

**STATEMENT OF
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COMMITTEE ON HOMELAND SECURITY

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HEARING ON

“Perspectives on TSA’s Policies to Prevent Unlawful Profiling”

Chairman Thompson, Ranking Member Rogers, and Members of the Committee: My name is Sim J. Singh, and I am the Senior Manager of Advocacy & Policy for the Sikh Coalition. Thank you for the opportunity to testify regarding the efforts of the Transportation Security Administration (TSA) to engage the traveling public. The Sikh Coalition is the nation’s largest Sikh American civil rights organization, non-profit, non-partisan foundation founded in 2001 in response to numerous cases of discrimination against Sikh Americans after 9/11. Our mission has been to work towards a nation where Sikhs - who have been part of the American fabric for over 125 years - and other religious minorities in America, may freely practice their faith without bias and discrimination.

In addition to conducting public education, pro-bono legal aid, national research, and community empowerment, the Sikh Coalition works with federal, state, and local agencies on a wide range of issues, and we have engaged with TSA since its inception. My testimony will focus on the challenges facing Sikh travelers, and our engagement with TSA. Please know that, we view these challenges as part of a broader spectrum of privacy and civil rights concerns that affect large segments of the traveling public. Those concerns are acutely amplified by travelers of intersectional identities of race, sex, gender identity, national origin, religion and disability.

Organizationally, we have worked with TSA to help reduce some of the inequities that travelers face based on their protected characteristics. Since 2001, the Sikh Coalition has trained thousands of Transportation Security Officers (TSOs) and Custom Border Protection officers at airports across the country in providing cultural competency on the Sikh religious articles of faith. We have also advised TSA’s multicultural branch on specific policy considerations, training gaps, and community outreach needs. Over the course of the last 18 years we have created several iterations of a traveler’s guide to “Know your Rights”, which TSA has vetted and provided feedback for in order to make it as accurate and consistent with TSA policy as possible.¹

In 2012, we made filing complaints against TSA more accessible by introducing a free mobile app called FlyRights. It was the first of its kind mobile app created to combat profiling at airports and is still in use today. The app allows travelers to formally report incidents in real time and have those complaints routed to TSA and DHS so that they will be treated as official and actionable. Our app was

¹ See Exhibit B and Exhibit C.



adopted not just by Sikh travelers, but travelers of all walks of life with over 10,000 downloads. When it was first launched DHS reported a mere 8 complaints for 2012, while FlyRights documented 157 for the same year.² In total the app helped facilitate approximately 1,000 complaints at 112 airports and provides insights of the issues the traveling public is facing when it comes to TSA engagement on a daily basis.

The Sikh Coalition recognizes the importance of TSA's mission to protect the nation's transportation systems to ensure freedom of movement for people and commerce. We believe that the Agency's mission statement can be more than aspirational. If the Agency is going to ensure the freedom of movement for people, it must do so for ALL people, regardless of their race, sex, gender identity, national origin, religion and disability. Sometimes it takes difficult conversations like these to ensure TSA is living up to the standards it has set out for itself, and to uphold the civil liberties of all individuals. I'm sure we can all agree that our government should not penalize anyone because of their protected characteristics.

To be clear, profiling not only stigmatizes victims but also makes our nation less safe because it redirects limited security resources away from detecting and preventing actual criminal behavior and security threats. Sikhs, like all other travelers, have the right to be free from profiling based on the wear of our articles of faith. As a concerned citizen and proud American, I am alarmed to hear that the Homeland Security Inspector General revealed that undercover investigators were able to smuggle banned weapons, such as fake guns, knives and explosives, through checkpoints 70% of the time - actions which could have been prevented if TSA had a better implementation of its resources and policies.³ The TSA shouldn't keep their eyes focused on my turban, rather security officials need to keep their eyes on the real threats such as the guns, knives, and explosives that have a 70% rate of passing a security checkpoint. With better technology, clearer and more transparent screening standards, increased oversight, and mechanisms in place to ensure civil rights compliance, our security resources can enable the Agency to focus on the real threats facing our nation.

