

VOICES FROM SILENCE

PERSONAL ACCOUNTS
OF THE
LONG-TERM IMPACT
OF 9/11

FEBRUARY 2007

R. Phillips

ABOUT MINNESOTA ADVOCATES FOR HUMAN RIGHTS

The Mission of Minnesota Advocates for Human Rights is to implement international human rights standards to promote civil society and reinforce the rule of law. By involving volunteers in research, education, and advocacy, we build broad constituencies in the United States and selected global communities.

Minnesota Advocates:

- Investigates and exposes human rights violations internationally and in the United States.
- Represents immigrants and refugees who are victims of human rights abuses.
- Trains and assists groups that protect human rights.
- Works through education and advocacy to engage the public, policy-makers and children about human rights and cultural understanding.

Minnesota Advocates was founded in 1983 by a group of Minnesota Lawyers who recognized the community's unique spirit of social justice as an opportunity to promote and protect human rights in the United States and around the world. The organization has produced more than 50 reports documenting human rights practices in more than 25 countries, and works with partners overseas and in the United States to restore and protect human rights. Minnesota Advocates for Human Rights hold Special Consultative Status with the United Nations.

Produced by
Minnesota Advocates for Human Rights
650 South Third Avenue, Suite 550
Minneapolis, MN 55402
(612) 341-3302
hrights@mnadvocates.org

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Laura Provinzino, Wellstone Legal Fellow 2004-06
Minnesota Advocates for Human Rights

TABLE OF CONTENTS

| | |
|---|------------|
| FOREWORD | VII |
| INTRODUCTION | 1 |
| EXECUTIVE SUMMARY | 3 |
| RESOURCES | 7 |
| THE IMPACT OF 9/11 ON OUR COMMUNITY | 9 |
| I. FEAR AND BLAME | 9 |
| II. HATE CRIMES | 13 |
| III. FEDERAL LAW ENFORCEMENT | 17 |
| IV. PROFILING | 21 |
| V. TRAVEL/FREEDOM OF MOVEMENT | 24 |
| VI. IMMIGRATION | 32 |
| VII. THE ECONOMY AND EMPLOYMENT | 35 |
| VIII. RELIGIOUS AND POLITICAL PARTICIPATION | 40 |
| IX. LOSS OF SENSE OF BELONGING AND ANTI-IMMIGRANT BACKLASH | 44 |
| X. ACCESS TO SERVICES | 47 |
| XI. ROLE OF THE MEDIA | 50 |
| XII. COMMUNITY RESPONSES | 52 |
| FEDERAL LEGISLATION | 55 |
| MINNESOTA’S RESPONSE TO 9/11 | 67 |
| CONCLUSION | 75 |
| APPENDIX A: METHODOLOGY | 77 |
| APPENDIX B: PROPOSED FEDERAL LEGISLATION | 81 |
| APPENDIX C: PROPOSED MINNESOTA LEGISLATION | 87 |
| APPENDIX D: HUMAN RIGHTS STANDARDS | 91 |

FOREWORD

Late in the afternoon of September 13, 2001, a Minnesota Advocates for Human Rights staff attorney was meeting in our office with two of our *pro bono* clients, a Christian couple fleeing religious persecution in Egypt. Although it had been rescheduled from the afternoon of September 11, this meeting to prepare their application for asylum was routine for our organization, which provides legal representation to hundreds of asylum seekers each year. During the meeting, however, two uniformed Minneapolis police officers obtained access to the locked offices of Minnesota Advocates for Human Rights and, without warning, entered the room where our clients were meeting with their attorney. The police apologized for interrupting the meeting, but stated that they were obligated to investigate a report that a “Middle Eastern” man had entered the building, which was located next to the Federal Building in downtown Minneapolis. After they departed, we could see the fear in our client’s eyes as he asked, “Am I not supposed to walk on the street anymore?”

We knew then that the impact of September 11 on our clients—and on our friends, colleagues, and ourselves—would go far beyond the loss and grief that we all felt when the World Trade Center fell.

We could not then have imagined, however, what the long-term government and community response to the terrorist attacks would be, nor the lasting impact of this response on Minnesotans from refugee, immigrant, and religious minority communities. The fear in the general public created by the United States government’s “War on Terror” has had a dramatic effect on the daily lives of many Minnesotans. We have received many reports from the public, as well as from staff and volunteers of Minnesota Advocates, of

discriminatory behavior targeted at people based on their race or perceived religious affiliations.

For example, a Minnesota Advocates staff attorney, a Sikh man, was denied access to a client at the Washington County jail in Stillwater, Minnesota. He was told that he must remove his turban or he would be denied entry to the facility. He told the official that such a rule denied his client a right to counsel and denied him a right to practice his religion. He produced his attorney license to no avail. The official told him that his entry was a safety concern but sought out the supervisor’s input. The supervisor indicated that he could meet with the client but that he could not be given a private meeting room for an attorney-client meeting. Instead, he had to meet with his client in a monitored room, communicating via telephone.

In September 2001, we could not have envisioned the extent to which the new laws and policies would silence refugee, immigrant, and religious minorities. In the aftermath of September 11, several individuals have requested that Minnesota Advocates address the negative impact of the governmental and societal responses on entire groups of innocent people in our community. One man, a Muslim naturalized U.S. citizen, implored Minnesota Advocates staff to take action: “[I]t is not safe for us to speak out; you must speak out for us now.”

This report is an attempt to give voice to these concerns. It is not meant to be a comprehensive or a scientific study. It is meant to illustrate the impact that widespread discriminatory private actions, as well as public laws and policies that have overturned longstanding, fundamental legal protections, have had on real people and their families. In some cases, it is difficult to discern whether a specific situation was

caused by the reaction to the September 11 terrorist attacks or by persistent racism that existed long before 2001. Our experience in preparing this report suggests that it is likely a combination of both.

We at Minnesota Advocates continue to work toward our vision of a country where every person not only has the right to express his or her point of view, but every person also feels safe in doing so. We hope that by listening to these voices and by seeking out the voices of others, we are increasing the likelihood that future discussions about national security, civil liberties, and immigration will include recognition of the inherent human rights and dignity of all people.



Robin Phillips
Executive Director

INTRODUCTION

*Americans are unable to distinguish who the enemies are.
They think we are all the same, and we are not.*
Male Christian refugee from Sudan 111:2.

*There is some suspicion, I can't place a finger on it . . .
When twenty-two-year-olds look at me in a strange way, it is really something.
They were not even born when I came here.*
Male Muslim lawful permanent resident from Ethiopia 037:4.

*People are often trying to make a joke but failing.
One person said, "You're a Muslim. If you don't like what I like, you'll blow me up."*
Female Muslim U.S. citizen whose family is from Pakistan 003:7.

I am always the "random" check.
Male Hindu lawful permanent resident from India 047:7.

Everyone is talking about me, but I don't get to say anything.
Female Muslim visa holder from South Africa at a public presentation in October 2006.

The effects of the terrorist attacks of 9/11 have been felt far beyond New York City, Washington, D.C., and rural Pennsylvania. Around the country, people have mourned and struggled with fear and a new sense of vulnerability. The effects have been acute, significant, and long-lasting, and there have been consequences for those who lost loved ones, for military personnel and their families, and for people in countries affected by the "War on Terror."

This report focuses on some of the indirect consequences of the attacks that have until now received little consideration. The events of 9/11 fueled changes in attitudes and policies concerning counter-terrorism, national security, civil liberties, and immigration that persist in isolating us from one another and fragmenting our country. These broader governmental and societal reactions to 9/11 have had a profound effect on the lives of refugees, immigrants, and religious minorities in the United States.

Some research has been conducted about public attitudes toward immigration. Public officials in the state and the nation have done little, however, to address either the misconceptions about immigration arising from the response to the events of 9/11 or the impact of 9/11 on the day-to-day experiences of immigrants, refugees, and religious minorities.

Minnesota Advocates conducted 107 interviews of Minnesotans belonging to various immigrant,¹ refugee,² and religious minority groups.³ The

¹ "Immigrant" as used in the Immigration and Nationality Act (hereinafter INA) refers to an alien present in the United States with lawful permanent resident status or any other class except nonimmigrant alien. See INA § 101(a)(15) (2006). This report uses the term "immigrant" more broadly to encompass all foreign-born persons in the U.S., including those with undocumented status, short-term visitors, and naturalized citizens. This report also draws upon the experiences of some ethnic minorities perceived to be immigrants.

² "Refugee" as used in the INA refers to aliens who are unable or unwilling to return to their country of origin or nationality because of persecution or a well-founded fear of persecution. INA § 101(a)(42)(A) (2006). Minnesota plays a unique role in resettling refugees. According to the latest data available, in 2005, Minnesota accounted for 12 percent of refugee resettlements, or over 6,400 refugees. This was just shy of the 14 percent settled

interviewees represented a broad spectrum of income levels, educational backgrounds, legal statuses, employment statuses, religious affiliations, and countries of origin. The goal of these interviews, and the principal focus of this report, is to document and publicize the impact that 9/11 has had on these immigrant and minority communities as revealed through personal histories and experiences.⁴ As one interviewee noted, “It is important that these stories are documented, so we don’t suffer in silence.” RT 1:1.

A striking feature of this set of accounts is the span of negative and often debilitating acts of prejudice, hate, and racial and religious stereotyping experienced by these groups of interviewees. Few of the incidents described in the interviews rise to the level of serious hate crimes or life-changing tragedies. Nevertheless, the report reveals that incidents of personal hostility, such as hateful epithets like “you people are responsible for 9/11” and “go back to your own country!” 004:1, occur all too frequently throughout Minnesota. Given that all of these experiences occurred in a group of just over 100 individuals who had virtually no connection to one another, these

stories present a disturbing portrait of post-9/11 life in immigrant communities in Minnesota.

A report prepared for the Minnesota Community Project in 2004 stated simply, “Minnesota is changing.”⁵ It found that while many people support the idea of Minnesota as an open and tolerant state and embrace the notion of “Minnesota nice,” many expressed resentment toward immigrants.⁶ The report identified concern about rapid growth and change in the composition of Minnesota communities. The report also cited the changing economy, racially diverse immigration into the state, and the polarization of politics as causes of skepticism and resentment.⁷

This Minnesota Advocates report takes a different approach, aiming to illuminate the effects of 9/11 on the day-to-day lives of Minnesotans from a diverse array of refugee, immigrant, and religious minority communities. The report also documents relevant post-9/11 laws and policies to provide additional context to these accounts.

in California, the nation’s leader. See Jeanne Batalova, Spotlight on Refugees and Asylees in the United States, Migration Information Source, Aug. 1, 2006, <http://www.migrationinformation.org/USfocus/display.cfm?ID=415>. This report distinguishes between immigrants, as defined above, and refugees.

³ The interviews provide the primary data for assessing the impact of 9/11 on Minnesota’s refugees, immigrants, and religious minorities. Voices from the three Minnesota communities where the majority of immigrants settle—Rochester, St. Cloud, and the Twin Cities—are interspersed throughout this report and demonstrate strong similarities of experiences. Rochester interviews are numbered in the 100s, St. Cloud interviews in the 200s, and those in the Twin Cities in the teens. Round table discussions are designated RT.

⁴ Some interviewees also told about the experiences of others in their communities. While Minnesota Advocates was unable to independently verify the stories in every case, this report includes some third person accounts to illustrate the perceptions in the community that contribute to the overall atmosphere of fear and hostility.

⁵ Stan Greenberg et al., *The Changing Shape of Minnesota: Reinvigorating Community and Government in the New Minnesota*, Hubert H. Humphrey Institute for Public Affairs: Minnesota Community Project, Dec. 14, 2004, <http://www.greenbergresearch.com/index.php?ID=1264>.

⁶ *Id.* at 29.

⁷ *Id.* at 3.

EXECUTIVE SUMMARY

Since 9/11, Minnesotans from immigrant, refugee, and religious minority communities have experienced many changes in their daily routines, travel experiences, treatment in the workplace, and interaction with law enforcement. They report detecting fear and resentment from non-immigrant communities, and increasingly, they feel targeted and discriminated against in routine interactions. These feelings are exacerbated by the dramatic changes in law and public policy at the state and national levels that affect both their everyday lives and create a general climate of fear in the community. The ongoing public debate around immigration reform has further increased resentment and hostility displayed toward immigrants.

Official changes in law and public policy at the federal level began immediately after 9/11. Within days, legislation was introduced, and two months later, Congress enacted the USA PATRIOT Act.⁸ This law dramatically reduced certain privacy and civil rights protections in the name of national security, creating a climate of fear that was powerful and widespread. Another piece of legislation, the REAL ID Act,⁹ was passed in 2005 and had many serious repercussions. The REAL ID Act created national standards for identity cards that have increased fear of additional monitoring of individuals by the federal government. The “material support” of terrorism provisions in these two laws have had a devastating impact on refugee communities and those awaiting resettlement in the United States. Most recently, the U.S. government

passed the Military Commissions Act of 2006,¹⁰ which allows for the redefinition of appropriate methods of interrogation and strips important due process rights from non-citizens. It grants the President near absolute power to determine that a person has engaged in terrorist activities or aided terrorist activities and then indefinitely detain him without bringing charges.

Similarly, Minnesota has passed laws and implemented policies that have negatively affected immigrant communities. The state’s rules on driver’s licenses, which label immigrants based on their visa status, add to the feelings of fear and marginalization in these communities. The Governor’s report on immigration, released in December 2005, pushed immigration issues to center stage.¹¹ The report presented a negative, unbalanced account of the costs of illegal immigration without including information about the positive economic contributions of immigrants—both documented and undocumented—in Minnesota. Coinciding with the introduction of restrictionist immigration laws in Congress, Governor Pawlenty’s report provided the basis for a series of punitive state-level immigration reform proposals in Minnesota that matched similar efforts around the country. Although the punitive measures did not pass in the Minnesota Legislature, the report and the legislative proposals injected inaccurate myths and negative stereotypes into the public debate and contributed to the climate of fear and hostility. This

⁸ USA PATRIOT Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

⁹ The REAL ID Act of 2005, a rider to Division B of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Pub. L. No. 109-13, 119 Stat. 231 (May 11, 2005).

¹⁰ Military Commissions Act of 2006, Pub. L. No. 109-366, 120 Stat. 2600 (2006), http://www.loc.gov/rr/frd/Military_Law/pdf/PL-109-366.pdf.

¹¹ The Office of Strategic Planning & Results Management, Minnesota Dep’t of Administration, *The Impact of Illegal Immigration on Minnesota: Costs and Population Trends*, (2005), http://www.state.mn.us/mn/externalDocs/Administration/Report_The_Impact_of_Illegal_Immigration_on_Minnesota_1208050353_15_Illegal%20Immigration%20Brief%2026.pdf.

climate was heightened during the election season in the fall of 2006 when several political candidates used these myths and stereotypes in their campaign literature and advertisements. These changes in state and national policy have taken place despite international and national legal obligations to protect the rights of refugees and asylees and to treat citizens and non-citizens equally with few exceptions.¹²

The following is an outline of observations and key trends identified through the course of the interviews that form the sections of this report.

Fear and blame. Many Minnesota Muslims interviewed for this report expressed concern that they were afraid to conduct their day-to-day activities after 9/11. Interviewees reported their perception that 9/11 created a sense in the community that it is now permissible to discriminate against them and to treat them with disrespect. As one Muslim woman said, before 9/11 it was not “politically correct” to express anti-Muslim sentiment in Minnesota, but the atmosphere has changed: “You had to be tolerant. Now, after September 11, it opened the floodgates. . . . It is OK to discriminate. . . . In Minnesota, people are [afraid] if they see a Muslim. That’s the negative result.” 002:9. Interviewees reported hearing hateful and intimidating comments on the street, in grocery stores, at gas stations, on public buses, and even on their answering machines, and some reported that they were afraid to leave home. Beyond the Muslim community, other immigrant communities of color reported feeling increased fear, blame, and suspicion after 9/11. Minnesotans from immigrant, refugee, and religious minority communities reported feeling that they are classified together and categorically targeted and blamed for the acts of terrorism of 9/11.

¹² For more on the applicable human rights standards, see *infra*, App. D, Human Rights Standards.

Increase in hate crimes. In Minnesota, hate crimes have occurred against Muslims and other communities perceived either as bearing some responsibility for 9/11 or as outsiders after 9/11. Interviewees reported crimes against the person, such as assaults and physical threats, and crimes against property, such as graffiti and serious vandalism to businesses and places of worship. Interviewees also expressed dissatisfaction with the response of the police. Some reported feeling that law enforcement did not properly categorize the incidents as hate crimes, did not take the alleged hate crimes seriously, and did not commit adequate resources to finding the perpetrators. Many interviewees also reported disappointment and frustration that efforts by law enforcement did not result in the identification and prosecution of the perpetrators.

National security environment. Interviewees, particularly Muslims, reported increased fear of surveillance and FBI intrusion into their homes, workplaces, and places of worship. Interviewees reported the belief that their communications were not private and that they were treated as possible terrorists. They shared accounts of aggressive law enforcement tactics, such as workplace visits and coercive pressure to serve as informants. Such tactics were reported to cause communities to lose trust in law enforcement and to undermine community policing efforts.

Profiling. A common perception shared with Minnesota Advocates was that, after 9/11, persons of certain races, national origins, and religious groups (often identified by their dress) were singled out for more scrutiny or profiling by law enforcement and private companies. Interviewees reported being stopped by police because they were Muslim, Black, or Latino, or followed in stores under suspicion of shoplifting on account of race or national origin. Such scrutiny created distrust, fear, and resentment, and damaged

the sense of safety and security for Minnesotans from immigrant, refugee, and religious minority communities. These reactions may frustrate the objectives of law enforcement.

Travel restrictions. The federal government responded to 9/11 by instituting changes to air travel with the creation of a new federal agency and new entry and exit procedures for both citizens and non-citizens. Minnesota Advocates heard many accounts of aggressive, hostile, and demeaning interactions with Transportation Security Administration (TSA), Immigration and Customs Enforcement (ICE) agents, and U.S. Customs and Border Protection (CBP). Interviewees also reported inconsistent implementation of transportation guidelines, including screening procedures that are perceived to disproportionately affect immigrant, refugee, and religious minority travelers. Travel restrictions extended beyond air travel to border crossings and automobile travel, as well. Interviewees cited increasingly closed borders, the stigmatizing effect of new driver's license policies, increased delays and errors when traveling, and overall frustration at the processes and problems that affect their freedom of travel.

Immigration. Minnesota Advocates heard numerous stories of both real and perceived immigration policy and enforcement changes after 9/11, including a reduction in the number of refugees being resettled in Minnesota, delays in family reunification, increased deportation of non-citizens, and delays in visa issuance and the processing of certain immigration benefits. Interviewees reported that these policies have disproportionately affected international students, scholars, medical patients, and certain classes of professionals, and pointed out that these effects hinder economic growth.

Economy and employment. Minnesotans from immigrant, refugee, and religious minority communities have faced new employment challenges after 9/11. Interviewees reported increased discrimination on account of race, national origin, and religion by employers, co-workers, and customers. This has led to greater difficulties in securing employment and in obtaining reasonable accommodations at work for certain religious practices, such as daily prayer. Minnesota Advocates heard that many non-citizens are hesitant to report such situations. Some are fearful of "rocking the boat" and do not want to draw attention to themselves because of their immigration status; others reported that they feel these efforts would be futile.

Diminished civic and political participation. Post-9/11 laws, including the USA PATRIOT Act, and changes to immigration laws and policies have stifled civic and political participation. Interviewees reported fear of contributing to certain charities or becoming active in other community and political affairs, including protesting the war in Iraq. Others, however, reported that such legislation has served as an organizing tool around which immigrant, refugee, and religious minority groups have mobilized, prompting new citizens to vote in increasing numbers.

Losing the sense of belonging: Anti-immigrant backlash. Minnesota Advocates found almost uniformly that after 9/11, Minnesota Muslims, Latinos, Asians, and other communities of color reported that they feel as if they have been made the enemy and that they do not belong in Minnesota, even though some were born here and others have lived here nearly all their lives. The long-held perception of many in the community that Minnesota provides an open and welcoming atmosphere for diverse ethnic groups and safety and opportunity for people from different faiths, languages, races, and national origins is challenged by interviewees' reporting formal and informal

discrimination, aggressive acts, rude behaviors, and beliefs that they were unjustly excluded from a wide variety of federal, state, and local services, particularly relating to health care and housing. Interviewees reported that superficial or sensational media coverage of immigration and national security fostered fear, racism, and misunderstanding.

Community responses. Minnesota continues to be recognized overwhelmingly by the immigrants, refugees, and religious minorities interviewed by Minnesota Advocates as their home, a place of opportunity, and a good place to raise their families. But Minnesota Advocates has also uncovered significant concerns in the course of its investigation, suggesting both that these communities have borne the brunt of the fears generated by 9/11 and that public officials have not taken adequate steps to dispel those fears. This has resulted in fear, blame, profiling, increased law enforcement intervention, employment discrimination, and even violence against Minnesotans from immigrant, refugee, and religious minority communities.

RESOURCES

Minnesota Advocates urges community members who face post-9/11 backlash or rising anti-immigrant sentiment to report acts of racism and discrimination to the appropriate authorities.

- Minnesota Department of Human Rights
Army Corps of Engineers Centre
190 East 5th Street, Suite 700
Saint Paul, Minnesota 55101
Phone: (651) 296-5663
Toll free: 1-800-657-3704
TTY: (651) 296-1283
<http://www.humanrights.state.mn.us/index.html>
If you believe you may be a victim of discrimination, send an email to: complaintinfo@therightsplace.net
- Department of Homeland Security
Office for Civil Rights and Civil Liberties
Mail Stop #0800
Washington, DC 20528
Phone: (866) 644-8360
Fax: (202) 401-4708
Email: civil.liberties@dhs.gov
http://www.dhs.gov/xabout/structure/editorial_0371.shtm
- Federal Bureau of Investigation
111 Washington Avenue South
Suite 1100
Minneapolis, MN 55401
Phone: (612) 376-3200
Fax: (612) 376-3249
<http://minneapolis.fbi.gov/home.htm>
Note: Report details such as date, time and agent involved, if known.
- Rochester Police Department
101 4th Street SE
Rochester, MN 55904-3761
Phone: (507) 285-8300
Fax: (507) 281-7354
<http://www.rochestermn.gov/departments/police/index.asp>
- Human Rights Commission of Olmsted County
151 4th Street SE
Rochester, MN 55904
Phone: (507) 287-1347
<http://www.co.olmsted.mn.us/departments/rights/index.asp>
- St. Cloud Police Department
807 Courthouse Square
P.O. Box 1616
St. Cloud, MN 56302
Phone: (320) 650-3830
Fax: (320) 650-3839
<http://ci.stcloud.mn.us/Web/departments/Police/index.htm>
- St. Cloud Human Rights Office
400 Second Street South
St. Cloud, MN 56301
Phone: (320) 650-3133
<http://www.ci.stcloud.mn.us/Web/departments/CommSvcs/HumanRights/HRights.htm>
baba.odukale@ci.stcloud.mn.us
- Minneapolis Police Department
350 South 5th Street, Room 130
Minneapolis, MN 55415-1389
Phone: (612) 348-2345
Email: police@ci.minneapolis.mn.us
<http://www.ci.minneapolis.mn.us/police/>
- Minneapolis Department of Civil Rights
350 S. 5th Street, Room 239
Minneapolis, MN 55415
Phone: (612) 673-3012
Fax: (612) 673-2599
<http://www.ci.minneapolis.mn.us/civil-rights/>
- St. Paul Police Department
367 Grove Street
St. Paul, MN 55101
Phone: (651) 291-1111
Email: policeinfo@ci.stpaul.mn.us
<http://www.stpaul.gov/depts/police/>
- St. Paul Department of Human Rights
240 City Hall
St. Paul, MN 55102
Phone: (651) 266-8966
Email: hrightscomplaints@ci.stpaul.mn.us
<http://www.stpaul.gov/depts/humanrights/>

Minnesota Advocates hopes that this report will help bring the voices of the Minnesotans most affected by the post-9/11 environment into the policy debate about recalibrating the balance between national security and civil liberties in the United States. The balance should improve rather than harm our economy, enhance rather than diminish our safety, and protect rather than target immigrant, refugee, and religious minority communities. Proactive responses by government officials and faith communities, combined with outreach to immigrant, refugee, and religious minority communities, can help to mitigate the harmful consequences of 9/11.

We encourage individuals to share their personal stories with Minnesota Advocates to avoid further “suffering in silence” and to share best practices. These stories will help to promote dialogue and better understanding of the issues faced by immigrant, refugee, and religious minority communities.

**Please share your stories at:
www.mnadvocates.org/Post_9_11Submission.html.**

THE IMPACT OF 9/11 ON OUR COMMUNITY

*9/11 was a day when 19 people cast a cloud over 1.5 billion people
that 300 million people can't see through.*
Arab Muslim male, 020:3

I. FEAR AND BLAME¹³

Fear and a sense of blame characterized the initial reaction to 9/11 among Minnesotans from immigrant, refugee, and religious minority communities, particularly Muslims. A young Muslim professional who lives in the northern suburbs of Minneapolis told Minnesota Advocates, “My mother chose to stay indoors post-9/11. She would not go to the grocery store.” 003:1. A government worker in Minneapolis said, “The Somali population was tremendously frightened. They were scared to send their children to school, to go to the grocery store . . .” 001:1. A Somali in Rochester told Minnesota Advocates that his community did not feel completely safe. “After 9/11, lots of them stopped going out at night because they were scared.” 108:1. The annual event of a multi-ethnic Indian cultural group scheduled for early October 2001 was cancelled because of heightened fear and concern for participant safety. 040:3-4. The daily activities of many Muslims were curtailed as people feared going outside, grocery shopping or riding public buses after 9/11.¹⁴

A Somali community leader in St. Cloud told Minnesota Advocates of an incident immediately after 9/11 where a Somali woman, who was filling her car with gas, was asked by a large, white man, “Where are you from? Why are you here?” 201:1. A Muslim professional

woman in Minneapolis was filling her car with gas when a man emerged from the convenience store and spit at her. 012:2. A community organizer in the Twin Cities related a similar incident in which a Somali woman was harassed outside a grocery store shortly after 9/11. The assailant said, “We don’t want Muslims.” 019:3.

In addition to fear, many Minnesota refugees, immigrants, and religious minorities reported feeling blamed. A Somali woman took her two daughters to a McDonald’s in St. Cloud a few months after 9/11. A customer started yelling at her and blamed her and all Muslims for the 9/11 attacks as she and her children quietly sat. Eventually, a few other patrons walked over to calm him down. They ended up escorting him out of the restaurant and apologized to the Somali woman. In talking about the incident later, she stated, “When I first came to this country, they told me I would be safe.”¹⁵ 207:2-3.

In addition to stares, comments, and even violence in public places, people with Muslim names were targeted in their homes. One Muslim professional in St. Cloud told Minnesota Advocates:

On 9/11 someone left a message that said, “Hello. I’m calling from the camp of Osama Bin Laden.” I don’t exactly remember how the message went. But it was a white person from here. I could trace the caller from the caller ID. I had proof and called the [St. Cloud] police department. I was living in an area without many minorities and am an advisor on campus. I wasn’t sure if the call was typical. I’m not

¹³ The statistics in the above quote, 1.5 billion and 300 million refer to the approximate population of Muslims worldwide and the total United States population, respectively.

¹⁴ See, e.g., Laurel Druley, Muslims in Minnesota Play it Safe (Minn. Pub. Radio broadcast Sept. 24, 2001).

¹⁵ NEW BEGINNINGS/BILOW CUSUB 158-59 (Mary Jane Berger, ed., 2004).

even sure if I was listed in the phone book. What are the chances the caller would randomly pick me? The cop came. I told him my story. He listened to the message. He basically said, "Just let him go. He was just drunk."

215:4.

The individual waited, and nothing was done. "I wanted to know what had happened. The outcome of that experience was that I felt threatened. The [police] should have done something differently." 215:4. He followed up on the incident and eventually met with the police chief who indicated that the initial officer should have communicated with him to let him know how the situation was resolved. He told Minnesota Advocates that he was satisfied in the end with how the situation was handled, but he expressed some concern. "You shouldn't have to follow up." 215:4.

A Muslim psychiatric professional who had just returned from overseas received a call from a client two days after 9/11; the client's initial response was to tell her, "You are going to pay for this!" She told Minnesota Advocates that the client threatened to call the FBI and "tip them off about my trip to [the Middle East]." 016:1. The client alleged that the trip was directly related to Osama Bin Laden.

The Arab Student Association at the University of Minnesota, which was disbanded after 9/11, had messages left on its answering machine, such as "Go back to your country!"¹⁶ 004:1. The FBI had apparently questioned several of the association's members, principally students from Saudi Arabia, in the immediate aftermath of 9/11. It was reported to Minnesota Advocates that fear of the FBI's investigation caused many members to leave the organization. Arab students at a private liberal arts

¹⁶ See, e.g., Patty Marsicano, A Changed Climate (Minn. Pub. Radio broadcast Sept. 17, 2001).

school in the Twin Cities reported receiving threatening mail in the immediate aftermath of 9/11. An Arab student told Minnesota Advocates that he believed his school investigated the threatening mail in a superficial way and that the perpetrators were not found. 038:2. A multicultural organization led by an Afghani Muslim received harassing calls that continued for months after 9/11. His organization called the police, but they were apparently unable to classify the calls as threats and unable to take official action against the callers. 022:2.

Incidents were not confined to Muslims or perceived Muslims, but quickly translated into anti-immigrant actions. Minnesotans from immigrant, refugee, and religious minority communities have experienced the same backlash that has affected other parts of the country.¹⁷ A Cambodian college student in Rochester who arrived as a refugee in the early 1980s stated about the post-9/11 period, "At first, it was not safe to go out late. People were mad, and I didn't want to go out until it was safer. I was afraid that people would take out their anger on anyone who looks different. I stayed in the house. When I walked, people would look at me. I kept thinking that they hate me." 106:4.

Minnesota Advocates heard stories from members of the Hmong, Latino, Sikh, and non-Muslim Arab communities who initially feared for their safety and felt blamed for 9/11. Some believed that they were targeted in the wake of 9/11 because they were perceived to be Arab or Muslim. "In fact, there has been what I call collateral damage," a Muslim woman told Minnesota Advocates. "Anyone with a different head wrap was targeted." 003:4.

¹⁷ See, e.g., HUMAN RIGHTS WATCH, "WE ARE NOT THE ENEMY": HATE CRIMES AGAINST ARABS, MUSLIMS, AND THOSE PERCEIVED TO BE ARAB OR MUSLIM AFTER SEPTEMBER 11 at 18 (2002), <http://www.hrw.org/reports/2002/usahate/usa1102.pdf> (focusing on Chicago, New York, Los Angeles, Seattle, Phoenix, and Dearborn, Michigan).

Minnesota Advocates was told in several interviews that the Sikh community suffered after 9/11 because the men wear turbans. “We are the only religious community by tradition who wear the turban. . . . I saw a picture of Bin Laden on TV, and I thought, ‘Oh my God.’ It seemed like his appearance was typical of how a Sikh turban is tied.” 040:3.

This Sikh man noted that there were “lots of attacks” on Sikhs wearing turbans in Chicago, San Francisco, and New York, as well as an attack that resulted in the death of a Sikh man in Mesa, Arizona.¹⁸ 040:3. One Sikh man who wears a turban reported that high school students called out, “Look, there is an Iraqi!” while he was in a suburban shopping mall soon after 9/11. 041:1. While Sikhs in Minnesota escaped the most severe hate crimes, a Sikh interviewee reported that graffiti had been scrawled at the home of a Sikh family in New Brighton, that a Sikh had been harassed while shopping in Eagan, and that a Sikh man was almost forced out of his lane while driving. 040:4.

Rumors of violence spread, with some stories circulating widely in certain immigrant communities. While Minnesota Advocates was not able to verify that all of the incidents took place, these rumors gained significance in and of themselves by the fear they created and maintained in the communities in which they were circulated. A Sikh man told Minnesota Advocates of an incident in Eagan, a suburb of Minnesota, on September 16, 2001, when a Sikh woman headed for her car after grocery shopping. Three men approached her from behind and pushed her up against her car. One of them punched her in the stomach, elbowed her on the back, and stated, “That’s

what you people deserve.”¹⁹ This incident was also officially reported to the Sikh Coalition and posted on their website. She reported the crime to the police, and Minnesota Advocates was told that the woman left Minnesota soon thereafter. 041:2-3. Another Sikh professional noted that the assault was one of the first things he was informed of when inquiring of the Sikh community in Minnesota after moving to the Twin Cities from the East Coast in 2003. 049:1.

A Minnesota Advocates Board member from India paid for the boot to be removed from his friend’s car because it had been parked illegally outside of a Minneapolis restaurant. He asked the towing company for a receipt and was told, “Not until you give me the f**king receipt for the World Trade Center.” 047:5. His friend, a Caucasian woman, called the police, who came and spoke with her and the towing company. The Board member said, “The police didn’t make eye contact with me. I was the reason they came. . . . To be made completely invisible is worse. . . .” 047:6. When asked if he got the police officers’ badge numbers or followed up with a complaint, he said that he did not. “It was too close to 9/11.” 047:6. He observed that before 9/11 “people were racist, and it was nothing new. Post-9/11, there is permission to insult.” 047:6.

While assessing the impact of 9/11, it was reported to Minnesota Advocates that significant effects of 9/11 continue to be felt five years later. In fact, there was a growing belief that 9/11 precipitated permanent change. Many Minnesotans from refugee, immigrant, and religious minority communities said that since 9/11, they are viewed as potential terrorists. One Muslim professional who has lived in the U.S. for over 30 years told Minnesota Advocates that 9/11 has

¹⁸ Balbir Singh Sodhi, a forty-nine-year-old turbaned Sikh and father of three, was shot and killed at his gas station in Arizona on September 15, 2002. Sodhi’s alleged killer had bragged at a local bar of his intention to “kill the ragheads responsible for September 11.” See *id.*

¹⁹ SIKH COALITION, BIAS INCIDENTS, <http://www.sikhcoalition.org/hatecrime.asp?mainaction=viewreport&reportid=74>.

