

# CONGRESSIONAL TESTIMONY

---

Written Testimony for the  
Committee on the Judiciary  
Subcommittee on the Constitution,  
Civil Rights, and Civil Liberties  
U.S. House of Representatives

Hearing on  
“Racial Profiling and the Use of Suspect  
Classifications in Law Enforcement  
Policy”

June 17, 2010

Submitted by  
Deepa Iyer, Executive Director  
South Asian Americans Leading Together

## **ABOUT SAALT**

South Asian Americans Leading Together (SAALT), is a national, nonpartisan, non-profit organization that elevates the voices and perspectives of South Asian individuals and organizations to build a more just and inclusive society in the United States.<sup>1</sup> SAALT's strategies include conducting policy analysis and advocacy; building partnerships with South Asian organizations and allies; mobilizing communities to take action; and developing leadership for social change. SAALT works with a base of individual members and advocates and is the coordinating entity of the National Coalition of South Asian Organizations (NCSO), a network of 39 organizations in 13 geographic regions that provide direct services to, organize, and advocate on behalf of the South Asians in the United States. The experiences and local knowledge of member organizations within the NCSO in large part inform the policy recommendations included in this testimony.

SAALT denounces the use of profiling based on race, religion, ethnicity, national origin, nationality, and immigration status. Especially since 9/11, South Asians, Sikhs, Muslims, and Arab Americans have been subjected to policies that are based in profiling by federal, state, and local law enforcement activities. SAALT works closely with partner organizations to identify the impact of profiling tactics and advocate against their utilization.<sup>2</sup> SAALT strongly urges the passage of federal legislation, such as the *End Racial Profiling Act*, that eliminates profiling in all its forms, including those resulting from post-9/11 policies and practices.

## **ABOUT THE SOUTH ASIAN COMMUNITY**

The South Asian community in the United States is extremely diverse in terms of our ancestry, ethnicity, national origin, immigration status, economic status, religion, culture, sexual orientation, and political affiliation. South Asians trace their ancestries to 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, and Uganda), Canada, Europe, the Middle East, and other parts of Asia and the Pacific Islands (Fiji, Indonesia, Malaysia, and Singapore). South Asians practice a diverse array of faiths and the community includes Muslims and Sikhs, who have been particularly affected by profiling policies and practices, as well as Buddhists, Christians, Hindus, Jains, and Zoroastrians. South Asians are also diverse in terms of immigration status. The majority of South Asians who live in the United States are foreign-born, with over 75% of the population born outside the United States, and possess a range of immigration statuses, including student and worker-visa holders and their dependents; lawful permanent residents; naturalized and native-born citizens; and undocumented immigrants.<sup>3</sup>

---

<sup>1</sup> For further information about SAALT, visit [www.saalt.org](http://www.saalt.org). (Last accessed May 17, 2010)

<sup>2</sup> For further information about SAALT's efforts to eliminate profiling and resources on the impact of profiling on the South Asian community, visit [www.saalt.org/pages/Racial-and-Religious-Profiling.html](http://www.saalt.org/pages/Racial-and-Religious-Profiling.html). (Last accessed May 17, 2010)

<sup>3</sup> U.S. Census 2000, Summary Files 1 through 4. *See also*, South Asian Americans Leading Together, "Demographic Characteristics of South Asians in the United States: Emphasis on Poverty, Gender, Language Ability, and Immigration Status" (2007). Available at

The community is also experiencing significant increases in population growth. Over 2.8 million South Asians reside in the United States.<sup>4</sup> Between 1990 and 2000, for example, the Indian, Pakistani and Bangladeshi populations were the fastest growing segments within the entire Asian American community.<sup>5</sup> The rapid growth of the South Asian community is reflected throughout the country – while metropolitan areas such as New York/New Jersey, the San Francisco Bay Area, Chicago, Los Angeles, and the Washington, DC metro area have the largest populations of South Asians, areas with emerging populations include Atlanta, Houston, and Seattle.<sup>6</sup>

## **EXECUTIVE SUMMARY**

SAALT supports the introduction and passage of the *End Racial Profiling Act (ERPA)*, proposed by Congressman John Conyers (D-MI) and Senator Russell Feingold (D-WI). We are pleased to see the introduction of civil rights legislation that intends to eliminate the scourge of profiling of communities of color. While historically, the impact of profiling has been experienced most directly by African-American and Latino communities, over the past nine years since the terrorist attacks of September 11, 2001, South Asian and Arab communities in the United States have been targeted by law enforcement tactics and national security policies. As a result, individuals of Arab or South Asian descent, and those practicing the Muslim and Sikh faiths, have also experienced the devastating impact of profiling.

Specifically, *ERPA* would do the following:

- Prohibit the use of profiling based on race, religion, ethnicity, or national origin by federal, state, and local law enforcement
- Institute anti-profiling trainings for law enforcement agents
- Ensure data collection and monitoring of law enforcement activities as it relates to race, religion, ethnicity, and national origin
- Develop meaningful procedures for receiving, investigating, and responding to complaints
- Establish a private right of action for victims of profiling
- Authorize the Attorney General to provide grants to law enforcement agencies to encourage the development and implementation of best policing practices and withhold grants from law enforcement agencies that fail to comply with the Act
- Mandate the Attorney General to submit periodic reports to Congress on ongoing discriminatory practices by federal, state, and local law enforcement

As a result of these provisions, *ERPA* will lead to the elimination of profiling based on a range of characteristics, including race, religion, ethnicity, and national origin by law enforcement at all levels of government. In addition, victims of profiling would be able to file lawsuits on their behalf against law enforcement agencies that violate their rights. Finally, law enforcement officials would receive training on how to refrain from using profiling tactics and implement best

---

[www.saalt.org/attachments/1/Demographic%20Characteristics%20of%20SA%20in%20US.pdf](http://www.saalt.org/attachments/1/Demographic%20Characteristics%20of%20SA%20in%20US.pdf). (Last accessed May 17, 2010)

<sup>4</sup> U.S. Census Bureau, American Community Survey (2006).

<sup>5</sup> See note 3.

<sup>6</sup> *Id.*

practices that enable community policing. With *ERPA* in place, the utilization of law enforcement tactics relying on profiling will be lessened, and communities of color will have more reasons to trust law enforcement.

SAALT also encourages the adoption of several additional provisions in order to strengthen *ERPA*. In many ways, the current language within *ERPA* reflects our country's historic understanding of profiling – one that is based primarily on race and is limited to traffic stops or drug trafficking. Yet, in today's society, profiling is used and experienced in additional and different ways, as we have observed in the post-9/11 environment. Today, profiling tactics are used by authorities enforcing immigration and national security policies, and the communities enduring the impact of profiling now also include Asian Americans, Arab Americans, South Asians, Sikhs, and Muslims in the United States.

