



Testimony of Amardeep Singh
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before the
House Judiciary Committee
Subcommittee on the Constitution, Civil Rights, and Civil
Liberties
on
Racial Profiling and the Use of Suspect Classifications in Law
Enforcement
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I would like to wholeheartedly thank the Judiciary Committee and the Subcommittee on the Constitution, Civil Rights, and Civil Liberties for the opportunity to appear before you today. I am also thankful for Chairman Conyer's leadership of the Judiciary Committee and Chairman Nadler's leadership of this Subcommittee and to the Ranking Member of the Subcommittee, Congressman Jim Sensenbrenner.

The topic we discuss today --- racial profiling and the use of suspect classifications in law enforcement --- has vital implications for the safety and freedom of all Americans.

To be direct, it is my humble submission today that the use by law enforcement of classifications based on race, national origin, religion, or ethnicity has severely undermined both our liberty and our safety. As the experience of the Sikh American community makes clear, the use of these classifications by law enforcement is invariably inaccurate, inevitably misused, and ultimately detrimental to the important work of our men and women in uniform. In short, we profile, we lose.

By way of background, I serve as the Director of Programs at the Sikh Coalition. The Sikh Coalition is the largest Sikh American civil rights organization. I co-founded the Sikh Coalition on the night of 9/11 in the wake of an ugly torrent of hate crimes and misguided discrimination against the Sikh American community.

Like all Americans, Sikh Americans have contributed richly to our country. The largest federal court security contractor for the U.S. Marshals Service is a Sikh American-owned company. The inventor of fiber optics is a Sikh American. The newly installed CEO of Mastercard is a Sikh. America's largest peach grower is a Sikh American. Sikhs proudly serve in the United States Army. And last, but not least, one of the first doctors to arrive on the scene to treat victims at Ground Zero on 9/11 is a Sikh.



However, when my fellow Americans look at me or any other Sikh, they don't always see a fellow American. Sadly, some associate the turban, which is a mandatory article of faith in the Sikh religion, with terrorists such as Osama bin Laden. I can say with great assurance that 99 percent of the persons who wear turbans in this country are Sikh Americans, and there lies the very cruel irony of the Sikh American experience since 9/11.

Not only have Sikhs in the United States endured “backlash” discrimination, but we have also been the victims of great ignorance about our background. As a result, while the vast, vast majority of Americans continue to welcome and embrace Sikhs as neighbors, co-workers, and friends, there have sadly been too many Sikhs who have suffered verbal harassment, damage to property, beatings, workplace discrimination, school bullying, and humiliating and invasive profiling at airports since 9/11.

It is this last piece --- the Sikh American experience at our nation’s airports --- that I would like to discuss more with this Subcommittee. I believe the Sikh community’s experience at airports around the country makes clear the use of suspect classifications by law enforcement – race, national origin, religion, or ethnicity --- is misguided at best and dangerous at worst.

As you may be aware, since 9/11, hundreds of thousands, if not millions, of Sikhs have endured “enhanced” screening at airports across America. Such screening requires officers of the Transportation Security Administration (“TSA”) to expend unnecessary time and energy to pull aside Sikhs for additional screening after they have already cleared a metal detector.

These screenings are conducted in full public view, usually in a segregated glass box. The screening usually involves a public pat down of a Sikh’s turban (many do not know that they have the option of a private screening) and at times even its removal. Airline passengers who are about to travel with Sikh passengers often view Sikhs being pulled aside for extra screening by officers, thereby undermining their confidence in their fellow Sikh passenger.



This enhanced screening affects Sikhs both young and old, well-settled third and fourth generation Sikh Americans, and newer immigrants to our country. This enhanced screening occurs despite the fact that each day Sikh Americans are at the forefront of making America stronger and more prosperous.

One such Sikh is Narinder Singh, a member of the Sikh Coalition's Board of Directors. Narinder was born and raised in the heartland of America, near Cincinnati, Ohio. He is a Wharton School of Business M.B.A., who co-founded a technology company in the Silicon Valley which now employs hundreds of Americans. His wife is currently a doctoral student at Harvard University.

