INTIMATE VIOLENCE, FOREIGN SOLUTIONS: DOMESTIC VIOLENCE POLICY AND MUSLIM-AMERICAN WOMEN

MAURA K. FINIGAN†

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In communities across the United States, husbands hit their wives.[1] Approximately 1.3 million women are physically assaulted by an intimate partner each year.[2] Flyers on bulletin boards on college campuses and community centers across the country advertise the familiar statistic that "one in every four American women will experience domestic violence in her lifetime."[3]

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1. I use gender-specific language in my discussion of domestic abuse throughout this Note. I recognize that men can also be victims of domestic violence. My choice of words reflects, however, the statistic that 92% of reported domestic abuse victims are female, and I believe this number is likely to be higher in Muslim-American communities for reasons discussed herein.

2. NAT'L COALITION AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE FACTS, http://www.ncadv.org/files/DomesticViolenceFactSheet(National).pdf (citing Ctr. for Disease Control and Prevention, Nat'l Ctr. for Injury Prevention and Control, *Costs of Intimate Partner Violence Against Women in the United States*, 2003, Atlanta, GA).

3. *Id.* (citing PATRICIA TJADEN & NANCY THOENNES, NAT'L INST. OF JUSTICE AND THE CTR. OF DISEASE CONTROL AND PREVENTION, EXTENT, NATURE AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY, 2000).

No part of society is spared from this national epidemic; however, women in certain racial and ethnic groups are at heightened risk.

Muslim-American women—rarely discussed in domestic violence scholarship—face domestic abuse risk factors not shared by the general population.[4] Not only may these women be more likely to be physically abused than most,[5] they are also subject to a variety of cultural factors, including sensitivity to attacks on their faith, mixed messages about battering within Islam, and limited knowledge about the American legal system. These factors seriously impede their ability to report domestic abuse.[6] Some of these issues are common to all heavily immigrant populations and are not exclusively "Muslim" problems. However, the especially patriarchal culture surrounding the Islamic faith exacerbates many of these problems.[7] It is for this reason that I focus specifically on the Muslim-American experience in this Note.

The American justice system has only recently enforced punishments for domestic abuse.[8] Modern enforcement initiatives have primarily taken the form of mandatory arrest policies, which compel police to arrest perpetrators of domestic violence even when their victims wish to drop the charges.[9] Mandatory arrest is now a popular method of enforcing domestic violence laws: the policy is currently in place in twenty-two states.[10]

Unfortunately, the current state of domestic violence policy is insufficient to address the needs of Muslim-American women. A key reason for this deficiency

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4. While there may be male Muslim-American victims of domestic abuse, there is limited data on such instances. Due to this fact and the gender dynamics at issue in Islam, for the purposes of this Note, I will be focusing exclusively on female Muslim-American victims of domestic abuse.

5. Research is mixed on this point. *See* Sheila Musaji, *The Death of Aqsa Parvez Should be an Interfaith Call to Action*, MUSLIM AM. SOC'Y, Dec. 15, 2007, *available at* http://www.masnet.org/news.asp?id=4626 ("The rate of domestic abuse in the Muslim community is about the same as in the general population—about eighteen percent, according to a 2000 study performed by Oakland University in Rochester, Mich. . . . It tends, however, to be more hidden."). *But see* Robert Crane, *Domestic Abuse by Muslim Men: Is the 18% Statistic Too Low?* THE AMERICAN MUSLIM, http://theamericanmuslim.org/tam.php/features/articles/domestic_abuse_by_muslim_men_is_the_18_statistic_too_low/ (estimating that "the percentage of Muslim men who have hit their wives at least once in their lives is closer to 90%" and questioning "how bad" the violence has to be "before it is registered statistically as abuse").

6. While there is limited data establishing low reporting levels (since by definition such data would be difficult to obtain), there is a consensus that reporting levels are lower for Muslim-American domestic violence victims. *See, e.g.*, Pamela Constable, *For Some Muslim Wives, Abuse Knows No Borders*, WASH. POST, May 8, 2007, at A2.

7. *See* discussion *infra* Part IV.A. For this reason, I will use Muslim-American women as a prism through which to assess problems with domestic violence policy that other ethnic groups will likely share.

8. *See* Bernadette D. Sewell, Note, *History of Abuse: Societal, Judicial, and Legislative Responses to the Problem of Wife Beating*, 23 SUFFOLK U. L. REV. 983, 988–97 (1989) (tracing the history of domestic violence law in the United States); *see also* Kathleen Waits, *The Criminal Justice System's Response to Battering: Understanding the Problem, Forging the Solutions*, 60 WASH. L. REV. 267, 299–302 (1985) (discussing current indifference and nonintervention).

