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BACKGROUND



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Immigrants in the Crosshairs: The Quiet Backlash Against America's Immigrants and Refugees

"Immigration is not a problem to be solved. It is the sign of a confident and successful nation. And people who seek to make America their home should be met in that spirit by representatives of our government. New arrivals should be greeted not with suspicion and resentment, but with openness and courtesy."

President George W. Bush

July 10, 2001

Ellis Island, New York

I. INTRODUCTION

In the year since the terrorist attacks of September 11, 2001, our government has struggled to respond so that Americans will be protected from further attacks. Legislation has been passed, agreements have been signed with neighbors and allies, government agencies have retooled for a new mission—all with the aim of making our nation less vulnerable to terrorism.

Unfortunately, the government's response to terrorism has been somewhat schizophrenic in the year that has passed since September 11. Rational, targeted measures meant to sift out the few who come here to do us harm from the millions of foreign-born who come here for legitimate reasons are being overshadowed by actions that have cast a wide net, hauling in hundreds of innocent persons and creating an atmosphere of fear in immigrant communities. The scattershot edicts from the Attorney General, for example, actually work at cross purposes with the more targeted efforts needed to keep us safe, creating a perception in immigrant communities that *any* contact with the government—even for those who now have resident status—might lead to their arrest and permanent exile from their adopted country.

The anniversary of the terrorist attacks gives us an opportunity to reflect on our government's response to date, and to ask whether the government has gone too far in some instances, leading to a feeling in immigrant communities that they are under siege.

The Key to Success in Fighting Terrorism: Intelligence. The key to fighting terrorism effectively is intelligence. We must learn who has plans to harm us, and that information must be shared with the agencies that serve as gatekeepers to our country. To do a better job, we must cooperate with intelligence agencies around the world that are collecting information on known or potential terrorists. We must disrupt their criminal and financial networks, and cripple their operations. In addition, we must have reliable travel documents that will identify persons entering the U.S. We also must work with our neighbors, Mexico and Canada, so that anyone trying to enter the North American continent will be screened in a similar way.

Here is where we have had a measure of success: new legislation, such as the Border Security Act, has given the government new tools to gather intelligence and identify potential terrorists, and to make sure that our gatekeeper agencies—the Immigration and Naturalization Service (INS) and the State Department—have the information they need to keep terrorists out. The Bush Administration has signed “Smart Border” agreements with Canada and Mexico, to prevent terrorists from using those countries as staging grounds for attacks on the U.S.

Policy Reform: Building Trust in Immigrant Communities. There are things the government could do that would greatly assist its ability to collect intelligence within the U.S. Using the increasingly popular tactic of community policing, police departments across the country could redouble their efforts to build trust in immigrant communities. By establishing good relations with communities of the foreign born, the police will be in a better position to collect useful bits of intelligence that might prevent future acts of terrorism. An overhaul of our immigration laws would also increase opportunities to gain intelligence on those already inside the U.S. Providing opportunities for undocumented immigrants to step out of the shadows and gain legal status, in exchange for making themselves known, would significantly shrink the haystack within which the needle of terrorism hides. The best way to enforce the laws is to create laws that are enforceable, and so Congress should reform our immigration laws to provide more legal channels for immigrants coming to work or join family members, so that they can be subjected to background checks and given legal visas if they qualify. Then, our enforcement agencies could shift their efforts away from keeping workers away from employers and focus instead on keeping out terrorists.

On this score, government actions have hindered, rather than helped, the fight against terrorism. Rather than complete the promising discussions on immigration reform begun with Mexico prior to September 11, the Administration and Congress have put immigration reform on the back burner. Instead of reforming our immigration laws to reward otherwise law abiding workers who are desperate for more legal opportunities to immigrate, the government seems to have come under the influence of those who want it to treat all immigrants as terrorists. The cumulative effect of a series of government actions at all levels has created a siege atmosphere in immigrant communities, particularly those of Middle Eastern descent. For example, letters sent by the Social Security Administration to employers have pushed hundreds of thousands of immigrant workers from their jobs into the underground economy. States are making it more difficult for some immigrants to drive legally. The Supreme Court has ruled that immigrant workers without proper papers cannot expect justice if they are illegally fired by their employers. The Justice Department has made vague pronouncements giving all police the authority to enforce immigration laws. The Justice Department has announced it will enforce an obscure 50-year-old law turning immigrants into criminals if they have not notified the government of a change of address.

