6930 Carroll Avenue, Suite 506
Takoma Park, MD 20912

Phone: 301.270.1855
Fax: 301.270.1882
saalt@saalt.org
www.saalt.org

Post-9/11 Civil Rights & Civil Liberties Priorities for the South Asian Community

RECOMMENDATIONS FOR THE OBAMA-BIDEN TRANSITION TEAM

DECEMBER 18, 2008

As a national civil rights and immigrant rights organization dedicated to fostering the full and equal civic and political participation of South Asians in the United States, **South Asian Americans Leading Together** (SAALT) appreciates the opportunity to provide input to the Obama-Biden Transition Team on post-9/11 civil rights and civil liberties issues affecting the South Asian community.

SAALT is the coordinating entity of the **National Coalition of South Asian Organizations**, a diverse network of 35 community-based organizations around the country that provide services to, organize, and advocate on behalf of South Asian communities. In 2008, the National Coalition produced the first policy platform from the perspective of South Asian communities (***A National Action Agenda: Policy Recommendations to Empower South Asian Communities in the United States***[1]), which contains detailed analysis and proposed solutions to address a range of concerns facing the South Asian community.

Overview of Civil Rights and Civil Liberties Issues Affecting South Asians in the United States

With over 2.5 million individuals in the United States, South Asians are a part of the diversity of American communities around the country. 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. This has been compounded by xenophobia lingering from the post-9/11 backlash and the rise in anti-immigrant sentiment in the United States. 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.

As the Presidential Transition Team endeavors to obtain community input in developing policies for the next Administration, we refer you to various sections[2] of *A National Action Agenda*, which sets forth analysis and recommendations on a broad range of civil rights and civil liberties issues affecting the South Asian community, including:

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[1] Available at http://www.saalt.org/attachments/1/National%20Action%20Agenda.pdf.

[2] Civil rights and civil liberties section available at http://www.saalt.org/attachments/1/Civil%20Rights%20and%20Civil%20Liberties.pdf. Voting rights issues available at http://www.saalt.org/attachments/1/Civic%20and%20Political%20Participation.pdf. Issues affecting the LGBTIQ community available at http://www.saalt.org/development/attachments/1/LGBTIQ%20Rights.pdf.

- Hate crimes and bias incidents
- Profiling and discrimination
- Due process violations in criminal and immigration proceedings
- Voting rights
- Civil rights affecting lesbian, gay, bisexual, transgender, intersex, and queer (LGBTIQ) individuals
- Access to services and benefits regardless of immigration status or language ability

In addition to the comprehensive recommendations offered in *A National Action Agenda*, we would like highlight four of the community's top priorities regarding **post-9/11 civil rights and civil liberties issues**. Specific issues affecting South Asians include bias, hate crimes, and discrimination; immigration-related enforcement and national security initiatives; profiling based on ethnicity, national origin, and religion; and the need for structural reforms within government to address post-9/11 concerns affecting the South Asian community.

Four Post-9/11 Civil Rights and Civil Liberties Priorities for the South Asian Community

Beyond the broader policy recommendations outlined in *A National Action Agenda*, below are four specific post-9/11 civil rights and civil liberties issues that we believe the new Administration can effectively address through administrative avenues and influence over legislative priorities in 2009.

Vigorously Enforce Laws that Address Bias, Hate Crimes, and Discrimination

Bias Incidents and Hate Crimes

While 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 rose significantly following 9/11. 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. Members of other religious faiths, including Hindus, have also been targets of harassment since 9/11.

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). Federal policies authorize 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 on the federal level, no specific classifications for crimes committed against South Asians (including anti-Hindu and anti-Sikh incidents) exist.