To reflect the pernicious and evolving forms of profiling that exist today, SAALT recommends the inclusion of provisions that explicitly address profiling that has occurred in the post-9/11 context, including the following:

- In order to apply to situations of profiling occurring in the airport context, ensure the definition of law enforcement's "routine and spontaneous activities" covered by *ERPA* includes searches of persons, possessions, or property of individuals "in any form of public or private transit"
- In order to apply to situations of profiling resulting from FBI surveillance activity, ensure the definition of law enforcement's "routine and spontaneous activities" covered by *ERPA* "data collection and analysis, assessments, and predicated investigations"
- In order to capture information on the rates of profiling in the various contexts that it occurs, beyond "stop and frisk" situations, ensure that data analysis provisions apply to "disparities in other data collected pursuant to routine or spontaneous investigations"
- In order to clearly apply to profiling that has occurred since 9/11, ensure specific findings outlining the impact of such policies and practices

By including these provisions, *ERPA* would become a more comprehensive piece of legislation, which can provide direction to law enforcement authorities and protection to as many individuals in the United States as possible.

## **PROFILING AND ITS CONSEQUENCES**

*“The data do not support the profiling assumption—that using racial or ethnic appearance to target law enforcement efforts will make for more efficient, more accurate policing, or for the arrest of more criminals. In fact, the opposite is true. Using race does not cause hit rates to go up; instead, the hit rate actually drops.”*

– **Professor David Harris, University of Pittsburgh School of Law**<sup>7</sup>

Profiling is a law enforcement tactic that connects individuals to crimes based on characteristics unrelated to criminal conduct, such as race, religion, ethnicity, national origin, and perceived immigration status. Federal, state, and local law enforcement officials often use these factors as predictors of criminal activity. Historical and contemporary examples include the use of racial profiling when stopping African-American motorists, interrogating Latino travelers, and questioning and searching South Asian, Muslim, Sikh, and Arab individuals. Despite the fact many claim to extol the necessity of profiling, the reality demonstrates that the consequences of profiling underscore the need for it to be eliminated. Specifically, the failures of profiling include how it ineffectively diverts limited resources away from law enforcement; undermines trust between targeted communities and law enforcement; and perpetuates misconceptions about affected communities in the eyes of the general public.

### ***Diverts Limited Law Enforcement Resources***

Evidence and experts have shown that profiling is a counterproductive method of identifying criminals and national security threats. In many cases, law enforcement agents miss the real criminals by focusing on a race-based profile rather than looking for specific behavioral indicators of illegal activity.<sup>8</sup> In fact, prior to 9/11, the then-U.S. Customs Service eliminated the use of race, ethnicity, and gender in determining which passengers were subject to searches and began focusing solely on behavioral factors indicating suspicion.<sup>9</sup> A subsequent study by Lamberth Consulting revealed that this change in policy resulted in an almost 300% increase in searches that actually yielded illegal contraband and activity.<sup>10</sup>

Yet many law enforcement agencies at all levels of government instead continue to rely upon factors, such as race, religion, ethnicity, and national origin, rather than neutral indicators of suspicious activity. By employing such tactics, law enforcement agents are diverting their limited time and resources away from individuals who actually pose a threat. In the post-9/11 context, while South Asians, Muslims, Sikhs, and Arabs have disproportionately endured the impact of national security policies, many of the individuals charged with terrorist activity have not been from Muslim-majority countries. Jose Padilla, Richard Reid, and Colleen LaRose (also known as

---

<sup>7</sup> David Harris, “Confronting Ethnic Profiling in the United States,” *Justice Initiatives*, Open Society Justice Initiative (June 2005).

<sup>8</sup> See, e.g., American Civil Liberties Union of Arizona, *Driving While Black or Brown: An Analysis of Racial Profiling in Arizona* (April 2008). Available at [www.acluaz.org/DrivingWhileBlackorBrown.pdf](http://www.acluaz.org/DrivingWhileBlackorBrown.pdf). (Last accessed May 17, 2010)

<sup>9</sup> See generally, Lamberth Consulting, “Racial Profiling Doesn’t Work.” Available at [www.lamberthconsulting.com/about-racial-profiling/racial-profiling-doesnt-work.asp](http://www.lamberthconsulting.com/about-racial-profiling/racial-profiling-doesnt-work.asp). (Last accessed May 17, 2010)

<sup>10</sup> *Id.*

“Jihad Jane”), are all examples of individuals who do not fit the “Muslim terrorist” profile that law enforcement agencies have been using over the past nine years.

### ***Undermines Trust Between Targeted Communities and Government***

The effects of profiling policies are far-ranging on communities that are being targeted by such tactics. Individuals from these communities feel disempowered and marginalized, and in many cases, do not trust government officials or law enforcement. Community members begin to feel wary about reporting criminal activity or seeking protection to due perceptions that law enforcement is biased and not committed to the affected community’s safety. Law enforcement agents find that their connections and contacts to communities being profiled are weakened.<sup>11</sup> And, the rates of people of color and immigrants who are stopped, questioned, incarcerated, detained, and deported due to the use of profiling tactics begin to increase.<sup>12</sup>

In the post-9/11 context, policies implemented in the name of national security have resulted in South Asian, Muslim, Sikh, and Arab community members becoming hesitant to contact police when they feel unsafe. For example, numerous South Asian women’s organizations that assist community members facing domestic violence reported that post-9/11 policies have not only resulted in an increase in abuse but also made battered women afraid to contact police.<sup>13</sup> In addition, profiling policies have raised suspicion within affected communities about sharing personal information with the federal government and heightened fears around participation in efforts intended to benefit the community, such as the U.S. Census.<sup>14</sup>

### ***Perpetuates Public Misconceptions and Stereotypes of Targeted Communities***

Profiling on the basis of factors such as race, ethnicity, religious affiliation, national origin and immigration status, fuels perceptions among the public at large that targeted community members are worthy of heightened suspicion. In fact, a report by SAALT compiling and analyzing incidents of xenophobic rhetoric in political discourse showed at least 31 remarks made by elected officials and political candidates linking South Asians, Muslims, Sikhs, and

---

<sup>11</sup> See, e.g. Madison Police Department Detective Alix Olson, “American law enforcement must demand the removal of Sheriff Arpaio from duty” (January 14, 2010). Available at [www.huffingtonpost.com/alix-olson/american-law-enforcement\\_b\\_423527.html](http://www.huffingtonpost.com/alix-olson/american-law-enforcement_b_423527.html). (Last accessed May 17, 2010)

