

Post 9/11 challenges – Institutionalized Profiling

Racial profiling is any use of race, religion, ethnicity, or national origin by law enforcement agents as a means of deciding who should be investigated. Official profiling of Muslims and Arabs began with the Attorney General Ashcroft's announcement in November 2001 to target about 5,000 young men of Middle Eastern and South Asian heritage who entered the country in the last two years on non-immigrant visas but who were not suspected of any criminal activity for questioning by the federal government.

Race, ethnicity and religion have become proxies for suspected terrorist activity since September 11, 2001. The Bush Administration claimed that its anti-terrorism efforts do not amount to racial profiling, but singling out for questioning and detention Muslims and Arabs and selective application of the immigration laws to the nationals of Arab and Muslim countries, were practices that spoke louder than words.

Post 9/11 legislative activity sanctioned racial profiling. In 2002 Congress passed and the president Bush signed, a customs service reauthorization bill that expanded legal immunity for Customs officers engaged in unconstitutional searches. The legislation was approved despite evidence from the General Accounting Office that the Customs Service has a history of racial profiling. In order to avoid the U.S. Constitution's Fourth Amendment protections from "unreasonable searches and seizures," airport searches now fall under the rubric of "administrative searches."

Amid mounting incidents of profiling, Senator Feingold and 12 other Senators in February 2004 introduced the End Racial Profiling Act of 2004 bill that was referred to the Committee on the Judiciary. The bill said: In the wake of the September 11, 2001, terrorist attacks, many Arabs, Muslims, Central and South Asians, and Sikhs, as well as other immigrants and Americans of foreign descent, were treated with generalized suspicion and subjected to searches and seizures based upon religion and national origin, without trustworthy information linking specific individuals to criminal conduct. The bill also pointed out that such profiling has failed to produce tangible benefits, yet has created a fear and mistrust of law enforcement agencies in these communities.

New York was probably the only state where an attempt was made to make profiling of Muslims legal when identical bills were presented in the NY Assembly and Senate on June 8, 2006. The proposed legislation would have authorized law enforcement officials to "consider race and ethnicity as one of many factors that could be used in identifying persons who can be initially stopped, questioned, frisked and/or searched." The bill had the support of politicians from both sides of the aisle. Assemblyman Dov Hikind, a Democrat and a twelve-term legislator, while introducing the bill argued that the Supreme Court set precedent in *Grutter v. Bollinger*, maintaining that factors such as race and ethnicity can be considered in making governmental decisions provided that such consideration serves a compelling governmental interest. (1)

"Flying While Muslim or Arab"

Since 9/11, the Muslims and Arabs have been resigned to some extra checks while traveling by air but they were shocked to hear a prominent congressman and at least three Republican office-seekers publicly calling for ethnic profiling. It actually became a Republican campaign issue in November 2006 elections.

House Homeland Security Committee Chairman Peter King endorsed requiring people of "Middle Eastern and South Asian" descent to undergo additional security checks because of their

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ethnicity and religion. Seizing on the incident of the alleged London plot to blow up U.S.-bound airliners in August 2006, the Republican Congressman said that, "if the threat is coming from a particular group, I can understand why it would make sense to single them out for further questioning." He said that airport screeners shouldn't be hampered by "political correctness." Peter King's prejudice against the American Muslims was nothing new. In 2004 he said that 85 percent of the mosques in the United States have extremist leadership. (2)

Mark Flanagan, a congressional candidate from the 13th District of Florida proposed that passengers who appear to be Arab or Muslim would be pulled out of security lines for additional screening. He said: "It is a fact that over the past 34 years, starting with the Munich Olympics, the majority of terrorist attacks have been carried out by Muslims." (3) Joining the fray, Paul Nelson, a Republican running in the third district of Wisconsin, also endorsed the idea. Asked on a radio show how screeners would spot a Muslim male, Nelson said, "If he comes in wearing a turban and his name is Muhammad, that's a good start." (4) The Republican gubernatorial candidate in New York, John Faso joining the chorus of profiling said that law enforcement officials should be able to question a Muslim man without fear of being slapped by an ACLU lawsuit. "Looking for Muslims for participation in Muslim jihad is not playing the odds. It is following an ironclad tautology." (5)

