

## HATE CRIMES, DISCRIMINATION, AND HARASSMENT

According to the federal government, hate crimes against Muslims and people of Middle Eastern ethnicity in 2001 increased by 1,600 percent over the previous year. The FBI's Uniform Crime Reporting Program released its annual Hate Crimes Statistics report on November 25, 2002.<sup>1</sup> The report documents 481 hate crimes against Arabs and Muslims in the United States during 2001, a massive increase from the 28 cases reported in 2000.<sup>2</sup>

Reports from other groups, including the American Arab Anti-Discrimination Committee, the Council on American-Islamic Relations, and Human Rights Watch confirm the severity of the backlash suffered by Arabs and Muslims in the United States after September 11. Incidents included employment discrimination, airport profiling, verbal harassment, vandalism, physical assaults and at least three murders.<sup>3</sup>

The Department of Justice has brought federal criminal charges against a number of individuals in connection with hate crimes against Arab Americans, Muslim Americans, Sikh Americans, South-Asian Americans, and those perceived to be members of these communities. In addition, the Department's Civil Rights Division directs a National Origin Working Group which conducts outreach to affected communities and offers information about DOJ resources for victims of discrimination and abuse.

These are important initiatives. But the issues most likely to be raised by affected communities in outreach meetings across the country are not the actions of individual purveyors of hate, but rather official government policies that target immigrants and help to create a climate of discrimination which enables hate crimes.

The government recently disclosed a new intelligence program under which Iraqi-Americans and Iraqi citizens in the United States may be electronically monitored, recruited as informants, and could be arrested and detained without charge if government authorities believe the person may be planning domestic terrorist operations. The details of this program are classified, including whether probable cause must be demonstrated before authorization is granted to monitor an individual. What little public information exists about the program has come from press reports citing unnamed government sources.<sup>4</sup> Press reports indicate that the FBI is hoping to uncover people who may pose a

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<sup>1</sup> Federal Bureau of Investigation Uniform Crime Reporting Program, "Hate Crimes Statistics, 2001," available at <http://www.fbi.gov/ucr/01hate.pdf> (accessed December 2, 2002).

<sup>2</sup> Curt Anderson, "FBI reports jump in violence against Muslims," Associated Press, November 25, 2002.

<sup>3</sup> See Human Rights Watch, "We Are Not the Enemy: Hate Crimes against Arabs, Muslims, and those Perceived to be Arab or Muslim after September 11," November 2002, p. 17, available at <http://www.hrw.org/reports/2002/usahate> (accessed December 2, 2002). See also American Arab Anti-Discrimination Committee, "ADC Fact Sheet: The Condition of Arab Americans Post-September 11," March 27, 2002, available at [http://www.adc.org/terror\\_attack/9-11aftermath.PDF](http://www.adc.org/terror_attack/9-11aftermath.PDF) (accessed December 10, 2002).

<sup>4</sup> See David Johnston and Don Van Natta Jr., "Agencies Monitor Iraqis in the U.S. for Terror Threat" *New York Times*, November 17, 2002; Gary Fields and Marjoire Valbrun, "FBI Contacts Iraqi Nationals Who Are Living in the U.S.," *Wall Street Journal*, January 15, 2003.

threat to the United States or have violated immigration laws. In addition, the government hopes to identify people willing to support its campaign to oust Saddam Hussein from Iraq.<sup>5</sup> Whatever the motive, rumors about the program, combined with other, more official policies like the requirement for visiting Iraqis to be fingerprinted and photographed upon entry to the United States, have created a climate of fear and mistrust for Iraqis and Iraqi Americans living in the United States.

Of the many discriminatory and intrusive policies targeting immigrants that have come into force since September 11, the “National Security Entry-Exit Registration System” (NSEERS), commonly known as “Special Registration,” is arguably the one which has caused the most widespread concern within affected immigrant communities, primarily among Arabs and Muslims.<sup>6</sup> Under this program, men and boys over 16 years of age from 25 countries must report to the INS where they will be photographed, fingerprinted, and interviewed under oath.<sup>7</sup> Failure to comply with requirements of the program is a deportable offense.

The Special Registration program has two parts. The first part requires visitors from certain countries designated by the State Department to be fingerprinted, photographed and interviewed upon arrival in the United States. This registration happens at the airport or border. The second and more controversial part requires temporary visitors already in the United States to report to INS offices around the country for registration pursuant to “call-in” procedures designed by the Department of Justice.

The program has resulted in the detention of nearly 1,200 people and has sparked new fears in Muslim communities that they are being targeted by the Department of Justice.<sup>8</sup> In December 2002, the INS in Los Angeles detained approximately 400 men and boys from Iraq, Iran, Libya, Sudan and Syria, during the first phase of implementation of the “call-in” procedures.<sup>9</sup> After voluntarily appearing before the INS in compliance with the special registration program, many were detained on the grounds that their visas were not up to date—despite their having correctly filed applications for permanent residency that were pending due to INS backlogs.<sup>10</sup> Amnesty International

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<sup>5</sup> Curt Anderson, “FBI questions Iraqis in U.S.,” *Associated Press*, January 25, 2003.

