

Formal Legality and East African Immigrant Perceptions of the “War on Terror”*

Elizabeth Heger Boyle & Fortunata Ghati Songora**

Introduction

Ultimately, the meaning of law emerges from the interaction of law in the abstract, law in practical application, and law as the public perceives it.¹ This Article focuses on the last category: the general assumptions and perceptions made about the law by ordinary individuals. We interviewed members of an immigrant community affected by the legal reforms resulting from the war on terror to find out how they perceived those legal reforms. Every immigrant we asked told us that September 11, 2001, changed the situation of immigrants. Few mentioned specific statutory reforms or legal cases. None of the immigrants made distinctions between state and federal law, and some greatly exaggerated the government’s abuses of immigrants after the terrorist attacks. In short, the immigrants we talked to were not very knowledgeable about most details of the United States government’s war on terror. Given the lack of knowledge about specific legal reforms,

* This project was made possible with funding from the National Science Foundation, Grant No. SES 0099145, and from the Life Course Center at the University of Minnesota. Any opinions, findings, and conclusions or recommendations expressed in this material are those of the authors and do not necessarily reflect the views of the National Science Foundation or Life Course Center. The authors would like to thank Erika Busse, Gülseren Isik, and Yasin Garad for thoughtful comments on an earlier draft. As other authors in this symposium have explained, the “war on terror” is not really a war at all. We use the term because of its common public usage, not because we concur with its implications. For ease of reading, however, we put the term in quotes only in the title. As an additional note, the interviews cited below were conducted upon assurances of confidentiality, and no names have been provided or are known except to the authors. All interviews are on file with the authors. *[Editors’ note: in the interest of confidentiality, no interview transcripts were provided to Law and Inequality for review]*

** Elizabeth Heger Boyle is Associate Professor of Sociology and Law at the University of Minnesota, Minneapolis. Fortunata Ghati Songora is a Ph.D. student in the Sociology Department at the University of Minnesota, Minneapolis.

1. See A. JAVIER TREVIÑO, *THE SOCIOLOGY OF LAW: CLASSICAL AND CONTEMPORARY PERSPECTIVES* 6-8 (1996).

the disjuncture between new immigration laws on the books and the legal consciousness of immigrants is a critically important issue.² Lawyers often speak of positive or negative reactions to law, motivations sparked by law, the chilling effect of law, and myriad other forms of personal behavior and attitudes resulting from law.³ Yet the degree to which such behavior and attitudes truly exist is rarely studied.⁴

As social scientists, we are interested in how law becomes "institutionalized," that is, how it becomes a part of everyday life.⁵ The war on terror is in the process of being institutionalized in the United States because the U.S. public believes that the war exists and should exist, at least to some extent.⁶

2. See generally PATRICIA EWICK & SUSAN SILBEY, *THE COMMON PLACE OF LAW: STORIES FROM EVERYDAY LIFE* (1998) (describing the "social construction of legality" as the interactions between individuals and law that shape both law and individuals' perceptions of law).

3. See, e.g., Alison Holland, *Across the Border and Over the Line: Congress's Attack on Criminal Aliens and the Judiciary under the Antiterrorism and Effective Death Penalty Act of 1996*, 27 AM. J. CRIM. L. 385, 400 n.118 (2000); Geoffrey Rapp, *The Economics of Shootouts: Does the Passage of Capital Punishment Laws Protect or Endanger Police Officers?*, 65 ALB. L. REV. 1051, 1057-58 (2002); Laura I. Weintraub, *Academic Privilege and Title VII: The Birth, Death, and Possible Rebirth Of An Evidentiary Privilege*, 33 COLUM. J.L. & SOC. PROBS. 313, 335 (2000).

4. See Rapp, *supra* note 3, at 1053-54 (providing needed empirical data that the death penalty produces behavioral effects).

5. See ELIZABETH HEGGER BOYLE, *FEMALE GENITAL CUTTING: CULTURAL CONFLICT IN THE GLOBAL COMMUNITY* 9-16 (2002). See generally Elisabeth S. Clemens & James M. Cook, *Politics and Institutionalism: Explaining Durability and Change* 25 ANN. REV. SOC. 441 (1999) (analyzing political and social "institutionalisms" and how they change); Lauren Edelman et al., *The Endogeneity of Legal Regulation: Grievance Procedures as Rational Myth*, 105 AM. J. SOC. 406 (1999) (describing how courts institutionalize emerging organizational practices in markets); John W. Meyer et al., *World Society and the Nation-State*, 103 AM. J. SOC. 144 (1997) (analyzing how world culture institutionalizes nation-states, including their legal authority).

6. See BOYLE, *supra* note 5, at 7-10. Institutionalization is a multi-layered process. Different groups have differing levels of knowledge of and control over particular legal policies. See Ronald Jepperson, *Institutions, Institutional Effects, and Institutionalism*, in *THE NEW INSTITUTIONALISM IN ORGANIZATIONAL ANALYSIS* 143, 148-52 (Walter W. Powell & Paul J. DiMaggio eds., 1991); see also Michel Foucault, *The Order of Discourse*, in *UNTYING THE TEXT: A POST-STRUCTURALIST READER* 48, 52-55 (Robert Young ed., 1981). Consequently, the aspects of a policy these groups take for granted and their expectations about policy enactment and reform also differ. In general, professionals understand how to work within or around policies, and also how to modify policies they find unsatisfactory. See, e.g., Austin Sarat & William L.F. Felstiner, *Popular Legal Culture: Lawyers and Legal Consciousness: Law Talk in the Divorce Lawyer's Office*, 98 YALE L.J. 1663, 1664 (1989). Those with less expertise are more likely to sense policies as autonomous from themselves, and as indiscriminate or arbitrary. See JOHN SUTTON, *LAW/SOCIETY: ORIGINS, INTERACTIONS, AND CHANGE* 6 (2001).

Legislators and lawyers are likely to know the details of the specific laws and regulations that constitute the war on terror, recognize the interconnections between these laws, and can explain the purposes attributed to the laws.⁷ These “experts” can also distinguish laws that make up the war on terror from unrelated laws and events. Thus, it is within their power to blur the distinctions between laws and maintain high levels of flexibility in applying those laws.⁸ The general public, in contrast, is distanced from the technical details of the war.⁹ People know that a war on terror exists, the overriding motivations behind it, and a few key stories related to it.¹⁰ However, they are less likely to know the precise terminology of the legal reforms or to be able to clearly identify what is and what is not a part of the war on terror.¹¹ Most immigrants are also unaware of the specific nature of the legal reforms, but are in a distinctive position: the war affects them more directly than other groups in the general public.¹² They are troubled by ambiguities concerning the war on terror,¹³ how to maintain legal status,¹⁴ and the definitions of “terrorist” and “immigrant.”¹⁵

Many of the immigrants we interviewed had adopted a number of strategies to bolster their sense of security in the current environment.¹⁶ Many of the interviewees had tried to avoid the vagaries of the war on terror by seeking citizenship.¹⁷

7. See generally Sarat & Felstiner, *supra* note 6 (providing an assessment of the special knowledge of lawyers and other experts with regard to law in general).

8. See Kitty Calavita, *Immigration, Law, and Marginalization in a Global Economy: Notes from Spain*, 32 LAW & SOC'Y REV. 529, 544-45 (1998) (describing interpretation of immigration laws by administrative authorities).

9. See generally Sarat & Felstiner, *supra* note 6 (providing an assessment of the special knowledge of lawyers and other experts with regard to law in general).

10. See *id.*

11. See *id.*

12. See LAWYERS COMM. FOR HUM. RTS., *IMBALANCE OF POWERS: HOW CHANGES TO U.S. LAW & POLICY SINCE 9/11 ERODE HUMAN RIGHTS AND CIVIL LIBERTIES* (2003), available at http://www.humanrightsfirst.org/us_law/loss/imbalance/powers.pdf.

13. See *infra* text accompanying notes 97-99.

14. See *infra* text accompanying notes 147-162; see generally Regina Germain, *Rushing to Judgment: The Unintended Consequences of the USA PATRIOT Act for Bona Fide Refugees*, 16 GEO. IMMIGR. L.J. 505, 506-07 (2002) (describing concerns regarding seeking asylum, deportation, and being labeled as a suspected terrorist).

15. See *infra* text accompanying notes 184-191; see generally Germain, *supra* note 14, at 506-17 (describing past and present definitions and providing examples).

16. See *infra* notes 119-215.

17. See *infra* text accompanying notes 128-132; see generally Germain, *supra* note 14, at 522-23 (describing how non-citizens are subject to detention and certification requirements of the PATRIOT Act).

Most of the immigrants we interviewed are not actively mobilizing to change laws that negatively impact them,¹⁸ but fortunately, some immigrants have remained politically active.¹⁹ Specifically, we find that of the immigrants we interviewed, those on permanent visas or with more education are more politically active.²⁰ Also, some issues spur more activism than others. For instance, East Africans we interviewed were very outspoken about police misconduct but mobilized less around bureaucratic slowdowns and overbroad deportation measures.²¹ This may be because citizenship, the apparent strategy of choice for dealing with U.S. law, provides little protection from police discrimination but does allow immigrants to avoid other ills. By appreciating the unique perspectives of immigrants in the multi-layered process of institutionalizing the war on terror, policymakers can minimize the war's collateral damage to immigrant groups.

The first section of the Article describes the general characteristics of the East African communities in Minneapolis and St. Paul, Minnesota (hereinafter the "Twin Cities").²² The second section explains the methods through which we recruited and interviewed members of those communities.²³ In the third section, we explore East Africans' perceptions of law and enforcement in the post-9/11 United States.²⁴ The analysis in this section is purposely broad—it includes some events that experts would not consider related to the government's war on terror. Our choice of what to include was driven by the immigrants themselves. Our primary concern was to identify the connections they perceived between particular events and the war on terror or September 11th. Finally, the Article concludes with policy recommendations that, by addressing immigrant concerns about the war on terror, would increase the legitimacy of that war and keep it focused on its true purpose—preventing terrorism.²⁵

18. See *infra* notes 119-123 and accompanying text.

19. See *infra* notes 125-127 and accompanying text.

20. See *infra* notes 124-127 and accompanying text.

21. See *infra* notes 133-162 and accompanying text. *But see infra* notes 208-215 and accompanying text.

22. See *infra* text accompanying notes 26-73.

23. See *infra* text accompanying notes 74-92.

24. See *infra* text accompanying notes 93-258.

25. See *infra* text accompanying note 259.

I. East Africans Immigrated to the Twin Cities for a Better Life

African immigration to the United States was minimal during most of the twentieth century, but increased notably beginning in the mid- to late 1980s.²⁶ Prior to that time, only individuals from relatively privileged backgrounds were able to come to the United States, most often as students.²⁷ Minnesota has been a particularly common site for secondary migration²⁸ for individuals coming from Africa.²⁹ The 2000 Census data for the state of Minnesota estimate that approximately 11,000 Somalis live in Minnesota.³⁰ The highest concentration of East Africans in the state of Minnesota is in the Twin Cities.³¹ Somalis are the largest East African group,³² followed by Ethiopians (numbering approximately 5,000).³³ Other East African nationalities represented in the Twin Cities are Oromos, Eritreans, and

26. See Tanya Kateri Hernandez, *The Construction of Race and Class Buffers in the Structure of Immigration Controls and Laws*, 76 OR. L. REV. 731, 749 (1997) (describing increase in number of immigrants of color). See also Joseph Takougang, *Recent African Immigrants to the United States: A Historical Perspective*, 19 W. J. BLACK STUD. 50, 51-52 (1995); Enid Trucios-Haynes, *The Legacy of Racially Restrictive Immigration Laws and Policies and the Construction of the American National Identity*, 76 OR. L. REV. 369, 369-71 (1997); Interview 031 with 45-year-old Ethiopian man, Associate Degree, citizen, in Minneapolis, Minn. (May 6, 2002) [hereinafter Interview 031].