“changed everything for America for all time to come. This is a new country.” 017:4.

A Muslim woman indicated that the lasting impact of 9/11 has been the change in people’s reactions. She acknowledged that there was anti-Muslim sentiment before 9/11 but that it was not “politically correct” to voice such views. “You had to be tolerant. Now, after September 11, it opened the floodgates. It came out. It is OK to discriminate. That was the aftermath. In Minnesota, people are [afraid] if they see a Muslim. That’s the negative result.” 002:9. An Arab Muslim man reported that now people feel that they have a “license to act on their prejudices.” 020:1.

II. HATE CRIMES

9/11 brought America's bigotries to the forefront.
Arab Muslim Male, 020:1.

With the passage of the Hate Crime Statistics Act of 1990,²⁰ Congress mandated the collection of data on bias-motivated crimes because of a person's race, religion, sexual orientation, ethnicity, or national origin, and, since 1996, disability. Nationally, the FBI's data indicate that the number of reported "anti-Islamic" crimes²¹ increased from 28 in 2000 to 481 in 2001, an increase of over 1600%. In addition, the number of hate crimes directed at individuals on the basis of their ethnicity or national origin doubled—from 911 in 2000 to 2,098 in 2001.²² Cities in Minnesota experienced increases in certain hate crimes as well.²³ In 2005, the latest full year in which statistics were compiled, Minnesota ranked 9th highest in bias-related incidents reported to authorities and 8th highest in crimes based on ethnicity.²⁴ Minnesota's population is the 21st largest in the country.²⁵

A. CRIMES AGAINST THE PERSON

The widely publicized bus stop assault of Ali W. Ali, an elder in the Somali community, occurred in the immediate aftermath of 9/11. Mr. Ali died nine days

²⁰ 28 U.S.C. § 534 (2006).

²¹ These are defined as crimes motivated by bias toward the Islamic religion. See FED. BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTING, HATE CRIMES (foreword) (2001), <http://www.fbi.gov/ucr/01hate.pdf>.

²² *Id.*

²³ See *id.* For example, reports of hate crimes in Minneapolis increased from 30 in 2000 to 34 in 2001 on account of race; from 2 in 2000 to 13 in 2001 on account of religion; and from 0 in 2000 to 2 in 2001 on account of ethnicity.

²⁴ See FED. BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTING, HATE CRIMES (foreword) (2005), <http://www.fbi.gov/ucr/hc2005/index.html>.

²⁵ U.S. CENSUS BUREAU, ANNUAL ESTIMATES OF THE POPULATION FOR THE UNITED STATES, REGIONS, STATES, AND FOR PUERTO RICO: APRIL 1, 2000 TO JULY 1, 2006 (NST-EST2006-01), <http://www.census.gov/popest/states/NST-ann-est.html>.

after being punched in the head while standing at a bus stop in Minneapolis on October 15, 2001. After originally finding that Mr. Ali had died of natural causes, the Hennepin County medical examiner's office ruled his death a homicide in January 2002.²⁶ The assailant has not been found. Many reported concern to Minnesota Advocates about the Minneapolis *Star Tribune's* front-page article a day before Mr. Ali's attack regarding an alleged, but unsubstantiated, connection between a terrorist group and Somalis who used money-transfer services in Minnesota.²⁷ While Somali leaders acknowledge that it is still not entirely clear why Mr. Ali was killed or whether it was related to 9/11, they noted that press coverage created anger against, and increased fear within, their community.²⁸ 005:3. Several Somalis reported to Minnesota Advocates that they agree with Mr. Ali's family that his murder was a hate crime.²⁹ 005:4; 036:6.

A Muslim professional described an ordeal she and her husband had with their neighbor in 2004:

We had to get a restraining order against our neighbor because he called us "terrorists" and

²⁶ HUMAN RIGHTS WATCH, *supra* note 17, at 19-20; David Chanen, Bus Stop Assault is Ruled Homicide; Somali Victim's Family Maintains it was Hate Crime, STAR TRIB. (Minneapolis, Minn.), Jan. 9, 2002, at B1.

²⁷ Greg Gordon, Terror Group May Have Received Local Funds: Some Minnesota Somalis Thought Al-Itihaad Was a Charity, STAR TRIB. (Minneapolis, Minn.), Oct. 14, 2001, at A1.

²⁸ See, e.g., Kate Parry, Newspaper Needs to Improve Coverage of Minnesota Somalis: Three Editors Offer Resources to Help the Star Tribune Reflect the Diversity of Views Among Members of the Nation's Largest Somali Population, STAR TRIB. (Minneapolis, Minn.), Jan. 22, 2006, at A2.

²⁹ Minnesota statutes §§ 626.5531 and 626.8451 (2006) identify certain crimes as hate and bias-motivated when they are committed against a person or group because of race, color, religion, gender, sexual orientation, age, disability, or national origin of the victim. A bias-motivated crime allows for a penalty enhancement to such criminal acts as assault, trespass, damage to property, harassment, or stalking. Under Minnesota law, Minn. Stat. § 626.5531, police officers responding to calls must classify any crime as a bias crime if either the officer or the victim believes that bias was a motivating factor.

threw pork in our backyard. He said, “Stay off my land, you f**king Muslim.”

Then a week later he shouted, “terrorist” at us. He was still doing the same stuff. He came over to us on his motorcycle. We called the police again, and they came and talked to him.

The next day, my husband was playing Arabic music while studying. The neighbor called the cops to complain about the noise. The police officer came, and my husband explained the situation. The officer knew that we had called twice before. He suggested that we get an order for protection.

It got to the point where it was dangerous. We had mail that was opened. He threw pork onto our backyard. We also got a letter from [someone with] a generic Arabic name saying, “People like you don’t live in Woodbury. Move to South Minneapolis.” I was keeping a log and recording everything that happened. I also wrote to our homeowners association. We had a security system installed.

The straw that broke the camel’s back was when he came...to our yard. He said, “Stay off the Christian side you f**king Muslims.” We called an officer, and he told us we needed an order for protection. So we filed for an order of protection in Washington County.³⁰

The harassment continued with the couple facing almost daily threats from their next-door neighbor.

I was in total panic mode. I would often be home alone, and I’m not a big person and couldn’t defend myself. I would wonder: Can the police get here fast enough? I had a bat in my left hand for

³⁰ The interviewee here likely sought a Harassment Restraining Order (HRO) under Minn. Stat. § 609.748 (2006). Harassment is defined, in part, as the repeated, intrusive, or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another regardless of the relationship between the actor and the intended target. An Order for Protection (OFP) is similar in many ways to an HRO, but may only be obtained against a “family or household member,” including spouses and former spouses, parents, children, persons related by blood, persons who have a child together, or persons involved in a significant romantic or sexual relationship. Minn. Stat. § 518B.01 (2006). The effect of the HRO or OFP is to prohibit the respondent from having direct or indirect contact with the petitioner during the time the order is in effect.

over a month. . . . Finally, we got the order instated.

My neighbor had [guests] over who were looking through the fence. The neighbor had been served [the order]. He said to them, “There’s the terrorist.” He said it three times. So we called the cops, and he got arrested. He was shouting never to live next to “damn Arabs” and that he would have to put his house up for sale.

As she and her husband were evaluating options for how best to get the harassment to end, she realized, “[I] don’t want to go to trial. Instead, I want him to go to diversity training. I’m willing to let this go because I’m Muslim.” 002:3-5. Instead of a trial, the neighbor was ordered to pay a fine and to write an essay about diversity.

My husband and I are very happy with the outcome and will be curious to read the essay. We both felt like this was a resolution that would force him to really think about what he did. I am just glad that it is over, and we can finally relax. This weekend we were grilling outside and were thinking about how this was the first time we have really enjoyed our backyard.

002:5.

Another incident contributed to the climate of fear in Minnesota’s Muslim community. A Muslim professional told Minnesota Advocates of a well-known assault that happened to a couple while driving on Central Avenue in Minneapolis. While at a traffic light, the driver of another car got out, removed the husband, and severely beat him. She believes that the wife’s hijab³¹ triggered the man’s anger. The wife jumped out of the car and tried to help her husband. Other drivers witnessed the beating, but no one stopped to intervene. After the incident, the husband suffered

³¹ Hijab is the word used in the Islamic context for the practice of dressing modestly. Opinions on what exactly constitutes hijab vary among Muslims. Throughout this report Minnesota Advocates will refer to “hijab” to mean a headscarf worn today by many Muslim women in Minnesota and around the world.

brain damage, their young daughter became mute, and the wife became severely depressed. The perpetrator was sentenced only to community service, causing them to feel betrayed by the system. It was reported to Minnesota Advocates that the wife stopped wearing the hijab and that she is in fear everywhere she goes. 016:3.

B. CRIMES AGAINST PROPERTY

Vandalism and graffiti were reported at Twin Cities' mosques and other places of worship. A partially constructed shed outside the mosque in Columbia Heights was burned in October 2004 in an apparent arson attempt. Members of the mosque called the police and issued a press release. The police came to investigate, and a member of the mosque told Minnesota Advocates that the police were not as effective as they could have been. "I thought, if this is a scene of a crime, why didn't you tape the place off?" 017:3.

In the two weeks prior to this arson attempt, paintballs were shot at the Islamic Center of Minnesota in Fridley, and rotten eggs were thrown at worshippers in Columbia Heights.³² Members of the mosques reported that this was worse than anything that happened immediately after 9/11. Even though the incidents happened several years after 9/11, members of the mosques believe they are related. "There is a three-year gap, but we make a strong argument that it is related [to 9/11]. People tend to interlink world events. When there are bombs in Iraq, that is an extension of 9/11. People feed off other world events." 003:2. The vandals have not been apprehended.

³² Scott Carlson, Muslims Fear Crime: Weekend Fire Latest Example of Vandalism Targeting Community, PIONEER PRESS (St. Paul, Minn.), Oct. 4, 2004, at B1 & B5; Chao Xiong, Twin Cities' Muslims Detail Vandalism Attacks, STAR TRIB. (Minneapolis, Minn.), Oct. 4, 2004, at B3.

Several incidents of hate-filled graffiti in immigrant-owned businesses in St. Cloud were also reported after 9/11. An Ethiopian high school student told Minnesota Advocates:

My uncle owns a store in St. Cloud. It closes at 11 p.m. He goes home, but he sees letters on his store, [which spell out] "Get out of St. Cloud." He was afraid something is going to happen. A second time there was writing, and then a third time there was smashed eggs in front of the store.³³ It was a good thing he had a lot of friends who were Americans. The police came and looked and said, "Stay there and keep up the good work." Now he is still afraid, and he might move to Minneapolis. He is afraid he might be shot. The police and the Americans made him stay. Now it is better. But it is very hard to have a business in St. Cloud.

208:1.

A St. Cloud law enforcement officer told Minnesota Advocates that they have increased their resources to try to solve hate crimes. "But it is difficult because there is generally not much evidence or many witnesses to help guide the investigation." 218:2. He indicated that the unsolved cases lead some in the community to believe that such cases are not aggressively pursued or that the police cannot solve them. "Those beliefs alone lead to more stress on the community [and the belief] that the situation is starting to deteriorate." 218:2.

C. CRIMES AGAINST NON-MUSLIMS

While many of the post-9/11 incidents reported to Minnesota Advocates affected Muslims,³⁴ there were

³³ Kelly Scott, Vandalized Businesses' Owners Welcome Support, ST. CLOUD TIMES, (St. Cloud, Minn.), Dec. 18, 2002, at A1; Kate Kompas, Vandals Deface Two Minority Businesses, ST. CLOUD TIMES, (St. Cloud, Minn.), Dec. 17, 2002, at A1.

³⁴ COUNCIL ON AMERICAN-ISLAMIC RELATIONS, THE STATUS OF MUSLIM CIVIL RIGHTS IN THE U.S. IN 2005 (2005), <http://www.cair-net.org/asp/2005CivilRightsReport.pdf> (reporting that anti-Muslim hate crimes jumped 52% in 2004 with more than 1,500 crimes reported nationally).

also reports of hate crimes against non-Muslim Arab-Americans, Latinos, Sikhs, and Hmong. A Vietnamese high school student in St. Cloud told Minnesota Advocates about the events surrounding her father's death while the family was ice fishing:

In 2002, my dad passed away. He fell through the ice. My little brother, ten years old, was trying to get help. [My brother and cousin] were two miles away from shore. They came across a white man fishing. The boys were crying, "Help my dad!" But the white guy said, "You f**king Asian people deserve to die" and didn't help them. They kept walking until they got to a house to get help.

208:3.

The efforts were too late, and her father died. The girl reported that the reaction her brother and cousin received from the other fisherman made it even harder to deal with the loss of their father. 208:3.

A Hmong organization in St. Paul received racist letters and e-mails relating to the resettlement in Minnesota of Hmong refugees from Thailand and the 2004 hunting incident in Wisconsin that resulted in the killing of six hunters by Chai Soua Vang. The letters said things such as "Hmong are destroying our neighborhood" and that they were taking away health care and Social Security from "Americans." The organization turned the written correspondence over to the Saint Paul Police Department. 014:1. A Muslim woman told Minnesota Advocates about bumper stickers that say, "Save a hunter, kill a Mung [sic]"³⁵ and indicated that such racism destroys one's sense of identity. She stated, "A whole new generation is being born based on hatred." 016:4.

³⁵ Alice L. Chang, Asian-American, Other Groups Hope to Avert Bias, MILWAUKEE J. SENTINEL, June 24, 2005, at B3; Mankato Store to Pull "Mung" Bumper Stickers, STAR TRIB. (Minneapolis, Minn.), Dec. 14, 2004.

III. FEDERAL LAW ENFORCEMENT

Either you are with us or against us.

Arab Muslim Male, reflecting on words he believes have pitted Americans against one another. 020:4.

The events of 9/11 led to the most massive government restructuring since World War II. The Department of Homeland Security (DHS) was created,³⁶ with more than 175,000 employees, a \$42.7 billion budget for FY2007, and a six-point agenda to enhance security.³⁷

The FBI works closely with DHS, whose mandate is to better protect the United States. An FBI representative in Minneapolis stated, "We will prevent terrorist attacks." RT4:2. While the FBI is the investigative arm of the Department of Justice, it works closely with the DHS on counterterrorism; the FBI is most readily identified by interviewees as the federal law enforcement agency.

The FBI's Minneapolis Task Force has a national reputation as one of the most active and successful field offices, with five arrests leading to prosecution of people who are classified as al-Qaeda operatives or Muslim extremists.³⁸ Investigations by the FBI in

Minnesota have led to charges against Zacarias Moussaoui,³⁹ Mohammed Warsame,⁴⁰ and Ilyas Ali.⁴¹

Minnesota Advocates heard many stories about the FBI's aggressive approach to homeland security in Minnesota. A Pakistani student at St. Cloud State University told Minnesota Advocates of the arrest of a fellow Pakistani student on September 12, 2001. "Agents were over at his house, and he was taken in a black Suburban. For one year, nobody knew where he was. He had a court hearing, and they could not prove that he had any involvement under the anti-terrorism statutes. He was released." 211:4.

A Muslim woman in the Twin Cities reported that the husband of a close friend was stopped and questioned by the FBI while on his way home from work soon after 9/11. She reported that his cell phone was taken, he was transferred from his car to a government van, and he was driven 45 minutes away to be interviewed. He was shown pictures of prominent Muslim businessmen in Columbia Heights [Minnesota] and asked about their activities. He was not able to call his wife until the following day and was instructed to tell nobody but her. The family was reportedly shaken up by the incident,

³⁶ Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002).

³⁷ Press Release, Dep't of Homeland Security, Homeland Security Secretary Michael Chertoff Announces Six-Point Agenda for Dep't of Homeland Security (July 13, 2005), http://www.dhs.gov/xnews/releases/press_release_0703.shtm, (stating that the agenda focuses on increasing overall preparedness, particularly for catastrophic events; creating better transportation security systems to move people and cargo more securely and efficiently; strengthening border security and interior enforcement; reforming immigration processes; and enhancing information sharing).

³⁸ David Chanen & Greg Gordon, Minneapolis FBI Racks Up Terror Arrests, STAR TRIB. (Minneapolis, Minn.), July 22, 2004, at A1. The Transactional Records Access Clearinghouse (TRAC) reports that across the country, the majority of prosecutions for terrorism-related activities are for minor immigration violations, such as making false/fraudulent statements. TRAC Reports, CRIMINAL TERRORISM ENFORCEMENT IN THE UNITED STATES

DURING THE FIVE YEARS SINCE THE 9/11/01 TERRORIST ATTACKS (2006), <http://trac.syr.edu/tracreports/terrorism/169/>.

³⁹ Moussaoui was indicted on six counts of Conspiracy to Commit Acts of Terrorism Transcending National Boundaries; Conspiracy to Commit Aircraft Piracy; Conspiracy to Destroy Aircraft; Conspiracy to Use Weapons of Mass Destruction; Conspiracy to Murder United States Employees; and Conspiracy to Destroy Property. See Indictment, United States v. Moussaoui, (E.D. Va. Dec. 11, 2001), <http://www.usdoj.gov/ag/moussaouiindictment.htm>.

⁴⁰ Pam Louwagie, Minneapolis Terrorist Suspect Charges Amended, STAR TRIB. (Minneapolis, Minn.), June 23, 2005, at A1 (Warsame was charged with conspiring to provide material support to al-Qaeda, making false statements, and providing material support).

⁴¹ Ilyas Ali was charged with conspiracy to import and distribute heroin and hashish and of providing material support to al-Qaeda. Al-Qaeda Dealers Face U.S. Trial (BBC News broadcast, Jan. 6, 2003).

and the two women now are afraid to speak on the phone. RT1:4.

The interviewees describing these incidents did not identify the individuals involved. As a result, Minnesota Advocates was not able to corroborate these stories. Minnesota Advocates nonetheless included these stories in this report because they illustrate perceptions and fears in the community. In an interview, a representative of the FBI expressed frustration that fear prevented individuals from making specific allegations of misconduct by FBI agents because general complaints could not then be internally investigated. The agent reported law enforcement's concern that rumors will persist, but without specific facts, the FBI cannot investigate any problem agent who may be unprofessional or disrespectful of an individual's culture or legal rights. 034:5.

A. INDIVIDUAL FBI INTERVIEWS

FBI visits to workplaces were cited by interviewees to Minnesota Advocates as a significant cause of concern. A Twin Cities imam⁴² reported that FBI visits to one's office signal Homeland Security coming for that employee. For example, in one situation, [the FBI] stopped and asked to talk to a manager. "The company was scared. Human Resources wanted to talk about what was allowed. But [the FBI] went to look for the guy in his cubicle anyway. If the guy is not there, they leave the impression that if he is hiding, they will get him." 025:4. The imam believes that the FBI is going after people "to shake them up." 025:5.

Reports of FBI stops at the homes of Muslims in the Twin Cities were also made to Minnesota Advocates. 005:5; 008:4; 025:5. An imam received calls from

fellow Muslims who were "hauled away by the authorities" in the middle of the night. 020:3. He noted that some of these people "are not heard from again for a long while." This further heightens fear among many Muslims who are "authority-wary to begin with because of where they are from." 020:3.

A Somali man employed by a school district in the Twin Cities received an FBI visit to his home a day after inquiring into bus rentals for a school event. The agent proceeded to ask questions about why he needed the buses, where the group was going, and what organization he represented. The agent also asked what the Somali interviewee described as a series of "routine" questions, such as what he thinks of Saddam Hussein and Osama Bin Laden. He was most surprised by questions about what mosque he attends and from which imam he takes instruction as well as how he interprets certain passages of the Qur'an. RT4:3-4.

A Somali refugee resettlement coordinator in Rochester told Minnesota Advocates of an incident in which the FBI questioned a local Somali woman. He noted:

A lady we know was at [a Rochester] hospital one day taking care of her son who was paralyzed. . . . Well, it seems that she was talking in Somali with some family members and friends who came to see her son when a nurse or someone else heard them mentioning President Bush. When she went back home that day, lots of FBI agents were waiting for her. She hardly knew English at the time, so she couldn't understand what was going on. They took her computer, asked her hundreds of questions, checked her house, and finally left when they realized she was no terrorist. She was so scared; she didn't leave her house for a couple of months. We haven't seen her for a while now. We heard she wanted to go back to Somalia.

108:3.

⁴² From the Arabic word for leader, an imam is a recognized leader or a religious teacher in Islam. An imam is the male prayer leader at the mosque.

B. RELATIONSHIP BETWEEN THE FBI AND IMMIGRANT AND RELIGIOUS MINORITY COMMUNITIES

Another imam told Minnesota Advocates of quarterly meetings with the FBI to discuss developments in law enforcement efforts.⁴³ 036:2. The Somali communities of the Twin Cities, 005:5, and St. Cloud, 206:5, reported to Minnesota Advocates that they had also taken part in meetings with the FBI. An FBI official confirmed more than 90 meetings with Muslims and Minnesota immigrant communities since 9/11, including meetings in St. Cloud and Rochester. 043:1. A Somali organization director indicated that immediately after 9/11, the FBI appeared to focus on people in the U.S. with student visas, not on Somalis who had principally come as refugees. He noted, however, that FBI interviews within Minnesota's Somali community had increased,⁴⁴ with specific questions related to possible organizational ties to terrorism. 005:5. An FBI agent noted their efforts to tell leaders of the Somali community in advance of necessary interviews and to prevent counterproductive rumors. He indicated that the Somali community has been very cooperative with the FBI. 043:3.

Two Somali leaders have taken part in the FBI's Citizens' Academy⁴⁵ for an "inside look at the FBI." 043:3. One Muslim male interviewee who participated in the Citizens' Academy indicated that an FBI agent told his class that there are approximately 70,000 Somalis in Minnesota and that not all, but maybe 1,000, are "bad"—potential terrorists. 023:5. That same interviewee expressed unease to Minnesota Advocates

⁴³ David Schechter, I-TEAM: FBI, Muslims Build Trust to Fight Terror (WCCO television broadcast, Jan. 24, 2005), http://wcco.com/iteam/local_story_024233924.html.

⁴⁴ See, e.g., John Letzing, A Knock on the Door: Will FBI Contacts Keep Fearful Somalis Away From the Ballot Box?, CITY PAGES, Oct. 27, 2004.

⁴⁵ Citizens' Academy, Minneapolis Fed. Bureau of Investigation, <http://minneapolis.fbi.gov/>.

about the overly inclusive profile of a terrorist used by the FBI. While sitting in the Academy class, an agent indicated that a typical terrorist profile is (a) one who is part of the Muslim base; (b) a male aged 25-40; (c) who is outwardly religious; (d) has a solitary lifestyle; and (e) is suspicious of people. 023:6. The interviewee reported that he thought, "That could be me." 023:6.

An FBI official at a public presentation confirmed their attempts at outreach, stating, "We have to enforce laws to prevent terrorist attacks. We don't want to offend anybody—that's not our line of business." RT4:3. The official said that the FBI wants people to talk to them if there are concerns in the community, and to facilitate that, the FBI has to work with the communities. RT4:3. The official explained that meetings are meant to build trust between the Muslim and immigrant communities and the FBI. An imam, however, indicated to Minnesota Advocates that certain FBI tactics are counterproductive. He reported harassment of a fellow imam and his pregnant wife by the FBI and embarrassment of an imam in front of his colleagues by the FBI's visit to his workplace. 036:2-3. The imam stated that the FBI cannot build trust by harassing people and that such allegations of harassment are weakening the bridge between the FBI and the community. He is hopeful that the FBI will investigate these complaints. 036:3.

It is difficult for Minnesota Advocates to assess the extent of FBI visits to mosques,⁴⁶ workplaces, and homes of local Muslims. One Somali community leader noted that people may be stopped by the FBI but are too afraid to tell anyone about it. Even after local imams distributed phone numbers of *pro bono* lawyers⁴⁷ and information about how to file a

⁴⁶ See discussion *infra* at § VIII. Religious and Political Participation.

⁴⁷ Minnesota Advocates is part of a consortium of legal professionals with expertise in criminal and immigration law that

complaint, people felt that things would get worse for them if they did so. As a result, he believes that problems with the FBI have been underreported. 005:5.

Reports to Minnesota Advocates indicate no sign of change to increased FBI scrutiny of Minnesota's Muslim community as part of the U.S. "War on Terror," particularly its large Somali population. One imam, responding to reports from his worshippers of increased FBI scrutiny, asked a representative of the U.S. Attorneys' Office, "When is it going to stop?" The attorney responded, "When the Middle Eastern problem is over." The imam retorted, "It has been on-going for 50 years, and it could be another 50 years." 025:8.

provides pro bono representation during FBI and ICE interviews and to advise non-citizen Muslim men regarding registration requirements.

IV. PROFILING

Hey, there's one of them.

Directed at a Muslim female, 028:3.

It wasn't Eskimos who hijacked those planes.

FBI representative at public meeting sponsored by Minnesota Advocates in April 2003.

These people just need to realize that things have changed.

Minnesota Advocates' funder, discussing impact of 9/11 on clients.

In June 2003, nearly two years after the 9/11 attacks and following reports of racial profiling, the Department of Justice issued policy guidance to ban federal law enforcement officials from engaging in racial profiling to implement President George W. Bush's directive that profiling is "wrong, and we will end it in America."⁴⁸ Specifically, the guidance provides that in routine law enforcement decisions, such as deciding which motorists to stop for traffic infractions, consideration of the driver's race or ethnicity is absolutely forbidden. Federal law enforcement officers may continue to rely upon specific descriptions of the physical appearance of criminal suspects, if a specific description exists in any given case. The directive recognized that terrorist identification is an essential component of the nation's security and that race and ethnicity may be used in such identification, but only to the extent permitted by the nation's laws and the Constitution.⁴⁹

Racial profiling is illegal in Minnesota. In 2001, the State Legislature enacted Minn. Stat. § 626.8471 to prohibit racial profiling after finding that both the reality and the perception of racial profiling alienate people from police, hindering community policing efforts and causing law enforcement to lose credibility and trust

⁴⁸ Press Release, Dep't of Justice, Justice Department Issues Policy Guidance to Ban Racial Profiling (June 17, 2003), http://www.usdoj.gov/opa/pr/2003/June/03_crt_355.htm.

⁴⁹ *Id.*

among the people it is sworn to protect and serve.⁵⁰ Further, the statute states that race, ethnicity, or national origin alone never provide sufficient reason for police stops. State legislation also required voluntary statewide racial profiling studies, new police training curricula, and efforts to recruit minorities and increase their representation in the police force.⁵¹ The racial profiling studies conducted in Minnesota's counties,⁵² as well as a report on Saint Cloud as a single jurisdiction,⁵³ revealed that drivers of color are over-represented among those stopped, over-represented among those searched, and under-represented among those found to have contraband on their person or in their vehicle as a result of being searched.⁵⁴

A. PROFILING BY PUBLIC ACTORS

Despite legislation making profiling illegal, race, national origin, and religion were reported to Minnesota Advocates to be increasingly salient factors in routine law enforcement decisions after 9/11.

For example, a Muslim imam in the Twin Cities told Minnesota Advocates:

⁵⁰ Minn. Stat. § 626.8471, subd. 1 (2006). Purpose. The legislature finds that the reality or public perception of racial profiling alienates people from police, hinders community policing efforts, and causes law enforcement to lose credibility and trust among the people law enforcement is sworn to protect and serve. No stop initiated by a peace officer should be made without a legitimate reason; race, ethnicity, or national origin alone should never provide a sufficient reason. Law enforcement policies and training programs must emphasize the need to respect the balance between the rights of all persons to be free from unreasonable governmental intrusions and law enforcement's need to enforce the law.

⁵¹ Minn. Stat. § 626.951 (2006).

⁵² INST. ON RACE & POVERTY, COUNCIL ON CRIME & JUSTICE, MINNESOTA STATEWIDE RACIAL PROFILING REPORT: ALL PARTICIPATING JURISDICTIONS (2003), <http://www1.umn.edu/irp/racialprof/aggregate%20report%2092303.pdf>.

⁵³ INST. ON RACE & POVERTY, COUNCIL ON CRIME & JUSTICE, MINNESOTA STATEWIDE RACIAL PROFILING REPORT: SAINT CLOUD (2003), <http://www.irpumn.org/uls/resources/projects/St%20Cloud-Final.pdf>.

⁵⁴ See *supra* notes 52 & 53.

I've been stopped 40 times since September 11. So there's no longer a problem with "flying while Muslim." It's also driving. Every time [the Department of Homeland Security] raises the alert from yellow to orange, I get pulled over more.⁵⁵ If the cops see a Muslim with a beard, they have to stop. This is especially the case with active Muslims. I've been stopped often after 10 p.m. It is often when the police officer is driving in the opposite direction.

025:3.

He indicated that the stated reasons given by law enforcement for pulling him over include reckless driving, driving while talking on his cell phone, speeding, failing to signal, signaling too late, and a routine stop to check his driver's license. 025:4.

Non-Muslims also reported profiling to Minnesota Advocates after 9/11. A Latina in Rochester stated, "No doubt about it. You are more likely to get stopped if you are brown."⁵⁶ She questioned whether law enforcement in Rochester was prepared to police people of diverse cultures. 103:2.

A Caucasian interfaith director told Minnesota Advocates that profiling affects all communities of color, even more so after 9/11. He described situations where profiling might have been based on skin color or perceived immigration status. In one such situation, a U.S.-born male of South Asian descent went out to move his car during a snow emergency in South Minneapolis. The police stopped him, forced him to "spread eagle," and detained him while checking his identity. 010:4.

⁵⁵ The interviewee told Minnesota Advocates that once the threat level returns to yellow, he is no longer pulled over. Overall, he reported being stopped an average of five times in an orange alert period and receiving one or two tickets. 025:4.

⁵⁶ "Latinos were stopped at nearly twice the expected rate." INST. ON RACE & POVERTY, COUNCIL ON CRIME & JUSTICE, MINNESOTA STATEWIDE RACIAL PROFILING REPORT: ROCHESTER 1 (2003), <http://www.irpumn.org/uls/resources/projects/Rochester-final.pdf>.

B. PROFILING BY PRIVATE ACTORS

Apart from local, state, and federal government actors, interviewees told Minnesota Advocates about situations where they felt there was profiling among private actors. Minnesotans from refugee, immigrant, and religious minority communities reported heightened suspicion, including being watched or followed when in private business establishments. 021:3.

A professional Muslim woman wearing a hijab recalled the time that she and her husband were followed in a beauty store in a suburban shopping mall after 9/11. "I was looking at the perfume. My husband noticed that a sales clerk was following us. She was about five feet behind us, and every time we moved, she followed. At the end, I actually bought something." 002:1.

This woman chose not to follow-up by speaking to a store manager or by filing a formal complaint, assuming that it would be ineffective. "It's not that uncommon to be followed," she told Minnesota Advocates. 002:1.

Minnesota Advocates was uniformly told that people with visible religious dress were singled out after 9/11 in public places and while using public transit. A social worker noted, "Muslim women in particular feel that their mode of dress—their headscarves—are resented more than before." 010:1. A Muslim professional noted, "It seems like after 9/11, those who used to wear hijab have stopped wearing it. I did not, but I know a lot who have out of fear." 016:3. A Muslim university student has received "weird looks" when wearing a hijab. Her reception after 9/11 became less sympathetic; she characterized it as cold and rude. She reported being called a "bitch" while reading the newspaper and talking about 9/11 on the public bus. 018:1.

A Vietnamese student in a St. Cloud high school told her class and Minnesota Advocates about a store policy explicitly using race to observe its customers:

I used to work at [a discount store] and quit for one reason. . . . Every time an Asian came in, they sent me to [check on him or her]. I asked, "Why do you always send me? Why always Asians? Have you seen them take anything?" There was no good answer. I knew the people they asked me to follow—one was my sister! Are you going to accuse me of stealing as an employee? . . . I was singled out. I was the only minority who worked there. I didn't feel comfortable. Why did they single out minorities?

208:3.

V. TRAVEL/FREEDOM OF MOVEMENT

I am always stopped by a random check.
Pakistani university student in St. Cloud, 211:2.

A. AIR TRAVEL

Minnesotans from immigrant, refugee, and religious minority communities reported that 9/11 has considerably changed how they travel. The lighted message board outside the Minneapolis/St. Paul International Airport (MSP) urging drivers to call 9-1-1 to report any suspicious activity, for example, was cited by a Hindu Indian lawful permanent resident as contributing to the “climate of fear” after 9/11. RT2:1.

A Muslim businessman whose work requires regular interaction with clients around the world told Minnesota Advocates that he has greatly reduced his air travel since 9/11 to avoid the possibility of trouble. He now drives when possible or asks business associates to travel to Minnesota. 020:2.

Minnesota Advocates heard that delays were routine, particularly for Muslim men. A Pakistani graduate student in the Twin Cities said that shortly after 9/11 he was held in an airport in California for three days. 009:1. Delays of one to two days are still “normal” for him and fellow Muslim students. 009:2. A young professional Muslim told Minnesota Advocates that she gets to the airport early when traveling with her family because her brother has a beard and a common Muslim name. 003:6.

Several Muslims indicated that their names may be the same as or similar to others on watch lists, creating “false positives” and causing delay.⁵⁷ The

⁵⁷ The Transportation Security Administration has implemented a clearance procedure which distinguishes passengers from persons who are in fact on the Watch Lists by placing their names and identifying information in a cleared portion of the Lists.

Transportation Security Administration (TSA) is authorized by law to maintain watch lists of individuals suspected of posing “a risk of air piracy or terrorism or a threat to airline or passenger safety.”⁵⁸ Such watch lists have been in existence and administered by the FBI since 1990.⁵⁹ The names of people on the lists have been withheld.⁶⁰ An imam in the Twin Cities who reported that he is on such a list arrives at the airport three to four hours before his flight departs. He told Minnesota Advocates that he is always asked the same questions by the same airport employees and that he gives the same answers each time. 036:3.

1. SEARCHES INCONSISTENT WITH TSA GUIDELINES

A Muslim university student who has lived in Minnesota since age seven and who identifies herself as Kenyan and Ugandan was told to remove her hijab when traveling to Canada in 2004. She reported requesting a separate room, which was refused by the TSA agents at MSP. She described the agents as rude and said they made her partially remove her hijab in front of male security guards even though an empty room and a female TSA agent were available.⁶¹ 018:2. Upon

⁵⁸ Aviation Security Screening Records, 68 Fed. Reg. 2101 (Jan. 15, 2003).

