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COUNTERING VIOLENT
EXTREMISM

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TABLE OF CONTENTS

Executive Summary	1
I. CVE Takes Center Stage	5
A. White House CVE Strategy and Plans	5
B. Action by Congress and Federal Agencies	6
II. CVE’s Shaky Foundations	9
A. Extremist Beliefs Do Not Cause Terrorism	9
B. There is No “Terrorist Profile” or Tell-Tale Signs of Terrorism	10
III. U.S. Government CVE Model Not Supported By Empirical Research	13
A. Discredited Ideological Markers; Vague Behavioral Indicators	14
B. Enlisting Parents, School Teachers and Mental Health Workers	16
C. CVE Programs Will Not Improve Public Safety	17
D. U.K. Experience Demonstrates Shortcomings of CVE	20
IV. CVE in Practice	22
A. Federal Initiatives	22
B. CVE Pilot Programs	25

V. CVE Online	32
A. Monitoring Social Media and Removing Information	32
B. Counter-messaging	34
VI. Conclusion and Recommendations	36
A. Focus Counter-Terrorism on Evidence of Wrongdoing, Not Vague and Disproven Indicators	36
B. Repair Relations with Muslim Communities	36
C. Build Concrete Safeguards into CVE Programs	37
D. Delink Social and Educational Programs from Counter-Terrorism	38
E. Greater Transparency About Online CVE	38
F. Ensure Government-Funded Research Adheres to Scientific Protocols	38
Endnotes	40

EXECUTIVE SUMMARY

President Donald Trump's animosity towards Muslims is well documented. During his campaign, he often expressed suspicions about American Muslims, called for greater surveillance of their mosques and communities, and refused to rule out forced registration of Muslims in government databases.¹ Within a week of taking office, he fulfilled his campaign promise to institute a "Muslim ban," issuing an executive order temporarily barring people from seven Muslim-majority countries from entering the United States and halting the Syrian refugee program. Two federal courts halted implementation of the order, relying in part on his calling for a ban on Muslims entering the country.² Trump transition officials have also signaled the administration's intent to target American Muslims in other ways. They have floated the idea of renaming the Department of Homeland Security's Countering Violent Extremism (CVE) program "Countering Radical Islam or Countering Violent Jihad," to make clear it will target only American Muslims.³ Reports suggest that such a change is imminent.⁴ New DHS Secretary John Kelly is conducting a review of the program which will determine its final contours.⁵ Four groups previously awarded over \$2.2 million in federal dollars to work on CVE projects aimed at Muslim communities worried by the new administration's statements have stated that they will decline the funds, and others may follow suit.⁶

Regardless of whether CVE is called Countering Radical Islam or not, the programs initiated under this rubric by the Obama administration — while couched in neutral terms — have, in practice, focused almost exclusively on American Muslim communities. This is despite the fact that empirical data shows that violence from far right movements results in at least as many fatalities in the U.S. as attacks inspired by Al Qaeda or the Islamic State.⁷ CVE not only stigmatizes Muslim communities as inherently suspect, it also creates serious risks of flagging innocuous activity as pre-terrorism and suppressing religious observance and speech. These flaws are only exacerbated when CVE programs are run by an administration that is overtly hostile towards Muslims, and that includes within its highest ranks individuals known for their frequent and public denunciations of a faith that is practiced by 1.6 billion people around the world.⁸

CVE has been part of the conversation about counterterrorism for over a decade, but the approach became more prominent in the United States starting in 2011, when the White House issued its "National Strategy for Empowering Local Partners to Prevent Violent Extremism in the United States." CVE aims to supplement law enforcement counterterrorism tactics such as surveillance, investigations, and prosecutions with a secondary set of prevention measures. Roughly speaking, these can be divided into three categories:

1. Initiatives focused on identifying American Muslims — especially young people — who have adopted "radical" or "extremist" ideas, or who supposedly exhibit signs of alienation and are therefore assumed to be at risk for becoming terrorists. These are frequently called intervention programs, and are supported by research grants aimed at identifying the predictive signatures of people who become terrorists.
2. Programs to fund or facilitate the provision of health, education, and social services to American Muslim communities, based on the theory that adverse economic and social conditions facilitate terrorism.

3. The promotion of messages that the government believes will counter the propaganda of groups like ISIS, as well as monitoring and sometimes suppressing messages that the government believes foster extremism, including encouraging Internet companies to remove extremist or terrorist content from their websites and promote counter-messages.⁹

In 2014, the Department of Justice (DOJ) announced CVE pilot programs in Boston, Los Angeles, Minneapolis, and Montgomery County, Maryland. The Federal Bureau of Investigation (FBI) has launched its own initiatives and Congress has allocated \$10 million for the Department of Homeland Security (DHS) Office of Community Partnerships to distribute in grant funding. These funds were awarded in the waning days of the Obama administration to a mix of 31 police departments, academic institutions, and non-profit groups.¹⁰

CVE proponents often present the strategy as a “soft” approach, which aims to divert at-risk American Muslims away from terrorism. A central goal of the Obama administration was to develop partnerships between the government and Muslim civil society to identify individuals at risk of terrorism and conduct interventions, which could include counseling, mentoring, or mental health treatment. The aim may be laudable, but CVE’s negative consequences outweigh any assumed and unproven benefits.

Many CVE programs label people as potential terrorists using disproven criteria and methods. The first is that extremist ideology is a precursor to, and driver of, terrorism. While this proposition has some intuitive appeal, it has been disproven by decades of empirical research. Many people hold views that can be described as “extreme” and never act violently; the reverse is also true.

The second disproven premise underlying CVE is that there is a predictable path toward terrorism, and that potential terrorists have identifiable markers. This notion has also been repeatedly debunked by empirical findings acknowledged by the White House and various law enforcement agencies. Yet CVE programs run or sponsored by the government continue to use unscientific lists of markers or signs in a misguided effort to identify individuals who are supposedly on their way to becoming terrorists. This overly broad approach creates a grave risk that people who have nothing to do with terrorism will be labeled potential threats, particularly because schoolteachers and social service and healthcare providers who come into contact with young Muslims, but have no law enforcement or intelligence experience, are expected to make these determinations.

CVE intervention programs are framed as community-led efforts to counsel young Muslims. In practice they are mostly led, funded, and administered by law enforcement agencies, including the Departments of Justice and Homeland Security, U.S. Attorney’s Offices, the FBI, and state and local law enforcement agencies. The involvement of these agencies increases the likelihood that these programs will act as a vehicle for intelligence reporting about people and organizations in CVE-targeted communities who have been identified as terrorism risks based on disproven indicators. Publicly available information about these programs does not include rules preventing the entities that receive funding for, or participate in, CVE programs from sharing information with the FBI and police.

It is unlikely that either new or existing CVE programs will carry tangible security benefits. Channeling

law enforcement resources into investigating people based on a potpourri of unproven indicators isn't likely to snare criminals, but rather to draw scrutiny to individuals whose speech or beliefs are outside the mainstream. In addition, these programs risk damaging critical relationships between law enforcement and Muslim communities, further undermining the goal of preventing terrorism.

These risks are far from theoretical. The United Kingdom has used a similar approach, which has resulted in thousands of people, including children, being wrongly identified as potential terrorists. The U.K.'s CVE program is widely perceived as targeting Muslims, particularly their political views; and has resulted in widespread suspicion of government among British Muslims. Top officials in the government have called for its review or dismantling.

Finally, by targeting extreme or radical viewpoints — either by identifying political views as potential indicators of terrorism, or by seeking to suppress them online — CVE programs restrict discourse and debate. This not only undermines First Amendment values, but also drives terrorist narratives underground, where they are harder to challenge.

This report aims to trigger a much-needed course correction by highlighting the risks of CVE programs. It recommends a shift away from CVE to a framework that focuses on viewing American Muslims as a source of strength rather than suspicion. The report makes six recommendations, which should be implemented by the responsible federal, state, and local agencies.

First, counterterrorism and law enforcement officials should focus on what has been proven to work, rather than trying to identify pre-terrorists based on disproven criteria. This means vigorously investigating any suspicion of criminal activity, a tactic that has a proven track record of leading to counterterrorism successes. Communities should feel comfortable sharing information when they suspect criminal activity, rather than pressured to detect nebulous markers of radicalization.

Second, although American Muslims have a strong record of assisting law enforcement, these relationships have been frayed by 15 years in which their communities have been the primary focus of counterterrorism efforts, most recently by CVE. To increase mutual trust, government agencies should reset engagement efforts with American Muslims to cover a broad range of issues, rather than focusing resources on contentious counterterrorism programs. Law enforcement officers should not lead engagement efforts and there should be strict protocols for the sharing of information gathered in the course of community outreach.

Third, to the extent that the federal government continues to conduct or provide funding for CVE programs, it should ensure that the agencies running CVE programs, as well the groups and agencies that receive federal dollars, have in place public and robust safeguards against the manifest risks posed by these programs before they are implemented.

Fourth, while there is no evidence to suggest that providing funds for social and educational programs helps prevent terrorism, these initiatives are generally beneficial and could be continued. However, to

avoid the risks associated with CVE, these programs should be conducted outside the counterterrorism and law enforcement umbrella, and include safeguards to prevent them from turning into vehicles for intelligence gathering.

Fifth, with respect to CVE measures relating to the Internet — i.e., monitoring and removal of content and counter-messaging — this report recommends greater transparency and the development of procedural safeguards.

Finally, government funding of terrorism research should adhere to scientific protocols, measure the effectiveness of CVE programs, and pay close attention to their impact on community relations and constitutional norms.

Even if the federal government pulls back from its active sponsorship of CVE or renames it to make clear that the target is “radical Islam,” the infrastructure for these programs has already been developed at the local level. It is therefore critical that government agencies, particularly at the state and local levels, heed the recommendations set out above and dismantle, or at the very least substantially reconfigure, their CVE programs.

I. CVE TAKES CENTER STAGE

While the ideas underlying CVE have been around for years, the approach became an increasingly prominent part of U.S. counterterrorism policy since 2011.

A. White House CVE Strategy and Plans

In August 2011, President Obama unveiled the “National Strategy for Empowering Local Partners to Prevent Violent Extremism in the United States” (White House CVE Strategy),¹¹ which was followed by an implementation plan (2011 White House CVE Implementation Plan).¹² The latter was updated in October 2016 (2016 White House CVE Implementation Plan).¹³

The first plank of Obama’s White House CVE Strategy was “enhancing [f]ederal engagement with and support to local communities targeted by violent extremists.”¹⁴ While CVE was framed without reference to a particular group or ideology, President Obama’s introduction to the document suggests that American Muslims are the primary target.¹⁵ Indeed, the Brennan Center’s research shows that the bulk of these initiatives, as well as the pilot programs discussed later in this report, are focused on American Muslims.¹⁶ The aim of the strategy was to leverage post-9/11 outreach efforts designed to foster better relations between law enforcement and Muslim communities to encourage them to work with law enforcement to identify potential violent extremists and develop intervention strategies.¹⁷ This goal was highlighted in the White House 2016 CVE Implementation Plan and in the DHS implementing grant program, both of which explicitly envision support for interventions.

Research on CVE was the second plank of the strategy,¹⁸ in order to develop training for communities and government “about how people are radicalized to accept violence, and what has worked to prevent violent extremism.”¹⁹ The 2016 CVE Implementation Plan included an additional emphasis: making such research more easily accessible to the public in order to inform CVE programs.²⁰

The final goal was to develop methods to counter internet propaganda that promotes violent extremism.²¹ This included monitoring social networking sites that advance violent extremist narratives and refuting their messages.²² The 2011 White House CVE Implementation Plan acknowledged that the latter was the “most challenging area of work, requiring careful consideration of a number of legal issues, especially those related to the First Amendment.”²³

Obama’s CVE Strategy recognized the risks posed by this approach and put forward broadly worded principles aimed at ameliorating them. These included the need to protect civil rights and civil liberties and to ensure that the government did not “stigmatize or blame communities because of the actions of a handful of individuals,” as well as the admonition that strong religious beliefs and opposition to government policy should not be confused with violent extremism.²⁴ Yet, despite repeated requests from civil rights and community organizations, the Obama administration never provided information on how these principles would be implemented.²⁵

The 2016 White House CVE Plan acknowledged community opposition, noting that “some have expressed fear of stigmatization and general distrust regarding CVE efforts, specifically citing community engagement as being carried out for purposes of law enforcement investigations or intelligence collection.”²⁶ In response, the plan noted that investigation and intelligence collection are “not the goal of CVE efforts” and that “[p]rotection of individual privacy and freedom of expression . . . will be woven into all efforts.”²⁷ Agency lawyers would “analyze potential privacy, civil rights, and civil liberties considerations” for federal CVE programs. But there is no indication that assessments will be made public or that federally-funded programs run by state and local agencies or non-governmental organizations (which make up a significant portion of these efforts) will be evaluated.²⁸ Indeed, as discussed later in this report, there is little evidence that such assessments have been undertaken or that protections have been incorporated into either the FBI’s CVE initiatives or the pilot programs funded by the federal government.²⁹

B. Action by Congress and Federal Agencies

An inter-agency CVE task force was established in early 2016, led by the Justice Department and DHS.³⁰ A few months earlier, DHS established an Office of Community Partnerships, with the stated mission of countering violent extremism,³¹ which recently issued its own CVE strategy (2016 DHS CVE Strategy). The guiding principles of the strategy state that “[i]ntelligence and law enforcement investigations are not part of CVE activities,” and that “[p]reservation of individual liberty, fairness, and equality under the law and respect for civil rights, civil liberties, and privacy are fundamental to CVE.”³²

Funding for CVE has also increased. Because grants for these programs flow through several different agencies and programs, and may not even be designated as CVE, it is not possible to get a complete picture. For the last few years, the government dedicated between \$3 million to \$4 million annually of the National Institute of Justice’s budget for research aimed at understanding what leads individuals to terrorism.³³ In addition, DHS’s newly-created Office of Community Partnerships was allotted \$13 million, of which \$10 million was earmarked for grants “to help states and local communities prepare for, prevent, and respond to emergent threats from violent extremism.”³⁴ CVE dollars may also be available through other sources, such as the Office of Community Oriented Policing Services at the Justice Department, which funded a program in Montgomery County, Maryland in 2014.³⁵

The request for grant proposals from the DHS Office for Community Partnerships recognized the need to ensure that CVE programs do not “infringe on individual privacy, civil rights, and civil liberties.”³⁶ Those seeking grants were required to “describe any potential impacts to privacy, civil rights, and civil liberties and ways in which applicants will protect against or mitigate those impacts and administer their program(s) in a nondiscriminatory manner.”³⁷ Applications that did not appropriately protect civil rights and civil liberties would not be eligible for grants.³⁸

On January 13, 2017, days before Obama left office, DHS released the list of 31 CVE grant recipients, which includes the broad categories into which they fall.³⁹ Approximately \$2 million was allocated for “developing resilience.”⁴⁰ About the same amount was earmarked for training and engagement activities and on intervention programs each, while about \$2.7 million is allocated to challenging the narrative.

Exporting CVE to the World

The U.S. has been a vocal proponent for CVE at the U.N. In 2014, it sponsored a Security Council resolution requiring governments to take action against foreign fighters, which included a section on CVE.⁴¹ Although the resolution neither defined violent extremism nor affirmatively stated that it leads to terrorism,⁴² it nonetheless elevated CVE as an essential part of addressing terrorism and asked states to take measures to combat violent extremism.⁴³

President Obama placed his personal imprimatur on these efforts, putting in a rare appearance at the meeting that approved the resolution on foreign fighters. In February 2015, President Obama brought together high-ranking officials from 70 countries for a three-day summit on CVE.⁴⁴

The U.S. has also led efforts to embed CVE in the U.N.'s human rights institutions, sponsoring a resolution at the U.N. Human Rights Council.⁴⁵ The passage of the resolution was contentious, necessitating a rare vote in the Council.⁴⁶ Four of the original sponsors — Ireland, the Netherlands, Norway, and the United Kingdom — withdrew their support after its passage because of concerns about changes made during the floor debate.⁴⁷

In December 2015, the U.N. Secretary General issued a Plan of Action to Prevent Violent Extremism, which positioned CVE as a human rights-focused alternative to security-based counterterrorism approaches.⁴⁸ Critics have noted that, like U.N. resolutions on CVE, the plan does not define “violent extremism,” fails to present convincing evidence of the causes or “drivers” of “violent extremism,” and “despite these threshold failings, . . . nonetheless prescribes a host of programmatic, political, and institutional actions with significant implications.”⁴⁹

U.N. human rights experts have raised concerns about the impact of CVE. In 2016, Ben Emmerson, the Special Rapporteur for Counterterrorism and Human Rights, issued a report highlighting the conceptual weaknesses of the CVE framework and cautioned that the approach jeopardizes anti-discrimination norms, freedom of expression, freedom of movement, and securitizes the protection of human rights in undesirable ways.⁵⁰ In their annual Joint Declaration in May 2016, the United Nations Special Rapporteur on Freedom of Expression, David Kaye, and his counterparts from the African Commission on Human and Peoples' Rights, the Inter-American Commission on Human Rights, and the Organization for Security and Co-operation in Europe, also raised concerns that CVE programs “risk undermining freedom of expression.”⁵¹ Kaye warned that: “efforts to counter ‘violent extremism’ can be the ‘perfect excuse’ for democratic and authoritarian governments around the world to restrict free expression and seek to control access to information.”⁵²

A final tranche of a little over \$1 million was awarded to “building capacity” of community-level non-profit organizations active in CVE. As of this writing, four groups awarded funds have stated that they will decline the funding in light of the Trump administration's apparent antipathy to Muslims, while one other has stated that it will do so if the framework for the program is changed to combating radical Islam rather than violent extremism generally.⁵³

It is impossible to evaluate the actual programs being funded because grant applications have not been made public; we also do not know whether they have incorporated adequate non-discrimination and civil rights and civil liberties protections. Two points about the grants are, however, worth noting. First, almost one-third of the funding will go to police and public service agencies and policing research institutions, underlining the central role of law enforcement in CVE. Second, of the non-profit groups providing services to communities and individuals, groups focusing on Muslims were awarded almost 80 percent of funding.⁵⁴ A notable exception is the allocation of \$400,000 to Life After Hate, a group run by former members of the “American violent far-right extremist movement,” which is known for its work in counseling individuals who wish to leave these movements.⁵⁵ An important distinction between Life After Hate and the intervention programs targeted at Muslim communities is that the group assists those who have self-identified as belonging to violent extremist movements with disengagement, and not on identifying pre-terrorists.⁵⁶

II. CVE'S SHAKY FOUNDATIONS

CVE programs are built on two shaky premises. The first is that extremist ideology is a precursor to, and driver of, terrorism. While this proposition has some intuitive appeal, it has been disproven by decades of empirical research. Many people hold views that can be described as “extreme” and never act violently; the reverse is also true. The second premise is that there is a predictable path toward terrorism with clear markers that can be used to identify potential terrorists. This notion has also been repeatedly debunked by empirical research.

Below, we detail what empirical research tells us about how people become terrorists. In the next section, we explain how the U.S. government's CVE framework departs from these findings.

A. Extremist Beliefs Do Not Cause Terrorism

Extreme or radical views are often assumed to lie at the heart of terrorism. But evidence shows that the overwhelming majority of people who hold radical beliefs do not engage in, nor support, violence. Prominent counterterrorism experts sum up what the research shows:

- Prof. Randy Borum, University of South Florida: “A focus on radicalization ... risks implying that radical beliefs are a proxy — or at least a necessary precursor — for terrorism. We know this not to be true. Most people who hold radical ideas do not engage in terrorism, and many terrorists — even those who lay claim to a ‘cause’ — are not deeply ideological and may not ‘radicalize’ in any traditional sense.”⁵⁷
- Prof. John Horgan, Georgia State University: “The idea that radicalization causes terrorism is perhaps the greatest myth alive today ... the overwhelming majority of people who hold radical beliefs do not engage in violence [and] there is increasing evidence that people who engage in terrorism don't necessarily hold radical beliefs.”⁵⁸
- Prof. Andrew Silke, University of East London: “The evidence isn't there to say ideology is the prime reason why people are becoming terrorists, and yet ideology is the foundation on which the counterterrorism effort is built. ... That is a mistake.”⁵⁹
- Dr. Marc Sageman, former CIA Officer: “[I]deology is commonly blamed for this turn to violence ... [b]ut my interviews with terrorists in the name of Islam showed me that they were not ideologues and, indeed, did not understand much about their ideology ... there are big problems with the ideology thesis. It is not a necessary condition to becoming a terrorist.”⁶⁰

These views are supported by a multitude of empirical studies, several of which were funded or conducted by governments, including those of the United States and the United Kingdom.⁶¹

Even the FBI acknowledges the difficulty of pinpointing the role of ideology in terrorism. In 2011, the Bureau analyzed 57 terrorism plots⁶² to evaluate the impact of Anwar al-Awlaki, the high-profile American-born cleric who was killed by a drone strike in Yemen.⁶³ He is widely considered the “inspiration” for several terrorist attacks, including the 2005 London subway bombings and the attempted 2010 Times Square bombing.⁶⁴ The FBI concluded:

It is difficult to quantify the degree to which Islamist materials and ideologues — such as Anwar al-Aulaqi (US Person), Abdullah e-Faisal, and Feiz Muhammed, all of whom appeal to English-speaking audiences — played a part in the radicalization of the persons included in this assessment. ... While Internet personalities are often cited as a source of radicalization, factors outside the scope of this assessment — such as social environment and personal psychology (how a person processes both external and internal messaging) — were also influential.⁶⁵

The FBI’s assessment hints at the difficulty in predicting who will become a terrorist, a topic explored in the next section.

B. No “Terrorist Profile” or Tell-Tale Signs of Terrorism

Western governments have spent millions trying to find a predictable trajectory that leads someone to terrorism or the tell-tale signs of a potentially violent actor. While the search continues,⁶⁶ empirical analysis has produced two definitive conclusions:

- There is no fixed profile of a terrorist. The process by which a person embraces violence is dynamic and involves an array of personal, social and political factors that interact with each other in complex, individualistic ways.
- Precisely because it is a complex mix of factors that leads to terrorism, there is no predictable path to violence. It is simply impossible to reliably assess who will become a terrorist within a population and who will not.

As detailed in the Brennan Center’s 2011 report, *Rethinking Radicalization*, law enforcement agencies, including the FBI and the New York City Police Department (NYPD), initially embraced a “religious conveyor belt” theory of how an individual becomes a terrorist. In essence, both agencies posited that there is a consistent, predictable pattern of stages of radicalization, which begins with the adoption of extremist religious beliefs.⁶⁷ The notion of a religious or ideological “conveyor belt” with visible markers along the way has been thoroughly debunked.⁶⁸

Noted counter-terrorism scholar and former CIA officer Marc Sageman, summed up the state of research, stating: “[d]espite decades of research ... we still do not know what leads people to engage in political violence. Attempts to discern a terrorist ‘profile’ or to model terrorist behavior have failed to yield lasting insights.”⁶⁹ The original proponents of the theory, the NYPD and the FBI, have retreated from their positions. In 2016, the NYPD’s report on homegrown terrorism — which set out the conveyor belt theory — was removed from the department’s website as part of the settlement of a lawsuit about

the department's surveillance of Muslims.⁷⁰ The FBI's Strategic Plan to Curb Violent Extremism goes even further. Obtained through a Freedom of Information Act request and never before published, it unambiguously states:

There is neither one path or personality type, which is prone to adopting extremist views of 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.*⁷¹

Rather, according to the FBI, social science research has developed “numerous behavioral models outlin[ing] the dynamics and factors leading to violent extremism” and has come to the conclusion that “violent extremism is not a linear progression, but an evolving, dynamic situation involving numerous factors, catalysts, inhibitors, and mobilization variables.”⁷²

In sum, researchers agree, as does the FBI, that there are no unique signs of individuals who may be likely to commit terrorism.

III. U.S. GOVERNMENT CVE MODEL NOT SUPPORTED BY EMPIRICAL RESEARCH

There is a deep disconnect between counterterrorism researchers who believe that “we are no closer to answering our original question about what leads people to turn to political violence” and government agencies that recognize this reality, but nonetheless promote CVE programs which assume that there *must* be ways to identify people who might become terrorists.⁷³ CVE relies on community partners — such as schools, social workers, and religious leaders — to pinpoint such individuals. But experience has shown that even trained law enforcement professionals with access to secret intelligence and state-of-the-art analytics have difficulty predicting who might become violent in the future.

Additionally, CVE undermines the social compacts and trusting relationships school teachers, social workers, and religious figures require to effectively serve communities. This is because CVE programs are often run by, or in close cooperation with, law enforcement officials, without safeguards to prevent the exchange of confidential information. This means that personal details about people identified as potential terrorists — on the basis of disproven indicators — can easily be shared with law enforcement agencies, essentially resulting in a system of soft surveillance and reporting by entities that are traditionally bound to confidentiality. People will withhold information from doctors, counselors, social workers, and teachers if they think they will report their conversations to the police.

This approach is also unlikely to contribute to safety. CVE programs will result in the reporting of large numbers of people who have nothing to do with terrorism and the diversion of law enforcement resources from more fruitful pursuits. Moreover, CVE has been counterproductive; it is sowing distrust of government in the very American Muslim communities that have been strong partners in counterterrorism efforts.

What is Violent Extremism?

The White House CVE Strategy states that violent extremists are “individuals who support or commit ideologically-motivated violence to further political goals.”⁷⁴ Similar definitions are used by DHS,⁷⁵ the FBI,⁷⁶ and the National Counterterrorism Center.⁷⁷

This definition encompasses criminal activity, but is also broad enough to cover speech and beliefs. The 2011 White House CVE Plan states that its goal is to “prevent violent extremists and their supporters from *inspiring, radicalizing, financing, or recruiting* individuals or groups in the United States to commit acts of violence.”⁷⁸ While financing or recruiting someone to commit violence is a criminal act, “inspiring” or “supporting” violence is not necessarily a crime. In the landmark case, *Brandenburg v. Ohio*, the Supreme Court upheld the right of a Ku Klux Klan member to voice support for racist violence. It found that constitutional guarantees to free speech apply even to “advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”⁷⁹

The term “radicalizing” too, could include speech and ideas.⁸⁰ In fact, as discussed later in this report, several CVE pilot programs list political viewpoints, such as concern about U.S. foreign policy or human rights abuses in the Middle East, as signs that someone might be on the path to violence.⁸¹

A. Discredited Ideological Markers; Vague Behavioral Indicators

The first post-9/11 models of radicalization, such as those put forward by the FBI and the NYPD, identified belief systems — particularly conservative interpretations of Islam, often described as “jihadi” or “salafi” ideology — as the key drivers of terrorism.⁸² Although these crude religious markers have been fully discredited by empirical research and have now been rejected by some of the very agencies that once put them forward, they remain influential in the terrorism discourse.⁸³ They have been supplemented by more coded references to ideological viewpoints, such as concerns about U.S. foreign policy or the belief that West is at war with Islam. In addition, recent government documents suggest that American Muslims, particularly youth, who are “alienated,” “withdrawn,” or feel “unjustly treated” are at high risk of becoming terrorists. Table 1, which lists the various markers of vulnerability to terrorism identified by federal agencies and local CVE programs, demonstrates this evolution, as well as common themes. For purposes of comparison, the chart also includes the markers used by the U.K.’s CVE program, which, as will be discussed later, has had a significant influence on U.S. policy.⁸⁴

The notion that concerns about U.S. foreign policy or feelings of alienation are markers of terrorism originates, in great part, from law enforcement studies seeking to identify commonalities among past terrorism cases.⁸⁵ These are used to create checklists to identify those “at risk” of committing terrorism.⁸⁶

While such analyses may be valuable as a post-mortem tool for law enforcement and researchers, they are not a useful *predictive* tool. Accepted social science methodology requires a comparison between behaviors and beliefs common to terrorists and a control group.⁸⁷ As Sageman explains:

Any attempt to assess the validity of indicators or factors that might lead an individual to commit political violence would require a study including both (a) individuals who actually carried out acts of political violence, and (b) individuals (the control group) who are similar to the first set in all respects except that they did not engage in violence. Use of a control group is critically important because it is only by a comparison with this control group, in which the indicator of actual violence is *absent*, that one can make the argument that other indicators specific to the subject group are valid. In short, a control group helps to lower the probability of generating a false positive, that is, falsely identifying someone as a future terrorist when he is not.⁸⁸

Sageman also noted that in his three decades of experience studying terrorism, he observed a “repeated failure within the government to employ basic scientific principles, such as the use of a control group, to test the specificity and validity of terrorism-related measures.”⁸⁹ The Brennan Center’s own research bears out this conclusion.

