

**ICAAD**

**STATEMENT OF**

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(ICAAD)**

**HEARING ON ENDING RACIAL PROFILING IN AMERICA**

**SENATE COMMITTEE ON THE JUDICIARY**

**SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS**

**UNITED STATES SENATE**

**APRIL 17, 2012**

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of the International Center for Advocates Against Discrimination (ICAAD) regarding today's hearing on racial profiling. ICAAD uses coalition based advocacy and strategic litigation to combat structural discrimination both domestically and internationally. ICAAD believes profiling based on racial, ethnic, religious, or national origin is one of the most pernicious forms of structural discrimination. Instead of furthering our security, profiling disparately impacts specific minority or vulnerable communities and further marginalizes them. As societies continue to build walls of separation between communities, ICAAD's mission is to remove each brick to illuminate our common humanity.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. ICAAD is particularly concerned about many policies and programs at the national, state and local level, which encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices are counterproductive, waste

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public resources, and violate the civil and human rights of persons living in the United States of America.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

### **Racial Profiling in Our Communities**

ICAAD attorneys have worked for over five years to ameliorate the disparate impact of racial/ religious profiling at U.S. airports, primarily<sup>1</sup> against Sikh travelers. The United States Department of Homeland Security's Transportation Security Agency (TSA) has adopted policies that subject Sikh passengers to additional security screening each and every time they travel through an airport, because of their article of faith (*dastaar* or turban). The additional screening includes being tested by a Explosive Trace Detection (ETD) procedure, which requires the pat-down of the turban followed by a hand swab, where the swab is then analyzed for explosives. This additional screening occurs even when no alarm is triggered through the primary screening mechanism. And sometimes, tertiary screening is conducted with the use of a metal detecting hand wand. Though TSA claims that the policy was instituted because Sikh turbans fall within the "bulky clothing" or "non-form fitting headwear" definitions, no other article of clothing or

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<sup>1</sup> It has been reported that Muslim women who wear hijabs, South Indian women who wear their cultural dress (*sari*), those with disabilities and medical conditions, and Black women who have "bunchy" hair, have all disproportionately been impacted by TSA's policies.

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headwear is subject to the same level of scrutiny. Additionally, many Sikh organizations have called for an independent audit of TSA's screening of "bulking clothing" to determine whether TSA is scrutinizing other items of clothing (baggy jeans, cargo shorts, sweatshirts, dresses etc.) similar to how the turban is currently being screened in both manner and frequency.

No other single community is mandatorily subject to this type of degrading treatment each and every time they fly. Moreover, the perception of the flying public continues to be skewed when observing every Sikh in a turban pulled aside for secondary screening and the ETD procedure; observing this kind of disparate treatment perpetuates the stereotype that those with external religious or ethnic identities are "suspect." **Degrading treatment and profiling of a community has consequences far beyond the airport confines.**

The security theatre orchestrated by TSA has deeply harmed the psyche of the Sikh community, but also, has had a direct impact on the levels of violence and discrimination perpetrated against Sikhs in society (e.g. hate crimes,<sup>2</sup> bullying,<sup>3</sup> and employment discrimination<sup>4</sup>). If a law enforcement agency like the TSA can systematically treat particular groups with such indignity, why shouldn't the common public similarly mistreat these individuals? The sad answer is that they can and they do, because the government has implicitly sanctioned the discriminatory actions that are being perpetrated against the Sikh community on a daily basis. The examples<sup>5</sup> below further shed light on the impact of profiling and how such policies lead to greater abuses of power. It is important to note that these are only a few (common) examples of a more systemic pattern of violations.

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<sup>2</sup> There have been at least ten (10) high-profile hate/bias related crimes against the Sikh community within the last sixteen (16) months.

<sup>3</sup> Reports and statistics gathered by Sikh civil rights organizations, Sikh Coalition and UNITED SIKHS, report an over 60% rate of bullying against Sikh children in schools.

<sup>4</sup> There has been a rise in the number of employment discrimination cases filed by the Sikh community in the last year alone.

<sup>5</sup> Each of these cases are formal complaints filed with TSA and DHS.

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### **Civil Rights Complaints: Flawed Profiling Policies Inevitably Lead to Flawed Implementation of those Same Policies**

#### **1) Jaspal Singh**

On Nov. 24, 2010, Mr. Singh was flying out of Washington DC's Dulles International Airport. As Mr. Singh entered the screening area, he passed through the metal detector without triggering any alarm. Nonetheless, he was immediately subject to additional screening based on the "bulky" clothing (or non-form fitting headwear policy).

