



# GUARANTEE PROTECTION AND ENFORCEMENT OF CIVIL RIGHTS AND CIVIL LIBERTIES FOR ALL.

Policies and programs that ensure the enforcement of our nation’s civil rights and civil liberties laws to the fullest extent are vital for the South Asian community in order to prevent discrimination on the basis of immigration status, national origin, language proficiency, ethnicity, race, religion, gender, and sexual orientation. Yet, unfair treatment of South Asians continues to occur in a variety of contexts – including **racial and religious profiling while traveling; discrimination in the workplace, at places of business, and in schools; violation of privacy rights; and increased government surveillance.** In addition, many South Asians have been **systematically deprived of fundamental Constitutional rights.** This has been compounded by **xenophobia lingering from the post-9/11 backlash and the rise in anti-immigrant sentiment** in the United States. Strengthening existing civil rights and civil liberties laws and enacting broader policies will help ensure that South Asians are afforded the full and equal rights that all people deserve.

## Harassment and Violence

**Hate Crimes and Bias Incidents** South Asians have long endured bias-motivated rhetoric and violence ranging from harassment to physical assaults targeted on the basis of religious affiliation and/or national origin. The number of incidents has risen significantly, particularly since 9/11.<sup>i</sup> In fact, the Civil Rights Division of the Department of Justice (DOJ), the Federal Bureau of Investigation (FBI), and the U.S. Attorney’s Office have investigated over 750 incidents involving violence, threats, vandalism, and arson against Arabs, Muslims, Sikhs, and South Asians in the United States between 9/11 and March 2007.<sup>ii</sup> Members of other religious faiths, including Hindus, have also been targets of harassment since 9/11.<sup>iii</sup> Examples of such incidents include the assaults and hate crimes perpetrated by the Dotbusters against Indian immigrants in the 1980s in Jersey City, New Jersey; the bullying and harassment experienced by students for expressing religious beliefs; and the post-9/11 backlash against Muslims, Sikhs, South Asians and Arab Americans, as well as those perceived to be from those communities.

Beyond the 9/11 context, hate crimes and bias incidents also continue to occur. In 2006, according to the FBI, law enforcement agencies reported over 9,500 hate crimes victims nationwide, with over 50% percent targeted on the basis of their race; 18% percent targeted because of their religious beliefs; and 14% targeted because of ethnicity/national origin bias.<sup>iv</sup> Actual figures are likely to be even higher due to underreporting that often occurs within communities.

While federal and state policies aimed at combating hate crimes exist, they are often neither fully enforced nor adequately comprehensive. For example, current federal hate crimes legislation prohibits the use of force or threat of force against an individual based on the victim’s actual or perceived race, religion, color or national origin. Yet, such protection is limited to incidents where the victim attempts to engage in a federally-protected activity (such as voting, attending school, or employment), and does not cover crimes motivated by a victim’s actual or perceived gender expression or identity, sexual orientation, or disability. The *Church Arsons Prevention Act* and

its amendments authorize federal investigation and prosecution of incidents of vandalism against houses of worship; yet, many state and local law enforcement agencies fail to effectively investigate such crimes due to lack of jurisdiction, will, or resources. Finally, while the *Hate Crimes Statistics Act* mandates the collection of data on hate crimes, no specific classifications for crimes committed against South Asians exist.

## **Profiling and Discrimination**

### ***Profiling Based on Ethnicity, National Origin, Religion, and Perceived Immigration Status***

Many communities of color experience profiling, a law enforcement tactic that connects individuals to crimes based on certain characteristics unrelated to criminal conduct. Since 9/11, South Asians have reported even higher incidents of profiling. Airport security, immigration enforcement agencies, and state and local law enforcement have singled out South Asians for additional scrutiny and investigation based on characteristics related to national origin, ethnicity, religion, and perceived immigration status. For example, many South Asians have been prevented from flying because their names are identical or similar to those on “no-fly” lists maintained by the Transportation Security Administration (TSA). South Asians have also reported experiencing excessive screenings and questioning by U.S. Customs and Border Protection (CBP) agents when returning from trips abroad.<sup>v</sup> In addition, Sikh travelers who wear turbans and Muslim women who wear headscarves are frequently subjected to additional secondary screening by TSA officers simply based upon their attire.<sup>vi</sup>

Outside of the transportation context, South Asians have also faced profiling through immigration policies that have focused on nationals from certain countries. For example, certain male nationals from predominantly Muslim

and Arab countries, including Bangladesh and Pakistan, were required to register with the Department of Justice through a program known as “special registration” in the wake of 9/11.<sup>vii</sup> While the program was modified in 2004, registrants are still required to register upon entry and departure at ports of entry and face the possibility of being called in again by the Department of Homeland Security (DHS) in the future.

### ***Discrimination at the Workplace, at Places of Business, and in Schools***

While all Americans are constitutionally guaranteed freedom of religion and freedom from racial discrimination, the rights of many South Asians are frequently violated at work, at school (*see text box*), and in other public settings.