⁵⁹ Documents released by the TSA after 9/11 indicate that they operate two lists: a “no fly” list and a “selectee” list, which requires the passenger to go through additional security measures. See Memorandum, TSA “Watchlists,” U.S. Dep’t of Transp. (Oct. 16, 2002), http://www.epic.org/foia_docs/airtravel/memo-10-16-02.pdf. A “no fly” match requires the agent to call a law enforcement officer to detain and question the passenger; a “selectee” receives additional screening at security. *Id.*

⁶⁰ The National Counterterrorism Center oversees a central database of 325,000 names of alleged international terrorism suspects or people who aid them. This number has more than quadrupled since 2003 and contains U.S. citizens. Names from the Counterterrorism Center are provided to the FBI’s Terrorist Screening Center, which provides names for TSA watch lists. See Walter Pincus & Dan Eggen, 325,000 Names on Terrorism List, WASH. POST, Feb. 15, 2006, at A1.

⁶¹ The Department of Transportation made clear that “selecting a woman for an inspection solely because her hair is covered or she is wearing a veil, as some Muslim women do, is illegal

return from Canada, an airport employee approached her, marked her customs form, and directed her to a separate room where her bags were searched. She told Minnesota Advocates that she believes the only reason she was pulled aside is that she was wearing a hijab. 018:2. She missed her connecting flight.

A Sikh man in Minneapolis scheduled to travel to a conference in Texas on September 12, 2001, made his first post-9/11 flight when the conference was rescheduled to early January 2002. He told Minnesota Advocates that he received extra scrutiny at the local airport, which he had never experienced before. Even though he did not set off the metal detector, "The [airport screeners] made me open my turban so it was reduced to a sheet. They had to lay it flat and looked at it carefully to make sure there wasn't a weapon or explosive hidden. I did ask for privacy, and the local agents complied." 041:5.

He has heard of similar searches in the case of other Sikhs at MSP,⁶² but he indicated that there has not been a lot of trouble:

The people at the Temple have received information from the TSA website, and they know the requirements and their rights. I leave early and try to have no metal⁶³ on me except for my

discrimination." If a search or inspection is necessary for safety or security reasons, whenever possible, screening personnel are to provide the person involved a choice of a public or private inspection and in front of female security personnel. See, e.g., Carrying Out Transportation Inspection and Safety Responsibilities in a Nondiscriminatory Manner, Dep't of Transp. (Oct. 12, 2001), <http://airconsumer.ost.dot.gov/rules/20011012.htm>; Guidance for Screeners and Other Security Personnel, Dep't of Transp. (Nov. 11, 2001), <http://airconsumer.ost.dot.gov/rules/20011116.htm>.

⁶² Dr. Jasjit Singh Ahluwalia reported the improper search and removal of his turban at MSP on October 25, 2001. SIKH COALITION, BIAS INCIDENT #217, Airport Security Requiring Removal of a Turban, <http://www.sikhcoalition.org/hatecrime.asp?mainaction=viewreport&reportid=217>.

⁶³ A kirpan is a sheathed sword, usually sharp and two-to-four inches in length. It is a mandatory article of faith for Sikhs and is usually carried on the person. Some Sikhs wear mini-kirpans that are not knives on necklaces. "These mini-kirpans are no more

[eye]glasses. I try to avoid the second level of the [security] check. I get through easily. If you are unprepared for travel, you will spend more time [in security].

041:5.

It was reported that many Sikhs routinely carry the TSA guidelines with them when they travel to avoid inappropriate searches.

2. "RANDOM" SEARCHES AT THE AIRPORT

Muslim interviewees uniformly reported increases in searches since 9/11.⁶⁴ While Minnesota Advocates cannot verify the numbers of searches, such reports indicate the fear and perception of how 9/11 has changed the travel experiences for Minnesota refugees, immigrants, and religious minorities. A female Muslim university student from Sudan said, "If you look at how many people are searched at the airport, the Muslims or Arabs will have been 'randomly chosen.' About 9 out of 10 times, I am selected and told that I was 'randomly selected.'" 026:3. A male Muslim student traveled frequently within the U.S. with his white middle-aged boss in 2003. He told Minnesota Advocates, "It was always the case that the computer randomly selected me, and my boss would go through. At the same time, I saw an 80-year-old white, American woman going through who was stopped and searched, so it could be a coin toss. But it happens every time. . . ." 004:4.

harmful than small crosses worn by some Christians and are permitted beyond screener checkpoints." See Fact Sheet, Answers to Frequently Asked Questions Concerning the Air Travel of People Who Are Or May Appear to Be of Arab, Middle Eastern or South Asian Descent and/or Muslim or Sikh, U.S. Dep't of Trans. (Nov. 19, 2001), <http://airconsumer.ost.dot.gov/rules/20011119.htm>.

⁶⁴ See, e.g., Eric Lipton, Significant Changes in Air Passenger Screening Lie Ahead, N.Y. TIMES, Dec. 1, 2005, at A28.

A female Muslim U.S. citizen returning to Minneapolis from a vacation in 2004 said that her ID was checked ten times in the Honolulu airport. "I'm not sure why." 002:8.

Non-Muslims, who may appear to be Muslim, also have reported an increase in "random" background checks and searches. An Asian-American school administrator, who was interned during the Second World War, told Minnesota Advocates that the TSA agents make many assumptions about him. On a recent domestic trip out of MSP he said, "I was checked three times, and, when I asked why, they said it was 'random.' Three times? I said, 'Bullshit. I'm a [school administrator]' and showed them my ID. There is harassment all along the way." 217:1.

An African immigrant traveling to California to see his family over Thanksgiving in 2005 was singled out for extra security while still 15 yards from the first line of TSA agents. While waiting for the TSA agents to finish searching his luggage, he noticed that the travelers pulled out for extra screening were all people of color. RT4:3. He reported that he had thought this profiling had stopped. He acknowledged the need for extra security after 9/11 but was alarmed by the "rude, abrupt, abrasive, and offensive" treatment from the TSA agents in MSP, treatment he did not experience from the agents in San Francisco upon return. RT4:3.

3. FOREIGN STUDENT TRAVEL

Minnesota Advocates heard of the increasing difficulties that foreign students experienced in airport security and immigration registration when continuing their education in Minnesota. A Pakistani student on an F-1 visa⁶⁵ told Minnesota Advocates that when he was departing to visit family in Pakistan after 9/11,

⁶⁵ An F-1 visa confers nonimmigrant student status for academic and language students.

"Immigration jokingly said, 'Maybe you have WMD strapped around your chest.' I can't joke. They can detain me without a phone call to a lawyer and jail me for 90 days. If I'm deported, my time here would be down the drain." 211:2.

The interviewee was completing the final year of his undergraduate degree at the time of the interview. In discussing his experiences since 9/11, he noted, "The immigration agents have too much discretion and should not be given that much power." 211:4. A male Muslim university student from Kenya reported that an immigration officer asked him if he was in the U.S. on a scholarship. "He said that we are using taxpayer's money. But I pay taxes too."⁶⁶ 004:2. As a result of the difficulties and hassles, one Arab student reported that many of his classmates are choosing not to travel home until they finish their schooling.⁶⁷ 038:2.

A Lebanese-born student with U.S. citizenship was subjected to secondary inspection⁶⁸ at MSP while returning from a visit to his family in France in August

⁶⁶ The head of the American Immigration Lawyers Association committee that works with Customs and Border Protection noted that most officers "are trying to do the right thing" but lack training in how to apply discretion. In some instances, she found that "officers seem newly emboldened by campaigns against illegal immigration to express their resentment of foreigners by denying or delaying entry whenever possible." Her business clients have reported remarks like, "You're just trying to take jobs away from Americans." Nina Bernstein, *Faulty Papers Can Put Travelers In Rough Hands at U.S. Border*, N.Y. TIMES, Feb. 10, 2006, at A1.

⁶⁷ Michelle Tan, *International Students Avoid Travel Overseas as Rules Tighten*, ST. CLOUD TIMES (St. Cloud, Minn.), Nov. 27, 2001, at A1.

⁶⁸ If the primary inspector cannot automatically verify information or the traveler does not have all of the required documentation, he or she may be escorted to an interview area known as "secondary inspection." Secondary inspection allows inspectors to conduct additional research in order to verify information. Verifications are done apart from the primary inspection lines so that an individual case will not cause delays for other arriving passengers. See U.S. CUSTOMS AND BORDER PROTECTION, *ARRIVAL PROCEDURES FOR STUDENTS AND EXCHANGE VISITORS* (Jan. 9, 2006), http://www.cbp.gov/linkhandler/cgov/travel/id_visa/student_visit_prog.ctt/student_visit_prog.doc.

2005. “I was taken out of line, and they made me wait for fifteen minutes before questioning me. I wasn’t coming from Iraq, I was coming from France.” The student describes the CBP agents as being “very meticulous,” using their “typical routine” of “repetitive questions.” 038:5. The immigration officer asked him to explain every entry and exit stamp in his passport and was “trying to trip me up” by getting an inconsistent response. 038:5. Then:

the officer started reading through my notebook. I’ve been traveling out of this country for twenty years now and I’ve always gotten a welcome back, but this time I didn’t. I tried telling him that I live in Minneapolis and study at [a private college] and that I play baseball. But the officer was really out of line, rude and aggressive in an almost sadistic way.⁶⁹ He gave me a complaint form in a “so I mistreated you, go ahead and complain” way. I wrote about how invasive and intrusive he was and went through the formality of mailing the form even though I knew nothing would come of it.

038:5.

When asked if he followed up on his complaint, he replied, “No, I don’t follow up on complaints anymore.”

038:5.

Since 9/11, it has become increasingly difficult for students from certain regions of the world to come to Minnesota to study. Student visas must be applied for and acquired prior to the start of school.⁷⁰ A Congressional staffer told Minnesota Advocates, “Students here are affected by more paperwork and

⁶⁹ Customs and Border Protection does not comment on individual cases, but has reported in the past, “Isolated incidents of rude and hostile conduct reflect poorly on our agency and our country and they are inconsistent with C.B.P. law enforcement professionalism.” See Bernstein, *supra* note 66. CBP officers process 86 million air travelers annually and enforce 400 different laws. Kelly Klundt, a spokesperson for CBP said, “there are unfortunately going to be a few instances that do not demonstrate perfect discretion.” *Id.*

⁷⁰ U.S. Dep’t of State, Student Visas, http://travel.state.gov/visa/temp/types/types_1268.html (last accessed Jan. 12, 2007).

security checks. If they study technology or are from China, they get the most scrutiny.”⁷¹ 029:2-3. A professor in St. Cloud observed that there is a more stringent screening process for students from Saudi Arabia and Iraq after 9/11. 215:1. A Muslim graduate student at the University of Minnesota noted appreciatively the school’s efforts to support challenges to proposed registration and reporting requirements. “Many students wonder why they should come here and study. They decide, ‘I don’t need to come and be scrutinized.’ It has also affected non-Muslim students and hurt enrollment.”⁷² 025:2. The student mentioned the constant address and phone number update requirements in place after 9/11,⁷³ and “if they don’t comply, they are suspect.” 025:2.

⁷¹ The General Accounting Office conducted a study to assess how long it takes a science student or scholar from a foreign country to obtain a visa and the factors contributing to the length of time. The Office recommended to the State Department ways to improve the security check process known as Visa Mantis, which is intended to prevent the transfer of sensitive technology. U.S. GEN. ACCOUNTING OFFICE, IMPROVEMENTS NEEDED TO REDUCE TIME TAKEN TO ADJUDICATE VISAS FOR SCIENCE STUDENTS AND SCHOLARS, (Report to the Chairman and Ranking Minority Member, Committee on Science, House of Representatives, Feb. 25, 2004), <http://www.gao.gov/new.items/d04371.pdf>.

⁷² The 2003-04 school year saw the first absolute decline in foreign student enrollments in the United States since the early 1970s. Reasons for the decline include real and perceived difficulties in obtaining student visas (especially in scientific and technical fields), rising U.S. tuition costs, vigorous recruitment activities by other English-speaking nations, and perceptions that international students may no longer be welcome in the U.S. See Mark F. Smith, Visa Reform 91 ACADEME 3 (2005). The 2005-06 school year shows that international student numbers are no longer declining, at least among the majority of responding institutions. See Press Release, New Survey Suggests Growth in New Enrollments of International Students at U.S. Colleges and Universities (Nov. 14, 2005), <http://opendoors.iienetwork.org/?p=69734> (“New enrollments of international students increased this fall [2005] from a year ago at 40% (388 institutions) of U.S. colleges and universities responding to a new survey Twenty-six percent (245) of the nearly 1,000 responding institutions experienced declines in newly enrolled international students, and 34% (328) report that new enrollments stayed about the same as [2004-05].”).

⁷³ All non-citizens who are required to be registered are also required to keep the Citizenship and Immigration Service (CIS) informed of their current address within ten days of any change. See U.S. CITIZENSHIP & IMMIGRATION SERVS., HOW DO I REPORT

Interviewees observed that visa restrictions for international students from principally Muslim countries have affected Minnesota's schools and economy.⁷⁴ A Pakistani student at St. Cloud State University (SCSU) told Minnesota Advocates in 2005,

I have not seen a new Pakistani student at SCSU in the last three years. There were 110-120 Pakistani students at 9/11; now there are 20-30. They don't get a visa. The U.K. has a more open visa policy. So does Australia. But here the process has too much red tape.

211:2 & 4.

As far as the economic costs of increased visa restrictions, this student noted, "I just heard a British representative on the radio mentioning that their foreign student enrollment has increased 500-600%. People who would have come to the U.S. are going to the U.K. or Australia. They have seen a jump in revenue." He noted that the change in U.S. policies creates "a loss for international students and for the people here."⁷⁵ 211:2. A Congressional staffer noted, "As far as the economic effects, there has been a loss of over \$10 billion to the U.S. economy in terms of tuition, housing, and other spending since September 11."⁷⁶ 029:3.

A CHANGE OF ADDRESS TO THE USCIS?, <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=9d686c854523d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=54519c7755cb9010VgnVCM10000045f3d6a1RCRD> (last accessed Jan. 12, 2007).

⁷⁴ The people in the U.S. who have been most affected by visa restrictions and special registration are non-Arab Muslims, in particular Pakistanis and Bangladeshis. Immigration Policy Center, Targets of Suspicion: The Impact of Post-9/11 Policies on Muslims, Arabs and South Asians in the United States, IN FOCUS, May 2004, at 7, <http://www.aifl.org/ipc/ipf051704.pdf>.

⁷⁵ Sam Dillon, U.S. Slips in Attracting the World's Best Students, N.Y. TIMES, Dec. 21, 2004, at A1.

⁷⁶ DEALING WITH FOREIGN STUDENTS AND SCHOLARS IN THE AGE OF TERRORISM: VISA BACKLOGS AND TRACKING SYSTEMS: HEARING BEFORE THE U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON SCIENCE, 108th Cong. (Mar. 26, 2003) (statement of David Ward, President of the American Council on Education):

A Christian student from Tanzania reported on her recent travel experience. When getting her visa renewed, she was asked if she had ever been in violation of student status. She responded, "no." She was not given any explanation by the agent, but she was told that she may be asked a lot of questions when she travels because of something showing up with her visa. She did have problems. When next returning to the U.S. from international travel, three different agents at MSP asked her the same questions in different ways. They kept checking her documents. She told them she was returning from fieldwork for a student research project, but they kept her there for an hour. The student told Minnesota Advocates that she feels like she constantly has to prove that she is not trying to do something illegal and is not out of status. 015:2. She still does not know what the concern was with her visa.

The Student and Exchange Visitor Information System (SEVIS)⁷⁷ adds new registration requirements for those select international students who do secure visas. SEVIS is the computerized system that collects and maintains information on the current status of non-immigrant students, exchange visitors, and their dependents during their stays in the U.S.⁷⁸ Failure to enroll in the program by a specified date or to maintain

According to the Institute for International Education, the nearly 583,000 international students who visit this country purchase some \$12 billion a year in goods and services. They do this when they pay tuition, rent an apartment, buy a pair of jeans, order a pizza, or go to a movie. Of course, like everyone else, international students and exchange visitors pay taxes on the goods and services they purchase. If they are allowed to work while they are here, they also pay federal and state income tax.

⁷⁷ SEVIS is a web-based system for maintaining information on international students and exchange visitors in the United States. SEVIS is administered by the Student and Exchange Visitor Program (SEVP), a division of U.S. Immigration and Customs Enforcement (ICE). Information on SEVIS is available at <http://www.ice.gov/sevis/sevisyearinreview.htm>.

⁷⁸ See Marisa Helms, New Database Tracks Foreign Students (Minn. Pub. Radio broadcast, Dec. 10, 2002).

a full course load could result in the students' violation of status and inability to complete their course of study.

A professor told Minnesota Advocates:

I know the [SEVIS] system was worked on even before 9/11. Not much was done, but post-9/11 there was recognition of the role of students in the [9/11] incident and an increased requirement for mandatory reports to ICE. If students leave to go home, they have to follow the rules to the letter.

215:2-3.

He noted that if the students do not comply, "They could go out and not come back in. Pre-9/11 and post-9/11 are like day and night." 215:3.

According to interviewees, the changes in visa access have not only affected universities, but they have also altered the landscape of some of Minnesota's communities and businesses, particularly in Rochester, which is home to the Mayo Clinic. For example, a Rochester public library employee told Minnesota Advocates, "Before 9/11, it was very common to see a lot of people from [Arabic-speaking] countries at the library. They would come here to read the newspapers or use Internet. They have disappeared now." 109:1. Media reports corroborate that the economy of Rochester has been negatively affected. The Mayo Clinic has traditionally had more international patients than any other U.S. health care facility, but 9/11 and the resulting difficulty for patients and their escorts to obtain visas⁷⁹ has hurt the Clinic's bottom line with effects felt throughout Rochester's economy.⁸⁰

⁷⁹ See Lee Hockstader, *Post-9/11 Visa Rules Keep Thousands From Coming to U.S.*, WASH. POST, Nov. 11, 2003, at A1.

⁸⁰ See Erin Galbally, *Mayo and Rochester Still Feel Loss of Middle Eastern Patients* (Minn. Pub. Radio broadcast, Sept. 8, 2003); Erin Galbally, *Mayo Clinic Sees Big Drop in Middle Eastern Patients* (Minn. Pub. Radio broadcast, Aug. 27, 2002).

B. LAND TRAVEL

1. INTERNATIONAL TRAVEL

Interviewees reported increased scrutiny of travelers who cross U.S. borders by land. Interviewees reported greater difficulty in crossing the northern border.⁸¹ A Muslim imam noted that Muslim scholars were stopped and fingerprinted at the Canadian border when traveling to a 2004 convention in Canada.

Border crossings put us in "no man's land." Whether it's on land or at the airport, we can be stopped and interrogated. They tell us that we're not in the U.S. and that it's an administrative process so you don't have rights, especially to an attorney.⁸² They can deny you entry even if you're a U.S. citizen.⁸³

025:3.

Changes in security along the southern border of the U.S. have also affected Minnesota's immigrant communities. A Latino lawyer noted that he has not heard many stories about air travel difficulties for Latinos after 9/11 but that border security is a different story. "It used to be routine for people to go back and forth between Mexico and other Latin American countries and the U.S. They would come in and work

⁸¹ Jon Bonné, *Huge Gaps Remain on Northern Border: One Agent Each 16 Miles, Data Shows; Little Change Since 9/11* (MSNBC television broadcast, July 2002), available at <http://www.msnbc.msn.com/id/3070731/from/RL.4/>.

⁸² An alien does not have a right to representation during primary or secondary inspection when he or she is seeking admission to the United States. See 8 C.F.R. § 292.5 (2007).

⁸³ U.S. Customs and Border Protection (CBP) officer's search authority is derived through 19 U.S.C. § 1467 and 19 C.F.R. § 162.6, which state that, "All persons, baggage and merchandise arriving in the Customs territory of the United States from places outside thereof are liable to inspection by a CBP officer." Unless exempt by diplomatic status, all travelers entering the U.S., including U.S. citizens, are required to participate in CBP processing. "CBP officers may, unfortunately, inconvenience law-abiding citizens in order to detect those involved in illicit activities." U.S. CUSTOMS & BORDER PATROL, CBP AUTHORITY TO SEARCH, http://www.cbp.gov/xp/cgov/travel/admissability/authority_to_search.xml (last accessed Jan. 9, 2007).

and go home.” 006:5. He reported to Minnesota Advocates that since 9/11, “you have to think carefully about travel. It is more hostile at the border.”⁸⁴ There are more government resources and a predatory environment on both sides of the border. It is riskier.” 006:5.

2. DOMESTIC TRAVEL

While dramatic changes to air and land travel across international borders have received much attention since 9/11, interviewees also reported significant changes to travel within Minnesota for immigrants, refugees, and religious minorities. The importance of being able to drive to and from work was frequently mentioned, particularly in St. Cloud and Rochester where public transportation is less extensive than in the Twin Cities. The key to this ability is a driver’s license, which new security restrictions after 9/11 have made increasingly difficult to obtain. Since 2003, Minnesota has required proof of legal immigration status to get a license.⁸⁵

C. DRIVER’S LICENSE DEBATE IN MINNESOTA

After 9/11, some of the individuals responsible for the attacks were reported to have had state-issued driver’s licenses that aided them in their activities. In response, an anti-terrorism bill was proposed in Minnesota’s 2002 legislative session that required driver’s license applicants to prove lawful presence in the U.S. and to link expiration of the driver’s license to expiration of an individual’s visa or other short-term admission

document.⁸⁶ After a contentious debate, the driver’s license provisions were not included in the final bill. Despite the legislature’s rejection of the proposal, the Department of Public Safety (DPS) promulgated rules to include immigration status on individual driver’s licenses. DPS bypassed normal rule-making procedures to implement the driver’s license changes without public comment and justified its actions with the claim that a fraudulently obtained Minnesota driver’s license may be used to facilitate a terrorist attack. The Minnesota Court of Appeals ultimately invalidated the DPS’s skirting of administrative procedural requirements and stated that the DPS failed to demonstrate “a particularly strong link between license regulation and the perpetration of terrorism crimes.”⁸⁷ The court held, however, that the “threat of terrorism to life, liberty, or property is beyond dispute,” and that DPS “sufficiently demonstrated both the seriousness and the immediacy of the threat of harm the rules purportedly address.”⁸⁸

Following the invalidation of the emergency rule-making by the Court of Appeals as inconsistent with procedural requirements, a hearing before an administrative law judge was held. The administrative law judge recommended that the rules be adopted on May 22, 2003. The words “status check” and a visa expiration date are now found on the license of visitors who are in Minnesota with temporary immigration status.⁸⁹ The meaning of these indicators is not well

⁸⁴ BORDER ACTION NETWORK, HATE OR HEROISM: VIGILANTES ON THE ARIZONA-MEXICO BORDER (2002), <http://www.borderaction.org/PDFs/BAN-Vigilante%20Report.pdf>; see also The Minuteman Project, <http://www.minutemanproject.com>.

⁸⁵ See Proof of Residency, MINN. R. 7410.0410. Non-citizens who present documents demonstrating lawful presence, which expire 30 days or more from the date of their application, receive a driver’s license with a “status check” printed on it in red ink and the date on which their visa expires. *Id.* at subd. 8.

⁸⁶ 9/11 Public Discourse Project, Fact Sheet, Driver’s Licenses, 9/11, and Intelligence Reform, (Dec. 3, 2004), http://www.9-11pdp.org/press/2004-12-03_factsheet.pdf.

⁸⁷ Jewish Cmty. Action v. Comm’r of Pub. Safety, 657 N.W.2d 604, 609 (Minn. Ct. App. 2003).

⁸⁸ *Id.*

⁸⁹ Drivers License Rule, Report of the Administrative Law Judge, Minnesota Office of Administrative Hearings for the Dep’t of Public Safety Driver and Vehicle Services Division, July 18, 2003 <http://www.state.mn.us/ebranch/oah/aljBase/240015360.rr.html>.

understood.⁹⁰ A community organizer who works extensively with Latinos reported that as soon as a person sees a driver's license with the red-lettered "status check," the person is reluctant to deal with the license holder, in part, because of a mistaken belief that it connects the license holder with terrorist activity. 019:1-2.

⁹⁰ For a more complete discussion of the driver's license debate, see *infra*, App. C, Proposed Minnesota Legislation.

VI. IMMIGRATION

Now it's one strike, and you're out.
Muslim imam, 026:1.

A. REFUGEE PROTECTION

The number of refugees accepted by the U.S. government for resettlement dramatically declined after 9/11. A director of a refugee resettlement organization in Rochester told Minnesota Advocates, "Prior to September 11, we handled 250 cases a year. After September 11, it was down to 30." 101:1. An English as a Second Language (ESL) program director in St. Cloud noted, "We need to realize that the last time the doors were open in Minnesota to refugees was in 2000."⁹¹ 214:5.

Although refugee resettlement had begun to rebound to pre-9/11 levels,⁹² resettlement in FY2006 is expected to decline again because of delays in resettling Burmese, Colombian, and West African refugees who are subject to the "material support" bar.⁹³ A combination of antiterrorism laws⁹⁴ have

⁹¹ The State Department has reported that 85,525 refugees arrived in FY1999; 73,147 in FY2000; 69,304 in FY2001; 27,110 in FY2002; 28,422 in FY2003, and 52,868 in FY2004. See U.S. DEP'T OF STATE, ADMISSIONS STATISTICS, <http://www.state.gov/g/prm/refadm/rls/> (last visited Jan. 12, 2007). The number of refugees admitted to Minnesota dropped from 4,012 in 2000 to 2,791 in 2001 to 1,035 in 2002, according to data compiled by the Fed. Reserve Bank of Minneapolis. Phil Davies, *Faces of Change*, FEDGAZETTE, Sept. 2004, <http://www.minneapolisfed.org/pubs/fedgaz/04-09/change.cfm>.

⁹² The number of refugee arrivals totaled 53,738 in FY2005, a 1.7% increase from FY2004. This number remains below pre-9/11 levels and significantly below the 70,000 admissions ceiling authorized by the President in consultation with Congress. See Migration Policy Inst., *Legal Immigration to United States Increased Substantially in FY2005*, IMMIGRATION FACTS, Oct. 2006, at 1, http://www.migrationpolicy.org/pubs/FS13_immigration_US_2006.pdf.

⁹³ See Jennie Pasquarelle & Mia F. Cohen, *Victims of Terror Stopped at the Gate to Safety: The Impact of the Material Support to Terrorism Bar on Refugees*, 25 IMMIGRATION LAW TODAY 4 at 16.

⁹⁴ Antiterrorism laws passed in the aftermath of the Oklahoma City bombing outlawed providing "material support" to foreign terrorist organizations, and expanded the definition of support to

greatly expanded the bar to admission to the U.S. for providing "material support" to terrorism.⁹⁵ The new bar lacks an exception for *de minimis* support or for support provided under duress. In practice, these extremely broad new "material support" provisions have resulted in the denial of refugee admission to victims of human rights abuses.⁹⁶

B. IMMIGRATION

Immigrants in Minnesota also reported experiencing delays in adjusting their immigration status or in reuniting with their families after 9/11. Regarding all immigration processes after 9/11, a Somali director of a Twin Cities community organization told Minnesota Advocates that U.S. Citizenship and Immigration Services (USCIS) "takes their time." 005:7. He noted that travel documents, citizenship papers, green cards, and other documents cannot be obtained in a reasonable amount of time. 005:7. A variety of factors account for delays. Significantly, there are name-check delays and an enormous backlog for immigration applications at the FBI. Delays also resulted from the INS breakup and the DHS restructuring. Changes in Freedom of Information Act (FOIA) requests, new

include "personnel" and "training." See 18 U.S.C. §§ 2339A-B. The USA PATRIOT Act extended that ban to "expert advice or assistance." See *supra* note 8. The REAL ID Act further expanded the application of the material support bar by creating a new definition of "terrorist organization" that includes any group, organized or not, of two or more people, who engage in activity which violates the laws of their country. See REAL ID *supra* note 9 § 103. In January 2007, the Bush Administration and the Department of Homeland Security announced plans to use discretion granted in law to exempt select groups of refugees and asylum seekers from the "material support" provision, including the Karen National Union and Karen National Liberation Army, Chin National Front and Chin National Army, Chin National League for Democracy, Kayan New Land Party, Arakan Liberation Party, Tibetan Mustangs, Cuban Alzados, and Karenni National Progressive Party. Dep't of Homeland Security, *Statement by Homeland Security Secretary Michael Chertoff on the Intention to Use Discretionary Authority for Material Support to Terrorism* (Jan. 19, 2007), http://www.dhs.gov/xnews/releases/pr_1169465766808.shtm.

⁹⁵ See INA §212(a)(3)(B).

⁹⁶ See *supra* note 93.

scrutiny of familial and other relationships, and the increase of DNA testing have also contributed to delays.

A Somali professional in Rochester told Minnesota Advocates, “Well, we know that every Somali man in the U.S. is under investigation. I’m applying for my green card at the moment, and it’s taking forever to get it.” 108:3. “When I called [USCIS], they informed me that my case was still under investigation.” 108:3. A Latina in Rochester reported to Minnesota Advocates that many immigrants she knows are waiting for their green cards.⁹⁷ “It seems to be taking longer [since 9/11],” she said. 103:2.

Others reported waiting with increasing frustration and uncertainty to be reunited with their families. An Ethiopian staff member at the Minnesota Department of Health told Minnesota Advocates of one man’s efforts to secure a visa for his wife. The background check has delayed his application. He is a U.S. citizen and wrote a letter to Congress because he has waited for over two years. 001:5. A Congressional staffer told Minnesota Advocates, “Under the guise of increased security, the process is not transparent . . . leading to people not knowing what to do and waiting for years.” 029:2. She mentioned a family whose reunification she had helped facilitate and who had been scheduled to fly out of Nairobi, Kenya, on September 13, 2001. She reported in 2005 that:

⁹⁷ See U.S. Citizenship & Immigration Servs., Application Procedures: Becoming a Permanent Resident While in the United States, <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=5993da568324e010VgnVCM1000000ecd190aRCRD&vgnnextchannel=4f719c7755cb9010VgnVCM10000045f3d6a1RCRD> (last accessed Jan. 12, 2007); U.S. Citizenship & Immigration Servs., How Do I Become a Lawful Permanent Resident While in the United States?, <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=8b76194d3e88d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=4f719c7755cb9010VgnVCM10000045f3d6a1RCRD> (last accessed Jan. 12, 2007).

They are still there. There are now more security checks and groups are still stuck in the process. The pre-2001 applications are getting processed now. I know a situation where an applicant in 1999 is still waiting, and his neighbor who started the process in 2002 already had results. This creates paranoia and is not the objective of the process.

029:2.

C. LOCAL ENFORCEMENT OF IMMIGRATION LAWS

Immigration laws traditionally have been enforced by the federal government. Increased security measures after 9/11 have triggered a debate over whether, and to what extent, the federal government should be employing the resources and efforts of local law enforcement to carry out its immigration mandates. Many local officials have opposed enforcement of immigration laws, arguing that it jeopardizes public safety. Moreover, adding immigration enforcement duties is a strain on already limited local law enforcement resources and undermines efforts to build trust with immigrant communities. Immigrant and women’s advocates are concerned that local enforcement of federal immigration laws will inhibit victims of domestic violence and other crimes from seeking assistance from the police and will increase the likelihood of racial profiling.⁹⁸

Interviewees told Minnesota Advocates that the passage of local immigration “separation ordinances” in Minneapolis and St. Paul were some of the community responses to 9/11 that had positive effects. The cities of Minneapolis and St. Paul passed ordinances clarifying that while the cities work cooperatively with the Department of Homeland Security, they do not operate programs for the purpose

⁹⁸ See APPLESEED, FORCING OUR BLUES INTO GRAY AREAS: LOCAL POLICE AND FEDERAL IMMIGRATION ENFORCEMENT (2006), <http://appleseeds.net/servlet/PublicationInfo?articleId=70>.

of enforcing federal immigration law.⁹⁹ “[Separation ordinances] are a good first step. Cops don’t have a grasp locally on immigration law, and we can choose here what we do and do not ask about immigration. . . It is a good sign that we are recognizing the changing face of the community.” 007:6. Immigrant advocates and law enforcement were concerned that without such ordinances immigrants would be afraid to report crime or interact with the police, 213:3, that immigration enforcement would shift resources away from public safety missions,¹⁰⁰ and that local police lack the necessary training to determine whether individuals are in compliance with complex federal immigration laws.

A Somali leader told Minnesota Advocates that these separation ordinances give immigrants the ability to ask for help from the police without fear of being turned over to federal immigration officials. 005:8. He highlighted the important coalition of lawyers, unions, churches, human rights organizations, and members of the Latino, Jewish, and African-American communities who have come together to develop better police relations and to address issues raised by 9/11.¹⁰¹ 005:8. A Latino lawyer noted, “Law enforcement is more aware of what their duties are, and they are not enforcing federal laws. This is a good result of 9/11.” 006:3. But, he noted, “Distinctions between local and

federal [government] are not clear. [People have heard stories that] immigration is called in when there is a traffic incident. Someone is deported or detained. Then people see government and authority as monolithic.” 006:2.

A Roman Catholic priest who presides over a principally Latino congregation noted, “The police say they don’t report illegal immigrants to [Immigration], but experience suggests otherwise.”¹⁰² 033:2. As a result, he indicated that many immigrants are “tremendously afraid” of police, even in cities where separation ordinances are in place. They will not report crimes, even when they are crime victims. A broad coalition successfully defeated legislative efforts in 2006 that would have effectively eliminated Minnesota’s local separation ordinances.¹⁰³

⁹⁹ The Minneapolis ordinance, for example, clarifies the communication and enforcement relationship between the city and the United States Department of Homeland Security with respect to the enforcement of civil immigration laws. “The city works cooperatively with the Homeland Security, as it does with all state and federal agencies, but the city does not operate its programs for the purpose of enforcing federal immigration laws. The Homeland Security has the legal authority to enforce immigration laws in the United States, in Minnesota and in the city.” MINNEAPOLIS, MINN., CODE tit. 2, ch. 19, § 1 (2003), http://library2.municode.com/mcc/home.htm?infobase=11490&doc_method=cleardoc.

