

WELL-FOUNDED FEAR: Understanding Legal Challenges and Best Practices for Sikh Asylum Applicants and Their Attorneys



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THE
SIKH COALITION

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FOREWORD

Indians, and more specifically Sikhs, are one of the largest populations in the world seeking asylum in the United States. Unfortunately, there is little information outside their own communities as to the ongoing persecution of Sikhs in India and the many grave reasons they flee to the U.S. Because the U.S. and India seem to have a friendly relationship, many fail to recognize the instability and mistreatment of Sikhs in India. In addition to the obstacles asylum seekers already face throughout the process, those representing Sikh asylum applicants in particular may not be adequately equipped with the requisite legal understanding, nor may pro se applicants fully understand the type and manner in which certain evidence must be presented. As a result, every year many of those most in need must return to the very places they fled in fear for their lives.

In 2019, The Sikh Coalition¹ became involved with the immigration crisis when called upon to advocate on behalf of Sikh detainees who had suffered a myriad of civil rights abuses in detention centers. Realizing the need for additional context into the plight of Sikh asylum seekers from India, The Sikh Coalition, along with our counsel partners at the Stanford Law School Religious Liberty Clinic² and the Harvard Law School Religious Freedom Clinic,³ have created this asylum report and practitioners' best practices guide to assist applicants in these cases. It is our sincere hope that this report will help shine a light on the issues specific to the Sikh asylum seeker and assist legal professionals and our immigration system in its endeavor towards justice for asylum seekers.

Through our prior advocacy, we recognized that Sikhs were increasingly fleeing India and other countries to seek asylum in the U.S. Then, in turn, we developed an acute awareness of the unique challenges Sikhs face in the American immigration system, many of which are not always fully understood by those in the immigration law community. While many of the authors of this report come from outside that community, our goal is to help pro se litigants and immigration attorneys understand their clients' challenges so they may more effectively navigate the immigration system. Thus, in addition to our own research we collaborated with immigration attorneys and country conditions experts familiar with Sikhs, India, and the historical relationship between this minority group and the Indian government.

As our counsel, we are grateful to the students of the Stanford and Harvard Law School Clinics who studied the background information on Sikhi and the political climate in India to provide an overview of the Sikh experience and their reasons for seeking U.S. based asylum. These students tirelessly researched and drafted this report and guide—the first of its kind for Sikh asylum seekers and their attorneys—and we can't thank them enough for their dedication to this project. We are also grateful to our collaborator, attorney Deepak Ahluwalia of the Singh Ahluwalia Law Firm, who spent many hours sharing his experience and expertise as a practitioner within the immigration court system, and the process legal professionals must follow in these types of cases. Finally, we could not have completed this report without the assistance of attorney and professor Mallika Kaur, Executive Director of the Sikh Family Center, and Harpreet Singh, professor and Sikh Chaplain at Harvard University, whose expertise on the treatment of Sikhs within India and South Asian traditions generally were central to our analysis and understanding of why Sikhs may choose to immigrate to the U.S.

Sincerely,



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INTRODUCTION AND OVERVIEW

This document provides background and practical guidance for legal professionals and pro se Sikh asylum applicants to more effectively make their case for asylum when coming from India to the United States. In providing this guidance, we further hope this document will assist those involved in the asylum process to better understand the historical and current Sikh experience and the specific humanitarian and legal challenges Sikh applicants face in fleeing persecution in India in the hope of safe haven.

Because Sikhs have been the target of increasingly severe religious and political violence in India,⁴ their need for asylum is acute. Sikhs are therefore fleeing India in great numbers, and to the West in particular. Canada saw a nearly 300% increase in Sikh asylum claimants from 2016 to 2018.⁵ And although similarly granular statistics do not exist for the United States, the data show that an increasing number of Sikh Indian nationals are turning to the United States with hopes of asylum there.⁶ With anti-Sikh sentiment on the rise in India in the various ways described below in this document, we expect these numbers only to increase.

But Sikh asylum applicants are often turned away because those involved in the process do not understand Sikh history or culture and its intersection with various facets of the asylum inquiry. Moreover, many applicants and their attorneys are not equipped to effectively tell their stories, posing significant hurdles to their applications. Ultimately, an asylum claimant's success hinges on their ability to demonstrate (1) a reasonable possibility they would be singled out for persecution, or (2) a pattern or practice of persecution against a group of people similarly situated to the applicant such that their link to that group creates a reasonable fear of persecution.⁷ Either option requires an understanding of the context of the applicant's situation and the ability to fully communicate it. Unfortunately, given the unique circumstances surrounding the Sikh experience in India, their challenges are often misunderstood or miscommunicated. This document seeks to fill that gap—to the benefit of applicants, their attorneys, and the asylum system alike.

The document proceeds from this introduction as follows:

Part I surveys the Sikh tradition and its history in India. From the Sikh faith's founding in the fifteenth century up to today, Sikhs have almost always been on the periphery of Indian society while simultaneously playing a historic role as champions for the oppressed. This past informs the present, and the community's dual legacy of persecution and perseverance is critical to understanding contemporary Sikh identity and the corresponding crisis leading to the tragic yet unavoidable need for many Sikhs to flee India.

Moving forward, Part II more directly discusses the challenges confronting many Sikhs in India today. With the ascendance of Hindu nationalism reaffirmed under Prime Minister Narendra Modi, Sikhs are increasingly cast as the "other" in contemporary Indian society. Religious and political violence are common against a variety of religious minorities in India, but Sikhs are a particularly vulnerable

group. Although an asylum case is always built on the individualized persecution of the given applicant, the case studies presented in Part II offer a high-level overview that will help pro se applicants, their counsel, or others involved in the process better present or understand the cultural context leading Sikhs to seek asylum.

Turning then to the nuts and bolts of the asylum process, Part III briefly outlines that process—including the eligibility criteria for asylum, the relevant burdens of proof, and some relevant exceptions to the general rules.

To more specifically address dynamics facing Sikhs in the asylum process, Part IV draws from recent case law and experience to highlight ways Sikh applicants and their advocates can more effectively make their case in asylum proceedings. Sikh asylum applicants, for example, often face difficulties alleging a well-founded fear of persecution due to the unfamiliarity of asylum officers or immigration judges with Sikhi and Sikh traditions.⁸ Although the particular experience of each asylum seeker is what matters, Part IV details how the typical Sikh applicant facing asylum-worthy persecution in India can better define the nature of that persecution as a protected ground for asylum, deal with those who might unfairly doubt the sincerity of the applicant's beliefs, and overcome prejudices when it comes to a credibility assessment.

In closing, Part V offers a brief recapitulation of best practices for Sikhs who meet the legal test for asylum but need help overcoming the obstacles described in the document. Where appropriate, it recommends dealing with a decisionmaker's lack of knowledge about the Sikh experience in India by articulating persecution on a combination of religious, political, or social-group grounds. Additionally, it flags the option of supporting a given claim with evidence of persecution against other Sikhs—especially those similarly situated to the applicant—as well as the need to explain why relocation within India is not a reasonable alternative to asylum.

I. A SHORT HISTORY OF THE SIKH FAITH IN INDIA

An overview of the history of Sikhs in India is foundationally significant, first to remind an asylum applicant of that history as helpful background for their application, but also—and perhaps more importantly—to orient a generalist immigration practitioner to the context from which their client may be coming. Although each applicant is an individual facing a unique set of circumstances, some background on Sikh history is particularly helpful for the non-Sikh advocate so that she can better “anticipate the places where her ... world view might not be the same as that of her culturally different client” and come to a client counseling situation equipped to ask perceptive questions in service of her client and more effectively tell her client’s story.⁹

With these goals in mind, the discussion below describes the founding of the Sikh religion and how an early history of persecution shaped the faith’s emphasis on civic engagement. The discussion then explores relevant legacies of British imperial rule; namely, a fractured geography and a simplification of Indian history by those in power. Finally, Part I closes by discussing post-colonial violence against Sikhs to better contextualize their modern experience.

A. Early Sikh History

The Sikh faith’s rich and grounded tradition amid a long and growing history of persecution informs its adherents’ experience and the community’s need for asylum today more than ever. Sikhi was founded in the Punjab region straddling modern-day India and Pakistan in the late fifteenth century by Guru Nanak Dev Ji.¹⁰ Nanak lived during a particularly volatile period in the region’s history, with decades of Turkic and Afghan invasions that brought certain cultural interchange yet also spawned a bitter rivalry between adherents of Islam and Hinduism.¹¹

Against this backdrop and after a profound spiritual revelation, Guru Nanak founded Sikhi as a monotheistic religion that, among other things, taught unity and equality while rejecting many of what he saw as divisive aspects in the dominant culture and religious perspectives of the region at the time.¹² Notably, Sikhi rejected the caste-based society—despite Nanak having been born into a privileged caste himself.¹³ And although the new religion had similarities with certain Hindu and Muslim concepts, as well as those of other faith traditions, Nanak “ultimately fashioned out his own philosophy elevating truth to the highest status and recognizing God as one.”¹⁴

Guru Nanak appointed a successor before his death, and over the following century an additional nine human gurus formalized and built on the foundation he provided—and often in the face of severe resistance. In responding to the exigencies of their times, the

Gurus developed the faith in ways that have endured for centuries despite the ongoing persecution it has faced.

Among the Sikh religion's prominent teachings and founding traditions is its integrated emphasis on civic duty—and associated action. After the Fifth Guru was martyred by Mughal rulers, his successor wore two swords at his investiture to represent the dual importance for Sikhs to maintain both *miri* (temporal power) and *piri* (spiritual authority). This temporal-spiritual emphasis grew following the martyrdom of the Ninth Guru for his principled defense of religious freedom in the law—notably, that it should extend to the right of Hindus to practice their faith.¹⁵

The Ninth Guru further developed Sikh identity as “based on the concept of ‘soldier saint’: spiritually pure people who uphold the principles of equality, justice, and compassion by force when necessary.”¹⁶ Even today, Sikhs are expected to carry out their temporal duties as a religious matter, especially when standing up for the oppressed.¹⁷ As discussed in Part IV below, educating asylum adjudicators on the enduring importance of the *miri-piri* philosophy can help in obtaining a successful outcome in an asylum case, especially for a politically active claimant.

