Guide to Investigating and Prosecuting Bias/Hate-Motivated Crimes Against Sikhs
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Letter from the Legal Director

The Sikh Coalition believes that all people deserve to live in a world without hate and discrimination, and we are committed to combating bias and hate-motivated crimes when they arise.

Bias/Hate crimes are a distinct category because they include two victims: first, the individual who was targeted, and second, the community that individual represents based on their targeted characteristics (e.g. race, ethnicity, religion, gender, sexuality, or another protected class). Providing justice for those impacted by such crimes holds a significant place in our organization’s work.

The Sikh Coalition was founded on September 11, 2001, in response to a wave of violent bias/hate crimes targeting Sikh Americans as a backlash to the terrorist attacks. Within two months, we tracked more than 300 anti-Sikh incidents across the nation, including the murder of a Sikh man in Arizona killed in supposed ‘retribution.’

The Sikh Coalition fought for government accountability and recognition of these crimes, resulting in the FBI tracking anti-Sikh crimes within its annual hate crime statistics data beginning in 2015. Today, this data—as flawed as it may be—consistently shows that Sikhs are amongst the nation’s most-targeted religious groups.

Our legal intakes show that Sikhs are hundreds of times more likely than other Americans to experience bias because of their distinct appearance, yet many of these crimes go uninvestigated, uncharged, or unreported due to the lack of understanding many law enforcement agencies and prosecutors’ offices have regarding bias against the Sikh community.

To create trust with our community, law enforcement must understand how Sikhs are targeted so they can more efficiently and effectively investigate, prosecute, and restore communities from these bias/hate crimes.

We hope this guide serves as a resource and creates awareness for all aspects of the criminal justice system so that agencies may work together to ensure justice prevails.

Sincerely,

Amrit Kaur Aakre
Legal Director
The Sikh Coalition
What is a hate crime?

According to the Federal Bureau of Investigation (FBI), and for the purposes of collecting statistics, a hate crime is defined as "a criminal offense against a person or property motivated in whole or in part by an offender's bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity."[1]

In addition to this federal definition, most jurisdictions have a state statute or penalty enhancement that defines the types of bias/hate crimes that are criminalized in that state.[2] It is important for law enforcement agencies to review their states’ statutes as part of individual case investigations. However, even in states or territories without bias/hate-motivated crime statutes, federal law can still protect victims from these types of offenses and encourage accurate reporting of bias offenses pursuant to two key pieces of federal legislation: The Shepard-Byrd Hate Crimes Prevention Act and the Shepard-Byrd Act.[3]

The Shepard-Byrd Hate Crimes Prevention Act of 2009 allows the federal government to prosecute bias/hate crimes either in parallel with state prosecutions or when local or state prosecutors do not do so.[4] Codified as 18 U.S.C.§ 249, the act created a new federal criminal law which criminalizes willfully causing bodily injury (or attempting to do so) with fire, firearm, or other dangerous weapon when: (1) the crime was committed because of the actual or perceived race, color, religion, national origin of any person, or (2) the crime was committed because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability of any person and the crime affected interstate or foreign commerce or occurred within federal special maritime and territorial jurisdiction.[5]

In 2021, prompted by the rise of anti-Asian hate as a backlash to the COVID-19 pandemic, the Jabara-Heyer was adopted to assist in bias/hate crime prosecutions by addressing shortcomings in hate crime reporting requirements.[6]

Along with other important mandates, it allocates federal grants for state and local governments that implement the National Incident-Based Reporting System.[7]

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[3] Id.
[7] Id.
Moreover, it provides federal grants for states to establish bias/hate crime reporting hotlines designed to assist victims who might otherwise be reluctant to report bias/hate crimes.[8]

**How has the Sikh community been impacted by bias/hate-motivated crimes?**

Since the September 11, 2001 terrorist attacks, the Sikh Coalition has received thousands of reports from Sikh Americans about bias/hate crimes and incidents, workplace discrimination, school discrimination, and racial and religious profiling incidents.[9] In the two months after 9/11 alone, there were more than 300 documented cases of violence and discrimination against Sikh Americans nationwide.[10] Indeed, one of the first acts of fatal domestic retaliation for 9/11 was the September 15, 2001 brutal murder of Sikh American gas station owner Balbir Singh Sodhi in Mesa, Arizona. The killer reportedly stated he wanted revenge for 9/11 and chose Sodhi because of the clothes he wore as well as his visible articles of faith—his turban and beard.[11] Understanding how and whether these articles of faith have been targeted in a crime is a crucial component for any law enforcement investigation.

**What role do police investigators and prosecutors play?**

The role of law enforcement is to investigate the predicate offense and adequately identify and categorize the crime by analyzing and investigating evidence that may show bias motivation when the law is applied to the individual facts of the case.[12] Law enforcement’s ability to investigate and identify a bias motivation has a long-lasting effect on both the individual targeted and the community where the crime happened.[13] This is in part because the perpetrator not only asserts power over the victim, but over the entire community that the victim represents.[14]

[8] Id.
[9] The Sikh Coalition is the nation’s largest Sikh civil rights organization and defends civil rights and civil liberties of Sikhs in the United States, educates the broader community about Sikhs and diversity, promotes local community empowerment, and fosters civic engagement amongst Sikh Americans. The Sikh Coalition owes its existence in large part to the effort to combat uninformed discrimination against Sikh Americans after September 11, 2001. Since its inception, it has worked with governmental and private entities across the country to provide cultural competency training and information regarding the discrimination Sikhs face in America.
For a quick reference, please see the Short Summary document and the visual glossary of Sikh terminology located on pg. 37 at end of the guide.
There are approximately 26 million Sikhs worldwide, with more than 500,000 located in the United States. The Sikh faith originated in Punjab, India through the teachings of its founder Guru Nanak, as well as the teachings of nine successive Gurus.

Sikhism (also referred to as Sikhi) is monotheistic, believing in one God that is all loving, all pervading and eternal. Consistent with the teachings of the faith, Sikhs are mandated to maintain an external uniform to bind them to their sincere religious beliefs, and to remind them of their daily commitment to Sikh teachings. While Sikhism can be practiced anywhere, the majority of Sikhs in America come together communally for services at a gurdwara, or house of worship.

Pursuant to the Sikh Code of Conduct, the Rehat Maryada, Sikhism requires its initiated members to maintain five specific articles of faith. These are colloquially referred to as the 5Ks and are comprised of: kesh (maintaining hair unshorn and covered with a turban), kangha (wooden comb), kara (steel bracelet), kachera (undergarment), and kirpan (emblem of justice resembling a small knife).[15] These five articles of faith are a daily reminder that obligate a Sikh to the highest ideals of generosity, compassion, and service to humanity.

The maintenance of kesh (keeping hair uncut) distinguishes a Sikh and is regarded as living in harmony with the will of God. Sikhs’ unshorn hair is worn covered—for men (and some women) with a turban, signifying sovereignty, dedication, self-respect, courage, and piety.

Women may also cover their hair with a turban or scarf. Sikhs, like those of other faiths, practice their religion on a spectrum; thus, some may maintain all 5Ks while others may maintain some or none.

The kangha, worn in a Sikh’s hair, serves as a constant reminder that a Sikh must maintain proper hygiene, remain socially committed and never practice asceticism. The kara, worn on a Sikh’s dominant wrist, is a reminder that he or she is a servant of God and should not take any action that may bring shame or disgrace. The kachera is a special, slightly longer type of undershorts that obligates a Sikh to moral restraint and conjugal fidelity.[16]

The kirpan (emblem of justice resembling a small knife) is worn as an obligation for Sikhs to, at all times, come to the defense of others.

Unlike in other religions where only the clergy are in uniform, all initiated Sikhs are required to wear these articles of faith. Sikhs cherish these articles because they view them as a gift from their Guru.

II. DEFINITION OF BIAS/HATE CRIMES, APPLICABLE LAWS, AND THE DISTINCTION FROM BIAS/HATE-MOTIVATED INCIDENTS

According to the FBI, and for the purposes of collecting statistics, a hate crime is defined as “a criminal offense against a person or property motivated in whole or in part by an offender’s bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity.” [17] Most jurisdictions have a state statute or penalty enhancement defining the types of bias/hate crimes which are criminalized in that state, which should be reviewed during any case investigation where bias may have played a role. [18]

More than 85 percent of bias/hate crimes involve violence, and almost one-quarter are serious violent crimes (e.g. rape/sexual assault, robbery, aggravated assault). [19] The National Crime Victimization Survey (“NCVS”) estimates that, from 2005-2019, about 246,900 bias/hate crimes occurred each year. [20] Most offenders are categorized into typologies, which describe the mental “why” behind their crimes. These typologies include:

- **Thrill-seeking act:** “Crimes committed to get a psychological or social thrill.” [21] These attacks most often involve vandalism or desecration. [22] (For example, a group of white teenagers looking for excitement after their high school graduation desecrate a Black Lives Matter flag that is hanging outside of a local coffee shop in their neighborhood.)