<sup>12</sup> See generally, Rights Working Group and American Civil Liberties Union, *The Persistence of Racial and Ethnic Profiling in the United States: A Follow-Up Report to the U.N. Committee on the Elimination of Racial Discrimination* (2009). Available at [www.aclu.org/files/pdfs/humanrights/cerd\\_finalreport.pdf](http://www.aclu.org/files/pdfs/humanrights/cerd_finalreport.pdf). (Last accessed May 17, 2010)

<sup>13</sup> Immigration Policy Center, “Targets of Suspicion: The Impact of Post-9/11 Policies on Muslims, Arabs, and South Asians in the United States,” (hereinafter “IPC Report”) *Immigration Policy In Focus*, Vol.3, Issue 2 (May 2004). Available at [www.immigrationpolicy.org/sites/default/files/docs/Targets%20of%20Suspicion.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/Targets%20of%20Suspicion.pdf). (Last accessed May 17, 2010) See also “Letter from South Asian Women’s Organizations to White House Council on Women and Girls and White House Advisor on Violence Against Women” (November 2, 2009). Available at <http://saalt.org/attachments/1/Letter%20from%20South%20Asian%20Organizations%20on%20Violence%20against%20Women%20Issues.pdf>. (Last accessed May 17, 2010).

<sup>14</sup> Tara Barahmpour, “Some Muslims, fearing backlash, worry about intent of Census,” *The Washington Post* (March 20, 2010) Available at [www.washingtonpost.com/wp-dyn/content/article/2010/03/09/AR2010030901688.html](http://www.washingtonpost.com/wp-dyn/content/article/2010/03/09/AR2010030901688.html) (Last accessed May 17, 2010)

Arabs to terrorism between 2002 and 2008.<sup>15</sup> In addition, at least four such remarks were statements in support of profiling based on misperceptions that these community members inherently pose a national security threat to this country.<sup>16</sup>

Such policies and statements consequently foster an environment that makes it more likely that individuals from affected backgrounds will be subjected to harassment, bullying, and discrimination in other settings as well, such as in the classroom, at work, and other public venues.<sup>17</sup> For example, many reports emerged immediately after 9/11 (and still occasionally recur to this day) of South Asians, Muslims, and Sikhs being removed from flights, even after passing through security and boarding planes, due to unfounded concerns raised by crew members and fellow passengers.<sup>18</sup>

### **POST-9/11 PROFILING AND THE SOUTH ASIAN EXPERIENCE**

*“Since September 11, our nation has engaged in a policy of institutionalized racial and ethnic profiling ... If Dr. Martin Luther King Jr. were alive today ... he would tell us we must not allow the horrific acts of terror our nation has endured to slowly and subversively destroy the foundation of our democracy.”*

– **Congressman John Conyers**, in a civil rights celebration of Dr. Martin Luther King’s birthday (2002)

While profiling of African-American and Latino communities continues unabated, as alluded to above, a new dimension arose when South Asian, Muslim, Sikh, and Arab community members also became targets for suspicion by law enforcement following 9/11. National security and immigration policies in the post-9/11 environment have led to racial, religious and national origin profiling by local, state and federal law enforcement agencies in three specific arenas:

- Travel at airports (including security screenings, border inspections, and terrorist watchlists);
- Immigration-related consequences of national security policies (including special registration; lengthy background checks delaying naturalization applications); and

---

<sup>15</sup> South Asian Americans Leading Together, “Documented Incidents of Xenophobia and Intolerance in Political Discourse: Part I” (October 2008). Available at [www.saalt.org/attachments/1/Xenophobia%20Community%20General%20October%2020082\\_.pdf](http://www.saalt.org/attachments/1/Xenophobia%20Community%20General%20October%2020082_.pdf). (Last accessed May 17, 2010)

<sup>16</sup> *Id.*

<sup>17</sup> See generally, National Coalition of South Asian Organizations, *A National Action Agenda: Policy Recommendations to Empower South Asian Communities – Civil Rights and Civil Liberties Section* (July 2008). Available at [www.saalt.org/attachments/1/Civil%20Rights%20and%20Civil%20Liberties.pdf](http://www.saalt.org/attachments/1/Civil%20Rights%20and%20Civil%20Liberties.pdf). (Last accessed May 17, 2010).

<sup>18</sup> See e.g. Sharon Cohen, “Arab Americans Complain of Profiling” (Case of Ashraf Khan flying to Pakistan), *Associated Press* (September 25, 2001). Linda Gibson, “Uneasy pilots refuse Arab-named travelers” (Cases of Akbar Ali and Muhammad Naeem from Pakistan), *St. Petersburg Times* (September 22, 2001). Available at [www.sptimes.com/News/092201/Hillsborough/Uneasy\\_pilots\\_refuse\\_.shtml](http://www.sptimes.com/News/092201/Hillsborough/Uneasy_pilots_refuse_.shtml) (Last accessed May 17, 2010). Bob Herbert, “High Altitude Rambos” (Case of Dr. Bob Rajcoomar, of Indian descent), *The New York Times* (September 19, 2002).

- Government surveillance of communities (including at places of worship, community organizations, and charities)

As described below, these policies have had a disproportionate impact on South Asian, Muslim, and Sikh, as well as Arab and Middle Eastern, communities in the United States, and have disrupted the lives of individuals from these backgrounds.

### ***Profiling While Traveling***

*“My family and I have been stopped and questioned at the border. As a police officer, I was shocked to see the federal government searching and questioning innocent travelers simply trying to return home. Targeting travelers based on their religion is not an effective way to protect our country—it is a costly distraction from those who mean us harm.”*

- **New York Police Department Detective Jamiel Altaheri** (April 2009)<sup>19</sup>

Although the U.S. government officially denies that it has employed profiling in the post-9/11 environment, there is evidence that various federal law enforcement agencies are subjecting travelers to profiling on the basis of race, ethnicity, religion, and nationality at airport security border inspections, and in the context of terrorist watchlists. While efforts to ascertain the actual scope of these policies and practices are stunted by the reluctance or unwillingness of government agencies to audit and provide complete data on its activities, organizations advocating on behalf of affected communities have been able to compile anecdotal and self-reported figures.

