Islam Incarcerated: Religious Accommodation of Muslim Prisoners Before Holt v. Hobbs

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I. INTRODUCTION

On January 20, 2015, the United States Supreme Court ruled that the Arkansas Department of Corrections' grooming policy restricting a Muslim inmate from growing a half-inch beard violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). The majority decision in *Holt v. Hobbs*, delivered by Justice Alito, held that the prison's restriction substantially burdened Abdul Maalik Muhammad's right to exercise his faith—Islam. For Muslim men like Abdul Maalik Muhammad, donning a beard was central to religious identity—and specifically, a demonstration of piety and emulation of Islam's final and foremost messenger, Muhammad.

*Holt* came before the Supreme Court during a moment of rising scholarly interest in the Muslim prison population. The protracted "War on Terror" has converted American prisons into battlegrounds, pitting prison officials against "radical Islam." In addition to fear of prisoner radicalization, the Nation of Islam (NOI), an African-American Muslim movement conceived in Detroit in 1930, is still strongly represented in American prisons. Scholars have not only paid little attention to the experience of NOI Muslim inmates, but also segregated this narrative from the modern legal discourse about Muslim inmates in the War on Terror era. The decision in *Holt* provides the ideal juncture to integrate the modern experience of Muslim prisoners with the pioneering strides brought forth by NOI Muslim inmates.

More than fifty-five years before Holt's appeal was granted *certiorari*, NOI Muslim inmates "provided a model for other groups to

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2. Id. at 862.
3. Id.
5. Hereinafter, incarcerated followers of the NOI will be referred to as "NOI Muslim inmates."
6. RICHARD BRENT TURNER, *ISLAM IN THE AFRICAN-AMERICAN EXPERIENCE* 151 (1997) (Fard Muhammad—who established the NOI in 1930—integrated core Islamic tenets with beliefs distinct to the African-American experience, and held, "[t]he black men in North America are not Negroes, but members of the lost tribe of Shabbazz, stolen by traders from the Holy City of Mecca 379 years ago."); see also id. at 169 (the NOI provided African Americans during the postbellum period with a distinct cosmology that spoke to their sociopolitical circumstance in America. The NOI's message resonated strongly with prisoners, and under the leadership of Elijah Muhammad, the organization emerged into the "major voice for Islam in America" in the 1950s. See SHERMAN JACKSON, *ISLAM AND THE BLACKAMERICAN: LOOKING TOWARD THE THIRD RESURRECTION* 3 (2005) (Sherman Jackson calls these African-American Islamic movements, most notably the NOI, "proto-Islamic black-nationalist spin-off movements.").
organize in prison." In addition, the legal victories achieved by NOI Muslim inmates set vital precedents that made Holt’s religious accommodation challenge possible today.

Attica Correctional Facility, New York – March 1960

New York’s Attica Prison was closer to Mecca than it was to Harlem. Martin Sostre diligently read atop his cot, underneath a portrait of an open crescent facing a western star. An Afro-Puerto Rican and Harlem native, Sostre arrived in Attica in 1952 following a narcotics conviction. Smitten with Elijah Muhammad’s vision and his message of Black empowerment, Sostre joined the NOI in 1960.

With his brown fingers wrapped around the steel bars and an “X” affixed between his first and last name, Sostre’s conversion spurred a new way of life, worldview, and identity. Practicing Islam, like most faiths, required access to scripture, consulting with ministers, and additional institutional accommodations that made religious observance and life possible behind bars.

As evidenced in Holt, donning a beard manifested a visible way to demonstrate piety for Muslim men. Sostre, who would become the vocal leader of a growing community of Muslims in Attica, requested copies of the Qur’an, asked to congregate with other Muslim inmates in prayer, “the right to communicate and visit with religious ministers of

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7. MARIE GOTTSHALK, THE PRISON AND THE GALLOWS: THE POLITICS OF MASS INCARCERATION IN AMERICA 175 (2006); see also id. at 176 (“Once the Nation of Islam made the courts a central battleground for prison issues, the legal profession and other prison reform groups streamed in, thus ushering the civil rights movement through the gates of the prison.”).

8. KATHLEEN MOORE, Muslims in Prison: Claims to Constitutional Protection of Religious Liberty, THE MUSLIMS OF AMERICA 139 (Yvonne Yazbeck Haddad, ed. 1991) (“The issue whether Islam is a religion worthy of constitutional protection has arisen in the courts most often in cases brought by African-American Muslim inmates confined in correctional facilities.”).

9. The NOI’s official emblem features a crescent facing a star to its left. The image reverses the direction of Islam’s symbol, which features a crescent facing a star to its right. An image of the NOI’s official emblem can be viewed on the Nation of Islam’s official website. NATION OF ISLAM, http://www.noi.org (last visited Dec. 2, 2015).


12. Wallace Terry, A ‘Messiah’ Preaches Hate of White Man to 70,000 ‘Black Muslims’, WASH. POST, Dec. 11, 1960 (“The ‘X’ category embraces those who have been allowed to drop their surnames for an ‘X’ notation assigned to them by the Chicago [headquarters] office. This ‘X’, according to Black Muslims, replaces the ‘slave-master’ name—the surname passed from a white master to a Negro forefather.”).

13. Sostre, 334 F.2d at 907.

their faith," and the freedom to wear a beard while incarcerated.\textsuperscript{15} Walter H. Wilkins, warden of Attica Prison, not only denied these accommodations, but frequently placed Sostre in solitary confinement for "agitating."\textsuperscript{16}

Sostre embraced Islam when the American prisons were largely unchecked and judicially unmonitored spaces. Therefore, prisons at this time seemed an unlikely and unholy sanctuary for religious "conversion."\textsuperscript{17} Yet thousands of incarcerated African-American men, like Sostre, embraced the NOI during the late 1950s and early 1960s.\textsuperscript{18}

At the center of a growing community of Muslim inmates in Attica at that time, Sostre counted himself among the NOI's 1,500--5,000 incarcerated following in the United States.\textsuperscript{19} During the early 1960s, the NOI itself underwent a conversion from burgeoning spiritual movement to the "[o]nly African American protest organization inside the penal system."\textsuperscript{20}

On March 19, 1961, the \textit{New York Times} ran a story that labeled the rising number of legal challenges brought by NOI Muslim inmates, "[a] widespread legal attack on the state's prison system... by Negro Muslim prisoners demanding concessions for the practice of their version of the Islamic religion."\textsuperscript{21}

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15. \textit{Sostre}, 334 F.2d at 907 ("The relief which the plaintiffs seek includes an order to the defendants to provide congregational religious services and an injunction against 'making, promulgating, maintaining and enforcing any and all rules, regulations or practices which prohibit, prevent or impede Plaintiffs and other Muslim inmates of Attica Prison' from holding or attending congregational services, communicating and conferring with ministers of their religion, receiving religious literature and 'carrying, displaying, discussing or otherwise using' such literature."); \textit{see also} Edward Ranzal, \textit{Muslim Convicts Win Bias Hearing}, \textit{N.Y. TIMES}, Aug. 1, 1961 ("The prisoners had been denied permission to purchase the Koran. They had been subjected to solitary confinement because of religious beliefs. They had been denied permission to establish contact with a spiritual adviser of the Islamic faith.").

16. Ranzal, \textit{supra} note 15, at 1; \textit{see also} Pierce v. LaVallee, 319 F.2d 844 (2d Cir. 1963). NOI Muslim agitation offenses were generally comprised of religious activities the group partook in, discussed more closely in \textit{infra} Section V.

17. \textit{Religion as Rehabilitation?}, \textit{supra} note 4, at 35. Conversion is not a monolithic process, but as legal scholar Spearlt states, "indicates a belief transition in matters of 'ultimate concern.' It often involves a two-fold act of turning away from some aspects of life and adopting practices of the new religion. Some inmates embrace an ideology that is self-empowering and changes their negatives outlook on life and behaviors." This "two-part" conversion process aptly characterizes the religious and existential transition experienced by Sostre, and other NOI Muslim inmates, after embracing the NOI.

18. \textit{Id}.


20. \textit{Id}. at 407 (the Black experience in America and the prison experience were inextricable during this time, and the NOI was cognizant of this, and focused on prisons as a source for recruits, organizing, and legal challenge).

21. Lawrence O'Kane, \textit{Muslim Negroes Suing the State: Convicts Seek Concessions on Religion in Prisons}, \textit{N.Y. TIMES}, Mar. 19, 1961, at 1. ("More than 100 court actions have been brought by inmates, many of whom were converted to their Muslim beliefs while in prison, they [state officials]
In addition to negative media representations, the law defining prisoners’ rights stood between NOI Muslim inmates and their right to practice Islam behind bars.\textsuperscript{22} \textit{Ruffin v. Commonwealth of Virginia} established that prisoners were “slave[s] of the state” and granted almost unfettered deference to prison authorities over which rights to accommodate or deny.\textsuperscript{23} Consequently, judicial review of prison administration was minimal, if not non-existent, until 1964. Before and during this “hands off” era,\textsuperscript{24} prison wardens and commissioners regularly dismissed the NOI as a “cult,”\textsuperscript{25} “masquerading Muslims,”\textsuperscript{26} and a subversive “militant group.”\textsuperscript{27} These tags were an intentional strategy to impeach the legitimacy of their faith, and in turn, avoid accommodation of their religious rights in prisons.\textsuperscript{28}

Martin X. Sostre and the swelling number of incarcerated Black Muslims did not fit the image of Muslims that prison wardens and criminal court judges were accustomed to in the early 1960s.\textsuperscript{29} First, NOI Muslims were African-Americans, which deviated from the per se racial conflation of Arab with Muslim identity.\textsuperscript{30} The courts, during the

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\textsuperscript{22} See generally U.S. CONST. amend. I. (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .”)

\textsuperscript{23} Ruffin v. Commonwealth, 62 Va. 790, 796 (Va. 1871). Prison wardens and correctional commissioners, who governed the scope of religious rights available to inmates, made the initial determination. If the prisons failed to accommodate their demands, NOI Muslims advanced First Amendment based claims in court. The suits brought forth by NOI Muslims not only marked the first set of legal interventions involving the accommodation of Islam in prisons, but also a string of Muslim petitioners that challenged the one-dimensional view of Islam and Muslims ingrained in U.S. courts since the beginning of the Naturalization Era.

\textsuperscript{24} See infra Part IV.A (“prison authorities had complete control, and the courts deferred to them on (almost) all decisions linked to prison administration and prisoner governance.”)

\textsuperscript{25} Comment, Black Muslims in Prison: Of Muslim Rites and Constitutional Rights, 62 COLUM. L. REV. 1488, 1497 (1962) [hereinafter \textit{Black Muslims in Prison}] (“A common justification for the persecution of minority faith has been the claim that the mistreated sects are not ‘true religions’.”); see also Complaints By Inmates Dismissed, WASH. POST, Dec. 22, 1962.

\textsuperscript{26} MOORE, supra note 8, at 139.

\textsuperscript{27} M.S. Handler, Malcolm X’s Role Dividing Muslims, N.Y. TIMES, Feb. 26, 1964.

\textsuperscript{28} Denigration of the NOI was not the first instance courts actively delegitimized Black religious practices. Courts denigrated the religious beliefs of Black slaves, even Muslim slaves, when they pursued legal relief.

\textsuperscript{29} I will refer to followers of the NOI as “NOI Muslims.” Although many social science scholars refer to this community as “Black Muslims,” that designation overlooks the populations of Black Muslims that preceded the NOI, and came after it, which subscribed to alternative interpretations of Islam.

\textsuperscript{30} Khaled A. Beydoun, Between Muslim and White: The Legal Construction of Arab-American Identity, 69 N.Y.U. ANN. SURV. AM. L. 29 (2013) (the perseverance of NOI Muslim inmates to practice their faith behind bars exposed Islam and (entrenched conceptions of) Muslim identity to a new kind of legal scrutiny. The legal scrutiny of Muslim identity shifted from the immigration realm in the 1940s to the sphere of prisoners’ rights in the early 1960s) [hereinafter \textit{Between Muslim and White}].
racially restrictive Naturalization Era,\textsuperscript{31} reduced Islam—a multicultural and racially diverse religion—into a racial classification in the exclusive image of Arab immigrants.\textsuperscript{32} This conflation diminished the ability of judges presiding over the religious accommodation suits of NOI Muslim inmates to see Black people, predominantly Black men, as Muslims.\textsuperscript{33}

Second, the NOI’s cornerstone beliefs conflicted with the central pillars of “orthodox Islam.”\textsuperscript{34} The latter centered on universalism while the NOI’s sectarian cosmology focused wholly on the experience of African-Americans.\textsuperscript{35} Popular and state knowledge of the NOI was shallow and flat, particularly during the early stages of the legal movement for religious accommodation. Prison wardens and the judges honed in on two NOI baselines covered heavily in the media: first, its anti-white platform;\textsuperscript{36} and second, the baseline that Elijah Muhammad was the messenger of God,\textsuperscript{37} distinguishing it from “orthodox Moslem groups”\textsuperscript{38} or another popular pseudonym, “international Islam.”\textsuperscript{39}

Despite considerable animus from popular media and prison wardens, NOI Muslim inmates made unprecedented gains. Despite discursive and judicial suspicion about the religious legitimacy of the NOI, the

\textsuperscript{31} See Naturalization Act of 1790, ch. 3, 1 Stat. 103 (1790) (immigration law mandated whiteness as a prerequisite for citizenship from 1790–1952. Immigrant petitioners for naturalization held the burden of persuading a court that their identity fit within the statutory definition of whiteness. “Any aliens being a free white person, who shall have resided within the limits and under the jurisdiction of the United States for the term of two years, may be admitted to become a citizen thereof on application to any common law Court of record in any one of the States wherein he shall have resided for the term of one year at least.” Id. See generally IAN F. HANEY LOPEZ, WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE (1996) (containing a thorough analysis of the Naturalization Era and the 52 naturalization cases brought by immigrant-petitioners)).

\textsuperscript{32} Between Muslim and White, supra note 30, at 4313.

\textsuperscript{33} See id. at 48.

\textsuperscript{34} “Orthodoxy” is a fiercely debated topic among Muslims scholars. Claims of Islamic orthodoxy are oftentimes made to delegitimize the authenticity of offshoots, such as the NOI. It is not my aim to define Islamic orthodoxy within this article, but examine how the courts assessed the religious authenticity of the NOI and its incarcerated followers. For purposes of this article, I use “orthodox” to refer to Islamic traditions that abide by its core “Five Pillars:” five daily prayers, abstaining from food or drink during the Holy Month of Ramadan, pilgrimage to the Holy sites in Mecca, almsgiving to the poor, and the declaration that there is “only one God, and the Prophet Mohammed is his messenger.”

\textsuperscript{35} EDWARD E. CURTIS IV, ISLAM IN BLACK AMERICA 15–16 (2002) (“Elijah Muhammad then attempted to rid African-American Islam of any paradox or ambiguity, eventually advancing an entirely particularistic interpretation of Islam” focused on re-writing the African-American narrative and empowering that demographic alone) (internal quotations omitted).

\textsuperscript{36} Fulwood v. Clemmer, 206 F. Supp. 370, 373 (D.D.C. 1962) (quoting the testimony of Father Charles M. Whelan: “In [sic] don’t know any other religion that teaches racial hatred as an essential part of the faith of the religion. There are many religions which have practiced racial hatred at various times, but this movement is the only movement that I know of which makes it a tenet of the faith that all white people should be hated.”).

\textsuperscript{37} Sostre v. McGinnis, 334 F.2d 906, 908–09 (2d Cir. 1964).

\textsuperscript{38} O’Kane, supra note 21.

\textsuperscript{39} International Islam Ignores Skin Color, NEW PITTSBURGH COURIER, Feb. 24, 1962.
accommodation suits advanced by NOI Muslim inmates eroded the hands off doctrine that confined prisoners' rights and prompted other potential religious rights challenges.\(^\text{40}\) Furthermore, the suits established that the First Amendment mandated the accommodation of free-exercise of Islam in prison. This recognition complicated the monolithic conception of Muslim identity with the courts,\(^\text{41}\) secured a range of inter-sectarian Islamic practices, and provided key legal precedents for prisoners from Sunni, Shiite and other Islamic sects seeking accommodation of their idiosyncratic religious practices.

