

# No Escape: How the Library of Congress Weaponized Internal Relocation Against Persecuted Sikhs and How to Fight Back

Josh A. Roth<sup>†</sup>

INTRODUCTION .....	83
I. LEGAL FRAMEWORK .....	85
A. Establishing Eligibility for Asylum.....	85
B. Internal Relocation as a Bar to Asylum.....	88
II. THE LIBRARY OF CONGRESS REPORT .....	89
A. Context and Background .....	89
B. Motivation and Main Arguments .....	91
III. <i>SINGH V. GARLAND</i> .....	92
IV. FLAWED RELIANCE ON POORLY SUPPORTED AND OUTDATED DATA..	95
A. The Library of Congress Report Is Poorly Supported and Contradictory .....	96
B. Contemporary Data Weakens the Library of Congress Report .....	100
C. A Call to Arms.....	102
CONCLUSION.....	103

## INTRODUCTION

Asylum is supposed to be a last resort. The first act of Congress to specifically address refugees was the Displaced Persons Act of 1948, intended to address the millions of European refugees displaced after World War II.<sup>1</sup> The United States later authorized non-quota visas through the Refugee Relief Act of 1953, for defectors of communist countries.<sup>2</sup> Congress made similar paths for Vietnamese and Cambodian refugees in the aftermath

---

DOI: <https://doi.org/10.15779/Z383R0PV51>

<sup>†</sup> Josh A. Roth is a legal fellow at the Center for Appellate Litigation in New York, NY. He is a graduate of Cornell Law School and served as an Articles Editor for the *Cornell Law Review*. The author is forever grateful to Professor Estelle McKee and Professor Stephen Yale-Loehr for their mentorship and passion for inspiring the next generation of lawyers to confront challenging issues of law and policy headfirst. Jin Cho, Soham Khan, Heidi Kong, Grace Pan, Sadia Sadiq, Shahnur Said, Trisha Tan, and Julia Wang each provided excellent editorial feedback and suggestions. This piece was awarded the Cornell Law School Robert Cantwell '56 Prize for Exemplary Student Research (First Place 2024)

1. Displaced Persons Act of 1948, Pub. L. No. 80-774, 62 Stat. 1009.
2. Refugee Relief Act of 1953, Pub. L. No. 83-203, 67 Stat. 400.

of the Vietnam War.<sup>3</sup> Some view the asylum process as a way to circumvent the (sometimes decades-long) process of obtaining a visa.<sup>4</sup> Concern for such abuse of the system is reflected in the five distinct immigration-law provisions that penalize immigration fraud.<sup>5</sup> It is further manifested in the seemingly arbitrary grounds for affirming a deportation order.<sup>6</sup> The contention that some applicants abuse the asylum system is not meritless; however, it has desensitized lawmakers and jurists from very real threats of persecution.

Many Sikhs fear for their well-being in India and seek refuge in the United States.<sup>7</sup> But in its efforts to enforce asylum as a last resort, the Department of Justice partnered with the Library of Congress in 2018 to draft a report that severely hamstrung the viability of asylum applications for Sikh refugees. The report claims that Sikh asylees can safely relocate to other regions of India and thus do not need to resettle in the United States.<sup>8</sup> Three years later in *Singh v. Garland*, the Second Circuit affirmed a Sikh asylee's removal order based on this Library of Congress report.<sup>9</sup> The court effectively empowered a problematic, non-periodical government report with authority equivalent to that of a legal statute.

This Article is intended to highlight one unjust institutional hurdle exclusive to Sikh asylees and provoke discussion on its remedy. Part I of this Article discusses asylum law as applied to Sikhs and the issue with internal relocation. Part II discusses the Library of Congress report and summarizes its key points. Part III analyzes the Second Circuit's decision in *Singh v. Garland* and subsequent Sikh asylum cases. Part IV proposes

---

3. Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102.

4. See *Visa Bulletin for July 2023, Number 79, Volume X*, U.S. DEP'T OF STATE, BUREAU OF CONSULAR AFFS. (June 2, 2023), <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2023/visa-bulletin-for-july-2023.html> [<https://perma.cc/F3BD-FE8X>] (reflecting priority dates for immigrants from China (mainland) as April 22, 2007; India as September 15, 2005; Mexico as August 1, 2000; and Philippines as August 22, 2002).

5. See Josh A. Roth & Stephen Yale-Loehr, *Dismantling the Due Process Dichotomy in Crimmigration Cases*, 56 CORNELL INT'L L.J. (forthcoming 2024) (manuscript at 10–12), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4602401](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4602401) [<https://perma.cc/6QLA-WXNZ>].

6. See, e.g., *Lin v. Mukasey*, 534 F.3d 162, 165 (2d Cir. 2008) (finding that an immigration judge may base an adverse credibility determination on *any* inconsistencies, inaccuracies, or falsehoods, even if the inconsistency, inaccuracy, or falsehood does not go to the heart of the applicant's claim).

7. See U.S. DEP'T OF JUST., EXEC. OFF. FOR IMMIGR. REV., ADJUDICATION STATISTICS—ASYLUM DECISION RATES BY NATIONALITY FISCAL YEAR 2023 (2023), <https://www.justice.gov/eoir/page/file/1107366/download> [<https://perma.cc/69FU-M4CW>] (47% of asylum applications were granted, 22% were denied, and 31% were listed as “other” implying abandonment, a grant of withholding of removal, no adjudication, or a withdrawal).

8. TARIQ AHMAD, LAW LIBR. OF CONG., INDIA: FEASIBILITY OF RELOCATION OF SIKHS AND MEMBERS OF THE SHIROMANI AKALI DAL (MANN) PARTY 1 (2018) [hereinafter LIBRARY OF CONGRESS REPORT], <https://www.justice.gov/file/1068936/download> [<https://perma.cc/8ET6-XV5V>].

9. *Singh v. Garland*, 11 F.4th 106, 109 (2d Cir. 2021).

recommendations for overcoming the Library of Congress report and *Singh* in future removal proceedings.<sup>10</sup>

## I. LEGAL FRAMEWORK

### A. Establishing Eligibility for Asylum

To demonstrate that they are a refugee under the Immigration and Nationality Act (INA), an asylum seeker must establish persecution as a matter of law. Applicants must show (1) that they suffered past persecution or have a well-founded fear of future persecution on account of a protected ground, and (2) that the government was the agent of the persecution or was unable or unwilling to control the persecutor(s).<sup>11</sup> The potential asylee must demonstrate that the protected group (here, based on religion or political opinion) was or will be the nexus, or “one central reason,” for the persecution.<sup>12</sup> And the applicant must establish some connection between the persecution and the government (i.e., whether the agents of the government itself were the persecutor or the government was unable or unwilling to control the persecutor).<sup>13</sup>

The credibility of the asylee is paramount to their application for removal relief. Under the REAL ID Act of 2005,<sup>14</sup> an immigration judge may base an adverse credibility determination on any inconsistencies, inaccuracies, or falsehoods, even if the inconsistency, inaccuracy, or falsehood does not go to the heart of the applicant’s claim.<sup>15</sup> In *Gao v. Barr*, the Second Circuit demonstrated how easily an applicant’s credibility can be rejected, stating that “a single inconsistency” satisfied the immigration judge’s adverse credibility finding.<sup>16</sup> In fact, the inconsistency need not contradict external facts; even internally inconsistent statements can trigger such a finding against the applicant.<sup>17</sup>

---

10. This Article focuses on the Library of Congress report and does not discuss Sikh asylum issues writ large. For those interested in learning about Sikh-related humanitarian issues on a broader scale, see SIKH COAL., <https://www.sikhcoalition.org/> [<https://perma.cc/47QY-YNMZ>].

11. 8 C.F.R. § 1208.16(b); *Arevalo-Giron v. Holder*, 667 F.3d 79, 83 (1st Cir. 2012).