In any event, and despite the just-described martyrdom of founding gurus and other forms of oppression in the Mughal era and into succeeding Hindu kingdoms, Sikhi survived and persisted. A Sikh Empire even developed during the Mughal decline of the mid-eighteenth century, where Sikh confederacies resisted Mughal and Afghan rule and were consolidated into a governing authority that stretched from Afghanistan to the Himalayas.¹⁸ The Sikhs remained in power even as British rule spread across the subcontinent. It was not until the death of Maharaj Ranjit Singh, followed by Anglo-Sikh Wars, that Britain ultimately annexed the Sikh Empire in 1849.

B. British Colonial Rule

When the British brought their empire to Punjab in the nineteenth century, the Indian subcontinent was host to “multiple communities based on various identities.”¹⁹ The concept of a homogeneous or national religious identity was largely absent at the time.²⁰

The delicate religious and cultural balance of this region was lost on the British colonizers. When taking the first census of 1871-72, the government required respondents to record their religion and caste. In creating a numbers game, the colonizers gave Sikhs a minority status as compared to both Muslims and those which the government termed “Hindus.”²¹ Imperial rule thus codified and even created religious distinctions in the region, ultimately stoking rivalry between communities on account of religious identity.

To seemingly ingratiate themselves to the Sikh community after highlighting their minority status, the British government only further deepened the distinction between Sikhs and other religious groups by recruiting many Sikhs to the British Army. There, Sikh religious practices like the wearing of a turban were accommodated, but in part “to preserve them from the contagion of Hinduism.”²² To the British, Sikhs were deemed “a brave and ‘martial’ race” in comparison to the “Hindus.”²³

Even today, the reaction against this perceived and antiquated denigration of Hinduism has helped fuel the nationalist movement: “in recent Hindu nationalist ideological campaigns, Jai Shri Ram [the Hindu god most associated with morality and ethics] has been weaponized to express muscularity, masculinity, and coercion—as opposed to kindness and compassion...[T]he meaning of Jai Shri Ram has been transformed into a battle cry for the establishment of a Hindu nationalist polity, presided over by a Hindu nationalist state.”²⁴ As will be discussed in more detail below, this weaponized religious masculinity has increasingly turned against religious minorities such as Sikhs and Muslims.

C. The Post-Colonial Era and Anti-Sikh Violence

When India and Pakistan were partitioned into independent countries in 1947, the Sikh homeland and former independent kingdom of Punjab was divided between the newly formed countries as the British separated Hindu and Muslim majorities.²⁵

This significantly disenfranchised the Sikh community, which relied heavily on the agriculture-rich land of Punjab as a source of livelihood and way of life. Despite their contribution to the subcontinent and the cause of independence, as well as a desire for an independent state, Sikhs were forsaken when it came time to draw the maps: There would be no autonomous or even majority Sikh state, with their historic cultural, religious, and economic base of Punjab remaining divided between India and Pakistan.²⁶

More immediately, the partition of Punjab triggered a massive humanitarian crisis, with more than 500,000 dead and another 12 million dislocated.²⁷ Additionally, it resulted in the loss of some 140 Sikh holy sites and gurdwaras (Sikh houses of worship) in Pakistan alone.²⁸ The partition thus remains a vivid reality for Sikhs today, with those experiencing political or religious violence often able to draw a straight line to the not-so-distant past, “joining the dots between past genocidal violence and present threats of genocide.”²⁹

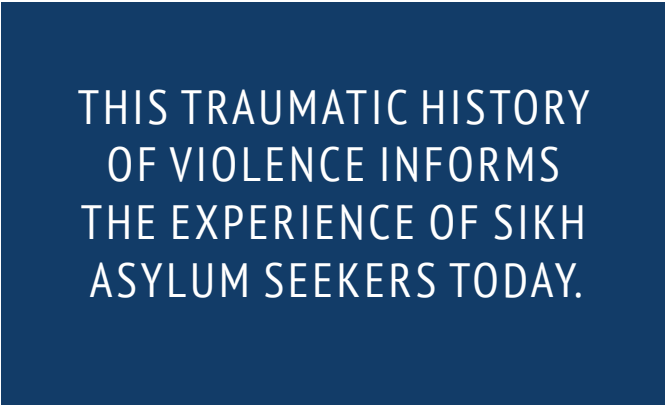
It was not until 1966 that Sikhs even made up the majority of the province, when the Indian government redrew Punjab’s boundary on the “language principle” (delineating districts across linguistic lines).³⁰ Yet still, the political structure was insufficient to fully protect Sikh interests—whether in the form of an autonomous homeland or otherwise.

During the 1970s, the Sikh community protested and introduced the “Anandpur Sahib Resolution,”³¹ which set forth demands for decentralization of federal power, water rights for the state government, a stronger social welfare system, and promotion of the Punjabi language and Sikh faith. Rather than address these significant concerns, the Indian government responded with violence and mass arrests.³²

Then came a charismatic Sikh leader, Jarnail Singh Bhindranwale, who gained influence and became the face of the movement for decentralization and the Sikh demand for increased autonomy and rights. He also led hundreds of thousands of Sikhs to follow the orthodox way of life ordered by the last of the founding Gurus. Bhindranwale’s popularity was seen as a threat by the government of then-Prime Minister of India, Indira Gandhi.

On June 1, 1984, during a major Sikh religious festival, Indian troops and tanks forcibly entered the Golden Temple Complex at Amritsar (one of the holiest sites in the Sikh tradition) to capture Bhindranwale, who at the time had neither legal charges pending nor an arrest warrant issued against him.³³ Simultaneously, Indian armed forces orchestrated a coordinated military operation to attack 37 gurdwaras throughout Punjab. In what the government called “Operation Blue Star,” thousands of Sikhs perished, religious treasures were destroyed, and holy sites sustained significant damage.³⁴

In retaliation, Prime Minister Indira Gandhi was murdered by two of her Sikh bodyguards on October 31, 1984.³⁵ Beyond executing those responsible for her killing, however, those sympathetic to Ms. Gandhi responded with wholesale violence against Sikhs across the country. According to Human Rights Watch: “Over three days, at least 2,733 Sikhs were killed in Delhi[,] their property looted and



THIS TRAUMATIC HISTORY
OF VIOLENCE INFORMS
THE EXPERIENCE OF SIKH
ASYLUM SEEKERS TODAY.

HISTORY OF THE SIKH FAITH AND PEOPLE: SIGNIFICANT EVENTS DRIVING THE FEAR OF PERSECUTION

1469	Birth of Guru Nanak
1849	Annexation of the Sikh Empire and Beginning of Colonial Rule
1871 - 1872	First imperial census recording religion and caste
1947	Partition of Punjab
1966	Redrawing of Punjab's boundary by the Government of India on "the language principle"
1970s	Introduction of the Anandpur Sahib Resolution
June 1, 1984	Government of India forcefully enters the Golden Temple (Operation Blue Star)
October 31, 1984	Assassination of Prime Minister Indira Gandhi precipitates anti-Sikh violence

destroyed. Many women were raped in the capital. Hundreds of Sikhs were killed elsewhere in the country.”³⁶ Despite independent inquiries substantiating police and government complicity, only a handful of individuals were ever prosecuted and convicted.³⁷

Even more than the 1947 partition, Sikhs throughout India and across the world remember the state-sponsored violence of 1984. Furthermore, and as one expert has put it, “the temporal divide between 1984 and 2021 ... is getting compressed—trauma that is not finite and finished, but chronic and persistent, is manifesting itself all over again.”³⁸ This traumatic history of violence informs the experience of Sikh asylum seekers today.

D. Hindu Nationalism and Modern Sikh Politics

In many ways, the contemporary persecution of Sikhs can best be understood in the context of a broader rise of Hindu nationalism that has threatened religious minorities throughout India.

According to anthropologists, Hindu nationalism is a movement aimed at “transform[ing] Indian public culture into a sovereign, disciplined national culture rooted in what is claimed to be a superior ancient Hindu past [while] impos[ing] a corporatist and disciplined social and political organization upon society.”³⁹ Its political vanguard has been the Bharatiya Janata Party (BJP), which has been a powerful influence in Indian politics since the 1970s and is now the ruling party.⁴⁰ What’s more, the present leader of the BJP is Prime Minister Narendra Modi, a figure whose responsibility for religious violence in Gujarat once caused the United States to cancel his visa for “severe violations of religious freedom.”⁴¹

Indeed, despite the generally good relations enjoyed between the United States and India in other matters, the rise of religious

violence in India recently led the bipartisan United States Commission for International Religious Freedom (USCIRF) to recommend that India be designated a “Country of Particular Concern.”⁴² And although the State Department rejected the formal designation, the U.S. Ambassador-at-Large for International Religious Freedom has since echoed USCIRF’s concern about the violence as a festering problem.⁴³

It is important to note that although Sikhs have their own political organizations, these organizations are weak and fragmented. The oldest Sikh political party is the Shiromani Akali Dal (SAD), which has functional control over the Shiromani Gurdwara Parbandhak Committee (SGPC)—the organization that administers the Golden Temple Complex and a number of gurdwaras in Punjab and elsewhere.⁴⁴ But the SAD only nominally provides a vehicle for political action. In the Punjab legislature, the SAD controls just 14 of the 117 seats; by contrast, the majority party, the Indian National Congress (INC or Congress Party), holds 80 seats.

The SAD is also split into factions that prevent its unity. These include a longstanding majority faction led by Sukhbir Singh Badal (the “Badal Party”) and a somewhat smaller offshoot that was founded in 1994 by Simranjit Singh Mann (the “Mann Party”) that more directly seeks independence for the Sikh people.⁴⁵ Since founding his faction, Mann has been a vocal advocate for the creation of Khalistan, a Sikh-majority nation-state, and the Indian government and INC partisans have done much to repress Mann and his followers’ activities.⁴⁶

It is also important to understand the nuances of the political parties. The dynastic Badal Party, for example, allied itself for decades with the BJP, and its members have been known to have been quietly complicit in human rights violations against Sikhs or in laws passed against their interests. Whereas the current ruling party of Punjab—the Congress Party—has openly threatened supporters of Khalistan. What is useful to understand is that the BJP, Badal Party, and Congress Party all oppose creating a separate nation and vehemently oppose the concept of Khalistan. This is perhaps the only thread that unites all three parties, and the distinction between and among those affiliated or opposed should be kept in mind in the asylum context.

