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Louise Cainkar

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# Post 9/11 Domestic Policies Affecting U. S. Arabs and Muslims: A Brief Review

LOUISE CAINKAR

U. S. government “anti-terrorism” policies and initiatives launched since the September 11 attacks have had a profoundly negative impact on Arabs and Muslims in the U. S., largely because they have targeted members of these communities indiscriminately.<sup>1</sup> Of the roughly twenty policies and initiatives implemented in the first twelve months after 9/11, fifteen explicitly targeted Arabs and Muslims.<sup>2</sup> It is important to note that these policies are not part of the USA PATRIOT Act; they are largely creations of the executive branch, a few of which are summarized here.

In late October 2001, the State Department issued a classified cable imposing a twenty-day mandatory hold on all non-immigrant visa applications submitted by men aged eighteen to forty-five from twenty-six countries, most of them Arab or Muslim. All such applicants were to be subjected to special security clearances. Even stricter procedures were put in place in certain countries. For example, beginning in August 2002, the U. S. Ambassador to Jordan announced that visa applications were no longer being approved at the American Consulate in Amman. All visa applications were sent to Washington D.C. for approval and no time limit was imposed on the response. The ambassador stressed that Jordan was not singled out for this process; other Arab countries had similar rules.<sup>3</sup> From across the Arab and Muslim world, thousands of students were unable to continue studies in the U. S., professors could not return to teach, jobs and fellowships were lost, and medical treatment and chemotherapy in the U. S. were discontinued.

In November 2001, the Justice Department announced its intention to interview some 5,000 individuals who had come to the U. S. on non-immigrant visas from Arab and Muslim countries since 1 January 2000. Later, Attorney General John Ashcroft announced a second round of interviews with an additional 3,000 persons. The subject’s knowledge of terrorist activity was the announced topic of these interviews. The Jus-

tice Department asked local police departments to participate in interviewing the Arab residents of their towns, placing them in the position of monitoring persons they are supposed to protect.

In January 2002, the Immigration and Naturalization Service (INS; now part of the Department of Homeland Security) launched an initiative to track down and deport 6,000 non-citizen males from (unnamed) Middle Eastern countries who had been ordered deported by an immigration judge but had never left the U. S. There are an estimated 314,000 so-called “absconders” in the U. S.—the vast majority from Latin America. Although less than two per cent are Middle Eastern, they were the government’s target. By May, the Justice Department reported that 585 Middle Eastern absconders had been caught. In a meeting with members of Chicago’s Arab community that this writer attended, government officials claimed that they were not engaging in racial profiling, since other communities would be approached next; they weren’t.

On 14 May 2002, Congress enacted the Enhanced Border Security and Visa Entry Reform Act. Among the many provisions of this act, which includes calls for the integration of INS databases, the development of machine-readable visas, the requirement that all airlines submit to the U. S. the list of passengers who have boarded a plane bound for the U. S., and stricter monitoring of foreign students, is a restriction on non-immigrant visas for individuals from countries identified by the U. S. as state sponsors of terrorism.

In late June 2002, the Department of Justice issued an internal memo to the INS and U. S. Customs requesting that they seek out and search all Yemenis, including American citizens, entering the U. S. As a result, Yemeni Americans were removed from planes and boarding lines, waiting hours for security clearances.

On 14 July 2002, the INS announced that it would begin enforcing section 265(a) of the Immigration and

Nationality Act, which requires all aliens to register changes of address within ten days of moving. Nothing has prevented the selective enforcement of this rule. Shortly after the announcement, a Palestinian legal immigrant stopped for driving four miles over the speed limit in North Carolina was detained for two months and finally charged with a misdemeanor for failing to report his address change. The INS sought his deportation. A local immigration judge ruled that he could not be deported for this infraction because he did not willfully break the law. [Endnote: reference for this anecdote?] I cannot find it without hours of searching.

### The Special Registration Program

On 11 September 2002, the Department of Justice, Immigration and Naturalization Service (INS) implemented the Special Registration program, which required that "certain non-immigrant aliens" (visitors) register with the U. S. immigration authorities, be fingerprinted and photographed, respond to questioning, and submit to routine reporting.<sup>4</sup> The Special Registration program was crafted by the office of Attorney General John Ashcroft. After stating for months that the program did not target certain groups because it would be expanded to all visiting aliens, the government phased out much of the program in May 2003. During the program's tenure, its scope was never expanded beyond males age sixteen and over from twenty-three Muslim-majority countries, plus heavily-Muslim Eritrea, and North Korea. Although at times government officials stated that the countries whose citizens and nationals were required to register were selected because of Al-Qaeda presence, countries with no proven Al-Qaeda presence were included, and countries with known Al-Qaeda presence, such as Germany and England, were excluded. In a 19 May press statement, the Department of Homeland Security, which took over immigration functions from the now-defunct INS, referred to Special Registration (using its NSEERS acronym) as a "pilot project focusing on a smaller segment of the nonimmigrant alien population deemed to be of risk to national security."<sup>5</sup> Implicit in this statement is a view that Muslims, or more specifically, non-U. S. born Muslims from Asia, the Middle East, and North Africa, were/are considered a security risk for the United States. This view has been at the foundation of several other Bush Administration programs, such as FBI Director Mueller's initiative, announced in late January 2003, to tie FBI field office goals for wire-tapping and undercover activities to the number of mosques in the field area.<sup>6</sup>