While most government studies remain secret, The Intercept published a 2014 National Counterterrorism Center (NCTC) document entitled “Countering Violent Extremism: A Guide for Practitioners and Analysts,” which contains a rating system for risk of violent extremism.⁹⁰ The guide suggests that individual American Muslims — not suspected of any wrongdoing — be evaluated on a range of measures, such as expressions of hopelessness, sense of being unjustly treated, general health, and economic status. Of course, these traits are not predictive of violence and would raise no suspicion if found in non-Muslims. It is not known whether the NCTC guidance has been used in practice. However, a similar NCTC document, “Radicalization Dynamics: A Primer,” has been used in training by Los Angeles police,⁹¹ and

Table I: Terrorism Indicators Identified by Government Agencies and Programs

Date	Source	Indicators
2006	FBI ⁹²	<ul style="list-style-type: none"> • Isolation from former life; • Wearing traditional Muslim attire, growing facial hair; • Frequent attendance at mosque or prayer group; • Travel to a Muslim country; • Increased activity in a pro-Muslim social group or political cause.
2007	New York City Police Department ⁹³	<ul style="list-style-type: none"> • Giving up cigarettes, drinking, gambling, urban hip-hop gangster clothes; • Wearing traditional Islamic clothing, growing a beard; • Involvement in social activism and community issues; • Reading religious scripture; • Showing unusual maturity and seriousness.
2011	Los Angeles Police Department ⁹⁴	<ul style="list-style-type: none"> • Strong need to join a social group, psychiatric disorders; • Pattern of violent behavior; • Outrage over U.S. or western foreign policy; • Perceived glory of fighting for a cause; • Interest in adventure and action.
2014	National Counterterrorism Center ⁹⁵	<ul style="list-style-type: none"> • Perceived economic stress; • Sense of being unjustly treated; • Low trust in institutions and law enforcement; • Expressions of hopelessness and futility; • Lack of access to healthcare and social services; • Isolation from friends, family, community; • Personal ties to other violent extremists; • Concerns about anti-Muslim discrimination; • Foreign policy concerns relating to U.S. operations in Iraq and Afghanistan, Israel's treatment of Palestinians and others.
2015	Montgomery County ⁹⁶	<ul style="list-style-type: none"> • Ideology, beliefs, and values: notion that West poses a threat to group, bifurcated world view of "us v. them," justifying violence; • Psychological factors: PTSD, mental illness, search for purpose or adventure; • Sociological motivators: alienation, acculturation problems, marginalization, discrimination, kinship ties; • Political grievances: human rights abuses, lack of political rights and civil liberties, corruption, conflict and foreign occupation; • Economic factors: unemployment, relative deprivation, financial incentives.
2015	"Don't Be a Puppet," ⁹⁷ FBI online game for high school students	<ul style="list-style-type: none"> • Personal need for excitement, power, purpose, importance, and achievement; • Fears and frustrations such as social alienation and anxiety.
2015	Minneapolis CVE Framework ⁹⁸	<ul style="list-style-type: none"> • Disaffection; • Disconnect between youth and religious leaders; • Internal identity crises; • Community isolation; • Lack of opportunity, including high unemployment, lack of activities for youth, and few mentors.
2015	Boston CVE Framework ⁹⁹	<ul style="list-style-type: none"> • Feeling isolated and alienated • Frustration at U.S. policy and events around the globe.
2015	United Kingdom Prevent Strategy ¹⁰⁰	<ul style="list-style-type: none"> • Feelings of grievance and injustice; • A desire for political or moral change; • Over-identification with a group or ideology; • "Them" and "us" thinking; • Being at a transitional time of life.

likely other law enforcement agencies as well.¹⁰¹ These themes are also found in NCTC briefings aimed at training communities to identify violent extremists.¹⁰² Two such community awareness briefings state that “common steps toward violent extremism” include experiences of “alienation, racism, blocked social mobility, humiliation.”¹⁰³ They suggest a linear progression from concerns about U.S. aggression against Muslims, to the view that the “U.S. is at war with Islam,” to an embrace of violence as the appropriate response.¹⁰⁴

In sum, U.S. policymakers, while acknowledging that there are no tell-tale signs of who is likely to become a terrorist, nonetheless promote an approach that maintains that likely terrorists come with visible flags. Although the newer checklists tend to avoid obvious religious stereotypes, these are replaced with subjective personality assessments and evaluations of political beliefs. Empirical research does not support the use of these as predictive of terrorism.

B. Enlisting Parents, School Teachers, and Mental Health Workers

Law enforcement agencies have long relied on Muslim communities to alert them to potential terrorist plots.¹⁰⁵ However, CVE is not about reporting suspected crimes. In practice, it is about identifying Muslims as terrorism risks on the basis of common behaviors. President Obama’s National Security Adviser Lisa Monaco explained the approach at an April 2014 forum at Harvard’s Kennedy School:

What kinds of behaviors are we talking about? For the most part, they’re not related directly to plotting attacks. They’re more subtle. For instance, parents might see sudden personality changes in their children at home — becoming confrontational. Religious leaders might notice unexpected clashes over ideological differences. Teachers might hear a student expressing an interest in traveling to a conflict zone overseas. Or friends might notice a new interest in watching or sharing violent material.¹⁰⁶

Several of the behaviors identified by Monaco — personality changes and ideological differences with authority figures — are extremely broad and subjective and are present in many young adults.¹⁰⁷ To support asking the families, friends, and teachers of young Muslims to watch out for pre-terrorist behavior,¹⁰⁸ Monaco cited studies showing that in more than 80 percent of cases involving violent extremists, “people in the community — whether peers or family members or authority figures or even strangers — had observed warning signs a person was becoming radicalized to violence.”¹⁰⁹ The 2016 White House CVE Implementation Plan echoed this view.¹¹⁰

Neither Monaco nor the White House provided references for these studies. However, two frequently cited examinations of lone wolf terrorism suggest that these offenders signal their intent to commit violence, either via social media or to family and friends. A 2014 review of 119 cases of known lone terrorists found: “In 82.4 percent of the cases, other people were aware of the individual’s grievance that spurred the terrorist plot, and in 79 percent other individuals were aware of the individual’s commitment to a specific extremist ideology. In 63.9 percent of the cases, family and friends were aware of the individual’s intent to engage in terrorism-related activities because the offender verbally told them.”¹¹¹ Another study covered 98 cases between 1940 and 2013, concluding that roughly 80 percent had broadcast their intent to commit a violent act through various means, including: social media, TV appearances, as well “statements to friends, family members, and mental health providers, transportation workers and police officers.”¹¹²

At first glance, these studies may appear to support CVE's focus on training people to spot signs of terrorism. But the studies do not adequately take into account the phenomenon of "confirmation bias," the tendency to interpret information that conforms to pre-existing viewpoints.¹¹³ Only in retrospect would changes in behavior — particularly subtle ones — appear consequential. There is also no data on all the cases where friends or family members noticed something "off" about someone but no violence resulted (i.e., there is no control group). As Professor John Horgan, the author of one of the studies referenced in the previous paragraph, has said, "[i]t's not that easy to reverse-engineer violent extremism."¹¹⁴

Enlisting schoolteachers and other adults who are in contact with young people into CVE is of particular concern. Not only does it turn trusted adult role models into informants, the reporting process can become an outlet for anti-Muslim sentiment. There is no reason to believe, for example, that teachers are different from the rest of Americans, 61 percent of whom have a negative view of Islam, according to a 2015 Brookings poll.¹¹⁵

Stereotypes about American Muslim children are not uncommon in schools. The case of Texas ninth-grader Mohammed Ahmed is an extreme example, but illustrates the point. Last September, Ahmed, who lives in a Dallas suburb, brought a homemade digital clock to school to show to his engineering teacher. When the clock beeped in English class, Ahmed showed it to the teacher, who thought it looked like a bomb.¹¹⁶ Ahmed soon found himself questioned by police, handcuffed, and fingerprinted. His treatment provoked outrage from many quarters, including President Obama and Facebook's Mark Zuckerberg.¹¹⁷ Yet Ahmed is hardly alone. According to a 2015 study by the California Chapter of the Council on American Islamic Relations, 55 percent of 621 Muslim students said they had faced religion-based bullying¹¹⁸ (approximately twice the national average for school bullying).¹¹⁹ One in five students reported discrimination from a teacher, including 27 percent of female respondents who wore a hijab (headscarf).¹²⁰ Another survey, conducted by a Montgomery County CVE program, found that 10 percent of Muslim students felt a teacher or school administrator had "treated them unfairly because they are Muslim."¹²¹

Teachers and psychologists have sounded the alarm about CVE. The nation's second-largest teachers' union, the American Federation of Teachers objected strongly to an FBI CVE program, describing it as "ideological profiling and surveillance" that would have "a chilling effect on our schools and immigrant communities, jeopardizing children's sense of safety and well-being and threatening the security and sense of trust of entire communities."¹²² Two psychologists writing in *Psychology Today* criticized CVE programs for asking mental health professionals to report young Muslims on the basis of unproven signs that someone might be on the path to violence.¹²³ Professional ethics, they noted, already require them to take action if they know that someone is "imminently at risk of harming him/herself or others." But CVE programs advocate reporting far beyond that standard, requiring mental health professionals to "spy on their patients, read minds, and predict the future."¹²⁴

C. CVE Programs Will Not Improve Public Safety

The unfounded and imprecise nature of the indicators used in CVE programs strongly suggests that they will result in large numbers of false positives. This effect is magnified by the rarity of domestic terrorist attacks.

Terrorism expert Sageman offers the following hypothetical. Suppose the government has a tool to identify

potential terrorists based on certain types of information, which is 100 percent sensitive — i.e., it is associated with and can identify all potential terrorists who will actually carry out violent acts. The information is also exceptionally specific, and would result in only one error — i.e., one false positive — in 100 predictions. The accuracy of the hypothetical tool (which is far more accurate than anything found in real life) would depend on the number of terrorists in the population. If there were 100 terrorists in a population of one million people (a base rate of 1/10,000), the predictive tool would identify all 100 of them, because it is 100 percent sensitive. However, because the tool is only 99 percent specific, for every hundred evaluations, it would make one error and thus falsely identify another 10,000 people as actual terrorists. In sum, even though the tool is near “perfect,” the probability that it would identify a person who is an actual terrorist is less than 1 percent.¹²⁵

The practical difficulty of predicting who will engage in violence is illustrated by recent cases investigated by the FBI. Omar Matteen (who killed 49 people at the Pulse night club in Orlando) and Tamerlan Tsarnaev (one of the perpetrators of the Boston Marathon bombing) were both investigated and questioned by the FBI. But the agents — who had counterterrorism expertise and access to intelligence databases — were not able to discern that they would later carry out attacks and ultimately closed down their investigations.¹²⁶

CVE efforts also undermine security by sowing division and distrust among American Muslim communities who are a vital source of information for law enforcement. Studies show that Muslims have provided information in between 33 to 40 percent of foiled U.S. terrorist plots.¹²⁷

Although under the Obama administration CVE was deliberately framed without reference to a particular ideology, one would be hard-pressed to find a CVE program directed at non-Muslims.¹²⁸

Can Anti-Gang Programs Serve as a Model for CVE?

The White House CVE Strategy cites the Justice Department’s Comprehensive Gang Model as an inspiration for CVE.¹²⁹ While a full-scale evaluation of gang prevention programs is beyond the scope of this report, a few facts suggest that these programs may not provide a sound model for CVE.

First, the scope of gang violence is far greater than terrorism. There were approximately 30,000 active gangs in the United States in 2012, with roughly 850,000 gang members,¹³⁰ and gangs are estimated to be responsible for as much as 90 percent of violent crime in some jurisdictions.¹³¹ By contrast, the annual number of terrorist incidents (of every stripe) in the U.S. in the last 15 years totals in the low hundreds at most.¹³² Developing accurate predictive models for crime is difficult generally and near impossible with such low frequency.

Second, the track record of gang reduction programs is mixed. The DOJ’s Comprehensive Gang Model failed in three of its six test sites and had “no measurable effect on the growth of gang membership.”¹³³

Finally, like CVE, gang reduction programs disproportionately target minorities,¹³⁴ while excluding predominantly white groups, such as motorcycle gangs and hate groups;¹³⁵ they also use vague and ill-defined criteria for placing individuals on gang lists,¹³⁶ which can subject them to sentencing enhancements for otherwise legal associations with “known gang members.”¹³⁷ Concerns about gang lists led to a California law requiring people to be informed before they are added to a gang database and a chance to challenge the designation.¹³⁸ Minority communities have also long feared that anti-gang initiatives are a cover for intelligence collection.¹³⁹

A 2016 survey of nearly 400 state, county, and municipal law enforcement agencies found that although they had serious concerns about anti-government extremism, not one “had a formal outreach program designed to counteract anti-government, racist, or other forms of violence.”¹⁴⁰

Given this focus, it is hardly surprising that many American Muslims perceive these programs as stigmatizing, particularly since in the last 15 years, violence from individuals inspired by anti-government and neo-Nazi ideologies has resulted in many more fatalities in the U.S. than have al-Qaeda or Islamic State inspired attacks.¹⁴¹ Law enforcement’s central role in CVE and the history of surveillance of Muslim communities have raised concerns that these programs are a pretext for intelligence gathering.¹⁴²

Indeed, there is widespread acknowledgement, both among researchers and even the government, that American Muslims have serious concerns about CVE.¹⁴³ Below are a few prominent critiques of the framework:

- Yusufi Vali, Executive Director, Islamic Society of Boston Cultural Center: CVE “seems to reinforce the same stereotype that society holds of American Muslims: that they or Islam are inherently violent.”¹⁴⁴
- Islamic Shura Council of Southern California, which represents 86 mosques and Muslim organizations in the greater Los Angeles area: CVE programs “will specifically target, stigmatize, and infringe upon the protected rights of Muslim community members in Southern California.”¹⁴⁵
- Muslim student groups at 27 colleges in California: CVE provides “reinforcement ... to the stereotypes that Muslims are security threats, as well as the climate of fear the surveillance program will create, especially amongst Muslim youth.”¹⁴⁶
- Forty-four Somali and Muslim groups from Minnesota, including the largest mosques in the state: “CVE is based on the premise that religion or nationality (Somali) determines an individual’s propensity towards violence. ... It will further stigmatize and marginalize the Somali/Muslim community by treating all of its members as suspects and by holding an entire community responsible for the actions of others.”¹⁴⁷
- Council of American-Islamic Relations and 18 other American Muslim and Asian organizations: “CVE is likely to result in law enforcement targeting an individual based on his/her political opinion and exercise of religion. These are First Amendment protected activities which no government-sponsored programs should encroach upon. Law enforcement cannot be allowed to use them as a basis for action.”¹⁴⁸
- Coalition of 27 civil liberties and community organizations including Muslim Advocates and the American-Arab Anti-Discrimination Committee: “The FBI and local law enforcement could feed information they gather in CVE and community outreach settings into ongoing surveillance and monitoring practices — including the demographic mapping of American Muslim communities, pressuring individuals to become informants and placing people on the No-Fly List and other watchlists based on loose standards.”¹⁴⁹

So unpopular is CVE among Muslims, that the very term is considered toxic.¹⁵⁰ As a result, many programs have rebranded themselves. The Minnesota CVE initiative is now called “Building Community Resilience,” the Boston program is “Promoting Engagement, Acceptance and Community Empowerment” (PEACE), Los Angeles goes by Recognizing Extremist Network Early Warnings (RENEW), and Montgomery County calls itself Build Resilience Against Violent Extremism (BRAVE).¹⁵¹

D. U.K. Experience Demonstrates Shortcomings of CVE

While formal CVE programs are still new in the U.S., the United Kingdom has used a similar approach for over a decade.¹⁵² The results show that thousands of people, including children, were wrongly singled out (false positives). The program is widely perceived as targeting Muslims, particularly their political views, and has resulted in widespread suspicion of government among British Muslims.

The United Kingdom’s CVE program, called Prevent, launched in 2003. It initially focused on providing resources to Muslim communities for “integration and social cohesion” programs,¹⁵³ but grew to encouraging teachers, doctors, and social workers to identify people “vulnerable” to extremism.¹⁵⁴ Those identified as at risk are evaluated by a panel to determine whether they need support — such as mentoring or guidance on theology, health, educational opportunities, and career guidance — in order to divert them from terrorism.¹⁵⁵

As Table 1 shows, the Prevent vulnerability assessment criteria are very similar to those espoused by U.S. CVE programs.¹⁵⁶ They too are empirically unproven, vague, and allow for bias and stereotypes to drive reporting. Of the 22 indicators listed in the U.K.’s “vulnerability assessment framework,” the vast majority is so capacious they could include almost anyone. Some examples: feelings of grievance and injustice; a need for identity, meaning, and belonging; and a desire for political or moral change.¹⁵⁷ Sir David Omand, an architect of the U.K. program and the former head of the country’s signals intelligence agency, GCHQ, has conceded the lack of scientific basis for these criteria, noting that a study by the Security Service “concluded there was no discernible pattern that could be of operational use to separate those who might be vulnerable to radicalization from those of similar backgrounds who would not be.”¹⁵⁸ More recently, the U.K.’s Royal College of Psychiatry questioned the research underlying the risk factors being used for referrals, noting that it had not been made public and subjected to scientific scrutiny.¹⁵⁹

In a sign that bodes ill for U.S. programs, of the nearly 4000 people identified as potential terrorists between 2007 and 2014, some 80 percent were unfounded.¹⁶⁰ This means that thousands of people who had nothing to do with terrorism were referred to the police. Indeed, it is unclear whether even the remaining 20 percent had any connection to terrorism, because there is no publicly available information on these cases.¹⁶¹ Unsurprisingly, the U.K.’s CVE program is perceived by many Muslims as discriminatory and stigmatizing.¹⁶²

As detailed in separate 2016 reports from the Open Society Justice Initiative and the Institute of Race Relations, these concerns have been greatly exacerbated by the passage of the Counter-Terrorism and Security Act of 2015, which imposes a legal duty on local authorities, schools, social services departments, and even nurseries, to report those they believe to be vulnerable to being drawn into

terrorism (formerly, such reporting was encouraged but not required).¹⁶³ The program has also become more explicitly focused on extremist speech and ideology rather than violence, with “extremism” defined as opposition to “fundamental British values.”¹⁶⁴ The combination of compulsory reporting and this nebulous standard led to Muslim children being suspected of terrorism in the following situations:

- A 12-year old boy for playing a terrorist in drama class;¹⁶⁵
- A 17-year old boy who became more overtly religious;¹⁶⁶
- A 14-year old boy who talked about “eco-terrorism” in class;¹⁶⁷
- A teenage boy who came to school with leaflets promoting a boycott of Israel;¹⁶⁸
- A teenager who went to a peaceful protest against the Israeli deputy ambassador;¹⁶⁹ and
- A two-year-old who sang an Islamic song and said “Allahu Akbar” (God is great).¹⁷⁰

Prominent British mosques have criticized the U.K.’s CVE approach as “ill-conceived and flawed policy” used to “spy [on] and denigrate the Muslim community and cause mistrust,” and called for its boycott.¹⁷¹ In a July 2015 open letter, 280 prominent academics, writers and activists wrote that the program “reinforces an ‘us’ and ‘them’ view of the world, divides communities, and sows mistrust of Muslims,” calling on the U.K. government to end the policy.¹⁷² In June 2016, the country’s National Union of Teachers passed a motion calling for the CVE effort to be scrapped because it causes “suspicion in the classroom and confusion in the staffroom.”¹⁷³ As summed up by the UK’s Independent Reviewer of Terrorism Legislation, “the lack of confidence in aspects of the Prevent program[], particularly but not exclusively among Muslims, is undeniable.”¹⁷⁴

The net effect of CVE in the U.K., which has been exacerbated since the introduction of the statutory duty to report, has been to generate hostility and suspicion among Muslim communities, which is counterproductive. The former Chief Superintendent for London’s Metropolitan police summed up the problem: “you need a good relationship with the community for people to come forward with intelligence. If the community doesn’t trust law enforcement, they will be reluctant to share information vital for countering terrorism.”¹⁷⁵

IV. CVE IN PRACTICE

While there is much talk about CVE principles, little is known about its practice. In the U.S., only a few programs have been mounted, many of which are in the early stages of implementation, and information about them is limited. In an effort to learn more, the Brennan Center filed several Freedom of Information requests, some of which are still pending.¹⁷⁶

As noted, community-oriented CVE consists of two elements: 1) ensuring that Muslim communities have certain resources; and 2) identifying potential radicals and intervening before they become violent. While there is no particular evidence suggesting that after-school and mentorship programs contribute to reductions in terrorism,¹⁷⁷ these types of programs, if properly structured to avoid law enforcement involvement, can offer concrete benefits to many underserved communities. Intervention programs, however, pose serious risks of labeling Muslims as terrorists on the basis of little more than conjecture, and offer little benefit from the perspective of either law enforcement or relevant communities.

A. Federal Initiatives

In 2016 the FBI launched two initiatives aimed at enlisting civilians to spot individuals at risk of becoming terrorists. First, it published a CVE program for schools, warning principals about the “emerging trend” of young people “embracing violent radical ideologies.”¹⁷⁸ Formally titled “Preventing Violent Extremism in Schools” (FBI CVE School Guidance), the guide states that young people “possess inherent risk factors making them susceptible to violent extremist ideologies or possible recruitment.”¹⁷⁹ In fact, the data shows that the number of people younger than age 18 involved in terrorism is tiny. Of the 101 people prosecuted for ISIS-related offenses up to mid-2016, only five were aged 18 or under.¹⁸⁰ Meanwhile, nearly 15 million students are enrolled in the nation’s high schools.¹⁸¹

Contrary to the FBI’s own CVE Plan, which states there is no single path to becoming a terrorist,¹⁸² its guidance to schools embraces the notion that there *is* a “trajectory to radicalization.”¹⁸³ According to the FBI CVE Plan, there are no “individually unique behavioral changes for those who mobilize to violent extremism.”¹⁸⁴ In contrast, the School Guidance states that students “on the pathway to becoming radicalized or mobilizing, often exhibit behaviors or engage in communications, indicating support for extremist ideologies or highlighting future intentions.”¹⁸⁵ While it disavows the use of profiles, the guidance urges schools to keep watch on students’ political views and identify those who are “curious about the subject matter” of extremism.¹⁸⁶ Such an approach undermines educational institutions’ traditional role as environments where robust and open inquiry is nourished; instead placing them in the role of actively monitoring students’ political and religious views for signs of violent extremism.¹⁸⁷

The FBI asks schools to stage “interventions” for students displaying “concerning” behaviors, which would involve school resource officers (who are law enforcement officers) and state and local police.¹⁸⁸ Of course, schools routinely get involved when students have behavioral problems. But the increased participation of law enforcement in schools has come under severe criticism for criminalizing disciplinary issues; adding a counter-terrorism element to the mix is only likely to increase these types of problems.¹⁸⁹

As of this writing, it is not known whether any schools have implemented the FBI's recommendations. However, another FBI CVE tool that debuted last year and is already up and running is a website, "Don't Be A Puppet." (<https://cve.fbi.gov/home.html>) The video's imagery encourages the audience to "free" a "puppet" from the "strings" of violent extremism that control it. The website identifies suspicious behavior so broadly that it practically invites stereotypes to influence what gets reported. For example, using "private messaging apps"¹⁹⁰ or playing violent "internet games"¹⁹¹ are deemed signs of trouble, as are "stress by problems at home, grades, peer pressure, bullying and ... frustration."¹⁹²

Muslim community and civil rights groups have criticized the site, noting that instructions such as reporting someone "traveling to places that sound suspicious" would likely lead to reporting of Muslims. According to a letter sent to FBI Director James Comey from the American-Arab Anti-Discrimination Committee:

A trip to France or Germany, which are home to many far-right groups, is not likely to be considered suspicious by most teachers and community leaders. Although there should be nothing inherently suspicious about traveling either to Saudi Arabia or Iraq, where some Muslim holy sites are located, bias could lead individuals to report innocent, constitutionally protected activity to law enforcement.¹⁹³

The American Federation of Teachers, along with 18 other educational and immigrants' rights organizations, asked the FBI to end "Don't Be a Puppet," arguing that the venture was contrary to public schools' mission to be safe, welcoming places of learning.¹⁹⁴ They particularly emphasized the risks to American Muslim children:

The harmful effects of such a campaign cannot be overstated. Racial profiling is marginalizing and will take an emotional and psychological toll on innocent children. A generation of children is growing up living in fear due to the current hateful rhetoric in the public arena targeted at their family and communities. Efforts like Don't Be a Puppet will only exacerbate the bullying and profiling of Middle Eastern and Muslim students by creating a culture of animosity and distrust.¹⁹⁵

The FBI also has announced plans to create Shared Responsibility Committees (SRCs) to review cases of individuals who might be at risk of becoming terrorists, to decide whether they can be diverted from this path via counseling.¹⁹⁶ Although the Bureau has not fully disclosed how these committees will work,¹⁹⁷ leaked draft letters to potential members (Draft SRC Letter),¹⁹⁸ press reports,¹⁹⁹ and FBI briefings²⁰⁰ provide an outline of likely SRC operations.

FBI: CVE is an Intelligence Program

Despite claims that CVE is not a means for intelligence gathering, internal documents from the FBI's CVE office describe the approach as designed to "strengthen our investigative, intelligence gathering, and collaborative abilities to be proactive in countering violent extremism."²⁰¹ The conflict of interest between the FBI's "fundamental law enforcement and intelligence responsibilities" and CVE's emphasis on social or mental health interventions was highlighted in the 2015 report of the 9/11 Review Commission, a Congressionally-mandated panel set up to review the Bureau's operations.²⁰² The panel recommended that CVE responsibilities be transferred to another agency "more directly involved with community interaction."²⁰³

The membership of SRCs is not well defined, and neither are the parameters of their work. The committees are described as “multi-disciplinary groups voluntarily formed in local communities ... at the initiative of the group and sometimes with the encouragement of the FBI.”²⁰⁴ It is not clear how SRC members will be selected, although it seems likely that the Bureau will play a central role. Membership of SRCs will be secret, with the FBI undertaking to “make all reasonable efforts not to divulge the identities of SRC members.”²⁰⁵ There is no information on what confidentiality rules SRCs will follow, on what basis they will make assessments about whether a person is suitable for an “intervention,” or even what such an intervention might entail.

Although the Draft SRC Letter says the FBI “will not... use the SRC as a means to gather intelligence on the subject or... potential connections to terrorism,”²⁰⁶ the operational model of these committees suggests otherwise. It explicitly allows for broad information sharing, stating that “[t]he SRC can, but will not be required to, inform the FBI of an individual’s progress throughout the course of the program.”²⁰⁷ Committee members may be subpoenaed for documents or testimony related to a referred individual in any criminal or civil investigation.²⁰⁸ Moreover, since the FBI is the agency creating the committees, and in some instances financing them,²⁰⁹ there is a considerable likelihood that the committees will perceive pressure, if not an obligation, to share information about people it evaluates.

According to the Draft SRC Letter, the FBI can refer individuals who it believes are “potential violent extremists” to the Committee, a category that appears to be broader than those being investigated by the Bureau under its expansive intelligence gathering mandate.²¹⁰ The committees may also receive referrals from other sources.²¹¹ This means that the SRCs could serve as a conduit of personal information about individuals who are not suspected of any criminal activity or involvement in terrorism or even being assessed as potential threats by the Bureau.

Although there has been no official announcement, it may be that the Bureau is reconsidering SRCs, as it previously indicated to a handful of Muslim community groups in October 2016.²¹² In discussing the 2016 White House CVE Implementation Plan, Brette Steele, who led the Countering Violent Extremism Task Force under President Obama, reportedly said that “We determined that efforts to build intervention teams are less likely to succeed if they are driven by the federal government,” and suggested that the teams should instead be community-led.²¹³

But the 2016 White House CVE Plan retains a central role for law enforcement. Intervention teams will be “led by a variety of practitioners, including, *but not limited to*, behavioral and mental health professionals, *local law enforcement officials*, and faith-based and other non-governmental representatives.”²¹⁴ This does not preclude FBI participation and explicitly envisions local law enforcement agencies as potentially leading intervention teams. Moreover, where such programs do not exist, “DOJ, in coordination with [f]ederal partners” is charged with making sure they are established.²¹⁵ Finally, while the plan states that “[m]any intervention teams will work independent of the government,”²¹⁶ it obviously leaves open the possibility that others will not.

Even leaving aside FBI-led intervention programs, as discussed below, federal law enforcement agencies remained integrally involved in several federally-funded CVE programs that are being carried out at the local level, raising similar conflict of interest issues.

B. CVE Pilot Programs

1. Montgomery County, Maryland

In 2014, the Justice Department gave approximately \$500,000 to the World Organization for Resource Development and Education (WORDE)²¹⁷ to run a CVE program in Montgomery County, Maryland. WORDE describes itself as “a nonprofit, educational organization whose mission is to enhance communication and understanding between communities to mitigate social and political conflict.”²¹⁸ The Montgomery County program is worth considering in detail because WORDE has been publicly described as an effective, evidence-based model that could be scaled up for use in other locales.²¹⁹

WORDE runs several programs under the CVE rubric. Many of these are fairly standard community building initiatives such as educational programs on conflict resolution, the impact of 9/11 on youth, family support, and town halls with public officials.²²⁰ It also sponsors programs that give Muslims the chance to work with people of other races and religions on cooperative ventures such as delivering food to the homeless.²²¹ These types of initiatives are sometimes described in the academic literature as “CVE relevant” to denote that they may have some long-term impact in reducing the likelihood that people will turn to violence, but are not expected to have a direct or immediate effect.

Under a separate DOJ grant, these WORDE programs were evaluated by three academics.²²² This evaluation is the basis for WORDE’s claim that it follows an evidence-based model. But the evaluation has been criticized by researchers at the University of Illinois for its circular reasoning.²²³ Without any scientific basis, the evaluators named certain qualities — feeling lonely or making friends with people from another race — that would impact an individual’s risk of becoming a violent extremist.²²⁴ The programs were then evaluated to see whether effected these risk factors. Even by this measure, as the study itself concedes, WORDE’s results were no better than those of other multicultural programs, which did not have CVE as their goal.²²⁵

In addition, WORDE runs two programs that can be categorized as “CVE specific” — i.e., they aim to identify American Muslims vulnerable to violent extremism. These programs, which raise the greatest concerns about individual rights, were not evaluated because they were started after the evaluation process began.²²⁶ The first is the “Cyber Civility Curriculum,” a “peer gatekeeper training” program that “train[s] high school students on recognizing and assisting peers experiencing isolation, personal crisis, and bullying.”²²⁷ Not much information is publicly available about this program and it is not clear that it is even operational.²²⁸ The second program is its intervention program, which claims to utilize “professionally trained, culturally sensitive clinicians [who] engage with clients (including refugees) on a wide range of psychological and social work issues, including those related to acculturation.”²²⁹ Its focus is on immigrants from the Middle East, South Asia and North, West, and East Africa — mostly Muslim regions.

