

COMMENTS

LEGALLY WHITE, EFFECTIVELY OTHERED: RECOGNIZING AND INVESTING IN ARAB AMERICAN COMMUNITIES*

I. INTRODUCTION

During the first presidential debate in September 2020, President Biden effortlessly spoke the Arabic phrase *inshallah*, meaning God willing.¹ President Biden's use of the phrase did not go unnoticed—some viewed it as a nod to Arabs and Muslims, and others criticized it as pandering or inappropriate.² About a month after this debate, then-candidate Biden was declared the winner of the 2020 presidential vote in Michigan, a key swing state that former President Trump won in 2016.³ Wayne County, a Michigan county with a high percentage of Arab residents, was vital in turning Michigan blue for then-candidate Biden.⁴ Though difficult to say definitively the extent to which the Arab vote influenced the results in Michigan, it was instrumental to President Biden's victory.⁵ Before and since his election to office, Arab Americans have emphasized their hope that as president, Biden would support Arabs just as they had supported him.⁶

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1. Carlie Porterfield, 'When? Inshallah?': Here's the Arabic Word Biden Used During the Presidential Debate, FORBES (Sept. 30, 2020, 4:34 PM), <http://www.forbes.com/sites/carlieporterfield/2020/09/30/when-inshallah-heres-the-arabic-word-biden-used-during-the-presidential-debate/?sh=87b2b0d5a1e5> [http://perma.cc/2V87-LZ39].

2. Tamara Qiblawi, Biden Uses 'Inshallah' in Response to Trump During Debate, Lighting Up Twitter, CNN (Sept. 30, 2020, 2:47 PM), <http://www.cnn.com/2020/09/30/politics/biden-inshallah-trump-debate-intl/index.html> [http://perma.cc/BZF2-NCTR].

3. Sam Gringlas, Biden Wins Michigan, Per the AP, Putting Him 6 Electoral Votes from Presidency, NPR (Nov. 4, 2020, 6:00 PM), <http://www.npr.org/2020/11/04/931398045/biden-wins-michigan-per-the-ap-putting-him-6-electoral-votes-from-presidency> [http://perma.cc/8V7W-8PRT].

4. Azmi Haroun, Higher Arab American Turnout in 2020 Could Have Helped Biden Win Michigan, While Black Voters and Other Young Voters of Color Led the Way in the Battleground State, BUS. INSIDER (Nov. 5, 2020, 3:15 AM), <http://www.businessinsider.com/arab-american-voters-underscore-diverse-turnout-for-biden-in-mi-2020-11> [http://perma.cc/4H5A-M4EG].

5. Rowaida Abdelaziz, Muslim and Arab Voters May Have Secured Biden's Michigan Win, HUFFPOST (Nov. 5, 2020, 1:29 PM), http://www.huffpost.com/entry/muslim-voters-michigan-biden-trump-2020_n_5fa41369c5b6f1e97fe77a1f [http://perma.cc/4EXL-LG85].

6. See *id.*

The year 2020 was also the year of the twenty-fourth census,⁷ which, like those before it, did not include a distinct category for Arab Americans.⁸ Instead, it categorized them as white.⁹ This omission has left many Arab Americans feeling excluded as they were forced to either identify as white—a group whose privileges are not afforded to Arab Americans—or “other,” a group that has no defining identity at all.¹⁰ The census serves as a reminder for Arab Americans that they are still fighting for recognition and visibility in the United States.¹¹

This Comment focuses on the discrimination that Arab Americans have faced throughout the history of the United States. It highlights how past and present incidents of discrimination and marginalization demonstrate that Arab Americans have never been afforded the privileges of whiteness and should therefore be granted the benefit of recognition as a distinct group. In the employment law context, Arab Americans have been protected by laws that address race- and ethnicity-based discrimination.¹² However, in other areas of law, they are neither legally recognized as a distinct group nor entitled to many federal benefits provided to other minorities.¹³

Past and present incidents of discrimination, some legally codified, demonstrate the persistent and continued marginalization of Arab Americans in the United States.¹⁴ In order to begin redressing this marginalization, the federal government should recognize Arab Americans as a distinct ethnic group and provide them with access to federal funding and the protection that other minority groups are afforded.

This Comment proceeds in two sections. Section II explores the history of Arab Americans in the United States in terms of their designation as white, the discrimination they have faced, and their inability to access federal programs available to other minority groups. Section III explains that, because of Arab Americans’ lived reality, they must be granted support and mechanisms through federal programming so that they can empower themselves and their communities. Section III also argues that there needs to be official recognition of Arab Americans at the federal and state levels, as well as access to funding and protections from discrimination that will assist in empowering the Arab American community.

7. 2020 Census, U.S. CENSUS BUREAU, <http://2020census.gov/en/what-is-2020-census.html> [<http://perma.cc/93BV-9PMR>] (last visited Nov. 1, 2021).

8. Yousef H. Alshammari, *Why Is There No MENA Category on the 2020 US Census?*, ALJAZEERA (Apr. 1, 2020), <http://www.aljazeera.com/news/2020/04/01/why-is-there-no-mena-category-on-the-2020-us-census/> [<http://perma.cc/AV6Z-6URC>].

9. *Id.*

10. See Joseph Gedeon, *As Census Approaches, Many Arab Americans Feel Left Out*, ASSOCIATED PRESS (Apr. 13, 2019), <http://apnews.com/article/a25b5d977a5049d6a9038a536cc7129a> [<http://perma.cc/RR5Y-EBQV>].

11. See Yasmeeen Khalifa, *The Census Doesn’t Count Arab Americans. That Leaves Some Texans Feeling Invisible*, TEX. TRIBUNE (Oct. 19, 2020, 5:00 AM), <http://www.texastribune.org/2020/10/19/2020-census-texas-arab-mena> [<http://perma.cc/9FMC-ADPT>].

12. See *infra* Part II.B.

13. See *infra* Parts II.C.1–C.2.

14. See, e.g., Exec. Order No. 13,769, 3 C.F.R. § 272 (2017); Manar Waheed, *The Effects of the Muslim Ban One Year Later*, ACLU (Dec. 4, 2018, 1:45 PM), <http://www.aclu.org/blog/immigrants-rights/effects-muslim-ban-one-year-later> [<http://perma.cc/9C9R-XP8A>] (detailing how Trump’s Muslim Ban harmed Arab American communities and further marginalized them).

II. OVERVIEW

The Naturalization Act of 1790¹⁵ stipulated the first uniform rules for granting United States citizenship through naturalization.¹⁶ The Act made naturalization accessible to “any alien, being a free white person.”¹⁷ The right of naturalization was extended to “aliens of African nativity and to persons of African descent” in the Act of 1870.¹⁸ Naturalization requirements fluctuated after both the 1790 and 1870 Acts, but racial stipulations remained intact for over 150 years until 1952.¹⁹ As a direct result of racial preconditions for naturalization and nativist sentiment in the country, immigrants applying for citizenship between 1790 and 1952 found themselves trying to prove their whiteness.²⁰

Some Arabs, like many other immigrant populations, attempted to adopt whiteness for the sake of citizenship.²¹ Today, Arabs are still legally classified as white, but they do not have the privileges associated with whiteness.²² In the United States, ethnic and racial groups are often defined along the Black-white binary.²³ This racial paradigm defines the American conception of race and the problems that surround it.²⁴ Because race in the United States is understood along this paradigm, Arabs are not easily categorized and, as such, they struggle to find recognition for their unique identities and needs in the American legal system and beyond.²⁵

This Section provides an overview of the historical naturalization of Arabs in the United States, the disparity between the racial categorization and lived reality of Arabs, and the consequences of that categorization on access to federal programs. Part II.A discusses the historical categorization and treatment of Arab Americans in case law, federal statutes, and regulations. Part II.B focuses on the treatment of Arab Americans in the employment context. Part II.C details the American-Arab Anti-Discrimination Committee’s application for minority designation from the Minority Business Development Agency—and the ultimate denial of that application. Finally, Part II.D highlights the Small Business Administration’s treatment of an Arab American as a minority.

15. Naturalization Act of 1790, ch. 3, 1 Stat. 103 (repealed 1795).

16. J. Allen Douglas, *The “Priceless Possession” of Citizenship: Race, Nation, and Naturalization in American Law, 1880-1930*, 43 DUQ. L. REV. 369, 372, 384 (2005).

17. John Tehranian, *Performing Whiteness: Naturalization Litigation and the Construction of Racial Identity in America*, 109 YALE L.J. 817, 818 (2000) (quoting Naturalization Act of 1790, ch. 3).

18. *Id.* at 818–19 (quoting Act of July 14, 1870, ch. 255, § 7, 16 Stat. 254).

19. IAN HANEY LOPEZ, *WHITE BY LAW* 1 (2d ed. 2006).

20. See Alia Malek, *Dying with the Wrong Name: The Role of Law in Racializing and Erasing Arabs in America*, 1 GEO. J. L. & MOD. CRITICAL RACE PERSP. 211, 216 (2009).

21. See JOHN TEHRANIAN, *WHITEWASHED: AMERICA’S INVISIBLE MIDDLE EASTERN MINORITY* 39 (2008).

22. See, e.g., Khaled A. Beydoun, *Boxed In: Reclassification of Arab Americans on the U.S. Census as Progress or Peril?*, 47 LOY. UNIV. CHI. L.J. 693, 724 (2016) [hereinafter Beydoun, *Boxed In*].

23. Juan F. Perea, *The Black/White Binary Paradigm of Race: The “Normal Science” of American Racial Thought*, 85 CALIF. L. REV. 1213, 1219 (1997).