- **Reactive or defensive act:** Crimes committed because offenders target victims they feel are encroaching on their space or to defend inferred incursions against one’s area of life. [23] (For example, a Hispanic family moves into a white neighborhood and a white neighbor spray paints the Hispanic family’s driveway with racial slurs.)

- **Retaliatory act:** Offender feels that their group was the previous victim of a bias/hate crime by the group they are now targeting [24] (For example, shortly after a U.S. military base is attacked in Afghanistan, a Muslim man is attacked on the subway by a group of veterans who tell him to “go back to your country.”)

BIAS/HATE CRIMES MAY BE INFLUENCED BY SOCIETAL EVENTS OCCURRING AT THE LOCAL, NATIONAL, OR INTERNATIONAL LEVELS, AS DEMONSTRATED BY THE SIGNIFICANT RISE IN BIAS/HATE CRIMES AGAINST SIKH, MUSLIM, AND OTHER COMMUNITIES AFTER THE SEPTEMBER 11 TERRORIST ATTACKS

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[18] Id.
[19] Id.
[22] Id.
[24] Id.
- **Mission-driven act:**[25] Committed by those who feel justified in a righteous mission on behalf of a strong belief; may also encompass perpetrators who subscribe to a belief system that views members of the minority group they target as evil.[26] (For example, a man attacks an LGBTQ+ nightclub because it is against his religious beliefs to be gay.)

- **Bias peripheral or mixed act:**[27] Committed for a mix of reasons, including any of the above categories in addition to the offender’s mental health state and other factors. (For example, a rideshare passenger diagnosed with paranoid schizophrenia becomes fearful that his turban-wearing Sikh driver is going to kidnap him because the driver looks like a terrorist, so the passenger takes his belt and tries to choke the driver from behind. In this scenario, the passenger has a history of mental health disorders, but also targeted this driver specifically based on his perceived appearance.)

NCVS surveys, backed by FBI data, show that race is the most likely motivation of a bias/hate crime, with the Black community being the most-often targeted.[28] However, in many cases, the crime is intersectional in that the offender has targeted an individual based on their actual or perceived racial and religious characteristics.[29] Further, bias/hate crimes may be influenced by societal events occurring at the local, national, or international levels, as demonstrated by the significant rise in bias/hate crimes against Sikh, Muslim, and other communities after the September 11 terrorist attacks as well as the spike in anti-Asian violence in the wake of the COVID-19 pandemic.[30]

**Bias/Hate-Motivated Crime vs. Bias/Hate Incident**

Prosecuting a bias/hate-motivated crime can be difficult because unlike other crimes which do not require a motive, bias/hate crimes do require the prosecutor to prove some bias-centered motive on the part of the offender.[31] Additionally, bias/hate crimes can sometimes be mistaken for hate incidents when police or prosecutors fail to recognize that a crime occurred.[32] Every bias/hate crime consists of two elements: first, the offender must commit a crime; and second, the offender must have been motivated by an unlawful bias towards a legally protected characteristic of the victim when they carried out that crime.[33] The offender does not have to know their victim specifically; indeed, bias/hate crimes often use the attack of an individual as a proxy for an attack on a group or class of people who share that individual’s protected characteristics.[34]

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[27] Id at 15-16.
[29] Federal Bureau of Investigation, supra note 17.
Law enforcement’s role is to investigate the predicate offense and adequately identify and categorize the crime, usually by producing evidence that can prove bias motivation.[35] Whether a law enforcement agency properly investigates and identifies a bias/hate crime has a long-lasting effect on the victim and community that was targeted. [36] This is in part because the perpetrator not only asserts power over the victim, but also asserts power over the entire community by causing them to fear that they may be targeted next. [37] Therefore, it is essential to know a jurisdiction’s definition of a bias/hate-motivated crime and understand the differences between a crime and incident. [38]

Hate incidents, such as hostile or hateful speech or other disrespectful or discriminatory behavior motivated by bias, are not illegal regardless of how offensive they may be.[39] However, such conduct can be used as evidence that a bias/hate crime occurred.[40] A hate incident becomes a crime when it directly incites perpetrators to commit violence against persons or property, or if the incident places a victim in reasonable fear of physical injury.[41] Importantly, “an act of incident of hate, bias or discrimination that is not a crime...may nonetheless violate other laws, or may require restorative justice efforts, and should still be reported.”[42]

Proper investigation and reporting has been shown to have far-reaching effects on community members.[43] For example, after a white supremacist gunman attacked a Sikh gurdwara in Oak Creek, Wisconsin, the crime was accurately reported as a bias/hate crime. This, in turn, prompted 26 U.S. senators to request that the FBI’s Uniform Crime Reporting Hate Crime Statistics Program (UCR) be expanded to include tracking bias/hate crimes against Sikhs and Hindus, and that it re-introduce tracking of crimes against Arabs.[44] They did so under the premise that adequate law enforcement training, proper investigatory practices, and adequate reporting of bias/hate crimes can prevent them from happening in the future.[45]

[36] Id.
[39] Id.
[45] Id.
For purposes of tracking, the International Association of Chiefs of Police (IACP) notes key indicators when evaluating whether a bias/hate crime has been committed, and as well as whether further investigation is necessary. [46] These indicators include:[47]

- Perpetrator’s perception(s) of the victim and witnesses;[48]
- Perpetrator’s comments, gestures, or written statements that reflect bias, including graffiti or other symbols;[49]
- Any differences between perpetrator and victim, whether actual or perceived by the perpetrator;[50]
- Similar incidents in the same neighborhood to determine whether a pattern exists;[51]
- Whether the victim was engaged in activities promoting his/her group or community (e.g. clothing or conduct);[52]
- Whether the incidence coincided with a holiday or date of particular significance;[53]
- Involvement of organized hate groups or their members;[54]
- Absence of any other motive such as economic gain.[55]

While these factors are important, they are not exhaustive—and perpetrators may be motivated by bias even if some or all of these factors are not met. For example, in 2008 in Suffolk County, New York, a group of high school students killed Marcelo Lucero, an Ecuadorian Immigrant student.[56] Although the perpetrators were not involved in organized hate groups and may not have met some of the other factors above, “they regularly convened to hunt down and attack Hispanic men.”[57]

After Lucero’s death, many Latino men came forward to report that they had been victims of similar attacks.[58] Notably, Suffolk County reported that similar attacks had been inaccurately classified as “youth disturbances,” and were never filed as criminal reports but rather classified as mere incidents.[59] Proper investigation and identification of these attacks as bias/hate crimes may have prevented future crimes and put the community on notice that they were being targeted.

[47] Id.
[48] Id.
[49] Id.
[50] Id.
[51] Id.
[52] Id.
[53] Id.
[54] Id.
[59] Id.
Mixed Motive Bias

In the realm of evaluating the perpetrator’s motive, law enforcement, prosecutors, and courts are tasked with a difficult issue that involves piecing together the motive behind a bias/hate crime. In effect, they must answer a complex question: “must the criminal conduct have been wholly, primarily, or slightly motivated by the disfavored prejudice?”[60] According to Brian Levin, Director of the Study of Hate and Extremism, “the prosecution has to establish not that there weren’t any other motives, but that at least one of the motives was prejudicial.”[61] It is not uncommon for offenders to be motivated by more than one motive or bias behind the crime.[62] Having a bias against another often creates an unsafe and unwelcoming environment, and, even if an act does not rise to the level of a crime under state or federal law, bias/hate incidents may still be fueled by conduct including name-calling, degrading language, creating racist images, or imitating someone.[63] These incidents can be verbal, physical, or visual.[64] The NCVS reported that between 2005-2019 there was an annual average of 246,900 hate-crime victimizations against victims aged 12 years and older in the United States.[65]

Almost 90 percent of these bias/hate crimes were thought to be motivated by racial bias, ethnic bias, or both.[66] The Equality and Human Rights Commission notes that many perpetrators may have mixed motives and hold intersecting prejudices.[67]

State Level Bias/Hate Crime and Bias Motivation Laws

At the state level, Arkansas, South Carolina and Wyoming do not have bias/hate crime laws.[68] Bias categories that are protected by state-level laws elsewhere across the nation vary depending on the state, and some may allow for mixed motive prosecutions.[69] Nonetheless, federal law can still protect victims in those states or territories that do not have any bias/hate crime law in their state where the crime occurred because of the victim’s protected characteristic.[70] For example, in Ohio, race, color, national origin, religion, gender and sex are protected.[71] However, sexual orientation, gender identity, and disability are not.[72] This means that a perpetrator of a bias/hate crime based on the victim’s perceived sexual orientation in Ohio could still be prosecuted under federal law.