27. See, e.g., OROMO CMTY. OF MINN., HOW THE OROMO CAME TO MINNESOTA 2 (2000); see also Takougang, *supra* note 26, at 51.

28. See LEAGUE OF WOMEN VOTERS OF MINN. EDUC. FUND, IMMIGRATION IN MINNESOTA: CHALLENGES AND OPPORTUNITIES 4 (2002). The term "secondary migration" describes instances in which immigrants enter a country at one location but move to another after some time. See *id.*

29. See *id.* at 5; MINN. STATE DEMOGRAPHIC CTR., HISTORICAL HIGH NUMBER OF IMMIGRANTS MOVE TO MINNESOTA IN 2002 (2003), available at <http://server.admin.state.mn.us/resource.html?Id=4298> (last visited Jan. 30, 2004) [hereinafter HISTORICAL HIGH NUMBER]. See also Interview 037 with 50 year-old Somali woman, Associate Degree, permanent resident, in Minneapolis, Minn. (Sept. 20, 2002) [hereinafter Interview 037]; Interview 020 with 28 year-old Somali man, Professional Degree, permanent resident, in Minneapolis, Minn. (Apr. 15, 2002) [hereinafter Interview 020].

30. See LEAGUE OF WOMEN VOTERS OF MINN. EDUC. FUND, *supra* note 28, at 10. Census data from 2000 indicates Minnesota's total African-born population is around 34,500. See *A World in Two Cities: Africans and African Music in the Twin Cities* (last updated June 30, 2002) (last visited Jan. 30, 2004), at http://www.cla.umn.edu/twocities/rprojs/eastafrica/ea_index.asp [hereinafter *A World in Two Cities*].

31. See *A World in Two Cities*, *supra* note 30.

32. See Barbara Ronningen, *Immigration Trends in Minnesota*, MINN. STATE DEMOGRAPHIC CTR., Slide 14 (Dec. 23, 2002) (MS PowerPoint presentation), available at <http://www.demography.state.mn.us/DownloadFiles/immig72103.ppt>.

33. See *id.*

Sudanese, as well as Tanzanians, Kenyans, and Ugandans.³⁴ The impact of the war on terror is especially significant for these groups of immigrants. First, most East Africans have not acquired citizenship and its related protections.³⁵ Second, like the September 11th terrorists,³⁶ many of these immigrants are Muslim.³⁷ For these reasons, these individuals have been particularly affected by the war on terror.

As noted, the largest group of East African immigrants in the Twin Cities is the Somalis.³⁸ From our interviews, we determined that the first wave of Somali refugees and asylees came in the early to mid-1990s, when political difficulties in Somalia began to mount.³⁹ These individuals tended to belong to the Somali middle

34. See MINN. STATE DEMOGRAPHIC CTR., IMMIGRANTS ADMITTED BY COUNTRY OF BIRTH AND INTENDED STATE OF RESIDENCE (Aug. 18, 2003), available at <http://www.demography.state.mn.us/DownloadFiles/Immigration2002/ImmigrantsByCountry.pdf> (last visited Feb. 7, 2004) [hereinafter *Immigrants by Country of Birth*]. Importantly, "East Africans" include a diverse array of political, cultural and historical legacies. In many cases, the outpouring of refugees and asylees from this region stemmed from postcolonial, Cold War and/or post-Cold War international politics. For example, Somalia, because of its geopolitical position, was viewed as a key Cold War site by both the United States and the former Soviet Union. Similarly, Eritrea was awarded to Ethiopia when colonial powers moved out of the Horn of Africa following the Second World War. At the same time, colonial powers shifted control over parts of what was formerly Somalia to Kenya, Ethiopia, and Djibouti. Consequently, Somalia has fought with these countries over the years in an effort to reclaim these lost provinces. These conflicts ultimately resulted in high numbers of refugees. Civil and border wars have resulted in collapsing infrastructure in these countries, which in turn has led to extended periods of famine in Ethiopia, Somalia, Eritrea, and the Sudan, and in the complete collapse of the Somali state. See generally ABDISALAM M. ISSA-SALWE, THE COLLAPSE OF THE SOMALI STATE 130-47 (1996) (describing United Nations involvement in Somalia and the country's recent political and economic disintegration); HAROLD WOODS & GERALDINE WOODS, THE HORN OF AFRICA: ETHIOPIA, SUDAN, SOMALIA, AND DJIBOUTI 15-23 (1981) (describing recent political and economic troubles in the Horn of Africa).

35. See *infra* note 84 and accompanying table (showing that only 18% of our diverse sample of East Africans had acquired citizenship, although nearly all were interested in acquiring it eventually).

36. See, e.g., Jodi Wilgoren, *A Terrorist Profile Emerges that Confounds the Experts*, N.Y. TIMES, Sept. 15, 2001, at A2.

37. See LEAGUE OF WOMEN VOTERS OF MINN. EDUC. FUND, *supra* note 28, at 10 (noting that 99.9% of all Somalis are Sunni Muslim, and citing statistics showing a large number of Somalis in Minnesota).

38. See Ronningen, *supra* note 32, at Slide 14. Most Somalis in the Twin Cities are single, between twenty and forty years of age, and because many men were killed in the war, the typical family is headed by a woman. See LEAGUE OF WOMEN VOTERS OF MINN. EDUC. FUND, *supra* note 28, at 10.

39. See LEAGUE OF WOMEN VOTERS OF MINN. EDUC. FUND, *supra* note 28, at 10. See also Interview 406 by Sadie Pendaz with refugee case manager from Catholic Charities in Minneapolis, Minn. (Aug. 28, 2003) [hereinafter Interview 406.]

class and came mostly from the country's urban areas.⁴⁰ Most had some formal education and could recall the time in their country's history when government institutions were still functioning.⁴¹ They knew how to read and write, but typically in a Somali dialect, Arabic, or Italian rather than in English.⁴² Our interview subjects also informed us that the largest group of Somalis arrived in Minnesota within the last eight years, as refugees and asylees.⁴³ This group included Somalia's rural poor, who bore the brunt of the war-torn country's failing infrastructure.⁴⁴ These refugees were generally illiterate and unable to speak English upon arrival.⁴⁵

A long-time resident of the Twin Cities from Ethiopia explained the history of Ethiopian migration to us.⁴⁶ He indicated that Ethiopian immigration began in the 1980s.⁴⁷ A large number of Ethiopians were granted refugee or asylee status through Cold War immigration policies favoring immigrants fleeing state socialism.⁴⁸ More recently, many Ethiopians have taken advantage of the diversity lottery,⁴⁹ a program that grants visas to citizens of countries that have been historically underrepresented in immigration to the United States.⁵⁰ Some Ethiopians also came to the United States on student visas and ultimately decided to stay rather than return to the tumultuous political and economic conditions back home.⁵¹

Oromos constitute a major ethnic group within Ethiopia, and often do not identify themselves as ethnically Ethiopian.⁵² Many

40. See LEAGUE OF WOMEN VOTERS OF MINN. EDUC. FUND, *supra* note 28, at 11.

41. *See id.*

42. *See id.*

43. *See id.*

44. Interview with Kent Mortimer, General Manager, Afton Hills Apartments (a subsidized housing complex that leases predominantly to East Africans), in St. Paul, Minn. (July 13, 2000). *See also* Interview 406, *supra* note 39.

45. Interview with Kent Mortimer, *supra* note 44. *See also* Interview 406, *supra* note 39.

46. Interview 031, *supra* note 26

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.* *See also* Interview 024 with 20-year-old Ethiopian man, high school, permanent resident, in Duluth, Minn. (May 6, 2002).

52. Abiyu Gelata, *The Plight of the Oromo People in Ethiopia* (2002), (on file with the author). *See also* Interview 003 with 35-year-old Oromo man, M.A., permanent resident, in Minneapolis, Minn. (Oct. 23, 2001) [hereinafter Interview 003]; Interview 004 with 45-year-old Oromo man, Ph.D., citizen, in Minneapolis, Minn. (Oct. 26, 2001) [hereinafter Interview 004]; Interview 007 with 35-year-old Oromo man, B.A., permanent resident, in Minneapolis, Minn. (Dec. 07, 2001) [hereinafter

Oromos immigrated to the Twin Cities to escape political and ethnic persecution by the Ethiopian government.⁵³ Since 1943, Oromos have been fighting for independence from Ethiopia through the Oromo Liberation Front (OLF).⁵⁴ Persecution is mainly targeted at Oromo intellectuals and leaders who are viewed as sympathetic to the OLF,⁵⁵ which may explain in part why many Oromo immigrants are more highly educated than the other East Africans we interviewed.⁵⁶

Until 1991, Eritrea was part of Ethiopia.⁵⁷ Like the Oromo, many Eritreans considered themselves colonized by Ethiopia.⁵⁸ The United Nations federated Eritrea to Ethiopia in 1950, and Ethiopia's annexation of Eritrea as a province ten years later sparked a thirty-year struggle for independence.⁵⁹ The revolution ended in 1991 with Eritrean rebels defeating government forces.⁶⁰ Eritrean independence was overwhelmingly approved in a 1993 national referendum.⁶¹ As a consequence of the war with Ethiopia, many Eritreans fled the country as refugees and asylees to the United States and other countries.⁶² Most Eritreans we interviewed came as refugees, and many of the Eritrean men had been guerrilla fighters during the war.⁶³

According to the immigrants we spoke with, the number of Sudanese in the Twin Cities is relatively small.⁶⁴ They indicated

Interview 007].

53. Mirjana Lausevic, *Africans and African Music in the Twin Cities: A World in Two Cities* (2002), available at http://www.cla.umn.edu/twocities/rprojs/eafrica/ea_index.asp (last visited Jan. 30, 2004).

54. HUM. RTS. WATCH, *ETHIOPIA: HALT CRACKDOWN ON OROMO STUDENTS* (2002), at <http://www.hrw.org/press/2002/05/ethiopia052202.htm> (last visited Jan. 30, 2004).