9. Richard Davis, *Pro-Arrest and No Drop Prosecution Policies*, CAL. BATTERER INTERVENTION REFORM COMM. at 2, *available at* http://www.nfvlrc.org/pdf/modelProgramsAndLegislation/Research.ProArrest.pdf.

10. AM. BAR ASS'N COMM'N ON DOMESTIC VIOLENCE, DOMESTIC VIOLENCE ARREST POLICIES BY STATE, 1–2 (Nov. 2007), *available at* http://www.abanet.org/domviol/docs/Domestic_Violence_Arrest_Policies_by_State_11_07.pdf.

is that mandatory arrest—the widely touted "solution" to the domestic violence problem—depends on victim reporting of domestic violence. This reliance presumes a knowledge of, and willingness to trust, the American justice system that simply does not exist in many Muslim-American communities; religious and cultural pressures, language barriers, and immigration-related concerns not only impede domestic violence reporting, but also can cause confusion and alienation when Muslim-American women enter the justice system.[11] In short, the one-size-fits-all nature of the "solution" to the domestic violence problem—mandatory arrests of perpetrators—fails to adequately address the needs of Muslim-American women.

In order to address the poor domestic violence enforcement in this population effectively, state and local governments cannot merely implement mandatory arrest policies. Instead, they must equally prioritize education and cultural sensitivity by funding supplementary legal initiatives that directly address the specific needs of Muslim-American women and other vulnerable minority and immigrant populations. Since it is comparatively lower reporting that makes mandatory arrest an especially poor fit for these communities, a more holistic approach would foster an environment that encourages domestic abuse reporting within Muslim-American communities. In order to address this problem, communities should work to educate Muslim-American women about the legal options available to victims of domestic violence, so that women vulnerable to abuse are armed with the information necessary to protect themselves. Furthermore, if Muslim-American women do report domestic abuse, the government must communicate with victims in a culturally sensitive manner so that the Muslim-American community's trust in the American justice system is not further eroded. Finally, communities must not evaluate the efficacy of the policies purely in the context of gender, and instead include race, immigration, and other factors in their analysis.

I. THE PROBLEM OF DOMESTIC VIOLENCE

Domestic violence, defined by the U.S. Department of Justice "as a pattern of abusive behavior in a relationship that is used by one partner to gain or maintain power and control over an intimate partner,"[12] is tragically common in the United States. According to the National Center for Injury Prevention and Control, women experience about 4.8 million intimate partner-related physical assaults and rapes every year.[13] These assaults have lasting consequences. Less than one-fifth of victims reporting an injury from intimate partner violence seek medical treatment following the injury, often resulting in long-term health problems.[14] For some women, the consequences are even more dire: "in 2005,

11. *See* discussion *infra* Part IV.A.

12. U.S. Dep't of Justice, About Domestic Violence, http://www.ovw.usdoj.gov/domviolence.htm (last visited Mar. 13, 2010).

13. CTR. FOR DISEASE CONTROL AND PREVENTION, UNDERSTANDING INTIMATE PARTNER VIOLENCE (2006), *available at* http://www.cdc.gov/ncipc/dvp/ipv_factsheet.pdf.

14. *Id.*

1181 women were murdered by an intimate partner . . . an average of three women every day."[15]

Though rarely discussed in domestic violence literature, Muslim-American communities face a heightened risk of domestic abuse. According to a survey by the North American Council for Muslim Women, ten percent of Muslim women are victims of domestic violence (including everything from hitting to incest) each year;[16] another study suggests the number is closer to twenty percent.[17] Furthermore, if verbal and psychological abuse were included, the figure would rise considerably.[18] By comparison, seven percent of the general population of American women are victims of domestic violence each year.[19]

Muslim-American women face numerous cultural pressures that discourage reporting of domestic abuse, drastically decreasing the likelihood of them receiving help in the event of a domestic violence incident. Some of these pressures—language barriers preventing effective communication with law enforcement,[20] and immigration-related fears of deportation[21]—are shared with many immigrant communities. However, other pressures—such as religious texts that cast doubt on domestic violence even being a crime,[22] cultural pressure to be loyal to one's husband, and reluctance to exacerbate existing stereotypes about Muslim-American men[23]—are especially prevalent in Muslim-American communities.

These same pressures may present serious problems for battered Muslim-American women even if they successfully report a domestic violence incident to law enforcement. Victims struggling with language barriers and a lack of familiarity with the American legal system might not clearly understand the reasons for the mandatory arrest of the perpetrator; this confusion can exacerbate Muslim-American women's distrust of the American justice system. In addition, a lack of culturally appropriate post-arrest resources, such as shelters equipped for observant Muslims and the availability of translators, risks further alienating this population. In short, Muslim-American women are not only especially vulnerable to domestic abuse, but also poorly equipped to utilize adequate legal protection.