Adding fuel to the fire, Bill O'Reilly at Fox News argued repeatedly for profiling of Muslims at airports. In his view detaining all Muslims between the ages of 16 and 45 for questioning "isn't racial profiling," but "criminal profiling." (6)

Not surprisingly, the panic caused by the alleged London plot – that later proved no more than a hoax (7)– prompted a flurry of incidents not only in US but also on the trans-Atlantic flights.

Three incidents of profiling happened in one day on August 17, 2006:

- A terminal at the Tri-State Airport in West Virginia was shut down for nine hours after an airport security screener grew suspicious of two bottles of liquid inside the carry-on bag of Rima Qayyum, a Pakistani woman, traveling to Detroit by U.S. Airways. Chemical tests of the bottles' contents turned up no explosives. Adding insult to injury, U.S. Airways refused to allow her to board a flight the next day, despite being completely cleared by the Federal Bureau of Investigation.
- A Pakistani national, Azar Iqbal, traveling from Manchester to Atlanta with his family on Delta airlines was separated from his wife and children, held for questioning by US immigration officials, and deported to the UK.
- A Canadian Muslim doctor, Dr. Ahmed Farooq, and his two colleagues were kicked off a United Airlines flight from Denver to Winnipeg (Canada) after a passenger identified them as a terrorist threat because he was offering prayers.

Earlier on August 10, a British Muslim airline pilot, Amar Ashraf, was hauled off a Continental Airlines' flight from Manchester, UK to Newark, NJ, just before take-off. He was returning to his job as a pilot for one of Continental's partner airlines in the U.S.

Yet in another incident, on August 15, a group of about 200 American Muslims were detained for hours at New York's Kennedy Airport when they came back to the United States from trips abroad. The passengers of Arab, Muslim or South Asian backgrounds were plucked from the baggage area, held six hours without food or water by Customs and Border Protection agents and questioned some about their views of Iraq.

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Obviously, many Americans were jittery after the alleged London plot. A poll conducted by the Quinnipiac University Polling Institute between August 17-23 found that most Americans support the screening of people who look "Middle Eastern" at airports and train stations. Surely, the by-product to the fear and hysteria generated by the administration and the media was not surprising. (8)

Unfortunately, discrimination against Arabs and Muslims at U.S. airports did not begin after 9/11. The phenomenon of "flying while Arab" has been part of the profiling landscape since the late 1980's. In particular, the bombing of Pan Am flight 103 over Lockerbie, Scotland in 1988, caused many Americans to link the threat of airline-related terrorism with Arabs. According to the Civil Rights Organization (civilrights.org) by the mid-1990's, the popular association of Arabs and Muslims with terrorist activities caused the American public to immediately suspect Arab and/or Muslim involvement whenever an unnatural disaster of significant proportions occurred. In the wake of the Oklahoma City bombing in 1995, law enforcement officials immediately posted bulletins looking for Arabs and/or Muslims, and authorities detained a Jordanian. That terrorist attack, of course, turned out to be the work of an Anglo-American, Timothy McVeigh. (9)

Similarly, the 1996 crash of TWA flight 800 off Long Island was initially attributed to Arabs by many, but ultimately attributed to equipment malfunction. After that crash, large numbers of Arab Americans, Muslims, and other Middle Eastern-looking airline passengers were subjected to harsh questioning, demeaning treatment, and searches of their personal possessions. Some were told that they were receiving special treatment because they "fit a profile." (10)

