



# **Losing Ground:**

*The Loss of Freedom, Equality,  
and Opportunity for America's  
Immigrants Since September 11*

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September 2003  
(updated)

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## **Mission Statement**

The mission of the Illinois Coalition for Immigrant and Refugee Rights is to promote the rights of immigrants and refugees to full and equal participation in the civic, cultural, social, and political life of our diverse society.

In partnership with our member organizations, the Coalition educates and organizes immigrant and refugee communities to assert their rights; promotes citizenship and civic participation; monitors, analyzes, and advocates on immigrant-related issues; and informs the general public about the contributions of immigrants and refugees.

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The Illinois Coalition for Immigrant and Refugee Rights would like to thank the following funders for their continued dedication to immigrant and refugee communities throughout Illinois. Your generous contributions make our work possible.

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massive job losses among undocumented workers and disruption at the targeted worksites.

- The Justice Department has taken several steps to engage local and state law enforcement agencies in immigration enforcement. Such involvement could turn any encounter between an immigrant and the police into a possible deportation case, and discourage immigrants from cooperating with law enforcement.
- The Justice Department's announcement that it intends to renew enforcement of decades-old laws requiring noncitizens to report address changes caused panic among many immigrants who feared that INS will deport them for failing to comply with provisions that they were never told to obey.

**The impact of the wide net cast by the federal government extends beyond immigrants to all Americans by threatening civil liberties, undermining community safety, and hindering cultural exchange.**

- The USA PATRIOT Act contains a laundry list of provisions that broaden federal powers to conduct surveillance and wiretapping, perform searches without notice, and review information about personal and financial records. The Justice Department has proposed further legislation to expand these powers even further.
- Shortly after 9/11 the Justice Department authorized the monitoring of communications between individuals in federal custody and their attorneys. This rule covers all federal detainees, including US citizens.
- Restrictions on temporary visas have prevented foreign students from starting their terms on time, blocked visiting artists and performers from keeping scheduled appearances, damaged industries that rely on tourism, and interfered with families being able to have relatives visit from other countries.

**Refugees languish in camps or in detention as the United States shuts its doors to those fleeing persecution.**

- Refugee admissions ceased altogether in the two months since 9/11. Since resettlement resumed, additional security precautions and diversion of resettlement staff have resulted in only 27,000 refugees gaining admission in fiscal year 2002 (of an authorized ceiling of 70,000), and a similarly slow pace for fiscal year 2003.
- Operation Liberty Shield mandated that people arriving in the US to seek asylum must remain detained during their entire asylum process if they came from Iraq or countries where Al Qaeda had been active. The very people who were fleeing Saddam Hussein's repressive regime would face months of imprisonment while seeking freedom in the US.

**Finally, the government's response to 9/11 has stalled hopes for a new legalization program and other positive immigration measures.**

- Anti-immigrant rhetoric has muddled the debate over immigration proposals. Immigration opponents have succeeded in tarring even such proposals as the limited extension of section 245(i), which would allow qualified immigrants to apply for legal status while remaining in the US, as bills that would aid terrorists.
- The momentum towards legalization that had been developing immediately before the attacks has halted:
  - Efforts in many states to improve highway safety by broadening access to driver's licenses to the undocumented have had to compete with proposals to restrict licenses to only those individuals who are lawfully in the US.
  - Proposals to legalize undocumented students, who intend to pursue a university education, were left hanging post-9/11. There are more than 50,000 undocumented students in the country, many of whom came as infants and have no recollection of their birth country. It is a loss to the entire country that the talents of these young people are not nurtured.

During times of economic stress or security concerns, the US has historically scapegoated immigrants for the woes of our nation, and we have often come to feel great shame for these actions. As we mark another anniversary of the 9/11 attacks, ICIRR calls on our country's leaders to honor our shared democratic heritage and the contributions of immigrants to our nation.

## Introduction

The aftermath of 9/11 has had a devastating impact on immigrants and refugees.

Before 9/11, the hopes for legalization ran high. Labor, business, faith, and community groups came out in support of legalization. The AFL-CIO, which has historically held an unfavorable position towards immigration, issued a resolution supporting the rights of undocumented workers and a new legalization program.

Subsequently, businesses and trade associations, including those from the hotel/motel, restaurant, and agricultural industries, formed the Essential Worker Immigration Coalition (EWIC) to advocate for “reform of US immigration policy to facilitate a sustainable workforce for the American economy while ensuring our national security and prosperity.”

The US Catholic Conference of Bishops in April 2000 also publicly stated its support for undocumented immigrants and backed a broad legalization program in a joint statement with the AFL-CIO. In its statement, the US Catholic Conference urged that “an orderly, (fair/generous) and responsive system of legal immigration should be developed which helps reduce the flow of undocumented workers into the country.”

**“Human compassion and fairness—as well as the United States’ historic willingness to embrace new citizens—dictate that people who have been working here for a certain number of years, contributing to the economy, perhaps even marrying and raising a family, and have stayed out of legal trouble, ought to have a chance to legalize their status.”**

**-Chicago Tribune, August 8, 2001**

Throughout the country, local efforts pushed federal lawmakers to consider passing a comprehensive legalization. In Chicago, ICIRR and its allies organized more than 10,000 people to march through the city’s downtown streets on September 23, 2000, in support of legalization: some local activists say it was the largest demonstration in Chicago since the 1968 Democratic National Convention. The Chicago City Council soon followed suit and passed a resolution supporting a nationwide legalization. Because of the broad US support for some form of legalization program, Presidents Bush and Fox initiated historic discussions in the summer of 2001 regarding bi-lateral solutions to US immigration from Mexico. Such discussions began to address how to deal with the millions of undocumented Mexican workers already living in and contributing to the US. These discussions also provided an opportunity to begin addressing the severe problems of our current immigration system.

And then the tragic events of 9/11. Progress on immigration reform, including the growing movement for legalization, was halted and even regressed. Hope gave way to fear: fear of the knock on the door from law enforcement officers, fear of losing one’s job, fear of being detained and even deported.

In times of economic or political stress, the US has historically scapegoated immigrants for the woes of the nation (see Appendix A):

- In November 1919, Attorney General A. Mitchell Palmer, who claimed a Russian communist takeover was imminent, ordered the roundup of more than 10,000 suspected communists and anarchists in what came to be known as the Palmer Raids. Most of the suspects were Eastern European Jews, and were held in custody without trial. No evidence of a possible takeover

was ever found.

- Following the bombing of Pearl Harbor in December 1941, more than 120,000 people of Japanese ancestry were forced to live in horrid conditions in internment camps scattered throughout the West as a national security measure, even though more than two-thirds of those detained were US citizens and did not demonstrate any disloyalty to this country.
- During the McCarthy Era, the US government initiated “Operation Wetback” in 1954 to address the increasing flow of immigration from Mexico (which was due to the US need for agricultural labor during World War II). As a result, more than 1 million Mexicans were deported, in some cases with their US-born children who were citizens by law.

Today, we look back on these times in history with great shame and disbelief. The Illinois Coalition for Immigrant and Refugee Rights calls on our nation’s leaders to protect our legacy as a nation of immigrants. We call on immigrants to become citizens, to participate in the American democracy, and to elect political leaders who will stand up for America’s immigrants and refugees in times of trouble.

In this report, the Illinois Coalition for Immigrant and Refugee Rights details the government actions that have transpired since 9/11 in order to document and hopefully change the familiar and shameful path that our country is currently taking.

**“I want to remind you of something about immigration. Family values do not stop at the Rio Grande River. There are moms and dads [who] have children in Mexico. And they’re hungry...And they’re going to come to try to find work. If they pay \$5 in one place and \$50 in another, and they’ve got mouths to feed, they’re going to come. It’s a powerful instinct. It’s called being a mom and being a dad.”**

**--George W. Bush  
as quoted in Time Magazine, November 15, 1999**

## Summary of Terms

**Statutes** are laws that Congress has passed and that the President has signed into law.

**Executive orders** are orders issued by the President or an administrative authority under his direction that interpret, implement, or put into effect a provision of the Constitution or a federal statute or treaty.

**Rules** are regulations issued by Cabinet departments (such as the Department of Justice) or executive branch agencies (such as INS) that implement federal statutes. The department or agency must publish the rule in the Federal Register for public comment. The rule may be initially published as either a **proposed rule** (which does not take effect during the public comment period) or an **interim rule** (which is effective during the comment period). After the comment period closes (usually after 30 or 60 days), the agency considers the comments and issues a **final rule**, which may include changes suggested by the commenters. A final rule takes effect on the date designated when it is published, usually on the publication date itself.

Federal agencies may also make changes in their policies and procedures or undertake initiatives that do not require changes to federal regulations and therefore do not need to be published as rules.

# Losing Ground: The Loss of Freedom, Equality, and Opportunity for America's Immigrants Since the September 11 Attacks

## 1. DETENTION OF INDIVIDUALS SUSPECTED OF INVOLVEMENT IN TERRORISM

*Federal law enforcement initiative begun 9/11/01; INS interim rule barring non-federal facilities from disclosing information regarding immigration detainees published 4/22/02, effective 4/17/02, made final 1/29/03*

Since September 11, 2001, law enforcement authorities have detained more than 1,200 individuals with suspected ties or knowledge of terrorist activity. The detainees have been mostly Arab or Arab-American, but also include some south Asians and Israeli Jews. The total number of detainees had been hard to determine because they include people held by local as well as state and federal authorities, and until mid-November the Justice Department would not release any information about the detainees. Many of the individuals were held as material witnesses, who can be detained indefinitely while the investigation of terrorist activity remains pending. Many others are being held after having been charged with immigration violations, such as visa overstays, or with criminal charges not related to terrorism. The number of individuals who are actual suspected terrorists is reportedly under 100. As of November 27, 2001, federal authorities still had 652 individuals in custody, including 548 held on immigration charges. As of February 15, 2002, the number of detainees was 327. As of May 29, 2002, 104 detainees remained. On July 11, 2002, the Justice Department reported that 147 detainees remained in custody (74 on immigration violations, 73 on criminal grounds); most of the other detainees have been deported.

