Introduction

AS WE SHUFFLED OUT OF CLASS, the tension in the air was palpable. Instead of the usual sounds of law student chatter, the halls were eerily quiet. I walked toward the lobby, noticing a large congregation of students huddled around the television. I heard gasps at the replays of two commercial airplanes crashing into the World Trade Center. What happened on that Tuesday of my second week of law school is etched in my memory forever. It was the day I went from being racially ambiguous to racially threatening.

I joined my classmates in shock at the sight of buildings crumbling, people fleeing, and emergency personnel hauling away dead bodies covered in blood and dust. We oscillated between listening intently to the newscasters and speculating about what was happening. How could this have happened? Who was flying those airplanes?

As television stations replayed the horrific scenes alongside analysts providing facts piecemeal, a theme was beginning to emerge: this may have been a terrorist act, not an accident. And the suspected perpetrators were Arab Muslim men. The stares of my classmates felt like lasers.

I quickly left the law school as my mind turned to the safety of my mother, who wore the Muslim headscarf. I feared the backlash would be violent. I worried she would be attacked at the large public hospital where she worked. I also worried about my father, whose first name is Mohamed and who speaks with a heavy foreign accent. Would their coworkers accost, or worse, assault, them out of a desire for revenge? Would they be afraid to go to work, to the grocery store, to the mosque? Would we be blamed for these atrocious criminal acts? Our lives in America as invisible minorities were over. We were now Racial Muslims.

That day changed the trajectory of my legal career in ways I could never have predicted. No longer would my professional goal be to work on rule

of law in Egypt, where I was born and from where my family had immigrated. I had enrolled in law school, despite my parents' wishes that I be an engineer or a doctor, out of an idealistic commitment to the fundamental rights enshrined in the US Constitution. The freedom of speech, association, assembly, and religion were rights I knew were not available in all countries. Hearing stories of my parents' experiences that caused them to leave their family and home behind to resettle in a new land with a different language and religion made me appreciate that freedom is not free.

The intense backlash against Muslims after 9/11, however, caused me to postpone any plans to travel to the Middle East to work with local civil society organizations to further the rule of law and defend human rights. A more existential issue now faced me, my family, and my faith community in the United States.

Everything, ranging from our mosques and charities to our travel and dress, was under scrutiny. American media now associated all things related to Islam with terrorism and threats to national security. My faith in the American legal system would be put to the test as I defended the rule of law right here in the United States.

. . .

"The New York Police Department Gathered Intelligence on 250-Plus Mosques, Student Groups in Terrorist Hunt," read the Associated Press headline on August 24, 2011.[1] Investigative reporters had uncovered a massive multiyear surveillance program wherein the NYPD was intentionally spying on tens of thousands of Muslims in the Tri-State area. What many of us in the civil rights community had long suspected was now confirmed: simply being Muslim was sufficient to attract the invasive scrutiny of the state.

But how could this happen in a country that prides itself on privileging religious freedom, both in law and in society? Where was the public outcry opposing the state's targeting of a religious minority in ways that chilled their right to religious freedom? Surely, spying on a house of worship constitutes the most direct infringement on this cherished First Amendment right.

Having advocated for the civil rights of Muslims for nearly a decade, I thought through different legal theories to challenge the NYPD surveillance program. My research led to me Title VI of the 1964 Civil Rights Act—a law that restricts recipients of federal funding from discriminating in their provision of services. Local and state police departments are among the

largest recipients of federal funds from the US Departments of Justice and Homeland Security.[2] I thought I was on to something that could avoid the lacuna of the equal protection doctrine that thus far had failed to protect Muslims from post-9/11 discrimination.

Each time a Muslim plaintiff challenged national security practices on First, Fourth, Fifth, or Fourteenth Amendment grounds, courts dismissed the claims because the plaintiff could not prove the government intended to discriminate on the basis of the plaintiff's religion. Instead, courts accepted government claims that its policies and practices were rationally aimed to secure the nation, not target Muslims. Since the US Supreme Court ruling in *Washington v. Davis* in 1976, proving a disparate adverse impact on a minority group has been insufficient to win a Fourteenth Amendment equal protection claim.[3] Thus, a Title VI statutory claim offered a potential alternative litigation strategy.

