Losing Ground:

The Loss of Freedom, Equality, and Opportunity for America's Immigrants Since September 11

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Mission Statement

The mission of the Illinois Coalition for Immigrant and Refugee Rights is to promote the rights of immigrants and refugees to full and equal participation in the civic, cultural, social, and political life of our diverse society.

In partnership with our member organizations, the Coalition educates and organizes immigrant and refugee communities to assert their rights; promotes citizenship and civic participation; monitors, analyzes, and advocates on immigrant-related issues; and, informs the general public about the contributions of immigrants and refugees.

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Executive Summary

Since the tragic attacks of 9/11, the Illinois Coalition for Immigrant and Refugee Rights (ICIRR) has documented no fewer than 24 government actions or proposals that, taken together, have constituted a quiet backlash against immigrants and refugees.

Instead of making America safer, these mean-spirited, heavy-handed, and ultimately un-American actions have scapegoated all of America's immigrant and refugee communities. They have inflamed anti-immigrant sentiment, imposed a virtual moratorium on refugee admissions, encouraged racial profiling of Arabs and Muslims, resulted in the firing of tens of thousands legal permanent resident noncitizens and undocumented workers, and quashed progress towards a rational immigration reform agenda that includes legalization of undocumented immigrants.

These actions, undertaken by all three branches of our federal government, violate our basic values of fairness by indiscriminately treating all immigrants as potential terrorists. For immigrants in the US, the year since September 11 has meant a loss of freedom, equality, and opportunity.

During times of economic stress or security concerns, the US has historically scapegoated immigrants for the woes of our nation. We have often come to feel great shame for these actions. On the one-year anniversary of the 9/11 attacks, ICIRR calls on our nation's leaders to honor our shared democratic legacy rather than to debase it with un-American and counterproductive anti-immigrant actions.

Post-9/11 federal policies criminalize and scapegoat hard working immigrants who make enormous contributions to the US.

- INS is now authorized to hold individuals without charge for 48 hours. Before 9/11, the INS could only hold someone for 24 hours without charge. In the case of undefined "extraordinary circumstances," the INS may hold individuals indefinitely.

- The USA-PATRIOT Act enables the Attorney General to detain any noncitizen that he has "reasonable grounds to believe" is involved in terrorist activity for up to seven days without charge.

- The Aviation Security Act, which requires that airport baggage screeners be US citizens, has cost hundreds of immigrant baggage screeners their jobs. Of the 28,000 screeners, 8,000 are noncitizens who lost their jobs.

- Operation Tarmac, a law enforcement initiative aimed at airport workers who might pose a security threat, has resulted in the arrests of hundreds of low-wage immigrant workers (many of whom are undocumented) who post no security risk whatsoever.

- This past spring, the Social Security Administration has issued 800,000 letters to employers who employed workers whose names and Social Security Numbers do not match. These "no-match" letters have resulted in massive job losses among undocumented workers and disruption at the targeted worksites.

- More recently, the Justice Department's announcement that it intends to renew enforcement of decades-old laws requiring noncitizens to report address changes has caused panic among many immigrants who now fear that INS will deport them for failing to comply with provisions that they were never told to obey.

Refugees are languishing in camps all over the world as the US shuts its doors to those fleeing persecution.

- Refugee admissions ceased altogether in the two months since 9/11. Since resettlement resumed, additional security precautions and diversion of resettlement staff have resulted in only 20,000 refugees (out of an authorized ceiling of 70,000 for the current fiscal year) gaining admission.

- Since refugee resettlement agencies (which are usually faith-based organizations) receive funding based on the new refugees they assist, funding for these agencies has been slashed. As a result, many previously admitted

refugees who still need English classes and other help adjusting to life in the US have gone without.

Arabs and Muslims have been targets of undemocratic and counterproductive government policies that have been ineffective in improving national security.

- Immediately after the terrorist attacks, federal authorities rounded up no fewer than 1,200 individuals, mostly Muslims or of Arab descent, based on suspicion that they were involved in or had knowledge of terrorist activity. As of July 2002, the Justice Department reported that 147 detainees remain in custody, half on unspecified criminal charges. The detentions and immigration hearings have been kept secret, and have driven a rift between Arab and Muslim communities and federal law enforcement authorities.

- In announcing its plans to track down more than 300,000 individuals who have already been ordered deported but who did not leave, the Justice Department specifically targeted the small percentage who come from predominantly Arab and Muslim countries, even though most absconders come from Latin America.

- The federal government has also singled out travelers from Arab and Muslim countries for special scrutiny, regardless of whether they pose any individual security risk. The State Department has placed 26 predominantly Muslim nations in southwest Asia, the Middle East, and northern Africa on a watch list.

- The Justice Department has also undertaken two separate initiatives to interview several thousand individuals in the US on temporary visas from Arab and Muslim countries. The interviews have produced very few useful leads, but at the cost of heightening the fear and insecurity that many Arab and Muslim immigrants now feel toward the government of their new homeland.

- Most recently, the Justice Department has approved requirements that travelers from five Muslim countries and anyone else fitting certain undisclosed criteria must be fingerprinted and photographed upon entering the US and must register their address with INS every year.

The impact of the wide net cast by the federal government extends beyond Arabs, Muslims, and immigrants to all Americans by threatening civil liberties and undermining community safety.

- The Justice Department's position that local police have the "inherent authority" to enforce immigration laws turns any encounter between an immigrant and the police into a possible deportation case. Police departments must rely on information from community members, including immigrants regardless of status, if they are to catch and prosecute criminals. Fortunately, many police departments have repudiated the Justice Department's position because it would compromise their ability to keep neighborhoods safe.

- Operation Tarmac, the airport security initiative that swept up hundreds of immigrant workers, has also caught US citizens who failed to disclose information when applying for security clearances. Many of the citizens affected by this initiative have been African Americans.

- Shortly after 9/11 the Justice Department authorized the monitoring of communications between individuals in federal custody and their attorneys. This rule covers all federal detainees, including US citizens.

- Restrictions on visitor visas keep families apart by hampering the ability of US citizens to have relatives visit from other countries.

Finally, the government's response to 9/11 has stalled hopes for a new legalization program and other positive immigration measures.

- Anti-immigrant rhetoric has muddled the debate over immigration proposals. Immigration opponents have succeeded in tarring even such proposals as the limited extension of section 245(i), which would allow qualified immigrants to apply for legal status while remaining in the US, as bills that would aid terrorists.

- The momentum towards legalization that had been developing immediately before the attacks has halted:

- Efforts in many states to improve highway safety by broadening access to driver's licenses to the undocumented have had to compete with proposals to restrict licenses to only those individuals who are lawfully in the US.
- Proposals to legalize undocumented students who hope to pursue a university education were left hanging post-9/11. There are more than 50,000 undocumented students in the country, many of whom came as infants and have no recollection of their birth country. It is a loss to the entire country that the talents of these young people are not nurtured.

Introduction

The aftermath of 9/11 has had a devastating impact on immigrants and refugees.

Before 9/11, the hopes for legalization ran high. Labor, business, faith, and community groups came out in support of legalization. The AFL-CIO, which has historically held an unfavorable position towards immigration, issued a resolution supporting the rights of undocumented workers and a new legalization program.

Subsequently, businesses and trade associations, including those from the hotel/motel, restaurant, and agricultural industries, formed the Essential Worker Immigration Coalition (EWIC) to advocate for "reform of US immigration policy to facilitate a sustainable workforce for the American economy while ensuring our national security and prosperity."

The US Catholic Conference of Bishops in April 2000 also publicly stated its support for undocumented immigrants and backed a broad legalization program in a joint statement with the AFL-CIO. In its statement, the US Catholic Conference urged that "an orderly, (fair/generous) and responsive system of legal immigration should be developed which helps reduce the flow of undocumented workers into the country."