24. *Id.*

25. See Adrien Katherine Wing, *Civil Rights in the Post 9/11 World: Critical Race Praxis, Coalition Building, and the War on Terrorism*, 63 LA. L. REV. 717, 717–19 (2003).

A. *Inventing Whiteness and the Erasure of Arab Identity*

Arab Americans continue to be categorized as white on official government documents, including the Census, despite the treatment of Arab Americans as an unwelcome “other” in the United States.²⁶ Part II.A.1 discusses how Arabs became legally white in the United States. It does so through an examination of the case law addressing the naturalization of Arab immigrants. This Part then goes on to examine the treatment and mistreatment of Arab Americans in federal regulations and statutes.²⁷

1. The Eventual Naturalization of Arab Americans as White

Just after the turn of the twentieth century, the District Court for the Eastern District of South Carolina examined the qualification of an Arab Christian applicant for naturalization.²⁸ In *Ex Parte Shahid*,²⁹ Faras Shahid, a Syrian applicant, fought to be classified as white, as that was his only avenue for naturalization.³⁰ The court described Shahid as being “[i]n color . . . about that of walnut” and emphasized the fact that he was only able to read in Arabic, not English.³¹ Based on the court’s description of Shahid’s complexion, as well as its tone in describing his linguistic abilities, it is apparent that the court did not find him worthy of “whiteness.”³²

According to the court, it was necessary to interpret the Naturalization Act of 1790’s “free white persons” as it would have been understood by those who passed the legislation.³³ As such, the court limited the “white” designation to people of “European habitancy or descent.”³⁴ Specifically, the court stated that Shahid was not the type of citizenship applicant whose naturalization would benefit the country.³⁵ Thus, the court barred citizenship—ostensibly to comply with legislative intent—but, in doing so, demonstrated its disfavor for the applicant through its description of his skin color and language.³⁶

Two years later, the United States Court of Appeals for the Fourth Circuit heard an appeal from George Dow, an Arab Christian applicant from Syria.³⁷ Like Shahid’s, Dow’s application for naturalization was denied by Judge Henry A. M. Smith of the Eastern District of South Carolina.³⁸ The Fourth Circuit reversed, concluding that the

26. See, e.g., Sahar F. Aziz, *Sticks and Stones, the Words that Hurt: Entrenched Stereotypes Eight Years After 9/11*, 13 N.Y.C. L. REV. 33, 36, 44 (2009).

27. See *infra* Part II.A.2.

28. *Ex parte Shahid*, 205 F. 812, 812 (E.D.S.C. 1913).

29. 205 F. 812 (E.D.S.C. 1913).

30. *Shahid*, 205 F. at 813.

31. *Id.* at 812–13.

32. See *id.* (describing Shahid’s linguistic ability by stating, “[h]e writes his name in Arabic, cannot read or write English, and speaks and understands English very imperfectly”).

33. *Id.* at 815.

34. *Id.*

35. *Id.* at 816.

36. *Id.* at 815–16; see also Khaled A. Beydoun, *Between Muslim and White: The Legal Construction of Arab American Identity*, 69 N.Y.U. ANN. SURV. AM. L. 29, 54 (2013) [hereinafter Beydoun, *Between Muslim and White*].

37. *Dow v. United States*, 226 F. 145, 145 (4th Cir. 1915), *rev’g In re Dow*, 213 F. 355 (E.D.S.C. 1914).

38. *Id.* at 145.

category “free white person” was intended to encompass more than just Europeans.³⁹ The court determined that Syrians should be classified as white, largely due to arguments based in eugenics.⁴⁰ The Fourth Circuit decision made no mention of Dow’s skin color or linguistic ability.⁴¹ In the district court decision, however, Judge Smith specifically emphasized that Dow is “darker than the usual person of white European descent” and that an understanding of the English language is not enough for citizenship.⁴² The Fourth Circuit’s choice not to engage in the discussion regarding skin color or language appears to be an intentional one.⁴³

Arab Christians benefitted from decisions like *Dow v. United States*,⁴⁴ which eased the immigration and naturalization process for them.⁴⁵ From the start, the Syrian American argument for whiteness was predicated on the belief that Arab Christians, by virtue of their faith, were more proximate to whiteness.⁴⁶ While Arabs generally struggled to find acceptance in the United States, Arab Muslims found themselves further in the periphery due to the perception that Islam was antithetical to whiteness—a perception that persists.⁴⁷

In 1942, almost three decades after the Fourth Circuit’s decision in *Dow*, the first Arab Muslim applicant petitioned for United States citizenship in a federal district court in Michigan.⁴⁸ The applicant, Ahmed Hassan, was a native of Yemen.⁴⁹ The court stated that the status of “an Arabian” had not been definitively decided by the courts.⁵⁰ In making this determination, the court effectively distinguished Hassan’s case from those like *Dow*.⁵¹

The court treated Ahmed Hassan’s application as distinct from cases involving Arab Christians.⁵² The difference between the applicants came down to religious affiliation.⁵³ This distinction was emblematic of the belief that Muslims, or those of the

39. *Id.* at 146.

40. *See id.* (“Blumenbach’s work probably became known in this country soon after 1807, when it was published in English; and his division, though the basis of it is now discarded, seems to have been that generally accepted. The opinions of later writers are in accord with Blumenbach’s that Syrians are to be classed as white people.”).

41. *See id.* at 145–48.

42. *Ex parte Dow*, 211 F. 486, 486–88 (E.D.S.C. 1914), *aff’d sub nom. In re Dow*, 213 F. 355 (E.D.S.C. 1914), *rev’d sub nom. Dow v. United States*, 226 F. 145 (4th Cir. 1915).

43. *See* Beydoun, *Between Muslim and White*, *supra* note 36, at 57–58.

44. 226 F. 145 (4th Cir. 1915).

45. *See* Beydoun, *Between Muslim and White*, *supra* note 36, at 58.

46. Sarah Gualtieri, *Becoming “White”: Race, Religion and the Foundations of Syrian/Lebanese Ethnicity in the United States*, 20 J. AM. ETHNIC HIST. 29, 42 (2001).

47. Khaled A. Beydoun, *Faith in Whiteness: Free Exercise of Religion as Racial Expression*, 105 IOWA L. REV. 1475, 1509 (2020) [hereinafter Beydoun, *Faith in Whiteness*] (discussing how in the past and the present, Christianity is often interpreted as akin to whiteness, while Islam is presumptively non-white and threatening).

48. Beydoun, *Between Muslim and White*, *supra* note 36, at 63.

49. *Id.*

50. *In re Ahmed Hassan*, 48 F. Supp. 843, 845 (E.D. Mich. 1942).

51. Beydoun, *Between Muslim and White*, *supra* note 36, at 36 (noting that in *In re Ahmed Hassan*, an Arab applicant was viewed as non-white because he was Muslim).

52. *See id.*

53. *Id.*

“Mohammedan world,” were incompatible with Western, Christian civilization.⁵⁴ The court went so far as to say that Muslims cannot be expected to “intermarry with our population and be assimilated into our civilization.”⁵⁵ It noted that whiteness should not be determined by science, but by common understanding.⁵⁶ The court also stated that Hassan had a high burden of proof to establish whiteness due to his “undisputedly dark brown” skin.⁵⁷ It found that this burden was not met and that Hassan, and other Arabs, were not white people within the meaning of the Naturalization Act.⁵⁸

*In re Ahmed Hassan*⁵⁹ depicts the view held, then and now, that an individual’s proximity to Islam is detrimental to their ability to assimilate in the United States and, therefore, to their “Americanness.”⁶⁰ Yet, in a 1944 case, *Ex parte Mohriez*,⁶¹ the District Court of Massachusetts approved an Arab Muslim’s application for naturalization by determining that he qualified as white.⁶² In *Mohriez*, however, the court did not mention the applicant’s Muslim faith, choosing instead to focus on the historical closeness between Arabs and Europeans.⁶³

In part, the court may have been influenced to make this decision due to foreign policy considerations.⁶⁴ Namely, the judge in *Mohriez* may have been motivated to make this decision in order to advance the United States’ interest in relations with Saudi Arabia and other Arab countries.⁶⁵ This interest was driven by the discovery of oil in Saudi Arabia and the economic advantages that could result therefrom.⁶⁶ Creating friendly relations with Saudi Arabia and other Arab countries had become economically and politically pragmatic.⁶⁷ America’s post–World War II foreign policy interests in the Arab world and its natural resources inspired the United States to paint itself as an appealing

54. *In re Ahmed Hassan*, 48 F. Supp. at 845.

55. *Id.*

56. *Id.* at 846.

57. *Id.* at 844–46.

58. *Id.* at 846.

59. 48 F. Supp. 843 (E.D. Mich. 1942).

60. See, e.g., Emmanuel Mauleón, *Black Twice: Policing Black Muslim Identities*, 65 UCLA L. REV. 1326, 1338 (2018) (explaining that racialization of Muslims can be traced back to cases like *In re Ahmed Hassan*, well before 9/11).

61. 54 F. Supp. 941 (D. Mass. 1944).

62. *Id.* at 942–43.

63. *Id.* at 942.

64. *Id.* at 943 (“In so far as the Nationality Act of 1940 is still open to interpretation, it is highly desirable that it should be interpreted so as to promote friendlier relations between the United States and other nations.”); see, e.g., CFR.org Editors, *U.S.-Saudi Arabia Relations*, COUNCIL ON FOREIGN REL. (Dec. 7, 2018, 7:00 AM), <http://www.cfr.org/backgroundunder/us-saudi-arabia-relations> [<http://perma.cc/YJK6-ARLB>] (describing how the United States has had business in Saudi Arabia since 1933 when Chevron won a sixty-year contract to explore Saudi Arabia and ultimately made the first oil discovery in 1938).

