

A COMMUNITY ON THE FRONT LINES: PUSHING BACK THE RISING TIDE OF ANTI- IMMIGRANT POLICY SINCE SEPTEMBER 11TH

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"As nightfall does not come at once, neither does oppression. In both instances, there is a twilight when everything remains seemingly unchanged. And it is in such twilight that we all must be most aware of change in the air, however slight, lest we become unwitting victims of the darkness."

-Justice William O. Douglas

It was a cold winter's afternoon in January of 2003. The Asian Pacific American Legal Resource Center was sponsoring a "know your rights" session concerning immigrant rights at the Muslim Community Center, located in a suburb of Maryland outside of Washington, DC. The session soon turned into a discussion of a new Department of Justice imperative called "Special Registration," which required males age 16 years and older from designated countries to present themselves before the Immigration and Naturalization Service on certain dates. As attorneys tried to decipher the new policy's guidelines and exceptions, audience members began to speak about their experiences. One after the other, green card holders, United States citizens, refugees, undocumented immigrants, and students of Pakistani, Bangladeshi, Sri Lankan, and Indian descent described the confusion and fear they have been feeling since September 11, 2001, as well as the increasing marginalization and exclusion they had been feeling from mainstream America. Their words painted a complex and multi-layered picture of

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what it means to be a citizen or immigrant of South Asian descent³ in America today.

Scenarios such as this one have been occurring throughout the country for close to two years now. South Asian immigrants, along with Arab Americans, Muslims, and those perceived to be “Muslim”, have been caught in a web of suspicion and scrutiny that has disrupted their lives dramatically. Since September 11, 2001, policies implemented by the United States government in the name of national security, coupled with a rising wave of bias incidents and discriminatory treatment against those who are or are perceived to be “Muslim” have taken a serious toll, the consequences of which we have yet to fully grasp.

At this watershed moment in South Asian American history, it is important, therefore, to take a critical look at post-September 11th policies that are affecting our community and to develop diverse and unifying strategies by which to effectively address them. When taken in tandem with the climate of bias and discrimination against certain communities, these policies should both raise several questions as well as encourage civic engagement on the part of South Asians.

For example, are the government’s anti-terrorism measures what they claim to be, or are they actually initiatives to target, investigate, detain, and deport individuals from predominantly Muslim countries? Moreover, are the government's new policies, as applied to immigrants, in line with the values of equality and fairness and the presumption of "innocent until proven guilty" upon which our country is founded? What is the real-life impact on the lives of South Asians who are both non-citizens and citizens of the United States? Finally, should South Asians push back the tide of anti-immigrant policies that have besieged the community since September 11th, and, if so, how?

This article searches for ways in which to answer some of these questions by exploring two policies that were implemented after September 11th and discusses their effects on the South Asian community. It also offers several strategies by which to address them. For its framework, the piece begins with the weeks and months after September 11th. However, it is important to keep in mind that policies targeting certain classes of

immigrants did not merely originate after September 11th or occur in a historical vacuum. Instead, in many instances, they represent the continuation of anti-immigrant sentiment and exclusionary tactics that the United States has applied to many immigrant communities throughout its history.⁴

The Immediate Reaction to September 11th

Almost immediately after September 11th, the general public and elected officials began calling for a strong domestic response to the terrorist attacks that had caused unspeakable harm to our country. Congress responded quickly. Just six weeks after September 11th, Congress enacted the USA Patriot Act⁵ with virtually no public debate or discussion; the Homeland Security Act⁶ took effect fourteen months after the attacks. These landmark laws provided federal government agencies and their heads - such as the Attorney General of the United States Department of Justice - with expanded surveillance and enforcement powers in order to combat terrorism within the borders of our country.

Before the USA Patriot Act even began to take effect, Muslims and those perceived to be Muslim found themselves to be targets of a growing public sentiment of suspicion and anger. In fact, according to published reports, over 600 incidents of bias were perpetrated against South Asians and Arab Americans in just the first week after the terrorist attacks.⁷ Advocates collected scores of examples of racial and religious profiling at airports, public places such as restaurants and stores, and at the workplace.⁸

Meanwhile, a number of far-reaching executive orders and policy guidelines were issued by the Administration in late 2001 and early 2002 which granted government agencies enforcement powers beyond those allowed by the USA Patriot Act itself. Nancy Chang, a constitutional scholar, has argued that it was these measures, “. . . which, to the extent that they have been disclosed to the public, have been implemented without prior public notice and comment - [that] are responsible for some of the most egregious civil liberties violations in the history of our nation.”⁹ For example, on September 20, 2001, the Justice Department issued an interim rule that would allow for the detention of non-citizens for 48 hours or longer if neces-

sary, without any charge against them.¹⁰ Soon thereafter, the FBI indefinitely began to detain individuals who were primarily of South Asian and Middle Eastern descent, as described in further detail later in the piece.

