

# Note

## HELD HOSTAGE: IDENTITY CITIZENSHIP OF IRANIAN AMERICANS

By: Sara Mahdavi\*

*If I see someone come in and he's got a diaper on his head and a fan belt around that diaper on his head, that guy needs to be pulled over and checked.*

– Former U.S. Congressman John Cooksey<sup>1</sup>

### I. INTRODUCTION

In the aftermath of September 11, the federal government has revived the practice of profiling people who appear to be Muslim, Arab, or Middle Eastern,<sup>2</sup> resulting in state-sanctioned

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1. *National Briefing South: Louisiana: Apology From Congressman*, N.Y. TIMES, Sept. 21, 2001, at A16.

2. Racial categories are socially constructed, with law playing a critical role in the construction and reinforcement of these categories. See IAN F. HANEY LOPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (New York University Press 1996) (discussing the changing definition of “White”); Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1761 (1993) (noting that “[t]he law has recognized and codified racial group identity as an instrumentality of exclusion and exploitation . . . .”); John Tehranian, Note, *Performing Whiteness: Naturalization Litigation and the Construction of Racial Identity in America*, 109 YALE L.J. 817, 823 (2000) (explaining that performance of Christian and Western European norms played an important role in determining who could be racialized as “White”). See also *Ozawa v. United States*, 260 U.S. 178, 198 (1922) (holding that a Japanese man was not White and could therefore not gain U.S. citizenship because “the words ‘white person’ are synonymous with the words ‘a person of the Caucasian race’ . . . .”); *United States v. Thind*, 261 U.S. 204, 215 (1923) (holding that, although Caucasian, a Hindu man could not naturalize because White actually meant what is “commonly recognized as white. The children of English, French, German, Italian, Scandinavian, and other European parentage . . . .”). Similarly, “Muslim, Arab, or Middle Eastern” is a socially constructed category encompassing a broad range of ethnic communities, including South Asians (particularly Sikhs), people of Middle Eastern descent, and even non-Muslim Latinos. See Leti Volpp, *The Citizen and the Terrorist*, 49 UCLA L. REV. 1575, 1576 n.2 (2002); Muneer I. Ahmad, *A Rage Shared by Law: Post-September 11 Racial Violence as Crimes of Passion*, 92 CALIF. L. REV. 1259, 1261 n.1 (2004). Though “Muslim, Arab, or Middle Eastern” is an imperfect and socially constructed category,

discrimination and encouraging discrimination by private actors. Public violence in the form of governmental policies targeting “Muslim-looking” people in the United States has been accompanied by private discrimination and hate crimes against such people.<sup>3</sup> Though the U.S. government has declared formally that Americans do not blame all Muslims or all Arabs for the attacks of September 11, former Congressman Cooksey’s derogatory comments about men who wear turbans, made in a radio interview broadcast statewide in Louisiana, demonstrate otherwise.<sup>4</sup> Though Cooksey later claimed he had not intended to disparage loyal Americans of Arab descent, he then aired television commercials in which he stated, “We know the faces of the terrorists and where they’re from.”<sup>5</sup> Furthermore, Cooksey noted that although the words “a diaper on his head” were too strong, “our security and safety are our most important rights.”<sup>6</sup>

Similar profiling of Muslims and people of Middle Eastern descent was seen again during the 2004 congressional elections. When Kamran Akhtar was arrested for videotaping the Charlotte, North Carolina skyline in July 2004, North Carolina congressional candidate Vernon Robinson immediately aired the following television ad:

**NARRATOR:** This is Pakistani terrorist Kamran Akhtar. He got arrested videotaping targets in Charlotte, North Carolina. He came here illegally across our Mexican border.

**VERNON ROBINSON:** I’m Vernon Robinson, and I approved this message because ol’ Akhtar didn’t come here to live the American dream. He came here to kill you.<sup>7</sup>

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government profiling, private hate crimes, and discrimination have occurred based on this category. I will use the terms “Middle Eastern” and “Muslim” to refer to this group throughout this article, notwithstanding their social construction and the over- and under-inclusiveness of the terms.

3. Ahmad, *supra* note 2, at 1262.

4. A 2004 survey found that 21% of Americans believed that American Muslims were not cooperating in the war against terrorism, and that 50% felt that American Muslims have not been as active as they should in condemning the terrorist attacks. See The Council on American-Islamic Relations, *Islam and Muslims: A Poll of American Public Opinion*, at <http://www.cair-net.org/downloads/pollresults.ppt> (last visited Mar. 30, 2006).

5. David Firestone, *National Briefing South: Louisiana: A Call for Terrorist Profiling*, N.Y. TIMES, Oct. 10, 2001, at A14.

6. *Id.*

7. PBS Transcripts of NOW with Bill Moyers, [http://www.pbs.org/now/transcript/transcript334\\_full.html](http://www.pbs.org/now/transcript/transcript334_full.html) (last visited Aug. 10, 2005). See also Jim Morrill, *TV ad Calls Pakistani ‘Terrorist,’* CHARLOTTE OBSERVER, Aug. 14, 2004, available at [http://www.amren.com/mtnews/archives/2004/08/tv\\_ad\\_calls\\_pak.php](http://www.amren.com/mtnews/archives/2004/08/tv_ad_calls_pak.php) (last visited March 30, 2006).

Contrary to Robinson's allegations, Akhtar was detained for immigration violations and was never charged with any terrorism-related activities. Federal authorities are not known to have uncovered any ties between Akhtar and terrorists.<sup>8</sup> The comments and advertisements of Vernon Robinson and former Congressman John Cooksey indicate, however, that profiling of people perceived to be from the Middle East – those who have the “faces of the terrorists” – is unapologetically alive and well. Although racial profiling had become unacceptable in the minds of many Americans prior to 2001, this view quickly changed after September 11, at least with respect to people who appear Arab, Muslim, or Middle Eastern. According to a USA Today/CNN/Gallup poll taken in September 2001, 58% of U.S. citizens favored racial profiling of Arabs, including profiling of U.S. citizens of Arab descent; 49% favored special identification cards for them; and 32% supported special surveillance of Arabs and Arab Americans.<sup>9</sup> In contrast, prior to the September 11 attacks, 80% of Americans *opposed* racial profiling.<sup>10</sup> Even more frightening, a 2001 Gallup poll found that one-third of the U.S. population favored internment of Arab Americans.<sup>11</sup>

This profiling and questioning of people of Middle Eastern descent continues because members of this group are seen as foreign and are presumed to be disloyal. This phenomenon, in turn, leads to a lack of American identity citizenship among group members. Although many people of Middle Eastern descent residing in the U.S. are U.S. citizens, they lack identity citizenship, which Linda Bosniak describes as a sense of belonging and community membership.<sup>12</sup> Identity citizenship may be essential to protecting a

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8. Paul Nowell, *Skyline Videotaper Gets Jail Sentence*, Jan. 24, 2005, <http://www.newsday.com/news/nationworld/nation/wire/sns-ap-arrest-videotaping,0,2610542.story?coll=sns-ap-nation-headlines> (last visited Aug. 12, 2005).

9. See Mark Memmott, Richard Benedetto, and Patrick O'Driscoll, *Poll Finds a United Nation*, USA TODAY, Sept. 17, 2001, at 4A (stating that 58% of those interviewed favored more intensive security checks for all Arab travelers, including those who are U.S. citizens); Sam Howe Verhovek, *A Nation Challenged: Civil Liberties; Americans Give in to Racial Profiling*, N.Y. TIMES, Sept. 23, 2001, at A1 (stating that 49% of those surveyed also favored special identification cards for Arabs and Arab Americans, and 32% supported “special surveillance” for them).

10. Nicole Davis, *The Slippery Slope of Racial Profiling*, COLORLINES, Dec. 2001, available at [http://www.arc.org/C\\_Lines/CLArchive/story2001\\_12\\_05.html](http://www.arc.org/C_Lines/CLArchive/story2001_12_05.html) (last visited Aug. 13, 2005).

11. Leti Volpp, *supra* note 2, at 1591 n.68 (2002) (citing Gallup Poll Analysis: The Impact of the Attacks on America, <http://www.gallup.com/poll/releases/pr010914c.asp>).

12. Linda Bosniak identifies four dimensions of citizenship: legal status, rights, political activity, and identity and solidarity. Citizenship as legal status is the formal citizenship of immigration law, obtained through birth or naturalization. Citizenship as rights signifies the civil, social, and political rights a person possesses by virtue of his citizenship status. A lack of full rights, for example, is often referred to as second-class citizenship. Citizenship as political activity describes the engagement and participation of a citizen in the political community. Finally, citizenship as identity refers to a shared feeling of community

community's interests and guaranteeing the rights and treatment granted by formal citizenship.<sup>13</sup> Thus, a lack of identity citizenship can lead to the erosion of a group's formal and political rights.<sup>14</sup> Violations of these formal and political rights then reinforce the lack of identity citizenship, both within the community whose rights have been violated and in the American public's perception of the community.

In this paper, I intend to explore the lack of identity citizenship in the Iranian American community in particular. Discrimination against Iranians in America in 1979, the beginning of the Hostage Crisis, is sometimes seen as the first example of anti-Arab bias in the U.S.<sup>15</sup> Profiling and discrimination against people of Middle Eastern descent in the United States has continued with every terrorist attack since, whether the attack was perpetrated by domestic or international terrorists.<sup>16</sup> Furthermore, private discrimination and hate crimes have been encouraged by government profiling and targeting.<sup>17</sup> These public and private actions have strengthened the image of Iranian Americans as outsiders, raising doubts about their loyalty to the United States and their "belonging" in the U.S. citizenry.<sup>18</sup> As a result, they have reinforced these citizens' self-perceptions as "foreigners," though many of these citizens have lived in the U.S. for most, or all, of their lives.<sup>19</sup> Both the public perception of Iranian Americans as outsiders and their self-perception as such are strengthened by U.S. policies and by anti-Middle Eastern sentiment in the U.S. public. From the reporting

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membership, belonging in the national community, and ties of solidarity. Linda Bosniak, *Citizenship Denationalized*, 7 IND. J. GLOBAL LEGAL STUD. 447, 456-88 (2000).

13. *Id.* at 494. See also Leti Volpp, "Obnoxious To Their Very Nature": *Asian Americans and Constitutional Citizenship*, 8 ASIAN L.J. 71, 83 (2001).