12. See *In re L-E-A-*, 27 I. & N. Dec. 40, 43–44 (B.I.A. 2017).

13. *Arevalo-Giron*, 667 F.3d at 83 (“[P]ersecution requires some nexus to the government.”); *Santos-Guaman v. Sessions*, 891 F.3d 12, 19 (1st Cir. 2018) (citations omitted) (stating that “a requisite for a finding of past persecution” is determining “whether the abuse . . . suffered was ‘government action, government-supported action, or government’s unwillingness or inability to control private conduct’”). The core case addressed in this Article, *Singh v. Garland*, 11 F.4th 106 (2d Cir. 2021), created a circuit split on this issue. In a separate article, I discuss that split and propose a resolution incorporating principles of law derived from terrorism-related inadmissibility grounds. See Josh A. Roth, *The Leadership Limitation on Persecutors and Terrorist Organizations*, 108 CORNELL L. REV. ONLINE 60, 79 (2023).

14. Pub. L. No. 109-13, 119 Stat. 231, 302.

15. *Lin v. Mukasey*, 534 F.3d 162, 165 (2d Cir. 2008) (citing 8 U.S.C. § 1158(b)(1)(B)(iii)).

16. 968 F.3d 137, 145 n.8 (2d Cir. 2020).

17. See *Fedosseeva v. Gonzales*, 492 F.3d 840, 844 (7th Cir. 2007) (affirming an adverse credibility finding because the respondent’s testimony was internally inconsistent and inconsistent with other facts she presented as part of her application).

Assuming the applicant is found to be credible, they must establish persecution and a nexus to the government.<sup>18</sup> For decades, adjudicators have been unable to decide what harm qualifies as persecution. While a finding of persecution is a subjective determination by each immigration judge, case law provides guidance on what persecution is. Persecution implies harm or threats of harm that jeopardize the victim's life, liberty, freedom, or autonomy. Physical harm such as confinement or torture can satisfy this standard;<sup>19</sup> so can non-physical harm such as the "deliberate imposition of severe economic disadvantage or the deprivation of liberty, food, housing, employment, or other essentials of life."<sup>20</sup> The Second Circuit recently agreed that a Sikh asylee was persecuted after he suffered numerous physical attacks based on his membership in the Shiromani Akali Dal Amritsar Party.<sup>21</sup>

Case law also establishes what persecution *is not*. An act does not constitute persecution simply because our society (or another) considers the act unfair, unjust, unlawful, or even unconstitutional.<sup>22</sup> Nor does an act constitute persecution just because it annoys, distresses, or harasses someone.<sup>23</sup> Moreover, any harm or fear of future harm stemming from the general crime conditions of the respondent's country is not enough to constitute persecution.<sup>24</sup> For example, despite credible testimony that a Sikh asylum applicant endured two physical beatings and received death threats from members of the Bharatiya Janata Party and Akali Dal Badal Party, the Second Circuit found that the harm endured failed to rise to the level of persecution.<sup>25</sup>

Often, asylum applicants rely on government-sponsored human rights reports to corroborate their testimony. This is by design, as the INA and the Board of Immigration Appeals (BIA) practically instruct applicants to do so. Crucially, the INA lists consistency with "the reports of the Department of State on country conditions" as a factor an immigration judge may consider in making an adverse credibility determination.<sup>26</sup> And the BIA has held that

---

18. See *In re E-P-*, 21 I. & N. Dec. 860, 860 (B.I.A. 1997) ("A finding of credible testimony by an asylum applicant is not dispositive as to whether asylum should be granted; rather, the specific content of the testimony, and any other relevant evidence in the record, is also considered."). But where the respondent is found not credible, the respondent cannot be granted relief unless other reasonably available evidence in the record rehabilitates her testimony. See *Mukulumbutu v. Barr*, 977 F.3d 924, 927 (9th Cir. 2020) (affirming a respondent's adverse credibility determination and denial of relief because the respondent failed to rehabilitate his incredible testimony with sufficient corroborative evidence).

19. *In re Acosta*, 19 I. & N. Dec. 211, 222 (B.I.A. 1985).

20. *In re T-Z-*, 24 I. & N. Dec. 163, 163 (B.I.A. 2007).

21. *Singh v. Garland*, No. 20-2009, 2023 WL 1126774, at \*1 (2d Cir. Jan. 31, 2023).

22. *In re V-T-S-*, 21 I. & N. Dec. 792, 798 (B.I.A. 1997) (citing *Fatin v. INS*, 12 F.3d 1233, 1240 (3d Cir. 1993)).

23. See *Ivanishvili v. U.S. Dep't of Just.*, 433 F.3d 332, 342 (2d Cir. 2006); see also *Hoxha v. Ashcroft*, 319 F.3d 1179, 1182 (9th Cir. 2003) (finding that harassment, threats, and one physical beating did not constitute persecution).

24. See *In re Acosta*, 19 I. & N. Dec. at 233.

25. *Singh v. Garland*, No. 20-469, 2022 WL 1073799, at \*2 (2d Cir. Apr. 11, 2022).

26. See Immigration & Nationality Act, 8 U.S.C. § 1158(b)(1)(B)(iii).

such reports were “highly probative evidence” and serve as the best evidence of country conditions.<sup>27</sup>

These reports, published annually by the U.S. State Department, often serve as the backbone for asylum claims.<sup>28</sup> Consequently, they also often serve as a source for the Department’s argument to deny asylum claims. Religious persecution is so pervasive abroad that the State Department authors a separate report for international religious freedom, referenced in the country conditions reports.<sup>29</sup> In the most recent edition, the State Department described conditions in India that suggest a tacit erasure of Sikhs due to their inclusion in the constitutional definition of “Hindus.”<sup>30</sup>

Alongside the State Department reports, human rights reports by the United States Commission on International Religious Freedom (USCIRF) also serve as valuable evidence for both asylees and the government. A recent edition of USCIRF’s report documents that Sikhs represent merely 1.7 percent of the Indian population, in sharp contrast to the Hindu majority at 79.8 percent.<sup>31</sup> The report chronicles the strife of Indian Sikhs, including political marginalization, targeted attacks, and limited access to housing, education, and employment.<sup>32</sup>

Of course, these reports do not establish that any one Sikh was persecuted on account of their religion. Such a finding still requires a

27. *E.g., In re H-L-H- & Z-Y-Z-*, 25 I. & N. Dec. 209, 213 (B.I.A. 2010).

28. Reports from recent years can be found at *Country Reports on Human Rights Practices*, U.S. DEP’T OF STATE, <https://www.state.gov/reports-bureau-of-democracy-human-rights-and-labor/country-reports-on-human-rights-practices/> [<https://perma.cc/W8YQ-R72K>]. Archived content can be retrieved from *Archive*, U.S. DEP’T OF STATE, <https://2009-2017.state.gov/>, or *Archive*, U.S. DEP’T OF STATE, <https://1997-2001.state.gov/>.

29. Off. of Int’l Religious Freedom, *2022 Report on International Religious Freedom*, U.S. DEP’T OF STATE (May 15, 2023), <https://www.state.gov/reports/2022-report-on-international-religious-freedom/> [<https://perma.cc/44N4-Z9QD>].

30. Off. of Int’l Religious Freedom, *2022 Report on International Religious Freedom: India*, U.S. DEP’T OF STATE (June 2, 2022), <https://www.state.gov/reports/2021-report-on-international-religious-freedom/india/> [<https://perma.cc/BB74-SB9Y>] (“The constitution states that any legal reference to Hindus is to be construed to include followers of Sikhism, Jainism, and Buddhism, meaning they are subject to laws regarding Hindus, such as the Hindu Marriage Act. Subsequent legislation continues to use the word Hindu as a category that includes Sikhs, Buddhists, Baha’is, and Jains, but it identifies the groups as separate religions whose followers are included under the legislation.”). As the Sikh Coalition points out, “Sikhism” isn’t even the appropriate term in this context, further illustrating the U.S. government’s ignorance on the subject. *See* SIKH COAL., *WELL-FOUNDED FEAR: UNDERSTANDING LEGAL CHALLENGES AND BEST PRACTICES FOR SIKH ASYLUM APPLICANTS AND THEIR ATTORNEYS* 5 n.8 (2021), <https://www.sikhcoalition.org/wp-content/uploads/2021/10/2021.11.01-asylum-report.pdf> [<https://perma.cc/97DB-VRUK>] (internal citations omitted).

(“The term ‘Sikhism’ is a Western term coined by Europeans during the nineteenth century. . . . The Punjabi term, ‘Sikhi,’ means to learn. And unlike the term ‘Sikhism,’ it does not represent an object, but a process of self-transformation.”).