In fact, the Equal Employment Opportunity Commission (EEOC) reported a significant spike in complaints of workplace discrimination against individuals perceived to be Muslim, Sikh, or South Asian following 9/11.<sup>viii</sup> At its peak, over 500 complaints of workplace-related discrimination, including the denial of the right to pray at work, were reported in 2005 to civil rights organizations.<sup>ix</sup> Similarly, Sikhs have been denied jobs unless they remove articles of faith. In fact, a survey conducted among New York City Sikhs showed that one in ten respondents reported being refused employment or denied a job promotion because of their Sikh identity.<sup>x</sup>

While protections currently exist under Title II of the *Civil Rights Act*, which prohibits discrimination on the basis of race, color, religion, or national origin in private places of business, many South Asians, particularly, Muslims<sup>xi</sup> and Sikhs<sup>xii</sup>, also encounter

discrimination at restaurants, hotels, and retail stores. A report on post-9/11 civil rights issues affecting Arabs, Muslims, and South Asians in New York City found that 25% of respondents

### **DID YOU KNOW?**

South Asian children encounter bias-based bullying in the classroom as well as mistreatment by school teachers and administrators because of their ethnicity, national origin, or religion. A recent report revealed that over 75% of Sikh male students surveyed in New York City were teased or harassed on the basis of their Sikh identity. *Hatred in the Hallways: A Preliminary Report on Bias Against Sikh Students in New York City’s Public Schools.*, The Sikh Coalition (2007). Discrimination in the classroom also affects Muslim students; in 2006, over 170 civil rights complaints were reported involving Muslims in schools across the country. *The Status of Muslim Civil Rights in the United States*, Council on American-Islamic Relations (2007). Students of other faiths have also experienced bullying and harassment for various reasons, including religious practices around vegetarianism or worship of multiple deities. “School Badgering: Kid’s Play or Serious Stuff?” *Hinduism Today* (January/February 2001).

encountered public accommodations discrimination on the basis of ethnicity or religion.<sup>xiii</sup> For example, “no-hats” policies are often discriminatorily applied to Sikh and Muslim customers who wear turbans or head coverings mandated by their faith. In fact, one in twenty-five Sikhs surveyed in New York City reported being refused service by a private business because of their Sikh identity and wearing of a turban was the most common cause.<sup>xiv</sup> Moreover, South Asians also face discriminatory treatment in public buildings; for example, Muslims and Sikhs have been instructed to remove articles of faith in airports and courtrooms.

### **Due Process Violations**

***Constitutional Violations against Detainees and Individuals Facing Deportation*** All individuals in the United States are guaranteed certain fundamental rights under the U.S. Constitution, including the right to challenge one’s detention or imprisonment (also known as *habeas corpus*), the right to counsel, and the right to access evidence being used against them. Following 9/11, however, many of these rights disappeared when the FBI began to indefinitely detain individuals, many of whom were of South Asian descent.<sup>xv</sup> These individuals were effectively denied the right to be informed of the charges against them and to receive a neutral and speedy hearing. Hundreds were also subjected to secret immigration hearings that were closed to the public.<sup>xvi</sup> Furthermore, the government has employed tactics that have severely undermined the South Asian community’s trust in the government, such as the use of informants within religious centers, to develop cases involving alleged ties to terrorism.

More recently, laws have stripped the ability of individuals to avail themselves of *habeas corpus* protections. For example, the *REAL ID Act of 2005* severely limits judicial review in federal district court of final orders of deportation. In addition, the *Military Commissions Act of 2006* instituted many provisions that significantly curtail the rights – including denying the right to challenge detention, convicting individuals for actions that were not illegal when taken, and prohibiting full and fair hearings – of certain detainees held on terrorism charges.

### **KEY RECOMMENDATIONS**

#### ***Expand and enforce strong anti-bias and hate crimes legislation.***

- Congress should expand the authority of the Department of Justice to enforce federal hate crimes legislation for victims attacked while engaging in activities that are not “federally protected.”
- Congress and state legislatures should expand the bases for investigating and preventing hate crimes to include sexual orientation, gender, and disability.
- State legislatures should enact policies addressing hate crimes and bias incidents in jurisdictions where they currently do not exist.
- Congress and state legislatures should increase funding for civil rights agencies and community-based organizations to investigate hate crimes and use the justice system as a means to address them.
- Congress should amend the *Hate Crimes Statistics Act* to require the Department of Justice to disaggregate data collected on hate crimes based on national origin and religious affiliation.
- Federal and state civil rights agencies should increase outreach and materials on *Know Your Rights* resources in South Asian languages for those affected by hate crimes.

#### ***Eliminate profiling based on national origin, religion, ethnicity, and perceived immigration status.***

- Congress and state legislatures should enact and expand, where appropriate, policies to prohibit profiling.
- Congress and state legislatures should provide funding to law enforcement agencies to ensure compliance with and implementation of policies prohibiting profiling.
- Congress should ensure that individuals affected by profiling can bring legal challenges against law enforcement agencies engaging in such practices.
- Congress and state legislatures should provide funding to government civil rights agencies and community-based organizations to develop and implement programs that eliminate profiling.
- The Department of Justice should strengthen and enforce policy guidances that prohibit profiling by law enforcement agencies.
- The Department of Justice should collect racial and religious data for all law enforcement encounters and regularly report such findings to Congress.

