



# A NATIONAL ACTION AGENDA

Policy Recommendations to Empower South Asian Communities in the United States (2008)

*A National Action Agenda: Policy Recommendations to Empower South Asian Communities in the United States* sets forth issues affecting the South Asian community and provides recommendations for policymakers, community-based organizations, stakeholders, allies, media, and the general public. *A National Action Agenda* is a product of the National Coalition of South Asian Organizations, a network of organizations across the country that are rooted in social justice values and that empower South Asian communities through social service provision, organizing, advocacy and community education.

*For more information about A National Action Agenda or the National Coalition of South Asian Organizations, please contact South Asian Americans Leading Together (SAALT) at [saalt@saalt.org](mailto:saalt@saalt.org), or (301) 270-1855, or visit [www.saalt.org](http://www.saalt.org).*





# ENDORsing ORGANIZATIONS

**Adhikaar for Human Rights and Social Justice**  
(New York, NY)  
Phone: 718.937.1117  
Email: [adhikaar@gmail.com](mailto:adhikaar@gmail.com)  
[www.adhikaar.org](http://www.adhikaar.org)

Adhikaar, meaning rights in Nepali, is a New York based women-led non-profit organization seeking to promote human rights and social justice in Nepal and Nepali Diaspora.

**Apna Ghar** (Chicago, IL)  
Phone: 773.334.0173  
Email: [info@apnaghar.org](mailto:info@apnaghar.org)  
[www.apnaghar.org](http://www.apnaghar.org)

Apna Ghar provides comprehensive multilingual, multicultural social services and shelter to South Asian women and their children seeking lives free from violence.

**Asian (Women's) Self-Help Association, Inc. (ASHA)** (Washington, DC)  
Phone: 202.207.1248  
Email: [coordinator@ashaforwomen.org](mailto:coordinator@ashaforwomen.org)  
[www.ashaforwomen.org](http://www.ashaforwomen.org)

ASHA, founded in 1989, an organization based in the Washington, DC area, is dedicated to providing culturally specific, multi-lingual support and referral services to women of South Asian descent.

**Chaya** (Seattle, WA)  
Phone: 206.568.7576  
Email: [chaya@chayaseattle.org](mailto:chaya@chayaseattle.org)  
[www.chayaseattle.org](http://www.chayaseattle.org)

Chaya supports South Asian survivors and families impacted by domestic violence and abuse and engages communities to change societal conditions that enable oppression, especially violence against women.

**Chhaya CDC** (New York, NY)  
Phone: 718.478.3848  
Email: [info@chhayacdc.org](mailto:info@chhayacdc.org)  
[www.chhayacdc.org](http://www.chhayacdc.org)

Chhaya's mission is to address and advocate for the housing and community development needs of South Asian communities in New York City.

**Council of Peoples Organization (COPO)**  
(New York, NY)  
Phone: 718.434.3266  
Email: [copousa@copousa.org](mailto:copousa@copousa.org)  
[www.copousa.org](http://www.copousa.org)

Copo came into being in the aftermath of the 9/11 tragedy and assists low-income South Asians to thrive and develop to their full capacity.

**Counselors Helping (South) Asian/Indians, Inc. (CHAI)** (Maryland/Washington, DC)  
Phone: 443.615.1355  
Email: [raziakosi@chaicounselors.org](mailto:raziakosi@chaicounselors.org)  
[www.chaicounselors.org](http://www.chaicounselors.org)

CHAI provides education, advocacy, counseling and referral services to the South Asian community about mental health issues in the Baltimore/Washington DC metropolitan area.

**Daya, Inc.** (Houston, TX)  
Phone: 713.981.7645  
Email: [manager\\_daya@dayahouston.org](mailto:manager_daya@dayahouston.org)  
[www.dayahouston.org](http://www.dayahouston.org)

Daya aims to promote healthy and harmonious family relationships in the South-Asian community by increasing awareness and providing peer support, information and referrals to women and children.

**Desis Rising Up and Moving (DRUM)** (New York, NY)  
Phone: 718.205.3036  
Email: [info@drumnyc.org](mailto:info@drumnyc.org)  
[www.drumnation.org](http://www.drumnation.org)

DRUM organizes low-income South Asian immigrants, families facing deportation, and detainees of color to end detention, deportation, and policing of immigrant communities.

**Maitri** (San Jose, CA)  
Phone: 408.436.8393  
Email: [maitri@maitri.org](mailto:maitri@maitri.org)  
[www.maitri.org](http://www.maitri.org)

Maitri is a free, confidential, referral nonprofit organization based in the Bay Area that primarily helps families from South Asia facing domestic violence, emotional abuse, cultural alienation, human trafficking or family conflict.

**Manavi** (New Jersey)  
Phone: 732.435.1414  
Email: [manavi@manavi.org](mailto:manavi@manavi.org)  
[www.manavi.org](http://www.manavi.org)

Manavi's goal is to increase awareness of women's rights in society and encourage social change to end all violence against women.

**Michigan Asian Indian Family Services (MAIFS)** (Michigan)  
Phone: 248.477.4985, 888.664.8624  
Email: [info@maifs.org](mailto:info@maifs.org)  
[www.maifs.org](http://www.maifs.org)

The mission of MAIFS is to actively organize, coordinate and support community efforts to enhance the stability and well being of individuals and families of South Asian Indian origin.

**Narika** (San Francisco Bay Area, CA)  
Phone: 510.444.6068  
Email: [narika@narika.org](mailto:narika@narika.org)  
[www.narika.org](http://www.narika.org)

Narika's mission is to promote the empowerment of women in the South Asian community to confront and overcome the cycles of domestic violence and exploitation.

**Raksha, Inc.** (Atlanta, GA)  
Phone: 404.876.0670  
Email: [raksha@raksha.org](mailto:raksha@raksha.org)  
[www.raksha.org](http://www.raksha.org)

Raksha is a nonprofit support and referral network that promotes a stronger and healthier South Asian community through free and confidential direct services, education and advocacy.

**Sakhi for South Asian Women** (New York, NY)

Phone: 212.714.9153

Email: [contactus@sakhi.org](mailto:contactus@sakhi.org)

[www.sakhi.org](http://www.sakhi.org)

Sakhi for South Asian Women is a community-based organization in the New York metropolitan area committed to ending violence against women of South Asian origin.

**Satrang** (Los Angeles, CA)

Phone: 888.370.9569

Email: [contact@satrang.org](mailto:contact@satrang.org)

[www.satrang.org](http://www.satrang.org)

Satrang is a social, political, cultural and support organization providing a safe space to empower South Asian LGBTIQs (Lesbian, Gay, Bisexual, Transgenders, Intersex, Questioning) in Southern California.

**Sikh American Legal Defense and Education Fund (SALDEF)** (National)

Phone: 202.393.2700

Email: [info@saldef.org](mailto:info@saldef.org)

[www.saldef.org](http://www.saldef.org)

SALDEF's mission is to protect the civil rights of Sikh Americans and to ensure a fostering environment in the United States for future generations by empowering Sikh Americans through legal assistance, educational outreach, legislative advocacy, and media relations.

**The Sikh Coalition** (New York, NY)

Phone: 212. 655.3095

Email: [info@sikhcoalition.org](mailto:info@sikhcoalition.org)

[www.sikhcoalition.org](http://www.sikhcoalition.org)

The Sikh Coalition defends civil rights and civil liberties in the United States, educates the broader community about Sikhs, promotes local community empowerment, and fosters civic engagement.

**Sneha, Inc.** (West Hartford, CT)

Phone: 860.658.4615, 800.58.SNEHA

Email: [sneha@sneha.org](mailto:sneha@sneha.org)

[www.sneha.org](http://www.sneha.org)

Sneha is a support group for women of South Asian origin that works to empower women, particularly survivors or domestic violence.

**South Asian American Policy Research Institute (SAAPRI)** (Chicago, IL)

Phone: 773.743.1109

Email: [saapri@saapri.org](mailto:saapri@saapri.org)

[www.saapri.org](http://www.saapri.org)

SAAPRI is a non-profit research institute to facilitate, through the use of cutting edge research and education, the formulation of equitable and socially responsible policy affecting South Asian Americans.

**South Asian Americans Leading Together (SAALT)** (National)

Phone: 301.270.1855

Email: [saalt@saalt.org](mailto:saalt@saalt.org)

[www.saalt.org](http://www.saalt.org)

SAALT is a national, non-profit organization dedicated to fostering an environment in which all South Asians in America can participate fully in civic and political life, and have influence over policies that affect them.

**South Asian Mental Health Awareness in Jersey (SAMHAJ)** (New Jersey)

Phone: 732.940.0991

Email: [samhaj@naminj.org](mailto:samhaj@naminj.org)

[www.naminj/programs/samhaj/samhaj.html](http://www.naminj/programs/samhaj/samhaj.html)

SAMHAJ is an effort to help South Asians in New Jersey understand that mental illness is a biologically-based, treatable illness.

**South Asian Health Initiative (SAHI)** (New York, NY)  
Phone: 212.263.8246  
Email: sahi@mednyu.edu  
[www.med.nyu.edu/sahi/](http://www.med.nyu.edu/sahi/)

SAHI's mission is to facilitate the delivery of linguistically, culturally, and epidemiologically sensitive healthcare services to South Asian communities.

**South Asian Network (SAN)** (Los Angeles, CA)  
Phone: 562.403.0488  
Email: [saninfo@southasianetwork.org](mailto:saninfo@southasianetwork.org)  
[www.southasianetwork.org](http://www.southasianetwork.org)

SAN was founded in 1990 to provide an open forum where individuals of South Asian origin could gather to discuss social, economic, and political issues, with the goal of raising awareness, active involvement and advocacy among community members leading to an informed, empowered community.

**South Asian Youth Action (SAYA!)** (New York, NY)  
Phone: 718.651.3484  
Email: [saya@saya.org](mailto:saya@saya.org)  
[www.saya.org](http://www.saya.org)

South Asian Youth Action (SAYA!) is the first and only organization of its kind in the United States working to develop the skills, talents, and leadership potential of South Asian youth living in New York City.

**South Asians Stepping in Solidarity (SASS Boston)** (Boston, MA)  
Email: [sassbos@gmail.com](mailto:sassbos@gmail.com)

SASS Boston is a group whose mission is to build a visible and vibrant South Asian presence by strengthening and promoting progressive action by members of the South Asian diasporic community.

**Trikone Northwest** (Seattle, WA)  
Phone: 425.985.4376  
Email: [tnw@trikone-nw.org](mailto:tnw@trikone-nw.org)  
[www.trikonenw.org](http://www.trikonenw.org)

Trikone Northwest is a vibrant, diverse group of individuals creating a social, supportive, educational, and political space for differently oriented South Asians and their family, friends and community.

**UNITED SIKHS** (National)  
Phone: 347.561.3348, 888.243.1690  
Email: [unitedsikhs-usa@unitedsikhs.org](mailto:unitedsikhs-usa@unitedsikhs.org)  
[www.unitedsikhs.org](http://www.unitedsikhs.org)

UNITED SIKHS is a U.N. affiliated, international non-profit, non-governmental, humanitarian relief, human development and advocacy organization, aimed at empowering those in need, especially disadvantaged and minority communities across the world.



# ABOUT A NATIONAL ACTION AGENDA

*A National Action Agenda: Policy Recommendations to Empower South Asian Communities in the United States* (2008) sets forth issues affecting the South Asian community and provides recommendations for policymakers, community-based organizations, stakeholders, allies, media, and the general public. *A National Action Agenda* is a product of the National Coalition of South Asian Organizations (NCSO), a network of groups around the country that provide services to, organize, and advocate on behalf of South Asian communities, and individual experts and advocates in various fields.

South Asian communities are part of the fabric of American history and society. While many South Asians have achieved a level of success in the United States, our organizations are cognizant of the range of significant challenges and needs that face segments of the South Asian community. We believe that these challenges can be addressed through effective social service provision, organizing and advocacy, as well as increased resources, information sharing and collaborative efforts. By coming together as a national coalition, our organizations – which have deep and articulated commitments to promoting social justice principles, amplifying local voices and experiences, and building alliances – will engage in efforts to strengthen our work and to influence positive policy change that will empower South Asians and all individuals in the United States.

South Asians navigate the intersections of gender, race, national origin, religious affiliation, class, immigration status, and sexual orientation, often on a daily basis. For example, South Asians have faced discrimination and marginalization ranging from immigration restrictions that began in the early twentieth century and continue to today; the impact of sexism, homophobia, and class-based bias; the struggle to gain equitable treatment in the workplace and at schools; the challenges faced by elderly and young South Asians; and the effects of targeting and profiling in the wake of September 11th, to name a few. Effective policies and practices that promote racial and economic justice, gender equity, and equal opportunity are critical to all communities in the United States.

*A National Action Agenda* comes about as a result of our recognition that issues affecting South Asian communities must be included in policy-level discussions in order to promote social justice.

For decades, community-based and faith-based organizations, advocates, and individuals in the South Asian community have expressed a broad spectrum of concerns affecting the South Asian community. Beginning in 2004, South Asian Americans Leading Together (SAALT) convened a series of local dialogues and forums in various parts of the country that provided an opportunity for these conversations to continue. In 2007, SAALT coordinated a national South Asian Summit, where over 150 individuals representing over 30 community-based organizations acknowledged the need for a unified policy platform that set forth issues and recommendations for social change. SAALT subsequently facilitated a collaborative process that solicited and incorporated feedback from 23 organizations and 15 individual experts in order to develop *A National Action Agenda*.

The National Coalition of South Asian Organizations (NCSO) presents the *National Action Agenda* in order to (1) raise awareness about the needs of South Asians in the United States; (2) insert issues affecting South Asians into local, state, and national dialogues; (3) guide future policy recommendations; (4) increase public understanding of the depth and scope of our community's needs; and (5) enhance ongoing and future advocacy, organizing, and educational efforts.

While *A National Action Agenda* is not intended to be the only or definitive source of information about these issues, we offer it with the hope that it will be a meaningful contribution to the discourse, actions, and efforts of social justice movements within the United States and globally. We invite additional South Asian organizations and individuals to join us in supporting *A National Action Agenda* by completing the endorsement form or contacting SAALT at [saalt@saalt.org](mailto:saalt@saalt.org).

## **ABOUT THE SOUTH ASIAN COMMUNITY**

With a population of more than 2.7 million people, according to the American Community Survey conducted by the U.S. Census Bureau in 2006, South Asians comprised the fastest growing Asian American community in the United States between 1990 and 2000. It is essential for policymakers, service providers, and others working with the community to understand the tremendous cultural, linguistic, and economic diversity among South Asians. The South Asian community in the United States comprises of individuals with ancestry from Bangladesh, Bhutan, India, Nepal, Pakistan, Sri Lanka, and the Maldives. The community also includes members of the South Asian diaspora – past generations of South Asians who originally settled in many areas around the world, including the Caribbean (Guyana, Jamaica, Suriname, and Trinidad & Tobago), Africa (Nigeria, South Africa, Uganda), Canada, Europe, the Middle East, and other parts of Asia and the Pacific Islands (Fiji, Indonesia, Malaysia, and Singapore).

The South Asian community is far from homogeneous: South Asians are diverse in terms of national origin, languages spoken, economic status, and religious affiliation. The most common languages other than English spoken by South Asians include Bengali, Gujarati, Hindi, Punjabi, and Urdu. South Asians practice a variety of faiths, the most common including Buddhism, Christianity, Hinduism, Islam, Jainism, Sikhism, and Zoroastrianism. The metropolitan areas with the largest South Asian populations include New York/New Jersey, San Francisco Bay Area, Chicago, Los Angeles, and the Washington DC metropolitan area (including suburban Maryland and Virginia). Populations of South Asians are also emerging in the Houston, Atlanta, and Seattle metropolitan areas.

South Asians are also diverse in terms immigration and socioeconomic status. The majority of South Asians who live in the United States are foreign-born, with over 75% of the population born outside of the United States. South Asians possess a range of immigration statuses including undocumented immigrants; student and worker visa holders and their dependents; legal permanent residents; and naturalized citizens. With respect to employment, many South Asians have careers in the technology and medical fields; many within the community are also employed in lower-wage jobs as cashiers, taxiworkers, and restaurant workers.



# TABLE OF CONTENTS

Endorsing Organizations	iii
About <i>A National Action Agenda</i>	vii
Summary of Issues and Recommendations	1
<i>A National Action Agenda</i> In Use	4
Civic and Political Participation	5
Civil Rights and Civil Liberties	9
Data Collection	14
Economic Justice	17
Gender Equity	24
Health Care	30
Immigrant Rights	35
LGBTIQ Rights	44
Youth Empowerment	49
Acknowledgements	53



# SUMMARY OF ISSUES AND RECOMMENDATIONS

A National Action Agenda includes the following nine components with detailed recommendations:

## **Civic and Political Participation:** *Ensure full and equal participation for all in the civic and political process*

- Promote naturalization and voting among South Asians
- Preserve voting rights of South Asians by eliminating voter intimidation and suppression
- Ensure limited English proficient citizens' access to the right to vote
- Ensure that votes by all eligible voters count
- Eliminate xenophobic comments against South Asians and other communities of color in political discourse
- Increase political participation and civic engagement of South Asian community members

## **Civil Rights and Civil Liberties:** *Guarantee enforcement of strong civil rights and civil liberties laws for all*

- Expand and enforce strong anti-bias and hate crimes legislation
- Eliminate profiling based on national origin, religion, ethnicity, and perceived

immigration status

- Institute and enforce policies that prevent discrimination occurring at the workplace, places of business, and schools
- Restore constitutional rights to all detained individuals
- Engage community-based organizations serving the South Asian community on issues pertaining to civil rights and civil liberties

## **Data Collection:** *Expand and refine data collection related to South Asians*

- Require federal and state agencies to disaggregate data among various South Asian subpopulations
- Improve data collection agencies' outreach efforts within the South Asian community
- Cease immigration enforcement raids while demographic data collection is being conducted

## **Economic Justice:** *Promote economic justice and financial security for South Asians*

- Support the right to collect a decent living wage with benefits

- Ensure work environments are free from exploitation and provide protections for labor trafficking survivors
- Support the rights of workers who seek to organize regardless of occupation or immigration status
- Provide protections for those affected by workplace discrimination
- Cease immigration enforcement at the workplace
- Ensure access to financial education and vocational training opportunities for immigrant and limited English proficient workers
- Ensure enforcement of tenants' rights and fair housing policies
- Support affordable housing for immigrants
- Ensure access to fair and affordable credit for immigrants
- women
- Promote programs and policies that foster the economic empowerment of South Asian women

**Health Care:** *Promote measures addressing the health needs of South Asians*

- Ensure the right to affordable health care for all
- Develop culturally relevant treatment strategies and research geared towards understanding diseases affecting South Asians
- Ensure availability of linguistically accessible and culturally competent medical services to all, including children, immigrants and the elderly
- Increase research and culturally appropriate resources regarding mental health services for South Asians
- Increase research and culturally appropriate resources concerning reproductive health, sexual health, and HIV/AIDS for South Asians
- Promote awareness and services related to LGBTIQ health issues