[63] Oregon Department of Justice, What’s the Difference between a Hate or Bias Crime and a Bias Incident?, https://www.doj.state.or.us/oregon-department-of-justice/civil-rights/bias-and-hate/whats-the-difference-between-a-hate-or-bias-crime-and-a-bias-incident/.
[64] Id.
[66] Id.
[69] Id.
[71] Id.
[72] Id.
State level bias/hate crime laws can also vary between stand alone statutes or enhancements to other offenses. For example, New York[73] has a bias-motivated penalty enhancement that raises the classification for charges where an intentional predicate offense was committed in whole or in part because of the victim’s actual or perceived race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation.[74] Thus, generally speaking, a penalty enhancement statute means the sentence is increased for crimes motivated by bias against whatever factors that jurisdiction protects.[75] Therefore, it is important to understand what type of statute (stand alone charge or penalty enhancement) is in effect in a specific area, and what protected categories are included. The Department of Justice maintains a state by state chart for easy reference.[76]

**Federal Law: Shepard-Byrd Hate Crimes Prevention Act**

In addition to the state-level bias/hate-motivated statutes or penalty enhancements, there are federal laws which further protect the rights of certain classes/categories of people when they are victimized because of that protected class/characteristic.[77] The Shepard-Byrd Hate Crimes Prevention Act of 2009 (“Shepard-Byrd”) allows the federal government to prosecute bias/hate crimes either in conjunction with or when local or state prosecutors choose not to.[78]

In October 1998, Matthew Shepard, a 21-year old openly gay student at the University of Wyoming, was brutally attacked, tied to a fence, and left for dead in a field outside Laramie, Wyoming, due to his sexual orientation.[79] His murder shocked the nation and pointed out a limitation of the Civil Rights Act due to its failure to include sexual orientation as a protected class.[80]

Shortly thereafter, James Byrd Jr., a 49 year-old African American man, accepted a ride from three white men who, motivated by racial bias; beat and dragged him to his death.[81] After the Act was first applied in a case against white supremacists, Thomas E. Perez, then-Assistant Attorney General for the Civil Rights Division of the Department of Justice stated, “[t]he Justice Department will not tolerate violent racially-motivated assaults and will continue to work cooperatively with our state and local partners to aggressively enforce the Shepard-Byrd Hate Crimes Prevention Act.”[82]

[77] Id.
Shepard-Byrd[83] criminalizes willfully causing bodily injury (or attempting to do so) with fire, firearm, or other dangerous weapon when: (1) the crime was committed because of the “actual or perceived race, color, religion, national origin” of any person, (2) the crime was committed because of the “actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability” of any person, and the crime affected interstate or foreign commerce, or (3) occurred within federal “special maritime or territorial jurisdiction.”[84]

In 2013, Shepard-Byrd was used to prosecute a racially-motivated assault against a Sikh taxi driver when the offender pulled his beard, stomped on him, called him a “towel-head” and “raghead,” and screamed various comments, such as “why did you come to my country?”[85] The offender ultimately pled guilty to one count of violating the Shepard-Byrd Hate Crimes Prevention Act.[86]

**Federal Law: Shepard-Byrd Act**

In May 2021, Congress passed the Jabara-Heyer NO HATE Act (“Jabara-Heyer”) as part of the COVID-19 Hate Crimes Act to account for a recent rise in bias/hate-motivated violence.[87] The bill was named after Khaled Jabara and Heather Heyer, whose murders were not recorded in the FBI hate crimes report as bias/hate crimes.[88] Khaled Jabara lost his life on August 12, 2016, after he was shot outside his family home by a neighbor who had been terrorizing their family for years.[89] Heather Heyer lost her life when a white supremacist plowed into a crowd of counterprotestors gathered to oppose a “Unite the Right” rally of white nationalist and other right-wing groups.[90]

Jabara-Heyer provides federal grants for state and local governments that implement the National Incident-Based Reporting System, which is highly detailed and replaces the former federal crime reporting system.[91] It also provides federal grants for states to establish bias/hate crime reporting hotlines designed to assist victims who might otherwise be reluctant to report bias/hate crimes.[92] If convicted under Jabara-Heyer, courts can require offenders to participate in educational programs or community service as a condition of supervised release.[93] Finally, one of Jabara-Heyer’s goals is to assign an official in the Justice Department to prioritize and expedite review of bias/hate crime reports related to COVID-19 and authorize more resources to deal with COVID-19 specific bias/hate crimes, making it a significant step towards modernizing bias/hate crime reporting and data collection while supporting bias/hate crime victims.[94]

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[85] Id.
[88] Id.
[92] Id.
[93] Id.
Additional Federal Bias/Hate Crime Laws

Federal prosecution[95] of bias/hate crimes may also be possible under the following statutes:

- **18 U.S.C. § 241**: Prohibiting conspiracy to deprive another of federally-protected rights;
- **18 U.S.C. § 242**: Prohibiting willful deprivation of federally-protected rights under color of law;
- **18 U.S.C. § 245**: Prohibiting, among other things, willful injury to, intimidation of, or interference with an individual because of that person’s race, color, religion, or national origin and because of that person’s participation in certain enumerated protected activities;
- **42 U.S.C. § 3631**: Prohibiting, among other things, willful injury to, intimidation of, or interference with an individual because that person’s race, color, religion, sex, disability, familial status, or national origin and because of that person’s enjoyment of certain federally-protected housing rights;
- **18 U.S.C. § 247**: Prohibiting, among other things, intentionally damaging a religious real property because of the religious character of that property (assuming it affects interstate commerce), or because of the race, color, or ethnic characteristics of any individual associated with that religious property;
- **18 U.S.C. § 249**: Prohibiting willfully causing bodily injury to another because of actual or perceived race, color, religion, or national origin, gender, sexual orientation, gender identity, or disability.

Even if the federal government decides not to prosecute a bias/hate-motivated crime under any federal bias/hate crime statutes, an offender’s bias may still be relevant at sentencing pursuant to the United States Sentencing Guidelines, which advise federal courts to impose an enhanced sentence where the judge or the jury determines beyond a reasonable doubt that a defendant committed a crime because of the actual or perceived race, color, religion, national origin, ethnicity, gender, gender identity, or sexual orientation of the victim.[96]

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**ALMOST 90 PERCENT OF THESE BIAS/HATE CRIMES WERE THOUGHT TO BE MOTIVATED BY RACIAL BIAS, ETHNIC BIAS, OR BOTH.**

**THE EQUALITY AND HUMAN RIGHTS COMMISSION NOTES THAT MANY PERPETRATORS MAY HAVE MIXED MOTIVES AND HOLD INTERSECTING PREJUDICES.**

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III. BACKGROUND ON BIAS/HATE-MOTIVATED CRIMES AGAINST SIKHS

Since the 9/11 terrorist attacks, the Sikh Coalition has received thousands of reports from Sikh Americans about bias/hate crimes and incidents, workplace discrimination, school bullying, and racial and religious profiling issues.[97] Indeed, one of the first acts of fatal domestic retaliation for 9/11 was the September 15, 2001 brutal murder of Sikh American gas station owner, Balbir Singh Sodhi, in Mesa, Arizona.[98] The killer reportedly stated he wanted revenge for 9/11 and chose Sodhi because of the clothes he wore as well as his visible articles of faith—his turban and beard.[99] In 2012, a mass shooting by a White supremacist took place in a gurdwara in the city of Oak Creek, Wisconsin, ultimately claiming seven victims. Former United States Attorney General Eric Holder described the incident as “an act of terrorism, an act of hatred, a bias/hate crime.”[100]

At the time, it was the deadliest attack on an American house of worship since the 1963 Baptist church bombings in Birmingham, Alabama.[101] Sadly, these acts are not unique to Sikhs. The Charleston Church massacre of 2015; synagogue shootings of 2018 and 2019 in Pittsburgh, Pennsylvania and Poway, California respectively; and other tragic bias-based crimes underscore that Americans of various racial and religious minority groups suffer at the hands of hate.

