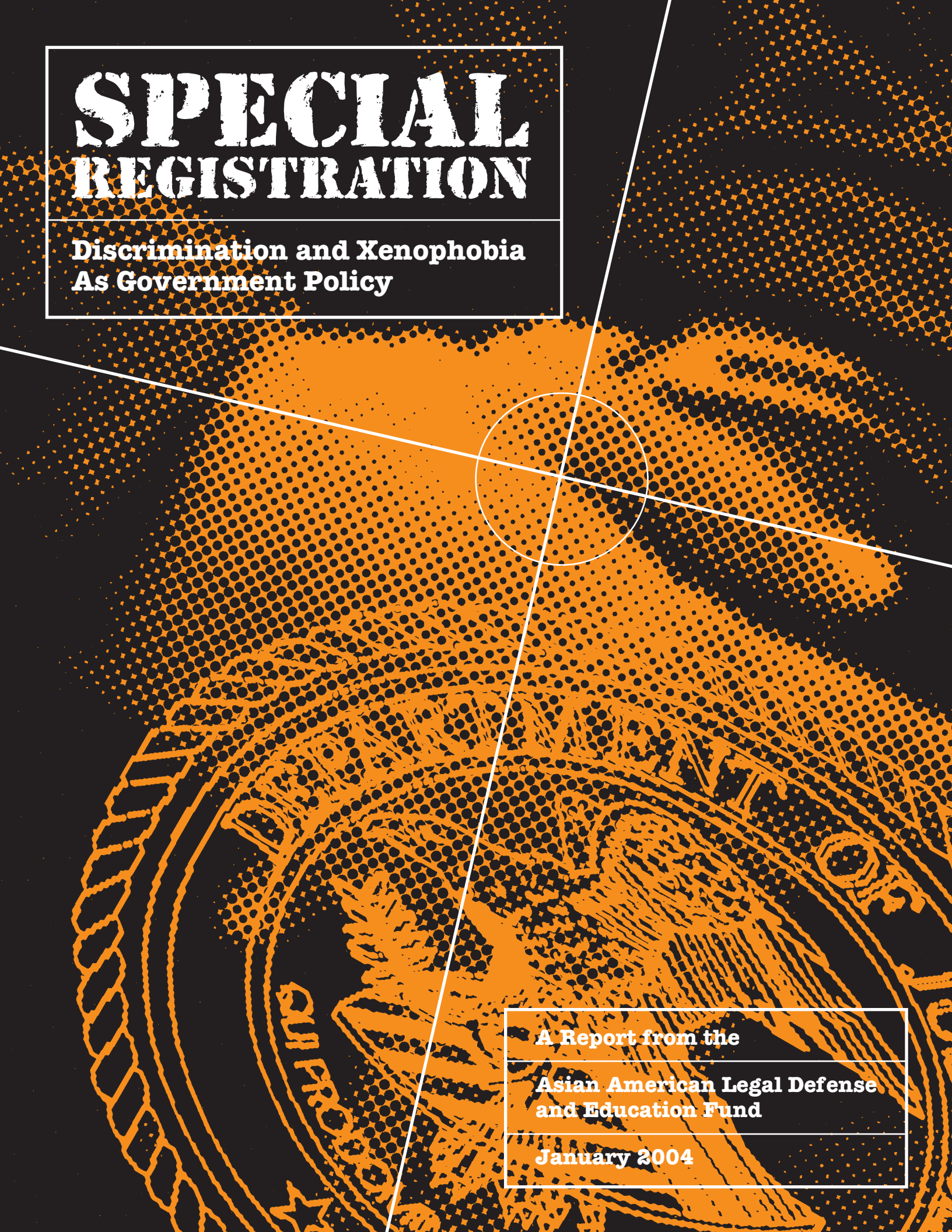
SPECIAL REGISTRATION

Discrimination and Xenophobia As Government Policy



A Report from the

Asian American Legal Defense and Education Fund

January 2004

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Executive Summary

In the days immediately after the attacks on the World Trade Center, the Pentagon, and United Airlines Flight 93 in Pennsylvania, officials from the Bush Administration assured us that they would do whatever necessary to protect people living in the United States. They also guaranteed that discrimination against Muslims and others would not be tolerated.[1] President Bush even went so far as to visit a mosque and condemn those who attacked Muslims and other minorities.[2]

However, despite its rhetoric, the Bush Administration has engaged in two years of intense profiling of Muslims and other select groups of noncitizens. From secret detentions to the incarceration of "enemy combatants" in military brigs to mass roundups, the Bush Administration has used immigration law to discriminate on the basis of religion and ethnicity and to expand a xenophobic immigration regime that has become increasingly repressive in the last decade.

This report describes how one immigration policy in particular, Special Registration, has been used to selectively track and deport Muslim men in the United States. It is a dangerous precedent that must not be expanded to other communities at the government's whim. Special Registration is defined in this report as the "call-in" portion of the National Security Entry-Exit Registry System (NSEERS), a program for tracking border entries and exits.[3] Although NSEERS was intended and presented as a program for tracking newcomers to the United States, Special Registration was applied to people and communities already present in the United States.[4]

Under Special Registration, the Bush Administration required certain men and boys over 16 from 25 countries, all of which are predominantly Muslim countries from Asia and Africa except North Korea, to report between November 2002 and April 2003 to immigration offices for fingerprinting, photographing, interrogation under oath, on pain of arrest, detention, or deportation.[5] The Bush Administration did not inform potential registrants that registration would also often lead to arrest, detention, or deportation, mainly for minor immigration violations that would have been ignored in other circumstances. This situation–that individuals could be detained or deported for going or not going to register–created a Catch-22 that led to uncertainty, fear, and outright flight from the United States.

As of May 11, 2003, the Bush Administration reported that it had collected information on 82,581 people, with at least 13,153 of them in deportation hearings.[6] For the approximately 70,000 people who have been registered and are not already in deportation proceedings, Special Registration has created a means for the government to track their movements and control their lives. Under current policy, those people are required to report again annually and every time they exit or enter the country.[7] They are also allowed to enter and exit the country only through certain border crossings, airports, and other points specified by the Bush Administration. People who registered are also required to alert immigration officials every time they change address, place of employment, or educational institution, among other things.

In order to bring to light the severe impacts of Special Registration, this report provides an account of the motivations and expe-

riences of those directly affected by this policy. We surveyed 219 of the approximately 800 people who received legal assistance from the Asian American Legal Defense and Education Fund (AALDEF) related to Special Registration. The typical respondent was an undocumented working-class Muslim living in New York whose country of origin was a majority-Muslim South Asian country–i.e. Bangladesh or Pakistan. Our survey also included several individuals of Indonesian descent and various Middle Eastern nationalities.

KEY FINDINGS

The People

- 95% were Muslim.
- At least 59% were engaged in working-class professions.[8]
- 38% were married with spouses in the United States.
- 19% had children in the United States.
- 62% first heard that they might have to register through community sources; only 1% first learned of the Special Registration program from government sources.
- 67% who registered and gave one or more reasons for doing so cited a desire to follow the law.

The Process

- 77% who registered had to spend 5 or more hours for the process; 59% of those who registered spent 10 or more hours for the process.
- 56% who registered were taken to immigration investigations, the arm of the Immigration and Naturalization Service (INS) and later Bureau of Immigration and Customs Enforcement (BICE) that primarily detains and deports individuals.
- 37% who registered and were taken to investigations were asked about their marital relationship; and 37% were asked about the immigration status of family members.
- 42% who registered had pending applications for a green card; the Bush Administration is trying to deport 9 of those individuals.
- 52% who registered were put into deportation proceedings; 12 were detained and at least 1 person is still in detention.
- 80% of our respondents the government is trying to deport are visa overstays.
- None were charged with any connections to Al Qaeda or any other violent political organizations.

What Our Respondents Think

- 68% felt that Special Registration had hurt their neighborhood or ethnic community.
- 44% of those who registered and expressed an opinion on this issue said that Special Registration had hurt their impression of the United States.
- 78% of those who registered and expressed an opinion on the issue felt that Special Registration was not fairly applied to all immigrants regardless of nationality.
- 79% of those who registered and expressed an opinion on the issue felt that Special Registration was not fairly applied to all immigrants regardless of religion.

RECOMMENDATIONS

Given the ineffectiveness, discriminatory nature, and far-reaching implications of Special Registration on the individuals, families, and communities it targeted, AALDEF recommends the following actions:

- Congress should initiate an investigation on the purpose, creation, implementation, and results of the Special Registration program, including: discrimination on the basis of religion and ethnicity inherent in the program; the misuse of immigration service resources; lack of attorney access during questioning and investigation of registrants and other possible due process violations. Congress should exercise oversight on other post 9-11 immigration policies, the effects of the 1996 immigration laws, and the use of administrative deportation hearings with severe penalties without the protections afforded criminal defendants–for example, the right to an attorney.
- Selective enforcement of immigration laws on the basis of religion, ethnicity, and nationality or other discriminatory category should be ended–most recently evident in post 9-11 immigration policies like Special Registration, the Absconder Initiative, and others.
- The requirements of the Special Registration program, including annual reporting requirements and restricted entry and exit for those who registered, should be terminated. Those who were subject to and did not comply with the requirements of the program should be given official notice of relief from any repercussions. Those who were detained through the program should be released immediately.
- Congress should explicitly reject the self-proclaimed authority of the executive branch to issue notices requiring similar registrations or any rules that convert civil immigration violations to criminal violations of the Immigration and Nationality Act.
- All information collected through the Special Registration program should be deleted from government databases; at minimum, this information should be removed from the National Crime Information Center (NCIC) and other non-immigration related law enforcement databases.
- Those who were subject to Special Registration requirements and their families should be eligible for any general legalization program enacted by Congress.
- Immigration enforcement should not be used as a pretext for addressing national security concerns.
- Given that administrative removal hearings carry consequences as severe as criminal proceedings, individuals questioned by immigration officials, held in detention, or in removal proceedings should be granted the same rights as criminal defendants, including the right to an attorney.
- Attorney General John Ashcroft, as the nation's top law enforcement official, should be held accountable for the creation and implementation of Special Registration and the devastating impacts it has had on Asian, Muslim, and Middle Eastern communities.

Introduction

Imagine waking up one day and hearing from your neighbor that you might be required to report to a government office in a month so that the government can fingerprint you, photograph you, and ask you questions. You hear that the government is asking only people of your religion and ethnicity to come in for this process, but if you don't go, you will be arrested and forced to leave the United States.

A week later you hear that many people who have gone along with this new requirement are being arrested and forced to leave the United States. People from your neighborhood begin to leave the country for Canada or other places. Local stores shut down because so many people have gone. You get laid off from work because there isn't enough business to keep you on.

The rules are extremely confusing. You can't figure out whether you're required to go or what might happen to you if you go; everyone seems to be telling you different things. Nonetheless, you decide to go because you want to follow the law. At 6 a.m., you get to the government building and wait in line outside in the middle of winter for three hours. You get inside at about 9 a.m. and someone gives you a number. You sit and wait for several hours along with several hundred other people who look like you. Finally, someone calls your number at about 3 p.m. and you go up to the counter. A government official begins asking you questions in a foreign language about your religion, how often you go to religious ceremonies, whether you've been convicted of any crimes, whether you're married, what your parents do, where they're from, what sorts of meetings you go to, and all sorts of other questions. You try to answer their questions to the best of your ability, but are nervous about disclosing so much personal information. Finally, she tells you to sit down and wait for a few more hours.

At 2 a.m. they call you again and take you to another area in the building. You ask them if you can bring a lawyer with you, but they say no. You're kept in a locked room for a half hour and then they ask you more questions–they ask you again about your religion, about your political views, about your background. After they finish asking you questions, they give you a piece of paper and say that you probably have to leave the country–if you don't want to be forced to leave the country, you can sign the paper now and leave the country on your own. Stunned–"I haven't done anything wrong," you think–you are sent on your way at 4 in the morning with a court appointment in two months.

"I haven't seen my family in 25 years, I am simply here for work and this registration process makes it cumbersome for me to earn my livelihood."

-Respondent

Almost 100,000 men from Muslim countries did not have to imagine the scenario above–they lived it. Between November 2002 and April 2003, the Bush Administration conducted its Special Registration program, defined in this report as the "call-in" portion of the National Security Entry-Exit Registry System (NSEERS). This report is a compilation of the experiences and opinions of 219 of

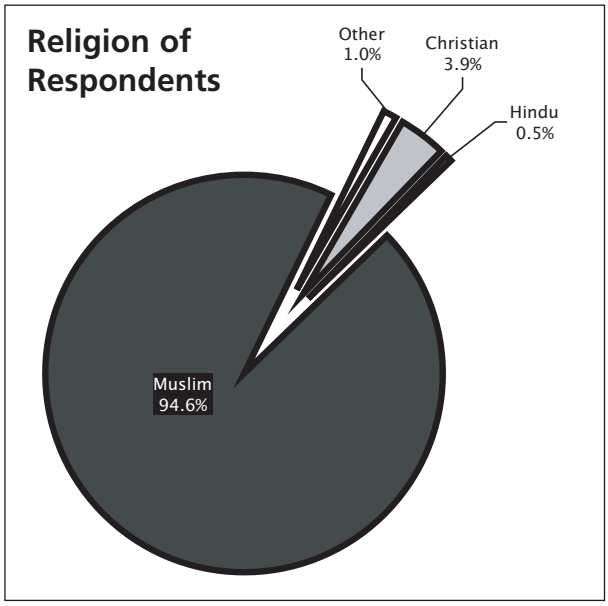
the roughly 800 people who received legal advice from AALDEF on Special Registration. It provides an overview of their motivations for registering or not registering, what they experienced in navigating the registration process, and the impact of the program on their lives, their families, and their communities.[9]

Special Registration was a policy in which the Bush Administration required certain men and boys over 16 from 25 predominantly Muslim countries in Asia, the Middle East, or North Africa–95% of our respondents were Muslim–and North Korea to report to immigration offices on pain of arrest, detention, or deportation.[10] There, they were told they would be fingerprinted, photographed, and interrogated under oath. The Bush Administration did not inform potential registrants that Special Registration would often lead to arrest, detention, or deportation, mainly for minor immigration violations that would have been ignored in other circumstances. Special Registration thus created a Catch-22 for those individuals who fell within its purview: according to the government's words, you could be detained, arrested, or deported if you didn't register. However, according to what we saw of the government's actions, you could be detained, arrested, or deported if you did register. As of May 11, 2003, the Bush Administration reported that it had collected information on 82,581 people, with at least 13,153 of them in deportation hearings. 52% of our respondents who registered were put into deportation proceedings and one person is still incarcerated.

