

April 13, 2012

BY U.S. MAIL AND FACSIMILE

U.S. Senator Dick Durbin
711 Hart Senate Building
Washington, DC 20510
Fax: 202/228-0400

Re: Written testimony about racial profiling in Illinois

Dear Senator Durbin:

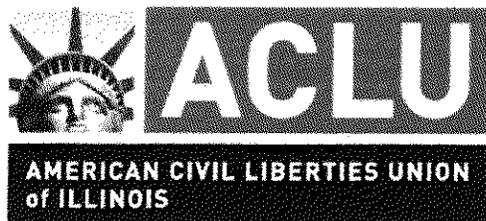
I write on behalf of the ACLU of Illinois, and its more than 20,000 members and supporters throughout the state, to provide the attached written testimony regarding racial profiling in Illinois. If I can be of any further assistance, please do not hesitate to call me at (312) 201-9740, extension 316, or to email me at hgrossman@aclu-il.org.

Sincerely,



Harvey Grossman
Legal Director
ACLU of Illinois

cc: Joseph Zogby (Joseph_Zogby@Judiciary-dem.senate.gov)



**Written Statement of Harvey Grossman
Legal Director of the ACLU of Illinois
Regarding Racial Profiling in Illinois**

**Submitted to the U.S. Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Human Rights**

**Hearing on “Ending Racial Profiling in America”
April 17, 2012**

The ACLU of Illinois joins the written statement of the ACLU submitted to this Subcommittee for this Hearing. Among other things, the ACLU of Illinois joins the ACLU in supporting the passage of the End Racial Profiling Act, and the strengthening of U.S. Department of Justice guidance regarding the use of race by federal law enforcement agencies. The ACLU of Illinois writes separately to address racial profiling issues in the State of Illinois.

In the national struggle against racial profiling, Illinois has been both part of the solution and part of the problem. To its credit, Illinois has one of our nation’s best systems for collecting and analyzing statistical data about traffic stops, as a means to deter and detect racial profiling – a critical accountability system championed by then-State Senator Barack Obama. Unfortunately, many police agencies in Illinois have adopted policies and practices that cause a racial disparate impact, perhaps best exemplified by the so-called “consent searches” performed by the Illinois State Police (“ISP”).

1. The Illinois Study Act

The Illinois Traffic Stop Statistical Study Act of 2003 (“the Study Act”) requires all police officers in Illinois to document all of their traffic stops, including motorist race and what happened. It also requires all police agencies in Illinois to report their stops data to the Illinois Department of Transportation (“IDOT”). It then requires IDOT to publish an annual report about this data, with assistance from university scholars. *See* 625 ILCS 5/11-212. *See also* www.dot.state.il.us/trafficstop/results.html (presenting seven years of Study Act data).

Among other factors, passage of the Study Act was advanced by the then-recent experience in the City of Highland Park. In 2000, the ACLU of Illinois and that city entered a consent decree requiring it to gather and analyze data about police stops and searches, to resolve racial profiling allegations by some of that city’s residents. *See Ledford v. City of Highland Park*, No. 00-cv-

4212 (N.D. Ill.). Highland Park found that measuring this aspect of officer performance assisted in efficient department management, and that the increased transparency advanced community trust and cooperation, without in any way diminishing public safety. In particular, Highland Park's actual experience helped to dispel the myth that data collection was too burdensome for patrol officers.

The Study Act has twice been expanded to capture additional kinds of data. In 2006, in response to Study Act data regarding racial disparity in consent searches, it was expanded to require disclosure of whether a consent search yielded contraband, and whether a motorist declined consent to search. *See* Public Act 94-997. In 2011, in response to Study Act data regarding racial disparity in canine sniffs, it was expanded to document whether a dog sniff occurred, whether a dog alerted, whether a dog alert caused a search by an officer, and whether contraband was discovered. *See* Public Act 97-0469.

In addition to the ACLU of Illinois, passage and expansion of the Study Act has been supported by the Illinois Coalition for Immigrant and Refugee Rights, the Mexican American Legal Defense and Education Fund, the National Association for the Advancement of Colored People (Illinois Conference), Rainbow/PUSH, and many other civil rights groups.

Collection of data under the Study Act has refuted many erroneous claims. For example, opponents of the Study Act argued that it would cause police officers to disengage from the public. In fact, the number of ISP traffic stops grew by 15% from 2004 (the first year of data) to 2010 (the most recent year of data). Likewise, some commentators argued that the racial disparity in consent searches was caused by minorities granting consent more frequently than whites – until new Study Act data showed that minorities and whites grant consent at nearly the same high rates.

The Illinois Study Act is arguably the best statute of its kind in the nation. It applies to every state and local police agency, and every traffic stop. It mandates collection of rich and relevant data. It requires annual analysis by a statewide agency, and disclosure to the general public of that analysis and the underlying raw statistical data. Every year, it spurs a salutary public discussion about police practices, in the news media and among policy makers and other stakeholders. Federal legislation might be modeled on the Illinois statute championed by our current President.

Unfortunately, the Illinois Study Act is now scheduled to sunset in July 2015. The ACLU of Illinois continues to urge the Illinois General Assembly to make the Study Act permanent.

One gap in the Illinois Study Act is sidewalk detentions by police officers of pedestrians: the Act only applies to traffic stops. In 2006, the Chicago Police Department (“CPD”) to some degree acted to address that gap: it required officers to document all of the reasons supporting their sidewalk detentions; it required supervisors to review whether these reasons justified the detention; and it required maintenance of this information for years. *See* CPD Special Order 03-09, Revisions of July 10 and December 29, 2006. This policy was a response to an ACLU of Illinois lawsuit on behalf of Olympic Gold Medal speed skater Shani Davis, who was subjected to an improper CPD sidewalk detention. *See Davis v. City of Chicago*, No. 03-cv-2094 (N.D.

Ill.). Unfortunately, the CPD subsequently withdrew these important accountability measures. *See* CPD Special Order S04-13-09 (issued and effective Feb. 23, 2012). Yet data collection to ensure integrity and fairness in police enforcement activity is as important in the context of sidewalk detentions, as in the context of the traffic stops covered by the Study Act.

2. ISP consent searches

A consent search occurs when a police officer does not have individualized suspicion or other legal cause to require a search, yet nevertheless requests that a civilian give permission for a search. Consent searches during routine traffic stops raise at least three serious civil rights and civil liberties concerns.

First, in many cases, the motorist's supposed "consent" to search is not truly voluntary. Consent is often granted on an isolated roadside in a one-on-one encounter with an armed law enforcement official. This setting is inherently coercive. Many civilians believe they must grant consent. Other civilians fear the consequences of refusing to grant consent, such as the issuance of extra traffic citations, or the delay caused by further interrogation or bringing a drug-sniffing dog to the scene. Thus, the Study Act data show that ISP troopers obtain consent to search from the overwhelming majority of motorists: 94% to 99%, depending upon the year and the motorist's race.

Second, once consent is granted, the result is an intrusive and publicly humiliating search of one's car and/or person. *See Terry v. Ohio*, 392 U.S. 1, 24-25 (1968) (describing a pat-down frisk of one's body as a "severe" intrusion, and as "annoying, frightening, and perhaps humiliating"); *Florida v. J.L.*, 529 U.S. 266, 272 (2000) (describing such frisks as "intrusive" and "embarrassing").

Third, because the decision whether to request consent to search is typically based on the subjective "hunch" of individual police officers, consent searches are inherently susceptible to bias, conscious or otherwise. From a management perspective, consent searches are particularly troublesome. Since they are subjective, they are not subject to meaningful supervisory review.

Indeed, the Study Act data show that ISP consent searches have a persistent and dramatic racial disparate impact against Hispanic and African American motorists. On the one hand, minority motorists are far more likely than white motorists to be subjected to ISP consent searches. Specifically, in the seven years from 2004 through 2010, Hispanic motorists were 2.7 to 4.0 times more likely to be consents searched, and African American motorists were 1.8 to 3.2 times more likely. On the other hand, white motorists subjected to ISP consent searches are far more likely than Hispanic and African American motorists to be found with contraband. For example, in 2010, white motorists were 89% more likely than Hispanic motorists to have contraband, and 26% more likely than African American motorists. According to a leading treatise, such racial disparity in hit rates implies that "a lower standard of proof was applied to searches of minorities than to searches of Caucasians." *See* Police Executive Research Forum, *By the numbers: A guide to analyzing race data from vehicle stops* (2004) at p. 274.

The solution is a ban on consent searches during routine traffic stops. This police practice is coercive, invades the privacy of motorists of all races, and has a racial disparate impact.

In 2008 and 2009, the ACLU of Illinois and a coalition of civil rights groups asked the past and current Illinois Governors to end ISP consent searches. No action was taken by either Governor.

In 2011, the ACLU of Illinois filed a complaint with the Civil Rights Division of the U.S. Department of Justice (“DOJ”), and requested an investigation of ISP consent searches. *See* Letters of June 7 and July 13, 2011, from Harvey Grossman to Thomas Perez. In response to that complaint, the Illinois Governor stated that the ISP would examine its consent search practices. No results from that examination have been announced. Also, the DOJ has not yet responded to the ACLU of Illinois’ complaint.

3. Other racial profiling problems in Illinois

Sadly, racial profiling in Illinois is not limited to the ISP, as shown by numerous examinations of Study Act data. For example, a media study showed that numerous suburban police departments were stopping Hispanic motorists at significantly disproportionate rates compared to the driving-age population. That study also found racial disparities in consent searches. *See* Fernando Diaz, *Driving while Latino*, Chi. Reporter, March 2, 2009.

Similarly, a newspaper expose showed that alerts by police drug-sniffing dogs in suburban Illinois are usually wrong, and that the hit rates for car searches resulting from the use of dogs are nearly twice as high for white motorists than for Hispanics. *See* Dan Hinkel, *Drug-sniffing dogs in traffic stops often wrong*, Chi. Trib., Jan. 6, 2011; Harvey Grossman, *Problems with dog sniffs*, Chi. Trib., Feb. 3, 2011. Concerns about this racial disparity prompted an expansion of the kinds of dog sniff data collected under the Study Act, and also a requirement that all state and local police drug-sniffing dogs in Illinois must be trained by programs certified by a state board. *See* Public Act 97-0469.

The danger of racial profiling in Chicago is increased by the current CPD policy on police spying, which allows investigations of First Amendment activity based on a mere “proper law enforcement purpose,” even when there is no indication whatsoever of wrongdoing. *See* CPD General Order G02-02-01 at Part II(A)(2). The recent loosening of the CPD’s spying rules may have been inspired in part by the loosening of the FBI’s domestic spying rules by Attorneys General Ashcroft and Mukasey. In years past, the infamous CPD “red squad” infiltrated and disrupted unpopular religious groups. In more recent years, the FBI and the NYPD, among other police agencies, have improperly spied on Muslim and Arab groups and individuals. It may only be a matter of time until the current nebulous CPD policy likewise contributes to similar religious and ethnic profiling.

4. The reform board that never met

In 2006, an Illinois statute created the Racial Profiling Prevention and Data Oversight Board, with a mission to examine Study Act data, and to make appropriate recommendations. *See* 20 ILCS 2715. Unfortunately, the Governor has never made the necessary appointments, so the

board has never met. This board would be a valuable means to advance the statewide dialogue about how to detect and deter racial profiling.

* * *

Thank you for giving the ACLU of Illinois the opportunity in this setting to address racial profiling in Illinois.



STATEMENT OF

Minister Leslie Watson Malachi, Director

**African American Ministers In Action,
a project of People For the American Way**

Hearing on Ending Racial Profiling in America

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of People For the American Way's African American Ministers in Action regarding today's hearing on racial profiling. African American Ministers in Action (AAMIA) is an alliance of over 800 progressive African American clergy who support social and economic justice, civil and human rights, and reproductive health and justice. Racial profiling disproportionately affects our families, our communities and those we are called to serve. We enthusiastically commend the subcommittee for investigating its real and harmful impact.

Thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. AAMIA is particularly concerned about many policies and programs at the national, state and local level which encourage or incentivize discriminatory law enforcement



practices such as racial profiling. We believe that these practices are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of where it takes place, racial profiling, often referred to as being stopped “for being Black or Brown”, is always wrong and the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Racial Profiling in Our Communities

We are an alliance of over 800 African American clergy representing communities in 35 states. Our communities and congregations are hard-working, law-abiding, and patriotic Americans. However, as African Americans, we know from past and present experience that we are more likely to be stopped by the police, searched, and arrested more often than any other racial or ethnic group. It is because of this that we are able to stand with our Latino and Arab American brothers and sisters, who also face the ingrained practice of racial profiling.



Legal racial profiling has a profound and detrimental effect on communities of color. Not only are individuals affected, but also their families, friends and neighbors in the community. It sends a signal to others that African Americans, Latinos and Arab Americans are not fully trusted by our own country. In return, racial profiling erodes trust and credibility in law enforcement and places a burden on community leaders.

African American churches and worship centers have historically and successfully worked together with law enforcement to ensure the safety and vibrancy of our communities. We agree on the value of safety and security for all, without suspicion on individuals or groups because of their race, ethnicity, religion or national origin.

Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color throughout the United States, including our brothers and sisters who are unfamiliar or unwelcomed faces in unfamiliar or unwelcoming places.

AAMIA is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:



- Congress should pass the “End Racial Profiling Act (S.1670)” and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of People For the American Way’s African American Ministers In Action. We are progressive, prophetic faith leaders in what Dr. Martin Luther King, Jr., called the “Beloved Community” and welcome the opportunity for further strategic, culturally sensitive dialogue about the important issue of racial, as well as religious, profiling.



STATEMENT OF

LeeAnn Hall, Executive Director

Alliance for a Just Society

Hearing on Ending Racial Profiling in America

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of the Alliance for a Just Society regarding today's hearing on racial profiling. The Alliance for a Just Society is a national network of community-based organizations dedicated to promoting economic and racial equity across our country. Racial profiling represents an affront to justice and equity, and the Alliance and our member organizations believe it should be eradicated in all forms.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. The Alliance for a Just Society is particularly concerned about many policies and programs at the national, state and local level that encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States.



Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Racial Profiling in Our Communities

Racial profiling and racially disparate law enforcement persists across the country and in the states where the Alliance for a Just Society's member organizations conduct their work. The following are just a few examples:

- **Use of immigration status inquiries as pretext for harassing immigrants and Latinos.** In Colorado, the Denver police recently settled a lawsuit after detaining a man who was doing nothing more than standing on a sidewalk. The police then accused the man of being an “illegal immigrant” and jailed him for presenting “false identification”—when the ID he presented was a work authorization card issued by the federal government.
- **Anti-gang measures result in racially based harassment and harassment by association.** Under Idaho's gang enforcement laws, based on their appearance many



Latino residents are being unfairly subjected to police stops that involve residents being photographed and recorded as associates of gang members.

- **“Low-level” law enforcement activities target people of color.** New York City’s stop-and-frisk policy has resulted in widespread harassment of men of color across the city, with 87 percent of stops in 2011 targeting black and Latino men. (It also has recently come to light that the NYPD has been operating a scheme to spy on Muslims based only their religion.)
- **Enforcement of drug laws is resulting in disproportionate arrests, convictions, and sentencing across the country.** Seattle, Washington, has one of the highest rates of racial disparity in drug arrests in the country. Because this disparity does not match the reality of drug markets in the city, it indicates racially discriminatory practices in law enforcement. (Seattle has also seen numerous incidents of police violence against civilians, including the murder of John Williams, who was gunned down while walking along the sidewalk. The SPD is now under investigation by the U.S. Department of Justice.)

Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color throughout the United States.



The Alliance for a Just Society is heartened by the Subcommittee’s leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the “End Racial Profiling Act (S.1670)” and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of the Alliance for a Just Society. We welcome the opportunity for further dialogue and discussion about these important issues.



Testimony of the American Immigration Lawyers Association

Submitted to the Senate Subcommittee on the Constitution, Civil Rights
and Human Rights of the Committee on the Judiciary

Hearing on: “End Racial Profiling in America”

April 17, 2012

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The American Immigration Lawyers Association (AILA) offers the following testimony to the Senate Subcommittee on the Constitution, Civil Rights and Human Rights of the Committee on the Judiciary. AILA is the national association of immigration lawyers with more than 11,000 active members and was established to promote justice and advocate for fair and reasonable immigration law and policy.

Racial profiling¹—relying on race, ethnicity, national origin, or religion to select which individual to take law enforcement action against—is an issue of grave concern to our member attorneys and the individuals that they represent. Many clients find themselves in removal proceedings after dubious stops by CBP, ICE, or local law enforcement. Others are unfairly targeted for increased scrutiny at airports and other ports of entry because of their name or manner of dress. Racial profiling hurts more than just the individuals impacted. Communities that believe they are the targets of racial profiling are far less likely to trust the police, report crime, or come forward as witnesses. Racial profiling not only undermines our values, it threatens our collective safety.

AILA has become increasingly troubled by the Department of Homeland Security’s growing reliance on local law enforcement to assist the agency in enforcing immigration laws. Programs such as 287(g), the Criminal Alien Program, and Secure Communities rely on local law enforcement to identify individuals whose immigration status ICE then checks.² ICE, however, has no system in place to assess whether the underlying arrests were made using racial profiling or other improper practices. As a result, these programs leave ICE vulnerable to serving as a conduit for racial profiling committed at the local level.

¹ For purposes of this testimony, “racial profiling” is defined as it is in S. 1670, End Racial Profiling Act of 2011 (Cardin D-MD) available at <http://www.gpo.gov/fdsys/pkg/BILLS-112s1670is/pdf/BILLS-112s1670is.pdf>.

² For more information on the importance of local law enforcement arrests on determining who the immigration authorities will ultimately deport, see Hiroshi Motomura, *The Discretion That Matters: Federal Immigration Enforcement, State and Local Arrests, and the Civil Criminal Line*, 58 UCLA Law Review 1819 (2011).

Last August, AILA issued a report, *Immigration Enforcement Off Target: Minor Offenses with Major Consequences*, based on responses to a survey of our members about clients placed into removal proceedings following stops for minor offenses or no offense at all.³ Members reported numerous cases of clients stopped by local law enforcement whom the officers targeted based on their race or ethnicity to check immigration status. In some cases, the officer made impermissible comments, such as making a derogatory comment about the person's perceived nationality. In other cases, the reason for the stop was fabricated—such as a police report citing a broken brake light where none existed. In other instances, no explanation was ever given for the stop. In many cases, people, including passengers in cars during a traffic stop, were questioned about their immigration status by local law enforcement. Despite these improper stops, ICE took enforcement action against all of these individuals, never questioning the circumstances surrounding the arrests. Other organizations and academic institutions have published reports finding that programs like Secure Communities and the Criminal Alien Program disproportionately target Latinos.⁴

DHS continues to insist that programs like Secure Communities are race neutral because the fingerprints of everyone arrested are run through the same check, ignoring the discretion every law enforcement officer exercises to decide who to arrest. Even so, in June 2011, DHS announced a series of reforms to address racial profiling and other concerns. The announced reforms included providing statistical analyses and quarterly reports to identify jurisdictions where suspect police practices might be occurring, the creation of a special Task Force on Secure Communities to assess the program and make recommendations to DHS for reform, and the more uniform and robust use of prosecutorial discretion. Nearly a year later, no statistical reports have been released and the Secure Communities Task Force recommendations, issued in September 2011, have not been adopted or addressed. Unless DHS can immediately implement better training and due process protections to ensure that it does not inadvertently sanction racial profiling, AILA recommends these federal programs be terminated.

For these same reasons, AILA has fundamental concerns with state laws that authorize or require local law enforcement officers to verify the immigration status of individuals. Typically such laws require an officer to verify the immigration status of an individual if the officer believes reasonable suspicion exists that the individual is an alien unlawfully present in the U.S.⁵ Alienage, however, is a legal status that cannot be readily determined based on observable

³ *Immigration Enforcement Off Target: Minor Offenses with Major Consequences*, American Immigration Lawyers Association, August 2011 available at <http://www.aila.org/content/default.aspx?docid=36646>.

⁴ See, e.g., Aarti Kohli, Peter L. Markowitz and Lisa Chavez, "Secure Communities by the Numbers: An Analysis of Demographics and Due Process," The Chief Justice Earl Warren Institute on Law and Social Policy, October 2011 available at http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf. (finding that Latinos comprise 93 percent of individuals arrested through Secure Communities though they only comprise 77 percent of the undocumented population in the U.S.); Trevor Gardner II and Aarti Kohli, *The C.A.P. Effect: Racial Profiling in the ICE Criminal Alien Program*, The Chief Justice Earl Warren Institute on Race, Ethnicity & Diversity, September 2009 available at http://www.law.berkeley.edu/files/policybrief_irving_FINAL.pdf (finding that the Criminal Alien Program appears to tacitly encourage local police to arrest Latinos for petty offenses, noting a nearly threefold increase in arrests of Latinos once the program was implemented in Irving, Texas).

⁵ See, e.g., Arizona's SB 1070 available at http://www.azgovernor.gov/dms/upload/SB_1070_Signed.pdf; Alabama's HB 56 available at <http://www.openbama.org/bills/1058/HB56-enr.pdf>.

factors or traits, such as physical appearance or behaviors. As a result, these laws encourage officers to use proxies such as race, ethnicity, language, or accent to identify people who may be unlawfully present. Such practices undermine community policing and, as a result, the ability of law enforcement to ensure public safety and investigate crimes. While state laws such as Arizona's SB 1070 and Alabama's HB 56 have received the greatest attention, there have also been federal legislative proposals, such as H.R. 100 (Blackburn R-TN) and H.R. 3808 (Myrick, R-NC), that require this same verification of immigration status by local law enforcement or purport to reaffirm the "inherent authority" of local police to enforce immigration laws.⁶

The Department of Justice (DOJ) plays an important role in monitoring state and local law enforcement agencies, and recently, they have taken action against the Maricopa County Sheriff's Office, the East Haven Police Department, and the New Orleans Police Department. However, it appears that DOJ lacks the authority and resources to thoroughly monitor a program like Secure Communities, now active in 2,670 jurisdictions across the United States, which intertwines federal immigration enforcement with local law enforcement.

Racial profiling is not a practice that is isolated to state and local law enforcement. Such practices are also a problem within federal law enforcement agencies. AILA lawyers report that clients of Middle Eastern nationality or Muslim faith are frequently detained by Customs and Border Protection (CBP) personnel for secondary inspection or more invasive searches and interrogations at airports and other ports of entry. AILA has also received reports of unlawful CBP *Terry*-stops to investigate occupants of color with no apparent basis. Other organizations, such as the Sikh Coalition, the Asian Law Caucus and Muslim Advocates, have also reported the disproportionate targeting of Arab or Muslim Americans re-entering the country for invasive stops, searches and interrogations. A recent report by the New York Civil Liberties Union documents transportation raids carried out by the Border Patrol in upstate New York, in which agents regularly boarded domestic buses and trains miles from the Canadian border to interrogate passengers about their immigration status, and in many cases, singled out passengers of color for additional scrutiny.⁷

RECOMMENDATIONS

1. Congress should terminate funding for federal programs that foster or facilitate the practice of racial profiling, including the 287(g) program, Secure Communities, and the Criminal Alien Program, unless DHS immediately implements mechanisms to ensure the protection of civil rights and due process.

⁶ See e.g. H.R. 3808 (Myrick R-NC) available at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr3808ih/pdf/BILLS-112hr3808ih.pdf>; H.R. 100 (Blackburn R-TN) available at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr100ih/pdf/BILLS-112hr100ih.pdf>.

⁷ *Justice Derailed: What Raids on New York's Trains and Buses Reveal About Border Patrol's Interior Enforcement Practices*, The New York Civil Liberties Union, November 2011 available at http://www.nyclu.org/files/publications/NYCLU_justicederailedweb_0.pdf.

2. Congress should reject legislation that authorizes or requires local law enforcement officers to engage in the verification of individuals' immigration status. Such proposals encourage state and local officers to engage in impermissible racial profiling.

3. The Department of Justice (DOJ) should strengthen the June 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies. The revised Guidance should:

- Explicitly state racial profiling includes profiling based on religion or national origin
- Apply equally to national security and border security law enforcement
- Prohibit federal law enforcement officials from participating in joint activities with state or local law enforcements agencies that do not have policies and practices that prohibit racial profiling at least to the extent of DOJ guidance.

4. DOJ and DHS must work more collaboratively to implement safeguards to ensure that federal programs that rely on local law enforcement agency action do not become conduits for racial profiling.

5. DHS must monitor the underlying arrests of individuals referred to them so that the department does not become a conduit for racial profiling. At a minimum, DHS should not initiate enforcement action when a local law enforcement agency or officer under investigation for racial profiling or other improper police practices is the referring source.

For follow-up, contact Gregory Chen, Director of Advocacy, 202/507-7615, gchen@aila.org or Alexsa Alonzo, Associate Director of Advocacy, 202/507-7645, aalonzo@aila.org.

STATEMENT OF
SUZANNE NOSSEL, EXECUTIVE DIRECTOR
AMNESTY INTERNATIONAL USA
“ENDING RACIAL PROFILING IN AMERICA”
SENATE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS
UNITED STATES SENATE
APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of Amnesty International USA regarding today’s hearing on racial profiling.

Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. Amnesty International is particularly concerned about many policies and programs at the national, state and local level which encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices are

counterproductive, waste public resources and violate the human rights of persons living in the United States.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country and the obligations of the United States under international law. Regardless of whether it takes place under the guise of the “war on drugs”, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong.

Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Amnesty International opposes racial profiling in all its forms and under any circumstances, however we intend to focus our testimony on discrimination and racial profiling in the context of immigration enforcement, as documented in Amnesty International’s most recent report, *In Hostile Terrain: Human rights violations in immigration enforcement in the US southwest*.

Racial Profiling along the U.S.-Mexico Border

While it is generally accepted that countries have the right to regulate the entry and stay of non-nationals in their territory, they can only do so within the limits of their human rights obligations. The United States government has an obligation under international human rights law to ensure that its laws, policies and practices do not place immigrants or others at an increased risk of

human rights abuses. The prohibition of discrimination on any ground, including race, color and national origin is enshrined in nearly all human rights instruments ratified by the United States.

In its most recent report, *In Hostile Terrain: Human rights violations in immigration enforcement in the US southwest*, Amnesty International documents how immigrants are at risk of discriminatory treatment from federal immigration officials, who are increasingly working in collaboration with state and local law enforcement agencies. This has also increased the risk of other communities living along the U.S.-Mexico border being targeted for racial profiling by state and local law enforcement officials. Citizens of Indigenous nations and members of Latino communities and others who are U.S. citizens or who are lawfully present in the United States are more likely to be repeatedly stopped and questioned about their immigration status and to be detained for minor offenses as a pretext for checking their identity through the immigration system. State and local law enforcement agencies engaged in Immigration and Customs Enforcement Agreements of Cooperation in Communities to Enhance Safety and Security (ICE ACCESS) programs such as 287(g) contracts, Secure Communities, and the Criminal Alien Program (CAP), frequently conduct stops, searches, and identity checks that target individuals based on their racial and ethnic identity. Latinos and other communities of color are disproportionately stopped for minor infractions and traffic violations and that these stops are often used as a pretext to inquire about citizenship and immigration status.

Amnesty International found that existing data demonstrates the prevalence of racial profiling by local law enforcement agencies involved in ICE ACCESS programs. For instance, in December 2011, the Department of Justice (DOJ) released the findings of its investigation into the

Maricopa County Sheriff's Office (MCSO) in Arizona which was operating under 287(g) authority to enforce immigration laws through both the Task Force and Jail Enforcement models. The investigation found that, since 2007, MCSO conducted discriminatory policing under 287(g) authority whereby Latino drivers were four to nine times more likely to be stopped than non-Latino drivers in similar situations. Furthermore, the DOJ found that crime suppression sweeps initiated by the law enforcement agency were not based on reported criminal activity, but rather on reports of individuals with "dark skin" congregating in a specific area or individuals speaking Spanish at a specific business. While MCSO clearly represents an extreme example of these types of discriminatory practices, there are no other further reviews or investigations of jurisdictions with 287(g) agreements to determine the prevalence of racial profiling in those agencies.

In Texas, the Secure Communities program was implemented in several jurisdictions in 2008. Since then, advocates have reported concerns to Amnesty International about a potential increase in racial profiling by state and local law enforcement officers who appear to pull individuals over for "driving while brown" to check whether the person has a driver's license or identification, or to inquire about his or her immigration status. Advocates believe that these types of stops are much more prevalent in smaller, more rural communities.

Amnesty International found that once arrested, individuals may be further profiled during the intake process in a local jail or prison, and may be detained for prolonged periods of time while state authorities verify their immigration status. Recent statistics released by ICE on the Secure Communities program show that many individuals are arrested for minor offenses and that

individuals who were never convicted of any criminal offense are being deported, contradicting ICE's stated objective of focusing on those involved in serious criminal offenses. Nationally, according to statistics released by ICE in May 2011, about 29 per cent of all those deported through the Secure Communities program since 2008 were not convicted of any crime. The large numbers of individuals who have been deported through Secure Communities who never committed a crime may be indicative of the level of profiling occurring in jurisdictions where the program is in operation. Studies of the Criminal Alien Program (CAP) document similar patterns of discretionary arrests of Latinos by local law enforcement where CAP is implemented. For instance, the Chief Justice Earl Warren Institute on Law and Social Policy analyzed arrest data which indicated a marked increase in discretionary arrests of Hispanics for petty offenses immediately following the September 2006 implementation of a CAP partnership in Irving, Texas. Analysis of arrest data found strong evidence to support claims of racial profiling by Irving police. The Warren Institute study also found that felony charges accounted for only 2 per cent of ICE detainers whereby 98 per cent of detainers resulted from arrests for misdemeanors under CAP. Studies have also found that Hispanics were arrested at disproportionately higher rates than whites and African Americans for the least serious offenses; that is, offenses that afford police the most discretion in decisions to stop, investigate and arrest.

The need for increased oversight and accountability in immigration enforcement

Amnesty International's report demonstrates the lack of adequate oversight by the U.S. authorities over federal immigration agencies such as Customs and Border Protection (CBP) and ICE. This has resulted in a failure to prevent and address discriminatory profiling, and has fostered a culture of impunity that perpetuates profiling of immigrants and communities of color

along the border. For instance, Amnesty International spoke with a U.S. citizen of Latino descent in Arizona. Johnny (not his real name) was driving along Highway 86 in Arizona on 16 December 2009, when he was followed and stopped by members of CBP at the edge of the Tohono O’odham Nation Tribal land. The Border Patrol agent pulled Johnny over and shouted: “What are you doing here, picking up illegals, picking up some drugs?” Johnny repeatedly told the agent that he was a US citizen and asked why he was being pulled over. The agents ignored him, searched his car, handcuffed him and assaulted him when he refused to sit on the ground. Minutes later, a Tohono O’odham Tribal Police car arrived. Johnny started yelling, “Help, officer! I’m a U.S. citizen! They are arresting me for no reason!” Johnny told Amnesty International delegates that he thought the agents were going to beat him and leave him in the desert. The Tohono O’odham police officer heard Johnny’s yelling and asked to speak with him. The Border Patrol agents turned Johnny over to the police officer and then left. Johnny said that in the month after the incident he was pulled over by the Border Patrol at least five times while driving on the same highway. He said: “Whenever a police officer gets behind me, I get nervous.”

In February 2010, Johnny submitted a complaint with the Office of Civil Rights and Civil Liberties, the agency responsible for investigating and resolving civil rights and civil liberties complaints against Department of Homeland Security personnel. Several months later his case was transferred to the Office of Professional Responsibility (OPR) at ICE. In November 2010 Johnny met with OPR agents at the Tucson office. Johnny told Amnesty International that the agents repeatedly interrupted him and became confrontational and accusatory. As he got up to leave, one of the agents got up, grabbed him, and punched him in the chest. When Johnny finally

got outside and tried to tell an officer from the Tucson Police Department what happened, the officer told him he couldn't make a police report because the facility was private property and no one was injured. Amnesty International has been unable to determine whether any further action was taken by OPR on Johnny's complaint.

Amnesty International's report also shows that ICE ACCESS programs lack sufficient oversight and safeguards to ensure that they do not encourage discriminatory profiling by local law enforcement officials. A review by the Department of Homeland Security's Office of Inspector General (OIG) in 2010 found that ICE needed to develop protocols to adequately monitor local agencies that have entered into 287(g) contracts; to collect data and conduct studies to address potential civil rights issues; and to supervise 287(g) officers and to provide them with proper training on immigration issues. A 2011 report by the Migration Policy Institute documents how the 287(g) program fosters racial profiling of immigrants and members of the Latino or Hispanic community without adequate federal oversight.

At present, the Secure Communities program does not contain any oversight mechanisms to determine whether racial profiling is occurring, or how to prevent it. In September 2011, a taskforce commissioned by DHS completed a review of Secure Communities, which aimed to address some of the concerns about the program, including its impact on community policing, the possibility of racial profiling, and ways to ensure the program's focus is on "individuals who pose a true public safety or national security threat." Advocates have criticized the taskforce's report for failing to provide concrete recommendations to address some of the fundamental flaws of Secure Communities, and have called for the program to be terminated instead. Furthermore,

two recently released reports from the Office of Inspector General of DHS failed to review the program in terms of the potential for racial profiling or address the lack of appropriate oversight that would ensure that profiling is not occurring in jurisdictions where Secure Communities is activated. CAP has received even less scrutiny and oversight by federal authorities. Although the program has been studied by the Office of Inspector General of DHS to determine whether it is effective in identifying individuals eligible for removal, no analysis was undertaken to determine whether it has led to racial profiling by local law enforcement officials.

Many state authorities lack the legal tools to assess whether discriminatory stops and searches are taking place and those that do, lack effective mechanisms to analyze the data and prevent and address racial profiling. For instance, in Texas, a state law passed in 2001 prohibits racial profiling and requires law enforcement officers to collect information on the race of individuals encountered during stops. However, the law as originally enacted had several deficiencies. For example it did not provide a template for uniform reporting standards or set out penalties for non-compliance. It also exempted agencies with audio-visual equipment from reporting certain statistical information altogether. For instance, the 2004 racial profiling statistics do not include adequate data from 34 per cent of law enforcement agencies. There was no mandatory requirement for all police departments to collect data until the law was amended in 2009 and mandatory reporting did not go into effect until 2011, so that more recent and complete data under this law is currently unavailable. Even with these deficiencies in data collection, a 2006 study by the Texas Criminal Justice Coalition of collected data found that two out of every three law enforcement agencies in the state reported searching the vehicles of Latino drivers at higher

rates than white drivers, with more than 25 per cent of those agencies searching Latino drivers at twice the rate of white drivers.

Another example can be found in Arizona. Following a class action lawsuit, the Arizona Department of Public Safety (DPS) was required to collect data on the race of all drivers in traffic stops for a five-year period starting in July 2006. However this only applied to the state police; local law enforcement agencies were exempt from this requirement. The Arizona DPS was required to collect this data as part of a legal settlement that stated that if statistical data suggested that a particular officer engaged in racial profiling, Arizona DPS had to take “corrective and/or disciplinary measures” to correct and/or discipline the officer. The American Civil Liberties Union of Arizona analyzed the data collected and reported that between 1 July 2006 and 30 June 2007 law enforcement officers searched Native Americans more than three times as often as whites and that African Americans and Hispanics were 2.5 times more likely to be searched than whites. It is unclear what will happen with the data collected by local civil rights organizations after August 2011 when the Advisory Board which analyzes the data will no longer exist. Recent efforts to introduce anti-racial profiling legislation in Arizona have failed.

Amnesty International’s research shows that the absence of adequate training for state and local law enforcement officials on how to enforce federal immigration laws in a non-discriminatory manner and the lack of proper accountability and oversight of these ICE ACCESS programs has allowed racial profiling to become common practice. The recent proliferation of state laws that provide local law enforcement with authority to inquire about a person’s immigration status,

such as S.B. 1070 in Arizona and H.B. 56 in Alabama only serve to place immigrant, Latino and Indigenous communities at even greater risk of racial profiling.

When the End Racial Profiling Act (ERPA) was introduced in the U.S. Congress in 2001, studies showed that U.S. citizens of all races and ethnicities believed that racial profiling was a widespread problem and this was reflected in bipartisan support for the bill. Without passage of ERPA, it remains difficult for individuals to challenge violations of their constitutional rights to be free from discrimination.

Conclusion

The practice of racial profiling by federal, state and local law enforcement and the widespread use of ICE ACCESS programs have resulted in a heightened fear of law enforcement in immigrant communities, as in many other communities of color throughout the United States.

Amnesty International is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly to address these human rights violations and abide by the United States' obligations under international law by prohibiting racial profiling at the federal, state and local level:

- Congress should pass the End Racial Profiling Act (S.1670) and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling

based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of Amnesty International. We welcome the opportunity for further dialogue and discussion about these important issues.

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April 16, 2012

The Honorable Richard J. Durbin
Chair

Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights
United States Senate
Washington, D.C. 20510

Dear Chairman Durbin:

In advance of tomorrow's hearings on "Ending Racial Profiling in America," we write to provide the Committee with the views of the Anti-Defamation League on several aspects of this issue. We ask that this statement be made part of the formal hearing record.

The Anti-Defamation League (ADL) was founded in 1913 with a mandate to fight the defamation of the Jewish people and secure justice and fair treatment for all. Today ADL is one of the country's leading civil rights and human services organizations.

An essential element of ADL's mission of seeking justice and fair treatment for all people compels us to combat bias and discrimination in whatever form it takes and against whomever it may be directed. From our experience advocating for victims of discrimination and responding to bias incidents, we know that discrimination against any individual or group of people not only hurts the individuals and targeted groups, but negatively affects the community as a whole. In other words, we all suffer when any group experiences bigotry or discrimination.

As a result of ADL's very broad work with law enforcement officials combatting extremism and terrorism, fighting bias crime and discrimination, and training on core values, we have established extensive contacts with leaders of many law enforcement agencies across the country. A backgrounder on the significant training and outreach ADL provides to law enforcement professionals is attached. Through our work with law enforcement, we have developed a deep appreciation of the professionalism, commitment, and integrity that the vast majority of the members of this profession bring to their work every day. These officers do not practice or condone the use of inappropriate profiling solely on the basis of race or religion as a criterion for criminal suspicion.