¹⁰⁰ See Katherine Fennelly, Commentary, For Good Reasons, Police Aren’t Meant to be Immigration Agents, STAR TRIB. (Minneapolis, Minn.), Jan. 8, 2006.

¹⁰¹ INS City Separation Ordinance Passes, T’KIAH, Summer 2004, at 1-2, <http://jewishcommunityaction.org/publications/TkiahSUMMER04.pdf>.

¹⁰² It is notable that while Minneapolis and St. Paul have separation policies, Hennepin County and Ramsey County do not, leaving undocumented immigrants vulnerable to federal immigration intervention during routine interaction with the police. See, e.g., HANNAH GLADSTEIN ET AL., BLURRING THE LINES: A PROFILE OF STATE AND LOCAL POLICE ENFORCEMENT OF IMMIGRATION LAW USING THE NATIONAL CRIME INFORMATION CENTER DATABASE, 2002-2004 (Migration Policy Inst., Dec. 2005), http://www.migrationpolicy.org/pubs/MPI_report_Blurring_the_Lines_120805.pdf.

¹⁰³ See H.F. 3308 (2006), <http://www.revisor.leg.state.mn.us/bin/bldbill.php?bill=H3308.3.html&session=ls84>.

VII. THE ECONOMY AND EMPLOYMENT

Interview after interview, I just wanted someone to look at my résumé.

Muslim professional woman, 003:3.

After 9/11 Minnesotans from immigrant, refugee, and religious minority communities reported economic and job-related challenges including difficulty obtaining employment, unwelcome and discriminatory treatment by employers and co-workers, and a lack of willingness to accommodate religious practices.

For example, on the morning of 9/11, the lounge of the Electrolux manufacturing plant in St. Cloud became a site of upheaval. That Tuesday morning, a group of workers watched the attacks on the World Trade Center live on TV. A rumor started that several Somali workers were cheering in celebration when the planes crashed into the buildings. 201:1. An elected official told Minnesota Advocates that there were fights, people were hurt, and the police were called. "There is a ton of animosity from that event, [which] brought these feelings out in the open." 216:7. A Somali social worker in St. Cloud told Minnesota Advocates that Somali workers were called names by their co-workers, including that of "terrorist." 206:3. Another elected official noted the Electrolux incident "had reached 'urban legend status'¹⁰⁴ in St. Cloud." 219:1-2. He

¹⁰⁴ The alleged incident at Electrolux is frequently mentioned in the St. Cloud Times on-line chat room. A sample of the hatred which erupts against immigrants appears in the following posting from December 4, 2004:

Let me tell you all a little story about the Somalis and the 9/11 tragedy. At our local Electrolux plant here in St. Cloud, on the day of Sept. 11, 2001 our fellow Somalis erupted [sic] in cheer when the news came over the radio of the first tower falling. They were all hollering and laughing, throwing their arms in the air cheering. These people left their crap country, left their dirt floors, eating their own feces, to come over here and cheer on our demise, and we keep the doors open for them!!!! For all of you idiots out there, 90% of the population in Somalia is comprised of Muslims. In the US, some 80% of us are Christians. MUSLIMS DESPISE CHRISTIANS!!!! Get them all out of here, I am sick of looking at them. Any one of you tell me something good about them.... Ha? what?

indicated to Minnesota Advocates that the reported incident in the lounge is without factual support, and he works to dispel the myth. 119:2. Uncertainty about the future of the plant in St. Cloud,¹⁰⁵ combined with these tensions and rumors after 9/11, resurfaced in 2005 and 2006. In fact, one Minnesota Advocates staff member was told this same story while staffing a booth at the 2006 Minnesota State Fair. The person retelling the story said it justified stopping immigration to the U.S. altogether. 050:1.

The former owner of an ethnic restaurant in Dinkytown, on the University of Minnesota campus in Minneapolis, told Minnesota Advocates of the extensive harassment his business sustained in the months after 9/11.

A group of individuals came into the restaurant and told [my wife] that we had to 'display our innocence.' They also would call and say things like 'Give us Bin Laden or die.' 022:2. The police sent cars around from time to time, but that didn't last long. Two months after 9/11, someone came into [my restaurant] and said to [my wife] that they had a gift. They handed her an American flag full of blood.

022:2-3.

His restaurant was closed permanently less than eight months after 9/11. An Arab merchant who owns a gas station and tobacco shop in a northern Minneapolis suburb said that after 9/11 several customers made negative comments such as, "Those people support terrorism. They have to go back." 042:2. But for every

nothing??? I will talk to Mr. Bush about this the next time I see him . . .

The post was accessed in December 2004 at http://72.14.203.104/search?q=cache:D7MIzvwwpSIJ:miva.sctimes.com/miva/cgi-bin/miva?CMN/Local/archive_feedback.mv+4+3+12+20041129040718+Somali+St.+Cloud+Electrolux+9/11&hl=en.

¹⁰⁵ John Welbes, *Minnesota's Biggest Factories: Will They Stay Here?*, PIONEER PRESS (St. Paul, Minn.), Dec. 11, 2005, at D1 (assessing the St. Cloud plant's outlook as "questionable").

person who made such comments, he said, “I’ve had about 20 people who will say, ‘He’s nuts.’” 042:2.

Non-Muslim immigrant business owners and employees also felt the immediate effects of 9/11. In Rochester, for example, a large corporation dismissed several Latino employees because of Social Security verification problems. 103:1. In 2002, the Social Security Administration expanded its policy to notify employers of the cases in which their employees names do not match the social security numbers they have provided the government. Many Latino and immigrant workers were fired as a result of these “No Match” letters.¹⁰⁶ This action, taken not long after 9/11, amplified fears in immigrant communities. A proposed change to the “No Match” letter policy in 2006 requires employers to take action when notified that an employee has provided an incorrect Social Security number.¹⁰⁷ This has again heightened concerns for immigrants and employers alike.

A. OBTAINING EMPLOYMENT

Obtaining employment is one of the central challenges mentioned by Minnesotans from refugee, immigrant, and religious minority communities. A Muslim professional who grew up in the United States reported

¹⁰⁶ MICHELE WASLIN, COUNTERTERRORISM AND THE LATINO COMMUNITY SINCE SEPTEMBER 11 Issue Brief No. 10 (Nat’l Council of La Raza, June 2003), <http://www.nclr.org/content/publications/detail/1389/> (last accessed Jan 12, 2007) (indicating that 750,000 letters were sent in 2002 to clear the Social Security Agency’s database; although such “No Match” letters indicate that the employer is merely to report the mismatch of name and Social Security number to the employee, many employers have fired employees listed in such letters). Proposed ICE regulations would change the importance of the no-match letters, which up until now have not mandated that the employee be fired. See *Safe-Harbor Procedures for Employers Who Receive a No-Match Letter*, 8 C.F.R. pt. 274a (2006), <http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/E6-9303.pdf>.

¹⁰⁷ National Immigration Law Center, *Safe Harbor Procedures for Employers Who Receive a No-Match Letter* (2006), http://www.nilc.org/immsemplmmt/SSA-NM_Toolkit/nomatchtoolkit_proposedrulesumry.pdf.

that she felt the effects of 9/11 when seeking employment during law school. She told Minnesota Advocates:

It is my personal belief—and I’m not a conspiracy theorist—that it was harder to find a job. During September [2001] there were on-campus interviews. One prospective employer said, “Do you know where Osama is?” I was 24 and a 2L at law school and was at the interview with a scarf. I didn’t say anything. I had a hard time finding a job. I’m not saying that I wouldn’t in the market now, but interview after interview I just wanted someone to look at my résumé. I would start to resent the questions and the need to state my position on Afghanistan.

003:3.

An Arab-American 2005 college graduate told Minnesota Advocates that many of his Arab friends from abroad have just ended up returning home so that they do not have to deal with employment discrimination and resulting visa hassles. 038:6.

A Somali employment service coordinator in Rochester said the key change after 9/11 is the “lack of jobs. Before it was possible to find lots of employers willing to hire immigrants. Today, instead, only a few want to hire them, but they don’t allow these [Muslim] immigrants to pray.” 110:2. A Sudanese employment service coordinator echoed this sentiment noting, “After 9/11, lots of companies shut down or changed business tactics to be able to survive the bad years, and they stopped hiring people. . . . Most of the Sudanese refugees living in town have only access to temporary positions.” 111:1.

A refugee resettlement coordinator in Rochester told Minnesota Advocates that a company in Wisconsin had planned to hire 30 of their Somali and Sudanese clients. The refugees completed the orientation, and it appeared that more would be hired. One of the company’s senior executives, however, decided they

would not hire them. The company “didn’t want to be left ‘holding the bag’ if something went wrong. So none of the group was hired. ” 101:2.

B. TERMS AND CONDITIONS OF EMPLOYMENT

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, religion, and national origin.¹⁰⁸ Title VII requires an employer to reasonably accommodate the religious practices of an employee or prospective employee, unless doing so would create an undue hardship for the employer. Religious discrimination filings with the Equal Employment Opportunity Commission (EEOC) have jumped considerably since 9/11 to 2,572 filings in 2002 from 1,939 in 2000.¹⁰⁹ Similarly, the Minnesota Human Rights Act provides protection against employment discrimination and unfair employment practices on account of race, religion, or national origin.¹¹⁰ The Minnesota Department of Human Rights reports that charges of discrimination based on religion have increased 82% since 9/11, those based on national origin have increased 45%, and those based on race have increased 5%.¹¹¹

Some interference by co-workers has had a devastating effect on Minnesotans, particularly Muslims. A Somali community leader told Minnesota Advocates of a Somali woman who worked for an eyeglass company in the Twin Cities. She brought a

water jug to work in order to perform her ablutions.¹¹² Her co-worker complained to management even though she prepared for and completed prayer during her break time and needed no special accommodations. It was reported to Minnesota Advocates that the company stopped allowing Somalis to work there. 005:6.

1. ACCOMMODATION

Accommodation of religious practices was reported to have decreased after 9/11. An African-American human rights agency director reported a shift in the business community in Minnesota after 9/11 away from reasonably accommodating different religious practices. 011:3. After 9/11, many Muslim workers tried to adjust their prayer time¹¹³ to fit scheduled breaks and others ended up leaving their jobs. 110:2. A Somali refugee recounted to Minnesota Advocates his experience of attempting to have his religious needs accommodated by a Rochester employer:

When I was working at [a company], a group of Somali employees asked for the day off on Ramadan. We knew some of us would have to stay to keep the place [going]. When we asked our supervisor for permission, she denied it and told us that we could have our day off on Christmas. She even threatened . . . firing us all if we didn’t come to work. We took the day off anyhow, and, even though we weren’t laid off, lots of our benefits disappeared.

108:2.

A Somali community leader intervened when two Somali women were terminated from their employment at a Twin Cities sports facility. He noted that they

¹⁰⁸ 42 U.S.C. § 2000e (2005).

¹⁰⁹ U.S. Equal Employment Opportunity Comm’n, Religion-Based Charges FY 1992–FY 2005, <http://www.eeoc.gov/stats/religion.html> (last visited Jan. 12, 2007).

¹¹⁰ Minn. Stat. § 363A.08 (2005).

¹¹¹ Minn. Dep’t of Human Rights, Bringing Human Rights Home to Minnesota: Trends in Race, National Origin, and Religious Discrimination, Address at Human Rights Day sponsored by Minnesota Advocates for Human Rights at the University of Minnesota Law School (Dec. 9, 2005).

¹¹² Ablutions are the intentional preparation and cleanliness before prayer. Partial ablution or wud’u consists of cleaning parts of the body that are exposed to dirt, dust, or elements of nature.

¹¹³ Muslims observe five formal prayers each day, which is known as salat. The prayers are spaced throughout the day: Fajr (pre-dawn), Dhuhr (noon), ‘Asr (afternoon), Maghrib (sunset), and ‘Isha (evening).

stopped work daily for brief midday prayers. One day, they were approached by a supervisor and told they could no longer pray at work. He believes co-workers had reported the women because the prayers took so little time that the supervisors likely had not even noticed. His organization contacted the human resources manager of the company and reported the incident to the EEOC. As a result, the company allowed the two women to return to work and participate in daily prayers. 005:3.

There were reports to Minnesota Advocates of businesses in the St. Cloud area that both succeeded and failed at accommodating religious practice needs.¹¹⁴ The city's Human Rights Director reported that one large company employing many Somalis initially extended prayer time but later rescinded it. He was concerned that pressure from non-minority employees provoked this result, leading to bad morale and the firing of several Somali employees. 204:5. The 165 Muslim Somali employees and the company reached a voluntary resolution in September 2003 allowing the employees to observe sunset prayer. 204:3. In addition, it provided: a Somali translator at specified occasions; diversity training for corporate managers, line leaders, and supervisors; and a monetary donation to the Islamic Center in St. Cloud.¹¹⁵

¹¹⁴ On October 10, 2006, nine Somali employees at poultry processor Gold'n Plump Poultry Inc. in Cold Spring, Minnesota, filed a federal lawsuit alleging discrimination on account of race and religion. The plaintiffs alleged that they were not permitted to pray during the day and that they were more likely to work the less desirable night shift than their white co-workers and were less likely to be promoted. See *Somali Workers File Bias Suit Against Gold'n Plump*, PIONEER PRESS (St. Paul, Minn.), Oct. 10, 2006, at C2.

¹¹⁵ Press Release, Equal Employment Opportunity Comm'n, EEOC and Electrolux Reach Voluntary Resolution in Class Religious Accommodation Case (Sept. 24, 2003), <http://www.eeoc.gov/press/9-24-03.html>.

Minnesota Advocates consistently heard of hesitancy to file complaints or challenge discriminatory treatment in all aspects of the day-to-day lives of Minnesotans from refugee, immigrant, and religious minority communities. This was especially notable in the employment setting.¹¹⁶ A Hmong lawyer told Minnesota Advocates of his community outreach and some of the stories he has heard from Hmong in the Twin Cities. He notes their resilience, "They tell me about discrimination but say, 'I want to move on with my life and not make my life a living hell.'" 039:2. He reported that these workers had chosen to move on and get a new job instead of pursuing a discrimination claim. Whether it is due to fear of implicating immigration status, an effort to try to fit in and not "rock the boat," or a sense that any complaint would be futile, Minnesota Advocates' interviews suggest that employment discrimination is underreported across immigrant, refugee, and religious minority categories.

2. DISCRIMINATORY TREATMENT BY CO-WORKERS AND CUSTOMERS

In addition to real or perceived discrimination from one's employer, reports to Minnesota Advocates also noted the role co-workers played in making an employee feel unwelcome, harassed, or discriminated against on account of race, national origin, or religion. For example, a Sikh worker who has been in Minnesota for over 15 years, 040:5, and an Ethiopian worker who has been in Minnesota for 30 years, 037:4, both reported feeling an increased suspicion or silence around co-workers. The Ethiopian man explained, "I

¹¹⁶ Andrea Elliott, *Immigrants Wary of Complaining of Bias*, Advocates Say, N.Y. TIMES, Apr. 30, 2005, at B4

Discrimination cases involving Muslims in the workplace, at school and in airports increased markedly after Sept. 11 but are most commonly brought by American-born Muslims because immigrants are reluctant to take legal action, lawyers and civil rights advocates say. A fear of retaliation by employers or more extreme outcomes, like deportation, drives many Muslim immigrants to stay quiet.

can't place a finger on it, but every time a story [about terrorism or immigration] happens, they give me a different look." 037:4. A Muslim female professional told Minnesota Advocates that her co-workers have made insensitive comments. "People are often trying to make a joke but failing. One person said, 'You're a Muslim. If you don't like what I like, you'll blow me up.' I've also heard, 'You're such a terrorist.' The words have a lot of weight to me." 003:4.

Some interviewees reported that 9/11 affected the interaction between customers or clients and workers. A young Muslim professional and teacher told Minnesota Advocates about a Muslim friend who is a notary public. A customer came to his friend's place of business in the Twin Cities in 2004 because he needed documents notarized before sending them to the U.S. government. The customer felt that having a Muslim notary might be harmful and asked for a different notary. His friend was able to refer him to a non-Muslim colleague. 008:2. In reflecting on his friend's situation, he stated, "This is maybe not hatred, but it tells you the level of uneasiness. This is something that is a reality these days." RT3:6.

An Arab-American woman who worked in childcare both before and after 9/11 told Minnesota Advocates of parents' increased discomfort after 9/11 in letting her care for their children. 042:1. A human rights agency director corroborated this woman's account and told Minnesota Advocates of the experiences of a friend who works as a daycare provider. Many of the providers are Somali, which before 9/11, did not bother most of the clients. But after 9/11, she noted, some of them expressed fear about dropping off their children. 011:3.

A prominent South Asian theater director was half-way through technical instruction for a women's dance production at the University of Minnesota when the

terrorist attacks of 9/11 occurred. The lighting director would no longer look at him or answer his questions. At one point when the theater director asked for appropriate microphones for the South Asian musicians, the lighting director said to her assistant, "Just tell him this is what we have and get away from them." 047:5. He experienced her animosity and rudeness the remaining days of production. In reflecting on the incident later, he told Minnesota Advocates,

We all represented the terrorists that hit the World Trade Center to her. It was the hardest day of my career. It isolated the entire crew. They were all white, and we were twenty-four South Asian [men and] women. A line was drawn. I was not proud of my work. It was completely adversarial.

047:5.

He later learned that the lighting director told others that it was difficult to work with him because of his religion. "That was such a loaded statement. First, she assumed that I am Muslim. In these situations I was very careful. [I heard] the incident was reported to the EEOC, and she lost her job." 047:5.

A Muslim professional woman reported an experience in 2004 when she was asked to give a presentation on workplace diversity and techniques to minimize post-9/11 backlash to over 300 company managers. The program was well received, and a company-wide email was sent out at the end of the week recognizing her efforts and that of her white, male co-presenter. The following Monday, a second company-wide email was sent, omitting her name from the list of presenters. She asked her boss about this omission, but he did not have an adequate response. She told Minnesota Advocates, "These are the subtle forms of racism that Muslim women face, and they leave little room for raising the issue for change." RT1:2.

VIII. RELIGIOUS AND POLITICAL PARTICIPATION

The PATRIOT Act is against everything that this country believes in. It is a huge price to pay to protect our country.

White, female university student and convert to Islam, 026:6.

Interviewees described how post-9/11 legislation restricting civil liberties and other policy directives, particularly the USA PATRIOT Act, have had a chilling effect on Minnesotans from immigrant, refugee, and religious minority communities. In particular, Minnesota Advocates was told of the effects of 9/11 on religious participation, charitable giving, and civic participation, including electoral involvement.

A. RELIGIOUS PARTICIPATION

Real or perceived effects of the original PATRIOT Act, which modified the rules on government searches, allowing the acquisition of church, synagogue, and mosque records without knowledge or consent, were reported to have affected religious participation after 9/11.¹¹⁷ Reports to Minnesota Advocates of changes in religious practice ranged from a young Muslim Pakistani's concern that if he started wearing a beard and cap he would be targeted, 009:2, to some Muslims staying away from their mosques over concerns of excess scrutiny, 023:2, to a Muslim professional woman unable to perform the Hajj¹¹⁸ in 2005 because of concerns relating to her immigration status, 016:2.

Muslims interviewed by Minnesota Advocates frequently cited allegations of FBI and other

¹¹⁷ USA PATRIOT Act, *supra* note 8, at § 215.

¹¹⁸ Hajj is the pilgrimage to the holy city of Mecca in Saudi Arabia, which every adult Muslim of either sex must make at least once in his or her lifetime. The hajj is the fifth of the fundamental Muslim practices and institutions known as the Five Pillars of Islam.

Encyclopedia Britannica Online, 2007, <http://www.britannica.com/eb/article-9038834>.

surveillance in Twin Cities' mosques. One Somali male indicated that he had not seen tangible evidence or obvious signs of monitoring but that many believe there are undercover agents or other surveillance in Twin Cities mosques.¹¹⁹ 008:4.

A female member of the Islamic Center of Minnesota noted the effects of such security concerns after 9/11: "We know that we have visitors, but we have nothing to hide. But it has changed our membership. In the past, we would put phone numbers on the board. Now, people are [giving money anonymously] so there won't be any financial links [of their contribution to our mosque]." 003:6.

Interviewees even reported that the PATRIOT Act has changed the way they interact and practice their religion itself. An Arab-American scientist and imam noted that 9/11 stifled dialogue among Muslims themselves. He told Minnesota Advocates that Muslims are uncomfortable discussing important concepts, like jihad,¹²⁰ openly; certain terms have

¹¹⁹ See, e.g., U.S. Mosques Checked for Radiation, BBC NEWS, Dec. 24, 2005 (reporting monitoring of mosques in the Washington, D.C. area, including Maryland and Virginia suburbs, and the cities of Chicago, Detroit, Las Vegas, New York, and Seattle); Lynette Clemetson, F.B.I. Tries to Dispel Surveillance Concerns, N.Y. TIMES, Jan. 12, 2006, at A18.

¹²⁰ Jihad is an Islamic term, from the Arabic root jhd ("to exert utmost effort, to strive, struggle"), which connotes a wide range of meanings from an inward spiritual struggle to attain perfect faith, known as the greater jihad, to a political or military struggle to further the Islamic cause, known as the lesser jihad. Jihad is not used in the Qur'an; its meaning is derived from the hadiths or what Muhammad said, did, and approved in others' actions, which are generally considered to be essential supplements to and clarifications of the Qur'an. The meaning of jihad is contested and is believed to be largely misrepresented as "holy war." For example, the U.S. Department of Justice has referred to jihad as "the use of violence, including paramilitary action, against persons, property or governments deemed to be enemies of a fundamentalist version of Islam," *United States v. Hayat*, No. 05-240-GEB, First Superseding Indictment ¶ 2 (E.D. Cal. Sept. 22, 2005), <http://www.milnet.com/terr-cases/Lodi-Five/2nd-indictment-hayat.pdf>, and "planning, preparing for, and engaging in, acts of physical violence, including murder, maiming, kidnapping, and hostage-taking," *United States v. Padilla*, No. 04-60001-CR-COOKE, Superseding Indictment ¶ 2

become unmentionable and discourse has been cut off. 020:4.

A Muslim Ethiopian told Minnesota Advocates, “Mosques have been raided twice in this [university] neighborhood. Are Muslims afraid? Yes! If they are telling you that they are not afraid, they are lying.” He continued, “‘Muslims hate our way of life’—that’s the way the [9/11] story came out. People have stepped in to protect us. The President spoke against hate crimes.¹²¹ But is that enough?” 037:3.

A pastoral worker indicated that the Catholic Latino community is flourishing in Minneapolis and that, if anything, it has been positively affected by tighter government policies since 9/11. She noted that religion is a source of strength for many in the community, keeping them from isolation, which can happen when people constantly live in fear of being “exposed” as undocumented. 021:4. A Roman Catholic priest noted, however, that registration and keeping track of his large, principally Latino parish has been difficult because, after 9/11, many congregants fear immigration consequences in reporting to any official body. 033:1.

1. CHARITABLE GIVING

The PATRIOT Act explicitly prohibited individuals or charitable groups from contributing “material support” to groups engaged in terrorist activities including “monetary instruments” and “expert advice or assistance.”¹²² Minnesota Advocates interviewed many people with deep concerns that these provisions are

(S.D. Fla. Nov. 17, 2005), <http://www.wiggin.com/db30/cgi-bin/pubs/11-17-05%20Indictment.pdf>.

¹²¹ George W. Bush, “Islam is Peace,” Remarks by the President at the Islamic Center in Washington, D.C. (Sept. 17, 2001), <http://www.whitehouse.gov/news/releases/2001/09/20010917-11.html>.

¹²² USA PATRIOT Act, *supra* note 8, at § 805.

being read too broadly to include many Muslim and Middle Eastern aid organizations doing legitimate work. Many Muslim interviewees reported to Minnesota Advocates that these legal restrictions made complying with the religious requirements of Islam to give to charity substantially more difficult. Islam has two tiers of charitable giving. The *zakat* requires believers to give 2.5% of their savings each year to the poor. *Sadaqah* is voluntary and depends on one’s ability to give. Many Minnesotan Muslims expressed uncertainty as to what kind of charitable giving was permitted after 9/11.

There is concern about giving to [Islamic] organizations. Even if the organization is registered with the government, two months later it may be closed. It is hard for Muslims to find out if an organization is okay. Muslims asked the FBI to make an approved list of organizations, but the FBI refused.¹²³ This is difficult for Muslims because charitable giving is an important part of Islam.

023:3.

A young Muslim professional related, “A lot of good organizations were shut down.”¹²⁴ 002:9. Other organizations are trying to stay afloat financially and legally. A Muslim professional reported that since 9/11 charities are advertising, “We have been cleared by

¹²³ The Treasury Department issued Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities in November 2002 as a response to demands from the American Muslim community. Treasury officials have confirmed, however, that complete compliance with the Guidelines does not protect against seizure of assets, closure, government investigations, and ultimate designation as an entity supporting terrorism. LAILA AL-MARAYATI, AMERICAN MUSLIM CHARITIES: EASY TARGETS IN THE WAR ON TERROR, (2004), <http://www.mpac.org/article.php?id=355>. The Treasury Department issued revised Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities in December 2005, http://www.treas.gov/offices/enforcement/key-issues/protecting/docs/guidelines_charities.pdf.

¹²⁴ Among the organizations closed after 9/11 are Holy Land Foundation for Relief and Development, Global Relief Foundation, and the Benevolence International Foundation. OMB WATCH, THE USA PATRIOT ACT AND ITS IMPACT ON NONPROFIT ORGANIZATIONS, 2006, <http://www.ombwatch.org/article/articleview/1803>.

the U.S. government.’ It is their selling point. Islamic Relief sent a letter [to its supporters defending its record].¹²⁵ Can you imagine the waste of administrative cost?” 003:6.

2. REMITTANCES

Apart from religious charities, Minnesotans from immigrant, refugee, and religious minority communities experienced difficulty in sending money home, putting friends and family overseas who rely on their financial contributions at risk. This concern was heightened by the government’s immediate response after 9/11 to shut down several prominent hawalas,¹²⁶ disrupting the means by which many of Minnesota’s Somalis sent money home.¹²⁷ 005:2. A Somali community leader told Minnesota Advocates that the media did not handle forced closure of some hawalas properly. “The media made it sound as though there was a much greater connection between the hawalas and al-Qaeda than was actually real.”¹²⁸ 005:3. While it was reported to Minnesota Advocates that the security of money transfer through the hawala system largely has been resolved and the lack of any connection to terrorism confirmed,¹²⁹ “there is lingering suspicion.” 008:4. A

¹²⁵ The U.S. Treasury Department requested financial records of eight Islamic groups, including Islamic Relief USA of Burbank, California, as part of a global anti-terrorism initiative after 9/11. Islamic Relief’s president and CEO Ahmad El Bendary reported, “There is nothing at all in our history or in our present operation that would cause concern.” See Lisa Getter et al., *Islamic American Nonprofits Face Increased Scrutiny in U.S.: Charities’ Financial Records are Sought to See if any Money is Funneled to Terrorist Groups*, L.A. TIMES, Nov. 4, 2001, at B2. No charges have been brought against Islamic Relief, and it has been designated a Four Star Charity by Charity Navigator. See ISLAMIC RELIEF, 2004 ANNUAL REPORT, http://www.irw.org/pdfs/2004_annual_report.pdf.

¹²⁶ An informal value transfer system used principally in the Middle East and Africa.

¹²⁷ See TRAM NGUYEN, *WE ARE ALL SUSPECTS NOW: UNTOLD STORIES FROM IMMIGRANT COMMUNITIES AFTER 9/11* 34-35 (2005).

¹²⁸ Gordon, *supra* note 27.

¹²⁹ After 9/11, the U.S. government suspected that hawala brokers may have aided terrorist organizations to transfer money

young Somali said the best thing to do is to send money with someone traveling to Somalia, which is how he provides money to his mother. 008:4.

B. POLITICAL PARTICIPATION

Minnesotans from immigrant, refugee, and religious minority communities reported that they are more hesitant to participate in civic matters after 9/11, including lawful protests. An Arab-American artist and 2005 college graduate who is a U.S. citizen told Minnesota Advocates about the Arab community in Minnesota: “A lot of them are now less involved. People have a tendency to put up their American flag and shut up.” 038:3. He noted that, among Minnesota’s Arabs and Muslims who are non-citizens, “There is real concern that you have to be careful about what you say.” 038:6.

A Muslim professional recalled her earlier civic participation: “I was nine years old when I was marching for Bosnia. We quieted ourselves down after 9/11. President Bush said you were ‘either with us or against us.’ If we protest the war, that is not condoned. But that’s the most American thing that we could do: protest.” 003:7.

A community organizer reported that immigrants are more reluctant to become involved in political or community activities since 9/11. In particular, she mentioned that it is harder to get immigrants to attend her interfaith organization’s public meetings. 019:4.

to fund their activities. In November 2001, the Bush administration froze the assets of a principal Somali remittance hawala, Al Barakaat. Notwithstanding cooperation by the United Arab Emirates, FBI interviews of the principal players in Al Barakaat, and complete and unfettered access to its financial records, the FBI could not substantiate any links between the hawala and terrorism. See John Roth, et al., *National Commission on Terrorist Attacks upon the United States, Monograph on Terrorist Financing, Staff Report to the 9/11 Commission, 2004*, at 83, http://www.9-11commission.gov/staff_statements/911_TerrFin_Monograph.pdf.

Many interviewees reported to Minnesota Advocates a perception that their communications are not private. A young Muslim professional noted that, since 9/11, the government has listened in on her calls and those of her family members—even calls that are completely domestic. 002:11. An Arab businessman told Minnesota Advocates that “Everyone in the community feels that [the government listens to their communication]. There is mistrust. I’m sure they are watching.”¹³⁰ 042:8-9.

While interfaith efforts to address 9/11 and to increase awareness were cited as a significant positive outcome of 9/11, one Muslim imam noted the challenges in mobilizing such coalitions to discuss the PATRIOT Act and ways to respond to it. He reported that there was even fear among non-Muslims, including church groups, to undertake such activity. 036:5.

There were reports of intimidation and fear, particularly among Minnesota’s Somalis, to vote.¹³¹ “They think INS will come after them. I know a professor at my school who plays soccer with many of them. He tried to get them to vote, but they said, ‘George Bush will come after me.’” 002:9. Several interviewees mentioned the Department of Public Safety’s memo¹³² issued before the November 2004 election on how to spot a terrorist at the polls. A Jewish Community Action organizer identified this memo as a further example of “heightened irrationality about people perceived to be immigrants since 9/11.” 034:1. Despite these

challenges, Somali organizations made significant efforts to increase voting within their community¹³³ in the first presidential election after 9/11. Candidates were invited to their community center, and Somali voters were instructed in how to fill out a ballot. A Somali community leader told Minnesota Advocates, “Without these efforts, many people who voted would not have done so. They had to be educated about the candidates and convinced that voting has value and could affect them.” 005:8.

¹³⁰ See Lowell Bergman et al., *Domestic Surveillance: The program*, N.Y. TIMES, Jan. 17, 2006, at A1 (“Some of the [F.B.I.] officials said the eavesdropping program might have helped uncover people with ties to al-Qaeda in Albany; Portland, Ore.; and Minneapolis. Some of the activities involved recruitment, training, or fund-raising.”).

¹³¹ See Letzing, *supra* note 44.

¹³² Secretary of State Mary Kiffmeyer sent 30,000 poll workers a one-page memorandum with instructions on spotting terror threats. Libby George, *Poll Workers Briefed on Terror Threats; State Memo Aims for Election Preparedness*, PIONEER PRESS (St. Paul, Minn.), Sept. 9, 2004, at B3.

¹³³ Henry Ogeri, a Kenyan-American lawyer who spearheaded a voter registration effort in Minnesota, said that according to the U.S. Citizenship and Immigration Services, some 15,000 Africans in Minnesota had become U.S. citizens in the ten years before the 2004 election. He said many community leaders estimate that there were between 20,000 and 30,000 eligible African voters statewide. Jeremy O’Kasick, *Swing State’s African Voters Prepare for Election Day*, MINN. SPOKESMAN-RECORDER, Oct. 27 – Nov. 3, 2004, at 1. See also Neil MacFarquhar, *Democrat Poised to Become First Muslim in Congress*, N.Y. TIMES, Oct. 8, 2006, § 1 at 30.

IX. LOSS OF SENSE OF BELONGING AND ANTI-IMMIGRANT BACKLASH

The challenge is that welcoming the stranger¹³⁴ is not universally accepted.

Refugee resettlement worker in Rochester, 101:3.

Over the years, the face of immigration in Minnesota has changed. The top ten nations of origin of Minnesota's immigrants at the turn of the 20th century were Sweden, Norway, Germany, Canada, Austria, Finland, Poland, Ireland, Russia, and England. In 2000, the top ten nations of origin were Mexico, Laos, Vietnam, Canada, Korea, Somalia, India, Thailand, China, and Germany.¹³⁵ Currently, 6.3% of Minnesota's population is foreign-born, which has grown over the years, but remains less than the national average.¹³⁶

A Palestinian professional told Minnesota Advocates about two men who he described as being "of Middle Eastern descent, both of whom come from Muslim families, have distinctly Arabic names, were born and raised in Minnesota, and speak fluent English. One of them has an advanced degree." The men were called in for questioning by law enforcement. The interviewing officer said they had received an anonymous tip complaining about suspicious behavior. One of the men asked the officer, "When will I belong?" 011:4.

A Somali imam told Minnesota Advocates that Muslims believe "where they land is home. This belief is part of

¹³⁴ See, e.g., U.S. Conference of Catholic Bishops, A Pastoral Letter Concerning Migration from the Catholic Bishops of Mexico and the United States, <http://www.usccb.org/mrs/stranger.shtml#31>.

¹³⁵ LEAGUE OF WOMEN VOTERS OF MINN. EDUC. FUND, IMMIGRATION IN MINNESOTA: CHALLENGES AND OPPORTUNITIES (2002), <http://www.lwvminn.org/EdFund/ImmigrationInMinnesota.asp>.