Although free-exercise challenges led by NOI Muslim inmates began to funnel through the courts more than five decades ago, the implications of these landmark suits have become increasingly relevant to pressing matters related to penal administration and legal scholarship. The *Holt* ruling and the rising fear of "Islamic radicalization" and "counter-radicalization" among Muslim prisoners and (prospective) converts following the September 11 terrorist attacks have pushed religious accommodation, particularly with respect to Muslims, into a role as an administrative priority for prison officials and an important area of debate among legal scholars and commentators.\(^\text{42}\)

This Article makes five contributions to pressing policy and legal discussions germane to prisoners' rights and the legal construction of Muslim-American identity:

First, the collective suits advanced by NOI Muslim inmates are a missing chapter of Muslim-American jurisprudential history. In the same way that the free-exercise of Islam within prisons is circumscribed today as a strategy to combat or counter radicalization,\(^\text{43}\) prison authorities argued that NOI prayer, personnel, and paraphernalia posed "a threat to the peace" during the 1960s.\(^\text{44}\) This Article positions their struggles to achieve free exercise of Islam rights as both important historical antecedents and relevant legal precedents that inform how

\(^{40}\) Christopher E. Smith, *Black Muslims and the Development of Prisoners' Rights*, 24 J. OF BLACK STUDIES 131, 132 (1993) (NOI Muslims were "primary actors in the process of filing legal actions to obtain judicial recognition and enforcement of constitutional rights for incarcerated offenders" of all faiths).

\(^{41}\) *Between Muslim and White*, supra note 30, at 33–34 (this conflation was entrenched during the racially restrictive Naturalization Era (1790–1952), whereby: "(1) Presiding judges conflated Arab identity with Muslim identity; (2) A rule that Arab Muslims were *per se* non-white and therefore ineligible for citizenship was in place until 1944, only eight years before the end of the Naturalization Era; (3) Presiding judges presumed that immigrant-petitioners from the Arab World (whether Christian or Muslim) were Muslims and thus non-white, as a consequence of the conflation; and (4) This presumption could only be overcome if the immigrant-petitioner could persuade the presiding judge that he was a bona fide Christian).

\(^{42}\) *See generally* *Muslim Radicalization in Prison*, supra note 4.

\(^{43}\) Id.

Muslim prisoners shape their legal challenges today. More than five decades before *Holt*, NOI Muslim inmates advanced pioneering legal challenges against prisons and their restrictions against free exercise of Islam behind bars, providing essential context to last term’s Supreme Court hearing. In addition to the legal narrative, Part II inserts an objective, comprehensive history of the NOI currently missing within the legal literature to expand on this point.

Second, by examining how the courts constructed the identity of the NOI vis-à-vis prison inmates, this article veers from the scholarly assessment of Islamic orthodoxy that saturates legal scholarship. The scholarly dismissal of the NOI’s Islamic bona fides has, generally, diminished recognition of its contributions to the civil rights gained by Muslim-Americans. As such, this Article echoes the position of historian Edward Curtis, who gives primacy to “self-identification,” instead of external judgments of orthodoxy, as the determinant measure of Muslim inclusion.

Third, this Article relies heavily on firsthand media reports of the NOI, published during the movement’s rapid ascent in the late 1950s and early 1960s. Popular media impacted how prison officials and presiding judges perceived the NOI and its followers. This reveals the salient role prominent media outlets had on the judicial construction of the NOI, highlighting how prominent media representations—and misrepresentations—continue to impact judicial perceptions of not only Muslim inmates but all Muslims generally.

Fourth, the suits advanced by NOI Muslim inmates illustrate how the courts constructed Muslim identity through different areas of law. During the Naturalization Era, courts interpreted immigration statutes to assess whether Muslim immigrants from the Arab World qualified as white, while presiding judges perceived the religious authenticity of NOI Muslim inmates through an assessment of the free-exercise of religion claims. Regardless of its classification as orthodox or occult, legitimate or illegitimate, the general designation of Islam during

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45. Within legal scholarship, the NOI is almost exclusively discussed within the corpus of literature addressing prisoners' rights.

46. CURTIS, supra note 35, at 51 ("Wherever and whenever a person calls himself or herself Muslim, scholars should include this person’s voice in their understanding of what constitutes Islam. The mere fact that one has labeled oneself a Muslim indicates some sort of participation, however, slight, in the process of Islamic history.").

47. Many decisions involving NOI Muslim inmates were essentially judicial affirmations of the religious, racial and compounded stereotypes of the NOI that proliferated in the media in the late 1950s and early 1960s.

48. See generally LOPEZ, supra note 31 (any of the religious accommodation challenges by NOI Muslim inmates were argued before the dissolution of the 1924 immigration quotas in 1965, which opened the door for Muslim immigrants from throughout the Arab World, Asia, and Africa, and altered the once Black-dominated composition of Muslim America).
naturalization and religious accommodation proceedings centered on universal characteristics that projected an image of Islam as a menacing, violent, and iconoclastic religion.

Finally, this Article engages how the judicial conception of Muslim identity is complicated when the subjects are not Arab but Black. This elucidates how the legal conception of Islam as an exclusively Arab religion prevents seeing Black subjects as legitimately Muslim—a dissonance that still continues today.

Part III of this Article provides a comprehensive survey of the NOI's history and belief system. Part IV examines the NOI's rise in popularity among prison inmates during the mid-1950s through the mid-1960s, paying close attention to the relevant factors that facilitated its expansion within prisons. Part V outlines the judicial doctrines in place during the rise of religious accommodation claims made by NOI Muslim inmates. Part VI analyzes the proliferation of religious accommodation suits brought by NOI Muslim inmates in the early 1960s, highlighting how the courts' understanding and construction of NOI identity were salient in determining their outcomes. Finally, Part VII examines the principal religious accommodation claims advanced by NOI Muslim inmates, giving special attention to those victories that established judicial standing and expanded the realm of religious rights for Muslim prisoners across racial and sectarian lines.

II. (RE)BUILDING A NATION: THE NATION OF ISLAM

"The Black Muslims have made a science of black nationalism. They have made black the ideal."

NOI followers were neither America's first population of Black Muslims, nor its first community of incarcerated Muslims. Scholars estimate that fifteen to thirty percent, or "[a]s many as 600,000 to 1.2 million slaves" in the Antebellum South were Muslims. Slave codes

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49. I analyze the conflation of Arab and Muslim identity in my previous work, and the erasure of Blackness from Muslim identity very closely in Khaled A. Beydoun, Antebellum Islam, 58 How. L. J. 141 (2015) [hereinafter Antebellum Islam].

50. Colley, supra note 19, at 414 (the Cooper decision "marked the high-point" of the NOI's work inside prisons. From 1964, the organization experienced a decline in popularity among African American inmates.).


53. Precious Rasheeda Muhammad, Muslims and the Making of America: 1600s to Present, MUSLIM PUB. AFF. COUNCIL, 23 (2013), http://virtuecenter.s3.amazonaws.com/files/2013-02-08-
and shackles, instead of wardens and prison bars, confined enslaved African Muslims in the Antebellum South.54 “[B]efore there was a United States of America,” and well before the NOI came to be in 1930, enslaved African Muslims channeled their faith as a “source of resistance and rebellion to slave code and slave master.”55 Therefore, as highlighted by the narrative of enslaved Muslims in the Antebellum South, wielding Islam as a source of resistance to de jure subjugation was a well rooted practice in the U.S., emerging again with the NOI nearly a century after the abolition of slavery in 1865.

NOI Muslim inmates followed in the footsteps of their enslaved predecessors by positioning Islam to challenge denial of religious rights within prison.56 NOI Muslim inmates were not enslaved in the sense that their Muslim predecessors in the Antebellum South were. But according to Ruffin v. Commonwealth of Virginia—an early decision foundational to the creation of the hands off doctrine—part of a prison population legally was perceived as “[s]lave[s] of the state.”57 Moreover, Black prisoners sat at the intersection of racial and criminal subordination, which compounded the rigors they faced while locked away.58 Consequently, thousands of incarcerated Black men looked toward a new brand of Islam, the NOI, for existential rebirth, dignity, and a potent means to challenge their “enslavement” behind bars.59

Legal scholarship focusing on Muslim-Americans has sidelined the NOI narrative, and consequently, has reduced its contributions to the

54. Antebellum Islam, supra note 49, at 146 (“Islam not only remained central in the lives of Muslim slaves, but also emerged into a liberation theology that perpetually reaffirmed the dignity, humanity, and “Muslim citizenship” in the face of slave codes. Islam mandated regular observance, which moved Muslim slaves to defy slave codes and question the legality of slavery at large. Slave codes that restricted the right to worship disparately impacted Muslim slaves simply on account of the frequency of prayer mandated by Islam. However, many Muslim slaves continued their religious observance and worshipped in brazen opposition to slave codes. Furthermore, because race-based, American slavery was irreconcilable with Islamic Law, the conflict of laws sparked resistance and rebellion on the part of Muslim slaves in the Antebellum South.”).

55. Id. at 150.

56. The NOI, preceded by the Ahmadiyya and Moorish Science Temple, became the most prominent and visible of these new American Muslim movements. For background information on the Ahmadiyya and Moorish Science Temple, see generally KAMBIZ GHANEABASSIRI, A HISTORY OF ISLAM IN AMERICA (2010).


58. Spearlt, God Behind Bars: Race, Religion & Revenge, 37 SETON HALL L. REV. 497, 501 (2007) [hereinafter God Behind Bars] (“Behind prison walls, White prisoners often get the best goods, facilities, and jobs that are bestowed by a largely White administration and security staff.”). Black prisoners were spurned by an overwhelmingly white prison administration that often treated them as second-class prisoners. Id.

59. See Ruffin, 62 Va. at 796.
broader Muslim-American milieu to literary footnotes or passing mention. By integrating a comprehensive history of the NOI into the legal literature, this Section seeks to fill that void. Part A highlights notable historical moments and figures. Part B outlines core NOI tenets, and Part C illustrates the dismissal from non-NOI Muslims who generally perceived the movement and its followers to be inauthentic Muslims.

A. Origins and History

It was only natural that the NOI was born in Detroit. The metropolitan area was rapidly evolving into a destination for African-Americans migrating northward from the Jim Crow South and also the hub for an emergent Muslim Diaspora from the Levant. The automobile capital also emerged into a jurisdictional hotbed for suits examining whether Muslim immigrants from the Arab World could be naturalized as citizens. Immigrants from the Arab World, both Christian and Muslim, made ends meet in the Motor City by working at General Motors or the Ford Motor Company automobile plants. For those that could not secure a spot on the assembly line, peddling silks and exotic fabrics was a common vocation. Wallace D. Fard Muhammad was among this corps of peddlers. However, unlike many of his peers, he chose to shop these wares in Detroit’s predominantly African-American neighborhoods instead of its wealthier white communities.

Also unlike his peers, Fard Muhammad was more interested in peddling a novel brand of Islam than he was exotic textiles. In 1930, he became a familiar and esteemed figure in Detroit’s African-American enclaves. Fard Muhammad capitalized on his newfound social cache as a vehicle to proselytize to Black Detroiters, and years before formally establishing the NOI in 1930, sowed the grassroots seeds that blossomed into a loyal following. While historians dispute the character of Fard

60. TURNER, supra note 6.
61. The “Levant” is the region east of the Mediterranean Sea that encompasses present-day Syria, Lebanon, Israel and the Palestinian territories.
65. TURNER, supra note 6, at 148; see also LINCOLN, supra note 51, at 10.
66. TURNER, supra note 6, at 149 (“As he got closer to the black people in Detroit, Fard began to warn them about their vices—such as adultery and alcohol consumption (which are forbidden by religious law) and smoking and dancing (which are prohibited among some Muslims). He encouraged
Muhammad’s ethnicity and ancestry, the fact that he was not white diminished suspicion and gradually won him reverence among Black Detroiter.\textsuperscript{67}

As his base grew, Fard Muhammad claimed to be a “prophet of Allah from the holy City of Mecca.”\textsuperscript{68} He echoed his divine authority at a pivotal gathering at Detroit’s Universal Negro Improvement Association Hall in August 1931, where a wide-eyed Elijah Poole—an African-American who migrated to Detroit from Georgia—sat among several hundred curious audience members.\textsuperscript{69} The audience was almost entirely African-American and hailed from the neighborhoods where Fard Muhammad peddled wares and religion.\textsuperscript{70} Following the meeting, Fard Muhammad elevated himself from messenger to God, and renamed the smitten Poole “Elijah Muhammad.”\textsuperscript{71} Shortly after, Fard Muhammad named Elijah “his messenger,” and entrusted him with the responsibility of spreading his message to African-American men and women across the United States.\textsuperscript{72}

Fard Muhammad vanished in 1934. “[E]lijah Muhammad was almost singlehandedly responsible for [his] deification and for the perpetuation

\textsuperscript{67} Black Detroiterst routinely referred to Fard Muhammad as a “brother from the East.” ALEX HALEY, THE AUTOBIOGRAPHY OF MALCOLM X 211 (1964). While there is still much debate over Fard Muhammad’s racial identity, “[m]any of the ghetto dwellers believed him to be an Arab or Palestinian.” LINCOLN, supra note 51, at 10 (“[H]e was thought to be an Arab, although his racial and national identity still remains undocumented. He was welcomed into the homes of the culture-hungry Negroes, who were eager to purchase his silks and artifacts, which he claimed were like those the Negro people wore in their homeland across the sea.”); see also TURNER, supra note 6, at 148; GHANEABASSIRI, supra note 56, at 223 (“According to the Nation of Islam’s account of its origins, Fard Muhammad, who is God in person, was born on February 26, 1877, to a black man and a white woman in Mecca of the tribe of Quraysh, the tribe of Muhammad ibn ‘Abd Allah; CURTIS, supra note 35, at 69. “Other accounts identify him [Fard] as a Palestinian, a Syrian Druze, a black Jamaican whose father was a Syrian Muslim, a Turkish-born Nazi, and/or some sort of Turko-Persian.”)

\textsuperscript{68} TURNER, supra note 6, at 151; see also MARTHA F. LEE, THE NATION OF ISLAM: AN AMERICAN MILLENNARIAN MOVEMENT 22 (1996) (Fard Muhammad traced his roots to the, “[K]oreish tribe of Muhammad ibn Abdullah, the Arabian Prophet himself”).

\textsuperscript{69} TURNER, supra note 6, at 148. Elijah Poole and his wife Clara moved to Detroit from Georgia, and like many migrants from the South and Muslim immigrants from the Arab World, sought jobs within the booming automobile industry; see also CURTIS, supra note 35, at 67.

\textsuperscript{70} TURNER, supra note 6, at 151.

\textsuperscript{71} Id. (“When he was introduced to Fard after the meeting, he declared, ‘I know who you are, you’re God himself.’ Fard replied, ‘That’s right, but don’t tell it now. It is not yet time for me to be known.’”); see also LINCOLN, supra note 51, at 15 (“The Prophet’s disappearance occurred in about June 1934, shortly after Muhammad was named Minister of Islam, and he vanished as mysteriously as he had arrived.”).

\textsuperscript{72} GHANEABASSIRI, supra note 56, at 224.
of his teachings” during this transition moment. Elijah Muhammad would succeed Fard Muhammad as the head of the NOI in 1934. However, a brief power struggle between Elijah and his younger brother ensued following Fard Muhammad’s disappearance, which led Elijah Muhammad to seek safe haven in Chicago for a period of seven years. Chicago was Elijah Muhammad’s Mecca—a safe haven from foes, and a space to rebuild and re-strategize. Nevertheless, his departure from Detroit was permanent, and Elijah Muhammad established Chicago as the NOI’s headquarters in 1942. The NOI’s headquarters remains in Chicago today.

