

IN THE NAME OF NATIONAL SECURITY: HOW POST 9/11 MEASURES UNDERMINE MINORITY RIGHTS

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ABSTRACT

National security has increasingly become an important topic in legal and political discourse. The threat of terrorism has led governments to adopt some controversial laws and policies that pose a risk to civil liberties, and in particular, have the effect of oppressing marginalized groups, who are often said to pose risks to national security. While the relationship between national security and civil liberties or human rights has been the focus of previous research papers, an empirical analysis of (express and implicit) instances where measures restricted civil liberties for the protection of national security, and how courts have responded, is largely lacking in the literature. Yet, this is a crucial question to foster a better understanding of the impact of national security measures on marginalized groups.

This article thus conducts an empirical analysis of some selected laws, policies, and executive orders (also referred to herein as ‘national security measures’) adopted in the United States since the terrorist attacks of 9/11 as a case-study to analyze this question. This article aims to assess, through empirical data and legal analysis, the extent to which national security measures have an adverse effect on minority groups. It examines measures that expressly target those groups as well as measures that have the effect of oppressing those groups in their application, even when on their face they do not target any specific groups. The article ultimately claims that whether expressly or implicitly, national security measures adopted in the United States since 9/11 disproportionately adversely affect marginalized groups.

Keywords

National security; human rights; minority rights; United States counter-terrorism; civil liberties; marginalized groups; terrorism; 9/11 terrorist attacks.

1. INTRODUCTION

National security has increasingly become an important topic in legal and political discourse. The threat of terrorism has led governments to adopt some controversial laws and policies that pose a risk to civil liberties, and in particular, have the effect of oppressing marginalized groups, who are often said to pose risks to national security. While the relationship between national security and civil liberties or human rights has been the focus of previous research papers, an empirical analysis of (express and implicit) instances where measures restricted civil liberties for the protection of national security, and how courts have responded, is largely lacking in the literature. Yet, this is a crucial question to foster a better understanding of the impact of national security measures on marginalized groups.

This article thus conducts an empirical analysis of some selected laws, policies, and executive orders (also referred to herein as ‘national security measures’) adopted in the United States since the terrorist attacks of 9/11 as a case-study to analyze this question. This article aims to assess, through empirical data and legal analysis, the extent to which national security measures have an adverse effect on minority groups. It examines measures that expressly target those groups as well as measures that have the effect

of oppressing those groups in their application, even when on their face they do not target any specific groups. The article ultimately claims that whether expressly or implicitly, national security measures adopted in the United States since 9/11 disproportionately adversely affect marginalized groups. While this article is not intended to conduct an exhaustive review of all measures adopted for national security since the terror attacks of 9/11, it aims at demonstrating how measures that allegedly counter-terrorism can deprive individuals of civil liberties, by their adverse effects on minority groups.

This article proceeds first to overview national security laws, policies, and orders adopted in the United States since 9/11. It then analyses whether and to what extent these measures affect marginalized groups. Finally, this article makes some recommendations for future developments in national security law and policy that align with respect for civil liberties.

The purpose of this paper is to examine several selected specific measures that have been enacted in the United States in the years following the terrorist attacks of 9/11, with a focus on recent measures after the election of President Donald Trump. While it has been almost twenty years since that event, national security remains a high priority and a growing concern for the American people. Unfortunately, the United States government has continued to rely on those strong sentiments as the basis for proposing several new laws. In addition to claiming that these national security objectives are not being met in the way they are proposed, this paper will also consider some of the stereotypes driving these policy changes, while fostering the ancillary effects, that these marginalized segments are forced to deal with, as a result of these national security measures. To pursue this analysis, this paper has selected some recent acts enacted in the United States. It will briefly review the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001)*¹, the *Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005* (the 'Real ID Act')², as well as recent Executive Orders enacted by President Trump (commonly referred to as the 'Travel Ban')³ and some of the restrictive measures which appear to be targeting Muslim people specifically.

The current approach is no different than it was for Chinese immigrants at the turn of the 20th century or for Jewish immigrants not long after that. The pattern that emerges from the analysis is that national security narratives are often used to target and oppress minorities. It is claimed that not only are these rules and regulations contrary to the United States Constitution, but these rights are being violated without drawing the attention of the American people. Instead of being repulsed by these rules, and over the last twenty years they have continued to justify their actions, under this guise of national security.