However, there is substantial evidence documenting that minority motorists are too-frequently stopped for pretextual reasons and questioned disproportionately more often than white motorists. The use of race, ethnicity, or any such criterion as a

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April 16, 2012
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sole basis for criminal suspicion in making traffic stops undermines public trust in law enforcement, widens the gulf that exists between white and minority perceptions of fairness, is a violation of the motorist's civil rights and stands in conflict with the core values of law enforcement.

ADL has also been concerned that legislative debates, lawmaking, and judicial decisions on issues such as immigration reform and border security have often fanned public fears and contributed to an atmosphere that fosters distrust, racial profiling, and even hate violence. Too often, even well-intentioned public officials have exacerbated these fears and misunderstandings. For these reasons, ADL strongly urged Arizona's legislators and governor to reject a proposed restrictive law on immigration. After the legislation became law, ADL filed an [amicus brief](#) in support of a preliminary injunction – in part because of the irreparable damage the law would cause to law enforcement's ability to protect the people of Arizona from hate crimes. ADL has recently filed similar briefs in [Georgia](#), [Alabama](#), [South Carolina](#) and Utah.

ADL has long opposed stereotyping – a component of racial profiling – based on immutable characteristics. The League has specifically and repeatedly expressed concern about the effect of singling out entire groups as targets of suspicion. As the nation commemorated the tenth anniversary of the September 11, 2001 terrorist attacks last fall, the Anti-Defamation League, with Human Rights First and the Leadership Conference on Civil and Human Rights, collaborated on a joint [statement](#) on behalf of an extraordinarily-diverse group of 71 religious, racial, ethnic, and civil and human rights organizations. The statement emphasized the particularly damaging manner in which racial profiling threatens to undermine efforts to promote safety and security:

Effective counterterrorism is important to everyone, but policies that divide communities, inflame fear and violate human rights undermine our nation's core values and our security. Some counterterrorism measures have resulted in insufficient adherence to constitutional protections and violations of human rights.

We know from experience that America's historic commitment to civil and human rights is not an impediment to public safety but rather offers a more enduring and effective approach by ensuring that communities are not alienated or scapegoated.

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One of the myriad ways ADL has addressed stereotyping has been through our anti-bias and educational efforts. For example, for the ten-year anniversary of the 9/11 terrorist attacks, our Education Division developed a thoughtful [curriculum guide](#) to promote understanding and respect for differences. We have learned that these are key elements to combatting prejudice and discrimination and an important way to increase cross-cultural communication and appreciation.

It is vitally important for these hearings – and any that may follow – to acknowledge and highlight the extraordinary efforts of federal, state, and local law enforcement officials to prevent and deter unlawful activity. However, law enforcement does not work in a vacuum. Officers cannot do their job without community relationships, trust, cooperation, and a shared sense of responsibility for public safety. We encourage you and other Members of Congress to take positive steps forward to promote trust and reject unfair stereotyping.

Sincerely,

Deborah M. Lauter
Director, Civil Rights

Michael Lieberman
Washington Counsel

Stacy Burdett
Washington Director



ADL & LAW ENFORCEMENT BY THE NUMBERS

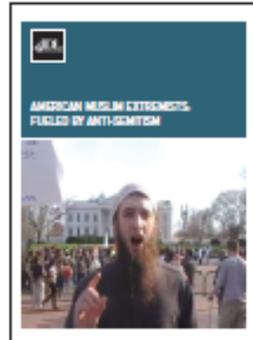
10,000

Law enforcement personnel trained at ADL's regional and national trainings each year



460,000

Visits to ADL's webpages on terrorism since 2010



395,000

Visits to ADL's webpages on extremism since 2010

30,000

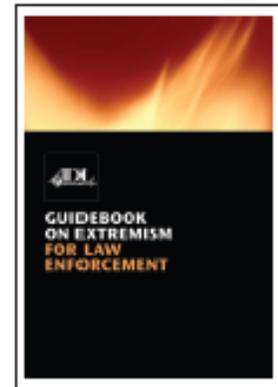
Recognizing Hate Symbols posters distributed to law enforcement

190,000

Hate on Display brochures distributed to law enforcement

7,000

Copies of *Guidebook on Extremism for Law Enforcement* distributed



10,000

Extremist-related assists to law enforcement (averaging over 700 per year)

33,000

Subscribers to ADL's *Terrorism Update* e-newsletter



735/225

735 Law enforcement commanders representing 225 agencies trained in ADL's *Advanced Training School (ATS)* course on Extremist and Terrorist threats

7 Million

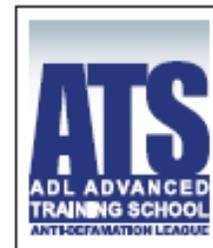
Visits to ADL's Law Enforcement Agency Resource Network (LEARN) webpages

70,000

Law enforcement personnel trained by *Law Enforcement and Society: Lessons of the Holocaust*, in partnership with the U.S. Holocaust Memorial Museum

100

Extremist events monitored per year



16,000

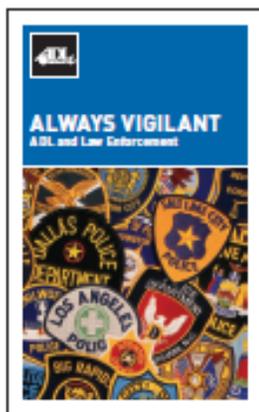
Subscribers to ADL's regional *Law Enforcement Intelligence Bulletins*

775

Extremist groups and/or group chapters in ADL's database

130

American law enforcement executives brought to Israel for ADL's *National Counter-Terrorism Seminar*



9 Million

Visits to ADL's online guide to hate symbols



7,000

Individual extremists in ADL's database

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For more information on ADL's Center on Extremism and law enforcement initiatives visit www.adl.org/learn

STATEMENT OF

Danielle Malaty, Manager of Government Relations in Domestic Policy

ARAB AMERICAN INSTITUTE

Hearing on "Ending Racial Profiling in America"

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of The Arab American Institute regarding today's hearing on racial profiling. The Arab American Institute's domestic agenda includes promoting immigrant rights, civil liberties and equal protection, and the full benefits of citizenship for our community.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. The Arab American Institute is particularly concerned about many policies and programs at the national, state and local level which encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except

where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Racial Profiling in Our Communities

In the immediate aftermath of 9/11, many Arab Americans were torn away from mourning the terrorist attacks with fellow Americans because they became the targets of egregious racial profiling and discrimination. Law enforcement often assumed collective guilt because the terrorists were Arabs.

Our nation was founded on the uncontroverted dedication to preserving, upholding, and defending the belief that all persons are created equal. Yet the further we travel down the path of using national security as an excuse for prejudice, discrimination, and racial profiling, the further we deviate from that ideal, and the promises guaranteed in the Constitution. For example, members of Congress have openly called for Arabs and Muslims to receive a heightened level of surveillance. Excusing racial profiling in one environment only facilitates the rationality of it in another. Who's to say that this behavior won't continue to pervade the way law enforcement agents conduct themselves? Will police officers be granted the right to randomly pull over black Americans driving through white neighborhoods? Where do we draw the line? If discrimination

against Arabs, Muslims, and others is tolerated, then we only open the door to discrimination against another.

Government efforts that infringe upon civil liberties and single out innocent people based on their ethnicity or religion are based on a methodology that runs contrary to the American ideal of equal protection under the law. Civil liberties abuses against Arab Americans and American Muslims have been well-publicized in the Arab world, and there is a growing perception that Arab immigrants and visitors are not welcome in the United States. As a result, America is less popular, and it is more politically difficult for our Arab allies to cooperate with our counter-terrorism efforts.

The practice of profiling by race, ethnicity, religion, or national origin directly contradicts what is perhaps the fundamental core of American democracy: that humans are created equal and are entitled to be treated as equals by the government, irrespective of immutable characteristics such as the color of their skin, their religion, or their national origin. Our fundamental principles of democracy upon which our country is based are in serious jeopardy as our government attempts to close in on terrorism with a zero sum ideology. These principles need and deserve our vigorous protection.

At one time, we set a high standard for the world; now we have lowered the bar. The damage to our image, to the values we have neglected, and our inability to deal more effectively with root causes of terror have significantly compromised our global image, our moral foundation, and our national security. We as a nation can, and must, be both safe and free. In

order to accomplish this, we must restore security policies that depend on Constitutional policing, exclusively based on evidence and fact, and respect the tradition of minority and individual rights in America. By allowing prejudice and stereotype to decide who gets pulled over on our highways or who gets detained and strip searched in our airports, we betray that fundamental promise. And, most tragically, we do so unnecessarily.

We urge you to treat this matter with urgency, and appreciate your taking the time to listen to very concerned Americans.

Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color in the U.S.

The Arab American Institute is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the "End Racial Profiling Act (S.1670)" and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes,

cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of The Arab American Institute. We welcome the opportunity for further dialogue and discussion about these important issues.

**UNITED STATES SENATE
SENATE COMMITTEE ON THE JUDICIARY**

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

Statement of

**Shahid Buttar
Executive Director,
Bill of Rights Defense Committee**

April 17, 2012

The Bill of Rights Defense Committee (BORDC) thanks Chairman Durbin and members of the Subcommittee on the Constitution, Civil Rights, and Human Rights for holding this important hearing about constitutional abuses violating the rights of millions of law-abiding Americans. We respectfully submit this statement for the record to express our enthusiastic support for the End Racial Profiling Act (S.1670).

BORDC is a national non-profit grassroots organization, established in 2001 after the passage of the USA PATRIOT Act. Our mission is to defend the rule of law and rights and liberties challenged by overbroad national security and counter-terrorism policies. The Bill of Rights was adopted to limit the power of the state over individuals and to preserve basic human and individual rights for every person in the US, even in times of national crisis. Yet, under the guise of public safety, many government agencies have institutionalized the practice of racial, ethnic, and religious profiling, which violate the founding principles of our country while also undermining the public safety principles prompting this nefarious practice.

Profiling occurs whenever law enforcement or intelligence agents use race, religion, ethnicity, or national origin as a factor in deciding whom to investigate, arrest, or detain without having a description of a specific suspect. Regardless of whether it takes place in the context of the war on drugs, immigration enforcement, or counterterrorism efforts, profiling is offensive to our nation's constitutional legacy, and also diverts precious law enforcement resources away from smart investigations based on criminal behavior.

The stain of racial profiling has marked our country for generations. Following Pearl Harbor, the US government rounded up Japanese citizens and detained them in camps solely because of their national origin, without a shred of evidence that suggested wrongdoing. Though the internment camps that imprisoned Japanese Americans during World War II have long since closed, similar threats to civil rights haunt this country in the post-9/11 era.

Law enforcement authorities at the local, state, and federal levels routinely target at least three groups of ethnic minorities: African Americans, Latinos, and Muslims. A well-documented history of race-based profiling against African Americans lends itself to continued disproportionate scrutiny by police, in the context of both traffic stops and pedestrian stop-and-frisks. These policies have expanded in recent years to increasingly impact Latinos and Muslim Americans, as well as black communities.

Throughout the US, law-abiding residents fear police harassment for “driving while black.” With regard to traffic stops, studies find great disparities between blacks and other groups all over the country. For instance, in Milwaukee, almost 70 percent of drivers stopped by police in 2010 were black, and cars of black drivers were searched twice as often as vehicles driven by whites.¹ The Milwaukee Police Department claims that their crime-fighting approach results in high racial disparities because high-crime neighborhoods tend to have larger minority populations, but the study also found that police discovered contraband in cars driven by whites and blacks in equal numbers.

Beyond biased policing on the roads, African Americans also endure persistent harassment by law enforcement when walking, or even when at home. The stop-and-frisk program in New York City targets racial minorities on streets and in homes: while blacks and Latinos constitute 23 and 29 percent of the population in NYC, respectively, these groups make up 87 percent of all stops.² Data collected on Operation Clean Halls, a program that permits NYPD officers to enter private residential buildings, reflect bias similar to that apparent in street policing.

Meanwhile, in the name of “securing” our borders, immigration enforcement has become the latest front for pervasive racial profiling. Following the example of Arizona’s SB 1070, states around the country have passed or attempted to pass similar legislation that legalizes and even encourages racial profiling.

Yet these policies not only are discriminatory, but also threaten the effectiveness of law enforcement. Undocumented—and even documented—immigrants and their family members who suffer or witness crime increasingly avoid interaction with authorities for fear of deportation or harassment. As a result, crimes go unreported and much-needed cooperation between police and communities erodes, endangering public safety for all.³ Furthermore, racial profiling has hampered America’s standing in the world, as 16 countries around the world have filed suit against South Carolina’s immigration law.⁴

Fred Korematsu, whose 1944 case before the Supreme Court established the perverse permissibility of race-based detention under strict scrutiny, foresaw the struggles that Muslim Americans would endure after 9/11. When the first two cases raised by Guantánamo detainees reached the Supreme Court, amicus briefs were submitted on Mr. Korematsu’s behalf.⁵ He noted in 2004 that “No one should ever be locked away simply because they share the same race, ethnicity, or religion as a spy or terrorist. If that principle was not learned from the internment of Japanese Americans, then these are very dangerous times for our democracy.”

¹ See Ben Poston, “Racial gap found in traffic stops in Milwaukee,” *Milwaukee Journal Sentinel* (Dec. 3, 2011), available at <http://www.jsonline.com/watchdog/watchdogreports/racial-gap-found-in-traffic-stops-in-milwaukee-ke1hsip-134977408.html>.

² See Center for Constitutional Rights, *Racial Disparity in NYPD Stops-and-Frisks*, available at <http://ccrjustice.org/stop-and-frisk-does-not-reduce-crime>.

³ See Goldwater Institute, *Mission Unaccomplished: The Misplaced Priorities of the Maricopa County Sheriff’s Office* (Dec. 2008), available at <http://goldwaterinstitute.org/article/goldwater-institute-study-looks-effectiveness-maricopa-county-sheriffs-office>.

⁴ See Jim Davenport, “16 Latin American Nations Want To Challenge SC Immigration Law,” *Huffington Post* (Nov. 8, 2011), available at http://www.huffingtonpost.com/2011/11/09/16-nations-want-to-challe_0_n_1083642.html

⁵ See Matt Bai, “He Said No to Internment,” *New York Times* (Dec. 25, 2005), available at <http://www.nytimes.com/2005/12/25/magazine/25korematsu.html>.

Sadly, law enforcement agencies have not heeded Mr. Korematsu's warnings. Documents have exposed the NYPD for baselessly monitoring mosques in New York⁶, and recent reports document the expansion of NYPD surveillance and religious profiling to monitor Muslim students and businesses across the Northeast, well beyond its jurisdiction and completely immune from any meaningful oversight.⁷

These practices are counterproductive, waste public resources, and violate the civil and human rights of persons living in the United States. To restore the principles of the Bill of Rights, Congress should pass the End Racial Profiling Act and institute a federal ban on profiling based on race, religion, ethnicity, and national origin at the federal, state, and local levels.

Furthermore, the Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Passing ERPA will help, but it alone may not stop the rising tide of abuses by our nation's law enforcement and intelligence agencies. For instance, the FBI has unapologetically profiled Muslim Americans, as well as peace and justice activists and environmentalists, under broad (indeed, nearly limitless) powers expanded by the 2008 Attorney General's Guidelines issued by then-Attorney General Michael Mukasey.⁸ Hearings into mounting abuses under the Attorney General's Guidelines are both long overdue and necessary to ensure that profiling through surveillance does not survive the passage of ERPA.⁹

Finally, the Subcommittee should introduce, approve, and work with the full Senate to enact the Judicious Use of Surveillance Tools in Countering Extremism (JUSTICE) Act. Like restoring meaningful limits on FBI operations, enacting the JUSTICE Act is the only way to restore the rule of law in the wake of draconian surveillance powers expanded by the FISA Amendments Act of 2008.

The Bill of Rights Defense Committee is encouraged by the Subcommittee's leadership in holding this hearing, and we are grateful for the opportunity to present our position on the unjust, ineffective, and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take decisive action to prohibit and prevent racial profiling at all levels of law enforcement.

Thank you again for this opportunity to express our views. We look forward to continued dialogue on these issues of vital concern to our diverse American public.

⁶ See *NYPD Secret Intelligence Strategy Report* (May 15, 2006), available at <https://www.documentcloud.org/documents/288719-nypd-iranian-intel.html>.

⁷ See Chris Hawley, "NYPD monitored Muslim students all over Northeast," *Associated Press* (Feb. 28, 2012), available at <http://www.ap.org/Content/AP-In-The-News/2012/NYPD-monitored-Muslim-students-all-over-Northeast>

⁸ See coalition letter to members of Congress regarding the extension of FBI Director Mueller's term (July 12, 2011), available at <http://bordc.org/letters/2011-07-12-mueller.pdf>.

⁹ See Emily Berman, "Domestic Intelligence: New Powers, New Risks," *Brennan Center for Justice* (Jan. 18, 2011), available at http://www.brennancenter.org/content/resource/domestic_intelligence_new_powers_new_risks/.

BRENNAN
CENTER
FOR JUSTICE

at New York University School of Law

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

**Hearing on
“Ending Racial Profiling in America”**

Thursday, April 17, 2012

Written Testimony of

Faiza Patel and Elizabeth Goitein
Co-Directors, Liberty and National Security Program

Supporting the End Racial Profiling Act (S. 1670)
and suggesting that Congress urge the U.S. Department of Justice to amend its
Guidance Regarding the Use of Race by Federal Law Enforcement Agencies.

Brennan Center for Justice *at New York University School of Law*
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Testimony of Faiza Patel and Elizabeth Goitein in Support of the End Racial Profiling Act

The Brennan Center for Justice at New York University School of Law (Brennan Center) submits this statement on racial and religious profiling to the U.S. Senate Judiciary Committee, Subcommittee on the Constitution, Civil Rights and Human Rights. The Brennan Center commends Chairman Durbin for his leadership in holding this crucial hearing, “Ending Racial Profiling in America,” and urges the Committee to take the necessary steps to eliminate racial and religious profiling by federal, state, and local law enforcement. Such profiling undermines our nation’s historical commitment to religious freedom and equal protection under the law and jeopardizes our counterterrorism efforts by alienating the very communities whose cooperation is most valuable in thwarting attempts to attack our country.

The Brennan Center is a non-partisan public policy and law institute that focuses on the fundamental issues of democracy and justice.¹ Our work ranges from racial justice in criminal law to ensuring that our counterterrorism efforts are consistent with our Constitutional values to voting rights to campaign finance reform. We use a range of tools, including scholarship, public education, and legislative and legal advocacy, to win meaningful reform.

Introduction

Our country is founded on the principle that all Americans — regardless of race, religion or ethnicity — will be treated equally by our government. Many of us, or our ancestors, came to America fleeing religious persecution and discrimination and in search of a country that would allow us to follow our consciences free from harassment. As our law enforcement agencies carry out the enormous responsibility of keeping us safe, they must do so consistent with these values and relying on the strength of our communities.

Selecting individuals for law enforcement scrutiny on the basis of race has long been recognized as both wrong and ineffective. Nonetheless, racial profiling persists and, since 9/11, has been joined by the equally invidious practice of religious profiling. In particular, evidence is mounting that law enforcement agencies deliberately target American Muslims for surveillance without any basis to suspect wrongdoing. Recent revelations about the New York City Police Department’s (NYPD) years-long operations to map and monitor the everyday lives of American Muslim communities, infiltrate mosques to keep tabs on how people are practicing their religion, and track Muslim student groups are just the most recent and egregious examples of such discrimination. Such operations are not only unfair in singling out an entire faith for enhanced scrutiny but also singularly unproductive. Terrorists come from diverse ethnic and religious backgrounds, and those who commit terrorist acts are aware of profiles and can avoid them. Instead of relying on stereotypes, our law enforcement agencies should use their limited resources to conduct smart, targeted, behavior-based investigations. And they should build strong, trusting relationships with American Muslim communities, so those communities continue cooperating with law enforcement agencies to foil terrorist plots.

¹ More information about the Brennan Center’s work can be found at <http://www.brennancenter.org>.

Racial profiling is wrong and ineffective

Racial or ethnic profiling occurs when law enforcement officers use race or ethnicity to determine whether a particular individual warrants police attention, such as a detention or search.² In the late 1990s, numerous studies established that police targeted African American and Latino communities based on race or ethnic appearance and that using race or ethnicity as a proxy for criminality was unproductive. A study of police searches on Maryland's main highway showed that even though African Americans and Latinos were vastly more likely to be stopped and searched for the drugs or other contraband, the likelihood of finding contraband was roughly the same for targeted minorities and for whites.³ More recently, an analysis of the NYPD's burgeoning stop and frisk program (more than 685,000 New Yorkers were stopped in 2011) shows that, although the individuals stopped are overwhelming African American and Latino, the "hit rate" — i.e., number of arrests resulting from stops — is actually lower for minority targets.⁴ The ineffectiveness of choosing targets on the basis of race or ethnicity has also been demonstrated in other contexts. For example, when the United States Customs Service changed its stop and search procedures to focus on race-neutral behavioral indicators, it conducted two-thirds fewer searches and tripled its hit rate.⁵

By the end of the twentieth century, national surveys showed that more than 80 percent of Americans disapproved of racial profiling.⁶ Many states enacted statutes against racial profiling, and many police departments — recognizing the inefficacy of profiling — mounted internal anti-profiling efforts.⁷ In June 2003, the United States Department of Justice issued a Policy Guidance (DOJ Guidance) prohibiting racial and ethnic profiling by federal law enforcement agencies. The DOJ Guidance stated that racial profiling by law enforcement was both wrong and ineffective:

Race-based assumptions in law enforcement perpetuate negative racial stereotypes that are harmful to our rich and diverse democracy, and materially impair our efforts to maintain a fair and just society. The use of race as the basis for law enforcement decision-making clearly has a terrible cost, both to the individuals who suffer invidious discrimination and to the Nation, whose goal of 'liberty and justice for all' recedes with every act of such discrimination."⁸

² Racial profiling does not include the use of racial or ethnic characteristics as part of a physical description of a particular person observed by police or other witnesses. Thus, the description of a suspect, which includes his or her probable race or ethnicity as reported by someone who has seen the suspect, violates no principle against racial profiling.

³ See Report of Dr. John Lamberth (plaintiff's expert), *Wilkins v. Maryland State Police, et al.*, Civil No. MJG-93-468 (D. Md. 1996).

⁴ Andrew Gelman, Jeffrey Fagan & Alex Kiss, *An Analysis of the New York City Police Department's "Stop-and-Frisk" Policy in the Context of Claims of Racial Bias*, 102 J. OF THE AM. STAT. ASS'N 813, 820-21 (2007). See also ELIOT SPITZER, ATTORNEY GEN. OF N.Y., THE NEW YORK CITY POLICE DEPARTMENT'S "STOP AND FRISK" PRACTICES 111, 115, tbl. IB.2 (1999); DAVID A. HARRIS, PROFILES IN INJUSTICE: WHY RACIAL PROFILING CANNOT WORK (The New Press, 2002), Chapter 4, *The Hard Numbers: Why Racial Profiling Doesn't Add Up*.

⁵ Deborah A. Ramirez, Jennifer Hoopes & Tara Lai Quinlan, *Defining Racial Profiling in a Post-September 11 World*, 40 AM. CRIM. L. REV. 1195, 1213 (2003).

⁶ Frank Newport, *Racial Profiling Seen as Widespread, Particularly Among Young Black Men*, GALLUP, December 9, 1999, available at <http://www.gallup.com/poll/3421/racial-profiling-seen-widespread-particularly-among-young-black-men.aspx>.

⁷ The Data Resource Collection Center at Northeastern University features a current national survey of jurisdictions with anti-profiling laws. See *Background and Current Data Collection Efforts*, DATA COLLECTION RESOURCE CTR., <http://www.racialprofilinganalysis.neu.edu/background/jurisdictions.php>, (last accessed March 27, 2012).

⁸ See U.S. DEP'T OF JUSTICE, GUIDANCE REGARDING THE USE OF RACE BY FEDERAL LAW ENFORCEMENT AGENICES 1 (2003), available at http://www.justice.gov/crt/about/spl/documents/guidance_on_race.pdf.

The DOJ Guidance prohibits federal agencies from considering race or ethnicity, alone or in conjunction with other factors, in routine law enforcement activities. But the Guidance contains several glaring loopholes that, along with changes to the rules governing intelligence collection by domestic law enforcement agencies, have permitted profiling to continue in certain contexts. The DOJ Guidance is deficient in three ways:

- The Guidance does not cover profiling on the basis of religion or national origin.
- The Guidance does not cover law enforcement activities relating to threats to national security or at the border.
- The Guidance regulates only federal agencies, and thus does not cover the state and local police departments.

Since 9/11, law enforcement agencies have instituted policies that target individuals for scrutiny because of their religion

Until 9/11, the public debate and consensus on racial profiling was focused almost exclusively on the profiling of African Americans and Latinos. Since the 9/11 attacks, however, the ongoing struggle to eliminate racial bias from policing has been presented with a new challenge: the systematic religious profiling of American Muslims.

In the immediate aftermath of 9/11, for instance, the FBI interviewed thousands of people from Muslim countries, often under coercive conditions.⁹ Also during this period, more than a thousand Muslims, both citizens and non-citizens, were detained — some for long periods of time and under harsh conditions — while the government determined whether they had any connection to the 9/11 attacks.¹⁰ None did.¹¹ Echoes of this initial “round-up” could be seen three years later in “Operation Front Line,” in which immigration officials interviewed more than 2,500 immigrants in an effort to stave off any potential terrorist attack around the presidential election. A substantial majority of those interviewed — 79 percent — were from countries with majority-Muslim populations.¹²

Even more troubling than these one-time operations is the extent to which broad gauge surveillance of American Muslims with no apparent links to criminal or terrorist activity has become the norm among certain federal, state, and local law enforcement agencies.

A months-long investigation by the Associated Press (AP) revealed that the NYPD has for years run a program that monitors American Muslim communities living in the tri-state (New York, New Jersey, and Connecticut) area. This surveillance appears to be based on religion, rather than any specific leads or other objective reasons to suspect wrongdoing.

⁹ See David A. Harris, *The War on Terror, Local Police, and Immigration Enforcement: A Curious Tale of Police Power in Post-9/11 America*, 38 RUTGERS L.J. 1, 16 (2006).

¹⁰ See generally U.S. DEPT OF JUSTICE, OFFICE OF THE INSPECTOR GEN., THE SEPTEMBER 11 DETAINEES: A REVIEW OF THE TREATMENT OF ALIENS HELD ON IMMIGRATION CHARGES IN CONNECTION WITH THE INVESTIGATION OF THE SEPTEMBER 11 ATTACKS (April 2003) (hereinafter “SEPTEMBER 11 DETAINEES REPORT”), available at <http://www.justice.gov/oig/special/0306/full.pdf>.

¹¹ See CTR. FOR DEMOCRACY AND TECH., CTR. FOR AM. PROGRESS & CTR. FOR NAT’L SEC. STUDIES, STRENGTHENING AMERICA BY DEFENDING OUR LIBERTIES: AN AGENDA FOR REFORM 8 (2003), available at <http://www.cnss.org/Defending%20our%20Liberties%20report.pdf>.

¹² Eric Lichtblau, *Inquiry Targeted 2,000 Foreign Muslims in 2004*, N.Y. TIMES, Oct. 31, 2008, at A17.

Internal NYPD documents¹³ released by the AP illustrate this apparent religious based monitoring:

- The NYPD's Intelligence Division, which was established and is run by a former CIA officer, operated a "Demographics Unit." This Unit conducted a "mapping" program to identify neighborhoods with large Muslim populations.¹⁴ The NYPD's community maps included information about places like mosques, schools, gyms, restaurants, bookstores, and travel agencies. Nothing in the documents obtained by the AP suggests that the mapping program was prompted by suspicions of terrorist activity. Nor do the documents include information that suggests that the police officers — who no doubt spent weeks conducting this mapping — came across anything related to terrorism. Nonetheless, the NYPD sent undercover agents, called "rakers," to report on the American Muslim patrons of cafes, clubs, barber shops, and other business establishments identified through the mapping program.¹⁵ Demographics Unit documents released by the AP show that the NYPD kept detailed information about the everyday lives of American Muslims whose families came to this country from Albania, Egypt, Morocco, and Syria.¹⁶
- The NYPD's mapping activities were not confined to New York City. They extended to other parts of the state, as well as to New Jersey.¹⁷ For example, the AP made public a sixty-page NYPD report on Newark, New Jersey, which states that the NYPD's goal there was to "identify the existence of population centers and business districts of communities of interest" — i.e., where American Muslims lived and the location of businesses that they owned and frequented.¹⁸ Another goal of the report was to identify "Locations of Concern," which are described as "locations [that] provide the maximum ability to assess the general opinions and the general activity of these communities"¹⁹ — i.e., what American Muslims were saying and doing.
- The NYPD's surveillance specifically targeted American Muslim places of worship. The police produced an analytical report on every mosque within 100 miles of New York City²⁰ and employed "mosque crawlers" to infiltrate mosques and monitor sermons in city mosques.²¹ These mosque crawlers, who were either confidential informants or undercover officers, reported back to the NYPD about what people in the mosques were saying. For example, when protests flared across the Muslim world in response to a Danish newspaper's publication of cartoons depicting the Prophet Mohammed, NYPD agents gathered information about how religious leaders and those who attended prayers at mosques reacted. They noted the names of the various Imams and worshippers who supported a boycott of Danish goods, those who deplored both the cartoons and

¹³ All NYPD documents released by the AP are found at *Highlights of AP's Probe Into NYPD Intelligence Operations*, ASSOCIATED PRESS, <http://ap.org/media-center/nypd/investigation> (last accessed March 27, 2012).

¹⁴ See Adam Goldman & Matt Apuzzo, *Inside the Spy Unit that NYPD Says Doesn't Exist*, ASSOCIATED PRESS, Aug. 31, 2011, available at <http://ap.org/Content/AP-In-The-News/2011/Inside-the-spy-unit-that-NYPD-says-doesnt-exist>; Matt Apuzzo, Eileen Sullivan & Adam Goldman, *NYPD Eyed U.S. Citizens in Intel Effort*, ASSOCIATED PRESS, Sept. 22, 2011, available at <http://ap.org/Content/AP-In-The-News/2011/NYPD-eyed-US-citizens-in-intel-effort>.

¹⁵ See *id.*

¹⁶ *Highlights, supra* note 13.

¹⁷ Adam Goldman & Matt Apuzzo, *NYPD Built Secret Files on Mosques Outside NY*, ASSOCIATED PRESS, Feb. 22, 2012, available at <http://ap.org/Content/AP-In-The-News/2012/NYPD-built-secret-files-on-mosques-outside-NY>.

¹⁸ *Highlights, supra* note 13.

¹⁹ *Id.*

²⁰ See Adam Goldman & Matt Apuzzo, *With CIA Help, NYPD Moves Covertly in Muslim Areas*, ASSOCIATED PRESS, Aug. 24, 2011, available at <http://ap.org/Content/AP-In-The-News/2011/With-CIA-help-NYPD-moves-covertly-in-Muslim-areas>.

²¹ See *Highlights, supra* note 13.

the violence they had precipitated, and those who sought a permit for a planned protest.²² In other words, the NYPD gathered information on core First Amendment protected speech taking place inside a house of worship and with no apparent criminal or terrorist nexus. In New Jersey, the AP documented an NYPD plan to conduct surveillance at a mosque before and during Friday prayers and to “record license plates and capture video and photographic record of those in attendance.”²³

- NYPD officers infiltrated not only Muslim student associations at college campuses in New York City but also throughout the Northeast. A document discovered by the AP shows that an NYPD officer was assigned to provide the Police Commissioner with daily reports on the “websites, blogs and Forums” of Muslim student associations at Albany University, Baruch College, Brooklyn College, Clarkson University, Columbia University, Stony Brook, LaGuardia Community College, New York University, the University of Pennsylvania, Rutgers, various campuses of the State University of New York, Syracuse University, Queens College, and Yale University.²⁴ In one case, an agent attended a Muslim student association’s whitewater rafting trip and reported back on the number of times students had prayed.²⁵

Unfortunately, the NYPD is not alone in its efforts to map American Muslim communities. The FBI has carried out similar programs. The American Civil Liberties Union has documented how FBI analysts have used crude stereotypes regarding the types of crimes committed by different racial and ethnic groups and then collected demographic data to map where those groups live. For example, a memorandum entitled “Detroit Domain Management” asserts that “[b]ecause Michigan has a large Middle-Eastern and Muslim population, it is prime territory for attempted radicalization and recruitment” by State Department-designated terrorist groups originating in the Middle East and Southeast Asia. Based on this overbroad and unsubstantiated assertion of a threat, the Detroit FBI sought to open a “Domain Assessment” in Michigan “for the purpose of collecting information and evaluating the threat.”²⁶

Like the NYPD, the FBI has not limited its scrutiny of American Muslims to “mapping,” and has on several occasions assigned informants to infiltrate groups of mosques and report on what they heard from congregants. For instance, in the case of “the Newburgh Four,” the FBI’s informant testified that he was sent to several mosques to find out what the Muslim community was saying and doing, rather than to uncover particular criminal or terrorist activity.²⁷ His assignment was to “listen [and] talk to ... the attendees of the mosque” and report back to his FBI handler “[i]f somebody was expressing radical views or extreme views.”²⁸ Another informant has claimed in a civil case against the FBI that he infiltrated several mosques and Islamic centers in Orange, Los Angeles, and San Bernardino counties with an assignment similar to the one given to the Newburgh Four informant.²⁹ Documents obtained through Freedom of Information Act litigation in 2009 show that the FBI’s Southern California office kept tabs on a variety of lawful First Amendment activities of American Muslims, including the subject and tenor of sermons given

²² *Highlights*, *supra* note 13.

²³ NYPD Surveillance Report on Majid Omar, obtained by the Associated Press, http://hosted.ap.org/specials/interactives/documents/nypd/nypd_omar.pdf.

²⁴ Chris Hawley, *NYPD Monitored Muslim Students All Over Northeast*, ASSOCIATED PRESS, Feb. 18, 2012, *available at* <http://ap.org/Content/AP-In-The-News/2012/NYPD-monitored-Muslim-students-all-over-Northeast>.

²⁵ *See id.*

²⁶ Memorandum on Detroit Domain Management, FBI (July 6, 2009), *available at* <http://www.aclu.org/files/fbimappingfoia/20111019/ACLURM011609.pdf>.

²⁷ Transcript of Record at 668, *United States v. Cromitie*, No. 09-558 (S.D.N.Y. Oct. 18, 2010).

²⁸ *Id.* at 669, 674, 2452.

²⁹ Second Amended Complaint at 24-25, *Monteilh v. FBI*, No. 8:2010-cv-00102 (C.D. Cal. Sept. 2, 2010).

at mosques.³⁰ These activities form the basis of a federal class action lawsuit against the FBI for infiltrating mosques in Southern California and targeting Muslim Americans for surveillance solely because of their religion.³¹

Another example of religious profiling by federal law enforcement officials can be seen at the border, where Muslims who reside in the United States report being subjected to lengthy and intrusive screening interviews — and occasionally, searches of their laptops or other electronic devices — as they return from overseas travel. Questions asked by customs and immigration enforcement officials have included, “What is your religion?” “What mosque do you attend?” “How often do you pray?” “Why did you convert to Islam?” “Do you recruit people for Islam?” and “Do you think [American Muslim religious scholar] is moderate, or an extremist?”³²

This type of institutionalized religious profiling draws upon the explicit connection some law enforcement agencies, particularly the NYPD and the FBI, have drawn between religiosity and terrorism.

The Brennan Center’s report, *Rethinking Radicalization*, demonstrates how unsupported and simplistic theories about how people turn to terrorism support law enforcement’s monitoring of American Muslim communities.³³ These theories suggest, contrary to social science research, that there is a sort of “religious conveyor belt” that leads American Muslims who harbor grievances against our society or who suffer from a personal crisis to become more religious, then to adopt “radical” beliefs, and, finally, to commit acts of terrorism. Both the FBI and the NYPD apparently subscribe to these theories.³⁴ They posit that each step along this continuum is identifiable by law enforcement officials who know how to recognize the signs of incipient terrorism. The hallmarks of this process, which is frequently dubbed “radicalization,” are by and large expressions of the Muslim faith that are likely to be found in millions of American Muslims. In other words, these theories treat religiosity in Muslims as signs of incipient terrorism.

For example, one of the “indicators” of extremism identified by the FBI is “[f]requent attendance at a mosque or a prayer group.”³⁵ A Gallup Study published last year shows that 44 percent of American Muslims attend a mosque at least once a week.³⁶ If we were to apply the FBI’s theory, this would mean that almost half of all American Muslims were on the road to becoming terrorists and should be closely watched. FBI field offices use this theory as a basis for collecting information about law-abiding American Muslims. At a 2010 presentation by the FBI’s Houston Division to Muslim community leaders, agents asked attendees to report on community members who were “taking extreme positions” and “trying to enforce a limited understanding of religion.” An example of such behavior, according to the agents, was if someone

³⁰ Records Mgmt. Div., FBI, FOI/PA No. 1071083-001, Response to Freedom of Information Act Request by American Civil Liberties Union for Surveillance Records ACLU-25.

³¹ See Complaint, *Fazaga v. FBI*, No. 11-00301 (C.D. Cal. Feb. 22, 2011), available at <http://www.courthousenews.com/2011/02/24/FBI.pdf>.

³² See Muslim Advocates, *Unreasonable Intrusions: Investigating the Politics, Faith, and Finances of Americans Returning Home* (April 2009), available at http://www.muslimadvocates.org/documents/Unreasonable_Intrusions_2009.pdf.

³³ FAIZA PATEL, *RETHINKING RADICALIZATION* (2011), available at <http://www.brennancenter.org/page/-RethinkingRadicalization.pdf>.