14. *Id.*

15. Michael J. Whidden, *Unequal Justice: Arabs in America and United States Antiterrorism Legislation*, 69 FORDHAM. L. REV. 2825, 2827 n.18 (2001). Iranians are often conflated with Arabs, though Iran is not in fact an Arab nation. Most Iranians speak Persian, while "Arab," on the other hand, generally refers to people from Arabic-speaking countries – Algeria, Bahrain, Comoros, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Sudan, Syria, Tunisia, United Arab Emirates, Yemen, and portions of Somalia and Djibouti. *Id.* These nations also constitute the League of Arab States, as listed on [www.arableagueonline.org](http://www.arableagueonline.org). Because Iran is often thought to be an Arab nation, however, references to "Arab" in this paper should be considered to include Iranians as well. As much as possible, I will attempt to use Middle East and "people of Middle Eastern descent" in lieu of "Arab," though these terms carry problems of their own.

16. See Whidden, *supra* note 15, at 2861-2869.

17. Ahmad, *supra* note 2, at 1265-77.

18. *Id.* at 1262, 1312. See also Susan M. Akram & Kevin R. Johnson, "Migration Regulation Goes Local: The Role of States in U.S. Immigration Policy": *Race, Civil Rights, and Immigration Law after September 11, 2001: The Targeting of Arabs and Muslims*, 58 N.Y.U. ANN. SURV. AM. L. 295, 341 (2002) (discussing marginalization of Arab and Muslim communities in the U.S.).

19. Akram & Johnson, *supra* note 18, at 341 (stating that government tactics since September 11 have suggested to noncitizens and citizens of Arab and Muslim ancestry that "they there are less than full members of U.S. society.").

requirements for Iranian students in the U.S. during the 1979-1981 hostage crisis to the registration requirements and detentions after September 11, 2001, the outsider status of Iranian Americans has been reflected and reinforced. This, in turn, has led to low civic development in the Iranian American community and the under-representation of Iranian American<sup>20</sup> interests in the political process.

## II. BEGINNINGS OF IRANIAN “FOREIGNNESS”: THE HOSTAGE CRISIS

To many Americans today, it seems unfathomable that the U.S. and Iran were once close and friendly allies. Indeed, most Americans, even those who were adults prior to the 1979 Iranian Revolution and subsequent hostage-taking of Americans at the U.S. Embassy in Tehran, knew little of Iran prior to the Revolution.<sup>21</sup> In fact, the United States and Iran were close allies prior to the Revolution, and the U.S. strongly supported the pre-revolution monarchy of the Shah of Iran.<sup>22</sup> Indeed, the U.S. government was deeply involved in the government of Iran prior to the Iranian Revolution.<sup>23</sup> After the election of Mohammad Mosaddegh as Prime Minister of Iran in 1951, U.S. intervention in Iran’s politics increased.<sup>24</sup> Mosaddegh was an immensely popular leader. Shortly after coming into office, he enforced the Oil Nationalization Act, nationalizing Iran’s oil industry and seizing control of the British-owned Anglo-Iranian Oil Company.<sup>25</sup> Seeing Mosaddegh as a threat to their interests in Iran, the American CIA, along with the British MI6, orchestrated a coup, overthrowing Mosaddegh in 1953.<sup>26</sup> Following this action, the Shah ruled Iran oppressively and developed an even closer relationship with the United States, who had restored him to power.<sup>27</sup> The overthrow of Mosaddegh embittered many Iranians against the United States, and when the Shah was finally deposed in a popular uprising in 1979, the 1953

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20. Throughout the rest of this paper, I will use “Iranian” or “Iranians in America” to refer to both Iranian Americans (American citizens of Iranian descent) and Iranians present in the United States without citizenship.

21. Yahya R. Kamalipour, *Window of Opportunity: Images of Iranians in the U.S. Media*, THE IRANIAN, Aug. 11, 1998, available at <http://www.iranian.com/Opinion/Aug98/Media/index.html> (last visited Feb. 18, 2006).

22. MABOUD ANSARI, *THE MAKING OF THE IRANIAN COMMUNITY IN AMERICA* 151 (Pardis Press 1992). See also NIKKI KEDDIE AND YANN RICHARD, *ROOTS OF REVOLUTION: AN INTERPRETIVE HISTORY OF MODERN IRAN* 146, 176 (Yale Univ. Press 1981).

23. KEDDIE, *supra* note 22.

24. *Id.* at 134-42. See also ANSARI, *supra* note 22, at 21.

25. Wikipedia Entry for Mohammed Mossadegh, [http://en.wikipedia.org/wiki/Mohammed\\_Mossadegh](http://en.wikipedia.org/wiki/Mohammed_Mossadegh) (last visited Feb. 24, 2006). See also STEPHEN KINZNER, *ALL THE SHAH’S MEN* 79-82 (John Wiley and Sons 2003); KEDDIE, *supra* note 22, at 136.

26. KEDDIE, *supra* note 22, at 133-40. See generally KINZNER, *supra* note 25.

27. KEDDIE, *supra* note 22, at 142-44.

coup was used as a rallying point in anti-U.S. and anti-Shah protests.<sup>28</sup>

It is this Revolution and the hostage crisis that followed that have shaped most Americans' perceptions of Iran and Iranians. On November 4, 1979, Iranian students stormed the U.S. Embassy in Tehran, taking more than sixty Americans hostage.<sup>29</sup> On November 19 and 20, most of the female, African American, and non-U.S.-citizen hostages were released because they had "already suffered 'the oppression of American society.'"<sup>30</sup> One other hostage was released in July 1980 because of an illness later diagnosed as multiple sclerosis.<sup>31</sup> The other fifty-two Americans, however, remained hostages for 444 days, until Ronald Reagan's inauguration on January 20, 1981.<sup>32</sup> The hostage crisis received enormous media coverage. Beginning shortly after the hostage-taking, ABC aired nightly updates entitled "The Iran Crisis – America Held Hostage: Day *xxx*," which later became *Nightline*.<sup>33</sup> Every night at 11:30 until the end of the hostage crisis, ABC would begin this program with a count of what day it was in the hostage crisis, give an update of the situation, and broadcast scenes from outside the Embassy in Tehran, where the crowd burned and trampled American flags, waved fists, and chanted "Death to America."<sup>34</sup> The show scored an extremely high Nielsen rating of 9.6, meaning that 7 million Americans were watching the show.<sup>35</sup> Many Americans "wouldn't go to sleep without getting their final hostage fix of the night."<sup>36</sup> It was against this backdrop that most Americans formed their perceptions of Iran and of Iranians.

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28. *Id.* at 140-41, 275. See also ANSARI, *supra* note 22, at 21, 152; Wikipedia Entry for Mohammed Mossadegh, *supra* note 25.

29. PBS American Experience, *People & Events: The Iranian Hostage Crisis, November 1979 – January 1981*, [http://www.pbs.org/wgbh/amex/carter/peopleevents/e\\_hostage.html](http://www.pbs.org/wgbh/amex/carter/peopleevents/e_hostage.html) (last visited Feb. 18, 2006).

30. *Id.* One African American hostage and two female hostages were not released in November 1979. See *The Hostages and the Casualties*, [http://www.jimmycarterlibrary.org/documents/list\\_of\\_hostages.phtml](http://www.jimmycarterlibrary.org/documents/list_of_hostages.phtml) (last visited April 10, 2005).

31. *Id.*

32. PBS American Experience, *supra* note 29.

33. Wikipedia Entry for Nightline, <http://en.wikipedia.org/w/index.php?title=Nightline&oldid=39639477> (last visited February 17, 2006).

34. Michael Socolow, *The Power of Ted: His Nuanced Approach to Interviewing may Become History in Broadcast Journalism*, CHI. TRIB., Apr. 3, 2005, at C9.

35. Bill Peterson, *The Greening of Patriotism in America; Iran Crisis Revives Patriotism in U.S.*, WASH. POST, Dec. 8, 1979, at A1.

36. Jacques Steinberg, *Koppel Leaving 'Nightline' and ABC this December*, N.Y. TIMES, Mar. 29, 2005, available at <http://iml.jou.ufl.edu/newszine/Archive/040605/entertainment/5.html> (last visited March 30, 2006) (quoting Ted Koppel).

## A. GOVERNMENT RETALIATION AND PROFILING

Immediately after the hostage-taking, the U.S. government retaliated against Iranians who were in the United States. On November 13, 1979, Attorney General Benjamin Civiletti issued regulations requiring post-secondary students who were in the U.S. on student visas and who were natives or citizens of Iran to submit special proof of their continued eligibility for student visa status.<sup>37</sup> Failure to comply with the regulation subjected students to deportation.<sup>38</sup> This regulation, ostensibly designed to exert diplomatic pressure on the Iranian government, applied exclusively to Iranian nationals.<sup>39</sup> Though the regulation targeted a specific group exclusively on the basis of national origin, creating a suspect classification, the D.C. Circuit Court of Appeals only subjected the regulation to rational basis review.<sup>40</sup> The Supreme Court has established that Congress and the Executive have enormous flexibility in decision-making related to immigration.<sup>41</sup> Because such matters often involve political questions and foreign policy considerations, they have been committed to the political branches of the government.<sup>42</sup> Thus, Executive and Congressional actions related to immigration are largely immune from judicial review, and distinctions on the basis of nationality may be drawn by Congress or the Executive in this field as long as such distinctions are not wholly irrational.<sup>43</sup> As a result, in *Narenji v. Civiletti*, the D.C. Circuit Court of Appeals held that the Attorney General's regulation subjecting Iranian nationals to special registration requirements was not wholly irrational and therefore must be sustained.<sup>44</sup> The court gave substantial deference to executive allegations that the regulation was "a fundamental element of the President's efforts to resolve the Iranian crisis and to maintain the safety of the American hostages in Tehran" and refused to interfere with the judgment of the President

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37. Requirements for Maintenance of Status for Nonimmigrant Students from Iran, 8 C.F.R. § 214.5 (1979).

38. *Narenji v. Civiletti*, 617 F.2d 745, 747 (D.C. Cir. 1979).

39. *Id.*

40. See generally *Narenji*, *supra* note 38. According to constitutional jurisprudence, classifications based on race or national origin receive strict scrutiny – the government must show a compelling governmental interest and must demonstrate that the classification is necessary to achieve that interest. In immigration law, however, the court pays great deference to the political branches of the federal government. *Fiallo v. Bell*, 430 U.S. 787, 792 (1977).

41. *Mathews v. Diaz*, 426 U.S. 67, 81-82 (1976).

42. *Id.* at 81. See also *Chae Chan Ping v. United States*, 130 U.S. 581, 606-609 (1889); *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952).

43. *Harisiades*, *supra* note 42, at 588-589. See also *Fiallo*, *supra* note 40, at 798-99 ("With respect to . . . legislative policy distinctions, it could be argued that the line should have been drawn at a different point . . . . But it is clear from our cases . . . that these are policy questions entrusted exclusively to the political branches of our Government, and we have no judicial authority to substitute our political judgment for that of the Congress.").

