

# **A CRITICAL LOOK AT THE FBI'S DECISION TO FORMALLY START TRACKING HATE CRIMES AGAINST SIKHS, ARABS, AND HINDUS BY THE YEAR 2015**

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## **Abstract**

The Hate Crime Statistics Act entrusts the Federal Bureau of Investigation (“FBI”) to gather statistics on hate crimes committed against various groups based on their actual or perceived race, religion, ethnicity, or sexual orientation. Until recently however, the FBI refused to track hate crime statistics against Arab Americans, Hindu Americans, and Sikh Americans, despite the fact that these three sects of people have been victims of hate crimes post-9/11.

On June 5 2013, after years of pressure from community leaders and civil rights organizations, the FBI announced that it will formally begin tracking hate crimes committed against Sikh Americans, Arab Americans, and Hindu Americans by the year 2015. Community leaders of these groups welcomed the FBI’s decision to begin tracking hate crimes as a major victory in a long fought battle to end bias-based crimes against their respective groups.

However, what is tracking supposed to achieve? What are its purported benefits? What would be the intended/unintended consequences? When exactly will the tracking process be implemented and what else can be done in the meantime? This note seeks to examine these and other questions that will need to be addressed as these groups wait for the FBI to begin tracking.

Part I of this note deals with establishing background information on Hate Crimes, including information on the Hate Crimes Statistics Act, the FBI’s tracking process and recent statistics regarding hate crimes. It will also focus on background information on Sikh Americans, Hindu Americans, and Arab Americans and

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<sup>1</sup> Shashwat Dave is a Juris Doctor candidate at Rutgers School of Law—Newark for May, 2015. This note would not have materialized without the invaluable insight and guidance from the Sikh Coalition, the Arab American Institute, and the Hindu American Foundation, as well as Dr. Prabhjot Singh; who shared both his personal experience and academic expertise in the field of hate crimes. A special thanks to the staff of the Rutgers Race & the Law Review for editing and publishing this note.

<sup>2</sup> The writing of this note commenced in the Fall of 2013, and was completed in March 2014.

provide statistical information on reports of hate crimes committed against these three groups.

Part II will establish the problem, namely the under-reporting or misreporting of hate crimes against these groups, the suggested solution to the problem, i.e., the FBI's decision to start tracking hate crimes committed against these groups, and the benefits of implementing the suggested solution.

Part III will offer a critical view of the problem, the solution and explore the consequences (both wanted and unwanted) of the FBI's decision.

Part IV of the note will explore alternatives and additions to improve the solution.

## I. Introduction & Background

On Saturday, September 21, 2013, Dr. Prabhjot Singh<sup>3</sup>, a bearded and turbaned Sikh and a Columbia University professor, was walking on 110<sup>th</sup> Street and Lenox Avenue in upper Manhattan.<sup>4</sup> Dr. Singh had just dropped off his wife and one year old son, when he observed approximately twenty young men on bicycles trailing behind.<sup>5</sup> The young men then began shouting slurs such as "Osama," "Terrorist," and "Taliban" at Dr. Singh.<sup>6</sup> Suddenly, one of the young men yelled, "get him," and someone grabbed Dr. Singh's beard and punched him in the face.<sup>7</sup> Dr. Singh tried to run away from his assailants but they caught up to him, surrounded him, and began hitting him as he lay on the ground.<sup>8</sup> The blows would not stop and the assailants continued shouting racial slurs until bystanders came to Dr. Singh's aid.<sup>9</sup> The assailants fled the crime scene and Dr. Singh was

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<sup>3</sup> Dr. Prabhjot Singh is an Assistant Professor of International and Public Affairs at the Columbia University School of International and Public Affairs. See *Prabhjot Singh, Assistant Professor of International and Public Affairs*, COLUMBIA SIPA, <https://sipa.columbia.edu/faculty/prabhjot-singh> (last visited Apr. 12, 2015).

<sup>4</sup> Paul Brandeis Raushenbush, *Prabhjot Singh, Sikh Columbia Professor, Attacked In Possible Hate Crime*, HUFF POST RELIGION, [http://www.huffingtonpost.com/2013/09/22/prabhjot-singh-sikh-columbia-hate-crime\\_n\\_3972449.html](http://www.huffingtonpost.com/2013/09/22/prabhjot-singh-sikh-columbia-hate-crime_n_3972449.html) (last updated Sept. 24, 2013, 1:24 PM).

<sup>5</sup> Valerie Kaur, *Sikh Doctor's Response to Brutal Hate Attack? 'Love and Service'*, MSNBC, <http://www.msnbc.com/melissa-harris-perry/sikh-doctors-response-brutal-hate-attack> (last updated Oct. 3, 2013, 4:55 AM).

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

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

rushed to a nearby hospital, with a battered and bloodied face, and a broken jaw.<sup>10</sup>

On October 2, 2013, Suk Dulai, a little league baseball volunteer coach, was walking back to his truck after finishing a game, when he saw the words, “we want no Hindus at SBLL,” carved into the side of his pick-up truck.<sup>11</sup> Mr. Dulai is of Indian origin<sup>12</sup> and has lived in the Yuba City, California area all of his life.<sup>13</sup> Mr. Dulai is an avid member of the Yuba City community and has been volunteering at the Sutter Butts Little League (SBLL) baseball games for the past several years.<sup>14</sup> The incident led Mr. Dulai to fear for not only his safety but also the safety of his family, and he even considered quitting coaching little league baseball altogether.<sup>15</sup> “It hurts, you know?” Mr. Dulai told a reporter. “Spending so much time helping kids, and this is how you get repaid for it?” He went on to add, “[i]f this continues, [w]hat’s going to be the next step? That’s the most scary part of it.”<sup>16</sup>

On the evening of Friday, August 10, 2012, approximately five hundred worshippers had gathered in a mosque near Morton Grove, Illinois for evening prayers and to celebrate the holy month of Ramadan.<sup>17</sup> Suddenly, they heard shots being fired, causing panic and terror amongst the worshippers.<sup>18</sup> The shots were fired by David Conrad, a neighbor and staunch opponent of the Mosque.<sup>19</sup> Although no one was hurt, some of the shots came within inches of a security

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

<sup>11</sup> Derek Shore, *Vandals Carve ‘We Want No Hindus at SBLL’ Into Sikh Little League Coach’s Truck*, CBS SACRAMENTO (Oct. 2, 2013, 11:33 PM), <http://sacramento.cbslocal.com/2013/10/02/vandals-carve-we-want-no-hindus-at-sbll-into-sikh-little-league-coachs-truck/>.

<sup>12</sup> The perpetrator(s) mistook Mr. Dulai for being a Hindu when he is in fact a Sikh. *See id.* Regardless, the crime would have been considered an anti-Hindu hate crime. Even though Mr. Dulai was not “actually” a Hindu, the perpetrator(s) “perceived” Mr. Dulai to be a Hindu and the Hate Crimes Act defines a hate crime offense as one “involving actual or perceived race, color, religion, or national origin,” of the victim. Hate Crimes Act, 18 U.S.C.S. § 249 (a)(1)(2014). Shore, *supra* note 11.

<sup>13</sup> Shore, *supra* note 11.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

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

<sup>17</sup> *Man Arrested after Allegedly Firing BB Gun at Mosque*, NBC NEWS (NBC television broadcast Aug. 13, 2012, 6:00 AM), [http://usnews.nbcnews.com/\\_news/2012/08/13/13257203-man-arrested-after-allegedly-firing-bb-gun-at-mosque](http://usnews.nbcnews.com/_news/2012/08/13/13257203-man-arrested-after-allegedly-firing-bb-gun-at-mosque).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

guard and caused damage to the walls and windows of the Mosque.<sup>20</sup> This was not the first time the mosque had been vandalized; as vandals had previously thrown rocks and broken windows of the mosque.<sup>21</sup> "This is a school and a house of worship . . . . And we are being shot at,' said Mohammad Aleemuddin, president of the Mosque. 'Community members are terrified, especially children.'"<sup>22</sup>

These three crimes vary in terms of their gravity and severity. Dr. Singh was the victim of a brutal assault; Mr. Dulai's car was vandalized; and the worshippers at the Morton Grove, Illinois Mosque were attacked with a pellet gun. But what these three crimes have in common is that they are hate crimes, driven by bias towards the victims' actual or perceived race, religion, or national ethnicity.<sup>23</sup> Dr. Singh was attacked for being a bearded and turbaned Sikh;<sup>24</sup> Mr. Dulai's car was vandalized because he was perceived to be a Hindu; and the mosque worshippers were attacked for being Muslim/Arab-Americans.