65. Zainab Ramahi, *The Muslim Ban Cases: A Lost Opportunity for the Court and a Lesson for the Future*, 108 CAL. L. REV. 557, 571 (2020).

66. *Id.*

67. *Id.* at 571–72 (“Without the development of American economic and political interests in Saudi Arabia, spurred by discovery of and increased demand for oil, the judge in *Mohriez* may have not extended the construction of white identity to Arab immigrants.”).

superpower.⁶⁸ The decision in *Mohriez* was likely an attempt at fostering better relations between the United States and newly independent, oil-rich Arab countries.⁶⁹

2. Contemporary Treatment of Arab Americans in the Law

Until the Immigration and Nationality Act of 1952⁷⁰—commonly referred to as the McCarran-Walter Act—whiteness was a prerequisite for naturalization.⁷¹ The McCarran-Walter Act removed this prerequisite and created five racial classifications for naturalization.⁷² While this change granted certain groups more freedom and autonomy in how they chose to identify themselves on official documents, Arabs continued to be classified as white and were excluded from asserting unique group identity in the United States.⁷³ Arabs have continued to be classified as white by the United States Census Bureau, regardless of their religion.⁷⁴ While Arabs initially had no choice but to plead their whiteness in order to meet the prerequisite for citizenship, they continue to struggle with gaining official recognition as a distinct group on the Census and beyond.⁷⁵ The impact of the erasure of Arab identity has been substantial.⁷⁶

While legally white, Arab Americans are not afforded the privileges of whiteness.⁷⁷ Arabs have faced discrimination in the United States based on perceptions that they are different due to various characteristics, such as language, phenotype, and religion.⁷⁸ For instance, Arabs in the early twentieth century faced harassment by groups like the Ku Klux Klan, who viewed Arabs as being “colored.”⁷⁹ Arabs were also purposely disenfranchised, particularly in the South.⁸⁰ For instance, in the 1920s, a candidate for local office in the South emphasized that Syrians should be disqualified from voting, just as Black Americans had been disqualified.⁸¹

While Arabs have long experienced discrimination in the United States, the events of September 11, 2001, heralded a new era of discrimination and hate crimes against

68. See Beydoun, *Between Muslim and White*, *supra* note 36, at 68–70.

69. *Id.* at 70.

70. Pub. L. No. 82-414, 66 Stat. 163 (1952) (codified as amended at 8 U.S.C. §§ 1101–1537).

71. See LOPEZ, *supra* note 19, at 31–32.

72. See Beydoun, *Faith in Whiteness*, *supra* note 47, at 1485.

73. *See id.*

74. See Beydoun, *Boxed In*, *supra* note 22, at 706.

75. *See id.* at 706–08.

76. See Christine Tamer, *Arab Americans, Affirmative Action, and a Quest for Racial Identity*, 16 TEX. J. C.L. & C.R. 101, 108–111 (2010).

77. See, e.g., Rachel Saloom, *I Know You Are, but What Am I? Arab-American Experiences Through the Critical Race Theory Lens*, 27 HAMLINE J. PUB. L. & POL’Y 55, 59 (2005) (“Arab-Americans are only considered white in an ‘honorary’ sense, and . . . whenever a relevant national crisis occurs that ‘honorary’ status is revoked.”).

78. While language is generally shared by Arabs, phenotype and religion can vary across populations. See Aziz, *supra* note 26, at 36, 39, 43.

79. Helen Hatab Samhan, *Not Quite White: Race Classification and the Arab-American Experience*, in ARABS IN AMERICA: BUILDING A NEW FUTURE 209, 218 (Michael W. Suleiman ed., 1999).

80. *Id.*

81. *Id.*

them and those perceived to be Arab American.⁸² The Federal Bureau of Investigation (FBI) reported that hate crimes against Arabs and Muslims increased from 28 to 481 incidents between 2000 and 2001—a 1,618% increase.⁸³ Because hate crimes are often underreported, this number likely does not reflect the true number of incidents that occurred during the early 2000s.⁸⁴ Though the stereotyping of Arabs predates the events of September 11, 2001, those events further “raced” Arabs as terrorists.⁸⁵

If the events of September 11, 2001, and the ensuing demonization of Arab Americans did not position Arabs as the “other,” President Donald Trump’s election in 2016 solidified that categorization, as demonstrated by the subsequent increase in hate crimes against those perceived to be Muslim or Arab.⁸⁶ One of President Trump’s first acts in office was to implement what was popularly known as “the Muslim Ban,” which effectively forbade all immigration into the United States from seven countries, all of which are predominantly Muslim and six of which are Arab countries.⁸⁷ The Executive Action signaled to Arab Americans they were “outsiders” and showed Arab Americans from other countries that they might be next.⁸⁸ Moreover, the different variations of the Muslim ban and the rhetoric that accompanied them increased the Arab community’s sense of marginalization in the United States.⁸⁹

The racialization and othering of Arab Americans as “terrorists” and threats to the safety of the nation are representative of their treatment as not white.⁹⁰ American movies perpetuate stereotypes of Arabs as anti-American, threatening, and “mad bombers lurk[ing] indistinguishably.”⁹¹ While the media stereotypes Arabs, governmental policy furthers their marginalization through programs like the National Security Entry-Exit Registration System, which requires immigrants primarily from the Middle East and

82. See, e.g., AMARDEEP SINGH, HUM. RTS. WATCH, UNITED STATES: “WE ARE NOT THE ENEMY”: HATE CRIMES AGAINST ARABS, MUSLIMS, AND THOSE PERCEIVED TO BE ARAB OR MUSLIM AFTER SEPTEMBER 11, at 11, 14–15 (Jamie Fellner & Joe Saunders eds., 2002), <http://www.hrw.org/reports/2002/usahate/usa1102.pdf> [<http://perma.cc/SV5H-KED6>] (noting that Arabs and Muslims have been stereotyped as “terrorists” long before September 11 but that the backlash continued and worsened post–September 11).

83. *Id.* at 15.

84. See *id.* at 16.

85. Saloom, *supra* note 77, at 63.

86. See, e.g., Eric Lichtblau, *Hate Crimes Against American Muslims Most Since Post-9/11 Era*, N.Y. TIMES (Sept. 17, 2016), <http://www.nytimes.com/2016/09/18/us/politics/hate-crimes-american-muslims-rise.html> [<http://perma.cc/URJ2-5SVP>] (“A number of experts in hate crimes said they were concerned that Mr. Trump’s vitriol may have legitimized threatening or even violent conduct . . .”).

87. See Exec. Order No. 13,769, 3 C.F.R. § 272 (2017).

88. See, e.g., Waheed, *supra* note 14; William Roberts, *Muslim Americans Testify on Effects of Trump’s Travel Ban*, AL JAZEERA (Sept. 24, 2019), <http://www.aljazeera.com/news/2019/09/24/muslim-americans-testify-on-effects-of-trumps-travel-ban/> [<http://perma.cc/HH85-HR9Z>] (detailing a Yemeni American’s separation from his wife and two young children as a result of the travel ban).

89. See, e.g., Waheed, *supra* note 14 (“Communities worry that law enforcement will report them to immigration enforcement or the FBI for little or no reason — even when they are U.S. citizens. For some, it may feel like there is no safe place to turn.”).

90. See, e.g., Saloom, *supra* note 77, at 59.

91. *Id.* at 66 (quoting AMERICAN-ARAB ANTI-DISCRIMINATION COMMITTEE, 1998-2000 REPORT ON HATE CRIMES AND DISCRIMINATION AGAINST ARAB-AMERICANS 51 (2001)).

North Africa to participate in special registration programs.⁹² The Arab experience in America has not been a white experience, but their categorization in the legal order ignores this reality.⁹³

Arab Americans have worked to create a category for “Middle Eastern” or “Arab” Americans.⁹⁴ The categorization is important—not only to recognize the existence of a unique Arab American identity and experience but also so that Arab Americans can access “certain remedial programs and better protection under antidiscrimination laws.”⁹⁵

In the 2020 census, however, this request was rejected by the United States Census Bureau.⁹⁶ The denial came despite a 2015 Census Bureau study that determined it would be optimal to dedicate a category for individuals who identify as Middle Eastern and North African (MENA).⁹⁷ The 2015 study found that including the category produced more accurate results for individuals who identified as MENA.⁹⁸ When a MENA category was provided as an option in this study, the number of MENA individuals who classified themselves as white dropped from 85.5% to 20%.⁹⁹ The creation of this category was clearly supported by a large segment, if not the majority, of the impacted community.¹⁰⁰

Advocates within and for the Arab American community believed that the inclusion of the category was near certain.¹⁰¹ They argued that the abrupt decision not to include a distinct category for MENA individuals may have been caused by the Trump administration’s fear that creating a MENA category would result in a decrease in the percentage of respondents who identify as white.¹⁰² This decision precluded Arabs from certain funding streams and stronger antidiscrimination protections.¹⁰³ It also continued to reinforce and exacerbate the erasure of Arab Americans from the American milieu by failing to recognize the unique needs and experiences of the community.¹⁰⁴

92. Aziz, *supra* note 26, at 39–42.

93. See Tamer, *supra* note 76, at 113–14.

94. *Id.* at 113.

95. TEHRANIAN, *supra* note 21, at 168.

96. Alshammari, *supra* note 8.

97. U.S. CENSUS BUREAU, 2015 NATIONAL CONTENT TEST RACE AND ETHNICITY ANALYSIS REPORT 72 (2017), <http://www2.census.gov/programs-surveys/decennial/2020/program-management/final-analysis-reports/2015nct-race-ethnicity-analysis.pdf> [<http://perma.cc/J8QT-7GKU>].

98. *Id.*

99. *Id.* at 59.

