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**Hearing on “Willful Blindness – The Consequences of Agency Efforts to De-
Emphasize Radical Islam in Combating Terrorism”**

U.S. SENATE COMMITTEE ON THE JUDICIARY

**SUBCOMMITTEE ON OVERSIGHT, AGENCY ACTION, FEDERAL RIGHTS
AND FEDERAL COURTS**

UNITED STATES SENATE

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On behalf of Muslim Advocates, I welcome the invitation to testify and submit this statement to the U.S. Senate Judiciary Committee, Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts.

Muslim Advocates¹ is a national legal advocacy and educational organization dedicated to promoting freedom for Americans of all faiths, using the tools of legal advocacy, policy engagement, and education and by serving as a legal resource to promote the full participation of Muslims in American civic life. Muslim Advocates seeks to protect the founding values of our nation and believes that America can be safe and secure without sacrificing the constitutional rights, protections, and values that make us unique.

Like all Americans who were shocked and horrified following the mass shooting that took place in Orlando at the Pulse nightclub, a gathering place for LGBTQ Americans, we at Muslim Advocates remain mournful and grief-stricken as we too search for answers.

Muslim Advocates recognizes and values the tremendous work that tens of thousands of law enforcement leaders and officials conduct every day in order to keep us safe. As Americans, living in communities throughout the U.S., we also seek safety and security from violence, no matter the source. Law enforcement officials have a sacred charge to protect us all, and we are thankful for their efforts today and every day.

Our hope is that today's hearing will focus on the most effective ways law enforcement officials can keep us safe while remaining true to the rights and protections all Americans are afforded under the law.

As Americans, we welcome constructive proposals to improve law enforcement's ability to keep us safe and secure while maintaining American constitutional principles. In recent months, several public officials have called for changes to law enforcement's approach to countering extremist violence. As civil right advocates and attorneys, we must question and oppose proposals that are ineffective and unconstitutional.

In our experience, we know that several of these proposals are misguided, flawed and do little to actually keep us safe, while wasting precious and limited law enforcement resources. Furthermore, the underlying current of anti-Muslim rhetoric has fueled a disturbing trend of hate crimes against individuals and houses of worship.

I. Prevailing Countering Violent Extremism Approaches Have Failed, Are Unconstitutional, and Are Wholly Ineffective

A. Federal Government's Use of Biased and Bigoted Training Materials

Federal law enforcement agencies have – in the recent past – used bigoted, false, and inflammatory materials to train their employees and agents. These materials run

¹ More information is available at <http://www.muslimadvocates.org>.

contrary to the FBI's expressed commitment to upholding constitutional values, and to refrain from equating "strong religious beliefs . . . with violent extremism."² Factual errors and bigoted views about a religious group have no place in any government materials used to guide or train our law enforcement officers.

One of the most disturbing revelations was that FBI training documents and materials equated traditional religious practices and beliefs with a propensity to commit violence; a disturbing demonstration of the FBI's culture of suspicion directed at all American Muslims. For example, a January 2009 powerpoint presentation by the FBI's Law Enforcement Communications Unit, which trains new recruits, states that Islam is a religion that "transforms [a] country's culture into 7th-century Arabian ways."³ Mandatory orientation material for all 4,400 members of the FBI's Joint Terrorism Task Force (JTTF) stated that "Sunni [Muslim] core doctrine and end state have remained the same and they continue to strive for Sunni Islamic domination of the world to prove a key Quranic assertion that no system of government or religion on earth can match the Quran's purity and effectiveness for paving the road to God."⁴

An FBI intelligence report, published in 2006, named "The Radicalization Process: From Conversion to Jihad" states that individuals who convert to Islam are on the path to becoming "Homegrown Islamic Extremists," if they exhibit any of the following behavior:⁵

- "Wearing traditional Muslim attire"
- "Growing facial hair"
- "Frequent attendance at a mosque or a prayer group"
- "Travel to a Muslim country"
- "Increased activity in a pro-Muslim social group or political cause."

Given that millions of American Muslims engage in some or all of the above-mentioned activities, the report clearly framed routine religious practices as indicators of extremism.

In 2014, further investigative reporting disclosed that FBI agents seeking data from the National Security Agency were provided a template memorandum to complete to request surveillance on a target: that template included "Mohammed Raghead" – a

² Fed. Bureau of Investigation, *Response to Media Reporting Regarding Counterterrorism Training* (Sept. 15, 2011), available at <https://www.fbi.gov/news/pressrel/press-releases/response-to-media-reporting-regarding-counterterrorism-training>.

³ Spencer Ackerman, *FBI 'Islam 101' Guide Depicted Muslims as 7th-Century Simpletons*, WIRED MAGAZINE, July 27, 2011, <http://www.wired.com/dangerroom/2011/07/fbi-islam-101-guide/>. While some news reports highlighted the FBI's use of biased experts and training materials, this problem extended far beyond the FBI and included the U.S. Attorney's Anti-Terrorism Advisory Councils, the U.S. Department of Homeland Security, and the U.S. Army.

⁴ Spencer Ackerman, *New Evidence of Anti-Islam Bias Underscores Deep Challenges for FBI's Reform Pledge*, WIRED MAGAZINE, Sept. 23, 2011, <https://www.wired.com/2011/09/fbi-islam-domination/>.