³⁴ Carol Dyer et al., *Countering Violent Extremism*, FBI L. ENFORCEMENT BULL., Dec. 2007, at 5, available at <http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/2007-pdfs/dec07leb.pdf>; MITCHELL D. SILBER & ARVIN BHATT, NYPD INTELLIGENCE DIV., *RADICALIZATION IN THE WEST: THE HOMEGROWN THREAT* (revised 2009), available at http://www.nyc.gov/html/nypd/downloads/pdf/public_information/NYPD_Report-Radicalization_in_the_West.pdf.

³⁵ FBI COUNTERTERRORISM DIV., *THE RADICALIZATION PROCESS: FROM CONVERSION TO JIHAD* (2006), available at <http://cryptome.org/fbi-jihad.pdf>.

³⁶ *Religious Perceptions in America: With an In-Depth Analysis of U.S. Attitudes Toward Muslims and Islam*, GALLUP CTR. FOR MUSLIM STUDIES, at 45, available at <http://www.gallup.com/se/148805/Muslim-Americans-Faith-Freedom-Future.aspx>.

asked women in the congregation to wear a *hijab* (head scarf) or veil.³⁷ Muslims frequently cover their heads in mosques, and 60 percent of American Muslim women wear headscarves some or all the time.³⁸

The NYPD targets religious behavior even more explicitly. For example, its 2007 report on homegrown terrorism identifies a variety of normal Muslim religious behaviors, such as wearing traditional Islamic clothing, growing a beard, and giving up cigarettes and drinking, as potential indicators of a person who is on the path to becoming a terrorist.³⁹

By equating these expressions of religious belief with signs of radicalization to terrorism, the FBI and the NYPD perpetuate the view that the Islamic faith is intrinsically connected to terrorism.

At the same time, the press has exposed law enforcement training materials that portray Islam and/or Muslims as inherently violent and suggest that the threat to the United States is not limited to terrorism but rather comes from Islam itself. In 2011, materials from FBI training sessions came to light that included a range of inaccurate and highly offensive pronouncements, including statements that “main stream” [sic] American Muslims are likely to be terrorist sympathizers, that the Prophet Mohammed was a “cult leader,” that the Islamic practice of giving charity is no more than a “funding mechanism for combat,” that “[a]ny war against non-believers is justified” under Muslim law, and that a “moderating process cannot happen if the Koran continues to be regarded as the unalterable word of Allah.”⁴⁰ The materials even included a chart that purported to graphically represent the connection between adherence to Islam and violence.

The DOJ was also found to have used training materials that warn of a “Civilizational Jihad” stretching back to the dawn of Islam and waged today in the United States by “civilians, juries, lawyers, media, academia and charities” who threaten “our values.”⁴² These revelations led the Department to review training materials and the White House to order a government-wide review of counterterrorism training late last year. The FBI has indicated that its review led to the purging of some 700 pages of training materials,⁴³ but the Bureau has not responded to requests to also review the “radicalization” intelligence products that display the same biases.⁴⁴

Training materials used by local police departments also display strong anti-Muslim biases. Most recently, it was revealed that the NYPD had shown the film *The Third Jihad* during training. Like the FBI and DOJ training materials described above, *The Third Jihad* carries the message that the real enemy of the United States is Islam and describes representative Muslim groups as engaged in a stealth war against American democracy. Prominent former government officials, as well as New York’s Police Commissioner, Raymond Kelly, are featured in the film, lending an imprimatur of credibility to its outlandish claims. In January 2011, when reports of the NYPD’s use of *The Third Jihad* first emerged, the NYPD claimed that the film had been

³⁷ *FBI Meet Houston Community Leaders*, MUSLIM OBSERVER, May 20, 2010, available at <http://muslimmedianetwork.com/mmn/?p=6225>.

³⁸ PEW RESEARCH CTR., MUSLIM AMERICANS: NO SIGNS OF GROWTH IN ALIENATION OR SUPPORT FOR EXTREMISM (August 2011), available at <http://www.people-press.org/files/2011/08/muslim-american-report.pdf>.

³⁹ SILBER, RADICALIZATION IN THE WEST, *supra* note 34, at 38-39.

⁴⁰ See Spencer Ackerman, *FBI Teaches Agents: “Mainstream” Muslims Are “Violent, Radical,”* WIRED, Sept. 14, 2011, available at <http://www.wired.com/dangerroom/2011/09/fbi-muslims-radical/all/1>.

⁴² Spencer Ackerman, *Justice Department Official: Muslim ‘Juries’ Threaten ‘Our Values,’* WIRED, Oct. 5, 2011, available at <http://www.wired.com/dangerroom/2011/10/islamophobia-beyond-fbi/all/1>.

⁴³ Spencer Ackerman, *FBI Purges Hundreds of Terrorism Documents in Islamophobia Probe,* WIRED, Feb. 15, 2012, available at <http://www.wired.com/dangerroom/2012/02/hundreds-fbi-documents-muslims/>.

⁴⁴ Letter from Am. Civil Liberties Union, et al., to Robert S. Mueller, III, Dir., Fed. Bureau of Investigation (Oct. 4, 2011), available at http://www.aclu.org/files/assets/sign_on_letter_to_dir_mueller_re_radicalization_report_10_4_11.pdf.

shown once or twice by mistake and that the clip of the Police Commissioner was lifted from old footage. A year later, documents obtained by the Brennan Center through New York's Freedom of Information Law showed that the film had been screened over the course of at least three months to at least 1,500 officers.⁴⁵ And the makers of the film stepped forward to reveal that the Police Commissioner had in fact participated in the making of the film. While the Commissioner has apologized, there is no indication that the NYPD is reviewing its training materials to weed out this type of material or is taking any steps to ensure that only appropriate materials are used in its trainings going forward.

In sum, since 9/11, many federal and local law enforcement agencies have embraced the assumption that expressions of religiosity among American Muslims may indicate a propensity to terrorism. This has resulted in enhanced scrutiny of American Muslim communities by local and federal law enforcement officials based on their religion.

Policing on the basis of religion burdens our ability to freely exercise our faith and is counterproductive

Profiling on the basis of an American's faith is as pernicious and ineffective as profiling on the basis of race or ethnicity. Religious profiling assumes that a person's exercise of his fundamental right to practice his religion is a basis for law enforcement scrutiny even where there is no suspicion of wrongdoing. The chilling effect of such enhanced scrutiny is reflected in American Muslims' cutting back on contributions to religious charities,⁴⁶ refraining from joining mosques or community organizations,⁴⁷ and avoiding political gatherings or conversations about politics (especially U.S. foreign policy).⁴⁸ In other words, the religious bias displayed by some law enforcement policies prevents American Muslims from freely adhering to the tenets of their faith and from expressing views about issues that are of concern to them.

Policing based on religion is not only inconsistent with our Constitutional values but also less effective than behavior-based policing. As noted earlier, numerous studies have found that law enforcement action based on racial or ethnic characteristics is less effective than law enforcement that focuses on potentially criminal behavior. Religious profiling appears to be equally ineffective. The mass interviews and detention of Muslims after 9/11 failed to turn up a single known connection to the 9/11 attacks; similarly, no terrorism or national security charges resulted from the mass interviews of Muslim immigrants leading up to the 2004 election.⁴⁹ There is no evidence that the NYPD's widespread mosque infiltration has uncovered any existing terrorist plots,⁵⁰ and indeed, senior CIA officials have described a similar program of mosque infiltration that the CIA undertook overseas as ineffective.⁵¹

⁴⁵ See Michael Powell, *In Police Training, A Dark Film on U.S. Muslims*, N.Y. TIMES, Jan. 23, 2012, at A1, available at <http://www.nytimes.com/2012/01/24/nyregion/in-police-training-a-dark-film-on-us-muslims.html?pagewanted=all>.

⁴⁶ See AM. CIVIL LIBERTIES UNION, BLOCKING FAITH, FREEZING CHARITY: CHILLING MUSLIM CHARITABLE GIVING IN THE "WAR ON TERRORISM FINANCING" 97-100 (2009), available at <http://www.aclu.org/pdfs/humanrights/blockingfaith.pdf>.

⁴⁷ Tom Tyler et al., *Legitimacy and Deterrence Effects in Counterterrorism Policing: A Study of Muslim Americans*, 44 LAW & SOC'Y REV. 365, 396.

⁴⁸ *Id.* at 396; NICOLE J. HENDERSON ET AL., VERA INST. OF JUSTICE, LAW ENFORCEMENT AND ARAB-AMERICAN COMMUNITY RELATIONS AFTER SEPTEMBER 11, 2001: ENGAGEMENT IN A TIME OF UNCERTAINTY (2006), available at <http://www.vera.org/content/law-enforcement-and-arab-american-community-relations-after-september-11-2001-engagement-tim>.

⁴⁹ See Lichtblau, *supra* note 12.

⁵⁰ Seth Freed Wessler, *A Closer Look at Ray Kelly's Multi-Billion Dollar Army of Spies*, COLORLINES, Mar. 1, 2012, available at http://colorlines.com/archives/2012/03/ray_kelly_multi-billion_dollar_army_profiling_spying_muslims.html.

⁵¹ See Matt Apuzzo, Adam Goldman & Eileen Sullivan, *NYPD Spying Program Yielded Only Mixed Results*, ASSOCIATED PRESS, Dec. 23, 2011, available at <http://ap.org/Content/AP-In-The-News/2011/NYPD-spying-programs-yielded-only-mixed-results>.

One widely acknowledged harm that stems from racial and ethnic profiling is that profiled groups come to resent and fear the police in their communities.⁵² The same holds true for religious profiling, and there is ample evidence that the above activities have triggered — as one national Muslim organization testified before Congress — “fear and suspicion within the Muslim community toward law enforcement.”⁵³ A representative of another major American Muslim group testified that “[t]he perception of the community has become one where they believe they are viewed as suspect rather than partner in the War on Terror, and that their civil liberties are ‘justifiably’ sacrificed upon the decisions of federal agents.”⁵⁴ A 2008 Vera Institute report on the effect of post-9/11 policing on sixteen Arab-American communities across the United States found that some Arab-American communities “were more afraid of law enforcement agencies — especially federal law enforcement agencies — than they were of acts of hate or violence, despite an increase in hate crimes.”⁵⁵ FBI officials themselves acknowledge that American Muslim communities “almost unanimously feel that government agents treat them as suspects and view all Muslims as extremists.”⁵⁶

American Muslims’ perception that law enforcement agencies treat them as a suspect community may lead them to become less cooperative and thus jeopardize our counterterrorism efforts. American Muslims have an exemplary record of cooperation with law enforcement: they have provided information on about 35 percent of the terrorist plots that have been foiled in the past decade.⁵⁷ But a recent empirical study of American Muslims in the New York area found that willingness to cooperate with law enforcement was closely tied to perceptions about whether law enforcement’s efforts were carried out in a just and legitimate manner. Today, in light of Muslim communities’ growing apprehension about law enforcement, community leaders report that individuals are “more reluctant to call the authorities when needed.”⁵⁸ A prominent Muslim organization advised community members not to speak with law enforcement attorneys without the presence or advice of an attorney,⁵⁹ and a national coalition of American Muslim organizations indicated that it would no longer cooperate with the FBI if the FBI continued surveilling mosques.⁶⁰

⁵² David A. Harris, *The Stories, the Statistics, and the Law: Why ‘Driving While Black’ Matters*, 84 MINN. L.R. 265, 289-99 (1999).

⁵³ See *Racial Profiling and the Use of Suspect Classifications in Law Enforcement Policy: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Civil Liberties of the H. Comm. on the Judiciary*, 111th Cong. 62 (2010) (written testimony of Farhana Khera, President and Exec. Dir., Muslim Advocates) (hereinafter “Khera June 2010 Testimony”).

⁵⁴ *Radicalization, Information Sharing and Community Outreach: Protecting the Homeland from Homegrown Terror: Hearing before the Subcomm. on Intelligence, Info. Sharing and Terrorism Risk Assessment of the H. Comm. on Homeland Sec.*, 110th Cong. 6 (2007) (statement for the record of Sireen Sawaf, Gov’t Relations Dir., S. Cal. Muslim Pub. Affairs Council), available at <http://hsc-democrats.house.gov/SiteDocuments/20070405120720-29895.pdf>.

⁵⁵ NICOLE J. HENDERSON ET AL., U.S. DEP’T OF JUSTICE, *POLICING IN ARAB-AMERICAN COMMUNITIES AFTER SEPTEMBER 11* ii (2008), available at <http://www.ncjrs.gov/pdffiles1/nij/221706.pdf>. For the full study, see NICOLE J. HENDERSON ET AL., *supra* note 48.

⁵⁶ Dyer et al., *supra* note 34, at 8.

⁵⁷ See, e.g., CHARLES KURZMAN, TRIANGLE CTR. ON TERRORISM AND HOMELAND SEC., *MUSLIM-AMERICAN TERRORISM SINCE 9/11: AN ACCOUNTING* 7 (2011), available at http://sanford.duke.edu/centers/tcths/about/documents/Kurzman_Muslim-American_Terrorism_Since_911_An_Accounting.pdf; KEVIN STROM ET AL., INST. FOR HOMELAND SEC. SOLUTIONS, *BUILDING ON CLUES: EXAMINING SUCCESSES AND FAILURES IN DETECTING U.S. TERRORIST PLOTS, 1999-2009* 19 (2010), available at https://www.ihsnc.org/portals/0/Building_on_Clues_Strom.pdf.

⁵⁸ Khera June 2010 Testimony, *supra* note 53.

⁵⁹ See, e.g., Muslim Advocates, *Urgent Community Alert: Seek Legal Advice Before Talking to the FBI*, available at http://www.muslimadvocates.org/FBI_IVU_COMMUNITY%20ALERT.pdf; see also Council on American-Islamic Relations Action Ctr., *Reports of FBI Visits Prompt Reminder of Legal Rights*, May 21, 2010, available at http://www.cair-ny.org/content/?content_id=279&PHPSESSID=a3pojgfokvmdfnl6odqdtng2; *Know Your Rights: If Federal Law Enforcement Contacts You*, in AM. MUSLIM CIVIC POCKET GUIDE (Council on American-Islamic Relations ed., 2010), available at <http://www.cair.com/CivilRights/KnowYourRights.aspx#9>.

⁶⁰ Press Release, Council on American-Islamic Relations & Ctr. for Constitutional Rights, *‘Newburgh Four’ Raises Concern of FBI Tactics in Terror Cases*, Oct. 21, 2010, available at http://www.cair-ny.org/content/?content_id=407.

This dynamic is also apparent in New York and New Jersey where, following the AP's revelations of the NYPD's blanket surveillance of American Muslim New Yorkers, prominent Muslim religious leaders boycotted the Mayor's traditional New Year's interfaith breakfast and have declined to meet with the Commissioner.⁶¹ The top FBI official in New Jersey observed, "We're starting to see cooperation pulled back. People are concerned that they're being followed, they're concerned that they can't trust law enforcement, and it's having a negative impact."⁶²

Religious Profiling Perpetuates Negative Stereotypes About American Muslims

The DOJ Guidance on racial profiling notes that "[r]ace-based assumptions in law enforcement perpetuate negative racial stereotypes that are harmful to our rich and diverse democracy, and materially impair our efforts to maintain a fair and just society." Religious profiling similarly perpetuates negative stereotypes about Muslims, and those stereotypes are reflected in the how the American public views fellow Americans who follow the Muslim faith. A 2010 survey by the Public Religion Research Institute found that 45 percent of Americans believe that the values of Islam are at odds with the American way of life.⁶³ Gallup reported that a majority of Americans say that their opinion of Islam is unfavorable.⁶⁴ This sentiment manifests itself in increasing numbers of hate crimes against Muslims, opposition to building mosques, and the spurious anti-Sharia movement.

Last month a thirty-two year old Iraqi immigrant and mother of five, Shaima Alawadi, was found lying unconscious in a pool of her own blood. While the perpetrator has not yet been identified, it is reported that lying beside her body was a note saying, "Go back to your own country. You're a terrorist."⁶⁵ In the midst of the controversy over building a mosque near the location of the World Trade Center towers in New York, a cab driver responded to his passenger's question by identifying himself as a Muslim. He was stabbed repeatedly by the passenger.⁶⁶ These are not just isolated instances. The FBI reports that between 2001 and 2010 there were more than 1,700 incidents of hate crimes based on "anti-Islamic" bias.⁶⁷

Another sign of the mounting Islamophobia in our country is the rising opposition to the building of mosques and Islamic community centers. We are all familiar with the public opposition to the so-called "Park 51 proposal," involving the establishment of an Islamic center two blocks from the former location of the World Trade Center towers. That is unfortunately not an isolated example. Similar protests, if on a smaller scale, have attended the building of mosques across the country, and some cities and towns have even changed their laws to prevent mosques from being built.⁶⁸ In many cases, the opposition is galvanized

⁶¹ Kate Taylor, *14 Muslim Leaders Plan Boycott of Breakfast With Mayor*, N.Y. TIMES, Dec. 28, 2011, at A23, available at <http://www.nytimes.com/2011/12/29/nyregion/14-muslim-leaders-plan-boycott-of-bloomberg-interfaith-breakfast.html>.

⁶² Samantha Henry, *NJ FBI: NYPD Monitoring Damaged Public Trust*, ASSOCIATED PRESS, Mar. 7, 2012, available at <http://ap.org/Content/AP-In-The-News/2012/NJ-FBI-NYPD-monitoring-damaged-public-trust>.

⁶³ *Old Alignment, Emerging Fault Lines: Religion in the 2010 Election and Beyond*, Public Religion Research Institute, slide 19, 2010, available at <http://www.publicreligion.org.research/?id=294>.

⁶⁴ Gallup Ctr. for Muslim Studies *supra* note 31, at 7.

⁶⁵ Nina Burleigh, *Shaima Alawadi's Murder: A Hate Crime Against Women?*, TIME, Apr. 10, 2012, available at <http://ideas.time.com/2012/04/10/shaima-alawadis-murder-a-hate-crime-against-women/?xid=gonewsedit>.

⁶⁶ N.R. Kleinfeld, *Rider Asks If Cabby Is Muslim, Then Stabs Him*, N.Y. TIMES, Aug. 25, 2010, at A19.

⁶⁷ The FBI publishes yearly reports on hate crimes in the United States. These reports are often criticized for under-reporting the actual number of hate crimes in the United States, so the number in text is likely low. The reports can be found at *Hate Crimes*, FBI, http://www.fbi.gov/about-us/investigate/civilrights/hate_crimes.

⁶⁸ See, e.g., Editorial, *No Room for Tolerance*, N.Y. TIMES, Sept. 19, 2011, at A26, available at <http://www.nytimes.com/2011/09/19/opinion/no-room-for-tolerance.html>; Am. Civil Liberties Union, *Map – Nationwide Anti-Mosque Activity*, <http://www.aclu.org/map-nationwide-anti-mosque-activity> (last accessed Mar. 27, 2012).

by anti-Muslim groups that have been classified as hate groups by the Southern Poverty Law Center, and objections center on fears of Islam and terrorism.⁶⁹

Yet another sign of Islamophobia is the growing fear of Sharia, or Islamic, law. State and local lawmakers have put forward legislation to prohibit courts from considering Sharia, and some proposed laws would go so far as to treat groups that practice Sharia as terrorists, by criminalizing the provision of “material support” to such groups.⁷⁰ While these efforts have mostly been beaten back through lawsuits and organized opposition (including from the business community), the anti-Sharia movement—and the anti-Muslim bias that it represents—remains troublingly strong in our country.

In short, religious profiling creates the same injustices and harms that are generated by racial and ethnic profiling. It burdens American Muslims’ fundamental right to practice their religion without unwarranted government scrutiny. Religious profiling is ineffective in preventing criminal and terrorist activity. It may be counterproductive because it breeds resentment among Muslim communities and therefore discourages their cooperation with law enforcement. Finally, it perpetuates negative stereotypes about Muslims and thus feeds into a poisonous dynamic of bias and intolerance.

Recommendations

The Brennan Center is heartened by the Subcommittee’s leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust and counterproductive practice of racial profiling. We urge Congress to move swiftly and take concrete actions to prohibit discriminatory policing at the federal, state, and local level. In particular, we recommend that

- the Judiciary Committee move promptly to report out the End Racial Profiling Act (S. 1670), which would institute a federal ban on profiling based on race, religion, ethnicity, and national origin at the federal, state, and local levels;
- and the Subcommittee urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to include profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of the Brennan Center for Justice at New York University School of Law on this critical issue.

⁶⁹ Ben Forer, *Hate Groups on the Rise in U.S., Report Says*, ABC NEWS, Mar. 8, 2012, available at <http://abcnews.go.com/blogs/headlines/2012/03/hate-groups-on-the-rise-in-u-s-report-says/>; Mark Potok, *The ‘Patriot’ Movement Explodes*, SOUTHERN POVERTY LAW CTR. INTELLIGENCE REPORT, Spring 2012, available at <http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2012/spring/the-year-in-hate-and-extremism>.

⁷⁰ See Bob Smietana, *Tennessee Bill Would Jail Shariah Followers*, USA TODAY, Feb. 23, 2011, available at http://www.usatoday.com/news/nation/2011-02-23-tennessee-law-shariah_N.htm; Omar Sacirbey, *Anti-Shariah Movement Loses Steam in State Legislatures*, HUFFINGTON POST, Mar. 25, 2012, available at http://www.huffingtonpost.com/2012/03/25/anti-shariah-movement-loses-steam_n_1374083.html.

Call the NYPD Campaign, Written Testimony

Our nation's youngest generation was born into a culture steeped in racial profiling. Following the terrorist attacks of September 11th, the Muslim and Arab identity obtained a permanent association with jihadism, fundamentalism, and that ever-evasive figure, Osama. Ironically, the very administration that ran on campaign promises of a racially tolerant America utilized racial profiling as a means of strategic prevention. Government programs, such as Special Registration, enabled the surveillance of Arab men and women across the country. America's nationalism surged at the expense of those who didn't fit its nostalgic vision of whiteness and homogeneity.

Over a decade later, it was unveiled that the NYPD placed Muslim Student Associations across the East Coast under surveillance. The shock was palpable. As we learn from this occurrence, the very students targeted should be at the center of the debate. The leaders of tomorrow have an important role to play in present political discourse. An increasingly globalized education system has given students nationwide a unique perspective on race relations. American universities are microcosms of the international community that surrounds them. Despite all of the academic scholarship on race, American students provide the best indication of race relations in this country because they are on the ground, confronting the challenges and consequences of diversity every day.

On college campuses, race relations appear strikingly positive. As leaders of the "Call the NYPD" campaign we experienced this truth firsthand. "Call the NYPD" is

a photo campaign that utilizes social media to protest the recent surveillance of Muslim student groups by the New York Police Department. With nearly 800 views daily on its Facebook page, the campaign features students from a plethora of universities holding signs which declare an element of their identity for which they refuse to be unjustly profiled. The campaign is deeply satiric. The declarations, “I am a black Muslim” and “I am incredibly good looking” merit the same response: Call the NYPD.

Student solidarity is palpable and it demonstrates an underlying tenet of the campaign; the NYPD’s act of racial profiling is not simply a “Muslim issue” but one that is universal. The unity within America’s younger demographic provides insight into the stereotypes that fuel racial profiling, namely, that they are simplistically absurd. Stereotypes are born of ignorance, perpetuated by fear, and embodied in acts of racial profiling. Consider the fact that NYPD officers were mandated to watch Islamophobic films before commencing their surveillance. Students effectively demystify such stereotypes because they realize that the illusory image of an Arab terrorist does not resemble their roommate, their academic rival, or that shy girl in their dining hall who wears hijab.

Thus, why the need for a hearing on racial profiling? Because not everyone has the access to diversity that college students do, and distance creates fear. The NYPD, isolated from honest interaction with the Muslim community, has grown Islamophobic because it cannot distinguish reality from stereotypes. A Congressional hearing is needed because the leaders of today need to be reminded

of what the leaders of tomorrow already know: that racial profiling is unacceptable and un-American.

We call on the NYPD to take responsibility for its actions. To act as a bystander is to implicitly condone racial profiling. To unite in opposition is to reflect the voice of America's youth, and thereby to engage with America's future.

Academics often cast the future of racial profiling in a pessimistic light. I, like students all across America, still have faith in our ability to transform racial interactions for the better. Even when our school days are over, we will always be held accountable for attendance. And, we will always have a responsibility to learn.

STATEMENT OF
VINCENT WARREN, EXECUTIVE DIRECTOR
CENTER FOR CONSTITUTIONAL RIGHTS
END RACIAL PROFILING IN AMERICA HEARING
SENATE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS
UNITED STATES SENATE
APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of the Center for Constitutional Rights in conjunction with today's hearing on racial profiling. The Center for Constitutional Rights (CCR) is a non-profit legal and educational organization committed to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights. These rights and protections must extend to everyone in the country regardless of race, religion, national origin, ethnicity, or immigration status. Through our litigation and advocacy efforts against the New York Police Department (NYPD) and abusive immigration enforcement programs such as Secure Communities, along with our stance against law enforcement's unjust surveillance of and entrapment targeting the Muslim, Arab and South Asian communities, CCR has historically been a strong voice for ending racial profiling across the country.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. The Center for Constitutional Rights is particularly concerned about the many policies and practices at the national, state and local level which encourage or incentivize discriminatory and abusive law enforcement practices such as racial profiling. These practices

are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as the sole factor in deciding whom they should investigate, arrest or detain. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is a serious concern to the Center for Constitutional Rights and its thousands of supporters. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling harms the community and creates distrust between law enforcement and the communities they serve.

RACIAL AND RELIGIOUS PROFILING BY THE NEW YORK POLICE DEPARTMENT

A. Stop-and-Frisk

The New York Police Department (NYPD) has a history of abusive and racially motivated police practices. In 1999, in the aftermath of the Amadou Diallo murder, CCR brought a class action lawsuit which in 2003 led to disbanding the special unit responsible for the most extreme NYPD use-of-force incidents and regular data and reporting on the NYPD's use of stop-and-frisk. Through the data released to CCR and the public, it became clear that the racial disparity in rates of stops and frisks had only become worse since 2003. The NYPD's stop-and-frisk practice has led to hundreds of thousands of suspicion-less and race-based stops of Black and Latino New Yorkers. A quick review of a few figures makes the point more clear. In 2003, the NYPD recorded 160,851 stops. This number rose to 685,724 in 2011. This reflects a more than 300% increase in the stop rate over eight years. In that time period the NYPD engaged in a total of 4.25 million stops. In 2011 alone, 84% of all stops were of Blacks and Latinos while 7%

of stops were “female.” Although the NYPD justifies its policy as preventing crime and taking guns off the streets of New York, weapons were only found in 1% of stops and less than 6% of stops led to arrests. Additionally, in over 50% of the stops in 2011, officers checked the vague “furtive movement” as one of the reasons for the stop. The human cost of racial profiling through the NYPD’s stop-and-frisk practice has also been well documented and reported on extensively.¹ Unfortunately, the practice is now known as a tool to harass people of color. A generation of Black and brown New Yorkers look at police officers as impediments to their daily routine rather than as protectors of their communities.

In 2008, CCR filed a second class action—*Floyd v. City of New York*—challenging the constitutionality of the stop-and-frisk practice.² In October 2011, a federal judge in the Southern District of New York ruled the case should move forward to trial, writing that the case “presents an issue of great public concern.”³ CCR is also active in a New York City-wide coalition engaging in State and local legislative advocacy to curb biased-based policing,⁴ including the racially motivated stop-and-frisk practice.

The data-reporting requirements of the prior settlement, similar to what the End Racial Profiling Act seeks to achieve, were critical to show the racial disparity and true scope of the problem. Now, the New York City Council as well as advocates, legal organizations and community members can make informed choices regarding one of the NYPD’s cornerstone law

¹ Peart Nicholas, “Why is the N.Y.P.D. After Me?”, Opinion, *New York Times*, December 17, 2011, available at: <http://www.nytimes.com/2011/12/18/opinion/sunday/young-black-and-frisked-by-the-nypd.html?pagewanted=all>.

² For more information related to *Floyd v. City of New York*-08-cv-1034, visit CCR’s case page at www.ccrjustice.org/floyd.

³ *Floyd v. City of New York* 08-cv-1034, Opinion and Order, November 23, 2011.

⁴ “Biased policing” or “biased-based policing” refers to discriminatory enforcement of the law based on categories that include race, color, national origin, gender, religion, age, and sexual orientation. Because it incorporates these categories, it is more broadly applicable than the commonly used term “racial profiling,” which may be understood as referring to discriminatory policing based on race alone.

enforcement tactics. CCR is optimistic that ERPA will aid Congress, State and local officials and advocates across the country to discover systemic problems with police practices and take appropriate measures to resolve any potential race or national origin biased-based policing operations.

B. Surveillance of Arab and Muslim Communities

The systematic NYPD surveillance of Muslim, Arab, and South Asian (MASA) communities in the northeast is another conspicuous and unsettling example of discriminatory police practices. Recent revelations by the Associated Press (AP) prove that the NYPD, with the assistance of the Central Intelligence Agency (CIA) has been engaging in an organized and expansive surveillance program targeting MASA communities because of their religious and ethnic identities and countries of origin.⁵ In fact, the NYPD has mapped, infiltrated, and surveilled every aspect of daily life for members of MASA communities, no matter how innocent or mundane. Even fieldtrips have been infiltrated so that Muslim students' speech and religious activities could be monitored and documented.⁶

There can be no doubt that the surveillance program was tethered solely to identity as a Muslim or what were euphemistically called "Ancestries of Interest."⁷ The NYPD's own documents bear this out. The blanket profiling of the MASA community on the basis of religion, national origin and ethnicity is wrong. It renders otherwise constitutionally protected activities –

⁵ For the full list of Associated Press articles on its probe into the NYPD's surveillance program (beginning August 23, 2011), visit <http://www.ap.org/Index/AP-In-The-News/NYPD>

⁶ Hawley, Chris, "NYPD monitored Muslim students all over Northeast," *Associated Press*, February 18, 2012, available at: <http://www.ap.org/Content/AP-In-The-News/2012/NYPD-monitored-Muslim-students-all-over-Northeast>

⁷ New York City Police Department Intelligence Division, "The Demographics Unit" (Microsoft Powerpoint), *Associated Press*, p. 5, available at: <http://wid.ap.org/documents/nypd-demo.pdf> (describing the NYPD Demographic Unit's surveillance methodology, which identified Egyptian, Yemeni, Pakistani, Indian, and several others as "Ancestries of Interest").

speaking freely, congregating, and practicing religion – presumptively criminal and threatening. The concomitant chilling effect threatens to discourage members of MASA communities from freely exercising the rights enshrined in the US Constitution. This is of deep concern to CCR. We are hopeful that ERPA will help expose and eliminate religious, national origin and ethnic-origin based counterterror policing in New York and beyond.

It bears noting that the profiling and targeting of Muslims and Arabs in counter-terrorism policing practices is but a microcosm of a broader problem of religious, national origin and ethnic-based discrimination evident in US counter-terror policies, both domestically and abroad. Muslims have been the accused in most if not all cases of the hundreds of terrorism prosecutions carried out since 9/11. In cases where special conditions have been imposed on the confinement of people accused or convicted of terrorism, whether through Special Administrative Measures or in Communication Management Units, Muslims have again constituted the majority. Outside of US borders, at the US prison at Guantanamo Bay, for example, Muslim foreign citizens make up the entirety of the population held at Guantanamo, which at its peak held nearly 800 men. While the citizens of over 40 countries have been held at Guantanamo, the largest groups came overwhelmingly from certain countries – or particular “ancestries of interest” – including Yemen, Afghanistan, Pakistan, and Saudi Arabia.

From our vantage point, as an organization that has represented and worked with communities victimized by the full spectrum of US counter-terror policies since 9/11, from domestic surveillance and prosecution to military detention and targeted killing, it is undeniable that the brunt of these policies, whether domestic or international, has been felt almost exclusively by Muslims, Arabs, and people of particular national origins. We therefore urge the

Subcommittee to consider discriminatory US counterterrorism practices in their full context and pass ERPA.

RACIAL PROFILING AND IMMIGRATION ENFORCEMENT

Racially discriminatory police policies, like the NYPD's stop-and-frisk practice, have the potential to have an even harsher impact on non-citizens. This is because the Department of Homeland Security's (DHS) Immigration and Customs Enforcement agency (ICE) has taken drastic measures to place local police at the center of immigration enforcement through its ICE Agreements of Cooperation in Communities to Enhance Safety and Security (ICE ACCESS) programs. CCR is currently litigating *National Day Laborer Organizing Network v. ICE*, a multi-agency Freedom of Information Act (FOIA) action to uncover information and data for one of the ICE ACCESS programs known as Secure Communities.⁸

Secure Communities effectively transforms local police officers into federal immigration agents by requiring local police to run the fingerprints of anyone they arrest through DHS's Automated Biometric Identification System (IDENT) database. If there is a "hit" in the database, ICE is notified and can take action to place a detainer on that individual. We have learned through the released FOIA records, Department of Justice investigations and anecdotes from local advocates and lawyers that when there is "no match" within the IDENT database, sometimes a local law enforcement agency will unlawfully hold a perceived non-citizen in its custody despite an order from a criminal court judge to permit release with or without a bond. Other times the local law enforcement agency will notify ICE, or use other ICE ACCESS programs such as the Criminal Alien Program or 287(g), to seek an admission regarding immigration status from a non-citizen.

⁸ For more information about *NDLON v. ICE*, please visit CCR's case page at <http://ccrjustice.org/secure-communities>.

Programs like Secure Communities, especially when combined with well-documented allegations of racial profiling or other biased-based policing, greatly increase the likelihood non-citizens will end up in removal proceedings following unlawful police interactions. CCR is particularly concerned with the ways in which Secure Communities creates an incentive for participating state and local law enforcement agents to engage in racial profiling and pretextual arrests. This is not a hypothetical concern. In addition to litigation like CCR's stop-and frisk challenge, police and sheriff's departments in seventeen jurisdictions are under investigation by the Department of Justice (DOJ) for alleged unlawful police practices.⁹ These DOJ investigations have shed light on the potential for local police to use arrests pursuant to minor offenses, such as traffic infractions, as a pretext for checking a person's immigration status and as a result facilitating the initiation of removal proceedings. For example, the DOJ investigation into the East Haven Police Department (EHPD) in Connecticut discusses the police using

⁹ See e.g., Horwitz, Sari, "Arizona sheriff rejects court monitor; Justice Department threatens to sue," *Washington Post*, April 3, 2012, available at: http://www.washingtonpost.com/politics/arizona-sheriff-rejects-court-monitor-justice-department-threatens-to-sue/2012/04/03/gIQA8P8ztS_story.html (Maricopa County Sheriff's Office, also citing 17 open DOJ investigations); Lee, Trymaine, "Justice Department Report Details Wide Range of Abuses by New Orleans Police Department," *Huffington Post*, March 18, 2011, available at: http://www.huffingtonpost.com/2011/03/18/justice-department-report-new-orleans-police_n_837866.html (New Orleans Police Department); Kaste, Martin, "Faith in Seattle Police 'Shaken' by DOJ Investigation," *National Public Radio*, April 6, 2012, available at: <http://www.npr.org/2012/04/06/150128344/faith-in-seattle-police-shaken-by-doj-investigation> (Seattle Police Department); See also http://www.justice.gov/crt/about/spl/documents/AlabamaHB56Ltr_12-2-11.pdf (DOJ expresses concern for potential racial or national origin profiling against Latinos in Alabama following implementation of HB 56); LoBasso, Randy, "Nutter Updates 'Stop and Frisk' Policy with Executive Orders Amid City Lawsuit Payout," *Philly Weekly*, June 21, 2011 available at: <http://blogs.philadelphiaweekly.com/phillynow/2011/06/21/nutter-updates-%E2%80%99stop-and-frisk%E2%80%99-policy-with-executive-orders-amid-city-lawsuit-payout/> (Settlement in private lawsuit against Philadelphia's stop-and-frisk practices).

“haphazard and uncoordinated immigration enforcement to target Latinos.”¹⁰ DOJ reviewed numerous incident reports where the East Haven Police Department contacted ICE to ascertain immigration status or seek an immigration hold on Latino arrestees under a local policy to do so pursuant to felony arrests. DOJ found that the arrests in all of these incidents were for traffic infractions, rather than felonies, but EHPD officers requested that ICE issue an immigration detainer, and DOJ concluded “these gaps in policy constitute a means for EHPD officers to harass and intimidate the Latino community.”¹¹ The convergence of local police’s involvement with immigration enforcement and the lack of race and national origin reporting by these same police departments allows racial profiling to go unmonitored and unchecked. CCR is hopeful that ERPA will provide one key step towards accountability and transparency in law enforcement actions.

Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color throughout the United States.

CCR is heartened by the Subcommittee’s decision to hold this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

¹⁰ Letter, United States Department of Justice Civil Rights Division, “Re: Investigation of the East Haven Police Department,” December 19, 2011, available at:

http://www.rightsworkinggroup.org/sites/default/files/DOJLetter_EastHavenFindings_Dec2011.pdf

¹¹ *Id.* at 9.

- Congress should pass the “End Racial Profiling Act (S.1670)” and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- Congress should cut the funding for programs like Secure Communities and 287(g) which provide a mechanism for local law enforcement agencies to engage in racial or national origin profiling.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

We welcome the opportunity for further dialogue and discussion about these important issues.

Thank you.

**Hearing on “Ending Racial Profiling in America”
U.S. Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights**

**Written Testimony of Sergio G. Diaz
Chief of Police, City of Riverside, California**

My name is Sergio G. Diaz and I have been the chief of police for the City of Riverside, California since July 2010. Riverside is a city of approximately 305,000 residents, located approximately 60 miles east of Los Angeles. Like many cities in Southern California, the population of Riverside is highly diverse. Also, like many cities throughout our nation, Riverside has had a history of racial tension, both among the various diverse communities in the city, as well as between the community and its police department.

Prior to my appointment as chief of police for Riverside, I spent 33 years in the Los Angeles Police Department; between 1977 and 2010. During that time, I witnessed first-hand the many devastating consequences that occur when there is a loss of trust and confidence between a community and its police department.