Sikhs often bear the brunt of bias/hate crimes; however, many police and prosecutors do not immediately recognize the acts as bias-based or bring those charges because not all are overtly biased. Egregious acts against observant Sikhs within the past five years alone include:

- A New York man intentionally struck with a vehicle while being called Osama;[102]
- A gurdwara in California vandalized with white supremacist graffiti;[103]
- An Uber driver choked while driving and yelled at for wearing a turban;[104]

[97] The Sikh Coalition is the nation’s largest Sikh civil rights organization and defends civil rights and civil liberties of Sikhs in the United States, educates the broader community about Sikhs and diversity, promotes local community empowerment, and fosters civic engagement amongst Sikh Americans. The Sikh Coalition owes its existence in large part to the effort to combat uninformed discrimination against Sikh Americans after September 11, 2001. Since its inception, it has worked with governmental and private entities across the country to provide cultural competency training and information regarding the discrimination Sikhs face in America.
• A store owner in Oregon who was beaten and had his beard violently pulled;[105]

• A Colorado store owner who was told “go back to your country” and then rammed with a vehicle and left for dead;[106]

• A taxi driver in Las Vegas who was physically attacked and had his turban ripped off;[107]

• A Gurdwara in California was vandalized with hate messages on its walls, including one calling for “nuking” Sikhs;[108]

• A Sikh man in Florida found the message: “Sikh [expletive] U” written in paint on his son’s car that was parked outside their home.[109]

While this list is not exhaustive, these examples of verbal and physical attacks keep the Sikh American community vigilant and are reason enough for local and federal law enforcement agencies to be cognizant of the special vulnerabilities the Sikh community faces. It is clear that these crimes and many others that are not charged as bias/hate crimes or go unreported altogether have a strong impact on religious and racial minority communities across the country. When law enforcement agencies fail to properly investigate or prosecute the potential bias motives, it can significantly erode trust and relationships between the community and those who are meant to protect and serve them.

THESE EXAMPLES OF VERBAL AND PHYSICAL ATTACKS ARE REASON ENOUGH FOR LOCAL AND FEDERAL LAW ENFORCEMENT AGENCIES TO BE COGNIZANT OF THE SPECIAL VULNERABILITIES THE SIKH COMMUNITY FACES.


IV. BIAS/HATE CRIME DATA COLLECTION, REPORTING, AND ANALYSIS

Overview of FBI and Bureau of Justice Assistance Tracking

There are two federal sources of data on bias/hate crimes, both of which define a hate crime pursuant to the Hate Crime Statistics Act as a crime that is “motivated in whole or in part by an offender’s bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity.”[110] Individual states may also maintain additional bias/hate crime statistical reports which should be reviewed by local law enforcement when investigating specific incidents.[111] It is worth noting that, depending on the jurisdiction, the bias motivating factors need not be the entire reason the offender committed the offense; rather, bias should be a motivating factor in the act or severity of the crime.[112]

The first federal source of data is the FBI’s Hate Crime Statistics Program, which is a compilation of data from the 1990s to the present via the UCR program.[113] The UCR includes information that is reported by police regarding bias/hate crime offenses, including additional offenses that were committed as a result of bias factors, such as other violent or property crimes and also reports on hate incidents and the offenders involved.[114] It captures data on individuals of all ages, organizations, businesses and religious facilities that are involved in bias incidents.[115] Notably, it only classifies data pursuant to the offender’s perceptions as to the racial or religious background of their victim, regardless of whether the offender was mistaken as to the victim’s identity.[116]

In 2015, the FBI and Department of Justice (DOJ) began tracking bias/hate crimes against Sikhs as a distinct category from other South Asian or Middle Eastern groups such as Hindus and Arab-Americans.[117]

COLLECTING DATA ON BIAS/HATE CRIMES AGAINST SIKHS REMAINS CHALLENGING DUE TO A LACK OF MANDATORY REPORTING REQUIREMENTS, LANGUAGE ACCESS ISSUES, AND A LACK OF TRUST BETWEEN LAW ENFORCEMENT OFFICERS & THE COMMUNITY.

[111] Id.
[112] Id.
[114] Id.
[115] Id.
[116] Id.
[118] Id.
The FBI’s UCR Statistics indicate that anti-Sikh bias/hate crimes are consistently rising, making Sikhs one of the top five most-targeted religious groups in the nation on an annual basis.[119] Despite this, FBI tracking still fails to provide a complete picture because it does not account for unreported incidents or the actual race and religion of the victim (as it focuses on the attacker’s perception of their target).

The second source of data is the NCVS.[120] This is a nationally representative household survey administered by the U.S. Census Bureau.[121] This includes many bias/hate crimes which have not been reported to the police but which are reported to community or civil rights representatives.[122] NCVS’ reporting is based on the victim’s identity (as opposed to how the offender perceives the victim in a case of mistaken racial/religious identity), as well as the crime scene evidence.[123] It is important to note that many of the cases surveyed are not charged as bias/hate crimes due to lack of reporting, lack of adequate police investigation into bias factors, or general lack of concrete evidence.[124] Additionally, the NCVS only captures data against individuals 12 years or older and it does not include victims that are businesses, organizations, or institutions.[125] Between 2005–2019, the NCVS indicated that, while there were an estimated 246,900 bias/hate crimes and incidents annually—including violent crimes—the majority of those victims did not report the incident to law enforcement for various reasons including lack of trust with local law enforcement.[126]

**Challenges to Collecting Accurate and Comprehensive Data**

There are a few reasons why collecting accurate and comprehensive data on bias/hate crimes against Sikhs remains challenging, including a lack of mandatory reporting requirements for law enforcement agencies, language access issues among the Sikh community (particularly for newer immigrants), a lack of trust and relationship between law enforcement officers and the community, and mistaken identity of victims caused by confusion or a lack of information.

While this is not an exhaustive list, better understanding these challenges and how they may impact localities is the first step in addressing them to gather more accurate and comprehensive data. Below, please find more information on each of these challenges:

<table>
<thead>
<tr>
<th>1. Lack of Mandatory Reporting</th>
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<td>Though the FBI relies on local law enforcement agencies to collect and submit bias/hate crime data, local agencies are not required to track and share this information.[127]</td>
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[119] Id.
[120] Id. See also NCVS, 119 Id..
[121] Id.
[122] Id.
[123] Id.
[119] Id.
[125] Id.
1. **Lack of Mandatory Reporting**

Among the nation’s thousands of federal, state, local and tribal law enforcement agencies, only a fraction report a single bias/hate crime to the FBI.[128] This is due to a number of reasons, including the fact that many agencies lack the resources and training to identify, report and respond to bias/hate crimes.[129]

Only 14 states currently have laws requiring officers to be trained to identify and investigate bias/hate crimes, thereby increasing the chances a prosecutor may review and bring those charges.[130]

2. **Language Access Issues**

Title VI of the Civil Rights Act of 1964 prohibits recipients of federal financial assistance, including state and federal law enforcement agencies, from discriminating against people based on national origin—thus obligating those agencies to provide some form of language access for crime victims and witnesses.[131] Discrimination occurs when, among other things, "an agency fails to provide meaningful access to its programs and activities for people who have limited English proficiency (LEP)."[132]

In order to provide meaningful access to LEP individuals, interpreters should be provided during investigatory preparation and interviews, as well as for translating written materials that are routinely provided to crime victims, witnesses or others who are likely to be affected by a law enforcement agency’s activities, including court proceedings.

[133] The majority of Sikhs in the United States, though not all, derive from a region of the Indian subcontinent where the primary spoken language is Punjabi.[134]

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[128] Id.
[129] Id.
### 2. Language Access Issues

Newer immigrants may not be as well-versed in English and thus may not feel as comfortable talking with police and prosecutors. Without adequate translators, a lack of language access can lead to miscommunication between law enforcement officials and crime victims. This is especially true when these victims have experienced trauma and are reverting to the language they are most familiar with in order to adequately express themselves and process what has happened to them.

Law enforcement should always approach crime victims and witnesses in a respectful and culturally sensitive manner to gain their trust and cooperation. Sikh victims and witnesses may be more likely to provide greater detail about the crime when approached in this manner, which will lead to more thorough investigations, better prepared cases, and a greater likelihood of conviction.

Investigators and prosecutors are best served if they start out by asking crime victims or witnesses directly how they can most effectively communicate with each other, what language they are most comfortable speaking in, and how the investigator or prosecutor can best support them. Most victims and witnesses prefer to have these issues immediately addressed, rather than endure further uneasiness and lack of understanding throughout an interview.

Importantly, organizations like The Sikh Coalition provide training on these cultural awareness issues so law enforcement officials are adequately equipped to investigate and prosecute crimes against vulnerable communities. To request a training see: [https://www.sikhcoalition.org/contact-us/request-a-sikh-awareness-training/](https://www.sikhcoalition.org/contact-us/request-a-sikh-awareness-training/).