On March 26, 2002, a New Jersey state court judge ruled that that state's freedom of information laws, the state could not refuse to disclose information about detainees held in its state and local facilities. In response to this decision, INS issued an interim rule on April 22, 2002, barring any non-federal facility housing immigration detainees from disclosing information about the detainees. (INS made this rule final on January 29, 2003.) In light of the new INS rule, an appellate court reversed the judge's decision on June 12, 2002, and the New Jersey Supreme Court refused to hear an appeal. Also, on July 11, 2002, a federal judge in New York rejected a challenge to detentions based on the material witness statute. This ruling conflicts with an April 30, 2002, decision in another case decided by another New York federal judge rejecting material witness detentions. On August 2, 2002, a federal judge in Washington DC ruled in a case brought by the Center for National Security Studies and other civil rights groups that INS must disclose the names of the detainees, with limited exceptions; this decision has been stayed pending an appeal.

On April 29, 2003, the Justice Department's Office of Inspector General issued a report evaluating the large-scale detentions in the aftermath of the September 11 attacks. The report criticized the failure of the FBI to distinguish between those detainees who were "of interest" to the investigation of terrorist from other detainees, and to quickly clear those not connected to terrorism. This failure, combined with INS' "hold until cleared" policy, led INS to hold many detainees who were charged only with immigration violations (typically visa overstays) for extended periods without bond or charge. The report also disapproves of the failure of INS to promptly issue charging documents for detainees (despite the agency's rule allowing holds without charge of no more than 48 hours; *see item 2 below*). The report noted that criticized the conditions under which INS held the detainees (specifically in New York and New Jersey), and in particular the restricted access allowed to attorneys, consular officials, and family members, the lack of opportunity to telephone calls, and the destruction of videotapes and other records of detainee complaints. The report of the Inspector General is available at [www.usdoj.gov/oig/special/03-06/full.pdf](http://www.usdoj.gov/oig/special/03-06/full.pdf).



Chicago Sun-Times, October 2, 2001

### Criminalizing Arab and Muslim Americans

Shortly after 9/11, the FBI visited the home of Itedal Shalabi, co-director of Arab American Family Services, to investigate an anonymous tip that her son might be involved in terrorist activities.

Itedal, who was justifiably shaken, summoned her son to meet the agents--he was only 9 years old.

"What would have happened if my son was 16 or 17?" Itedal asks. "That's the scary part. This incident made us all wonder who is out there to protect us."

The suspicions of the unnamed tipster were proven wrong.

## 2. EXTENSION OF MAXIMUM PERIOD FOR INS DETENTION WITHOUT CHARGE

*INS interim rule published 9/20/01, effective 9/17/01*

INS regulations before 9/11 had authorized the agency to hold individuals without charge for only 24 hours. Shortly after 9/11, INS modified this rule to change the maximum hold period to 48 hours. In the case of an emergency or other “extraordinary circumstance,” INS can keep the individual in custody until a decision regarding release and bond is made “within an additional reasonable period of time.” The rule, however, does not define “emergency,” “extraordinary circumstance,” or “reasonable,” and thus enables immigration authorities to hold individuals without charge indefinitely. In addition, the “emergency” or “extraordinary circumstance” that INS may use to justify extended detention may have nothing to do with the detainee’s particular case.

It is not clear whether the certification provisions of USA-PATRIOT override this rule (*see item 5 below*). The 7-day rule in USA-PATRIOT applies specifically to individuals certified by the Justice Department; the 48-hour rule applies generally.

## 3. SECRET IMMIGRATION TRIALS

*memorandum by Chief Immigration Judge Michael Creppy issued and effective 9/21/01*

Immigration judges are now authorized to close deportation proceedings from the public. It is not clear what circumstances would justify closed proceedings, though Judge Creppy’s memorandum notes that some of these cases may involve classified

**“The executive branch seeks to uproot people’s lives, outside the public eye, and behind a closed door. Democracies die behind closed doors.**

**“The government could operate in virtual secrecy in all matters dealing, even remotely, with ‘national security,’ resulting in a wholesale suspension of 1st Amendment rights. . . . This, we simply may not countenance. A government operating in the shadow of secrecy stands in complete opposition to the society envisioned by the Framers of our Constitution.”**

**--US 6th Circuit Court of Appeals  
August 26, 2002**

evidence. These cases are to be heard only by judges who hold secret clearances. These cases are not to be listed on court calendars, and no information about these cases can be disclosed on the immigration court’s toll-free information line. These proceedings are to be held separately from the judge’s other docket. No family members, visitors, or press will be allowed in the courtroom. In April 2002, a federal judge in Detroit, ruling in the case of detainee Rabih Haddad, ordered that Haddad’s immigration proceedings be open to the public and the press; the Sixth Circuit Court of Appeals has upheld this decision, writing, “The executive branch seeks to uproot people’s lives, outside the public eye, and behind a closed door. Democracies die behind closed doors.” (After 19 months in custody without being charged with any terrorist-related crime, Haddad was deported in July 2003.) In May 2002, a federal judge in Newark, NJ, similarly ruled that immigration proceedings could not be closed. The US Court of Appeals for the Third Circuit overturned this ruling on October 8, 2002; the plaintiffs are seeking review of this decision in the US Supreme Court. A Justice Department letter to Sen. Carl Levin (D-MI) revealed that 611 detainees had been subjected to at least one closed hearing, with 419 going through multiple closed hearings.

## 4. STRICTER REVIEW OF FREEDOM OF INFORMATION REQUESTS

*Memo issued by Attorney General Ashcroft 10/12/01*

Attorney General John Ashcroft issued a memo to all federal agencies and cabinet departments encouraging them to take a more restrictive approach to requests for public information under the Freedom of Information Act (FOIA). The memo urges federal agencies to give strong consideration to governmental, commercial, and person privacy interests and to legal privileges when reviewing FOIA requests, and informed these agencies that the Justice Department would generally defend them against legal challenges to FOIA denials. The federal government has followed the substance of this memo, particularly with respect to requests for information about immigration detainees and federal operations undertaken in the name of national security. In the Chicago area, for example, immigration authorities have stopped providing the names of individuals held in local detention facilities. As a result, attorneys and advocates have experienced greater difficulty in gaining access

to detainees and enabling them to gain relief from detention and deportation. More generally, this restrictive approach to information requests has made it harder to evaluate the federal government's anti-terrorism initiatives and to hold the government accountable for mistakes and abuses.

## 5. USA-PATRIOT ACT

### *Federal statute enacted 10/26/01*

The USA-PATRIOT law includes several provisions that directly affect immigrants.

#### *Expanded definition of "terrorism" for immigration purposes*

It makes the following changes to the grounds of inadmissibility and deportability regarding terrorism:

- It broadens the definition of "terrorist organization" beyond those designated as such by the State Department under section 219 of the INA. It enables the State Department to designate an organization as a "terrorist organization" by publication in the Federal Register, and extends the definition to cover "two or more individuals, whether organized or not." This definition is not limited to foreign organizations.
- USA-PATRIOT broadens the definition of "engage in terrorist activity" to include solicitation of membership, solicitation of funds, and provision of material support for non-designated "terrorist organizations"
- The new law allows exclusion or removal of representatives of groups who endorse terrorist activity, of individuals who use their position of prominence to endorse terrorist activity, and spouses and children of inadmissible individuals.
- USA-PATRIOT allows exclusion or removal of anyone who has been associated with a terrorist organization and who, while in the US, intends to engage in activities endangering national security.

Immigrant and civil liberties advocates raised concerns that "terrorist organization" is defined too broadly: the definition could be used to apply to groups such as Greenpeace, Operation Rescue, and PETA, and persons who are not even organized. In addition, the definition is not limited to organizations based outside the US. And because the definition of terrorist activity includes association with groups not designated as terrorist organizations, individuals will not have advance notice of the organizations with which they must not associate, and could face charges for activities they did not know could lead to deportation. Furthermore, it is not clear whether USA-PATRIOT can be applied retroactively, so association with groups that are later designated as terrorist organizations could lead to deportation.

The expanded definition of "terrorist activity" also penalizes associational activities that have nothing to do with terrorism, includes fundraising and contributions for non-terrorist activities (such as schools and health clinics) conducted by organizations that also engage in terrorism. In addition, the law extends inadmissibility and deportability to spouses and children who may otherwise have no connection with terrorist activity.

#### *Indefinite detention*

USA-PATRIOT also creates a new "certification" process that allows the Attorney General to certify (upon "reasonable grounds to believe") that an alien is involved in terrorism. Certified individuals may be detained up to 7 days without charge; however, detention



### **Crushed Hopes**

Yunhee is a bright and driven 20-year-old aspiring to become a doctor. She came to the United States from Korea. Even though she spoke no English when she arrived, Yunhee excelled in academics while she participated in numerous extracurricular activities including the National Honors Society, choir, theater, and cross-country. In June 2002, she graduated high school with a 4.0 GPA.

