Statement of

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for the

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Chairman Sensenbrenner, Ranking Member Conyers and distinguished Members of the Committee, my name is Carlina Tapia-Ruano and I am the First Vice President of the American Immigration Lawyers Association (AILA). I am honored to be here today representing AILA.

AILA is the immigration bar association with more than 8,900 members who practice immigration law. Founded in 1946, the association is a nonpartisan, nonprofit organization and is an affiliated organization of the American Bar Association (ABA). AILA members represent tens of thousands of American families who have applied for permanent residence for their spouses, children, and other close relatives to lawfully enter and reside in the United States; U.S. businesses, universities, colleges, and industries that sponsor highly skilled foreign professionals seeking to enter the United States on a temporary basis or, having proved the unavailability of U.S. workers when required, on a permanent basis; and healthcare workers, asylum seekers, often on a pro bono basis, as well as athletes, entertainers, exchange visitors, artists, and foreign students. AILA members have assisted in contributing ideas for increased port of entry inspection efficiencies and continue to work through their national liaison activities with federal agencies engaged in the administration and enforcement of our immigration laws to identify ways to improve adjudicative processes and procedures.

Thank you for this opportunity to appear before you today on this very important issue. In response to the September 11, 2001 terrorist attacks, Congress with insufficient deliberation passed the USA PATRIOT Act (the "Act"). The Act includes a number of highly troubling immigration-related provisions and casts such a broad net that it allows for the detention and deportation of people engaging in innocent associational activity and constitutionally protected speech, and permits the indefinite detention of immigrants and noncitizens who are not terrorists.

The Bush Administration also has taken some deeply troubling steps since September 11. Along with supporting the USA PATRIOT ACT, the Administration has initiated new policies and practices that negate fundamental due process protections and jeopardize basic civil liberties for non-citizens in the United States. These constitutionally dubious initiatives undermine our historical commitment to the fair treatment of every individual before the law and do not enhance our security. Issued without Congressional consultation or approval, these new measures include regulations that increase secrecy, limit accountability, and erode important due process principles that set our nation apart from other countries.

In the 108th Congress, Members in the House and Senate introduced a bill, the Civil Liberties Restoration Act (CLRA), that sought to roll back some of the most egregious post-9/11 policies and strike an appropriate balance between security needs and liberty interests. The CLRA (H.R. 1502), which was reintroduced in the 109th Congress by Representatives Berman (D-CA) and Dellahunt (D-MA), would secure due process protections and civil liberties for non-citizens in the U.S., enhance the effectiveness of our nation's enforcement activities, restore the confidence of immigrant communities in

the fairness of our government, and facilitate our efforts at promoting human rights and democracy around the world.

While every step must be taken to protect the American public from further terrorist acts, our government must not trample on the Constitution in the process and on those basic rights and protections that make American democracy so unique.

THE PATRIOT ACT: Deeply Troubling Provisions

AILA is deeply troubled by the following practices included in the PATRIOT Act :

Punishing innocent associations and constitutionally protected speech: The USA PATRIOT Act includes provisions that:

- Authorize the Attorney General (AG) to arrest and detain noncitizens based on mere suspicion, and require that they remain in detention "*irrespective of any relief they may be eligible for or granted."* (In order to grant someone relief from deportation, an immigration judge must find that the person is not a terrorist, a criminal, or someone who has engaged in fraud or misrepresentation.) When relief from deportation is granted, no person should be subject to continued detention based merely on the Attorney General's unproven suspicions.
- Require the AG to bring charges against a person who has been arrested and detained as a "certified" terrorist suspect within seven days, but the law does not require that those charges be based on terrorism-related offenses. As a result, an alien can be treated as a terrorist suspect despite being charged with only a minor immigration violation, and may never have his or her day in court to prove otherwise.
- Make material support for groups that have not been officially designated as "terrorist organizations" a deportable offense. Under this law, people who make innocent donations to charitable organizations that are secretly tied to terrorist activities would be presumed guilty unless they can prove they are innocent. Restrictions on material support should be limited to those organizations that have officially been designated terrorist organizations.
- Deny legal permanent residents readmission to the U.S. based solely on speech protected by the First Amendment. The laws punish those who "endorse," "espouse," or "persuade others to support terrorist activity or terrorist organizations." Rather than prohibiting speech that incites violence or criminal activity, these new grounds of inadmissibility punish speech that "undermines the United States' efforts to reduce or eliminate terrorist activity." This language is unconstitutionally vague and overbroad, and will undeniably have a chilling effect on constitutionally protected speech.
- Authorize the AG and the Secretary of State to designate <u>domestic</u> groups as terrorist organizations and block any noncitizen who belongs to them from entering the country. Under this provision, the mere payment of membership

dues is a deportable offense. This vague and overly broad language constitutes guilt by association. Our laws should punish people who commit crimes, not punish people based on their beliefs or associations.