The reality and the perception that racial profiling is occurring are not the only sources of mistrust of the police, but they are significant sources. Few things are as devastating to a community’s sense of self as is the conclusion that the public servants who are charged with protecting them do not see its members as individual human beings, but only as potential suspects because of their skin color or ethnicity. This issue transcends good public relations for law enforcement; it goes to the heart of police legitimacy. The American tradition of policing, which dates back to the principles of Sir Robert Peel, depends on the consent, cooperation and collaboration of the majority of the public. In the United States, we accept the premise that the community’s support and cooperation are required for law enforcement professionals to deliver public safety. When a critical mass within a community refuses to provide such support and cooperation, criminals benefit, crime rises and the guilty go unpunished.

When members of the public lack trust in their police department, they don’t cooperate with authorities. Community members are reluctant to report crimes, identify criminals or participate in the judicial process as witnesses. Juries are less likely to believe police witnesses. In fact lack of trust in and hostility toward the police contribute to crime. In our urban centers we have seen an ethos develop that celebrates crime, denigrates the law-abiding and shows contempt for those who would cooperate with the police (“Don’t Snitch” campaigns). These

public attitudes make it harder and less likely that the police will be able to provide public safety and that the courts can deliver justice.

Racial profiling is also illegal and profoundly un-American. Our system of laws depends on the government's respect for individual rights. For local law enforcement officer, that concept is not theoretical. Based on the number of contacts between local police officers and the public, statistically, the greatest opportunity for a civil rights violation by the government is at the point of contact between a uniformed, local police officer and a motorist.

The appropriate application of the 4th and 14th Amendments to the Constitution are the bread and butter of police officers. Seizures of evidence, detentions and arrests that can withstand the scrutiny of our legal processes are the result of intelligent police work, based on a foundation of attention to detail, knowledge of the law, familiarity with local crime trends, critical thinking and public trust. When those factors are present, officers act on individualized suspicion based on suspect behavior; not on racial stereotypes. Racial profiling is the antithesis of good police work. It is lazy, unintelligent, amateurish and unproductive.

The issue of racial profiling has been much discussed in police circles. In particular, for at least 20 years, police practitioners and academics have struggled with the question of how to investigate public complaints that enforcement actions are the result of racial profiling and not based on reasonable suspicion or probable cause. For the most part, those who have studied the issue have concluded that it is practically impossible to determine whether racial profiling is behind a particular enforcement action, or is the cause of general arrest trends. The problem with determining whether racial profiling is occurring is because we often can't discern a human being's motive.

However, to acknowledge that it is difficult to ascertain motive is not to argue that racial profiling never happens. Police officers are recruited from the human race. We know that, sadly, stereotyping people based on race is a phenomenon that is all too common in our society. Non police people racially profile others all the time. Ask any young minority person about the assumptions that strangers make about them. I believe that with time and experience, most police officers grow out of racial profiling. Police work is an experience-intensive occupation and it gives the discerning practitioner plenty of opportunities to discover that racial profiling does not work. Most officers quickly develop the skills necessary to base their actions on legal individualized suspicion.

Law enforcement leaders cannot, however, depend on time and experience to "fix" our officers who come to us with the bad habits of our society. Again, our legitimacy is at stake. We need

to make a priority of eliminating the reality and the perception of racial profiling in our ranks. This will require that all our systems of managing people be used; training, discipline and leadership. We must also do a better job at communicating with the public that we serve.

It was my privilege to be the commanding officer of the LAPD's Training Division in the early 2000's when, in response to a federal civil rights consent decree, we developed and delivered a program of training for all police officers on the topic of constitutional policing, and more specifically addressing the issues of individualized suspicion, probable cause, and the appropriate application of the 4th and 14th Amendments. The LAPD aggressively took on the issue of racial profiling and in the process became a better department. The city of Los Angeles is safer than it has been in many decades. There are many explanations for the drops in crime. I believe, however, that crime has been reduced in Los Angeles, in no small part, because today's LAPD's officers are more likely to exercise solid, legal police work and less likely to rely on racial profiling. The results of that kind of work are obvious; the guilty are more likely to be identified and convicted and the community is less likely to be alienated from the police department that serves it. Constitutional policing gets better results on the street and in the courts. It also begets public trust which in turn results in lower crime and even better policing. It is a virtuous cycle.

On the disciplinary side, notwithstanding the difficulty of positively determining whether or not racial profiling is at work during a particular police action, agencies cannot hesitate to investigate public complaints when they arise or to examine the issue even without a complaint. The public must be reassured that this is an important and non-negotiable topic for police leaders.

Beyond training and discipline, police leaders must use their inspirational skills, their "bully pulpit", to reiterate to their troops that racial profiling is un-American, illegal, doesn't work and won't be tolerated.

At a time, when our society sometimes seems increasingly polarized and intolerant, police leaders are in a unique position to communicate to their internal and external audiences what our values are. As to racial stereotyping by the police and the public, the primary lesson may be found in the words of Victor Frankl, "From all this we may learn that there are two races of men in the world, but only these two - the 'race' of the decent man, and the 'race' of the indecent man. Both are found everywhere; they penetrate into all groups of society."

**Written Testimony to the U.S. Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Human Rights**

Hearing on “Ending Racial Profiling in America”

I. Introduction

Chairman Durbin, and members of the Subcommittee on the Constitution, Civil Rights, and Human Rights:

On behalf of the Chicago office of the Council on American-Islamic Relations (CAIR-Chicago), we commend the Subcommittee's commitment to ending racial profiling in the United States, as well as its acknowledgment that anti-terrorism efforts which target American Muslims have given way to discriminatory policies and practices by law enforcement.

CAIR-Chicago is an independent institution that is the Midwest affiliate of the Council on American-Islamic Relations (CAIR). CAIR is the largest national Muslim civil rights organization whose mission is to defend the religious rights of Muslims in America, with 31 chapters in North America. During its seven (8) years of service, CAIR-Chicago's mission has been to defend civil rights, fight bigotry, and promote tolerance on behalf of Muslims in the United States. We have handled over 2,200 cases of anti-Muslim discrimination, including - but not limited to - employment discrimination in private and public sectors, denial of religious accommodations, housing discrimination, and discriminatory treatment by law enforcement or other state, local, and federal officers.

II. Executive Branch's Divide Between Proclamations to Preserve Muslims' Civil Rights and Infringements on Their Rights

Soon after the September 11, 2001 terrorist attacks, President George W. Bush met with American Muslim leaders and proclaimed the dire need to distinguish between those who committed such attacks and the billions of people who practice Islam:

The face of terror is not the true faith of Islam. That's not what Islam is all about. Islam is peace. These terrorists don't represent peace. They represent evil and war. When we think of Islam we think of a faith that brings comfort to a billion people around the world. Billions of people find comfort and solace and peace. And that's made brothers and sisters out of every race -- out of every race. America counts millions of Muslims amongst our citizens, and Muslims make an incredibly valuable contribution to our country. Muslims are doctors, lawyers, law professors, members of the military, entrepreneurs, shopkeepers, moms and dads.

*And they need to be treated with respect. In our anger and emotion, our fellow Americans must treat each other with respect.*¹

President Obama's Inaugural Address firmly stated: "As for our common defense, we reject as false the choice between our safety and our ideals."² The President explicitly condemned Islamophobia in his speech in Cairo, Egypt in June 2009: "I consider it part of my responsibility as President of the United States to fight against negative stereotypes of Islam wherever they appear."³ According to news reports and Chairman Durbin, in reference to the anniversary of the September 11th attacks in 2010, Attorney General Eric Holder explicitly identified anti-Muslim hate as "the civil rights issue of our time."⁴

Contrary to some commentators' arguments that young Muslim males should be profiled as a means of increasing our nation's security, "there is no reliable empirical evidence that racial profiling is an effective counterterrorism measure and no solid theoretical reason why it would be."⁵ In fact, evidence suggests that the long-term effects of such profiling will be increases in terrorist attacks by those who fail to fit the profile.⁶ As New York City Police Commissioner Raymond Kelly initially stated, profiling terrorists based on race or religion would not have prevented the September 11th attacks or the London bombings in July 2005.⁷

Despite the Executive Branch's strong admonitions against the collective treatment of Muslims in the United States less favorably than other citizens, law enforcement officials on both federal and local levels have engaged in policies or practices which profile Muslims as a security threat. As detailed below, such efforts began during the Bush Administration via targeting individuals from majority Muslim countries for special immigration scrutiny and have continued during the Obama Administration with surreptitious surveillance of Muslim American communities. These flawed security

¹ George W. Bush, Address at Islamic Center of Washington (Sept. 17, 2001), available at <http://www.americanrhetoric.com/speeches/gwbush911islamispence.htm>.

² Barack H. Obama, Inaugural Address (Jan. 19, 2009), available at <http://www.whitehouse.gov/blog/inaugural-address>.

³ Barack H. Obama, Remarks by the President at Cairo University (June 4, 2009), available at <http://www.whitehouse.gov/video/President-Obama-Speaks-to-the-Muslim-World-from-Cairo-Egypt#transcript>.

⁴ Michelle Boorstein & Felicia Sonmez, *Previewing Dick Durbin's Hearing on the Rights of American Muslims*, Wash. Post, Mar. 28, 2011, available at http://www.washingtonpost.com/blogs/2chambers/post/previewing-dick-durbins-hearing-on-the-rights-of-american-muslims/2011/03/28/AFJ5wKpB_blog.html.

⁵ Barnard E. Harcourt, *Muslim Profiles Post 9/11: Is Racial Profiling an Effective Counterterrorist Measure and Does it Violate the Right to Be Free from Discrimination?* 3 (The Law Sch. Univ. of Chicago, Pub. Law & Legal Theory, Working Paper No. 123, 2006), available at http://ssrn.com/abstract_id=896153.

⁶ *Id.* at 18-19.

⁷ Malcolm Gladwell, *Troublemakers: What Pit Bulls Can Teach Us about Profiling*, The New Yorker, Feb. 6, 2006, available at http://www.newyorker.com/archive/2006/02/06/060206fa_fact#ixzz1oZ7aasgp.

measures not only subject individuals to civil rights violations but propagate stereotypes of Muslim Americans that have far reaching and long lasting effects for all Muslims in this country.

III. Failure of Special Registration Program

In August 2002, the Bush Administration implemented a new program called National Security Entry-Exit Registry System (NSEERS), which was purportedly created to track border entries and exits.⁸ As part of this program, beginning in November 2002, a new policy called Special Registration was implemented – male “non-immigrants” (nationals of country in US on visa, etc.) ages 16 and above from twenty-four (24) Muslim-majority countries and North Korea were required to report to immigration offices or face arrest, detention, or deportation.⁹ Special Registration required fingerprinting, photographing, and interrogation under oath for all individuals subject to the new requirements, regardless of the immigration status of the non-citizens.¹⁰

By September 2003, the US government collected information on more than 80,000 people, with at least 13,799 of them in deportation proceedings.¹¹ Ultimately, the process never uncovered any terrorists.¹²

After much outcry on the Special Registration program, in December 2003, the Department of Homeland Security suspended some of the requirements, such as annual re-registration for all registrants and follow-up interviews for port-of-entry registrants.¹³ Until April 28, 2011, those who were subject to Special Registration in 2002 and who are non-citizens were still required to only depart from specially designated ports and comply with special departure processing, such as being extensively interviewed by Customs & Border Patrol.¹⁴

The consensus of law enforcement experts is that Special Registration was a failure for addressing any potential threats of terrorism.¹⁵ Instead, Muslim leaders outside of the

⁸ Registration & Monitoring of Certain Nonimmigrants, 67 Fed. Reg. 52584 (Aug. 12, 2002).

⁹ Registration of Certain Nonimmigrant Aliens from Designated Countries, 67 Fed. Reg. 67766 (Nov. 6, 2002); 67 Fed. Reg. 70526 (Nov. 22, 2002); 67 Fed. Reg. 77642 (Dec. 18, 2002); 68 Fed. Reg. 2363 (Jan. 16, 2003).

¹⁰ Penn. State Univ. Dickerson Sch. of Law, Ctr. for Immigrants' Rights, *NSEERS: The Consequences of America's Efforts to Secure Its Borders* 15-16 (2009), available at <http://www.adc.org/PDF/nseerspaper.pdf>.

¹¹ *Id.* at 9.

¹² *Id.* at 11.

¹³ Department of Homeland Security, Suspending the 30-Day and Annual Interview Requirements from the Special Registration Process for Certain Nonimmigrants, 68 Fed. Reg. 67578 (Dec. 2, 2003).

¹⁴ Ctr. for Immigrants' Rights, *supra* note 10, at 18; Removing Designated Countries from the National Security Entry-Exit Registration System (NSEERS), 76 Fed. Reg. 23830 (Apr. 28, 2011).

¹⁵ Ctr. for Immigrants' Rights, *supra* note 10, at 23-24.

US were outraged, and a former DHS official has called the program “a blatantly racist scheme . . . It was in effect a huge indictment of the FBI, which had no sources or contacts in local Muslim communities, and therefore no alternatives to just rounding people up.”¹⁶

Despite the eventual dismantlement of the NSEERS program, any Muslim immigrant who failed to comply in any way with the special registration procedures in place in 2002 and 2003 may very well still be subject to deportation.¹⁷ CAIR-Chicago has received recent complaints regarding this issue, and thus the ineffective Special Registration program has only resulted in ensuring that many Muslim individuals seeking to establish permanent residency were denied equitable access to a process afforded to everyone else.

IV. New York Surveillance Program

On August 23, 2011, the Associated Press reported that David Cohen, a veteran CIA officer, was the architect of a New York Police Department (NYPD) intelligence program beginning in at least 2003, where the NYPD dispatched undercover officers into minority neighborhoods as part of a human mapping program.¹⁸ Police officers, posing as civilians and acting as informants, blended into ethnic neighborhoods and organizations to observe activities to build cases against people suspected of terrorist activity.¹⁹ Muslim student associations, mosques, and businesses were also infiltrated.²⁰

Informants called “mosque crawlers” monitored weekly sermons and reported on what was said.²¹ NYPD produced an analytical report on every mosque within 100 miles.²²

In October 2011, the Associated Press exposed the NYPD investigating Muslims who change their names to sound more American, as immigrants have done for generations, or those who adopt Arabic names as signs of their faith.²³

¹⁶ Edward Alden, *Immigration Control – Special Registration’s Legacy*, New Am. Media, Oct. 4, 2008, available at

http://news.newamericamedia.org/news/view_article.html?article_id=d179e2311af82222f49e8e9299c83490.

¹⁷ Ctr. for Immigrants’ Rights, *supra* note 10, at 18.

¹⁸ Matt Apuzzo & Adam Goldman, *With CIA Help, NYPD Moves Covertly in Muslim Areas*, Associated Press, Aug. 23, 2011, available at <http://ap.org/Content/AP-In-The-News/2011/With-CIA-help-NYPD-moves-covertly-in-Muslim-areas>.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Matt Apuzzo & Adam Goldman, *NYPD Keeps Files on Muslims Who Change Their Names*, Associated Press, Oct. 26, 2011, available at <http://ap.org/Content/AP-In-The-News/2011/NYPD-keeps-files-on-Muslims-who-change-their-names>.

The impact of NYPD's program has been that attendance is noticeably down in mosques and political discussion among students has been stifled.²⁴ These infiltration and surveillance tactics have the potential to break down American-Muslim community interaction and the decrease of substantial community organization and development.

The NYPD surveillance program violates every fundamental constitutional right of US persons to be free from government interference in their religious and political activities, as well as free from unreasonable searches and seizures (i.e., without probable cause). Beyond the legal implications, racial and religious profiling leads to an inherent distrust that can only harm our national security.

Unfortunately, the NYPD's surveillance of Muslim communities by law enforcement is not an isolated program. The FBI's use of informants to infiltrate mosques has not abated since the September 11th terrorist attacks, leading many in American Muslim communities to distrust any contact with federal law enforcement.²⁵ Furthermore, many FBI agents maintain a rudimentary ideology of what constitutes an "extremist" or "radical" Muslim, failing to reflect the reality of how American Muslims practice their religion.²⁶

At a recent CAIR-Chicago banquet, Chicago Police Department Superintendent Garry McCarthy responded to news reports of his knowledge of the NYPD program during his tenure as New Jersey Superintendent by strongly opposing any profiling tactics in Chicago.²⁷ While we are grateful to have such commitment on a local level, CAIR-Chicago's experiences with issues such as FBI interrogations mandates congressional intervention through the End Racial Profiling Act.

V. FBI Interrogation of Chicagoland Muslim Community Members

CAIR-Chicago regularly receives complaints from Muslim community members regarding FBI agents seeking to interview them. In 2011, our FBI complaints consisted of 24% of all government-based complaints (including citizenship delay, other immigration issues, and local law enforcement issues). By contrast, only 9% of our government-based complaints in 2009 were related to FBI issues.

²⁴ Arun Venugopal, *Muslims Say NYPD Surveillance Is Already Changing Behavior*, WNYC News Blog, Feb. 29, 2012, available at <http://www.wnyc.org/blogs/wnyc-news-blog/2012/feb/29/muslims-say-nypd-surveillance-already-changing-behavior/>.

²⁵ Jerry Markon, *Mosque Infiltration Feeds Muslims' Distrust of FBI*, Wash. Post, Dec. 5, 2010, available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/12/04/AR2010120403720.html>

²⁶ Arun Kundnani, *The FBI's 'Good' Muslims*, The Nation, Sept. 19, 2011, at 18-20.

²⁷ *Chicago Police Chief Pledges No NYPD-Style Spying*, Wall St. J., Mar. 5, 2012.

By many accounts, FBI agents contact members of the Chicagoland Muslim communities under the pretense of seeking to establish “better relations” with these communities, which spans across nationalities of all types of Middle Eastern and South Asian countries. In fact, when individuals fail to request the presence of an attorney, agents question them extensively about their religious and political activities, with the following examples:

- Which mosque do you attend?
- Do you find your imam to be extremist/radical?
- In light of your beard/headscarf, would you consider yourself to be more conservative?
- Which scholars do you study?
- Have you ever studied the teachings of Anwar Al-Awlaki?
- Do you agree with Anwar Al-Awlaki’s more recent writings [condemning the US]?
- Would you consider yourself to be an extremist/radical?
- Of what organizations are you a member?

More recently, FBI agents have referenced the Arab revolutionary movements abroad as a basis for questioning. Ultimately, complainants who respond to such questions in a satisfactory manner to FBI agents are sometimes requested to become informants. Muslims who have not attained US citizenship fear that a failure to comply with such requests will lead to devastating consequences on their immigration status, while those with the protections of US citizenship remain concerned that they will be placed on no-fly lists for non-compliance. In light of the large amount of discretion currently afforded to USCIS and DHS, such fears are not unfounded.

CAIR-Chicago regularly advises Muslim individuals to report any potential illegal activity to local law enforcement and the FBI, and we have assisted in this process. FBI infiltration of lawful activities protected by the First and Fourth Amendments, however, perpetuates the wrongheaded and discriminatory practices implemented immediately after September 11, 2001. To truly strengthen our national security, law enforcement must cease targeting Muslims on the basis of their religion, national origin, or race, and instead foster partnerships with Muslim community leaders that rely on an understanding of Islam proclaimed by Presidents George W. Bush and Obama.

VI. Local Law Enforcement Profiling of Muslims

CAIR-Chicago also receives reports of local police profiling for Chicagoland Muslims, consisting of approximately 11-12% of the government-based complaints received. Examples of such complaints include:

- In August 2008, a Pakistani college student drove into a Chicago McDonald’s with four (4) other college aged males (3 African-Americans and 1 from Kenya).

A police officer told him to pull over, and another officer asked where he was from. When the student identified his residence near Chicago, the officer stated, "No, what country?" As soon as the student identified Pakistan as his country of origin, the police ordered everyone out of the car and obtained their identification. Both the driver and the Kenyan were told to stand with their hands on the car, while the others were permitted to stand to the side. The officers accused them of drinking and searched the car without their permission. The driver was issued a citation for not wearing his seat belt. The officer who questioned the driver's national origin loudly proclaimed "God Bless America" at the end of the incident.

- In March 2010, four (4) young Muslim boys were returning home from the movie theater on a Friday night when they were approached by police officer in a north suburb of Chicago. The police stated that they were investigating a local theft at a convenience store. Three of the boys were brought to the police station, at which time the police questioned them about Islamic extremism and information regarding a local mosque. The officers threatened that if the boys did not answer the questions, their car would be impounded and they would be detained until Monday morning. They were eventually released on condition they speak to an FBI agent on a specified date and time. The boys ultimately learned that the FBI was targeting a local mosque as part of a credit card theft ring investigation, and police had been profiling Muslims in the area.
- In April 2010, a 19-year-old African American Muslim male was driving in a south suburb of Chicago, and his cousin was in a car behind him. A plainclothes police officer stopped him, pulled him out of the car at gunpoint, threw him on the ground, and handcuffed him. Four (4) police cars ultimately arrived at the scene, and they threw electronic DJ equipment out of the car. After handcuffing the victim and searching his car, the officers stated that there was nothing problematic, but the victim was directed to come to the police station so that tickets could be issued. When he arrived at the station, the victim was issued tickets for failure to wear a seatbelt, failure to yield to an emergency vehicle, and failure to produce proof of insurance. While the police claimed that the victim had failed to pull over when the officers engaged their sirens and had not stopped at stop signs, both the victim and his cousin verified that no sirens were used by the officers and that they had not missed any stop signs. The officers failed to appear in court, so all of the tickets were dismissed. The victim's mother believed that her son was targeted because the car was registered in her name, a Muslim name.

Generally, prosecuting claims of law enforcement's profiling of Muslims is very difficult due to the financial and legal resources required as well as victims preferring not to place themselves under the scrutiny of litigation, and the difficulty of ensuring sufficient evidence from which claims could be proven in a court of law. American Muslims

require a proactive measure to compel law enforcement to cease its practices of racial and religious profiling

VII. Conclusion

CAIR-Chicago respectfully requests the Subcommittee on the Constitution, Civil Rights, and Human Rights to advocate for passage of the End Racial Profiling Act. Firm measures must be instituted by Congress to cease the rudimentary and ineffective practices of placing US persons under scrutiny based solely on their race, religion, national origin, and other protected characteristics.

VIII. Addendum

Why Racial Profiling Makes for Dumb Security

By Ahmed Rehab (Huffington Post http://www.huffingtonpost.com/ahmed-rehab/why-racial-profiling-make_b_414884.html, January 7, 2010)

By now, I am sure most people are privy to the raging public debate on racial profiling, reignited courtesy of a young Nigerian Muslim male's attempt to detonate an incendiary device aboard a Detroit-bound Northwest flight last Christmas.

After Umar Farouk Abdulmutallab slipped by airport security only to be stopped thanks to the vigilance of fellow passengers, a debate on the *effectiveness* of airport security and counter-terrorism intelligence is no doubt in order.

But trying to fix a problem without actually fixing the problem is misguided. Trying to fix it by introducing a new problem is dumb.

This guy seemed to have left every clue short of raising his hand and proclaiming, "Arrest me, I am a terrorist!"

Can someone explain to me how he managed to purchase a one way ticket, pay for it in cash, board the plane with no luggage, have his own father report him as a radicalized threat to a CIA base in Nigeria, be [denied a visa to the UK](#) where he previously lived and worked, and on top of that be on an active [US terror watch list for two years](#), yet still not be flagged by the system as a security threat?

And can someone explain to me how after those six glaring red flags were missed - not to mention the explosive material in his underwear - the debate today is not about why

and how they were missed, but about whether he could have been flagged for being of a certain skin color, hair texture, place of birth, faith, or namesake?

The racial profiling argument is lazy and unimaginative; most of all it is irresponsible because it evades the real problem staring us in the face: a fatal breakdown in communication between our intelligence units. Ironically, this is a problem so troubling that an entire new department, the National Homeland Security Department, was created with the sole mission to address it.

Make no mistake about it; it is hardly ever a case of not having the necessary Intelligence. Even in the case of the 9/11 hijackers, we had security files on each of the 19 hijackers. The problem is in our repeated failure to act upon intelligence between our fingertips in a timely manner. Introducing new and untested wild card measures will not correct what's failing, though the debate makes for a convenient distraction from bearing responsibility.

The idea that there are some racial profiles we need to check out thoroughly in order to conclusively determine that they do not have bombs on them is not what troubles me most. What truly troubles me is the corollary of that proposition: that we know of a way to conclusively determine whether someone has a bomb on them or not but we are going to exempt most people from it because we do not deem them suspicious enough, or we do not have the resources for it. How is that supposed to make us feel safer?

There is nothing comforting about a de facto admission by security officials that our primary airport security lines are a prop up and that secondary ones are where it's really at. So, what's the point of primary security? Placebo? Clearly, what will make us safer is beefing up our primary security measures so that they actually do what they are supposed to do for the entire population (conclusively determine that no bombs or explosive material makes it through). It certainly isn't adding a secondary layer that, by design, most passengers will end up skipping. As good as that layer may be it won't be good enough, given that it is only partially applied to the passenger population.

Any security analyst will tell you that if we have a national security defense system that waits until an airport security gate to identify terrorists, then it's only a matter of time before it's good night and good luck. But even at security gates, our last-guard measures need to be scientific and objective, like improving bomb detecting machines; you know, the ones that didn't beep when dynamite underpants stepped through. Objective and scientific measures however do not include part-timers eyeballing passengers for people who look like characters out of Disney's Aladdin or whatever image their mind conjures of what a terror suspect looks like that day of the week.

So what *do* they look like anyway?

Presumably we are talking about Muslim men, but short of Muslims wearing green arm bands with a crescent and a star logo, what does that really mean?

Any Middle-Eastern looking person with an exotic sounding name?

Fine, this may work, provided we can count on Middle-Eastern terrorists with exotic sounding names being unaware of our little precautionary measure. Nobody tell them.

As for non-terrorists who fit that profile (which would unfortunately include Jesus himself should he come back and try to enter the United States with his real name Yeshua Bin Yosef), get ready to take one for the team.

An African looking person with an exotic sounding name?

Well, fortunately for Barack Obama, he does not work for say Microsoft or Motorola, instead of the White House, otherwise he'd be spending his days at airports.

But never mind the absurdity in a system that is unfriendly to people who look like our president and Jesus, here's the real problem with racial profiling: it is ineffective. There are two main reasons for that, the first is scientific as [concluded by what few studies on racial profiling](#) have taken place.

The second is logical:

Think about it, the purpose of security checkpoints is to prevent future terror attacks not past ones. If it is future ones, then should we *limit* ourselves to what *did* happen or would it make more sense to address the possibilities of what *could* happen?

This is not a probability game, one improbable situation is enough to do the damage we hope to prevent.

Racial profiling is an elusive game, and Al Qaeda can always racially profile too by fielding unlikely phenotypes to their deadly missions.

Do we really want a system where we are always one step behind?

Say we do go for the bearded brown guy, Al Qaeda will send a clean-shaven black one next. Oh wait, they already did; in fact, one that looks like your average all-state American high school athlete. Will that now be the next profile to look out for?

And when we've flagged all Middle-Eastern and Black men with exotic names, they are going to send a white British guy with an Anglo name like Richard Reid. Oh wait, they already did that. And after they send a Russian recruit and a Chinese one and we start profiling all men of all races, they'll recruit a woman. Oh wait, there were two cases of women blowing up Russian airliners in 2004.

At this rate, the only profile that won't be racially profiled is that Scandinavian grandmother everyone keeps talking about.

Of course, after billions are spent and humanity inconvenienced to no avail, we could always go back to actually acting upon hard intelligence and actually detecting bomb material at airports.

Or, we could do that now.



**Written Statement of the
Council on American-Islamic Relations**

On

“Ending Racial Profiling in America”

Submitted to the

**U.S. Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights**

April 17, 2012

Testimony Prepared by Robert S. McCaw
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Chairman Durbin, Ranking Member Graham and other esteemed members of the Subcommittee: The Council on American-Islamic Relations (CAIR) thanks you for holding this vital hearing on ending racial profiling in America and respectfully submits this written testimony for your consideration.

Introduction

CAIR is America's largest Muslim civil liberties and advocacy organization. Its mission is to enhance the understanding of Islam, encourage dialogue, protect civil liberties, empower American Muslims, and build coalitions that promote justice and mutual understanding. CAIR is committed to protecting the civil rights of all Americans, regardless of faith. CAIR supports domestic policies that promote civil rights, diversity and freedom of religion. CAIR opposes domestic policies that limit civil rights, permit racial, ethnic or religious profiling, infringe on due process, or that prevent Muslims and others from participating fully in American civic life.

CAIR, like numerous other civil rights and advocacy organizations, recognizes the critical need for Congress to take action and put an end to racial and religious profiling by federal and state law enforcement agencies. The U.S. Constitution requires that federal and state law enforcement agencies respect the rights and freedoms of "all persons," regardless of race, religion, ethnicity, or national origin. For reasons that will be outlined in this testimony, CAIR respectfully requests that Congress enact the End Racial Profiling Act (S.1670/H.R. 3618) introduced by Senator Cardin and Representative Conyers, and revise the U.S. Department of Justice (DOJ) Civil Rights Division's Guidance Regarding the Use of Race by Federal Law Enforcement Agencies.

Background

Since the tragic events of September 11, 2001, CAIR has received hundreds of reports from innocent Americans who have been wrongfully targeted by federal, state and local law enforcement officials because of their race, religion or national origin. They have been searched, investigated and detained without reasonable suspicion. Since then, the American Muslim community has become the unfair target of numerous federal and state counterterrorism initiatives and surveillance programs.

In 2001, President George W. Bush proclaimed in his State of the Union address, "[Racial profiling is] wrong, and we will end it in America." In 2003, the DOJ Civil Rights Division made a partial attempt to put a stop to racial profiling by issuing the Guidance Regarding the Use of Race by Federal Law Enforcement Agencies. The DOJ guidance forbids federal law enforcement agencies from engaging in racial profiling.

However the DOJ guidance remains ineffective because it does not prohibit profiling based on religion or national origin, it includes open-ended loopholes that allow federal law enforcement to profile at U.S. borders and for reasons of national security, it is not applicable to state and local law enforcement agencies that work in cooperation with federal agencies or receive

federal funds, and it lacks any enforcement mechanisms because it does not carry the same authority as official policy. In addition, the DOJ guidance permits the U.S. Immigration Customs and Border Enforcement (ICE) and U.S. Customs and Border Protection (CBP) to continue to use ethnicity as a “relevant factor” in decisions to make immigration stops.

The repeated detention and questioning of Muslims about their religious beliefs and practices by federal agents at and inside the United States-Canada border led the Michigan chapter of CAIR to file a federal lawsuit against the Federal Bureau of Investigation (FBI) and CBP. The lawsuit asserts that such questioning violated the plaintiffs’ First Amendment rights.

Additional acts of racial and religious profiling by the nation’s federal and state law enforcement agencies recently highlighted in the national press include the American Civil Liberties Union revealing that FBI agents had gathered intelligence on constitutionally-protected activities at mosques during community outreach events; the FBI infiltrating mainstream mosques in Southern California with an agent provocateur to target Muslims for surveillance solely because of their religion; and the *Associated Press* revealing that the New York City Police Department, under the direction of individuals linked to the Central Intelligence Agency, has been spying on Muslim communities and houses of worship, leaders and student groups not suspected of committing any crimes.

In 2009, President Obama pledged to “ban racial profiling by federal law enforcement agencies and provide federal incentives to state and local police departments to prohibit the practice.” While the DOJ has not yet revised the guidance on racial profiling, CAIR, along with congressional leaders and civil rights groups, continues to urge the president and attorney general to put a stop to racial profiling and revise the DOJ guidance.

CAIR believes that racial and religious profiling is not effective law enforcement and narrowly focuses the nation’s law enforcement resources away from following actual leads and preventing illegal and violent acts. Profiling violates the basic constitutional protections of the First, Fourth and Fourteenth Amendments. Profiling also hinders counterterrorism efforts against antigovernment extremists. For example, Timothy McVeigh (Oklahoma City Bombing, 1995), John Bedell (Pentagon Shooting, 2010), and Joseph Stack (IRS - Austin, TX Suicide Bombing, 2010) would not have been identified by racial or religious profiling.

Recommendations

There are two important steps Congress can take to support comprehensive reform of the nation’s law enforcement policies and practices dealing with racial and religious profiling. To safeguard our communities’ constitutional rights and freedoms, CAIR offers the following recommendations.

Congress should enact the End Racial Profiling Act of 2011. If signed into law, the act would require that:

- Federal law enforcement agencies maintain policies and procedures eliminating racial and religious profiling and any preexisting practices of profiling.
- State and local governments applying for federal law enforcement assistance grants certify that they maintain similar policies and practices to eliminate racial profiling.
- State and local governments establish procedures and programs for addressing complaints of racial profiling.
- The attorney general collect data on hit rates for stops and searches by law enforcement agents. He or she must also create grants to develop and implement best practice devices and systems to eliminate racial profiling.

Congress should request the DOJ Civil Rights Division to revise the Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to:

- Include measures that prevent profiling based on religion and national origin.
- Require federal law enforcement agencies to maintain policies and procedures that eliminate profiling and any preexisting practices of profiling.
- Require states and local governments working in cooperation with federal law enforcement agencies or seeking federal grants to certify that they maintain policies and practices to eliminate profiling.
- Require state and local governments to establish procedures and programs for addressing complaints of profiling.
- Eliminate loopholes that permit profiling at U.S. borders and for reasons of national security.
- Ensure that the DOJ guidance is enforceable.

Conclusion

CAIR believes that it is the civic duty of every American to work with law enforcement to protect our nation. Equally important, it is the responsibility of our nation's law enforcement to protect the nation while respecting the rights of individuals. Likewise, it is the responsibility of the nation's elected officials to develop clear and concise laws, policies and practices for law enforcement agencies to adhere to while balancing the need for security and the rights enshrined in the U.S. Constitution.

Delta Sigma Theta Sorority, Incorporated

A Public Service Sorority Founded in 1913

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**United States Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Human Rights
Hearing on “Ending Racial Profiling in America”
Tuesday, April 17, 2012**

**Testimony by Cynthia Butler McIntyre
President, Delta Sigma Theta Sorority, Incorporated**

Good Morning Chairman Durbin, Ranking Member Graham and distinguished members of this subcommittee. Delta Sigma Theta Sorority, Incorporated is pleased to have the opportunity to present testimony at this hearing on “Ending Racial Profiling in America.” I proudly submit this testimony on behalf of the members of Delta Sigma Theta Sorority, in the spirit of our Founders, who were great champions of social justice, and in the spirit and memory of members Barbara Jordan, Shirley Chisholm and Stephanie Tubbs Jones, also great champions of civil rights and social justice, who served honorably in the United States House of Representatives.

Mr. Chairman, I want to thank you for holding a hearing on this profoundly important issue, which is just as important today as it was when the term “racial profiling” became part of our lexicon. The members of Delta do not come lightly to this issue of calling for an end to racial profiling in America. Delta Sigma Theta is an international organization committed to community service, social justice and racial and sexual equality. Our history is long and deep. The first public act of commitment to justice was performed by the Founders of Delta, who participated in the Women's Suffrage March in Washington D.C., in March 1913. Our members include many notable Deltas who committed their life's work to racial and sexual equality and others who continue to do so. Mr. Chairman, you and the other members of this subcommittee know who they are. A past National President of Delta, The Honorable Marcia L. Fudge, currently serves as a member of the United States House of Representatives. Other members who serve or have served this country honorably include Brigadier General Hazel Johnson-Brown, Patricia Roberts Harris, Dorothy Irene Height, Jewel Lafontant, Frankie

Freeman, Elaine Jones, and Alexis Herman (to name a few). Some dedicated their lives, and created paths to justice and equality for all. Some, such as members Freeman and Jones, continue to do so.

Mr. Chairman, racial profiling in American has a human face, and that face tragically is all too often an African-American man. The members of Delta know him. We grew up with him. We married him. We are his mother, his sister, his cousin, his niece. He is our neighbor or our pastor. We know that face well, and it haunts us every time we read or hear about another case of racial profiling. So, we applaud you and the members of this subcommittee for recognizing the urgent need to examine this decades-long phenomenon, which is steeped in America's history of racial injustice.

In that regard, it is important that the members of the subcommittee contextually understand what it means to be racially profiled, which by its very nature deprives a person of their human dignity and the fundamental rights of life, liberty, and the pursuit of happiness. At its core, racial profiling promotes prejudices through the inaccurate gathering of data solely based on the color of one's skin, ethnicity, or racial background. Mr. Chairman, silence is often associated with acquiescence. Any failure of Congress to take decisive action to protect a targeted group of citizens sends a tacit message to the larger society that the targeted group is not entitled to co-exist with others and be treated with respect and dignity as full citizens of our great country. Under those circumstances, the targeted group feels constantly under siege and is left feeling vulnerable and alone to figure out how it must survive.

The recent tragic and senseless killing of Trayvon Martin in Sanford, Florida and the random slayings two weeks ago of African-Americans in Tulsa, Oklahoma, are but two vivid examples of the violent outcomes of racial stereotyping and hatred. Racial profiling affects the entire targeted group, not just the individuals of any specific incident. As an organization of African-American women, we empathize with the Martin family. Trayvon could have been our son, our nephew, our cousin, and, if not a blood relative, our god-child or our neighbor. And the families of the predominantly black neighborhood in Tulsa, Oklahoma are the neighbors of our Tulsa members and representative of our neighbors in black communities across America. For us, racial profiling is deeply personal and affects us in a most intimate way.

Given all of this, where do we go from here? Surely, violence is not the answer. This nation has experienced widespread violence and deaths from gun shots, independent of the cover of a “stand your ground” law. Americans cannot take up arms and shoot every person they do not like at the moment. Perhaps we should have a national healing that can bring all of us to the realization that racial, cultural and ethnic differences are the diverse ingredients that bind the foundation and cornerstones of democracy in America. This type of change, of course, must come from the heart and cannot be legislated, but sound legislation, such as the End Racial Profiling Act, will be an important step in the right direction.

Americans value life, liberty and the ability to co-exist and pursue happiness freely. In that context, our laws must reflect our values. Through the passage of legislation to end racial profiling, Congress would send a message to all Americans that racial stereotyping and hatred will not be tolerated, and our global community will understand that we are a nation that embraces and enforces equality and fairness towards our fellow person.

