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Post-9/11 U.S. Immigration Laws and Implications for Muslims

Muhammad Abdullah Fazi^{1*}, Maryam Bibi², Sardar Ali Shah³, Ali Abbas⁴, Mian Waqar Ahmed⁵, Rusdi Bin Omar⁶

¹ Faculty of Law, Multimedia University, Melaka, Malaysia

² Istanbul Sabahattin Zaim University, Turkey

³ Institute of Law, University of Sindh, Jamshoro, Pakistan

⁴ Central China Normal University, Wuhan, PR China

⁵ National Commission for Human Rights, Pakistan

⁶ School of International Studies, University Utara Malaysia

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Abstract:

U.S. immigration laws and policy changed in the aftermath of 9/11. This paper provides an overview of the most significant changes to U.S. immigration policy since 2001, focusing on the legislative and policy response toward immigrants. This study examines whether these policy changes and laws have affected or targeted any particular community in America—specifically, Muslim immigrants—by reviewing some significant policy documents and laws i.e., the U.S. Patriot Act, National Strategy for Homeland Security, National Security Entry-Exit Registration System. This paper is divided into three major sections while adopting the qualitative approach to reach the findings. The first section reviews the laws and policies introduced after 9/11 in America and analyzes how these regulations were affecting the minorities residing in the U.S. while considering the success of the new immigration system. The second section provides an overview of the U.S. judicial response toward securing and safeguarding the rights of immigrants who were directly affected by the new immigration laws. The third and final part of this study describes the latest immigration reforms, particularly under the post 9/11 administration.

Keywords: immigration, Islamophobia, Muslims, reforms.

9/11 之后的美国移民法和对穆斯林的影响

Corresponding Author: Muhammad Abdullah Fazi, Faculty of Law, Multimedia University, Melaka, Malaysia; email: fazi.mabdullah@mmu.edu.my

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摘要:

美国移民法律和政策在9/11之后发生了变化。本文概述了自2001年以来美国移民政策的最重大变化，重点关注针对移民的立法和政策反应。本研究通过审查一些重要的政策文件和法律，即《美国爱国者法案》、《国土安全国家战略》、《国家安全进出境》，检验这些政策变化和法律是否已经影响或针对美国的任何特定社区——

特别是穆斯林移民。注册系统。本文分为三个主要部分，同时采用定性方法得出结论。第一部分回顾了9/11之后美国出台的法律和政策，并分析了这些法规如何影响居住在美国的少数民族，同时考虑到新移民制度的成功。第二部分概述了美国司法对保障和保障直接受新移民法影响的移民权利的反应。本研究的第三部分也是最后一部分描述了最新的移民改革，特别是在9/11后政府的领导下。

关键词: 移民，伊斯兰恐惧症，穆斯林，改革。

1. Introduction

This study examines regulatory and legal challenges experienced by immigrants regarding new legislations promulgated after 9/11 in the U.S., identifies areas that discriminate against minorities, and recommends where amendments are required through a focused review of the most significant studies on the subject. First, it provides a cursory overview of U.S. immigration laws and identifies the so-called security prism, through which immigrants have to pass, while highlighting its considerable discriminatory implications. Second, it discusses the misery of minorities and the existing U.S. legal framework along with a judicial response to determining whether those regulations fit with the global human rights regime. Last, while discussing the features of the post-Trump anti-immigration policy, this study reports the results emphasizing the need for immigrant-friendly laws and adoption of a policy that helps convergence between the different segments of society rather than isolating some minorities to mitigate the risk of discrimination and make it coherent with the global human rights regime. In conclusion, this study has identified several vulnerable groups (i.e., Muslims) particularly affected by the execution of post-Trump U.S. immigration policies that raise concerns regarding transparency of policy and equal application of law in the U.S.

2. Background

After 9/11, the 2004 National Commission on Terrorist Attacks (National Commission on Terrorist Attacks upon the United States, 2020) found that all nine terrorists who executed the attack were given visas and exploited the loopholes in the U.S. immigration system. Consequently, migration has been recognized as a potential factor for spreading terrorism. Hence, strict border controls and harsh immigration laws became justified (Rudolph, 2007). The idea that the U.S. immigration system has been compromised or that unlawful immigration is the reason for terrorist attacks might appeal to some people in the given context. Therefore, many policy analysts have anticipated that 9/11 would provide a political opportunity in favor of

vast new immigration restrictions against those who will be entering the U.S. from predominantly Muslim countries. Later, as anticipated, public surveys supported restrictive immigration policies to fight against terrorism (Martin, 2002).