⁵ Fed. Bureau of Investigation, *Intelligence Assessment (U//FOUO) The Radicalization Process: From Conversation to Jihad* (May 10, 2006), available at <https://cryptome.org/fbi-jihad.pdf>.

racist and bigoted slur – as a placeholder for the target’s name.⁶

This reporting also highlighted a troubling example of virulently anti-Muslim trainings and discriminatory conduct by government officials. For example, John Guandolo, a former FBI counterterrorism official who believes CIA Director John Brennan is a “closet Muslim” and the FBI has been taken over by the Muslim Brotherhood, has trained agents that “mainstream” Muslims should be treated as supporters of terrorism.⁷ Guandolo’s definition of activities that merit surveillance encompasses so many basic practices of Islam that it would include virtually every Muslim in the U.S. and activities protected by the First Amendment. Using his credential as a former FBI agent, Guandolo continues to provide bigoted training to state and local law enforcement as a consultant. Similarly, FBI analyst William Gawthrop has instructed law enforcement officials that Islam is a “Death Star” that must be destroyed.

In November 2011, President Obama’s then-Counterterrorism Advisor John Brennan agreed the White House would create an interagency task force to create review processes and build rigorous standards to ensure training material is not biased.⁸ However, the task force has had no public accountability, and has not assessed the pervasiveness of these biased training materials and whether the agents and officials involved were subject to any disciplinary action. Moreover, although there was reportedly a review and purge of a limited portion of training materials by the FBI, no commitment has been made to review intelligence products that mirror these biased training materials. We also have received no assurance that law enforcement and other government employees who participated in these trainings have been retrained. We are concerned that these biased trainings and intelligence products continue to drive racial and religious profiling at every stage of the intelligence-gathering and investigative processes.

B. Discriminatory Surveillance by the FBI

The use of bigoted trainers and materials in the recent past is not only highly offensive, disparaging the faith of millions of Americans, but leads to biased policing that targets individuals and communities based on religion, rather than based upon evidence of wrongdoing.

Since September 11, 2001, American Muslims are frequently approached by FBI agents for uninvited questioning at their homes and workplaces and asked personal questions about their family, friends, and community acquaintances. These so-called “voluntary” interviews not only intimidate, but also cast suspicion over community members and jeopardize their personal and professional relationships. Some individuals are coerced into becoming informants in order to avoid prosecution or deprivation of immigration benefits.

⁶ Glenn Greenwald & Murtaza Hussain, *Meet the Muslim American Leaders the FBI and NSA Have Been Spying On*, THE INTERCEPT, July 9, 2014, <https://theintercept.com/2014/07/09/under-surveillance/>.

⁷ *Id.*

⁸ Letter from John Brennan, President Obama’s former Counterterrorism Advisor, to Farhana Khera, Exec. Director, Muslim Advocates (Nov. 3, 2011) (on file with Muslim Advocates).

According to one former senior FBI counterterrorism official, the FBI conducted nearly 500,000 such “voluntary” interviews by the end of 2005, and not a single one of those interviews led to information that would have allowed the government to detect or prevent the 9/11 attacks.⁹ In early 2003, then FBI Director Robert Mueller directed all 56 FBI Field Offices to count the mosques and Islamic charities in their region to create demographic profiles.¹⁰ This data was to be used by the FBI to “set specific numerical goals for counterterrorism investigations and national security wiretaps in each region.”¹¹

In 2008, the FBI began codifying these changes in its practices. The FBI’s Domestic Investigative Operational Guidelines (“DIOG”)¹² authorizes massive data gathering based on troubling assumptions and stereotypes about minority and ethnic communities.¹³ While it barred investigative activities based “solely on the exercise of First Amendment rights or on the race, ethnicity, national origin, or religion,”¹⁴ it allows investigative activities based partially on these factors.¹⁵ The DIOG authorizes the FBI to “identify locations of concentrated ethnic communities in the Field Office’s domain, if these locations will reasonably aid in the analysis of potential threats and vulnerabilities . . . [s]imilarly, the locations of ethnically-oriented businesses and other facilities may be collected”¹⁶ In this way, the DIOG authorizes the collection of racial and ethnic demographic data and cultural and behavioral information about racial and ethnic communities, *not individualized suspicion of criminal activity or threats to national security*. In no uncertain terms, the FBI DIOG fosters and encourages racial, ethnic, and religious profiling.

The Attorney General Guidelines (“AG Guidelines”), which were modified by then-Attorney General Mukasey in 2008,¹⁷ have also expanded the FBI’s scope of domestic intelligence gathering, allowing agents to conduct “assessments” to gather information on individuals without a shred of evidence or any factual basis for suspected wrongdoing. The ease with which FBI agents can now conduct these broad assessments is compounded by the intrusive information-collecting techniques they can utilize in this phase. Agents and informants are allowed to attend meetings and events secretly; to conduct pretext interviews with people while hiding their true identity; and to engage in

⁹ *Losing Liberty: The State of Freedom 10 Years After the Patriot Act*, MUSLIM ADVOCATES (2011), note 35, (citing Michael E. Rolince, Remarks During Workshop on Muslim-Law Enforcement Partnership at Muslim Public Affairs Council 5th Annual Convention (Dec. 17, 2005)).

¹⁰ Michael Isikoff, *Investigators: The FBI Says, Count the Mosques*, NEWSWEEK, Feb. 2, 2003, <http://www.newsweek.com/2003/02/02/investigators-the-fbi-says-count-the-mosques.html>. See also Eric Lichtblau, *F.B.I. Tells Offices to Count Local Muslims and Mosques*, N.Y. TIMES, Jan. 28, 2003, <http://www.nytimes.com/2003/01/28/politics/28MOSQ.html>.

¹¹ Isikoff, *supra* note 10.

¹² Fed. Bureau of Investigation, Domestic Investigations and Operational Guidelines (2008) [hereinafter DIOG], available at [https://vault.fbi.gov/FBI%20Domestic%20Investigations%20and%20Operations%20Guide%20\(DIOG\)](https://vault.fbi.gov/FBI%20Domestic%20Investigations%20and%20Operations%20Guide%20(DIOG)).

¹³ *Id.*

¹⁴ DIOG at §§ 3, 5.1.

