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**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
BOARD OF IMMIGRATION APPEALS**

In re the Matter of:	)	File No. A72 222 222
	)	
	)	
ARWINDER SINGH,	)	RESPONDENT'S BRIEF IN
	)	SUPPORT OF APPEAL
Respondent,	)	
	)	
In Removal Proceedings.	)	
_____	)	

Respondent ARWINDER SINGH submits the following brief in support of his appeal of the August 21, 2001, decision of the Immigration Judge (IJ) denying his applications for asylum pursuant to Section 208(a) of the Immigration and Nationality Act (Act), withholding of deportation under Section 241(b)(3) of the Act, and for relief under Article 3 of the Convention Against Torture (CAT).

**I.  
FACTS**

Respondent is a thirty-four year old single man, Sikh, and a citizen of India, who, by his own admission, is removable from the United States on the grounds alleged in the Notice to Appear, issued on June 25, 1999 (Exhibit 1). In the course of his removal proceedings, he conceded removability and sought asylum and withholding of deportation as to India, and

protection under the Convention Against Torture, or in the alternative, voluntary departure (Exhibit 2).

For more than a decade, the Punjab state has been in violent turmoil due to separatist movements to make the state a separate Sikh nation, to be known as “Khalistan.” The Hindu central government of India, as well as the government of the Punjab, have acted forcefully to suppress the separatists. The central government has posted large numbers of troops in the state, and the state itself has offered rewards for the killing of alleged militants. U.S. Department of State Country Reports reflect that between 1991 and 1993, the state paid 41,000 such rewards, or “bounties.” Militant Sikh separatists have and continue to strike violently at the Indian government, as reflected in the assassination of the Chief Minister of the Punjab, Beant Singh, in the second half of 1995 (Exhibits 12, 13, 14).

Respondent grew up in Rehan Jatta village, Kapurthalla district, of Punjab State. Respondent completed nine years of education, then quit school after his father passed away when he began to assist his paternal uncle, Phumman Singh, on his farm. Respondent also worked part-time as a motorcycle and scooter mechanic’s assistant and apprentice. Respondent has two sisters and is the only male in his family (Transcript of Hearing, *hereinafter*, TH 13-14, 74-77, Exhibit 9).

Respondent is a non-baptized Sikh. He attends *gurdwara*, or temple, in both Fremont and Hayward, California. In India, respondent attended Shahid Baba Garib Singh *gurdwara* (TH 14-15, Exhibits 7 and 11).

Respondent joined the All India Sikh Student Federation (AISSF)–Manjit group, a Sikh separatist movement dedicated to achieving Khalistan through peaceful means. Respondent joined this group because he believes that the government of India denies justice and freedom to

practice religion to Sikhs (TH 15-16, 115-116). Respondent learned about the organization through AISSF member, Amarjit Sandhu, who told respondent that the organization was to unite Sikhs to raise their voices against the injustices committed by the police in Punjab (TH 79-80). Respondent joined AISSF, April 13, 1985, remembering the date because it falls on the Sikh festival of *Baisakhi*, the celebration of the foundation of Sikhism by Guru Arjandev (TH 18-19, Exhibit 3). Respondent was politically active as a member of the AISSF, and he attended the group's meetings, rallies and demonstrations, as well as distributed literature and information about the group and its rallies in local villages. He also hung posters advertising AISSF events and spoke with people in attempt to recruit them (TH 17, 78, Exhibit 3). Respondent did not vote in the elections of 1985 because he was not old enough to do so at the time (TH 116). Respondent also did not vote in the elections of 1989 because he had failed to register to vote as he was helping his uncle with some family problems at the time (TH 116-117). Respondent has maintained his membership in the AISSF, sending money to support the organization through his mother (TH 119).

Respondent was arrested by the Indian police early in the morning from his brother-in-law's house in Phagwarha, on June 6, 1990. Two days before, on June 4, respondent had participated with other Sikhs and AISSF members in a demonstration at the *gurdwara* Sukhchainsahib in Phagwarha, in commemoration of the attack on Harminder Sahib, also known as a black day. At the demonstration, approximately three to four hundred participants shouted slogans for Khalistan and spoke out against government atrocities committed against Sikhs. Uniformed policemen watched the demonstration from outside the temple, and plainclothes policemen observed the event from inside the temple (TH 22-24, 89, 113).