55. *Id.* See also Geleta, *supra* note 52.

56. We interviewed seven Oromos; all but one had some college education. One had a doctorate degree and two had masters degrees.

57. ERITREA CMTY. CTR. IN MINN., *HISTORY OF ERITREA* (2001), available at <http://www.nitesoft.com/eccm/history.htm> [hereinafter ECCA].

58. AFRICANET, *ETHIOPIA HISTORY* (1997), at <http://www.africanet.com/africanet/country/ethiopia/history.htm> (last visited Jan. 30, 2004).

59. ECCA, *supra* note 57.

60. *Id.*; DAVID POOL, *FROM GUERRILLAS TO GOVERNMENT: THE ERITREAN PEOPLE'S LIBERATION FRONT 161* (2001).

61. ECCA, *supra* note 57.

62. Interview 102 with 48-year-old Eritrean man, high school education, citizen, in Minneapolis, Minn. (June 24, 2001) [hereinafter Interview 102]; Interview 103 with 35-year-old Oromo man, B.S., citizen, in Minneapolis, Minn. (June 30, 2003) [hereinafter Interview 103].

63. Interview 102, *supra* note 62; Interview 103, *supra* note 62.

64. See, e.g., Interview 101 with 35-year-old Oromo man, M.A., permanent

that Sudanese immigrants came to the United States primarily in search of religious and political freedom.⁶⁵ After almost forty years of civil war, Umar Hasan Ahmad al-Bashir became president in 1989 following a military coup backed by the National Islamic Front.⁶⁶ Subsequently, many Sudanese Christians sought refuge outside of the Sudan.⁶⁷ The vast majority⁶⁸ of participants in this study from Somalia, Ethiopia, Eritrea, and the Sudan plan to remain permanently in the United States, mostly because they feel that they cannot go home, and a number have already become naturalized citizens.⁶⁹

Our interviewees informed us that in contrast to the refugees and asylees from the Horn of Africa, most immigrants from Kenya, Tanzania, and Uganda came as students or through the diversity lottery.⁷⁰ Individuals from these countries do not generally come to the United States to flee political persecution or civil unrest, but are more typically motivated by economic and educational opportunities.⁷¹ Immigrants from these countries tend to be highly educated in comparison to refugees from the Horn of Africa. Out of our total sample of ninety-three, only seven individuals plan to return permanently to their countries of origin.⁷² Five of the seven students interviewed would like to remain in the United States, so these individuals should not necessarily be considered temporary visitors.⁷³

resident, in Minneapolis, Minn. (Oct. 23, 2001) [hereinafter Interview 101].

65. *Id.*

66. Horn of Africa News Agency, Country Profile: Sudan (2000), at <http://www.hananews.org/wholearticle.asp?artId=709> (last visited Mar. 3, 2004).

67. Interview 101, *supra* note 64.

68. Forty-eight of the fifty Somalis we have interviewed, seventeen of the nineteen Ethiopians, and all of the Eritreans plan to stay in the United States permanently. One Sudanese man, who is a U.S. citizen, is hoping to go back and help rebuild his community if the situation in Sudan improves.

69. Seventeen of the interview subjects have already been naturalized.

70. Interview 006 with 27-year-old Tanzanian woman, M.A., permanent resident, (translated from Swahili) in Minneapolis, Minn. (Nov. 20, 2001) [hereinafter Interview 006]; Interview 705 with 30-year-old Tanzanian woman, M.A., student visa, in Minneapolis, Minn. (Oct. 1, 2003) [hereinafter Interview 705]. All of the Kenyans, Tanzanians, and Ugandans in our sample were students, spouses of students, or professionals.

71. *See, e.g.*, Interview 006, *supra* note 70; Interview 705, *supra* note 70.

72. *See supra* note 68.

73. *See generally* Takougang, *supra* note 26.

II. Interviews were Conducted with East Africans to Learn Their Thoughts on Changes in the Law since September 11th

We conducted semi-structured, in-depth interviews with ninety-three East African immigrants in the Twin Cities between September, 2001 and November, 2003 to assess their perceptions of the war on terror.⁷⁴ Interviews of this type provide an opportunity to “give voice” to a population that is marginalized along several axes of inequality, such as race, income, English proficiency, and citizenship status.⁷⁵

A. Recruitment of the Interviewees

A multi-faceted recruitment strategy was necessary to draw a sample that reflected the diversity of the East African community in the Twin Cities.⁷⁶ The nationality of our interviewees, although not exactly parallel to the total population, approximates those numbers.⁷⁷ The table provides an overview of the characteristics of our sample.⁷⁸ Fifty of the interview subjects (54%) are Somali.⁷⁹ Nineteen (24%) are from Ethiopia.⁸⁰ Among the individuals from Ethiopia, seven are ethnically Oromo (8% of the total sample), eleven are ethnically Amharic (12% of the total sample), and one was ethnically mixed (1%). We also interviewed nine Eritreans (12%), eight Tanzanians (9%), three Sudanese (3%), one Ugandan (1%), and three Kenyans (3%).⁸¹

Our sample includes forty men (48%) and forty-eight women

74. This is part of a larger study considering the effect of gender and nationality on citizenship decisions among East African immigrants.

75. See generally CHARLES RAGIN, *CONSTRUCTING SOCIAL RESEARCH* (1994).

76. In devising a sampling strategy, we attempted to represent the full contours of the East African population in the Twin Cities. Respondents were recruited at conferences and community meetings. We also visited East African neighborhoods and enclaves, recruiting through English as a Second Language classes, community centers, and immigrant-owned/operated stores and shopping malls. Respondents were also recruited through personal networks.

77. A multitude of ethnic groups and clans create specific ethnic groupings in East Africa, such that within any one country, up to several dozen separate ethnic groups may coexist. With the exception of the Ethiopians (who are identified as Oromos or Amharics), we only provide data on nationality. We made this decision because it would not be possible to generalize about each of the large number of possible ethnic affiliations in our sample.

78. See *infra* note 85 and the accompanying data table.

79. Due to shifting borders created by colonial powers, our sample also includes three individuals who are ethnically Somali, but have Kenyan citizenship; these individuals are classified as Somali.

80. See *infra* note 85 and accompanying data table.

81. See *infra* note 85 and accompanying data table.

(52%).⁸² Most of our interview subjects were Muslim (58%), followed by Christians (39%).⁸³ Forty-one interviewees (44%) were single, twenty-eight (30%) were married, six (6%) were divorced, eight were separated (9%), and four (4%) were widowed and not remarried.⁸⁴ The average age of our interview subjects was twenty-seven years old. In terms of class, the table includes data on educational attainment and visa status, both rough measures of class. In our sample, 50% of interviewees had at least a college degree, while 15% had less than a high school degree. Immigration status correlates with class and education, as individuals with asylee status, or who come to the United States through the diversity lottery, are usually more highly educated and have higher incomes in their countries of origin than refugees.

**Table 1. Demographic Information of the Respondents⁸⁵
(N=93)***

Variable	Value
<u>Gender</u>	
Men	45 (48%)
Women	48 (52%)
<u>Nationality</u>	
Somalis	50 (54%)
Ethiopians/Oromos	19 (20%)
Oromo	7(8%)
Amharic	11(12%)
Ethnically mixed	1(1%)
Eritreans	9 (12%)
Tanzanians	8 (9%)
Sudanese	3 (3%)
Kenya	3 (3%)
Ugandans	1 (1%)
<u>Marital status</u>	
Married	28(30%)
Divorced	6 (6%)
Partnered	1 (3%)
Separated	8 (9%)
Single	41(44%)
Widowed	4 (4%)

82. See *infra* note 85 and accompanying data table.

83. See *infra* note 85 and accompanying data table.

84. See *infra* note 85 and accompanying data table.

85. The data for Table 1 is a compilation of demographic information of the respondents of this survey.

Variable	Value
<u>Education</u>	
No formal education	8 (9%)
Elementary	7 (8%)
GED/HS	31 (33%)
AA/AS	7 (8%)
BA/BS	20 (22%)
MA/MS	9(10%)
PhD	3 (3%)
<u>Current immigration status</u>	
Asylees	11 (12%)
Refugee	13 (14%)
Citizenship	17 (18%)
Permanent resident	34 (37%)
Students	7 (8%)
Other	3 (3%)
<u>Religion</u>	
Muslims	54 (58%)
Christians	36 (39%)
Bahai	1 (1%)
None	2 (2%)

*Values do not always add up to 93 because some respondents did not answer all the questions. Percentages do not always add up to 100 because of this and rounding.

B. Interview Technique

The use of semi-structured interviews allowed us to encourage respondents to address issues that they felt were important.⁸⁶ Although structured questions were used to guide the interviews, the discussions could take any form, and follow-up questions were used to explore ideas not covered in our set of questions. By treating the interview process and the interview guide as fluid,⁸⁷ we were able to incorporate participants' ideas and suggestions into the research process. In the initial

86. See generally HERBERT J. RUBIN & IRENE S. RUBIN, *QUALITATIVE INTERVIEWING: THE ART OF HEARING DATA* (1995). Rather than treating participants as passive subjects, we encouraged participants to tell stories that they thought were especially significant. To this end, interviewers emphasized the conversational nature of the interviews, allowing deviations from leading questions when appropriate.

87. We also revised the questions during the course of the study to incorporate new themes that had emerged in recent interviews. The order of questions was rotated in different interviews to ensure that ordering did not influence how people responded to questions. At the end of each interview, interviewees were asked if there was anything else they would like to share, and many interviewees responded enthusiastically with more information.

interviews, we simply asked general questions about law and politics. We found that many of the interview subjects specifically mentioned how life had changed for their communities after the 2001 terrorist attacks.⁸⁸ As a consequence, we added more specific questions about this in the later interviews.

Fortunata Songora, a Ph.D. student from Tanzania, conducted most of the interviews with assistance from three Somali undergraduates.⁸⁹ Interviews were conducted in English, Somali, or Swahili. The interviews generally lasted one to two hours and respondents were asked open-ended questions in six general areas: law, citizenship, political participation, religion, family status and relationships, and race relations. All of the interviews were tape-recorded,⁹⁰ transcribed, and translated into English, if necessary.⁹¹ Interviewees were also asked to complete a brief demographic questionnaire. We promised interview subjects anonymity to encourage them to speak freely without fear of reprisals.⁹²

III. The PATRIOT Act Ushered in a New World of Terror for East African Immigrants

Shortly after the September 11th terrorist attacks, United States President George W. Bush declared a war on terror.⁹³ Although Bush has repeatedly stated that the war on terror is *not* a war on immigrants,⁹⁴ collateral damage to refugees and asylees

88. Interview 038 with 51-year-old Somali woman, no formal education, refugee, in Minneapolis, Minn. (Sept. 20, 2002) [hereinafter Interview 038].