POST 9/11 REGULATIONS AND POLICIES

Many of the post-9/11 regulations and policies of the Bush Administration have undermined law enforcement officials' ability to perform their duties, have done little to gather worthwhile intelligence, have granted the executive branch broad powers to act in secret, and have made it difficult for foreign visitors to maintain legal status. These actions waste law enforcement's valuable resources by focusing on people who pose no threat to our national security, and violate fundamental principles of justice. The CLRA would redress a number of troubling post-9/11 policies affecting non-citizens, including the following:

- **Closing immigration hearings and refusing to disclose basic information on detainees:** On September 21, 2001, the Department of Justice (DOJ) through what is now known as the "Creppy memo," ordered immigration judges to close all hearings related to individuals detained in the course of the 9/11 investigation. Not only were the hearings held in secret—excluding all visitors, family, and press—but the very identities of the jailed individuals were withheld from public disclosure. Although these cases involved no classified evidence, the records of these proceedings were never released and court officials were prohibited from confirming or denying the mere existence of the cases. To this day, the government refuses to provide any information about these cases despite repeated Freedom of Information Act (FOIA) requests. These FOIA denials were litigated up to the Supreme Court, which recently declined to grant *certiorari*, leaving intact a split federal appeals court decision upholding the denials.

  The immigration process should be open to the public; secret hearings are the practice of repressive regimes, not open and democratic societies. The CLRA would prohibit blanket closures of immigration proceedings, authorizing closure only after a judge has determined that there is a compelling reason to keep out the public or withhold information in a particular case or portion thereof.

- **Holding non-citizens in jail indefinitely without charges:** The DOJ issued regulations on September 20, 2001 authorizing the INS to hold any non-citizen in custody for 48 hours or an unspecified "additional reasonable period of time" before charging the person with an offense. Congress subsequently weighed in on this subject in the USA PATRIOT Act when it authorized detention of up to 7 days before charges must be brought *in the case of certified suspected terrorists*. The DOJ, however, has never invoked that provision and has relied instead on its own open-ended regulation as the legal justification for the detention of non-citizens without charge. The DOJ rule is unlimited in its application and can be applied to any non-citizen. A DOJ Inspector General Report (April 2003) on post-9/11 detainees documents how INS detained non-citizens for weeks, and in some cases months,

before charging them with immigration violations. Tellingly, none of the detainees ever was charged with an offense related to the 9/11 attacks.

As amply manifest in its implementation, this rule violates a fundamental principle in our constitutional system and in internationally recognized standards of fair legal process—that no person should be subject to arrest and imprisonment without reason, explanation, and due process. It also demonstrates that DOJ willfully circumvented Congress's mandate about how long an individual suspected of terrorist activity can reasonably be detained before charging them. The CLRA would explicitly supersede the DOJ regulation by requiring charges to be filed, and notice of charges to be served, within 48 hours of the detention (unless certified as a suspected terrorist under the PATRIOT Act provision). It also would require the detainee to be brought in front of an immigration judge within 72 hours of being detained.

- **Keeping non-citizens jailed even after an immigration judge has found them eligible for release:** The Attorney General issued regulations on October 31, 2001 that require people in immigration proceedings to remain in custody even though an immigration judge has found them eligible for bond. In its rationale, the DOJ does not assert that immigration judges or the Board of Immigration Appeals (BIA) were abusing their power or failing to keep terrorist suspects in detention. Rather, the DOJ argues that the new regulation will "avoid the necessity for a case-by-case determination of whether a stay [of a release order] should be granted in particular cases." This regulation effectively enables prosecutors to circumvent the considered decision of independent adjudicators regarding the likelihood that an individual will appear for future proceedings and the threat a detainee poses to the community. Prosecutors present their case before the court, and if they should lose, they can simply overrule the judge. It thus completely eviscerates the longstanding role of immigration courts in making bond determinations and the BIA in reviewing those decisions.

  When an individual faces detention—a fundamental deprivation of liberty—a case-by-case review is exactly what the principles of our judicial system demand. Allowing the agency with the chief interest in prosecution (DHS) to also determine whether an individual can be released from jail is a violation of fundamental principles of due process. The CLRA would eliminate the power of DHS prosecutors to automatically stay immigration judges' bond determinations and it defines the conditions under which temporary stays should be granted, giving the government ample opportunity to demonstrate a person's dangerousness while providing a fair process of adjudication.

- **Denying bond to whole classes of non-citizens without individual case consideration:** The detention of non-citizens for indefinite periods without an individualized assessment of their eligibility for release on bond or other conditions raises serious constitutional questions. Although the Supreme Court has upheld mandatory detention when Congress has expressly required such detention for a discrete class of non-citizens, it has not authorized the executive branch to make

sweeping group-wide detention decisions. Nevertheless, since September 11, 2001, DOJ and DHS have established policies mandating the detention of certain classes of non-citizens without any possibility for release until the conclusion of proceedings against them. For example, all of the individuals who were detained on immigration violations during the course of the post-9/11 investigation were subjected to a "hold until cleared" policy. Even individuals who did not contest their removability, and against whom final orders of removal had been entered, remained in detention until the FBI cleared them. It bears repeating that the government never charged any of these detainees with a terrorism-related offense.

DOJ and DHS also have extended mandatory detention policies to certain non-citizens seeking asylum. In *Matter of D-J*, the Attorney General (AG) reversed a BIA decision upholding bond to a detained asylum seeker from Haiti. The AG's precedent decision argues that releasing the individual on bond would trigger a wave of sea-going migrations from Haiti and would divert Coast Guard resources from the fight against terrorism. He then concludes, on that specious basis, that national security interests necessitated the mandatory detention of all similarly situated asylum applicants during the pendency of their proceedings. DHS's (now defunct) Operation Liberty Shield initiative reinforced this harsh and inappropriate policy by subjecting all asylum seekers from 30-plus unspecified countries to mandatory detention.