**Gender Equity:** *Advance gender equity within the South Asian community*

- Support programs aimed to address and prevent gender-based violence within the South Asian community
- Support programs that provide linguistically accessible and culturally appropriate services for South Asian domestic violence survivors
- Support policies that protect and empower immigrant domestic violence survivors
- Support immigration policies that protect and empower dependent visa holders
- Strengthen policies aimed to prevent all forms of trafficking and provide meaningful resources to survivors
- Develop policies aimed at curbing transnational abandonment of spouses
- Increase culturally and linguistically appropriate health services for South Asian

**Immigrant Rights:** *Promote immigrant rights and just reforms to the immigration system*

- Ensure a just and humane approach to reforming the immigration system at the federal level
- Expedite immigration application background checks related to security-related delays
- Ensure the naturalization process is accessible to all eligible immigrants
- Ensure that the immigration system promotes the reunification of families
- Support immigration policies that protect the

rights of immigrant workers

- Support immigration policies that protect and empower domestic violence survivors
- Support immigration policies that protect and empower all dependent visaholders
- Cease enforcement initiatives and national security measures that disproportionately affect immigrants and promote profiling
- Ensure that immigrants are not deported from the United States for minor violations of the law
- Cease sharing information among various law enforcement agencies for immigration purposes
- Oppose policies denying public services to non-citizens or permitting state and local law enforcement to carry out federal immigration law
- Ensure compliance of detention standards and provide alternatives to immigrant detention
- Strengthen due process protections within the immigration system
- Standardize the adjudication of asylum-related forms of relief

positive immigrants

- Expand anti-discrimination and hate crimes policies to cover LGBTIQ individuals
- Support the right to civil marriage, domestic partner benefits, and recognition of self-defined families
- Promote awareness and services related to LGBTIQ health issues

**Youth Empowerment:** *Advance the empowerment of South Asian youth*

- Ensure access to education that is cognizant of the needs of limited English proficient (LEP) students
- Ensure communication between schools and South Asian parents who are LEP and/or recent immigrants
- Ensure that classrooms are safe spaces free from discrimination and harassment
- Ensure that classrooms are safe spaces free from police presence and immigration enforcement
- Ensure access to higher education regardless of income level or immigration status

**LGBTIQ Rights:** *Protect the rights of lesbian, gay, bisexual, transgender, intersex, questioning, and gender non-conforming South Asians*

- Support legislation that provides the same immigration benefits to LGBTIQ individuals as to other immigrants.
- Ensure that LGBTIQ South Asians persecuted due to their sexual orientation are able to obtain asylum relief
- Eliminate immigration restrictions against HIV-positive immigrants
- Investigate and prevent harassment by immigration officials of LGTBQ and HIV-



# A NATIONAL ACTION AGENDA IN USE

*A National Action Agenda* is intended to be used by policymakers, community-based organizations, media, and community members to gain a deeper understanding about the needs of the South Asians and to take proactive measures to best meet these needs. Below are examples of how various stakeholders can use *A National Action Agenda*.

## For Policymakers and Government Agencies

- As guidance on what stance or action to take on a particular policy issue that may affect the South Asian community
- As talking points and background material for gaining allies within legislatures and governmental agencies on issues affecting the South Asian community
- As recommendations on how to engage with the South Asian community when developing policies affecting the South Asian community
- As a resource on organizations that serve the South Asian community locally and throughout the country

policymakers, government agencies, coalitions, or elected officials

- As educational materials for an organization's membership, staff, board members, volunteers, or constituents

## For the Media

- As background materials for articles on policies affecting the South Asian community
- As a resource on organizations that serve the South Asian community locally and throughout the country

## For Community Members

- As a background information to learn more and raise awareness around issues affecting the South Asian community
- As talking points for individuals engaging in advocacy efforts with local, state, and national policymakers on issues affecting the South Asian community
- As a resource on organizations that serve the South Asian community locally and throughout the country

## For Community-Based Organizations Serving the South Asian Community

- As guidance if approached to take a stance on a particular local or national policy issue that may affect the South Asian community
- As background information for speeches, media inquiries, or coalition meetings on issues affecting the South Asian community
- As talking points for meetings with local



# ENSURE FULL AND EQUAL PARTICIPATION IN THE CIVIC AND POLITICAL PROCESS.

The ability to freely participate in civic and political life is a right enjoyed by citizens and non-citizens in the United States. **South Asian community members are engaging more actively in the civic and political process** by voting; expressing views on important issues; supporting political campaigns; and running for office at local, state, and national levels.

The community's patterns of migration and naturalization indicate that **South Asians are part of the increasing pool of new voters in the United States**. Three-quarters of South Asians who live in the United States are foreign-born. While only one-third of Indians, Pakistanis, and Sri Lankans, and only one-fourth of Bangladeshis have become citizens, the percentages of naturalized and native-born citizens within the community are on the rise.<sup>i</sup> In fact, results from a 2004 exit poll of Asian American voters in metropolitan areas on the East Coast found that 88% of South Asian voters surveyed were born abroad and that 42% of South Asian voters were casting ballots for the first time.<sup>ii</sup>

However, **many South Asians encounter roadblocks to civic and political engagement**, including voter intimidation and harassment; insufficient bilingual materials and interpreters at the polls; and illegal voter identification requirements. Non-citizens also face unique barriers. Many South Asians, especially new immigrants, also often lack an understanding of the civic and political process in the United States and feel isolated by increased xenophobia and anti-immigrant sentiment in the public realm. Stakeholders with an interest in ensuring civic and political participation for all individuals must take efforts to ensure that such barriers are recognized and eliminated.

**Obstacles in the Naturalization Process** Census data show that 30% of South Asians in the United States were naturalized citizens in 2000.<sup>iii</sup> Many face obstacles when navigating the naturalization process. Various policies have played a role in preventing South Asians from naturalizing, such as increased immigration application fees, a redesigned naturalization exam, and lengthy delays in the processing of naturalization applications caused by security background checks.

**Voter Intimidation and Suppression** Currently, minority voters can rely on policies, such as the

*Voting Rights Act (VRA)* and the *Help America Vote Act (HAVA)*, to protect their access to the ballot box. Specifically, Section 2 of the VRA prohibits voter discrimination on the basis of race, color, or membership to designated language minority groups as well as electoral practices or procedures that have a discriminatory impact. Provisions of HAVA also mandate the use of certain electoral procedures that could benefit minority voters, such as pollworker training and provisional ballots for those who may be considered ineligible to vote.

Yet, in recent elections, many South Asians have been affected by inconsistent implementation of voting rights laws as well as voter intimidation and harassment.<sup>iv</sup> For example, in the 2004 election, South Asian voters who participated in an Asian American exit poll conducted in metropolitan areas on the East Coast reported incidences of voter intimidation. Many South Asians who participated in the exit poll reported that they were erroneously required to show identification prior to voting; that their names were not on the registered voters' lists; that poll workers were often discourteous, hostile, and poorly trained; that they did not receive provisional ballots; and that they were sometimes misdirected to wrong polling sites or election districts.<sup>v</sup>

In addition, many immigrant voters are blocked from participating in the political process due to recent photo identification requirements, at the federal and state levels. Such requirements, in effect, disenfranchise many U.S. citizens who lack permissible forms of identification, including the poor, seniors, and immigrants.

**Language Assistance for Limited English Proficient Voters** Understanding voter referenda and constitutional changes on ballots can be a challenging task, even for a voter fluent in English. For individuals who are limited English proficient (LEP) – which include half of the Bangladeshi, one-third of the Pakistani, and one-quarter of the Indian populations in the United States<sup>vi</sup> – the act of voting can be daunting and entirely inaccessible. In fact, an exit poll conducted in 2004 of Asian American voters in metropolitan areas on the East Coast showed that one-third of Urdu and Bangla/Bengali speakers in New York City needed language assistance when voting.<sup>vii</sup>

Section 203 of the VRA requires the mandatory provision of bilingual ballots, translated signs, and interpreters in counties where 5% or more than 10,000 voting-age citizens who speak the same Asian, Hispanic, or Native American language are

LEP or, as a group, have a high illiteracy rate. However, no jurisdiction is currently mandated to provide materials or interpretation in South Asian languages. Section 208 of the VRA also guarantees LEP voters the right to be assisted and accompanied by persons of their choice (except for their employer or union representatives) at the voting booth.

### Xenophobia and Anti-Immigrant Sentiment

Around the country, xenophobic and anti-immigrant sentiment increasingly permeates the media and political sphere. This can hamper civic and political participation of recent immigrants and new citizens. In particular, xenophobic rhetoric made by political and public figures can foster similar perceptions on the part of the public and perpetuate misconceptions and stereotypes about the community. It can also influence support for policies and practices that target or harm people of color and immigrants, further feelings of marginalization, and discourage political and civic participation. South Asians have increasingly become targets of xenophobic and intolerant rhetoric with over 25 such remarks made by public officials between 2005 and 2007.<sup>viii</sup> In addition, candidates of South Asian descent have also reported encountering intolerant comments by their opponents, which can have a significant impact on running an effective campaign.<sup>ix</sup>

### DID YOU KNOW?

Language assistance for South Asian voters has been achieved in various ways. For example, in 2000, the city of Hamtramck, Michigan was sued by the federal government and subsequently required to provide Bengali language assistance to voters, given the discriminatory practices of its pollworkers who had required Bengali-speaking voters to take oaths of citizenship prior to voting. *U.S. v. City of Hamtramck, Michigan* (E.D. Michigan 2000).

Advocacy efforts have also led to the voluntary provision of language assistance in certain jurisdictions. For example, the state of New Jersey produced voter registration forms in Gujarati, a South Asian language, in 2008. Yet the number of jurisdictions nationwide voluntarily offering such assistance is very limited, leaving many LEP South Asian voters disenfranchised.

### Impact of Redistricting Initiatives on Communities of Color

The apportionment of seats in the U.S. House of Representatives, as well as state legislative bodies, is based on a state's population. Every ten years, district lines are redrawn through a process known as "redistricting." Historically, some districts have been reconfigured with the intent or impact of fragmenting communities of color into multiple districts resulting in the dilution of these communities' political power. As the redistricting process begins in local communities, it is important for South Asian community members to understand and participate in the redistricting process.

### ***Need for civic education and political participation***

Citizens and non-citizens of South Asian descent can be more engaged in the civic and political process through a variety of means. Increased civic education and naturalization assistance can help South Asians become more active in their local communities. In addition, political participation in the form of running for elected or appointed office, supporting political campaigns, and being involved in every level of civic life should be encouraged.

### **KEY RECOMMENDATIONS**

#### ***Promote naturalization and voting among South Asians.***

- U.S. Citizenship and Immigration Service (USCIS) should ensure that the processing of naturalization applications delayed due to name and security background checks is expedited.
- USCIS' Office of Citizenship, in collaboration with community-based organizations, should increase outreach to the South Asian community in South Asian languages regarding changes in naturalization procedures.
- USCIS should ensure that immigration application fees are not increased such that obtaining naturalization and other benefits becomes prohibitively expensive.

#### ***Preserve voting rights of South Asians by eliminating voter intimidation and suppression.***

- Congress and the Department of Justice should ensure that voter protection laws and regulations are carefully crafted, understood by state and local election officials, and are implemented in a fair manner.
- The Department of Justice and state and local election boards should ensure proper training of pollworkers and election officials.
- State and local election boards should prioritize recruitment and hiring of South Asian pollworkers with bilingual capabilities, particularly in precincts with significant South Asian populations.
- The Department of Justice should ensure that voter protection and anti-discrimination laws, such as Section 2 of the VRA, are strongly enforced by its civil rights and voting rights components.
- Congress and state legislatures should repeal photo identification requirements at the election booth.
- State and local election boards should ensure that provisional ballots are provided and counted in elections as mandated by the provisions of HAVA.

#### ***Ensure limited English proficient citizens' access to the right to vote.***

- Congress should lower the numerical threshold that triggers mandatory Section 203 compliance under the VRA so that additional counties and languages are covered.
- State and local election boards should provide bilingual voter assistance, even if not mandated under Section 203 of the VRA, through interpreters and translated materials in South Asian languages in metropolitan areas with

significant South Asian populations (including New York/New Jersey, the San Francisco Bay Area, Chicago, Los Angeles, and Washington, DC).

- The Department of Justice and state and local election boards should ensure proper enforcement of Section 208 of the VRA so that LEP voters are guaranteed assistance by persons of their choice in the election booth.

#### ***Ensure that votes by all eligible voters count.***

- State and local election boards should ensure that all voters have the opportunity to cast provisional ballots through proper enforcement of and compliance with HAVA.
- State and local election boards should ensure voting information is more accessible through sample ballots, voter instructions, and information about voter rights through proper enforcement of HAVA.

#### ***Eliminate xenophobic comments against South Asians and other communities of color in political discourse.***

- Political parties should have an articulated and publicized “zero tolerance” policy condemning racism and xenophobia in the political sphere.
- Community members should monitor incidents of xenophobia and racism made by elected officials or those running for office.
- Community members should report such incidents to political parties and civil rights organizations.

#### ***Increase political participation and civic engagement of South Asian community members.***

- Community-based organizations should conduct naturalization and citizenship drives within South Asian communities.
- Political parties and community-based organizations should host candidate and issue-based forums that focus on issues relevant to South Asians.
- Community-based organizations and individuals should engage the South Asian community to participate in voter registration and “get out the vote” efforts.
- Political parties and community members should promote the candidacy of South Asian individuals seeking electoral office.
- State and local immigrant affairs offices and community-based organizations should provide educational information in South Asian languages on how to become politically engaged.
- State and local immigrant affairs offices and community-based organizations should conduct

civic and political education trainings with new South Asian immigrants to promote a clear understanding of civic process in the United States.

- Community members should become engaged in local redistricting efforts every ten years to ensure that the political power of communities of color is not diluted.

<sup>i</sup> U.S. Census 2000, Summary Files 1 through 4. See also *Demographic Characteristics of South Asians in the United States: Emphasis on Poverty, Gender, Language Ability, and Immigration Status*, South Asian American Leading Together (2007).

<sup>ii</sup> *The Asian American Vote 2004: A Report on the Multilingual Exit Poll in the 2004 Presidential Election*, Asian American Legal Defense and Education Fund (2005).

<sup>iii</sup> See *supra* note i.

<sup>iv</sup> *The 2004 Elections: South Asian Voting Trends and Patterns*, South Asian Americans Leading Together (2005) based on data from *The Asian American Vote 2004: A Report on the Multilingual Exit Poll in the 2004 Presidential Election*, Asian American Legal Defense and Education Fund (2005).

<sup>v</sup> *Id.*

<sup>vi</sup> See *supra* note i.

<sup>vii</sup> *Asian American Access to Democracy in the 2004 Elections: Local Compliance with the Voting Rights Act and Help America Vote Act (HAVA) in NY, NJ, MA, RI, MI, IL, PA, VA*, Asian American Legal Defense and Education Fund (2005). *AALDEF Exit Poll Reveals Trends in Growing NJ Asian American Electorate*, Asian American Legal Defense and Education Fund (2006).

<sup>viii</sup> *Community Education on Documented Incidents of Xenophobia and Intolerance in Political Discourse*, South Asian Americans Leading Together (2007).

<sup>ix</sup> *Id.*



# 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.*



# EXPAND AND REFINE DATA COLLECTION RELATING TO THE SOUTH ASIAN COMMUNITY.

South Asians belong to a diverse community representing different countries of origin, religions, and languages. As the community expands, it is **important to obtain accurate and specific demographic data about the population** which are essential to policymakers, governmental agencies, and organizations serving the community. The collection and disaggregation of demographic data affects the proper distribution of public benefits; accurate apportionment of Congressional representatives; provision of resources and information in South Asian languages; and a comprehensive assessment of the community's health needs.

At the national level, the U.S. Census Bureau administers the decennial Census (a nationwide count that occurs every ten years) and the annual American Community Survey (sent to approximately 2.5% of all U.S. households each year<sup>i</sup>). Various state agencies often collect data about communities for a variety of reasons. While data collection has provided critical baseline information about the South Asian community, **further disaggregated data related to national origin, ancestry, religious affiliation, language ability, immigration and citizenship status, economic status, gender, and health disparities are needed**. In addition, **increased outreach to South Asian communities is necessary** to properly capture information about the community. In-depth data collection techniques are needed to reflect the full extent the diversity of needs within the South Asian community in the United States.

***Data on South Asians Disaggregated by National Origin and Religion*** Currently, many data collection surveys used by various federal and state agencies ask individuals to self-report their race, ancestry, and national origin. Often individuals from Bangladesh, Caribbean nations, Nepal, Pakistan, and Sri Lanka find that their countries of origin are not specifically delineated as options to select on these forms. For example, the 2000 U.S. Census form only included "Asian Indian" as a choice for South Asians answering the race question; consequently, non-Indian South Asians had to choose between "Asian Indian" or fill in a response under the "Other Asian" category. As a result, South Asians may tend to choose more general or inaccurate answers to reflect their racial background. In the 2000 U.S. Census, this may have led to undercounts of the Bangladeshi, Indo-

Caribbean, Nepali, Pakistani, and Sri Lankan populations.

In addition, there is currently no data collected on most federal and state data collection forms that capture information regarding religious affiliation. South Asians practice a diversity of faiths, including Buddhism, Christianity, Hinduism, Islam, Jainism, Sikhism, and Zoroastrianism. Yet accurate figures are unavailable on the size and concentration of these faith communities.

## ***Outreach to South Asian Communities by Government Data Collection Agencies***

Historically, immigrant communities have been reluctant to participate in data collection efforts for a variety of reasons. These include the lack of translated data collection tools; insufficient information about why and how data is being

collected; and distrust of government agencies. For example, questionnaires administered by the U.S. Census Bureau are not currently produced in any South Asian languages, which impede the ability to reach those in the community who do not speak English. Similarly, mistrust of government agencies often results in reluctance to provide personal information to authorities, regardless of the purpose.

In addition, data collection efforts can be limited due to the lack of South Asian census takers and outreach staff at data collection agencies. Under federal law, the U.S. Census Bureau can employ only U.S. citizens as census takers. While waivers were made available in 1999 for noncitizens, nationals of certain countries, including Bangladesh, India, and Pakistan, were initially not allowed to be hired. The policy subsequently changed in 2000 to allow the hiring of Bangladeshi, Indian, and Pakistani nationals with bilingual abilities, but mishandled implementation of the policy by the Census Bureau led to the rejection of many South Asian applicants.<sup>ii</sup> Given the linguistic and cultural diversity among South Asians, noncitizens from South Asia would be valuable additions to the staff of both federal and state data collection agencies.

***Immigration Enforcement and Information Sharing during Data Collection Efforts*** The Census Bureau has acknowledged that immigrants, especially those who are out of status, may be reluctant to participate in data collection efforts. It is important that all data collection efforts at the state or national level include assurances that personal information collected will not be shared with other government entities, particularly with immigration enforcement agencies.

In addition, since 1970, immigration enforcement agencies have agreed to limit or halt raids against immigrants while the decennial census was being conducted. However, as of June 2008, Immigration and Customs Enforcement (ICE) within the Department of Homeland Security (DHS) has not agreed to suspend raids. With the estimated numbers of undocumented immigrants from South Asian and other countries on the rise, it is vital that enforcement activities be suspended during future data collection efforts, such as Census 2010.