Other Administration policies intended to increase national security included the “voluntary” interviews of over 3,000 nonimmigrant men from countries in which Al Qaeda was suspected to have links or activities. According to the U.S. General Accounting Office, which recently reviewed the implementation of this policy, 42% of the 7,602 names that have been sent to U.S. Attorney offices across the country for questioning have been contacted thus far to come in for interviews.¹¹ Despite the voluntary nature of the interviews and their supposed information-gathering motive, some of the men questioned were arrested for violating immigration laws, such as overstaying past the expiration dates of their visas or working without authorization.¹² Thus, for many of the men who complied while attempting to assist government officials, a voluntary government program turned into a serious investigative process with the risk of deportation.

In January 2002, the Justice Department and the Immigration and Naturalization Service¹³ began implementing the *Alien Absconder Apprehension Initiative* to locate over 300,000 people with court orders of deportation already against them. As Asa Hutchinson, Under Secretary of the INS, recently explained before a congressional committee, the initiative was “aimed at aggressively tracking, apprehending, and removing aliens who have violated U.S. immigration law, been ordered deported, then fled before the order could be carried out.”¹⁴ While this seems like a non-discriminatory enforcement measure to locate all individuals who have run afoul of immigration laws, the actual implementation is problematic in terms of the choice of who would first be located. According to Under Secretary Hutchinson, the first phase of this initiative would target “some 5,900 aliens from countries where Al Qaeda is known to operate or recruit.”¹⁵

While many of these policies and others not mentioned here have affected the South Asian community since September 11, 2001, the two that have had the most dramatic impact and that should compel us to ask serious questions about the govern-

ment's motives are the detentions and roundups that began a few months after the terrorist attacks, as well as the Special Registration policy, which began in December 2002 and continued through March 2003.

Detention Without Reason

Shortly after September 11th, compounded by the USA Patriot Act and interim rules and regulations issued by the Administration behind them, the Federal Bureau of Investigation and the Immigration and Naturalization Service conducted nationwide sweeps to detain individuals who might have links to terrorist activities. Initially, government officials indicated that approximately 1,100 individuals were taken into custody as a result¹⁶; a more recent report from the Office of Inspector General [hereafter referred to as the OIG Report] at the Department of Justice places that number at 762.¹⁷ By February 2002, 327 individuals remained in custody, while the remainder had been either deported or released, having spent days and even months in detention centers across the country.¹⁸

Thanks to an interim rule issued by the Administration in mid-September of 2001, detainees could be held without being charged, during which time investigations into their lives were launched. These individuals were effectively denied the constitutional guarantees afforded to "all persons" - regardless of citizenship - to be informed of the charges against them and to receive a neutral hearing before an authority figure in a timely fashion.¹⁹

In cases where it was revealed that detainees had broken immigration laws, they were held for prolonged periods of time for even minor visa violations that would never have previously resulted in jail time.²⁰ Moreover, the government refused to release information about the identities and locations of detainees, leaving families and community advocates with little information about those who had all of a sudden "disappeared."²¹ The government held over 600 secret immigration hearings where the public, the media, and even family and friends were excluded, effectively foreclosing any chance to hold the government accountable by scrutinizing its actions.²²

Recently revealed government information reveals that, for the

most part, the detainees were men from South Asian or Middle Eastern nations. According to the OIG Report, the largest number of detainees (254 or 33%) came from Pakistan. That number was more than double the number of detainees from any other country. Egyptian nationals comprised the second largest number of detainees. India was sixth on the list of approximately twenty countries of origin for detainees.

It is still unclear what criteria government officials used to detain individuals shortly after September 11th. In fact, in many circumstances, FBI agents and local police identified and detained individuals based not on evidence of their potential ties to terrorism - what in the legal world is called "probable cause" indicating criminal behavior - but on tips from the public and chance encounters. For example, on November 25, 2001, a resident in Torrington, Connecticut, informed police that he had heard two "Arabs" talking about anthrax. Police officers followed the two men [who turned out to be Pakistani] suspected of having had the conversation. When the two men reached a gas station, they were arrested. Also arrested were Ayazuddin Sheerazi, an Indian businessman who had been working at the gas station, as well as another man from Pakistan who happened to be at the gas station at the same time. The police did not offer any explanation for why Sheerazi was arrested. Instead, he was detained for eighteen days before being released on bond; meanwhile, the Torrington caller failed a voluntary polygraph test regarding the issue.²³

In addition, human rights organizations raised concerns about the confinement conditions of detainees. According to the Human Rights Watch Detention Report, detainees had to endure harsh conditions including abusive interrogations, lack of access to counsel, and solitary confinement. Some detainees complained of verbal and physical abuse inside detention centers and found it difficult to comply with religious customs including diet and prayer. The OIG report confirmed many of the allegations that advocates and detainees had raised with respect to the selective targeting and deplorable conditions of detention since September 11th, especially at detention centers in Brooklyn, New York, and Paterson, New Jersey.