- Federal and state law enforcement agencies should collect racial and religious data for all law enforcement encounters and regularly report such findings to Congress.
- Federal, state, and local law enforcement agencies should implement anti-discrimination and sensitivity trainings for personnel regarding South Asians.
- Federal and state civil rights agencies should increase outreach and materials on *Know Your Rights* resources in South Asian languages for those affected by profiling.

***Institute and enforce policies that prevent discrimination occurring at the workplace, places of business, and schools.***

- The Department of Justice, the Equal Employment Opportunity Commission, and state civil rights agencies should ensure proper enforcement of existing civil rights laws aimed at prohibiting discrimination.
- Congress and state legislatures should expand existing anti-discrimination policies to explicitly prohibit discrimination based on religious practices and attire, including wearing turbans, headscarves, and beards.
- Federal and state civil rights agencies should increase trainings with employers and school personnel on South Asian cultures and faiths.
- Federal and state civil rights agencies should increase outreach and materials on *Know Your Rights* resources in South Asian languages for those affected by discrimination.

***Restore constitutional rights to all detained individuals.***

- Congress should guarantee the right to a full and fair hearing for all individuals in detention.
- Congress should ensure that a detainee held for forty-eight hours without charge is automatically brought before an immigration or federal court to determine the detention's legality.
- Congress should cease the use of secret detention and secret evidence or else provide justification demonstrating the need for conducting all or part of the proceedings in secret.
- Prosecuting authorities should provide meaningful declassified summaries of any secret evidence used in cases involving individuals held in detention.
- Detention facilities should ensure that all detainees have access to counsel, family members, medical care, and the ability to freely practice their religious faiths.

- Congress should repeal laws that eliminate or weaken the right to *habeas corpus* and other constitutional guarantees.

***Engage community-based organizations serving the South Asian community on issues pertaining to civil rights and civil liberties.***

- Community-based organizations should press for maximum expansion of anti-bias and anti-discrimination policies at the local, state, and national levels.
- Community-based organizations should provide mental health support for those affected by bias incidents, hate crimes, and discrimination.
- Community-based organizations should report incidents of bias, hate crimes, and discrimination to law enforcement, as appropriate.
- Community-based organizations should conduct cultural sensitivity trainings on South Asian cultures and religions to government agencies that interact with and serve the South Asian community.

<sup>i</sup> In fact, there were 645 incidents of hate crimes perpetrated against Arabs, Muslims, Sikhs, and South Asians in the first week immediately following the terrorist attacks. *American Backlash: Terrorists Bring War Home in More Ways than One*, South Asian Americans Leading Together (2001).

<sup>ii</sup> *Enforcement and Outreach Following the September 11 Terrorist Attacks*, Department of Justice, Civil Rights Division (2007)

<sup>iii</sup> *Post-9/11 Hate Crimes Trends: Muslims, Sikhs, Hindus, and Jews*, The Pluralism Project at Harvard University (2005).

<sup>iv</sup> *2006 Hate Crimes Statistics*, (Table 1: Incidents, Offenses, Victims, and Known Offenders, by Bias Motivation), Federal Bureau of Investigation (2007).

<sup>v</sup> *Complaint for Injunctive Relief for Violation of the Freedom of Information Act*, *Asian Law Caucus and Electronic Frontier Foundation v. U.S. Department of Homeland Security* (N.D. Cal. 2008).

<sup>vi</sup> *The TSA Report Card: A Quarterly Review of Security Screenings of Sikh Travelers in U.S. Airports*, The Sikh Coalition (April 2008); *The Status of Muslim Civil Rights in the United States*, Council on American-Islamic Relations (2007).

<sup>vii</sup> *Special Registration: Discrimination and Xenophobia as Government Policy*, Asian American Legal Defense and Education Fund (2004).

<sup>viii</sup> *Muslim/Arab Employment Discrimination Charges since 9/11*, U.S. Equal Employment Opportunity Commission (2002).

<sup>ix</sup> *The Status of Muslim Civil Rights in the United States*, Council on American-Islamic Relations (2006).

<sup>x</sup> *Making Our Voices Heard: A Civil Rights Agenda for New York City Sikhs*, The Sikh Coalition (2008).

<sup>xi</sup> See *supra* note viii.

<sup>xii</sup> Gohil, N. and Sidhu, D., *The Sikh Turban: Post 9-11 Challenges to this Article of Faith*, Rutgers Journal of Law and Religion (Spring 2008).

<sup>xiii</sup> *Discrimination Against Arabs, Muslims and South Asians in New York City Since 9/11*, New York City Commission on Human Rights (2003).

<sup>xiv</sup> See *supra* note x.

<sup>xv</sup> *The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks*, Office of the Inspector General (2003)

<sup>xvi</sup> *Id.*