

PROTECTING THE NATION FROM “HONOR KILLINGS”: THE CONSTRUCTION OF A PROBLEM

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INTRODUCTION

On January 27, 2017, seven days after his Presidency began, Donald Trump issued an executive order titled “Protecting the Nation from Foreign Terrorist Entry into the United States” (hereinafter, “EO-1”).¹ The order invoked the terrorist attacks of September 11, 2001, and indicated that the United States sought to “prevent the admission of foreign nationals who intend to exploit United States immigration laws for malevolent purposes.”² In order to accomplish that goal, EO-1 temporarily suspended the entry of noncitizens from seven countries, temporarily suspended the U.S. refugee program, and indefinitely suspended the entry of any Syrian refugees.³

Mass chaos ensued, as travelers were turned away from flights to the United States, stranded overseas while in transit, and detained upon arrival at U.S. airports.⁴ Amid the outcry about

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1. “Protecting the Nation From Foreign Terrorist Entry into the United States.” Exec. Order No. 13,769, 82 Fed. Reg. 8,977 (Jan. 27, 2017).

2. *Id.*

3. *Id.*

4. While Trump claimed on Twitter that 109 people had been “held for questioning,” which White House press secretary Sean Spicer subsequently described as “inconvenienced,” the government later reported 746 persons were detained and processed in a 26 hour period beginning on January 27, 2017. Attorneys challenged the

EO-1, observers missed a curious fact. Overlooked by most was the fact that the text of EO-1 twice invoked the idea of “honor killings”—first, by identifying “honor killings” as a problematic practice by “foreign nationals” condemned in the Purpose section of the Order, and, second, by mandating data collection and reporting about “honor killings.”⁵

In March, 2017, facing a losing battle to defend EO-1 in the courts, the Trump administration replaced EO-1 with Executive Order No. 13780, bearing EO-1’s identical title of “Protecting the Nation from Foreign Terrorist Entry into the United States” (hereinafter, “EO-2”).⁶ The Purpose section of EO-2 was stripped of any reference to “honor killings,” but EO-2 retained the mandate for data collection and reporting about “honor killings.” On September 24, 2017, the Trump administration once again revised its approach in the face of legal challenges by issuing a Presidential Proclamation (hereinafter, “EO-3”), which replaced most but not all of EO-2. While EO-3 made no reference to “honor killings” in its text, it left the mandate for data collection and reporting on “honor killings” of EO-2 intact.⁷ On June 26, 2018 the Supreme Court upheld EO-3 in a split 5 – 4 decision.⁸

Why did “honor killings” appear in these executive orders? What is accomplished by invoking “honor killings”? And how have “honor killings” been constituted as a problem for U.S. governance? An initial answer to these questions can be gleaned from the social, political, and legal uses of the phrase “honor killings,” a term taken to refer to “the killing of a woman by her relatives for violation of a sexual code in the name of restoring family honor.”⁹

veracity of this list, saying they knew of others who were detained who were not included. Liz Robbins, *U.S. List of Those Detained for Trump’s Travel Ban is Called Incomplete*, N.Y. TIMES (Feb. 24, 2017), <https://www.nytimes.com/2017/02/24/nyregion/travel-ban-trump-detained.html>.

5. Leti Volpp, *Trump’s Mentions of ‘Honor Killings’ Betrays the Truth of His ‘Muslim Ban’*, HILL (Feb. 22, 2017), <https://thehill.com/blogs/pundits-blog/immigration/320632-trumps-mention-of-honor-killings-betray-the-truth-of-his>.

6. “Protecting the Nation From Foreign Terrorist Entry into the United States.” Exec. Order No. 13,780, 82 Fed. Reg. 13,209 (Mar. 6, 2017).

7. “Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats,” Proclamation No. 9645, 82 Fed. Reg. 45,161 (Sept. 24, 2017).

8. See *Trump v. Hawaii*, 138 S. Ct. 2392 (2018).

9. See Lila Abu-Lughod, *Seductions of the ‘Honor Crime’*, 22 DIFFERENCES 17 (2011) [hereinafter *Seductions*].

The use of the term to isolate one form of gender-based violence as distinct from other forms is hotly contested, and has been criticized as assisting in the portrayal of only certain communities as sites of aberrant violence.¹⁰ As Lila Abu-Lughod explains, "honor killings" are marked as "culturally specific," as "distinct from other widespread forms of domestic or intimate partner violence," and are constantly associated with reports from the Middle East and South Asia or immigrant communities originating from those regions.¹¹ This division of "honor killings" from other forms of gendered violence reflects the way in which motivation for acts of gender-based violation is selectively narrated through the media and public discourse, so that different explanations are proffered, depending upon the identity of the perpetrator.

Bad acts by immigrant communities tend to be attributed to culture, as opposed to bad acts by white Americans, which are usually described as either the product of individual deviancy or psychological factors.¹² These explanatory choices mask the entrenchment of gendered violence in U.S. culture: we could look to the facts that adultery has often been proffered by American jurists as the paradigm example of provocation, and that men are more likely than women in the United States to claim a "heat-of-passion" defense with regard to the killing of their spouses.¹³ The

10. For a discussion of the effects of portraying only certain communities as sites of aberrant gendered violence, see Leti Volpp, *Feminism Versus Multiculturalism*, 101 COLUM. L. REV. 1181 (2001).

11. *Seductions*, *supra* note 9, at 17–18. As Nadera Shalhoub-Kervorkian and Suhad Daher-Nashif write, it is critical to "counter dominant culturalized depictions of such crimes." Nadera Shalhoub-Kervorkian & Suhad Daher-Nashif, *Femicide and Colonization: Between the Politics of Exclusion and the Culture of Control*, 19 VIOLENCE AGAINST WOMEN 295 (2013) (explaining the choice of the term femicide instead of "honor killings" or crimes of passion).

12. See, e.g., Leti Volpp, *Blaming Culture for Bad Behavior*, 12 YALE J. L. & HUMAN. 89 (2000). See also Sherene H. Razack, *Imperilled Muslim Women, Dangerous Muslim Men and Civilised Europeans: Legal and Social Responses to Forced Marriages*, 12 FEMINIST LEGAL STUD. 129 (2004). Razack describes "honor killings" as purportedly about culture, and involving the body, as opposed to "crimes of passion" which are thought to originate in gender, involve the mind, and to be the product of individual practices born of deviancy or criminality and not culture. *Id.* at 152. We see this kind of dichotomy operating with mass killings in the United States as well, divided between "terrorists" and "shooters," with the former motivated by a racialized religion, and the latter motivated by mental illness. On "crimes of passion" versus "honor killings," see also Lama Abu Odeh, *Comparatively Speaking: The Honor of the East and the Passion of the West*, 1997 UTAH L. REV. 287 (1997).

13. See Donna Coker, *Heat of Passion and Wife Killing: Men Who Batter/Men Who Kill*, 2 S. CAL. REV. L. & WOMEN'S STUD. 71 (1992).

term “honor killing” thus circulates as what Inderpal Grewal calls a “media-ted” concept, which both diagnoses the nature of a crime and its solution as confined to certain communities, following a racial logic.¹⁴ Discursively, “‘honor killings’ work as a ‘comforting phantasm,’”¹⁵ juxtaposing an “assumed gender inequality and oppression of women by Islam” with a “quintessentially American gender-egalitarianism and respect for women’s rights.”¹⁶ They help create an illusion that only some communities engage in violence against women, since “modern” societies are thought to be sites where such violence only occurs when perpetrated by immigrants.¹⁷

On these readings, the use of the phrase “honor killings” in the executive orders can be understood as evincing a professed concern for violence against women, while actually functioning to reinforce a perception of Muslim barbarity and inferiority. The invocation of “honor killings” thus functions as the kind of coded signal called a “dog whistle,” purporting to convey one message while in fact communicating another to those who are aware of the speaker’s true intent.¹⁸ This cynical deployment of feminist concerns as a proxy for xenophobic exclusion is troubling enough.

But what may be even more disturbing is that the notion that “honor killings” are a problem in the United States has been constructed through false and misleading claims about data. As

14. Inderpal Grewal, *Outsourcing Patriarchy: Feminist Encounters, Transnational Mediations, and the Crime of ‘Honour Killings,’* 15 INT’L FEMINIST J. POL. 1, 3 (2013).

15. LILA ABU-LUGHOD, DO MUSLIM WOMEN NEED SAVING? 127 (2013) (hereinafter SAVING).

16. Juliane Hammer, *(Muslim) Women’s Bodies, Islamophobia, and American Politics,* 42 BULL. FOR STUDY RELIGION 29, 33 (2013).

17. Grewal, *supra* note 14, at 8.

18. A “dog whistle” refers to coded signals that only certain constituencies understand (dogs can hear whistles at frequencies that humans cannot). See IAN HANEY LÓPEZ, DOG WHISTLE POLITICS: HOW CODED RACIAL APPEALS HAVE REINVENTED RACISM AND WRECKED THE MIDDLE CLASS (2014); and Nahal Toosi, *‘Honor Killings’ Highlighted Under Trump’s New Travel Ban,* POLITICO (Mar. 6, 2017), <https://www.politico.com/story/2017/03/trump-travel-ban-killings-235731>:

To some critics of the travel ban, the mention of ‘honor killings’ sounds like a dog whistle. ‘It’s based on a stereotypical view of Muslims and what their position is toward women,’ said Grace Meng, a senior U.S. researcher with Human Rights Watch. . . . The administration strongly denies the new order . . . targets any particular religious group. . . . ‘Nothing in this executive order has anything to do with any particular faith, so any story stating or suggesting otherwise would be completely wrong,’ said Michael Short, a White House press aide. ‘This administration strongly believes that gender-based violence in all of its forms has no place in this country.’

explained further below, the idea that there are "23 - 27 honor killings" occurring annually in the United States was circulated by former Attorney General Jeff Sessions when he was a Senator, and is expressed in the report produced by the Departments of Justice and Homeland Security in response to the transparency and data collection mandate of EO-2. A concerted campaign led by the AHA Foundation, which worked vigorously to generate concern among academic and political circuits about "honor killings" as a phenomenon, produced this figure, which is both invalid and misreported.¹⁹

In what follows, I first briefly explain the legal backdrop of EO-1, EO-2 and EO-3. I then focus on the role of "honor killings" in EO-1 and EO-2, as well as in legal strategy, and judicial decisions. Next, I examine how "honor killings" functioned in the context of Trump's speeches, which constitute a kind of "legislative history" of the executive orders. I then sketch a genealogy of how "honor killings" became a focus of U.S. governance, to explain how this as an issue managed to appear in these key public articulations of the Trump administration, as concretized through an annual rate of death that is in fact imagined.

