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New California Media - The New America Now

Acts of P.A.T.R.O.I.T.ism--Fears of Terrorism Incite Reactionary Policy

Asian Week, By Neela Banerjee and Joyce Nishioka, October 10, 2001

The Sept. 11 attacks have left two cities devastated and a nation of people conflicted. Americans are resolute in their pursuit for justice yet wary of the future. From our renewed sense of patriotism, a nationalistic fervor is beginning to emerge, most evident in the hate crimes committed against those who look Arab.

In this atmosphere of uncertainty, legislators and the Bush administration have sought to expand their powers for the sake of national security.

But these new powers may also encroach on civil liberties, the backbone of America's constitution. And in this new world of suspicion and enhanced security, the main suspects are immigrants.

In grainy security camera stills and headshots, Hani Hanjour is the new face of the enemy: dark hair and eyes, olive colored skin. The fact that Hanjour — one of the suspected hijackers of American Airlines Flight 77 which crashed into the Pentagon — was here on a student visa and was to enroll in intensive language classes at Oakland's ELS Language Center in November, suddenly brings the entire immigration system under intense scrutiny.

As details of the attacks on New York and Washington, D.C., come to light, it has been reported that two other suspected hijackers are being investigated to determine if they attended a San Diego community college. Other suspects are believed to have entered through loopholes in immigration policy, including two who crossed the border from Canada.

These discoveries are adding to a strong anti-immigrant backlash felt across the country, affecting everyone from Mexican Americans to Korean Americans.

With major immigration victories like the recent extension of section 245(i) — a provision that allows illegal aliens to adjust their status while remaining in the United States — and President George W. Bush's talks with Mexican President Vicente Fox about granting amnesty to millions of undocumented workers, 2001 was shaping up to be a turning point for immigrant communities. But in the aftermath of the devastating terrorist attacks, legislation that both affects immigrants

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and makes changes to immigration policy is already underway on Capitol Hill.

Mobilization Against Terrorism

Just two weeks after the World Trade Center crumbled, Attorney General John Ashcroft presented the Mobilization Against Terrorism Act to Congress. The purpose of this legislation is to provide the President and the Department of Justice with "the tools and resources necessary to disrupt, weaken, thwart and eliminate the infrastructure of terrorist organizations, to prevent terrorist attacks and punish perpetrators of terrorist acts."

During subsequent hearings in the House Judiciary Committee the bill was given a new name. Set to be formally introduced in the House next week, the bill is now titled, "Provide Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001," or in its acronym form, the Patriot Act.

The proposed legislation seeks to combat terrorist activity on several fronts: by enhancing the Department's capacity to gather intelligence, i.e. increasing wire-tapping ability; by enhancing the authority of the Immigration and Naturalization Service (INS) to detain and remove suspected terrorists by expanding the definition of terrorists; and by providing for alternative maximum sentences for the commission of terrorist acts and severe punishment for those who assist terrorists and their organizations through concealment of their activities or members.

While protecting the United States is imperative, human rights activists say that with such broad policy changes, law-abiding immigrants could become targets of unjust treatment, including being wire-tapped, jailed or even deported without due process.

"We are concerned about any limitations on the constitutional rights of immigrants," Zenobia Lai, executive director of San Francisco-based Asian Law Caucus, said.

Proposed legislation

Across the board, immigrant advocates were most concerned about early provisions that would have allowed indefinite detention of non-citizens without any judicial review. Currently, the holding period is 24 hours.

In the latest version of the anti-terrorism bill, a non-citizen could be detained up to seven days before being charged, if the authorities had "reasonable grounds" for suspecting the detainee of terrorist activity.

These provisions still hinge on the expanded definition of terrorism, which would allow the INS to detain anyone believed to be involved in terrorist activity; a threat to national security; or in some way affiliated with accused terrorists.

Ashcroft had originally wanted to push this legislation through in one week, according to the American Civil Liberties Union, which has been closely monitoring the bill. The ACLU urged Senators not to rush the Patriot Act through, and to consider its full impact on both security and civil liberties.