However, until now, several questions remained unanswered, such as whether the new immigration laws suggested by the Department of Homeland Security have been proven effective. Were the suggested policies consistent with international human rights instruments? Were the new laws racially motivated? These questions need to be explored in studies comparing and analyzing U.S. immigration policy.

This argument should not be seen as a call for immigration policy to operate in isolation or separate from national security. Even before 9/11, immigration and security policies overlapped in some areas, and immigration policy played a role in national security as well. However, after 9/11, this overlap has changed entirely and unwisely, which subordinates the immigration policy to national security. This convergence caused the decline of the rights of immigrants in America. The next sections of this study provide an in-depth view of the convergence of both policies. It also shows how the so-called National Strategy for Homeland Security provides a cover to the immigration-plus profiling regime in the United States.

3. The U.S. Strategy for Homeland Security

Security-oriented immigration laws were promulgated after 9/11 when the U.S. liberal visa regime was restricted. This provided the populists in the U.S. an opportunity to forward their anti-immigration agenda by introducing strict immigration policies. After 9/11, the Bush administration established the foundation of a security-oriented agenda that resulted in the U.S.A. Patriot Act (2001).

The U.S. administration later demonstrated the security-centric immigration policy in the first-ever *National Strategy for Homeland Security* as:

Our great power leaves these enemies with few conventional options for doing us harm. One such

option is to take advantage of our freedom and openness by secretly inserting terrorists into our country to attack our homeland. Homeland security seeks to deny this avenue of attack to our enemies and thus to provide a secure foundation to America's ongoing global engagement (Office of Homeland Security, 2002).

The document further highlighted six initiatives to be taken under the *National Strategy for Homeland Security*, which were related to U.S. immigration policy, such as enabling smart border control, increasing vessel security, aviation policy reform through the implementation of the Aviation and Transport Security Act (2001), recapitalizing the U.S. Coast Guard, and U.S. immigration reform.

The document provides further guidelines for ensuring national security and combating terrorism, including the creation of a "smart border," regulations on fraudulent travel documents, increasing shipping container security, and intensifying cooperation among law enforcement bodies.

Here, it is quite evident that the critical areas that the policy has pointed out are directly related to immigration or issues related to border control. It suggests that the policy was designed to introduce strict immigration in the name of national security.

As mentioned earlier, the Bush administration and Congress heeded the pressure to introduce strict immigration laws that resulted in far-reaching implications not only for the suspects of terrorism but for immigrants already residing in America or applicants who were traveling to the U.S. with just cause.

3.1. The U.S. PATRIOT Act

Since September 11, 2001, roughly 20 policies were introduced in the first 12 months, and among these, 15 were targeted Muslims living in the U.S. (Cainkar, 2004). Among all the anti-immigration laws, the USA Patriot Act was the most significant legislation enacted initially. The Act faced no resistance and was passed by Congress almost unanimously, and President Bush signed the draft just after six weeks of the attacks. The Act provided expanded rather provoking powers to the law enforcement agencies such as search, detain and monitor any person based on mere suspicion. Since its enactment, the implications of this Act faced by non-citizen Muslims, Arabs, and Sikhs most heavily (Hing, 2006). Bill Ong Hing has pointed out the most provoking clause of the Act:

- Non-citizens visitors are denied entry if they endorse or expose terrorist activity as the State department determines.
- The Act defines terrorist activities expansively that includes support and nonviolent activities.
- Non-citizen visitors are deportable based on associational activities without determining that they pose a flight risk or danger.
- Non-citizen visitors can be detained for seven days.

- The Attorney-General can detain a non-citizen indefinitely until the Attorney general determines that the detainee is no more a suspect of terrorism.

- Wiretaps and searches are authorized without determination of potential criminal conduct (Hing, 2006).

To further tighten the visa policy, in 2002, the Immigration and Naturalization Service (INS), which was previously under the control of the Attorney-General's justice department, was now included in the Homeland Security Department (Hing, 2006). The Immigration and Naturalization Service merger in the Department of Homeland Security was a sheer example of how the immigration policy was made subordinate to the security policy, as described earlier. The Immigration and Naturalization Service no longer exists, and virtually all of the INS functions are now undertaken by the Homeland Security Department. Now, INS is one of the agencies working under DHS.

Aside from the legal and policy changes, the Immigration and Naturalization Service transfer to the Department of Homeland Security has a significant effect. This merger conveys a mindset that immigrants, visitors, refugees, and asylum seekers are a potential threat to America. Due to this transfer, legal immigrants who wished to make America their home must meet the Homeland Security officials before entry to the United States. So, the first message America sends to legal immigrants is now a suspicion not welcome.