These three sects of people, namely Sikhs, Hindus, and Arabs, have been victimized time and again, post-9/11.<sup>25</sup> Yet, the FBI, which is responsible for tracking hate crimes perpetrated against individuals of various races, ethnicities, religions, and national origins, has failed to track hate crimes against these particular groups.<sup>26</sup> Bias based crimes against these groups has not slowed down as all three attacks mentioned above were committed more than a decade after

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<sup>20</sup> *Pellet Rifle Shots Fired at Mosque Near Chicago*, USA TODAY (Aug. 11, 2012, 8:47 PM), <http://usatoday30.usatoday.com/news/nation/story/2012-08-11/mosque-illinois-shots/56989464/1>.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Laura Pfeiffer, *To Enhance or Not to Enhance: Civil Penalty Enhancement for Parents of Juvenile Hate Crime Offenders*, 41 VAL. U.L. REV. 1685, 1688 (2007), available at <http://scholar.valpo.edu/cgi/viewcontent.cgi?article=1198&context=vulr>.

<sup>24</sup> Ironically, Dr. Singh has written extensively on the need to track hate crimes committed against Sikhs. See Simran Jeet Singh & Prabhjot Singh, *How Hate Gets Counted*, THE NEW YORK TIMES (Aug. 24, 2012), [www.nytimes.com/2012/08/24/opinion/do-american-sikhs-count.html?\\_r=0](http://www.nytimes.com/2012/08/24/opinion/do-american-sikhs-count.html?_r=0). See also Hansdeep Singh, Jaspreet Singh, & Prabhjot Singh, *RECENT DEVELOPMENT: A Systems Approach to Identifying Structural Discrimination through the Lens of Hate Crimes*, 20 ASIAN AM. L.J. 107 (2013). The irony lies in the fact that Dr. Singh could have become a statistic himself if the FBI had begun formally tracking hate crimes against Sikhs earlier.

<sup>25</sup> See generally, Jaweed Kaleem, *FBI to Start Tracking Hate Crimes against Sikhs, Hindus and Arabs*, HUFFINGTON POST, [http://www.huffingtonpost.com/2013/06/05/hate-crimes-sikhs-hindus-arabs-fbi\\_n\\_3392760.html](http://www.huffingtonpost.com/2013/06/05/hate-crimes-sikhs-hindus-arabs-fbi_n_3392760.html) (last updated June 6, 2013, 7:58 PM).

<sup>26</sup> See *id.*

9/11. After years of pressure from civil rights organizations and community leaders of these three groups, the FBI has finally decided to begin tracking hate crimes against these groups.<sup>27</sup>

### ***A. Hate Crimes Overview***

Crimes of hatred and prejudice have been a sad but inherent part of American history. Whether it is the historic and systemic persecution of African Americans,<sup>28</sup> or the more recent post 9/11 attacks on Muslims and Sikhs,<sup>29</sup> hate crimes continue to plague American society.

Although the Federal Government and the FBI have been tracking crimes of hatred and prejudice since World War II, the phrase “hate crime” had not entered popular use until the 1980s, when emerging hate groups such as the Neo-Nazis and Skinheads launched a wave of bias-based crimes against minority victims.<sup>30</sup> Congress later defined a hate crime as a “criminal offense against a person or property motivated in whole or in part by an offender’s bias against a race, religion, disability, ethnic origin or sexual orientation.”<sup>31</sup> Additionally, the *Hate Crimes Act* codifies a hate crime as one where the offender attacks a victim because of his or her “actual or perceived race, color, religion, or national origin” and “whoever, whether or not acting under color of law, willfully causes bodily injury to any person” or property because of their “race, color, religion, or national origin, as being a hate crime.”<sup>32</sup> In essence, a hate crime is like any other offense, with the added element of bias towards the victim.<sup>33</sup>

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<sup>27</sup> *Id.*

<sup>28</sup> In the South, an estimated two or three African-Americans were lynched each week in the late 19th and early 20th centuries. In Mississippi alone, 500 African Americans were lynched from the 1800s to 1955. Nationwide, the figure climbed to nearly 5,000. *People & Events: Lynching in America*, PBS, [http://www.pbs.org/wgbh/amex/till/peopleevents/e\\_lynch.html](http://www.pbs.org/wgbh/amex/till/peopleevents/e_lynch.html) (last visited Mar. 23, 2015).

<sup>29</sup> See generally Kaleem, *supra* note 25.

<sup>30</sup> *Hate crimes add an element of bias to traditional crimes—and the mixture is toxic to our communities*, FBI.GOV, [http://www.fbi.gov/about-us/investigate/civilrights/hate\\_crimes](http://www.fbi.gov/about-us/investigate/civilrights/hate_crimes) (last visited Mar. 23, 2015). [Hereinafter *FBI*]

<sup>31</sup> *Hate Crime-Overview*, FBI.GOV, [http://www.fbi.gov/about-us/investigate/civilrights/hate\\_crimes/overview](http://www.fbi.gov/about-us/investigate/civilrights/hate_crimes/overview) (last visited Mar. 10, 2014). [Hereinafter *Hate Crime-Overview*]

<sup>32</sup> Hate Crimes Act, 18 U.S.C.S. § 249 (a)(1) (2013).

<sup>33</sup> *Id.*

A hate crime has often been described as a "doubly depraved act" because of the act's discriminatory motivation and the inherent violence, or the threat of violence, in such an attack.<sup>34</sup> As a result, perpetrator(s) of hate crimes are punished at a higher level than other offenders.<sup>35</sup>

Hate crimes have garnered national attention in the past few decades. Congress and State Legislatures have recognized the need to deter and punish hate crime offenders.<sup>36</sup> Congress responded to this need by enacting the Hate Crime Statistics Act.<sup>37</sup>

### *i. Hate Crime Statistics Act*

Passed in 1990, the Hate Crime Statistics Act states in relevant part that;

(1) Under the authority of section 534 of title 28, United States Code, the Attorney General shall acquire data, for each calendar year, about crimes that manifest evidence of prejudice based on race, *gender and gender identity*, [emphasis added] religion, disability, sexual orientation, or ethnicity, including where appropriate the crimes of murder, non-negligent manslaughter; forcible rape; aggravated assault, simple assault, intimidation; arson; and destruction, damage or vandalism of property. (2) The Attorney General shall establish guidelines for the collection of such data including the necessary evidence and criteria that must be present for a finding of manifest prejudice and procedures for carrying out the purposes of this section."<sup>38</sup>

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<sup>34</sup> Pfeiffer, *supra* note 23 at 1688-89.

<sup>35</sup> "If the finder of fact at trial or, in the case of a plea of guilty or nolo contendere, the court at sentencing determines beyond a reasonable doubt that the defendant intentionally selected any victim or any property as the object of the offense of conviction because of the actual or perceived race, color, religion, national origin, ethnicity, gender, gender identity, disability, or sexual orientation of any person, increase by 3 levels." Federal Sentencing Guidelines, 18 U.S.C.S. App. § 3A1.1. (2011).

<sup>36</sup> Pfeiffer, *supra* note 23.

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

<sup>38</sup> Hate Crime Statistics Act, 28 U.S.C.S. §534 (2011), *available at* <http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2011/resources/hate-crime-statistics-act> (last visited Mar. 1, 2014).