Unilateral executive branch decisions to mandatorily detain whole classes of individuals contravene important due process principles and individual liberty interests. The CLRA would require immigration authorities and immigration judges to provide an individualized assessment of whether persons should remain in detention because they constitute a flight risk or a danger to society. If not, the CLRA would require their release under reasonable bond or other conditions.

- **Entering certain immigration status violators into a criminal database and exempting the data from accuracy requirements of the Privacy Act:** The DOJ reversed a legal opinion drafted under a previous Administration, concluding that states and localities, as sovereign entities, have the "inherent authority" to enforce federal immigration laws, including civil violations of immigration law. This opinion conflicts with the long-standing legal tradition that immigration is exclusively a federal matter. Moreover, by conscripting local police to serve as federal immigration agents, immigrant communities will lose confidence in the police, thereby undoing decades of successful community-based policing initiatives.

  DOJ also announced in December 2001 that it would begin entering the names of hundreds of thousands of immigration status violators into the National Crime Information Center (NCIC) database so that local police could apprehend them. Compounding the potentially disastrous consequences of this initiative is a regulation DOJ issued in March 2003 that exempts the NCIC database from the accuracy requirements of the Privacy Act. The database thus will provide information of dubious accuracy to local law enforcement officials who have little or no training in

immigration law, increasing the likelihood of unfair or unlawful arrests and detentions or other civil rights abuses. To forestall some of these concerns, the CLRA would require information entered into the NCIC database to comply with the Privacy Act accuracy standards.

- **Implementing a discriminatory "special registration" policy:** The National Security Entry-Exit Registration System (NSEERS or special registration) imposes new registration requirements on certain applicants for admission to the U.S. as well as on certain non-citizens already living in the U.S. The latter requirement, known as call-in registration, required all males 16 years of age or older, who were citizens or nationals of one of twenty-five designated predominantly Muslim countries, and who entered the U.S. as nonimmigrants before certain designated dates, to be interrogated, fingerprinted, and photographed. Administration protests to the contrary notwithstanding, the call-in registration program targeted people based on national origin, race and religion, rather than on specific intelligence information. Billed as a national security initiative, NSEERS obligated men from Muslim countries to register so that the government could get a better sense of who was in the country. Dutifully, more than 85,000 people registered; tragically, more than 13,000 of the registrants were placed into removal proceedings due to immigration status violations. Although many of the violations were technical and many registrants were on the path to normalizing their status, they were placed in proceedings nevertheless.

  As with the post-9/11 detainees, none of the call-in registrants was charged with a terrorist-related offense, providing further evidence that this initiative succeeded only in alienating immigrant communities, straining international relations, and diverting precious law enforcement resources from identifying people who intend to harm us. In December 2003, DHS wisely suspended certain re-registration requirements associated with the program, but left other components intact. The CLRA would terminate the NSEERS program in its entirety and provide relief from immigration consequences to some individuals who were placed in immigration proceedings due to this failed program.

- **Instituting "reforms" that severely undermine due process rights for immigrants appearing before the BIA:** Despite nearly universal agreement that our immigration system is replete with serious deficiencies, the Administration has begun dismantling the only review apparatus currently in place, the immigration appeals system. Through a series of regulations issued by Attorney General John Ashcroft, the BIA—the court of last resort for many immigrants fighting deportation—has been stripped of its ability to serve as a meaningful watchdog over the lower courts. Because the Executive Office for Immigration Review (which currently houses the immigration courts) is a regulatory creation, the Attorney General possesses virtually unfettered discretion to reconstitute the system in whatever way he deems appropriate. The "reforms" at issue include the following: reducing the overall number of judges sitting on the Board of Immigration Appeals from 23 to 11 by reassigning the 5 most "immigrant friendly" judges to other positions; making one-judge review of lower court decisions the norm as opposed to the traditional three-judge panels; expanding

dramatically the range of cases which can be affirmed without any opinion; and eliminating the Board's de novo review authority. (See AILA Issue Paper entitled "The Importance of Independence and Accountability in Our Immigration Courts".)

The results of this initiative have been stunning. A report commissioned by the American Bar Association (ABA) that evaluated the regulations determined that the increased speed in the decision-making process has had a significant impact on substantive outcomes: "decisions in favor of the respondents have decreased alarmingly from 1 in 4 to 1 in 10." Not only did the regulations fail miserably from a fairness perspective, they also failed to achieve their stated purpose of improving efficiency. The United States Courts of Appeals have experienced a massive surge in BIA appeals, in volume and rate, since the regulations were implemented. Hence, the net effect of the Attorney General's streamlining measures has not been to eliminate the backlogs, but merely to shift the backlog to another branch of government, the federal courts. The CLRA would establish an independent immigration court system and establish, for the first time, explicit statutory parameters for its makeup and functions.