Under the implications of the Patriot Act, several U.S. Department of Justice policies imply immigration-plus profiling to ensure greater security and selective application of immigration rules on a certain group of people, which will be discussed in detail in the next section of this study.

3.2. The Special Registration Program

On September 11, 2002, the Immigration Naturalization Service (INS) and Department of Homeland Security (DHD) implemented the Special Registration Program made under the *National Strategy for Homeland Security* guidelines, as discussed earlier.

The Special Registration Program was designed for the "certain non-immigrant aliens". The program required a certain group of visitors to be registered with INS and photographed, fingerprinted, and questioned by the authorities upon their registration.

The administration introduced several new policies aimed at non-citizens and visitors. Hing (2006) has summarized these policies and actions:

- The Immigration Naturalization Service is authorized to detain any alien for forty-eight hours without imposing any charge on him/her. This detention may be extended for an additional "reasonable period" subject to "extraordinary circumstances or in an emergency".
- The immigration judges were directed under the new procedure to hold separate hearings of the immigration cases to avoid disclosing the case outside the immigration court.

- In pursuance of the Patriot Act, the Attorney-General asked to include 46 new organizations and groups as terrorist organizations.
- Under the new policy on November 9, 2001, the U.S. State Department slowed the visa granting process for certain Muslim and Arab countries.
- On November 13, 2001, President Bush, through an executive order, authorized military tribunals to try non-citizens under terrorism changes.
- On December 6, 2001, Immigration Naturalization Service announced that they would send the names of 300,000 aliens to the FBI before their deportation orders.
- On March 19, 2002, the U.S. Department of Justice announced interviews of Muslim and Arab students residing in America.
- In the same year, the Immigration Naturalization Service proposed increased special registration requirements for certain Muslim countries.
- Under the new policy, The U.S. Department of Justice launched a new program to report “suspicious activity” in which truck, bus drivers can act as informants.
- On August 21, 2002, the Immigration Naturalization Service deported one hundred Pakistanis on immigration violation charges.
- The Immigration Naturalization Service (INS) extended National Security Entry-Exit Registration System (NSEERS) to the nationals of Iraq, Iran, Libya, Syria, and Sudan who were entered in the U.S before September 11, 2001, to register with INS.
- Later, males over the age of 16 from Pakistan and Saudi Arabia were included in this list.
- On January 16, 2003, five more Muslims, i.e., Jordan, Kuwait, Egypt, Indonesia, and Bangladesh, were added to this list to register with INS (Hing, 2006).

The Special Registration Program was made by the office of the Attorney-General and was made for all aliens. Although the countries listed in the program were included based on the presence of Al-Qaeda, there were countries with no proven Al-Qaeda presence that were also included in the list. However, countries such as the United Kingdom, where Al-Qaeda's presence was proved, were excluded from the list.

<ul style="list-style-type: none"> • Yemen Men with unexplained trips to the following countries also register: Iran, Iraq, Sudan, Syria, Saudi Arabi, and nine undisclosed countries 	Saudi Arabia, Sudan Syria, Tunisia UAE, Yemen
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The U.S. immigration policies have posed serious implications, particularly on immigrants from Muslim countries to America. This has created a perception among citizens of America and worldwide that Muslim immigrants are a potential threat of terrorism and can be largely seen as suspect on airports and entry-exit points. Therefore, the list of 20 countries that suffered travel restrictions after 9/11 consisted of Muslim and Arab countries. Due to these new regulations, which were adopted after 9/11, mostly the legal immigrants and students in America have suffered in getting the U.S. visa and during travel.

In connection to these harsh regulations, one month after the attacks, the U.S. State Department released a classified cable and imposed 20 days' mandatory hold on all non-immigrant visa applications from 26 countries in which most of the countries were Muslim and Arab. All these applications were subjected to further security clearance. In some cases, even stricter instructions were given. For instance, in Jordan, the U.S. visa applications were no longer approved at the U.S. embassy in Aman. So, all the visa applications from Jordan were sent to the U.S. for approval without mentioning any time limit. From across the Muslim and Arab world, thousands of legal immigrants, students, and visitors were unable to continue their work, lost their fellowships and other economic opportunities. Even the medical treatment for most critical patients belonging to Arab and Muslim countries was discontinued due to the policies mentioned above (Cainkar, 2004).