In 1947, Elijah Muhammad enlisted his most charismatic, zealous, and important recruit, Malcolm Little. Shortly after converting and being assigned a new name, Malcolm X opened the “first Nation of Islam Temple in Harlem” and served as the ascending movement’s national spokesman. Malcolm X became the NOI’s de facto second-in-command, only outranked by Elijah Muhammad himself. Malcolm also came to represent the archetype the NOI sought in its following—intelligent, disciplined, and fiercely dedicated.

73. LINCOLN, supra note 51, at 15; see also God Behind Bars, supra note 58, at 507 (“Elijah Muhammad declared him [Fard Muhammad] as the black man who was Allah incarnate.”).
74. JACKSON, supra note 6, at 43.
75. LEE, supra note 68, at 25–26 (“Sahib notes that this time was not wasted. Muhammad continued to preach, perhaps spurred on by the vision of an imminent millennium. Elijah claimed that during this period the voice of Wallace Fard directed his actions. He apparently traveled across the United States, but spend most of the years preaching in Washington D.C. under the name Mohammed Rasool.”).
76. After relocating from Detroit to Chicago, Elijah Muhammad became the undisputed leader of the NOI. A movement still in its infancy during the 1940s, the broader public beyond Chicago and Detroit knew very little about the NOI. This period witnessed Elijah Muhammad solidify his base, develop his worldview and message, and cultivate leadership that would broaden the NOI’s reach and resonance. The FBI closely monitored the NOI at this juncture, particularly as followers—including Elijah Muhammad himself—dodged the World War II draft on religious grounds.” See also Colley, supra note 19, at 401 (“It was the Black Muslims refusal to register for the draft during World War II that first inspired a large-scale FBI investigation of the group; fear that the group’s disavowal of allegiance to the United States posed a threat to the nation’s domestic order and international security.”). Indeed, Muhammad and other NOI members’ decision to dodge the draft also witnessed earlier moments when the NOI’s religious legitimacy was being questioned by courts, and also foreshadowed the organization’s willingness to utilize legal action as a form of resistance and protest.
78. Id. at 36–37 (“In 1947, converted by his brother Reginald, he became a member of the Nation of Islam. His new religion became the outlet for his tremendous energy and drive. Like all converts, Malcolm was required to copy and submit the following letter to Elijah Muhammad: ‘Dear Savior Allah, Our Deliverer, I have been attending the teachings of Islam by one of your Ministers, two or three times. I believe in It, and I bear witness that there is no God but Thee, and that Muhammad is Thy Servant and Apostle. I desire to reclaim my own Original Name. My slave name is as follows: ______.’”).
79. Id. at 37 (Malcolm X was previously known as Malcolm Little).
80. In Elijah Muhammad’s eyes, Malcolm X represented the quintessential NOI Muslim, and an aspirational model for recruits to emulate.
The NOI witnessed incredible growth during the 1950s. Malcolm X’s charisma, youth, and vision were central to the NOI’s proliferating membership and appeal. Most importantly, Malcolm X possessed the grassroots organizing ability to resonate within indigent and working class African-American communities, in conjunction with the intellect to move minds on college campuses and through media appearances. For the NOI faithful, Malcolm X was both a hero and the quintessential archetype young enlistees aspired to become. Yet, he came to represent the villain for those outside of the NOI.

A five-part television series, The Hate That Hate Produced, introduced the slim and spectacled NOI archetype to the American public. The program opened with Mike Wallace, an upstart reporter who later emerged into a national news personality on CBS, issuing a shrill warning to American viewers about:

[the rise of Black Racism, of a call for black supremacy among a growing segment of American Negroes. While city officials, state agencies, white liberals and sober-minded Negroes stand idly by, a group of Negro dissenters are taking to street corner step ladders, church pulpits, sports arenas and ballroom platforms across the nation to preach the gospel of hate that would set off a federal investigation if it were to be preached by Southern Whites.]

Media attention on the NOI proliferated as a result of that program. “[F]ollowing this blistering bit of investigative journalism, articles about the movement appeared in Readers Digest, Time, U.S. News and World Report, and the New York Times.” Almost overnight, the public became fixated on a new brand of Muslim threat—the “Black Muslims.” According to Alex Haley, “[T]he public reaction [following The Hate That Hate Produced] was like what happened back in the 1930s when Orson Welles frightened America with a radio program describing an invasion by ‘men from Mars.’” The news

81. TURNER, supra note 6, at 190 (Malcolm X spearheaded the establishment of 49 new temples, and increased the NOI’s membership by 40,000).
82. GHANEABASSIRI, supra note 56, at 243–44; see also CURTIS, supra note 35, at 81-82, 89-90 (discussing Malcolm X’s speaking tour on campuses including Dartmouth, UCLA, Harvard, Fordham, among other American colleges and universities).
83. CURTIS, supra note 35, at 80.
85. CURTIS, supra note 35, at 80.
87. HALEY, supra note 67, at 236.
coverage that followed The Hate That Hate Produced caricatured the NOI as "militants," "Negro supremacists and separatists," and most menacingly, "anti-white." However, even as the negative press soared, the late 1950s and early 1960s marked the highpoint of the NOI's appeal among African-American recruits and converts.

The early 1960s witnessed unprecedented growth for the NOI. Its membership climbed up to 100,000 in 1960. Sixty-nine NOI Temples, spread across twenty-seven states and staffed with ministers and community organizers, were established. In addition to building ecclesiastical institutions, the NOI also expanded into the business sphere. In the early 1960s, the NOI "owned and operated 18" businesses in its headquarters' city, Chicago, with similar holdings in New York City, Washington, DC, Atlanta, and Los Angeles. Its biweekly newspaper, Muhammad Speaks, "had a circulation of 600,000, the largest of all Black newspapers in the United States," and more importantly, equipped the NOI with a news and propaganda arm that kept it connected to its growing following. As discussed below, Muhammad Speaks served as an instrument used to recruit incarcerated African-American men, and also a news source that kept members behind bars abreast of relevant news and events.

In the early 1960s, the NOI ranked among the most influential Muslim and African-American organizations in the U.S. The Washington Post branded Elijah Muhammad "the most powerful black man in America." The Los Angeles Times called Muhammad, "the most dangerous Negro leader in the country" and pegged his "traveling minister," Malcolm X, the NOI's "exceedingly articulate and forceful" representative. Indeed, the media firestorm that followed The Hate That Hate Produced, combined with the Malcolm X's "emergence as a

88. Handler, supra note 27, at 1.
89. TURNER, supra note 6, at 183; see also Terry, supra note 12, at 1 (NOI literature, however, claimed the NOI's membership in 1960 to be at 250,000).
90. LINCOLN, supra note 51, at 4; see also Constitutional Law—in General—Right to Practice Black Muslim Tenets in State Prisons; Piece v. Lavallee (2d Cir. 1961); In re Ferguson (Cal. 1961), 75 HARV. L. REV. 837 (1962) [hereinafter Right to Practice Black Muslim Tenets in State Prisons].
91. Terry, supra note 12, at 1.
92. LEE, supra note 68, at 39 (bow-tied members sold the NOI's official newspaper on street corners across the U.S., particularly in cities with NOI temples and sizeable memberships); see also GHANEABASSIRI, supra note 56, at 243 (in addition to being the "best-selling black newspaper in the nation" in the early 1960s, Muhammad Speaks also "served as the main sources of news from the Middle East and Africa for African Americans.").
93. Terry, supra note 12, at 1.
95. Id.
96. CURTIS, supra note 35, at 80.
national figure," made the NOI a known commodity across and beyond the U.S., and thereafter, a maligned element within prisons and the courts.

However, rapid growth bred both success and internal discord for the NOI. Malcolm X’s growing national profile began to eclipse Elijah Muhammad’s in the early 1960s, which generated jealousy and spurred rumors that Malcolm X had his eyes on the NOI highest seat. Elijah Muhammad gradually succumbed to these rumors and suspended Malcolm X from the NOI on December 5, 1963, one day after the latter described the assassination of John F. Kennedy as “the chickens coming home to roost.” The rift between Malcolm X and Elijah Muhammad not only reversed the NOI’s momentum, but also stunted the NOI’s appeal among prisoners, as discussed in Part IV.

Malcolm X permanently left the NOI on March 8, 1964 to “form a new Muslim group, the Muslim Mosque, Inc.” Two months later, Malcolm X made the Islamic pilgrimage to Mecca and disavowed the NOI’s anti-white and Black separatist positions. Malcolm X was killed shortly after, less than one year after leaving the NOI. Elijah Muhammad continued as the head of the NOI until his death on February 25, 1975. While this split halted the forward momentum of the NOI in prisons, the groundwork done before it embedded Islam as a spiritual and institutional fixture within American prisons.

**B. Core Beliefs**

Fard Muhammad and his successor, Elijah Muhammad, molded a new theology that integrated traditional Islamic tenets with Black
The NOI, like many religions or sects, encompassed a spiritual outlook as well as a political one. These dimensions often blurred, and scholars questioned and still debate whether the NOI was more political movement than religion. One baseline, however, was irrefutable. The NOI’s “desire to . . . subvert white supremacy and anti-black racism,” which drove both the spiritual and political aims of the movement, was based on its principal aim of resisting racial subjugation. This Section focuses centrally on these core NOI tenets that impacted the religious accommodation claims of incarcerated NOI Muslims during the late 1950s through the early 1960s. This period also marked the apex of the NOI’s visibility, influence and infamy.

Before identifying the NOI’s core beliefs, it is a vital first step to identify the sociopolitical circumstances that spawned the movement and made its message a resonant one. Legal bondage, pre and post-Thirteenth Amendment, spurred African-American migration to the North. Conditions in the South also highlighted that the de facto abolition of slavery furnished African-Americans with only nominal citizenship. Post-bellum segregation and dehumanization drove many African-Americans toward a quest for redefinition and existential emancipation. Likewise, desperate conditions in northern cities posed “formidable opposition to first-class citizenship.” African-Americans who migrated from the South realized rather quickly that racial realities in the North were not radically different. These desperate conditions, in northern cities including Detroit, the NOI’s birthplace, sowed a fertile soil for the NOI to appeal with resettled African-Americans.

The emerging “Muslim mood” primed disenfranchised African-

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106. The NOI cosmology was fluid, tailored to fit the experience of African Americans and accommodate changing interests. Elijah Muhammad, who presided over the NOI from 1934 through 1975 as both executive and prophetic messenger, held divine authority to shape scripture, revise code and introduce new tenets as he wished. Muhammad made his spiritual declarations through speeches, but also through print. His book, MESSAGE TO THE BLACKMAN IN AMERICA (1965), outlined NOI edicts and ideology, and the NOI’s official newspaper, Muhammad Speaks, offered a biweekly platform for Muhammad to share religious views with his membership; see also CURTIS, supra note 35, at 63 (“Elijah Muhammad viewed Islam as a religious alternative to Christianity that fostered a positive sense of black pride and advanced the fight for black liberation. Muhammad also saw Islam as the ‘natural’ religion of blacks.”); see also LINCOLN, supra note 51, at 36 (“The Black Muslims have made a science of black nationalism. They have made black the ideal; the ultimate value have proclaimed the Black Man..., The Chosen of Allah.”).

107. Right to Practice Black Muslim Tenets in Prison, supra note 90, at 838 (scholars, during the NOI’s rise, also struggled with classifying it as acutely religious or political. “Their beliefs have been called ‘a peculiar mixture of orthodox Mohammedanism and the personal prejudices of their leader Elijah Muhammad.’”)

108. JACKSON, supra note 6, at 29.

109. TURNER, supra note 6, at 153.

110. LINCOLN, supra note 51, at 10 (“The tradition of disprivilege and the continuing formidable opposition to first-class citizenship are the discouraging elements that contribute most to the ‘Muslim mood.’”).
Americans that settled in northern states to be the NOI’s base.\textsuperscript{11} Fard Muhammad, and later, Elijah Muhammad, considered Islam the perfect religion to “subvert white supremacy and anti-black racism.”\textsuperscript{112} The first step would be persuading African-Americans to trade in “imposed identities for self-affirmed” ones that connected them to a proud history.\textsuperscript{113} While Christianity was viewed as “the white man’s religion,”\textsuperscript{114} Elijah Muhammad considered Islam “the natural religion of blacks.”\textsuperscript{115} Furthermore, NOI scripture held that the “rule of white men was coming to an end in the 20th Century,” after which the NOI would serve as the catalyst for restoring Blacks to their “rightful position as the earth’s rulers.”\textsuperscript{116} This belief formed the foundation of the NOI’s version of Black Nationalism, which appealed to embattled African-American settlers from the South.

“[W]hile traditional Islam maintains that the last Prophet of Allah was Muhammad, the Nation of Islam interpreted Elijah Muhammad as the last messenger of Wallace Fard [or Fard Muhammad].”\textsuperscript{117} The deification of Fard Muhammad, combined with the prophetic authority of Elijah Muhammad, was foundational to the NOI. However, these core baselines clashed with traditional Islamic beliefs that a mortal could not embody, or take the form of, God.\textsuperscript{118} Further, the deification of Fard Muhammad rejected the seal of the prophecy with the Prophet Mohammed Ibn ‘Abd Allah, which holds the Arab prophet to be God’s...
final messenger.\textsuperscript{119} News stories,\textsuperscript{120} non-NOI Muslims,\textsuperscript{121} and later the courts, pointed to Elijah Muhammad’s assumption of prophethood as the popular method for distinguishing the NOI from “orthodox Islam” in an effort to delegitimize it as a sect or religion.\textsuperscript{122}

NOI scripture included the Qur’an, in addition to a code of religious law developed by Elijah Muhammad—the movement’s prophet and clerical chief. Elijah Muhammad outlined his religious edicts through his seminal books, \textit{The Supreme Wisdom} and \textit{A Message to the Blackman in America}.\textsuperscript{123} \textit{Muhammad Speaks}, the NOI’s official newspaper, became a powerful platform for Elijah Muhammad to publicize his rulings and issue new dictates. In addition, the magazine also functioned as a potent recruitment tool, particularly for those far from central community spaces, such as temples, schools, and NOI businesses.\textsuperscript{124}

The NOI’s religious edicts offered its followers with a comprehensive template for leading a “righteous life” and “creat[ing] heaven on earth.”\textsuperscript{125} Prayer was the foundation of building this righteous life. In addition, prayer bred discipline, as did the observance of a fast during the month of December, cultivating a committed and regimented following.\textsuperscript{126} Elijah Muhammad repudiated vice and ordered his following to lead a disciplined and ethical lifestyle. “[T]he Nation also prohibited the use of alcohol, drugs, cigarettes, and pork products” and encouraged hard work and a healthy diet.\textsuperscript{127} While committed to fostering a spiritually devout membership, the NOI also sought to cultivate a disciplined and empowered following built upon self-love, self-reliance, and structure.\textsuperscript{128} Countering how American law reduced

\textsuperscript{119} Wael B. Hallaq, \textit{An Introduction to Islamic Law} 107 (2009) (the pillar that Muhammad ibn ‘Abd Allah is the final prophet of God).
\textsuperscript{120} O’Kane, \textit{supra} note 21, at 1.
\textsuperscript{121} See \textit{infra} Section II.C.
\textsuperscript{122} Sostre v. McGinnis, 334 F.2d 906, 908–09 (2d Cir. 1964) (Judge Hays of the Second Circuit, who wrote the majority opinion, stated: “The difference between the beliefs of Muslims, who, like the plaintiffs are followers of Elijah Muhammad, and the beliefs of other religions, including, incidentally, the orthodox Islam of several hundred millions of Asians and Africans, are far more striking than the similarities.”).
\textsuperscript{123} Curtis, \textit{supra} note 35, at 74.
\textsuperscript{124} See Lee, \textit{supra} note 68, at 34.
\textsuperscript{125} Id. (according to NOI cosmology, the dismantling of white supremacy and liberation of African-American men and women would create a Black utopia whereby, “[n]o sickness, no hospitals, no insane asylums, no gambling, no cursing, or swearing will be seen or heard. Fear, grief, sorrow will stop [those who follow Allah] will be clothed in silk interwoven with gold and eat the best of food.”).
\textsuperscript{126} Ghaneabassiri, \textit{supra} note 56, at 231—33 (NOI followers pray five times per day. But unlike Ramadan as practiced by Sunni and Shiite Muslims, who observe the fast in accord with the shifting lunar calendar, NOI followers observe a fixed annual fast during the month of December).
\textsuperscript{127} Id. at 233.
\textsuperscript{128} Lincoln, \textit{supra} note 51, at 22 (Elijah Muhammad was both a revered prophet and political
Blackness into a badge of inferiority, the NOI reversed this racial indictment, and made "[B]lack[ness] the ideal."\(^1\)

In addition to directives for each member, formative NOI rules were shaped with an eye toward establishing an independent Muslim state.\(^1\) Its core beliefs included: economic self-sufficiency,\(^1\) physical\(^1\) and symbolic separatism;\(^1\) restrictions against interracial marriage;\(^1\) the vilification of whites;\(^1\) Black supremacy as a counter to the Nordic superiority solidified by the eugenics' movements,\(^1\) and self-imposed exclusion from the American political process.\(^1\) For men, donning a beard represented brotherhood and piety. These directives served the short-term function of galvanizing followers while part of the American polity and the long-term codes ultimately would form the charter of an independent Muslim state.