### 3. Lack of Trust and/or Immigration Concerns

It is important that law enforcement personnel—including police officers, prosecutors, and victim’s rights advocates—do everything they can to build trust in the community and facilitate crime reporting and victim cooperation.[135]

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<th>3. Lack of Trust and/or Immigration Concerns</th>
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<td>For some, the fear of deportation is a significant obstacle to establishing that trust. Some immigrants may be fearful due to a lack of legal immigration status in the United States; they may be subject to exploitation of that fact by a perpetrator and thus unwilling to come forward to report crimes or work with law enforcement.[136]</td>
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<td>In other cases, bias/hate crimes directed at particularly vulnerable groups, such as more recently emigrated Sikhs, can be difficult to identify and investigate due to the victims’ fear of interactions with law enforcement based on trauma from and government persecution in their home country.[137]</td>
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<tr>
<td>Law enforcement making it clear that they are not focused on a victim’s immigration status or that they understand the victim may distrust law enforcement based on prior experiences may be critical to providing them with a greater sense of security when reporting and prosecuting a bias/hate crime.</td>
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<td>Further, explaining potential avenues of redress, such as the availability of a U nonimmigrant status (“U visa”) for victims of certain crimes, T nonimmigrant status (“T visa”) for victims of human trafficking, and other types of cooperative visas is one approach law enforcement may take to make victims comfortable in cooperating.</td>
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<th>4. Mistaken Identity</th>
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<td>Sikhs are often mistaken for other religious or ethnic groups, such as Muslims or Arabs. In some cases, when law enforcement realize the individual is a Sikh—and not a Muslim, as the offender assumed—they fail to classify the act as a bias/hate crime.</td>
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[139] Id.
4. Mistaken Identity

Not only does this lead to inaccurate classification and underreporting of anti-Sikh bias/hate crimes, but officials must recognize that the offense is still a bias/hate crime as long as the offender was motivated in some part by bias against a protected group (regardless of whether they were wrong on the characteristic they were targeting).[140] Thus, mistaken identity is not a defense and such cases warrant the inclusion of bias/hate crime charges and classifications.

V. ROLE OF POLICE INVESTIGATORS AND PROSECUTORS

Understanding the Evidence and Challenges Presented

Effective policing measures are necessary when investigating bias/hate crimes against Sikhs because they send a clear message to the public that addressing bias/hate crimes is a priority. The IACP has stated that, when it comes to bias/hate crimes and incidents, “a swift and strong response by law enforcement can help stabilize and calm the community as well as aid in a victim's recovery.”[141] However, this is predicated on an officer’s level of awareness as to the bias involved. Sometimes this lack of awareness can be the result of a language barrier between the crime victim and investigators, but that is not an excuse for investigators being inadequately equipped to recognize the signs of potential bias where they may exist. An effective response reinforces for victims and their representative groups that the perpetrator will be made to answer for all of their conduct.[142] For Sikh and other minority communities, this is also part of breaking down the barrier of being treated as the “other” from their fellow Americans.[143]

Bias/Hate crime investigations are substantially similar to other criminal investigations, where law enforcement officers arriving at the scene should follow general investigatory and evidence gathering protocol in securing the scene, calling for medical attention when required, and photographing and preserving the scene of the crime and any residual evidence or debris that is in the vicinity, as well as other immediate response protocols.[144] Beyond the typical protocol, however, bias/hate crimes require a deeper dive, both in investigation and case preparation.[145] This is especially true when the victim belongs to a vulnerable group but overt evidence indicating bias—such as hate literature, graffiti, tattoos or symbolic images used by hate groups—is not applicable or readily apparent.

In cases where the obvious bias components do not exist, investigators should ask specific questions geared towards determining whether or not bias played a role during the offensive act.[146] Starting with an interview of the victim and witnesses, officers should assess step by step what the perpetrator said and did in reference to the victims’ or witness’ protected characteristics. For many groups, that can often mean hateful comments referencing their use of a different language; statements or slurs such as “go back to your country”[147], “ISIS”,[148] “Middle East”, “terrorist”[149], “sand cricket”, and “raghead”; references to the victim ethnic food from a targeted region (i.e. Middle Eastern foods such as babaganoush, falafel, curry etc.); or using a mocking foreign accent—just to name a few examples.

[144] International Association of Chief of Police Law Enforcement Policy Center, supra note 138.
[145] International Association of Chief of Police Law Enforcement Policy Center, supra note 138.
[146] International Association of Chiefs of Police Law Enforcement Policy Center, supra note 138 at 7.
[147] Matt Day, Sikh man in Kent says he was told, ‘Go back to your own country’ before he was shot, SEATTLE TIMES (March 4, 2017, 10:04 AM), https://www.seattletimes.com/seattle-news/law-justice/kent-shooting-victim-says-he-was-told-go-back-to-your-own-country/.
[149] Id.
Additionally, in many cases where Sikhs are targeted, the perpetrator has made gestures or physical contact indicating bias may be involved, which officers should recognize. For example, if the victim has visible articles of faith, officers should look into whether those articles were attacked or targeted in any manner. In many cases where a turban wearing individual is victimized, the turban itself is attacked in a manner such as pulling or punching it in an attempt to remove it.[150] Because the turban is a religious article of faith (as opposed to just a secular hat), this conduct should immediately trigger the notion that bias may be involved and can be used to establish the elements of a bias/hate crime.[151]

In practice, many police and prosecutor offices do not investigate or bring bias/hate crime charges because there are other applicable charges with higher statutory penalties for the offender which do not require the added element of bias intent to be proven. However, the reality is that for a bias/hate crime victim and the community that victim represents, the most serious, underlying offense is often the bias motivation itself. Failure to acknowledge the bias aspect of a crime denotes a level of dismissal as to that victim’s and their community’s experience with bias and has lasting effects on the degradation of relations between law enforcement and vulnerable groups.

**Building Cultural Competence Through Training and Engagement**

Engaging in cultural awareness training and continuously updating training curricula is critical to ensuring law enforcement officials are able to effectively protect communities.[152] No police officer or prosecutor can properly investigate or prosecute anti-Sikh bias/hate crimes without learning about and understanding how and why Sikhs are so frequently targeted. Agencies should collaborate with community stakeholders, local community members, and civil rights and advocacy organizations to enhance the quality of their training curriculum. This will enable officers to better understand the concerns that communities are confronting and develop their training materials accordingly.

Moreover, conducting regular audits of internal policies, trainings, officer conduct, recruitment processes, and retention numbers can also be helpful to disclosing bias or discrimination that may exist in the department and to provide additional support to officers who need more training in this area.[153] While there is no national standard for police training specific to bias/hate crimes or creating cultural competence, a variety of resources are available to guide agencies in developing training materials to meet their needs.[154]

Regardless of department size, the trainings ought to be conducted for all employees in a law enforcement agency—not just the officers or prosecutors investigating and prosecuting. Leadership and command staff should also be trained in order to prepare them to lead their colleagues in properly responding to reports of bias/hate crimes.[155]

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[151] Id.
[155] Id.
NO POLICE OFFICER OR PROSECUTOR CAN PROPERLY INVESTIGATE OR PROSECUTE ANTI-SIKH BIAS/HATE CRIMES WITHOUT LEARNING ABOUT AND UNDERSTANDING HOW AND WHY SIKHS ARE SO FREQUENTLY TARGETED.

Collecting Evidence and Conducting the Investigation

The initial phases of a bias/hate crime investigation are critical. It is imperative that law enforcement officials ask themselves, “is this offense motivated by hate or bias?” at the earliest possible point, regardless of whether the crime or incident is a felony or misdemeanor.

For law enforcement, demonstrating a causal nexus between an offender’s bias and the crime against the victim can require extensive research and investigation into more than the offender’s immediate actions. Subsequent to assessing and observing the immediate scene of the crime, evidence should be gathered by:

- Victim and witness interviews regarding the incident, including any and all statements made or exchanged between them and the offender before, during or after the incident.
- Social media evidence that may show involvement in organized hate groups; and
- Looking at aspects of the act itself, including non-verbal conduct indicating bias, such as symbolic attacks on religious or racial locations or other acts that are consistent with methods of perpetuating biased attacks on groups of people. For example, one may target an article of faith, or engage in activities that coincide with a holiday or date.

Courts have held that proving bias takes more than just showing the offender has a general animus against a particular class of people where that animus is unrelated to the offense at hand.