Discriminatory screening and abusive treatment of Arabs and Muslims by airport personnel continued well into the 1990's. The FAA attempted to address these abuses in 1998 through its implementation of the Computer Assisted Passenger Screening (CAPS) system, which standardized the criteria for deciding which passengers to scrutinize closely. While the elements of CAPS have not been made public, the government insists that the CAPS system does not rely on race or ethnicity in determining who should be subjected to heightened scrutiny at airports. (11)

In August 2006, the Transportation Security Administration's new behavioral profiling system Screening of Passengers by Observation Techniques (SPOT) went on-line in many major airports in the U.S. SPOT will allow TSA and law enforcement to focus on persons who look Middle Eastern or "Muslim," while justifying it through a subjective psychological impression. (12)

Since September 11, 2001, the "flying while Muslim or Arab" phenomenon has returned with a vengeance. Passengers perceived to be Arab or Muslim have experienced abuse or humiliation, have been subjected to especially intrusive security screening procedures, and have even been ordered off planes for no reason other than that they appeared to be Arab or Muslim and were therefore perceived to be terrorist threats. (13)

The most notorious example of this treatment involved Secret Service Agent Walid Shatter, an Arab American who was flying to Texas on Christmas Day 2001 to join President Bush's security detail. Agent Shatter was removed from his flight when a flight attendant spotted a book on Middle Eastern history on his seat and airline officials refused to believe that his credentials and badge were authentic. There is no question that Agent Shatter would not have been treated in this manner had he not been an Arab American. The same can be said of scores of Arabs, South Asians and Muslims who experienced discrimination at airports and on airplanes post-September. (14)

There was a spate of profiling incidents in 2001 and 2002

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Soon after the 9/11 attacks, there was a spate of profiling incidents. Let's illustrate this with some most important cases.

- On January 1, 2002, an Arab American passenger en route to Washington, D.C. passed through security checks, submitted his boarding pass, and stood in line at the jet way during boarding. Two police officers approached him and escorted him back to the airport. When he asked why this had happened, the officers informed the passenger that the airplane's pilot had requested that he be "checked out" because he had an "Arabic name." Three FBI agents then appeared and questioned the passenger about his identity. (15)

- Two Arab Americans, Michael Dasrath and Edgardo Cureg, were unceremoniously and unapologetically forced off of Continental Flight #1218 on New Year's Eve in 2001, after a fellow passenger stated that the "brown men are behaving suspiciously." (16)

- On October 28, 2001, three Arab American women were prevented from boarding their flight to New York City from Minneapolis because airline personnel had overheard them quietly praying before the flight and became concerned on hearing one of the women say the word "Allah." (17)

- A Muslim businessman was singled out for extra interrogation before boarding a flight from Los Angeles to Tampa on Oct. 10, 2001. When he inquired about why he was receiving this extraordinary attention, he was told by the airline employee that "[m]ay be you were acting suspiciously or maybe (because of) the way you look." (18)

- On November 7, 2001, a 22-year-old Muslim American woman was asked to remove her head scarf - which many Muslim women wear for religious reasons - after passing through an airport metal detector without setting it off. After a manual detector was passed along her body, again revealing nothing, she was asked to remove her head scarf and was escorted to a private room where female airport security personnel conducted a full body search and ran their fingers through her hair. (19)

If you are not convinced, here are few more takes:

- On November 19, 2006, six Imams (Muslim religious leaders) were taken off a US Airways flight in Minneapolis and detained for several hours after some passengers and crew members complained of behavior they deemed suspicious. Before boarding the flight, three of the six men went to a corner at the gate to perform obligatory prayers, one of the five pillars of Islam and a constitutionally protected right. The flight's captain decided to remove the Imams after the passenger passed him a note pointing out "suspicious Arabic men." The six imams, who were returning after attending a Minneapolis conference of the North American Imams Federation, were handcuffed by the police and led off the flight. Among the group was NAIF President Omar Shahin - an American citizen and Imam in Arizona for the last 30 years - later told the media that he and his five colleagues, including a blind man, were made to line up 10 feet apart in the airport terminal before hundreds of others passengers waiting for other flights. They were then handcuffed and led to separate rooms where they were detained for nearly three hours. (20)

