File No. 170092 Committee Item No. 4
Board Item No. 45

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Public Safety and Neighborhood Services **Date** February 22, 2017

Board of Supervisors Meeting **Date** February 28, 2017

Cmte	Board	
☐	☐	Motion
☐	☐	Resolution
☒	☒	Ordinance
☒	☒	Legislative Digest
☐	☐	Budget and Legislative Analyst Report
☐	☐	Youth Commission Report
☒	☒	Introduction Form
☐	☐	Department/Agency Cover Letter and/or Report
☐	☐	MOU
☐	☐	Grant Information Form
☐	☐	Grant Budget
☐	☐	Subcontract Budget
☐	☐	Contract/Agreement
☐	☐	Form 126 – Ethics Commission
☐	☐	Award Letter
☐	☐	Application
☒	☒	Public Correspondence

OTHER (Use back side if additional space is needed)

☒	☒	Referral FYI 01/30/17
☐	☐	
☐	☐	
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Completed by: Erica Major **Date** February 17, 2017
Completed by: CM **Date** 2/24/17

[Administrative Code - Non-Cooperation with ~~Religion~~Identity-Based Registry]

Ordinance amending the Administrative Code to prohibit the City from using resources to create, implement, provide investigation or information for, enforce, or otherwise assist or support any government program requiring the registration of individuals on the basis of religion, national origin, or ethnicity, or creating a database of individuals on the basis of religion, national origin, or ethnicity.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The Administrative Code is hereby amended by adding Chapter 103 to consist of Sections 103.1, 103.2, 103.3, 103.4, 103.5, 103.6, and 103.7, to read as follows:

CHAPTER 103: ~~**RELIGION REGISTRY**~~ ***NON-COOPERATION*** **WITH IDENTITY-BASED REGISTRY** ***ORDINANCE***

SEC. 103.1. TITLE.

This Chapter 103 shall be known as the ~~Religion Registry~~ *Non-Cooperation* With Identity-Based Registry *Ordinance.*

SEC. 103.2. FINDINGS AND PURPOSE.

(a) From its earliest beginnings, the United States ~~and its citizens have~~ *cherished religious freedom.* ~~Many of the early settlers from Europe came to America to escape religious persecution, and subsequent waves of immigrants included many refugees from religious oppression.~~ *Enshrined in the First Amendment to the Constitution is the admonition that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Even predating the First Amendment, Article VI of the Constitution prohibited, and continues to prohibit, a religious test for any federal office. The California Constitution is in line with its federal counterpart, guaranteeing, in Article I, Section 4, the "[f]ree exercise and enjoyment of religion without discrimination or preference" and prohibiting any law "respecting an establishment of religion."*

(b) These constitutional pronouncements have been matched in recent decades by legislation recognizing that discrimination based on religion is intolerable in a free society. As prime examples, the Civil Rights Act of 1964 outlaws discrimination on the basis of religion in employment and access to public accommodations, the Fair Housing Act of 1968 outlaws discrimination on the basis of religion in housing, and the Religious Freedom Restoration Act of 1993 offers considerable protection against laws which, though neutral in form, place burdens on the free exercise of religion. In California, the Unruh Act protects against religious discrimination in public accommodations, and the Fair Employment and Housing Act protects against religious discrimination in those areas.

(c) San Francisco's laws champion the same commitment to religious freedom, tolerance, and diversity that federal and state law recognize. These principles are articulated, for example, in the findings and policy declaration forming the basis for the Human Rights Commission (Administrative Code, Sections 12A.1, 12A.2). It is the official policy of the City to eliminate discrimination within the City based on religion. (Police Code, Section 3301.) Following through on that policy, City laws

proscribe religious discrimination in many areas, including public accommodations, employment, and housing. (Police Code, Article 33.)

(d) Against this backdrop of federal, state, and local laws insisting that people not be treated differently because of religion – demanding that people be free to enjoy their religious beliefs, associations, practices, backgrounds, and identities – any proposal to base a governmental registry on religion or for a governmental entity to compile a database of individuals based on religion is anathema to this country, this state, and this city. For government to label people by religion would repudiate our most cherished values.

(e) And such a registry or database would be very dangerous. It would demean those in our community included in the registry or database, and would foster the very prejudice and discrimination that federal, state, and local laws are designed to combat. It would teach people that hate, fear, and suspicion of religious minorities is permissible. Misguided individuals could see the registry or database as sanctioning the commission of hate crimes against religious minorities in general, and especially against those individuals whose religion – or perceived religion – is targeted as the basis for inclusion in the registry or database. At the same time, those individuals the government seeks to label by religion would naturally be reluctant to interact with government beyond what is absolutely necessary. Cooperation with local law enforcement investigations would likely decline; use of the City's public health facilities; and the provision of personal information related to public health, would likely decline; participation in programs designed to uplift the disadvantaged would likely decline. In these and like circumstances, the entire community – not just the targeted individuals – would suffer.

(f) Further, once the government starts classifying people by religion, no one can say where or when the practice will end; which groups will be the subject of classification, and which not; how the information will be used by the authorities; and what additional measures, if any, will be taken by government toward or against people based on religion. In this regard, history's examples are not comforting. Gross violations of human rights can begin with smaller violations. The first step down

that road can lead to second, third, and fourth steps that at the beginning would ~~seem~~have seemed *unimaginable.*

(g) Notwithstanding this country's fidelity to the principle of religious freedom, there have been instances in which we have sometimes fallen short in practicing religious tolerance. Catholics, Jews, Muslims, Sikhs, *Jehovah's Witnesses, and some other Protestant sects, among many other faith communities, have at times felt the sting of religious bigotry and discrimination. Members of certain faith communities have been the victims of hate crimes, including in recent years most particularly Jews and Muslims. There has been an upsurge in anti-Muslim sentiment in recent years, as measured by hate crimes statistics and other social science data. In the modern era, if not always in the more distant past, government has acted as a positive force to curb religious bigotry and discrimination. For government to start to classify people by religion through a registry or other database would put government on a different, more ominous course and would profoundly injure the City's relationship with its residents.*

(h) A registry of individuals identified by national origin or ethnicity, or a database including that information, could be used by the government as a proxy for determining religion, as many countries and ethnic groups are made up of individuals of predominantly one religion. A registry or database keyed to national origin or ethnicity that is created for purposes of determining the likely religion of the people in the registry or database would be just as offensive to our values, just as damaging to the affected individuals, and just as harmful to our community, as a registry or database based directly on religion. And even if it could not be determined that such a registry or database was created for the purpose of indirectly classifying people by religion, it could, in fact, be used for that purpose, or have that effect.

(i) Independent of its possible use to indirectly identify individuals by religion, a registry or database classifying individuals by national origin or ethnicity would – like a classification

system based on religion – tread on the most fundamental values of our country, our state, and our community. Constitutional guarantees of equal protection of the laws cannot be squared with the maintenance of such a registry or database. Nor can state and City laws prohibiting discrimination based on national origin or ethnicity. Notwithstanding the persistence of ethnic prejudice in some quarters, and its exacerbation in a time of terrorism, eradication of such prejudice is among the highest priorities of all levels of government in the United States. To maintain a registry or database identifying people by national origin or ethnicity would grossly distort our priorities, and for the worse. And it would ignore the tragedies of history rooted in ethnic prejudice – such as the tragedy experienced during wartime, not so long ago, by persons of Japanese descent, including American citizens, in California and elsewhere. Rather than soft-pedal the dangers that would abound in a registry or database identifying individuals by national origin or ethnicity, this City should be ever-vigilant to call out those dangers and, within the limits of the law, should not cooperate in the creation, maintenance, or use of such a registry or database.

(j) It is the City's intent that this Chapter prevent the use of City resources to assist in any way with a government registry based on religion, national origin, or ethnicity, and to prevent the City from disclosing personal information regarding any individual that could be used to create such a registry. Nonetheless, and out of abundance of caution, due solely to the existence of Section 1373(a) of Title 8 of the United States Code, this Chapter exempts from its scope the sending to or receiving from a Federal agency charged with enforcement of Federal immigration law information regarding an individual's citizenship or immigration status. It is the City's position that Section 1373(a) is unconstitutional, and the City has filed a federal lawsuit seeking a judgment declaring it as such. *See City and County of San Francisco v. Trump, et al.*, Case No. 3:17-cv-00485 (N.D. Cal.). Until the City obtains court relief from Section 1373(a), it will continue to comply with Section 1373(a).

SEC. 103.3. DEFINITIONS.

For purposes of this Chapter 103, the following terms have the following meanings:

"List, Database, or Registry" means any public, private, or joint public-private collection of information stored in any form.

"Personal Information" means any information that can, on its own or in combination with other information, be used to contact, track, locate, identify, or reasonably infer the identity of, a specific individual.

SEC. 103.4. ASSISTANCE WITH GOVERNMENT REGISTRY OR DATABASE.

(a) No officer, employee, department, board, commission, or other entity of the City shall use City moneys, facilities, property, equipment, or personnel to create, implement, provide investigation for, enforce, or assist in the creation, implementation, provision of investigation for, or enforcement of, or provide support in any manner for, any government program that (1) creates or compiles a List, Database, or Registry of individuals on the basis of religious affiliation, kinship, belief, or practice~~,~~; national origin; or ethnicity or (2) requires registration of individuals in a List, Database, Registry, or otherwise, on the basis of religious affiliation, kinship, belief, or practice; national origin; or ethnicity.

*(b) Notwithstanding any other law, no officer, employee, department, board, commission, or other entity of the City shall provide or disclose to any government authority Personal Information regarding any individual that is requested for the purpose of (1) creating or compiling a List, Database, or Registry of individuals based on religious affiliation, kinship, belief, or practice; national origin; or ethnicity, or (2) requiring registration of individuals in a List, Database, registry, or otherwise, on the basis of religious affiliation, kinship, belief, or practice~~.~~; national origin; or ethnicity. ~~In addition, regardless of the purpose of the request, no such information shall be provided or disclosed to any government authority if it could potentially become part of such a~~

~~List, Database or Registry.~~ This includes a prohibition on making available Personal Information from any City database for the purposes mentioned in the foregoing sentence, including any City database maintained by a private vendor under contract with the City.

(c) This Section 103.4 shall apply to all individuals, regardless of citizenship or immigration status, race, age, or any other factor.

(d) Nothing in this Chapter 103 prohibits any officer, employee, department, board, commission, or other entity of the City from sending to, or receiving from, any local, state, or federal agency, aggregate information about religious affiliation, kinship, belief, or practice; national origin; or ethnicity within a geographic area, institution, category, or group, where such information is not associated with Personal Information, including but not limited to, names, addresses, and telephone numbers, and cannot be used to identify individuals on the basis of religious affiliation, kinship, belief, or practice; national origin; or ethnicity.

(e) Nothing in this Chapter 103 prohibits any officer, employee, department, board, commission, or other entity of the City from sending to, or receiving from, a Federal agency charged with enforcement of Federal immigration law information regarding an individual's citizenship or immigration status, lawful or unlawful. "Information regarding an individual's citizenship or immigration status, lawful or unlawful" for purposes of this Chapter 103, shall be interpreted consistent with Section 1373 of Title 8 of the United States Code. This subsection (e) shall expire by operation of law if a court of competent jurisdiction enters a judgment ruling 8 U.S.C. § 1373(a) facially unconstitutional or unconstitutional as applied to the City.

(f) Nothing in this Chapter 103 prohibits the City from creating or maintaining a List, Database, or Registry that contains ethnicity or national origin information where such information is collected for purposes of complying with anti-discrimination laws or laws regarding the administration of public benefits.

SEC. 103.5. ENFORCEMENT AND REPORTING.

(a) *The Director of the Human Rights Commission, or his or her designee ("the Director") shall review compliance with this Chapter 103. The Director may initiate and receive complaints regarding violations of this Chapter. After conducting an investigation, the Director may issue findings regarding any alleged violation. If the Director finds that a violation occurred, the Director shall, within 30 days of such finding, send a report of such finding to the Board of Supervisors, the Mayor, and the head of any department involved in the violation or in which the violation occurred. All officers, employees, departments, boards, commissions, and other entities of the City shall cooperate with the Director in any investigation of a violation of this Chapter.*

(b) By February 1 of each year, each City department shall submit to the Board of Supervisors a written, public report regarding the Department's compliance with this Chapter 103 over the previous calendar year. This report, at minimum, must: (1) detail with specificity the steps the department has taken to ensure compliance with this Chapter; (2) disclose any issues with compliance, including any violations or potential violations of this Chapter; and (3) detail actions taken to cure any deficiencies with compliance.

SEC. 103.6. ~~UNDERTAKING FOR THE GENERAL WELFARE~~ CIVIL ACTION.

(a) Cause of Action. The City shall be liable in a civil action for a violation of Section 103.4(b) filed by either (1) an individual whose Personal Information has been disclosed in violation of Section 103.4(b) of this Chapter or (2) a non-profit organization exempt from taxation pursuant to Title 26, Section 501 of the United States Code, that has the defense of immigrants' and ethnic minorities' rights as a stated purpose in its articles of incorporation or bylaws.

(b) Damages and Civil Penalties. If the City is found liable in a cause of action brought by an individual under section (a)(1) of this Section 103.6, the City shall be liable for (1) the

damages suffered by the plaintiff, if any, as determined by the court, and (2) a civil penalty no greater than $5,000 per violation, as determined by the court. If the City is found liable in a cause of action brought by an organization under section (a)(2) of this Section 103.6, the City shall be liable for a civil penalty no greater than $5,000 per violation, as determined by the court; provided that an organization may not recover a civil penalty if a court has already awarded a penalty to an individual or another organization arising out of the same violation. In determining the amount of the civil penalty in any action filed under subsection 103.6(a), the court shall consider: whether the violation was intentional or negligent, and any prior violations of Section 103.4(b) by the City department that committed the violation. For the purpose of this subsection 103.6(b), each disclosure of each individual's Personal Information shall be a separate violation.

(c) Attorney's Fees and Costs. A court may award a plaintiff who prevails on a cause of action under subsection (a) of this Section 103.6 reasonable attorney's fees and costs.

(d) Limitations on Actions. Any person or entity bringing an action under this Section 103.6 must first file a claim with the City under Government Code Section 905 or any successor statute within three years of the alleged violation.

(e) Exception. Any disclosure of Personal Information required by a legally enforceable subpoena, judicial warrant, or court order shall not give rise to a cause of action under this Section 103.6.

~~In enacting and implementing this Chapter 103, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.~~

FILE NO. 170092

REVISED LEGISLATIVE DIGEST
(Amended in Committee, 2/22/2017)

[Administrative Code - Non-Cooperation with Identity-Based Registry]

Ordinance amending the Administrative Code to prohibit the City from using resources to create, implement, provide investigation or information for, enforce, or otherwise assist or support any government program requiring the registration of individuals on the basis of religion, national origin, or ethnicity, or creating a database of individuals on the basis of religion, national origin, or ethnicity.

Existing Law

Current law does not regulate whether the City may provide information to other government entities regarding the religious affiliation, national origin, or ethnicity of any individual or assist other government entities in creating or enforcing a database or registry of individuals based on religious affiliation, national origin, or ethnicity. Current law prohibits the City from discriminating against any individual on the basis of religious affiliation, national origin, and ethnicity.

Amendments to Current Law

The proposed ordinance would prohibit any City entity, employee, or officer from, (1) using City resources to assist in any way with a government program that creates a list, database, or registry of individuals on the basis of religious affiliation, national origin, or ethnicity, or requires registration of individuals on the basis of religious affiliation, national origin, or ethnicity; and (2) disclosing to any government entity personal information regarding any individual for the purposes of creating a list, database, or registry of individuals on the basis of religious affiliation, national origin, or ethnicity. This would include prohibiting the City from making any City databases, including City databases maintained by private contractors, available for purposes of creating a registry based on religious affiliation, national origin, or ethnicity. The ordinance would also prohibit the City from creating a registry of individuals based on their religious affiliation, national origin, or ethnicity. The ordinance would not prohibit the City from collecting and storing information regarding national origin or ethnicity for purposes of compliance with anti-discrimination laws and the administration of public benefits programs, many of which require the collection of this information to ensure non-discrimination.

The Human Rights Commission is delegated authority to receive and investigate complaints of violations of the ordinance and to issue findings regarding any substantiated violation. Departments must report to the Board of Supervisors annually regarding compliance with the ordinance.

The proposed ordinance creates a private right of action against the City for an individual whose personal information has been disclosed in violation of the ordinance. A non-profit organization that has as its purpose the defense of immigrants' and ethnic minorities' rights also has standing to sue the City on behalf of aggrieved individuals. An individual plaintiff who prevails in a suit against the City may recover damages resulting from the violation as well as a $5,000 civil penalty per violation. A non-profit plaintiff can recover a $5,000 civil penalty per violation. But an individual and a non-profit cannot recover a penalty regarding the same violation. A prevailing plaintiff in a case against the City is entitled to recover reasonable attorney's fees and costs.

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SUBMITTED VIA EMAIL
170092
RECEIVED 2/08/2017

February 22nd, 2017

The Honorable Edwin M. Lee
San Francisco City Hall
1 Dr. Carlton B. Goodlett Place, Room 200
San Francisco, CA 94102

Dear Mayor Lee,

I write to express my unwavering support for the Religious Registry Non-Cooperative Ordinance.

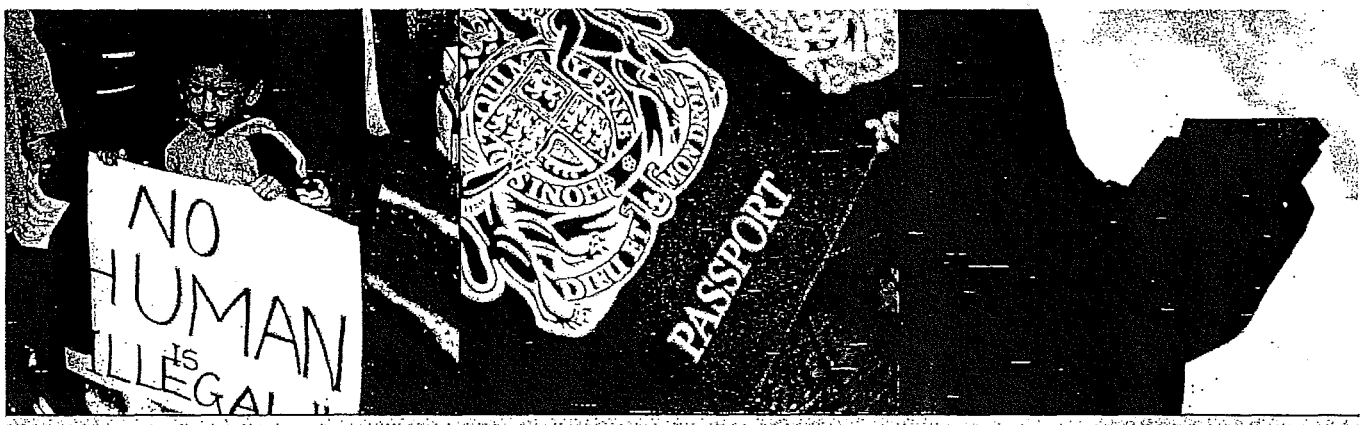
The Constitution grants citizens the right to religious freedom. A religious registry threatens our First Amendment. It gives government the tools to condone or persecute people practicing a specific religion. Any law that singles out people on the basis of religious beliefs, associations, practices, backgrounds or identities is a direct attack on the foundation of our country.

Religious anonymity protects people from government authorities' prejudice and discrimination. Within the last month, President Donald Trump created an executive order that bans refugees from seven predominantly Muslim countries from entering the country for 120 days. There was also a period where the ban extended to current U.S. green-card-holding legal residents from these countries. The executive order claimed to focus on "terror-prone" countries—completely ignoring that no one from these countries has committed acts of terrorism against the United States, that many acts of terrorism have been committed by U.S. citizens in recent years, and that the executive order fuels Islamophobia and xenophobia. Even though the ban has been overturned, the federal government has openly targeted a religious group, and we cannot tolerate this un-American, first-amendment-violating, hateful act.

It is our responsibility to combat racism and bigotry, especially when these views are expressed by top of our political leadership. By passing the Religious Registry Non-Cooperative, San Francisco sets an example for other cities who should do the same. I commend your dedication to protect the people and our inalienable rights.

Sincerely,

Angelica Sullam
Citizen of San Francisco
4016 26th Street



THE NSEERS EFFECT:

A Decade *of* Racial Profiling, Fear, *and* Secrecy

May 2012

RIGHTS working group

PENN STATE LAW

TABLE OF CONTENTS

About the Authors

Rights Working Group

Rights Working Group (RWG) formed in the aftermath of September 11th to promote and protect the human rights of all people in the United States. A coalition of more than 330 local, state, and national organizations, RWG works collaboratively to advocate for the civil liberties and human rights of everyone regardless of race, ethnicity, religion, national origin, citizenship, or immigration status. RWG has advocated for the full termination of NSEERS since the program's inception.

Center for Immigrants' Rights, Pennsylvania State University's Dickinson School of Law

The Center for Immigrants' Rights is an immigration policy clinic at Penn State's Dickinson School of Law. At the Center, students produce practitioner toolkits, reports, and primers of national impact on behalf of client organizations. Working in teams, students build professional relationships with government and nongovernmental policymakers, academics, individual clients, and others. In 2009, the Center produced an analysis of the National Security Entry-Exit Registration System (NSEERS) for the American-Arab Anti-Discrimination Committee (ADC), which this current report builds on.

ACKNOWLEDGMENTS

This report was prepared by students Mohita Anand and Constantin Schreiber as part of the Pennsylvania State University's Dickinson School of Law's Center for Immigrants' Rights, under the supervision of Shoba Sivaprasad Wadhia and on behalf of the Rights Working Group. The report was reviewed and edited by the following individuals: Sameera Hafiz, Jumana Musa, Aadika Singh, and Shoba Sivaprasad Wadhia.

Rights Working Group (RWG) and Penn State Law's Center for Immigrants' Rights (CIR) are enormously grateful to the following individuals and organizations for their contributions as interviewees to this report.

Seth-Kaper Dale, *Reverend at the Reformed Church of Highland Park, NJ*
Reverend Seth-Kaper Dale (Pastor Seth) has been serving as a Reverend at the Reformed Church of Highland Park, New Jersey since 2001. Throughout his ministry, he has helped promote interfaith dialogue amongst the different communities. He has become an integral component in advising and assisting the Indonesian community with NSEERS. [1]

Mirwan Harahap, *individual affected by NSEERS*
Mirwan Harahap faced religious harassment in his home country of Indonesia and thus fled to the United States on a tourist visa in 1997. He lived in Metuchen, New Jersey and worked for a car service company as a dispatcher. Around 2002, he complied with the NSEERS registration requirements. He was later deported in February 2009 and was forced to leave his child and wife behind. He currently lives in Jakarta, Indonesia. [2]

Denyse Sabagh, Esq., *Head of Immigration Practice Group, Duane Morris LLP*
Denyse Sabagh serves as a partner at Duane Morris and heads the firm's Immigration Practice Group. Ms. Sabagh is the former national president and the general counsel of the American Immigration Lawyers Association. In 2010, Human Resource Executive magazine named her one of their top 15 immigration lawyers. She is listed in *Chambers Global and Chambers USA: America's Leading Business Lawyers for 2006* through 2011. She was also awarded the first Rose Bouzaine Nader Award by the American-Arab Anti-Discrimination Committee in June 2006 to honor her civic courage, organizing skills, and in advancing the just society with its pursuit of happiness, creativity, and foresight. [3]

James Zogby, *President and Founder of the Arab American Institute* Dr. James Zogby is the founder and president of the Arab American Institute (AAI), an organization focused on political and policy research for the Arab American community. Since 1986, Dr. Zogby has led Arab American efforts through the AAI for political empowerment in the United States, such as voter registration, education, and mobilization. Dr. Zogby has been involved in numerous Arab American issues. In the late 1970s, he co-founded and held a position of a chairman of the Palestine Human Rights Campaign and later served as the Co-Founder and Executive Director of the American-Arab Anti-Discrimination Committee. [4]

In addition to the contributors listed above, the authors of the report also interviewed other individuals knowledgeable about NSEERS who prefer to remain anonymous. Some of them have been quoted here, while others have only informed the content of the report.

Executive Summary

In the wake of the tragic attacks of September 11, 2001, the landscape of immigration law and policy in the United States changed dramatically as the government scrambled to create counterterrorism programs to respond to potential national security threats. Many of these policies relied on discriminatory profiling of individuals from countries with predominantly Muslim populations and were based on the false assumption that people of a particular religion or nationality have a greater propensity for committing terrorism-related crimes. One of the most prominent of these programs is the National Security Entry-Exit Registration System (NSEERS) or "special registration" that was initiated by the Department of Justice (DOJ) in 2002 and inherited by the Department of Homeland Security (DHS) in 2003.

NSEERS served as a tool that allowed the government to systematically target Arabs, Middle Easterners, Muslims, and South Asians from designated countries for enhanced scrutiny. The most controversial piece of NSEERS required nonimmigrant males who were 16 years of age and older from 25 specific countries to register at local immigration offices for fingerprinting, photographs, and lengthy, invasive interrogations. Generally, the term "nonimmigrants" refers to individuals who are seeking admission to the United States temporarily for purposes of education, employment, pleasure, etc. Other than North Korea, each of the listed countries has predominantly Muslim populations.[5] Many individuals were deported through secret proceedings that took place without due process of law. The specifics of NSEERS reveal it to be a clear example of discriminatory and arbitrary racial profiling. More than 80,000 men underwent call-in registration and thousands were subjected to interrogations and detention, wasting taxpayer dollars through this counterproductive response to September 11th which has not resulted in a single known terrorism-related conviction.

From its inception, NSEERS elicited a strong negative response from Arab, Middle Eastern, Muslim, and South Asian communities in the United States. For a decade, advocacy organizations including Rights Working Group, [6] immigration lawyers and the private bar, [7] policy analysts, [8] and politicians [9] have spoken out against the discriminatory and ineffective program and called for its full termination. [10]

Impact on Families and Communities

To this day, many families are separated geographically because a male family member was deported to his country of origin after attempting to comply with NSEERS, even if he did not have any relatives or contacts in that country. [11] In April 2011, the Department of Homeland Security (DHS) announced that the 25 NSEERS countries would be delisted and nonimmigrants from those countries would no longer need to comply with the program. Although DHS framed this policy shift as having "ended" NSEERS, the delisting of the specific countries through the April 2011 Rule did not eliminate the program's underlying infrastructure. Individuals continue to face harsh immigration consequences resulting from the program, including deportation and the denial of immigration benefits for which they are otherwise eligible.

Continued Lack of Transparency and Misuse of Data

Clear, publicly available information on NSEERS procedures and goals was unavailable from its inception and the program continues to lack transparency. Even today, the agencies involved in the program share little data or other information regarding its effectiveness. The issue of transparency is closely related to concerns about the misuse of data.

While NSEERS has been suspended, the data collected through the program is still available to DHS and potentially other government agencies. It is unclear how the data collected through the registration process has been and potentially is still being used. Much of the data gathered is very private and sensitive information, such as that related to individuals' private financial matters. Those who registered have to live with the constant fear that this data could be used against them in the future.

NSEERS is Easy to Resurrect

Subsequent to the April 2011 delisting, DHS admitted that the NSEERS program was not dismantled because the government wished to keep the regulations intact. This position is untenable as it ignores the numerous calls for full termination from advocates, members of Congress, and DHS' own Office of Inspector General. Moreover, this lets-keep-it-in-our-back-pocket approach to addressing NSEERS suggests that the Obama Administration condones and intends to continue policies that rely on discriminatory racial profiling.

Failure to Meet Program Objectives

NSEERS was ineffective and failed as a counterterrorism tool. There appears to be no evidence that NSEERS has led to the identification of anyone suspected of involvement in terrorism-related crimes. In February 2012, DHS's independent watchdog, the Office of the Inspector General (OIG), concluded that the NSEERS database was unreliable and found that the requirements of the program proved to be burdensome upon registrants, as they imposed lengthy questioning and multiple data checks. The OIG also characterized the program as an inefficient use of government resources which prevented DHS agents from conducting more targeted homeland security efforts. [12] DHS has estimated that the program cost American taxpayers more than $10 million annually, and the OIG found that leaving the regulatory structure of the program intact provides no discernible public benefit. The OIG recommended fully terminating NSEERS and stated there is "no longer a value to the program." [13]

Postscript

Following the final draft of this report in April of 2012, DHS released a new memorandum about individuals impacted by NSEERS, granting limited relief to individuals who failed to comply with NSEERS and who can demonstrate that their noncompliance was not willful. This memo is binding on all DHS personnel and requires each component of DHS to implement guidance within 60 days of the memorandum's issuance and related training.

Conclusion

NSEERS is an ineffective, discriminatory program which relies on racial profiling. It continues to devastate individuals, their families and communities and its lasting impacts are not sufficiently corrected by the Obama Administration's recent policy shifts. Rights Working Group hopes that this report and its recommendations result in the full termination of the NSEERS program, redress for all individuals impacted by the program, and the discontinuation of the use of data collected through it.

Recommendations

Dismantle the Regulatory Framework of NSEERS: NSEERS has failed as a counterterrorism policy, and national security needs can be addressed more effectively and efficiently through other existing programs and/or through programs targeting individuals based on suspect behavior, rather than through identity-based criteria such as race, religion, gender, or nationality.

Remove Residual NSEERS Penalties: DHS should, by regulation, remove the residual penalties associated with NSEERS and apply such regulations retroactively. DHS should additionally set aside immigration or criminal penalties against individuals who complied with, did not comply with, or are otherwise affected by the NSEERS program. DHS should also exercise prosecutorial discretion favorably in cases where an individual has positive equities but faces immigration consequences because he or she was targeted by NSEERS.

Information Collected through NSEERS Should No Longer be Used for Any Purposes: DHS should discontinue the use of data collected through NSEERS.

Increase Oversight and Transparency: NSEERS should be fully audited by DHS through the Office of Inspector General as well as by the Government Accountability Office to determine the program's effectiveness and to examine the continuing impact of NSEERS on individuals and the potential misuse of data. DHS should make statistics available on the number of individuals who were identified through the program and subsequently convicted of terrorism-related offenses. DHS should also provide complete statistics about the total number of individuals who registered with the program, as well as details about the enforcement actions that were taken against them.

Support the End Racial Profiling Act: To show his commitment to ending racial profiling, President Obama should make a clear statement in support of the End Racial Profiling Act (ERPA) of 2011. This bill was introduced in both Houses of Congress in 2011. [14] If ERPA were passed, it "would prohibit racial profiling by law enforcement at the local, state, and federal levels on the basis of race, ethnicity, national origin, religion, and gender." [15]

Fix the DOJ Racial Profiling Guidance: To effectively combat racial profiling, the 2003 Department of Justice Guidance on the Use of Race by Federal Law Enforcement Agencies must be reformed to cover profiling based on religion and national origin; remove the large loopholes that allow for profiling in the name of national security and border security; cover law enforcement surveillance activities; apply anywhere federal agents act in partnership with state or local law enforcement agents and to any agency that receives federal funds; and make the guidance enforceable.


STOP DEPORTING
PERSECUTED
INDONESIAN REFUGEES
LET THEM STAY
STOP DEPORTING
PERSECUTED
INDONESIAN REFUGEES

INTRODUCTION

> *In the national trauma caused by 9/11, civil liberties came face to face with national security. Arab-Americans, American Muslims, and South-Asian Americans faced national origin and religious profiling. To take just one example, the Special Registration program targeted Arab and Muslim visitors, requiring them to promptly register with the INS or face deportation. At the time, I called for the program to be terminated because there were serious doubts it would help combat terrorism. Terrorism experts have since concluded that Special Registration wasted homeland security resources and alienated Arab Americans and American Muslims. More than 80,000 people registered, and more than 13,000 were placed in deportation proceedings. Even today, many innocent Arabs and Muslims face deportation because of Special Registration. How many terrorists were identified by Special Registration? None.* [16]
>
> --- Senator Dick Durbin (D-Illinois)

In the wake of the September 11, 2001 attacks (9/11), the landscape of immigration law and policy in the United States changed dramatically as the government scrambled to create counterterrorism programs to respond to potential national security threats. Many of these policies relied on discriminatory profiling of individuals from predominantly Arab and Muslim countries based on the false assumption that people of a particular gender, race, ethnicity, religion, or nationality have a greater propensity for committing terrorism-related crimes. [17] One of the most prominent of these programs is the National Security Entry-Exit Registration System (NSEERS) or "special registration" that was initiated by the Department of Justice (DOJ) in 2002 and later inherited by the Department of Homeland Security (DHS) in 2003. Since its inception, NSEERS elicited a strong negative response from Arab, Middle Eastern, Muslim, and South Asian (AMEMSA) communities in the United States. Advocacy organizations including Rights Working Group, [18] immigration lawyers and the private bar, [19] policy analysts, [20] and politicians [21] have spoken out against the discriminatory and ineffective program. [22]

On June 5, 2002, U.S. Attorney General John Ashcroft announced the creation of NSEERS, [23]

marketing it as a counterterrorism tool. [24] According to DHS, NSEERS was originally designed to

> [R]ecord the arrival, stay, and departure of certain individuals from countries chosen based on an analysis of possible national security threats. The NSEERS registration required approximately 30 minutes in secondary inspection, per person, per arrival; and NSEERS registrants were also required to register upon departure at one of the 118 designated ports of departure, limiting travel flexibility. [25]

NSEERS targeted visitors from predominantly Arab and Muslim countries. [26] The registration process required certain individuals [27] to be fingerprinted, photographed, and interrogated about their background and biographical information (including details about their families, birthdays and birth places, financial information, etc.) at a port of entry/exit or at local immigration office. [28] Particularly in the beginning, the program's regulations and guidelines were communicated and distributed ineffectively, and at times even inaccurately, making it exceedingly difficult for individuals to comply. [29] Although NSEERS has undergone several changes since its inception in 2002, it remains a discriminatory program which relies on racial profiling. NSEERS continues to devastate individuals, their families, and communities, and its impacts have not been sufficiently corrected through the Obama Administration's policy shifts.