Yunhee's hard work paid off and she was accepted to the University of Illinois. But she could only afford to attend the university for one semester. Yunhee is undocumented and cannot receive in-state tuition or apply for any financial aid. Yunhee's parents are unable to pay for her schooling on their earnings as housekeepers so Yunhee worked odd jobs to save enough money for at least one semester of study.

Before 9/11, immigration relief for students like Yunhee was within arm's reach. After the attacks, prospects for student legalization came to an abrupt halt. "I really want to ask America to give us an opportunity—a chance to become what we can be."

may continue beyond 7 days if the individual is charged with any criminal or immigration violation, including offenses not relating to terrorism. Detainees may seek habeas review of the detention and certification decisions in any district court with jurisdiction, but the law of the DC appellate circuit applies. Appeals can be taken on to the DC Circuit Court of Appeals and to the Supreme Court. Certified individuals who have been ordered removed but who cannot be removed will have their cases reviewed every 6 months, and can be released if found not to threaten national security.

USA-PATRIOT sets a very low threshold for certification decisions (“reasonable grounds”) that could result in detention. Nor does the law require that the certified detainee be chargeable with a terrorism-related offense to be subject to detention. Someone who has been certified who merely overstayed his visa could still be held without bond through the duration of his deportation case. Furthermore, it is not clear whether the provisions regarding case reviews for non-removable detainees conform to the US Supreme Court’s decision in *Zadvydas* that strictly limited indefinite detention.

#### *Consular identification documents*

On July 17, 2002, the Treasury Department and seven other federal agencies that regulate financial institutions issued proposed regulations that would implement the money laundering provisions of USA-PATRIOT (section 326) by requiring banks and other financial institutions to put into place procedures to verify the identity of anyone applying to open an account and screening such individuals for involvement in terrorist activity. The Treasury Department issued a final rule implementing this provision on May 9, 2003; the rule gave financial institutions discretion regarding which documents they would accept to verify the identity of foreign individuals seeking to open accounts. Under pressure from anti-immigrant members of Congress, the department reopened the comment period on July 1, 2003, and in particular asked whether to bar certain types of documents (such as consular identification documents like the Mexican *matricula consular*) from being accepted. The comment period ended on July 31, 2003. In the meantime, the House of Representatives approved an amendment to the 2003 Foreign Affairs Authorization Act that would severely limit the ability of foreign consulates to issue consular identification documents; the amendment would require consulates to put in place specific and burdensome verification procedures and mandate recordkeeping, with records open to US government audit. As of the date of this report, the amendment had not yet gone before the Senate.

USA PATRIOT also broadened federal authority to conduct electronic surveillance and wiretaps, monitor financial transactions and other personal records, engage in searches of a person’s home or office without notifying the person. In February 2003, the Center for Public Integrity revealed that the Justice Department had developed another proposal that would supplement USA PATRIOT. The bill, which was officially called the Domestic Security Enhancement Act but which soon became known as PATRIOT Act II, would have further restricted disclosure of information regarding suspected terrorist in federal custody, authorized creation of a DNA database of suspected terrorists, swept aside consent orders limiting the ability of state law enforcement agencies to collect information about individuals, and stripped the citizenship of anyone (including native-born citizens) who belongs to or provides material support for terrorist organizations. In the face of public uproar, the Justice Department distanced itself from this proposal. The department nevertheless is developing another proposal, the VICTORY Act, that would broaden federal powers to conduct surveillance and seize records in cases involving “narcoterrorism.” As of late August 2003, the Justice Department was still working with members of Congress on the language of the bill, but advocates have already raised concerns about the expanded powers the bill would create. In addition, several states and municipalities have passed resolutions calling for the repeal of the USA-PATRIOT Act. Such a resolution is now pending in the Chicago City Council.

## **6. MONITORING OF ATTORNEY CORRESPONDENCE**

### ***Bureau of Prisons interim rule published and effective 10/30/01***

The Justice Department has issued a new regulation that authorizes monitoring of communications between individuals in federal custody (including INS custody) and their attorneys. Under the rule, if there is “reasonable suspicion” that an inmate will use attorney communications to facilitate terrorist activity, the Attorney General can order the Bureau of Prisons to monitor or review these communications. The detainee must be notified of this monitoring in writing in advance. Monitoring would be conducted by special “privilege teams” unrelated to the terrorism investigation. The Justice Department may not use communications that would otherwise be protected by attorney-client privilege in investigations or prosecutions regarding the terrorist activity, and may not otherwise disclose the monitored information without approval of a federal judge. (Attorney-client privilege does not include communications in furtherance of illegal activity.) This rule applies to any federal inmate, including US citizens.

Monitoring of attorney communications could discourage detainees from sharing any information with their attorneys, and thus deny their right to effective counsel. Procedures already exist to enable law enforcement officers to monitor attorney communications; these procedures generally require that law enforcement officers ask a court to review the case and issue

an order approving the monitoring. The new rule enables the Justice Department to undertake monitoring without any outside prior review of the case.

## **7. AUTOMATIC STAY OF DECISIONS TO RELEASE IMMIGRATION DETAINEES**

### ***Justice Department interim rule published 10/31/01, effective 10/29/01***

The Justice Department has issued a rule that allows INS to keep certain detainees in custody even if they have been ordered released. Under existing rules, INS makes an initial custody decision whether to detain or release an individual while that person's deportation case is pending. If INS refuses to release the detainee, or the detainee cannot satisfy the conditions that INS imposes (for instance, if INS sets a bond amount that the detainee cannot pay), the detainee can ask an immigration judge to review the INS decision. (Certain immigrants, such as those charged with offenses relating to national security or terrorism or who were convicted of certain criminal offenses, are subject to "mandatory detention," and cannot appeal their custody decisions.) If the judge releases the detainee, INS can appeal to the Board of Immigration Appeals (BIA). In a limited range of cases, INS can get an automatic stay of the judge's decision upon filing a notice with the immigration judge that it intends to appeal. The notice of intent must be filed on the same day that the judge issues his decision. The stay lapses if INS fails to file an appeal. If INS appeals, the stay keeps the detainee in custody until the BIA reviews the case.

Under the new rule, INS can get an automatic stay in any case in which it had initially decided either to not release the detainee or to set a bond of at least \$10,000. To gain a stay, INS must file a notice of intent to appeal with the judge within one day of the judge's decision. The stay lapses if INS does not file an appeal within ten days. The Justice Department states that this rule is necessary to "prevent the release of aliens who may pose a threat to national security" and who might otherwise be released while INS prepares its appeal and before it can ask the BIA to stay the judge's decision. The new rule also states that if the BIA decides to release the detainee, that decision will be stayed automatically for five days. If during those five days the INS commissioner asks the Attorney General to review the custody decision, the stay will remain in effect until the Attorney General makes his decision.

This new rule is unnecessary in those cases involving individuals charged with offenses relating to national security or terrorism. These individuals are already subject to mandatory decision and therefore cannot be released, so the stay provisions would not apply to their cases in any event. In addition, the new rule is excessively broad in that it could cover any detainee regardless of the offense for which he is being deported. Individuals who committed minor immigration violations could in effect be subject to continued detention if INS decides that they must be held. If the defendant in fact poses a threat to national security, she should be charged accordingly. Finally, the new rule threatens to make review of custody decisions meaningless. The rule enables INS to continue to hold an individual even if an immigration judge and the BIA rule that the INS custody decision is incorrect and that the detainee should be released.

## **8. SPECIAL SECURITY CLEARANCE REQUIREMENTS FOR ARAB AND MUSLIM NON-IMMIGRANTS**

### ***State Department procedural change October 2001, revealed November 2001, ended 2003***

The State Department has issued a classified cable imposing 20-day mandatory hold on non-immigrant visa applications submitted by men age 18-45 from 26 countries in Africa, Middle East, central Asia. All such applications must be subjected to special security clearances. On August 7, 2002, US Ambassador to Jordan Edward Gnehm disclosed that visa applications by Jordanians age 16 to 46 must be sent to Washington for approval before the embassy in Amman can issue the visa. These special procedures ended in 2003 in light of implementation of other clearance procedures, including special registration (*see item 26 below*).

This policy swept very broadly, covering thousands of individuals who have nothing to do with terrorism. The policy branded all young and middle-aged men from these countries as suspects, regardless of their actual circumstances. Many of these men may even be trying to flee persecution in their native countries. In addition, the clearance procedures have prevented many visiting artists and performers from coming to the US (including, most famously, Iranian filmmaker Abbas Kiarostami) and have delayed many foreign students, including those who had already been pursuing degrees in the US and had returned to their home countries during academic breaks, from arriving for the start of their terms.

