

Employment discrimination on the basis of race, color, religion, sex or national origin has been unlawful in the United States since 1964, under Title VII of the Civil Rights Act.¹ Curiously, however, national origin is not defined anywhere in Title VII, so it raises questions such as whether you have to come from a nation in order to have a claim of national origin discrimination. Palestine, for example, is not a recognized state. Can Palestinians bring claims for employment discrimination? The answer is yes, because the Equal Employment Opportunity Commission, to which the courts give deference in its interpretation of the Act, has defined national origin discrimination as “including but not limited to the denial of equal employment opportunity because of an individual or his ancestor’s place of origin or because an individual has the physical, cultural, or linguistic characteristics of a national origin group.”² Case law flushed this out to show that, for example, national origin can include those with a common heritage or shared ethnic characteristics. Hispanics, for example, can claim discrimination as a group on the basis of national origin, even though they do not necessarily originate from any particular Latin nation. This of course takes us back to the interesting question, what is an Arab-American?

National origin discrimination can be both intentional discrimination and what's known in law as disparate impact. A good example of disparate impact cases is the classic one in which New York City Police Department height requirements eliminated Puerto Ricans. Although the height requirements were not intended to screen out Puerto Ricans, that was their impact, and as they could not be proven necessary to the job, they were impermissible.

American Arabs are protected from both kinds of discrimination by various statutes. A Reconstruction era civil rights act, for example, addresses race discrimination. It was passed to protect newly emancipated slaves, and included the phrase, "All persons...shall have the same right...to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens."³ In 1987, the Supreme Court held in *St. Francis College v. al-Khazraji*⁴ that Arabs are a race for purposes of this statute. The court went back to books and publications around 1886, when the law was passed, and found that Arabs were frequently referred to as a race at the time.⁵ So Arab-Americans can now bring race discrimination cases under the statute. The Immigration Reform and Control Act of 1986⁶ placed on employers the duty to employ only people who are properly documented to work in the United States. Because of fears that the statute might result in national origin discrimination and citizenship discrimination – employers assuming, for example, that Hispanics are not legal immigrants - the statute

together. To the extent that the expansive new immigration powers that the bill grants to the Attorney General are subject to abuse, who do we think that is most likely to bear the brunt of the abuse? It won't be immigrants from Ireland. It won't be immigrants from El Salvador or Nicaragua. It won't even be immigrants from Haiti or Africa. It will be immigrants from Arab, Muslim and South Asian countries. In the wake of these terrible events our government has been given vast new powers and they may fall most heavily on a minority of our population who already feel particularly acutely the pain of this disaster."¹⁰

In 1942, Lord Atkin, a law lord in the British House of Lords, said, "In this country amid the clash of arms, the laws are not silent. They may be changed but they speak the same language in war as in peace. It has always been one of the pillars of freedom, one of the principles of liberty for which on recent authority we are now fighting, that the judges are no respecters of persons and stand between the subject and any attempted encroachment on his liberty by the executive alert to see that any coercive action is justified in the law."¹¹

A final word might be said about Arab-Americans and identity. As I deal with U.S. laws based on respect for pluralism, for civil liberties, and the protection and promotion of identity within the United States, the question arises, what does it mean to be an Arab-American with respect to the rest of the Arab world? And my feeling about it is that the test to me will be whether there will be some reciprocity in this. Can Arab-Americans share the American values of civil liberties and non-discrimination, as a part of our culture, with

the Arab world? As a union lawyer I am quite familiar with the concept of solidarity. When a community is embattled, there's a circling of the wagons,