II. TODAY'S CHALLENGES

Turning to the present, Sikhs face a particularly harsh combination of political, religious, economic, and social persecution in India. Anti-Sikh sentiment and Hindu nationalism have been part of the landscape for decades, yet, as USCIRF recently observed, conditions have only deteriorated in recent years. Sikhs, like other religious minorities in India, now “face challenges ranging from acts of violence or intimidation, to the loss of political power, increasing feelings of disenfranchisement, and limits on access to education, housing, and employment.”⁴⁷ In 2020, this persecution was most visible in the crackdown against Sikh farmers who protested the government’s policy of agricultural deregulation.

Indeed, the farmer protests showcase the discrimination and misrepresentation Sikhs face throughout India. The agricultural bills that were passed disproportionately affect the bargaining and selling power of Sikh farmers, leaving them to the depredations of private companies without any safeguards, regulations, or benchmark pricing.⁴⁸ Yet state-sponsored media have distorted the economic and social struggle attached to the bills, labeling Sikh farmers “terrorists” and spreading false narratives about Sikhs in India and abroad.

In any event, understanding these and other persecutions requires a discussion of the following: (A) subordination of Sikh culture to the Hindu majority; (B) police misconduct and targeting of Sikhs; (C) persecution of those who support the Khalistan movement; and (D) a more in-depth look at anti-Sikh sentiment in the recent agricultural deregulation and farmers protests.

Before beginning this survey of contemporary challenges, however, it is worth noting two things. First, because the Sikh tradition values civic action under the miri-piri philosophy, it is unlikely that observant Sikhs will cease their political activities in the face of government repression—thus deepening the long-term, ongoing need for asylum in these cases. Second, although critics might claim that anti-Sikh bias in India is negated by the prominence of certain Sikhs in Indian society—including, say, the former prime minister Manmohan Singh—the fact that a select group of Sikhs has prospered in the prevailing political system should not dismiss the individualized persecution that thousands of Sikhs still face based on their religious, social, or political affiliations across India.

A. Subordination of Sikh Culture

Sikhs are subjected to various legal and cultural injustices in contemporary India that deny their full participation in society and subordinate Sikh culture to the Hindu majority. Sikhi is still not accepted by many Hindu nationalists as a separate religion, and its teachings are often explicitly rejected by the Hindu establishment. Indeed, the threat of Sikhs losing their identity “in a sea of secu-

larism or, worse, in a flood of resurgent Hinduism” was one of the motivating factors for Bhindranwale’s separatist movement back in the 1980s.⁴⁹

Sikhs, for example, are falsely characterized as a type of Hindu in the Indian constitution,⁵⁰ and, until recently, Sikhs married in gurdwaras were even forced to have their marriages classified as “Hindu” under the “Hindu Marriage Act.”⁵¹ Accordingly, because many Hindu nationalists erroneously believe that Sikhs are a subset within Hinduism, Sikhs often suffer “virulent attacks when they assert their separateness as a religion.”⁵² The reaction is often even worse when Sikhs come to the aid of Muslims and other religious minorities. For instance, Sikhs were targeted by hardline Hindu groups after opening gurdwaras for shelter to Muslims during a series of anti-Muslim riots spurred by the government’s opposition to Muslim refugees in 2020.⁵³

B. Police Misconduct and Targeting of Sikhs

SIKHS ARE SUBJECTED TO VARIOUS LEGAL AND CULTURAL INJUSTICES IN CONTEMPORARY INDIA THAT DENY THEIR FULL PARTICIPATION IN SOCIETY AND SUBORDINATE SIKH CULTURE TO THE HINDU MAJORITY.

The South Asia director for Human Rights Watch recently observed, “Indian authorities are using draconian counterterrorism laws against activists simply for criticizing or raising their voices against injustice.”⁵⁴ One of those laws is the Unlawful Activities Prevention Act (UAPA). The World Sikh Organization of Canada notes that, “[s]ince June 2020, hundreds of Sikhs have been detained and interrogated in India due to their social media activities, and some have been charged with offences related to support for Khalistan under the [UAPA].”⁵⁵ The UAPA has been heavily used against Sikhs: over 99% of those charged under it in Punjab have been Sikh.⁵⁶ And although numerous abuses of power against Sikhs have been catalogued by activist groups, two recent incidents stand out: those of Jagtar Singh Johal and Nodeep Kaur.⁵⁷

Jagtar Singh Johal, a British citizen, was arrested under the UAPA while visiting India and has been held without a trial since 2017.⁵⁸ He claims to have been tortured and forced to sign a blank sheet of paper on which the police later wrote a false confession.⁵⁹ Despite having appeared in court over 150 times, the government has yet to secure a conviction.⁶⁰ Jagtar’s brother believes Jagtar was targeted

because of his involvement with the website “NeverForget84.com,” which commemorates the 1984 raid on the Golden Temple.⁶¹ Regardless, the evidence on which the Indian police are holding Jagtar has led nearly 140 members of the British Parliament to call on their government to urge Jagtar’s release while decrying what they view as his arbitrary detention, torture, and potential death sentence on the basis of trumped-up charges.⁶²

Dalit Sikhs—those whose family lineage is from India’s lowest caste—tend to face even greater abuse when they speak out against the government. The assault of Nodeep Kaur, a Sikh activist who spoke against the treatment of Dalits in Indian society and was arrested on January 12, 2021, is a seeming prime example. After demonstrating outside a factory on the outskirts of Delhi in connection with the recent farmers protests, Nodeep was arrested and allegedly sexually assaulted and tortured.⁶³ Nodeep has since been accused of various offenses including “attempt to murder, extortion, and trying to snatch official documents and a gun from the police.”⁶⁴ Like Jagtar, Nodeep’s arrest has sparked an international outcry—including in British parliament, and even in a viral tweet

from Meena Harris, the niece of U.S. Vice President Kamala Harris.⁶⁵

C. Persecution of Khalistan Supporters

Any affiliation with Sikh groups promoting an autonomous Sikh state can put an individual at risk for police surveillance, arbitrary detention, and extrajudicial violence. The Immigration and Refugee Board of Canada notes, “Sikh communities that advocate for and support a separate Sikh state or Khalistan ... are subject to monitoring and in some cases, detention and torture.”⁶⁶

As detailed below, even Sikhs’ democratic right to freedom of speech has been labelled seditious and is often censored. This is especially true when their statements are in support of a Sikh state or otherwise related to issues involving the Punjab region or the plight of Sikhs in general.⁶⁷ The BJP-led government’s February 2021 demand that Twitter remove nearly 1200 accounts related to the farmers protests can be seen as but a microcosm of the larger problem.⁶⁸

D. Monitoring, Tracking, and Targeting

The Indian government has the means to track, surveil, and monitor its citizens. Under the Aadhaar Act, individuals’ demographic and biometric information are collected and assigned a unique 12-digit “Aadhaar number.” Although the program is nominally voluntary, it is “all set to become universal and ubiquitous” as a single point of online/offline verification in India.⁶⁹ As one commentator observed several years ago, this has grave surveillance implications: “Once Aadhaar becomes an all-purpose identification tool, your life will be as transparent to the state as a contact lens. Details of your railway bookings, phone call records, financial transactions and so on will be accessible to the government at the click of a mouse without invoking any special powers ...”⁷⁰

EVEN SIKHS’ DEMOCRATIC
RIGHT TO FREEDOM
OF SPEECH HAS BEEN
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More specifically, the government has shown an apparent willingness to put cutting-edge technology to work by using social media to “target and prosecute Sikhs and members of other minority communities who advocate on human rights and political issues.”⁷¹ In recent years, the police have been found to have arrested Sikh youths on little to no evidence, often under false pretenses of supporting the Khalistan movement.⁷² In February 2019, an 18-year old boy was arrested for “liking” a poem promoting Khalistan that had been posted on Facebook; he was later released “in exchange for a written apology and deactivation of his Facebook account.”⁷³

Other Sikh youths have been tracked, detained, or “deradicalized” for what could only be described as minor connections with the Khalistan cause. As one Sikh youth said to a reporter:

I am using the right given to us by the Indian constitution to peacefully protest and demand Khalistan for the last eight years. I am not connected to Referendum 2020. No case is registered against me as I have never violated any law or indulged in violence. But the police started raiding my house and badgering my father and brother to get me to quit this path. Now they have snapped ties with me and I am forced to live with my in-laws.⁷⁴

Also in February 2019, three Sikh youths were sentenced to life in prison reportedly for possessing photographs and books about Sikh martyrs.⁷⁵

E. Extrajudicial Harassment and Violence

Harassment against Sikhs by Indian authorities and the public can be severe even when suspects are not formally arrested or charged. In particular, those associated with the Mann Party and its Khalistan platform are often harassed, intimidated, and harmed by those who oppose them.

For example, Mann party member Chanpreet Kaur testified she was in her early twenties when Congress Party members “accosted her in the street, cursed her, and told her that she would not ‘be able to show [her] face to the world’ if she continued working for the Mann Party.”⁷⁶ After refusing to end her affiliation with the Khalistan-supporting group, Chanpreet was assaulted by a group of Congress Party members who dragged her into the street and attempted to rape her.⁷⁷ Even after leaving India, Chanpreet received threatening phone calls from Congress Party agents saying they were “going to kill [her]” and bring her “dead body back to India.”⁷⁸ As is relevant to the asylum context, the Ninth Circuit Court of Appeals held such harassment could be deemed to have been initiated by the government given the Congress Party’s control of the Punjab legislature.⁷⁹

In another instance, Lovepreet Singh, a twenty-three-year-old Dalit Sikh, was summoned by the authorities under the UAPA as a witness in connection to a case regarding the “pasting of Khalistan ... banners at different locations in Punjab and New Delhi.”⁸⁰ The next day, he died by suicide. Because Lovepreet’s body was bruised and bandaged at the time of his death, his parents are convinced his “interrogation, and possible torture, by the [authorities] pushed him to take his life.” According to observers, Lovepreet’s case is “only one of the hundreds of cases of harassment, intimidation, torture and wrongful arrest in connection with the Khalistan movement.”⁸¹

F. Repressing Khalistan Abroad

The Indian government has also flexed its influence abroad to repress the Khalistan movement.⁸² After imposing a national ban on the pro-Khalistan group Sikhs for Justice, the Indian government sought assistance from other countries in rooting out support for the organization.⁸³ When Canadian Prime Minister Justin Trudeau visited India, the Indian government passed along a list of nine Canadians suspected of promoting Khalistan.⁸⁴

The Indian government has also been caught reaching across international boundaries and recruiting those of Indian descent to spy on Sikhs suspected of supporting Khalistan. Recently, a German court convicted an Indian couple of spying on Sikhs for India’s intelligence agency.⁸⁵

G. The Farmers’ Protest and Other Discrimination

As noted above, anti-Sikh discrimination and violence has likewise been associated with India’s new farm laws and the government’s reaction to protests against them.