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15. Nat'l Org. for Women, Violence Against Women in the United States: Statistics, http://www.now.org/issues/violence/stats.html (last visited Mar. 13, 2010).

16. Sharifa Alkhateeb, Ending Domestic Violence in Muslim Families, http://www.themodernreligion.com/women/dv-ending.htm (last visited Mar. 13, 2010).

17. Anahid Devartanian Kulwicki & June Miller, *Domestic Violence in the Arab American Population: Transforming Environmental Conditions through Community Education*, 20 ISSUES IN MENTAL HEALTH NURSING 199, 199–215 (1999).

18. Alkhateeb, *supra* note 16.

19. *Id.*

20. HOWARD DAVIDSON, AM. BAR ASS'N, THE IMPACT OF DOMESTIC VIOLENCE ON CHILDREN: A REPORT TO THE PRESIDENT OF THE AMERICAN BAR ASSOCIATION 19–20 (1994).

21. *See, e.g.*, Tien-Li Loke, *Trapped in Domestic Violence: The Impact of United States Immigration on Battered Immigrant Women*, 6 B.U. PUB. INT. L.J. 589 (1996).

22. Nooria Faizi, *Domestic Violence in the Muslim Community*, 10 TEX. J. WOMEN & L. 209, 211 (2001); *see, e.g.* Constable, *supra* note 6.

23. *See* Neil MacFarquhar, *Muslim American Women Confront Domestic Abuse*, N.Y. TIMES, Jan. 7, 2008 at 10.

II. HISTORIC INADEQUACY OF DOMESTIC VIOLENCE LAW

Until the late nineteenth century, a man's right to use violence to manage his household was not only socially accepted, but also legally protected.[24] Communities and courts were reluctant to peer into "family matters," so early efforts at legal reform were anemic, prioritizing the family preservation over the victim protection.[25] Physically assaulting a domestic partner was criminalized in 1920, but punishments were not seriously enforced for decades.[26] Police generally delayed their arrival on the scene of a domestic violence disturbance in hope that the "problem" would be "resolved."[27] When they did eventually arrive, more often than not an arrest did not result.[28]

These limited legal protections are particularly worrisome for women of color, who are especially vulnerable to domestic abuse.[29] Nearly all nonwhite ethnic groups, including African-American and Native American women, are victimized at higher rates than white women.[30] Women of color must weigh the need to acknowledge intimate violence against their desire to avoid issues that might reinforce distorted public perceptions, as reporting a domestic violence incident may cause ostracism within their community and racism outside it.[31] These tensions, combined with lax legal protection from domestic violence, have rendered domestic abuse victims of color almost utterly without recourse for much of our nation's history.

III. MODERN DOMESTIC VIOLENCE POLICY AND THE MANDATORY ARREST "SOLUTION"

The women's movement, which gained power in the 1960s and 1970s, made domestic violence education a major priority.[32] This effort was highly successful: all fifty states made domestic abuse an arrestable offense,[33] and there are now over one thousand battered women's shelters across the United States.[34] However, even with ubiquitous domestic violence laws and police commitment

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24. *See* Sewell, *supra* note 8, at 990–91 (discussing nineteenth century cases upholding a man's right to abuse his wife if the abuse was "provoked").

25. *Id.* at 994; *see also* Waits, *supra* note 8, at 300.

26. Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARV. L. REV. 1849, 1858 (1996); *see also* Sewell, *supra* note 8, at 994–995; Waits, *supra* note 8, at 311. *Cf.* Nichole Miras Mordini, *Mandatory State Interventions for Domestic Abuse Cases: An Examination of the Effects on Victim Safety and Autonomy*, 52 DRAKE L. REV. 295, 307 (2004) (asserting that "once domestic violence laws had been passed, legislators believed their job was done,"—implying little to no enforcement).

27. Mordini, *supra* note 26, at 310–312 (discussing police non-intervention policies for domestic violence that courts found violated equal protection).

28. *Id.* at 308 ("a woman who was abused required a certain number of surgical sutures before her husband could be arrested for assault and battery").

29. Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1301, 1303 (1991) (discussing how women of color are disproportionally victims of rape).

30. *See* Nat'l Org. for Women, *supra* note 15.

31. *See* Crenshaw, *supra* note 29, at 1256.

32. Sewell, *supra* note 8, at 996–97.

33. *See* Hanna, *supra* note 26, at 1859.