2. UNDER THE NATIONAL SECURITY VEIL

Following the terrorist attacks of 9/11, the United States proceeded to pass some laws which on their face were intended to promote national security. Unsurprisingly, it is claimed that increasing national security can only be achieved by reducing the protection of several basic and fundamental rights enshrined in the U.S. Constitution. However, this article argues that often, these security measures have the consequence of disproportionately affecting certain marginalized groups.

A) In the wake of the 9/11 terror attacks: the Patriot Act

An example of this encroachment was when congress passed the *USA PATRIOT Act* in 2001⁴, a month after the 9/11 attacks, which made it significantly easier for the United States government to obtain personal information. The Act passed by an overwhelming majority under the veil of "National Security."⁵

Under this Act, the government was given the power to ignore certain constitutional and civil liberties, on account of requiring a much lower standard. As the staff attorney for the American Civil Liberties Union, Jameel Jaffer stated:

The FBI can obtain records... merely by specifying to a court that the records are "sought for" an ongoing investigation... That standard... is much lower than the standard required by the Fourth Amendment, which ordinarily prohibits the government from conducting intrusive searches unless it has probable cause to

believe that the target of the investigation is engaged in criminal activity.⁶

The government also used the Act as a way of broadening the scope of their power, such that domestic terrorism would now fall under the definition of “types of terrorist activities under [the government’s] purview.”⁷ The Act further circumvents certain constitutional rights, by allowing suspects to be detained on mere suspicion, regardless of whether there is any truth to the allegations, and also allows the Department of Justice to obtain electronic communications from individuals, without ever having to obtain a court order.⁸ Prior to these changes, if the government wanted to obtain this type of information, they would need to demonstrate either “probable cause or a compelling need for access to the information,” but as a result of the Act’s newly imposed threshold, the standard for which is essentially non-existent, the entire process is expedited at the expense of fundamental civil rights.⁹

B) The continuing trend: the REAL ID Act

In 2005, the Senate passed the *Real ID Act*. This Act,¹⁰ apart from several changes to acceptable driver’s licenses and identification cards, also made it significantly more difficult for asylum seekers, especially those coming from war-torn countries. The Act effectively expanded “the category of persons ineligible for refugee status based on their supposed ‘engagement in terrorist activity.’” Refugee status is denied to persons who have provided ‘material support’ to a terrorist organization.”¹¹ This broad exception makes it increasingly difficult for a vulnerable and marginalized segment, particularly women and children, who are trying to escape being raped and tortured in underdeveloped countries.

One of the issues with this Act is that it fails to consider the involuntary actions of those people acting under duress. Take for example the story of a woman from Sierra Leone, whose name has been protected. Rebels arrived at her home, burned one of her family members, and killed another. Both she and her daughter were attacked and raped. These rebels stayed in her home for four days as unwanted guests.¹² Yet, because of the “material support” rule entrenched in the *Real ID Act*, anyone who provides support to a terrorist group is ineligible to declare refugee

status in the United States. The fact that the rebels stayed in her home for four days meant that according to the law she provided support for a terrorist group, even though that support was being provided under extreme duress, she was prevented from entering the United States. Further, even if she were to then attempt to cross in Canada, she would be sent back to the United States, since the United States is a safe country.¹³

C) The recent targeting of minority groups: the 2017 ‘Travel Ban’

The United States has been referred to as “the nation of immigrants.”¹⁴ It is thus shocking to discover that when Mr. Donald Trump was running for President in the 2016 campaign, his poll numbers increased 6.5% after announcing that he would order “a complete shutdown of Muslims entering the United States until our country’s representatives can figure out what is going on.”¹⁵ Once elected, President Trump passed Executive Orders No. 13,769 and No.13,780 to “protect the nation from foreign terrorist entry to the United States.”¹⁶ Although President Trump initially stated that the Order was passed to fulfill his campaign promise to ban Muslims from entering the United States, the legislation does not explicitly use the term Muslim.¹⁷ However, what the Order does do, is temporarily suspend entry from seven countries, all of which happen to be Muslim-majority countries. According to President Trump, that is merely a coincidence, these seven countries were, “included because Congress and the administration had identified them as ‘the most-watched countries harboring terrorists’.”¹⁸