While we do not know who specifically inserted the "honor killing" provisions into the executive orders, White House advisors Stephen Miller and Steve Bannon were described as primarily involved in EO-1's development.²⁰ Regardless of who authored EO-1 and EO-2, the idea that Muslim women are particularly oppressed now appears in U.S. discourse as a kind of common sense.²¹ The project of "saving women" is knitted into Islamophobia in the United States, with the literal barring of Muslim bodies from entering the United States in the name of purportedly protecting Muslim women from violence.

19. The AHA Foundation, founded in 2007, works to end honor violence, and is named after its founder Ayaan Hirsi Ali.

20. Brian Bennett, *Travel Ban Is the Clearest Sign Yet of Trump Advisors' Intent to Reshape the Country*, L.A. TIMES (Jan. 29, 2017), <https://www.latimes.com/politics/la-na-pol-trump-immigration-20170129-story.html> (describing Miller as the order's architect).

21. See Leti Volpp, *Saving Muslim Women*, PUBLIC BOOKS (Aug. 1, 2015), <https://www.publicbooks.org/saving-muslim-women/> (reviewing LILA ABU-LUGHOD, *DO MUSLIM WOMEN NEED SAVING?* (2013)).

I. LEGAL BACKGROUND

EO-1 sought to suspend the entry of immigrants and nonimmigrants (temporary visitors) from seven countries—Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen—for a period of ninety days. Syrian refugees were to be indefinitely barred from the United States, while refugee admissions in general were to be suspended for 120 days. Once refugee admissions were to be resumed, refugees from “minority religions” were to be given priority, which Trump announced on the Christian Broadcasting Network was intended to assist persecuted Christians.²² Critics quickly labeled EO-1 a Muslim ban, as the manifestation of Trump’s campaign promise to create such.

After several lawsuits challenging the constitutionality of EO-1 were filed, leading to multiple provisions of EO-1 being barred from implementation, the Trump administration issued EO-2.²³ While EO-2 deleted several of EO-1’s provisions in an attempt to immunize the administration from legal challenge, including the language prioritizing refugee claimants from “minority religions,” as well as the indefinite bar preventing entry by Syrian refugees, critics quickly labeled EO-2 “Muslim Ban 2.0,” signifying that it continued EO-1’s project of seeking to bar Muslims from entering the United States.²⁴ EO-2 was attacked in the courts as violating both the U.S. Constitution and the federal Immigration and Nationality Act, culminating in a brief and unsigned decision issued on June 26, 2017, by the Supreme Court.²⁵ This decision both promised to review the rulings by lower courts once the Supreme Court’s October 2017 term commenced, and also allowed the ban to be implemented against those without a “bona fide relationship” to a person or entity in the United States.

On September 24, 2017, the Trump administration once again attempted to rewrite its ban in order to withstand legal

22. See Katie Reilly, *President Trump Says He Will Prioritize Persecuted Christians in Refugee Policy*, TIME (Jan. 27, 2017), <http://time.com/4652367/donald-trump-refugee-policy-christians/>.

23. Exec. Order No. 13,780, *supra* note 6.

24. EO-2 also removed Iraq from the list of seven countries due to concern about the impact on U.S. military operations, and also no longer denied entry to lawful permanent residents, travelers who already had a visa, and dual-nationals with citizenship in a country that is not banned.

25. *Trump v. Int’l Refugee Assistance Project*, 137 S. Ct. 2080 (2017).

challenges.²⁶ This appeared in the form of a Presidential Proclamation (“EO-3”). Critics called this Proclamation “Muslim Ban 3.0,” as it indefinitely suspended the entry of particular groups of individuals from several countries—continuing the ban on Iran, Libya, Somalia, Syria, and Yemen, while also newly adding Chad, North Korea, and Venezuela to the list.²⁷ This action led the Supreme Court to strike the challenges to EO-2 from the docket. Challenges to EO-3 were immediately filed, leading to district court judges in Hawai’i and Maryland partially blocking EO-3’s enforcement bars on Iran, Libya, Somalia, Syria, Yemen, and Chad.²⁸ On December 4, 2017, those injunctions were lifted by the Supreme Court, and EO-3 has been in effect since that time. On June 26, 2018 the Supreme Court upheld EO-3. In a 5-to-4 vote, a majority of the justices held that Trump’s statutory authority to suspend the entry of aliens into the United States had been lawfully exercised, without violating either the Immigration and Nationality Act or the Establishment Clause of the Constitution.²⁹ In a vehement dissent, Justice Sonia Sotomayor highlighted the history lost in translation as litigation jumped

26. In addition, on October 24, 2017, the administration issued an additional executive order, “Presidential Executive Order on Resuming the United States Refugee Admissions Program with Enhanced Vetting Capabilities” as the 120-day suspension on admission of refugees ended, mandating that an unnamed eleven countries would newly be subject to “enhanced vetting.” “Presidential Executive Order on Resuming the United States Refugee Admissions Program with Enhanced Vetting Capabilities,” Exec. Order No. 13,815, 82 Fed. Reg. 50,055 (Oct. 24, 2017). While the administration refused to disclose which countries were targeted, reporters were able to discern that the countries were Egypt, Iran, Iraq, Libya, Mali, North Korea, Somalia, South Sudan, Sudan, Syria, and Yemen, all of which (with the exception of North Korea and South Sudan) are predominantly Muslim, and which represent the national origin of 43 percent of refugees admitted in the previous fiscal year. Krishnadev Calamur, *Trump’s New Refugee Policy Targets These 11 Countries*, ATLANTIC (Oct. 25, 2017), <https://www.theatlantic.com/international/archive/2017/10/us-refugees-11-countries/543933/>.

27. Proclamation No. 9645, *supra* note 7. It is not clear why the administration chose to issue this executive action in the form of a presidential proclamation rather than an executive order, bracketed as it is by such proclamations as “President Donald J. Trump Proclaims October 9, 2017 as Leif Erickson Day.” For an analysis of the use of executive orders versus proclamations as “Trump’s Travel Ban Vehicle” which does not conjecture as to the underlying motivation as to the shift, see Andrew Wright, *Executive Orders and Presidential Proclamations as Trump’s Travel Ban Vehicle*, JURIST (Sept. 29, 2017), <http://jurist.org/forum/2017/09/Andrew-Wright-Trump-Travel-Ban.php>.

28. *State of Hawai’i v. Trump*, 265 F. Supp. 3d 1140 (D. Haw. 2017) (granting temporary restraining order); *Int’l Refugee Assistance Project v. Trump*, 265 F. Supp. 3d 570 (D. Md. 2017).

29. See *Trump v. Hawaii*, 138 S. Ct. 2392 (2018). Section 212(f) of the Immigration and Nationality Act vests the President with authority to restrict the entry of aliens when their entry “would be detrimental to the interests of the United States.” *Id.* at 2403.

from EO-1 to EO-2 to EO-3, writing that “[t]he full record paints a far more harrowing picture, from which a reasonable observer would readily conclude that [EO-3] was motivated by hostility and animus toward the Muslim faith.”³⁰ While EO-3 did not mention the term “honor killings,” it nonetheless left EO-2’s mandate to collect and publish data on “honor killings” still in force, a requirement that the Department of Homeland Security and Department of Justice are following today.

II. “PROTECTING THE NATION”

1. PURPOSE

Let us now turn to the specific text of the Executive Orders. “Honor killings” first appear in the “Purpose” section of EO-1. After stating that the visa-issuance process plays a “crucial role in detecting individuals with terrorist ties and stopping them from entering the United States,” invoking the terrorist attacks of September 11, 2001, and “numerous foreign-born individuals” who were “convicted or implicated in terrorism-related crimes” since that date, and asserting that “[d]eteriorating conditions in certain countries . . . increase the likelihood that terrorists will use any means possible to enter the United States,” the EO-1 goes on to state:

In order to protect Americans, the United States must ensure that those admitted to this country do not bear hostile attitudes toward it and its founding principles. The United States cannot, and should not, admit those who do not support the Constitution, or those who would place violent ideologies over American law. In addition, the United States should not admit those who engage in acts of bigotry or hatred (including “honor” killings, other forms of violence against women, or the persecution of those who practice religions different from their own) or those who would oppress Americans of any race, gender, or sexual orientation.³¹

Let us pause here to make some observations. First, we should note the prominence of what the government labels “‘honor’ killings” in EO-1. The Purpose section of an executive order, like the preamble or purpose section of an act of legislation, is used to help the reader discern the intent behind an order or

30. *Id.* at 2435 (Sotomayor, J., dissenting).

31. Exec. Order No. 13,769, *supra* note 1, at § 1.

legislative act. Here, the Purpose section of EO-1 is comprised of only three paragraphs: the first singling out the government’s issuing of visas as linked to the detection and exclusion of terrorists; the second raising the specter of September 11, 2011, and the possibility of “foreign-born nationals” who seek to harm Americans being admitted as visitors, students, employees, or refugees; and the third asserting that some persons who would enter the United States as “foreign nationals” bear animus towards the nation, its Constitution, or its founding principles.

The reference to those with “hostile attitudes,” who “would place violent ideologies over American law,” appears intended to evoke, first, the concept of what Trump has repeatedly called “Islamic terror” and, second, the image of a growing group of individuals supplanting American law with Sharia law; both evocations suggest that Muslim individuals are dangerous to the American republic.³² Immediately folded into this vision is the statement that the U.S. should exclude those who engage in “acts of bigotry or hatred,” with two parenthetical iterations of such acts provided: violence against women and the persecution of those who practice religions different from their own. “‘Honor’ killings”—which appears immediately after “acts of bigotry or hatred”—is ostensibly provided as an example of violence against women, yet the term precedes the general category of violence against women, suggesting a greater emphasis on the example than on the general category.

What is signaled here, then, is that the generic concern is not so much “violence against women” as it is “honor killings”—a point borne out with Trump’s attacks on women and their rights, both personally and through his administration.³³ As Nora

32. For a description of how various Trump Administration officials and close associates view Sharia law as posing a great threat to the United States, see Zack Beauchamp, *Trump’s Counter-Jihad*, VOX (Feb. 13, 2017), <https://www.vox.com/world/2017/2/13/14559822/trump-islam-muslims-islamophobia-sharia>; see also Yaser Ali, *Shariah and Citizenship—How Islamophobia is Creating a Second-Class Citizenry in America*, 100 CAL. L. REV. 1027 (2012); Asifa Quraishi-Landes, *Rumors of the Sharia Threat are Greatly Exaggerated: What American Judges Really Do with Islamic Family Law in Their Courtrooms*, 57 N.Y.L. SCH. L. REV. 245 (2012–2013); Sherene H. Razack, *The ‘Sharia Law Debate’ in Ontario: The Modernity/Premodernity Distinction in Legal Efforts to Protect Women from Culture*, 15 FEMINIST LEGAL STUD. 3 (2007).