### **Secondary Screening Practices at Airports (conducted by U.S. Transportation Security Administration)**

In the wake of 9/11, the U.S. Department of Transportation was praised for implementing screening policies that respected the civil rights of passengers from various religious backgrounds. Yet, airport screening procedures were subsequently altered in a manner that resulted in the targeting of many South Asian, particularly Sikh and Muslim, travelers. In August 2007, the Transportation Security Administration (TSA) within the Department of Homeland Security (DHS) instituted guidelines affecting those who wore religious headcoverings, including turbans worn by Sikh men and headscarves worn Muslim women. According to these guidelines, these individuals were subject to the “possibility of additional security screening, which may include a pat-down search of the headcovering” and “may be referred for additional screening if the security officer cannot reasonably determine that the head area is free of a detectable threat item.”<sup>20</sup> In addition, TSA officers routinely informed passengers that the

<sup>19</sup> Quote from Muslim Advocates, *Unreasonable Intrusions: Investigating the Politics, Faith & Finances of Americans Returning Home* (April 2009). Available at [www.muslimadvocates.org/documents/Unreasonable\\_Intrusions\\_2009.pdf](http://www.muslimadvocates.org/documents/Unreasonable_Intrusions_2009.pdf). (Last accessed May 17, 2010)

<sup>20</sup> Transportation Security Administration, “News & Happenings: Security Screening of Head Coverings” (August 28, 2007). Available at [www.tsa.gov/press/happenings/head\\_coverings.shtm](http://www.tsa.gov/press/happenings/head_coverings.shtm). Last accessed May 17, 2010



guidelines automatically mandated searches of certain headcoverings, including the turban, regardless of whether the metal detector was set off.<sup>21</sup>

In response to advocacy efforts from various civil and immigrant rights organizations, particularly those representing Muslim and Sikh communities, the guidelines were revised to the current “bulky clothing” screening procedure that leaves it to an individual TSA officer’s discretion to conduct a secondary screening if they believe the headcovering was bulky.<sup>22</sup> It also requires a TSA officer to provide the choice a private screening or use of a puffer machine, a self-pat-down and test for chemical traces through a finger swab, or a pat-down of the headcovering from a TSA officer.<sup>23</sup>

Despite improvements to airport screening policies, in practice, many South Asian travelers routinely encounter secondary security screening by TSA officers and some are continually told that turbans and headscarves require an automatic search. In fact, a report by The Sikh Coalition found that among Sikh travelers surveyed, there was a 100% secondary screening rate for those wearing turbans at certain airports.<sup>24</sup>

Below are a few incidents that underscore the abuse of discretion on the part of TSA officers and their impact on South Asian travelers:

*Nadia Hassan, a Maryland woman traveling from Washington Dulles to Los Angeles in January 2010, was instructed by TSA officials to take off her headcovering. When she declined, she was put through a public full-body patdown and all her belongings were tested for bomb-making chemicals. When she asked TSA officials about her treatment, she was told that a policy went into effect mandating searches of all headscarves.<sup>25</sup> A Sikh passenger who had been told to proceed without secondary screening at Richmond Airport was called back for secondary screening when a supervisor yelled to the original screener, “Hey, he has to get patted down.”<sup>26</sup>*

The severely disproportionate impact that TSA officers’ actions have on South Asian, Sikh, and Muslim travelers is often based on the lack of adequate training on existing protocols and can be

---

<sup>21</sup> Letter from Senators Richard Durbin, Russell Feingold, Barack Obama, and Jeff Bingaman to TSA Administrator/DHS Assistant Secretary Kip Hawley (September 25, 2007). Available at [www.sikhcoalition.org/advisories/documents/TSA Letter on Sikh Screening.pdf](http://www.sikhcoalition.org/advisories/documents/TSA%20Letter%20on%20Sikh%20Screening.pdf). (Last accessed May 17, 2010)

<sup>22</sup> Transportation Security Administration, “News and Happenings: TSA Adjust Security Procedures for Bulky Clothing” (October 15, 2007). Available at [www.tsa.gov/press/happenings/sop\\_adjustments.shtm](http://www.tsa.gov/press/happenings/sop_adjustments.shtm). See also Transportation Security Administration, “News and Happenings: TSA’s Head-to-Toe Screening Policies” (October 15, 2007). Available at [www.tsa.gov/press/happenings/sop\\_facts.shtm](http://www.tsa.gov/press/happenings/sop_facts.shtm). (Last accessed May 17, 2010)

<sup>23</sup> *Id.*

<sup>24</sup> The Sikh Coalition, *The TSA Report Card: A Quarterly Review of Security Screenings of Sikh Travelers in U.S. Airports, Q2 2009* (August 2009). Available at <https://salsa.wiredforchange.com/o/1607/images/2009%20Q2%20Report%20Card.pdf>. (Last accessed May 17, 2010).

<sup>25</sup> Council on American-Islamic Relations, “TSA tells Muslim traveler hijab now triggers security checks” (January 6, 2010). Available at [www.cair.com/ArticleDetails.aspx?mid1=777&&ArticleID=26219&&name=n&&currPage=5](http://www.cair.com/ArticleDetails.aspx?mid1=777&&ArticleID=26219&&name=n&&currPage=5). (Last accessed May 17, 2010)

<sup>26</sup> See note 24.

fueled by blanket assumptions about community members posing a threat to national security. **Federal policies must be instituted that prohibit profiling in airport security screening procedures; mandate data collection and audits on the part of TSA to determine whether profiling is occurring; and require routine and uniform training of officers on civil rights protections guaranteed to travelers.**

*Intrusive Border Questioning and Searches (conducted by U.S. Customs and Border Protection)*

Travelers seeking to enter or re-enter the country from abroad are required to undergo security screening and immigration inspection administered by U.S. Customs and Border Protection (CBP) within DHS. Under current policies, CBP uses a two-track system for screening persons entering the country – one for U.S. citizens and another for non-citizens. On either of these tracks, agents may select a traveler for secondary enhanced screening that can include intrusive body and baggage searches, extensive questioning, and detention.

South Asian travelers entering or returning to the United States have been targeted for detailed interrogation about political views, family members, friends and acquaintances, financial transactions, and religious beliefs. In fact, two civil rights organizations, Asian Law Caucus and Muslim Advocates, have documented complaints about invasive inspections by CBP officers at U.S. ports of entry.<sup>27</sup> The complaints were overwhelmingly lodged by travelers of South Asian, Muslim, and Middle Eastern descent, and many were U.S. citizens and lawful permanent residents.<sup>28</sup>

In addition to intrusive questioning, such travelers have been compelled to turn over personal belongings, including laptop computers, cell phones, letters, digital cameras, confidential company documents, and business cards.<sup>29</sup> Individuals were often quizzed about the knowledge of their documents, photos, and contacts. Items were often searched and copied by CBP officers with virtually no evidence that the individual posed a legitimate threat while simultaneously violating basic privacy rights of those affected.<sup>30</sup>

Below are a few incidents that demonstrate the impact that these practices have had on South Asian travelers seeking to come into the United States:

