

**The PATRIOT Act,  
Other Post-9/11 Enforcement Powers and  
The Impact on California's Muslim Communities**



**California Senate Office of Research  
May 2004**

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*From a California Perspective,  
An Analysis of the Fallout from Investigations,  
Interrogations, Arrests, Detentions, and Deportations*

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## ***Executive Summary***

At the request of Senator Liz Figueroa, the Senate Office of Research has examined the USA PATRIOT Act and associated federal powers that the government acquired to protect the country against domestic terrorism following the attacks of September 11, 2001. The office has looked at these issues from the perspective of members of Muslim communities in California. A broad cross-section of those communities, we discover, find the force of these new powers to be aimed against Muslims innocent of any connection to terrorist acts or known terrorist intentions.

In its overall implications, the USA PATRIOT Act, as perceived by Muslim organizations, created a fear that gripped their member communities as the new powers were deployed. Through the act and associated executive orders, for example, fears spread when the FBI conducted community-wide investigations to gather demographic data on California Muslims. The FBI survey included taking a count of how many mosques served a given region, an action carrying the message for many Muslims that people were being singled out purely because of their religion.

Referring to the scrutiny received by Muslim communities after 9/11, the Muslim rights organization Council on American-Islamic Relations notes, as we report, that “never before had an international terrorist act had such a long-lasting impact on Muslim life in the United States.” Another Muslim community-affiliated organization, the California Civil Rights Alliance, expressing similar concerns, originally suggested the idea of a state inquiry.

In the national debates over the PATRIOT Act, we find sustained and detailed criticism from such civil rights organizations as the ACLU, but find the same sentiments being voiced by, for example, the conservative former Congressman Bob Barr. We include statements defending the act by the U.S. Justice Department and U. S. Senator Dianne Feinstein. In reply to questions we prepared, the FBI office in San Francisco replied directly in some instances but explained that secrecy often surrounds the FBI’s anti-terrorist investigations.

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Among others expressing reservations or outright opposition to sections of the PATRIOT Act are: Members of Congress (where a vote passed in July 2003 to scale back certain provisions); three states and, by the hundreds, local governments that have voted to oppose the act all or in part<sup>1</sup>; legal analyses including one that found the PATRIOT Act in violation of six amendments to the Constitution; plus legal court challenges, at least in one of which a federal judge ruled a portion of the act unconstitutional.

We also summarize in our report instances of cruel and illegal treatment of Muslims by federal authorities as reported by the U.S. Justice Department's Office of Inspector General. Instances are specific and detailed in the inspector general's report, but without victim or perpetrator identities and, often, without the inspector general formally affirming that an abuse had taken place.

The Senate Office of Research report looks also at special new requirements that students from Muslim countries must observe to avoid suspicion of terrorist activity. We survey separately the connection between federal anti-terrorist enforcers and California's own Department of Justice – and how the department's post-9/11 activities do not always proceed smoothly.

At Senator Figueroa's request, we examined four specific sections of the PATRIOT Act – those dealing with delayed warrants (Section 213), monitoring computer traffic (Section 216), secret searches and surveillance (Section 218) and indefinite detentions (Section 412). We found civil rights and communications-monitoring organizations highly critical of these sections, based on their secrecy and reputed roadblocks to due process. We quote lawyers representing Muslim immigrants being held in detention as saying the PATRIOT Act may or may not have been used to investigate their clients. They would not know; for lawyers also, the information is withheld. Government defenders of these sections maintain they are necessary and, for most, are not without precedent in certain U.S. criminal investigations.

In the area of immigration violations, we found lawyers reporting to us the sudden fate of clients arrested, detained and held incommunicado or deported for the slightest immigration law infraction. In no case was a charge of terrorist activity made known. In almost two dozen such cases, SOR tracked the details and tells the stories of Muslims rounded up, mostly during a Special Registration period in late 2002 and early 2003. The "Stories" section of our report recounts specific instances of

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<sup>1</sup> More local governments have voted against the Act since the 206 we reference in our report.

detainees and those investigated, by name, often through personal interviews, who were picked up, locked up, deported or detained for hours, days or years. In all cases, the subjects bore Muslim names. Some subjects of our stories have spent, by now, a matter of years in federal detention.

Along with the criticisms and reports of abuse, however, we attempt to give a full airing to the federal government's explanation of their new powers and enforcement tools. Government rejoinders to charges of excess and abuse are to found in the main report. Additionally, the "Supplemental" section is devoted entirely to federal authorities making their case for the PATRIOT Act.



## **Introduction**

Within the Bush Administration and Congress, in the news media and public, among concerned scholars, and on the part of civil rights and immigrant advocacy groups, controversy abounds over the federal government's broad new powers to investigate and suppress threats of domestic terrorism.

The federal government acquired these powers in the aftermath of the attacks of September 11, 2001. Those attacks, perpetrated by Middle Eastern terrorists, came at the expense of more than 3,000 lives of Christians, Jews, atheists and others. Charges from Muslim and other advocates soon followed that the federal government, ostensibly to prevent further attacks, was targeting and harassing whole communities of largely Muslim immigrants living in the United States. The government defended its actions as necessary for national security, citing a new and dangerous post-9/11 world justifying a heightened state of alert.

Now, two and a half years removed from the tragic events, the debate over how to keep America safe and free continues, but seldom has a forum been raised within state government for a critical examination of these issues. Also, as federal agencies continue scrutinizing Arab, South Asian and other immigrant Muslim communities in the name of national security, Muslims in California have borne a substantial share of that scrutiny.

This report responds to those concerns. It was prepared at the request of state Senator Liz Figueroa to review, in particular, the PATRIOT Act and other anti-terrorist directives and procedures adopted by the federal government after September 11, 2001. Specifically, Senator Figueroa asked the Senate Office of Research (SOR) to analyze certain sections of the PATRIOT Act and other directives adopted after 9/11. These are sections of the act that community leaders in California find troubling in light of their impact on the large number of immigrant residents with no demonstrated connection to terrorism<sup>2</sup> that have been

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<sup>2</sup> See Georgetown University law Professor David Cole reference, page 22.

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swept up in federal roundups and investigations. Additionally, in terms of legislative participation, Assemblymember John Dutra, proceeding from findings of this report, plans to explore the issue at informational hearings at times and places to be announced in the near future.

Tactics relating to arrest, detention, deportation and interrogation are addressed in this report. To put a human face on various ways in which these tactics are used, we devote a major part of the report to relate the personal experiences of a number of individuals adversely affected. Their stories are representative of others, often hundreds of others, who had similar experiences. Some are stories showing the powers of the government in action, backed by the PATRIOT Act. Others illustrate new attitudes and enhanced powers of the federal government over immigrants in an indirect fashion – representative of the PATRIOT Act’s “tone and reach” extending beyond the force of its explicit provisions.<sup>3</sup> Examples are cited that describe incidents of humiliation, embarrassment and intrusions upon the privacy of Muslims, South Asian and Arab immigrants and, in several cases, American citizens after heightened levels of scrutiny and suspicion fell upon their communities following the attacks of 9/11.

Besides provisions of the PATRIOT Act, of particular concern to Muslim community leaders and those affected were the federal government’s immigration sweeps, exhibited most prominently in California, as elsewhere, by Special Registration exercises that took place in late 2002 and the spring of 2003. During the first-of-its-kind Special Registration exercise, immigrants by the hundreds in California, many thinking they were being asked to report to immigration authorities for routine purposes, report that they were instantly detained, disappearing into detention centers and deportation proceedings often unbeknown to families and friends. The sanctions applied only to immigrants from 24 Muslim and Arab countries (and North Korea), and were justified on the basis of status irregularities such as overstaying a visa’s time period. No connection to terrorism was formally alleged and therefore never proven.

Special Registration for those affected was to be repeated annually, and the second round of the procedures was about to get under way when the government announced a change of policy. Henceforth, as of early December 2003, the Department of Homeland Security announced it was suspending the data-mining nature of the Special Registration requirements as it previously existed.

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<sup>3</sup> *The USA Patriot Act: Impact on the Arab and Muslim American Community*, Institute for Social Policy and Understanding, September 2003.

As noted later in this report, civil rights groups welcomed the change but with reservations, noting it only partially suspended ethnic-profiling policies aimed primarily at visitors from Muslim countries. Critics also observed that Muslim aliens caught up in the previous roundups still faced consequences including detention without trial and the threats of deportation pending the outcome of court hearings.

### **Secret Courts, Counting Mosques**

Other activities of the federal government, beyond the specific topics addressed at length in this report, bear noticing in the context of concern to Muslim communities. Among them, secrecy provisions that can close the courtrooms to immigration proceedings in which large numbers of Muslim immigrants face detention and deportation. A memo obtained by the news media shortly after 9/11 from Michael J. Creppy, chief immigration judge, specifically authorizes the closing of immigration courts in circumstances the government deems necessary. The relevant section of the Creppy memo to all immigration court judges states:

*As some of you already know, the Attorney General has implemented additional security procedures for certain cases in Immigration Court. Those procedures require us to hold the hearings individually, to close the hearing to the public and to avoid discussing the case or otherwise disclosing any information about the case to anyone outside the Immigration Court.<sup>4</sup>*

Another development that Muslim communities in California found troubling, if not alarming, was the FBI headquarters directive of February 3, 2003, ordering each of the bureau's 56 regional field offices to base their terrorist investigations on demographic data of Muslim communities. Included in the data for field agents to ascertain were the number of mosques that the FBI could identify in a given area.

The directive prompted criticism of the FBI for using the size of a Muslim community as the basis for how extensive the FBI's investigations would be in the hunt for terrorists. "These reports raise serious questions concerning the FBI's willingness to engage in religious profiling," said Human Rights Watch. The FBI appeared not to carry out the directive, however, at least for the purposes originally stated. At one

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<sup>4</sup> From Creppy memo addressed to all immigration judges and court administrators September 21, 2001. Though dated more than two years ago, the directives remain in force.

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point, press reports quoted FBI sources as saying the purpose of FBI monitoring of mosques was to prevent hate crimes against them.

### **PATRIOT Act Secrecy**

As it happens, most of the personal accounts that we have collected for this report spring from immigration status issues. Where the PATRIOT Act, on the other hand, is used in an investigation that perhaps never reached a court, or was never explained in court, personal accounts are fewer. This, we have found, is chiefly because provisions of the PATRIOT Act often are invoked by the federal government in secret. Repeatedly, lawyers representing detained Muslim immigrants report that they cannot learn whether government evidence was obtained under authority granted from sections of the PATRIOT Act permitting secret surveillance. Hence many Muslim immigrants investigated by federal agents acting on PATRIOT Act authority simply cannot be identified as such or their circumstances known if the government chooses, as it invariably does, to keep the case file closed.

### **Foreign Students, State and Local Connection**

We also explore new procedures required by the federal government to monitor foreign students and scholars enrolled at U.S. colleges and universities. In California, the Student and Exchange Visitor Information System (SEVIS) applies to University of California (UC), California State University (CSU) and community college campuses.

The monitoring has the apparent purpose of revealing whether, for example, a foreign student may not be sufficiently engaged in course studies to dispel suspicion of terrorist activities. Institutions enrolling international students and scholars are required to maintain databases tracking compliance with the regulations.

Lastly, since this is a state-level inquiry, we explore the PATRIOT Act environment and its connection to state and local law enforcement. We look particularly at the modus vivendi that state agencies have established with federal agents conducting anti-terrorist investigations in California.

## ***The PATRIOT Act – an Overview***

On October 26, 2001 – 45 days after the terrorist attacks on the World Trade Center, the Pentagon and the crash of a hijacked plane in Pennsylvania killed more than 3,000 people – President Bush signed into law the USA PATRIOT Act.<sup>5</sup> Prior to enactment, the impending law with its broad new powers for federal agents to investigate and conduct surveillance was presented to Congress as an essential set of new tools required to investigate possible 9/11 conspirators and to prevent further acts of terrorism. Voted on so soon after the horrific attacks, the PATRIOT Act, with a minimum of debate, passed Congress overwhelmingly. Only one senator, Russ Feingold of Wisconsin, and 66 House members voted against it. Upon being quickly signed into law by President Bush, the 342-page act made changes to more than 15 federal statutes, with profound implications for Muslim immigrant communities, including many in California.

Although the government chooses not to divulge the number of immigrants in California detained, deported or at a minimum required periodically to authenticate their permission to remain in the U.S., community groups report generally that 800,000 Muslims live in California, of whom 60 percent are in some category of foreign visitor or certified immigrant.

Since its enactment, the PATRIOT Act, acceptable though it may have been at first, has come under severe criticism in a variety of quarters.

### **In Congress**

The act's popularity has waned to the point that the House, on July 22, 2003, voted with bipartisan support to cut off funds for enforcement of a key section that allows the FBI to enter and search private premises without showing the occupant a warrant or notifying the occupant that the place was searched, until some indeterminate time in the future.

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<sup>5</sup> An acronym formed for its effect from the act's full title: Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism.

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Other bills propose outright repeal of several sections of the act, including allowing indefinite detention without trial. That and other sections of the PATRIOT Act under reconsideration by members of Congress coincide with those that this office has been asked to review, and are analyzed later in this report.

### **State and Local Governments**

Three states and by one recent count 206 American cities, towns and/or counties have passed resolutions calling for repeal of or otherwise faulting the PATRIOT Act, finding that certain provisions violate civil rights guaranteed by the Constitution. In California, state Senate President pro Tempore John Burton has introduced in the Senate a proposed resolution urging California's Congressional delegation to "work to repeal any provisions of the USA PATRIOT Act that limit or impinge on rights and liberties protected equally by the United States Constitution and the California Constitution..."<sup>6</sup>

### **Legal Challenges**

Several civil rights and lawyer groups and university scholars have acted aggressively to challenge many of the act's provisions – in one case successfully, as noted below. Advocacy groups have declared that parts of the PATRIOT Act, on its face, threaten constitutional rights guaranteed by the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments.<sup>7</sup> Three of those critics, the American Civil Liberties Union (ACLU), the Electronic Privacy Information Center, and the American Booksellers Foundation for Free Expression, filed a Freedom of Information Act (FOIA) request in August of 2002, seeking information on 14 categories of agency records, including the number of times the government has:

- ◆ Conducted "sneak and peek" delayed-warrant searches as described above and later in this report;
- ◆ Directed a library, bookstore or newspaper to produce "tangible things," e.g, the titles of books an individual has purchased or

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<sup>6</sup> SR 25 and SJR 122.

<sup>7</sup> Critics of the USA PATRIOT Act include organizations on both the left and the right, from Amnesty International to the American Conservative Union (ACU). A member of the ACU, former Representative Bob Barr, is quoted elsewhere in this report. Organizations that lobbied against portions of the Act during its passage include the American Library Association, the American Civil Liberties Union, Americans for Tax Reform, Center for Democracy & Technology, Eagle Forum, and Electronic Frontier Foundation.

borrowed or the identity of individuals who have purchased or borrowed certain books;

- ♦ Authorized the use of devices to trace the telephone calls or e-mails of people who are not suspected of any crime, addressed later in this report;
- ♦ Investigated American citizens and permanent legal residents and sought information on the basis of activities protected by the First Amendment (e.g., writing a letter to the editor or attending a rally).

The government responded to the FOIA request by submitting 341 pages of records. Many of the pages include portions that are blacked out, ostensibly for national security reasons. The government has also withheld an additional 53 pages in their entirety. Lawyers familiar with the FOIA request report that it is not clear from the government's response to what extent these powers are being used or to what extent Californians have been affected by the use of these powers.

### **Legal Action, Continued**

The first direct court challenge to the PATRIOT Act was filed in July of 2003 by the ACLU on behalf of the Muslim Community Association of Ann Arbor (MCA); the American-Arab Anti-Discrimination Committee; Arab Community Center for Economic and Social Services (ACCESS); Bridge Refugee and Sponsorship Services ("Bridge") based in Knoxville, TN; Council on American-Islamic Relations; and The Islamic Center of Portland, OR. This lawsuit challenges Section 215 of the PATRIOT Act on the basis that it violates constitutional protections against unreasonable searches and seizures as well as the rights to freedom of speech and association.

In California, a class action lawsuit filed on December 24, 2002, by the Center for Human Rights and Constitutional Law, among others, names Attorney General John Ashcroft and federal immigration agencies as having violated the Immigration and Nationality Act in the arrests and detentions carried out during a Special Registration period that singled out immigrants mainly from Muslim countries in late 2002 and early 2003. Subsequently, a federal court in Los Angeles refused the government's motion to dismiss the lawsuit's allegation of illegal arrests, indicating the court's belief that that the issue has merit. (Special Registration issues are explored later in this report.)

Also in California, on August 5, 2003, plaintiffs representing the interests of Tamil political groups in Sri Lanka and Kurdish groups in Turkey, and the Center for Constitutional Rights, filed a lawsuit in Los

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Angeles declaring the PATRIOT Act placed peaceful advocates for these interests in danger of criminal prosecution. The lawsuit says the PATRIOT Act does so by making it a crime to provide “expert advice and assistance”<sup>8</sup> to groups described by the government as terrorist organizations.