Narinder is also a frequent air traveler. He has flown over thirty times this year alone. By his estimate, he has been pulled aside for enhanced screening more than 27 times. In February, Narinder was even told that he would have to remove his religiously-mandated turban for inspection if he wanted to travel out of Dallas Fort Worth Airport.

Amazingly the TSA expends time and effort on these screenings of hundreds of thousands of Sikhs like Narinder even though there are no Sikhs who are considered a threat to the security of the United States.

Though the TSA has a policy that officially bars its officers from engaging in profiling, in truth the officers of the TSA (like many law enforcement officers whether they be at the border, highway, or airport) have extremely wide discretion to pull aside whoever they chose with little to no oversight and accountability. The result is what I believe to be a colossal waste of time and violation of the fundamental constitutional rights of law-abiding Americans.

Indeed, experience tells us that there is no reliable profile of a terrorist who would do our country harm. Consider the following picture:

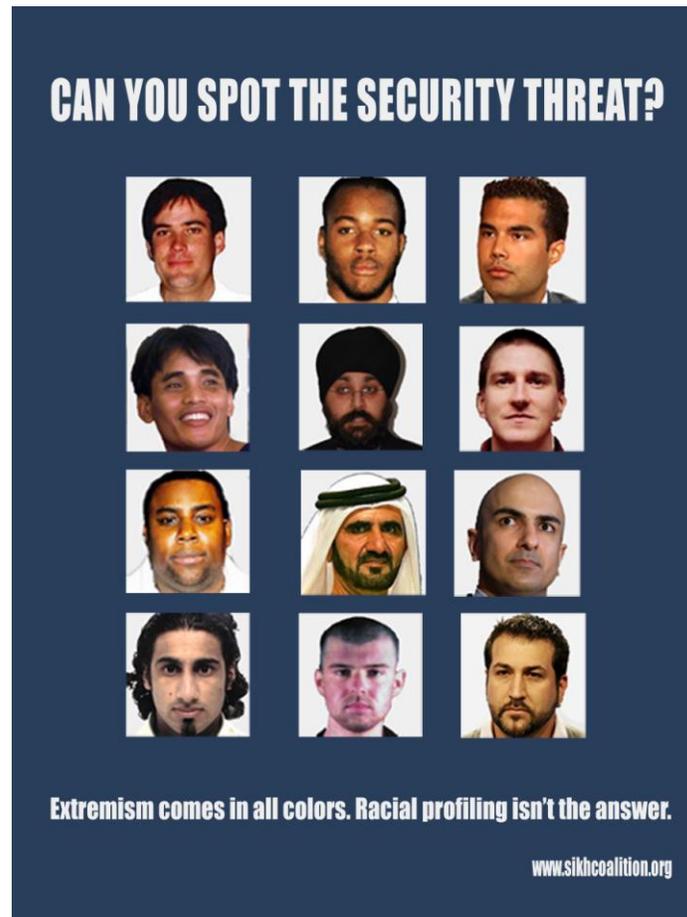


The first man pictured on the left, John Patrick Bedell, started shooting at police officers at the Pentagon Metro Station stop in Arlington, Virginia earlier this year, as a result of his extremist anti-government views. The second man, Joseph Stack, flew an airplane into an IRS building in Austin, Texas earlier this year, again because of his extremist anti-government views. Both men are considered “martyrs” by their supporters online. The two women pictured here --- Collen LaRose and Jaime Paulin-Ramirez --- were both accused by the federal government of planning terrorist killings last March.

The Sikh pictured here is an enlisted dentist in the United States Army. He recently volunteered to be deployed in Afghanistan. Sadly none of this matters to the many law enforcement officers who possess unchecked discretion and have used it to subject this U.S. Army soldier to enhanced screenings at airports across the country.