AILA'S POSITION: AILA strongly supports policies undertaken since 9/11 that truly promote our security (such as the Enhanced Border Security and Visa Entry Reform Act, P.L. 107-173 and the Intelligence Reform ACT GET PL NUMBER) However, the immigration-related provisions in the PATRIOT Act and The executive actions highlighted in my testimony do not enhance our security. What they have done is erode our constitutionally protected civil liberties. In thoughtful, measured fashion, the Civil Liberties Restoration Act (H.R. 1502) would rein in those policies that go too far in tilting the scales against individual rights and would reaffirm our Constitutional commitment to provide due process to all persons.

APPENDIX

Selected Executive Branch Actions since September 11, 2001

The following are selected administrative actions taken by the Executive Branch since September 11, 2001 listed in reverse chronological order. These actions:

- curb rights and due process
- undermine fundamental constitutional protections
- profile certain communities based on race, religion, and ethnicity and target them for heightened measures
- respond to various actions by the INS that have drawn criticism

- **December 2, 2003: Suspension of Certain NSEERS Requirements**

The Department of Homeland Security (DHS) published an Interim Rule in the Federal Register announcing the suspension of certain re-registration requirements for individuals initially registered under the National Security Entry-Exit Registration System (NSEERS or "Special Registration"). Specifically, the Rule amends 8 CFR §§ 264.1(f)(3) and 264.1(f)(5), which required 30-day re-registration for those specially registered at a Port of Entry (POE) and annual re-registration for all individuals subject to Special Registration. Suspension of the re-registration requirements applies to all previously registered foreign nationals, whether under POE registration or "call-in" registration. All other requirements (including departure registration and POE registration) and the Special Registration program itself remain in effect. Anyone who fails to comply with the continuing requirements of Special Registration could be subjected to denial of admission to the U.S., denial of immigration benefits, possible criminal prosecution, and/or removal proceedings. [*68 FR 67577, 12-2-03, Interim Rule*]

- **July 7, 2003: Personal Appearance Required for Visa Interviews**

DOS published an Interim Rule in the Federal Register, effective August 1, 2003, requiring applicants for visas to appear (in most cases) for a personal interview. The Department of State Cable sent to consular posts on May 22, in anticipation of the new regulation, warned of backlogs yet advised posts that they "must implement the new interview guidelines using existing resources. Post should not, repeat not, use overtime to deal with additional workload requirements but should develop appointment systems and public relations strategies to mitigate as much as possible the impact of these changes." *[68 FR 40127, 7-7-03, Interim Rule]*

As AILA noted in its comments on the Interim Rule, "In fiscal year 2002, 843 consular officers processed 8.3 million nonimmigrant visa applications. It is thought that in some posts as few as 20 percent of applicants were interviewed. The new…policy will mean that about 90 percent of visa applicants will now be interviewed (thus generating, in some

posts, an increase in visa workload of up to 70 percent)—without an attendant increase in the number of consular interviewers or other resources."

- **April 24, 2003: Matter of D-J**

In a far-reaching precedent decision, the Attorney General denied undocumented immigrants recourse to an individualized bond hearing if immigration officials say their release would endanger national security interests. The national security interest identified by the Attorney General in this decision was the prevention of "further surges of mass migration…with attendant strains on national and homeland security resources."

The Attorney General issued this ruling in the case of an 18-year-old Haitian who arrived in the U.S. on October 29 with more than 200 other refugees and subsequently applied for asylum. The Attorney General's ruling overturns the decisions of both the Immigration Judge (IJ) and the Bureau of Immigration Appeals (BIA) to release the individual on bond pending the outcome of his asylum proceedings. Both the IJ and the BIA concluded that the individual did not present a flight risk or a danger to the community. By eliminating the possibility of release on bond for whole classes of people, this decision represents a significant departure from the well-established due process principle that every individual deserves a hearing to determine whether his or her liberty interest outweighs the government's interest in preventing flight and danger to society.

- **March 17, 2003: Operation Liberty Shield**

Secretary Ridge issued a fact statement and press release discussing a new DHS initiative called Operation Liberty Shield. One component of this initiative requires that asylum applicants be detained for the duration of their processing period if they come from nations where al-Qaeda, al-Qaeda sympathizers, and other terrorist groups are known to have operated.

- **February 19, 2003: Additional Exit Ports Designated**

DOJ published a Notice in the Federal Register providing the public with an expanded list of ports through which nonimmigrant aliens who have been specially registered may depart from the United States. There are now 99 authorized ports of departure for special registrants.

- **February 19, 2003: Special Registration Deadlines Extended for Groups 3 & 4**

DOJ published a Notice in the Federal Register extending the registration deadline for two groups of affected foreign nationals. Nonimmigrant aliens of Pakistan or Saudi Arabia who are required to register were given until March 21, 2003 to do so. Nonimmigrant aliens from Bangladesh, Egypt, Indonesia, Jordan, or Kuwait who are required to register are permitted to do so before April 25, 2003. [*68 FR 8046, 2-19-03, Notice]*

- **January 16, 2003: Call-In Special Registration Expanded**

DOJ published a Notice in the Federal Register expanding the special registration program to foreign nationals from five additional countries. The Notice requires all nonimmigrant males aged 16 or over who are citizens or nationals of Bangladesh, Egypt, Indonesia, Jordan or Kuwait, and who entered on or before September 30, 2002, to appear for call-in registration between February 24, 2003 and March 28, 2003. *[68FR 2363, 1-16-03, Notice]*

- **January 16, 2003*:* Special Registration Deadlines Extended for Groups 1 & 2**

DOJ published a Notice in the Federal Register reopening the registration periods to permit citizens or nationals of Afghanistan, Algeria, Bahrain, Eritrea, Iran, Iraq Lebanon, Libya, Morocco, North Korea, Oman, Qatar, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, or Yemen who were required to register previously but did not do so, to appear and register with the INS between January 27, 2003, and February 7, 2003. The Notice indicates that registration during this extension period would be considered timely under the original notices.