## **KEY RECOMMENDATIONS**

### ***Require federal and state agencies to disaggregate data on various issues among various South Asian subpopulations.***

- Federal and state data collection agencies should provide specific South Asian subgroups (e.g. Bangladeshi, Indian, Indo-Caribbean, Nepali, Pakistani, Sri Lankan), countries of origin, and religions as categories on data collection survey forms.
- Federal and state data collection agencies should provide disaggregated data based on specific South Asian subgroups, countries of origin, gender, and religions for statistics gathered on various issues including discrimination, education, hate crimes, and health.

### **DID YOU KNOW?**

It is vital to develop partnerships with community-based organizations and leaders when embarking upon data collection within the South Asian community. While undercounting continues to be a concern, partnerships established between the Census Bureau and immigrant communities in 2000 helped to improve the accuracy of demographic data on minority communities as compared to previous decades.

### ***Improve data collection agencies' outreach efforts within the South Asian community.***

- Federal and state data collection agencies should maintain and expand partnerships with South Asian community organizations.
- Federal and state data collection agencies, along with community-based organizations, should increase outreach to the South Asian community on how to fill out the forms accurately.

- Federal and state data collection agencies should provide materials and questionnaires in South Asian languages.
- The U.S. Census Bureau should allow the hiring of bilingual South Asian census takers regardless of immigration status.
- Federal and state data collection agencies should utilize South Asian ethnic media outlets to increase awareness about demographic data collection efforts.

### ***Cease immigration enforcement raids while demographic data collection is being conducted.***

- ICE should not conduct immigration raids during national Census efforts.
- Federal and state data collection agencies should ensure that information pertaining to individual survey participants remains confidential and is not disclosed to immigration enforcement authorities.

<sup>i</sup> *American Community Survey Factsheet*, U.S. Census Bureau (2007).

<sup>ii</sup> *Asian Pacific Americans and Census 2000: Findings and Recommendations for Census 2000*, Asian American Justice Center (2001).



# PROMOTE ECONOMIC JUSTICE AND FINANCIAL SECURITY FOR SOUTH ASIANS.

Employed in a variety of occupations in the United States – from engineers, doctors, and lawyers to convenience store clerks, assembly-line workers, restaurant workers, taxi workers, and domestic workers – **South Asians face challenges in the workplace that cut across class, religious, and national origin lines**. Specifically, many South Asians are unable to attain financial security and economic independence because of immigration restrictions placed on foreign-born workers; limitations on the right to organize and unionize; exploitation in the workplace; labor trafficking; and discrimination by employers, landlords, and financial institutions.

**Over 200,000 South Asians currently work in the United States on temporary visas and many others work without authorization.** Working-class South Asians and temporary workers encounter unique types of harassment and exploitation, often compounded by limited language skills, immigration status, lack of information about rights and resources, and labor law restrictions. South Asian immigrants on skilled worker visas also encounter difficulties, often locked into jobs for years without the opportunity for career advancement or transfer as they await approval of their green card applications.

In addition to labor rights violations and immigration restrictions on workers, **language and poverty block the path to economic empowerment for many South Asians**. A significant percentage of the community lives at or near poverty, which is a particular concern for many working-class South Asians. In fact, the majority of Bangladeshis in the United States live at 200% of the poverty line and more than one-fifth of Pakistani and Bangladeshi children live in poverty.<sup>i</sup> Although only 13% of Indians are at 125% of the poverty level, this constitutes more than 200,000 individuals.<sup>ii</sup> For example, increasing rates of poverty and limited English proficiency within the South Asian community, in addition to **increased discrimination following 9/11, have prevented many South Asians from obtaining affordable credit or access to fair housing**. Many are also unable to attain economic self-sufficiency because of the lack of linguistically accessible financial education and vocational training for South Asians. Policies at the state and federal levels must be enacted and implemented to promote the economic advancement of South Asians.

## Labor Rights

**Earning a Living Wage** While many South Asians have careers in the technology and medical fields, prevalent occupations for South Asians also include cashiers, retail sales, and production occupations.<sup>iii</sup>

In order to ensure the economic well-being of all South Asians, including those who are working-class or living at or near poverty levels, policies must be enacted and expanded to ensure that a living wage and basic benefits are awarded to all workers.

Enacting and enforcing fair wage laws is necessary for South Asians to attain economic-self-sufficiency. Currently, the *Fair Labor Standards Act (FLSA)* sets a federal minimum wage rate, maximum work hours, and overtime for employees in certain occupations. Yet, there is insufficient enforcement of these standards which are frequently violated by many employers. In addition, many workers are excluded from its protections because they are misclassified as “non-employees” under the law. This problem is especially acute for taxiworkers, who are considered “independent contractors”, and live-in domestic workers<sup>iv</sup>, rendering them ineligible for overtime and other benefits under the *FLSA*.

**Obtaining Work-Related Benefits** Many working-class South Asians are often denied basic employment benefits, including workers’ compensation (*see text box*), a guarantee of a safe working environment, and health benefits. Specifically, the absence of basic protections concerning workplace safety has impacted South Asian workers in certain occupations. For example, regulations implementing the *Occupational Safety and Health Act (OSHA)*, which was created to ensure workers’ safety and health, explicitly exclude domestic workers, many of whom are South Asian, from its protections despite the fact that these workers frequently sustain work-related injuries. Such injuries include those resulting from heavy lifting, handling toxic cleaning chemicals, and prolonged exposure to dust.<sup>v</sup>

Lack of health benefits is also an issue for many South Asian workers. In fact, a recent report showed that immigrant domestic workers in New York City have difficulty obtaining medical care, with nine out of ten domestic workers surveyed reporting that their employers did not provide health coverage.<sup>vi</sup>

**Labor Trafficking** Immigration laws have facilitated the practice of labor trafficking and led to the virtual enslavement of many South Asian immigrants. Labor trafficking can occur through the use of force, fraud, or coercion to exploit a person for commercial sex or for the purpose of subjecting

a victim to involuntary servitude, debt bondage, or forced labor. The use of force or coercion can be direct and violent, or psychological. As a result of labor trafficking, many workers are prone to severe exploitation by unscrupulous employers who take advantage of them because of their precarious immigration status.

For example, many South Asian women who are employed as domestic workers for diplomats and staff of international and foreign government entities enter the country on temporary A-3, B-1, and G-5 visas.<sup>vii</sup> Numerous cases have revealed that South Asian domestic workers endure harsh conditions amounting to force, fraud, and coercion, including being confined in the home where they work, being physically assaulted by their employer, and receiving no pay for work.<sup>viii</sup> Many are hesitant to seek recourse because their ability to stay legally

in the United States hinges upon their relationship with their employer. Some fear reprisal from their employers including isolating them from the outside world and threatening them with deportation. This is often exacerbated for those employed by senior diplomats who are protected by diplomatic immunity.

Similarly, many skilled workers trafficked into the United States on H-2B visas (temporary visas for nonagricultural workers), suffer abuses at the hands of their employers but have difficulty escaping exploitation due to the terms of their visas. Contract and

### DID YOU KNOW?

Many working-class South Asians are often denied basic employment benefits, including workers’ compensation. Taxiworkers, for example, are employed in especially dangerous jobs environments where their lives are often at risk, yet many have no workers’ compensation. This affects many South Asians, given that 7% of taxidrivers across the country and close to 40% of taxidrivers in New York City alone are South Asian. *Sweatshops on Wheels: Review and Recommendations for L.A.’s Taxi Workers Alliance* (2006); *The New York City Taxicab Factbook*, Schaller Consulting (2006).

wage violations under this visa program are rampant because the Department of Labor lacks the legal authority to enforce prevailing wage requirements under the visa or employer-employee contracts.<sup>ix</sup> Worsening the situation are high fees that recruiters, contractors, and employers charge these workers in order to gain access to jobs.<sup>x</sup> This forces many H-2B workers into serious debts that they must repay by taking out high interest loans, and selling their homes in their country of origin.<sup>xi</sup>

The H-2B program also affects South Asians. In 2006, for example, over 500 Indian pipefitters and welders were brought to the Gulf Coast on H-2B visas, after paying a lifetime’s worth of earnings to recruiters. Once they arrived in the United States,

they were imprisoned by their employer and were threatened with deportation. Due to the terms of their temporary visas, they could not leave their jobs or change employers, despite the exploitation they suffered, without losing their immigration status.

**The Right to Organize and Unionize** The ability to unionize and/or organize is critical for workers in order to counter exploitation in the workplace and to ensure better wages and working conditions.

While the *National Labor Relations Act (NLRA)* protects workers' rights to collectively bargain for improved workplace conditions and wages, many employers continue to unfairly suppress such efforts. There have been numerous cases of employer retaliation against South Asian workers, particularly those in service and retail industries, who have attempted to organize and challenge unfair employer practices.<sup>xii</sup>

Attempts to unionize and challenge work conditions are especially difficult for many South Asian women employed as domestic workers. These workers are specifically denied the right to unionize as the *NLRA* explicitly excludes them from its definition of an "employee." Yet, domestic workers are routinely subjected to various forms of abuse, including: wage and hour violations; passport deprivation; physical, sexual, and emotional abuse; and restrictions on freedom of movement.<sup>xiii</sup> The inability of these workers to unionize severely undercuts their leverage against exploitative employers and undermines their rights to basic benefits such as vacation, sick days, and notice prior to termination.

## **Discrimination and Immigration Enforcement**

**Discrimination Occurring at the Workplace** Many South Asian workers encounter discrimination at the hands of their employers and co-workers. Such discrimination can be based on various factors, including the victim's race, religion, and/or national origin. While discrimination has long been an issue for the community, the prevalence of such incidents

has risen sharply following 9/11. 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>xiv</sup> At its peak, over 500 complaints of workplace-related discrimination, including denying Muslim employees the right to pray at work, were reported in 2005 by civil rights organizations.<sup>xv</sup> Similarly, Sikhs have been denied jobs as well as entry into places of business 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 a promotion because of their Sikh identity.<sup>xvi</sup> Hate crimes against South Asian employees while on the job are also a major concern for many workers. This is particularly the case for individuals who work in controlled environments, such as taxi workers, convenience store employees, and food delivery workers, who have increasingly become targets for violence by customers since 9/11.<sup>xvii</sup>

While various laws exist to protect victims of different forms of discrimination – including Title VII of the *Civil Rights Act* (which bars employment discrimination based on race, color, religion, sex, or national origin); the *Americans with Disabilities*

*Act* (which bars employment discrimination based on disability); and the *Age Discrimination in Employment Act* – individuals working in small businesses or as domestic workers are often not protected.

**Immigration Enforcement at the Workplace** The escalation of "interior enforcement" of immigration laws by the Department of Homeland Security (DHS) at worksites has negatively affected immigrants, disrupted local businesses, and resulted in the separation of many families with mixed immigration statuses. Workplace raids are ineffective means of enforcement that criminalize workers who seek jobs and better lives.

## **DID YOU KNOW?**

The trend among predatory subprime lenders to employ marketing practices that target low-income and minority communities affects South Asians. In fact, certain neighborhoods in New York City with significant South Asian populations have the highest percentage of subprime lending in the country. The lack of fair credit and the increase in predatory lending have serious financial consequences on the lives of many South Asians. In particular, they have stunted the ability of South Asians to be able to purchase their own homes. In fact, homeownership for South Asians is difficult because of predatory lending practices that often target low-income, LEP, and minority communities. *A Report on the Housing and Community Development Needs Assessment of South Asian Americans in New York City*, Chhaya Community Development Corporation (2001).

**Employment Verification Programs Aimed at Immigrant Workers** Existing and proposed electronic employment verification systems have had a detrimental impact upon all workers, regardless of immigration status. One concern with such programs is their reliance on government databases with high error rates; in fact, the Social Security Administration estimates that 17.8 million of its records contain discrepancies related to name, date of birth, or citizenship status, with 12.7 million of those records involving U.S. citizens.<sup>xviii</sup> Due to database errors, foreign-born lawful workers are 30 times more likely than native-born U.S. citizens to be incorrectly identified as unauthorized for employment.<sup>xix</sup> Another concern is that employers may misuse the verification process and unjustly fire immigrant workers.<sup>xx</sup> Evaluations of existing employment verification programs have shown that employers often preemptively engage in prohibited employment practices while attempting to be in compliance with the law, including pre-employment screening, adverse employment action without confirmation of a worker's immigration status, and failure to inform workers of their rights.<sup>xxi</sup>

## **Financial Security and Affordable Housing**

**Access to Credit** In our society's credit-based system, in order for individuals to make certain purchases, such as buying a home, or for small businesses to set up their enterprises, they must demonstrate an established record in properly managing debt. Yet, many mainstream lenders do not provide loans to individuals who do not have strong credit histories, including newly arrived immigrants and/or low-income individuals. As a result, these individuals are forced into subprime lending markets with loans that have high interest rates and exorbitant fees (*see text box*). Due to the harsh terms of such arrangements, many South Asians find themselves trapped in a vicious cycle of struggling to pay off oppressive loans while already in financial distress.

**Tenants' Rights and Access to Fair Housing** Despite the fact that tenants are entitled to a range of rights, many South Asians frequently face discrimination and harassment by landlords based on perceived or actual race, religion, national origin, or immigration status. The *Fair Housing Act* prohibits discrimination on the basis of race, color, religion, sex, handicap, familial status, or national origin in housing-related transactions. Yet, landlords often engage in abusive practices against South Asian tenants, such as: violating rent control laws; unjustified refusal to rent; charging higher rents; and providing short-term notices to vacate or evict. These experiences have been exacerbated in

the post-9/11 environment. In fact, a recent study revealed that housing discrimination was a pressing issue for 11% of South Asians, Arabs, and Muslims surveyed in New York City alone following 9/11.<sup>xxii</sup>

**Affordable Housing** The absence of sufficient affordable housing affects many low-income South Asians in the United States, especially those who are economically disadvantaged. According to Census 2000, the rate of homeownership among South Asians is lower than the national average, with more than 50% renting instead of buying a home.<sup>xxiii</sup> Census 2000 data also indicates that South Asian families tend to be larger than the national average, likely the result of extended family members living together. In areas with insufficient affordable housing, many large South Asian families are forced to live in overcrowded residences. In addition, local ordinances related to overcrowding, conversions of single-family homes for multi-family use that fine residents often have negative consequences on South Asians and other immigrants who live in crowded quarters because of the inability to afford to live elsewhere.<sup>xxiv</sup>

Finally, the current national mortgage foreclosure crisis has had an impact on communities around the country. While information about its impact on South Asian communities is currently unavailable, it is important that legislative and outreach efforts related to resolving the crisis include culturally appropriate counseling and prevention services for immigrants.

**Access to Linguistically Accessible Financial Education and Vocational Training Opportunities** For working-class and poor South Asians, access to financial education and vocational training programs is critical. Yet there are limited job training and financial literacy and vocational programs at the state and local levels that provide assistance in a linguistically accessible manner. Through programs targeted towards South Asians, many within the community will be able to embark upon the path towards economic self-sufficiency and financial independence.

## **KEY RECOMMENDATIONS**

### ***Support the right to collect a decent living wage with benefits.***

- Congress and state legislatures should enact legislation that provides a living wage to all workers.
- Congress and state legislatures should require companies that apply for government subsidies to provide living-wage jobs.
- Congress and state legislatures should enact policies that broaden the class of workers, including domestic workers and taxiworkers, who are eligible to receive overtime.
- Congress and state legislatures should enact policies allowing domestic workers to obtain worker's compensation for work-related injuries.
- Congress and state legislatures should require employers to provide health care coverage and medical leave to low-income workers.
- Public and private funders should support organizations working to promote the basic financial rights of working-class South Asians.

### ***Ensure work environments are free from exploitation and provide protections for labor trafficking survivors.***

- Congress and state legislatures should support policies ensuring the protection of workers exploited because of their immigration status are protected.
- Law enforcement and immigration authorities should implement training programs aimed at identifying and assisting trafficking survivors, including the establishment of immediate health care, immigration assistance, and social service referrals.
- The U.S. State Department should seek waivers of immunity for foreign diplomats who abuse immigrant workers they bring into the country so survivors can seek redress in court.
- Congress should amend immigration law to allow all temporary workers the ability to gain permanent immigration status.
- Congress should amend immigration law to allow workers on temporary visas greater ability to be able to change employers or jobs.
- Congress should amend immigration law to allow the Department of Labor to enforce contracts and monitor workplace conditions for H-2B visa holders.
- Government agencies should regulate companies that recruit foreign workers and implement caps on recruiting fees charged.
- Federal and state labor rights agencies should publish and disseminate *Know Your Rights*

guides for workers suffering employer abuse in South Asian languages.

- Federal and state labor rights agencies should provide trainings for employers on their obligation to protect the rights of immigrant workers.
- Congress should enact just and humane immigration reform that protects the rights of all immigrant workers.

### ***Support the rights of workers who seek to organize regardless of occupation or immigration status.***

- Congress and state legislatures should enact policies that protect and preserve the freedom of workers to choose whether or not to form a union regardless of immigration status.
- Congress and state legislatures should change policies that limit the ability of domestic workers to unionize and organize.
- Federal and state labor agencies should ensure strong enforcement of laws protecting workers who are subjected to employer retaliation for their unionizing and organizing efforts.

### ***Provide protections for those affected by workplace discrimination.***

- Congress and state legislatures should adequately fund and support federal and state agencies charged with enforcing laws prohibiting discrimination in the workplace.
- Congress and state legislatures should preserve the ability of workers discriminated in the workplace the right to file lawsuits against their employers.
- Congress and state legislatures should enact policies that guarantee employees the right to practice their faith in the workplace.
- Federal and state labor and civil rights agencies should provide trainings to employers on cultural competency in South Asian cultures and religions.
- Federal and state civil rights agencies should publish and disseminate Know Your Rights materials in South Asian languages for individuals discriminated in the workplace.

### ***Cease immigration enforcement at the workplace.***

- Immigration and Customs Enforcement (ICE) should terminate enforcement strategies that target immigrant workers and employ racial profiling tactics.
- ICE should ensure that enforcement initiatives do not separate immigrant workers from their families.
- The Department of Homeland Security should ensure that employment verification programs do not lead unjust terminations and racial profiling of immigrant workers by employers.

### **Ensure access to financial education and vocational training opportunities for immigrant and limited English proficient workers.**

- Federal and state agencies should provide resources on credit and financial education in South Asian languages.
- State immigrant affairs agencies should offer and provide funding for English as a Second Language (ESL) courses.
- State employment agencies should offer and provide funding for job training in South Asian languages for low-income or unemployed immigrants.
- Federal and state immigrant affairs agencies should provide funding for community organizations that offer training programs for low-income immigrants.