On January 23, 2004, a Los Angeles judge agreed, declaring the “expert advice or assistance” language in the law unconstitutional. United States District Judge Audrey B. Collins called the clause overly vague, capable of being “construed to include unequivocally pure speech and advocacy protected by the 1<sup>st</sup> Amendment.”<sup>9</sup> The plaintiff group Center for Constitutional Rights declared a seminal victory, saying the ruling represented the first time any part of the PATRIOT Act had been declared unconstitutional.<sup>10</sup>

### **Criticism from a Legal Scholar**

Law Professor David Cole of Georgetown University – an attorney in the successful suit against the PATRIOT Act noted above – challenges almost the entire panoply of post-9/11 laws and directives that the federal government is using in the name of fighting domestic terrorism. Among his themes, contained in a recent book,<sup>11</sup> is the proposition that the unfair treatment of immigrants leads inexorably to the same unfair treatment of citizens.

### **Information Sought by SOR**

The Department of Justice’s (DOJ’s) Office of Inspector General provided information during an interview but would not divulge instances of abuse – which the inspector general investigates periodically and we address in detail below – in California.

A representative of the West Coast office of the Department of Homeland Security (DHS) provided information on process questions pertaining to changes in immigration policies. But SOR was told the department does not divulge numbers of individuals affected by those policies, and does not answer questions on individual cases, although a DHS public affairs official did answer a question about the whereabouts of one detainee.

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<sup>8</sup> Section 805(a)(2)(B).

<sup>9</sup> *Humanitarian Law Project v. Ashcroft*, CV 03-6107 ABC(MCx), Central Dist. California, 2004 U.S. Dist. Lexis 4411, March 17, 2004.

<sup>10</sup> David Rosenzweig, *L.A. Times*, “Judge Rules Against Patriot Act,” January 27, 2004.

<sup>11</sup> David Cole, *Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terrorism*. New York: The New Press, 2003.

SOR contacted special agents of the FBI seeking comment and replies to questions. FBI personnel indicated a willingness to consider our questions and after an elapse of time did, in part, reply. The text of the FBI communication to SOR, and other material supplied by federal authorities, is set out in detail in the accompanying Supplement to the Senate Office of Research Report, January 7, 2004.

### **Complaints from Muslim Organizations**

Muslim community organizations have spoken out continuously against what they consider intrusive sections of the PATRIOT Act being used against the innocent. Among concerned organizations, each with a substantial presence in California, are the Council on American-Islamic Relations (CAIR), the American Muslim Alliance (AMA) and the Arab-American Anti-Discrimination Committee (ADC). With memberships that include immigration lawyers, community leaders and university scholars, these organizations, besides their criticism of the PATRIOT Act for the extraordinary powers it accords to federal law enforcement, also express the sense of anguish and fear that they find in South Asian, Arab and Muslim immigrant communities since the investigations and roundups began.

Typical of the fear factor are comments contained in a recent CAIR report entitled *Guilt by Association*.<sup>12</sup> As of 9/11, the report said, “never before had an international terrorist act had such a long-lasting impact on Muslim life in the United States.” In part, it noted, profiling and hate crimes aimed at Muslims from the public at large increased.<sup>13</sup> But the report said also that “mistreatment at the hands of federal government personnel continue[d] [in 2002] to be reported in substantial numbers.” FBI searches of homes and businesses and interrogations and property seizures took place based on “hearsay,” CAIR found. FBI inquiries about mosque memberships and media reports about the FBI taking an inventory of American mosques raised widespread apprehension among community members “who believed they were being scrutinized based on religious association.” To date, out of no such activity in California has a successful prosecution of an accused terrorist been reported.

The CAIR organization’s reference to fears spreading through Muslim communities, even if based on unconfirmed or seemingly minor events occasioned by federal investigations, underscores a main concern

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<sup>12</sup> “The Status of Muslim Civil Rights in the United States, 2003,” *Guilt by Association*, CAIR Research Center.

<sup>13</sup> As noted in media reports, in the wake of 9/11, members of the Sikh community also have suffered from hate crimes by those presumably misidentifying turbaned Sikhs as Muslims.

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among those who speak for the people affected. Muslim community leaders who sought recognition of their concerns by state elected representatives repeatedly emphasized the anguish and fear that they say, in large part, describes life in the households of Arab and Muslim immigrant families in California after 9/11.

### **Findings of Abuse by the Government**

Another perspective of abuses under the PATRIOT Act is made known under the act itself. Section 1001 requires the DOJ's Office of Inspector General (OIG) to report semi-annually to Congress any such findings. In its July 2003 report,<sup>14</sup> the OIG, while noting that limited resources prevent investigation of all complaints, and that others lie outside its jurisdiction, said it received 1,073 complaints "suggesting a PATRIOT-Act-related civil rights or civil liberties connection." Of these, the OIG told Congress it was empowered to investigate 272 complaints, and found "credible" 34 complaints. However, in an interview with this office, an OIG officer<sup>15</sup> said the agency has since amended the wording of that finding. He said the number 34 more accurately refers to the number of cases that "that clearly raised issues that had something to do with the deprivation of civil rights or civil liberties." A confirmed finding of rights violations, the liaison officer said, occurred in only six cases of the 34.

Civil rights groups engaged in the immigrant custody issue say they suspect the OIG numbers are underreported because of the secrecy surrounding the PATRIOT Act provisions and other post-9/11 policies.

Among cases that the OIG reported was that of the prison doctor at an unnamed facility who told an inmate: "If I was in charge, I would execute every one of you ... because of the crimes you all did." Thereafter, the OIG notes, the Bureau of Prisons physician who made the remarks "received a verbal reprimand."<sup>16</sup>

Among other investigations cited in the OIG report were instances and allegations of severe and humiliating abuse: Bureau of Prison officers accused of shining shoes with a Muslim inmate's shirt; inflicting repeated body cavity searches on an Egyptian national while forcing him to eat food forbidden by his religion; FBI agents accused of illegally searching and vandalizing a Muslim's apartment, stealing items and calling the victim a terrorist; during the transfer of a Muslim detainee

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<sup>14</sup> *Report to Congress on Implementation of Section 1001 of the USA PATRIOT Act*, U.S. Department of Justice, Office of the Inspector General, July 17, 2003.

<sup>15</sup> Paul Martin, OIG legislative liaison officer, by telephone, October 27, 2003.

<sup>16</sup> *Op. cit.*, OIG *Report to Congress*, pp. 11-12.

between custody facilities, an INS detention officer accused of holding a loaded gun to the detainee's head.

A separate OIG report released earlier, in April 2003,<sup>17</sup> also reported unjustified harsh treatment of detained immigrants who were rounded up immediately following the 9/11 attacks. The subjects in that OIG report are called The September 11 Detainees, meaning those, mainly, being held for investigation for suspected complicity in the 9/11 attacks. The OIG review focused on detainee treatment at two detention facilities, in Brooklyn in New York City and in Paterson, New Jersey.

When asked, the OIG officer referenced above said "most" of the cases reviewed for civil rights violations in the OIG's September 11 Detainees report originated on the East Coast. Cases reviewed for the later report to Congress, on the other hand, could have originated elsewhere including the West Coast. However, the OIG officer said, the agency "was not releasing" specific locations, and therefore would not disclose to SOR which if any cases reviewed had a connection to California.

#### **"PATRIOT Act II"**

Further changes in federal law that exceed in scope the provisions of the PATRIOT Act are contemplated – and in part are being implemented, according to critics. Opponents have dubbed these proposed enhancements "PATRIOT Act II." Among its chief provisions, cited as necessary by President Bush in a speech last year,<sup>18</sup> would be "administrative subpoenas," issued directly by law enforcement without judicial oversight to obtain information on terrorist suspects; presumptive denial of bail in such cases and the wider use of the death penalty to include, for example, an attack on a military base.

Whether the government still plans to incorporate such measures in a single bill is unclear, following sustained criticism from a wide political spectrum of the "PATRIOT Act II" concept. To cite one critic, former Representative Bob Barr of Georgia, a Republican, a member of the American Conservative Union and a strong supporter of privacy protections, the government is using means to circumvent a public outcry against enhanced PATRIOT Act powers.

Referring to "what I call the son of the PATRIOT Act," Barr said that he has been "warning people for months now ... that the government would

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<sup>17</sup> *The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks*, Office of the Inspector General, U.S. DOJ, April 2003.

<sup>18</sup> Address at the FBI training academy at Quantico, VA, on September 10, 2003.

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try to insert separate, certain provisions of it into other bills.” Critics such as the ACLU have noted that, buried in the 77-page Senate Intelligence Authorization Bill, is language permitting the government to secretly examine financial transactions whether they be with car dealers and casinos or securities dealers and currency exchanges. Barr said the government “is getting [processes] into high gear now” to examine financial records of people “without any reasonable suspicion whatever that the target has done anything wrong.”<sup>19</sup>

### **The PATRIOT Act’s Defenders**

The act, in whole and in part, has its informed defenders, including those in Congress in a position to amend, repeal or, for example, extend or let stand its sunset provisions.<sup>20</sup> Senator Dianne Feinstein, a member of the Judiciary Committee and the Subcommittee on Technology, Terrorism, and Government Information, which review the act from time to time, has stated:

*I supported the USA PATRIOT Act because I believed that it could help solve some of the problems that may have led to missed opportunities before September 11. But the USA PATRIOT Act was passed with the knowledge that it had been drafted and negotiated rather quickly – only six weeks elapsed between proposal and passage – and that Congress would need to exercise vigorous oversight to prevent abuses and solve unintended problems. That is one reason why some of the tools in the USA PATRIOT Act will sunset in a few years.*

*If the new tools in the USA PATRIOT Act are working and effective, we should keep them – and even strengthen them. If they are being abused, we should eliminate them or add new safeguards.<sup>21</sup>*

Senator Feinstein continues to support the act. She reports as of October 21, 2003, having received 21,424 messages from the public opposing the act, but says most reflect a misunderstanding of the PATRIOT Act by condemning security measures that lie outside its provisions, or have not become law. Furthermore, she said at a recent subcommittee meeting, “I have never had a single abuse of the PATRIOT Act reported to me.”<sup>22</sup>

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<sup>19</sup> Barr interview on the November 14, 2003, PBS program, *NOW With Bill Moyers*.

<sup>20</sup> Section 224, stating sunset of most provisions on December 31, 2005.

<sup>21</sup> Prepared statement at a meeting of the subcommittee October 9, 2002.

<sup>22</sup> Susan Schmidt, “Patriot Act Misunderstood, Senators Say,” *Washington Post*, October 22, 2003.

The U.S. Department of Justice's principal public statement on the PATRIOT Act, accessible at a specially created Website,<sup>23</sup> describes in the act "only modest, incremental changes in the law." But the statement concludes that preventing, thus far, "another catastrophic attack ... would have been much more difficult, if not impossible, without the USA PATRIOT Act." Of relevance to this study, the DOJ statement states in general terms that the act "allows law enforcement to use surveillance against more crimes of terror," and mentions especially wiretaps now obtainable on "the full range of terror-related crimes." (See discussion PATRIOT Act sections 216 and 218 on pages 16 and 18. For a more detailed DOJ defense of the act, see also Statements from the Department of Justice in the "Supplement" to this report that begins on page S1).

The government's Website statement goes on to say that the act "allows law enforcement to conduct investigations without tipping off terrorists" and makes reference to delayed notice of warrants (discussed under Section 213 on page 16). Search warrants presented to the subject of a search after the fact "have been used for decades" in drug and mob cases with the approval of the courts, the DOJ statement says. Furthermore, as argued by staff to Senator Feinstein, defenders of the act cite Section 213 as advancing the fairness of delayed-warrant searches by replacing case-law precedents with codified law, making clearer where and how the government may invoke it.

The federal government's portrayal of the PATRIOT Act as a collection of modest measures with antecedents in other areas of criminal law conflicts with interpretations by the act's critics, who ascribe to it an excess of enforcement power selectively aimed at Muslim immigrant communities. Members of those communities and their defenders express their concerns not so much with "abuses" of the PATRIOT Act, for which Senator Feinstein finds no examples in her mail. Rather – to sum up collective opinions expressed in preparation for this report – the complaints derive from the perceived injustice of the act itself, that is, abuses *allowed* by the PATRIOT Act. Intrusions on civil rights of a profiled immigrant community become possible under the PATRIOT Act as written, in this widely shared view, not necessarily in overstepping its authority.

Bob Barr, the former congressman quoted above, has said that to say the act has not been abused is "just a rhetorical game. The problem is that many of these powers are unconstitutional in and of themselves." Furthermore, the assertion that the PATRIOT Act is not abused is

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<sup>23</sup> <[www.lifeandliberty.gov](http://www.lifeandliberty.gov)>.

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something “you can never refute ... because these powers are exercised in secret. You never know what the government is doing.”<sup>24</sup>

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<sup>24</sup> Op. cit., Barr PBS interview.

## ***Selected PATRIOT Act Sections***

Senator Figueroa asked this office to examine four sections of the PATRIOT Act that, in turn, constituents from her district told her they found particularly troubling for California's Muslim immigrant communities. We analyze those sections below, along with, at the request of Assemblymember Dutra's staff, the PATRIOT Act's definition of domestic terrorism.

### **Domestic Terrorism Defined, Section 802**

Section 802 of Public Law 107-56 (the PATRIOT Act) amends existing federal law (Section 2331 of Title 18, U.S. Codes) by adding, at (a) (5) (A) "... the term 'domestic terrorism' means activities that involve acts dangerous to human life that are a violation of criminal laws of the United States or any State" and (B) "appear to be intended (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and (C) occur primarily within the territorial jurisdiction of the United States."

An ACLU analysis finds that Section 802 is over-broad, expanding the types of conduct that the government can investigate as "terrorism."<sup>25</sup> It therefore follows, notes the analysis, that given the sweeping nature of the definitions contained in Section 802, political organizations with no connection to the issues raised by 9/11 could be found in violation of domestic terrorism as defined by the PATRIOT Act. Critics cite the activities of such organizations as Greenpeace and groups that recently protested practice bombing runs by the U.S. Navy on Vieques Island in Puerto Rico. Those critics make the case that members of those and other protest organizations, based on activities however nonviolent, could be, under the PATRIOT Act, investigated and prosecuted as terrorists.<sup>26</sup> Indeed, in the first two months of 2003, the Justice Department did file charges of "terrorism" against eight Puerto Ricans

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<sup>25</sup> See criticisms published by the ACLU, Center for Constitutional Rights, Electronic Frontier Foundation, and OMB Watch.

<sup>26</sup> <<http://www.aclu.org/NationalSecurity/NationalSecurity.cfm?ID=11437&c=111>>.

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charged with trespassing on Navy property on the island of Vieques, long a site of civil protests of ordnance testing.<sup>27</sup>

### **Delayed Warrants, Section 213**

This section expands the authority of government agents to conduct searches and seize material goods upon entering private premises – without having to show a warrant before doing so. Warrants issued in secret are required but need only be shown after the fact to the person whose home or office is entered by federal agents looking for evidence of terrorist activity. Known pejoratively by critics as “sneak and peak,” and, where goods are seized, “sneak and steal” and “black bag jobs,” it was Section 213 of the PATRIOT Act that caught the attention of a critical Congress last July. The House voted on a bipartisan basis, 309-118, for an amendment that would withhold further funding with which to enforce the delayed-warrant provision.

The administration maintains it already had authority to conduct delayed-warrant searches. It said the PATRIOT Act only codified existing law.<sup>28</sup> Civil rights groups disagree that any such broad authority had been in place. Though courts in some cases have allowed secret searches, according to one informed analysis, there is no unanimity among judges, nor has the Supreme Court ruled on the issue and, in this critical region of privacy rights in this country, by far the predominant requirement for law enforcement has been to present a warrant before entering private premises.<sup>29</sup> Another variation on the warrant procedure as generally practiced is that law enforcement must make its case to a judge for a warrant to be issued, whereas a warrant request under PATRIOT Act rules is effectively automatic. There is no record of one having been turned down.

### **Pen Register, and Trap and Trace, Section 216**

These are terms that for years have been used to describe a form of wiretapping by which law enforcement hooks up devices that secretly identify phone numbers called from (pen register) and received by (trap and trace) a suspect’s telephone. Court orders were easy for the FBI to obtain. Agents had only to declare that the warrant was needed to pursue a criminal investigation, and were not required to show probable cause or reasonable suspicion of criminal activity. Judges had to

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<sup>27</sup> <<http://www.philly.com/mld/inquirer/5862945.htm>>.

<sup>28</sup> The Justice Department has had that authority “for decades”: Attorney General John Ashcroft interview on *Privacy and Protection: The PATRIOT Act Debates*, CNN special report, September 7, 2003.

<sup>29</sup> Analysis by the Center for Democracy and Technology, <[www.cdt.org](http://www.cdt.org)>.

comply, and had no power to exercise judicial discretion. But, on the other hand, the information the FBI could record was limited. Recording devices of this kind could only pick up telephone numbers, not the conversations, of incoming and outgoing calls on a target phone.