Similarly, in early 2002, the INS and DHS made an initiative to deport almost 6000 immigrants from Arab countries, for whom an immigration judge has ordered deportation. Here, it is to be noted that there were approximately 314,000 so-called "absconders" living in the U.S., and the majority of these absconders were from Latin America. However, the government target only the Arab immigrants who were only less than two percent of the total number (Cainkar, 2004). In June 2002, the U.S. Department of Justice released a memo to the U.S. Customs and Immigration Naturalization Service (INS) asking them to search and seek out Yemenis traveling to the U.S. As a result of this request, many Yemenis were removed from planes and waited long hours for security clearance for no justified reason.

Under the Special Registration Program, according to the DHS, 82,880 persons were registered by June 2003. In contrast, 13431 persons were put in removal proceedings for visa-related violations. However, none of them were charged with any terrorism or terrorism-related activities. This shows that the purpose initiated

Table 1 Non-immigrants subject to special registration (Tumlin, 2004)

Port of Entry Registration	CALL-IN Registration
All non-immigrants from the following countries: <ul style="list-style-type: none"> • Iran • Iraq • Sudan • Syria • Libya The leaked memo states that men 16-45 from the following countries also register: <ul style="list-style-type: none"> • Pakistan • Saudi Arabia 	Men 16-year-old and above from the following countries must register: <ul style="list-style-type: none"> Afghanistan, Algeria Bahrain, Bangladesh Egypt, Eretria Indonesia, Iran Iraq, Jordan Kuwait, Lebanon Libya, Morocco North Korea, Pakistan Oman, Qatar

by the Special Registration Program was not fulfilled, and no terrorist was found under the selective registration derive. Although the U.S. government has closed the National Security Entry-Exit Registration System (NSEERS) program, the NSEERS is still alive for the persons who have registered and still living in the U.S. (Cainkar, 2004).

4. Judicial Response towards Immigration

This part of the study explores how the U.S. courts have responded to the initial wave of litigation related to immigration. This study section focuses on how the U.S. judiciary failed to notice the violation of immigrants' rights. Despite very harsh regulations that endanger America's constitutional liberties, it is surprising that notes of these actions were not challenged.

It is to be noted that among all the lawsuits, only one has challenged the congressional action, and the rest of the lawsuits challenged the constitutionality of actions taken by executives. Nearly all the lawsuits focused on reviewing the legality of actions taken by the appointed and executives who lack the mandate to make decisions involving civil liberties (Tumlin, 2004).

It is also noteworthy to mention that most of the opposition in the form of challenging the authority of the executives was against detentions. In these cases, plaintiffs relied on the Fifth Amendment and claimed due process rights, providing strong guarantees to ensure physical liberty. These lawsuits challenged the legality of detention under new laws, and some of them challenged the conditions they faced during detention (Tumlin, 2004).

In response to these lawsuits, the government relied on old and new legislations to nullify plaintiffs' claims and justify their actions under given circumstances while carried out those detentions. Therefore, individual persons have been detained under immigration laws and laws collected in the Nationality and Immigration Act, Bail Reform Act, federal criminal statutes, and some long-ignored case laws and legislation allowing President to detain "unlawful combatants," which the Bush administration renamed as "enemy combatants" (Tumlin, 2004).

In connection to these detentions, it is worth mentioning that the courts have released no accused based on unlawful detention claims. Aside from these detentions held under civil law enforcement, the other detentions involved military detention detained under the label of "enemy combatants".

These detainees were detained under the famous Guantanamo Bay prison, where no judicial proceeding happened against these individuals. Moreover, no one of these has been charged with a violation of federal or international law.

As a result of introducing the new category of detainees, the government expanded its preventive detention campaign under this new label which

effectively harmed the physical liberty of selected group individuals belonging to a certain religion residing in America.

For the detainees in Guantanamo Bay, there were two challenges faced by detainees. The first challenge was focused only on the detention conditions and not the legality of detention. Secondly, the detainees challenged their detentions on the ground of habeas corpus. In response to both of the stated grounds, the court refused to accept these grounds separately and treated them under one ground to request relief from detention. Court held that detainees of Guantanamo Bay have no right to claim these rights as they are detained outside American soil. Here, it is to be noted that most of the detainees in Guantanamo Bay were Muslims and Arabs.

The example of Guantanamo Bay's detainees and the response of the U.S. court towards their legal rights clearly shows that the facility (Guantanamo Bay prison) itself was established to avoid U.S. laws and Constitution that also depicts the malicious intention of the U.S authorities from the beginning.

5. Muslim Travel Ban under the Trump Administration

The anti-immigration policy adopted by the former president Bush on immigration has been taken as a national narrative on U.S. immigration. Consequently, Trump launched his election campaign with this appalling statement:

"The U.S. has become a dumping ground for everybody else's problems. *[Applause]* Thank you. It's true, and these are the best and the finest. When Mexico sends its people, they're not sending their best. They're not sending you. They're not sending you. They're sending people that have lots of problems, and they're bringing those problems with us. They are bringing drugs. They are bringing crime. They are rapists. And some, I assume, are good people" (Benkler et al., 2018).