33. See Allison Boalt, *15 of Trump’s Direct Attacks Against Women and Their Rights*, PASTE MAG. (Aug. 17, 2018), <https://www.pastemagazine.com/articles/2018/08/15-of-trumps-direct-attacks-against-women-and-thei.html>; and Aaron Rupar, *Trump to Track ‘Honor Killings’ by Muslim Men While Proposing Cuts to Violence Against Women*

Caplan-Bricker writes, by making it clear that sexual violence is emphasized only as a priority for Homeland Security, and not for other government agencies, Trump is “communicating that sexual violence isn’t wrong unless it’s perpetrated by a foreigner. Otherwise, as our president has said, ‘You can do anything Grab them by the pussy.’”³⁴ If the Trump administration truly cared about protecting women, it would be “strengthening domestic violence programs and allowing women refugees in . . . [rather than] using women as political pawns.”³⁵ This is “repackaging xenophobia as feminism.”³⁶

We should also note the coupling of “‘honor’ killings” and the “persecution of those who practice religions different from their own.” Recall that EO-1 provided a preference for refugee admissions for those refugees who were members of minority religions, which was explicitly intended to benefit Christian refugees fleeing persecution. As such, the “persecution of those who practice religions different from their own” should be understood to invoke the vision of Muslim persecution of Christians; its placement in EO-1 in proximity to “‘honor’ killings,” side by side, helps cement the understanding of which “foreign nationals” are to be banned from the United States.

Next, note that EO-1 follows the statement that the United States should not admit those who engage in “acts of bigotry or hatred” with the assertion that the U.S. should also not admit “those who would oppress Americans of any race, gender, or sexual orientation.” This may seem a curious addition to EO-1, particularly given the administration’s stance on issues of racial, gender, or LGBTQ equality.³⁷ But the inclusion of this phrasing

Grants, THINK PROGRESS (Mar. 6, 2017), <https://thinkprogress.org/trump-muslim-ban-honor-killings-790b3e8d38d1/>.

34. Nora Caplan-Bricker, *Donald Trump Plans to Track ‘Honor Killings’ Even as He Slashes Violence Against Women Grants*, SLATE (Jan. 25, 2017), <https://slate.com/human-interest/2017/01/donald-trumps-immigration-order-will-track-violence-against-women-by-foreign-born-men.html>.

35. Karen Attiah, *How Trump’s Travel Ban Uses Muslim Women as Pawns*, WASH. POST (Mar. 16, 2017), <https://www.washingtonpost.com/news/global-opinions/wp/2017/03/16/how-trumps-travel-ban-uses-muslim-women-as-pawns/>.

36. Erin Gloria Ryan, *The Right Wing’s Xenophobic Feminism*, DAILY BEAST (Mar. 6, 2017), <https://www.thedailybeast.com/the-right-wings-xenophobic-feminism>.

37. See, e.g., *Trump’s Timeline of Hate*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/timelines/trump> (last visited Dec. 17, 2018); and Sherrilyn Ifill, *President Trump’s First Year Was an Affront to Civil Rights*, TIME (Jan. 17, 2018), <http://time.com/5106648/donald-trump-civil-rights-race/>.

should be understood to reflect and reiterate a potent narrative that positions Muslim immigrants as direct threats to U.S. sexual freedom and gender equality. In addition to the "common sense" that women must be saved from Islam, gay rights discourses have been incorporated in U.S. and Western imperial projects through what Jasbir Puar has articulated as "homonationalism."³⁸

The suggestion in EO-1, made through the proximity of the text of "'honor' killing" to "violence against women," and "persecution of those with religions different from their own," is that Muslims are the oppressors who would harm Americans on the basis of race, gender, or sexual orientation. Thus, EO-1 informs its readers that Muslim immigrants are to be banned not only for their terroristic threat; they are also to be banned because they are dangerous to purported Western liberal values. This idea, one also propagated in Europe by politicians such as Pim Fortuyn and Geert Wilders and nationalist political parties, was already circulated during the campaign by Trump, as discussed below.³⁹

While the surface of the text of EO-1's Purpose section suggests the administration is concerned about gendered violence, discrimination, and inequality, we can understand the rationale of these passages as reinforcing the presumption that Muslims must be kept out of the United States, as particularly engaged in these forms of abhorrent behavior.

2. "PROTECTING THE NATION": TRANSPARENCY AND DATA COLLECTION

As noted above, "honor killings" also appear in the section of EO-1 titled "Transparency and Data Collection." This section mandates the Secretary of Homeland Security, in consultation with the Attorney General, to "collect and make publicly available within 180 days, and every 180 days thereafter" information regarding particular acts in order to "be more transparent with the American people, and to more effectively

38. See JASBIR PUAR, *TERRORIST ASSEMBLAGES: HOMONATIONALISM IN QUEER TIMES* (2007).

39. See, e.g., Moustafa Bayoumi, *How the "Homophobic Muslim" Became a Populist Bogeyman*, *GUARDIAN* (Aug. 7, 2017), <https://www.theguardian.com/commentisfree/2017/aug/07/homophobic-muslim-populist-bogeyman-trump-le-pen>; Robert Tait, *Geert Wilders Calls for Trump-Style Muslim Travel Ban in Europe*, *GUARDIAN* (Dec. 17, 2017); Elizabeth Kolbert, *Beyond Tolerance*, *NEW YORKER* (Sept. 9, 2002), <https://www.newyorker.com/magazine/2002/09/09/beyond-tolerance>.

implement policies and practices that serve the national interest.”⁴⁰ These include:

(i) information regarding the number of foreign nationals in the United States who have been charged with terrorism-related offenses while in the United States; convicted of terrorism-related offenses while in the United States; or removed from the United States based on terrorism-related activity, affiliation, or material support to a terrorism-related organization, or any other national security reasons since the date of this order or the last reporting period, whichever is later;

(ii) information regarding the number of foreign nationals in the United States who have been radicalized after entry into the United States and engaged in terrorism-related acts, or who have provided material support to terrorism-related organizations in countries that pose a threat to the United States, since the date of this order or the last reporting period, whichever is later; and

(iii) information regarding the number and types of acts of gender-based violence against women, including honor killings, in the United States by foreign nationals, since the date of this order or the last reporting period, whichever is later; and

(iv) any other information relevant to public safety and security as determined by the Secretary of Homeland Security and the Attorney General, including information on the immigration status of foreign nationals charged with major offenses.⁴¹

The language from the “Purpose” section in EO-1 was replaced in EO-2 with a more sober and detailed accounting of why nationals from the six designated countries present “heightened risks” to the security of the United States. Yet the data gathering requirement about “honor killings” remains in section 11 of EO-2, mandating “information regarding the number and types of acts of gender-based violence against women, including so-called ‘honor killings,’ in the United States by foreign nationals” to be collected and made publicly available.⁴²

In considering the transition from EO-1 to EO-2, we could note the slippage in punctuation and choice of language, from

40. Exec. Order No. 13,769, *supra* note 1, at § 10.

41. *Id.* at § 10(i)-(iv).

42. Exec. Order No. 13,780, *supra* note 6, at § 11.

“honor’ killings” in EO-1’s Purpose section, to “honor killings” in EO-1’s reporting section, to “so-called ‘honor killings’” in EO-2’s reporting section. This inconsistency betrays an uncertainty about how to label “honor killings” as a phenomenon, which arguably exposes an underlying uncertainty about whether these are, in fact, a phenomenon.

Why did “honor killings” disappear from the Purpose section of EO-2 but remain as a mandated category for data collection? To understand this shift requires parsing how the purpose of EO-1 and EO-2 became perceived as potentially unconstitutional, while the transparency and data collection section received less scrutiny.

A panel of the Ninth Circuit had noted that there were serious allegations raised that EO-1 violated the Establishment and Equal Protection Clauses because it was intended to disfavor Muslims.⁴³ In response, the administration stripped EO-2 of any explicit reference to religion, and devoted a lengthy paragraph to explicitly denying that religious animus motivated EO-1.⁴⁴ Nonetheless, federal district court Judge Derrick Watson’s analysis in *Hawai’i v. Trump* found that, despite the absence of any explicit reference to religion in the text of the order, evidence of past public statements of Trump and of his associates and statements contemporaneous with the issuance of EO-2 suggested that “[a]ny reasonable, objective observer would conclude . . . that the stated secular purpose of the Executive Order is . . . secondary to a religious objective of temporarily suspending the entry of Muslims.”⁴⁵ Judge Watson did not point to EO-2’s reporting mandate in ascertaining anti-Muslim animus.

In *IRAP v. Trump*, federal district court judge Theodore Chuang of Maryland also ordered a temporary halt to implementing the provisions of EO-2 affecting visa issuance for

43. *Washington v. Trump*, 847 F.3d 1151, 1168 (9th Cir. 2017).

44. *See* Exec. Order No. 13,780, *supra* note 6, at § 1(b)(iv) (“Executive Order 13769 did not provide a basis for discriminating for or against members of any particular religion. While that order allowed for prioritization of refugee claims from members of persecuted religious minority groups, that priority applied to refugees from every nation, including those in which Islam is a minority religion, and it applied to minority sects within a religion. That order was not motivated by animus toward any religion, but was instead intended to protect the ability of religious minorities— whoever they are and wherever they reside—to avail themselves of the USRAP in light of their particular challenges and circumstances.”)

45. *Hawai’i v. Trump*, 241 F. Supp. 3d 1119, 1137 (D. Haw. 2017).

nationals of six majority Muslim countries. In addition to analyzing the constitutional claims concerning religious discrimination that the plaintiffs claimed infected EO-2, Judge Chuang focused on provisions of the immigration statute that forbid nationality discrimination in the issuance of immigrant visas, and concluded that the plaintiffs' challenge to the ninety-day ban was likely to succeed on both grounds. There was no mention by Judge Chuang of the reporting mandate.

With the administration challenging both district court decisions, litigation continued. Numerous amicus briefs were filed in both the Ninth and Fourth Circuits, most on behalf of the parties challenging the ban. Forty-eight amicus briefs were filed in the *Hawai'i* case. Of these, six pointed to EO-2's requirement of reporting and data collection about "honor killings." Seven of the forty-eight amicus briefs filed in *IRAP v. Trump* pointed to the provision. All of these amicus briefs singled out the provision as another source of evidence as to the constitutionally impermissible motive underlying the executive orders.