The farm laws, passed in the fall of 2020, allow buyers of crops to bypass government price-setting boards and negotiate directly with farmers. In adopting these laws, the government argued the legislation would accelerate the modernization of Indian agriculture by encouraging private investment and allowing for contract farming—an arrangement under which small farmers produce crops for corporate investors according to privately negotiated terms.⁸⁶

In contrast, farmer unions believe this new system will cause the breakdown of government marketing boards, which purchase much of the surplus food grain at set prices and provide financial security for farmers. This is particularly concerning because farmers in India are already struggling to survive amid a host of other challenges. Farmer suicides have increased twelve-fold over the past five years, and “three to four farm deaths are reported in the local news almost every day.”⁸⁷ Given that these new farm laws seem poised to worsen the farmers’ predicament, many have been protesting against them, further alienating themselves from the Modi government.

More directly, because the new farm laws most acutely affect the Punjab and Haryana provinces—which account for just 3% of India’s land mass but 50% of its surplus agricultural product—the laws have disproportionately harmed India’s Sikhs, who make up a majority of Punjab’s citizens and workforce. Thus, many view these laws as systemically targeting Sikhs in a combination of religious, cultural, and economic disenfranchisement.

Even if the new farm laws did not intend to wholly target just the Sikh community at the outset, Sikhs have been villainized in a widespread political effort to discredit the protests.⁸⁸ There have been “transparent attempts by some in the Indian media to paint the farmers as being overrun by Sikh separatists, or to claim they are working for Pakistan.”⁸⁹ Pro-BJP activists have even held “menacing rallies outside Sikh places of worship,”⁹⁰ and those participating in protests have been subjected to excessive force by police.⁹¹ So far, at least one protestor has been killed in clashes with police forces, with the government claiming the protestor fell from a tractor, despite local television reporters maintaining he was shot.⁹²

The stigmatization of Sikhs has even affected Sikh communities outside of India, where there have been “increased [acts of] abuse and attacks from pro-Modi government supporters and Hindu nationalists.”⁹³ Though critics of Modi’s government have faced various forms of hatred for some time, international observers have stressed that “this hate has been particularly directed against the Sikhs and social media since the farmers movement began.”⁹⁴

The situation has deteriorated to the point that at least nine journalists who reported that police officers shot and killed the protestor alleged to have fallen from his tractor have been jailed.⁹⁵ These journalists have also received death threats and been accused of being part of an “anti-Indian conspiracy” that should lead to them being hanged.⁹⁶

Sadly, the farmers protests can be understood as just the latest flashpoint in a decades-long struggle between Sikhs, for whom speaking truth to power is part of their religious identity, and those in the Indian government who have consistently tamped down on dissident elements—real or perceived.⁹⁷ Some have noted the cyclical, recurring nature of Sikh persecution, contextualizing this latest protest by recalling the partition of 1947 and Operation Blue Star in 1984 in yet another “joining [of] the dots between past genocidal violence and present threats of genocide.”⁹⁸

III. THE ASYLUM APPLICATION PROCESS

Having discussed the history of Sikhi and the many contemporary challenges facing Sikhs in India, we will now shift gears to focus on asylum and, specifically, the asylum process.

Applying for asylum in the United States is a multi-step process that can either begin as an affirmative application or as a defense to removal. Applicants present in the United States may generally make an affirmative application within one year of arrival. Alternatively, individuals may assert a fear of persecution in immigration removal proceedings as a defense to removal.

If an individual makes an affirmative application, it is adjudicated by an asylum officer of the U.S. Citizenship and Immigration Services (USCIS). In removal, the asylum defense is adjudicated by an immigration judge under the Department of Justice.⁹⁹

If an applicant is unsuccessful at the initial application or removal-defense stage, they may appeal to the Board of Immigration Appeals (BIA).¹⁰⁰ And although the BIA reviews questions of law, discretion, and judgment de novo, it defers to the asylum officer or immigration judge on questions of fact by reviewing the lower decision on those grounds only for clear error.

If denied by the BIA, an applicant may petition for review by a federal Court of Appeals. Like the BIA, however, such court review is limited: federal courts review de novo whether the BIA applied the correct standard of review and all other questions of law, but otherwise apply a “substantial evidence” standard. This latter, deferential standard means “[t]he BIA’s decision must be affirmed if it is supported by reasonable, substantial, and probative evidence on the record considered as a whole.”¹⁰¹ Put another way, the court grants the petition only if the asylum applicant “shows that ‘the evidence not only supports [reversal of the BIA’s decision], but compels it.’”¹⁰²

These standards of review require Sikh asylum applicants to carefully present a complete and consistent account at the initial fact-finding stage to be successful.

A. Eligibility for Asylum

To be eligible for asylum, applicants must demonstrate that they are a refugee as defined by the Immigration and Nationality Act (INA), meaning they are “unable or unwilling” to avail themselves of the protection of their home country “because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group (PSG), or po-

litical opinion.”¹⁰³ Throughout the asylum application process, the burden is generally on the asylum seeker to prove they meet this definition.

Notwithstanding an applicant’s eligibility for asylum, the application may be denied if the claimant falls within one of several barred categories of persons or exceptions to eligibility.¹⁰⁴ In most cases, however, the denial of an otherwise-eligible applicant’s claim will typically arise from the claimant’s failure to make the substantive case for asylum. The remainder of this section will therefore explain the particular elements of an applicant’s credible assertion of a well-founded fear of persecution on account of a protected ground.

IN ORDER TO GAIN ASYLUM IN THE UNITED STATES, AN ASYLUM-SEEKER HAS THE BURDEN OF PROVING THAT THEY ARE:

- 1 Unable or unwilling to return to their home country, and
- 2 Unable or unwilling to avail themselves of the protection of their home country
- 3 Because of persecution or a well-founded fear of persecution
- 4 On account of race, religion, nationality, membership in a particular social group, or political opinion.

Source: INA § 208

1. “Well-Founded Fear”

Notably, the need for an applicant to show a “well-founded fear” of persecution does not require a finding that persecution would in fact be more likely than not to occur should the applicant be sent home.¹⁰⁵ Rather, the question is a subjective one that focuses on the individual’s concerns; even a one-tenth chance of death or forced labor could theoretically give rise to a well-founded fear.¹⁰⁶ And as for the “well-founded” qualifier, the applicant must generally “provide evidence that there is a reasonable possibility that he or she would be singled out individually for persecution.”¹⁰⁷ Alternatively, however, the applicant can establish “a pattern or practice ... of persecution of a group of persons similarly situated to the applicant” where the applicant’s “inclusion in, and identification with” that group creates a reasonable fear of persecution.¹⁰⁸

In any event, evidence of past persecution creates the rebuttable presumption that an applicant has a well-founded fear.¹⁰⁹ In that case, the government can refuse asylum only if it can demonstrate a fundamental change in circumstances since the first instance of persecution or that the applicant could avoid future persecution by reasonably relocating within their home country.¹¹⁰

2. “Persecution”

The operative Immigration and Nationality Act does not define “persecution,” but courts have described it as “the infliction of suffering or harm upon those who differ ... in a way regarded as offensive.”¹¹¹ That said, such persecution is more than “mere discrimination or harassment.”¹¹² Indeed, persecution under the INA is still “an extreme concept that does not include every sort of treatment our society regards as offensive.”¹¹³ Rather, such persecution typically involves some sort of physical violence, severe economic or psychological harm, or imprisonment.¹¹⁴ Examples of conduct deemed persecution include: being detained and beaten by local police for participation in political activities;¹¹⁵ attempted rape or kidnapping;¹¹⁶ or death threats and physical attacks.¹¹⁷

Importantly, recognized persecution can be perpetrated by both state and non-state actors. The central question when the state is not the perpetrator, though, is whether the government is “unwilling or unable to control the group.”¹¹⁸ Notably, the U.S. Court of Appeals for the D.C. Circuit recently endorsed an interpretation of this “unwilling or unable standard” to encompass a situation where the government, despite its willingness to investigate a murder, appeared incapable of offering the victim’s family protection from organized criminals.¹¹⁹

3. “On account of” a Protected Ground

In addition to a well-founded fear of persecution, the asylum applicant must also prove a nexus between their fear of persecution and one of the protected grounds enumerated in the INA; namely, race, religion, nationality, membership in a particular social group (PSG), or political opinion.¹²⁰ The evidence may be either direct or circumstantial.¹²¹

This element of an asylum claim is particularly nuanced where persecution is based on political opinion or membership in a PSG. As to the former, for example, courts have held that one need not actually hold a particular political opinion for it to subject them to persecution. Rather, persecution may also arise when an individual has had a political opinion imputed to them or is even perceived to be politically neutral to their detriment.¹²² But the evidence must still demonstrate that the persecution in fact resulted from politically motivated behavior, not merely behavior with a political dimension.¹²³

As for the requirements for membership in a PSG, the law is in many ways indeterminate; after all, the INA itself does not define “particular social group.” That said, it is “well-accepted” that a group is protected if it possesses a common characteristic that members “either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences.”¹²⁴ Yet courts also impose a “circularity rule,” meaning an applicant must show they are persecuted for being a member of a group that “exist[s] independently” of the harm alleged; in other words, the group must not be defined by its persecution.¹²⁵ Paradigmatic examples of protected social groups include gay men and disabled individuals.¹²⁶