While taking respondent from the house of his brother-in-law, Harpal Singh, the police used abusive and obscene language. The police took respondent to C.I. Staff Phagwarha, a special police unit, known by locals for its abuse and harassment of those in its custodial care, where he was held for four days. On his first day, respondent was presented to Inspector Sewaram and interrogated about his AISSF membership and about his participation in the Black Day demonstration only two days before. When respondent confirmed that he was a Sikh, the inspector slapped him several times and accused him of being a terrorist. When respondent denied any involvement in or connection with terrorist activities, the inspector ordered that respondent's clothes be removed. Respondent protested this and was beaten with batons by the other police officers present. The officers then stripped the respondent and forced him to lay down on the floor, where they began to mercilessly beat and kick him. After the police turned respondent onto his stomach, one officer then held his head, another sat on his back and held respondent's feet up, and a third officer beat the soles of his feet with a wooden baton. Respondent screamed with pain and begged for help. The beating continued for another 20 minutes before the interrogation began anew. After respondent again denied any knowledge of any terrorists, the inspector ordered additional beating and finally instructed the officers to tie respondent's feet with a rope and to hang him upside down. As respondent was helplessly suspended mid-air, the officers beat him with the baton about his hips. After about 15 minutes of this torture, respondent lost consciousness. When respondent regained consciousness, he was in a cell with his clothes lying next to him (TH 24-29, 114, Exhibit 5B).

On the second day of his arrest, a passing police officer called respondent "Khalistani" and told him there was still time to inform them of what they wanted to know, otherwise they would kill him that day. Respondent believed that the police would kill him. For two days the

police forced respondent to clean toilets, wash clothes and polish shoes. He was often beaten with a baton and told he was not working fast enough. On the fourth day, around nine or ten o'clock in the evening, respondent was brought from his cell to the inspector, who told him he would be killed if he did not tell them what they wanted to know. Respondent thought the police officers were drunk because he could smell liquor on them. The inspector then slapped respondent several times, had an officer hold him by the neck, and told respondent to sign a blank paper. Respondent told the inspector that he did not have any association with a terrorist group or with any terrorists, to which the inspector's reply was to sign the paper. Respondent refused to sign the blank paper because he knew that later the police could add anything they wanted to it. When respondent refused, the officers immediately began to hit him with a stick and continued to beat him for 20 minutes. While respondent was warding off the officers' blows, he felt a deep sting of pain and realized his arm had been broken. He also suffered blows to his legs and thighs. After this, the officers said that they would "give him his Khalistan and get rid of his Sikh," after which they humiliated respondent by forcibly cutting his long hair (TH 29-31, 115). After suffering this degradation, and more beating, respondent was dragged by his legs back to his cell. Respondent was released from the jail on June 10, 1990, after his mother and uncle arranged a bribe of 50,000 rupees to be paid to the police (TH 31-32, 114). After his release, respondent returned to his village and sought treatment for his injuries from the healer Motasinda, from the village of Ramgara, who splinted his broken arm and bandaged his hand and feet. Respondent spent two months in bed recovering from his injuries (TH 32-33, 114, Exhibit 10).

After two months of recovery, respondent began attending AISSF events again and assisting Federation members at the encouragement of his friends. (TH 33, 90). Later,

respondent learned of another young man, Giani Surinder Singh, who had been picked up by the police after the same rally respondent had attended immediately before his arrest. This young man's whereabouts were unknown for three years, after which, he was suddenly released from a jail in Bhadinda, mentally unbalanced after having spent so much time being tortured in the Indian prison system. Respondent had personal knowledge of this man's circumstances because he lived four houses away from the home of respondent's sister (TH 34).