WORDE has released a CVE instructor’s manual, which sets out its approach to intervention based on “lessons learned and best practices from two years of programming and evaluation.”²³⁰ The manual states that “radicalization to violent extremism is multi-faceted, interconnected and often entails overlapping potential factors” and identifies “five clusters of potential risk factors of radicalization: sociological motivators; psychological conditions; ideology/belief/and values; political grievances; and economic factors.”²³¹

The manual concedes:

This framework was developed using terms such as ‘risk factor’ or ‘indicators of vulnerability’ in the colloquial sense. It is important to note that scientifically, ‘risk factors’ may assume that risk is quantifiable, or that there is a proven causal link between two factors (for example, smoking is a common risk factor of lung cancer). However because there are no studies to date that have demonstrated a causal link between any one risk factor, or combination of factors, and an individual becoming a terrorist, our use of the term ‘risk factor’ is not predictive of who will become radicalized. Instead, it represents a structured guide to explore variables that have a potential to contribute to one’s radicalization.²³²

Despite these nods to scientific inquiry, WORDE in fact seems to use these factors to do just what the group says they cannot. The very report, which states that researchers have not identified any “risk factor, or combination of factors” unique to individuals likely to become terrorists, simultaneously aims to teach others how to identify individuals as vulnerable to violent extremism based on “potential risk factors.”²³³ Earlier WORDE trainings, including for police officers in schools, reflect the same model.²³⁴ But, as one CVE expert, Dr. Arun Kundnani, has explained, if the model has no “predictive power” as WORDE concedes, then it “shouldn’t be used ... because it means the variables it focuses on have no demonstrable relationship to radicalization.”²³⁵

There is no information available on the number or type of interventions conducted by WORDE since it received DOJ funding.²³⁶ Indeed, Professor John Horgan of Georgia State University, one of the researchers who assessed the program after it received government dollars, publicly criticized the group’s lack of transparency in this regard, noting that we cannot accept “at face value claims that these programs are effective.”²³⁷

Many of the “potential risk factors” WORDE identifies as relevant to assessing risk for violent extremism are capacious enough to encompass any number of common problems faced by human beings, such as stress or feelings of alienation. Others, such as those listed under the headings of “political grievances” and “ideology, beliefs and values” — are shared by many people who never commit an act of violence and are at the core of the values protected by the First Amendment. For example, WORDE identifies several prominent extremist narratives, suggesting that ascribing to these views could signal a propensity for violent extremism. First on the list is the view that the West is at war with Islam and Muslims based on “US interventions in Afghanistan and Iraq, drone attacks in Pakistan, the establishment of military bases in Muslim majority countries, human rights abuses against Muslims in Guantanamo Bay, civil rights infringements, US support for Israel, and Washington’s reluctance to support regime change in authoritarian states in the Middle East.”²³⁸ Similarly, WORDE portrays concerns about Western foreign policy and abuses in Muslim countries as signals of a potential inclination toward terrorism. This includes concerns regarding: “state repression,” “the brutal practices of repressive authoritarian regimes in the Middle East,” “lack of political representation, perceptions of political discrimination and feelings of disenfranchisement,” “government corruption,” and “foreign interventions.”²³⁹

These views are hardly unique to budding terrorists. They comprise a list of current national security-related issues discussed on the pages of American newspapers and debated in Congress every day. Repression in the Middle East is routinely documented and criticized by human rights organizations and the U.S.

government. Suggesting that opposition to drone strikes is a suspect “extremist narrative,” or that human rights concerns are an extremist “grievance” and precursors to terrorism, is not only patently absurd, but also illustrates how government-funded CVE programs can impinge on political speech.

American Muslims identified as potential problems based on this unfounded evidence are referred to WORDE’s CVE intervention program, which works hand-in-glove with the Montgomery County Police Department. This could give the police access to information about individuals who have been identified as at risk, potentially based solely on their political beliefs. Information about WORDE’s relationship with Montgomery County police are set out in its grant application:

- More than a third of WORDE’s DOJ funding was sub-granted to Montgomery County police to employ a social worker to assist with CVE cases;²⁴⁰
- The police are in charge of coordinating “referrals and interventions specifically to combat violent extremism;”²⁴¹
- Police officers and WORDE caseworkers decide jointly whether a “CVE case” should be handled by the “criminal-intelligence system or utilizing the public and private social services resources available.”²⁴²

Information may also flow from WORDE to the police *after* a referral is made and in the course of an intervention. According to the group, it follows the Health Insurance Portability and Accountability Act (HIPAA) standard and reports those it considers an “imminent threat” or a threat to “national security,” but it has no formal guidance on what this open-ended standard entails.²⁴³

Finally, whatever assurances WORDE may offer, law enforcement’s perspective on CVE could not be clearer. Montgomery County assistant police chief Darryl McSwain views the program as a “way to gather information on security threats and share it with state and federal officials.”²⁴⁴

In sum, WORDE’s CVE intervention program has significant deficiencies. The program uses a checklist of broadly described measures, including widely held political views, as a way to identify individuals at “risk” for becoming terrorists. At root, WORDE adopts the thoroughly debunked approach of trying to predict who is likely to become a terrorist. The group also works closely with Montgomery County police when deciding which cases to refer for intervention and it appears that information can also flow to the police during counseling. Finally, despite claims of demonstrated effectiveness, the intervention aspect of WORDE’s programs has simply never been scientifically evaluated.

2. Boston, Los Angeles and Minneapolis

In September 2014, the Department of Justice announced plans to create CVE pilot programs in Boston, Los Angeles, and Minneapolis-St. Paul.²⁴⁵ Run by local U.S. attorneys, these programs include two features: CVE-relevant efforts that aim to provide Muslim communities with social and educational programs, and CVE-specific efforts to identify potential radicals and conduct interventions, possibly through the FBI-led SRCs.

Boston

Boston's Framework for Prevention and Intervention Strategies (Boston CVE Framework) envisions CVE-relevant activities such as skills training, efforts to increase awareness about mental health resources, and training on digital literacy.²⁴⁶ The framework notes that “[r]esearchers across the globe have made it clear that the path to violent extremism is not linear and there are no valid or reliable indicators to ‘predict’ who is more likely to engage in violent extremism.”²⁴⁷ The lead agency in charge, the Massachusetts U.S. Attorney's office, also conceded that “[w]ithout specific behavior indicators, it may be challenging to craft specific intervention protocols.”²⁴⁸

Nonetheless, the framework calls for programs to train people to identify “individuals vulnerable to isolation, alienation and becoming disenfranchised,”²⁴⁹ perhaps through teacher-created “lists of students to determine which students appear not to be connected”²⁵⁰ and those who express anger or frustration at U.S. foreign policy.²⁵¹ According to the framework, it does not have a law enforcement component and police will become involved only “once an individual has begun to prepare for or engage in ideologically-motivated violence.”²⁵² However, the framework does not specify who will be responsible for deciding that a person has crossed the line into criminal activity, or on what basis.

So far, the Boston program appears to be proceeding along two tracks: trainings and a grant program. Trainings, which are frequently arranged by the U.S. Attorney's office,²⁵³ are meant to teach educators, public health providers, and community and faith-based leaders to spot individuals vulnerable to violent extremism.²⁵⁴

The grant program is run by the Massachusetts Executive Office of Health and Human Services (MA-HHS), which was awarded some \$217,000 by the U.S. attorney's office to distribute CVE funds to “non-profits, for-profits, and/or education systems.”²⁵⁵ The agreement between the two offices acknowledges that “there is a lack of understanding regarding violent extremism,” but specifically envisions intervention programs for individuals are vulnerable to recruitment to terrorism because they “feel[] isolated and alienated” or because they are frustrated and angered by “U.S. policy and events around the globe.”²⁵⁶

In early 2016, MA-HHS solicited information from stakeholders on a range of CVE initiatives including intervention programs for individuals who display “concerning behavior” to “prevent mobilization to violence.”²⁵⁷ Several community and civil rights groups expressed concerns with respect to this and other aspects of the proposed grant program.²⁵⁸

When the agency issued its final request for proposal in August 2016, it appeared to take account of some of these criticisms. The program, which has been rebranded as the Promoting Engagement, Acceptance and Community Empowerment (PEACE) project, identifies its overall goal as preventing “violence” motivated by prejudice (as defined in hate crimes laws) or that meets the federal definition of terrorism.²⁵⁹ The solicitation bars the use of grant funds to “prohibit[] protected speech; suppress[] political dissent; profil[e] based on race, national origin, religious affiliation, ethnicity and/or ideology,” or to “erod[e] confidentiality protections established by law.”²⁶⁰ Importantly, the program appears to have moved away from a reporting framework based on discredited signs of pre-terrorism to one that requests proposals for “[i]nformation and referrals” for “spouses, parents, guardians or caretakers who are concerned that a child in their care or custody, or adult, may be recruited by organizations that promote, plan or engage in violence.”²⁶¹

These are welcome developments, which are further buttressed by the award of grants that do not appear to include any intervention component. The grants announced are as follows:

- **Empower Peace** will outreach to high schools and work with students to develop social media strategies and campaigns to promote tolerance and acceptance, and will offer a one day academy on social media and messaging related to violence prevention.
- **Somali Development Center** will convene local Somali leaders to promote economic development, community engagement, and social adaptation and cohesion. The Center will focus on the prevention of harmful cultural practices, the development of women and girls, and opportunities for immigrant and refugee youth.
- **United Somali Youth** will work with Somali and other African and Middle Eastern youth in the Greater Boston area to help build academic, social, athletic and critical life skills. The organization will offer afterschool programs, counseling, college readiness assistance, extracurricular activities, and community events.²⁶²

Despite this progress, it is clear that Massachusetts CVE is focused on American Muslims. Two out of the three grants were given to groups that work primarily with Muslims and it is not clear whether the grant to Empower Peace will also be focused on these communities. It should also be noted that the improvements in the Massachusetts approach may be entirely undercut if the U.S. Attorney’s Office or other government agencies continue to sponsor trainings that promote debunked indicators of violent extremism²⁶³ or initiates intervention programs along the lines of the FBI’s Special Responsibility Committees.

Los Angeles

The Los Angeles Framework for Countering Violent Extremism includes a CVE-general component, which mainly relies on existing rather than new programs, the overwhelming majority of which involve Muslim communities.²⁶⁴ It also envisages the creation of a CVE-specific intervention program to provide individuals “already deemed to be on a path towards violent extremism, with off-ramps to needed social services, mental health, faith-based, and other services.”²⁶⁵

In September 2016, the LAPD's Deputy Chief of Counterterrorism, Michael Downing, outlined how the Los Angeles intervention program would work.²⁶⁶ Called Recognizing Extremist Network Early Warnings (RENEW), is run jointly with the FBI, the Los Angeles County Sheriff's office, the Los Angeles County Department of Mental Health, as well as the Joint Regional Intelligence Center. According to Downing:

- The Joint Terrorism Task Force (JTTF), which includes representatives from Los Angeles police and the FBI as well as other state and federal agencies, notifies a designated coordinator in the LAPD's mental evaluation unit if they come across a "subject they would like the program to look into." Calls from the public would also be referred to the coordinator.
- The coordinator transmits the person's name to the Joint Regional Intelligence Center for a "full work-up," including criminal records, whether the person has a weapon, a "Social Media analysis," and travel and financial records.
- The work-up is assessed by a joint LAPD-LA Department of Mental Health program that will decide whether: 1) the subject is a threat and should be held for evaluation, 2) the subject exhibits signs of mental illness and should be referred for outpatient therapy; or 3) the subject is not mentally ill but "may be isolated and would respond well to better integration with community or social services such as a mentorship [or] cross-cultural program."
- The result is reported back to the coordinator, who may also inform the JTTF.

Missing from Downing's presentation is the basis on which individuals would be referred to RENEW in the first place. If only those already under investigation by the JTTF were referred, the program could work as a means of exploring alternatives to prosecution. But the program appears to be broader. It starts with an evaluation by the regional intelligence center, which would hardly seem necessary in the case of an existing investigation suggesting that RENEW also anticipates collecting names from the public. While the criteria for referring someone are not specified, it seems likely that they will be similar to those previously identified by the LAPD as characterizing violent extremists, including political speech (e.g., outrage over U.S. or western foreign policy), psychological disorders, patterns of violent behavior, and capacious criteria that allow ample room for preconceptions (e.g., interest in adventure and action, strong need to join a social group).²⁶⁷

Remarkably, Downing's model does not allow for a perfectly plausible outcome: a person may be wrongly referred. In such cases, individuals wrongly identified as potential violent extremists — potentially on the basis of political views or common behaviors — will be thoroughly investigated and, even if they are found to have nothing to do with terrorism, could be added to intelligence databases of suspicious activity.²⁶⁸

Minneapolis

Minneapolis-St. Paul has the nation's largest Somali-American community and the area's CVE plan is largely focused on them. The Minneapolis Framework lists five "community-identified root

causes of radicalization:” “disaffected youth;” “a deepening disconnect between youth and religious leaders;” “internal identity crises;” “community isolation;” and “lack of opportunity.”²⁶⁹ Now called “Building Community Resilience” and funded with \$1 million in government and private money, the initiative includes: a mentorship program for Somali youth operated by Big Brothers Big Sisters of the Greater Twin Cities; an education and career resource hub for Somali youth in the Cedar-Riverside neighborhood; and some \$500,000 in grants to be distributed by Youthprise, a non-profit organization focused on teenagers.²⁷⁰ Thus far, most of the programming has been “CVE-relevant,” meaning long-term initiatives that may reduce violence.

While these initiatives are no doubt broadly helpful, it is not at all clear they do anything to prevent people from turning to terrorism.²⁷¹ Moreover, even these benign initiatives have raised suspicions because a previous community engagement program obtained funding from the federal government by promising to identify radicals among youth.²⁷²

The Minneapolis Framework also anticipates an intervention component, but does not provide details on how subjects will be identified. It suggests that “community volunteers” such as mothers, community organizers, religious leaders, and mental health professionals mobilize to work “directly with families before law enforcement is ever involved.”²⁷³ The framework does not address the issue of when or how law enforcement should become involved. It is not clear whether such an intervention program has been established, although in 2014, the Minneapolis public school system announced that it planned to place youth workers in lunchrooms and other non-classroom settings to “identity issues and disaffection at school.”²⁷⁴ According to news accounts, the program was in effect in the 2015 school year but was discontinued due to a lack of funds.²⁷⁵

V. CVE ONLINE

CVE is increasingly moving into the online space. Counterterrorism officials are concerned about ISIS's online recruitment and propaganda, although both have diminished dramatically in the last year.²⁷⁶ The Obama White House repeatedly urged companies to monitor social media for terrorist or extremist content, remove certain accounts and posts, promote counter speech by funding voices that it considers useful counterpoints to ISIS, and encouraged companies to promote these counter-messages on their platforms.²⁷⁷ While these efforts may seem different in kind from the community programs discussed above, they too rest on the disproven premise that terrorism is driven by extreme ideologies. The way to address the threat, the thinking goes, is to find ways to combat the spread of these ideas, either by removing them from the internet or by promoting the voices of those who contest them.

Online CVE is a complex subject, worthy of its own investigation. However, some core issues have emerged that are discussed below.

A. Monitoring Social Media and Removing Information

Social media companies, such as Facebook, Google, and Twitter, have been urged to screen content on their platforms. Often, this is described as looking for “terrorist content” and “terrorist activity,”²⁷⁸ but also includes attempts to monitor “radicalization,” which appears to be something short of terrorism.²⁷⁹

An initial question is whether companies like Twitter and Facebook should be running analytical tools on *all* their users to identify vague concepts like “radicalization,” which inevitably involves core political views, or whether they should instead rely on reporting by users.²⁸⁰ Another difficulty is identifying such information. Social media companies take the position that there is no “magic algorithm” for distinguishing “terrorist content”²⁸¹ and doing so requires them to make challenging judgments based on limited information and guidance.²⁸² Detecting “radical” or “extreme” material is even harder since these concepts are elusive, especially for global online platforms operating across cultures and languages.²⁸³

Nonetheless, several companies have become more active in monitoring their platforms, removing posts and closing accounts that violate “community standards,” generally banning “hate speech” and/or the promotion or praise of “acts of terror.”²⁸⁴ In August 2016, Twitter reported that it had deleted 360,000 accounts for promoting terrorism since mid-2015.²⁸⁵ Facebook, too, has taken a more vigorous approach. According to its head of public policy, when the company becomes “aware of an account supporting terrorism, we look at their friends, and associated accounts, so we can remove them.”²⁸⁶ In December 2016, Facebook, Microsoft, and Twitter announced that they would create a shared database of the digital fingerprints of “the most extreme and egregious terrorist images and videos we have removed from our services — content most likely to violate all of our respective companies’ content policies.”²⁸⁷ Even supporters of the initiative are concerned about the lack of transparency about what the database captures.²⁸⁸ Critics worry that the initiative will squelch speech.²⁸⁹ Facebook has drawn criticism for, among other things, deactivating the accounts of several prominent Palestinian journalists,²⁹⁰ deleting accounts and posts relating to the conflict in Kashmir,²⁹¹ and removing an iconic Vietnam War photo of a young napalm victim because it ran afoul of nudity restrictions.²⁹² While

Facebook conceded that these materials and accounts were taken down by mistake and restored them, the cases illustrate the difficulty of making judgments about what materials fall within its broadly phrased community standards.²⁹³

Selected Removal Standards

Facebook: organizations engaged in “terrorist activity” not allowed to have a presence on the site; removes content that expresses support for groups engaged in terrorist or organized criminal activity, supports or praises leaders of such groups, and condones their violent activity.²⁹⁴

Twitter: blocks accounts that “make threats of violence or promote violence, including threatening or promoting terrorism.”²⁹⁵

YouTube: prohibits content intended to recruit for terrorist organizations, incite violence, celebrate terrorist attacks or otherwise promote acts of terrorism, and does not permit foreign terrorist organizations to use the site.²⁹⁶

Microsoft: deletes “terrorist content” by, or in support of, terrorist organizations identified for sanctions by the United Nations Security Council if the material “depicts graphic violence, encourages violent action, endorses a terrorist organization or its acts, or encourages people to join such groups.”²⁹⁷

It is an open question whether removing online content is particularly useful in fighting terrorism. ISIS’s use of Twitter has been examined in a handful of studies, some of which suggest that suspending accounts of ISIS supporters is helpful in limiting the group’s reach.²⁹⁸ Others scholars, however maintain that these efforts are futile and that accounts simply re-appear under other names.²⁹⁹ For example, according to *The New York Times*, Twitter repeatedly tried to cut off the pro-ISIS account of a group called Asawitiri Media, which in 2015 was on its 335th iteration.³⁰⁰ Indeed, removals may even be counterproductive: they can destroy potentially valuable sources of intelligence; close avenues for engaging with and dissuading ISIS supporters (a core part of CVE counter-messaging strategy); and result in a smaller, but more focused and coherent group operating in a “much louder echo chamber,” thus creating greater risks.³⁰¹ Another unresolved question is whether it is “ethical to suppress political speech, even when such speech is repugnant?”³⁰² While most may find it acceptable to remove ISIS accounts, doing so risks the proverbial slippery slope that could result in the removal of posts and videos from groups that may not be violent but are nonetheless distasteful or unpopular.

Lastly, it must be noted that the policies governing takedowns are set by the corporations that own these platforms. While some progress has been made in increasing transparency about removals for counterterrorism or CVE purposes, the data is anecdotal and — except in cases of a public outcry — little information is available about the actual types of information and accounts that are deleted.³⁰³

B. Counter-messaging

The Obama administration also encouraged alternatives to the messaging of groups like ISIS through direct funding and by encouraging “the private sector to consider ways to increase the availability of alternative content.”³⁰⁴

Government counter-messaging efforts are not new. During the Cold War, the U.S.-owned Radio Free Europe beamed programs to those living behind the Iron Curtain.³⁰⁵ Until recently, these efforts were for overseas consumption and conducted primarily through the State Department. In 2013, key portions of the Smith-Mundt Act were repealed,³⁰⁶ lifting the requirement that the State Department disseminate its programs only to audiences abroad.³⁰⁷ This paves the way for domestic distribution of the State Department’s programs.³⁰⁸ DHS recently awarded \$2.7 million in CVE funding for counter-messaging³⁰⁹ and such campaigns are also a part of the agenda of the CVE pilot programs in Boston, Los Angeles, and Minneapolis.³¹⁰

In addition, encouraged by the government, at least some companies are taking steps to promote messages that rebut “extremist” views. Google has given grants to nonprofit organizations “to enable [them] to place counter-radicalization ads against search queries of their choosing.”³¹¹ In 2016, the company’s “tech incubator” Jigsaw (previously called Google Ideas) tested a program called the Redirect Method. A search for one of 1,700 keywords triggered ads leading to anti-ISIS playlists curated from existing material on the internet.³¹² Similarly, the State Department piloted a four-week Facebook campaign targeting people in Morocco, Tunisia, and Saudi Arabia who “expressed an interest in Iraq, Syria, or Islamic State-related topics, as indicated by their Facebook activity” and directed them to videos that were meant to dissuade them from supporting ISIS.³¹³

Counter-messaging campaigns raise several questions. First, how are companies identifying users to in order to provide targeted content? If they are running algorithms that identify users searching for certain terms, which are likely closely associated with political views, this information may be available to the companies and potentially shared with the government. Second, while providing the opportunity for sponsored ads as Google has done is relatively harmless, larger scale attempts at manipulating information available on the internet may damage companies’ reputations. Facebook faced a firestorm of criticism when it was alleged that it had manipulated the “Trending Topics” portion of its newsfeed to demote conservative sources.³¹⁴ Similar concerns have been raised about recent efforts by the company to identify “fake news” on its site.³¹⁵

A key issue when the government funds counter-messaging campaigns is whether its involvement will be disclosed. CVE programs seek to work through third-party interlocutors who are perceived as more effective messengers than the government.³¹⁶ But concealing government sponsorship has the potential to backfire; here too the U.K.’s experience again proves instructive. The British government funded a multi-million dollar “series of clandestine propaganda campaigns intended to bring about ‘attitudinal and behavioral change’ among young British Muslims as part of a counter-radicalization program[].”³¹⁷ When the initiative became publicly known, it was met with broad condemnation for “undermining, rather than amplifying, the work of Muslim civil society,” generating further distrust among the U.K.’s Muslim communities,” and treating citizens as a fifth column.³¹⁸

Indeed, elevating certain types of information through government funding may be inimical to free speech if the sponsor is not disclosed. While it is not clear that there are any legal rules requiring the disclosure of government sponsorship for CVE messaging, courts and individual judges have regularly expressed concerns about the distorting impact of allowing government speech to be disseminated without attribution.³¹⁹

Finally, there is little consensus about the effectiveness of counter-messaging campaigns. Proponents point to the number of people reached by such methods,³²⁰ but there is a significant leap from getting people to click on a link or watch a video to changing their views. As one of the State Department officials involved in setting up early counter-messaging ventures stated: “Nobody wants to cop to the fact that [messaging is] pretty tangential to stopping fighters from carrying out attacks,” although “[i]t probably helps at the margins.”³²¹

VI. CONCLUSION AND RECOMMENDATIONS

The government's primary interest in engaging with American Muslim communities is to ensure that they report individuals they suspect of involvement in terrorism. CVE expands the pool of individuals whom the government seeks to identify to include those who are considered in some way vulnerable to becoming terrorists, with the promise that there are methods for diverting such individuals from the path to extremism. As the above discussion demonstrates, empirical research does not support the idea that such individuals can be reliably identified. Moreover, the notion that the government will use non-law enforcement approaches rather than prosecutions is belied by placing CVE programs under the jurisdiction of law enforcement agencies and by the close involvement of law enforcement. Not only does this approach put any troubled or politically active Muslim in the crosshairs of counterterrorism policing, but it also adds little to our security because the likelihood of false positives is so high. By creating suspicion among large segments of the Muslim community, as these programs have demonstrably done, CVE also damages the already strained relationship between American Muslims and law enforcement, undermining counterterrorism cooperation.

It is recommended that government agencies abandon the CVE framework. This means more than just changing the name. Rather, it is recommended that they do the following.

A. Focus Counter-Terrorism on Evidence of Wrongdoing, Not Vague and Disproven Indicators

The goal of preventing terrorism is best met by pursuing those who are suspected of planning or committing acts of violence based on concrete facts. This approach focuses law enforcement resources on actual criminal activity rather than vague notions of alienation and political beliefs. Targeted intelligence gathering and normal police work — exploring the connections of known terrorist networks (including online) and investigating tips of genuinely suspicious activity, for example — would allow law enforcement officers to identify individuals before they undertake violence. The Institute of Homeland Security Solutions, which examined 86 terrorist plots against U.S. targets from 1999 to 2009, confirms this common sense conclusion. More than 80 percent of the foiled plots were discovered “via observations from law enforcement or the general public.”³²² While the study did not discount the importance of intelligence gathering, it emphasized “the importance of more basic processes, such as ensuring that investigative leads are properly pursued, which unclassified reporting suggests have foiled an order of magnitude more cases.”³²³

B. Repair Relations with Muslim Communities

Like any other American community, Muslims have a critical role to play in reporting suspicious activity of all sorts, including relating to terrorism. And the evidence shows Muslims are responsible for providing information on up to 40 percent of thwarted terrorism plots.³²⁴ Yet the relationship has been frayed. For the last 15 years, law enforcement agencies have treated Muslims as suspect communities. There needs to be a re-set, forming broad-based partnerships with Muslim that are not based solely counterterrorism cooperation and are designed to allay fear and build trust. In concrete terms, this means:

- Outreach efforts to American Muslims should identify and address *community* concerns, rather than build relationships to advance a contentious counter-terrorism framework. A broad lens on engagement efforts will ameliorate the concerns of American Muslims that they are viewed as a suspect community, providing a more sustainable and stable basis for building trust.
- All community engagement programs should be completely transparent, with a clear articulation of their purpose and the government agencies involved.
- Law enforcement agencies should not lead engagement programs. Rather, they should be called upon when necessary to answer questions, or if invited by community institutions.
- To quell concerns about spying, all community partnership programs should include specific, publicly announced, robust safeguards to ensure that they are not used as intelligence gathering vehicles. The FBI, as well as local police and other law enforcement agencies, should adopt public, comprehensive policies that enshrine a bright line between community outreach and intelligence gathering, except in instances where an official becomes aware of criminal activity.³²⁵

C. Build Concrete Safeguards into CVE Programs

If government agencies continue to run CVE programs or fund them, then they and grant recipients must adhere to certain rules to ameliorate the numerous risks posed by CVE. In a welcome development, DHS's notice of CVE funding opportunities asks those applying for grants to describe potential impacts to privacy, civil rights, and civil liberties, and "ways in which applicants will protect against or mitigate those impacts."³²⁶ And the 2016 White House CVE Plan provides that Agency lawyers will "analyze potential privacy, civil rights, and civil liberties considerations"³²⁷ for federal CVE programs. These protections should be bolstered in the following ways:

- Safeguards should uniformly cover all agencies and programs, and information about all programs should be posted online on a central portal;
- All CVE programs supported or funded by government agencies should be evaluated by privacy and civil liberties officers or attorneys at the relevant agency using publicly available criteria and methodology.
- All safeguarding plans and evaluations should be disclosed to the public.
- There should be a complaints process for those who believe their rights have been violated by CVE.
- CVE training materials, information sharing procedures and evaluation tools should be publicly available so that they may be reviewed by experts who are independent of the government.

- Specific and publicly available protocols should be developed to protect confidentiality during sensitive intervention and mental health-oriented programs.

D. Delink Social and Educational Programs from Counter-Terrorism

The CVE programs in Minneapolis and Montgomery County include several social and educational programs — such as conflict resolution, youth engagement and family support — that may, in the long term, contribute to reducing violence. While there is no evidence to show that these programs are useful for counterterrorism, they are broadly beneficial. For the most part, they do not present the same level of risk as individualized intervention efforts. On the other hand, there is a significant history of spying on Muslim communities via community engagement programs. Accordingly, it is recommended that these efforts be housed in appropriate agencies and not under a counterterrorism or law enforcement umbrella. And like community engagement programs, these too should include specific, publicly announced, robust safeguards to increase community trust. Giving law enforcement access to data collected through these programs would increase community distrust of all government programs.

E. Greater Transparency About Online CVE

Online CVE initiatives online requires a different range of fixes. These programs affect a broad swath of Americans who may be researching or discussing politics or religion online. At the very least, the government should refrain from pressuring social media companies to monitor their platforms for vague and disproven indicators of “radicalization.” Companies should be more forthright about what exactly they are doing in terms of monitoring and removal. They should build on their transparency record in the context of government requests for removal by publicly disclosing information about the process for identifying content that might violate their community standards or terms of service (e.g., does it involve an algorithm? what role do humans play in making decisions?) and disclose the number of posts or accounts they are deleting. In addition, they need to find mechanisms to assure their customers that information is being removed from their platforms in an even-handed way and is not distorting the flow of information online.

Finally, government funding of domestic counter-messaging initiatives should be disclosed so that these programs not to cross the line into secret government propaganda, which is antithetical to democratic values.

F. Ensure Government-Funded Research Adheres to Scientific Protocols

For at least the last several years, a significant focus of CVE funding has been research into the drivers and signs of radicalization. As experts have noted, and as is demonstrated in this report, this research often fails to adhere to basic scientific protocols, and studies are often kept secret. The 2016 CVE Implementation Plan and the 2016 DHS CVE Strategy both include welcome commitments to making research public.³²⁸ However, it is also critical that the research the government relies on when

formulating and disseminating policies is conducted in accordance with scientific principles. This means that government should, at the very least, require researchers to: 1) use valid and reliable social scientific methods, including unbiased sampling and control groups; and 2) subject their findings to academic peer review.