¹³⁶ MINN. STATE DEMOGRAPHIC CENTER, IMMIGRANTS TO MINNESOTA BY REGION AND SELECTED COUNTRY OF BIRTH, 2005, <http://www.demography.state.mn.us/documents/ImmigrationJuly2006.csv>.

their faith." 036:3. Muslims in Minnesota indicated to Minnesota Advocates they have pride in being from Minnesota but indicated some of the real obstacles—staring, name calling, and hate crimes—that make the question, "When will we belong?" a common refrain.

A U.S.-born Muslim community organizer and journalist who wears a hijab told Minnesota Advocates that after 9/11 people assumed, incorrectly, her country of origin "depending on what country we were bombing." 028:1. Before 9/11 it was assumed that she was Somali, immediately after 9/11 that she was Palestinian, and when the U.S. was bombing Afghanistan, that she was Afghani. None of these assumptions were right. When asked where she is from, she responds, "the United States." 028:1.

An asylee from Ethiopia told Minnesota Advocates, "There has been a change in the 30 years that I have been here. I'm careful where I go now. I'm careful with the kind of jokes I tell." 037:2. While he reported that he does not feel direct discrimination,

There is some suspicion. . . I am still a foreigner to them. I have been here longer than many other people. Every year I try to belong. Minnesota is my home. When twenty-two-year-olds look at me in a strange way, it is really something. They were not even born when I came here.

037:4.

A Somali who works for a resettlement organization in Rochester said, "Most of us thought this was the place to start over and that we were going to stay here until we die, but now we realize this will never be our home." 108:3.

A St. Cloud community service worker who works with Somali youth related the story of a tenth grade Somali girl who was called names by a Caucasian student. The Somali girl asked her classmate, "Do you have a

problem with me?” The service worker told Minnesota Advocates that it is the daily interactions such as these that make the Somali students feel that they do not belong. “It is the little stuff—it’s not really little—because it adds up.” 207:4.

Outside of Minnesota’s Muslim communities, other immigrants and ethnic minorities, including Latinos, reported the continued perception that they do not belong. When asked if he feels welcome in the community, a Latino director of a Latino organization responded:

From the context of having been in the area for awhile, I feel welcome. People ask me where I’m from. I tell them I’m from Sartell, [Minnesota]. But then they ask, “What country are you from?” That throws a different spin on it. “I am from the surrounding area. I am a seventh generation American. I was born and raised in the U.S.” Then they say, “Oh! Wow.” They are surprised. But they look at me as a Latino/Mexicano and not as part of the country.

213:1.

He said that there is some difficulty in knowing where you stand in Minnesota because of “Minnesota nice.”¹³⁷ 213:8.

A Latina in Lakeville told a community organizer that after 9/11 she feels she must be a “model citizen.” This organizer told Minnesota Advocates that if she does not cut her grass and weed her garden, she feels that she and her children will be seen as “dirty Mexicans.” 019:3.

An Asian-American school administrator in St. Cloud says there is disbelief when people find out what he does. “They ask where I learned to speak English so

‘good.’ I say that I learned to speak English ‘well’ in school in the United States.” 217:2.

Interviewees in St. Cloud discussed incidents at a local high school, which had escalated to violence between Caucasian and Somali students. While the exact events are unclear, it was reported that Caucasian boys taunted Somali girls, which provided the catalyst for the violence. The school scheduled meetings with parents, hosting a separate one for Somali families. The result of the school’s intervention, Minnesota Advocates was told, was a perception, left uncorrected, of special privilege for Somali and other immigrant and refugee students. Parents voiced concern that Somali children pray during school but that Catholic students are not able to, 201:3, and that Somali students receive privileges like ESL. Somali students were also reported to wear scarves while Caucasian students cannot wear baseball caps and do not have special rooms for prayer during school time. 202:2.

A legal services provider noted that the parents who complained ignored the fact that the school year is set up around the Christian calendar. 202:2. She expressed disappointment that the school administration provided no explanation of or defense of these alleged privileges. 202:2. She also noted that the Somali parents felt slighted that the meeting held for them was not attended by school administrators or law enforcement. They were concerned that the Somali students involved in the altercation received harsher penalties than the non-Somali students, 202:3, and that the Somali students do not receive adequate protection, 215:7. Suggestions of expanding diversity training and implementing diverse hiring practices were offered to help mitigate difficulties. School and community leaders reported that tensions have lessened in the subsequent school years. 218:4.

¹³⁷ "Minnesota nice is the stereotypical behavior of Minnesota residents to provide hospitality and courtesy to others." "Minnesota Nice," WIKIPEDIA, http://en.wikipedia.org/wiki/Minnesota_nice (last accessed Dec. 12, 2006).

A male interfaith coordinator noted that the already existent xenophobia in the U.S. has risen to a new level after 9/11, affecting all immigrants. He explained that the hostility has two stages. "Now, immigrants who are struggling financially are perceived, inaccurately, as being a 'drain on our resources.' In fact, the hostility may worsen when these immigrants become more successful. Then, the perception will be that 'they are trying to lord it over us.'" 010:5. He mentioned deep resentment in the white community in the Twin Cities in the 1980s when many high school valedictorians were Vietnamese. "People who have enjoyed dominance do not want to accommodate. In short, 'beware, because there is more trouble brewing in the long-term.'" 010:5.

X. ACCESS TO SERVICES

There's a decrease in resources everywhere except Homeland Security.

Law enforcement officer, 219:3.

In addition to homeland security, government services—including access to and quality of health care, housing, and other services—became the focal point of some of the post-9/11 changes affecting Minnesota's refugee, immigrant, and religious minority communities.

A. HEALTH CARE

The interviews reflected increasing concern about the fact that fewer immigrants in Minnesota have health care coverage since 9/11. Undocumented Minnesotans, particularly single men, are essentially without access to health care services.¹³⁸ In 2003 and 2006, some members of the Minnesota Legislature tried to delist pregnant, undocumented women from accessing government-sponsored health care provisions.¹³⁹ A community organizer told Minnesota Advocates, "Without 9/11, this probably would not have been a topic for potential legislation." 019:2. Interviewees voiced concern over the two-tiered health care system in the U.S.: one standard for citizens with

¹³⁸ See, e.g., Randall Chun & Danyell Punelli LeMire, Eligibility of Noncitizens for Health Care and Social Service Programs, Minn. House of Representatives Research Dep't, rev. Feb. 2006, at 2 <http://www.house.leg.state.mn.us/hrd/pubs/ncitzhhs.pdf>. ("Generally, undocumented persons and nonimmigrants are not eligible for most programs, except for coverage of emergency services through Emergency Medical Assistance and coverage of services through the end of a pregnancy through Emergency Medical Assistance or Medical Assistance").

¹³⁹ In January 2003 the Minnesota House of Representatives passed a budget bill that would have eliminated state-funded health coverage for about 5,000 non-citizens, including 3,000 pregnant women. See Laura McCallum, House Focuses on Human Services Cuts in Battle (Minn. Pub. Radio broadcast, Jan. 28, 2003). Eligibility information for General Assistance Medical Care (GAMC), Medical Assistance, and MinnesotaCare is available at the Dep't of Human Services website at http://www.dhs.state.mn.us/main/groups/healthcare/documents/pub/DHS_id_006257.hcsp.

insurance and one for the undocumented. A Latina told Minnesota Advocates, "I have heard of hospitals that are building separate space for the undocumented. This is nonsense. There is no difference. We are all the same." 214:4. A Latino lawyer noted that many in the Latino community are using traditional neighborhood *curanderos*.¹⁴⁰ "Many are afraid to go to the hospital, and they have no insurance. If they go, they are afraid that they will be asked about their immigration status. So the traditional practices are regaining popularity among segments of the Latino community." 006:7.

Resource cuts to health care services, including MinnesotaCare, and constant changes in program eligibility have led to the creation of community clinics with a sliding fee for services. Interviewees identified these clinics as a positive response to 9/11. These clinics have networks such as La Clínica in St. Paul, Project H.E.A.L. (Health, Education, Access, Link) in St. Cloud, and Open Cities Health Care in Mankato. A Latino government worker told Minnesota Advocates, "The harm hasn't been nullified, but it's a different way to help people." 007:6.

Lack of access to health care also includes lack of mental health care and treatment. Stress, anxiety, depression, and post-traumatic stress disorder were identified as health care problems affecting Minnesotans from immigrant, refugee, and religious minority communities. Many noted the interrelationship between mental health and lack of employment, housing, and the ability to meet other basic needs, which were all made more difficult after 9/11. A social services case worker in Rochester noted that, in general, the refugees and immigrants she helps do not have family support.

¹⁴⁰ Spanish term for healer; a practitioner of folk medicine; an herb doctor.

Add to that, that most of the refugees have gone through very tough situations back home. Some have been raped, some have been the victims of gunshots, and some have witnessed the killing of family members. And even though they are safe now, being in a new country with a completely different culture is hard, too.

107:2.

She said, "I've met men who were judges or doctors in their country who can't even find a job at a McDonald's. Depression and post-traumatic stress are very common among the refugee population."¹⁴¹ 107:2.

A member of the Islamic Center of Minnesota reported to Minnesota Advocates that counseling cases have gone up after 9/11. 017:5. "There is elevated anxiety. There is no question about it. Do they see any way out of anxiety and what it will look like? No one knows because there is no end." 017:5. Two Muslim professional women told Minnesota Advocates about the triple burden on Muslims in America. First, they have to fight stereotypes from the outside. Second, they have to prove that they are loyal to the U.S. and fight the alleged "guilt by association" of Muslims after 9/11. Finally, they have to fight ignorance within the Muslim community. "These burdens create burn-out." RT1:4.

Minnesota Advocates heard of an increase in mental health problems caused by fear of constant surveillance affecting Muslims, particularly the Somali population. 010:3; 025:6. An imam who counsels the Muslim population in the Twin Cities told Minnesota Advocates that many recent arrivals "lack proper support, language skills, and education. And now they face a system that questions them." 025:6. Even

¹⁴¹ See, e.g., Jack El-Hai, Turning Victims into Victors: The Center for Victims of Torture Helps to Heal Those Broken in Body, Mind, and Spirit., 82 MINN. MED., July 1999, <http://www.mmaonline.net/publications/mnmed1999/july/el-hai.cfm>.

among non-Muslims, a community organizer described the low-level, constant stress affecting immigrants from Latin America. One client confided in her, "I only feel safe at church, not even at home." 019:2.

B. HOUSING

Anti-immigrant backlash and resource cuts after 9/11 have resulted in decreased access to various government services, including public housing. Housing was uniformly cited as expensive and in short supply, especially transitional and public housing. 101:2. A Somali community leader noted that public housing is essentially unavailable unless a person is elderly or disabled.¹⁴² 005:7.

Eligibility for housing assistance for refugees and immigrants is often unclear.¹⁴³ The Human Rights Director in St. Cloud reported that some landlords ask Somali tenants for verification of immigration status, and others do not. "It really should be the same for everyone." 204:4. A Somali community leader told Minnesota Advocates, "Since 9/11, some lenders have been requiring [Somalis] to have loans co-signed by an established agency or organization, and [they] have requested applications co-signed by individuals." 005:7. He noted that, if asked, these lenders would claim they treat all applicants similarly,¹⁴⁴ but he was

¹⁴² See, e.g., Housing Authority Waiting List, Housing Link, http://www.housinglink.org/Hsg_Authority_Waiting_Lists.htm

¹⁴³ Public housing is limited to low-income families and individuals. A local housing agency determines eligibility based on (1) annual gross income; (2) qualification as elderly, a person with a disability, or as a family; and (3) U.S. citizenship or eligible immigration status. See HUD's Public Housing Program, U.S. Dep't of Housing and Urban Development, <http://www.hud.gov/renting/phprog.cfm>. Submission of evidence of citizenship or eligible immigration status is provided in 24 C.F.R. § 5.508(a) (2006).

¹⁴⁴ The Minnesota Human Rights Act (MHRA), Minn. Stat. § 363A.02 (2006), states that it is the public policy of the state to secure for persons in the state freedom from discrimination in employment, housing, public accommodation, public services, and education, that such discrimination threatens the rights and privileges of the inhabitants of this state, and that the opportunity

very skeptical of that claim. 005:7. A Latino director of a non-profit agency noted that before 9/11, landlords required one-month rent deposit. Now they ask for more than that, including rent payments of six months up front. 213:5. A community organizer in the Twin Cities noted that often prospective renters are asked to provide a Social Security number and undergo a background check, which were not often required before 9/11. 019:2. She attributes the increase in requests to a greater unwillingness to rent to immigrants.

Legal providers in St. Cloud noted that lack of safe and affordable housing and increased scrutiny of one's background are not the only problems. In representing clients facing eviction, different issues arise depending on the immigrant or refugee group. For example, the service providers identified misunderstandings of Somali culture, such as suspicion of family members moving in, concern for property destruction, conflicts with on-site security guards, and complaints about various cooking odors to be at the root of some of these disputes. 202:1.

to obtain government services, employment, and housing without discrimination is recognized and declared to be a civil right.

XI. ROLE OF THE MEDIA

*This is not a clash of civilizations;
it is more about communication.*
Indian Muslim male, 023:4.

Many interviewees mentioned to Minnesota Advocates the harm that inaccurate reporting or sensationalized news stories caused after 9/11. Many also recognized the positive contributions of both local and national media, particularly media in the community's own language, such as Sudanese and Somali TV programming in Rochester, 101:2 and immigrant-owned newspapers in the Twin Cities. A Muslim university student told Minnesota Advocates that Michael Moore's *Bowling for Columbine* captured the media's role best: "Marilyn Manson said that the role of the media is to create fear so that people are always worried. The media sometimes covers events and shows us in a positive light. But other times it encourages a feeling of Islamophobia."¹⁴⁵ 004:7.

A Palestinian Christian-American told Minnesota Advocates that after 9/11, the U.S. media has been "too quick to ball everything up into the cliché 'the fight against terrorism.'"¹⁴⁶ 012:3. Muslims have been particularly concerned with the way their religion often has been conflated with terrorism. A female university student from Somalia told Minnesota Advocates of the significant and unhelpful role of the media: "When all sources push an image of a hostile, ready-to-die, fanatic religion that links extremists with fundamentalists with Islamists with suicide bombers, people have an image in their mind. When they see someone who might fit the profile, they remember the

¹⁴⁵ Islamophobia is defined as fear or intolerance of Muslims because of their religion. Dominic Casciani, UK "Islamophobia" Rises After 11 September (BBC News Aug. 29, 2002).

¹⁴⁶ See, e.g., Jacob Levenson, Commentary, The War on What Exactly?: Why the Press Must Be Precise, COLUMBIA JOURNALISM REV., Nov./Dec. 2004, <http://www.cjr.org/issues/2004/6/voices-levenson.asp>.

hostile image." 026:2. One Muslim professional told Minnesota Advocates that she has to combat the images of Muslims presented by Fox News and the Fox TV show "24."¹⁴⁷ "I think the message is: Don't trust my Muslim neighbors. They might be terrorists." 002:7.

Interviewees reported that post-9/11 media coverage of immigration issues affecting Minnesota's Latino population is "a mixed bag." A Latino immigration lawyer said the media does "a good job with stories with emotional appeal, such as a "good family" that has to get deported,¹⁴⁸ they've lived here for 20 years, and have kids in school. Those have a limited benefit. They do a lousy job of unwrapping the complexity of immigration issues." 006:6.

A director of a Hmong organization noted the spotty role of the local and national media in covering issues affecting their community. He told Minnesota Advocates that a local media affiliate used sensational words such as "explosion" and "exodus" when covering the 2004 resettlement in Minnesota of approximately 5,000 Hmong from the refugee camp Wat Tham Krabok in Thailand. 014:2. His organization attempted to contact the news director to complain, but their call

¹⁴⁷ In an episode of the Fox TV series "24," Islamic terrorists attack a nuclear power plant in the U.S. The Council on American-Islamic Relations raised concerns that the portrayal may "cast a shadow of suspicion over ordinary American Muslims and could increase Islamophobic stereotyping and bias." Fox produced an on-air disclaimer, which stated,

Now while terrorism is obviously one of the most critical challenges facing our nation and the world, it is important to recognize that the American Muslim community stands firmly beside their fellow Americans in denouncing and resisting all forms of terrorism. So in watching 24, please, bear that in mind.

See Steve Inskeep, Fox Offers Disclaimer for Portrayal of Muslims on "24" (Nat'l Pub. Radio broadcast, Feb. 15, 2005).

¹⁴⁸ See, e.g., Rubén Rosario, With Wife Facing Deportation, Spouses Torn Asunder By Law, PIONEER PRESS (St. Paul, Minn.), Dec. 5, 2005, at B1; Rubén Rosario, Immigrants Case Draws Passionate Response, PIONEER PRESS (St. Paul, Minn.), Aug. 8, 2005, at B1.

was not returned. He indicated that his organization has a better relationship with the newspapers than TV news, but even the newspapers “blew it” when reporting on Chai Soua Vang.¹⁴⁹ “They just had a free-for-all with that; it was very irresponsible coverage. All rules about ‘race tagging’ were broken.” 014:2.

The expansion in popularity of online commentary after 9/11 has had significant impact in St. Cloud. The local newspaper, the *St. Cloud Times*, hosts online chat rooms allowing readers to post anonymous responses to news items. The newspaper specifically disclaims any obligation to monitor postings, any responsibility for what is posted, and any liability for defamatory, offensive, or illegal conduct.¹⁵⁰ Interviewees in St. Cloud told Minnesota Advocates of their concern over misinformation and hate messages posted anonymously on the website. For example, a coordinator of service learning said, “The chat room is bogus. It fosters discrimination and hate. I’ve gone to it only so many times to see what the comments are. But how can you say blatantly discriminatory stuff? It fuels flames. . . There is nothing to foster community.” 207:5.

One Somali employment coordinator stated, “I don’t know how to describe it—maybe it is something that members of the Klan would write. When you read what people post—and it is not only about Somalis, but also African-Americans and Mexicans—they complain about immigrants taking jobs.” 206:5. When asked for examples, he stated, “They write that the government is giving money to the immigrants. A lot of people write in. I wrote and [inquired], ‘Tell me what the government does. I want to get in on it.’ But no one did.” 206:5.

¹⁴⁹ This comment refers to the 2004 hunting incident in Wisconsin that resulted in the killing of six hunters by Chai Soua Vang. See *supra*, § IIC, at 16.

¹⁵⁰ See ST. CLOUD TIMES ONLINE, Terms of Service, <http://www.sctimes.com/terms.html>.

XII. COMMUNITY RESPONSES

American people are open-minded.
Somali male, RT3:6.

While Minnesota Advocates documented many stories about fear, suspicion, lack of belonging, and even violence stemming from post-9/11 changes in policies and attitudes, there were also numerous examples of favorable community responses. These included support from elected officials, interfaith and education efforts combating misinformation, increased civic and political involvement, and outreach efforts by the affected communities themselves. A Muslim businessman whose restaurant closed as a result of 9/11 told Minnesota Advocates, “9/11 sent a warning. We need to build bridges of understanding as communities or we will break apart in prejudice.” 022:4. A law enforcement officer in St. Cloud noted that 9/11 has forced the city to look at itself in different ways and to recognize the importance and necessity of diversity. 118:6.

A Christian Arab-American told Minnesota Advocates that, in the face of 9/11, he remains optimistic about the capacity of Americans to make fair judgments. Despite general insularity, he noted that there are always people who are interested in his background and who want to learn more about his culture. He reported that when Americans are given full information, they make fair judgments. 012:4.

A. COMMUNITY OUTREACH

In preparing for World Refugee Day celebrations in Rochester in June 2005, a refugee resettlement coordinator told Minnesota Advocates that his organization asked refugees to bring flags from their country of origin. Interestingly, he commented, “They responded that they want one flag: the American flag. They want to show their willingness to be American.”

101:3. A Cambodian student at Rochester Community and Technical College (RCTC) told Minnesota Advocates that they have come together since 9/11. “At RCTC we have been raising money for the soldiers in Iraq. We support military families with food and babysitting.” 106:4.

Minnesota Advocates was informed about creative outreach efforts to refugees and immigrants since 9/11. A county services provider in St. Cloud hosted community gatherings to get input from people using its services. One development was a Somali translator day, where an interpreter/translator would be on-site once a week to help fill out county forms on a walk-in basis. Even the mayor helped provide transportation to make it successful.¹⁵¹ 203:3. It was reported to Minnesota Advocates that there was little education about the history and culture of the Somalis in St. Cloud, even though they had long been a sizeable part of the community. 011:4. As a result, the United Way in St. Cloud started Somali 101 classes to address the information gap. Local Somali men and women present information about their culture and why they have chosen to live and to raise their families in St. Cloud. 206:4. An elected official in St. Cloud noted, “We are seeing each other’s people. We look for the ways that we are alike rather than different.” 216:10.

A librarian at the Rochester Public Library told Minnesota Advocates that their new acquisitions since 9/11 focus on international books and film. They have a large collection of Indian films and Chinese books. A high demand for Spanish books even prompted him to attend a book fair in Guadalajara, Mexico, in 2004. In addition, they have literacy materials, ESL books, and citizenship information. Immigrants can take Internet classes. “Every once in a while, we give talks about

¹⁵¹ Unfortunately, Minnesota Advocates has learned that the community does not have adequate resources to continue the interpreter program.

other cultures, and I have noticed these are of particular interest.” 109:2.

Many of the Muslims interviewed by Minnesota Advocates indicated a greater need to inform and educate the public about Islam after 9/11. 004:6. The Islamic Resource Group (IRG)¹⁵² developed a volunteer speakers’ bureau that has given over 1,300 presentations to over 55,000 Minnesotans at churches, schools, and businesses since 9/11. One of the IRG’s presenters said,

We needed 9/11 to open our eyes and mobilize. It is good for the community to know about Muslims in a positive way. We need to make ourselves available. I think there is a bifurcated responsibility post-9/11: the non-Muslim needs to get educated, and the Muslims, if they hear something that is not true, need to correct them.

002:10.

Similarly, the Sikh community has raised money for victims of 9/11, held memorial prayer services, and hosted community outreach and school presentations to educate people about their religion and culture. 040:5; 041:3; 044:2. The Hmong community also continues to do cultural performances and educational outreach. 045:4-5.

B. INTERFAITH EFFORTS

The responses of Minnesota’s faith communities to 9/11 included collaborative efforts to learn more about each other and to work together. An interfaith coordinator spoke of the efforts of Christian, Jewish, Muslim, and other communities to try to mitigate the effects of 9/11. 010:6. After the attempted arson at a mosque in Columbia Heights in October 2004,

Christians in the area worked with members of the mosque to condemn the vandalism.¹⁵³

A Latina in St. Cloud noted that many Lutherans and Catholics are open in their faith “to receive the stranger. We call everyone Brother and Sister. People in the faith-based community have responded well.” 214:4. A Muslim professional gave the example of her younger brother who was invited to talk about Islam at the Christian church of his high school friends in the Twin Cities. 002:6-7. Minnesota Advocates was also told of interfaith candlelight vigils in Rochester. 102:3. In addition, a representative of Jewish Community Action (JCA) noted that his group’s established mission was to assist Russian-speaking Jews who were resettling in the Twin Cities. Since 9/11, JCA has been involved in activities with a broad mandate to benefit the general immigrant population. 031:1. A Muslim professor in St. Cloud stated, “If everybody takes a deep breath and reflects at the end of the day, we worship the same God. We are Abrahamic religions and more alike than different.” 215:6.

C. SUPPORT OF ELECTED OFFICIALS

Right after 9/11, many of Minnesota’s elected officials strongly condemned the acts of terrorism and any potential stereotyping and provided guarantees of safety to all Minnesotans. A Muslim professional recalled, “In Minnesota, we were under [Governor] Jesse Ventura. He talked about [9/11] in a way only he could. He said don’t mess with the Muslims [and that] Mohammed Ali was a Muslim. That hit a chord, particularly with rural voters. Mohammed Ali was a good guy.” 003:7.

¹⁵² Information about the Islamic Resource Group can be found at <http://www.islamicresourceonline.org/>.

¹⁵³ Minn. Council of Churches, Minnesota Places of Worship Attacked by Vandals, Violence: MCC Stands in Solidarity with Victims of Hate, THE MESSENGER, Fall 2004, at 6, <http://www.mnchurches.org/messenger/pdfs/Fall2004.pdf>.

In addition, she noted that Senator Paul Wellstone sent a representative to her mosque, and justices from the Minnesota Supreme Court visited. 003:7. A student at the University of Minnesota described President Mark Yudof's program to provide 24-hour security to protect against any 9/11 backlash. 004:1. Similarly, a professor at St. Cloud State University noted President Roy Saigo's unequivocal response to inform, educate, and prepare the University community, particularly Muslims. "He wanted to provide ways to seek redress [after 9/11]." 215:2.

An elected official in St. Cloud told Minnesota Advocates that anybody "in this country will be welcomed and protected," that it was his "responsibility to ensure that people are adequately protected," and that discrimination and violence will be prosecuted. 219:5. Another elected official in St. Cloud noted that, in response to bias-motivated graffiti, elected officials went out and whitewashed the words. We were "out there with [our] sleeves rolled up and doing something. The City continues to make an effort." 216:1. A Latina noted the supportive response in St. Cloud to hate crimes: "When something bad happens, there are good consequences. It is sad that something bad happens, but we are moving forward to build a regional [human rights] office¹⁵⁴ and for an agreement with the police department.¹⁵⁵ We are trying to stay ahead of the problem." 214:5.

St. Cloud hosted a showing of "The Letter"¹⁵⁶ on Human Rights Day in 2004 and at subsequent events, which documented the reaction to the settlement of

Somali refugees in Lewiston, Maine. A discussion was held after the screening. 201:1.

Minnesota Advocates consistently heard of the significant role played by elected officials. Their words of condemnation for hate-filled acts and words of inclusion and tolerance are critical in creating a sense of belonging and safety for Minnesotans from refugee, immigrant, and religious minority communities.

D. CONCLUSION

A Muslim man who believed that after 9/11 he and his wife and family would have "to pack and leave now," indicated to Minnesota Advocates that this fear has not materialized. He called for continued efforts toward tolerance and respect.

From the ashes can come the domain of peace. It is sad that people died the way they did. But now we know more about each other. We need to communicate. . . . People in Nigeria worshipped different gods—those of iron, lightning, and thunder. But they didn't fight against each other. There was respect. We should not decimate people because they worship a different god than the one I worship. We need tolerance on [all] sides in this matter. 215:6.

¹⁵⁴ Annie Baxter, St. Cloud Human Rights Office Expands its Footprint (Minn. Pub. Radio broadcast, Nov. 19, 2004); Michelle Tan, Councils Vote to Fight Hate Crimes: Members to Consider Creation of Regional Human Rights Office, ST. CLOUD TIMES (St. Cloud, Minn.), Apr. 12, 2005, at B1.

¹⁵⁵ Annie Baxter, St. Cloud's New Civil Rights Vanguard (Minn. Pub. Radio broadcast, Apr. 22, 2004).

¹⁵⁶ THE LETTER (Hamzeh Mystique Films 2003).

FEDERAL LEGISLATION

In time of actual war, great discretionary powers are constantly given to the executive magistrate. Constant apprehension of war has the same tendency to render the head too large for the body. A standing military force with an overgrown executive will not long be safe companions to liberty.

James Madison

In the years since 9/11, public policy has been shaped by an atmosphere of elevated fear and mistrust of certain groups, including those who are foreign-born. National security has often trumped other policy concerns and has justified legislation that puts at risk personal freedoms, the balance of governmental powers, and the human rights of immigrants and refugees. The national conversation on social issues and policies is influenced not only by laws that are passed, but also by those that are proposed. For example, during the immigration reform debate, a proposal to criminalize and deport millions of undocumented immigrants inspired hundreds of thousands of protestors to march in the streets of major cities across the United States. The effects that such proposals have on our country, our elected officials, and future policy debates are significant.¹⁵⁷

A. USA PATRIOT ACT OF 2001¹⁵⁸

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 expands government power to search records, property, intelligence, and correspondence and provides for the indefinite detention of non-citizens on suspicion of terror. The USA PATRIOT Act was passed just 45 days after 9/11, with minimal debate or dissent in Congress. It generated a firestorm of controversy:

¹⁵⁷ To read more about national proposals that were influenced by the events of 9/11, but were not passed, please read Appendix B. See discussion *infra* App. B.

¹⁵⁸ See discussion *infra* App. B. See USA PATRIOT Act *supra* note 8.

while supporters pointed to the fear of another terrorist attack as a legitimate reason for a reduction in personal privacy, opponents claimed both that the new government powers were too invasive and that they would not provide a significant increase in security to justify their effect upon the average citizen.

The Act expands the government's ability to review third-party records on individuals.¹⁵⁹ Under the expanded powers, the FBI can force anyone—doctors, service providers, and libraries—to turn over records without the client's knowledge or permission and without providing a reasonable suspicion of criminal activity. The FBI need not inform the third parties of why the client is being investigated or whether the documents are related to an “agent of foreign power,” as had previously been required. The same is true of the government's ability to search private property. Now, after obtaining a search warrant, the government can enter a home or office to search private property, take pictures, and even seize items without notifying the owner.

The FBI's power to conduct searches has been increased as well. The PATRIOT Act allows the FBI to secretly conduct a wiretap or physical search without proving probable cause. This provision was justified by an exception to the Fourth Amendment in a 1978 law, the Foreign Intelligence Surveillance Act (FISA), which allowed such searches only if the primary purpose was to gather foreign intelligence. These searches, however, have been conducted on domestic

¹⁵⁹ See USA PATRIOT Act *supra* note 8 at § 215.

conversations.¹⁶⁰ The Act also permits “trap and trace” searches, which track the origin and destination of correspondence. The requirements for a warrant are essentially nonexistent: the FBI must only certify, without having to prove, that the warrant would be “relevant” to a terrorism inquiry.

Most strikingly, the PATRIOT Act allows for the indefinite detention of non-citizens on suspicion of terror, an unprecedented move by the administration. The Attorney General can order detention based on “reasonable grounds to believe” the non-citizen endangers national security.

The impact of the PATRIOT Act is manifold. The government can apply these expanded intelligence provisions against virtually anyone—that is, they can search a house and obtain records based on a suspicion of criminal activity that may be only marginally related to terrorist activities. Normally, search warrants contain limitations on what officers can do on the premises, and officers are typically required to notify the owner when a search warrant has been obtained. The lack of any oversight or owner notification means that police can search with complete and unsupervised discretion, diminishing accountability. Another source of concern is the increase in use of National Security Letters (NSLs), an investigative tool given new importance by the PATRIOT Act. NSLs have been available for three decades, but the FBI now sends 30,000 a year—a hundredfold increase over pre-9/11 rates.¹⁶¹ NSLs allow the FBI to review certain records of U.S.

¹⁶⁰ There remains some uncertainty as to whether this provides the legal basis for domestic surveillance. See, e.g., James Risen & Eric Lichtblau, *Bush Secretly Lifted Some Limits on Spying in U.S. After 9/11, Officials Say*, N.Y. TIMES, Dec. 15, 2005, at A1.

¹⁶¹ This issue sparked considerable debate. See, e.g., Barton Gellman, *The FBI’s Secret Scrutiny*, WASH. POST, Nov. 6, 2005, at A1 (discussing National Security Letters and their “widespread use and limited oversight”).

residents and visitors who are not suspected of terrorism or espionage.¹⁶²

B. THE ENHANCED BORDER SECURITY AND VISA REFORM ACT OF 2002¹⁶³

The Enhanced Border Security and Visa Reform Act of 2002 is another measure that increases government surveillance and control over immigration. It required that (1) the Immigration and Naturalization Service (INS) link all internal databases so that a single search will allow access to all information about a particular alien, (2) federal law enforcement and intelligence agencies share data on aliens within the INS and State Department, and (3) all travel and entry documents issued to aliens be machine-readable and include a standard biometric identifier. It tightened border control and subjected aliens to increased government monitoring.

C. REGISTRATION OF NON-CITIZENS

Although not a legislative change, alien registration was widely expanded following 9/11. The National Security Entry Exit Registration System (NSEERS) established a national registry for temporary foreign visitors (non-immigrant aliens) starting September 11, 2002. Under NSEERS, certain aliens¹⁶⁴ were required

¹⁶² Sixteen of the provisions in the USA PATRIOT Act were set to expire in December 2005. After short-term extensions, President Bush signed two renewal bills into law. See USA PATRIOT Improvement And Reauthorization Act Of 2005, Pub. L. No. 109-177, 120 Stat. 192, and USA PATRIOT Act Additional Reauthorizing Amendments Act of 2006, Pub. L. No. 109-178, 120 Stat. 278. See also discussion *infra* Part H.

¹⁶³ Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. Law No. 107-173, 116 Stat. 543.

¹⁶⁴ Males over the age of 16 who are citizens or nationals of the following countries are required to register: Afghanistan, Algeria, Bahrain, Bangladesh, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, North Korea, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen. See U.S. Immigration & Customs Enforcement, *Changes To National Security Entry/Exit Registration System (NSEERS)*, <http://www.ice.gov/pi/news/factsheets/nseersFS120103.htm>. For more details, see Public

to register upon arrival to and departure from the United States and could be detained for not doing so.

The NSEERS program has collected detailed information about the background and purpose of an individual's visit to the U.S., has periodically verified an individual's location and activities, and confirmed his or her departure. It has also allowed the U.S. to run fingerprints of aliens to determine instantly whether an alien has overstayed his or her visa.

NSEERS has had far-ranging implications for foreign visitors. Those who have been required to register include aliens from certain countries or those who present an elevated national security concern.¹⁶⁵ They were required to interview with the U.S. Citizenship and Immigration Services (USCIS) if they planned to remain in the United States for more than 30 days, and to notify the USCIS within ten days of any changes regarding place of residence, employment, or educational institution. A 2003 change allows DHS, as a matter of discretion, to require individual non-immigrant aliens to appear for one or more additional continuing registration interviews. A requirement that non-immigrant aliens re-register every year was implemented but subsequently suspended in December 2003.