Instead of looking for the needle in the haystack, the government has added bale after bale of hay to that haystack. If the goal is finding and rooting out potential terrorists among us, many of the initiatives launched in recent months can only be counterproductive. The remainder of this backgrounder summarizes some recent actions of the government—the Department of Justice in particular—which, taken together, constitute a backlash against all immigrants and refugees.

II. AMERICA VS. AMERICA’S HERITAGE AS A NATION OF IMMIGRANTS

There have been a series of actions taken by the Administration, Congress, the courts, and the states that, though they may have nothing to do with the fight against terrorism, have occurred during the past year and have acted to push immigrants outside the circle instead of drawing them in.

Immigration Through the Lens of Anti-Terrorism. Congress and the Bush Administration are in the process of creating a Department of Homeland Security, a new federal agency dedicated to fighting and preventing terrorism. The entire immigration function of the government will be contained within the new department. This proposal is a powerful signal that all immigrants will be viewed as terrorist threats.

Simply burying an agency that seems at times to be nearly paralyzed with dysfunction in a mega-department with an anti-terrorist mission will not increase our security. Rather, the agency must be reorganized so that it can both effectively contribute to the homeland security mission *and* process the applications of immigrants and visitors in a timely manner. There has been much thinking on how to reorganize the agency so that it may accomplish its dual enforcement and service missions—even if it is ultimately placed within the Department of Homeland Security—by separating service and enforcement chains of command, and having an executive with clout to coordinate the separate functions and to elevate the immigration function within the federal bureaucracy. The Administration’s version of the legislation and that advanced by the House of Representatives fail to take into account that thinking.

No Match for Reality. The Social Security Administration has sent out more than 750,000 letters to employers, telling them that a Social Security number they have supplied does not match one in its database. Thousands of immigrants are losing their jobs, driving them from jobs where they were paying taxes into work in the underground economy. Perhaps more than anything, this example illustrates the disconnect between our immigration laws and the reality of our economy—that there are not sufficient legal opportunities for immigrants to work for employers who are in need of their labor.

Driving the Wrong Way. Since September 11, states across the country are making it more difficult for immigrants to obtain drivers licenses—ostensibly to make the document more secure. These states are in effect changing the purpose of a license, from a document used to show that the operator of a motor vehicle understands the rules of the road and is licensed to drive, into a kind of internal passport. With the option to drive legally closed to them, some immigrants who want to obey the law may be forced for job-related reasons to drive without a license—and without insurance. The practical result of making it more difficult for immigrants to get licenses, then, is to make the roads less safe for all of us.

Mass Firing of Baggage Screeners. After September 11, Congress passed a law requiring all airport baggage screeners to be U.S. citizens. Thousands of immigrants who have not yet become citizens have been fired from jobs they have been trained for and often held for many years. In their place, airports have had to hire citizens who have to be trained anew. Ironically, non-citizens can serve in the military and the National Guard, where they may watch over the citizen baggage screeners.

Work Without Pay. In March, the Supreme Court handed down a decision which, in effect, gives employers who use undocumented workers the green light to fire their workers as soon as they begin to stick up for their rights in the workplace. In a decision known as *Hoffman Plastics*, the court said that the worker was not entitled to back pay—a common remedy when workers are fired illegally—from the time they were illegally fired. Some unscrupulous employers are taking this as an opportunity to not pay some of their workers even for the time they have worked. As other government actions make it harder for some immigrants to work for well-intentioned employers, they will to a greater extent be relegated to jobs with unscrupulous employers trying to test the limits of our labor laws.

Red Tape for the Persecuted. The events of September 11 seem to have shaken America’s leadership in protecting the world’s persecuted. Our refugee resettlement program slowed to a trickle as refugees, already the most diligently-screened category of immigrants admitted to this country, became subject to additional security screening. By the end of July, with just two months to go in the government’s fiscal year, the U.S. had resettled a little more than one quarter of the target number of refugees that were

supposed to be resettled this year. Add to this the 20,000 refugees approved for U.S. resettlement that were left stranded last fiscal year due to the September 11 attacks, and it is apparent that the United States has severely undershot its commitment to providing a safe haven for the world's most vulnerable people.