*Anila Ali, a naturalized U.S. citizen, originally from Pakistan, teaches middle school near Los Angeles and is an active member of various community-based and charitable organizations. In December 2007, she flew back to Los Angeles after attending her mother's funeral in Pakistan. Upon arrival at the airport, a CBP officer shouted at her to step aside, saying "You're here from Pakistan? Go over there!" After being pulled aside,*

---

<sup>27</sup> Muslim Advocates, *Unreasonable Intrusions: Investigating the Politics, Faith & Finances of Americans Returning Home* (hereinafter "Muslim Advocates Report") (April 2009). Available at [www.muslimadvocates.org/documents/Unreasonable\\_Intrusions\\_2009.pdf](http://www.muslimadvocates.org/documents/Unreasonable_Intrusions_2009.pdf). (Last accessed May 17, 2010). See also, Asian Law Caucus, *Returning Home: How U.S. Government Practices Undermine Civil Rights At Our Nation's Doorstep* (hereinafter "Asian Law Caucus Report") (April 2009). Available at [www.asianlawcaucus.org/wp-content/uploads/2009/04/Returning%20Home.pdf](http://www.asianlawcaucus.org/wp-content/uploads/2009/04/Returning%20Home.pdf). (Last accessed May 17, 2010)

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

*a CBP asked her about her travels and handled every item in her purse, even opening tampons. When she asked the agent's supervising officer why she had been singled out, she was told that it was because of where she was born and her name. This was the fifth time in recent years that she had been pulled aside for questioning.*<sup>31</sup>

*"Rajiv", a U.S. citizen and resident of the District of Columbia, is an artist of Indian descent and, despite his Hindu heritage, is often mistaken for being Muslim on account of his prominent beard. In September 2008, he returned to the U.S. from visiting family in India, and was detained for 30 minutes at John F. Kennedy airport in New York City. CBP agents searched his luggage, where they found his laptop and a 500GB external hard drive. They took both sets of equipment to another location and returned half an hour later. They also asked questions about his travel companions, whom he visited, how often he traveled overseas, and where his family lived. Agents took a particular interest in his visa to visit Pakistan, asking multiple times about the nature of his interest in traveling there.*<sup>32</sup>

Questioning individuals about their religious or political views and scrutinizing their personal belongings, particularly when based on factors unrelated to criminal activity and individualized suspicion, has a chilling effect on freedom of expression and association. **Given this impact and the denial of basic rights, Congress must enact policies that prohibit law enforcement agencies, including CBP, from relying on race, ethnicity, national origin, or religion, specifically in the context of border inspections and investigatory decisions.**

#### *Terrorist Screening Database (maintained by the Terrorist Screening Center)*

The Terrorist Screening Center (TSC) within the Federal Bureau of Investigation (FBI) maintains the U.S. government's centralized and consolidated Terrorist Screening Database (TSDB) (also known as the "terrorist watchlist"). Included within the TSDB are two subset lists: the "No-Fly List", where listed individuals are prohibited from boarding airlines; and the "Selectee List", where listed individuals are subjected to additional secondary screening.<sup>33</sup> The TSDB is described by the FBI as "a single database of identifying information about those known or reasonably suspected of being involved in terrorist activity."<sup>34</sup>

The TSDB has come under severe public criticism for being overbroad, inaccurate, and mismanaged. As of March 2009, there were one million names on the list, but given that the database is overly expansive and not updated, it has often yielded a number of "false positives" while simultaneously not capturing individuals who actually pose a threat to national security.<sup>35</sup> In fact, in 2008, 33,000 entries were removed by the FBI pursuant to an effort to purge the database of outdated information and individuals whose names were cleared after investigation.<sup>36</sup>

---

<sup>31</sup> See note 27, Asian Law Caucus Report.

<sup>32</sup> See note 27, Muslim Advocates Report.

<sup>33</sup> Federal Bureau of Investigation, "Terrorist Screening Center: Frequently Asked Questions." Available at [www.fbi.gov/terrorinfo/counterrorism/faqs.htm](http://www.fbi.gov/terrorinfo/counterrorism/faqs.htm). (Last accessed May 17, 2010)

<sup>34</sup> *Id.*

<sup>35</sup> Peter Eisler, "Terrorist watchlist hits 1 million," *USA Today* (March 10, 2009). Available at [http://www.usatoday.com/news/washington/2009-03-10-watchlist\\_N.htm](http://www.usatoday.com/news/washington/2009-03-10-watchlist_N.htm). (Last accessed May 17, 2010).

<sup>36</sup> *Id.*

In addition, between 2007 and 2009, approximately 51,000 individuals had filed "redress" requests claiming they were wrongly included in the database.<sup>37</sup> In Congressional testimony, even DHS stated that the use of similar data in the airport context would "expand the number of misidentifications to unjustifiable proportions without a measurable increase in security." In the context of border searches and inspections, it has been noted that CBP "screens individuals against more name records from the consolidated terrorist database than any other federal agency," thus increasing the likelihood of individuals being questioned and searched simply based upon their name, ethnicity, and country of origin.<sup>38</sup>

The criteria used to populate these lists are not public, making it impossible for community members to ascertain whether they are indeed included in the database. Yet the fact that various government agencies, including TSA and CBP rely upon the TSDB coupled with the disproportionate impact the these agencies' security measures have had on South Asian, Muslim, Sikh, and Arab community members, raises the strong possibility that race, religion, ethnicity, and national origin are factors used in developing and maintaining these lists. **Congress must ensure that there is adequate oversight to ensure accuracy within the TSDB and, in particular, that profiling on the basis of race, religion, national origin, and ethnicity are not the sole factors determining an individuals' inclusion on its lists.**

### *Profiling in the Immigration Context*

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

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

As a predominantly foreign-born community, South Asians routinely interact with the immigration system and, in the post-9/11 era, policies implemented purportedly in the interest of national security have resulted in harsh immigration-related consequences. Such policies have often been used as a proxy for immigration enforcement crackdowns on South Asian, Muslim and Arab communities. In fact, in the weeks immediately after 9/11, South Asians, Muslims, and Arabs, were apprehended and detained by the FBI and held without charge; eventually, most were deported for minor immigration violations rather than any terrorism-related offenses.<sup>39</sup> Programs and practices, such as the National Security Entry-Exit Registration System (NSEERS) and lengthy security background check delays in processing individuals' naturalization applications, have similarly yielded no proven counterterrorism information while simultaneously resulting in the selective deportation and denial of immigration benefits of community members based on race, religion, and national origin.

---

<sup>37</sup> *Id.*

<sup>38</sup> See note 27, Asian Law Caucus Report.