The Act also provides enhanced punishment for committing a hate crime,<sup>39</sup> and requires the FBI to collect data on hate crimes.<sup>40</sup>

***ii. How are Hate Crimes Reported, Recorded, and Investigated?***

The FBI often investigates hate crimes by working in conjunction with local police departments.<sup>41</sup> Victims may report these crimes to local police departments, which in turn relay this information to the FBI, or victims may report these crimes directly to the FBI through the use of the Hate Crime hotline.<sup>42</sup> Once the FBI has obtained the requisite information, a Hate Crimes Incidence Report is filled out<sup>43</sup> and the investigation commences.<sup>44</sup>

The categories listed on the Hate Crime Incident Report are based on race, ethnicity, sexual orientation, and/or national origin.<sup>45</sup> Based on race, the FBI currently tracks hate crimes against Whites, African Americans, Native Americans, and Asians.<sup>46</sup> People who do not fit into any of these race categories are categorized as “Anti-other race.”<sup>47</sup> Based on religion, the FBI tracks hate crimes against Jews, Catholics, Protestants, Muslims, and atheists.<sup>48</sup> People who do not fit into this category are labeled “anti-other religion.”<sup>49</sup> Based on ethnicity, the FBI only tracks hate crimes committed against Hispanics; the rest are categorized into anti-other ethnicity/national origin.<sup>50</sup>

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<sup>39</sup> Pfeiffer, *supra* note 23, at 1688.

<sup>40</sup> See generally FBI, *supra* note 30.

<sup>41</sup> *Hate Crime-Overview*, *supra* note 31.

<sup>42</sup> See, e.g., *Hate Crime FAQs*, METRO. POLICE DEPT., <http://mpdc.dc.gov/page/hate-crimes-faqs> (last visited Mar. 23, 2015).

<sup>43</sup> *Hate Crimes Accounting*, FBI.GOV (Dec. 10, 2012), <http://www.fbi.gov/news/stories/2012/december/annual-hate-crimes-report-released/annual-hate-crimes-report-released>.

<sup>44</sup> FBI, *supra* note 30.

<sup>45</sup> For the purposes of this note, I have not included data on sexual orientation. That data may be found here: *Uniform Crime Reports*, FBI.GOV (2012), [http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2012/tables-and-data-declarations/1tabledatadecpdf/table\\_1\\_incidents\\_offenses\\_victims\\_and\\_known\\_offenders\\_by\\_bias\\_motivation\\_2012.xls](http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2012/tables-and-data-declarations/1tabledatadecpdf/table_1_incidents_offenses_victims_and_known_offenders_by_bias_motivation_2012.xls) (last visited Mar. 23, 2015).

<sup>46</sup> See *id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

### ***iii. Recent Statistics on Hate Crimes***

In its most recent report, released on December 10, 2012, the FBI noted that in 2011, U.S. law enforcement agencies reported 6,222 hate crime incidents involving 7,254 offenses.<sup>51</sup> These incidents included various offenses such as vandalism, intimidation, assault, rape, murder, etc.<sup>52</sup> An analysis of the reported hate crimes showed that 47.4% of the crimes were racially motivated, 20.4% resulted from sexual orientation bias, 19.2% were motivated by religious bias, 12.2% stemmed from ethnicity/national origin bias, and 0.8% were prompted by disability bias.<sup>53</sup>

### ***iv. Recent Statistics on Hate Crimes Motivated by Race, Religion, and National Origin***

Of particular interest is that out of all reported hate crimes, the majority were motivated by race (46.9%) and religion (19.8%).<sup>54</sup> There were 2,917 hate crimes that were racially motivated; 504 of those were Anti-White, 2,076 were Anti-Black, 61 were anti-American Indian/Alaskan Native, 138 were anti-Asian/Pacific Islander, and 138 were anti-Multiple Races.<sup>55</sup> Of the 1,233 hate crimes committed due to a person's religion, 771 were anti-Jewish, 67 were anti-Catholic, 44 were anti-Protestant, 157 were anti-Islamic, 130 were anti-other religion, 60 were anti-multiple religions, and 4 were anti-atheism, agnosticism, etc.<sup>56</sup>

Finally, of the 720 hate crimes committed due to the victim's ethnicity/national origin, 405 were Anti-Hispanic, and 315 were Anti-other ethnicity/national origin.<sup>57</sup>

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<sup>51</sup> *Hate Crime Statistics 2011: Victims*, FBI.GOV, <http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2011/narratives/victims> (last visited Mar. 23, 2015); *see also Table 1: Incidents, Offenses, Victims, and Known Offenders*, FBI.GOV (2011), <http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2011/tables/table-1> (last visited, Mar. 23, 2015).

<sup>52</sup> *Hate Crime Statistics 2011: Victims*, *supra* note 51.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Table 1: Incidents, Offenses, Victims, and Known Offenders (2011)*, *supra* note 51.

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

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

***v. Background, Demographics, and Statistics on Sikh-Americans, Hindu Americans, and Arab Americans.***

***1. Sikh Americans***

Sikh Americans form a small, but integral part of American Society. According to the Sikh civil rights organization *The Sikh Coalition*, there are approximately 500,000 Sikhs living in the U.S. that have resided here for over a 100 years.<sup>58</sup>

Sikhism is a monotheistic religion, with over 25 million followers worldwide.<sup>59</sup> Sikhism was founded over 500 years ago by Guru Nanak in the Punjab region of present day India.<sup>60</sup> Sikhism preaches a “message of devotion, remembrance of God at all times, truthful living, equality between all human beings, social justice” and emphatically denounces superstitions and blind rituals.<sup>61</sup> In addition, Sikhs are religiously mandated to don five articles of faith, namely *Kirpan* (a sword), *Kanga* (a comb), *Kaccha* (under-shorts), *Kara* (a metal bracelet) and *Kesh* (uncut hair covered by a turban).<sup>62</sup> The practice of maintaining uncut hair covered by a turban also includes maintaining an untrimmed beard.<sup>63</sup>

This practice of maintaining unshorn hair covered by a turban and a beard, has subjected Sikh Americans to discrimination and acts of violence. Many people wrongfully associate a Sikh turban and a beard with that of the Taliban or Osama Bin Laden.<sup>64</sup> This wrongful association began soon after 9/11, as images of Osama Bin Laden and other turbaned Taliban members were plastered across newspapers and television screens.

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<sup>58</sup> *FAQ: How many Sikhs live in the United States? When did Sikhs first immigrate to America?*, THE SIKH COALITION,

<http://www.sikhcoalition.org/resources/about-sikhs/faq> (last visited Mar. 1, 2014).

<sup>59</sup> *See At a Glance*, THE SIKH COALITION,,

<http://www.sikhcoalition.org/resources/about-sikhs/at-a-glance> (last visited Mar. 1, 2014).

<sup>60</sup> *See generally, Introduction to Sikhism: Who and What is a Sikh?*, SIKHS.ORG, <http://www.sikhs.org/summary.htm> (last visited Mar. 23, 2015).

<sup>61</sup> *See generally At a Glance*, *supra* note 59.

<sup>62</sup> *A Discourse on the Sikh Articles of Faith*, THE SIKH COALITION, <http://www.sikhcoalition.org/about-sikhs/sikh-theology/a-discourse-on-the-sikh-articles-of-faith> (last visited Mar. 1, 2014).

<sup>63</sup> *Id.*

<sup>64</sup> *See generally Crowley, Over 100 Members of Congress Urge Stronger Action to Protect Sikh, Hindu, Arab-American Communities from Hate Crimes*, CONGRESSMAN JOSEPH CROWLEY (Mar. 21, 2013), <http://crowley.house.gov/press-release/crowley-over-100-members-congress-urge-stronger-action-protect-sikh-hindu-arab>.