According to the Department of Homeland Security, 82,880 persons living in the U. S. had been "specially" registered by 1 June 2003 in domestic call-in registration.

Another 127,694 persons were initial registrants at their U. S. Port of Entry.<sup>7</sup> Of the domestic call-in registrants, 13,434 were placed in removal proceedings for visa violations, though *none* of them was charged with terrorism, terrorist affiliations, or otherwise suspected of terrorist affiliations. Of these, persons able to post bail and with pending applications for adjustment of status had the chance to make their case for staying during an administrative hearing, but thousands had departed within one year of the program's implementation; some were quickly removed on charter flights.

Prior to the implementation of special registration, more Arabs and Muslims (none accused of terrorist connections) had been removed from the United States subsequent to the 9/11 attacks than the number of foreign nationals deported for their political beliefs following the infamous 1919 Palmer Raids.<sup>8</sup> Arabs and Muslims who are "out of status" compose a highly select group, comprising less than one per cent of the estimated total of 3.2–3.6 million "out of status" and the eight million undocumented persons in the U. S. The magnitude of this selective immigration policy enforcement is without historic precedent in the United States.

Although the government ended the domestic "call-in" part of NSEERS (National Security Entry and Exit Registry System), the name given to the body of rules governing special registration, the program is still quite alive for the persons who registered, if still in the U. S., and for the unknown number who did not comply. In addition, family members of the 13,434 men and boys in the removal process will be affected by the program's outcomes, through separation or departure. Registrants allowed to stay in the U. S. must still comply with certain reporting requirements and Port of Entry exit registration. Willful non-compliers are subject to criminal charges, fines, and removal, and may not be able obtain immigration benefits in the future, even upon marriage to a U. S. citizen. Attorney General Ashcroft amended the Code of Federal Regulations (CFR) declaring willful failure to register and provide full and truthful disclosure of information a failure to maintain non-immigrant status, a deportable offense.<sup>9</sup> He also amended the CFR by declaring that failure to register upon departure from the U. S. is an unlawful activity, making one presumed to be inadmissible to the U. S. because one "can reasonably be seen as attempting to reenter for purpose of engaging in an unlawful activity."<sup>10</sup> He thus made non-compliance with special registration a bar to immigration, although only Congress has the right to establish such categories of inadmissibility. Special registration may also deny Arabs and Muslims the right to benefit from any future amnesty or legalization program.

An in-depth analysis of the special registration pro-

gram, its historical context, and its relationship to U. S. racial and "ideological threat" policies, is contained in an article by Louise Cainkar, "A Fervor for Muslims: Special Registration," *Journal of Islamic Law and Culture* 7:2(2003), pp 73-101. A shorter discussion is located in "Targeting Muslims, at Ashcroft's Discretion" *Middle East Report On-Line* (Washington DC: MERIP) 14 March 2003; available on-line at [www.merip.org/mero/mero031403.html](http://www.merip.org/mero/mero031403.html).

### Changes in Issuance of Visitors' Visa: First Year after 9/11

Table 1 indicates the number of persons from each of the designated Special Registration countries who were awarded visitors visas in FY 2002 (1 October 2001 and 30 September 2002) as compared to FY 2001 (1 October 2000 and 30 September 2001), organized by a special registration group. The data indicate an overall thirty-nine per cent drop for these countries in FY 2002, and sharp decreases for all special registration countries except Eritrea. (Korea was removed from the calculation because its numbers are so large as to distort overall results, and because North and South Korea are reported together.)