44. *Narenji*, *supra* note 38, at 748-49.

in what the court characterized as a “foreign policy” decision.<sup>45</sup> During the period in which this regulation was in effect, 57,000 Iranian students were screened regarding their legality, 7,177 deportation hearings were held, and 3,088 Iranians were ordered deported.<sup>46</sup> The concurrence in the *Narenji* case went even further in demonizing Iranians, justifying the discriminatory regulation by quoting the Supreme Court in *Harisiades v. Shaughnessy*: “Though the resident alien may be personally loyal to the United States, if his nation becomes our enemy his allegiance prevails over his personal preference and makes him also our enemy, liable to expulsion or internment, and his property becomes subject to seizure and perhaps confiscation.”<sup>47</sup> Notably, this comment applies to all non-citizens, whether they are in the United States as immigrants or non-immigrants.<sup>48</sup> Under this view, even legal permanent residents – who have been in the U.S. for a lengthy period, plan to stay permanently, and hope to eventually adjust their status to become U.S. citizens – are suspects.

Also on November 13, 1979, the Acting Commissioner of the Immigration and Naturalization Service (INS) revoked deferred departure dates that the INS had previously granted to Iranian nationals, many of whom were students.<sup>49</sup> This policy change ostensibly occurred either in response to fear that Iranian nationals retained their loyalty to Iran, and were thus a threat to the United States, or as a tactic to apply pressure on the Iranian government to release the American hostages.<sup>50</sup> In *Yassini v. Crosland*, which challenged the Acting Commissioner’s revocation of the previously granted deferred departure dates, the Ninth Circuit Court of Appeals held that this action was not an independent, “renegade” act of foreign policy by Commissioner Crosland.<sup>51</sup> Rather, it constituted an implementation of the President’s response to the Iranian hostage crisis and his efforts to secure the release of hostages.<sup>52</sup> It was therefore a foreign policy decision better left to the political branches, and the court held that the revocation did not violate

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45. *Id.* at 747.

46. Mehdi Bozorgmehr and Georges Sabagh, *High Status Immigrants: A Statistical Profile of Iranians in the United States*, 21 IRANIAN STUDIES (1988).

47. *Narenji*, *supra* note 38, at 749 (MacKinnon, C.J., concurring) (citing *Harisiades*, 342 U.S. at 587).

48. Non-immigrants are foreign visitors who are in the U.S. for temporary stays, while immigrants have been admitted in a status allowing them to stay permanently and to eventually gain U.S. citizenship.

49. *Yassini v. Crosland*, 618 F.2d 1356, 1359 (9th Cir. 1980). *See also Narenji*, 617 F.2d at 747-48.

50. *Yassini*, *supra* note 49.

51. *Id.* at 1358, 1361.

52. *Id.* at 1361.

Iranian nationals' due process rights or the procedural requirements of the Administrative Procedure and Freedom of Information Acts.<sup>53</sup>

In addition to federal government policies, state actors also enacted discriminatory legislation targeting students of Iranian nationality. New Mexico State University, for example, attempted to "rid the campus of Iranian students" during the hostage crisis.<sup>54</sup> On May 9, 1980, New Mexico State University Regents passed a motion declaring that "any student whose home government holds, or permits the holding of U.S. citizens hostage will be denied admission or readmission to New Mexico State University commencing with the Fall 1980 semester unless the American hostages are returned unharmed by July 15, 1980."<sup>55</sup> This provision was followed by the Substitute Motion of June 5, 1980: "Any student whose home government holds or permits the holding of U.S. citizens hostage will be denied subsequent enrollment to New Mexico State University until the hostages are released unharmed. The effective date of this motion is July 15, 1980."<sup>56</sup> It is important to note that the Substitute Motion applied both to Iranians who were in the U.S. as non-immigrants and those who were here as immigrants, admitted to the U.S. as permanent residents and eligible for citizenship after five years of residence.<sup>57</sup> By the time of the appeal, the Regents stated that they did not intend to enforce the Motion against legal permanent residents, but originally, no such distinction was made between permanent residents and non-immigrants.<sup>58</sup> Furthermore, the Regents admitted that they ultimately distinguished between non-immigrants and immigrants only because they believed that the Motion could not be constitutionally applied to permanent residents.<sup>59</sup> Thus, there was no acknowledgement by the Regents that permanent residents of Iranian descent constituted a genuine part of the community or of the student body.

The New Mexico State University Regents asserted various justifications for barring Iranian students from enrollment, including the inability to ensure the safety of Iranian students on college campuses during a time of high anti-Iranian sentiment, citing "tensions" on the campus during the preceding Fall semester.<sup>60</sup> The *Tayyari* court, however, found expulsion of Iranian students an impermissible solution to this asserted justification for the Motion, likening it to arguments against court-ordered desegregation during

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53. *Id.* at 1361-62.

54. *Tayyari v. New Mexico State University*, 495 F. Supp. 1365, 1367 (D.N.M. 1980)

55. *Id.* at 1367-68.

56. *Id.* at 1368.

57. *Id.*

58. *Id.* at 1371 n.5.

59. *Id.* at 1372.

60. *Id.* at 1375.

the Civil Rights era.<sup>61</sup> The Regents also alleged that their actions were motivated by economic concerns, since they would have no recourse for collecting unpaid tuition or fees from Iranian students who defaulted because there was no longer an Iranian Embassy in the United States.<sup>62</sup> Prior to the *Tayyari* hearing, however, the only articulation of any financial justifications for the Motion consisted of a mention in the Regents' minutes of May 9, 1980, that taxpayers should not have to support Iranian students at NMSU.<sup>63</sup> There was no mention of concern about payment of tuition or fees by Iranians.<sup>64</sup> Instead, the minutes stated that Iran had become an enemy of the United States, that Americans were angry and fed up with Iranians, and that Iranian students therefore should not get any benefits from New Mexico taxpayers.<sup>65</sup> The New Mexico District Court rejected the Regents' belated justifications for the Motion targeting Iranian students and struck it down, declaring that the "true purpose" of the state's law was to "make a political statement" about Iranian students.<sup>66</sup>

Just before the *Tayyari* decision, a federal district court in Mississippi issued a preliminary injunction against a Mississippi law that also targeted Iranian students by requiring them to pay nearly five times the tuition of other students in the state.<sup>67</sup> The law would have raised tuition to \$4,000 for non-resident students from countries that had no formal relations with the U.S. and were subject to U.S. economic sanctions. Other non-residents, meanwhile, paid \$664 to \$879 per year, plus an \$825 non-resident fee.<sup>68</sup> Though the regulation would also have affected students from Vietnam, Cambodia, and possibly Albania, Iraq, and South Yemen, there were few, if any, students in Mississippi state schools from those countries, while there were 432 Iranian students in the state.<sup>69</sup> Thus, this regulation, too, was intended to make a political statement that Iranians were despised and unwelcome.

## B. HATE CRIMES AND PRIVATE DISCRIMINATION

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61. *Id.*

62. *Id.* at 1373-74.

63. *Id.* at 1374.

64. *Id.*

65. *Id.*

66. *Id.* at 1376.

67. *Id.* at 1374.

68. *U.S. to Join Challenge of Miss. Law on Iranian Student Tuition*, WASH. POST, June 22, 1980, at A5.

69. *Id.*



too. After we cancel their Visa cards. No more Big Macs. See how they like to walk a mile for a camel burger.”<sup>75</sup>

Other private discrimination and violence against Iranians included children being beaten up on the bus, anti-Iranian slogans scrawled on walls, and merchandise being returned when customers learned that the retailer was Iranian.<sup>76</sup> Furthermore, one Iranian recounts that with seven years of professional experience and education, he received no employer responses to his resume when he used his real name, “Mohammad.”<sup>77</sup> After changing the name on his resume to “Mike,” however, he immediately received four responses, including one from a company that had not responded to the “Mohammad” resume.<sup>78</sup>

During this time of national crisis, the Japanese American Citizens League was one of only a few groups to speak out against the persecution of Iranians in America.<sup>79</sup> With such hostility during this time and so few communities speaking up for their protection, Iranians received and internalized the message that they were not welcome members of American society.<sup>80</sup> Indeed, while some government policies applied only to non-immigrants, others, such as the New Mexico State University Motion, did not distinguish between Iranian visitors in America and those who were permanent residents intending to acquire U.S. citizenship.<sup>81</sup> Furthermore, discrimination and hate crimes in particular did not distinguish between Iranians who were American citizens and those who were nationals of Iran. Instead, they were directed against anyone who was perceived to be Iranian, regardless of whether they in fact were of Iranian descent or not, and whether they were Iranian nationals or American citizens.<sup>82</sup> Thus, both groups were mistreated. Because both Iranian nationals and American citizens of Iranian descent received such a negative reception in the United States during this period, their image as outsiders was reinforced and internalized.

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75. Roger Hallmark, *A Letter to Khomeini* (This Side Up Music 1979), available at <http://www.wfmu.org/playlists/shows/3523> (last visited Jan. 25, 2006).

76. Mehdi Bozorgmehr, *No Solidarity: Iranians in the United States*, May 2, 2001, available at <http://www.iranian.com/Opinion/2001/May/Iranians> (May 2, 2001) (last visited Mar. 14, 2005).

77. *Id.*

78. *Id.*

79. Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 340 (1987). See also Victor Bascara, *Cultural Politics of Redress: Reassessing the Meaning of the Civil Liberties Act of 1988 After 9/11*, 10 ASIAN L.J. 185, 214 n.136 (2003).

80. See generally Bozorgmehr, *supra* note 76.

81. Tayyari, *supra* note 54, at 1368.

82. Bozorgmehr, *supra* note 76. See also Human Rights Watch, “*We are not the Enemy*”: *Hate Crimes Against Arabs, Muslims, and Those Perceived to be Arab or Muslim after September 11*, Nov. 2002, at 11, available at <http://www.hrw.org/reports/2002/usahate/usa1102.pdf> (last visited Feb. 18, 2006).