Section 216 of the PATRIOT Act leaves in place these provisions of federal law, including the requirement of judges to issue warrants, no questions asked. But the act substantially broadens the scope of authorized surveillance and adds appreciably to the information the wiretap provides. It does so by permitting the FBI not only to inventory phone numbers, but also to observe source data and contact information passing across the Internet to and from a target individual's computer. Again applying the old pen register/trap and trace system of monitoring, today's agents investigating terrorist activity can look at e-mail addresses entering and leaving the surveillance subject's computer, and can observe URLs, or Website addresses, the computer user has transmitted to a server to obtain data.

The PATRIOT Act thus "made the [privacy invasion] problem worse," according to a rights group analysis, by extending the FBI's essentially unfettered, "rubber-stamp" authority to wiretap a new medium widely used for private communications.<sup>30</sup> Like previous monitoring restricted to telephone numbers, but not the content of telephone conversations, under this section, only e-mail addresses and URL addresses may be examined on a target computer.<sup>31</sup> But critics express concerns that addresses used in computer communications, particularly Web addresses, indicate content and Website visits provide a window into "who we are and what we are thinking about." Enactment of Section 216 of the PATRIOT Act, where deployed by federal agents maintaining they are acting in the interests of national security, strips any privacy protection away.

A lawyer cites a case of a young man from Iran who was living in Los Angeles while petitioning for a permanent resident visa. He was ordered detained after a series of events not necessarily prompted by Section 216 but related to computer communications nevertheless. The young man receives an e-mail he describes as "wacky" and hinting of possible terrorist activity. The young man promptly reports the contact to the police. Unknown to him, he is placed on a national security watch list on the basis that to receive, as well as to send, a threatening message represents suspected terrorist intent. Later, he is one of thousands of Middle Eastern immigrants who complies with a requirement from

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<sup>30</sup> Ibid.

<sup>31</sup> Other PATRIOT Act sections do permit surveillance of communications content. See Section *Enhanced Surveillance, Section 218*, next page.

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immigration authorities to report in person during a “special registration” period to check visa statuses. Upon showing up, he is detained and held for investigation because of the e-mail he received. After 21 days in detention, family members pool resources and get him released on \$50,000 bond. He comes out of custody shaken, fearful and afflicted with a nerve condition. His case is pending. He could be deported.<sup>32</sup>

To illustrate another point in which Section 216 played a role, at a forum on the PATRIOT Act in September sponsored by Fullerton College, a community college in Orange County, the student newspaper reported later that a “heated debate ensued” between an FBI agent and an ACLU lawyer. The lawyer, Steve Rhode, argued that Section 216 violated the Fourth Amendment’s right of protection against unreasonable search and seizure, and added the government now had the power to monitor Americans’ computers as they surfed the Internet. The FBI man, Louis Flores, called the idea “ludicrous.” He argued that the FBI now had the authority but not the manpower capacity to broadly snoop on Internet users.

The reported exchange brings into focus an aspect of the PATRIOT Act that runs through much of the commentary, at least among critics, about its capacity to sanction abuse. Yes, the FBI may not have the personnel to search vast numbers of computers, and may not even want to. The expressed danger is that, whether under this or other PATRIOT Act sections, whether in the hands of today’s FBI or tomorrow’s FBI, the authority is now sanctioned and enshrined in law to put aside, in the name of national security, a previously unassailable individual right.

To quote the former congressman Bob Barr again: “One has to assume, I think, it’s sort of a law of nature, that if a government has a certain power, it is going to use it.” Where the government inherited new powers under the PATRIOT Act,” said Barr, “we have to realistically assume that they are going to use those powers.”<sup>33</sup>

### **Enhanced Surveillance, Section 218**

A 1978 law allowed the FBI, when tracking suspected foreign spies operating in the United States, to install wiretaps and conduct searches without having to show probable cause that a crime had been committed. The rationale, in part, was that since foreign spies do not face trial, and instead are often simply expelled from the country, the constitutional protections were unnecessary. Under Section 218 of the

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<sup>32</sup> Op. cit., Akhlaghi.

<sup>33</sup> Op. cit., Barr interview on PBS.

PATRIOT Act, by a slight rewording of the Foreign Intelligence Surveillance Act (FISA), federal agents are now empowered, based on warrants issued by a secret FISA Court of Review, to wiretap and search properties in the course of normal criminal investigations, terrorist and otherwise. As in spy cases, the FISA court requires no showing of probable cause to issue a Section 218 warrant.

(A caveat: The secret court, making a rare disclosure of a decision, last year revealed it had rejected a government attempt for prosecutors to use intelligence warrants for criminal prosecutions. The decision was appealed and later overturned after secret proceedings before a special appellate court.<sup>34</sup> The ACLU and the National Association of Criminal Defense Lawyers sought review before the Supreme Court and were turned down.<sup>35</sup> The upshot is regarded as a victory for the PATRIOT Act. A key provision enacted by Congress now has the additional approval of a federal appellate court.)

To what extent Section 218 has been used by the FBI to conduct wiretaps and searches in the Muslim communities of California is not divulged and, according to two lawyers we interviewed who defend Muslim clients caught up in federal investigations, cannot be found out. Banafsheh Akhlaghi, a San Francisco immigration lawyer who has represented many Muslims in California immigration and criminal courts, said she and her clients would “never know” if this section were used by the government to collect evidence and prosecute her clients. She points out that the secrecy that is part of the act itself automatically stops her from learning critical details.

Another immigration lawyer, Ban Al-Wardi who practices in Southern California, recalled a case she said was typical of the government using the PATRIOT Act to gather evidence secretly, but whether under Section 218 she did not know. Al-Wardi said that, as the case illustrates, it is necessary to understand the control that courts have yielded to federal prosecutors in the name of post-9/11 national security to appreciate the government’s courtroom advantage.

Al-Wardi explained that the case involved a foreign student client from Tunisia who dropped out of classes at a community college in Los Angeles after receiving injuries in a vehicle accident. Federal agents took him into custody for not being in school as required by his visa. Al-Wardi was able to bring the case to court where a judge ordered her

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<sup>34</sup> “Special appellate court that had never met before,” described by Cole in *Enemy Aliens*, pp. 66-67.

<sup>35</sup> Op. cit., Cole, *Enemy Aliens*, pp. 68-69. Cole characterizes Section 218 on p. 66 as “the PATRIOT Act’s most controversial intelligence-gathering amendment.”

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client released. But the prosecutor immediately appealed that decision, basing his case on “prosecutorial discretion” superseding the judge’s order, based on evidence not allowed to be disclosed. At a subsequent hearing a judge ordered the young Tunisian student deported, based on his failure to maintain a full load of college courses.

While the final decision was pending, the 20-year-old Tunisian was held in isolation at a detention facility in San Pedro for six months, then deported. The government may have had other evidence against the man, and it could have been gathered pursuant to Section 218 of the PATRIOT Act. But, said Al-Wardi, “I would not know that.” (Note: See the “Stories” section of this report for more individual cases involving related issues.)

### **Indefinite Detention, Section 412**

This section lays out the conditions for taking aliens into custody and detaining them without trial solely on the authority of the U.S. attorney general. The section specifies certain periods of allowable detention, but grants the attorney general the authority to renew a person’s detention at six-month intervals indefinitely. The section provides for the attorney general invoking this section to “certify” that an immigrant, within seven days of being picked up, took part in terrorist activity or could be deported for a visa violation.

Civil rights groups declare that the attorney general assumes an excess of power under Section 412.<sup>36</sup> The section notes that a detention could truly become of indefinite duration in this situation: An immigrant who is deportable for a visa violation, such as overstaying, comes from a country that refuses to let him return. Should the attorney general find “reasonable grounds to believe” that the individual represents a terrorist or other criminal threat, in that instance the system would run out of alternatives and the detainee would remain in custody with no end in sight and without recourse to challenge the attorney general’s order. Besides hypothetical examples, there are confirmed cases of Muslims – citizens and noncitizens alike – being held in detention without recourse to a court hearing for weeks and months. We provide examples in the “Stories” section of the report.

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<sup>36</sup> See analyses by the ACLU at <<http://archive.aclu.org/congress/1102301e.html>>, the Cato Institute at <<http://www.cato.org/current/terrorism/pubs/levy-martial-law.html>>, and National Association of Criminal Defense Lawyers at <<http://www.criminaljustice.org/public.nsf/0/6DFC470F0930ABAD85256B06005AF56D?OpenDocument>>.

## ***The Roundup of Muslim Immigrants***

Rather than developing evidence against individual suspects gathered through policing intelligence methods, in the one activity that affected Muslim immigrants most acutely, the federal government seemingly abandoned investigations of terrorism directly altogether. It did so by imposing severe sanctions on any male visa-holder of a certain age from a Muslim country whose compliance with immigration regulations fell short of the letter of the law. Widespread instances of arrests, detentions and deportations and threatened deportations resulted. No suspected connection to terrorism formed the criteria for sanctions. As one immigration study group put it, “the government ... used national origin as a proxy for evidence of dangerousness.”<sup>37</sup>

Muslim communities reacted with anger, fear and confusion. The breadth of concern is shown by a letter sent to the secretary of Homeland Security, Tom Ridge, and signed by 77 civil rights, immigration and Muslim community groups – seven from California. The letter states in part: “We urge your Department to revisit the overarching assumptions of post 9/11 detentions – that immigration law should be a tool for the blanket detention of individuals who are not connected to terrorism and cannot be charged criminally.”<sup>38</sup>

### **People Affected, by the Numbers**

The volume of immigrants – and in some cases, citizens – caught up in the federal immigration-violation roundups varied among episodes at different times and places. From estimates and tallies,<sup>39</sup> below are some figures representing Muslim immigrants rounded up at the major stages of the immigration sweeps:

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<sup>37</sup> Migration Policy Institute, *America’s Challenge: Domestic Security, Civil Liberties, and National Unity after September 11*, pg. 8.

<sup>38</sup> See Appendix I for full text and list of signers.

<sup>39</sup> Unless otherwise noted, this chronology summarizes a longer version prepared by the American Immigration Lawyers Association under the title, *Executive Branch Actions Since Sept. 11, 2001*.

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- ◆ The first numbers came, briefly, from the government. The Office of the Inspector General of the Department of Justice is charged with investigating complaints against DOJ methods and enforcement activities. It begins one of its reviews of conduct toward Muslim immigrants by noting that within two months of the 9/11 attacks, authorities had detained 1,200 “citizens and aliens nationwide” with “possible ties to terrorism.” Thereafter, however, as quoted by the OIG, the DOJ announced it was stopping the count “because the statistics became confusing.”<sup>40</sup> Up to that point, the actual number apparently is 1,182.<sup>41</sup>
- ◆ The OIG’s own review of this first immigration sweep, as noted above, was conducted mostly on the East Coast as the government investigated the 9/11 attacks. The OIG reported that 738 aliens were arrested between September 11, 2001, and August 6, 2002. A mixture of suspicions were cited as reasons for the arrests. OIG said that these detainees were placed on an “INS custody list” because the FBI believed they “may have had a connection to the September 11 attacks,” or because agents were still checking for that connection, or because those on the list may have had a connection to “terrorism in general.”<sup>42</sup> Later, Georgetown University law Professor David Cole, among others, cited research showing that from this first group of detained Muslim immigrants, “not a single one was charged with any terrorist crime, and virtually all were cleared of any connection to terrorism by the FBI.”<sup>43</sup>
- ◆ The next federal action directed at Muslims and Arabs en masse was in response to Attorney General Ashcroft’s directive on November 9, 2001, ordering federal agents to interview 5,000 men ages 18 to 33 who entered the U.S. after January 2000. The interviews of men from countries where Al Qaeda has a “presence or activity” were voluntary, but pressure to cooperate was reported. Immigration status was included in questions asked. Of the 5,000, 2,261 were interviewed. Fewer than 20 were detained, and only three were arrested on criminal charges.
- ◆ A week later, the State Department imposed a 20-day waiting period for security checks of visa applicants from two dozen Middle Eastern Muslim countries. The department refused to confirm that the edict had been issued, but notices of its implementation appeared in computer systems in the target countries.

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<sup>40</sup> OIG, *September 11 Detainees*, p.1.

<sup>41</sup> Op. cit., Cole, *Enemy Aliens*, p.25.

<sup>42</sup> Op. cit., OIG, p.2.

<sup>43</sup> Op. cit., Cole, *Enemy Aliens*, p.30.

- ♦ In January 2002, DOJ instructed agents to locate 314,000 people with deportation orders against them. First to be entered in a National Crime Information Center Database were 6,000 men from “Al Qaeda-harboring countries ...” More than 1,100 “absconder” immigrants were detained.<sup>44</sup>
- ♦ In March 2002, another 3,000 Arab and Muslim men were asked to submit to interviews.
- ♦ Elements of Special Registration had been in effect weeks before, but in mid-September 2002 the first phase of the National Security Entry-Exit Registration System (NSEERS) was implemented. The system required, then as now, that aliens, upon entering or temporarily leaving the United States, and once a year while in the United States, must register or reregister with immigration authorities.
- ♦ The first of the NSEERS annual inspections, known as Special Registration call-ins, began in November 2002, and concluded in April 2003.<sup>45</sup> Under this requirement, Muslim aliens who had not become permanent residents were required during the call-in period to report personally at federal immigration offices to be fingerprinted, photographed and questioned under oath by immigration officers, as set out below:

**Figure 1**  
**Nationalities Required to Respond to Special Registration Call-In**

Men and Boys, Aged 16 and Older, From the Following Countries Were Subject to Special Registration Through the Call-In	Original Dates for Special Registration Call-In
Iran, Iraq, Libya, Sudan, Syria (citizens and nationals who were last admitted to the U.S. as non-immigrants on or before September 10, 2002)	November 15 - December 16, 2002 & January 27 - February 7, 2003
Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morocco, North Korea, Oman, Qatar, Somalia, Tunisia, United Arab Emirates, Yemen (citizens and nationals who were last admitted to the U.S. as non-immigrants on or before September 30, 2002)	December 2, 2002 - January 10, 2003 & January 27 - February 7, 2003
Pakistan, Saudi Arabia (citizens and nationals who were last admitted to the U.S. as non-immigrants on or before September 30, 2002)	January 13 - March 21, 2003
Bangladesh, Egypt, Indonesia, Jordan, Kuwait (citizens and nationals who were last admitted to the U.S. as non-immigrants on or before September 30, 2002)	February 24 - April 25, 2003

**Source: Reformatted data from the Immigration and Naturalization Service**

- ♦ By May 2003, following detentions from Special Registration roundups across the country, the estimates of detained immigrants ranged from 5,000 (Cole) to uncounted “thousands of men, mostly of

<sup>44</sup> Congressional testimony reported in Federal News Service May 8, 2003, cited by Cole.

<sup>45</sup> The registration requirement did not end there. By September 2003, that year’s mandatory *annual* registration requirement was under way for Muslim immigrants.

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Arab and South Asian origin” (ACLU). Cole finds only five detainees out of the later roundups who were charged with a terrorist-related crime, and of the five, only one who was convicted and one other, at the time of publication, was awaiting trial.<sup>46</sup> None of these few surviving cases emanated from California.

- An unofficial tally: Since September 11, 2001:
  - Number of foreign visitors from 25 predominantly Muslim nations (and North Korea) who were ordered to register with the government: 83,310.
  - Number of those 83,310 who were ordered into deportation proceedings: 13,740
  - Number who were publicly charged with terrorism, although officials say a few have terrorism connections: 0.<sup>47</sup>
  
- By early December 2003, when the government announced changes in monitoring the activities of Muslim aliens, also announced were the final and official totals of those affected before the changes took place, as of September 30, 2003:
  - Registered at ports of entry: 93,741.
  - Registered during Special Registration: 83,519.
  - Placed in deportation proceedings: 13,799.
  - Jailed at detention centers: 2,870.
  - Charged as criminals: 143.<sup>48</sup>

### **Special Registration in California**

The call-in registration experience for those responding to this federal requirement appeared to produce most of the anguish for Muslim immigrant families in California. How many families is not known. The best that immigrant rights groups and lawyers can collectively estimate is that hundreds of Muslims in California were detained, deported or interrogated, stemming from Special Registration-type and/or FBI enforcement and investigations.

We present testimony of specific instances and individuals who experienced this process in the “Stories” section of this report. But in general, from conducting scores of interviews of members of immigrant communities and their supporters and lawyers, we learned that typically an immigrant would show up for Special Registration at an office in California believing the purpose was no more than a check of

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<sup>46</sup> Op. cit., Cole, *Enemy Aliens*, p.26.

<sup>47</sup> From a *Chicago Tribune* study, “Immigration Crackdown Shatters Muslims’ Lives,” November 17, 2003.

<sup>48</sup> Department of Homeland Security, Fact Sheet, December 1, 2003.

his status. In recent times past, even being out of status, that is, remaining in the country after a visa had lapsed, would not automatically jeopardize the immigrant's ability to remain in the country. A provision of immigration law allowed some categories of out-of-status aliens to remain by paying a \$1,000 fine at the time of making application for permanent residence. Many such applicants for permanent residence status were married to American citizens.