### Other Resources on post-9/11 U. S. Government Policies and their Impacts

In addition to the article by Sunaina Maira in this issue, data on post-9/11 impacts on Arab/Muslim communities in the U. S. can be found in Louise Cainkar's "The Impact of 9/11 on Muslims and Arabs in the United States," in *The Maze of Fear: Security & Migration After September 11<sup>th</sup>*, ed. John Tirman (New York: The New Press, 2004), pp. 215-239. *Middle East Report* devoted a special post-9/11 issue to the topic: *Arabs, Muslims and Race in America* (Washington DC: MERIP) 224 (Fall 2002); available on-line at <http://www.merip.org/mcr/mcr224/mcr224.html>. Also see Nadine Naber's "So Our History Doesn't Become Your Future: The Local and Global Politics of Coalition Building Post September 11th" in *Journal of Asian American Studies*, 5:3 (October 2002), and her forthcoming "The Rules of Forced Engagement: Engravements of Terrorism on Arab and Muslim Bodies," in *Bodies on the Line: Rethinking Political Conflict and Violence Through Gender and Sexuality*, eds. Frances Hasso and Paola Bacchetta (under press review).

A review of Post 9/11 policies in the context of the history of Arabs/Muslims in the United States may be found in Cainkar's article "No Longer Invisible: Arab and Muslim Exclusion After September 11" in the *Middle East Report* issue cited above. A report on thirty-five government policies justified by invoking national secu-

rity that target Arabs and Muslims in particular and immigrants in general, is *Losing Ground: The Loss of Freedom and Equality for America's Immigrants Since September 11<sup>th</sup>* by Fred Tsao and Rhoda Rae Gutierrez (Chicago: Illinois Coalition for Immigrant and Refugee Rights, 2003). David Cole's recent books *Enemy Aliens* (2003) and

and diverse communities within Australia, over their one hundred years of migration there has been a consistent level of prejudice directed at them. From this base of discrimination, the community has seen anti-Arab sentiment increase dramatically during times of crisis, such as during the 1990 Gulf War. However, 9/11 and the events that followed – especially the war on terror and the Bali bombings – are particularly significant within this history. September 11 heralded a discourse within Australia that legitimized the questioning of the compatibility of Arab and Muslim Australians with the Australian social context. Following 9/11, in addition to overt prejudice expressed in attacks and vilification, it appeared legitimate to question the loyalty of Arab-Australians, to ask whether they were a "Fifth Column" for *Al Qaeda*, and if Muslim women should be "allowed" the basic civil right of wearing the *chador*. Through their comments and framing of Arab-Australians, the media and politicians within Australia played a very large part in creating and exacerbating this destructive atmosphere. This is not to say that such racist discourses went unchallenged. There was considerable dissent within the general Australian population against the anti-Arab, anti-Muslim discourse. This opposition was reflected most prominently in the unprecedented protests within Australia against the treatment of refugees in Australia and the war in Iraq. However, 9/11 resulted in a level of prejudice towards Arab-Australians that the community is still struggling with today. Arab-Australians have responded to 9/11 in a number of ways. For some, the resulting attacks and vilification have made them question their place within the Australian nation. Many now feel less secure and less accepted. They feel the need to continually justify that they are not terrorists and that they are "loyal" to Australia. Other reactions by Arab-Australians have been to assert their right to a contrapuntal identity, and to focus on increasing understanding and combating prejudice. The backlash from 9/11 in Australia, however, has served to starkly demonstrate the ambiguous position of Arab-Australians within the "lucky country" of Australia.

TABLE 1:  
*Visitor Visas Approved-FY 2002 and FY 2001 and Per Cent Change*

Source: INS, Department of Justice

Rank # Visas FY 2002	Country	2001	2002	% Decrease	Rank % Decrease	Regis- try Group
9	Iran	20,268	12,284	39%	12	1
18	Iraq	3,071	1,837	40%	11	1
24	Libya	449	343	24%	19	1
17	Sudan	4,576	2,258	51%	7	1
11	Syria	14,399	8,529	41%	10	1
22	Afghanistan	1983	1,178	41%	10	2
13	Algeria	7,516	5,084	32%	16	2
16	Bahrain	4671	2,279	51%	7	2
20	Eritrea	1,590	1,574	1%	21	2
6	Lebanon	32,321	21,741	33%	15	2
4	Morocco	26,159	22,775	13%	20	2
15	Oman	3,963	2,312	42%	9	3
19	Qatar	3,769	1,826	52%	6	3
23	Somalia	1,003	429	57%	3	3
14	Tunisia	9,161	4,269	53%	5	3
12	U.A.E	17,247	6,090	65%	2	3
21	Yemen	2,875	1,304	55%	4	3
2	Pakistan	95,595	61,538	36%	14	4
5	Saudi Arabia	66,721	22,245	67%	1	4
8	Bangladesh	21,107	15,556	26%	18	5
3	Egypt	61,828	37,381	40%	11	5
1	Indonesia	96,961	68,478	29%	17	5
7	Jordan	33,548	21,043	37%	13	5
10	Kuwait	19,756	11,242	43%	8	5
	<b>Total</b>	<b>550,537</b>	<b>333,595</b>	<b>39%</b>		

North  
and

South Korea 841,863 802,552 5%