Beginning with the murder of Balbir Singh Sodhi in 2001,<sup>65</sup> violence against Sikh Americans has escalated to alarming levels post-9/11. Grass roots surveys reveal that 9% of Sikhs in New York City have experienced physical assaults on account of their religion.<sup>66</sup> In San Francisco, 10% of Sikhs reported facing bias based physical assaults or property damage.<sup>67</sup> The reports of bias amongst Sikh children are even more staggering; with approximately 62% of turbaned Sikh children in New York reported being bullied, including approximately 42% reporting incidents of physical harassment; and in San Francisco, 74% of Sikh children reported being bullied.<sup>68</sup>

Perhaps the greatest tragedy that the Sikh American community has faced in the wake of 9/11, is the Oak Creek Massacre. On August 5, 2012, a gunman opened fire on a Sikh Gurudwara (place of worship) in Oak Creek, Wisconsin killing six people (including a police officer) and wounding four others.<sup>69</sup> The gunman, Wade Michael Page, was a white supremacist with a history of involvement in Neo-Nazi groups.<sup>70</sup> The shootings drew national attention and worldwide support for the Wisconsin Sikh Community and the American Sikh Community at large and highlighted racial tensions against Sikh Americans.<sup>71</sup>

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<sup>65</sup> Balbir Singh Sodhi, a Sikh American gas station owner, was fatally shot and murdered by Frank Roque on September 15, 2001. See Tamar Lewin, *Sikh Owner Of Gas Station Is Fatally Shot In Rampage*, N.Y. TIMES (Sep. 17, 2001), <http://www.nytimes.com/2001/09/17/us/sikh-owner-of-gas-station-is-fatally-shot-in-rampage.html>. The shooting is largely considered the first of the many post 9/11 backlash faced by Sikh Americans. Roque boasted during his arrest and prosecution that "I am a patriot" and "I stand for America all the way." See also *The First 9/11 Backlash Fatality: The Murder of Balbir Singh Sodhi*, SALDEF (Aug. 30, 2011), <http://www.saldef.org/issues/balbir-singh-sodhi/>.

<sup>66</sup> Letter from Richard J. Durbin et al., United States Senator, to Eric Holder, Attorney General of the United States (Feb. 19, 2013), available at [http://www.feinstein.senate.gov/public/index.cfm/files/serve/?File\\_id=f9869a7c-bad2-4dba-a169-d018d9ca2250](http://www.feinstein.senate.gov/public/index.cfm/files/serve/?File_id=f9869a7c-bad2-4dba-a169-d018d9ca2250) [hereinafter *Letter*].

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> CNN Wire Staff, *Police Identify Army Veteran as Wisconsin Temple Shooting Gunman*, CNN (Aug. 7, 2012, 7:50AM), <http://www.cnn.com/2012/08/06/us/wisconsin-temple-shooting/index.html>.

<sup>70</sup> See Joe Heim, *Wade Michael Page was Steeped in Neo-Nazi 'hate music' Movement*, WASH. POST (Aug. 7, 2012), [http://www.washingtonpost.com/lifestyle/style/wade-michael-page-was-steeped-in-neo-nazi-hate-music-movement/2012/08/07/b879451e-dfe8-11e1-a19c-fcfa365396c8\\_story.html](http://www.washingtonpost.com/lifestyle/style/wade-michael-page-was-steeped-in-neo-nazi-hate-music-movement/2012/08/07/b879451e-dfe8-11e1-a19c-fcfa365396c8_story.html).

<sup>71</sup> CNN Wire Staff, *Temple Shooting Dredges up Memories of Long History of Bias Crimes Against Sikhs*, CNN (Aug. 6, 2012, 1:34 PM), <http://www.cnn.com/2012/08/06/us/sikhs-bias-crimes/index.html>.

Despite this alarming data, a total of only three crimes against Sikh Americans have been prosecuted as hate crimes since September 11, 2001.<sup>72</sup> Hate crimes against Sikhs continue to be incorrectly reported as primarily in the anti-Islam or in the anti-Muslim category.<sup>73</sup>

## 2. Hindu Americans

From a mere 1,700 people in the year 1900, the Hindu American population has since grown to 2.29 million as of 2008.<sup>74</sup> With a worldwide population of approximately 1 billion followers,<sup>75</sup> Hindu Americans are among the most affluent and the most educated minorities in the United States.<sup>76</sup>

Hinduism is currently the oldest religion practiced in the world.<sup>77</sup> The essence of Hinduism lies in tolerance and pluralism.<sup>78</sup> Hinduism "is a rich collection of hundreds of spiritual and philosophical traditions followed throughout Asia for more than five thousand years."<sup>79</sup> Hindu traditions "share certain distinctive core beliefs despite the absence of an identifiable beginning in history, single founder, central religious establishment or sole authoritative scripture."<sup>80</sup> Aside from promoting tolerance and respect for different religious beliefs, Hinduism also acknowledges "the existence of more than one path to relating to truth (God)."<sup>81</sup>

The Hindu American community is no stranger to hate crimes. Although not generally victimized for their physical appearance like Sikhs, acts of vandalism, graffiti and arson are common at the approximately 700 Hindu temples across the United

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<sup>72</sup> *Letter, supra* note 66.

<sup>73</sup> *Id.*

<sup>74</sup> See *Hindu Demographics: Population of Hindus in the U.S.*, HAF, [http://www.hafsite.org/resources/hinduism\\_101/hinduism\\_demographics](http://www.hafsite.org/resources/hinduism_101/hinduism_demographics) (last visited Mar. 23, 2015); see also *So, How Many Hindus are in the US?*, HINDUISM TODAY, <http://www.hinduismtoday.com/modules/smartsection/item.php?itemid=1584> (last visited Mar. 23, 2015).

<sup>75</sup> See generally *The Global Religious Landscape*, PEW RESEARCH CENTER (Dec. 18, 2012), <http://www.pewforum.org/2012/12/18/global-religious-landscape-hindu/>.

<sup>76</sup> *Hindu Demographics: Population of Hindus in the U.S.*, *supra* note 74.

<sup>77</sup> *Hinduism Basics*, HAF, <http://hafsite.org/hinduism-101/hinduism-basics> (last visited Mar. 23, 2015).

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

States.<sup>82</sup> For example, a Hindu temple in New York was damaged from a Molotov cocktail.<sup>83</sup> Assaults against Hindu Americans are also commonplace. Recently, a forty-six year old Hindu American, Suando Sen, was attacked and killed after being intentionally pushed onto the tracks of a New York Subway train.<sup>84</sup>

### 3. Arab Americans

Arab Americans are comprised of various groups from the Arabic-speaking countries of Southwest Asia and North Africa. Arab Americans have settled in the United States since the 1880s.<sup>85</sup> More than 80% of Arab Americans are U.S. citizens.<sup>86</sup> Arab Americans “work in all sectors of society and are leaders in many professions and organizations.”<sup>87</sup>

The Arab American Institute estimates the population of Arab Americans to be approximately 3.66 million.<sup>88</sup> The Arab heritage includes twenty-two countries and “reflects a rich culture that is thousands of years old . . .”<sup>89</sup> Contrary to popular belief, most Arab Americans identify themselves as Christians.<sup>90</sup> Only about twelve percent of Muslims worldwide are Arabs.<sup>91</sup> Most Muslims are located

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<sup>82</sup> *Letter, supra* note 66.

<sup>83</sup> *Id.*; see also Jessica Simeone, *Molotov Cocktails Hurlled at Mosque, Hindu Temple, and Bodega in Queens*, N.Y. POST (Jan. 2, 2012, 5:00 AM), <http://nypost.com/2012/01/02/molotov-cocktails-hurled-at-mosque-hindu-temple-and-bodega-in-queens/>.

<sup>84</sup> *Letter, supra* note 66. See also Marc Santora, *Woman Is Charged With Murder as a Hate Crime in a Fatal Subway Push*, N.Y. TIMES (Dec. 29, 2012), [http://www.nytimes.com/2012/12/30/nyregion/woman-is-held-in-death-of-man-pushed-onto-subway-tracks-in-queens.html?\\_r=0](http://www.nytimes.com/2012/12/30/nyregion/woman-is-held-in-death-of-man-pushed-onto-subway-tracks-in-queens.html?_r=0). The assailant, who was charged with second degree murder, told police investigators that she pushed a “Muslim off the train tracks because I hate Hindus and Muslims ever since 2001 when they put down the twin towers I’ve been beating them up.” *Id.*

<sup>85</sup> *Quick Facts About Arab Americans*, ARAB AM. INST. FOUND., [http://b.3cdn.net/aai/fcc68db3efdd45f613\\_vim6ii3a7.pdf](http://b.3cdn.net/aai/fcc68db3efdd45f613_vim6ii3a7.pdf) (last visited Apr. 11, 2014).

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> Samer Araabi, *How Many Arab Americans Are There?*, ARAB AM. INST. (Apr. 5, 2013, 11:49 AM), <http://www.aaiusa.org/blog/entry/how-many-arab-americans-are-there-3-reasons-we-dont-quite-know/>.