Ironically, Executive Order 13769 uses language that includes, “[t]he United States cannot, and should not admit those who do not support the constitution,” when the Order itself is likely to be against the Constitution.¹⁹ Executive Order 13769 reduces the total number of refugee admissions to 50,000 and suspends the refugee admissions for 120 days.²⁰ Hours after the order had been announced, the constitutionality of the order was challenged, and deemed to be unconstitutional in that it violated the right to due process and equal protection.²¹ It was in effect, except in the extent to which it was blocked by some countries, from January 27th, 2017 until March 16th, 2017. The language of the Order was particularly couched in national security terms. For example, under Section 2 it

stated that: "It is the policy of the United States to protect its citizens from foreign nationals who intend to commit terrorist attacks in the United States, and to prevent the admission of foreign nationals who intend to exploit United States immigration laws for malevolent purposes."²²

A revised order, Executive Order 13780, was passed on March 6, 2017.²³ The bulk of the order remained the same, however, Iraq was no longer included on the list of countries whose refugee admissions would be suspended.²⁴ It also permitted permanent residents to enter without suspension.²⁵ The White House senior policy advisor, Stephen Miller, explained that "[o]ne of the big differences that you are going to see in the executive order is that it is going to be responsive to the judicial ruling, which didn't exist previously."²⁶ Despite these revisions, courts continue to find that the establishment clause and/or rights to equal protection were being violated, based on religious discrimination. On its face, the Order appeared to be motivated by anti-Muslim sentiment.²⁷ In both the 2018 *Hawaii v Trump*,²⁸ and the 2017 *International Refugee Assistance Project et al v Trump*²⁹ cases, the courts found and upheld that due to establishment clause claims a temporary nationwide restraining order should be implemented, on the basis that the Executive Order was "primarily motivated by religious animus against Muslims," and also because the President was exercising powers beyond the scope of his authority.³⁰

Does the question then become why were these measures necessary? The suggested reasons: the 2017 Las Vegas shooting; the 2017 airport shooting at Fort Lauderdale airport; the Orlando nightclub shooting in 2016; the 2015 shooting in San Bernardino; the 2015 shooting in Chattanooga; and the 2015 church shooting in Charleston, were all carried out by United States citizens.³¹ Yet, there is this continued divergence, singling out, and further perpetuating this racial and religious discrimination. Essentially, the United States government has identified, albeit incorrectly, that Muslim refugees are creating a threat to national security and by imposing this Order the government will be able to address the root of that problem, under this notion that the Executive Order will help promote national security. Upon closer inspection, this presupposition that Muslim refugees are posing this serious threat to national security seems not

only wholly unfounded, but it can only be drawn if one were to ignore all of the recent shootings mentioned above, where that Muslim refugee precondition was not met. There is no denying that each of the aforementioned tragic events would certainly rise to the level of national security, and yet somehow none would have fallen within the purviews of this Executive Order.

The question then remains, is the purpose of this order to promote national security, or is this an attempt to provide those with a deeply ingrained stereotype with a false sense of security?³² This stereotypical message is portrayed time and again in news reports, movies, and on television.³³ While it may be unclear whether it is the policy that is furthering the stereotype or vice versa, the fact remains that this law was passed by way of Executive Order to address what was perceived to be a national security concern. While these Executive Orders have been used more frequently of late, this power is supposed to be exercised in good faith, during times of emergency.³⁴ It would be unfortunate to see the President of the United States exercising his broad power, circumventing civil liberties, and passing an Executive Order for national security when in reality, the Order is not addressing a genuine concern.³⁵ Further, not only does the Order fail to address real issues of National Security, but bypassing it, the government is reinforcing and spreading stereotypical ideas.