"Human compassion and fairness—as well as the United States' historic willingness to embrace new citizens—dictate that people who have been working here for a certain number of years, contributing to the economy, perhaps even marrying and raising a family, and have stayed out of legal trouble, ought to have a chance to legalize their status."

-Chicago Tribune, August 8, 2001

Throughout the country, local efforts pushed federal lawmakers to consider passing a comprehensive legalization. In Chicago, ICIRR and its allies organized more than 10,000 people to march through the city's downtown streets on September 23, 2000 in support of legalization: some local activists say it was the largest demonstration in Chicago since the 1968 Democratic National Convention. The Chicago City Council soon followed suit and passed a resolution supporting a nationwide legalization. Because of the broad US support for some form of legalization program, Presidents Bush and Fox initiated historic discussions in the summer of 2001 regarding bi-lateral solutions to US immigration from Mexico. Such discussions began to address how to deal with the millions of undocumented Mexican workers already living in and contributing to the US. These discussions also provided an opportunity to begin addressing the severe problems of our current immigration system.

And then the tragic events of 9/11. Progress on immigration reform, including the growing movement for legalization, was halted and even regressed. Hope gave way to fear: fear of the knock on the door from law enforcement officers, fear of losing one's job, fear of being detained and even deported.

In times of economic or political stress, the US has historically scapegoated immigrants for the woes of the nation (see Appendix A):

- In November 1919, Attorney General A. Mitchell Palmer, who claimed a Russian communist takeover was imminent, ordered the roundup of more than 10,000 suspected communists and anarchists in what came to be known as the Palmer Raids. Most of the suspects were Eastern European Jews, and were held in custody without trial. No evidence of a possible takeover

was ever found.

- Following the bombing of Pearl Harbor in December 1941, more than 120,000 people of Japanese ancestry were forced to live in horrid conditions in internment camps scattered throughout the West as a national security measure, even though more than two-thirds of those detained were US citizens and did not demonstrate any disloyalty to this country.

- During the McCarthy Era, the US government initiated "Operation Wetback" in 1954 to address the increasing flow of immigration from Mexico (which was due to the US need for agricultural labor duringWorld War II). As a result, more than 1 million Mexicans were deported, in some cases with their US-born children who were citizens by law.

Today, we look back on these times in history with great shame and disbelief. The Illinois Coalition for Immigrant and Refugee Rights calls on our nation's leaders to protect our legacy as a nation of immigrants. We call on immigrants to become citizens, to participate in the American democracy, and to elect political leaders who will stand up for America's immigrants and refugees in times of trouble.

In this report, the Illinois Coalition for Immigrant and Refugee Rights details the government actions that have transpired since 9/11 in order to document and hopefully change the familiar and shameful path that our country is currently taking.

"I want to remind you of something about immigration. Family values do not stop at the Rio Grande River. There are moms and dads [who] have children in Mexico. And they're hungry...And they're going to come to try to find work. If they pay $5 in one place and $50 in another, and they've got mouths to feed, they're going to come. It's a powerful instinct. It's called being a mom and being a dad."

--George W. Bush
as quoted in Time Magazine, November 15, 1999

Summary of Terms

Statutes are laws that Congress has passed and that the President has signed into law.

Executive orders are orders issued by the President or an administrative authority under his direction that interpret, implement, or put into effect a provision of the Constitution or a federal statute or treaty.

Rules are regulations issued by Cabinet departments (such as the Department of Justice) or executive branch agencies (such as INS) that implement federal statutes. The department or agency must publish the rule in the Federal Register for public comment. The rule may be initially published as either a **proposed rule** (which does not take effect during the public comment period) or an **interim rule** (which is effective during the comment period). After the comment period closes (usually after 30 or 60 days), the agency considers the comments and issues a **final rule**, which may include changes suggested by the commenters. A final rule takes effect on the date designated when it is published, usually on the publication date itself.

Federal agencies may also make changes in their policies and procedures or undertake initiatives that do not require changes to federal regulations and therefore do not need to be published as rules.

Losing Ground: The Loss of Freedom, Equality, and Opportunity for America's Immigrants Since September 11

1. DETENTION OF INDIVIDUALS SUSPECTED OF INVOLVEMENT IN TERRORISM

Since September 11, law enforcement authorities have detained more than 1,200 individuals with suspected ties or knowledge of terrorist activity. The detainees have been mostly Arab or Arab-American, but also include some south Asians and Israeli Jews. The total number of detainees had been hard to determine because they include people held by local as well as state and federal authorities, and until mid-November the Justice Department would not release any information about the detainees. Many of the individuals were held as material witnesses, who can be detained indefinitely while the investigation of terrorist activity remains pending. Many others are being held after having been charged with immigration violations, such as visa overstays, or with criminal charges not related to terrorism. The number of individuals who are actual suspected terrorists is reportedly under 100. As of November 27, 2001, federal authorities still had 652 individuals in custody, including 548 held on immigration charges. As of February 15, 2002, the number of detainees was 327. On July 11, 2002, the Justice Department reported that 147 detainees remained in custody (74 on immigration violations, 73 on criminal grounds); most of the other detainees have been deported.

Chicago Sun-Times, October 2, 2001

AMERICA FIGHTS BACK

Every Arab American isn't a suspect

When FBI agents are checking out 9-year-olds, it's time to take a step back

Mark BROWN

On March 26, 2002, a New Jersey state court judge ruled that under that state's freedom of information laws, the state could not refuse to disclose information about detainees held in its state and local facilities; however, an appellate court reversed this decision on June 12, and the New Jersey Supreme Court refused to hear an appeal. In response to the New Jersey decision, INS issued an interim rule on April 22, 2002, barring any non-federal facility housing immigration detainees from disclosing information about the detainees. Also, on July 11, 2002, a federal judge in New York rejected a challenge to detentions based on the material witness statute. This ruling conflicts with an April 30 decision in another case decided by another New York federal judge rejecting material witness detentions. On August 2, a federal judge in Washington DC ruled that INS must disclose the names of the detainees, with limited exceptions; this decision has been stayed pending an appeal.

Concerns:

- The roundup of suspects has focused on Arab and Arab-American individuals, raising issues of racial profiling and group suspicion.
- Many of these individuals can in effect be held indefinitely. The rules regarding detention of material witnesses provide for open-ended detention while the underlying investigation is pending. Once charged, a detainee may request release on bond, but these requests are subject to the discretion of the immigration or criminal court hearing the case.
- Because the Justice Department and other law enforcement offices have not been forthcoming with information about the detainees, it has been difficult for advocates to make arrangements for legal representation or other services for detainees, or even to question whether continued detention is justified.

Criminalizing Arab and Muslim Americans

Shortly after 9/11, the FBI visited the home of Itedal Shalabi, co-director of Arab American Family Services, to investigate an anonymous tip that her son might be involved in terrorist activities.

Itedal, who was justifiably shaken, summoned her son to meet the agents--he was only 9 years old.

"What would have happened if my son was 16 or 17?" Itedal asks. "That's the scary part. This incident made us all wonder who is out there to protect us."

The suspicions of the unnamed tipster were proven wrong.

2. EXTENSION OF MAXIMUM PERIOD FOR INS DETENTION WITHOUT CHARGE [1]

INS interim rule published 9/20/01, in effect since 9/17/01

INS regulations before 9/11 had authorized the agency to hold individuals without charge for only 24 hours. Shortly after 9/11, INS modified this rule to change the maximum hold period to 48 hours. In the case of an emergency or other "extraordinary circumstance," INS can keep the individual in custody until a decision regarding release and bond is made "within an additional reasonable period of time."

Concerns:

- Because the rule does not define "emergency," "extraordinary circumstance," or "reasonable," it enables INS to hold individuals without charge indefinitely.
- The "emergency" or "extraordinary circumstance" that INS may use to justify extended detention may have nothing to do with the detainee's particular case.
- NOTE: It is not clear whether the certification provisions of USA-PATRIOT (*see item 4*) override this rule. The 7-day rule in USA-PATRIOT applies specifically to individuals certified by the Justice Department; the 48-hour rule applies generally.