NSEERS targeted Muslim and Arab men of a certain age range, thus legitimizing race, national origin, and religion profiling and, according to critics, entrenching racist stereotyping and fear. Since its enactment, thousands of non-immigrant aliens have been detained. Over 13,000 men were put into removal proceedings within the first year of enforcement, and 2,800 were deported. The system was purportedly

Information, Topics of Interest, Special Registration (last accessed Jan. 11, 2007), http://www.ice.gov/pi/special_registration/index.htm.

¹⁶⁵ *Id.*

designed to catch terrorists, but it has resulted in massive numbers of people being detained or delayed without any connection to terrorism.

On January 5, 2004, a new phase (which is eventually to incorporate NSEERS) began: the U.S. Visitor and Immigrant Status Indicator Technology (U.S.-VISIT). U.S.-VISIT uses scanning equipment to collect biometric identifiers, such as inkless fingerprints and a digital photograph of the foreign visitor, which, along with the standard information about the visitor, are used to verify identity and compliance with visa and immigration policies. Visitors also check out at exit kiosks by scanning their passport or visa and repeating the inkless fingerprinting process. In December 2006, with U.S.-VISIT operable at 154 of the 170 land ports of entry, DHS suspended efforts to proceed with program expansion due to a lack of resources.¹⁶⁶

Another registration system aimed exclusively at students, the Student Exchange Visitor Information System (SEVIS), is a web-based system that maintains a database with information on foreign-visitor or exchange students. The Student Exchange Visitor Program (SEVP) gathers this information "so that only legitimate foreign students or exchange visitors gain entry to the United States."¹⁶⁷ The system is designed to prevent terrorists from entering the country on a student visa. SEVIS, which came into effect on August 1, 2003, requires schools to keep records of all foreign students. Foreign students who fail to attend class are

¹⁶⁶ U.S. GEN. ACCOUNTING OFFICE, REPORT TO CONGRESSIONAL REQUESTERS, BORDER SECURITY: US-VISIT PROGRAM FACES STRATEGIC, OPERATIONAL, AND TECHNOLOGICAL CHALLENGES AT LAND PORTS OF ENTRY (2006), <http://www.gao.gov/new.items/d07248.pdf>.

¹⁶⁷ U.S. Immigration & Customs Enforcement, <http://www.ice.gov/sevis/> (last visited Feb.13, 2007).

subject to immediate investigation and even deportation.¹⁶⁸

D. THE HOMELAND SECURITY ACT OF 2002¹⁶⁹

The Homeland Security Act of 2002 represented a mammoth government restructuring. Pushed through Congress after 9/11, it represented the biggest change in the federal government since 1947, when President Truman created the Department of Defense. According to the Bush administration, the Act was designed “to organize a government that is fractured, divided, and under-prepared to handle the all-important task of defending our great nation from terrorist attack.”¹⁷⁰ Its passage consolidated more than twenty existing federal agencies into a single Department of Homeland Security (DHS), including the Federal Emergency Management Agency (FEMA), the U.S. Secret Service, the U.S. Customs Service, the U.S. Coast Guard, and the Immigration and Naturalization Service (INS). DHS now houses three immigration agencies that are responsible for the functions previously performed by the INS. They include the U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and the U.S. Customs and Border Protection (CBP).

The primary mission of DHS is “to prevent terrorist acts within the United States; to reduce the vulnerability of the United States to terrorism; and minimize the damage from any terrorist attacks that do occur.”¹⁷¹ Its five major functions include: (1) information analysis and infrastructure protection; (2) chemical, biological,

radiological, nuclear, and related countermeasures; (3) border and transportation security; (4) emergency preparedness and response; and (5) coordination with other parts of the federal government, with state and local governments, and with the private sector.

The Act also created the Directorate of Information Analysis and Infrastructure Protection, which maintains a massive database of public and private information on virtually any individual in the U.S., including credit card purchases, phone calls, and travel. The Directorate has authority:

to develop a comprehensive national plan for securing the key resources and critical infrastructure of the United States, including power production, generation, and distribution systems, information technology and telecommunications systems (including satellites), electronic financial and property record storage and transmission systems, emergency preparedness communications systems, and the physical and technological assets that support such systems.¹⁷²

Several other Homeland Security Act provisions represent notable departures from earlier legislation. The new provisions tighten government control over civil liberties and expand government power. For instance, the Act exempts “critical infrastructure information” that is “voluntarily submitted to a covered Federal agency” from public disclosure under the Freedom of Information Act (FOIA).¹⁷³ Once submitted to the government, information cannot be used in any civil action against the person or entity that submitted it. Any government officer who discloses it would be subject to criminal penalties.

The Act incorporates text of the Cyber Security Enhancement Act of 2001 (CSEA), which allows service providers to give government agents access to

¹⁶⁸ Jeanne Meserve, International Student Registry Deadline Arrives, CNN.COM, Aug. 1, 2003, <http://www.cnn.com/2003/EDUCATION/08/01/student.tracking/index.html>.

¹⁶⁹ *Supra* note 36.

¹⁷⁰ 148 Cong. Rec. H8706 (2002) (statement of Rep. Watts).

¹⁷¹ Press Release, The White House, Executive Summary: National Strategy for Homeland Security (July 16, 2002), <http://www.whitehouse.gov/news/releases/2002/07/20020716.html>.

¹⁷² Homeland Security Act, *supra* note 36, at § 201(d)(5).

¹⁷³ *Id.* at § 214.

contents of customer communications without consent, based on a “good faith” belief that the situation constitutes an emergency.¹⁷⁴ Another provision allows DHS to form advisory committees exempt from provisions in federal law that normally mandate openness and transparency in government.¹⁷⁵ Provisions included in the Homeland Security Information Sharing Act (HSISA) facilitate sharing of sensitive intelligence information with state and local authorities and allow for expanded sharing of grand jury information and electronic surveillance.¹⁷⁶ In addition, the Homeland Security Act also provides for federal supervision and guidance of “local first responders,” such as police and emergency personnel, thus expanding federal control of local law enforcement.¹⁷⁷

E. INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004¹⁷⁸

The Intelligence Reform and Terrorism Prevention Act of 2004 represents an overhaul of intelligence operations, creating the position of National Intelligence Director, a national counterterrorism center, and interagency information sharing between the nation’s fifteen intelligence agencies. The bill’s objective was to reform intelligence operations in order to deal with new and different threats, consistent with other federal legislation designed to streamline defense policy in the wake of 9/11.¹⁷⁹

¹⁷⁴ *Id.* at § 225.

¹⁷⁵ *Id.* at § 871.

¹⁷⁶ *Id.* at § 891.

¹⁷⁷ *Id.* at §§ 501-509.

¹⁷⁸ Intelligence Reform & Terrorism Prevention Act of 2004, Pub. L. No. 108-458, 118 Stat. § 3638, <http://travel.state.gov/pdf/irtpa2004.pdf>.

¹⁷⁹ U.S. Senate Governmental Affairs Committee Chairwoman Susan Collins (R-ME) stated, “We are rebuilding a structure that was designed for a different enemy at a different time, a structure that was designed for the Cold War and has not proved agile enough to deal with the threats of the 21st century.”

The bill also includes provisions for increasing the number of full-time border patrol agents by 10,000 over five years and the number of full-time Immigration and Customs Enforcement (ICE) investigators by 4,000 over five years. It also orders an annual increase of at least 8,000 beds to house detained immigrants, beginning in 2006.¹⁸⁰ Other measures in the bill lower standards for FBI surveillance warrants, allow the Justice Department to detain suspects more easily without bail, and expand the criteria that constitute “material support” to terrorist groups.¹⁸¹

F. REAL ID ACT OF 2005¹⁸²

The REAL ID Act, attached to an \$82 billion military spending bill, establishes federal standards for state driver’s licenses, essentially resulting in a national identity card. Starting in May 2008, U.S. residents will need a federally-approved ID card to travel by plane, open a bank account, collect Social Security, or use virtually any other government service. In addition, the REAL ID Act changes asylum procedures and steps up border enforcement.

Congress Passes Intel Reform (CBS television broadcast, Dec. 8, 2004).

¹⁸⁰ Intelligence Reform & Terrorism Prevention Act § 5204.

¹⁸¹ “In this section, the term ‘material support or resources’ means currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.” 18 U.S.C. § 2339A (2004). For a useful discussion of material support, see Norman Abrams, *The Material Support for Terrorism Offenses*, 1 J. NAT’L SECURITY L. & POL’Y 5 (2005), <http://www.mcgeorge.edu/jnslp/media/01-01/02%20ABRAMS%20MASTER.pdf>. See also HUMAN RIGHTS WATCH, *WITNESS TO ABUSE: HUMAN RIGHTS ABUSES UNDER THE MATERIAL WITNESS LAW SINCE SEPTEMBER 11* (2005), <http://hrw.org/reports/2005/us0605/us0605.pdf>.

¹⁸² The REAL ID Act passed as part of an emergency military spending bill on May 10, 2005, sponsored by Representative James Sensenbrenner (R-WI). See REAL ID Act of 2005, Pub. L. No. 109-13, Division B, 119 Stat. § 302.

Diverse organizations, such as the American Association of Motor Vehicle Administrators, National Association of Evangelicals, American Library Association, National Council of State Legislatures, American Immigration Lawyers Association, and the National Governors Association, opposed the REAL ID Act. Federal IDs would make it easy (and legal) for anyone, whether a corner store, bank, or airline, to demand identification, scan the standardized strip, and view personal information at will. Barry Steinhardt, Director of the ACLU's Technology and Liberty Program, noted that the card would be not just a national ID but a national database.¹⁸³ Concerns include facilitating identity theft through "common machine-readable technology," preventing states from issuing driver's licenses to non-citizens, and shifting complex decisions about immigration status to untrained, entry-level Department of Motor Vehicles employees.

The most controversial provisions in the REAL ID Act concern immigration and asylum. Asylum seekers now face higher standards to prove that they qualify for legal protection in the U.S. The Act increases the standard of proof for the grant of asylum and strips federal courts of the ability to review certain administrative determinations regarding immigration. The Act broadly expands the power of immigration judges to make life-or-death decisions and, some critics warn, includes provisions that may be culturally insensitive. For instance, refugees can be denied asylum based on "demeanor," which includes a lack of eye contact or failure to show a great deal of emotion. In addition, a judge can deny asylum to an applicant who may relate only some of the grounds for a well-founded fear of persecution to armed airport inspectors

¹⁸³ See American Civil Liberties Union, RealNightmare.org, <http://www.realnightmare.org> (last visited Jan. 11, 2007) (documenting problems created by the REAL ID Act).

but is later able to provide additional details to the judge.

Finally, the REAL ID Act contains a provision that allows DHS to bar aliens from admission if they have provided "material support" to a group defined as a terrorist organization,¹⁸⁴ even if the applicant bears no personal responsibility for such acts or was coerced into such activities. Thousands of refugees have had their cases denied and over 500 asylum cases are on hold because of this bar.¹⁸⁵ Human rights advocates have pointed out that the material support bar is in violation of international obligations to protect refugees.¹⁸⁶ While the Act granted DHS and the State Department the authority to exempt refugees, to date they have not exercised their authority to do so.¹⁸⁷ In early 2007, however, following a public campaign to provide relief from this bar to refugees, Homeland Security Secretary Michael Chertoff issued a statement declaring that DHS would provide an exemption to certain groups seeking asylum in the United States.¹⁸⁸ In response, human rights organizations expressed concern that the plan would not address core issues

¹⁸⁴ The definition of a "terrorist group" was widely expanded in the REAL ID Act, § 103.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ MINN. ADVOCATES FOR HUM. RTS. ET AL., REPORT TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE, PROBLEMS WITH U.S. COMPLIANCE WITH THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: VIOLATIONS OF THE RIGHTS OF ALIENS (2006).

¹⁸⁸ Exempted groups are to include the Karen National Union and Karen National Liberation Army, Chin National Front and Chin National Army, Chin National League for Democracy, Kayan New Land Party, Arakan Liberation Party, Tibetan Mustangs, Cuban Alzados, and Karenni National Progressive Party. DHS, Statement by Homeland Security Secretary Michael Chertoff on the Intention to Use Discretionary Authority for Material Support to Terrorism, Jan. 19, 2007, http://www.dhs.gov/xnews/releases/pr_1169465766808.shtm.

within the Act, thus continuing to exclude many vulnerable groups.¹⁸⁹

G. DETAINEE TREATMENT ACT OF 2005¹⁹⁰

After the revelations of torture and abuse in Abu Ghraib, internal memoranda written by various members of the Bush administration materialized, revealing questionable interpretations of domestic and international law. Receiving overwhelming support, the Detainee Treatment Act of 2005 (DTA) was included in the 2006 Department of Defense Appropriations Act and signed by President Bush on December 30, 2005, to correct and improve protections for detainees.

In Section 1003(a), the DTA contains provisions banning the cruel, inhumane, or degrading treatment of detainees in U.S. custody, regardless of nationality or physical location. In addition, DTA section 1002(a) requires treatment of persons within control of the Department of Defense to be consistent with the United States Army Field Manual on Intelligence Interrogation.

There are several loopholes in the DTA, however. First, section 1002 does not apply to CIA interrogators.¹⁹¹ The perpetrators of such actions may have a valid legal defense that they were following the orders of the President if those orders were not manifestly unlawful under section 1004.¹⁹²

Despite the overwhelming support to pass the DTA over stiff lobbying resistance from the Bush

administration,¹⁹³ a Presidential signing statement interpreted the DTA in ways inconsistent with both the spirit and letter of the Act. Under its “unitary executive” theory, the administration argues that the Commander-in-Chief power grants the President complete discretion and authority over the conduct of war, so Congress lacks the authority to restrain the President in wartime operations. Since the President would be authorizing the detention and interrogation of detainees in pursuance of the war on terrorism, this position would render the DTA’s protections completely irrelevant.

Section 1005 of the DTA also severely restricts the ability of Guantánamo Bay prisoners to bring future *habeas* challenges to their detention in U.S. federal courts.¹⁹⁴ The Bush administration signing statement interpreted the DTA to cut off pending claims challenging detention and military commissions.¹⁹⁵ This assertion was rejected in *Hamdan v. Rumsfeld* (discussed below).¹⁹⁶

H. PATRIOT ACT RENEWAL: USA PATRIOT IMPROVEMENT AND REAUTHORIZATION ACT OF 2005 AND THE USA PATRIOT ACT ADDITIONAL REAUTHORIZING AMENDMENTS ACT OF 2006.

Sixteen of the key sections of the USA PATRIOT Act were set to expire on December 31, 2005. Members of Congress were initially unable to reach agreement on the terms of the renewal, instead passing two short-term extensions. On March 9, 2006, President Bush

¹⁸⁹ HUMAN RIGHTS FIRST, Administration’s New Asylum Proposal Leaves Vulnerable Refugees at Risk, Jan. 12, 2007, <http://www.humanrightsfirst.org/media/asy/2007/statement/305/>.

¹⁹⁰ Detainee Treatment Act of 2005, Pub. L. No. 109-148, §§ 1001-1006, 119 Stat. 2739-2744.

¹⁹¹ Arsalan M. Suleman, Recent Developments: The Detainee Treatment Act of 2005, 19 HARV. HUM. RTS. J. 257, 260 (2006).

¹⁹² Detainee Treatment Act, *supra* note 190, at § 1004.

¹⁹³ Dana Priest & Robin Wright, Cheney Fights for Detainee Policy, WASH. POST, Nov. 7, 2005, at A1.

¹⁹⁴ Detainee Treatment Act, *supra* note 190 at § 1005.

¹⁹⁵ Press Release, The White House, President’s Statement on Signing of H.R. 2863, the “Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006” (Dec. 30, 2005), <http://www.whitehouse.gov/news/releases/2005/12/20051230-8.html>.

¹⁹⁶ *Hamdan v. Rumsfeld*, 548 U.S. ___, 126 S. Ct. 2749 (2006).

signed the two separate, but related, renewal bills into law.

The USA PATRIOT Improvement and Reauthorization Act of 2005¹⁹⁷ made permanent 14 of the 16 USA PATRIOT Act provisions that were due to sunset and placed four-year sunsets on the other two—the authority to conduct roving surveillance under the Foreign Intelligence Surveillance Act (FISA) and the authority to request production of business records under FISA.¹⁹⁸

Incorporating only a fraction of the safeguards of the proposed Security and Freedom Enhancement Act (SAFE),¹⁹⁹ the USA PATRIOT Act Additional Reauthorizing Amendments Act of 2006²⁰⁰ was passed to address some of the civil liberties shortcomings of the original PATRIOT Act. Additional civil liberties safeguards built into the renewal include allowing recipients of Section 215 subpoenas to be able to challenge the accompanying gag order, eliminating a requirement that people who receive National Security Letters (NSLs) must provide the FBI the names of lawyers consulted about the NSL, and clarifying that libraries functioning in their traditional roles would not be subject to NSLs.²⁰¹

¹⁹⁷ USA PATRIOT Improvement and Reauthorization Act of 2005, Pub. L. No. 109-177, 120 Stat. 192, http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_public_laws&docid=f:publ177.109.pdf.

¹⁹⁸ Department of Justice, Fact Sheet: USA PATRIOT Act Improvement and Reauthorization Act of 2005 (Mar. 2, 2006), http://www.usdoj.gov/opa/pr/2006/March/06_opa_113.html.

¹⁹⁹ Security & Freedom Enhancement Act, S. 737, 109th Cong. (2005). The bill was introduced by Senator Larry Craig (R-ID), http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:s737is.txt.pdf.

²⁰⁰ USA PATRIOT Act Additional Reauthorizing Amendments Act of 2006, Pub. L. No. 109-178, 120 Stat. 278, http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_public_laws&docid=f:publ178.109.pdf.

²⁰¹ BRIAN T. YEH, CONGRESSIONAL RESEARCH SERVICE REPORT, USA PATRIOT ACT ADDITIONAL REAUTHORIZING AMENDMENTS ACT

Significant concerns remain about the USA PATRIOT Act framework. As Senator Russell Feingold (D-WI) said, the new protections for Americans were so modest they were almost meaningless.²⁰² In addition to the problems retained from the original Act, President Bush's signing statement declared that he would construe the oversight provisions that require furnishing information to entities outside the executive branch "in a manner consistent with the President's constitutional authority to supervise the unitary executive branch and to withhold information the disclosure of which could impair foreign relations, national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties."²⁰³

I. THE SECURE FENCE ACT OF 2006²⁰⁴

The Secure Fence Act of 2006 was introduced on September 13, 2006, and passed on September 29, 2006. This piece of legislation directs the Secretary of Homeland Security to "take appropriate actions to achieve operational control over U.S. international land and maritime borders," and calls for 700 miles of fencing along the U.S.-Mexico border, extending from California to Texas.²⁰⁵ This Act had been deemed a political "quick-fix" before mid-term elections, in response to growing calls for immigration reform. Immigrant and refugee advocates have pointed out that previous attempts at enforcement-only legislation

OF 2006 (S.2271) 5-6, <http://www.fas.org/sgp/crs/intel/RS22384.pdf>.

²⁰² Laurie Kellman, Bush to Sign Patriot Act Renewal (ABC news broadcast Mar. 8, 2006) <http://www.abcnews.go.com/Politics/wireStory?id=1700403&page=1>.

²⁰³ Press Release, The White House, President's Statement on H.R. 199, the "USA PATRIOT Improvement and Reauthorization Act of 2005" (Mar. 9, 2006), <http://www.whitehouse.gov/news/releases/2006/03/20060309-8.html>.

²⁰⁴ Secure Fence Act of 2006, Pub. L. No. 109-367, 120 Stat. 2638, http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_public_laws&docid=f:publ367.109.pdf.

²⁰⁵ *Id.*

have failed to curb undocumented immigration into the United States. Many analysts also worry about foreign policy implications of the Secure Fence Act. Vicente Fox, the former President of Mexico, called the legislation “shameful” and compared it to creating a “Berlin Wall.”²⁰⁶ Developments since the passage of the Secure Fence Act indicate that monies may be put into a “virtual fence,” and that fewer resources will be devoted to a physical wall.²⁰⁷

J. FY 2007 DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT²⁰⁸

On October 4, 2006, President Bush signed legislation appropriating funding for the Department of Homeland Security for the fiscal year 2007.²⁰⁹ The Act provides \$21.3 billion of the \$34.8 billion total for funding border protection and immigration enforcement.²¹⁰ Border security enhancements include new infrastructure and technology, as well as an additional 1,500 Border Patrol agents by the end of 2008, increasing their ranks to 14,800. Immigration and Customs Enforcement received a 25% funding increase, providing 6,700 additional detention beds, for a total of 27,500.²¹¹ Detention Watch Network asserts that many immigrants who pose no security or flight risk are detained at significant social and economic costs in

²⁰⁶ Deb Riechmann, Bush Signs Homeland Security Bill, WASH. POST, Oct. 4, 2006.

²⁰⁷ Spencer S. Hsu, In Border Fence's Path, Congressional Roadblocks, WASH. POST, Oct. 6, 2006, at A1.

²⁰⁸ Dep't of Homeland Security Appropriations Act, 2007, Pub. L. No. 109-295, http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:h5441enr.txt.pdf.

²⁰⁹ Press Release, The White House, President Bush Signs Department of Homeland Security Appropriations Act (Oct. 4, 2006), <http://www.whitehouse.gov/news/releases/2006/10/20061004-2.html>.

²¹⁰ American Immigration Lawyers Assoc., Senate Appropriators Block Harsh Enforcement Provisions from Conference Agreement on DHS Funding, AILA InfoNet Doc. No. 06092663 (Sept. 26, 2006), <http://www.aila.com/Content/default.aspx?docid=20673>.

²¹¹ *Id.*

inhumane conditions, limiting their access to legal assistance. The detainees affected include very vulnerable populations including asylum seekers, torture survivors, and unaccompanied minors.²¹² Over \$28 million was allocated to assist state and local efforts to enforce immigration law.²¹³

K. MILITARY COMMISSIONS ACT OF 2006²¹⁴

On June 29, 2006, the Supreme Court decided the landmark case, *Hamdan v. Rumsfeld*. *Hamdan* held that whatever inherent authority the President has in the absence of legislation, “he may not disregard limitations that Congress has, in proper exercise of its own powers, placed on his powers.”²¹⁵ The military commissions established by President Bush failed to meet the requirements of Article 36 of the Uniform Code of Military Justice (UCMJ), which requires that “the rules applied to military commissions must be the same as those applied to courts-martial unless such uniformity proves impracticable.”²¹⁶

Hamdan also held that Common Article 3 of the Geneva Conventions applied to military commissions and that the actual procedures adopted by the military commissions violated the requirement that detainees be tried by “a regularly constituted court that affords all the judicial guarantees which are recognized as indispensable by civilized peoples.”²¹⁷ Defects included a failure to charge Hamdan with a recognized violation of the laws of war, a failure to provide rules of evidence

²¹² Detention Watch Network, Immigration Detention – An Overview, <http://detentionwatchnetwork.org/aboutdetention>.

²¹³ American Immigration Lawyers Assoc., *supra* note 210.

²¹⁴ Military Commissions Act of 2006, Pub. L. No. 109-366, 120 Stat. 2600 (2006), http://www.loc.gov/rr/frd/Military_Law/pdf/PL-109-366.pdf.

²¹⁵ *Hamdan*, *supra* note 196 at n.23 (2006) (citing *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637 (1952)).

²¹⁶ *Id.* at 2790.

²¹⁷ *Id.* at 2795.

consistent with the UCMJ, and a failure to allow detainees to be present at the proceedings and challenge evidence against them.²¹⁸

The diverging opinions on how to settle the matter of holding and trying detainees culminated in a meeting between the Bush administration and critics of the bill, including Senators John McCain (R-AZ), Lindsey Graham (R-SC), and John Warner (R-VA).²¹⁹ The resultant compromise was the Military Commissions Act of 2006. This bill, sponsored by Senators Mitch McConnell (R-KY), William H. Frist (R-TN), and John Warner (R-VA), was introduced in the Senate on September 22, 2006, and passed six days later. The House passed it on September 29, 2006, and President Bush signed it into law on October 17, 2006.²²⁰

The Military Commissions Act defines an “alien unlawful enemy combatant” and authorizes the President to establish military commissions to try such individuals. The legislation outlines the procedures by which such commissions are to be conducted and identifies triable offenses, permissible sentencing, and appropriate use of commission findings and precedents. The bill also sets new standards in relation to the Geneva Conventions and the UCMJ.

The term “unlawful enemy combatant” has also been scrutinized. The term is defined in the Military Commissions Act as

(i) a person who has engaged in hostilities or who has purposefully and materially supported hostilities against the United States or its co-belligerents who is not a lawful enemy combatant (including a person who is part of

the Taliban, al-Qaeda, or associated forces); or (ii) a person who . . . has been determined to be an unlawful enemy combatant by a Combatant Status Review Tribunal or another competent tribunal established under the authority of the President or the Secretary of Defense.²²¹

A statement by Amnesty International calls the definition “dangerously broad,”²²² noting that U.S. citizens could be tried under the given definition.²²³

Section 7 contains one of the most controversial provisions of the legislation—the denial of the right of any detainee held since September 11, 2001 to challenge his detention in U.S. courts.²²⁴ In a letter to the Senate denouncing the bill as written, the American Civil Liberties Union stated that “[t]he ancient writ of *habeas corpus* is our check of last resort against arbitrary executive power” and “a congressional attempt to strip *habeas* rights will be found unconstitutional by the Supreme Court.”²²⁵ The concern over the constitutionality of the bill has been echoed by legal analysts, members of Congress, and civil libertarians across the country.²²⁶ Amnesty International estimates that this would affect over 200 appeals filed on behalf of Guantánamo detainees.²²⁷

Human rights organizations cautioned that the bill would give the President the authority to “interpret the meaning and application of the Geneva Conventions”

²²¹ *Id.* at § 3.

²²² Amnesty International, *supra* note 227.

²²³ Scott Shane & Adam Liptak, Shifting Power to a President, N.Y. TIMES, Sept. 30, 2006, at A1.

²²⁴ *Id.* at § 7.

²²⁵ American Civil Liberties Union, ACLU Letter to the Senate Strongly Urging Opposition to S.3930, the Military Commissions Act of 2006 (Sept. 25, 2006), <http://www.aclu.org/natsec/gen/26861leg20060925.html>.

²²⁶ David G. Savage & Richard Simon, Legal Battle Over Detainee Bill Is Likely, L.A. TIMES, Sept. 29, 2006, at A1.

²²⁷ Amnesty International, Military Commissions Act of 2006 – Turning bad policy into bad law (Sept. 29, 2006), <http://web.amnesty.org/library/index/ENGAMR511542006>.

²¹⁸ *Id.* at 2777-98.

²¹⁹ David Welna, Bush, GOP Senators Seek Deal on Tribunals (Nat'l Pub. Radio broadcast, Sept. 12, 2006), <http://www.npr.org/templates/story/story.php?storyId=6062917>.

²²⁰ Military Commissions Act of 2006 § 10.

and would prohibit only grave breaches of the Geneva Conventions.²²⁸ This grants the Executive the power to determine allowable interrogation practices. Section 5 explicitly prohibits a person from invoking the Geneva Conventions in any *habeas corpus* or other civil action.²²⁹ Furthermore, the pre-trial procedures set forth in Section 3 of the bill prohibit use of compulsory self-incrimination or use of evidence obtained through torture, but it provides a sweeping exception for statements obtained before the Detainee Treatment Act of 2005, which became effective on December 30, 2005.²³⁰ Critics say that this date falls after the worst scandals of Abu Ghraib and Guantánamo and does little to address the evidence obtained in the years since 9/11.²³¹

The bill also grants retroactive immunity to government officials who could have been tried under the War Crimes Act applicable to personnel who authorized torture of detainees²³² and provides protection to acts dating all the way back to November 26, 1997.²³³

²²⁸ See American Civil Liberties Union, *supra* note 225; see also Military Commissions Act of 2006 § 6(a)(3)(A).

²²⁹ Military Commissions Act of 2006 § 5.

²³⁰ *Id.* § 3.

²³¹ Kate Zernike, Senate Approves Broad New Rules to Try Detainees, N.Y. TIMES, Sept. 29, 2006, at A1, <http://www.nytimes.com/2006/09/29/washington/29detain.html?ex=1317182400&en=2c7dcbae5b760b3e&ei=5090&partner=rssuserland&emc=rss>.

²³² American Civil Liberties Union, *supra* note 225.

²³³ Military Commissions Act of 2006 § 6.

MINNESOTA'S RESPONSE TO 9/11

The rules are changing so fast it is hard for me to grasp.
Male Muslim lawful permanent resident from Ethiopia, 037:2.

A. BORDER CONTROL

The events of 9/11 renewed the national debate over border control and security.²³⁴ Those who support increased vigilance at the borders are concerned that lax border enforcement was a major factor in the failure to prevent 9/11. They believe that any measure of reform to prevent terrorists from entering the country must include increased control over the borders.²³⁵ Those on the other side of the debate argue that 9/11 was not a reflection of a failure in immigration policy, but rather a failure in intelligence, and that unduly burdensome restrictions tarnish the image of the United States as a free, open, and welcoming society.²³⁶ Minnesota, bordering Canada to the north, has experienced first-hand the effects of the post-9/11 debate. Although specific information about border security is not widely disseminated for fear of providing useful information to potential terrorists,²³⁷ a few changes resulting from 9/11 are apparent.

²³⁴ See, e.g., NATIONAL COMMISSION ON TERRORIST ATTACKS, THE 9/11 COMMISSION REPORT 387 (2004) (“The border and immigration system of the United States must remain a visible manifestation of our belief in freedom, democracy, global economic growth, and the rule of law, yet serve equally well as a vital element of counterterrorism.”).

²³⁵ See, e.g., MARK KRIKORIAN & STEVEN A. CAMAROTA, CENTER FOR IMMIGRATION STUDIES, BACKGROUND IMMIGRATION & TERRORISM: WHAT IS TO BE DONE? 1 (2001).

²³⁶ See, e.g., MARGARET D. STOCK & BENJAMIN JOHNSON, IMMIGRATION POLICY CENTER OF THE AMERICAN IMMIGRATION LAW FOUNDATION, IMMIGRATION POLICY FOCUS, THE LESSONS OF 9/11: A FAILURE OF INTELLIGENCE, NOT IMMIGRATION LAW 1–14 (2003).

²³⁷ See, e.g., Mark Johnson, A New Chill at the Northern Border, MILWAUKEE J. SENTINEL, Mar. 10, 2002, at A1 (indicating that officials have declined to detail how any Border Patrol station is staffed “for fear of providing information that would be useful to terrorists”).

Before 9/11, relatively little attention was given to the northern border, particularly the crossing between International Falls, Minnesota and Fort Frances in Canada. In the aftermath of 9/11, however, more attention has been given to the northern border and several changes have been made.²³⁸ One of the more visible changes is the increase in searches taking place at the border. Before 9/11, identification was rarely required to cross at International Falls; however, in a post-9/11 world, inspectors not only demand identification, but often search cars thoroughly, “popping trunks, inspecting glove compartments and using mirrors to peer underneath vehicles,” even when they know the driver.²³⁹ Such increased scrutiny of individuals also has been accompanied by greater attention to goods crossing the border by rail at International Falls.²⁴⁰

Augmenting the increased scrutiny of persons, vehicles, and goods crossing the border, Congress mandated a new passport protocol that was included in the December 2004 intelligence reform law that will significantly affect Minnesota.²⁴¹ Under the protocol, all Western Hemisphere foreigners except Mexicans will have to show passports to enter the United States.²⁴² The protocol will be phased in over the next three years with the U.S.-Canada land border rules taking

²³⁸ See, e.g., Bob Reha, Beefing up U.S. Border Security (Minn. Pub. Radio broadcast, Aug. 7, 2003), http://news.minnesota.publicradio.org/features/2003/08/07_rehab_beefyborder.

²³⁹ Johnson, *supra* note 237.

²⁴⁰ See *id.*

²⁴¹ Kevin Diaz, Trip to Canada? Get that Passport, STAR TRIB. (Minneapolis, Minn.), Apr. 6, 2005, at A1.

²⁴² *Id.*

effect on January 1, 2008.²⁴³ According to Representative James Oberstar (D–MN), the changes reflect the “post-9/11 border reality between the U.S. and Canada[,] [where] [w]e have to know who’s crossing our borders, and they have to be who they say they are.”²⁴⁴

In order to accommodate the increased scrutiny at the borders, the Border Patrol has seen an expansion in resources and capacity. In the immediate aftermath of 9/11, one hundred Border Patrol agents were temporarily moved from the Mexican border to the northern border.²⁴⁵ In addition, the Border Patrol’s Grand Forks sector, which serves Minnesota and has offices in Duluth, Grand Marais, and International Falls, received sixty additional agents in 2003 who were transferred to comply with the PATRIOT Act.²⁴⁶ The Grand Forks sector, in direct response to 9/11, has also acquired new equipment, planes, boats, and high-tech movement sensors to increase security along the border.²⁴⁷

B. CHANGES IN MINNESOTA STATE CRIMINAL LAW AFTER 9/11

In the aftermath of 9/11, many states enacted criminal legislation directed specifically at the threat of terrorism. The National District Attorneys Association has organized criminal anti-terrorism legislation into four categories: (1) statutes that criminalize precursor crimes; (2) statutes directed at threats, hoaxes, and false reports; (3) statutes that punish actual incidents of terrorism; and (4) statutes designed to enhance the ability to investigate and prosecute incidents of

terrorism.²⁴⁸ Changes to Minnesota state law can be categorized in a similar fashion.

1. Precursor Crimes: Minnesota’s statute addressing weapons of mass destruction prohibits “knowingly manufactur[ing], acquir[ing], possess[ing], or mak[ing] readily accessible” numerous substances “in levels dangerous to human life”²⁴⁹ Prohibited substances include, among others, smallpox, anthrax, botulinum toxin, and radioactive materials.²⁵⁰

2. Threats, Hoaxes, and False Reports: The same weapons of mass destruction statute contains a provision in subdivision four making it illegal to “manufacture[], acquire[], posses[] or make readily accessible to another a simulated weapon of mass destruction with the intent of terrorizing another”²⁵¹ Subdivision five of the same statute outlaws threats involving real or simulated weapons of mass destruction.²⁵²

3. Actual Incidents: Minnesota Statute § 609.714 enhances the statutory maximum of a crime by fifty percent if the crime is committed “to further terrorism.”²⁵³ A crime committed to “further terrorism” is defined as one that “is a premeditated act involving violence to persons or property that is intended to: (1) terrorize, intimidate, or coerce a considerable number of members of the public in addition to the direct victims of the act; and (2) significantly disrupt or interfere with the lawful exercise, operation, or conduct

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ Johnson, *supra* note 237.