¹⁵ DIOG at § 5.3; See also Emily Berman, *Domestic Intelligence: New Powers, New Risks*, BRENNAN CENTER FOR JUSTICE, AT 24 (2011).

¹⁶ DIOG § 4.3(C).

¹⁷ U.S. Dep’t of Justice, *The Attorney General’s Guidelines For Domestic FBI Operations*, § II(B)(4)(a)(i) (2008), available at <http://www.justice.gov/ag/readingroom/guidelines.pdf>.

indefinite physical surveillance of homes, offices, and individuals.¹⁸ This means that law-abiding individuals and organizations across the country are subject to surveillance based on their faith, which is a constitutionally protected class.

The AG Guidelines and DIOG, therefore, starkly illustrate the existence of a federal intelligence gathering apparatus targeting racial, ethnic, cultural, and religious behavior as indicators of future criminal activity. The net result is the stigmatization and marginalization of an entire group of Americans based on their faith and a chill on the free exercise of religion by American Muslims.

Official documents obtained by Freedom of Information Act (“FOIA”) requests reveal the FBI’s problematic approach to the American Muslim community.¹⁹ One FBI field office memorandum in Detroit, for instance, sheds light on the FBI’s surveillance and information collection in that area: “because Michigan has a large Middle-Eastern and Muslim population, it is prime territory for attempted radicalization and recruitment by . . . terrorist groups.”²⁰

The FOIA documents also uncovered a great deal about the techniques used by the FBI to surveil Muslims throughout the country. In the San Francisco Bay Area, for example, FBI agents have attended community events hosted by Muslim organizations, without invitation, interviewed employees, documented the attendees’ names, personal information, religious and political views, and racial, ethnic, and national origin.²¹ These activities have been conducted under the guise of “community outreach”, but documents reveal that the FBI both categorized information about Muslims as “positive intelligence” and distributed it to agencies outside the FBI.²² These overreaching and unconstitutional activities are a serious threat to our nation’s commitment to religious freedom, equal protection of the law, and the right to be free from government intrusion in the absence of objective evidence to suspect illegal activity or wrongdoing.

C. Discriminatory Surveillance by the New York Police Department

Using methods chillingly similar to those of the FBI, the New York Police Department’s (“NYPD”) blanket surveillance of Muslim community members and organizations throughout the northeast – based on race, ethnicity and religious beliefs, not based on individualized suspicion of wrongdoing – is well-documented.

In August 2011, the Associated Press (“AP”) began releasing a series of

¹⁸ See Berman, *supra* note 15, at 25.

¹⁹ See e.g., *Eye on the FBI*, AM. CIVIL LIBERTIES UNION (2013), <https://www.aclu.org/national-security/eye-fbi-exposing-misconduct-and-abuse-authority>.

²⁰ *ACLU Eye On The FBI: The FBI Is Engaged in Unconstitutional Racial Profiling and Racial “Mapping,”* AM. CIVIL LIBERTIES UNION (Oct. 20, 2011), https://www.aclu.org/files/assets/aclu_eye_on_the_fbi_alert_-_fbi_engaged_in_unconstitutional_racial_profiling_and_racial_mapping_0.pdf.

²¹ *Id.*

²² *ACLU Eye On The FBI: The San Francisco FBI Conduced A Years-Long Mosque outreach Program that Collected and Illegally stored Intelligence about American Muslims’ First Amendment-Protected Religious Beliefs and Practices*, AM. CIVIL LIBERTIES UNION (Mar. 27, 2012), https://www.aclu.org/files/assets/aclu_eye_on_the_fbi_-_mosque_outreach_03272012_0_0.pdf.

investigative reports about the NYPD's intelligence gathering program specifically targeting the Muslim community, and the CIA's involvement in that effort.²³ The NYPD was exposed as targeting the entire Muslim community – and approximately 250 mosques, schools, and businesses – without any evidence of wrongdoing.²⁴ As part of ethnic mapping programs throughout the city, the NYPD targeted Muslim neighborhoods, maintained a list of “ancestries of interest,” and received daily reports from informants who visited cafes and clubs to collect information about Muslim patrons.²⁵

The NYPD's improper targeting of innocent Muslims is compounded by its use during officer trainings of *The Third Jihad*, a film containing offensive, inflammatory and inaccurate depictions of Muslims as violent and seeking world domination.²⁶ Though the NYPD assured the public that the film had only been shown “a few times” to some officers,²⁷ that claim was later revealed to be false when documents proved that it was played for three months, viewed by almost 1,500 officers, and its producers conducted a ninety-minute interview with NYPD Commissioner Ray Kelly.²⁸

The enormity of the NYPD's suspicionless and blanket surveillance operations, which cast suspicion on an entire faith community, and Commissioner Kelly's own participation in an interview for an offensive and hateful film about Muslims, painted a disturbing picture of biased policing by the NYPD and triggered widespread outcry and condemnation by American Muslims.

These are the reasons why Muslim Advocates filed a lawsuit in federal court in 2012, *Hassan v. City of New York*, challenging the constitutionality of the NYPD's blanket, suspicionless surveillance program. The Center for Constitutional Rights and the Gibbons, P.C. law firm later joined our legal team. The NYPD had sent undercover agents and informants into mosques, Muslim-owned restaurants and stores, and onto college campuses, sometimes posing as Muslim students themselves, in New York, New Jersey, and throughout the Northeast—not based on evidence of criminal activity, but simply because these were spaces where Muslims could be found.

Last fall, the U.S. Court of Appeals for the Third Circuit issued a landmark ruling, upholding the rights of American Muslims—and Americans of all faiths—to be free from suspicionless surveillance.²⁹ In a unanimous ruling, the court recognized that the

²³ Matt Apuzzo & Adam Goldman, *What's the CIA Doing At NYPD? Depends Whom You Ask*, ASSOCIATED PRESS, Oct. 17, 2011, http://www.ap.org/pages/about/whatsnew/wn_101711a.html.