### **Ensure access to fair and affordable credit for immigrants.**

- Congress and state legislatures should ensure that affordable loans from mainstream prime lenders are accessible to newly arrived and low-income South Asian immigrants.
- Congress and state legislatures should support and enforce anti-predatory lending legislation.
- Federal and state agencies that regulate the lending industry should prohibit predatory lending practices that target individuals based upon race, ethnicity, immigration status, and other factors unrelated to credit worthiness.
- Federal and state agencies that regulate the lending industry should disaggregate lending data by national origin to ascertain how discriminatory lending practices affect South Asians.
- Federal and state housing agencies should increase *Know Your Rights* resources on predatory lending for affected individual in South Asian languages.
- Federal and state housing agencies should support home ownership assistance and counseling provided by community-based organizations serving South Asians.

### **Ensure enforcement of tenants' rights and fair housing policies.**

- Congress and state legislatures should adequately fund and support federal and state agencies charged with enforcing laws prohibiting discrimination in the housing context.
- State housing agencies should implement tenants' bills of rights policies.
- Federal and state civil rights and housing agencies should publish and disseminate *Know Your Rights* materials in South Asian languages

for individuals discriminated in the housing context.

- Federal and state housing agencies should forge relationships with community-based organizations to ensure the enforcement of existing housing access laws.

### **Support affordable housing for immigrants.**

- Federal and state housing agencies should support the construction of low-income public housing that is in compliance with local health and safety codes.
- Federal and state housing agencies should develop more affordable housing to accommodate larger immigrant families.
- Federal and state housing agencies should provide housing assistance to all individuals in need, regardless of immigration status.

<sup>i</sup> U.S. Census 2000, Summary Files 1 through 4. See also *Demographic Characteristics of South Asians in the United States: Emphasis on Poverty, Gender, Language Ability, and Immigration Status*, South Asian Americans Leading Together (2007).

<sup>ii</sup> *Id.*

<sup>iii</sup> *Id.*

<sup>iv</sup> *Home is Where the Work Is: Inside New York's Domestic Work Industry* Domestic Workers United (2006).

<sup>v</sup> *Swept Under the Rug: Abuses Against Domestic Workers Around the World*, Human Rights Watch (2006).

<sup>vi</sup> See *supra* note iv.

<sup>vii</sup> The A-3 visa covers domestic workers and personal attendants of foreign diplomats. The G-5 visa is for domestic workers and personal attendants of representatives of international civil servants. The B-1 visa covers domestic workers and personal attendants of other foreigners or U.S. citizens.

<sup>viii</sup> *Sabbithi, et al. v. Al Saleh, et al.* (U.S. District Court of the District of Columbia 2007); *U.S. v. Alzanki*, 54 F.3d 994 (1st Cir. 1995); *Stories Break the Chain Campaign: Assisting the Enslaved in the Land of the Free.; Hidden in the Home: Abuse of Domestic Workers with Special Visas in the United States*, Human Rights Watch (2001).

<sup>ix</sup> *Close to Slavery: Guestworker Programs in the United States*, The Southern Poverty Law Center (2007).

<sup>x</sup> *Id.*

<sup>xi</sup> *Id.*

<sup>xii</sup> *Fifteen Immigrant Workers Join Lawsuit Against Devi Restaurant* Asian American Legal Defense and Education Fund (2007). *Guest Workers Fired After Protesting "Slave" Conditions*, New America Media (March 2007). *Unregulated Work in the Global City: Employment and Labor Law Violations in New York City*, Brennan Center for Justice (2007).

<sup>xiii</sup> See *supra* note iv.

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

<sup>xv</sup> *The Status of Muslim Civil Rights in the United States*, Council on American-Islamic Relations (2007).

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

<sup>xvii</sup> *Sweatshops on Wheels: Review and Recommendations for L.A.'s Taxi Workers Alliance* (2006).

<sup>xviii</sup> *Congressional Response Report: Accuracy of the Social Security Administration's Numident File*, Office of the Inspector General, Social Security Administration (Dec. 2006).

<sup>xix</sup> *Id.*

<sup>xx</sup> *Transcript from Hearing on Employment Eligibility Verification Systems*, Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives (June 7, 2007).

<sup>xxi</sup> *Findings of the Web-Based Basic Pilot Evaluation*, Westat, (2007).

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

<sup>xxiii</sup> See *supra* note i.

<sup>xxiv</sup> “3200 Properties Cited for Code Violations”, *Home News Tribune* (August 11, 2007).



# PROMOTE GENDER EQUITY WITHIN SOUTH ASIAN COMMUNITIES.

Gender equity is a critical goal within all communities. Issues surrounding women's rights are of particular concern to the South Asian community, given that women comprise nearly half of the total South Asian population.<sup>i</sup> Significant **disparities among men and women of South Asian descent are evident along several different variables, including education, presence in the workforce, annual income, and limited English proficiency.** For example, among most South Asian communities, the percentage of men earning more than \$57,000 annually is more than double the percentage of women earning the same.<sup>ii</sup> In contrast, twice as many South Asian women than men earn less than \$12,500 annually.<sup>iii</sup> South Asian women are also not equally represented in the labor force – for example, among Indians, 80% of men are employed, compared to 54% of women; and for Pakistanis, 76% of men are employed, compared to 34% of women.<sup>iv</sup> Language is also a factor contributing to disempowerment as 28% of South Asian women are limited English proficient.<sup>v</sup>

**Among the most important issues facing South Asian women are domestic violence, trafficking, limited access to reproductive and mental health services, and economic disempowerment.** Moreover, many South Asian women experience these issues encounter even greater challenges due to their dependent immigrant or undocumented status. Policies and programs must be implemented to address these systemic inequalities and provide pathways to attain true gender equity.

## Violence and Exploitation

**Gender-Based Violence within the South Asian Community** While comprehensive data is unavailable, there is strong evidence indicating that many South Asians, particularly women, continually encounter gender-based violence in the United States. Such violence can occur in a variety of contexts, including at the hands of an abusive spouse, partner, or extended family member; in the form of a hate crime based on gender; or as a result of trafficking. It can result in physical, emotional, or psychological harm.

Domestic violence, in particular, is a major concern for South Asian women. In fact, a recent study about the South Asian community in the Boston area found that 40.8% of women surveyed in 1998 and 1999 had reported experiencing physical abuse or sexual abuse from their current male partners or

injury/need for medical services due to that abuse.<sup>vi</sup> Often domestic violence results in life-threatening situations for many South Asian women. Between March 1990 and March 2007, at least 148 intimate violence-related fatalities or near-fatalities were reported in South Asian community newspapers.<sup>vii</sup> In addition, violence in same-sex relationships also affects many South Asians yet often goes unreported. These statistics show that anti-violence programs and support services for survivors are critically needed.

**Access to Linguistically Accessible and Culturally Appropriate Services for South Asian Domestic Violence Survivors** Many South Asian women of all economic backgrounds and immigration statuses can encounter violence. Yet some of these women are unable to access the legal and social services needed for their safety. Often South Asian women are unable to avail themselves of services at

mainstream service agency shelters due to linguistic and cultural barriers. The legal system also presents additional obstacles to limited-English proficient (LEP) women, who may be unable to navigate complex legal procedures due to language barriers, particularly when there are insufficient court interpreters trained in South Asian languages. As a result, LEP domestic violence survivors can become hesitant to leave their batterers or report a crime, forcing them to avoid the justice system altogether.

***Immigration Concerns for Survivors of Domestic Violence*** For those women trapped in abusive marriages, securing their stay in the United States can be challenging because maintaining lawful immigration status sometimes requires cooperation from the abusive spouse. This forces many women to choose between two equally disempowering options: remaining in a violent marriage or losing their immigration status. In addition, for immigrant women with children, escaping an abusive marriage becomes even more complicated due to child custody concerns. Women who have to choose between keeping their children and reporting their abusive situations may often choose the former.

***The Violence Against Women Act*** The process of self-petitioning under the *Violence Against Women Act* (VAWA) helps many abused spouses of U.S. citizens or green card holders to obtain immigration status without the assistance of the abusive spouse. However, VAWA regulations are limited for battered spouses on dependent visas, such as the H-4, F-2, and L-2 visas.<sup>viii</sup> Women on such dependent visas cannot receive permanent immigration status even if they successfully self-petition under VAWA.

Furthermore, additional obstacles can include the abuser's attempt to exert control over an abused spouse by threatening to withdraw immigration sponsorship; destroying or hiding immigration documents; withholding information about the immigration process; or allowing the dependent's visa status to expire.<sup>ix</sup>

***Undocumented Survivors of Domestic Violence*** The path to legal status becomes especially difficult for undocumented survivors of domestic violence. If a

woman is placed in deportation proceedings, in order to qualify for cancellation of removal (a form of relief from deportation available in immigration courts) and stay in the country, she must demonstrate an "exceptional and extremely unusual hardship" to herself or to her U.S. citizen or lawful permanent resident child or parent if she were deported. However, many undocumented South Asian women do not have relatives in order to be eligible for such relief. Furthermore, to satisfy this threshold, some applicants may have to obtain documentation that is within an abusive spouse's sole control, including a social security number, birth certificate, and proof that the marriage was entered into good faith. These requirements impose a serious burden on these South Asian women and prevent many from winning their deportation cases.

***The U-Visa*** The U-visa is a form of relief that allows immigrant survivors of mental and physical abuse to stay in the United States regardless of immigration status; however, there are requirements that prevent many women from seeking it. Specifically, a U-visa is only granted to those able to provide information useful to certain criminal prosecutions. Such requirements make it difficult for many women to acquire this visa, particularly if they are hesitant to pursue prosecution or work with law enforcement.

***Trafficking*** Several South Asian countries (including Bangladesh, India, Nepal, and Pakistan), are source countries of trafficking worldwide.<sup>x</sup> Various forms of trafficking affect South Asians, including labor and sex trafficking. Specifically regarding labor trafficking, many South Asian women who are employed as domestic workers for diplomats and staff of international and foreign government entities enter the

country on temporary A-3, B-1, and G-5 visas.<sup>xi</sup> Numerous cases have revealed that South Asian domestic workers endure harsh conditions amounting to force, fraud, and coercion, including being confined in the home where they work, being physically assaulted by their employer, and receiving no pay for work.<sup>xii</sup> Many are hesitant to seek recourse because their ability to stay legally in the United States hinges upon their relationship

## DID YOU KNOW?

There are various reasons for domestic violence survivors to be reluctant to work with law enforcement ranging from the trauma of retelling to a stranger the abuse suffered; mistrust of police; and fear of incarcerating or deporting the primary earner in the family. For example, if a woman reports her non-citizen abusive spouse to law enforcement, and the abuser is convicted of an "aggravated felony", he may be deported, rendering the survivor and her children without financial support. In fact, since 9/11, many South Asian women have become extremely hesitant to contact police, given the increased detention of male immigrants from South Asia who were often the sole breadwinners for their families.

country on temporary A-3, B-1, and G-5 visas.<sup>xi</sup> Numerous cases have revealed that South Asian domestic workers endure harsh conditions amounting to force, fraud, and coercion, including being confined in the home where they work, being physically assaulted by their employer, and receiving no pay for work.<sup>xii</sup> Many are hesitant to seek recourse because their ability to stay legally in the United States hinges upon their relationship

with their employer. Some fear reprisal from their employers including isolating them from the outside world and threatening them with deportation. This is often exacerbated for those employed by senior diplomats who are protected by diplomatic immunity.

Existing legislation allows trafficking survivors to receive certain benefits, including immigration status through the *Trafficking Victims Protection Act (TVPA)* which allows them to stay in the United States on a T-visa. In order to qualify for such relief, trafficking victims must prove that they came to the United States as a direct result of trafficking and must cooperate in the prosecution of their traffickers. Even if survivors choose to cooperate with prosecution, their safety is not guaranteed as information can be turned over to opposing counsel and there is currently no witness protection program for such survivors. Eligibility for T-visas is also limited to survivors of “severe trafficking” which requires meeting stringent standards that leave many unprotected and force others to endure lengthy separations from family members abroad. Moreover, because immigrant children are not protected under the *TVPA*, trafficking survivors may be reluctant to come forward and seek such relief.

### **Immigration Issues**

***Transnational Abandonment of Spouses*** Spousal abandonment is a phenomenon that increasingly affects South Asian women. In fact, according to the Ministry of Overseas Indian Affairs, over 30,000 women in India alone have been abandoned by their husbands living abroad.<sup>xiii</sup> While statistics are currently unavailable for other nations, abandonment also affects women from Bangladesh, Pakistan and other South Asian countries. In cases of abandonment, wives are left in South Asia waiting for their husbands to initiate the immigration process to bring them to the United States. These women remain without any communication from their husbands, receive no immigration benefits, and are often divorced under U.S. law without their knowledge.

***Obstacles to Employment Authorization for H-4 Visa Holders*** The H-1B visa program for workers employed in “specialty occupations” is heavily used by South Asians entering the United States. In fact,

over 130,000 South Asian H-1B workers and their dependents came to the country in 2006.<sup>xiv</sup> Yet spouses of H-1B workers who enter the United States on H-4 visas suffer from various immigration restrictions under immigration law. Under the terms of their visas, many dependents are currently unable to work, gain public benefits, or receive a social security number; in some states, it is difficult to even obtain a driver’s license without spousal consent. As a result, many women are prevented from progressing in their careers and becoming self-sufficient as they await their green cards.

These problems are magnified for H-4 visa holders in abusive marriages. Due to their inability to work and become financially independent, many of these women are reluctant to leave these relationships.<sup>xv</sup> While some provisions are in place to allow abused H-4 visaholders to self-petition and gain work

authorization under VAWA when it was reauthorized in 2005, only interim regulations have been passed. Because final regulations have yet to be implemented, many South Asian H-4 visaholders are reluctant to step forward as survivors of violence without the assurance that they will be able to work.

### **Access to Services and Benefits**

***Availability of Linguistically Accessible and Culturally Competent Health Care*** For many South Asian women new to the United States, access to health information can often be limited or nonexistent. These challenges often arise due to different cultural perceptions about health care and health

service provision and language barriers on the part of many immigrants.<sup>xvi</sup> Linguistic barriers can prevent individuals from being able to adequately communicate with health care providers. As a result, South Asian immigrants may be erroneously denied services, improperly use family members to translate with service providers, or fail to seek medical attention at all.

Misinterpretation and miscommunication caused by linguistic and cultural differences can completely block vital assistance that South Asian women need. Programs designed to raise awareness, provide treatment, and promote prevention in a linguistically and culturally appropriate manner

must be instituted by government agencies and health care providers.

**Availability of Reproductive and Sexual Health Services for South Asian Women** While not often publicly addressed, reproductive and sexual health are growing concerns within the South Asian community. Many young South Asians refrain from seeking appropriate health services regarding sexuality and relationships due to cultural perceptions within the South Asian community. In fact, South Asian women often express difficulty communicating with their families or doctors about issues related to sex, sexuality, relationships, and marriage.<sup>xvii</sup>

This is particularly a concern for those who endure sexual abuse or are sexually assaulted, either as adults or as children. In fact, a study conducted between 1998 and 1999 of South Asian women in Boston revealed that 65% of women surveyed who reported physical abuse also reported sexual abuse.<sup>xviii</sup> Silence in the South Asian community surrounding these issues prevents many survivors from being able to obtain help and reach a safe space, while suffering through the trauma of abuse and dealing with its consequences.

In addition to sexual health, accurate education and information specifically regarding reproductive health is needed. In particular, due to unequal power dynamics between men and women in some South Asian families, South Asian women are often unable to exercise complete control over their reproductive health needs.

**Access to the Legal System for Limited English Proficient Women** South Asians, like many other immigrants, face obstacles when accessing the American legal system due to linguistic barriers. This can be especially problematic in situations where LEP survivors of abuse are attempting to use court systems. Many South Asian women who speak limited English require interpretation in the courtroom, yet various jurisdictions do not provide adequately trained interpreters fluent in South Asian languages. In some states, the standards used by courts to hire qualified interpreters vary depending upon the language being spoken. For example, in New Jersey, interpreters in South Asian languages seeking to work in the courts are not required to undergo interpreter screening tests, unlike interpreters in certain non-South Asian languages. As a result, many South Asian women cannot properly use the legal system and domestic violence survivors are unable to effectively bring forth complaints against their abusers.

**Economic Empowerment** An integral part of advancing gender equity within the South Asian community is the promotion of economic empowerment and self-sufficiency of immigrant women in the United States. Yet many disparities exist between South Asian women and men when it comes to employment, education, and annual income.

In addition, due to unequal power dynamics within many South Asian families, these disparities are magnified by economic abuse that occurs in relationships. For example, an abusive husband may take out mortgages or other loans in his wife's name. If the husband ends up defaulting on the loan, it is reflected upon the wife's credit report and can have long-lasting economic consequences, including the inability to obtain future loans or qualify for Section 8 subsidized housing.

## **KEY RECOMMENDATIONS**

### ***Support programs aimed to address and prevent gender-based violence within the South Asian community.***

- Legislative bodies and administrative agencies should establish policies at the federal, state, and local levels to address gender-based violence with an understanding of cultural and immigration contexts affecting the South Asian community.
- Government agencies providing legal resources for survivors of gender-based violence should ensure its availability in South Asian languages.
- Federal and state agencies should increase the creation of violence prevention programs geared towards the South Asian community by funding and supporting their expansion.
- Federal and state agencies overseeing violence against women initiatives should fund and support programs that promote mutual respect and cooperation between men and women in South Asian communities.
- Federal and state public health agencies should disaggregate data by national origin on the incidences of gender-based violence within South Asian communities.

### ***Support programs that provide linguistically accessible and culturally appropriate services for South Asian domestic violence survivors.***

- Federal, state and local agencies charged with administering violence against women programs should increase awareness and provision of linguistically and culturally appropriate resources for trauma survivors, including shelters, hotlines, and mental health resources.
- Mainstream organizations providing services to domestic violence survivors should train their staff on the customs and religious practices of South Asian clients.
- State and local law enforcement agencies should mandate telephonic interpreter services in South Asian languages for responses to domestic violence calls.

### ***Support policies that protect and empower immigrant domestic violence survivors.***

- Congress should amend immigration law to allow domestic violence survivors who are undocumented or on dependent visas to be eligible for permanent legal status through the self-petitioning process under the VAWA.
- Congress should study the impact of the requirement for applicants of U-visas to cooperate with the arrest and prosecution of an abusive spouse.

- State and local governments should provide immediate financial support or vocational training to domestic violence survivors and their families.
- Family courts should not allow a domestic violence survivor's immigration status or financial situation to prevent her from maintaining custody over her children.
- The Department of Justice should increase funding for all VAWA-funded organizations to provide assistance for domestic violence survivors with the self-petitioning process.
- The Department of Justice should increase funding for organizations serving South Asian women to receive training on forms of relief for survivors of abuse and trafficking.

### ***Support immigration policies that protect and empower dependent visa holders.***

- The Department of Homeland Security should implement final regulations allowing all dependent visaholders to gain employment authorization.
- The Department of Homeland Security should not require dependent visa holders seeking to change their status to submit any documents that only a spouse can access.
- Government and private funders should increase funding for organizations serving South Asian women to receive training on dependent visa issues.