By far the most developed argument about the appearance of this provision is found in amicus briefs filed in both courts on behalf of Muslim Rights, Professional and Public Health Organizations, which rely upon a declaration filed by the anthropologist Lila Abu-Lughod. As articulated in the amicus brief filed in the Ninth Circuit, the "invocation of private violence against women in the context of national security policy" may seem, "[a]t first blush . . . puzzling and out of place."⁴⁶ Yet it in fact constitutes "evidence of the invidious stereotypes about Muslims that underpin the Muslim ban policy."⁴⁷ Quoting Abu-Lughod, the brief states "the term 'honor killing,' or 'honor crime,' has become a means of signaling a class of violence purportedly linked to Islam and committed by Muslim men," and is therefore "a way of stigmatizing and demeaning Islam as a faith and Muslim men as a group as uncivilized and dangerous."⁴⁸ The brief goes on to quote Abu-Lughod: "Neither Islamic law nor its religious authorities, however, uniformly or consistently condone honor crimes . . . the term 'honor crime' is commonly invoked by

46. Brief of Muslim Rights, Professional and Public Health Organizations as Amici Curiae, in Support of Appellees, and in Opposition to Appellants' Motion for a Stay and on the Merits at 16, *Hawai'i v. Trump*, 864 F.3d 994 (9th Cir. 2017).

47. *Id.*

48. *Id.*

individuals and groups with an anti-Muslim agenda because it reinforces the [false] stigmatization of Muslims as violent and backward.”⁴⁹ The brief concludes this discussion by asserting that the term in both Executive Orders, which are “instruments that are purportedly about national security rather than domestic violence,” is “evidence of the invidious stereotypes about Muslims that underpin the Muslim ban policy.”⁵⁰

The Ninth Circuit decision, which largely upheld the district court’s order, did so on statutory grounds, finding that EO-2 both had run afoul of anti-discriminatory provisions in the immigration statute and that the President had exceeded his authority, stating “immigration, even for the President, is not a one-person show.”⁵¹

49. *Id.*

50. *Id.* The other amicus briefs which point to the invocation of “honor killing” in EO-2 make more brief observations—sometimes limited to a footnote. The amicus brief of New York University describes the “call for public reporting of ‘honor killing’” as a “thinly-veiled attempt to paint Muslim men as domestic abusers.” Brief for New York University as Amicus Curiae in Support of Plaintiffs-Appellees and Affirmance at 20, *Hawai’i v. Trump*, 864 F.3d 994 (9th Cir. 2017) (No. 17-15589) (citing Volpp, *supra* note 5: “Honor killings stand in for the idea of Muslim barbarity. Their invocation in the executive order helps make apparent that the ‘foreign nationals’ whose entry poses a terrorist threat are Muslim.”) The amicus brief of Constitutional Law Scholars characterizes the mention of “honor killings” as a kind of supplemental form of evidence, placing it entirely in a footnote, and stating that the Order’s call to publicize “so-called ‘honor killings’ that occur ‘in the United States by foreign nationals’” can be understood as “anti-Islamic dog-whistling.” Brief of Scholars and Academics of Constitutional Law as Amici Curiae In Support of Plaintiffs-Appellees and Affirmance at 19, n.3, *Hawai’i v. Trump*, 864 F.3d 994 (9th Cir. 2017) (No. 17-15589). That brief’s same footnote quotes journalist Nahal Toosi: “‘Honor killings’ are believed to be rare in the U.S.” yet “far-right conservative activists often focus on honor killings as an example of the potential ‘Islamization’ of America posed by allowing Muslim immigrants into the U.S.” Toosi, *supra* note 18. The amicus brief of Members of the Clergy et al. describes the mandatory acquisition and dissemination of “information regarding . . . so-called ‘honor killings’ in the United States by foreign nationals” as “employing a common tactic to evoke negative and misleading stereotypes about Islam as uncivilized and dangerous.” Brief of Members of the Clergy et al. as Amici Curiae Supporting Appellees and Affirmance 13–14, *Hawai’i v. Trump*, 864 F.3d 994 (9th Cir. 2017) (No. 17-15589) (citing Volpp, *supra* note 5). The Muslim Justice League, Islamic Circle of North America, & Council on American-Islamic Relations amicus brief calls the provision on “honor killings” a “‘shaming’ and ‘dehumanizing device’ seemingly ‘designed to whip up fear of Muslims’ and perpetuate the ‘damaging stereotype of Muslims as terrorists.’” Brief of Amici Curiae Muslim Justice League et al. in Support of Plaintiff-Appellees and Affirmance at 17–18, *Int’l Refugee Assistance Project v. Trump*, 857 F.3d 554 (4th Cir. 2017) (No. 17-1351). The brief here is quoting Justin Cox, a NILC staff attorney. But this brief goes on to try to argue with EO-2 on its own terms. Noting the miniscule odds of “an American” perishing in a “terrorist act committed by a foreigner on U.S. soil over the past 41 years,” the brief continues, “the EO’s insistence on reporting crimes by foreign nationals, including ‘honor killings,’ is likewise misplaced as such crimes are exceedingly rare.” Brief of Amici Curiae Muslim Justice League et al., *supra*, at 29–30.

51. *Hawaii v. Trump*, 859 F.3d 741, 755 (9th Cir. 2017) (per curiam).

The decision made no mention of the “honor killings” provision, a corollary of the court’s decision not to base its ruling on any constitutional grounds that would have required discerning the question of religious discrimination and Trump’s intent. In contrast, the Fourth Circuit gave the “honor killings” provision some attention. First, in a footnote, the court pointed to the provision as a basis on which to rebut the administration’s claim that the Order was “facially neutral,” calling it “yet another marker” that “its national security purpose is secondary to its religious purpose”:

Plaintiffs suggest that EO-2 is not facially neutral, because by directing the Secretary of Homeland Security to collect data on “honor killings” committed in the United States by foreign nationals, EO-2 incorporates “a stereotype about Muslims that the President had invoked in the months preceding the Order.” Appellees’ Br. 5, 7; see J.A. 598 (reproducing Trump’s remarks in a September 2016 speech in Arizona in which he stated that applicants from countries like Iraq and Afghanistan would be “asked their views about honor killings,” because “a majority of residents [in those countries] say that the barbaric practice of honor killings against women are often or sometimes justified”). Numerous amici explain that invoking the specter of “honor killings” is a well-worn tactic for stigmatizing and demeaning Islam and painting the religion, and its men, as violent and barbaric (citations omitted). The Amici Constitutional Law Scholars go so far as to call the reference to honor killings “anti-Islamic dog-whistling.” Brief for Constitutional Law Scholars 19 n.3. We find this text in EO-2 to be yet another marker that its national security purpose is secondary to its religious purpose.⁵²

In addition, in a concurring opinion, Judge Stephanie Thacker wrote that “the record in this case amply demonstrates the primary purpose of EO-2 was to ban Muslims from entering the United States in violation of the Establishment Clause.” She stated:

Last, but by no means least, EO-2 identifies and discriminates against Muslims on its face. It identifies only Muslim majority nations, thus banning approximately 10% of the world’s Muslim population from entering the United States. It discusses only Islamic terrorism. And, it seeks information on honor killings—a stereotype affiliated with Muslims—even

52. *Int’l Refugee Assistance Project v. Trump*, 857 F.3d 554, 596 n.17 (4th Cir. 2017).

though honor killings have no connection whatsoever to the stated purpose of the Order.⁵³

The data collection and reporting requirement as to “honor killings” which remained in EO-2, would thus have been important in helping the Supreme Court discern whether that provision violated the Constitution, had EO-2 ever reached the Court. As put by Gerald Neuman, the “tangential footnote” was possibly “the most important passage” in the Fourth Circuit decision.⁵⁴ The data collection and reporting requirement “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,” as “facial evidence of illegitimate purpose.”⁵⁵

We can also understand the data collection and reporting requirement as part of a generalized approach by the Trump administration. Two days before issuing EO-1, Trump had issued another Executive Order, “Enhancing Public Safety in the Interior of the United States,” which mostly received media attention because of its provisions threatening so-called “sanctuary jurisdictions.”⁵⁶ As with EO-1 and EO-2, there is a “Transparency” section, which mandates the following:

Sec. 16. Transparency. To promote the transparency and situational awareness of criminal aliens in the United States, the Secretary and the Attorney General are hereby directed to collect relevant data and provide quarterly reports on the following:

(a) the immigration status of all aliens incarcerated under the supervision of the Federal Bureau of Prisons;

53. *Id.* at 635 (J. Thacker, concurring).

54. See Gerald Neuman, *Neither Facially Legitimate Nor Bona Fide—Why the Very Text of the Travel Ban Shows It’s Unconstitutional*, JUST SECURITY (June 9, 2017), <https://www.justsecurity.org/41953/facially-legitimate-bona-fide-why-unconstitutional-travel-ban/>.

55. *Id.* As Neuman explains, this facial illegitimacy is important as the key Supreme Court precedent in the immigration context requires the government to show that a restriction is based on a “facially legitimate and bona fide reason.” See *Kleindienst v. Mandel*, 408 U.S. 753 (1972). This means both that the reason of the government is legitimate on its face, and that the government must be acting in good faith. See *Kerry v. Din*, 135 S. Ct. 2128 (2015).

56. “Enhancing Public Security in the Interior of the United States,” Exec. Order No. 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017).

(b) the immigration status of all aliens incarcerated as Federal pretrial detainees under the supervision of the United States Marshals Service; and

(c) the immigration status of all convicted aliens incarcerated in State prisons and local detention centers throughout the United States.

There is also a requirement that so-called “sanctuary jurisdictions,” which engage in various forms of non-collaboration with ICE, be penalized through the following publicity:

To better inform the public regarding the public safety threats associated with sanctuary jurisdictions, the Secretary shall . . . make public a comprehensive list of criminal actions committed by aliens and any jurisdiction that ignored or otherwise failed to honor any detainers with respect to such aliens.⁵⁷

And the Order also announces the creation of “VOICE,” a new office for victims of “immigrant crime”:

Sec. 13. Office for Victims of Crimes Committed by Removable Aliens. The Secretary shall direct the Director of U.S. Immigration and Customs Enforcement to take all appropriate and lawful action to establish within U.S. Immigration and Customs Enforcement an office to provide proactive, timely, adequate, and professional services to victims of crimes committed by removable aliens and the family members of such victims. This office shall provide quarterly reports studying the effects of the victimization by criminal aliens present in the United States.

An amicus brief filed by History Professors and Scholars in *IRAP v. Trump* clearly elucidates how we might understand these reporting requirements as similarly motivated and designed.⁵⁸ As the brief states, “Throughout modern history, criminal reporting targeting particular groups have been used to demonize those

57. *Id.* at § 9(b).