There is also some disagreement regarding the requirement for showing a nexus between membership in a PSG and persecution. In a recent decision involving the 2005 REAL ID Act’s amendment to asylum requirements, the Acting Attorney General objected to the conceptualization in some courts of the nexus requirement as providing the reason “‘why the applicant, and not another person is threatened’ or harmed.”¹²⁷ In other words, he rejected a nexus test that requires only but-for causation.¹²⁸ The Attorney General instead insisted that the REAL ID Act requires the protected status for which someone is persecuted to be “at least one central reason” for that person’s persecution by the perpetrators involved; it cannot be incidental or tangential to another reason for the harm.¹²⁹ As a result, and given the Attorney General’s authority over immigration judges, the REAL ID Act presently requires “more than but-for causation.”¹³⁰

B. Burden of Proof

As mentioned, the burden of proof rests on the asylum applicant to demonstrate a well-founded fear of persecution based on protected status. Accordingly, and as described in more detail in the next Part, asylum will not be granted unless the applicant's testimony is "credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee."¹³¹

This credibility determination will in turn be based on an applicant's "demeanor, candor, or responsiveness," as well as the following: the "inherent plausibility" of the applicant's account; the internal consistency of that account; the account's consistency with the applicant's other statements and other evidence (including State Department country conditions reports); and any inaccuracies or falsehoods.¹³² The evidence offered typically consists of the applicant's testimony and additional corroborating materials, such as affidavits from family members and third-party sources.¹³³ An applicant is not entitled to a presumption of credibility, except on appeal if "no adverse credibility determination [was] explicitly made."¹³⁴ And once a determination is made, a reviewing court will afford the asylum officer or immigration judge's credibility determination "great weight" under a deferential substantial-evidence review.¹³⁵

C. Exceptions to Eligibility and Barred Persons

Finally, it should also be noted that the INA categorically excludes certain individuals from asylum, whether as a procedural matter or as a substantive matter.

Procedurally, individuals cannot apply for asylum beyond one year after their date of arrival in the United States—barring extraordinary circumstances causing delay.¹³⁶ Moreover, applicants whose previous application was denied may not apply again unless there has been a change of circumstances materially affecting their eligibility.¹³⁷

Substantively, applicants are also barred from obtaining asylum if they fall into one of several categories.¹³⁸ These include individuals who are themselves perpetrators of persecution; individuals convicted of certain serious crimes or who committed a "serious nonpolitical crime" prior to arriving in the United States; individuals regarded as a security danger to the United States; individuals who have engaged in terrorist activity; and individuals who were "firmly resettled" in another country prior to arriving in the United States.¹³⁹ Additionally, the Attorney General has discretion to specify further conditions rendering certain individuals ineligible for asylum.¹⁴⁰

Lastly, recall that even an individual's evidence of past persecution is not sufficient to justify asylum if there is evidence that the applicant could avoid persecution by relocating to another part of their home country and it would be reasonable to expect them to relocate.¹⁴¹

IV. CHALLENGES FOR SIKH ASYLUM APPLICANTS

Asylum-eligible Sikhs from India can nonetheless face a series of frequent challenges when seeking to credibly allege a qualifying fear of persecution. Due to the lack of familiarity with the Sikh faith by asylum officers and immigration judges, for example, Sikh asylum applicants must carefully explain the nature of their persecution along one or more protected grounds (Section A). When alleging religious persecution, moreover, Sikhs will likely be questioned about the sincerity of their beliefs, which they should be prepared to explain (Section B). Lastly, Sikh applicants and their attorneys should prepare evidence necessary to survive a credibility assessment, including details about general country conditions and the applicant's individualized circumstances, as well as corroborating evidence from family, friends, or third-party sources (Section C).

A. Demonstrating a Well-Founded Fear of Persecution on a Protected Ground

As mentioned, an individual must allege persecution on account of one of the INA's five protected grounds. It is critically important, therefore, for a claimant to explain the nexus between the persecution faced and their religious, political, and/or social identity. Where applicable, Sikh claimants should allege persecution on account of religion, political opinion, and belonging to particular social groups to maximize the likelihood of success. (Two examples of particular social groups are (1) Indian nationals who have opposed or resisted the Hindutva ideology, and (2) Indian nationals who have held pro-independence views or advocated for a separate nation.)

Above all, helping asylum officers and immigration judges understand the concept of miri-piri is one way claimants can improve their chances of success on a claim of religious persecution. Such claims have failed where asylum officers or immigration judges believed that at least Sikhs outside of Punjab "do not have any particular hardship in practicing their faith or having access to services and facilities available to the general public."¹⁴² But this idea that Sikhs do not suffer religious persecution because they can perform certain forms of worship or access public services and facilities despite their Sikh identity misses the point that Sikhs are nonetheless unable to fully adhere to the tenets of their religion, including the miri-piri philosophy which instructs them to speak out against injustice. Sikhs who do speak out are assumed to face persecution only "for particular political opinions," not religion.¹⁴³ But speaking out is not merely a political act for Sikhs.¹⁴⁴ Claimants must explain that being punished for speaking out against injustice is also religious persecution.

The oppression of farmers protesting in Punjab, for example, should not be framed as strictly a political issue—it is yet another example of the government's religious persecution of Sikhs. Protesting farmers primarily hail from the predominantly Sikh state of

Punjab,¹⁴⁵ and view the government's laws allowing purchasers of wholesale produce to sidestep state-regulated agricultural markets as part of a broader strategy to destabilize their Punjabi homeland.¹⁴⁶ The public opposition to these laws is therefore consistent with the Sikh community's commitment to civic engagement and fighting injustice, notwithstanding differences in religiosity and political ideology among members of the movement.¹⁴⁷ The fact that farmers are economically motivated to oppose the laws—which threaten to worsen a debt situation so dire that thousands of farmers have resorted to taking their own lives¹⁴⁸—does not negate the religious dynamics at play.

It has become plain that the response to these protests by those in power is part and parcel with a nationalist agenda and rejection of Sikhi. In a resurgence of propaganda tactics reminiscent of 1984,¹⁴⁹ government officials and their allies in the media have sought to paint the farmers as “terrorists” or “Khalistanis ... plotting to create a separate Sikh homeland.”¹⁵⁰ Rather than oppose the protesters as political opponents, the government has instead preferred an approach of “[b]esmirching rivals ... by linking them to the extreme version of their religious faith.”¹⁵¹

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As a result, despite widespread recognition that “[t]he laws are not good for the farmers,” the farmers’ Sikh identity delegitimizes their plight in the eyes of the public, whose “sympathy for their farmer’s cause has given way to anger and prejudice.”¹⁵² The mere unfurling of a religious flag by a Sikh protester was recently portrayed as having inflamed tensions during protests where a protester died and several others were injured.¹⁵³

Explaining the concept of miri-piri might also help adjudicators better understand the interconnectedness of a Sikh applicant’s religious and political identities as it relates to claiming those forms of persecution. Although individuals who are persecuted due to their support for the Khalistan movement are often understood to be suffering on account of political opinion,¹⁵⁴ this support often owes equally to those persons’ religious beliefs. Adjudicators may consider claims of both religious and political persecution in tandem; depending on the specifics of an individual’s claim, therefore, it may be wise to raise both grounds for seeking asylum in the application.¹⁵⁵

Indeed, given the multifaceted nature of the persecution Sikhs face in India, an asylum applicant should typically allege persecution on account of religion, political opinion and particular social group. If an immigration judge or reviewing court finds the applicant has not made out their case for a particular type of persecution, it might still find there is a credible fear of persecution on another protected ground so long as the applicant has raised it. This is especially true when claiming persecution for membership in a particular social group, since applicants may be able to define a narrower group of persons for whom the evidence of persecution is more robust.

B. Sincerity

In some cases, the greatest challenge in showing a credible well-founded fear of religious persecution is overcoming doubts about the sincerity of an applicant’s religious beliefs. Such doubts might arise, for example, in cases where the Sikh applicant has cut their

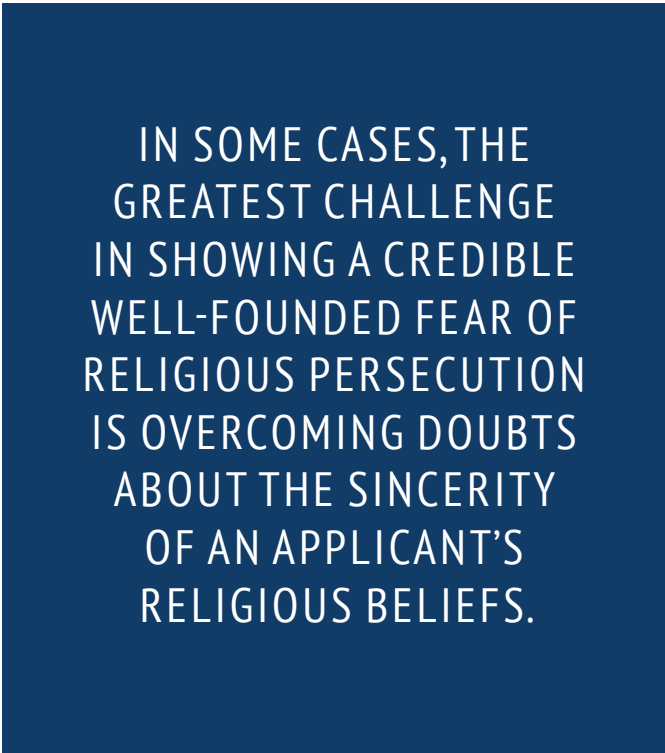
hair—since unshorn hair is one of the most recognizable characteristics of practicing Sikhs.¹⁵⁶

Applicants in these situations should explain to the asylum officer or immigration judge, however, that there is no list of criteria an individual must satisfy to be a Sikh. Though a common practice amongst followers, the requirement of keeping one's hair, for example, is not written down in any religious text. In fact, the literature on Sikhi is replete with discussions of the varying practices among individuals who identify as Sikh. Jagbir Jhutti-Johal, a university lecturer in Sikh Studies in the United Kingdom writes, “[T]oday one archetypal Sikh identity does not exist, and cannot be argued for. Not all Sikhs are the same.”¹⁵⁷ For although differences in the observation of “the Five Ks” of Sikhi as introduced by Guru Gobind Singh—including unshorn hair and other dress and grooming practices—give rise to different Sikh identities that describe the level of observance of certain groups, the very definition of a Sikh is one who is a disciple or student.¹⁵⁸

To further the point, the Sikh faith observes a leadership tradition that gives decision-making power to the Khalsa Panth (community) and Guru Granth (Scripture.) In line with this tradition, the entire Sikh community with representatives of all levels of Sikh identity agreed in 1945 to the definition of a Sikh through the Rehit Maryada (Sikh code of conduct). While such a community definition of a Sikh had existed before, the Rehit Maryada solidified it in written form as one who: (1) believes in the existence of One Eternal God, (2) follows the teaching of, and accepts as his or her own Spiritual guides, the Guru Granth Sahib and the ten human Gurus, and (3) believes in Amrit sanchar (Khalsa initiation ceremony), as promoted by the tenth Guru.¹⁵⁹

While not all Sikhs are Khalsa—those who outwardly show their commitment to Sikhi—all Khalsa are Sikhs. And although all Sikhs understand the aspirational goal is to become a Khalsa, each member of the collective Sikh Panth (community) may exercise their faith at a different level on a spectrum. While not all the same in appearance, Sikhs are united in their core belief system, which includes recognizing the Khalsa as the physical manifestation of the Sikh spirit.