The law enforcement resources wasted on these misguided searches of Sikhs – which again number in the millions --- is highly troubling. It is especially troubling considering that our experience since then tells us terrorists are determined to circumvent any and every profile we create.

Consider also the following picture:



Can you spot who may be a threat to our national security here? Some of the people pictured here --- and they span every race and religion --- have committed acts of terrorism around the world. On the other hand, some of persons depicted include a Bush Administration official, a current Saturday Night Live comedian, and a former member of the rock band *NSYNC.¹

¹ The persons depicted in order are: Eric Robert Rudolph (Atlanta Olympics 2006 bomber); Germaine Lindsay (London subway 7/7 bomber); George P. Bush (son of Governor Jeb Bush); Amrozi (convicted Bali 2003 bomber); Captain Kamaljeet Singh Kalsi (U.S. Army doctor); Timothy McVeigh (Oklahoma City bomber); Keenan Thompson (comedian); Sheik of Dubai; Neel Kashkari (former U.S. Treasury Department official); Shehzad Tanweer (London bomber); John Walker Lindh (former Taliban soldier); Joey Fatone (NYSNYC)



Are you confused? So am I. Perhaps that is why New York City Police Commissioner Ray Kelly declared profiling to be “just nuts.”² In an interview, Commissioner Kelly went on to declare:

“We [the NYPD] have a policy against racial profiling... it is the wrong thing to do, and it’s also ineffective. If you look at the London bombings, you have three British citizens of Pakistani descent. You have Germaine Lindsay, who is Jamaican. You have the next crew, on July 21st, who are East African. So whom do you profile?”

Commissioner Kelly is not alone. In response, to the failed Christmas Day attack this past December, General Michael Hayden, former Director of the Central Intelligence Agency and former Director of the National Security Agency, stated,

“[H]e [the accused Christmas Day bomber] would not have automatically fit a profile if you were standing next to him in the visa line at Dulles, for example. So it's the behavior that we're attempting to profile. And it's the behavior, these little bits and pieces of information that were in the databases, that we didn't quite stitch together at this point in time. But it wasn't a question of ethnicity or, or religion... it's what people **do** [emphasis added] that we should be paying attention to.”³

Agreeing with General Hayden, former Department of Homeland Security Secretary Michael Chertoff stated that:

“I think relying on, on preconceptions of stereotypes is, is actually kind of misleading and arguably dangerous... what I would say is you want to look at things like where has a person traveled to, where have they spent time, what has their behavior been. But recognize, one of the things al-Qaeda's done is deliberately tried to recruit people who don't fit the stereotype, who are Western in background or appearance. Look at a--like a guy like an Adam Gadahn, who grew up in California, who's one of the senior level al-Qaeda operatives but does not fit the normal prejudice about what a--an extremist looks like.”

² See, “Troublemakers: What pit bulls can teach us about profiling,” New York Magazine, February 6, 2006. Accessible at: http://www.newyorker.com/archive/2006/02/06/060206fa_fact?currentPage=all

³ See, Meet the Press Transcript, January 3, 2010. Accessible at:

http://www.realclearpolitics.com/articles/2010/01/03/john_brennan_michael_chertoff_michael_hayden_on_meet_the_press_99758.html

I am sure the members of the Committee and I hope most Americans respect the service and expertise of General Hayden, Secretary Chertoff, and Commissioner Kelly on issues like profiling.

Indeed, profiling simply does not withstand empirical scrutiny. As we have heard or will hear today, the numbers just do not add up.

Last month the New York Times reported that Blacks and Latinos were nine times as likely as whites to be stopped by the New York City Police Department, but, once stopped, were no more likely to be arrested.⁴ In other words while Blacks and Latinos were stopped and frisked 490,000 times compared to 53,000 times for whites in New York City last year, the number of stops that led to arrest --- or what is known as the “hit rate” --- was slightly above 6% for whites and slightly less than 6% for Blacks. That’s a great deal of trouble for little law enforcement reward.