With the implementation of Special Registration during the call-in period in late 2002 until April 2003, however, the rules changed dramatically. An immigrant found to be out of status was often detained instantaneously and placed in deportation proceedings, now called removal proceedings. The subject could, at this point, become one of what Professor Cole calls "the disappeared"<sup>49</sup> among Muslim immigrants in the United States, held incommunicado at locations unknown to family or legal counsel. A time of confusion and fear appeared to grip Muslim communities as immigration procedures as they were previously understood gave way to new and changing rules, a new bureaucracy replacing the INS,<sup>50</sup> and a new role of immigration enforcement by the FBI, now empowered to make arrests for immigration infractions in what previously had been exclusively a province of civil, not criminal, law.<sup>51</sup>

Immigrants (technically nonimmigrants awaiting immigrant status) were required to follow the new rules as published in the Federal Register, seldom read by other than lawyers. Only in the Register did the government announce changes in call-in dates for Muslims from some countries and other dates for those from other countries and, for example, changing rules for different ports from which Muslims were required to embark when making temporary trips out of the country. Any variation from the requirements could result in severe sanctions. The stage was set for new rules and new attitudes that began governing the relationship between Muslim immigrants and U.S. institutions and their agents.

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<sup>49</sup> Op. cit., Cole, *Enemy Aliens*, p.22.

<sup>50</sup> Under the new Department of Homeland Security (DHS), the INS was replaced by three DHS sub-agencies: U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Patrol (CBP) and U.S. Citizenship and Immigration Services (CIS).

<sup>51</sup> The attorney general "authorizes the FBI to investigate and detain aliens suspected of violating any immigration law or regulation and to enforce all immigration provisions, including those related to special registration." *Executive Branch Actions Since September 11, 2001*, American Immigration Lawyers Association.

## **New Regulations Announced**

In the first few days of December 2003, the rules changed again for Muslim visitors to the U.S. The Department of Homeland Security announced it had decided to “suspend” subsequent rounds of Special Registration call-ins that were to have followed the first-round period, November 2002 to April 2003. But the government qualified the suspension, saying it reserved the authority “as a matter of discretion” to call in individuals at any time “to ensure that an alien remains in compliance with the terms of his or her ... visa and admission.”<sup>52</sup>

At the time, the department also stated that other parts of the National Security Entry-Exit Registration System (NSEERS) requirements would remain in place for visitors from “designated” countries. Among the standing requirements: that special registration for visitors from those mainly Muslim designated countries would continue to undergo – as other foreign visitors would not – extra scrutiny upon arriving in and departing from the U.S. However, the government went on to say that entry-exit policies would change in the future under a new name: US-VISIT. Phased in beginning in December 2003, US-VISIT is described as, in effect, treating all visitors requiring a visa to be processed in the same way, doing away with special scrutiny for those arriving from Muslim countries.

Civil rights groups were quick to comment on the changes, acknowledging the new degrees of fairness described in government notices of the new policies, but noting concern at the same time.

The American-Arab Anti-Discrimination Committee (ADC) said it welcomed the changes but said they gave no relief to thousands of Muslim immigrants swept up in previous wide-ranging roundups. ADC President Mary Rose Oakar said, “The elimination of the call-in requirements is a positive step, and helps move us away from a system which discriminates against individuals based solely on their national origin. However, we are still very concerned about the thousands of people who unreasonably face possible deportation as a result of a policy that is increasingly recognized as having been ill-conceived. ... Deporting thousands of individuals for trivial reasons resulting from the poor implementation of a flawed policy will not make our country any safer.”<sup>53</sup>

The American Immigration Lawyers Association warned immigrant communities that special registration singling out Muslim nationals still

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<sup>52</sup> Federal Register/Vol. 68, No. 231, Dec. 2, 2003, pp. 67578-79.

<sup>53</sup> ADC press release, December 1, 2003.

was in force at the borders and ports and still could be required of certain visiting or resident individuals as the government wished. And, noted Judith Golub, AILA's senior director of advocacy and public affairs: "The changes DHS announced [suspending Special Registration call-ins] demonstrate that the program has been a failure. . . . They have left immigrant communities feeling besieged, harmed our relations with foreign governments, and wasted precious resources."<sup>54</sup> The ACLU took notice of the new regulations with tentative approval of the government's suspension of Special Registration call-ins, but listed concerns. Among them:

- ♦ "...all other requirements of NSEERS remain in place and will perpetuate the discrimination that lies at the heart of the program."
- ♦ Confusing "departure requirements" for those temporarily leaving the country.
- ♦ Lack of "accurate, timely and understandable" instructions on how to comply with regulations.
- ♦ No relief for those who missed interview deadlines under the previous call-in rules.
- ♦ Immigrants from Muslim countries, until policy changes, will continue to be "singled out for special registration."
- ♦ Under the phased-in US-VISIT program, despite no overt discrimination in the regulations, the regulations "still could permit immigration authorities to detain and deport noncitizens based largely on their ethnicity, religion or country of origin."<sup>55</sup>

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<sup>54</sup> AILA press release, December 9, 2003.

<sup>55</sup> ACLU press release at:  
<http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=14485&c=206>.

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## ***Federal Enforcement and the California Connection: State and Local Issues***

State and local law enforcement officials, with exceptions, have shown a reluctance to employ the powers vested in federal agents by the PATRIOT Act and, as a group, appear to have resisted attempts to broaden their powers to include routine enforcement of federal immigration statutes. (This issue centers primarily on immigration enforcement because, as noted earlier in this report, the post-9/11 investigations of domestic terrorist activity underwent a profound shift emphasizing the immigration status, rather than any connection to terrorism, on the part of Muslim immigrants.) In response to the call for local participation, in an April 10, 2002, letter to U.S. Attorney General John Ashcroft, President Bob McDonnell of the California Police Chiefs Association said California police agencies would not welcome the new role of immigration enforcement.

McDonnell, police chief of Newport Beach, wrote that “it is the strong opinion of the California Police Chiefs Association leadership that in order for local and state law enforcement organizations to continue to be effective partners in their communities, it is imperative that they not be placed in the role of detaining and arresting individuals based solely on a change in their immigration status.”

Ashcroft in June 2002 issued a proposed rule empowering local law enforcement officers to arrest individuals for civil violations of immigration laws. The U.S. Department of Justice cited a recent DOJ Office of Legal Counsel opinion, unpublished, which claims for local law enforcement officers the “inherent authority” to enforce not only criminal violations of immigration law, but civil violations as well.

### **The Proposed CLEAR Act**

In the House of Representatives, Rep. Charlie Norwood, R-Georgia, has introduced HR 2671, legislation which would criminalize hitherto civil immigration status violations and *mandate* that state and local police enforce federal immigration law. The so-called CLEAR Act – Clear Law Enforcement for Criminal Alien Removal Act of 2003 – has garnered 109

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congressional co-sponsors. The California Police Chiefs Association opposes the measure.

In a September 12, 2003, letter to members of Congress, California legislators said the CLEAR Act “poses dangerous consequences for public safety, improperly shifts the burden of federal immigration law enforcement to local police, and ensures the likelihood of civil rights abuses and wrongful arrests.” Urging opposition to the measure, the letter was signed by 60 members of the California Legislature.

Political controversies arising from the aftermath of the events of September 11, 2001, most notably the war in Iraq, occasionally have played themselves out on the streets of California cities. As political protests take the form of civil demonstrations, two sets of state issues have been the focus of concern:

- ◆ Activities of the California Anti-Terrorism Information Center in the evaluation and dissemination of information it defines as potential terrorist threats, and
- ◆ The intelligence-gathering activities of state and local law enforcement agencies which are governed by California statute and case law.

### **The California Anti-Terrorism Information Center versus Protestors**

The California Anti-Terrorism Information Center (CATIC) was established by state Attorney General Bill Lockyer and former Governor Gray Davis by way of a Memorandum of Understanding signed September 25, 2001. It is the state’s clearinghouse for all terrorist-related activities and investigations. CATIC collects, analyzes, develops and disseminates terrorism-related intelligence to California law enforcement agencies and the Federal Bureau of Investigation. In addition, members of CATIC are assigned to six of the FBI’s Joint Terrorism Task Forces in California.

CATIC became the focus of concern in the aftermath of an April 7, 2003, protest at the Port of Oakland when police fired wooden slugs at anti-war demonstrators. In the days leading up to the demonstration, intelligence bulletins issued under the imprimatur of the state’s information center on combating terrorism left local law enforcement officials – who may have been trying to evaluate the level of force that might be necessary in the event of an anti-war protest – with an impression that a dangerous outbreak of violence was imminent and that protestors intended to shut down the port.

Responding to inquiries from reporters for the *Oakland Tribune* after the confrontation, CATIC spokesman Mike Van Winkle offered a somewhat expansive definition of the agency's interest in the demonstration. Van Winkle told the *Oakland Tribune*: "You can make an easy kind of link that, if you have a protest group protesting a war where the cause that's being fought against is international terrorism, you might have terrorism at that (protest). You can almost argue that a protest against that is a terrorist act." The newspaper quoted one unnamed Bay Area official saying that "since Day One" CATIC has targeted activist groups in the name of anti-terrorism.

The aftermath of the confrontation in Oakland gave rise to complaints that the unit was using anti-terrorism resources to gather intelligence and issue warnings about noncriminal citizen activities protected by the First Amendment of the U.S. Constitution. In a June 3, 2003, letter to the editor of the *Oakland Tribune*, Attorney General Lockyer wrote, "I have made it abundantly clear that connecting war protestors with terrorists is preposterous, and that the [Van Winkle] quote represents neither the policy or practice of my office, which has in fact vigorously resisted extremist proposals to establish a nationwide database to snoop on America." In May, Van Winkle's job within CATIC was "redefined," according to a spokesman for Lockyer, and new chain-of-command procedures have given the state Department of Justice more direct oversight of CATIC.

However, although Lockyer has communicated some guidelines since then, some confusion had been evident among local law enforcement agencies. For example, when it was revealed that a member of the Fresno County Sheriff's Department had been attending meetings undercover of the anti-war group Peace Fresno for three months, the sheriff continued to assert the right to conduct such investigations. Echoing the Ashcroft Intelligence Guidelines, Sheriff Pierce stated, "We can be anywhere we want that's open to the public."

### **Criminal Intelligence Systems: A California Perspective**

The revised training manual, *Criminal Intelligence Systems: A California Perspective*, was published by the state Department of Justice in September 2003. W. Scott Thorpe, special assistant attorney general, said the new manual was intended to update state and local law enforcement officials on state statutory and case law in relation to intelligence gathering and to focus new attention on constraints to such activities. Said Thorpe, "It emphasizes in greater detail this balance between privacy and security, particularly in the context of public

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gatherings and political protests, those types of things that have come up recently after 9/11.”

This new training manual states:

*The best assurance for public acceptance of intelligence operations are clear guidelines that focus intelligence efforts on illegal activities, and do not encourage surveillance of people or groups engaged in acts of protest or civil disobedience. We do not mean to suggest that law enforcement should not be aware of disruptive events taking place in a community that may affect public safety, but it is one thing to ensure that law enforcement officers are aware of the potential for disruption, and quite another to focus intelligence operations on those participating in or organizing such events in the absence of credible information that they intend to engage in or encourage criminal acts.*

The new manual delves in some detail into case law, in particular *White v. Davis* (1975) 13 Cal.3d 757, which involved the use by the Los Angeles Police Department of undercover agents on the campus of the University of California, Los Angeles. When police agents were discovered monitoring the content of certain college courses, a taxpayer’s suit was filed to terminate the practice. The California Supreme Court singled out the LAPD’s failure to justify the information-gathering in connection with any criminal activity. According to the new manual, it is “a mistake of constitutional dimension” to gather information for a criminal intelligence file where “there is no reasonable suspicion” of the existence of criminal activity.

## ***Foreign Students and Scholars***

There were 79,000 undergraduate and graduate foreign students enrolled in public and private universities and colleges in California in the fall of 2002 according to the California Postsecondary Education Commission. The federal government has always kept some information on these nonimmigrants, but the level of scrutiny intensified after the 1993 World Trade Center bombing and the 2001 attack on the Twin Towers.

### **Student and Exchange Visitor Information System (SEVIS)**

The federal Immigration and Naturalization Service (renamed after 9/11 and divided into three parts within the Department of Homeland Security) tracks foreign students and scholars in the United States. Prior to 1993, when it was discovered that one of the terrorists involved in the bombing of the World Trade Center was in the country on an expired student visa, the U.S. record-keeping system for foreign students and scholars was deemed unreliable. Subsequent to the February 1993 bombing, Congress passed and the president signed the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). IIRIRA mandated that the then-INS develop a computer system to collect foreign student information from colleges and universities. Today, this computer tracking system is called the Student and Exchange Visitor Information System (SEVIS).

The PATRIOT Act signed after the September 11, 2001, terrorist attacks required the immigration bureau to implement SEVIS by January 1, 2003. The PATRIOT Act expanded the types of schools required to participate in SEVIS to include flight schools, language training schools and vocational schools. The PATRIOT Act also required that SEVIS include data on foreign students' and foreign scholars' port of entry and date of entry to the U.S.

Additional requirements were added to SEVIS when the Enhanced Border Security and Visa Entry Reform Act was passed in 2002. This

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amended SEVIS to include information on the issuance of an I-20<sup>56</sup> by an INS-approved school, the issuance of a visa, the registration and enrollment of the student, and, if applicable, the failure of an alien to enroll or commence participation in a school or visitor-exchange program. Most of the glitches have been worked out in the implementation of SEVIS and the system is up and running for new and continuing foreign students and scholars.

### **Special Registration Requirements**

As previously noted, non-immigrants, including male foreign students, coming from countries that are identified as presenting national security concerns have been required to register under NSEERS, the post-9/11 visitor-monitoring program.

The attorney general wrote NSEERS after 9/11, and it was enacted through the federal regulatory process. In December 2003, the Department of Homeland Security issued regulations to amend NSEERS by suspending 30-day and annual registration requirements. The new regulations do not impact existing SEVIS requirements, but they do allow foreign students and scholars who are monitored by SEVIS to avoid having to separately notify the DHS of changes in educational institutions and addresses.

These special registration requirements affect foreign students and scholars from designated countries in a variety of ways. Male students or scholars in the U.S. had to register with immigration authorities at a port of entry or a designated immigration office in the winter and spring of 2003. Additional in-person interviews were conducted. After the December 2003 changes to NSEERS, these non-immigrant foreign students must still notify immigration authorities of changes in employment, since this information is not currently captured by SEVIS. These foreign students and scholars must also use specially designated ports when they leave the country and report in person to an immigration officer at the port on their departure date.

### **Additional Rules for Some Foreign Students Entering and Exiting the U.S.**

Foreign students and scholars return to their homeland for a variety of reasons: to visit family and friends during school breaks, to help an

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<sup>56</sup> When a foreign student is accepted to a program offered by a school approved by the immigration bureau, that school issues a form I-20 to the student. The foreign student presents the I-20 when applying for a student visa and shows it to an inspector when entering the U.S.

ailing relative, to attend an important event such an international conference. When that individual wants to reenter the U.S., different rules apply depending on the home country.

Since well before 9/11, foreign students and scholars from countries with serious political conflicts with the U.S. have been required to get a new visa every time they come back. For instance, students from Iran, Syria and Iraq had been in this “single entry” category for a number of years. Before a new visa is issued, the State Department does a background check. This background check can take a long time. For instance, John Pearson from Stanford University told the California Senate Office of Research (SOR) in October 2003 about one Ph.D. student from China who went home during winter break in late 2002 and still has not returned because a new visa is still under review.

Students studying in fields such as technology where their knowledge can be used to harm U.S. interests are subject to heightened scrutiny through background checks when they enter and exit the U.S. This kind of additional scrutiny has been in place for many years.

### **USA PATRIOT Act Records-Disclosure Requirements**

Section 507 of the PATRIOT Act gives the attorney general or his deputies the authority to ask a judge for an order allowing the attorney general to obtain private educational records for a foreign student. A judge must grant the attorney general’s request if the attorney general certifies that the records are necessary to investigate domestic or international terrorism. The judge does not make an independent assessment as to the relevance of the private records to the terrorism investigation. Section 508 allows access to National Education Statistics Act records relevant to a terrorism investigation.

### **Data from UC, CSU and the Community Colleges**

In October 2003, SOR surveyed the University of California (UC), the California State University system (CSU) and the California Community Colleges to gather data related to SEVIS. UC and CSU responded to most of the survey questions. The California Community Colleges provided enrollment figures from 1992 to 2002 for students with student visas, but were unable to answer questions related to the impact of SEVIS.

International student enrollment figures for all three branches of public higher education showed overall increases from 1993 to 2002. Enrollment figures for the fall of 2003 were not available. In the fall of 2002, there were 11,165 undergraduate and graduate students at UC,

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19,633 at CSU, and 35,426 undergraduates at the community colleges with visas. The following table shows the undergraduate and graduate enrollment figures from 1993 to 2002.