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, and in other public settings. In fact, the Equal Employment Opportunity Commission (EEOC) has reported a significant spike in complaints of workplace discrimination against individuals perceived to be Muslim, Sikh, or South Asian following 9/11. 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 the Council on American-Islamic Relations. Similarly, Sikhs have been denied jobs unless they remove articles of faith. In fact, a survey conducted among New York City Sikhs by the Sikh Coalition showed that one in ten respondents reported being refused employment or denied a job promotion because of their religious identity. In addition, South Asian children have encountered bias-based bullying in the classroom as well as mistreatment by school teachers and administrators because of their ethnicity, national, origin, or religion since 9/11.

Many South Asians, particularly, Muslims and Sikhs, also encounter discrimination at restaurants, hotels, and retail stores. A report by the New York City Commission on Human Rights on post-9/11 civil rights issues affecting Arabs, Muslims, and South Asians in New York City found that 25% of respondents encountered public accommodations discrimination on the basis of ethnicity or religion. 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 the New York City reported to the Sikh Coalition being refused service by a private business because of their Sikh identity and wearing of a turban was the most common cause. 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.

We ask the Administration to support and implement policies that would:

- Implement the *Hate Crimes Statistics Act* to designate data collection categories related to bias incidents on the basis of religious identity and affiliation (*Department of Justice*)
- Amend regulations implementing the *Hate Crimes Statistics Act* to mandate collection on the race, religion, national origin/ethnicity, gender, and age of both the victim and the suspected offender (*Department of Justice*)
- Ensure vigorous enforcement of civil rights laws related to places of public accommodation, schools, and workplaces (*Department of Justice; Equal Employment Opportunity Commission*)

- Support the passage of the *Local Law Enforcement Hate Crimes Prevention Act* (LLEHCPA) which would give local law enforcement officials important tools to combat bias-motivated crimes and facilitate federal investigations and prosecutions when local authorities are unwilling or unable (*Congress*)
- Support legislative efforts to expand existing federal anti-discrimination policies to explicitly prohibit discrimination based on religious practices and attire, including wearing turbans, headscarves, and beards (*Congress*)

Ban Profiling Based on Ethnicity, National Origin, Religion, and Perceived Immigration Status by Government Agencies and Law Enforcement

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. 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.

Existing guidance related to racial profiling does not go far enough. In fact, the 2003 DOJ Guidance Banning Racial Profiling by Federal Law Enforcement bans racial profiling in federal law enforcement actions but includes an exemption in cases related to national security and border integrity. Furthermore, the Guidance does not ban profiling based on religious identity or affiliation, ethnicity, or perceived immigration status. In addition, as of December 2008, the Federal Bureau of Investigation (FBI) has revised and adopted Investigative Guidelines and implementing Domestic Investigative Operational Guidelines which empower the FBI to collect data and initiate threat assessments about individuals with little or no factual predicate.

We ask the Administration to support and implement policies that would:

- Supportive the passage of the *End Racial Profiling Act* (*Congress*)
- Ban completely the use of profiling based on religion, race, ethnicity, national origin and immigration status by government agencies and law enforcement via Executive Order and implementing guidance (*Department of Justice; White House*)
- Revise the 2003 Guidance in order to close the exemption related to national security (*Department of Justice*)
- Collect data on stops, encounters, and investigations that use profiling measures related to race, ethnicity, national origin, or religious affiliation (*All agencies*)

- Assess the effectiveness and breadth of "watch lists" used by government agencies
- Ensure that CBP agents meet threshold requirements of reasonable suspicion to search and probable cause to seize electronic devices or data during border interrogations (*Department of Homeland Security – Customs and Border Protection*)

Immigration-Related Enforcement and National Security Initiatives

In the wake of September 11th, national security initiatives and immigration laws have been used to expand the power of the government to detain and investigate individuals targeted for terrorism-related investigations. Many of these policies undertaken through the Department of Justice (DOJ) and the Department of Homeland Security (DHS) can be nullified or terminated by the new Administration. In addition, an opportunity exists for the new Administration to investigate the extent of violations of civil rights and due process protections of immigrants in the wake of September 11th by governmental agencies and officials in order to ensure that such breaches do not recur in the future.