There was one problem, though: the text of Title VI. The statute reads, "No person in the United States shall, on the ground of *race, color, or national origin*, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."[4] Religion is glaringly absent as a protected class under Title VI. Muslims, thus, are unprotected by the statute.

Muslim identity is not a race in any phenotypical sense. Indeed, Muslims are the most racially diverse faith community in the United States, composed of African Americans and immigrants from more than seventy-five countries.[5] Their diversity makes it hard for a lawyer to prove that a particular race or national origin, as required by Title VI, is the grounds on which national security practices are directed at Muslims.

And yet what we are witnessing in the post-9/11 era is a type and degree of profiling and targeting more closely resembling the racial discrimination historically experienced by African American, Native American, and Asian American communities (of all faiths). Muslims are being treated as a race, and more specifically, a suspect race, rather than as a religious minority to be protected from persecution. For that reason, government officials and members of the public—who may in fact believe in religious freedom norms—do not view targeting Muslims in national security and immigration practices as a threat to religious freedom.[6]

Herein lies the genesis of this book. With the goal of making a legal claim to stop police surveillance of Muslim communities, my research led me to a more fundamental question with much broader implications for

all Americans. Is our stated commitment to religious freedom meaningful? Does it apply equally to all faith communities? If so, then how can we explain the systematic subordination of Muslim communities, including physical attacks on and surveillance of their houses of worship, under the guise of national security? The explanation, I believe, lies in the racialization of a minority religious group—a process with a protracted and checkered history in the United States.

This book interrogates how and why a country where religious freedom is a founding principle in law and societal norms produces such overt prejudice and discrimination against Muslims. How does the critical mass of Americans in the twenty-first century that holds unfavorable views of Muslims reconcile such mistreatment with the nation's (and their own) commitments to religious freedom?[7] More pointedly, how do Christian religious conservatives who decry assaults on their own religious freedom justify their support, as shown in numerous polls, for state practices that infringe on Muslims' religious freedoms?[8]

I proffer that the explanation lies in how racism intersects with religion to racialize a religion's followers and consequently excludes them from the panoply of religious freedom protections. Put simply, racialization causes a faith community's religious freedoms to be circumscribed or denied altogether. The ways in which particular religious communities are racialized depend on both domestic and international factors unique to that group. For this reason, I limit my analysis to the experiences of immigrant Muslims. That is because the domestic factors contributing to the racialization of African American Muslims is starkly different, though certainly overlapping, from the domestic factors racializing Muslims who immigrated primarily from the Middle East, North Africa, and South Asia. Similarly, relations between the United States and immigrant Muslims' countries of origin influence their treatment legally and socially in the United States in ways that do not impact African American Muslims.

My intervention is twofold. First, I argue that the racialization of immigrant Muslims is grounded in a racial-religious hierarchy, as opposed to just a racial hierarchy, to socially construct a racialized Muslim identity. Second, I offer a typology of what I call the Racial Muslim that explains why some immigrant Muslims are more likely to be targeted than others by private and government Islamophobia. Four factors converge to racialize Muslims to produce the Racial Muslim: (1) White Protestant supremacy, (2) xenophobia arising from coercive assimilation into Western European cultural norms,

(3) Orientalism, and (4) American empire in Muslim-majority countries. I explore how each of these factors interacts politically, socially, and discursively to define the characteristics attributed to Racial Muslims that in turn legitimize their systematic subordination.