And what’s more amazing about New York City is that we’ve been here before! Ten years ago, the New York State Attorney General found that while Blacks and Latinos made up almost 3/4s of the persons stopped by police, the rates at which the stops led to an arrest was less for both Blacks and Latinos than whites.

Again the numbers in New York City --- though more than ten years apart -- match up and they again make crystal clear: profiling does not work.



Should it surprise us then that from February 2003 to September 2003, Nathaniel Heatwole (pictured on the left), a white college student, was able to smuggle box cutters, matches, bleach, and razor blades onto planes in the United States?⁵ The TSA only discovered that he had been able to do so once he emailed them to say so.

⁴ See, “New York Minorities More Likely to be Frisked,” New York Times, May 12, 2010. Accessible at: <http://www.nytimes.com/2010/05/13/nyregion/13frisk.html>.

⁵ See, “Student Who Hid Box Cutters on BWI Flight Gets Probation,” Washington Post, June 25, 2004. Accessible at: <http://www.washingtonpost.com/wp-dyn/articles/A3739-2004Jun24.html>.



This is what happens when we lose our focus on behaviors and instead focus on external appearances. While Nathaniel Heatwole was able to smuggle dangerous items onto airplane six separate times, innocent Sikhs were likely subjected to extra scrutiny for no other reason than their appearance. We profile, we lose.

Perhaps this is why Rafi Ron, who was chief of security at Ben Gurion airport in Tel Aviv, Israel, stated in response to the thwarted Christmas Day 2009 attack:

One of the problems with racial profiling is that there's a tendency to believe that this is the silver bullet to solve the problem. In other terms, if you're a Middle Eastern or if you're a Muslim, then you must be bad. And if you're a European and Christian, then you must be good.

But back in 1972, Ben Gurion Airport in Tel Aviv was supposed to be attacked by a Palestinian, was never attacked by one. It was attacked by a Japanese terrorist killing 24 people. And it was attacked in the mid-'80s by a German terrorist answering to the name Miller.⁶

So if the law enforcement experts --- Ray Kelly, Michael Chertoff, Rafi Ron --- tells us racial profiling does not work and the numbers do not add up, why do we continue to profile?

In part there is a Generals-Soldiers problem. In other words, while leadership states that profiling is not the policy of their Departments, their frontline officers engage in the type of crude profiling that is ineffective.

While Commissioner Ray Kelly says profiling is “nuts,” we know the mere fact that you are Black or Latino in New York City makes you more susceptible to stops and searches even if the stop or search is less likely to lead to an arrest than a similar search of someone who is White.⁷

⁶ See, “Challenge: Airport Screening Without Discrimination,” National Public Radio, January 14, 2010. Accessible at: <http://www.npr.org/templates/story/story.php?storyId=122556071>.

⁷ See, “New York Minorities More Likely to be Frisked,” New York Times, May 12, 2010. Accessible at: <http://www.nytimes.com/2010/05/13/nyregion/13frisk.html>.



While Secretary Napolitano says that profiling is not the policy of the TSA, the Sikh Coalition has found that Sikhs are pulled aside for enhanced screening 100% of the time at some airports in the country.⁸

So we know that there is a Generals-Soldiers problem when it comes to profiling. But there are also systemic problems that this Committee must address.

If I as a Sikh, believe that I have been subject to unfair scrutiny simple on the basis of my appearance again and again, what remedy do I have?

The answer is quite simple: There are no effective remedies. The current legal frameworks that exist, allow profiling. Take for example the 2003 United States Department of Justice Guidance on Racial Profiling.

First it should be noted that the Guidance itself is merely a Guidance, it does not have the force of law.

That being said, even as a mere Guidance, it is ineffective. It contains a gaping “national security” loophole which effectively states that the protections against profiling contained in the Guidance may be cast aside for vague and undefined reasons of national security.

It is this loophole ridden Guidance that forms the basis of the TSA’s own anti-profiling Guidance. In this context it should come as no surprise that the TSA’s anti-profiling guidance actually empowers TSA screeners to misguidedly profile Sikh passengers in the name of an undefined and unchecked national security exception.