This report adopts the definition of racial profiling contained in the End Racial Profiling Act of 2011 (ERPA), [30] where it is defined as "[t]he practice of a law enforcement agent or agency relying, to any degree, on race, ethnicity, national origin, gender, or religion—

> (i) in selecting which individual to subject to routine or spontaneous investigatory activities or
> (ii) in deciding upon the scope and substance of law enforcement activity following the initial investigatory activity." [31]

On April 28, 2011, DHS announced the "end" of NSEERS through a notice in the Federal Register (April 2011 Rule). [32] Specifically, the April 2011 Rule stated "that it is no longer necessary to subject nationals from these countries to special registration procedures, and this notice deletes all currently designated countries from NSEERS compliance." [33] A press release on the DHS website stated:

> Since NSEERS was created, DHS has implemented several automated systems that capture arrival and/or exit information, making the manual entry of this data via the NSEERS registration process redundant, inefficient and unnecessary. The improved and expanded DHS and Department of State systems capture the same information for visitors, regardless of nationality. As a result of these advances and input from community groups and advocacy organizations, we are pleased to announce that the Department is officially ending the NSEERS registration process. This step will streamline the collection of data for individuals entering or exiting the United States, regardless of nationality. [34]

Although DHS framed this policy shift as having "ended" NSEERS, the delisting of the specific countries through the April 2011 Rule did not eliminate the program's underlying infrastructure, and we do not regard this as a true end to the program. [35] This policy shift meant only that from April 28, 2011 onwards, individuals who would have been targeted previously by the program were no longer obligated to register. Notably, the April 2011 Rule failed to address the ongoing negative impacts felt by individuals who had previously registered, failed to register, or improperly registered. While a variety of advocacy organizations opposed to the program applauded DHS for the "long-overdue" [36] suspension of NSEERS, [37] they also pointed out "that the program is dormant, not abolished, and there's still been no accountability." [38] Many of these advocacy groups contend that DHS, through the April 2011 rule, did not address residual effects of the program, as "there remains much damage to rectify from NSEERS' discriminatory immigration enforcement." [39]

As a candidate, President Barack Obama's campaign released a "Blueprint for Change" which stated that, if elected, "Obama and Biden will ban racial profiling . . .". [40] Attorney General Eric Holder has also stated that ending racial profiling was a "priority" for the Obama Administration and that profiling was "simply not good law enforcement." [41] DHS maintains that NSEERS did not profile based on religion because every eligible male from an NSEERS country was required to register regardless of religious affiliation. We maintain that NSEERS did profile based on religion because the program disproportionately impacted Muslims. A more detailed discussion of this issue appears in the Racial Profiling section of this report. By keeping the structures of a program (NSEERS) that targeted people based on their gender, religion, age, and nationality in place, the federal government can be seen as condoning and promoting similar discriminatory policies at the state and local level. A prominent example is that of the New York City Police Department's (NYPD)

surveillance of Muslim communities and individuals. A series of Pulitzer Prize winning Associated Press articles revealed that the NYPD has subjected Muslims to surveillance. Undercover officers infiltrated minority neighborhoods and hundreds of mosques and Muslim student groups, without any reliable indication of suspect behavior. Many of the NYPD operations were built with help from the CIA, which is prohibited from domestic spying but which was critical to the transformation of the NYPD's intelligence unit after 9/11. [42] The fact that DHS has kept the NSEERS regulatory framework intact belies the Obama Administration's statements of opposition to racial profiling and indicates the Administration's support of similar practices at the state and local level.

This report builds on a 2009 white paper prepared by the Center for Immigrants' Rights at Penn State's Dickinson School of Law on behalf of the American-Arab Anti-Discrimination Committee. [43] The purpose of this report is to analyze the impact of NSEERS in its current form and make recommendations for meaningful reform. The groundwork for this analysis is laid out in Section 1: *The NSEERS Framework*, which describes the legal foundation and the development of NSEERS since its inception. The ensuing policy analysis in Section 2: Policy Impact: *NSEERS is Still in Effect* identifies the current issues with the program. In particular, this section looks at the effects NSEERS has on those individuals who continue to be negatively impacted by the program. Based on this examination, the *Policy Recommendations* section provides recommendations for government policymakers. The report also aims to educate individuals, policymakers, and advocates about NSEERS.

The methodology of this report consists of two pillars. First, it is based on the analysis of statutes, regulations, policies, reports, and statistics relating to NSEERS. Second, the analysis is complemented by interviews with policymakers involved in the creation and oversight of NSEERS, analysts who have studied the program, and immigration attorneys and advocacy groups who have represented impacted individuals.

PROFILE

DENYSE SABAGH,
HEAD OF IMMIGRATION LAW GROUP, DUANE MORRIS LLC

I was involved with NSEERS from the beginning. Right from the start, when they published the first set of countries, it was very chaotic. The regulation was published in the Federal Register. It was not disseminated to the community very effectively. Many people in the community and those who would be affected by the regulation did not know about it.

I represented many individuals subject to NSEERS since its inception in 2002. The program was sloppy in its original set-up due to the rapid execution, no additional funding for implementation, no additional staff and a general lack of clear guidance. Initially, the regulations of the program were unclear to all parties involved (affected immigrants, immigration lawyers, and even government staff) and resulted in mistakes and misinformation. For many affected individuals it was difficult to register because of long lines in front of registration offices, people being turned away, unclear, contradicting, or missing information, and procedural mistakes made by the staff of the government agencies.

For a lot of people, it affected their lives adversely. I represented a student from Johns Hopkins. He was from Pakistan. He had gone in to register. He had applied and had been admitted to Johns Hopkins for his Master's Degree. Johns Hopkins knew his situation. However, somewhere along the way, Hopkins failed to advise him properly about the timing of filing his application to change status from H-1B to a student. He ended up in jail and in deportation proceedings. He also was the President of the student body. They and the professors provided tremendous support. Thirty-plus people came to his deportation hearing. The Judge was impressed. We conducted an all-out campaign to get him reinstated. We were finally able to get him reinstated so that he could stay in the U.S. The fallout from NSEERS for him and many others created unnecessary problems and psychological and emotional scars.

I also observed that as a result of NSEERS, the Muslim communities felt very much under siege. It seemed that the legal standard changed and they were guilty until they were proven innocent. They were placed in a state of constant anxiety and fear. NSEERS sure looked like racial profiling. It targeted individuals based on nationality, age, gender, and religion. If the government wanted to create an effective counterterrorism tool, it could have developed a list of criteria that would be related to the actual focus of identifying terrorists, rather than profiling against whole classes of people based on their nationality. [44]

NSEERS Legal Framework

NSEERS was badly-conceived, poorly executed, arbitrarily administered, and it had disastrous results.

— **James Zogby**, *President and Founder of the Arab American Institute*

The framework of NSEERS is linked to Section 110 of the U.S. Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) of 1996, [45] which mandated an automated entry-exit data system that would "collect a record of every alien departing the United States and match the records of departure with the record of the alien's arrival in the United States." [46] According to DHS, the initial purpose of the entry-exit data system was to address the extensive problem the United States was facing with nonimmigrants [47] overstaying their visas. [48]

In response to the September 11 attacks, former President George W. Bush signed into law the Uniting and Strengthening America by Providing Appropriate Tools to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 [49] and the Enhanced Border Security and Visa Entry Reform Act of 2002 (EBSVERA). [50] Under Section 414 of the USA PATRIOT Act, [51] Congress called for the integration of the entry and exit data system in Section 110 of the IIRAIRA amongst airports, seaports, and land border ports of entry. The section further emphasized the utilization of biometric technology and the development of tamper-resistant documents readable at ports of entry. [52]

As a means of implementing these changes, Congress placed the responsibility of developing an entry and exit registration system on the Department of Justice (DOJ). NSEERS was created under the guidance of Kris W. Kobach, [53] a DOJ advisor at that time. While NSEERS was showcased as a component of the entry and exit system, the program also found its statutory foundation in section 263 of the Immigration and Nationality Act (INA). [54] Under this section,

> The Attorney General is authorized to prescribe special regulations and forms for the registration and fingerprinting of (1) alien crewmen, (2) holders of border-crossing identification cards, (3) aliens confined in institutions within the US, (4) aliens under order of removal, (5) aliens who are or have been on criminal prohibition or criminal parole within the United States, and (6) aliens of any other class not lawfully admitted to the US for permanent residence. [55]

The NSEERS program had three main components. The first component of NSEERS was known as "port-of-entry" registration and consisted of fingerprinting and photographing certain nonimmigrants or visitors at all ports of entry, such as border crossings, seaports, and airports. Those initially required to register included: visitors from Iran, Iraq, Libya, Sudan, and Syria, and select foreign visitors determined to present an elevated national security risk. [56] Under NSEERS, fingerprint scans were to be run on all entering nonimmigrants against a database of thousands of known terrorists. [57] All individuals registered under NSEERS were also required to re-register after thirty days if initially registered at a port-of-entry and annually if they were remaining in the United States longer than one year. [58]

The NSEERS program was expanded to include a "call-in" feature that required certain male foreign visitors who were 16 years of age and older from specified countries and already present in the United States to register at designated immigration offices. The registration requirement was first applied to nonimmigrant males from Iran, Iraq, Libya, Sudan, and Syria. These individuals were required to register with INS between November 15, 2002 [59] and December 16, 2002. The second group required to register were from Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morocco, North Korea, Oman, Qatar, Somalia, Tunisia, United Arab Emirates, and Yemen. Their registration occurred between December 2, 2002 and January 10, 2003. [60] The third group included individuals from Pakistan and Saudi Arabia who were to register between January 13, 2003 and March 21, 2003. [61] The last group of visitors required to register were from Bangladesh, Egypt, Indonesia, and Kuwait and were to register between February 24, 2003 and April 25, 2003. [62] The government's execution of the "call in" registration was sharply criticized. Requiring males of a certain age from predominantly Muslim countries to register constituted profiling based on gender, age, religion, [63] and nationality. Moreover, inadequate notice and misinformation prevented many individuals who would have complied from doing so. The federal government relied principally on notices in the Federal Register to inform the public of registration requirements and, like the majority of the American population, most individuals subject to NSEERS were not familiar with the Federal Register or the requirements contained therein. [64]

Finally, the NSEERS program established a system of exit controls, which required individuals subject to NSEERS to register each time they departed from the United States. [65]

Then-Attorney General John Ashcroft believed a critical aspect of the NSEERS program was to arrest those individuals who attempted to escape the registration requirements or to stay in the country beyond their permitted time. [66]

Failure to comply with NSEERS could result in significant penalties. [67] Any nonimmigrant subject to special registration who failed without good cause to be examined by an inspecting officer at the time of his departure and to have his departure recorded by the inspecting officer is presumed to be inadmissible upon future entry under but not limited to 212(a)(3)(A)(ii) of the Immigration and Nationality Act (INA) as an "alien who seeks to enter the United States to engage in unlawful activity." [68] If one failed to comply with NSEERS after admission into the United States, he is considered to have failed to maintain status under section 237(a)(1)(C)(i) of the INA. [69] However, an exception to this rule applies if the individual is able to demonstrate that the failure to register was "reasonably excusable or not willful." [70] A related penalty kicked in for a number of individuals who were in the process of applying for an immigration benefit or relief, who were told during this process that they must comply with NSEERS through "late" registration. In these situations, the agency's adjudication of "willful" was often controversial to the extent that officers capriciously stamped the passports of late registrants as "willful" even in cases where they were unaware of the program, limited in English, and/or of high school age at the time they were required to register. [71]

Another potential consequence for failure to comply with NSEERS is the initiation of criminal proceedings. Pursuant to the statute and related notices issued by the government, anyone required to register who "willfully fails or refuses" to do so "shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not to exceed $1000 or be imprisoned, not more than six months, or both." [72]

In December 2003, DHS amended NSEERS by suspending the thirty-day and annual re-registration requirements, among other changes. [73] In place of the previous requirement, the new rule allowed DHS, as a matter of discretion, to notify individual nonimmigrants subject to NSEERS to appear for one or more additional continuing registration interviews to determine whether the individual was complying with the conditions of his or her visa status and admission. [74] The 2003 rule left the regulatory framework of NSEERS, related penalties, and entry and exit registration requirements intact.

DHS subsequently issued a handful of memos discussing how immigration cases involving NSEERS should be handled. One memorandum issued by former ICE Principal Legal Advisor William Howard in October of 2005 addressed the use of prosecutorial discretion and its relation to NSEERS (Howard Memo). [75] Prosecutorial discretion is law enforcement's authority to decide whether or not to enforce particular laws against a party. [76] The Howard Memo urges ICE attorneys to use prosecutorial discretion before or in lieu of issuing a Notice to Appear (NTA) for immigration action [77] in certain sympathetic circumstances in which an individual has failed to register with NSEERS. Specifically, the Howard Memo states:

> When an alien subject to NSEERS registration failed to timely register but is otherwise in status and has no criminal record, he should not be placed in proceedings if he has a reasonable excuse for his failure. Reasonably excusable failure to register includes the alien's hospitalization, admission into a nursing home or extended care facility (where mobility is severely limited); or where the alien is simply unaware of the registration requirements. [78]

Interestingly, the Howard Memo did not include "compliance with NSEERS" as a positive factor in considering whether to exercise prosecutorial discretion favorably. Reverend Seth Kaper-Dale of the Reformed Church, profiled later in this report, has criticized the absence of such language in the Howard Memo and lamented that several Indonesian men in his community complied with NSEERS but were nonetheless placed in removal proceedings. After months of advocacy with the local ICE office, Kaper-Dale was able to move ICE to grant orders of supervision (a form of prosecutorial discretion) for about eighty-three Indonesian immigrants, nine of whom were incarcerated by ICE but were later released as a result of the arrangement. [79]

Photo Courtesy of Reverend Seth Kaper-Dale

On April 28, 2011, DHS announced the delisting of all 25 specified countries from the program. [80] The Department stated that, as a result of improved intelligence programs and better methods of tracking immigrant visa overstays, NSEERS is no longer needed to protect national security. In addition, DHS stated that it will "seek to identify individuals and actions that pose specific threats, rather than focusing on more general designations of groups of individuals, such as country of origin." [81] This language supports the idea that the profiling of individuals based on gender, age, religion, or nationality is wrong and ineffective and that NSEERS represents a failed policy. This April 2011 rule thus temporarily suspends the program requirements for nationals and citizens from these 25 countries. Key to note, however, is that the regulations that gave rise to the NSEERS program and the penalties faced by the vast majority of noncitizens who did not comply or improperly complied with the program remained in place.

On June 17, 2011, Immigration and Customs Enforcement (ICE) Director John Morton issued two significant memos on the use of prosecutorial discretion in immigration matters. [82] The memo called on ICE attorneys and employees to refrain from pursuing noncitizens with close family, educational, military, or other ties in the United States, and instead to spend the agency's limited resources on persons who pose a serious threat to public safety or national security. The Morton Memo elucidates 19 factors that ICE should consider in deciding whether prosecutorial discretion should be favorably exercised. [83] The Morton memo is the most comprehensive memo on prosecutorial discretion since the creation of DHS. Yet, as of this writing, it has, at best, been implemented inconsistently. [84] Moreover, the Morton Memo lacks any details about how individuals impacted by NSEERS should be treated.

United States Citizenship and Immigration Services (USCIS) also issued a memo related to prosecutorial discretion on November 7, 2011. This memo established new guidelines for referring cases and issuing Notices to Appear (NTAs) in a manner that promotes the effective use of DOJ and DHS resources. It states that USCIS will refer all cases in which immigration benefits are denied based on NSEERS violations to ICE for possible NTA issuance. [85] This memo reveals that immigration benefits can still be denied because of NSEERS and that those whose cases were previously denied could continue to face negative consequences. In addition, referring cases to ICE for possible NTA issuance means that individuals are still subject to removal from the United States because of NSEERS. This referral policy contradicts the agency's stated desire to "end" NSEERS. [86]

In February 2012, DHS's independent watchdog, the Office of the Inspector General (OIG), released a report entitled, "Information Sharing on Foreign Nationals: Border Security." [87] In this report, the OIG concludes that the NSEERS database was unreliable and finds that the requirements of the program proved to be burdensome upon registrants, as they imposed lengthy questioning and multiple data checks. The OIG also characterizes the program as an inefficient use of government resources that prevented DHS agents from conducting more targeted homeland security efforts. [88] DHS has estimated that the program cost American taxpayers more than $10 million annually, and the OIG finds that leaving the regulatory structure of the program intact provides no discernible public benefit. Most importantly, the OIG recommends fully terminating NSEERS and states there is "no longer a value to the program." [89]

Policy Impact: NSEERS is Still in Effect

> Of course it could come back because the infrastructure is still there and they [the government] still do not get the fact that they screwed it up. They did not get it right and they wasted resources and did not accomplish anything. They will do it again and they will do it again in exactly the same way because they still do not get it. [90]
>
> — **James Zogby**, *President and Founder of the Arab American Institute*

Despite DHS' indefinite suspension of NSEERS under the April 2011 Rule, no relief or policy has been suggested that addresses foreign nationals and citizens who were placed in removal proceedings after complying with NSEERS, those who had never registered because they were afraid to register or were unaware of the program, among others. [91] This section also highlights a number of policy concerns with NSEERS including the program's lack of transparency, misuse of the data collected through NSEERS, the negative impact of preserving the underlying regulatory structure, and the program's ineffectiveness as a counterterrorism tool.

PROFILE

HADI SYED ZAIDI,
INDIVIDUAL AFFECTED BY NSEERS

Hadi Syed Zaidi is a Pakistani citizen who came to the United States at the age of 4. After being an honors student in high school, he attended West Los Angeles Community College with the hope of ultimately being able to transfer to a four-year university and enroll in a degree program in industrial design or applied mathematics. [92] *His parents are both green card holders. Having registered under NSEERS when he was 16, he was taken into custody by ICE in December of 2011, after the purported "end" of NSEERS as announced in April of that year. He was detained because he overstayed his visa and consequently faced deportation to Pakistan. Hadi was eventually released and granted a temporary stay of removal in January of 2012. Despite this temporary stay, he can still be taken into custody and must check in with immigration officials on a regular basis.* [93]

RACIAL PROFILING

Racial profiling undermines the rule of law and strikes at the core of our nation's commitment to equal protection for all. [94]

— Senator Dick Durbin (D-Illinois)

Since the 9/11 attacks, the United States has seen an increase in racial profiling practices and policies at the federal, state, and local level, particularly the targeting of individuals of Arab, Middle Eastern, Muslim, and South Asian descent or those perceived to be members of those groups. [95] This increase is tied to counter-terrorism measures such as NSEERS implemented by the federal government which permitted and even encouraged authorities to target these communities. [96] As mentioned previously in this report, the call-in portion of NSEERS targeted male visitors of certain ages from 25 specified countries, 24 of which have predominantly Muslim populations. The program was discriminatory, arbitrary and failed to meet its purported goals. Government officials have argued that NSEERS did not constitute profiling in part because it was intended to expand to all countries, but this did not occur, as the NSEERS list was never expanded past the 25

countries—and individuals continue to be negatively affected by the program despite its suspension. [97] Preeminent scholar on racial profiling, David Harris from the University of Pittsburgh School of Law stated in a 2012 congressional hearing on racial profiling that under NSEERS, "Muslims were targeted by using a convenient proxy characteristic: national origin." [98] The agency maintained that NSEERS did not profile based on religion because every eligible male from the NSEERS countries was required to register regardless of religious affiliation. We disagree. In addition, while some members of the immigration agency have argued that distinctions based on nationality and national origin in immigration are not only legitimate and consistent with other immigration designs, the context matters. In her paper "Business as Usual: Immigration and the National Security Exception," Professor Shoba Sivaprasad Wadhia writes:

> While profiling based on nationality or national origin may not be inherently wrong, there are at least five reasons why it is offensive and in many cases no different from profiling based on race, ethnicity or religion: 1) in practice many policies based on nationality disproportionately impact particular religions and ethnicities; 2) this disproportionate impact creates the perception that a particular policy is premised on anti-Arab or anti-Muslim sentiment; 3) most of the countries identified by the government as harboring terrorists have been Arab or Muslim; 4) in practice "nationality" based profiling is often conflated with "national origin" profiling; 5) profiling based on country of birth has extended to naturalized United States [citizens] from particular countries, leading to the presumption that citizens from particular places are somehow less reliable or loyal in their allegiances to the United States. [99]

The Obama Administration's refusal to fully terminate NSEERS suggests that the Administration condones, supports, and intends to continue policies that rely on discriminatory racial profiling, such as those of the New York City Police Department (NYPD) at the local level and the Federal Bureau of Investigation (FBI) at the federal level. With strong parallels to NSEERS, it was reported in 2011 that the NYPD has a secret squad, known as the Demographics Unit, that spies on Muslim businesses, mosques, and Muslim students on campuses in New York City and beyond. This squad wears

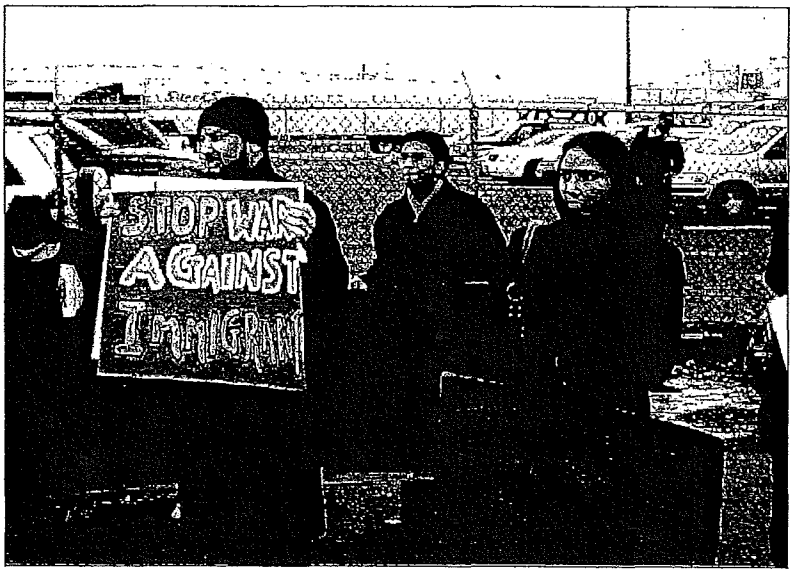


Photo Courtesy of Monami Maulik, Desis Rising Up and Moving (DRUM)

plainclothes and goes into Muslim neighborhoods to photograph and monitor mosques and locations where Muslims congregate including restaurants, grocery stores, and travel agencies. The NYPD further monitors Muslims who have changed their names to sound more traditionally American. At mosques, police record license plates and take photos and videos of worshippers as they arrive for services. In 2004, New York City adopted a law to prohibit racial profiling, which is defined as "the use of race, color, ethnicity, religion, or national origin as the factor for initiating police action." Surveillance such as that conducted by the NYPD contradicts this law and clearly constitutes racial profiling, as did NSEERS. [100] Policies that rely on profiling persist at the national level as well, as evidenced, for example, by the FBI's mapping program. Based on crude stereotypes and assumptions about which groups commit crimes, the FBI is collecting racial and ethnic information and "mapping" communities around the United States. Across the country, the FBI is gathering reports on the so-called "suspicious activity" of innocent Americans and sharing it across federal, state and local government agencies. [101]

Impact on Families and Communities

[NSEERS] is a family-breaking policy. [102]
— **Seth Kaper-Dale,** *Reverend at the Reformed Church in Highland Park, New Jersey*

Profile

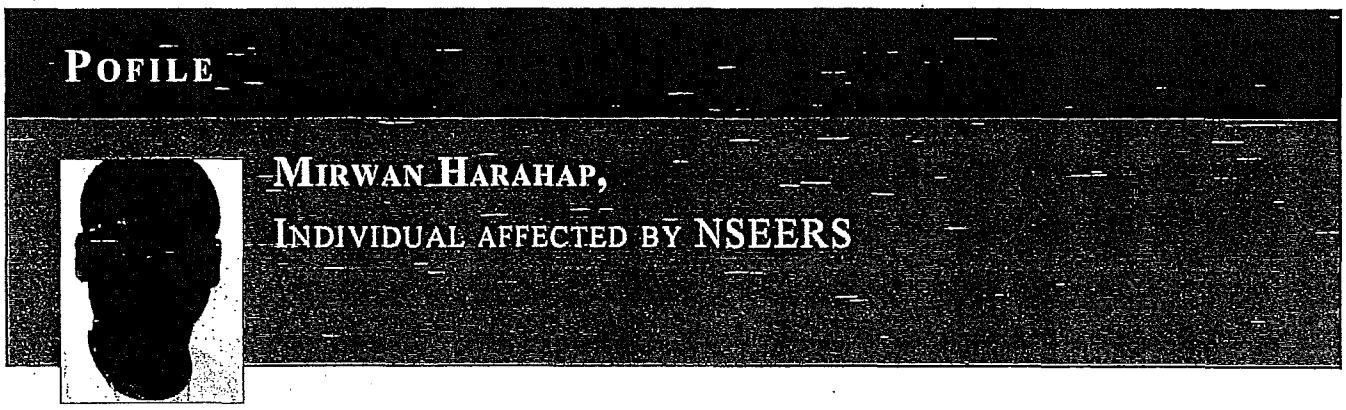
Seth Kaper-Dale,
Reverend at the Reformed Church in Highland Park, New Jersey

My wife and I became co-pastors of the Reformed Church in Highland Park in September of 2001. Our first Sunday was two days before 9/11. The Reformed Church served as a sanctuary for the Indonesian community to worship quietly on Sunday afternoons. Almost all of individuals from this community fled religious persecution in Indonesia and arrived in the United States on tourist visas. However, many had failed to file for asylum. After the start of the NSEERS Program, [103] *I urged the Indonesian community to register and many took my advice and did register. Melinda Basaran, a New Jersey immigration lawyer who worked with the Indonesians, believes that a "good portion" of the community was deported due to compliance with NSEERS.* [104] *In May 2006 at 5 a.m., at an apartment complex where many Indonesians lived, armed federal agents rounded up 37 men with expired visas and deportation orders— terrifying their wives and children as they, along with others, witnessed the men being taken away. Many believe that this raid was a result of the information provided when registering with NSEERS. NSEERS did nothing more than instill fear amongst these individuals, break family unity, and destroy the Indonesian community.* [105]

Augus Alex Asa and his wife Grace arrived in the United States on tourist visas from Indonesia. They complied with the NSEERS registration process in fear of being considered terrorist fugitives. I urged the Indonesian community to register, but could have never predicted such detrimental consequences. During the raid in May 2006, Mr. Asa, his wife, and daughter hid in the closet as the immigration agents arrived at their door. For two weeks after, the family slept at the church. After lengthy stays in immigration jails, 37 men from this Indonesian community were deported. Their wives were forced to find work, financially support their families, and raise their children alone. [106]

On a Sunday night in 2006, I saw a lot of fathers playing with their kids in the sandbox. In the wee hours of Monday morning they were picked up in that raid. Within thirty days, every single male was sent away. We had people fearing everyday that another raid would happen. So for the next month, we had about forty people sleeping in our church, eating at our kitchens. [107]

NSEERS has had a wide range of negative social and economic consequences for families of targeted individuals. NSEERS requirements often resulted in immigration detention or deportation, tearing families apart. Many of these families feared not only loss or separation from a loved one, but loss of their primary source of income and resulting homelessness. To this day, many families are separated geographically because a male family member was deported to his country of origin after attempting to comply with NSEERS, even if he did not have any relatives or contacts in that country. [108]



I fled harassment and discrimination of Christians like myself in Indonesia in 1997 and arrived in the United States on a tourist visa. I began working at a car service center in Metuchen, New Jersey. After the start of NSEERS, I registered under the program and was questioned by DHS regarding my overstay in the United States. In February 2009, I was deported to Indonesia and it destroyed my family. I was forced to leave behind my wife and U.S. born child, and return to a country to live without my loved ones. Complying with the registration procedures and abiding by NSEERS, my life has been destroyed, whereas others who did not register under NSEERS continued to live and work in the United States. Despite my valid working permit issued by DHS and my attorney's demand for my release back to my family in Metuchen, ICE has refused to reopen my case. I constantly question why the U.S. government rushes to deport family-oriented men with no criminal records who have continued to live in the United States as law-abiding citizens for numerous years. [109]

NSEERS continues to have real, negative impacts on families and communities. Prosecutorial discretion "authorizes immigration officers and attorneys to channel their limited enforcement resources towards the most dangerous, while placing sympathetic cases involving individuals with favorable qualities like full-time fathers, those with serious medical conditions, long-time employees, and students with strong ties to the U.S. on hold." [110] Prosecutorial discretion could thus potentially apply to many individuals who are affected by NSEERS and present other positive equities.

The October 2005 Memo by former ICE Principal Legal Advisor William Howard and the June 2011 Memo by ICE Director John Morton [111] advise the use of prosecutorial discretion in ICE enforcement, clarifying that the enforcement focus should be on high-priority cases. However, the memos lack clear instructions about when and how to use prosecutorial discretion in NSEERS cases. Arguably many of the positive equities that should be considered in the granting of relief, as described in the Morton Memo, are demonstrated by several members of the Indonesian community in New Jersey in which Reverend Kaper-Dale is so heavily engaged. [112] These individuals, many of whom had registered under NSEERS and none of whom have criminal histories, had overstayed their visas. At least 37 were deported. In 2009 and 2010, most of these Indonesians who had not been forced to leave were able to strike a temporary deal with the local ICE office but now face deportation. They had received orders of supervision, allowing them to live and work in the United States lawfully as long as they tried to obtain legal immigration status. In 2011, when the Morton Memo on prosecutorial discretion was issued, the community assumed that the memo would aid their cases. Instead, ICE seems to have stepped up their enforcement, requiring 72 Indonesians, who had previously been given orders of supervision and who should qualify for the favorable exercise of prosecutorial discretion, to report to

Photo Courtesy of Reverend Seth Kaper-Dale

the local DHS office for possible immigration action. [113]

Prosecutorial discretion is critical to addressing the residual effects of NSEERS. The mere existence of prosecutorial discretion guidelines, unfortunately, has not guaranteed their appropriate implementation.

> *There are 19 bullet points [listing factors to consider when exercising prosecutorial discretion] in Morton's June 17th memo...and even if you have 17 on there, and if you don't have the one or two that your field office wants to give, they do not care. Everybody in our community has a large number of those bullet points. Fifty-percent of our people have been granted 1 year stays by using that criteria and fifty-percent [have] not. That's how capricious this program is.* [114]
> --- **Reverend Seth Kaper-Dale**, *Reformed Church of Highland Park, New Jersey*

Lack of Transparency

Clear, publicly available information on NSEERS procedures and goals was unavailable from its inception [115] and the program continues to lack transparency. Even today, the agencies involved in the program share little data and other information regarding its effectiveness. The few statistics that are available, such as the frequently quoted numbers from a 2003 ICE factsheet on NSEERS, [116] are outdated. This factsheet states that, out of a total of 83,519 individuals who registered with NSEERS, 13,799 individuals were placed into removal proceedings and 2,870 were detained. [117] The most recently available information from the 2012 DHS OIG report states that the number of entry and exit registrations decreased from over 250,000 per year in 2002 to approximately 60,000 in 2010. The report further notes that "NSEERS remains a significant part of the CBP caseload" and that "at several ports of entry, NSEERS registrants were the largest caseload handled in secondary inspections." [118]

There are various reports about the lack of information or even misinformation, particularly in the beginning of NSEERS implementation. Voicing the perspectives of many immigration lawyers, [119] Denyse Sabagh points out that very little information was available about NSEERS in its initial stages. Even many immigration lawyers were unaware of the exact nature of the program and requirements for compliance. [120] The lack of transparency had grave effects on community leaders and affected individuals, as further described by Dr. James Zogby.