### ***Strengthen policies aimed to prevent all forms of trafficking and provide meaningful resources to survivors.***

- Congress should ensure that anti-trafficking initiatives address the root causes of trafficking in a global context.
- Law enforcement and immigration officials should implement training initiatives to identify trafficking survivors, including the establishment of immediate health care, immigration assistance, and social service referrals.
- The U.S. State Department should seek waivers of immunity for foreign diplomats who abuse immigrant workers they bring into the country so survivors can seek redress in court.
- Congress should study the impact eliminate the requirement for applicants of T-visas to cooperate with the arrest and prosecution of their trafficker in order to obtain such relief.
- Government agencies and private funders should increase funding to community-based organizations providing protection and services for South Asian trafficking survivors regardless of their cooperation in the prosecution of traffickers.

- Congress should enact policies that provide labor protections to all immigrant workers, including trafficking survivors, regardless of their status.
- Federal, state, and local civil rights agencies should publish and disseminate *Know Your Rights* guides for workers suffering employer abuse in South Asian languages.
- Law enforcement and data collection agencies should increase disaggregated data about the gender, country of origin, and language of trafficking survivors.

### ***Develop policies aimed at curbing transnational abandonment of spouses.***

- Congress should conduct an extensive and comprehensive examination of bilateral treaties between the United States and South Asian nations related to transnational abandonment.

### ***Increase culturally and linguistically appropriate health services for South Asian women.***

- Government health agencies and private funders should increase funding to mental health care providers (including mainstream organizations and South Asian community-based groups) that offer services in a culturally and linguistically appropriate context to South Asians women.
- Government health agencies and private funders should increase funding to support mental, reproductive, and sexual health research on women within the South Asian community.
- The Office of Minority Health (OMH) within the Department of Health and Human Services, the Center for Disease Control (CDC) through the Health Resources and Services Administration, as well as state and local health agencies should collect and disaggregate data by gender, ethnicity, primary language, and country of origin on mental, sexual, and reproductive health issues affecting women within different South Asian communities.

### ***Promote programs and policies that foster the economic empowerment of South Asian women.***

- Federal, state, and local government agencies should expand programs that provide South Asian women with the tools needed for personal and professional development, including English classes, financial planning, and job training skills.
- Government agencies and private funders should increase funding for and support local organizations that promote the economic empowerment of South Asian women.

<sup>i</sup> U.S. Census 2000, Summary Files 1 through 4. See also *Demographic Characteristics of South Asians in the United States: Emphasis on Poverty, Gender, Language Ability, and Immigration Status*, South Asian Americans Leading Together (2007).

<sup>ii</sup> *Id.*

<sup>iii</sup> *Id.*

<sup>iv</sup> *Id.*

<sup>v</sup> *Id.*

<sup>vi</sup> Raj, A. and Silverman, J. *Intimate Partner Violence Against South Asian Women in Greater Boston* in *Journal of the American Medical Women's Association* (2002).

<sup>vii</sup> Dasgupta, S.D. *Manavi Occasional Paper No. 3: Communicating with Faith: Anti-Domestic Violence Advocacy in Religious Communities* (2007).

<sup>viii</sup> The H-4 visa covers dependents of H-1B visa holders, who are “specialty occupation” workers. The F-2 visa covers dependents of F-1 student visa holders. The L-2 visa covers dependents of L-1 intracompany transfer visa holders.

<sup>ix</sup> Bhuyan, R. *Navigating Gender, Immigration, and Domestic Violence: Advocacy with Work Visa Holders in Body Evidence* (2007).

<sup>x</sup> Ribando, Claire M. *Trafficking in Persons: U.S. Policy and Issues for Congress*, Congressional Research Service (June 20, 2007).

<sup>xi</sup> The A-3 visa covers domestic workers and personal attendants of foreign diplomats. The G-5 visa is for domestic workers and personal attendants of representatives of international civil servants. The B-1 visa covers domestic workers and personal attendants of other foreigners or U.S. citizens.

<sup>xii</sup> *Sabbithi, et al. v. Al Saleh, et al.* (U.S. District Court of the District of Columbia 2007); *U.S. v. Alzanki*, 54 F.3d 994, 999 (1st Cir. 1995); *Stories Break the Chain Campaign: Assisting the Enslaved in the Land of the Free.; Hidden in the Home: Abuse of Domestic Workers with Special Visas in the United States*, Human Rights Watch (2001).

<sup>xiii</sup> Karim, R., “Spouse abandonment reaches epidemic proportions” *India Post* (2007).

<sup>xiv</sup> *2005 Yearbook of Immigration Statistics*, U.S. Department of Homeland Security, Office of Immigration Statistics (2007).

<sup>xv</sup> Shah, S., *Middle Class, Documented, and Helpless in Body Evidence* (2007).

<sup>xvi</sup> In fact, one-half of all Bangladeshis are LEP, while almost one-third of Pakistanis and nearly one-quarter of Indians are LEP. U.S. Census 2000, Summary Files 1 through 4. See also *Demographic Characteristics of South Asians in the United States: Emphasis on Poverty, Gender, Language Ability, and Immigration Status*, South Asian Americans Leading Together (2007).

<sup>xvii</sup> Rao, S., Akram, S. Ivey, S., and Bhattacharya B., *A Brown Paper: The Health of South Asians in the United States: Women's Health, South Asian Public Health Association* (2002).

<sup>xviii</sup> Raj, A., Silverman, J. *Intimate Partner Violence against South Asian Women in Greater Boston*, Journal of American Medical Women's Association (2002).



# PROMOTE POLICIES AND PRACTICES THAT ADDRESS THE HEALTH NEEDS OF SOUTH ASIANS.

**Health needs that affect South Asians must be addressed with cultural and linguistic competency** by health care providers and community members alike. South Asians confront a range of health issues including cardiovascular disease; diabetes; various forms of cancer mental, reproductive, and sexual health; and HIV/AIDS.<sup>i</sup> **Immigrant eligibility restrictions often prevent South Asians from receiving vital benefits**, including state-sponsored medical coverage. In addition, many South Asians also face **obstacles when accessing health care due to linguistic and cultural barriers, immigration status, and economic status**. As a result, many South Asians, including recent immigrants, the poor, the elderly, women, and children lack the ability to access linguistically and culturally appropriate health care.

**Access to Affordable Health Coverage** The limited availability of affordable health coverage affects many individuals and families in the United States, including those within the South Asian community. In fact, over 20% of all South Asians lack health coverage plans making adequate health care out of reach for a significant segment of the population.<sup>ii</sup> According to a study of racial and ethnic disparities in access to health insurance and health care conducted in 2000, forty percent of uninsured South Asians under the age of 65 had no regular source of care and even 15% of those with coverage felt they had no regular source of care.<sup>iii</sup>

While health insurance is out of reach for many in the United States, obstacles to accessibility are especially heightened for many foreign-born individuals due to their immigration status. For example, as a result of welfare reform legislation in 1996, immigrants who arrived in the United States after August 22, 1996, are required to wait five years before becoming eligible for various federal health coverage programs (including Medicaid and SCHIP). This leaves many legal immigrants without

insurance, preventative care, and illness treatment. Moreover, undocumented immigrants are entirely ineligible for Medicare or Medicaid, making it nearly impossible for them to obtain any health coverage or health care at all.

**Research and Prevention Strategies on Health Issues Affecting South Asians** Primary health concerns for the South Asian community include cardiovascular disease, diabetes, tobacco-related diseases<sup>iv</sup>, and various forms of cancer.<sup>v</sup> In fact, the most common cause of death for South Asians is heart disease<sup>vi</sup> with rates that are nearly four times that of the general population in the United States.<sup>vii</sup> South Asian immigrants are also seven times more likely to suffer from Type 2 diabetes than the general population,<sup>viii</sup> and South Asian women are particularly susceptible to this disease as compared to the general population.<sup>ix</sup>

While the leading causes of disease for South Asians have been identified and documented, there is a need for research and data to show their prevalence and how they manifest in various South

Asian subpopulations.<sup>x</sup> Moreover, there is a need for greater awareness within the community about potential health risks and the need for preventative care.

### ***Availability of Linguistically Accessible and Culturally Competent Health Care***

For many South Asians new to the United States, access to health information can often be limited or nonexistent.

These challenges often arise due to different cultural perceptions about health care and health service provision and language barriers on the part of many immigrants.<sup>xi</sup> Linguistic barriers can prevent individuals from being able to adequately communicate with health care providers. As a result, South Asian immigrants may be erroneously denied services, improperly use family members to translate with service providers, or fail to seek medical attention at all.

Misinterpretation and miscommunication caused by linguistic and cultural barriers can have grave consequences for individuals and completely block vital assistance that marginalized South Asians need. Programs designed to raise awareness, provide treatment, and promote prevention in a linguistically and culturally appropriate manner must be instituted by government agencies and health care providers.

### ***Availability of Linguistically Accessible and Culturally Competent Mental Health Services***

***Addressing the mental health needs of South Asians is an important yet often overlooked concern, especially for newly-arrived immigrants and survivors of trauma.***

Depression, in particular, is a major concern for South Asians. Suicide rates in our communities, particularly among young South Asian women, are found to be higher than in other populations.<sup>xii</sup> Mental health needs also surface for recent immigrants. In fact, elderly South Asians particularly struggle with the acculturation process and its mental health consequences as they adjust to new lives in the United States.<sup>xiii</sup>

In addition, many survivors of domestic violence and hate crimes grapple not only with the physical trauma of abuse, but also with psychological and psychiatric consequences including depression, anxiety disorders, and substance abuse.<sup>xiv</sup> Yet, little comprehensive research has been conducted on the state of mental health in the South Asian community and, in particular, on the psychological impact of domestic and intimate partner violence, hate crimes, and other traumatic events.

### **DID YOU KNOW?**

The limited availability of affordable health coverage affects many individuals and families in the United States, including those within the South Asian community. Lack of coverage can especially be challenging for the elderly, new immigrants, and the economically disadvantaged. In fact, over 20% of all South Asians lack health coverage plans, making adequate health care out of reach for a significant segment of the population. According to a study conducted in 2000 of racial and ethnic disparities in access to health insurance and health care, 40% of uninsured South Asians under the age of 65 had no regular source of care and even 15% of those with coverage felt they had no regular source of care. *Racial and Ethnic Disparities in Access to Health Insurance and Health Care*, UCLA Center for Health Policy Research and the Henry J. Kaiser Family Foundation (2000).

Issues surrounding mental health are seldom acknowledged within the South Asian community, due to religious beliefs and cultural influences, forcing many afflicted with mental health conditions to suffer in silence. South Asians are often unwilling to seek mental health services and instead opt to work out issues within the family structure.<sup>xv</sup> In order to ensure the mental health of the entire community, South Asian individuals need adequate and compassionate support that is linguistically appropriate and culturally sensitive.

### ***Awareness and Care Regarding Reproductive Health, Sexual Health, and HIV/AIDS Concerns***

While not often publicly addressed, reproductive health, sexual health, and HIV/AIDS issues are growing concerns within the South Asian community. Many young South Asians refrain from seeking appropriate health services or counseling regarding sexuality and relationships due to cultural perceptions within the South Asian community. In fact, South Asians often express difficulty communicating with their families or doctors about issues related to sex, sexuality, relationships, and marriage.<sup>xvi</sup>

This is particularly a concern for those who endure sexual abuse or are sexually assaulted, either as adults or as children. In fact, a study conducted between 1998 and 1999 of South Asian women in Boston revealed that 65% of women surveyed who reported physical abuse also reported sexual abuse.<sup>xvii</sup> Silence in the South Asian community surrounding these issues prevents many survivors from being able to obtain help and reach a safe

space, while suffering through the trauma of abuse and dealing with its consequences.

In addition to sexual health, accurate education and information specifically regarding reproductive health is needed.<sup>xviii</sup> In particular, due to unequal power dynamics between men and women in some South Asian families, South Asian women are often unable to exercise complete control over their reproductive health needs.

HIV/AIDS issues are also a growing concern for South Asians. Misconceptions about how the disease is transmitted exist within the community; for example, 54% of South Asians surveyed in a recent study conducted in New York City incorrectly believed that diaphragms, birth control, pills, and patches provided effective protection against HIV/AIDS during sex.<sup>xxix</sup> Religious and cultural beliefs about HIV/AIDS as a “punishment” also affect the perception of the disease; in fact, the same study showed that 45% of South Asians surveyed believed that individuals afflicted with HIV/AIDS “deserved to get it because of their lifestyle.”<sup>xx</sup> This stigma prevents many South Asians from obtaining accurate information, seeking testing, and obtaining treatment.<sup>xxi</sup>

#### ***Awareness Regarding LGBTIQ Health Issues***

Often, health care service providers are not aware of the South Asian lesbian, gay, bisexual, transgender, intersex, questioning, and gender non-conforming (LGBTIQ) community’s health care needs. A recent survey of the South Asian LGBTIQ community in Southern California showed that 90% of respondents experienced mental health issues, which can manifest into suicidal thoughts, abuse in the family, substance abuse, and unsafe sex.<sup>xxii</sup> Utilization of health services is also relatively low among LGBTIQ individuals, especially for mental health and sexual health issues, even among those who have access to these services.<sup>xxiii</sup> Often, this is a result of the social stigma surrounding homosexuality within South Asian cultures and religions, which forces many LGBTIQ individuals to be reluctant to seek health care.<sup>xxiv</sup> In addition, many South Asian LGBTIQ individuals report discrimination in health care settings due to multiple factors, including sexual orientation, gender non-conformity, ethnicity, nationality, and immigration status.<sup>xxv</sup> Yet instances of such discrimination are often underreported due to internalized homophobia within the South Asian community.<sup>xxvi</sup>

#### **KEY RECOMMENDATIONS**

##### ***Ensure the right to affordable health care for all.***

- Congress should enact legislation providing universal state-sponsored health care for all.
- Congress should enact legislation permitting states to provide the option of coverage of immigrants under the Medicaid program and the State Children’s Health Insurance Program (SCHIP).
- Congress should eliminate restrictions to state-supported medical insurance based on immigration status.
- Congress should repeal citizenship documentation requirements for those seeking Medicaid coverage.
- Congress and the Department of Health and Human Services (HHS) should simplify enrollment procedures for state-sponsored health insurance programs, including Medicare and Medicaid.
- Federal and state health agencies should provide translated materials into South Asian languages regarding state-sponsored health insurance programs.

##### ***Develop culturally relevant treatment strategies and research geared towards understanding diseases affecting South Asians.***

- Public health officials and health care providers should increase the design and implementation of treatment and prevention programs with the goal of reducing the prevalence of various diseases affecting South Asians, including cardiovascular disease, cancer, tobacco-related diseases, and diabetes.
- Public and private funders should support targeted research towards understanding the various diseases affecting different South Asian populations.
- Public and private funders should support collaborative efforts among state agencies, hospitals, health care providers, and community organizations in addressing South Asian health issues.
- The Office of Minority Health (OMH) within HHS, the Center for Disease Control (CDC), the Health Resources and Services Administration, and state agencies should collect and report disaggregated data by ethnicity, primary language, gender, and country of origin on health issues affecting different South Asian communities.
- OMH, CDC through the Health Resources and Services Administration, and state agencies should collect and report disaggregated data on the health needs of South Asians in regions

where the population is heavily concentrated, including the New York/New Jersey, Los Angeles, Chicago, San Francisco, and Washington, DC metropolitan areas.

***Ensure availability of linguistically accessible and culturally competent medical services.***

- OMH within HHS and state health agencies should implement policies to allow the government to extend coverage that is linguistically and culturally appropriate to South Asians.
- Federal and state health agencies should mandate that all administrative and direct service staff at medical facilities undergo cultural competency training pertaining to treating South Asian patients.
- Hospitals and other health care facilities should increase the hiring of qualified bilingual South Asian staff.
- Federal and state health agencies should provide trainings and implement uniform standards for interpreters used in medical settings.
- Federal and state health agencies should provide trainings to medical service providers on how to appropriately work with interpreters in an objective manner.
- Federal and state health agencies should prohibit the use of patients' children and family members as interpreters in medical settings.
- Federal and state health agencies should provide translated materials and information in South Asian languages about health care services and benefits, including free and low-cost coverage.

***Increase research and culturally appropriate resources regarding mental health services for South Asians.***

- Congress should enact legislation requiring equity in the provision of mental health and substance-related disorder benefits under health insurance plans.
- Public and private funders should increase funding to mental health care providers (including mainstream organizations and South Asian community-based groups) that offer services in a culturally appropriate context to South Asians.
- OMH, the CDC, the Health Resources and Services Administration, the National Institute on Mental Health, and state agencies should collect and report disaggregated data by ethnicity, primary language, gender, and country of origin on mental health issues affecting different South Asian communities.

***Increase research and culturally appropriate resources concerning reproductive health, sexual health, and HIV/AIDS for South Asians.***

- Public and private funders should increase funding to support reproductive health, sexual health, and HIV/AIDS research within the South Asian community.
- Federal, state, and local health agencies should implement collaborative outreach and awareness efforts involving South Asian community-based organizations and religious institutions on these issues in manners consistent with institutional cultures and religious teachings.
- Government health agencies and community-based organizations should develop programs addressing the reproductive health, sexual health, and HIV/AIDS needs of South Asians.
- OMH, the CDC, the Health Resources and Services Administration, and state agencies should collect and disaggregate data by ethnicity, primary language, and country of origin on sexual, reproductive, and HIV/AIDS health issues affecting different South Asian communities.

***Promote awareness and services related to LGBTIQ health issues.***

- Hospitals and other health care providers should develop programs relating to mental health, sexual health, gynecology, HIV-testing and treatment, safe sex education, and intimate or family abuse grounded in an understanding of the specific needs faced by LGBTIQ South Asians.
- Federal and state public health agencies should implement collaborative outreach and awareness efforts involving South Asian community organizations and religious institutions to combat discrimination against patients based on sexual orientation, gender identity, or gender expression.
- Hospitals and other health care providers should implement trainings for health care service providers around cultural competency and sensitivity when addressing the medical needs of the South Asian LGBTIQ community.
- OMH, the CDC, the Health Resources and Services Administration, and state agencies should collect and disaggregate data by ethnicity, primary language, and country of origin on LGBTIQ health issues affecting different South Asian communities.
- Federal and state health agencies should promote the visibility of South Asian LGBTIQ organizations and develop state-sponsored programs that address the medical needs of this community.

<sup>i</sup> Asian Pacific Islander American Health Forum, *Health Briefs: South Asians in the United States* (2005).

<sup>ii</sup> *Racial and Ethnic Disparities in Access to Health Insurance and Health Care*, UCLA Center for Health Policy Research and the Henry J. Kaiser Family Foundation (2000). See also *APIAHF Health Brief: South Asians in the United States*, Asian Pacific Islander American Health Forum (August 2006).

<sup>iii</sup> *Estimates of the Unauthorized Immigrant Population Residing in the United States: 1990 to 2000*, U.S. Immigration and Naturalization Service, Office of Policy and Planning.

<sup>iv</sup> *Tobacco and South Asians*, South Asian Network (2003).

<sup>v</sup> See *supra* note i.

<sup>vi</sup> Ivey, S.L., Khatta M., Vedanthan, R. *Cardiovascular Disease in A Brown Paper: The Health of South Asians in the United States*, South Asian Public Health Association (2002).