31. U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, *2019 ANNUAL REPORT* 175 (2019), <https://www.uscifr.gov/sites/default/files/2019USCIRFAnnualReport.pdf> [<https://perma.cc/AGQ6-E53X>].

32. *Id.*

showing of credible testimony or corroborative evidence.<sup>33</sup> The reports, however, serve as a foundation for an asylum claim by showing that persecution of Sikhs by the controlling Hindu government is *possible*. Accordingly, it is reasonable that a Sikh could be persecuted on account of his or her faith. But overcoming the issue of persecution is not dispositive of an asylum application—an otherwise statutorily eligible asylee still faces the hurdle of internal relocation.

### B. Internal Relocation as a Bar to Asylum

Even if a Sikh asylee establishes a *prima facie* case for granting asylum by providing evidence of persecution and a nexus, the Department of Homeland Security may still seek removal. To do so, the Department must show that despite the asylee's past persecution or well-founded fear of future persecution, the asylee may safely return to another region of their home country—in other words, internally relocate.<sup>34</sup> The BIA's 2012 decision in *Matter of M-Z-M-R*<sup>35</sup> serves as a guide for immigration judges evaluating internal relocation. The case instructs the adjudicator to evaluate (1) the feasibility of internal relocation given potential future harm, and (2) whether it is "reasonable" for an applicant to relocate internally.<sup>36</sup> To satisfy this first element of feasibility,<sup>37</sup> the proposed region of relocation must have substantially better circumstances than the region giving rise to the past persecution or well-founded fear of future persecution.<sup>38</sup> Second, to determine whether it is reasonable for the applicant to internally relocate, immigration judges conduct a four-part balancing test: (1) the totality of the relevant circumstances of an applicant's prospects for relocation, including the size of the country of nationality or last habitual residence; (2) the geographic locus of the alleged persecution; (3) the size, numerosity, and reach of the alleged persecutor; and (4) the applicant's demonstrated ability to relocate to the United States to apply for asylum (collectively, *M-Z-M-R*-Factors).<sup>39</sup>

The U.S. government crafted the Library of Congress report to weaken a potential asylee's ability to establish *M-Z-M-R*-Factors (1) through (3). In other words, the report contends that persecution against Sikhs is geographically concentrated and that internal relocation within India is feasible.

---

33. See *In re E-P-*, 21 I. & N. Dec. 860, 862 (B.I.A. 1997) (holding that even if found credible, an immigration judge may require an asylum applicant whose claim relies primarily on personal experiences to provide reasonably available corroborative evidence).

34. See 8 C.F.R. § 1208.13(b)(3).

35. See 26 I. & N. Dec. 28 (B.I.A. 2012).

36. *Id.* at 32.

37. The term "feasibility" used here refers to the BIA's requirement that "an Immigration Judge must decide whether [t]he applicant could avoid future persecution by relocating to another part of the applicant's country of nationality." *Id.* (citing 8 C.F.R. § 1208(b)(1)(i)(B)) (internal quotations omitted).

38. *Id.* 32–33.

39. *Id.* at 34–35; 8 C.F.R. § 1208.13(b)(3).

## II. THE LIBRARY OF CONGRESS REPORT

The Library of Congress report stymied Sikh asylees by strengthening the Department of Homeland Security's argument that Sikhs need not seek refuge in the United States because they can relocate internally. This Section discusses the conditions that led to the creation of the report and identifies its main arguments.<sup>40</sup>

### A. Context and Background

The disparity of Hindus in comparison to Sikhs in India, coupled with the historic and contemporary relationships between both religious groups, shows ample reason for a Sikh to fear persecution. India's history is a wealth of technological and social advancements.<sup>41</sup> Running parallel, though, is a centuries-long history of religious polarization, specifically between Hindus and Sikhs. In *The Construction of Religious Boundaries*, Harjot Oberoi describes the innocuous circumstances underlying the Sikh religion's formation and Indian society's transformation into divisive animus.<sup>42</sup> First, inhabitants of Punjab—the birthplace of Sikhi—were agrarian, and day-to-day life transpired without scripture or religious code.<sup>43</sup> Second, Sikhi (in its early form) was known as a “village religion” because it was only open to those “common people” local to the region.<sup>44</sup> Third, while other religions such as Hinduism sought to explain reality through scripture, the Sikh practice was pragmatic; it aimed to “manipulate reality to the advantage of its constituents.”<sup>45</sup> These characteristics brewed tensions between Sikhs and Hindus, which were only exacerbated by British colonization in 1868. England viewed Sikhs as potential adversaries, and after annexing Punjab, the British heavily recruited Sikhs into the royal military.<sup>46</sup> At the same time, the Hindu community was rallying for a “Hindu Golden Age” as resistance to British domination. After Partition in 1947, Punjab was split into the modern-day Punjab region and Pakistan, cutting off Sikhs from historically and spiritually important sites.<sup>47</sup> The Hindu majority then began the *Shuddhi*

---

40. Part IV of this article critiques those arguments. I thank the *AALJ* editorial team for their help restructuring this section, as it is difficult to identify the report's main arguments without simultaneously pointing out their flaws.

41. See Roth, *supra* note **Error! Bookmark not defined.**, at 61 (providing sources of India's development of the concept of zero and the decimal, the catapult, and the first synthetic gene).

42. See HARJOT OBEROI, *THE CONSTRUCTION OF RELIGIOUS BOUNDARIES* 139–47 (1994).

43. *Id.* at 141–42.

44. *Id.* at 142.

45. *Id.*

46. Samrath S. Machra, *Sikhs and Colonialism: A Study of Religious Identity Across Time from Guru Nanak to the British Raj* 10–11 (2022) (B.A. thesis, Claremont McKenna College) (on file with Claremont McKenna College) (describing how “the Sikh community was forced to redefine itself in the face of British and native pressures.”).

47. Cynthia K. Mahmood, *Sikh Rebellion and the Hindu Concept of Order*, 29 *ASIAN SURV.* 326, 329 (1989).

(purification) campaign, seeking to reunify India as a monochrome, ethno-religious country.<sup>48</sup> Naturally, Sikhs resisted.

Sikh-Hindu tensions escalated into the Sikh Massacre in 1984.<sup>49</sup> This incident goes by several names, further illustrating the polarized rhetoric surrounding Sikh-Hindu relations. Some groups refer to it as a genocide,<sup>50</sup> while the government minimizes it as a “riot.”<sup>51</sup> Sources disagree on how sanguinary this conflict was. Perhaps unsurprisingly, government sources reported around 3,000 Sikh deaths,<sup>52</sup> but independent sources estimate between 8,000 and 17,000 Sikh deaths.<sup>53</sup>

As a result, Sikhs rallied for independence and advocated for secession into a sovereign state—Khalistan.<sup>54</sup> This movement only exacerbated the feud between Sikhs and the Hindu-majority Indian government, festering into the twenty-first century. In 2021, the Indian government served a Mutual Legal Assistance Request to the United States to investigate a U.S.-based secessionist group called Sikhs for Justice and extradite pro-Khalistan Sikhs.<sup>55</sup> Opponents of the Khalistan movement have not been quiet about their determination to combat “Khalistan Extremism.” One anti-Khalistan organization established the Khalistan Extremism Monitor (KEM), which exists as a “non-partisan” database for research on the separatist movement by Sikhs in Punjab.<sup>56</sup>

48. *Id.* at 333–34.

49. See generally *India: No Justice for 1984 Anti-Sikh Bloodshed*, HUM. RTS. WATCH (Oct. 29, 2014), <https://www.hrw.org/news/2014/10/29/india-no-justice-1984-anti-sikh-bloodshed> [https://perma.cc/9VWT-A972] (discussing incidents of violence between Sikhs and Hindus in the early 1980s, including a military deployment on “the holiest of Sikh shrines,” and the retaliatory assassination of India’s Prime Minister that followed).

50. See *Sikh Genocide of 1984*, BASICS OF SIKHI (Oct. 29, 2022), <https://www.basicsofsikhi.com/post/sikh-genocide-of-1984> [https://perma.cc/3JSY-733N].

51. See G.T. NANAVATI, INDIAN MINISTRY OF HOME AFFS., JUSTICE NANAVATI COMMISSION OF INQUIRY: 1984 ANTI-SIKH RIOTS I (2005), [https://www.mha.gov.in/sites/default/files/2022-08/Nanavati-I\\_eng\\_3%5B1%5D.pdf](https://www.mha.gov.in/sites/default/files/2022-08/Nanavati-I_eng_3%5B1%5D.pdf) [https://perma.cc/P795-X2MP].