"The executive branch seeks to uproot people's lives, outside the public eye, and behind a closed door. Democracies die behind closed doors.

"The government could operate in virtual secrecy in all matters dealing, even remotely, with `national security,' resulting in a wholesale suspension of 1st Amendment rights. . . . This, we simply may not countenance. A government operating in the shadow of secrecy stands in complete opposition to the society envisioned by the Framers of our Constitution."

--US 6th Circuit Court of Appeals
August 26, 2002

3. SECRET IMMIGRATION TRIALS

memorandum by Chief Immigration Judge Michael Creppy issued and in effect since 9/21/01

Immigration judges are now authorized to close deportation proceedings from the public. It is not clear what circumstances would justify closed proceedings, though Judge Creppy's memorandum notes that some of these cases may involve classified evidence. These cases are to be heard only by judges who hold special clearances. These cases are not to be listed on court calendars, and no information about these cases can be disclosed on the immigration court's toll-free information line. These proceedings are to be held separately from the judge's other docket. No family members, visitors, or press will be allowed in the courtroom.

In April 2002, a federal judge in Detroit, ruling in the case of detainee Rabih Haddad, ordered that Haddad's immigration proceedings be open to the public and the press; the Sixth Circuit Court of Appeals upheld this decision on August 26, 2002. In May 2002, a federal judge in Newark, NJ, similarly ruled that immigration proceedings could not be closed. The US Court of Appeals for the Third Circuit upheld this ruling on June 17, 2002. A Justice Department letter to Sen. Carl Levin (D-MI) revealed that 611 detainees had been subjected to at least one closed hearing, with 419 going through multiple closed hearings.

Concerns:

- Secret proceedings diminish the accountability of prosecutors and judges, who could abuse the trial procedures if they are not subject to public scrutiny.

- It cannot be known whether the justification for the closed proceedings is reasonable. Review of cases involving "secret evidence" has shown that such evidence has been at best questionable.

4. USA-PATRIOT ACT [2]
Federal statute enacted on 10/26/01

The recently enacted USA-PATRIOT law includes several provisions relating to suspected terrorists. It makes the following changes to the grounds of inadmissibility and deportability regarding terrorism:

- It broadens the definition of "terrorist organization" to cover not just organizations formally designated by the State Department, but also any "two or more individuals, whether organized or not." This definition is not limited to foreign organizations.
- USA-PATRIOT broadens the definition of "terrorist activity" to even include destruction of property, and the definition of "engage in terrorist activity" to include solicitation of membership, solicitation of funds, and provision of material support for non-designated "terrorist organizations"
- The new law allows exclusion or removal of representatives of groups who endorse terrorist activity, of individuals who use their position of prominence to endorse terrorist activity.
- USA-PATRIOT allows exclusion or removal of anyone who has been associated with a terrorist organization and who, while in the US, intends to engage in activities endangering national security.
- USA-PATRIOT bars from the US not only those who "engage in terrorist activity" but also their spouses and children, who may have no involvement themselves.

USA-PATRIOT also creates a new "certification" process that allows the Attorney General to certify (upon "reasonable grounds to believe") that an alien is involved in terrorism. Certified individuals may be detained up to 7 days without charge; however, detention may continue beyond 7 days if the individual is charged with any criminal or immigration violation, including offenses not relating to terrorism. Detainees may seek habeas review of the detention and certification decisions in any district court with jurisdiction, but the law of the DC appellate circuit applies. Appeals can be taken on to the DC Circuit Court of Appeals and to the Supreme Court. Certified individuals who have been ordered removed but who cannot be removed will have their cases reviewed every 6 months, and can be released if found not to threaten national security.

USA-PATRIOT contains numerous other provisions regarding such matters as surveillance and money laundering. On July 17, 2002, the Treasury Department and seven other federal agencies that regulate financial institutions issued proposed regulations that would implement the money laundering provi-

Crushed Hopes

Yunhee is a bright and driven 20-year-old aspiring to become a doctor. She came to the United States from Korea. Even though she spoke no English when she arrived, Yunhee excelled in academics while she participated in numerous extracurricular activities including the National Honors Society, choir, theater, and cross-country. In June 2002, she graduated high school with a 4.0 GPA.

Yunhee's hard work paid off and she was accepted to the University of Illinois. But she could only afford to attend the university for one semester. Yunhee is undocumented and cannot receive in-state tuition or apply for any financial aid. Yunhee's parents are unable to pay for her schooling on their earnings as housekeepers so Yunhee worked odd jobs to save enough money for at least one semester of study.

Before 9/11, immigration relief for students like Yunhee was within arm's reach. After the attacks, prospects for student legalization came to an abrupt halt. "I really want to ask America to give us an opportunity—a chance to become what we can be."

sions of USA-PATRIOT by requiring banks and other financial institutions to create procedures to verify the identity of anyone applying to open an account and screening such individuals for involvement in terrorist activity.

Concerns:

- USA-PATRIOT extends the definition of "terrorist organization" too broadly: the definition could be used to apply to groups such as Greenpeace, Operation Rescue, and PETA, and persons who are not even organized. The definition is not limited to organizations based outside the US.
- Because the definition of terrorist activity includes association with groups not designated as terrorist organizations, individuals will not have advance notice of the organizations with which they must not associate, and could face charges for activities they did not know could lead to deportation.
- It is not clear whether USA-PATRIOT can be applied retroactively, so association with groups that are later designated as terrorist organizations could lead to deportation.
- The expanded definition of "terrorist activity" penalizes associational activities that have nothing to do with terrorism, includes fundraising and contributions for non-terrorist activities (such as schools and health clinics) conducted by organizations that also engage in terrorism.
- The new law extends inadmissibility and deportability to spouses and children who may otherwise have no connection with terrorist activity.
- USA-PATRIOT sets a very low threshold for certification decisions ("reasonable grounds") that could result in detention.
- The law does not require that the certified detainee be chargeable with a terrorism-related offense to be subject to detention. Someone who has been certified who merely overstayed his visa could still be held without bond through the duration of his deportation case.
- It is not clear whether the provisions regarding case reviews for non-removable detainees conform to the recent Supreme Court decision (*Zadvydas*) that strictly limited indefinite detention.

5. AUTOMATIC STAY OF DECISIONS TO RELEASE IMMIGRATION DETAINEES [3]

Justice Department interim rule published 10/31/01, in effect since 10/29/01

The Justice Department has issued a rule that allows INS to keep certain detainees in custody even if they have been ordered released. Under existing rules, INS makes an initial custody decision whether to detain or release an individual while that person's deportation case is pending. If INS refuses to release the detainee, or the detainee cannot satisfy the conditions that INS imposes (for instance, if INS sets a bond amount that the detainee cannot pay), the detainee can ask an immigration judge to review the INS decision. (Certain immigrants, such as those charged with offenses relating to national security or terrorism or who were convicted of certain criminal offenses, are subject to "mandatory detention," and cannot appeal their custody decisions.) If the judge releases the detainee, INS can appeal to the Board of Immigration Appeals (BIA). In a limited range of cases, INS can get an automatic stay of the judge's decision upon filing a notice with the immigration judge that it intends to appeal. The notice of intent must be filed on the same day that the judge issues his decision. The stay lapses if INS fails to file an appeal. If INS appeals, the stay keeps the detainee in custody until the BIA reviews the case.

Under the new rule, INS can get an automatic stay in any case in which it had initially decided either to not release the detainee or to set a bond of at least $10,000. To gain a stay, INS must file a notice of intent to appeal with the judge within one day of the judge's decision. The stay lapses if INS does not file an appeal within ten days. The Justice Department states that this rule is necessary to "prevent the release of aliens who may pose a threat to national security" and who might otherwise be released while INS prepares its appeal and before it can ask the BIA to stay the judge's decision. The new rule also states that if the BIA decides to release the detainee, that decision will be stayed automatically for five days. If during those five days the INS commissioner asks the Attorney General to review the custody decision, the stay will remain in effect until the Attorney General makes his decision.

