit militia who bombed the Dar Al-Farooq Islamic Center outside Minneapolis in 2017.³³³

b. CVE programs in the Twin Cities impermissibly harm tens of thousands of innocent Somalis.

Second, the CVE programs impermissibly harm the tens of thousands of nonviolent Somalis who are associated with criminality simply because of their ancestry and religious affiliation. When evaluating the constitutionality of government programs making suspect classifications, courts must consider the harms inflicted on innocent third parties.³³⁴ A program is not sufficiently narrowly tailored when the effect of the actions purportedly furthering the government’s compelling interest “impose the entire burden . . . on particular individuals, often resulting in serious disruption of their lives.”³³⁵ Harm need not be physical or material; the reinforcement of stereotypes and perpetuation of feelings of inferiority and stigmatization are cognizable injuries under Equal Protection jurisprudence.³³⁶

The chilling effect CVE programs have on American Muslims has been tangible, as Sahar Aziz poignantly summarized:

As a consequence [of CVE surveillance], Muslims are pressured to downplay their religious identity while attempting to assimilate by

331. KUNDNANI, *supra* note 95, at 229.

332. *Id.* at 211.

333. *See supra* note 156 (discussing new CVE branding tactics by the Trump Administration that would continue to foster fear without successful results).

334. *United States v. Paradise*, 480 U.S. 149, 171, 183 (1987) (plurality opinion).

335. *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 283 (1986) (plurality opinion).

336. *See supra* notes 216, 219.

adopting local accents, remaining deferential and cheerful in the face of government targeting, and engaging in hyper-patriotic acts such as displaying American flags in their homes and businesses. In addition, they fear becoming too active in the religious activities of a Muslim community because this will be viewed as anti-assimilationist and indicative of terrorist inclinations. Muslims cease engaging in identity performance expressed through public prayer, wearing headscarves, attending Muslim community events, or other activities that foster a Muslim group identity.³³⁷

In addition to inflicting a significant chilling effect on American Muslims, CVE programs legitimize discrimination of Muslims by “reinforc[ing] that Muslims are a suspect community.”³³⁸ Since September 11, 2001, those perceived as Muslim or “Middle Eastern” have been deemed suspicious and faced increasing discrimination in traffic stops, at airports, and in operating their businesses.³³⁹ American Muslims have faced increasing hate crimes, including “arsons at mosques, assaults, shootings, and threats of violence.”³⁴⁰ Somalis in the Twin Cities have been the victims of harassment, assault, and domestic terrorist attacks.³⁴¹

Even in the absence of “tangible” harms, of which there have certainly been many, CVE programs, when implemented in a way that solely targets a community based on their national origin or religion, are a harmful “brand upon them, affixed by the law.”³⁴² Minnesotan Somalis are forced to bear the burden of ineffective programs that impermissibly target them on the basis of their national origin and religion.

c. There are effective and less harmful alternatives to CVE programs.

Finally, the government has effective alternatives in countering radicalization in the Twin Cities. In determining whether a program is sufficiently narrowly tailored, courts will evaluate whether there are effective, “neutral” alternatives that allow for the government to further its compelling interest without making suspect classifications

337. Aziz, *supra* note 201, at 181.

338. *Id.* at 211.

339. *See supra* note 238 and accompanying text.

340. Lichtblau, *supra* note 154.

341. *Id.*; *see supra* notes 155–57 and accompanying text.

342. *See* *Strauder v. West Virginia*, 100 U.S. 303, 308 (1879) (holding that prohibiting African Americans from jury service was an impermissible “assertion of their inferiority”), *abrogated by* *Taylor v. Louisiana*, 419 U.S. 522 (1975).

or infringing on fundamental rights.³⁴³ Especially in light of the ineffectiveness of the methodology behind CVE and radicalization theory,³⁴⁴ there are a number of alternatives that could be more effective in preventing violent extremism.