For all the research dollars that have been spent on counterterrorism, little seems to have been channeled to measuring effectiveness. Again, the 2016 CVE Implementation Plan and the 2016 DHS CVE Strategy are promising first steps in that they include a greater focus on measuring the effectiveness of programs.³²⁹ Data-driven analysis is vital for both community-oriented programs and for online CVE initiatives, and should be integral to project design and approval.

Finally, evaluations must find ways to measure the negative consequences of programs as well, including in terms of erosion of trust, undermining of constitutional norms, and stigmatization of Muslim communities. These should serve as a basis for developing concrete safeguards that go beyond the assurances of consideration of civil rights and civil liberties issues that have thus far been provided.

Simply put, CVE is not the right solution for preventing terrorism in the United States. The way forward with Muslim communities is to treat their integration and success — rather than their ability to spot terrorists — as the goal of government programs.

ENDNOTES

- 1 See, e.g., Maggie Haberman, *Donald Trump Calls for Surveillance of ‘Certain Mosques’ and a Syrian Refugee Database*, N.Y. TIMES, Nov. 21, 2015, at A24, available at <https://www.nytimes.com/2015/11/22/us/politics/donald-trump-syrian-muslims-surveillance.html>; Maggie Haberman & Richard Pérez-Peña, *Donald Trump Sets Off a Furor With Call to Register Muslims in the U.S.*, N.Y. TIMES, Nov. 20, 2015, at A1, available at https://www.nytimes.com/2015/11/21/us/politics/donald-trump-sets-off-a-furor-with-call-to-register-muslims-in-the-us.html?_r=0; Associated Press, *Trump and Carson Repeat Calls to Spy on U.S. Muslims*, PBS, Nov. 22, 2015, <http://www.pbs.org/newshour/rundown/trump-and-carson-repeat-calls-to-spy-on-u-s-muslims/>. At a town hall in October 2016, Trump falsely claimed “many people saw the bombs all over the apartment” of the couple who fatally shot 14 in San Bernardino, CA in 2015 and failed to tell police, while further arguing that Muslims should inform law enforcement whenever “they see hatred going on.” *Transcript of the Second Debate*, N.Y. TIMES, Oct. 10, 2016, http://www.nytimes.com/2016/10/10/us/politics/transcript-second-debate.html?_r=1.
- 2 *Washington v. Trump*, No. 17-35105, slip op. at 5, 24-26 (9th Cir. Feb. 9, 2017) (per curiam); *Aziz v. Trump*, No. 1:17-cv-116, slip op. at 7-9 (E.D. Va. Feb. 13, 2017).
- 3 Michael Crowley, *Trump’s Terror-Fighting Team yet to Take Shape*, POLITICO, Dec. 12, 2016, <http://www.politico.com/story/2016/12/donald-trump-terrorism-232870>. The Chair of the House Homeland Security Committee made a similar statement. Michael McCaul, Chairman, Homeland Sec. Committee, “State of Homeland Security Address” at The Heritage Foundation 4 (Dec. 7, 2016), available at <https://homeland.house.gov/wp-content/uploads/2016/12/State-of-Homeland-Security-Address-2016.pdf>.
- 4 Julia Edwards Ainsley, et al., *Exclusive: Trump to Focus Counter-Extremism Program Solely on Islam*, REUTERS, Feb. 2, 2017, <http://www.reuters.com/article/us-usa-trump-extremists-program-exclusiv-idUSKBN15G-5VO> [hereinafter “REUTERS, *Trump to Focus CVE Solely on Islam*”].
- 5 *Hearing on the Nomination of General John F. Kelly to be Secretary, Department of Homeland Security Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 115th Cong. 38-39 (2017) (pre-hearing questionnaire of Gen. John F. Kelly, Nominee, Sec’y, Dep’t of Homeland Sec.), available at <http://www.hsgac.senate.gov/download/kelly-pre-hearing-questions>.
- 6 Ron Nixon, Adam Goldman & Matt Apuzzo, *Pointing to Trump Groups Reject U.S. Aid to Fight Extremism*, N.Y. TIMES, Feb. 2, 2017, at A19, available at https://www.nytimes.com/2017/02/02/us/politics/trump-muslim-groups-aid-extremism.html?_r=0; REUTERS, *Trump to Focus CVE Solely on Islam*, *supra* note 4; Associated Press, *Citing Trump, 3rd Nonprofit Rejects Funds to Fight Extremism*, FOXNEWS.COM, Feb. 8, 2017, <http://www.foxnews.com/us/2017/02/08/citing-trump-3rd-nonprofit-rejects-funds-to-fight-extremism.html>; Stephen Montemayor, *Citing Trump, Minneapolis Somali Nonprofit Rejects \$500,000 Counterextremism Grant*, MINN. STAR TRIB., Feb. 3, 2017, <http://www.startribune.com/citing-trump-minneapolis-somali-nonprofit-rejects-500-000-counterextremism-grant/412514513/>; Associated Press, *Fourth Muslim Group Rejects Federal Grant to Fight Extremism*, YAHOO NEWS (Feb. 11, 2017), <https://www.yahoo.com/news/fourth-muslim-group-rejects-federal-grant-fight-extremism-063321100--politics.html>.
- 7 See *infra* text accompanying notes 132, 141.
- 8 Scott Shane, Matthew Rosenberg & Eric Lipton, *Trump Pushes Dark View of Islam to Center of U.S. Policy-Making*, N.Y. TIMES, Feb. 2, 2017, at A1, available at <https://www.nytimes.com/2017/02/01/us/politics/donald-trump-islam.html>; David Shariatmadari, *How War on Islam Became Central to the Trump Doctrine*, GUARDIAN, Jan. 30, 2017, <https://www.theguardian.com/us-news/2017/jan/30/war-on-islam-central-trump-doctrine-terrorism-immigration>.
- 9 See *infra* text accompanying notes 14-22. A possible fourth category of initiatives focus on what is called “de-radicalization” – i.e., measures aimed at ensuring that individuals who have been convicted of terrorism (or

pled guilty to terrorism charges) do not return to criminal activity. This report does not address these types of back-end programs.

- 10 Press Release, Jeh Johnson, Sec’y of Homeland Sec., Statement by Secretary Jeh Johnson Announcing First Round of DHS’s Countering Violent Extremism Grants (Jan. 13, 2017) [hereinafter “DHS CVE Grant Press Release”], *available at* <https://www.dhs.gov/news/2017/01/13/statement-secretary-jeh-johnson-announcing-first-round-dhss-countering-violent>.
- 11 EXEC. OFFICE OF THE PRESIDENT, EMPOWERING LOCAL PARTNERS TO PREVENT VIOLENT EXTREMISM IN THE UNITED STATES (Aug. 2011) [hereinafter “WHITE HOUSE CVE STRATEGY”], *available at* https://obamawhitehouse.archives.gov/sites/default/files/empowering_local_partners.pdf. As explained in the December 2011 implementation plan, the Strategy was developed under the leadership of the National Security Staff and involved a number of agencies: the Department of State, Treasury, Department of Defense, Department of Justice, Department of Commerce, Department of Labor, Department of Health and Human Services, Department of Education, Department of Veterans Affairs, Department of Homeland Security, as well as the Federal Bureau of Investigation and the National Counterterrorism Center. EXEC. OFFICE OF THE PRESIDENT, STRATEGIC IMPLEMENTATION PLAN FOR EMPOWERING LOCAL PARTNERS TO PREVENT VIOLENT EXTREMISM IN THE UNITED STATES 3 (Dec. 2011) [hereinafter “2011 WHITE HOUSE CVE IMPLEMENTATION PLAN”], *available at* <https://obamawhitehouse.archives.gov/sites/default/files/sip-final.pdf>.
- 12 *Id.*
- 13 EXEC. OFFICE OF THE PRESIDENT, STRATEGIC IMPLEMENTATION PLAN FOR EMPOWERING LOCAL PARTNERS TO PREVENT VIOLENT EXTREMISM IN THE UNITED STATES (Oct. 2016) [hereinafter “2016 WHITE HOUSE CVE IMPLEMENTATION PLAN”], *available at* https://www.dhs.gov/sites/default/files/publications/2016_strategic_implementation_plan_empowering_local_partners_prev.pdf.
- 14 WHITE HOUSE CVE STRATEGY, *supra* note 11, at 5.
- 15 *See id.* Preface by President Obama (noting that while all types of extremist violence are a problem “countering al-Qa’ida’s violent ideology is one part of our comprehensive strategy” and requires the cooperation of “Muslim American communities whose children, families and neighbors are being targeted for recruitment by al-Qa’ida”). *Id.* (n.p.). In his speech after the 2015 San Bernardino attacks, President Obama was careful to point out that ISIS did not represent Islam; at the same time, he stated the spread of extremist ideology within some Muslim communities was a “real problem that Muslims must confront, without excuse.” President Barack Obama, Address to the Nation by the President (Dec. 6, 2015), (transcript available at <https://obamawhitehouse.archives.gov/the-press-office/2015/12/06/address-nation-president>).
- 16 *See infra* text accompanying notes 54-56, 82-86, 90-100, 128, 140-151, 193-195, 218, 238-239, 262, 269-275.
- 17 WHITE HOUSE CVE STRATEGY, *supra* note 11, at 2-4.
- 18 *Id.* at 6; *see also* 2011 WHITE HOUSE CVE IMPLEMENTATION PLAN, *supra* note 11, at 12-14. The particular areas identified as needing further research are: 1) pre-operational indicators of violent extremism; 2) the role of the Internet; 3) single-actor terrorism, including lessons learned from school shooters; 4) disengagement; and 5) non-al-Qaida threats.
- 19 WHITE HOUSE CVE STRATEGY, *supra* note 11, at 6. The 2011 White House CVE Plan also notes the need for improved training on CVE, especially in light of what it characterizes as “a small number of instances of [f]ederally sponsored or funded CVE-related and counterterrorism training that used offensive and inaccurate information.” 2011 WHITE HOUSE CVE IMPLEMENTATION PLAN, *supra* note 11, at 15. To improve the quality of materials, the Plan prioritizes identifying offensive training materials and improving review processes, devel-

oping a CVE curriculum for inclusion in existing training programs in this area, establishing a DHS committee to review training materials and experts, ensuring that training guidance is incorporated into FEMA grants, and introducing measures to increase the quantity of training materials. *Id.* at 17-18. This appears to be a reference to the discovery that the training materials used by the FBI promoted the idea that “main stream [sic] American Muslims are likely to be terrorist sympathizers.” Spencer Ackerman, *FBI Teaches Agents ‘Mainstream’ Muslims Are ‘Violent, Radical’*, WIRED, Sept. 14, 2011, <https://www.wired.com/2011/09/fbi-muslims-radical/>. In response, the White House ordered the DHS to lead an inter-agency process to review and improve CVE-related training and the FBI stated that it had purged several hundred pages of documents. Letter from John O. Brennan, Ass’t to the President for Homeland Sec., to Farhana Khera, President & Exec. Dir., Muslim Advocates (Nov. 3, 2011), *available at* <https://www.muslimadvocates.org/files/JOB-CVE-training-letter-to-Khera-11.3.11.pdf>; Spencer Ackerman, *FBI Purges Hundreds of Terrorism Documents in Islamophobia Probe*, WIRED, Feb. 15, 2012, <https://www.wired.com/2012/02/hundreds-fbi-documents-muslims/>. The response was criticized by civil rights and Muslim grassroots groups because “no public accounting was given indicating that more comprehensive inter-agency review was initiated as promised, no re-training of officers and agents tainted by the biased and inaccurate trainings was apparently ever done, and no disciplinary action appears to have been taken against those responsible for preparing and providing the trainings.” Debi Kar, *End the Use of Anti-Muslim Training Materials by the Federal Government*, MUSLIM ADVOCATES (Aug. 14, 2014), <https://www.muslimadvocates.org/end-the-use-of-anti-muslim-training-materials-by-the-federal-government/>.

- 20 2016 WHITE HOUSE CVE IMPLEMENTATION PLAN, *supra* note 13, at 5-6.
- 21 WHITE HOUSE CVE STRATEGY, *supra* note 11, at 6-7.
- 22 2011 WHITE HOUSE CVE IMPLEMENTATION PLAN, *supra* note 11, at 18-20. The plan states that a “separate strategy” will be developed focusing on CVE online, but our research has not uncovered any such publicly available document, except for the updates set out in the 2016 White House CVE Implementation Plan. *See* 2016 WHITE HOUSE CVE IMPLEMENTATION PLAN, *supra* note 13, at 13-14; *see also infra* text accompanying notes 276-321.
- 23 2011 WHITE HOUSE CVE IMPLEMENTATION PLAN, *supra* note 11, at 18.
- 24 WHITE HOUSE CVE STRATEGY, *supra* note 11, at 7-8.
- 25 *See* Letter from the American Civil Liberties Union et al. to Lisa Monaco, Ass’t to the President for Homeland Sec. (Dec. 18, 2014) [hereinafter “Coalition Letter to Lisa Monaco”], *available at* https://www.aclu.org/sites/default/files/assets/141218_cve_coalition_letter_2.pdf. This request was renewed in April 2016. *See* Letter from the American Civil Liberties Union et al. to Hon. Jennifer Easterly, Senior Dir. for Counterterrorism, White House (Apr. 22, 2016), *available at* https://www.amnestyusa.org/pdfs/CounteringViolentExtremism_April2016.pdf. The Brennan Center and the American Civil Liberties Union also filed Freedom of Information Act requests with several agencies to unearth policies or guidance for ensuring that CVE programs include appropriate safeguards. In early 2016, both organizations filed suit to compel the government to produce documents that explain how these programs are intended to work. *See* Press Release, Brennan Ctr. for Justice at N.Y.U. School of Law, Brennan Center Files Suit to Make “Countering Violent Extremism” Records Public (Jan. 29, 2016) [hereinafter “Brennan Ctr. CVE Press Release”], *available at* <https://www.brennancenter.org/press-release/brennan-center-files-suit-make-countering-violent-extremism-records-public>; *ACLU v. Department of Homeland Security: FOIA Lawsuit Seeking Records on “Countering Violent Extremism” Programs*, AMERICAN CIVIL LIBERTIES UNION (last updated Feb. 9, 2016), <https://www.aclu.org/cases/aclu-v-department-homeland-security-foia-lawsuit-seeking-records-countering-violent-extremism>. While documents have been produced in response to these lawsuits and are referred to throughout this report, none of those reviewed thus far indicate the development of safeguards against these risks.
- 26 2016 WHITE HOUSE CVE IMPLEMENTATION PLAN, *supra* note 13, at 3.
- 27 *Id.*
- 28 The DOJ and DHS may, however, “provide advice and consultation about potential privacy, civil rights, and civil liberties issues to state, local, tribal, and territorial authorities regarding their proposed CVE programs and activities.” *Id.*

- 29 See *infra* text accompanying notes 201-203, 205-211, 212-216, 240-243, 266-268.
- 30 The task force is charged with coordinating support and outreach to CVE “stakeholders,” providing technical assistance to CVE “practitioners,” working “with CVE stakeholders to develop multidisciplinary intervention programs” and managing communications. Press Release, Dep’t of Homeland Sec., Fact Sheet on Countering Violent Extremism Task Force (Jan. 8, 2016), *available at* <https://www.dhs.gov/news/2016/01/08/countering-violent-extremism-task-force>.
- 31 Press Release, Dep’t of Homeland Sec., Statement by Secretary Jeh C. Johnson on DHS’s New Office for Community Partnerships (Sept. 28, 2015), *available at* <https://www.dhs.gov/news/2015/09/28/statement-secretary-jeh-c-johnson-dhs%E2%80%99s-new-office-community-partnerships>.
- 32 DEP’T OF HOMELAND SEC., DEP’T OF HOMELAND SEC. STRATEGY FOR COUNTERING VIOLENT EXTREMISM 2 (Oct. 28, 2016) [hereinafter “DHS CVE STRATEGY”], *available at* https://www.dhs.gov/sites/default/files/publications/16_1028_S1_CVE_strategy.pdf.
- 33 Starting in 2012, the National Institute Justice (NIJ) launched a \$3.2 million grant program with a focus on “understanding extremism and advancing strategies for effective prevention and intervention.” OFFICE OF JUSTICE PROGRAMS, DEP’T OF JUSTICE, NAT’L INST. JUSTICE: ANNUAL REPORT 22 (2012), *available at* <https://www.ncjrs.gov/pdffiles1/nij/244249.pdf>. In 2015, this program was funded at \$4 million. OFFICE OF JUSTICE PROGRAMS, DEP’T OF JUSTICE, NAT’L INST. JUSTICE, NIJ-2015-3983, RESEARCH AND EVALUATION ON DOMESTIC RADICALIZATION TO VIOLENT EXTREMISM 8 (2015), *available at* <https://www.ncjrs.gov/pdffiles1/nij/sl001152.pdf>; DEP’T OF JUSTICE, FY 2016 DOJ REQUEST: STATE, LOCAL AND TRIBAL LAW ENFORCEMENT ASSISTANCE 1 (2016), *available at* https://www.justice.gov/sites/default/files/jmd/pages/attachments/2015/01/30/3_2016_state_and_local_chart.pdf.
- 34 161 Cong. Rec. H10162, H10163 (daily ed. Dec. 17, 2015), *available at* <https://www.congress.gov/crec/2015/12/17/CREC-2015-12-17-pt3-PgH10161.pdf> (statement explaining Division F of the Consolidated Appropriations Act of 2016 submitted by Rep. Harold Rogers, Chairman of the House Committee on Appropriations).
- 35 See Cooperative Agreement #2014-CK-WX-K043 between Ronald L. Davis, Dir., Office of Community Oriented Policing Services, and Hedieh Mirahmadi, President, World Organization for Resource Development and Education (last updated Oct. 2014), *available at* <https://www.brennancenter.org/sites/default/files/01-%20Cooperative%20Agreement%20COPS.pdf> (obtained by the Brennan Center through Freedom of Information Act request).
- 36 DEP’T OF HOMELAND SEC., DHS-16-OCP-132-00-01, NOTICE OF FUNDING OPPORTUNITY: FISCAL YEAR 2016 COUNTERING VIOLENT EXTREMISM (CVE) GRANT PROGRAM 4 (June 6, 2016) [hereinafter “2016 CVE GRANT NOFO”], *available at* https://www.fema.gov/media-library-data/1467814173660-58024ff00713060a31e54a2b0b54deb9/FY16_CVE_NOFO_Final.pdf.
- 37 *Id.* at 4-5.
- 38 *Id.* at 12.
- 39 DHS CVE Grant Press Release, *supra* note 10. The full list is as follows. **Developing Resilience:** Police Foundation - \$463,185 (Boston); Ka Joog Nonprofit Organization – \$499,998 (Minneapolis); Heartland Democracy Center – \$165,435 (Minneapolis); Leaders Advancing and Helping Communities - \$500,000 (Dearborn, Mich.); Tuesday’s Children - \$147,154 (Nationwide); Music in Common - \$159,000 (Nationwide); Peace Catalyst International, INC - \$95,000 (Nationwide); Coptic Orthodox Charities - \$150,000 (Nationwide). **Training and Engagement:** City of Houston, Mayor’s Office of Public Safety & Homeland Security - \$400,000 (Houston); City of Arlington, Police - \$47,497 (Arlington, TX); Illinois Criminal Justice Information Authority - \$187,877 (Illinois); Global Peace Foundation - \$150,000 (New Jersey); Nebraska Emergency Management Agency - \$300,000 (Ne-

braska); City of Dearborn Police Department - \$51,521 (Dearborn, Mich.); City of Los Angeles, Mayor's Office of Public Safety - \$400,000 (Los Angeles); Denver Police Department - \$240,000 (Denver); National Consortium for Advanced Policing - \$200,000 (Nationwide). **Managing Interventions:** City of Los Angeles, Mayor's Office of Public Safety - \$425,000 (Los Angeles); Crisis Intervention of Houston, Inc. - \$400,000 (Houston); Las Vegas Metropolitan Police Department - \$425,000 (Las Vegas); Life After Hate Inc. - \$400,000 (Nationwide); Muslim Public Affairs Council Foundation - \$393,800 (Nationwide). **Challenging the Narrative:** Project Help Nevada, Inc. - \$150,000 (Reno, Nev.); Unity Productions Foundation - \$396,585 (Nationwide); America Abroad Media - \$647,546 (Nationwide); Rochester Institute of Technology - \$149,955 (Nationwide); Masjid Muhammad, Inc. - \$450,000 (Nationwide); The University of North Carolina at Chapel Hill - \$866,687 (Nationwide); Muslim American Leadership Alliance - \$40,000 (Nationwide). **Building Capacity:** Counter Extremism Project - \$298,760 (New York); Claremont School of Theology - \$800,000 (Los Angeles).

- 40 The Notice of Funding Opportunities defines resilience as “communities where violent extremists routinely meet disinterest and opposition, recruitment attempts routinely fail, and communities know what tools and support are available to assist individuals that may be on a path towards violence.” 2016 CVE GRANT NOFO, *supra* note 36, at 2.
- 41 S.C. Res. 2178, U.N. Doc. S/RES/2178 ¶¶ 15-19 (Sept. 24, 2014), available at http://www.un.org/en/sc/ctc/docs/2015/SCR%202178_2014_EN.pdf. See generally Justin Sink, *UN Security Council Approves Foreign Fighters Resolution Pushed By Obama*, HILL (Sept. 24, 2014, 3:26 PM), <http://thehill.com/policy/international/218803-un-security-council-approves-resolution-to-stop-foreign-terrorist>
- 42 See Colum Lynch & Elias Groll, *Obama's Foreign Fighters Campaign is a Gift to the World's Police States*, FOREIGN POL'Y, Sept. 30, 2014, <http://foreignpolicy.com/2014/09/30/obamas-foreign-fighters-campaign-is-a-gift-to-the-worlds-police-states/>; Faiza Patel, *President Obama to Preside Over Flawed UN Security Council Resolution on Foreign Fighters*, JUST SEC. (Sept. 23, 2014, 9:25 AM), <https://www.justsecurity.org/15393/security-council-resolution-foreign-fighters/>; Martin Scheinin, *Back to 9/11 Panic? Security Council Resolution on Foreign Terrorist Fighters*, JUST SEC. (Sept. 23, 2014, 2:54 PM), <https://www.justsecurity.org/15407/post-911-panic-security-council-resolution-foreign-terrorist-fighters-scheinin/>.
- 43 Most of the measures suggested in Resolution 2178 are positive – e.g., “promoting political and religious tolerance, economic development and social cohesion and inclusiveness, ending and resolving armed conflicts, and facilitating reintegration and rehabilitation” – but, with the exception of armed conflict, it is unclear that there is evidence that they constitute drivers of terrorism. See Naz Modirzadeh, *If It's Broke, Don't Make it Worse: A Critique of the U.N. Secretary-General's Plan of Action to Prevent Violent Extremism*, LAWFARE (Jan. 23, 2016, 7:48 AM), <https://www.lawfareblog.com/if-its-broke-dont-make-it-worse-critique-un-secretary-generals-plan-action-prevent-violent-extremism> [hereinafter “LAWFARE, *Critique of the U.N. Secretary-General's CVE Plan*”].
- 44 Tanya Somanader, *President Obama Chairs the U.N. Security Council Meeting on Foreign Terrorist Fighters*, WHITE HOUSE (Sept. 24, 2014, 7:04 PM), <https://www.whitehouse.gov/blog/2014/09/24/president-obama-chairs-un-security-council-meeting-foreign-terrorist-fighters>; Press Release, White House, FACT SHEET: The White House Summit on Countering Violent Extremism, (Feb. 18, 2015), <https://www.whitehouse.gov/the-press-office/2015/02/18/fact-sheet-white-house-summit-countering-violent-extremism>. The program for the summit reflects the priorities of the White House CVE Strategy: finding ways for identifying violent extremists, including by asking Muslim communities to do so, and developing ways of countering extremist narratives. See Steven W. Hawkins, *Obama's Anti-Extremism Plan lacks Human Rights Safeguards*, AL JAZEERA AMERICA, Feb. 19, 2015, <http://america.aljazeera.com/opinions/2015/2/obamas-extremism-plan-lacks-human-rights-safeguards.html>.
- 45 Human Rights Council Res. 30/15, Human Rights and Preventing and Countering Violent Extremism, A/HRC/RES/30/15 (Oct. 12, 2015); Press Release, Dep't of State, Office of the Spokesperson, Fact Sheet on Key U.S. Outcomes at the UN Human Rights Council 30th Session (Oct. 8, 2015), available at <http://www.state.gov/r/pa/prs/ps/2015/10/248047.htm>.

- 46 The debate revealed significant differences among countries about whether the resolution should address “ideology or action, or both, and how either would be defined, and whether ‘violence’ was even a necessary element.” *See UN HRC: Resolution on “Violent Extremism” Undermines Clarity*, ARTICLE 19 (Oct. 8, 2015), <https://www.article19.org/resources.php/resource/38133/en/un-hrc-resolution-on-%E2%80%9Cviolent-extremism%E2%80%9D-undermines-clarity>. This ambiguity continues into the resolution itself, which does not define “violent extremism” or distinguish it from terrorism, except to imply that it is a broader concept.
- 47 *See* Vice-President and Rapporteur of the U.N. Human Rights Council, Rep. of the Human Rights Council on Its Thirtieth session, ¶ 196, U.N. Doc. A/HRC/30/2 (May 19, 2016) (by Mothusi Bruce Rabasha Palai), http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A-HRC-30-2_en.doc. In addition, Ireland on behalf of Belgium, Denmark, Estonia, Iceland, Mexico, Poland, Sweden and Switzerland expressed concerns about oral revisions added during the discussion of the resolution. *See id.* ¶ 210 at 39; Letter from Ireland, on behalf of a Group of States, to the President of the U.N. Human Rights Council (Oct. 2, 2015), *available at* <https://www.dfa.ie/media/dfa/alldfawebstimedia/ourrolesandpolicies/int-priorities/humanrights/HRC30---General-Comment-by-Ireland-after-the-vote-regarding-the-draft-resolution-on-human-rights-and-preventing-and-counteracting-violent-extremism.pdf>.
- 48 U.N. Secretary-General, *Plan of Action to Prevent Violent Extremism*, U.N. Doc. A/70/674 (Dec. 24, 2015), *available at* <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/456/22/PDF/N1545622.pdf>.
- 49 LAWFARE, *Critique of the U.N. Secretary-General’s CVE Plan*, *supra* note 43.
- 50 Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, Rep., Human Rights Council, ¶¶ 36–47, U.N. Doc. A/HRC/31/65 (Feb. 22, 2016), *available at* <https://goo.gl/xPx0wi>. For a discussion of the report, *see* Faiza Patel & Amrit Singh, *The Human Rights Risks of Countering Violent Extremism*, JUST SEC. (Apr. 7, 2016, 12:15 PM), <https://www.justsecurity.org/30459/human-rights-risks-counteracting-violent-extremism-programs/>.
- 51 Press Release, Office of the High Commissioner for Human Rights, Countering Violent Extremism, A ‘Perfect Excuse’ to Restrict Free Speech and Control the Media – UN Expert (May 3, 2016), *available at* <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19916&LangID=E>.
- 52 *Id.*
- 53 *See supra* text accompanying notes 4, 6.
- 54 Out of the nearly \$5 million allocated to groups that provided services to individuals and communities, approximately \$3.9 million (78%) was dedicated to groups that focus on Muslims and Muslim communities. The breakdown of Muslim-focused groups is as follows: America Abroad Media, Coptic Orthodox Charities, Global Peace Foundation, Heartland Democracy Center, Ka Joog Nonprofit Organization, Leaders Advancing and Helping Communities, Life After Hate Inc., Masjid Muhammad Inc., Muslim American Leadership Alliance, Muslim Public Affairs Council, Peace Catalyst International Inc., and Unity Productions Foundation.
- 55 *About Us*, LIFE AFTER HATE, <http://www.lifeafterhate.org/about>.
- 56 ExitUSA and Against Violent Extremism (AVE) Network are Life After Hate programs that provide services and support to current and former members of violent extremist organizations. *Programs & Partners*, LIFE AFTER HATE, <http://www.lifeafterhate.org/programs/>.
- 57 Randy Borum, *Radicalization into Violent Extremism I: A Review of Social Science Theories*, 4 J. STRATEGIC SEC. 7, 8 (2011), *available at* <http://scholarcommons.usf.edu/cgi/viewcontent.cgi?article=1139&context=jss>.
- 58 John Knefel, *Everything You’ve Been Told About Radicalization is Wrong*, ROLLING STONE, May 6, 2013, <http://www.rollingstone.com/politics/news/everything-youve-been-told-about-radicalization-is-wrong-20130506>

(quoting Professor John Horgan, Global Studies Inst., Dep't of Psychology, at Georgia State University).