- On January 31, 2006, Mohammed Khan and his father, Fazal Khan, had boarded their flight from Los Angeles to Oakland and were waiting for the plane to take off. Both men wore traditional South Asian tunics and white skullcaps, and both had long beards. After the flight was delayed an hour on the runway, a customer service representative boarded the plane and told the Khans that they would have to leave the aircraft to discuss something inside the terminal. There, the representative informed the men that they could not remain on the flight because their presence made the flight attendant uncomfortable. She found them seats on a different flight that departed two hours later. The circumstances make it abundantly clear that no security rationale existed for

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the Khans' removal. The airline even left the men's checked luggage on board the original flight, which took off shortly after the Khans were removed. (21)

- On December 11, 2004, Dr. Salam Al-Marayati the executive director of the Muslim Public Affairs Council, was interrogated at Los Angeles airport by security agents when he returned after vacation in Mexico. Writing in the Los Angeles Times, Al Marayati said: One officer asked whether we had committed any criminal act in the past or had done anything that would warrant an investigation. Of course the answer was no. Another officer wanted to know which charities we donated to and whether those organizations send money overseas. (22)

Clearly, it has become commonplace for security personnel to exercise their discretion in a manner that distinguishes Muslims and Arabs from the rest of the air traveling public. This treatment is based on the unfair assumption that Arabs and Muslims share a general propensity for terrorist activity and is directly analogous to the treatment of Blacks and other minorities on America's highways and streets. (23)

In the aftermath of 9/11, Arab-Americans have a greater fear of racial profiling and immigration enforcement than of falling victim to hate crimes, according to a national study financed by the Justice Department. The study also concluded that local police officers and federal agents were straining under the pressure to fight terrorism, and that new federal policies in this effort were poorly defined and inconsistently applied. The two-year study, released in June 2006 by the Vera Institute of Justice, explored the changed relationship between Arab-Americans and law enforcement in the years since the 2001 terrorist attacks. The Vera Institute is a nonprofit policy research center based in New York. About 100 Arab-Americans and 111 law enforcement personnel, both FBI agents and police officers, participated in the study, which was conducted from 2003 to 2005. Both Arab-American community leaders and law enforcement officials interviewed in the study said that cooperation between both groups had suffered from a lack of trust. (24)

"Driving While Arab or Muslim"

"Driving while Arab or Muslim" has joined the profiling lexicon alongside "driving while Black" and "driving while brown" since 9/11. Arabs, Muslims, South Asians, and Sikhs are now subjected to traffic stops and searches based in whole or in part on their race, ethnicity, or religion due to law enforcement perceptions that they are likely participants in terrorist activity. For example:

- On Sept. 5, 2006, a federal judge in Bay City, Michigan, threw out all charges against three Texas men who were arrested in August 2006 while driving at the Mackinac Bridge. State prosecutors slapped them with terrorism charges for buying hundreds of cell phones, but soon dropped them. The prosecutors then charged them with conspiring to traffic in counterfeit goods and carrying out an unlawful activity involving a financial transaction. Magistrate Judge Charles Binder dismissed the federal charges saying there was no terror plot. The Texas men -- brothers Adham Othman, 21, of Dallas and Louai Othman, 23, and their cousin Awad Muhareb, 18, - were of Palestinian descent. Surely, they were the victims of racial profiling - "Driving while Arab" - and there will forever be a stigma attached to them. (25)

- On October 4, 2001, in Gwinnett, Georgia, an Arab American motorist was pulled over by a patrol car following an illegal U-turn. The police officer approached the car with gun drawn. He ordered the motorist out of his car, searched him, threatened him, and called him a "bin Laden supporter." (26)