Although NSEERS was intended and represented as a program to track and monitor new visitors, Special Registration targeted exclusively people who were already present in the United States. People subject to the requirements entered prior to either September 11, 2002[11] or September 30, 2002[12] and intended to stay past the Special Registration deadline for their nationality–one of four dates between December 2002 and April 2003. Most of the affected individuals entered with the government's permission on tourist, student, ship crew, and business visas.[13] People with pending green card applications, often waiting for years due to INS backlogs, were required to register and in many cases were put into deportation proceedings.[14] 42% of our respondents who registered had pending applications for adjustment of status; 9 of those individuals were put into deportation proceedings.

Furthermore, those subject to Special Registration must reregister every year within ten days of when they first registered; they can only leave through particular border crossings, airports, and other entry-exit points; and they must report changes of address, school, or place of employment to immigration officials.[15] This was an extremely time-consuming process. 77% of our respondents who registered had to spend 5 or more hours for the process, and 49% spent 12 hours or more. Then, the government placed their names, fingerprints, and other information in databases that may eventually be accessible to all law enforcement agencies in the country.

In announcing the program, Attorney General John Ashcroft stated, "When aliens violate these rules, we will place their photographs, fingerprints, and information in the National Crime Information Center (NCIC) system. The nation's 650,000 police officers check this system regularly in the course of traffic stops and routine encounters. When federal, state and local law enforcement offi-



cers encounter an alien of national security concern who has been listed on the NCIC for violating immigration law, federal law permits them to arrest that individual and transfer him to the custody of the INS."[16]

Thus, Special Registration has created a new class of people on the basis of ethnicity and religion. In addition, mechanisms have been created to track and control the lives of the 70,000 not placed in removal proceedings, plus those who chose not to register or were not aware of the program. The second those people fall out of immigration status by not notifying the government of a change of address or allowing their visas to expire without an extension, the government will know immediately and will be able to deport them if and when they are discovered.

Through its use of selective enforcement to target predominantly Muslim communities from Asia and Africa and immigration law as a pretext for national security purposes, Special Registration is symptomatic of the discriminatory tactics employed by the Bush Administration since September 11. As a system of information collection, information sharing among immigration and law enforcement agencies, and rules that criminalize particular groups of noncitizens, Special Registration is part and parcel of an ongoing attack on the rights of noncitizens since 1996. However, the historical precedents of policies like Special Registration go back to the Palmer Raids of the early 20th century and the incarceration of Japanese Americans during World War II and evoke the darkest parts of American history.

The Special Registration Process in New York

At 26 Federal Plaza, the headquarters of immigration services and enforcement in New York City, lines ordinarily stretch down Broadway and around the corner to Worth Street during spring, summer, fall, and winter. Special Registration resulted in the vast expansion of these lines, as men and boys lined up as early as 2:00 a.m. in frigid temperatures.

By 9:00 a.m., the lines would sometimes stretch three city blocks, with most of the men waiting for approximately two hours. During the third and fourth rounds of Special Registration, from February through April 2003, security guards adopted a new procedure to speed up registration. They would periodically call out, "Who is here for Special Registration?" and usher special registrants in ahead of those waiting for green card interviews and other backlogged immigration services.

Once they entered the building, people attempting to register would take the elevator to the 3rd floor and enter Room 310, a newly renovated space used for the initial processing of special registrants. Row upon row of bolted down seats, white walls, and a line of DMV-style counters behind which the government officials sat gave the impression of a departure gate at an airport. A security guard was stationed in the front to ensure that those entering the room were there for some purpose related to call in registration.

Inside Room 310, "check-in" required registrants to provide the government with a passport and an I-94, a document that indicates they were admitted and inspected by immigration during their last entry into the United States. In exchange, each registrant was given a number and a one-page form asking for biographical information.[17]

However, not everyone attempting to register was allowed to register. For example, AALDEF represented a 16-year-old Bangladeshi high school student who lost his I-94 in a fire. He was not allowed to register, despite attempts to obtain the necessary information from his consulate. Registrants were told that the burden was on them to prove admission into the United States. Immigration officers refused to provide a letter indicating that the men and boys had attempted to register, but were turned away.

Those permitted to continue with registration would ordinarily wait one or more hours as immigration officials called them out by numbers–"216!", "98!", "116!". Once a registrant heard his number called, he would go up to a counter to undergo the initial registration process. The immigration officers conducting registrations had been moved from their usual duties of adjudicating green card or naturalization applications. In addition to fingerprinting and photographing the registrant, the immigration officer would interrogate the person under oath without the presence of an attorney, asking about the immigration status of family members, employment status, political opinions, and religious beliefs, among other things.

For those who registered without triggering any interest by immigration officers, that would be the end of the process for the day, and they would be able to leave. However, 58% of our respondents were not so lucky–they were told to sit down and wait for immigration enforcement to come get them and take them to the 10th floor for more inva-

sive questioning, possible detention, and in many cases the initiation of deportation proceedings. The instructions to the immigration officers determining who would be taken to investigations and who would not indicated that "An officer will have the discretion to refer any nonimmigrant to the Investigations section that the officer believes warrants referral. Possible reasons for referral include (but

"They gave people of Middle Eastern descent a harder time — asked them more questions."
- Indonesian Respondent

are not limited to) law enforcement IBIS [Integrated Ballistic Identification System] hits, registrants being out of status or registrants giving evasive or inconsistent answers."[18]

Individuals marked for further investigation thereupon began a long process of tense waiting, frequently until dawn or the afternoon of the next day. On particular nights nearing the group deadlines, the government struggled to register men on the 3rd floor and to refer them to investigations due to large turnout and an insufficient number of immigration officers. Many men and boys waited from early morning until 2:00 or 3:00 a.m. the following day simply to receive notices requiring them to return to investigations on yet another day.

Room 310 and the adjoining spillover room were equipped to hold approximately 250 people, and we witnessed occasions when these rooms were filled. Glass windows encasing the room were the only contact with the outside world for the hundreds of dark-skinned men inside. During the deadline days, men would look out the window in the late evenings to see candlelight vigils held on Lafayette Street by local community groups and individuals. Security guards forbade men from lying down on the seats so many sat straight up from morning to midnight. At most times, some of the 200 men were pacing the aisles of the room.

Eating and drinking were not permitted inside the room. Many spent the day without food or water. The cafeteria on the 6th floor closed at 3:30 pm leaving no access to food or drinks, except snack machines outside the lobby, for the remainder of the night. Leaving the room to eat meant the possibility of not being present when their numbers were called. Leaving the building was out of the question because registrants might not be able to get back in and thereby risked severe immigration consequences. Numbers to the local Domino's pizza were distributed after hours so that food could be delivered.

Eventually an immigration enforcement agent–people from the same unit who conduct raids on people's homes–would escort a registrant to the 10th floor, search him, remove his belt, take away his belongings, and empty his pockets. One registrant reported that some men vomited in fear of not knowing how long they were going to be detained or where they may be taken to next; another was handcuffed for eight hours for overstaying his visa. Registrants were sometimes held overnight in locked rooms, waiting for a second round of questioning, fingerprinting and photographs. We even encountered some individuals with Down Syndrome or HIV who were detained for a period of time.

The locked cells contained two toilets and a surveillance camera capturing every movement by the registrants. Benches were lined up around the room, seating as many men that immigration could hold. Blankets and pillows were handed out to those detained overnight. Food and water were sometimes unavailable.

For 91% of those taken to investigations, this process resulted in a Notice To Appear (NTA), a charging document that initiates deportation proceedings in front of an administrative judge who is ultimately accountable to Attorney General John Ashcroft. One respondent is still incarcerated as of the writing of this report.

AALDEF's Response to Special Registration

Given the challenges posed by the Bush Administration's Special Registration program, AALDEF has been assisting people and communities in defending themselves, in attempting to end the Special Registration program, and in transforming the current anti-Muslim and anti-immigrant climate.

One of the key issues with Special Registration was the lack of accurate information available to people affected. In order to deal with this problem, AALDEF pursued several strategies. We produced and circulated legal alerts directed at Pakistanis, Bangladeshis, and Indonesians that were translated into Urdu, Bangla, and Bahasa Indonesia respectively. These alerts gave specifics on who was required to register under the complex Special Registration rules, a realistic assessment of the risks of registering or not registering, and contact information for AALDEF and several other organizations. The alerts were designed to be easily modifiable for use by other organizations and ethnic communities in other geographic areas.

We also issued several press releases with similar information to the Bangladeshi and Pakistani ethnic media. Working with immigrant media in this way proved extremely important in alerting individuals to services offered by AALDEF–26% of our respondents first learned of Special Registration through the ethnic media.

A second problem Special Registration posed was the individualized nature of the risk and hence the dilemma of whether to go to register. For example, people who entered on advanced parole or crossed a border without contact with U.S. immigration officials were not required to register and would likely be sent home if they tried, whereas people who had overstayed a visa by one month and had a pending green card application were required to register and would likely be issued a Notice To Appear if they attempted to do so.

In order to try to meet the needs of some of the community in this regard, between January and April 2003, AALDEF began offering free legal consultations over the phone and holding one to two free legal clinics per week in partnership with New York metropolitan area community-based organizations and with the help of numerous volunteers. On the phone and at these clinics, AALDEF staff and volunteer lawyers would offer three pieces of information: whether a person was legally required to register under the complex guidelines; what might happen to that person if they did register; and what might happen if they did not register. Neighborhood clinics were most effective when we paired up with community institutions that had substantial constituencies, such as social clubs, churches, and mosques. Towards the end of several rounds, AALDEF would approach people on line outside 26 Federal Plaza in New York City to provide them with legal advice. Altogether, AALDEF with the assistance of other individuals and groups was able to provide legal advice to approximately 800 people.

A third problem Special Registration posed was the need for advice, advocacy and legal representation related to the actual process of registering and its aftermath. AALDEF provided practical advice and legal accompaniment throughout the registration process, to the extent that immigration officials would allow us to. For example, AALDEF instructed many planning on registering to bring a blanket and hot liquids to

ward off unusually cold temperatures that hit New York City last winter. AALDEF negotiated earlier release for two men with serious medical conditions, one suffering from Down Syndrome and the other HIV. Individuals prevented from registering were given affidavits by AALDEF that we witnessed them attempting to do so.

"Why have we been selected for registration? The government could have applied the law fairly to all immigrants."
-Respondent

AALDEF has also been representing individuals through their immigration court proceedings, as the Bush Administration tries to deport them. The New York District Office of the Bureau of Immigration and Customs Enforcement (BICE) had issued over 2,000 NTAs to registrants by late May 2003. In effect, Special Registration deluged a system that is known as one of the busiest immigration courts around the country. On any given day, reading off the names of cases on a judge's docket revealed names that recall the predominant ethnicity and/or faith of countries designated for Special Registration.

As might be imagined, there are not enough legal resources available in the New York area to offer the necessary individualized advice to everyone who needs it, much less to represent the thousands of people in the New York area alone that the government is trying to deport. Moreover, even if every lawyer in New York, New Jersey, and Connecticut had made themselves available to offer advice and to represent individuals through deportation proceedings, the problem would not be solved. Thousands of people would still be getting deported under this program because the immigration laws themselves are flawed.

As a result, in addition to offering legal services, AALDEF pursued another track–advocacy and organizing work. From late December 2002 through the end of the Special Registration period, we participated in the Ad Hoc Coalition Against Special Registration, organizing monthly demonstrations with numerous other concerned individuals and groups around the New York metropolitan area. We also publicized the issue as much as possible, writing in mainstream publications, speaking publicly, and pursuing other means of letting the public know about the damaging effects of Special Registration.

However, what we ultimately came to believe was that without grassroots community organizing, there would be no change in the values and circumstances that allowed for the creation of this sort of discriminatory, anti-immigrant program. As a result, in addition to interviewing our respondents on their experiences, we also set up organizing meetings for affected individuals to attend. The purpose of these meetings was for people directly affected and their families to share their experiences with each other, to develop means of supporting each other through court hearings and related difficulties, and to participate and eventually lead efforts to change the basic inequities of the immigration system, starting with Special Registration.

We believe that promoting this type of grassroots community organizing, with long-range goals and direct involvement and leadership by the people affected, will be the most effective way to combat the underlying causes that allowed Special Registration to happen–structural flaws in the immigration system that offer noncitizens few remedies when they are mistreated and government officials who act in an unaccountable manner.

Iskandar Ismail

Iskandar Ismail is a 29-year old man from Aceh, a province in Indonesia. Aceh was recently placed under martial law by the Indonesian President Megawati Sukarnoputri after peace talks collapsed on May 19, 2003. She authorized the government's military to launch a full-scale attack against a separatist organization called the Free Aceh Movement (GAM).

Mr. Ismail was a fisherman and attained a 3rd grade education in Indonesia. In 1998, while he was selling fish, a single gunshot pierced through the market. He witnessed a military officer fall near him. The military fired back as other officers chased after the suspect. A military officer approached Ismail and a customer, who at the time was purchasing fish from Ismail, demanding to know who shot the military officer. Both Ismail and the customer denied having knowledge of the suspect. The officer shot the customer in the thigh, struck Ismail in the temple with the butt of his gun, and accused both men of being GAM supporters. Ismail felt someone hit him in the back. He fell down. The officer threatened to kill them and everyone around them. More gunshots rang out and some officers went to investigate the shots. Military guns were aimed at all the civilians. After the gunshots subsided, civilians in the market were taken to a military office for additional questioning.

Ismail was taken to a prison cell. He witnessed young and old men tortured because they were perceived to be GAM supporters. Officers arrived to interrogate him about whether he knew the suspect who shot the military officer. Ismail again denied having any knowledge, but the officer insisted that he was lying and threatened to kill him. During the interrogation, he was tortured and beaten. He was held in custody overnight until his parents came the next day to secure his release.