"Does [the rush] have anything to do with the fact that the department had sought many of these authorities on numerous other occasions, has been unsuccessful in obtaining them and now seeks to take advantage of what is obviously an emergency situation?" Rep. Bob Barr, R-Ga., said at a House Judiciary Committee Hearing last week.

ACLU attorney Rachel King, who testified at the same hearing, stated: "In the aftermath of the terrorist attacks, it is appropriate that Congress take every reasonable step it can to protect our nation against future attacks. But it is a mistake to assume that many of the expanded police powers sought in the bill are going to make us safer..."

"It is our strong belief that other provisions go far beyond addressing the events of Sept. 11."

Along with the detainment of non-citizens, the expanded definition of terrorist has the potential to affect immigrant communities, especially certain Asian Pacific Islander American communities.

"[Section 303] would make the crime of attempted terrorism or conspiracy to commit terrorism punishable to the same degree as the underlying offense as terrorism," King said.

According to one immigration lawyer who spoke under the condition of anonymity, "This should be of great concern to the South Asian communities, for example: Sri Lankan Tamils."

There is a militant movement in Sri Lanka, which engages in what could be defined as terrorist activity under the new bill, the lawyer said. At the same time, the country is facing a huge humanitarian crisis, with thousands of people internally displaced.

According to the lawyer, the parts of the country that are controlled by the militant movement, manage all humanitarian aid distributed to its displaced citizens.

Sri Lankans who reside in the United States and donate to relief efforts in their homeland could be seen as affiliating with terrorist groups — and they now run the risk of being deported.

As of Oct. 1, the ACLU was still urging the House to reject the Patriot Act, even with compromises.

Some problematic provisions that have been omitted, include one that would have required schools to disclose information to authorities about foreign students suspected of terrorist activity; and another that would have allowed officials to use information gathered in other countries, even if obtained by methods considered unconstitutional in the United States.

Immigrant Backlash

As the suspected terrorists' photographs are run on the front pages of newspapers nationwide, the violent backlash also affected immigrants of other ethnicities. Victor Narro, director of the Worker Rights Project at the Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA), said that a number of the nearly 80 hate crimes documented in Los Angeles, were aimed at Mexican immigrants.

Glen Mimura, Asian American Studies professor at UC Irvine, believes that the backlash against immigrants will have an indiscriminate, spiraling effect.

"A lot of the backlash recycles longstanding views of immigrants. There is a long history of Nativist views and you see that now on both the street level and in policy," Mimura said.

He added: "The government is sending mixed messages. On one hand, Bush, Governor Pataki and New York City Mayor Giuliani have strongly condemned hate crimes. At the same time, they have aggressively pursued people of Arab and Muslim descent.

"So while there has been verbal support for targeted communities, behind the scenes, we're seeing an abrogation of civil rights for those groups."

In Los Angeles, immigrant rights advocates are worried about federal legislation affecting local policies that protect undocumented immigrants. Special Order 40, which was put in place in 1979, prohibits police officers from stopping, questioning and detaining an individual solely because of his or her immigration status.

Prior to 1979, the LAPD required officers who came into contact with a person suspected of being undocumented to determine the person's immigration status and notify the INS. Because of this, many immigrants refused to

report crimes or assist in criminal investigations for fear of being deported.

The proposed anti-terrorism legislation calls for local law enforcement agencies to again work hand-in-hand with the INS.

Last week, Narro along with members of other immigrant advocacy groups, testified at a Police Commission meeting to make sure the LAPD complies with Special Order 40, in light of what is going to be coming out of Congress in the next few weeks.

"There were people outside the meeting alleging that the Order would be a way for terrorists to come in and be undetected," Liz Esunwoo of Korean Immigrant Workers Advocates (KIWA) said. "This just shows that there is already a backlash against any law that protects immigrants, even small ones like Special Order 40."

Esunwoo said that even as the advocates testified, there were already amendments being made in the direction of a stricter Special Order 40 that is less effective for undocumented immigrants. She said that many of the workers she organizes already feel very threatened, by both the average population and authorities. KIWA held a forum last Saturday to educate workers about how to protect themselves from hate crimes and what to do in case of a civil rights violation by the authorities.