<sup>89</sup> *Quick Facts About Arab Americans, supra* note 86.

<sup>90</sup> *Caught in the Crossfire*, PBS, [http://www.pbs.org/itvs/caughtinthecrossfire/arab\\_americans.html](http://www.pbs.org/itvs/caughtinthecrossfire/arab_americans.html) (last visited Mar. 1, 2014).

<sup>91</sup> *Id.*

in Indonesia, and "[i]n fact there are more Muslims in Indonesia than in all Arab countries combined."<sup>92</sup>

For many years, and especially after 9/11, Arab Americans have experienced a significant increase in bias based crimes.<sup>93</sup> "According to the Justice Department, 'of the 43 [September 11th] . . . prosecutions that Civil Rights Division has brought . . . [sixteen] involved attacks in whole or in part based on the fact that the victim was Arab or Middle Eastern.'"<sup>94</sup> For instance, Eric Kenneth Nix, an Illinois man, pled guilty to blowing up the van of a Palestinian-American family that was parked in front of the family's home because the family were Arab.<sup>95</sup>

Hate crimes committed against Arab Americans which are "reported as 'anti-Islamic' on the Hate Crime Incident Report form . . . might not accurately capture the motivation of the perpetrator."<sup>96</sup> Currently "there is no appropriate place on the Hate Crime Incident Report form to record a hate crime against an Arab American Christian motivated by an anti-Arab bias."<sup>97</sup> Instead he or she would be incorrectly reported as a victim of an "Anti-Muslim" or "Anti-Christian" hate crime.

Christian members of the Arab American community are also victims of Hate Crimes.<sup>98</sup> For example, Patrick Syring, a State department official was prosecuted by the Justice Department and

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<sup>92</sup> *Id.*

<sup>93</sup> In fact this is a disturbing trend seen around the world. British Muslims for instance have seen a significant backlash in hate crimes fueled by political rhetoric and election campaign speeches. *See, e.g.,* Steven Erlanger, *As Hate Crimes Rise, British Muslims Say They're Becoming More Insular*, N.Y. TIMES (Feb. 13, 2014), <http://www.nytimes.com/2014/02/14/world/europe/as-hate-crimes-rise-british-muslims-say-theyre-becoming-more-insular.html?ribbon-ad-id=20&rref=world/europe&module=ArrowsNav&contentCollection=Europe&action=keypress&region=FixedRight&pgtype=article&r=0>.

<sup>94</sup> *Letter, supra* note 66.

<sup>95</sup> "Burbank, Illinois: Eric Kenneth Nix pleaded guilty on March 6, 2006 to blowing up the van of a Palestinian-American family that was parked in front of the family's home. Nix pleaded guilty to a felony violation of 42 U.S.C. § 3631, which prohibits threats or violence that interfere with fair housing rights. He received a 15-month prison sentence on August 22, 2006." *Initiative to Combat Post 9/11 Discriminatory Backlash*,

U.S. DEPT. OF JUSTICE, <http://www.justice.gov/crt/legalinfo/discrimupdate.php> (last visited March 1, 2014).

<sup>96</sup> *Letter, supra* note 66.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

pled guilty to sending several email and voice mail threats to the President of the Arab American Institute, who was an Arab American Christian.<sup>99</sup> “According to a recent survey by the Arab American institute, [forty] percent of Arab Americans have personally experienced discrimination because of their ethnicity or country of origin, including [thirty] percent of Catholic Arab Americans and [forty-two] percent of Orthodox Protestant Christian Arab Americans.”<sup>100</sup>

## II. The Problem and the Solution

### A. *The Problem*

The main problem that these three groups face, is the under representation or in many cases, the misrepresentations, of hate crimes committed against them. The problem persists chiefly because of inherent glitches with the FBI tracking methodology.

#### *i. Inherent Problems with FBI Tracking*

Since the enactment of the Hate Crime Statistics Act (the "Act"), the FBI has been tracking hate crimes against a variety of groups including Jews, Catholics, Protestants, Muslims and atheists/agnostics.<sup>101</sup> The bureau also tracks hate crimes motivated by race, ethnicity, sexual orientation, and gender.<sup>102</sup> However, as the data suggests, there are several inherent flaws in some of these tracking categories. For instance, out of the 130 “anti-other religion” hate crimes,<sup>103</sup> it is unclear how many were committed against followers of Hinduism, the third largest religion in the world,<sup>104</sup> and how many were committed against the followers of Sikhism, the fifth largest religion in the world.<sup>105</sup> Another example would be the problem of effectively reporting hate crimes against Arab Americans, who have faced significant backlash post 9/11,<sup>106</sup> and determining which

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<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> Kaleem, *supra* note 25. *See also*, Table 1, *supra* note 51.

<sup>102</sup> Kaleem, *supra* note 25.

<sup>103</sup> Table 1, *supra* note 51.

<sup>104</sup> *See The Global Religious Landscape*, PEW RESEARCH (Dec. 18, 2012), <http://www.pewforum.org/2012/12/18/global-religious-landscape-exec/>.

<sup>105</sup> *See FAQ: What is The Definition of a Sikh?*, THE SIKH COALITION, <http://www.sikhcoalition.org/resources/about-sikhs/faq> (last visited Mar. 1, 2014).

<sup>106</sup> *See generally*, Emily Jabareen, *Hate Crimes Against Muslims Escalate: Virginia*, ARAB AMERICAN INSTITUTE (Sept. 21, 2012), <http://www.aaiusa.org/blog/entry/hate->

category they fit into. Are they included in the anti-Islam category, anti-Muslim category, or anti-Christian category? All three options would be characteristically misleading as Asians cover a broad group of people and as mentioned earlier, most Arab-Americans are Christians and not Muslim.<sup>107</sup>

The entire purpose of the Act was to quantify “what was, at that point, an un-quantified problem.”<sup>108</sup> Before the Act, the available data on hate crimes had not yet been systematically analyzed.<sup>109</sup> The Act designated a federal authority, namely the FBI, to get involved and sift through the data to better organize it. The most logical way to organize the data was by dividing the data into various groups based on religion, ethnicity, national origin, and sexual orientation.<sup>110</sup>

Initially, the Act contained major American groups that had been historically persecuted on account of their race or religion namely African Americans and Jewish Americans. And this rather simple categorization was largely accepted. After all, throughout American history, anti-Jewish and anti-African American hate crimes have dominated the sphere of bias-based crimes.

However, with the changing face of American society and an influx of immigration from countries like India, the categories that existed in 1990, are no longer representative of the American population.<sup>111</sup> And with the tragedy of 9/11, the entire hate crime sphere has changed. Historically unaffected American groups like Arab Americans, Hindu Americans, and Sikh Americans have been targeted in mass numbers in the post 9/11 backlash.<sup>112</sup> And the

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crimes-against-muslims-escalate-virginia/(describing a series of hate crimes and acts of vandalism directed toward Muslims in the United States).

<sup>107</sup> See *Caught in the Crossfire*, PBS,

[http://www.pbs.org/itvs/caughtinthecrossfire/arab\\_americans.html](http://www.pbs.org/itvs/caughtinthecrossfire/arab_americans.html) (last visited Apr. 9, 2015).

<sup>108</sup> George S. Peek, *Recent Legislation: Where are we Going with Federal Hate Crimes Legislation? Congress and the Politics of Sexual Orientation*, 85 MARQ. L. REV. 537, 539 (2001).

<sup>109</sup> *Id.*

<sup>110</sup> Indeed, the Hate Crime Statistics Act's "purpose was to establish a national data collection system on crimes motivated by hate so that federal and local law enforcement authorities could determine whether hate crimes were isolated events or a more pervasive problem, and whether any particular groups were more likely to be targeted than others." Susan J. Becker, *Tumbling Towers as Turning Points: Will 9/11 Usher in a New Civil Rights Era for Gay Men and Lesbians in the United States?*, 9 WM. & MARY J. WOMEN & L. 207, 250 (2003).

<sup>111</sup> As stated earlier, gender based and sexual orientation based hate crimes have been omitted from this note. For more information on those, see Becker, *supra* note 111.