100. See *id.*

101. See, e.g., Alshammari, *supra* note 8.

102. See, e.g., *id.* (explaining that the exclusion of the MENA category is a political act by the Trump administration).

103. Laura Measher, *The 2020 Census Continues the Whitewashing of Middle Eastern Americans*, NBC NEWS: THINK (May 21, 2020, 11:08 AM) <http://www.nbcnews.com/think/opinion/2020-census-continues-whitewashing-middle-eastern-americans-nca-1212051> [<http://perma.cc/NGM3-AV6Y>].

104. Moustafa Bayoumi, *I’m a Brown Arab-American, and the US Census Refuses To Recognize Me*, GUARDIAN (Feb. 14, 2019, 11:28 AM), <http://www.theguardian.com/commentisfree/2019/feb/14/arab-american-census-america-racism> [<http://perma.cc/7PRQ-ZZBU>] (“[T]he US census has never simply reflected who we are. Rather, it produces a

There is some trepidation that a MENA category in a future census could be used by the State to identify and isolate individuals who identify as MENA for policing and “national security reasons.”¹⁰⁵ After all, MENA individuals have been subjected to National Security Agency surveillance and other governmental programs that target and treat them as a dangerous other.¹⁰⁶ Some Arab Americans fear that census demographic data would be used to enhance surveillance programs and similar activities, making them even more invasive.¹⁰⁷

Under the Biden-Harris administration, a MENA category may be added to the 2030 census questionnaire.¹⁰⁸ The Biden-Harris administration refers to the MENA population in the United States as a “socially disadvantaged group[,]” deserving of “equitable access to federal procurement opportunities.”¹⁰⁹ During his campaign, then-candidate Biden stated that he would support the creation of a MENA category in order to ensure that Arab Americans are “fairly counted and their needs studied and considered alongside other minorities.”¹¹⁰

B. *Arabs as a Vulnerable Group in the Employment Context*

While Arabs continue to be classified as white, they are still subjected to harassment and discrimination based on immutable characteristics.¹¹¹ Immutable characteristics are those that cannot be changed—in other words, characteristics over which an individual has no choice.¹¹² In the 1980s, for instance, the Supreme Court of the United States considered whether the Civil Rights Act¹¹³ applied to the “Arabian race.”¹¹⁴ As one scholar put it, this case highlighted the “sociopolitical nature of race and the manner in which the concept of ethnicity had begun, in many instances, to supplant that of race.”¹¹⁵

In *Saint Francis College v. Al-Khazraji*,¹¹⁶ the Court was presented with a discrimination claim from an individual who was classified as white but, by virtue of his ethnicity, was not treated as such.¹¹⁷ Professor Al-Khazraji, an American citizen born in Iraq, filed suit alleging that Saint Francis College and its tenure committee had

picture of who we are based on the very categories those in power have chosen. I, like millions of others, have waited for decades to see my reality in America counted. We're still waiting.”).

105. Beydoun, *Boxed In*, *supra* note 22, at 744–45.

106. *See id.* at 746.

107. *Id.*

108. *See Joe Biden and the Arab American Community: A Plan for Partnership*, BIDEN HARRIS, <http://joebiden.com/joe-biden-and-the-arab-american-community-a-plan-for-partnership/> [<http://perma.cc/ZX6F-Y2CD>] (last visited Nov. 1, 2021).

109. *Id.*

110. *Id.*

111. *See, e.g.*, Saloom, *supra* note 77, at 70–71 (“While hate crimes against Arab-Americans occurred before 9/11, hate crimes post 9/11 increased dramatically. In the immediate aftermath of 9/11, many instances of hate crimes were documented. These included crimes ranging from murder, to death threats, physical assaults and vandalism.”).

112. Jessica A. Clarke, *Against Immutability*, 125 YALE L.J. 2, 13 (2015).

113. Pub. L. No. 88–352, 78 Stat. 241 (1964).

114. *Saint Francis Coll. v. Al-Khazraji*, 481 U.S. 604, 606–07 (1987).

115. Donald Braman, *Of Race and Immutability*, 46 UCLA L. REV. 1375, 1442–43 (1999).

116. 481 U.S. 604 (1987).

117. *See Al-Khazraji*, 481 U.S. at 607.

discriminated against him on the basis of race when they denied him tenure.¹¹⁸ The college argued that, because Arabs are classified as white, Al-Khazraji could not state a claim of racial discrimination under the Civil Rights Act.¹¹⁹ The Court disagreed with the college, emphasizing that the legislative history showed a congressional intent to prevent discrimination against individuals who, like Al-Khazraji, were “subjected to intentional discrimination solely because of their ancestry or ethnic characteristics.”¹²⁰ The Court went so far as to say that Congress intended for discrimination based on ancestry or ethnic characteristic to be understood as racial discrimination, regardless of whether it would be considered racial discrimination under modern scientific theory.¹²¹

The *Al-Khazraji* Court adopted a broad methodology for interpreting the word “race” in the context of the Civil Rights Act.¹²² As one scholar puts it, the Court used two legal tests: (1) the categorical test, and (2) the racial-in-character test.¹²³ Under the first approach, the Court looked at how race was defined in encyclopedias and dictionaries at the time the statute was enacted to determine who Congress intended to cover.¹²⁴ Under the second approach, the Court created a more flexible test that looks beyond textbook definitions of race and, instead, acknowledges that because race is a construct, certain groups can become racialized based on things like ethnic traits.¹²⁵ The Court acknowledged that, while legally classified as white, individuals of Arab ethnicity may experience discrimination based on their racialization and treatment as the “other.”¹²⁶

As noted earlier in this Comment and demonstrated through Professor Al-Khazraji’s experience, Arabs faced discrimination in the United States well before the events of September 11, 2001. After September 11, however, the Equal Employment Opportunity Commission (EEOC) found that special measures were required to curtail the subsequent employment discrimination backlash against individuals perceived to be Muslim or Arab.¹²⁷ In the initial months after September 11, the EEOC saw a 250% increase in discrimination charges involving Muslims.¹²⁸ Since the *Al-Khazraji* decision, Arab Americans have continued to face discrimination in the workplace because of their Arab heritage.

118. *Id.* at 604.

119. *Id.* at 605.

120. *Id.* at 613.

121. *Id.*

122. Sarah Khanghahi, *Thirty Years After Al-Khazraji: Revisiting Employment Discrimination Under Section 1981*, 64 UCLA L. REV. 794, 810 (2017) (citing *Al-Khazraji*, 481 U.S. at 613).

123. *Id.* (citing *Al-Khazraji*, 481 U.S. at 613).

124. *Id.*

125. *Id.* at 811 (quoting *Al-Khazraji*, 481 U.S. at 613).

126. *See id.* at 813.

127. *What You Should Know About the EEOC and Religious and National Origin Discrimination Involving the Muslim, Sikh, Arab, Middle Eastern and South Asian Communities*, U.S. EQUAL EMP. OPPORTUNITY COMM’N, <http://www.eeoc.gov/wysk/what-you-should-know-about-eeoc-and-religious-and-national-origin-discrimination-involving> [<http://perma.cc/S9CK-5GJJ>] (last visited Nov. 1, 2021).

128. *Id.*

C. *Arab American Attempts at Gaining MBDA Minority Status*

In January 2012, the American-Arab Anti-Discrimination Committee (ADC) submitted an application for recognition to the Minority Business Development Agency (MBDA).¹²⁹ The MBDA is a part of the United States Department of Commerce and describes itself as “the only federal agency created specifically to foster the establishment and growth of minority-owned businesses in America.”¹³⁰ One of the MBDA’s primary objectives is the creation of wealth in minority communities.¹³¹

Given that discrimination against Arab Americans stalled the community’s social and economic progress,¹³² the ADC requested designation as a minority group eligible for MBDA assistance.¹³³ Part II.C.1 discusses the ADC’s application requesting that Arab Americans be designated as a minority group for purposes of the MBDA, and the reasoning the ADC used to argue that Arab Americans should be given such a designation. Part II.C.2 then explains the MBDA’s rejection of this request and the reasoning the agency used to justify its decision.

1. The ADC Application to the MBDA

In 2012, the ADC submitted a petition requesting recognition of Arab Americans as a minority group that was socially or economically disadvantaged within the meaning of the Determination of Group Eligibility for MBDA Assistance Regulation.¹³⁴ The ADC sought to show that the Arab American community had historically suffered, and continued to suffer, from social or economic disadvantage that was chronic, longstanding, and substantial.¹³⁵

The ADC noted that upon arrival, the first Arab American immigrants faced discrimination at the hands of nativists, who referred to them using racial epithets like “Dago” and prohibited them from entering public spaces.¹³⁶ In the 1920s in Lockhart, Texas, for example, white Americans referred to Arabs as “Dago” and did not allow Arabs to eat in public restaurants.¹³⁷ In 1907, John L. Burnett, a U.S. Representative from Alabama, publicly referred to Arabs as “dirty and diseased,” “the most undesirable of the undesirable peoples of Asia Minor,” and endorsed their exclusion from American

129. AM.-ARAB ANTI-DISCRIMINATION COMM. (ADC), PETITION FOR DETERMINATION OF GROUP ELIGIBILITY FOR MBDA ASSISTANCE 1 (2012) [hereinafter ADC PETITION], <http://archive.mbda.gov/sites/mbda.gov/files/migrated/files-attachments/AmericanArabAntiDiscriminationCommitteePetition.pdf> [<http://perma.cc/5R8M-7EUN>].

130. *Who Is MBDA?*, MINORITY BUS. DEV. AGENCY (Apr. 19, 2017), <http://archive.mbda.gov/page/who-mbda.html> [<http://perma.cc/6X28-AJJ2>].