For most detainees, the end result of incarceration was deportation for minor visa violations. During the time in which this

piece is being written, six planes will have already transported detainees back to Pakistan. According to the Embassy of Pakistan, since Sept. 11, 2001, about 1,400 Pakistani immigrants have been deported.²⁴ Another 180 Pakistani citizens remain in detention centers as of October 2003.²⁵

To Register or not to Register...Two Choices, One Outcome?

On August 12, 2002, the Department of Justice published a notice in the Federal Register that set forth registration requirements for non-immigrant aliens who were entering the United States from certain designated countries.²⁶ The rule stated that nonimmigrant males 16 years and older [individuals with time-limited visas, such as students and visitors, legal permanent residents, or green card holders, as well as individuals granted asylum or refugee status were excluded] from specific countries would need to make reports to the INS upon arrival; 30 days after arrival; every twelve months after arrival; upon events such as a change of address, employment, or school; and upon departure from the United States.²⁷ The notice expressed the reasons for the registration requirements in the following manner:

*Recent terrorist incidents have underscored the need to broaden the special registration requirements for nonimmigrant aliens whose presence in the United States requires closer monitoring to require that they provide specific information at regular intervals to ensure their compliance with the terms of their visas and admission, and to ensure that they depart the United States at the end of their authorized stay.*²⁸

In other words, these requirements, according to the Department of Justice, were necessary to ensure the country's national security. Accordingly, between September and December 2002, nationals or citizens, aged 16 years and older, from twenty-five countries with predominant Muslim populations were required to present themselves to their local INS office by a certain date for interrogation and fingerprinting.²⁹ These twenty-five countries had significant Muslim populations for the most part, and included the following: Afghanistan, Algeria, Bahrain, Bangladesh, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya,

Morocco, North Korea, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen.

While the Special Registration policy seemed benign on the surface, the way in which it was implemented led to harmful consequences. There were reports of differential treatment from region to region, with some striking examples of mistreatment and improper interrogation. In December 2002, the INS office in Los Angeles allegedly arrested around 400 individuals who had come to comply with the requirement, casting doubt on the program's information-gathering motives and adding fuel to the suspicion that the program was, instead, the most recent method by which to selectively enforce immigration laws against certain communities. Contributing to this conclusion were the reports from registrants that, in addition to a focus on their immigration status, their residence, their employment status and other matters, Special Registration procedures also queried them for unrelated information, such as their credit card numbers and frequented locations for prayer; even more claimed that they were unfairly detained and harassed by INS officers.³⁰

Some examples illustrate the dramatic impact of Special Registration. In San Francisco, two brothers of Pakistani descent described their experiences at a news conference convened by the American Civil Liberties Union of Northern California, the American Muslim Voice, and the Pakistani-American Alliance. Both brothers, aged 17 and 19, were placed in deportation proceedings even though they had lived in America for several years. Their mother, a full-time teacher, stated: "In 1998 we sold our house in Pakistan to come to this country so that my sons could have a better education...My sons cannot go back to Pakistan, there is no home for them there."³¹

A Bangladeshi newspaper recently reported the story of a Pakistani citizen who complied with registration requirements.³² The man had hoped that, since he had a family in the States, the INS would grant him adjustment of status. Instead, he was detained and is set to be deported because he is out of status. His wife, a Bangladeshi citizen, despaired, "We've been trapped. My husband decided to go to comply with the law.

But they put him in prison instead.”²³³

When Special Registration was completed, 13,000 men of the nearly 83,000 who complied with the program were set to be deported.³⁴ Thirty-five percent of those who have been or will be deported are of Pakistani descent.³⁵

Measuring the Impact

The federal government’s immigration-related practices, including Special Registration and detentions, have had a significant impact on both individuals and our community collectively. In addition to casting a wide net and presuming disloyalty among general classes of immigrants from certain countries, the government’s stance towards and treatment of Muslims and South Asians also fosters an environment in which it is easier to justify the discrimination and harassment of such individuals in the public realm. I would also argue that while the impact of these policies on non-citizens of South Asian descent is, in some part, measurable, there are also subtle, but harmful, consequences experienced by citizens of South Asian descent.