PROFILE

DR. JAMES ZOGBY,
PRESIDENT AND FOUNDER OF THE ARAB AMERICAN INSTITUTE

The Arab immigrant communities we serve at the Arab American Institute have been confronted with the effects of NSEERS from the beginning of the program and continue to feel its consequences. Right in the beginning, we called the Dallas office of the INS [in charge of NSEERS before the creation of DHS] and asked, "Are you sending out notices of information to people?" and they said, "Yeah it's all taken care of." We said that we have talked to our people in Dallas, but they have not heard anything from you. INS responded and said "Oh no, that's not true, we have talked to the Arab community." INS stated that they had a group of women in, and they had veils on so they knew they were Arab. We then asked them what about the name of the group. It turned out that it was some Pakistani medical association, so obviously the INS officer did not know that Pakistanis are not Arabs and that not all Arabs are Muslims and just by [talking to someone] wearing a head scarf does not mean that you talked to the Arab community.

We found much the same in other cities, where they did not know who the Arab groups were, they did not know how to reach the groups, and they were counting on us. It was then that I began using the framework that it was badly conceived, poorly executed, arbitrarily administered and it had disastrous results. It was arbitrarily administered, which was what we discovered when they began calling the dates because what we found was that if you were from the Clinton era and applied for change of status and got married, whatever, changed schools, and got a letter saying okay, if you showed up in one office, they said that you didn't even need to show up and you were fine. But if you showed up in another office you were told that it was not acceptable and you could be held for deportation. We got a number of those.

Now, ten years after NSEERS was created, the lack of transparency is one of the major issues that remain. My policy recommendation would be to request full transparency. I strongly believe that without establishing transparency and accountability, the issues of the program will never be addressed appropriately. That being said, I don't see any willingness on the part of the government to do that. When I asked a senior officer in DHS during the Bush administration to give us an accounting of how many were ordered deported and why, he said that he couldn't find such records. That's a hell of a way to run a government. You have people who came and registered at INS offices, somebody must have a printout of that, someone must have some documentation of that. They say

that they don't. I would like to see how many people went in to register, and how many people were deported and why. Until I see that, this entire process is a mystery and it's a mystery because it is so badly done and that is a huge embarrassment and the government does not want anyone to know how badly it was done.

Even if NSEERS would actually be terminated at some point in the future, the issue of transparency would have to be addressed. In fact, the Administration needs to re-examine the effects of the program on individuals on a case-by-case basis. Practically no numbers are known or made available. The decision makers responsible for the creation and enforcement of the program need to be held accountable, particularly with the program's infrastructure still being intact. We need to get to the bottom of it. If the instinct is there and the culture is there, then this will happen again. NSEERS has sowed fear and confusion in the Arab and Muslim communities instead of promoting an atmosphere of cooperation with law enforcement authorities. [121]

Misuse of Data

The issue of transparency is closely related to concerns about data use. Even after the discontinuation of the NSEERS requirements, it is not completely clear how the data collected through the registration process has been and potentially still is being used. The "Operation Frontline" program is one example of how data gathered through NSEERS was used for discriminatory law enforcement activities that went far beyond the boundaries of NSEERS. Operation Frontline was started in 2004 with the stated purpose of preventing a terrorist attack during the presidential elections. To reach this goal, ICE targeted alleged violators of immigration law who had been identified as potential national security concerns. While the government denied profiling based on ethnicity or religion, more than 80 percent of the individuals approached through Operation Frontline were from predominantly Muslim countries. [122] Data from NSEERS and two other immigration programs, the Student and Exchange Information System (SEVIS) and the United States Visitor and Immigrant Status Indicator Technology program (US-VISIT), were mined by ICE in order to identify individuals to target for Operation Frontline. [123] Advocacy organizations such as the American-Arab Anti-Discrimination Committee were quick to detect this misuse of the data. [124]

While NSEERS has been suspended, the data collected through the program is still available to DHS and potentially other government agencies. Much of the data gathered is very private and includes sensitive information, such that related to individuals' private financial situations. Despite the government's claim that the data is being used for NSEERS purposes, those who registered have to live with the constant fear that this data could be used against them in the future. This is all the more troubling given the DHS Office of Inspector General's acknowledgment that "the NSEERS database is unreliable and it is difficult for NSEERS registrants to adhere to the registration requirements." [125] The DHS OIG has further confirmed that "[D]ata captured in the NSEERS database are transferred automatically to other DHS systems or captured initially in other systems, including US-VISIT and Enforcement Case Tracking System (ENFORCE)." [126]

NSEERS is Easy to Resurrect

As mentioned previously, what was framed by DHS as the "end" of NSEERS was simply a delisting of the 25 countries through the April 2011 Rule. The legal foundation for the program remains. Subsequent to the April 2011 delisting, DHS itself admitted that the NSEERS program was not dismantled because the government wished to keep the regulations intact:

> *Because the Secretary of Homeland Security's authority under the NSEERS regulations is broader than the manual information flow based on country designation that has now ended, the underlying NSEERS regulation will remain in place in the event a special registration program is again needed.* [127]

The decision by DHS to preserve the underlying NSEERS regulations is inconsistent with their sentiment that NSEERS "has become redundant as we have strengthened security across the board, while at the same time improving and expanding existing systems to automatically and more effectively capture the same information that was being manually collected via NSEERS." [128] Moreover, preserving the NSEERS framework perpetuates the anxiety and fear felt in AMEMSA communities. It also suggests that the federal government condones discriminatory profiling practices and intends to engage in them again in the future. A significant step towards establishing trust and eliminating profiling based on religion, nationality, and gender would thus be for the U.S. government to terminate NSEERS completely. This would require the full dismantling of the underlying regulations and the provision of meaningful relief for all individuals negatively impacted by the program.

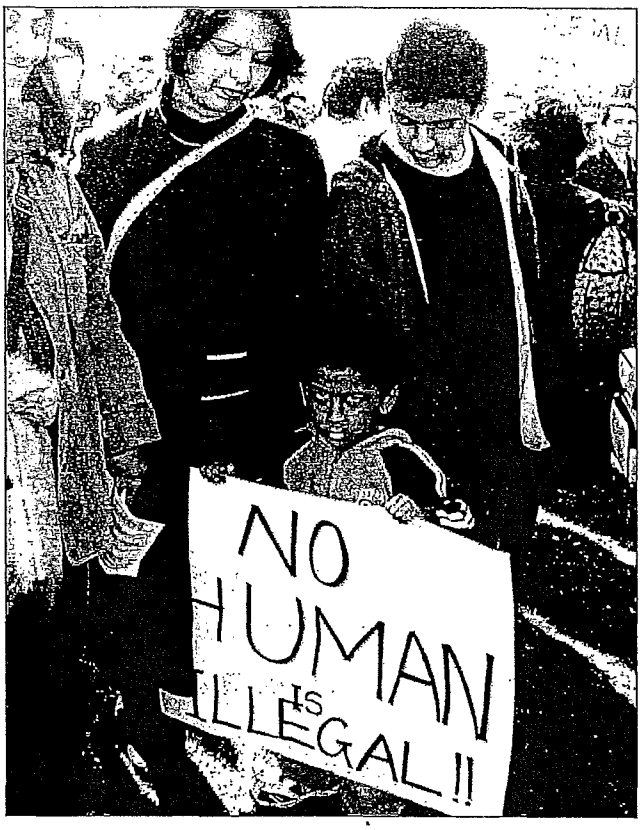


Photo Courtesy of Monami Maulik, Desis Rising Up and Moving (DRUM)

Failure to Meet Program Objectives

NSEERS was inefficient and failed to meet the purpose the government claimed it served. The program was purportedly designed as a counterterrorism tool. The exact number of individuals arrested on the basis of terrorism-related charges through NSEERS has never been made publicly available. In fact, there seems to be no evidence that NSEERS helped convict any individuals in connection with any terrorism-related crimes, although the Bush Administration reported that the program identified 11 "terrorism suspects." [129] Government officials have not corrected those who have pointed out that "[NSEERS] was ineffective in producing terrorism-related convictions," [130] or that "the NSEERS program did not result in a single terrorism conviction." [131] Rather than refuting these criticisms, DHS responded to a related congressional inquiry by stating that information about the program's success in convicting terrorists is classified and unavailable to the public. [132]

Another fundamental criticism of NSEERS is that the program is "unnecessary" because the data collected through the program is already captured through other means. [133] DHS even adopted this view in its recent descriptions of the program, most notably in the April 2011 Rule. [134] Moreover, the 2012 report by the DHS OIG clearly stated that CBP itself has pointed to the low value of the information collected through the NSEERS interviews. [135] Given these failures and all the program's collateral consequences on families and communities, no argument can be made for DHS to keep the program in its back pocket.

> *I think that it was an ill-advised program and the ultimate goal was not achieved because the program was defective from the start... I would abolish NSEERS. There are plenty of laws and regulations already in effect. If you are looking to come up with a program that is trying to identify terrorists and prospective terrorists, then I would try to come up with a list of characteristics that would be related to the actual focus of the search.* [136]
>
> --- **Denyse Sabagh**, *Head of Immigration Practice Group, Duane Morris LLP*

POSTSCRIPT

Following the completion of this report, DHS released a long-awaited memo addressing the treatment of individuals who previously failed to comply with NSEERS (April 2012 Memo). [137]

The April 2012 Memo offers the agency's first definition for "willful" noncompliance with NSEERS and protects individuals who are able to prove that their noncompliance with NSEERS was not willful. It defines "willful" noncompliance as "that which was deliberate, voluntary, or intentional, as distinguished from that which was involuntary, unintentional, or otherwise reasonably excusable." The April 2012 Memo further notes that individuals who are found to have "willfully" failed to register can be considered for prosecutorial discretion as appropriate.

Importantly, the April 2012 memo is "binding" on all DHS personnel and requires each component of DHS to implement guidance within 60 days and implement training in line with the contents therein. Moreover, it retracts from the controversial language contained in the November 2011 USCIS NTA Memo by ceasing referrals of cases with suspected NSEERS violations from USCIS to ICE unless the case is denied for "willful" noncompliance.

Despite the significant step DHS has made after years of documentation about the individuals and families stained by NSEERS, the limitations of the April 2012 Memo are striking and illustrate the importance of the recommendations contained in *The NSEERS Effect.* First and foremost, it maintains the regulatory framework of the NSEERS program. Moreover, the April 2012 Memo fails to articulate a clear policy for those who complied with NSEERS and now face immigration consequences. Additionally, it creates room for ambiguity about what constitutes "willful" by leading with a rather broad definition (see above) and later elucidating rather extreme examples (e.g., exceptional circumstances beyond the alien's control, incapacitation of the alien). Also troubling is the conclusion that people who failed to register out of 'fear' or 'inconvenience' could be found to be in 'willful' noncompliance. The April 2012 Memo further imposes the burden of proving that noncompliance with NSEERS was not 'willful' on the individual while at the same time allowing the DHS to continue using information that was obtained through or in connection with the NSEERS program.

RWG is disappointed by the limited reach of the April 2012 Memo and hopes that this report and its recommendations result in the full dismantling of the NSEERS program, redress for all individuals impacted by the program, as well as a discontinuation of use of data collected through the program.

POLICY RECOMMENDATIONS

Refugees came to this country seeking safety from violence. They ended up having their families ripped apart. Those that did not have their families ripped apart are going through 10 years of immigration hell because of NSEERS and the way it played out. You created anger and fear that we have never gotten over. It still is doing damage. [138]

--- **Reverend Seth Kaper-Dale,** *Reformed Church of Highland Park, New Jersey*

- Dismantle the Regulatory Framework of NSEERS: NSEERS has failed as a counterterrorism policy. National security needs can be addressed more effectively and efficiently through other existing programs and/or through programs targeting individuals based on suspect behavior, not identity-based criteria such as race, religion, gender or nationality. [139]

- Remove Residual NSEERS Penalties: DHS should, by regulation, remove the residual penalties associated with NSEERS, and apply such regulations retroactively. DHS should additionally set aside immigration or criminal penalties against individuals who complied with, did not comply with, or are otherwise affected by the NSEERS program. DHS should also exercise prosecutorial discretion favorably in cases where an individual has positive equities but faces immigration consequences because he or she was targeted by NSEERS.

- Information Collected through NSEERS Should No Longer be Used for Any Purposes: DHS should discontinue the use of data collected through NSEERS.

- Increase Oversight and Transparency: NSEERS should be fully audited by DHS through the Office of Inspector General, as well as by the Government Accountability Office, to determine the program's effectiveness and to examine the continuing impact of NSEERS on individuals and the potential misuse of data. DHS should also make statistics available on the number of individuals who were identified through the program and subsequently convicted of terrorism-related offenses. DHS also should provide complete statistics about the total number of individuals who registered with the

program, as well as details about the enforcement actions that were taken against them.

- Support the End Racial Profiling Act: To show his commitment to ending racial profiling, President Obama should make a clear statement in support of the End Racial Profiling Act (ERPA) of 2011. [140] This bill was introduced in both Houses of Congress in 2011. If ERPA were passed, it "would prohibit racial profiling by law enforcement at the local, state and federal levels on the basis of race, ethnicity, national origin, religion, and gender." [141]

- Fix the DOJ Racial Profiling Guidance: To effectively combat racial profiling, the 2003 Department of Justice Guidance on the Use of Race by Federal Law Enforcement Agencies must be reformed to cover profiling based on religion and national origin; remove the large loopholes that allow for profiling in the name of national security and border security; cover law enforcement surveillance activities; apply anywhere federal agents act in partnership with state or local law enforcement agents and to any agency that receives federal funds; and make the guidance enforceable.

GLOSSARY

ADC	American-Arab Anti-Discrimination Committee
AIC	American Immigration Council (formerly American Immigration Law Foundation)
AILA	American Immigration Lawyers Association
AMEMSA	Arab, Middle Eastern, Muslim, and South Asian
CBP	Customs and Border Protection
DHS	Department of Homeland Security
DOJ	Department of Justice
EOIR	Executive Office for Immigration Review
ICE	Immigration and Customs Enforcement
IIRAIRA	Illegal Immigration Reform and Immigrant Responsibility Act
INA	Immigration and Nationality Act
INS	Immigration and Naturalization Service
NSEERS	National Security Entry-Exit Registration System
NTA	Notice to Appear
OIG	Officer of Inspector General
RWG	Rights Working Group
SEVIS	Student and Exchange Information System
USCIS	U.S. Citizenship and Immigration Services
US-VISIT	United States Visitor and Immigrant Status Indicator Technology Program

ENDNOTES

[1] Telephone Interview with Seth Kaper-Dale, Reverend, The Reformed Church of Highland Park, NJ (Feb. 23, 2012).

[2] Email Interview with Mirwan Harahap, individual affected by NSEERS (Mar. 23, 2012).

[3] Denyse Sabagh, http://www.duanemorris.com/attorneys/denysesabagh.html (last visited Apr. 5, 2012).

[4] About James Zogby, http://www.aaiusa.org/pages/about-dr-zogby (last visited Apr. 5, 2012).

[5] The 25 countries are: Afghanistan, Algeria, Bahrain, Bangladesh, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, North Korea, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates and Yemen. North Korea was the anomalous addition to the list of NSEERS countries and was seen as a fig leaf by many advocates opposed to the program who believed that it was added to the list to provide political cover for a policy that would obviously be criticized as discriminatory. The U.S. hosts almost no North Korean visitors and would not be necessitated to include North Korea in a list of NSEERS countries due to an actual national security threat that could be identified through special registration.

[6] Rights Working Group, The Policy Impact Ten Years Since 9/11: NSEERS (2011), http://www.rightsworkinggroup.org/content/policy-impact-ten-years-911-nseers (last visited Feb. 26, 2012); American-Arab Anti-Discrimination Committee, *End of the Shame of NSEERS* (Apr. 28, 2011), http://www.adc.org/legal/end-the-shame-of-nseers/ (last visited Feb. 22, 2012); Desis Rising Up and Moving, *DRUM Welcomes Victory in Endings NSEERS and Calls for Accountability for Thousands of Muslim Families Already Torn Apart* (Apr. 28, 2011) http://drumnyc.org/DRUM/Media/Pages/NSEERS_Release_April11.html (last visited Mar. 7, 2012); National Immigration Forum, *Advocacy Organizations Welcome DHS Policy Change Regarding NSEERS* (Apr. 27, 2011), http://immigrationforum.org/media/advocacy-organizations-welcome-dhs-policy-change-regarding-nseers (last visited Feb. 3, 2012); South Asian Americans Leading Together (SAALT), *Wrong Then, Still Wrong Now* (Dec. 4, 2009), http://blog.saalt.org/?p=706 (last visited Jan. 30, 2012).

[7] *See, e.g.*, AILA, *AILA Welcomes End of NSEERS Country Listings, Call for Program's Complete Termination* (April 27, 2012), http://www.aila.org/content/default.aspx?docid=35230.

[8] *See, e.g.*, Muzaffar A. Chisti et al., *America's Challenge: Domestic Security, Civil Liberties, and National Unity after September 11* (2003), http://www.migrationpolicy.org/pubs/Americas_Challenges.pdf; Muzaffar Chishti and Claire Bergeron, *DHS Announces End to Controversial Post -9/11 Immigration Registration and Tracking Program* (May 17, 2011), http://www.migrationinformation.org/usfocus/display.cfm?ID=840 (last visited Feb. 20, 2012).

[9] *See, e.g.*, Letter from Senator Feingold and Senator Kennedy, and Representative Conyers, Jr. to John Ashcroft, Attorney General, U.S. Dep't of Justice (Dec. 23, 2002), available at www.adc.org/media/press-releases/2002/december-2002/senators-and-congressman-demand-ashcroft-suspend-ins-special-registration/.

[10] *See, e.g.*, Letter from Senator Feingold and Senator Kennedy, and Representative Conyers, Jr. to John Ashcroft, Attorney General, U.S. Dep't of Justice (Dec. 23, 2002), available at www.adc.org/media/press-releases/2002/december-2002/senators-and-congressman-demand-ashcroft-suspend-ins-special-registration/.

[11] Desis Rising Up and Moving, *supra* note 6.

[12] Department of Homeland Security – Office of Inspector General, *Information Sharing on Foreign Nationals:*

Border Security (Redacted), at 15, available at http://www.oig.dhs.gov/assets/Mgmt/2012/OIGr_12-39_Feb12.pdf.

[13] *See Id.*

[14] End Racial Profiling Act of 2011 S.1670, 112th Cong. (2011).

[15] Keith Rushing, *Coalition of Rights Groups Applaud Introduction of Bill to End Racial Profiling* (Dec. 12, 2011), http://www.rightsworkinggroup.org/content/coalition-rights-groups-applaud-introduction-bill-end-racial-profiling (last visited Apr. 10, 2012).

[16] *Senator Dick Durbin: Opening Statement at the Hearing on Ending Racial Profiling in America*, Subcommittee on the Constitution, Civil Rights, and Human Rights (Apr. 2012), http://www.judiciary.senate.gov/pdf/12-4-17DurbinStatement.pdf.

[17] See Rights Working Group, *Racial Profiling in the Name of National Security*, http://www.rightsworkinggroup.org/sites/default/files/FactSheetNationalSecurityFinal.pdf.

[18] Rights Working Group, *supra* note 6; American-Arab Anti-Discrimination Committee, *supra* note 6; Desis Rising Up and Moving, *supra* note 6; National Immigration Forum, *supra* note 6; South Asian Americans Leading Together (SAALT), *supra* note 6.

[19] *See, e.g.*, AILA, *supra* note 7.

[20] *See, e.g.*, Muzaffar A. Chisti et al., *supra* note 8, at 13; Muzaffar Chishti and Claire Bergeron, *supra* note 8.

[21] *See, e.g.*, Letter from Senator Feingold and Senator Kennedy, and Representative Conyers, Jr. to John Ashcroft, Attorney General, U.S. Dep't of Justice (Dec. 23, 2002), available at www.adc.org/media/press-releases/2002/december-2002/senators-and-congressman-demand-ashcroft-suspend-ins-special-registration/.

[22] *Id.*

[23] Press Release, Attorney General Prepared Remarks on the National Security Entry-Exit Registration System (Jun. 6, 2002), available at http://www.justice.gov/archive/ag/speeches/2002/060502agpreparedremarks.htm; See also Registration and Monitoring of Certain Nonimmigrants, 67 Fed. Reg. 52584 (Aug. 12, 2002).

[24] Penn St. Univ. Dickinson School of Law, Ctr. for Immigrants' Rights, *NSEERS: The Consequences of America's Efforts to Secure its Borders* (2009), available at http://www.adc.org/PDF/nseerspaper.pdf.

[25] Department of Homeland Security, *DHS Removes Designated Countries from NSEERS Registration*, http://www.dhs.gov/files/publications/crcl-201105-nseers-registration-removal.shtm (last visited Mar. 7, 2012).

[26] The United States has a long history of profiling based on citizenship and nationality, such as the Visa Waiver Program. Under the INA § 217, the Visa Waiver Program allows citizens of participating countries to stay in the United States for 90 days or less without obtaining a visa. NSEERS is different from the Visa Waiver Program in many ways. NSEERS created fear and alienation within the AMEMSA communities. Moreover, the program has been detrimental for many individuals, resulting in removal proceedings and the separation of families. Shoba Sivaprasad Wadhia, *Business as Usual: Immigration and the National Security Exception*, 114 Penn St. L. Rev. 1485, available at http://www.pennstatelawreview.org/articles/114/114%20Penn%20St.%20L.%20Rev.%201485.pdf.

[27] Press Release, Attorney General, Attorney General Prepared Remarks on the National Security Entry-Exit Registration System, (Jun. 6, 2002) available at http://www.justice.gov/archive/ag/speeches/2002/060502agpr

eparedremarks.htm. See also Registration and Monitoring of Certain Nonimmigrants, 67 Fed. Reg. 52584 (Aug. 2002); See Penn St. Univ. Dickinson School of Law, Ctr. for Immigrants' Rights, supra note 24.

[28] Telephone Interview with Denyse Sabagh, Partner, Duane Morris, LLP (Feb. 24, 2012); See also Penn St. Univ. Dickinson School of Law, Ctr. for Immigrants' Rights, *supra* note 24.

[29] See, e.g., Chris Rickerd, *Homeland Security Suspends Ineffective, Discriminatory Immigration Program* (May 6, 2011), available at http://www.aclu.org/blog/immigrants-rights-racial-justice/homeland-security-suspends-ineffective-discriminatory (AILA's Comments on the Interim Rule Suspending NSEERS' Re-Registration Requirements).

[30] End Racial Profiling Act of 2011, H.R. 3618, 112th Cong. (2011), available at http://www.gpo.gov/fdsys/pkg/BILLS-112hr3618ih/pdf/BILLS-112hr3618ih.pdf; End Racial Profiling Act of 2011, S.1670, 112th Cong.(2011), available at http://www.gpo.gov/fdsys/pkg/BILLS-112s1670is/pdf/BILLS-112s1670is.pdf. Versions of the bill have been introduced in previous Congresses.

[31] *Id.*

[32] Removing Designated Countries from the National Security Entry-Exit Registration System (NSEERS), 76 Fed. Reg. 82, 23830-23831 (Apr. 28, 2011), available at https://www.federalregister.gov/articles/2011/04/28/2011-10305/removing-designated-countries-from-the-national-security-entry-exit-registration-system-nseers (last visited May 9, 2012).

[33] *Id.*

[34] Department of Homeland Security, *supra* note 25.

[35] This delisting was achieved through a Federal Register notice and did not eliminate the program's legal foundation. Rather, it removed the registration requirement for males from certain countries by removing the list of countries from the program. The delisting or Federal Register notice will be referred to as "April 2011 Rule" throughout this report. For the full Federal Register notice, see *Removing Designated Countries from the National Security Entry-Exit Registration System (NSEERS)*, 76 Fed. Reg. at 23830-23831 (Apr. 28, 2011).

[36] *Id;* See American Civil Liberties Union, *DHS Announces Indefinite Suspension Of Controversial And Ineffective Immigrant Registration And Tracking System* (April 27, 2011), http://www.aclu.org/immigrants-rights/dhs-announces-indefinite-suspension-controversial-and-ineffective-immigrant-regist (last visited Mar. 7, 2012).

[37] Removing Designated Countries from the National Security Entry-Exit Registration System (NSEERS), 76 Fed. Reg. at 23830-23831 (Apr. 28, 2011); See AILA, supra note 7; Colorlines, *Channing Kennedy, After 9 Years of Pressure, DHS Finally Drops 'SB 1070 for Muslims'* (Apr. 29, 2011) http://colorlines.com/archives/2011/04/after_nine_years_of_pressure_dhs_finally_drops_its_sb1070_for_muslims.html (last visited Feb. 20, 2012); Muzaffar Chishti and Claire Bergeron, surpa note 8; American-Arab Anti-Discrimination Committee, Advocacy Organizations Welcome DHS Policy Change Regarding NSEERS, http://www.adc.org/media/press-releases/2011/april-2011/advocacy-organizations-welcome-dhs-policy-change-regarding-nseers/ (last visited Mar. 4, 2012); American Civil Liberties Union, supra note 36; Muslim Public Affairs Council, *MPAC Welcomes DHS' Suspension of National Entry-Exit Registration System*, http://www.mpac.org/programs/government-relations/mpac-welcomes-dhs-suspension-of-national-entry-exit-registration-system.php, (last visited Mar. 4); South Asian Network, *SAN Welcomes Suspension of "Special Registration"*, http://southasiannetwork.org/2011/05/02/special-registration-requirements-suspended-san-welcomes-this-partial-victory/ (last visited Mar. 4, 2012); America's Voice, *DHS Announces End to National Security Entry-Exit Registration System (NSEERS)*, http://americasvoiceonline.org/blog/entry/dhs_announces_end_to_national_security_entry-exit_registration_system_nseer/ (last visited Mar. 4, 2012); *Penn State Law Center for Immigrants' Rights Plays*

Role in Key Post 9/11 Policy Shift, http://law.psu.edu/news/policy_shift, (last visited Mar. 4, 2012); American Immigration Council, *DHS Removes Countries from Special Registration List, But Leaves Door Open for Future Placements*, http://immigrationimpact.com/2011/04/28/dhs-removes-countries-from-special-registration-list-but-leaves-doors-open-for-future-placements/ (last visited Mar. 4, 2012); Council on American-Islamic Relations, *CAIR Welcomes DHS Decision to Drop NSEERS Program*, http://www.facebook.com/note.php?note_id=10150175544539442&comments (last visited Mar. 4, 2012); Race Matters, DHS Suspends NSEERS, http://endnseers.blogspot.com/2011/04/dhs-has-made-huge-step-in-right.html (last visited Mar. 7, 2012).

[38] *See, e.g.*, Desis Rising Up and Moving, supra note 6.

[39] American Civil Liberties Union, *supra* note 36.

[40] Obama '08, Blueprint For Change: Obama and Biden's Plan for America 65 (2008), available at http://www.barackobama.com/pdf/ObamaBlueprintForChange.pdf.

[41] *Hearing to Review Funding and Oversight of the Dep't of Justice: Hearing Before the Senate Appropriations Subcomm. On Commerce, Justice and Science, and Related Agencies*, 111th Cong. (2009) (statement of Eric Holder, Att'y General).

[42] *Highlights of AP's Pulitzer-Prize Winning Probe into NYPD Intelligence Operations*, http://www.ap.org/media-center/nypd/investigation.

[43] See Penn St. Univ. Dickinson School of Law, Ctr. for Immigrants' Rights, *supra* note 24. This paper provided the first comprehensive analysis of the NSEERS program. Through a legal and policy analysis of the program, it identified several issues with the program and provided recommendations for the new administration.

[44] Telephone Interview with Denyse Sabagh, *supra* note 28.

[45] See Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRAIRA), Pub. L. No. 104-208, 110 Stat. 3009.

[46] *Id.* at § 110.a.1, "Automated Entry-Exit Control System," US Congressional Record – House (September 28, 1996): H11787.

[47] The terms alien, immigrant, and nonimmigrant, are used in this report as specified in the INA. Generally, "nonimmigrants" refer to individuals who are seeking admission to the United States temporarily for purposes of education, employment, pleasure, etc. According to § 101(a)(15), "[t]he term 'immigrant' means every alien except an alien who is within one of the following classes of nonimmigrant aliens." The term nonimmigrant is defined in the following sections of INA§101(a)(15).

[48] *Rey Koslowski, Real Challenges for Virtual Borders: The Implementation of US-VISIT* (2005), available at http://www.migrationpolicy.org/pubs/Koslowski_Report.pdf.

[49] The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (PATRIOT ACT) of 2001, Pub. L. 107-56, 115 Stat. 272 (2001).

[50] Enhanced Border Security and Visa Reform Act of 2002, Pub. L. No. 107-173, 116 Stat. 543. The first provision seen in EBSVERA required the United States Citizenship and Immigration Services (USCIS) to integrate all of its data systems into one interoperable interagency system, employing the technology standard developed under §201 of the Act. See Enhanced Border Security and Visa Reform Act § 202. Section 201 of the Act further required law enforcement and intelligence agencies to share information relevant to admissibility and deportability of "aliens" within the State and the USCIS. Lastly, the Act required that USCIS issue machine

readable, tamper-resistant visas, and other travel and entry documents that used biometric identifiers. See Enhanced Border Security and Visa Reform Act § 201.

[51] The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (PATRIOT ACT) of 2001 § 414, Pub. L. 107-56, 115 Stat. 272 (2001).

[52] *Id.*

[53] Alan Greenblatt, *Kris Kobach Tackles Illegal Immigration* (Mar. 2012), http://www.governing.com/topics/politics/gov-kris-kobach-tackles-illegal-immigration.html (last visited April 5, 2012) ("Kobach was elected Kansas secretary of state in 2010... Kobach helped draft the 2010 Arizona law that, among other things, requires state and local enforcement officials to check the immigration status of individuals they have stopped and have "reasonable suspicion" to believe are in the country illegally... Among the policies Kobach helped devise was the creation of the National Security Entry-Exit Registration System, or NSEERS – a controversial program that limited access to the country by individuals, primarily from certain Middle Eastern and North African countries, and requires that they be fingerprinted, photographed, and interrogated.").

[54] INA § 263, 8 U.S.C. §1303 (2008).

[55] *Id.*

[56] Press Release, Attorney General, Attorney General Prepared Remarks on the National Security Entry-Exit Registration System (Jun. 6, 2002), available at http://www.justice.gov/archive/ag/speeches/2002/060502agpreparedremarks.htm. See also Registration and Monitoring of Certain Nonimmigrants, 67 Fed. Reg. 52584 (Aug. 2002); See Penn St. Univ. Dickinson School of Law, Ctr. for Immigrants' Rights, *supra* note 24.

[57] Press Release, Attorney General, supra note 56. See also Registration and Monitoring of Certain Nonimmigrants, 67 Fed. Reg. 52584 (Aug. 12, 2002).

[58] See Department of Homeland Security, *Fact Sheet: Changes to National Security Entry-Exit Registration System* (Dec. 1, 2003) (on file with author), available at http://www2.gtlaw.com/practices/immigration/news/2003/12/01a.pdf.

[59] 67 Fed. Reg. 66765-68 (Nov. 6, 2002); 68 Fed. Reg. 2366-67 (Jan. 16, 2003).

[60] 67 Fed. Reg. 70525-28 (Nov. 22, 2002); 68 Fed. Reg. 2366-67 (Jan. 16, 2003).

[61] 67 Fed. Reg. 77642-44 (Dec. 18, 2002); 68 Fed. Reg. 8046-48 (Feb. 19, 2003).

[62] 68 Fed. Reg. 2363-65 (Jan. 16, 2003); 68 Fed. Reg. 8046-48 (Feb. 19, 2003).

[63] See *Hearing on Ending Racial Profiling in America, Subcommittee of the Constitution, Civil Rights and Human Rights* (Apr. 2012) (testimony of David A. Harris, Faculty Scholar and Associate Dean for Research, University of Pittsburgh School of Law), available at http://www.judiciary.senate.gov/pdf/12-4-17HarrisTestimony.pdf; see *Hearing on Ending Racial Profiling in America, Subcommittee of the Constitution, Civil Rights and Human Rights* (Apr. 2012) (testimony of the American Immigration Lawyers Association), available at http://www.aila.org/content/default.aspx?docid=39267.

[64] AILA, *AILA's Comments on the Interim Rule Suspending NSEERS' Re-Registration Requirements*, (Feb. 2, 2004), http://www.aila.org/content/default.aspx?bc=1016%7C6715%7C8921%7C18602%7C10002.

[65] Press Release, Attorney General, supra note 56. See also Registration and Monitoring of Certain Nonimmigrants, 67 Fed. Reg. 52584 (Aug. 12, 2002).

