

Profiling and Immigration in the Post-9/11 World

As a predominantly foreign-born community, South Asians routinely interact with the immigration system and, in the post-9/11 era, immigration-related policies and practices have been implemented that are connected to national security. These policies include the National Security Entry-Exit Registration System (NSEERS) requiring certain men from Muslim-majority countries to register with the government; lengthy security background check delays in processing citizenship applications; and state and local law enforcement of immigration laws that can lead to profiling.

Examples of Current Policies

Agencies within the Department of Homeland Security, such as Immigration and Customs Enforcement (ICE) and Citizenship and Immigration Service (USCIS), have implemented many of the policies resulting in the profiling of South Asians in the immigration context.

Special Registration/NSEERS Initiated by the U.S. Department of Justice in June 2002, the special registration program under NSEERS, required all males over the age of the 16 who were nationals of 25 specified countries (except green card holders) to be fingerprinted, photographed, and questioned by the federal government at ports of entry and local immigration offices. As a clear example of profiling based on religion and national origin, with the exception of North Korea, the list was exclusively comprised of Arab- or Muslim-majority countries, including Bangladesh and Pakistan. Failure to comply led to fines, detention, and deportation. While portions the program were suspended in 2003, certain aspects remain, including registration at ports of entry and departure and penalties for those who did not comply. There has been no evidence to show that any counterterrorism information was obtained through this program.

Security Background Check Delays in Naturalization Applications All immigration applications submitted to the USCIS must undergo various security background checks – including clearance through the Interagency Border Inspection System (IBIS), FBI fingerprint databases, and the FBI National Name Check Program – before they are approved. By law, decisions on naturalization applications should be completed within 120 days after a naturalization interview. Yet, as a result of the FBI name check process in particular, many South Asian community members have had their applications severely delayed, sometimes for years. While USCIS and the FBI took promising measures in 2008 to improve the processing times for such applications, many South Asians continue to await immigration benefits for which they are eligible.

State and Local Enforcement of Immigration Laws State and local law enforcement agencies are increasingly being given the authority to enforce federal immigration laws and turn over those suspected of being undocumented to immigration authorities. Such authority stems from state, county, and local governments entering into “287(g)” agreements with the DHS or state and local legislators and administrative officials instituting their own policies. These agreements and policies have been implemented in various areas with significant South Asian populations, including the state of New Jersey and cities and counties in Georgia and Maryland. These programs lack adequate safeguards and training to prevent racial and religious profiling from occurring, even after DHS Secretary Napolitano revised the memoranda of agreement under the 287(g) program in 2009. In addition, they diminish trust between immigrant communities and police and divert resources away from investigating crimes towards enforcing civil immigration law,

Voices Against Profiling

“Times of crisis are the true test of a democracy. Our nation still bears the scars of an earlier crisis when our government went too far by detaining Japanese, German, and Italian Americans based on their race, ethnicity, or national origin. We should not repeat those same mistakes.”

- Letter from Senator Russell Feingold, Senator Edward Kennedy, and Congressman John Conyers (December 2002)

What is the community impact?

Special Registration/NSEERS While many individuals voluntarily complied, numerous others were completely unaware of the program as it was inadequately publicized by the government. As a result, community members who failed to register as well as those who complied but had minor immigration violations or were undocumented were detained and placed into deportation proceedings. Among the 84,000 men who registered with the government, 13,000 were placed in deportation proceedings. In addition, for those who did not register, many were charged with “willful” failure to register and were unable to gain green cards and remain in this country. The American Arab Anti-Discrimination Committee and Penn State Dickinson’s School of Law’s report *NSEERS: The Consequences of America’s Efforts to Secure Its Borders* includes stories of those affected by the program, including that of Abu Hasan Mahmud Pervez. A Bangladeshi citizen who is married to U.S. citizen and has a son, he was in the United States on a student visa. After complying the special registration, however, he was placed in deportation proceedings.

Security Background Check Delays in Naturalization Applications Having to wait years for naturalization applications has affected community members’ ability to be reunited with family members abroad and pursue career opportunities in the United States. For example, the waiting period for sponsoring a spouse for immigration purposes is significantly shorter for U.S. citizens than for green card holders; being unable to obtain citizenship slows down the sponsorship process tremendously. One naturalization applicant from Pakistan, as NYU’s Center for Human Rights and Global Justice’s report *Americans on Hold* shows, passed his citizenship interview but waited over two years to take the naturalization oath, while his wife and two children were left waiting in Pakistan.

State and Local Enforcement of Immigration Laws Given that there is no mechanism for state and local police to identify who is undocumented, the potential for community members to be stopped, detained, and turned over to immigration authorities simply based upon appearance is extremely high. In fact, an increasing number of South Asian community members in New Jersey have been pulled over following the implementation of the state Attorney General’s directive allowing police to carry out immigration laws. In addition, such programs undermine the very purpose that police are intended to serve – public safety. Rather than being a source of aid for victims and witnesses of crimes, police are seen as authorities to avoid for many immigrants within the South Asian community.

Solutions

- Congress and DHS must terminate the 287(g) program and allow federal authorities to retain the sole power to enforce immigration laws.
- DHS must terminate NSEERS/special registration program, including exit interviews and address change reporting requirements, and restore eligibility for immigration benefits for individuals who failed to register due to lack of knowledge.
- The U.S. Department of Justice must amend the *2003 Guidance Regarding the Use of Race by Federal Law Enforcement* banning profiling to include national origin and religion as bases for prohibiting profiling. USCIS and ICE must report on their compliance with the guidance.
- USCIS and FBI should ensure that all security background checks for delayed naturalization applications that remain are conducted quickly and transparently.
- State and local law enforcement agencies should promote community-oriented policing programs that foster relationships based on trust between immigrant communities and law enforcement.

Resources

- NYU Center for Human Rights and Global Justice, *Americans on Hold: Profiling, Citizenship, and the “War on Terror”, 2007*; <http://www.chrgj.org/docs/AOH/AmericansonHoldReport.pdf>
- American Arab Anti-Discrimination Committee and Penn State Dickinson School of Law, *NSEERS: The Consequences of America’s Efforts to Secure Its Borders*, March 2009, <http://www.adc.org/PDF/nseerspaper.pdf>
- Rights Working Group and the ACLU, *The Persistence of Racial and Ethnic Profiling in the United States*, August 2009, http://www.aclu.org/files/pdfs/humanrights/cerd_finalreport.pdf

South Asian Americans Leading Together is a national non-partisan organization that elevates the voices and perspectives of South Asian individuals and organizations to build a more just and inclusive society in the United States. For more information about SAALT, visit www.saalt.org.