- 59 Matthew Weaver, *Cameron's Anti-terror Strategy is "Barking Up Wrong Tree," Says Expert*, GUARDIAN, July 20, 2015, <https://www.theguardian.com/uk-news/2015/jul/20/david-cameron-anti-terror-strategy-wrong-expert-says> (quoting Professor Andrew Silke, Dir., Terrorism Studies, University of East London).
- 60 *Interview – Marc Sageman*, E-INT'L RELATIONS (Nov. 20, 2014), <http://www.e-ir.info/2014/11/20/interview-marc-sageman/> (quoting Marc Sageman, former CIA officer, terrorism researcher and psychologist).
- 61 *See, e.g.* EUROPOL PUB. INFORMATION, CHANGES IN MODUS OPERANDI OF ISLAMIC STATE TERRORIST ATTACKS ¶ 8 (Jan. 25, 2016), *available at* https://www.europol.europa.eu/sites/default/files/publications/changes_in_modus_operandi_of_is_in_terrorist_attacks.pdf; Clark McCauley & Sophia Moskalenko, *Individual and Group Mechanisms of Radicalization*, in TOPICAL STRATEGIC MULTI-DISCIPLINARY WHITE PAPERS IN SUPPORT OF COUNTER-TERRORISM AND COUNTER-WMD 88 (Laurie Fenstermacher ed., 2010), *available at* https://www.start.umd.edu/sites/default/files/files/publications/U_Counter_Terrorism_White_Paper_Final_January_2010.pdf; Clark McCauley & Sophia Moskalenko, *Mechanisms of Political Radicalization: Pathways Toward Terrorism*, 20 TERRORISM & POL. VIOLENCE 415, 418, 429 (2008), *available at* <http://www.brynmawr.edu/aschcenter/mc-cauley/webpage%20stuff/2008%20mechanisms%20rad%20McC%20Moskale.pdf>; RICHARD ENGLISH, TERRORISM: HOW TO RESPOND 52 (2009); JAMIE BARTLETT, JONATHAN BIRDWELL AND MICHAEL KING, DEMOS, THE EDGE OF VIOLENCE: A RADICAL APPROACH TO EXTREMISM 37-38 (2010), *available at* http://www.demos.co.uk/files/Edge_of_Violence_-_full_-_web.pdf?1291806916; Andrew Gilligan, *Hizb Ut Tahrir is Not a Gateway To Terrorism, Claims Whitehall Report*, TELEGRAPH, July 25, 2010, <http://www.telegraph.co.uk/journalists/andrew-gilligan/7908262/Hizb-ut-Tahrir-is-not-a-gateway-to-terrorism-claims-Whitehall-report.html>; Alan Travis, *M15 Report Challenges Views on Terrorism in Britain*, GUARDIAN, Aug. 20, 2008, <http://www.theguardian.com/uk/2008/aug/20/uksecurity.terrorism1> (summary of a report conducted by the British intelligence service M15, which reviewed hundreds of case studies and found that there was “no typical profile” of a British terrorist; that the majority of those associated with violent extremist activity were largely religious novices rather than “Islamic fundamentalists”; and also downplayed the importance of radical extremist clerics as a diminishing influence in mobilizing would-be terrorists).
- 62 FED. BUREAU OF INVESTIGATION, DECADE IN REVIEW: SELF-SELECTING US PERSONS DRIVE POST-2006 INCREASE IN ANTI-US PLOTTING (2011) [hereinafter “2011 FBI REPORT ON ANTI-US PLOTS”], *available at* https://d3gn0r3afghep.cloudfront.net/foia_files/2016/09/13/Decade_in_Review__March_7-2011__.pdf.
- 63 According to the U.S. government, al-Awlaki was targeted because he maintained “operational and leadership roles” with al-Qaeda and “continues to plot attacks intended to kill Americans.” Greg Miller, *Legal Memo Backing Drone Strike that Killed American Anwar al-Awlaki is Released*, WASH. POST, June 23, 2014, https://www.washingtonpost.com/world/national-security/legal-memo-backing-drone-strike-is-released/2014/06/23/1f48dd16-faec-11e3-8176-f2c941cf35f1_story.html.
- 64 *See* Scott Shane, *Times Sq. Bomb Suspect Is Linked to Militant Cleric*, N.Y. TIMES, May 6, 2010, at A13, *available at* <http://www.nytimes.com/2010/05/07/world/middleeast/07awlaki-.html>; Philip Sherwell, *Fort Hood Shooting: Radical Islamic Preacher Also Inspired July 7 Bombers*, TELEGRAPH, Nov. 23, 2009, *available at* <http://www.telegraph.co.uk/news/worldnews/northamerica/usa/6630555/Fort-Hood-shooting-radical-Islamic-preacher-also-inspired-july-7-bombers.html>.
- 65 2011 FBI REPORT ON ANTI-US PLOTS, *supra* note 62, at 7.
- 66 *See supra* text accompanying note 61.
- 67 FAIZA PATEL, BRENNAN CTR. FOR JUSTICE, RETHINKING RADICALIZATION 14-18 (2011) [hereinafter “RETHINKING RADICALIZATION”], *available at* <https://www.brennancenter.org/sites/default/files/legacy/RethinkingRadicalization.pdf>.

- 68 *See id.* at 8-9.
- 69 Declaration of Marc Sageman in Opposition to Defendants’ Cross-Motion for Summary Judgment, Latif v. U.S. Dep’t of Justice et al., No. 3:100-cv-00750, 2015 WL 1883890 ¶ 14 (D. Or. Aug. 7, 2015) [hereinafter “Sageman Affidavit”], *available at* https://www.aclu.org/sites/default/files/field_document/268._declaration_of_marc_sageman_8.7.15.pdf.
- 70 *Raza v. City of New York—Legal Challenge to NYPD Muslim Surveillance Program*, AMERICAN CIVIL LIBERTIES UNION, <https://www.aclu.org/cases/raza-v-city-new-york-legal-challenge-nypd-muslim-surveillance-program> (last updated Jan. 7, 2016). *See also* Faiza Patel, *Opinion: Build on NYPD’s Clarified Approach to Muslims*, NEWSDAY (Sept. 17, 2009), <http://www.newsday.com/opinion/opinion-build-on-nypd-s-clarified-approach-to-muslims-1.1458017>.
- 71 COUNTERING VIOLENT EXTREMISM OFFICE, FED. BUREAU OF INVESTIGATION, FBI STRATEGIC PLAN TO CURB VIOLENT EXTREMISM 2 (declassified March 2015) [hereinafter “FBI CVE PLAN”] (emphasis added), *available at* <https://www.brennancenter.org/sites/default/files/1318911-0%20-%20FBI%20Strategic%20Plan%20to%20Curb%20Violent%20Extremism-Section%201-Imported%20Media.PDF> (obtained by the Brennan Center through Freedom of Information Act request).
- 72 *Id.* at 3.
- 73 Matt Apuzzo, *Who Will Become a Terrorist? Research Yields Few Clues*, N.Y. TIMES, Mar. 27, 2016, at A1, <http://www.nytimes.com/2016/03/28/world/europe/mystery-about-who-will-become-a-terrorist-defies-clear-answers.html> [hereinafter “N.Y. TIMES, *Who Will Become a Terrorist*”] (quoting former CIA officer, terrorism researcher and psychologist Marc Sageman).
- 74 WHITE HOUSE CVE STRATEGY, *supra* note 11, at 1.
- 75 DHS CVE STRATEGY, *supra* note 32, at 1. (“Individuals who commit acts of violent extremism are inspired by diverse political, religious, and philosophical beliefs, and are not limited to any single population or region.”).
- 76 FBI CVE PLAN, *supra* note 71, at 2 (“The FBI defines violent extremism as *encouraging, condoning justifying, or supporting the commission of a violent criminal act to achieve political, ideological, religious, social or economic goals.*”). The mission of the FBI’s Countering Violent Extremism Office is described as “leveraging its resources” in communities to “prevent violent extremists and their supporters from inspiring, radicalizing, financing or recruiting individuals or groups in the United States to commit acts of violence.” Exec. Staff of the FBI’s Nat’l Sec. Branch, *A New Approach to Countering Violent Extremism: Sharing Expertise and Empowering Local Communities*, FBI L. ENFORCEMENT BULL., Oct. 7, 2014, <https://leb.fbi.gov/2014/october/a-new-approach-to-countering-violent-extremism-sharing-expertise-and-empowering-local-communities>.
- 77 NAT’L COUNTERTERRORISM CTR., (U//FOUO) COUNTERING VIOLENT EXTREMISM: A GUIDE FOR PRACTITIONERS AND ANALYSTS 3 (May 2014) [hereinafter “NCTC CVE GUIDE”], *available at* <https://www.documentcloud.org/documents/1657824-cve-guide.html> (“A violent extremist advocates, is engaged in, or is preparing to engage in ideologically motivated violence to further political or social objectives.”).
- 78 2011 WHITE HOUSE CVE IMPLEMENTATION PLAN, *supra* note 11, at 1-2 (emphasis added).
- 79 *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).
- 80 It is commonly used to describe how individuals (primarily Muslims) become terrorists, covering both an ideological component (i.e., embracing “radical” ideas) and a criminal component (i.e., actions in furtherance of a terrorist plot, including financing, recruitment, planning and execution). *See* RETHINKING RADICALIZATION, *supra* note 67, at 32 n.1.

- 81 See *infra* Table 1.
- 82 MITCHELL D. SILBER & ARVIN BHATT, NYPD INTELLIGENCE DIV., *RADICALIZATION IN THE WEST: THE HOMEGROWN THREAT 6* (2007) [hereinafter “NYPD REPORT 2007”], available at http://sethgodin.typepad.com/seths_blog/files/NYPD_Report-Radicalization_in_the_West.pdf (“Jihadist or jihadi-Salafist ideology is the driver that motivates young men and women, born or living in the West, to carry out ‘autonomous jihad’ via acts of terrorism against their host countries. It guides movements, identifies the issues, drives recruitment and is the basis of action.”). The FBI’s analysis of radicalization is different from the NYPD in its focus on the *venues* where a person might be exposed to radical ideas. The accompanying commentary makes clear, however, the Bureau too is concerned with individuals who either convert to Islam or adopt a conservative form of Islam. See, e.g., *infra* text associated with note 92; Carol Dyer et al., *Countering Violent Extremism*, 76(12), FBI L. ENFORCEMENT BULL. 1, 3-9 (Dec. 2007), available at <https://leb.fbi.gov/2007-pdfs/leb-december-2007>. For a detailed analysis of these theories, see RETHINKING RADICALIZATION, *supra* note 67, at 14-18.
- 83 See, e.g., *Willful Blindness: Consequences of Agency Efforts To Deemphasize Radical Islam in Combating Terrorism: Hearing before the Subcomm. on Oversight, Agency Action, Fed. Rights and Fed. Courts of the S. Comm. on Judiciary*, 114th Cong. (2016) (statement for the record of Sen. Grassley, Chairman, S. Judiciary Comm.), available at <https://www.judiciary.senate.gov/imo/media/doc/06-28-16p%20Grassley%20Statement.pdf>; *id.*, (statement for the record of M. Zuhdi Jasser, President, American Islamic Forum for Democracy), available at <https://www.judiciary.senate.gov/imo/media/doc/06-28-16%20Jasser%20Testimony.pdf>. See also Soharab Ahmari, Opinion, *Global Jihad’s Deadly Calendar*, WALL ST. J., March 22, 2016, <http://www.wsj.com/articles/global-jihads-deadly-calendar-1458688588>; Cora Currier, *The FBI Wanted to Target Yemenis Through Student Groups and Mosques*, INTERCEPT (Sept. 29, 2016, 2:33 PM), <https://theintercept.com/2016/09/29/the-fbi-wanted-to-target-yemenis-through-student-groups-and-mosques/>; Merit Kennedy, *Investigators Say Orlando Shooter Showed Few Warning Signs Of Radicalization*, NAT’L PUB. RADIO (June 18, 2016, 3:54 PM), <http://www.npr.org/sections/thetwo-way/2016/06/18/482621690/investigators-say-orlando-shooter-showed-few-warning-signs-of-radicalization>.
- 84 See *infra* text accompanying notes 152-175.
- 85 For example, in 2011, DHS authored a report titled “A Model for Understanding the Motivations of Homegrown Violent Extremists” which examined past cases of “violent extremism” within the United States to identify commonalities. This report has not been released to the public but is referenced in the CVE WORKBOOK. See COUNTERING VIOLENT EXTREMISM: OUTREACH STRATEGY WORKBOOK EXECUTIVE SESSION FOR STATE, LOCAL AND TRIBAL LAW ENFORCEMENT at 15, n. 1. (2011) [hereinafter “CVE WORKBOOK”], available at https://d3gn0r3afghep.cloudfront.net/foia_files/2016/09/13/_CVE_Executive_Workbook_.pdf (obtained via California Public Records Act request from the LAPD, this workbook is a companion to LAPD CVE CURRICULUM COMPONENTS). DHS also conducted an analysis of various cases of Somali-American youth joining terrorist groups in order to determine trends that can “help federal, state and private partners prioritize efforts countering violent extremism (CVE) and invest in the most promising strategies.” OFFICE OF INTELLIGENCE & ANALYSIS, DEP’T OF HOMELAND SEC., IA-0214-15, (U//FOUO) EMPOWERING SOMALI [REDACTED] KEY FOR COUNTERING YOUTH RADICALIZATION AND THEIR TRAVEL ABROAD FOR TERRORISM 1 (June 16, 2015), available at <https://www.brennancenter.org/sites/default/files/Empowering%20Somali%20Parents%20Key%20for%20Countering%20Youth%20Radicalization.pdf> (obtained by the Brennan Center through Freedom of Information Act request). The NCTC has released findings from an interagency study of homegrown terrorists, which describes four “mobilizing patterns” among extremists. NAT’L COUNTERTERRORISM CTR., BEHAVIORAL INDICATORS OFFER INSIGHTS FOR SPOTTING EXTREMISTS MOBILIZING FOR VIOLENCE 2 (2011) [hereinafter “2011 NCTC REPORT”], available at <https://info.publicintelligence.net/NCTC-SpottingHVEs.pdf>. Another 2011 study by the NCTC, conducted in conjunction with DHS and the FBI, reportedly examined 62 homegrown violent extremists in order to identify “warning signs” that “might help local law enforcement better understand and detect threats,” Eileen Sullivan, *Police Chiefs Meet at WH on Homegrown Terror Fight*, ASSOCIATED PRESS, Jan. 18, 2012, https://archive.boston.com/news/nation/washington/articles/2012/01/18/police_chiefs_meet_

at_wh_on_homegrown_terror_fight/.

- 86 The push for simple, reductionist answers has led counter-terrorism researchers, including those who receive government funding, to publicly express frustration with the government's "preoccupation with research that can be distilled into simple checklists, even at the risk of casting unnecessary suspicion on innocent people." N.Y. TIMES, *Who Will Become a Terrorist*, *supra* note 73 (quoting Clark R. McCauley Jr., a professor of psychology at Bryn Mawr College).
- 87 MARC SAGEMAN, MISUNDERSTANDING TERRORISM 55-89 (2016) (explaining the importance of control groups, representativeness of a sample, the sensitivity and specificity of an instrument, and Bayesian probability in the context of social science methodology in terrorism analysis); Jeff Victoroff, *The Mind of the Terrorist: A Review and Critique of Psychological Approaches*, 49(1) J. CONFLICT RESOLUTION 3, 9 (Feb. 2005), available at <https://www.surrey.ac.uk/politics/research/researchareasofstaff/isppsummeracademy/instructors%20/The%20Terrost%20mind.pdf> (explaining that in the absence of valid and reliable behavioral measures and without a control group, various terrorism studies cannot distinguish terrorists from non-terrorists). See also *Why Randomize?*, YALE INST. FOR SOC. & POL'Y STUDIES, <http://isps.yale.edu/node/16697> (last visited Nov. 1, 2016) ("Random assignment controls for both known and unknown variables that can creep in with other selection processes to confound analyses."); BERNARD H. RUSSELL, SOCIAL RESEARCH METHODS: QUALITATIVE AND QUANTITATIVE APPROACHES 144 (2000) (noting the importance of random sampling in research attempting to estimate the ideas or preferences of a larger group).
- 88 Sageman Affidavit, *supra* note 69, at ¶ 21.
- 89 *Id.*
- 90 Murtaza Hussain, Cora Currier & Jana Winter, *Is Your Child a Terrorist? U.S. Questionnaire Rates Families at Risk for Extremism*, INTERCEPT (Feb. 9, 2015, 12:39 PM) [hereinafter "INTERCEPT, *Is Your Child a Terrorist?*"], <https://theintercept.com/2015/02/09/government-develops-questionnaire-see-might-become-terrorist/>.
- 91 LOS ANGELES POLICE DEP'T, COUNTERING VIOLENT EXTREMISM: POTENTIAL CURRICULUM COMPONENTS (WORKING DOCUMENT) 18 (2010) [hereinafter "LAPD CVE CURRICULUM COMPONENTS"], available at https://www.brennancenter.org/sites/default/files/CVE%20initiative%20to%20develop%20training_0.pdf (obtained by the Brennan Center through California Public Records Act request) (section D(3)(b) references page 11 in NAT'L COUNTERTERRORISM CENTER, U//FOUO: (U) RADICALIZATION DYNAMICS: A PRIMER (2010) [hereinafter "RADICALIZATION DYNAMICS"], available at https://www.brennancenter.org/sites/default/files/Radicalization%20Dynamics%20Primer%20Sept.%202010_0.pdf (obtained via California Public Records Act request)); LOS ANGELES POLICE DEP'T, COUNTERING VIOLENT EXTREMISM: EXPANDED COURSE OUTLINE VERSION 6 at 1 (2011) [hereinafter "LAPD CVE EXPANDED COURSE OUTLINE"], available at https://www.brennancenter.org/sites/default/files/LAPD%20CVE%20draft%20course%20outline%20red%20_0.pdf (obtained by the Brennan Center through California Public Records Act request) (section A(3)(a)(2) references RADICALIZATION DYNAMICS).
- 92 FBI COUNTERTERRORISM DIV., (U//FOUO) THE RADICALIZATION PROCESS: FROM CONVERSION TO JIHAD 10 (2006), available at <http://cryptome.org/fbi-jihad.pdf>.
- 93 NYPD REPORT 2007, *supra* note 82, at 23, 31.
- 94 LAPD CVE CURRICULUM COMPONENTS, *supra* note 91, at 12-16; CVE WORKBOOK, *supra* note 91, at 15-16; see also LAPD CVE EXPANDED COURSE OUTLINE, *supra* note 91, at 3, 4.
- 95 RADICALIZATION DYNAMICS, *supra* note 91, at 10-16; NCTC CVE GUIDE, *supra* note 77, at 20-21; see also INTERCEPT, *Is Your Child a Terrorist?*, *supra* note 90.
- 96 WORLD ORG. FOR RES. DEVELOPMENT AND EDUC., DEVELOPING A COMMUNITY-LED APPROACH TO COUNTERING VIOLENT EXTREMISM: AN INSTRUCTOR'S MANUAL 43 (2016) [hereinafter "WORDE CVE MANUAL"],

available at <http://www.worde.org/wp-content/uploads/2016/08/WORDE-Developing-a-Community-Led-Approach-to-CVE.pdf>.

- 97 *Don't Be a Puppet: Why Do People Become Violent Extremists?* FED. BUREAU OF INVESTIGATION, <https://cve.fbi.gov/why/> (last visited Feb. 1, 2017) [hereinafter “*Don't Be a Puppet: Why Do People Become Violent Extremists?*”].
- 98 U.S. ATTORNEY'S OFFICE, DISTRICT OF MINN., BUILDING COMMUNITY RESILIENCE: MINNEAPOLIS-ST. PAUL PILOT PROGRAM: A COMMUNITY-LED LOCAL FRAMEWORK 4 (2015) [hereinafter “MINNEAPOLIS CVE FRAMEWORK”], available at <http://www.justice.gov/usao-mn/file/642121/download>.
- 99 U.S. ATTORNEY'S OFFICE, DISTRICT OF MASS., A FRAMEWORK FOR PREVENTION AND INTERVENTION STRATEGIES: INCORPORATING VIOLENT EXTREMISM INTO VIOLENCE PREVENTION EFFORTS 3 (2015) [hereinafter “BOSTON CVE FRAMEWORK”], available at <https://www.justice.gov/sites/default/files/usao-ma/pages/attachments/2015/02/18/framework.pdf>.
- 100 HM GOVERNMENT, CHANNEL DUTY GUIDANCE: PROTECTING VULNERABLE PEOPLE FROM BEING DRAWN INTO TERRORISM (Apr. 2016) [hereinafter “2016 CHANNEL DUTY GUIDANCE”], Annex C, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/425189/Channel_Duty_Guidance_April_2015.pdf. See also, HM GOVERNMENT, CHANNEL: VULNERABILITY ASSESSMENT FRAMEWORK 2, 3 (Oct. 2012) [hereinafter “CHANNEL FRAMEWORK”], available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118187/vul-assessment.pdf; HM GOVERNMENT, REVISED PREVENT DUTY GUIDANCE: FOR ENGLAND AND WALES (2015), available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/445977/3799_Revised_Prevent_Duty_Guidance__England_Wales_V2-Interactive.pdf (originally issued on March 12, 2015 and revised on July 16, 2015).
- 101 The primer states that it is intended to be a reference for U.S. policymakers, law enforcement officers, civilians and military personnel who “report, analyze, or act on radicalization trends,” RADICALIZATION DYNAMICS, *supra* note 91, at 3.
- 102 While there is no comprehensive list of these briefings, it is known that they have been conducted in at least “12 U.S. cities over the past few years.” DEP'T OF HOMELAND SEC., DHS CVE INVENTORY [DRAFT] 2 (Aug. 1, 2014), available at <https://www.brennancenter.org/sites/default/files/140814%20Report%20--%20DHS%20CVE%20Inventory.pdf> (obtained by the Brennan Center through Freedom of Information Act request). According to the White House “United States Attorneys have hosted or attended more than 1,000 engagement related events and meetings where they build relationships with communities, dispel myths and misperceptions, and develop locally-based partnerships.” Memorandum concerning the White House CVE Summit (unclassified on Feb. 25, 2015) [hereinafter “WHITE HOUSE CVE SUMMIT PRESS POINTS”], available at <https://www.brennancenter.org/sites/default/files/1318911%20White%20House%20CVE%20Summit%20Press%20Points.pdf> (obtained by the Brennan Center through Freedom of Information Act request). Similarly, in Connecticut, DHS and NCTC officials held a closed-door briefing with Pakistani American physicians on “what the community needs to know” about “Radicalization and De-Radicalization Strategies.” The FBI's Cincinnati field office, in partnership with local U.S. Attorneys' offices and the Columbus Division of Police, also hosted a radicalization awareness program for members of the local Somali community. Amna A. Akbar, *National Security's Broken Windows*, 62 UCLA L. REV. 834, 867 (2015), available at <http://www.uclalawreview.org/wp-content/uploads/2015/05/Akbar-final-article-5.29.15.pdf>.
- 103 GLOBAL ENGAGEMENT GROUP, NAT'L COUNTERTERRORISM CTR., PROMOTING SAFE AND RESILIENT AMERICAN COMMUNITIES 13 (released Apr. 28, 2016) [hereinafter “GLOBAL ENGAGEMENT GROUP PRESENTATION”], available at <https://www.dni.gov/files/documents/FOIA/DF-2015-00054/DF-2015-00054%20%282010%20CAB%29.pdf>; see also OFFICE OF THE DIR. OF NAT'L INTELLIGENCE, COMMUNITY AWARENESS BRIEFING 7, 8 (n.d., released 2016), available at <https://www.dni.gov/files/documents/FOIA/DF-2015-00054/DF-2015-00054%20%282014%20CAB%29.pdf>.

- 104 GLOBAL ENGAGEMENT GROUP PRESENTATION, *supra* note 103, at 14. The ODNI has released guidance for Community Resilience Exercise (CREX) run by federal law enforcement agencies, which are table-top exercises designed to highlight responses from communities and law enforcement in the face of cases of potential violent extremism. COMMUNITY RESILIENCE EXERCISE (CREX) TPs (released Apr. 28, 2016), *available at* <https://www.dni.gov/files/documents/FOIA/DF-2015-00054/DF-2015-00054%20%28CREX%20TPs%29.pdf>. The actual scenarios used in these exercises have not been released, but the Brennan Center attended a CREX exercise in New York City on September 3, 2014, which reflected many of the themes in the community awareness briefings.
- 105 *See, e.g.*, Mark Berman, *Donald Trump Says Muslims Should Report Suspicious Activity. The FBI Says They Already Do.*, WASH. POST, Oct. 9, 2016, <https://www.washingtonpost.com/politics/2016/live-updates/general-election/real-time-fact-checking-and-analysis-of-the-2nd-2016-presidential-debate/donald-trump-says-muslims-should-report-suspicious-activity-the-fbi-says-they-already-do/> (quoting FBI director, James Comey, “They do not want people committing violence, either in their community or in the name of their faith, and so some of our most productive relationships are with people who see things and tell us things who happen to be Muslim.”); Kristina Cooke & Joseph Ax, *U.S. Officials Say American Muslims Do Report Extremist Threats*, REUTERS, June 16, 2016, <http://www.reuters.com/article/us-florida-shooting-cooperation-idUSKCN0Z213U> (Michael Downing, deputy chief of the LAPD and head of its Counterterrorism and Special Operations Bureau, stating that the city’s Muslim community has been helpful in reporting “red flags”); *see also Eight Years After 9/11: Confronting the Terrorist Threat to the Homeland: Hearing Before the S. Comm. on Homeland Sec. and Gov’t Affairs*, 111th Cong. 6 (2009) (statement for the record by Robert S. Mueller, III, Dir., Fed. Bureau of Investigation) (“[T]he FBI understands that protecting America requires the cooperation and understanding of the public. The FBI has an extensive outreach program to Muslim, South Asian, and Sikh communities to address concerns and develop trust about the FBI and federal efforts to protect the Homeland.”), *available at* <http://www.hsgac.senate.gov/download/2009-09-30-mueller-testimony>.
- 106 Lisa Monaco, Ass’t to the President for Homeland Sec. and Counterterrorism, *Countering Violent Extremism and the Power of Community*, Remarks at the Harvard Kennedy School Forum (Apr. 15, 2014) [hereinafter “Lisa Monaco Remarks”], *available at* <https://obamawhitehouse.archives.gov/the-press-office/2014/04/16/remarks-assistant-president-homeland-security-and-counterterrorism-lisa->
- 107 *See* Naureen Shah, *Terrorist or... Teenager?*, SLATE (Nov. 12, 2014), http://www.slate.com/articles/news_and_politics/politics/2014/11/justice_department_s_countering_violent_extremism_program_ripe_for_abuse.html; JANE KROGER, *IDENTITY DEVELOPMENT: ADOLESCENCE THROUGH ADULTHOOD* 107 (2006) (“Among late adolescents, renegotiating relationships with parents and other family members has generally occurred during the identity-formation process.”).
- 108 One NCTC document makes this clear, explaining that “[l]ocal-level contacts such as school officials” were most likely to see an indicator such as “withdrawal from established social networks.” 2011 NCTC REPORT, *supra* note 85, at 4.
- 109 Lisa Monaco Remarks, *supra* note 106.
- 110 2016 CVE IMPLEMENTATION PLAN, *supra* note 13, at 11 (“Studies indicate that family members, friends, or close acquaintances are the most likely to observe activities or behaviors suggesting an individual is being radicalized or has violent intent.”) Similarly, the 2016 DHS CVE Strategy states: “Research shows that parents, neighbors, colleagues, peers, teachers, and community leaders are best positioned to ... recognize when an individual becomes ideologically-motivated to commit violence, and intervene before an individual or a group commits an act of violent extremism.” 2016 DHS CVE STRATEGY, *supra* note 32, at 1.
- 111 Paul Gill et al., *Bombing Alone: Tracing the Motivations and Antecedent Behaviors of Lone-Actor Terrorists*, 59 J. FORENSIC SCI. 2, 425, 429 (2013), *available at* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4217375/pdf/jfo0059-0425.pdf>. The authors note that the number of family and friends who were aware of the individuals’ intent to engage in terrorism was comparatively lower than the 81% found in a study of school

- shooters. *Id.* n. 18. (citing BRIAN VOSSEKUIL ET AL., THE FINAL REPORT AND FINDINGS OF THE SAFE SCHOOL INITIATIVE: IMPLICATIONS FOR THE PREVENTION OF SCHOOL ATTACKS IN THE UNITED STATES (2004), available at <https://www2.ed.gov/admins/lead/safety/preventingattacksreport.pdf>).
- 112 MARK HAMM & RAMON SPAAJ, LONE WOLF TERRORISM IN AMERICA: USING KNOWLEDGE OF RADICALIZATION PATHWAYS TO FORGE PREVENTION STRATEGIES 9 (2015), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/248691.pdf>.
- 113 Matthew Rabin & Joel L. Schrag, *First Impressions Matter: A Model of Confirmatory Bias*, 144 Q.J. ECON 37, 38 (1999), available at http://www.anderson.ucla.edu/faculty/keith.chen/negot.%20papers/RabinSchrag_ConfirmBias99.pdf.
- 114 Email from John Horgan, Professor, Global Studies Institute Dep't of Psychology, at Georgia State University to Waqas Mirza, Journalist, Muckrock (May 17, 2016, 1:14PM ET) (on file with author); see also John Horgan, Remarks at the Res. for the Real World Seminar (March 7, 2016), in *Video Transcript: Community-Level Efforts to Prevent Violent Extremism*, NAT'L INST. JUSTICE (June 16, 2016) [hereinafter "Horgan Panel"], <http://nij.gov/multimedia/Pages/video-rfrw-community-level-effort-to-prevent-violent-extremism-transcript.aspx> ("Much of what we do know is verified only in hindsight and to further complicate matters, our understanding is constantly shifting... it is like tracking a moving target through the wrong end of the telescope.... It refuses to fit into any of our analogies. It refuses to bend to our models. Its complexity sometimes threatens to overwhelm us. Because there so little systematic research on these issues, that situation is not going change anytime soon, so let's not kid ourselves.").
- 115 Shibley Telhami, *What Americans Really Think About Muslims and Islam*, BROOKINGS INST. (Dec. 9, 2015), <https://www.brookings.edu/blog/markaz/2015/12/09/what-americans-really-think-about-muslims-and-islam/>. Some surveys suggest that more than half of Americans support banning Muslims from entering the nation and 45 percent believe that police should have the authority to "patrol and secure Muslim neighborhoods before they become radicalized," as suggested by Sen. Ted Cruz and echoed by Donald Trump, the 2016 Republican Presidential nominee. See, e.g., Katie Zezima and Adam Goldman, *Ted Cruz Calls for Law Enforcement to 'Patrol and Secure' Muslim Neighborhoods*, WASH. POST, March 22, 2016, <https://www.washingtonpost.com/news/post-politics/wp/2016/03/22/ted-cruz-calls-for-law-enforcement-to-patrol-and-secure-muslim-neighborhoods/>; Jonathan Easley, *Trump Calls for Muslim Patrols, Torture in Wake of Brussels Attacks*, HILL (March 22, 2016, 6:24 PM), <http://thehill.com/blogs/ballot-box/273970-trump-calls-for-muslim-patrols-torture-in-wake-of-brussels-attacks>; Cameron Easley, *Half of Voters Back Muslim Travel Ban, Patrols of Muslim Neighborhoods*, MORNING CONSULT (March 29, 2015), <https://morningconsult.com/2016/03/29/polling-muslim-travel-ban-patrolling-muslim-neighborhood/>; Peter Moore, *Divide on Muslim Neighborhood Patrols But Majority Now Back Muslim Travel Ban*, YOU.GOV (March 28, 2016, 1:06 PM), <https://today.yougov.com/news/2016/03/28/divide-muslim-neighborhood-patrols/>.
- 116 See, e.g., Sarah Kaplan & Abby Phillip, *They Thought It Was a Bomb: 9th Grader Arrested After Bringing a Home-Built Clock to School*, WASH. POST, Sept. 16, 2015, <https://www.washingtonpost.com/news/morning-mix/wp/2015/09/16/they-thought-it-was-a-bomb-ahmed-mohamed-texas-9th-grader-arrested-after-bringing-a-home-built-clock-to-school/>. Similarly, in Dallas, a 12-year-old Sikh boy was handcuffed and held in a juvenile detention center for three days after a classmate joked about a bomb in his backpack. Michael Miller, *Another 'Clock Kid'? Family Outraged As 12-Year-Old Sikh Boy Arrested Over Alleged Bomb Threat at Tex. School*, WASH. POST, Dec. 18, 2015, <https://www.washingtonpost.com/news/morning-mix/wp/2015/12/18/another-clock-kid-family-outraged-as-12-year-old-sikh-boy-arrested-over-alleged-bomb-threat-at-tex-school/>. See also Faiza Patel, *Obama's Response to Ahmed Mohamed's Clock is Hypocritical*, TIME, Sept. 20, 2015, <http://time.com/4041210/obamas-response-to-ahmed-mohameds-clock-is-hypocritical/>.
- 117 Tanya Basu, *Ahmed the Clockmaker Meets President Obama*, TIME, Oct. 20, 2015, <http://time.com/4079766/ahmed-mohamed-clockmaker-president-obama/>; Nick Statt, *Facebook, Google Roll Out Welcome Mat to Ahmed Mohamed*, USA TODAY (Sept. 17, 2015), <http://www.usatoday.com/story/tech/2015/09/16/mark-zuckerberg-facebook-google-box-aaron-levie-ahmed-mohamed-clock/32510935/>.