131. *Id.*; see also *Who We Serve*, MINORITY BUS. DEV. AGENCY, <http://www.mbda.gov/about/whoweserve> [<http://perma.cc/7F7R-KFPF>] (last visited Nov. 1, 2021) (noting that the following groups are considered minorities for the MBDA: African Americans, Asian Americans, Hasidic Jews, Hispanic Americans, Native Americans, and Pacific Islanders).

132. ADC PETITION, *supra* note 129, at 42.

133. *Id.* at 43.

134. ADC Petition, *supra* note 129, at 1.

135. ADC PETITION, *supra* note 129, at 7.

136. *Id.* at 8–9.

137. *Id.* at 9.

society.¹³⁸ While Arabs have faced discrimination since their early immigration to the United States, the ADC emphasized that the discrimination became more ethnically specific after World War II.¹³⁹ Racial slurs began to include epithets such as “camel jockey” and “dirty Syrian,” rather than epithets like “Dago,” which did not specifically refer to Arab origin.¹⁴⁰

The events of September 11, 2001, only intensified the Arab American struggle.¹⁴¹ After the events of September 11, Arab Americans became outsiders who, today, continue to be seen as threatening and dangerous.¹⁴² In their application to the MBDA, the ADC argued that Arab Americans faced discrimination in both public and private spheres with regard to employment, housing, government contracts, and benefits.¹⁴³ This discrimination, the ADC contended, existed from the moment that Arab Americans began to reside in the United States.¹⁴⁴

While the daily discrimination against Arab Americans in the United States increased, the ADC further argued that government-sponsored programs exacerbated the marginalization of Arab Americans in American society.¹⁴⁵ Programs like the No Fly List served as clear examples of racial profiling and, in effect, state-sponsored discrimination.¹⁴⁶ The ADC suggested a connection between these discriminatory programs and business dealings by Arab Americans.¹⁴⁷ It argued that, through programs like the No Fly List, Arab Americans traveling for business were deterred from doing so and, thus, may have had to curtail their business practices.¹⁴⁸ Ultimately, this could have resulted in the loss of profit and future business opportunities. By describing the governmental programs and their societal influence, the ADC argued that the impact of discrimination on the Arab American community increased, and even worsened, since September 11, 2001.¹⁴⁹

The ADC also discussed workplace discrimination and the impact that it had on Arab Americans and their entry into the business world.¹⁵⁰ The ADC stated that employment discrimination caused Arab Americans to suffer both as employees and

138. *Id.*

139. *Id.* at 9–10.

140. *Id.*

141. *Id.* at 17.

142. *Id.* at 18.

143. *Id.* at 15; *see, e.g.*, Ibrahim v. N.Y. State Dep’t of Health, 904 F.2d 161, 168 (2d Cir. 1990) (explaining that the Department had failed to promote an Arab American, despite the fact that he was the most qualified candidate for the promotion, on the basis of national origin discrimination, in violation of Title VII).

144. *See* ADC PETITION, *supra* note 129, at 14–17.

145. *See id.* at 19; *see, e.g.*, Cindy C. Unegbu, Comment, *National Security Surveillance on the Basis of Race, Ethnicity, and Religion: A Constitutional Missstep*, 57 *HOW. L.J.* 433, 444 (2013) (discussing that one such program—the National Security Entry-Exit Registration System, which forced male nationals from twenty-five countries, twenty-four of which are predominantly Muslim, to report to immigration for fingerprinting and interviews—failed to capture any terrorists, but placed about fourteen thousand individuals in deportation proceedings).

146. *See* ADC PETITION, *supra* note 129, at 19–20.

147. *Id.* at 20.

148. *Id.*

149. *Id.* at 19–21.

150. *Id.* at 21.

entrepreneurs in a manner that was distinguishable from and more severe than individuals who were not Arab American.¹⁵¹ It did so by noting that the Supreme Court ruled in favor of *Al-Khazraji*, finding that Congress was attempting to protect individuals who are “subject to intentional discrimination solely because of their ancestry or ethnic heritage.”¹⁵² It emphasized that *Al-Khazraji* is still pertinent today, specifically because of the increase in the number of employment discrimination complaints by Arab Americans.¹⁵³

Since the events of September 11, 2001, the largest category of complaints received by the ADC related to employment discrimination issues faced by members of the Arab American community.¹⁵⁴ The discrimination claims are varied. In certain instances, there was a pattern of discriminatory behavior that included name-calling, such as “towel head,” “terrorist,” and the like.¹⁵⁵ There were also cases of threats and outright assault.¹⁵⁶ The EEOC confirmed an increase in workplace discrimination against individuals who were either Arab or perceived to be Arab.¹⁵⁷ The ADC also emphasized that the official number—1,035 charges—was likely only representative of a small portion of the actual discrimination that took place.¹⁵⁸

Moreover, one study found that Arab American men at various income levels experienced a significant decline in their earnings after September 11, 2001.¹⁵⁹ This decrease could have been the result of employer, employee, or customer discrimination—or the fact that employers may have anticipated an increase in workplace inspection by governmental entities due to immigration policies passed after September 11, 2001.¹⁶⁰ Due to their belief that these inspections may increase, some employers were afraid of the consequences of hiring Arab Americans due to potential government scrutiny of an employer.¹⁶¹ In both the scenarios outlined, the ADC noted that the result was more or less the same for Arab Americans.¹⁶² They suffered from negative association and stigmatization, and the economic impact thereof.¹⁶³

In addition to the impact on earnings, the ADC underscored the difficulty that Arab Americans frequently faced when they attempted to climb the ladder in their chosen

151. *Id.*

152. *Id.* at 23 (quoting *Saint Francis Coll. v. Al-Khazraji*, 481 U.S. 604, 605 (1987)).

153. *Id.*; see, e.g., Daniel Widner & Stephen Chicoine, *It's All in the Name: Employment Discrimination Against Arab Americans*, 26 Soc. F. 806, 809 (2011) (explaining findings that real wages and weekly earnings decreased by 9–11% for Arabs and Muslims after the events of September 11, 2001, and that Arab men experienced a significant decline in earnings).

154. ADC PETITION, *supra* note 129, at 23.

155. *Id.* at 24.

156. *Id.*

157. U.S. EQUAL EMP. OPPORTUNITY COMM'N, *supra* note 127 (stating that in the initial months after September 11, the EEOC saw a 250% increase in the number of religion-based discrimination charges involving Muslims, and that between September 11, 2001 and March 11, 2012, there were 1,040 charges filed relating to attacks on individuals who are or were perceived to be Muslim, Sikh, Arab, Middle Eastern, or South Asian).

158. ADC PETITION, *supra* note 129, at 25.

159. *Id.* at 25–26.

160. *Id.* at 26.

161. *See id.*

162. *Id.*

163. *Id.* at 26–27.

careers.¹⁶⁴ The ADC discussed how this difficulty was indicative of the fact that, even with noteworthy educational and professional achievements and experiences, Arab Americans were often precluded from promotions and advancement.¹⁶⁵

In their petition to the MBDA, the ADC discussed the negative impacts of discrimination on Arab American entrepreneurs.¹⁶⁶ The MBDA works to empower minority-owned businesses by connecting them to resources like capital, contracts, and markets.¹⁶⁷ The ADC explained that a large number of Arab Americans are small business owners for two reasons. First, many Arabs moved to the United States due to political upheaval, not poverty, and thus had the capital to invest in business.¹⁶⁸ Second, some Arab Americans choose to become small business owners due to the fact that the broader American workplace is not a space where they feel or are treated as welcome.¹⁶⁹ Even when they opt to be small business owners, Arab Americans are not safe from discrimination. For instance, Arab Americans often have difficulty finding investors and capital for their businesses.¹⁷⁰ Both of these burdens could be lessened if Arab Americans were to receive MBDA designation and the support associated with that designation.¹⁷¹

In concluding their petition, the ADC impressed upon the MBDA that the classification of Arab Americans as “white” is inappropriate because they are a distinct group who do not enjoy the benefits of white privilege in everyday life.¹⁷² Arab Americans face daily discrimination that has been sanctioned by the government through programs and policies.¹⁷³ Arab Americans experience discrimination by employers and employees, teachers and students, and others, often motivated by government-sponsored fear.¹⁷⁴

2. The MBDA’s Rejection of the ADC’s Petition

On May 30, 2012, about five months after the ADC filed their petition, the MBDA published a notice requesting public comment on the designation of Arab Americans as minorities for the purposes of the MBDA.¹⁷⁵ The MBDA extended its decision deadline

164. *Id.* at 27. For instance, the ADC pointed to the case of Agent Bassem Youssef, an Arab American and qualified candidate, who filed a complaint against the FBI after he was denied promotion. The ADC explained that Youssef was not promoted because of his ethnic background, and that the FBI had never appointed an American citizen born in an Arabic speaking country in the Middle East to a senior level. *Id.* at 27–28.

165. *Id.* at 28.

166. *See id.* at 29–31.

167. *What We Do*, MINORITY BUS. DEV. AGENCY, <http://www.mbda.gov/about/whatwedo> [<http://perma.cc/4D4E-PGYC>] (last visited Nov. 1, 2021).

168. ADC PETITION, *supra* note 129, at 29.

169. *Id.* at 29–30.

170. *Id.* at 31.

171. *See id.*

172. *Id.* at 41.

173. *See id.* at 42.