### III. AFTER THE HOSTAGE CRISIS – DURING THE 1980S AND 1990S

Over the next two decades, the perception of Iranians as terrorists continued, regardless of the actual source of any terrorist activities. Partly because of the ignorance of many Americans to the ethnic, cultural, religious, and national origin diversity in the Middle East and the inability of most Americans to differentiate between Middle Easterners,<sup>83</sup> and partly because of the already-established image of Iranians as terrorists, Muslim fanatics, and extremists, Iranians continued to be viewed suspiciously throughout the 1980s and 1990s. A 1987 Harris Poll showed that a majority of Americans named only one country as an “enemy” – Iran.<sup>84</sup> In July 1989, the United States mistakenly shot down an Iranian passenger plane, killing 290 civilian passengers.<sup>85</sup> A poll taken shortly after the incident found that 71% of Americans felt that the missile attack on the plane was justified and that almost two-thirds of respondents opposed compensation for the victims.<sup>86</sup> Furthermore, distasteful and offensive humor that circulated the week after the passenger plane was shot down demonstrated the public’s dislike of Iranians: “The President wired Iran his regrets after the Iran airplane was shot down, saying ‘we regret there were 10 empty seats on the Airbus.’”<sup>87</sup>

Incidents reflecting anti-American sentiment in the Middle East further flamed anti-Middle Eastern and anti-Iranian response in the United States.<sup>88</sup> Bombings for which Muslims of Arab descent were found responsible, such as the World Trade Center bombing of 1993, fueled anti-Middle Eastern sentiment, and many Americans conflated Iranians with terrorism and Muslim fundamentalism.<sup>89</sup> During the first Gulf War against Iraq, many Americans confused Iran and Iraq, leading to revived suspicion of Iranians as the enemy, despite the fact that Iran and Iraq had been enemies for years and had just recently ended an eight-year war.<sup>90</sup> In fact, during the Gulf War, assaults, arsons, and bombings in the U.S. against people of

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83. Yahya R. Kamalipour, *Oil, Mean People, Dark Skin, Terrorism: Mental Images of the Middle East Influence Relationships*, THE IRANIAN, Dec. 1, 1998, available at <http://www.iranian.com/Opinion/Dec98/Mideast> (last visited Mar. 28, 2005).

84. ANSARI, *supra* note 22, at 152.

85. *Id.*

86. *Id.* at 152-53.

87. *Id.* at 153.

88. Bozorgmehr, *supra* note 76.

89. *Id.*

90. See generally Human Rights Watch, *supra* note 82; Bozorgmehr, *supra* note 76 (discussing the failure of Americans to distinguish between Middle Eastern groups); Kamalipour, *supra* note 21 (discussing survey of high school students’ perception of the Middle East and indicating connotations of Iran and Iraq).

Middle Eastern descent increased from 39 incidents in 1990 to 119 in 1991.<sup>91</sup>

Additionally, terrorist attacks inside and outside the United States were attributed to Iranians and other Middle Easterners both before and after evidence existed regarding the actual, non-Arab or Muslim perpetrators.<sup>92</sup> The government, the media, and the public immediately blamed Middle Easterners, and the Iranian government in particular, for the Oklahoma City bombing.<sup>93</sup> Former CIA and FBI director, William Webster, claimed that the bombing had the “hallmarks” of Middle East terrorism, while another former CIA official insisted that “[t]he foreign supporters must be identified.”<sup>94</sup> Even after Caucasian American suspect Timothy McVeigh was linked to the bombing just two days after the incident, attacks against Muslims continued.<sup>95</sup> In the first three days after the Oklahoma City bombing, 222 attacks against Muslims were recorded, including gunshots at mosques, spitting at women, death threats, and harassment of Muslim and Middle Eastern students at schools and universities.<sup>96</sup>

Despite the fact that between 1984 and 1998, 95% of terrorist incidents in the United States – 83 out of 87 incidents – were attributed to domestic groups, the association of Middle Easterners and Muslims with terrorism continued.<sup>97</sup> Domestic terrorism activities during this period included money counterfeiting, robbery of over \$4 million, a synagogue bombing, and the killing of at least three people by The Order, an Aryan Nation offshoot, in its quest to overthrow the U.S. government; the deaths of at least 80 people, including many children, during the Waco standoff against the Branch Davidians; an Amtrak derailment attributed to the Sons of the Gestapo; a plot by the Minnesota Patriots Council to use ricin, a deadly poison 12,000 times more lethal than rattlesnake venom, as a biological weapon; detonation of a bomb at the Atlanta Olympics, killing two and injuring 112 people; and the bombing of the Oklahoma City Federal Building by Timothy McVeigh on April 19, 1995, the two-year anniversary of the end of the Waco standoff.<sup>98</sup> However, legislation passed in response to terrorism in general and the Oklahoma City bombing in particular – the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) – affected no white

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91. Deborah Sontag, *The Twin Towers: Backlash; Muslims in the United States Fear an Upsurge in Hostility*, N.Y. TIMES, Mar. 7, 1993, at A1.

92. Whidden, *supra* note 15, at 2863-64.

93. Bozorgmehr, *supra* note 76.

94. Whidden, *supra* note 15, at 2864.

95. *Id.* at 2863.

96. *Id.*

97. *Id.* at 2853.

98. *Id.* at 2856-59.

American groups.<sup>99</sup> Instead, AEDPA established a procedure for designating *foreign* terrorist organizations, prohibited fundraising for such groups, and authorized the use of secret evidence in deportation hearings against “alien terrorists.”<sup>100</sup> By specifically targeting only foreign terrorist organizations through AEDPA, and primarily Middle Eastern and Muslim organizations at that,<sup>101</sup> and excluding terrorist groups such as the American Front Skinheads or the West Virginia Mountaineer Militia, the federal government again stigmatized Middle Easterners as dangerous, fanatical, and untrustworthy. Therefore, the public perception of Muslims and Middle Easterners as terrorists was legitimated and reinforced by the government’s actions. Muslims and Middle Easterners in the U.S. were well aware of this trend, and they again received the message that they were unwelcome and suspect in the American community

The case of Eric Robert Rudolph further illustrates the disparate treatment accorded white and Middle Eastern or Muslim terrorists. Eric Rudolph was responsible for bombings at family planning clinics, at a gay club, and at the 1996 Olympics in Atlanta, Georgia.<sup>102</sup> As a result of those bombings, Rudolph killed two people, including a police officer, and injured more than 150 others.<sup>103</sup> As he evaded capture in the North Carolina mountains for five years, however, many Americans celebrated Rudolph as a local boy evading federal intruders.<sup>104</sup> T-shirts were sold bearing encouraging phrases such as “Run Rudolph Run” and “Hide and Seek Champion.”<sup>105</sup> In his recent plea agreement, in exchange for life in prison rather than the possibility of execution, Rudolph revealed the whereabouts of over 250 pounds of dynamite and a buried bomb more than twice as powerful as the bomb detonated during the Atlanta Olympics.<sup>106</sup> Despite his terrorist acts and the clear threat of people like Eric Rudolph to U.S. national security, however, anti-terrorism measures such as AEDPA do not profile or target people

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99. *Id.* at 2860.

100. *Id.* at 2841-46.

101. *Id.* at 2870-71. In addition to only targeting foreign terrorist groups, half of the original 28 “most dangerous terrorist organizations” designated by AEDPA were Arab and Muslim groups, while the remaining 14 were from disparate regions. Significantly, the Irish Republican Army was not even included in the list of foreign terrorist organizations. The State Department justified this by explaining that the IRA had recently entered cease-fire and peace negotiations; yet the Palestinian Liberation Organization was listed as one of the 28 most dangerous terrorist organizations, despite the fact that it too had recently entered peace talks and concluded three peace agreements. *Id.*

102. Shaila Dewan, *Suspect in Blast at '96 Olympics to Plead Guilty*, N.Y. TIMES, April 9, 2005 at A1.

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

like him.<sup>107</sup> Instead, the American public continues to associate terrorism with Muslims and Middle Easterners, largely as a result of federal policies reinforcing this association. Since the U.S.'s 1979-1981 experience with Iran during the hostage crisis, Iranians have also been firmly cemented under this shadow of terrorism and have been vulnerable to having any future acts of terrorism attributed to them.

#### IV. SEPTEMBER 11, 2001

##### A. GOVERNMENT RETALIATION AND PROFILING

Although none of the September 11 hijackers were Iranian and there was no other indication that Iran was involved in the attacks, Iranians, along with other Muslims and Middle Easterners, continued to be the targets of both public and private discrimination and profiling after September 11. Reminiscent of the retaliation against Iranians in the U.S. during the hostage crisis, on January 25, 2002, Deputy Attorney General Larry Thompson circulated a memorandum laying out guidelines for implementing the Absconder Apprehension Initiative.<sup>108</sup> This memorandum indicated that 314,000 non-citizens remained in the United States despite final removal orders commanding their departure.<sup>109</sup> Of this group, several thousand were identified as coming "from countries in which there has been Al Qaeda terrorist presence or activity."<sup>110</sup> These non-citizens were labeled "priority absconders," who should be targeted first for arrest, detention, and enforcement of their removal orders.<sup>111</sup> Not surprisingly – and, again, despite the lack of any Iranian involvement in the September 11 attacks – Iran was labeled as one of the countries "in which there has been Al Qaeda terrorist presence or activity," and Iranians were among those against whom these deportation orders were selectively enforced.<sup>112</sup> As discussed in *Narenji*, the federal government has extreme flexibility in immigration decisions, including selective enforcement of

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107. See generally Whidden, *supra* note 15.

108. Memorandum from the Deputy Attorney General to the Comm'r of the Immigration and Naturalization Service, Dir. of the Federal Bureau of Investigation, Dir. of the U.S. Marshals Service, and the U.S. Attorneys, *Guidance for Absconder Apprehension Initiative* (Jan. 25, 2002), available at <http://news.findlaw.com/hdocs/docs/doj/abscondr012502mem.pdf>.

109. *Id.* at 1.

110. *Id.*

111. *Id.* at 1-2.

112. NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES, Monograph on 9/11 and Terrorist Travel, Section 6: Crisis Management and Response Post-September 11, page 154, n.32, available at [http://www.9-11commission.gov/staff\\_statements/911\\_TerrTrav\\_Ch6.pdf](http://www.9-11commission.gov/staff_statements/911_TerrTrav_Ch6.pdf). See also Rosanna Ruiz, 'Absconders' questioned by justice officials; Detainees offered deals to talk, HOUSTON CHRON., Mar. 9, 2002, at A35.

immigration laws.<sup>113</sup> The Supreme Court in *Reno v. American-Arab Anti-Discrimination Committee* confirmed that courts do not have jurisdiction to hear claims arising from a decision by the Attorney General to commence proceedings or execute removal orders against any alien, even when selectively enforced.<sup>114</sup> Thus, the federal government, especially in a time of such high anti-Muslim and anti-Arab sentiment, faced few obstacles in selectively deporting people of Middle Eastern descent based upon national origin.