Chairman Durbin and members of the subcommittee, the members of Delta Sigma Theta maintain our commitment to upholding the rich history of our fight for justice and equality. We will continue to marshal our collective strength to address the needs and challenges of all persons in our nation.

Thank you for taking the time to hear us, and we look forward to an expedient resolve in the passage of the End Racial Profiling Act.

**Racial Profiling and the War on Drugs:
How Biased Policing Undermines Civil Rights,
Public Health and Public Safety**



**Hearing on “Ending Racial Profiling in America”
U.S. Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Human Rights**

Tuesday, April 24, 2012

Submitted by
Jasmine L. Tyler, Deputy Director of National Affairs, Drug Policy Alliance

Chairman Durbin, Ranking Member Graham, and members of the Subcommittee:

I am honored to submit this testimony for the record on behalf of the Drug Policy Alliance regarding hearing on racial profiling that occurred on April 17, 2011. The Drug Policy Alliance is the nation's leading organization promoting alternatives to current drug policies that are grounded in science, compassion, health and human rights. Our supporters are individuals who believe the war on drugs is doing more harm than good. We work to ensure that our nation's drug policies no longer arrest, incarcerate, disenfranchise and otherwise harm millions – particularly young people and people of color who are disproportionately affected by the war on drugs through policing practices such as racial profiling. The Drug Policy Alliance works to expose the vastly disproportionate impact of the drug war on communities of color and we urge you to pass legislation aimed at eliminating racial profiling.

Last June marked 40 years since President Nixon declared a "war on drugs," a war that has cost us more than a trillion dollars. More than 500,000 Americans are behind bars for nothing more than a nonviolent drug law violation, at a time when states are cutting essential services that compromise public safety. In the last four decades, just as with alcohol Prohibition, the threat of arrest and harsh punishment has not deterred drug use. According to the recent report released by the Global Commission on Drug Policy, whose members include Paul Volcker, former Chairman of the Federal Reserve; George Schultz, former Secretary of State; Kofi Annan, the former Secretary General of the United Nations; and five former heads of state, the U.S. would do better to “replace criminalization and punishment of people who use drugs with the offer of health and treatment services to those who need them.”¹

The drug war has produced profoundly unequal outcomes across racial groups, manifested through racial discrimination by law enforcement that culminates in misery suffered by communities of color. Although rates of drug use and selling are comparable across racial lines, people of color are far more likely to be stopped, searched, arrested, prosecuted, convicted and incarcerated for drug law violations than are whites. This has led many to conclude that mass criminalization of people of color, particularly young African American men, is as profound a system of racial control as the Jim Crow laws were in this country until the mid-1960s.

The U.S. has nearly five percent of the world's population but almost 25 percent of its prison population. That is not sustainable, either financially or morally. While the U.S. prison population explosion can be attributed to sentencing policies, such as mandatory minimums and abolition of parole, it is important to note that each person sentenced to serve time in a jail or prison was first arrested. One of the fiercest and oldest forms of policing, racial profiling, has consistently

been perpetrated on African American communities under the guise of drug law enforcement. These policies are known by many in policy and academia as the “new Jim Crow”. Racial profiling is often used in choosing targets for stop and frisk searches, car stops and searches, and other methods of surveillance in drug law enforcement.

Following the attacks of September 11, 2001, the problem of racial profiling took on a different tenor, as immigrants, Americans of Middle Eastern descent, and Muslims faced new levels of harassment and persecution. Latinos are also aggressively targeted through racial profiling, especially since the recent increase in anti-immigration fervor. Law enforcement often uses the pretext of drug law enforcement, such as the use of the high intensity drug trafficking area (HIDTA) designation, to monitor these communities. More than 50 percent of the U.S. population now lives in a HIDTA, begging the question, “high intensity in comparison to what?” In February of this year, the Associated Press reported, based on internal New York Police Department documents and interviews with current and former officials, that “millions of dollars” from the HIDTA program were actually used to “pay for New York Police Department programs that put entire American Muslim neighborhoods under surveillance.”² HIDTA dollars were used for vehicles used to spy on Muslim communities, and for the computers used to store even “innocuous” data on these targets. The briefings given to New York City Police Commissioner Ray Kelly on these programs were prepared, stored and delivered using these same HIDTA-funded computers.

Drug Use and Selling Rates

Higher arrest and incarceration rates for African Americans and Latinos are not reflective of significantly increased prevalence of drug use or sales in these communities, but rather of a law enforcement focus on urban areas, lower-income communities, and communities of color, as well as inequitable treatment by the criminal justice system.

According to U.S. Census data from 2010, the U.S. is about 72 percent white and only 12.6 percent black,³ but according to the Bureau of Justice Statistics, African Americans comprised 35 percent of individuals incarcerated for federal drug law violations. In 2010, 1,270,443 people were arrested for “drug abuse violations” – and nearly 32 percent of those were black.⁴ African Americans do not use drugs at significantly higher rates than other races; in fact, illicit drug use rates are similar among racial and ethnic groups, with approximately 10.7 percent of blacks, 9.1 percent of whites, and 8.1 percent of Hispanics aged 12 or older stating they used illicit drugs within the past month.⁵ These three facts, when considered together, imply the presence of discriminatory policies in the investigation, prosecution and/or the sentencing of drug-related offenses. For example, national and regional studies indicate that Latinos, African Americans and other racial and ethnic minorities may transport drugs at lower rates than whites, yet are searched at higher rates. A study conducted by the U.S. Department of Justice in 2006 found that officers searched more than ten percent of African Americans and eleven percent of Latinos, but less than four percent of white drivers were searched following a traffic stop. The report found that three percent of African American searches, 13 percent of hispanic searches, and nearly 14 percent of white searches yielded prosecutable results.⁶ According to an article published in *Reason* magazine in 2001, racial profiling investigations at that time were almost exclusively focused on drug-related offenses. Drug law enforcement remains an area of policing in which racial profiling is prevalent and has an unjust impact on communities of color.

It is important to note, though, that data on drug use are limited because it is much more likely that drug *sellers*, rather than *users*, will receive prison sentences. But measuring drug selling is difficult, as there are no reliable surveys that provide data. However, people who

use drugs generally report that they purchased their drugs from someone of their own race.⁷ Therefore, if drug use is roughly proportional to the overall population, drug selling rates are likely to be in that range as well.

Racial Profiling and the Anti-Drug Abuse Acts of 1986 and 1988

Federal law enforcement's focus on inner-city communities has resulted in African Americans being disproportionately impacted by the facially neutral, yet unreasonably harsh, mandatory minimum crack cocaine penalties set forth in the Anti-Drug Abuse Acts of 1986 and 1988. The low triggers and high penalties assigned to crack cocaine – formerly 100 times greater than cocaine, now 18 times greater following the 2010 passage of the Fair Sentencing Act – has incentivized racially-fueled stops for more than two decades. Crack cocaine is more often sold in open air markets than powder cocaine, which has led police officers to focus on crack cocaine arrests, despite the fact that powder cocaine is the main ingredient. In 2007, 82.7 percent of those sentenced federally for crack cocaine offenses were black,⁸ despite the fact that only 30 percent of crack cocaine users in the U.S. were African American.⁹ It is well established that there is a much larger number of white crack cocaine users,¹⁰ but “[t]he disparity in the arrest, prosecution and treatment has led to inordinately harsh sentences disproportionately meted out to African American defendants that are far more severe than sentences for comparable offenses by white defendants.”¹¹ This inequality indicates a problem not just in the way these cases are prosecuted and sentenced, but initiated.

No scientific or legal justification exists to support any sentencing disparity given that the two forms of cocaine are pharmacologically almost identical. The United States Sentencing Commission supported reforming this sentencing disparity since 1991, and argued that the change would do more to reduce racial inequality in the criminal justice system “than any other single policy change.”¹² The crack cocaine sentencing disparity causes myriad problems, including perpetuating racial disparities, wasting taxpayer money, and targeting low-level offenders instead of violent criminals.

Ironically, in 1986, the same year Congress passed the first Anti-Drug Abuse Act, which created the 100-to-1 structure, the Comprehensive Anti-Apartheid Act was passed. The Comprehensive Anti-Apartheid Act imposed sanctions on the South African government to encourage the end of Apartheid and establishment of a “nonracial” democracy. It is unfortunate that those ideals were not applied to our own criminal justice system. According to Michelle Alexander, Associate Professor of Law at Ohio State University and author of *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, “there are more African Americans under correctional control – in prison or jail, on probation or parole – than were enslaved in 1850, a decade before the Civil War began.”¹³

Despite the historic bipartisan passage of the Fair Sentencing Act, which significantly reduced the crack disparity to 18:1 and eliminated the mandatory minimum sentence for simple possession – the first mandatory minimum sentence to be repealed in more than four decades – the crack cocaine and powder cocaine sentencing disparity continues to provide an example of how minorities receive harsher treatment at every step in the criminal justice system, beginning with racial profiling. As Congressman Dan Lungren (R-CA) stated on the House floor during the passage of the Fair Sentencing Act, “when African Americans, low-level crack defendants, represent 10 times the number of low-level white crack defendants . . . I don’t think we can simply close our eyes.”¹⁴

Racial Profiling and Marijuana Law Enforcement

More than 850,000 people were arrested for marijuana related offenses in 2010 – almost 90 percent of those arrests were for simple possession. As of 2002, the estimated criminal justice costs of marijuana arrests for state and local governments were as much as \$7.6 billion: \$3.7 billion for police costs, \$3.1 billion in correctional costs and \$852 million in judicial/legal costs. That averages more than \$10,000 per arrest.¹⁵

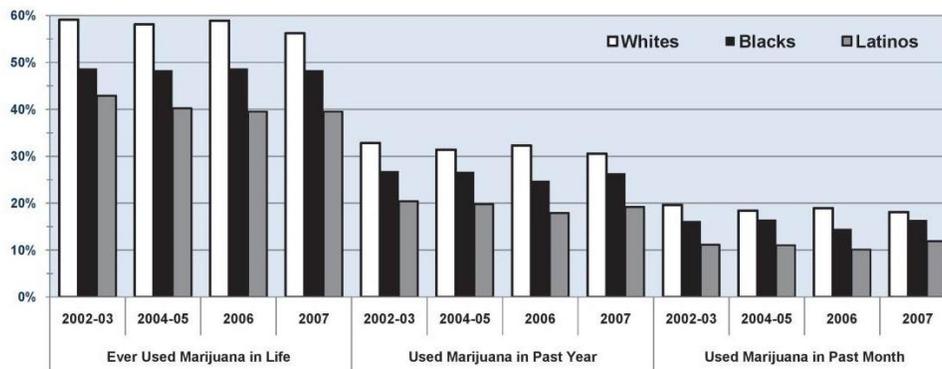
The enforcement of marijuana laws across the country provide many examples of racially-biased policing. In fact, the original prohibition of marijuana was not based on science and reasoned analysis, but rather on racial politics and prejudice. Harry J. Anslinger, the first U.S. Commissioner of the Federal Bureau of Narcotics, was extensively quoted on the subject.

The primary reason to outlaw marijuana is its effect on the degenerate races.¹⁶

There are 100,000 total marijuana smokers in the US, and most are Negroes, Hispanics, Filipinos, and entertainers. Their Satanic music, jazz, and swing, result from marijuana use. This marijuana causes white women to seek sexual relations with Negroes, entertainers, and any others.¹⁷

According to SAMHSA surveys, depicted below, whites actually outpace blacks and Latinos in marijuana use by all measures: over their lifetime, the past year, and the past month.¹⁸

Marijuana Use by Whites, Blacks and Latinos, Ages 18 to 25, 2002-2007



Source: US Dept HHS, SAMHSA, Office of Applied Studies, National Survey on Drug Use and Health, 2002-2007. 2003-2005. Table 1.80B Marijuana Use in Lifetime, Past Year, and Past Month among Persons Aged 18 to 25, by Racial/Ethnic Subgroups: Percentages, Annual Averages Based on 2002-2003 and 2004-2005. <http://www.oas.samhsa.gov/NSDUH/2k5NSDUH/tabs/Sect1peTabs67to132.htm#Tab1.80B>. 2006-2007: Table 1.26B – Marijuana Use in Lifetime, Past Year, and Past Month among Persons Aged 18 to 25, 2006 and 2007 <http://www.oas.samhsa.gov/NSDUH/2k7NSDUH/tabs/Sect1peTabs1to46.htm#Tab1.26B>

Harry G. Levine, Sociology Department, Queens College, City University of New York, hglevine@Qc.edu January 2011

If policing practices were equitable, they would reflect these use patterns, and it would follow that the majority of individuals arrested for marijuana possession would be white. In reality, whites occasionally face arrest for marijuana use but largely enjoy *de facto* legalization, while police resources are disproportionately deployed in communities of color as non-white individuals are singled out for searches.

For instance, in 2011, there were 50,684 marijuana possession arrests in New York City, making it the most frequent type of arrest in New York City and second highest number of marijuana arrests in City history, despite the fact that marijuana was decriminalized in the state in the 1970s. Additionally, Commissioner Kelly issued a directive in the fall of 2011 ordering police officer to end such arrests, but they have continued at a similar pace. Even though young whites in New York City use marijuana at higher rates, nearly 85 percent of the people arrested for marijuana possession are black and Latino, and most are under 30 years old.

Unfortunately, racially motivated marijuana searches and arrests are not relegated to New York City alone. In July 2011, *The Chicago Reader* reported:

The ratio of black to white arrests for marijuana possession in Chicago is 15 to 1. And by the time the cases make their way through the court system, the gap widens even further: the ratio among those who plead or are found guilty is 40 to 1. Here's another way to look at it: almost nine of every ten people who end up guilty of possessing marijuana in Chicago – 86 percent, to be precise – are black men.¹⁹

New York City and Chicago are not outliers – across the country, marijuana arrests are racially disparate:

- In the 4 largest counties in Alabama, African Americans are 1.6 to 4.8 times more likely to be arrested for marijuana possession than white residents.²⁰
- In the 4 largest counties in Connecticut, African Americans are 3.3 to 5.4 times more likely to be arrested for marijuana possession than white residents.²¹
- In the 5 largest counties in Minnesota, African Americans are 2.4 to 9.1 times more likely to be arrested for marijuana possession than white residents.²²
- In the 13 largest counties in New York, African Americans are anywhere from 2.5 to 8.5 times more likely to be arrested for marijuana possession than white residents.²³
- In the 7 largest counties in South Carolina, African Americans are anywhere from 2.4 to 3.7 times more likely to be arrested for marijuana possession than white residents.²⁴
- In the 18 largest counties in Texas, African Americans are anywhere from 1.7 to 4.9 times more likely to be arrested for marijuana possession than white residents.²⁵
- In the 4 largest counties in Wisconsin, African Americans are 2.5 to 10.6 times more likely to be arrested for marijuana possession than white residents.²⁶

The cost of these marijuana arrests and the criminalization of communities of color – particularly young people of color – has not increased public safety, causing many to view these racially disparate level marijuana arrests as being as damaging to communities of color as the disparate impact of crack cocaine laws.

Racial Profiling and Civil Rights Abuses

One example of racial profiling in a case that did much to undermine the credibility of the justice system occurred in Tulia, Texas in 1999. In this well-known case, forty African American residents and six white residents known to have ties to the African American community were arrested for drug law violations. The arrested individuals comprised about fifteen percent of the town's African American population and roughly one-third of the town's African American men. These individuals were targeted by Tom Coleman, an officer in a drug task force – during the Tulia operation, he was charged with misdemeanor theft and abuse of his official position in the

last county he served, yet he was allowed to continue the Tulia investigation.²⁷ Coleman was later convicted of perjury for lying about his own arrest record in hearings involving some of the Tulia defendants. During his undercover operation Coleman never wore a wire or conducted any video surveillance, and no other officers corroborated his statements. No drugs, large amounts of money, or guns were found in the roundup of the Tulia residents. Despite the weak case against them, many of the individuals arrested in this roundup pleaded guilty after the first person to be tried was sentenced to 90 years in prison. After involvement by the NAACP Legal Defense and Education Fund and the American Civil Liberties Union, the cases were dismissed, and individuals who had been convicted were pardoned by Texas Gov. Rick Perry.

People who cannot afford adequate legal counsel, have perilous immigration status, or do not have full command of the English language are particularly vulnerable to racial profiling. In 2002, eighty cases were dismissed in Dallas when police officers and a confidential informant teamed up to falsely target a number of mainly Mexican immigrants in drug busts over three years.²⁸ In these cases two officers operated without oversight (despite a staggering number of major arrests), and lab tests were never ordered for the seized drugs. “Positive” field tests conducted by these two officers were later proven to be fabricated. Further investigation revealed that the officers planted pounds of sheetrock mix on defendants who could not speak English, or afford effective legal counsel. Due to the “profile” these people fit, no one questioned the high volume of arrests and allowed this injustice to occur for years until a defense attorney revealed what eventually became known as the “Texas sheetrock scandal.”

Racial Profiling Undermines Public Safety and Public Health

In addition to undermining the very foundations of American democracy, racial profiling also makes all U.S. residents less safe. Racial profiling is not an effective form of policing as law enforcement officers expend significant resources investigating individuals with no connection to criminal activity and pay less attention to the investigations of actual crimes. In Arizona, the ACLU analyzed data related to highway stops made between July 1, 2006 and June 30, 2007. This analysis found that that Native Americans were more than three times as likely to be searched as whites, while African Americans and Hispanics were 2.5 times more likely to be searched than whites.²⁹ Whites, however, were more likely to be carrying contraband than Native Americans or Hispanics; seizure rates of drugs, weapons or other illegal materials for whites and African Americans were similar.

An analysis of Los Angeles data gathered between 2003 and 2004 led Yale researchers to conclude the stop rate for blacks was 3,400 stops per 10,000 residents – translating to a 127 percent higher likelihood that a black resident would be stopped than a white resident. The stop rate for Hispanics was 360 stops per 10,000 – a 43 percent higher likelihood of being stopped. Once stopped, blacks and Hispanics are 76 percent and 16 percent more likely to be searched than whites, respectively. Researchers also found that these frisks and searches were systematically less productive when conducted on blacks and Hispanics than when conducted on whites. Frisked blacks and Hispanics are, respectively, 42.3 percent and 31.8 percent less likely to be found with a weapon than frisked whites.³⁰

In 1998, the U.S. Customs service eliminated the use of race, ethnicity, and gender in deciding which individuals to search and focused only on suspect behavior. According to a study conducted by Lamberth Consulting, this shift in policy led to an almost 300 percent increase in searches that discovered illegal contraband or activity.³¹ Ending racial profiling would most likely lead to a similar surge in law enforcement productivity, meaning more evidence-based arrests which would increase drug seizure rates. The National Council of Law Enforcement

Organizations (NCLEO), in their December 2011 letter to Reps. Lamar Smith (D-TX) and John Conyers (D-MI), summarized current research showing “when law enforcement focuses on race and ethnicity, they pay less attention to criminal behavior, reducing its ability to effectively detecting contraband or uncovering and solving crimes.” NCLEO went on to say the practice of “racial profiling also undermines the trust that is critical for solving crimes and keeping our communities safe.”³²

There is also a growing body of evidence indicating that the war on drugs is negatively impacting public health. In an evaluation of survey data from a sample of syringe access programs, Yale researchers found that both direct experience with and perceptions of police practices decreased the willingness and ability of injection drug users to engage in risk reduction practices, such as participation in a syringe exchange program (SEPs). Their analysis documented systematic police interference with visible syringe access programs targeting urban areas. Programs serving primarily minority clients were 3.56 times as likely to report client arrest and 3.92 times as likely to report unauthorized confiscation of syringes. The authors note:

This finding hints at a mechanism by which racial disparities in police interactions – such as stop-and-frisk searches, questioning and arrests – can deter participation in SEPs, and ultimately translate into elevated incidence of HIV infection in minority communities.³³

In a survey of residents in New York City neighborhoods subject to waves of zero-tolerance drug enforcement crackdowns, researchers found that residents frequently reported physical, psychological and sexual violence by police. These abuses were often associated with drug crackdown-related tactics and perceived officer prejudice, with many residents invoking race as conditions for being subject to this abuse. While residents agreed that the enforcement crackdowns were successful in reducing visible drug use, they often reported that law enforcement neglected residents’ calls for help with civilian-on-civilian violence – an especially disturbing fact considering these areas had a high rate of violent crime.³⁴

Long-Term Impact of Racial Profiling

Racially biased policies foster a distrust of law enforcement, and the court system. Individuals in negatively affected communities may be less likely to contact the police in the event of a crime or emergency and less likely to cooperate with law enforcement when asked. Distrust of this type between the citizens of a state and their supposed protectors undermines the entire functioning of the American democratic system. In fact, more than two million African Americans have been disenfranchised because of felony convictions, mostly due to drug charges.³⁵ As Michelle Alexander concludes, it is a travesty that in this country:

We force millions of people – who are largely black and brown – into a permanent second-class status, simply because they once committed a crime. Once labeled a felon, you are ushered into a parallel social universe. You can be denied the right to vote, automatically excluded from juries and legally discriminated against in employment, housing, access to education and public benefits -- forms of discrimination that we supposedly left behind.³⁶

Because of racial profiling, these penalties are disproportionately enforced against African American and Latino individuals who are arrested and stopped at higher rates than whites, more likely to be convicted, more likely to receive longer sentences, and thus more likely to be saddled with post-incarceration restrictions and exclusions. The drug war has, in fact, become a

new form of Jim Crow segregation due to the stark racial lines along which these exclusions fall. Collateral consequences continue to harken back to medieval times when punishments included banishment and “civil death.” Today, 5.3 million Americans are disenfranchised due to felony convictions. While these 5.3 million individuals comprise only two percent of the entire US population, it includes 13 percent of all African American men. Felony disenfranchisement laws are particularly severe below the Mason Dixon line, where they follow in the legacy of other forms of codified voter exclusion including poll taxes, literacy tests, and the grandfather clause.

Even a marijuana arrest is no small matter – most people are handcuffed, placed in a police car, taken to a police station, fingerprinted and photographed, held in jail for 24 hours or more, and then arraigned before a judge. The arrest creates a permanent criminal record that can be easily found on the Internet by employers, landlords, schools, credit agencies, licensing boards and banks. Convictions can lead to reduced access to employment and voting rights, as well as denial of aid for higher education, termination of parental rights, eviction or exclusion from public housing, prohibitions on receiving benefits such as TANF and food stamps, ineligibility from serving on a jury, and many others.

Recommendations

Racial profiling is the first stop along the path that, for people of color, results in mass incarceration and systemic injustice. This discriminatory practice affects many communities in the United States, and is often used during enforcement of U.S. drug laws. Racial profiling violates human rights, reduces law enforcement efficacy, harms relationships between communities and police, and damages public safety.

Following the historic, bipartisan leadership of the Senate Judiciary Committee to reform the egregiously racially disparate 100:1 crack disparity in order to better target major traffickers and ensure that the lowest-level offenders were not punished disproportionately, Congress should:

- Pass the End Racial Profiling Act of 2011 (S. 1670/H.R. 3618), introduced by Sen. Benjamin Cardin (D-MD) and Rep. John Conyers (D-MI) that requires local and state law enforcement agencies receiving federal Byrne Grant and COPS funding to expand education and document their arrests by race and ethnicity. This legislation is essential to ensuring that federal money is not being used to facilitate racially disparate enforcement. The Drug Policy Alliance recommends expanding this provision to also require the documentation of traffic stops and searches by race and ethnicity. Such information should be available to Congress, the U.S. Attorney General and the public. If law enforcement agencies have nothing to hide, then they should have no reason to oppose such data collection requirements. States are receiving hundreds of millions of dollars in federal law enforcement funding every year – it is therefore reasonable that they provide information about how the funds are being used.
- Introduce companion legislation to The Fairness in Cocaine Sentencing Act of 2011 (H.R. 2242), introduced by Reps. Bobby Scott (D-VA) and Ron Paul (R-TX), to fully eliminate the remaining 18:1 sentencing disparity between powder and crack cocaine.
- Look to Portugal’s model of national drug decriminalization, which removed criminal penalties for personal drug possession and replaced prison sentences with dissuasion panels qualified to recommend substance abuse treatment for residents in need. Studies conducted ten years after decriminalization indicate that decriminalization has been very successful, with drug usage in many categories – including among youth – decreasing

while substance abuse treatment admissions nearly doubled. Interestingly, drug seizures increased as well, as law enforcement have been able to direct greater resources toward targeting drug trafficking organizations rather than individual users.³⁷

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² Associated Press. "WH money helps pay for NYPD Muslim surveillance." February 27, 2012.

³ U.S. Census Bureau, "Overview of Race and Hispanic Origin: 2010." Accessed April 12, 2012. <http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf>.

⁴ Federal Bureau of Investigation. Criminal Justice Information Services Division. "Crime in the United States." Table 43a. Accessed April 18, 2012. <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/tables/table-43/10tbl43a.xls>.

⁵ U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, "Results from the 101 National Survey on Drug Use and Health." Accessed April 12, 2012. <http://www.oas.samhsa.gov/NSDUH/2k10NSDUH/2k10Results.htm>.

⁶ U.S. Department of Justice, Bureau of Justice Statistics, "Contacts between Police and the Public." June 2006.

⁷ K. Jack Riley, *Crack, Powder Cocaine, and Heroin: Drug Purchase and Use Patterns in Six U.S. Cities*, National Institute of Justice, December 1997.

⁸ U.S. Sentencing Commission. *Sourcebook of Federal Sentencing Statistics*. 2007. (Table 34).

⁹ U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, *2007 National Survey on Drug Use & Health* (Washington, DC: Substance Abuse and Mental Health Services Administration, Sept. 2008), Table 1.34a.

¹⁰ See USSC (1995), at 38, citing National Institute on Drug Abuse, Overview of the 1991 National Household Survey on Drug Abuse (1991) (NIDA Capsules)

¹¹ Watts, J.C. and Asa Hutchinson, "Reforming Crack-Cocaine Law: Will Congress Follow the Federal Sentencing Panel?" *The Washington Times*, (February 12, 2008) at A17.

¹² USSC, Fifteen Years of Guidelines Sentencing 132 (2003).

¹³ Alexander, Michelle. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York City: The New Press, 2010.

¹⁴ "Fair Sentencing Act of 2010." *Congressional Record*, sec. House Legislative Action, July 28, 2010.

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¹⁶ Anslinger, Harry J. Personal notes. ca. 1937.

¹⁷ *Ibid.*

¹⁸ U.S. Department of Health And Human Services, Substance Abuse and Mental Health Services Administration. "National Survey on Drug use and Health, 2002-2007. 2003-2005." December 30, 2008, Table 1.26B. Accessed April 18 2011. <http://www.oas.samhsa.gov/NSDUH/2k7NSDUH/tabs/Sect1peTabs1to46.htm#Tab1.26B>.

¹⁹ Dumke, Mick, and Ben Joravsky. "The Grass Gap." *Chicago Reader*, sec. News & Features, July 07, 2011.

²⁰ Levine, Harry G., Jon B. Gettman, and Loren Siegel. "Marijuana Possession Arrest Rates of Whites and Blacks in the 4 Largest Counties in Alabama, 2003- 2007." March 19, 2011.

²¹ Levine, Harry G., Jon B. Gettman, and Loren Siegel. "Marijuana Possession Arrest Rates of Whites and Blacks in the 4 Largest Counties in Connecticut, 2003- 2007." March 19, 2011.

²² Levine, Harry G., Jon B. Gettman, and Loren Siegel. "Marijuana Possession Arrest Rates of Whites and Blacks in the 5 Largest Counties in Minnesota, 2003- 2007." March 19, 2011.

²³ Levine, Harry G., Jon B. Gettman, and Loren Siegel. "Marijuana Possession Arrest Rates of Whites and Blacks in the 13 Largest Counties in New York, 2003- 2007." March 19, 2011.

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²⁵ Levine, Harry G., Jon B. Gettman, and Loren Siegel. "Marijuana Possession Arrest Rates of Whites and Blacks in the 18 Largest Counties in Texas, 2003- 2007." March 19, 2011.

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STATEMENT SUBMITTED BY

**Fahd Ahmed, Legal and Policy Director
& the 1400 leaders and members of
DRUM – Desis Rising Up & Moving**

Hearing on “Racial Profiling in America”

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. DRUM (Desis Rising Up & Moving) is particularly concerned about many policies and programs at the national, state and local level, which encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States. I am honored to submit this testimony for the record on behalf of the 1400 low-income South Asian members of DRUM regarding today’s hearing on racial profiling.

DRUM is a membership-based community organization of low-income South Asian immigrants, workers and youth. DRUM has been organizing our community members for the past 12 years for immigrant rights, workers rights, educational justice, and for police accountability. Being firmly rooted in our communities, DRUM has directly seen and experienced the various forms and effects of racial profiling on the lives of our members. For the past 6 months, as part of our End Racial profiling campaign, DRUM has been conducting surveys and interviews in NYC Muslim communities on their interactions with law enforcement agencies, instances of profiling, the impacts on their social, religious, and political participation in society, and their levels of trust in law enforcement agencies. These experiences and ongoing data form the basis for this testimony.



Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

The Last 11 Years of Racial Profiling in Our Communities

DRUM- Desis Rising Up & Moving was founded in January 2000 because of the mass wave of low-wage South Asian migrant workers to New York City in the 1990's, the impacts of the 1996 immigration laws on our community, and expanding over-policing regime in NYC. DRUM is unique in that we did not form as a response to 9/11, but were already organizing in immigrant detention centers, on racial profiling, and human rights since 2000. So we recognize that the profiling of our communities did not begin on September 11, 2001. In fact, when nearly 1200 men from the New York and New Jersey areas were picked up out of their homes, workplaces, and off the street for being or appearing to be Muslim, we already has a base of members inside detention centers and were the first to locate hundreds of men arrested and jailed in New Jersey county jails.

On September 12, 2001, DRUM immediately set up a multi-lingual community hotline for South Asians, Arabs, and Muslims being 'disappeared', facing bias crimes, and being questioned by authorities. Within days, we received hundreds of calls community members and mosques. Starting in September of 2002, the National Security Entry-Exit Registration System (NSEERS), also known as "Special Registrations," forced non-citizens above the age of 16 from 24 Muslim majority countries to register with the government. Nearly 83,000 men complied, and over 13,000 were put into deportation proceedings. By 2003, DRUM formed and led the NYC Coalition to End Special



Registrations with over fifty organizations and played a lead role in the 9/11 Coalition for Civil Liberties to serve thousands of impacted New Yorkers with legal services. We witnessed first hand how the post 9/11 sweeps and the Special Registrations program tore apart thousands of families, destroyed whole communities and neighborhoods, and yet produced no results that made us any safer.

The instances of profiling have not been limited to the streets or to adults. In 2005, members and leaders of our youth program, YouthPower!, conducted a survey of 662 high school aged South Asian youth and published a groundbreaking report with the Urban Justice Center entitled, *“Education Not Deportation: Impacts of NYC School Safety Policies on South Asian Youth.”* The report found alarming data that showed overwhelming evidence of racial profiling faced by South Asian and Muslim youth in schools and neighborhoods, the impacts it had on their education and their sense of well-being, and led us to join efforts to curtail school policing and racial disparity in education.

We have also seen the blanket surveillance, mapping and raids in our communities by the FBI, the NYPD, and by ICE (Immigration and Customs Enforcement), which have been well document by the ACLU, the Associated Press and other civil rights organizations and media outlets. In addition to their practices on the ground, the agencies’ own documents prove that they profile our communities on the basis of religion, ethnicity, or national origin.

Current Data from DRUM’s Survey and Documentation Project

In August of 2011, DRUM launched a Muslim community survey project to document the experiences of our communities in their interactions with law enforcement agencies, the impacts on their lives. The actual stories of community members encounters with law enforcement agencies are astounding:

- A Bangladeshi cab driver being pulled over by the NYPD for frivolous reasons and being asked if he was Muslim, what mosque he goes to, and if he prays regularly



- An Indian youth being stopped, searched and repeatedly harassed by school security officers in his high school, causing him to drop out
- A Pakistani woman and her family being detained by Immigration and Customs Enforcement (ICE) for her political activities for police accountability and immigration reform
- A Yemeni man being asked to provide information on fellow Muslims by the FBI, and upon his refusal being threatened, harassed, and followed around the city in dark unmarked cars
- A Bangladeshi youth being stooped and frisked nearly 25 times by the NYPD in his own neighborhood by the NYPD
- A Pakistani woman being threatened and harassed to show her immigration documents by the NY Court Police at her workplace
- The leadership of a mosque throwing an attendee out of their mosque for engaging in inflammatory rhetoric, only later to discover that the man was an undercover NYPD officer

These are just some of the stories we have gathered so far, and we have not even completed 1/5th of our surveys. Thus it comes as no surprise that nearly 75% of the community members surveyed indicated that they do not have trust in the various law enforcement agencies, and another 19% expressed uncertainty about whether they trust the agencies. The impacts within our communities are even more startling. Nearly half of those surveyed feel uncomfortable or think twice before going to their places of worship or building friendships with general community members for fear of informants and surveillance. Nearly 80% are uncomfortable engaging in political activities, discussions, or going to rallies and events.

Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color in the U.S.



DRUM is heartened by the Subcommittee’s leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the “End Racial Profiling Act (S.1670)” and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of DRUM and our membership and constituencies. We welcome the opportunity for further dialogue and discussion about these important issues.

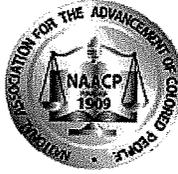
**List of Organizations and Individuals Submitting
Statements for the “Ending Racial Profiling in America Hearing” to
Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights**

April 17, 2012

Organizational Letters from:

1. Alabama State Conference of the NAACP (*Athens, Alabama*)
2. American-Arab Anti-Discrimination Committee (*Washington, DC*)
3. American Friends Service Committee (*Philadelphia, Pennsylvania*)
4. Americans for Immigrant Justice (*Miami, Florida*)
5. American Immigration Lawyers Association (*Washington, DC*)
6. Asian American Center for Advancing Justice (*San Francisco, California; Los Angeles, California; Chicago, Illinois and Washington, DC*)
7. Bill of Rights Defense Committee (*Northampton, Massachusetts*)
8. Black Alliance for Just Immigration (*Oakland, California*)
9. City of Seattle Immigrant and Refugee Commission (*Seattle, Washington*)
10. Coalition for Humane Immigrant Rights of Los Angeles (*Los Angeles, California*)
11. Comunidad Liberación/Liberation Community (*Aurora, Colorado*)
12. Defending Dissent Foundation (*Silver Spring, Maryland*)
13. DRUM – Desis Rising Up and Moving (*Jackson Heights, New York*)
14. Homies Unidos (*Los Angeles, California*)
15. Human Rights Watch (*Washington, DC*)
16. Illinois Coalition for Immigrant and Refugee Rights (*Chicago, Illinois*)
17. Immigration Equality (*New York, New York*)
18. International Center for Advocates Against Discrimination (ICAAD)
19. Meiklejohn Civil Liberties Institute (*Berkeley, California*)
20. Metro Atlanta Task Force for the Homeless (*Atlanta, Georgia*)
21. Montgomery County Civil Liberties Coalition (*Montgomery County, Maryland*)
22. Muslim Legal Fund of America (*Richardson, Texas*)
23. National Coalition for Immigrant Women’s Rights (*Washington, DC*)
24. The National Congress of American Indians (*Washington, DC*)
25. National Immigration Forum (*Washington, DC*)
26. National Network for Arab American Communities (*Dearborn, Michigan*)

27. Our Lady of Victory Missionary Sisters (*Huntington, Indiana*)
28. Rights Working Group (*Washington, DC*)
29. Sikh American Legal Defense and Education Fund (*Washington, DC*)
30. Sisters of the Most Precious Blood of O'Fallon, MO (*O'Fallon, Missouri*)
31. Virginia CURE (*Alexandria, Virginia*)
32. Virginia Organizing (*Charlottesville, Virginia*)
33. Washington Defender Association (*Seattle, Washington*)



STATEMENT OF

Benard H. Simelton, President

Alabama State Conference of the NAACP

Hearing on “Ending Racial Profiling in America”

SENATE COMMITTEE ON THE JUDICIARY

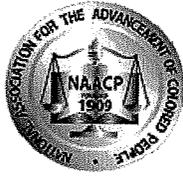
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of Alabama State Conference of the NAACP regarding today’s hearing on racial profiling. The Mission of the Alabama State NAACP is to ensure the political, educational, social and economic of all citizens; to achieve equality of rights and eliminate race prejudice among the citizens of the United States; to remove all barriers of racial discrimination through democratic process; to seek enactment and enforcement of federal, state and local laws securing civil rights and to educate persons as to their constitutional rights and to take all lawful actions to secure the exercise thereof, and to take any other lawful actions in furtherance of these objectives, consistent with the NAACP’s Articles of Incorporation and the constitution.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. The Alabama State Conference of the NAACP is particularly concerned about



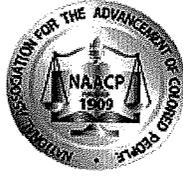
many policies and programs at the national, state and local level which encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Racial Profiling in Our Communities

The Alabama State Conference has several cases that we would like to bring to the committee's attention where racial profiling has occurred. These are just the cases where we were involved; each branch has cases that they investigate that may not come to the attention of the AL State NAACP in which racial profiling has occurred.

Case 1 happened in March 2012 in Huntsville, AL with the Huntsville police department. This case involves a young African American male who had just gotten off work from the church where he work and is getting into his car when police officers that were watching him because he saw them when he came out of the church. He gets into his car and they approach and ask him what he was doing there, he explained that he had just gotten off work from the church where he



was parked, he also had a shirt on with the name of the church that he worked for. After they asked him several additional questions, he asked what this was all about and they told him that they received a report that an African American male had robbed a restaurant about two blocks from where they were. The police officers continued to ask questions and the individual became upset and about this time a female officer approached and asked if it was ok to search his car and he said no, but the female officer searched the vehicle anyway. After the search did not find anything they told him he was going to jail for disorderly conduct and interfering with police operations...case is pending.