Concerns:

- This new rule is unnecessary in those cases involving individuals charged with offenses relating to national security or terrorism. These individuals are already subject to mandatory decision and therefore cannot be released, so the stay provisions would not apply to their cases in any event.
- The new rule is excessively broad in that it could cover any detainee regardless of the offense for which he is being deported. Individuals who committed minor immigration violations could in effect be subject to continued detention if INS decides that they must be held. If the defendant in fact poses a threat to national security, she should be charged accordingly.
- The new rule threatens to make review of custody decisions meaningless. The rule enables INS to continue to hold an individual even if an immigration judge and the BIA rule that the INS custody decision is incorrect and that the detainee should be released.

6. MONITORING OF ATTORNEY CORRESPONDENCE [4]

Bureau of Prisons interim rule published and in effect since 10/30/01

The Justice Department has issued a new regulation that authorizes monitoring of communications between individuals in federal custody (including INS custody) and their attorneys. Under the rule, if there is "reasonable suspicion" that an inmate will use attorney communications to facilitate terrorist activity, the Attorney General can order the Bureau of Prisons to monitor or review these communications. The detainee must be notified of this monitoring in writing in advance. Monitoring would be conducted by special "privilege teams" unrelated to the terrorism investigation. The Justice Department may not use communications that would otherwise be protected by attorney-client privilege in investigations or prosecutions regarding the terrorist activity, and may not otherwise disclose the monitored information without approval of a federal judge. (Attorney-client privilege does not include communications in furtherance of illegal activity.)

Concerns:

- Monitoring of attorney communications could discourage detainees from sharing any information with their attorneys, and thus deny their right to effective counsel.
- Procedures now exist to enable law enforcement officers to monitor attorney communications; these procedures generally require that law enforcement officers ask a court to review the case and issue an order approving the monitoring. The new rule enables the Justice Department to undertake monitoring without any outside prior review of the case.
- This rule applies to any federal inmate, including US citizens.

7. SPECIAL REQUIREMENTS FOR ARAB AND MUSLIM VISA APPLICANTS

State Department procedural change October 2001, revealed November 2001

The State Department has issued a classified cable imposing 20-day mandatory hold on non-immigrant visa applications submitted by men age 18-45 from 26 countries in Africa, Middle East, central Asia. All such applications must be subjected to special security clearances. On August 7, 2002, US Ambassador to Jordan Edward Gnehm disclosed that visa applications by Jordanians age 16 to 46 must be sent to Washington for approval before the embassy in Amman can issue the visa.

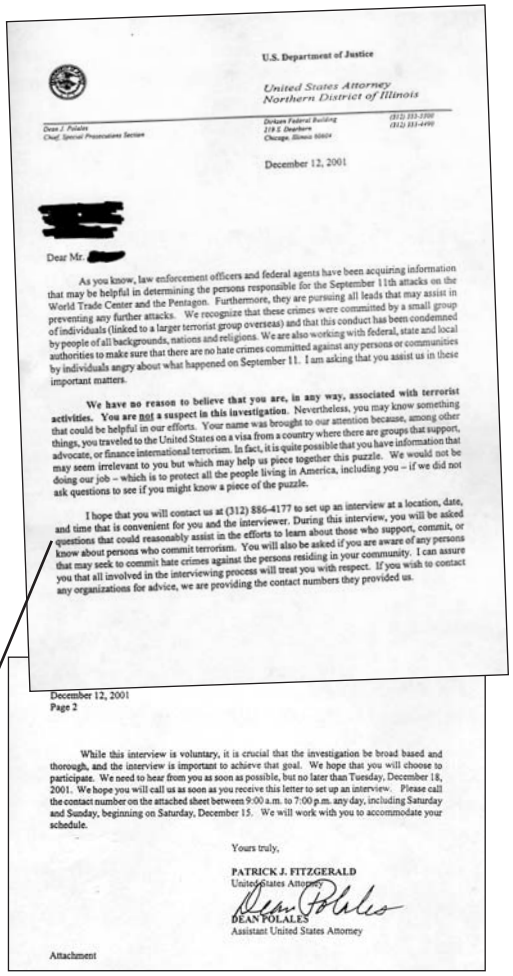
Concerns:

- This new policy sweeps very broadly, and covers thousands of individuals who have nothing to do with terrorism.
- The policy brands all young and middle-aged men from these countries as suspects, regardless of their actual circumstances. Many of these men may even be trying to flee persecution in their native countries.

8. INTERVIEWS OF NON-IMMIGRANTS FROM ARAB AND MUSLIM COUNTRIES

Justice Department initiatives announced 11/9/01 and 3/20/02

The Justice Department is seeking interviews with 5,000 individuals who came to the US from Muslim countries since January 1, 2000, on non-immigrant visas. The interview subjects are to be asked about any information they may have about terrorist activity. In some areas, FBI agents and other law enforcement officers are seeking out these individuals at their last known addresses. In other areas, including Chicago, invitation letters are being sent to the individuals. Some police departments (including Chicago and Portland, Oregon) have refused to participate in this initiative. A report on this initial round of interviews noted that only about half of the individuals asked for interviews complied, and that the interviews revealed no useful leads regarding terrorist activity. The interviews nevertheless revealed that some of the interviewees had violated their immigration status, which has led to referrals for deportation. On March 20, 2002, Attorney General Ashcroft announced a second round of interviews for another 3,000 individuals who entered the US more recently than those interviewed in the first round.



U.S. Department of Justice

United States Attorney
Northern District of Illinois

Dean J. Polales
Chief, Special Prosecutions Section

Dirksen Federal Building
219 S. Dearborn
Chicago, Illinois 60604

(312) 353-5300
(312) 353-4490

December 12, 2001

[redacted]

Dear Mr. [redacted]

As you know, law enforcement officers and federal agents have been acquiring information that may be helpful in determining the persons responsible for the September 11th attacks on the World Trade Center and the Pentagon. Furthermore, they are pursuing all leads that may assist in preventing any further attacks. We recognize that these crimes were committed by a small group of individuals (linked to a larger terrorist group overseas) and that this conduct has been condemned by people of all backgrounds, nations and religions. We are also working with federal, state and local authorities to make sure that there are no hate crimes committed against any persons or communities by individuals angry about what happened on September 11. I am asking that you assist us in these important matters.

We have no reason to believe that you are, in any way, associated with terrorist activities. You are not a suspect in this investigation. Nevertheless, you may know something that could be helpful in our efforts. Your name was brought to our attention because, among other things, you traveled to the United States on a visa from a country where there are groups that support, advocate, or finance international terrorism. In fact, it is quite possible that you have information that may seem irrelevant to you but which may help us piece together this puzzle. We would not be doing our job – which is to protect all the people living in America, including you – if we did not ask questions to see if you might know a piece of the puzzle.

I hope that you will contact us at (312) 886-4177 to set up an interview at a location, date, and time that is convenient for you and the interviewer. During this interview, you will be asked questions that could reasonably assist in the efforts to learn about those who support, commit, or know about persons who commit terrorism. You will also be asked if you are aware of any persons that may seek to commit hate crimes against the persons residing in your community. I can assure you that all involved in the interviewing process will treat you with respect. If you wish to contact any organizations for advice, we are providing the contact numbers they provided us.

December 12, 2001
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While this interview is voluntary, it is crucial that the investigation be broad based and thorough, and the interview is important to achieve that goal. We hope that you will choose to participate. We need to hear from you as soon as possible, but no later than Tuesday, December 18, 2001. We hope you will call us as soon as you receive this letter to set up an interview. Please call the contact number on the attached sheet between 9:00 a.m. to 7:00 p.m. any day, including Saturday and Sunday, beginning on Saturday, December 15. We will work with you to accommodate your schedule.