The scholars Deepa Kumar and Nazia Kazi have critically examined how race intersects with empire in the racialization of Muslims, which I build on in my deeper examination of how religion, religious beliefs, and religious practices also racialize a group within the United States.[9] Scholars on Arab American identity, such as Nadine Naber, Amaney Jamal, and Moustafa Bayoumi, examine how religious affiliation influences Arab racial identity placements and how mainstream American society views Arab Americans.[10] The work of other scholars who have insightfully examined the intersection of race and religion, such as Tisa Wenger, does not extend to Muslims in the United States; and Erik Love's important work, *Islamophobia and Racism in America*, is limited to an exploration of Islamophobia exclusively through the lens of American racism.[11]

The existing literature, thus, does not examine in detail the central role religion plays and how it racializes diverse immigrants encompassed in the Racial Muslim construct.[12] And no books have yet presented an in-depth comparative analysis between the racialization of immigrant Muslims today and other religious minorities in the past. In this regard, I merge and expand on the important work of these scholars by showing how empire, American race/racism, xenophobia, *and* religion interact to racialize immigrant Muslims in the post-9/11 era.

The co-constitutive nature of religion and race means neither identity exists in isolation but rather interacts to produce a racial-religious hierarchy.[13] Religious identity in certain contexts functions as a racial marker. The literature on racial and ethnic formation, although richly developed, does not adequately incorporate the role of religion in producing socially constructed racial hierarchies, or what is known as the racialization of religion.[14] Likewise, the literature on religious freedom tends to overlook the dispositive role that race plays in the subordination of religious minorities. The social construction of Whiteness is shaped as much by religious identity as it is by skin color, hair texture, facial features, and other phenotypical characteristics.[15]

To fill these gaps in the literature, I proffer a theoretical framework to explain why Islamophobia—the systematic fear of Muslims and Islam[16]—has become entrenched in American race politics and in turn produces anti-Muslim racism on individual and structural levels.[17] My theoretical framework

aims to explain the causes of a phenomenon, or more specifically, a paradox: overt private and state discrimination against a religious minority in a country that privileges religious freedom in both law and society.

To be sure, the Racial Muslim construct cannot explain every individualized experience or exception. Nor do I claim direct causation between the four macro factors in my theoretical frame and anti-Muslim racism. Instead, this book explains how the multiple, complex factors intersected in the past to produce systematic discrimination by the state, political elites, and members of the public against immigrant Muslims in the United States in the post-9/11 era.

THE RACIAL MUSLIM TYPOLOGY

The September 11 terrorist attacks finalized a transformation of Muslim identity that had been in the making for decades and was grounded in European Orientalism. Immigrant Muslims historically have been presumed to be Arabs and vice versa. As a result, Middle Eastern attire, the Arabic language, and Arab-presenting physical markers are combined with real or imputed Muslim beliefs to create a racial identity.[18] Put simply, to be Middle Eastern is to be presumed Muslim and vice versa. After the September 11 attacks, the racial markers of Muslim identity became tied to Al-Qaeda, ISIS, the Taliban, or Hamas. Persons who looked, dressed like, or had the same names as terrorists profiled in the media were collectively treated as Racial Muslims. Moreover, people of South Asian origin—whether Hindu, Sikh, Christian, or Muslim—joined Arabs in being "Muslim-looking."

By definition, Racial Muslims do not experience full religious freedom protections afforded to religious minorities. Nor are they considered to have an American national identity, even if they were born in the United States or possess US citizenship. Rather, Racial Muslims are a suspect race, permanent foreigners, and national security threats who warrant exclusion, purging, or incarceration to protect real (White Judeo-Christian) Americans. Their mere presence on US soil poses a national security threat.

Like any persons who are attributed a socially constructed racial identity, Racial Muslims are not all treated the same by the government or private actors. Building on Mahmoud Mamdani's "good Muslim, bad Muslim" frame, I propose that the performative and social construction of the Racial Muslim is hierarchical, not dichotomous.[19] Mamdani argues that the US gov-

ernment's "good Muslim" aligns geopolitically with the United States. For example, during the 1980s, some political Islamists such as the Afghan mujahideen and Saudi Arabian Salafists were "good Muslims," whereas others such as Khomeini and his Islamist supporters were "bad Muslims," deemed enemies of the United States.