## **9. INTERVIEWS OF NON-IMMIGRANTS FROM ARAB AND MUSLIM COUNTRIES**

### ***Justice Department initiatives announced 11/9/01 and 3/20/02***

The Justice Department is seeking interviews with 5,000 individuals who came to the US from Muslim countries since January 1, 2000, on non-immigrant visas. The interview subjects are to be asked about any information they may have about terrorist activity. In some areas, FBI agents and other law enforcement officers are seeking out these individuals at their last known addresses. In other areas, including Chicago, invitation letters are being sent to the individuals. Some police departments (including Chicago and Portland, Oregon) have refused to participate in this initiative. A report on this

initial round of interviews noted that only about half of the individuals asked for interviews complied, and that the interviews revealed no useful leads regarding terrorist activity. The interviews nevertheless revealed that some of the interviewees had violated their immigration status, which has led to referrals for deportation. On March 20, 2002, Attorney General Ashcroft announced a second round of interviews for another 3,000 individuals who entered the US more recently than those interviewed in the first round. A report that the General Accounting Office published in April 2003 reported that as of March 2003, the Justice Department had completed interviews with only 3,216 (42%) of the 7602 individuals it sought to interview. The report raised questions about how effective the interviews had been in gathering information, and recommended that the department conduct a formal review of the interview project. (The GAO report is available on the GAO website at [www.gao.gov/cgi-bin/getrpt?GAO-03-459](http://www.gao.gov/cgi-bin/getrpt?GAO-03-459).) The interview initiative in any event blatantly targeted one group as suspected of having knowledge of terrorism, and created fear in Muslim communities that law enforcement officers will try to locate and detain or otherwise intimidate individuals who do not respond.

**“During this interview, you will be asked questions that could reasonably assist in the efforts to learn about those who support, commit, or know about persons who commit terrorism...”**

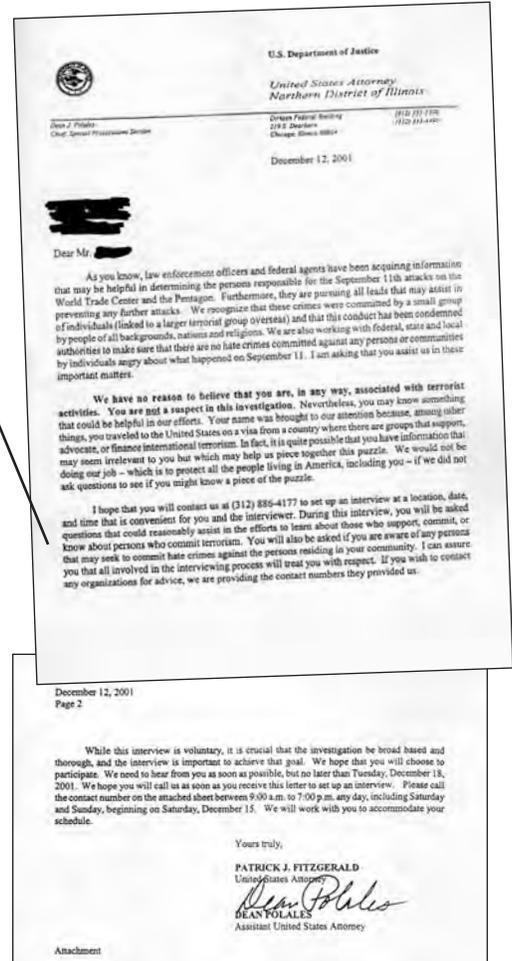
**10. AUTHORIZATION OF MILITARY TRIBUNALS**

*Executive order signed by President Bush 11/13/01*

Under this order, non-citizens who are suspected of involvement in international terrorism (including membership in al-Qaeda) and those who knowingly harbor such individuals may be tried in military tribunals as opposed to civilian courts. Such tribunals would consist of military personnel who would be triers of both law and fact (that is, they would decide what the correct law should be as well as defendant’s guilt or innocence under that law). The rules of evidence for such tribunals would be different from those in civilian courts, with greater consideration for release of information that involves national security but also greater flexibility to admit evidence that would otherwise be limited (such as hearsay). The tribunals may convict and impose sentences only upon a 2/3 vote. Defense Secretary Donald Rumsfeld issued an order on March 21, 2002, further detailing the procedures to be used in these tribunals.

Advocates contend that such tribunals may be unconstitutional if they are established without specific Congressional authorization and if the defendant can be tried in civilian court. Specifically, the looser rules of evidence could lead to abuses, such as coerced confessions and admission of unlawfully obtained evidence, as well as introduction of information that has limited value in determining the facts but that could prejudice the court against the defendant. Also, restrictions on disclosure of evidence based on national security could limit the defendant’s ability to respond to the charges against him and thus deny him the opportunity for a fair trial. Review of cases involving “secret evidence” has revealed that such evidence has been at best questionable. Furthermore, it is not clear what standard of proof is needed for a conviction. If a defendant can be convicted with 1/3 of the tribunal voting to acquit, has the defendant really been found guilty “beyond a reasonable doubt”?

In addition to due process concerns, advocates argue that military tribunals are unnecessary; the prosecutions for the 1993 World Trade Center bombing and other terrorist attacks show that such offenses can be prosecuted effectively and successfully in civilian courts. Use of military tribunals also seems hypocritical in light of US protests against judicial abuses in other countries, such as the trials of Lori Berenson (a US citizen) in Peru or Ken Saro-wiwa in Nigeria. Military tribunals could also have foreign policy implications: In summer 2003, the Bush Administration disclosed that it planned to use military tribunals to try six detainees captured during the 2001 war in Afghanistan and held at the US military based at Guantanamo Bay. The six individuals include nationals of the United Kingdom and Australia, both of which have been US allies.



## **11. AVIATION SECURITY ACT/ OPERATION TARMAC/ OPERATION CHICAGOLAND SKIES**

*Aviation Security Act enacted 11/19/01; Operation Tarmac first executed 12/11/01; Chicagoland Skies executed 12/10/02*

The new aviation security law requires that all baggage screeners be US citizens. Approximately 8,000 individuals who hold these jobs (out of 28,000) are noncitizens, including some undocumented individuals. While the requirement for US citizenship applies generally to federal government employment, the need for such a requirement for security screeners is questionable. Military personnel need not be US citizens, and in some cases National Guard troops who are not citizens have been supervising screeners who now must be citizens.

In a related development, INS and the FBI, as well as other federal and some local law enforcement agencies, have conducted mass arrests of airport workers in an initiative called Operation Tarmac. On December 11, 2001, 69 airport workers in Salt Lake City (including 63 noncitizens) were charged with providing false information to get security clearances. Security sweeps have also occurred at no fewer than a dozen other airports, including those in Seattle, Las Vegas, Atlanta, Boston, San Diego, and Washington, DC. In Chicago, federal authorities executed Operation Tarmac on December 10, 2002, as Operation Chicagoland Skies. This operation netted 25 airport workers who were charged with federal criminal offenses; all but five were immigrants who had provided false Social Security numbers or identification to their employers. At least 26 others were arrested and charged with immigration offenses, primarily visa overstays or being in the US unlawfully.

The security sweeps conducted under Operation Tarmac have caused many immigrants to lose their jobs even though they had no contact with planes or baggage. The dozens of immigrants caught in the sweeps mostly work as janitorial staff and food-service workers. In at least one case, INS took into custody an undocumented immigrant who worked for a contractor with an airport site, even though the immigrant herself did not work at the airport. In Chicago, one of the detained workers drove a delivery truck; his only connection to the airport was that the airport was the last stop on his route. The sweeps have also affected US-born workers (including five caught in Operation Chicagoland Skies) who gave false or incomplete information on their job applications, including some workers who failed to disclose past minor criminal convictions.

## **12. DELAY AND SHORTFALL IN REFUGEE ADMISSIONS**

*Presidential Determination for fiscal year 2002 issued 11/21/01, for fiscal year 2003 issued 10/16/02*

The State Department suspended refugee admissions immediately after the September 11 attacks. Admissions did not resume until President Bush issued the refugee admissions determination for Fiscal Year 2002 two month into the fiscal year. Under the determination, the US would admit up to 70,000 through September 30, 2002. The actual flow of admissions, however, has been slow, due in large part to greater scrutiny of the refugees and to diversion of resettlement staff to other duties relating to security. By the end of the fiscal year, the US admitted fewer than 28,000 refugees. Meanwhile, refugee resettlement organizations, which receive federal funding based on current refugee admissions, are losing funds that they need to provide services to refugees who have already entered the US and continue to need assistance in adjusting to life in the US.

In October 2002, President Bush issued the determination for Fiscal Year 2003. Under this determination, the US would admit 70,000 refugees; however, the determination put 20,000 of these slots into an unallocated reserve rather than assigning them to a specific continent or region. Immigrant and refugee advocates objected that the unused slots from FY 2002 were not added to FY 2003's amount, and to the large undistributed reserve. Actual admissions were on the same slow pace as admission in fiscal year 2002; as of June 30, 2003, nine months into the fiscal year, only 17,400 refugees entered the US.

## **13. "RESPONSIBLE COOPERATORS" PROGRAM**

*Justice Department initiative announced 11/29/01*

Attorney General Ashcroft has ordered federal law enforcement officials to use S non-immigrant visas and other immigration relief as rewards for individuals who provide information regarding terrorist activity. There are 50 S-5 visas available each year for persons with information about criminal organizations, and 200 S-6 visas for those with information about terrorist operations. Ashcroft also encouraged use of parole (allowing out-of-status individuals to be enter and remain in the US) and deferred action (postponement of deportation proceedings).

S visas are limited, so individuals who provide information might still not get an S visa. Individuals who inform in hopes of getting an S visa may still end up being deported, at very least for being present in the US without status. This risk becomes especially high when the informant may himself have been involved with a terrorist group or in terrorist activity.

"Protecting refugees is part of America's proud tradition as a beacon of hope to those fleeing persecution and oppression.

"However, unnecessary bureaucratic delays and infighting between federal agencies are derailing this important piece of our country's heritage."

--Dori Dinsmore, Director  
World Relief Chicago



### **Destruction of the Refugee Resettlement Program**

Joseph Alier Paul arrived in the United States in May 2001. He is one of the lucky ones.