Yours truly,

PATRICK J. FITZGERALD
United States Attorney

DEAN POLALES
Assistant United States Attorney

Attachment

Concerns:

- The initiative blatantly targets one group as suspected of having knowledge of terrorism, and raises concerns about racial and ethnic profiling.
- The uncertainty about how voluntary the interviews are has created fear in Muslim communities that law enforcement officers will try to locate and detain or otherwise intimidate individuals who do not respond.

"During this interview, you will be asked questions that could reasonably assist in the efforts to learn about those who support, commit, or know about persons who commit terrorism..."

9. AUTHORIZATION OF MILITARY TRIBUNALS [5]

Executive order signed by President Bush 11/13/01

Under this order, non-citizens who are suspected of involvement in international terrorism (including membership in al-Qaeda) and those who knowingly harbor such individuals may be tried in military tribunals as opposed to civilian courts. Such tribunals would consist of military personnel who would be triers of both law and fact (that is, they would decide what the correct law should be as well as defendant's guilt or innocence under that law). The rules of evidence for such tribunals would be different from those in civilian courts, with greater consideration for release of information that involves national security but also greater flexibility to admit evidence that would otherwise be limited (such as hearsay). The tribunals may convict and impose sentences only upon a 2/3 vote. Defense Secretary Donald Rumsfeld issued an order on March 21, 2002, further detailing the procedures to be used in these tribunals.

Concerns:

- Military tribunals may be unconstitutional if they are established without specific Congressional authorization

and if the defendant can be tried in civilian court.

- Military tribunals are unnecessary; the prosecutions for the 1993 World Trade Center bombing and other terrorist attacks show that such offenses can be prosecuted effectively and successfully in civilian courts.
- Restrictions on disclosure of evidence based on national security could limit the defendant's ability to respond to the charges against him and thus deny him the opportunity for a fair trial. Review of cases involving "secret evidence" has revealed that such evidence has been at best questionable.
- The looser rules of evidence could lead to abuses, such as coerced confessions and admission of unlawfully obtained evidence, as well as introduction of information that has limited value in determining the facts but that could prejudice the court against the defendant.
- It is not clear what standard of proof is needed for a conviction. If a defendant can be convicted with 1/3 of the tribunal voting to acquit, has the defendant really been found guilty "beyond a reasonable doubt"?
- Use of military tribunals is hypocritical in light of US protests against judicial abuses in other countries, such as the trials of Lori Berenson (a US citizen) in Peru or Ken Saro-wiwa in Nigeria.

10. AVIATION SECURITY ACT/ OPERATION TARMAC [6]

Aviation Security Act enacted on 11/19/01

The new aviation security law requires that all baggage screeners be US citizens. Approximately 8,000 individuals who hold these jobs (out of 28,000) are noncitizens, including some undocumented individuals. In a related development, INS and the FBI, as well as other federal and some local law enforcement agencies, have conducted security sweeps at airports in an initiative called Operation Tarmac. On December 11, 69 airport workers in Salt Lake City (including 63 noncitizens) were charged with providing false information to get security clearances. Security sweeps have also occurred at no fewer than a dozen other airports, including those in Seattle, Las Vegas, Atlanta, Boston, San Diego, Washington, DC, and most recently Los Angeles.

Concerns:

- While the requirement for US citizenship applies generally to federal government employment, the need for such a requirement for security screeners is questionable. Military personnel need not be US citizens, and in some cases National Guard troops who are not citizens have been supervising screeners who now must be citizens.
- The requirement hits hard many immigrant families who work in service industries that have already seen declining business in the aftermath of September 11.
- The security sweeps conducted under Operation Tarmac have caused many immigrants to lose their jobs even if they have no contact with planes or baggage. The dozens of immigrants caught in the sweeps mostly work as janitorial staff and food-service workers. In at least one case, INS took into custody an undocumented immigrant who worked for a contractor that had a worksite an at airport, even though the immigrant herself did not work at the airport.
- The sweeps have also affected US-born workers who gave false or incomplete information on their job applications, including some workers who failed to disclose past minor criminal convictions.

11. DELAY AND SHORTFALL IN REFUGEE ADMISSIONS

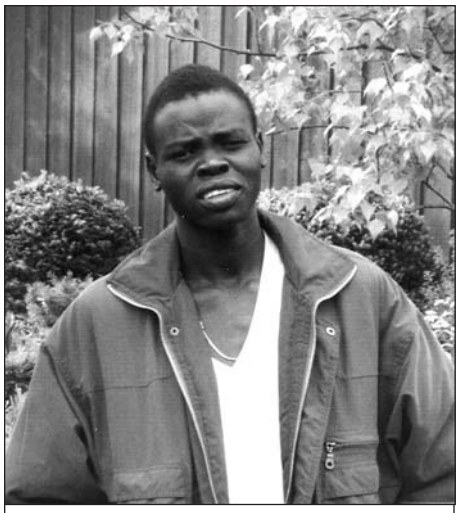
Presidential Determination issued 11/21/01

The State Department suspended refugee admissions immediately after the September 11 attacks. Admissions did not resume until President Bush issued the refugee admissions determination for Fiscal Year 2002 two months into the fiscal year. Under the determination, the US will admit up to 70,000 through September 30, 2002. The actual flow of admissions, however, has been slow, due

"Protecting refugees is part of America's proud tradition as a beacon of hope to those fleeing persecution and oppression.

"However, unneccessary bureaucratic delays and infighting between federal agencies are derailing this important piece of our country's heritage."

--Dori Dinsmore, Director
World Relief Chicago



Destruction of the Refugee Resettlement Program

Joseph Alier Paul arrived in the United States in May 2001. He is one of the lucky ones.

Joseph is one of the "Sudanese Lost Boys." At the age of 6, Joseph was separated from his family when the growing civil war in his country forced him to flee.

Joseph spent 9 years in refugee camps in Ethiopia and Kenya. He might not be alive today if not for the US refugee program.

"It is important that the United States helps refugees," said Joseph. "I am very happy to be here. If I think about the other brothers who are still there, it makes me sad."

in large part to greater scrutiny of the refugees and to diversion of resettlement staff to other duties relating to security. As of August 2002, only about 20,000 refugees had been admitted during the fiscal year. Meanwhile, refugee resettlement organizations (most of which are faith-based organizations), which receive federal funding based on current refugee admissions, are losing funds that they need to provide services to refugees who have already entered the US and continue to need assistance in adjusting to life in the US.

12. "RESPONSIBLE COOPERATORS" PROGRAM
Justice Department initiative announced 11/29/01

Attorney General Ashcroft has ordered federal law enforcement officials to use S non-immigrant visas and other immigration relief as rewards for individuals who provide information regarding terrorist activity. There are 50 S-5 visas available each year for persons with information about criminal organizations, and 200 S-6 visas for those with information about terrorist operations. Ashcroft also encouraged use of parole (allowing out-of-status individuals to be enter and remain in the US) and deferred action (postponement of deportation proceedings).

Concerns:

- S visas are limited, so individuals who provide information might still not get an S visa. Individuals who inform in hopes of getting an S visa may still end up being deported, at the very least for being present in the US without status. This risk becomes especially high when the informant may himself have been involved with a terrorist group or in terrorist activity.

13. TARGETING OF MIDDLE EASTERN MALES WITH DEPORTATION ORDERS
INS initiative announced 1/8/02

INS has announced its plans to pursue approximately 6,000 non-citizen males from unnamed Middle Eastern countries with active al-Qaeda cells who had been ordered deported but who never left the US. There are a total of approximately 314,000 "absconders" (aliens ordered deported but who never left), most of whom are from Latin America. The US deports about 180,000 people per year; grants voluntary departure to another 70-80,000 per year; and "apprehends" and turns back another 1.4 million individuals who attempt to cross the border. On May 29, 2002, the Justice Department reported that 585 absconders had been caught.