52. Deepshikha Ghosh, *Why Gujarat 2002 Finds Mention in 1984 Riots Court Order on Sajjan Kumar*, NEW DELHI TELEVISION (Dec. 17, 2018), <https://www.ndtv.com/india-news/why-gujarat-2002-finds-mention-in-1984-riots-court-order-on-sajjan-kumar-1963730> [https://perma.cc/JRY3-YGBG].

53. See 1 THE SAGE ENCYCLOPEDIA OF WAR: SOCIAL SCIENCE PERSPECTIVES 433 (Paul Joseph ed., 2016) (“[A]round 17,000 Sikhs were burned alive or killed . . . .”); Akhilesh Pillalamarri, *India’s Anti-Sikh Riots, 30 Years On*, DIPLOMAT (Oct. 31, 2014), <https://thediplomat.com/2014/10/indias-anti-sikh-riots-30-years-on/> [https://perma.cc/A2AJ-JDLM] (“Between October 31 and November 3, 1984, over 8,000 Sikhs were murdered in riots organized and supported by numerous members of India’s then-ruling Congress Party after Prime Minister Indira Gandhi’s Sikh bodyguards assassinated her.”).

54. See Roth, *supra* note 13, at 61.

55. Ananya Varma, *India Approaches US, Seeks Assistance in Investigating Khalistani Outfit Sikhs for Justice*, REPUBLIC WORLD (Feb. 4, 2021), <https://www.republicworld.com/india-news/general-news/india-approaches-us-seeks-assistance-in-investigating-khalistani-outfit-sikhs-for-justice.html> [https://perma.cc/99CL-89P5].

56. See generally *About Us*, KHALISTAN EXTREMISM MONITOR, <https://www.khalistanextremismmonitor.org/about-us> [https://perma.cc/N5A7-6K8T] (stating that KEM exists to research and document Khalistani extremism and “monitor the daily activities of Khalistan supporters and detractors, including hate speech and acts, as well as law-and-order issues created in Punjab and other parts of the world by Khalistani elements.”).



These incidents are not ancient history. The Sikh Coalition<sup>57</sup> published a report in 2021 documenting modern instances of systemic subordination of Sikh culture, police misconduct and targeting of Sikhs, persecution of pro-Khalistan Sikhs, and government surveillance and targeting of Sikhs.<sup>58</sup>

### B. Motivation and Main Arguments

Between 2016 and 2018, Canada and the United States experienced a surge of Sikh asylees.<sup>59</sup> This rise seemingly became concerning to the Department of Homeland Security because around the same time, it had built the foundation to argue that Indian Sikhs need not seek refuge in America. That base is *India: Feasibility of Relocation of Sikhs and Members of the Shiromani Akali Dal (Mann) Party*, an eleven-page report by the Library of Congress.<sup>60</sup> The report's assertions are supported by sources from the governments of various countries, including the United States, United Kingdom, Canada, and Australia.

The report's main arguments can be summed up in three parts, which Part IV of this Article dissects and critiques. The report's first major contention is that no Indian law prevents Sikhs from moving freely within the country, and therefore, there are no official government barriers to internal relocation.<sup>61</sup> Next, the report contests that while there are human rights violations in India, the numbers suggest that average Sikhs are not the targeted demographic.<sup>62</sup> The report's third and strongest assertion is that even Khalistan supporters (considered radical secessionists) can live without persecution in India, and thus so can everyone else.<sup>63</sup> The report effectively makes the first three *M-Z-M-R*-Factors categorically inapplicable to Indian Sikhs. But as discussed, these government reports served only as evidence—that is, until *Singh v. Garland*.

---

57. The Sikh Coalition describes itself as “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.” SIKH COAL., *supra* note 30, at ii n.1. It “originated to combat uniformed discrimination” against Sikh Americans and has “worked with government agencies and the private sector to achieve mutually acceptable solutions to the accommodation of Sikh articles of faith.” *Id.*

58. *Id.* at 12–14.

59. *See id.* at 4 (internal citations omitted) (“Canada saw a nearly 300% increase in Sikh asylum claimants from 2016 to 2018. 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.”).

60. *See* LIBRARY OF CONGRESS REPORT, *supra* note 8, at 2.

61. *Id.* at 1–4.

62. *Id.* at 5–6.

63. *Id.* at 5–8.

III. *SINGH V. GARLAND*

In *Singh v. Garland*,<sup>64</sup> the Second Circuit adopted the Library of Congress report into binding jurisprudence when it denied asylum to a Sikh named Jagdeep Singh.

Singh was a member of the Mann Party who feared returning to India on account of his political affiliation.<sup>65</sup> At his merits hearing, Singh testified that members of the opposing political party threatened his life if he did not sell drugs on their behalf.<sup>66</sup> Interestingly, Singh attempted to insulate himself from potential counterarguments recommending internal relocation:

Singh said that he did not move to another part of India to avoid the rival party members because, when he rented a home or applied for a job, he would need to provide identification. If he showed his identification to anyone, he said, “[i]t’s a very strong possibility that . . . I would [be] tracked down and I would have been killed.”<sup>67</sup>

Fatally, Singh never claimed to be a high-ranking member of the Mann Party, which opened the window of denial for the immigration judge. Despite agreeing that Singh was persecuted, the immigration judge denied his application for asylum. The judge primarily relied on the Library of Congress report, the State Department’s country conditions report for India, and the State Department’s international religious freedom report in his determination.<sup>68</sup>

Singh unsuccessfully appealed the immigration judge’s decision to the BIA. The BIA found no error in the immigration judge’s ruling and affirmed that Singh could safely relocate within India.<sup>69</sup> Upon his appeal to the Second Circuit, Singh argued that the immigration judge’s denial was incorrect for two reasons: (1) the Department failed to show that internal relocation would be *reasonable*, and (2) Singh had established eligibility for relief under the Convention Against Torture (CAT).<sup>70</sup>

---

64. 11 F.4th 106 (2d Cir. 2021).

65. *Id.* at 109.

66. *Id.* at 110.

67. *Id.*

68. *See id.* at 111 (internal citations omitted) (“Noting that Singh did not allege to be a high-profile member of the Akali Dal Mann, the IJ also relied on a report of the Library of Congress indicating that ‘only hardcore militants are of interest to Central Indian authorities’ and that one does not qualify as a high-profile militant merely by holding pro-Khalistan views. The IJ also observed that ‘neither the 2016 U.S. Department of State Human Rights Report for India nor the most recent International Religious Freedom Report mentions the persecution of Shiromani Akali Dal Amritsar members in Punjab or elsewhere in India.’”).

69. *Id.* at 112.

70. *Id.*; *see* Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted and opened for signature Dec. 10, 1984, G.A. Res. 39/46, 39 U.N. GAOR Supp. No. 51, at 197, U.N. Doc. A/RES/39/708 (1984) (entered into force June 26, 1987; for the United States Apr. 18, 1988) (implemented in the removal context in principal part at 8 C.F.R. §§ 1208.16(c)–18). The CAT is a non-self-executing treaty. *See, e.g.*, *Pierre v. Gonzales*, 502 F.3d 109, 119–20 (2d Cir. 2007); *In re H-M-V-*, 22 I. & N. Dec. 256, 259–60 (B.I.A. 1998). Adjudicators do not apply the CAT itself, but rather the implementing regulations. The latter, for example, contain important United States ratification “reservations, understandings, declarations, and provis[i]ons” with respect to the definition of “torture”

In immigration proceedings, standards of review are crucial and often dispositive for potential asylees. Upon review by the circuit court, findings of fact by the BIA are considered “conclusive unless any reasonable adjudicator would be compelled to conclude the contrary.”<sup>71</sup> There is one exception to this—adverse credibility findings, which allow a more nuanced review of the prior decision.<sup>72</sup> Here, though, Singh was credible in his testimony on past persecution, so overturning the BIA decision would be an uphill battle.<sup>73</sup> Ironically, the Second Circuit even questioned the BIA’s holding that Singh was persecuted, but left that stone unturned and instead focused on the issues of internal relocation and CAT protection.<sup>74</sup>