[66] *Id.*

[67] 67 Fed. Reg. 67766 (Nov. 6, 2002).

[68] Id; 8 C.F.R. § 264.1(f)(8)(ii).

[69] 67 Fed. Reg. 67766 (Nov. 6, 2002).

[70] 67 Fed. Reg. 67766 (Nov. 6, 2002).

[71] In describing the late registration one young man, attorney Denyse Sabagh recounted: "[I] explained again that this young man had no reason not to register, he was in valid status, had just turned 17, didn't speak English, was trying to deal with a new high school in the US and had he known about Registration, he would have registered. The agents said it was no excuse. They said absent catastrophic illness or jail, there was not a valid excuse. I explained that is not a correct standard. They had to determine if it was "willful." They said that no one would be a "willful" violator if all they had to say was they didn't know. I explained that each person was judged on his own circumstances." See Denyse Sabagh, *Commentary on Late NSEERS Registration from Shoba Sivaprasad Wadhia, Penn State Law's Center for Immigrants' Rights* (Nov. 19, 2009), http://endnseers.blogspot.com/2009/11/commentary-on-late-nseers-registration.html.

[72] INA § 266 (a); 8 U.S.C. § 1306(a)(2008); Penn St. Univ. Dickinson School of Law, Ctr. for Immigrants' Rights, *supra* note 24.

[73] 68 Fed. Reg. 67578 (Dec. 2, 2003).

[74] See Department of Homeland Security, *supra* note 58.

[75] See William J. Howard, *Exercising Prosecutorial Discretion to Dismiss Adjustment Cases* (Oct. 6, 2005), available at http://www.aila.org/content/default.aspx?bc=1016%7C6715%7C8412%7C18465%7C17718.

[76] Shoba Sivaprasad Wadhia, *Prosecutorial Discretion and Post 9/11*, RACE MATTERS (Dec. 8, 2011), http://endnseers.blogspot.com/2011/12/prosecutorial-discretion-and-post-911.html (last visited Mar. 8, 2012).

[77] The NTA contains the nature of the removal proceedings, the legal authority under which the proceedings are conducted, the acts or conduct alleged to be in violation of the law, as well as the immigration charges against the individual. See INA § 239(a).

[78] See William J. Howard, *supra* note 75.

[79] Telephone Interview with Seth Kaper-Dale, *supra* note 1.

[80] 76 Fed. Reg.23830, 23831 (Apr. 28, 2011).

[81] Leslie Berestein Rojas, *The End of NSEERS, One of the Most Contentious Post-9/11 National Security Programs* (Jan. 30, 2012), http://multiamerican.scpr.org/2011/05/the-end-of-nseers-one-of-the-most-contentious-post-911-national-security-programs/ (last visited Feb. 19, 2012).

[82] See John Morton, *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens, U.S. Immigration and Customs Enforcement* (June 17, 2011), available at http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf; see John Morton, Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs

(June 17, 2011), available at http://www.ice.gov/doclib/secure-communities/pdf/domestic-violence.pdf; see Shoba Sivaprasad Wadhia, *Morton Memo and Prosecutorial Discretion* (2011), available at http://www.immigrationpolicy.org/sites/default/files/docs/Shoba_-_Prosecutorial_Discretion_072011_0.pdf.

[83] See John Morton, Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens, U.S. Immigration and Customs Enforcement, supra note 82 ("When weighing whether an exercise of prosecutorial discretion may be warranted for a given alien, ICE officers, agents, and attorneys should consider all relevant factors, including but not limited to – the agency's civil immigration enforcement priorities; the person's length of presence in the United States, with particular consideration given to presence while in lawful status; the circumstances of the person's arrival in the United States and the manner of his or her entry, particularly if the alien came to the United States...The following positive factors should prompt particular care and consideration: veterans and members of the U.S. armed forces; long-time lawful permanent residents; minors and elderly individuals; individuals present in the United States since childhood; pregnant or nursing women; victims of domestic violence, trafficking, or other serious crimes; individuals who suffer from a serious mental or physical disability; individuals with serious health conditions. In exercising prosecutorial discretion in furtherance of ICE's enforcement priorities, the following negative factors should also prompt particular care and consideration by ICE officers, agents, and attorneys: individuals who pose a clear risk to national security; serious felons, repeat offenders, or individuals with a lengthy criminal record of any kind; known gang members or other individuals who pose a clear danger to public safety; and individuals with an egregious record of immigration violations, including those with a record of illegal re-entry and those who have engaged in immigration fraud.").

[84] See telephone interview with Reverend Seth Kaper-Dale, *supra* note 1.

[85] See USCIS, *USCIS Memorandum, Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens* (Nov. 7, 2011), available at http://cis.org/sites/default/files/new%20guidance.pdf.

[86] Letter from Shoba Sivaprasad Wadhia to Margo Schlanger, DHS Officer for Civil Rights and Kelly Ryan, Acting Deputy Assistant Secretary for Policy (November 15, 2011), available at http://www.aila.org/content/default.aspx?docid=37674.

[87] Department of Homeland Security – Office of Inspector General, *supra* note 12.

[88] Rights Working Group, We Applaud the Department of Homeland Security (DHS) Office of Inspector General's (OIG) recommendation to fully terminate controversial National Security Entry Exit Registration System (NSEERS) (Mar. 20, 2012), http://www.rightsworkinggroup.org/content/we-applaud-department-homeland-security-dhs-office-inspector-general's-oig-recommendation-fu (last visited Apr. 24, 2012).

[89] Department of Homeland Security – Office of Inspector General, supra note 12,

[90] Telephone Interview with James Zogby, President, The Arab American Institute (Mar. 9, 2012).

[91] See Shoba Sivaprasad Wadhia, Letter to DHS Secretary Regarding Unfinished Work Around NSEERS (May 18, 2011), available at http://endnseers.blogspot.com/2011/05/letter-to-dhs-secretary-regarding.html (Last visited Mar. 8, 2012).

[92] Prena Lal, NSEERS Lands Pakistani-American Youth In Detention, Deportation Looming, SAALT (Jan. 1, 2012), http://blog.saalt.org/?p=1949.

[93] Leslie Berestein Rojas, supra note 81.

[94] Dick Durbin, *Senator Dick Durbin: Opening Statement at the Hearing on Ending Racial Profiling in America*, Subcommittee on the Constitution, Civil Rights, and Human Rights (Apr. 2012), available at http://www.judiciary.senate.gov/pdf/12-4-17DurbinStatement.pdf.

[95] See Rights Working Group, *Racial Profiling: Face the Truth*, http://www.rightsworkinggroup.org/content/racial-profiling-face-truth-0 (last visited Feb. 26, 2012); Rights Working Group, supra note 17; Leadership Conference on Civil Rights and Education Fund, *Wrong Then, Wrong Now: Racial Profiling Before & After September 11, 2001*, available at http://www.civilrights.org/publications/wrong-then/racial_profiling_report.pdf.

[96] Asian Pacific Americans for Progress, *Racial Profiling: Degrading, Unconstitutional, and Ineffective*, http://www.apaforprogress.org/racial-profiling-degrading-unconstitutinal-and-ineffective (last visited Feb. 27, 2012).

[97] American Civil Liberties Union and The Rights Working Group, *The Persistence of Racial and Ethnic Profiling in the United States* (2009), available at http://www.aclu.org/pdfs/humanrights/cerd_finalreport.pdf.

[98] Hearing on *"Ending Racial Profiling in America" Before the Subcommittee of the Constitution, Civil Rights and Human Rights* (2012) (testimony of David A. Harris, Faculty Scholar and Associate Dean for Research, University of Pittsburgh School of Law), available at http://www.judiciary.senate.gov/pdf/12-4-17HarrisTestimony.pdf.

[99] Shoba Sivaprasad Wadhia, *Business As Usual: Immigration and the National Security Exception, 114 Penn St. L. Rev. 1485* (2010). DHS denied that NSEERS was a program based on racial or religion profiling and to support this position, indicated that the POE registration was applied to visitors from 150 countries. DHS' rationale ignores the country-specific design of the "call in" registration program, the inevitable application of NSEERS to large groups of Muslim boys and men to future exits and entries, and the perception by affected individuals, advocates and foreign leaders around the world that NSEERS was discriminatory; Department of Homeland Security, F*act Sheet: Changes to National Security Entry-Exit Registration System* (Dec. 1, 2003) (on file with author), available at http://www2.gtlaw.com/practices/immigration/news/2003/12/01a.pdf

[100] Matt Apuzzo, *NYPD Muslim Spying: The Legal and Policy Issues Raised by Widespread Surveillance, HUFFINGTON POST*, Mar. 12, 2012, http://www.huffingtonpost.com/2012/03/12/nypd-muslim-spying-the-legal-and-policy-issues-raised-by-surveillance-qa_n_1338765.html (last visited Apr. 5, 2012). See also Highlights of AP's Pulitzer-Prize Winning Probe into NYPD Intelligence Operations, http://www.ap.org/media-center/nypd/investigation.

[101] American Civil Liberties Union, *Mapping the FBI: Uncovering Abusive Surveillance and Racial Profiling*, http://www.aclu.org/mapping-fbi-uncovering-abusive-surveillance-and-racial-profiling.

[102] Telephone Interview with Seth Kaper-Dale, *supra* note 1.

[103] Mary Snow, *New Jersey Church, 'Safe Haven' for Indonesian Immigrant*, CNN, http://inamerica.blogs.cnn.com/2012/03/20/new-jersey-church-safe-haven-for-indonesian-immigrant/ (last visited Apr. 20, 2012).

[104] Id.

[105] Telephone Interview with Seth Kaper-Dale, *supra* note 1.

[106] See Nina Bernstein, *Church Works with U.S. to Spare Detention, N.Y. Times*, Dec. 13, 2009, at A1, available at http://www.nytimes.com/2009/12/13/nyregion/13indonesians.html?pagewanted=all.

[107] Telephone Interview with Seth Kaper-Dale, *supra* note 1.

[108] Desis Rising Up and Moving, *supra* note 6.

[109] Email Interview with Mirwan Harahap, *supra* note 2.

[110] Shoba Sivaprasad Wadhia, *9/11 Registration and the Morton Memo* (July 14, 2011), http://lawprofessors.typepad.com/immigration/2011/07/911-registration-and-the-morton-memo-by-.html (last visited Mar. 7, 2012).

[111] J. Howard, *supra* note 75 and John Morton, *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens, U.S. Immigration and Customs Enforcement, supra* note 82.

[112] *See Id* ("Impact on Communities").

[113] Nathan Pippenger, *Broken Promises: How Obama's Immigration Failures Have Put a New Jersey Community on Edge, THE NEW REPUBLIC,* Mar. 2, 2012, at http://www.tnr.com/article/politics/101307/immigration-indonesians-new-jersey, (last visited Mar. 7, 2012) and
Kirk Semple, *Canceling Stay, U.S. Orders 72 Indonesians in New Jersey to Leave, N.Y. TIMES,* Dec. 26, 2011, at A26, available at
http://www.nytimes.com/2011/12/07/nyregion/us-tells-72-indonesians-in-new-jersey-to-leave.html?_r=1.

[114] Telephone Interview with Seth Kaper-Dale, *supra* note 1.

[115] See e.g., Sarah Stuteville, *Trouble in Little Pakistan* (May 26, 2004), available at http://www.indypressny.org/nycma/voices/119/briefs/briefs_1/ (last visited Feb. 27, 2012).

[116] See Department of Homeland Security, *supra* note 58.

[117] *See Id.*

[118] Department of Homeland Security – Office of Inspector General,*supra* note 12.

[119] Christopher J. Einolf and Luke Hall, *Inconsistency, Confusion, and Chaos: Experiences with Call-in Special Registration* (Apr. 15, 2003), available at http://www.ailf.org/lac/chdocs/lac_sr_report_041503.pdf.

[120] Telephone Interview with Denyse Sabagh, *supra* note 28.

[121] Telephone Interview with James Zogby, President, The Arab American Institute, *supra* note 90

[122] NYU School of Law Center for Human Rights and Global Justice and the Asian American Legal Defense and Education Fund, *Under the Radar: Muslims Deported, Detained, and Denied on Unsubstantiated Terrorism Allegations,* available at http://www.chrgj.org/projects/docs/undertheradar.pdf (last visited Mar. 8, 2012).

[123] Joint Press Release, American-Arab Anti- Discrimination Committee and Yale Law School, ICE Target Immigrants from Muslim Majority Countries Prior to 2004 Presidential Election (Oct. 20, 2008), available at http://www.adc.org/PDF/frontline.pdf.

[124] Letters from American-Arab Anti-Discrimination Committee, Letter/Complaint and Request for Investigation into Operation Frontline, to Timothy Keefer, Acting Officer, Office for Civ. Rights and Civ. Liberties (Feb. 26, 2009), available at http://www.adc.org/PDF/frontlinecomplaint.pdf.

[125] Department of Homeland Security – Office of Inspector General, *supra* note 12.

[126] Department of Homeland Security – Office of Inspector General, *supra* note 12.

[127] Letter from Margo Schlanger, DHS Officer, Civil Rights and Civil Liberties, addressing end of NSEERS (Apr. 27, 2011), available at http://law.psu.edu/_file/Immigrants/NSEERS_Schlanger_Memo.pdf.

[128] Customs and Border Protection, *Important NSEERS Information*, http://www.cbp.gov/xp/cgov/travel/id_visa/nseers/imp_nseers_info.xml (last visited Mar. 8, 2012).

[129] The Constitution Project, *The Use and Abuse of Immigration Authority as a Counterterrorism Tool: Constitutional and Policy Considerations* (2008), available at http://www.constitutionproject.org/pdf/Immigration_Authority_As_A_Counterterrorism_Tool.pdf.

[130] Doris Meissner and Donald Kerwin, *DHS and Immigration: Taking Stock and Correcting Course* (Feb. 2009), available at www.migrationpolicy.org/pubs/DHS_Feb09.pdf.

[131] Penn St. Univ. Dickinson School of Law, Ctr. for Immigrants' Rights, *supra* note 24 and Letter from American-Arab Anti-Discrimination Committee; Letter and Request for Removal of new Security Devices, to Janet Napolitano, Secretary, Department of Homeland Security (January 8, 2010), available at http://saalt.org/attachments/1/TSA%20Profiling%20Letter.pdf.

[132] Response Letter from Donald H. Kent, Asst. Secretary for Leg. and Intergovernmental Affairs, to Senator Richard J. Durbin, (Apr. 25, 2007) (on file with the Director for the Center of Immigrants' Rights at Penn State University, The Dickinson School of Law) (requesting update on NSEERS program. Certain responses to questions are not contained within the letter due to law enforcement sensitivity).

[133] Muzaffar Chishti and Claire Bergeron, *supra* note 8.

[134] *Removing Designated Countries from the National Security Entry-Exit Registration System (NSEERS)*, 76 Fed. Reg. 82, 23830-23831 (Apr. 28, 2011); See American Civil Liberties Union, supra note 36.

[135] Department of Homeland Security – Office of Inspector General, *supra* note 12.

[136] Telephone Interview with Denyse Sabagh, *supra* note 28.

[137] Department of Homeland Security, *Guidance on Treatment of Individuals Previously Subject to the Reporting and Registration Requirements of the National Security Entry and Exist Registration System* (Apr. 16, 2012), available at https://law.psu.edu/_file/NSEERSMemoPublic.pdf.

[138] Telephone Interview with Seth Kaper-Dale, *supra* note 1.

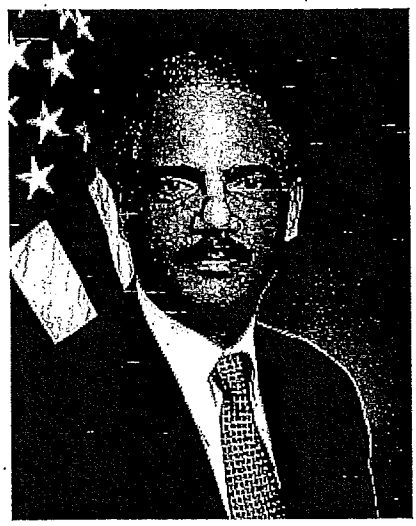
[139] Beyond the scope of this report, but nonetheless important, is the efficacy of these other programs. As the DHS OIG points out in its 2012 report, the number one recommendation following its evaluation of the program is to "fully terminate the National Security Entry-Exit Registration System and reinstate the prior provisions." Department of Homeland Security – Office of Inspector General, supra note 12.

[140] End Racial Profiling Act of 2011 H.R. 3618 (2011) and End Racial Profiling Act of 2011 S.1670 (2011).

[141] Keith Rushing, *supra* note 15.

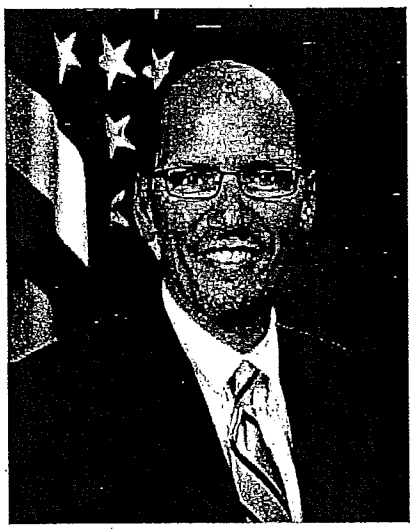
Confronting Discrimination in the Post-9/11 Era: Challenges and Opportunities Ten Years Later

A Report on the Civil Rights Division's Post-9/11 Civil Rights Summit
Hosted by George Washington University Law School
October 19, 2011



"The President's pledge for a new beginning between the United States and the Muslim community takes root here in the Justice Department where we are committed to using criminal and civil rights laws to protect Muslim Americans. A top priority of this Justice Department is a return to robust civil rights enforcement and outreach in defending religious freedoms and other fundamental rights of all of our fellow citizens in the workplace, in the housing market, in our schools and in the voting booth."

-Attorney General Eric Holder



"Today, we are simply using the long-standing tools in our arsenal to address an emerging challenge that threatens the freedom of individuals who want nothing more than for their families to be accepted in their communities, to live their lives and practice their faith in peace, and to realize the American Dream. We will continue to use every available tool in our law enforcement arsenal to transform this headwind of intolerance into a tailwind of inclusion and opportunity."

-Assistant Attorney General for Civil Rights
Thomas E. Perez

Table of Contents

Introduction

Within hours after the United States was attacked by terrorists on September 11, 2001, the phones at the Arab American Institute in Washington, D.C., started ringing. Members of the Arab-American community from around the country were receiving threats and did not know what to do. Although the office had been ordered to evacuate due to its proximity to the White House, Dr. James Zogby, the organization's founder and president, and other staff stayed to accept the calls. By the next day, Dr. Zogby's own life had been threatened.

Dr. James Zogby, Arab American Institute

"The organism was in shock. The whole body of America was in shock, and when a body is in shock, it reacts, and it reacts in different ways. One of the ways it reacts is to strike out at threats: real, imagined."

"[T]he second day, I got the first death threat. It was, 'Zogby you Arab dog. You'll die. I'll murder you and slit the throats of your children.' It stung. It stung both because of the personal threat of what it represented, but also as I described it, we were in mourning collectively as a country and then someone decided to say to me, 'you can't be part of this,' and pulled me away. I had to look over my shoulder; I couldn't just be part of this process of grief that was engulfing the rest of the country."

-Dr. James Zogby, Arab American Institute

As calls flooded into the Arab American Institute the afternoon of September 11, Amardeep Singh, who would go on to cofound The Sikh Coalition to respond to the backlash discrimination and violence, started driving from Washington, D.C., where he had been living, to his family home in New Jersey. His mother and fiancée called and pled with him to remove his turban, a Sikh article of faith that is not to be removed, but he refused, responding, "No, no, this is my country. This is not gonna happen here." When Singh stopped at a drive-thru to pick up food, his mother begged, "Please don't stop. Please don't stop. Please don't stop." When Singh finally arrived safely in New Jersey, he learned that a Sikh man in nearby Queens who had been praying for victims of the attacks had been severely beaten with a baseball bat as he left the Gurdwara (Sikh house of worship).

Meanwhile, Amber Khan, now the corporate secretary of Muslim Advocates, was scared and frightened for her brothers in rural Tennessee and for her recent immigrant relatives who "were barely verbal and comfortable articulating their rights as Americans, unable to fathom and comprehend the devastation and the tragedy that was taking place in their new home."

On September 19, 2001, Khan, Zogby and other advocates gathered at the National Japanese-American Memorial in Washington, D.C., along with political and religious leaders and veterans, including Japanese-American veterans who had survived the internment. Their purpose was to stand up in solidarity against the violent backlash they were already witnessing, and to send a message that what happened to Japanese Americans after Japan's attack on Pearl Harbor during

World War II should never happen to those wrongly associated by virtue of their faith or ethnicity with the attacks on 9/11.

Ten years later, on October 19, 2011, these stories and others were recounted at a summit sponsored by the Department of Justice (DOJ) Civil Rights Division and hosted by George Washington University (GWU) School of Law. Members of the advocacy, faith, government, and academic communities gathered that day on two panels to share their experiences on and after 9/11 and to take a look back at the Division's response to the backlash, and also to look forward at remaining challenges and emerging opportunities in the Division's continued outreach and enforcement efforts. Researchers from the Pew Research Center also presented important findings from their recent survey of Muslim Americans.

Amber Khan of Muslim Advocates, Amardeep Singh of The Sikh Coalition, and Dr. James Zogby of the Arab American Institute participated at the summit at GWU on October 19, 2011

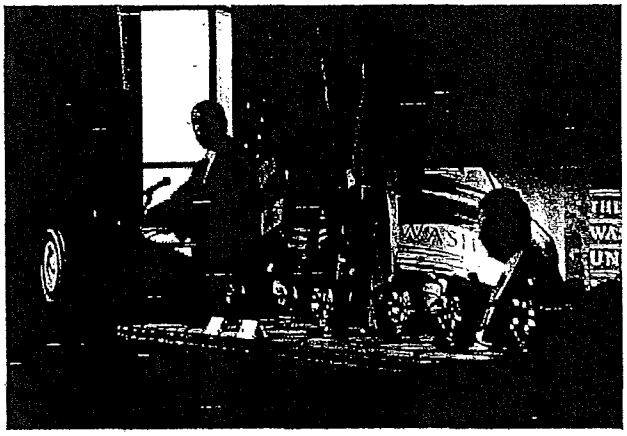
The terrorist attacks of 9/11 were an attack on all Americans. Like other Americans, many Arab, Muslim, Sikhs, and South Asian Americans lost friends and loved ones. Like all Americans, members of these communities experienced the anger and grief of seeing their country attacked and their families, neighbors, and country put at risk of future attack. But these communities suffered in an additional way from the terrorist attacks: they were the victims of a backlash of hate crimes and discrimination by those who somehow believed that an attack on innocents could be avenged by attacks on other innocents who shared the perceived ethnicity or religion of the terrorists.

As discussed at the summit and summarized in the "Looking Back: The Post-9/11 Backlash" section of this report, the Division responded quickly after 9/11 to address a wave of hate crimes and increased discrimination against Arab, Muslim, Sikh, and South Asian Americans. The Division created a template to deal with the backlash, which entailed three major elements: (1) a clear and plain statement to the American people that Arab, Muslim, Sikh, and South Asian Americans are Americans too, and that hate crimes and discrimination against them would not be tolerated; (2) outreach to the affected communities; and (3) coordination of civil rights enforcement across agencies at all levels of government.

In the first six years after 9/11, the Department investigated more than 800 incidents involving violence, threats, vandalism, and arson against persons perceived to be Muslim or of Arab, Middle Eastern, or South Asian origin. In the decade after 9/11, the Division prosecuted 50 defendants in 37 different cases, obtaining convictions of 45 defendants. In addition, the Division investigated and pursued a number of important civil cases to address unlawful discrimination on the basis of religion or national origin. In the education context, for example,

the Division addressed harassment of Arab, Muslim, Sikh, and South Asian American children in public schools. The Division also worked with the Equal Employment Opportunity Commission to protect these communities from discrimination in the workplace, and to ensure that individuals are not forced to choose between their jobs and their faith by, for example, having to remove a headscarf or turban at work. Finally, the Division ramped up efforts to enforce religious land use protections to respond to an increase in anti-Muslim bias in zoning. Since 9/11, the Division has opened more than 28 matters involving efforts to interfere with the construction of mosques and Islamic centers.

Notwithstanding these efforts and accomplishments, and as summarized in "The Pew Survey on Muslim Americans" section of this report," Muslim Americans report that they continue to experience high levels of discrimination and that bigotry and intolerance by non-Muslims are among the biggest problems affecting their community.



George Washington University School of Law Dean Paul Schiff Berman (at the podium) set the tone for the summit and introduced Deputy Attorney General James Cole (seated)

Clearly, the Division's post-9/11 backlash work is not finished. Advocates who participated in the summit offered specific recommendations for the Division going forward, which are summarized in the "Looking Forward: Remaining Challenges, Emerging Opportunities" section of this report. Their recommendations fall into three primary categories: (1) acknowledge the relationship between civil liberties and civil rights; (2) support certain policy changes to strengthen the law; and (3) bolster outreach and public education efforts.

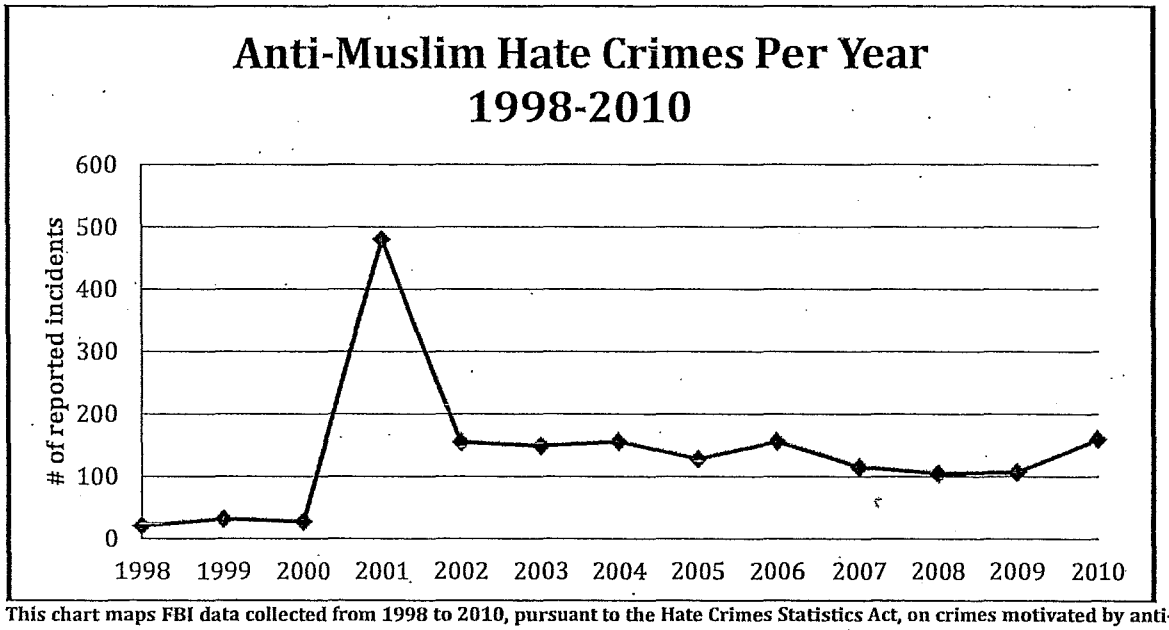
"This kind of stereotyping and hate runs counter to the basic values of equality and religious liberty on which this Nation is founded. We must never allow our sorrow, our anger at the senseless attack of 9/11, to blind us to the great gift of our diversity in this Nation. All of us must reject any suggestion that every Muslim is a terrorist or that every terrorist is a Muslim. As we have seen time and again – from the Oklahoma City bombing to the recent attacks in Oslo, Norway – no religion or ethnicity has a monopoly on terror."

"The Justice Department is doing everything possible to protect the national security and to keep America safe from those who would do us harm. We will never waiver in that commitment, but we also, fully and completely, are committed to protecting the civil rights and the civil liberties of all of our people. Those two critical goals are not inconsistent. While to some it might seem easier to focus only on national security with little regard for civil rights or the Constitution, or conversely to protect civil rights and civil liberties at the cost of national security, we at the Department disagree. We can, we must, and we will do both."

- Deputy Attorney General James Cole

Looking Back: The Post-9/11 Backlash

As Dr. Zogby recounted, the first threats of violence and acts of violence against people perceived to be Arab, Muslim, Sikh, and South Asian occurred within hours of the 9/11 attacks. The violence intensified for the next three weeks, eventually tapering off but never falling below the levels documented before 9/11. **The Federal Bureau of Investigations (FBI) reported a 1,600% increase in anti-Muslim hate crime incidents in 2001.**

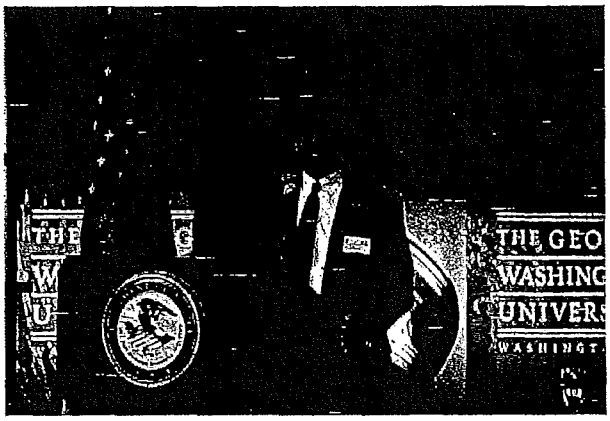


This chart maps FBI data collected from 1998 to 2010, pursuant to the Hate Crimes Statistics Act, on crimes motivated by anti-Muslim bias.

Although the violence decreased after the first three weeks, it was soon replaced by other bias-related incidents, including discrimination in education, employment, and religious land use. At the same time, new law enforcement and immigration policies developed in response to the terrorist attacks appeared to target people from Arab and Muslim countries, such as the now-discontinued special registration program for certain immigrants from specified countries. Such policies were perceived by members of those communities as sending a mixed message regarding the government's commitment to protect them from hate crimes and discrimination.

Responding to the Backlash

The Civil Rights Division, which is charged with enforcing federal laws that criminalize acts of violence motivated by, and that prohibit discrimination based on, a person's, race, religion, or national origin, among other characteristics, did not have a system in place before 9/11 to address the sudden and unexpected backlash against Arab, Muslim, Sikh, and South Asian Americans. Under the leadership of former Assistant Attorney General Ralph Boyd, and with the guidance and dedication of many hardworking career staff in the Division, including some who were members of communities targeted by the backlash, the Division quickly created a template for responding to the new wave of violence and discrimination.

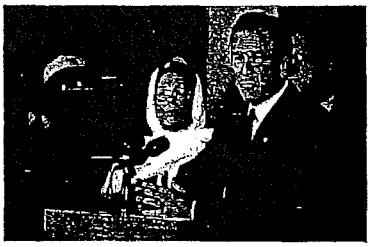


Former Assistant Attorney General Ralph Boyd. Boyd led the Division from 2001 to 2003.

Boyd explained that the template had three elements. The first element required "a very clear and plain statement to the American people" from then-leaders in the Executive Branch, particularly DOJ. Statements were immediately issued by President George W. Bush, Attorney General John Ashcroft, and FBI Director Robert S. Mueller III, as well as by Boyd and others, with a threefold purpose: (1) to convey a message about American values and to encourage the American people "not to tolerate difference and diversity in people from affected and vulnerable communities, but rather to

"Those who feel like they can intimidate our fellow citizens to take out their anger don't represent the best of America, they represent the worst of humankind, and they should be ashamed of that kind of behavior."

-President George W. Bush



President George W. Bush addressed an Islamic Center in Washington, DC, on September 17, 2001.

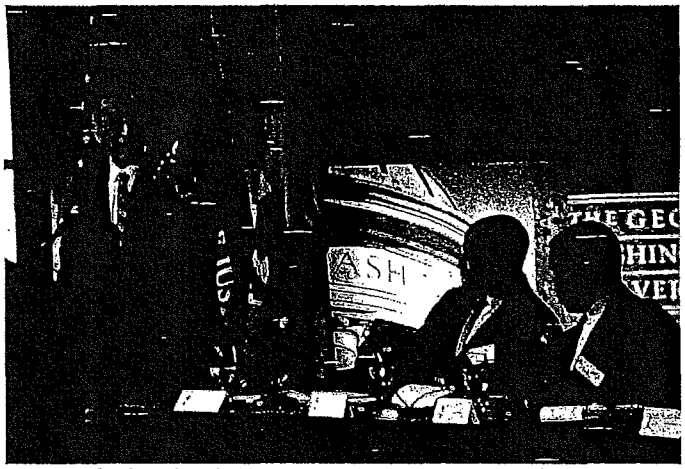
embrace them as being us"; (2) to "remind Americans that Muslims and Arabs and Sikhs and South Asians . . . were also victims of the September 11th attacks and they were also first responders"; and (3) "to send a very clear warning to those people who were not committed to playing by the rules and living within the law . . . that [our] commitment was, 'if you break the law, if you discriminate, if you threaten, if you commit acts of violence, we will find you and we will prosecute you — fairly, but certainly.'"