The National Security Entry/Exit Registration System (NSEERS), reminiscent of the reporting requirements for Iranian students during the hostage crisis, also targeted non-citizens from Muslim and Middle Eastern countries.<sup>115</sup> On September 11, 2002, "special registration" through NSEERS began.<sup>116</sup> It required certain non-citizens from designated foreign countries to register with immigration authorities; to be fingerprinted and photographed; to provide additional information, which might include their addresses in the U.S. and in their countries of origin, information about both parents, points of contact in the non-citizen's country of origin, intended activities in the U.S., and more; and to be subjected to periodic re-registration requirements.<sup>117</sup> Interestingly, to authorize this special registration, Attorney General John Ashcroft relied on a 1981 immigration law amendment allowing the Attorney General to require natives of one or more foreign states to provide address and other information.<sup>118</sup> The House Report regarding the 1981 amendment specifically mentioned Iran, noting that "the Iranian Crisis in 1980 [demonstrated] that immediate access to records of nonimmigrants may be vital to our nation's security."<sup>119</sup>

As special registration commenced on September 11, 2002, Iran was among the first five countries whose nationals were subjected to special registration.<sup>120</sup> Numerous Iranians were among the 500 to

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113. See Narenji, *supra* note 38.

114. *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 491-92 (1999) (interpreting a provision of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1252).

115. North Korea was the only country on the NSEERS list that was not heavily Muslim, Arab, or Middle Eastern. Louise Cainkar, *Special Registration: A Fervor for Muslims*, 7 J. ISLAMIC L. & CULTURE 73, 83-85 (2002/2003); Karen Engle, *Constructing Good Aliens and Good Citizens: Legitimizing the War on Terror (ism)*, 75 U. Colo. L. Rev. 59, 88-89 n.120 (2004); Heidee Stoller, Tahlia Townsend, Rashad Hussain, and Marcia Yablon, *Developments in Law and Policy: The Costs of Post-9/11 National Security Strategy*, 22 YALE L. & POL'Y REV. 197, 218 (2004).

116. Registration and Monitoring of Certain Nonimmigrants, 67 Fed. Reg. 40,581 (June 13, 2002) (notice of proposed rule), 67 Fed. Reg. 52,584 (Aug. 12, 2002) (final rule) (to be codified at 8 C.F.R. pts. 214 and 264).

117. *Id.*

118. Immigration and Nationality Act Amendments of 1981, Pub. L. No. 97-116, 95 Stat. 1611 (1981). See also Cainkar, *supra* note 115, at 77-78.

119. H.R. REP. NO. 97-264, at 27 (1981).

120. The other four countries were Iraq, Libya, Syria, and the Sudan.

1,000 registrants who were arrested and detained for visa violations when they appeared to register in Los Angeles, California.<sup>121</sup> Many of those arrested had applications for permanent residency pending.<sup>122</sup> Though the Attorney General initially described NSEERS as “the first step toward the development of a comprehensive entry-exit system applicable to virtually *all foreign visitors*,”<sup>123</sup> the NSEERS program was never expanded beyond males over 16 years old from 25 countries – 24 Middle Eastern and/or heavily Muslim countries and North Korea.<sup>124</sup> In a May 19, 2003, Fact Sheet, the Department of Homeland Security stated that “NSEERS was a pilot project focusing on a smaller segment of the nonimmigrant alien population deemed to be of risk to national security.”<sup>125</sup> Thus, the federal government again confirmed and condoned the generally-held U.S. belief that Middle Eastern and Muslim men were, and still are, categorically distrusted and considered threats to the United States. The continuing distrust of Iranians, despite the lack of any evidence of their participation in the September 11 attacks, was communicated by NSEERS and the detention of hundreds of Iranians who registered. This was yet another reminder to Iranians in America that they occupied a position in the American community as foreigners, outsiders, and potential terrorists – a stigma that had been fixed firmly upon them since the 1979 hostage crisis, despite the lack of any involvement of Iranians in terrorist attacks in the United States before or since the hostage crisis.

## B. PRIVATE VIOLENCE AND HATE CRIMES

Again, private violence accompanied government discrimination and profiling. Over one thousand bias incidents against those perceived to be Muslim or Middle Eastern were

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121. Andrew Gumbel, *California Orders Mass Arrests of Muslim Foreigners*, THE INDEP., Dec. 20, 2002, at 13.

122. Megan Garvey, Martha Groves and Henry Weinstein, *Hundreds Are Detained After Visits to INS*, L.A. TIMES, Dec. 19, 2002, at 1. See also Rachel L. Swarns, *Thousands of Arabs and Muslims Could Be Deported, Officials Say*, N.Y. TIMES, June 7, 2003, at A1.

123. Press Release, Department of Justice, Attorney General Ashcroft Announces Implementation of the First Phase of the National Security Entry-Exit Registration System (Aug. 12, 2002), available at [http://www.usdoj.gov/opa/pr/2002/August/02\\_ag\\_466.htm](http://www.usdoj.gov/opa/pr/2002/August/02_ag_466.htm) (last visited Jan. 25, 2006) (emphasis added).

124. The countries subject to special registration were Afghanistan, Algeria, Bahrain, Bangladesh, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Libya, Lebanon, Morocco, North Korea, Oman, Pakistan, Qatar, Somalia, Saudi Arabia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen. Karen C. Tumlin, *Suspect First: How Terrorism Policy is Reshaping Immigration Policy*, 92 CAL. L. REV. 1173, 1189 (2004); Cainkar, *supra* note 115, at 83-85.

125. Press Release, Department of Homeland Security, Fact Sheet: US-VISIT Program (May 19, 2003), available at <http://www.dhs.gov/dhspublic/display?content=736>. See also Cainkar, *supra* note 115, at 73-74.

reported in the eight weeks after September 11, including up to 19 murders, incidents of vandalism and property destruction, violence such as fire bombings, many assaults, and numerous instances of verbal harassment and threats.<sup>126</sup> In Los Angeles, two men bumped the car of a man they thought was Iranian (he was actually Mexican), followed him to his home, broke in, and beat him in front of his wife and daughter while shouting insults against Arabs.<sup>127</sup> The car of an Iranian family in Los Angeles was attacked with a baseball bat and a hammer while it was parked in the driveway of their home.<sup>128</sup> An Iranian couple in their seventies received death threats.<sup>129</sup> An Iranian restaurant in Texas was attacked, and an Iranian-owned grocery store in Washington was vandalized.<sup>130</sup> Furthermore, whereas 80% of Americans opposed racial profiling prior to September 11, after the attacks 70% of Americans favored some form of racial profiling.<sup>131</sup> A CNN/USA Today/Gallup poll in September 2001 found that 58% of Americans favored requiring all Arabs, *including U.S. citizens*, to undergo more intensive security checks at airports, 49% favored special identification cards for such people, and 32% favored “special surveillance” of them.<sup>132</sup> In fact, as stated earlier, a 2001 Gallup poll found that one-third of Americans favored the internment of people of Arab descent, *including Arab Americans*.<sup>133</sup>

Nor did this suspicion of, and private violence against, those perceived to be Muslim or Middle Eastern end with the passage of time. Anti-Muslim harassment, violence, and discrimination in 2003 increased by nearly 70% over 2002.<sup>134</sup> Additionally, a 2004 poll sponsored by the Council on American-Islamic Relations and conducted by an independent research firm found that one in four Americans believe a number of anti-Muslim stereotypes, such as “Muslims value life less than other people” or “Muslims want to change the American way of life.”<sup>135</sup> The poll also found that

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126. Volpp, *supra* note 2, at 1575-76 n.1. See also Ahmad, *supra* note 2, at 1261-62.

127. Arab American Institute Foundation Report to the United States Commission on Civil Rights, Appendix: Selected Hate-Based Incidents, September 11 – October 10, 2001, at iii.

128. *Id.* at v.

129. *Id.* at vi.

130. *Id.* at xxv-xxxi.

131. Davis, *supra* note 10; Volpp, *supra* note 2; Ahmad, *supra* note 2, at 1267.

132. Jake Tapper, *Setback for Arab Americans*, SALON, Sept. 17, 2001, <http://archive.salon.com/politics/feature/2001/09/17/muslims/print.html> (last visited April 10, 2005); Memmott et al., *supra* note 9; Verhovek, *supra* note 9.

133. Volpp, *supra* note 2.

134. Ahmad, *supra* note 2, at 1263 n.7. See also Council on American-Islamic Relations, *Unpatriotic Acts: The Status of Muslim Civil Rights in the United States 2004*, at <http://cair-net.org/asp/execsum2004.asp> (last visited April 13, 2005).

135. Council on American-Islamic Relations, *supra* note 4.

negative images of Muslims are 16 times more prevalent than positive ones.<sup>136</sup>

### C. PRACTICAL IMPACT ON U.S. CITIZENS

Americans who perpetrate hate crimes and who hold these negative stereotypes of Muslims do not make distinctions based on citizenship status. Instead, people who appear to be Muslim or Middle Eastern become victims of these crimes and biases regardless of whether they are American citizens or not. They are viewed as foreign and dangerous, despite the fact that many have spent all or nearly all of their lives in the United States. Violence against them conveys the perception that they are outsiders in this society, contributing to their own sense of separation from the American community.

Though most official government policies targeting people of Middle Eastern descent have been directed at non-citizens, American citizens have felt the impact of anti-Middle Eastern sentiment as well. Airline profiling, for example, has affected many U.S. citizens of Middle Eastern descent. Darrell Issa, a California congressman whose grandparents were Lebanese immigrants, was prevented from boarding a flight to Paris in October 2001, even after another congressman, Rep. Robert Wexler, intervened on his behalf.<sup>137</sup> Other United States citizens who appear Muslim or Middle Eastern have been removed from flights even after passing airport security checks and enhanced screening because other passengers or crew members allegedly “felt uncomfortable” with them on board.<sup>138</sup>

Indeed, President Bush’s deputization of American citizens has had a frightening and detrimental effect on American citizens who are, or who appear to be, Muslim or Middle Eastern. In September 2002, three Muslim medical students – *all three U.S. citizens* – were detained after a woman at a diner in Georgia claimed to have overheard them plotting a terrorist attack.<sup>139</sup> One of the men had a beard and was wearing “traditional Muslim headgear.”<sup>140</sup> The three men were handcuffed and held in the back of separate police cars all

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136. *Id.*

137. Mark Sherman, *Rep. Issa: I Was Profiling Victim*, WASH. POST., Oct. 26, 2001, at A5.

138. Phil Hirschhorn and Michael Okwu, *Airlines Face Post 9/11 Racial Profiling, Discrimination Suits*, CNN.com, June 4, 2002, at <http://archives.cnn.com/2002/LAW/06/04/airlines.discrimination> (last visited May 13, 2005). See also Kevin Diaz and Shira Kantor, *Sept. 11-related Bias Suit Filed Against Northwest*, MINNEAPOLIS STAR TRIBUNE, June 5, 2002, at 6A; Deb Prince, *Men Sue Airlines, Claim Arab Bias*, DETROIT NEWS, June 5, 2002, at 1A.

139. *Man in Terror Scare Says Woman is Lying*, CNN.COM, Sept. 13, 2002, available at <http://archives.cnn.com/2002/US/09/13/alligator.alley>.