²⁴ *AP's Probe Into NYPD Intelligence Operations*, ASSOCIATED PRESS, <http://www.ap.org/Index/AP-In-The-News/NYPD>.

²⁵ Matt Apuzzo & Adam Goldman, *Inside the Spy Unit That Doesn't Exist*, ASSOCIATED PRESS, Aug 31, 2011, <http://www.ap.org/Content/AP-In-The-News/2011/Inside-the-spy-unit-that-NYPD-says-doesnt-exist>.

²⁶ Tom Robbins, *NYPD Cops' Training Included an Anti-Muslim Horror Flick*, VILLAGE VOICE, Jan 19, 2011, <http://www.villagevoice.com/content/printVersion/2337684/>.

²⁷ Michael Powell, *In Shift, Police Say Leader Helped with Anti-Islam Film and Now Regrets It*, N.Y. TIMES, Jan 24, 2012, <http://www.nytimes.com/2012/01/25/nyregion/police-commissioner-kelly-helped-with-anti-islam-film-and-regrets-it.html?scp=1&sq=kelly%20third%20jihad&st=cse>.

²⁸ *Id.*

²⁹ *Hassan v. City of New York*, 804 F.3d 277 (3rd Cir. 2015).

NYPD's treatment of American Muslims echoes the most shameful episodes in our nation's history, likening the NYPD's arguments in defense of discriminatory surveillance of Muslims to those used to justify past injustices against groups of Americans based on their race, ethnicity or faith.

The court said:

“What occurs here in one guise is not new. We have been down similar roads before. Jewish-Americans during the Red Scare, African-Americans during the Civil Rights Movement, and Japanese-Americans during World War II are examples that readily spring to mind. We are left to wonder why we cannot see with foresight what we see so clearly with hindsight—that ‘[l]oyalty is a matter of the heart and mind[,] not race, creed, or color.’ *Ex parte Mitsuye Endo*, 323 U.S. 283, 302 (1944).”³⁰

The court did not issue its ruling in a vacuum. The court sat and heard arguments in the case just one week after the heinous Charlie Hebdo attacks in Paris in January 2015. In fact, the judges asked our legal team why the NYPD should not have blanket surveillance authority in light of the Paris attacks. A few months later, in its blistering decision, the court understood that Americans cannot sacrifice our values and who we are as Americans in the name of the false promise of enhanced security.

In recent months, in the wake of the court's decision, it has been heartening to hear New York City Mayor Bill de Blasio and NYPD Commissioner Bill Bratton recognize that the program was wrong and ineffective. Commissioner Bratton said the program failed to produce a single piece of actionable intelligence and “didn't work.” Instead, it increased distrust between the police and the communities they serve and aim to protect by wrongly stigmatizing Muslims.

Furthermore, by law enforcement's own admission, violent extremist groups such as ISIS are not recruiting in mosques or other Muslim community institutions in the U.S. Instead they are spreading their message and recruiting vulnerable individuals – described by FBI Director James Comey as “troubled souls who are being inspired or enabled online” – over the Internet. Any suggestion that law enforcement indiscriminately surveil mosques must be rejected: such an action would not only be unconstitutional, it would likely cause permanent damage to the relationship between law enforcement and a sizable portion of the American Muslim community.

If law enforcement leaders are plainly stating that mosques are not recruiting grounds for extremist groups, we wonder why such a call exists among political leaders who purport to advocate on behalf of law enforcement officials as they seek to keep us safe from harm.

³⁰ *Id.* at 309.

D. FBI's "Don't Be a Puppet" Website Exacerbates Stigmatization and Discriminatory Targeting of American Muslim Children

Given the history of bigoted training materials and policies and practices that condone mass, discriminatory data-gathering and targeting of Americans simply because they are Muslim, Muslim Advocates was especially disturbed to learn about the launch earlier this year of an FBI website directed to educators, community leaders and students to assist law enforcement in identifying potential threats. Despite attempts by Muslim Advocates and other civil rights and community organizations to provide constructive and meaningful feedback to the FBI, the "Don't Be a Puppet" website perpetuates negative stereotypes that American Muslim children and those perceived to be Muslim are prone to engage in violence and encourages the policing of thoughts, ideas and beliefs.

For example, the website calls for individuals to report innocuous activity that bears no meaningful relation to or indication of violence. The website encourages individuals to "contact someone you trust if someone you know is . . . traveling to places that sound suspicious." This warning is extremely troublesome because of the subjective and vague concept of a "place that sounds suspicious." A trip to France or Germany, which are home to many far-right groups, is not likely to be considered suspicious by most teachers. 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.

The website also asks individuals to contact someone they trust if individuals are "using code words or unusual language", "using several different private cell phones and private messaging apps," or "studying or taking pictures of potential targets (like a government building)." Again, bias could easily lead individuals to conclude that speaking foreign languages, such as Arabic, amounts to using "unusual language." They may also draw improper inferences that Arabs, Muslims or South Asians who are using Internet applications, or visiting and photographing monuments or other attractions for tourism reasons, are somehow engaging in suspicious behavior.

Furthermore, the use of the terms "extremist" and "radical" as shorthand for "violent extremism" throughout the website improperly reinforces the idea that holding views that may be outside the mainstream equates to criminal behavior. The website would have teachers and community leaders ("trusted adults") determine whether views are extremist or radical and report them to police, inappropriately discouraging views protected by the First Amendment.