Background

Sikhism is the fifth largest organized world religion, with more than 25 million adherents throughout the world. Sikhs have been in the United States for 125 years and approximately 500,000 followers live here. The core teachings of the Sikh religion are that there is one God and that all human beings are created equal, regardless of distinctions such as their religion, race, sex, or caste. Observant Sikhs are distinguished by visible articles of faith, including uncut hair, which Sikhs, both men and women, will cover with a religiously mandated turban which must be worn at all times.

Although the Sikh turban signifies a commitment to upholding freedom, justice, and dignity for all people, the physical appearance of a Sikh is often ignorantly and negatively conflated with images of foreign terrorists, some of whom also wear turbans and many of whom have received copious publicity in our mainstream media in the post-9/11 environment. More troubling is that our physical appearance has invoked bias against our community. As far back as the early 20th century, Sikhs have been ridiculed and stereotyped because of their appearance, and continue to be subjected to unusually high

² "FlyRights" by the Sikh Coalition, 2012, available at https://www.fly-rights.org/infographic_2013.pdf.

³ "TSA Misses 70% Of Fake Weapons But That's An Improvement" by Forbes November 9, 2017 available at <https://www.forbes.com/sites/michaelgoldstein/2017/11/09/tsa-misses-70-of-fake-weapons-but-thats-an-improvement/#5a2deb2a38df>.



rates of discrimination and profiling based on these articles of faith. Today Sikhs continue to face disproportionately higher rates of secondary screening by TSA in comparison to the average traveler.

Challenges faced by religiously observant travelers

TSA was established in the aftermath of Sept. 11, 2001 to help secure weaknesses in existing airport security procedures. In that same time period, hundreds of Sikh Americans were put on the receiving end of backlash attacks, harassment, and discrimination. Not only were Sikhs facing brutal physical assaults, murder, and intimidation within their neighborhoods, but law enforcement was also turning against Sikhs and other racial and religious minorities by subjecting people like us to profiling. At the time, TSA was no exception to profiling Sikhs because of their external appearance, subjecting Sikhs to a 100% screening rate at airports across the country.

The removal of the turban - which Sikhs view as an extension of their body - is highly personal and sensitive and is akin to a strip search. Removal of the turban is not just a mere inconvenience for Sikhs, as re-tying a turban can take a significant period of time. It is considered a great dishonor for anyone to violate another's turban by removing it, and it is highly disrespectful to touch it with unwashed hands or by anyone who does not themselves adhere to the tenets of the faith. As you can imagine TSA's security protocol on religious headwear was deeply problematic for religious observance and civil rights, as it was patently similar to frisking an individual without suspicion or probable cause. The reason Sikhs are frisked is plainly stated by TSOs - it is because we wear turbans on our heads, and not that they actually believe we are hiding something underneath it.⁴

Anyone with religious headwear was mandated to remove their article of faith at TSA checkpoint until October 2007. After receiving numerous complaints we worked with TSA to help modify the Agency's screening policy to better balance the needs of national security and civil rights. We arrived at a policy that allowed for self-pat downs of religious headwear and presenting hands for additional screening with Explosive Trace Detection (ETD) devices.⁵ The new procedures, designed to detect non-metallic objects, allow the Sikh traveler to request a self pat-down of their turban instead of an officer-conducted pat-down. A Sikh turban or other religious head covering may only be asked to be removed if the traveler wearing it does not successfully clear the additional screening measures that are in place.

For Sikh Americans and other minority groups, biases against travelers are prevalent at every stage of the traveling process. This bias starts with the fact that TSOs do not receive adequate training on TSA policies or cultural competencies, which is evident from the moment many stigmatized groups arrive at the airport and have to go through behavioral detection before reaching security. It continues as these passengers pass through security, proceed past the security screening area, and in many cases even as these individuals are boarding their flights. For example, TSA has employed behavioral detection - a junk science - disproportionately targets segments of the traveling public for additional screening

⁴ "Sikh Americans' 'Raw Deal' at Airport Security" by The Washington Post, November 29, 2013 available at https://www.washingtonpost.com/opinions/sikh-americans-raw-deal-at-airport-security/2013/11/29/8aab1dc6-5790-11e3-8304-caf30787c0a9_story.html.

