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Targeting Muslims, at Ashcroft's Discretion

By Louise Cainkar

On September 11, 2002, the Immigration and Naturalization Service (INS), then part of the Department of Justice, began implementing a broad program of "special registration" for certain "non-immigrant aliens" resident in the United States to facilitate the "monitoring" of people so registered "in the interest of national security." The body of rules governing special registration is now referred to as the National Security Entry and Exit Registry System (NSEERS). Registration is mandatory. Non-compliance and lack of truthful disclosure upon registration are grounds for deportation, and Attorney General John Ashcroft declared that those failing to register upon exiting the US can be barred from subsequent re-entry.

Ashcroft and the INS have repeatedly assured audiences that changes in immigration procedures subsequent to the September 11 attacks are not based on racial or religious profiling. But in practice, special registration has been nothing short of a massive roundup of out-of-status and visiting Arabs and Asians from predominantly Muslim countries. While special registration is much larger in scope than the infamous INS workplace raids of late 2001, it has evoked far less public and institutional protest than those actions. Of the estimated 3.2 to 3.6 million persons in the US who are "out of status," and the 8 million undocumented, Arabs and Muslims constitute a very small proportion, yet they are the target of this initiative. The number of persons who will be "removed" from the US as a result of this program is unknown, but Ashcroft has already removed more Arabs and Muslims (who were neither terrorists nor criminals) from the US in the past year than the total number of foreign nationals deported in the infamous Palmer raids of 1919.

"This Notice Is for You"

Special registration requires that visitors from countries designated by Ashcroft be fingerprinted, photographed and "provide information required" by the INS at their US port of entry. Registered persons must report to an INS office within ten days after staying in the US for 30 days and provide "additional documentation confirming compliance" with visa requirements, such as proof of residence, employment or study, and any "additional information" required by the INS. After that, registrants must report annually, in person, to the INS, within ten days of the anniversary of entry, and notify the INS within ten days of any change of address, job or school. Finally, they must report to an INS inspecting officer upon departure from the US, from ports

specified by the INS. Registrants are given "fingerprint identification numbers," which are written in their passports.

Ashcroft's program also includes special "call-in" registration. Although call-in registration was included in his final rule of August 12, 2002, where he amended the Code of Federal Regulations to lay out his special registration program, this aspect of the program was not implemented until November 6. On that day, the attorney general published a call-in notice in the Federal Register for "certain visiting citizens and nationals" of Iran, Iraq, Libya, Syria and the Sudan who had entered the US and been inspected by the INS prior to September 11, 2002. These persons were ordered to report to specified INS offices between November 15 and December 16, unless they were leaving the US prior to the latter date. At this time, the call-in program was limited to males 16 years of age and older (based on "intelligence information" and "administrative feasibility") and excluded applicants for asylum. While US permanent residents and citizens are excluded from special registration, applicants for adjustment of status (to permanent resident) are required to register.

Call-in registrants must answer questions under oath before an immigration officer, and present all travel documents, passports and government-issued identification, as well as proof of residence, proof of matriculation or proof of employment, and "such other information as is requested by the immigration officer." The words "This Notice Is for You" are emblazoned in capital letters across the top of INS flyers produced to advertise the call-in program. With call-in registration, the abuses of the NSEERS system, and its narrow targeting at Muslims and Arabs, became evident.

Roundup

The arrests and detention of between 400 and 900 registrants, mostly Iranians, in southern California during the December call-in period sparked nationwide protest, as persons seeking to voluntarily comply with the new rules were handcuffed, sometimes leg-ironed and transported to jails for visa violations. Some reported verbal abuse, sleep deprivation and body cavity searches. Most of these detainees were law-abiding, working taxpayers with families who had lived in the US for decades. Many had pending applications for permanent residency. Eventually, most of the detainees were released on bail, but removal proceedings were started by the INS at the same time. The director of the Southern California chapter of the American Civil Liberties Union said the arrests were "reminiscent of the internment of Japanese Americans during World War II."

On November 22, 13 more countries were added to the call-in list: Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morocco, North Korea, Oman, Qatar, Somalia, Tunisia, the United Arab Emirates and Yemen. Pakistani and Saudi Arabian nationals were called in for registry on December 16. Armenians were included in the initial Federal Register notice for this group, but were removed two days later after protest from the Armenian government. Similar protests from governments of Arab and predominantly Muslim countries produced no such change. The addition of Pakistanis to call-in registry sent hundreds of Pakistani families fleeing to the Canadian border to seek political asylum. The Canadians gave them future return dates and sent them back to the US, where the INS detained them and began removal proceedings against the males.