The second element of the Division's template for responding to the backlash required "boots on the ground . . . [to] conduct outreach to vulnerable people in communities." Boyd explained that there was "a lot of multilateral learning and communication that needed to go on to identify issues and concerns." To protect victims from the backlash, the Division created "something of a risk assessment matrix" to prioritize issues by level of immediacy and severity, "starting with the most serious type of criminal concerns and then moving to lower . . . but certainly important, unlawful discrimination issues." This required gathering information from potential victims about threats and other concerns. DOJ officials immediately reached out to leaders within the affected communities, including Dr. James Zogby of the Arab American Institute and Amardeep Singh of the newly formed Sikh American Coalition. But

"We must not descend to the level of those who perpetrated Tuesday's violence by targeting individuals based on their race, their religion, or their national origin. Such reports of violence and threats are in direct opposition to the very principles and laws of the United States and will not be tolerated."

-Attorney General John Ashcroft, September 12, 2001

compared to other minority groups with longer histories in the United States, Arab, Muslim, Sikh, and South Asian Americans did not have strong community organizations in place at that time. As Amber Khan, the Corporate Secretary of Muslim Advocates explained, her organization did not exist on 9/11. Rather, it later emerged from a list-serve of Muslim lawyers to fill a gap. Similarly, religious leaders, who were used to presiding over marriages and funerals, suddenly found themselves serving as spokespeople on important civil rights issues. Notwithstanding these challenges, **DOJ leaders within the first few months after 9/11 attended more than 100 meetings and events with representatives from the Arab, Muslim, Sikh, and South Asian communities.**



James Zogby (speaking), Deputy Assistant Attorney General Roy Austin, and Former Assistant Attorney General Ralph Boyd

"I called [Assistant Attorney General] Ralph [Boyd] and asked him to host a meeting. I actually asked him to do it the following week, and [he] decided to do it two days later."

-Dr. James Zogby,
Arab American Institute

The third and final element of the Division's template required coordination among law enforcement and civil rights agencies across the federal government and at all levels of state and local government. Boyd explained that the Department "created a special backlash crime task force that was staffed with some of the most experienced federal prosecutors within the federal system, both from the Criminal Section within the Civil Rights Division as well as Assistant U.S. Attorneys within the various U.S. Attorney's Offices across the country." The task force was responsible for creating a clearinghouse for documenting complaints of threats of violence and actual violence, conducting investigations, referring cases to state and local prosecutors where appropriate, and, where the facts and the law warranted federal action, prosecuting those acts.

Similarly, to address violations of civil anti-discrimination laws, the Division also created a backlash discrimination team within the Division's existing National Origin Working Group to document reports of discrimination, track complaints, and make referrals to the appropriate section within the Division or other government agency that might have jurisdiction to investigate and, if necessary, file a lawsuit. The team conducted outreach to affected communities and, in 2002, published brochures explaining civil rights protections in diverse languages, including Arabic, Farsi, and Punjabi. To help coordinate those efforts, the position of Special Counsel on Post-9/11 National Origin Discrimination was created. Currently, the Special Counsel for Religious Discrimination continues coordinating most of the Division's backlash work.

Prosecuting Hate Crimes

In the first few months after 9/11, DOJ investigated more than 350 backlash-related criminal complaints, resulting in more than 70 state and local criminal prosecutions and 12 federal prosecutions. Ultimately, the federal cases included prosecutions of three different individuals who threatened Dr. James Zogby in the first five years after 9/11.

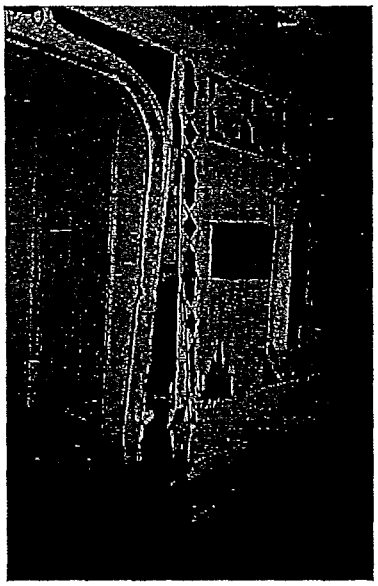
> **"The threats were nothing new. My life had been threatened before. My office had been fire-bombed in 1980. Never a prosecution ever. Since 9/11, three people who threatened my life had gone to jail. I'm not proud of it, but I'm pleased to know that there is somebody there to defend me."**
>
> **-Dr. James Zogby,**
> **Arab American Institute**

Examples of hate crimes the Division and United States Attorney's Offices prosecuted immediately after 9/11 include:

- **Attack on a Seattle Mosque.** Two days after 9/11, Patrick Cunningham attempted to set fire to cars in the parking lot of a Seattle mosque and then fired a gun at worshippers. He pled guilty and was sentenced to 78 months in prison.

- **Fire-Bombing of a Pakistani Restaurant.** Two days after 9/11, James Herrick poured gasoline on and ignited the wall of a Pakistani-American restaurant in Salt Lake City, Utah. He pled guilty and was sentenced to 51 months in prison.

- **Mail Threats.** One month after 9/11, Wesley Fritts mailed fake anthrax and a threat to an Arab-American restaurant in Janesville, Wisconsin. He pled guilty and was sentenced to 21 months in prison.

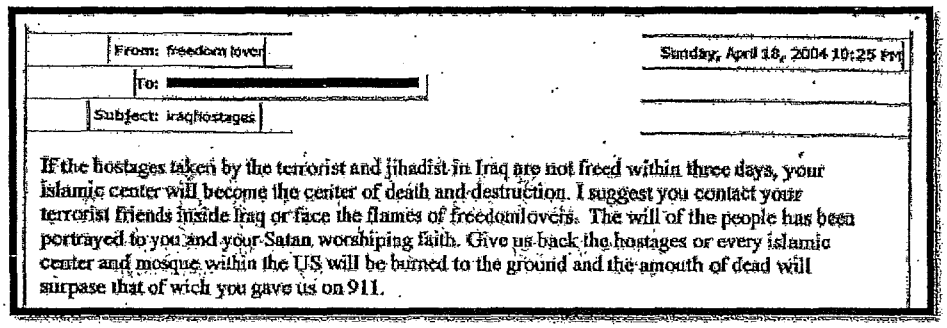


This Florida mosque was damaged after Franklin crashed his truck into it.

Although the number of hate crimes decreased in 2002, the Division continued to aggressively investigate and prosecute violent acts targeting members of affected communities. For example, the Division prosecuted Charles Franklin, who, on March 25, 2002, intentionally crashed his truck into a Florida mosque. Franklin was convicted of obstructing the free exercise of religion, in violation of the Church Arson Prevention Act. He was sentenced to 27 months in prison and ordered to pay $63,669 in restitution.

Sikhs also were targeted at a high rate after 9/11, as reported by the media and Sikh community advocates, and confirmed by an internal Civil Rights Division study. For example, on May 28, 2003, Matthew John Burdick shot and wounded a Sikh postal carrier in Sacramento, California. The Division prosecuted Burdick, who pled guilty and was sentenced to 70 months in prison and ordered to pay $25,395 in restitution.

In the first six years after 9/11, the Department investigated more than 800 incidents involving violence, threats, vandalism, and arson against persons perceived to be Muslim or Sikh, or of Arab, Middle Eastern, or South Asian origin. In the decade after 9/11, the Division prosecuted 50 defendants in 37 different cases, obtaining convictions of 45 defendants.



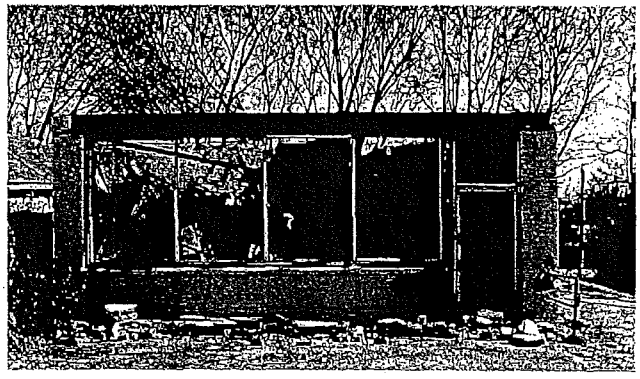
From: freedom lover
Sunday, April 18, 2004 10:25 PM
To: [redacted]
Subject: iraqihostages

If the hostages taken by the terrorist and jihadist in Iraq are not freed within three days, your islamic center will become the center of death and destruction. I suggest you contact your terrorist friends inside Iraq or face the flames of freedomlovers. The will of the people has been portrayed to you and your Satan worshiping faith. Give us back the hostages or every islamic center and mosque within the US will be burned to the ground and the amouth of dead will surpase that of wich you gave us on 911.

The Division prosecuted Jared Bjarnason for sending this email (above) to a mosque in Texas, threatening to burn it down and kill anyone inside if American hostages held in Iraq were not released. Bjarnason pled guilty and was sentenced to 18 months in prison.

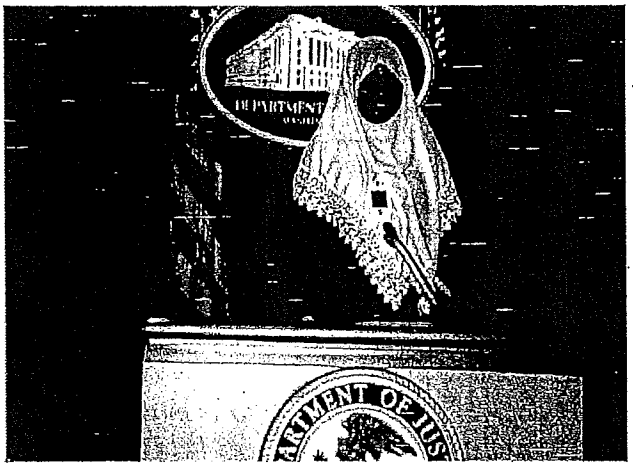
The Division prosecuted Eric Kenneth Nix for blowing up this van (left) belonging to a Palestinian-American family. The van was parked in front of the family's home in Burbank, Illinois. Nix was sentenced to 15 months in prison, and his co-conspirator, Daniel Alba was sentenced to 6 months' home confinement.

The Division prosecuted three men who destroyed this Islamic center (right) in Tennessee. The men spray-painted swastikas and "white power" on it and then set it on fire. They received sentences of 15, 14 and 6 years in prison.



Protecting Students from Bullying and Religious Discrimination

Enforcing laws that prohibit harassment and discrimination in public schools is an important part of the Division's post-9/11 backlash work.



When a public middle school in Muskogee, Oklahoma, prohibited 12-year-old Nashala Hearn from wearing a headscarf required by her Muslim faith, the Division intervened to argue that the school was using its uniform policy in a discriminatory manner, in violation of Hearn's constitutional rights. The case was settled by a consent decree that ordered the school to change its dress code to accommodate religious clothing.

The Division can address bullying when it rises to the level of harassment. For example:

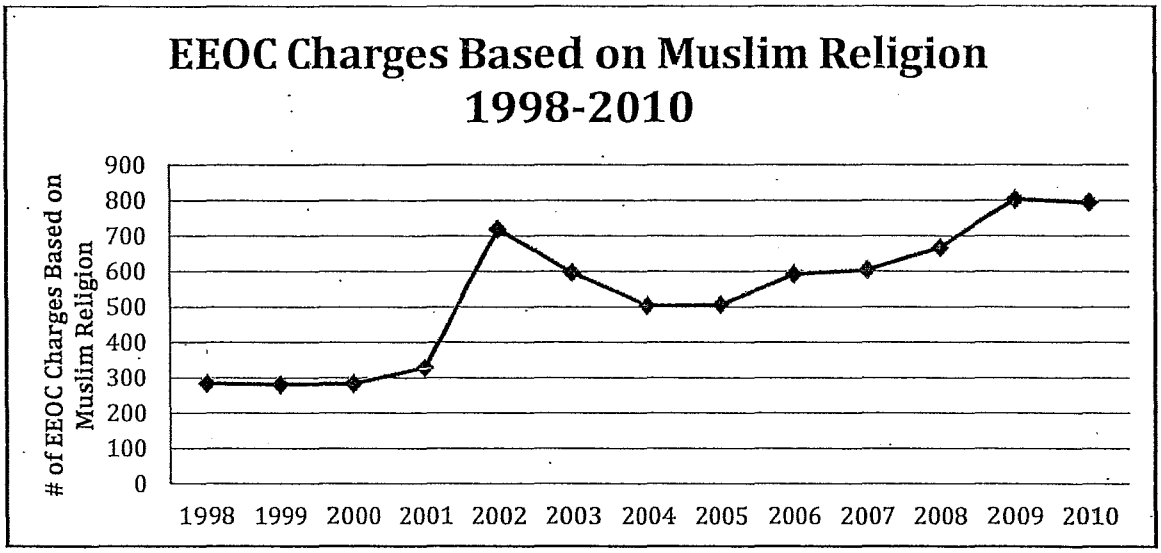
- **Harassment of Somali-American Students.** Somali-American students in Owatonna, MN, reported that they were severely harassed by their classmates and disproportionately disciplined by school officials. The Division and the Department of Education's Office for Civil Rights reached a settlement agreement with the school district that required, among other measures, adoption of an anti-harassment policy, training for faculty and staff, and establishment of a working group composed of district personnel, parents, and students.

- **Harassment of a Muslim Fourth Grader.** A teacher in Cape Henlopen, Delaware, reportedly ridiculed a fourth-grade student in front of her classmates because of the student's Muslim faith and because her mother wore a headscarf. Consequently, the student was also harassed by her peers, and she missed several weeks of school as a result of emotional distress. After conducting an investigation, the Division reached a settlement with the school district that required religious tolerance programs for students and teachers, as well as special training and monitoring for the teacher.

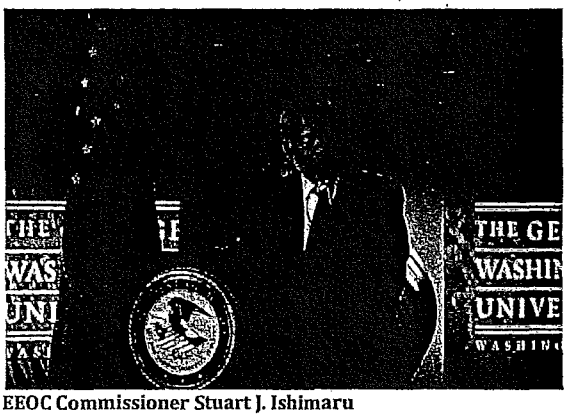
Addressing Discrimination in Employment

The Division shares responsibility with the Equal Employment Opportunity Commission (EEOC) for enforcing laws that prohibit discrimination in employment, including discrimination based on national origin or religion. EEOC statistics show a marked increase in claims alleging discrimination based on Muslim faith since 2001. Although the number of complaints filed decreased after 2002, complaints alleging anti-Muslim bias in the workplace are now the highest they have ever been. As illustrated in the chart below, the EEOC received 803 such complaints

alleging discrimination on the basis of Muslim religion from September 2008 to September 2009, a 20% increase from the previous year.



EEOC Commissioner Stuart J. Ishimaru explained that, immediately after 9/11, then-EEOC Chair Cari Dominguez joined DOJ and other government officials in issuing a strong statement condemning discrimination against Arab, Muslim, Sikh, and South Asian Americans. Dominguez made clear that employment discrimination was illegal and that victims could file a complaint with the EEOC. In addition, the agency worked with the Division and other partners to expand its outreach and to educate employers about their legal responsibilities to prevent unlawful discrimination. The agency also created a new tracking system to document backlash-related complaints.


EEOC Commissioner Stuart J. Ishimaru

"Within three months after the attacks, 166 charges – formal charges – were filed with the EEOC alleging backlash discrimination. A hundred of these raised the issue of discharge, and harassment was raised in some 60 cases."

-EEOC Commissioner
Stuart J. Ishimaru

The Division has focused its efforts on ensuring that Muslims are not forced to choose between their faith and their jobs. Some examples of the Division's religious accommodations cases include:

- **Denial of Unpaid Time-Off for Religious Pilgrimage.** A Muslim middle-school teacher in Illinois was denied an unpaid leave of absence to perform *hajj*, a religious

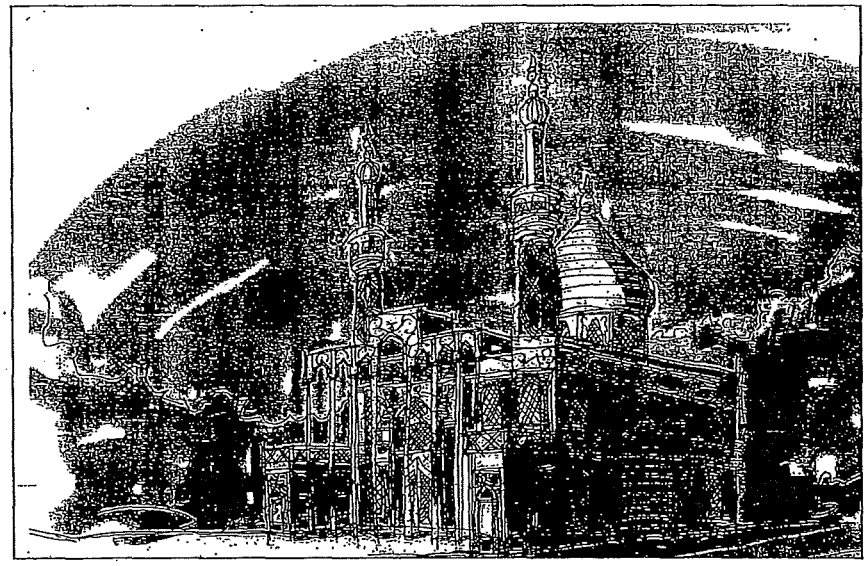
pilgrimage. The Division entered a settlement agreement requiring the school district to pay the teacher $75,000 in back pay, damages, and attorney's fees, and to develop a leave policy that reasonably accommodates the religious beliefs and practices of all current and prospective employees, as required by law. The district also agreed to train its leadership and managers on the new policy.

- **Prohibition of Religious Head Covering.** A Muslim female corrections officer in Essex County, New Jersey, was prohibited from wearing a headscarf at work. The Division resolved the case by consent decree, requiring the county to adopt a policy for providing reasonable accommodation of employees' sincere religious beliefs, observances, and practices; training staff on the new policy; and providing back pay to the officer.

- **Refusal to Accommodate Work Schedule for Religious Observance.** A Muslim school bus driver in Plano, Texas, had, for many years, been provided a work schedule that allowed him to attend Friday prayers. His new supervisor refused to continue the accommodation. The Division reached an agreement with the school district that required it to continue accommodation of the driver's schedule.

Guaranteeing Religious Land Use

One year before 9/11, Congress passed the Religious Land Use and Institutionalized Persons Act (RLUIPA) to protect against government infringement of religious liberty in two areas: local land-use laws, such as zoning and landmarking ordinances, and the religious exercise of persons confined to institutions. While Muslims comprise approximately 1% of the American population, 14% of the Division's RLUIPA land-use investigations in the statute's first ten years involved mosques or Muslim schools. In Lilburn, Georgia, for example, the Division and the local U.S. Attorney's Office sued the city under RLUIPA when it rejected the Dar-E-Abbas Shia Islamic Center's requests for rezoning to construct a mosque. The complaint alleged that the city's rejection of the re-zoning applications was based on the anti-Muslim bias of city officials and members of the public, and that the city treated Dar-E-Abbas differently than non-Muslim religious groups that had been granted similar rezoning requests. The parties reached a consent decree that required the city to approve the zoning application; to not impose different zoning or



This is a drawing of the proposed Islamic center in Lilburn, Georgia.

building requirements on Dar-E-Abbas or other religious groups; to publicize its nondiscrimination policies and practices; to train its leaders, managers, and certain other city employees on the requirements of RLUIPA; and to adopt new procedures that clarify its complaint process for zoning and permitting decisions regarding houses of worship.

Other notable cases include:

- **Eminent Domain Taking of Mosque's Land.** The Division investigated allegations that Wayne Township, New Jersey delayed a mosque's building application for more than three years and then tried to stop the building project by seizing the property under eminent domain. The Division argued that the township's use of eminent domain power to bypass zoning regulations could violate RLUIPA, and the court agreed. The parties ultimately settled the case, and the Division closed its investigation.

- **Opposition to Muslim School's Plans to Build a Mosque.** A Muslim school in Morton Grove, Illinois, encountered community opposition to its plans to build a mosque on its property, which may have been driven by anti-Muslim bias. The Division opened an investigation, and, after mediation by the Department of Justice's Community Relations Service, Morton Grove entered into an agreement with the Division that permitted the school to build the mosque subject to certain conditions.

- **Denial of Rezoning Request to Construct a Mosque.** When Henrico County, Virginia, denied a congregation's request to rezone a piece of property from commercial to residential so that it could build a mosque, the Division filed a complaint alleging that various churches had been granted such requests and pointed to derogatory comments about Muslims in the course of the zoning process. The case was resolved by a consent decree that permitted the mosque to be built and imposed training and record keeping requirements on the county.

Since 9/11, the Division has opened 28 matters involving construction of Muslim religious institutions. Of those, 18 have been opened since May 2010, suggesting that anti-Muslim bias in zoning is on the rise.

"A mosque is quite plainly a place of worship, and the county rightly recognized that it had an obligation to treat mosques the same as churches, synagogue, or any other religious assemblies. This is not only common sense; it is required by federal law. The Justice Department is committed to protecting rights of Americans of all faiths to build places of worship and to worship in peace."

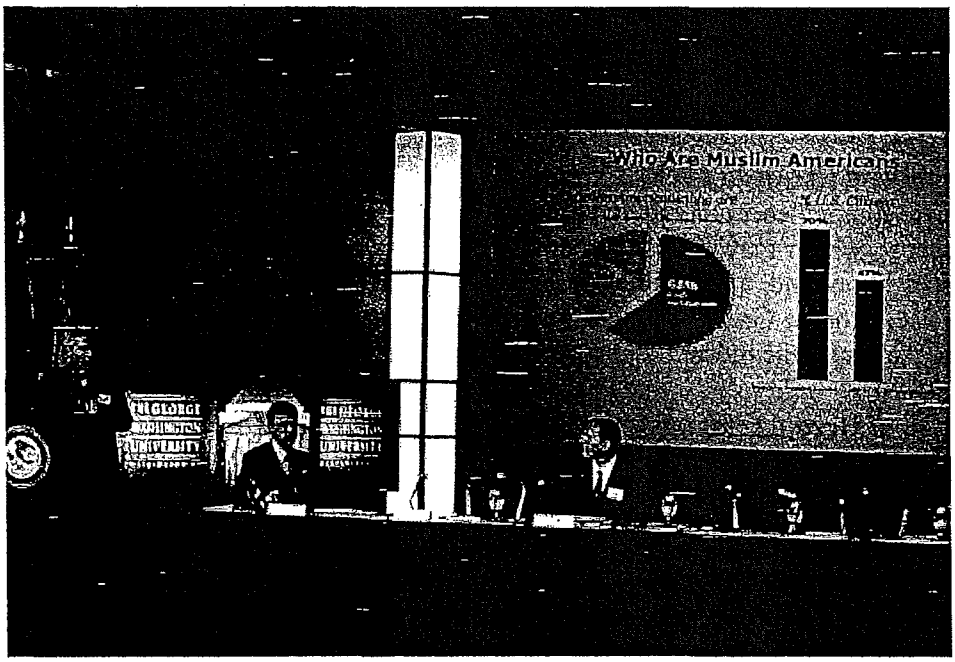
-Thomas E. Perez,
Assistant Attorney General for Civil Rights

Recently, the Division filed a friend-of-the-court brief in a case where neighbors of a proposed mosque in Murfreesboro, TN, challenged the county's grant of a building permit on the ground that Islam was not a religion entitled to First Amendment protection, but rather a political ideology, committed to turning America into a *sharia* state: in other words, the mosque's building application should not be considered as a church's application would be. The Division argued that Islam is clearly a religion; a mosque is plainly a place of worship; and the county acted

correctly in treating the application as it would treat an application from any other religious institution. The court agreed and dismissed the case in May 2011.

The Pew Survey on Muslim Americans

In August, the Pew Research Center for the People and the Press released a new survey on the Muslim American community. The survey, entitled "Muslim Americans: No Signs of Growth in Alienation or Support for Extremism," includes important findings relevant to the Civil Rights Division's post-9/11 backlash work.

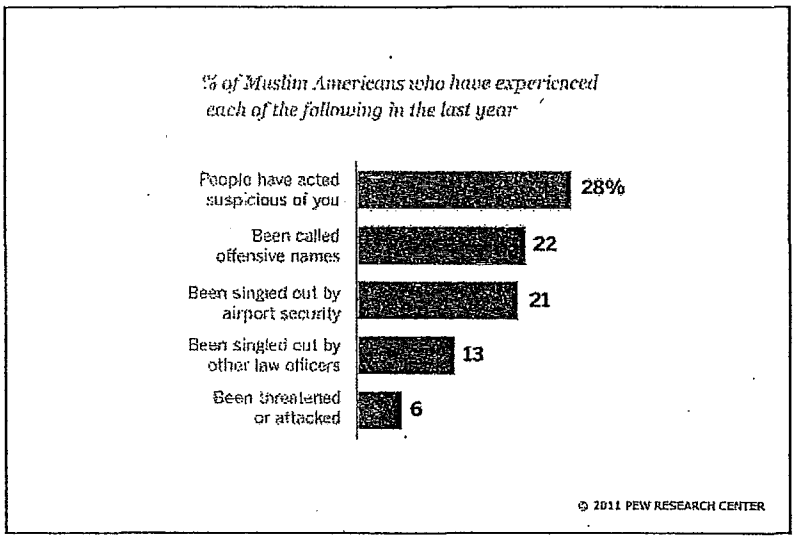


Dr. Scott Keeter (at the podium) of the Pew Research Center and Dr. Gregory A. Smith (far right) of the Pew Forum on Religion and Public Life discussed key findings of their survey on Muslim Americans. The panel was moderated by Eric Treene (center), Special Counsel for Religious Discrimination at the Department of Justice Civil Rights Division.

"One thing that we did find in our polling immediately in the aftermath of 9/11 is that there was a very clear sense in the data that President Bush's statement to not blame all Muslims, to make distinctions and not lay upon the Muslim-American population a responsibility for what happened on 9/11, seemed to actually make a difference, because the groups that became more favorable to Muslim Americans in the aftermath of 9/11 were actually [those] who had had the most negative views beforehand. So, we made an inferential leap there that there certainly was evidence that part of the audiences that the President was speaking to at that time . . . took it to heart."

-Dr. Scott Keeter,
Director of Survey Research, Pew Research Center

For example, and as illustrated below, the survey confirmed that the American public's perception of the Muslim-American community continues to differ in some ways from the community's own, and that bigotry and discrimination persist.



Muslim Americans Say Most Want to Assimilate...

	U.S. Muslims		General public
Most Muslims who come to the U.S. today want to...*	2007 %	2011 %	2011 %
Adopt American customs and ways of life	--	56	33
Be distinct from the larger American society	--	20	51
Both (Vol.)	--	16	4
Don't know		8	12
		100	100
How many of your close friends are Muslims?			
All of them	12	7	--
Most of them	35	41	--
Some of them	40	36	--
Hardly any/None (Vol.)	11	15	--
Don't know	2	*	
	100	100	

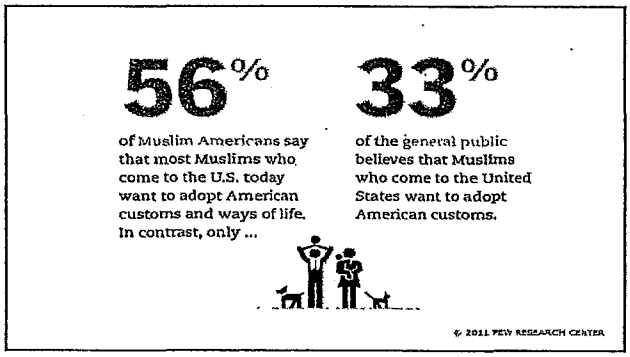
And a Large Majority Says Hard Work Leads to Success

Which comes closer to your view?			
Most people can get ahead if they're willing to work hard	71	74	62
Hard work and determination are no guarantee of success	26	26	34
Other/Don't know	3	1	3
	100	100	100
Rating of personal financial situation:			
Excellent/Good shape	42	46	38
Only fair/Poor shape	52	53	61
Don't know	6	1	1
	100	100	100

PEW RESEARCH CENTER 2011 Muslim American Survey. Q35, Q32, Q14b, Q202. Figures may not add to 100% because of rounding.
* General public asked about 'most Muslims in our country today."

"When we ask Muslim Americans to tell us in their own words about the most important problems facing the Muslim-American community, the theme that emerges is one of intolerance, discrimination, and ignorance. Nearly three in ten Muslim Americans tell us that negative views toward Muslims on the part of non-Muslims is one of the most serious problems facing the Muslim-American community. In a similar vein, 20% say discrimination, prejudice, and unfair treatment are major problems; 15% tell us that there is a lot of ignorance of Islam, and that this is very problematic; and then 7% cite religious and cultural problems between Muslims and non-Muslims."

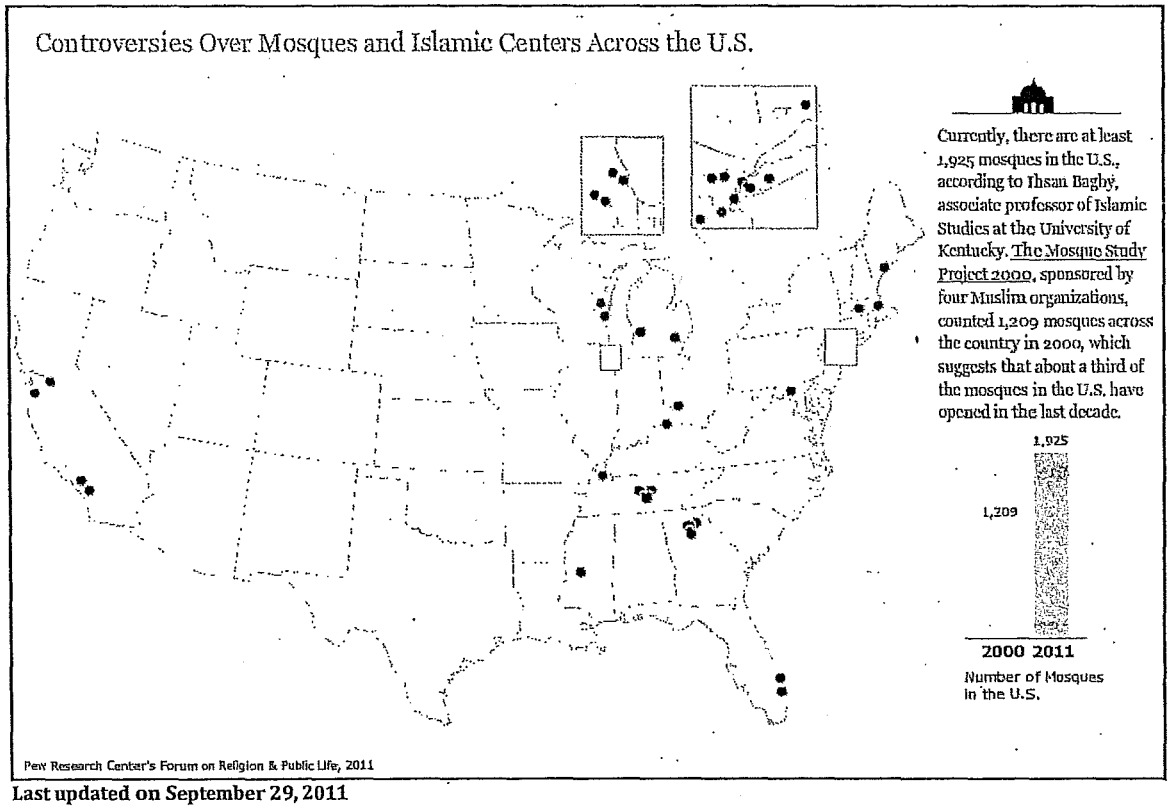
-Dr. Gregory A. Smith,
Pew Forum on Religion and Public Life



Some portions of the Muslim-American population have reported experiencing more hostile acts than others:

- More men (46%) than women (39%)
- More young people ages 18-29 (56%) than adults ages 30-54 (35-50%) and older adults over the age of 55
- More native-born (54%) than foreign-born (37%)
- More South Asians from other countries (51%) than South Asians from the Middle East (41%) or Pakistan (30%)
- More among those who identified as having high religious commitment (55%) than those with medium (39%) or low (37%) commitment

The survey also revealed that the Division's enforcement of religious land use protections seems to be addressing a clear need: **25% of Muslim Americans surveyed said that mosques or Islamic centers in their communities had been the subjects of controversy or hostility; 15% reported that such a building was the target of vandalism or other hostile acts within the past year; and 14% said that there was opposition to building a mosque or Islamic center.**

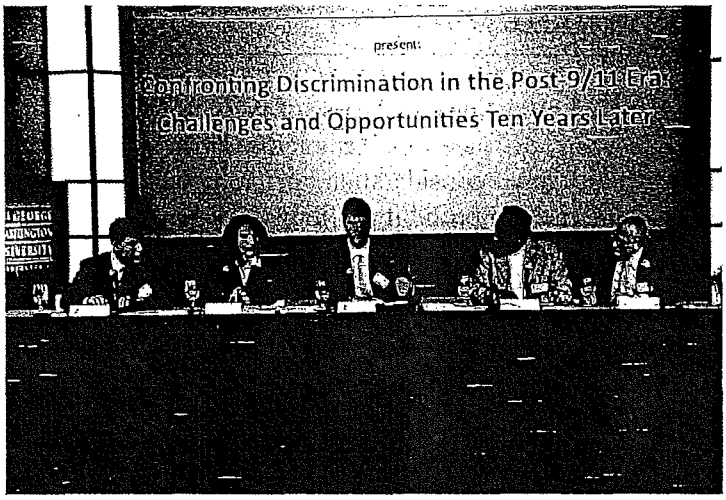


Last updated on September 29, 2011

Finally, despite these findings, the survey revealed that 56% of Muslim Americans are satisfied with the way things are going in the United States, and 82% are satisfied with the way things are going in their own lives.