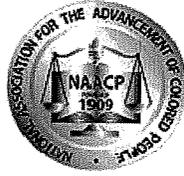
Case 2 occurred in 2008 in Dothan, AL when a young African American female TV producer/anchor was walking home from work after producing a morning newscast. She had an existing medical condition that caused her to be in a lot of pain and had to have emergency surgery two days after the incident with the police. A White Dothan City employee came by and tried to pull her into his vehicle. She pulled away from him. The city worker then called 911 and reported a person needing help on the side of the road. The police and ambulance arrived; she signed a waiver of denial of medical services for the ambulance operator because she was already scheduled for surgery later that month and had a doctor's appointment that day. Because she would not go with the ambulance, the police arrested her under the charge of disorderly conduct. The arresting officer's first complaint was that she yelled obscene words at him. Therefore, the prosecutor charged her with using abusive or obscene language. That charge was amended to making unreasonable noise and later dismissed then later nol pros. Then the police office wrote a completely new complaint



stating that she repeatedly yelled and cursed at the officer and pushed then pushed the officer in his chest. The officer also alleges that she refused to cooperate with the officer for the same arrest and the prosecutor then charged her with engaging in fighting in a violent tumultuous or threatening behavior. It is important to note, that neither the young lady nor her attorney was allowed to view the police report until the police officer was testifying from the document on the witnesses stand. The police report did not support the complaint or charge. The police officer testified that he changed the complaint seven months after the arrest to make it fit the charge because the prosecutor told him to do it. In the police report eleven out of the twenty-two sentences written by the arresting police officer refer to her as a black female instead of her name. A critical note is the fact that this young lady walked down a major highway and no one from the public complained about her doing anything. Only when she turned off on a back road of an upscale community was she stopped and arrested. The first officer on the scene even stated to her attorney that he would not have charged her.

This case is pending in the Alabama Supreme Court review.

Case 3 happened in 2011 when a young African American female who worked for the Limestone County Sheriff Department was invited to become a board member of the local little league baseball team. This was a very heated meeting because parents were upset with the board. After several outburst from parents and board members, the invited members remarked something to the effect of that we should all just respect each other and try to work this out. After the meeting was over the invited member and one of the parents who was a white female that had made some of the outbursts happened to cross paths. The white female and the African American had some words and then they went their own ways, but the white female continued to



be belligerent and the Athens Police was called and came over and arrested the white female. The white female remarked that if you arrest me, then you need to arrest her (referring to the African American female) for calling me the “B” word. Athens police came over and arrested the African American female and charged her with disorderly conduct. The African American female was terminated from her job with the Limestone County Sheriff department and when it went to trial she was found not guilty, but the Sheriff Department who had already terminated her employment would not reinstate her.

Case 3

We have several cases where young African American males have been charged with rape after the young white girls that they were dating became angry and decided to call police officers. In these cases, no rape test were completed and in one incident a high school senior in Andalusia, AL was sent to juvenile prison for about 9 month and missed school and possible opportunity to play college football. In the case in Andalusia, the young girl tried to distort money from him, stating that if you don't give me \$100, I am going to say that you raped me. A year or so earlier, she had claimed that a relative of hers had raped her and she later recanted her story.

In addition to these examples that illustrate racial profiling by law enforcement and the role of racial bias and stereotypes in the justice system, the Alabama state Conference of the NAACP is opposed to Alabama's harsh anti-immigrant law HB 56. We are concerned that the law, which criminalizes immigrants and allows local police to act as immigration agents, incentivizes racial profiling in Latino as well as African American communities in Alabama.



Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color in the U.S.

The Alabama State Conference of the NAACP is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the "End Racial Profiling Act (S.1670)" and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of Alabama NAACP. We welcome the opportunity for further dialogue and discussion about these important issues.



Statement for The Record
on behalf of
The American-Arab Anti-Discrimination Committee (ADC)
Before
U.S. Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Human Rights

The American-Arab Anti-Discrimination Committee (ADC) appreciates the opportunity to provide a statement for the record concerning the April 17, 2012, hearing scheduled by Senator Dick Durbin and the Senate Judicial Subcommittee on the Constitution, Civil Rights and Human Rights. ADC commends the "*End Racial Profiling in America*" hearing, the first such hearing on racial profiling since 2001. As key stakeholders and community partners, ADC welcomes the set forth by the Committee and is pleased to see the issue once again become a priority.

ADC is the country's largest Arab-American organization; it is non-profit, non-sectarian, and non-partisan. ADC is a membership based organization, which has protected the Arab-American community for over thirty years against defamation, discrimination, racism and stereotyping. ADC was established in 1980 by former US Senator James Abourezk and has grown into a national organization with headquarters in Washington, DC. ADC coordinates its efforts closely with United States federal, state, and local government agencies in facilitating open-lines of communication with the Arab-American community.

Racial profiling affects thousands of Americans each year. Driving, flying, walking and carrying out mundane tasks may easily become complicated. These targeted populations begin to anticipate difficulty during daily routines, simply because of their race, ethnicity or religion. A number of U.S. Government policies designed to combat terrorism have both proven ineffective in fulfilling their mandates and have had a devastating impact on the ability of the Arab and Muslim communities to actively participate, as members of civil society, in reaching our full-potential as members of society. Racial profiling occurs when law enforcement relies on race, ethnicity, national origin, or religion in selecting which individuals to subject to routine or spontaneous investigatory activities. This practice violates our nation's basic constitutional commitment to equality. Racial profiling is ineffective, inefficient and fruitless.

Throughout the history of this country, racial profiling has time and time again proven to be an ineffective method of law enforcement. In 1901, the Secret Service failed to detect the white assassin of President McKinley, instead focusing their attention on a retired African-American law enforcement officer, who was ironically responsible for the capture of President McKinley's assassin. In the 1920s, the U.S. government carried out a series of raids, The Palmer Raids, which targeted thousands of Eastern European immigrants based on ethnicity and religion. During World War II, the government interned thousands of Japanese Americans camps solely because of their race. Racial profiling in the current national security climate increasingly affects Arab, Muslim, Middle Eastern and South Asian Americans.

Racial profiling has taken its shape in many different forms post-9/11. Some examples of racial profiling include: the National Security Entry Exit Registration System (NSEERS), U.S. Congressional reports that incorrectly focus on Muslims, FBI's voluntary interviews, watch and no-fly list programs, local law enforcement's increased scrutiny of Muslims, NSA's warrantless surveillance of electronic communication, background check delays in naturalization applications, TSA stops and interrogations in airports, and customs and boarder protection secondary searches and

interviews. All of these actions have harmful effects and enhance the negative perception and stigma that often leads to anti-Arab and anti-Muslim discrimination. The total number of terror-related arrests resulting from the use of post-9/11 racial profiling methods is 0. A clear example that racial profiling does not work.

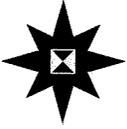
The detrimental effects of racial profiling cause communities to mistrust the government and fuel the perception of the criminal justice system as biased and unjust. According to counter-terrorism experts, racial and ethnic profiling does not make our communities safer. In October 2001, senior U.S. intelligence officials circulated a memorandum entitled *Assessing Behaviors* to American law enforcement agents worldwide. The memorandum emphasized that a focus on individuals' racial characteristics wasted resources and may divert attention away from those who engage in suspicious behavior but are not profiled. Of striking importance is the fact that there is not one documented incident in which racial profiling resulted in the capture or detention of a suspect related to terrorism, again showing that racial profiling does not work.

In June 2003, the Department of Justice (DOJ) issued its *Guidance Regarding the Use of Race by Federal Law Enforcement Agencies* which essentially forbids profiling based on ethnicity and race. Notably however, the guidelines permit ethnic/racial profiling and discrimination based on physical appearance of criminal suspects in certain cases. The guidelines also carved an exception for national security concerns. These exceptions create spineless guidelines that in effect allow racial profiling so long as law enforcement applies their facts to the "exception." Moreover, the guidelines do not cover state and local police agencies that at times have a stronger tendency to engage in racial profiling during routine law enforcement activities. Empirical evidence from around the nation reveals that profiling by federal, state, and local law enforcement agencies is widespread. Despite the efforts of some states and local law enforcement agencies to address this increasingly detrimental problem, federal legislation is necessary.

The End Racial Profiling Act (ERPA) is necessary to help guard against racial profiling and civil right abuses Throughout the U.S. Federal and local agencies must be held accountable for violating the constitution and discriminating against any minority community. ERPA's mandate for data collection of those who have been stopped and detained by law enforcement will provide information that is needed to further analyze U.S. policies and how they are executed. Furthermore, with ERPA procedures set in place to respond and investigate complaints of racial profiling and discrimination, the community may once again find the faith and trust in the U.S. Government that they have lost over time. The ability to seek redress and find answers to the discrimination they have faced will surely bond the U.S. government and law enforcement to the community once again.

ADC strongly believes Congress should enact legislation to address the dangerous problem of racial profiling. ERPA would ban federal law enforcement agencies' practice of racial profiling and create an enforcement mechanism to ensure that anti-profiling policies followed. Over the last several years, variations of ERPA have been introduced, yet it has never been passed. ADC, along with a broad range of community partners, strongly believe that now is the time ERPA must be passed into active legislation to protect the civil rights of all Americans.

Date of Submission: April 13, 2012



**American Friends
Service Committee**

1501 Cherry St, Philadelphia, PA 19102 - afscinfo@afsc.org

**STATEMENT OF THE
AMERICAN FRIENDS SERVICE COMMITTEE
HEARING "ENDING RACIAL PROFILING IN AMERICA"
SENATE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS
AND HUMAN RIGHTS
UNITED STATES SENATE
APRIL 17, 2012**

Chairman Durbin, Ranking Member Graham and members of the Subcommittee:

The American Friends Service Committee (AFSC) is honored to submit this testimony for the record regarding today's hearing on racial profiling and the End Racial Profiling Act. We thank you for holding this critical and timely hearing.

AFSC is a Quaker organization that includes people of various faiths who are committed to social justice, peace, and humanitarian service. Our work is based on the principles of the Religious Society of Friends, the belief in the worth of every person, and faith in the power of love to overcome violence and injustice. It is from the experience of more than 90 years that we speak to support an end to racial

Quaker values in action

profiling. We present this testimony as our witness to the devastating impact racial profiling, especially by law enforcement, has on individuals, families and communities.

- About a year ago, in Charlotte, North Carolina, a naturalized US citizen from Jordan was pulled over for a minor traffic violation. The officer was polite, until he noticed the man's wife in the passenger seat, who was wearing the Hijab head covering. After that, the officer's tone changed distinctly and began aggressively questioning the driver about his birth place, ethnicity and citizenship status. The man was ordered out of the car and immediately searched, handcuffed and arrested, as his terrified wife watched. The man spent the night in jail, and was released on bond the next morning, but only after being questioned by additional officers and immigration authorities. The charges were eventually dropped completely, and the District Attorney claimed the case was ridiculous. Even though the man was cleared, he says that the experience was completely devastating to his family, even unbearable. He states, "You tell your children to stay out of trouble and try to raise them to be good. But what does that tell them when your 19 year old son has to bail you out of jail for not doing anything wrong?"

Please take a few seconds now to imagine yourself in a similar situation.

You are driving a car and are pulled over for a minor traffic violation. Your spouse is sitting in the passenger seat and something about your spouse's dress or appearance causes the officer's manner to change. The police officer asks about your birth place, ethnicity and citizenship status, and then orders you out of the car. You are searched, handcuffed and arrested.

How would you and your spouse feel?

Throughout our history, the AFSC has addressed issues of race, civil rights violations and racial profiling as they affect all people, particularly communities of color. Most recently, in 2010 we co-sponsored hearings in Maine where tribal members shared emotional, personal stories of racial profiling. We built tribal government support for the End Racial Profiling Act (ERPA) across the country by working to add the savings clause to the bill, preserving tribal sovereignty. As part of the Campaign to End the New Jim Crow, AFSC has worked with affected people in New York City to raise awareness of, and put an end to, a situation in which 80 percent of those stopped and frisked by police are African American and Latino.

The AFSC is particularly concerned about many policies and programs at the national, state and local level which encourage or incentivize discriminatory law enforcement practices such as racial profiling. Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain. Except where these characteristics are part of a specific suspect description, singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship, immigration status or gender is in direct breach of the founding principles of this country and international conventions. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice builds resentment and non-cooperation, and diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Racial Profiling in Our Communities

Racial profiling has been a recurrent practice of enforcement agencies in the communities we support. We have reviewed racial stop and search data collected by 22 states, covering 4,000 cities and 6,000 police departments. These reports overwhelmingly show significant differences in the rate of stops and searches for

African Americans, Latinos, Indigenous people (Native Americans) and Asians. The same reports also show that these racial groups are no more likely, and often less likely, than whites to be found to possess drugs, weapons or other contraband when searched as part of traffic stops.

In addition, we have witnessed numerous instances of racial profiling, and believe those are only a fraction of the actual cases taking place, most of which are not reported or documented. Some we have witnessed directly in the course of our work include the following:

- In 2010, an African-American man was on an Amtrak train coming back from a speaking engagement in Los Angeles. He had spent 22 years in solitary confinement in New Jersey's Management Control Unit and AFSC had supported him during his ordeal. He was the only African American in his train car. The man had fallen asleep and was suddenly awakened by two plainclothes police in Colorado, who arrested him and charged him with "endangering public transportation." A train conductor later said she reported him because she "had a gut feeling" about him. Three days later the charges were dismissed as baseless.

- In February 2012, a number of officials dressed as civilians identifying themselves as police knocked at the door of Mr. A. G.'s house in Des Moines, Iowa. He lives with his wife and his 15-year old daughter. He did not open the door and asked the officials what they wanted. "We are looking for Frank," they said. Mr. A.G. couldn't catch the last name and answered: "There is no one living here by that name." The officials insisted he open the door saying that they just wanted to talk to him. Exercising his civil rights, he barely opened the door and got out of the house. The officials immediately handcuffed him insisting that he was "Frank", and showed him a picture of a man somewhat similar to him. Mr. A.G. insisted it was not him. Then they said they were going to search the house. He yelled to his wife and daughter to lock their door and not to open it unless they brought a search warrant. His wife and daughter were able to lock the door with a lot of effort as the officials were trying to force their entry. The officials left the scene with Mr. A.G. and yelled to the wife that they would be back with the search warrant. Four hours later they showed up with the search warrant and took a list of objects that supposedly were evidence of arms possession. The wife said: "Those bullets you are taking, he found them in a public park and the gun you are taking pictures of, is my son's toy; it is not a real gun." Later on, the family learned that a white neighbor had reported them because he suspected they were "cooking drugs" as they had been seen carrying

some large pots in the house during the daytime. In fact, Mr. A.G. and his wife were using those large pots for making cheese to supplement their income. The worse came when Mr. A.G. was taken the next day to the ICE facility in the federal building of Des Moines where he was forced by one of the officers to put his fingerprint on some forms. He actually did not want to sign anything unless he was advised by an immigration attorney to do so. He was told: "You have no right to any attorney because you have a previous deportation order." During the struggle to forcing him to put his fingerprint on the form, he hurt his shoulder, which had suffered a previous injury at work. The incident caused a significant increase in the chronic pain he experienced from that injury subsequently. When Mr. A.G. was arrested, his wife provided officials with the prescription medication he needed to treat his pain. However, he has reported from the jail that he receives only two Advil pills twice a day (the equivalent to 400mg, while his prescription required 800mg twice a day). His level of pain has increased, but he has received no medical treatment or the physical therapy prescribed to him according to medical records which his wife provided to the jail staff. His wife learned from a police officer that was called to act as an interpreter during the search of their house that the ICE officials had been watching and investigating the family for a long time and now were trying to

“fabricate” a case given the amount of time and resources they had spent in their case. “They have to justify it,” she was told.

- An African American family moved to East Greenwich RI, a mostly white community in 2010. Their 16-year old son walked with a friend to the store for candy. On the way home they were stopped by the police, asked what they were doing there, searched (patted down, hands over their heads, leaning against the police car) and finally sent on their way. The boy was humiliated and angry. His father was furious and went to the police. The “reason” for the stop was that “someone” had called and reported “suspicious activity, perhaps drug related.” The police didn’t think to question the racial profiling of the caller and had their own bias.
- In January 2012, AFSC staff became aware of a cruel injustice being done to a group of eight carpenters working to build a student housing project in Durham, NH. The carpenters are immigrant workers who had been hired by a subcontractor working on the project. They were owed tens of thousands of dollars in unpaid wages for their labor over the last few months. When the workers complained, the employer fired and evicted them from their housing, which had been provided by the employer in neighboring Dover. After being

terminated, three of those workers reached out to the Dover Police Department, which detained the workers and turned them over to Immigration and Customs Enforcement under suspicion of being undocumented immigrants. According to a media account, the police department also turned over their wage theft case to the immigration authorities. The officers ignored state and federal labor laws that protect those workers' rights to be paid, regardless of their immigration status.

- Last fall in Des Moines, Iowa, a man from Latin America arrived home to watch his 4-year old son minutes after his wife left for work. To his surprise, the father found two previous tenants of the house in his dining room, drinking and playing cards as if they owned the place. He had gotten rid of such tenants precisely because of their drinking, feeling that they posed a risk to his wife and child. For that reason, he asked the intruders to leave his property immediately. They refused loudly, challenging him with a fist fight. The noise woke up his 4-year old from his nap. Afraid that things would escalate, the father called the police. Even with his limited English language, he was able to get a police car to his house within minutes. However, when the police showed up, the former tenants –a white man and a second-generation Latino– turned things around and accused him of being the trespasser. The police believed them instead of

believing him. They arrested him, and put him in handcuffs in front of his son without caring about the child's cries and the father's worries about leaving his son alone. Additionally, those police officers did not follow a procedure that require the translation services of a bilingual police officer or AT&T services when dealing with people with limited English abilities. The father was taken to the local jail in Des Moines. Fortunately, after a few hours he was released thanks to the help of a bilingual officer who helped clear up the situation. This police officer offered him an apology. The father was so upset that he sought legal advice from AFSC and attorneys. He filed a formal complaint with the Des Moines Police Department and the Civil Rights Commission. However, two weeks later Immigration and Customs Enforcement (ICE)'s officials showed up at his work, arrested and deported him in less than 48 hours. His wife strongly suspects that he was reported to ICE by the police officers to preclude any investigation of his formal complaint.

- In 2009, an Asian 16-year old from Rhode Island was walking down the street to his uncle's house when he realized two police cars were slowly shadowing him. At some point they stopped and approached him. He was asked who he was, what he was doing there, and if he was part of a gang, and was required to provide ID. He asked repeatedly why he was being stopped, but was told

simply to stop mouthing off. He was taken to the police station for questioning, and was photographed and printed. Finally he was allowed to call an adult to come get him, with no charges filed. He is not part of a gang, yet he has reason to believe his photo is now in the gang unit database.

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear and resentment of law enforcement in many communities of color throughout the United States.

The American Friends Service Committee is heartened by the Subcommittee's leadership in holding this hearing, and we are grateful for the opportunity to present stories drawn from our organization's experience with individuals and communities impacted by racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- AFSC supports congressional efforts that seek to end profiling based on race, religion, ethnicity, national origin and gender.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin; remove national and border security loopholes; cover law enforcement surveillance activities;

apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of the American Friends Service Committee. We welcome the opportunity for further dialogue and discussion about these important issues.



**Americans for
Immigrant Justice**

formerly

FIAC
FLORIDA IMMIGRANT
ADVOCACY CENTER

STATEMENT OF

Cheryl Little, Executive Director

AMERICANS FOR IMMIGRANT JUSTICE

Hearing on Ending Racial Profiling in America

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham, and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of Americans for Immigrant Justice (formerly Florida Immigrant Advocacy Center) regarding today's hearing on racial profiling and the potential passage of the End Racial Profiling Act. We thank you for holding this critical and timely hearing, especially given the current climate with respect to immigrants in our country.

Americans for Immigrant Justice is dedicated to protecting and promoting the basic human rights of immigrants through free direct legal services, impact litigation, policy reform, and public education at local, state, and national levels. We work tirelessly to bring about an American society where immigrants are not subjected to abuse or injustice; are not afraid to seek help; have a fair opportunity to make their case in the system that governs them; and have their contributions valued and encouraged.

Americans for Immigrant Justice is particularly concerned about many policies and programs at the national, state and local levels that encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices violate the civil and human rights of persons living in the United States. Singling people out on the basis of race, ethnicity, religion, national origin, or perceived citizenship or immigration status directly undercuts the founding principles of this country. Simply put, racial profiling is wrong.

Racial Profiling in Our Communities

We believe that racial profiling is happening in our communities on a regular basis. In our work to further immigrants' rights, we often encounter individuals who have suffered the indignities of apparent racial profiling. Stories of abuse stemming from apparent profiling abound in southern Florida, including the following account recently reported in the news:

Mateo Gaspar, a mechanic and legal permanent resident, was stopped by a Miami-Dade police officer around the corner from his home in Homestead, Florida one afternoon in June 2011. The officer asked if he had a driver's license, registration and insurance papers. Gaspar, 46, said he had a driver's license. The officer then asked for his vehicle registration and proof of insurance. Gaspar responded that he was test driving a friend's car.

The officer then asked Gaspar where he was from. When Gaspar answered that he was Guatemalan, the officer responded: "F----- immigrant." Moments later, the officer told Gaspar that he was arresting him for driving a stolen car. According to Gaspar, the officer had not checked his computer or called anyone on the radio. Instead, he handcuffed Gaspar and pushed him into the patrol car. In the process, Gaspar's head hit the car, and he fell backward onto the street. The officer ordered him to get up. With handcuffs still in place, Gaspar struggled to stand up and climb into the car.

For about two hours, Gaspar was locked in the back seat of a police car, windows closed, with no air conditioning in the South Florida sun. During that time, the officer told Gaspar's wife and 17-year-old daughter that Gaspar would be going to jail for many years. The car's owner also came to the scene, presented police with proof of ownership and confirmed that the car had not been stolen.

Nonetheless, Gaspar was taken to a Miami-Dade Police station and he was jailed at about 10 p.m. The following morning he was taken to court, where the judge dropped all charges, including the bogus stolen car charges, and released Gaspar. Jail booking records later showed that the officer arrested him on a charge of failure to obey a police officer.ⁱ

This and other incidents break the bonds of trust with local police, who may be viewed as de facto agents of immigration authorities, and also racist. Consequently, many people, including United States citizens, are discouraged from reporting tips or crimes to local police or cooperating in investigations. Police Chiefs nationwide have expressed serious concern in this regard. A 2011 national Police Executive Research Forum report concluded that: “Active involvement in immigration enforcement can complicate local law enforcement agencies’ efforts to fulfill their primary missions of investigating and preventing crime.”ⁱⁱ

Recently, Americans for Immigrant Justice partnered with Florida International University’s Research Institute on Social & Economic Policy to conduct a study of Immigration and Customs Enforcement’s controversial Secure Communities program. The study examines a year’s worth of arrest records, obtained through public record requests, for over 1800 persons in Miami-Dade County referred to ICE through Secure Communities. A report on the study’s findings is due to be released shortly. Preliminarily, we believe that the study will show a clear nexus between the Secure Communities program and the use of racial profiling by local law enforcement authorities.

Conclusion

The practice of racial profiling by federal, state, and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color

throughout the United States. Americans for Immigrant Justice is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local levels. Specifically, we believe:

- Congress should pass the "End Racial Profiling Act (S.1670)" and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of Americans for Immigrant Justice.

We welcome the opportunity for further dialogue and discussion about these important issues.

ⁱ Alfonso Chardy, Residente acusa a policia de acoso. *El Nuevo Herald*, July 28, 2011, <http://www.elnuevoherald.com/2011/07/28/992046/residente-acusa-a-policia-de-acoso.html>; Declaracion de Mateo Gaspar, provided by Jonathan Fried, Executive Director of We Count, a community group based in Homestead, Florida.

ⁱⁱ Debra A. Hoffmaster, *Police and Immigration: How Chiefs Are Leading their Communities through the Challenges*. *Police Executive Research Forum*, Washington, D.C. March 2011, p. xv. <http://www.policeforum.org/library/immigration/PERFImmigrationReportMarch2011.pdf>.



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Testimony of the American Immigration Lawyers Association

Submitted to the Senate Subcommittee on the Constitution, Civil Rights
and Human Rights of the Committee on the Judiciary

Hearing on: "End Racial Profiling in America"

April 17, 2012

The American Immigration Lawyers Association (AILA) offers the following testimony to the Senate Subcommittee on the Constitution, Civil Rights and Human Rights of the Committee on the Judiciary. AILA is the national association of immigration lawyers with more than 11,000 active members and was established to promote justice and advocate for fair and reasonable immigration law and policy.

Racial profiling¹—relying on race, ethnicity, national origin, or religion to select which individual to take law enforcement action against—is an issue of grave concern to our member attorneys and the individuals that they represent. Many clients find themselves in removal proceedings after dubious stops by CBP, ICE, or local law enforcement. Others are unfairly targeted for increased scrutiny at airports and other ports of entry because of their name or manner of dress. Racial profiling hurts more than just the individuals impacted. Communities that believe they are the targets of racial profiling are far less likely to trust the police, report crime, or come forward as witnesses. Racial profiling not only undermines our values, it threatens our collective safety.

AILA has become increasingly troubled by the Department of Homeland Security's growing reliance on local law enforcement to assist the agency in enforcing immigration laws. Programs such as 287(g), the Criminal Alien Program, and Secure Communities rely on local law enforcement to identify individuals whose immigration status ICE then checks.² ICE, however, has no system in place to assess whether the underlying arrests were made using racial profiling or other improper practices. As a result, these programs leave ICE vulnerable to serving as a conduit for racial profiling committed at the local level.

¹ For purposes of this testimony, "racial profiling" is defined as it is in S. 1670, End Racial Profiling Act of 2011 (Cardin D-MD) available at <http://www.gpo.gov/fdsys/pkg/BILLS-112s1670is/pdf/BILLS-112s1670is.pdf>.

² For more information on the importance of local law enforcement arrests on determining who the immigration authorities will ultimately deport, see Hiroshi Motomura, *The Discretion That Matters: Federal Immigration Enforcement, State and Local Arrests, and the Civil Criminal Line*, 58 UCLA Law Review 1819 (2011).

Last August, AILA issued a report, *Immigration Enforcement Off Target: Minor Offenses with Major Consequences*, based on responses to a survey of our members about clients placed into removal proceedings following stops for minor offenses or no offense at all.³ Members reported numerous cases of clients stopped by local law enforcement whom the officers targeted based on their race or ethnicity to check immigration status. In some cases, the officer made impermissible comments, such as making a derogatory comment about the person's perceived nationality. In other cases, the reason for the stop was fabricated—such as a police report citing a broken brake light where none existed. In other instances, no explanation was ever given for the stop. In many cases, people, including passengers in cars during a traffic stop, were questioned about their immigration status by local law enforcement. Despite these improper stops, ICE took enforcement action against all of these individuals, never questioning the circumstances surrounding the arrests. Other organizations and academic institutions have published reports finding that programs like Secure Communities and the Criminal Alien Program disproportionately target Latinos.⁴

DHS continues to insist that programs like Secure Communities are race neutral because the fingerprints of everyone arrested are run through the same check, ignoring the discretion every law enforcement officer exercises to decide who to arrest. Even so, in June 2011, DHS announced a series of reforms to address racial profiling and other concerns. The announced reforms included providing statistical analyses and quarterly reports to identify jurisdictions where suspect police practices might be occurring, the creation of a special Task Force on Secure Communities to assess the program and make recommendations to DHS for reform, and the more uniform and robust use of prosecutorial discretion. Nearly a year later, no statistical reports have been released and the Secure Communities Task Force recommendations, issued in September 2011, have not been adopted or addressed. Unless DHS can immediately implement better training and due process protections to ensure that it does not inadvertently sanction racial profiling, AILA recommends these federal programs be terminated.

For these same reasons, AILA has fundamental concerns with state laws that authorize or require local law enforcement officers to verify the immigration status of individuals. Typically such laws require an officer to verify the immigration status of an individual if the officer believes reasonable suspicion exists that the individual is an alien unlawfully present in the U.S.⁵ Alienage, however, is a legal status that cannot be readily determined based on observable

³ *Immigration Enforcement Off Target: Minor Offenses with Major Consequences*, American Immigration Lawyers Association, August 2011 available at <http://www.aila.org/content/default.aspx?docid=36646>.

⁴ See, e.g., Aarti Kohli, Peter L. Markowitz and Lisa Chavez, "Secure Communities by the Numbers: An Analysis of Demographics and Due Process," The Chief Justice Earl Warren Institute on Law and Social Policy, October 2011 available at http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf. (finding that Latinos comprise 93 percent of individuals arrested through Secure Communities though they only comprise 77 percent of the undocumented population in the U.S.); Trevor Gardner II and Aarti Kohli, *The C.A.P. Effect: Racial Profiling in the ICE Criminal Alien Program*, The Chief Justice Earl Warren Institute on Race, Ethnicity & Diversity, September 2009 available at http://www.law.berkeley.edu/files/policybrief_irving_FINAL.pdf (finding that the Criminal Alien Program appears to tacitly encourage local police to arrest Latinos for petty offenses, noting a nearly threefold increase in arrests of Latinos once the program was implemented in Irving, Texas).

⁵ See, e.g., Arizona's SB 1070 available at http://www.azgovernor.gov/dms/upload/SB_1070_Signed.pdf; Alabama's HB 56 available at <http://www.openbama.org/bills/1058/HB56-enr.pdf>.

factors or traits, such as physical appearance or behaviors. As a result, these laws encourage officers to use proxies such as race, ethnicity, language, or accent to identify people who may be unlawfully present. Such practices undermine community policing and, as a result, the ability of law enforcement to ensure public safety and investigate crimes. While state laws such as Arizona's SB 1070 and Alabama's HB 56 have received the greatest attention, there have also been federal legislative proposals, such as H.R. 100 (Blackburn R-TN) and H.R. 3808 (Myrick, R-NC), that require this same verification of immigration status by local law enforcement or purport to reaffirm the "inherent authority" of local police to enforce immigration laws.⁶

The Department of Justice (DOJ) plays an important role in monitoring state and local law enforcement agencies, and recently, they have taken action against the Maricopa County Sheriff's Office, the East Haven Police Department, and the New Orleans Police Department. However, it appears that DOJ lacks the authority and resources to thoroughly monitor a program like Secure Communities, now active in 2,670 jurisdictions across the United States, which intertwines federal immigration enforcement with local law enforcement.

Racial profiling is not a practice that is isolated to state and local law enforcement. Such practices are also a problem within federal law enforcement agencies. AILA lawyers report that clients of Middle Eastern nationality or Muslim faith are frequently detained by Customs and Border Protection (CBP) personnel for secondary inspection or more invasive searches and interrogations at airports and other ports of entry. AILA has also received reports of unlawful CBP *Terry*-stops to investigate occupants of color with no apparent basis. Other organizations, such as the Sikh Coalition, the Asian Law Caucus and Muslim Advocates, have also reported the disproportionate targeting of Arab or Muslim Americans re-entering the country for invasive stops, searches and interrogations. A recent report by the New York Civil Liberties Union documents transportation raids carried out by the Border Patrol in upstate New York, in which agents regularly boarded domestic buses and trains miles from the Canadian border to interrogate passengers about their immigration status, and in many cases, singled out passengers of color for additional scrutiny.⁷

RECOMMENDATIONS

1. Congress should terminate funding for federal programs that foster or facilitate the practice of racial profiling, including the 287(g) program, Secure Communities, and the Criminal Alien Program, unless DHS immediately implements mechanisms to ensure the protection of civil rights and due process.

⁶ See e.g. H.R. 3808 (Myrick R-NC) available at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr3808ih/pdf/BILLS-112hr3808ih.pdf>; H.R. 100 (Blackburn R-TN) available at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr100ih/pdf/BILLS-112hr100ih.pdf>.

⁷ *Justice Derailed: What Raids on New York's Trains and Buses Reveal About Border Patrol's Interior Enforcement Practices*, The New York Civil Liberties Union, November 2011 available at http://www.nyclu.org/files/publications/NYCLU_justicederailedweb_0.pdf.

2. Congress should reject legislation that authorizes or requires local law enforcement officers to engage in the verification of individuals' immigration status. Such proposals encourage state and local officers to engage in impermissible racial profiling.

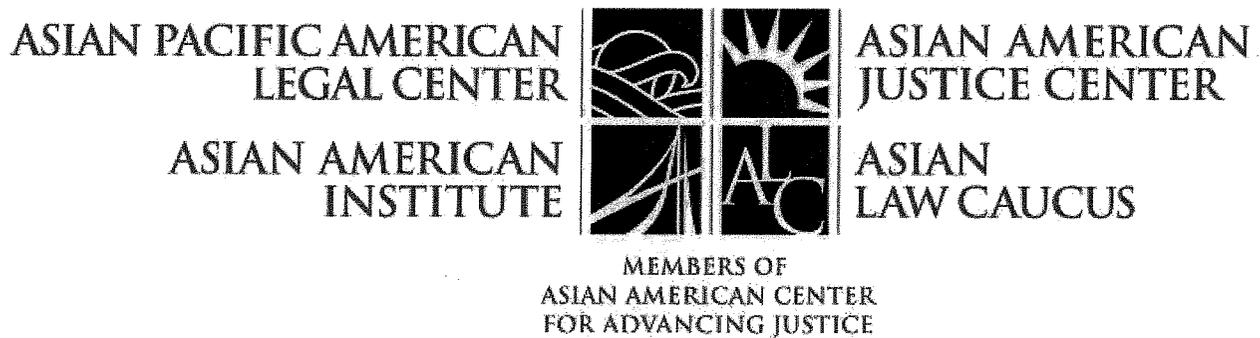
3. The Department of Justice (DOJ) should strengthen the June 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies. The revised Guidance should:

- Explicitly state racial profiling includes profiling based on religion or national origin
- Apply equally to national security and border security law enforcement
- Prohibit federal law enforcement officials from participating in joint activities with state or local law enforcements agencies that do not have policies and practices that prohibit racial profiling at least to the extent of DOJ guidance.

4. DOJ and DHS must work more collaboratively to implement safeguards to ensure that federal programs that rely on local law enforcement agency action do not become conduits for racial profiling.

5. DHS must monitor the underlying arrests of individuals referred to them so that the department does not become a conduit for racial profiling. At a minimum, DHS should not initiate enforcement action when a local law enforcement agency or officer under investigation for racial profiling or other improper police practices is the referring source.

For follow-up, contact Gregory Chen, Director of Advocacy, 202/507-7615, gchen@aila.org or Alexa Alonzo, Associate Director of Advocacy, 202/507-7645, aalonzo@aila.org.



**STATEMENT OF
Asian American Center for Advancing Justice
Hearing on Ending Racial Profiling in America**

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee:

We submit this testimony for the record on behalf of the Asian Pacific American Legal Center, Asian American Justice Center, Asian American Institute, and Asian Law Caucus, as members of the Asian American Center for Advancing Justice (hereafter “Advancing Justice”). The mission of the Asian American Center for Advancing Justice is to promote a fair and equitable society for all by working for civil and human rights and empowering Asian Americans and Pacific Islanders (AAPI) and other underserved communities.

Advancing Justice is heartened by the Subcommittee’s leadership in holding this critical and timely hearing. We are concerned about the unjust, ineffective and counterproductive practice of racial profiling and, in particular, the many policies and programs throughout the nation that encourage or incentivize such discriminatory law enforcement practices. Regardless of whether it is framed or manifested as the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is wrong. Accordingly, Advancing Justice respectfully urges you to support the “End Racial Profiling Act (S.1670)” and institute a federal ban on profiling based on race, religion, ethnicity, and national origin at the federal, state, and local levels.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, *except* where these characteristics are part of a specific suspect description. The practice relies on the flawed

assumption that a particular crime is most likely to be committed by members of a particular racial, ethnic, religious, or national group.

Such practices are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. As long as racial profiling remains a widespread practice amongst law enforcement, the rule of law, national security, and the dignity of all Americans will be compromised.

Racial Profiling in AAPI Communities

There is a long and tragic trajectory of racial and religious profiling that has, and continues to, negatively impact AAPI communities. Asian Americans and Pacific Islanders have been targeted for heightened scrutiny by the government based on race, religion, ethnicity, national origin, or nationality. Examples include the internment of Japanese Americans during World War II; profiling of AAPI youth as gang members; racial and religious discrimination following September 11, such as surveillance and discrimination of Arab, Middle Eastern, Muslim, Sikh, and South Asian Americans, additional and invasive searches of travelers, and targeted detention and deportation of AAPI immigrants, many of whom have U.S. citizen children and are productive members of American society; and immigration enforcement initiatives, including state laws such as Arizona's SB 1070, Georgia's HB 87, and Alabama's HB 56.

Not only does racial profiling waste limited government resources by misdirecting scrutiny to innocent individuals, it also seriously erodes trust between law enforcement agencies and AAPI communities. The practice of racial profiling by federal, state and local agencies has resulted in a heightened fear of law enforcement in our community. Law enforcement agencies that resort to faulty investigative tools such as profiling are less likely to use and develop reliable and proven skills, such as intelligence or behavior-spotting. Criminal investigations are flawed and hindered because people and communities impacted by these stereotypes are less likely to cooperate with agencies they have grown to mistrust. As a result, fear and distrust of law enforcement develops within a community, undermining its ability to work effectively. In effect, racial profiling makes our communities, and ultimately all communities, less safe.

Recently, the tragic death of Trayvon Martin has put racial profiling front-and-center in the national consciousness. This case is a chilling reminder of the ongoing specter of racial prejudice and discrimination – and that justice is often elusive for those who are considered “suspicious” or “other.” In 1982, against the milieu of fierce economic competition with Japan, Vincent Chin, a Chinese American man celebrating his upcoming wedding was beaten to death with a baseball bat by two white auto workers who presumed Chin was Japanese. The perpetrators never spent a day in jail.

Conclusion

We must ensure that history does not repeat itself. Advancing Justice respectfully urges the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the “End Racial Profiling Act (S.1670)” and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for holding this critical and timely hearing and for the opportunity to express the views of Advancing Justice. We welcome the opportunity for further dialogue and discussion about these important issues.