58. See Alex Shams, *Trump’s ‘Honour Crimes’ Order is a Racist Distraction*, AL JAZEERA (Mar. 11, 2017), <https://www.aljazeera.com/indepth/opinion/2017/03/trump-honour-crimes-order-racist-distraction-170309080923757.html> (“Trump’s proposals . . . similarly aim to convince the public of the unique threat posed by certain kinds of criminals, highlighting one form of crime and one form of victim that fit a narrative of a helpless America beset by violent, criminal foreigners.”); Kevin Drum, *Trump Amps Up the Racial Demagoguery Yet Again*, MOTHER JONES (Mar. 6, 2017), <https://www.motherjones.com/kevin-drum/2017/03/trump-amps-racial-dcmagoguery-yet-again/> (linking the “Black Crime” section of Breitbart News to Trump’s VOICE program highlighting victims of immigrant crime to EO-2’s Transparency provision).

groups and incite bigotry.”⁵⁹ Pointing to and discussing an array of examples, such as the association of Jews with criminality in Nazi Germany, the use of criminal association to exclude Italian immigrants and Chinese immigrants from the U.S., the portrayal of immigrants as sexual threats to U.S. citizens, and the stereotyping of African American men as rapists, the brief asserts:

Historical studies have shown that crime reporting that disproportionately focuses on members of a social or political minority has routinely been used as a tool of mass stigmatization and criminalization, anchoring disparate human outcomes including nation-based exclusion from the United States. In some instances, the association of a particular community with criminality, and the reinforcement of that association in the public mind through official government action and rhetoric, have led to widespread state and vigilante violence against members of the identified group.⁶⁰

Recall the importance of “immigrant crime” to the Republican National Convention, which featured a parade of family members whose loved ones had been killed or injured by undocumented immigrants. In a speech on July 28, 2017, to law enforcement personnel on Long Island, describing members of MS-13, a gang which originated in Los Angeles in the 1980s, Trump alleged they have “transformed peaceful parks and beautiful, quiet neighborhoods into blood-stained killing fields. They’re animals.”⁶¹ Recall as well his campaign invocation of Mexicans as “rapists” and “criminals.” And Trump has continued to govern through invoking the specter of immigrant crime, most recently through an ad he tweeted suggesting refugees in migrant caravans posed a criminal threat—an ad pulled off multiple television networks because of its racism. Although foreign-born residents are less likely to commit crimes than native-born citizens, the depiction of “foreign nationals” as dangerously criminal has functioned as a key element of Trump’s campaign and governance strategies, which mobilize support through fear.⁶²

59. Brief for History Professors and Scholars as Amici Curiae Supporting Plaintiffs-Appellees at 2, Int’l Refugee Assistance Project v. Trump, *supra* note 52.

60. *Id.* at 3.

61. Christopher Woody, *Trump: The MS-13 Gang Has Turned ‘Peaceful Parks’ and ‘Quiet Neighborhoods’ in the US into ‘Blood-Stained Killing Fields’*, BUS. INSIDER (July 28, 2017), <https://www.businessinsider.com/trump-ms-13-has-turned-us-into-blood-stained-killing-fields-2017-7>.

62. *Immigration and Public Safety*, SENTENCING PROJECT (2017), <http://www.sentencingproject.org/wp-content/uploads/2017/03/Immigration-and-Public->

We can now return to the question of why “honor killings” disappeared from the Purpose section of EO-2 but remained in the Transparency and Data Collection section. In fact, an answer is proffered in the one amicus brief, filed with the Supreme Court when EO-2 was still pending there, that focuses entirely on the invocation of “honor killings.”⁶³ The Brief of Social Science Scholars, signed by Lila Abu-Lughod, John Bowen, Inderpal Grewal, Charles Kurzman, Sherene Razack, and Joan Scott, argues that the reference to “honor killings” is a “veiled reference intended to invoke association with a particular religious minority. It is what is colloquially known as a ‘dog whistle.’”⁶⁴ The brief describes cases where violence by men is retroactively classified as “honor killings” without regard to the evidence of actual motives.⁶⁵ As the brief notes, “the term ‘honor killing’ is a way of misleadingly categorizing violence against women as a Muslim problem.”⁶⁶ Forcefully arguing how we understand the retention of the term in EO-2, it states:

But the term was not included in the text by accident—and certainly not preserved from EO-1 and carried into EO-2 by chance. The only plausible rationale for invoking “honor killings” in the text of both Executive Orders was to trigger a negative association with Muslims. In particular the use of the term in the text of both EO-1 and EO-2 invokes the very same negative stereotypes about Muslims that permeated the rhetoric surrounding the Orders’ promulgation. Hence, there is a direct link between EO-2’s text and the surrounding evidence of animus that the government wishes to obscure.⁶⁷

Safety.pdf; see also Michelangelo Landgrave & Alex Nowrasteh, *Criminal Immigrants: Their Numbers, Demographics, and Countries of Origin*, CATO Inst. (Mar. 15, 2017), https://object.cato.org/sites/cato.org/files/pubs/pdf/immigration_brief-1.pdf.

63. Seventy-seven amicus briefs were filed. Ten of the briefs mention or discuss “honor killings.”

64. Brief for Social Science Scholars as Amici Curiae Supporting Respondents at 9, *Trump v. Int’l Refugee Assistance Project*, 137 S. Ct. 2080 (2017) (No. 16-1436 (16A1190)). I assisted with identifying scholars to sign this brief but was not responsible for its content.

65. The brief mentions the case of Sarah and Amina Said, murdered by their father, who had a long history of family violence, as described in Leti Volpp, *Framing Cultural Difference: Immigrant Women and Discourses of Tradition*, 22 DIFFERENCES: J. FEMINIST CULTURAL STUD. 90, 90–91 (2011), and the case of a woman murdered by her husband in Buffalo just after she obtained a restraining order against him, which was quickly labelled an “honor killing.” Brief for Social Science Scholars, *supra* note 64, at 11.

66. Brief for Social Science Scholars, *supra* note 64, at 13.

67. *Id.* at 16–17.

III. TRUMP'S SPEECHES

Just as the litigation against the Muslim ban traced the prehistory of the Executive Orders through examining Trump's campaign statements in order to determine whether the Orders constituted constitutionally impermissible religious discrimination,⁶⁸ we can examine Trump's articulations during his campaign connecting "Muslims," "honor killings," violence against women, and acts of violence against members of LGBTQ communities, to better understand what lies behind the surface of the words of EO-1, EO-2, and EO-3. There are three relevant speeches to examine.

On June 13, 2016, after the Orlando massacre, when 49 persons were killed in a gay nightclub by Omar Mateen, Trump delivered a speech in New Hampshire, stating:

Our nation stands together in solidarity with the members of Orlando's LGBT community A radical Islamic terrorist targeted the nightclub not only because he wanted to kill Americans, but in order to execute gay and lesbian citizens because of their sexual orientation. It is a strike at the heart and soul of who we are as a nation. It is an assault on the ability of free people to live their lives, love who they want and express their identity.

Radical Islam is anti-woman, anti-gay and anti-American.

68. In December, 2015, several days after the San Bernardino attack, Trump had called for "a total and complete shutdown of Muslims entering the United States" until the nation's leaders can "figure out what is going on." He later amended this to say he would exempt returning U.S. citizens and Muslims coming to the U.S. to attend sporting events. Jenna Johnson, *Trump Calls for 'Total and Complete Shutdown of Muslims Entering the United States,'* WASH. POST (Dec. 7, 2015), https://www.washingtonpost.com/news/post-politics/wp/2015/12/07/donald-trump-calls-for-total-and-complete-shutdown-of-muslims-entering-the-united-states/?utm_term=.a9028c38f92d.

After the Pulse massacre, Trump pivoted to rearticulate this ban as one on "areas of the world where there is a proven history of terrorism against the U.S., Europe or our allies." Christine Wang, *Trump: If Elected, I'll Ban Immigration from Areas with Terrorism Ties*, CNBC (June 13, 2016), <https://www.cnbc.com/2016/06/13/trump-if-elected-ill-ban-immigration-from-areas-with-terrorism-ties.html>. He further shifted the target in an August speech on immigration and terrorism, when he called for an ideological screening test, which would screen out all members or sympathizers of terrorist groups as well as any who have hostile attitudes toward our country or its principles, including those who support bigotry and hatred. This, said Trump, would be a temporary suspension of immigration from some of the most dangerous and volatile regions of the world, and would involve "extreme vetting." *Donald Trump Calls for 'Extreme Vetting' of Immigrants to US*, BBC (Aug. 16, 2016), <https://www.bbc.com/news/election-us-2016-37086578>.

The bottom line is that the only reason the killer was in America in the first place was because we allowed his family to come here. We have a dysfunctional immigration system which does not permit us to know who we let into our country, and it does not permit us to protect our citizens. . . .

We cannot continue to allow thousands upon thousands of people to pour into our country, many of whom have the same thought process as this savage killer.

Hillary Clinton said “Muslims are peaceful and tolerant people, and have nothing whatsoever to do with terrorism” Hillary Clinton can never claim to be a friend of the gay community as long as she continues to support immigration policies that bring Islamic extremists to our country who suppress women, gays, and anyone who doesn’t share their views.

Ask yourself, who is really the friend of women and the LGBT community, Donald Trump with his actions, or Hillary Clinton with her words? Clinton wants to allow Radical Islamic terrorists to pour into our country—they enslave women and murder gays.”⁶⁹

Trump’s speech facilitates an opposition between the Muslim immigrant, sexual freedom, and gender equality through a number of tactics. First is the conflation of individual terrorists with Muslims in general, and the transmutation of a homegrown problem into a foreign threat. Omar Mateen, a U.S. born citizen, stands in for “thousands upon thousands” of “[r]adical Islamic terrorists” who have been “pouring into our country.” Second, the identity markers of race, religion, and immigration status disappear for victims of terrorist attacks, even while they become hypervisible for the perpetrator. The Latinx victims of the Pulse massacre appear in Donald Trump’s speech as “gay and lesbian citizens” and as “gay and lesbian” victims of radical Islamic terror.