The last group to be called in to date comprises male visitors who are citizens and nationals of Jordan, Kuwait, Bangladesh, Egypt and Indonesia. On January 16, 2003 these persons were notified to register between February 24 and March 28, 2003, but this period was extended on February 14 to April 25. North Korea remains the only country on the call-in list whose population is not substantially Muslim.

At Ashcroft's Discretion

The Bush administration uses a combination of fear and Congressional mandate as justification for what is presently a discriminatory system targeting Arabs, Muslims and Asians from predominantly Muslim countries. Ashcroft reached back to laws originating in 1940, as well as the groundwork laid by the attorneys general of Presidents George H. Bush and Bill Clinton, for his dramatic expansion of the concept of registration. To designate countries whose citizens and nationals are required to specially register upon entry to the US, Ashcroft needs only to confer with the secretary of state and then publish the names of the countries as a notice in the Federal Register. This quick and simple formula was instituted in 1993 under former Attorney General Janet Reno. However, at that time, "extra" registration procedures conducted in the name of national security were limited to port of entry fingerprinting and photography, in addition to the I-94 registration (arrival-departure record) required of nearly all non-immigrants. The ten day notice invoked for call-in registry is an interpretation of a 1981 amendment to immigration law that removed annual and quarterly address reporting for non-citizens, but allowed the attorney general to give such notice when current addresses and "additional information" was required. This section of the law was also the first to bring back the concept of special regulations for "natives of states" (rather than persons possessing certain political beliefs) since

Chinese Exclusion and the Asia Barred Zone, hearkening back to the overtly racialized immigration policies of the past.

Credit for inaugurating "extra" national security port-of-entry registration procedures goes to former Attorney General Richard Thornburgh of the first Bush administration, who amended the Code of Federal Regulations in January 1991 to require the port of entry registration of visitors "bearing Iraqi and Kuwaiti travel documents." Reno rescinded this rule in December 1993, amended the Code of Federal Regulations to make the country designation process simpler and then published a Federal Register notice requiring "certain non-immigrants from Iraq and the Sudan" to register. In 1996 Reno added "certain non-immigrants" bearing Iranian and Libyan travel documents.

Ashcroft added Syria to this list on September 6, 2002, declaring that citizens and nationals of these five countries, and persons believed to be such, were subject to the new expanded special registration. One impact of the "persons believed to be such" clause is the requirement that dual nationals register, such as persons who are Canadian and Syrian citizens, or Swiss and Iranian citizens. The Canadian government issued a travel warning for its citizens going to the US shortly after the program was implemented, following the US deportation to Syria of a Canadian citizen in transit at New York's John F. Kennedy airport and the reported harassment of Canadians of Arab and Asian descent at US borders. (It later lifted this warning after the US government promised to treat Canadian citizens better, although registry still applies.)

A national entry and exit system was first mandated by Congress in 1996, as part of the Illegal Immigration Reform and Immigrant Responsibility Act. In 2000, Congress amended this mandate, directing the INS to use "available data" to create an integrated entry and exit data system, and stated that no additional data collection was authorized. Funding for a national entry and exit system was authorized in the USA PATRIOT Act of October 2001 and bolstered in the Enhanced Border Security Act of 2002. The NSEERS program and "call-in registration" however, were neither created by nor subjected to the approval of Congress. They are a set of administrative regulations created by members of the Bush administration.

The Department of Justice has said that NSEERS will be implemented for visitors from all countries by 2005. When the INS launched an initiative in January 2002 to track down and deport some 6,000 males from Arab and predominantly Muslim countries who had been ordered deported, a group comprised of less than 2 percent of all "absconders" in the US, government authorities responded to charges of racial profiling by saying other communities would be next.

They weren't. Members of other communities have yet to receive flyers telling them "This Notice Is for You."

As evidence that NSEERS is not targeting Arabs and Muslims, the INS points to a seemingly arbitrary provision of the special registration regulations. In addition to citizens and nationals of the designated countries, a visitor of any nationality can be required to submit to special registration if an INS inspecting officer has reason to believe that s/he meets pre-existing criteria determined by the Attorney General. These criteria -- found in a September 5, 2002 "limited official use" INS memo that was leaked to the public -- include unexplained trips to Iran, Iraq, Libya, Sudan, Syria, North Korea, Cuba, Saudi Arabia, Afghanistan, Yemen, Egypt, Somalia, Pakistan, Indonesia or Malaysia; travel not well explained; previous overstays of visas; and the visitor's behavior, demeanor or information s/he provides under questioning. "To date," says the INS, "individuals from well over 100 countries have been registered."