Ismail has stated that even after his release, he was required to report to the military on a continuing basis for a couple of months. Criminal charges were never brought against Ismail. Desperate, he decided to go to Jakarta to find a way to leave Indonesia. In Jakarta, he met an individual from Aceh who claimed to know a broker who could help him flee the country. He was put in contact with the broker, submitted a photograph, and paid the broker money. Within weeks, in 1999, he was en route to the United States with another identity that protected him from being found by the Indonesian government. After arriving in the United States, he was immediately flown back to Indonesia by the Immigration and Naturalization Service on expedited removal.

Back in Aceh In 2000, Ismail was sitting in a coffee shop when a bomb exploded, followed by gunshots exchanged between the military and GAM fighters. Ismail witnessed what appeared to be two military officers shooting at civilian populations. It was not long before the military went into stores and shops to arrest civilians suspicious of supporting the GAM movement, the group suspected of being behind the bomb incident. Those arrested were taken down to the police station and processed.

The military interrogated civilians about who threw the bomb. The military lined up approximately 20 men to lie face down on the floor as an officer on a motorcycle drove over their backs about 4 times. An officer approached Ismail asking if he knew who threw the bomb. Ismail stated that he did not know. The officer took an M-16 rifle and hit Ismail in the back of the neck. Ismail contacted a local human rights organization in Indonesian and left for the United States on a tourist visa.

On April 24, 2003, Mr. Ismail arrived at 26 Federal Plaza at 2:00 am to line up for call in registration. He was registered on the 3rd floor about 10:00 in the morning and referred to investigations. A government agent escorted him up to the 10th floor at around midnight. Shortly thereafter, he was transferred to Elizabeth Detention Facility and has been detained since April 2003. The Asian American Legal Defense and Education Fund represents Iskander Ismail.

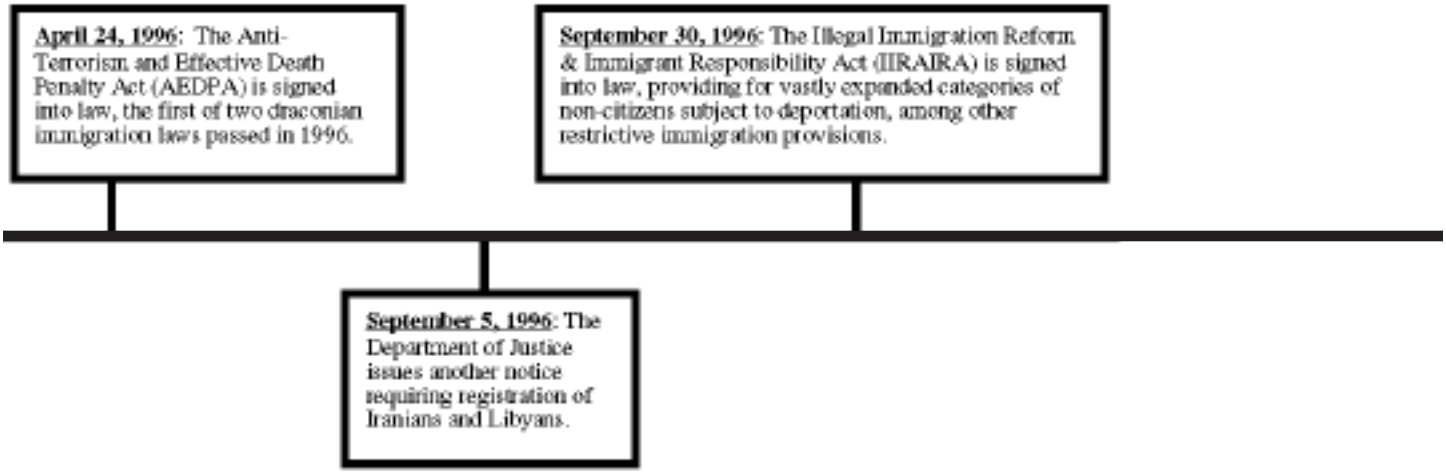
How Special Registration Came About: A Chronology

In November 2002, Attorney General John Ashcroft's Department of Justice issued a rule creating Special Registration and the rest of NSEERS.[19] It did so over objections that the program was discriminatory, ineffective, redundant, violated due process rights of individuals already present in the United States, and imposed unfair restrictions on noncitizens.[20]

There was no law passed by Congress calling for Special Registration–the program was entirely an initiative of the Bush Administration.

The Bush Administration gave only minimum notice in the Federal Register, defining the class of individuals subject to Special Registration. Only 1% of our respondents said that they first heard about Special Registration from the government, while 62% said they first heard about the program from friends, family, or media in their languages. The Bush Administration issued the first Special Registration notice on November 6, 2002, requiring men and boys over 16 from Iraq, Iran, Libya, Syria, and Sudan who entered the United States prior to September 11, 2002 to register if they planned to remain in the country past December 16, 2002, the deadline for the first round of Special Registration.[21] The second round of Special Registration, announced on November 22, 2002, affected an additional 13 countries: Afghanistan; Algeria; Bahrain; Eritrea; Lebanon; Morocco; North Korea; Oman; Qatar; Somalia; Tunisia; and United Arab Emirates; and Yemen. The deadline for men and boys over 16 from those countries was January 10, 2003.[22]

On December 16, 2002, the day of the first deadline, Special Registration achieved notoriety through a series of inhumane decisions by the Department of Justice. As Reuters reported a few days later, "[Immigration attorneys said that] between 1,000 and 2,500 males, some as young as 16, were spending their fourth day locked up...subjected to strip searches in freezing,



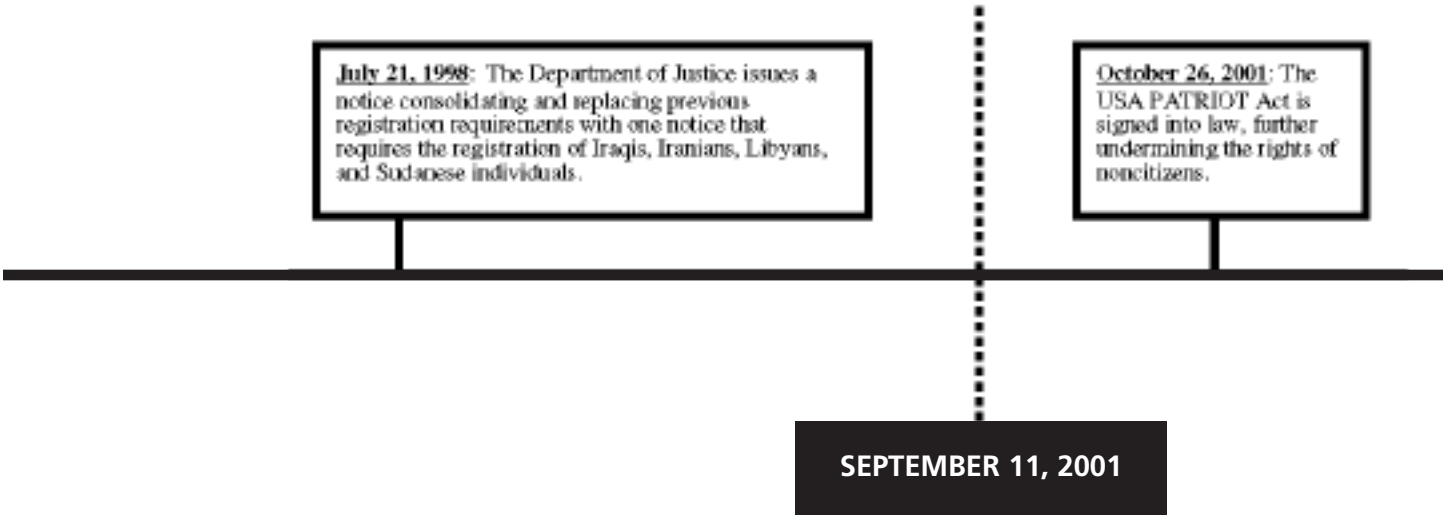
standing room [sic] only detention centers...after being arrested for routine visa irregularities" in southern California alone, with additional detentions around the country.[23] Widely broadcast reports in the national media described how teenagers and men were shipped up and down the California coastline, as federal officials ran out of handcuffs and jail space.[24] In hindsight, the decision to lock up hundreds of people is all the more egregious because the Bush Administration eventually created another period of legal registration for the same group of people and those of the second round from January 27, 2003 to February 7, 2003.[25] Overall, the incident reflected how an ill-conceived policy could quickly transform into widespread human rights violations.

"Special Registration makes me feel that this country is not mine."
– Respondent

The resulting outcry led Senators Edward Kennedy and Russell Feingold and Representative John Conyers to write a letter to Attorney General John Ashcroft on December 23, 2002 denouncing the program.[26] They called Special Registration "a component of a second wave of roundups and detentions of Arab and Muslim males disguised as a perfunctory registration requirement," citing a "pattern of targeting persons for arrest based on race, religion, ethnicity, or national origin rather than on specific evidence of criminal activity or connections with terrorist organizations" and "serious privacy and constitutional concerns." On January 23, 2003, the Senate, at the prompting of Senator Kennedy, voted to remove funding for all of NSEERS because of these concerns–although the funding was later restored.[27]

Despite the widespread condemnation of the mass detentions and the manifestly discriminatory nature of Special Registration, the Bush Administration plunged forward with the roundups. With people from Round 1 still in detention in California, a revised list for Round 3 was announced on December 18, 2002, designating Pakistan and Saudi Arabia as the targeted countries, with a deadline of February 21, 2003. Armenia, initially included on the Round 3 list, had been removed from the list.

The case of Armenians is of particular interest because it demonstrates that whatever "national security" motivations were driving the Special Registration policy could quickly be dropped in light of domestic political pressure. The Bush Administration has stated that the decision to include Armenia had been unresolved when the list of countries including Armenia was released.[28] However, advocates of the Armenian community and the media claimed that the real reason Armenia was



removed from the list of countries was immediate and intense political pressure on the Bush Administration.[29] It may have been easier for Armenians to force the Bush Administration to remove them from the list given that Armenia is not a Muslim country–other communities whose governments or domestic advocates lobbied for removal from the list were denied. Nonetheless, the success of the Armenian community speaks to the Bush Administration's convenient use and abandonment of "national security" as a rationale for Special Registration, depending on domestic political pressure.[30]

For those communities that were unable to escape from the impact of Special Registration, confusion, fear, and anxiety prevailed. With contradictory signals coming from the Bush Administration's rhetoric and actions as to what would be in their best interests, men and boys trying to decide whether to register faced great uncertainty in making a decision. The reaction in the Pakistani communities of "Coney Island" and Midwood, Brooklyn was telling–10 times as many people attended the first AALDEF legal clinic on Special Registration conducted in conjunction with Council of Pakistan Organization (COPO) as had attended prior legal clinics in the same space by the same organizations before the announcement of the requirement.

Widespread misinformation compounded the problem, as rumors flew around the affected communities. One of our respondents told us that he did not register because he incorrectly believed people over 55 were not required to do so. Of the 112 of our respondents who attempted to register, 9 did so at least in part out of a belief that Special Registration would result in a green card or other benefits; this was also not the case. At times, erroneous information came from the Bush Administration itself, which seriously mistranslated the Arabic registration requirements for the second round and left it on the INS website until the day before the deadline for the second round.[31]

> "My children go to school and feel unsafe even though every morning they recite that we live under one god, all nations are equal"
>
> -Respondent

With this atmosphere of tension and uncertainty, thousands of individuals and families took flight from their neighborhoods in New York, Kansas, Texas, and the rest of the United States. Of our respondents, 13% left the country; an unknown number of the approximately 600 individuals we were unable to reach also left the country. Those who left frequently returned to their country of origin or sought refuge in Canada. According to the

June 13, 2002: Attorney General John Ashcroft issues a proposed rule in the Federal Register to create the National Security Entry-Exit Registration System (NSEERS), including border registration and Special Registration.

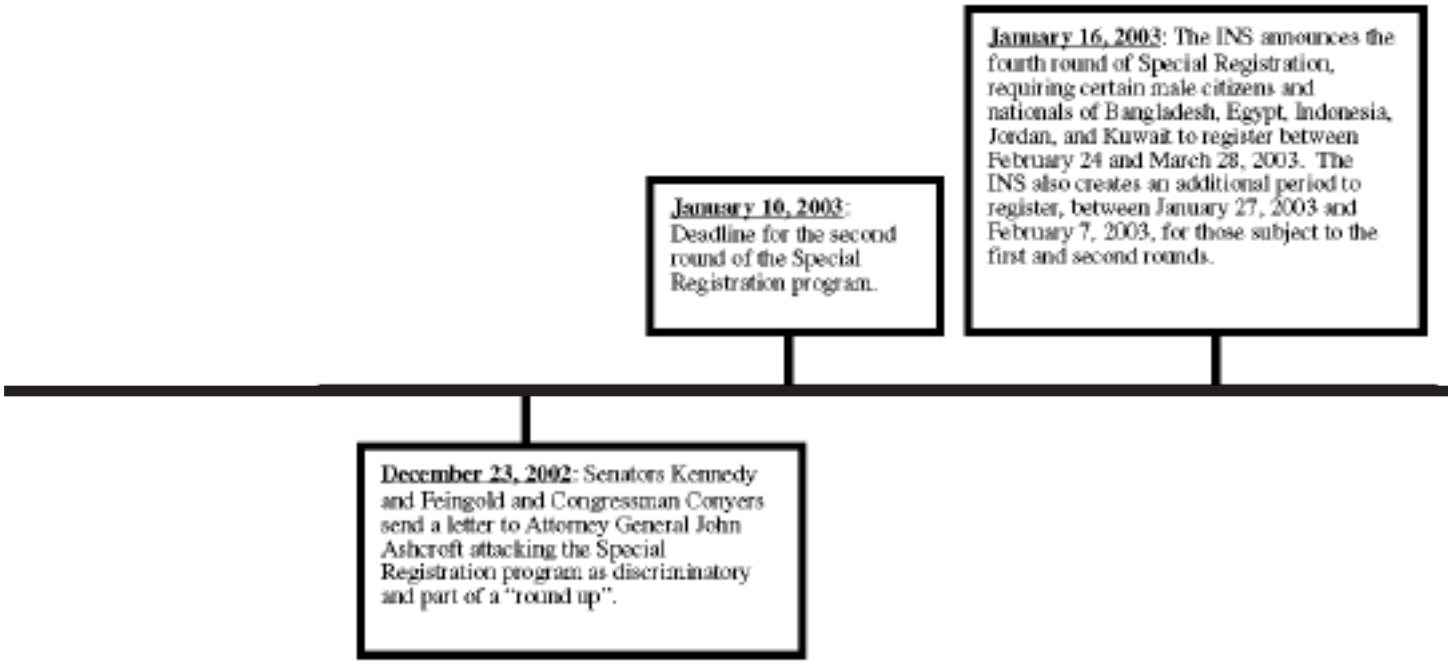
August 22, 2002: The June 2002 proposed rule becomes final, creating Special Registration as a requirement. The Department of Justice disregards comments that the program is discriminatory, ineffective, and redundant, violates due process rights of individuals already present in the United States, and imposes unfair restrictions on noncitizens. This is the first time in recent decades that any populations already present in the United States, as opposed to entering noncitizens, have been subjected to registration.