⁵ "The Public Face of TSA: Examining the Agency's Outreach and Traveler Engagement Efforts" by the Transportation Security Administration, March 5, 2018 available at www.tsa.gov/news/testimony/2018/02/27/public-face-tsa-examining-agencys-outreach-and-traveler-engagement.



based on their racial or religious characteristics even before they enter the screening area. Once a traveler is within the screening area, inconsistent application of procedures - including the implementation of “local rules” on screening, unfettered TSO discretion, and biased technology single out specific groups of passengers more than others. Profiling continues to reverberate throughout the security landscape even after leaving the screening area with reports of TSOs attempting to haul passengers back for additional screening.⁶ This is often unacceptably exacerbated when the general traveling public expresses discomfort with traveling alongside passengers perceived to be Muslim, Middle-Eastern, Arab, and South Asian.⁷ To be clear, it is the government’s responsibility to remain above the fray when this type of public hysteria breaks out, and TSA should not be engaging in profiling activities as a result.

Technology Reinforcing Biases

Not only are minority communities subjected to bias based profiling by policies and procedures enabling discretion to be used as pretext for profiling, but the technology utilized to dispel bias based suspicions reinforce negative stereotypes. The technology currently in use does not help reduce incidents of profiling; rather it ensures that secondary screening will transpire more frequently and adds needless delays, unwelcomed humiliation, and frustration as passengers with bulky clothing or certain hairstyles that are not equally subjected to TSA policies. Algorithmic biases like these are dangerous because algorithms are often perceived to be neutral and project greater authority than human expertise. Travelers feel that they cannot complain about the bad results generated by the machine or the TSO operating the device.

In practice new policies adopted to screen religious headwear have not been implemented in a manner that is consistent, respectful or accurate in threat detection. In many airports, TSOs are not adequately trained on TSA policies and procedures when it comes to screening and searching religious articles of faith. The option of a self-pat down by a passenger is not proactively offered by the TSO. As such travelers often feel they have no other option than to acquiesce to the TSO’s request to pat-down or removal of their religious garment. Travelers also don’t want to make a TSO’s job any harder than necessary or perpetuate a negative stereotype of an angry minority. Due to the lack of appropriate supervision and ineffective religious sensitivity training, TSA places the onus on travelers to request a self-administered pat-down of their religious headwear and ensure TSOs are following their own security protocol.

⁶ “TSA Tells Sikh Man To Remove Turban, Finds Out He’s A Canadian Politician” by. HuffPost, May 11, 2018 available at www.huffpost.com/entry/tsa-sikh-canadian-politician_n_5af5dbb3e4b00d7e4c1a643f?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlMmNvbS8&guce_referrer_sig=AQAAAKnkcIsC_AIUNqKhr0UwyHDIqekBXfhAtqy4e5J_I8_eKOx_j4kOfw6_NPMuJD2rqBvt6ZkJAHerdZo9mfbQ-fQHIRkFK6yX8HGmEv_D5CfLX5Axuc3oU89g-PbTfVJFnuulwz63XRLqHteBhFxGG9SCLqoQhV4IT77w1trZZL.

⁷ “Jess Hilarious profiled four Sikhs on a plane. Our government does so every day.” By RNS, March 18, 2019 available at <https://religionnews.com/2019/03/18/jess-hilarious-profiled-four-sikhs-on-a-plane-our-government-does-so-every-day/> and “College Student Is Removed From Flight After Speaking Arabic on Plane” by The New York Times, April 17, 2016 available at www.nytimes.com/2016/04/17/us/student-speaking-arabic-removed-southwest-airlines-plane.html and “Four Passengers Removed from Flight at BWI That Was Headed to Chicago” by The Washington Post, November 17, 2015 available at www.washingtonpost.com/local/trafficandcommuting/four-passengers-removed-from-flight-at-bwi-that-was-headed-to-chicago/2015/11/17/554cc46a-8d38-11e5-acff-673ae92ddd2b_story.html?utm_term=.26ce2023550d and “Ivy League Professor Kicked Off Plane For Writing ‘Arabic Symbols,’ Aka Math Equations” by Mic, May 7, 2019 available at www.mic.com/articles/142926/ivy-league-professor-kicked-off-plane-for-writing-arabic-symbols-aka-math-equations#.JYhQijNto.