3. TERRORISM AND MUSLIM CHARITIES

When George W. Bush declared war on terror, he also promised to shut down terrorism's financial network. That meant freezing the assets of any charities with ties to terrorist organizations. Within the span of a 10-day investigation, the three largest Muslim charities in the United States had all of their assets frozen.³⁶ The decision to enforce these "terrorism financing laws have disproportionately affected Muslim charities."³⁷ As the *American Civil Liberties Union* has stated:

The laws prohibiting material support for terrorism are in desperate need of re-valuation and reform. These laws punish wholly innocent assistance to arbitrarily blacklisted individuals and organizations, undermine legitimate humanitarian efforts, and can be used to prosecute innocent donors who intend to support only

lawful activity through religious practice, humanitarian aid, speech, or association.³⁸

These terrorism financing laws deny these charities due process, and “allow the seizure and indefinite freezing of a charitable organizations’ assets ‘pending investigation,’ without notice, charges, opportunity to respond or meaningful judicial review.”³⁹ Without warning, the charitable organization will receive a letter, notifying them that the charity’s property and interests in property will be blocked while the investigation takes place. In the meantime, the charitable organization has no way of providing defense and incurring legal fees, because all their assets have been seized.

As an example of the application of these laws, *KindHearts for Charitable Humanitarian Development Inc.* attempted to avoid having their assets frozen and tried to comply with the law. Then in 2006, the charity had all of their assets frozen without notice. They were told that they were under investigation, “without notice of the basis for the freeze, any hearing, any finding of wrongdoing, or any meaningful opportunity to defend... based on classified evidence.”⁴⁰ Furthermore, all of the proceedings were conducted *ex parte* and *in camera* without the presence of the charitable organization. Despite all of this, there is no accountability, since the government is free to hide behind the cloak of national security, and while that may be enough reasoning for the United States to continue engaging in this practice for the immediate future, other countries have started to denounce these terrorist designations and asset seizures.⁴¹

4. THE PROLIFERATION OF ANTI SHARIA-LAW

At this time the United States has not passed any federal legislation which explicitly prohibits Sharia law. At the state level, more and more states are either proposing or passing bills that would prevent the courts from enforcing foreign law. Between the years 2010 and 2016, 18 anti-Sharia bills have been enacted, and a total of 194 anti-Sharia bills have been introduced.⁴² “The ‘anti-Sharia law’ movement did not originate within a vacuum, but has been garnering support and influence since 9/11.”⁴³

According to Yerushalmi, it is not the passing of the bills that matter, but rather the

discussions that come from it. In his view, “[i]f this thing passed in every state without any friction it would not have served its purpose.”⁴⁴ Instead, he hopes people will think deeply about these issues, as did former National Security Advisor Michael Flynn, who once said:

I don’t see Islam as a religion. I see it as a political ideology... it will mask itself as a religion globally because, especially in the west, especially in the United States, because it can hide behind and protect itself behind what we call freedom of religion.⁴⁵

It is that ignorance and lack of understanding which enables many of these anti-Sharia law bills to be passed at a state level and normalizes this culture of fear. However, rather than overgeneralizing and drawing conclusions based on stereotypes, it is important that people understand the consequences that stem from passing anti-Sharia laws, and whether these laws serve to address any real threat at all.

Many people think of honor killing and immediately decide that this is a law that should never be followed. What they fail to consider, is that such laws could never be enforced in the United States as “the applicability of foreign law is always determined by American law. The Constitution establishes that foreign law does not supplant state law or American law.”⁴⁶ The threat of Sharia law superimposing on American law had never been a problem, but by introducing these bills, these advocates “propelled Islamophobia into cities and towns across the US that had never heard of Sharia, let alone perceived Sharia as a threat to their constitutional rights or way of life.”⁴⁷

These bills instill fear and hate, into the American people, and further stigmatize this minority group. What often becomes overlooked are some of the fundamental problems which are inevitable once one of these anti-Sharia bills has passed, namely the effects on wills and marriage contracts. If a judge is unable to enforce Sharia law, then any marriage contract or will be based on Sharia principles becomes unenforceable.⁴⁸ A Muslim person would need to carefully make sure that any contracts are void of Sharia principles. Any marriage contracts promising a dowry to the wife upon divorce would be difficult if not impossible to enforce. Such a contract would have been carefully drafted, to protect the woman, and to ensure that she will be taken care of if her husband ever decides to

leave. Typically the place where the marriage takes place is the law that governs. If Sharia law is not recognized, then what does that mean for marriages conducted outside the United States where Sharia law applies? The law which was intended to protect people has this ancillary effect which can potentially cause a significant amount of uncertainty and financial harm.