Several of the victims in the Pulse massacre were undocumented—reporting indicates one Salvadoran man and one Mexican man were injured, and one Mexican man, his identity not revealed because of the potential consequences to his family, was

69. Ryan Teague Beckwith, *Read Donald Trump's Speech on the Orlando Shooting*, TIME (June 13, 2016), <http://time.com/4367120/orlando-shooting-donald-trump-transcript/>.

murdered.⁷⁰ In Trump's invective, they are not worthy of mention as Latinx, or as immigrants, but instead, as "gay and lesbian citizens" who register as presumptively white.⁷¹ As Maya Mikdashi writes, "US political discourse on the war on terror has starkly divided the world into victims (Europeans and Americans) and perpetrators (Muslims and Arabs)."⁷² The victims of the Pulse massacre are thus mourned as Americans, or mourned as gay and lesbian victims of Islamic terrorism. What violence they may have faced as Latinx, as Puerto Rican, as Mexican, as Salvadoran, is not worthy of mention.

The patriotism demanded by the war on terror makes race—other than the race of the Muslim terrorist—disappear. Queerness is folded into what Jasbir Puar and Amit Rai called the project of docile patriotism.⁷³ They describe how after 9/11 the United States was depicted as a feminist and gay safe haven—even while the American state, after being "castrated and penetrated," promised to violently emasculate others. Witness, for example, the reports of the poster of Osama Bin Laden circulating after 9/11 in New York of Bin Laden being sodomized by the Empire State Building titled "The Empire Strikes Back"—or the U.S. navy bomb aboard the USS Enterprise with "Hijack this, fags" scrawled upon it.⁷⁴

Despite the erasure of terrorist victims' racial or ethnic markers, race and immigration status become hypervisible for perpetrators of terrorist attacks. Indeed, the hyper-racialization of the killer matches the deracination of the victims.⁷⁵ This hyper-racialization is also meant to signal sexual deviation. As Puar and Rai write, the construct of the terrorist relies on the idea of the monster, who has always been a sexual deviant and who has a kind of failed heterosexuality. This is evident in the whirlwind of media

70. See John Burnett, *Families of Undocumented Victims of Orlando Face Unique Challenges*, NPR (June 19, 2016), <http://www.npr.org/2016/06/19/482668952/families-of-undocumented-victims-of-orlando-face-unique-challenges>.

71. See Russell Robinson, *Marriage Equality and Postracialism*, 61 UCLA L. REV 1010, 1024–25 (2014) (pointing out the problems with the claim that "Gay is the New Black" including its presumption that no Black people are gay).

72. Maya Mikdashi, *After Orlando*, MIDDLE E. RES. & INFO. PROJECT (June 17, 2016), <http://www.merip.org/after-orlando>.

73. See generally Jasbir Puar & Amit Rai, *Monster, Terrorist, Fag: The War on Terrorism and the Production of Docile Patriots*, 20 SOC. TEXT 117 (2002).

74. *Id.* See also Muneer Ahmad, *Homeland Insecurities: Racial Profiling the Day After September 11th*, 20 SOC. TEXT 101, 109 (2002).

75. Mikdashi, *supra* note 72.

focus on Omar Mateen's supposed queer desires. The idea is of pent-up sexual desires repressed by Islam, so that the cultural backwardness of immigrant and nonwhite families leads their children to psychological compulsion.⁷⁶ As Sima Shaksari writes, one is supposed to "Come out, get married and be normal!"; the repression of homophobic cultures of color is what supposedly leads to violence.⁷⁷ Normal is white gay visibility.

Omar Mateen's homophobia, transphobia, misogyny, and racism are all attributed to Islam, an Islam which in turn engenders perverse subjects. Mateen was not understood to perform a homophobic and misogynistic American masculinity enabled by everyday militarism, attributable, not to his parent's birthplace or religion, but to a North American culture of violence and toxic masculinity.⁷⁸ Omar Mateen worked for nine years—despite being outed by coworkers as racist, homophobic, sexist and possibly violent—for the world's largest private security firm, G4S, which is the world's third largest private employer; it runs several Israeli checkpoints and prisons as well as many U.S. prisons. Thus, we might understand Mateen as a hypermasculine and homophobic male in a culture that prizes masculinity in a Trumpian world of beauty contests, women as fat slobs, and penis size.⁷⁹

In a subsequent speech, on "fighting terrorism" on August 15, 2016, Trump explicitly used the term "honor killings," suggesting that terrorism and "honor killings" shared the same "breeding ground," stating:

Just as we won the Cold War, in part, by exposing the evils of communism and the virtues of free markets, so too must we take on the ideology of Radical Islam.

While my opponent accepted millions of dollars in Foundation donations from countries where being gay is an offense punishable by prison or death, my Administration will speak

76. Sima Shaksari, *After Orlando*, MIDDLE E. RES. & INFO. PROJECT (June 17, 2016), <http://www.merip.org/after-orlando>.

77. *Id.*

78. *Id.*; Roqayah Chamseddine, *After Orlando*, MIDDLE E. RES. & INFO. PROJECT (June 17, 2016), <http://www.merip.org/after-orlando>.

79. See Shaksari, *supra* note 76 ("Perhaps it was not Mateen's 'closeted gayness,' but his performance of a homophobic and misogynistic American masculinity enabled by everyday militarism, and constructed vis-à-vis the 'failed masculinity' of the Muslim other, that led to this massacre").

out against the oppression of women, gays and people of different faith.

Our Administration will be a friend to all moderate Muslim reformers in the Middle East, and will amplify their voices.

This includes speaking out against the horrible practice of honor killings, where women are murdered by their relatives for dressing, marrying or acting in a way that violates fundamentalist teachings. . . . Shockingly, this is a practice that has reached our own shores.

One such case involves an Iraqi immigrant who was sentenced to 34 years in jail for running over his own daughter claiming she had become "too Westernized." To defeat Islamic terrorism, we must also speak out forcefully against a hateful ideology that provides the breeding ground for violence and terrorism to grow.⁸⁰

The case Trump is describing here is the 2009 murder of Noor Almaleki in Arizona; what he fails to note is that the jury found her father guilty of second-degree murder, meaning it did not find the act either premeditated or an "honor killing."⁸¹ Instead, what we find in this speech is, as with his speech following the Pulse massacre, a linking of repression of women, gays, and "people of different faith" by "Radical Islam," articulated as a problem not just in the "Middle East" but as reaching "our own shores."

Lastly, Trump gave a speech on August 31, 2016, in Phoenix on immigration, where he outlined several reforms he hoped to implement. They included the following:

Another reform involves new screening tests for all applicants that include, and this is so important, especially if you get the right people. And we will get the right people. An ideological certification to make sure that those we are admitting to our country share our values and love our people.

(APPLAUSE)

Thank you. We're very proud of our country. Aren't we? Really? With all it's going through, we're very proud of our country. For instance, in the last five years, we've admitted nearly 100,000 immigrants from Iraq and Afghanistan. And these two countries according to Pew Research, a majority of

80. *Full Text: Donald Trump's Speech on Fighting Terrorism*, POLITICO (Aug. 15, 2016), <http://www.politico.com/story/2016/08/donald-trump-terrorism-speech-227025>.

81. *Was Noor Al-Maleki the Victim of an Honor Killing?* CBS (Sept. 1, 2012), <http://www.cbsnews.com/news/was-noor-almaleki-the-victim-of-an-honor-killing/5/>.

residents say that the barbaric practice of honor killings against women are often or sometimes justified. That's what they say.

(APPLAUSE)

That's what they say. They're justified. Right? And we're admitting them to our country. Applicants will be asked their views about honor killings, about respect for women and gays and minorities. Attitudes on radical Islam, which our president refuses to say and many other topics as part of this vetting procedure. And if we have the right people doing it, believe me, very, very few will slip through the cracks. Hopefully, none.⁸²

In addition to the visible use of gender and sexual equality as a proxy for xenophobia and Islamophobia, we also see in these speeches the crime victim as what Jonathon Simon has called the "idealized political subject" whose only request of the state is punishment.⁸³ It is as the victim of crime that the LGBTQ immigrant murdered in the Pulse Nightclub or the Muslim woman subject to an "honor killing" may be folded into a national object of concern—when alive, they face exclusion from the borders of the United States; through their death, they are incorporated into citizenship.

IV. THE "DATA"

In September 2016, then-Senator Jeff Sessions had an exchange with Simon Henshaw, the U.S. State Department official in charge of its refugee program, who was testifying about the Obama administration's approach to the Syrian refugee problem. Sessions asked Henshaw about "honor killings":

Sessions: We had 27 honor killings last year in the United States according to DOJ, do you ask if you adhere to the practice of honor killings for people who violate certain religious codes before admitting into the United States?" [sic]

Henshaw: I'm not sure those honor killings took place among the resettled refugee community in the United States. I see they're becoming good American citizens, members of the

82. *Transcript of Donald Trump's Immigration Speech*, N.Y. TIMES (Sept. 1, 2016), <https://www.nytimes.com/2016/09/02/us/politics/transcript-trump-immigration-speech.html>.

83. JONATHAN SIMON, *GOVERNING THROUGH CRIME: HOW THE WAR ON CRIME TRANSFORMED AMERICAN DEMOCRACY AND CREATED A CULTURE OF FEAR* 136–40 (2007).

military, members of our police, member—people with U.S. American values, that’s what I see when I visit refugee populations in the U.S.

Sessions: Well if they’re illiterate in their home country they’re not likely to be a police officer the next week in the United States, are they? And with regard to honor killings, you have evidence that 27 people were killed in the United States for honor killings according to a DOJ report.

Henshaw: I have no evidence that there were any honor killings among the refugee population resettled in the U.S., sir.

Sessions: Well, it’s from the same cultural background I would say.⁸⁴

What is this report, referred to by Sessions, source of the claim that there were “27 honor killings last year in the United States”? There are multiple assertions, in addition to that of Jeff Sessions, that this was a study conducted by the Department of Justice. Typically reporting states that this DOJ report found that there are 23–27 victims of “honor killings” annually in the United States.⁸⁵

In fact, there is no such data. The report Sessions referred to was not produced by the Department of Justice, but was commissioned by the Department of Justice and conducted by the research firm Westat, which carries out research for U.S. government agencies as well as other sectors.⁸⁶ The 23–27 “honor killings” per year is not a figure produced by Westat, but rather emerged from an unpublished study mentioned in the Westat

84. Adam Serwer, *Jeff Sessions’s Fear of Muslim Immigrants*, THE ATLANTIC (Feb. 8, 2017), <https://www.theatlantic.com/politics/archive/2017/02/jeff-sessions-has-long-feared-muslim-immigrants/516069/>.