Joseph is one of the "Sudanese Lost Boys." At the age of 6, Joseph was separated from his family when the growing civil war in his country forced him to flee.

Joseph spent 9 years in refugee camps in Ethiopia and Kenya. He might not be alive today if not for the US refugee program.

"It is important that the United States helps refugees," said Joseph. "I am very happy to be here. If I think about the other brothers who are still there, it makes me sad."

## **14. TARGETING OF MIDDLE EASTERN MALES WITH DEPORTATION ORDERS**

### ***INS initiative announced 1/8/02***

INS has announced its plans to pursue approximately 6,000 non-citizen males from unnamed Middle Eastern countries with active al-Qaeda cells who had been ordered deported but who never left the US. There are a total of approximately 314,000 "absconders" (aliens ordered deported but who never left), most of whom are from Latin America. The US deports about 180,000 people per year; grants voluntary departure to another 70-80,000 per year; and "apprehends" and turns back another 1.4 million individuals who attempt to cross the border. On May 29, 2002, the Justice Department reported that 585 absconders had been caught.

This INS initiative targets individuals from one particular region, regardless of the offense for which they were actually ordered deported or of whether these individuals in fact have been involved in terrorism. Like the interview initiative and the detention of individuals since September 11, this initiative, by focusing on one group of individuals and presuming them all to be involved in terrorism, raises concerns about racial and ethnic profiling.

## **15. "STREAMLINING" OF BOARD OF IMMIGRATION APPEALS**

### ***Justice Department proposed rule 2/19/02, final rule 8/26/02, effective 9/25/02***

The Board of Immigration Appeals (BIA) is the body within the Justice Department that hears appeals of decisions by immigration judges and INS officials. Recently the BIA faced an exploding backlog of cases; as of September 30, 2001, the BIA had 57,597 pending cases. Many of these cases arose from unclear sections of the 1996 immigration law, for many of which the INS has not issued regulations. The Justice Department presented a plan to "streamline" procedures at the BIA in February 2002. Ostensibly this plan sought to address the case backlog, but the plan seemed designed more to bring the BIA under closer control of the department, especially in light of its tougher stance on immigration enforcement after the September 11 attacks. The department proposed to remove the BIA's ability to review factual questions (and thus correct factual errors) in decisions by immigration judges; provide for more cases to be considered by single BIA members as opposed to three-member panels; make it easier for the BIA to summarily dismiss appeals and affirms decisions by immigration judges without opinion. The proposal also would cut the size of the BIA in half, from 23 to 11, thus providing fewer board members to review the backlogged cases.

Despite vehement protests from immigration lawyers and other immigrant advocates, the Justice Department adopted the proposed rule in August 2002, providing a six-month transition period for implementation. During this transition, the BIA addressed the backlog by issuing decisions (mostly summary dismissals) at an absurdly rapid pace. The *Los Angeles Times* reported on January 5, 2003, that some BIA members were issuing decisions in 50 cases per day, often disposing of cases with decisions that were only two lines of text long. The article also noted that in October 2002, 86% of BIA decisions went against the immigrant, as

opposed to 59% in October 2001. To complete implementation of the streamlining plan, the Justice Department pressured five BIA members to resign in March 2003; the five were among the longest serving board members and were generally regarded as among the most sympathetic to immigrant concerns. Immigrant advocates have filed several legal challenges to the streamlining rule, but so far none have succeeded. In the meantime, practitioners are turning increasingly to the next step in the immigration appeals process after the BIA, the federal appellate courts, to challenge unfavorable decisions and in particular to object to the summary dismissal of substantial factual and legal issues. In other words, the BIA backlog could soon be replaced by an appellate court backlog. Access to the appellate courts, however, is limited by several factors, including cost and judicial deference to BIA decisions. As a result, BIA streamlining will likely effectively deny many immigrants any meaningful opportunity to have their cases reviewed.

## 16. RESTRICTIONS ON DRIVER'S LICENSES

*Proposed legislation in various states; Social Security Administration restriction issued 2/25/02 as policy change (since rescinded), 3/26/03 as proposed rule, not yet in effect*

The ability of some of the perpetrators of the September 11 attacks to get driver's licenses prompted many states to consider proposals to limit who can get licenses. According to the National Immigration Law Center (NILC), in the year immediately following the attacks, 46 state bills to restrict access to licenses were introduced throughout the US. Of these, six passed, in Colorado, Florida, Kentucky, New Jersey, Ohio, and Virginia. Colorado codified an existing requirement that applicants for a license must be lawfully present in the country; Florida, Kentucky, New Jersey, and Ohio tied the expiration of an immigrant's license to his or her immigration document; and Virginia required noncitizens to submit fingerprints with their license application, and authorized the state police and driver's license agency to share information with federal agencies. Ohio also authorized the registrar to implement "security features" on noncitizens' licenses. Efforts in other states to limit access to licenses were defeated, and two states, New Mexico and South Carolina, even passed bills to broaden eligibility.

Meanwhile, the Social Security Administration's decision (as of March 1, 2002) to no longer issue Social Security Numbers for purposes of getting a driver's license has limited the ability of many individuals to get licenses in those states that require SSNs to get licenses (including Illinois). This policy change has affected not only undocumented immigrants, but also many lawful nonimmigrants who are not authorized to work, such as exchange students and dependents of temporary workers. In response to litigation challenging SSA's failure to follow proper procedures in issuing the policy change, SSA rescinded the change in early 2003, but reissued the change as a proposed rule on March 26, 2003.

These new policies and laws deny the ability to drive to many individuals with legitimate needs to drive for work, school, and family purposes. The ability to drive has no reasonable link to immigration status, and should not be tied to it. NILC continues to monitor the status of state legislation regarding driver's licenses, and offers a summary of these bills and laws on its website, [www.nilc.org](http://www.nilc.org).

## 17. CLOSER SCRUTINY OF SOCIAL SECURITY NUMBERS

*Social Security Administration procedural change early 2002*

In early 2002, the Social Security Administration began sending no-match letters to all employers who employed workers whose names and Social Security Numbers do not match. While SSA had been issuing these letters since 1994, until recently it had sent a letter to an employer only when 10% of its employees show up as no-matches. SSA changed this policy in early 2002 so that it is now sending letters to employers who have even one no-match. This change has caused the number of no-match letters issued by



Workers Raul and Juan (pseudonyms)

### Scapegoating Hardworking Immigrants

"Raul and I both work for a garment factory that makes Guess Jeans in Chicago, IL. We both arrived from Guerrero, Mexico about eight years ago, I was 25 and Raul was 15 years old.

"While it was hard to leave our families in Guerrero, we needed to be able to support them so we came to Chicago to work. We both work 40 hours a week earning \$7.00 per hour, and we receive no benefits—not even health insurance. We have not received a raise since we started working six years ago.

"In early June 2002, the owner where we work called us and fourteen other employees into his office and told us that he had received letters from the Social Security Administration stating that our social security numbers did not match the information in their database, therefore we were fired. We did not know that it was illegal to be fired because of these letters, so we did not contact our union representative.

"Luckily, a week later I ran into the former president of our union [UFCW local 1546]. He asked about work and I told him that we had been fired. He immediately called the union and they were able to get our jobs back the next day. We were extremely fortunate to be able to return to work, because our families in the US and Mexico depend greatly on our salary. We are happy that the union was able to save our jobs, yet we also know that many workers, who have lived and worked here for more years than us, have also lost their jobs for the same reason. Now they and their families are suffering."

SSA to increase from 110,000 (one in every 60 employers) in 2001 to 800,000 (one in every 8 employers) in 2002. SSA has been sending no-match letters with the intention of getting employers to fix erroneous name and number information. If SSA cannot match a Social Security withholding payment to a worker's account, it must deposit the payments into a "suspense account" that is costly to maintain. SSA has not expressly stated that the broader sweep of no-match letters is tied to anti-terrorism efforts. Many government officials and commentators, however, have expressed concern over the possible use of Social Security Numbers by would-be terrorists. Although in 2003 SSA reverted to its previous policy of sending letters to employers only when 10% of employer's workers turn up as no-matches, the letters have been confusing and panic among many employers and workers, with thousands of workers losing their jobs as a result.

## **18. LIMITS ON REVALIDATION OF TEMPORARY VISAS**

*State Department interim rule published 3/7/02, effective 4/1/02, made final 8/18/03*

State Department regulations provide that non-immigrant (temporary) visa holders can have their visas automatically revalidated if they leave the US for trips to Canada or Mexico of no more than 30 days. Revalidation enables many foreign students and visitors to take short trips outside the US (such as during academic breaks) and then reenter the US without needing to get a new visa. In response to national security concerns, the department revised these regulations to limit revalidation for visa holders from nations identified as state sponsors of terrorism, and for visa holders who apply for new visas (whether in the same category or for a different type of visa) while outside the US. Ending revalidation in these cases could cause delays for many visa holders in trying to reenter the US, especially if processing for applications to replace the visas that are no longer revalidated becomes backlogged. (*see item 34 below*)

## **19. LOCAL LAW ENFORCEMENT INVOLVEMENT IN IMMIGRATION ENFORCEMENT**

*Justice Department legal opinion reported 4/4/02, not yet published or in effect*

The Office of Legal Counsel of the US Department of Justice has reportedly prepared a legal opinion that states that local and state law enforcement officers have the "inherent authority" to enforce immigration laws. This legal opinion would reverse longstanding Justice Department policy. The immigration statute already provides that local law enforcement agencies may enter into memoranda of understanding (MOU) with INS regarding cooperation on immigration enforcement; however, until recently, no community has chosen to pursue such an arrangement. On July 2, 2002, Florida became the first state to enter into such an MOU. Several cities, including Chicago, San Francisco, and New York, have official policies that prohibit municipal agencies from asking about immigration status and pursuing immigration violations.