After a pat-down is conducted TSOs often fail to visibly change their gloves or replace ETD swabs in front of a traveler prior to administering the ETD on a traveler. ETDs are sensitive enough to capture chemical compounds by contact from other sources. TSOs come into primary contact with a range of chemical compounds carried by travelers before needing to administer an ETD. Without measures taken to ensure ETD alarms are as accurate as possible, travelers will continue to be subjected to invasive secondary screening by ETD which reduces passenger throughput and credible threat detection. These false alarms adversely impact travelers with religiously-mandated headwear as the alarm will accompany a request to remove that religious headwear. We frequently receive reports of false ETD alarms from Sikh community members. Speaking from personal experience, the ETD alarms will not re-occur upon a change of swabs and/or gloves. Unfortunately, ETDs and how they are implemented are not the only screening technology that singles out specific types of passengers for additional screening, Advanced Imaging Technology (AIT) devices are even more problematic.

TSA adopted full body scanners, amidst promises that these machines would eliminate the need for pat-downs, which we now know not to be true. The technology can apparently filter through clothing, but not thick hair.⁸ What culminates is disproportionate targeting of minorities based on race and religion. According to TSA, the cloth on our heads and/or the accompanying hair are registered as an “anomaly” requiring increased scrutiny. What results is humiliating hair and headwear pat-downs that leave travelers feeling profiled and violated while others watch. In practice, Sikhs are virtually guaranteed to receive secondary screening because of our turbans, and reports also show that African American women and Transgender individuals are subjected to higher rates of secondary screening as a result of AIT deficiencies as well.⁹

Despite TSA having knowledge and proof of long-standing issues facing travelers with religious headwear, the Agency has failed to publish easily accessible and transparent information on its website to assist this segment of the traveling public. Instead the Agency relies on a “Know Before You Go” document that contains ambiguous and unclear language that is confusing for a Sikh traveler. This document also was never published on the Agency’s website and it’s unclear how it is even distributed to the public. Ultimately, the Agency relies on organizations like ours to develop easy to understand publications that are language accessible and comprehensible to the average traveler, however even then TSA fails to adequately resolve issues that such organizations face when deciphering TSA’s policies by often citing “National Security” as a reason to evade answering questions for clarity.¹⁰

TSA needs to do more to ensure the technologies and procedures in use do not perpetuate biases or otherwise lead to disproportionate screening of minority and marginalized communities. TSA must also convene stakeholders from the community, including organizations like the Sikh Coalition, to provide input and feedback on policy procedures, development and challenges. We should not accept the fact that specific groups of travelers are guaranteed to receive secondary screening whenever they pass through TSA checkpoints due to their race or religion. Beyond these common-sense approaches,

⁸ “How Airport Scanners Discriminate against Passengers of Color.” Vox, April 17, 2019 available at www.vox.com/the-goods/2019/4/17/18412450/tsa-airport-full-body-scanners-racist.

⁹ “TSA Agents Say They’re Not Discriminating Against Black Women, But Their Body Scanners Might Be” by ProPublica, April 22, 2019 available at www.propublica.org/article/tsa-not-discriminating-against-black-women-but-their-body-scanners-might-be.

¹⁰ “Know Your Rights At the Airport” by the Sikh Coalition, Nov. 19, 2018 available at <https://www.sikhcoalition.org/wp-content/uploads/2018/11/tsa-know-your-rights-2018-1.pdf>.



more needs to be done to reduce incidents of bias and recognizing the consequences. Not only are minority communities adversely impacted by biases in technology and its application, but it also inadvertently validates and perpetuates negative stereotypes of the ensnared communities.

The general traveling public also internalizes these biases by witnessing minority communities routinely subjected to secondary screening when passing through security checkpoints. As a result of the negative stereotypes reinforced by TSA's screening procedures and policies, passengers have a heightened fear of those who are most likely to face secondary screening and equate those individuals (and others who look like them) with "something" dangerous. The deputization of the general traveling public as an integral part of the security landscape via programs like "If you see something, say something", creates further harm against minority communities. Minorities are therefore increasingly singled out by the general public with reports of suspect behavior based purely on bias.