174. *See id.*

175. *See* Petition for Inclusion of the Arab-American Community in the Groups Eligible for MBDA Services, 77 Fed. Reg. 31,765 (May 30, 2012) (to be codified at 15 C.F.R. pt. 1400).

four times and took over nine months to make a decision from when it first requested public comment.¹⁷⁶

The MBDA did not announce its determination on the ADC's petition until March 5, 2013, about fourteen months after the petition was submitted.¹⁷⁷ The MBDA noted that during the thirty-day period when the public was allowed to submit comments, the MBDA received thirty-seven comments: nineteen in support of ADC's petition, thirteen in opposition, and five that could not be used due to "offensive or derogatory language."¹⁷⁸ The MBDA reviewed the comments, application, and independent research to reach its conclusion.¹⁷⁹ It ultimately decided that there was not enough evidence to support a finding that Arab Americans met the required elements of social or economic disadvantage as described by the Determination of Group Eligibility for MBDA Assistance Regulation.¹⁸⁰

In order for a group to demonstrate eligibility for MBDA services, the group must show by a preponderance of the evidence that it is socially or economically disadvantaged.¹⁸¹ The MBDA explained in its rejection notice to the ADC that because the MBDA relies on racial classifications, the existence of the MBDA itself is subject to strict scrutiny.¹⁸² In order for a group to show social disadvantage, it must demonstrate the following: (1) the group has been subjected to cultural, racial, or ethnic prejudice because of their group identity without regard to their qualities as individuals; (2) the resulting social disadvantage is chronic, longstanding, substantial, and beyond the control of the group's members; and (3) the social conditions faced by the group have caused impediments not commonly faced by others in the business world.¹⁸³ To demonstrate economic disadvantage to the satisfaction of the MBDA, a group must meet three requirements: (1) group members' ability to compete in the free market is diminished as a result of insufficient capital or credit opportunity because of their membership in the identity group; (2) the economic disadvantage is chronic, longstanding, substantial, and beyond the control of the group's members; and (3) the economic circumstances have caused barriers in the business world for the group that is not commonly experienced by others in the same line of business.¹⁸⁴

The MBDA concluded that, while there was evidence that Arab Americans faced significant prejudice in many cases, the evidence did not satisfactorily show that these prejudices had resulted in the preclusion or deterrence of Arab Americans from the free

176. See Notice of Petition Decision Extension, 77 Fed. Reg. 34,883 (June 12, 2012); Second Notice of Petition Decision Extension, 77 Fed. Reg. 46,346 (Aug. 3, 2012) (extending the decision deadline to August 30, 2012); Third Notice of Petition Decision Extension, 77 Fed. Reg. 53,780 (Sept. 4, 2012) (extending the decision deadline to November 30, 2012); Fourth Notice of Petition Decision Extension, 77 Fed. Reg. 72,254 (Dec. 5, 2012) (extending the decision deadline to March 1, 2013).

177. Determination of Group Eligibility for MBDA Assistance, 78 Fed. Reg. 14,238 (Mar. 5, 2013) [hereinafter MBDA Response].

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*; see also *Adarand Constructors v. Peña*, 515 U.S. 200, 227 (1995) (holding that racial classifications imposed by a federal, state, or local government actor must be analyzed using strict scrutiny).

183. MBDA Response, *supra* note 177, at 14,240.

184. *Id.*

market.¹⁸⁵ Moreover, the MBDA stated that the evidence presented was not demonstrative of longstanding, chronic, and substantial bias.¹⁸⁶ The MBDA determined that while the petition presented by the ADC provided evidence that tended to show that Arab Americans faced adverse treatment, the ADC did not make a connection between that treatment and the impact on Arab Americans in the free market economy.¹⁸⁷ Namely, the MBDA decided that “statistical measures of the impact that employment discrimination complaints have on Arab American business success or workplace attainment” were necessary in order for the MBDA to designate Arab Americans as a minority group for the purposes of the MBDA.¹⁸⁸

Ultimately, the MBDA determined that there was insufficient evidence to warrant designating Arab Americans as a minority group.¹⁸⁹ The MBDA returned the petition to the ADC for further consideration.¹⁹⁰

D. The Small Business Administration and Arab American Minority Status

The Small Business Administration (SBA)¹⁹¹ is a federal entity empowered to “make an award to a small business concern owned and controlled by socially and economically disadvantaged individuals.”¹⁹² While the Small Business Act of 1953¹⁹³ does not specifically require the SBA to prioritize minority-owned small businesses, the SBA has “interpreted its authority to permit this narrowing of focus.”¹⁹⁴

In an application for an SBA grant, Omar Kader, a Palestinian American, claimed that he was marginalized and that his efforts to proliferate his business were hindered.¹⁹⁵ According to Kader, he was met with “dozens of rejections of applications” he made on behalf of his company, Pal-Tech Inc.¹⁹⁶ These were applications for government contracts that would have procured Pal-Tech’s services to install security software for government agencies.¹⁹⁷ Kader alleged that these rejections were the result of discrimination that he faced due to his Arab heritage.¹⁹⁸ He also noted that, in the process of these rejections, he was told that people were not willing to do business with “ragheads” or “terrorists.”¹⁹⁹ Kader argued that those who directed these types of slurs

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.*

191. See Daniel R. Levinson, *A Study of Preferential Treatment: The Evolution of Minority Business Enterprise Assistance Programs*, 49 GEO. WASH. L. REV. 61, 64 (1980) (explaining that the SBA was established under Section 8 of the Small Business Act of 1953).

192. 15 U.S.C. § 637(a)(1)(C).

193. *Id.* §§ 631–56.

194. Levinson, *supra* note 191.

195. See Joel Millman, *Delayed Recognition*, WALL STREET J. (Nov. 14, 2005, 12:01 AM), <http://www.wsj.com/articles/SB113164521327893778> [<http://perma.cc/Z59Q-CF9S>].

196. *Id.*

197. *Id.*

198. *Id.*

199. *Id.*

against him, and simultaneously put his livelihood at risk, felt that they could do so because Arab Americans did not have redress when faced with such discrimination.²⁰⁰

Though Kader was aware of the economic losses caused by this discrimination, he did not necessarily have clear avenues for redress.²⁰¹ The lack of clarity that Kader and those like him face is because of the misclassification of Arab Americans as white.²⁰² Nonetheless, Kader sought minority status with the SBA.²⁰³

Kader sought to be categorized as a socially and economically disadvantaged individual under the SBA.²⁰⁴ It took four years for the SBA to approve Kader's application.²⁰⁵ The process was long, and throughout it, Kader dealt with discrimination.²⁰⁶ At one point, an individual reviewing Kader's application as part of the SBA committee went so far as to state that a Palestinian had "no business trying to break into the government contracting field."²⁰⁷ Despite this and similar comments, Kader's diligence and advocacy²⁰⁸ resulted in Kader's becoming the first Arab American to gain minority status from SBA.²⁰⁹

III. DISCUSSION

Because race in America is understood along the Black-white paradigm, Arab Americans have to negotiate their place within that preexisting order. By attempting to force Arab identity into a paradigm that defines groups by their proximity to blackness

200. See Omar M. Kader, *The Middle East and the Law: Arab-American Businessman Achieves Breakthrough with Minority Status*, WASH. REP. ON MIDDLE EAST AFFS. (Oct. 27, 1991), <http://www.wrmea.org/1991-october/the-middle-east-and-the-law-arab-american-businessman-achieves-breakthrough-with-minority-status.html> [<http://perma.cc/E6RZ-XY5G>] ("The group involved felt secure in discriminating against me and even bragged to others that bias against Arab Americans is not the same as that against members of other American ethnic groups officially designated as minorities.").

201. See Lee Davidson, *Former Utahn Gets U.S. To Grant Minority Status to Arab Americans*, DESERET NEWS (Mar. 21, 1991, 12:00 AM), <http://www.deseret.com/1991/3/21/18911308/former-utahn-gets-u-s-to-grant-minority-status-to-arab-americans> [<http://perma.cc/NM78-UWE9>] (explaining the different economic losses that Kader dealt with due to discrimination).

202. See, e.g., Tamer, *supra* note 76, at 102 ("The classification of Arab Americans as officially 'white' in the census, while society perceives Arab Americans as socially 'black' is problematic. It denies a group that is historically and presently suffering discrimination the benefits and protections of minority status, as well as the benefit of official recognition as a way of conferring identity.").

203. Kader, *supra* note 200.

204. *Id.* ("I sought 8(a) status for three reasons: 1) I have experienced bias and could document discrimination against Arab Americans; 2) I had to overcome this bias in contracting; and 3) other Arab Americans who experience discrimination would benefit from my effort.").

205. Millman, *supra* note 195 (explaining that Kader was assisted by Senator Orrin Hatch in a four-year lobbying campaign before he was able to gain minority status through SBA).

206. Davidson, *supra* note 201 ("For three years, the process moved slowly with the government seemingly requesting an endless stream of more documents. Feeling he was given the runaround, Kader sought help from a member of Congress from Utah – but said he declined saying he didn't want to be seen as an ally of a Palestinian.").

207. Kader, *supra* note 200.

208. See *id.* ("After I had compiled the documentation, my case was still delayed for many months. I finally sought out and received help from a US senator, and close acquaintance, from my home state of Utah. His office monitored the process to assure fair treatment during the last year of the application.").

209. Millman, *supra* note 195.

and whiteness, the unique experience, struggles, and needs of Arabs in the United States are erased or rendered less significant.²¹⁰ The federal government should officially recognize Arab Americans as a minority group to afford them necessary protections against discrimination. This recognition would resolve some of the inconsistencies in how Arab Americans are treated in federal programs. For instance, Arab Americans currently qualify for funding from the SBA but not from the MBDA.²¹¹ A clear federal designation will assist in streamlining access to these types of protections, thereby empowering Arab American business owners and the larger community.