The police arrested respondent a second time in the last week of March 1991 outside an AISSF meeting held in the neighboring village of Metiana. The police captured respondent as he jumped over a wall in an attempt to escape. Respondent was arrested and taken to the Phagwara police station along with two other men. This time, respondent was kept at the jail for seven days. On the first day, respondent was brought from lock-up to an interrogation room where an inspector accused him of being a terrorist and demanded information about the AISSF meeting. Respondent told the inspector everything he could about the meeting, which had been held to plan the upcoming Baisakhi festival on April 13 in Anandpur Sahib, but the inspector did not believe the respondent, instead claiming that terrorists were in attendance at the meeting. The inspector told respondent that he and others at the meeting would not have run away from the police unless they were terrorists, but respondent told him that he and others had fled because they were afraid. The police showed respondent several photographs and asked him to identify the individuals and whether they had been present at the meeting. When respondent told the police that he did not know any of the people in the photographs, the inspector demanded that respondent remove his clothes. Respondent refused to undress so the police began to beat him with a stick, stripped him, and forced him to lay face down on the ground. Two policemen held respondent's legs and hands while he was beaten with a leather strap on his hips for 20 minutes.

The police also grabbed respondent by his hair and beat his head and face against the ground (TH 34-40, 115).

Over the next two days, the police continued to threaten respondent with his life and hurled profanities at him. On the third day, the police interrogated respondent again, stripping him from the waist down, tying his hands behind his back and forcing him to sit on the ground while they spread his legs and proceeded to kick and hit respondent in the groin and thighs. Respondent experienced terrible pain, but the police gripped respondent by his hair and told him that he still had enough consciousness that he should be able to tell them what they wanted to know, or they would kill him that very day. Afterwards, the police dragged respondent by his legs back to the cell. For the next two days, respondent was forced to clean the toilet and to endure the officers' death threats. On the seventh day, the police beat respondent with a baton and threatened him with death if he ever again worked with or participated in any activities of the AISSF. Respondent promised to not associate with AISSF. A few hours later, respondent was brought to the inspector's office where his village *panchayat* and *sarpanch* were sitting. The village leaders promised the inspector that respondent would not participate in any AISSF activities, and the police released him. Respondent did not return to his home, but stayed with his maternal uncle in Gurayan village for approximately two and a half months. Respondent did not return to his village because he feared the police would come for him again (TH 40-45, 74).

On June 20, 1991, fearing that the police would find him and again arrest and torture, or even kill him, respondent fled India (TH 57). Respondent hired an agent who arranged for him to get to the United States, along with two other individuals. The agent arranged for a passport in respondent's name that included a photograph of him with cut hair. Respondent flew from New Delhi to France, and then to Mexico where the agent then retained possession of

respondent's passport. Respondent entered the U.S. without inspection, July 20, 1991, near San Ysidro, California, after crossing the border with Mexico (TH 46-48, Exhibit 2). In November 1991, respondent submitted an application for asylum and withholding of deportation, including a two-page declaration in support of his application (Exhibit 2). Respondent was never interviewed by an asylum officer of the Immigration and Naturalization Service.

Respondent maintained contact with his mother, Sanjeeta Kaur, by telephone after his arrival in the United States. Respondent's mother told him that the police speak with the village *sarpanch* once or twice a year, inquiring as to respondent's whereabouts (TH 46, 117, Exhibit 6B). Respondent also keeps abreast of current events in India and Punjab by listening to Punjabi radio programs and reading the newspapers (TH 117).

## II.

### WITHHOLDING OF DEPORTATION AND ASYLUM.

Removal of an alien is prohibited by Section 241(b)(3) of the Act where there is a clear probability that his life or freedom would be threatened as a result of persecution on account of political opinion, religion, membership in a particular social group, nationality, or race. INS v. Stevic, 467 U.S. 407, 104 S.Ct. 2489 (1984). For the harm or suffering to be considered persecution, it must be inflicted either by the government or by persons or organizations the government is unwilling or unable to control. Mgoian v. INS, 184 F.3d 1029, 1036 (9<sup>th</sup> Cir. 1999). Discrimination, harassment, and violence by a group that the government is unable or unwilling to control at times may constitute persecution. Arteaga v. INS, 836 F.2d 1227, 1231 (9<sup>th</sup> Cir. 1988).