<sup>39</sup> U.S. Department of Justice, Office of the Inspector General, *The September 11 Detainees: A Review of Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks* (June 2003). Available at [www.justice.gov/oig/special/0306/index.htm](http://www.justice.gov/oig/special/0306/index.htm). (Last accessed May 17, 2010)

*NSEERS/Special Registration (enforced by U.S. Department of Homeland Security)*

Initiated by the U.S. Department of Justice in 2002, the special registration program under NSEERS required nonimmigrant males over the age of 16 and who were nationals of 25 specified countries to be fingerprinted, photographed, and questioned by immigration authorities at ports of entry and local immigration offices.<sup>40</sup> With the exception of North Korea, the list was exclusively comprised of Arab- or Muslim-majority countries in the Middle East and South Asia, including Bangladesh and Pakistan. Failure to comply with NSEERS led to fines, detention and deportation. By September 2003, more than 80,000 men had complied with the program; over 13,000 were subjected to investigations, primarily related to irregularities in their immigration status.<sup>41</sup> The government has yet to identify the extent to which the NSEERS program protected national security.

The impact on South Asian communities in the United States was severe and palpable. Many within the Bangladeshi and Pakistani communities who participated in the program in order to remain in compliance with the law, were placed into deportation or removal proceedings for minor immigration violations. Others who were not aware of the program, because of a lack of proper public notification and often confusing information about its requirements on the part of the government, were charged with “willful failure to register”, damaging their ability to obtain immigration benefits for which they were otherwise eligible.<sup>42</sup> In addition, previously vibrant Bangladeshi and Pakistani neighborhoods in various parts of the country, particularly in New York, became vacant as community members fled the country.<sup>43</sup>

While portions of the program were suspended in 2003, certain aspects still remain, including registration at ports-of-entry and departure as well as penalties for those who did not comply.<sup>44</sup> In addition, similar programs arose, including Operation Frontline (formerly known as the *October Plan*), which led to the investigation and arrests of immigrants from Muslim-majority countries between May 2004 and February 2005.<sup>45</sup> Relying upon various government immigration databases, including those resulting from NSEERS program, this enforcement effort led to the targeting of individuals simply based on their religious affiliation and national origin in

---

<sup>40</sup> See generally, U.S. Department of Homeland Security “Special Registration Archives.” Available at [www.ice.gov/pi/specialregistration/archive.htm](http://www.ice.gov/pi/specialregistration/archive.htm). (Last accessed May 17, 2010)

<sup>41</sup> See generally, Kareem Shora, American-Arab Anti-Discrimination Committee and Shoba Sivaprasad Wadhia, Center for Immigrants’ Rights, Penn State’s Dickinson School of Law, *NSEERS: The Consequences of America’s Efforts to Secure Its Borders* (March 31, 2009). Available at [www.adc.org/PDF/nseerspaper.pdf](http://www.adc.org/PDF/nseerspaper.pdf). (Last accessed May 17, 2010)

<sup>42</sup> *Id.*

<sup>43</sup> See generally, South Asian Americans Leading Together, “The Continuing Impact of the Special Registration Program” (hereinafter “SAALT Continuing Impact Factsheet”) (December 2005). Available at [www.saalt.org/attachments/1/Spec%20Reg%20Factsheet.pdf](http://www.saalt.org/attachments/1/Spec%20Reg%20Factsheet.pdf). (Last accessed May 17, 2010). See also note 13, IPC Report.

<sup>44</sup> U.S. Department of Homeland Security, “Fact Sheet: Changes to National Security Entry/Exit Registration System (NSEERS)” (December 1, 2003). Available at [www.dhs.gov/xnews/releases/press\\_release\\_0305.shtm](http://www.dhs.gov/xnews/releases/press_release_0305.shtm). (Last accessed May 17, 2010)

<sup>45</sup> American-Arab Anti-Discrimination Committee and Yale Law School, “ICE targets immigrants from Muslim majority countries prior to 2004 Presidential elections” (October 2008). Available at [www.adc.org/PDF/frontline.pdf](http://www.adc.org/PDF/frontline.pdf). (Last accessed May 17, 2010)

the name of national security.<sup>46</sup> Again, the government has failed to show the link between the protection of U.S. interests and the targeting of individuals based on their nationality.

Below are a few incidents that demonstrate the impact that the NSEERS program continues to have on South Asians in the United States:

*Originally from Pakistan, Mr. A. was a legally blind elderly gentleman who resided in Brooklyn. He came to the United States to seek medical treatment for his blindness and was living here for over ten years. He subsequently overstayed his visa and became undocumented. Then, in the winter of 2003, he learned of NSEERS at a town hall meeting with government officials. At the meeting, he was encouraged to register and learned that this could legalize his status. Subsequently, Mr. A. appeared for NSEERS and, to his surprise, was detained by immigration officials due to his lack of status. During his detention, he was held in a highly air-conditioned room in winter, told to remove his warm clothing, and had his passport confiscated. Lacking any identification or immigration status, Mr. A. was unable to obtain necessary medical treatment for his eyes. Following his detention, he was placed in removal proceedings.<sup>47</sup>*

*Abu Hasan Mahmud Parvez is a native and citizen of Bangladesh who entered the United States on a diplomatic visa and was later granted a student visa. He then married a Bangladeshi woman, who was in the process of applying for a green card, and together they had a United States citizen son. However, Parvez was placed in removal proceedings, due to a visa overstay, even after complying with NSEERS.<sup>48</sup>*

Given its explicit targeting of individuals of nationals from South Asia and the Middle East coupled with its complete ineffectiveness at promoting the country's safety, **it is vital that Congress eliminate NSEERS and similar programs that result in the selective enforcement of immigration laws implemented in the name of national security.**

*Security Background Check Delays in Naturalization Applications (conducted by U.S. Citizenship and Immigration Service and Federal Bureau of Investigation)*

Another example of the impact of profiling on the South Asian community arises in the adjudication of applications for immigration-related benefits. Under current immigration laws and regulations, all applications submitted to the U.S. Citizenship and Immigration Service (USCIS) must undergo various security background checks – including clearance through the Interagency Border Inspection System (IBIS), FBI fingerprint databases, and the FBI National Name Check Program – before they are approved. By law, decisions on naturalization applications should be completed within 120 days after a naturalization interview. Yet, as a result of the FBI name check process in particular, many South Asian community members have had their applications severely delayed, sometimes for years. While USCIS and the FBI took promising measures in 2008 to improve the processing times for such applications, many South Asians continue to await naturalization for which they are eligible.

---

<sup>46</sup> *Id.*

<sup>47</sup> See note 43, SAALT Continuing Impact Factsheet.

<sup>48</sup> See note 41.