Sincerely,

Asian Pacific American Legal Center
Asian American Justice Center
Asian American Institute
Asian Law Caucus

~Members of the Asian American Center for Advancing Justice~

**UNITED STATES SENATE
SENATE COMMITTEE ON THE JUDICIARY**

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

Statement of

**Shahid Buttar
Executive Director,
Bill of Rights Defense Committee**

April 17, 2012

The Bill of Rights Defense Committee (BORDC) thanks Chairman Durbin and members of the Subcommittee on the Constitution, Civil Rights, and Human Rights for holding this important hearing about constitutional abuses violating the rights of millions of law-abiding Americans. We respectfully submit this statement for the record to express our enthusiastic support for the End Racial Profiling Act (S.1670).

BORDC is a national non-profit grassroots organization, established in 2001 after the passage of the USA PATRIOT Act. Our mission is to defend the rule of law and rights and liberties challenged by overbroad national security and counter-terrorism policies. The Bill of Rights was adopted to limit the power of the state over individuals and to preserve basic human and individual rights for every person in the US, even in times of national crisis. Yet, under the guise of public safety, many government agencies have institutionalized the practice of racial, ethnic, and religious profiling, which violate the founding principles of our country while also undermining the public safety principles prompting this nefarious practice.

Profiling occurs whenever law enforcement or intelligence agents use race, religion, ethnicity, or national origin as a factor in deciding whom to investigate, arrest, or detain without having a description of a specific suspect. Regardless of whether it takes place in the context of the war on drugs, immigration enforcement, or counterterrorism efforts, profiling is offensive to our nation's constitutional legacy, and also diverts precious law enforcement resources away from smart investigations based on criminal behavior.

The stain of racial profiling has marked our country for generations. Following Pearl Harbor, the US government rounded up Japanese citizens and detained them in camps solely because of their national origin, without a shred of evidence that suggested wrongdoing. Though the internment camps that imprisoned Japanese Americans during World War II have long since closed, similar threats to civil rights haunt this country in the post-9/11 era.

Law enforcement authorities at the local, state, and federal levels routinely target at least three groups of ethnic minorities: African Americans, Latinos, and Muslims. A well-documented history of race-based profiling against African Americans lends itself to continued disproportionate scrutiny by police, in the context of both traffic stops and pedestrian stop-and-frisks. These policies have expanded in recent years to increasingly impact Latinos and Muslim Americans, as well as black communities.

Throughout the US, law-abiding residents fear police harassment for “driving while black.” With regard to traffic stops, studies find great disparities between blacks and other groups all over the country. For instance, in Milwaukee, almost 70 percent of drivers stopped by police in 2010 were black, and cars of black drivers were searched twice as often as vehicles driven by whites.¹ The Milwaukee Police Department claims that their crime-fighting approach results in high racial disparities because high-crime neighborhoods tend to have larger minority populations, but the study also found that police discovered contraband in cars driven by whites and blacks in equal numbers.

Beyond biased policing on the roads, African Americans also endure persistent harassment by law enforcement when walking, or even when at home. The stop-and-frisk program in New York City targets racial minorities on streets and in homes: while blacks and Latinos constitute 23 and 29 percent of the population in NYC, respectively, these groups make up 87 percent of all stops.² Data collected on Operation Clean Halls, a program that permits NYPD officers to enter private residential buildings, reflect bias similar to that apparent in street policing.

Meanwhile, in the name of “securing” our borders, immigration enforcement has become the latest front for pervasive racial profiling. Following the example of Arizona’s SB 1070, states around the country have passed or attempted to pass similar legislation that legalizes and even encourages racial profiling.

Yet these policies not only are discriminatory, but also threaten the effectiveness of law enforcement. Undocumented—and even documented—immigrants and their family members who suffer or witness crime increasingly avoid interaction with authorities for fear of deportation or harassment. As a result, crimes go unreported and much-needed cooperation between police and communities erodes, endangering public safety for all.³ Furthermore, racial profiling has hampered America’s standing in the world, as 16 countries around the world have filed suit against South Carolina’s immigration law.⁴

Fred Korematsu, whose 1944 case before the Supreme Court established the perverse permissibility of race-based detention under strict scrutiny, foresaw the struggles that Muslim Americans would endure after 9/11. When the first two cases raised by Guantánamo detainees reached the Supreme Court, amicus briefs were submitted on Mr. Korematsu’s behalf.⁵ He noted in 2004 that “No one should ever be locked away simply because they share the same race, ethnicity, or religion as a spy or terrorist. If that principle was not learned from the internment of Japanese Americans, then these are very dangerous times for our democracy.”

¹ See Ben Poston, “Racial gap found in traffic stops in Milwaukee,” *Milwaukee Journal Sentinel* (Dec. 3, 2011), available at <http://www.jsonline.com/watchdog/watchdogreports/racial-gap-found-in-traffic-stops-in-milwaukee-ke1hsip-134977408.html>.

² See Center for Constitutional Rights, *Racial Disparity in NYPD Stops-and-Frisks*, available at <http://ccrjustice.org/stop-and-frisk-does-not-reduce-crime>.

³ See Goldwater Institute, *Mission Unaccomplished: The Mismatched Priorities of the Maricopa County Sheriff’s Office* (Dec. 2008), available at <http://goldwaterinstitute.org/article/goldwater-institute-study-looks-effectiveness-maricopa-county-sheriffs-office>.

⁴ See Jim Davenport, “16 Latin American Nations Want To Challenge SC Immigration Law,” *Huffington Post* (Nov. 8, 2011), available at http://www.huffingtonpost.com/2011/11/09/16-nations-want-to-challe_0_n_1083642.html

⁵ See Matt Bai, “He Said No to Internment,” *New York Times* (Dec. 25, 2005), available at <http://www.nytimes.com/2005/12/25/magazine/25korematsu.html>.

Sadly, law enforcement agencies have not heeded Mr. Korematsu's warnings. Documents have exposed the NYPD for baselessly monitoring mosques in New York⁶, and recent reports document the expansion of NYPD surveillance and religious profiling to monitor Muslim students and businesses across the Northeast, well beyond its jurisdiction and completely immune from any meaningful oversight.⁷

These practices are counterproductive, waste public resources, and violate the civil and human rights of persons living in the United States. To restore the principles of the Bill of Rights, Congress should pass the End Racial Profiling Act and institute a federal ban on profiling based on race, religion, ethnicity, and national origin at the federal, state, and local levels.

Furthermore, the Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Passing ERPA will help, but it alone may not stop the rising tide of abuses by our nation's law enforcement and intelligence agencies. For instance, the FBI has unapologetically profiled Muslim Americans, as well as peace and justice activists and environmentalists, under broad (indeed, nearly limitless) powers expanded by the 2008 Attorney General's Guidelines issued by then-Attorney General Michael Mukasey.⁸ Hearings into mounting abuses under the Attorney General's Guidelines are both long overdue and necessary to ensure that profiling through surveillance does not survive the passage of ERPA.⁹

Finally, the Subcommittee should introduce, approve, and work with the full Senate to enact the Judicious Use of Surveillance Tools in Countering Extremism (JUSTICE) Act. Like restoring meaningful limits on FBI operations, enacting the JUSTICE Act is the only way to restore the rule of law in the wake of draconian surveillance powers expanded by the FISA Amendments Act of 2008.

The Bill of Rights Defense Committee is encouraged by the Subcommittee's leadership in holding this hearing, and we are grateful for the opportunity to present our position on the unjust, ineffective, and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take decisive action to prohibit and prevent racial profiling at all levels of law enforcement.

Thank you again for this opportunity to express our views. We look forward to continued dialogue on these issues of vital concern to our diverse American public.

⁶ See *NYPD Secret Intelligence Strategy Report* (May 15, 2006), available at <https://www.documentcloud.org/documents/288719-nypd-iranian-intel.html>.

⁷ See Chris Hawley, "NYPD monitored Muslim students all over Northeast," *Associated Press* (Feb. 28, 2012), available at <http://www.ap.org/Content/AP-In-The-News/2012/NYPD-monitored-Muslim-students-all-over-Northeast>

⁸ See coalition letter to members of Congress regarding the extension of FBI Director Mueller's term (July 12, 2011), available at <http://bordc.org/letters/2011-07-12-mueller.pdf>.

⁹ See Emily Berman, "Domestic Intelligence: New Powers, New Risks," *Brennan Center for Justice* (Jan. 18, 2011), available at http://www.brennancenter.org/content/resource/domestic_intelligence_new_powers_new_risks/.



STATEMENT OF

Gerald Lenoir, Executive Director

Black Alliance for Just Immigration

Hearing on Racial Profiling and the End Racial Profiling Act

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of the Black Alliance for Just Immigration (BAJI) regarding today's hearing on racial profiling. BAJI is an education and advocacy group comprised of African Americans and black immigrants from Africa, Latin America and the Caribbean. We are interested in the issue of racial profiling because many of our members and constituency are racially profiled by local police and Immigration and Customs Enforcement (ICE).

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. BAJI is particularly concerned about many policies and programs at the national, state and local level which encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States.



Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Racial Profiling in Our Communities

In communities throughout the San Francisco Bay Area, racial profiling is a major problem. The most well known case is of Oscar Grant, a young African American male who was shot in the back by a Bay Area Rapid Transit (BART) policeman in 2009. Latino immigrants also face racial profiling from local law enforcement who stop drivers who “look like undocumented immigrants.” [My quotes]

Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color in the U.S.



BAJI is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the "End Racial Profiling Act (S.1670)" and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of the Black Alliance for Just Immigration. We welcome the opportunity for further dialogue and discussion about these important issues.

STATEMENT OF Jesus Y. Rodriguez & Devon Abdallah, Co-chairs

City of Seattle Immigrant and Refugee Commission

Hearing

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of the City of Seattle Immigrant and Refugee Commission regarding today's hearing on racial profiling. Our mission is to represent the interests of Immigrant and Refugee communities as they strive to become full members of American society and to advocate on their behalf as they struggle to realize life, liberty and the pursuit of happiness. We, however, share definite concerns regarding the issue of racial profiling as many of our constituents have been victims of such abuse of their civil and human rights. American history has ample documentation regarding the racial profiling of Blacks, Latinos, Native Americans, Asians, and most recently, Arab Americans and other Middle Eastern persons. If it were possible, we would testify in person, but finances are a problem for many of as a result of the recession.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. The Immigrant and Refugee Commission is particularly concerned about many policies and programs at the national, state and local level which encourage or incentivize

discriminatory law enforcement practices such as racial profiling. We believe that these practices are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States. **They send a negative message to those who have come to this great nation with much hope of freedom and a chance to start a new life! It is sad indeed, that those they would trust to be their protectors, turn out to be their oppressors.**

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Racial Profiling in Our Communities As recently as the last two years, the Seattle Times and the Seattle Post-Intelligencer, have run feature stories regarding the excessive use of force by the Seattle Police Department against Native American, Latino and Black community members who point in the direction of racial profiling. The issues have been serious enough as to warrant an investigation by the United States Department of Justice during 2011-2012. Many of our Black, Latino and Asian American youth have also been targets of racial profiling in relation to neighborhood gangs simply because of their appearance. As recently as a few weeks ago, copycat vigilantes have targeted Muslim women and other recent immigrant and refugee

residents. All this in spite of the fact that Seattle is home to a more liberal and enlightened citizen population. Time and space do not allow for describing the tragic stories Americans of Mexican descent or their relatives have to face in Washington, Arizona, Alabama, Georgia and elsewhere simply because we "look illegal!" Please help us make America truly become the "Land of the Free and the Home of the Brave" instead of a place where hate and discrimination rule supreme!

Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color throughout the United States.

Our Immigrant and Refugee Commission is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the "End Racial Profiling Act (S.1670)" and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of many of our Immigrant and Refugee Commission constituents. We welcome the opportunity for further dialogue and discussion about these important issues.



COALITION FOR HUMANE IMMIGRANT RIGHTS OF LOS ANGELES

17 April 2012

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STATEMENT OF

Angelica Salas, Executive Director

Coalition for Humane Immigrant Rights of Los Angeles, CHIRLA

Hearing “Ending Racial Profiling in America”

**SENATE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS**

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee:

I am honored to submit this testimony for the record on behalf of the Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA) regarding today’s hearing on racial profiling. Formed in 1986, CHIRLA’s mission is to advance the human and civil rights of immigrants and refugees in Los Angeles; promote harmonious multi-ethnic and multi-racial human relations; and through coalition-building, advocacy, community education and organizing, empower immigrants and their allies to build a more just society. Racial profiling is a long-standing concern of the immigrant community in California, and with the increased immigration enforcement – including the expanding involvement of local police departments and sheriff’s agencies – the threat is greater than it has ever been. In addition, CHIRLA works closely with representatives of minorities, vulnerable groups and

other communities of color, all of whom are also adversely impacted by racial profiling by law enforcement agencies.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. CHIRLA is particularly concerned about many policies and programs at the national, state and local level which encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Racial Profiling in Our Communities

In March 2012, Chief Charlie Beck of the Los Angeles Police Department (LAPD) became the first Chief to acknowledge and refer a case of racial profiling by a LAPD officer to a three person review panel.¹ For decades, community members, including immigrants and Latinos, have been subjected to random stops by local police, and despite hundreds of formal complaints each year, there have never been any consequences. This particular officer was accused of profiling Latinos, which in this day and age comes as little surprise. Against the will of



COALITION FOR HUMANE IMMIGRANT RIGHTS OF LOS ANGELES

the Mayor of Los Angeles and his Chief of Police, our city is now part of Immigration and Customs Enforcement (ICE) “Secure Communities”(S-Comm) program. S-Comm connects the LAPD and other agencies in LA County directly to ICE via fingerprint databases, and erases the bright line Los Angeles has established between the police and immigration functions of the federal government. Several studies, including from the University of California, Berkeley and Irvine, demonstrate that deportation programs like S-Comm leverage and rely on the existing racial profiling practices of local police.ⁱⁱ This is unacceptable and highly detrimental to public safety, making immigrants less willing to report crime.

Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color in the U.S.

CHIRLA is heartened by the Subcommittee’s leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the “End Racial Profiling Act (S.1670)” and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of CHIRLA. We welcome the opportunity for further dialogue and discussion about these important issues.

Sincerely,

Angelica Salas, Executive Director

ⁱ “LAPD officer profiled Latinos in traffic stops, internal probe concludes”, 27 March 2012, Los Angeles Times, <http://articles.latimes.com/2012/mar/27/local/la-me-lapd-racial-profile-20120326>

ⁱⁱ Please see, “Secure Communities by the Numbers”, A Kohli, P. Markowitz, L. Chavez, Chief Justice Earl Warren Institute on Law and Social Policy, University of California Berkeley, Law School; October 2011
http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf

“Misplaced Priorities: the Failure of Secure Communities in Los Angeles County”, E. Aguilarsocho, D. Rodwin, S. Ashar
Immigrant Rights Clinic University of California, Irvine School of Law, January 2012
http://www.law.uci.edu/pdf/MisplacedPriorities_aguilascho-rodwin-ashar.pdf



STATEMENT OF

Rev. Anne Dunlap, Pastor

Comunidad Liberación/Liberation Community

Hearing on Ending Racial Profiling in America

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of Comunidad Liberación/Liberation Community regarding today's hearing on racial profiling. Comunidad Liberación/Liberation Community ("Comunidad") is a bilingual, multi-cultural community of faith in the Christian tradition, which strives to live faithfully, to embody God's vision of the beloved community, and to resist joyfully oppression and injustice. Because the majority of our members are persons of color who routinely experience racial discrimination and racial profiling, we have a deep concern for ending racial profiling.

Comunidad Liberación/Liberation Community
Aurora, CO

<http://liberationcommunity.org> liberation.community@gmail.com

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. Comunidad is particularly concerned about many policies and programs at the national, state and local level which encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Racial Profiling in Our Communities

Racial profiling is rampant in Denver and Aurora, CO. Our members and neighbors report police harassment based on racial profiling on a consistent basis. Victims of domestic violence and wage theft who are persons of color know that they cannot count on the police for assistance for fear of such harassment. For just one example, one of our immigrant members shared with us that when he called the police after being robbed on the street, the police interrogated *him* about his immigration status and why he was out (he was walking home from the bus stop after

Comunidad Liberación/Liberation Community

Aurora, CO

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work) rather than gather details about the crime.

Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color throughout the United States.

Comunidad is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the "End Racial Profiling Act (S.1670)" and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of Comunidad Liberación/Liberation Community. We welcome the opportunity for further dialogue and discussion about these important issues.

Comunidad Liberación/Liberation Community
Aurora, CO

<http://liberationcommunity.org> liberation.community@gmail.com



STATEMENT OF

Woody Kaplan, President

Defending Dissent Foundation

Hearing on Ending Racial Profiling in America

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of the Defending Dissent Foundation (DDF) regarding today's hearing on racial profiling. DDF was founded in 1960 to protect and advance the right of dissent in the United States, and we are particularly concerned that racial, religious, ethnic and national origin profiling have a strong chilling effect on the free speech and assembly rights of targeted individuals and communities.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. We encourage the committee to examine the link between profiling and “Intelligence-Led” policing policies and procedures that specifically encourage investigations based on First Amendment-protected speech and/or legal but ‘suspicious’ activity, and which allow law enforcement to use race, religion, ethnicity or national origin as a factor in deciding whether to open an investigation. Law enforcement officers should not be authorized to launch investigations, arrest or detain people without some predicated facts or allegations. In the absence of evidence or even a credible allegation of wrongdoing on which to base their activities, law enforcement agencies at every level have time and again turned to racial, ethnic, religious and national origin profiling, in direct violation of the civil and human rights of targeted individuals and communities.

DDF encourages the Subcommittee to pay particular attention to the Attorney General’s Guidelines for Domestic FBI Operations and the Suspicious Activity Reporting Initiative.

Attorney General’s Guidelines for Domestic FBI Operations

In the closing days of the Bush Administration in 2008, then Attorney General Michael Mukasey issued a new set of Guidelines, prompting concerns from Senator Richard Durbin (D-IL) even before their implementation:

These guidelines would permit FBI surveillance of innocent Americans with no suspicion and on the basis of their race, religion, or national origin. These

guidelines will hinder the FBI's efforts to protect our national security and threaten the constitutional rights of American citizens.¹

The Bush Administration had already loosened the guidelines considerably, in 2002, 2003, and 2006, but the 2008 Mukasey Guidelines vastly expanded the investigatory authorities available to agents without any predicated facts or allegations, by expanding the Assessment tier of investigative activity. The changes authorize a number of intrusive investigative techniques during Assessments, including pretext interviews, interviewing members of the public, recruiting and tasking informants, physical surveillance not requiring a court order, grand jury subpoenas for telephone or electronic mail subscriber information, and more.²

The Guidelines give FBI agents broad individual discretion to investigate Americans using these techniques without reasonable suspicion of wrongdoing, or supervisory approval or oversight. They also allow race to be used as a factor, among others, justifying scrutiny. Given the pressure on agents to identify unknown threats to national security before they emerge, such unchecked power invites abuse, including inappropriate profiling according to race, religion, ethnicity, national origin, or political speech.

At an oversight hearing before the Senate Judiciary Committee on July 28, 2010, FBI Director Mueller testified that religious groups are protected from profiling because *FBI agents cannot begin an investigation without reasonable suspicion of wrongdoing*. Unfortunately, that assertion is untrue (as Director Mueller admitted in a letter to the Committee shortly after the hearing).

FBI agents are allowed to, and do investigate people and groups about whom there is no

evidence, allegation or even suspicion of criminal activity. And, the guidelines allow agents to use race, religion, ethnicity or national origin as a factor in deciding to open an assessment (thus there is no protection against profiling at all).

FBI documents obtained by the ACLU under FOIA litigation have revealed that the FBI is engaged in unconstitutional racial profiling and racial “mapping,” and using community outreach programs to collect and store information about American’s First Amendment-protected activities. Most recently, in March 2012, the ACLU released documents showing that the San Francisco FBI conducted a years-long *Mosque Outreach* program that collected and illegally stored intelligence about American Muslims’ First Amendment-protected beliefs and religious practices, including documenting the content of sermons.³

The FBI has a long history of abusing its investigatory power, symbolized most aptly by the COINTELPRO scandal, which prompted the establishment of the Attorney General’s Guidelines. However, since 1976, the Guidelines have shrunk to a shadow of their original protections. Rather than impose meaningful constraints on potentially politicized investigations and prosecutions, or intrusions by Bureau agents into constitutionally protected activity, today’s guidelines invite—rather than constrain—these sorts of abuses.

Suspicious Activity Reporting

Launched in 2010, the National Suspicious Activity Reporting (SARS) initiative encourages law enforcement officers and even the public to report activity that is ‘suspicious’ on the assumption that it may indicate possible terrorist activity. Among the legal activities singled out as ‘suspicious’ are: taking videos or photographs⁴; paying in cash⁴; expressing ‘extreme’ religious

or political views⁴; using an apartment as a house of worship⁴; traveling abroad⁴; speaking out against the government⁵; converting to Islam and growing facial hair⁶. The wide range of commonplace activities identified as 'suspicious' opens the door to racial, religious, ethnic and national origin profiling.

A 2010 investigation by Public Research Associates exposed how Suspicious Activity Reporting "enables and institutionalizes racial, ethnic and political profiling by legitimizing prejudicial assumptions about certain groups' alleged propensity for terrorism."⁷ The report documents numerous incidents where law-abiding people of 'Middle Eastern appearance' received intimidating visits from police or FBI Joint Terrorism Task Force agents simply because they videotaped a tourist attraction, rented a boat without fishing gear, engaged in religious practice, or took a picture with a friend at an airport.

In 2011, a report⁸ by NPR and Center for Investigative Reporting detailed the SAR program at the Mall of America documenting that mall security stop 1,200 people each year for acting suspicious, and 65% of the subjects of SAR reports were non-white, far exceeding the proportion of non-whites in the population. In one incident, Saleem Qureshi, a 69 year old Pakistani-American left his cell phone at the mall food court. Mall security became suspicious when they noticed an unattended stroller nearby (which did not belong to Qureshi). Even after it became evident that neither the phone nor the stroller presented a threat, mall security officers continued questioning Qureshi, following him back to his place of work. Details of the report were forwarded to the FBI, who then visited the family at their home.

The public face of the SAR Initiative, which encourages the public to report ‘suspicious’ activity through the “If you see something, Say Something” campaign is also problematic. The Department of Homeland Security’s webpage promoting the campaign to the public, suggests that “factors such as race, ethnicity, national origin, or religious affiliation alone are not suspicious,”⁹ leaving open the possibility that those attributes can legitimately be considered as one factor among others in determining whether any given activity is innocent, or suspicious.

Conclusion

The Defending Dissent Foundation applauds the Subcommittee’s leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the “End Racial Profiling Act (S.1670)” and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.
- Congress should consider a legislative fix to the problem of the steady loosening of the Attorney General’s Guidelines by establishing a legislative charter for the FBI, limiting the FBI’s investigative authorities by requiring a factual predicate sufficient to establish

reasonable suspicion before intrusive investigative techniques may be authorized, and prohibiting investigations based in part on race, religion, ethnicity or national origin, or on the exercise of First Amendment Rights.

- Congress should hold hearings on the National SAR Initiative to evaluate the effectiveness of the program, as well as the legitimate privacy and civil liberties concerns the program raises.

Thank you again for this opportunity to express the views of the Defending Dissent Foundation. We welcome the opportunity for further dialogue and discussion.

End Notes:

¹ U.S. Senator Richard Durbin, *Statement on Announcement of New FBI Guidelines* (Oct. 3, 2008), available at <http://durbin.senate.gov/showRelease.cfm?releaseId=304117>.

² U.S. Dep't of Justice, *The Attorney General's Guidelines for Domestic FBI Operations*, 19 (2008).

³ American Civil Liberties Union, various documents, available at <http://www.aclu.org/national-security/foia-documents-show-fbi-using-mosque-outreach-intelligence-gathering>

⁴ Montgomery County (MD) Police Department, *Operation Tripwire: Potential Indicators of Terrorist Activities*, available at

<http://www.montgomerycountymd.gov/content/pol/districts/ISB/sid/ViceIntelligence/operationtripwirewebready.pdf>

⁵ Eileen Sullivan, Huffington Post, *Obama Administration Holding Terrorism Summit With Police Chiefs*, January 18, 2012. Available at

http://www.huffingtonpost.com/2012/01/18/obama-administration-police-chiefs-violent-extremism_n_1212697.html

⁶ FBI Intelligence Assessment "The Radicalization Process: From Conversion to Jihad," May 2006

⁷ Thomas Cincotta, *Platform for Prejudice: How Nationwide Suspicious Activities Reporting Initiative Invites Racial Profiling, Erodes Civil Liberties, and Undermines Security* (Political Research Associates, 2010) available at

http://www.publiceye.org/liberty/matrix/reports/sar_initiative/index.html

⁸ Center for Investigative Reporting and National Public Radio, *America's War Within*, available at

<http://americaswarwithin.org/articles/2011/09/07/mall-america-visitors-unknowingly-end-counterterrorism-reports>

⁹ Department of Homeland Security, "If You See Something, Say Something™" Campaign at:

<http://www.dhs.gov/files/reportincidents/see-something-say-something.shtm>



STATEMENT SUBMITTED BY

**Fahd Ahmed, Legal and Policy Director
& the 1400 leaders and members of
DRUM – Desis Rising Up & Moving**

Hearing on “Racial Profiling in America”

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. DRUM (Desis Rising Up & Moving) is particularly concerned about many policies and programs at the national, state and local level, which encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States. I am honored to submit this testimony for the record on behalf of the 1400 low-income South Asian members of DRUM regarding today’s hearing on racial profiling.

DRUM is a membership-based community organization of low-income South Asian immigrants, workers and youth. DRUM has been organizing our community members for the past 12 years for immigrant rights, workers rights, educational justice, and for police accountability. Being firmly rooted in our communities, DRUM has directly seen and experienced the various forms and effects of racial profiling on the lives of our members. For the past 6 months, as part of our End Racial profiling campaign, DRUM has been conducting surveys and interviews in NYC Muslim communities on their interactions with law enforcement agencies, instances of profiling, the impacts on their social, religious, and political participation in society, and their levels of trust in law enforcement agencies. These experiences and ongoing data form the basis for this testimony.



Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

The Last 11 Years of Racial Profiling in Our Communities

DRUM- Desis Rising Up & Moving was founded in January 2000 because of the mass wave of low-wage South Asian migrant workers to New York City in the 1990's, the impacts of the 1996 immigration laws on our community, and expanding over-policing regime in NYC. DRUM is unique in that we did not form as a response to 9/11, but were already organizing in immigrant detention centers, on racial profiling, and human rights since 2000. So we recognize that the profiling of our communities did not begin on September 11, 2001. In fact, when nearly 1200 men from the New York and New Jersey areas were picked up out of their homes, workplaces, and off the street for being or appearing to be Muslim, we already had a base of members inside detention centers and were the first to locate hundreds of men arrested and jailed in New Jersey county jails.

On September 12, 2001, DRUM immediately set up a multi-lingual community hotline for South Asians, Arabs, and Muslims being 'disappeared', facing bias crimes, and being questioned by authorities. Within days, we received hundreds of calls from community members and mosques. Starting in September of 2002, the National Security Entry-Exit Registration System (NSEERS), also known as "Special Registrations," forced non-citizens above the age of 16 from 24 Muslim majority countries to register with the government. Nearly 83,000 men complied, and over 13,000 were put into deportation proceedings. By 2003, DRUM formed and led the NYC Coalition to End Special



Registrations with over fifty organizations and played a lead role in the 9/11 Coalition for Civil Liberties to serve thousands of impacted New Yorkers with legal services. We witnessed first hand how the post 9/11 sweeps and the Special Registrations program tore apart thousands of families, destroyed whole communities and neighborhoods, and yet produced no results that made us any safer.

The instances of profiling have not been limited to the streets or to adults. In 2005, members and leaders of our youth program, YouthPower!, conducted a survey of 662 high school aged South Asian youth and published a groundbreaking report with the Urban Justice Center entitled, *“Education Not Deportation: Impacts of NYC School Safety Policies on South Asian Youth.”* The report found alarming data that showed overwhelming evidence of racial profiling faced by South Asian and Muslim youth in schools and neighborhoods, the impacts it had on their education and their sense of well-being, and led us to join efforts to curtail school policing and racial disparity in education.

We have also seen the blanket surveillance, mapping and raids in our communities by the FBI, the NYPD, and by ICE (Immigration and Customs Enforcement), which have been well document by the ACLU, the Associated Press and other civil rights organizations and media outlets. In addition to their practices on the ground, the agencies’ own documents prove that they profile our communities on the basis of religion, ethnicity, or national origin.

Current Data from DRUM’s Survey and Documentation Project

In August of 2011, DRUM launched a Muslim community survey project to document the experiences of our communities in their interactions with law enforcement agencies, the impacts on their lives. The actual stories of community members encounters with law enforcement agencies are astounding:

- A Bangladeshi cab driver being pulled over by the NYPD for frivolous reasons and being asked if he was Muslim, what mosque he goes to, and if he prays regularly



- An Indian youth being stopped, searched and repeatedly harassed by school security officers in his high school, causing him to drop out
- A Pakistani woman and her family being detained by Immigration and Customs Enforcement (ICE) for her political activities for police accountability and immigration reform
- A Yemeni man being asked to provide information on fellow Muslims by the FBI, and upon his refusal being threatened, harassed, and followed around the city in dark unmarked cars
- A Bangladeshi youth being stooped and frisked nearly 25 times by the NYPD in his own neighborhood by the NYPD
- A Pakistani woman being threatened and harassed to show her immigration documents by the NY Court Police at her workplace
- The leadership of a mosque throwing an attendee out of their mosque for engaging in inflammatory rhetoric, only later to discover that the man was an undercover NYPD officer

These are just some of the stories we have gathered so far, and we have not even completed 1/5th of our surveys. Thus it comes as no surprise that nearly 75% of the community members surveyed indicated that they do not have trust in the various law enforcement agencies, and another 19% expressed uncertainty about whether they trust the agencies. The impacts within our communities are even more startling. Nearly half of those surveyed feel uncomfortable or think twice before going to their places of worship or building friendships with general community members for fear of informants and surveillance. Nearly 80% are uncomfortable engaging in political activities, discussions, or going to rallies and events.

Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color in the U.S.



DRUM is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the "End Racial Profiling Act (S.1670)" and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of DRUM and our membership and constituencies. We welcome the opportunity for further dialogue and discussion about these important issues.

STATEMENT OF

Alexander Sanchez, Executive Director

Homies Unidos

Hearing "Ending Racial Profiling in America"

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of Homies Unidos regarding today's hearing on racial profiling. Homies Unidos originally formed to address the problems of urban violence and the internationalization of gangs in 1996. In 1998, gang members and former gang members in the predominantly Central American community of Los Angeles in queue with Homies Unidos in El Salvador started working in their neighborhood with the same goal.

It is our mission to defend the inherent right of youth, families and their communities to pursue their dreams and achieve their full potential in a just, safe and healthy society. To achieve this, Homies Unidos works to end violence and promote peace in our communities by empowering youth and their families to become advocates for social justice rather than agents of self-destruction.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. Homies Unidos is particularly concerned about many policies and programs at the

national, state and local level which encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Racial Profiling in Our Communities

Our predominately immigrant communities of Pico Union and Westlake in Los Angeles California has suffered by seeing how our community members are stereotyped, labeled, and racially profiled by law enforcement who are implemented policies like Gang injunctions, Sobriety checkpoints, requesting legal resident documents to anyone who fits a profile. Racial profiling has been used to stop individuals for tickets because of how you look or dress. Many of our young men and women in our communities have been placed in criminal data bases because they live in a community where there is violence or because of the way they are dressed without having had a criminal record or belonging to a gang. U.S. citizens have been stopped by law enforcement a detained to have immigration pick them up for deportation because they did not

have an I.D. at the time. As an immigrant from El Salvador at the age of seven, I had to defend myself from individuals in school and community, calling me names like; Wet Back, Mojado, Indio, and was told to go back to Mexico although I was born in El Salvador. I tried so hard to assimilate to the culture in Los Angeles. I internalized the anger I felt and resorted to alcohol and drugs as young as twelve years old. My life took a turn when I joined a gang. I am 40 years old now and seen how racial profiling hurts people around us but most importantly our children growing up, they are exposed to racial slurs and see the only time law enforcement comes into our communities is to arrest people who look like them. I know dedicate myself to making a change. Help me save more lives from being railroaded in the criminal justice system just because how they look.

Conclusion

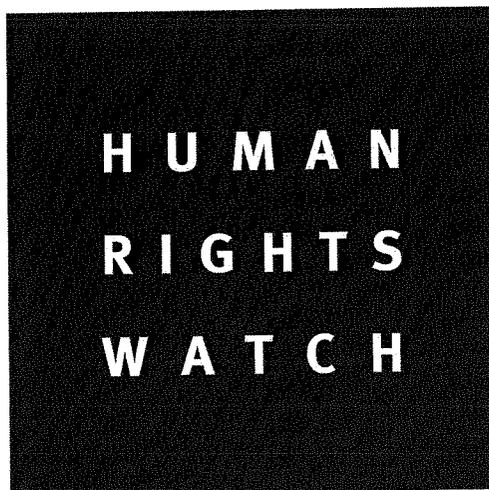
The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color in the U.S.

Homies Unidos is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the "End Racial Profiling Act (S.1670)" and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.

- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of Homies Unidos. We welcome the opportunity for further dialogue and discussion about these important issues.



Written Statement of Antonio M. Ginatta,
US Program Advocacy Director,
Human Rights Watch

United States Senate Committee on the Judiciary,
Subcommittee on the Constitution, Civil Rights
and Human Rights

“Ending Racial Profiling in America”

April 17, 2012

Mr. Chairman and members of the Committee, thank you for the opportunity to submit a statement for today's hearing on "Ending Racial Profiling in America."

Human Rights Watch is an independent organization dedicated to promoting and protecting human rights around the globe. In the United States, we work to secure increased recognition of and respect for internationally recognized human rights, focusing on issues arising from excessive punishment and detention, insufficient access to due process, and discrimination.

Equality under the law is a cornerstone of human rights. The preamble to the Universal Declaration of Human Rights begins by stating that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation for freedom, justice and peace in the world."¹ Two centuries earlier, the founders of the United States recognized a similar principle in the Declaration of Independence, acknowledging the self-evident truth that "all men are created equal."

Profiling by law enforcement and other government agencies undermines the promise of equal treatment. Investigating, surveilling, or otherwise targeting people solely on the basis of their race, ethnicity, religion, or national origin is a clear form of discrimination and goes against the protections of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which the US ratified in 1994.²

Human Rights Watch has recently raised concerns about the problem of profiling in two separate contexts: Alabama's recent immigrant law and the New York City Police Department's surveillance of Muslim communities. Both forms of profiling are impermissible under ICERD.³

While affecting different communities, these two forms of profiling have similar poisonous consequences. First, profiling drives a wedge between law enforcement and the targeted community members, making them less likely to trust and engage law enforcement, thereby making the whole community less safe. Relying on profiling also gives law enforcement agencies the disincentive to engage in effective investigative techniques. Finally, and most troublingly, profiling results in further discrimination. By engaging in racial profiling, law enforcement legitimizes the marginalization of targeted racial, ethnic, and religious minorities and legitimizes the distrust of those communities.

¹ Universal Declaration of Human Rights, adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948).

² International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969, ratified by the United States on November 20, 1994. See article 2: "States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law." See also article 5: "In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law."

³ The Committee on the Elimination of Racial Discrimination has recommended that states "[e]nsure that immigration policies do not have the effect of discriminating against persons on the basis of race, colour, descent, or national or ethnic origin" and "[e]nsure that any measures taken in the fight against terrorism do not discriminate, in purpose in effect, on the grounds of race, colour, descent, or national or ethnic origin." General Recommendation No. 30, Discrimination against Non-citizens (Sixty-fourth session, 2004), U.N. Doc. CERD/C/64/Misc.11/rev.3 (2004). In General Recommendation No. 31, the Committee further recommended that states "take the necessary steps to prevent questioning, arrests and searches which are in reality based solely on the physical appearance of a person, that person's colour or features or membership of a racial or ethnic group, or any profiling which exposes him or her to greater suspicion." General Recommendation No. 31, The Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System (2002), U.N. Doc. A/60/18, p. 98-108.

Profiling resulting from Alabama's immigrant law

In our December 2011 report *No Way to Live*, Human Rights Watch documented some of the consequences stemming from the passage of the Beason-Hammon Taxpayer and Citizen Protection Act, Alabama's immigrant law.⁴ One section of the act requires police to verify a person's immigration status during a stop if they have reasonable suspicion that the person is not authorized to be in the country. Community members expressed concern that the law would lead police to profile people who "looked" undocumented. Several persons of Latino descent, including US citizens and legal residents, reported to us that since the law went into effect, the police stopped or arrested them for no reason or on pretext.

Fernando Rodriguez, a legal permanent resident and the minister of a church in Albertville, reported that he and his friend, another pastor, were given no reason for being stopped in the town of Warrior, soon after pulling out of a gas station. According to Rev. Rodriguez, the officer made abusive and derogatory statements like, "Why are you in the US?" and "Go back to Mexico."

A Latino doctor who is a legal permanent resident reported that a few weeks after the law went into effect, a state trooper stopped his car but did not offer a reason for doing so. According to the doctor, the trooper, who was standing in the street, merely put out his hand, arm extended, after "look[ing] at the color of my skin." After the officer saw the doctor had a driver's license, he gave it back and let him go.

Stephen McGowan, an attorney in Dothan, reported that a client of his had been deported after he was pulled over, allegedly for having his radio on too loud. According to McGowan, however, the radio was broken and could not have been turned on.

One woman, who was born in the US and whose family is from the Dominican Republic, wondered if she had been the victim of racial profiling when she was pulled over soon after the immigrant law went into effect. The officer said he thought she had not been wearing her seatbelt. She admitted it was possible the seatbelt had not been visible against her dark clothing, but at the same time, in all the years she had lived in the area, she had never been stopped for not wearing a seatbelt before.

We documented several other questionable stops by police in our report. We cannot establish that these stops were directly motivated by passage of the law. Yet we were able to document a pervasive fear among persons of Latino origin that the Beason-Hammon Act was enabling profiling and that they were being treated differently by police after the law went into effect.