Casting a Wide Net

While it seems logical that the government should investigate non-citizens from the geographic regions from where the September 11th terrorists originated, what is not reasonable or efficient is to use enforcement measures to target all individuals from those regions. The government’s policies assume that individuals from countries in the Middle East and South Asia are prone to disloyalty or subversive tactics and, thus, place the burden on these individuals to prove their loyalty - a phenomenon that is in stark contrast to our country’s legal safeguard of “presumed innocent until proven guilty.”

It is reasonable to investigate people from the Middle East and South Asia; it is not reasonable to investigate them all.

Post September 11th policies reflect what Angelo Ancheta has called “foreign racialization” - the practice of categorizing all immigrants from a particular area as having certain stereotypes with the goal of blurring any individual distinctions among them.³⁶ Such categorization has led to the fostering of stereotypes, such as the “model minority” status often accorded to Asians or the “illegal immigrant” perception applied to Latinos. Similarly, since September 11th, the presumption that foreign-born individuals from Middle Eastern and South Asian countries are either potential terrorists or have information or ties to terrorist organizations has been reflected in public policies and actions. However, it is important to remember that the gov-

ernment and the public did not target white men who were Irish Catholics after Timothy McVeigh was revealed as the mastermind of the attack on the federal building in Oklahoma City.

The type of profiling that has been taking place since September 11th also harkens back to World War II, when over 100,000 individuals of Japanese descent - including American citizens - were interned because of their presumed disloyalty to the United States. The United States Supreme Court, in one of its most well-known decisions, stated that the “exclusion of those of Japanese origin was deemed necessary because of the presence of an unascertained number of disloyal members of the group.”³⁷ For this decision and its ramifications, the Supreme Court, Congress, and the Executive Branch have made considerable apologies. Unfortunately, our government seems to have forgotten the immeasurable harm visited upon Constitutional principles and on the Japanese American community, as policies implemented since September 11th bear an eerie similarity to those implemented during World War II. As one scholar has noted:

*...[W]artime coupled with racism and intolerance create particular types of mistakes. Specifically, we overestimate the threat posed by racial 'others' (in WW II, Japanese Americans; today, Arab Americans, Muslims, Middle Easterners, immigrants, and anyone who looks like "them"). Simultaneously, we underestimate how our response to those threats burden those "others" (in WW II, shattering lives through the internment; today, intimidation and violence by individuals, and racial profiling by the state).*³⁸

The type of ethnic and religious profiling, or “guilt by association”, that we have seen since September 11th fails to consider any other factors - unrelated to religion or national origin - that might be more likely to signify terrorist activity. Moreover, it has failed to be effective in actually capturing the suspects they are intended to net. As many have argued, in the case of Special Registration, it is unlikely that possible terrorists will voluntarily present themselves to INS officials. As David Cole argues, “. . . the proxies of Arab or Muslim identity or nationality are so inexact and overbroad that virtually all of those questioned, registered, or detained have proven to be innocent of any terrorist activity.”³⁹ Thus far, the two individuals who have been charged with terrorist-related crimes are British and French citizens - respectively, Richard Reid and Zacarias Moussaoui.⁴⁰

The government’s claims that it is not targeting people who are Muslim but, instead, is targeting non-citizens from countries with suspected terrorist activities is simply a smokescreen for sanctioning discrimination based on race, national origin, and religious affiliation. While it might seem that the

government's policies are logical methods by which to locate and gather information about immigrants, their ultimate ineffectiveness, their selective enforcement, and their relatively tenuous relationship to, or success in, fighting terrorism leaves open the possibility that such policies are, in effect, ways to purge America of “undesirable immigrants.”

Public Policy, Private Actions

Government policies can have a strong impact on how the public treats those of South Asian descent. The constant barrage of government policies tracking Arab Americans and South Asians has contributed to creating an image of what a terrorist might look like: a brown-skinned man from a Middle Eastern or South Asian country. They also create an environment that normalizes the discrimination against those who are or who are perceived to be Muslim.