Concerns:

- This INS initiative targets individuals from one particular region, regardless of the offense for which they were actually ordered deported or of whether these individuals in fact have been involved in terrorism. Like the interview initiative and the detention of individuals since September 11, this initiative, by focusing on one group of individuals and presuming them all to be involved in terrorism, raises concerns about racial and ethnic profiling.

14. RESTRICTIONS ON DRIVER'S LICENSES [7]

Proposed legislation in various states; Social Security Administration policy change issued 2/25/02

The ability of some of the perpetrators of the September 11 attacks to get driver's licenses prompted many states to consider proposals to limit who can get licenses. According to the National Immigration Law Center, 46 state bills to restrict access to licenses were introduced throughout the US. Of these, six passed, in Colorado, Florida, Kentucky, New Jersey, Ohio, and Virginia. Colorado codified an existing requirement that applicants for a license must be lawfully present in the country; Florida, Kentucky, New Jersey, and Ohio tied the expiration of an immigrant's license to his or her immigration document; and Virginia required noncitizens to submit fingerprints with their license application, and authorized the state police and driver's license agency to share information with federal agencies. Ohio also authorized the registrar to implement "security features" on noncitizens' licenses. Efforts in other states to limit access to licenses were defeated, and two states, New Mexico and South Carolina, even passed bills to broaden eligibility. Meanwhile, the Social Security Administration's decision (as of March 1, 2002) to no longer issue Social Security Numbers for purposes of getting a driver's license has limited the ability of many individuals to get licenses in those states that require SSNs to get licenses (including Illinois). This policy change has affected not only undocumented immigrants, but also many lawful nonimmigrants who are not authorized to work, such as exchange students and dependents of temporary workers.

Concerns:

- These new policies and laws deny the ability to drive to many individuals with legitimate needs to drive for work, school, and family purposes. The ability to drive has no reasonable link to immigration status, and should not be tied to it.

15. CLOSER SCRUTINY OF SOCIAL SECURITY NUMBERS

Social Security Administration procedural change early 2002

In early 2002, the Social Security Administration began sending no-match letters to all employers who employed workers whose names and Social Security Numbers do not match. While SSA had been issuing these letters since 1994, until recently it had sent a letter to an employer only when 10% of its employees show up as no-matches. SSA changed this

Workers Raul and Juan (pseudonyms)

Scapegoating Hardworking Immigrants

"Raul and I both work for a garment factory that makes Guess Jeans in Chicago, IL. We both arrived from Guerrero, Mexico about eight years ago, I was 25 and Raul was 15 years old.

"While it was hard to leave our families in Guerrero, we needed to be able to support them so we came to Chicago to work. We both work 40 hours a week earning $7.00 per hour, and we receive no benefits—not even health insurance. We have not received a raise since we started working six years ago.

"In early June 2002, the owner where we work called us and fourteen other employees into his office and told us that he had received letters from the Social Security Administration stating that our social security numbers did not match the information in their database, therefore we were fired. We did not know that it was illegal to be fired because of these letters, so we did not contact our union representative.

"Luckily, a week later I ran into the former president of our union [UFCW local 1546]. He asked about work and I told him that we had been fired. He immediately called the union and they were able to get our jobs back the next day. We were extremely fortunate to be able to return to work, because our families in the US and Mexico depend greatly on our salary. We are happy that the union was able to save our jobs, yet we also know that many workers, who have lived and worked here for more years than us, have also lost their jobs for the same reason. Now they and their families are suffering."

policy in early 2002 so that it is now sending letters to employers who have even one no-match. This change has caused the number of no-match letters issued by SSA to increase from 110,000 (one in every 60 employers) in 2001 to 800,000 (one in every 8 employers) in 2002. SSA has been sending no-match letters with the intention of getting employers to fix erroneous name and number information. If SSA cannot match a Social Security withholding payment to a worker's account, it must deposit the payments into a "suspense account" that is costly to maintain. SSA has not expressly stated that the broader sweep of no-match letters is tied to anti-terrorism efforts. Many government officials and commentators, however, have expressed concern over the possible use of Social Security Numbers by would-be terrorists. Whatever the intent of SSA, the main effect of the no-match letters has been confusion and panic among many employers and workers, with thousands of workers losing their jobs as a result.

16. JUSTICE DEPARTMENT LEGAL OPINION ON POLICE AUTHORITY TO ENFORCE IMMIGRATION LAWS

reported 4/4/02, not yet published and not yet in effect

The Office of Legal Counsel of the US Department of Justice has reportedly prepared a legal opinion that states that local and state law enforcement officers have the "inherent authority" to enforce immigration laws. This legal opinion would reverse longstanding Justice Department policy. The immigration statute already provides that local law enforcement agencies may enter into memoranda of understanding (MOU) with INS regarding cooperation on immigration enforcement; however, until recently, no community has chosen to pursue such an arrangement. Several cities, including Chicago, San Francisco, and New York, have official policies that prohibit municipal agencies from asking about immigration status and pursuing immigration violations.

Since the initial press accounts of the opinion, and the overwhelmingly negative reaction that followed, the Justice Department appears to have retreated from its position recognizing broad inherent authority. In announcing its proposal for special registration of certain non-immigrants on June 5, 2002 (*see item 23*), the Justice Department stated that local police would be authorized to arrest individuals who did not comply with the registration requirements whose names were added to the National Crime Information Center database (NCIC). In a June 24, 2002, letter to the Migration Policy Institute, White House Counsel Alberto Gonzalez stated that the Justice Department recognized the authority of police to arrest and detain immigration violators whose names have been placed in the NCIC. On July 24, 2002, INS issued a final rule implementing part of the 1996 immigration law that authorized the agency to deputize local law enforcement agencies to engage in immigration enforcement during a "mass influx of aliens," subject to stringent training and reporting requirements. This final rule would be unnecessary if local law enforcement agencies already had the authority to enforcement immigration laws. The actual position of the Justice Department or the Bush Administration is therefore unclear.

Concerns:

- Unlike federal immigration officials, local police departments do not have training in or understanding of immigration law. Without such specialized knowledge, police officers cannot be expected to handle immigration matters effectively or fairly.
- Allowing local police to enforce immigration laws opens up grave possibilities for racial profiling and harassment of immigrants and minorities. Even without the DOJ opinion, many communities with growing immigrant communities have witnessed arbitrary police stops of immigrants on the pretext of minor traffic violations, as well as other reporting by police to INS. The legal opinion would essentially tell local police that such practices should continue.
- Immigrants will feel discouraged from reporting crimes (including incidents of domestic violence) and cooperating with law enforcement authorities if they believe that the police can question their immigration status and report them to INS. Such sentiment would thwart effective law enforcement and undermine the trust that many police departments have attempted to build with immigrant communities.

17. RESTRICTIONS ON VISITOR AND STUDENT VISAS [8]

INS proposed rules published 4/12/02, not yet in effect

INS has proposed significant changes to student and visitor visas. Under the proposed visitor visa regulations, visas would be granted only for the amount of time "needed to accomplish the purpose of the trip." INS would generally consider such an amount of time to be only 30 days (in contrast to the current usual period of six months). The maximum length of a visitor visa would be six months, as opposed to the current maximum of one year. The regulation would also restrict the ability of visa holders to get extensions, and would require a showing of an "unexpected circumstance" that prevents departure when the visa expires, or "compelling humanitarian reasons" to support the request. Extensions would be limited to six months (again as opposed to one year currently). In addition, anyone entering the US on a visitor visa who wishes to change her status to a student visa category (F-1 or M-1) must have stated her intention to study in the US when they first entered. Another new rule requires that holders of visitor visas who seek student visa status must wait until their change of status is approved before they can start their studies, as opposed to being able to begin when they file their change application.