- On December 5, 2001, in Burbank, Illinois, a veiled Muslim woman was stopped by a police officer for driving with suspended plates. After she showed the officer her license and registration, as requested, the officer asked her when Ramadan would be over. She was

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arrested for driving with suspended plates, was pushed by the officer as she got in the patrol car, and was asked inappropriate questions about her hair by the officer. The woman was released later that day. (27)

- On October 8, 2001, in Alexandria, Virginia, two police officers stopped an Arab American motorist and his two Arab American passengers, questioned them about the verse of the Koran hanging from the car's rear view mirror, and inquired about documents and photocopies in the backseat. After asking for and receiving the motorist's and passengers' identification cards, the police officer returned to his car and drove off without explanation. He returned 10 minutes later, explaining that he had had to take another call. (28)

Some other instances of profiling

A group of 36 American Muslims were searched, fingerprinted and photographed at the Lewiston Bridge crossing near Niagara Falls, New York on return from an Islamic conference in Toronto in December 2004. A spokeswoman for Homeland Security's Customs and Border Protection confirmed that agents stopped anyone who said they attended the three-day conference, titled "Reviving the Islamic Spirit," based on information that such gatherings can be a means for terrorists to promote their cause. "We have ongoing credible information that conferences such as the one that these individuals just left in Toronto may be used by terrorist organizations to promote terrorist activities, which includes traveling and fund raising," another US official said. Several of the Muslim citizens held at the border for up to six hours said that when they objected strenuously to being fingerprinted, they were informed by Customs and Border Protection representatives that "you have no rights" and that they would be held until they agreed to the fingerprinting procedure. (29)

- The agents of the New Jersey Office of Counter-Terrorism were barred from filing reports to the State Police database after the discovery of more than 100 entries that seemed to target suspects only because they were practicing Muslims or were active in the Muslim community. The State Police action sparked a dispute that became so intense that the acting Gov. Richard Codey's office had to intervene by summoning Attorney General Peter Harvey, State Police Superintendent Rick Fuentes and Counter-Terrorism Director Sydney Caspersen to a Statehouse meeting to broker a peace. (30)

- Five Muslim men attending the Sept. 19 (2005) Giants football game against the New Orleans Saints were detained and questioned for about a half hour by the FBI after they were observed praying at the stadium. The men were allowed to return to the stadium, but in different seats, and were escorted to their cars when they left. (31)

- In August 2005 an increasing number of calls for legal advice from Iranian Americans sent up red flags for a coalition of civil rights organizations monitoring the treatment of Muslims and natives of two dozen countries in North Africa, the Middle East and South Asia. Iranians were increasingly seeking legal aid after being questioned by the FBI, put on government watch lists and losing their jobs or security clearances. "Over the past year or so there are increasing numbers of Iranian Americans who are being discriminated against across the board," Dalia Hashad of ACLU told a news conference in San Francisco. (32)

Interviews of 5,000 Muslims and Arabs

Official profiling of Muslims and Arabs began with the Attorney General Ashcroft's announcement in November 2001 to target about 5,000 young men of Middle Eastern and South Asian heritage who entered the country in the last two years on non-immigrant visas but who were not suspected of any criminal activity for questioning by the federal government.

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In planning these interviews - which were expected to number 5000 in late 2001 and an additional 3000 in early 2002 - the federal government sought the support of state and local governments and law enforcement agencies. In a stunning reversal, many of these state and local offices balked at assisting federal authorities, arguing that to single out Arab men for questioning amounted to racial profiling. (33)

Nevertheless, the interviews were carried out as planned. Ninety percent of those sought for questioning appeared and were interrogated about their political and religious beliefs and those of their families; whether they sympathized with the September 11 hijackers; whether they had any scientific or weapons training; and where they had traveled. It is not believed that any person interviewed provided any useful information to law enforcement authorities, although Attorney General Ashcroft claimed that the interviews "generated a significant number of leads . . . into the September 11 attacks . . . fostered new trust between law enforcement' and the Arab and Muslim communities, and helped to disrupt potential terrorist activities." (34)