89. The two undergraduate male interviewers were Ahmed Ali and Yasin Garad; the undergraduate female interviewer was Idil Mohamed. Ali and Garad are United States citizens; Songora and Mohamed are not. Elizabeth Boyle, a professor at the University of Minnesota, and Sadie Pendaz, a Ph.D. student—both born in the United States—also conducted some of the interviews.

90. On four occasions, interviewees requested that the interviewer temporarily turn off the tape recorder to discuss sensitive issues.

91. In addition, a small number of interviews were conducted in English with a Somali translator present. The translator's interpretations of interviewee's responses were transcribed in these cases.

92. Rather than using the name of interview subjects in our citations, we refer to them by number and also provide their nationality, age, gender, educational attainment, and immigration status.

93. *Bush's Remarks to Cabinet and Advisors*, N.Y. TIMES, Sept. 13, 2001, at A16. For commentary on the connection between the war on terror and immigration, see generally Hiroshi Motomura, *Immigration and We the People After September 11*, 66 ALB. L. REV. 413 (2003); David Cole, *The New McCarthyism: Repeating History in the War on Terrorism*, 38 HARV. C.R.-C.L. L. REV. 1 (2003); Germain, *supra* note 14.

94. See LAWYERS COMM. FOR HUM. RTS., *supra* note 12, at 27. Compare *id.*, e.g., with LAWYERS COMM. FOR HUM. RTS., *infra* note 136.

is irrefutable.⁹⁵ Congress passed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act on October 26, 2001.⁹⁶ The PATRIOT Act had a direct effect on immigrant communities.⁹⁷ In particular, the PATRIOT Act expanded the offenses for which immigrants could be deported. The PATRIOT Act labeled as a deportable offense the provision of material support for groups that the State Department had designated “terrorist organizations” even for humanitarian projects.⁹⁸ The Act also makes it a deportable offense to materially aid a group that a person “knows, or reasonably should know promotes terrorist activity,” even if the donee is not on the State Department’s list of known terrorist organizations.⁹⁹

A. *East Africans Worry about Their Tenuous Position in the Wake of September 11th*

The East African immigrants that we interviewed differed greatly in their level of knowledge about the war on terror.¹⁰⁰ Many perceived U.S. law as sweeping and indiscriminate, and viewed the operation of immigration law as largely outside of their

95. *Id.* See also David Cole, *In Aid of Removal: Due Process Limits on Immigration Detention*, 51 EMORY L.J. 1003, 1028 (2002); Michael M. Hethmon, *Diversity, Mass Immigration, and National Security After 9/11—An Immigration Reform Movement Perspective*, 66 ALB. L. REV. 387, 409 (2003); Michael J. Wishnie, *Introduction: Immigration and Federalism*, 58 ANN. SURV. AM. L. 283, 284 (2002).

96. Uniting and Strengthening America By Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

97. See generally David Cole, *Enemy Aliens*, 54 STAN. L. REV. 953 (2002); Megan Peitzke, *The Fate of “Unremovable” Aliens Before and After September 11, 2001: The Supreme Court’s Presumptive Six-Month Limit to Post-Removal-Period Detention*, 30 PEPP. L. REV. 769 (2003); Natsu Taylor Saito, *Whose Liberty? Whose Security? The USA PATRIOT Act in the Context of COINTELPRO and the Unlawful Repression of Political Dissent*, 81 OR. L. REV. 1051 (2002); Natsu Taylor Saito, *Will Force Trump Legality After September 11? American Jurisprudence Confronts The Rule Of Law*, 17 GEO. IMMIGR. L.J. 1 (2002); Rita Shulman, *USA Patriot Act: Granting the U.S. Government the Unprecedented Power to Circumvent American Civil Liberties in the Name of National Security*, 80 U. DET. MERCY L. REV. 427 (2003); Shirin Sinnar, *Patriotic or Unconstitutional? The Mandatory Detention of Aliens Under the USA Patriot Act*, 55 STAN. L. REV. 1419 (2003); Marie A. Taylor, *Immigration Enforcement Post-September 11: Safeguarding the Civil Rights of Middle Eastern-American and Immigrant Communities*, 17 GEO. IMMIGR. L.J. 63 (2002).

98. USA PATRIOT Act, Pub. L. No. 107-56, 115 Stat 411 (2001), amending 8 U.S.C. §1182.

99. *See id.*

100. Compare, e.g., text accompanying *infra* note 103 with text accompanying *infra* note 107.

control. Most of the immigrants we spoke to had very specific thoughts on how the United States' response to the terrorist attacks was affecting them personally—for example, in the form of delays in family unification and changes in immigration status.¹⁰¹ We were informed that in response to changes after September 11th, many immigrants attempted to obtain citizenship to gain more control over their futures in the face of a new regime for immigration and homeland security.¹⁰²

The legal consequences of the war on terror and the PATRIOT Act, while serious in and of themselves, gave way to exaggerated rumors within the East African community. For example, one woman told us:

Since September 11th, there is almost ten thousand Somali refugees who are not U.S. citizens in jail—prison. They are denied the same rights that American people enjoy. I mean, American citizen would not be imprisoned or deported for like a simple thing like parking ticket or stuff like that. . . . In Minnesota alone, there [are] thousands of Somali people, both men and women, who are in prison.¹⁰³

These *perceptions* of the law, however inaccurate or exaggerated, and not the specific purposes of the law, ultimately influence East African reactions to the war on terror.

B. Immigrants Rank Deportation as Their Number One Fear after Several High Profile Deportation Cases Target Somalis in the Twin Cities.

The highly publicized deportation of Somali immigrants after September 11th created fear among many of the immigrants with whom we spoke. On February 14, 2002, for example, the United States government deported thirty individuals to Somalia, including ten individuals from Minnesota.¹⁰⁴ A *Star Tribune* report raised concerns about the fate of deportees returned to Somalia because locals believed them to be U.S. agents.¹⁰⁵ One

101. See, e.g., Interview 039 with 44-year-old Somali woman, B.A., asylee, in Minneapolis, Minn. (Sept. 20, 2002) [hereinafter Interview 039].

102. See, e.g., Interview 104 with 19-year-old Eritrean woman, high school, asylee, in St. Paul, Minn. (July 12, 2003) [hereinafter Interview 104].

103. Interview 311 by Ahmed Ali with 22-year-old Somali woman, high school, citizen, (translated from Somali) in Minneapolis, Minn. (June 23, 2003) [hereinafter Interview 311]. Throughout this Article, we have used direct quotes and occasionally added words in brackets to clarify meaning rather than the use of [sic] to indicate a grammatical error.

104. Lourdes Medrano Leslie & Eric Black, *10 Minnesota Somalis deported; Five others could be sent back*, STAR TRIB., Mar. 7, 2002, at 8A. Eight of the ten deportees were convicted felons. See *id.*

105. *Id.*

Somali interview subject mentioned the killing of one deportee;¹⁰⁶ others expressed concern about the safety of the deported Somalis.¹⁰⁷ Two weeks before these deportations, on February 1, 2002, a U.S. magistrate ruled that Keyse Jama, a 22-year-old Minnesota resident who pled guilty to a 1999 assault, could not be deported to Somalia because the country had no government.¹⁰⁸ Jama's case then went before a U.S. district judge in Minneapolis, who concurred with the magistrate's finding in March 2002.¹⁰⁹ In May 2003, a three-judge panel from the Eighth Circuit Court of Appeals overturned the lower court finding in *Jama*, holding in a two-to-one decision that Jama's deportation was permissible.¹¹⁰

Nevertheless, the district court finding in the *Jama* case laid the groundwork for a Seattle class-action lawsuit filed on behalf of potential Somali deportees.¹¹¹ In that case, the district court judge issued a stay on all Somali deportations until the case was resolved.¹¹² That stay applies to the deportation of Omar Jamal, an outspoken Twin Cities activist.¹¹³ In September 2003, the Ninth Circuit Court of Appeals upheld the stay imposed by the Seattle district court.¹¹⁴ The contradictory rulings in the Eighth and Ninth Circuit Courts of Appeals may ultimately be resolved by the Supreme Court.¹¹⁵

106. Interview 704 with 25-year-old Somali man, some college, citizen, in Minneapolis, Minn. (Nov. 1, 2003) [hereinafter Interview 704].

107. Interview 032 with 22-year-old Somali man, high school, permanent resident, in Minneapolis, Minn. (July 10, 2002) [hereinafter Interview 032]; Interview 046 by Idil Mohamed with 52-year-old Somali woman, elementary school, permanent resident, in Minneapolis, Minn., Oct. 10, 2002, [hereinafter Interview 046]; Interview 311, *supra* note 103.

108. Kavita Kumar & Erik Black, *Somali can be deported, U.S. Appeals Court rules: Ruling applies to 1 case but it could affect others*, STAR TRIB., May 28, 2003, at 3B.

109. *Jama v. INS*, No. CIV.01-1172 2002 WL 507046, at *4 (D. Minn. Mar. 31, 2002).

110. *Jama v. INS*, 329 F.3d 630, 635 (8th Cir. 2003). *See also* Kumar & Black, *supra* note 108, at 3B.

111. *Ali v. Ashcroft*, 213 F.R.D. 390 (D. Wash. 2003). Both the global linking of economies and "the growth of a broad network of rights and court decisions along with the emergence of immigrants as political actors, have reduced the autonomy of the state in immigration . . . and refugee . . . policy making." SASKIA SASSEN, *GUESTS AND ALIENS* 156 (1999).

112. *Ali*, 213 F.R.D. 390, at 411.

113. *See* Curt Brown, *Advocate pleads not guilty in immigration fraud case*, STAR TRIB., May 1, 2003, at 3B. Jamal is charged with six felony counts based on filing false immigration information. *Id.* He is accused of failing to disclose information about his asylee status in Canada when he applied for refugee status in the United States. *Id.*

114. *Ali v. Ashcroft*, 346 F. 3d 873, 876 (9th Cir. 2003).

115. On February 23, 2004, the United States Supreme Court granted certiorari

Our interviews indicated that many East African immigrants, especially Somalis, were well informed about the deportation proceedings. Both Jama and Jamal are well known in the local Somali community.¹¹⁶ A number of immigrants expressed keen interest in the final outcome of their cases.¹¹⁷ Even with substantial knowledge, however, most of the immigrants we spoke with thought the circumstances under which a person could be deported were broad and arbitrary. As the Somali woman's quote above suggests, some immigrants believed they could be deported for any misconduct, even a parking ticket. There was a general perception that deportation occurs unpredictably and indiscriminately. For example, one Oromo man stated that "[i]f you do anything, if you do some crime, or stealing, fight, you gonna be deported if you do not have citizenship."¹¹⁸ This reflects some immigrants' general perception that they are subject to the whims of law—that the law operates outside their control or expectations.