140. *Id.*

night.<sup>141</sup> Authorities shut down a twenty-mile stretch of highway while they searched the U.S. citizens' cars and interrogated them extensively.<sup>142</sup> More than one-hundred federal, state, and local law officers, emergency personnel, and support groups from nineteen agencies were at the scene.<sup>143</sup> The men were finally released after seventeen hours when nothing was found.<sup>144</sup> The three medical students were on their way to a nine-week internship at a Florida hospital when they were detained.<sup>145</sup> Following the incident, the hospital asked the students to transfer elsewhere after receiving an overwhelming number of e-mails and phone calls that hospital president Dr. Jack Michel described as "threatening, ethnic, racial e-mails directed at Muslim-Americans."<sup>146</sup> Eunice Stone, the woman who reported the Muslim men, stated, "I did what my government asked me to do."<sup>147</sup>

Clearly, fellow Americans are not distinguishing between non-citizens and citizens as they profile fellow community members and suspect that they are disloyal and threatening. Fortunately, a government program to further deputize fellow citizens to ferret out suspicious community members was never launched. Operation TIPS (Terrorism Information and Prevention System), proposed in January 2002, would have implemented a formal system to give workers from selected industries a way to report suspicious and potentially terrorism-related activity.<sup>148</sup> Millions of American workers, including truck drivers, bus drivers, train conductors, mail carriers, utility readers, ship captains, and port personnel, would have served as extra eyes and ears for law enforcement.<sup>149</sup> In its pilot stage, Operation TIPS was expected to involve one million workers.<sup>150</sup> With the profiling and suspicion of Muslims and Middle Easterners already occurring, this program would likely have been devastating for these communities. Fortunately, the government decided to drop the program.

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141. *Id.*

142. *Id.*

143. Denes Husty, *One Year Later, Wounds From Saga Around Alligator Alley Still Hurt*, THE NEWS-PRESS (Fort Myers, FL), Sept. 13, 2003, at 1A.

144. *Id.*

145. 'Bring it Down' was About a Car, Students' Lawyer Says, CNN.COM, Sept. 15, 2002, available at [www.cnn.com/2002/US/09/15/fla.terror.students/](http://www.cnn.com/2002/US/09/15/fla.terror.students/).

146. *Id.*

147. Husty, *supra* note 143.

148. The Operation TIPS website has been deleted, but the archived site can be viewed through the Internet Archive Way Back Machine, at [http://web.archive.org/web/\\*/http://www.citizen corps.gov/tips.html](http://web.archive.org/web/*/http://www.citizen corps.gov/tips.html). The Memory Hole also has archived pages available at <http://www.thememoryhole.org/policestate/tips-deleted.htm>.

149. *Id.*

150. June 4, 2002, Internet Archive, at <http://web.archive.org/web/20020604015434/http://www.citizen corps.gov/tips.html>

## V. IMPACT ON THE IRANIAN COMMUNITY IN THE UNITED STATES

*It makes no difference whether he is an American citizen, he is still a Japanese. American citizenship does not necessarily determine loyalty.*  
 – General DeWitt<sup>151</sup>

### A. MESSAGES CONVEYED

As Professor Kenneth Karst explains, group identity conveys to a person whether and where a person belongs within a community.<sup>152</sup> Through the public and private discrimination against Iranians throughout the years, their group identity has been constructed negatively, and they have been told that they are outsiders in the American body politic.<sup>153</sup> Iranians in America have been cast as disloyal, potentially dangerous, and certainly undesirable.

#### 1. DISLOYAL AND DANGEROUS

Numerous federal actions have reinforced the belief among many Americans that certain immigrants, including Iranians, are inherently threatening. The NSEERS program, for example, conveyed the message that people of certain nationalities – Iranians among the first five of these nationalities – should be viewed first as potential terror suspects and only second, if at all, as welcome newcomers.<sup>154</sup> This presumptive suspicion of Iranians was not lost on the American public or on the Iranian community in the United States.

The Absconder Apprehension Initiative also conveyed the message that certain non-citizens, the so-called “priority absconders,” though comprising less than 2% of the total population of non-citizens who had not yet complied with their deportation orders, were somehow more dangerous than the other 98% of non-citizens who remained in the U.S. despite final removal orders.<sup>155</sup> The “priority absconders” came from countries in which there had allegedly been Al Qaeda presence or activity, suggesting that these

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151. Testimony of General DeWitt on April 13, 1943, before the House Naval Affairs Subcommittee to Investigate Congested Areas, Part 3, pp. 739-40 (78th Cong., 1st Sess.), cited in *Korematsu v. United States*, 323 U.S. 214, 236 n.2 (Murphy, J., dissenting).

152. Kenneth Karst, *Paths to Belonging: The Constitution and Cultural Identity*, 64 N.C.L. REV. 303, 309 (1986).

153. ANSARI, *supra* note 22, at 121.

154. Karen C. Tumlin, *Suspect First: How Terrorism Policy is Reshaping Immigration Policy*, 92 CAL. L. REV. 1173, 1177 (2004).

155. *Id.* at 1191.

non-citizens were somehow dangerous.<sup>156</sup> However, some countries with known Al Qaeda presence, such as Germany and England, were not among those whose nationals were targeted by either the Absconder Apprehension Initiative or the NSEERS program.<sup>157</sup> Instead, the targets of both of these federal programs were primarily people from Middle Eastern or predominantly Muslim countries.<sup>158</sup> These policy decisions reinforced the belief that natives of these countries are inherently dangerous and disloyal, while those from Western European countries are friendly and trustworthy. Furthermore, even the symbolic impact of abolishing the INS and transferring responsibility for immigration matters to the Department of Homeland Security imparts a negative message of suspicion of non-citizens.<sup>159</sup> Rather than being welcomed as newcomers with potential to naturalize and belong in the American community, immigrants coming to the U.S. from countries perceived to pose a danger to the U.S., however unfounded that perception may be, now receive the message that they are threats, requiring screening and clearance by Homeland Security before they are allowed to pass through our borders.

Finally, the negative group identity of Iranians as dangerous and disloyal has been applied to all group members, regardless of individual characteristics. While white terrorists such as Timothy McVeigh have been viewed as individual bad actors,<sup>160</sup> people of Middle Eastern descent and Muslims are viewed as prone to terror or as bearing responsibility for terrorist acts as a group. In opposition to their treatment of white terrorists, Americans are willing to profile, and even intern, people of Middle Eastern descent and to blame them for not doing enough to combat terrorism.<sup>161</sup> Thus, Muslims and Middle Easterners have been subjected to group racial stereotyping and profiling, but white American terrorists have been treated as aberrational individuals.<sup>162</sup>

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156. *Id.*

157. Cainkar, *supra* note 115, at 73.

158. *Id.*

159. Tumlin, *supra* note 154, at 1179.

160. Volpp, *supra* note 2, at 1584-86.

161. See generally Council on American-Islamic Relations, *supra* note 4; Memmot et al., *supra* note 9; Volpp, *supra* note 2.

162. For an excellent discussion of group stereotyping of Muslims and people of Middle Eastern descent versus individualized treatment of white Americans, see Chris K. Iijima, *Shooting Justice Jackson's "Loaded Weapon" at Ysar Hamdi: Judicial Abdication at the Convergence of Korematsu and McCarthy*, 54 SYRACUSE L. REV. 109, 131-33 (2004). Professor Iijima discusses documentation by Professor Baynes of the media coverage surrounding Charles Bishop, the teenager who flew a small plane into an office building in Florida. Professor Baynes observed that media coverage of Charles Bishop originally centered around questions of "what went wrong with his upbringing." Once it was discovered that Bishop was half Syrian, media coverage became less favorable and, instead of viewing the teenager as aberrational, speculated that his ethnicity might somehow explain his behavior. *Id.* at 131-32.

In this regard, the racialization of Muslims and people of Middle Eastern descent in the United States has been similar to that of people of Japanese descent during World War II. At that time, General Dewitt, an influential voice in the decision to intern Japanese and Japanese Americans, gave the following testimony about people of Japanese descent:

There is no way to determine their loyalty. . . . It makes no difference whether he is an American citizen, he is still a Japanese. American citizenship does not necessarily determine loyalty. . . . You needn't worry about the Italians at all except in certain cases. Also, the same for the Germans except in individual cases. But we must worry about the Japanese all the time until he is wiped off the map.<sup>163</sup>

Similar to the Japanese, Muslims and people of Middle Eastern descent in the United States are viewed as presumptively disloyal. Because of this presumed disloyalty, people who “look Middle Eastern” or Muslim make fellow Americans uncomfortable on flights, are assumed to be plotting attacks when snippets of their conversations are taken out of context, and are labeled terrorists for filming a skyline before any charges are even brought against them. Fortunately, this prejudice has not led to internment as it did for Japanese and Japanese Americans during World War II. But the willingness of one-third of Americans to intern Arabs and Arab Americans and the belief among 58% of Americans that Arab Americans should be racially profiled demonstrates that these citizens are not considered full members of the American community and are, instead, regarded as presumptively disloyal and dangerous.

## 2. UNDESIRABLE

Beginning in 1979, Iranians and Iranian Americans received the message that they were undesirable in the United States, regardless of any actual or potential threat that they might pose. The government retaliation against Iranians during the hostage crisis did not have much to do with domestic national security. There was little indication that the registration requirements or the revocation of deferred departure for Iranians were undertaken for the safety of the United States, and there is no evidence that they were actually effective in protecting national security. Instead, the dominant

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163. Whidden, *supra* note 15, at 2837 (citing Eugene V. Rostow, *The Japanese American Cases - A Disaster*, 54 YALE L.J. 489, 490 (1945), quoting Hearings Before Subcomm. of House Comm. on Naval Affairs on H.R. 30, 78th Cong., 1st Sess. 739-40 (1943)).

justification asserted for screening 57,000 Iranian students regarding their legality, holding 7,177 deportation hearings, and ordering 3,088 Iranians deported was to apply pressure on the Iranian government to release the American hostages held in Iran.<sup>164</sup> It is unclear what level of success these “diplomatic pressures” were expected to have on an Iranian government that had recently toppled its monarch in a popular revolution, consolidated its own power by killing and imprisoning dissidents, accused America of being imperialistic, overrun the American Embassy, and taken all of the Americans present hostage. In actuality, as the New Mexico District Court stated in *Tayyari*, the “true purpose” of these laws was to “make a political statement” about Iranians.<sup>165</sup> As the United States worked to actively remove Iranians from the U.S. during the 1980s, it clearly expressed to the American public that people of Iranian descent were undesirables in the U.S. community. As laws were selectively enforced against Iranians, as new laws were enacted retaliating against them, and as private violence occurred against them, Iranians in America, too, received the U.S. message that Iranians were disloyal, dangerous, and unwanted.