The Attorney General has discretionary authority to grant an alien asylum in the United States under Section 208(a) of the Act. To be eligible, an alien must meet the definition of a



“refugee,” as defined in Section 101(a)(42)(A) of the Act. This requires that an alien show he is unwilling to return to his country either because of persecution or a well-founded fear of persecution, on account of his political opinion, religion, membership in a particular social group, nationality, or race. Cordoza-Fonseca v. INS, 767 F.2d 1448 (9<sup>th</sup> Cir. 1985), *aff’d* 480 U.S. 421, 107 S.Ct. 1207, 94 L.Ed.2d 434 (1987); Desir v. Ilchert, 840 F.2d 723 (9<sup>th</sup> Cir. 1988); Matter of Mogharrabi, I.D. #3028 (BIA 1987). For the harm or suffering to be considered persecution, it must be inflicted either by the government or by persons or organizations the government is unable or unwilling to control. Mgoian, *supra* at 1036; Singh v. INS, 94 F.3d 1353, 1360 (9<sup>th</sup> Cir. 1996); Gomez-Saballos v. INS, 79 F.3d 912 (9<sup>th</sup> Cir. 1996); McMullen v. INS, 658 F.2d 1312, 1315 (9<sup>th</sup> Cir. 1981). However, a respondent is not required to show the exact motivation of his “persecutor” where different reasons for actions are possible. An alien is only required to establish facts due to which a reasonable person would fear danger arising on account of one or more of the qualified reasons contained in the Act. Matter of Fuentes, 19 I&N Dec. 658, 662 (BIA 1988).

Either past persecution or a well-founded fear of future persecution may satisfy the statutory requirements for asylum. Matter of Chen, I.D. #3104 (BIA 1989); Desir, *supra* at 729. The “well-founded fear” standard has both objective and subjective components. Barraza Rivera v. INS, 913 F.2d 1443, 1449 (9<sup>th</sup> Cir. 1990). The subjective component requires that an alien establish that his fear is “genuine.” Hernandez-Ortiz v. INS, 777 F.2d 509, 513 (9<sup>th</sup> Cir. 1985). Credible testimony in support of the subjective fear will satisfy the burden. Duarte de Guinac v. INS, 179 F.3d 1156, 1159 (9<sup>th</sup> Cir. 1999).

The objective component requires a showing, by credible, direct, and specific evidence in the record, of facts that establish that persecution is a reasonable possibility. Barraza Rivera,

*supra* at 1449; Devalle v. INS, 901 F.2d 787, 790 (9<sup>th</sup> Cir. 1990). If documentary evidence is not available, the evidence may consist solely of the alien's own testimony, if it is specific, credible and persuasive. Cordoza-Fonseca, *supra* at 1453. Evidence of past persecution or a threat of future persecution will usually suffice to form the objective component of the evidence requirement. Zacarias v. INS, 908 F.2d 1452, 1458 n.7 (9<sup>th</sup> Cir. 1990); Cordoza-Fonseca, *supra* at 1453. Past persecution does not require corroborative evidence but may be established through the applicant's own testimony. Garrovillas v. INS, 156 F.3d 1010, 1016-17 (9<sup>th</sup> Cir. 1998). Under the regulations, a person who suffered past persecution is presumed to have a well-founded fear unless by a preponderance of the evidence, the government establishes that conditions have changed in the country of origin *to such an extent* that the applicant no longer has a well-founded fear. [Emphasis added] 8 C.F.R. § 208.13(b)(1)(i). See Borja v. INS, 175 F.3d 732, 737-38 (9<sup>th</sup> Cir. 1999) *en banc*; Tarubac v. INS, 182 F.3d 1114, 1119-1120 (9<sup>th</sup> Cir. 1999); Leiva-Montalvo v. INS, 173 F.3d 749, 751-52 (9<sup>th</sup> Cir. 1999); Del Carmen Molina v. INS, 170 F.3d 1247, 1250 (9<sup>th</sup> Cir. 1999); Osorio v. INS, 99 F.3d 928, 932 (9<sup>th</sup> Cir. 1996) [Presumption in favor of applicant]; Surita v. INS, 95 F.3d 814, 821 (9<sup>th</sup> Cir. 1996) [INS must overcome presumption]; Prasad v. INS, 101 F.3d 614 (9<sup>th</sup> Cir. 1996).