The IACP has created the following checklist for law enforcement agents to use when thoroughly documenting a potential bias/hate crime:

[156] Id.
[157] Id.
[158] Id.
[159] Id.
[160] Id at 20.
[161] Id.
[162] Id.
[163] Id.
1. Determine the primary elements of the crime and obtain the information necessary to complete the bias/hate crime data collection requirements.\[166]\n
2. Recognize the potential need for additional investigatory resources, and request such assistance where necessary (e.g., a Punjabi translator), as well as looping in other agencies (e.g. FBI).\[167]\n
3. If evidence of improper bias motivation or improper bias indicators cannot be physically removed (e.g., graffiti), the owner of the property should be contacted to do all that is possible to ensure that the physical evidence is removed as soon as possible once it has been photographed.\[168]\n
4. Work closely with the prosecutor's office to ensure that an adequate case is developed for prosecution.\[169]\n
5. Coordinate the investigation with other departments as well as with state and federal agencies in order to identify any patterns, organized hate groups, and suspects potentially involved in the bias/hate crime.\[170]\n
6. Make a determination based on evidence and facts as to whether the incident should be classified as a bias/hate crime—and adjust that determination as needed if new evidence surfaces.\[171]\n
7. Request additional resources from local, state, and federal agencies as they are necessary and available.\[172]\n
8. Ensure that appropriate assistance is made available to victims, including but not limited to providing ongoing information to the victim about the status of the criminal investigation and contacting the victim periodically to determine whether they are receiving adequate and appropriate assistance.\[173]\n
**Important Considerations for Prosecution**

Police officers and prosecutors must work together closely during investigations and prosecutions of bias/hate crime cases. Police officers should share helpful information for communicating with witnesses or victims who often provide key facts and details during a trial.\[174]\n
Law enforcement officials may also choose to participate in “know your rights” trainings.\[175]\ These trainings often bring together prosecutors, law enforcement officers, and community members.\[176]\ Community members can articulate challenges their communities face, while officers can discuss the policies and procedures governing their investigations and prosecutors can explain the legal requirements of building a bias/hate crimes case as well as the process for prosecuting them \[177]\.

\[166]\ Id.
\[167]\ Id.
\[168]\ Id.
\[169]\ Id.
\[170]\ Id.
\[171]\ Id.
\[172]\ Id.
\[173]\ Id.
\[175]\ Id.
\[176]\ Id.
\[177]\ Id.
Importantly Considerations for Prosecution

Creating this level of transparency and accountability increases the likelihood that vulnerable communities will engage with law enforcement, report crimes when they happen, and share the necessary information for a successful prosecution.[178]

Where appropriate, prosecutors should explore restorative justice principles and practices. Restorative justice is an alternative to the traditional criminal legal process in addressing harm to crime victims while demanding accountability from the perpetrators, whereby victims and offenders agree to enter into a specific program that is non-adversarial.[179] Ultimately, restorative justice seeks to reduce the role of incarceration as punishment, repair the harm of bias/hate crimes, hold perpetrators accountable, and address underlying issues (e.g., mental health, substance abuse, or anger management) with respect to the offender.[180] It prioritizes facilitating engagement and awareness of the harm caused between the victim, stakeholder communities, offender, and legal and psychological professionals over punitive models in redress to deter crime and rehabilitate those offenders.[181] Although models tend to differ, they typically involve the following three phases:[182]

1. **Preparation phase**: Facilitators meet with victims, offenders, and other possible participants to discuss expectations and concerns and assess readiness to participate.[183]

2. **Dialogue meeting**: Victims share the impact of the crime and ask questions of the person who harmed them. Offenders have an opportunity to express remorse and the participants agree on a set of reparative obligations.[184]

3. **Follow-up phase**: Facilitators support and monitor compliance with the agreement, including how law enforcement can continue relationship building with the harmed community.[185]

Restorative justice programs may include requirements such as monetary restitution, community service, apologies to the victim, the completion of an educational or counseling program, the repair of physical damage, or other creative interventions tailored to the nature of the crime.

Proactively Engaging with Community Stakeholders

If bias is a factor in a particular case, investigators should immediately recognize that there may be additional security threats towards the community the victim represents or is perceived to belong to. When such crimes occur, both the victim and their community may suffer from trauma, frustration and feelings of vulnerability.[186] Sikh victims are often chosen due to their brown skin and articles of faith, which leaves the community feeling as though any of them could be an interchangeable victim for the offender or a copycat.[187]

[178] Id.
[180] Id.
[181] Id.
[183] Id.
[184] Id.
[185] Id.
As a result, law enforcement agencies should connect with local community leaders or with an affiliated advocacy organization, gurdwara, local bias/hate crime coalition, or interfaith group to discuss the security needs of the broader community. Such a response acknowledges what the victim has experienced, further addresses the needs of community stakeholders, and presents an opportunity to engage with local community members to provide much needed support and stabilization.

Though the relationship between police, prosecutors, and minority communities ideally exists prior to a crisis, looping in community stakeholders is also an opportunity for local law enforcement to discuss a Memorandum of Understanding (MOU) between their agency and their local gurdwara.[188] An MOU is a document outlining a predetermined security plan in the event of a crisis between houses of worship and local police departments, such as known or perceived safety threats—either against this community or another one which is often mistaken for this community—or an active shooter/violence situation.[189] The MOU essentially acts as an emergency notification system where the police have toured the gurdwara and have a documented understanding of safe spaces, exits, and entrances.[190] It should also include a phone tree for the gurdwara safety committee and the police for ease of notification in an emergency. The document will also describe the roles and responsibilities of each party in carrying out their assigned duties.

The main reason organizations and police develop a MOU is to create collaboration between both parties, ensuring they each have a full understanding of the scope of events and actions necessary to protect and respond to emergencies. In the context of anti-Sikh crime, it is most effective to enter into a MOU subsequent to a Sikh awareness training which provides clarity for police on significant aspects of Sikhism and respectful community interaction, so there is no miscommunication in an emergency. This also sets the foundation for improved coordination and response time if an incident occurs.[191]

In addition to developing MOUs with a gurdwara, law enforcement officials may want to consider the following action steps based on those developed by the IACP:[192]

1. Evaluate bias/hate crime impact on the community involved and acknowledge the harm done.

2. Continue to provide support to the victim—including protecting their privacy and that of their family, and connecting them to any available experts and resources.

3. Collaborate with the affected community to “help reduce fears, stem possible retaliation, prevent additional bias/hate crimes or incidents, and encourage any other previously victimized individuals to step forward and report those crimes.”[193]

[189] Id.
[190] Id.
[193] Id. at 6.
4. As appropriate, meet with those in the neighborhood or targeted communities, as well as any other identified groups "as soon as possible to address fears, explain the [department]'s serious treatment of [the situation], reduce the potential for counter-violence and reprisals, and provide safety, security, and crime prevention information."[194]

5. If engaging the media, ensure you are “restoring [the] victimized communities through sensitive and accurate reporting, being mindful of victim’s privacy and security.”[195] In this vein, departments should consider working with community advocacy organizations, such as the Sikh Coalition, to ensure accurate and timely information is conveyed to media outlets.

6. Immediately following an alleged bias/hate crime, “ensure that comments from the department to the media or general public do not prematurely rule out improper bias motivation.”[196] Law enforcement agencies must make sure to emphasize that discrimination and hate do not have a place in the broader community.

7. Solicit community impact statements so they feel acknowledged as a secondary victim in bias/hate-motivated crimes.

8. Where appropriate, expand educational and preventative programs for schools.

[194] Id.
[195] Id.
[196] Id.
VI. CASE STUDIES

Attack on a House of Worship: Oak Creek

Who were the victims of the shooting that took place in Oak Creek, Wisconsin? On August 5, 2012, a gunman opened fire at a Sikh Temple in Oak Creek, Wisconsin while Sikh community members were praying, ultimately killing seven individuals.[197] On that day, several other worshippers were severely injured, as well as an Oak Creek Police Officer, Brian Murphy, who was shot numerous times at close range while attempting to save others.[198]

What evidence was gathered to prove that bias was a motivating factor? The investigation into the shooting quickly revealed that the shooter, Wade Michael Page, was a white supremacist.[199] The Oak Creek Police Department (OCPD) identified local groups and social media websites that Page had been part of and began accessing intelligence shared by the greater law enforcement community.[200]

After that, OCPD had to answer serious and candid questions from local members of the Sikh community about the shooting, the police response, and how to ensure this type of attack never happened again.[201]

Page’s history showed that he was involved in a white power music scene, had been immersed in a Neo-Nazi rock music world a little, and that he received a “patch” in the Northern Hammerskins, a violent skinhead group in the U.S. [202] Furthermore, Page had multiple white supremacist tattoos, including a Nazi’s death head and Hammerskins tattoo,[203] and the Southern Poverty Law Center, which tracks known white supremacists, had been tracking him for over ten years.[204]

[198] Id.
[200] Id.
[201] Id.
[204] Michael Martin, Shooter Was on Radar For Years, Expert Says (Aug. 8, 2012), https://www.npr.org/2012/08/08/158419582/shooter-was-on-radar-for-years-expert-says
[Image] Washington, DC - Aug. 8, 2012: Prayer vigil near the White House for the Sikh community following the murder of six Sikh worshipers in Oak Creek, Wisc. Photo by Rose Marie Berger / Sojourners
The FBI concluded that Page acted alone and the crime was not directed or facilitated by a white supremacist group; regardless, Page's motivation was undeniably biased because he targeted a Sikh Temple on a Sunday—a day of worship for the Sikh community, when gurdwaras are generally filled with Sikh members. [205] Meanwhile, the hate groups that Page had a long history of being part of are particularly fueled by the changing racial landscapes across the United States. [206] Page ultimately could not be prosecuted because he died at the scene. [207]

What steps did Oak Creek Law Enforcement take after the shooting? OCPD immediately responded and engaged with the offender during the attack, coordinating an effort to save multiple additional parishioners. On the day after the shooting, the police chief, mayor, and other city representatives privately met with members of the Sikh community and religious leaders to develop and implement a robust security plan and MOU between the police department and the gurdwara. [208] OCPD also made additional commitments towards a strong working relationship with the Sikh community members, which led to officers stopping by the gurdwara for tea and to engage with the community. [209] Since then, and in consultation with the Sikh community, OCPD has added security or additional patrols when there is a large presence at the gurdwara. [210] The measures that OCPD took to support the Sikh community and recognize the bias/hate crime it had experienced ultimately led to better relations between police and the community. [211]

Many local Sikh community members get together at the gurdwara for an event to raise money to support the hurricane relief assistance program after homes in Houston, Texas, and parts of Lake Charles, Louisiana, experienced extreme water damage in late September. It’s a sunny day, so the event takes place outside on gurdwara property.