85. See, e.g., Greg Zoroya, ‘Honor Killings’: 5 Things to Know, USA TODAY (June 9, 2016), <https://www.usatoday.com/story/news/world/2016/06/09/honor-killings-united-nations-pakistan/85642786/> (stating that “the Department of Justice estimated in its 2014 report that based on U.S. demographics, 23 to 27 honor killings occur in the country each year”); Chelsea Schilling, *Trump Orders Reports on U.S. Honor Killings, DOJ Estimates 23–27 Victims Each Year in America*, WND (Mar. 6, 2017), <http://mobile.wnd.com/2017/03/trump-orders-reports-on-u-s-honor-killings/>; Kimberly Winston, *Trump Travel Ban Orders a Report on Honor Killings*, RELIGION NEWS SERVICE (Mar. 6, 2017), <https://religionnews.com/2017/03/06/trump-travel-ban-orders-a-report-on-honor-killings/> (stating that “a 2014 Justice Department reports (sic) shows [‘honor killings’] make up about 23 to 27 of the approximately 15,000 U.S. murders reported to the FBI annually”).

86. See Cynthia Helba et al., *Report on Exploratory Study into Honor Violence Measurement Methods*, WESTAT (Nov. 26, 2014), <https://www.ncjrs.gov/pdffiles1/bjs/grants/248879.pdf>.

report, as first reported by Jesse Singal in *New York Magazine*.⁸⁷ And the purported statistic of 23-27 “honor killings” per year is not based on any actual cases in the United States.

The story of the birth and continued life of this “data” is a story of the mobilization of a “broad array of technologies of governance,”⁸⁸ thanks to the traction of this issue. It is also attributable to the efforts of former Dutch MP and Hoover Institute and American Enterprise Institute fellow Ayaan Hirsi Ali and the organization she founded, the AHA Foundation, which describes itself as “the leading organization working to end honor violence that shames, hurts or kills thousands of women and girls in the US each year, and puts millions more at risk.”⁸⁹ Hirsi Ali is a well-known critic of Islam.⁹⁰ In February 2012, the AHA Foundation provided draft language and a letter of support to Republican Representative Frank Wolf of Virginia for an Appropriations Bill that would mandate the U.S. government to begin tracking “honor violence” and to determine if extant federal data collection mechanisms could be used to estimate the prevalence of such violence in the United States. This mandate

87. Reporting about this study first appeared in the popular press in Jesse Singal, *Here's What the Research Says About Honor Killings in the U.S.*, N.Y. MAG. (Mar. 6, 2017), <http://nymag.com/intelligencer/2017/03/heres-what-the-research-says-about-american-honor-killings.html>. Singal noted that the origin story of the study was “telling” and that because “so little is known about honor killings in the U.S.” the researchers “had to resort to generating a proxy estimate of their frequency” which they accomplished through combining “statistics about the prevalence of honor killings in the U.K., Germany, and Holland with crime and demographic stats from the U.S.” *Id.* Singal does not report on the specifics of how the statistics were generated in the U.K., Germany, and Holland.

88. Grewal, *supra* note 14 at 8 (describing how “honor killings” have mobilized anti-immigrant governance in the U.K. context).

89. *The AHA Foundation*, WORLDWIDEWOMEN, <https://worldwidewomen.co/organizations/3979/the-aha-foundation-2> (last visited Dec. 17, 2018).

90. She had been identified as a prominent “anti-Muslim extremist” on the Southern Poverty Law Center website. See Hemant Mehta, *Southern Poverty Law Center: Ayaan Hirsi Ali and Maajid Nawaz Are “Anti-Muslim Extremists”*, THE FRIENDLY ATHEIST (Oct. 27, 2016), <https://friendlyatheist.patheos.com/2016/10/27/southern-poverty-law-center-ayaan-hirsi-ali-and-maajid-nawaz-are-anti-muslim-extremists/> (“Although she now positions herself as an ex-Muslim champion of women’s rights, her anti-Muslim rhetoric is remarkably toxic. In 2007, she told Reason magazine that the West should ‘defeat’ Islam and that ‘we are war with Islam.’ The same year, she said that Islam was ‘the new fascism’ and a ‘destructive, nihilistic cult of death’ in an interview with The London Evening Standard.”). After Maajid Nawaz, also named as an anti-Muslim extremist by the Southern Poverty Law Center, successfully sued, Nawaz and Hirsi Ali were removed from the Southern Poverty Law Center website in June, 2018. Jack Crowe, *Southern Poverty Law Center Quietly Deleted List of ‘Anti-Muslim’ Extremists After Legal Threat*, NATIONAL REVIEW (April 19, 2018), <https://www.nationalreview.com/news/southern-poverty-law-center-removes-extremist-list-after-legal-threat/>.

was issued by Congress in 2014.⁹¹ The AHA Foundation reports that it was "frequently consulted during the drafting" of the report commissioned from Westat for the Bureau of Justice Statistics, and that AHA Foundation staff "provided significant background information about honor violence and our programs," and "shared our studies on honor killing and forced marriage carried out by the John Jay College of Criminal Justice."⁹²

The Westat report begins by noting that there is no reliable summary data available for the U.S. regarding the prevalence of "honor violence," and that such cases appear to be rare compared to other types of crime in the United States.⁹³ The report attempts to study four types of "honor violence": forced marriage, "honor-based domestic violence," "honor killing," and "female genital mutilation."⁹⁴

The report then notes the frequently quoted estimate of 5,000 "honor killings worldwide" — a statistic that is repeatedly cited but

91. See *Analysis of the FY 2014 Omnibus & Implications for Social and Behavioral Science*, COSSA (Jan. 27, 2014), <http://archive.constantcontact.com/fs177/1102766514430/archive/1116343282004.html> ("On Friday, January 17, President Obama signed into law the Consolidated Appropriations Act of 2014, thereby completing the fiscal year (FY) 2014 appropriations process more than three months into the fiscal year. . . . In addition, the omnibus accepts report language from the House which provides funding for research on 'honor violence,' a form of violence against women. According to the House report from July, 'There is currently a lack of statistical information on the occurrence of honor violence in the United States. Therefore, of the amounts provided for research and evaluation on violence against women [\$3.3 million is included in the omnibus for FY 2014], no less than \$250,000 shall be for [BJS] to collect statistics and report on the incidence of honor violence in the United States.'") See also Consolidated and Further Continuing Appropriations Act of 2015, PUB. L. NO. 113-235, 128 Stat. 2191. ("\$41,000,000 is for criminal justice statistics programs, and other activities, as authorized by part C of title I of the 1968 Act: Provided, That beginning not later than 2 years after the date of enactment of this Act, as part of each National Crime Victimization Survey, the Attorney General shall include statistics relating to honor violence.").

92. *Annual Report 2015*, AHA FOUNDATION 5-6 (2015), <https://www.thcaha.foundation.org/wp-content/uploads/2016/09/AHA%20Annual%20Report2015.pdf>. This is the unpublished Curtis et al. study described below.

93. Helba et al, *supra* note 86, at 1-1.

94. *Id.* "Honor violence" is explained in the report as rooted in cultures "that use honor to justify violent behavior" and are listed as including "Mediterranean societies such as Greece, Italy and Spain; Middle East and Arab culture; Latin and South American cultures with Iberian roots, and the American South." *Id.* at 1-2. The report contrasts "honor violence" to "domestic violence" as having "a conspiratorial and less impulsive quality, evidenced by the systematic surveillance of the victim, involvement of one or more family members, and in some instances, the family engagement of bounty hunters or assassins. . . . Perpetrators have a sense of honor rather than one of wrongdoing . . ." *Id.* at 1-3.

never explained⁹⁵—and mentions the 23–27 figure from an unpublished study.⁹⁶ Acknowledging that there is little strong empirical research, and that information is “not always of rigorous scientific origin,” the researchers outline their methodology: they reviewed research literature, reviewed materials directed at law enforcement created by the AHA Foundation, reviewed websites focusing on “honor violence,” watched three movies about “honor violence,” including (the heavily criticized) “Honor Diaries,” tried to interview U.S. law enforcement, who either did not respond or said they had no cases to discuss or were not familiar with the topic, and then interviewed, with the help of the AHA Foundation, individuals in the Netherlands and the U.K., as well as the detectives who worked on the Noor Almaleki case.⁹⁷

The report authors also spoke with five academic researchers, held several conversations with a representative of the AHA Foundation, and reviewed existing victimization surveys. Finally, the authors also reviewed online sources about cases that either occurred in the U.S., were planned in the U.S., and/or were somehow connected to people or events in the U.S., searching the web for “keywords such as ‘honor violence,’ ‘honor killings,’ ‘honor crime,’ ‘forced marriage,’ and ‘female genital mutilation.’” Searching over a 24-year period, from 1990–2014, the authors found fourteen “honor killings,” one suspected “honor killing,” one threatened “honor killing,” and two cases of “honor violence.” The study notes that this “does not appear to be consistent with the estimate” of 23–27 killings per year in the unpublished study⁹⁸— the rate of “honor killing” would instead be fewer than one per year in the United States.

Examining the particulars of the eighteen cases that are identified in the Westat study, several involve sexual abuse and histories of family violence, histories of domestic violence, and cases of what might seem “routine” domestic violence murders were it not for the “cultural” background of the parties involved and the invocation by the media of “honor.” We know that

95. For a criticism of the “5,000 honor killings per year, worldwide” figure, see *SAVING*, *supra* note 15, at 136.

96. Helba et al., *supra* note 86, at 1–5.

97. This is the case described above, invoked by Trump as an “honor killing” case, where the jury refused to find premeditation or an “honor killing.” See *Was Noor Al-Maleki the Victim of an Honor Killing?*, *supra* note 81.

98. Helba et al., *supra* note 86, at 5–2.

"honor killings" are often post hoc generalizations.⁹⁹ The most prominently publicized cases of the eighteen cases—that of Tina Isa, and the case of Sarah and Amina Said—feature complex webs of causal factors that are erased by the invocation of "honor killing," as I have previously argued.¹⁰⁰

We turn now to the unpublished study responsible for the assertion of "23–27" "honor killings" per year in the United States. Titled "A Comparative Approach to Estimating the Annual Number of Honor Killings in the United States Among People from North African, Middle Eastern, and Southeast (sic) Asian (MENASA) Countries," and with nine authors led by Ric Curtis of John Jay College, the study acknowledges support from the AHA Foundation.¹⁰¹

The call of the Introduction is to "ask if honor violence of the type that the international community has recently addressed is a problem among migrants in the United States that merits greater scrutiny and action by policy makers, professionals and researchers." The study explains its decision to focus on what it calls people from "MENASA" countries (the authors mistake Southeast Asia for South Asia), labeling these countries as placed within what Curtis et al. call "the patriarchal belt."¹⁰² Given the paucity of official statistics about "honor killings" in the United States, the authors decided to use primary data sources from Germany, the U.K., and Holland, to establish an annual expected "rate" of "honor killings" in other countries, which was then used to project expected numbers of "honor killings" in the United States.