The result is innocent travelers forcibly removed by airlines as a result of the traveling public citing fears for their safety - fears based on perceptions of an individual's appearance, language, or religious appearance. What is apparent from these disturbing events is the need for better passenger protections to mitigate against profiling and the wrongful removal of a passenger from flights for innocuous behavior such as speaking a foreign language.

Proposals to implement any new technology must be carefully scrutinized to ensure that technologies that are touted as "objective" do not have the potential of discriminating against people of color, faith, gender identity, disability, or nationality.

It is not that the technology tools themselves are discriminatory -- instead they reinforce human biases and perpetuate disparate treatment. TSA's request for technology vendors to develop solutions that accommodate the diversity of the traveling public travelers is a good first step but not enough. Plans to introduce facial recognition technology by TSA should require more regulatory oversight as such technology has been repeatedly proven to have higher error rates in identifying darker-skinned and female faces.¹¹ Such systems would exacerbate discrimination, encourage intrusive surveillance of marginalized groups, and cases of mistaken identity. It does not appear TSA is providing adequate consideration to the limitations of such technologies and the risk of bias they perpetuate for specific communities. The Agency's plans to expand facial recognition technology under the TSA Biometrics Roadmap for Aviation Security and Passenger Experience to all passengers is yet another example of wasteful spending for technologies that are inaccurate and problematic for passengers.¹² As new technologies evolve the government must do more to ensure harm is not further perpetuated on already historically marginalized groups.

Ambiguous Discretion Standards Contributing to Profiling

Even where technology says an individual is not a threat, overly broad discretion is provided to TSOs to screen a traveler. Without a clear and articulable threshold standard required of other law

¹¹ "AI Researchers Tell Amazon to Stop Selling 'Flawed' Facial Recognition to the Police" by The Verge, April 3, 2019 available at www.theverge.com/2019/4/3/18291995/amazon-facial-recognition-technology-rekognition-police-ai-researchers-ban-flawed.

"Facial Recognition Is Accurate, If You're a White Guy." The New York Times, February 9, 2018 available at www.nytimes.com/2018/02/09/technology/facial-recognition-race-artificial-intelligence.html.

¹² "How the TSA's Facial Recognition Plan Will Go Far Beyond the Airport." American Civil Liberties Union, October 23, 2018 available at <https://www.aclu.org/blog/privacy-technology/surveillance-technologies/how-tsas-facial-recognition-plan-will-go-far>.



enforcement agencies, travelers often feel profiled without any articulable basis for selection. When questioned, TSOs often claim that the routine selection of Sikhs a for further inspection is random, or plainly state that they are always required to screen headwear.

In my personal experience, due to the wide discretion granted to TSOs, minorities like me have to change our behavior to avoid being singled out any more than we usually would be. I have to engage in a pattern of behavior not expected of my other fellow travelers. Though I have TSA Precheck, I take many additional precautions such as wearing light and professional clothing to keep searches minimally invasive, triple checking all my pockets are emptied, ensuring that my bags are compliant with the latest TSA screening guidelines, and arriving at the airport well in advance of the average traveler -- because “something” will usually require secondary screening. The less reasons I can provide for security to further delay me for additional screening, the better.

It does not matter how bad of a day I am having - at no point am I allowed to get upset or show my aggravation. I can't commiserate with others who fume and complain throughout the security line. I have to be calm and respectful and answer questions as succinctly and politely as possible oftentimes giving deference to TSOs who I know are acting outside the scope of TSA policy and my civil rights, for fear of creating a scene or worse. Speaking clearly and quietly has the least risk of getting additional screening. For all intents and purposes, I must behave like a second-class citizen or model minority - I am not sure which is worse. The sad reality is that anyone with brown skin or non-Judeo-Christian religious headwear is not going to get through security any quicker by protesting, nor do we have the time and energy to protest about the many injustices faced every time we travel. If anything, we have learned that complaining about the bias of a TSO is only likely to confirm further suspicion and scary stories of being taken to private back rooms for searches.