Since September 11, 2001, South Asians have been confronting an increase in hate crimes, workplace discrimination, and racial and religious profiling. A report by Human Rights Watch, entitled, *We Are Not The Enemy: Hate Crimes Against Arabs, Muslims, and Those Perceived to be Arab or Muslim after September 11*, sets forth some statistics about the rates of discrimination and bias.⁴¹ According to the HRW report, the FBI reported that the number of anti-Muslim hate crimes rose by 17% in 2001, from just twenty-eight reports in 2000 to 481 in 2001.⁴² Moreover, other government agencies also observed a rise in complaints of discrimination based on national origin or religious affiliation. The United States Equal Employment Opportunity Commission (EEOC), the federal agency responsible for enforcing federal laws prohibiting workplace discrimination, received 488 complaints of September 11-related employment discrimination as of May 2002.⁴³ Similarly, the U.S. Department of Transportation reported that it had investigated 111 complaints from passengers who claimed that they had been discriminated against because of their ethnic or religious appearance during the airline security process.⁴⁴

While these incidents of discrimination significantly increased during the days and months after September 11th, they are showing no signs of complete abatement two years since, despite education and advocacy by concerned community advocates, academics, and government representatives. As this article was written, a mosque in Savannah, Georgia, was set on fire in an act of arson,⁴⁵ and a Muslim student in Cleveland, Ohio, was told not to return to her high school unless she removed her hijab, an article of religious clothing.⁴⁶ A Sikh man is suing Delta Airlines for the harassment by a crewmember who allegedly solicited the help of fellow passengers to physi-

cally subdue the passenger because she felt that the person wearing the “turban” would cause “trouble” on the flight.⁴⁷

Actual physical violence against individuals of South Asian descent continues to occur as well: in early August 2003, a Sikh couple and the couple's cousin were walking to their home in a neighborhood in Queens, New York, when they became the targets of a hate crime. Three white men in a livery cab began to yell slurs such as, “Bin Laden family, go back to your country,” and then spat on and beat the three South Asians outside their home. The victims had lived in the neighborhood for nine years.⁴⁸

The Impact on Non-Citizens: Growing Mistrust and Leaving the Land of Opportunity

Life has changed for many South Asians in America in deeply personal ways over the past two years. The impact on non-citizens of South Asian descent has been dramatic. As individuals with precarious immigration statuses - and in many cases, no immigration status - non-citizens are far more vulnerable than citizens of South Asian descent. In many instances, they do not have the ability to challenge violations of their civil rights and are unwilling to avail themselves of benefits to which they may be entitled.

Advocates have warned of how community members are less inclined now to turn to law enforcement to report crimes for fear of being investigated for issues unrelated to such reports, such as their immigration status. South Asians who do not have legal status have heard of how they can be questioned about their immigration status if they were to draw the attention of law enforcement. For example, a recent newspaper article reported the story of a man named Mahmud who was stabbed in the stomach by three men in the foyer of his building. When the police and paramedics arrived, Mohmad, an immigrant from Pakistan who does not have legal status, said he had stabbed himself.⁴⁹ What was his explanation for not reporting the crime? “I don't have no papers, no documents. I didn't want to make a police report,” he claimed.⁵⁰

The fear of reporting crimes has ramifications in many different contexts: a battered spouse is afraid to report her abusive spouse for fear that he might be deported; advocates cannot amass accurate statistics on the number of hate crimes occurring against South Asians, as many victims may be afraid to report crimes; and social service providers cannot convince those who need their help the most to avail themselves of medical benefits or public assistance. Recently, one success story emerged in New York City. In response to some of these concerns, advocates and City Council members worked with the Administration to successfully produce Executive Order

No. 41, which prevents government officials to solicit or share information about immigration status that they receive in the course of their duties, with some exceptions.⁵¹

In some circumstances, the post September 11th climate has meant that South Asians must leave the neighborhoods and jobs in which they have invested to find other lands of opportunity. For example, in Brooklyn, New York, where over 120,000 Pakistanis used to live, approximately 15,000 have left for Canada, Europe, or Pakistan, according to the Pakistan Embassy.⁵² A *Washington Post* article recently described the scene at Brooklyn's Coney Island Avenue in bleak terms:

*The mosque on Coney Island Avenue is one-third empty on Fridays. Restaurants close at 10 PM. Hairdressers and pizza joints report a 40 percent drop in business. Sada-E-Pakistan newspaper, written in Urdu, sells 60 percent fewer ads.*⁵³

Facing the possibility of investigation and possible eventual deportation, the South Asians who have created, worked in, and shopped at the little Indias, Pakistans, and Bangladeshes that dot cities and towns across America are beginning to leave. In doing so, many are seeking asylum to escape religious and political persecution in the United States - a stark illustration of the treatment they face in America.