Similarly, the constitution protects the freedom of religion. Presumably, there are Muslim people with certain religious beliefs who would prefer to draft a will that reflects those beliefs. If they happen to live in a state where anti-Sharia law has been passed, then they will be denied those rights.⁴⁹ Instead of simply leaving it to the courts' discretion, and allowing them to examine the circumstances on a case by case basis, anti-Sharia laws divest judges from the authority to decide what law governs. To date, only one lawsuit has struck down anti-Sharia legislation,⁵⁰ but if this trend continues, more are bound to follow.

In 1965, the United States Congress passed the *Immigration and Nationality Act*, which stated that no person could be "discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth or place of residence."⁵¹ Time has passed, but rather than adopting policies that address the root of the issue, the government is choosing instead to ignore these non-discriminatory *Acts*. A more successful policy would look to change the structure, instead of focusing on the symptoms, "undocumented people are a symptom of a problem, not the problem itself."⁵²

5. NATIONAL SECURITY AND MINORITIES IN FOREIGN SOIL

Finding the right balance between national security and constitutional rights is a difficult task and one which has leaned more heavily on the side of national security in the United States in the years following 9/11. Although the official numbers are unknown, it is reported that recently the CIA operated at least 95 black sites in over 30 states, while also operating at least 17 floating prison ships.⁵³ Prisoners at these black sites were subjected to enhanced interrogation techniques, such as waterboarding, stress positions, and ice baths, all in an attempt to elicit information.⁵⁴

If an individual is detained at these black sites, any semblance of rights is all but forgotten, as they become trapped in a legal black hole, irrespective of any universal norms.

The right to be free from torture is a universally accepted non-derogable right, the United States has ratified the *United Nations Convention Against Torture*⁵⁵, and yet these prisoners were being detained indefinitely, without being charged, and without being permitted access to the judicial process.⁵⁶ "Legislation specifically instructs domestic judges not to rely on foreign sources for their interpretation of its prohibitions."⁵⁷

Sadly, there is little accountability for officials involved in these covert practices. The immunity doctrine protects officials from torture claims. As it has been claimed, "even if plaintiffs had rights under the Due Process Clause and the Cruel and Unusual Punishment Clause and even if those rights had been violated, qualified immunity shields the [official]."⁵⁸ In dozens of cases, courts have found that there is no lawful reason to detain these prisoners, and yet despite these findings, there is still no guarantee that these prisoners will be released.⁵⁹ Courts in the United States have opted instead to interpret war crimes in their way, separate and distinct from the definitions used in international humanitarian law and irrespective of any *jus cogens* norms.⁶⁰ Furthermore, individuals are prevented from bringing any civil actions forward due to the state secrets doctrine which bars anything posing any risk to national security from advancing to trial.⁶¹

As it has been stated, "the creation of human rights-based norms and their place in any hierarchy comes back in most cases to the judges themselves."⁶² Recently, that discretion is being overshadowed because of decisions made by the executive branch and the separation of powers. New policies and public opinion, in light of the San Bernadino and Paris attacks, are allowing human rights to take a back seat to national security. The United States has shut its doors to thousands of refugees, calling it a "necessary precaution to protect U.S. citizens."⁶³ They do so relying on old precedents established in cases like *Chae Chan Ping* (1889) and *Korematsu* (1944). These were cases that established this "necessary precaution,"⁶⁴ and preserving national security interests by way of discrimination.⁶⁵

6. OPPRESSING MARGINALIZED GROUPS UNDER THE GUISE OF PROMOTING NATIONAL SECURITY

The analysis of these selected laws, policies, and executive orders serve to illustrate how the national security narrative has been used, in multiple aspects, to undermine the rights of minorities. While not always overtly directed at certain specific groups, reports have demonstrated that their effects have been to target and undermine minority groups. Their detrimental effects are both direct, by limiting and stripping these groups of their constitutionally protected rights, but also symbolic, contributing to the institutionalization of fear and discrimination.

The narrative of ‘in the name of national security’ used to justify draconian measures that affect minorities has the consequence of shielding these measures from legal scrutiny. Under the veil of national security, such measures are normalized and they make the violation of civil liberties and human rights accepted by the general public. This in turn has the effect of creating a social norm where individuals can be stripped of rights for the greater good of ‘keeping the nation safe’. However, many of the national security measures adopted in the United States to counter alleged terrorist threats start from

a dangerous premise: that individuals bearing some common characteristics (e.g. nationality) pose a greater threat to the nation and thus shall be the focus of such measures. It is a slippery slope scenario: once rights are minimized or limited in the name of national security, the government gives itself *carte blanche* to act, rights become derogable and disposable, to the detriment of all.