Just five months before the November 2004 presidential election, the FBI began a third round of interviews of members of the Arab and Muslim communities in July. The FBI and the Department of Justice had described the move as an ongoing effort to "establish contacts with community organizations and leaders in their territories", but for many in the Arab/Muslim community that outreach effort has triggered painful memories of the post-9/11 security dragnet that landed hundreds of Arab and Muslim suspects in police detention, most of whom were later exonerated of any terrorist-related activities. Civil rights groups received numerous complaints about coercive or intimidating tactics used by FBI agents. The new interviews provoked heavy scrutiny from the American Civil Liberties Union (ACLU), which had offered to provide free legal representation to those contacted by the FBI for information.

The FBI interviews came at a time when the Arab American community was also dealing with a controversial decision by the US Census Bureau to provide the Department of Homeland Security with new statistics on the Arab American population. The data, which included detailed information on the number of Arabs who live in certain zip codes, was tabulated in August 2002 and December 2003 at the request of the Customs and Border Protection (CBP), a division of the Homeland Security Department. The report documented US cities with more than 1000 Arab Americans residents, along with a second listing for zip code demographics on individuals with Egyptian, Syrian, Jordanian, Palestinian, Moroccan, Iraqi and Lebanese heritage. Two other categories were "Arab/Arabic" and " Other Arab". Census Bureau officials have said they were legally obligated to provide the information, while CBP officials said they wanted the statistics in order to post Arabic signs in certain airports.

Detentions and Deportations

A particularly disturbing form of terrorism profiling has been the federal government's use of race as a basis for the detention without due process and its subsequent use of the anti-terrorism investigation as a vehicle for the disproportionate application of U.S. immigration laws against detainees who were found to be innocent of any terrorist activity. In the wake of 9/11, the United States detained hundreds - perhaps thousands - of Arabs, South Asians and Muslims on suspicion of terrorist activity. Almost none of these individuals were ultimately found to have been in any way involved in terrorism. Yet many continued to be held without being formally charged with any crime or immigration violation. (35)

The US government acknowledged at one point that the number of detainees was in the range of 1200, although it refused to give out specific information about how many persons were detained and why. This information has been sought by various civil rights groups under the Freedom of Information Act, a request that was upheld in November 2002 by a federal district court ordering release of names and other information on detainees. (36)

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Unfortunately, a divided 2-1 decision in the U.S. Court of Appeals for the D.C. Circuit in June, 2003, reversed that ruling and upheld the withholding of all information. The plaintiffs filed for review by the Supreme Court, but that petition was denied on January 12, 2004.

Many of those who were ultimately charged with immigration violations were held to be deportable based on relatively trivial offenses. One Palestinian man was detained and charged for failing to notify INS of a change of address; and a Pakistani was detained and charged with helping some illegal immigrants find housing. During some of the often unexplained detentions, law enforcement officials interrogated the detainees rudely and even abusively, limited their access to families and lawyers severely, threw them into jails where guards and other prisoners taunted and in at least one case badly beat them, kept them behind bars long after abandoning any claim that they were terrorists. (37)

The story of Ali al Maqtari, a French teacher from Yemen, provides a chilling example of what many Arabs and Muslims have faced since 9/11. Mr. al Maqtari was married on June 1, 2001 to an American citizen and was therefore himself eligible for citizenship. On September 15, 2001, Mr. al Maqtari and his wife drove up to the Fort Campbell, Kentucky, U.S. army base so that she could report for duty as a new recruit. Federal agents descended on them, separated them and questioned Mr. al Maqtari for 12 hours. The federal agents falsely accused Mr. al Maqtari of violating the immigration laws, abusing his wife, and conspiring with terrorists from Russia; claimed to have evidence against him which proved not to exist; and threatened him with beatings. Even after polygraph tests showed that he was telling the truth, and even after INS and FBI officials indicated he would be freed, Mr. al Maqtari was held for an additional seven weeks, during which time he was housed with hardened criminals in two separate jails, taunted by guards, and limited to one phone call per week. Mr. al Maqtari's experience supports the conclusion of Amnesty International that "a significant number of detainees continue to be deprived of certain basic rights guaranteed under international law," according to the LCCREF.