I expand on this dichotomy by arguing that the severity and extent of state and private acts of racialization vary depending on the Racial Muslims' religious practices, political beliefs, and assimilation as defined by Anglo-Protestant social norms. Accordingly, the Racial Muslim comprises an internal hierarchy that determines which Muslims are most and least likely to be targeted by private and state anti-Muslim racism. The hierarchy is shaped by a Muslim's levels of religiosity and political dissent. Hence a religious political dissident Muslim is likely to experience the harshest forms of anti-Muslim racism, while a secular, politically mainstream or apolitical Muslim is likely to be tolerated as a "good Muslim." While skin color, hair texture, facial features, and other phenotypical traits still affect the racialization process, phenotype is subsumed by the now-racialized Muslim identity. Put another way, a White-presenting immigrant practicing Muslim named Mohamed cannot escape Islamophobia or anti-Muslim racism in the post-9/11 era.

Two international factors interact with two domestic factors to produce this outcome. American imperial designs and Orientalism interact with coercive assimilationism of immigrants and White Protestant supremacy. The interplay of these four factors produce five typologies of the Racial Muslim: (1) Religious Dissident, (2) Religious, (3) Secular Dissident, (4) Secular, and (5) Former Muslim. The typology partially explains the interplay between the state's prioritization of certain Muslims in national security enforcement, on the one hand, and individual identity performances by Muslims seeking to avoid the material and dignitary harms arising from racialization, on the other.[20]

Secularism and support for American militarism in Muslim-majority countries signify higher levels of assimilation into White Christian normalcy.[21] The Secular Racial Muslim thus is the least threatening, both for liberal elites and for religious conservatives. In contrast, Islamic beliefs and practices coupled with dissent against American foreign policy make him a Religious Dissident Racial Muslim targeted for surveillance, prosecution, deportation, denaturalization, and private discrimination. The Former Racial Muslim, meanwhile, serves as a native informant who legitimizes repression of the other four categories of Racial Muslims.

Religious Dissident Racial Muslim

Muslims experiencing the most harm from Islamophobia and national security practices are the political dissidents (as defined by the US government and American elites) who practice Islam. Accused of terrorism, barbarity, and inassimilability, the Religious Dissident Racial Muslim is the prime target of government antiterrorism operations, frequently discriminated against at work and in public, and portrayed in the media as a threat to American security.[22] In vociferously challenging American empire abroad and racism at home, Religious Dissident Racial Muslims attract government repression, which in turn chills other devout Muslims, who remain silent about their dissenting political views and hide their religious beliefs.[23] The result is a coercive depoliticization and secularization of immigrant Muslims in exchange for less discriminatory treatment.

Religious Racial Muslim

Less dangerous, though still subject to heightened state scrutiny and public suspicions, is the Religious Racial Muslim, who is either apolitical or supports mainstream politics particularly with regard to US policy in Muslim-majority countries.[24] Even though Muslims in this category do not challenge the political status quo, their religiosity alone prompts state scrutiny and public suspicions. Praying five times a day, fasting during Ramadan, growing a beard or wearing a hijab, socializing with other religious Muslims, attending Islamic school, and regularly attending a mosque triggers government suspicion. Just being religious makes a Muslim vulnerable to recruitment by Islamic terrorist groups, according to this racialized reasoning. The Religious Racial Muslim's visible religious identity and lifestyle also triggers suspicions by neighbors and coworkers influenced by right-wing Islamophobic conspiracy theories of Muslims as a fifth column or Trojan horse waiting to Islamicize America from within.[25]