The corollary effects of security-related background check delays have been far-reaching, as affected individuals have been denied certain rights and benefits solely afforded to U.S. citizens. For example, many South Asians have been unable to take advantage of expedited processing of sponsorship applications for spouses and children abroad of U.S. citizens. Community members also face barriers in pursuing careers in government that are reserved for U.S. citizens. In addition, many who have been unable to naturalize face heightened scrutiny by CBP, as described above, because of their nationality.

The following incident demonstrates the impact that security-related background check delays have had on South Asian naturalization applicants:

*In November 2001, a Pakistani national applied for naturalization, and in November 2002, he received a letter informing him that he passed the requisite interview and exams but the application could not yet be approved because of background checks. After waiting four years for notice of the naturalization oath ceremony, he went to his Congressional representative and inquired about the delay. His representative was also informed that the application remained pending because of ongoing background checks. Not having any family in the U.S., he wanted to sponsor his parents in Pakistan to come to the United States because they were elderly and ill. Despite having absolutely no criminal record, when returning twice from Pakistan while awaiting naturalization, he was stopped and held for interrogation at the airport upon arrival.<sup>49</sup>*

Such cases highlight the **need for Congress to ensure that immigration applications are not denied or delayed because of an individual's nationality, national origin or religion.**

### ***Profiling and Surveillance***

*"[U]sing race . . . as a proxy for potential criminal behavior is unconstitutional, and it undermines law enforcement by undermining the confidence that people can have in law enforcement."*

- **Former Attorney General John Ashcroft** (February 2002)

As part of counterterrorism efforts, law enforcement has focused its activities, including surveillance, investigations, and undercover operations, on the Muslim population in the United States, affecting many South Asian community members. Various policies and practices have been employed by law enforcement agencies, including the infiltration of ethnic and religious communities through the use of informants and agents provocateurs as well as FBI policies expanding the ability to commence national security investigations with virtually no preliminary evidence required.

---

<sup>49</sup> New York University School of Law, Center for Human Rights and Global Justice, *Americans on Hold: Profiling, Citizenship, and the "War on Terror."* Available at [www.chrgj.org/docs/AOH/AmericansonHoldReport.pdf](http://www.chrgj.org/docs/AOH/AmericansonHoldReport.pdf). (Last accessed May 17, 2010).

Individuals have been investigated at their places of employment, their homes, and their schools and universities, and have had their families, friends, classmates, and co-workers questioned and harassed. In addition to the targeting of individual community members, selective intelligence-gathering has also affected the community's religious organizations, such as mosques and Muslim charities. Keeping these communities under watch has resulted in a chilling effect on the civic participation of Muslim individuals, including those in the South Asian community. Many have reported that surveillance, for example, has caused them to not attend mosque, avoid making charitable contributions, and refrain from having conversations about political issues, such as U.S. foreign policy.<sup>50</sup>

While investigations and surveillance foster sentiments within affected communities of feeling under siege, rarely do they result in any concrete terrorism-related charges. In fact, most cases have either resulted in no charges being filed at all or with the filing of lesser charges, such as immigration-related offenses, tax evasion, or document fraud.

#### *Use of Informants and Agent Provocateurs (employed by Federal Bureau of Investigation)*

Since 9/11, law enforcement agencies have increasingly employed tactics that turn community members into the “eyes and ears” of the government to ascertain suspicious activity. While it is vital for all community members to remain vigilant in order to prevent threats, policies and practices implemented by the government have had the effect of turning community members against one another. For example, the FBI often infiltrates mosques and other places where Muslims gather through informants who track the activities of those who attend and even help to promote terrorist plots that entrap unsuspecting Muslim community members.<sup>51</sup> In some instances, anecdotal evidence suggested that community members have been pressured to become informants through monetary incentives, revocation of immigration status, and even the threat of arrest.

The following case demonstrates the impact that the use of informants and agents provocateurs has had on the lives of innocent members of the South Asian community:

*In a 2002 case in Lodi, California, federal agents paid a Pakistani immigrant nearly \$230,000 to infiltrate a predominantly Pakistani mosque. The informant aggressively pushed for a community member, Hamid Hayat, to attend a terrorist training camp in Pakistan.*<sup>52</sup>

The use of informants has promoted fear and mistrust within the South Asian community, particularly among those who attend mosques. In addition, it simultaneously undermines law

---

<sup>50</sup> See generally, American Civil Liberties Union, *Blocking Faith, Freezing Charity: Chilling Muslim Charitable Giving in the “War on Terrorism Financing”* (June 2009). Available at <http://www.aclu.org/pdfs/humanrights/blockingfaith.pdf>. (Last accessed May 17, 2010)

<sup>51</sup> See e.g. Michael Wilson, “In Bronx Bomb Case, Missteps Caught on Tape,” *The New York Times* (May 21, 2009). Available at [www.nytimes.com/2009/05/22/nyregion/22plot.html?pagewanted=1](http://www.nytimes.com/2009/05/22/nyregion/22plot.html?pagewanted=1). (Last accessed May 17, 2010). See also William K. Rashbaum, “Man Gets 30 Years in Subway Bomb Plot,” *The New York Times*, (January 9, 2007). Available at [www.nytimes.com/2007/01/09/nyregion/09plot.html](http://www.nytimes.com/2007/01/09/nyregion/09plot.html). (Last accessed May 17, 2010)

<sup>52</sup> Frontline, “Interview with James Wedick (October 10, 2006). Available at <http://www.pbs.org/wgbh/pages/frontline/enemywithin/interviews/wedick.html>. (Last accessed May 17, 2010)



enforcement efforts to forge stronger ties with the community in order to identify actual threats to national security. **Congress must ensure that measures that ban profiling on the basis of race, religion, ethnicity, and national origin apply to federal law enforcement agencies, such as the FBI, engaged in surveillance activities that rely upon the use of informants and agents provocateurs.**

*Domestic Investigative Operational Guidelines (employed by Federal Bureau of Investigation)*

In October 2008, the Department of Justice, under the direction of former Attorney General Michael Mukasey, issued revised FBI guidelines that relaxed restrictions on federal law enforcement to conduct threat assessments using factors based on religion and ethnicity. Initially unavailable to the public, advocacy by privacy rights and civil rights organizations, including Muslim Advocates, led to the release of a redacted version; yet, provisions related to mosque infiltration and mapping of religious and ethnic communities remains undisclosed.<sup>53</sup>

The current Domestic Investigative Operational Guidelines (DIOGs), which went into effect in December 2008, provide the FBI significant latitude to target its efforts on Middle Eastern and Muslim communities, including the South Asian community, in several different ways. First, the guidelines explicitly allow the use of race and religion in investigations. They undermine even the narrow protections articulated in the Department of Justice's 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies (DOJ Guidance), which states:

“In making routine or spontaneous law enforcement decisions, such as ordinary traffic stops, Federal law enforcement *officers may not use race or ethnicity to any degree*, except that officers may rely on race and ethnicity in a specific suspect description. This prohibition applies even where the use of race or ethnicity might otherwise be lawful.”<sup>54</sup> (emphasis added)

The DIOGs provide much more restricted limitations on profiling by stating that agents cannot conduct investigative activity “solely on the basis of race,” or solely on the basis of First Amendment activity<sup>55</sup>, in direct violation of the standard set forth in the DOJ guidance.