Similarly, the administrative complaint systems in place are largely ineffective. Our organization has filed complaints of profiling to the Department of Homeland Security and the Transportation Security Administration on behalf of dozens of Sikh airline passengers over the years.

These administrative complaints are usually answered more than a year after they are filed and they inevitably find that TSA screeners did not engage in any unlawful conduct.⁹ Many

⁸ See The Sikh Coalition, The TSA Report Card: A Quarterly Review of Security Screenings of Sikh Travelers in U.S. Airports, Q2 2009 (Aug. 2009), accessible at <https://salsa.wiredforchange.com/o/1607/images/2009%20Q2%20Report%20Card.pdf>.

⁹ It should be noted that the relatively new head of the DHS Office of Civil Rights and Civil Liberties, Margo Schlanger, is working to reinvigorate the DHS Civil Rights Complaint process.

community members have come to the conclusion that the complaint process at DHS and TSA is like submitting complaints down a black hole that never sees the light of day.

Let's keep in mind that the Supreme Court has played a significant role in undermining the possibility of effective redress. In 1975, in United States v. Brignoni-Ponce, the Court held that "Mexican appearance" combined with other factors was enough to allow the United States Border Patrol to lawfully stop a vehicle. Similarly in 1996, the Court effectively held in Whren v. United States that the Fourth Amendment allows police to make pre-text stops or stops based on a genuine traffic violation but are often really a method of profiling in an attempt to discover a great infraction.

So from the Supreme Court to the law enforcement agencies themselves there exists a system that allows profiling and a huge vacuum of inaction by Congress. How can we fill this void?

What is necessary to combat profiling is an effective law that allows for two simple yet powerful means of addressing profiling directly: 1) a system of data collection that provides the public with insight into who is being stopped, how often, and whether the stops yielded an arrest; and 2) an individual right of action similar to long-standing civil rights protections that allow individuals to make statutory claims of a rights violation in a court of law.

Without these protections, we end up with what is collective punishment for minority communities in the United States but no means of addressing it. What do I mean by collective punishment? Consider this final picture:





This is a picture of my 18 month old son Azaad. His name means “freedom.” He is the third generation of Americans in our family. Hopefully, like his father, he’ll be a New York Yankees fan.

Two months ago, my family and I were coming back to the United States from a family vacation in Playa Del Carmen, Mexico. At Fort Lauderdale Airport, not only was I subjected to extra screening, but so was he. I was sadly forced to take my son, Azaad, into the infamous glass box so that he could be patted down. He cried while I held him. He did not know who that stranger was who was patting him down. His bag was also thoroughly searched. His Elmo book number one was searched. His Elmo book number two was searched. His mini-mail truck was searched.

The time spent waiting for me to grab him as he ran through the glass box was wasted time. The time spent going through his baby books was wasted time. I am not sure what I am going to tell him when he is old enough and asks why his father and grandfather and soon him --- Americans all three ---- are constantly stopped by the TSA 100% of the time at some airports.

It’s not fair. It’s not safe. It’s not American. My son and my community are being collectively punished and there is no actual law enforcement benefit in exchange for this collective punishment. There is something wrong with a system that will allow a Sikh baby and his bag to be searched for 15 minutes but allows Nathaniel Heatwole to pass through security six separate times with box cutters and dangerous liquids. We’re profiling Sikhs and we’re losing as a result.

We need this Subcommittee and this Congress to put an end to this senseless and dangerous dynamic if our law enforcement leaders who profess an aversion to profiling cannot. Without action, ten years from now we will engage in the exercise of again reviewing NYPD traffic stops and for a third time finding that while Blacks and Latinos make up 75% of those stopped, the rate at which they are arrested is less than whites.

This Subcommittee and this Congress has the power to stop this Groundhog’s Day dynamic of profiling with no benefit from occurring again by helping to enact landmark legislation to address it. In the process we will make America not only safer, but better.

I thank you for your time and consideration.