34. Sewell, *supra* note 8, at 985.

to aggressive enforcement, many domestic violence incidents went unpunished due to victim reluctance to press charges.[35] Generally, battered women would call the police to stop the domestic assault, but the women were unwilling to press charges after the violence stopped.[36] Domestic violence advocacy organizations have identified this victim reluctance as the major obstacle to successful prosecution of domestic abuse crimes.[37]

The solution, many domestic violence advocates believed, was a policy called "mandatory arrest." In a mandatory arrest jurisdiction, an officer is required "to arrest a suspect if there is probable cause to believe that an assault or battery has occurred, regardless of a victim's consent or objection."[38] This policy first became popular in 1984, when Lawrence Sherman and Richard Berk published the landmark "Minnesota Experiment," which studied the relationship between arrest and recidivism in domestic violence criminal cases.[39] After analyzing 314 domestic violence cases, Sherman and Berk concluded that mandatory arrest was the most effective way to reduce the likelihood of a second violent incident.[40] After the study, the U.S. Attorney General recommended mandatory arrest as the standard response to domestic violence cases.[41] Many feminist leaders, who viewed mandatory arrest policies as "tool[s] to hold both the battering partner and the state accountable," embraced this new policy initiative.[42] Activists have dedicated energy and passion to mandatory arrest over other strategies for the simple reason that no other strategy has been widely adopted throughout the country.[43]

Pursuing arrest over the wishes of the victim has been heavily criticized; however, the controversy has been largely confined to the (primarily white) feminist movement.[44] Some opponents fear that the involuntary nature of this policy removes women's autonomy by forcing them into the prosecutorial

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35. Hanna, *supra* note 26, at 1860.

36. *Id.*

37. *Cf. id.* (discussing advocacy groups' encouragement of prosecutors to aggressively enforce domestic violence laws).

38. Linda Mills, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention*, 113 HARV. L. REV. 550, 558 (1999) [hereinafter *Killing Her Softly*].

39. *See generally* Lawrence W. Sherman & Richard A. Berk, *The Specific Deterrent Effects of Arrest for Domestic Assault*, 49 AM. SOC. REV. 261 (1984) (finding that, according to police and victims in Minneapolis, Minnesota, arrest was nearly twice as effective as other methods in preventing domestic violence).

40. *Killing Her Softly*, *supra* note 38, at 559.

41. WILLIAM L. HART ET. AL, FAMILY VIOLENCE: ATTORNEY GENERAL'S TASK FORCE FINAL REPORT 22–25 (1984), *available at* http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/2e/bf/7a.pdf.

42. *See* G. Kristian Miccio, *A House Divided: Mandatory Arrest, Domestic Violence, and the Conservatization of the Battered Women's Movement*, 42 HOUS. L. REV. 237, 264–65 (2005).

43. *Id.* at 279, 281.

44. *See, e.g.*, Christine K. Ho, *An Analysis of Domestic Violence in Asian American Communities: A Multicultural Approach to Counseling*, 9 WOMEN & THERAPY 129, 131 (1990) ("The feminist analysis . . . offers only a monocultural analysis of domestic violence. An analysis predicated on a Western cultural context offers a limited view of domestic violence for people from non-Western cultural backgrounds").

process.[45] To do so, these theorists argue, treats women as "incapable of making rational decisions in moments of trauma."[46] Furthermore, these critics assert, such a zero-tolerance policy violates a woman's privacy right to decide what is best for her particular situation.[47] Critics of mandatory arrest also fear that the policy reinforces the cultural stereotypes of the "incapacitated and irrational woman."[48] These criticisms, while vigorous, are primarily limited to the theoretical confines of feminist theory, and rarely analyze problems with the policy's application.

Though controversial, mandatory arrest policies have been widely adopted. Twenty-two states and the District of Columbia currently enforce these policies,[49] with the encouragement of the Department of Justice.[50] With the passage of the Violence Against Women Act in 1994, the federal government has incentivized mandatory arrest policies, offering grants to encourage mandatory arrest programs in jurisdictions across the country.[51] When criticized, mandatory arrest jurisdictions point to the numbers as justification for the policy: in every jurisdiction where the policy has been implemented, the number of deaths from domestic violence has fallen.[52] The policy is currently viewed as the "default" reform for lax domestic violence enforcement.[53]

IV. INADEQUACY OF MANDATORY ARREST POLICIES FOR MUSLIM-AMERICAN WOMEN

The domestic violence "solution" adopted by all states—mandatory arrest—does not sufficiently protect battered Muslim-American women, and this is true

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45. *See, e.g.*, *Killing Her Softly*, *supra* note 38, at 578 (discussing psychological theories which require victim empowerment for healing, and suggesting that taking away the victim's decision to press charges or not impedes her healing process); Mordini, *supra* note 26, at 319.

46. Miccio, *supra* note 42, at 243.

47. *See, e.g.*, Mordini, *supra* note 26, at 323; Linda G. Mills, *Intuition and Insight: A New Job Description for the Battered Woman's Prosecutor and Other More Modest Proposals*, 7 UCLA WOMEN'S L.J. 183, 191 (1997). *But see* CATHARINE A. MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW 100 (Harvard Univ. Press) (1987) (arguing that privacy does not justify non-intervention because there "is no 'private' for women").