Immigration Reform Goes to the Back Burner. Prior to September 11, immigrant communities had high hopes that our government would fix our broken immigration system. Presidents Bush and Vicente Fox of Mexico were in negotiations that could have led to a “grand bargain” on immigration, including legalizing the status of hard-working immigrants who have been living in this country for a number of years, and expanding opportunities for more people to come to the U.S. legally in the future. Although the Administration has said repeatedly that it wants to get back to that positive agenda, there has been very little action. In fact, since September 11, our border policy has continued to focus on keeping out Mexican workers, as more agents are deployed to the Southern border while the Northern border has received only token reinforcement. Our border policy has led to a record number of deaths of would-be immigrant workers trying to cross the border in remote desert terrain. Meanwhile, many of the internal enforcement measures the government has recently adopted are driving those working here without permission further underground. Immigrant communities are becoming resigned to the possibility that recognition of and reward for their contributions before and after September 11 may have to wait for new leadership in Washington.

III. DEPARTMENT OF JUSTICE ACTIONS

The Department of Justice has launched a number of initiatives since September 11 that, taken together, cast a wide net that threatens to entangle millions of America's newcomers. Even immigrants who have established themselves here have come to worry that they could be sent into permanent exile for the most minor offense—or thrown into detention indefinitely without charge.

A Criminal Move. The Justice Department has given notice that it will start enforcing a little-used, 50-year-old law making it a crime for an immigrant not to report a change of address to the INS within ten days of moving. The law also permits the government to send people into permanent exile if they fail to send in their change of address form. The problem is, millions of non-citizens (including perhaps as many as nine million legal permanent residents) who have moved since they were last in communication with the INS did not know about this rule. Potentially, they could all be facing criminal charges, and they are all at risk of deportation. This decision gives the Justice Department the option to pick up just about anyone. If the Department follows its own precedent in other initiatives since September 11, a decision to punish someone for not filing an address change form will depend on whether the person is Arab or Muslim. As if to illustrate this suspicion, the INS recently tried to deport a Palestinian man for failing to file a change of address form. (A judge threw the case out.)

Those who do know about this obscure law, and follow the rules, may not fare any better. The INS has not been able to process the forms that have been mailed in. In July 2002, the INS had 200,000 change of address forms sitting in boxes in an underground storage facility. That was before the Justice Department announced it would strictly enforce the law. In the three months after the announcement, the INS received 700,000 additional forms which are also sitting in boxes, in storage. Some of the people who filled out the forms now sitting in those boxes could be deported for failing to file their change of address properly, and would be unable to prove that they had indeed followed the rules.

APB for Foreigners. In April, press reports revealed that the Justice Department would reverse a long-standing government policy which logically kept responsibility for enforcing civil immigration law with trained officers of the Immigration and Naturalization Service. In the switch, the Department was

declaring that local and state police agencies had the “inherent authority” to enforce immigration laws. Millions may be affected by this rule as law enforcement officers, untrained in immigration law, stop and question foreigners and other Americans who look or sound like they might be foreign.

Most big-city police agencies have already rejected this authority. They know that their ability to fight real crime depends on building trust in their communities, and if immigrants fear being turned over to the INS, they will not turn to the police if they have been a victim or witness a crime—or if they have information that might be useful in deterring future terrorism. As Montgomery County, Maryland Police Chief Charles Moose said, “[T]his movement by the federal government to say that they want local officers to become INS agents is against the core values of community policing: partnerships, assisting people, and being there to solve problems. . . . I think it would be totally inappropriate to go down that path.”

Your Papers, Please. The Justice Department will implement a tracking scheme that will require visitors and immigrants from certain countries—and others who an immigration inspector decides meets certain secret criteria—to register with the government by providing their fingerprints, photographs and other information when they enter the country. After thirty days, they will have to appear again to register, and then at one year intervals after that. Those who have traveled to communist countries may recognize this “big brother” treatment of foreigners, but it is hardly fitting for an open society such as the U.S.

Round Up the Usual Suspects. The Justice Department’s actions have hit American Muslims and Arab Americans the hardest. In its round-up of immigrants as part of the post-September 11 investigation, the Justice Department has taken into custody hundreds of men with Middle Eastern and Arabic backgrounds. At the end of last year, the Justice Department announced that it would track down and interview 5,000 Arab in the U.S. They were interviewed not because they were suspected of having a connection to terrorism, but because they were Arab, in a certain age range, and were newly arrived in the U.S. Out of the 5,000, twenty were taken into custody, mostly on immigration charges. In the spring of 2002, another 3,000 interviews were ordered.