Disturbingly, "Don't Be a Puppet" also encourages the use of the website in schools, namely social studies, civic and government classes. While the website may not set forth the curriculum of how this program is implemented, the fact that the FBI, a federal law enforcement agency, is endorsing its use in our schools is problematic. Not only will "Don't Be a Puppet" hinder the free exchange of speech, ideas, and debate on controversial topics because students are afraid of being labeled suspect and being

reported to the police, it will isolate students and possibly subject them to harassment and bullying.

In sum, this website will seriously damage trusted relationships between educators and students and cannot be described as a legitimate or credible law enforcement tool.

II. Responsibility of Public Officials to Refrain from Bigoted and Anti-Muslim Rhetoric and Rise In Hate & Violence Against American Muslims

Far too many of our nation's public officials and political leaders engage in hateful and blatantly bigoted anti-Muslim rhetoric. Public officials must understand that such rhetoric carries grave consequences for American Muslims and those who are perceived to be Muslim in the U.S.

In at least two hate crime incidents this year, the perpetrator specifically invoked the name or rhetoric of a candidate for public office. In Kansas, after harassing an African American, a man assaulted two males, a Muslim and a Latino, while yelling, "You guys, we'll throw you over the wall" as he attacked the young men.³¹ And, at Northwestern University, the interior of a non-denominational chapel was defaced with hateful messages targeting African American, Muslim, LGBT and Jewish communities, while invoking the name of a candidate for public office.³²

A climate of fear, suspicion and hate against American Muslim is fueled by calls to "monitor mosques," ban Muslims from entering the U.S., bar refugees from resettling in the U.S. based solely on their religion, or "patrol and secure Muslim neighborhoods." As discussed further below, the level of fear and concern among American Muslims about the safety and future of their families is at the highest level it has ever been, including the immediate weeks and months after 9/11.

A. Hate Crimes

In just the last seven months alone since the November 2015 Paris attacks, Muslim Advocates has monitored and tracked an unprecedented number of hate crimes against American Muslims and those perceived to be Muslim: nearly 100 publicly reported hate crimes.³³

As stark as these numbers are, however, they likely do not accurately depict the full gravity of the crisis. According to a 2005 report by the Justice Department's Bureau

³¹ Justin Wm. Moyer, *Trump! Trump! Trump! Attacker Allegedly Yelled as He Beat Hispanic Man, Muslim Student*, THE WASH. POST, Mar. 14, 2016, <https://www.washingtonpost.com/news/morning-mix/wp/2016/03/14/trump-trump-trump-yells-attacker-as-he-beats-hispanic-man-muslim-student/>.

³² William Lee, *Northwestern University Students Charged with Hate Crime, Vandalism to Chapel*, CHI. TRIBUNE, Mar. 12, 2016, <http://www.chicagotribune.com/news/local/breaking/ct-50k-bails-for-northwestern-university-students-accused-of-chapel-vandalism-20160312-story.html>.

³³ *Recent Incidents of Anti-Muslim Hate Crimes*, MUSLIM ADVOCATES (2016), <https://www.muslimadvocates.org/map-anti-muslim-hate-crimes/>.

of Statistics, only 44% of hate crimes are reported to the police.³⁴ In 2013, the Bureau of Statistics noted that nearly two-thirds of all hate crimes went unreported to the police.³⁵ According to the Southern Poverty Law Center, the real number of hate crimes may be *fifteen* times higher than the FBI's statistics indicate.³⁶

Specific examples of hate crimes in the last seven months include:

- Nov. 26, 2015: A taxi driver - a 38-year-old Moroccan immigrant – was shot and injured by one of his passengers after being asked about his background.³⁷
- Dec. 11, 2015: In two separate incidents, one American Muslim female was shot as she was leaving an Islamic center. Another woman was nearly run off the road by someone throwing rocks at her car as she left the mosque.³⁸
- Jan. 1, 2016: An elderly Sikh man was stabbed to death while working at a convenience store.³⁹
- Feb. 21, 2016: While a Muslim family was shopping for a home, a man in the neighborhood pointed a gun at them saying they “should all die” because they are Muslim.⁴⁰
- Mar. 3, 2016: A Sikh temple was vandalized by a man who said he thought it was a mosque and affiliated with terrorists.⁴¹
- April 21, 2016: A Muslim woman wearing a headscarf had hot liquid poured on her by another woman shouting “Muslim piece of trash.”⁴²
- May 21, 2016: A livery driver was brutally beaten by a passenger who called him a “Muslim a—hole.” He was punched multiple times before trying to

³⁴ C. W. Harlow, *Hate Crime Reported by Victims and Police*, U.S. DEP'T. OF JUSTICE, BUREAU OF JUSTICE STATISTICS (Nov. 2005), available at <http://www.bjs.gov/content/pub/pdf/hcrvp.pdf>.

³⁵ U.S. Dep't of Justice, *Nearly Two-Thirds of Hate Crimes Went Unreported to Police in Recent Years* (Mar. 21, 2013), available at <http://ojp.gov/newsroom/pressreleases/2013/ojppr032113.pdf>.

³⁶ *Report: FBI Hate Crime Statistics Vastly Understate Problem*, SOUTHERN POVERTY LAW CENTER, (Winter 2005), <http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2005/winter/hate-crime>.

³⁷ Dan Majors, *Muslim Taxi Driver Shot on Thanksgiving in Hazelwood Calls Attack a Hate Crime*, PITT. POST GAZETTE, Nov. 29, 2015, <http://www.post-gazette.com/local/city/2015/11/29/Muslim-taxi-driver-shot-on-Thanksgiving-in-Pittsburgh-calls-attack-a-hate-crime/stories/201511290154>.

³⁸ Travis Gettys, *Muslim Woman Shot At and Another Nearly Run Off the Road in Tampa After Leaving Mosques*, RAW STORY, Dec. 11, 2015, <https://www.rawstory.com/2015/12/muslim-woman-shot-at-and-another-nearly-run-off-the-road-in-tampa-after-leaving-mosques/>.