In evaluating Singh’s argument against internal relocation, the Second Circuit emphasized how generic country condition reports did not dispose of any asylee’s case, meaning the reports alone cannot show that any person would be subject to persecution if removed.<sup>75</sup> That said, the Second Circuit used the Library of Congress report to show that any Sikh likely *would not* be subject to persecution if removed. By doing so, the Second Circuit bolstered the Library of Congress report’s validity and advanced the argument that even pro-Khalistan Sikhs can relocate internally within India.<sup>76</sup>

The countervailing issue here is that U.S. jurisprudence is slow to evolve compared to the volatility of international political discourse. In the Second Circuit’s defense, it did not blindly accept its own 2006 decision on the same issue. Eighteen years ago, a pro-Khalistan Sikh sought asylum in the United States, and the Second Circuit affirmed the BIA’s denial of removal relief because he was “unlikely to face persecution for his Sikh

not contained in the text of the Convention Against Torture itself. 8 C.F.R. § 1208.18(a); *see also id.* § 1208.16(c)(1) (“The definition of torture contained in § 1208.18(a) of this part shall govern all decisions made under regulations under Title II of the [INA] about the applicability of Article 3 of the Convention Against Torture.”). For ease of reference, however, I use “CAT” to refer to the implementing regulations.

71. Immigration & Nationality Act, 8 U.S.C. § 1252(b)(4)(B).

72. *Singh*, 11 F.4th at 113.

73. The Second Circuit cited a 2021 U.S. Supreme Court case which fortified the difficulty of overcoming a BIA finding of fact, holding that “[t]he only question for judges reviewing the BIA’s factual determinations is whether *any* reasonable adjudicator could have found as the agency did.” *Id.* (citing *Garland v. Dai*, 539 U.S. 357, 368 (2021)) (emphasis in original).

74. *Singh*, 11 F.4th at 116 (internal citations omitted) (“We doubt that the finding of past persecution was correct, but we need not disturb that unchallenged finding in order to reject Singh’s argument that ‘there are [no] safe places’ for him ‘within’ India because he ‘was persecuted by the government.’”).

75. *Id.*

76. *Compare id.* at 117 (“The record contained evidence that there are 1.2 billion people, including 19 million Sikhs, living in India and that Indian citizens—Sikhs in particular—do not face difficulties relocating within the country.”), with LIBRARY OF CONGRESS REPORT, *supra* note 8, at 2 (“[T]here are over 19 million Sikhs in India, representing approximately 1.9 percent of the population.”), and LIBRARY OF CONGRESS REPORT, *supra* note 8, at 4 (“Several sources indicate that Sikhs do not face difficulties relocating to other areas of India.”) (citing Rsch. Directorate, *India: Situation of Sikhs Outside the State of Punjab*, IMMIGR. & REFUGEE BD. OF CANADA (May 13, 2013), <https://irb-cisr.gc.ca/en/country-information/rir/Pages/index.aspx?doc=454556> [perma.cc/C2AE-RATN]).

beliefs and his membership in Akali Dal Mann” and “any threat faced by [such an applicant] in India is not country-wide.”<sup>77</sup> But *Singh v. Garland* presents a novel issue of incorporating a non-periodical government-sponsored report into a broadly applicable decision.<sup>78</sup>

Sikh asylum applicants now face an uphill battle to overcome *Singh*. The Second and Third Circuits, specifically, have used *Singh* to deny similar asylum claims.

Take Balbir Singh, a Mann-Party Sikh who was persecuted by members of the Congress Party near his home in Bhadas, Punjab.<sup>79</sup> He credibly testified that he feared persecution “across the whole of India due to tenant registration systems that would track his movement and allow police and Congress Party members to locate and harm him.”<sup>80</sup> But the Court rejected his asylum claim, citing *Singh v. Garland* and the Library of Congress report, ultimately concluding that he could safely relocate internally.<sup>81</sup>

Around the same time in the Third Circuit, Karanpreet Singh, another Sikh asylum applicant, appealed his denial for removal relief.<sup>82</sup> Karanpreet was beaten by Congress Party members, who threatened to kill him if he did not sell drugs on their behalf.<sup>83</sup> After his escape from India, his family reported that Congress Party members were still looking for him.<sup>84</sup> To its credit, the Third Circuit critically evaluated the merits of the Library of Congress report, stating, “[T]he report notes practical challenges to relocation by Sikhs, who are identifiable by their dress and Punjabi accent. Those who are unskilled and uneducated will have difficulty finding work and certain parts of the country would pose language barriers and limit the ownership of land.”<sup>85</sup> But the Court still denied Karanpreet’s appeal, citing *Singh v. Garland*.<sup>86</sup>

Jarringly, the Second Circuit even used *Singh v. Garland* as support to deny non-Sikh asylum appeals. Lalit Sambahamphe was a Nepali native who feared persecution based on Maoist threats.<sup>87</sup> The Court disposed of all forms of removal relief because, as in *Singh*, it found that Lalit could relocate

---

77. *Singh v. BIA*, 435 F.3d 216, 219 (2d Cir. 2006).

78. The State Department human rights reports are often incorporated into similar court opinions, but those reports are updated annually and consist of empirical research.

79. *Singh v. Garland*, No. 19-3030 NAC, 2022 WL 610342, at \*1 (2d Cir. Mar. 2, 2022).

80. *Id.*

81. *Id.* at \*2.

82. *Singh v. Att’y Gen. of the U.S.*, No. 21-2083, 2022 WL 996572, at \*1 (3d Cir. Apr. 4, 2022).

83. *Id.*

84. *Id.*

85. *Id.* at \*3.

86. *Id.*

87. *Sambahamphe v. Garland*, No. 20-3666 NAC, 2022 WL 4087951, at \*1 (2d Cir. Sept. 7, 2022).

internally.<sup>88</sup> *Singh v. Garland* has also supported internal relocation findings for deportation orders to Bangladesh<sup>89</sup> and Ecuador.<sup>90</sup>

Before *Singh*, these government reports were relevant, but not dispositive. Now, it appears easy for immigration courts and Circuit Courts to rule on *M-Z-M-R*- Factors (1) through (3)<sup>91</sup> in an asylum claim if the circumstances are close enough to those in *Singh* and congruent with the Library of Congress report. So, while asylum cases are, at least facially, still evaluated on a case-by-case basis, courts can utilize a growing body of case law to categorically weaken the claims of certain applicants.

#### IV. FLAWED RELIANCE ON POORLY SUPPORTED AND OUTDATED DATA

Before addressing the specific fallacies of the Library of Congress report, let me be clear: the Library of Congress is not akin to a partisan lobbying organization intent on limiting asylum for a particular demographic.<sup>92</sup> It is a respected agency of the legislative branch encompassing many service units, including the Congressional Research Service (CRS) and Law Library of Congress Global Research Center (GRS). The CRS serves Congress by providing confidential, objective, and authoritative research to help inform debate. In the same vein, the GRS assists individuals and government agencies with legal research associated with its collection of U.S., foreign, comparative, and international law.

Federal appellate courts think highly of the Library of Congress and the reports it publishes. The Ninth Circuit described how “Library of Congress research deserves considerable evidentiary weight” when “American tribunals must apply unfamiliar, foreign law, particularly unwritten, customary law.”<sup>93</sup> And the Ninth Circuit isn’t alone; the Sixth Circuit and the BIA also have consulted with ad hoc reports from the Library of Congress.<sup>94</sup>

---

88. *Id.* (citing *Singh v. Garland*, 11 F.4th 106, 115–17 (2d Cir. 2021)) (“Although the report also reflects that a breakaway Maoist faction engaged in some violence and intimidation during a 2013 election, such isolated incidents by non-governmental actors does not outweigh the evidence that Sambahamphe can—and did—safely relocate.”).

89. *See Bhaktibhai-Patel v. Garland*, 32 F.4th 180, 186 (2d Cir. 2022).

90. *See Flores-Silva v. Garland*, 2023 WL 4229242, at \*2 (2d Cir. June 28, 2023).

91. *See supra* notes 35–38 and accompanying text.