In each of its enforcement initiatives since September 11, the Department has made it a point to enforce the law first on immigrants of Middle Eastern descent. For example, an effort to track down 300,000 immigrants who have been given final deportation orders has focused first on Middle Eastern men. Former CIA counterterrorism head Vincent Cannistraro noted that the Justice Department’s “detention of thousands of immigrant Muslims—the policy of ‘shaking the trees’ in Islamic communities—alienates the very people on whom law enforcement depends for leads and may turn out to be counterproductive.”

Secret Trials. Shortly after September 11, the Justice Department’s chief immigration judge issued instructions to hundreds of immigration judges to close to the public all immigration-related trials of individuals picked up in connection with the September 11 investigations. The order has applied to more than 600 “special interest” immigration cases. Not only is the courtroom closed to visitors, family, and the press, but the restriction extends to even “confirming or denying whether such a case is on the docket.” Because they are being held in secret, there is no way to determine if these trials are being conducted fairly, or if immigrants are being given proper due process as the government tries to deport them.

The Disappeared. Since September 11, hundreds of immigrants have been thrown in prison without being told why, without access to a lawyer, without anyone on the outside—including their families—knowing where they are being held. Most of those in secret detention are officially being held for minor immigration violations. Some, even after they stop fighting the government’s efforts to deport them, are still held for months with no reason given. Former Secretary of State Warren Christopher said that this tactic—of snatching people in the middle of the night and secretly jailing them—reminded him of the “disappeareds” in Argentina. “I’ll never forget going to Argentina and seeing the mothers marching in the

streets asking for the names of those being held by the government,” Mr. Christopher said. “We must be careful in this country about taking people into custody without revealing their names.”

Benefit in Doubt. Applicants for immigration benefits—such as naturalization or lawful permanent residence—have always had to undergo security clearances, including an FBI background check. In May, the INS suddenly started to require its adjudicators to start checking all applications on an additional system—the Interagency Border Inspection System—normally used at the border to check people entering the country. Many offices in the interior of the U.S. did not have access to this system. In other offices, INS personnel were not trained in its use. As a result, the backlogs for which the INS has become infamous are on the rise again. While it is entirely appropriate to be running security checks on immigrants who we are accepting as new Americans, for any system that will be used the technology should be in place and the workers trained to use the technology.

IV. CONCLUSION

Immigrants Want to Embrace America; Does America Want to Embrace Immigrants? Despite the government’s efforts to make life difficult, immigrants are embracing America in near record numbers. By the end of the third quarter of the government’s fiscal year, citizenship applications were near an all-time high. Many reacted to the attacks against America by showing their patriotism for their adopted country. At the same time, there is a feeling that only citizenship will protect them from the whims of a government that is making life in America more tenuous with each passing month.

For those unlucky enough not to be eligible for citizenship at this time, there is a constant fear of losing everything they have built up during years in the U.S. Even long-time permanent residents, who up to now may have been confident that they knew America and America knew them, are now wondering whether the government will find some other obscure law that could be used as an excuse to deport them.

Busywork Will Not Make Us Safer. Will the broad attacks launched by the government on the rights and liberties of immigrants in this country make us safer? It is hard to see how. The INS has been charged with, or is being required to place new priority on, collecting information such as change of address data from all immigrants, biographical and academic data from students, and entry and exit data from certain immigrants of “special concern.” Assuming the INS can cope with the new workload, all of this extra information will keep data-enterers busy but will be difficult to analyze, because it will not tell the government which of the millions of immigrants from whom the information is collected may have harmful intent.

The government measures described here make it more difficult for millions of immigrants to work and provide for their families, and will drive those without permission to be here further underground—not a good thing if we would like know who is here, and what information they might have for us. Instead, we need to bring these people out of the shadows by moving forward with a legalization program that gives us a chance to scrutinize their backgrounds and determine whether or not they should remain in this country. We also need to open up legal avenues for workers to come in the future, to take the wind from the sails of the lucrative human smuggling business that thrives when so many are shut out from legal opportunities to come here. That industry could just as easily serve clients who come here to do us harm.

The government’s policies towards immigrants have strayed far from the ideals mentioned by President Bush in his July 2001 speech quoted at the beginning of this background. It is time that we reverse course, stop blaming all immigrants for the actions of a handful of foreign-born terrorists, and focus on what really will make us safer from terrorism.