Looking Forward: Remaining Challenges, Emerging Opportunities

The Division's post-9/11 backlash work is not finished. Hate crimes and discrimination against Arab, Muslim, Sikh, and South Asian Americans are at levels higher than they were before 9/11. As the Division continues its vigorous civil rights enforcement on behalf of these communities, it should also consider addressing certain remaining challenges. Advocates who participated in the summit identified three primary challenges and opportunities for DOJ and the Division going forward.



From left to right: Mazen Basrawi, Counsel to the Assistant Attorney General for Civil Rights; Sahar F. Aziz, Associate Professor of Law, Texas Wesleyan School of Law; Dwight C. Holton, Former U.S. Attorney and current Senior Litigation Counsel, District of Oregon; Imam Mohamed Magid, President, Islamic Society of North America and Imam, ADAMS Center; and Rabbi David Saperstein, Director and Counsel, Religious Action Center for Reform Judaism, discussed remaining challenges and offered recommendations to the Civil Rights Division.

1. Acknowledge the Relationship between Civil Liberties and Civil Rights

Arab, Muslim, Sikh, and South Asian Americans continue to be very concerned about post-9/11 law enforcement and immigration policies, even though many of the programs adopted immediately after 9/11 are no longer in effect. According to the Pew Research Center's survey, 52% of Muslim Americans still believe that the government's antiterrorism policies single them out for extra scrutiny, and only one-third of Muslim Americans do not believe their community is singled out. This reality cannot be ignored, and advocates emphasized that they would like DOJ to do a better job of acknowledging that civil liberties violations by the government hamper the Division's ability to combat civil rights violations by private actors. Advocates offered the following specific recommendations:

- Produce More Tangible Reforms. When news reports surfaced last year that certain FBI training materials contained offensive stereotypes about Muslim Americans, DOJ officials publicly denounced the materials. At the same time, Deputy Attorney General James Cole ordered all DOJ components to reevaluate their training and training materials to ensure that they do not contain false statements and improper characterizations. Advocates said that they would like to see more swift action like this from the government when it comes to reviewing and correcting counterterrorism policies that may be flawed. They pointed out, for example, that they still do not know the full impact special registration requirements imposed on immigrants from certain Muslim countries immediately after 9/11 had on those communities.

On March 20, 2012, Deputy Attorney James Cole issued a memorandum to all DOJ component heads and United States Attorneys approving five overarching training guiding principles drafted by a working group chaired by the Civil Rights Division and constituted within the Attorney General's Arab-Muslim Engagement Advisory Group. The first principle requires that training "be consistent with the Constitution and Department values" and "must not disparage groups or individuals based on their race, religion, national origin, ethnicity, gender, disability, sexual orientation, gender identity, economic condition, political affiliation or other similar characteristics." The full memorandum is available on the DOJ website at http://blogs.usdoj.gov/blog/archives/1944.

- Minimize Racial Profiling. DOJ's 2003 guidelines on the use of race and ethnicity in law enforcement permit the consideration of race and ethnicity in national security investigations and do not prohibit any consideration of religion. Advocates recommended that the guidelines be revised to prohibit profiling regardless of the type of investigation and to add religious affiliation to the list of protected characteristics.

- Investigate State and Local Police Departments. Advocates expressed concern about reports that some major metropolitan police departments may be targeting Muslims in their law enforcement efforts and recommended that the Division investigate those agencies, which benefit from federal funding, for possible civil rights violations.

"We will continue to engage, we will continue to act, we will continue to reflect, and we will continue to recalibrate whenever necessary to ensure that the false choice that some would have between security and civil rights is indeed a false choice."

-Thomas E. Perez, Assistant Attorney General for Civil Rights

2. Support Certain Policy Changes to Strengthen the Law

Advocates offered the following policy suggestions:

- Bolster Protections in the Workplace. Under existing law, it is difficult to address "back of the bus" discrimination in the workplace – *i.e.*, treating employees equally when it comes to pay and promotions, but assigning Muslim and Sikh employees wearing religious garb, who might make customers feel uncomfortable, to positions where they do not have to interact with the public. Also, under existing law, there are some limitations on accommodations to practice one's religion in the workplace. Some of the advocates said that they would like to see changes in the law to address these issues.

- Expand Prohibitions of Religious Discrimination in Federally Funded Activities. Explicit prohibition of religious discrimination in federally funded activities, including law enforcement and public education, is limited under existing law. Some of the advocates stated that federal law should be amended to include more explicit protection, which

would strengthen the Division's authority to investigate religious-based bullying and anti-Muslim bias in policing.

- Track Hate Crimes against Sikhs. Although the FBI tracks hate crimes motivated by the victim's real or perceived religion, it currently does not track hate crimes committed specifically against Sikhs. Some of the advocates recommended that the FBI create a special tracking code for Sikhs to support the Division's outreach and criminal enforcement efforts.

3. Strengthen Outreach and Public Education Efforts

Advocates at the summit praised the Division for its outreach to vulnerable communities immediately after 9/11, and for much of the outreach it has continued during the subsequent decade. They offered several specific recommendations for bolstering those efforts.

- Be More Inclusive. Advocates recommended that the Division broaden its outreach to be more inclusive. The Division often meets with community groups and leaders that are well known, but may miss some groups with significant constituencies who should have a voice as well. Advocates stressed that the government should seek out community contacts with sufficient reach into communities to convey individuals' real concerns, and that outreach should include more women representatives to ensure that gender issues are also being addressed.

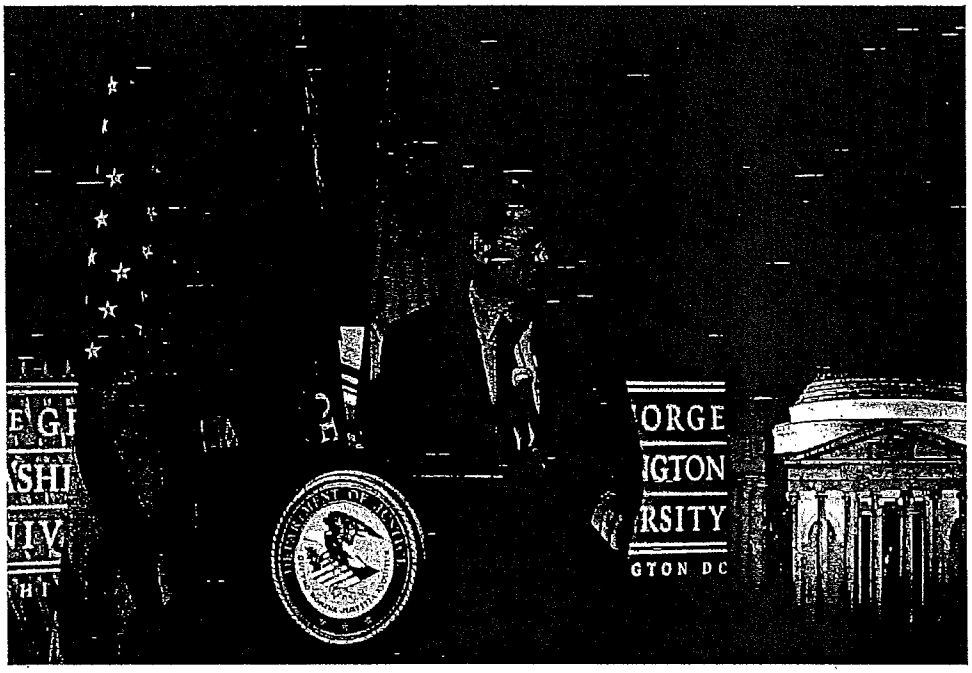
- Engage Both Muslim Communities and Neighboring Communities. Advocates expressed their preference for community engagement as a tool for fighting terrorism. Advocates also recommend that the Division, working with local U.S. Attorney's Offices around the country, do more to engage non-Muslims to help prevent bullying and to educate against Islamophobia, as former U.S. Attorney Dwight C. Holton has done in Oregon.

- Hold More Town Hall Meetings. Advocates spoke highly of the Division's use of town hall meetings and recommended that the Division hold even more town halls to collect information from affected communities regarding their experiences with hate crimes and backlash discrimination.

> **"I have often heard people mis-describe our engagement efforts as a need to go off and explain something, or a need to tell people something. That is completely backwards. The United States Attorneys' role in our engagement is to listen. And to learn how to do our job better and equip and empower people in the community to help us do our job on the civil rights side and on the national security side."**
>
> **Dwight C. Holton, U.S. Attorney's Office, District of Oregon**

Conclusion

The Civil Rights Division has played a vital role in protecting Arab, Muslim, Sikh, and South Asian Americans from hate crimes and backlash discrimination in the decade since 9/11, but there is still a lot of work to be done. While the Division continues to vigorously enforce existing federal criminal civil rights laws to punish bias-related violence, as well as civil anti-discrimination laws to address prejudice and harassment in education, employment, and zoning, among other areas, it will be mindful of advocates' recommendations for addressing certain remaining challenges and emerging opportunities. As Assistant Attorney Thomas E. Perez said in his closing remarks, "the measure of the benefit of a conference is not simply the quality of the dialogue, but the quality of the follow-up."



Assistant Attorney General Thomas E. Perez thanked all of the summit panelists for their participation and for their feedback on the Division's post-9/11 backlash work.

While there is no single answer to what is a critically important civil rights concern, the Division recognizes the significance of the free flow of information and ideas that took place during this summit and will continue to seek opportunities to hear directly hear from the public.

For more information about the Division's work in this and other areas, please visit the website: http://www.justice.gov/crt/index.php. To view a video of the summit, please visit: http://www.justice.gov/crt/pressroom/videos.php.[1]

[1] The Division is extremely grateful to George Washington University School of Law and Associate Professor Roger A. Fairfax for hosting the summit and to the panelists for their participation and thoughtful feedback and recommendations. The Division also acknowledges Sarah Steege, 2012 University of Michigan *juris doctor* candidate and Harvard Kennedy School masters in public policy candidate, for her assistance in drafting this report.

Long-Run Labor Market Effects of Japanese American Internment During World War II on Working-Age Male Internees

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Department of Economics, University of Houston

This version: June 2004

ABSTRACT

In 1942, all Japanese were evacuated from the West Coast and incarcerated in internment camps. To investigate the long-run economic consequences of this historic episode, I exploit the fact that Hawaiian Japanese were not subject to mass internment. I find that the labor market withdrawal induced by the internment reduced the annual earnings of males by as much as nine to thirteen percent twenty-five years afterwards. This is consistent with the predictions of an economic model that equates the labor market withdrawal induced by the internment with a loss of civilian labor market experience or a loss of advantageous job matches. (JEL J15, J31, N32)

* Assistant Professor, Department of Economics, University of Houston, McElhinney Building, Houston, TX 77204 (e-mail: achin@uh.edu; phone: (713) 743-3761; fax: (713) 743-3798). I have benefited greatly from comments from Dora Costa, Chinhui Juhn, Walter Oi, participants in the Spring 2001 MIT labor lunch, Spring 2002 Texas Econometrics Camp, 2003 NBER Summer Institute Labor Studies Workshop, University of Texas at Austin Applied Microeconomics Seminar and Texas A&M Applied Microeconomics Workshop, and, especially, Josh Angrist. Financial support from the University of Houston New Faculty Research Grant is gratefully acknowledged. All errors are mine.

I. INTRODUCTION

In 1942, the U.S. government evacuated all persons of Japanese descent from the West Coast and incarcerated them in War Relocation Authority (WRA) relocation centers. Approximately 110,000 people were interned, 65% of them American citizens and the remaining 35% Japan-born resident aliens.[1] The internees constituted 87% of the Japanese population in the continental United States and 97% of the Japanese population in the West Coast enumerated in the 1940 Census. Internees were held for an average of three years.

The internees lost both property and income. Property losses resulted from fire sales prior to internment, the inability to manage property or service mortgages while incarcerated, and damage and theft of stored property due to neglect or poor storage facilities. Internees lost income because their labor market wages and opportunities were reduced or eliminated in WRA camps. Social scientists have attempted to quantify the extent of these economic losses. In a widely cited study, Broom and Riemer (1949) used data from several small-scale surveys conducted in Los Angeles County immediately following the internment to estimate the magnitude of property and income losses. A significant part of the economic losses from internment, however, may be due to reduced income in the post-internment period. The extent of these post-internment losses is an open question.

How would internees have fared in the labor market in the absence of internment? In this paper, I use Japanese residents of Hawaii (then a U.S. territory) as a control group to answer this question.[2] In contrast with the West Coast Japanese (and in spite of Pearl Harbor's Hawaii

[1] Following other researchers, this paper defines internment as the combined process of evacuation and incarceration. The technical definition of internment is the evacuation and incarceration of enemy aliens (i.e., citizens of nations with which the nation concerned is at war). However, the Japanese American internment during World War II applied to all persons of Japanese descent, including American citizens.

[2] I will also use Japanese located in other continental U.S. states in the control. About 90% of the Japanese outside the West Coast lived in Hawaii, which is why Hawaii is emphasized in the discussion.

location), there was no mass evacuation of Hawaiian Japanese. To control for fixed differences in labor market outcomes between West Coast and Hawaiian Japanese, I incorporate birth cohorts whose labor market experience was unaffected by internment. Moreover, I test the identifying assumption underlying my analysis – that in the absence of the internment, labor market outcomes in the West Coast would have followed the same trend as in Hawaii – by using data on Chinese and Whites.

This paper provides new empirical evidence on the long-run economic impacts of a regrettable but important and unique episode in American history. Originally justified as a military necessity, the Japanese American internment during World War II has since been viewed as an act of injustice committed by the U.S. government against a group of people on the basis of race. A public apology has been issued, and reparations of $1.6 billion have been paid out ($20,000 for each surviving former internee) under the Civil Liberties Act of 1988. One question that my paper addresses is whether compensation paid under the 1988 Act is adequate. Additionally, the results reported here may be relevant for other sorts of forced labor market withdrawal, including contemporary detention policies.

Using individual-level data from the 1970 Census, I find that the labor market withdrawal induced by the internment reduced the annual earnings of males by as much as nine to thirteen percent twenty-five years afterwards. Additionally, internment increased the probability of self-employment, and reduced the probability of holding high-status professional and technical occupations. These findings are consistent with the predictions of an economic model that equates the labor market withdrawal induced by the internment with a loss of civilian labor market experience or a loss of advantageous job matches.

The paper is organized as follows. Section II provides a brief historical background and

reviews the related literature. Section III presents the estimation strategy. Section IV describes the data. The empirical results are discussed in Section V and Section VI concludes.

II. BACKGROUND

A. Historical Background

On February 19, 1942, President Franklin D. Roosevelt signed Executive Order No. 9066, which authorized military commanders to designate military areas "from which any or all persons may be excluded." The military commander in charge of the western U.S. designated much of Washington, Oregon, California and Arizona as military areas and ordered the removal of all persons of Japanese descent from these areas (these four evacuated states are collectively called the West Coast in this paper). That is, immigrants from Japan and U.S.-born persons of Japanese descent were no longer allowed to live, work or travel in the West Coast. The Army enforced the evacuation. By August 7, 1942, 110,000 persons of Japanese descent had been removed from the West Coast. These evacuees were placed in WRA camps; the barbed wire and armed guards were markers of their prisoner status.[3] The internees did not know how long they would be held. Ex post, we know that the exclusion of Japanese from the West Coast was lifted December 17, 1944 and that most camps were closed by the end of 1945.

Internees received food, shelter, medical care and education free of charge. The internees were expected and encouraged to work, but pay was meager. There was a fixed wage scale in the camps of $12/month for unskilled labor; $16/month for skilled labor and $19/month for professional employees.[4] In addition, the camps offered few good jobs. Most jobs were in camp operations, such as food preparation, health and sanitation and security. Broom and Riemer

[3] Technically, the evacuees spent the first three months in Wartime Civil Control Authority (WCCA) assembly centers while the permanent camps, the War Relocation Authority relocation centers, were being built.

[4] These wages were much lower than the pre-internment monthly wage; for example, in a Los Angeles County sample, the 1941 median monthly wage was $108 (Broom and Riemer (1949), p. 22). They were similar to wages paid to young domestic workers who worked 3-4 hours/day and received room and board.

(1949) state that these wages "provided an inadequate incentive, so many skills were lost to the communities" (p. 34). The U.S. Commission on Wartime Relocation and Internment of Civilians (1997) comments: "Many evacuees saw no reason to devote their best efforts to a system which displayed so little trust in them and held out such demeaning rewards" (p. 167). Myer (1971), the director of the War Relocation Authority, observes that "[o]ver-staffing and the creation of boondoggling type jobs occurred at some centers, and the encouragement of slack work habits was found among many evacuees" (p. 43).

Instead of improving the employment situation inside the camps, the WRA developed various leave policies enabling internees to pursue opportunities outside the camps and the West Coast.[5] Young adult internees were more likely to take these leaves. Other internees tended to stay until the camps closed. Thus, whereas the young adult internees were generally incarcerated for one to two years, the other internees were generally incarcerated for three years.[6] Figure 1 shows the distribution of duration in the internment camps. The mean duration was three years; the median duration was three and a half years.

The internees surely lost income while in camp – the wages paid in camp were substantially below the market wage. It is less obvious, but widely claimed, that internment changed the internees' earnings trajectory thereafter (see, for example, U.S. Commission on Wartime Relocation and Internment of Civilians (1997)). Internees' earnings potential could

[5] Seasonal leaves permitted internees to leave camp for several months to provide agricultural labor to private farms. Student leaves allowed internees who had been admitted to a college outside the West Coast and whose families had the financial ability to pay for college to continue their education. Eventually, the WRA also granted indefinite leaves, which enabled internees to permanently relocate to areas outside the West Coast provided that they could find a job and support themselves. Also, beginning in 1943, internees could leave camp by volunteering for the armed forces. Between the Pearl Harbor attack and 1943, the War Department had stopped taking Japanese into the military. The draft was reinstated for the Japanese in 1944.

[6] Despite being interned for shorter than the average duration, the young adult internees could have lost just as much civilian labor market experience. This is because the alternative activities they took on to leave the camps may not have been well valued by the civilian labor market either. For example, Angrist (1990) finds that the earnings penalty for military service during the Vietnam era appears to be mediated through loss of civilian labor market experience.

have been reduced through various mechanisms. One possibility is loss of civilian labor market experience. Work experience in the camps was a poor substitute for work experience in the civilian labor market. Workers were underpaid and underutilized. Some skills may have deteriorated through lack of incentive or opportunity to practice them. Another possibility is loss of advantageous job matches. On the one hand, the internment could have separated workers from jobs for which they were especially well suited, such as jobs for which they had developed much firm-specific human capital or jobs that they had obtained after a costly search process. This might be especially applicable to older internees since many of them had worked for years in their own farms and small businesses prior to internment, and many of these enterprises were lost as a result of internment. On the other hand, the internment could have prevented workers from building their search capital. This might be especially applicable to young adult internees, who were at the inception of their work lives when the internment intervened.

These same two mechanisms could have raised earnings potential as well. First, internees might have acquired skills valued by the civilian labor market during internment. For example, there was vocational training and adult English-language classes in the camps. Also, since the internees participated in all aspects of camp operations, they might have gained experience in jobs that were previously inaccessible to them because of racial discrimination, such as secretarial jobs and jobs in schools and hospitals. Second, the internment might have improved job matches. Through the permanent leave program, internees might have landed in cities that had better opportunities for Japanese.

Mass evacuation was not carried out anywhere outside the West Coast, or for any ethnic/racial group other than the Japanese, although it was permitted by Executive Order No. 9066. For example, persons of Japanese descent living outside the West Coast, persons of

German descent and persons of Italian descent were not evacuated wholesale. A selective evacuation process applied to these groups.[7] Table 1 shows the number of internees in 1942 and the Japanese population in 1940 by state of residence. Less than 1% of Japanese living outside the West Coast were placed in the WRA camps whereas all Japanese living in the West Coast were. Many have speculated on the reasons for such disparate policies toward the Japanese in the two regions.[8] They note that to the extent that evacuation was a military necessity as officially claimed, the Hawaiian Japanese should have been evacuated ahead of the West Coast Japanese; after all, not only was Hawaii the location of the Pearl Harbor attack, but also the Hawaiian Japanese were both more numerous and closer to Japan. In any case, the disparate policies may facilitate an evaluation of the Japanese American internment, as will be elaborated in Section III.

B. Related Literature

Academic studies on the Japanese American internment by historians and sociologists on the one hand, and firsthand accounts by former internees on the other, enrich our understanding of the experience inside the WRA camps and suggest mechanisms by which this experience could be propagated to life afterwards. However, there are few studies that use statistical methods to examine the economic effects of the internment. The authoritative reference on the

[7] Under selective evacuation, individuals who the government believed posed a threat to national security were detained and given a hearing. Following the hearing, they (and, on a voluntary basis, their families) might be sent to Department of Justice internment camps. According to Immigration and Naturalization Service records, 16,849 persons of Japanese descent (this figure includes Japanese from both Hawaii and the continental U.S.), 10,905 persons of German descent and 3,248 persons of Italian descent were held in Department of Justice internment camps.

[8] See, for example, U.S. Commission on Wartime Relocation and Internment of Civilians (1997) and Weglyn (1976). Reasons include the logistical difficulty of evacuating such a large number of people from Hawaii (there were about 158,000 Hawaiian Japanese), the potential crippling effects on the Hawaiian economy (the Japanese constituted 37% of the population in Hawaii but at most only 1.4% of any continental states' population) and the possibility that General DeWitt (the military commander in charge of western U.S.) had different sentiments about the Japanese than General Emmons (the military commander in charge of the Hawaiian Islands).

immediate economic effects is Broom and Riemer (1949).[9] They conducted several small-scale surveys in Los Angeles County inquiring former internees about conditions in 1941 (before internment) and 1946 (immediately after). These data enable them to estimate the property and income losses sustained by internees while interned, and to characterize changes in the occupational and geographic distribution of Japanese following the internment. One limitation of this study is that it is basically a before/after contrast; the effects of the internment cannot be separated from secular time effects. Also, the study leaves open the question of long-run effects; are the immediate effects transitory or permanent?

One of the only studies on the longer run economic effects of the internment is an unpublished undergraduate thesis by Hatamiya (1981). Hatamiya uses aggregate data from the 1940-1970 Censuses to estimate the income loss over time. On the one hand, he does not have income data, and all his statements about income effects are based on changes in occupational distribution over time. Specifically, he has data on the occupation distribution by race for California, and to translate these into income effects he makes the assumption that the median wage for a particular occupation is the same for Japanese as for all Californians. On the other hand, he makes no distinction among different cohorts of Japanese. Yet, by 1970, some workers would have been born after the internment.

This paper contributes to the literature on the Japanese American internment by using econometric techniques to estimate the causal impact of the labor market withdrawal induced by the internment on long-run labor market outcomes. In contrast to Broom and Riemer, I control for secular time effects and examine longer-run effects of the internment. In contrast to

[9] The U.S. Commission on Wartime Relocation and Internment of Civilians (1997) writes: "In 1954 the JACL [Japanese American Citizens League] characterized this study as authoritative to the Congressional subcommittee considering amendments to the Act [Evacuation Claims Act of 1948] and it is certainly the most thorough analytical work that is even roughly contemporaneous with the evacuation" (p. 119).

Hatamiya, I use individual-level data with income, compute standard errors and separate out the cohorts not affected by the internment.

III. Estimation Strategy

The challenge in estimating the long-run labor market effects of the internment is finding a control group that credibly tracks how the internees would have fared in the labor market in the absence of internment. The innovation in this paper is to use the Japanese located outside the West Coast in 1942, i.e., in Hawaii and continental U.S. states, as a control group. In sharp contrast to the West Coast Japanese, the non-West Coast Japanese were not evacuated and incarcerated en masse. They were by and large allowed to remain in their homes and conduct their lives as usual, albeit under greater scrutiny.[10] This suggests a difference-in-differences estimation strategy for obtaining the effect of the internment. An individual is considered treated if he was in the West Coast in 1942 and he is being observed in the post-internment period.

Unfortunately, public-use microdata for residents of Hawaii are not available until the 1960 Census, and so there are no data for any pre-internment years.[11] Hawaii data is critical to the implementation of the estimation strategy since Hawaiian Japanese constitute about 90% of non-West Coast Japanese; relying solely on Japanese in the continental U.S. states would not yield enough control group observations. A feasible solution might be to use cross-cohort instead of cross-time variation. In particular, I can take advantage of the fact that in the post-internment years, there are West Coast cohorts whose labor market experience was affected by the internment as well as West Coast cohorts whose labor market experience was not affected.

[10] Hawaii was under martial law from the Pearl Harbor attack through October 24, 1944. This imposed curfew, rationed gasoline, required all residents to carry identification cards, censored media, suspended jury trials, etc. This does not necessarily make the Hawaiian Japanese a poor control group; in the counterfactual (of not having been interned), West Coast Japanese would likely have been subject to additional restrictions during the war.

[11] The U.S. decennial census has been conducted in Hawaii since 1900, and population tabulations have been published. However, microdata and even aggregate data by race and cohort have not been released.

The internment interrupted the labor market experience of working-age individuals in the West Coast; the labor market experience of younger individuals in the West Coast was not interrupted. Younger individuals attended school in the camps, just as they would have in their old neighborhoods in the West Coast.[12] The effect of labor market withdrawal induced by the internment on labor market outcomes is given by β in the following equation:

$$(1) \qquad y_{ic} = \alpha + \beta OLD_{ic} * WC_{ic} + \gamma OLD_{ic} + \kappa WC_{ic} + \pi X_{ic} + \varepsilon_{ic}$$

for individual i in cohort c. y_{ic} is a labor market outcome (e.g., log earnings), OLD_{ic} is a dummy variable indicating whether the individual is a member of the older cohort, WC_{ic} is a dummy variable indicating whether the individual was in the West Coast in 1942 (and therefore interned) and X_{ic} is a set of other explanatory variables (e.g., age and education).[13] γ is the change in earnings due to secular cohort effects. κ is the fixed difference in earnings between the West Coast and non-West Coast Japanese.[14] The key assumption needed to interpret β as the effect of labor market withdrawal induced by the internment is that in the absence of the internment, earnings for the West Coast Japanese would have followed the same trend (across cohorts instead of time) as earnings for the non-West Coast Japanese. That is, the age-earnings profile between the two regions would have been the same, after allowing for a level difference (with the West Coast dummy).

Problematic for this interpretation of β would be the existence of trends in earnings that vary at the region-cohort level. One might suspect a differential trend because Hawaii was more

[12] It is not obvious how the quality of schooling for the young internees changed. In the camps, schools tended to be more crowded and teachers tended to be less experienced (teachers were brought from outside, and also Japanese Americans trained as teachers in college but never found a teaching job got to teach in the camps). But in the old neighborhood, there was overt anti-Asian discrimination which would likely have worsened during the war.

[13] In the empirical implementation, I will actually define WC_{ic} based on state of birth since I do not have a measure of where an individual was in 1942. This is explained in the next section.

[14] One component of the fixed difference is the fact of having been interned. Note both the young and old cohorts from the West Coast were interned.

racially mixed and tolerant than the West Coast prior to the internment. In 1940, the Japanese were the largest racial group in Hawaii (making up 37% of Hawaii's population), but only a small minority group in the rest of the U.S. (making up 1.4% of the population in California, 0.8% in Washington and much less elsewhere). The Japanese in Hawaii had access to virtually all jobs in the economy, including high-status, high-paying jobs (e.g., professional and managerial jobs). In contrast, the Japanese in the West Coast were largely foreclosed from such jobs, except in Japanese-owned enterprises. Thus, although Hawaii's economy was more agricultural than California's prior to World War II, the Japanese in Hawaii were actually less likely to hold agricultural occupations than the Japanese in California. A staggering 46% of U.S.-born male internees reported working in agriculture prior to internment.[15] To address the concern of differential trends between the West Coast and non-West Coast, I will analyze data on other racial groups (specifically, the Chinese and Whites) which have some commonalities with the Japanese but which were not interned. These other groups can be used to test the identifying assumption. I elaborate on this after discussing the data and main results.

IV. DATA

The empirical analysis employs microdata from the 1970 U.S. Census of Population and Housing. The 1970 Integrated Public-Use Microdata Series (IPUMS) files contain individual-level data for 6% of the population (Ruggles, Sobek et al. (2003)).[16] I have made several sample restrictions. First, for my main analysis, I use individuals of Japanese descent. I take these to be

[15] It must be noted that this figure is for males aged fourteen and over; this includes many workers who are working temporarily in agriculture, including on their father's farm, until they complete their schooling. 1940 Census occupational data by race are not available for Hawaii, but 33% of all employed males in Hawaii had an agricultural occupation, and anecdotal evidence suggests that the Japanese were less involved in agriculture than the average resident of Hawaii. Japanese participation in agriculture was higher in other non-West Coast states in the West census region, but these states constitute less than ten percent of all non-West-Coast Japanese, and consequently would not affect the overall fraction of non-West Coast Japanese in agriculture much.

[16] I have combined the following 1% samples: Form 1 State Sample, Form 2 State Sample, Form 1 Metro Sample and Form 2 Metro Sample, Form 1 Neighborhood Sample and Form 2 Neighborhood Sample.

the respondents who selected "Japanese" for the "color and race" question in the 1970 census questionnaires.[17]

Second, I focus on men. Since there is nearly full labor force participation among adult males, the labor force experience of almost every adult male internee would have been affected by the internment.

Third, I include only U.S.-born individuals. Approximately 65% of the internees were U.S.-born. It is a more straightforward matter to define WC_{ic}, the dummy variable indicating whether the individual was in the West Coast in 1942 (and therefore interned), for those born in the U.S.[18] WC_{ic} is set equal to one for individuals who are born in Washington, Oregon, California and Arizona, and zero otherwise. In this way, I have defined a group that has most likely been interned (the West Coast Japanese) and a group that is unlikely to have been interned (the non-West Coast Japanese).[19]

Finally, I restrict my sample to individuals born 1908 to 1941; individuals with imputed age have been eliminated. They are divided into two groups: the older cohort born 1908 to 1924 (aged 46 to 62 in 1970, 18 to 34 in 1942 when evacuation occurred) and the younger cohort born 1925 to 1941 (aged 29 to 45 in 1970, 1 to 17 in 1942). Both cohorts in the West Coast were interned, but only the older cohort's labor market experience would have been affected; members of the younger cohort were children in camp, attending school as usual.[20] The timing of the

[17] Respondents are asked to fill in one circle for color and race. The nine choices (in order) were: White; Black or Negro; Indian (Amer.); Japanese; Chinese; Filipino; Hawaiian; Korean; Other.

[18] This variable is difficult to define for foreign-born individuals. For example, a Japanese immigrant observed in 1970 could have been in Japan, Hawaii, the West Coast or elsewhere in 1942.

[19] The implicit assumption is that West Coast-born would have been residing in the West Coast in 1942 and therefore interned whereas the non-West Coast-born would not have. Of course in reality people are mobile, such that there are some West Coast-born Japanese who were not interned, and some non-West Coast-born Japanese who were interned. Internee place of birth data tabulated by the War Relocation Authority of the U.S. Department of the Interior (1946) suggest that this is minimal.