<sup>112</sup> See generally *Letter*, *supra* note 66.

problem persists to this day. Therefore, in order to effectively combat bias based crimes against these three sects, it is important to accurately track the crimes against these groups.

### ***B. The Solution***

On its face, the simplest and most logical solution to the problem would be to create individual categories for each of these groups. This is exactly what community leaders and civil rights organizations had been asking the FBI to do for years.<sup>113</sup> Finally, on June 5, 2013, the FBI finally decided to formally start tracking hate crimes against Sikh Americans, Hindu Americans and Arab Americans.<sup>114</sup> The changes will be implemented within the next two years and the tracking will formally commence in 2015.<sup>115</sup> Leaders of these three groups have applauded this decision, and several benefits of the decision to begin tracking have been cited.

First, the solution is simple and easy to implement. The only effort required would be to change the tracking form and add a few additional categories, which can be done relatively quickly.

Second, the tracking will enable advocacy groups such as the Sikh Coalition and the Arab American Institute to present concrete data on hate crimes that plague their respective groups to the Congressmen and women that represent them. As Rajdeep Singh, director of law and policy at the Sikh Coalition said, “[w]e can’t go to policy makers or law enforcement to make the case about crimes against our communities unless we have the official data.”<sup>116</sup> Having concrete data will enable Congress members and policy makers to

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<sup>113</sup> Valarie Kaur, *One Year After Oak Creek, Why the FBI Tracking Hate Crimes is a Victory*, MSNBC (AUG. 05, 2013, 11:09 AM), <http://www.msnbc.com/melissa-harris-perry/one-year-after-oak-creek-why-the-fbi>.

<sup>114</sup> “In addition to [Sikhs, Hindus, and Arabs], the FBI has [also] agreed to track crimes against a number of religious groups it has never before tracked. The new categories include tracking crimes committed against Buddhists, [] Mormons, Jehovah’s Witnesses and Orthodox Christians.” Corrie Mitchell, *Religious Leaders Welcome FBI Hate Crimes Reporting*, WASH. POST (June 06, 2013), [http://articles.washingtonpost.com/2013-06-06/national/39782813\\_1\\_hate-crimes-orthodox-christians-sikh](http://articles.washingtonpost.com/2013-06-06/national/39782813_1_hate-crimes-orthodox-christians-sikh).

<sup>115</sup> *Id.*

<sup>116</sup> Tendar Tesering, *FBI To Begin Tracking Hate Crimes Against Religious Minority Communities*, HNGN.COM (June 06, 2013 8:09 AM), <http://www.hngn.com/articles/4616/20130606/sikh-hindu-arab-us-india-minorities-religion-fbi.htm>.

realize how deeply rooted the hate crime problem is, and take the necessary steps.

Third, it will improve the accuracy of the data. The purpose of the Act was to better organize data and curb statistical uncertainties.<sup>117</sup> If the FBI continues to record hate crimes against these minorities as “anti-other”, it defeats the purpose of enacting the statute in the first place. If the reasons cited for the enactment were to limit statistical uncertainties, then it is not possible to achieve this purpose if the FBI continually mis-categorizes hate crimes committed against major religions as “Anti-other religion” and hate crimes against non-Hispanic races as “Anti-other”.<sup>118</sup> Therefore, the new categories will greatly improve the precision of the data.

Fourth, the failure to document hate crimes accurately prevents the affected communities from receiving adequate resources to address crimes targeting particularly vulnerable communities. Local police departments, if equipped with the right information on hate crimes in their neighborhood, can direct their resources towards these communities.<sup>119</sup> In fact, having accurate data would serve as a call to action to local police departments. Some of the ways police departments can help combat hate crimes are:

increased police patrols of property that is more likely to be targeted (e.g. houses of worship, community centers); training officers to follow set procedures when investigating and questioning victims, witnesses, or perpetrators in potential bias related incidents; funding for the installation of protective boundaries; holding press conferences in solidarity with the community; holding public education events; and conducting training by agencies, like the FBI, on measures the community can take to better protect itself.<sup>120</sup>

These solutions, along with the federal government’s support of these communities, would help to strengthen faith in these

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<sup>117</sup> At the time lawmakers proposed the HCSA, the spearhead of what can be termed modern federal hate crime legislation, the identified purpose was to quantify “what was, at that point, an unquantified problem.” Hansdeep Singh et al., *A Systems Approach to Identifying Structural Discrimination Through the Lens of Hate Crimes*, 20 ASIAN AM. L.J. 107, 126-27 (2013).

<sup>118</sup> See Table 1, *supra* note 55. See also Hansdeep Singh, *supra* note 117.

<sup>119</sup> Hansdeep Singh, *supra* note 117.

<sup>120</sup> *Id.*

organizations and will aid in fostering a healthy relationship between law enforcement and minority communities. Immigrant and minority communities often have an unfavorable impression of law enforcement and the FBI's decision might be a step in the right direction for mending such a view.<sup>121</sup>

Finally, tracking hate crimes against victims of these groups will give the victims the "the dignity of being a statistic."<sup>122</sup> The phrase was first used by eighteen year-old Harpreet Singh Saini, whose mother was killed in the Oak Creek massacre. In a powerful, emotionally charged testimony in front of members of Congress, Mr. Saini pleaded with the members to start tracking hate crimes against Sikh Americans. He ended the speech by saying, "give my mother at least the dignity of being a statistic."<sup>123</sup> Several other Sikh organizations have used the phrase to get the attention of members of Congress to adopt the change.<sup>124</sup> As Valerie Kaur, a prominent Sikh advocate said, "[t]he government can't bring back the six people murdered in Oak Creek, Wisconsin. But it can at least afford them the dignity of being counted."<sup>125</sup>

### III. The Problem and the Solution, Revisited

Tracking hate crimes against these three groups is undoubtedly a major victory for the respective communities. It is the quintessential first step in combating hate crimes. However, simply listing new categories on the FBI's hate crimes report may not be enough to solve the problem of under-reporting. There are significant additions needed to the purported solution in order to effectively end the problem of under-reporting of hate crimes. Before exploring the additional solutions, the stated problem ought to be revisited.

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<sup>121</sup> See *id.* at 127.

<sup>122</sup> Larry Margasak, *FBI Asked to Keep Data on Anti-Sikh Hate Crimes*, USA TODAY (Sept. 19, 2012), <http://usatoday30.usatoday.com/news/nation/story/2012/09/19/fbi-asked-to-keep-data-on-anti-sikh-hate-crimes/57809828/1>.

<sup>123</sup> Larry Margasak, *'Give my mother at least the dignity of being a statistic,'* THE INDIAN EXPRESS (Sept. 21 2012, 6:17 AM), <http://archive.indianexpress.com/news/-give-my-mother-at-least-the-dignity-of-being-a-statistic-/1005791/>.

<sup>124</sup> See *Give My Mother at Least The Dignity of Being a Statistic*, SIKH SANGAT NEWS, <http://sikhsangat.org/2012/give-my-mother-at-least-the-dignity-of-being-a-statistic/> (last visited Apr. 9, 2015).

<sup>125</sup> Valerie Kaur, *Sikhs Deserve the Dignity of Being a Statistic*, VALARIEKAUR (AUG. 16, 2012), <http://valariekaur.com/2012/08/the-washington-post-sikhs-deserve-the-dignity-of-being-a-statistic/>.

## ***A. The Problem Revisited***

The problem of under-reporting does not exist in a vacuum where minorities are impaired from reporting hate crimes solely because of a lack of categories to accurately track data. There are other systemic factors that affect these groups. These factors have existed and will continue to exist despite the passage of this legislation and may hinder the process of reporting hate crimes. Such systemic factors are further explored here.

### ***i. An Unfavorable View of Law Enforcement***

Race and ethnicity are arguably the most powerful variables explaining public attitudes toward law enforcement.<sup>126</sup> Ethnic minorities in general tend to have a less favorable view of law enforcement than White Americans.<sup>127</sup> The reasons for these unfavorable views vary by race and culture, as different minorities have gone through different experiences. For example, Asian-Americans, including Indian Americans, distrust law enforcement because they associate these departments and individuals with corruption.<sup>128</sup> The same holds true for other minorities who have their own reasons, cultural or otherwise, for having an unfavorable opinion of law enforcement. However, no community's relationship with law enforcement has been as severely damaged post 9/11 as that of Arab Americans and Sikh Americans.