The Sikh community understands that most TSOs are just trying to do their job. But, wide discretion, inadequate training, and a lack of civil rights oversight will breed problems. When passengers like myself repeatedly experience suspect behavior by TSOs through random selection or additional screening because of clothing or something “other”, it is clear that profiling is taking place. Anyone who reads media articles and publicly available first-person accounts of additional screening will quickly identify a consistent pattern where people of color are routinely “randomly” selected for screening - to the point where it has become a joke.¹³

While traveling for work in 2018 out of DCA I was on the receiving end of this abuse of discretion, despite being a trusted traveler enrolled with TSA Pre-Check and being cleared in the corresponding Pre-Check line. I cleared the Walk-Through Metal Detector without alarm and was informed that I was chosen for random screening. I questioned how I was chosen after observing at least 20 passengers ahead of me not undergo additional screening. What resulted was a conversation with a TSA Supervisor informing me that I would require additional screening solely as a result of my wearing a turban. That is unacceptable.

Profiling has repercussions beyond mere inconvenience or delay for travelers. It further perpetuates negative stereotypes and falsely validates the myth of racial and religious minority communities posing

¹³ “Queer Eye's Tan France Claims TSA Racially Profiled Him After He Was Stopped 3 Times in a Week” by People, December 13 2018, people.com/tv/queer-eyes-tan-france-slams-tsa-racial-profiling/.



a threat to our country. TSOs witnessing minorities disproportionately receiving additional screening leads to the creation of implicit and explicit biases that influence their behavior and TSA policies which serve to justify scrutinizing specific kinds of travelers on racial or religious grounds.

According to TSA documents, there is a substantial focus on using techniques to specifically target Arabs, Muslims, and people of Middle Eastern or South Asian descent when it implemented the Screening Passengers by Observation Techniques.¹⁴ Training materials focused exclusively on examples of Arab or Muslim terrorists and perpetuated demeaning stereotypes about Muslims and women.¹⁵ From early 2008 to late 2009 TSOs routinely looked for Hispanic male travelers to see if they had proper visas and passport stamps. If not, those passengers would be subjected to bag searches, pat downs, questioning and referrals to immigration with bogus behaviors invented by screeners to obscure evidence of profiling and to meet alleged quotas.¹⁶ What is clear is that unfettered discretion in screening is being used as a pretext for harassing minorities and disfavored groups.

The implicit and explicit biases of TSOs coupled with a lack of appropriate oversight, high turnover, and inadequate training are all factors that increase the likelihood that a religious or racial minority will be disproportionately selected for additional screening by a TSO. Without explicit and implicit bias training, TSA will continue to erode public trust and harm the civil rights of many travelers. Despite TSA having policies in place to prevent profiling, these policies appear to be enforced only after a complaint has been filed by a traveler and only within the specific airport where the violation occurred.

Despite all the work that TSA has done to establish its Multicultural Division and community outreach, we are extremely disappointed to receive complaints in recent months of airports instituting “local rules” that require TSOs to frisk turbans without cause. We are hard-pressed to understand how a federal agency governed by federal law can implement “local” or regional rules, which inevitably lead to major inconsistencies in the application of federal policies. We know that TSOs across the country are refusing travelers to self-administer a pat-down of their turban. To date, no TSA representatives have informed us of this potential policy change that affects religious headwear travelers nor has any information been published to advise the traveling public about this policy change. What the Agency has done is fail to provide adequate guidance for when requests for self pat-downs of religious headwear may or may not be granted, as our questions regarding that issue were met with the response that TSA could not disclose any information due to “National Security” concerns. It is the government’s responsibility to provide clarity for all travelers when it comes to the criteria for safely moving through TSA checkpoints. When there is a lack of transparency and failure in communication between TSA and organizations like the Sikh Coalition - which has always sought to work with TSA in providing cultural competency and in deciphering what TSA policy means for Sikhs in America - it

¹⁴ “TSA Screening Program Risks Racial Profiling amid Shaky Science” by The Guardian, February 8, 2017 available at www.theguardian.com/us-news/2017/feb/08/tsa-screening-racial-religious-profiling-aclu-study.

¹⁵ “New Documents Show This TSA Program Blamed for Profiling Is Unscientific and Unreliable - But Still It Continues” by the American Civil Liberties Union, February 8, 2017 available at www.aclu.org/blog/national-security/discriminatory-profiling/new-documents-show-tsa-program-blamed-profiling.