Since the initial press accounts of the opinion, and the overwhelmingly negative reaction that followed, the Justice Department appears to have retreated from its position recognizing broad inherent authority. In announcing its proposal for special registration of certain non-immigrants on June 5, 2002 (*see item 26 below*), the Justice Department stated that local police would be authorized to arrest individuals who did not comply with the registration requirements whose names were added to the National Crime Information Center database (NCIC). In a June 24, 2002, letter to the Migration Policy Institute, White House Counsel Alberto Gonzalez stated that the Justice Department recognized the authority of police to arrest and detain immigration violators whose names have been placed in the NCIC. On March 24, 2003, the FBI issued a final rule exempting the NCIC from legal requirements regarding the accuracy of information in federal databases; this exemption opens up the prospect that law enforcement agencies can arrest individuals based on incorrect information.

On July 24, 2002, INS issued a final rule regarding implementation of a provision of the 1996 immigration law that authorized the agency to deputize local law enforcement agencies to engage in immigration enforcement during a "mass influx of aliens," subject to memoranda of understanding that would include stringent training and reporting requirements. This final rule would be unnecessary if local law enforcement agencies already had the authority to enforce immigration laws. On February 26, 2003, INS issued an interim rule that authorizes the Attorney General to waive the training requirements in mass influx situations.

Although the precise position of the Justice Department or the Bush Administration is therefore unclear, the tenor of Justice Department has been to encourage local law enforcement agencies to engage in immigration enforcement. In the meantime, anti-immigrant members of Congress have introduced the CLEAR Act (Clear Law Enforcement for Criminal Alien Removal Act of 2003) (HR 2671), which would require local and state jurisdictions to expressly authorize their law enforcement agencies to undertake immigration enforcement.

Immigrant advocates fear that allowing local police to enforce immigration laws would open up grave possibilities for racial profiling and harassment of immigrants and minorities. Even without the DOJ opinion, many communities with growing immigrant communities have witnessed arbitrary police stops of immigrants on the pretext of minor traffic violations, as well as other reporting by police to INS. The legal opinion and the CLEAR Act would essentially tell local police that

such practices should continue. More important, immigrants will feel discouraged from reporting crimes (including incidents of domestic violence) and cooperating with law enforcement authorities if they believe that the police can question their immigration status and report them to INS. Such sentiment would thwart effective law enforcement and undermine the trust that many police departments have attempted to build with immigrant communities

## **20. RESTRICTIONS ON VISITOR AND STUDENT VISAS**

### ***INS proposed rules published 4/12/02; visitor visa rule withdrawn, other rules not yet in effect***

INS has proposed significant changes to student and visitor visas. Under the proposed visitor visa regulations, visas would be granted only for the amount of time “needed to accomplish the purpose of the trip.” INS would generally consider such an amount of time to be only 30 days (in contrast to the current usual period of six months). The maximum length of a visitor visa would be six months, as opposed to the current maximum of one year. The regulation would also restrict the ability of visa holders to get extensions, and would require a showing of an “unexpected circumstance” that prevents departure when the visa expires, or “compelling humanitarian reasons” to support the request. Extensions would be limited to six months (again as opposed to one year currently). In addition, anyone entering the US on a visitor visa who wishes to change her status to a student visa category (F-1 or M-1) must have stated her intention to study in the US when they first enter. Another new rule requires that holders of visitor visas who seek student visa status must wait until their change of status is approved before they can start their studies, as opposed to being able to begin when they file their change application.

Immigrant advocates raised concerns that the shorter allotted time for visitor visas could lead to an increased number of requests for extensions and thus add to INS’ already large load of applications. Also, many industries that rely on tourism expressed concern about the impact that shorter visitor stays will have on their business and their employees. INS withdrew the proposed rule regarding visitor visas in fall 2002.

## **21. MANDATORY SURRENDER OF INDIVIDUALS WITH FINAL REMOVAL ORDERS**

### ***INS proposed rule published 5/9/02, not yet in effect***

INS has proposed a rule that affects individuals who are subject to final removal orders. Under the proposed rule, such individuals must turn themselves in to INS within 30 days after the removal order becomes final. If they do not surrender, they will become ineligible for any relief from the order or other benefit (such as asylum or permanent resident status) while they remain in the US or within ten years after they leave. After the rule takes effect, individuals will be given notice of their duty to surrender during each phase of their immigration proceedings. This rule builds on the INS initiative of January 2002 to track down “absconders” (*see item 14 above*).

## **22. ENHANCED BORDER SECURITY AND VISA ENTRY REFORM ACT**

### ***Federal statute enacted 5/14/02***

Members of Congress from both parties as well as immigration advocates developed this legislation to bolster the efforts of federal agencies in identifying and intercepting potential terrorist threats. This new law enhances the sharing of information among these agencies, and creates several layers of security to screen out individuals entering and leaving the US. The specific provisions include the following:

- increased funding for hiring and training INS inspectors and investigators and State Department consular staff, and specific funding for improved border security technology
- integration of all INS databases and development of plans for sharing information between federal law enforcement agencies and INS and the State Department;
- creation of an integrated entry-exit data system;
- development of machine-readable, tamper-resistant entry and exit documents;
- restrictions on nonimmigrant visas for individuals from countries identified as state sponsors of terrorism;
- enhanced tracking of stolen passports;
- study of the feasibility of a North American National Security Program that would better coordinate security efforts among the US, Canada, and Mexico, including pre-clearance and pre-inspection of individuals traveling to these countries;
- a new requirement that all airlines transmit to the US the list of passengers who have boarded a plane bound for this country;
- stricter monitoring of foreign students.

## **23. SECURITY CHECKS FOR ALL INS PETITIONS AND APPLICATIONS**

### ***INS procedural change announced 5/16/02***

INS is now running the names of all applicants for immigration benefits (such as green cards, work permits, travel documents, and naturalization) through the InterBorder Intelligence System (IBIS), a database compiling information from 27 different

law enforcement organizations. INS is conducting these checks not just on the applicants, but on all individuals named in the applications (including US citizens). INS has stated that these additional checks should not further delay its processing of any applications; however, processing of INS applications has slowed since spring 2002.

#### **24. TRACKING OF STUDENT VISA HOLDERS**

*INS rule proposed 5/16/02, made final 12/11/02, fully implemented 2/15/03*

INS has implemented the new Student and Exchange Visitor Information System (SEVIS), a new internet-based system for processing student visa applications and monitoring student visa holders. SEVIS replaces the current process, which is based on submission and handling of paper forms. Schools need to submit to SEVIS information about the student's name and address (including updating any changes), enrollment or failure to enroll, changes in course load below full-time enrollment (including dropping out), disciplinary infractions, and other information relevant to the student's status. Participating in SEVIS will become mandatory on January 30, 2003. Tracking of foreign students is required by section 641(c) of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) and the USA PATRIOT Act.

#### **25. PROTECTIVE ORDERS IN IMMIGRATION PROCEEDINGS**

*Justice Department interim rule published and effective 5/28/02*

The Justice Department has set up a procedure for immigration judges to issue protective orders regarding information that INS believes is sensitive to national security or law enforcement. Under the procedure, INS may submit such information to the immigration court under seal and request that the court issue an order limiting the respondent's (and her attorney's or representative's) ability to disclose this information. The judge may issue the order if INS can show a "substantial likelihood" that disclosure of the information would harm national security or law enforcement interests. Proceedings involving information subject to a protective order shall be closed to the public. This proposal raises the same concerns as the memorandum authorizing secret immigration proceedings that Chief Immigration Judge Michael Creppy issued on September 21, 2002 (*see item 3 above*).

#### **26. SPECIAL REGISTRATION**

*INS rule announced 6/5/02, published 6/13/02, made final 8/12/02, effective 9/11/02; Call-in program initially announced 11/6/02, ended 4/25/03*

The Justice Department is now requiring many individuals entering the US to submit to fingerprinting upon entry and to register with INS. This initiative, the National Security Entry-Exit Registration System (NSEERS), covers anyone arriving in the US on a nonimmigrant visa from any country identified as a state sponsor of terrorism (currently, Iran, Iraq, Libya, Sudan, and Syria), as well as any nonimmigrant who meets or may meet certain criteria that would warrant monitoring in the interest of national security. Any individuals subject to this proposal would need to submit to fingerprinting at their port of entry, and must register with INS 30 days after their arrival and then annually after that if they remain in the US. They must also notify INS when they depart. Any individuals who register and then overstay their visas or fail to comply with these rules would have their names added to the National Crime Information Center database, and local police will be authorized to apprehend them. After receiving comments during a 30-day comment period, the Justice Department issued a final version of this proposal (with only minor changes) on August 12, 2002, to take effect on September 11, 2002. In implementing the new procedures, the Justice Department has declared that the requirements will also cover nonimmigrants from Pakistan, Yemen, and Saudi Arabia, as well as individuals who have made "unexplained" trips to any of several countries (all of the eight countries previously listed plus Cuba, North Korea, Afghanistan, Egypt, Somalia, Indonesia, and Malaysia), anyone who made other trips not explained by work purposes or other legitimate circumstances, anyone who previously overstayed a visa, and other categories.