[20] The results reported below are not sensitive to the specific birth cohorts included, or the age cut-off for having labor market experience affected. With regard to the latter, in an earlier version of this paper, I used internees aged

internment and the data necessitates these age restrictions. By the time of the 1970 Census – twenty-five years after the internment – many individuals whose labor market experience was affected had already retired.

An individual is considered treated if he was born between 1908 and 1924 in a West Coast state. As a point of reference, males born 1908 to 1924 constituted three-quarters of U.S.-born adult (aged 18+) male internees, one-third of all adult male internees, two-fifths of U.S.-born adult internees and one-fifth of all adult internees. Thus, this treatment group is a meaningful fraction of the working-age internees.

The resulting sample has almost five thousand observations. Of the two thousand West Coast observations, 81% are born in California and 14% in Washington. 93% of the non-West Coast observations are born in Hawaii. Table 2 shows some descriptive statistics. I examine three types of labor market outcomes: participation, earnings and job characteristics. The latter two are conditional on participation, which means it is potentially subject to selection bias in participation.[21] In practice, selective participation is unlikely to be a concern given the extremely high rates of labor force participation across all groups.[22] The labor market income measures I use are wages (wage and salary income), business income (from farms, professional practices and other non-farm enterprises) and earnings (sum of wages and business income); imputed wages and business income are coded as missing. Because self-employment is so prevalent

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23-34 in 1942 as the group whose labor market experience was affected by the internment and internees aged 3 to 14 as the unaffected group and found similar results. The current version incorporates the intermediate ages to increase efficiency. Admittedly, it is less clear-cut whether the intermediate ages belong to the treatment or control group, but it is likely that among 15 to 22 year-olds, probability of working is increasing in age.

[21] For the estimation strategy described in Section III, selective participation causes bias only if there is *differential* selection between the West Coast and non-West Coast. For example, that successful individuals tend to retire earlier would not cause bias. However, that successful individuals tend to retire earlier *especially in Hawaii* would cause bias.

[22] I show this more formally in Table 4 – the difference-in-differences estimates for worked last year, worked at least 50 weeks last year conditional on working, and worked at least 40 hours last week conditional on working are not significantly different from zero.

among the Japanese, earnings better capture the value of work; wages reflect only the individuals who choose to work for others. The job characteristics measures, occupational score and self-employment indicator, attempt to capture some non-monetary aspects of an individual's labor market experience, including the degree of autonomy and prestige.

Ideally for the estimation strategy, the labor market outcomes of the Japanese in the West Coast and non-West Coast would have been moving in parallel prior to the internment, and subsequently not been subject to interventions (besides the internment) that alter the parallel path. Table 2 hints that the dynamics may have been different between the two regions. First, West Coast Japanese have higher educational attainment, but the non-West Coast Japanese have been catching up over time – the raw difference-in-differences in years of schooling is 0.76. I will show specifications with and without a control for schooling. Second, the older cohort in the West Coast was more likely to have served in the military during the World War II era.[23] I will be able to distinguish the effect of the labor market withdrawal induced by the internment from the effect of military service and effect of differential expansion in education by analyzing other racial groups.

V. Results

A. Main Results

The results from estimating Equation 1 using ordinary least squares with the Japanese sample are presented in Table 3. Each column is from a separate regression. The dependent variable is log earnings. The difference-in-differences estimate, β, is reported in the first row. It

[23] The working-age internees may have felt compelled to prove their patriotism or been desperate to leave camp (but as discussed in Section II, there were other ways to leave). The raw difference-in-difference in military service during World War II era (between September 1940 and July 1947) is 0.07. Controlling for year of birth, state of birth dummies, and years of schooling (allowed to differ for West Coast and older cohort), I find the effect is not significant: the coefficient is 0.0348 and standard error is 0.0350. This analysis is performed using the Form 2 1970 IPUMS samples, which have veteran status variables.

is negative and significant at the 95% level of confidence in every specification. Column 1 has an estimated β of –0.0724. The main effect of being in the older cohort is weakly negative. The older cohort is near retirement age and may be working less, which offsets the labor market rewards for experience. The main effect of being born in a West Coast state is positive. This primarily reflects higher wages in West Coast labor markets; state of birth is highly correlated with state of residence.[24] The specification in Column 2 adds years of schooling as a control variable.[25] The estimated β is now –0.1220. It decreases because there is a significant positive difference-in-differences in years of schooling, and schooling has a positive effect on earnings. Controlling for years of schooling may not adequately control for education differences between the young and old, and West Coast and non-West Coast. Arguably, there could be differences in quality of education. In Column 3, I allow the returns to education to differ by cohort and region. The estimated β is –0.0994. The effect of years of schooling is weakly lower for the old cohort, and weakly higher for the West Coast. Columns 4-6 parallel Columns 1-3, but with a full set of year of birth dummies (instead of just one dummy for older cohort) and a full set of state of birth dummies (instead of just one dummy for born in West Coast). The results are essentially the same. In all subsequent analysis I will use the finer controls for the main effects.

To summarize the results of Table 3, Columns 4-6, the labor market withdrawal induced by the internment reduced the annual earnings of males by nine percent to thirteen percent to twenty-five years afterwards. In dollar terms, earnings losses were $1000 to $1400 in 1969 (average earnings among West Coast individuals were approximately $11,000 in 1969).

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[24] In specifications not reported, I control for census region of residence (using all the 1970 IPUMS samples) and state of residence (in an analysis restricted to the State and Metro samples, which do have state of residence identifiers). The results are similar to those reported here. I do not control for place of residence in my main analysis because it can be considered an outcome.

[25] I have also used a traditional potential experience model (which controls for quadratics in education and age as well as an interaction between education and age) and the results were unchanged. These results are not reported.

Table 4 presents the estimation results for a larger set of labor market outcomes. Each cell in Columns 1 and 2 displays the difference-in-differences estimate and its standard error, and is from a separate regression. Column 1 uses the specification of Table 3, Column 4 and Column 3 uses the specification of Table 3, Column 6. Panel A shows that there is not a significant effect on the probability of working last year, working at least 50 weeks last year conditional on working last year, or working at least 40 hours last week conditional on working last week. Thus, it does not appear that the labor market withdrawal induced by the internment rendered working-age internees so unfit for the civilian labor market that they subsequently are unable to find work or to work on a full-time basis.

Panel B shows the earnings effects, the first row which we already saw in Table 3. Results for two additional earnings measures – earnings for individuals who have only wage income and earnings for individuals who have only business income – are also displayed. The earnings effect is negative, significant and large for the individuals with only business income. In contrast, it is only weakly negative for the individuals with only wages. The overall earnings effect is basically a weighted average of these two effects.[26] The relative magnitude of these two effects suggests that self-employed workers account for a disproportionate share of the earnings losses.

Panel C shows the impact on job characteristics. The occupational score is an index of occupations according to the 1950 median income of all individuals in that occupation, in units of hundreds of 1969 dollars. There is a negative and significant effect on occupational score – working-age internees hold occupations that pay $515 to $550 less per year. The earnings losses implied by the regressions using occupational score are about half those implied by the regressions using individual earnings, implying that working-age internees receive lower-than-

[26] The number of individuals with both wages and business income is small.

median pay for a given occupation. The movements in the occupational score summarize many movements into and out of specific occupations, notably a significantly lower probability of holding a professional/technical or managerial occupation, and significant higher probability of being a non-farm laborer (primarily self-employed contract gardeners as discussed below).

The coefficient for being a self-employed worker is large, positive and significant: 0.1115 in Column 1, 0.0748 in Column 2. This differential increase in self-employment appears to come entirely from the influx of working-age internees into contract gardening.[27] Contract gardeners provide lawn care and landscaping services to residential and commercial clients in urban areas. Prior to World War II, the two most common types of self-employment among Japanese were farmer and proprietor; contract gardener was a nascent occupation. By 1970, contract gardening had expanded dramatically in both the West Coast and non-West Coast, with the number of Japanese contract gardeners exceeding the number of either farmers or proprietors in the West Coast among both younger and older cohorts. Although prewar experience in farming, nursery and gardening was useful for contract gardening, it was not necessary for establishing a viable business; "[t]he Japanese Americans' prewar reputation for horticultural proficiency stereotyped them and made it possible for those who had never done gardening to get contracts."[28] Contract gardening had much lower start-up costs than traditional self-employment channels, but was also less remunerative. The earnings losses and the changes in occupational characteristics for working-age internees discussed earlier in this subsection are in good part driven by the increase in self-employment in contract gardening. Perhaps some working-age internees are unable to find suitable wage employment, and thus turn to self-employment. Or, there are some non-monetary rewards of self-employment that are unique to the working-age

[27] The Census classifies contract gardeners as non-farm workers in the "gardeners, except farm, and groundskeepers" detailed category.
[28] Broom and Riemer (1949), p. 119.

internees and that compensate for the lower earnings received. I discuss possible channels for the labor market effects in Section V.D.

B. Controlling for Differential Trends

We have been interpreting the difference-in-differences estimates as the causal effects of the labor market withdrawal induced by the internment. The coefficient for the interaction between cohort and region of birth could be non-zero even in the absence of the internment, however. For concreteness, consider the earnings outcome. There are a number of plausible reasons for the negative coefficient besides the labor market withdrawal induced by the internment. One involves the weakly positive difference-in-differences in military service during the World War II era mentioned in the data section. To the extent that service in World War II has a negative earnings impact – this is suggested by Angrist and Krueger (1994) – then the negative difference-in-differences in earnings may actually be an effect of military service, not an effect of the labor market withdrawal induced by the internment. A second reason involves the differences in the occupational structure of the Japanese in the West Coast and non-West Coast. In Hawaii, the Japanese had greater access to higher-paying, higher-status jobs. In the West Coast, the Japanese had little access to white-collar jobs, and were heavily concentrated in agricultural occupations and self-owned enterprises. Since the empirical analysis uses a single cross-section, and older cohorts are also higher in age than younger cohorts, the coefficient for $OLD_{ic}*WC_{ic}$ may be negative because a steeper age-wage profile applies to Hawaii. A third reason involves the reduction in anti-Asian discrimination following World War II. Perhaps anti-Asian discrimination is abating more in the West Coast than non-West Coast in the post-war period (because the West Coast had a higher initial level of anti-Asian discrimination, and is converging to the level of racial tolerance in the rest of the country), opening up better career

opportunities for young workers in the West Coast.

The Chinese could potentially control for these reasons for differential trend in labor market outcomes between the West Coast and non-West Coast, as they have some key features in common with the Japanese but they were not interned during World War II. First, the Chinese also have a positive difference-in-differences in military service (actually, the point estimate is even higher than for the Japanese). Second, the Chinese also had better access to higher-paying, higher-status jobs in Hawaii than the West Coast, so the age-wage profiles might be expected to be steeper for those in Hawaii. Finally, the Chinese faced much of the same anti-Asian discrimination as the Japanese – more in the West Coast than non-West Coast – and would also have benefited from a reduction in anti-Asian discrimination. Thus, to the extent that the difference-in-differences estimates in Table 4 are contaminated by one of the foregoing stories, the Chinese should be able to control for it. The estimated β for the Chinese (obtained by estimating Equation 1 using a sample of individuals who are of Chinese descent) would give the difference in earnings for the older cohort in the West Coast that has nothing to do with the internment. We can subtract out the estimated β for the Chinese from the estimated β for the Japanese to obtain the difference-in-differences-in-differences estimate of the effect of the labor market withdrawal induced by the internment; this is a "detrended" estimate of the effect.

To form the Chinese sample, I apply the same sample restrictions as for the Japanese. To make the geographic distribution of the Chinese more comparable to that of the Japanese, I weight each Chinese individual born in state s by $(N_{sJ}/\Sigma_s N_{sJ})/(N_{sC}/\Sigma_s N_{sC})$, where N_{sJ} is the number of Japanese observations with non-missing earnings for state s and N_{sC} is the number of Chinese observations with non-missing earnings for state s.[29] Appendix Table 1 displays the

[29] The result is that the distribution of the Chinese by state of birth is the same as the distribution of the Japanese by

descriptive statistics. The results from estimating Equation 1 with the Chinese sample are presented in Table 5. None of the coefficients in Columns 1 and 2 are significantly different from zero at the 95% level of confidence. The lack of significant results is partially the result of the smaller sample size for the Chinese. However, the sign and magnitude of the Chinese difference-in-differences estimates do not support the idea that the results for Japanese are driven entirely by a differential trend in labor market outcomes between the West Coast and non-West Coast. For each earnings outcome, the Chinese difference-in-differences estimate is either positive, or negative but lower in magnitude, compared to the Japanese estimate. The difference-in-differences in occupational score is negative in both Columns 1 and 2, but the magnitude is lower than for the Japanese. Finally, the difference-in-differences in the probability of being a self-employed worker is positive in Column 1, but negative in Column 2, and both are lower in magnitude than the Japanese estimate.

We can explicitly subtract out the differential trends – as estimated using the Chinese sample – from the Japanese difference-in-difference estimates of Table 4. The results of this exercise are displayed in Table 5, Columns 4 and 5. The triple differences estimates show the same qualitative results as Table 4, which is not surprising given that the Chinese difference-in-differences estimates were not statistically different from zero. The effects on earnings and occupational score remain negative, and the effect on proportion self-employed remains negative, but they are imprecisely estimated.

A concern with using the Chinese as a control group is that prior to the Japanese American internment, the Chinese had virtually no presence in agriculture, whereas half of U.S.-

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state of birth, with the weighted number of Chinese observations the same as the unweighted. Compared to the Japanese, the Chinese had a much larger presence in the Northeast census region. Without weighting, the difference-in-differences in earnings would actually be more positive for the Chinese, meaning the triple differences estimates would be more negative. That is, not weighting strengthens the finding of earnings losses for the Japanese working-age internees.

born male internees worked in agriculture. After World War II, the U.S. underwent rapid structural transformation out of agriculture into industry and service. Thus, if there are region-specific changes in the age-wage profile that are unique to the shift out of agriculture, then the Chinese cannot adequately control for them.[30] One way to address this is to incorporate other Asians into the analysis. At the outset of World War II, the largest Asian groups in the U.S. were the Chinese, Japanese, Koreans and Filipinos. Considering Koreans and Filipinos had a greater presence in agriculture than the Chinese, all non-Japanese Asians might be a better control than Chinese only.[31] In Columns 6 and 7 of Table 5, I report the difference-in-differences-in-differences estimates for when Chinese, Koreans and Filipinos as a group are used to control for a differential trend. The results are similar to Columns 4 and 5, although the standard errors are smaller due to the larger sample size.

A second way to address this is to use data on Whites. We would like the White control group to capture as much of the dynamics of the Japanese as possible, hence geographic restrictions for the former seem necessary. Below, I use two samples of Whites. One is those born in Hawaii and California. A second is Whites born in the West census region of two foreign-born parents; as the children of immigrants, their rootedness in the West would be similar to the U.S.-born Japanese. Whites had a greater presence in agriculture than the Chinese prior to the internment (approximately 13% of the West Coast older cohort was in agricultural occupations in the first sample, and 21% in the second sample according to the 1940 Census).

[30] Structural transformation in the post-World War II economy displaced Chinese workers as well – for example, technological advances in home production reduced the demand for launderers and domestic servants, two important occupations for the Chinese in the West Coast – but arguably the displacement of workers in agriculture was greater.
[31] Immigration to the U.S. from Korea and the Philippines started later than that from China and Japan. The inflow was heavy from China between the 1850s and 1880s (ended by the Chinese Exclusion Act of 1882), from Japan between the 1890s and 1900s (ended by the Gentlemen's Agreement of 1908), and from Korea and the Philippines since the 1910s. Compared to Japanese and Chinese, Koreans and Filipinos were less educated, more likely to be in farm laborer and factory operator jobs, less likely to be self-employed and members of less established ethnic networks. For these reasons, one might expect a distinct trend for Koreans and Filipinos. Consequently this paper emphasizes results using the Chinese as the only control.

Similar to the Japanese, Whites' participation in agriculture is lower in Hawaii and over time, the difference-in-differences in years of schooling is positive and the difference-in-differences in military service is negative.

The estimation results using the Whites are presented in Table 6 (see Appendix Tables 2 and 3 for the means). Columns 1 and 2 show the triple differences estimates using individuals born in California and Hawaii only. Columns 3 and 4 show the triple differences estimates using individuals born in the West Census Region excluding Alaska, with the Whites having two immigrant parents. There is no evidence from the difference-in-differences estimates for either sample of Whites that the older cohort is faring worse than the younger cohort in the West Coast relative to the non-West Coast. As a result, the triple differences estimates in Table 6 show the same qualitative results as the difference-in-differences estimates for the Japanese.

C. *Earnings Losses Relative to the Reparations*

In summary, I find evidence that the labor market withdrawal induced by the Japanese American internment during World War II generated earnings losses twenty-five years afterwards. Also, former internees are more likely to be in a lower-paying job – occupational score is lower, and the proportion in professional/technical and managerial occupations is lower. Finally, former working-age internees are much more likely to be self-employed workers. These findings are robust to controlling for differential trends in labor market outcomes between the West Coast and non-West Coast (to the extent that they are adequately approximated by the Chinese or Whites).

These findings should not be interpreted as the overall impact of the internment, but as the impact of the labor market withdrawal induced by the internment.[32] Additionally, these

[32] This is because both the younger and older cohorts of Japanese in the West Coast were interned, although only the older cohorts' labor market experience was interrupted (the younger cohort was still school-aged in camp).

findings are for a single point in time, 1970, twenty-five years after the internment. It is possible that the long-run effects differ from shorter-run effects, and even that the effects estimated here are idiosyncratic effects for 1970. One way to get a sense of the general validity of the estimates obtained here is to apply to same empirical strategy to data from other census years; micro-level census data for residents of Hawaii became available starting in 1960, and conceivably I can estimate treatment effects for 1960 and 1980 also. It must be noted that by 1980, members of the treated cohort (born 1908-1924) were already aged 56-72. These ages are too advanced to meaningfully study labor market outcomes, and so I have not pursued analysis using 1980 Census data.

I have, however, performed a detailed analysis using 1960 Census data. Appendix Table 4 reports the double and triple differences estimates using Japanese and Chinese born 1908-1935.[33] The triple differences estimates in Columns 7 and 8 are broadly consistent with those presented in Table 5 using 1970 Census data.[34] They are negative for log earnings and log wages, and positive for probability of being a self-employed worker. These results suggest a larger detrimental effect on wages than the results using 1970 data, which implied that most of the earnings effect is mediated through reduced self-employment income. Several caveats must be made about 1960 results. First, micro-level data are available for only a one percent sample of the population (as opposed to 6% in subsequent censuses). Considering I am looking at a narrow portion of the population (due to race, year of birth, sex and place of birth restrictions), the resulting sample size becomes extremely small. In particular, there are fewer than 800 observations for Japanese and fewer than 200 observations for the Chinese. Second, the

[33] The analysis using 1960 data excludes those born 1936-1941 (aged 19-24). Some of these individuals are still attending school in 1960 and should not be included in a study of labor market outcomes.

[34] I do not discuss the difference-in-differences results reported in the same table because of the strong trends found in the Chinese control sample. In this context, the detrended results are more relevant.

youngest members of the younger cohort are still school-aged. The results in Appendix Table 4, which drops individuals under age 25, may therefore not be directly comparable to the earlier results using 1970 data.[35] Finally, as a result of the small sample sizes, there are actually too few self-employed workers to estimate the effect on business income. Given these caveats, I have chosen to emphasize the 1970 results in this paper.

It is interesting to note how similar these long-run effects estimated using 1970 data are to the immediate effects estimated by Broom and Riemer (1949). Based on a survey of former internees in Los Angeles County, Broom and Riemer found that real income fell about 20% between 1941 and 1946.[36] Additionally, they observed an influx of former internees into contract gardening, and called it "[o]ne of the clearest and most important trends in the postwar period."[37] The deleterious effects of internment estimated by Broom and Riemer appear to have been persistent since they show up even using 1970 data.

The Civil Liberties Act of 1988 paid each surviving former internee $20,000 (about $6000 in 1969 dollars) in reparations.[38] My estimates imply that these reparations fall considerably short of compensating working-age male internees for lifetime earnings losses resulting from the labor market withdrawal induced by the internment. Members of the treatment group in my analysis had several decades of work life ahead of them. My empirical analysis suggests a single-year earnings loss of $1000 to $1400 in 1969 dollars, which already

[35] To the extent that the work lives of the oldest members of the young cohort were partially interrupted by the internment (but the work lives of the youngest members were not at all impacted), then the earnings losses suggested by the difference-in-differences estimates would be too low. I have repeated the analysis for all individuals born 1908-1941 (i.e., not dropping the 19-24 year-olds) and get similar results.

[36] Per worker nominal income increased 9% between 1941 and 1946, but inflation was 25%. Over the same period, per worker nominal income increased 44% for Whites.

[37] Broom and Riemer, p. 119.

[38] The Evacuation Claims Act of 1948 was passed to compensate for physical property losses incurred by the internees. Not only did this act ignore non-property losses, also it ended up covering only a small fraction of property losses (only $37 million was paid out against claims of $148 million).

amounts to one-fifth of the reparations.[39] As a back-of-the-envelope calculation, if I assume $1100 is the constant permanent effect of the labor market withdrawal induced by the internment and 65 is the retirement age, then the implied lifetime earnings losses are $31,000 in 1969 dollars for the oldest member of the treatment group (born 1908) and $48,000 in 1969 dollars for the youngest (born 1924).

D. Results in the Context of Human Capital Models

Prior to the internment, the children of Japanese immigrants were poised to do at least as well as their fathers. They had more education, better English-language skills and more legal rights (to own property, to vote) than their fathers. Their fathers had started in the U.S. as laborers, but had managed to build up their own businesses. The children were expected to go to the next step, to professional and other non-manual-labor occupations. After the internment, we observe the U.S.-born working-age internees going through what their fathers had gone through decades ago – working as laborers (mostly in contract gardening), saving money, and building their own businesses. The internment seems to have set the U.S.-born working-age internees back a generation. How did this happen?

The findings are consistent with both the loss-of-labor-market-experience model and the loss-of-advantageous-job-matches model (which were discussed in Section II). It is difficult to empirically disentangle which is the more relevant model.[40] Data on actual years of labor market experience would help – if there is a significant treatment effect even after explicitly controlling for years of labor market experience, then the loss-of-labor-market-experience model cannot account for it. Unfortunately, I do not have such data. However, examining the occupational distribution of the internees before and after the internment might provide elucidation on the

[39] Calculation is based on the difference-in-differences estimates for log earnings of 9% to 13%, and average earnings of $11,000.
[40] Additional models might apply, as discussed below.

specific mechanisms for the earnings losses.

Table 7 tabulates the occupational background of male internees. The data are from a form filled out for all internees in 1942, when they entered the camps. Occupational data by cohort are not available. This is not a serious impediment because the U.S.-born individuals roughly correspond to the older cohort born 1908-1924 that is the treated group in this paper, whereas the foreign-born individuals roughly correspond to an even older cohort that is too old in age to study using the 1970 Census. 46% of the U.S.-born internees worked in agriculture immediately prior to the internment. Given the youth of this group (age 14 and over who have ever worked), agricultural laborer must have been a temporary or part-time occupation; many had not yet finished schooling and started their careers.

To examine the occupational shifts, I use IPUMS data from the 1940, 1950, 1960 and 1970 Censuses. In Table 8, I report the occupational distribution of the Japanese by cohort and census year. Note the 1940 distribution matches the distribution for U.S.-born internees in Table 7 fairly well despite the 1940 IPUMS having very few observations. In 1950, the working-age internees studied in this paper were aged 26-42. Typically by this age, men would have started their permanent careers but in fact more than one-quarter were still laborers. Indeed, by 1950, only one half of the laborers in 1940 had managed to enter another occupation (a majority to self-employment as farmer or proprietor). By 1960, more left contract gardening for other occupations, interestingly everything but farmer and proprietor. Workers stayed in the same occupation between 1960 and 1970 except for half of the farmers, who became contract gardeners. Although this latter movement can be viewed as caused by urbanization which would have happened even in the absence of the internment, it can also be interpreted as a result of the internment; had the internment never occurred, the working-age internees would not have been

as likely to become farmers in the first place. I elaborate on this next.

The pre-internment occupational distribution for the working-age internees would not appear to provide much support for the loss-of-civilian-labor-market-experience model. On the one hand, much of the mass of the working-age internees prior to the internment was in occupations that are not known to confer much returns to experience (46% farm laborers, 3% other laborers, 3% (domestic) service workers). On the other hand, there is a great deal of movement away from agricultural jobs to non-agricultural jobs. When switching occupations, skills relevant for the old job may not be particularly relevant for the new job, and so loss of a few years of labor market experience in the old job may be immaterial.[41] In this context, the loss-of-advantageous-job-match model seems more relevant for explaining the effects of the labor market withdrawal induced by the internment. However, the specific channel is not clear. Only 16% of the old cohort was self-employed in 1940, and so the story is probably not about separation from self-owned enterprises for which much specific human capital had been accumulated; this might be a better story for even older internees. Moreover, many of the enterprises would have been farms, and individuals would have been separated from them anyway by 1970 with the rapid urbanization. A more plausible story involving the loss of advantageous job matches is that the labor market withdrawal induced by the internment prevented the working-age internees from accumulating search capital.[42] Search capital might include knowledge of what types of jobs are out there, where to look and who to contact. Without search capital, working-age-internees would have a harder time finding a good job after the displacements caused by the internment and urbanization. They search for employment in a

[41] Some agricultural skills were useful in contract gardening (a non-agricultural job). However, even an inexperienced farm worker would possess the skills needed to succeed in contract farming.

[42] In this case, the job match that is lost is not one the individual ever held, but one he would have gotten had he been able to build up the search capital.

less effective way, and may end up with no acceptable job offers. There is no expectation that further search would be any more fruitful and there is urgent need for money (they had families to support; the internment had caused huge property losses so many were starting their post-internment lives with nothing), so they just take the dependable path of self-employment.

The loss-of-civilian-labor-market-experience could be salvaged- if we allow that some working-age internees observed in the pre-internment era were in temporary occupations. It is plausible to think that in the absence of internment, they would have stopped being agricultural laborers and entered a new occupation (the plan was white-collar jobs), marking the start of their career. Because of the internment, the working-age internees lost these years of work experience in the desired area. After the internment, they applied for jobs offering wages exceeding their reservation wage. However, they might have been less able to get these jobs because non-Japanese job applicants with otherwise similar qualifications possessed a few more years of relevant work experience. Phrased differently, the best wage offer from the wage employment sector may have fallen short of their reservation wage. Without acceptable offers from the wage employment sector immediately after the internment, the working-age internees might have given up their search and turned to self-employment.[43]

The key distinction between the loss-of-advantageous-job-match story and the loss-of-civilian-labor-market-experience story is that in the former, it is lack of search capital that prevents an individual from getting a good job while in the latter it is the lack of work experience in the desired area that prevents it. In both cases though, the result is devolution into self-employment. Initially, self-employment was as contract gardener. As savings were amassed, it was as farmer and proprietor. Urbanization took away many farms, leading some farmers to

[43] Either the individual has the same reservation wage for all types of employment and he gets no offer from the wage sector, or he has a higher reservation wage for the wage sector than the self-employment sector. The latter is plausible, since there are non-monetary rewards to self-employment, such as greater autonomy.

become contract gardeners by 1970. Enough working-age internees stuck to their fathers' path of self-employment, and stopped looking for wage employment after the initial search, that overall the labor market withdrawal induced by the internment had negative effects decades after the internment. In the difference-in-differences analysis, those choosing wage employment earned weakly less, but those choosing self-employment suffered earnings losses that were large and significant.

Although I have interpreted the results through the lens of interrupted work lives, there could be alternative mechanisms. The internment experience had many effects which could in turn impact long-run labor market outcomes. It caused property losses, psychological distress, fragmentation in the Japanese community, trauma and so on. Not every effect of internment can be considered a mechanism for the earnings losses found in the paper. In the difference-in-differences strategy, internment effects that are common between the younger and older cohorts are absorbed by the West Coast fixed effect and are not part of the treatment effect. Instead, only effects of internment that are differential by cohort can be valid alternative mechanisms. Interruption of work life is an obvious one (since children would not have begun their work lives yet), but there may be others. One example might be health. This is suggested by the medical literature on the long-run health consequences of prisoner-of-war (POW) status during World War II.[44] These studies tend to find excess morbidity and mortality among former POWs compared to non-prisoner veterans decades after the imprisonment (see for example Beebe (1975), Keehn (1980) and Page and Brass (2001)). Trauma, malnutrition and stress during imprisonment are among the key contributors to worse health later. Violence and nutritional deprivation were less serious problems in the internment camps compared to the POW camps, but inhabitants of both types of camps were prisoners being held for indefinite periods. If we

[44] I thank the referee who pointed me to this literature.

assume that the internment impaired the health of adult internees more, then health would yet be another mechanism for the long-run labor market effects estimated in this paper.[45]

VI. Conclusions

This paper provides new empirical evidence on the long-run economic consequences of an important episode in American history. I find that because of the civilian labor market withdrawal induced by the Japanese American internment during World War II, male internees incurred earnings losses, shifted to lower-paying, lower-status jobs, and moved to self-employment opportunities. These findings are contrary to the view that the Japanese recovered from the wartime experience with remarkable resilience to emerge as a model minority. While the Japanese appear successful overall, their success must be compared to an appropriate counterfactual; perhaps they would have succeeded even more in the absence of the internment.

The treatment group used in the analysis of this paper was born between 1908 and 1924. These are the youngest birth cohorts for whom labor market experience was affected by the internment. Older cohorts were probably even more adversely impacted, since they were more likely to be foreign-born, to have held an agricultural occupation prior to internment, and to have owned a farm or small business prior to internment (and therefore possessing more firm-specific human capital). Thus, the earnings losses for working-age male internees as a whole likely exceed 9% to 13%.

A promising avenue for further investigation is to examine the effects of internment on females. Considering women's labor force participation rate was less than half of men's prior to the internment, we might expect the experience of working-age female internees to be somewhat different. What economic mechanisms account for the effects on women, and what are the

[45] There is no empirical evidence on the validity of this assumption. The follow-up studies on former POWs obviously do not inform on this issue since children do not serve in the military.

implications for economic models of the family?

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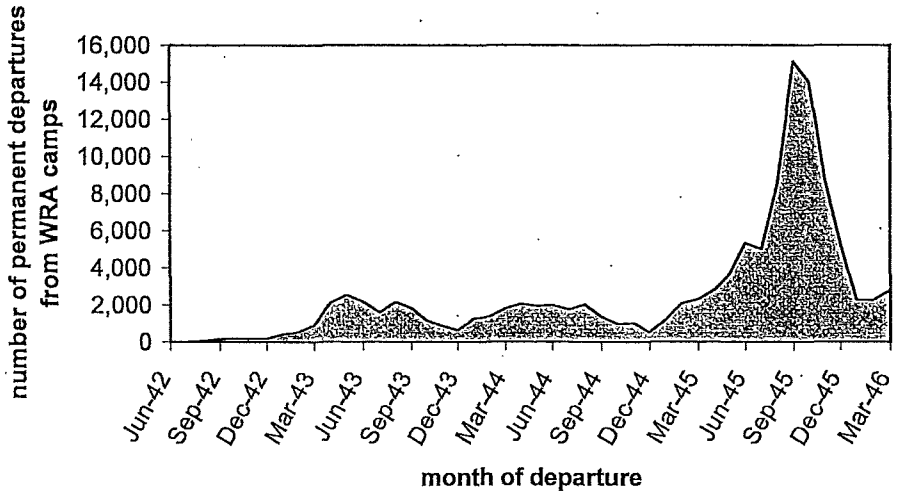
Figure 1. Duration in the Internment Camps



Mean duration of internment: 3.25 years (3 mos in WCCA centers + 36 mos in WRA camps)
Median duration of internment: 3.5 years (August 1945 = 42nd month)

Notes: The area under the graph sums to 117,694, which includes the 110,000 evacuated from the West Coast in 1942 as well as births during internment.
Source is U.S. War Relocation Authority (1946), Table 10, Column 3.
"Permanent Departures" are departures for relocation purposes, armed forces, institutions, Department of Justice internment camps and repatriation to Japan.
Prior to location in WRA camps, the internees spent up to three months in WCCA assembly centers; Army-enforced evacuation began in March 1942.