As community members arrive, someone notices a white man in a black vehicle with tinted windows, slowly driving up and down the street in front of the gurdwara for several minutes without exiting the car. This appears suspicious to several community members, so they get the license plate number and call the local police to report it. They ask if a patrol car can immediately be sent to engage with the driver and ensure the community’s safety. A patrol car soon arrives, and stops the black vehicle.

As the owner of the vehicle is rolling down his windows, the officers notice a camera on his passenger seat. The officers question the man about what he is doing and what the camera is for, and ask for his name and identification. The man says he was just seeing what “those terrorists” were up to. The officers ask if they can see any pictures he took, so the man hands them his camera. The officers do not see any images related to the gurdwara or Sikh community, and ultimately tell the man to immediately leave the premises and not return, else he be charged with trespassing.

[206] Id.
[207] Id.
[209] Id.
[210] Id.
[211] Id.
What are the facts of the bias/hate crime committed against Lakhwant Singh? Mr. Singh, a brown skinned, turban-wearing Sikh man and Colorado store owner, was inside his store and speaking to his wife in Punjabi when a white male customer, Eric Breemen, began shouting at him to “go back to your country!”[212] Mr. Singh told Breeman to leave and then went outside to take a picture of the man’s license plate to report it to police.[213] Breemen got in his vehicle, backed up, and repeatedly ran over Mr. Singh before driving away, leaving him for dead. He was eventually arrested, at which time he asked the arresting officers if he had “killed the Arab guy.”[214] Colorado has a bias motivation statute which prohibits crimes against individuals which are committed because of the victim’s perceived race, religion, and national origin.[215]

What evidence was gathered to prove the motivation was based on bias? Initially, the local police department did not document Mr. Singh’s race or visible articles of faith, the fact that Breemen became enraged after seeing Mr. Singh and hearing him speak another language to his wife, or the conversation that occurred between Mr. Singh and Breeman just prior to the attack.[216]

The District Attorney’s office also refused to bring bias/hate crime charges against Breemen, stating the phrase “go back to your country” was not biased—and that even if it was, Breemen had a mental health disorder, which was the main reason behind the attack.[217] Ultimately, after re-evaluating the evidence and further review of the mixed-motive elements of the Colorado bias motivation statute, the DA’s office announced that the assault would be charged as a bias/hate crime, with bias being a factor in the attack.[218]

[213] Id.
[214] Id.
[215] See Boulder Police Department, Bias Motivated Crimes https://bouldercolorado.gov/services/bias-motivated-crimes#:--text=Definitions-“Bias%20motivated%20crime%20shall%20mean%20the%20commission%20of%20any%20of%20the%20following%20acts%20which%20are%20based%20on%20race%20or%20gender%20expression%20or%20national%20origin.”
[217] Id.
[218] Id.
Johnny, a Hispanic male in his twenties, has been diagnosed with depression and has trouble controlling his temper ever since his diagnosis. He lives at home in California and often gets into arguments with his parents, after which he likes to go to the movies to cool off. After one particular fight, he goes to his local theater and walks up to the attendant to buy his ticket.

The attendant, Mr. Singh, is a Sikh male who wears a turban and has a beard. When Mr. Singh asks Johnny to pay the $10 for his ticket, Johnny asks him why the ticket price is so expensive. Mr. Singh, who speaks with an accent, says that he does not know but if Johnny wants to watch the movie he will have to pay the price. Johnny then shouts, “You can’t even talk properly, don’t talk to me if you don’t know English and don’t tell me what I owe! I’m not paying that ridiculous price!” and punches Mr. Singh in the head, knocking off his turban and breaking his nose. Mr. Singh’s coworkers call the police, who arrive on scene.

Upon speaking with Mr. Singh, witnesses, and Johnny, they immediately consider whether bias was a motivating factor to Johnny’s conduct. Officers look up the California bias/hate crime statute, which says “…any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim’s race, ethnicity, religion, sexual orientation, or physical or mental disability…”

The police then conduct an analysis into the various IACP factors present in this case. They believe Johnny’s comments and gestures reflect bias based on the perceived differences between him and Mr. Singh. Even though Johnny was already upset when he walked into the movie theater and he has a diagnosed mental health diagnosis, he also focused on Mr. Singh’s ethnic accent and non-white national origin when engaging in the criminal act. As a result, officers present hate crime charges in addition to aggravated battery charges to the prosecutor. The prosecutor understands that, according to the California statute, an act can qualify as a hate crime—even if it was motivated “in part” rather than entirely by bias.

Federal Case Study: Sikh Student in Texas

What are the facts of the bias/hate crime that was committed against a Sikh student in West Texas? A young, turban-wearing Sikh student working as a part-time pizza delivery driver was thrown into a swimming pool and brutally assaulted in West Texas by a group of men who hurled racist slurs at him.[219] Upon delivering the pizza, the men called him ‘Osama Bin Laden’ and told him to ‘go back to Afghanistan.’[220] The four men then grabbed the Sikh student and threw him into a swimming pool.[221] After he was thrown in, the attackers surrounded the pool, kicking, hitting, and stomping at him in the head and on his body every time he tried to escape.[222] For twenty minutes, the student swam for his life while trying to escape.[223] Eventually, he seized an opportunity to get out of the pool and run with two of the men in pursuit.[224]

[220] Id.
[221] Id.
[222] Id.
[223]Id.
[224] Id.
**How did the local police handle the attack?** Local police were called and classified the incident as a misdemeanor.[225] Despite being aware of the racial epithets and connecting those to the Sikh student’s visible appearance, the police did not investigate the incident as a bias/hate crime.

After the Sikh Coalition notified the FBI about the incident, the FBI and DOJ began investigating the incident as a possible federal bias/hate crime.[226] Eventually, Doug Wilson Renshaw—one of the attackers—pled guilty to a federal bias/hate crime charge after admitting to assaulting the victim with others.[227]

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Mira, a Sikh woman of Indian descent and with dark brown skin living in Arizona, gets a part-time job as a UberEats driver to help pay for college. When she arrives at a house for a particular delivery, she is greeted at the door by one white female and one Hispanic male who immediately ask her if she “is Osama’s wife,” or if she’s a “Taliban bride.” They then imitate an Indian accent in front of her and laugh. Mira feels fearful and asks for the money for the food so she can leave. However, the couple laughs at her, takes the food, refuses to pay, and slams the door in her face. At the same time, another man comes out of the garage and throws tennis balls at her car, damaging the windshield and the front of the car while laughing and saying “Osama’s wife.” Her front windshield is cracked, resulting in $400 worth of damages.

Mira attempts to drive away, but is unable to see so she pulls over a few minutes later. She then calls the police to report the incident. The police arrive at the house and interview all of the suspects, as well as neighbors who claim they didn’t hear anything. A neighbor’s security camera shows the man throwing tennis balls at Mira’s vehicle and the couple pointing at Mira and speaking, but it does not include audio. The police tell Mira that, because none of the neighbors heard what the couple said, they are unable to seek bias/hate crime charges. The prosecutor’s office refuses to conduct its own investigation and proceeds on the misdemeanor criminal damage to property charges.

Mira files a complaint with the FBI. The FBI investigates and learns the couple and man who refused to pay Mira belong to a local neo-Nazi group. The FBI also discovers that the man who threw the tennis balls had accidentally recorded some of the initial conversation on his phone. The investigators could hear “Osama’s wife” in part of the recording. The U.S. Attorneys’ office prosecutes the case under federal hate crime laws, presenting evidence that even though the couple and man involved incorrectly assumed Mira was a Muslim woman, they called her racial slurs based on her perceived race or national origin, put her in reasonable apprehension of fear of bodily injury, and caused property damage.