**Table 1**  
**Students with Visas at California Public Universities, Colleges**

<b>Year</b>	<b>UC</b>	<b>CSU</b>	<b>Community Colleges</b>
1993	6800	10,246	26,807
1994	6535	10,591	25,102
1995	6599	9803	24,319
1996	6992	10,901	26,364
1997	7730	12,039	30,135
1998	8196	12,697	33,033
1999	8200	13,929	34,031
2000	9139	15,387	35,963
2001	10,168	16,850	37,283
2002	11,165	19,633	35,426

UC and CSU report that SEVIS is fully operational on their campuses. SEVIS appears to have had little impact on enrollment at UC and CSU, and the campuses that responded to the survey believe enrollment held steady in 2003. CSU says, “Most campuses did report that it took longer than usual for international students to obtain visas for travel to the U.S.”

This last finding from CSU is consistent with oral conversations SOR had with Stanford University’s John Pearson, the director of the Bechtel International Center, and Ted Goode, UC Berkeley’s now-retired Director of Services for International Students and Scholars. They indicated that foreign students at Stanford and Berkeley are not encountering SEVIS problems, but a number have had visa delays that were detrimental to these students.

Additionally, UC, CSU and the community colleges were unable to provide SOR with data on admission of foreign students and scholars from particular countries. Therefore, we are unable to know whether admissions from particular countries, such as Middle Eastern countries, has changed.

### **Students Experiencing Visa Delays and SEVIS Problems**

Ted Goode says the visa-issuing process has become much more problematic for many students. In the past, many visas were renewed administratively, and now all new and continuing students must have a face-to-face interview. What took only days in the past now can take

months. These delays can conflict with the academic calendar and SEVIS requirements, especially a requirement that schools report within 30 days the failure of a student or scholar to enroll or commence participation in school.

Both John Pearson and Ted Goode mentioned Chinese graduate students who missed the spring 2003 semester due to visa delays. Ted Goode cited a music professor from Japan, who is Australian by birth, who couldn't get his visa in time to teach last fall at Berkeley. His course offerings had to be put off until spring.

Ban Al-Wardi, a Southern California immigration attorney, reports that one of her clients experienced visa delays that resulted in his entering the country after the school term had started. He was unable to enroll. His failure to enroll was tracked by SEVIS and he was deported for failure to enroll within 30 days.

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## **Conclusion**

This report has focused on four of the PATRIOT Act's sections and the act's definition of domestic terrorism. Where possible, it has given examples of the government's use of the act in specific cases. However, since the FBI and other federal investigating agencies are, under the terms of the act, allowed to invoke its sections in secret, individual accounts of its use are difficult to trace and explain.

Our inquiry into the government's post 9/11 changes in immigration rules for visa holders from predominantly Muslim countries was more productive. From published records from a variety of sources we were able to report tallies and estimates of the numbers of immigrants required to undergo inspections of their visitor status by the INS and its successor agencies created under the new Department of Homeland Security. At latest count, more than 83,000 visitors from Muslim countries (and North Korea), some of long-standing U.S. residence who had families here, were required to register with immigration authorities. Of that number, more than 13,000 were ordered deported, largely on the basis of overstaying despite, in many cases, extenuating circumstances that prior to 9/11 would not have jeopardized their ability to remain in the United States. It is estimated that hundreds of people from the 13,000-plus ordered deported were placed in "removal proceedings" in California.

We also examined new rules calling for closer scrutiny of foreign students and scholars from Muslim countries and the nexus, where it exists, between agencies of California state government and the federal government in its terrorist-investigation role. Our study finds that that connection, along with the way in which local governments have responded to federal post-9/11 laws, directives and enforcement practices, has met with substantial resistance on some issues in a number of local jurisdictions.

## **Looking Ahead**

As this report is being prepared, various developments point to future changes in the federal government's policies toward Muslim immigrant

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communities, including those in California. The Bush administration has proposed toughening provisions of the PATRIOT Act to bring about, for example, the ability of federal agents to originate and serve subpoenas in situations they deem to be terrorist cases, without first obtaining the permission of a court as now required. Critics contend some elements of the enhanced powers, which they call PATRIOT Act II, are already making their way into bills active in Congress.

On the other hand, the Department of Homeland Security has announced that significant changes are at hand in immigration policy that are described as fairer to Muslims coming to the United States as visitors or those who might seek permanent residence or citizenship in the future. According to U.S. Immigration and Customs Enforcement staff, a new, US-VISIT program will treat all visitors requiring visas traveling to and from the United States in the same way, and will do away with the ethnic profiling aspects of NSEERS.<sup>57</sup> New US-VISIT procedures at U.S. ports began a phase-in period in late 2003. They feature fingerprints and records storage for tracking purposes to better keep tabs on those remaining in the country beyond the exit dates stamped on their visas.<sup>58</sup>

For immigrants already in the country, modifications have been announced that suspend sweeping investigations and secret detentions that took place in the Special Registration call-in exercises a year ago. Still, even as the relaxation of this immigration policy most resented by Muslim communities takes effect, the government says it retains the authority to carry out the policy on a case-by-case basis. That means the immigrant summoned for a checkup will undergo at minimum fingerprinting, photographing and an under-oath interrogation – all of which can lead to arrest, detention and deportation for those whose travel documents are not in order.

Also, judging from the nature of many of the stories we have collected, questions remain, despite changes in procedures ordered at the top, about the treatment a Muslim immigrant or a Muslim traveler may receive at the enforcement level of constituted authority. For example – and these cases are explored more fully in the following “Stories” section:

- ♦ Can Tarek Elaydi, an American citizen of Palestinian origins, be assured that a passport control officer will not again shout questions

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<sup>57</sup> SOR interview with Virginia Tice, West Coast director of communications for U.S. Immigration and Customs Enforcement (USICE).

<sup>58</sup> US-VISIT fact sheet provided by USICE. See full fact sheet in Appendix II.

at him in an airport as to his religious beliefs and finish up by contemptuously tossing his American passport on the floor?

- ♦ Does Muhammad Bachir, who made his way from a Palestinian refugee camp 23 years ago and became a permanent U.S. resident, know for sure that officers calling him a terrorist – charges that no court believed – will not again hold him for a year and a half, moving him from one detention center to another across the country demanding that he stop complaining to civil rights groups and the press?
- ♦ How about Mohammad Alfaorri, an American who changed his name to Freddy and drives a van through residential San Bernardino, ringing a bell and selling ice cream? Federal agents came for him twice, arresting him, questioning his citizenship and seizing his naturalization card. Will Alfaorri now no longer fear that they might come again “any minute”?

A restive Muslim community waits for answers.

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## **The Stories**

*The following accounts derive solely from the individuals affected or lawyers acting in their behalf. An FBI response to this report is contained in the “Supplement” section beginning on page S1.*

### **❖ Issue: “Traveling While Arab”**

Not all were immigrants. Tarek Elaydi was on his way back to his home in San Francisco last April from a filming trip to Ecuador. He said good morning to the passport control officer in Houston and handed him his United States passport. Elaydi explains what happened next.

*He opened my passport to the first page and said in a loud voice, “Are you a Muslim?”*

*I was caught off guard but eventually I managed a “yes.”*

*“Are you Shiite or Sunni?”*

*I replied I was not religious.*

*Again, shouting now, “Are you Shiite or Sunni!”*

*Well, I told him, I was raised a Sunni. The officer looked at the passport again.*

*“Are you Wahabi?”*

*He continues shouting. Now everyone in line is looking at me. They hear the tone of the officer’s voice and must think he is accusing me of something horrible. I start wondering where this is leading.*

*I ask, “Where are you going with this? I told you I am not religious so there is no way I could be Wahabi.”*

*Officer: “Have you been to the region?”*

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*I take it he means the Middle East. “Yes, I’ve been to Israel and Jordan.”*

*“Are you pro-Palestinian?”*

*“I am very pro-Palestinian.”*

*“Do you have relatives there?”*

*“Yes.”*

*“Do you support Hamas?”*

*“No.”*

*“Have you been to Yemen?”*

*“No.”*

*He asks more questions about where I have been. I am wondering, “Why doesn’t he just scan my passport to see where I have traveled?” I start feeling sick to my stomach. I am ready to ask the officer if he is charging me with “traveling while Arab.” Is he going to let me into my country?*

*I ask if I can go now. He finally flips through my passport, throws it at me and calls the next person in line, who does not approach until I pick my passport off the floor and I am at a “safe distance.”*

*Needless to say, I felt extremely humiliated and unwelcome back to what was supposed to be my home.<sup>59</sup>*

### **❖ Issue: Secret Detention**

Confusion resulted at INS offices in California from detaining the first group of immigrant Muslim men, those from Iraq, Iran, Libya, Sudan and Syria, under the Special Registration call-in program. Immigration officials ran short of detention facilities and began sending detainees to distant lockups. Lawyers lost track of clients taken into custody as the immigrants came forward at immigration offices. Immigration lawyer Banafsheh Akhlaghi was missing 13 clients at one point. The then-INS acknowledged holding five of the 13 and gave the location: in one of a

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<sup>59</sup> Edited for length from a transcript Elyadi prepared and distributed to human rights organizations.

series of barracks-like buildings in San Diego. In it, Akhlaghi found the clients among 25 men she counted in the building, all shackled and handcuffed. She secured the release of her clients but no lawyer had yet come forward to represent the other 12. Akhlaghi said the detained men she observed in restraints were confined in one of six buildings situated on government property. She said there were indications the other five buildings may have also have contained still other detainees.<sup>60</sup>

❖ **Issue: Long-term Detention**

Muhammad Bachir, 44, is a permanent resident of the United States who emigrated from a Palestinian refugee camp in Lebanon 23 years ago. Settling in Anaheim, Bachir married a citizen, had children and made a living as an accountant, sales rep and table tennis teacher. There were personal issues with his family in the late 1990s and technical immigration violations over travels that his son made to Lebanon. According to Bachir and his lawyers, the INS said the seriousness of the infractions could mean he would be placed in custody.

He was ordered to appear for an INS interview in July 2001. Bachir notified the authorities by fax and phone that he had been hospitalized with a kidney infection and could not show up on the appointed date. The hospital likewise confirmed to the INS that Muhammad Bachir was a patient requiring hospitalization. Nothing further was immediately heard from the INS. But in early 2002 – after the 9/11 attacks on America – immigration ordered Bachir to report immediately and when he did, he was arrested and placed in detention at the San Pedro federal detention center. The charge was failing to appear for the earlier appointment. The INS denied it had been notified of the illness.

At that point, events began to unfold that would keep Bachir on the move, by force and under guard, to 17 different detention facilities across the United States over the next 18 months. Now there were accusations by federal agents that he was a member of the Palestine Liberation Organization and a terrorist. Bachir denied the charges and went public inviting news coverage of his predicament.

Irritated by this rare public airing of complaints by a detainee, immigration authorities tried to move Bachir to another facility by commercial airliner. At LAX, Bachir made a fuss, denying he was a terrorist. “I’ve lived in this country half my life,” he protested. As Bachir tells it, agents pummeled him and dragged him aboard. But the airline kicked them off the plane. Agents drew up a list of charges, but in

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<sup>60</sup> SOR interview, September 2003.

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federal court prosecutors brought only a misdemeanor charge of resisting. The judge threw out the charge.

In November 2002, immigration officials picked up Bachir again and, with guns drawn at a government airstrip in Victorville, they forced Bachir to get aboard a U.S. Marshals Service aircraft to begin a year-and-a-half odyssey. He was taken to more detention centers than he can remember, but he knows he was transported to various places in many states including Oklahoma, New Hampshire and Florida.

What drove the government to treat Muhammad Bachir, Anaheim businessman, in this way? “They were obsessed with me. I was outspoken. I called the media and human rights organizations, accusing the government of profiling. I went on a hunger strike.” Bachir said the agents promised his detention would end if he stopped going public with his troubles. “I never stopped.”

On August 29, 2003, when he was in a cell in Batavia, New York, near the Canadian border, Bachir recalls, “They opened the door.” He had \$23 in his pocket. Aided by the nationwide CAIR Muslim rights organization, Bachir returned to California and continues receiving help from CAIR.

“I lost everything,” he said – job, house, family. Today he studies to become a paralegal.

*Postscript:* At the end of his sojourn in New York, Bachir tells of an immigration officer informing him privately that immigration authorities now conceded that he had told the truth back in California more than two years earlier. They knew that he had been hospitalized at the time of his missed appointment – the supposed violation that set in motion his long ordeal.

### ❖ **Issue: Citizen Harassment**

Mr. Rashid (not his real name) has lived in the U.S. for 47 years and has been a U.S. citizen for 40 years. He is a businessman, in real estate now after owning a string of home-decorating stores in Orange County. He has been active in interfaith work for years, counseling cooperation between members of different religions.

Until 9/11, he traveled frequently and without incident. Then, in December 2002, returning to LAX from a trip to Pakistan, he was met at the jetway exit, in the terminal, by three uniformed and armed officers. He was unsure what branch of law enforcement they represented. Rashid asked them to produce identification. According to Rashid, they

refused. Rashid showed his passport, handing it up to the officers from the wheelchair he was using because of a leg injury. The officers surrounded him and ushered him, on the wheelchair, through passport control to the luggage carousel. Upon retrieving his luggage, the agents seized it, opened it, scattered belongings and sent a young woman back and forth to a copier machine, copying all written material they found including personal letters. They asked questions as they went through the luggage, searched Rashid's clothing and photographed him. They asked where he went to school. Mr. Rashid found the question odd since he was 67 years old. He told them:

"I was a citizen of this country before you were born."

After two hours, they let Rashid go.

That was one occasion, soon after 9/11, when security forces were on high alert at U.S. airports. But he says the same routine met him upon landing at the same airport on three subsequent trips.

"I wrote to my congressman. I was told [presumably by the congressman's staff], 'Your name must be on some kind of list and they don't know how to take it off.'"

Rashid prefers to conceal his real name because of the trouble it has caused him. He also prefers not to make a bigger issue of his experience. "I'm a lover, not a fighter. But it's unbelievable that this could happen in this country."

#### ❖ **Issue: Case Revived Through PATRIOT Act**

In 1987, seven Palestinians and the Kenyan wife of one of the Palestinians – who were to become known as the "LA 8" – were charged with aiding a terrorist organization, the Popular Front for the Liberation of Palestine (PFLP). Since then, the case has been in immigration deportation proceedings, but without resolution. Previously an immigration court had ruled that terrorism provisions of the law did not apply to two remaining members of the LA 8 against which the government was pursuing immigration violation cases – Khader Hamide and Michel Shehadeh. But now, a section of the PATRIOT Act allows an immigrant to be deported for activities that took place prior to enactment of new sections in the act defining terrorist activity,<sup>61</sup> presenting the government with a new legal basis to argue for deporting the two men.

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<sup>61</sup> Sec. 411.

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Originally, the LA 8 were charged under provisions of the McCarran-Walter Act calling for deporting immigrants advocating a communist cause. The act has since been repealed. PLFP activities today, scaled back from the activism of earlier years, now center on achieving a Palestinian state in the Middle East. Defense attorneys for LA 8 members have obtained statements from federal agents, including a former FBI director, that Hamide and Shehadeh pose no terrorist threat to the United States.

Still, notes Professor David Cole, who served as one of the LA 8 defense attorneys, “the case continues.”<sup>62</sup>

Today, Michel Shehadeh lives in Riverside with his naturalized American wife and one son, and has another son away at college. He manages an Italian restaurant in Anaheim. Shehadeh has been in the U.S. since 1975 and long ago acquired the “green card” making him a permanent resident. To be deported would be to separate him from his home, family and business and force him out of the country to an uncertain destination. As a Palestinian by origin, he would be a stateless person. Shehadeh says:

*We love this country. Our roots run deep. Our kids were born here. I believe in the Constitution. I believe in free speech. We were advocating then, and still do, nothing more than what the Bush Administration is advocating now: That there should be an independent Palestinian state.*

Shehadeh says he is the victim of “a new political atmosphere.”<sup>63</sup>

### **❖ Issue: No Criminal Case, But Immigration Case Is Created**

The home of a Canadian citizen living in Southern California is raided by the FBI without prior notice – allowable under Section 213 of the PATRIOT Act. Documents are seized. The Canadian is told he cannot leave the country while an investigation proceeds based on “secret evidence.” In federal court, the FBI is required to rescind its hold order when no evidence of terrorist activity is produced. But U.S. Citizenship and Immigration Services (CIS) seeks to deport the man. The charge is overstaying. CIS is not swayed by the contention that man overstayed only because the FBI ordered him not to leave the country. At last reports, the case was pending in an immigration court.<sup>64</sup>

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<sup>62</sup> *Enemy Aliens*, p.167.

<sup>63</sup> SOR telephone interview, September 25, 2003.

<sup>64</sup> From case files of immigration attorney Ban Al-Wardi, Los Angeles area immigration lawyer.

❖ **Issue: Unusual Circumstances, Usual Result: Detention**

Abdelrahim Kewan, an Egyptian, met and married his American citizen wife in Boston and soon thereafter, in about 1997, she filed a petition for her husband to become a permanent resident. They quarreled. She withdrew the petition. The INS prepared to deport him. She reconsidered and filed again on his behalf for permanent residence status. They moved to San Diego and again she withdrew the petition. Upon the advice of a lawyer, Kewan prepared to file for a “green card” on his own, basing the application on a claim that he was a battered spouse, in accordance with a provision covering that situation in immigration law.