On other fronts, the INS is tightening borders and Narro said they want to eliminate border passes, which allows thousands of Mexicans to cross the border to work and then return home.

"They say we must forsake civil rights in the interest of national security, but you have to ask, 'Whose security?' Will all people have their freedoms restricted or will only certain groups suffer?" Mimura said.

Other Changes

Beyond the Patriot Act, there is talk of other immigration legislation being floated in Washington, D.C., that aims to streamline the INS and put greater scrutiny on incoming immigrants. But as of right now, there are no official changes.

"One question I am asked 15 to 20 times a day is, 'How will the Sept. 11 attacks affect my [visa] renewal application or a new application?' And I tell them there may be some additional security checks but it should not affect it in any way," Arlington, Va.-based immigration lawyer Rajiv Khanna said.

Although it is rumored that the Visa Waiver Program, which allows those from friendly countries to travel for 90

days without a visa, will be suspended, Khanna said that would be unlikely. He said he doesn't believe there will be a "blanket suspension," since the Visa Waiver Program is based on agreements the United States makes with each country individually.

Pauline Jen, managing para-legal for Fragomen, DelRey, Bernsen & Lowey, the largest immigration law firm in the nation, said that though there have been no changes in policy, there has been a change in procedures.

"In the past, we have never cautioned that our clients travel with their immigration documents or passports domestically, but recently we have had to do that," Jen said.

With everyone from Arab Americans to Latinos being pulled off of planes and held at security checks, both immigrants rights groups and lawyers are cautioning their clients not to visit airports without proper documentation.

"Minorities are getting checked all the time now. If you're white American, then all you have to carry is your driver's license," San Francisco immigration lawyer Rodel Rodis said. "But if you're not prototypical American, authorities can ask you for your documents. Then, they check with INS computers. If you're illegal, they detain you and remove you."

According to Jen, there are at least three pieces of immigration legislation that were being floated on the congressional floor as of last week.

"I can't really talk about them because they are being passed around internally in our law firm, but I can say this: I think we are going to see a shift in making the State Department less of a service organization and more of an enforcement organization," she said.

Study Abroad No More

One of the immigration policies that is already being targeted by legislators is the student visa program. Senator Dianne Feinstein announced last week that she will soon introduce legislation to reform this program, stating these changes are necessary after she learned that a number of the suspected hijackers in the Sept. 11 attack are now under investigation for enrolling in U.S. schools but never attending. Feinstein also pointed out that one of the terrorists in the 1993 World Trade Center bombing was in the United States on an expired student visa.

Feinstein will propose a six-month moratorium on the student visa program to give the INS time to revamp the system. Congress enacted a law in 1996, requiring the

INS to collect important data on foreign students, but the program has not yet been put in place.

"[These plans] may be controversial but there has to be recognition that this is an unprecedented time in the country and our national security depends on our system functioning to ensure that terrorists do not take advantage of the vulnerabilities in the student visa program," Feinstein said.

Feinstein's legislation also includes provisions that would: modify existing law by requiring the INS to conduct comprehensive background checks before the State Department may approve a foreign visa application; require the INS to upgrade its electronic data system to include fingerprints and photographs on all foreign students planning to enter the United States; require schools to report to the INS on a quarterly basis on the student's academic status, type of courses taken and any disciplinary action taken by the school as a result of a crime committed "by the alien," among other things.

Soumik Ukil, 22, recently arrived from India to start a master's of science program at the University of Iowa, where he studies bio-medical engineering. After graduating from the Indian Institute of Technology (IIT) earlier this year, Ukil said that getting a student visa was no problem.

"For me it was very easy. It took about five minutes at the consulate. They ask you a few questions about what your plans are and what you plan to do post-graduation," Ukil said, admitting that the consulate favors graduates of the prestigious IIT system. Officials estimate that 245,000 foreign students have entered the United States this year to pursue various courses of study.