<sup>6</sup> Congress authorized in 1996 the creation of an entry-exit system, as part of the “Illegal Immigration Reform and Immigrant Responsibility Act of 1996,” Immigration and Nationality Act, 110, 8 U.S.C. 1365a and the USA PATRIOT Act, 414. But the current registration program, as designed and implemented by the Justice Department, is dramatically flawed in carrying out this objective. Several members of Congress have objected to the manner in which their intent has been interpreted. *See, e.g.*, Letter to Attorney General John Ashcroft from U.S. Senator Russell D. Feingold, U.S. Senator Edward M. Kennedy and U.S. Representative John Conyers, Jr., December 23, 2002, available at [http://www.house.gov/judiciary\\_democrats/dojentryexitltr122302.pdf](http://www.house.gov/judiciary_democrats/dojentryexitltr122302.pdf) (accessed January 23, 2003).

<sup>7</sup> The 25 countries have been identified in four groups, each having a different deadline. For more information on the particular requirements, see the American Immigration Lawyers Association website at [www.aila.org](http://www.aila.org) or the INS official website, [www.ins.usdoj.gov](http://www.ins.usdoj.gov).

<sup>8</sup> “U.S. Detains Nearly 1,200 During Registry,” *Washington Post*, January 17, 2003.

<sup>9</sup> John M. Broder and Susan Sachs, “Men From Muslim Nations Swamp Immigration Office,” *New York Times*, December 17, 2002.

<sup>10</sup> Dan Eggen and Nurith C. Aizenman, “Registration Stirs Panic, Worry,” *Washington Post*, January 10, 2003.

reported harsh treatment of the detainees while in INS custody, including being placed in handcuffs and leg shackles and being hosed down with cold water. Detainees also reported being forced to sleep standing up because of overcrowding and being transferred to various facilities without a chance to call family members or obtain legal counsel.<sup>11</sup>

Many people have questioned the efficacy of the Special Registration program. The program creates a substantial new burden on government bureaucracy to accurately record and store data that is unlikely to contribute to combating terrorism. Juliette Kayyem, a terrorism expert at Harvard University, noted that

[t]he pure accumulation of massive amounts of data is not necessarily helpful, especially for an agency like the INS that already has problems keeping track of things. Basically, what this has become is an immigration sweep. The idea that this has anything to do with security, or is something the government can do to stop terrorism, is absurd.<sup>12</sup>

The logic behind the Special Registration program remains unclear and unconvincing. There seems little doubt that terrorists intent on harming Americans will not come forward to register their presence with the government. The majority of those who present themselves for registration are simply trying to comply with the law and maintain their status as legitimate tourists, visitors, businessmen, students and applicants for permanent residence. But the government has done such a poor job of publicizing the registration requirements that many subject to the program do not understand what they must do in order to comply.

Governments of countries allied with the United States in the “war on terrorism” whose nationals are included on the Special Registration list have objected to the registration policy. Government officials from Bangladesh and Pakistan have complained that it is offensive for partners in the global effort against terrorism to have their nationals treated as suspect.<sup>13</sup> The Pakistani Foreign Minister has requested an exemption for Pakistani residents in the United States from the registration policy.<sup>14</sup> The Indonesian government has advised its citizens to avoid travel to the United States, saying that the policy is arbitrary and confusing.<sup>15</sup>

Because the United States considers both nationalities of dual nationals in deciding who is subject to Special Registration, the Canadian Ministry of Foreign Affairs has issued a travel advisory, warning Canadian citizens born in countries on the Special Registration list to reconsider travel to the United States. Tensions in U.S.-Canada

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<sup>11</sup> Letter from Amnesty International to Attorney General John Ashcroft, dated January 10, 2003, available at <http://www.amnestyusa.org/news/2003/usa01102003-3.html> (accessed March 5, 2003).

<sup>12</sup> See supra, note 60.

<sup>13</sup> Barry James, “U.S. Plan to Monitor Muslims Meets With Widespread Protest,” *New York Times*, January 18, 2003.

<sup>14</sup> Colum Lynch, “Registration Amnesty for Pakistanis Sought,” *Washington Post*, January 22, 2003.

<sup>15</sup> Barry James, “U.S. Plan to Monitor Muslims Meets With Widespread Protest,” *New York Times*, January 18, 2003.

relations on this issue have eased since the U.S. State Department and the Canadian Ministry of Foreign Affairs began negotiating an exemption for citizens of Canada.<sup>16</sup>

In light of the problems created by the Special Registration program, and the lack of clear benefits, some members of Congress have requested that the Justice Department suspend the NSEERS program until Congress has a chance to review it and suggest alternatives.<sup>17</sup> In January, the Senate voted to prohibit funding for NSEERS, but the provision was stripped out of the bill in the House-Senate conference committee.<sup>18</sup>

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<sup>16</sup> See U.S. Department of State, Secretary of State Colin L. Powell, "Remarks with Canadian Minister of Foreign Affairs Bill Graham," November 14, 2002, available at <http://www.state.gov/secretary/rm/2002/15153.htm> (accessed March 7, 2002).

<sup>17</sup> Letter to Attorney General John Ashcroft from U.S. Senator Russell D. Feingold, U.S. Senator Edward M. Kennedy and U.S. Representative John Conyers, Jr., December 23, 2002, available at [http://www.house.gov/judiciary\\_democrats/dojentryexitltr122302.pdf](http://www.house.gov/judiciary_democrats/dojentryexitltr122302.pdf) (accessed January 23, 2003).

<sup>18</sup> Edward Walsh, "Senate Votes to Halt INS Registration Program," *Washington Post*, January 25, 2003.