Understanding these distinctions, the Seventh Circuit has held that applicants need not comply with any particular tenets of the Sikh tradition in order to make a credible allegation of religious sincerity and persecution. Accordingly, the court admonished an immigration judge for doubting an applicant's claim to be a Sikh based on his failure to demonstrate adherence to certain tenets of Sikhi included on a Wikipedia page.¹⁶⁰ First Amendment principles, the court observed, dictate that “a sincere religious believer doesn't forfeit his religious rights merely because he is not scrupulous with his observance.”¹⁶¹ Immigration judges, the court added, “should listen to a petitioner's personal explanation of religious beliefs” and evaluate the petitioner's “tone, words, and demeanor,” rather than rely on the petitioner's “ability (or inability) to recall doctrine.”¹⁶²



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C. Credibility Determination

As mentioned above, asylum applicants must offer credible testimony to sustain their burden of proof that they are eligible for asylum as a refugee.¹⁶³ The credibility determination is a critically important aspect of an asylum proceeding that can present a challenge for any asylum applicant—including Sikhs.

Applications for asylum, withholding of removal, and Convention Against Torture (CAT) relief made on or after May 11, 2005, are subject to the provisions of the REAL ID Act of 2005.¹⁶⁴ Under the REAL ID Act, an applicant may sustain their burden of proof through testimony alone but only if the trier of fact is satisfied that their testimony is credible.¹⁶⁵ In making a credibility determination pursuant to the REAL ID Act, the court looks to the totality of the circumstances, including the “demeanor, candor, [and] responsiveness of the applicant or witness, the inherent plausibility of the applicant or witness’s account, consistency between the applicant or witness’s written and oral statements, the internal consistency of each statement, and the consistency of statements with other evidence in the record,” as well as any other relevant factors.¹⁶⁶ The REAL ID Act permits the court to make a credibility determination without regard to whether any inconsistency, inaccuracy, or falsehood goes to the heart of the applicant’s claim.¹⁶⁷ However, such broad standards “must be assessed under a rule reason of reason,” and the court may not base an adverse credibility finding on trivial inconsistencies.¹⁶⁸

Specific details of an individual’s subjective fear are important to their initial credibility determination, in addition to information regarding their country conditions. An applicant should provide these relevant details in their interview with an asylum officer, as well as before the immigration judge.

Applicants may in some cases meet the credibility requirements based on their own account, but when possible they should also seek to corroborate their testimony with affidavits from family, friends, experts, or other witnesses so the trier of fact may review the totality of the circumstances presented to them.¹⁶⁹ Former victims of persecution are presumptively assumed to have a credible fear of persecution, but the Department of Homeland Security may overcome this presumption by showing that a fundamental change in circumstances makes relocation within India a reasonable alternative to asylum in the U.S.¹⁷⁰

In any event, to make a credible asylum case, it is critical for applicants to offer evidence of past or potential violence, discrimination, or other mistreatment that rises to the level of persecution.¹⁷¹ Submitting evidence that the persecution occurred or is likely to occur specifically on account of a protected ground—e.g., religion or political opinion—is of course also key.¹⁷²

In the following sections, we discuss three credibility obstacles Sikh asylum applicants can face and how to deal with them.

1. Lack of Knowledge

When a Sikh applicant is making a claim of religious persecution, a lack of familiarity with Sikhi can undermine their credibility. For example, in *Kaur v. Gonzales*, the Ninth Circuit denied review of the BIA’s asylum denial where the applicant “could not identify basic Sikh concepts and holidays at her asylum interview although she said she had been a devout Sikh who attended temple daily in India” and the applicant later shared at her hearing that “she learned about the Sikh faith in the United States.”¹⁷³ Though the issues pointed out by the Ninth Circuit also speak to concerns about sincerity, applicants should be able to explain their particular religious observance to survive the credibility assessment.¹⁷⁴

The same is true for applicants seeking political asylum. In denying a Sikh applicant’s petition for review in another case, the Ninth Circuit noted that the applicant “knew little of India’s political landscape or the events that shaped Sikh politics” and that his “tes-

timony describing restricted Sikh participation in the political process was factually false.”¹⁷⁵ Some adjudicators might even expect a certain level of participation in politics before they will consider a claim of political persecution to be credible.¹⁷⁶ That said, an applicant may escape such a requirement if they have faced persecution or fear future persecution on account of an imputed political opinion—i.e., one they either do not hold or have not expressed.¹⁷⁷

2. Inconsistency

Because asylum is a multi-step process, it is not uncommon for a claimant to have to tell his or her story numerous times to various officials.¹⁷⁸ This can be a pitfall. When determining the credibility of the claimant and his or her story, the immigration judge or the BIA will often look aggressively for any inconsistencies or omissions.¹⁷⁹ Indeed, “materially different accounts of ... purported persecution ... may render the alien’s testimony incredible.”¹⁸⁰ If the inconsistencies are “trivial,” however, they will not support an adverse credibility determination.¹⁸¹

The Tenth Circuit’s decision in *Singh v. Barr* illustrates this point.¹⁸² Mr. Singh sought asylum in the United States after two incidents in which members of the Badal party physically assaulted him for his active membership in the Mann party. During the asylum process, Mr. Singh offered two different testimonies about the incidents, and the immigration judge concluded that “omissions and discrepancies [between the testimonies] were material and that they made Mr. Singh’s testimony non-credible.”¹⁸³ Such inconsistencies regarded whether Mr. Singh was on a bicycle when attacked; whether he saw his parents before going to the doctor; whether he reported an incident to the police; how long he took to recover after one attack; the kinds of weapons used; his family members’ political affiliations; and the number of people present during an attack.¹⁸⁴

In another case—this time out of the Second Circuit—inconsistent testimony on whether an attack left the applicant “unconscious” or “half-conscious” was held sufficient to support a “partial adverse credibility determination.”¹⁸⁵ In short, details and consistency matter.

3. Demeanor

Although consistency is critical, being too rehearsed can also backfire. For example, “hesitant” testimony that comes across as a “poorly rehearsed script” can work against the applicant.¹⁸⁶ A judge may decide that the applicant appears to have “learned” the story of his persecution rather than lived it himself.¹⁸⁷ On the other hand, a judge might understand that when an applicant appears rehearsed, she has simply done “what any reasonable person in removal proceedings would do: namely, prepare for questioning at a potentially life-altering hearing.”¹⁸⁸

Regardless, and as with any witness, asylum applicants should have their story straight and be prepared to give an accurate account in an unrehearsed manner.

4. Language and Translation Access

Additionally, Sikh asylum applicants and their attorneys should be aware of the scarcity of Punjabi-speaking resources in the immigration system and the effect this shortage may have on an applicant’s ability to articulate a coherent, consistent, and confident narrative of their persecution.

Although the USCIS strives to provide interpreters for credible-fear interviews and other screenings as part of its “Language Access Plan,” applicants must in other instances provide their own interpreters.¹⁸⁹ As the number of Sikh asylum seekers rises, demand for

Punjabi interpretation and translation services will far outstrip supply.¹⁹⁰ And as the Bipartisan Policy Center points out, the limited availability of interpreters for certain languages may “prevent [the courts and USCIS] from upholding their Language Access Plans.”¹⁹¹ As a result, Punjabi speakers can be severely disadvantaged and unable to communicate their plight throughout the asylum process. In one case, a Sikh asylum applicant in El Paso was forced to rely on the services of “an Albuquerque-based cab driver who had only conversational Punjabi skills and couldn’t communicate at the level that [the applicant’s attorney] needed to fill out his clients’ asylum claims in detail.”¹⁹²

Upon first reviewing a Punjabi-speaker’s record, a conscientious attorney should verify that their client had access to a fluent, Punjabi-speaking interpreter and that inconsistencies or confusion in their client’s statements are not the result of misinterpretation. This is critical because such inconsistencies may cause an asylum officer or immigration judge to make an adverse credibility determination.¹⁹³

D. Knowledge Gaps and Misinformation

IT IS ALSO COMMON TO SEE SIKH ASYLUM CLAIMS DENIED IN PART BECAUSE IMMIGRATION JUDGES MAY NOT UNDERSTAND INDIA TO BE A COUNTRY THAT IS HOSTILE TOWARDS SIKHS.

Another serious obstacle Sikh asylum applicants face is a dearth of accurate information depicting current—and relevant—circumstances in India to establish their fear of persecution. Too often, asylum officers and immigration judges take unhelpful anecdotal information about Sikhs in India at face value,¹⁹⁴ and are quick to believe that Sikhs do not face persecution because, for example, certain Sikhs have occupied high-ranking government positions.¹⁹⁵ Adjudicators are also often swayed by the mere fact that, according to the 2011 census, though “Sikhs reside in every Indian state,” most Sikhs live in Punjab where they represent the majority of the population in Punjab (around 16 million) and believe the applicants may simply move to a different region within India.¹⁹⁶ It is also common to see Sikh asylum claims denied in part because immigration judges may not understand India to be a country that is hostile towards Sikhs.