Ironically and sadly, the United States, which has long been perceived as a land in which immigrants can find solace from persecution in their homelands, has now turned into a nation from which some immigrants wish to flee. According to news reports, approximately 5,000 Pakistanis have sought asylum in Canada since 2001.⁵⁴ A recent Philadelphia Inquirer article told the story of a Pakistani family who, after their primary breadwinner was told he had only four months to leave the U.S after he registered with INS, packed up and left for Canada where the entire family is now residing and have received asylum.⁵⁵ A family member, Mukeem Butt, enthusiastically states: "Canada is the greatest country in the world," echoing a sentiment that many immigrants have expressed about America in the past.⁵⁶

The Impact on Citizens: Privileges Do Not Always Apply

Government policies since September 11th have also contributed to a feeling of isolation among many South Asians - citizens and non-citizens alike. US citizens of South Asian descent, while not directly facing the consequences of policies such as Special Registration, nonetheless suffer tangential harm due to the messages these policies send. As many have argued, the privileges and guarantees of citizenship are meaningless for immigrants who continue to be seen as "foreign". Neil Gotanda, in *Citizenship Nullification*, argues that

merely receiving the privileges of citizenship does not ensure the ability of most Asians to fully participate in American society as citizens.⁵⁷ That is, despite receiving the privileges of citizenship, many Asians who are naturalized citizens of the United States are still not seen as Americans because of their “perpetual foreign-ness”.

This sort of citizenship nullification occurs in the post September 11th climate as well, when American citizens of South Asian descent feel that their citizenship does not exempt them from discrimination or stereotyping. As Leti Volpp has put it:

...[O]ne may formally be a U.S. citizen and formally entitled to various legal guarantees, but one will stand outside of the membership of kinship/solidarity that structures the U.S. nation... Thus, the general failure to identify people who appear "Middle Eastern, Arab, or Muslim" as constituting American national identity reappears to haunt their ability to enjoy citizenship as a matter of rights, in the form of being free from violent attack.⁵⁸

Thus, US citizens of South Asian descent may feel the indirect results of governmental policies that ostensibly target non-citizens of South Asian descent. US citizens of South Asian descent are likely to be discriminated against, harassed, and mistreated simply because they bear physical resemblances to those who are the supposed “targets”. After all, the general public does not make distinctions among people based on their immigration status. Unlike skin color or gender, citizenship status has few, if any, identifiers. Therefore, all those who “look” like they could be Muslim - regardless of their citizenship - are potential targets. As a result, policies intending to single out only non-citizens of South Asian descent will have collateral consequences on individuals who are citizens of South Asian descent, as well as on any individuals who might be perceived to fall within that suspect category.

The Road Ahead

What awaits the South Asian community on the road ahead? Clearly, immigration policies attempting to maintain national security have not run their course. Already, there is legislation pending in Congress that would empower local and state police to actually enforce civil immigration laws.⁵⁹

It is our community’s responsibility - now more than ever - to do our part to respond to the climate in our country today. First is the individual and collective responsibility to educate ourselves about the types of laws, policies, and real-life impact on South Asians since September 11th. Several websites,

listserves, books, and documentaries are available to assist in the individual and collective education process.⁶⁰

Our community must also come together in a unified show of support and understanding for our shared experiences, both historically and today. The support of all South Asians - regardless of religious background or country of origin - is important if we are to demonstrate a strong front both within our community and outside of it. Categorizing ourselves as falling outside the parameters of the “suspect group” is not effective in terms of preventing discrimination or crimes. As explained earlier, those who wish to do harm to Muslims will not distinguish between Indians, Pakistanis, or Mexicans, for that matter. No reason remains to avoid working with one another at this time.

Moreover, while many second-generation individuals of South Asian descent are already organizing and working along these lines, it is important to see examples of coalition-building between Hindu, Sikh, Christian, and Muslim religious leaders and collaborative relationship-building between Indian, Pakistani, and Bangladeshi communities. The religious centers and cultural associations that dominate the lives of most South Asians in the United States must take a leadership role in reaching South Asians with messages of solidarity and unified commitment to a new consciousness of what it means to be a South Asian in America today.

Many organizations have already begun to take strong stances on recent immigration policies, to archive information about the experiences of South Asians since September 11th, and to collaborate with government agencies to the extent possible to educate South Asian community members about their rights under anti-discrimination laws. For example, the Hate Free Zone of Washington held a town hall meeting last year where individuals testified about their personal experiences since September 11th; 1,000 members from the local Muslim, Arab, Sikh, Cambodian, and Somali communities attended the forum to show their support and concern for these issues.⁶¹ In Southern California, the South Asian Network and the South Asian American Leaders of Tomorrow collaborated on a town hall meeting where the audience viewed a documentary on hate crimes and discussed how to work with local authorities to bring address bias incidents. In the New York City area, South Asian organizations have been working with immigrant coalitions to address the personal and legal needs of detainees and their families. Such work must be undertaken in all communities across the country and, especially, where new immigrants are reshaping the landscape, but where institutional resources and support are still scarce.