¹⁶ “The Mexican Hunters’: Racial Profiling Team at Newark Airport Targeted Hispanic Passengers” by the Daily Mail, June 13 2011 available at www.dailymail.co.uk/news/article-2003174/The-Mexican-Hunters-Racial-profiling-team-Newark-Airport-targeted-Hispanic-passengers.html.



calls into question the Agency's commitment to ensuring the civil rights of all passengers are protected.

Often individuals do not want to report TSA misconduct due to factors of embarrassment, lack of awareness about one's rights, hopelessness about change after 18 years of profiling, or lack of time and awareness on how to file a complaint. The Government Accountability Office's "GAO" recent report on profiling infers most travelers don't want to further engage with TSA or otherwise relive that traumatic experience. With the GAO's recent report reviewing approximately 3,700 complaints, what is shocking is that half of the complaints were civil rights and civil liberties violations. It is not surprising that half of those complaints contained inaccessible passenger information or a lack of passenger response.

Policy Recommendations

The consequences of profiling have far-reaching consequences beyond inconvenience and delays to specific groups of people. Whether implicit or explicit, biases have a detrimental impact on the freedom of movement for people and commerce. This is a damaging distraction from actual credible threats and creates distrust between vulnerable communities and the federal government.

When profiling is made permissible by inadequate and inconsistent policies and biased technologies, it amounts to not just delay, inconvenience, and shame for being separated from family, friends, and colleagues for travelers, but it further perpetuates negative stereotypes of entire communities. It is a pronouncement that minorities are outsiders and pose threats worthy of investigation. This also hits home the reality that actual credible threats to our nation's security are not TSA's priority. Without adequate screening procedures and practices, we trivialize the Constitution's promise of democracy and equality for all.

The thousands of civil-rights-related complaints TSA has received are the tip of the iceberg. Many travelers don't know where to complain, or that they can complain, especially if TSOs were just following procedure and produces a bad outcome that is perceived as legitimate from technology that is biased. Some travelers have given up filing complaints when the same things happen again and again. What is clear is the need for improvements in TSA's training, policies, procedures, and implementation of technology.

The Sikh Coalition offers the following recommendations in connection with the committee's hearing:

- Require TSOs to adhere to consistent and transparent standards of discretionary criteria that reduce the likelihood of profiling. Criteria that requires a clear and articulable suspicion of an individual and imminent security threat permits TSOs to continue thwarting credible security threats and reduces the likelihood of discretionary abuse. Beyond establishing clear discretionary standards, TSA should also be required to log statistical data on secondary screening practices to eliminate inconsistencies, gauge the efficacy of secondary screenings, and identify disproportionate enforcement and TSO non-compliance.
- Any new technology or procedures must reduce the use of pat-downs and ensure travelers aren't singled out based on their race, religion, or gender. Respectful engagement with religious headwear must be maintained at all times and the use of pat-downs should be an absolute last



resort. Travelers with religious grooming requirements, including headwear, should be permitted the right to self pat-down and avail themselves of readily available non-intrusive screening methods. TSOs should be provided clear guidance and training that travelers with religious headwear must be given the option to self pat-down. Furthermore, TSA should issue clear guidance and training for all TSOs and staff that “local rules” do not apply to the Agency and are not to be used as pretext to discriminate or profile passengers for additional screening.