The Transportation Security Officer (TSO) who conducted ETD (Explosive Trace Detection) instructed Mr. Singh to run his hands over his turban repeatedly, however, when Mr. Singh's hands were swabbed, the ETD machine indicated that an alarm was triggered. At this point, to resolve any anomaly, Mr. Singh should have been offered a private screening area where he could remove his turban for inspection and have the ability to retie it privately. Instead, the Transportation Security Manager (TSM) instructed Mr. Singh to remove his turban in public and pass it through the x-ray machine. Mr. Singh explained how humiliating the removal of his article of faith would be and that it was an integral part of a Sikh's identity. At this point, two additional screening managers arrived and the TSMs intimidated Mr. Singh into removing his turban in public, without the opportunity for a private screening, which is in direct violation of TSA's own policies and procedures.<sup>6</sup>

With deep anguish and utter humiliation, Mr. Singh removed his turban in public and further had his six-meter turban unfurled in public by TSA employees. This is akin to being strip searched for a Sikh, and TSA has been consistently put on notice to be sensitive to Sikhs being forced to remove their turbans in public. After clearing security and before leaving the screening area, Mr.

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<sup>6</sup> TSA Adjusts Screening Procedures for Bulky Clothing, [http://www.tsa.gov/press/happenings/sop\\_adjustments.shtm](http://www.tsa.gov/press/happenings/sop_adjustments.shtm) (Oct. 15, 2007).

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Singh conveyed to one of the TSMs that, “I have been humiliated to the utmost extent and I feel ashamed.”

### **2) Daljeet Singh Mann**

On November 6, 2010, when traveling out of San Francisco International Airport (SFO), prior to Mr. Mann’s entry into the primary screening apparatus (in this case a metal detector), a TSO made a motion towards his turban. According to TSA policy,<sup>7</sup> an individual should not be segregated, isolated, or “called out” before proceeding through the primary screening threshold. Yet, instead of passing through the metal detector and having an ETD screening conducted, three TSOs approached Mr. Mann and two of them said they wanted to “look under” his turban in a private room. The TSOs had no grounds to conduct this type of invasive search unless Mr. Mann had undergone an ETD screening and triggered an alarm. Intimidated by the sheer number of TSOs that were surrounding him, he proceeded to the private screening area.

The TSOs failed to explain the need for such an invasive search absent any alarm being triggered and Mr. Mann, feeling intimidated and believing he had no choice, removed his turban. After he was cleared to leave the screening area, Mr. Mann reported his discriminatory treatment to a TSM. The TSM apologized and stated that someone “dropped the ball” and that he would be filing a personal report to TSA.

### **3) Gurvinder Singh & Rajinder Singh Bal**

On May 5, 2011, both Mr. Singh and Mr. Bal were flying through BWI Airport where they were racially/ religiously profiled and denied the ability to opt-out of AIT.

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<sup>7</sup> Kimberly Walton, Special Counselor to the Administrator of TSA, confirmed this at an inter-agency meeting that any signaling or separation of Sikhs before even going through the primary screening device would violate TSA policy. A complaint was also filed on behalf of a Sikh gentleman who experienced an even more extreme situation of being separated before going through the primary screening device.

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As Mr. Singh and Mr. Bal entered the security line, they noticed that there was another Sikh gentleman who was 4-6 people ahead of them in line. In this circumstance, the primary screening device was a metal detector; however, adjacent to the metal detector was an AIT machine, where individuals were “randomly” chosen and sent through AIT. Coincidentally, all three Sikh gentlemen were sent through AIT. When Mr. Singh and Mr. Bal questioned the TSO on why they were being directed towards AIT, she told them they had been “randomly selected and were required to go through AIT.” Thus, in a span of less than 8 people in the security line, three Sikhs were “randomly” directed to AIT.

Furthermore, Mr. Singh and Mr. Bal knew that AIT was a voluntary process and that they could opt for a full body pat-down under TSA policies,<sup>8</sup> and they clearly conveyed to the TSO that they wanted another option. The TSO refused to acknowledge their request to opt-out and forced them to proceed through AIT.

Finally, when the Lead Transportation Security Officer (LTSO) was questioned about why they were first directed toward AIT and then not given an option to opt-out, he stated that “each of them was randomly selected” and that the TSO responsible for not listening to their request for an opt-out “was a new recruit in the learning process.”

### **Conclusion**

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<sup>8</sup> TSA, *TSA Contact Center Frequently Asked Questions: Screening*, [http://www.tsa.gov/travelers/customer/editorial\\_1029.shtm](http://www.tsa.gov/travelers/customer/editorial_1029.shtm) (“Screenings using AIT are voluntary. Individuals who do not wish to be screened by this technology should inform the TSO of their desire to opt out of AIT. Passengers opting out of AIT will be required to undergo alternative screening, to include a thorough pat-down. If passengers are told they are not allowed the option of a pat-down or other screening, they should ask to speak with a Supervisory Transportation Security Officer.”) (last visited April 9, 2012).

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These case studies are only a small sample of the practice of racial profiling by law enforcement that has resulted in a heightened fear of law enforcement in the Sikh community, as in many other communities of color throughout the United States.

ICAAD is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the "End Racial Profiling Act (S.1670)" and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of ICAAD. We welcome the opportunity for further dialogue and discussion about these important issues.