On November 6, 2002, INS initiated a call-in special registration program that required certain men from designated countries who last entered the US on nonimmigrant (temporary) visas to report to INS offices. Under the program, INS took fingerprints and photographs from the registrants and asked for additional information regarding their entry into the US, their family background, their residence and employment in the US, and any knowledge they might have regarding terrorist activity. In all, men from 25 countries were called in; all of these countries were predominantly Muslim nations in northern Africa, the Middle East, and south Asia, with the sole exception of North Korea. In addition to submitting to initial registration, individuals covered by the program also needed to register annually within ten days of the anniversary of the initial registration, report any address change within ten days of the change, and register upon leaving the US. (The Bureau of Citizenship and Immigration Services has dedicated a section of its website to the special registration provisions at [www.immigration.gov/graphics/shared/lawenfor/specialreg/index.htm](http://www.immigration.gov/graphics/shared/lawenfor/specialreg/index.htm))

Like many of the other initiatives undertaken by the Justice Department, special registration specifically targeted individuals from Arab and Muslim countries, and paints all such individuals with a broad brush of suspicion. To make matters

worse, INS used the call-in program to identify and detain individuals who had overstayed their visas or committed other immigration violations. Indeed, the widely reported detention of Iranian registrants in Los Angeles in late December 2002 caused widespread fear among immigrant communities and discouraged many men who could have been covered by the program from complying. Many individuals (including a large number of Pakistani men in the Chicago area) left for Canada or otherwise fled the US. In all, more than 83,000 individuals registered during the call-in program. Of these, 13,000 now face deportation.

Although Attorney General Ashcroft had stated his intention to extend special registration to all nations, the Department of Homeland Security has added no additional countries to the program since the registration deadline for the fourth and final group on April 25, 2003. DHS, however, has announced its intention to incorporate NSEERS into the USVISIT system. (see item 34 below)

## 27. ADDRESS CHANGE NOTIFICATION

*INS proposed rule announced 7/19/02, published 7/26/02, not yet in effect*

The Justice Department announced its intention to resume enforcement of section 265(a) of the Immigration and Nationality Act, which requires all noncitizens to register changes of address with the INS within 10 days of moving. INS proposed to implement this provision by revising most of its benefit applications to include language stating that when an applicant signs the form, she is being put on notice that she must report address changes to INS. This language would also specify that if the applicant fails to provide an address update, and INS later tries to deport her, the applicant can still be ordered deported even if she does not show up in court because she never got the notice to appear. While this proposal was not directly related to anti-terrorism efforts, the DOJ announcement has sown confusion among immigrant communities. Noncitizens who had not reported address changes, particularly in Arab and Muslim communities already targeted in anti-terror initiatives, feared that INS would try to deport them. INS stoked these fears by trying to deport Thar Abdeljaber, a Palestinian immigrant living in North Carolina, on the basis of his failure to report his address change. (An immigration judge dismissed the charge on August 5, 2002.)

It also was not clear whether INS would record the address change information properly. The AR-11 address change forms were to be sent to INS in Washington DC (changed to an address in London, Kentucky in November 2002), not to any of the service centers or district offices or to the National Customer Service Center or National Records Center. There was no assurance that INS would put enter the address changes into the same database as the address information on the benefit applications, or otherwise match the two sets of information. Nor was INS capable of handling the additional paperwork load. The *San Diego Union-Tribune* reported on July 27, 2002, that INS has collected 200,000 address change forms at the National Records Center that it has not yet filed. To date INS and its successor agencies within the Department of Homeland Security have not fully implemented this proposal.

## 28. DEPARTMENT OF HOMELAND SECURITY

*Federal statute enacted 11/25/02; department created 3/1/03*

On November 25, 2002, President Bush signed the Homeland Security Act of 2002. The new law set up a new Department of Homeland Security (DHS) that combined 22 agencies, including the Secret Service, the Coast Guard, the Customs Service, and the Federal Emergency Management Agency. The new law also abolished the Immigration and Naturalization Service and replaced it with three new bureaus: the Bureau of Customs and Border Protection (BCBP), which oversees inspections at the border and ports of entry and includes the Border Patrol; the Bureau of Immigration and Customs

### Special Registration

Asim Salam reported to the Chicago INS office for special registration on February 6, 2003. Having graduated from USC and gained an extension on his student visa for optional practical training (OPT), Asim had married a US citizen the preceding December. He had just filed the papers to apply for a green card (based on his marriage) at the INS office when he went in to register as well. "I had heard about the arrests that were happening, but I thought I would not have any problems," Asim recalled.

Instead, Asim was arrested. INS questioned his OPT status and even raised doubts about his marriage. Thinking he had overstayed his visa, and lacking a record of the green card application he had just filed, INS detained him and set a \$7,500 bond. (Ordinarily bonds range from \$1,000 to \$5,000.) Asim spent the night and the next day in INS custody, until his father-in-law posted the bond the following day.

It is not known how many others who, like Asim, reported for special registration were detained. "I was trying to obey the law," he reflects, "but instead I got treated like a criminal."

Enforcement (BICE), which handles investigations of immigration violations, detention, and deportation; and the Bureau of Citizenship and Immigration Services (BCIS), which handles applications for immigration benefits. The new department and the new immigration bureaus came into existence on March 1, 2003, though the implementation of the new structure could take as long as two more years.

The Homeland Security Act included few provisions to ensure that these bureaus would coordinate their operations or communicate effectively, or that the department would formulate a coherent overall immigration policy. In many instances, including special registration (*see item 26 above*) or border apprehensions of individuals who may have claims to citizenship or asylum, the responsibilities of the bureaus overlap. Also, the Act provides no assurance that benefit processing will receive adequate funding or otherwise get short shrift compared to immigration enforcement. Indeed, DHS has arrested many individuals when they have reported for interviews for their benefit applications. The incorporation of immigration functions into a department dedicated to homeland security, combined with the other enforcement initiatives detailed in this report, points toward more aggressive pursuit of undocumented immigrants and of other noncitizens whom the federal government suspects of posing a threat to national security.

## **29. ADDITIONAL SECURITY CHECKS ON IMMIGRATION APPLICATIONS**

### ***INS procedural change implemented November 2002***

In addition to the IBIS checks implemented in spring 2002, INS added a further change in its screening procedures that fall. Formerly INS would proceed with an immigration benefit case (such as a naturalization or green card case) if it submitted a name to the FBI and did not receive any response within 60 days. In November, INS changed its procedures so that it must wait until it receives an FBI response before it can proceed. INS (and now BCIS) submits case records on magnetic tape to the FBI to conduct this data check. As of March 2003, only .32% of the submitted names had produced any FBI records. Unfortunately, this new procedure has slowed down approvals for many naturalization and green card holders. In some instances, BCIS cancelled naturalization ceremonies because the agency had not received clearances for the would-be citizens. In many other instances, applicants who otherwise had been approved now needed to wait months before they could take the naturalization oath or receive their green cards.

## **30. FBI AUTHORIZATION TO PERFORM IMMIGRATION ENFORCEMENT**

### ***Secret order of Attorney General Ashcroft 12/18/02***

Attorney General Ashcroft issued a secret order to the FBI authorizing its agents to enforce immigration laws, and in particular to investigate and detain suspected immigration violators. This order follows other Justice Department efforts to enlist other law enforcement agencies, including state and local agencies, to engage in immigration enforcement. (*see item 19 above*). Adding the resources of the FBI is of questionable value, given the FBI's other law enforcement missions and priorities as well as its lack of training in immigration law and immigration enforcement.

## **31. VISA REQUIREMENTS FOR BRITISH COMMONWEALTH NATIONS**

### ***INS and State Department interim rule published 1/31/03, effective 3/17/03***

In the name of national security, INS and the State Department changed rules that had previously allowed individuals who are permanent residents of Canada and Bermuda but who are nationals or citizens of other nations in the British Commonwealth to enter the US without a passport and visa. The rule covers nationals of 53 countries, including the United Kingdom, Australia, South Africa, India, Pakistan, and many African and Caribbean countries. This rule continues a trend of regulations that make it more difficult for people from other nations to visit and conduct business in the US.

## **32. OPERATION LIBERTY SHIELD**

### ***DHS initiative announced 3/17/03, ended April 2003***

As the US prepared for war with Iraq, the Department of Homeland Security announced Operation Liberty Shield, an initiative to tighten control of US borders during the impending hostilities. The operation included heightened alerts at US ports of entry and an initiative to interview 11,000 immigrants from Iraq to gain information about potential military and terrorist threats. Most controversially, the operation also required that asylum applicants from Iraq and countries where al-Qaeda has been known to operate remain in detention during the entire duration of their asylum cases. It is not known how many asylum applicants were affected by the operation, but many advocates found it puzzling that those individuals who were fleeing the regime of Saddam Hussein should now face incarceration as they arrive in the US seeking freedom. The operation ended when the war in Iraq halted in late April 2003.

### 33. DENIAL OF BOND WHEN IMMIGRATION AUTHORITIES CLAIM NATIONAL SECURITY RISKS

#### *Decision of Attorney General Ashcroft 4/24/03*

Breaking with longstanding precedent, Attorney General Ashcroft ruled that immigration authorities can disregard individual circumstances and deny bond to detained immigrants if the immigrants' release could have general national security implications. Ashcroft ruled in the case of an 18-year-old Haitian, David Joseph, who arrived with more than 200 other Haitians in October 2002. Joseph applied for asylum and sought release from detention. INS objected to releasing Joseph, raising national security concerns about the further waves of migration from Haiti that his release would encourage. Both the immigration judge and the Board of Immigration Appeals ruled in Joseph's favor. Ashcroft, however, ruled that national security concerns overrode Joseph's right to release on bond, a right that ordinarily would be denied only if the detainee could be shown to be a flight risk or a danger to the community.