- Screening policies of ETDs require transparent and standardized application that mitigates the false positive alert rate. When a traveler requires ETD screening, TSOs must be required to change gloves and swabs in the presence of the traveler to eliminate any uncertainty as to the TSO’s adherence to policy standards. Reducing the amount of false positives, otherwise known as nuisance alarms, helps ensure that TSA staff are able to allocate existing resources in a more efficient manner and leads to improved traveler satisfaction and throughput.
- TSA must implement consistent, mandatory anti-discrimination training programs for all TSA employees in promoting systemic, agency wide change as opposed to its individual approach to training and disciplining TSOs when complaints arise.¹⁷ Such training components must include in-person, interactive cultural competency awareness and periodic recertification on implicit and explicit bias. TSA needs to ensure that bias training is embedded within all courses taught to TSOs to reinforce the Agency’s commitment and dedication to ensuring the civil rights and liberties of the traveling public is fully respected.
- Congress must mandate regular and independent Civil Liberties Impact Assessments at all airports nationwide. Such programs should entail unannounced audits of all airports to document civil liberties compliance. Assessments should be based on reviews of TSO interactions via video footage, the use of undercover agents testing for civil rights violations, and reviewing passenger complaints to reveal the full extent to which TSA is respecting travelers’ civil rights and liberties.
- Mandate that TSA implement random TSO screener audits ensuring officers are not engaged in racial profiling and that supervisors are instructed in detecting situations where unlawful profiling occurs. TSA should also adopt GAO’s recommendation to monitor “behavior detection” activities for compliance with policies that prohibit unlawful profiling.
- Though AIT and other advanced screening technologies are routinely tested for accuracy in the screening of passenger characteristics, the testing mechanisms and monitoring of screening that occurs in practice must be improved to account for the large diversity of passengers. TSA must routinely develop best practices to reduce biased alarms, and train officers in the operation of these technologies and detection to avoid discriminatory practices with the goal of eliminating profiling.
- Incentivize airport security technology vendors to work collaboratively with community stakeholders in mitigating against profiling. Government contracts for any new technology acquisitions should take into account a vendor’s commitment to alleviating bias by considering

¹⁷ See Exhibit A.



factors such as: (a) whether the vendor conducts regular convenings with community stakeholders and profiling experts, (b) issues routine software improvements designed to improve device reliability, and (c) certifies anti-bias initiatives and publishes efficacy rates for variations in traits screened that may be a part of a protected identity (i.e. race, sex, gender identity, national origin, religion and disability).

- Amend the Airline Passengers' Bill of Rights to establish clear guidelines limiting the ability of airlines to forcibly remove passengers solely based on generalized concerns of personal safety without any specific, objectively concerning information that is not rooted in personal bias. All airline crew must undergo training focusing on behavioral forces like implicit bias and stereotype threats. Barring exigent circumstances, when passengers report an issue, airline crew must be required to investigate the credibility of such concerns to reach an informed decision on the veracity of any threats. Airlines should be held liable for the wrongful removal of a passenger if the removed passenger is not determined to pose an imminent security threat by law enforcement.
- Re-introduce and pass the End Racial Profiling Act to comprehensively address the insidious practice of biased treatment by law enforcement, including TSA. Such legislation is critical to restoring the community's confidence in our nation's law enforcement and ensuring that scarce security resources are focused on combating actual criminal and suspect behavior. This legislation should add safeguards against the harmful impacts of algorithmic bias against protected identity (i.e. race, sex, gender identity, national origin, religion and disability).
- TSA must publish clear, transparent and easy to understand traveler guidance on its website to better inform the traveling public on what to expect at the security line, and ensure that TSOs adhere to its protocols. This guidance would help reduce traveler frustrations and negative stereotypes of those who are routinely subjected to additional unnecessary screening, and expedite screening procedures for all travelers.

Conclusion

Disparate treatment not only undermines cherished constitutional rights, but also reinforces the perception among TSA and the flying public that members of minority racial and religious communities should be treated with suspicion and caution. This outcome is at direct odds with TSA's responsibility to ensure that its screening procedures and technologies are implemented in a fair and equitable manner. Biased technologies and unstructured discretion lead to longer lines, invasive and unnecessary pat downs, traumatic stress and anxiety, missed flights, and unlawful discrimination against minority communities.

We must acknowledge that stereotypical beliefs about certain travelers due to the way they look or their religious articles of faith are not a reasonable basis to subject them to disparate screening. Religious head coverings do not pose any greater threat than other articles of clothing and should not automatically be subjected to additional screening. Similarly, stigmatic beliefs based on perceived ethnicity and nationality do not serve as a basis to subject individuals to disparate screening practices. Thus, we respectfully request that our policy recommendations be considered and implemented.



The Sikh Coalition is grateful for the opportunity to submit this testimony for the hearing record and looks forward to working with the esteemed committee here today along with partners in government, private industry, civil society, and grassroots communities nationwide to foster dignified and respectful treatment of all travelers passing through TSA.