While many non-South Asian American organizations have been at the forefront in addressing issues of discrimination and bias on the local and national levels, it is incumbent upon us as well to create the institutional structures and mechanisms to advocate on behalf of our community's needs and to build strong coalitions with other communities of color. Forging links between Arab American, African American, and Latino communities on similar issues, such as racial profiling or anti-immigrant sentiment, will help to advance our collective goals both today and in the future.

Finally, our community must allocate portions of its significant intellectual and financial capital to addressing the needs of organizations that work with community members. Many South Asian organizations that were created after September 11th to respond to immediate community needs are in need of financial support to continue the valuable work they have been providing. And this is the most opportune moment for community leaders to build the types of long-lasting and viable institutions that can address the civil rights concerns of South Asians, such as those described in this article.

Collaborative work, individual action, and collective education can go a long way in responding to the tide of policies and actions that threaten to erode our civil rights and the lives of South Asians in America at this time. How we - individually and as a community - respond will surely have an impact on future generations of South Asian Americans and on our country as a whole.



1. The author thanks Parag Khandhar and Juliet Stumpf for their guidance with this article.
2. Letter from Justice William O. Douglas to Washington State Bar Association, Young Lawyer's Section (1976), in Melvin I. Urofsky, ed., *The Douglas Letters: Selections from the Private Papers of Justice William O. Douglas* (Bethesda, MD: Adler & Adler, 1987), 162, quoted in David Cole, *Enemy Aliens* (New York: The New Press, 2003), 13-14.
3. "South Asian" refers to individuals whose countries of origin include Bangladesh, Bhutan, India, Nepal, Pakistan, Sri Lanka, and South Asian communities in the diaspora, including Africa and the West Indies.
4. For a comprehensive discussion of laws that have affected Asian immigrants, see Ancheto, Angela N., *Race, Rights, and the Asian American Experience* (New Brunswick and London: Rutgers University Press, 2001).
5. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56.
6. The Homeland Security Act of 2002, Pub. L. No. 107-296.
7. *American Backlash: Terrorists Cause Harm in More Ways than One*, South Asian American Leaders of Tomorrow [October 2001].
8. For an example of early archived accounts of discrimination, visit the Sikh Coalition's website at

www.sikhcoalition.org.

9. Nancy Chang, "How Democracy Dies: The War on Our Civil Liberties" in *Lost Liberties: Ashcroft and the Assault on Personal Freedom*, ed. Cynthia Brown (New York: The New Press, 2003), 34-35.
10. 66 Fed. Reg. 48,334 (September 20, 2001)
11. Report to Congressional Committees on the Justice Department's Project to Interview Aliens after September 11, 2001 (GAO-03-459).
12. *Id.*
13. On March 1, 2003, the function of providing immigration-related services and benefits of the Immigration and Naturalization Service (INS) - formerly part of the Department of Justice - was transferred to the Bureau of Citizenship and Immigration Services (BCIS) in the newly created Department of Homeland Security. For the purposes of this article, this entity will be referred to as INS.
14. Statement of Asa Hutchinson at a hearing on "Department of Homeland Security Transition: Bureau of Immigration and Customs Enforcement" before the House Subcommittee on Immigration, Border Security, and Claims, Committee on the Judiciary (April 10, 2003); accessed at http://www.bcis.gov/graphics/aboutus/congress/testimonies/2003/Hutchinson_041003.pdf+alien+absconder+apprehension+initiative&hl=en&ie=UTF-8 (last visited on September 3, 2003)
15. *Id.*
16. *Presumption of Guilt: Human Rights Abuses of Post-September 11 Detainees*, Report by Human Rights Watch, Vol. 14, No. 4 (G) (August 2002), 18 (hereafter referred to as the Human Rights Watch Detentions Report)
17. *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 (June 2003) (hereafter referred to as the "OIG Report")
18. *Concerns Regarding Post September 11 Detentions in the USA*, Report by Amnesty International, AMR 51/044/2002 (March 2002), 2.
19. Chang, *supra* note 9, at 48.
20. Human Rights Watch Detention Report, *supra* note 16, at 18.
21. *Id.*
22. Kate Martin, "Secret Arrests and Preventive Detention" in *Lost Liberties: Ashcroft and the Assault on Personal Freedom*, ed. Cynthia Brown (New York: The New Press, 2003), 79.
23. Human Rights Watch Detention Report, *supra* note 16, at 13.
24. *Immigration News Briefs*, Vol. 6, No. 43 - October 25, 2003
25. *Id.*
26. 67 Fed. Reg. 52584 (August 12, 2002)
27. *Id.*
28. *Id.*
29. 67 Fed. Reg. 67765-68 (November 6, 2002); 67 Fed. Reg. 70525-28 (November 22, 2002); 67 Fed. Reg. 77642-44 (December 18, 2002); 68 Fed. Reg. 2363 (January 16, 2003).
30. *Inconsistency, Confusion, and Chaos: Experiences with Call-in Special Registration*, American Immigration Law Foundation (April 15, 2003)
31. Immigrants Targeted for Deportation After Participating in INS Special Registration Program Speak Out, Press Release from American Civil Liberties Union (July 1, 2003), last accessed on September 1, 2003, at www.aclu.org/SafeandFree/SafeandFree.cfm?ID=13071&c=205