This Section argues that the federal government should recognize Arab Americans as soon as possible and grant them access to federal funding. It does so in two parts. Part III.A argues that Arab Americans need executive support to access programs and initiatives that would empower their community and fight against its oppression. It also asserts that President Biden and his administration should direct the Office of Management and Budget (OMB) to work towards recognizing Arab Americans as a distinct group, thereby obliging other federal agencies to do the same. Part III.B states that, regardless of whether Arab Americans are designated as a distinct ethnic group, the MBDA should consider Arab Americans as eligible for minority status in order to align with the SBA and the reality that Arab Americans are a socially and economically disadvantaged group.

A. *Using Executive Power To Recognize and Empower the Arab American Community*

Though legally white, Arab American racial identity does not align with a lived reality of whiteness.²¹² Arab American racial identity has always been in question.²¹³ This disconnect has existed since early Arab immigration to the United States, when Arabs attempted to embrace whiteness in front of judges and government officials.²¹⁴

Arab Americans, regardless of their religion, have been othered through categorization as “foreign,” “disloyal,” and “terrorists.”²¹⁵ The racialization of Arabs as terrorists is exacerbated not only by governmental policies but also by popular media.²¹⁶ This othering and stereotyping as the terrorist enemy has consequences for Arab American civil liberties and other facets of daily life in the United States.²¹⁷ While Arab Americans face unique struggles in the United States, their legal classification as white does not afford them formal recognition as a distinct group in American society.²¹⁸

210. See Nadine Naber, *Ambiguous Insiders: An Investigation of Arab American Invisibility*, 23 ETHNIC & RACIAL STUD. 37, 56–57 (2010).

211. See *infra* notes 246–247 and accompanying text.

212. Malek, *supra* note 20, at 211–12.

213. See *id.* at 211.

214. *Id.* at 225.

215. Natsu Taylor Saito, *Symbolism Under Siege: Japanese American Redress and the “Racing” of Arab Americans as “Terrorists”*, 8 ASIAN L.J. 1, 12 (2001).

216. *Id.*

217. Debra Merskin, *The Construction of Arabs as Enemies: Post-September 11 Discourse of George W. Bush*, 7 MASS COMMUN & SOC’Y 157, 172 (2004).

218. See Beydoun, *Boxed In*, *supra* note 22, at 696.

The continued absence of a MENA category on the United States Census is a form of erasure of MENA individuals from the fabric of American society. The invisibility of MENA individuals in the census has barred access to important opportunities that could aid in empowering their communities. For instance, Arab American individuals, not currently recognized as a minority group, cannot gain access to protections and funding that are awarded to other minority groups.²¹⁹ Census data is used to determine the distribution of resources, but because Arab Americans are not counted, they are not included in these monetary calculations.²²⁰ Therefore, Arab Americans struggle to access resources to counteract some of the consequences of their marginalization in American society.

The Biden-Harris administration must fulfill its campaign promises to Arab Americans. The administration should push for the inclusion of a MENA category on the Census. This way, Arab Americans can begin to gain visibility and access to necessary resources. By having their own category on the Census, Arab Americans would be considered recipients during the government's calculations for resource distribution.²²¹ The administration should ensure that the category is used to empower the community, not to further surveillance programs or other governmental programs that oppress Arab Americans and other members of the MENA category. This goal can be accomplished by creating strong privacy safeguards that prohibit census data from being shared for extralegal purposes.

Because of the privacy concerns discussed above, the Arab American community may be suspicious of government efforts to collect demographic data, especially in light of Trump-era policies. The Biden-Harris administration must work with community leaders in order to effectively understand how the government can reach out to Arab Americans and begin to rebuild faith.

Even if the inclusion of a MENA category were to grant access to much-needed funding streams for the Arab American community, that category would be included in the 2030 census—approximately ten years from the publication of this Comment.²²² It is vital that Arab Americans gain avenues for recognition, protection, and empowerment before then. Executive support is one method by which this change can and should occur.

In his first month in office, President Biden issued an executive order on advancing racial equity and supporting underserved communities through the federal government.²²³ This executive order did not mention Arab Americans outright.²²⁴ In line

219. *See id.* at 744–45.

220. *See id.*

221. *See id.*

222. Hansi Lo Wang, *Biden Wants Census To See 'Invisible' Groups: LGBTQ, Middle Eastern, North African*, NPR (Nov. 14, 2020, 5:01 AM), <http://www.npr.org/2020/11/14/932594879/biden-wants-census-to-see-invisible-groups-lgbtq-middle-eastern-north-african> [<http://perma.cc/NX3V-NRVH>].

223. Exec. Order No. 13,985, 86 Fed. Reg. 7009 (2021).

224. *Cf.* BIDEN HARRIS, *supra* note 108 (“Biden will reestablish the United States as a welcoming destination for those seeking to pursue the American dream, including immigrants from the Arab world. Prohibiting the populations of entire countries from coming to the United States is morally wrong . . .”).

with campaign promises,²²⁵ President Biden's administration should support Arab Americans in obtaining access to federal procurement programs as well as other opportunities the administration plans to afford to underserved communities. Federal laws and programs should align with the lived reality of Arab Americans. Categorizing Arab Americans as white and treating them as such in the legal sphere, and for purposes of federal programs, is problematic for two reasons. First, Arab Americans are not beneficiaries of white privilege; they instead face overt and covert discrimination on a daily basis.²²⁶ Second, the federal government's treatment of Arab Americans as white effectively erases their unique experience in the United States and eliminates avenues for accessing protections against discrimination, as well as funding available to other marginalized groups.²²⁷

In his executive order, President Biden listed several directives to the OMB aimed at advancing racial equity and supporting underserved communities through the federal government.²²⁸ President Biden should make further requests of the OMB in order to fulfill his campaign promises to the Arab American community. He should urge the OMB to recognize Arab Americans as a distinct ethnic group.²²⁹ The OMB promotes the creation of "compatible, nonduplicated, exchangeable racial and ethnic categories to be utilized by the federal government for three reporting purposes: statistical, administrative and civil rights compliance."²³⁰ The OMB should designate Arab Americans as a distinct ethnic group so they may be afforded access to funding determined by census data. This designation would aid in feelings of inclusion and belonging and would economically and socially uplift the community.

The OMB determines which races and ethnicities are used for the census²³¹ as well as for all federal programs.²³² The sooner Arab Americans are recognized as a distinct ethnic group by OMB, the quicker Arab Americans can gain fair access to and treatment by federal programs.

President Biden and his administration need to include Arab Americans in the quest to advance equity and support for underserved communities now, lest Arab Americans be left behind for another ten years. These efforts need to originate in the OMB and other government organizations. There must be recognition that, regardless of the racial categorization of Arab Americans, the lived reality has not been one of whiteness.

225. *Id.* ("Biden will commission an independent study that will make recommendations on possible additional categories of socially disadvantaged groups, such as MENA, for purposes of ensuring equitable access to federal procurement opportunities.").

226. See *supra* Part II.A.2 for a discussion of contemporary examples of discrimination against Arab Americans.

227. Beydoun, *Boxed In*, *supra* note 22, at 724–25.

228. Exec. Order No. 13,985, 86 Fed. Reg. 7009, 7010–11 (2021).

229. Pratheep Sevanthinathan, *Shifting from Race to Ethnicity in Higher Education*, 9 SCHOLAR 1, 41–42 (2006).

230. Julissa Reynoso, *Race, Censuses, and Attempts at Racial Democracy*, 39 COLUM. J. TRANSNAT'L L. 533, 535 (2001) (citation omitted).

231. Jason Jurjevich, *Race/Ethnicity and the 2020 Census*, CENSUS 2020, <http://www.census2020now.org/faces-blog/same-sex-households-2020-census-r3976> [<http://perma.cc/RF82-MY8R>] (last visited Nov. 1, 2021).

232. Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, 62 Fed. Reg. 58,782 (Oct. 30, 1997).

B. *Wider Recognition of Arab Americans in Federal Funding Programs*

The Supreme Court's decision in *Al-Khazraji* was a recognition that racial demographics in the United States have shifted.²³³ *Al-Khazraji* acknowledged that race is often classified along sociopolitical lines, rather than because of significant biological differences.²³⁴ By acknowledging that Arabs can be discriminated against because of their perceived race and granting them protection in the employment context,²³⁵ the *Al-Khazraji* Court essentially recognized that Arabs in America were racialized citizens because of their sociopolitical status and treatment.

Because Arab Americans are marginalized and othered, they face discrimination that is more akin to that faced by other nonwhite groups.²³⁶ Since the 1987 decision in *Al-Khazraji*, Arab Americans have become targets of "vicarious retribution" whereby they are attacked in America because they are viewed and stereotyped as foreign and threatening outsiders.²³⁷ Because of their sociopolitical standing in America as threatening outsiders, Arab Americans have been pushed further to the margins. While this process has taken place, however, there has been no official recognition of their status by the government and, in turn, by federal agencies.²³⁸

Arabs have continued to face harassment in the workplace since *Al-Khazraji*, and this harassment has arguably worsened.²³⁹ This discrimination, which has, at the very least, caused Arab Americans to be socially disadvantaged, has often been initiated or furthered by government-sanctioned programs. The FBI's questioning of Arab Americans in their workplace is only one example.²⁴⁰ Thus, while refusing to grant Arab Americans access to funding and protection, the government has also perpetuated the harm that has caused Arab Americans to be viewed as foreign and threatening.

233. See Khanghahi, *supra* note 122, at 814.

234. Saint Francis Coll. v. Al-Khazraji, 481 U.S. 604, 610 n.4 (1987).

235. See *id.* at 613.

236. See, e.g., Aziz, *supra* note 26, at 36 (discussing how, in post-September 11 America, Arabs and Muslims have become "subject to a concerted de-Americanization process," and the sentiment that, as immigrants and people of color, they are dangerous and suspect).