Part of the misunderstanding arises because adjudicators are known to rely on outdated or overgeneralized information.¹⁹⁷ Lawyers aiding Sikh asylum claimants should therefore make sure that immigration judges do not rely on cases or sources that are out of date, or on overly broad reports that do not focus specifically on Sikhs. As the Ninth Circuit has stated, “[u]nlike fine wine, reports on country conditions do not improve with age—a reality that our colleagues on the Second Circuit have repeatedly acknowledged.”¹⁹⁸ Not even one year later, though, the Ninth Circuit did not object to the BIA’s use of a 2012 Law Library of Congress report in reaching an adverse asylum decision in 2016.¹⁹⁹ There is work to do here.

For example, judges have been known to rely on the Department of State’s 2016 International Religious Freedom Report on India to determine if Sikhs are generally persecuted.²⁰⁰ But that report discusses the Sikh faith only briefly and is primarily focused on Hindu-Muslim relations. It notes only a single incident of violence against Sikhs: an October 2015 incident where two Sikhs were killed and eighty injured as a result of police shootings during protests after reports that a Sikh holy book had been desecrated.²⁰¹ Without sufficient competing evidence, judges may be prone to find a lack of evidence of “systemic and pervasive” persecution of Sikhs in India.²⁰²

Even recent reports acknowledging the worsening conditions for religious and political minorities in India often do not tell the full story. USCIRF noted in its 2020 Annual Report that “[i]n 2019, religious freedom conditions in India experienced a drastic turn downward.”²⁰³ The USCIRF report added, “tolerance for violence against minorities at the national, state, and local level increased the climate of fear among non-Hindu communities.”²⁰⁴ Yet the State Department’s 2019 International Religious Freedom Report on India mentions no specific incidents of Sikh persecution at all. In fact, the latter report notes only that Sikhs were most likely among survey respondents to agree that police forces discriminate against religious minorities.²⁰⁵

For that matter, even Sikh-specific reports can lack sufficient detail. For example, a report by the Immigration and Refugee Board of Canada on conditions for Sikhs outside of Punjab notes that “there is no comprehensive data set on the casualties from communal violence disaggregated by religious group.”²⁰⁶ When the report did address Sikhs specifically, it said that Hindu nationalists’ harassment of Sikhs “does not represent a systemic pattern” and that only Sikhs who advocate for an independent Khalistan would likely face persecution outside of Punjab.²⁰⁷

Where necessary, Sikh asylum applicants are therefore wise to be prepared to counter these sorts of reports typically offered into evidence by the government with equally reliable sources that accurately describe the severity of persecution faced by Sikhs—especially those situated similarly to them—in India. And, in any event, they should always be prepared to tell their own story of persecution regardless of any generalized reports offered against them. The discussion herein and sources it identifies should assist with compiling such evidence to meet an applicant’s burden of proof.

E. Refuting the Possibility of Internal Relocation

Finally, Sikh asylum applicants typically should also be prepared to refute arguments that they could reasonably relocate within India to avoid future persecution.²⁰⁸

The burden for proving that internal relocation is not a reasonable option falls on applicants in different ways depending on their claim. If the applicant has not established past persecution, the applicant must show that relocation is not reasonable unless the persecutor is the government or its agent.²⁰⁹ And if the persecutor is in fact a private actor, the applicant must also overcome a presumption that relocation is indeed reasonable.²¹⁰ If the government is the persecutor, however, relocation is presumptively unreasonable unless the Department of Homeland Security rebuts by a preponderance of the evidence.²¹¹ In evaluating such evidence, the adjudicator will consider the “totality of the circumstances” including “the size of the country of nationality or last habitual residence, the geographic locus of the alleged persecution, the size, numerosity, and reach of the alleged persecutor, and the applicant’s demonstrated ability to relocate to the United States.”²¹²

For relocation to be reasonable, there must be some part of the country where there would be no well-founded fear of persecution.²¹³ For many Sikh claimants, it has been difficult to demonstrate that they would not be able to relocate elsewhere in the Punjab region, where Sikhs constitute a majority.²¹⁴ For example, even an applicant who established a credible fear of persecution on the basis of past persecution failed to win asylum because the government rebutted the presumption of future persecution by demonstrating he could relocate within India.²¹⁵ The Ninth Circuit held in that case that though local officials had targeted the applicant because of his Sikh practices and affiliation with the Mann political party, “there are Sikh communities throughout the country where Sikhs can safely practice their religion and politics” and the applicant was not likely to be targeted by the greater Punjab police or the national government.²¹⁶

That said, and where appropriate, the applicant should be prepared to argue that the mere existence of communities deemed safe for Sikhs should not be dispositive. Indeed, the Ninth Circuit explained in *Singh v. Whitaker* that the relocation analysis is a particularized one that should be tailored to the applicant’s “individualized situation.”²¹⁷ Even without a presumption of nationwide persecution, the applicant can and should take care to produce evidence explaining why they would likely face persecution even if relocated within India.

In making this argument, however, generalized arguments—even if accurate—will not suffice. For example, the Fifth Circuit recently approved the BIA’s rejection of an asylum claim based on a finding that the applicant could reasonably relocate within India where the applicant “cite[d] no record evidence supporting his position” that his rival political party had “nationwide influence,” that he would have difficulty finding work outside of Punjab, or that he would face prejudice due to his Sikh appearance.²¹⁸ Where appropriate, therefore, it is essential that the applicant submit evidence that their protected activities—e.g., religious or political practices—would subject them to persecution throughout India.

For example, applicants could demonstrate that their membership in a particular political group, such as one that advocates for Khalistan, prevents them from safely relocating within India.²¹⁹ In *Singh v. Whitaker*, the applicant was a member of the Mann Party who had been arrested and beaten by the Punjabi Police and members of the Congress Party for his participation in Mann Party events and support for an independent Khalistan.²²⁰ Reversing the BIA’s denial of asylum, the Ninth Circuit held that the BIA erred in focusing on whether the Punjabi police would follow Singh outside of Punjab, rather than considering whether Singh would still face persecution from “local authorities or other actors” after being relocated.²²¹ The BIA also erred by “unlawfully assuming that [Singh] could silence his political activity to avoid harm.”²²² The Ninth Circuit held that the BIA should have considered whether it was possible for Singh to relocate given his “stated intent to continue proselytizing for his party wherever he went” and the “potential harm Congress Party members, or other local authorities, might inflict upon Singh in a new state.”²²³ The Ninth Circuit has applied this same reasoning in subsequent cases, reversing a denial of asylum where the BIA “failed to consider the safety and reasonableness of relocation if [the applicant] continued expressing support for the Mann Party and the Khalistani secession movement.”²²⁴

Sikh asylum applicants may be able to invoke *Whitaker* as establishing a principle that the Department of Homeland Security may not rely on an individual’s future silence in assessing whether they can safely relocate within India. This could help victims of all types of persecution—not only political—if they could demonstrate that their ability to safely relocate to another area would depend on them suppressing a protected behavior such as religious practices. However, *Whitaker* has yet to be applied outside the Ninth Circuit, and the language referencing persecution by “local authorities and other actors”²²⁵ makes it unclear whether this principle would apply only in the context of persecution at the hands of the government or also by private actors.

V. CONCLUDING SUGGESTIONS

Sikh asylum applicants and the lawyers that assist them should be attuned to particular challenges they can face in obtaining asylum. Most importantly, they must understand the challenges Sikhs can face in convincing asylum adjudicators of the harsh conditions for Sikhs in India giving rise to a well-founded fear of persecution. Due to these adjudicators' unfamiliarity with the Sikh faith in particular, applicants and practitioners should further evaluate whether the facts support alleging persecution on a combination of religious, political, or particular social group grounds. And, in any event, they should be prepared to educate decisionmakers about Sikhi and the central relationship between Sikh religious and political traditions reflected in history and the miri-piri philosophy. The discussion and sources provided in this report should assist with this objective.

On a more subjective level, Sikh applicants can also face challenges in demonstrating how their individual circumstances substantiate their fear of persecution and need for asylum. They must therefore be prepared to face scrutiny over the sincerity of their religious and political beliefs and any doubts about their credibility by presenting a truthful, informed, consistent, and thorough account of their suffering. To support their statements and fill gaps in adjudicators' knowledge, applicants should also try to submit corroborating materials from others and, where appropriate, evidence of incidents affecting other Sikhs—especially those similarly situated to the applicant—that is generally not found in the government reports on which adjudicators typically rely in asylum proceedings. Finally, applicants should prepare to address any arguments about the potential for relocation within India that would obviate their need for asylum. The preceding discussion offers guidance for handling each of these challenges as well.

ENDNOTES

1 The Sikh Coalition is a community-based organization that defends civil rights and civil liberties in the United States, educates the broader community about Sikhs and diversity, and fosters civic engagement amongst Sikh Americans. The Sikh Coalition originated to combat uniformed discrimination against Sikh Americans after the events of September 11, 2001. Since its inception, the Sikh Coalition has worked with government agencies and the private sector to achieve mutually acceptable solutions to the accommodation of Sikh articles of faith.

2 The Stanford Religious Liberty Clinic is the leading and only full-time clinic of its kind in the country. Founded in 2012, the landmark program offers participating students a full-time, first-chair experience representing a diverse group of clients in legal disputes arising from a wide range of beliefs, practices, and circumstances. Although religious liberty disputes cut across economic lines, the clinic strives to serve those in need.

3 The Harvard Religious Freedom Clinic provides students a hands-on, supervised experience representing a diverse group of clients in legal matters raising religious liberty issues. As a pro bono program dedicated to building bridges in service to those in need, the clinic focuses on representing members of minority faiths, the vulnerable, and those who serve or support them in our pluralistic society. This includes helping the imprisoned, victims of workplace discrimination, and those facing obstacles in ministering to migrants, the poor, and their communities.

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9 See Paul R. Tremblay & Carlina Weng, *Multicultural Lawyering: Heuristics and Biases*, in *THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION* 143, 151 (Marjorie A. Silver, ed. 2007).