With this decision, Ashcroft extends the national security rationale for denying bond to detainees beyond the immediate context of anti-terrorism efforts (as in the sweep immediately after the September 11 attacks—see *item 1 above*). The ability of detainees to gain release is already severely limited under the "mandatory detention" provisions of the 1996 immigration law (which the Supreme Court upheld in 2003). Ashcroft's decision raises the prospect that immigration authorities will invoke national security concerns in many more cases. If this happens, many more immigration detainees will lose their ability to be released, and to gain access to their families, attorneys, and communities, while their cases move forward.

### 34. USVISIT PROGRAM

#### *DHS initiative announced 4/29/03, not yet in effect*

Homeland Security Secretary Tom Ridge has announced plans for a comprehensive tracking system for foreign nationals entering the US. Under the US Visitor and Immigrant Status Indication Technology System (USVISIT), all entrants would be fingerprinted, photographed, asked for information regarding immigration status and residence, and subjected to a check against lists of individuals who should be denied entry. DHS plans to implement USVISIT according to the timeline set by the Immigration and Naturalization Service Data Management Improvement Act of 2000 for setting up an integrated entry-exit data system: the system must be installed at all of the nation's airports and seaports by the end of 2003, and at the 50 land border posts with the highest traffic by the end of 2004, and at all other points of entry by the end of 2005. DHS has stated that USVISIT would replace the special registration program (see *item 26 above*) and incorporate the SEVIS student tracking system (see *item 24 above*). It is not clear whether DHS will have sufficient funds to implement this program on its required timeline. The program, however, is certain to create additional backlogs at ports of entry, and also raises the prospect of improper denials based on inaccurate information.

### 35. OPERATION LANDMARK

#### *DHS initiative executed in Chicago starting 5/10/03 and ongoing*

In addition to conducting sweeps of immigrant workers at US airports (see *item 11 above*), DHS also investigated worksites in buildings that



#### **Operation Chicagoland Skies**

Elvira Arellano came to the US from Mexico in 1997. She worked hard to support herself, her family in Mexico and later her US-born son Saul. Her most recent job was performing clean-up work on airplanes at O'Hare Airport.

On the morning of December 10, 2002, federal law enforcement agents came to Elvira's home and arrested her in Operation Chicagoland Skies. The federal government stated that it launched the operation to protect the airport from potential terrorists. Instead, the operation ended up punishing food service workers, truck drivers, and janitors like Elvira, who pose no threat to anyone. "I am not a terrorist," Elvira insists. "Terrorists are bad people who want to harm others. I am only trying to do what is right for my son and me."

Elvira was one of 25 workers who were charged with minor federal criminal charges like using a false Social Security number. While many of the other workers received light sentences, the judge gave Elvira five years of probation. She still faces deportation back to Mexico. Elvira realizes that beating the deportation will be difficult, but she says, "I want to show my son that if something wrong happens to you, you need to fight back."

the department deemed to be sites that would be attractive for terrorist attacks. Operation Landmark first surfaced in Chicago on May 10, 2003, with a sweep of workers at the Sears Tower. As with Operation Tarmac/ Chicagoland Skies, it appears that most of the individuals whom DHS apprehended were undocumented food service and janitorial workers. DHS is not disclosing how many immigrants have been arrested in this operation, or what other sites have been targeted.

### **36. REQUIREMENT FOR CONSULAR INTERVIEWS**

#### ***State Department interim rule published 7/7/03, effective 8/1/03***

The State Department, which had already undertaken several measures to toughen screening of individuals seeking to visit or otherwise temporarily enter the US (*see items 8, 18 and 31 above*), has codified its new requirements that most of these individuals submit to a personal interview at a US consulate before getting a visa. Before this change, consular officers had broader discretion to waive the interview requirement. Under the new rule, waivers are available only for applicants who are 16 or under, 60 or older, diplomats and their families, individuals who during the preceding 12 months had been granted the same class of visa they are now seeking, and others whose cases involve the national interest or unusual circumstances. While screening of visa applicants should enhance national security, this new requirement has not come with increased personnel or resources to handle the additional interviews. As a result, interview backlogs have developed at many US consulates, and many individuals who had hoped to come to the US to visit family, transact business, attend school, or pursue other innocent interests now face frustrating waits that at some posts may approach one year.

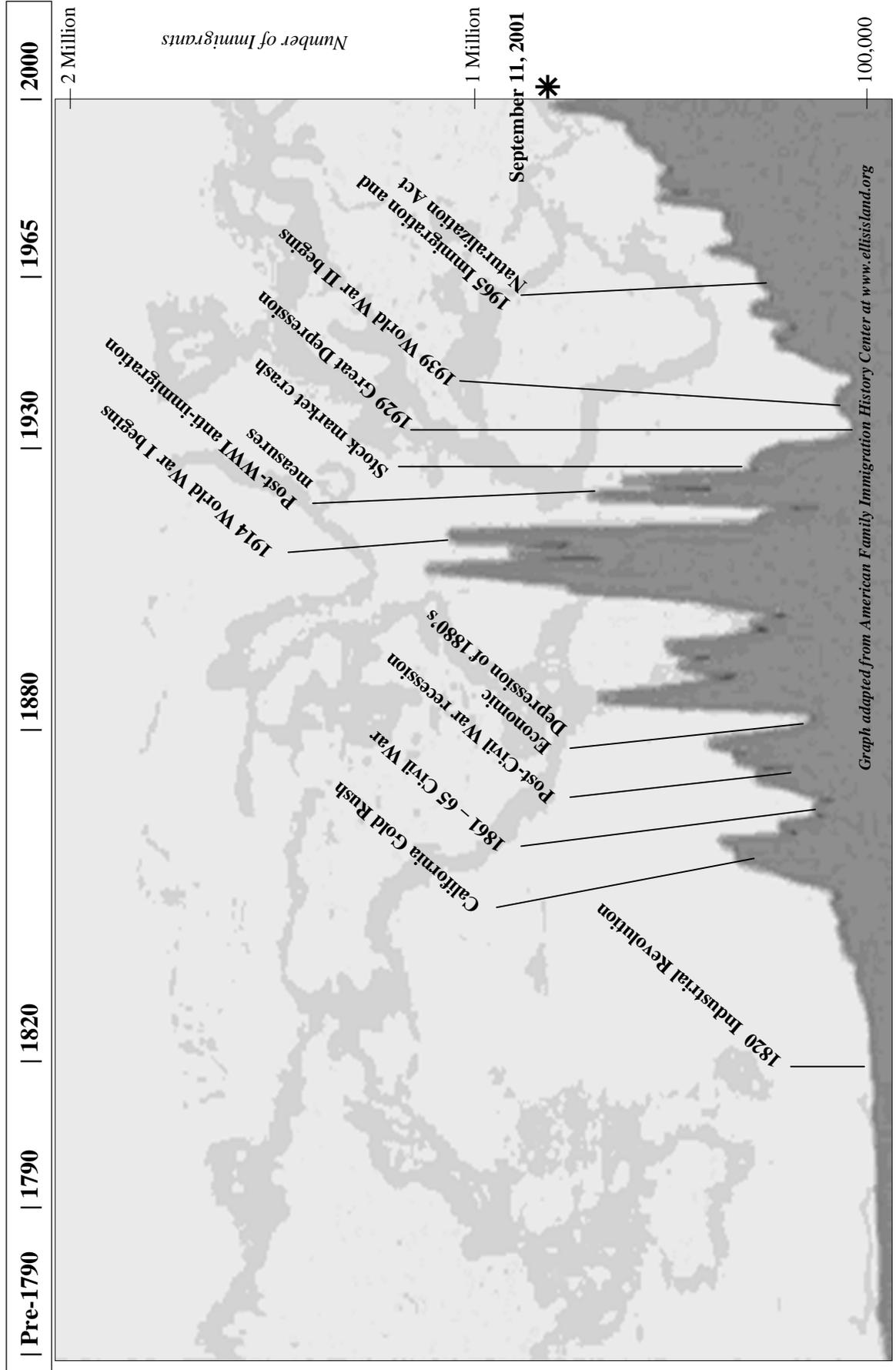
### **37. SUSPENSION OF TRANSIT WITHOUT VISA AND INTERNATIONAL-TO-INTERNATIONAL PROGRAMS**

#### ***State Department and DHS interim rules published 8/7/03, effective 8/2/03***

Immigration laws provide that individuals who arrive in the US solely to proceed to another destination outside the US may be able to enter and remain in the US without a visa. The State Department has been running the Transit Without Visa (TWOV) and International-to-International (ITI) programs to work with airlines to facilitate such travel. The State Department and DHS have suspended this provision, citing the need to evaluate potential security risks in the programs that potential terrorist might exploit. As with the requirement that most applicants must now appear for consular interviews, the suspension of these programs and the resulting need for affected travelers to get visas could add to further visa processing backlogs and thwart the travel plans of many well-intended foreigners.



*Forces behind immigration & their impact on the immigrant experience: What's Next?*



Graph adapted from American Family Immigration History Center at [www.ellisisland.org](http://www.ellisisland.org)