<sup>vii</sup> Enas, E.A., *How to Beat the Heart Disease Epidemic Among South Asians*, Coronary Artery Disease among Asian Indians Research Foundation (2005).

<sup>viii</sup> Bhopal, R., Unwin, N., White, M., Yallop, J., Walker, L., Alberti, K.G., Harland, J., Patel, S., Ahmad, N., Turner, C., Watson, B., Kaur, D., Kulkarni, A., & Laker, M. *Heterogeneity of coronary heart disease risk factors in Indian, Pakistani, Bangladeshi, and European origin populations*. British Medical Journal (1999).

<sup>ix</sup> Kieffer E.C., Martin J.A., Herman W.H., *The Impact of Maternal Nativity on the Prevalence of Diabetes During Pregnancy among U.S. Ethnic Groups in Diabetes Care* (1999).

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

<sup>xi</sup> In fact, one-half of all Bangladeshis are LEP, while almost one-third of Pakistanis and nearly one-quarter of Indians are LEP. U.S. Census 2000, Summary Files 1 through 4. See also *Demographic Characteristics of South Asians in the United States: Emphasis on Poverty, Gender, Language Ability, and Immigration Status*, South Asian Americans Leading Together (2007).

<sup>xii</sup> Rastogi, M., and Suthakaran, V. *Mental Health in A Brown Paper: The Health of South Asians in the United States*, South Asian Public Health Association (2002).

<sup>xiii</sup> *Id.*

<sup>xiv</sup> *Id.*

<sup>xv</sup> See *supra* note i.

<sup>xvi</sup> Rao, S., Akram, S., Ivey, S., and Bhattacharya B., *A Brown Paper: The Health of South Asians in the United States: Women's Health*, South Asian Public Health Association (2002).

<sup>xvii</sup> Raj, A., Silverman, J. *Intimate Partner Violence against South Asian Women in Greater Boston*, Journal of American Medical Women's Association (2002).

<sup>xviii</sup> See *supra* note xvi.

<sup>xix</sup> *South Asian Women's HIV/AIDS Related Issues: An Exploratory Study of New York City*, Asian & Pacific Islander Coalition on HIV/AIDS, Inc. (2004).

<sup>xx</sup> *Id.*

<sup>xxi</sup> Bhattacharya, G, Health care seeking for HIV/AIDS among South Asians in the United States. *Health & Social Work* (2000).

<sup>xxii</sup> *No More Denial: Giving Visibility to the South Asian LGBTIQ Community in Southern California*, Satrang and South Asian Network (2007).

<sup>xxiii</sup> *Id.*

<sup>xxiv</sup> *Id.*

<sup>xxv</sup> *Id.*

<sup>xxvi</sup> *Id.*



# PROMOTE IMMIGRANT RIGHTS AND JUST REFORMS TO THE IMMIGRATION SYSTEM.

With **nearly three-quarters of the over 2.5 million South Asians in the United States being foreign-born**, the rights and welfare of immigrants in this country are a top priority for the community.<sup>i</sup> **South Asians possess a range of immigration statuses.** The South Asian community includes undocumented immigrants, dependents and temporary workers on various visas, refugees and asylum-seekers, lawful permanent residents, and United States citizens. Unfortunately, **the immigration system and immigration policies have negatively affected many South Asians**, regardless of status. For example, members of the South Asian community have faced obstacles to attaining permanent legal status and citizenship and the impact of various harsh enforcement initiatives. Just and humane reform is necessary to fix the immigration system.

## Obtaining and Maintaining Legal Status and Citizenship

**Obstacles to Legal Permanent Immigrant Status**  
The numbers of undocumented South Asian immigrants are steadily on the rise. For example, the estimated undocumented population from India alone increased 125% between 2000 and 2006, jumping from 120,000 to 270,000 in six years.<sup>ii</sup> In 2000, there were over 17,000 Bangladeshis, 26,000 Pakistanis, and 3,000 Sri Lankans residing in the United States without status<sup>iii</sup>; these numbers have risen considerably in recent years. Unfortunately, many undocumented immigrants – despite having developed strong ties to the United States, paying taxes, and expressing a desire to obtain permanent legal status – are relegated to the shadows of American society and are often unable to access basic government services and protections. These individuals are unable to apply for legal status due to current immigration laws that bar adjusting to lawful permanent resident status without valid immigration documentation. Policies must be changed so that undocumented immigrants can

become lawful permanent residents and citizens and continue to contribute to society.

**Naturalization** Recently, various changes in the naturalization process have been implemented by the U.S. Citizenship and Immigration Services (USCIS). In 2007, the fees for naturalization applications, as well as other immigration applications, almost doubled, making citizenship out of reach for many applicants. In addition, the recent surge in naturalization applications immediately prior to the fee increase has hampered USCIS's ability to process applications in a timely manner. Finally, a newly redesigned naturalization exam, to be implemented in October 2008, which includes many difficult questions about civics and U.S. history, will likely pose challenges for many elderly and limited English proficient (LEP) applicants.

**Immigration Application Processing Delays due to Security Background Checks** All immigration applications must undergo various security background checks – including clearance through

the Interagency Border Inspection System (IBIS), Federal Bureau of Investigation (FBI) fingerprint databases, and the FBI National Name Check Program – before they are approved. Yet, as a result of the FBI name check process in particular, many individuals have had their immigration applications delayed. In fact, in May 2007, USCIS reported over 300,000 FBI name check cases pending.<sup>iv</sup> Many South Asians have had their applications held up for months or even years while these name checks are being completed.<sup>v</sup> While USCIS and the FBI took promising measures in 2008 to improve the processing times for green card and naturalization applicants facing delays, many South Asians continue to await immigration benefits for which they are eligible.

### **Family Reunification**

#### ***Family-based Visa Backlogs***

With almost 22,000 individuals entering through a family category in 2006, South Asians heavily use family-based immigration visas.<sup>vi</sup> Yet, some South Asians who are currently being sponsored by U.S. citizen siblings have to wait nearly eleven years before obtaining green cards; others, in particular, green card holders, are waiting to be reunited with even spouses and children.<sup>vii</sup> These separations are especially difficult for newer immigrants who do not have family in the United States for support if they come upon hard times. Reasons for these delays include the backlog of applications processed by USCIS and insufficient numbers of visas for certain family preference categories.

***Immigration Benefits for LGBTIQ Immigrant Couples*** Immigrant families with lesbian, gay, bisexual, intersex, transgender, and gender non-conforming (LGBTIQ) members face unique challenges. Current immigration policies deny many families headed by same-sex couples the rights to which heterosexual couples are entitled.

For example, because the United States does not recognize committed relationships between same-sex partners as legal “marriages” or “families” under federal law and immigration regulations, these individuals are excluded from numerous family-based immigration benefits. As a result,

many same-sex binational couples have no choice but to make significant sacrifices. These hardships include maintaining long-distance relationships across national boundaries; making frequent and expensive trips to visit a partner abroad; resorting to living in exile outside the United States; or overstaying visas.<sup>viii</sup>

### **Immigrant Worker Issues**

***Guestworker Issues*** Many skilled workers entering the United States on H-2B visas (temporary visas for nonagricultural workers), suffer abuses at the hands of their employers but have difficulty escaping exploitation due to the terms of their visas. Under the H-2B visa program, workers are forced to lose their immigration status if they leave or change their employer. As a result, many exploited workers are left with little choice but to remain in abusive work environments.

Exploitation often occurs undetected due to the lack of labor law enforcement over this visa program. Contract and wage violations are rampant because the Department of Labor lacks the legal authority to enforce prevailing wage requirements under the visa or employer-employee contracts.<sup>ix</sup> Further exacerbating the situation are high fees that recruiters, contractors, and employers charge these workers in order to gain access to these jobs.<sup>x</sup> This forces many H-2B workers into serious debts that they must repay by taking out high interest loans or selling their homes in their countries of origin.<sup>xi</sup>

The H-2B guestworker program has had devastating consequences for many South Asians. In 2007, over 500 Indian pipefitters and welders were brought to the Gulf Coast on H-2B visas, after paying a lifetime’s worth of earnings to recruiters, being imprisoned by their employer, and being threatened with deportation. Due to the terms of their temporary visas, they could not leave their jobs or change employers without losing their immigration status.

***H-1B Visa Issues*** The H-1B visa program is heavily used by skilled immigrants from South Asia in certain specialty occupations. Of the 240,000

South Asians on temporary work-related visas in 2006, over 130,000 H-1B were visaholders and their dependents. Yet, numerous challenges exist for this class of workers. Severe caps, set at 65,000 per year, placed on these visas make it difficult for South Asians to come to the United States under this category. In fact, in recent years, the annual cap for H-1B visas has been filled in a mere few days after the filing deadline. H-1B workers also find it nearly impossible for them to change jobs and advance in their professional careers due to limitations on the portability of their visas.

**Employment-based Visa Backlogs** South Asians rely upon employment-based immigration, as evidenced by the 21,000 South Asians entering the country and obtaining green cards through employment-based categories in 2006.<sup>xii</sup> While these immigrants come here to improve their lives and contribute their skills to the U.S. economy, many are hampered by restrictions imposed upon them through the immigration system. For example, severe caps placed on employment-based visas make it difficult for South Asians to come to the United States to fill jobs. In addition, many wait years to adjust their status to lawful permanent residents and obtain their green cards due to the backlog of applications being processed by USCIS.

**Immigration Enforcement at the Workplace** The escalation of "interior enforcement" of immigration laws by the Department of Homeland Security (DHS) at worksites have negatively affected the South Asian community, disrupted local businesses, and resulted in the separation of many families with mixed immigration statuses. Workplace raids are ineffective at fixing our country's broken immigration system and instead criminalize workers who are merely seeking financial security and better lives for themselves and their families.

**Employment Verification Programs Aimed at Immigrant Workers** Existing and proposed electronic employment verification systems have had a detrimental impact upon all workers, regardless of immigration status. One concern is their reliance on government databases with high error rates; in fact, the Social Security Administration estimates that 17.8 million of its records contain discrepancies related to name, date of birth, or citizenship status, with 12.7 million of those records involving U.S. citizens.<sup>xiii</sup> Due to database errors, foreign-born lawful workers are 30 times more likely than native-born U.S. citizens to be incorrectly identified as unauthorized for employment.<sup>xiv</sup> Another concern is that employers may misuse the verification process and unjustly

fire immigrant workers.<sup>xv</sup> Evaluations of existing employment verification programs have shown that many employers engage in prohibited employment practices, including pre-employment screening, adverse employment action without confirmation of a worker's immigration status, and failure to inform workers of their rights.<sup>xvi</sup>

### **Immigration Concerns for Women**

**Immigration Concerns for Survivors of Domestic Violence** For women trapped in abusive marriages, securing their stay in the United States can be challenging because maintaining immigration status sometimes requires cooperation from the abusive spouse. This forces many to choose between remaining in a violent marriage and losing their immigration status. While various forms of relief – such as the *Violence Against Women Act* (VAWA), the U-visa, and cancellation of removal – exist to assist immigrant domestic violence survivors, these avenues are often blocked for many women because of arduous requirements under the law.

For example, VAWA establishes a process of self-petitioning for permanent immigration status that helps abused spouses of U.S. citizens or green card holders to obtain immigration status without the assistance of an abusive spouse. However, abused spouses on temporary dependent visas cannot receive permanent immigration status under VAWA's regulations. The U-visa is another channel used by South Asian domestic violence survivors who have suffered mental and physical abuse; however, it is only granted to those able to provide information useful to certain criminal prosecutions. Such requirements make it difficult for many South Asian women to acquire this visa, particularly if they are hesitant to pursue prosecution or work with law enforcement.

Undocumented survivors of domestic violence face unique hurdles to legal immigration status. These women can pursue a form of relief known as "cancellation of removal" in immigration court. However, the burden of proof requires that they demonstrate an "exceptional and extremely unusual hardship" to herself or to her U.S. citizen or lawful permanent resident child or parent if she were deported. However, many undocumented South Asian women do not have such relatives in order to be eligible for such relief. Furthermore some applicants may have to obtain documentation that is within an abusive spouse's sole control to obtain such relief. These requirements impose a serious burden on many South Asian women and prevent many from winning their deportation cases.

**Obstacles to Employment Authorization for H-4 Visa Holders** The H-1B visa program for workers employed in “specialty occupations” is heavily used by South Asians entering the United States. In fact, over 130,000 South Asian H-1B workers and their dependents came to the country in 2006.<sup>xvii</sup> Yet spouses of H-1B workers who enter the United States on H-4 visas suffer from various restrictions under immigration law. Under the terms of their visas, many dependents are currently unable to work, gain public benefits, or receive a social security number; in some states, it is difficult to even get a driver’s license without spousal consent. As a result, many women are prevented from progressing in their careers and becoming self-sufficient as they await their green cards.

These problems are magnified for H-4 visa holders in abusive marriages. Due to their inability to work and become financially independent, many of these women fell trapped in these relationships.<sup>xviii</sup> While some provisions are in place to allow abused H-4 visaholders to self-petition and gain work authorization under VAWA when it was reauthorized in 2005, only interim regulations have been passed. Because final regulations have yet to be implemented, many South Asian H-4 visaholders are reluctant to step forward as survivors of violence without the assurance that they will be able to work.

### **Enforcement Initiatives**

**Special Registration** In recent years, the federal government has established immigration enforcement programs under the guise of national security that have, in reality, led to profiling of immigrant communities. An example is the “special registration” program under the National Security Exit-Entry Registration System (NSEERS), a program instituted by the Department of Justice following 9/11 that required certain male nationals from predominantly Muslim and Arab countries to report to immigration authorities for interviews and processing. As a result, many individuals within the South Asian community were deported. While the initial phase of this program is over, many South Asian and Muslim immigrants are still required to

continually register with the government or face serious immigration consequences.

**Expanded Grounds for Deportation and Limited Access to Relief** Since the passage of various pieces of legislation in 1996, the breadth of reasons for deporting immigrants from the United States has significantly expanded. Immigrants who are found guilty of “aggravated felonies” under immigration law could be deported (aggravated felonies include various minor offenses and misdemeanors). The consequences of deportation are especially dire for aggravated felons as they may never return to the United States once ordered deported. Even immigrants who have received suspended sentences or have entered into plea agreements with prosecutors can be subjected to deportation proceedings. The situation for many immigrants has been worsened due to the retroactive nature of many of these laws, rendering them deportable.

### **DID YOU KNOW?**

Special registration was an immigration enforcement tool that targeted Pakistani and Bangladeshi communities nationwide.

Individuals who were unaware of the registration requirement and failed to register, as well as those who complied with registration but were found to lack immigration status, were placed into deportation proceedings. When special registration was completed, 13,000 of the nearly 83,000 men who complied with the program were set to be removed from the United States. *The Continuing Impact of the Special Registration Program*, South Asian Americans Leading Together (2005).

In addition, avenues of relief from deportation have been significantly reduced. There are no waivers exempting those classified as aggravated felons from deportation, unlike many other immigrants. Furthermore, due to immigration laws, immigration judges are unable to consider the hardship imposed upon U.S. citizen or lawful permanent resident family members who would be affected by an individual’s deportation. Such immigrants are also ineligible for seeking other forms of immigration relief, such as asylum and withholding of removal.

In addition, LGBTIQ citizens and lawful permanent residents are prevented from assisting partners who may be facing deportation. Due to legal provisions prohibiting same-sex partners from qualifying as family members, these individuals are unable to support applications for bond (release from immigration detention) or cancellation of removal, both of which can be influenced by familial ties.

**Information-sharing between Criminal and Immigration Databases** Recently, government agencies are increasingly entering immigration-related information, including suspected violations of immigration law, about individuals into state or

federal databases. These databases, such as the National Crime Information Center (NCIC) database, are often shared by local and federal law enforcement. In late 2001, the Departments of Justice and Homeland Security began entering certain categories of immigration violators into the NCIC database, including individuals who were apprehended through the special registration program that targeted many South Asian and Muslim immigrants. This practice is problematic because it often includes individuals suspected of committing civil (non-criminal) violations in criminal databases. In addition, serious concerns related to reliability of information collected in the databases have arisen.

***State and Local Policies Curtailing the Rights of Immigrants*** 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. This has occurred in many jurisdictions with significant South Asian populations. As a result of such policies, many South Asian immigrants, including hate crime and domestic violence survivors, are hesitant to reach out to local law enforcement for assistance out of fear that they may be investigated, arrested, or placed in deportation proceedings.

### **Accessing Services and Benefits**

***Benefits and Services Provided by State Governments*** Many areas with concentrated or emerging South Asian populations – including Georgia, Michigan, New Jersey, and Virginia – have considered or have already implemented policies that would negatively affect immigrants. Examples of such initiatives include prohibiting housing rentals to undocumented immigrants, mandating English-only curricula in public schools, and denying drivers' licenses to undocumented immigrants.

Even policies at the federal level are having an impact on how states distribute services to immigrants. For example, the *REAL ID Act* mandates national standards for state-issued identification, such as drivers' licenses. When *REAL ID* requirements are implemented, states will only be able to grant such licenses after verifying the lawful immigration status of an applicant. Moreover, undocumented immigrants will have no access to state-issued identification or a driver's license while in the United States. Such policies will create bureaucratic delays at driver's license agencies as employees make complicated

judgments about an applicant's immigration status. In addition, such policies will also make it increasingly difficult for many immigrants to access basic benefits and services that require a form of state identification. Furthermore, these policies will severely diminish public safety, as individuals will be forced to drive without a license in order to commute to work and school.

***Benefits and Services Provided by the Federal Government*** Access to many forms of federally-provided benefits and services, such as welfare, federally-subsidized loans, and state-sponsored medical coverage, hinges upon an individual's legal immigration status. In the realm of health coverage, for example, immigrant children who arrived in the United States after August 22, 1996, are required to wait five years before becoming eligible for various federal health coverage programs (including Medicaid and SCHIP). This leaves many legal immigrants without insurance, preventative care, and illness treatment. Moreover, undocumented immigrants are entirely ineligible for Medicare or Medicaid, making it nearly impossible for them to obtain any health coverage and health care.

### **Immigration Issues in Detention and Courts**

***Detention Issues*** The expansion of mandatory and indefinite detention of immigrants has been a major concern for the South Asian community. Following 9/11, the FBI began to indefinitely detain individuals, many of whom were of South Asian descent.<sup>xix</sup> Detention often results in families being torn apart; harassment and mistreatment of detainees; insufficient accommodations for religious attire, dietary restrictions, and practices; inadequate health care; and limited access to legal assistance.

South Asian immigrants have also been increasingly subjected to harassment by immigration officials while in immigration detention, particularly after 9/11. Sikh and Muslim detainees have reported being unable to practice their faiths or wear religious attire while in detention. For LGBTIQ and HIV-positive South Asian detainees, many endure mistreatment because of their illness, sexual orientation and/or gender identity. Transgender immigrant detainees face various hardships, including being placed gender-segregated facilities that do not conform to their own gender identity and frequently being denied medically necessary hormone therapy.<sup>xx</sup>

***Denial of Due Process*** Due process rights – such as the right to challenge one's detention or imprisonment (also known as *habeas corpus*), the

right to counsel, and the right to access to evidence – have been significantly eroded in recent years. South Asian immigrants have had their due process rights severely curtailed, particularly following 9/11, whether as a result of special registration, secret immigration hearings, or increased detention. Many of 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>xxi</sup> The *REAL ID Act*, in particular, significantly limits the due process rights of immigrants by denying those ordered deported or who have received adverse decisions on their immigration applications the right to challenge the decision in federal district courts.