48. Miccio, *supra* note 42, at 242.

49. Nat'l Inst. of Justice, Domestic Violence Cases: What Research Shows About Arrest and Dual Arrest Rates, http://www.ojp.gov/nij/publications/dv-dual-arrest-222679/exhibits/table1.htm (last visited Mar. 13, 2010).

50. *See* Richard Davis, PoliceOne Analysis: The "arrest default position" for domestics, http://www.policeone.com/legal/articles/1879103-PoliceOne-Analysis-The-arrest-default-position-for-domestics (last visited Mar. 13, 2010).

51. *See* U.S. Dep't of Justice, Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program, http://www.ovw.usdoj.gov/arrest_grant_desc.htm (last visited Mar. 13, 2010) (DOJ offers grants to encourage mandatory arrest. The website discussing the program explains that "this discretionary grant program is designed to encourage state, local, and tribal governments and state, local, and tribal courts to treat domestic violence, dating violence, sexual assault, and stalking as serious violations of criminal law requiring" the coordinated involvement of the entire criminal justice system. Eligible applicants are states, units of local government, Indian tribal governments, and state, local, tribal, and territorial courts).

52. *See, e.g.*, *Killing Her Softly*, *supra* note 38, at 563.

53. *See* Miccio, *supra* note 42, at 282 (arguing that mandatory arrest is the "sole option" for law enforcement).

primarily for reasons not discussed in traditional critiques. While low reporting has been identified as a major problem in many communities, Muslim-Americans face a myriad of cultural and religious pressures that impede reliable reporting still further, and if battered women do not report abuse in the first place, mandatory arrest can do nothing to protect them. Furthermore, even if Muslim-American women report domestic violence incidents, cultural and linguistic barriers can impede meaningful communication between law enforcement and the abused. Such a communication breakdown risks further alienating this already vulnerable population.

A. Reporting Barriers Specific to Muslim-American Communities

Certain religious and cultural practices unique to Islam deter reliable reporting from domestic violence victims. Ambiguity in the Koran about domestic violence is a key example: certain passages seem to condone violence toward women, which can result in such practices being overlooked or dismissed as religiously sanctioned.[54] Specifically, verse 4:34 of the Koran lays out a series of steps for men to take when dealing with disobedient women: "As for those from whom you fear disobedience, admonish them and send them to beds apart and beat them. Then if they obey you take no further action against them."[55] The same passage emphasizes male dominance over women, asserting, "Men have authority over women because Allah has made the one superior to the other."[56] These passages, as well as other traditional Islamic writings,[57] appear (at least on the surface) to condone domestic violence. Accordingly, there is widespread confusion among devout Muslims about whether domestic abuse is actually illegal.[58] Many Muslim-American women are unaware that they are in fact victims of a crime,[59] and many Muslim-American men will argue that they were within their legal rights or were being victimized by vindictive wives when taken to court on charges of abuse.[60]

The intensely private nature of Islamic culture further discourages Muslim-American women from reporting domestic violence incidents. According to social workers, Islamic clerics, and women's advocates, Muslim-American women face intense social ostracism if they gather the courage to leave their husbands or press charges.[61] Marital violence is considered to be an intensely

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54. *See* Faizi, *supra* note 22, at 211–12.

55. THE KORAN (THE QUR'AN) 54 (N.J. Dawood, ed., 2004).

56. *Id.*

57. AHMAD IBN NAQID AL-MISRI, *Dealing with a Rebellious Wife*, *in* RELIANCE OF THE TRAVELER: THE CLASSIC MANUAL OF ISLAMIC SACRED LAW 541, 541 (Nuh Ha Mim Keller, trans., Amana Publications 2d ed. 1994) (explaining that a man may hit his wife as long as he doesn't draw blood, leave a bruise, or break bones); *see* Jorge Banales, *Abuse Among Immigrants: As Their Numbers Grow So Does the Need for Services*, WASH. POST, Oct. 16, 1990, at E5 (asserting that according to Islamic law and the Koran, "men are in charge of women because Allah has made the one of them to excel the other and because they (the men) spend of their property (for the support of women)").

58. *See* Faizi, *supra* note 22, at 212 (explaining that many Muslim-American women believe their husbands when they use Islam to justify abuse).

59. *Id.* at 214 (explaining that many Muslim-American women are not knowledgeable of the rights Islam affords them).

60. Constable, *supra* note 6.

61. *Id.*

"private" problem, and discussion of such matters can be viewed as a humiliating source of family disgrace, even among family members.[62] Many of the Muslim countries are "shame-based" societies, in which keeping up appearances is heavily valued[63]—even at the expense of the safety of battered wives.