Secular Dissident Racial Muslim

More palatable to mainstream White Judeo-Christian America but still racialized as outsiders are Secular Dissident Racial Muslims. They are secular in lifestyle but hold dissident political views. Even though Secular Dissident Racial Muslims may not practice their faith, their political views are still attributed

to a nominal Muslim identity. Opposition to American foreign policy, especially regarding Muslim-majority countries and the Israel-Palestine conflict, and antiracist domestic activism marks an immigrant Muslim as disloyal.[26] That they are not overtly practicing Muslims (e.g., secularized in lifestyle) assures the government of the unlikeliness of recruitment by Islamic terrorist groups. But their support for Black Lives Matter, undocumented immigrant rights, and Palestinian human rights makes them nefarious Muslims who strategically hide their orthodox religious views as part of an anti-American conspiracy. In the end, they are treated as suspect Muslim immigrants who should be investigated, deported, and prosecuted as punishment for challenging White supremacy at home and American imperialism abroad.[27]

Secular Racial Muslim

The most palatable and least dangerous Muslim is secular and politically mainstream or apolitical. Secular Racial Muslims identify as Muslim but do not practice their religion of birth, believe American culture is color-blind, and support American foreign policy. Secular Racial Muslims—commonly referred to as moderate Muslims—attempt to pass as not Muslim to avoid discrimination. The Secular Racial Muslim is the manifestation of the model minority who works hard, doesn't complain, believes America is the best country in the world, secularizes their lifestyle according to Anglo-Protestant norms, and joins majoritarian condemnations of dissident and religious Muslims.[28]

Secular Racial Muslims are the exception that liberal and conservative Islamophobes point to when arguing that they do not believe all Muslims are terrorists. If only all Muslims lived and assimilated like the Secular Racial Muslim, goes the narrative propagated by liberals and moderate conservative Americans, then Islamophobia would not be such a serious problem. Hence Muslims are to blame for the rise in anti-Muslim bigotry. In the end, Secular Racial Muslims stand the highest chance of becoming honorary Whites should American national identity expand from Judeo-Christian to Abrahamic—a topic I explore in the final chapter of this book.

Former Racial Muslim

Finally, the ideal Muslim for White Judeo-Christian normativity is the Former Racial Muslim who converts from Islam (preferably to Protestantism)

and serves as a native informant.[29] Former Muslims such as Ayaan Hirsi Ali, Wafa Sultan, and Nonie Darwish are frequently invited to give media interviews and public presentations to religious conservative audiences where they validate claims that Islam is violent, evil, misogynist, and antithetical to Western civilization.[30] Meanwhile, secular liberals point to female Former Racial Muslims and Secular Racial Muslims to validate their belief that Muslim women need saving by the West.[31] The Former Racial Muslim's portrayals of Islam as misogynistic convince Christians that they are not racist in concluding the "Islamic world" is illiberal and violent.[32] The Former Racial Muslims' role as validators of Islamophobia evinces the permanence of their racialized Muslim identities, notwithstanding their formal departure from the faith. Although their tokenized status allows them to escape the worst consequences of anti-Muslim racism, Former Racial Muslims are still racial outsiders.

THEORETICAL UNDERPINNINGS OF THE RACIAL MUSLIM

The terms *Religious* and *Secular*, as I use them in the typologies discussed above, are not intended to be objective descriptors but rather ascriptive terms based on Anglo-Protestant normativity that dominates American culture and race politics at a particular time. For example, a Muslim who wears a headscarf, has a beard, or prays the daily prayers is perceived as religious in mainstream American society today. In contrast, a Muslim who drinks alcohol, engages in premarital sex, or associates exclusively with non-Muslims is perceived as secularized and modern. Whether that person is in fact religious or secular according to Islamic tenets is not what determines where they fall in the Racial Muslim typology. Rather, it is how they are perceived by those doing the racializing. Those perceptions in turn determine how a Muslim is treated by coworkers, neighbors, friends, and members of the general public—as well as the US government.

Similarly, if one falls within the Religious Racial Muslim and the Secular Racial Muslim typologies, one is not a political dissident as perceived by mainstream American society. This often translates into being either uncritical or supportive of liberalism, American empire, and neoliberal economic policies. Should mainstream politics change in the future, so too will the

boundaries of what constitutes a dissident in the Racial Muslim typology. Whether a particular Muslim is treated as a (nondissident) Religious Racial Muslim or (nondissident) Secular Racial Muslim by the government or private actors is determined by mainstream Judeo-Christian norms, which fluctuate over time depending on domestic and international developments. Put another way, I am not making claims as to what Islam really is or what a Muslim actually believes but rather what the US government and the American public perceive Islam and Muslims to be—which can be dispositive in the racialization of Muslim identity.