For Siddharth Singh, a classmate of Ukil's at IIT, the prospect of coming to study in the United States now seems much more complicated. Singh, who studied energy engineering, is currently employed at Hellosoft Solutions, Ltd., in Hyderabad, India. He was planning to come to the United States to study in the next year.

"I am a bit worried because the United States is the preferred destination for higher studies. If the number of visas is reduced then the students are bound to get affected," Singh said.

He said that in India, there is an expectation among the students that the scholarship funds for universities, which draw many international students, might get diverted to the United States' war-related activities. Singh said that the terrorist attacks have definitely dampened the spirits of the students who were planning to studying in the States.

"Reducing the number of student visas is not going to

solve the problem, so I hope that won't happen," Singh said. "The U.S. economy has benefited due to the contributions of the Indian community, especially in the technological field."

Both Singh and Ukil think that security measures should be reinforced and have faith that the American government will do a good job.

"I think that the policy changes regarding security are actually a good idea," Ukil said. "Because all the people who are coming here to really work or study will still get through."

Temporary Workers

The next step for many students who come to the United States for school, is to find employment. Part of Feinstein's proposal would be to track students very closely and make sure all visa adjustments would be monitored. While most immigration lawyers say that the changes will not effect temporary work visas like the H-1B, immigrant backlash seems to have myriad effects.

"We help get the next piece for the student, the temporary work visa," Jen said. "The burden of maintaining legal status at this time is really difficult. I think it is easy for the government to say everyone will be tracked, but the people who are not on the radar screen are really hard to find. As an immigration law agency, we are on the look-out and won't touch cases that have not followed the proper procedures. Right now there is no enforcement/tracking method. I think that is really next to impossible to do."

Jen said that the economic downturn is what is most likely to effect H-1B visas. Just last year, under the Clinton administration, the cap on H-1B workers was raised to some 195,000 and immigrants were ushered in with a celebration of the new workforce powering the high-tech revolution. But as the nation has already been teetering at the edge of a recession and now is desperately trying to gain back confidence in its markets, the fate of the temporary worker seems doomed.

"We went the other direction when we were looking for employees and we were having such a hard time, especially in Silicon Valley, getting qualified computer technicians, unless we went overseas," Lydia Ortega, chair of the Economics Department at San Jose State University, said. "The mindset was 'Do they have computer skill? Let them in.'"

Ajay Goel, C.E.O. of Silicomm Corporation, an e-business consulting company in Dayton, Ohio, employs seven H-1B visa holders. He says that he doesn't really think that new legislation will affect his employees because most of them have worked for a year or less. H-1B visas are

good for three years.

But Goel said that he was recruiting overseas because the economy was booming and there was a tremendous worker shortage. But now, with thousands of lay-offs, he believes that there is plenty of talent here.

"I think the general trend for the country, apart from what happened on Sept. 11, is that things are going to be more constrictive on allowing immigrant workers to come here and work," Goel said. "When the economy is in the state that it is and there are so many unemployed workers who are citizens of this country, the government is going to question companies that hire from the outside."

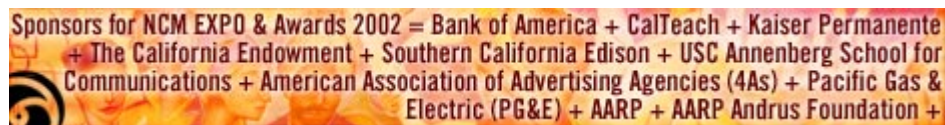
Goel said that he heard that after Motorola did several rounds of lay-offs, the INS froze their ability to apply for green cards for the H-1B employees.

"I think the idea was that they just laid off so many people, so why would they need people from overseas to be permanent residents," Goel explained.

A South Asian American, Goel comes from an immigrant community, yet he believes a tighter immigration policy would be a good thing for the country.

"Over the past few years when immigration has been really open, a lot of people have come into this country legally and illegally. A lot of times they haven't had the appropriate skills to function very well in the United States. A lot of times their English isn't very good," Goel said. "There have been cases where technical skills have been faked on paperwork just to get people into the country. Those people drain our economic system."

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