

**Sunita Patel**

*Assistant Professor of Law*

*University of California, Los Angeles*

Sunita Patel is an Assistant Professor of Law and Faculty Director of the UCLA Veterans Legal Clinic at UCLA School of Law. Her areas of research include police misconduct, civil rights litigation, social movement theory, and the intersection of migrant rights and criminal procedure. She teaches courses and clinics in the area of civil rights, policing, and veterans justice. Prior to joining UCLA, she held clinical teaching positions with the Civil Advocacy Clinic at American University and the Transnational Legal Clinic at the University of Pennsylvania Law School. She has practice experience with notable public interest institutions, including the Center for Constitutional Rights, The Legal Aid Society of New York, and the Southern Center for Human Rights. An experienced litigator, Professor Patel has appeared before administrative bodies; state, federal, and appellate courts; and human rights tribunals. She has engaged in significant litigation and advocacy on a range of issues including; policing, criminal justice processes, racial profiling, immigration detention, employment law, and international human rights, and has also provided legal counsel to numerous grassroots social justice organizations.

Professor Patel's influential cases included *Floyd v. City of New York*, a watershed successful class action lawsuit against the New York City Police Department's discriminatory stop and frisk practices and *Turkmen v. Ashcroft* (argued in the U.S. Supreme Court this year), a class action Bivens suit on behalf of Muslim and Arab men challenging senior officials in the U.S. government for their roles in the post-9/11 round-ups and punitive treatment in federal prison. Professor Patel served as a judicial law clerk for the Honorable Ivan L. R. Lemelle in the Eastern District of Louisiana and was previously awarded a prestigious Soros Justice Advocacy Fellowship. She has served as a board member for the U.S. Human Rights Network and Families for Freedom.

## *Cracking Open the Courthouse Door to Sue Police*

The perception that the Roberts and Rehnquist courts effectively closed the courthouse doors to those seeking judicial review of unconstitutional police practices is pervasive in civil rights literature. The death knell has been rung, perhaps most resolutely, on police reform litigation. Scholars typically view institutional reform litigation against police as beyond reach, citing the exacting procedural hurdles and evidentiary standards. Yet, against the odds, as seen vividly through the class action challenge to New York City's stop and frisk practices, systemic police reform practices may reach court judgment.

I am interested in the gap between the expectation of failure in civil rights and policing literature and the systemic cases that reach a remedy at the trial court level. While acknowledging that the hurdles are high, this Article contends that structural reform litigation against unconstitutional policing is still viable as one among a constellation of reform strategies. It charts the procedural terrain in three successful impact cases challenging race- and/or national-origin-based profiling in New York, Phoenix, and Philadelphia. They primarily examine the litigants' arguments, evidence, and the courts' opinions on three issues typically considered insurmountable roadblocks to substantive review—standing for injunctive relief (*Lyons v. Los Angeles Police Department*), municipal liability for an unlawful practice or custom (*Monell v. Social Security Administration*), and most recently, class certification (*Wal-Mart v. Dukes*)—to illustrate how the barriers have been successfully navigated in the face of pessimistic predictions from scholars and litigators. The case studies position the litigation within their respective ecosystems of police reform to understand the litigation's relationship to other reform and social movement actors. Finally, the Paper addresses other often cited barriers to systemic police litigation—availability of hard data for statistical analysis, litigation costs, and the role of the judiciary in systemic reform.

Taken as a whole, the case studies demonstrate that federal courts today can, and will, act to stop unconstitutional profiling under certain circumstances, and identify the political influence of successful impact litigation. These examples reveal an opening in the court house door in an area of criminal justice reform long thought closed. The well-developed stories inform scholarly conversations on access to justice and the pursuit of structural reform litigation.