10 Eleanor Nesbitt, *SIKHISM: A VERY SHORT INTRODUCTION* 13 (2005).

11 Jagbir Jhutti-Johal, *SIKHISM TODAY* 2 (2011).

12 Nesbitt, *supra* note 7, at 21-22. Although “[t]here was no urgent need during [Sikhism’s founding] period for Sikhs to identify themselves as being distinct from Hindus,” since they shared festivals and some philosophical beliefs, Guru Nanak’s perhaps most famous couplet, “There is no Hindu There is no Musalman,” is in itself indicative of the already recognized separateness of the followers of Guru Nanak from the two dominant traditions of the time.” Opinderjit Kaur Takhar, *SIKH IDENTITY: AN EXPLORATION OF GROUPS AMONG SIKHS* 5-6 (2016).

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154 WORLD SIKH ORG. OF CAN., supra note 52. (noting that Indian authorities target Sikhs who “advocate on human rights and political issues”) [Index 255].
155 See, e.g., Singh v. Ashcroft, 362 F.3d 1164, 1167 (9th Cir. 2004) (noting that the applicant's past “beatings and torture ... for his believed association with militant Sikh separatists” substantiated his claims of both religious and political persecution).
156 See Jhutti-Johal, supra note 8, at 100 (2011) (describing “kesh (hair)” as Sikhism's most recognized symbol”); Gentleman, Amelia, Young Sikh Men Get Haircuts, Annoying Their Elders, N.Y. Times (Mar. 29, 2007), <https://www.nytimes.com/2007/03/29/world/asia/29turban.html?smid=url-share> (noting that turbans “make Sikhs easily identifiable in a crowd” and that it is estimated “half of India's Sikh men now forgo the turban”).
157 Jhutti-Johal, supra note 8, at 95.
158 Id. at 95-96.
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160 Singh v. Holder, 730 F.3d 635, 643-44 (7th Cir. 2013).
161 Id. at 644 (quoting Grayson v. Schuler, 666 F.3d 450, 454 (7th Cir. 2012)).
162 Id.; see also Pin Zhuang Chen v. Holder, 583 Fed. App'x 164, 168 (4th Cir. 2014) (unpublished) (applying Singh v. Holder and finding that “failure to openly practice religion in some circumstances may not indicate a lack of sincerity”).
163 8 U.S.C. § 1158(b)(1); Maini v. INS, 212 F.3d 1167, 1173 (9th Cir. 2020) (“An alien satisfies the subjective element [of the credibility determination] by testifying credibly that he genuinely fears persecution.”).
164 Pub. L. No. 109-13, 119 Stat. 231 (2005).
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170 8 C.F.R. § 1208.13(b)(1)(i)(A).
171 C.f. Lamda v. Att'y Gen. of U.S., 646 Fed. App'x 216 (3d Cir. 2016) (unpublished) (finding that the applicant's treatment was “deplorable” but did not rise to the level of persecution because “he suffered no injuries that required medical treatment”).
172 See, e.g., Singh v. Ashcroft, 362 F.3d 1164, 1167 (9th Cir. 2004) (noting that the applicant's “head was shaved, an affront to Sikh religious practice”).
173 232 Fed. App'x 634, 635 (9th Cir. 2007) (unpublished).
174 See note 154 and accompanying text.
175 Singh v. INS, 70 Fed. App'x 405, 405 (9th Cir. 2003) (unpublished).
176 See Singh v. Barr, 790 Fed. App'x 941, 946 (10th Cir. 2019) (unpublished) (“The IJ found no evidence that Mr. Singh personally had publicly advocated for the creation of Khalistan, and he points to no evidence to the contrary.”).
177 See Singh v. Ilchert, 69 F.3d 375, 379 (9th Cir. 1995) (describing how the Indian police tortured a Sikh man based on his support for Sikh separatists despite his objections regarding his political opinion).
178 See, e.g., Singh v. Ashcroft, 362 F.3d 1164, 1167 (9th Cir. 2004) (noting that the applicant faced seven hearings over four years regarding his asylum claim).
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180 Ramsameachire v. Ashcroft, 357 F.3d 169, 180-81 (2d Cir. 2004).
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183 Id. at 945.
184 Id.
185 Singh v. Barr, 801 Fed. App'x 819, 821 (2d Cir. 2020) (unpublished).
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187 Yingshi Li v. Sessions, 723 Fed. App'x 53, 55 (2d Cir. 2018) (unpublished).

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191 See Cristobal Ramón & Lucas Reyes, Language Access in the Immigration System: A Primer, Bipartisan Pol'y Ctr. (Sept. 18, 2020), <https://bipartisan-policy.org/blog/language-access-in-the-immigration-system-a-primer/>.

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193 See, e.g., Singh v. INS, 27 Fed. App'x 790, 792 (9th Cir. 2001) (Reinhardt, J., dissenting) (noting that an interpreter's inability to "translate clearly at many points" may have affected the credibility of a Sikh applicant's testimony); Singh v. Ashcroft, 87 Fed. App'x 69, 71 (9th Cir. 2004) (noting that "perceived discrepancies" supporting an IJ's adverse credibility determination "resulted from language or translation problems").

194 See, e.g., Singh v. Barr, 825 Fed. App'x 532, 533 (mem.) (9th Cir. 2020) (accepting "[r]eliable government reports cited by the [BIA]" that offered generalized information about Sikhs living in India).

195 See, e.g., Singh v. Atty. Gen. of U.S., 433 Fed. App'x 63, 65 (3d Cir. 2011) (unpublished) (denying asylum claim on account of reports that "current conditions in India have become more hospitable to Sikhs," and that the "Prime Minister of India is a Sikh"); Singh v. Holder, 339 Fed. App'x 421, 422 (5th Cir. 2009) (unpublished) ("Sikhs are a majority ethnic group in Punjab; many of the police officers who interrogated and abused Singh were Sikhs themselves."); Singh v. I.N.S., 70 Fed. App'x 405, 405-06 (9th Cir. 2003) (unpublished) (denying asylum claim in part because the members of the applicant's political party "held substantial numbers of seats in both regional and national legislatures.").

196 IRBC, INDIA: SITUATION OF SIKHS OUTSIDE THE STATE OF PUNJAB § 1 (2019), supra note 47.

197 See, e.g., Hehar v. Barr, 800 Fed. App'x 540, 541 (9th Cir. 2020) (mem.) (noting that the "government only submitted two out-of-date country reports to rebut the presumption that 'internal relocation' would not be reasonable").

198 Parada v. Sessions, 902 F.3d 901, 912 (9th Cir. 2018).

199 Singh v. Whitaker, 914 F.3d 654, 660-61 (9th Cir. 2019) (noting in the docket the BIA's decision from February 2016).

200 U.S. DEP'T OF STATE, 2016 INTERNATIONAL RELIGIOUS FREEDOM REPORT: INDIA 8 (2016) (hereinafter "STATE DEPARTMENT 2016"); see, e.g., Singh v. Barr, 801 Fed. App'x 819, 823 (2d Cir. 2020) (unpublished).

201 STATE DEPARTMENT 2016, supra note 197, at 8 (2016).

202 Singh v. Barr, 801 Fed. App'x 819, 823 (2d Cir. 2020) (unpublished); Singh v. Atty. Gen. of U.S., 751 Fed. App'x 323, 324 (3d Cir. 2018) (unpublished) (noting that the applicant's "country condition reports only describe communal violence between Sikhs and Hindus, but such generalized depictions are insufficient to establish persecution").

203 U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, ANNUAL REPORT 2020, at 20 (2020).

204 Id.

205 U.S. DEP'T OF STATE, 2019 INTERNATIONAL RELIGIOUS FREEDOM REPORT: INDIA 16 (2019) (hereinafter "STATE DEPARTMENT 2019").

206 IRBC, INDIA: SITUATION OF SIKHS OUTSIDE THE STATE OF PUNJAB § 1 (2019), supra note 47 at § 2.1.

207 Id. at § 3.

208 See, e.g., Singh v. Whitaker, 914 F.3d 654, 659 (9th Cir. 2019) (noting that courts ask "(1) 'whether an applicant could relocate safely,' and (2) 'whether it would be reasonable to require the applicant to do so'").

209 8 C.F.R. § 1208.13(b)(3)(i).

210 Id. § 1208.13(b)(3)(iii).

211 Id. § 1208.13(b)(3)(ii).

212 Id. § 1208.13(b)(3); see Knezevic v. Ashcroft, 367 F.3d 1206, 1214 (9th Cir. 2004) (considering "whether the applicant would face other serious harm in the place of suggested relocation; any ongoing civil strife; administrative, economic, or judicial infrastructure; geographical limitations; and social and cultural constraints, such as age, gender, health, and social and family ties").

213 Matter of M-Z-M-R-, 26 I. & N. Dec. 28, 33 (B.I.A. 2012).

214 STATE DEPARTMENT 2019, supra note 202, at 4.

215 Singh v. Barr, 825 Fed. App'x 532 (9th Cir. 2020) (unpublished).

216 Id. at 532-33; but see Singh v. Whitaker, 914 F.3d 654 (9th Cir. 2019).

217 Whitaker, 914 F.3d at 661; Kaur v. Wilkinson, 986 F.3d 1216, 1230-31 (9th Cir. 2021) (reiterating Whitaker); Hehar v. Barr, 800 Fed. App'x 540 (9th Cir. 2020) (unpublished) (same).

218 Singh v. Barr, 813 Fed. App'x 934, 936 (5th Cir. 2020) (unpublished).

219 See Whitaker, 914 F.3d at 661.

220 Id. at 657.

221 Id. at 661. Note that this requirement derives from the rebuttable presumption that persecution exists nationwide because the claimant faced

persecution by the government. See also *Rhandawa v. Barr*, 804 Fed.App'x 624, 625 (9th Cir. 2020) (unpublished); *Singh v. Barr*, 771 Fed.App'x 781, 782 (9th Cir. 2019) (unpublished).

222 *Whitaker*, 914 F.3d at 660.

223 *Id.* at 661.

224 *Singh v. Barr*, 770 Fed.App'x 364, 365 (9th Cir. 2019) (unpublished); see also *Rhandawa*, 804 Fed.App'x at 625; *Singh*, 771 Fed.App'x at 782.

225 *Singh v. Whitaker*, 914 F.3d 654, 660 (9th Cir. 2019).