#### ***1. The Arab-American Experience***

The Arab American experience with law enforcement has been a largely traumatic and negative one. 9/11 has indefinitely changed the Arab American relationship with law enforcement officials. Arab American communities have become more visible post 9/11, have gained unwanted negative attention in the public eye, and have been subjected to arbitrary scrutiny by law enforcement officials.

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<sup>126</sup> See Arthur J. Lurigio, Richard G. Greenleaf & Jamie L. Flexon, *The Effects of Race on Relationships with the Police: A Survey of African American and Latino Youths in Chicago*, 10 W. CRIMINOLOGY REV. 29 (2009).

<sup>127</sup> This is especially true for African Americans and Latinos. See generally *id.*

<sup>128</sup> See *US Police Departments Face Challenges Recruiting Asian Americans*, VOICE OF AMERICA (MAR. 07, 2012), <http://www.voanews.com/content/us-police-departments-face-challenges-recruiting-asian-americans-141905613/180743.html>. Most Hindu Americans are of Indian descent.

Arab Americans face racial profiling at the hands of law enforcement officials; whether it is profiling by the Transportation Security Authority (“TSA”) agents at airports,<sup>129</sup> or surveillance of their day-to-day activities by other government agencies.<sup>130</sup> In fact, according to a detailed study conducted by the Vera Institute, in the aftermath of 9/11, Arab-Americans have a greater fear of falling victim to state actions, such as profiling, deportation, or surveillance, than of becoming hate crime victims.<sup>131</sup> Such unwanted scrutiny by law enforcement officials has traumatized the Arab American community and may have permanently severed that community’s relationship with law enforcement.

Under such circumstances, it is hard to imagine that Arab Americans will come forward and report hate crimes committed against them or their families simply by having the FBI add another category to the Hate Crimes Incident Report form. It is unreasonable for the FBI on one hand to target and profile Arab Americans, and on the other hand, expect to solve reporting problems by doing nothing more than adding an additional category to the Hate Crimes Incidence Report form. Therefore, the FBI must engage in other services to win back the trust of the Arab American community.

## ***2. The Sikh American Experience***

Law enforcement officials, in the wake of 9/11, have also victimized Sikh Americans. According to the Sikh Coalition, a significant amount of Sikh New Yorkers, who wear turbans, report having been unfairly stopped or questioned by law enforcement officers because of their appearance.<sup>132</sup> Sikh Americans also experience racial profiling at the hands of TSA officials at airports. A study conducted by the Sikh Coalition in 2009 found that 90% of Sikh travelers were singled out because of their turban and beard and sent

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<sup>129</sup> See generally Yasmine Taeb, *TSA Profiling and the SPOT Program*, ARAB AM. INST. (June 7, 2013), <http://www.aaiusa.org/blog/entry/tsa-profiling-and-the-spot-program/>.

<sup>130</sup> Ashley Gorski, *Wrongly Legitimizing NYPD Discrimination*, ACLU (FEB. 25, 2014), <https://www.aclu.org/blog/national-security-religion-belief-technology-and-liberty/wrongly-legitimizing-nypd>.

<sup>131</sup> NICOLE J. HENDERSON ET AL., VERA INST. OF JUSTICE, LAW ENFORCEMENT & ARAB AMERICAN COMMUNITY RELATIONS AFTER SEPTEMBER 11, 2001 23 (2006), available at [http://www.vera.org/sites/default/files/resources/downloads/Arab\\_American\\_technical\\_report.pdf](http://www.vera.org/sites/default/files/resources/downloads/Arab_American_technical_report.pdf).

<sup>132</sup> *Id.*

for additional screening at airports.<sup>133</sup> In fact, at some airports, Sikhs endure secondary screening 100% of the time.<sup>134</sup> As a result, at certain airports, every single bearded and turbaned Sikh will likely be singled out and forced to undergo a secondary, invasive screening.

Sikh men who are bearded and wear a turban are prevented from joining the police department in almost every major US city.<sup>135</sup> A Sikh man, who truly desires to serve his community as a police officer, must either violate his religious beliefs and remove his turban and cut his hair and beard, or endure the time consuming process of applying for an accommodation.<sup>136</sup> Because Sikhs are unrepresented in many police departments, the already tense relationship between the two communities is even more strained, especially because studies have shown that minorities feel more comfortable when talking to a police officers who share their background, race or ethnicity.<sup>137</sup>

Another related issue that plagues the Sikh American community is that they are not allowed to join the U.S. military either because of their bearded and turbaned appearance. For the same “safety” concerns as with the police departments, bearded and turbaned Sikhs are not allowed to serve in the U.S. military and are

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<sup>133</sup> *The TSA Report Card*, THE SIKH COALITION (2009), <http://www.sikhcoalition.org/documents/pdf/2009%20Q2%20Report%20Card.pdf>. The situation for Sikh travelers has gotten so out of hand that the Sikh Coalition has coined the term, “Flying While Sikh,” because of racial profiling. See *Air Travel*, THE SIKH COALITION, <http://www.sikhcoalition.org/resources/air-travel> (last visited Mar. 1, 2014). The Sikh Coalition even came out with an application where Sikh passengers (and others) can quickly file a complaint against the TSA as soon as it occurs. See Amy Bingham, *Ethnic Profiling by TSA? 'Fly Rights' App Made for Complaints*, ABC NEWS (Apr. 30, 2012), <http://abcnews.go.com/Politics/OTUS/tsa-complaints-increase-exponentially-fly-rights-app/story?id=16246876>.

<sup>134</sup> *The TSA Report Card*, *supra* note 134.

<sup>135</sup> *DC Police Allow Sikh Officers to Wear Beards and Turbans*, CBS DC (May 16, 2012, 5:45 PM), <http://washington.cbslocal.com/2012/05/16/dc-police-allow-sikh-officers-to-wear-beards-and-turbans/>.

<sup>136</sup> “Police departments routinely ban beards for safety reasons, such as the need to ensure that an officer can be fitted for a gas mask, though exemptions are made for medical conditions. Officers seeking to waive the grooming requirements would be expected to seek permission from the chief, who would decide on a case-by-case basis.” Eric Tucker, *DC police: Sikh Officers Can Wear Beards*, MERCURY NEWS (May 16, 2012), [http://www.mercurynews.com/news/ci\\_20639230/dc-police-sikh-officers-can-wear-beards-turbans](http://www.mercurynews.com/news/ci_20639230/dc-police-sikh-officers-can-wear-beards-turbans).

<sup>137</sup> See Robert D. Hanser, *Establishing Effective Police Relations with Asian American Populations in Mid-Sized United States Communities*, 6 ASIA PAC. J. POLICE & CRIM. JUST. 49 (2008), available at [http://www.aaps.or.kr/journal/attach/hanser\\_edited.pdf](http://www.aaps.or.kr/journal/attach/hanser_edited.pdf).

given the painful choice of deciding between their religion or serving their country.<sup>138</sup>

If Sikh Americans continue to be profiled by law enforcement officials and are prevented from joining police departments and the military, they will not feel comfortable approaching law enforcement officials to report hate crimes.

***i. The Hindu American Experience with Law Enforcement***

Unlike Sikh Americans and Arab Americans, the Hindu American community's relationship with law enforcement has not been hindered as severely by post 9/11 profiling. However, there are other reasons the Hindu American community is likely to under-report hate crimes committed against them.

The challenges that face Hindu Americans can, for the most part, also hold true for the other groups discussed in this note. The strained relationship between these communities and law enforcement can be attributed to several factors:

1) Generational status in the United States: A substantial number of Asian Americans are born outside of the United States, including seventy percent of all Indian Americans (which includes Sikh Americans and many Hindu Americans).<sup>139</sup> The more assimilated the generation, the more likely they will be to have a favorable view of law enforcement.<sup>140</sup>

2) Degree of acculturation and assimilation where Asian American immigrants are surviving, preserving, adjusting, changing, or choosing:<sup>141</sup> Surviving includes individuals who have recently immigrated; preserving includes individuals who have resided in America for more than five years but who still do a majority of socializing within their own culture; and adjusting individuals are normally second generation offspring.<sup>142</sup> Changing individuals are those that have had a majority of their experience in the US.<sup>143</sup> Finally,

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<sup>138</sup> See James Dao, *Taking on Rules to Ease Sikhs' Path to the Army*, N.Y. TIMES (July 7, 2013), [http://www.nytimes.com/2013/07/08/us/taking-on-rules-so-other-sikhs-join-the-army.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/07/08/us/taking-on-rules-so-other-sikhs-join-the-army.html?pagewanted=all&_r=0). See *id.*

<sup>139</sup> Hanser, *supra* note 137, at 53.