This message of undesirability has surged again since the September 11 attacks. Similar to the registration and deportation of Iranians from 1979-1981, there is little indication that the recent registrations and deportations under NSEERS revealed any terrorist connections or enhanced national security. Under NSEERS, 83,519 men who were present in the U.S. registered at INS offices.<sup>166</sup> 13,799 of these individuals, or 16.5%, were put in deportation proceedings, almost exclusively for immigration violations.<sup>167</sup> Many of them had applications to legalize their immigration status that had been pending for years.<sup>168</sup> 2,870 of these men were detained.<sup>169</sup> Not a single one of them has been charged with crimes related to terrorism.<sup>170</sup> Though Homeland Security officials claimed that six of the men – out of the 83,519 who showed up at INS offices – were linked to terrorism, the 9-11 Commission challenged even that allegation, reporting that it found little evidence to support that

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164. Mehdi Bozorgmehr, *No Solidarity: Iranians in the U.S.*, THE IRANIAN, May 2, 2001, available at [www.iranian.com/Opinion/2001/May/Iranians/index.html](http://www.iranian.com/Opinion/2001/May/Iranians/index.html) (last visited Feb. 4, 2006).

165. *Tayyari*, *supra* note 54, at 1376.

166. Press Release, U.S. Immigration and Customs Enforcement (ICE), *Fact Sheet: Changes to National Security Entry/Exit Registration System (NSEERS)*, Dec. 1, 2003, available at <http://www.ice.gov/graphics/news/factsheets/nseersFS120103.htm> (last visited April 8, 2005).

167. *Id.* See also STEPHEN H. LEGOMSKY, IMMIGRATION AND REFUGEE LAW AND POLICY SUPPLEMENT 112 (3rd Ed. 2003).

168. Swarns, *supra* note 122.

169. US ICE Fact Sheet, *supra* note 166.

170. Rachel L. Swarns, *Program's Value in Dispute As a Tool to Fight Terrorism*, N.Y. TIMES, Dec. 21, 2004, at A26.

claim.<sup>171</sup> Clearly, NSEERS did little to protect the U.S. from potential terrorists. Instead, it sent a message to the American public and to nationals of predominantly Middle Eastern and Muslim countries – including Iranians – that people who were of Middle Eastern descent were undesirable in the United States.

## B. REACTIONS IN THE IRANIAN COMMUNITY IN AMERICA – DISASSOCIATION

### 1. ETHNIC AND RELIGIOUS TIES

Hostility from the host community often creates group solidarity and strengthens ethnic affiliation in immigrant communities.<sup>172</sup> Among the Iranian community in the United States, however, this has not been the typical result. Instead, Iranians have tended to disassociate themselves from ties based on national origin.<sup>173</sup> One way in which Iranians have accomplished this is by identifying themselves by ethnicity rather than by nationality.<sup>174</sup> 51% of Iranians are ethnically Persian, but there are also Kurds, Azeris, Arabs, Baluch, Turkomen, Armenians, Assyrians, and others.<sup>175</sup> After the hostage crisis, many Iranian Persians began identifying by their Persian ethnicity rather than by national origin.<sup>176</sup> While “Persian” conjures up images of carpets, cats, and pistachios, “Iranian” evokes negative images such as hostage-takers and Islamic fundamentalists.<sup>177</sup> Indeed, a survey of high school students in northern Indiana in 1997 revealed strong negative associations with the term “Iranian,” including “Ayatollahs, Khomeini, extremism, hostages, anti-American, war, oil, mean people, dark skin, terrorism, religious, poverty, Muslims, strict, fanatical, “Not Without My Daughter,” sand, Arabs, death, hated, Saddam Hussein, Iran-Contra, missiles, oppression.”<sup>178</sup> Unsurprisingly, most Iranians attempted to disassociate themselves from these negative images and began referring to themselves as Persian instead. Iranians who were not Persian identified with their respective ethnicities rather than their nationality.

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171. *Id.*

172. Karst, *supra* note 152, at 326. *See also* Bozorgmehr, *supra* note 76.

173. Bozorgmehr, *supra* note 76.

174. *Id.*

175. THE WORLD FACTBOOK, <http://www.cia.gov/cia/publications/factbook/geos/ir.html> (last modified April 21, 2005).

176. ANSARI, *supra* note 22, at 153.

177. Tara Bahrapour, *Persia on the Pacific*, THE NEW YORKER, Nov. 10, 2003, 52-60.

178. Kamalipour, *supra* note 83.

Iranians in America are also an incredibly heterogeneous group religiously. Iranians are not all Muslims, as many people believe; there are also Iranian Christians, Zoroastrians, Baha'is, and Jews.<sup>179</sup> Though Iranians in Iran are overwhelmingly Muslim – 89% of the population is Shi'a Muslim and 9% is Sunni Muslim<sup>180</sup> – Iranians of other religious groups are overrepresented in the United States, since many of them fled Iran after the Revolution resulted in the establishment of an Islamic Republic.<sup>181</sup> This religious heterogeneity of the Iranian population in the U.S. resulted in less group solidarity than might be expected from a community experiencing host hostility.<sup>182</sup> As a result of living in a predominantly Muslim society, where they were subject to discrimination and prejudice, religious minorities in Iran had already developed a strong sense of religious identity prior to leaving Iran.<sup>183</sup> Thus, Iranians who could – those who were Christian Armenians and Assyrians, Jewish, Baha'i, or otherwise – tended to identify with these ethnic and religious groups in the U.S. as well, thereby attempting to avoid discrimination based on national origin.

## 2. NUMBERS AND CONCENTRATION

Even where the Iranian community is homogenous – Iranian Muslims, for example – it has little ethnic solidarity. One explanation is that while California has a large population of Iranian Americans – 159,016, according to the National Iranian American Council's IranCensus Report of 2003<sup>184</sup> – there are still relatively few Iranians in the U.S. The California figure, for example, constitutes only 0.469% of California's state population.<sup>185</sup> Furthermore, despite their relatively large concentration in Los Angeles, Iranian Americans are by-and-large scattered throughout the United States.<sup>186</sup> There are 22,856 Iranian Americans living in New York, the state with the second largest population of Iranians. 22,590 Iranian Americans live in Texas; 12,935 are in Maryland; 14,970 reside in Virginia; 9,625 live in Florida; and small numbers are

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179. THE WORLD FACTBOOK, *supra* note 175.

180. *Id.*

181. Bozorgmehr, *supra* note 76.

182. *Id.*

183. *Id.*

184. National Iranian American Council, *IranCensus: Strength in Numbers, The Relative Concentration of Iranian Americans Across the United States*, available at <http://www.niacouncil.org/pressreleases/press116.asp> (last visited April 12, 2005).

185. *Id.*

186. Ali Akbar Mahdi, *Not a Community Yet. The Second Generation Iranians: Questions and Concerns*, THE IRANIAN (Feb./Mar. 1997), available at <http://www.iranian.com/Feb97/Features/IrAms/IrAmsFullText.html> (last visited Mar. 30, 2005).

scattered throughout the rest of the states as well.<sup>187</sup> The relatively small number of Iranian Americans in the U.S. and their geographic dispersion has also contributed to the reduced development of a national identity. Unlike the Japanese during World War II, Iranians have not been rounded up and interned together. As the small population of Iranian immigrants in the United States dispersed throughout the country, they instead had the option of disassociating themselves from other Iranians and from their Iranian origin.

### 3. CLASS RESOURCES

The relatively high level of class resources among Iranians in the United States may also have contributed to the lack of ethnic solidarity in this community. Between 1957 and 1977, Iranian immigration to the U.S. consisted mainly of students and visitors.<sup>188</sup> After 1978, the immigrant pool consisted primarily of political refugees and exiles.<sup>189</sup> This group of people was generally highly educated, entrepreneurial, and engaged in professional occupations. Indeed, the Iranian community has one of the highest levels of educational attainment among immigrant groups in the United States. According to the 1990 U.S. Census, Iranians ranked third in educational attainment, behind Asian Indians and Taiwanese.<sup>190</sup> Furthermore, almost two-thirds of Iranian men and 39% of Iranian women had completed college, while another 24% of Iranian women had some college education.<sup>191</sup> Iranians also ranked third in holding professional occupations, with over half of Iranian men in managerial and professional occupations.<sup>192</sup> Iranians were also successful entrepreneurs among immigrant groups, ranking second in Los Angeles, behind Koreans.<sup>193</sup> The self-employment rate for Iranians in the U.S. in 1990 was 23.7% for men.<sup>194</sup>

Because of the high class resources among the Iranian community, Iranians were sometimes able to lessen the effects of discrimination and prejudice against them.<sup>195</sup> As entrepreneurs and professionals, when anti-Iranian hostility developed and flared in the U.S., Iranians often identified primarily with their professional characters, for example, as engineers and business-owners, rather

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187. National Iranian American Council, *supra* note 184.

188. Bozorgmehr, *supra* note 76.

189. *Id.*

190. *Id.* (culling data from the 1990 U.S. Census).

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.*

than their national identities.<sup>196</sup> The high class resources of the Iranian community also enabled its members to avoid competition with and dependence on the rest of the American population, thereby avoiding further hostility. Because Iranians were able to side-step economic competition with other Americans, they were able to avoid additional hostility that might have surfaced had they been seen as taking jobs from native-born Americans. Furthermore, entrepreneurs who were self-employed insulated themselves from the discrimination they might have faced in searching for jobs. Because Iranians tended to be highly educated, with professional careers and English proficiency, they relied less on other Iranians to transition into life in the United States.<sup>197</sup> Thus, they were able to disassociate themselves from other Iranians during times of anti-Iranian sentiment. They thereby avoided hostility against themselves, but this disassociation also resulted in less ethnic solidarity and almost no organizing among the Iranian community in the U.S.

Finally, the exile status of many Iranians may also have contributed to the lack of group solidarity in the community. Many Iranians in the United States who came as refugees or exiles believed that the new Islamic regime would not survive and that they would soon return to live in Iran.<sup>198</sup> Furthermore, amongst those who were not exiles or refugees but who chose to leave Iran after the revolution, many continued to believe that they might return to Iran some day, perhaps in retirement.<sup>199</sup> This hope of return resulted in greater orientation towards political and social change in Iran rather than in the United States.<sup>200</sup> In turn, this resulted in reduced organizing in the U.S. and prevented the development of a strong national Iranian community in the United States.

#### 4. GENDER

The experience of Iranian women in America has been somewhat different than that of Iranian men. The myth of return, for example, has been less visible among Iranian women than among Iranian men. Because of the immense changes in Iran in the twenty-five years since the Revolution, returning to Iran is a much less viable option for women, who have become accustomed to the lifestyle they lead in the U.S. and who would face extremely restrictive regulations of their conduct in Iran.<sup>201</sup> In a 1993 asylum claim that was denied,

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196. Mahdi, *supra* note 186.