Kewan is a housepainter and, in October 2002, he drove north from San Diego heading for a location where a painting job awaited him. According to his lawyer, Kewan became lost and pulled up to the San Onofre gate of the Camp Pendleton U.S. Marine base and asked for directions. MPs provided the directions and Kewan drove away to his destination around Oceanside. Early in the morning of October 25, 2002, INS agents came to his house and arrested him. He was held at a federal detention in Otai Mesa. A judge refused his release on bond, declaring him a national security risk, and Kewan, after a matter of months in custody, was deported back to Egypt.

The government stated that Kewan’s presence at the Marine base security gate was suspicious. According to Kewan’s lawyer, Jonathon Montag, the government said it had detected Middle Eastern men “testing security” at military installations and that many also were filing battered-spouse petitions to qualify for permanent residence status. At one court hearing for Kewan, a naval intelligence officer claimed that since the 9/11 attacks, 100 Middle East men had gone to Camp Pendleton gates claiming they had done so by mistake. Montag challenged the assertion in court, and elicited the admission that the only individual detained after visiting a Pendleton security gate has been his client. Montag says he obtained testimony from an FBI agent that no federal agency has an interest in Abdelrehim Kewan. He says it appears, however, that some immigration authorities ignored evidence of Kewan’s innocence but became fixated on trying to prove otherwise and on their attempts to deport him, which proved successful.<sup>65</sup>

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<sup>65</sup> Telephone interview, Jonathon Montag.

❖ **Issue: Community Rallies for Imam, Government Wants Him Deported**

Federal agents called at the Livermore home of Ahmad Abdalghafar Abdalla, an imam (religious leader) at a local mosque, took him into custody and held him in detention for several days in April last year. Imam Abdalla contested in court the government's attempt to deport him back to Egypt. The charge against the 30-year-old religious leader was overstaying beyond the three years allowed by his religious worker visa. Almost a year later, his case is still pending.

Abdalla's lawyer, Banafsheh Akhlaghi, cites reasons not of her client's making for the overstaying violation. A former attorney filed the wrong visa extension form with the government, then the government sent its notice pointing this out to the wrong address. The government continues pressing for the imam's deportation.

The imam is a popular figure in his community, where churches, synagogues and elected officials have rallied to his cause, petitioning an immigration court to extend Abdalla's stay. Members of his mosque have collected several thousand dollars to help pay legal fees for Abdalla and his wife. She faces possible deportation also and meanwhile – adding a complicating factor for the government – has given birth to one child and is soon to give birth to another while here, making the children American citizens automatically.

“This is not the way we handle other immigrants, but it's the way we deal with Muslims by prosecuting them on the smallest details,” Akhlaghi told a reporter.

A parishioner at the Livermore Presbyterian Church, Cynthia Morse, is active in Abdalla's defense. “He's a holy man. He's a humble man, and it was a really jarring sight to see him in shackles being led away,” she was quoted as saying. “I don't think we need terrorists to destroy this country when we're treating people like this. It's emblematic, and it's very scary.”<sup>66</sup>

❖ **Issue: More Airport Profiling**

Khalid Afsar emigrated from Pakistan and in 1993 became a U.S. citizen. He is a city planner for the city of Oakland. He traveled repeatedly pre-9/11 without incident, but upon returning from a visit to Pakistan in January 2003, passport control at LAX had a question for

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<sup>66</sup> Jack Chang, “Muslim Calls Deportation a Mishap,” *Contra Costa Times*, September 19, 2003.

him he had never heard before. The officer “asked if I had a second form of photo identification,” besides the photo in the passport. Afsar replied he had none, that he did not carry his California driver’s license when he traveled outside the country.

Khalid Afsar was escorted to various rooms, various people asking him for his driver’s license photo. During one interview, Afsar asked an officer with a walkie-talkie why a passport photo did not suffice. The officer said a photo substitution may have occurred, and in any case, he would ask the questions, not Afsar.

Next he was told to write on a slip of paper where he worked and its phone number. An officer called his workplace to verify the information. Another officer asked more questions: length of time living in the U.S., his birth date, his sign of the zodiac, contacts in the U.S., in Pakistan, name of sponsor when applying for citizenship.

After two hours with immigration officers, Customs took over. An officer looked through his carry-on bag and asked more questions: where did Afsar work, how long had he been gone on the current trip? “He grabbed my personal journal from one of the outside pockets of [my] backpack and began to thumb through it.” The officer asked if the journal was a personal diary. When Afsar replied in the affirmative, “he spent a few more minutes to slowly flip through [it] from beginning to end.”

Afsar summed up his experience to a fellow passenger as he completed his trip on a domestic flight to San Francisco. “I told her I had been ... detained by the U.S. Immigration and Customs people, whose new tactic was to harass U.S. citizens fitting certain racial or religious profiles by questioning the authenticity of their passports, reading their personal diaries and asking accusatory questions.”

Upon reaching home, Afsar was “sick to my stomach.” What if he had been grilled at LAX on a weekend when no one had have been in the office to answer the phone and verify his employment? Would he have been held through the weekend?

He wonders today, “Does the mere fact that I am Muslim and have a common Arabic name give the government authorities the right to revoke my citizenship privileges and hold me without just cause?”

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“I fell asleep wondering what was still in store for Muslims, Arabs and South Asians in the coming phases of George Bush’s war on terrorism.”<sup>67</sup>

### ❖ **Issue: Detention of Citizen, Middle East Origin**

Mohammad “Freddy” Alfaorri sells ice cream out of a van he drives, ringing a bell, through the residential streets of San Bernardino. He emigrated from Jordan in 1992, married an American woman, made a home in Redlands, and two years ago became an American citizen. At 5 o’clock one morning in January, 2003, armed men knocked on his door, told him he was under arrest and drove him the 60 or so miles to immigration headquarters in Los Angeles.

On the way, “they asked if I know this guy, and show me a picture. I know nothing about the man.” At the immigration office, the agents said they now realized Alfaori was an American citizen. “They say sorry” and let him go.

But on February 7, 2003, the agents came again, in greater force, and with guns drawn took him into custody at the facility where he starts his work day. Bound in cuffs and shackles, Alfaorri was taken again on the long drive to Los Angeles.

To what extent Alfaorri had access to court proceedings is unclear. He had no lawyer at the time. He recalls being taken into what he thinks was a courtroom where a “person behind a desk said he had to check my case” and ordered him held by the U.S. Marshals Service. At no time was Alfaorri, as he recalls it, told why he was being held although he recalls agents telling him, “Come on, Mohammad, admit it. You’re not legal here.” This was after the agents were shown, and seized, his naturalization card. He also showed his Social Security card and tried to explain that he is married to a woman who, like himself, is an American citizen “but they wouldn’t let me get a word in edgeways.”

Freddy (as he likes to be called) Alfaorri spent the next 14 days in jail not knowing why he had been arrested. His confinement ended on February 21, 2003. “Someone came and said my case was dismissed,” but he was not present for the ruling. He went straight from jail to the street.

Alfaorri recalls having little or no money, wandering on foot in Los Angeles for hours. He knew no one he could call. His wife was hospitalized, having suffered a stroke. Eventually he asked for and

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<sup>67</sup> From prepared statement and follow-up interview.

received train fare from a stranger for the trip from Union Station to San Bernardino.

Alfaorri returned to the lockup days later trying to retrieve his naturalization card. He was refused. He retained a lawyer – for the first time during his ordeal – and the lawyer retrieved the card.

Alfaorri expresses no interest in Middle East or any foreign affairs. At no time does he say anyone accused him of any form of terrorism while he was in custody. Not a registered voter, he cares nothing for politics – and does not know why he came to the attention of federal agents. “Maybe because my name is Mohammad.”

Today, he says, “I am still afraid of them. They may come again, any minute.”<sup>68</sup>

❖ **Issue: Possibility of Forced Separation of Family**

Ahmad Amin and his brother Hassan, ages 18 and 19, are threatened with deportation to Pakistan. Their mother, Tahira Manzur, is a permanent resident and is free to stay in the country. Their half-brother, Imran Mughal, is a U.S. citizen.

The possible breakup of the family – the case is pending – comes about for what the family’s lawyer, Banafsheh Akhlaghi, calls a “hyper-technical violation” having nothing to do with terrorism or even a knowing attempt to evade immigration law. Years ago when Mrs. Manzur was applying for permanent residency, a lawyer in Texas told the family that the status of her sons would automatically be adjusted to hers. Meanwhile, when their visas expired in 1999, Mrs. Manzur immediately filed for renewals.

During the Special Registration period for Muslim aliens, the family discovered no such adjustment was now being acknowledged by immigration authorities. In February, the brothers appeared for Special Registration, as required, at the San Jose immigration office. To the astonishment and horror of their mother and half-brother, Imran, a software engineer for America Online, Ahmad and Hassan were ordered deported for being in the country illegally.

Hassan was detained on the spot and held overnight in the Yuba County jail before the family bonded him out at a cost of \$4,000. Ahmad, then 17, was released to his mother.

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<sup>68</sup> SOR interview with Alfaorri and his lawyer, Ban Al-Wardi.

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As they waited for resolution of the case, Ahmad and his mother, as required, rose early once a month and traveled to San Francisco for a meeting with an immigration officer who held Ahmad's Pakistani passport. The visits were required to show Ahmad was not evading resolution of his case.

Plans remained on hold for a family under stress. In interviews with the *San Jose Mercury News*, Mughal said he "can't take the next steps in my life." Ahmad withstood taunts from classmates as he practiced with the football team. Hassan couldn't make plans to transfer from the community college he attends. Of his predicament, "I think about it all the time." Mrs. Manzur, a teacher at a child development center, says she's "tired of this now, physically, emotionally."

Following publication of the story in the San Jose newspaper, immigration authorities appeared to back off from their previous position calling for immediate deportation. U.S. Immigration and Customs Enforcement has delayed the deportation order, allowing Ahmad and Hassan to apply for temporary visas.

If deported, the newspaper account notes, the brothers can never reenter the United States.<sup>69</sup>

### **❖ Issue: Unexpected Detention During Special Registration**

All requirements to stay in the United States seemed to have been met for Yashar Haider, who had graduated with honors from an American university as a computer engineer and whose services were being sought by two Silicon Valley companies. One of the prospective employers, on behalf of Haider, a 24-year-old Pakistani citizen, had filed with the INS to obtain a work visa for him, replacing the student visa that expired after he graduated.

As a visitor from a Muslim country, Haider was among the hundreds in California – and thousands nationwide – who were required to appear at immigration offices for Special Registration, consisting of fingerprinting, photographing and being interviewed under oath. As related by Haider's Bay Area lawyer at the time, Saad Ahmad, "everything looked fine" for Haider. It looked as if he would be in and out of the immigration office in San Jose in a few minutes.<sup>70</sup>

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<sup>69</sup> Jessie Mangaliman, "Family fights deportations," *San Jose Mercury News*, September 10, 2003, updated September 23 with later developments.

<sup>70</sup> Interview with Saad Ahmad.

Instead, after the interview, an immigration officer told Haider to wait in another room. Three hours later, as witnessed by Ahmad who was present, to his surprise, several immigration officers appeared, handcuffed Haider and led him away. After two days in detention, the lawyer obtained Haider's release on \$5,000 bond, but the case in court went against him. Haider was deported, ending his three-year stay in the U.S. and the career he was pursuing in the information technology industry.

Ahmad said that the government had, in effect, deported a person whose immigration status was valid. By long and accepted precedence, he said, a foreign national with a pending visa application in Haider's circumstances was considered by the government to be in the country legally, a person between visas, so to speak. Haider's case illustrates that is no longer so, observed Ahmad, and thus his client's deportation.

"He is a very bright kid," said Ahmad, "the kind of person we should want to have in this country."<sup>71</sup>

❖ **Issue: He Comes From "One of Those Designated Countries"**

During Special Registration call-in, a young Pakistani man, who asks that his name not be used, was detained by the immigration service in San Francisco. His lawyer, Saad Ahmad, received a ruling from an immigration judge allowing the man to be released on bond pending resolution of his case. But agents continued to hold the man in detention. After 12 days, Ahmad asked the authorities to explain why the detention was continuing after a court had approved bonding him out. As related by Ahmad, officers said the man came from "one of those designated countries," meaning Muslim countries whose nationals were being called in for Special Registration.

The officers explained further that immigration headquarters in Washington had issued a memo to field offices ordering more than routine investigation of nationals from certain countries. Ahmad said he replied that immigration authorities had already held the man 12 days, and he asked the agents to produce the memo but they refused. Ahmad said the immigration agents held his client four days more, then released him.

While these events were unfolding, the client in this case was seeking asylum after leaving Pakistan. He had entered the U.S. through Mexico illegally and was caught in an FBI-INS roundup of illegal immigrants in the Silicon Valley. Ahmad said another lawyer handled the asylum case,

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<sup>71</sup> Ibid.

but that the law recognizes that asylum seekers, fearing persecution if returned to their home countries, often must take unusual measures to reach the U.S., including illegal entry.

❖ **Issue: Charitable Donations Prompt FBI Threat**

In an Arab community in Northern California, a family donated money to an Islamic organization for Palestine relief. FBI agents visited the home. They told the occupants, “Do you realize if we find this organization is associated with terrorists you can be prosecuted under the Patriot Act?” This and other threats like it become a concern for many Muslims at the close of Ramadan each year, when charitable donations are made as a religious rite. One person asked a lawyer, “How can I now donate and know the FBI won’t link me to terrorism?”<sup>72</sup>

❖ **Issue: Police Preoccupation with a Head Scarf**

In March of 2003, Tabassum Siddiqui joined others protesting the Iraq war in and around Rockefeller Center in New York City. Siddiqui, from California but enrolled at New York University, always wears the *hijab*, or head scarf, in public as a sign and a condition of her Muslim religion. The demonstrators, including Siddiqui, protested by lying down in the street and making statements of protest. New York police began seizing and handcuffing them. Arrested, Siddiqui and others were shoved, pushed and made to remain handcuffed for hours, not untypical of such encounters that demonstrators experience worldwide.

But upon reaching jail and undergoing the processing for incarceration, Siddiqui reports the police singled her out for special treatment. They demanded she remove the *hijab*, so she could be photographed. She refused, and became anxious and upset, afraid that to her other offenses would be added that of resisting. She was told that she did not, as she insisted, have the right to wear the *hijab*. She was told she would be held indefinitely until she agreed to remove it.

“I called my parents in California asking for their advice because at that moment I was so stressed from being intimidated, manipulated and lied to by officers that I forgot that I wrote my lawyer’s name on my arm. My parents said that this was a serious situation, and this was the worst place to be stuck – in prison. They continued to say that Allah is merciful and understanding and that whatever I decided will not displease Allah.”

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<sup>72</sup> Interview, immigration lawyer Reem O. Awad-Rashmawi.

But Siddiqui, apart from removing “one pin” from her headwear, stood her ground. The *hijab* “was still firmly secured on my head” although the pressure to remove it was “was unreal.” She sobbed and felt humiliated. Male police officers watched, “waiting to see what I would expose to them.” She exposed nothing, was returned to a cell, food was denied her, and hours passed.

Her colleagues in jail with her rallied to her cause, vowing to remain detained until she was released, on her terms. Finally the police relented, and took her photograph with the *hijab* in place. At 1 a.m. the next day, Siddiqui was released from custody.

❖ **Issue: Uncertain Links to Uncertain Terrorist Group**

The four Mirmehdi brothers had been in the U.S. for eight years, all engaged in real estate businesses in the San Fernando Valley when, shortly after 9/11, all four were arrested and placed in federal detention, where they remain as of this writing. The offenses of Mohsen, Mohammad, Mojtaba and Mostafa Mirmehdi – asylum seekers from Iran – were the same: support of a group listed by the government as a terrorist organization.

The unusual twist of the Mirmehdi case derives in part from the nature of the suspect organization, called the Moujahedeen Khalq, or MEK, and its umbrella group, the National Council of Resistance (NCR) – which has not always been suspect. The MEK/NCR opposes the present Iranian government, calling for its downfall. Several members of Congress had praised the NCR for its stand against a perceived enemy of America and objected strongly when the Clinton Administration in 1997 listed it as a terrorist organization. According to published reports, John Ashcroft when he served in the Senate was an NCR supporter.<sup>73</sup>

As attorney general, Ashcroft has made no further favorable comments about the group. But President Bush has declared Iran under its present government part of the terrorist “axis of evil” presenting a danger to the U.S. The brothers take the same position, and yet they, too, stand accused of terrorist activities by U.S. agencies. The situation shows, as noted by the referenced Newsweek article,<sup>74</sup> “just how murky fighting terrorism can sometimes get.”

The Mirmehdi brothers are accused of attending a rally in Denver in 1997 organized by the NCR, even though at the time it had not been

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<sup>73</sup> “Ashcroft’s Baghdad Connection,” *Newsweek*, September 26, 2002.

<sup>74</sup> *Ibid.*

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declared a terrorist organization. They are accused of lending material support to a terrorist organization by the \$25 entrance fee they paid to attend a party hosted by the NCR to celebrate the Iranian new year. They are accused of membership in the NCR/MEK on the basis of testimony from a government informant.