***Obstacles to Obtaining Asylum Relief*** Many South Asians regularly petition for asylum relief or come to the United States as refugees. In fact, nearly 1,500 individuals of South Asian descent were granted asylum in 2006 alone.<sup>xxii</sup> Yet current standards regarding the adjudication of asylum applications are neither uniform nor consistent. In fact, due to the discretion given to individual adjudicators, there are significant disparities in asylum cases.<sup>xxiii</sup>

Moreover, there have been several cases of South Asian asylum applicants being denied relief in immigration courts due to cultural and linguistic barriers.<sup>xxiv</sup> Immigration judges who are not culturally sensitive have erroneously concluded that an applicant is not credible based on an incorrectly translated statement or a statement taken out of cultural context. Asylum claims from South Asian applicants have also been denied based on an immigration judge's failure to provide meaningful hearings.<sup>xxv</sup>

In addition, while persecution on account of gender and sexual orientation is being raised by many South Asians in asylum applications, asylum is often difficult to gain on these grounds.

## **KEY RECOMMENDATIONS**

### ***Ensure a just and humane approach to reforming the immigration system at the federal level.***

Congress must consider and enact immigration reform that includes all of the following:

- Elimination of visa backlogs and increase of visa caps in the family and employment contexts
- A path to legalization and citizenship for undocumented immigrants that allows individuals to adjust their status without incurring burdensome fines.
- Strong worker protections and paths to residency for temporary skilled and unskilled workers
- Access to services and benefits regardless of immigration status
- Preservation of due process rights in the immigration system

### ***Expedite immigration application background checks related to security-related delays.***

- USCIS and FBI should ensure that security background checks for all immigration applications are conducted quickly and transparently.
- USCIS and FBI should ensure that immigration applications are not delayed or denied solely due to an applicant's national origin or religious affiliation.
- USCIS should establish more processing facilities in order to quickly adjudicate applications awaiting security background checks.

### ***Ensure the naturalization process is accessible to all eligible immigrants.***

- USCIS should decrease the fees for naturalization, as well as other immigration applications, and ensure that any fee increases are not prohibitively expensive.
- USCIS should develop a culturally and linguistically accessible outreach plan regarding current and prospective changes in naturalization procedures.

### ***Ensure that the immigration system promotes the reunification of families.***

- USCIS should eliminate the current backlog of family-based visa applications.
- Congress should raise the number of family-based visas granted annually.
- Congress should amend immigration law to permit U.S. citizens and lawful permanent residents in binational same-sex relationships to sponsor foreign-born partners for the same

immigration benefits that heterosexual married couples receive.

#### ***Support immigration policies that protect the rights of immigrant workers.***

- Congress should amend immigration law to allow workers on temporary visas greater ability to be able to change employers or jobs without losing their immigration status.
- Congress should amend immigration law to allow the Department of Labor to enforce contracts and monitor workplace conditions for H-2B visa holders.
- USCIS should eliminate the current backlog of employment-based visa applications.
- Congress should raise the number of employment-based and H-1B visas granted annually.
- Immigration and Customs Enforcement (ICE) should terminate enforcement strategies that target immigrant workers and allow for racial profiling.
- ICE should ensure that enforcement initiatives do not separate immigrant workers from their families.
- The Department of Homeland Security should ensure that employment verification programs do not lead to unjust terminations and racial profiling of immigrant workers by employers.

#### ***Support immigration policies that protect and empower domestic violence survivors.***

- Congress should amend immigration law to allow all domestic violence survivors who are undocumented or on dependent visas to be eligible for permanent immigration status through the self-petitioning process under VAWA.
- Congress should study the impact of the requirement for applicants of U-visas to cooperate with the arrest and prosecution of an abusive spouse.
- The Department of Justice should increase funding for all VAWA-funded organizations to provide assistance for domestic violence survivors with the self-petitioning process.
- The Department of Justice should increase funding for organizations serving South Asian women to receive training on forms of relief for survivors of abuse and trafficking.

#### ***Support immigration policies that protect and empower dependent visa holders.***

- The Department of Homeland Security should implement final regulations allowing all dependent visaholders to gain employment authorization.

- The Department of Homeland Security should not require dependent visa holders who are seeking to change their status to submit any documents to which only a spouse has access.
- The Department of Justice should increase funding for organizations serving South Asian women to receive training on dependent visa issues.

#### ***Cease enforcement initiatives and national security measures that disproportionately affect immigrants and promote profiling.***

- Congress should completely terminate the special registration program, including exit interviews and address change reporting requirements.
- Congress and the Department of Homeland Security should ensure future immigration enforcement and national security initiatives are not selectively enforced against certain communities on the basis of race, religion, national origin, or ethnicity.

#### ***Ensure that immigrants are not deported from the United States for minor violations of the law.***

- Congress should amend immigration law so that immigrants who have committed minor non-violent offenses are not subject to deportation.
- Congress should amend immigration law to ensure that immigrants who are not a danger to the community may be able to pursue asylum and other related forms of relief for those fleeing persecution in their countries of origin.
- Congress should amend immigration law to ensure that offenses labeled as deportable are not retroactive.
- Congress should amend immigration laws to allow state and federal criminal judges to make recommendations against deportation.
- Congress and state legislatures should mandate that criminal defense attorneys undergo trainings regarding the immigration consequences of criminal convictions and plea agreements.
- ICE and the Office of Immigration Statistics within the Department of Homeland Security should publish statistics tabulating the numbers of countries of origin of immigrants deported from the United States on the basis of criminal convictions.

#### ***Cease sharing information among various law enforcement agencies for immigration purposes.***

- Congress should terminate programs with a discriminatory impact that allow information-sharing among various immigration and criminal databases shown to be inaccurate.

- Congress should ensure that criminal databases comply with accuracy requirements under the *Privacy Act*.

- Oppose policies denying public services to non-citizens or permitting state and local law enforcement to carry out federal immigration law.**
- State and local governments should not promote policies that restrict eligibility for public benefits based on immigration status.
  - Congress should repeal the *REAL ID Act* which mandates states to verify the immigration status of state identification applicants and denies drivers' licenses to undocumented immigrants.
  - State and local law enforcement agencies should promote community-oriented policing programs that foster relationships based on trust between immigrant communities and law enforcement.
  - ICE should end collaboration between its enforcement agencies and local, county, and state police departments.

**Ensure compliance of immigration detention standards and provide alternatives to immigration detention.**

- ICE should uphold its own internal standards governing immigrant detention, including those pertaining to access to legal counsel, religious accommodation, access to health care, and linguistically accessible services.
- ICE should institute cultural competency trainings for detention facility personnel on the needs of South Asian detainees.
- Congress should eliminate mandatory and indefinite detention of immigrants.
- Congress should study, implement, and fund alternatives to immigration detention.
- Congress should amend immigration law to ensure that same-sex family ties are treated the same as heterosexual relationships for purposes of relief from immigration detention and deportation, including bond and cancellation of removal.

**Strengthen due process protections within the immigration system.**

- Congress should amend current laws to guarantee a right to a full and fair public hearing for all immigrants.
- 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 repeal the *REAL ID Act* preventing many immigrants whose immigration applications have been denied or

are in detention from obtaining judicial review in federal district court.

- Congress should terminate the use of secret evidence in court proceedings or provide justification demonstrating the need for conducting all or part of the proceedings in secret.
- Congress should repeal laws that eliminate or weaken the right to *habeas corpus* and other constitutional guarantees.

**Standardize the adjudication of asylum-related forms of relief.**

- The Executive Office for Immigration Review (EOIR) within the Department of Justice should ensure uniform application of asylum-related forms of relief from deportation across Immigration Courts.
- EOIR should provide trainings for immigration judges on the role of cultural differences and linguistic barriers for South Asian respondents.
- EOIR should improve its internal review process to identify and eliminate bias and incompetence among immigration judges.
- Congress should establish persecution on account of sexual orientation, gender identity, and gender expression as explicitly protected grounds for asylum applicants.
- Congress should eliminate the one-year filing deadline for asylum applicants that prevent many South Asians from seeking relief.

<sup>i</sup> Based on figures extrapolated from U.S. Census 2000, Summary Files 1 through 4.

<sup>ii</sup> *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2006*, U.S. Department of Homeland Security, Office of Immigration Statistics (2007). Statistics from 2006 for undocumented immigrants from other South Asian countries are not available in this report.

<sup>iii</sup> *Estimates of the Unauthorized Immigrant Population Residing in the United States: 1990 to 2000*, U.S. Immigration and Naturalization Service, Office of Policy and Planning.

<sup>iv</sup> *Americans on Hold: Profiling, Citizenship, and the "War on Terror"*, New York University Law School, Center for Human Rights and Global Justice (2007).

<sup>v</sup> *Id.*

<sup>vi</sup> *2006 Yearbook of Immigration Statistics*, U.S. Department of Homeland Security, Office of Immigration Statistics (November 2007).

<sup>vii</sup> *Visa Bulletin* U.S. State Department (March 2008)

<sup>viii</sup> *Family, Unvalued: Discrimination, Denial, and the Fate of Binational Same-Sex Couples under U.S. Law*, Human Rights Watch/Immigration Equality (2006).

<sup>ix</sup> *Close to Slavery: Guestworker Programs in the United States*, Southern Poverty Law Center (2007).

<sup>x</sup> *Id.*

<sup>xi</sup> *Id.*

<sup>xii</sup> *Id.*

<sup>xiii</sup> *Congressional Response Report: Accuracy of the Social Security Administration's Numinous File*, Office of the Inspector General, Social Security Administration (Dec. 2006).

<sup>xiv</sup> *Id.*

<sup>xv</sup> *Transcript from Hearing on Employment Eligibility Verification Systems*, Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives (June 7, 2007).

<sup>xvi</sup> *Findings of the Web-Based Basic Pilot Evaluation*, Westat, (2007).

<sup>xvii</sup> *2005 Yearbook of Immigration Statistics*, U.S. Department of Homeland Security, Office of Immigration Statistics (2007).

<sup>xviii</sup> Shah, S., *Middle Class, Documented, and Helpless in Body Evidence* (2007).

<sup>xix</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>xx</sup> *HIV and Immigration: The Basics*, Immigration Equality/Lambda Legal (2007); *Queers and Immigration*, Queers for Economic Justice (2007).

<sup>xxi</sup> See *supra* note xix.

<sup>xxii</sup> See *supra* note vi.

<sup>xxiii</sup> *Asylum Disparities Exist Regardless of Court Location and Nationality*, Transactional Records Access Clearinghouse (2007).

<sup>xxiv</sup> *Singh v. INS*, 292 F.3d 1017 (9th Cir. 2002). See also *Paramasamy v. Ashcroft*, 295 F.3d 1047 (9th Cir. 2002).

<sup>xxv</sup> *Ahmed v. Gonzales*, 298 F.3d 722 (6th Cir. 2005). See also *Thangaraja v. Ashcroft*, 107 Fed. Appx. 815 (9th Cir. 2004) *later proceeding at* 428 F.3d 870 (9th Cir. 2005); and *Sahi v. Gonzalez*, 416 F.3d 587 (7th Cir. 2005).



# PROTECT THE RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER, INTERSEX, QUESTIONING, AND GENDER NON-CONFORMING SOUTH ASIANS.

South Asians in the United States who are lesbian, gay, bisexual, transgender, intersex, questioning, or gender non-conforming (LGBTIQ) often face multiple levels of discrimination and unfair treatment in various contexts. In particular, policies relating to hate crimes enforcement, immigration, marriage between same-sex partners, and workplace discrimination have a significant impact on the community.

**Immigration-related policies that have a disparate impact on South Asian LGBTIQ individuals** – including the denial of immigration benefits to same-sex partners; abuse and harassment based on sexual orientation, gender identity, and gender expression in immigration detention centers; and restrictions on HIV-positive individuals from entering the country – must be changed. Furthermore, in order to promote the safety of LGBTIQ South Asians in the United States, **strong hate crimes and anti-discrimination legislation must be enacted** to address violence and unequal treatment occurring, not only on the basis of religion or national origin, but also due to sexual orientation, gender identity, and gender expression. In addition, the **traditional notion of what constitutes a family under federal and state laws must be redefined** to recognize the multitude of family structures that exist within the South Asian LGBTIQ community. Moreover, **health issues affecting the South Asian community must be further researched and addressed** in a manner that is both linguistically accessible and culturally appropriate.

## Immigration Issues

### ***Immigration Benefits for LGBTIQ Immigrants***

There are an estimated 63,000 same-sex partnerships in the United States where at least one partner is not a U.S. citizen, including over 35,000 binational same-sex couples where one partner is a U.S. citizen or lawful permanent resident.<sup>i</sup> However, current immigration policies deny many

families headed by same-sex couples the rights to which heterosexual couples are entitled.

For example, because the United States does not recognize committed relationships between same-sex partners as legal “marriages” or “families” under federal law and immigration regulations, these individuals are excluded from numerous family-based immigration benefits. As a result, many same-sex binational couples have no choice

but to make significant sacrifices. These hardships include maintaining long-distance relationships across national boundaries; making frequent and expensive trips to visit a partner abroad; resorting to living in exile outside the United States; or overstaying visas.<sup>ii</sup>

In addition to restrictions on family-based immigration benefits, LGBTIQ citizens and lawful permanent residents are prevented from assisting partners who may be facing deportation. Due to legal provisions prohibiting same-sex partners from qualifying as family members, these individuals are unable to support applications for bond (release from immigration detention) or cancellation of removal, both of which can be influenced by familial ties. Even if laws banning marriage between same-sex partners were lifted, immigrant same-sex couples would still be unable to avail themselves of the same immigration benefits that other couples receive. Federal government agencies must specifically issue regulations recognizing same-sex partnerships for the purposes of immigration law.

**Obstacles for LGBTIQ Asylum Seekers** Under current law, individuals fleeing from abuse suffered in their country of origin as a result of their sexual orientation can be protected. Many LGBTIQ individuals face the threat of persecution on account of their sexual orientation, gender identity, or gender expression. A range of issues in South Asian countries drive many LGBTIQ South Asians to seek refuge in the United States, including laws that criminalize alternative sexual orientations, gender identities, or gender expression; police brutality suffered as a result of alternative identities and orientation; and exile from family.

Specifically, for individuals persecuted as a result of their sexual orientation, asylum case law from the Board of Immigration Appeals (BIA) exists that protects them based upon their membership in a “particular social group.” Yet the definition of this term has been inconsistently applied in various circuit courts, complicating an already difficult asylum application process for LGBTIQ asylum-seekers.

### DID YOU KNOW?

The requirement that those seeking asylum must file their application within one year after arriving in the United States forces many LGBTIQ immigrants escaping persecution to avoid seeking relief. They are often unaware of the asylum process and its filing deadlines or are afraid to come forward to pursue it due to concerns about homophobia. *HIV and Immigration: The Basics*, Immigration Equality/Lambda Legal; *Queers and Immigration*, Queers for Economic Justice (2007).

**Immigration Ban on Individuals Diagnosed as HIV-Positive** Current immigration law restricts the entry of certain HIV-positive individuals into the country because of their medical condition in a variety of ways. In addition, every applicant for lawful permanent residency over the age of fifteen is required to undergo HIV-testing. While HIV-positive individuals who are married to U.S. citizens are allowed to enter the country, many involved in committed same-sex partnerships generally cannot unless they qualify for a limited waiver. For temporary immigrants, if an immigration official suspects an individual of having HIV, the government can require testing. Moreover, asylum-seekers persecuted in their country of origin for being HIV-positive are not explicitly protected because a medical condition is not considered a “particular social group” under asylum law.

**Harassment of LGBTIQ and HIV-Positive Individuals by Immigration Officials** South Asian immigrants have been increasingly subjected to harassment by immigration officials upon entering the country and in immigration detention, particularly after 9/11. For LGBTIQ and HIV-positive South Asians, the trauma suffered is even greater, as many endure additional mistreatment due to their HIV-positive status, sexual orientation, gender identity, and/or gender expression. Transgender immigrant detainees face additional hardships, including

being placed in gender-segregated facilities that may not conform to their own gender identity and frequently being denied medically necessary hormone therapy.<sup>iii</sup>

### Discrimination and Hate Crimes

**Discrimination Against LGBTIQ South Asians** South Asians across the country have long experienced discrimination at the workplace, at school, and at places of business as a result of their national origin, religion, accent, and/or attire. LGBTIQ South Asians often face additional discrimination based on their sexual orientation, gender identity, and/or gender expression. A recent report showed that among LGBTIQ Indians surveyed across the country, 84% experienced discrimination and/or harassment based on race or ethnicity and 69% experienced discrimination

and/or harassment based on sexual orientation.<sup>iv</sup> Another needs assessment survey of LGBTIQ South Asians in Southern California found that 77% of survey participants reported experiencing discrimination because of their sexual orientation or gender identity and 69% reported experiencing racism in mainstream society.<sup>v</sup> Seven out of ten participants in the same survey reported facing discrimination by other South Asians based on their sexual orientation, gender identity, or gender expression.<sup>vi</sup> Moreover, current anti-discrimination policies at the federal and state levels, in some cases, fail to adequately address such unfair treatment on the basis of sexual orientation, gender identity, and gender expression.

**Hate Crimes Against LGBTIQ South Asians** Hate crimes are a serious concern for LGBTIQ South Asians. According to the Federal Bureau of Investigation (FBI), fifteen percent of all hate crimes perpetrated in 2006 (regardless of race or ethnicity) were motivated by the victim's sexual orientation.<sup>vii</sup> However, current federal legislation does not provide adequate protection or resources for investigating bias-related incidents and hate crimes perpetrated on the basis of sexual orientation, gender identity, and gender expression. Furthermore, anti-homophobia trainings both within and beyond the South Asian community are necessary to ensure that hate crimes against LGBTIQ South Asians are prevented and addressed.

### **Family Issues**

#### ***Right to Civil Marriage***

Currently, federal law does not permit individuals in committed same-sex relationships the right to marry. Following the enactment of the *Defense of Marriage Act (DOMA)*, individual states are not required to recognize marriages between same-sex couples (even if recognized in other jurisdictions), and the federal government is mandated to only recognize marriages between one man and one woman. Many states have also enacted legislation and constitutional amendments banning marriages between same-sex couples denying a fundamental right to LGBTIQ individuals.

#### ***Domestic Partner Benefits and Recognition of Self-Defined Families***

While legalization of

marriage for same-sex couples is a crucial step, many couples, regardless of sexual orientation, may choose not to participate in the institution of marriage, and instead, seek to expand the definition of what constitutes a family.<sup>viii</sup> There are a variety of configurations of what constitutes a family in South Asian communities that extend beyond the "traditional" nuclear family, such as extended families living in one household; single-parent households; caregivers providing assistance to the elderly; and families headed by same-sex couples. Given the diversity that exists among South Asian family structures, it is important to ensure that benefits currently associated with married couples—such as tax incentives, health care, Social Security and pension plans, unemployment insurance, and welfare assistance – be expanded.