- 118 COUNCIL ON AMERICAN-ISLAMIC RELATIONS CAL., MISLABELED: THE IMPACT OF SCHOOL BULLYING AND DISCRIMINATION ON CALIFORNIA MUSLIM STUDENTS 4 (2015) [hereinafter “CAIR-CA REPORT”], *available at* <https://ca.cair.com/sfba/wp-content/uploads/2015/10/CAIR-CA-2015-Bullying-Report-Web.pdf>.
- 119 Dep’t of Health & Human Services, *Facts About Bullying*, STOPBULLYING.GOV, <https://www.stopbullying.gov/media/facts/index.html#listing> (last visited Feb. 4, 2017).
- 120 CAIR-CA REPORT, *supra* note 118, at 15.
- 121 *Flyer from the Int’l Cultural Ctr., a Program of the World Org. for Res. Dev. and Educ., Bullying of Muslims Students*, https://www.brennancenter.org/sites/default/files/styles/large/public/Impact-of-Bullying-in-Montgomery-County_0.png?itok=AgmSk4yP (last visited Feb. 27, 2017); Donna St. George, *During a School Year of Terrorist Attacks, Muslim Students Report Bullying*, WASH. POST, June 14, 2016, https://www.washingtonpost.com/local/education/during-a-school-year-of-terrorist-attacks-muslim-students-report-bullying/2016/06/14/1b066a44-3220-11e6-8758-d58e76e11b12_story.html. *See also* *Protecting the Civil Rights of American Muslims: Hearing Before the S. Subcomm. on the Constitution, Civil Rights and Human Rights of the S. Comm. of the Judiciary*, 112th Cong. 15 (2011) (statement of Farhana Khera, President & Exec. Dir., Muslim Advocates), *available at* https://www.muslimadvocates.org/wp-content/uploads/2014/04/Muslim-Advocates-Testimony_final.pdf. Yet another indication of anti-Muslim bias in schools have been efforts in at least five states to remove or reduce mentions of Islam from history textbooks because the studying Islam was considered by some parents and school board members to be equivalent to indoctrination. *See* Cameron McWhirter, *References to Islam in School Textbooks Stir Up a Fight*, WALL ST. J., Jan. 15, 2016, <http://www.wsj.com/articles/references-to-islam-in-school-textbooks-stir-up-a-fight-1452853800>.
- 122 Letter from the American Federation of Teachers et al. to Hon. James Comey, Dir., Fed. Bureau of Investigation (Aug. 9, 2016) [hereinafter “AFT Letter”], *available at* http://www.aft.org/sites/default/files/ltr_dont_be_a_puppet_aug2016.pdf.
- 123 Alice LoCicero & J. Wesley Boyd, *The Dangers of Countering Violent Extremism (CVE) Programs*, PSYCHOL. TODAY (July 19, 2016), <https://www.psychologytoday.com/blog/almost-addicted/201607/the-dangers-countering-violent-extremism-cve-programs>.
- 124 *Id.*
- 125 Sageman Affidavit, *supra* note 69, at ¶ 28.
- 126 *See* Bryan Bender, *Russian Alerted US About Tamerlan Tsarnaev*, BOSTON GLOBE, Apr. 21, 2013, <https://www.bostonglobe.com/metro/2013/04/20/bombmain/IQ48jNsFSG21X8jkkcSsMJ/story.html>; Eric Lichtblau & Matt Apuzzo, *Orlando Gunman Was On Terror Watchlist, F.B.I. Director Says*, N.Y. TIMES, June 13, 2016, <http://www.nytimes.com/2016/06/14/us/omar-mateen-fbi.html>.
- 127 KEVIN STROM ET AL., INST. FOR HOMELAND SEC. SOLUTIONS, BUILDING ON CLUES: EXAMINING SUCCESSES AND FAILURES IN DETECTING U.S. TERRORIST PLOTS, 1999-2009 at 19 (2010) [hereinafter “HSS STUDY”], *available at* https://sites.duke.edu/ihss/files/2011/12/Building_on_Clues_Strom.pdf; CHARLES KURZMAN, TRIANGLE CTR. ON TERRORISM AND HOMELAND SEC., MUSLIM-AMERICAN TERRORISM IN THE DECADE SINCE 9/11 at 5 (Feb. 2012), *available at* http://kurzman.unc.edu/files/2011/06/Kurzman_Muslim-American_Terrorism_in_the_Decade_Since_9_11.pdf; MUSLIM PUB. AFF. COUNCIL, DATA ON POST-9/11 TERRORISM IN THE UNITED STATES 3 (2012), *available at* <http://www.mpac.org/assets/docs/publications/MPAC-Post-911-Terrorism-Data.pdf>.
- 128 The exception that proves the rule is a recently-announced program that looks at ways of disengaging from the white power movement. *See* 2016 WHITE HOUSE CVE IMPLEMENTATION PLAN, *supra* note 13, at 12. Since the program works with individuals who self-identify, it does not involve efforts to identify violent extremists in white communities.

- 129 See *Factsheet: A Comprehensive U.S. Government Approach to Countering Violent Extremism*, DEP'T OF HOMELAND SEC., <http://www.dhs.gov/sites/default/files/publications/US%20Government%20Approach%20to%20CVE-Fact%20Sheet.pdf> (last visited Jan. 30, 2017) [hereinafter “*Factsheet: Comprehensive CVE Approach*”] (“We can learn from intervention approaches in other situations, such as gang prevention.”); MINNEAPOLIS CVE FRAMEWORK, *supra* note 98, at 4 (stating that the Minneapolis CVE framework “borrow[s] elements” from the Office of Juvenile Justice and Delinquency Prevention’s Gang Reduction Model); Shelley Murphy, *Federal Initiative in Boston Aims to Counter Violent Extremism*, BOSTON GLOBE, Oct. 4, 2014, <https://www.bostonglobe.com/metro/2014/10/03/attorney-details-efforts-stop-violent-extremists/jC6JDiUiLa3Wv8TrblOM1J/story.html> (explaining that Boston was chosen as a CVE pilot city because of its “strong community-oriented policing that has been successful in targeting gangs and gun violence”); Maya Rhodan, *What the War on Terrorism Can Learn from the War on Gangs*, TIME, Feb. 20, 2015, <http://time.com/3716160/terrorism-gangs-white-house-summit/> (describing LAPD CVE efforts as “draw[ing] inspiration from anti-gang models”). Proponents of CVE outside the government have made similar arguments as well. See BIPARTISAN POL’Y CTR., PREVENTING VIOLENT RADICALIZATION IN AMERICA 42 (2011), available at <http://bipartisanpolicy.org/wp-content/uploads/sites/default/files/NSPG.pdf>.
- 130 *National Youth Gang Survey Analysis: Measuring the Extent of Gang Problems*, NAT’L GANG CENTER, <https://www.nationalgangcenter.gov/survey-analysis/measuring-the-extent-of-gang-problems> (last visited Jan. 30, 2017).
- 131 NAT’L GANG INTELLIGENCE CTR., 2011 NATIONAL GANG THREAT ASSESSMENT—EMERGING TRENDS 9 (2011), available at <https://www.fbi.gov/stats-services/publications/2011-national-gang-threat-assessment/2011-national-gang-threat-assessment-emerging-trends>.
- 132 A 2015 study by Duke’s Triangle Center showed that between Sept. 11, 2001 and June 22, 2015, there had been an average of six terrorism-related plots involving American Muslims. CHARLES KURZMAN & DAVID SCHANZER, TRIANGLE CTR. ON TERRORISM AND HOMELAND SEC., LAW ENFORCEMENT ASSESSMENT OF THE VIOLENT EXTREMIST THREAT 7 (2015) [hereinafter “2015 TRIANGLE STUDY”], available at https://sites.duke.edu/tcths/files/2013/06/Kurzman_Schanzer_Law_Enforcement_Assessment_of_the_Violent_Extremist_Threat_final.pdf. According to a study by the United States Military Academy’s Combating Terrorism Center, right-wing extremists averaged 307.5 attacks per year in the first 11 years of the twenty-first century. ARIE PERLIGER, COMBATING TERRORISM CENTER AT WEST POINT, CHALLENGERS FROM THE SIDELINES: UNDERSTANDING AMERICA’S VIOLENT FAR-RIGHT 87 (Nov. 2012), available at <https://www.ctc.usma.edu/v2/wp-content/uploads/2013/01/ChallengersFromtheSidelines.pdf>. These two studies would total 313.5 terrorism incidents per year. Other studies show lower numbers. For example, the Global Terrorism Database maintained by the START at the University of Maryland identifies 256 terrorist attacks from 2001 to 2014. NAT’L CONSORTIUM FOR STUDY OF TERRORISM AND RESPONSES TO TERRORISM, FACT SHEET: AMERICAN DEATHS IN TERRORIST ATTACKS 1 (Oct. 2015), available at https://www.start.umd.edu/pubs/START_AmericanTerrorismDeaths_FactSheet_Oct2015.pdf.
- 133 See MALCOLM W. KLEIN & CHERYL L. MAXSON, STREET GANG PATTERNS AND POLICIES 126 (2006). See also Erika Gebo et al., *The OJJDP Comprehensive Gang Strategy: The Comprehensive Gang Model*, in THE HANDBOOK OF GANGS 399-402 (2015) (Scott H. Decker & David C. Pyrooz eds., 2015); Irving Spergel et al., *The Comprehensive, Community-Wide Gang Program Model: Success And Failure*, in STUDYING YOUTH GANGS 222 (James F. Short & Lorine A. Hughes eds., 2006).
- 134 The Justice Policy Institute’s examination of data shows that African-Americans and Latinos were roughly fifteen times more likely than non-Hispanic whites to be identified by law enforcement as gang members. JUDITH GREENE & KEVIN PRANIS, GANG WARS: THE FAILURE OF ENFORCEMENT TACTICS AND THE NEED FOR EFFECTIVE PUBLIC SAFETY STRATEGIES 36 (2007), available at http://www.justicepolicy.org/uploads/justicepolicy/documents/07-07_rep_gangwars_gc-ps-ac-jj.pdf; See also Stacey Leyton, *The New Blacklists: The Threat to Civil Liberties Posed by Gang Databases*, in CRIME CONTROL AND SOCIAL JUSTICE (Samuel L. Meyers Jr. & Randolph N. Stone eds., 2003) [hereinafter “Leyton, *The New Blacklists*”] (noting the disproportionate

targeting of minority groups for inclusion in gang databases by law enforcement).

- 135 For instance, the National Youth Gang Survey, which incorporates data from all police departments serving populations with at least 2,500 people, and all county police and sheriff's departments, does not include hate groups and motorcycle gangs in its definition of gangs—both groups that are predominantly white. Sara Lynn Van Hofwegen, *Unjust and Ineffective: A Critical Look at California's STEP Act*, S. CAL. INTERDISCIPLINARY L.J., 679, 684 (2009), available at <http://www-bcf.usc.edu/~idjlaw/PDF/18-3/18-3%20Van%20Hofwegen.pdf>.
- 136 See, e.g., *id.* (“For example, police commonly place African American youth in gang databases merely because they have a childhood nickname or are seen congregating on a street corner with friends. Once an individual is placed in a gang database, his friends are also likely to find themselves in the database because of their association with a “known” gang member. As a result of these practices, black and other minority males are disproportionately targeted, arrested, and incarcerated for gang involvement at far higher rates than their actual participation dictates.”); Daniel Alarcon, *How Do You Define a Gang Member?*, N.Y. TIMES, May 27, 2015, <http://www.nytimes.com/2015/05/31/magazine/how-do-you-define-a-gang-member.html>; Leyton, *The New Blacklists*, *supra* note 134.
- 137 See generally YOUTH JUSTICE COALITION, TRACKED AND TRAPPED: YOUTH OF COLOR, GANG DATABASES, AND GANG INJUNCTIONS 6, 7 (2012), available at <http://www.youth4justice.org/wp-content/uploads/2012/12/TrackedandTrapped.pdf>.
- 138 Assemb. B. 2298 (Cal. 2016) (codified at CAL. GOV'T. CODE § 70615 and CAL. PEN. CODE §§ 186.34, 186.35); see also Dave Maass, *Victory! Gov. Brown Signs Bill to Overhaul California's Broken Gang Databases*, ELECTRONIC FRONTIER FOUNDATION (Sept. 28, 2016), <https://www.eff.org/deeplinks/2016/09/gov-brown-signs-bill-overhaul-californias-broken-gang-databases>.
- 139 See, e.g., Will Hobson, *Police Gang Lists Can Have Life-long Impacts and are Questioned by Legal Experts*, TAMPA BAY TIMES, Sept. 15, 2012, <http://www.tampabay.com/news/publicsafety/crime/police-gang-lists-can-have-life-long-impacts-and-are-questioned-by-legal/1251855>; Charles Hallman, *Gang List Criticized as Racial Profiling*, TWIN CITIES DAILY PLANET (Aug. 6, 2009), <http://www.tcdailyplanet.net/gang-list-criticized-racial-profiling/>; Josmar Trujillo, *Gangbusters: How the Upsurge in Anti-Gang Tactics Will Hurt Communities of Color*, TRUTHOUT (Jan. 19, 2016), <http://www.truth-out.org/news/item/34475-the-upsurge-in-gang-conspiracy-charges-is-not-protecting-communities-of-color>. Cf. Kate Abbey-Lambertz & Joseph Erbraut, *The Simple Strategies That Could Fundamentally Change How Communities View Their Police*, HUFFINGTON POST (Feb. 17, 2015, 7:35 AM), http://www.huffingtonpost.com/entry/community-policing-police-trust_n_6607766 (“Like some of the skeptics in Madison, [Opal] Tometi, the #BlackLivesMatter co-founder, is hesitant to embrace community policing, which she describes as ‘a euphemism for more surveillance’ of minority communities.”).
- 140 DAVID SCHANZER ET AL., THE CHALLENGE AND PROMISE OF USING COMMUNITY POLICING STRATEGIES TO PREVENT VIOLENT EXTREMISM 11 (2016) [hereinafter “SCHANZER ET AL., THE CHALLENGE AND PROMISE OF USING COMMUNITY POLICING STRATEGIES TO PREVENT VIOLENT EXTREMISM”], available at <https://www.ncjrs.gov/pdffiles1/nij/grants/249674.pdf>. CVE's construction of American Muslim communities as particularly suspect is also reflected in how anti-extremism programs are conceived: for “anti-government extremism,” police assume that they should target groups identified with that movement not the broader communities from which their members come, but initiatives to counter “extremism connected with al Qaeda or like-minded terrorist organizations” are aimed at all Muslims, not groups that support ISIS or some other terrorist group. *Id.*
- 141 A report from the National Consortium for the Study of Terrorism and Responses to Terrorism (START), led by the University of Maryland, found that attacks committed by al-Qaeda and affiliated movements resulted in fewer deaths (62) than far-right extremists (245) in the U.S. from 1990 to 2014, excluding 9/11 and the Oklahoma City bombing. WILLIAM S. PARKIN ET AL., NAT'L CONSORTIUM FOR THE STUDY OF TERRORISM

AND RESPONSES TO TERRORISM, TWENTY-FIVE YEARS OF IDEOLOGICAL HOMICIDE VICTIMIZATION IN THE UNITED STATES OF AMERICA 1 (2016), *available at* https://www.start.umd.edu/pubs/START_CSTAB_EC_DB_25YearsofIdeologicalHomicideVictimizationUS_March2016.pdf. Other studies also show a serious threat from right-wing violence, although numbers vary depending on what cases are counted as terrorism. Moreover, because of the overall number of terrorist attacks is very low, a single incident can easily skew numbers, especially if statistics cover only a few years. For example, an ongoing 2016 study by the New America Foundation shows that prior to June 2016, “jihadist” attacks in America had resulted in fewer deaths (45 as of May 26, 2016) than “right wing” attacks (48 as of May 26, 2016). Data from a single attack, the June 12, 2016 Orlando shooting, reversed that conclusion. *What Is the Threat to the United States Today?*, NEW AMERICA FOUND., <https://www.newamerica.org/in-depth/terrorism-in-america/what-threat-united-states-today/> (accessed May 26, 2016 and Jan. 31, 2017). A 2014 nationwide survey of 382 police departments by the Triangle Center on Terrorism and Homeland Security and the Stanford School of Public Policy at Duke University showed that 74 percent rated anti-government extremism, such as sovereign citizen’ movements, as one of the top three terrorist threats in their jurisdiction, while 39 percent listed extremism connected with al Qaeda or like-minded terrorist organizations as a top terrorist threat. Another 33 percent listed environmental extremism as the biggest threat. 2015 TRIANGLE STUDY *supra* note 132, at 3, 4.

142 The outreach programs that form the basis of many CVE efforts have in the past been used as a means of gathering intelligence on participating groups and individuals. *See, e.g.*, MICHAEL PRICE, BRENNAN CTR. FOR JUSTICE, COMMUNITY OUTREACH OR INTELLIGENCE GATHERING? A CLOSER LOOK AT ‘COUNTERING VIOLENT EXTREMISM’ PROGRAMS (2014) [hereinafter “COMMUNITY OUTREACH OR INTELLIGENCE GATHERING”], *available at* https://www.brennancenter.org/sites/default/files/analysis/Community_Outreach_or_Intelligence_Gathering.pdf. In addition, documents obtained through Freedom of Information Act requests demonstrate that even routine observations of Federal Bureau of Investigation officers on members of Muslim communities ended up in intelligence records. AMERICAN CIVIL LIBERTIES UNION, ACLU EYE ON THE FBI (Mar. 27, 2012), *available at* https://www.aclu.org/files/assets/aclu_eye_on_the_fbi_-_mosque_outreach_03272012_0_0.pdf. As explained by Los Angeles-based community and civil rights groups: “We understand [CVE] against the backdrop of the over decade-long history of the federal government’s intrusive surveillance on mosque communities and American Muslims more generally, absent evidence of their engaging in any criminal activity.... In light of the failure of the federal government at any level to ensure safeguards against religious profiling, we cannot help but believe that CVE programs will open the doors to further profiling of American Muslims and other impacted communities.” Press Release, Asian Americans Advancing Justice- Los Angeles et al., Los Angeles Based Groups Serving American Muslim Communities Question Federal Government’s “Countering Violent Extremism” Programs as Ill-Conceived, Ineffective, and Stigmatizing (Nov. 13, 2014) [hereinafter “Los Angeles Press Release”], *available at* <http://www.advancingjustice-la.org/sites/default/files/20141113%20-%20MR%20-%20CVE%20Statement.pdf>. Similarly, in a 2015 letter, a number of Boston groups noted: “CVE programs developed with the input of law enforcement agencies threaten to incorporate intelligence gathering into the process by which individuals are referred to or use mental health and other social services.” Letter from Muslim Justice League et al. to Lisa O. Monaco, Ass’t to the President for Homeland Sec. and Counterterrorism (Feb. 13, 2015), *available at* <https://www.brennancenter.org/sites/default/files/analysis/Boston%20Organizational%20Letter%20re%20CVE%20Concerns.pdf>. Somali groups in Minnesota have also expressed unease. Letter from Minnesota Muslim Groups to Department of Justice et al. (May 1, 2015) [hereinafter “Minnesota Letter”], *available at* <http://files.ctctcdn.com/bd15115b001/d068ad69-9ad8-46a0-bdcd-b9d57454ed20.pdf>. So important is this issue in the Somali community that even the groups working with the U.S. Attorney on youth programs included a “no spying” clause in their agreement with him. Memorandum of Understanding between the United States Attorney’s Office for the District of Minnesota and the Somali American Taskforce, 1 (2015) [hereinafter “USAO-SATF MOU”] *available at* <http://www.justice.gov/usao-mn/file/764306/download>.

143 SCHANZER ET AL., THE CHALLENGE AND PROMISE OF USING COMMUNITY POLICING STRATEGIES TO PREVENT VIOLENT EXTREMISM, *supra* note 140, at 19-31; 2016 CVE IMPLEMENTATION PLAN, *supra* note 13, at 3; Robert McKenzie, *Countering Violent Extremism in America: Policy Recommendations for the Next President*, BROOKINGS

INST. (Oct. 18, 2016), <https://www.brookings.edu/research/countering-violent-extremism-in-america-policy-recommendations-for-the-next-president/>. Of course not all Muslims are opposed to CVE. Six Muslim and Somali groups were part of the Greater Boston Regional Collaborative, which developed the Boston CVE Framework. BOSTON CVE FRAMEWORK, *supra* note 99, at 16. The Somali American Taskforce, which consists of 12 Somali-American individuals including “religious leaders, teachers, students and mental health professionals,” entered into an agreement with the Minnesota U.S. Attorney to develop CVE programs such as mentorships and education and career resources for Somali youth. See Angela Davis, *Community-Led Force Looking to Curb Terror Recruitment*, CBS MINN. (May 14, 2016, 5: 35 PM), <http://minnesota.cbslocal.com/2015/05/14/community-led-task-force-looking-to-curb-terror-recruitment/>; USAO-SATF MOU, *supra* note 142, at 4 (identifies twelve individuals who signed and dated the document). In Los Angeles, the Muslim Public Affairs Council works closely with the LAPD and runs a program called Safe Spaces, which is broadly in line with the government’s CVE model. MUSLIM PUB. AFF. COUNCIL, SAFE SPACES: AN UPDATED TOOLKIT FOR EMPOWERING COMMUNITIES AND ADDRESSING IDEOLOGICAL VIOLENCE, MUSLIM PUB. AFF. COUNCIL (2015), available at <http://www.mpac.org/safespaces/files/MPAC-Safe-Spaces.pdf>. The LA CVE Framework cited MPAC’s Safe Spaces as a “grassroots approach to prevention.” LOS ANGELES INTERAGENCY COORDINATION GROUP, THE LOS ANGELES FRAMEWORK FOR COUNTERING VIOLENT EXTREMISM 5 (2015) [hereinafter “LA CVE FRAMEWORK”], available at <https://www.dhs.gov/sites/default/files/publications/Los%20Angeles%20Framework%20for%20CVE-Full%20Report.pdf>. However, the group has rejected FBI-sponsored CVE. See *The Problem with the FBI’s ‘Shared Responsibility Committees’*, MUSLIM PUB. AFF. COUNCIL (Mar. 31, 2016), <http://www.mpac.org/policy-analysis/the-problem-with-the-fbis-shared-responsibility-committees.php>.

144 BOSTON CVE FRAMEWORK, *supra* note 99, at 20 (dissenting opinion of Yusufi Vali, Exec. Dir., Islamic Society of Boston Cultural Ctr.).

145 Los Angeles Press Release, *supra* note 142.

146 Statement, MSA West, Muslim Student Associations Across CA Against Federal Government’s Countering Violent Extremism Programs (Feb. 21, 2015), <http://us4.campaign-archive2.com/?u=30d739eae2442c8d20aaad278&id=25a5c44b43&e=%5bUNIQID>.

147 Minnesota Letter, *supra* note 142.

148 Letter from Council on American-Islamic Relations (CAIR) et al., on behalf of a Coalition of Nineteen Civil Liberties and Community Organizations, to Hon. Jeh Johnson, Sec’y of Homeland Sec. (Aug. 31, 2016), available at <http://www.cair.com/images/pdf/2016-CVE-Grant-Program.pdf>.

149 Coalition Letter to Lisa Monaco, *supra* note 25, at 3.

150 The Boston CVE Framework, for example, acknowledges community hostility to CVE by cautioning against “creat[ing] and/or brand[ing] separate programs labeled CVE which may have a certain stigma.” BOSTON CVE FRAMEWORK, *supra* note 99, at 2. The LA CVE Framework similarly notes the “antipathy and opposition towards CVE as a concept... voiced by some civil rights and advocacy groups in Los Angeles and around the country.” LA CVE FRAMEWORK, *supra* note 143, at 9. Professor John Horgan, in a National Institute of Justice panel states, “I am not entirely sure when this happened, but at some point over the last two years, CVE, the term CVE became the new terrorism. It is a very deeply contentious label that if you used it, you were seen as compromised or in the service of federal government or in the service of interest[s] that really ran counter to what it is that we say on paper that we are trying to do.” Horgan Panel, *supra* note 114.

151 MICHAEL DOWNING, THE RENEW PROGRAM: A NEW APPROACH TO IDENTIFYING EARLY WARNINGS OF POTENTIAL VIOLENT BEHAVIOR (2016) [hereinafter “RENEW FRAMEWORK”] (on file with the Brennan Ctr.); Philip Marcelo, *What’s In a Name? Government Recast Anti-Extremism Efforts*, ASSOCIATED PRESS (Aug. 26, 2016 12:32 AM EDT), <http://bigstory.ap.org/article/29e87290d5a74a988cce221ef6a14996/whats-name-governments-recast-anti-extremism-efforts/>; *Montgomery County BRAVE Model*, WORLD ORG. RES. DEV. AND EDUC., <http://www.worde.org/programs/the-montgomery-county-model/> (last visited Jan. 30, 2017).

- 152 Samuel J. Rascoff, *Establishing Official Islam? The Law and Strategy of Counter-Radicalization*, 64. STAN. L. REV., 125, 148 (2012) (“American domestic counter-radicalization is emerging mainly as a (modified) import from Europe, chiefly from the United Kingdom”).
- 153 HM GOVERNMENT, CM 6888, COUNTERING INTERNATIONAL TERRORISM: THE UNITED KINGDOM’S STRATEGY ¶¶ 49, 102 (2006), *available at* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/272320/6888.pdf.
- 154 HM GOVERNMENT, PREVENT STRATEGY ¶¶ 10.143, 10.35-10.43 (2011) [hereinafter “2011 PREVENT STRATEGY”], *available at* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97976/prevent-strategy-review.pdf
- 155 2016 CHANNEL DUTY GUIDANCE, *supra* note 100, at ¶¶ 80, 83. Integration and social cohesion initiatives have been substantially scaled back and are now run by a separate government agency from Prevent, although the two initiatives remain coordinated. 2011 PREVENT STRATEGY, *supra* note 154, at ¶¶ 6.30-6.31; OPEN SOCIETY JUSTICE INST., ERODING TRUST: THE UK’S PREVENT COUNTER-EXTREMISM STRATEGY IN HEALTH AND EDUCATION 25 (2016) [hereinafter “OSJI PREVENT STUDY”], *available at* https://www.opensocietyfoundations.org/sites/default/files/eroding-trust-20161017_0.pdf.
- 156 *See supra* text accompanying notes 92-100.
- 157 Most interventions under Prevent seem to be conducted under a program named Channel and the guidance on how to identify individuals is issued under the auspices for that program. *See* 2016 CHANNEL DUTY GUIDANCE, *supra* note 100, at ¶ 7; CHANNEL FRAMEWORK, *supra* note 100, at 2. The other factors listed in the Channel vulnerability assessment include “feelings of grievance and injustice; feeling under threat; a need for identity, meaning and belonging; []desire for status; []desire for excitement and adventure; []need to dominate and control others; susceptibility to indoctrination; a desire for political or moral change; opportunistic involvement; family or friends involvement in extremism; being at a transitional time of life; being influenced or controlled by a group; relevant mental health issues; over-identification with a group or ideology; ‘them and us’ thinking; dehumanisation of the enemy; attitudes that justify offending; harmful means to an end; harmful objectives; individual knowledge, skills and competencies; access to networks, funding or equipment; and criminal capability.”
- 158 OSJI PREVENT STUDY, *supra* note 155, at 37.
- 159 ROYAL COLLEGE OF PSYCHIATRISTS, POSITION STATEMENT PS04/16, COUNTER-TERRORISM AND PSYCHIATRY 7 (Sept. 2016), *available at* http://www.rcpsych.ac.uk/pdf/PS04_16.pdf. The Royal College also noted “potential conflicts with the duties of a doctor” and the possibility that “Prevent could reduce the willingness of people to access mental health treatment.” *Id.* at 4. *See also* British Academics, Letter, *Anti-Radicalization Strategy Lacks Evidence Base in Science*, GUARDIAN, Sept. 28, 2016, <https://www.theguardian.com/politics/2016/sep/29/anti-radicalisation-strategy-lacks-evidence-base-in-science>.
- 160 *National Channel Referral Figures*, NAT’L POLICE CHIEF’S COUNCIL, <http://www.npcc.police.uk/FreedomofInformation/NationalChannelReferralFigures.aspx> (last visited Oct. 24, 2016).
- 161 According to a recent report by the government of the U.K., interventions for “the vast majority of cases” in which an individual has been linked to extremism have been successful because “there are no remaining concerns that the individual will be drawn into terrorism.” This, of course, begs the question of whether there was a substantiated reason to suspect them of being pre-terrorists in the first instance. HM GOVERNMENT, CM. 9310, CONTEST: THE UNITED KINGDOM’S STRATEGY FOR COUNTERING TERRORISM: ANNUAL REPORT FOR 2015 (July 2016), ¶ 2.37, *available at* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/539683/55469_Cm_9310_Web_Accessible_v0.11.pdf.