³⁹ Charles Lam, *Sikh Man Stabbed to Death in Robbery of Central California Convenience Store*, NBC NEWS, Jan. 5, 2016, <http://www.nbcnews.com/news/asian-america/sikh-man-stabbed-death-robbery-central-california-convenience-store-n490786>.

⁴⁰ Kevin Killeen, *Affton Man Charged With Anti-Muslim Hate Crime*, CBS ST. LOUIS, Feb. 29, 2016, <http://stlouis.cbslocal.com/2016/02/29/muslims-wait-for-bob-mcculloch-to-file-charges/>.

⁴¹ Ajay Ghosh, *Hate Crime Charged Against Pittman for Spokane Gurdwara Vandalism*, THE UNIVERSAL NEWS NETWORK, Mar. 15, 2016, <http://theunn.com/2016/03/hate-crime-charged-against-pittman-for-spokane-gurdwara-vandalism/>.

⁴² Steve Birr, *Police Release Video of Assault on Muslim Woman Outside DC Starbucks*, THE DAILY CALLER, May 3, 2016, <http://dailycaller.com/2016/05/03/police-release-video-of-assault-on-muslim-woman-outside-dc-starbucks/>.

escape the vehicle, and then later pulled to the ground and was punched and stomped on.⁴³

- June 1, 2016: A Muslim man was assaulted and beaten after leaving a mosque. He suffered at least 5 broken bones, a concussion, and fractured ribs.⁴⁴

B. Mosque Opposition and Direct Threats and Attacks

Over the past several years, the American Muslim community has been the target of increased hostility towards mosques and community institutions. Mosque sites across the country have been targets for vandalism, criminal acts, and other forms of aggression. Mosques have been hit with bullets,⁴⁵ smeared with feces,⁴⁶ firebombed,⁴⁷ and congregants have arrived to find severed pig's heads at the doorstep of the mosque.⁴⁸

The various manifestations of anti-Muslim animus lead to real-life consequences, and chip away at the right of American Muslims to freely practice their faith without fear. For example, a small Muslim community in New York was terrorized by a one-time congressional candidate, Robert Daggart, in a plot uncovered by the FBI to destroy the community's mosque and gun down residents who may try to stop him.⁴⁹ Daggart, in describing the proposed attack on the town's 200 Muslim residents, went so far as to say, "If it gets down to the machete, we will cut them to shreds."⁵⁰ In October 2015, anti-Muslim activists planned armed protests in front of mosques in 20 cities across the U.S. The hate rally organizers urged protestors to exercise their right to open carry guns and to gather to demonstrate that, "The world is saying no to Islam."⁵¹

There are also coordinated efforts by local communities to block necessary zoning permits for the construction and expansion of mosques, cemeteries, and community centers. Typically quiet zoning board hearings are now platforms for expressing anti-Muslim rhetoric. American Muslims face exactly the kind of subtle and overt

⁴³ Rocco Parascandola, *Bronx Livery Driver Repeatedly Punched In the Face By Passenger Who Called Him 'Muslim Driver A--hole,'* N.Y. DAILY NEWS, May 25, 2016, <http://www.nydailynews.com/new-york/bronx-livery-driver-punched-called-muslim-driver-a-hole-article-1.2648669>.

⁴⁴ Laurel Raymond, *Assault of Muslim Man in NYC Comes Amid Rising Islamophobia Nationwide,* THINKPROGRESS, June 6, 2016, <http://thinkprogress.org/justice/2016/06/06/3785049/muslim-man-attacked-queens/>.

⁴⁵ Nicholas Rondinone, *Police: FBI Investigating After Bullets Hit Meriden Mosque,* HARTFORD COURANT, Nov. 17, 2015, <http://www.courant.com/breaking-news/hc-meriden-mosque-shot-1118-20151117-story.html>.

⁴⁶ Noelle Newton, *Pflugerville Mosque Site of Hate Crime,* FOX 7 AUSTIN, Nov. 16, 2015, <http://www.fox7austin.com/news/local-news/50055485-story>.

⁴⁷ Ralph Ellis & Steve Almasy, *Arrest Made in Connection With California Mosque Fire,* CNN, Dec. 12, 2015, <http://www.cnn.com/2015/12/12/us/california-mosque-fire/>.

⁴⁸ Elahe Izadi, *'Ignorant Act': Severed Pig's Head Thrown At Philadelphia Mosque Door,* THE WASH. POST, Dec. 9, 2015, <https://www.washingtonpost.com/news/acts-of-faith/wp/2015/12/08/severed-pigs-head-thrown-at-philadelphia-mosque-door/>.

⁴⁹ Laila Kearney, *A Tranquil Muslim Hamlet in the Catskills – Until the Attack Plot,* REUTERS, June 1, 2015, <http://www.reuters.com/article/us-usa-islamberg-insight-idUSKBN0OH1D920150601>.

⁵⁰ *Id.*

⁵¹ Tony Dokoupil, *Armed protests planned at US mosques: 'The world is saying no to Islam,'* MSNBC, Oct. 10, 2015, <http://www.msnbc.com/msnbc/armed-protests-planned-us-mosques-the-world-saying-no-islam>.

discrimination Congress sought to ward against in enacting the Religious Land Use and Institutionalized Persons Act (“RLUIPA”). In 2000, Congress sought to prevent local governments from enacting land use regulations that impose substantial burdens on the free exercise of religion, including religious institutions. Congress did so, in part, because it found that zoning authorities were frequently placing excessive or unreasonable burdens on the ability of congregations to exercise their faith with little to no justification and in violation of the Constitution.