C. How Other Muslims Perceived the Nation of Islam During its Rise

Other Muslims in the U.S. were vehement in their dismissal of the NOI.\(^1\) These Muslims looked to the NOI's distinctive structure and beliefs, particularly Elijah Muhammad’s violation of the seal of the prophethood and the movement’s claim of Black supremacy, as principal reasons why they did not qualify as legitimate Muslims. Non-NOI Muslims condemned Elijah Muhammad’s followers as chief. NOI members closely followed his dictates. Malcolm X aptly illustrated this culture of discipline when discussing how NOI members would vote (if ordered to partake in elections): “You can be sure of one thing. Every single Muslim man and woman will vote the way Mr. Muhammad tells them to vote.” (internal quotations omitted).

\(^{129}\) LINCOLN, supra note 51, at 17–36 (“The Black Muslims have made a science of black nationalism. They have made black the ideal.”).

\(^{130}\) LEE, supra note 68, at 32.

\(^{131}\) Id. at 31; see also LINCOLN, supra note 51, at 20.

\(^{132}\) LEE, supra note 68. See also TURNER, supra note 6, at 203 (“He [Elijah Muhammad] argued for a separate black territory and the release of all Muslims from the federal prisons in order to create a black Muslim theocracy in America.”); see also LINCOLN, supra note 51, at 4.

\(^{133}\) TURNER, supra note 6, at 166 (“Fard taught his followers that they were not a part of the United States but instead were citizens of Mecca and owed allegiance solely to the Muslim flag.”); see also LINCOLN, supra note 65, at 18 (NOI leadership discouraged its members from voting among NOI in local and national elections—believing that partaking in these processes would be tantamount to endorsement and integration).

\(^{134}\) LINCOLN, supra note 51, at 47, 89.

\(^{135}\) TURNER, supra note 6, at 157 (“Blacks and whites were ‘fundamentally different’ in nature: black people were ‘righteous and divine’ and white people were wicked ‘blond blue-eyed’ devils.”).

\(^{136}\) Id. at 157 (“W.D. Fard’s ‘hidden truth’ could be understood as a deconstruction of the Nordic racial myth for the purpose of black political mobilization and self-defense against the possibility of genocide.”).

\(^{137}\) LEE, supra note 68, at 79.

"unorthodox,"' phony Muslims,' and perpetuators of racism "abhorred by Islam."' In fact, non-NOI Muslims sometimes adopted the title "Moslem" to distinguish themselves from the "Black Muslims," a distinction echoed by some media outlets.'

Although the non-Black Muslim population was small before the eradication of immigration quotas in 1965, critiques from non-NOI Muslims were still frequent. An article in the 1962 Harvard Law Review, cited often in NOI Muslim inmate suits, claimed that "[T]he Black Muslims may eventually be accepted as an Islamic sect, although official Islamic groups in America have emphatically refused to recognize them."' Ahmed Kalam, president of the Jami'at al-Islam Foundation,' affirmed that position in 1963 when he stated:

Elijah Poole (Elijah Muhammad's original name) teaches hatred, which is satanic. The Negro people have a new burden to bear. Elijah Poole has taught his listeners that in following him they are guided by a living prophet, and they are Black Muslims . . . His hate teaching, his dogma and doctrine of hatred, is utterly non-Muslim. It is anti-Muslim.'

Kalam not only positioned the NOI as non-Muslim, but also went as far as branding them anti-Muslim.' Kalam's views were not an exception at the time. Rather, his claims were widely shared among Arab, South Asian, and African non-NOI Muslims.' The Islamic Center of Washington, D.C., "which received support from various Arab [and other foreign] governments, attempted to dispel the notion that Muhammad's NOI was a 'sect' of Islam."'

However, one cannot overlook how anti-Black racism permeated the vitriolic condemnation of the movement and its followers from non-NOI Muslims. In addition, dismissal of the NOI is in part exacerbated by the pathology of "Arab supremacy," which stratifies the Muslim population

139. O'Kane, supra note 21, at 1.
140. Id.
141. Terry, supra note 12, at 1 ("Elijah [Muhammad], unclaimed by 100,000 orthodox Moslems of the Islamic Brotherhood, U.S.A., who abhor discrimination in any form."); see also NEW PITTSBURGH COURIER, supra note 38, at 1.
142. Id.
143. Right to Practice Black Muslim Tenets in State Prisons, supra note 90, at 838.
144. An Islamic human rights agency comprised of largely South Asian and Arab immigrants. The organization, which took form in the 1960's, is now defunct.
145. O'Kane, supra note 21, at 1.
146. Id.
147. Richest Man In Nigeria Heads its Black Moslems, TRI-STATE DEFENDER, Oct. 20, 1962 ("This infant nation [Nigeria] has its black Moslems, but they have nothing to do with the black Muslims of America.").
148. CURTIS, supra note 35, at 81.
along racial and even tribal lines and conflates Arab identity with Muslim authenticity. Non-NOI Muslims dismissed the movement because of its aberrational tenets and particularism but also distinguished the NOI from the brand of Islam they practiced in order to distance themselves racially from African-Americans.

Moreover, it must be noted that popular awareness of the NOI emerged during an impasse when the population of non-Black Muslims in the U.S. was still small. Racially restrictive quotas suppressed immigration from African, Arab, and Asian states with considerable Muslim populations. The religious accommodation suits of NOI Muslim inmates became prominent in court before these quotas were lifted in 1965. The dissolution of these quotas was followed by an influx of Muslims from all over the world, many of whom were Sunni. The progressive immigration reforms forever changed the composition of Muslim America, and shortly thereafter, spurred a tense relationship between “indigenous” and “immigrant Muslims” in the U.S.

The population of Sunni Muslims proliferated after the abolition of immigration quotas, which amplified dismissals of the NOI. Sherman  

149. Despite the Islamic legal mandate of equal, colorblind citizenship, Arabs held a de facto claim to ethnic superiority. Islam was revealed to an Arab Prophet, on the Arabian Peninsula, and the Qur’an was revealed and memorialized in the Arabic language. These facts rooted the Arab de facto supremacy within the expanding Muslim community, which stretched and intermixed with indigenous peoples in Asia, Europe, and Africa shortly after the faith’s revelation. A range of salient factors contributed to the modern maintenance of de facto Arab superiority. The pilgrimage to the holy sites in Mecca, one of the mandatory five pillars of Islam, requires travel to the Kingdom of Saudi Arabia—an Arab nation-state. Second, Arabic remains the official language of Islam, requiring Muslims whose mother tongue is not Arabic to learn the language (even rudimentarily) in order to recite prayer and read the Qur’an. These, among other factors, perpetuate de facto Arab Supremacy within the broad and diverse global Ummah (community), and cross-racial division and tension within the Muslim-American population today, although the Prophet Muhammad himself vehemently condemned it. See CURTIS, supra note 35, at 9 (citing the Prophet Muhammad, “God has removed you from baseless pride of the period of ignorance and glorifying its ancestors. You are all from Adam and Adam was from the dust. The Arab has no superiority to the non-Arab except by virtue of righteousness.”); for an intimate illustration of how cross-racial division plays out in Muslim-American communities today, see Andrea Elliot, Between Black and Immigrants Muslims, an Uneasy Alliance, N.Y. TIMES (Mar. 11, 2007), http://www.nytimes.com/2007/03/11/nyregion/11muslim.html?pagewanted=all&_r=0.


151. Immigration and Nationality Act of 1965, Pub. L. No. 89-236, 79 Stat. 911 (1965); see also GHANEABASSIRI, supra note 56, at 292 (“The Immigration and Nationality Act of 1965, also known as the Hart-Cellar Act, abolished nation-origins quotas established by the Immigration Act of 1924. Under those quotas, only 100 immigrant from Muslim-majority countries were allowed entry into the United States.”).

152. GHANEABASSIRI, supra note 56, at 293 (“According to the Bureau of Census, the number of immigrants from Muslim-majority parts of the world rose from 134,615 in 1960 to 871,582 in 1990. Most of these new immigrants came from the Middle East and South Asia,” with considerable Muslim immigrants coming from Egypt, Lebanon, Turkey, and Syria, which are largely Sunni-majority states.”).

153. See generally JACKSON, supra note 6.
Jackson pegged this “Black Orientalism;”\(^\text{154}\) the process by which “immigrant” Muslims usurped “indigenous” Muslims as the voice of Islam in the U.S.

Prior to the 1970s, Islam in the United States – and I include here the “prototypical Islamic movements” such as the Nation of Islam – had been dominated by a black presence and thus a black, American agenda. From the 1970s on, however, “real” Islam increasingly came to be perceived as the religion of Arabs and foreigners, who were neither knowledgeable about nor genuinely interested in the realities of Black Americans.\(^\text{155}\)

The courts perceived Islam as the “religion of Arabs and foreigners” well before the influx of Arab and South Asian Muslims,\(^\text{156}\) and judges presiding over the claims of NOI Muslim inmates echoed condemnations from “orthodox Muslims” as persuasive authority.\(^\text{157}\) As discussed in Part V, these representations and views impacted the determination in many key religious accommodation suits involving NOI Muslim inmates.

### III. THE NATION OF ISLAM’S RISE BEHIND BARS

“[Through conversion], the profane is purified as the filthiest and most forgotten place in America [i.e., prison] becomes another’s Mecca.”\(^\text{158}\)

Prisons, since the 1950s, have been an “important source of Muslim converts.”\(^\text{159}\) While the faith initially appealed to African-American inmates, Holt represents how Islam is increasingly resonating with white, and other non-Black, inmates. However, despite broadening demographical appeal, African-American inmates and Islam are still commonly intertwined, reified in popular culture, seen most prominently

\(\text{154. Id. at 99.}\)

\(\text{155. Sherman Jackson, Black Orientalism: Its Genesis, Aims, and Significance for American Islam, in BLACK ROUTES TO ISLAM 34 (2009). Although I agree with Sherman’s observation that Muslim demographics changed dramatically after 1965, I disagree with his construction of the “Immigrant Islam” versus “Indigenous Islam” binary. Jackson’s binary asserts “immigrant” and “indigenous” to be fixed terms, assigning perpetual “immigrant” status to Arab, South Asian, and even African Diasporas that arrived in the U.S. after 1965.}\)

\(\text{156. See generally Between Muslim and White, supra note 30.}\)

\(\text{157. Sostre v. McGinnis, 334 F.2d 906 (2d Cir. 1964).}\)

\(\text{158. God Behind Bars, supra note 58, at 497–98.}\)

\(\text{159. Hilal Elver, Racializing Islam Before and After 9/11: From Melting Pot to Islamophobia, 21 J. OF TRANSNATIONAL L. & CONTEMPORARY PROBLEMS 119129 (2012). The conversion of the prison cell into a sacred space where Islam is spawned is due to the recruitment and organizing efforts of the NOI.}\)
in Hollywood films like *Malcolm X*, and in the conversion of high-profile African-American athletes like Mike Tyson. While Islam everywhere else is inextricably associated with Arab identity, as discussed in Part V.A, the prison space has emerged as the lone caveat to that general rule. Indeed, Islam is racially identified with Blackness within prison—a conflation rooted in the NOI’s mobilization behind bars, which began in the 1950s.

While prisoners are individuals isolated from the rest of society, the NOI’s message of challenging subjugation and indignity collapsed those existential walls. This message resonated with Black inmates, who molded NOI talking points into “prison concerns in the vocabulary of political and social protest.”

The growth of the Black Muslims and the assertion of a Black nationalist philosophy within the prison coincided with outside civil rights activities that the prisoners knew were occurring in American society during the 1960s. In asserting that they should be able to congregate, study and pray, the Muslims challenged the existing institutional order.

With their message permeating through prison walls, the NOI made it focal to their organizing efforts to recruit and build tight bonds with converts and prospective converts.

Matching its character on the outside, the practice of incarcerated *Islam* furnished NOI Muslim inmates with a comprehensively packaged epistemology that sparked spiritual rebirth and resistance against religious and racial subjugation in prison. In addition to a revitalized spiritual and political identity, the NOI furnished Black prisoners with a “renewed sense of masculinity” and self, built upon the NOI’s

160. 40 Acres and a Mule Filmworks (1992).
162. Everywhere else in society, aside from prisons, Islam is inextricably conflated with Arab identity.
163. Colley, *supra* note 19, at 407 ("As the only African American protest organization to have a presence inside the penal system before the late 1960s, the Nation of Islam acted as a mouthpiece for black prisoners who were being politicized by civil right activism outside the prison; it allowed them to situate their own struggles against white privilege within a wider analysis of American race struggles. In a wider sense, it enables prisoners to express their frustration and anger at the white power structure, and especially their treatment by white police officers and prison guards, while also offering a positive message of economic self-help and psychological transformation.").
165. *Id.* at 136.
166. Colley, *supra* note 19, at 408 ("In a world where African American men felt emasculated by poverty and white racism, conversion to the Nation of Islam offered prisoners a renewed sense of masculinity."); *see also* GOTTSHALK, *supra* note 7, at 174–76 ("The Black Muslims also engineered a
foundational ethos of "Black Power." The effort to keep spirits raised was especially trying for Black men behind bars, which made conversion for inmates a transformative process that radically changed both self and space.

The NOI's message appealed to the most disenfranchised and disgruntled African-Americans. Few were more disgruntled than those behind bars. NOI leadership was cognizant of the low morale of Black prisoners, which made prisons, "[f]ertile recruiting grounds for Black Muslims" in the 1950s and 1960s. Prisons, however, were far more than merely grounds for the NOI to spread their message and enlist new members. They were also dynamic spaces that spawned many of the NOI's most active cohorts, prominent leaders, and its most important legal movement.

For NOI Muslim inmates, conversion supplanted the command of prison officials with a divine authority. Renewed faith "help[ed] catalyze the prisoner into a self-governing subject.") Inspired by their renewed identities, converted inmates set up makeshift NOI temples, smuggled in religious literature, recruited from their cell blocks, and donned beards to manifest membership in this burgeoning community. NOI leadership not only taught its incarcerated followers to reject rules of prison officials that denied them the right to worship, but to actively resist them. Challenging prison officials not only adhered to the NOI's baselines of dissent and resistance, but also functioned as the very lifeline for recruitment and expansion behind bars. For non-Muslim inmates, witnessing a NOI Muslim openly challenge and resist a prison official was a rare and empowering sight, which frequently sparked interest in the NOI and mobilized new converts.

The NOI attained "the height of its influence inside prisons between 1961 and 1963." During this interval, the incarcerated NOI Muslim

dramatic shift in how prisoners viewed themselves and how society viewed them.").

167. LINCOLN, supra note 51, at 34.

168. God Behind Bars, supra note 58, at 497–98 ("This wretched and filthy place becomes a special, spiritual place—a meta-zone that memorialized and commemorates spiritual rebirth, hierophany, or mysterium tremendum for the ecstatic, emotional, and earth-shaking epiphanies of religious experience.").