The government detained at least 70 men, all but one a Muslim, as material witnesses and abused their civil rights in a largely secret operation launched by the Justice Department after the Sept. 11 attacks, according to a Human Rights Watch and the ACLU report released in June 2005. The civil rights groups said that in many cases the detainees were not told why they were arrested and did not get immediate access to lawyers, and that the Justice Department often would not confirm whether they were being held. Federal law allows the government to temporarily detain people who are suspected of having knowledge of a crime to ensure they testify. But the report accused the government of operating in "a Kafkaesque world of indefinite detention" for many people who were never linked to terrorism. Of the 70 men identified in the report, 42 were released without any charges filed. Seven were charged with terrorism-related offenses. At least 13 received apologies from the government for being wrongfully detained. "Muslim men were arrested for little more than attending the same mosque as a Sept. 11 hijacker or owning a box-cutter," the report pointed out. (38)

Alien Registration Program

In the post-9/11 America, immigrants from predominantly Muslim countries were victimized by U.S. legislation that unjustly targeted them as a group. Harsh immigration and anti-terrorism laws and policies had a devastating effect on many Muslim communities leaving a legacy of fear and disillusionment, especially among young people.

Most forms of profiling, such as "driving while Black," feature the exercise of law enforcement discretion based on certain assumptions about the propensity of a particular group toward certain criminal behavior. This discretion was exercised on a case-by-case basis at the point of contact. That is, the officer observes and decides to take action against a person who the officer believes, based on the assumptions under which he operates, is likely to engage in criminal activity. (39)

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But profiling can also occur at a more general level, when a law enforcement institution makes the determination that an entire group of people is so dangerous that all persons in that group should automatically receive heightened attention. In such cases, profiling is not a function of the exercise of law enforcement discretion, but represents the absence of law enforcement discretion. (40)

An example of this type of profiling was the Alien Registration Program, which went into effect in late 2002. The program enforced a requirement that foreign visitors to the United States register with the Immigration and Naturalization Service (INS) – which is now renamed as U.S. Citizenship and Immigration Services - and keep law enforcement apprised of their whereabouts. The Justice Department claimed that the registration program will eventually cover visitors from all foreign countries, but the first individuals subjected to the requirements were visitors from five Arab or Muslim countries - Iran, Iraq, Syria, Sudan, Libya - and those from North Korea - who were required to register by December 16, 2002. Pakistan, Indonesia, and Saudi Arabia were later added to the original list and, overall, the program was extended to cover 25 countries. Registrants were required to re-register annually. The program was cancelled in December 2003. (41)

A California Senate report on the impact of INS Registration said: 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 of 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. (42)

The CA report entitled “the Patriot Act, other post-9/11 enforcement powers and the impact on California’s Muslim communities,” also said: 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.”

When the program was announced, Justice Department officials defended it on the grounds that the requirements were merely administrative measures that would assist the anti-terrorism struggle by helping authorities keep track of visitors to the United States - not as a vehicle for prosecuting or investigating these individuals for activity unrelated to terrorism. These representations proved false. Almost immediately after the registration requirements went into effect, the government began to detain registrants found to have been guilty of immigration violations, not terrorism. According to reports, 500-1000 registrants were detained in the Los Angeles/Orange County area alone when they attempted to meet the initial December 10 (2002) registration deadline. (43)

Some 83,000 Muslim men registered with the program, officially called the National Security Entry Exit Registration System (NSEERS), from its inception in September 2002 to its termination in April 2003. Out of those 83,000, more than 13,000 were taken to detention centers or deported. Not one of them was ever charged with a terrorism-related crime.