197. ANSARI, *supra* note 22, at 131.

198. Bozorgmehr, *supra* note 76.

199. ANSARI, *supra* note 22, at 93-101. *See also* Bozorgmehr, *supra* note 76.

200. Bozorgmehr, *supra* note 76.

201. ANSARI, *supra* note 22, at 49-50. *See also* Bahrapour, *supra* note 177.

Parastoo Fatin attempted to make a social group claim as an “educated Westernized free-thinking” woman.<sup>202</sup> The prospect of returning to a country in which she would face abuse and imprisonment for failing to wear the Islamic veil is one that was not appealing to Fatin or to most other Iranian women in the United States. Thus, Iranian women less often entertain visions of returning to Iran, even in retirement, than do Iranian men, and are obliged to some extent to assimilate in the U.S. and develop a place for themselves in American society. A sociological study of Iranians in America in the late 1980s documented the experiences of some Iranian women educated in America who chose to return to Iran, but who shortly found themselves back in the United States.<sup>203</sup> The study discusses some of the frustrations these women experienced upon returning to Iran, including social pressures, stigma for being unmarried, lack of freedom, and the devaluing of their professional accomplishments.<sup>204</sup> One woman stated that she preferred “the loneliness in this country to the lack of freedom at home.”<sup>205</sup> The study found that many of the Iranians surveyed decided to remain permanent residents in the U.S. not necessarily out of love for American life but, rather, because of dislike of the Iranian life.<sup>206</sup>

In some respects, Iranian men have suffered greater alienation in the American community than have women. While for Iranian women the U.S. holds much greater promise than does Iran, Iranian men here have more often been the victims of discrimination. As an Iranian woman in Los Angeles explained about her husband, “He only reads Iranian magazines, he only watches Iranian TV. He had a much better life in Iran. His passion is teaching, and he lost that here. For him, life in L.A. isn’t that promising.”<sup>207</sup> While Iranian women are often seen as victims of the Islamic regime, men are viewed suspiciously as perpetrators – terroristic, barbaric, and disloyal. Thus, NSEERS required non-immigrant males from selected countries – predominantly Muslim and Middle Eastern countries – who entered and remained in the United States for thirty days or longer to be interviewed, fingerprinted, and photographed.<sup>208</sup> In addition, the Department of Justice sought to conduct “voluntary interviews” of about 5000 men – mostly Arab or Muslim – between the ages of eighteen and thirty-three who had arrived in the United

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202. *Fatin v. INS*, 12 F.3d 1233, 1237 (3d Cir. 1993).

203. ANSARI, *supra* note 22, at 47-52.

204. *Id.* at 49-50.

205. *Id.*

206. *Id.* at 51.

207. Bahrampour, *supra* note 177.

208. Heidee Stoller, Tahlia Townsend, Rashad Hussain, and Marcia Yablon, *Developments in Law and Policy: The Costs of Post-9/11 National Security Strategy*, 22 YALE L. & POL’Y REV. 197, 217 (2004).

States on non-immigrant visas.<sup>209</sup> Women, on the other hand, are more often viewed as fellow victims of a common enemy. In a radio address on November 17, 2001, shortly after the bombing of Afghanistan began, Laura Bush stated, “The brutal oppression of women is a central goal of the terrorists.”<sup>210</sup> Thus, women are also seen as victims of the perpetrators of terror against the United States. They are, therefore, more often expected to be grateful for their lives in America, to be appreciative of the freedoms they have as a result of America’s interventions, and to have disavowed their nations of origin. Additional comments by Mrs. Bush in her November 17 radio address further the idea that women of repressive regimes owe gratitude to U.S. liberators: “Because of our recent military gains in much of Afghanistan, women are no longer imprisoned in their homes. They can listen to music and teach their daughters without fear of punishment.”<sup>211</sup> The disavowal of Iran expected of Iranian women further hinders ethnic solidarity among men and women of Iranian descent.

## 5. STRAINED BILATERAL RELATIONS

Finally, strained bilateral relations between Iran and the United States worked against the development of group solidarity among Iranians in the U.S. During the hostage crisis, with Iran as the provoking government in the clash, Iranians were incredibly wary of identifying themselves as such. Daily broadcasts of the hostage crisis were accompanied by images of mobs of Iranians burning and trampling American flags while chanting “Death to America.” Anti-American slogans were displayed scrawled across the former U.S. Embassy in Tehran, showing the Statue of Liberty as a skull and calling America the “Great Satan.” This provoked outrage in the American population, as evidenced by the popularity of songs such as “Bomb Bomb Bomb, Bomb Bomb Iran” (to the tune of the Beach Boys’ Barbara Ann) and “A Message to Khomeini,” declaring that the U.S. would bomb Iran’s “buns to the sun” and cancel Iranians’ visas. In this environment, Iranians were reluctant to identify as Iranians and to unite with other Iranians. Rather than organizing collectively against the discrimination and prejudice they experienced, Iranians attempted to avoid it, where possible, by associating with other ethnic or religious affiliations and with professional identities.

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209. Akram & Johnson, *supra* note 18, at 334.

210. *Radio Address by Mrs. Bush* (Nov. 17, 2001), available at <http://www.whitehouse.gov/news/releases/2001/11/20011117.html> (last visited Aug. 13, 2005).

211. *Id.*

### C. RESULTING LACK OF CIVIC DEVELOPMENT

One consequence of the lack of group solidarity, combined with marginalization by the American government and populace, has been low political activity in the Iranian-American community.<sup>212</sup> After largely abstaining from political activity for many years, however, Iranians have recently become more involved in organized politics. Though Iranians comprise approximately one-quarter of the population in Beverly Hills, for example, the first, and only, Iranian politician in the area was elected as a City Council Member in March 2003.<sup>213</sup>

The political development of the Iranian community in America has likely been slow because of the defensive atmosphere in which the community has developed since the hostage crisis. Because identifying as Iranian sometimes led to discrimination, hate crimes, or undeserved suspicion, Iranians were not eager to form political coalitions or organize collectively as Iranians. Instead, they acted defensively as individuals to protect themselves from discrimination rather than engaging in community building and organizing. Furthermore, many Iranians were disenchanted with politics after the Iranian Revolution. Those who had participated as revolutionaries hoping to remold their society found themselves refugees or self-exiles in the United States, a country whose interference in the politics of Iran they had despised.<sup>214</sup> They were marginalized both in the Iranian society they had left and in the American society in which they found themselves.

U.S. policies through the years have also contributed to a lack of community-building within Iranian and other Muslim or Middle Eastern communities in America. Policies such as federal designation of terrorist organizations chill political action, as the stakes are raised and the consequences become graver for inadvertently associating with a group that might later be treated with suspicion. The Secretary of State's policy on designation of foreign terrorist organizations does not provide an organization with

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212. Bozorgmehr, *supra* note 76. See also Nader Habibi, *Despised we should not be: On the survival and progress of unpopular minorities in the United States*, THE IRANIAN (May 9, 2003), available at <http://www.iranian.com/BTW/2003/May/Protect/> (last visited Feb. 18, 2006). In fact, the National Iranian American Council was founded in 2002 to promote Iranian American participation in American civic life. See NIAC Questions and Answers, <http://www.niacouncil.org/faq2.asp>.

213. Life and Times Transcript, *Jimmy Delshad* (KCET April 29, 2004), available at <http://www.kcet.org/lifeandtimes/archives/200404/20040429.php> (last visited Mar. 10, 2005). See also City of Beverly Hills, *Biography of Jimmy Delshad*, available at [http://www.beverlyhills.org/presence/connect/CoBH/Homepage/Local+Government/City+Officials/City+Councilmembers/Bio-CCJimmy\\_Delshad](http://www.beverlyhills.org/presence/connect/CoBH/Homepage/Local+Government/City+Officials/City+Councilmembers/Bio-CCJimmy_Delshad) (last visited Mar. 10, 2005).

214. ANSARI, *supra* note 22, at 122.

notice or a hearing about its designation.<sup>215</sup> Instead, an organization may suddenly find its offices raided, its records confiscated, its assets frozen, and its principals arrested while the government uses secret evidence and prevents disclosure of the charges against the organization.<sup>216</sup> Recently, the Senate Finance Committee asked the IRS to turn over confidential tax and financial records, including donor lists, of dozens of Muslim charities and foundations.<sup>217</sup> With these potential consequences for making a donation to one of these charities, people who are Muslim or Middle Eastern are wary of becoming involved in organizations that may form to represent their interests.

The lack of community organizing then results in underrepresentation of these communities in the American political process. Instead of having powerful friends in American politics, Iranians and other Muslims or Middle Easterners have, at best, cautious acquaintances. With few voices to speak on their behalf in the political process, these communities are politically vulnerable. Furthermore, since they lack identity citizenship in the United States, the derogation of their rights seems justified in the eyes of the American public and government, who view these communities as outsiders in the American body politic.

## VI. CONCLUSION

Because Muslims and people of Middle Eastern descent are viewed as outsiders who are presumptively disloyal, racial profiling and discrimination against them becomes acceptable. Public violence in the form of governmental policies targeting “Muslim-looking” people has been accompanied by private discrimination and hate crimes against such people. This has then reinforced the conception of American citizens who are Muslim or of Middle Eastern descent as outsiders who do not “belong” in the society of the United States, both within the communities themselves and among the rest of the U.S. population.

Since the hostage crisis, the Iranian community in the United States has experienced this outsider status. Iranians went from a position of obscurity in the U.S. community to one of notoriety for holding hostage the citizens of one of the most powerful countries in the world. Since then, Iranians in the United States have been

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215. Susan M. Akram and Maritza Karmlely, *Immigration and Constitutional Consequences of Post-9/11 Policies Involving Arabs and Muslims in the United States: Is Alienage a Distinction Without a Difference?*, 38 U.C. DAVIS L. REV. 609, 693 (2005).

216. *Id.* at 635.

217. Dan Eggen and John Mintz, *Muslim Groups' IRS Files Sought: Hill Panel Probing Alleged Terror Ties*, WASH. POST, Jan. 14, 2004, at A1.

perceived as disloyal, dangerous, and undesirable. This perception has been reflected in and reinforced by U.S. policies, from the reporting requirements for Iranian students in the U.S. during the 1979-1981 hostage crisis to the registration requirements and detentions after September 11, 2001. The outsider status of Iranians in America has resulted in a lack of identity citizenship in the Iranian American community and has led to the vulnerability of Iranians in America to further derogation of their formal rights. Subsequent violations of these formal and political rights have reinforced this lack of identity citizenship, both within the Iranian community in America and in the American public's perception of the community.