Second, the DIOGs lower the threshold necessary to commence threat assessments without requiring adequate factual basis or supervisory approval for national security cases.<sup>56</sup> By removing the requirement for a factual predicate, they open the door to abuse of power and profiling. In addition, by calling these investigations “assessments,” FBI agents can investigate any person they choose without mandating an evidentiary connection between the agent's

---

<sup>53</sup> Muslim Advocates *Freedom of Information Act* Complaint to the U.S. Department of Justice regarding the DIOGs (September 16, 2009). Available at <http://www.muslimadvocates.org/documents/Muslim%20Advocates%20Complaint%20To%20File.pdf>. (Last accessed May 17, 2010)

<sup>54</sup> U.S. Department of Justice, Civil Rights Division, *Guidance Regarding the Use of Race by Federal Law Enforcement Agencies* (June 2003). Available at [www.usdoj.gov/crt/split/documents/guidance\\_on\\_race.php](http://www.usdoj.gov/crt/split/documents/guidance_on_race.php). (Last accessed May 17, 2010)

<sup>55</sup> U.S. Department of Justice, Office of the Attorney General, *The Attorney General's Guidelines for Domestic FBI Operations* (December 2008). Available at [www.justice.gov/ag/readingroom/guidelines.pdf](http://www.justice.gov/ag/readingroom/guidelines.pdf).

<sup>56</sup> *Id.*

authorizing purpose and the actual conduct of individuals being investigated. Furthermore, by permitting FBI agents to initiate such assessments absent supervisory approval or reporting to FBI headquarters or the Department of Justice, there is virtually no oversight over decisions being made.

Third, the DIOGs authorize the FBI to collect data and monitor activities in areas where particular racial and ethnic communities are concentrated.<sup>57</sup> They also allow FBI agents to focus on “behavioral characteristics reasonably believed to be associated with a particular criminal or terrorist element of an ethnic community.”<sup>58</sup> The DIOGs specifically provide the example of charitable giving as such a cultural act that “would be relevant if intelligence revealed that, unknown to many donors, the charitable causes were fronts for terrorist organizations or that terrorists supporters within the community intended to exploit the unwitting donors.”<sup>59</sup>

Such provisions create scenarios where the government is allowed to cast an overly broad net on South Asian, as well as Arab, Muslim, and Middle Eastern, communities for purposes of surveillance and data gathering. The effect is isolation of targeted individuals while continuing to perpetuate the notion that certain communities are worthy of suspicion. In addition, the government’s ability to undertake such intrusive surveillance techniques without any factual basis creates a chilling effect on how South Asian community members conduct their daily lives, including business transactions, interactions with fellow community members, and charitable donations to places of worship. **Congress must ensure that measures that ban profiling on the basis of race, religion, ethnicity, and national origin apply to FBI and other law enforcement surveillance activities, including data collection and analysis, investigations, and threat assessment activities.**

## **RECOMMENDATIONS**

As demonstrated above, the consequences of profiling since 9/11 on the basis of race, religion, ethnicity, nationality, and national origin on the South Asian community have been expansive and profound. In addition, such practices and policies have been either ineffective or counterproductive towards achieving national security. Yet, there are currently limited prohibitions that prevent law enforcement from engaging in such activities. Under existing policies, law enforcement agencies are bound by the minimal and vague guidelines set forth in the DOJ Guidance. Yet the DOJ guidance is inadequate in several respects. Specifically, it fails to prohibit profiling on the basis of religion or national origin; includes an overly broad exemption for national security matters; does not apply to state and local law enforcement agencies; and lacks an enforcement mechanism to ensure law enforcement agency compliance.

Given the dearth of robust and effective administrative policies to curb profiling and assess its impact, SAALT believes it is incumbent upon Congress to enact legislation banning its practice. Legislation such as *ERPA*, which has been introduced in previous Congressional sessions, serves as an ideal vehicle to achieve the goal of eliminating profiling.

---

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

Specifically, *ERPA* would do the following:

- Prohibit the use of profiling based on race, religion, ethnicity, or national origin by federal, state, and local law enforcement
- Institute anti-profiling trainings for law enforcement agents
- Ensure data collection and monitoring of law enforcement activities as it relates to race, religion, ethnicity, and national origin
- Develop meaningful procedures for receiving, investigating, and responding to complaints
- Establish a private right of action for victims of profiling
- Authorize the Attorney General to provide grants to law enforcement agencies to encourage the development and implementation of best policing practices and withhold grants from law enforcement agencies that fail to comply with the Act
- Mandate the Attorney General to submit periodic reports to Congress on ongoing discriminatory practices by federal, state, and local law enforcement

In addition to the laudable measures included *ERPA*, we also strongly urge the inclusion of provisions that explicitly address profiling that has occurred in the post-9/11 context, including the following:

- In order to apply situations of profiling occurring in the airport context, ensure the definition of law enforcement's "routine and spontaneous activities" covered by the Act includes searches of persons, possessions, or property of individuals "in any form of public or private transit"
- In order to apply to situations of profiling resulting from FBI surveillance activity, ensure the definition of law enforcement's "routine and spontaneous activities" covered by the Act includes "data collection and analysis, assessments, and predicated investigations"
- In order to capture information on the rates of profiling in the various contexts that it occurs, beyond "stop and frisk" situations, ensure that data analysis applies to "disparities in other data collected pursuant to routine or spontaneous investigations"
- In order to clearly apply to profiling that has occurred since 9/11, ensure specific findings outlining the impact of such policies and practices

## CONCLUSION

In conclusion, SAALT supports the introduction of the *End Racial Profiling Act*, and urges Congressional members to strengthen the legislation during the review process by including the provisions recommended above. We commend Congressman Conyers and Senator Feingold for their longstanding commitment to addressing the impact of racial and religious profiling. SAALT stands together with our allies in support of this important legislation, which will reaffirm our country's fundamental ideals of civil rights, equality, and due process.

*For further information about the impact of profiling on the South Asian community, contact Priya Murthy, SAALT's Policy Director, at [priya@saalt.org](mailto:priya@saalt.org) or (301) 270-1855.*