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[226] Id.
[227] Id.
Bias/Hate crimes are some of the most deeply impactful crimes because they attack both an individual’s identity—aspects of their being which cannot be changed or altered—and the identity of the community that they represent. As a result, these investigations and prosecutions require a particular knowledge of the protected characteristics of the victim as well as a baseline of cultural competence to approach and engage their community.

While this guide is no substitute for actual engagement with your local Sikh community, it is meant to provide insight into the specific challenges Sikh Americans often face due to their distinct and visible religious and racial identity. Bias/Hate crime investigations may require an additional element in presenting evidence of the offender’s motive, but that should not deter law enforcement officials from thoroughly investigating and prosecuting these cases when the evidence exists.

As law enforcement officials, your aim is to serve, protect, and seek justice for all the people you represent, and thus it is important to understand—and seek to achieve—what justice means to those individuals.

WHILE THIS GUIDE IS NO SUBSTITUTE FOR ACTUAL ENGAGEMENT WITH YOUR LOCAL SIKH COMMUNITY, IT IS MEANT TO PROVIDE INSIGHT INTO THE SPECIFIC CHALLENGES SIKH AMERICANS OFTEN FACE DUE TO THEIR DISTINCT AND VISIBLE RELIGIOUS AND RACIAL IDENTITY.

IT IS IMPORTANT TO UNDERSTAND—AND SEEK TO ACHIEVE—WHAT JUSTICE MEANS TO THEM.
**Amritdhari:** An individual who partakes in an amrit sanchar, through which they are formally initiated as a Sikh and becomes part of the Khalsa; all amritdhari Sikhs are required to keep the five articles of faith on or as part of their person at all times.

**Amrit Sanskar:** Initiation ceremony that allows Sikhs to become members of the Khalsa.

**Articles of Faith (also Kakaar, the “5 Ks”):** Many Sikhs display dedication to their religion by wearing five articles of faith, which must be maintained on their person at all times to signify their outward commitment to living by Sikh principles of honor, justice, and love for humanity:

- **Kanga:** A small wooden comb often placed within one's hair.
- **Kachera:** Shorts worn traditionally as an undergarment
- **Kara:** A bracelet worn on one or both wrists.
- **Kirpan:** An article of faith that resembles a knife or sword worn with a shoulder strap (gatra) on the body.
- **Kesh:** Uncut hair on the head, face, and body; hair on the head is covered with a turban (dastaar), with some women choosing to wear a scarf (chunni) instead.

Kesh also includes all hair on the body - including facial hair.

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Amrit sanchar 91 [https://www.flickr.com/photos/skiranjotsingh/16523483553] by S. Kiranjot Singh Malhotra (CC BY 2.0)
Cotton Kashera for Adults and Kids [https://sacredsikh.com/products/kashera-soft-cotton]
Kara on Wrist [https://www.flickr.com/photos/hari_singh/3136258933] by Hari Singh (CC BY 2.0)
Kirpan and kara [https://en.wikipedia.org/wiki/Kirpan#/media/File:Kirpan_and_kara.jpg] by Skielor (CC BY-SA 4.0)
Indian woman with purple dress and black hair © ChiccoDodiFC /Adobe Stock.
**Chunni:** Thin scarf worn by some Sikh women to cover their heads.

**Dastaar (turban), also known as pugh:** A type of headwear which, for Sikhs, is religiously significant and part of their articles of faith; consists of a long piece of cloth that is tightly wound and wrapped around its wearer's head.

**Gatra:** A strap for a kirpan typically worn over the shoulder and across the torso, allowing the kirpan to be suspended at the waist.

**Gurdwara:** Sikh house of worship and community center; everyone is welcome at a Gurdwara regardless of their race, religion, color, or class.

**Guru:** Literally translates to "teacher."

The Sikh Gurus were prophets who preached a new, revolutionary message to improve life on earth and to enable human beings to come closer to God; one after the other, the ten Gurus worked to spread and institutionalize the Sikh religion.

**Guru Granth Sahib:** The Sikh holy scripture; a collection of revelations that offer direction on living an ethical life that bring Sikhs closer to God. The gurdwara is the Sikh place of learning and worship where the Guru Granth Sahib is installed and paid reverence to. One must cover their head and remove their shoes in the presence of Guru Granth Sahib.

**Kaur:** Translates to "warrior princess;" collective last name given to all Sikh females by the tenth Guru, and often used as a last or middle name by Sikh women today.

**Khalsa:** Collective body of initiated Sikhs who are committed to serving society, defending the oppressed, and providing leadership for the larger Sikh community.

**Patka:** A smaller version of a Sikh turban, is usually worn by boys in pre-kindergarten to middle school before they begin wearing a turban.

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Turban Day 2012-15 (https://www.flickr.com/photos/mrsikhnet/9189548792/) by Anuraj Singh (CC BY 2.0)
Vaisakhi Day Celebration (https://commons.wikimedia.org/w/index.php?curid=30749581) by Firdaus Latif (CC BY-SA 2.0)
San Jose Gurdwara Sahib (https://openverse.org/image/72f8b572-94b5-4bf7-9edf-a3f3da7fc7af?q=gurdwara) by Jasleen Kaur (CC BY-SA 2.0)
Guru Granth Sahib (https://www.flickr.com/photos/sikhphotos/903721216/) by cchana (CC BY 2.0)
Portrait of Indian Sikh boy © StockImageFactory/Adobe Stock.
**Sangat:** A Sikh term with its origin in the Sanskrit word *sangh*, which means company, fellowship, and association often used to refer to a Gurdwara’s congregation.

**Seva:** A Sanskrit word meaning “service.” Seva is a selfless service that is performed without any expectation of result or award for performing it.

**Sikh** (*also known as Sikhism or the Sikh faith/religion*): Monotheistic religion originating in the South Asian subcontinent, the core beliefs of which include remembering God at all times, serving humanity, advocating for equality and justice, and living an honest and moral life.

**Singh:** Translates to “lion/tiger,” collective last name given to all Sikh males by the tenth Guru, and often used as middle name by Sikh men or as a last name by Sikh men and women today.

**Waheguru:** A term used in Sikhism to refer to God, the Supreme Being or the creator of all. It means “The Wonderful Teacher” in Punjabi, the language spoken by many Sikhs.

**Kaur:** Translates to “warrior princess” while Singh translates to “lion.” They are collective last names given to Sikh men & women by the 10th Guru.

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**Sikh Resources**

Australian Office of Multicultural Affairs: Sikhism

Who are Sikhs?
https://www.sikhnet.com/pages/who-are-sikhs-what-is-sikhism

From the Sikh Coalition:
https://www.sikhcoalition.org/about-sikhs/
https://www.sikhcoalition.org/resources/who-are-the-sikhs-poster/

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**Faith & Identity**

Sikhism teaches a message based on the principles of love and oneness and calls on all followers to be spiritual warriors. Meditation, service, and justice are core aspects of the Sikh way of life. Sikhism is a distinct religious tradition that maintains its own distinctive features, including founders, scripture, worship, ceremonies and traditions.

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**Hate Crime Resources**

1. Hate Crime Laws, United States Department of Justice, Civil Rights Division (updated March 2019).
https://www.justice.gov/crt/hate-crime-laws

https://civilrights.org/2021/05/20/victory-president-biden-signs-historic-hate-crimes-bill-into-law/


**Hate Crime Resources**


**Restorative Justice Practices**


Sikh Resources

Australian Office of Multicultural Affairs: Sikhism

Who are Sikhs?
https://www.sikhnet.com/pages/who-are-sikhs-what-is-sikhism

From the Sikh Coalition
https://www.sikhcoalition.org/about-sikhs/
https://www.sikhcoalition.org/resources/who-are-the-sikhs-poster/

Hate Crime Resources

1. Hate Crime Laws, United States Department of Justice, Civil Rights Division (updated March 2019),
https://www.justice.gov/crt/hate-crime-laws

2. Victory! President Signs Historic Hate Crimes Bill into Law, The Leadership Conference on Civil and Human Rights (May 20, 2021),
https://civilrights.org/2021/05/20/victory-president-biden-signs-historic-hate-crimes-bill-into-law/

3. 2021 Hate Crime Statistics, Federal Bureau of Investigation (updated August 2021),

4. Trends in U.S. Corrections, The Sentencing Project (May 2021),

5. The Khalid Jabara and Heather Heyer No Hate Act Fact Sheet, Arab American Institute (2020),

6. Matthew Shepard and James Byrd, Jr Hate Crimes Prevention Act, Cornell Law School Legal Information Institute (last updated July 2021),
https://www.law.cornell.edu/wex/mattshepard-and-jamesbyrdjr

Restorative Justice Practices

https://digitalcommons.law.buffalo.edu/cgi/viewcontent.cgi?article=4913&context=buffalolawreview