- **December 18, 2002: Call-In Special Registration Expanded**

DOJ published a Notice in the Federal Register expanding the special registration program to foreign nationals from two additional countries. The Notice requires all nonimmigrant males aged 16 or over who are citizens or nationals of Saudi Arabia or Pakistan and who entered on or before September 30, 2002, to appear for call-in registration between January 13, 2003 and February 21, 2003. This Notice also rescinds a December 16, 2002 Notice which erroneously included Armenia on the list of affected countries. *[67 FR 77642, 12-18-02,-Notice]*

- **December 18, 2002: Attorney General Secret Order Delegating Authority to FBI to Exercise the Powers and Duties of Immigration Officers**

The Attorney General issued an order authorizing the FBI Director and his delegates to perform the functions of immigration officers. Specifically, the order authorizes the FBI to investigate and detain aliens suspected of violating any immigration law or regulation and to enforce all immigration provisions, including those related to special registration. The actual text of this order has not been released by the Attorney General although its contents have been leaked to the press.

- **November 22, 2002: Call-In Special Registration Expanded**

DOJ published a Notice in the Federal Register expanding the special registration call-in program to foreign nationals from 13 additional countries. The Notice requires all nonimmigrant males aged 16 or over who are citizens or nationals of Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morocco, North Korea, Oman, Qatar, Somalia, Tunisia, United Arab Emirates, or Yemen and who entered on or before September 30, 2002, to appear for call-in registration between January 13, 2003 and February 21, 2003.

- **November 13, 2002: Expansion of Expedited Removal**

DOJ published a Notice in the Federal Register authorizing INS to place in expedited removal proceedings certain aliens who arrive in the United States by sea, either by boat or other means, who are not admitted or paroled, and who have not been physically present in the United States continuously for the two-year period prior to the determination of inadmissibility. *[67 FR 68924 11/13/02]*

- **November 6, 2002: Call-In Special Registration Implemented**

DOJ published a Notice in the Federal Register requiring certain nonimmigrants from five countries - Iran, Iraq, Libya, Sudan, or Syria – who are already in the U.S. to appear for fingerprinting and photographing, answer questions, present documentation, and register before an immigration officer. The Notice requires all nonimmigrant males aged 16 or over who are citizens or nationals of one of the five countries and who entered the U.S. on or before September 10, 2002, to appear for call-in registration on or before December 16, 2002.

The Notice advises that a willful failure to comply with the call-in special registration requirements constitutes a failure to maintain nonimmigrant status under section 237(a)(1)(C)(i) of the Immigration and Nationality Act, rendering the individual removable unless the alien establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful. It further advises that if an alien subject to the registration requirements fails to comply with the requirement that the alien report to an inspecting immigration officer when departing the U.S., the alien shall thereafter be presumed to be inadmissible under section 212(a)(3)(A)(ii) of the Act.

- **September 30, 2002: 26 Exit Ports Designated**

DOJ published a Notice in the Federal Register advising the public of the list of ports through which nonimmigrants who have been specially registered must depart from the United States. The list includes 26 land and air ports of entry/exit. *[67 FR 61352, 9-30-02, Notice]*

- **September 24, 2002: Special Registration Expanded**

A special memo from INS Executive Associate Commissioner, Office of Field Operations, was leaked to the press and published by WorldNetDaily.com. The memo indicates that nationals of five countries—Iraq, Iran, Sudan, Syria and Libya—are subject to special registration as of September 11, 2002. The memo further indicates that as of October 1, 2002, national from Pakistan, Saudi Arabia and Yemen who are males between 16 and 45 will also be subject to "registration". The memo also instructs inspecting officers to order "registration" based on 7 criteria, including previous visa overstays, "demeanor", and unexplained travel.

- **August 26, 2002: BIA "Reforms"**

The Attorney General published a final rule that is substantially the same as the proposed regulation published in February. The new regulation will restructure the Board of

Immigration Appeals. The BIA "reform" will institute one-judge review, streamlined procedures, and will reduce the Board itself to 11 members (from the current complement of 21 positions.) Effective September 26, 2002. *[67 FR 165 at 54877, 8-26-02]*

- **August 13, 2002: "St. Cyr" Relief Regulation**

The Attorney General published a proposed rule, purportedly implementing the Supreme Court decision in the *St. Cyr* case, which makes certain immigrants with criminal convictions eligible to apply for a waiver of deportation. The rule fails to make provisions for those who were deported from the country while the litigation resulting in the Supreme Court case was pending. On August 22, 2002, the Attorney General published a technical correction to the proposed rule. Comments are due October 15, 2002. *[67 FR 156 at 52627, 8-13-02; 67 FR 163 54360, 8-22-2002]*

- **August 12, 2002: Registration and Monitoring of Certain Nonimmigrants** *[Final Rule]*

Attorney General John Ashcroft announced that the first phase of the National Security Entry-Exit Registration System (NSEERS) will be implemented by the Immigration and Naturalization Service (INS) at selected ports of entry throughout the United States on September 11, 2002. After an initial 20-day period for testing and evaluating the system at selected ports of entry, all remaining ports of entry -- including land, air and sea -- will have the new system in place on October 1, 2002. The final rule adopted the proposed rule "without substantial change".

