

SPECIAL REGISTRATION (NATIONAL SECURITY ENTRY-EXIT REGISTRATION SYSTEM)

Of the many discriminatory and intrusive policies targeting immigrants that have come into force since September 11, the “National Security Entry-Exit Registration System” (NSEERS), commonly known as “Special Registration,” is arguably the one which has caused the most widespread concern within affected immigrant communities, primarily among Arabs and Muslims.¹ Under this program, men and boys over 16 years of age from 25 countries must report to the INS where they will be photographed, fingerprinted, and interviewed under oath.² Failure to comply with requirements of the program is a deportable offense.

The Special Registration program has two parts. The first part requires visitors from certain countries designated by the State Department to be fingerprinted, photographed and interviewed upon arrival in the United States. This registration happens at the airport or border. The second and more controversial part requires temporary visitors already in the United States to report to INS offices around the country for registration pursuant to “call-in” procedures designed by the Department of Justice.

The program has resulted in the detention of nearly 1,200 people and has sparked new fears in Muslim communities that they are being targeted by the Department of Justice.³ In December 2002, the INS in Los Angeles detained approximately 400 men and boys from Iraq, Iran, Libya, Sudan and Syria, during the first phase of implementation of the “call-in” procedures.⁴ After voluntarily appearing before the INS in compliance with the special registration program, many were detained on the grounds that their visas were not up to date—despite their having correctly filed applications for permanent residency that were pending due to INS backlogs.⁵ Amnesty International reported harsh treatment of the detainees while in INS custody, including being placed in handcuffs and leg shackles and being hosed down with cold water. Detainees also reported being forced to sleep standing up because of overcrowding and being

¹ Congress authorized in 1996 the creation of an entry-exit system, as part of the “Illegal Immigration Reform and Immigrant Responsibility Act of 1996,” Immigration and Nationality Act, 110, 8 U.S.C. 1365a and the USA PATRIOT Act, 414. But the current registration program, as designed and implemented by the Justice Department, is dramatically flawed in carrying out this objective. Several members of Congress have objected to the manner in which their intent has been interpreted. *See, e.g.*, Letter to Attorney General John Ashcroft from U.S. Senator Russell D. Feingold, U.S. Senator Edward M. Kennedy and U.S. Representative John Conyers, Jr., December 23, 2002, available at http://www.house.gov/judiciary_democrats/dojentryexitltr122302.pdf (accessed January 23, 2003).

² The 25 countries have been identified in four groups, each having a different deadline. For more information on the particular requirements, see the American Immigration Lawyers Association website at www.aila.org or the INS official website, www.ins.usdoj.gov.

³ “U.S. Detains Nearly 1,200 During Registry,” *Washington Post*, January 17, 2003.

⁴ John M. Broder and Susan Sachs, “Men From Muslim Nations Swamp Immigration Office,” *New York Times*, December 17, 2002.

⁵ Dan Eggen and Nurith C. Aizenman, “Registration Stirs Panic, Worry,” *Washington Post*, January 10, 2003.

transferred to various facilities without a chance to call family members or obtain legal counsel.⁶

Many people have questioned the efficacy of the Special Registration program. The program creates a substantial new burden on government bureaucracy to accurately record and store data that is unlikely to contribute to combating terrorism. Juliette Kayyem, a terrorism expert at Harvard University, noted that

[t]he pure accumulation of massive amounts of data is not necessarily helpful, especially for an agency like the INS that already has problems keeping track of things. Basically, what this has become is an immigration sweep. The idea that this has anything to do with security, or is something the government can do to stop terrorism, is absurd.⁷

The logic behind the Special Registration program remains unclear and unconvincing. There seems little doubt that terrorists intent on harming Americans will not come forward to register their presence with the government. The majority of those who present themselves for registration are simply trying to comply with the law and maintain their status as legitimate tourists, visitors, businessmen, students and applicants for permanent residence. But the government has done such a poor job of publicizing the registration requirements that many subject to the program do not understand what they must do in order to comply.

Governments of countries allied with the United States in the “war on terrorism” whose nationals are included on the Special Registration list have objected to the registration policy. Government officials from Bangladesh and Pakistan have complained that it is offensive for partners in the global effort against terrorism to have their nationals treated as suspect.⁸ The Pakistani Foreign Minister has requested an exemption for Pakistani residents in the United States from the registration policy.⁹ The Indonesian government has advised its citizens to avoid travel to the United States, saying that the policy is arbitrary and confusing.¹⁰

Because the United States considers both nationalities of dual nationals in deciding who is subject to Special Registration, the Canadian Ministry of Foreign Affairs has issued a travel advisory, warning Canadian citizens born in countries on the Special Registration list to reconsider travel to the United States. Tensions in U.S.-Canada relations on this

⁶ Letter from Amnesty International to Attorney General John Ashcroft, dated January 10, 2003, available at <http://www.amnestyusa.org/news/2003/usa01102003-3.html> (accessed March 5, 2003).

⁷ See supra, note 60.

⁸ Barry James, “U.S. Plan to Monitor Muslims Meets With Widespread Protest,” *New York Times*, January 18, 2003.

⁹ Colum Lynch, “Registration Amnesty for Pakistanis Sought,” *Washington Post*, January 22, 2003.

¹⁰ Barry James, “U.S. Plan to Monitor Muslims Meets With Widespread Protest,” *New York Times*, January 18, 2003.

issue have eased since the U.S. State Department and the Canadian Ministry of Foreign Affairs began negotiating an exemption for citizens of Canada.¹¹

In light of the problems created by the Special Registration program, and the lack of clear benefits, some members of Congress have requested that the Justice Department suspend the NSEERS program until Congress has a chance to review it and suggest alternatives.¹² In January, the Senate voted to prohibit funding for NSEERS, but the provision was stripped out of the bill in the House-Senate conference committee.¹³

¹¹ See U.S. Department of State, Secretary of State Colin L. Powell, "Remarks with Canadian Minister of Foreign Affairs Bill Graham," November 14, 2002, available at <http://www.state.gov/secretary/rm/2002/15153.htm> (accessed March 7, 2002).

¹² Letter to Attorney General John Ashcroft from U.S. Senator Russell D. Feingold, U.S. Senator Edward M. Kennedy and U.S. Representative John Conyers, Jr., December 23, 2002, available at http://www.house.gov/judiciary_democrats/dojentryexitltr122302.pdf (accessed January 23, 2003).

¹³ Edward Walsh, "Senate Votes to Halt INS Registration Program," *Washington Post*, January 25, 2003.