While Muslims make up about 1% of the U.S. population,⁵² “[s]ince 2010, roughly 40 percent of the Justice Department’s RLUIPA land use investigations have involved mosques or Muslim schools, compared to 15 percent from the 10 years prior.”⁵³

The anti-Muslim animus in land use proposals continue at a disturbing pace, as illustrated by recently resolved or pending RLUIPA litigation across the country, including Minnesota,⁵⁴ Michigan,⁵⁵ and New Jersey.⁵⁶ Recently, as a zoning board hearing for a proposed mosque became tense, a community member stood up to shout, “Nobody, nobody, nobody wants your evil cult in this county. I will do everything in my power to make sure that doesn’t happen because you are terrorists.”⁵⁷ In Texas, a group of angry residents threatened to put pigs’ heads and pour the blood onto the site of a proposed Islamic cemetery.⁵⁸

C. Bullying and Harassment of Children

Since at least November 2015, one of the most common concerns Muslim Advocates hears from Muslim parents across the country is a concern about the harm being caused by the caustic anti-Muslim rhetoric on their children. We have received an alarming number of complaints from parents concerned about their children being harassed and bullied in schools. Examples range from children being physically attacked by their peers, threats of attack by their peers, or consistent name calling and taunting by other students. Parents are reporting that their children – as young as 8 years old – return home from school and ask if they have to leave America because they are Muslim and their classmates in school say it will happen if Donald Trump becomes president.

⁵² Besheer Mohamed, *A New Estimate of the U.S. Muslim Population*, PEW RESEARCH CENTER, Jan. 6, 2016, <http://www.pewresearch.org/fact-tank/2016/01/06/a-new-estimate-of-the-u-s-muslim-population/>.

⁵³ *Head of the Civil Rights Division Vanita Gupta Delivers Remarks at Muslim Advocates Annual Gala*, U.S. DEPT. OF JUSTICE, May 15, 2016, <https://www.justice.gov/opa/speech/head-civil-rights-division-vanita-gupta-delivers-remarks-muslim-advocates-annual-gala>.

⁵⁴ *See Abu-Huraira Islamic Center v. City of St. Anthony*, 0:14-cv-03280 (D. Minn. 2015).

⁵⁵ *See United States v. Pittsfield Charter Township*, 2:15-cv-13779-DPH-DRG (E.D. Mich. 2015).

⁵⁶ *See Al Falah v. Township of Bridgewater*, No. 3:11-CV-02397 (D. N.J. 2011); *see also The Islamic Society of Basking Ridge v. Township of Bernards*, No. 16-CV-01369 (D. NJ 2016).

⁵⁷ Rachel Weiner, *Meeting About Virginia Mosque Exposes Deep Divide*, THE WASH. POST, Nov. 22, 2015, https://www.washingtonpost.com/local/virginia-politics/in-fredericksburg-mosque-meeting-exposes-deep-divide/2015/11/22/0b8e0386-9074-11e5-baf4-bdf37355da0c_story.html.

⁵⁸ David Millward, *Texans Threaten to Cover Land With Pigs’ Blood to Block Muslim Cemetery*, THE TELEGRAPH, July 20, 2015, <http://www.telegraph.co.uk/news/worldnews/northamerica/usa/11750259/Texans-threaten-to-cover-land-with-pigs-blood-to-block-Muslim-cemetery.html>.

We know of instances where school administrators do not take these matters seriously and turn a blind eye. We also know of instances where teachers and administrators are perpetuating stereotypes and speaking about Muslims in a negative way, creating fear and confusion for many young Muslim students.

In 2010, a study from Northern Virginia found that 80% of Muslim youth were subjected to taunts and harassment at school (50% in front of teachers and administrators). In another survey of Muslim children in grades three through twelve in Maryland reported in 2014, nearly one-third of the students “said they had experienced insults or abuse at least once because of their faith.”⁵⁹ There have not yet been any studies on the bullying and harassment experienced by American Muslim children today and in the last year. Based on feedback from parents as we travel the country, however, we believe that bullying and harassment of their children have only worsened.

American Muslim children are affected by not only direct bullying, but also the hostile discourse about their place in American society. Americans’ favorable view toward Muslims has declined from 40% in 2012 to 27% in 2014, according to the Arab American Institute.⁶⁰

Unfortunately, these are but a sample of the acts of hate violence, harassment and discrimination experienced by American Muslims – and those perceived to be Muslim – in the last several months.

III. Impact of the Orlando Shooting and Responsibility of Americans to Speak Out Against Hate and Fear-Mongering

The horrific shooting in Orlando had a traumatic impact on all Americans but especially LGBTQ Americans and the Latino LGBTQ community. Muslim Advocates has been building bridges and working in coalition with LGBTQ organizations for more than ten years, and members of the community have been among our staunchest partners in the struggle to build a stronger, safer and more equal nation.

Last week, Muslim Advocates helped initiate a joint unity statement signed by more than 65 LGBTQ and Muslim organizations, committed to love, hope and unity in the face of fear and hate. The statement reads in part: “In this moment of immense sadness and outrage, we stand together united against fear, hate and violence. We will not lose hope in the people and communities around us because we know we are stronger together. In standing together, hand in hand, across every faith, we send a powerful message to those who seek to divide us using hatred and violence: love is stronger than

⁵⁹ Donna St. George, *During A School Year of Terrorist Attack, Muslim Students Report Bullying*, THE 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.

⁶⁰ *American Attitudes Toward Arabs and Muslims*, ARAB AMERICAN INSTITUTE (July 29, 2014), at 2, <https://d3n8a8pro7vhmx.cloudfront.net/aai/pages/9785/attachments/original/1431961128/American%2520Attitudes%2520Toward%2520Arabs%2520and%2520Muslims%25202014.pdf?1431961128>.

hate and hope will defeat fear.”⁶¹ (We submit and request that a copy of the unity statement in its entirety be included in the record of this hearing.)