Globe and Mail, "Pakistanis represented 5 percent of people requesting refugee hearings in Canada in November, and 58 percent three months later."[32] Reports in the media stated that more than 2,500 people had already sought to cross the border by March 10, 2003.[33]

With the increased influx, on January 30, 2003, the Canadian government began turning away at the border people who arrived without appointments.[34] Entire families were left to walk back to the United States in the snow and frigid winter temperatures to face U.S. immigration officials, detention, and possibly deportation.[35] At one border crossing alone, 432 were people turned away and over 130 were detained by U.S. immigration officials between January 30 and March 6, 2003.[36] State police began setting up checkpoints to investigate people on the way to the border.[37] As those seeking refuge began to make appointments in advance, hundreds flooded refugee assistance and homeless centers in Buffalo, Vermont, and other crossing points near the border.[38] On March 6, 2003, the leading refugee assistance group working near the LaColle border crossing announced it would cease providing services because it could no longer meet the demand created by flight resulting from Special Registration and Canadian border policy.[39]

As Special Registration continued to wreak havoc on immigrant communities, five more countries were designated for the fourth round: Bangladesh, Egypt, Indonesia, Jordan, and Kuwait. The government later extended the period for legally complying with the Special Registration requirements for the third and fourth rounds. The deadline for Pakistanis and Saudis was extended to March 21, while the fourth round of Special Registration–originally scheduled to last from February 24, 2003 to March 28, 2003–was extended to April 25, 2003.[40]

The Bush Administration has claimed that it was making an effort to adjust to the needs of affected individuals and communities.[41] However, this explanation seems disingenuous given the enormous number of registrants and the bureaucratic confusion that plagued the Special Registration process. It is more plausible that the so-called "grace periods" were an administrative tactic allowing overburdened immigration officials to gain additional time to collect information on people, while avoiding a repeat of the public relations disaster in southern California in December 2002.



The Aftermath of Special Registration

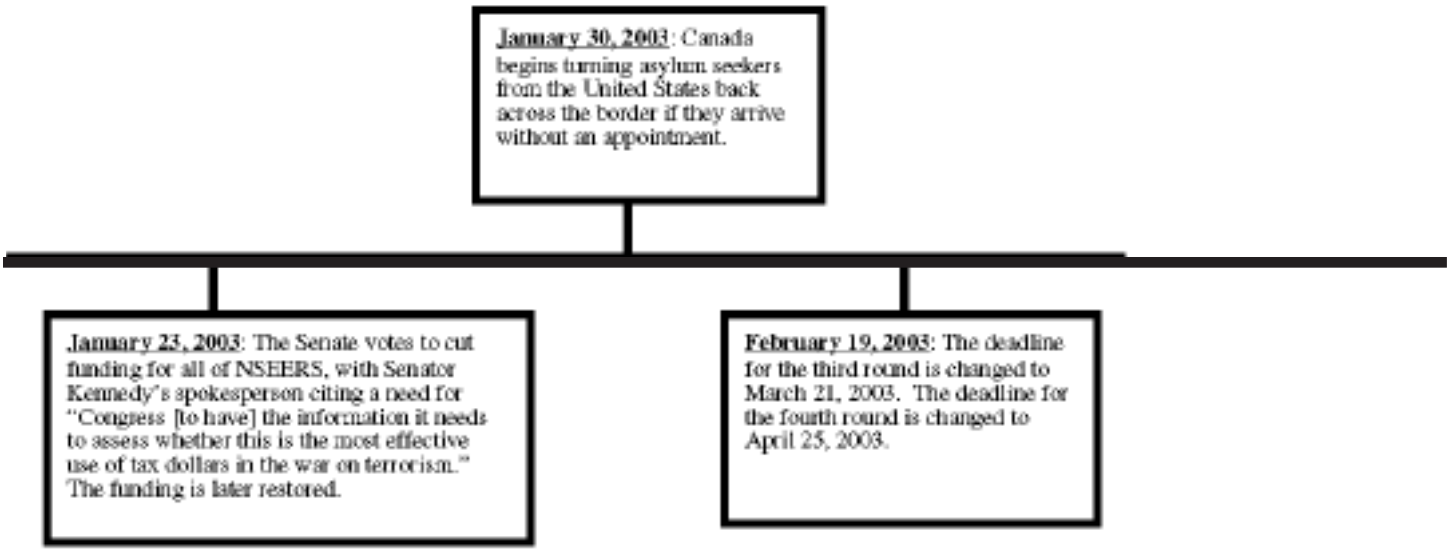
After the conclusion of four rounds of Special Registration on April 25, 2003, the government reported that 82,581 people nationwide had been questioned, fingerprinted, and interrogated under oath.

The Bush Administration announced the termination of the Special Registration program on April 29, 2003 and the replacement of NSEERS with a new border-tracking program called US VISIT.[42] Although the rounds of Special Registration ended on April 25, our respondents reported follow-up notices to complete their registration process as late as June 23, 2003.

Moreover, by May 11, 2003, 13,153 registrants nationwide received NTAs initiating deportation proceedings. Of our respondents who received NTAs, 80% received them for overstaying their visas, not because they were associated with the September 11 attacks or were plotting future violent acts on American soil. This number confirms our own experience and that of other immigration advocates around the country–the vast majority of those who received NTAs through Special Registration were charged with minor immigration violations that prior to September 11th and in other contexts would have been overlooked. Some of those facing deportation are registrants who were involved in religious, political, or social groups and as a result, face persecution in their home country. In the course of providing legal services, we encountered a number of individuals who expressed fear of being killed if they were returned to their country of origin.

Besides individuals directly targeted by Special Registration, tens of thousands of others officially exempt were deeply affected by the policy through family or community ties.[43] The Bush Administration's decision to create and implement Special Registration demonstrates a callous attitude toward the people who love and depend on many of these men and these boys. These registrants were not just men and boys–they were also sons, brothers, fathers, and partners.

Among the most heart-wrenching situations we witnessed were cases in which a man with a family was detained and faced deportation; 38% of our respondents have wives in



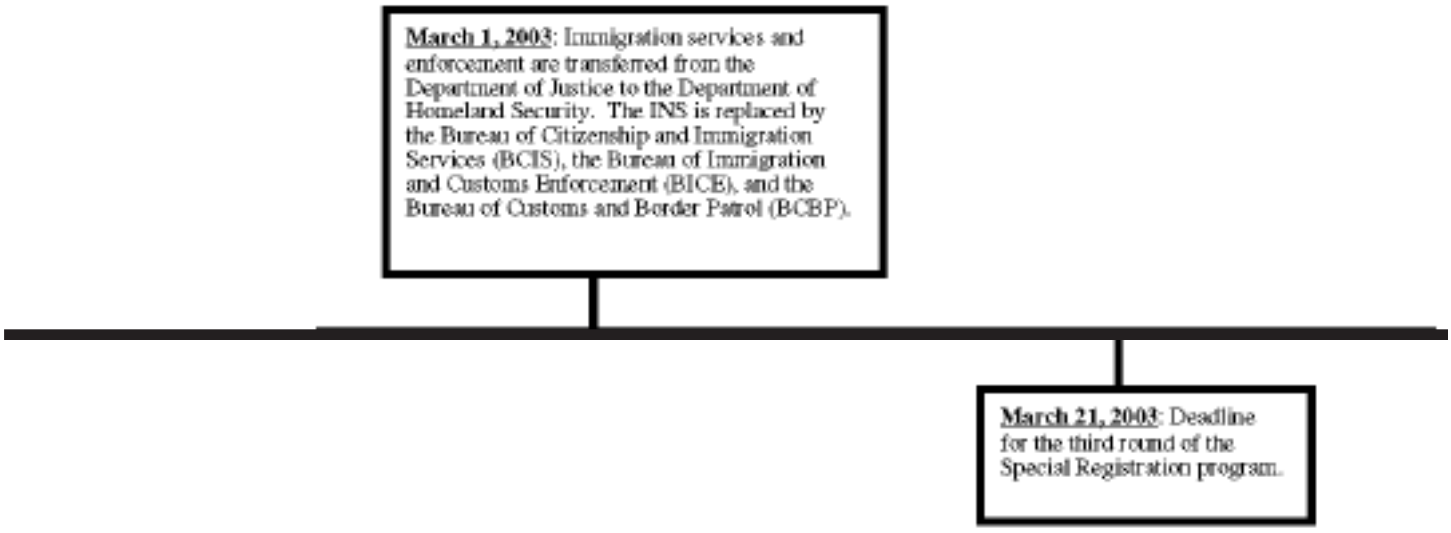
the United States. In cases of prolonged detention, the income provider of the family is incarcerated and unable to work. All of a sudden, his partner faces the burden of finding a way to hold their family together financially, while simultaneously dealing with the emotional torture of having a loved one in jail and being separated from him, possibly forever, through deportation. Children, in many cases U.S. citizens, have been especially hard hit, being deprived of one parent while the other is placed under enormous stress. Forty-one families with children in the United States were in our total pool of respondents. In the final outcome, if the father is removed from the country, the effect is either a broken family or the de facto deportation of the whole family.

Children, in many cases U.S. citizens, have been especially hard hit, being deprived of one parent while the other is placed under enormous stress.

Not all registrants were heterosexual; a significant number of gay, bisexual, or transgender (GBT)[44] men that were required to register with the government would not have faced 10th floor detention and imminent deportation if immigration law were more equitable. Same sex partners are not considered "spouses" under the law and cannot be sponsored for family-based immigration.[45] As with heterosexual couples, partners are left fearful of long-term separation with one or both vulnerable to deportation, often back to countries that they had fled because of persecution or dangerous situations. Their children are no less traumatized by separation from their parents.

Just as potential "registrants" were fathers, sons, and partners, they were also employees, employers, and neighbors. As a result of deportations, flight from the United States, and the decline of national, state, and municipal economies, many immigrant communities have stagnated. One of our respondents from the Pakistani neighborhoods of "Coney Island" and Midwood, Brooklyn said, "[the] community...has been deeply impacted. Many people left and a lot of businesses have taken heavy hits." Stores have cut back their hours or closed down entirely.

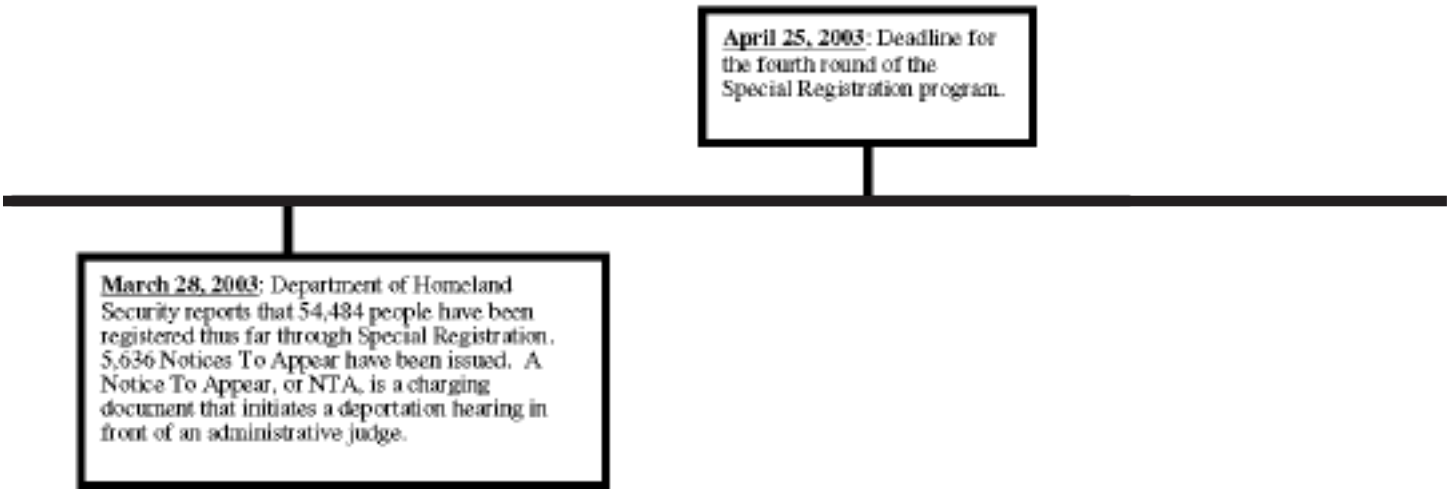
In addition to large-scale flight, the fear created by Special Registration and other post September 11 policies among targeted populations has left many afraid to access government services as basic as calling the police or the fire department. For example, one undocumented man who was stabbed in the Pakistani



neighborhood in Midwood, Brooklyn in early 2003 did not want to report his crime because he feared deportation. The actual effects of the policy stand in ironic contrast to the stated aim of Special Registration to increase public safety.