- 162 TUFYAL CHOUDHURY & HELEN FENWICK, THE IMPACT OF COUNTER-TERRORISM MEASURES ON MUSLIM COMMUNITIES at vii, 63-65 (2011), *available at* <http://dro.dur.ac.uk/10715/1/10715.pdf>; ARUN KUNDNANI, THE MUSLIMS ARE COMING!: ISLAMOPHOBIA, EXTREMISM, AND THE DOMESTIC WAR ON TERROR 167 (2014).
- 163 Counter-Terrorism and Security Act 2015, § 26 (1), Schedule 6, *available at* http://www.legislation.gov.uk/ukpga/2015/6/pdfs/ukpga_20150006_en.pdf (listing municipal authorities obliged to prevent people from being drawn into terrorism); *see* OSJI PREVENT STUDY, *supra* note 155, at 27; INST. OF RACE RELATIONS, PREVENT AND THE CHILDREN'S RIGHTS CONVENTION 1-2 (2016) [hereinafter "PREVENT & CHILDREN'S RIGHTS STUDY"], *available at* http://www.irr.org.uk/wp-content/uploads/2016/01/IRR_Prevent_Submission.pdf.
- 164 Prevent defines extremism as "vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance for those with different faiths and beliefs." 2011 PREVENT STRATEGY, *supra* note 154, at 107.
- 165 OSJI PREVENT STUDY, *supra* note 155, at 74.
- 166 *Id.* at 83.
- 167 *Id.* at 84-86.
- 168 *Id.* at 86-89.
- 169 PREVENT & CHILDREN'S RIGHTS STUDY, *supra* note 163, at 4.
- 170 *Id.* at 5.
- 171 Diane Taylor, *Society of Mosques to Boycott 'Racist' Anti-Terror Prevent Programme*, GUARDIAN, Dec. 17, 2015, <http://www.theguardian.com/world/2015/dec/17/society-of-mosques-to-boycott-anti-terror-prevent-programme>. The chairman of the Birmingham Central Mosque called for a boycott of the U.K.'s CVE program on the grounds that it "unfairly targets Muslims and school children." Lexi Finnigan, *Birmingham Central Mosque Calls for Boycott of 'Racist' Prevent Programme*, TELEGRAPH, Jan. 23, 2016, <http://www.telegraph.co.uk/news/uknews/terrorism-in-the-uk/12117605/Birmingham-Central-Mosque-chairman-calls-for-boycott-of-racist-Prevent-programme.html>.
- 172 British Academics, Letter, *PREVENT Will Have a Chilling Effect on Open Debate, Free Speech and Political Dissent*, INDEPENDENT, July 10, 2015, <http://www.independent.co.uk/voices/letters/prevent-will-have-a-chilling-effect-on-open-debate-free-speech-and-political-dissent-10381491.html>.
- 173 Richard Adams, *Teachers Back Motion Calling for Prevent Strategy to be Scrapped*, GUARDIAN, Mar. 28, 2016, <https://www.theguardian.com/politics/2016/mar/28/teachers-nut-back-motion-calling-prevent-strategy-radicalisation-scrapped>.
- 174 Supplementary Written Evidence submitted by David Anderson QC, Independent Reviewer of Terrorism Legislation, to the Home Affairs Select Committee Inquiry into Countering Extremism (Jan. 29, 2016), at 1, *available at* <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/countering-extremism/written/27920.pdf>.
- 175 OSJI PREVENT STUDY, *supra* note 155, at 109 (quoting Dal Babu, a former Chief Superintendent for the Metropolitan Police).
- 176 Several agencies did not respond at all or inadequately to our requests, leading us to commence litigation in early 2016. *See* Brennan Ctr. CVE Press Release, *supra* note 25. Since the filing of this lawsuit, some documents have been produced and form part of the basis for this report.
- 177 Alan B. Kruger & Jitka Malekova, *Education, Poverty and Terrorism: Is There a Casual Connection*, 17 (4) J.

ECON. PERSPECTIVES 119 (2003), *available at* <http://www.rochester.edu/College/PSC/clarke/214/Krueger03.pdf> (“Any connection between poverty, education, and terrorism is indirect, complicated, and probably quite weak.”); David R. Francis, *Poverty and Low Education Don’t Cause Terrorism*, NAT’L BUREAU ECON. RES. (last visited Nov. 2, 2016), <http://www.nber.org/digest/sep02/w9074.html>; N.Y. TIMES, *Who Will Become a Terrorist*, *supra* note 73.

178 OFFICE OF PARTNER ENGAGEMENT, FED. BUREAU OF INVESTIGATION, PREVENTING VIOLENT EXTREMISM IN SCHOOLS 3 (Jan. 2016) [hereinafter “FBI CVE SCHOOL GUIDANCE”], *available at* <https://info.publicintelligence.net/FBI-PreventingExtremismSchools.pdf>.

179 *Id.*

180 FORDHAM UNIV. CTR. ON NAT’L SEC., CASE BY CASE: ISIS PROSECUTIONS IN THE UNITED STATES, MARCH 1, 2014 – JUNE 30, 2016 at 10 (2016), <https://static1.squarespace.com/static/55dc76f7e4b013c872183fea/t/577c5b43197aea832bd486c0/1467767622315/ISIS+Report+-+Case+by+Case+-+July2016.pdf>. A study by the Program on Extremism at George Washington University, found four cases involving individuals ages 15-17 and another 26 between ages 18 and 20, but did not provide a breakdown of the latter category. *ISIS Recruits in the U.S. Legal System*, PROGRAM ON EXTREMISM, GEO. WASH. U. (Nov. 30, 2016), *available at* <https://cchs.gwu.edu/sites/cchs.gwu.edu/files/downloads/Nov.%202016%20Snapshot.pdf>. These statistics do not reflect the number of those indicted who came to the attention of law enforcement while at school, but were only indicted at a later date. That data is not available, nor is comparable data for prosecutions relating to violence committed in the name of other groups.

181 *Factsheet of Elementary and Secondary School Statistics for 2015*, NAT’L CTR. EDUC. STATISTICS, <http://nces.ed.gov/fastfacts/display.asp?id=372> (last visited Jan. 31, 2017).

182 *See supra* text accompanying notes 71.

183 FBI CVE SCHOOL GUIDANCE, *supra* note 178, at 15.

184 *See supra* text accompanying note 71.

185 FBI CVE SCHOOL GUIDANCE, *supra* note 178, at 15.

186 *Id.* at 11.

187 *See* Danielle Jefferis, *The FBI Wants Schools to Spy on Their Students’ Thoughts*, JUST SEC. (Mar. 11, 2016, 11:50 AM), <https://www.justsecurity.org/29901/fbi-schools-spy-students-thoughts/>.

188 FBI CVE SCHOOL GUIDANCE, *supra* note 178, at 19-20, 23.

189 *See generally* CHRISTOPHER MALLET, THE SCHOOL TO PRISON PIPELINE: A COMPREHENSIVE ANALYSIS (2015); Clyde Haberman, *The Unintended Consequences of Taking a Hard Line on School Discipline*, N.Y. TIMES, Oct. 2, 2016, <http://www.nytimes.com/2016/10/03/us/the-unintended-consequences-of-taking-a-hard-line-on-school-discipline.html>.

190 *Don’t Be a Puppet: When to Report Violent Extremism*, FED. BUREAU OF INVESTIGATION, <https://cve.fbi.gov/where/?state=report> (last visited Jan. 31, 2017)

191 *Don’t Be a Puppet: How Do Violent Extremists Make Contact?*, FED. BUREAU OF INVESTIGATION, <https://www.fbi.gov/cve508/teen-website/how> (last visited Jan. 31, 2017)

192 *Don’t Be a Puppet: Why Do People Become Violent Extremists?*, *supra* note 97.

193 Letter from American-Arab Anti-Discrimination Committee et al, to Hon. James Comey, Dir., Fed. Bureau of Investigation (Apr. 5, 2016), *available at* <http://www.adc.org/wp-content/uploads/2016/04/Coalition->

Letter-to-FBI-RE-Website-Profiling-Arab-Youth1.pdf.

194 AFT Letter, *supra* note 122.

195 *Id.*

196 See Letter from Peter J. Kadzik to Rep. Bennie G. Thompson, Ranking Member, H. Comm. on Homeland Security (Mar. 10, 2016), *available at* <https://democrats-homeland.house.gov/sites/democrats.house.gov/files/sitedocuments/pclobletter.pdf>.

197 In response to the Brennan Center's Freedom of Information Act request on SRCs, the FBI claimed in that it had no responsive records. See Letter from David M. Hardy, Section Chief, Record/Information Dissemination Section, Fed. Bureau of Investigation to Michael Price, Counsel, Brennan Ctr. for Justice (Nov. 19, 2015) (on file with the Brennan Center). Such "no records" responses are used by the FBI to effectively refuse to disclose whether or not it has responsive records. For an explanation of this practice, see Marcy Wheeler, *DOJ Admits It Has Been Lying for 24 Years; Journalists Applaud*, EMPTYWHEEL (Nov. 4, 2011), <https://www.emptywheel.net/2011/11/04/doj-admits-it-has-been-lying-for-24-years-journalists-applaud/>. After the Center filed suit, the FBI discovered relevant documents that it could release, several of which have been incorporated in this report.

198 See Letter from Unnamed, Fed. Bureau of Investigation to Members of Shared Responsibility Committees 1 (n.d.) [hereinafter "Draft SRC Letter"], *available at* <https://www.documentcloud.org/documents/2815794-FBI-SRC-Letter.html>; Cora Currier & Murtaza Hussain, *Letter Details FBI Plan for Secretive Anti-Radicalization Committees*, INTERCEPT (Apr. 28, 2016, 1:02 PM), <https://theintercept.com/2016/04/28/letter-details-fbi-plan-for-secretive-anti-radicalization-committees/>.

199 See, e.g., Michelle Boostein, *Muslim Activists Alarmed by the FBI's New Game-Like Counterterrorism Program for Kids*, WASH. POST, Nov. 2, 2015, <https://www.washingtonpost.com/news/acts-of-faith/wp/2015/11/02/muslims-and-arab-groups-concerned-about-fbi-counter-extremism-program-aimed-at-schools/>; Michael Hirsh, *Inside the FBI's Secret Muslim Networks*, POLITICO, Mar. 24, 2015, <http://www.politico.com/magazine/story/2016/03/fbi-muslim-outreach-terrorism-213765> [hereinafter "*Politico on FBI Spying*"]; Hannan Adely, *N.J. Anti-Terrorism Plan Aims to Spot Those Vulnerable to Being Radicalized*, NORTHJERSEY.COM, Apr. 30, 2016, <http://www.northjersey.com/news/n-j-anti-terrorism-plan-aims-to-spot-those-vulnerable-to-being-radicalized-1.1556340> [hereinafter "*N.J. Anti-Terrorism Plan*"]; Murtaza Hussain & Jenna McLaughlin, *FBI's "Shared Responsibility Committees" to Identify "Radicalized" Muslims Raise Alarms*, INTERCEPT (Apr. 9, 2016, 11:46 AM), <https://theintercept.com/2016/04/09/fbis-shared-responsibility-committees-to-identify-radicalized-muslims-raises-alarms/>.

200 See Arjun Singh Sethi, *The FBI Needs to Stop Spying on Muslim-Americans*, POLITICO, Mar. 29, 2016, <http://www.politico.com/magazine/story/2016/03/muslim-american-surveillance-fbi-spying-213773>.

201 FED. BUREAU OF INVESTIGATION, (U//FOUO) ASAC CONFERENCE – COUNTERING VIOLENT EXTREMISM TRAINING 2 (Aug. 13, 2016), *available at* <https://www.brennancenter.org/sites/default/files/9D189AFA9E878DF18145FA7D70DE4A5B36CFB1E.pdf> (obtained by the Brennan Center through Freedom of Information Act request).

202 9/11 REVIEW COMMISSION, (U) THE FBI: PROTECTING THE HOMELAND IN THE 21ST CENTURY 96 (March 2015), *available at* <https://fas.org/irp/agency/doj/fbi/9-11-review.pdf>.

203 *Id.* at 99.

204 Draft SRC Letter, *supra* note 198 at 1. According to press reports, the committee may include mental health professionals, religious leaders, social service workers, and mentors. *N.J. Anti-Terrorism Plan*, *supra* note 199; *Politico on FBI Spying*, *supra* note 199.

- 205 Members must sign confidentiality agreements that prevent them from sharing information about individuals referred to them, except with law enforcement agencies and cannot consult with outside experts except with the FBI's permission. Draft SRC Letter, *supra* note 198, at 2.
- 206 *Id.* at 1.
- 207 *Id.* at 3. There is no requirement to obtain the consent of the individual concerned for this type of information sharing. In addition, the SRC must report information “regarding any serious threat of physical violence” and notify the FBI if any case referred by them is “an inappropriate candidate for intervention.” If the individual concerned agrees, the SRC must also report to the FBI the results of any intervention. *Id.*
- 208 *Id.*
- 209 *Id.*
- 210 *Id.* at 1. Under its guidelines for domestic investigations, the FBI has broad leeway to conduct investigations called “assessments,” even when it does not have any particular suspicion of wrongdoing so long as it believes that it is acting to protect against national security threats. Since even this minimal standard is not mentioned in the Draft SRC Letter, it appears that the Bureau has absolute discretion to identify individuals as violent extremists and trigger committee scrutiny. See MICHAEL B. MUKASEY, U.S. DEP'T OF JUSTICE, THE ATTORNEY GENERAL'S GUIDELINES FOR DOMESTIC FBI OPERATIONS § II(B)(4)(a)(i), *available at* <http://www.justice.gov/ag/readingroom/guidelines.pdf>. For a discussion of the different types of investigations the FBI is authorized to conduct, see EMILY BERMAN, BRENNAN CTR. FOR JUSTICE, DOMESTIC INTELLIGENCE: NEW POWERS, NEW RISKS (2011), *available at* <https://www.brennancenter.org/sites/default/files/legacy/AGGReportFINALed.pdf>.
- 211 It appears that individuals may be referred to SRCs from other sources because certain obligations listed in the Draft SRC letter apply only “[w]here the FBI is the referring entity,” while others apply more broadly. Draft SRC Letter, *supra* note 198, at 3.
- 212 Press Release, Muslim Advocates Commends Justice Department Decision to Stop Plans for Dangerous CVE Program That Would Trample on Americans' Civil Rights, (Oct. 4, 2016), *available at* <https://www.muslimadvocates.org/dojendsplansforsrc/>; Jeff Goldman, *Muslim Outreach Program Reportedly Dropped by FBI*, NEWJERSEY.COM, Oct. 19, 2016, http://www.nj.com/news/index.ssf/2016/10/muslim_outreach_reportedly_program_dropped_by_fbi.html.
- 213 Julia Edwards, *White House Plans Community-Based Prevention of Violent Ideologies*, REUTERS, Oct. 19, 2016, <http://www.reuters.com/article/us-usa-justice-counterterrorism-idUSKCN12J15A>.
- 214 2016 WHITE HOUSE CVE IMPLEMENTATION PLAN, *supra* note 13, at 11 (emphasis added).
- 215 *Id.*
- 216 *Id.*
- 217 Letter from Ronald L. Davis, Dir., Office of Community Oriented Policing Services Justice to Hedieh Mirahmadi, President, World Organization for Resource Development and Education concerning Cooperative Agreement# 2014CKWXK043 (Oct. 1, 2013), *available at* <https://www.brennancenter.org/sites/default/files/11-%20WORDE%20Grant%20award%20letter.pdf> (obtained by the Brennan Center through Freedom of Information Act request).
- 218 *About Us*, WORLD ORG. FOR RES. DEV. AND EDUC., <http://www.worde.org/about/> (last visited Oct. 27, 2016).
- 219 *Inside the Mind of ISIL: Understanding Its Goals and Ideology to Better Protect the Homeland: Hearing Before the S. Homeland Sec. and Governmental Affairs Comm.* 114th Cong. 2 (2016) [hereinafter “Mirahmadi Testimony”], *available at* <https://www.hsgac.senate.gov/download/testimony-mirahmadi-2016-01-20> (state-

ment of Hedieh Mirahmadi, President, World Organization for Resource Development and Education); *The Montgomery County BRAVE Model*, WORLD ORG. FOR RES. DEV. AND EDUC., <http://www.worde.org/programs/the-montgomery-county-model/> (last visited Jan. 31, 2017) (“The model is now evidence-based and has undergone an independent, scientific evaluation.”); *see also Factsheet: Comprehensive CVE Approach*, *supra* note 129, at 3; Press Release, White House, FACT SHEET: Leaders’ Summit to Counter ISIL and Violent Extremism (Sept. 26, 2016), *available at* <https://www.whitehouse.gov/the-press-office/2015/09/29/fact-sheet-leaders-summit-counter-isil-and-violent-extremism>; *Obama Administration Looks to Community-Led Program to Stop Homegrown Radicals*, WORLD ORG. RES. DEV. AND EDUC. (October 23, 2014), <http://www.worde.org/publications/commentary/can-a-community-program-help-stop-homegrown-radicals/>.

220 *Events*, INT’L COMMUNITY CTR., <http://www.theicc.net/events> (last visited Oct. 28, 2016); *see also* MICHAEL WILLIAMS, JOHN HORGAN & WILLIAM EVANS, EVALUATION OF A MULTI-FACETED, U.S. COMMUNITY BASED, MUSLIM-LED CVE PROGRAM 15 (2016) [hereinafter “WORDE EVALUATION”], *available at* <https://www.ncjrs.gov/pdffiles1/nij/grants/249936.pdf>.

221 *Youth Against Hunger*, INT’L CULTURAL CTR., <http://www.theicc.net/programs/social-action-programs/youth-against-hunger> (last visited Jan. 31, 2017).

222 WORDE EVALUATION, *supra* note 220.

223 Letter from Nicole Nguyen & Stacey Krueger, Researchers from the University of Illinois at Chicago, to Members of Congress et al., Concerning the Questionable Use of Academic Research to Support CVE Initiatives (October 5, 2016) [hereinafter “UIC Letter”], *available at* <https://www.brennancenter.org/sites/default/files/Nguyen%20Krueger%20WORDE%20final%20%284%29.pdf>.

224 WORDE EVALUATION, *supra* note 220, at 22.

225 *Id.* at 63.

226 *Id.* at 85.

227 *Cyber Civility Curriculum*, INT’L CULTURAL CTR., <http://www.theicc.net/programs/educational-programming/cybercivility>; WORDE EVALUATION, *supra* note 220, at 17.

228 In response to a Freedom of Information Law request, the director of the Montgomery County School District informed a reporter from Muckrock that no high schools in Montgomery County participated in the training. Email from Waqas Mirza, Journalist, Muckrock to Faiza Patel, Co-Director, Liberty & Nat’l Sec. Program, Brennan Ctr. for Justice at N.Y.U. School of Law (Dec. 19, 2016, 7:21PM ET) (on file with author). The program may have been implemented in other school districts.

229 *About Crossroads*, INT’L CULTURAL CTR., <http://www.theicc.net/programs/crossroads> (last visited Oct. 28, 2016); WORDE EVALUATION, *supra* note 220, at 85; WORLD ORG. FOR RES. DEV. AND EDUC., TOPIC AND PROGRAM OUTCOME IDENTIFICATION AND JUSTIFICATION 4 (2014) [hereinafter “WORDE PROGRAM OUTCOME IDENTIFICATION AND JUSTIFICATION”], *available at* https://www.brennancenter.org/sites/default/files/05-%20Grant%20Application%20Topic%20%26%20Program%20Outcome%20_0.pdf (obtained by the Brennan Center through Freedom of Information Act request).

230 WORDE CVE MANUAL, *supra* note 96, at 3.

231 *Id.* at 42; *see also* Mirahmadi Testimony, *supra* note 219, at 2.

232 WORDE CVE MANUAL, *supra* note 96, at 44.

233 *Id.* at 43, 44.

234 WORLD ORG. FOR RES. DEV. AND EDUC., ANNUAL REPORT 2014 at 9 (2015), *available at* <http://www.worde.org/publications/annual-report-2014/>.

worde.org/wp-content/uploads/2010/11/WORDE-2014-Annual-Report.pdf; WORLD ORG. FOR RES. DEV. AND EDUC., ANNUAL REPORT 2013 at 3, 7, 15 (2014), *available at* <http://www.worde.org/wp-content/uploads/2015/01/WORDE-2013-Annual-Report.pdf>.

235 Waqas Mirza, *Montgomery County's Flawed Model for Nationwide Counterterrorism Programs*, (Sept. 28, 2016), <https://www.muckrock.com/news/archives/2016/sep/28/cve-community-resistance/>.

236 At the time that WORDE applied for federal funds for its CVE programs, it stated that during the previous year, more than 25 people had been referred to its existing counseling services for things such as “homesickness,” “acculturation related stress,” “feelings of alienation,” and “economic stressors in the family,” which the group characterized as suggesting that they “*may* be at risk of violent extremism.” WORDE PROGRAM OUTCOME IDENTIFICATION AND JUSTIFICATION, *supra* note 229, at 3, 4 (emphasis added).

237 Mila Koumpilova, *What Maryland's Test Lab Can Teach Minnesota About Thwarting Radical Recruiters*, MINN. STAR TRIB., May 16, 2016, <http://www.startribune.com/what-maryland-s-test-lab-can-teach-minnesota-about-thwarting-radical-recruiters/379484141/>.

238 WORDE CVE MANUAL, *supra* note 96, at 51.

239 *Id.* at 54.

240 Subaward Agreement for “Countering Domestic Violent Extremism” between WORDE and Montgomery County Maryland 13 (2014), *available at* <https://www.brennancenter.org/sites/default/files/20-MCPD%20Response.pdf> (obtained by the Brennan Center through Freedom of Information Act request).

241 *Id.*

242 *Id.*

243 INT’L CULTURAL CTR., CROSSROADS PROGRAM: HIPAA NOTICE OF PRIVACY PRACTICES § III(B)(2), III(B)(8) (2014), *available at* <http://www.theicc.net/wp-content/uploads/2014/10/ICC-Crossroads-HIPAA-Long-form.pdf>; WORLD ORG. FOR RESOURCE DEV. AND EDUC., THE BUILDING RESILIENCE AGAINST VIOLENT EXTREMISM (BRAVE) MODEL: A COLLECTIVE IMPACT INITIATIVE THAT INCREASES PUBLIC SAFETY AND SOCIAL COHESION STRATEGIC PLAN 2016-2019 at 16 (2016), *available at* <http://www.worde.org/wp-content/uploads/2016/08/WORDE-BRAVE-Model-Strategic-Plan.pdf>.

244 Aaron Miguel Cantu, *In Maryland, Faith Leaders and Law Enforcement Fight Radicalization*, AL JAZEERA AMERICA, Sept. 12, 2015, <http://america.aljazeera.com/articles/2015/9/12/in-maryland-a-new-way-of-policing-radical-ideology.html>.

245 Press Release, Dep’t of Justice, Attorney General Holder Announces Pilot Program to Counter Violent Extremists (Sept. 15, 2014), *available at* <http://www.justice.gov/opa/pr/attorney-general-holder-announces-pilot-program-counter-violent-extremists>.

246 BOSTON CVE FRAMEWORK, *supra* note 99, at 4-5.

247 *Id.* at 2.

248 Email, “Follow-Up/Multidisciplinary Threat Assessment and Intervention Working Group,” from Brandy Donini-Melanson, Law Enforcement Coordinator, U.S. Attorneys’ Office of Mass., to the Greater Boston CVE Multidisciplinary Working Group (Oct. 7, 2014, 9:06:00 PM), *available at* https://d3gn0r3afghep.cloudfront.net/foia_files/2016/03/16/CVE_Email.pdf. Professor John Horgan explained the lack of reliable predictive signs to the group involved in developing the framework. Slides shown at another community event also make the same point. Waqas Mirza, *Boston Finds Muslim Surveillance Program “Flawed and Problematic” But Implements It Anyway*, MUCKROCK (May 13, 2016), <https://www.muckrock.com/news/archives/2016/may/13/boston-cve/>.

- 249 BOSTON CVE FRAMEWORK, *supra* note 99, at 2.
- 250 *Id.* at 6.
- 251 *Id.* at 3.
- 252 *Id.* at 1.
- 253 See e.g., *Upcoming Training Events, District of Massachusetts*, DEP'T OF JUSTICE, <https://www.justice.gov/usao-ma/trainingevents/upcoming> (last visited Jan. 31, 2017); *Archived Training / Events, District of Massachusetts*, <https://www.justice.gov/usao-ma/trainingevents/archived> (last visited Jan. 31, 2017).
- 254 BOSTON CVE FRAMEWORK, *supra* note 99, at 7, 15.
- 255 Cooperative Agreement between the United States Attorney's Office for the District of Mass. and Mass. Exec. Office of Health and Human Services for Implementation Strategies to Enhance Resilience to Violent Extremism art. I (F), I (G) (approved Sept. 30, 2015), at 2, *available at* <https://www.scribd.com/document/321906162/CVE-Cooperative-Agreement-of-USAO-for-Massachusetts-with-Massachusetts-EOHHS>.
- 256 *Id.* art. III (C), at 3. The agreement makes clear that while the programs funded under the grant would preferably be evidence-based, it notes that “there is little research available regarding prevention strategies specific to violent extremism” and thus other types of crime prevention models may be used. *Id.* art. III (J), at 5.
- 257 *Id.* art. I (A), I (C), at 1.
- 258 American-Arab Anti-Discrimination Comm., Comments to the Commonwealth of Mass. Exec. Office of Health and Human Services, on Enhancing Resilience to Violent Extremism in Massachusetts Through a Continuum of Prevention and Intervention Strategies (2016); Sue Udry, Exec. Dir., Bill of Rights Defense Comm./Defending Dissent Foundation, Respondent Cover Sheet, Enhancing Resilience to Violent Extremism in Massachusetts Through a Continuum of Prevention and Intervention Strategies (issued March 11, 2016); Shannon Erwin, Exec. Dir., Muslim Justice League, Respondent Cover Sheet, Enhancing Resilience to Violent Extremism in Massachusetts Through a Continuum of Prevention and Intervention Strategies (issued March 11, 2016); Alex Marthews, President, Restore the Fourth – Boston/Campaign for Digital Fourth Amendment Rights, Respondent Cover Sheet, Enhancing Resilience to Violent Extremism in Massachusetts Through a Continuum of Prevention and Intervention Strategies (issued March 11, 2016). All response sheets were obtained by the Muslim Justice League via Freedom of Information Law requests and are on file with the Brennan Center.
- 259 MASS. EXEC. OFFICE OF HEALTH AND HUMAN SERVICES, DOCUMENT #: 17LCEHSPEACEGRANTAPP, GRANT APPLICATION FOR THE MASSACHUSETTS PROMOTING ENGAGEMENT, ACCEPTANCE AND COMMUNITY EMPOWERMENT (PEACE) PROJECT 4 (issued Aug. 8, 2016), *available at* <https://www.brennancenter.org/sites/default/files/PEACE%20Project%20Grant%20Application080816.pdf>.
- 260 *Id.* at 5.
- 261 *Id.*
- 262 Press Release, Mass. Exec. Office of Health and Human Services, Three Boston-based Organizations Chosen for 210K in PEACE Project Grants (Dec. 1, 2016), *available at* <http://www.mass.gov/eohhs/gov/newsroom/press-releases/eohhs/three-boston-based-orgs-chosen-for-210k-in-peace-grants.html>.
- 263 WHITE HOUSE CVE SUMMIT PRESS POINTS, *supra* note 102.
- 264 LA CVE FRAMEWORK, *supra* note 143, at 3-6.
- 265 *Id.* at 7. The Los Angeles Framework does not explain how individuals will be identified, but notes the need for “credible research-based baselines for indicators of violent extremism.” The Framework provides few specifics

about how interventions will be structured, but does point out the potential conflict of interest in having law enforcement agencies involved in “rehabilitation” programs. Relatedly, the Los Angeles Framework notes the need for law enforcement agencies to maximize alternatives to interdiction so that “individuals are referred out of the interdiction process and into available and viable prevention and intervention components.” *Id.* at 8.