169. Smith, supra note 41, at 135 ("The recruitment of new members who would study and accept Islam while incarcerated was not a phenomenon limited to the most visible era of Black Americans' self-discovery and political assertiveness in the 1960s. This is not surprising, because Elijah Muhammad and other Muslim leaders had opportunities to recruit incarcerated converts during periods when these leaders were imprisoned for refusing to serve in the armed forces during World War II.").

170. Id.

171. Colley, supra note 19, at 396.

172. Religion As Rehabilitation, supra note 4, at 49–50.

173. Colley, supra note 19, at 407.
inmates population was officially 1,500–5,000 inmates, but was believed to be even higher than the upper range of this approximation. In short time, NOI Muslims emerged into one of the most visible groups in prisons, collecting together in the yard, meal halls, work stations, and other spaces where prisoners convene.

NOI leaders were themselves strongly committed to recruitment within prisons. Elijah Muhammad and Malcolm X served prison bids with the latter embracing the NOI while still behind bars. For NOI Muslim inmates and prospective converts, the fact that Malcolm X, Elijah Muhammad, and Fard Muhammad—the NOI’s national spokesman, the messenger of God, and God himself, respectively—were all imprisoned testified to the rehabilitative and redemptive promise in the NOI. In particular, Malcolm X’s conversion, from “Satan to Saved to Savior,” served as “an inspiring model for other African-American Muslim converts in the corrections system,” particularly because of his regular engagement with prisoners during the early 1960s.

The growth and organization of NOI Muslim inmates engendered suspicion and suppression from prison authorities. Again, affiliation

174. Id. at 395–96.
175. Clopton, supra note 44.
176. Evidenced by the engagement of its highest echelon leadership, it was clear that the NOI understood the plight of Black inmates, and aligned this empathy with the strategic aim of mobilizing an increasing black prison population as members of their burgeoning movement. See Smith, supra note 41, at 135–36; see also Colley, supra note 19, at 402. Furthermore, NOI brass viewed prison as a rigorous human crucible that hardened the spiritual mettle of their incarcerated members, and chiseled an iron will, discipline, and devotion that would serve the movement well behind bars, and subsequently the outside after an inmate’s release from prison. Elijah Muhammad viewed prisons more narrowly as a space to cultivate and grow the NOI’s base, while Malcolm X materially supported and helped NOI inmates strategize legal challenges against prisons; see also TURNER, supra note 6, at 183. In his capacity as the NOI’s national spokesman, Malcolm X continued to consult with prison inmates all over the country.; see also Muslims Leader Ban at Lorton is Charged, WASH. POST, June 28, 1963.
177. Id. at notes 62–67; see also TURNER, supra note 6, at 182–83 (“In January 1946, he [Malcolm X] was charged with larceny, breaking and entering, and carrying firearms [he] converted to Islam in prison in 1947.”); see also O’Kane, supra note 21 (“Malcolm Little, leader of the Manhattan temple, who has given his ‘slave name back to the white man’ and now calls himself Malcolm X, has served six years in prison for larceny.”).
178. Id. at 502 (Fard Muhammad was arrested in 1926, and imprisoned for illegally selling alcohol to an undercover police officer. He served three years in San Quentin State Prison, and was released in 1929.)
179. Id. at 502 (describing the radical transformation of Malcolm X, from a criminal, to a loyal follower of the NOI, and ultimately, one of its most esteemed figures).
180. Id. at 502 (in his capacity as the NOI’s national spokesman, Malcolm X continued to consult with prison inmates all over the country); see also WASH. POST, supra note 176.
with the NOI placed inmates at the intersection of racial, religious, and political animus. As examined more closely in Part V, prison wardens came to view the NOI as "nothing but a gang" or a "militant black supremacist movement" that "threat[ened] order." Prison officials often responded to the religious activity and accommodation requests of NOI Muslim inmates with antipathy. When NOI Muslim inmates demanded access to religious literature, prayer space, or the right to communicate with a minister, prison "[o]fficials countered by purging Muslims from their jobs, blocking their legitimate prison activities, and suppressing them whenever possible. Not surprisingly, many of their leaders ended up in segregation." These suppressive actions were executed in the name of maintaining "racial harmony," enforcing "prison discipline," and suppressing an "explosive situation" within prison confines.

In response to the rapid rise of the incarcerated NOI Muslim population, "prison and government officials offered increasingly shrill warnings about the growing strength of the NOI inside their correctional institutions." The NOI's recruitment efforts honed in on prisons with sizeable and active prison populations. The high concentrations of NOI Muslim inmates in California, New Jersey, New York, and

182. JACOBS, supra note 164, at 137.
184. In response to the religious accommodation requests of NOI Muslim inmates, prison wardens sometimes assigned them to solitary confinement for extended periods of time. These extreme punitive measures were prima facie exercises of "cruel and unusual punishment," in violation of the Eighth Amendment. U.S. CONST. amend. VIII; see also JACOBS, supra note 164, at 59–60 (discussing why prison authorities took extreme measures in response to the religious accommodation requests by NOI Muslim inmates: "It is impossible to understand the vehemence and determination with which the prison resisted every Muslim demand, no matter how insignificant, except by understanding that what seemed to be at stake was the very survival of the authoritarian regime.").
185. JACOBS, supra note 164, at 59 (Jacobs estimates that between 33 to 50% of all prison inmates in solitary confinement during the early 1960s were NOI Muslims); see also Cooper v. Pate, 378 U.S. 518, 523 (1964) (where the NOI Muslim petitioner's "stay in segregation [was] almost of record length").
186. Colley, supra note 19, at 394.
188. O'Kane, supra note 21, at 1.
189. Colley, supra note 19, at 409.
190. Id. at 402. ("The desire to recruit prisoners was part of a larger campaign to challenge the high rate of black criminality within the ghettos" where the NOI established its bases. The communities where the NOI developed a strong grassroots' presence and recruited members were, "[r]acked by terrible poverty, police brutality... and the highest levels of male incarceration," which in turn, established a strong nexus between the NOI's organizing efforts on the outside and in the prison. "Arrest and imprisonment was an experience shared by a large part of the NOI's membership; for example, [Jeffry] Ogbar estimates that 90 percent of the members of Harlem Temple Number Seven had criminal records.").
191. Bundschu, supra note 138, at 1 ("The California State Department of Correction spokesman said 114 members of the group [NOI] are in California prisons or on parole from them, and it blames
Virginia, furnished the movement with considerable organizational presence and visibility within prisons in these states. Not surprisingly, the vast majority of the religious accommodation suits discussed in Parts V and VI arose from these states, which also became NOI organizational strongholds.

Media began to closely monitor the escalating face-offs between NOI Muslim inmates and prison authorities in the early 1960s. In March 1961, the New York Times reported that "more than 100 court actions have been brought by inmates, many of whom were converted to their Muslims beliefs while in prison." This alerted the American public at large to the NOI's "concerted action" for religious rights and placed judges across the country on notice that similar challenges were likely to arrive within their trial dockets.

Following nearly a century of deferring to prison officials, NOI Muslim inmates would spearhead a legal movement for enhanced prisoners' rights that eroded the courts' hands off doctrine and furnished prisoners with standing to challenge the arbitrary decisions and unfettered authority of prison officials.

IV. JUDICIAL DOCTRINE GOVERNING PRISONERS’ RIGHTS

"Judges generally remained unwilling to intervene in prison affairs until the Muslims pressed the issue." Untitled

Until the religious accommodation challenges advanced by NOI Muslim inmates, prison officials held unbridled authority over what their inmates could and could not do behind bars. This authority encompassed religion, and more specifically, how prisoners were

black Muslims for riots in the mess hall of Folsom Prison on March 4 and 5 [1961]."

192. N.Y. AMSTERDAM NEWS, supra note 188.
193. See Negro Muslims Assail N.Y. Prison System, L.A. TIMES, Mar. 19, 1961 ("A widespread legal attack on New York state's prison system is being made by Negro Muslim prisoners demanding concessions for the practice of their version of the Islamic religion. The number and persistence of the cases are taken to indicate the growing size and vitality of the black nationalist Muslim movement within the prisons.").
194. Clopton, supra note 44, at 1.
195. Colley, supra note 19, at 411 ("While some prison temples extended their protests to include direct protests against prison racism, the majority of imprisoned NOI members focused upon the right to practice their religion and continued to believe that the courts offered the best chance of redress against official oppression.").
196. Id.
197. Id.
198. GOTTISHALK, supra note 7, at 175.
199. William Bennett Turner, Establishing the Rule of Law in Prisons: A Manual For Prisoners’ Rights Litigation, 23 STAN. L. REV. 484 ("The Black Muslims have been largely responsible for establishing prisoners’ constitutional rights to worship.") [hereinafter Bennett Turner].
permitted to worship. The courts believed prison administration to be beyond their jurisdiction. Thus, the courts seldom questioned, let alone overruled, the administrative decisions of prison officials. Judicial review of prisoner life was rare, until the NOI Muslim inmates launched a barrage of suits that brought down the jurisprudential wall that stood between prisoners and the courts for nearly a century.200

This Part examines the two judicial doctrines that governed prisoners’ right during the 1960s—the decade that witnessed the surge in religious rights litigation advanced by NOI Muslim inmates. Part A provides an overview of the “hands off” doctrine, which precluded judicial review of prison administration. Part B discusses the legal doctrine ushered in by the Warren Court through the suits advanced by NOI Muslim inmates—the “clear and present danger” test—a more liberal standard that ushered in a heightened level of judicial review of prison administration.

A. The “Hands Off” Doctrine

Until the 1960s, judicial review of the state of prisoners’ rights was virtually non-existent. Prison authorities held unfettered dominion over prison administration and the courts seldom intervened. The hands off doctrine,201 cemented by the likes of the Ruffin decision, established a legal regime where the “complaints of prisoners about conditions of life in prison were ignored by the courts.”202 The courts generally held that prison administration was an area beyond their expertise, and with rare exception, deferred to the decisions made by prison authorities.203

Under the hands off doctrine, corrections became the most isolated and under-examined part of the criminal justice process. According to William Bennett Turner,

[t]his immunity from judicial scrutiny led to a tradition of lawlessness in the corrections phase of the criminal process. The elaborate constitutional protections afforded the accused before and during trial stopped at the point of sentencing. What happened to the convicted

200. GOTTSHALK, supra note 7, at 175.

201. Ruffin v. Commonwealth, 62 Va. 790, at 796 (1871) In addition to diminishing the legal rights of inmates, the Ruffin decision also shifted complete deference to correctional officers over inmates’ rights. These rights encompassed the religious accommodation claims of NOI Muslims, who challenged Ruffin on two grounds: (1) the diminished constitutional protection as “slave[s] of the state” violated their First Amendment rights; and, (2) that the great deference given to prison authorities furnished them with unfettered and unchecked authority to violate the fundamental religious rights of inmates.


203. Id. See also generally Note, Constitutional Rights of Prisoners: The Developing Law, 110 U. PA. L. REV. 985 (1962), for a contemporaneous analysis of the hand-off doctrine during the rise of NOI Muslim inmates’ religious accommodation suits.
after sentencing was not a matter of judicial, or indeed, public concern.204

As a result, prisons became unmonitored, guarded off sectors of the criminal justice system segregated from the courts. The hands off doctrine not only stifled potentially meritorious suits from being heard in court, but also engendered a culture within prisons that emboldened prison officials to act stridently, sometimes violently toward prisoners. It was not uncommon for prison wardens to operate with impunity, aware that their actions were unmonitored by courts. Furthermore, the state of the law socialized prisoners to accept the decisions of prison wardens and commissioners as final and unreviewable, which reinforced the "slave and master" relationship articulated in Ruffin.205

The hands off regime not only equipped prison officials with complete and unquestioned authority, but also furnished them with discretion to arbitrarily grant and deny the religious accommodation requests of prison inmates.206 Naturally, wardens were far more likely to grant the requests of followers of faiths they were familiar with and deny those of inmates who practiced minority or unknown religions. This marginalized non-Christian inmates, and more specifically, followers of foreign and Black faiths like the NOI.207

B. The "Clear and Present Danger" Test

NOI Muslim inmates were the first to challenge the hands off doctrine and the prevailing idea embedded by Ruffin that prisoners were "slave[s] of the state."208 In order to state their due process claims in court, NOI Muslim inmates had to undo the institutional deference the hands off doctrine extended to prison wardens and commissioners. Correctional authorities overwhelmingly viewed NOI Muslim inmates as "agitators"209 and generally rejected their religious accommodation claims without process or explanation. Thus, the courts offered the lone forum for prospective relief. However, in addition to overcoming the

204. Bennett Turner, supra note 199, at 473.
205. Ruffin, 62 Va. at 796.
206. Brown v. McGinnis, 180 N.E.2d 791, 793 (N.Y. 1962) (courts consistently affirmed the position in Ruffin, holding, "freedom of exercise of religious worship is not an absolute but rather a preferred right; it cannot interfere with the laws which the State enacts for its preservation, safety, or welfare.") (internal quotations and citations omitted); see also In re Ferguson, 361 P.2d 417, 421 (Cal. 1961) ("inmates of state prisons may not be allowed to assert the constitutional rights guaranteed to nonincarcerated citizens.").
207. Muslim Radicalization in Prison, supra note 4, at 50 ("The hands-off era effectively allowed states to deny Muslims the right to practice their religion.").
208. Ruffin, 62 Va. at 796.
209. Pierce v. LaVallee, 319 F.2d 844 (2d Cir. 1963).
authority of prison officials, NOI Muslims would have to confront a judicial doctrine that had stood for decades before attaining the right to practice their faith behind bars.\textsuperscript{210}

The legal challenges mounted by NOI Muslim inmates revealed that many prison officials were exploiting their authority and diminishing the religious rights of inmates. Organized resistance ranked as the NOI's \textit{raison d'\'etre}, which fueled NOI Muslim inmates to look beyond the decisions of prison officials and seek relief in court. Although unsuccessful, early suits generated momentum for NOI Muslim inmates seeking accommodation for their religious rights in prison.

In the early 1960s, state and federal courts became familiar with the claims of NOI Muslim inmates, and in 1964—fifty years before \textit{Holt}—one of their suits finally reached the Earl Warren-led Supreme Court. In \textit{Cooper v. Pate}, the Supreme Court held that religious accommodation claims by NOI Muslim inmates stated a federal cause of action under the Federal Civil Rights Act of 1871.\textsuperscript{211} A landmark decision for prisoners' rights, ushered in by an "activist and liberal" Warren Court, \textit{Cooper} established that, "[p]risoners have constitutional rights; [and] prison officials were not free to do with prisoners as they pleased."\textsuperscript{212} This decision established that prisoners had standing to sue prisons, and, more specifically, launch legal challenges against practices that compromised their religious rights.

\textit{Cooper}'s firm declaration that prisoners held standing to sue in federal court overruled the rule in \textit{Ruffin} and ended the hands off doctrine.\textsuperscript{213} In short, \textit{Cooper} established that prison officials no longer held unfettered authority over the administration of prisoners, and signaled that their decisions and actions would be closely reviewed by courts moving forward.

\textit{Cooper} opened the door for a judicial test that balanced prisoners' rights with the state's interest in maintaining prison safety. The new test obligated prison officials to accommodate prisoners when such religious activity posed no "clear and present danger" to prison safety or security. The Third Circuit in \textit{Long v. Parker} articulated the new "clear and present danger" test:

\begin{quote}
[M]ere antipathy caused by statements derogatory of, and offensive to the white race is not sufficient to justify
\end{quote}

\begin{footnotes}
\item[210] Smith, \textit{supra} note 41, at 135 ("Because they are confined within the control of correctional officials, prisoners must look to the courts as the external institution responsible for overseeing the effectuation of their constitutional rights. It is often fruitless to file internal complaints that seek redress from the very correctional institutions and officials who are the sources of the grievances.").
\item[211] Cooper v. Pate, 378 U.S. 546 (1964).
\item[212] Id.
\item[213] \textit{Ruffin}, 62 Va. at 796.
\end{footnotes}
the suppression of religious literature even in a prison. Nor does the mere speculation that such statements may ignite racial or religious riots in a penal institution warrant their proscription. To justify the prohibition of religious literature, the prison officials must prove that the literature creates a clear and present danger of a breach of prison security or discipline or some other substantial interference with the orderly functioning of the institution.\footnote{214. Long v. Parker, 390 F.2d 816, 822 (3d Cir. 1968).}

The clear and present danger test stripped prison authorities of their unbridled authority and carved a pathway for NOI Muslim inmates to articulate the sincerity and meaningfulness of their religious beliefs to judges.\footnote{215. United States v. Seeger, 380 U.S. 163, 165–66 (1965) (introducing the “ultimate concern test,” whereby the court does not probe into the content or character of an individual’s beliefs, but rather, examines the importance of those beliefs to that individual’s life. “[T]he test is whether a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the [draft objector] exception.”).} After establishment of this test, the burden shifted to prison officials to demonstrate how a specific NOI Muslim practice threatened prison security or safety.