Members of the East African community in the Twin Cities are dealing with their fear of deportation in two ways. The first is to keep a low profile.¹¹⁹ For example, one Somali man explained how the immigrants would like to advocate on behalf of their home countries, but they fear such advocacy would be interpreted as finger-pointing or anti-American. He concluded:

Because of [September 11th], it is very difficult for them Some people, if they want to show their sorrows and hurtfulness of what is happening or [in response to] the media [coverage], they are afraid if they do, they will be deported back or get arrested or somehow [get] tortured. So they don't even want to show or express their feelings.¹²⁰

A number of people were critical of Omar Jamal's outspokenness, indicating that he did not speak for the Somali community at large and fearing he would bring too much negative attention to the Somali community.¹²¹ A social service provider at the West Seventh Community Center, a family counseling center in St. Paul, indicated that although most immigrants have legal

in Jama's case. INS, No. 03-674, 2004 WL 323175 (2004).

116. Interview 704, *supra* note 106.

117. Interview 032, *supra* note 107; Interview 046, *supra* note 107; Interview 311, *supra* note 103.

118. Interview 003, *supra* note 53.

119. Interview 317 by Ahmed Ali with 25-year-old Somali man, elementary school, citizen, in Minneapolis, Minn. (July 24, 2003) [hereinafter Interview 317].

120. Interview 317, *supra* note 119.

121. Interview 703 with 28-year-old Somali man, some college, citizen, in Minneapolis, Minn. (Aug. 1, 2002) [hereinafter Interview 703].

status, they are afraid that if they make one mistake they will be deported.¹²² In general, we found that immigrants on temporary visas, such as students, were more motivated to keep silent after the declaration of a war on terror for fear of deportation than more permanent immigrants.¹²³ Individuals with little or no education also indicated an unwillingness to speak out politically, although for this group, the unwillingness seems to predate September 11, 2001.¹²⁴ When asked what "political participation" meant to her, one Somali woman said, "I am not involved in politics and I hate it."¹²⁵

Fortunately, a few individuals, including highly educated Somalis, were not discouraged by a perceived risk of deportation and indicated their interest in speaking out politically.¹²⁶ For example, a 22-year-old female Somali college student stated:

I am not excusing anything. But I believe the main thing why September 11th occurred was because of U.S. foreign policy towards the Middle East and towards African people. I mean, the U.S. preaches democracy but outside of the American walls, they are imperialist, they are dictators and what they do itself is so savage that people could not take it [any] more. . . . So, after September 11th, I read a lot. I was actually part of the Students Against the War. I went to their meetings and like that.¹²⁷

In sum, fear of deportation did not silence all of the immigrants, even within the Somali community, which has been most affected by the forced removals.

C. *East African Immigrants Seek Citizenship to Gain Legal Protections and Avoid Deportation.*

The second response to fear of deportation was more uniform among the various East African immigrant communities: fear led

122. Interview 402 by Sadie Pendaz with West Seventh Community Center social service provider, in Minneapolis, Minn. (July 29, 2003) [hereinafter Interview 402].

123. Interview 019 with 30-year-old Tanzanian woman, B.S., student visa, in Minneapolis, Minn. (Apr. 10, 2002) [hereinafter Interview 019]; Interview 014 with 27-year-old Tanzanian woman, M.A., permanent resident, in Minneapolis, Minn. (Mar. 6, 2002) [hereinafter Interview 014].

124. Interview 305 by Ahmed Ali with 66-year-old Somali woman, no formal education, permanent resident, in Minneapolis, Minn. (Jan. 7, 2003) [hereinafter Interview 305]; Interview 306 by Ahmed Ali with 78-year-old Somali man, B.S., refugee, in Minneapolis, Minn. (Jan. 7, 2003) [hereinafter Interview 306].

125. Interview 301 by Ahmed Ali with 66-year-old Eritrean woman, some college, permanent resident, in Minneapolis, Minn. (Oct. 16, 2002) [hereinafter Interview 301].

126. Interview 311, *supra* note 103.

127. *Id.*

more immigrants to seek citizenship.¹²⁸ Not surprisingly, it appears that this was especially true for the Somalis. As one Somali woman explained, “[i]t is a little bit better to be a U.S. citizen than to have permanent residence because, let us say, some people when they commit some kind of crime, if they are U.S. citizen[s] they don’t get deported back.”¹²⁹ Many Somali men talked about citizenship specifically in the context of deportation. For example, this 28-year-old Somali doctor stated:

I think there are a lot of advantages of being a U.S. citizen. And I think the biggest one is legal protection to some extent. If you run into any trouble, it’s easier to be a U.S. citizen than not be a U.S. citizen. Ten Somalis were just deported about a month ago, uh, for minor crimes they committed in the United States. They would not have been deported for those minor crimes if they were citizens They were permanent residents . . . so there’s a lot of security that comes with [being a United States citizen].¹³⁰

Other immigrants indicated that either they or their families began to consider becoming American citizens only after September 11th. One 45-year-old Kenyan student explained, “I haven’t looked at [trying to obtain citizenship] in detail because I have not been interested in it. Experiences in the past, I mean. Now [it] is different with this Somali thing coming and, and the terrorism.”¹³¹ A 19-year-old Eritrean woman also related:

I have family members who were permanent residents for, you know, five, six, ten years and they never thought to become citizens . . . not that they didn’t want to, but they didn’t take that extra step. But now, after September 11th, there are a lot of things that are changing, and a lot of things are more strict and . . . you know, I’ve . . . around maybe four, five family members that just became citizens, have applied for citizenship now because it’s more useful.¹³²

Thus, the fear of deportation associated with the war on terror has encouraged more immigrants to declare their formal

128. Interview 017 with 45-year-old Kenyan man, M.A., student, in Minneapolis, Minn. (Mar. 18, 2002) [hereinafter Interview 017]; Interview 104, *supra* note 102. Christian Joppke argued that immigrants in Western countries are increasingly able to obtain citizenship while maintaining their unique cultural identities. See generally Christian Joppke, *How Immigration is Changing Citizenship: A Comparative View*, 22 ETHNIC & RACIAL STUD. 646 (1999). On the other hand, the perceived uniqueness of immigrants often prevents them from being fully accepted in their adopted countries. See *id.*

129. Interview 051 with 28-year-old Somali woman, A.A., permanent resident, in Minneapolis, Minn. (Oct. 4, 2002) [hereinafter Interview 051].

130. Interview 020, *supra* note 29.

131. Interview 017, *supra* note 128.

132. Interview 104, *supra* note 102.

loyalty to the United States. In general, the immigrants did not call for new limits on deportation or greater clarification of the law. Nor did they believe they could tailor their actions to avoid violating the new deportation laws. Instead, most sought to eliminate uncertainty by becoming U.S. citizens.

IV. Immigration Processing Slows Down at a Crucial Time for Citizenship and Family Reunification

Along with increased deportations, immigrants we spoke with noticed the increasing difficulty of navigating the bureaucracy of U.S. immigration law.¹³³ This aspect of the war on terror affected the immigrants in two ways. First, it hindered family reunification.¹³⁴ Second, bureaucratic slowdowns impeded immigrants' ability to adjust their status, to travel, or to become citizens.¹³⁵

The immediate effect of the war on terror was to halt the flow of new refugees into the United States. After September 11, 2001, the American refugee resettlement program was shut down for nearly three months while officials conducted a security review of the program.¹³⁶ Officials informed 22,000 immigrants who had already been approved for immigration to the United States that their admission into the country had been delayed indefinitely.¹³⁷ This occurred despite the fact that none of the September 11th terrorists were refugees and that all of the refugees who had been cleared for admission to the United States had met their burden of demonstrating a well-founded fear of persecution in their home countries.¹³⁸

When the refugee resettlement program resumed operations on December 11, 2001, the number of individuals allowed into the United States was significantly scaled back. In the twenty years prior to 2001, the United States had allowed an average of about 90,000 refugees a year to resettle within its borders.¹³⁹ Although

133. Interview 007, *supra* note 52; Interview 005 with 24-year-old Oromo woman, B.A., asylee, in St. Paul, Minn. (Nov. 01, 2001) [hereinafter Interview 005].

134. *See infra* text accompanying notes 136-146.

135. *See infra* text accompanying notes 148-162.

136. LAWYERS COMM. FOR HUM. RTS., A YEAR OF LOSS: RE-EXAMINING CIVIL LIBERTIES SINCE SEPTEMBER 11 13 (2002), *available at* http://www.lchr.org/pubs/descriptions/loss_report.pdf (last visited Feb. 7, 2004).

137. *Id.*

138. *Id.*

139. *Id.* *See also* LAWYERS COMM. FOR HUM. RTS., ASSESSING THE NEW NORMAL: LIBERTY AND SECURITY FOR THE POST-SEPTEMBER 11 UNITED STATES 45 (2003), *at* <http://www.lchr.org/pubs/descriptions/Assessing/AssessingtheNewNormal.pdf> (last

President Bush approved entry for up to 70,000 refugees for fiscal year 2001-02, only 27,508 were actually admitted into the United States in that year.¹⁴⁰ President Bush once again approved entry for up to 70,000 refugees in fiscal year 2002-03,¹⁴¹ but the administration allocated only enough staff and resources to resettle at most 50,000 refugees in that year.¹⁴² As it turned out, even that number was extremely optimistic. As of August 2003 (for the fiscal year ending in September) only 26,317 refugees had been resettled in the United States.¹⁴³ Locally, Thomas Kosel, Resettlement Director of the Migration & Refugee Program at Catholic Social Services in St. Paul, noted in June 2002 that the steady stream of Somali refugees arriving in the Twin Cities had dwindled to a trickle.¹⁴⁴

The initial halt and subsequent slowdown in admissions dramatically affected the ability of East African refugees to reunite with their families. Many East Africans mentioned this hardship. For example, one Somali woman was granted asylum during a 1999 visit to the United States and had been struggling since that time to get her husband and children into the country.¹⁴⁵ She was concerned that the terrorist attack would postpone her family's reunification indefinitely:

After September 11th, I think the interview process has stopped and all the people who were about to come cannot come, and I do not know how long it will take them to start interviewing again, and if you were behind in the schedule then you have to wait longer. So we do not know how long it will be.

F.S.: How long ago did you start the process?

As soon as I came, and it is about three years now. Last July was the time they were going to interview them and now I do not know.¹⁴⁶

A worker at Catholic Charities noted another example of the problems with family reunification after September 11th:

An elderly woman was here yesterday and we had requested her INS file because JVA had closed the case of one of her

visited Feb.7, 2004) [Hereinafter ASSESSING THE NEW NORMAL].

140. ASSESSING THE NEW NORMAL, *supra* note 139, at 45.

141. *Id.*

142. *Id.*

143. *Id.*

144. Scott Calvert, *Somalis Find a New Home, New Struggles in Minnesota: Sept. 11 and Local Violence Rouse Budding Community*, BALT. SUN, June 2, 2002, at 1A.