²⁴⁶ See Reha, *supra* note 238.

²⁴⁷ *Id.*

²⁴⁸ NAT’L DIST. ATTORNEYS ASSOC., OVERVIEW OF STATE CRIMINAL LEGISLATION PASSED IN RESPONSE TO 9/11/01 (2002), http://www.ndaa-apri.org/pdf/state_legislation_passed_response_nine_eleven.pdf.

²⁴⁹ MINN. STAT. § 609.712, subd. 3(a) (2006).

²⁵⁰ *Id.* (botulism is the condition; botulinum is the substance that causes it).

²⁵¹ *Id.* at § 609.712, subd. 4 (2006).

²⁵² *Id.* at § 609.712, subd. 5 (2006).

²⁵³ MINN. STAT. § 609.714, subd. 2 (2006).

of government, lawful commerce, or the right of lawful assembly.”²⁵⁴ In addition, Minnesota Statute § 609.185 provides that it is first-degree murder to “cause[] the death of a human being while committing, conspiring to commit, or attempting to commit a felony crime to further terrorism, and the death occurs under circumstances manifesting an extreme indifference to human life.”²⁵⁵

The weapons of mass destruction statute makes it illegal to manufacture, acquire, possess, or make “readily accessible to another a weapon of mass destruction with the intent to cause injury to another.”²⁵⁶

4. Investigation and Prosecution: Minnesota Statute § 609.106 mandates a sentence of life without possibility of release for convictions of first-degree murder involving terrorism.²⁵⁷ A review of Minnesota case law indicates that no prosecutions have taken place under Minnesota’s post-9/11 anti-terrorism legislation.

C. RESPONSE TO THE PATRIOT ACT

The PATRIOT Act has generated opposition movements at the state and local level.²⁵⁸ Eight states and over 400 local communities have passed resolutions upholding civil liberties and civil rights. Although Minnesota has not passed a statewide resolution, such resolutions have been passed by the city councils of Duluth, Minneapolis, St. Paul, and Robbinsdale.

All of the resolutions contain similar themes and are similarly structured. As a general rule, the resolutions

have three parts. First, they declare that certain fundamental rights are guaranteed under the Constitution and other sources. Second, they indicate that certain provisions of the PATRIOT Act threaten such fundamental rights. Third, they articulate specific resolutions in response to those threats. Among other things, the resolutions support the PATRIOT Act’s sunset provisions,²⁵⁹ reaffirm the cities’ policies against racial profiling,²⁶⁰ and call upon “members of the Minnesota Congressional delegation to actively work for the revocation of any sections of the USA PATRIOT and Homeland Security Acts, and any federal legislation, orders or directives which limit or violate fundamental rights and liberties”²⁶¹

The St. Paul resolution is unique in its condemnation of “all terrorist attacks wherever occurring.” Along a similar vein, the resolution includes language noting the competing considerations inherent in national security policy:

WHEREAS, the St. Paul City Charter recognizes that protecting our citizens against future terrorist attacks requires the federal government to aggressively pursue potential terrorists but these efforts to combat terrorism should not disproportionately infringe on the essential civil rights and liberties of the people of the United States; and

WHEREAS, the prevention of future terrorist attacks is a critical national priority, but it is equally important to preserve the fundamental civil liberties and personal freedoms embodied in the Bill of Rights over 200 years ago, and which have been preserved through a constant vigilance against periodic threats to its principles.²⁶²

²⁵⁴ *Id.* at § 609.714, subd. 1 (2006).

²⁵⁵ MINN. STAT. § 609.185(a)(7) (2006).

²⁵⁶ MINN. STAT. § 609.712, subd. 2 (a) (2006).

²⁵⁷ MINN. STAT. § 609.106, subd. 2 (1) (2006).

²⁵⁸ The information in this section was obtained from the Bill of Rights Defense Committee’s website at <http://www.bordc.org>.

²⁵⁹ Duluth and St. Paul.

²⁶⁰ Minneapolis, Robbinsdale, and St. Paul.

²⁶¹ Quoting Minneapolis’ resolution. The resolutions of Duluth and St. Paul contain similar language.

²⁶² SAINT PAUL CITY COUNCIL, BILL OF RIGHTS DEFENSE RESOLUTION AFFIRMING THE PRINCIPLES OF FEDERALISM AND CIVIL LIBERTIES ADAPTED FROM THE NATIONAL LEAGUE OF CITIES

D. THE DRIVER'S LICENSE DEBATE

In the aftermath of the 9/11 attacks, there were reports that some of the terrorists had U.S. state-issued driver's licenses that aided them in their activities.²⁶³ The Immigration and Naturalization Service (INS) had undertaken driver's license reform in the Minnesota Legislature two years before 9/11, and legislation had been drafted. In 1999-2000, the INS lobbied Minnesota's legislature for expanded cooperation between INS and the state related to SAVE, a verification system for employers. Following 9/11, many states passed restrictive driver's license legislation or promulgated similar policies by administrative rule.²⁶⁴ In 2002, the Governor's administration, including former legislators from the 1999-2000 session who had been key proponents of driver's license limitations, established rules in the Department of Public Safety (DPS) to restrict driver's licenses based on immigration status.²⁶⁵ The events of 9/11 provided a new justification to establish policies that had previously not survived the legislative process.

In January 2002, the DPS sought comment on the rule that would have required a driver's license applicant to prove lawful presence in the U.S. and would have linked expiration of the driver's license to the expiration of an individual's visa or other short-term admission document issued by the federal government.²⁶⁶ The DPS halted its proceedings, however, in February 2002, when the Minnesota legislature introduced an anti-terrorism bill that would have had a similar

effect.²⁶⁷ In May 2002, the final bill was passed without the driver's license provisions. In response and pursuant to its apparent statutory authority, DPS changed some of its rules. First, an amended rule placed more stringent requirements on the types of documents acceptable to prove an applicant's identity.²⁶⁸ Second, a new rule required proof of Minnesota residency and, for non-citizens, proof of lawful, short-term, indefinite, or permanent presence in the U.S.²⁶⁹ Third, another new rule required full frontal pictures with the head uncovered and provided no exception for religious objections.²⁷⁰ These changes were not made according to the regular rulemaking process, which requires a public hearing; rather, DPS determined that this process would have been contrary to the public interest because of the serious and immediate threat of terrorism. Therefore, DPS applied a "good cause" statutory exception available if an agency finds the regular requirements "unnecessary, impracticable, or contrary to public interest," and the rule addresses "a serious and immediate threat to the public health, safety, or welfare."²⁷¹

A coalition, including the Minnesota Civil Liberties Union, Jewish Community Action, American-Arab Anti-Discrimination Committee, and the Somali Community of Minnesota, challenged the rules in *Jewish Community Action v. Commissioner of Public Safety*.²⁷²

BILL OF RIGHTS DEFENSE RESOLUTION (2004), <http://www.bordc.org/detail.php?id=528>.

²⁶³ See Rebecca Smith, et al., Low Pay, High Risk: State Models for Advancing Immigrant Workers' Rights, 28 N.Y.U. REV. L. & SOC. CHANGE 597, 641 (2004).

²⁶⁴ See *id.* at 645-49.

²⁶⁵ Source on file with Minnesota Advocates for Human Rights.

²⁶⁶ Smith et al., *supra* note 263, at 606.

²⁶⁷ H.F. 2946, 82d Leg. Reg. Sess. (Minn. 2001-02), available at <http://www.house.leg.state.mn.us>.

²⁶⁸ See *Jewish Cmty. Action v. Comm'r Pub. Safety*, 657 N.W.2d 604, 606 (Minn. Ct. App. 2003) (providing an overview of the new rules).

²⁶⁹ *Id.*

²⁷⁰ *Id.*; see also Smith et al., *supra* note 263, at 649.

²⁷¹ *Jewish Cmty. Action*, 657 N.W.2d at 607 (citing Minn. Stat. § 14.388 (2002)).

²⁷² *Id.* at 606-07. For an overview of the policy aspects of the driver's license debate see HISPANIC ADVOCACY & COMMUNITY EMPOWERMENT THROUGH RESEARCH, DRIVER SAFETY AND THE ROLE OF MINNESOTA'S DRIVER'S LICENSE POLICY 12-15 (2005), <http://www.hacer-mn.org/PDFs/DriversLicense.pdf>.

The coalition argued both that they violated the Constitution's Equal Protection Clause under the Fourteenth Amendment and that the rulemaking was done in violation of procedural requirements.²⁷³ In its brief, DPS responded that application of the exception was appropriate because a "legitimate threat of terrorism . . . exists nationwide, and there is absolutely no reason to believe that Minnesota is excluded as a potential harbor or target for terrorism, or that a fraudulently obtained Minnesota driver's license would not be used to facilitate a terrorist attack in another state."²⁷⁴

The Minnesota Court of Appeals ultimately invalidated the rules, holding that DPS did not demonstrate that the general rulemaking process would have been contrary to the public interest.²⁷⁵ The court held, however, that "the threat of terrorism to life, liberty, or property is beyond dispute,"²⁷⁶ and thus DPS "sufficiently demonstrated both the seriousness and the immediacy of the threat of harm the rules purportedly address."²⁷⁷ The court did not determine whether the rules were appropriate to deal with the threat of terrorism, but stated that DPS failed to demonstrate "a particularly strong link between license regulation and the perpetration of terrorist crimes."²⁷⁸

Following the court's invalidation of the rules as inconsistent with procedural requirements, a hearing was conducted and a report was issued by an Administrative Law Judge on May 22, 2003, as required in the rulemaking process under the

²⁷³ See Elizabeth Stawicki, *Driver's License Changes Challenged*, (Minn. Pub. Radio broadcast, Dec. 12, 2002).

²⁷⁴ Brief of Resp't at 10, *Jewish Cmty. Action v. Comm'r of Pub. Safety*, 657 N.W.2d 604 (Minn. Ct. App. 2003).

²⁷⁵ *Jewish Cmty. Action*, 657 N.W.2d at 611.

²⁷⁶ *Id.* at 608.

²⁷⁷ *Id.* at 609.

²⁷⁸ *Id.*

Minnesota Administrative Procedure Act. Based upon the findings, the judge recommended that the rules be adopted.²⁷⁹

Since his first gubernatorial election, Governor Pawlenty has been supportive of enacting the driver's license rules into permanent law.²⁸⁰ Although the 2006 legislature failed to codify the requirements through legislation, the status check remains standard procedure for non-citizens soliciting or renewing a driver's license in Minnesota. Future attempts to codify the driver's license requirements may resurface or may be made unnecessary by the required standardization of identity documents under the REAL ID Act, effective May 2008.

E. GOVERNOR PAWLENTY'S IMMIGRATION REFORM PROPOSALS

In conjunction with a widely disputed study issued by Governor Tim Pawlenty's administration in late 2005,²⁸¹ the Governor began 2006 by outlining a series of initiatives intended to "crack down on criminal activities related to illegal immigration."²⁸² These

²⁷⁹ State of Minnesota Office of Administrative Hearings for the Department of Public Safety Driver and Vehicle Services Division, Report of the Administrative Law Judge, *Drivers License Rule*, July 18, 2003, 15-2400-15360-1, <http://www.state.mn.us/ebranch/oah/aljBase/240015360.rr.html>.

²⁸⁰ See, Conrad deFiebre, *Court Hears Appeal of Immigrant Driver Rules*, STAR TRIB. (Minneapolis, Minn.) Dec. 13, 2002, at B2.

²⁸¹ MINN. DEP'T OF ADMIN., OFFICE OF STRATEGIC PLANNING AND RESULTS MANAGEMENT, *THE IMPACT OF ILLEGAL IMMIGRATION ON MINNESOTA: COSTS AND POPULATION TRENDS* (2005). http://www.state.mn.us/mn/externalDocs/Administration/Report_The_Impact_of_Illegal_Immigration_on_Minnesota_1208050353_15_Illegal%20Immigration%20Brief%2026.pdf. For an example of the criticisms of the report, see Tom Scheck, *Critics Question Pawlenty's Motives on Immigration Stance*, (Minn. Pub. Radio broadcast, Dec. 16, 2005) (quoting a University of Minnesota professor as stating that the report focuses on the costs of undocumented workers without addressing the benefits).

²⁸² Press Release, Office of Governor Tim Pawlenty, *Pawlenty Proposes Initiatives to Tackle Criminal Activity Related to Illegal Immigration* (Jan. 3, 2006), Last viewed August 2006. http://www.governor.state.mn.us/Tpaw_View_Article.asp?artid=1688.

initiatives would greatly increase the state's involvement in immigration issues that are traditionally left to the federal government.²⁸³ The seven initiatives included:

1. Creating the Minnesota Illegal Immigration Enforcement Team (MIET), a team of ten state law enforcement officers vested with the authority to enforce federal immigration laws;
2. Making it a crime to possess, create, manufacture, or obtain an identity that is not one's own;
3. Increasing penalties for human trafficking;
4. Permanently codifying a Department of Public Safety administrative rule preventing non-citizens from staying in the country longer than allowed by federal law;
5. Prohibiting separation ordinances such as those in Minneapolis and St. Paul, which prohibit police officers from questioning, arresting, or detaining any person for violations of federal civil immigration laws, unless immigration status is an element of the crime;
6. Requiring local law enforcement to record country of citizenship and immigration status during arrests to allow for better tracking by the state; and
7. Subjecting employers who knowingly hire, employ, or recruit illegal immigrants to a fine and requiring that state contracts contain a clause prohibiting the use of illegal immigrants to perform services.²⁸⁴

On January 12, 2006, after significant criticism, Governor Pawlenty introduced another set of immigration initiatives with the express goal of encouraging legal immigration, "particularly in

categories that are strategically helpful and important to the United States,"²⁸⁵ including:

1. Creating an Immigration Investor Visa Regional Center to attract foreign business investment to Minnesota;
2. A \$3 million grant program for employers who provide English language instruction to employees;
3. Utilizing visa opportunities for foreign medical professionals to practice in underserved areas of Minnesota;
4. Allocating \$500,000 to address health care challenges within the immigrant communities, particularly increasing immunization rates and reducing tuberculosis;
5. Creating a citizenship tax credit of up to \$300 dollars for costs incurred in citizenship acquisition or preparing for the English requirement; and
6. Providing financial information to immigrants.²⁸⁶

Although Governor Pawlenty justified the proposals as a means of addressing public safety issues by cracking down on criminal activities related to immigration,²⁸⁷ critics, including some law enforcement officials, responded to the proposals with skepticism.²⁸⁸ Governor Pawlenty responded that he had been talking about immigration since 2002 and that his primary

²⁸³ Conrad Defiebre, Pawlenty Takes Aim at Illegal Immigration, STAR TRIB. (Minneapolis, Minn.), Jan. 4, 2006, at A1.

²⁸⁴ See Press Release, *supra* note 282.

²⁸⁵ Laura McCallum, Governor Shows Softer Side Toward Immigrants (Minn. Pub. Radio broadcast, Jan. 12, 2006), http://news.minnesota.publicradio.org/features/2006/01/12_mccallum1_moreimmigration/.

²⁸⁶ *Id.*; John Vomhof, Jr., Pawlenty Unveils Proposals to Aid Legal Immigration, MINNEAPOLIS/ST. PAUL BUSINESS, Jan. 12, 2006, <http://www.bizjournals.com/twincities/stories/2006/01/09/daily46.html?t=printable>; YWCA of Minneapolis, Legislative Action Alert (Jan. 18, 2006), <http://www.ywcampis.org/community-programs/public-policy/pdfs/legalalertJan182006.pdf>.

²⁸⁷ See Press Release, *supra* note 282.

²⁸⁸ See, e.g., Defiebre, *supra* note 283; Scheck, *supra* note 281.

concern was not political gain but rather to address a significant issue of local and national concern.²⁸⁹

F. LAWS RESULTING FROM THE FOCUS ON IMMIGRATION IN THE 2006 LEGISLATIVE SESSION

The only immigration-related legislation that passed into law in 2006 will likely benefit immigrants. The human trafficking bills H.F. 3244 authored by Representative Kathy Tingelstad (R-Andover)²⁹⁰ and S.F. 2870 authored by Senator Sandra L. Pappas (DFL-St. Paul) were included in public safety and supplemental spending legislation.²⁹¹ The new legislation authorized monetary support for three Hennepin County clinics, free legal services to immigrants, and a new toll-free hotline. In addition, the funding will establish a human trafficking task force to increase public awareness, provide training, and make recommendations.²⁹² The new laws also increase the penalties for trafficking of a minor to a maximum twenty-year prison sentence and a \$40,000 fine.²⁹³ The final piece of the legislation provided a \$1.25 million allocation for adult literacy grants to educate recent immigrants.²⁹⁴

The 2006 legislative session's focus on immigration, particularly unauthorized immigrants, kept the issue at

the forefront of public discussion. The predominant issues were local enforcement of federal immigration law and the repeal of the separation ordinances.²⁹⁵ While punitive immigration legislation was not passed in the 2006 session, the debate itself influenced public impressions of immigrants and reflected the uncertain climate immigrants endured. A full explanation of proposed immigration legislation in Minnesota is included in Appendix C.

²⁸⁹ Scheck, *supra* note 281.

²⁹⁰ H.F. 3244, 84th Leg. Reg. Sess. (Minn. 2006), http://www.revisor.leg.state.mn.us/revisor/pages/search_status/status_detail.php?b=House&f=HF3244&ssn=0&y=2006.

²⁹¹ S.F. 2870, 84th Leg. Reg. Sess. (Minn. 2006), http://www.revisor.leg.state.mn.us/revisor/pages/search_status/status_detail.php?b=Senate&f=SF2870&ssn=0&y=2006.

²⁹² Minn. House of Representatives, Budget – New Laws 2006: Supplemental Spending Addresses Legislative Priorities, <http://www.house.leg.state.mn.us/hinfo/newlawsart2006-0.asp?yearid=2006&storyid=434> (last accessed Jan. 12, 2006).

²⁹³ Minn. House of Representatives, Safety – New Laws 2006: Public Safety Provisions, <http://www.house.leg.state.mn.us/hinfo/newlawsart2006-0.asp?yearid=2006&storyid=412> (last accessed Jan. 12, 2006).

²⁹⁴ See Minn. House of Representatives, Budget – New Laws 2006, *supra* note 292.

²⁹⁵ Separation ordinances clarify that law enforcement cooperates with DHS, but does not inquire about immigration status unless it is part of a criminal investigation. MINNEAPOLIS, MINN., CODE tit. 2, ch. 19, § 1.

CONCLUSION

The post-9/11 experiences of immigrants, refugees, and religious minorities reflect individual and collective responses to a national tragedy. This report provides a forum for some of their stories and contextualizes them with the laws and policies that have influenced our society since 9/11.

It is critical that we ensure the protection of human rights and human dignity in the United States while providing for national security. Minnesota Advocates for Human Rights hopes that this report is a starting point for future dialogue and an invitation for others to come forward to tell their stories. The personal accounts should serve as a catalyst for thoughtful consideration of how the events of 9/11 continue to affect our country and all who call it home.

APPENDIX A: METHODOLOGY

The purpose of this report is to document the post-9/11 experiences of Minnesota's immigrant, refugee, and religious minority communities and to bring their voices into the national dialogue about immigration, terrorism, and civil liberties. This report focuses on the long-term impact 9/11 has had on immigrant communities as shown through their own personal histories and experiences and urges compliance with human rights standards by national, state, and local agencies.

At the request of some members of immigrant, refugee, and religious minority communities in Minnesota, Minnesota Advocates for Human Rights originally conducted a small-scale pilot project in 2003, which involved interviews with 15 members of these communities. Interviewees shared their knowledge, experiences, and perspectives in three broad issue areas: (1) the impact of 9/11 on their respective communities in Minnesota; (2) the needs of their ethnic, religious, or immigrant groups in the post-9/11 political and economic context; and (3) the potential role for human rights organizations to address those needs after 9/11. This pilot project indicated feasibility and promise for a large-scale undertaking.

In 2004, Minnesota Advocates expanded on this earlier research and findings by focusing on the impact of 9/11 on Minnesota's immigrant, refugee, and religious minority communities in three principal areas where Minnesota's immigrants and religious minorities live: Rochester, St. Cloud, and the Twin Cities. Minnesota Advocates devised the Post-9/11 Project's methodology in consultation with individuals and organizations nationally that have undertaken similar work. Minnesota Advocates used recognized fact-finding and documentation techniques. This project also builds upon Minnesota Advocates' recent work documenting conditions in the Twin Cities affecting

immigrant and refugee survivors of domestic violence.²⁹⁶

Minnesota Advocates reviewed other reports by national,²⁹⁷ regional,²⁹⁸ and local organizations²⁹⁹ relating to immigration, civil liberties, national security, and counterterrorism after 9/11. National and regional human rights organizations have documented abuses of the material witness law;³⁰⁰ post-9/11 detentions of non-citizens;³⁰¹ human rights violations at Guantánamo Bay;³⁰² erosion of civil liberties under the PATRIOT Act;³⁰³ enforcement of pre- and post-9/11 modifications

²⁹⁶ MOLLY BEUTZ ET AL., THE GOVERNMENT RESPONSE TO DOMESTIC VIOLENCE AGAINST REFUGEE AND IMMIGRANT WOMEN IN THE MINNEAPOLIS/ST. PAUL METROPOLITAN AREA: A HUMAN RIGHTS REPORT, (Minn. Advocates for Human Rights 2004), http://www.mnadvocates.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/FINAL_REPORT_Dec_10_2004_2.pdf.

²⁹⁷ National groups include Human Rights Watch, Amnesty International, Human Rights First, the American Bar Association, and the American Immigration Law Foundation. National special interest groups include the Council on American-Islamic Relations, American-Arab Anti-Discrimination Committee, the National Hispanic Leadership Agenda, and the National Council of La Raza.

²⁹⁸ Regional organizations included the Hate Free Zone in Seattle, the Florida Immigrant Advocacy Center, the Center for the Prevention of Hate Violence at the University of Southern Maine, the Illinois Coalition for Immigrant and Refugee Rights, and the University of Michigan Institute for Social Research and its on-going Detroit Arab American Study.

²⁹⁹ Local organizations included Hispanic Advocacy and Community Empowerment through Research and the League of Women Voters of Minnesota.

³⁰⁰ HUMAN RIGHTS WATCH, WITNESS TO ABUSE: HUMAN RIGHTS ABUSES UNDER THE MATERIAL WITNESS LAW SINCE SEPTEMBER 11 (2005), <http://hrw.org/reports/2005/us0605/us0605.pdf>.

³⁰¹ HUMAN RIGHTS WATCH, PRESUMPTION OF GUILT: HUMAN RIGHTS ABUSES OF POST-SEPTEMBER 11 DETAINEES (2002), <http://www.hrw.org/reports/2002/us911/USA0802.pdf>.

³⁰² AMNESTY INTERNATIONAL, GUANTÁNAMO AND BEYOND: THE CONTINUING PURSUIT OF UNCHECKED EXECUTIVE POWER (2005), <http://web.amnesty.org/library/Index/ENGAMR510632005>.

³⁰³ HUMAN RIGHTS FIRST, ASSESSING THE NEW NORMAL: LIBERTY AND SECURITY FOR THE POST-SEPTEMBER 11 UNITED STATES (2003), <http://www.humanrightsfirst.org/pubs/descriptions/Assessing/AssessingtheNewNormal.pdf>.

to U.S. immigration laws³⁰⁴ and their effects on Latinos;³⁰⁵ Special Registration of Muslims, Arabs, and South Asians;³⁰⁶ post-9/11 hate crimes;³⁰⁷ and the effects of 9/11 on Detroit's Arab Muslim and Chaldean populations.³⁰⁸ These efforts have documented abuses, raised awareness, and advocated for changes in law and policy. Notably, the Center for the Prevention of Hate Violence in Maine reported negative treatment of Muslims or those perceived to be Muslims in the aftermath of 9/11,³⁰⁹ which led the Governor of Maine to issue an Executive Order³¹⁰ providing that local law enforcement officials would not enforce federal immigration laws.³¹¹

³⁰⁴ AMERICAN BAR ASSOC. & LEADERSHIP CONFERENCE ON CIVIL RIGHTS EDUCATION FUND, AMERICAN JUSTICE THROUGH IMMIGRANTS' EYES, (American Bar Association 2004).

³⁰⁵ See, e.g., NAT'L HISPANIC LEADERSHIP AGENDA'S CIVIL RIGHTS COMM., HOW THE LATINO COMMUNITY'S AGENDA ON IMMIGRATION ENFORCEMENT AND REFORM HAS SUFFERED SINCE 9/11 (2004), http://www.maldef.org/pdf/NHLA_report.pdf; MICHELE WASLIN, COUNTERTERRORISM AND THE LATINO COMMUNITY SINCE SEPTEMBER 11, 2003, <http://www.nclr.org/content/publications/detail/1389>.

³⁰⁶ Paul M. Sherer, Targets of Suspicion: The Impact of Post-9/11 Policies on Muslims, Arabs and South Asians in the United States, IMMIGRATION POL'Y FOCUS, May 2004, <http://www.aifl.org/ipc/ipf050104.asp>.

³⁰⁷ HUMAN RIGHTS WATCH, "WE ARE NOT THE ENEMY": HATE CRIMES AGAINST ARABS, MUSLIMS, AND THOSE PERCEIVED TO BE ARAB OR MUSLIM AFTER SEPTEMBER 11 (2002), <http://www.hrw.org/reports/2002/usahate/usa1102.pdf>.

³⁰⁸ WAYNE BAKER ET AL., PRELIMINARY FINDINGS FROM THE DETROIT ARAB AMERICAN STUDY (Univ. of Mich. Inst. for Social Research 2004), http://umich.edu/~urecord/0304/July19_04/img/040719_daas.pdf.

³⁰⁹ CTR. FOR PREVENTION OF HATE VIOLENCE, THE FRACTURED AMERICAN DREAM: THE DESTRUCTIVE IMPACT OF U.S. ANTI-TERRORISM POLICY ON MUSLIM, LATINO AND OTHER IMMIGRANTS AND REFUGEES TWO YEARS AFTER SEPTEMBER 11, 2001 (Nov. 2003), <http://www.cphv.usm.maine.edu/FracturedAmericanDream.pdf>.

³¹⁰ Press Release, Office of the Governor, Governor Signs Order Affirming Access to State Services (Apr. 9, 2004), <http://www.maine.gov/tools/whatsnew/index.php?topic=Gov+News&id=2172&v=Article-2006>.

³¹¹ Exec. Order, Office of the Governor, An Order Concerning Access to State Services by All Entitled Maine Residents (Apr.9, 2004), http://www.main.gov/governor/baldacci/news/executive-orders/EX_ORDER_4_9_04.doc.

Prior to 9/11, the Wilder Research Center published *Speaking for Themselves: A Survey of Hispanic, Hmong, Russian, and Somali Immigrants in Minneapolis-Saint Paul*.³¹² In conjunction with the *St. Paul Pioneer Press*, the Wilder Research Center conducted 1,119 telephone interviews.³¹³ Of those surveyed, about half (56%) of the immigrants came directly to Minnesota; the others arrived in Minnesota after living in other U.S. locations.³¹⁴ Overall, Twin Cities immigrants named family (71%) and employment (45%) as the top reasons for wanting to come to the United States.³¹⁵ Asked before 9/11 about how Americans treat them, eight out of 10 respondents said that Americans in the Twin Cities are "usually friendly"³¹⁶ to them. Those experiencing "mean" or "unkind" treatment include 36% of the Hmong surveyed; 29% of the Hispanics; 19% of the Somalis; and 6% of the Russians.³¹⁷ Such data provide a snapshot of immigrant treatment before 9/11 but provide little context or detail as to the type of unkind treatment experienced.

The League of Women Voters of Minnesota (LWVMN) published *Immigration in Minnesota: Challenges and Opportunities*³¹⁸ in 2002, which chronicled the history of immigration to Minnesota, including the countries of origin of Minnesota's recent arrivals. It also reviewed the educational opportunities for adult immigrants and the legal landscape affecting immigration. The report

³¹² WILDER RESEARCH CTR., SPEAKING FOR THEMSELVES: A SURVEY OF HISPANIC, HMONG, RUSSIAN, AND SOMALI IMMIGRANTS IN MINNEAPOLIS-SAINT PAUL (2000), http://www.wilder.org/fileadmin/user_upload/research/immigrantsurvey11-2000.pdf.

³¹³ *Id.* at 18.

³¹⁴ *Id.* at 7.

³¹⁵ *Id.*

³¹⁶ *Id.* at 8.

³¹⁷ *Id.*

³¹⁸ League of Women Voters of Minn. Educ. Fund, *Immigration in Minnesota: Challenges and Opportunities* (Dec. 2002), <http://www.lwvmn.org/EdFund/ImmigrationInMinnesota.asp>.

highlighted Minnesota's historic role as a haven for refugees, with at least seven agencies assisting in their resettlement.³¹⁹ Recognizing that immigration policy extends beyond federally-mandated decisions about admission and eligibility for benefits, the LWVMN provided background on legal debates in Minnesota and presented arguments to enable people "to look at all side of issues that are both complicated and relevant to our communities and state."³²⁰

After hosting several round-table discussions with members of immigrant and religious minority communities, Minnesota Advocates identified interview topics to assess the effects of 9/11. The topics included (1) fear and blame; (2) hate crimes; (3) federal law enforcement; (4) profiling; (5) travel/freedom of movement; (6) immigration; (7) the economy and employment; (8) religious and political participation; (9) loss of sense of belonging and anti-immigrant backlash; (10) access to services; (11) role of the media; and (12) community responses. The interviewers asked open-ended questions on all of these topics and encouraged interviewees to address these and other issues that they felt were important.

Minnesota Advocates conducted 107 interviews of people belonging to various immigrant,³²¹ refugee,³²² and religious minority groups in Minnesota. Interviewees included individuals belonging to, or perceived by the public as belonging to, one or more of these categories. In all, Minnesota Advocates interviewed 12 people in Rochester in 2005, 39 people in St. Cloud in 2005, and 56 people in the Twin Cities in 2005-06. Minnesota Advocates attempted to gather basic demographic information from all participants, which included age, gender, ethnicity, religion,

educational background, occupation, marital status, and immigration status.

Minnesota Advocates intentionally over-sampled religious minorities, particularly Muslims, estimated at up to 150,000 adherents in Minnesota.³²³ There was under-sampling of Latinos, particularly undocumented Latinos, and refugees, immigrants, and religious minorities without a college education.

Assessing the impact of 9/11 on Minnesota's Native Americans and non-immigrant African Americans was beyond the scope of this project.

³¹⁹ *Id.*

³²⁰ *Id.* at foreword.

³²¹ See *supra* note 1.

³²² See *supra* note 2

³²³ See, e.g., Pamela Miller, Eid al-Adha: Muslims Pause Today To Pray and Honor Sacrifice, STAR TRIB. (Minneapolis, Minn.), Jan. 10, 2006, at B8. ("Estimates of Minnesota's fast-growing Muslim population range up to 150,000"); Paula Woessner, Size of Twin Cities Muslim Community Difficult to Determine, COMMUNITY DIVIDEND (Federal Reserve Bank of Minneapolis 2002 Issue No.1), <http://minneapolisfed.org/pubs/cd/02-1/population.cfm> (placing the numbers of Muslims in the Twin Cities between 70-80,000); Stephen Scott, In Detailed Study of Twin Cities, Religion Counts, PIONEER PRESS (St. Paul, Minn.), Mar. 9, 2002, at E10 (reporting Religion Information Resources' estimate in 2002 of the number of Muslims in Minnesota at 100,000 and Sikhs at 800).

APPENDIX B: PROPOSED FEDERAL LEGISLATION

A. DOMESTIC SECURITY ENHANCEMENT ACT OF 2003 (PATRIOT II)

The Domestic Security Enhancement Act of 2003 (PATRIOT II) was draft legislation from Attorney General John Ashcroft's Justice Department that would greatly expand government powers and curtail judicial review. This legislation was leaked in February 2003.³²⁴

Under PATRIOT II, the FBI would be able to conduct searches and surveillance based on foreign intelligence without obtaining a search warrant; it would also maintain a DNA database of suspected terrorists. The Act would also prohibit public disclosure of the names of suspected terrorists, including those who have been arrested. In effect, someone deemed a "suspected terrorist" by the FBI would be held without charges or access to a lawyer. The Act would allow for summary deportations without evidence of a crime or criminal intent, even of lawful permanent residents, whom the Attorney General says are a threat to national security.

The draft PATRIOT II created intense controversy because it represented a significant departure from generally accepted privacy and civil rights standards. Although it is unlikely that the Act could pass in its current form—its defenders argue that it was intended merely as a rough draft to be revised before being introduced in Congress—some of its provisions have been incorporated into other bills, such as a Senate spending bill, and subsequently passed.³²⁵

³²⁴ A copy of the leaked draft is available at <http://www.pbs.org/now/politics/patriot2-hi.pdf>.

³²⁵ See, e.g., the VICTORY Act. See, e.g., ACLU, President Bush Plugs New Ashcroft PATRIOT Act Power Grab; ACLU Says Congress Should Resist Granting Expanded Police Powers

B. THE VITAL INTERDICTION OF CRIMINAL TERRORIST ORGANIZATIONS (VICTORY) ACT OF 2003³²⁶

The VICTORY Act of 2003 is draft legislation that, if passed, would merge the "War on Terror" with the "War on Drugs" and could affect the informal transfer of money used by many resident aliens in the United States. VICTORY has yet to be introduced, but it threatens to outlaw hawalas (informal money transfer systems often used in parts of the Middle East, Africa, and Asia). The bill could, in effect, cut off funding for families who rely on such transactions and target Muslim communities in the U.S. The Act also attempts to combat terrorism and drugs by defining a new criminal offense, "narco-terrorism," as the crime of manufacturing, distributing, or selling a controlled substance with the intent of aiding a terrorist group.³²⁷

C. CLEAR LAW ENFORCEMENT FOR CRIMINAL ALIEN REMOVAL (CLEAR) ACT³²⁸

The Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act is legislation introduced in 2003 by Representative Charlie Norwood (R-GA). The legislation was halted through an immigration reform stalemate in 2006. The Act would require all aliens who

(Sept. 10, 2003), <http://www.aclu.org/safefree/patriot/16777prs20030910.html>.