The registration requirements may be applied to certain named nation groups already within the United States whenever the Attorney General so orders. The new registration requirements will first apply to nationals from Syria, Libya, Iraq, Iran and Sudan. The list is contemplated to expand to all 26 countries now subject to heightened security checks at visa posts (Afghanistan, Algeria, Bahrain, Dijbouti, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Malaysia, Morocco, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, Yemen.) [*67 FR 155 at 52584, 8-12-2002]*

- **July 26, 2002: Address Notification to be Filed with Designated Applications**

The Attorney General proposed a rule clarifying the alien's obligation to provide an address to the Service, including a change of address within 10 days. The rule will require every alien to acknowledge having received notice that he or she is obliged to provide a valid address to the Service. The rules clarify that a "willful" failure to register with the INS, or a failure to give written notice of a change in address, is a criminal violation. This proposed regulation is accompanied by a statement by DOJ.

The proposed regulations will allow the Service to mail a "Notice to Appear" to the most recent address reported by the alien. Upon such mailing, the Service will have met its burden of the "advanced notice" an alien must receive before an Immigration Judge issues an *in absentia* order of removal. See, Matter of G-Y-R. This expanded definition of "notice" increases the likelihood for *in absentia* orders to be issued against non-criminal aliens who fail to report an address change.

The stated intent of this rule is to provide clear notice to aliens of their obligation to report their address, and to punish those who fail to do so. *[67 FR 144 at 48818, 7-26-02]*

- **July 24, 2002: Powers of State or Local Law Enforcement Officers To Exercise Federal Immigration Enforcement** *[Final Rule]*

DOJ issued a final rule which implements INA 103(a)(8), which allows the Attorney General to authorize any state or local law enforcement officer, with the consent of the head of the department whose geographic boundary the officer is serving, to exercise and enforce immigration laws during the period of a declared "mass influx of aliens."

The rules authorize the Attorney General to consider the definitions of "immigration emergency" and "other circumstances" under 28 C.F.R. 65.81 when making a declaration of "mass influx of aliens". The rules purport that civil liberties and civil rights will be protected with officer training, and a complaint reporting procedure. The final rule is effective August 23, 2002. *[67 FR 142 at 48354*, 07-24-02]

- **July 2, 2002: DOJ and State of Florida sign MOU**

DOJ and the State of Florida executed a Memorandum of Understanding authorizing 35 state and local law enforcement officers working specifically as part of the State of Florida's Regional Domestic Security Task Forces (RDSTFs) to perform certain immigration officer enforcement functions. It gives such officers the power to interrogate any person believed to be an alien as to his right to be in the United States and to arrest those believed to be in violation of the law.

- **June 13, 2002: Registration and Monitoring of Certain Nonimmigrants**

The Attorney General issued a proposed rule requiring certain yet-to-be-designated aliens to register (fingerprints and photographs and other information) at entry, at 30 days after entry, at one-year intervals thereafter, and at exit, which must be through designated exit points. The registration requirements may be applied to certain named nation groups already within the United States whenever the Attorney General so orders.

Failure to satisfy any of the required reporting results in criminal penalties, and in the entering of the person's name in the NCIC database. The regulation is accompanied by a statement by the Attorney General indicating that local law enforcement officers will be requested to check the names of any persons they encounter against the NCIC data base, and arrest and detain not only those who have violated the registration requirement, but also those who have overstayed a visa whose names will also be entered into the database.

The power of local law enforcement to arrest people for mere civil violations of immigration laws is stated to derive from a new DOJ Office of Legal Counsel opinion which has not been made public, which states that local law enforcement officers have "inherent authority" to enforce not only criminal violations of immigration law, but civil violations as well. *[67 FR 114 at 40581, 6-13-02]*

- **May 28, 2002: Immigration Judges Given Authority to Seal Records and Issue Protective Orders**

The Attorney General issued an interim regulation authorizing immigration judges to issue protective orders and seal records relating to law enforcement or national security information. The rule applies in all immigration proceedings before EOIR. The rule is made effective as of May 21, 2002, *a week prior to publication.* Comments due 7-29-02. *[67 FR 102 at 36799, 5-28-02]*

- **May 16, 2002: Student Reporting Required**

The Attorney General issued a proposed regulation that implements a new student reporting system, SEVIS. The system will become voluntary on July 1, 2002, and mandatory for all covered school on 1-30-03. The new SEVIS system will require reporting of student enrollment, start date of next term, failure to enroll, dropping below full course load, disciplinary action by school, early graduation, etc. Comments due 6-17-02. *[67 FR 95 at 34862, 5-16-02]*