Nervousness about leaving one's home after domestic violence comes to light further prevents reporting in Muslim-American communities. To leave a family unit, even an abusive one, is often seen as a worse fate than allowing the abuse to continue. In many Muslim societies, women are protected by men for their entire lives—first their fathers and then their husbands—and if they date or live alone, they risk being labeled prostitutes.[64] Furthermore, devout Muslim women may believe that God forbids them to leave abusive situations, and that it is their Islamic duty to remain home and respect their husbands.[65]

Finally, sensitivity to negative images about the Muslim religion and fear of perpetuating stereotypes can silence battered Muslim-American women. Raising the issue is often considered an attack on the Islamic faith, [66] which is constantly under siege from outsiders since the attacks of September 11th and the rise of radical jihadists. Muslim-American men are already disproportionate targets for law enforcement due to perceptions that they are likely participants in terrorist activity.[67] Muslim-American women are loath to be perceived as supportive of or in collusion with such stereotyping, even if their husbands are victimizing them.[68] The existence of these stereotypes creates a difficult tension for Muslim-American women: if they seek protection for themselves, they are seen as contributing to the stereotype that Muslim-American men are "barbaric, oppressive, terrible people."[69]

B. Barriers to Reporting in Immigrant Populations Generally

Muslim-American women—over half of whom are immigrants[70]—must also navigate barriers to domestic violence reporting common to all heavily immigrant communities. Most notably, the fear of deportation silences battered immigrant women of all cultures; it is the single largest concern for immigrant women seeking to leave an abusive relationship.[71] This fear can paralyze abused

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62. *See* Maxine Yi Hwa Lee, *A Life Preserver for Battered Immigrant Women: The 1990 Amendments to the Immigration Marriage Fraud Amendments*, 41 BUFF. L. REV. 779, 782–84 (1993) (discussing the reasons that prevent many immigrant women from leaving abusive relationships).

63. *See* All Things Considered: Was Bridges TV Beheading An Honor Killing?, (Nat'l Pub. Radio broadcast Feb. 24, 2009), *available at* http://www.npr.org/templates/story/story.php ?storyId=101106235.

64. Constable, *supra* note 6.

65. *See id.*

66. MacFarquhar, *supra* note 23.

67. LEADERSHIP COMM. ON CIVIL RIGHTS EDUC. FUND, WRONG THEN, WRONG NOW: RACIAL PROFILING BEFORE & AFTER SEPTEMBER 11, 2001 8, *available at* http://www.civilrights.org/ publications/wrong-then/racial_profiling_report.pdf.

68. *See* MacFarquhar, *supra* note 23.

69. *Id.* (quoting Rafia Zarkaria, a political science graduate student at Indiana University).

70. FAREED H. NUMAN, AM. MUSLIM COUNCIL, THE MUSLIM POPULATION IN THE UNITED STATES, http://www.uga.edu/islam/muslimpop_usa.html.

71. *See generally* Lee, *supra* note 62.

immigrant women from protecting themselves by filing a protective order or even simply calling the police.[72] Furthermore, immigration status can itself serve as a form of abuse: many women enter the United States with temporary "marriage" visas obtained by resident or citizen husbands and men can wield the legal immigration status of their wives above them as a weapon.[73]

Significant language barriers further impede battered immigrant women from reporting domestic violence incidents, preventing reporting sometimes even in cases where the victim is willingly communicating with law enforcement. Often, the inability to communicate effectively is the most significant barrier faced by non-English speaking victims seeking help from the legal system.[74] Lack of knowledge about the American justice system exacerbates this problem; these women often come from societies with little or no legal framework for domestic violence protection and have no reason to expect anything different in America.[75] Furthermore, the inability to speak English limits battered women's ability to care for themselves and their children if they were to extricate themselves from an abusive relationship. Poor language skills limit their employment opportunities, forcing them to rely on abusive husbands for financial support.[76]

C. Post-Reporting Cultural Problems with Mandatory Arrest

Even if Muslim-American women were to overcome these obstacles and report domestic violence incidents, cultural and language barriers remain, impeding meaningful communication between law enforcement and the abused, and risking further alienation of this population. Victims struggling with language barriers and a lack of familiarity with the American legal system might not clearly understand the reasons for the mandatory arrest of the perpetrator. This confusion would likely exacerbate Muslim women's distrust of the American justice system.