Concerns:

- The shorter allotted time for visitor visas could lead to an increased number of requests for extensions and thus add to INS' already large load of applications.
- Visitors and other nonimmigrants who wish to study in the US will face additional hurdles for processing their visa paperwork, including possibly needing to return to their home country because they did not know or state their intention to study in the US when they enter.
- Industries that rely on tourism have expressed concern about the impact that shorter visitor stays will have on their business and their employees, amny of whom are low-wage immigrant workers.

18. MANDATORY SURRENDER OF INDIVIDUALS WITH FINAL REMOVAL ORDERS

INS proposed rule published 5/9/02, not yet in effect

INS has proposed a rule that affects individuals who are subject to final removal orders. Under the proposed rule, such individuals must turn themselves in to INS within 30 days after the removal order becomes final. If they do not surrender, they will become ineligible for any relief from the order or other benefit (such as asylum or permanent resident status) while they remain in the US or within ten years after they leave. After the rule takes effect, individuals will be given notice of their duty to surrender during each phase of their immigration proceedings. This rule builds on the INS initiative of January 2002 to track down "absconders" (*see item 13*).

19. ENHANCED BORDER SECURITY AND VISA ENTRY REFORM ACT [9]

Federal statute enacted on 5/14/02

Members of Congress from both parties as well as immigration advocates developed this legislation to bolster the efforts of federal agencies in identifying and intercepting potential terrorist threats. This new law enhances the sharing of information among these agencies, and creates several layers of security to screen out individuals entering and leaving the US. The specific provisions include the following:

- increased funding for hiring and training INS inspectors and investigators and State Department consular staff, and specific funding for improved border security technology
- integration of all INS databases and development of plans for sharing information between federal law enforcement agencies and INS and the State Department;
- creation of an integrated entry-exit data system;
- development of machine-readable, tamper-resistant entry and exit documents;
- restrictions on nonimmigrant visas for individuals from countries identified as state sponsors of terrorism;
- enhanced tracking of stolen passports;
- study of the feasibility of a North American National Security Program that would better coordinate security efforts among the US, Canada, and Mexico, including pre-clearance and pre-inspection of individuals traveling to these countries;
- a new requirement that all airlines transmit to the US the list of passengers who board US-bound planes;

- stricter monitoring of foreign students.

Note: Unlike the other government actions listed in this report, this law was developed in coordination with immigrant advocates and legislators so as not to unfairly target immigrants.

20. SECURITY CHECKS FOR ALL INS PETITIONS AND APPLICATIONS

INS procedural change announced 5/16/02

INS is now running the names of all applicants for immigration benefits (such as green cards, work permits, travel documents, and naturalization) through the InterBorder Intelligence System (IBIS), a database compiling information from 27 different law enforcement organizations. INS is conducting these checks not just on the applicants, but on all individuals named in the applications (including US citizens). INS has stated that these additional checks should not further delay its processing of any applications; however, processing of INS applications has slowed since spring 2002.

21. TRACKING OF STUDENT VISA HOLDERS[10]

INS proposed rule published 5/16/02, not yet in effect

INS is proposing implementation of the Student and Exchange Visitor Information System (SEVIS), a new internet-based system for processing student visa applications and monitoring student visa holders. SEVIS replaces the current process, which is based on submission and handling of paper forms. Schools would need to submit to SEVIS information about the student's name and address (including updating any changes), enrollment or failure to enroll, changes in course load below full-time enrollment (including dropping out), disciplinary infractions, and other information relevant to the student's status. Participating in SEVIS will become mandatory on January 30, 2003. Tracking of foreign students is required by section 641(c) of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) and the USA PATRIOT Act.

22. PROTECTIVE ORDERS IN IMMIGRATION PROCEEDINGS [11]

Justice Department interim rule published and in effect since 5/28/02

The Justice Department has set up a procedure for immigration judges to issue protective orders regarding information that INS believes is sensitive to national security or law enforcement. Under the procedure, INS may submit such information to the immigration court under seal and request that the court issue an order limiting the respondent's (and her attorney's or representative's) ability to disclose this information. The judge may issue the order if INS can show a "substantial likelihood" that disclosure of the information would harm national security or law enforcement interests. Proceedings involving information subject to a protective order shall be closed to the public. This proposal raises the same concerns as the memorandum authorizing secret immigration proceedings that Chief Immigration Judge Michael Creppy issued on September 21, 2002 (*see item 3*).

23. REGISTRATION REQUIREMENTS FOR NONIMMIGRANTS FROM ARAB AND MUSLIM COUNTRIES [12]

INS rule announced 6/5/02, published 6/13/02, made final 8/12/02, to take effect 9/11/02

The Justice Department will soon require many individuals entering the US to submit to fingerprinting upon entry and to register with INS. This rule covers anyone arriving in the US on a nonimmigrant visa from any country identified as a state sponsor of terrorism (currently, Iran, Iraq, Libya, Sudan, and Syria), as well as any nonimmigrant who meets or may meet certain criteria that warrant monitoring in the interest of national security. Any individuals subject to this proposal must submit to fingerprinting at their port of entry, and must register with INS 30 days after their arrival and then annually after that if they remain in the US. They must also notify INS when they depart. Any individuals who register and then overstay their visas or fail to comply with these rules will have their names added to the National Crime Information Center database, and local police will be authorized to apprehend them. The Justice Department proceeded with this rule very quickly: After receiving

comments during a 30-day comment period ending July 15, 2002, the Justice Department issued a final version (with only minor changes) on August 12, 2002, to take effect on September 11, 2002.

Concerns:

- Like many of the other initiatives undertaken by the Justice Department, this initiative specifically targets individuals from Arab and Muslim countries, and paints all such individuals with a broad brush of suspicion.
- Fingerprinting and registration will do little to enhance law enforcement efforts to identify suspected terrorists. Many of the September 11 perpetrators came from countries that are not covered by this initiative (such as Saudi Arabia), as have other individuals linked to al-Qaeda (which includes at least one US citizen).
- The Justice Department never adequately explained why individuals who draw suspicion should not simply be denied entry to the US, rather than being monitored after they enter.
- The initiative incorporates the Justice Department's draft opinion that would recognize the authority of local police departments to enforce immigration law. Although the Justice Department is asking local police to use this authority only in cases involving individuals subject to the proposed rule, the fact that the opinion is cited at all raises concerns about the other circumstances in which it can be used.

24. ADDRESS CHANGE NOTIFICATION [13]

INS proposed rule announced 7/19/02, published 7/26/02, not yet in effect

The Justice Department announced its intention to resume enforcement of section 265(a) of the Immigration and Nationality Act, which requires all noncitizens to register changes of address with the INS within 10 days of moving. INS is proposing to implement this provision by revising most of its benefit applications to include language stating that when an applicant signs the form, she is being put on notice that she must report address changes to INS. This language will also specify that if the applicant fails to provide an address update, and INS later tries to deport her, the applicant can still be ordered deported even if she does not show up in court because she never got the notice to appear. While this proposal is not directly related to anti-terrorism efforts, the DOJ announcement has sown confusion among immigrant communities, and the proposal itself will make it easier for INS to pursue deportation cases when an immigrant cannot be located, and in effect adds another ground that INS can use to start deportation proceedings.