- **May 10, 2002: New Security Checks Required**

The INS issued a memo requiring District Offices and Service Centers to run IBIS (Interagency Border Inspection System) security checks for *all* applications and petitions, including naturalization. The checks are to be run not only on foreign nationals, but also on every name on the application, including US citizen petitioners and attorneys. IBIS includes information on "suspect" individuals and can also be used to access NCIC records. It is used by INS, Customs, and 20 other federal agencies (FBI, Interpol, DEA, ATF, IRS, Coast Guard, FAA, Secret Service, etc.) *[INS Memorandum from William Yates to Regional Directors, Service Center Directors, and District Directors, 5-10-02]*

- **May 9, 2002: Aliens Ordered to Surrender within 30 days**

The Attorney General issued a proposed regulation that requires that aliens subject to final orders of removal surrender to INS within 30 days of the final order or be barred forever from any discretionary relief from deportation, including asylum relief, while he/she remains in the U.S. or for 10 years after departing from the U.S. Comments due 6-10-02. *[67 FR 90 at 31157, 5-9-02}*

- **April 22, 2002: States Forbidden to Release Detainee Information**

The Attorney General issued an interim regulation that forbids any state or county jail from releasing information about INS detainees housed in their facilities. This regulation flies in the face of a New Jersey state court decision ordering the release of information regarding detainees in New Jersey facilities. The rule is made effective 4-17-02, *a week prior to publication.* Comments due 6-21-02. *[67 FR 19508, 4-22-02]*

- **April 12, 2002: New Limitations on Student Change of Status**

INS issued an interim rule prohibiting a visitor from attending school while an application for a change to student status is pending. The rule is made effective 4-12-02. Comments due 6-11-02. *[67 FR 71 at 18062, 4-12-02]*

- **April 12, 2002: New Limitations on Visitors/Students**

INS issued a proposed regulation establishing a presumptive limitation on visitors to the US of 30 days, or a "fair and reasonable period" to accomplish the purpose of the visit. The regulation also prohibits a change of status from visitor to student, unless student intent is declared at time of initial entry. Comments due 5-13-02. *[67 FR 71 at 18065, 4-12-02]*

- **April 10, 2002: Local Law Enforcement Powers**

News of a new DOJ legal opinion that states that local law enforcement personnel have "inherent" power to enforce the nation's immigration laws is leaked to the press. *[Various news reports]*

- **March 19, 2002: Additional Interviews**

DOJ announced another round of interviews of 3000 Arab/Muslim men. *Memorandum from U.S. Department of Justice, Executive Office for U.S. Attorneys, TO: All US Attorneys, from Kenneth L. Wainstein, Director, entitled "Interview Report", dated 3-19-02*.

- **February 26, 2002: Interview Report**

DOJ issued a final report on its project of interviewing the 5,000 Arab/Muslim men. The Report states that approximately half (2261) of those on the list were actually interviewed and that fewer than twenty interview subjects were taken into custody. Most of these were charged with immigration violations; only three were arrested on criminal charges. *[Report from U.S. Department of Justice, Executive Office for U.S. Attorneys, Memorandum for the Attorney General, from Kenneth L. Wainstein, Director, entitled "Final Report on Interview Project, dated 2-26-02]*

- **February 19, 2002: BIA "Reforms"**

The Attorney General published a new regulation proposing to restructure the Board of Immigration Appeals. The BIA "reform" would institute one-judge review, streamlined procedures, and would reduce the Board itself to 11 members (from the current complement of 21 positions.) Comment due 3-21-02. *[67 FR 33 at 7309, 2-19-02]*

- **January 25, 2002: "Absconder Initiative"**

The Deputy Attorney General issued a memo of instructions for the "Absconder Apprehension Initiative", announced by INS Commissioner Ziglar in December, to locate 314,000 people who have a final deportation or removal order against them. 6,000 men from "al Qaeda-harboring countries will be first to be entered in the National Crime Information Center (NCIC) database. DOJ uses country, age, and gender criteria to prioritize this selective enforcement list. *[Office of Deputy Attorney General, Subject: Guidance for Absconder Apprehension Initiative, dated 1-25-02]*

- **December 4, 2001: Senate Hearings**

Senator Feingold held hearings on the status of 9-11 detainees. The Attorney General stated that those who question his policies are "aiding and abetting terrorism."

(http://www.lexis.com/research/retrieve/frames?_m=d88b568e87c195aecaf968445f816c1f&csvc=bl&cform=bool&_fmtstr=XCITE&docnum=1&_startdoc=1&wchp=dGLbVlb-lSllB&_md5=cbdb097ca85216c342e7a33a47c91389)

- **November 29, 2001: "Snitch Visas"**

The Attorney General issued a memo announcing the use of S visas for those who provide information relating to terrorists. *[Attorney General Directive on Cooperators Program, 10-29-01]*

- **November 26, 2001: Interviews to be "voluntary"**

US Attorneys in Detroit issued a letter stating that the interviews are voluntary, but that "we need to hear from you by December 4." *[Letter from U.S. Attorney, Eastern District of Michigan, signed by Jeffrey Collins and Robert Cares, dated 11-26-01]*

- **November 23, 2001: INS Actions re Interviewees**

INS issued memo stating that "officers conducting these interviews may discover information which leads them to suspect that specific aliens on the list are unlawfully present or in violation of their immigration status." The memo directs INS to provide agents to respond to requests from state and local officers involved in the interviews. *[Memorandum for Regional directors, from Michael A. Pearson, INS Executive Associate Commissioner, Office of Field Operations, dated 10-23-01]*