The purpose of this paper was to examine some selected case studies of measures adopted in the United States in the name of national security which can have detrimental effects on individuals from minority groups. The empirical analysis of the measures adopted by the government not only demonstrate that they aim, directly or indirectly, to target and marginalize minorities, but also, and importantly, that there is no evidence that they are making the country safer, and thus not achieving their national security objectives.

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NOTES

1. Public Law, 107-56-October 26th, 2001 (hereinafter 'Patriot Act').
2. Public Law 109-13 109th Congress, May 11th, 2005.
3. Order 13769, January 27th, 2017; Executive Order 13780 and Presidential Proclamation 9645.
4. Note 1.
5. U.S. Senate Roll Call Votes 107th Congress – 1st Session, www.senate.gov, October 25, 2001.
6. Brasch, Walter M., and Jörg Waltje. America's unpatriotic acts: The federal government's violation of constitutional and civil rights. Peter Lang, 2005 at 12.
7. Kleinder, Yevgenia S. "Racial profiling in the name of national security: Protecting minority travelers' civil liberties in the age of terrorism." BC Third World LJ 30 (2010): 103 at 106.
8. See Kleinder, supra note 2 at 118. One of those opposing the Act was Senator Russ Feingold, who "warned that the PATRIOT Act fell 'short of meeting even basic constitutional standards of due process and fairness [because it] continues to allow the Attorney General to detail persons based on mere suspicion."
9. Ibid, at 119.
10. See note 2.
11. Canadian Council for Refugees. (2006). Less Safe than ever: Challenging the designation of the US as a safe third country for refugees. Montreal, QC. at 2-3.
12. Janet Dench, "America no 'safe haven' for refugees." The Star (2007) retrieved from: https://www.thestar.com/opinion/2007/02/06/america_no_safe_haven_for_refugees.html
13. Ibid.
14. Tyler Lloyd, "Closing the Golden Door: The Potential Legality of Donald Trump's Ban on Muslim Immigration." (2016) 30:2 Geo Immigr LJ 399 at 400. ("Trump has defended his proposal as a necessary precaution to protect U.S. citizens "[u]ntil we are able to determine and understand this problem [of Islamic extremism] and the dangerous threat it poses" at 402.)
15. Ibid, at 399.
16. Lee, Eunice. "Non-Discrimination in Refugee and Asylum Law (against Travel Ban 1.0 and 2.0)." Geo. Immigr. LJ 31 (2016): 459 at 460.
17. Ibid, at 461.
18. "Trump's executive order: Who does the travel ban affect?" BBC News. (10 February 2017). [BBC News] online: <http://www.bbc.com/news/world-us-canada-38781302>
19. Executive Order No 13769. Protecting the Nation from Foreign Terrorist Entry To The United States, 82 Fed Reg 8977 (Jan 27, 2017) at Section 1.
20. Lee, supra note 10 at 464.
21. Darweesh v Trump, 1:17- cv-00480, (EDNY Jan 28, 2017).
22. Executive Order No 13769. Protecting the Nation from Foreign Terrorist Entry To The United States, 82 Fed Reg 8977 (Jan 27, 2017) at Section 2.
23. Lee, supra note 16 at 468.
24. Ibid.
25. Ibid, at 469.
26. Ibid, at 270.
27. See, Lee, supra note 10 ("As Professor Gerald Neuman points out, this directive 'has no conceivable relation to the alleged national security purpose of the travel ban, and it continues to reveal the true underlying purpose of both orders.' In other words, it comprises facial evidence of discriminatory purpose" at 472.)
28. 138 S. Ct. 2392; 201 L. Ed. 2d 775.
29. 857 F.3d 554 (4th Cir. 2017).
30. Ibid, at 473.
31. BBC News, supra note 18.
32. Shaheen, Jack G. "Reel Bad Arabs: How Hollywood Vilifies a People." The ANNALS of the American Academy of Political and Social Science, vol. 588, no. 1, July 2003, at 172.
33. See, Shaheen, supra note 23 (Not only do these violent news images of extremists reinforce and exacerbate already prevalent stereotypes, but they serve as both a source and excuse for continued Arab-bashing by those filmmakers eager to exploit the issue. In particular, the news programs are used by some producers and directors to deny they are actually engaged in stereotyping. 'We're not stereotyping,' they object. 'Just look at your television set. Those are real Arabs'" at 189.)