It remains unclear what will happen to the nearly 70,000 people who have registered but have not received NTAs yet. All of their names and fingerprints have been entered into government databases through the Special Registration program. In the original notices, the Bush Administration required registrants to reappear annually, and the Department of Homeland Security has not announced whether that provision will be enforced this year. Regardless, the moment that registrants fall out of immigration status, unlike people with similar status from other countries, their names will likely be entered into the National Crime Information Center (NCIC), a database used by local, state, and federal law enforcement agencies.[46] Those individuals would be forced to live in a state of perpetual fear of deportation. Whether they are caught at a traffic stop or if a police officer should inquire about their immigration status for no reason at all and run their names through a database, their immigration problems would immediately pop up. Additionally, there have already been documented instances of individuals who did not report to an immigration officer on their way out of the country being denied reentry, despite proper documented status in all other respects.[47]

The Special Registration program, then, has a good chance of forcing all 82,581 people to leave the United States, one way or another. An additional number have already left without registering, while countless others who were subject to Special Registration but chose not to register face arrest and deportation at any moment. The Special Registration policy amounts to the selective and mass expulsion of entire working class, Muslim communities. With respect to post September 11 immigration policies, Special Registration was likely the single-most destructive program that the Bush Administration implemented in terms of the effects on communities targeted and on basic values of decency, equal treatment under the law, and human dignity.



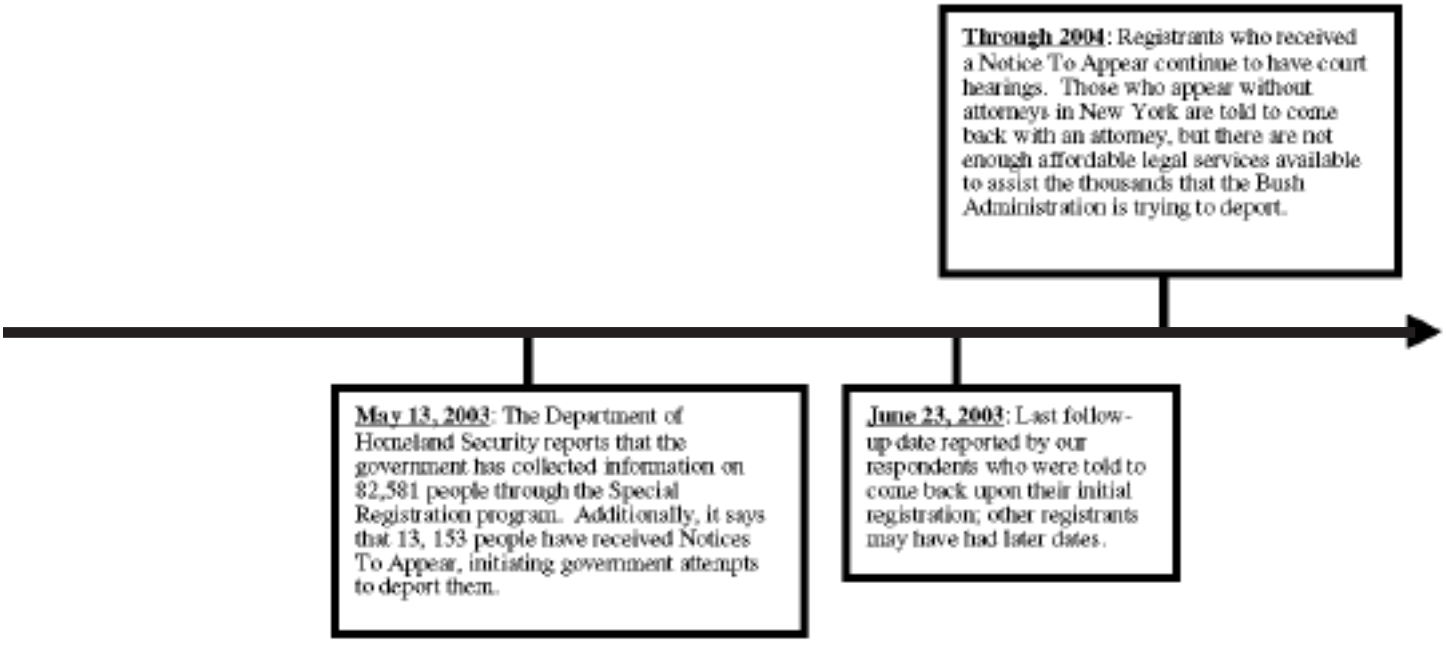
One Family's Ordeal in Queens

Neighborhood friends, 24-year-old Pakistani Mohammad Junaid and 21-year-old Bangladeshi Nishat Islam, met in their Queens neighborhood. Three years ago, they tied the knot, beginning a new life together. Together, they had a place to live, a wonderful young daughter Ayesha, and another child on the way. Ms. Islam's father also lived with them.

On March 21, 2003, Mr. Junaid reported to immigration officials to fulfill his Special Registration requirements and received a follow-up notice. When he came back to 26 Federal Plaza on May 19, 2003 for his follow-up date, he thought he would be coming home the same day. Instead, his wife received a telephone call later that day from her husband letting her know that he had been detained. Rafiqul Islam, Mr. Junaid's father-in-law, also received a Notice To Appear and is being represented by AALDEF in his hearings. With the two men in the family rounded up by immigration officials, Mr. Junaid, his wife, Mr. Islam, and two-year-old Ayesha began living the nightmarish realities of Special Registration.

Mr. Junaid was incarcerated at Sussex County jail. While he was lucky enough to acquire legal representation, there was little he could do through the law because he had an outstanding deportation order and was termed by the government an "absconder." Mr. Junaid is someone who was caught up in the intersection of Special Registration and the Absconder Initiative–another post 9-11 policy that initially targeted people with outstanding deportation orders from predominantly Muslim countries in Asia and Africa as well as the Philippines.

Meanwhile, on the outside, Nishat Islam, Mr. Junaid's wife, suddenly faced a world in which her life partner was in jail with the prospect of being exiled thousands of miles from her any day. She had no income, but had to find a way to manage her pregnancy and care for her two-year old daughter, Ayesha. Ayesha has had serious medical problems requiring brain surgery in the past, and has now been deprived of her father. She grows angry every evening at the time that Mr. Junaid used to come home from work.



With no money coming in, Ms. Islam was forced to use up all of the money in Mr. Junaid's bank account and sell the family car at well below market rate. She toiled to find other means to continue to feed herself, her children, her father, and her mother-in-law from Pakistan, but met with little success. For example, on a visit to apply for benefits, she was sent home with an application after waiting for months. However, because of Ms. Islam's persistence, she managed to alert several organizations assisting post 9-11 detainees and their families and is able to sustain herself and her family for several months. She gave birth to a son, Rasha, alone in Elmhurst hospital on September 25, 2003, and is currently continuing to search for ways to support herself, her children and family. After five months of being separated from her husband, Ms. Islam learned that he had been deported back to Pakistan.

We learned the details of the Junaid and Islam family's situation through the organizations that are assisting Ms. Islam. We have also been assisting her father, whom the government is also trying to deport to Bangladesh, despite that he is on five prescription medications and recently had a pacemaker installed. Hearing their story serves as a reminder that policies on immigration, terrorism, and profiling have human effects–broken families, impoverished and parentless children, and unnecessary calamities for thousands of people.

Significant Issues Raised by Special Registration

Given the enormous costs described above, one might ask why Special Registration was instituted. Attorney General John Ashcroft put it most plainly, stating, "In this new war, our enemy's platoons infiltrate our borders, quietly blending in with visiting tourists, students, and workers.

They move unnoticed through our cities, neighborhoods, and public spaces. They wear no uniforms. Their camouflage is not forest green, but rather it is the color of common street clothing. Their tactics rely on evading recognition at the border and escaping detection within the United States. Their terrorist mission is to defeat America, destroy our values and kill innocent people".[48]

Special Registration and other post September 11 policies rest on a premise that lurking among working class Muslim communities are individuals waiting for their chance to commit atrocities against other people on American soil. However, even if this assumption is accepted, Special Registration as a solution is highly problematic on multiple, specific grounds.

> "Muslims are being targeted. It's unfair to the community and immigrants in general. Terrorism is not limited to Muslims or brown-colored people."
>
> -Respondent

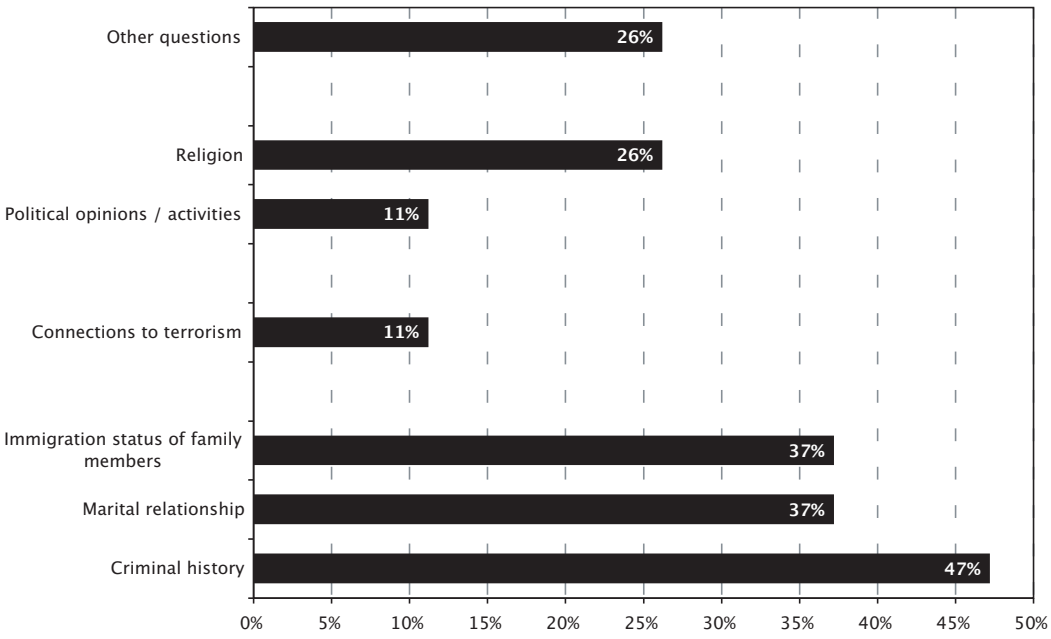
Special Registration was inhumane and has had catastrophic effects on the lives of people directly or indirectly affected by it. Tens of thousands of people are currently in deportation proceedings, an unknown number have fled the country, families have been torn apart, and those who were not given NTAs last year may have put themselves on a slow track to deportation. The result is that entire communities have stagnated economically and socially. The amount of fear in these communities is hard to overstate, with consequences that affect both citizens and noncitizens.

Another frequent criticism of Special Registration is that the program focused on particular groups of people on the basis of nationality, religion, and ethnicity. The Bush administration overtly defended the use of nationality as a means of targeting groups of people,[49] which we find unacceptable. In addressing the question, "Why are only Muslims and Arabs required to register?" the Bush Administration answered, "Registration is based solely on nationality and citizenship, not on ethnicity or religion."[50] All of the countries affected were Asian, Middle Eastern, or African–no European countries were targeted. Furthermore, given that 24 of the 25 countries designated in the Special Registration policy were predominantly Muslim and that 95% of our respondents were Muslim, we find it difficult to believe any other explanation than that the Department of Justice used nationality as a proxy for religion in the program. A destructive side effect of the attempt to preserve the appearance of religious toleration was that Indonesian Christians, Bangladeshi Buddhists, North Koreans, and other minority populations were caught in the roundups, providing a convenient public relations cover.

Special Registration is also problematic for using the enforcement of immigration laws as a substitute for the criminal justice system. Registration requirements, interrogation without the presence of legal counsel, and expulsion without due process rights apply only to immigrants and noncitizens. For example, when people were taken to the immigration investigations unit in New York City, registrants were not free to leave and often faced further questioning that led to a NTA. Lawyers were not allowed to accompany them. Complaints to the government about interferences with a registrant's right to an attorney were acknowledged, but ultimately not addressed.[51]

In one concrete example, a registrant was taken to the 10th floor at 2:00 am and was not permitted to bring his AALDEF lawyer. The registrant had a Maryland driver license, even though he was a resident of New York City. The agent questioned him relentlessly, accusing him of fraudulently obtaining the driver license. Even after constant questioning, the registrant continued to maintain his position that he obtained the license legally. If he had

Further Questioned in Investigations Relating to ...



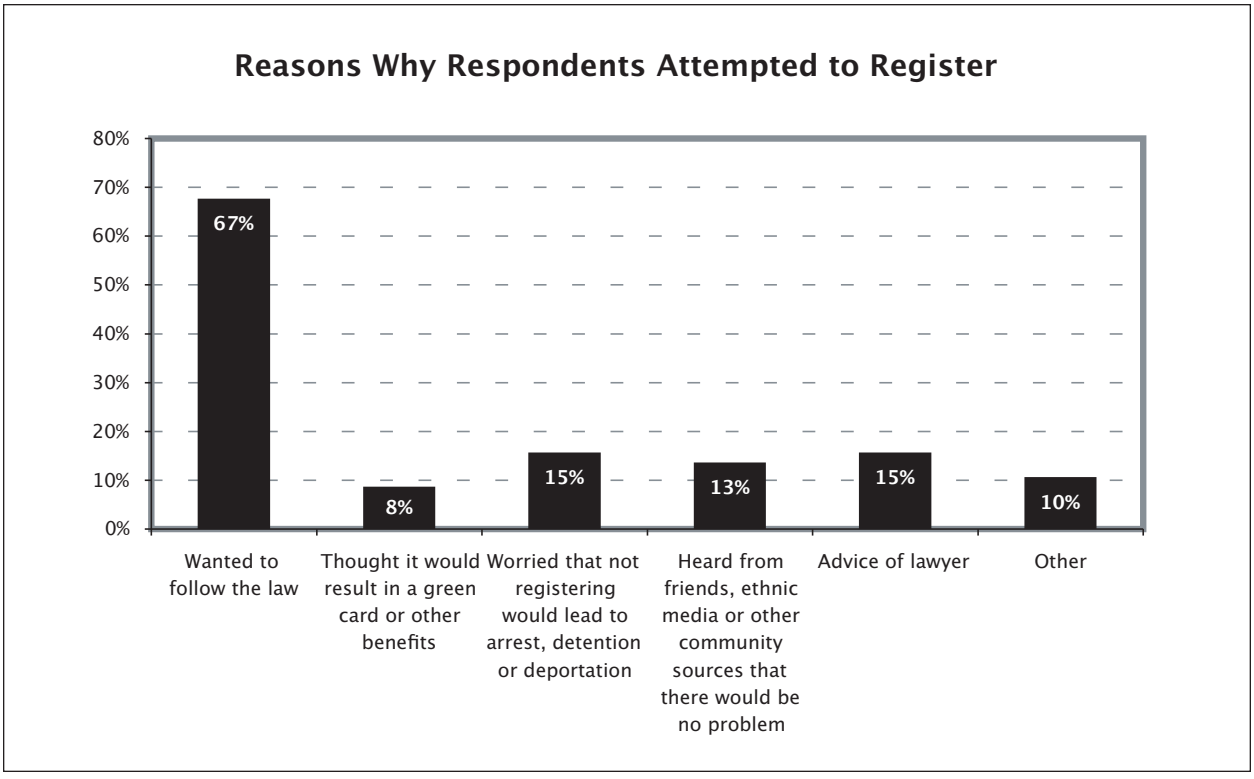
Miscellaneous questions, such as:

- Why did you jump ship?
- What was your travel route to the United States?
- How are you getting support from your friend?
- How did you obtain your Maryland driver's license?
- Inquired into his international driver's license?
- Do you have a second name?
- What college do you attend?
- How much money are you making?
- Do you have any tattoos or piercings?
- What are you travels outside of the United States or home country?

buckled under pressure to answer differently, the registrant could have faced deportation and other consequences. Had immigration officials observed the right to counsel, an attorney would have prevented that line of coercive questioning. If individuals are subject to investigation and face penalties as harsh as those in the criminal justice system, they deserve the same legal protections as people in the criminal justice system.