This statement is an epic example of how the new U.S. administration looks upon the immigrants and aimed to stop immigration once under the name of war against terror and now under the so-called 'nationalist agenda'. Immigration has become the core subject of Trump's campaign and a primary agenda. Not surprisingly, Trump's voters were primed during that period to judge him by how he is going to implement the core agenda.

A closer look at Trump's campaign indicates that initially, the focus of his immigration policy was on Mexico, but later, it was shifted to anti-Muslim terms (Benkler et al., 2018).

Interestingly, the new president used a similar expression to enforce a travel ban on Muslims (The Guardian, 2017), i.e., Syria, Iran, Somalia, Yemen, and Libya. The executive order passed on January 27, 2017, is named "Protecting the Nation from Foreign Terrorist Entry into the United States" (The Guardian, 2017). Under this, the policy statement stated:

"It is the policy of the United States to protect its citizens from foreign nationals who intend to commit terrorist attacks in the United States and to prevent the admission of foreign nationals who intend to exploit United States immigration laws for malevolent purposes" (The Guardian, 2017).

Here, the expression and motivation behind the so-called nationalist immigration policy introduced by the Trump administration are quite similar to the policy implemented by the Bush administration. It depicts that the mindset of the U.S. policymakers has not been changed much since 9/11.

In contrast, the new immigration policy departed from the principles and values of American liberty that were expressed in former President Reagan's speech in 1980. Therefore, before the conclusion, it is pertinent to quote an excerpt from Reagan's famous speech (Moore & Haris, 1996), when he was inviting and embracing the immigrants to the U.S.:

"Can we doubt that only a Divine Providence placed this land, this island of freedom, here as a refuge for all those people in the world who yearn to breathe freely: Jews and Christians enduring persecution behind the Iron Curtain, the boat people of Southeast Asia, of Cuba and Haiti, the victims of drought and famine in Africa, the freedom fighters of Afghanistan and our countrymen held in savage captivity" (Moore & Haris, 1996).

6. Conclusion

This study provides a critical review of U.S. immigration laws and particularly highlights the U.S. policy shift that occurred after 9/11. Through the analysis process, the study discovers that a critical assessment post-Trump regarding the U.S. immigration policy is lacking in existing literature, and is quite imperative to understand the divide and the discrimination against the Muslim minority in the U.S. Therefore, this review provides an opportunity to investigate the U.S. immigration policy shift with a novel approach. In the wake of the war on terror, the U.S. has changed its immigration policy entirely in the fight against terrorism. As suggested at the beginning of this paper, after 9/11 many policy analysts have rightly anticipated that the incidents that occurred on 9/11 would provide a political opportunity in favor of introducing new and wide ranging immigration restrictions against those who would be entering the U.S. However, the post 9/11 policy shift has not proven to be as effective as was anticipated by its projectors in many ways. The study indicates that the U.S. immigration laws such as the U.S.A. Patriot Act and policy reforms introduced right after 9/11 provide unprecedented and extensive authority to law enforcement agencies. The authority that is granted law enforcement agencies has been used to violate and abuse human rights. Moreover, the selective use of immigration rules regarding Muslim immigrants in particular raises human rights concerns and are a

permanent cause for anxiety among American Muslims and Muslims outside America. Therefore, a review of policy documents and new sanctions in relation to immigration suggest that the control over the terrorism policy and the immigration policy is the very root of the immigration-plus profiling regime. It is quite evident that the U.S. government has exhaustively used the immigration system in combatting terrorism, which as an anti-terrorism measure has shown to be ineffective. In relation to this, the findings of this study suggest that a crackdown or selective application of the law does not apprehend terrorists. By taking a closer look at Trump's campaign, the results of the review also indicated that initially the focus of his immigration policy was on Mexico, but that it later shifted to anti-Muslim terms, which was a clear indication of religious bias against Muslims. In conclusion, this study suggests that a selective application of the law and targeting of non-citizens belonging to a certain race, religion, or ethnicity, or closing the borders to visitors and newcomers does not make America safe. In fact, these strategies would rather increase a rift between Americans and rest of the world, particularly those who belong to the targeted groups. Moreover, the new policy further widens the gap between citizens and non-citizens in the U.S. particularly based on religion, which is a most worrisome aspect from a national security point of view. Therefore, this study suggests that a well-organized policy with a compassion for all participants is imperative to formulate a true, positive, and inclusive national agenda.

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