Furthermore, the new judicial standard formed by the Warren Court furnished NOI Muslim inmates with a platform to present the genuine contours of their faith to judges, and gradually, attempt to retrench the caricatured views of the NOI that judges generally subscribed to. Unfortunately, even after judicial removal of the hands off doctrine, popular conceptions of the NOI continued to impact how judges saw the faith and its incarcerated followers.

V. JUDICIAL VIEW OF THE NATION OF ISLAM

Islam ranks among the most misunderstood, misrepresented, and maligned faiths in American jurisprudential history.\footnote{216. See generally Between Muslim and White, supra note 30.} Animus toward Islam, and fear of a “Mahometan eruption” stateside, has influenced the judicial construction of Muslim identity since the U.S. gained independence.\footnote{217. Ex parte Shahid, 205 F. 812, 816 (E.D. S.C. 1913).} This misunderstanding continues today and extends into the bounds of American prisons. As law scholar SpearIt observes, “[i]t is critical to understand how fear-based perceptions about Muslims and Islam have hampered objective inquiry into Islam in prison, and perhaps more critically, how they have concretely informed penal policy.”\footnote{218. Muslim Radicalization in Prison, supra note 4, at 43.}
The emergence of the NOI ushered in a new shape and shade of Muslim threat. In the early 1960s, the media became fixated with the NOI’s aspirations of secession, racial separation, and an African-American iteration of Islam that combined “Black rage” with “Islamic hostility.” The courts were not insulated from popular framing of the NOI, and in line with the Los Angeles Times, New York Times, Washington Post, many judges presiding over suits involving NOI Muslim inmates were, “[m]ore concerned with vilification of the movement than with understanding it.”

This Part outlines how the courts constructed and classified NOI Muslim identity. Part A highlights the judicial conflation of Muslim with Arab identity that preceded the rise of NOI Muslim litigation in the early 1960s, which entrenched a racially monolithic view of Muslim identity within the courts. Part B examines how the court constructed NOI Muslim identity, outlining the four most prominent classifications that emerged from the litigation.

A. Legal Conflation of Muslim and Arab Identity

Islam, well before and after the racially restrictive Naturalization Era, was imagined through an Oriental prism. During the Naturalization Era, which spanned from 1790 until 1952, judges overwhelmingly “conflated Arab and Muslim identity,” in turn converting a multiracial religion with followers on every continent into a narrowly imagined ethnic group. From the judicial gaze, Muslims that did not fit within the legal caricature, those not seen as Arab, were unseen as Muslims. As a consequence, judges viewed the NOI and its followers as separate and distinct from “orthodox Islam,” or as the courts commonly called it

219. CORNEL WEST, RACE MATTERS 100 (1994).
220. In re Ross, 140 U.S. 453 (1891) ("The intense hostility of the people of Moslem faith to all other sects, and particularly to Christians, affected all their intercourse."). Ross addressed the applicability of U.S. law to foreign sailors on U.S. ships while in the territory of another country.
222. See generally Between Muslim and White, supra note 30; see also THOMAS S. KIDD, AMERICAN CHRISTIANS AND ISLAM: EVANGELICAL CULTURE AND MUSLIMS FROM THE COLONIAL PERIOD TO THE AGE OF TERRORISM (2009); ROBERT J. ALLISON, THE CRESCENT OBSCURED: THE UNITED STATES AND THE MUSLIM WORLD, 1776–1815 (1995). In Citizen and the Terrorist, 49 UCLA L. REV. 1575 (2002), Leti Volpp provides a useful summary of EDWARD SAID’S ORIENTALISM (1979) ("A master discourse of European civilization that constructs and polarizes the East and the West. Western representations of the East serve not only to define those who are the objects of the Orientalizing gaze, but also the West, which is defined through its opposition to the East."). Id. at 1586.
223. Some scholars argue that the Era did not technically conclude until 1965, when race-based immigration quotas were lifted.
224. Between Muslim and White, supra note 30.
until the early twentieth century, the “Mohammedan faith.”  

In addition to caricaturing Muslim with Arab identity, courts during the Naturalization Era generally cast Islam as foreign, violent, and irreconcilable with American conceptions of citizenship. Popular sentiment in the U.S. reflected the propaganda at the time, which cautioned that a “global clash between the two religions was inevitable.” Influenced by this propaganda, which became prominent during the early nineteenth century through the duration of the Naturalization Era, judges saw Islam as a “decidedly non-American religion” which threatened the religious and cultural character of the country:

[State and federal] courts not only institutionalized an image and understanding of Islam as irreducibly foreign and inassimilable, but also as one that was bent on threatening the Christian character of the U.S. Judges echoed the maligned view of Islam affirmed by the Supreme Court in US v. McIntyre. Judge Bradley, speaking for the Supreme Court, labeled Islam a “pagan” faith in Dainese v. Hale. Other judges focused more squarely on the Prophet Muhammad, whom they demonized and maligned as a “false prophet.” Still others framed Islam as a heathen foil, a persecutor and forcible convertor of Christians, a war-mongering creed, and the longtime Crusades’ rival of Christianity.

For many judges, the perception of Islam as monolithically Arab and immigrant, combined with the idea that Black signified former slave or criminal, blinded their ability to see African-Americans as Muslims. Although the Muslim population had been dominated by a Black

225. See, e.g., Dainese v. Hale, 91 U.S. 13, 145 (1875); In re Ross, 140 U.S. 453 (1891); Ex Parte Hing, 22 F.2d 554 (W.D. Wash. 1927).
226. Between Muslim and White, supra note 30, at 47 (“U.S. courts not only institutionalized an image and understanding of Islam as irreducibly foreign and inassimilable, but also one that was bent on threatening the Christian character of the U.S.”).
228. Failinger, supra note 63.
229. Ross, 140 U.S. at 463 (“The intense hostility of the people of Moslem faith to all other sects, and particularly to Christians, affected all their intercourse.”).
230. Dainese, 91 U.S. at 15 (invoking an action to recover the value of certain goods, chattels, and credits, which the defendant, the Consul-General of the U.S. in Egypt, caused to be attached to the Consulate).
232. Antebellum Islam, supra note 53, at 145 (“[B]lack and Muslim identities were imagined and constructed by law in terms that undermined seeing them as coexistent. Thus, simultaneous recognition of Black and Muslim identity was precluded by law during the Antebellum Era.”). Islam was itself converted into a racial identity in the ethnic image of Arabs, which excluded anybody—including African-Americans—who did not fit the legally entrenched caricature.
majority since the formation of the U.S., NOI Muslim inmates were viewed chiefly, and sometimes exclusively, by judges as Black men and not Muslims—particularly during the initial wave of suits brought by NOI inmates in the early 1960s.

Even for judges with a more nuanced understanding of the Muslim population as transracial, popular tropes including violence, civilizational threat, and political menace still informed how they encountered and interpreted Muslim identity across racial lines. This is particularly descriptive of judges presiding over the religious accommodation claims of NOI Muslim inmates, who generally differentiated them from the stock of Muslims they were accustomed to seeing in court during the Naturalization Era. Despite this general pattern, in several suits discussed below a number of judges ascribed prominent Muslim stereotypes to the activity of NOI Muslim inmates and merged them with prevailing stereotypes of an African-American male identity.

B. Prominent Judicial Perceptions of the NOI

During a period when the courts exclusively imagined Muslim identity in Arab and immigrant terms, NOI Muslim inmates fought fiercely for their religious rights in court. Thus, the religious accommodation suits were not trials limited to examining the legal merits of the religious accommodation claims made by NOI Muslim inmates, but also were proceedings whereby judges engaged in shaping the legal construction of the NOI as a movement vis-à-vis its incarcerated followers. Furthermore, the fact that Black Muslim convicts served as the in-court embodiments of the NOI only intensified many presiding judges' negative image of the NOI and frequently led to dismissal of many meritorious religious accommodation claims. The judges evaluating suits advanced by NOI Muslim inmates were prejudiced by popular characterizations of the NOI as a militant organization, "fanatical cult," or "sham religion." It would be an

233. SAI'D, supra note 222, at 26.
235. The legal conflation of Muslim with Arab identity established a racial precedent that diminished the Islamic orthodoxy of NOI Muslim inmates petitioners before the eyes of the courts.
understatement to claim that the courts were impacted by the media constructions of the NOI’s identity. Judicial understandings of the NOI were shaped by how *Time*, the *New York Times*, the *Washington Post*, and other influential outlets portrayed the movement and its members. In addition, the surge in NOI inmate litigation intersected with the Civil Rights Era and the broader quest for equality in every sphere of American life. However, the NOI and its following were cast as foils to Martin Luther King, the NAACP, and elements within the Civil Rights Movement mainstream, which further intensified their vilification in the press, prisons, and courthouses.

In addition to being the subject of popular representations of the religious group, NOI Muslim inmates were also Black men in America, vulnerable to the racism and racial stereotypes attributed to that maligned identity. Therefore, the courts’ construction of NOI identity were shaped and shifted along the tracks of popular representations of the NOI, embedded characterizations of Muslim identity, and the “racialization” of Black men in America.240

This section examines the four most common designations the media, and subsequently the courts, applied to the NOI: (1) a gang, (2) black militants, (3) a cult or sham religion, and finally, (4) a legitimate religion or sect.

1. A Gang

During the earliest rounds of litigation, the courts deferred to prison authorities’ designation of the NOI as a “gang.”241 This designation ranked as the most dismissive and neglected the NOI’s organized, structured, and regimented makeup. Most critically, the gang label stripped the NOI of its religious dimension and projected an image based on insubordination, criminality, and violence—stereotypes attributed most closely to an African-American male identity. In short, the gang designation seemed a proxy for Blackness, which cast the NOI as another iteration of a ragtag Black criminal group devoid of any religious or political substance.

Prison authorities frequently branded the NOI as a gang to delegitimize the religious accommodation complaints made by its members. Playing on race and racism to dismiss their demands, prison authorities labeled the NOI as a gang and Muslim inmates as gangsters,
before and during the embryonic stages of their legal challenges to project an image of the movement as a lawless band of African-American men.\textsuperscript{242}

Dismissals of the NOI as a gang became less convincing, and less common, as the public learned more about the movement. The NOI’s formal introduction to the American public, via the television program The Hate That Hate Produced, vividly represented that the NOI was too structured and far too multi-layered a movement to be dismissed as a gang.\textsuperscript{243} As a result of the program, views of the NOI as a gang gradually diminished while classification of the movement as a Black Militant faction became more prominent.

Furthermore, Malcolm X’s ascendancy as a public figure, especially as a potent and powerful representative, bred a renewed public image for the NOI.\textsuperscript{244} He emphasized the NOI’s regimented culture, distinct political aims, and spiritual base, gradually eroding the early labels of the NOI as a gang and fostering greater understanding of it as a political movement. Although a political organization seemed an evolutionary step up from a gang, the former produced a greater degree of fear from prison authorities and the courts.\textsuperscript{245}

2. Black Militants

The NOI as “Black militants” ranked as one of the most prominent popular designations, and in turn, one to which the courts overwhelmingly subscribed.\textsuperscript{246} Upon the NOI’s ascent into popular consciousness, the media focused on its anti-white and separatist stances, which became the most widely reported and discussed dimensions of the NOI. During the early 1960s, these two ideas became synonymous with the NOI, and consequently, shaped how prison authorities and the courts imagined NOI Muslim identity.

Prominent media outlets reported that the NOI would seek to carry

\textsuperscript{242} The Religious Rights of the Incarcerated, 125 U. Pa. L. Rev. 812, 840 (1977) (“In some of the earliest cases involving Black Muslims, for example, prison officials, fearful that the sect would teach defiance of civil authority, denied Muslim inmates all forms of group worship and cut off access to religious literature and ministerial visits.”).

\textsuperscript{243} CURTIS, supra note 35, at 80.

\textsuperscript{244} Handler, supra note 27, at 1 (“The emergence of Malcolm as a national figure was due to his forceful, uncompromising exposition of the Muslim thesis.”).

\textsuperscript{245} God Behind Bars, supra note 58, at 504 (classifying Muslim groups as gangs has not completely subsided from the prison context. Wardens and prison officials in many states continue to view the NOI as a gang, and brand other sects, such as the “Five Percent Nation,” which is regarded as “the most notorious” sect, as a gang).

\textsuperscript{246} Courts regularly referred to the NOI as a militant organization, and its followers as militants. The political designation overshadowed the NOI’s religious character, and in court, curbed the First Amendment based accommodations sought by NOI Muslim inmates.
out its goals through "violent" and "brutal" means, solidifying popular perception of the movement as a black militant and subversive outfit. Although some stories highlighted the NOI's positive political qualities and achievements, the vast lot offered only a caricatured illustration of its segregationist and separatist aims. Discrediting its leader, Elijah Muhammad, was also a common method for dismissing it as a bona fide religion.

The NOI's anti-white stance was also cited as a principal basis for designating it a militant political organization instead of a religion. Heightened media attention on the NOI's anti-white and separatist stances intersected with the proliferation of religious accommodation suits brought by NOI Muslim inmates. On March 2, 1961, the New York Times ran the second of a two-part expose on the NOI, titled "Negroes Say Conditions in U.S. Explain Nationalists’ Militancy," which focused centrally on its segregationist and separatist aims: "[T]he Black Muslims are opposed to integration. They say they will settle for nothing less than a separate sovereign state." In his first ever press conference in April 1961, Elijah Muhammad focused centrally on his aspiration to establish a "Negro nation" somewhere on the U.S.'s mainland.

The impact of these news stories, and others fixated on the NOI’s anti-whiteness, impacted how the courts perceived NOI Muslim identity. In Sostre, Judge Hayes cited the expert opinion of Father Charles M. Whelan, whose testimony echoed the news stories that highlighted the NOI’s aversion to whites:

[I] don't know any other religion that teaches racial hatred as an essential part of the religion. There are

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247. Davis, supra note 238, at 1.
248. See Robert E. Dallos, Themes and Variations: Coffee With Malcolm X, May 16, 1963, for a relatively more objective report on the NOI, which advances a positive description of the organization, yet concludes rather dismissively ("The Black Muslims are an impassioned, well-ordered and hard-working organization. Their mission is fueled by the long deprivation of the American Negro. In the voice of Malcolm X one hears the snapping of the last straw, the call to final and official separation from the whites. Never does that voice admit the progress that’s been made, or the widely-held hope that a more fraternal feeling among races is only possible, but available.").
249. Terry, supra note 12, at 1 (describing Elijah Muhammad, as a "runt, brown-skinned man whose head was covered by an embroidered fez which matched his tan summer suit").
250. See CURTIS, supra note 35, at 63, for more on the NOI’s position regarding whites, which were especially antagonistic during the movement’s earlier phases.
252. L.A. TIMES, supra note 116, at 1. (similar stories were run in other prominent newspapers, in turn solidifying the view in courts that the NOI was, by and large, a group of "[r]acist Black militants seeking their own state"); see also Teague, supra note 251, at 1 (for many judges presiding over the religious accommodation claims of NOI Muslim inmates, this hyper-politicized image of the NOI eroded its religious character, and cast it as an internal national security threat that demanded opposition not accommodation).
many religions which have practiced racial hatred at various times, but this movement is the only movement I know of which makes it a tenet of the faith that all white people should be hated.\footnote{\textit{Sostre} v. McGinnis, 334 F. 2d 906, 909 (2d Cir. 1964).}

The court in \textit{Sostre} believed that the “course of the anti-white doctrine” originated from the “Black Muslim Koran [sic],” which led to prison officials restricting the seminal Islamic text.\footnote{\textit{Id.} at 911.} Furthermore, Judge Hayes of the Second Circuit Court distinguished the “Black Muslim” doctrine from “orthodox Islam,” stating: “[T]he difference between the beliefs of Muslims, who, like the plaintiffs are followers of Elijah Muhammad, and the beliefs of other religions, including, incidentally, the orthodox Islam of several hundred millions of Asians and Africans, are far more striking than the similarities.”\footnote{\textit{Id.} at 908–09.}

The Supreme Court of New Jersey in \textit{Cooke v. Traumburg} echoed the \textit{Sostre} ruling, stating, “[T]he basic tenets of the movement is the segregation of the races, including hatred of the Caucasian Race both Christians and Jews.”\footnote{256. Cooke v. Traumburg, 205 A.2d 889 (N.J. 1964) (involving a NOI Muslim inmate confined in New Jersey State Prison requesting that prison officials accommodate his request to make available space for congregated prayer within the prison).} Consequently, the courts conception of NOI Muslim identity became founded upon separatism and “racial hatred” which, for judges, undermined its legitimacy as a religion and materially impacted the outcome of religious accommodation suits advanced by NOI Muslim inmates.