Muslim Advocates has also made clear that all Americans, including American Muslims, must call out and condemn hate against LGBTQ people wherever it may be found: online, in our families and social networks, in our houses of worship, and among our religious, civic, and political leaders.

Americans must also challenge attempts to pit communities against each other. In the wake of the Orlando tragedy, we saw calls for discriminatory, blanket surveillance of American Muslims⁶² and for LGBTQ Americans to turn on their Muslim family, friends and neighbors.⁶³

IV. Conclusion & Recommendations

American Muslims, who number about 3.3 million today,⁶⁴ are very much a part of the fabric of the communities that make up our great nation – which includes LGBTQ communities who remain targets of hate and discrimination. As such, we own the same level of commitment to keeping our country safe from violence. To suggest otherwise is wrong, bigoted and incredibly offensive to the American Muslims serving our nation as police officers, firefighters, teachers, lawyers, physicians, members of our armed services, and even as members of Congress.

Like all Americans, we are looking for answers and for solutions in the wake of the largest mass shooting in our nation’s history. We seek to make constructive contributions to the effort to keep our nation, our neighbors, and our families safe from harm, while at the same time ensuring that we emerge from this collective challenge with the values that have made us uniquely American intact.

Accordingly, Muslim Advocates urges Congress and the administration to promptly undertake the following steps:

- (1) To address bigoted training materials, Muslim Advocates urges the administration to:
 - a) Audit all federal law enforcement and intelligence gathering training and educational materials to identify and remove information that is factually incorrect or exhibits bias against any race, ethnicity, religion, or national

⁶¹ *Statement of Muslim Advocates Executive Director Farhana Khera on Florida Nightclub Shooting*, MUSLIM ADVOCATES, June 12, 2016, <https://www.muslimadvocates.org/statement-of-muslim-advocates-executive-director-farhana-khera-on-florida-nightclub-shooting/>.

⁶² Sheryl Gay Stolberg, *Barney Frank Speaks of Concern on ‘Islamic Element’ to Terrorism*, N.Y. TIMES, June 13, 2016, <http://www.nytimes.com/live/orlando-nightclub-shooting-live-updates/barney-frank/>.

⁶³ Sandy Fitzgerald, *Gingrich Blasts Obama, Leaders: ‘Willfully’ Not Telling Truth on Islamic Terrorism*, Newsmax, June 12, 2016, <http://www.newsmax.com/Newsfront/Newt-Gingrich-islamic-radicals-gay/2016/06/12/id/733455/>.

⁶⁴ Mohamed, *supra* note 52.

- origin;
- b) Implement a mandatory retraining program for all federal, state and local law enforcement officials who have been subjected to biased and discriminatory trainings provided by the federal government or with federal funds;
 - c) Pursue disciplinary action against those agents and officials engaging in discriminatory conduct and responsible for these training materials; and
 - d) Require federal agencies that provide law enforcement and homeland security funding to state and local governments to condition such funding on carrying out training or otherwise using federal funds in a manner that upholds our nation's commitment to equal treatment and equal justice under the law and barring the use of trainers or materials that exhibit bias against any race, ethnicity, religion, or national origin.
- (2) To address discriminatory surveillance and other law enforcement policies and practices, Muslim Advocates urges Congress to:
- a) Enact the End Racial Profiling Act (“ERPA”) introduced by Congressman Conyers and Senator Cardin. ERPA would:
 - i. Ban racial, ethnic, religious and national origin profiling by federal, state and local law enforcement;
 - ii. Require training of federal, state and local law enforcement to ensure that discriminatory policing does not take place;
 - iii. Establish an effective redress mechanism for those aggrieved to ensure accountability;
 - iv. Require federal, state and local law enforcement to collect data on stops, interviews, and all investigatory activities to allow the agency and the public to monitor whether racial, ethnic and religious profiling is taking place; and
 - v. Require the Attorney General to report to Congress on the implementation of such a law.
 - b) Urge the U.S. Attorney General to modify the *Guidance Banning Racial Profiling by Federal Law Enforcement Agencies* to:
 - i. Remove the national security and border integrity exceptions, since there are no such exceptions to the application of the Equal Protection and Free Exercise Clauses of the U.S. Constitution;
 - ii. Explicitly state that the ban on racial, ethnic, religious and national origin profiling applies to intelligence activities carried out by law enforcement agencies subject to the Guidance;
 - iii. Ensure that it is enforceable and that law enforcement agencies are held accountable for any violations; and
 - iv. Apply to state or local law enforcement agencies working in cooperation with federal agencies or receiving federal financial assistance, including grants, training, use of equipment, donations of surplus property, and other assistance.

- (3) To address the disturbing escalation of anti-Muslim hate and bigotry, Muslim Advocates urges Congress to:
- a) Urge the administration to establish a dedicated website modeled after www.stopbullying.gov to serve as a resource for the general public, law enforcement officials, educators, public officials, media and other key stakeholders. The site should aggregate federal resources about effective hate crime laws, prevention policies, best police policies and procedures and community awareness-building practices, victim service resources, and law enforcement training initiatives.
 - b) Urge the U.S. Department of Justice to work with federal law enforcement agencies to explore and implement ways to enhance hate crime reporting by state and local law enforcement agencies.
 - c) Urge the U.S. Department of Education, which will begin to collect data on bullying of children motivated by faith (mandated for the first time next year), to disaggregate the data by particular faith groups in order to better assess the gravity of the problem. Using this new data, the Education Department should tailor bullying prevention resources accordingly.
 - d) Refrain from putting forward dangerous and discriminatory proposals and making hateful statements about Islam and the American Muslim community, as well as condemn those public officials who engage in hateful rhetoric or actions. Anti-Muslim bigotry only serves to divide us as a nation when we should be coming together to address the many challenges we face.