266 RENEW FRAMEWORK, *supra* note 151; Exploring the Use of Health Approaches in Community-Level Strategies to Countering Violent Extremism and Radicalization: Session II and Session III Pt. 1, NAT’L ACADEMIES OF SCIENCES, ENGINEERING & MEDICINE (Sept. 7, 2016), <https://www.nationalacademies.org/hmd/-/media/Files/Activity%20Files/PublicHealth/MedPrep/2016-SEPT-7/Audio/Sept%207%20Session%20II%20and%20III%20Part%201.MP3>.

267 *See supra* Table 1.

268 *See* Michael Price, *New Counterterrorism Program in Los Angeles: Suspicious Thought Reporting*, JUST SEC. (Dec. 1, 2016, 8: 57 AM), <https://www.justsecurity.org/35054/counterterrorism-program-los-angeles-suspicious-thought-reporting/> (explaining how information about those identified for CVE interventions could become part of LAPD databases).

269 MINNEAPOLIS CVE FRAMEWORK, *supra* note 98, at 4. A diagram adds “difficulties in school”; “lack of ties to broader Minnesota community”; and “generational divide” to the list of “community identified root causes.” *Id.* at 6.

270 Press Release, United States Attorney’s Office, District of Minn., Twin Cities Somali Community Leaders, Government Officials And Private Partners Present Plan To Build Community Resilience (Sept. 9, 2015), *available at* <https://www.justice.gov/usao-mn/pr/twin-cities-somali-community-leaders-government-officials-and-private-partners-present>.

271 For example, several programs seem to be focused on providing training and job opportunities to Somali youth. But a DHS-sponsored qualitative study came to the conclusion that the assumption that poverty and a lack of social mobility were the primary causes for “radicalization and departure” to fight with ISIS was untrue. ERROL SOUTHERS & JUSTIN HEINZ, NAT’L CTR. OF EXCELLENCE FOR RISK AND ECONOMIC ANALYSIS OF TERRORISM EVENTS (CREATE), U. SOUTHERN CAL., FOREIGN FIGHTERS: TERRORIST RECRUITMENT & COUNTERING VIOLENT EXTREMISM (CVE) PROGRAMS IN MINNEAPOLIS-ST. PAUL 1 (Apr. 2015), *available at* <http://securitydebrief.com/wp-content/uploads/2015/04/Foreign-Fighters-Terrorist-Recruitment-and-CVE-in-Minneapolis-St-Paul.pdf>.

272 COMMUNITY OUTREACH OR INTELLIGENCE GATHERING, *supra* note 142, at 5-7.

273 MINNEAPOLIS CVE FRAMEWORK, *supra* note 98, at 5. The Building Community Resilience MOU provides for support teams made up of “parents, imams, teachers, coaches, youth advocates and mental health professionals to collaborate and provide support and resources for young people and families who are struggling.” USAO-SATF MOU, *supra* note 142, at 2.

274 *See White House Summit on Countering Violent Extremism*, C-SPAN (Feb. 18, 2015), <https://www.c-span.org/video/?324398-102/white-house-summit-countering-violent-extremism> (quoting Courtney Kiernat, former Exec. Dir., External Partnerships for Minneapolis Public Schools, “Well-trained community representatives working in the school systems will help spot identity issues and disaffection . . . Our intervention model will bring trained youth workers together with parents and mental health professionals to address identity issues and disaffection at school, root causes of radicalization.”).

275 Joseph Sabroski, *Video of FBI Visit of Muslim Activist Highlights Disturbing Nature of Federal Counter-Extremism Programs*, ALTERNET (Aug. 28, 2016), <http://www.alternet.org/grayzone-project/video-fbi-visit-muslim-activist-highlights-disturbing-nature-federal-counter>.

- 276 According to the director of the FBI, since August 2015, the number of people attempting to travel to Syria to join ISIS has dropped from 6-10 per month to one per month on average. Michael Isikoff, *Steep Decline in U.S. Recruits to ISIS, FBI Chief James Comey Says*, YAHOO NEWS (May 11, 2016), <https://www.yahoo.com/news/steep-decline-in-us-recruits-to-isis-fbi-chief-212138680.html>. Between August 2015 and August 2016, official ISIS media output has decreased from 700 items to under 200. Scott Shane, *ISIS Media Output Drops as Pressure Rises, Report Says*, N.Y. TIMES, Oct. 10, 2016, at A7, *available at* http://www.nytimes.com/2016/10/11/world/middleeast/islamic-state-media-propaganda-isis.html?_r=0.
- 277 2011 WHITE HOUSE CVE IMPLEMENTATION PLAN, *supra* note 11, at 5; 2016 WHITE HOUSE CVE IMPLEMENTATION PLAN, *supra* note 13, at 13, 14.
- 278 In 2015, lawmakers twice attempted to impose legal obligations upon social media companies to report, and possibly monitor for, “terrorist activity” on their sites. The Chair of the Senate Select Intelligence Committee added a provision to the 2016 Intelligence Authorization Bill requiring companies to report instances of “terrorist activity” on their sites. *See* Intelligence Authorization Act for Fiscal Year 2016, S. 1705, 114th Cong. § 603 (a) (2015), *available at* <https://www.congress.gov/114/bills/s/1705/BILLS-114s1705pcs.pdf>; Press Release, Sen. Ron Wyden, Wyden Applauds Win for Free Speech and Common Sense in Revised Intelligence Authorization Bill (Sept. 21, 2015), <https://www.wyden.senate.gov/news/press-releases/wyden-applauds-win-for-free-speech-and-common-sense-in-revised-intelligence-authorization-bill>. A similar measure was introduced by Sen. Dianne Feinstein (D-CA) and Sen. Richard Burr (R-NC) in the wake of the San Bernardino attacks. *See* Requiring Reporting of Online Terrorist Activity Act of 2015, S. 2372, 114th Cong. § 2 (a) (2015), *available at* https://www.feinstein.senate.gov/public/index.cfm?a=files.serve&File_id=9BDFE0CAF12-4BEB-B64D-DC9239D93070; *see also* Press Release, Office of Sen. Dianne Feinstein, Bill Would Require Tech Companies to Report Online Terrorist Activity (Dec. 8, 2015), <http://www.feinstein.senate.gov/public/index.cfm/2015/12/bill-would-require-tech-companies-to-report-online-terrorist-activity>. These bills were not adopted; they faced strong opposition from privacy advocates, technology companies, and lawmakers, who argued that they would require companies that do not possess law enforcement expertise to make nuanced judgments about what constituted a terrorist post and to broadly police their users’ speech. *See* Cat Zakrzewski, *Social Media Firms Resist Role of Policing Terror Talk*, WALL ST. J., Jul. 26, 2015, <http://www.wsj.com/articles/social-media-firms-resist-role-of-policing-terror-talk-1437957517>; Emma Llansó, *Intel Authorization Bill Would Turn Online Service Providers into Law Enforcement Watchdogs*, CTR. FOR DEMOCRACY & TECH. (July 9, 2015), <https://cdt.org/blog/intel-authorization-bill-would-turn-online-service-providers-into-law-enforcement-watchdogs/>; Letter from the Ctr. for Democracy & Tech. et al. to Chairman Charles Grassley and Ranking Member Patrick Leahy, Comm. on the Judiciary (Dec. 16, 2015), *available at* <https://cdt.org/insight/coalition-letter-opposing-the-requiring-reporting-of-online-terrorist-activity-act/>; Julian Hattem, *Spy Panel Drops Controversial Mandate on Web Firms, Amid Pressure*, HILL (Sept. 21, 2015, 6:12 PM), <http://thehill.com/policy/national-security/254440-spy-panel-drops-controversial-mandate-on-web-firms-amid-pressure>.
- 279 Top counterterrorism officials – including the Attorney General and the directors of the FBI and CIA – met with Silicon Valley executives in late 2015 and early 2016. Ellen Nakashima, *Obama’s Top National Security Officials to Meet with Silicon Valley CEOs*, WASH. POST, Jan. 7, 2016, https://www.washingtonpost.com/world/national-security/obamas-top-national-security-officials-to-meet-with-silicon-valley-ceos/2016/01/07/178d95ca-b586-11e5-a842-0feb51d1d124_story.html; Roberta Rampton & Dustin Volz, *Obama Appeals to Silicon Valley for Help with Online Anti-Extremist Campaign*, REUTERS, Dec. 9, 2015, <http://www.reuters.com/article/california-shooting-cyber-idUSKBN0TQ0A320151207>. According to a memorandum prepared for the 2015 meeting, government officials sought help in “measur[ing] radicalization” on social media platforms because doing so would be “extremely useful to help shape and target counter-messaging and efforts focused on countering violent extremism.” Jenna McLaughlin, *White House Raises Encryption Threat in Silicon Valley Summit*, INTERCEPT (Jan. 8, 2016, 2:35 PM) [hereinafter “INTERCEPT, *White House Raises Encryption Threat*”], <https://theintercept.com/2016/01/08/white-house-raises-encryption-threat-in-silicon-valley-summit/>. The memorandum also suggested that companies use their expertise in measuring

message resonance to conduct “front-end research on specific drivers of radicalization and themes among violent extremist populations.” *Id.*

280 Twitter at least is known to pro-actively monitor accounts and has significantly increased the personnel allocated to this function over the last year, leading to an 80% increase in suspensions. *An Update on our Efforts to Combat Violent Extremism*, THE OFFICIAL TWITTER BLOG (Aug. 18, 2016, 16:06 UTC), <https://blog.twitter.com/2016/an-update-on-our-efforts-to-combat-violent-extremism>; *Combating Violent Extremism*, THE OFFICIAL TWITTER BLOG (Feb. 5, 2016) [hereinafter “*Twitter Policy on Combating Extremism*”], <https://blog.twitter.com/2016/combating-violent-extremism>.

281 *Id.*; see also Danny Yadron, *Twitter Deletes 125,000 ISIS Accounts and Expands Anti-Terror Teams*, GUARDIAN, Jan. 13, 2016 [hereinafter “*Guardian on Twitter Takedowns*”], <https://www.theguardian.com/technology/2016/feb/05/twitter-deletes-isis-accounts-terrorism-online> (quoting Facebook’s director of strategic communications that there is no “magical algorithm” for flagging terrorism-related content).

282 *Twitter Policy on Combating Extremism*, *supra* note 280.

283 It has been suggested the model used to prevent the dissemination of child pornography could be used for terrorist content as well. To prevent child pornography on their sites, several companies automatically compare images, video and audio on their platforms against a database of materials that have been tagged as child pornography and which have unique “hash” values associated with them. A group called the Counter Extremism Project (CEP), which includes the Dartmouth researcher who developed the child pornography database, claims to have developed an algorithm that can create a “database of known extremist content” that companies can use. Elias Groll, *Suppressing Extremist Speech: There’s an Algorithm for That!*, FOREIGN POL’Y, June 17, 2016, <http://foreignpolicy.com/2016/06/17/suppressing-extremist-speech-theres-an-algorithm-for-that/>. Some press reports indicate that companies have not embraced this approach in part because of the difficulty of coming up with “a sufficiently neutral definition of what constitutes ‘extremist’ content.” *Id.*; Ellen Nakashima, *There’s a New Tool to Take Down Terrorism Images Online. But Social-Media Companies are Wary of It*, WASH. POST, June 21, 2016, https://www.washingtonpost.com/world/national-security/new-tool-to-take-down-terrorism-images-online-spurs-debate-on-what-constitutes-extremist-content/2016/06/20/ca4f73a-3492-11e6-8758-d58e76e11b12_story.html (“Some firms also fear that if they collaborated with a third party such as CEP, the organization might try to influence the companies’ guidelines regarding extremist content.”). Others, however, suggest that Google and Facebook are already using a system based on hash values to rapidly take down “Islamic State videos and other similar material.” Joseph Menn & Dustin Volz, *Exclusive: Google, Facebook Quietly Move Toward Automatic Blocking*, REUTERS, June 25, 2016, <http://www.reuters.com/article/us-internet-extremism-video-exclusive-idUSKCN0ZB00M>.

284 See *infra* text accompanying notes 294-297.

285 Ellen Nakashima, *Twitter Says It Shut Down More Than 235,000 Accounts Promoting Terrorism Since February*, WASH. POST, Aug. 18, 2016, https://www.washingtonpost.com/world/national-security/twitter-says-it-shut-down-more-than-235000-accounts-promoting-terrorism-since-february/2016/08/18/7fc5b7b4-653d-11e6-96c0-37533479f3f5_story.html?postshare=1921471540869973&tid=ss_tw. In February 2016, the company reported taking down 125,000 accounts, thus the shutting of an additional 235,000 accounts was a significant increase in the rate of removals. *Guardian on Twitter Takedowns*, *supra* note 281.

286 Madhumita Murgia & Hannah Kuchler, *Social Media: Challenging the Jihadi Narrative*, FINANCIAL TIMES, Oct. 17, 2016, <https://www.ft.com/content/3b03edde-8992-11e6-8aa5-f79f5696c731>.

287 *Partnering to Help Curb Spread of Online Terrorist Content*, FACEBOOK NEWSROOM (Dec. 5, 2016), <http://newsroom.fb.com/news/2016/12/partnering-to-help-curb-spread-of-online-terrorist-content/>.

288 Olivia Solon, *Facebook, Twitter, Google and Microsoft Team Up to Tackle Extremist Content*, GUARDIAN, Dec. 5, 2016, <https://www.theguardian.com/technology/2016/dec/05/facebook-twitter-google-microsoft-terrorist-ex>

tremist-content (quoting Hany Farid, the computer scientist who helped develop PhotoDNA, a database of images of child pornography, who has advocated for companies to adopt the model for removing terrorist content).

- 289 Emma Llanso, *Takedown Collaboration by Private Companies Creates Troubling Precedent*, CENTER FOR DEMOCRACY & TECHNOLOGY (Dec. 6, 2016) <https://cdt.org/blog/takedown-collaboration-by-private-companies-creates-troubling-precedent/>.
- 290 Sophia Hyatt, *Facebook 'Blocks Accounts' of Palestinian Journalists*, AL JAZEERA, Sept. 25, 2016, <http://www.aljazeera.com/news/2016/09/facebook-blocks-accounts-palestinian-journalists-160925095126952.html>.
- 291 Vidhi Doshi, *Facebook Under Fire for 'Censoring' Kashmir-related Posts and Accounts*, GUARDIAN, July 19, 2016, <https://www.theguardian.com/technology/2016/jul/19/facebook-under-fire-censoring-kashmir-posts-accounts>.
- 292 Mark Scott & Mike Isaac, *Facebook Restores Iconic Vietnam War Photo It Censored for Nudity*, N.Y. TIMES, Sept. 9, 2016, at B1, *available at* http://www.nytimes.com/2016/09/10/technology/facebook-vietnam-war-photo-nudity.html?_r=0.
- 293 Following complaints about these types of deletions, Facebook announced that it was “going to begin allowing more items that people find newsworthy, significant, or important to the public interest — even if they might otherwise violate our standards.” Joe Kaplan, *Input from Community and Partners on our Community Standards*, FACEBOOK NEWSROOM (Oct. 21, 2016), <http://newsroom.fb.com/news/2016/10/input-from-community-and-partners-on-our-community-standards/>.
- 294 *Community Standards*, FACEBOOK (last visited Jan. 31, 2017), <https://www.facebook.com/communitystandards#>.
- 295 *The Twitter Rules*, TWITTER (last visited Jan. 31, 2017), <https://support.twitter.com/articles/18311>.
- 296 *Violent or Graphic Content- YouTube Help*, YOUTUBE (last visited Jan. 31, 2017), <https://support.google.com/youtube/answer/2802008?hl=en>.
- 297 *Microsoft's Approach to Terrorist Content*, MICROSOFT (May 20, 2016), <http://blogs.microsoft.com/on-the-issues/2016/05/20/microsofts-approach-terrorist-content-online/#sm.0000yv3gmd4y5eewqvn2abbhosjmw>.
- 298 J.M. BERGER & H. PEREZ, *THE ISLAMIC STATE'S DIMINISHING RETURNS ON TWITTER: HOW SUSPENSIONS ARE LIMITING THE SOCIAL NETWORKS OF ENGLISH-SPEAKING ISIS SUPPORTERS* 4 (Feb. 2016), *available at* https://cchs.gwu.edu/sites/cchs.gwu.edu/files/downloads/Berger_Occasional%20Paper.pdf; J.M. BERGER & JONATHON MORGAN, *THE ISIS TWITTER CONSENSUS: DEFINING AND DESCRIBING THE POPULATION OF ISIS SUPPORTERS ON TWITTER* 56 (2015), https://www.brookings.edu/wp-content/uploads/2016/06/isis_twitter_census_berger_morgan.pdf [hereinafter “BROOKINGS 2015 ISIS TWITTER STUDY”].
- 299 Shaun Wright, et al., *Resurgent Insurgents: Quantitative Research Into Jihadists Who Get Suspended But Return On Twitter*, 7(2) J. TERRORISM RES. 1, 2 (2016); Charles Arthur, *Taking Down ISIS Material from Twitter or Youtube Not As Clear Cut As It Seems*, GUARDIAN, June 23, 2014, <https://www.theguardian.com/world/2014/jun/23/taking-down-isis-youtube-twitter-google-video>; RACHEL Levy, *ISIS Tries to Outwit Social Networks*, VOCATIV (June 17, 2014, 3:58 PM ET), <http://www.vocativ.com/world/syria-world/isis-tries-outwit-social-networks/>.
- 300 Nicole Perloth & Mike Isaac, *Terrorists Mock Bids to End Use of Social Media*, N.Y. TIMES, Dec. 7, 2015, at A1, *available at* http://www.nytimes.com/2015/12/08/technology/terrorists-mock-bids-to-end-use-of-social-media.html?_r=0.
- 301 BROOKINGS 2015 ISIS TWITTER STUDY, *supra* note 298, at 58.

302 *Id.* at 53.

303 One way in which some major companies have sought to counteract the built-in secrecy and exercise of discretion involved in content removal based on community standards is by issuing regular transparency reports. But these only count removal requests from governments based on legal restrictions, not those undertaken on the basis of the company's terms of service. *See, e.g., Removal Requests: January to June 2016*, TWITTER (last visited Feb. 1, 2017), <https://transparency.twitter.com/en/removal-requests.html#removal-requests-jan-jun-2016>; *Government Requests Report: FAQs*, FACEBOOK (last visited Feb. 1, 2017), <https://govtrequests.facebook.com/faq/>. Thus, except where companies like Twitter announce the results of their efforts in order to demonstrate their commitment to fighting terrorism, the extent of removals based on flagging as terrorist content or the like is not known.

304 INTERCEPT, *White House Raises Encryption Threat*, *supra* note 279.

305 For a history of these efforts, *see* Weston R. Sager, *Apple Pie Propaganda? The Smith-Mundt Act Before and After the Repeal of the Domestic Dissemination Ban*, 109 NORTHWESTERN L. REV. 511, 515-522 (2015) [hereinafter "Sager, *Apple Pie Propaganda?*"]; ALLAN M. WINKLER, *THE POLITICS OF PROPAGANDA: THE OFFICE OF WAR INFORMATION 1942-1945* (1978); Allen W. Palmer & Edward L. Carter, *The Smith-Mundt Act's Ban on Domestic Propaganda: An Analysis of the Cold War Statute Limiting Access to Public Diplomacy*, 11 COMM. L. & POL'Y 1, 5-9 (2006).

306 22 U.S.C. § 1431 (Supp. II 1948); Pub. L. No. 80-402, § 2, 62 Stat. 6 (1948). The statute is called the U.S. Information and Educational Exchange, but it is commonly known as the Smith-Mundt Act after its sponsors Rep. Karl E. Mundt (R-SD) and Sen. H. Alexander Smith (R-N.J.).

307 National Defense Authorization Act for Fiscal Year 2013, Pub. L. No 112-239, 126 Stat. 1632, 1957-59 (codified as amended at 22 U.S.C. §§ 1461, 1461-1a (2012)). For the original text of the bill that was incorporated into the National Defense Authorization Act for Fiscal Year 2013, *see* H.R. 5736, 112th Cong. (2012) ("Smith-Mundt Modernization Act of 2012"). A predecessor to this bill was introduced on July 13, 2010. H.R. 5729, 111th Cong. (2010) ("The Smith-Mundt Modernization Act of 2010"). The reasons for repeal included the ubiquity of the Internet, which undermined the enforceability of a ban on the domestic dissemination of propaganda, and the desire to counter the message of terrorist groups like Al Shabaab, at home as well as abroad. *See* Sager, *Apple Pie Propaganda?*, *supra* note 305, at 531-537; Daniel C. Walsh, *The History of the U.S. Information and Educational Exchange Act of 1948 and Three Arguments for the Termination of Its Prohibition on Domestic Release of Information*, INT'L J. COMM. L. & POL'Y, (Summer 2011).

308 The restrictions on domestic propaganda that remain are not meaningful. *See* Sager, *Apple Pie Propaganda?*, *supra* note 305, at 528-536.

309 *See supra* text accompanying notes 39.

310 2016 CVE GRANT NOFO, *supra* note 36, at 19; LA CVE FRAMEWORK, *supra* note 132, at 6; BOSTON CVE FRAMEWORK, *supra* note 99, at 9; MINNEAPOLIS CVE FRAMEWORK, *supra* note 98, at 5.

311 Simon Lewis, *Google Looks to Divert Extremists With Anti-Radicalization Ads*, TIME, Feb. 2, 2016, <http://time.com/4205555/google-extremist-searches-radicalization-isis/>.

312 Andy Greenberg, *Google's Clever Plan to Stop Aspiring ISIS Recruits*, WIRED, Sept. 7, 2016, <https://www.wired.com/2016/09/googles-clever-plan-stop-aspiring-isis-recruits/>.

313 Felicia Schwartz, *U.S. Targets Would-Be Terrorists Overseas with New Ad Campaign*, WALL ST. J., Oct. 20, 2016, <http://www.wsj.com/articles/u-s-targets-would-be-terrorists-overseas-with-new-ad-campaign-1476973216> [hereinafter "WALL ST. J., *U.S. Target's Would Be Terrorists*"].

314 Alex Johnson, *Senate Republicans Want Face Time With Facebook Over Trending Topics 'Bias'*, NBCNEWS.COM,

May 10, 2016, <http://www.nbcnews.com/news/us-news/senate-republicans-want-face-time-facebook-over-trending-topics-bias-n571521>. The criticism elicited a quick response from the company, which released its closely-held internal guidelines for selecting Trending Topics. FACEBOOK INC., TRENDING REVIEW GUIDELINES (n.d.), available at <https://fbnewsroomus.files.wordpress.com/2016/05/full-trending-review-guidelines.pdf>. It also organized a meeting between Mark Zuckerberg and conservative leaders to reassure them about the platform's neutrality. Alex Johnson & Matthew Deluca, *Facebook's Mark Zuckerberg Meets Conservatives Amid 'Trending' Furor*, NBCNEWS.COM, May 19, 2016, <http://www.nbcnews.com/tech/social-media/facebook-s-mark-zuckerberg-meets-conservatives-amid-trending-furor-n576366>. Similarly, when a Google official told the U.K. parliament that the company was looking into making anti-ISIS messages more easily discoverable on its search engine, the company quickly clarified that it was not making changes to its search algorithms, but providing non-profit groups opportunities to promote their messages through the Google Adwords Grant program. Ben Quinn, *Google to Point Extremist Searches Towards Anti-Radicalisation Websites*, GUARDIAN, Feb. 2, 2016, <https://www.theguardian.com/uk-news/2016/feb/02/google-pilot-extremist-anti-radicalisation-information>; Patrick Kulp, *Google Is Now Showing Anti-ISIS Ads to Potential Extremists*, MASHABLE (Feb. 4, 2016), http://mashable.com/2016/02/04/google-is-now-showing-anti-isis-ads-to-potential-extremists/?utm_cid=mash-com-Tw-main-link#RSQQ2liHIqql.

315 Tyler Cherry, *Conservative Media Freak Out Over Facebook's Plan to Address Fake News Problem*, MEDIA MATTERS FOR AMERICA (Dec. 15, 2016, 4:10 PM EST), <http://mediamatters.org/research/2016/12/15/conservative-media-freak-out-over-facebook-s-plan-address-fake-news-problem/214832>.

316 See, e.g., LA CVE FRAMEWORK, *supra* note 143, at 6; BOSTON CVE FRAMEWORK, *supra* note 99, at 9; MINNEAPOLIS CVE FRAMEWORK, *supra* note 98, at 5.

317 Ian Cobain, Alice Ross, Rob Evans & Mona Mahmood, *Revealed: UK's Covert Propaganda Bid to Stop Muslims Joining ISIS*, GUARDIAN, May 2, 2016, <http://www.theguardian.com/uk-news/2016/may/02/uk-government-covert-propaganda-stop-muslims-joining-isis>.

318 *Id.*

319 In *Johanns v. Livestock Marketing Association*, the Supreme Court held that there is no absolute requirement for attribution where government controls the content of a private actor's speech (which may be the case for the CVE counter-messaging campaigns). *Johanns v. Livestock Marketing Association*, 544 U.S. 550, 564 (2005). Justice Souter penned a strong dissent in the case arguing that in order for the political process to work, the people need to know when the government is speaking. *Id.* at 575, 577-579 (Souter, J. dissenting). Justices Kennedy and Stevens also dissented. Subsequently, the Sixth Circuit interpreted *Johanns* narrowly, holding that attribution is required for speech controlled by the government. *ACLU of Tenn. v. Bredesen*, 441 F.3d 370, 375-377 (6th Cir. 2006). See also *Kidwell v. City of Union*, 462 F.3d 620, 624 (6th Cir. 2006). A similar position has also been expressed by the Ninth Circuit. *Charter v. U.S. Dep't of Agriculture*, 412 F.3d 1017, 1020 (9th Cir. 2005). See also Sager, *Apple Pie Propaganda?*, *supra* note 305, at 544 n. 224, 225; Caroline Mala Corbin, *Mixed Speech: When Speech is Both Private and Governmental*, 83 N.Y.U. L. REV. 605, 628-640, 662-71 (2008); Carl G. DeNigris, *When Leviathan Speaks: Reining in the Government-Speech Doctrine Through a New and Restrictive Approach*, 60 AM. U. L. REV. 133, 152-56 (2010).

320 The State Department Facebook campaign reportedly reached 6.9 million people and generated 781,000 visits to external sites. In the Jigsaw program described above, some 300,000 people were drawn to "YouTube channels with videos intended to dissuade would-be fighters by featuring Islamic State defectors and other themes." WALL ST. J., *U.S. Target's Would Be Terrorists*, *supra* note 313.

321 *Id.* Even outside the counterterrorism realm, social marketing is often unsuccessful. For example, anti-smoking and other public safety campaigns, disclaimers, disclosures, product warnings, and other corrective advertising often fail to discourage harmful behavior. Petia K. Petrova & Robert Cialdini, *New Approaches Toward Resistance to Persuasion*, in THE SAGE HANDBOOK OF SOCIAL MARKETING 107 (Gerard Hastings, et

al. eds., 2011); *see also* *Efforts of the National Institute on Drug Abuse to Prevent and Treat Prescription Drug Abuse: Hearing Before the Subcomm. on Criminal Justice, Drug Policy, and Human Resources, H. Comm. on Government Reform*, 109th Cong. (2009) (statement for the record of Nora Volkow, Dir., Nat'l Inst. on Drug Abuse, National Inst. of Health, Dep't of Health and Human Services), *available at* <https://www.drugabuse.gov/about-nida/legislative-activities/testimony-to-congress/2006/07/efforts-national-institute-drug-abuse-to-prevent-treat-prescr>; Sally Caswell & Jia-Fang Zhang, *Impact of Liking for Advertising and Brand Allegiance on Drinking and Alcohol Related Aggression: A Longitudinal Study*, 93(8) *ADDICTION* 1209-17 (1998); Cornelia Pechman & Susan J. Knight, *An Experimental Investigation of the Joint Effects of Advertising and Peers on Adolescents' Beliefs and Intentions About Cigarette Consumption*, 29(1) *J. CONSUMER RESEARCH* 5, 13 (2002).

322 HSS STUDY, *supra* note 127, at 1.

323 *Id.* at 16.

324 *See supra* note 127.

325 The FBI has in place guidelines on community outreach and intelligence gathering, the 2013 version of which was obtained by the Brennan Center via a Freedom of Information Act request. FED. BUREAU OF INVESTIGATION, 0575DPG, COMMUNITY OUTREACH IN FIELD OFFICES CORPORATE POLICY DIRECTIVE AND POLICY IMPLEMENTATION GUIDE (March 4, 2013), *available at* <https://www.brennancenter.org/sites/default/files/blog/FBI%202013%20Community%20Outreach%20Guidelines%20combined%20w.o%20redactions.pdf> (obtained by the Brennan Center through Freedom of Information Act request). However, these guidelines appear to apply only to its Community Outreach Program and it is not clear whether that part of the Bureau is the one charged with CVE. Moreover, the guidelines do not meaningfully separate community outreach from investigative activities. *See* Michael Price, *FBI Guidelines Weaken Separation of Community Outreach and Intelligence Gathering Efforts*, JUST SEC. (June 8, 2016, 1:02 PM), <https://www.justsecurity.org/31440/fbi-guidelines-weaken-separation-community-outreach-intelligence-gathering-efforts/>.

326 2016 CVE GRANT NOFO, *supra* note 36, at 5.

327 2016 WHITE HOUSE CVE IMPLEMENTATION PLAN, *supra* note 13, at 3.

328 *See* 2016 CVE IMPLEMENTATION PLAN, *supra* note 13, at 5-6; 2016 DHS CVE STRATEGY, *supra* note 32, at 4.

329 *See* 2016 CVE IMPLEMENTATION PLAN, *supra* note 13, at 6; 2016 DHS CVE STRATEGY, *supra* note 32, at 5.

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