145. Interview 039, *supra* note 101.

146. *Id.*

daughters, who didn't come with the rest of the family because she was pregnant . . . [H]er case was closed after 9/11 and all this background security checking started up. . . . [T]he daughter's file was sent to Washington. They checked on the mother's file and this daughter's name wasn't in the mother's file, nor was another daughter who had already arrived. The reason, I believe, was because the guy ran out of lines when he was writing down her children's names. There were six lines [and] there are six names, [but] she had *eight* children.¹⁴⁷

Thus, the initial effect of the war on terror was to delay or even halt family reunification among East African refugees and asylees in the Twin Cities.

The Bureau of Immigration and Customs Enforcement scrutinizes immigrants more closely than the former Immigration and Naturalization Service.¹⁴⁸ However, despite the increased responsibilities, resources have not correspondingly increased.¹⁴⁹ As a result, the bureaucracy is operating more slowly than it has in the past.¹⁵⁰ One Eritrean woman explained the way she saw things:

But a lot of things did change after September 11th . . . and immigration is really taking long . . . you know, the processes got a lot longer after September 11th, so [it] . . . has a really big effect on a lot of . . . people.¹⁵¹

The slowdown in the bureaucracy combined with the increase in deportations keeps many immigrants in a constant state of uncertainty. Just as the Justice Department appears to be increasing its use of immigration violations to detain or deport individuals they consider threatening,¹⁵² the number of those violations is likely increasing because of difficulties dealing with the bureaucracy.¹⁵³ In other words, more individuals may find themselves out of status, not because they are irresponsible, but because of shortcomings in the administration of their papers. For example, the Lawyers Committee for Human Rights related the case of Mohammad Sarfaraz Hussain, an 18-year-old high school student from Pakistan who had lived in the United States since he

147. Interview 406, *supra* note 39.

148. *See, e.g.*, ASSESSING THE NEW NORMAL, *supra* note 139, at 37-38.

149. *Id.* at 45. *See also* Jean Hopfensperger, *Immigrants feel wind of change: The U.S. war on terrorism has sparked changes in immigration policy and procedures that are unfolding in a number of ways*, STAR TRIB., Nov. 21, 2001, at 1B.

150. ASSESSING THE NEW NORMAL, *supra* note 140, at 45.

151. Interview 104, *supra* note 132.

152. ASSESSING THE NEW NORMAL, *supra* note 140, at 34 (stating that of the over 1200 immigrants detained after the September 11th terrorist attacks, the vast majority were held for being out of status).

153. *See id.* at 37.

was eight.¹⁵⁴ Hussain was put in removal proceedings when he tried to fulfill his call-in registration requirement even though he had appropriately filed an application for a green card over a year earlier.¹⁵⁵ The bureaucratic backlog, and not misconduct on Hussain's part, led to his being out of status.¹⁵⁶ Only the intervention of a U.S. Congressman kept Hussain from being deported.¹⁵⁷

Among the immigrants with whom we spoke, some were out of status.¹⁵⁸ Others, who were permanent residents or citizens, declined with some discomfort to explain how they had attained that status.¹⁵⁹ In general, the immigrants we spoke with were generally not comfortable relating the details of their immigration status to us. As one Tanzanian man, for example, explained:

I know more Tanzanians are scared, some Tanzanians who might be out of status are more scared that they might be found. So there's more of that tension. Of course, these are Tanzanians who are working and they're contributing to the economy of Minnesota. They are paying their taxes. But they are living in fear much more than before.¹⁶⁰

Social service providers we talked to also confirm that this discomfort is widespread.¹⁶¹ In this context, the enforcement of the law creates ambiguity between who is "legal" and who is "illegal." As regards immigrants who do not have complete control over their status—the government itself can place them out of status simply through its inefficiency.¹⁶² Once again, immigration law is an impediment operating outside the influence of those most affected by it. This impotency marginalizes immigrant groups, particularly those on temporary visas such as students. Thus, the close connection between bureaucratic uncertainty and the fear of deportation operate hand in hand to keep recent immigrants literally unsettled.

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. Because of the exceptionally sensitive nature of this information, it was not preserved in the transcripts.

159. Interview 107 with 35-year-old Ethiopian woman, M.A., permanent resident, in Minneapolis, Minn. (July 24, 2003) [hereinafter Interview 107].

160. Interview 014 with 27-year-old Tanzanian woman, M.A., permanent resident, in Minneapolis, Minn. (Mar. 6, 2002) [hereinafter Interview 014].

161. Interview 402, *supra* note 122.

162. Calavita, *supra* note 8, at 548, has argued that similar bureaucratic "catch-22s" in Spain are intentionally designed to marginalize immigrant groups.

V. Immigrants are the Targets of State and Private Discrimination after September 11th

Another issue related to the war on terror that concerned East Africans was their impression that state and private actors were discriminating against them.¹⁶³ Not surprisingly, this impression made many of the immigrants we interviewed feel that U.S. laws were working against them and operating outside their control. In some instances, the targeting occurred through formal state policies or in interactions with state officials. In other instances, targeting came from private individuals, but immigrants expressed surprise and dismay at the lack of state censure of the private actions. A Kenyan woman expressed the problem this way:

Americans are racists and I could see it clearly after September 11th—the racist remarks in the name of patriotism. Some of these remarks were suppressed but after September 11th, I could not believe what people were doing and saying about people of other cultures. I could not believe the way poor Arabs, Somali, or any Arab-looking person was treated after September 11th.¹⁶⁴

Many immigrants felt state protection was generally inadequate against prejudice emerging out of the war on terror.

Two months after the terrorist attacks, the FBI closed all of the Somali wire services in the Twin Cities.¹⁶⁵ Crackdowns on these services affected immigrants' ties to their families and friends around the world.¹⁶⁶ Since the mid-1990s, Somalis in Minnesota sent two to four million dollars per month to the Horn of Africa.¹⁶⁷ Somali remittances were considerably more organized and substantial than the remittances of other immigrant groups.¹⁶⁸ Some Somalis felt community pressure to donate; others cited religious obligation as the basis for their

163. Victor C. Romero, *Decoupling "Terrorist" from "Immigrant": An Enhanced Role for the Federal Courts Post 9/11*, 7 J. GENDER RACE & JUST. 201, 205 (2003) (stating that the vast majority of immigrants never commit any crime, and many terrorists apprehended in the United States in recent years are not immigrants). See also Victor C. Romero, *Proxies for Loyalty in Constitutional Law: Citizenship and Race After September 11*, 52 DEPAUL L. REV. 871, 875-76 (2003).

164. Interview 016 with 55-year-old Kenyan woman, Ph.D., permanent resident, in Minneapolis, Minn. (Mar. 18, 2002) [hereinafter Interview 016].

165. Joy Powell, *Raids anger Minnesota Somalis: They deny terrorism links and worry about how to send money to poor relatives*, STAR TRIB., Nov. 8, 2001, at A1.

166. *Id.*

167. David Phelps et al., *Somalis funnel millions to E. Africa: Minnesota immigrants have supported relatives left behind, but U.S. agencies are investigating whether some money fueled clan wars*, STAR TRIB., Nov. 19, 2000, at A1.

168. *Id.*

contributions.¹⁶⁹

Local police began to investigate these wire transfers before the terrorist attacks, in early 1999.¹⁷⁰ The Federal Bureau of Investigation, the Immigration and Naturalization Service, and the Internal Revenue Service also scrutinized the activities of the wiring services.¹⁷¹ By November 2000, the authorities agreed that although much of the money went directly to support relatives, some of the money was used to fund military supplies for warlords and terrorists.¹⁷² Estimates suggest that approximately five percent of the money sent to Somalia from family members living abroad supported terrorism.¹⁷³

One Somali man explained how the money transfer agencies worked and how their closure affected the Somali community:

They closed two of the largest [money wiring businesses] and it . . . had a huge impact on the Somali community, because Somalia doesn't have a central government and there isn't a central banking system. So those two institutions basically served as banks for Somalians. You could send one hundred dollars from here today and have your mother pick it up in four hours. And it was based entirely on trust. And this is something that has existed in the Muslim world . . . since medieval times, based on trust . . . So they closed, shut down these two companies. It could entirely cloud the economy of Somalia. You can go to the United Nations website . . . the United Nations is very angry about it, about what the United States government has done in that respect. Because it crippled an already crippled country. Again, it affected the people here because they can't remit money to their families abroad.¹⁷⁴

Later, he acknowledged that the smaller companies that re-opened after the FBI intervention provided some relief for these problems although he felt they are not as effective as the larger services.¹⁷⁵ Several other immigrants interviewed also mentioned the hardship incurred as a result of the wire service closings.

New changes in Minnesota Department of Public Safety regulations also target immigrants.¹⁷⁶ Drivers' licenses are now

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Money wiring: Pursue terrorists, help families, too*, STAR TRIB., Nov. 19, 2001, at A18.

174. Interview 020, *supra* note 29.

175. *Id.*

176. Howie Padilla, *Should illegal immigrant workers be issued state driver's licenses?*, STAR TRIB., May 5, 2001, at A1.

only issued to legal immigrants with valid visas.¹⁷⁷ The initial purpose of the policy was to keep illegal immigrants from receiving state benefits.¹⁷⁸ After the terrorist attacks, support for the policy increased as lawmakers imagined that it might also increase state security.¹⁷⁹ Charlie Weaver, former Minnesota Public Safety Commissioner, explicitly connected immigration with terrorism in his reasons for supporting the bill: “[t]hey’re from the countries that attacked us on Sept. 11 and that hate us for our freedoms A driver’s license is a gateway to guns, airplanes, pilot schools, checking accounts and credit cards.”¹⁸⁰ Legislators debated, but ultimately rejected, putting special markings on licenses of immigrants.¹⁸¹ Nevertheless, the Public Safety Commission enacted the provisions through emergency rulemaking in July 2002.¹⁸²

Representatives of numerous communities, such as Jewish Community Action and leaders of the Mexican-American and Somali communities, challenged the new requirements, arguing that distinctive features on legal immigrant drivers’ licenses would signal their status to law enforcement officers and make it harder for immigrants to rent apartments or obtain social services.¹⁸³ While the Minnesota Court of Appeals overturned some provisions of the policy, inclusion of visa status on foreign visitors’ drivers’ licenses remains.¹⁸⁴

Racial, ethnic, and religious profiling in airports was also of great concern to many immigrants we interviewed.¹⁸⁵ For example, a Tanzanian woman related the story of a cousin who was denied entry into the United States after September 11th.¹⁸⁶

177. MINN. R. 7410.0410(6), 7410.0410 (7), 7410.0410 (8) (2004).

178. Padilla, *supra* note 164.

179. Conrad de Fiebre, *Immigrants oppose security proposal: Plan to tighten licensing process is too sweeping, opponents say*, STAR TRIB., Feb. 16, 2002, at B5.

180. *Id.*

181. Conrad de Fiebre, *A vehicle for information: Data on driver’s licenses extend far beyond road*, STAR TRIB., Mar. 9, 2003, at A1.