92. Though one may argue that such an organization may be influenced by the incumbent administration. For example, during the Trump administration, watchdogs identified subtle but powerful changes to the language used in the Department of State Human Rights reports, such as replacing “reproductive rights” with “coercion in population control.” *See* Conor Finnegan, *Trump Administration’s First Human Rights Report Sparks Fierce Criticism*, ABC NEWS (Apr. 20, 2018), <https://abcnews.go.com/Politics/trump-administrations-human-rights-report-sparks-fierce-criticism/story?id=54621360> [<https://perma.cc/PNQ8-MNNW>].

93. *Dulai v. Immigr. & Nat’y Serv.*, No. 93-70036, 1994 U.S. App. LEXIS 35923, at \*6 (9th Cir. Dec. 7, 1994).

94. *Poon v. Immigr. & Nat’y Serv.*, 707 F.2d 258, 259 (6th Cir. 1983) (relying on Library of Congress memorandum regarding Hong Kong drug laws); *In re Nwangwu*, 16 I. & N. Dec. 61, 62 (B.I.A.

That said, this reliance is not always warranted, especially in the face of newly developed information.<sup>95</sup> There are two compelling arguments for Sikh asylees tasked with overcoming *Singh* and other cases relying on the Library of Congress report. First, the Library of Congress report was, at its inception, poorly supported and contradictory. Second, contemporary data further weakens the report's outdated data.

#### A. The Library of Congress Report Is Poorly Supported and Contradictory

The Library of Congress report is merely one piece of evidence in support of the Department of Homeland Security's argument. It is not binding on any immigration judge and does not automatically dispose of any removal proceeding. The 2018 report incorporates data from as early as 2003 and does not use data from after 2015. This Section analyzes weaknesses in the report, while the following Section identifies contemporary country condition data that contradicts the report.

At its onset, the report notes that no Indian law prohibits or restricts Sikh relocation from the Punjab province into other regions.<sup>96</sup> In fact, the first citation in the report is to a 2003 U.S. Citizenship and Immigration Services (USCIS) report to support the contention that “[n]o provisions were located under Indian law that prohibit or restrict members of the Sikh religion from relocating to other parts of India from the Province of Punjab.”<sup>97</sup> This ignores the 2003 Department of State Country Report on Human Rights Practices, which directly contradicts USCIS:

Under the Passports Act, the Government may deny a passport to any applicant who “may or is likely to engage outside India in activities prejudicial to the sovereignty and integrity of India.” The Government used this provision to prohibit the foreign travel of some government critics, especially those advocating Sikh independence . . . .<sup>98</sup>

This could be compelling if the Indian government empirically followed the law and substantively enforced violations. As the 2022 State Department human rights report suggests, however, religious feuds are

1976) (relying on Library of Congress memorandum regarding validity of customary divorce); *In re Akinola*, 15 I. & N. Dec. 359, 360 (B.I.A. 1975) (same).

95. See SHANE DIZON & POOJA DADHANIA, 2 IMMIGRATION LAW SERVICE 2D § 7:119 (“Only if the advocate can find other overwhelmingly persuasive evidence that indicates that the Library of Congress’ analysis is incorrect or out of date will the petitioner have any hope . . .”).

96. LIBRARY OF CONGRESS REPORT, *supra* note 8, at 1.

97. *Id.*; *see id.* at 1 n.1; U.K. HOME OFF., COUNTRY INFORMATION AND GUIDANCE: INDIA: BACKGROUND INFORMATION, INCLUDING ACTORS OF PROTECTION, AND INTERNAL RELOCATION para. 1.2.7 (2015), [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/565776/CIG-india-background-v2-February-2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/565776/CIG-india-background-v2-February-2015.pdf) [<https://perma.cc/T75U-CHM2>].

98. U.S. DEP’T OF STATE, BUREAU OF DEMOCRACY, HUM. RTS. & LAB., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES, INDIA 2003 (Feb. 25, 2004), <https://2009-2017.state.gov/j/drl/rls/hrrpt/2003/27947.htm>.

rampant.<sup>99</sup> This “lack” of restriction on movement is also inherently illogical to propose as an argument after the applicant has already established eligibility for asylum, meaning that they demonstrated the government was the persecutor or unable or unwilling to handle the problem. So what relevance is the nonexistence of a law preventing relocation if such law is not what stops Sikhs from relocating anyway?

Just after that contradiction, the report refers to the 2011 State Department Human Rights Report to make the same point.<sup>100</sup> But at the same time, the 2011 State Department International Religious Freedom Report stated that “at times, violence between religious groups and organized communal attacks against religious minorities occurred.”<sup>101</sup> That same report identifies Sikhs as religious minorities.<sup>102</sup>

Similar discrepancies exist in the reports from international immigration agencies to which the Library of Congress report cites. For instance, the same U.K. report purporting the feasibility of Sikhs living harmoniously in India simultaneously discusses how Sikhs who marry outside of their religion may forfeit certain property inheritance rights.<sup>103</sup> The U.K. report thus supports an argument of persecution based on severe economic disadvantage due to laws governing interfaith marriage applicable throughout India.<sup>104</sup> Persecution rooted in animus toward interfaith couples in India is not unheard of, either. In 2000, the Ninth Circuit lambasted the BIA in *Maini v. Immigration and Nationality Service* for denying an asylum application to a Sikh woman, her Hindu husband, and their children who suffered persecution “because of their interfaith practices.”<sup>105</sup> Fifteen years

99. See, e.g., U.S. DEP’T OF STATE, 2022 COUNTRY CONDITIONS ON HUMAN RIGHTS PRACTICES: INDIA (2023), [https://www.state.gov/wp-content/uploads/2023/03/415610\\_INDIA-2022-HUMAN-RIGHTS-REPORT.pdf](https://www.state.gov/wp-content/uploads/2023/03/415610_INDIA-2022-HUMAN-RIGHTS-REPORT.pdf) [<https://perma.cc/3AYM-FV4A>] (discussing how Indian law does not prevent employment discrimination based on religion).

100. LIBRARY OF CONGRESS REPORT, *supra* note 8, at 2 (internal quotations omitted) (“In addition, the 2011 US State Department *Country Report on Human Rights Practices* states that [t]he law [of India] provides for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice.”).

101. BUREAU OF DEMOCRACY, HUM. RTS. & LAB., U.S. DEP’T OF STATE, INTERNATIONAL RELIGIOUS FREEDOM REPORT, INDIA (2011), <https://2009-2017.state.gov/documents/organization/193135.pdf> [<https://perma.cc/CE8Y-C3QB>].

102. *Id.*

103. U.K. HOME OFF., COUNTRY INFORMATION AND GUIDANCE: INDIA: RELIGIOUS MINORITY GROUPS para. 4.1.12 (2015), [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/565774/CIG-India-Religious-groups-v1-April-2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/565774/CIG-India-Religious-groups-v1-April-2015.pdf) [<https://perma.cc/BL34-MLUK>]. This legal infrastructure still exists today. See U.S. DEP’T OF STATE, INDIA 2022 INTERNATIONAL RELIGIOUS FREEDOM REPORT (2023), <https://www.state.gov/wp-content/uploads/2023/05/441219-INDIA-2022-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf> [<https://perma.cc/T8F9-MND9>].

104. See U.K. HOME OFF., *supra* note 103, at para. 4.1.12; *In re T-Z-*, 24 I. & N. Dec. 163, 170 (B.I.A. 2007) (deliberate imposition of severe economic disadvantage can be persecution).

105. *Maini v. Immigr. & Nat’y Serv.*, 212 F.3d 1167, 1175–76 (9th Cir. 2000) (“[P]ersecution aimed at stamping out an interfaith marriage is without question persecution on account of religion. In light of

later in *Singh v. Lynch*, that court similarly held that the BIA abused its discretion by denying a Sikh asylee's claim of persecution based on interfaith marriage.<sup>106</sup>

Another legal basis supporting the feasibility of relocation is that India does not require citizens or residents to register their religion with the state.<sup>107</sup> That said, Sikhs are the only religious demographic in India that wear turbans, making them easily identifiable to anyone looking for them.