34. Neighbors, William D. "Presidential legislation by executive order." U. Colo. L. Rev. 37 (1964) at 117.
35. See, Neighbors, supra note 25 ("[T]he President has the power to act at his discretion for the public good without explicit legal authority sometimes even in violation of a law which the President believes impinges upon the common good. Constitutional restrictions have been ignored, in effect, when an emergency existed and presidential action was needed in the interest of the community" at 108-109.)
36. American Civil Liberties Union. (2009). Blocking Faith, freezing Charity. New York, NY. at 7.
37. Ibid, at 11.
38. See, American Civil Liberties, supra note 27 at 26.
39. Ibid, at 39.
40. Ibid, at 42.
41. See, American Civil Liberties, supra note 27 ("[M]any countries stopped cooperating with the U.S., because the U.S. said it had evidence of supporting terrorism, but all the 'secret' evidence the U.S. had was press clippings" at 121.)
42. Elsheikh, Elsadig, Basima Sisemore, and Natalia Ramirez Lee. "Legalizing Othering: The United States of Islamophobia." (2017) Haass Institute, Berkeley, CA. at 8 [Legalizing Othering].
43. Ibid, at 6.
44. Elliott, Andrea. "The man behind the anti-Shariah movement." New York Times 30 (2011).
45. Beinart, Peter. "The Denationalization of American Muslims." The Atlantic 19 (2017).
46. Supra note 42 at 37.
47. Ibid, at 38.
48. See Legalizing Othering, supra note 42 ("If a state legislature enacts an anti-Sharia bill into law, a judge of that state cannot enforce a contract that is based on Sharia principles. This strips judges of their ability to enforce marriage contracts, business contracts, divorce contracts, wills, etc. that are written in accordance with Sharia principles. This results in an unequal treatment of Muslims, and violates their freedom to contract, as well as their religious liberty protections as afforded by the First Amendment of the United States Constitution" at 43.)
49. See Legalizing Othering, supra note 33 ("Muslims seeking relief from a state court will have to ensure that their claims, defenses, evidence and legal arguments are scrubbed of all references to Islamic law and beliefs. Otherwise, courts will be unable to adjudicate their disputes or perform routine judicial functions, such as probating wills" at 43.)
50. Awad v Zirrax, et al, No. 10-6273 (10th Cir. 2012).
51. BBC News, supra note 11.
52. Judith Golub, "Immigration Reform Post-9/11." (2005) 13 US-Mex LJ 9 at 15.
53. Sherwood Ross, "More Than Two-Dozen Countries Complicit In US Torture Program", The Public Record (1 April 2010), online: <pubrecord.org/torture/7326/two-dozen-countries-complicit-torture/>.
54. US, Senate Select Committee on Intelligence, 113th Cong, Committee Study of the Central Intelligence Agency's Detention and Interrogation Program: Findings and Conclusions (Washington, DC: US Government Printing Office, 2014) at 3-4
55. N General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at: <https://www.refworld.org/docid/3ae6b3a94.html> [accessed 10 May 2019].
56. UNCATOR, 36th Sess, UN Doc CAT/C/USA/CO/2 (2006) at para 22.
57. Patricia Wald, "National Security versus Human Rights: An Uneven Playing Field." (2010) 104 Am Soc'y Int'l L Proc 458 at 459.
58. Rasul v Myers, 563 F3d 527 (DC Cir 2009) at 529.
59. Wald, supra note 57 at 459.
60. Ibid.
61. Ibid.
62. Ibid, at 461.
63. Lloyd, supra note 7 at 402.
64. Chae Chan Ping v United States, 130 US 581 (1889).
65. Korematsu v United States, 323 US 214 (1944) (Japanese Americans in the United States were ordered into Internment Camps during WWII, simply because they were Japanese Americans).