First, the government, especially law enforcement, should focus on targeted intelligence gathering and normal, fact-driven police work that pursues individuals *actually suspected of criminal activity*. This can include untangling connections of known terrorist networks and investigating tips of genuinely suspicious activity.³⁴⁵ The Institute of Homeland Security Solutions confirmed that more than eighty percent of the foiled terrorist plots against the United States between 1999 and 2009 were discovered “via observations from law enforcement or the general public.”³⁴⁶ The study concluded that more “basic processes, such as ensuring that investigative leads are properly pursued” were important and more effective than misguided preventative measures.³⁴⁷ In addition to ensuring that the rights of American Muslims are not being impermissibly violated, widening and shifting the focus of counterterrorism back to effective, fact-driven law enforcement will allow for mechanisms that capture *all* forms of violent extremism, including the most prevalent form: domestic terrorism by right-wing extremists.³⁴⁸

Second, any efforts to address the social conditions that may make individuals vulnerable to radicalization should be truly *led* by the communities they are a part of. Despite the lip service paid to “community engagement,” the “federal government has repeatedly signaled little room for American Muslim communities to play a determinative role in setting priorities” of CVE programs.³⁴⁹ Law enforcement in the Twin Cities has continued to assume a predominant role in community-driven initiatives, despite the fact that only about eight percent of Minneapolis police officers actually live in the Twin Cities.³⁵⁰ Preventative programs should be left to civil society

343. *United States v. Paradise*, 480 U.S. 149, 171 (1987) (plurality opinion).

344. *See supra* Section I.A.3 (addressing racialization and stigmatization of American Muslims as the foundation with inconsistent results of such CVE programs).

345. PATEL & KOUSHIK, *supra* note 43, at 36.

346. *Id.*

347. *Id.*

348. *See supra* note 147 and accompanying text.

349. Akbar, *supra* note 112, at 893.

350. Libor Jany, *Only About 8 Percent of Minneapolis Police Officers Live in City Limits*, STAR TRIB. (Aug. 24, 2017, 7:29 AM), <https://www.startribune.com/few-minneapolis->

organizations and social service providers that have the trust of the community and can serve the community outside of the counterterrorism context.³⁵¹ Law enforcement should not be involved in these spaces as it breaks the trust of the community and disincentivizes people who may be seeking help from doing so because they are afraid of being handed over to the police before they have ever actually engaged in criminal activity.³⁵² Community organization leaders in the Twin Cities have emphasized a need for “a civic infrastructure” and youth engagement.³⁵³ Although activities working toward these broader goals may prevent terrorism and radicalization, it is crucial that the activities not be tied to these terms so as to avoid stigmatization and to provide the communities with social services they need.

Given the availability of neutral, effective alternatives, as well as the overbroad and injurious nature of many CVE programs as implemented, there is a clear lack of the narrow tailoring required for a government classification to survive strict scrutiny.

CONCLUSION

CVE programs, as implemented, violate the Equal Protection rights of the Somali community in the Twin Cities because the government makes impermissible facial and as-applied classifications on the basis of national origin and religion. These classifications are not sufficiently narrowly tailored to further the government’s interest in preventing violent extremism. Even though they may be well-intentioned, the programs designate the community as inherently suspect, chill American Muslims from exercising their freedoms, and legitimize discrimination and harassment. Instead, the government, especially law enforcement, should use traditional, legal, fact-driven policing measures to pursue suspects of terrorism that have actually engaged in

cops-live-inside-city-limits/441581413/?refresh=true [https://perma.cc/W37R-NCLX].

351. See ABBAS BARZEGAR ET AL., CIVIC APPROACHES TO CONFRONTING VIOLENT EXTREMISM 15 (2016), <https://tcv.gsu.edu/files/2016/09/Civic-Approaches-Sept-8-2016-Digital-Release.pdf> [https://perma.cc/KA5H-PMUH] (arguing that effective CVE “requires a shift away from asking, expecting, or compelling local religious and civil society actors from serving as monitors and informants for law enforcement”).

352. *Id.*

353. See JACKSON ET AL., *supra* note 4, at 114 (“Although [community groups] might contribute to achieving goals of terrorism prevention, neither the organizations nor the people they serve necessarily see what they do as having anything to do with terrorism.”).

criminality. This approach would create space for communities to truly take the lead in identifying their needs and the vulnerabilities, if any, their community members have to extremist recruitment.