The brothers deny they have any ties to terrorism and portray themselves as, if anything, allies of American foreign policy. They explain their continued detention at a federal lockup in San Pedro by saying an immigration judge chooses to believe false and coerced evidence against them.

The brothers are in the United States seeking political asylum on grounds that government persecution awaits them if forced to return to Iran. In recent court appearances, the brothers received favorable rulings on petitions for asylum, but the government appealed. The case is before an appeal court. The brothers remain in jail.

### **❖ Issue: Detention, Investigation Based on Ethnic Assumptions**

Four young college graduates from Pakistan, whose names were not provided by the source of this account,<sup>75</sup> are friends who came to California to work in the information technology industry at different times beginning in July 2000. One came on a visitor's visa, got a job with a computer company and was awaiting a status change of his visa. The other three had the required H-1B work visas, but one had been laid off and was looking for a job.

On October 6, 2001, less than a month after the 9/11 attacks, the four friends toured San Francisco, including a stop to view the Golden Gate Bridge. At Vista Park, a favorite spot for tourists near the bridge, the friends took a wrong turn in their vehicle and soon were pulled over by a CHP unit. ID's were requested. Two of the men had California driver's licenses, two had only documents showing they were Pakistanis. The FBI was called in. After being unable to verify identities of two of the men, the federal agents took all four to FBI offices in San Francisco and placed them, while handcuffed, in an interview room.

The detained men were prohibited from using a phone, but told the agents they had friends who could provide documents to clear up the identity questions. Agents placed calls to the home of the friends, also Pakistanis, three of whom came to the office with the documents. Agents interrogated the three friends of the original four and, with

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<sup>75</sup> *America's Challenge: Domestic Security, Civil Liberties, and National Unity After September 11*, Migration Policy Institute, Washington, D.C., 2003, p.40, Appendix.

permission of the men, went to and searched the home. No evidence of criminal activity was found, but Islamic books including the Quran attracted the attention of the FBI and led to questions, repeated over and over, why and how the seven Pakistanis had come to the U.S. Other questions concerned how deeply held were their religious convictions, who else they associated with and what they knew about the Taliban.

The four original friends were fingerprinted and photographed and were released a day after their apprehension at about 3 p.m. The fourth Pakistani remained detained for one week, then appeared before an immigration court where he agreed to voluntary departure from the U.S. No attorney was present to represent the detained man. Friends hired an attorney, but the court had completed its case before the attorney located his client.

After another four weeks in detention, during which he was never told the reasons for holding him, the detained man was allowed to return to Pakistan. Whatever may have been his violation, acts related to terrorism probably were not involved. The FBI routinely runs a clearance investigation against deported persons prior to their departure. If evidence of terrorism turns up, the individual remains in custody.

❖ **Issue: Long-term Detention, No Reason Given**

Dr. Ahmed Imran, a thoracic surgeon from Lahore, Pakistan, cites two reasons for leaving his homeland in August of 2000 and coming to California. He told of death threats he received from terrorists targeting prominent Pakistani professionals with ties to the West. Dr. Imran had been back and forth between the U.S. and Pakistan before, and still had a valid visa when the threats became so severe he decided to leave for good. His plan was to apply for visa credentials that would allow him to prepare to qualify to practice medicine in California.

The other reason for Dr. Imran to come to California was to try to help his younger brother, Ahmid Adnan Chaudhry, a student at California State University, San Bernardino, who had been convicted of a crime – stabbing and wounding a college roommate during a religious argument. Serving a term of up to life at Calipatria State Prison, Adnan is appealing his conviction and his brother, the doctor, has led efforts to solicit donations from student and Muslim groups to pay legal fees.

Dr. Imran's own troubles in this country began on April 13, 2002. Driving back to San Bernardino from visiting his brother at the Calipatria prison, he was stopped at an immigration checkpoint, set up mainly to discover illegal immigrants coming across the nearby border

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with Mexico. Officers found Dr. Imran's visa had expired. Prior to 9/11 when immigration rules were looser, an applicant for a change of visa status – as was the case with Dr. Imran – would be allowed to remain in the country after the first visa had expired and while the new visa was pending. But on this post-9/11 date in the California desert, Dr. Imran was arrested for being out of status and placed in detention. He has been there, in the immigration lock-up at El Centro, ever since– and no one on his side of the case has been told why.

On the expired-visa finding, according to his wife, Heather Imran, Dr. Imran on July 8, 2002, was ordered deported by an immigration judge. His lawyer – who turned out to be a fraud posing as a lawyer – failed to file a timely appeal, but that was 16 months ago and his case has been stalled ever since. Mrs. Imran says attempts to learn the reasons for continued detention have been unavailing. Hints of suspicion by the government have surfaced from time to time. A reporter for the *LA Weekly* newspaper quoted a Homeland Security official as saying: “How do you know [Ahmad] Imran and [Adnan] Chaudhry are really brothers?”<sup>76</sup>

And, the judge at a bond hearing for Dr. Imran (denied) declared that the doctor was not to be trusted after the judge asked Dr. Imran where he had trained abroad and Dr. Imran answered “England” when in fact his residence and training took place in Scotland and Ireland. Whether he had received the training and where were not the issues – that was confirmed. It was solely the utterance of mistaken geography that apparently raised suspicions with the judge, a judge, incidentally, who allegedly has allowed deadlines to lapse in reaching decisions affecting Dr. Imran's case. But apart from these indirect signals – plus other possibly relevant factors including his failure to comply with requirements to receive political asylum – it remains unknown to his family and lawyers why Dr. Imran is approaching two years of uninterrupted detention.

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<sup>76</sup> Jeffrey Anderson and Michael A. Salorio, “A Doctor in the House; The asylum case of a Pakistani physician that no one wants to touch,” *LA Weekly*, June 13-19, 2003.



California Senate Office of Research

May 2004

**Supplement to the  
Senate Office of Research Report:**

**“The PATRIOT Act, Other Post-9/11 Enforcement Powers and the Impact  
on California’s Muslim Communities”**

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*The following points were developed or became known after completion of the SOR report on the PATRIOT Act and related activities, and their impact on Muslim communities in California, prepared at the request of Senator Liz Figueroa:*

I. Response from the FBI

In an exchange of communications beginning in September 2003, SOR asked the FBI office in San Francisco to respond to a series of questions regarding the use of the PATRIOT Act in its investigations of suspected terrorists in cases with a California connection. Three months later, after asking SOR to resubmit the questions, the FBI responded by letter on December 17, 2003. With the letter came several attachments that included transcripts of FBI and Department of Justice testimony before Congress and other material supporting the usefulness of the PATRIOT Act. A selection of attachments accompanying the FBI letter are briefly summarized below. Full texts are available upon request at the SOR office.

The FBI did not answer all of SOR’s questions directly. The bureau referred to policies prohibiting discussions of ongoing cases that often are classified, although the majority of our questions did not pursue details of ongoing cases. However, Assistant Special Agent in Charge David Miller, who prepared the letter to SOR, did respond informatively on other points of interest, as follows:

- ◆ We had asked the FBI to discuss the usefulness of the four PATRIOT Act sections that Senator Figueroa specified as being of interest to her. Among

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them was Section 412, authorizing the attorney general to detain terrorist suspects without trial. Miller replied to SOR, "I can advise you that Section 412 of the Patriot Act has not been applied in the Northern District of California."<sup>77</sup> Other law enforcement representatives, in background discussions with SOR, said they were unaware that Section 412 had been used anywhere in California.

- ◆ We had informed the FBI that conducting interviews in the Muslim communities was viewed with concern by community leaders who believed that Muslim immigrants were being singled out for interrogations on terrorism, yet no terrorists had been exposed through these methods. The FBI replied:

*The Counterterrorism Program of the FBI has been clearly identified as the number one priority of the FBI. In order to address effectively the terrorist threat, FBI Special Agents conduct interviews in order to clarify an allegation and/or to further an investigation. The FBI is committed to protecting the constitutional rights of all Americans, and does not conduct interviews based solely on ethnic origin. Interviews are conducted based on the leads available to investigators within the framework of their investigation.*

- ◆ The FBI letter to SOR stated the bureau had no bias toward Muslims but added that post-9/11 investigations "indicate that religious extremists remain willing and capable of assisting terrorist networks." The letter continued:

*Suspicious activities involving the leadership and members of certain mosques has necessitated that reasonable efforts be made to gauge the extent of the threat from those who may be using mosques or religious institutions to further or to shield their extremist aims. The FBI has taken a number of steps in order to identify these religious extremists, and to protect Americans and others against the actions of such persons.*

The FBI did not divulge if any such suspect mosques were found in California. However, as noted on page 3 of SOR's report on issues of concern to Muslim leaders, all 56 FBI field offices in the U.S. were ordered to demographically profile Muslim communities. Agents were assigned to count the number of mosques in a given area and, if necessary, add resources commensurate with the size of the target communities to conduct investigations and surveillance.

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<sup>77</sup> The federal Northern District of California extends through the coastal counties from San Benito County to the Oregon state line.

## II. Statements from the Department of Justice

This section was provided to SOR as attachments to the FBI letter noted above. In the government's words, it augments material presented in the main SOR report beginning on page 12 under the title: "The PATRIOT Act's Defenders."

Excerpts shown below from the DOJ document, *The USA PATRIOT Act: Myth vs. Reality*, September 2003, pertain to the four PATRIOT Act sections that SOR analyzed at the request of Senator Figueroa. This material is edited for space but is otherwise presented verbatim from the DOJ document:

- ◆ *Section 213. Authority for delaying notice of the execution of a warrant.*
  - ▶ *Summary: Allows courts, in certain narrow circumstances, to give delayed notice that a search warrant has been executed.*
  - ▶ *Myth: "It expands the government's ability to search private property with notice to the owner." [ACLU, Apr. 3, 2003]*
  - ▶ *Reality: Delayed notification warrants are a long-standing, crime-fighting tool upheld by courts nationwide for decades in organized crime, drug cases and child pornography. . . . The Supreme Court has held that Fourth Amendment does not require law enforcement to give immediate notice of the execution of a search warrant.<sup>78</sup> . . . . Courts can delay notice only when immediate notification may result in death or physical harm to an individual, flight from prosecution, evidence tampering or witness intimidation. . . .*
  
- ◆ *Section 216. Modification of authorities relating to use of pen register and trap and trace devices [defined on Page 16, main SOR report].*
  - ▶ *Summary: Amends the pen register/trap and trace statute to clarify that it applies to Internet communications, and to allow for a single [search warrant] order that is valid across the country.*
  - ▶ *Myth: "Section 216 would worsen the problem by giving the FBI access to communications of non-targets and to portions of the target's communications to which it is not entitled under the court order it obtained. The 'trust us, we're the government' solution the FBI proposes is entirely unacceptable and inconsistent with the Fourth Amendment." [ACLU, Oct. 23, 2001]*

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<sup>78</sup> Two decisions are cited: *Dalia v. U.S.*, 441 U.S. 238 (1979) and *Katz v. U.S.*, 389 U.S. 347 (1967).

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*Reality: For years, law enforcement has used pen registers to track which numbers a particular telephone dials. See 18 U.S.C. § 3123. Before the USA PATRIOT Act, it was not clear that they could be used to gather the same routing and addressing information about Internet communications. . . . Section 216 updated the law to the technology. It ensures that law enforcement will be able to collect non-content information about terrorists' communications regardless of the media they use. . . . Section 216 also allows courts to issue pen-register orders that are valid across the country. As a result, law enforcement no longer needs to waste precious time by applying for new orders each time an investigation leads to another jurisdiction. . . . Section 216 preserved all of the law's pre-existing standards. As before, law enforcement must get court approval before installing a pen register. And as before, law enforcement must show that the information sought is relevant to an ongoing investigation. . . . In fact, section 216 enhanced the privacy protections in the pen-register statute. It made explicit that anyone using a pen register has an affirmative obligation to avoid the collection of content. . . . Department field investigators and prosecutors have used section 216 in a number of terrorism and other important criminal cases. . . . Section 216 was used in the investigation of the murder of Wall Street Journal reporter Danny Pearl to obtain information that proved critical to identifying some of the perpetrators. . . . Section 216 was used in a case where two unknown individuals, using a U.S.-based email account, threatened to kill executives at a company in another country unless they were paid a hefty ransom. The use of a pen register enabled Department investigators to provide the foreign authorities with critical information about the suspects' identities – which led to their prompt apprehension overseas.*

- ◆ *Section 218. Foreign intelligence information.*

*Summary: Encourages an integrated antiterrorism campaign by allowing the use of FISA whenever “a significant purpose” of the investigation is foreign intelligence.*

*Myth: “It permits the FBI to conduct a secret search or to secretly record telephone conversations for the purpose of investigating crime even though the FBI does not have probable cause of crime. The section authorizes unconstitutional activity – searches and wiretaps in non-emergency circumstances – for criminal activity with no showing of probable cause of crime.” [ACLU, Oct. 23, 2001]*

*Reality: Before the USA PATRIOT Act, a perceived metaphorical “wall” often inhibited vital information sharing and coordination. Intelligence investigators were concerned about sharing information with, and seeking advice from, law enforcement investigators and prosecutors. There was a fear that such sharing and consultation could mean that they would not be*

*able to obtain or continue FISA coverage. . . . Previously, courts had ruled that FISA could be used only when foreign intelligence was the “primary purpose” of an investigation. . . . Section 218 expressly permitted the full coordination between intelligence and law enforcement that is vital to protecting the nation’s security. Now, FISA can be used whenever foreign intelligence is a “significant purpose” of a national security investigation. Moreover, section 504 of the USA PATRIOT Act specifically permits intelligence investigators to consult with federal law enforcement officers to coordinate efforts to investigate or protect against threats from foreign powers and their agents . . . . Generally, a surveillance or search under FISA can be ordered only if the court finds there is probable cause to believe that the target is a foreign power or an agent of a foreign power. . . . This provision already is producing important dividends in the war on terror. The Department has recently obtained the indictment of Sami al-Arian, an alleged member of a Palestinian Islamic Jihad (PIJ) cell in Tampa, Florida. . . . In November of last year, the Foreign Intelligence Surveillance Court of Review upheld in full section 218, as well the Department’s procedures to implement it.*

- ♦ *Section 412. Mandatory detention of suspected terrorists; habeas corpus; judicial review.*

*Summary: Requires the detention of aliens who are certified as threats to the national security, pending their removal from the United States.*

*Myth: “Suspects convicted of no crime may be detained indefinitely in 6 month increments without meaningful judicial review.” [ACLU, Feb. 11, 2003]*

*Reality: Section 412 allows the government, with extensive judicial supervision, temporarily to detain terrorist aliens until they are removed from the country. It is the equivalent of denying bail to a criminal defendant. Section 412 ensures that terrorists are not released to live among the people they seek to harm. . . . Law-abiding Americans have nothing to fear from section 412. It applies only to aliens who engage in terrorism or otherwise pose a severe threat to the national security. And detention lasts only as long as it takes to remove an alien from the U.S. . . . An extremely narrow class of aliens can be detained under section 412. There must be “reasonable grounds to believe” that the alien: (1) entered the United States to violate espionage or sabotage laws, (2) entered to oppose the government by force, (3) engage in terrorist activity, or (4) endangers the United States’ national security. . . . Section 412 expressly grants aliens the right to challenge their detention in court. Aliens may file a habeas petition in any federal district court that has jurisdiction. . . . To date, the Attorney General has not used section 412. Numerous aliens who could have been considered have been detained*

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*since the enactment of the USA PATRIOT Act. But it has not proven necessary to use section 412 in these particular cases because traditional administrative bond proceedings have been sufficient to detain these individuals without bond. The Department believes that this authority should be retained for use in appropriate situations.*

Prepared by Max Vanzi, SOR

**APPENDIX I**

September 9, 2003

The Honorable Thomas J. Ridge  
Secretary  
Department of Homeland Security  
3801 Nebraska Avenue, NW  
Washington, DC 20393

Dear Secretary Ridge:

We, the undersigned ethnic, religious, human rights, and civil rights organizations submit the following response to the report by the Department of Justice's Office Of Inspector General titled, "The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks."

These comments will be limited to Office of the Inspector General's (OIG) report. They do not address all of the problems that are pervasive in our detention system. For years, detained immigrants have been mistreated and denied access to the legal system. Thus, we urge the Department to use the OIG report's recommendations as an opportunity to address broader defects in our immigration detention system. While we are pleased by your Department's attention to the recommendations in the OIG report, we have outlined below areas of particular concern and indicated our recommendations.

The OIG report confirmed the concerns many of our organizations voiced from the beginning — that many detainees were classified as "September 11<sup>th</sup>" detainees "regardless of the factual circumstances of the aliens' arrest or the absence of evidence connecting them to the September 11th attacks or terrorism." (pg. 186) Similarly, the OIG report confirmed that detainees were subject to harsh and abusive conditions of detention. Moreover, the sweeping nature of the investigation illustrated a lack of good intelligence by the FBI, and its failure to distinguish between immigrants who it suspected of having a connection to terrorism from those who had no connection.