Special Registration also misdirected resources. Rather than investigating or finding individuals who have actually harmed other people, Special Registration used taxpayer money to find and deport individuals who happen to share a religion or ethnicity with members of Al Qaeda. Similarly, the transfer of resources away from immigration services further delayed the processing of countless green card and citizenship applications. Financially, the practice of incarcerating people who have overstayed their visas in county jails and detention centers comes at enormous cost to taxpayers.

Another significant issue is that the Bush Administration imposed Special Registration unilaterally and presented it in a disingenuous manner. Special Registration was not the result of Congressional legislation or public debate; it was an executive action announced by the Justice Department. Furthermore, the Bush Administration has been misleading on a variety of fronts with regard to this policy. It has claimed that the program does not selectively target by religion or ethnicity by deliberately confusing the number of countries whose citizens have been affected by border registration and the 25 designated for Special Registration.[52] It has ignored the vast difference between rounding up people who were already living in the United States and collecting information on people who were entering for the first time, stating that Special Registration was "essentially...nothing more than an attempt to capture information that [the government] would have gotten at the border had the people come in...after NSEERS was put in place."[53] It has downplayed major failures in the program; the hundreds of December detentions in southern California that many saw as a frightening abuse of government power was described by a Bush Administration official as "some lines and overload, as it were, of that office."[54] Most importantly, it has indicated that Special Registration is over because the Department of Homeland Security has replaced NSEERS with



a new tracking program called US VISIT; however, as of the writing of this report, the Bush Administration has not explicitly relieved registrants of the requirements of Special Registration, including reregistering annually.

Finally, Special Registration was inherently flawed because it is a broadbrush law enforcement tactic, an attempt to throw out entire communities rather than to investigate any particular individual. It was a policy that required hundreds of thousands of people to come in to an immigration office for fingerprinting, photographing, interrogation, and possible detention or deportation. To our knowledge, it has failed to identify a single person connected to organized efforts to commit violent political acts on U.S. soil. This is hardly surprising–it is hard to imagine that anyone involved in a network designed to harm people in the United States would voluntarily present himself to the federal government for questioning, detention, and deportation.

In contrast, the vast majority of those with whom we spoke wanted to comply with the law. Despite the hundreds detained in December, despite the thousands of NTAs issued, 56% of our respondents attempted to register. Of those who did register, 67% cited a desire to follow the law as a reason for registering. Far from presenting the profile of a group of people interested in harming other people in the United States, the people we interacted with were trying the best they could to do what was asked of them with little information to go on and enormous risks to bear.

Beyond these specifics, Special Registration is a dangerous precedent because it implicitly supports the notion that the government can deem suspect anyone, anywhere –"they wear no uniforms...their camouflage is the color of common street clothing"–an idea antithetical to democratic society. As one of our respondents said, "[there is] no difference between what is happening now and what happened to the Japanese [during World War II]."

Why North Korea?

The inclusion of North Korea in the Special Registration program is particularly interesting since it is the only country that is not predominantly Muslim. On January 29, 2002, in his State of the Union Address, President Bush said that Iran, Iraq and North Korea constitute an "axis of evil" that threatens world peace by developing weapons of mass destruction.

Special Registration helped deepen the government's campaign to brand North Korea as a terrorist nation, to justify continued U.S. military presence in South Korea. In listing the 13 countries designated for the second round of Special Registration, the Bush Administration identified North Korea, along with Cuba, Iran, Iraq, Libya, Sudan and Syria, as state sponsors of terrorism. The government also cited this to argue that North Koreans in the United States warranted closer attention and surveillance. The inclusion of North Koreans demonstrates that the post September 11 policies currently targeting Muslims are easily transferable to other communities.

A Legacy of Xenophobia and Discrimination

Special Registration may seem like an isolated response to an equally unique national emergency. In fact, it reflects a history of repressive laws and policies, particularly during times of crisis.

The 1798 Alien and Sedition Acts, passed under the threat of war, criminalized the political activities of opponents of then-President John Adams and limited citizenship to White people. In 1919, bombings through the mail blamed on anarchists and immigrants led to the Palmer Raids–mass deportations on the basis of ethnicity and political opinion. While many were citizens, Japanese Americans incarcerated during World War II met with a similar fate–as the political climate grew more hostile and discriminatory, the American government invoked "military necessity" as the rationale to disrupt the lives of thousands of people and families, solely because of their race and national origin.

"People criticize the United States for this Special Registration."
-Respondent

Even during calmer times, immigrants have regularly faced institutional discrimination. Successive immigration laws passed between 1882 and 1934 excluded people from China, South Asia, the Philippines, and eventually all of Asia from entering the United States, obtaining U.S. citizenship, or owning land in the United States. Southern and Eastern Europeans and Africans also faced similar measures. Only with the passage of the 1965 Immigration Act were people of color from the Eastern Hemisphere again allowed to enter the United States in significant numbers.

In recent years, immigration laws have again been used as a tool to deny people basic rights because of their immigration status. In 1996, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), commonly known as welfare reform, stripped green card holders and other noncitizens of the right to public assistance. That same year, the Antiterrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform And Immigrant Responsibility Act (IIRAIRA) added to the mass of deportable offenses for noncitizens. As a result of IIRAIRA, a green card holder convicted of shoplifting, drug possession, or driving while intoxicated can be deported under certain circumstances. While conducting deportation hearings, the government frequently incarcerates people–often in private prisons or local county jails due to the sheer number of people in immigration detention.

After the September 11 terrorist attacks, the government detained thousands of people, using immigration law when no criminal violations could be found. Attorney General John Ashcroft issued an order that noncitizen detainees could be held for an essentially unlimited amount of time in periods of national crisis instead of the previous standard of 24 hours.[45] Chief Immigration Judge Michael Creppy further ordered closed hearings for "special interest" cases. The "Creppy Memo" called for gag orders on the noncitizens, their lawyers, if they were lucky enough to find one, and whoever else was present. In some cases, noncitizens who were detained for overstaying their visas were required to post bond in the hundreds of thousands of dollars.

By November of 2001, when the Bush Administration stopped releasing a count, over 1,200 people had been subjected to these tactics; the final figure is likely much higher. The Department of Justice denied requests under the Freedom Of Information Act (FOIA) for information on the individuals detained, resulting in a lawsuit against the government to compel disclosure brought by AALDEF, the American Civil Liberties Union (ACLU), and over a dozen other groups. According to the Department of Justice's own Office of the Inspector General, "the FBI should have expended more effort attempting to distinguish between aliens who it actually suspected of having a connection to terrorism from those aliens who, while possibly guilty of violating federal immigration law, had no connection to terrorism."[46]

The secret detentions were just the beginning. Between November 2001 and today, there have been numerous other efforts by the Bush Administration to crack down on noncitizens in the name of national security. Many of these efforts have targeted noncitizens from 30 to 40 countries that are predominantly Muslim, although other nations like the Philippines and North Korea have been included in particular instances. The justification, as with Special Registration, is that there is "Al Qaeda presence" in those countries. Citizens of European countries, like Spain and German, allegedly with active Al Qaeda cells were not targeted. In practice, as shown by the fact that 95% of our respondents are Muslim, justifications premised on "Al Qaeda presence" in particular countries are a way to profile Muslims. Select other populations are included, presumably as public relations cover.

The Absconder Initiative, launched in February 2002 and continuing to date, directed law enforcement officials to find individuals who had been ordered deported ("absconders") but had not left the country. However, the policy prioritized 6,000 of the approximately 300,000 absconders because they were from predominantly Muslim countries or the Philippines.[57] Operation LibertyShield, from March through May 2003, provided for the jailing of people seeking asylum who were entering the United States from 33 predominantly Muslim countries during the war in Iraq, a list that was never published but informally put together by immigrant advocates.[58] In the summer of 2002, immigration officials conducted raids on Pakistani owned jewelry stores in almost 20 cities. Thousands of Arabs and, during the war, specifically Iraqis, have been subjected to so-called Voluntary Interviews. The FBI has used the number of mosques in an area as a factor in determining how many counterterrorism resources to devote to that locale.

Even while particular groups have been targeted post September 11 on the basis of religion and ethnicity, a slew of other efforts targeted individuals because of immigration status alone. The Student Exchange Visitor Information System (SEVIS) requires colleges and universities to report information on foreign students to immigration officials, which can then be used to deport those students. Operation Tarmac, ongoing for the past two years, is a series of raids on airport workers around the country through which individuals with immigration violations have been targeted. The notorious USA PATRIOT Act allows the Attorney General to certify any noncitizen a national security threat, providing for that person's mandatory detention.

> "Special Registration is discriminatory and is putting Bangladeshi and Muslim people at risk. One time or another some ethnic group always has suffered in America. Now, it is Bengalis' and Muslims' turn."
>
> -Respondent

Attorney General John Ashcroft also called for local and state police officers to join in the crackdown on non-criminal immigration offenses like the visa overstays that were the basis of so many Special Registration

NTAs. This idea has been resisted in many places because it will undermine reporting of crimes by victims or witnesses and otherwise increase fear in immigrant communities. Moreover, it will place local police in a position of enforcing laws that they don't have the resources or training to deal with effectively. Despite these criticisms, the police have actively collaborated with Federal immigration officials in some states and cities, including Florida, South Carolina, and New York City. The Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act, currently being considered in the House of Representatives, would make it mandatory for local law enforcement to collaborate in targeting noncitizens, in addition to further criminalizing immigration violations.

In this broad context of resurgent attacks on the rights of noncitizens, millions of people still experience the fear that the country they have lived in and worked in might suddenly turn on them. Since 1996, over 1,000,000 people have been deported from the United States, according to the government's own statistics.[59] Teenagers who have grown up in the United States are suddenly locked up and sent to a country where they have no ties, no family. Neighbors disappear, mothers lose their sons and daughters, couples are broken apart, and parents are exiled thousands of miles from their children with no chance to see them.

As part of this broad, ongoing assault on noncitizens and their communities, call-in Special Registration represented a serious lapse of judgment that should not be repeated again and whose wrongs should be redressed. It did little to enhance public safety or address national security concerns, while posing a threat to core democratic values of freedom and basic fairness. With almost 100,000 people's lives disrupted by the policy, it is time to look critically at how the September 11 tragedy is invoked to further the ongoing attacks on the rights of immigrants and citizens. Ultimately, the only real way to protect American society is to strengthen our commitment to human rights and fundamental decency.❖

The Legal Basis of Special Registration

Special Registration is based on the Alien Registration Act of 1940 that required all immigrants to report to the government for fingerprinting and biographical information. Although the reporting requirement lasted the duration of World War II, the United States government also made it an offense to advocate or belong to a group that advocated the violent overthrow of the government, which became the basis for prosecutions of members of the Communist party.

In response to September 11, Section 264 of the Immigration and Nationality Act[60] authorized the Attorney General to mandate that nonimmigrants from certain designated countries be registered, fingerprinted and photographed by the Immigration and Naturalization Service, whose functions have since been incorporated into the new Department of Homeland Security. Section 265 requires immigrants from those designated countries to notify the Attorney General within 10 days of any change of address.

Section 264 is based on the plenary power doctrine, which states that as a sovereign nation, the U.S. government has the right to admit, expel, and exclude immigrants with limited judicial review. The genesis of the plenary power doctrine can be traced back to the discriminatory exclusion of Asian immigrants in 1882, which was upheld by the Supreme Court in Chae Chan Ping v. United States.[61] Justice Field stated, "The government of the United States...considers the presence of foreigners of a different race in this country, who will not assimilate with us, to be dangerous to its peace and security...its determination is conclusive upon the judiciary." In a post September 11 environment, the plenary power doctrine is once again being used selectively to enforce immigration laws against people from predominantly Muslim countries in Asia, the Middle East, and North Africa, North Korea, and the Philippines.

Appendix

Methodology

The Asian American Legal Defense and Education Fund provided legal services related to Special Registration[62] to approximately 800 people. We collected initial demographic data and contact information through our legal intake forms. Between January 2003 and April 2003, we provided legal advice prior to individuals registering. Subsequently, we designed a questionnaire to supplement the initial information with data specific to registration experiences and opinions. From June 2003 through August 2003, we attempted to follow up with individuals to administer a survey on whether they registered, what their experiences were like, and what their opinions were on Special Registration and its effects. Included in our pool of respondents were several individuals who approached us for legal representation subsequent to registering. We were able to acquire data on 219 respondents altogether.