Serving the Targeted

Local and national organizations are making efforts to fight NSEERS and its clearly discriminatory implementation. In mid-December, a class action lawsuit was filed by the American-Arab Anti-Discrimination Committee (ADC), the Alliance of Iranian Americans, the Council on American Islamic Relations and the National Council of Pakistani Americans seeking an injunction against arrests of persons registering without Federal warrants and an order preventing deportations without due process. On December 12, Senators Russell Feingold (D-WI) and Edward Kennedy (D-MA), along with Rep. John Conyers (D-MI), sent a letter to Ashcroft requesting suspension of the NSEERS process. The three congressmen demanded that the Department of Justice release information about what it was doing "to allow Congress and the American people to decide whether the Department has acted appropriately and consistent with the Constitution."

In the meantime, the American Immigration Law Association, National Immigration Forum, the American-Arab Anti-Discrimination Committee and the American Immigration Law Foundation have teamed up to develop a web-based special registration questionnaire to document people's experiences. Local organizations are handing out flyers asking people to call in with their experiences. The Iranian American Bar Association is asking everyone with firsthand knowledge of detentions and allegations of misconduct against Iranian nationals to call a toll-free number and share their information for an independent special report. The purpose of the report is "to ensure transparency and accountability in government" and to analyze whether the detentions or mistreatment by INS officials violated any laws. Some local branches of the

Council for American Islamic Relations (CAIR) have assembled support teams to provide pre-registration check-in, so persons detained can be tracked, and offering free legal advice and refreshments. CAIR-New York, in coalition with other organizations, set up an Emergency Family Fund to assist families of "uncharged" detainees. Other local groups have trained human rights monitors to be positioned near INS offices.

Parallel Legal Systems

Efforts to serve the targeted communities are hampered by the fact that the INS has not been clear about who special registration affects or may affect in the future, nor about what people can expect upon registration. The INS rule that "citizens and nationals" of designated countries must register has confused many, including immigration lawyers. What is a citizen? A national? Does it vary by country? Whose rules apply? The INS definition of these terms produces little clarification. Does one ever cease to be a citizen of the place where one was born? Are West Bank Palestinians with Jordanian passports Jordanian citizens? (In general, no, according to Jordanian law.) Must people waiting for permanent residency register? (Yes.) Will an out-of-status person be jailed, deported, or released on bail? What amount of bail might one expect? Attorneys and immigration specialists have a difficult time advising people when there are so many unanswered questions. Across the country, considerable local efforts by Arab, Asian and Muslim organizations have been made to inform community members about the registration process and attempt to answer these questions. The problem is, no one can guarantee how anyone will be treated. Adding to the uncertainty is the March 1, 2003 splitting of the INS into the Directorate of Border and Transportation Security and the Bureau of Citizenship and Immigration Services, both within the Department of Homeland Security. The former is charged with responsibility for special registration. The attorney general's legal role in immigration matters is now unclear; immigration is now officially a national security matter. Meanwhile, instead of spending their time and resources on enhancing civic participation and community development, the Arab and Muslim American communities, yet again, must organize around self-defense. Welcome to America!

Despite the efforts of groups that are organizing to stop it or ameliorate its effects, NSEERS has forged ahead. The Justice Department says the program is a proven success in "apprehending persons" who would be a "severe risk to the American people." The data show that its major success has been to split up or deport tax-paying, law-abiding families. But since the special registration program is an executive branch creation, and not the result of a new law -- as is mistakenly assumed by many -- there may be little recourse. Special registration is

another aspect of what columnist Nat Hentoff has called the "parallel legal system" advanced by the Bush administration, one in which "aliens" do not have the same rights as citizens, and even some citizens, like the two "enemy combatants" held incommunicado in military brigades, do not have the same rights as others. In the context of a period in which US-born Arabs and Muslims are visited and called in for fingerprinting by the FBI, and Peter Kirsanow of the US Civil Rights Commission and Rep. Howard Coble (R-NC) muse publicly about the revival of internment camps, immigrant rights advocates have to wonder what is next. The law allowing apprehension, restraint and removal of "alien enemies" -- dating back to the Alien and Sedition Acts of 1798 -- is still on the books.