**Profiling and Immigration Law as a Proxy for Combating Terrorism**

We note that there was a faulty assumption at the outset of the investigation, namely that it would find terrorists by apprehending persons who were out of status from certain countries. This led to the anomaly of using national origin, religion, and racial profiling as a basis for finding terrorists rather than relying on intelligence and traditional law enforcement investigative mechanisms as the most effective tools to locate those connected to terrorism. Moreover, we are disturbed by the OIG's assumption that in recommending that agencies decrease the time needed for a clearance in the future, the same kind of blanket sweep may happen again. We urge you to commit that the Department will never again round up immigrants and detain them in the name of fighting terrorism, without clear evidence linking them to terrorism.

What's more, immigration laws were improperly used to hold minor visa violators as "September 11th" detainees when no ties to terrorism could be found and they could not be charged criminally. We urge your Department to revisit the overarching assumption of the post 9-11 detentions — that immigration law should be a tool for the blanket detention of individuals who are not connected to terrorism and cannot be charged criminally. As the report shows, such an approach resulted in the prolonged detention of individuals from certain countries. Our immigration laws can and should be enforced in a fair and even-handed manner, and not selectively enforced against a particular race, nationality or religion. As counterterrorism expert Vincent Cannistraro noted, "When we attach the blunt instrument of

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immigration policy and enforcement to [select immigrant] communities...we undercut the basis of any cooperation with the FBI and local law enforcement. And that's the problem I see...we're using immigration policy as a proxy for law enforcement and it is a poor proxy because it alienates the very communities that we need to depend on for early warning. ...the FBI needs to be able to ...work with immigrant communities."<sup>79</sup>

**Secret Arrests and Hearings:** The unprecedented secrecy surrounding the arrests, detention, and deportation hearings of the September 11 detainees contributed to the abuses identified in the OIG report. This regime of secrecy continues today with the Justice Department refusing to release the names of detainees and mandating secret immigration hearings for these detainees. Such secrecy blocks Congressional and public scrutiny of the kinds of abuses found by the OIG. It is not compatible with an open society and notions of fair play, which are the cornerstone of our democracy. We request that the names of those who have been detained in connection with the September 11 investigations be released immediately and that you take whatever steps are necessary to ensure that this policy of unwarranted arrests and blanket closed hearings will not be repeated. Specifically, we ask that you reaffirm that immigration proceedings are presumptively open to the public, and allow limited exceptions only for discrete portions of hearings and only upon a case-by-case showing of necessity.

**Secret Detentions without Charge:** Detaining somebody without a charge is one of the more egregious and disturbing features of the terrorism investigation. This occurred in great part because of a September 17, 2001, DOJ-issued regulation which not only expanded the time INS was given to charge an individual to 48 hours, but also created a broad exception. The exception: that in the event of an "emergency or other extraordinary circumstances," a charging determination could be made within an "additional reasonable period of time." The September 17, 2001 regulation does not define "extraordinary circumstances" or "reasonable period of time."

Moreover, the regulation does not specify a timeframe for when an individual must be notified about the charges against him. This deprives individuals of due process, namely, prompt notice of the government's custody decision and of the charges on which they are being held. While the goal by INS was to serve a Notice to Appear (NTA) on an individual within 72 hours, the OIG Report confirms that many did not receive these notices for weeks and for some, more than a month after their arrest (pg. 35).

The OIG report takes a step in the right direction by recommending that DHS document cases where individuals are detained without charge beyond 48 hours and formally require that individuals are served an NTA within 72 hours of their arrest. These recommendations are not sufficient. We urge that DHS rescind the September 17 rule and establish a 48 hour deadline for DHS to charge an individual and serve him with an NTA. Where a charge cannot be levied within the 48 hour period, the detainee must be brought immediately before a judge for determination of whether there exists a legitimate exception for limited continued detention without charge.

**Access to the Legal System:** We have long opposed the practice of jailing immigration detainees without an individualized determination that they pose a risk of flight or a danger to the community. The practice of blanket denial of bonds was used on September 11 detainees in violation of the law. Under an October 3, 2001 policy, INS was required to oppose bond in all cases unless FBI headquarters expressed no interest in the case. This policy is contrary to the law and, again, the law could have been followed if adequate resources had been devoted to

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<sup>79</sup> See comments of Vincent Cannistraro at 26<sup>th</sup> National Legal Conference on Immigration and Refugee Policy, Center for Migration Studies and the Catholic Legal Immigration Network, Inc., April 3, 2003, "National Security and Immigration Rights." See also, "America's Challenge: Domestic Security, Civil Liberties and National Unity After September 11," Migration Policy Institute (June 2003).

the clearance of innocent detainees. Then INS General Counsel Owen ("Bo") Cooper questioned whether INS lawyers could make representations to the Court consistent with the evidence necessary to follow the Department's "no bond" policy. (pg. 78) As revealed in the OIG report: "Thus, even though from the INS's perspective it had no evidence to support a "no bond" position, INS attorneys were required to argue that position in court." The INS attorneys should be applauded for raising these concerns; we agree with their understanding of the law. Even where there is a legitimate detention, we recommend that individuals be afforded an individualized bond hearing before an Immigration Judge. Individuals should be released from custody on a reasonable bond unless they are found to be a flight risk or a danger to the community. We urge the Department to make those regulatory and statutory changes necessary to insure this in the future.

**Access to Counsel:** The OIG report identifies a number of "right to counsel" barriers, among them a "communications blackout," a once a week phone call policy for contacting attorneys, and the miscommunication between detention facilities and attorneys. A "communications blackout" at the Metropolitan Detention Center, formally initiated September 17, but lasting until mid-October, (pgs. 112-114) essentially "disappeared" detainees within the system, leaving them with no access to their attorneys or families, and no way to inform them of their whereabouts. It was frightening to learn that the first call to legal counsel by a September 11 detainee did not take place until October 15, 2001. (p. 132). Even after the communications blackout was lifted, access to counsel was severely limited. Detainees could make one legal call a week and busy signals and answers by voicemail were counted as a call. (pg. 134) In some circumstances, "Are you okay" by a prison counselor became the functional equivalent of "Do you need to talk to your lawyer this week?" As confirmed by the OIG report, "Detainees we interviewed reported that an affirmative response to the question of whether they were "okay" resulted in them not receiving a legal telephone call that week." (p. 132) The OIG report also found that attorneys were regularly told that their clients were not in a facility, when in fact they were. (pg. 136) In addition, INS did not consistently provide the detainees with a list of pro bono attorneys. (pg. 137)

We are pleased by Under Secretary Asa Hutchinson's recent testimony before the Senate Judiciary Committee about the new BICE detention standard: "Finally, the standards include specific timeframes during which [BICE] officers must respond to certain enumerated detainee requests. All detainees in DHS controlled facilities are required to have access to counsel, telephone calls, and visitation privileges consistent with their classification. ... This order particularly noted the importance of detainees' access to legal representation and consular officials." It is essential that detainees receive regular access to counsel, regardless of their classification. Indeed, as the OIG Report indicates, access to counsel can be too easily denied in practice, especially when based on a flawed or haphazard process of classification.

**Detention Conditions:** The OIG report also found disturbing conditions of detention at the MDC. The report found that detainees were placed in the most restrictive forms of custody: 23 hour lockdown, a "pattern of physical and verbal abuse," (p. 142) restrictive escorts, communications blackout and then strict limits on access to counsel and visitors — without a routine individualized assessment. (pg. 112) The resulting mistreatment of the detainees shows the need for strict adherence to protective procedures and policies, especially in times of emergency. Several of our organizations regularly represent immigration detainees and note that many of the problems experienced by the 9/11 detainees and outlined in this report (i.e. commingling with criminals, abuse by guards, lack of access to counsel) can be seen, in slightly less egregious forms, in jails and prisons throughout the country.

**Effective Internal Oversight:** The recent "Report to Congress on Implementation of Section 1001 of the USA PATRIOT Act" (Report) details 1,073 reported complaints received by the OIG. Among other things, the Report delineates whether such complaints were investigated by OIG, referred to another agency, or closed after review. One complaint involved an inmate who

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alleged “that during a physical examination a BOP physician told the inmate, ‘If I was in charge, I would execute every one of you . . . because of the crimes you all did.’ The physician allegedly treated other inmates in a cruel and unprofessional manner.” The abuses identified in the OIG report and the Report to Congress highlight the need for strong and effective oversight over civil rights in DHS. Under the Homeland Security Act, the Officer for Civil Rights and Civil Liberties (OCRCL) is responsible for reviewing and assessing abuses related to civil rights, civil liberties, and racial and ethnic profiling by Department staff and employees. We urge your Department to work with the OCRCL in the development of policy so that potential problems can be identified and corrected before policies are finalized. Similarly, we recommend that you develop an effective complaint mechanism and investigative protocol in OIG for potential civil rights and civil liberties violations involving DHS officers.

In advance, we thank you very much for your consideration of the above-mentioned recommendations. We look forward to working together in the future.

Sincerely,

### **National**

American-Arab Anti-Discrimination Committee  
American Civil Liberties Union  
American Friends Service Committee  
Arab American Institute  
Catholic Legal Immigration Network, Inc.  
Center for Community Change  
Center for Constitutional Rights  
The Center for Victims of Torture  
Guatemala Human Rights Commission/USA  
Immigrant Legal Resource Center  
Immigration & Refugee Services of America  
Kurdish Human Rights Watch  
Lesbian and Gay Immigration Rights Task Force  
Lutheran Immigration and Refugee Service  
Mexican American Legal Defense and Educational Fund  
Migration and Refugee Services of the USCCB  
National Asian Pacific American Legal Consortium  
National Council of La Raza  
National Federation of Filipino American Associations  
National Immigration Forum  
National Immigration Law Center  
National Immigration Project of the National Lawyers Guild  
National Iranian American Council  
National Ministries, American Baptist Churches USA  
National People's Action  
Open Society Policy Center  
People for the American Way Foundation  
Refugee Council USA  
South Asian American Leaders of Tomorrow  
U.S. Committee for Refugees  
Women's Commission for Refugee Women and Children

### **Local**

Arab-American Family Support Center, Inc. (Brooklyn, NY)  
Arab Community Center for Economic and Social Services (Dearborn, MI)  
Asian American Legal Defense and Education Fund (New York, NY)  
Asian Pacific American Legal Center of Southern California (Los Angeles, CA)

The Bronx Defenders (Bronx, NY)  
Cabrinini Immigrant Services (New York, NY)  
Capital Area Immigrants' Rights Coalition (Washington, D.C.)  
Californian Partnership (Los Angeles, CA)  
CASA of Maryland (Silver Spring, MD)  
Catholic Charities Immigration Clinic (Jackson, MS)  
Catholic Charities Refugee and Immigration Services (San Diego, CA)  
Catholic Charities Archdiocese of New Orleans (New Orleans, LA)  
Catholic Social Service of Central and Northern Arizona (Phoenix, AZ)  
Coalition for Humane Immigrant Rights of Los Angeles (Los Angeles, CA)  
Community Refugee and Immigration Services (Columbus, OH)  
Council of Islamic Organizations of Greater Chicago (Chicago, IL)  
En Camino (Toledo Diocese) (Toledo, OH)  
Florida Immigrant Advocacy Center (Miami, FL)  
Freedom House (Detroit, MI)  
Heartland Alliance for Human Needs and Human Rights (Chicago, IL)  
Hispanic American Association of East Texas (Longview, TX)  
Hispanic Development Corporation (Newark, NJ)  
The Hispanic Committee of Virginia (Falls Church, VA)  
Illinois Coalition for Immigrant and Refugee Rights (Chicago, IL)  
Immigrant Defense Project, New York State Defenders Association (New York, NY)  
Immigrant Legal Advocacy Project (Portland, ME)  
International Institute of New Jersey (Jersey City, NJ)  
Korean American Resource and Cultural Center (Chicago, IL)  
Lawyers' Committee for Civil Rights (San Francisco, CA)  
Lahore Foundation Inc. (Rockville, MD)  
Midwest Immigrant and Human Rights Center (Chicago, IL)  
Migration & Refugee Services Diocese of Trenton, NJ (Trenton, NJ)  
Migration Policy and Resource Center/Occidental College (Los Angeles, CA)  
Muslim Civil Rights Center (Hickory Hills, IL)  
Nashville Kurdish Forum (Nashville, TN)  
National Lawyers Guild, Immigration Committee, District of Columbia Chapter (Washington, D.C.)  
New Immigrant Community Empowerment (Jackson Heights, NY)  
New Jersey Immigration Policy Network (Newark, NJ)  
New York Immigration Coalition (New York, NY)  
Northwest Immigrant Rights Project (Seattle, WA)  
Philadelphia Arab-American Association (Philadelphia, PA)  
Political Asylum Project of Austin, Inc. (Austin, TX)  
Tahirih Justice Center (Falls Church, VA)  
Universal Immigration Services (Anaheim, CA)  
Washington Defender Association's Immigration Project (Seattle, WA)  
Washington Lawyers' Committee for Civil Rights and Urban Affairs (Washington, D.C.)  
cc: Asa Hutchinson, Undersecretary, Border and Transportation Security  
    Stewart Verdery, Assistant Secretary for Policy and Planning, Border and Transportation Security  
    Michael J. Garcia, Assistant Secretary, Bureau of Immigration and Customs Enforcement  
    Clark Kent Ervin, Acting Inspector General, Department of Homeland Security  
    Dan Sutherland, Officer for Civil Rights and Civil Liberties, Department of Homeland Security

**APPENDIX II**

# US-VISIT

## FACT SHEET

These procedures, described by U.S. Immigration and Customs Enforcement, are designed to treat U.S. visitors who require visas in the same way. They are being phased in as of late 2003. Visitors who do not require visas have also been added to the program.

### THE US-VISIT GOALS

The goals of US-VISIT are to:

- Enhance the security of our citizens and visitors.
- Expedite legitimate travel and trade.
- Ensure the integrity of the immigration system.
- Safeguard the personal privacy of our visitors.

### HOW IT WORKS: ENTRY

- Many of the entry procedures in place today remain unchanged and are familiar to international travelers.
- Customs and Border Protection officers will review travel documents, such as a visa and passport, and ask questions about the visitor's stay in the U.S.
- The new, inkless fingerprint scanner is easy to use. The visitor will be asked to put one and then the other index finger on a glass plate that will electronically capture two of their fingerprints. No ink is used.
- Visitors also will be asked to look into a camera and their picture will be taken. This can be done while fingerprinting is in process.
- The enhancements to the entry procedures add minimal time – seconds in most cases – to the process.

### EXIT:

- The exit procedures at airports and seaports will be phased in, with up to ten airports and one seaport operational by December 31, 2003. Remaining airports and seaports will be operational in early 2004.
- At the international departure area, visitors will see automated, self-service departure locations where they will be asked to scan their visa and repeat the fingerprinting process on the inkless device, at which point their photograph will be taken. Attendants will be available to assist with the process.
- The exit confirmation will be added to the visitor's travel records to demonstrate compliance and record the individual's status for future visits to the United States.

**ENHANCING SECURITY...**

- The addition of biometric identifiers, such as fingerprints, makes our security system more effective than names databases alone.
- Biometric identifiers also protect our visitors by making it virtually impossible for anyone else to claim their identity should their travel documents be stolen or duplicated.
- By combining these entry and exit processes, and by securely storing the travel records, we can account for visitors who require a visa for travel to the U.S.

**EXPEDITING TRAVEL...**

- US-VISIT procedures are designed to be easy. The enhanced entry procedures at airports and seaports add minimal time to the immigration process, which typically takes 60-90 seconds without US-VISIT procedures.

**... AND RESPECTING PRIVACY AND THE ENVIRONMENT**

- Travel data will be securely stored, and is made available only to authorized officials and selected law enforcement agencies on a need-to-know basis to help protect the nation against those who intend harm to our citizens or our visitors.
- As we look toward implementation of US-VISIT at land ports of entry, we have been carefully studying and working to mitigate environmental impacts. Respect for the environment is a key goal of the program.

**US-VISIT: TIMING AND DELIVERY**

- The Department of Homeland Security is aggressively working to meet the congressional end-of-year deadline to have in place an entry and exit system that strengthens security through identity verification and expedites travel for legitimate visitors while respecting their privacy and our environment.
- The Department of Homeland Security is also on track to meet the Secretary's deadline to implement technology at the primary inspection location that will collect and verify biometric information – fingerprints and photos – of foreign nationals who are required to obtain a visa to enter the United States.
- The entry enhancements to the immigration process – taking fingerprints and photos – will be operative in 115 airports and 14 major seaports by December 31, 2003.
- The exit procedures will be phased in at airports and seaports. By December 31, 2003, exit procedures will be operational at up to ten airports and at one seaport. Visitors requiring a visa to travel to the United States who leave from one of those airports or seaports will check out to confirm their compliance with immigration policies.
- Exit procedures will be phased in at the remaining major airports and seaports in early 2004.
- Entry and exit enhancements at land borders will be phased in throughout 2005 and 2006.

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- The US-VISIT program received \$362 million for FY 03 and has been authorized \$330 million for FY 04.