***Challenges in Adoption for LGBTIQ Couples*** For many LGBTIQ immigrants, expanding their families involves adopting children either within the United States and from abroad. Yet such adoption can be complicated by various federal and state laws; in fact, states may completely restrict or significantly limit the ability of same-sex couples to adopt children. Laws must be implemented to ensure all families that can provide safe and stable environments for children be allowed to adopt.

### **Health Issues**

#### ***Awareness Regarding LGBTIQ Health Issues***

Often, health care service providers are not aware of the South Asian LGBTIQ community's unique health care needs. A recent survey of the South Asian LGBTIQ community in Southern California showed that

90% of respondents experienced mental health issues, which can manifest into suicidal thoughts, abuse in the family, substance abuse, and unsafe sex.<sup>ix</sup> Utilization of health services is also relatively low among LGBTIQ individuals, especially for mental health and sexual health issues, even among those who have access to these services.<sup>x</sup> Often, this is a result of the social stigma surrounding homosexuality within South Asian cultures and religions, which forces many LGBTIQ individuals with health concerns to remain isolated and reluctant to seek health care.<sup>xi</sup>

HIV/AIDS issues are also a growing concern for South Asians. Misconceptions about how the

disease is transmitted exist within the community; for example, 54% of South Asians surveyed in a recent study conducted in New York City incorrectly believed that diaphragms, birth control, pills, and patches provided effective protection against HIV/AIDS during sex.<sup>xii</sup> Religious and cultural beliefs about HIV/AIDS as a “punishment” also affect the perception of the disease; in fact, the same study showed that 45% of South Asians surveyed believed that individuals afflicted with HIV/AIDS “deserved to get it because of their lifestyle.”<sup>xiii</sup> This stigma prevents many South Asians from obtaining accurate information, seeking testing, and obtaining treatment.<sup>xiv</sup>

## **KEY RECOMMENDATIONS**

### ***Support legislation that provides the same immigration benefits to LGBTIQ individuals as to other immigrants.***

- Congress should amend immigration law to permit U.S. citizens and lawful permanent residents in binational same-sex relationships to sponsor foreign-born partners for the same immigration benefits that heterosexual married couples receive.
- Congress should amend immigration law to ensure that same-sex family ties are treated the same as heterosexual relationships for purposes of relief from immigration detention and deportation, including bond and cancellation of removal.

### ***Ensure that LGBTIQ South Asians persecuted due to their sexual orientation are able to obtain asylum relief.***

- Congress should amend immigration law to explicitly establish persecution on account of sexual orientation, gender identity, and gender expression as protected grounds for asylum applicants.
- Congress should eliminate the one-year filing deadline for asylum applicants that prevent many LGBTIQ South Asians from seeking relief.

### ***Eliminate immigration restrictions against HIV-positive immigrants.***

- Congress should enact legislation that would declassify HIV as a “communicable disease of public health significance” and allow HIV-positive immigrants to enter the country without having to seek a discretionary waiver.
- Congress should eliminate HIV-testing requirements for immigrants seeking to enter the country or adjust their status, including green card applicants.

### ***Investigate and prevent harassment by immigration officials of LGBTIQ and HIV-positive immigrants.***

- Immigration and Customs Enforcement (ICE) should provide mandatory trainings for immigration officials and immigration detention personnel on how to appropriately work with LGBTIQ immigrants.
- ICE should amend immigration detention standards to prohibit discrimination and harassment against LGBTIQ and HIV-positive detainees.
- ICE should implement a complaint process in South Asian languages for LGBTIQ and HIV-positive immigrants to report incidences of

harassment by immigration officials and detention abuse.

- ICE should investigate incidences of harassment and detention abuse against LGBTIQ and HIV-positive immigrants.
- ICE should ensure that HIV-positive and transgender detainees have access to needed medical care while in detention.

#### ***Expand anti-discrimination and hate crimes policies to cover LGBTIQ individuals.***

- Congress and state legislatures should expand current federal and state hate crimes legislation to cover incidents motivated by a victim's actual or perceived sexual orientation, gender identity, or gender expression.
- Congress and state legislatures should provide state and local law enforcement additional resources to investigate hate crimes against LGTBIQ individuals.
- Federal and state civil rights agencies should track hate crimes against LGBTIQ individuals.
- Congress should enact legislation making it illegal to fire, refuse to hire, or refuse to promote employees based solely on sexual orientation or gender identity.
- Federal and state civil rights agencies should establish and provide funding for *Know Your Rights* programs and materials that are linguistically and culturally appropriate for South Asian LGBTIQ victims of discrimination and hate crimes.
- Federal and state civil rights agencies should engage with community-based organizations in developing programs that eliminate homophobia and promote tolerance of LGTBIQ South Asians both within and outside of the South Asian community.

#### ***Support the right to civil marriage, domestic partner benefits, and recognition of self-defined families.***

- Congress should repeal the *Federal Defense of Marriage Act* and state legislation that do not recognize marriage between same-sex partners.
- Federal and state agencies should allow for individuals in committed relationships who may not elect to marry to be able to avail themselves of the same rights and benefits as married couples.
- Congress and state legislatures should enact policies that ensure the right of LGBTIQ couples to adopt children.

#### ***Promote awareness and services related to LGBTIQ health issues.***

- Federal and state health agencies should develop programs relating to mental health, sexual

health, gynecology, HIV testing and treatment, safe sex education, and intimate or family abuse grounded in an understanding of the specific needs faced by LGBTIQ South Asians.

- Federal and state health agencies should implement collaborative outreach and awareness efforts involving South Asian community organizations, religious institutions, and government public health agencies to combat discrimination against patients based on sexual orientation, gender identity, and gender expression.
- Health care service providers should implement trainings around cultural competency and sensitivity when addressing the medical needs of the South Asian LGBTIQ community.
- The Office of Minority Health, the Center for Disease Control, and the Health Resources and Services Administration should collect and disaggregate data by ethnicity, primary language, and country of origin on LGBTIQ health issues affecting different South Asian communities.
- Federal and state health agencies should promote the visibility of South Asian LGBTIQ organizations and develop programs addressing the medical needs of this community.

<sup>i</sup> Family, *Unvalued: Discrimination, Denial, and the Fate of Binational Same-Sex Couples under U.S. Law*, Human Rights Watch/Immigration Equality (2006).

<sup>ii</sup> *Id.*

<sup>iii</sup> *HIV and Immigrants: The Basics*, Immigration Equality/Lambda Legal; *Queers and Immigration*, Queers for Economic Justice (2007).

<sup>iv</sup> Daing, A. and Vianney, C., *Living in the Margins: A National Survey of Lesbian, Gay Asian and Pacific Islander Americans*, National Gay and Lesbian Task Force Policy Institute (2007).

<sup>v</sup> *No More Denial! Giving Visibility to the Needs of the South Asian LGBTIQ Community in Southern California*, Satrang/South Asian Network (2007).

<sup>vi</sup> *Id.*

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

<sup>viii</sup> *Building a Movement from the Ground Up: A Report from the Family, Community, and Sexuality Project*, Western States Center (2006).

<sup>ix</sup> See *supra* note v.

<sup>x</sup> *Id.*

<sup>xii</sup> *South Asian Women's HIV/AIDS Related Issues: An Exploratory Study of New York City*, Asian & Pacific Islander Coalition on HIV/AIDS, Inc. (2004).

<sup>xiii</sup> *Id.*

<sup>xiv</sup> Bhattacharya, G, Health care seeking for HIV/AIDS among South Asians in the United States. *Health & Social Work* (2000).



# ADVANCE THE EMPOWERMENT OF SOUTH ASIAN YOUTH.

Approximately one quarter of the South Asian population in the United States is under the age of 18.<sup>i</sup> **South Asian youth often face unique issues in the United States** that are often overlooked by members in the community and by policymakers at the local, state, and federal levels.

Many South Asian youth, particularly those who come from low-income families or are recent immigrants, are in need of academic preparation, employment training, leadership development, and safe spaces within schools. In addition, **limited English proficient (LEP) South Asian students struggle to academically succeed** without appropriate bilingual assistance, and, following 9/11, many South Asian students have experienced bias and discrimination in the classroom. **For undocumented youth, additional obstacles arise** in terms of attaining affordable higher education and interacting with immigration enforcement officials who enter schools to apprehend students lacking immigration status. Programs and policies that address these issues must be developed in consultation with students, parents, schools, and community organizations in order to meet the growing needs of young South Asians.

## Primary and Secondary Education

**Challenges Facing Limited English Proficient South Asian Students** Many South Asian students are unable to obtain a meaningful education due to inadequate resources for limited English proficient (LEP) students. In New Jersey, for example, South Asian students are now among the top ten ethnic groups with the highest LEP enrollment rates statewide.<sup>ii</sup> Studies have shown that the lack of bilingual education instruction at schools can lead to a number of consequences for LEP students including poor academic performance; incorrect placement in special education classes; inability to form friendships with peers; lack of preparation for higher education; and lack of requisite skills to obtain employment.<sup>iii</sup>

In addition, many LEP students find themselves falling behind their classmates without appropriate instruction and trained teachers. Yet, across the country, teacher shortages are most severe in subjects beneficial to LEP students, including bilingual, English as a Second Language, and foreign language courses.<sup>iv</sup>

**Cultural Barriers Between South Asian Parents and Schools** Compounding the difficulties that students face in the classroom is the breakdown of communication between teachers and parents of South Asian students. Many immigrants coming to the United States were educated in school systems that are markedly different from what their children experience.<sup>v</sup> School administrators and teachers in the United States often believe it is the parents' responsibility to be engaged in their children's education but fail to acknowledge and learn about the cultural differences that exist.<sup>vi</sup> Due to such barriers, parents often refrain from becoming involved in their children's educational experiences. In addition, due to linguistic and cultural differences, immigrant parents are often not informed of important school issues, including parent-teacher conferences, examinations, and disciplinary procedures. In order to ensure that all South Asian students and parents are engaged, it would help significantly to have South Asian teachers and other school staff to whom they can relate.

### ***Discrimination and Law Enforcement in the Classroom***

For many South Asian youth, classrooms are often not the safe spaces that they should be. This is due to harassment motivated by a student's race or religion, the presence of law enforcement at schools, and immigration enforcement authorities targeting immigrant students.

South Asian children often encounter bias-based bullying in the classroom and mistreatment by school teachers and administrators because of their ethnicity, national origin, or religion. In fact, 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.<sup>vii</sup> Discrimination in the classroom also affects Muslim students; in 2006, over 170 civil rights complaints were reported involving Muslims in schools across the country.<sup>viii</sup>

Students of other faiths have also experienced bullying and harassment for various reasons, including religious practices around vegetarianism or worship of multiple deities.<sup>ix</sup>

In addition to harassment perpetrated by classmates, teachers, and administrators, the increased presence of police and immigration authorities in schools following 9/11 has threatened the safety of many South Asian youth.<sup>x</sup> Law enforcement presence often includes armed police patrolling school hallways, metal detectors at school, regular frisks and searches of students, and even enforcement of school disciplinary policies.<sup>xi</sup> Often students find that police presence, instead of promoting school safety, can actually diminish it.

Particularly threatening to undocumented students is collaboration that has occurred among local law enforcement, immigration authorities, and school administrators since 9/11. Various policies, including the *No Child Left Behind Act* (NCLB), the *PATRIOT Act*, and the *National Defense Authorization Act of 2002*, have enabled personal information about individuals, including students, to be shared among governmental agencies. Although all students, including those who are undocumented, have the right to a high school education, schools frequently ask students about their immigration status upon registration, when applying for lunch

### **DID YOU KNOW?**

A survey of South Asian students attending public schools in New York study found that 51% of respondents reported having seen and/or experienced harassment by school or police authorities. Among those who experienced or witnessed such harassment, 85% believed it was based on actual or perceived race, ethnicity, religion, or immigration status. *Education Not Deportation: Impact of New York City School Safety Policies on South Asian Immigrant Youth, Desis Rising Up and Moving* (DRUM) (2006).

programs, and when counseling them for higher education options.<sup>xii</sup>

Another roadblock in creating safe zones for South Asian students have been inflexible "zero tolerance" disciplinary policies that mandate maximum punishments for students who commit certain infractions.<sup>xiii</sup> Such policies rely upon harsh punitive measures and even criminal charges when addressing often minor disciplinary problems.<sup>xiv</sup> Zero tolerance disciplinary codes have also been shown to disproportionately affect students of color and the most vulnerable within student populations.

### **Higher Education**

***Pursuing Higher Education for Low-Income Students*** Poverty within the South Asian community prevents many students from being able to obtain a college education. In fact, the majority of

Bangladeshis in the United States live at 200% of the poverty line and more than one-fifth of Pakistani and Bangladeshi children live in poverty.<sup>xv</sup> Although only 13% of Indians are at 125% of the poverty level, this constitutes more than 200,000 individuals.<sup>xvi</sup> While various federal government programs are currently in place to promote the higher education of students from disadvantaged backgrounds, including Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) and TRIO (which combines various education programs including Upward Bound, Talent Search, and Student Support Services), greater efforts must be made to promote the recruitment and retention of low-income South Asian students through these programs.

### ***Higher Education for Undocumented Students***

Often, through no fault of their own, undocumented students live in the United States without immigration status after immigrating with their parents or other family members. These students are frequently prevented from pursuing their academic dreams due to state policies banning undocumented students from public colleges and universities or forcing them to pay out-of-state tuition. Policies must be enacted at the state and federal levels to ensure that these youth can obtain an affordable college education and also be able to legalize their status.

## **KEY RECOMMENDATIONS**

### ***Ensure access to education that is cognizant of the needs of LEP students.***

- Federal and state education agencies should increase funding for bilingual education programs that assist LEP South Asian students.
- State and local education agencies should obtain bilingual education materials in South Asian languages that can be incorporated into classroom curricula.
- State and local education agencies should provide technical assistance and trainings on cultural, linguistic, and immigration experiences in conjunction with local South Asian community-based organizations to teachers and school districts with LEP South Asian student populations.
- Schools, in consultation with South Asian community-based organizations, leaders and advocates, should recruit and train teachers who speak South Asian languages.
- Schools should train all teachers to understand the needs of South Asian LEP students and to work in multicultural environments.
- Federal and state education agencies should ensure that mandated standardized exams used to ascertain school performance accommodate the needs of LEP students, regardless of how long they are in the United States.
- State education agencies should develop accountability mechanisms to ensure that funding for English as a second language and bilingual education programs are used for such programs.
- Schools should promote peer tutoring programs among South Asian students that involve activities that foster language learning skills.
- State education agencies should conduct assessments through state education agencies to understand the needs of LEP South Asian students.
- Federal and state education agencies, as well as the U.S. Census Bureau, should expand data collection efforts on LEP students.

### ***Ensure communication between schools and South Asian parents who are LEP and/or recent immigrants.***

- State and local education agencies should develop programs encouraging South Asian parents, particularly those who are LEP or recent immigrants, to be involved in their children's education.
- Schools in areas with significant South Asian populations should provide translated notices about school activities, such as parent-teacher conferences, in South Asian languages.

- Schools should recruit South Asian teachers and education staff to facilitate communication between parents and educators.
- State and local education agencies should utilize community organizations and ethnic media to reach out to South Asian parents about important school-related information.

### ***Ensure that classrooms are safe spaces free from discrimination and harassment.***

- State and local education and civil rights agencies should institute educational training programs, and technical assistance to school districts on harassment and bias-based bullying.
- Federal, state, and local education and civil rights agencies should outreach to South Asian community members on anti-discrimination and bias-based bullying.
- State education agencies should develop educational curricula that promote cultural understanding in the classroom and incorporate the cultural and historical experiences of South Asian communities and faiths.
- Federal and state education and civil rights agencies should provide Know Your Rights resources in South Asian languages for students and parents about their rights when they confront bias and discrimination in the classroom.
- Schools should recruit South Asian case managers to provide counseling support for victims of bias and discrimination in the classroom.

### ***Ensure that classrooms are safe spaces free from police presence and immigration enforcement.***

- State legislatures as well state and local education agencies should establish “immigrant safe zones” where teachers, administrators, and other school staff are prohibited from inquiring about students’ immigration status on school grounds.
- Law enforcement agencies should train police officers in public schools on South Asian cultures and faiths.
- Immigration and Customs Enforcement (ICE) as well as schools should ensure that immigration enforcement will not seek out students who may be undocumented in the classroom setting.
- Schools, law enforcement, and ICE should put safeguards in place to ensure that personal information about students is not shared.
- Schools should involve students, parents, teachers, and South Asian community-based organizations in the development and evaluation of classroom safety programs.
- Federal, state, and local education and civil rights agencies should provide Know your

*Rights* resources in South Asian languages for students harassed by law enforcement or immigration authorities.

**Ensure access and resources to higher education.**

- Congress should enact legislation, such as the *DREAM Act*, that allows students lacking immigration status to legalize their status.
- Congress and state legislatures should enact legislation allowing students lacking immigration status to be eligible for higher education at public colleges and universities at in-state tuition rates.
- State legislatures and universities should promote scholarships and tuition assistance for low-income South Asian students.
- Congress should support the designation of higher educational institutions that serve minority students, including South Asians, to receive federal and state funding.

<sup>i</sup> U.S. Census 2000, Summary Files 1 through 4. See also *Demographic Characteristics of South Asians in the United States: Emphasis on Poverty, Gender, Language Ability, and Immigration Status*, South Asian Americans Leading Together (2007).

<sup>ii</sup> State of New Jersey Department of Education, Bureau of Bilingual/ESL Education. 2006-2007 *Languages with Highest LEP Statewide Enrollment* (2007).

<sup>iii</sup> *The Provision of an Equal Education Opportunity for Limited-English Proficient Students*, U.S. Department of Education, Office for Civil Rights (2000).

<sup>iv</sup> *Teachers Supply and Demand in the U.S.*, American Association for Employment in Education (1998).

<sup>v</sup> *Id.*

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<sup>vii</sup> *Hatred in the Hallways: A Preliminary Report on Bias Against Sikh Students in New York City's Public Schools.*, The Sikh Coalition (2007)

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<sup>ix</sup> School Badgering: Kid's Play or Serious Stuff?", *Hinduism Today* (January/February 2001).

<sup>x</sup> *Education Not Deportation: Impact of New York City School Safety Policies on South Asian Immigrant Youth*, Desis Rising Up and Moving (DRUM) (2006).

<sup>xi</sup> *Id.*

<sup>xii</sup> *Id.*

<sup>xiii</sup> *School to Prison Pipeline Factsheet*, New York Civil Liberties Union (2007).

<sup>xiv</sup> *Id.*

<sup>xv</sup> See *supra* note i.

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



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# **ENDORSE A NATIONAL ACTION AGENDA: POLICY RECOMMENDATIONS TO EMPOWER SOUTH ASIAN COMMUNITIES IN THE UNITED STATES**

South Asian organizations and community members are invited to support the principles and recommendations set forth within *A National Action Agenda*. To endorse *A National Action Agenda*, please complete the following form:

Name: \_\_\_\_\_

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