Concededly, there are genuine arguments supporting the Department's contention that internal relocation is feasible. For example, the Library of Congress report references a 2015 guidance document from the United Kingdom that imposes requirements similar to the *M-Z-M-R*- Factors:

Internal relocation to another area of India is generally viable but consideration must be given to the relevance and reasonableness of internal relocation on a case-by-case basis taking full account of the individual circumstances of the particular person. Decision makers need to consider the ability of the persecutor to pursue the person in the proposed site of relocation, and whether effective protection is available in that area. Decision makers will also need to consider the age, gender, health, level of education, ethnicity, religion, financial circumstances [and/or] ability to secure access to a livelihood and/or support network of the person, as well as the security, human rights and socioeconomic conditions in the proposed area of relocation, including their ability to sustain themselves.<sup>108</sup>

However, the Australian government seems to disagree with the United Kingdom. In a similar study conducted five years earlier (and also cited in the Library of Congress report), the Australian government determined that Punjabi Sikhs "who fear ill treatment by central authorities [versus local police] . . . cannot relocate within India to avoid being targeted."<sup>109</sup>

Likewise, the Canadian government questioned the feasibility of Sikh internal relocation and published a 2013 report stating:

[I]t would be "very hard," particularly for Sikh farmers, who account for the majority of Sikhs in Punjab . . . .

[I]t would be possible for Sikhs who are skilled and educated to find employment outside Punjab, but that it would be difficult for those who are unskilled and uneducated . . . .

Media sources corroborate that there are regulations limiting non-state residents from owning land in Jammu and Kashmir and Himachal Pradesh . . . .

---

our country's shameful history of bigotry, we find it disturbing that the BIA should categorically reject the Mainis' claim of persecution . . . .").

106. *Singh v. Lynch*, 617 F. App'x 817, 817 (9th Cir. 2015).

107. LIBRARY OF CONGRESS REPORT, *supra* note 8, at 4 (citing U.K. HOME OFF., U.K. BORDER AGENCY, OPERATIONAL GUIDANCE NOTE: INDIA para. 3.9.15 (2013), [https://www.ecoi.net/file\\_upload/1226\\_1368622339\\_india.pdf](https://www.ecoi.net/file_upload/1226_1368622339_india.pdf) [<https://perma.cc/2N2D-653W>]).

108. *Id.* at 3 (citing U.K. HOME OFF., *supra* note 97, at para. 1.2.7).

109. *Id.* (quoting AUSTRALIAN GOV'T, REFUGEE REV. TRIBUNAL, COUNTRY ADVICE: INDIA 2 (2010), [https://www.ecoi.net/file\\_upload/2107\\_1317284132\\_ind37728.pdf](https://www.ecoi.net/file_upload/2107_1317284132_ind37728.pdf) [<https://perma.cc/TG8J-MQ7L>]).



Sources note that traditional Sikhs are easily identifiable due to their beards and turbans. According to the VFF legal researcher, this poses a potential challenge for Sikhs to relocate as they are “easily recognizable during any communal riots” in states outside Punjab.<sup>110</sup>

To clarify, the Library of Congress report’s discussion of the Shiromani Akali Dal (Mann) Party only applies to the pro-Khalistan faction of Sikhs. This is where lines are blurred. It is easy to distinguish between Sikhs and non-Sikhs, but it is not so axiomatic to distinguish between a Sikh affiliated with the Mann Party and one who is not.

The crux of the Library of Congress report is that not every Sikh faces persecution in India; only the radical secessionists do. The report cites international immigration agencies that reach similar conclusions. But in curious circularity, the report also cites the Department of Homeland Security. In 2003, USCIS tried to wrangle this issue:

“[S]everal experts have suggested that only those considered by police to be high-profile militants are at risk” of persecution even if they were to relocate. However, “simply holding pro-Khalistani views—favoring an independent Sikh state in Punjab—would not make an individual a high-profile suspect.”<sup>111</sup>

The same report alludes to a list of “chronic offenders” that the Punjab government might use to identify these specific targets.<sup>112</sup> Ten years later, the Immigration and Refugee Board of Canada published a report advancing the same conclusions. This Canadian report reveals that as of 2013, Indian police resources can “track suspects who move to other states, but they must have the cooperation of the police in the other state.”<sup>113</sup>

The Library of Congress report ends with a 2018 decision by the U.N. Committee Against Torture that evaluated an Indian Sikh who was denied asylum in Canada:

While the majority of Sikhs live in the State of Punjab, there are also sizable Sikh minorities in other Indian States and there are Sikh communities all over India. Sikh communities are thriving across the country and many persons of the Sikh faith hold prominent official positions. Moreover, country reports do not suggest that there exists a general risk in India of ill-

---

110. *Id.* at 4 (quoting IMMIGR. & REFUGEE BD. OF CANADA, INDIA: SITUATION OF SIKHS OUTSIDE THE STATE OF PUNJAB (2013), <https://irb-cisr.gc.ca/en/country-information/rir/Pages/index.aspx?doc=454556> [<https://perma.cc/S3KZ-DTVF>]).

111. *Id.* at 5 (quoting Bureau of Citizenship & Immigr. Servs., Res. Info. Ctr., *India: Information on Relocation of Sikhs from Punjab to Other Parts of India*, U.S. CITIZENSHIP & IMMIGR. SERV. (May 16, 2003), <https://www.uscis.gov/tools/asylum-resources/ric-query-india-16-may-2003-0> [<https://perma.cc/FY6ZNUM9>]) (internal citation omitted).

112. Bureau of Citizenship & Immigr. Servs., Res. Info. Ctr., *supra* note 111.

113. LIBRARY OF CONGRESS REPORT, *supra* note 8, at 6 (quoting IMMIGR. & REFUGEE BD. OF CAN., *supra* note 110).

treatment for members of the Shiromani Akali Dal (Amritsar/Mann) party. The party operates openly.<sup>114</sup>

Despite contrary evidence, the report concludes that Sikh internal relocation is feasible and can be reasonable depending on the individual asylum seeker

#### B. Contemporary Data Weakens the Library of Congress Report

According to the 2021 International Religious Freedom Report on India, “[s]uspected terrorists targeted and killed civilians and migrants from . . . the Sikh minorit[y].”<sup>115</sup> The same report discusses separate concerns from Giani Harpreet Singh, leader of the Sikh organization Shiromani Gurdwara Parbandhak Committee, about missionaries who were “running a campaign for forced conversions in border areas of Punjab.”<sup>116</sup>

International organizations bolster this argument. For instance, the U.N. Working Group on Arbitrary Detentions considers the current detention of Jagtar Singh Johal unlawful under international law.<sup>117</sup> Johal is a British national of Indian descent who visited India to get married.<sup>118</sup> After his wedding, Johal was kidnapped by police without an opportunity to consult a lawyer.<sup>119</sup> After analyzing the facts and country conditions in India, the working group concluded that:

Mr. Johal was targeted *because of his activities as a Sikh practitioner* and supporter and because of his activism in writing public posts calling for accountability for alleged actions committed against Sikhs by the authorities.

For these reasons, the Working Group finds that Mr. Johal was deprived of his liberty on discriminatory grounds, owing to his status as a human rights defender and based on his political activism, religious faith and opinions. His detention violates articles 2 and 7 of the Universal Declaration of Human Rights, articles 7, 18(1), 19(1) and (2), and 20 of the Covenant, and articles 1(1), 2(1), 3 and 4(1) of the Declaration on the Rights of Persons

114. *Id.* at 7 (citing Comm. Against Torture, Decision Adopted by the Committee under Article 22 of the Convention, Concerning Communication No. 715/2015, CAT/C/62/D/715/2015, ¶4.3 (Jan. 9, 2018),

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d/PPRiCAqhKb7yhskiKGYGPahxhaHF7/PZ+WRdSynmDt6goXu5NZaMC4tmEHCsrjZz8D1IsvBJU3Zkp8YqhfeGTOW6tf4I+scDowy5LaFJui9B8ZVtM5XvK7dhNzAlmlvCg4qvWnpX4JQ55kw==> [<https://perma.cc/L6VL-S8CG>]).

115. U.S. DEP’T OF STATE, BUREAU OF DEMOCRACY, HUM. RTS. & LAB., INDIA 2021 INTERNATIONAL RELIGIOUS FREEDOM REPORT 2 (2021), <https://www.state.gov/reports/2021-report-on-international-religious-freedom/india/> [<https://perma.cc/L4C7-LNTC>].

116. *Id.* at 29.

117. Hum. Rts. Council Working Grp. on Arbitrary Detention, Op. No. 80/2021, U.N. Doc. A/HRC/WGAD/2021/80, at 16 (2022).

118. *Id.* at 2.