According to an unofficial tally:

_ 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 from 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 (44)

Many of the detainees had committed only minor immigration infractions, had experienced delays or difficulties in adjusting their status to citizen or legal permanent resident, and/or had been living in the United States legally for years, often with spouses and families. In one such case, a Moroccan man living in the Washington, D.C., area with an application for legal permanent residency pending was handcuffed, placed in leg irons, and held in a county jail overnight. He now faces deportation, even though he was not found to be connected at all to terrorism. (45)

Most of the detainees were released, but problems lingered with the registration program in general. Some registrants reported being subjected to verbal abuse and taunting by government officials. Officials at one Florida registration site mockingly offered ham sandwiches to hungry registrants who had been held for hours and interrogated about their immigration status and suggested that the registrants wash their hands in "camel's milk" before being fingerprinted. (46)

The experience of Ejaz Haider, an editor at one of Pakistan's most respected English-language news magazines and a visiting research fellow at the Brookings Institution, demonstrates the twisting of INS registration programs into vehicles for the unfair treatment of Muslims under the guise of counter-terrorism. Pursuant to INS regulations, Mr. Haider registered in the United States upon his arrival and was told to report for an interview within 40 days. Mr. Haider subsequently checked with both the State Department and INS and was told that in fact that he did not have to report for the interview. (47)

On January 28, 2003, however, Mr. Haider was accosted by two INS agents in front of the Brookings Institution, taken into custody, fingerprinted, photographed, and told that he would spend the night in jail. Only the intervention of Mr. Haider's colleagues at Brookings and the Pakistani Foreign Minister caused his release and saved him further hardship. (48)

The mixed advice provided by the U.S. officials to Mr. Haider was yet another layer of unfairness to the process. Writing in Washington Post, Mr. Haider said: "I did not know I was in violation of the INS policy. Brookings did not know I was in violation. My friends in the State Department did not know I was in violation. And if - even after following the policy closely and calling INS for information - we could not understand the law, what hope can there be for the cabdriver or the restaurant worker who doesn't have the leisure to discover the letter and intent of INS policies." (49)

The registration program not only became another pretext for the disproportionate targeting of Muslims and Arabs but there is also no evidence that the program had been useful to the anti-terrorism struggle. In fact, as The Washington Post had pointed out, "The bait and switch, which punishes and humiliates those who tried to follow the rules, can only undermine the purpose of the registration program." (50)

Special registration was not a program mandated by Congress. It was crafted by members of the executive branch of government. Attorney General Ashcroft amended the Code of Federal Regulations (CFR) declaring willful failure to register and provide full and truthful disclosure of information a failure to maintain nonimmigrant status, a deportable offense.²⁵ He also amended the CFR by declaring that failure to register upon departure from the United States is an unlawful activity, making one presumed to be inadmissible to the United States because one "can reasonably be seen as attempting to reenter for purpose of engaging in an unlawful activity." (51) Ashcroft thereby made noncompliance with the special registration program a bar to immigration, although only Congress has the right to establish such categories of inadmissibility. Special registration may also deny Arabs and Muslims the right to benefit from any future amnesty or legalization program.

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David Cole, Law Professor at Georgetown University believes that the nation is experiencing the largest example of ethnic profiling after the Sept. 11 attacks since World War II, when the U.S. government interned Japanese-Americans. "Our government says we will sacrifice foreign nationals' rights, Arabs and Muslims most notably, for Americans' security."

As a matter of fact, the racial profiling by US law enforcement agencies has increased since 9/11 and now affects one in nine Americans, according to an Amnesty International USA (AI-USA) report of 2004. State and federal agencies, under the guise of fighting terrorism, have expanded the use of this degrading, discriminatory and dangerous practice, the AI-USA pointed out.