Table 1. Japanese Affected by the Internment

	population in 1940 (1)	number interned in WRA camps in 1942 (2)	interned/ pop in 1940 (3)
The Evacuated Area: West Coast			
Arizona	632	245	39%
California	93,717	92,757	99%
Oregon	4,071	3,531	87%
Washington	14,565	12,848	88%
West Coast total	***112,985***	***109,381***	***97%***
Unevacuated Areas			
All other continental U.S. states	13,962	105	1%
Hawaii	157,905	1,037	1%

Notes: Column 1 is from the 1940 Census.
Column 2 is from U.S. War Relocation Authority (1946), Table 19. The latter excludes 145 internees from Alaska (Aleuts) and 502 internees with no last permanent address data.
The internees from non-West Coast continental U.S. states include persons whose permanent address is outside the West Coast but were in the West Coast at the time of evacuation, or persons who voluntarily joined family members in relocation centers. The internees from Hawaii are predominantly persons who were individually evacuated and their families.

Table 2. Means for Japanese, 1970 Census

	born in the West Coast (evacuated states)			born elsewhere (non-evacuated states)		
	overall	born 1908-24	born 1925-41	overall	born 1908-24	born 1925-41
	(1)	(2)	(3)	(4)	(5)	(6)
Panel A. Labor Force Participation Measures						
worked last year	0.9819	0.9746	0.9892	0.9733	0.9634	0.9822
worked >= 50 weeks last year, if worked	0.8342	0.8273	0.8409	0.8794	0.8646	0.8925
worked >= 40 hours last week, if worked	0.9177	0.9255	0.9098	0.9170	0.9138	0.9199
Panel B. Earnings Measures (in 1969 dollars)						
log earnings, indivs with any earnings	9.2018	9.1538	9.2454	9.1027	9.0924	9.1115
log wages, indivs with no bus. inc.	9.1786	9.1481	9.2019	9.0808	9.0622	9.0956
log bus. inc., indivs with no wages	9.1270	9.0130	9.3335	9.1967	9.2185	9.1563
Panel C. Job Characteristics (of individuals who worked last year or last week)						
occupational score (see notes)	45.18	41.38	48.93	45.44	44.28	46.46
self-employed worker	0.3101	0.4004	0.2211	0.1198	0.1631	0.0818
Panel D. Other Variables						
age	44.87	51.36	38.40	44.71	52.41	37.81
years of schooling	13.17	12.48	13.87	11.97	10.83	12.99
high school diploma	0.8630	0.8147	0.9120	0.7207	0.5386	0.8840
college diploma	0.2579	0.1713	0.3458	0.1636	0.0911	0.2286
served in WWII	0.3095	0.4464	0.1756	0.2726	0.3741	0.1779
ever served in U.S. military	0.5998	0.4639	0.7328	0.5764	0.3973	0.7434
total number of observations	2,045	1,022	1,023	3,409	1,610	1,799
obs with non-missing earnings	1,783	848	935	3,158	1,452	1,706

Notes: Sample is as follows: Japanese male, 1970 IPUMS (the State, Metro and Neighborhood samples -- both Form 1 and 2 -- have been merged), and year of birth 1908-1941 (aged 29-62). Individuals born 1908-1924 are classified as the older cohort. The West Coast is defined as AZ, CA, OR and WA. Occupational score is an index of occupations according to the 1950 median income of all individuals in that occupation, in units of of hundreds of 1969 dollars.

Table 3. Difference-in-Differences in Earnings, 1970 Census for Japanese

	dependent variable is log 1969 earnings (wages + business income)					
	(1)	(2)	(3)	(4)	(5)	(6)
older cohort	-0.0724	-0.1220	-0.0994	-0.0878	-0.1317	-0.1015
* born in West Coast	(0.0357)	(0.0350)	(0.0377)	(0.0358)	(0.0351)	(0.0377)
older cohort	-0.0192	0.1073	0.2194			
(born 1908-1924)	(0.0207)	(0.0219)	(0.0870)			
born in West Coast	0.1339	0.0785	-0.0099			
(CA, WA, OR or AZ)	(0.0245)	(0.0238)	(0.1009)			
years of schooling		0.0595	0.0626		0.0604	0.0648
		(0.0034)	(0.0059)		(0.0033)	(0.0057)
years of schooling			-0.0097			-0.0132
* older cohort			(0.0069)			(0.0069)
years of schooling			0.0061			0.0078
* born in West Coast			(0.0072)			(0.0071)
year of birth dummies	NO	NO	NO	YES	YES	YES
state of birth dummies	NO	NO	NO	YES	YES	YES
Adjusted R-squared	0.0087	0.0810	0.0817	0.0423	0.1098	0.1110
Number of observations	4,941	4,816	4,816	4,941	4,816	4,816

Notes: Robust standard errors in parentheses. Sample is as follows: 1970 IPUMS (the State, Metro and Neighborhood samples -- both Form 1 and 2 -- have been merged), male and year of birth 1908-1941 (aged 29-62).

Table 4. Difference-in-Differences in Labor Market Outcomes, 1970 Census for Japanese

dependent variable	dep var mean (st dev) of Japanese old & non-WC	Japanese Diff-in-Diffs Estimate coeff for *older cohort*born in West Coast* basic (1)	educ ctrl (2)	N in (2) (3)
Panel A. Labor Force Participation Measures				
Worked last year	0.9634	-0.0062	-0.0113	5,312
	(0.1879)	(0.0080)	(0.0088)	
Worked >= 50 weeks last year, if worked last year	0.8646	0.0032	-0.0114	5,195
	(0.3423)	(0.0203)	(0.0215)	
Worked >= 40 hours last week, if worked last week	0.9138	0.0102	0.0115	4,891
	(0.2808)	(0.0163)	(0.0177)	
Panel B. Earnings Measures (in 1969 dollars)				
Log annual earnings, indivs with any earnings	9.0924	-0.0878	-0.1015	4,816
	(0.5732)	(0.0358)	(0.0377)	
Log annual wages, indivs with no business income	9.0622	-0.0309	-0.0430	4,104
	(0.5242)	(0.0362)	(0.0376)	
Log annual business income, indivs with no wages	9.2185	-0.4387	-0.4180	426
	(0.8882)	(0.1874)	(0.1903)	
Panel C. Job Characteristics (of individuals who worked last year or last week)				
Occupational score	44.2758	-5.5013	-5.1484	5,203
	(14.7289)	(0.9620)	(0.9755)	
Self-employed worker	0.1631	0.1115	0.0748	5,203
	(0.3696)	(0.0232)	(0.0256)	

Notes: Robust standard errors in parentheses. Sample is as follows: 1970 IPUMS (the State, Metro and Neighborhood samples -- both Form 1 and 2 -- have been merged), male and year of birth 1908-1941 (aged 29-62). The diff-in-diffs estimate is the coefficient for the interaction term, older cohort*born in West Coast. "Basic" specification in column 1 has a full set of year of birth dummies and state of birth dummies on the right-hand side. "Educ ctrl" specification in column 2 adds years of schooling, yrssch*older cohort and yrssch*born in West Coast as explanatory variables.

Table 5. Comparison to Other Asians, 1970 Census

dependent variable	dep var mean (st dev) of Chinese old & non-WC	Chinese Diff-in-Diffs Estimate coeff for *old*West Coast* basic (1)	educ ctrl (2)	N in (2) (3)	Diff-in-Diffs-in-Diffs Japanese - Chinese basic (4)	educ ctrl (5)	Japanese - All Other Asians basic (6)	educ ctrl (7)
Panel A. Labor Force Participation Measures								
Worked last year	0.9584	0.0054	0.0079	1,388	-0.0115	-0.0195	-0.0293	-0.0257
	(0.1999)	(0.0205)	(0.0185)		(0.0218)	(0.0203)	(0.0215)	(0.0204)
Worked >= 50 weeks, if worked last year	0.8868	-0.0650	-0.0655	1,345	0.0695	0.0545	0.0063	-0.0078
	(0.3173)	(0.0437)	(0.0432)		(0.0476)	(0.0477)	(0.0438)	(0.0450)
Worked >= 40 hours, if worked last week	0.8942	0.0313	0.0392	1,257	-0.0221	-0.0286	-0.0626	-0.0552
	(0.3081)	(0.0370)	(0.0396)		(0.0399)	(0.0428)	(0.0347)	(0.0370)
Panel B. Earnings Measures								
Log annual earnings, indivs with any earnings	9.1869	0.0253	-0.0167	1,260	-0.1133	-0.0829	-0.0772	-0.0602
	(0.6782)	(0.0791)	(0.0766)		(0.0857)	(0.0843)	(0.0784)	(0.0800)
Log annual wages, indivs with no bus. inc.	9.0928	0.0039	-0.0198	1,066	-0.0319	-0.0187	-0.0054	-0.0057
	(0.6229)	(0.0786)	(0.0754)		(0.0853)	(0.0830)	(0.0790)	(0.0793)
Log annual bus. inc. indivs with no wages	9.7708	-0.1528	0.0781	116	-0.3387	-0.5285	-0.2675	-0.4417
	(0.6882)	(0.3670)	(0.3105)		(0.3708)	(0.3314)	(0.3229)	(0.2949)
Panel C. Job Characteristics								
Occupational score	48.2243	-1.1112	-0.7152	1,351	-4.4549	-4.4275	-6.1945	-5.2876
	(16.4137)	(2.1858)	(2.0940)		(2.3584)	(2.2809)	(2.0944)	(1.9830)
Self-employed worker	0.1420	0.0193	-0.0057	1,351	0.0907	0.0757	0.0831	0.0667
	(0.3496)	(0.0514)	(0.0541)		(0.0556)	(0.0590)	(0.0479)	(0.0518)

Notes: See Table 4 notes. In addition, in Columns 1 to 5 (6 to 7), each Chinese (non-Japanese Asian) observation has been weighted such that the distribution of Chinese (non-Japanese Asian) by state of birth is the same as the distribution of Japanese by state of birth. Columns 4 and 5 (6 and 7) drop the observations with states of birth that either have no Chinese (non-Japanese Asian) or no Japanese.
The diff-in-diffs-in-diffs estimate is the coefficient for the interaction term, older cohort*born in West Coast*Japanese.
"Basic" specification in Columns 4 and 6 has older cohort*born in West Coast, dummies for each Asian group, year of birth dummies and state of birth dummies (the effects of the last two groups of variables are allowed to vary by Japanese/non-Japanese) on the right-hand side.
"Educ ctrl" specification in Columns 5 and 7 adds years of schooling, yrssch*older cohort and yrssch*born in West Coast, and their interactions with Japanese, as explanatory variables. For the log annual earnings outcome, N = 5993 in Column 5 and N = 6974 in Column 7.

Table 6. Comparison to Whites, 1970 Census

	California and Hawaii Diff-in-Diffs-in-Diffs		West Children of Immigrants Diff-in-Diffs-in-Diffs	
	basic	educ ctrl	basic	educ ctrl
dependent variable	(1)	(2)	(3)	(4)
Panel A. Labor Force Participation Measures				
Worked last year	-0.0340	-0.0162	-0.0148	-0.0121
	(0.0159)	(0.0166)	(0.0130)	(0.0137)
Worked >= 50 weeks, if worked last year	-0.0427	-0.0557	0.0128	0.0018
	(0.0298)	(0.0318)	(0.0290)	(0.0301)
Worked >= 40 hours, if worked last week	0.0064	0.0250	0.0306	0.0359
	(0.0242)	(0.0257)	(0.0225)	(0.0238)
Panel B. Earnings Measures				
Log annual earnings, indivs with any earnings	-0.1387	-0.0558	-0.0841	-0.0781
	(0.0539)	(0.0555)	(0.0524)	(0.0534)
Log annual wages, indivs with no bus. inc.	-0.0688	-0.0053	-0.0010	-0.0023
	(0.0539)	(0.0553)	(0.0533)	(0.0542)
Log annual bus. inc. indivs with no wages	-0.4632	0.0101	-0.3268	-0.2029
	(0.4020)	(0.3725)	(0.2697)	(0.2642)
Panel C. Job Characteristics				
Occupational score	-6.0727	-3.1038	-5.3543	-4.8024
	(1.3162)	(1.3187)	(1.2545)	(1.2359)
Self-employed worker	0.0824	0.0727	0.0981	0.0605
	(0.0288)	(0.0316)	(0.0304)	(0.0327)

Notes: Robust standard errors in parentheses. In Columns 1 and 2, individuals are born either in California or Hawaii. In Columns 3 and 4, individuals are born in the West census region excluding Alaska (i.e., AZ, CA, CO, HI, ID, MT, NV, NM, OR, UT, WA and WY) and Whites have two immigrant parents. The diff-in-diffs-in-diffs estimate is the coefficient for the interaction term, older cohort*born in West Coast*Japanese. "Basic" specification has older cohort*born in West Coast, year of birth dummies and state of birth dummies (the effects of the last two groups of variables are allowed to vary by Japanese/non-Japanese) on the right-hand side. "Educ ctrl" specification adds years of schooling, yrssch*older cohort and yrssch*born in West Coast, and their interactions with Japanese as explanatory variables.

Table 7. Occupational Distribution of Male Internees, 1942

	Total		U.S.-born		Foreign-born	
	Number	%	Number	%	Number	%
	(1)	(2)	(3)	(4)	(5)	(6)
Panel A. Male Internees						
professional, technical and managerial	7,010	17%	2,677	14%	4,333	19%
clerical and sales	3,943	9%	2,959	16%	984	4%
service	3,812	9%	1,051	6%	2,761	12%
craft/operative -- skilled	2,188	5%	1,029	5%	1,159	5%
craft/operative -- semi-skilled	3,005	7%	2,185	11%	820	4%
craft/operative -- unskilled	777	2%	422	2%	355	2%
agricultural, fishery and forestry	21,027	50%	8,720	46%	12,307	54%
Total	41,762	100%	19,043	100%	22,719	100%
Panel B. Comparable Categories						
white-collar	10,953	26%	5,636	30%	5,317	23%
blue-collar	9,782	23%	4,687	25%	5,095	22%
agricultural	21,027	50%	8,720	46%	12,307	54%
	41,762	100%	19,043	100%	22,719	100%

Notes: Source of Panel A is U.S. War Relocation Authority (1946), Table 22, "Primary Occupational Classification as of 1942 by Sex and Nativity: Evacuees 14 Years Old and Over to WRA in 1942." This table reports the number of males in each occupational category, among males reporting some occupational experience. The WRA occupational categories are mapped into the three broad categories as follows: professional, clerical and sales are white collar; agricultural, fishery and forestry are agricultural, and the rest are blue-collar.

Table 8. Occupational Distribution of Japanese, 1940-1970 Censuses

	1940 Census		1950 Census		1960 Census		1970 Census	
	b. 1908-24	b. 1925-41	b. 1908-24	b. 1925-41	b. 1908-24	b. 1925-41	b. 1908-24	b. 1925-41
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Panel A. Japanese born in the West Coast								
professional, technical	4%	NA	10%	5%	16%	28%	17%	39%
farmer (owners, tenants, mgr)	11%	NA	22%	11%	22%	13%	9%	5%
managers, officials, proprietors	4%	NA	11%	2%	11%	5%	12%	11%
clerical	5%	NA	5%	2%	9%	7%	7%	5%
sales workers	12%	NA	5%	4%	8%	6%	7%	5%
craftsmen	3%	NA	8%	10%	12%	16%	12%	14%
operatives	7%	NA	9%	14%	8%	10%	11%	8%
service workers	3%	NA	3%	4%	4%	1%	4%	3%
farm laborers	46%	NA	10%	20%	4%	8%	3%	2%
other laborers	3%	NA	18%	26%	4%	5%	18%	9%
proportion who are self-employed	16%	NA	41%	19%	42%	18%	40%	22%
number of observations	94	NA	209	99	182	141	989	1,001
Panel B. Comparable Categories								
white-collar	26%	NA	31%	13%	45%	45%	43%	60%
blue-collar	17%	NA	37%	55%	29%	31%	45%	33%
agricultural	56%	NA	33%	31%	26%	21%	12%	7%

Notes: Japanese males born 1908-1941 (aged 16-32 in 1940) in AZ, CA, OR or WA who have worked. The 1940, 1950 and 1960 IPUMS are each 1% samples, the 1970 IPUMS samples add up to a 6% sample. The Census occupational categories are mapped into the three broad categories as follows: professional, technical, managers, officials, proprietors, clerical and sales workers are white collar; farmer and farm laborers are agricultural, and the rest are blue-collar. "NA" denotes not applicable, the younger cohort is too young to be working.

Appendix Table 1. Means for Chinese, 1970 Census

	born in the West Coast (evacuated states)			born elsewhere (non-evacuated states)		
	overall	born 1908-24	born 1925-41	overall	born 1908-24	born 1925-41
	(1)	(2)	(3)	(4)	(5)	(6)
Panel A. Labor Force Participation Measures						
worked last year	0.9721	0.9566	0.9818	0.9545	0.9584	0.9513
worked >= 50 weeks last year, if worked	0.8459	0.8153	0.8646	0.8741	0.8868	0.8636
worked >= 40 hours last week, if worked	0.9315	0.9354	0.9292	0.9095	0.8942	0.9215
Panel B. Earnings Measures (in 1969 dollars)						
log earnings, indivs with any earnings	9.2244	9.2149	9.2302	9.2167	9.1869	9.2403
log wages, indivs with no bus. inc.	9.1354	9.0940	9.1599	9.1458	9.0928	9.1861
log bus. inc., indivs with no wages	9.5223	9.6003	9.4699	9.7834	9.7708	9.7947
Panel C. Job Characteristics (of individuals who worked last year or last week)						
occupational score (see notes)	51.56	50.61	52.15	49.02	48.22	49.66
self-employed worker	0.2558	0.2909	0.2344	0.1336	0.1420	0.1270
Panel D. Other Variables						
age	43.59	52.28	38.14	44.12	52.59	37.28
years of schooling	13.48	12.28	14.24	12.72	11.91	13.36
high school diploma	0.8664	0.7573	0.9354	0.8148	0.7265	0.8856
college diploma	0.3206	0.1964	0.3992	0.2811	0.1993	0.3467
served in WWII	0.3722	0.6493	0.1994	0.2584	0.3664	0.1651
ever served in U.S. military	0.6916	0.6752	0.7019	0.5815	0.4378	0.7056
total number of observations	581	219	362	860	354	506
obs with non-missing earnings	523	194	329	786	317	469

Notes: Each observation has been weighted such that the distribution of Chinese by state of birth is the same as the distribution of Japanese by state of birth.
Sample is as follows: Chinese male, 1970 IPUMS (the State, Metro and Neighborhood Form 1 and 2 samples), and year of birth 1908-1941 (aged 29-62).
Individuals born 1908-1924 are classified as the older cohort. The West Coast is defined as AZ, CA, OR and WA.
Occupational score is an index of occupations according to the 1950 median income of all individuals in that occupation, in units of of hundreds of 1969 dollars.

Appendix Table 2. Means for Whites Born in California or Hawaii, 1970 Census

	born in the West Coast (evacuated states)			born elsewhere (non-evacuated states)		
	overall	born 1908-24	born 1925-41	overall	born 1908-24	born 1925-41
	(1)	(2)	(3)	(4)	(5)	(6)
Panel A. Labor Force Participation Measures						
worked last year	0.9536	0.9280	0.9683	0.9269	0.8887	0.9566
worked >= 50 weeks last year, if worked	0.7832	0.7777	0.7862	0.8251	0.7919	0.8492
worked >= 40 hours last week, if worked	0.8947	0.8863	0.8994	0.9103	0.9031	0.9154
Panel B. Earnings Measures (in 1969 dollars)						
log earnings, indivs with any earnings	9.1381	9.1514	9.1309	9.0041	8.9675	9.0303
log wages, indivs with no bus. inc.	9.1048	9.1188	9.0976	8.9764	8.9409	9.0014
log bus. inc., indivs with no wages	9.2393	9.1890	9.2892	9.2085	9.0727	9.3502
Panel C. Job Characteristics (of individuals who worked last year or last week)						
occupational score (see notes)	46.76	46.72	46.78	44.61	44.01	45.04
self-employed worker	0.1475	0.1911	0.1236	0.0688	0.0796	0.0609
Panel D. Other Variables						
age	42.45	52.81	36.51	44.02	53.53	36.60
years of schooling	12.66	12.20	12.93	11.14	9.75	12.21
high school diploma	0.7572	0.7077	0.7855	0.5629	0.3986	0.6889
college diploma	0.2142	0.1696	0.2397	0.1560	0.0899	0.2067
served in WWII	0.3415	0.6078	0.1866	0.2612	0.3923	0.1591
ever served in U.S. military	0.6773	0.6387	0.6998	0.5949	0.4558	0.7032
total number of observations	56,430	20,554	35,876	1,641	719	922
obs with non-missing earnings	50,927	17,813	33,114	1,478	617	861

Notes: Sample is as follows: White male, 1970 IPUMS (the State, Metro and Neighborhood Form 1 and 2 samples), year of birth 1908-1941 (aged 29-62), and state of birth is California or Hawaii. Individuals born 1908-1924 are classified as the older cohort. The West Coast is defined as AZ, CA, OR and WA. Occupational score is an index of occupations according to the 1950 median income of all individuals in that occupation, in units of of hundreds of 1969 dollars.

Appendix Table 3. Means for Whites with Immigrant Parents, 1970 Census

	born in the West Coast (evacuated states)			born elsewhere (non-evacuated states)		
	overall	born 1908-24	born 1925-41	overall	born 1908-24	born 1925-41
	(1)	(2)	(3)	(4)	(5)	(6)
Panel A. Labor Force Participation Measures						
worked last year	0.9455	0.9299	0.9637	0.9386	0.9242	0.9710
worked >= 50 weeks last year, if worked	0.7651	0.7621	0.7685	0.8060	0.8041	0.8100
worked >= 40 hours last week, if worked	0.8934	0.8806	0.9079	0.9123	0.9094	0.9187
Panel B. Earnings Measures (in 1969 dollars)						
log earnings, indivs with any earnings	9.0558	9.0589	9.0524	8.9672	8.9652	8.9713
log wages, indivs with no bus. inc.	9.0174	9.0153	9.0196	8.9494	8.9555	8.9376
log bus. inc., indivs with no wages	9.1642	9.1463	9.2025	8.8942	8.8677	9.0100
Panel C. Job Characteristics (of individuals who worked last year or last week)						
occupational score (see notes)	43.53	43.75	43.28	43.50	43.52	43.47
self-employed worker	0.1646	0.1978	0.1268	0.1935	0.2117	0.1547
Panel D. Other Variables						
age	46.64	53.33	38.77	49.51	54.13	39.16
years of schooling	11.21	11.02	11.43	10.82	10.58	11.35
high school diploma	0.5714	0.5510	0.5954	0.5210	0.4836	0.6043
college diploma	0.1171	0.0970	0.1408	0.1155	0.0968	0.1572
served in WWII	0.4216	0.5491	0.2717	0.4264	0.4844	0.2964
ever served in U.S. military	0.6218	0.5720	0.6803	0.5667	0.5085	0.6970
total number of observations	6,893	3,724	3,169	2,460	1,701	759
obs with non-missing earnings	6,176	3,249	2,927	2,164	1,466	698

Notes: Sample is as follows: White male with both parents foreign-born, 1970 IPUMS (the State, Metro and Neighborhood Form 2 samples), year of birth 1908-1941 (aged 29-62), state of birth in the West Census Region except Alaska (i.e., AZ, CA, CO, HI, ID, MT, NV, NM, OR, UT, WA and WY). Individuals born 1908-1924 are classified as the older cohort. The West Coast is defined as AZ, CA, OR and WA.
Occupational score is an index of occupations according to the 1950 median income of all individuals in that occupation, in units of of hundreds of 1969 dollars.

Appendix Table 4. Analysis using 1960 Census

	Diff-in-Diffs (coeff for older cohort*born in West Coast) Japanese			Chinese			Diff-in-Diffs-in-Diffs Japanese - Chinese	
dependent variable	basic (1)	educ ctrl (2)	N in (2) (3)	basic (4)	educ ctrl (5)	N in (5) (6)	basic (7)	educ ctrl (8)
Panel A. Labor Force Participation Measures								
Worked last year	0.0005	-0.0047	787	0.0082	-0.0254	166	-0.0115	0.0172
	(0.0198)	(0.0206)		(0.0379)	(0.0399)		(0.0404)	(0.0421)
Worked >= 50 weeks, if worked last year	-0.0200	0.0174	774	0.3285	0.2548	164	-0.3443	-0.2331
	(0.0622)	(0.0647)		(0.1258)	(0.1325)		(0.1316)	(0.1375)
Worked >= 40 hours, if worked last week	-0.0950	-0.0740	725	-0.1545	-0.1668	159	0.0639	0.0992
	(0.0393)	(0.0397)		(0.1197)	(0.1257)		(0.1169)	(0.1213)
Panel B. Earnings Measures								
Log annual earnings, indivs with any earnings	0.0793	0.0279	767	0.5909	0.4866	163	-0.5337	-0.4785
	(0.0966)	(0.0994)		(0.2437)	(0.2521)		(0.2442)	(0.2507)
Log annual wages, indivs with no bus. inc.	0.0833	0.0675	564	0.6140	0.5213	133	-0.5466	-0.4720
	(0.1088)	(0.1096)		(0.2863)	(0.3174)		(0.2804)	(0.3040)
Log annual bus. inc. indivs with no wages	-0.0671	-0.1026	131	NM	NM	18	NM	NM
	(0.3966)	(0.3332)						
Panel C. Job Characteristics								
Occupational score	-1.4554	-1.5070	764	0.5188	-4.8634	162	-2.5733	3.1569
	(2.6543)	(2.5833)		(5.9361)	(6.2361)		(6.0695)	(6.2510)
Self-employed worker	0.1020	0.0950	777	-0.0955	-0.2150	164	0.1996	0.3071
	(0.0609)	(0.0649)		(0.1200)	(0.1326)		(0.1262)	(0.1375)

Notes: Robust standard errors in parentheses. Sample is as follows: 1960 IPUMS male and year of birth 1908-1935 (aged 25-52).
The diff-in-diffs estimate is the coefficient for the interaction term, older cohort*born in West Coast. "Basic" specification in columns 1 and 4 has a full set of year of birth dummies and state of birth dummies on the right-hand side. "Educ ctrl" specification in columns 2 and 5 adds years of schooling, yrssch*older cohort and yrssch*born in West Coast as explanatory variables. The diff-in-diffs-in-diffs estimate is the coefficient for the interaction term, older cohort*born in West Coast*Japanese. "Basic" specification in Column 7 has older cohort*born in West Coast, dummies for each Asian group, year of birth dummies and state of birth dummies (the effects of the last two groups of variables are allowed to vary by Japanese/non-Japanese) on the right-hand side. "Educ ctrl" specification in column 8 adds years of schooling, yrssch*older cohort and yrssch*born in West Coast, and their interactions with Japanese, as explanatory variables. In Columns 4 to 8, each Chinese observation has been weighted such that the distribution of Chinese by state of birth is the same as the distribution of Japanese by state of birth. Columns 7 and 8 drop the observations with states of birth that either have no Chinese or no Japanese. "NM" denotes not meaningful, there are too few observations to get coefficient and standard error for the given specification.

170097
SUBMITTED VIA EMAIL
2/8/17

February 7, 2017

The Honorable Edwin M. Lee
San Francisco City Hall
1 Dr. Carlton B. Goodlett Place, Room 200
San Francisco, CA 94102

Dear Mayor Lee,

On behalf of the Jewish Community Relations Council (JCRC) of San Francisco, the Peninsula, Marin, Sonoma, Alameda and Contra Costa counties, **I write to express our unwavering support for the Religious Registry Non-Cooperative Ordinance.** The organized Jewish community refuses to remain silent while facing the threat of any attempts to register Americans on the basis of their religion, nationality, ethnicity, or any other immutable characteristic.

We will not stand idly by as some in our country attempt to repeat history. As members of a community that has suffered persecution and even genocide, we know all too well the consequences of insidious identity-based registries. We also witnessed – and opposed – the registry and internment of our Japanese American neighbors here in California. This stain on our nation's legacy as a democracy occurred at the same time as six million of our fellow Jews were exterminated in Europe after they, too, were required to register with government authorities.

Any law that singles out people on the basis of religious beliefs, associations, practices, backgrounds, and identities would be a direct attack on the pluralistic, democratic, and inclusive values that serve as the very foundation of our country. But we are not naïve: recent executive orders outright banning refugees from seven Muslim-majority countries, as well as set a temporary ban on refugees in general comes from a concerted effort to institutionalize Islamophobia and other forms of bigotry at the highest levels of government.

Whether refugees ourselves or the progeny of refugees fleeing persecution and seeking a better life, the American Jewish community has flourished here because of the country's longstanding commitment to religious freedom. We wish the same for all other communities, especially Muslims, Arabs, South Asians, and all immigrants who are under such blatant assault by top political leadership and we support San Francisco's leadership of resilience during these challenging times.

People are looking to San Francisco to lead the way during these times that require enormous resilience, and we are proud to support your efforts to ensure the safety and wellbeing of all of the City's inhabitants. The proposed Religious Registry Non-Cooperative Ordinance is a step in the right direction in stopping bigotry in its tracks. We are also supporting **SB 31 by State Senator Ricardo Lara**, which amends the California Religious Freedom Act and complements this proposed ordinance by prohibiting state and local governments from providing any information that could be used in any such registry.

JCRC will continue to work as an ally to Muslims, communities of color, LGBT people, immigrants, women, and people of all economic classes. We strive for a world in which none of the characteristics of

identity, heritage, political beliefs, ability, immigration status, or faith are used to discriminate or separate people from their neighbors and loved ones.

We look forward to continuing our important work together.

Best regards,

Joe Goldman
Public Affairs & Civic Engagement Manager
San Francisco

CC: Supervisor London Breed, President, San Francisco Board of Supervisors
Supervisor Malia Cohen
Supervisor Mark Farrell
Supervisor Sandra Lee Fewer
Supervisor Jane Kim
Supervisor Aaron Peskin
Supervisor Hillary Ronen
Supervisor Ahsha Safai
Supervisor Jeff Sheehy
Supervisor Katy Tang
Supervisor Norman Yee

BOS 11, COB, PSNS
Leg Dep, Dep't a.
Mayor's office

President, District 5
BOARD of SUPERVISORS

City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-7630
Fax No. 554-7634
TDD/TTY No. 544-5227

London Breed

PRESIDENTIAL ACTION

Date: 1/30/17

To: Angela Calvillo, Clerk of the Board of Supervisors

2017 FEB -2 PM 4:00

Madam Clerk,
Pursuant to Board Rules, I am hereby:

☐ Waiving 30-Day Rule (Board Rule No. 3.23)

File No. 170092 Mayor
(Primary Sponsor)

Title. Non-Cooperation with Religion Registry

☐ Transferring (Board Rule No 3.3)

File No. _____ _____
(Primary Sponsor)

Title.

From: _____ Committee

To: _____ Committee

☐ Assigning Temporary Committee Appointment (Board Rule No. 3.1)

Supervisor _____

Replacing Supervisor _____

For: _____ _____ Meeting
(Date) (Committee)

London Breed

London Breed, President
Board of Supervisors

BOARD of SUPERVISORS

City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Sheryl Evans Davis, Director, Human Rights Commission
Micki Callahan, Director, Department of Human Resources
Barbara A. Garcia, Director, Department of Public Health
William Scott, Police Chief, Police Department
Sergeant Rachael Kilshaw, Police Commission
Vicki Hennessy, Sheriff, Sheriff's Department
Jon Givner, Office of the City Attorney
George Gascon, District Attorney, Office of the District Attorney

FROM: Erica Major, Assistant Clerk, Public Safety and Neighborhood Services Committee, Board of Supervisors

DATE: January 27, 2017

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following proposed legislation, introduced by Mayor Lee on January 24, 2017:

File No. 170092

Ordinance amending the Administrative Code to prohibit the City from using resources to create, implement, provide investigation or information for, enforce, or otherwise assist or support any government program requiring the registration of individuals on the basis of religion, or creating a database of individuals on the basis of religion.

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c:
Susan Gard, Department of Human Resources
Greg Wagner, Department of Public Health
Colleen Chawla, Department of Public Health
Rowena Carr, Police Department
Kristine Demafeliz, Police Department
Katherine Gorwood, Sheriff's Department
Eileen Hirst, Sheriff's Department
Cristine Soto DeBerry, Office of the District Attorney
Maxwell Szabo, Office of the District Attorney

OFFICE OF THE MAYOR
SAN FRANCISCO

EDWIN M. LEE

TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: For Mayor Edwin M. Lee
RE: Administrative Code – Non-Cooperation with Religion Registry
DATE: January 24. 2017

Attached for introduction to the Board of Supervisors is an ordinance amending the Administrative Code to prohibit the City from using resources to create, implement, provide investigation or information for, enforce, or otherwise assist or support any government program requiring registration of individuals on the basis of religion, or creating a database of individuals on the basis of religion.

Please note that this legislation is co-sponsored by Supervisors Cohen and Safai.

Should you have any questions, please contact Mawuli Tugbenyoh (415) 554-5168.

1 DR. CARLTON B. GOODLETT PLACE, ROOM 200
SAN FRANCISCO, CALIFORNIA 94102-4681
TELEPHONE: (415) 554-6141