- **November 16, 2001: Secrecy re INS Detainees**

DOJ issued a letter to Senator Feingold asserting that identities/locations of 9-11 detainees will not be disclosed. *[U.S. Department of Justice, Office of Legislative Affairs, to Senator Russell D. Feingold, dated 11-16-01]*

- **November 15, 2001: New 20-Day Wait for Certain Visa Applicants**

The State Department imposed new security checks on visa applicants from unnamed countries. The State Department refuses to confirm the new requirement, but the following message appears when individuals born in certain countries attempt to make a visa appointment through the on-line Visa Appointment Reservation System:

> "Effective immediately, the State Department has introduced a 20-day waiting period for men from certain countries, ages 16-45, applying for visas into the United States."

The following countries of birth are among those for whom this message appears: Afghanistan, Algeria, Bahrain, Dijbouti, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Malaysia, Morocco, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, Yemen.

- **November 13, 2001: Military Tribunals**

President Bush issued an Executive Order authorizing creation of military tribunals to try non-citizens alleged to be involved in international terrorism (http://www.whitehouse.gov/news/orders/).

- **November 9, 2001: Interviews of Arab/Muslim Men**

The Attorney General issued a memo directing interviews of a list of 5000 men, ages 18-33, who entered US since Jan. 2000 and who came from countries where Al Queda has a "terrorist presence or activity". The interviews are to be "voluntary" but immigration status questions may be asked (see Pearson memo, Nov. 23).

- **November 7, 2001: Creation of Foreign Terrorist Tracking Task Force**

The President announced the first formal meeting of the full Homeland Security Council, and the creation of a "Foreign Terrorist Tracking Task Force" which will deny entry, locate, detain, prosecute and deport anyone suspected of terrorist activity. The Task Force includes DOS, FBI, INS, Secret Service, Customs and the intelligence community. The Task Force is charged with a mandate to perform a thorough review of student visa policies. *[White House Announcement, 11-07-01]*

- **October 31, 2001: New Terrorist Groups Designated**

The Attorney General issued a letter requesting that the Secretary of State designate 46 new groups as terrorist organizations, per powers authorized by USA Patriot Act (9 groups identified in President's Executive Order of 9-23-02; 6 groups identified in joint State-Treasury designation of 10-12-02, and 31 groups designated by DOS Patterns of Global Terrorism Report, published April 2001). *[Letter from Attorney General to Colin L. Powell with attachment]*

- **October 31, 2001: Eavesdropping on Attorney/Client Conversations**

DOJ issued a Bureau of Prisons interim regulation that allows eavesdropping on attorney/client conversations wherever there is "reasonable suspicion…to believe that a particular inmate may use communications with attorneys to further or facilitate acts of terrorism"; the regulation requires written notice to the inmate and attorney, "except in the case of prior court authorization". The rule is made effective 10-31-01. Comments due 12-31-01. *[66 FR 211, at 55062, 10-31-01]*

- **October 31, 2001: Automatic Stays of Bond Decisions**

DOJ issued an interim regulation that provides an automatic stay of IJ bond decisions wherever DD has ordered no bond or has set a bond of $10K or more. The rule is made effective 10-29-02, two days *prior to publication.* Comments due 12-31-01. *[66 FR 211, at 54909, 10-31-01]*

- **October 12, 2001: Attorney General FOIA Memorandum**

The Attorney General issued a memorandum to the heads of all federal departments and agencies encouraging them to carefully consider protecting legal privileges before releasing information pursuant to a FOIA request. The memo states that the decision to

disclose information that could be protected "should be made only after full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be implicated by disclosure of the information." Moreover, the memo advised that in making a decision to withhold records, "you can be assured that the [DOJ] will defend your decisions unless they lack a sound legal basis or present an unwarranted risk of adverse impact on the ability of other agencies to protect other important records."

- **October 4, 2001: FBI "mosaic" Memo, Opposing Bond**

The FBI began to use a boilerplate memo to oppose bond in all post-9-11 cases. The memo states:

> "The FBI is gathering and culling information that may corroborate or diminish our current suspicions of the individuals who have been detained…the FBI has been unable to rule out the possibility that respondent is somehow linked to, or possesses knowledge of, the terrorist attacks…" *[Memo submitted to United States Department of Justice, Executive Office for Immigration Review, Immigration Court, "In Bond Proceedings", "Exhibit A", signed by Michael E. Rolince, Section Chief, International Terrorism Operations Section, Counter terrorism Division, Federal Bureau of Investigation]*

- **September 21, 2001: Closed Hearings**

Chief Immigration Judge Michael Creppy issued a memo stating: "the Attorney General has implemented additional security procedures for certain cases in the Immigration Court". Creppy further states that these procedures "require" IJs to "close the hearing to the public…". *[Creppy Memo, 9-21-01, 12:20 PM]*

- **September 20, 2001: Detention without Charges**

The Department of Justice (DOJ) published an interim regulation allowing detention without charges for 48 hours or "an additional reasonable period of time" in the event of an "emergency or other extraordinary circumstance". The rule is made effective 9-17-02, *three days prior to publication.* Comments due 11-19-01. *[66 FR 183 at 48334, 9-20-01]*

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