Furthermore, a dearth of appropriate post-arrest resources, such as Muslim women's shelters and availability of translators in the judicial process, risks confusing and alienating the very women most vulnerable to abuse.[77] Many Muslim-American women will not be open with non-Muslims about their domestic issues, creating problems both in reporting domestic abuse and addressing its effects.[78] Furthermore, Muslim-American women may avoid non-Muslim shelters due to an inability to relate to non-Muslim women; issues like substance abuse problems and casual sex outside of marriage may be utterly foreign to observant Muslim women.[79] Even the diet and attire of American

72. *See* H.R. REP. NO. 103-395, at 31 (1993).
73. Constable, *supra* note 6.
74. *See* DAVIDSON, *supra* note 20.
75. *Id.*
76. Lee, *supra* note 62.
77. *See* Faizi, *supra* note 22, at 218–19, 229.
78. *See id.* at 229 (discussing Muslim distrust of Western service providers).
79. *Id.* at 219.

women could easily provide a source of alienation and distress, rather than support, for battered Muslim-American women.[80]

Mandatory arrest—currently, the only major solution to the problem of domestic violence[81]—makes the assumption that the woman will have the informational, cultural, and emotional resources to freely choose whether or not to report domestic violence. This assumption, sadly, is incorrect for many women in Muslim and other minority and immigrant communities. In short, white feminist theory dominates current domestic violence policy, ignoring the real problems of minority and immigrant women, or at most, dealing with them in a footnote.[82]

V. RECOMMENDATIONS

In order for domestic violence policy to protect Muslim-American women and other especially vulnerable populations, the government must address the problem in a holistic manner. First, communities must make domestic violence education a priority, informing vulnerable populations both that domestic violence is unacceptable in any community and that there are legal protections and resources available to victims. In addition, when Muslim-American women do report domestic violence, the state's response—from the explanation of mandatory arrest policy to the availability of culturally appropriate shelters—should proceed in a culturally sensitive manner, ensuring that Muslim women are not further alienated by the American justice system.

Domestic violence advocates for Muslim-American women should first prioritize education, teaching that domestic violence is unacceptable, irrespective of religious or cultural affiliation. There are many passages in the Koran that indicate that Islam does not condone domestic violence.[83] For example, in verse 9:71, Allah calls men and women "friends of one another,"[84] and in verse 30:21, he describes the marital relationship as one founded on mercy, compassion, and tranquility.[85] These passages, along with non-violent interpretations of passages

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80. *Id.*

81. *See* Miccio, *supra* note 42, at 282 (arguing that mandatory arrest is the "sole option" for law enforcement).

82. The battered women's movement's primary identification as a white movement has been recognized in the past. *See, e.g.*, SUSAN SCHECHTER, WOMEN AND MALE VIOLENCE 272 (1982) (noting that battered women's shelters have been run by predominantly white women and many thus have a white, middle-class bias); G. Chezia Carraway, *Violence Against Women of Color*, 43 STAN. L. REV. 1301, 1304–05 (1991) (asserting that data on violence against women fails to differentiate by race or culture and arguing that this lack of information removes women of color from the violence discussion); Ho, *supra* note 44; Elizabeth M. Schneider, *Particularity and Generality: Challenges of Feminist Theory and Practice in Work on Woman-Abuse*, 67 N.Y.U. L. REV. 520, 532 (1992) (noting that the battered women's movement has been "largely shaped by the experience and understanding of white women").

83. *See, e.g.*, Sharifa Alkhateeb, *supra* note 16 (noting, for example, that Verse 4:128 refers to a woman's obedience to Allah, not to another human being); Salma Elkadi Abugideiri, A Perspective on Domestic Violence in the Muslim Community 3, *available at* http://www.faithtrustinstitute.org/resources/articles/DV-in-Muslim-Community.pdf (identifying verses that, among other things, remind men to treat women with kindness and justice).

84. THE KORAN, *supra* note 55, at 130.

85. *Id.* at 85.

that seem to condone abuse,[86] should be widely disseminated in Muslim-American communities. The government should also make efforts to inform Muslim-American women that domestic violence is an offense punishable by law in every jurisdiction of the United States.

Similarly, immigrants from Islamic countries should be informed about the legal protections offered by various immigration laws in order to combat fears of deportation. There are several such policies specifically aimed at protecting battered immigrant women. Self-petitioning, for example, permits an immigrant victim of domestic abuse to file a petition with the Attorney General on her own behalf for unconditional permanent resident status without having to depend on her husband's participation or cooperation.[87] Under the Suspension of Deportation policy, a battered illegal alien may avoid deportation if she can prove that: (1) she has been physically present in the United States for at least three years immediately prior to the application, (2) she was battered or subjected to extreme cruelty by her spouse, (3) she is of good moral character, and (4) deportation would cause extreme hardship to her or her child.[88] These policies, though highly technical, can prove to be lifesaving for battered immigrant women.