If past persecution is established, then the government, to deny asylum as a matter of discretion, has the burden to establish that the applicant will be safe in other regions of the country where they raise that claim. Singh v. Ilchert, 69 F.3d 375, 379-81 (9<sup>th</sup> Cir. 1995). This includes demonstrating how the INS will accomplish the deportation of the individual to the protected area. Matter of H-, 21 I&N Dec. 337, 347-48 (BIA 1996).

In light of the above, it is submitted that respondent's testimony must be considered factually correct and sufficient, without more, to sustain his burden. If the events he testified to

describe past persecution, or conditions such as to reasonably cause a well-founded fear of future persecution, then respondent did meet his burden.

### III.

#### **RESPONDENT ESTABLISHED ELIGIBILITY FOR ASYLUM AND WITHHOLDING OF DEPORTATION**

Viewed in its entirety, the record shows that the respondent established eligibility for asylum and withholding of deportation. The evidence established that respondent is a Sikh (*see* Exhibits 7, 11). Both written and testimonial evidence established that respondent was a member of the AISSF (Exhibit 3). In his testimony, respondent demonstrated detailed knowledge of the AISSF, including: the date of and reasons for its inception and first president; significant organization dates (including elections and campaigns); past and current national and local organization presidents and secretaries; names of AISSF groups and coalitions (including groups that advocated more violent separatist movements); separatist groups with financial connections to *gurdwaras* in the United States; and the experiences of well-known Sikhs Daljeet Singh Bittu, Jaswant Singh Khalra, and Giani Surinder Singh; (TH 80-86).

Further, testimony showed that respondent was arrested, detained, verbally assaulted, threatened and physically tortured on several occasions by the police. Respondent testified that his fear for his life and safety, was great enough to force him into hiding, and finally to flee his country altogether. Country reports submitted by government's counsel confirmed that significant human rights abuses in India remain a problem and that numerous serious problems included extrajudicial killings, including faked encounter killings, deaths of suspects in police custody throughout the country, and torture by police. The Department of State reports cite several examples of abuses and uses of excessive force by police in Punjab as well as throughout

the country (Exhibits 13, 14). Respondent stated several times throughout his testimony that he feared arrest, torture and death at the hands of the police should he be forced to return to India.

Evidence established that respondent was a member of the All India Sikh Student Federation–Manjit group. Evidence further established that respondent was arrested by the police, detained and tortured for his association and activities. There is no question that the type of harm respondent suffered amounts to persecution. He was not arrested or detained for any legitimate purpose, but rather for his political opinion and religious identity as a Sikh. There is no indication that respondent was engaged in any illegal activities. He never appeared before a tribunal, paid bail, or had any formal charges brought against him. Since the police were not engaged in legitimate law enforcement activity, it must be presumed that their actions amounted to persecution.

There is no question that the type of harm respondent suffered amounts to persecution. His attackers' threats and assaults on his person, and his religious and political group as a whole, combined with his arrests and subsequent torture, including the breaking of his arm during an interrogation, were so menacing as to cause significant actual suffering and harm to respondent, as he was forced to abandon his home and to flee his country. These events and threats caused respondent mental suffering and anxiety sufficient to force him to leave his family. *See Sangha v. INS*, 103 F.3d 1482 (9<sup>th</sup> Cir. 1997); *Melencio Legui Lim v. INS*, 224 F.3d 929 (9<sup>th</sup> Cir. 2000). He was not pursued or threatened for any legitimate purpose, rather he was singled out because he is a Sikh and a member of the AISSF.