The courts frequently sustained prison officials’ denial of Qur’ans on grounds that it would facilitate insubordination and exacerbate the threat posed by “Black Militants.”\footnote{\textit{Id.} at 1504 (“The Black Muslim Koran, however, is the source of the anti-white doctrine that prompts many of the disciplinary problems, and Black Muslim services almost invariably involve stirring expositions of the implications of the black supremacy doctrine. To offer the Black Muslims expurgated bibles and censored sermons would be to engage in the very activities the first amendment was designed to avoid.”).} In the \textit{In re Ferguson} case, ten NOI Muslim inmates filed a writ of habeas corpus under the Fourteenth Amendment that they were denied rightful access to copies of the Qur’an.\footnote{\textit{In re Ferguson}, 361 P.2d 417 (Cal. 1961).} The court ruled that refusing to grant the ten inmates with access to the Qur’an and congregated prayer were a “necessary disciplinary measure” to suppress insubordination and threat.\footnote{\textit{Id.}} Moreover, the New York Supreme Court upheld an Attica prison warden’s restriction of a NOI Muslim inmate’s right to read an Arabic grammar book, used to enhance his ability to read from the Qur’an and
practice his faith, while in the prison, on grounds that it would disturb the peace.  

260 Courts were even more wary of NOI Muslim inmates congregating to worship, also evidenced in In re Ferguson. In addition to denying prisoners the right to access the Qur’an, the Ferguson court denied ten NOI Muslims a place of worship, fearing that NOI Muslim inmates coming together posed a threat to other prisoners, and prison safety at large.  

261 The Fourth Circuit echoed that rationale in Sewell v. Pegelow, and the Supreme Court of New Jersey ruled in Traumburg that “collective worship would bring about a disruption of prison discipline” and denied the petitioner’s accommodation request.  

262 These negative outcomes for NOI Muslim inmates were driven by the belief that the NOI was not a legitimate religion, but rather, a corps of Black militants whose separatist and hateful practices deserved no legal protection.

3. Cult or Sham Religion

Branding NOI members as “phony Muslims” was a prominently held view during the rise of religious accommodation claims made by NOI Muslims.  

263 Although incarcerated followers of the NOI inmates claimed to be Muslims, during the early to mid-1960s, judges generally held a dramatically distinct racial understanding of Islam and Muslim identity. Again, since the Naturalization Era, judges overwhelmingly conflated Muslim with Arab and immigrant identity and regarded Islam in narrow and distorted theological terms.  

264 The FBI, fearing the momentum gained by the rising legal challenges brought by NOI inmates, echoed the media by calling the NOI a “cult of harassment.”  

265 This prevailing view, combined with rising dismissals from non-NOI Muslims, popularized the view among prison officials and the courts that the NOI was a “[s]ham religion, not entitled to any assistance in

266. Colley, supra note 19, at 412 (“The FBI went so far as to deny the sincerity of the legal cases, arguing that they [NOI] were part of a ‘cult of harassment’ that was designed to create extra work for prison officials.”).

267. See supra Part II.C.
their efforts to practice their faith.\textsuperscript{268}

The NOI's criticism of Christianity, secretive operations, and pointed Black Nationalist aims drove popular view that it was more occult than legitimate religion.\textsuperscript{269} In 1962, the \textit{Los Angeles Times} ran a widely-read story that branded the NOI a "fanatical cult,"\textsuperscript{270} preceded by another article describing the organization as a:

30-year-old religio-political cult which is anti-white, anti-Christian and dedicated to the establishment of a segregated Negro state within the United States. Until Uncle Sam turns over the land for that purpose, the cult urges its members to "buy black," set up their own stores and service establishments and shun the white man in all respects.\textsuperscript{271}

A number of other prominent newspapers, including the \textit{Washington Post},\textsuperscript{272} echoed the \textit{Los Angeles Times}' classification of the NOI as a cult. In the early 1960s, media headlines were just as likely to classify the NOI as a cult as they were to brand it a Black militant group. Oftentimes, these two menacing characterizations were infused by news stories, intensifying the public's fear of "the religio-political cult . . . dedicated to the establishment of a segregated Negro state."\textsuperscript{273}

Media illustrations of the NOI as a cult were also echoed in legal scholarship. An influential comment, published in the \textit{Columbia Law Review} in 1962, examined the rising number of religious accommodation claims brought forth by NOI Muslims.\textsuperscript{274} The comment—which dismissed the religious legitimacy of the NOI and concluded that the "[p]roscription by prison officials of their activities seems constitutionally permissible—was cited in a number of key religious accommodation suits brought forth by NOI Muslims.\textsuperscript{275} This description of the NOI had considerable persuasive influence with many judges, as did its implication that the movement was a "sham religion."\textsuperscript{276}

\begin{thebibliography}{99}
\bibitem{268} \	extit{Black Muslims in Prison}, supra note 25, at 1490 (his was the position of the Department of Corrections of California by the State Advisory on Institutional Religion on January 1961).
\bibitem{269} \textit{Kidd, supra} note 222, at 106-07 ("Christians used the Nation of Islam as evidence of a broader groundswell of secretive American cults challenging traditional Christianity's authority.").
\bibitem{270} Davis, \textit{supra} note 238, at 1.
\bibitem{271} Bundschu, \textit{supra} note 138, at 1 ("The cult has wrapped itself in secrecy and claims a nationwide membership of a quarter million blacks—they shun the word Negro as well as their original 'slave' surnames.").
\bibitem{272} \textit{WASH. POST.}, \textit{supra} note 26, at 1.
\bibitem{273} Bundschu, \textit{supra} note 138, at 1.
\bibitem{274} \textit{Black Muslims in Prison, supra} note 25, at 1488.
\bibitem{275} \textit{Id.} at 1504.
\bibitem{276} \textit{Id.} at 1492. "The Black Muslim movement, founded in Detroit in 1930 by an American Negro calling himself Muhammad Elijah \textit{[note: real name Elijah Muhammad]}, has attracted from the

\end{thebibliography}
Wardens disallowed the entry of ministers on grounds that the NOI was a sham religion. "[P]rison officials, doubting either the sincerity of the conversion or its rehabilitative effectiveness, have been unwilling to welcome these men back into prisons as ministers of a new faith." In addition to doubting the legitimacy of the NOI and its rehabilitative effect, judges deferred to prison officials who maintained that congregated prayer and the entry of NOI ministers would exacerbate racial division, undermine security, and "disrupt prison discipline." However, prison authorities and judges did not simply view the NOI along single-stereotypical tracks. Instead, they merged other popular designations to form their view. In other words, it was common for judges to frame the NOI as a cult, while also integrating behaviors or characteristics that qualified it as a Black militant organization. In some instances, the judicial view of the NOI as a cult stemmed "from the perception that Muslims teach racial hatred." These hybridized representations proved prominent within legal circles and resonated among judges presiding over the religious accommodation claims of NOI Muslim inmates.

4. Legitimate Religion or Sect

"[T]hey believe in Allah, as a supreme being and as the one true god." It was virtually consensus among judges presiding over the religious accommodation claims of NOI Muslim inmates that their faith was distinct from "orthodox Islam." The conflation of Islam with Arab identity, combined with the Blackness of the petitioners and their distinctive sectarian views, collectively functioned to prevent judges from seeing NOI Muslim inmates as "orthodox Muslims." Therefore, in order to access the religious rights they sought, NOI Muslim inmates effectively had to persuade judges that the NOI itself was a distinct and

ranks of young, predominantly lower class American Negroes a steadily increasing membership now approximating 100,000. To the traditional Koran the founded added the doctrine of black supremacy and proclaimed the desirability of maintaining (or regaining) the purity of the black race. This is to be achieved not only by social and economic disassociation from the white man but also by attainment of the eventual goal of geographic separation of the races, commonly envisioned as the securing of fire or more American states in which to establish an Islamic kingdom."

279. MOORE, supra note 8, at 139.
282. Between Muslim and White, supra note 30.
283. Sostre, 334 F. 2d at 908–09.
legitimate religion or sect of Islam.

The NOI’s distinct sectarian baselines and acute political character spurred some judges to deem it a sect of Islam. In *Pierce v. LaVallee*, the Second Circuit referred to the NOI as the “Muslim Brotherhood,” a “[s]elf-organized and self-styled group having its avowed object the study and furtherance of Islam, but which also has overtones of secrecy and intrigue.” The NOI’s clandestine internal operations and the racial makeup of the organization moved the *Pierce* court to view it as a sectarian offshoot of Islam.

*Fulwood v. Clemmer* ranked as the most important early decision involving the religious rights of NOI Muslim inmates. The *Fulwood* court was not the first to explore whether the NOI qualified as a religion, but was the first to deem it a legitimate religion. The U.S. District Court for the District of Columbia ruled that:

> [It is not] the function of the court to consider the merits or fallacies of a religion or to praise or condemn it . . . The concept of religion is met by the Muslims in that they believe in Allah, as a supreme being and as the one true god. It follows, therefore, that the Muslim faith is a religion.

The decision did not raise mainstream perception among judges that NOI was a legitimate and authentic religion. Nonetheless, considering that the majority view in 1962 still perceived the NOI as a cult or a Black militancy group, or both, it did initiate momentum in the direction of legitimacy. This momentum fueled the NOI to litigate further, and “[s]et the stage for later legal battles in which Muslims used the courts to contest prison conditions and achieve greater religious liberty.”

*Fulwood*, as revealed by subsequent cases involving both NOI and non-NOI Muslim inmates, made two landmark pronouncements regarding the protection of Muslims’ rights within prisons. First, it established that Islam, in the most general understanding of the faith,
was a legitimate religion. This proved watershed, particularly after the Naturalization Era, because it marked a pivotal moment when the courts acknowledged that Muslims were not exclusively a foreign and immigrant element, but also a segment of the American polity whose constitutional rights were to be protected.

Second, as discussed more closely in the following section, the Fulwood court also established the NOI itself to be a viable faith. Through the suits brought by NOI Muslim inmates, judges came to understand that Muslims who followed the NOI creed shared some kindred beliefs with Sunni Muslims but also held their own distinct spiritual views. Consequently, the courts’ understanding of Islam, and the spiritual diversity within the Muslim population inside and outside of the U.S., broadened in those courts that presided over a significant number of suits involving NOI Muslim inmates.

Two years after Fulwood, the Supreme Court established that NOI Muslim inmates had standing to sue in federal court. In 1964, the U.S. Supreme Court granted certiorari in a case a suit involving an NOI inmate. In Cooper v. Pate, the Supreme Court ruled that a NOI Muslim inmate possessed legal standing to sue the prison under the 1871 Civil Rights Act. This ruling enabled NOI Muslim inmates to compel prison officials to recognize Islam as a legitimate religion and argue for enhanced religious accommodations using that body of legislation.

With Cooper, the Supreme Court reaffirmed the decision in Fulwood, establishing Islam, vis-à-vis the NOI, as a religion to be accommodated

292. The NOI’s rehabilitative success on inmates cannot be overlooked as a factor that facilitated the courts’ view of it as a legitimate religion. Judges frequently looked to the NOI’s record of rehabilitating convicts while inside and outside of prison. Media reports on the NOI, although generally scathing, sometimes highlighted the movement’s success in rehabilitating convicts, “[o]bservers agree that the Black Muslims have a tremendous record of rehabilitation – released convicts who join stay away from crime. One big city urban league directed has been quoted: ‘Frankly, I’d like to see find somebody non-Muslims who are as well behaved.” Quigg, supra note 136, at 1. Such reports affirmed the NOI’s claims of its rehabilitative success. Malcolm X, during a speech in Boston in 1960, stated: “[w]hen the Black Man who is a hardened criminal hears the teachings of Mr. Muhammad, immediately he make an about-face. Where the warden couldn’t straighten him out through solitary confinement, as soon as he became a Muslim, he begins to become a model prisoner.” LINCOLN, supra note 51, at 82–83.
293. The degree of progress is an issue of debate, yet I contend that it was neither considerable nor trivial. While the conflation of Arab with Muslim identity was still firmly entrenched, those courts and state judicial systems that presided over a large number of NOI Muslim inmates’ suits during the 1960s, comparatively, developed a more nuanced understanding of Islam and Muslim identity.
295. Id. (suit involving a NOI Muslim inmate imprisoned in Illinois seeking legal recognition of his religion, in addition to the religious accommodation rights associated with that recognition).
296. Id.
More specifically, it solidified the judicial image of
the NOI as a distinctly African-American iteration of Islam, sharing
iconographic and spiritual overlap with orthodox Islam, but ultimately
the NOI stood alone as a separate faith or sect. The judicial construction
of the NOI as a distinct quasi-Islamic tradition was in large part due to
its idiosyncratic spiritual and political tenets, but also due to the
embedded notion in courts that Islam was itself already viewed in the
narrow, racial image of Arabs.

In other words, one might wonder if the courts would have been more
likely to place the NOI more closely within the penumbra of orthodox
Islam if the NOI inmate litigants were themselves Arab instead of
African-American. Indeed, the racial identity of the NOI as not only
African-American, but unapologetically Black, defiant, and proud,
deviated from the racial caricature of Muslim identity developed
centuries before the first NOI Muslim inmate stepped in court seeking
accommodation of his religious rights.

VI. BETWEEN RITES AND RIGHTS

The *Fulwood* decision opened the door for a range of religious
accommodation victories claimed by NOI Muslim inmates. Although
the courts still balanced the religious interests of NOI Muslim inmates
with the administrative and safety concerns of prisons, recognition of
the NOI as a legitimate faith had three important consequences: first, the
ruling mitigated the legitimacy of arbitrary claims that NOI activity
threatened prison safety or peace; second, the burden shifted to prison
wardens and officials to demonstrate in court how NOI activity
threatened prison safety and peace; and third, the decision mainstreamed
a more nuanced view of the NOI as a standalone religion or sect of
Islam.

However, the Supreme Court’s ruling in *Seeger*, which followed
*Fulwood* by three years, made the courts’ view of the NOI’s religious
legitimacy less relevant by making the subjective views of NOI Muslim
inmates the controlling factor. *Seeger* was transformative, because
the subjective beliefs of the petitioner became the factor that determined
whether a religion was legitimate instead of a judge’s view of that faith.
The decision in *Seeger*, combined with ruling in *Cooper* that NOI

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297. Colley, supra note 19, at 414 (the *Cooper* decision, “marked the high-point of the NOI’s
work inside prisons. From 1964, the organization experienced a decline in popularity among African-
American inmates. Elijah Muhammad’s split with Malcolm X was an important factor in this in black
prisoners’ support.”).

298. See *Between Muslim and White*, supra note 30.

Muslim inmates had standing to sue a prison in federal court under the Civil Rights Act of 1871, revolutionized the legal terrain in favor of prisoners.