Detention and Investigation of "Special Interest Detainees"

Following 9/11, the Department of Justice apprehended, questioned, and detained 762 non-citizens of Arab, Muslim, and South Asian descent based on little or no evidence that they posed a threat to national security. These individuals, known as "special interest" detainees, suffered to prolonged detention without charge; interference with the right to counsel and closed immigration hearings; revocation of bond; and physical and verbal abuse while in confinement. In 2003, the DOJ Inspector General issued a report heavily criticizing the treatment of these detainees, none of whom were charged with involvement in the 9/11 attacks.

Special Registration under NSEERS

In addition, in late 2002, DOJ instituted the special registration program under the National Security Entry/Exit Registration System (NSEERS), which required male non-citizens aged 16 years and older on non-immigrant visas from exclusively majority-Muslim countries (with the exception of North Korea), including Bangladesh and Pakistan, to register with immigration authorities. Consequences for failing to register included arrest, detention, fines, and/or removal from the United States. When special registration was completed, 14,000 of the nearly 84,000 men who complied with the program were placed in deportation proceedings for lacking immigration status. In addition, thousands of individuals who failed to registered also faced penalties

While portions of the program were suspended in 2003, its impact remains for those who were placed in removal/deportation proceedings or failed to register. In addition, a discretionary call-in component is still in place under which DHS may notify individual non-immigrants subject to special registration to appear for additional and continuing registration interviews. This

initiative yielded virtually no information of significance to ensure national security but took a devastating toll upon community members and families.

We ask the Administration to support and implement policies that would:

- Rescind NSEERS regulations in order to terminate the program entirely, and ensure that those who failed to register are not denied the ability to seek immigration status or relief from removal if otherwise eligible (*Department of Homeland Security – Immigration and Customs Enforcement)*
- Prohibit the future use of policies such as special registration that target immigrants on the basis of national origin, religion, ethnicity and similar bases (*Department of Homeland Security*)
- Nullify the September 21, 2001 Creppy memo that put into effect the conditions for investigating and detaining "special interest" detainees (*Department of Justice – Executive Office for Immigration Review*)
- Ensure prompt filing of charges and bond hearings for individuals detained as part of immigration proceedings (*Department of Justice – Executive Office for Immigration Review; Department of Homeland Security – Immigration and Customs Enforcement*)
- Repeal the "automatic stay" regulation which interferes with the ability of detainees to obtain bond (*Department of Justice – Executive Office for Immigration Review*)
- Establish a presumption that immigration proceedings are open to the public (*Department of Justice – Executive Office for Immigration Review*)

Structural Recommendations Related to Agencies Implementing Post 9/11 Initiatives

It is critical that agencies implementing post-9/11 policies or working with our communities formalize many of the *ad hoc* outreach efforts that have been put into place since September 11th, 2001. In addition, it is critical that federal agencies investigate and understand the civil rights implications of post-9/11 policies.

Specific recommendations include:

- Formalizing the Initiative to Combat Post-9/11 Discriminatory Backlash within the Civil Rights Division of the U.S. Department of Justice by designating a Special Counsel for Post-9/11 Discrimination and a Special Counsel for Religious Discrimination
- Enhancing the authority provided to the Officer for Civil Rights and Civil Liberties within the Department of Homeland Security
- Ensure that an interagency working group is created and coordinated by the White House that is specifically focused on understanding the impact of policies on our communities, and conducting outreach
- Conducting an internal audit and investigation within federal agencies that implemented initiatives which have had harmful consequences on our communities, in order to

understand the extent of civil rights violations and safeguard against implementing policies in the future that will have similar impact

We look forward to a continuing dialogue with members of the Transition Team and the next Administration on civil rights and civil liberties issues affecting the South Asian community in the United States.

For Additional Information:

Deepa Iyer, Executive Director (301-270-1855; deepa@saalt.org)
Priya Murthy, Policy Director (301-270-1855; priya@saalt.org)