Respondent also established by credible testimony that police authorities in India were either unwilling or unable to protect him from either past or future persecution, and they were in fact, the instigators of the physical attacks on him. He fears that the police will locate and arrest

him should he return to India, as a result of his membership in the AISSF, for which he was arrested and tortured on two separate occasions. Based on his prior experiences, as well as knowledge of the experience of other Sikhs in India, respondent believes that were he to fall into the hands of the police, that they would certainly torture and perhaps kill him for his political opinions and past associations.

In addition to his personal knowledge of the detention, torture, and subsequent loss of sanity by his sister's neighbor, Giani Surinder Singh, after arrest by the police, respondent also testified to knowledge of the experiences of other Sikhs in his country in their encounters with the Indian police. Respondent testimony disclosed his knowledge of the abduction and murder by the Indian police of human rights activist and attorney, Jaswant Singh Khalra, who had attempted to collect information to expose the illegal cremation of hundreds of unidentified bodies by the Indian police in the Punjab. (TH 59-, *See also* Exhibits 12, 13, 14).

The IJ's sole basis for concluding that respondent had failed to sustain his burden of establishing eligibility for asylum and withholding of deportation was his finding that respondent was not a credible witness. The finding is not supported by the record. The IJ's decisions in denying asylum and withholding of deportation were incorrect applications of both law and discretion.

Respondent plainly suffered persecution on account of his religion and both actual and imputed political opinion, qualifying him as a refugee. Background materials corroborated that conditions in India remain relatively unchanged for Sikhs. Therefore, respondent met his burden of demonstrating a well-founded fear of future harm on account of religion and both actual political opinions and those imputed to him by the police.

Further, the IJ did not apply the substantial evidence standard of review, but rather ignored statements made in the State Department's country conditions reports which actually supported respondent's claims. The purpose of country conditions evidence, such as the State Department report, is not to corroborate specific acts of persecution, but to provide information about the context in which the persecution alleged took place, in order that the fact finder may intelligently evaluate the petitioner's credibility. Duarte de Guinac, *supra* at 1162. The country report in respondent's case indicated that significant human rights abuses in India remain a problem and that numerous serious problems included extrajudicial killings, including faked encounter killings, deaths of suspects in police custody throughout the country, and torture by police. The report also cites several examples of abuses and uses of excessive force by police in Punjab as well as throughout the country (Exhibits 13, 14). This not only corroborates respondent's testimony as credible, but proves there continues to be a basis for a well-founded fear.

Respondent was the target of physical and verbal assault, on account of his religion and actual and imputed political opinion. Respondent testified that he was a Sikh and a member of the Manjit faction of the All India Sikh Student Federation. It is irrelevant that he was not an officer of the organization, he was targeted on account of his political association and religious affiliation. Therefore, he demonstrated past persecution, that he was subjected to torture, and that he has a well-founded fear of future harm on account of political beliefs imputed to him. Respondent believes that if he were to return to his country that he is sure to be arrested and detained, and possibly killed (TH 57). Therefore, he has demonstrated past persecution, and that he has a well-founded fear

of future harm on account of his religion and both actual political beliefs and those imputed to him.

Additionally, the IJ did not find that the Service had rebutted the presumption of future persecution afforded respondent on account of his past persecution. Proof of past persecution raises the presumption that an asylum applicant has a well-founded fear of future persecution, which may be rebutted by a showing, by a preponderance of the evidence, that country conditions have changed sufficiently so as to overcome that presumption. 8 C.F.R. § 208.13(b)(1)(i); Singh v. Ilchert, *supra* at 378. The Service is obligated to “introduce evidence that, on an individualized basis, rebuts a particular applicant’s specific grounds for his well-founded fear of future persecution.” Ernesto Navas v. INS, 217 F.3d 646, 662 (9<sup>th</sup> Cir. 2000). Information about general changes in the country is not sufficient. Garrovillas, *supra* at 1017. In respondent’s case, the IJ did not consider whether the Service had met its burden of showing changed country conditions.