<sup>140</sup> *Id.*

<sup>141</sup> *Id.* at 53-54.

<sup>142</sup> *Id.* at 54.

<sup>143</sup> *Id.*

choosing individuals are those that are third generation or later.<sup>144</sup> The degree of assimilation is thought to represent their comfort and satisfaction with law enforcement officials.<sup>145</sup>

3) Comfort with, and competence in, English determines whether these individuals are able to effectively communicate with law enforcement officials.<sup>146</sup>

4) Religious beliefs and cultural value orientation may also hinder the law enforcement community's efforts to communicate with these groups, especially if they unwittingly violate cultural norms.<sup>147</sup>

5) Family cultural dynamics also differ from one family to another and need to be taken into account.<sup>148</sup> Law enforcement officials need to be weary of such cultural sensitivities when dealing with Sikh Americans, Hindu Americans, and Arab Americans.

### *ii. The Changes will not be Implemented Until 2015*

Perhaps the biggest problem is the time it will take the FBI to implement these changes. The FBI announced that hate crime tracking for these three groups will begin in 2015.<sup>149</sup> Assuming the FBI starts collection of data in the year 2015, the data itself will most likely not be available until 2016, and an official report of the data will probably take until 2017. Once the data becomes available, it will likely take time to discern and identify any emerging patterns or trends. Any entity looking through this data will likely need a few years's worth, at least, in order to truly locate and identify patterns, especially if these organizations wish to avail this information to members of Congress in the hopes of incentivizing them to propose policy changes. Assuming the community leaders can rely on, at minimum, one year's worth of data, the earliest any change could be implemented would probably be in the year 2018.

This is an enormous problem, as the threat of hate crime victimization is imminent. These communities are now, and have been for the past ten years, under constant threat and need immediate protection. Therefore, in addition to the changes suggested, additional steps need to be taken in order to effectively combat hate crimes.

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<sup>144</sup> *Id.*

<sup>145</sup> *See* Hanser, *supra* note 137, at 54.

<sup>146</sup> *Id.* at 54-55.

<sup>147</sup> *See id.* at 53.

<sup>148</sup> *See id.*

<sup>149</sup> Kaleem, *supra* note 25.

## IV. Additions to the Solution

In addition to the several reforms suggested to data collection,<sup>150</sup> these additional reforms, which deal specifically with Sikh Americans, Hindu Americans, and Arab Americans, need to be implemented to solve the problem of under-reporting and to combat hate crimes.

### ***A. Law Enforcement Must Foster a Healthy Relationship with these Communities***

In order to combat the problem of under-reporting and hate crimes in general, the FBI and other law enforcement agencies must foster a healthier relationship with these three communities. This is especially true for Arab Americans and Sikh Americans. A healthier relationship can be achieved by implementing several changes in the way the FBI and other law enforcement agencies deal with these minorities.

First, the FBI and other law enforcement agencies must undergo some form of mandatory cultural sensitivity training. The benefits of cultural sensitivity trainings have been explored extensively.<sup>151</sup> This reform can be implemented by something as simple as community organizations visiting various police academies around the country and training police officers for a few hours. Perhaps law enforcement agencies can adopt the Sikh Coalition's approach. The Sikh Coalition recently conducted sensitivity training for over 1,200 NYPD graduates in a single day.<sup>152</sup> The graduates were given information about Sikh beliefs including the significance of the turban and the Sikh articles of faith. Special attention was paid regarding how to respectfully interact with Sikhs who wear turbans, or carry a *Kirpan*, and how to effectively engage with Sikhs in New York City.<sup>153</sup> The presentations lasted around ninety minutes each and included a question and answer session, as well as a turban tying demonstration.<sup>154</sup>

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<sup>150</sup> See Hansdeep Singh, *supra* note 117; see also Hanser, *supra* note 137.

<sup>151</sup> See generally Hansdeep Singh, *supra* note 117.

<sup>152</sup> *America's Largest Police Force Continues Training on Sikhi*, THE SIKH COALITION, <http://www.sikhcoalition.org/advisories/2014/americas-largest-police-force-continues-training-on-sikhi#sthash.Tmt01DAu.dpuf><http://www.sikhcoalition.org/advisories/2014/america-as-largest-police-force-continues-training-on-sikhi> (last visited Mar. 1, 2014).

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

This model of communicating with graduating cadets is fast, efficient, and effective. It exposes law enforcement officials to the Sikh culture and teaches them how to effectively communicate with members of the Sikh community. With access to modern technology, such training can be done virtually, either through live video telecommunications, or even through recorded videos. If something as simple as this approach is incorporated into training programs for police academies and agencies like the FBI, it would go a long way in fostering effective dialogue between the various communities and law enforcement.

Next, Congress has to take a stand and allow religious accommodations to Sikh and Arab American citizens who wish to join the law enforcement community. When law enforcement limits the abilities of Sikhs and Arabs to serve in their departments because of their physical appearance and religious beliefs, communication between the communities is hindered. Close-knit communities like Sikh and Arab Americans would feel more comfortable speaking freely with law enforcement officials of their own race, ethnicity, culture, or background. Denying Sikh Americans and Arab Americans the ability to join the police force, or the FBI, solely because they are religiously mandated to maintain beards and wear turbans sends the wrong message to the community at large. It makes these communities feel isolated, which in turn only increases the sentiment that law enforcement officials are not on their side, thereby hindering communication between both parties.

Finally, the spying on and racial profiling of Arab Americans must be terminated. Law enforcement officials simply cannot expect Arab Americans to contact the FBI to report a hate crime when community members know that these same agencies are spying on them. The problem of under-reporting in the Arab American community will not be resolved by simply adding an additional category to the form. The ongoing harm caused by profiling and spying is still deeply rooted in the community and hinders the FBI's relations with the Arab American community.

### ***B. Re-visiting the Other Categories***

Another way to combat under-reporting of hate crimes would be to re-visit the Hate Crimes Incident Report form altogether. The various other categories/groups on the form create similar problems. For example, in the ethnicity category, the form lists only two categories: "Hispanic" or "Non-Hispanic". Clearly there are

several other ethnicities that have faced bias based crimes. Listing only Hispanic or non-Hispanic categories provide little clarity regarding hate crimes perpetrated on individuals of different ethnicities. Even the term “Hispanic” covers several groups of people from various countries. The FBI ought to revisit the categories listed as soon as possible, get in contact with various community leaders and academic experts in the country and, and revamp the form to truly reflect the changing face of American society.

Another reason to revisit the FBI’s Hate Crime Incident Report form as soon as possible would be the extensive time it takes for the changes to be implemented. As stated earlier, it will most probably take at least until 2018 for the FBI to generate sufficient data on hate crimes against the three groups mentioned in this note. Instead of waiting for each affected community to advocate for their own category, the FBI ought to take the initiative and proactively improve the Hate Crime Incident Report form. Doing so would save both time and resources, foster communication between various groups and law enforcement, and improve the accuracy of hate crime data collection.

### Conclusion

The FBI’s decision to begin tracking hate crimes against Sikh Americans, Hindu Americans, and Arab Americans is a step in the right direction. However, in order to effectively combat the under-reporting problem, the FBI needs to take additional steps. These steps should involve cultural trainings, effective communication with members of the various communities, and an overhaul of the broad categories listed in the Hate Crime Incident Report Form.

As long as hate crimes continue to plague American society, accurate reporting and tracking of such crimes is imperative. Mr. Saini’s mother, and other hate crime victims, deserve not only the dignity of being recorded as a statistic, but also the dignity of being *accurately* recorded as a statistic.