Concerns:

- While the INS proposal is limited to individuals who would be completing the revised forms, it is not clear whether INS would pursue other noncitizens who have not reported address changes and use their failure as the basis for deportation. In particular, there is nothing to prevent INS from selecting certain groups (such as Arabs and Muslims) for enforcement. Indeed, INS tried to deport Thar Abdeljaber, a Palestinian immigrant living in North Carolina, on the basis of his failure to report his address change; the immigration judge hearing the case dismissed the charge on August 5, 2002.
- Would INS go after individuals who fail to report an address change and then submit a new benefit application? For instance, someone can file an application for her green card (updated with the new language), get approved, move without notifying INS, and then apply for citizenship and list her past address on her application. Will INS try to deport this person because she failed to report her address change, especially now that the agency knows where she is?
- Also, would the address change information be properly recorded? The AR-11 address change forms are sent to INS in Washington DC, not to any of the service centers or district offices or to the National Customer Service Center or National Records Center. There is no assurance that INS will put the address changes reported on the AR-11 into the same database as the address information on the benefit applications, or otherwise match the two sets of information. More basically, will INS be able to handle the additional load of paperwork? In August INS conceded that it had collected 200,000 address change forms at the National Records Center that it has not yet filed. If a noncitizen files an AR-11 but INS never matches her address information or never even processes it, what good will it do to file the AR-11?

Endnotes

[1] The rule is available on the Federal Register website at
http://frwebgate4.access.gpo.gov/cgibin/waisgate.cgi?WAISdocID=9551545273+1+0+0&WAISction=retrieve

[2] The text of USA-PATRIOT Act is on the THOMAS website at http://thomas.loc.gov/cgibin/query/z?c107:H.R.3162.ENR:

The American Immigration Lawyers Association has posted a summary of the immigration provisions of USA-PATRIOT on its website at www.aila.org/newsroom/21le1026.html

The Center for Constitutional Rights has posted an analysis of USA-PATRIOT on its website at
http://www.ccr-ny.org/whatsnew/usa_patriot_act.asp.

[3] The rule is available on the Federal Register website at
http://frwebgate3.access.gpo.gov/cgibin/waisgate.cgi?WAISdocID=95674828092+0+0+0&WAISaction=retrieve

[4] The rule is available on the Federal Register website at
http://frwebgate3.access.gpo.gov/cgibin/waisgate.cgi?WAISdocID=95674828092+2+0+0&WAISaction=retrieve

[5] President Bush's executive order is available on the White House website at
www.whitehouse.gov/news/releases/2001/11/20011113-27.html

[6] The text of the Aviation Security Act is available on the THOMAS website at
http://thomas.loc.gov/cgi-bin/query/z?c107:S.1447.ENR:

[7] A summary of the status of state bills regarding driver's licenses is available on the NILC website at
http://www.nilc.org/immspbs/DLs/DL003.htm

The policy statement issued by the Social Security Administration regarding issuing numbers for licensing purposes is available on the SSA website at http://policy.ssa.gov/poms.nsf/lnx/0100203510

[8] The proposal regarding visitor visas (including stating one's intention to study) is available on the Federal Register website at http://frwebgate3.access.gpo.gov/cgibin/waisgate.cgi?WAISdocID=44499230059+2+0+0&WAISaction=retrieve

The rule regarding student visas is available on the Federal Register website at
http://frwebgate3.access.gpo.gov/cgibin/waisgate.cgi?WAISdocID=44499230059+1+0+0&WAISaction=retrieve

[9] The text of the Enhanced Border Security And Visa Entry Reform Act is available on the THOMAS website at
http://thomas.loc.gov/cgi-bin/query/z?c107:H.R.3525.ENR:

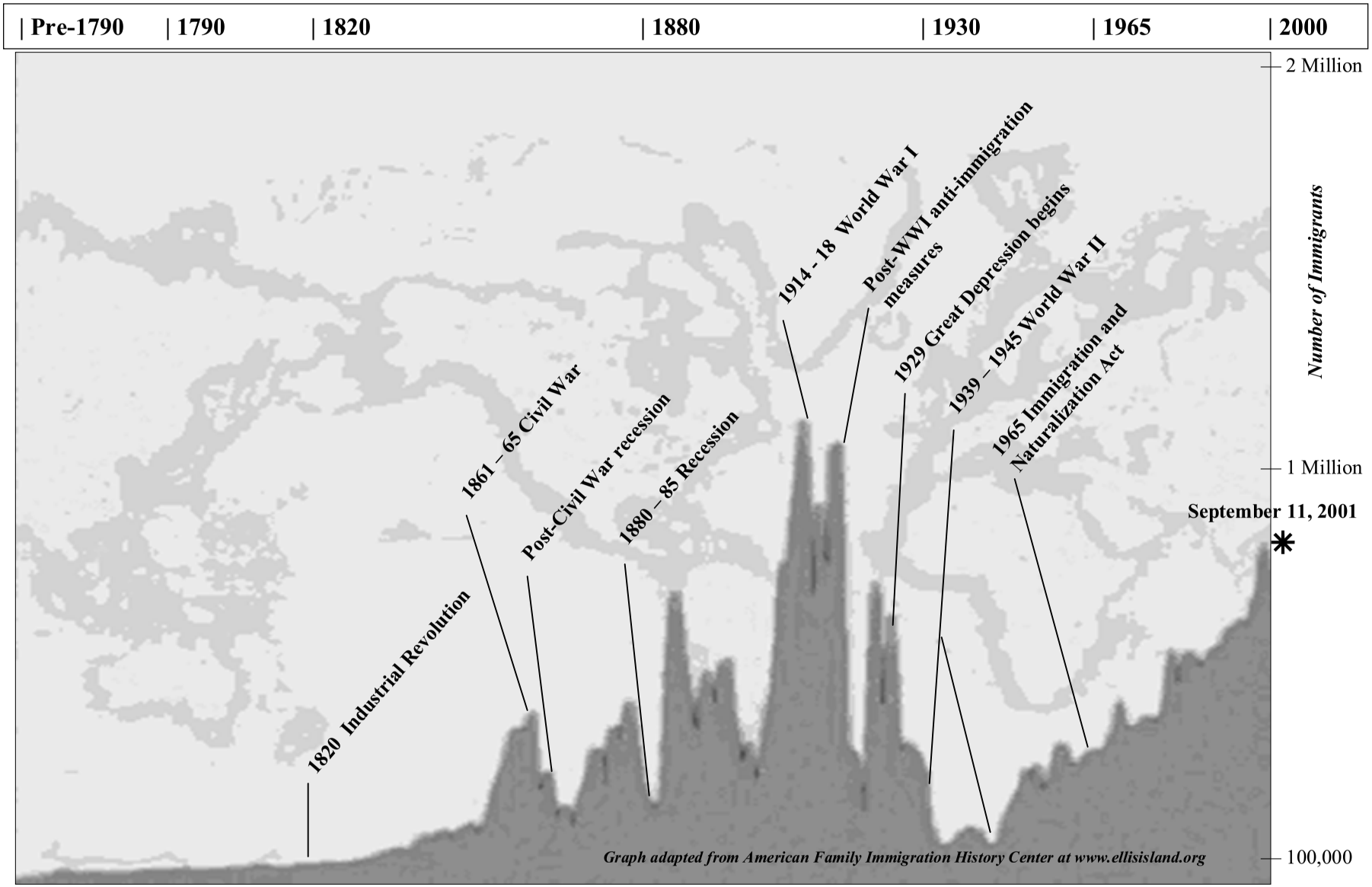
[10] The proposal is available on the Federal Register website at
http://frwebgate3.access.gpo.gov/cgibin/waisgate.cgi?WAISdocID=44415221432+1+0+0&WAISaction=retrieve

[11] The proposal is available on the Federal Register website at
http://frwebgate3.access.gpo.gov/cgibin/waisgate.cgi?WAISdocID=4448085642+0+0+0&WAISaction=retrieve

[12] The final rule is available on the Federal Register website at
http://frwebgate4.access.gpo.gov/cgibin/waisgate.cgi?WAISdocID=44339312315+0+0+0&WAISaction=retrieve

[13] The proposal is available on the Federal Register website at
http://frwebgate4.access.gpo.gov/cgibin/waisgate.cgi?WAISdocID=44358310097+0+0+0&WAISaction=retrieve

Forces behind immigration & their impact on the immigrant experience: What's Next?



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