The problem, of course, is getting this information to the women who need it most. The reason this community is particularly vulnerable is due to lack of familiarity with the American legal system;[89] using that same legal system as a communications tool is clearly fraught with problems. The complex nature of this problem requires creative solutions. Perhaps this information could be distributed through pamphlets made available at places likely to reach battered Muslim women, such as mosques, cultural centers, and shops in heavily Muslim communities. Mosques could also require counseling for engaged couples to ensure appropriate understanding of the relationship between man and wife and behavior that is prohibited by law.[90] These methods would likely prove less effective for recent immigrants (as they are less likely to be integrated into communities). Perhaps a potential solution would be to require the Immigration and Naturalization Service to distribute information widely about domestic violence and its impact on immigrant women.[91] These solutions are clearly

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86. *See* Alkhateeb, *supra* note 16, at 4 (discussing an interpretation of Verse 4:34 that does not condone abuse).

87. 8 U.S.C. § 1154(a)(1) (2009) (stating that in order to self-petition for permanent resident status, the immigrant woman must demonstrate that: (1) she is a person of good moral character; (2) she has lived in the United States with her citizen or legal permanent resident spouse; (3) she is currently residing in this country; (4) she married in good faith; (5) during the marriage, the alien or her child was battered or subjected to extreme cruelty by her spouse; and (6) deportation would result in extreme hardship to her or her child).

88. 8 C.F.R. § 240.65 (2009) (discussing requirements for providing relief to an undocumented battered woman who is subject to deportation as a result of her sponsor-husband's failure to file an initial petition to begin her conditional residency).

89. *See* discussion *infra* Part IV.B.

90. *See* Constable, *supra* note 6 (discussing counseling services currently in place at one mosque).

91. *See* 8 C.F.R. § 216.2 (2006) (requiring the INS to inform conditional residents of the joint petitioning requirements to adjust to permanent residency). Information about domestic violence could easily be distributed at the same time.

imperfect, but they are a starting point, and they have met with success in some Muslim-American communities.[92]

Once Muslim-American women are informed about the problem of domestic violence and the solutions available to them, the state must work to create a culturally sensitive justice system that can appropriately communicate with and support these victims. For example, the government should enlarge its pool of translators so that a woman who reports domestic abuse fully understands why her husband must be incarcerated and the processes surrounding the next steps. Similarly, all aspects of the justice system—courts, police, hospitals, social service agencies, mental health centers, and therapists—should have translators available to provide assistance to non-English speaking communities.[93] California is an example of a state that is attempting to address the problem of non-English speaking parties in the court system.[94] Under existing California law, any witness who is incapable of speaking or understanding English will be provided with an interpreter.[95] In addition, the government should ensure the availability of Muslim shelters, with accommodations for Muslim prayer, privacy, and dietary requirements. Such accommodations would foster positive and supportive communities in harmony with Islamic values, allowing battered women to protect themselves while remaining observant Muslims.[96] For these women, whose communities have developed an understandable distrust of the American justice system after the 9/11 attacks, the paradigm must shift so that American law enforcement and American support systems are allies, not antagonists.

VI. CONCLUSION

The current state of domestic violence policy in general, and the widely advocated mandatory arrest movement in particular, presume a knowledge of and willingness to trust the American justice system that is, unfortunately, lacking in the Muslim-American community. Religious, cultural, and immigration-related pressures create barriers for Muslim-American women to report domestic violence that are more significant than the barriers facing the general population. These women need to understand their legal options when confronted with intimate abuse and to feel comfortable navigating the American justice system; whether or not they can "exercise their autonomy" is far from a relevant concern. For Muslim-American women, the key questions are not about whether mandatory arrest policies should be in place—rather, they are about *how* these policies are implemented and whether at-risk women have enough information to properly utilize these protections.

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92. *See* Constable, *supra* note 6 (discussing the reaction when Muslim-American women receive counseling and ultimately understand they are not at fault if abused).

93. *See* CAL. EVID. CODE § 755(a); (West 1995) (providing that in proceedings concerning domestic violence, any party who does not speak or understand English may be appointed an interpreter to assist with communication between the party and the party's counsel); 42 U.S.C. §§ 13991–94, 14001–02 (2010) (VAWA provides for grants to educate and train judges and court personnel that include consideration of racial, ethnic or religious factors).

94. *Id.*

95. CAL. EVID. CODE § 755(a).

96. *See* Faizi, *supra* note 22, at 229.

Communities should not allow enforcement initiatives such as mandatory arrest policies to serve as their primary solution for domestic violence, as these policies do not address the primary problem for many vulnerable communities—underreporting. Instead, they should implement supplementary legal initiatives that directly address the needs of Muslim-American women and other such vulnerable populations. Specifically, communities should focus on education about immigration options, Muslim-sensitive shelters, and counseling so that Muslim-American women can understand and trust the American legal system. Furthermore, jurisdictions should administer mandatory arrest policies in a culturally sensitive manner, with a larger pool of translators in the justice system and judges trained to consider racial, ethnic, and religious factors in their decision-making so that Muslim victims' already-shaken trust in the American justice system is not further eroded. It is only through this holistic approach that Muslim-American women, often silent victims of domestic abuse, will truly be protected.