The survey was administered by AALDEF staff and volunteers over the telephone between 11 a.m. and 9 p.m. on weekdays and during daytime hours on weekends. All respondents not fluent in English were interviewed in their native language. Most respondents with some or complete English fluency were also interviewed in their native language, although some were interviewed in second languages, particularly English, Urdu, or different dialects of Arabic.

We attempted to call all 800 respondents at least three times or until our survey was completed to the extent possible, but approximately 10% were called only once or twice. 82% of the respondents were the actual person who approached us initially; the remainder were friends, family, or other individuals who responded to phone inquiries.

The data we collected was sorted into several categories: all respondents; those who did not attempt to register; those who attempted to register; those who attempted to register but were not allowed to do so; those who attempted to register and were allowed to do so; those who were allowed to register and taken to investigations; those who were allowed to register and received a follow-up notice; and those who were allowed to register and did not receive a follow-up notice and were not taken to investigations. Throughout this report, the appropriate category is listed for the finding given. The terms "allowed to register" and "registered" are used interchangeably. Varying numbers of respondents answered each question posed. Therefore, percentages should not be taken to represent a percentage of the total number of individuals in a particular category unless explicitly stated to be so.

We were unable to survey a large number of people because they had moved, their phones had been disconnected, they were uninterested in participating, or they were simply not present when our interviewers called.

Other limitations include that most of our phone calls were made during evening hours on weekdays, between 5 and 8 p.m. Our responses to the supplementary survey on registration were often gathered one to seven months after the actual registration experience, and may be affected by memory or hindsight knowledge of outcomes. Additionally, because of the nature of our outreach efforts in providing legal services, our pool is predominantly made up of Bangladeshis and Pakistanis.

Demographic Background of Respondents

The typical registrant was a 31 to 34 year old, undocumented working-class Muslim living in New York who was originally from a predominantly Muslim South Asian country, i.e. Bangladesh or Pakistan. 52% of the total respondents were Bangladeshis; 34% were Pakistanis; 8% were from predominantly Arab countries and Iran; and 6% were Indonesians. Although our outreach included work with

individuals from religious, ethnic, and linguistic minorities from all of those countries, 95% of the respondents were Muslim, 4% were Christians, and 1.5% were Hindu or Other.

In terms of immigration status, 58% of our respondents were visa overstays, 14% had entered the United States without inspection, while only 1.4% had outstanding deportation orders. An additional 1.4% were green card holders; 25% fell in a catch-all category of "Other."

While precise information is not available, we know that at least 59% of the respondents for whom we had occupational data were engaged in blue-collar professions–defined as workers in the restaurant, construction, garment, domestic, taxi/livery industries, and students. Restaurant employees (18%) and construction workers (12%) made up the largest percentages, with students (9%) not far behind. However, based on our interactions with those we worked with, we suspect that the number of working-class respondents is much higher, given that 34% of the respondents fell in a catch-all category of "Other."

53% of the respondents were 31 to 45 years of age, 21% were 23 to 30 years of age, and 13% were 46 to 55 years of age. Individuals between 19 and 22 made up 5% of the respondents, while 0.5% were 14 to 18 years of age. 5.9% were 56 to 65 and an additional 2.5% were over 65.

While most (86%) of the respondents who attempted to register did so in New York, 14% attempted to register in other states: California; Georgia; Illinois; Kansas; New Jersey; Pennsylvania; Texas; or Virginia.

Pre-Registration Experiences of Respondents

62% of those we spoke with first heard that they might have to register through community sources–36% through friends or family members, and 26% through the ethnic media. Only 1% of the respondents first learned of the Special Registration program from government sources. 56% of those with whom we spoke ultimately decided to try to register, while 44% did not.

Of the respondents who were willing to offer one or more reasons why they did not register, 43% believed that Special Registration did not apply to them and 48% cited the advice of a lawyer as a factor. A much smaller number (10%) cited worrying about arrest, detention, or deportation. 16% cited other reasons.

Of the respondents who were willing to offer one or more reasons for registering, an overwhelming 67% said a desire to follow the law was a factor. 15% cited a lawyer's advice. Smaller numbers had either heard from community sources that there would be no problem in registering (13%) or believed that registering would lead to a green card or other benefits (8%.) 10% had one or more other reasons.

Details of the Special Registration Process

28% of the respondents began waiting on line outside the federal building in their district between 2 a.m. and 6 a.m; 66% were on line by 8 a.m. The respondents entered the building at various times between 7 a.m. and 4 p.m., with a plurality entering between 9 a.m. and 10 a.m. Of the 112 respondents who attempted to register, 88% were allowed to register, while 12% were not.

Among the reasons various respondents reported that immigration officials gave for not allowing registration were: lack of an I-94; that "they had no record" [of him]; and that the registration requirements did not apply. One Bangladeshi man attempted to register on April 23, 2003. He arrived at 7:15 a.m. and entered the Federal Building at 10 a.m. He was told that he did not have an I-94 and so could not register. He went home, came back, again waited on line, and was then told he could not register because "his name was not in the computer."

66% of the respondents who were allowed to register reported that immigration officials had taken documents from them. 84% of the respondents were fingerprinted, photographed, and interrogated under oath without an attorney present. 32% of the

respondents reported not being completely able to understand what was being asked of them. Despite the repeated claims by the Bush Administration that the Special Registration program would be paperless, we and other immigrant advocates in New York saw that registrants were handed out a form to fill out and return to immigration officials.[63]

When we were in Room 310 of the Federal Building in New York, what we saw was truly disturbing. There were row upon row of dark-skinned men waiting for hours to be called up to answer questions. Immigration official policy was that people could not eat in the room while they waited, but would have to go out to the hallway to eat. They obviously could not leave either, given that immigration officials held their passports and, more importantly, that they could miss their turn on line and face potential immigration consequences. As an example of the callousness with which registrants were treated, consider this incident–on April 23, 2003, two days before the deadline for the fourth round of Special Registration, the federal immigration building in New York City had a fire drill in the late morning. The hundreds of people waiting to register were forced to go outside, leaving behind their identification documents and other pieces of information. While federal employees were quickly filed back in, those who had been waiting to register had to wait much longer.

When asked what questions they were asked during this initial registration process, 36% of the respondents said they were asked about criminal history, 28% were asked about the immigration status of their family members, and 26% were asked about their marital relationship–questions that to us sound like an effort to uncover individuals in violation of immigration law. This stands in contrast to 17% the respondents, who were asked questions about connections to terrorism.

13% of those we spoke with were asked about their religion and 15% were asked about their political opinions and activities–questions that were a clear effort to monitor beliefs and activities that noncitizens are legally entitled to hold and to engage in under the Constitution. 31% of the respondents were asked questions about other topics–the Special Registration rule allows for immigration officials to ask essentially whatever they would like of registrants.

Furthermore, over half (54%) of the respondents told us that the person asking them questions did not identify what government agency they were with, making the program all the more unsettling.

After registering, 42% of the respondents were immediately allowed to leave. Among the respondents, the plurality left between 1:30 and 3 p.m. 3 out of 26 of them reported further contact with immigration officials or other law enforcement since they registered.

The majority (58%) of the respondents who registered, however, were not allowed to leave after registering. This meant that something about them had triggered interest by immigration officials and they would generally be forced to wait for hours and then taken to the investigations arm of immigration. However, because so many people were forced to comply with Special Registration guidelines, immigration officials could not process everyone each day; thus, over one-quarter (26%) of the respondents who registered received what were called follow-up notices. These notices instructed them to come back to immigration on another day and report directly to the immigration investigations unit. The follow-up dates the respondents reported ranged from March 7 all the way through June 23, 2003.

Immigration officials in investigations perform the enforcement function–they are the people who will ask additional questions, initiate deportation proceedings, and raid people's homes. Of respondents who were questioned in investigations, 47% were asked about their criminal history, 37% were asked about their marital relationship; and 37% were asked about the immigration status of family members. Only 11% were asked questions about connections to terrorism. Again, these are disturbing signs that catching people on immigration violations was a focus of Special Registration. In investigations, 26%

were asked questions relating to their religion, and 11% were asked questions relating to their political opinions and activities. In our assessment, intrusions of privacy, violations of constitutionally protected activities made individuals and communities distrust the government.

In addition to these forms of abuse, 3 people reported being handcuffed and physically restrained. 12 people reported being detained at some point, some for over a day, and one person has been incarcerated since April 9, 2003 to date.

Of respondents who were allowed to register, the experience took 10 to 12 hours for 9%, 12 to 15 hours for 21%, 15 to 24 hours for 20%, 1 to 2 days for 5%, and more than two days for 4%. 59% of the respondents who registered spent 10 or more hours dealing with registration. These statistics do not include follow-up dates or deportation hearings in immigration court.

Of these respondents who expressed an opinion on the matter, 63% said that the process took at least somewhat more time than they expected, including 38% who said that Special Registration took a lot more time than they expected.

Out of the individuals taken to investigations, 8% took 10 to 12 hours, 31% took 12 to 15 hours, 30% took 15 to 24 hours, 8% took 24 to 48 hours, and 6% took more than two days, for a total of 83% who spent more than 10 hours dealing with Special Registration. These numbers exclude the time it takes to attend follow-up dates, potentially numerous immigration hearings, visits to lawyers' offices, travel time to and from the site of registration, etc.

Effects of Special Registration on the Respondents

52% of the respondents who were allowed to register received a Notice To Appear (NTA.) A Notice To Appear is a charging document that initiates a deportation hearing in front of an administrative judge who is ultimately accountable to Attorney General John Ashcroft. Of those people who answered, 80% told us that they were charged with overstaying their visas, a civil violation of immigration law that was generally not enforced prior to 9-11 in these ethnic communities.

Given the burden imposed by Special Registration, entailing at least 10 hours of one's time and frequently the beginning of deportation, it is unsurprising that 60% of those who were allowed to register and had an opinion on the matter were either completely or somewhat unsatisfied with their decision.

The respondents gave their input on the effectiveness of the program; of those who registered and had an opinion on the issue, 64% felt that Special Registration would not improve the safety of people in the United States or would actually make the country less safe.

The respondents confirm what critics of Special Registration have been arguing for almost 1 year now–that the policy hurt the communities it affected. 44% of those who registered and had an opinion on the issue felt that Special Registration would make people in their ethnic community in the United States less safe. Similarly, 68% felt that Special Registration had hurt their neighborhood or ethnic community, including 29% who felt that the program had "hurt a lot."

Of those who registered and had an opinion, 44% felt that the program had hurt their impression on the United States. 45% said what happened to them was unjust, with an additional 19% saying it might be.

The respondents were especially conscious that Special Registration discriminated on the basis of nationality and religion. An overwhelming 78% felt that Special Registration was not fairly applied to all immigrants regardless of nationality, and 79% felt that Special Registration was not fairly applied to all immigrants regardless of religion.

End Notes

1 CNN, Bush Denounces Muslim Harassment (Sept. 17, 2001), available at http://www.cnn.com/2001/US/09/17/gen.hate.crimes.

2 Id.

3 Registration and Monitoring of Certain Nonimmigrants, 67 Fed. Reg. 52,584 (August 12, 2002).

4 Registration of Certain Nonimmigrant Aliens From Designated Countries, 67 Fed. Reg. 66,765 (November 6, 2002); Registration of Certain Nonimmigrant Aliens From Designated Countries, 67 Fed. Reg. 70,525 (November 22, 2002); Registration of Certain Nonimmigrant Aliens From Designated Countries, 67 Fed. Reg. 77,641 (December 18, 2002); Registration of Certain Nonimmigrant Aliens from Designated Countries, 68 Fed. Reg. 2,363, 2,364 (January 16, 2003).

5 Registration and Monitoring of Certain Nonimmigrants, 67 Fed. Reg. 52,584 (August 12, 2002); Registration of Certain Nonimmigrant Aliens From Designated Countries, 67 Fed. Reg. 66,765 (November 6, 2002); Registration of Certain Nonimmigrant Aliens From Designated Countries, 67 Fed. Reg. 70,525 (November 22, 2002); Registration of Certain Nonimmigrant Aliens From Designated Countries, 67 Fed. Reg. 77,641 (December 18, 2002); Registration of Certain Nonimmigrant Aliens from Designated Countries, 68 Fed. Reg. 2,363, 2,364 (January 16, 2003); Permission for Certain Nonimmigrant Aliens From Designated Countries To Register in a Timely Fashion, 68 Fed. Reg. 2,366 (January 16, 2003); Registration of Certain Nonimmigrant Aliens From Designated Countries, 68 Fed. Reg. 8,046 (February 19, 2003).

6 E-mail from Norman Eng, Policy Advocate, New York Immigration Coalition, to Saurav Sarkar, Community Organizer, Asian American Legal Defense and Education Fund (October 21,2003, 02:35:00 EST) (on file with author) (Figures reported by DHS/BCIS at a meeting between DHS/BCIS and community-based organizations on May 20, 2003, at BCIS headquarters, 425 I Street N.W., Sixth Floor Conference Room, Washington, D.C.).

7 Registration of Certain Nonimmigrant Aliens From Designated Countries, 67 Fed. Reg. 66,765 (November 6, 2002); Registration of Certain Nonimmigrant Aliens From Designated Countries, 67 Fed. Reg. 70,525 (November 22, 2002); Registration of Certain Nonimmigrant Aliens From Designated Countries, 67 Fed. Reg. 77,641 (December 18, 2002); Registration of Certain Nonimmigrant Aliens from Designated Countries, 68 Fed. Reg. 2,363, 2,364 (January 16, 2003).

8 The percentage cited includes construction workers, restaurant workers, students, and others. An additional 34% were classified in a catch-all category of "other" for employment; handwritten notes indicate that many of these individuals are also engaged in working-class professions.

9 Because of the scope of AALDEF's program work, this report focuses primarily on individuals from Bangladesh and Pakistan, but includes information on individuals from other affected communities, particularly Indonesian and Arab nationals and citizens.

10 Registration of Certain Nonimmigrant Aliens From Designated Countries, 67 Fed. Reg. 66,765 (Nov. 6, 2002).

11 Registration of Certain Nonimmigrant Aliens From Designated Countries, 67 Fed. Reg. 66,765 (Nov. 6, 2002)(for the first round, Special Registration required those who entered prior to September 11, 2002 to submit to the process).