237. Ilir Disha, James C. Cavendish & Ryan D. King, *Historical Events and Spaces of Hate: Hate Crimes Against Arabs and Muslims in Post-9/11 America*, 58 SOC. PROBS. 21, 26 (2011).

238. See Beydoun, *Boxed In*, *supra* note 22, at 743-45.

239. U.S. EQUAL EMP. OPPORTUNITY COMM'N, *supra* note 127.

240. See, e.g., Seth Freed Wessler, *Muslim Students Reeling from Shocking News of NYPD's Spying*, DEFENDING RELIGIOUS FREEDOM (Feb. 24, 2012), <http://www.defendingreligiousfreedom.com/muslim-students-reeling-from-shocking-news-of-nypds-spying/> [<http://perma.cc/9WX5-7D4H>] (describing the NYPD's surveillance and entrapment efforts of Muslim communities, including students on college campuses, in New York and more broadly throughout the Northeast). See generally Colin Moynihan, *Last Suit Accusing N.Y.P.D. of Spying on Muslims Is Settled*, N.Y. TIMES (Apr. 5, 2018), <http://www.nytimes.com/2018/04/05/nyregion/last-suit-accusing-nypd-of-spying-on-muslims-is-settled.html> [<http://perma.cc/GY8J-X6J4>] ("[F]iled in 2012 on behalf of individuals, businesses, student associations and mosques in New Jersey who said that New York detectives had violated the Constitution by conducting surveillance of at least 20 mosques, 14 restaurants, 11 retail stores, two grade schools and two Muslim student organizations and creating more than 20 maps of Newark noting the location of mosques and the ethnic composition of Muslim neighborhoods.").

The fact that governmental programs targeting Arabs and Muslims have entered the workplace has emboldened and encouraged those who view Arab Americans as “other” and “un-American” to act on those sentiments.²⁴¹ This type of discrimination not only causes social disadvantages for Arab Americans but can also have a psychological impact that hinders productivity and the ability to prosper economically.²⁴²

If Arab Americans are not designated as a distinct ethnic group, the MBDA (and agencies like it) should still acknowledge Arab Americans as a socially disadvantaged group. Like the MBDA, the SBA requires that individuals be “socially . . . disadvantaged.”²⁴³ The rule governing qualification for the SBA’s minority status defines socially disadvantaged individuals as follows: “[I]ndividuals . . . who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. The social disadvantage must stem from circumstances beyond their control.”²⁴⁴ This standard is more or less the same as the one outlined and required by the MBDA.²⁴⁵ Yet, while the SBA and MBDA require that individuals or groups meet the same criteria in order to be eligible for designation, Kader—an Arab American—was able to qualify for SBA minority status,²⁴⁶ while the ADC’s petition was rejected by the MBDA.²⁴⁷

Omar Kader applied for SBA minority status in the late 1980s, a time when Arabs faced discrimination—though not as blatantly as in post-September 11 America.²⁴⁸ The ADC’s petition, on the other hand, was submitted to the MBDA in 2012, well after the events of September 11, when there was more documentation to prove the increase in discrimination against Arab Americans in the workplace and elsewhere.²⁴⁹ Puzzlingly, while Kader’s petition was submitted at a less tense, less volatile time, his petition was

241. See Aziz, *supra* note 26, at 53; Murtaza Hussain, *Hate Crimes Rise Along with Donald Trump’s Anti-Muslim Rhetoric*, INTERCEPT (May 5, 2016, 3:22 PM), <http://theintercept.com/2016/05/05/hate-crimes-rise-along-with-donald-trumps-anti-muslim-rhetoric/> [<http://perma.cc/86UV-5FKT>] (noting that there was an increase in violence against Muslims in America during the 2016 election campaign, including murders, physical assaults, vandalism, shootings, and bombings).

242. See Germinie H. Awad, Maryam Kia-Keating & Mona M. Amer, *A Model of Cumulative Racial-Ethnic Trauma Among Americans of Middle Eastern and North African (MENA) Descent*, 74 AM. PSYCH. 76, 82 (2019) (“The experience of being a group under target through surveillance, hate crimes, post-9/11 backlash, and a hostile national climate has significant negative repercussions for MENA Americans, including pervasive anxiety, alienation, fears about personal safety, feelings of vulnerability, social isolation, and sense of victimization.”).

243. 15 U.S.C. § 637(a)(1)(C).

244. 13 C.F.R. § 124.103(a) (2021) (emphasis added).

245. See MBDA Response, *supra* note 177 (noting that a group seeking recognition under the MBDA must show the following: (1) the ability of group members to compete in the free market is diminished as a result of lack of capital or credit opportunity because of their membership in the identity group; (2) the economic disadvantage is chronic, longstanding, substantial, and beyond the control of the group’s members; and (3) the economic circumstances caused barriers in the business world for the group that are not commonly experienced by others in the same lines of business).

246. Millman, *supra* note 195.

247. MBDA Response, *supra* note 177.

248. See Millman, *supra* note 195.

249. See ADC PETITION, *supra* note 129, at 23.

accepted.²⁵⁰ The ADC's petition was rejected.²⁵¹ The MBDA claimed that it rejected the petition because there was insufficient evidence that Arab Americans were hindered from competing in free enterprise.²⁵² This determination, which was based on a small sample size, was economically driven.²⁵³ Notably, the MBDA requires a group to establish that its members are socially or economically disadvantaged in order to qualify for MBDA status.²⁵⁴ Thus, a group is not obligated to prove that it is both socially and economically disadvantaged.

Because the SBA narrowed its focus to minority businesses,²⁵⁵ the recognition of Kader's business as one belonging to an individual who is socially and economically disadvantaged within the meaning of the statute is significant. By recognizing Kader in this manner, the SBA acknowledged that Arab Americans can be socially and economically disadvantaged, which is inconsistent with the MBDA decision on the ADC petition. The MBDA should designate Arab Americans as a minority group eligible for MBDA assistance for many reasons. First, the decision in *Al-Khazraji* demonstrates that, though legally white, Arab Americans are more vulnerable to discrimination based on immutable characteristics than individuals who actually present as white.²⁵⁶ Second, Arab Americans have faced increased discrimination in the workplace after September 11, 2001, demonstrating a need for more protection for their economic and social interests.²⁵⁷ Third, the SBA runs a program similar to the MBDA's and has granted minority designation to an Arab American.²⁵⁸ The MBDA should attempt to be consistent with the SBA.

Because Arab Americans face hostile workplaces, they may be incentivized to create their own work environments.²⁵⁹ This would be beneficial for the Arab American community beyond just individuals starting businesses. By creating Arab-owned businesses, Arab Americans can carve out safe workplaces for themselves and use those businesses to uplift their communities. In order to assist this socially disadvantaged group in finding success and safety in the United States, however, programs like the MBDA must recognize it and provide its members with federal funding.

250. Since the events of September 11, 2001, almost twenty years after Kader's SBA petition, Arab Americans have faced an increase in discrimination. SINGH, *supra* note 82.

251. MBDA Response, *supra* note 177.

252. *See id.* at 14,241.

253. *See* Ben Goad, *Administration Won't Put Arab-Americans on 'Disadvantaged' List*, HILL (Mar. 4, 2013, 8:18 PM), <http://thehill.com/regulation/business/286039-obama-administration-rejects-arab-american-bid-for-business-assistance-> [<http://perma.cc/G9GE-TKXY>].

254. MBDA Response, *supra* note 177.

255. Levinson, *supra* note 191, at 64.

256. *See* Beydoun, *Boxed In*, *supra* note 22, at 725 (“[T]he ruling equipped proponents of racial reform and reclassification with judicial endorsement from the highest court in the land that Arab Americans could suffer discrimination on grounds of their ‘nationality’ or ‘place of origin’—proxies for race and ethnicity.”).

257. U.S. EQUAL EMP. OPPORTUNITY COMM'N, *supra* note 127.

258. Millman, *supra* note 195.

259. ADC PETITION, *supra* note 129, at 29–30.

IV. CONCLUSION

As of 2019, there are just over two million Arab Americans in the United States, which is not a significant percentage of the overall population.²⁶⁰ Throughout the history of the United States, they have faced discrimination and othering. Despite this reality, Arab Americans have been officially considered white, causing a dissonance between their experience and their government paperwork.²⁶¹ Moreover, because of this categorization, they have been barred access to legal protections and government mechanisms put in place to empower marginalized communities.²⁶²

Though Kader was officially classified as white, he was not treated as such during his business dealings. Most Arab Americans, although classified as white, are not treated as such in their daily lives.²⁶³ Because this inconsistency remains a daily reality, and because it continues to be perpetuated by discriminatory governmental policies and programs, the MBDA and other federal agencies must recognize the Arab American reality and provide funding for Arab Americans, regardless of what their racial designation is on paper.

It is important that Arab Americans are recognized as a distinct group, not only because a separate category is reflective of their experience but also because they deserve to be made visible in the United States and have access to programs that will propel their communities forward. After all, governmental programs have harmed and hindered their progress, and it is now time that those programs work to help the Arab American community to undo those harms.

260. Statista Rsch. Dep't, *U.S. States with the Highest Arab American Population in 2019*, STATISTA (Jan. 20, 2021), <http://www.statista.com/statistics/912643/arab-american-population-state/#:~:text=In%202019%2C%20there%20were%20just,ancestry%20living%20in%20the%20U.S> [http://perma.cc/SL5G-YU2E].

261. See *supra* notes 70–104 and accompanying text.

262. See *supra* Part II.C.2.

263. See, e.g., Hilal Elver, *Racializing Islam Before and After 9/11: From Melting Pot to Islamophobia*, 21 *TRANSNAT'L L. & CONTEMP. PROBS.* 119, 152 (2012) (discussing how Arabs and Muslims have been racialized and classified as dangerous and outside of whiteness).