Part A examines the religious rights attained by litigation advanced by NOI Muslim inmates in the 1960s. These victories encompassed: (1) Qur'an and religious literature rights; (2) congregated prayer and clergy rights; and (3) Islamic dress and dietary rights. Part B examines how many of the religious accommodations won by NOI Muslim inmates benefited Sunni, Shiite, and Muslims of other and all sects. These legal victories converted cold, confining cells into sacred settings "that become a sanctuary," and subsequently provided a springboard for legal challenges seeking enhanced religious accommodation.

A. Religious Rights Won by Nation of Islam Inmates

1. Qur'an and Religious Literature Rights

The suits advanced by NOI Muslim inmates initially sought access to the Qur'an—Islam's Holy Book. In Pierce v. LaVallee, a combined action of three NOI Muslims against the Clinton State Prison in Dannemora, New York, the plaintiffs claimed they were denied permission to purchase the Qur'an. The copies of the Qur'an sought by the inmates were the very versions read by orthodox Muslims across the world. The court ruled in favor of the plaintiffs and provided the NOI Muslims with copies of the Qur'an.

Pierce's firm pronouncement that Islam qualified as a legitimate religion facilitated subsequent suits requesting access to copies of the Qur'an. The Second Circuit in Sostre v. McGinnis ruled that an inmate's right to possess religious literature cannot be restricted because the literature is deemed "inflammatory" or "racist" by prison officials.

300. God Behind Bars, supra note 58, at 523.
301. Pierce v. LaVallee, 293 F.2d 233 (2d Cir. 1961) ("[A]ll three complainants pray for the right to purchase the Koran for an end to religious discrimination, and for other and further relief as justice requires.").
302. Pierce, 293 F.2d at 236 ("On January 5, 1960, after the present actions were commenced, the Commissioner of Correction issued a directive to wardens of state prisons approving for purchase by inmates four different translations of the Koran published in the United States. On June 9, 1961, this memorandum was supplemented by the addition of the Koran published in Pakistan in 1951. This latter edition is the one sought by the plaintiffs, and the defendant represented in open court that this edition is available for purchase by plaintiffs in accord with the prison's regular procedures.").
303. Id.
305. Sostre v. McGinnis, 334 F.2d 906, 908 (2d Cir. 1964) ("The relief which the plaintiffs seek includes an order to the defendants to provide congregational religious services and an injunction against 'making, promulgating' maintaining and enforcing any and all rules, regulations or practices...").
The court considered Martin X. Sostre’s right to access his faith’s most sacred text over the concerns of Attica prison officials, which it found tenuously linked to its stated objective of maintaining prison safety. Two years after Pierce, marking the first moment the courts overturned prison authorities’ denial of the Qu’ran to inmates, Sostre v. McGinnis spurred a series of suits that secured the right of NOI Muslim inmates to possess a Qur’an in prison.

Access to the Qur’an mainstreamed a central religious right for Muslims across all sects and schools of thought. Possession of the Qur’an is core to the practice of Islam. Muslims supplement their daily prayer with active reading of the Qur’an, which evolves their understanding of Islam and provides a comprehensive basis for leading a pious lifestyle. Indeed, “[t]he most private and contemplative of religious activities is the reading of one’s bible.” Thus, keeping a Qur’an was central for incarcerated Muslims that aspire to continue observance while behind bars. Moreover, gaining access to the Qur’an emboldened NOI Muslim inmates to request additional and broader religious accommodation requests.

In addition to the Qur’an, the courts mandated prison officials to make NOI-specific literature available to NOI Muslim inmates. A series of suits, beginning with Cooper v. Pate in the Seventh Circuit, ordered prisons to make Elijah Muhammad’s, A Message to the Blackman in America, and the NOI’s official newspaper, Muhammad Speaks, available to NOI Muslim inmates. These decisions overturned earlier rulings that deemed this literature, particularly Muhammad Speaks, threatening to prison safety.

Moreover, the Fifth Circuit Court’s decision in Walker v. Blackwell, “[h]elped to limit correctional officials’ discretionary power to arbitrarily ban literature as inflammatory without demonstrating the existence of an actual threat to institutional security.” This shifted the burden to prison officials to specifically identify a security threat versus advancing general or speculative claims that met the low threshold of

which prohibit, prevent or impede Plaintiffs and other Muslim inmates of Attica Prison’ from holding or attending congregational services, communicating and conferring with ministers of their religion, receiving religious literature and ‘carrying, displaying, discussing, or otherwise using’ such literature.”


308. Cooper, 382 F.2d 518; Long, 390 F.2d 816; Walker, 411 F.2d 23; Northern, 315 F. Supp. 687.

309. Northern, 315 F. Supp. at 688 (mandating that California prisons make Muhammad Speaks available in every penal institution in the State of California).

310. See Smith, supra note 41, at 140 (citing Walker, 411 F.2d 23).
the hands off doctrine.

By making religious literature available to NOI Muslim inmates, *Cooper* and its progeny of cases also enhanced NOI Muslim inmates' ability to stay abreast of new religious edicts, current events, and developments within the movement. This strengthened community and recruitment efforts within prisons, which consequently led to an increase in size and presence of the NOI within many prisons across the country. Increased size and presence moved NOI inmates to demand enhanced accommodation of their right to worship, including the right to convene in congregated prayer and meet with religious clergy. Access to the Qur'an, and other NOI-specific literature, also had the effect of strengthening the faith of NOI Muslim inmates, which again moved them to demand additional accommodations that spanned from prayer beards to piety beards.

2. Congregated Prayer and Clergy Rights

When the courts accepted the importance of the Qur'an and religious literature to the spiritual lives of incarcerated Muslims, NOI Muslim inmates capitalized on this as a foundation to demand additional First Amendment rights. *Fulwood*, followed by *Sostre*, set in motion a number of rulings that affirmed the right of NOI Muslim inmates to worship together in prison.\(^{311}\)

Daily prayer and community prayer are both definitive components of Islamic life. Prayer itself is one of Islam's Five Pillars.\(^{312}\) Sunni, Shiite,\(^ {313}\) and NOI Muslims pray five times per day and convene for community prayer on Friday—Islam's Sabbath. Prayer congregations are not only encouraged, but are central to the building of community among Muslims. Thus, the rulings in *Sostre* and cases that followed compelled prisons to accommodate the congregated prayers of incarcerated Muslims.\(^ {314}\) These cases, advanced by NOI Muslim inmates, made congregated prayer rights available to imprisoned Muslims across sectarian lines within a number of state and federal

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312. Five central responsibilities are required of each Muslim. These "five pillars" include: five daily prayers, abstaining from food or drink during the Holy Month of Ramadan, pilgrimage to the Holy sites in Mecca, almsgiving to the poor, and the declaration that there is "only one God, and the Prophet Mohammed is his messenger."

313. The majority of sects under the Shiite umbrella pray five times per day.

Demanding the right to engage in congregated prayer typically accompanied requests to meet with Muslim ministers. NOI Muslim inmates generally requested a minister for the Muslim Sabbath, who would lead prayer and subsequently deliver a religious sermon. This is a practice observed by NOI Muslims as well as Sunni and Shiite Muslims. A number of cases following *Fulwood* and *Sostre* established the right for NOI Muslim inmates to meet with religious clergy.  

In addition, the legal challenges brought forth by NOI Muslim inmates also secured the right to observe Ramadan, which the NOI observe in December. This decision opened the door for Sunni and Shiite Muslims to make accommodation requests based on their distinct observance of the Holy Month in later cases, creating cultural awareness within prisons that facilitated further religious accommodation requests of Muslims based on sectarian distinction and cultural difference.

### 3. Islamic Dietary and Dress Rights

NOI Muslim inmates also challenged prison restrictions on their religious modes of diet and dress. Islam restricts a Muslim’s diet in number of ways. Pork, and any foodstuffs with pork ingredients, is sacrilege, and devout Muslims typically only consume meat that has been blessed by a minister. NOI Muslims observe these two tenets and are also encouraged to maintain very healthy and modest diets. NOI Muslim inmates in *Long v. Parker* challenged the warden’s refusal to provide a diet that aligned with Islamic dictates. The Third Circuit overruled the warden and mandated that the prison provide religiously sanctioned dietary options to NOI Muslim inmates.

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315. Given the size of the NOI Muslim inmates population within the New York Prison System, a number of religious accommodation suits were tried within the courts of New York. In *Brown v. McGinnis*, the New York Court of Appeals mandated the prison commissioner to administer the rule in a fashion that would not discriminate against NOI Muslim inmates. 180 N.E.2d 791 (N.Y. 1962). Five years later, the New York Supreme Court in *SalMarion v. McGinnis* identified the prison officials’ attempts to suppress the growth and define membership of the NOI, and overturned the rule that limited attendance at NOI prayer and worship meetings to inmates that were “presented” affiliated with the NOI. 284 N.Y.S.2d 504, 508 (N.Y. Sup. Ct. 1967).


318. *Qur’an* 6:118 (Islamically sanctioned meat is called *halal* (Arabic), meaning that the animal was slaughtered in accordance with Islamic Law (killed with the incurring minimal pain while God’s name is pronounced).

319. GHANEABASSIRI, supra note 56, at 232.

320. 390 F.2d 816 (3d Cir. 1968).

Muslims often express their faith and degree of piety through dress. The *Fulwood* decision facilitated future suits whereby the courts allowed NOI Muslim inmates to express religious affiliation through necklaces, medals, and other conspicuous symbols. These rulings enabled NOI Muslim inmates to also wear *kufis* in prison and to physically manifest affiliation with the NOI in a way that enhanced the movement’s visibility in prison. In addition, the ability to dress in accordance with Islam also showcased the legal strides made by the NOI in courts to non-Muslim inmates, increasing their cache behind bars.

As highlighted in *Holt*, the beard symbolized Islamic identity and piety. It is common for devout Muslims men to wear their beards in accord with how they believe the Prophet Muhammad wore his, seeking to emulate the prophet. A number of earlier suits won NOI Muslim inmates the right to don beards in line with Islamic custom.

Collectively, these legal strides mainstreamed the Muslim aesthetic in cell blocks and prison yards and broadened the capacity of NOI inmates, and subsequently Muslims of all sects and traditions, to carry on a religious lifestyle that aligns with their interpretation of Islam.

**B. One For All: Landmark Suits Benefit Muslim Inmates Across Sectarian Lines**

Although a discrete sect with distinct traditions, the legal victories attained by NOI had a universal impact on prisoners of all faiths. As demonstrated in *Holt*, the religious accommodation suits advanced by NOI Muslim inmates benefitted, and continue to benefit, incarcerated Muslims of all sects and tradition. The suits provide a foundation for effectuating all prisoners’ rights of access to the courts by supplying a statutory vehicle (i.e., the Civil Rights Act’s section 1983); procedural protections (i.e., ability to send and receive legal email) and effective remedies for prisoners to use in asserting constitutional claims.


323. (Arabic) A brimless rounded cap, which is worn to signify piety in Islam.

324. This mode of prophetic emulation is called *Sunnah* (Arabic).


326. *Smith*, *supra* note 41, at 142.
In addition, the suits familiarized courts with the religious practices, lifestyles, and needs of practicing Muslim inmates. Although NOI Muslim inmates subscribed to a sectarian movement overwhelmingly dismissed as unorthodox and illegitimate, the strides attained within the judicial and penal spheres enhanced the protection of incarcerated Muslims’ rights beyond orthodox and sectarian lines.

NOI Muslim inmates won suits that equip incarcerated Muslim claimants today with key legal precedents. As discussed above, NOI Muslim inmates successfully argued before state and federal courts that prison officials’ denying them access to the Qu’ran qualified as a violation of their free exercise of religion rights. Although advanced by NOI Muslim inmates, the Qur’an is universally regarded across sectarian lines as the principal source of law and guidance for Muslims. For instance, in Northern v. Nelson, the U.S. District Court for the Northern District of California mandated that the thirteen prison facilities across the state provide “at least one copy of the book entitled The Holy Qu-ran by Usef Ali.”

For NOI Muslim inmates, attaining access to the Qur’an while behind bars was only a springboard for enhanced religious rights. Following Fulwood, which established the judicial legitimacy of Islam as a religion, NOI Muslim inmates launched successful suits in state and federal courts that expanded their realm of religious rights to include congregated prayer and clergy rights and Islamic dietary and dress accommodations. One of these important decisions was through Cooper in 1964, where the Supreme Court resolved that Muslims had standing to sue prison officials under the Civil Rights Act of 1871.

Again, these accommodations had inter-sectarian ramifications. The victories gained by NOI Muslim inmates furnished incarcerated Muslim claimants of today with precedential and persuasive authority: first, in the face of growing penal opposition citing Islamic “radicalization” as an impetus to deny religious rights, the precedent for standing provides a historical and legal bases to mount first amendment claims today; and second, it also provides a basis to argue for enhanced rights within prison, such as those specifically unique to Islamic sects historically absent or underrepresented in prisons (i.e., Shiites), or general requests such as the right to wear a “half-inch beard.”

327. Cooper v. Pate, 382 F.2d 518 (7th Cir. 1967); Long, 390 F.2d 816; Walker, 411 F.2d 23; Northern, 315 F. Supp. 687.
331. Muslim Radicalization in Prison, supra note 4, at 64-66.
In addition to the legal strides, the suits advanced by NOI Muslim inmates also mainstreamed familiarity with Islam and Muslim practices among prison officials. Prison systems, particularly those with considerable NOI populations, gradually grew more culturally aware and literate of Islam after having to implement accommodations linked to literature, worship, personnel, holidays, diet, and dress. Decades later, this is still evident in Holt.

Indeed, it would be a fair critique to claim that this familiarity largely conflated the NOI with Islam in toto. In other words, the Islam with which prison officials became familiar was not in line with how the rest of society, nor how the courts viewed the religion. Yet even a distorted literacy opened avenues for Muslims of other sects to enjoy religious accommodations that prison officials believed were uniquely practiced by NOI Muslims.333

VII. CONCLUSION

On January 20, 2015, the United States Supreme Court ruled the Arkansas Department of Correction’s grooming policy restricting a Muslim inmate’s right to grow a half-inch beard violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). Holt came before the Supreme Court during a moment of rising scholarly interest in the Muslim prison population.

The War on Terror converted American prisons into battlegrounds, pitting prison officials against “radical Islam.”334 Although Islam ranks as the fastest growing religion, both inside and outside of American prisons, prison authorities still deny Muslim-American inmates fundamental First Amendment religious liberties in the name of suppressing Islamic radicalization and maintaining prison security. Incarcerated Muslims, representing a milieu of races and sectarian traditions, are at the head of state and federal litigation demanding accommodation of general Islamic and specific sectarian religious practices. The demonization of Islam as a means to deny Muslim inmates religious rights is not a new phenomenon, but a penal strategy that commenced nearly fifty-four years ago.

Incarcerated followers of the NOI—a movement betwixt and between judicial and Muslim conceptions of Islamic orthodoxy—spearheaded the legal movement that compelled accommodation of Muslim inmates to worship behind bars. This Article illustrates how the legal challenges, victories, and obstacles faced by incarcerated followers of the NOI

333. Ironically, prisons were perhaps the lone spheres of American society where Islam was believed to be a Black religion—a caveat to the broader conflation of Muslim with Arab identity.

334. See generally Muslim Radicalization in Prison, supra note 4.
achieved judicial recognition of Islam as a religion that prison authorities must accommodate, and nets a range of central religious accommodations that were not peculiar to the Nation of Islam, but amenable to Muslims across sectarian lines.

In the early 1960s, incarcerated members of the NOI launched legal challenges that pioneered prison accommodation of Muslim practices. Although dismissed as a cult or an illegitimate sect of Islam by courts and other Muslims, the legal victories achieved by incarcerated members of the NOI secured access to foundational religious scripture, congregated prayer and clergy, and accommodation of Islamic diet and dress. Through an analysis of this litigation, this Article also examines how courts’ construction of the Nation of Islam’s identity was shaped along lines of race, racism, and idiosyncratic religious beliefs, which complicated the monolithic judicial understanding of Islam and Muslim identity.