12 Registration of Certain Nonimmigrant Aliens from Designated Countries, 68 Fed. Reg. 2,363, 2,364 (January 16, 2003); Registration of Certain Nonimmigrant Aliens From Designated Countries, 67 Fed. Reg. 77,641 (December 18, 2002); Registration of Certain Nonimmigrant Aliens From Designated Countries, 67 Fed. Reg. 70,525 (November 22, 2002)(for the remaining three rounds the date prior to which one must have entered was September 30, 2002).

13 Registration of Certain Nonimmigrant Aliens from Designated Countries, 68 Fed. Reg. 2,363, 2,364 (January 16, 2003); Registration of Certain Nonimmigrant Aliens From Designated Countries, 67 Fed. Reg. 77,641 (December 18, 2002); Registration of Certain Nonimmigrant Aliens From Designated Countries, 67 Fed. Reg. 70,525 (November 22, 2002); Registration of Certain Nonimmigrant Aliens From Designated Countries, 67 Fed. Reg. 66,765 (Nov. 6, 2002).

14 Department of Justice, Special Call-In Registration Procedures...Questions and Answers (Nov. 26, 2002), available at http://www.immigration.gov/graphics/shared/lawenfor/special-reg/CALL_IN_ALL.pdf.

15 Id.

16 Department of Justice, Attorney General Prepared Remarks on National Security Entry-Exit Registration System (June 6, 2002), available at http://www.usdoj.gov/ag/speeches/2002/060502agpreparedremarks.htm.

17 Biographical information asked includes: a) name; b) address; c) telephone number; d) date of birth; e) city and country of birth; f) father's name/father's country of birth/citizen of what country; g) mother's name/mother's country of birth/citizen of what country; h) parent's home address and telephone number in home country; i) employer's name, address and telephone number; j) if student, name of school address and major; k) names of two contact persons in the US, addresses, telephone numbers and relationship; l) spouse's name; m) email address; n) and listing of current applications pending with Bureau of Immigration and Citizenship Services BCIS. Registration and Monitoring of Certain Nonimmigrants, 67 Fed. Reg. 52,584 (August 12, 2002) The use of this form contrasts with the Department of Justice's statements that Special Registration would be "paperless".

18 Memo from Johnny N. Williams, Executive Associate Commissioner of Office of Field Operations, Immigration and Naturalization Service, November 21, 2002.

19 The Department of Justice was then in charge of the federal government's immigration functions through the now-defunct Immigration and Naturalization Service (INS). On March 1, 2003, the INS's responsibilities were transferred to three different agencies within the new Department of Homeland Security; Registration and Monitoring of Certain Nonimmigrants, 67 Fed. Reg. 52,584 (August 12, 2002).

20 Ibid (listing objections to the program in responses to comments in the final rule).

21 Registration of Certain Nonimmigrant Aliens From Designated Countries, 67 Fed. Reg. 66,765 (Nov. 6, 2002).

22 Registration of Certain Nonimmigrant Aliens From Designated Countries, 67 Fed. Reg. 70,525 (November 22, 2002).

23 Reuters, US Muslim immigrants strip-searched, (Dec. 19, 2002), available at http://www.telegraphindia.com/1021221/asp/foreign/story_1502606.asp

24 Id.; U.S. Detains Nearly 1,200 During Registry, Wash. Post, Jan. 17, 2003, at A14; Dan Eggen and Nurith C. Aizenman, Registration Stirs Panic, Worry, Wash. Post, Jan. 10, 2003, at A01; John M. Broder and Susan Sachs, Men From Muslim Nations Swamp Immigration Office, N.Y. Times, Dec. 17, 2002, at A16.

25 Permission for Certain Nonimmigrant Aliens From Designated Countries to Register in a Timely Fashion, 68 Fed. Reg. 2,366 (Jan. 16, 2003).

26 Letter from Sens. Kennedy and Feingold and Rep. Conyers, to Attorney General John Ashcroft (Dec. 23, 2002) (as transcribed at http://www.mpac.org/ home_article_display.aspx?ITEM = 319).

27 Edward Walsh, Senate Votes To Halt INS Registration Program, Wash. Post, Jan. 25, 2003, at A11.

http://www.washingtonpost.com/wp-dyn/articles/A40377-2003Jan24.html

28 Kris Kobach, Foreign Press Center Briefing (Jan. 17, 2003) (available at http://fpc.state.gov/16739pf.htm).

29 Media Release, Armenian National Committee of America, Bush Administration Revises I.N.S. Policy On Requiring Registration of Armenian Nationals in the United States (Dec. 16, 2003); USA Today, Pakistan protests being added to INS tracking list (Dec. 17, 2002), available at http://www.usatoday .com/news/washington/2002-12-17-ins-usat_x.htm.

30 The Tribune, Pak to continue on security-risk list: USA (Dec. 30,2002), available at http://www.tribuneindia.com/2002/ 20021231/world.htm#1; The Daily Star, US Ambassador handed over protest note (Jan. 20, 2003) available at http://www.thedailystar.net/dailystarnews/200301/20/n3012001.htm.

31 The Bush Administration's Arabic translation of its Questions and Answers stated that individuals who entered after September 30, 2002 would be required to register, rather than rendering it properly as individuals who entered before September 30, 2002; Mae Cheng, Immigrants Hurrying To Meet INS Deadline, Newsday, Jan. 9, 2003 available at http://www.newsday.com/ news/ local/newyork/nyreg0110,0,45 21910.story.

32 Margaret Philip, Pakistanis flocking to Canada, Globe and Mail, Mar. 15, 2003, at page A9.

33 Brian Donohue, Desperate Mideasterners seek asylum in Canada, Newark Star-Ledger, Mar. 10, 2003 available at http://www.nj.com/ search/index.ssf?/base/news-7/104728043076650.xml?starledger.

34 Vermont Refugee Aid Group Says Policy Thins Resources, N.Y. Times, Mar. 13, 2003, at A17.

35 Media Release, Vermont Refugee Assistance, Refugee Advocates Overwhelmed by Canadian Policy (Mar. 6, 2003).

36 Id.

37 E-mail from Patrick Giantonio, Executive Director, Vermont Refugee Assistance, to aclu-detention@lists.aclu. org, Detentionwatchnetwork@lists.lirs. org (Feb. 14, 2003, 07:18:00 EST).

38 Vermont Refugee Aid Group Says Policy Thins Resources, N.Y. Times, Mar. 13, 2003, at A17; Brian Donohue, Desperate Mideasterners seek asylum in Canada, Newark Star-Ledger, Mar. 10, 2003 available at http://www.nj.com/search/index.ssf?/base/news-7/104728043076650.xml? starledger.

39 Vermont Refugee Assistance, supra note 35.

40 Registration of Certain Nonimmigrant Aliens From Designated Countries, 68 Fed. Reg. 8,046 (Feb. 19, 2003).

41 Id.; Kobach, supra note 28.

42 Joe Cantlupe, Registration Program For Foreigners in U.S. To End, San Diego Union-Trib., Apr. 30, 2003, available at http://www.tindallfoster.com/news/ registration.html.

43 Registration of Certain Nonimmigrant Aliens from Designated Countries, 68 Fed. Reg. 2,363, 2,364 (January 16, 2003); Registration of Certain Nonimmigrant Aliens From Designated Countries, 67 Fed. Reg. 77,641 (December 18, 2002); Registration of Certain Nonimmigrant Aliens From Designated Countries, 67 Fed. Reg. 70,525 (November 22, 2002); Registration of Certain Nonimmigrant Aliens From Designated Countries, 67 Fed. Reg. 66,765 (Nov. 6, 2002) (green card holders, holders of diplomat visas, asylum-seekers who applied before a certain date, recipients of asylum or refugee status, U.S. citizens, people who entered the United States without permission, and female noncitizens were exempt from the Special Registration requirements).

44 Id. (This report does not include immigrant lesbians into its analysis because only men were mandated to report under Special Registration).

45 AALDEF supports a bill entitled the Permanent Partners Immigration Act, which would allow U.S. citizens and permanent residents to sponsor their same-sex partners for adjustment of status, extending to same-sex couples the same immigration rights currently enjoyed by legally married heterosexual couples.

46 Department of Justice, supra note 16.

47 George Lardner Jr., Foreign Nationals Plagued by Travel Rules, Wash. Post, June 8, 2003, at A08.

48 Department of Justice, supra note 16.

49 Registration and Monitoring of Certain Nonimmigrants, 67 Fed. Reg. 52,584 (August 12, 2002)

50 Department of Justice, supra note 14.

51 The government's main argument was that what occurred on the 10th floor of 26 Federal Plaza was merely a "booking process" that does not require the presence of counsel. However, the booking process merely limits the government to fingerprinting, photographing and biographical data, AALDEF found that additional testimony was developed during this stage triggering concerns of Constitutional violations of registrants' due process rights. At investigations, 73% of reported that they were asked further questions.

52 Department of Justice, supra note 14.

53 Kobach, supra note 28.

54 Id.

55 Custody Procedures, 8 CFR § 287 (2001).

56 Media Release, Office of the Inspector General of the Department of Justice, Department of Justice Inspector General Issues Report on Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Terrorist Attacks (June 2, 2003).

57 VisaLaw.com, News Bytes (Jan. 10, 2003), available at http://www.visalaw.com/03jan2/7jan203.html.

58 Media Release, The White House, Fact Sheet: Operation Liberty Shield (Mar. 17, 2003); Operation Liberty Shield Quietly Terminated, Asylum Protection News 15, (Lawyers Committee For Human Rights, city, State), May 15, 2003, available at http://www.lchr.org/asylum/torchlight/newsletter/newslet_15.htm.

59 Bureau of Citizenship and Immigration Services, 2002 Yearbook of Immigration Statistics (2002), available at http://www.immigration.gov/graphics/shared/aboutus/statistics/ENF2002tables.pdf.

60 8 USC § 1304.

61 130 U.S. 581 (1889).

62 "Special Registration" is defined in this report as the call-in portion of the National Security Entry-Exit Registry System (NSEERS).

63 Registration and Monitoring of Certain Nonimmigrants, 67 Fed. Reg. 52,584 (August 12, 2002).

The Asian American Legal Defense and Education Fund (AALDEF), founded in 1974, is a New York-based organization that protects and promotes the civil rights of Asian Americans through litigation, legal advocacy and community education. AALDEF focuses on critical issues affecting Asian Americans both locally and nationally, including civic participation and voting rights, economic justice for workers, immigrant rights, language rights, affirmative action, and the elimination of anti-Asian violence and police misconduct.

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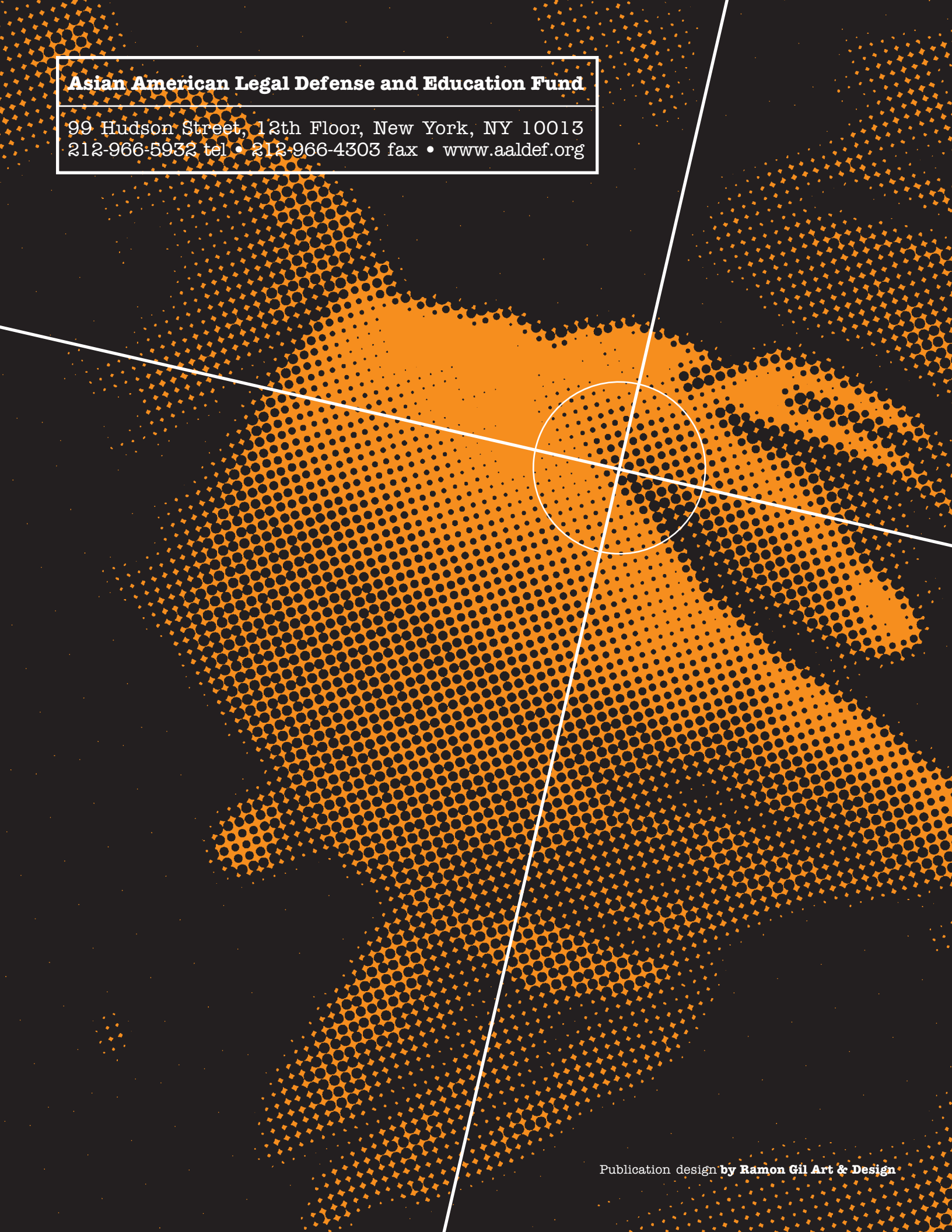

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