Based on the record, the presumption afforded respondent remains unrebutted. The Service failed to produce evidence showing that country conditions in India improved as a general matter, and it failed to introduce evidence to meet its burden of showing that there has been a change in the conditions that would affect respondent individually. Popova v. INS, (9<sup>th</sup> Cir. 2001). Respondent’s testimony disclosed his knowledge of the abduction and murder by the Indian police of human rights activist and attorney, Jaswant Singh Khalra, who had attempted to collect information to expose the illegal cremation of hundreds of unidentified bodies by the Indian police in the Punjab. (TH 59-60, *See also* Exhibits 12, 13, 14). Respondent suggested that if an attorney would

not be safe in India, then someone with an arrest record there, like himself, would not be safe either. Additionally, respondent disagreed with the suggestion that country conditions had changed in India based on the Department of State report, stating that all that had happened in Khalra's case and others', with all the attendant cover-ups, only proved that government reports on activities in India were not accurate nor to be trusted. In sum, there is nothing submitted by the Service that rebuts respondent's legitimate fears of future harassment, threats, imprisonment, and possibly death, based upon his religion and political opinion.

The Service questioned applicant as to whether respondent could live in another location within India. Given that respondent testified that he is sought by the Indian police, and that the Indian police have been his persecutors, the possibility of living outside of respondent's home state of the Punjab is not a realistic alternative. Applicant would have no legal protections outside of the Punjab that he does not enjoy within that state. To suggest that he would be safe from arrest outside of the Punjab is on the same level as suggesting that an American can be safe from arrest merely because he moves from one state to another. This is not the case. India, as the United States, is a nation of states governed by a unified system of laws. An individual can be readily arrested and returned to the state where the area police have originated a real or imagined charge against the individual. Respondent could reasonably fear that his persecution would be country-wide. The Department of State country report submitted by government's counsel confirms respondent's fears, reporting that under national security legislation, police may detain persons they consider to be "security risks" (undefined in the National



Security Act) anywhere in the country, and hold suspects without charge or trial for as long as a year on loosely defined security grounds (Exhibit 13).

In fact, respondent testified that he would be in more danger of arrest and torture by the police should he return to India than before his departure, for his being a member of the AISSF and for his absence from the country; essentially, that the police would believe that he was associated with “groups that have been demanding Khalistan at gun point” and supporting such violent groups financially from the safety of the United States (TH 57-58, 117). Respondent testified to personal knowledge of militant Sikh groups operating in the United States to gather support for their cause in India through *gurdwaras*, or Sikh temples. Specifically, respondent named the Babbar Khalsa and International Youth Federation as groups that use the *gurdwara* in Fremont, California, near respondent’s residence, as a platform for petitioning financial and moral support of their organization in the Punjab (TH 58-59). Additionally, respondent testified under cross-examination that he would be in more danger living outside the state of Punjab as he would stand out as a Sikh and bring question upon himself as to why he was living outside Punjab and what his political associations or past might be, making him an easy target for the police to arrest and detain (TH 117).

Despite the overwhelming consistency between respondent’s written application and his testimony both at the asylum office and at his hearing, the IJ ignored extensive corroborative evidence in the record and made errors regarding respondent’s actual testimony in court. Respondent plainly suffered persecution on account of his religious and actual and imputed political opinions, qualifying him as a refugee.

**IV.**

**CONCLUSION**

Based upon the foregoing, it is respectfully submitted that this appeal should be affirmed, that respondent be granted asylum in the United States, and that the Attorney General be prohibited from removing him to India. In the alternative, the matter should be remanded to the IJ for a decision addressing the issue of a well-founded fear.

Dated: March 12, 2002.

Respectfully Submitted,

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AMY L. BECERRA  
Attorney for Respondent

## CERTIFICATE OF SERVICE

I, AMY L. BECERRA, do hereby certify that on March 12, 2002, a copy of the foregoing Brief in Support of Appeal was delivered to the office of the District Counsel, U.S. Immigration and Naturalization Service, 550 Kearny Street, Room 1000, San Francisco, CA.

Dated: March 12, 2002.

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AMY L. BECERRA