I begin the intellectual journey by historicizing the racialization of religion in the United States because in American society religious freedom has always been circumscribed by race. In examining the experiences of Jews, Catholics, and Mormons from the turn of the twentieth century until World War II in chapters 2, 3, and 4, I illustrate how immigrants have always had to conform to Anglo-Saxon Protestant norms, language, and lifestyles in order to access socioeconomic privileges and legal rights of first-class citizenship.[33] Thus, structural assimilation through English-only rules, staunch individualism, and capitalism undergirds American national identity.[34] Immigrants, in turn, are expected to divest their foreign language, culture, dress, and lifestyle.[35] They are also expected to "Protestantize" their faith in ways that translate into a secularization and individualization of their religious communities. Failure to do so results in stigmatizing and discriminatory responses at best or in physical exclusion and criminalization at worst.

Four phenomena explain the historical racialization of Muslims before and after the September 11 attacks: (1) White Christian dominance, (2) American empire, (3) imputation of racial attributes based on religious beliefs and practices, and (4) racialized borders of religious freedom.

White Christian Dominance

Early American Protestant leaders perpetuated Europeans' depictions of Muslims as violent and blasphemous. Tellingly, the famous American Protestant theologian Jonathan Edwards attacked Islam by comparing it to Roman Catholicism.[36] He described both religions as kingdoms erected by the devil to oppose the kingdom of Christ. Because Islam was purportedly established through violence, Edwards claimed, Christ would destroy it as one of the forces of the devil at the battle of Armageddon. Indeed, the

demise of Islam was a sign of the second coming of Christ for some American Evangelicals—a belief that motivates contemporary Evangelicals' support for Israel's dehumanization of the Palestinians.[37]

During the formation of the American Republic, Islam was also deployed as a political foil. For example, Thomas Paine's book *Common Sense* contrasted America's status as an "asylum for liberty" with Islam's despotic empire of superstition and fanaticism.[38] Although Thomas Jefferson emphasized that "Mahometans" should be protected under his vision of religious freedom, as Denise Spellberg's book, *Thomas Jefferson's Quran*, meticulously demonstrates, Jefferson's commitments to religious pluralism were never tested.[39] The only Muslims in America at the time were enslaved Africans not considered fully human under law.[40] John Adams and Thomas Jefferson referred to each other as "Oriental despots" and "Mahometans" as derogatory epithets during the 1800 presidential election, revealing the extent to which Islam was the antithesis of American notions of liberty and freedom.[41]

In chapters 5 and 6, I demonstrate how the association of Islam with violent barbarism predated the September 11 attacks. As far back as the Crusades, Europeans portrayed Islam as an evil threatening Christian civilization.[42] Remnants of European Orientalism and colonialism in the "Old World" combined with racism, settler colonialism, and xenophobia in the "New World" still shape contemporary American culture. Entrenched Orientalist stereotypes of people from the Middle East, therefore, contribute to the redefinition of Islam as an aggressive political ideology antithetical to Christianity in the post-9/11 era.[43]

American Empire

Racialization of Islam as an evil and violent ideology combined with American coercive assimilationism do not fully explain the social construction of the Racial Muslim. American hegemony in the Middle East after World War I required a narrative that morally justified military interventions in Muslim-majority countries. As expansion of its global influence became a priority in the second half of the twentieth century, the US government took great interest in controlling the large oil reserves of Saudi Arabia and other Middle Eastern countries.[44] Meanwhile, Europe's dissolution of the Ottoman Empire after World War I and mounting pogroms in Eastern Europe triggered mass migration and land purchases by European Jews seeking a permanent homeland in Palestine with little regard for the rights of indigenous Palestinians.