32. Partha Banerjee, "A Muslim family in hell because of INS Special Registration," *Akhon Samoy* (August 19, 2003)
33. *Id.*
34. Nurith C. Aizenmann and Edward Walsh, "Immigrants Fear Deportation After Registration," *Washington Post* (July 28, 2003).
35. "35% of deported from US are Pakistanis," *Dawn* (July 29, 2003)
36. See Ancheta, *supra* note 4, at 64.
37. *Korematsu v. United States*, 323 U.S. 214, 218-219 (1944).
38. Thinking through Internment: 12/7 and 9/11, Jerry Kang, *Amerasia Journal*, 27:3 (2001/28:1 (2002): 42-50.
39. Cole, *supra* note 2, at 185.
40. *Id.*
41. *We Are Not The Enemy: Hate Crimes Against Arabs, Muslims, and Those Perceived to be Arab or Muslim after September 11*, Human Rights Watch, Vol. 14, No. 6 (G) (November 2002), hereafter referred to as the HRW Report
42. *Id.* at 14
43. *Id.* at 15
44. *Id.*
45. Press Release of Council on American-Islamic Relations (August 25, 2003)
46. Karen R. Long, "Ohio Catholic School Bars Girl Wearing Muslim Scarf," *Cleveland Plain Dealer* (August 28, 2003)
47. Press Release of Sikh Mediawatch and Resource Task Force (September 16, 2003)
48. Bryan Virasami, "Residents Rally Against Hate Crime," *Newsday* (August 6, 2003)
49. Alisa Solomon, "Immigrants Brace for Backlash but Fear Alerting the NYPD," *Village Voice* [April 2-8, 2003]
50. *Id.*
51. Executive Order No. 41, City-Wide Privacy Policy and Amendment of Executive Order No. 34 Relating to City Policy Concerning Immigrant Access to City Services (September 17, 2003)
52. Michael Powell, "An Exodus Grows in Brooklyn," *Washington Post* (May 29, 2003)
53. *Id.*
54. Gaiutra Bahadur, "Fear Shakes Immigrant Enclave," *Philadelphia Inquirer* (August 18, 2003)
55. *Id.*
56. *Id.*
57. See generally Neil Gotanda, "Citizenship Nullification," in *Asian Americans and Politics*, ed. Gordon H. Chang (Washington DC: Woodrow Wilson Center Press, 2001).
58. Leti Volpp, The Citizen and the Terrorist, 49 *UCLA L. Rev.* 1575 (June 2002): 1594-95.
59. Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act, H.R. 2671
60. Recent books written on topics discussed within this article include the collection of essays edited by Cynthia Brown and the David Cole book, both mentioned above. The documentary, *Lest We Forget*, provides a compelling picture of post-September 11th America for Muslims and South Asians; for more information, please visit www.lestweforgetmovie.com. Organizations addressing issues

discussed in this article have websites with resources as well as listservs that can be joined to receive frequent updates. While this is by no means a comprehensive list, some of the South Asian organizations that are addressing post September 11th-related civil rights issues include the South Asian Network based in Los Angeles, Desis Rising Up and Moving, Council of Pakistani Organizations, Families for Freedom, South Asian Human Rights - all based in New York City; and South Asian Bar Association chapters around the country; and national organizations such as South Asian American Leaders of Tomorrow, the Sikh Coalition, Sikh Media Action Resource Taskforce, the National Council of Pakistani Americans, the Indian American Center for Political Awareness, and the Bangladeshi American Foundation, Inc. Other national organizations addressing these issues include the American Civil Liberties Union, the Anti-Arab American Discrimination Committee, the Arab American Institute, the Asian American Legal Defense and Education Fund and the National Asian Pacific American Legal Consortium.

61. Janet I. Tu, "Forum Speakers tell of Post-Sept. 11 Harassment," *Seattle Times* (September 22, 2002)