182. *Id.* See also Lourdes Medrano Leslie, *State’s new rules go on smooth first ride: But the tighter restrictions on getting a driver’s license or an ID card, meant to deter terrorists, worry immigrants*, STAR TRIB., July 9, 2002, at B3; MINN. R. 7410.0400, 7410.0410 (2004).

183. Kevin Duchschere, *Immigrants weigh in on anti-terrorism bill*, STAR TRIB., Apr. 24, 2002, at B5.

184. David Phelps, *Some driver’s license provisions overturned: But the Minnesota Appeals Court ruling did not cover inclusion of visa status on foreign visitors’ IDs*, STAR TRIB., Mar. 12, 2003, at B3.

185. See Motomura, *supra* note 93, at 415 (suggesting that profiling is wrong because it humiliates affected groups and sends a message of exclusion to them).

186. Interview 014, *supra* note 160.

The cousin's wife attended school in the United States, and the cousin came to visit her. He planned to return to Tanzania with their young child after staying in the country for a month. He became a suspect of the authorities at the Atlanta airport because he was an airplane pilot in Tanzania and had flown for Arab airlines. The authorities detained him for two days. The interview subject explained:

[T]hey said, you know, they wouldn't let him enter, and . . . he can stay and continue being detained And he started begging to go back home after a while. Of course, he's terrified. He's never experienced anything like it. So he's, like, just send me home So after two days, they did send him back home. So we were happy that he was safe, but it was disgusting what happened because he was coming to see his wife and he wasn't even able to pick up his poor kid¹⁸⁷

No one at the airport would give this man's wife, a non-U.S. citizen, any information about his detention.¹⁸⁸ However, when the interviewee's American husband called, "they gave him all kinds of information that they didn't give the wife."¹⁸⁹ The woman concluded her story by relating the fear that "things we do that are completely innocent are being perceived as terrorist."¹⁹⁰ She also noted that even "innocent people visiting family" can be labeled as terrorists.¹⁹¹ Other interview subjects also mentioned profiling in airports,¹⁹² and Ahmed Ali, one member of this Article's project team, was detained briefly at an airport while the authorities investigated a bottle of perfume in his suitcase. Instances such as these bolster the perception that anti-terrorism laws are being enforced indiscriminately against all immigrants.

Interactions with local police also contributed to a sense that the Somali community was being targeted by discrimination. In March 2002, police officers shot and killed Abu Jeilani, a 27-year-old mentally-ill immigrant.¹⁹³ Jeilani had come to the United States in 1997 after spending several years in a refugee camp in

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.*

191. *Id.*

192. Interview 004, *supra* note 52.

193. Heron Marquez Estrada & Kavita Kumar, *Minneapolis Police kill machete-wielding man: Some Somalis said that the man, who was shouting in Somali, was mentally ill, and that police acted too hastily and too harshly*, STAR TRIB., Mar. 11, 2002, at A1. The specific nature of Jeilani's mental illness was never revealed in the media, but he had been on medication to control it for several months. *Id.*

Kenya.¹⁹⁴ He was married and had two young children.¹⁹⁵ When police encountered Jeilani, he was carrying a machete and a crowbar down a Minneapolis street and calling out "God is Great" in Somali.¹⁹⁶ Police officer Todd Gross, who did not initially notice the machete, pulled up alongside Jeilani and asked to have a conversation.¹⁹⁷ At that point, Jeilani began waving the machete.¹⁹⁸ Gross called for a Crisis Intervention Team officer and began to follow Jeilani.¹⁹⁹ The Crisis Intervention Team arrived six minutes later.²⁰⁰ The officers attempted to subdue Jeilani using a Taser gun, which delivers an electrical charge designed to immobilize a person for several seconds.²⁰¹ The Taser gun proved ineffective.²⁰² The officers continued to follow Jeilani for two blocks until squad cars surrounded him.²⁰³ An officer again fired a Taser at Jeilani several times, to no effect.²⁰⁴ Then the officers fired thirteen shots, hitting Jeilani twelve times.²⁰⁵ The interaction with police lasted a total of eleven minutes.²⁰⁶ Three months later, the police officers involved in the shooting were cleared of wrongdoing by a grand jury.²⁰⁷

The fatal shooting was denounced by leaders of several Somali organizations.²⁰⁸ They called for an independent investigation and for the resignation of the police chief.²⁰⁹ Many expressed the sentiment that the police should have done more to defuse the crisis.²¹⁰ In the days following the shooting, there were several large protests.²¹¹ One interview subject voiced the familiar

194. Lourdes Medrano Leslie, *Grieving family, friends struggle to understand*, STAR TRIB., Mar. 12, 2002, at A8.

195. *Id.*

196. Estrada & Kumar, *supra* note 193.

197. *Id.*

198. *Id.*

199. Chris Graves & Rochelle Olson, *Somalis want answers in fatal police shooting*, STAR TRIB., Mar. 12, 2002, at A1.

200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.*

205. Howie Padilla & Terry Collins, *Panel Clears Police in Somali's Killing*, STAR TRIB., June 21, 2002, at B1.

206. Graves & Olson, *supra* note 199.

207. Padilla & Collins, *supra* note 205.

208. Graves & Olson, *supra* note 199.

209. *Id.*

210. *Id.*

211. Heron Marquez Estrada, *Ideas for change in police tactics catch Rybak's eye*, STAR TRIB., Mar. 14, 2002, at B1; Terry Collins, *Shooting is condemned by*

theme that legal authorities acted indiscriminately in the Jeilani shooting:

I was touched when that happened because I don't like such thing happening to [a] human being and not just because he was Somali but a human being who did not bother anyone and [who was] mentally ill. They get him by sixteen bullets. It is something that is unacceptable, you know. Of course I went there and I showed that I am among those who are not happy about what happened.²¹²

A group of angry Somali women marched to Minneapolis Mayor R.T. Rybak's office to protest the shooting,²¹³ and Rybak met with members of Somali community several times.²¹⁴ Some of our interview subjects used the Jeilani case to explain why they felt that the police did not treat them fairly because they were Black, Muslim, or immigrants.²¹⁵ East African immigrants, particularly Somalis, mobilized politically to protest the shooting. This contrasts with their lack of political mobilization in the areas of overbroad bases for deportation and the failure of family reunification. The different reactions may be explained by the fact that acquiring citizenship does not eliminate the risk of targeting by police but it is perceived as eliminating the risk of deportation and improving chances of family reunification.

Many of the immigrants we spoke to perceived the Jeilani tragedy as state discrimination against them.²¹⁶ Of equal concern to recent immigrants was the sense that the police were not protecting them from targeting by private individuals who unfairly blamed all Muslims and immigrants for the terrorist attacks. East Africans were physically threatened and beaten in the months following the terrorist attacks, and this was a major concern within the community.²¹⁷ One Somali woman described a harrowing experience:

I was, the person speaking to you, two days after September 11th at Lake Street when a Black American man driving a car wanted to hit us right in the middle of the street—the car my friend and I were in. "Bullshit Islam! You stinking Muslims that burn our buildings and our country!" Thank God, God

marchers: Police overreacted in killing Somali man, speakers say, STAR TRIB., Mar. 24, 2002, at B8.

212. Interview 317, *supra* note 119.

213. Estrada, *supra* note 211, at B1.

214. *Id.*

215. Interview 022 with 36-year-old Tanzanian man, M.A., student, in Minneapolis, Minn. (Apr. 18, 2002) [hereinafter Interview 022].

216. *See, e.g.*, Interview 100 with 25-year-old Sudanese man, high school, citizen, in Minneapolis, Minn. (Nov. 27, 2002).

217. Calvert, *supra* note 144.

brought us people, otherwise he wanted to kill us right there.²¹⁸

We were told by an interviewee that other women wearing the *hijab* in the days after the terrorist attack also reported being harassed and assaulted.²¹⁹

In addition, stores owned by immigrants were defaced in the months following September 11th. For example, in June of 2002, an Ethiopian man explained to Fortunata Songora how his business had been firebombed the day before his interview:

Let me tell you, yesterday after you left, you know, you see this, [he shows me different signs of burns in the store and I realize they were not there the two times I was there before] this fire over here, over there. [We are now walking around the store and he is showing me all the burns in the store]. Let me show you these are the burns . . . so you see these ones [he shows me some little firebombs—mmh, I'm scared a bit]. So when you left, my friends were sitting here and I'm wiring money through Western Union and somebody throw the firebomb from the door.²²⁰

The Ethiopian man went on to explain that Americans cannot distinguish between Arabs and Africans, implying that Americans think both groups are terrorists.²²¹ The man also complained that it took the police two hours to respond to his emergency call.²²²

Like this Ethiopian man, a number of our interviewees felt that the police lacked sensitivity to their situation. This problem was exemplified in a case involving one of the most serious attacks on an immigrant. Somali elder Ali W. Ali was assaulted at a bus stop one month after the terrorist attacks.²²³ Ali was punched in the face, which apparently caused him to fall and strike his head on the pavement.²²⁴ He died several days later.²²⁵ The hospital where Ali was treated initially announced to the press that Ali had

218. Interview 043 by Idil Mohamed with 45-year-old Somali woman, A.A., permanent resident, in Minneapolis, Minn. (Sep. 20, 2002) [hereinafter Interview 043].

219. Interview 021 with 34-year-old Oromo man, B.A., work permit, in Minneapolis, Minn. (Apr. 15, 2002) [hereinafter Interview 021]. See also Calvert, *supra* note 144.

220. Interview 021, *supra* note 219.

221. *Id.*

222. *Id.*

223. Kavita Kumar, *Somalis, Muslims denounce paper's story: A Star Tribune article said investigators think some Somalis gave funds to a group linked to Bin Laden*, STAR TRIB., Oct. 10, 2001, at B2.

224. *Id.*

225. David Chanen, *Man assaulted at bus stop dies*, STAR TRIB., Oct. 25, 2001, at B7 [hereinafter *Man assaulted at bus stop dies*].

died of natural causes.²²⁶ On January 9th, nearly three months after the assault, they changed their assessment, and attributed Ali's death to the head injuries he suffered in the assault.²²⁷ Upon hearing the news that the death had been ruled a homicide, one family friend noted, "[i]t's like telling you that you have two feet. You knew it. You knew it all the time."²²⁸

The attack occurred on October 14, 2001, the same day that the *Star Tribune* reported that Somalis had been inadvertently wiring money to Al Qaida.²²⁹ The timing of the assault led many in the Somali community to blame the article for the attack.²³⁰ Both the crime and its official handling rankled some in the local Somali community. Police initially resisted the idea that the man was a victim of a hate crime.²³¹ Apparently, in an interview at the hospital, the dying man had led the police to believe he had been hit by a car driven by a Somali.²³² Later, the police acknowledged that Ali's medical condition made it difficult for him to give a clear explanation of the assault.²³³ Early on, the police claimed to be frustrated by a lack of evidence and witnesses.²³⁴ They made a request for any witnesses to come forward.²³⁵ Later, it appeared that the police had interviewed witnesses at the scene of the crime, but had not believed those witnesses would be very helpful.²³⁶

For example, when police arrived at the crime scene, they discovered that a group across the street had witnessed the attack.²³⁷ Police reported that one of the witnesses claimed a

226. David Chanen, *Bus stop assault is ruled homicide: Somali victim's family maintains it was hate crime*, STAR TRIB., Jan. 9, 2002, at B1 [hereinafter *Bus stop assault is ruled homicide*].