99. See *Seductions*, *supra* note 9.

100. See Leti Volpp, *Disappearing Acts: On Gendered Violence, Pathological Cultures, and Civil Society*, 121 PMLA 1631 (2006) (explaining how the federal government accused Isa's father and two other men of murdering her because of fears she would disclose their Abu Nidal cell, and not as an "honor killing"); Volpp, *supra* note 65 (explaining how the Said sisters' mother and brother both described a history of family and domestic violence and refuted the idea that this was an "honor killing").

101. Ric Curtis et al., *A Comparative Approach to Estimating the Annual Number of Honor Killings in the United States Among People from North African, Middle Eastern and Southeast Asian (MENASA) Countries*, (January, 2014) (unpublished paper on file with author).

102. *Id.* at 5. The MENASA countries listed by Curtis et al. are as follows: Algeria, Bahrain, Djibouti, Egypt, Iraq, Palestine/Israel, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Qatar, Saudi Arabia, Sudan, Syria, Tunisia, United Arab Emirates, Yemen, Iran, Afghanistan, Pakistan, India, Bangladesh, Sri Lanka, and Nepal. The authors write: "We have also included Turkey, despite its position between Europe and Western Asia." *Id.* at 6.

The statistical validity of this kind of comparison is limited. As the study reports, Germany, with a population about one quarter the size of the United States, had 690 homicides in 2010; in the U.S. that year there were 12,996.¹⁰³ Obviously, there are enormous differences between the United States and Germany that are not being controlled for.¹⁰⁴ There are also no official data collected about “honor killings” in either country. But there are “more than 4 million people from MENASA countries” in Germany, so Curtis et al. decided this would be an apt comparison. While there is no reported data, Curtis et al. found a study by German researchers who estimated the prevalence of “honor killings” in Germany by looking at known cases of homicide, and by searching a news agency database for homicide articles that focused on “cultural explanations” that happened in “ethnic minority groups” that portrayed “family relations” as a cause.¹⁰⁵ Since cases of gendered subordination are often selectively blamed on culture, not on the basis of any empirical evidence, but upon the identity of the actor, we find ourselves here in terrain which suggests that any homicide case involving people of color (or what in German is called a *Migrationshintergrund*, or migration background) may be attributed in this study as an “honor killing.”¹⁰⁶ Over the nine-year period covered by the study, the German researchers found what they believed to be 78 cases and attempts through this kind of post hoc assumption.¹⁰⁷

The United Kingdom, with 3 million people from MENASA countries is the next target of comparison. Perhaps most breathtaking, official police estimates in the U.K. turn out to be “based simply on a casual remark made by a police official in a 2003 speech” of “10–12 honor killings” each year.¹⁰⁸ This number becomes the U.K. statistic of annual “honor killings” in that country. Holland reports “on average 13 cases” every year, according to researchers at the National Centre of Expertise on

103. *Id.* at 8.

104. There are also large differences between the “MENASA” populations in these countries.

105. D. OBERWITTLER & J. KASSETL, *EHREN MORDE IN DEUTSCHLAND, 1996-2005. EINE UNTERSUCHUNG AUF DER BASIS VON PROZESSAKTEN* (2011).

106. *See generally* Volpp, *supra* note 12.

107. Curtis et al., *supra* note 101, at 8.

108. *Id.* at 12.

Honour Violence. This number includes "cases that the others do not: manslaughter cases, suicides and men."¹⁰⁹

To develop a "per capita" "killing rate," the researchers took the number of "MENASA" people in each country, divided by the number of annual "honor killing" cases in each country, and then calculated the rate per 100,000 people (called below the "per capita rate."). Germany, with nine "honor killings" per year, has a .22 "per capita rate"; the U.K., with twelve, has a .26 "per capita rate," and Holland, with 13, has a 2.06 "per capita rate."

To estimate the annual rate of "honor killings" in the United States, Curtis et al. take the "per capita rate" for these three countries and adjust the rate downwards for the Netherlands, which has the highest rate, and adjust the rate upwards for missing cases in the U.K. and Germany, in an attempt to reach parity among these three countries (Figure 1).

109. *Id.* at 14–15.

Honor Killings in Holland	Per Capita	Honor Killings in Germany	Per Capita	Honor Killings in the U.K.	Per Capita
13	2.06	9	.22	12	.26
With Fewer Cases		With Additional Cases		With Additional Cases	
12	1.90	10	.24	13	.28
11	1.75	11	.26	14	.30
10	1.59	12	.29	15	.32
9	1.43	13	.31	16	.34
8	1.27	14	.33	17	.36
7	1.11	15	.36	18	.38
6	.95	16	.38	19	.40
5	.79	17	.41	20	.43
4	.63	18	.43	21	.45
3	.48	19	.45	22	.47
2	.32	20	.48	23	.49

Figure 1. Per Capita Rate of "Honor Killings" in Curtis et al.

The authors subtract eight deaths from the Dutch total and add three to the Germany and U.K. figures in order to try to align the numbers (as shown in Figure 1), or subtract seven deaths from the Dutch total and add four to the Germany and U.K. figures. This yields two alternatives for an "EU killing rate": a ".467 EU Honor killing rate" (Figure 2) or a ".533 EU Honor killing rate," (Figure 3) which, multiplied with the MENASA population in the United States, yields the range of 23.45 to 26.76, or "23-27" "honor killings" per year.¹¹⁰

110. *Id.* at 23.

MENASA in U.S	5,022,400
EU Honor killing rate	<u>x.467</u> 2,345,460.8
Adjust per 100,000	2,345,460.8 ÷ <u>100,000</u>
Annual Number of Honor Killings in the US w/EU average	23.45

Figure 2. U.S. Estimate based upon .467 EU rate in Curtis et al.

MENASA in U.S	5,022,400
EU Honor killing rate	<u>x.533</u> 2,676,939.2
Adjust per 100,000	2,676,939.2 ÷ <u>100,000</u>
Annual Number of Honor Killings in the US w/EU average	26.76

Figure 3. U.S. Estimate based upon .533 EU rate in Curtis et al.

The authors admit in the study that estimating "the annual number of honor killings in the U.S. by proxy is far from ideal." In an interview with reporter Jesse Singal, Ric Curtis described their study's methodology thus: "It's not terribly scientific."¹¹¹ That the Curtis et al. report, with this methodology, has transmuted into the widespread perception that the U.S. government has documented an average of 23-27 "honor killings" per year in the country is deeply disturbing.

Would this kind of unsubstantiated claim work in any other realm? Of course, data has its own magic, carrying with it the notions of objectivity, science, and truth. Yet there is also a willing

111. Singal, *supra* note 87.

belief in the prevalence of “honor killings” among Muslims that aligns with longstanding narratives of the dangerous Muslim man and imperiled Muslim woman.¹¹² The relationship of stereotype, threat, evidence, and consequence seem reminiscent of nothing so much as the forced relocation of Japanese American citizens and noncitizens into concentration camps, based not upon real dangers but, quoting Justice Murphy dissenting in *Korematsu*, on “an accumulation of [...] misinformation, half-truths and insinuations” directed against Japanese Americans.¹¹³

V. CONCLUSION

In January, 2018, the reporting requirements of Section 11 of EO-2 materialized in the form of an “Initial Section 11 Report” issued jointly by the Department of Justice and the Department of Homeland Security.¹¹⁴ In responding to EO-2’s requirement to present data “regarding the number and types of acts of gender-based violence against women, including so-called ‘honor killings,’ in the United States by foreign nationals,” the report states:

There is no federal statute specifically prohibiting “honor killings” and the federal government lacks comprehensive data regarding incidents of such offenses at the state and local levels. Although the federal government lacks independent data

112. It is important to also note a recent shift in the perception of Muslim women, as not just subordinated victims of Islam but also as terrorist threats. See Sahar Aziz, *From the Oppressed to the Terrorist: Muslim American Women Caught in the Crosshairs of Intersectionality*, 9 HASTINGS RACE & POVERTY L.J. 191 (2012); SHAKIRA HUSSEIN, FROM VICTIMS TO SUSPECTS: MUSLIM WOMEN SINCE 9/11 (2019).

113. *Korematsu v. United States*, 323 U.S. 214, 239 (Murphy J., dissenting). For a discussion of how the War Department concealed evidence from the courts as to the non-dangerousness of Japanese Americans, see ERIC YAMAMOTO ET AL, RACE, RIGHTS AND REPARATION: LAW AND THE JAPANESE AMERICAN INTERNMENT (2001). In fact, *Korematsu* had been analogized to the Muslim ban in amicus briefs, including many filed by Japanese American organizations and individuals. Justice Roberts, writing for the majority in *Trump v. Hawai’i*, called *Korematsu* morally repugnant and a wholly inapt comparison to the “facially neutral policy” of EO-3, and took the opportunity to state that *Korematsu* had been overruled “in the court of history.” *Trump v. Hawaii*, 138 S. Ct. 2392, 2423 (2018). Justice Sonia Sotomayor saw the relationship of *Korematsu* to EO-3 very differently, pointing instead to the stark parallels between both cases, and the same dangerous logic employed, sanctioning discriminatory policy motivated by animus toward a disfavored group, all in the name of a superficial claim of national security. *Id.* at 2448 (Sotomayor, J., dissenting).

114. Executive Order 13780: Protecting the Nation from Foreign Terrorist Entry into the United States: Initial Section 11 Report, United States Dep’t of Justice (January, 2018), <https://www.justice.gov/opa/press-release/file/1026436/download>.

regarding incidents of honor killings, a study commissioned and provided to the DOJ's Bureau of Justice Statistics in 2014 estimated that an average of 23–27 honor killings occur every year in the United States.¹¹⁵

In other words, the perception of "23–27 honor killings" per year in the United States lives on, now bolstered through its rearticulation in the Executive Order's official DOJ and DHS Report.

Broader attention must be paid to how "honor killings" in the United States have been constructed as a problem for U.S. governance. Rhetoric and the illusion of data work together in fueling a phantasm that links "foreign terrorist entry" with "honor killings." The specter of violence against women has played an important role in the Trump administration's executive orders seeking to bar Muslims from entry, and continues to rationalize the notion that the nation must be protected through their exclusion. Yet this submerged story has been largely overlooked.

Perhaps this is because the "common sense" beliefs that link Muslim immigrants with security threat, the subjugation of women, and attacks on sexual liberty are so pervasive today as to be unremarkable. But very specific ideas about gender are integral to anti-Muslim animus and deserve a central place in our scrutiny. The Trump administration has used "honor killings" in order to reinforce the necessity of Muslim exclusion outside of U.S. borders, in the process, naturalizing Islamophobia as immigration policy of the United States.

115. *Id.* at 8.