³²⁶ The VICTORY Act of June 27, 2003, was drafted by Senator Orrin Hatch (R-UT), <http://www.libertythink.com/VICTORYAct.pdf>.

³²⁷ A discussion of the problematic nature of "narco-terrorism" can be found in ACLU, ACLU Interested Persons Memo Providing Analysis the Latest Available Draft (7/30/2003) of the Vital Interdiction of Criminal Terrorist Organizations Act of 2003 ("VICTORY") Act (Dec. 15, 2003), <http://www.aclu.org/safefree/general/16983leg20031215.html>.

³²⁸ The CLEAR Act was proposed on July 9, 2003 and sponsored by Representative Charlie Norwood (R-GA), a draft is available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:h2671h.txt.pdf.

violate immigration law to be entered into the National Crime Information Center (NCIC) database. It would also require the federal government to take custody of illegal aliens arrested by state or local law enforcement officers. It would create a new criminal offense and new civil penalties for unlawful presence in the U.S., increase the criminal and civil penalties for unlawful entry, and increase the number of federal detention facilities. Finally, it would give states authority to enforce federal immigration law.

D. CIVIL LIBERTIES RESTORATION ACT³²⁹

The Civil Liberties Restoration Act (CLRA) was proposed in response to what critics felt was the Bush administration's ineffective counterterrorism strategy after 9/11. The CLRA's proponents claim that many of the government's actions have failed to make Americans safer from future attacks, and in fact have undermined security while eroding fundamental civil liberties and wasting resources. The CLRA proposes to redress some of the more problematic government responses to 9/11 in order to restore certain civil liberties.

Among other provisions, the CLRA would ensure that individuals detained for immigration violations are charged within 48 hours and given the right to a fair bond hearing. It would also establish an independent immigration court to prevent everyday immigration issues from being conflated with counterterrorism and eliminate criminal penalties for relatively minor immigration violations (such as failing to report a change of address within 10 days).³³⁰

³²⁹ The CLRA was proposed on April 6, 2005 and co-sponsored by Representatives Howard Berman (D-CA) and William Delahunt (D-MA), a draft of the legislation is available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:h1502ih.txt.pdf.

³³⁰ For more information on the changes CLRA would effect for immigrants' rights, see, e.g., the National Immigration Forum at

The CLRA also would limit secret seizure of private databases and individual records to those that actually concern the investigation of a suspected terrorist or terrorist group.

E. BORDER PROTECTION, ANTI-TERRORISM, AND ILLEGAL IMMIGRATION CONTROL ACT³³¹

The Border Protection, Anti-Terrorism, and Illegal Immigration Control Act – a massive border security, interior enforcement, and immigration reform bill – was authored by Representatives James Sensenbrenner (R-WI) and Peter King (R-NY). This bill absorbed measures of the CLEAR Act and the Intelligence Reform and Terrorism Prevention Act of 2004 (Intelligence Reform Act), and passed the House on December 16, 2005 by a vote of 239 to 182.

The first set of policy changes in H.R. 4437 revolves around border security enhancements. The purpose of this bill was to heighten enforcement of the U.S.-Mexico border by: constructing a 700-mile wall; increasing surveillance in several capacities; adding border guards, inspection personnel, and canine teams; improving communication between DHS and law enforcement; and gathering additional biometric identifiers from immigrants.³³²

The two primary concerns with this section of the legislation are the increased dangers to human life and health along the border and the foreign policy implications of walling off the U.S. from a neighboring

<http://www.immigrationforum.org/DesktopDefault.aspx?tabid=604> or the American Immigration Lawyers Association at <http://aila.org/Content/default.aspx?docid=8494>.

³³¹ The Border Protection, Anti-Terrorism, and Illegal Immigration Control Act, H.R. 4437, 109th Cong. (2005) <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:HR04437>.

³³² *Id.* While H.R. 4437 did not pass, some of its Title I measures, such as provisions for additional fencing and surveillance along the U.S.-Mexico border, were incorporated into the Secure Fence Act of 2006, which was signed into law on October 26, 2006. See *supra* note 204.

country. The legislation has also received criticism for its concentration on the southern border with little regard to the northern border.

Another classification of proposed policy changes in H.R. 4437 relates to “interior enforcement,” or expanded definitions of, and penalties for, immigration violations in U.S. law and increased enforcement of such legislation. The two most notable changes of this type would be: (a) creating a new federal crime of “unlawful presence,” which is now considered a civil violation; and (b) expanding “alien smuggling” to include any organization or individual providing assistance to undocumented persons.

These two proposals have drawn the most media attention and public scrutiny, as their implications are far-reaching. Immediately upon enactment, 11-12 million people within the U.S. borders would be eligible to be convicted of felony-level charges and removed. Furthermore, the ambiguous definition of “alien smuggling” could be interpreted to include any church, school, shelter, non-profit, or individual who knowingly gives aid to undocumented persons. This has led to considerable protest from advocates, church leaders, teachers, immigrant communities, and others.

H.R. 4437 would also mandate a crackdown on workplace enforcement by increasing penalties for employers who hire undocumented workers, adding investigators dedicated to identifying the unlawful employment of aliens, and creating the Electronic Employment Verification System (EEVS).

The final grouping of proposed changes falls under immigration policy reform. Such measures include the elimination of the Diversity Visa Lottery system and the reduction of immigration system backlogs by adding personnel and by streamlining paperwork. Because backlogs within USCIS are so substantial, and H.R.

4437 does not provide adequate legal pathways for new immigrants, many analysts do not believe this bill will address the long wait that immigrants currently face in obtaining green cards and visas for themselves and family members, nor the core issue of inadequate numbers of visas for immigrants to the United States.

F. LEGISLATION TO LIMIT PRESIDENTIAL SIGNING STATEMENTS

The presidential signing statement included in the Detainee Treatment Act of 2005 (DTA) declared that President Bush would bypass the interrogation limits included in the DTA if he determined national security concerns required it. Later reports revealed that President Bush has “claimed the authority to disobey more than 750 laws enacted since he took office, asserting that he has the power to set aside any statute passed by Congress when it conflicts with his interpretation of the Constitution.”³³³

While the use of signing statements is far from unprecedented, many legal scholars and members of Congress are troubled by the frequency and aggressive nature of the Bush administration signing statements. The American Bar Association (ABA) recently issued a report calling for legislation limiting their use.³³⁴

³³³ Charlie Savage, *Bush Challenges Hundreds of Laws*, BOSTON GLOBE, Apr. 30, 2006, at A1.

³³⁴ AMERICAN BAR ASSOC., TASK FORCE ON PRESIDENTIAL SIGNING STATEMENTS AND THE SEPARATION OF POWERS DOCTRINE: RECOMMENDATIONS (July 24, 2006), http://www.abanet.org/op/signingstatements/aba_final_signing_statements_recommendation-report_7-24-06.pdf.

G. PROPOSED AMENDMENTS TO THE FOREIGN INTELLIGENCE SURVEILLANCE ACT (FISA) TO DEAL WITH THE NATIONAL SECURITY AGENCY (NSA) DOMESTIC SPYING PROGRAM.

On December 16, 2005, it became public that, under a presidential order signed in 2002, the NSA has monitored the international telephone calls and e-mail messages of people inside the United States without warrants. The practice has been ongoing for the past three years in an effort to track possible “dirty numbers” linked to al-Qaeda.³³⁵ The NSA had been collecting phone call records of millions of Americans.³³⁶ In June 2006, the *New York Times* revealed that counterterrorism officials had looked at the banking and financial records of thousands of Americans and others in the United States.³³⁷

H. COMPREHENSIVE IMMIGRATION REFORM ACT OF 2006³³⁸

The Comprehensive Immigration Reform Act of 2006 was authored by Senators Arlen Specter (R-PA), Chuck Hagel (R-NE), Mel Martinez (R-FL), John McCain (R-AZ), Edward Kennedy (D-MA), Lindsey Graham (R-SC), and Sam Brownback (R-KS). It was introduced on April 7, 2006 in the U.S. Senate and passed by a vote of 62-36 on May 25, 2006. The bill reflects many of the immigration reform bills that came before it³³⁹ and is the result of a multi-step process in the Senate.

³³⁵ James Risen & Eric Lichtblau, *Bush Lets U.S. Spy on Callers Without Courts*, *NEW YORK TIMES*, Dec. 16, 2005, at A1.

³³⁶ Leslie Cauley, *NSA Has Massive Database of Americans' Phone Calls*, *USA TODAY*, May 11, 2006 at A1.

³³⁷ Eric Lichtblau & James Risen, *Bank Data Is Sifted by U.S. in Secret to Block Terror*, *N.Y. TIMES*, June 23, 2006, at A1.

³³⁸ *Comprehensive Immigration Reform Act*, S. 2611, 109th Cong. (2006), <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:SN02611:@@L&summ2=mb>.

³³⁹ The precursor proposals to S. 2611 include the Safe, Orderly, Legal Visas and Enforcement Act of 2004 (SOLVE) (proposed), the Secure America and Orderly Immigration Act, the

The bill that eventually passed the Senate had most of the same border security and interior enforcement measures of the House bill, H.R. 4437. There were, however, some key differences within the border and enforcement sections of the Senate bill that mitigated the more controversial pieces of the House version. The first important distinction is that the Senate bill would build 370 miles of fencing along the southern border (as opposed to the 700 miles proposed in H.R. 4437) and use unmanned vehicles for surveillance along 500 miles. The second is that the Senate bill raises unlawful entry to a criminal misdemeanor-level offense, but not to a felony-level offense. It also offers exceptions for many undocumented immigrants who are otherwise eligible for the legalization programs detailed below. The third major distinction is that the Senate bill provides an exception within the definition of “alien smuggling” to religious groups and organizations providing humanitarian assistance.

While the House bill took up immigration policy reform through basic backlog reduction strategies and elimination of the Diversity Visa Lottery, S. 2611 encompasses a multi-pronged approach to immigration policy reform to allow paths to legalization for undocumented immigrants already present in the U.S. as well as for future immigrants.

The earned legalization program proposed for undocumented persons present in the United States gives access to citizenship to those present before January 7, 2004, after meeting certain requirements and paying fees and fines.³⁴⁰ Other immigration policy

Comprehensive Enforcement and Immigration Reform Act of 2005, Senator Chuck Hagel's Package of Immigration Reform Legislation, and President Bush's Guest Worker Program proposal.

³⁴⁰ Long-term – Present before April 5, 2001: This program allows undocumented persons who can prove their residence for five years prior to 4/5/06 to work and to apply for legal permanent residence after current backlogs are cleared. In order to be eligible, a person must: pass background checks; be able

proposals in S. 2611 include significant backlog reduction and visa reforms to alleviate the current backlog and create legal pathways for future immigration. To reduce backlogs, the bill raises certain visa caps, redistributes some visas among existing preference categories, creates new visas, and reserves some visas for specific groups of immigrants.

The bill also creates a “temporary worker program” with the creation of the H-2C visa—a new visa category for up to 200,000 workers annually. Workers will be allowed into the U.S. with this visa only after employers verify that they were unable to hire U.S. workers and that the immigrant workers will not depress wages of U.S. workers. Immigrant workers in this program will not be allowed into areas with unemployment rates above 9% among workers with no more than a high school degree (the only demographic group that has been proven in studies to be adversely affected by immigration).³⁴¹ The temporary worker program allows for an eventual path to legal permanent residence for workers and their families. The worker must pay fees and undergo background checks to

to prove she or he has worked in the U.S. for at least three of the past five years; pay fines, fees, and all back taxes owed to the federal government; and pass the English and Civics tests normally required for citizenship.

Mid-term – Present before January 7, 2004: This program creates a Deferred Mandatory Departure (DMD) status that allows undocumented persons to work and to apply for legal permanent residency after current backlogs have cleared, or after eight years after the bill’s enactment. In order to be eligible, a person must: pass background checks; be able to prove she or he worked prior to 1/7/04 and has worked continuously since that date; pay fines, fees, and all back taxes owed to the federal government; admit to being unlawfully present; and turn in any false documents used to obtain work. The primary distinction of this group is that individuals must exit the country within three years and re-enter through any port of entry, going through the inspection process for international arrivals.

Short-term – Present after January 7, 2004: Individuals who cannot prove residence prior to this date are required to remove themselves from the U.S. and to apply for legalization in their home countries.

³⁴¹ See, e.g., Giovanni Peri, *Immigrants, Skills, and Wages: Measuring the Economic Gains from Immigration*, 5 IMMIGRATION POL’Y IN FOCUS 4 (Mar. 2006).

obtain the H-2C visa and will then be granted the same rights and benefits as other workers, the ability to travel freely in and out of the U.S., and permission to move jobs.

Of equal concern is the fact that the bill declares English as the official language and states that no person has a right to information in any language other than in English.³⁴²

Stand-alone bills that were included in S. 2611 include the Development, Relief, and Education for “Alien” Minors (DREAM) Act, the Agricultural Job Opportunities, Benefits, and Security (AgJOBS) Act, and the Strengthening American Citizenship Act of 2006.

The DREAM Act would provide children of immigrants who have lived in the U.S. for a significant portion of their lives the opportunity to obtain legal status³⁴³ and thus the chance to pursue educational and employment opportunities. Under the DREAM Act, a student must have lived in the U.S. for at least five years (since before the age of 15) and have demonstrated good moral character. The student would then, upon graduating from high school, be able to apply for six-year conditional status. If during the course of the six-year period the student had maintained good moral character and had either graduated from a two-year college, completed at least two years toward a four-year degree, or served in the

³⁴² James Crawford, *Legislating Language: Anglo-Paranoia in the U.S.A.* (last accessed July 2006), <http://ourworld.compuserve.com/homepages/JWCRAWFORD/worldpap.htm>.

³⁴³ See, e.g., Nat’l Immigration Law Ctr., *Dream Act: Basic Information* (Nov. 2005) (discussing the DREAM Act’s impact on immigrant students’ access to higher education), http://www.nilc.org/immlawpolicy/DREAM/dream_basic_info_0406.pdf.

military for at least two years, he or she would be eligible for permanent residence.³⁴⁴

The AgJOBS Act was introduced in 2005 by Senator Larry Craig (R-ID) and was included in S. 2611. The legislation would provide a pathway to legal status for agricultural workers who have been in the U.S. at least two years. Approved applicants would receive a “Blue Card,” with which they could travel into and outside of the U.S. and could apply for legal permanent residence. The worker would be ineligible for most public benefits for five years but would be granted some rights and protections. AgJOBS was reintroduced in the 2007 legislative session.³⁴⁵

The final piece of stand-alone legislation included in S. 2611 is the Strengthening American Citizenship Act of 2006. This would provide grants for learning English and U.S. Civics to eligible legal permanent residents seeking to obtain citizenship.

³⁴⁴ There have also been proposals at the state level in Minnesota which compliment the federal DREAM Act. These state proposals are also referred to as the “DREAM Act” and are similar in their educational access provisions for undocumented youth, but they do not provide pathways to legal immigration status, which is under the sole purview of the federal government.

³⁴⁵ Originally introduced on January 10, 2007 as S. 237 (Feinstein D-CA) and H.R. 371 (Berman D-CA), the Senate bill was reintroduced as S. 340 to include additional co-sponsors. See S.430, 10th Cong. (2007).

APPENDIX C: PROPOSED MINNESOTA LEGISLATION

A. PROHIBITING IMMIGRATION LAW ENFORCEMENT NON-COOPERATION ORDINANCE, H.F. 2576

The 2006 legislative session opened with the introduction of H.F. 2576 by Representative Jim Knoblach (R-St. Cloud) to ban separation ordinances, such as those in St. Paul and Minneapolis, which prohibit police officers from inquiring into an individual's immigration status unless it is part of a criminal investigation. Governor Pawlenty asserted that "[s]tate and federal laws must be respected and enforced statewide, and sanctuary laws prevent this from happening."³⁴⁶ Immigrant advocates testified that local enforcement of federal immigration laws would mean that immigrant victims of domestic violence would be less likely to seek safety for themselves and accountability for their abusers.³⁴⁷ In addition, public safety officials insisted that community policing efforts would be weakened by the repeal of separation ordinances. For example, former Minneapolis Police Chief Bill McManus stated, "[i]t's difficult now to get members of [immigrant] communities to report crime and to work with the police. So I can see that magnifying exponentially if local police were given the authority of INS officers."³⁴⁸ An amended version of the bill with protections to prevent racial profiling passed the House on March 20, 2006, by a vote of 94-37.³⁴⁹

³⁴⁶ *Id.*

³⁴⁷ Cheryl Thomas, Testimony before the Minnesota House of Representatives (Mar. 21, 2006), http://www.mnadvocates.org/Minnesota_Advocates_Testifies_Before_Minnesota_House_of_Representatives_Public_Safety_Committee.html.

³⁴⁸ Tom Scheck & Brandt Williams, Pawlenty Outlines Plan to Fight Illegal Immigration (Minn. Pub. Radio broadcast Jan. 3, 2006), http://news.minnesota.publicradio.org/features/2006/01/03_scheckt_immigrationplan/.

³⁴⁹ H.F. 2576 (Mar. 21, 2006), http://www.revisor.leg.state.mn.us/revisor/pages/search_status/status_detail.php?b=House&f=HF2576&ssn=0&y=2006.

To make its ultimate passage more likely, the repeal of separation ordinances was included as Article 6 of H.F. 3308, the Governor's Omnibus Bill on Immigration and Identity Theft, which never reached the House floor for a vote.³⁵⁰ Neither attempt to prohibit separation ordinances became law.

B. THE GOVERNOR'S OMNIBUS BILL ON IMMIGRATION AND IDENTITY THEFT, H.F. 3308

The Governor's Omnibus Bill on Immigration and Identity Theft, H.F. 3308, included specific articles relating to Governor Pawlenty's proposed initiatives to address illegal immigration. As previously mentioned, Article 6 sought to prohibit city separation ordinances, while Article 7 sought to authorize the Commissioner of Public Safety to enter into Memoranda of Understanding to enable state and local officers to enforce immigration laws. In addition, Article 7 would establish the creation of the Minnesota Illegal Immigration Enforcement Team (MIIET) for the apprehension of illegal immigrants involved in felonies and require the collections of immigration data for those arrested in Minnesota.³⁵¹ Concerns about these provisions included the breakdown of immigrant and police relations, racial profiling, and the diversion of resources from burdened local authorities.

The immigration omnibus bill reached beyond local enforcement issues to address documentation restriction and fraud, as well as employer sanctions. Article 2 sought to increase penalties for fraudulent

³⁵⁰ See Governor Omnibus Bill on Immigration Theft, H.F. 3308 (Apr. 4, 2006) http://ros.leg.mn/revisor/pages/search_search_status/status_detail.php?b=House&f=HF3308&ssn=0&y=2006.

³⁵¹ Minn. House Research, Bill Summary (Mar. 16, 2006), http://www.revisor.leg.state.mn.us/revisor/pages/search_status/status_detail.php?b=Senate&f=SF3117&ssn=0&y=2006.

documents, and Article 4 implemented facial recognition technology for Minnesota state identification cards and driver's licenses. Article 3 incorporated H.F. 3014 to codify the driver's license rules. Article 6 established state-imposed fines for employers that violate immigration laws.³⁵² Determining an immigrant's status is complex and mistakes could result in discrimination or the denial of a job or license to eligible employees or drivers.

Non-controversial Article 1 sought to create a human trafficking task force that would address and prevent trafficking in Minnesota and enhance penalties, especially for the trafficking of minors. Article 3 offered up to \$300 in tax credits to immigrants to defray some of the expenses incurred for acquiring citizenship.³⁵³ Ultimately, the Governor's Omnibus Bill on Immigration and Identity Theft, was heard in several committees but never reached the House floor for a full vote.³⁵⁴

C. THE DEFICIENCY AND SUPPLEMENTAL APPROPRIATIONS BILL, H.F. 4162

The Deficiency and Supplemental Appropriations Bill, H.F. 4162, authored by Representative Jim Knoblach (R-St. Cloud), also alarmed immigrants and their advocates. It would have required immigration status checks for food assistance benefits, General Assistance, immunizations, testing and treatment of symptoms of communicable diseases, MinnesotaCare, and Group Residential Housing.³⁵⁵ Advocates and immigrants shared concerns that children, including citizen children within mixed-status families, would be significantly affected, and the result would be more uninsured children. Additionally, required reporting

³⁵² *Id.*

³⁵³ *Id.*

³⁵⁴ See H.F. 3308 *supra* note 350.

³⁵⁵ Minn. House of Representatives, Summary of H.F. 4162, <http://ww3.house.leg.state.mn.us/hrd/bs/84/HF4162.html> (last visited Jan. 2007).

would be extremely detrimental to victims of domestic violence, who may fear seeking medical attention.

D. THE DEVELOPMENT, RELIEF, AND EDUCATION FOR "ALIEN" MINORS (DREAM) ACT

The Development, Relief, and Education for Alien Minors Act (DREAM Act) is legislation that has been introduced in different forms at both the state and federal levels. The DREAM Act would permit certain undocumented students to pay in-state tuition rates when attending public post-secondary education. At the federal level, this legislation was included in the 2006 Senate proposal S. 2611, as discussed in Appendix B.³⁵⁶

In 2001, the DREAM Act was proposed in Minnesota. The bill would have allowed undocumented students to pay in-state tuition if they had attended high school in Minnesota for more than two (later amended to three or more) years, had graduated from a state high school or attained high school equivalency, and had registered at a public institution of higher education.³⁵⁷ Ten states have passed similar legislation.³⁵⁸ Despite the persistence of state legislators and bipartisan support in both the state House and Senate, the legislation has yet to pass in Minnesota.

In 2005, the DREAM Act was withdrawn from the Higher Education Omnibus bill at the last minute when Governor Tim Pawlenty threatened to veto it.³⁵⁹ In the

³⁵⁶ See *supra* App. B at § H.

³⁵⁷ S.F. 627 (Jan. 31, 2005), <http://ros.leg.mn/bin/bldbill.php?bill=S0627.0&session=ls84>.

³⁵⁸ These states are Texas, California, Utah, Washington, New York, Oklahoma, Illinois, Kansas, Nebraska, and New Mexico. U.S. Dep't of Educ., Financial Aid and Scholarships for Undocumented Students, <http://www.finaid.org/otheraid/undocumented.phtml>.

³⁵⁹ Mary Turck, Help Immigrant Students to Keep the Dream Alive, STAR TRIB. (Minneapolis, Minn.), May 26, 2005; Press Release, Senator Sandra L. Pappas, Governor Threatens Veto over "Dream Act" (May 20, 2005),

2006 legislative session, the Minnesota DREAM Act was introduced in the House, as H.F. 3911, by Representative Ray Cox (R-Northfield). Senators Sandra L. Pappas (DFL-St. Paul), Cal Larson (R-Fergus Falls), and Larry Pogemiller (DFL-Minneapolis) sponsored the Minnesota DREAM Act in the Senate as S.F. 2876.³⁶⁰ While it passed the Senate, the House dismissed policy-related legislation to address appropriations-related issues. Therefore, H.F. 3911 was never called to a floor vote and did not reach the Governor's desk.

E. H.F. 1443

On March 3, 2005, Representative Tom Emmer (R-Delano) introduced H.F. 1443, a bill requiring voters to show proof of citizenship to register to vote. Prior to passing the House on May 9, 2006, the citizenship requirement was withdrawn, leaving a photo identification requirement for all voters when registering.³⁶¹ The Senate did not pass an accompanying bill.

http://www.senate.leg.state.mn.us/caucus/dem/membernews/2005/dist65/20050520_Pappas_Dream_Act.htm. The DREAM Act was reintroduced in the 2005 Special Session as S.F. No. 28, but was not passed. Text of the DREAM Act is available at http://www.revisor.leg.state.mn.us/bin/bldbill.php?bill=S0028.0&session_year=2005&session_number=1.

³⁶⁰ DREAM Act, S.F. 2876 (May 9, 2006), http://www.revisor.leg.state.mn.us/revisor/pages/search_status/status_detail.php?b=Senate&f=SF2876&ssn=0&y=2006.

³⁶¹ H.F. 1443, 2005-2006 Leg., 84th Sess. (Minn. 2006), <http://ros.leg.mn/bin/bldbill.php?bill=H1443.4.html&session=ls84>.

APPENDIX D: HUMAN RIGHTS STANDARDS

The United States is obligated by its Constitution, statutes, and international treaty law, to treat citizens and non-citizens equally with few exceptions, to protect the rights of refugees and asylees and to guarantee non-discrimination and equality.

A. RIGHTS OF NON-CITIZENS UNDER U.S. AND INTERNATIONAL LAW

A non-citizen is “any individual who is not a national of a State in which he or she is present.”³⁶² Many non-citizens possess a recognized legal status in the U.S., including lawful permanent residents; people legally admitted for work, education, or tourism; refugees; asylum seekers; and people with temporary protected status.³⁶³ Undocumented immigrants are also classified as non-citizens. Non-citizens, regardless of immigration status, are guaranteed almost all the same rights as citizens, such as rights to due process and equal protection of the law, freedom of speech and assembly, and freedom from cruel and unusual punishment.³⁶⁴ Only three constitutional rights are denied non-citizens outright—voting in elections,

holding certain political offices, and the absolute ability to enter and remain in the U.S.³⁶⁵

In addition to most rights found in the Constitution, non-citizens have the rights embodied in the international human rights treaties that the U.S. has ratified, such as the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the 1951 Refugee Convention. The ICCPR, in particular, requires that each signatory country recognize certain civil and political rights in “all individuals within its territory and subject to its jurisdiction,” without distinction of citizenship status.³⁶⁶ General Comment 15 of the Human Rights Committee states, “in general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness.”

Like the Constitution, the ICCPR permits distinctions between citizens and non-citizens only as to political rights and freedom of movement.³⁶⁷ Article 25 of the ICCPR specifies that “every citizen” shall have the right to participate in public affairs, to vote and hold office, and to have access to public services. Article 12(1) of the ICCPR grants “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.” Basic human rights protections, including freedom from arbitrary detention, access to the courts,

³⁶² Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, G.A. Res. 40/144 annex, U.N. GAOR, 40th Sess., Supp. No. 53, at 252, U.N. Doc. A/40/53 (1985).

³⁶³ Temporary Protected Status (TPS) is a temporary immigration status designated by the Attorney General and granted to eligible nationals of designated countries who cannot return home because of a crisis—such as armed conflict or environmental disaster—in their home country. Burundi, El Salvador, Honduras, Liberia, Nicaragua, Somalia and Sudan are currently designated under the TPS program. The designation of Liberia for TPS has been terminated effective October 1, 2007. See Temporary Protected Status, <http://www.uscis.gov>.

³⁶⁴ “[A]ll persons should by virtue of their essential humanity enjoy all human rights unless exceptional distinctions, for example, between citizens and non-citizens, serve a legitimate State objective and are proportional to the achievement of that objective.” U.N. Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights Final Report on the Rights of Non-citizens, Mr. David Weissbrodt, May 26, 2003, U.N. Doc. E/CN.4/Sub.2/2003/23.

³⁶⁵ See Alison Parker, *Inalienable Rights: Can Human-Rights Law Help to End U.S. Mistreatment of Noncitizens?*, AM. PROSPECT, Oct. 1, 2004, <http://www.prospect.org/web/page.wv?section=root&name=ViewPrint&articleId=8556>.

³⁶⁶ ICCPR, *infra* note 376, Art. 2(1).

³⁶⁷ The CERD permits distinctions between non-citizens and citizens as long as all non-citizens are treated similarly. CERD, *infra* note 374, Arts. 1(2) & 1(3).

and freedom from cruel, inhumane, or degrading treatment or punishment, are enjoyed by all persons, regardless of citizenship or legal status.

B. RIGHTS OF ASYLEES AND REFUGEES UNDER U.S. AND INTERNATIONAL LAW

The right to seek and enjoy asylum from persecution is a core principle of international human rights. Asylees and refugees are persons who have fled their country because of fear of persecution. Asylees and refugees differ only in the place where a person asks for and secures the status. Asylum is requested in the United States; refugee status is asked for outside the United States.

The Refugee Act of 1980³⁶⁸ incorporated into U.S. law the definition contained in the 1951 Convention Relating to the Status of Refugees and the corresponding 1967 Protocol, which define a refugee as a person who:

owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

As a party to the Convention and Protocol, the U.S. cannot return refugees to their native countries.³⁶⁹ In addition, the U.S. is bound to apply the provisions of

³⁶⁸ The Refugee Act of 1980, which amended the Immigration and Nationality Act, was “to provide a permanent and systematic procedure for the admission to this country of refugees of special humanitarian concern to the United States.” Pub. L. 96-212, tit. I, 101(b), 94 Stat. § 102 (1980). Also, the Refugee Act brought the domestic laws of the United States into conformity with its treaty obligations under the United Nations Protocol Relating to the Status of Refugees. See *INS v. Stevic*, 467 U.S. 407, 421, 427 (1984).

³⁶⁹ This is known as the principle of non-refoulement.

the Convention without discrimination as to race, religion, or country of origin.

C. RIGHTS OF NON-DISCRIMINATION

The Universal Declaration of Human Rights recognizes the inherent equality in dignity and rights of all human beings.³⁷⁰ Everyone is entitled to all of the rights and freedoms identified in the Declaration, without distinction on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.³⁷¹ This strong statement of non-discrimination extends to equal protection of the law.³⁷²

Non-discrimination is perhaps the most significant and widely accepted human rights principle in international law.³⁷³ It has been restated in all the major human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Convention on the Elimination of All Forms of Racial Discrimination (CERD);³⁷⁴ and the Convention on the Elimination of All Forms of Discrimination against Women

³⁷⁰ Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. GAOR 3d Sess., (Resolutions, Part 1), at 71, Art. 1, U.N. Doc, A1810 (1948).

³⁷¹ *Id.* at Art. 2.

³⁷² *Id.* at Art. 7.

³⁷³ See generally, NON-DISCRIMINATION IN INTERNATIONAL LAW: A HANDBOOK FOR PRACTITIONERS, (Kevin Kitching ed., 2005), <http://www.interights.org/doc/Handbook.pdf>.

³⁷⁴ International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX), Annex., U.N. GAOR 20th Sess., Supp. No. 14, at 47, Art. 1(1), U.N. Doc. A/6014 (1966) (defining racial discrimination as, “any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”).

(CEDAW).³⁷⁵ These instruments apply the principle of non-discrimination to everyone.

The ICCPR binds each member to respect and to ensure the rights within the ICCPR to all persons regardless of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.³⁷⁶ Importantly, Article 26 of the ICCPR creates a right to equality:

All persons are equal before the law and are entitled without any discrimination to equal protection of the law. In this respect, the law shall prohibit discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.³⁷⁷

The principle of non-discrimination is aimed primarily at national laws, policies, and practices, but the principle also applies to private actors.³⁷⁸ In interpreting the

³⁷⁵ The U.S. played an active role in drafting the Treaty, which President Carter signed in 1980. Although 183 countries have ratified CEDAW, the United States has not. Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, Art. 2, U.N. Doc. A/34/46 (1981) (“States Parties condemn discrimination against women in all its forms, . . . pursue by all appropriate means and without delay a policy of eliminating discrimination against women. . .”).

³⁷⁶ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 52 Art. 2, U.N. Doc. A/6316 (1966).

³⁷⁷ The ICESCR also contains general and specific non-discrimination clauses, which are similar to the ICCPR. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 49, Art. 2(2), U.N. Doc. A/6316 (1966) (“The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”). Although the ICESCR was signed by President Carter in 1977, the U.S. Senate has failed to ratify it.

³⁷⁸ ICCPR, *supra* note 376, at Art. 2(1), contains the clause that States are bound “to respect and to ensure to all” individuals the rights of the ICCPR, which implies that the State is obliged to ensure compliance by private persons with the ICCPR’s norms,

ICCPR, the Human Rights Committee held, “The right to equality before the law and freedom from discrimination protected by Article 26 requires States to act against discrimination by private, as well as public agents in all fields.”³⁷⁹ This principle is violated if the effect of a distinction, exclusion, restriction, or preference is discriminatory, regardless of intent.³⁸⁰

The ICCPR permits discriminatory treatment under very narrow circumstances, and only if (1) the goal achieves a legitimate purpose; and (2) the criteria for such differentiation are reasonable and objective.³⁸¹ In case of a public emergency, although a member State may take steps to derogate certain obligations under the ICCPR, such measures may not involve discrimination solely on the grounds of race, color, sex, language, religion, or social origin.³⁸²

The principle of non-discrimination is also recognized in the U.S. Constitution, which forbids any state to “deny to any person within its jurisdiction the equal protection of the law.”³⁸³ The Constitution of the State of Minnesota provides, “No member of this state shall be disenfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers.”³⁸⁴ The Minnesota Human Rights Act states that it is the public policy to secure for persons freedom from

or at a minimum, adopt measures against private interference of the rights protected in the ICCPR.

³⁷⁹ U.N. Hum. Rts. Comm., 68th Sess., General Comment 28, Equality of Rights Between Men and Women (2000).

³⁸⁰ U.N. Hum. Rts. Comm., 37th Sess., General Comment 18, Non-Discrimination (1989) (applying this type of definition of “discriminate” to the ICCPR by reference to the definitions found in the CERD and CEDAW).

³⁸¹ *Id.*

³⁸² ICCPR, *supra* note 376, at Art. 4.

³⁸³ U.S. CONST. amend. XIV, § 1.

³⁸⁴ MINN. CONST. art. I, § 2.

discrimination in employment, housing, public accommodation, and public services.³⁸⁵

³⁸⁵ Minn. Stat. § 363A.02 (2006), http://www.humanrights.state.mn.us/rights_363.html. Protected classes include race, color, creed, religion, national origin, sex, marital status, sexual orientation, status with regard to public assistance, disability, age, or familial status (only as to housing).