227. Ali was gravely ill with heart disease and kidney cancer when he was attacked. This complicated the determination of his cause of death. *Bus stop assault is ruled homicide*, *supra* note 226, at B1.

228. *Id.*

229. Greg Gordon et. al., *Terror group may have received local funds: Some Minnesota Somalis thought Al-Itihaad was a charity*, STAR TRIB., Oct. 14, 2001, at A1.

230. Kumar, *supra* note 223, at B2.

231. *Id.*

232. David Chanen & Joy Powell, *Somali man told detective he was injured by a car: Police haven't found any evidence that a Minneapolis man was a hate-crime victim*, STAR TRIB., Oct. 27, 2001, at B3.

233. David Chanen, *Police seek witnesses to assault at bus stop*, STAR TRIB., Oct. 26, 2001, at B3 [hereinafter *Police seek witnesses to assault at bus stop*].

234. *Man Assaulted at bus stop dies*, *supra* note 225.

235. *Police seek witnesses to assault at bus stop*, *supra* note 233.

236. David Chanen, *FBI questions witness in alleged hate assault*, STAR TRIB., Nov. 16, 2001, at B1 [hereinafter *FBI questions witness*].

237. Chanen & Powell, *supra* note 232.

White man had hit Ali in the face.²³⁸ The police enlisted the aid of someone to translate because most of the group spoke only Spanish.²³⁹ The Hispanic men indicated that the male perpetrator, who was White, had threatened them first and then moved on to the Somali man.²⁴⁰ In addition, Reverend Larry Wesley, the associate pastor of Total Victory Christian Center, witnessed the assault from the dining room window of a Catholic Charities homeless shelter where he was working as an outreach counselor.²⁴¹ Wesley saw the man approach Ali, circle him, and then punch him.²⁴² Wesley described the perpetrator as a White male with short blond hair, in his twenties, about five feet, eleven inches tall, approximately 200 pounds, and wearing a hat and dark clothes.²⁴³ Minneapolis police found this description too generic to be very useful.²⁴⁴

While the police have maintained that there is not enough evidence to characterize the assault as a hate crime, several of our interview subjects had a different opinion. One interviewee, for example, stated:

Hate crime, you know, hate crimes. We see it in Minneapolis, a lot of incidents since September 11th, because a lot of, two, three, women, they harassed . . . and one old guy, like sixty-three years old . . . somebody hit [him] and he died. So they damaged his head, so.²⁴⁵

The police position did not change after Ali's death was ruled a homicide in January 2002.²⁴⁶ The police continues to maintain that the circumstances of Ali's death were unclear.²⁴⁷ The perpetrator was never apprehended.²⁴⁸ The handling of the Ali murder raised the level of distrust between the Somalis and the local police, and this distrust was exacerbated by the Jeilani shooting.

238. *Id.*

239. *Id.*

240. *Id.*

241. *FBI questions witness, supra* note 236.

242. *Id.*

243. *Id.*

244. *Id.*

245. Interview 035 with 35-year-old Somali man, high school, permanent resident, in Minneapolis, Minn. (July 11, 2002).

246. *Bus stop assault is ruled homicide, supra* note 226.

247. Lourdes Medrano Leslie, *Muslims, Arabs say Sept. 11 backlash has changed form: Physical and verbal harassment have been replaced by subtle discrimination, related to jobs, for example*, STAR TRIB., Sep. 9, 2002, at A8.

248. David Chanen, *I Charged in Cabbie's Slaying: Family glad about arrest yet fearful*, STAR TRIB., July 29, 2003, at B1.

Prejudice and violence against immigrants predated the terrorist attacks. Several East African cab drivers have been murdered in the Twin Cities, both before and after the terrorist attacks.²⁴⁹ A number of East Africans mentioned that Americans (both Black and White) were unwilling to sit next to them on buses because Americans thought they smelled.²⁵⁰ However, the sting of informal religious and racial bigotry became more pronounced in the post-September 11th environment.²⁵¹ While many of the immigrants sensed discrimination prior to the war on terror, it is clear that they felt they were under heightened scrutiny after the terrorist attacks. One Somali woman articulated the change that she perceived:

When I speak the truth, before September 11th, I did not see that much problem. After September 11th, when it was said the people who did the attack were Muslims, it caused many people problems in America.²⁵²

Another Somali woman was frustrated by what she perceived as the indiscriminate application of the terrorist label:

We are very sorry for what happened on September 11th—something unimaginable happened that day. We are suffering the pain, but at the same we are treated bad. People talk about us in the bus—the way we are dressing and they think we are terrorists. We came here in America because we wanted peace. All of a sudden everything in America we are not against, but we are treated like we are against America, and I think to a large extent we are treated that way because we are Muslims.²⁵³

The war on terror increased the discriminatory targeting of recent immigrant communities. It appears that over time, many in the East African community became distrustful that legal authorities would intervene to protect them from discrimination, and some immigrants even felt that the police were actively operating against their community.

Fortunately, the Minneapolis Police has attempted to close the rift between its officers and East Africans. Around the time

249. *Id.*

250. Interview 705, *supra* note 70; Interview 041 by Idil Mohamed with 45-year-old Somali woman, B.A., asylee, translated from Somali, in St. Paul, Minn. (Sept. 20, 2002) [hereinafter Interview 041].

251. Some Somalis feared that the release of the movie *Black Hawk Down* would cause Americans to see Somalis as anti-American, and commented that Somalis already had safety concerns, and that the release of the movie would increase anti-Somali sentiment. Lourdes Medrano Leslie, *Somalis fear film 'Black Hawk Down' will stir backlash*, STAR TRIB., Jan. 18, 2002, at A1.

252. Interview 041, *supra* note 250.

253. Interview 038, *supra* note 88.

the officers were cleared of wrongdoing in the Jeilani shooting, police chief Robert Olson met with members of the immigrant community and assured them that they could trust local police.²⁵⁴ The local police were not immigration police, he stated—they were not looking to determine the legal status of members of the immigrant community.²⁵⁵ It is not clear that the typical immigrant makes this distinction. Furthermore, recent legal developments have or will change the role of local police in enforcing immigration laws. For example, because of the new Minnesota regulations regarding immigrant drivers' licenses, local police now have to deal with expired visas when they check drivers' licenses after traffic violations.²⁵⁶ Furthermore, federal legislation pending in the House of Representatives at the time of this writing would change local police responsibilities by giving them authority over immigration matters.²⁵⁷

Many of the East African immigrants we interviewed perceive that they are being targeted because of their appearance or religion. At best, they see legal authorities, such as the police, as ineffective at protecting them from that targeting; at worst, they perceive legal authorities themselves engaged in discrimination. Exacerbating this uncertainty, state and federal laws are changing the local police role in the war on terror.²⁵⁸ That role must clearly be defined and conveyed to the immigrant communities.

Conclusion

Because of the U.S. public's belief in the necessity of the war on terror, widespread deportations, bureaucratic slowdowns, and racial, ethnic, and religious discrimination against East African immigrants and refugees are viewed as acceptable, if somewhat regrettable, by-products of the war on terror. Lawmakers technically distinguish the war on terror from the mistreatment of immigrants. They rhetorically suggest that "good" immigrants have nothing to fear from their policies. But these distinctions get lost in the enactment of law and, consequently, in immigrants'

254. The Minneapolis Police have a policy of not asking questions about immigration unless specifically requested by federal authorities. See Jackie Crosby, *Minneapolis chief, mayor vow to work with city's Somalis: Police issues raised at community forum*, STAR TRIB., June 7, 2002, at B3.

255. *Id.*

256. Phelps, *supra* note 166, at B3.

257. See Clear Law Enforcement for Criminal Alien Removal Act of 2003 (the CLEAR Act of 2003), H.R. 2671, 108th Cong. (2003).

258. *Id.*

perceptions of the law.

Our interviews suggest that most East African immigrants in the Twin Cities believe that U.S. immigration and anti-terrorism laws are indiscriminate and operate against them—even when they have no connections whatsoever to terrorism. In general, many interview subjects shared this Somali woman's assessment that the U.S. legal system was indiscriminate in its apprehension of immigrants:

We can't be terrorists. We came here because we wanted peace. We have adopted this country as our own How can we then turn around and kill all other Americans? I wish the Americans would have really looked into this thing and seen who is terrorist and who is not, but now we Somalis are all treated like terrorists.²⁵⁹

Rhetorical differentiation between terrorists and immigrants, and between “good” and “bad” immigrants, disappears in the implementation of the war on terror.

Fortunately, several of the East African immigrants we spoke with were politically active and informed. The war on terror did not have a uniformly chilling effect on political mobilization. However, the war on terror is unsettling many immigrants, causing them to fear deportation, suffer a bureaucratic labyrinth, and feel discriminated against by officials and lay people alike. Some formal targeting such as profiling and license requirements makes immigrants afraid to assert their rights under the law. When this formal discrimination is coupled with the inability or unwillingness of state officials to protect immigrants from private violence and discrimination, the war on terror *is* targeting immigrants.

We believe the most important task is to clarify the legal mandate of the war on terror. This will minimize “collateral damage” to immigrants who have done nothing to threaten the safety of the country. First, policymakers should ensure that immigration forms are processed quickly and clearly so that bureaucratic slowdowns do not put family reunification and an immigrant's overall legal status into jeopardy. Second, policymakers should provide more counseling and education to immigrant groups, in their native languages, to explain clearly how to maintain legal status and how the government makes decisions about detention and deportation. Third, the role of local police in the enforcement of immigration laws must be clearly defined and conveyed to the immigrant communities. In addition,

259. Interview 038, *supra* note 88.

police must continue to take steps to reduce violent crime against East Africans and publicize their efforts within those communities. Fourth, policymakers should continue to work with immigrant groups to fight against religious and racial discrimination of all types. Finally, policymakers must understand how the motivations and backgrounds of immigrants may keep them from speaking out against certain policies that could be harmful in the long run. Fundamentally, policymakers must work to reduce the ambiguities and uncertainties that surround the war on terror.

By creating a bureaucratic system for immigration that is reasonable, efficient, and transparent, the United States will allow appreciative immigrants the opportunity to enter this country without fear. Providing immigrants with the same legal protections citizens enjoy will enhance trust among immigrant communities, bureaucratic officials, and law enforcement. This trust may bear fruit as immigrants become a part of U.S. society and contribute to the ultimate goal of the war on terror: finding and stopping terrorists.