119. *Id.*; see also *Free Jagtar Singh Johal: Latest News and Everything You Need to Know*, REPRIEVE (Sept. 2, 2022), <https://reprieve.org/uk/2022/09/02/jagtar-singh-johal-latest-news/> [<https://perma.cc/89LG-ZVUX>].

Belonging to National or Ethnic, Religious and Linguistic Minorities. It is therefore arbitrary, falling within category V.<sup>120</sup>

This U.N. report was published one year after *Singh v. Garland* was decided. Yet two years later, the Second Circuit continues to affirm deportation orders for Sikhs based on internal relocation.<sup>121</sup>

A cynic might argue that Sikhs are not even safe in Canada nor the United States, let alone in other regions of India. In September 2023, the Canadian Prime Minister accused the Indian government<sup>122</sup> of orchestrating the assassination of Hardeep Singh Nijjar, the pro-Khalistan President of the Guru Nanak Sikh Gurdwara temple.<sup>123</sup> Around the same time, a murder-for-hire plot was underway in the United States, targeting Gurpatwant Singh Pannun, general counsel for Sikhs for Justice.<sup>124</sup> In late November 2023, the U.S. Department of Justice indicted Nikhil Gupta, who was recruited by an Indian government employee to pay a hitman \$100,000 to assassinate Gurpatwant Singh Pannun.<sup>125</sup> In early 2024, the Supreme Court of India declined to intervene, essentially dismissing the indictment as a political issue.<sup>126</sup> Thus we may soon see litigated in U.S. federal courts the question of whether the Indian government is willing to partake in intercontinental assassinations. This is crucial because if so, nothing is stopping the Indian government from persecuting Sikhs within its own borders.

It is a basic tenant of the legal profession to “keep abreast of changes in the law and its practice.”<sup>127</sup> So, too, should attorneys and jurists who find

120. Hum. Rts. Council Working Grp. on Arbitrary Detention, *supra* note 117, at 15 (emphasis added).

121. See, e.g., *Singh v. Garland*, No. 20-2159, 2023 WL 6629763, at \*1 (2d Cir. Oct. 12, 2023) (“[T]he Government demonstrated that Singh could safely relocate within India and that it would be reasonable for him to do so.”); *Singh v. Garland*, No. 20-3514, 2023 WL 4940247, at \*1 (2d Cir. Aug. 3, 2023)

(“Singh was assaulted . . . because of his membership in the Shiromani Akali Dal Mann Amritsar party (“SADA”) party, and the police in his home state of Punjab beat and detained him when he reported the attack. Substantial evidence supports the agency’s conclusion that he could relocate.”).

122. Peter Baker, *Biden Is Caught Between Allies as Canada Accuses India of Assassination*, N.Y. TIMES (Sept. 20, 2023), <https://www.nytimes.com/2023/09/20/us/politics/biden-canada-india.html> [<https://perma.cc/2K8L-GFJZ>].

123. Vjosa Isai, *Killing of Sikh Leader Raises Fear in British Columbia*, N.Y. TIMES (June 24, 2023), <https://www.nytimes.com/2023/06/24/world/canada/sikh-killing-british-columbia-india.html> [<https://perma.cc/5DPT-4FF8>].

124. See Astha Rajvanshi, *Exclusive: Gurpatwant Singh Pannun on Sikh Separatism and Being the Target of a Foiled Assassination*, TIME (Dec. 15, 2023), <https://time.com/6339942/india-gurpatwant-singh-pannun-sikh-separatist-qa/> [<https://perma.cc/C4JY-DSE8>].

125. Sealed Superseding Indictment ¶¶ 1–4, *United States v. Gupta*, No. S1-23-CR-289 (VM) (S.D.N.Y. Nov. 29, 2023). Fortunately, the hitman was an undercover U.S. law enforcement officer and foiled the plan after Gupta allegedly provided a \$15,000 advance payment. *Id.* ¶¶ 4–5.

126. Umang Poddar, *Nikhil Gupta: India Supreme Court Rejects Plea from U.S. Murder Plot Accused*, BBC NEWS (Jan. 4, 2024), <https://www.bbc.com/news/world-asia-india-67879258> [<https://perma.cc/D5RM-V7BX>].

127. MODEL RULES OF PRO. CONDUCT r. 1.1 cmt. 8 (AM. BAR ASS’N 1983).

themselves advocating for or adjudicating Sikh asylum claims stay abreast of the volatile geopolitical dynamics in India.

### C. A Call to Arms

In 2017, I was serving in the U.S. Army overseas when one day, a new soldier showed up to formation in a full beard and turban. Surprised, and somewhat jealous of the beard, I thought to myself how the Army was slowly becoming more tolerable of religious accommodations. But of course, I later learned that someone had to sue the Army first.<sup>128</sup> That effort was spearheaded by Aman Sindhu, co-founder of the Sikh Coalition. Aman is now a partner at Winston & Strawn, LLP, which represents the Sikh Coalition as pro bono counsel.<sup>129</sup>

Though an advocate need not be associated with a powerful law firm to make a difference. Many law schools provide opportunities for students to advocate for asylees threatened with deportation. For example, students at Cornell Law School who participate in the Asylum and Convention Against Torture Appellate Clinic work in litigation teams under attorney supervision to represent clients before the BIA and federal courts.<sup>130</sup>

Sikh advocacy need not be legal, either. Students and faculty at Syracuse University tirelessly compile comprehensive, independent, and nonpartisan information about immigration enforcement.<sup>131</sup> That information, hopefully like the information I point to in this Article, assists asylum applicants and litigators challenging the empirical fallacies of the immigration system. Additionally, the Sikh Coalition maintains a public list of its ongoing legal and political campaigns, to which it invites all to assist.<sup>132</sup>

In short, advocacy comes in many forms. To the attorneys who find themselves before a circuit court fighting the next *Singh v. Garland*, I wish you luck. To those who are compelled to donate to Sikh community organizations, I commend your contribution to a worthy cause. And to those who wonder how they can help, I ask you to share these issues with your peers. In the end, meaningful discussion is the only way to combat difficult issues of law and policy.

---

128. See *Singh v. McConville*, No. 16-581 (BAH), 2016 WL 11719235, at \*1 (D.D.C. Oct. 26, 2016).

129. *Winston for Good Heroes: Amandeep Sidhu Fights for Religious Freedom for All*, WINSTON & STRAWN LLP (July 11, 2023), <https://www.winston.com/en/blogs-and-podcasts/life-at-winston/winston-for-good-heroes-amandeep-sidhu-fights-for-religious-freedom-for-all> [<https://perma.cc/BS2S-535L>]. In an almost comical illustration of how small the world is, I met Aman during a law school internship at his firm where, at the same time, I met *AALJ* editor Natasha Suterwala.

130. *Asylum and Convention Against Torture Appellate Clinic*, CORNELL L. SCH. (2024), <https://www.lawschool.cornell.edu/academics/experiential-learning/clinical-program/asylum-and-convention-against-torture-clinic/> [<https://perma.cc/G6C6-U8TX>].

131. See *Immigration*, TRANSACTIONAL RECS. ACCESS CLEARINGHOUSE, SYRACUSE UNIV., <https://trac.syr.edu/immigration/> [<https://perma.cc/3JU2-33MG>].

132. *Legal Cases & Policy Initiatives*, SIKH COAL., <https://www.sikhcoalition.org/our-work/legal-and-policy/> [<https://perma.cc/96UQ-W2CF>].

## CONCLUSION

Sikh asylees face a unique hurdle in seeking asylum. In 2018, the Library of Congress published a report that stymied Sikh asylum cases, later adopted by the Second Circuit in *Singh v. Garland*. But on critical review, it is apparent that the report should not serve as a de facto bar to asylum for Indian Sikhs. Overcoming the arguments that undergird *Singh* and the Library of Congress report is not an easy task. But zealous advocates cannot yield when empirical evidence supports a grant of asylum for Sikh clients.

Immigration law in the United States is highly polarizing but often misunderstood and misrepresented. There are many nuances to this body of law that impacts the lives of millions. Despite popular belief, the United States is welcoming to immigrants and affords them several rights that other countries would not. But as with any government function, there is the potential for abuse, and the asylum system is no exception. In the federal government's efforts to mitigate the abuse, thought-provoking cases such as *Singh* are born.