Traveling While Brown

After September 11th, 2001, the U.S. government implemented a series of policies that targeted South Asians traveling within and entering the United States. These policies have led to many South Asian individuals being treated differently than other passengers, and being subjected to increased pat-downs and secondary security screenings; removal of articles of religious faith (such as turbans and head scarves); enhanced security screenings for travelers from South Asia while leaving airports abroad; and extensive searches and questioning at U.S. borders.

Examples of Current Policies

The Transportation Security Administration (TSA) and the Customs and Border Protection (CBP) agencies within the U.S. Department of Homeland Security have implemented many of the policies related to travelers since September 11th.

Border Searches and Questioning Under current policies, CBP uses a two-track system for screening persons entering the United States – one for American citizens and another for non-citizens. On either of these tracks, CBP agents may select a traveler for a secondary enhanced screening that can include an intrusive body and baggage search, extensive questioning, and detention.

TSA Domestic Airport Screening Airport screening procedures were altered soon after September 11th that resulted in the targeting of many Sikh and Muslim travelers. As a result, the TSA put into place an investigative mechanism in the months after September 11, 2001 to enable travelers to report incidents of bias during air travel. Following advocacy from Sikh, Muslim, South Asian and Arab American organizations, the TSA also issued directives that described methods for conducting airport screening in a manner that ensures safety and protects civil rights. A revised October 2007 "bulky clothing" screening procedure no longer mandates that turbans and hijabs be automatically searched for non-metallic threats; rather, it is left to an individual TSA officer's discretion if they believed the head covering was bulky. It also requires a TSA officer to provide the choice of a private turban screening or use of puffer machine, a self pat-down and test for chemical traces through a finger swab, or a pat down of the turban from a TSA officer.

> ### Voices Against Profiling
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> "*Routinely pulling passengers out of line and subjecting them to searches need not, and should not, be done on the basis of race. Establishing such a policy would be counterproductive to our efforts to build a solid basis for aviation security…*"
>
> - Norman Y. Mineta
>
>   Former Secretary of Transportation (After the September 11th attacks)

TSA 14-Country Directive Another TSA policy explicitly affecting South Asians came in response to the Christmas Day attempted terror attack. In January 2010, the TSA began requiring passengers travelling to the United States from or through Pakistan (and 13 other primarily Muslim-majority countries) to receive a full body pat-down and search of all carry-on items. The new standards categorically target individuals for additional scrutiny based upon ethnicity, religion, and country of origin. Moreover, the measures promote existing misperceptions about these communities as threats to security and harm the U.S. government's reputation, both domestically and abroad, towards ensuring civil rights and equality.

What is the community impact?

Border Searches and Questioning South Asian travelers returning to or entering the United States for the first time have been targeted for detailed interrogation about political views, family, friends, financial transactions and religious beliefs. Their cell phones, computers, personal papers, business cards and books are searched and copied with virtually no evidence that an individual poses a threat; and they are often subject to prolonged detention and referral to immigration authorities. The Asian Law Caucus' report *Returning Home: How U.S. Government Practices Undermine Civil Rights at Our Nation's Doorstep* provides a number of examples of South Asians affected by the border interrogations. One such example is that of Pakistani-born Amir Khan who has been interrogated by CBP agents for nearly 20 hours in trips abroad after September 11th, about his religion, about his hatred of the U.S. government and whether he had visited any mosques.

TSA Domestic Airport Screening Although the current TSA screening policy no longer lists turbans and hijabs as automatically requiring additional screening, many individual TSA officers tell travelers that such searches are mandatory. The Sikh Coalition has also found that among Sikh travelers surveyed that there is a 100% secondary screening rate for those wearing turbans at certain airports. In addition, many community members are not informed by TSA officers of their rights during airport screening procedures despite directives that allow travelers to choose among puffer machines and self-pat-downs for secondary screening.

TSA 14-Country Directive Given that this policy explicitly singles out passport holders of certain countries, including Pakistan, it is a clear example of profiling based on nationality. In addition, it will more likely affect individuals who frequently travel to and from the listed countries, regardless of their citizenship status, including those of South Asian descent. Individuals who are subjected to this policy include a family of green card holders who are Pakistani citizens returning to the U.S. from travel abroad; Sikh-American U.S. citizens returning from Pakistan to visit religious sites; Indian Muslims returning from Mecca; and many other South Asian travelers. Rather than focusing resources towards conducting individualized threat assessments, this policy diverts away valuable national security resources through blanket profiling.

Solutions

- Congress must pass the *End Racial Profiling Act* with provisions that explicitly prohibit racial and religious profiling at the borders and in transit as well as the *Travelers Privacy Protection Act* that restores privacy protections for those entering at the border.

- The U.S. Department of Justice must amend the *2003 Guidance Regarding the Use of Race by Federal Law Enforcement* to include national origin and religion as bases for prohibiting profiling, and must remove the national security exemption within the guidance. The TSA and CBP should report on their compliance with the 2003 Guidance.

- The U.S. Department of Homeland Security must audit the use and maintenance of government watch lists that can serve as the basis for interrogation at borders and revise the mechanism for processing travelers' complaints.

- The U.S. Department of Homeland Security must remove exceptions to prohibitions based on national security and border protection within its guidance banning profiling and raise the standard for CBP questioning to 'probable cause.'

- The TSA and CBP must routinely and uniformly train officers and agents on civil rights protections afforded to travelers in partnership with organizations serving affected community members.

- The TSA and CBP must provide quarterly reports on the status of their investigations into complaints, and should reassess their complaint mechanisms.

- The TSA and CBP must maintain communication with community-based organizations to better understand the community impact of their protocols and directives and provide opportunities to provide input on proposed policies.

Resources

- Asian Law Caucus and the Stanford Law School Immigrants Rights Clinic, *Returning Home: How U.S. Government Practices Undermine Civil Rights at Our Nation's Doorstep*, August 2009; http://www.asianlawcaucus.org/wp-content/uploads/2009/04/Returning%20Home.pdf.

- Muslim Advocates, *Unreasonable Intrusions*, April 2009; http://www.muslimadvocates.org/documents/Unreasonable_Intrusions_2009.pdf.

- Rights Working Group and the American Civil Liberties Union, *The Persistence of Racial and Ethnic Profiling in the United States*, August 2009; http://www.aclu.org/files/pdfs/humanrights/cerd_finalreport.pdf

- The Sikh Coalition, *Quarterly TSA Report Cards*; http://www.sikhcoalition.org