Profiling of Muslims by the New York City Police Department

Since August 2011, the Associated Press has published several reports detailing the New York City police department's surveillance and intelligence-gathering efforts in Muslim communities, both

⁴ Human Rights Watch, *United States – No Way to Live: Alabama's Immigrant Law*, December 14, 2011, <http://www.hrw.org/reports/2011/12/14/no-way-live>.

inside and outside the city, from 2006 to 2008. The intelligence-gathering was carried out solely based on the communities' religious or ethnic profile and not on suspicion of criminal activity.

One NYPD report detailed a 2007 surveillance operation focusing on Muslims in Long Island, New York and Newark, New Jersey. Plainclothes officers from the NYPD Demographics Unit infiltrated and photographed dozens of areas identified as "locations of concern," including mosques, Muslim student organizations, and businesses owned or frequented by Muslims.

Using this information, the police department built databases showing where Muslims live, pray, buy groceries, and use internet cafes. The report acknowledged that the intelligence-gathering efforts went beyond the department's jurisdiction and cited no evidence of terrorism or other criminal activity prompting the operation.

The Associated Press also reported that New York City police monitored Muslim college students throughout the northeastern United States, including at Syracuse University, Yale University, and the University of Pennsylvania.

This surveillance has had a chilling effect on the relationship between Muslims and law enforcement in the region. Michael Ward, director of the FBI's Newark division, stated in the *Washington Post*, "What we have now is [Muslim communities] ... that they're not sure they trust law enforcement in general, they're fearing being watched, they're starting to withdraw their activities."⁵ The operation also hindered the effectiveness of other surveillance efforts that are not based on profiling. According to Ward, "the impact of that sinking tide of cooperation means that we don't have our finger on the pulse of what's going on in the community ... we're less knowledgeable, we have blind spots, and there's more risk."⁶

The cases of Alabama and New York show that the use of profiling is pernicious. Not only is it unlawful, profiling is ineffective and counterproductive as a public safety measure.

Human Rights Watch urges all states to pass enforceable laws that bar profiling by law enforcement. The US Senate should take up the End Racial Profiling Act (ERPA) this year. ERPA, which prohibits law enforcement agencies from profiling on the basis of race, ethnicity, national origin, or religion, has languished in Congress for a decade. Finally, the US Department of Justice should improve its Guidance Regarding the Use of Race by Federal Law Enforcement Agencies by prohibiting profiling based on religion, religious appearance, or national origin.

We thank you for the opportunity to submit this statement.

⁵ Jason Grant, "FBI says Muslims' trust is broken by NYPD spying," *Washington Post*, March 7, 2012.

⁶ Ibid.

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS**

**Hearing on Ending Racial Profiling in America
APRIL 17, 2012**

**STATEMENT OF
ILLINOIS COALITION FOR IMMIGRANT AND REFUGEE RIGHTS
Fred Tsao, Policy Director**

The Illinois Coalition for Immigrant and Refugee Rights (ICIRR) thanks our own Senator Richard Durbin and the other members of this subcommittee for organizing today's hearing on racial profiling.

ICIRR is dedicated to promoting the rights of immigrants and refugees to full and equal participation in the civic, cultural, social, and political life of our diverse society. In partnership with our member organizations, the Coalition educates and organizes immigrant and refugee communities to assert their rights; promotes citizenship and civic participation; monitors, analyzes, and advocates on immigrant-related issues; and, informs the general public about the contributions of immigrants and refugees.

ICIRR believes that newcomers to our country cannot become full members of our society if they face racial profiling and other discrimination based on their race, ethnicity, religion, or national origin. We have deep concerns about any police or government practices that could intimidate immigrants or chill their participation in our civic life, or that could alienate them from those responsible for our public safety—to the detriment of our entire community.

While Illinois has a long history of welcoming immigrants and remains one of the top destination states for new arrivals, we have also witnessed law enforcement officials targeting them for harassment or worse. Until recently, the city of Waukegan was notorious for using selective building inspections and car impoundments focused on the growing Latino community. The practices ended only when Latino citizens organized to remove the incumbent mayor who had driven them. We have also seen disparities in traffic stops in several suburban Chicago counties; in McHenry County, a Chicago Tribune expose in March 2011 alleged that county sheriff's police misclassified Latino motorists as white, a practice that would conceal disparate treatment of Latinos.

Still more recently, we have seen Latino drivers arrested by suburban police departments for offenses like "weaving" and "windshield obstruction." In one case in DuPage County, a motorist was stopped and arrested for having a four-inch transparent "dream catcher" attached to his windshield. Other cases have involved drivers who had rosaries strung from their rearview mirrors. These cases have raised particular concern because of the participation of these suburban counties in the federal "Secure Communities" program. The "dream

catcher” motorist was referred to Immigration and Customs Enforcement (ICE) and removed despite having lived in the US for more than a decade and having no prior criminal record.

In Illinois we are fortunate to have several policies in place intended to combat racial profiling. In 2007 the Illinois General Assembly passed the Racial Profiling Prevention and Data Oversight Act (20 ILCS 2715/1 et seq.), which authorizes an ongoing Illinois Traffic Stop Statistical Study to require collection of racial and ethnic data on each traffic stop. That data collection has helped identify disparities and inform development of local policies to address these disparities. Indeed, the revelations regarding McHenry County grew out of the data produced under the statistical study.

In addition, Governor Quinn moved to withdraw Illinois from “Secure Communities” in May 2011 after ICIRR and other advocates noted the likelihood that this program and other local police engagement with immigration enforcement will encourage local police to target Latinos and other minorities for arrest and referral to ICE. ICE, however, has taken the position that Illinois and other states cannot withdraw from “Secure Communities.” As a result, more “dream catcher” and “windshield obstruction” cases can occur in Illinois, leading to more deportations and separated families.

Racial profiling harms families, damages communities, sows mistrust, and undermines public safety. ICIRR believes that the federal government needs to take strong action to combat racial profiling. We urge the Judiciary Committee to take two important next steps:

- Recommend passage of the End Racial Profiling Act (S.1670), which would impose a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- Urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

We again thank Senator Durbin and this subcommittee for holding this hearing and for considering this statement, and look forward to further federal action to end racial profiling.

STATEMENT OF
RACHEL B. TIVEN, EXECUTIVE DIRECTOR
IMMIGRATION EQUALITY
ENDING RACIAL PROFILING IN AMERICA HEARING
SENATE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS
UNITED STATES SENATE
APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am pleased to submit this testimony for the record on behalf of Immigration Equality regarding today's hearing on racial profiling. Immigration Equality is a national organization that works to end discrimination in immigration law against those in the lesbian, gay, bisexual, and transgender ("LGBT") community and immigrants who are living with HIV or AIDS. Incorporated in 1994, Immigration Equality helps those affected by discriminatory practices through education, outreach, advocacy, and the maintenance of a nationwide resource network and a heavily-trafficked website. Immigration Equality also runs a pro bono asylum program and provides technical assistance and advice to hundreds of attorneys nationwide on sexual orientation, transgender, and HIV-based asylum matters. We frequently represent individuals who have been placed in removal proceedings as a result of contact with law enforcement over very minor infractions which may, at times, be pretextual.

We believe strongly in the rights afforded to all citizens and non-citizens under our Constitution. The LGBT community has suffered a long history of being targeted by law enforcement simply because of who we are. Similarly, immigrants of all backgrounds have suffered, and continue to suffer, profiling under the laws of many states. Law enforcement should never rely on a person's race, religion, ethnicity, national origin, or perceived sexual orientation or gender identity to target him or her for questioning or possible arrest.

We have worked with many clients who have been stopped and required to show identification simply for being within 100 miles of a U.S. border or for riding on public transportation; all of these individuals have been Latino. Similarly, transgender people of color are at particular risk of being arrested on suspicion of prostitution merely for dressing in gender non-conforming clothes. Once arrested, unauthorized immigrants face possible detention, where LGBT people are particularly vulnerable to abuse and mistreatment. And, even worse, once arrested, unauthorized immigrants face the possibility of being removed from the United States, often to countries where conditions are dangerous for LGBT people.

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color throughout the United States.

Immigration Equality is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and

counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the “End Racial Profiling Act (S.1670)” and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of Immigration Equality. We welcome the opportunity for further dialogue and discussion about these important issues.

ICAAD

STATEMENT OF

**HANSDEEP SINGH & JASPREET SINGH, CO-FOUNDERS &
LEGAL PROGRAM DIRECTORS OF THE**

**INTERNATIONAL CENTER FOR ADVOCATES AGAINST DISCRIMINATION
(ICAAD)**

HEARING ENDING RACIAL PROFILING IN AMERICA

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of the International Center for Advocates Against Discrimination (ICAAD) regarding today's hearing on racial profiling. ICAAD uses coalition based advocacy and strategic litigation to combat structural discrimination both domestically and internationally. ICAAD believes profiling based on racial, ethnic, religious, or national origin is one of the most pernicious forms of structural discrimination. Instead of furthering our security, profiling disparately impacts specific minority or vulnerable communities and further marginalizes them. As societies continue to build walls of separation between communities, ICAAD's mission is to remove each brick to illuminate our common humanity.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. ICAAD is particularly concerned about many policies and programs at the national, state and local level, which encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices are counterproductive, waste

ICAAD

public resources, and violate the civil and human rights of persons living in the United States of America.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Racial Profiling in Our Communities

ICAAD attorneys have worked for over five years to ameliorate the disparate impact of racial/ religious profiling at U.S. airports, primarily¹ against Sikh travelers. The United States Department of Homeland Security's Transportation Security Agency (TSA) has adopted policies that subject Sikh passengers to additional security screening each and every time they travel through an airport, because of their article of faith (*dastaar* or turban). The additional screening includes being tested by a Explosive Trace Detection (ETD) procedure, which requires the pat-down of the turban followed by a hand swab, where the swab is then analyzed for explosives. This additional screening occurs even when no alarm is triggered through the primary screening mechanism. And sometimes, tertiary screening is conducted with the use of a metal detecting hand wand. Though TSA claims that the policy was instituted because Sikh turbans fall within the "bulky clothing" or "non-form fitting headwear" definitions, no other article of clothing or

¹ It has been reported that Muslim women who wear hijabs, South Indian women who wear their cultural dress (*sari*), those with disabilities and medical conditions, and Black women who have "bunchy" hair, have all disproportionately been impacted by TSA's policies.

ICAAD

headwear is subject to the same level of scrutiny. Additionally, many Sikh organizations have called for an independent audit of TSA's screening of "bulking clothing" to determine whether TSA is scrutinizing other items of clothing (baggy jeans, cargo shorts, sweatshirts, dresses etc.) similar to how the turban is currently being screened in both manner and frequency.

No other single community is mandatorily subject to this type of degrading treatment each and every time they fly. Moreover, the perception of the flying public continues to be skewed when observing every Sikh in a turban pulled aside for secondary screening and the ETD procedure; observing this kind of disparate treatment perpetuates the stereotype that those with external religious or ethnic identities are "suspect." **Degrading treatment and profiling of a community has consequences far beyond the airport confines.**

The security theatre orchestrated by TSA has deeply harmed the psyche of the Sikh community, but also, has had a direct impact on the levels of violence and discrimination perpetrated against Sikhs in society (e.g. hate crimes,² bullying,³ and employment discrimination⁴). If a law enforcement agency like the TSA can systematically treat particular groups with such indignity, why shouldn't the common public similarly mistreat these individuals? The sad answer is that they can and they do, because the government has implicitly sanctioned the discriminatory actions that are being perpetrated against the Sikh community on a daily basis. The examples⁵ below further shed light on the impact of profiling and how such policies lead to greater abuses of power. It is important to note that these are only a few (common) examples of a more systemic pattern of violations.

² There have been at least ten (10) high-profile hate/bias related crimes against the Sikh community within the last sixteen (16) months.

³ Reports and statistics gathered by Sikh civil rights organizations, Sikh Coalition and UNITED SIKHS, report an over 60% rate of bullying against Sikh children in schools.

⁴ There has been a rise in the number of employment discrimination cases filed by the Sikh community in the last year alone.

⁵ Each of these cases are formal complaints filed with TSA and DHS.

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Civil Rights Complaints: Flawed Profiling Policies Inevitably Lead to Flawed

Implementation of those Same Policies

1) Jaspal Singh

On Nov. 24, 2010, Mr. Singh was flying out of Washington DC's Dulles International Airport. As Mr. Singh entered the screening area, he passed through the metal detector without triggering any alarm. Nonetheless, he was immediately subject to additional screening based on the "bulky" clothing (or non-form fitting headwear policy).

The Transportation Security Officer (TSO) who conducted ETD (Explosive Trace Detection) instructed Mr. Singh to run his hands over his turban repeatedly, however, when Mr. Singh's hands were swabbed, the ETD machine indicated that an alarm was triggered. At this point, to resolve any anomaly, Mr. Singh should have been offered a private screening area where he could remove his turban for inspection and have the ability to retie it privately. Instead, the Transportation Security Manager (TSM) instructed Mr. Singh to remove his turban in public and pass it through the x-ray machine. Mr. Singh explained how humiliating the removal of his article of faith would be and that it was an integral part of a Sikh's identity. At this point, two additional screening managers arrived and the TSMs intimidated Mr. Singh into removing his turban in public, without the opportunity for a private screening, which is in direct violation of TSA's own policies and procedures.⁶

With deep anguish and utter humiliation, Mr. Singh removed his turban in public and further had his six-meter turban unfurled in public by TSA employees. This is akin to being strip searched for a Sikh, and TSA has been consistently put on notice to be sensitive to Sikhs being forced to remove their turbans in public. After clearing security and before leaving the screening area, Mr.

⁶ TSA Adjusts Screening Procedures for Bulky Clothing,
http://www.tsa.gov/press/happenings/sop_adjustments.shtm (Oct. 15, 2007).

ICAAD

Singh conveyed to one of the TSMs that, "I have been humiliated to the utmost extent and I feel ashamed."

2) Daljeet Singh Mann

On November 6, 2010, when traveling out of San Francisco International Airport (SFO), prior to Mr. Mann's entry into the primary screening apparatus (in this case a metal detector), a TSO made a motion towards his turban. According to TSA policy,⁷ an individual should not be segregated, isolated, or "called out" before proceeding through the primary screening threshold. Yet, instead of passing through the metal detector and having an ETD screening conducted, three TSOs approached Mr. Mann and two of them said they wanted to "look under" his turban in a private room. The TSOs had no grounds to conduct this type of invasive search unless Mr. Mann had undergone an ETD screening and triggered an alarm. Intimidated by the sheer number of TSOs that were surrounding him, he proceeded to the private screening area.

The TSOs failed to explain the need for such an invasive search absent any alarm being triggered and Mr. Mann, feeling intimidated and believing he had no choice, removed his turban. After he was cleared to leave the screening area, Mr. Mann reported his discriminatory treatment to a TSM. The TSM apologized and stated that someone "dropped the ball" and that he would be filing a personal report to TSA.

3) Gurbinder Singh & Rajinder Singh Bal

On May 5, 2011, both Mr. Singh and Mr. Bal were flying through BWI Airport where they were racially/ religiously profiled and denied the ability to opt-out of AIT.

⁷ Kimberly Walton, Special Counselor to the Administrator of TSA, confirmed this at an inter-agency meeting that any signaling or separation of Sikhs before even going through the primary screening device would violate TSA policy. A complaint was also filed on behalf of a Sikh gentleman who experienced an even more extreme situation of being separated before going through the primary screening device.

ICAAD

As Mr. Singh and Mr. Bal entered the security line, they noticed that there was another Sikh gentleman who was 4-6 people ahead of them in line. In this circumstance, the primary screening device was a metal detector; however, adjacent to the metal detector was an AIT machine, where individuals were “randomly” chosen and sent through AIT. Coincidentally, all three Sikh gentlemen were sent through AIT. When Mr. Singh and Mr. Bal questioned the TSO on why they were being directed towards AIT, she told them they had been “randomly selected and were required to go through AIT.” Thus, in a span of less than 8 people in the security line, three Sikhs were “randomly” directed to AIT.

Furthermore, Mr. Singh and Mr. Bal knew that AIT was a voluntary process and that they could opt for a full body pat-down under TSA policies,⁸ and they clearly conveyed to the TSO that they wanted another option. The TSO refused to acknowledge their request to opt-out and forced them to proceed through AIT.

Finally, when the Lead Transportation Security Officer (LTSO) was questioned about why they were first directed toward AIT and then not given an option to opt-out, he stated that “each of them was randomly selected” and that the TSO responsible for not listening to their request for an opt-out “was a new recruit in the learning process.”

Conclusion

⁸ TSA, *TSA Contact Center Frequently Asked Questions: Screening*, <http://www.tsa.gov/travelers/customer/editorial/1029.shtm> (“Screenings using AIT are voluntary. Individuals who do not wish to be screened by this technology should inform the TSO of their desire to opt out of AIT. Passengers opting out of AIT will be required to undergo alternative screening, to include a thorough pat-down. If passengers are told they are not allowed the option of a pat-down or other screening, they should ask to speak with a Supervisory Transportation Security Officer.”) (last visited April 9, 2012).

ICAAD

These case studies are only a small sample of the practice of racial profiling by law enforcement that has resulted in a heightened fear of law enforcement in the Sikh community, as in many other communities of color throughout the United States.

ICAAD is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the "End Racial Profiling Act (S.1670)" and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of ICAAD. We welcome the opportunity for further dialogue and discussion about these important issues.



STATEMENT OF

Ann Fagan Ginger, Executive Director emeritus

Meiklejohn Civil Liberties Institute

Hearing on Ending Racial Profiling in America

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of Meiklejohn Civil Liberties Institute regarding today's hearing on racial profiling. Meiklejohn Civil Liberties Institute was founded in 1965 to work for human rights and peace through enforcement of all relevant laws. MCLI has worked since 1994 for publicizing the text of the U.S.-ratified International Convention on Elimination of All Forms of Racial Discrimination (ICERD).

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. Meiklejohn Civil Liberties Institute is particularly concerned about many policies and programs at the national, state and local levels which encourage discriminatory law enforcement practices such as racial profiling. Racial profiling violates the terms of the International Convention on Elimination of all forms of Racial Discrimination (ICERD), which



spells out the prohibitions against race discrimination in the 13th, 14th and 15th Amendments to our Constitution. The U.S. violates these treaty provisions, as well as the equal protection clauses of the Constitution when it does not immediately stop all forms of racial profiling at all levels of government.

The U.S. made a basic commitment not to participate in racial profiling when it ratified the United Nations Charter in 1945, ICERD, and the International Covenant on Civil and Political Rights (ICCPR) and the International Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (ICAT). All of these treaties set forth the right to human dignity of every human being regardless of color, race, nationality, citizenship status, disability, sexual orientation, gender, language, or religion. (U.N. Charter preamble; ICERD Art. 1(1); ICCPR preamble, Art. 2(1); ICAT preamble.)

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling out people on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Whether it takes place in connection with the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always against our basic law. And the practice diverts precious law enforcement resources away from targeted, behavior-based investigations.



Racial Profiling in Our Communities

The beating and fatal shooting of Oscar Grant, a young African American youth, by a Bay Area Rapid Transit (BART) Police Officer on New Years Eve, 2009 led MCLI President Rev. Daniel Buford to work with other community and church leaders and activists in Oakland, California to end racial profiling by all police. Many police shootings from the past have been recounted. This led the new Oscar Grant Committee to support the BART officials establishing the Office of the Independent Police Auditor (OIPA) and the Citizen Review Board (CRB) to provide effective and independent oversight of the BART Police Department.

Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color throughout the United States.

Meiklejohn Civil Liberties Institute is heartened by the Subcommittee's leadership in holding this hearing. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local levels:

- Congress should pass the "End Racial Profiling Act (S.1670)" and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling



based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.



METRO ATLANTA TASK FORCE FOR THE HOMELESS
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STATEMENT OF

Metro Atlanta Task Force for the Homeless
Anita L. Beaty, Executive Director
anitalawbeaty@aol.com

Hearing on Ending Racial Profiling in America

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of the Metro Atlanta Task Force for the Homeless (Task Force) regarding today's hearing on racial profiling. The Task Force has been the central coordinating agency for homeless people to access services in Metro Atlanta and even throughout the state of Georgia since 1981.

Events in Atlanta leading up to and following the 1996 Olympic Games provided ample proof of racial profiling, particularly relating to homelessness and the effort to remove visible homelessness from our downtown. Beginning with the arrests of 9,000 African American "homeless" men during the 14 months leading up to the Games and continuing into the present with routine threats of arrests of African American men who try to enter a public food court on the ground floor of a downtown hospital, we have documented statistically and anecdotally evidence of profiling in the seat of the Civil Rights Movement.



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404-230-5000 WWW.HOMELESSTASKFORCE.ORG

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. The Metro Atlanta Task Force for the Homeless is particularly concerned about many policies and programs at the national, state and local levels which encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices violate the civil and human rights of persons living in the United States.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, the effect is racial profiling. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Racial Profiling in Our Communities

During the preparation for the Atlanta Olympics, the Task Force discovered mass produced arrest citations with pre-printed info: "African American male," "homeless" and the date, name and charge left blank. We later tabulated the arrests and charges and in a Federal lawsuit caused the City to be ordered to cease and desist arrests without probable cause. Those practices today have the cover of newly-targeted city ordinances passed since the Olympic Games but resulting in the arrests of disproportionate number of African American males.



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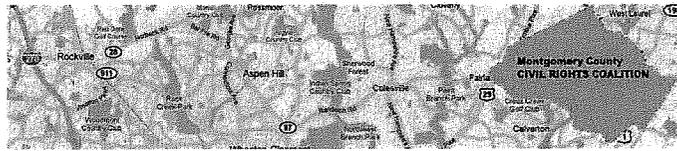
Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color throughout the United States.

The Metro Atlanta Task Force for the Homeless is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the "End Racial Profiling Act (S.1670)" and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express our views of. We welcome the opportunity for further dialogue and discussion about these important issues.



STATEMENT OF

Sue Udry, Co-Founder

Montgomery County Civil Liberties Coalition

Hearing on Ending Racial Profiling in America

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of the Montgomery County Civil Rights Coalition (MCCRC) regarding today's hearing on racial profiling. MCCRC is a grassroots coalition focused on civil rights and civil liberties in Montgomery County Maryland.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. MCCRC is particularly concerned about the impact of policies and programs which encourage or incentivize racial profiling in Montgomery County, MD.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their

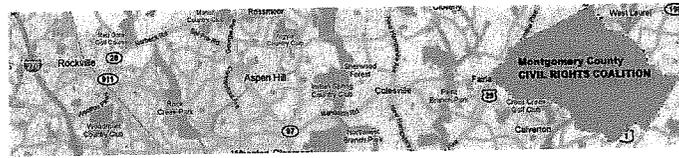


race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong.

Racial Profiling in Montgomery County

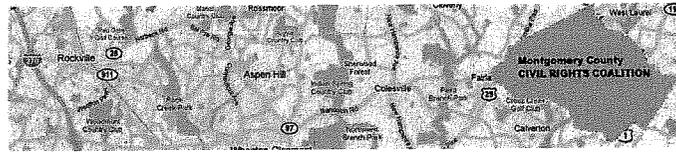
Montgomery County, Maryland is a vibrant and diverse community. A suburb of Washington DC, our county is generally regarded as tolerant and inclusive, but there are still incidents of profiling by our police force. These incidents create real fear in our community and sow distrust. Just one example of problematic police conduct occurred at the Montgomery County Fair in 2010, when five Latino boys and one African-American boy were stopped, questioned, harassed, physically searched and photographed without their permission by five members of the Montgomery County Police Gang Unit. The boys were given trespass notices, prohibited from returning to the Fairgrounds for one year for being “with known gang members and wearing gang paraphernalia.” There was no evidence any of the boys were involved with gangs, and none were sporting “gang paraphernalia,” but they had little recourse but to file a complaint with police, which was handled administratively. The outcome of that administrative action is unknown due to the Maryland Public Information Act, which precludes disclosure of personnel matters.

The Montgomery County Police have recently begun promoting “Operation Tripwire” as part of the National Suspicious Activity Reporting (SARS) Initiative. The police have made available



on the county website a booklet called *Operation Tripwire: Potential Indicators of Terrorist Activities* for use by the community. The wide range of commonplace activities identified as ‘suspicious’ opens the door to racial, religious, ethnic and national origin profiling. Examples of “potential indicators of terrorist activities” identified for the public by the Montgomery County Maryland police include: “purchases of expensive photography equipment with panoramic shooting capability,” “payment by cash rather than a commercial credit card” at a hardware store, beauty supply store or hotel, a person “attempting to enter (a nightclub)... alone,” or a “vehicle which has undergone recent body work” in a parking garage, or “taking notes or calling on mobile phones” while on public transportation! Although the booklet contains a disclaimer that “just because someone’s speech, actions, beliefs, appearance, or way of life is different, it does not mean that he or she is suspicious” the booklet certainly does promote suspicion of alternative religious views or practices: “making extreme religious statements” and “use of an apartment as a house of worship” are listed as potential indicators of terrorist activities. We are greatly concerned that the vague, even silly, catalogue of indicators will encourage participants in the program to “fill in the blanks” and rely on stereotypes and profiling to distinguish between suspicious and innocent buyers of cameras or drivers of cars with evidence of bodywork.¹

¹Montgomery County Police, *Operation Tripwire* available at:
<http://www.montgomerycountymd.gov/content/pol/districts/ISB/sid/ViceIntelligence/operationtripwirewebready.pdf>



Conclusion

MCCRC is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the "End Racial Profiling Act (S.1670)" and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.
- Congress should hold hearings on the National SARS Initiative to evaluate the effectiveness of the program, and to address concerns about profiling, privacy and other civil liberties and human rights concerns.

Thank you again for this opportunity to express the views of Montgomery County Civil Liberties Coalition. We welcome the opportunity for further dialogue and discussion about these important issues. Please contact Sue Udry at 301-325-1201 for additional information.



Muslim Legal Fund of America

FIGHTING FOR LEGAL JUSTICE SINCE 2001

STATEMENT OF

Coleen Rowley, Vice President of the Board of Directors

MUSLIM LEGAL FUND OF AMERICA

Hearing "Ending Racial Profiling in America"

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of Muslim Legal Fund of America regarding today's hearing on racial profiling. Established in 2001, the Muslim Legal Fund of America is a charity that supports legal cases in defense of civil liberties in America. As a civil liberties legal fund, MLFA focuses its efforts to preserving the ideals of due process of law, right to a fair trial, right to face your accuser, freedom from warrantless searches, freedom of speech, freedom of religion and other rights enshrined in our Constitution. Racial profiling is of great concern to MLFA because the practice of targeting individuals based on race or ethnic appearance infringes on everyone's freedom of expression and often leads to unjust prosecutions. Such practices are also counterproductive because targeted communities learn to distrust law enforcement, which negatively impacts legitimate law enforcement efforts. While race and religion are often seen as two different characteristics, Arabs and Southeast Asians are often associated with being Muslim and therefore treated with additional suspicion because of their outward, ethnic appearance.



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MLFA fully endorses the findings of University of Pittsburgh Professor of Law David A. Harris, considered the leading national authority on racial profiling who testified broadly on this same topic: “Ending Racial Profiling: Necessary for Public Safety and the Protection of Civil Rights” almost two years ago in similar hearings convened in the U.S. House of Representatives by the Subcommittee on the Constitution, Civil rights and Civil Liberties. Professor Harris’ 2002 seminal book, *Profiles in Injustice: Why Racial Profiling Cannot Work*, and his scholarly articles in the field of traffic stops of minority motorists and stops and frisks, made significant inroads influencing and turning around the national debate on profiling and related topics. His work led to federal efforts to address the practice and to legislation and voluntary efforts in over half the states and hundreds of police departments.

Professor Harris has testified three times in the U.S. Senate and before many state legislative bodies on profiling and related issues. He began his testimony to the House Subcommittee on June 17, 2010 (<http://judiciary.house.gov/hearings/pdf/Harris100617.pdf>) by stating:

“The American people need to know that ending racial profiling is necessary for *both* the enhancement of public safety *and* the protection of civil rights. The use of racial or ethnic appearance as a way to target law enforcement efforts does not help police catch more criminals; rather, racial targeting nets fewer criminals, and in the bargain turns the public against police efforts. Protecting civil rights by ending racial profiling will help make us safer, and honor our country’s commitment to equal justice under law.



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The Connection Between Racial Profiling and Public Safety

The practice of racial profiling—defined as using racial or ethnic appearance as one factor (among others) in deciding who to stop, question, search, frisk or the like—has a very direct impact on the quality of the work police officers can do. In a nutshell, police departments that use racial or ethnic targeting do a poorer job at finding lawbreakers than departments that do not use this method. Just as important, departments that use racial targeting cut themselves off from the communities they serve, making their jobs more difficult and dangerous.

From those who advocate racial profiling, one frequently hears what we may call the profiling hypothesis: we know who the criminals are and what they look like, because we know what societal groups they come from; therefore using racial or ethnic appearance will allow police to better target their enforcement efforts; and when police target those efforts, they will be more effective, because they will get higher rates of “hits”—finding guns, drugs, criminals—than when they do not use racial targeting. Many people both inside and outside law enforcement have long assumed the truth of this idea. But the data produced in study after study since the late 1990s prove otherwise. When a police department uses race or ethnic appearance to target its enforcement efforts—and to be sure, not all police departments do this—the rate of hits for the targeted group does *not* go up; it does not even stay the same. In fact, the rate of hits *drops*, by a statistically significant, measurable amount. This has proven true across multiple studies, in numerous locations, and in many different kinds of police agencies. Therefore, whatever people may believe, the data do not support the profiling hypothesis; the data contradict it. It is not, in fact, an effective crime-fighting strategy.

The reasons for these results originate with what profiling is supposed to be: a predictive tool that increases the odds of police finding the “right” people to stop, question, or search. Using race or ethnic appearance as part of a description of a person seen by a witness is absolutely fine, because that kind of information helps police identify a particular individual. On the other hand, using race as a predictor of criminal behavior, in situations in which we do not yet know about the criminal conduct—for example, when we wonder which of the thousands of vehicles on a busy highway is loaded with drugs, or which passenger among tens of thousands in an airport may be trying to smuggle a weapon onto an airplane—throws police work off. That is because using race



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or ethnic appearance as a short cut takes the eye of law enforcement off of what really counts. And what really matters in finding as-yet-unknown criminal conduct is the close observation of behavior. Paying attention to race as a way to more easily figure out who is worthy of extra police attention takes police attention off of behavior and focuses it on appearance, which predicts nothing.”

Legal scholars, ethicists and human rights academics had long decried the racial, religious and other kinds of profiling commonly practiced by law enforcement on moral and legal grounds. But it seems the key to success for Professor Harris’ and other legal researchers in finally getting many police officials around the country to budge off their calcified reliance upon racial profiling and make a 180 degree turn, about a decade ago, lay in these scholars finally providing solid, statistical proof that profiling simply does not “work”. So powerful were their findings, that it undoubtedly was what convinced the Bush Administration to issue guidance (in June 2003) generally prohibiting all federal law enforcement officers from practicing racial profiling.

Unfortunately the 2003 Department of Justice (DOJ) “Guidance Regarding the Use of Race by Federal Law Enforcement Agencies” suffered from two major flaws: 1) it applies to police profiling (discrimination) based on race and ethnicity but not to religious discrimination (which is often entwined with ethnicity) even though the Guidance, in its first pages, cites the Supreme Court decision in United States v. Armstrong, 517 U.S. 456, 464 (1996) for the proposition that “whether to prosecute may not be based on ‘an unjustifiable standard such as race, *religion*, or other arbitrary classification” (emp added) and then adding that “the same is true of (decisions



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of) Federal law enforcement officers. Federal courts repeatedly have held that any general policy of ‘utiliz(ing) impermissible racial classifications in determining whom to stop, detain and search’ would violate the Equal Protection Clause;” and 2) the federal anti-racial profiling policy unreasonably carved out a large exemption from its reach for “threats to National Security or other catastrophic events (including the performance of duties related to air transportation security) or when protecting the integrity of the nation’s borders”.

MLFA strongly feels there is no good reason for either of these two exclusions; not for the explicit “national security” one nor for the not-so-explicit but merely unmentioned religious profiling one. In fact the failure of the Guidance to protect against religious profiling and its failure to generally prohibit racial and ethnic profiling relating to threats of national security and border integrity completely contradict the Bush DOJ’s stated rationale for issuing the policy. These “loopholes” should be closed.

The MLFA has absolutely no doubt, that if the relevant data could be obtained and analyzed, it would reveal that profiling based on religion in the “war on terror” is as equally counter-productive to public safety as profiling based on race, ethnicity or the color of one’s skin was shown to be in the “war on drugs”. However, actual statistical proof like that published by Professor David Harris and others in the late 1990’s seems to be currently lacking vis a vis religion-based profiling, the first cousin of racial and ethnic profiling. There are probably a



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couple main reasons why there is little hard data focused on authorities' actions focused, for instance on "flying while Muslim" as opposed to "driving while black". For starters, not much more than a decade has transpired since 9-11. Media coverage of the terrorist attacks seem to have quickly shattered the emerging American public consensus that racial and ethnic profiling is wrong and should be eliminated. Polls taken after 9-11 showed a majority of Americans in support of profiling of Arabs at airports and of requiring Arabs to carry special identification cards. Consequently, despite public speeches and reassurances by high ranking agency and administration officials to the contrary, religious and ethnic profiling is believed to have dramatically expanded. One early indication was when Attorney General Ashcroft relaxed the prior AG Guidelines to allow FBI agents and informants to attend and target mosques without any specific factual suspicion. Another clue could be seen in the government's instituting of new non-immigrant registration policies that targeted certain Arab, and largely Islamic countries. Arab-Americans, and those with Arab appearances, were increasingly singled out for questioning and security checks based on their skin color, clothing, name, or religious beliefs.

Consequently "a poll conducted in May 2002 found that more than three-quarters of Arab Americans felt that there was more profiling of Arab Americans since 9/11, and nearly two-thirds felt very or somewhat worried about the long-term effects of discrimination. Reports by other State Advisory Committees to the U.S. Commission on Civil Rights confirm the existence of post-9/11 racial and ethnic profiling, as well as a surge in hate violence and discrimination in the United States against people who are or are perceived to be Arab, South Asian, or Muslim in the



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months immediately following 9/11. (District of Columbia, Maryland, and Virginia Advisory Committees to the U.S. Commission on Civil Rights, *Civil Rights Concerns in the Metropolitan Washington, D.C., Area in the Aftermath of the September 11, 2001, Tragedies*, June 2003, p. 1; Illinois Advisory Committee to the U.S. Commission on Civil Rights, *Arab and Muslim Civil Rights Issues in the Chicago Metropolitan Area Post-September 11*, May 2003, p. 4.).

Unfortunately, counter-terrorism reports on all levels tend to be classified and much harder for legal and human rights researchers to access and study than regular criminal reports. It has taken years for investigative reporters and civil liberties groups using Freedom of Information requests and other tools to uncover the first bits of real truth and official documentation about how the FBI, other federal agencies and big police departments like the NYPD could have so quickly and simplistically based so much of their “counter-terrorism” efforts upon ethnic origin and religion. News has emerged, however, detailing collection/retention of information about various Muslim individuals’ religious practices, by law enforcement and national security agencies, in cases lacking any specific factual suspicion. The extent of this collection remains unknown.

Anecdotal evidence does increasingly surface of the counter-productive nature of such religion-based profiling, for example the recent news of the NYPD’s spying on innocent Muslim college students going on a canoe trip. At the same time, whether due to improperly diverted law enforcement resources or other failures, the real terrorists in recent years (like “Times Square bomber” Shazad, “underwear bomber” Abdulmattalub and the Jordanian suicide-bomber who



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blew up the CIA station in Pakistan to name just a few of the more well-known recent ones) went undetected and unstopped by national security agencies. This anecdotal evidence would need to be empirically bolstered, however, in order to prove that religious profiling functions as counterproductively as racial profiling. The MLFA would definitely support the collection and study of the type of solid credible statistics similar to what served to prove that racial profiling was not effective.

Any research will be a lot more difficult to conduct as to religious and ethnic profiling than what Professor Harris published also due to the fact that there are fewer visual cues and due to national security actions being less spontaneous and more based on and entwined with what the Washington Post describes as “Top Secret America’s” massive data (“intelligence”) collection and data-mining programs put into place after 9-11. Besides the classified nature of the data, it was relatively easier, by comparison, to study the “hit rates” of drug/weapon confiscations and arrests following police stops and frisks of black drivers, given the more obvious skin color visual cues. While distinctive religious garb exists in some cases and ethnic origin is often accompanied by skin color and physical differences, the distinctions are not as visible as “race” in allowing legal researchers to determine law enforcement motivations and then examine the effectiveness of such racial profiling.



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In any event, the DOJ must have had a reason for allowing racial and ethnic profiling to continue in connection with “threats to national security” as opposed to prohibiting racial and ethnic profiling in connection with other crimes. It should be pointed out that nowhere in the policy is a “threat to national security” defined. Espionage and international terrorism are undoubtedly considered “threats to national security” but what about a domestic terrorist incident like the bombing of the Oklahoma Federal Building or the series of murders caused by mailing weaponized anthrax, (presumably from Ft. Detrick military laboratories)? Could not massive financial frauds or public corruption also threaten national security? Could not the national security exception allowing racial profiling then swallow the rule?

What exacerbates the problem is that ethnic and religion-based profiling combines in national security cases with the doctrine of “pre-emption”, the belief that it’s possible to accurately prevent serious crimes and acts of terrorism before they happen. (A desirable but unrealistic utilitarian outcome like this is often used to justify wrongful, ineffective means, the most common one in recent history being the nonsensical notion, now believed by a majority of Americans inclined to believe fictional TV plots, that “torture tactics are justified in order to elicit information to find the ticking time bomb and thus save lives.”) It should be noted that the scenarios furnished in the 2003 DOJ anti-racial profiling guidance exemplifying when a race-based description, along with other factors, does not violate the policy all dealt with past or ongoing specific crimes and not an inchoate future threat. Targeting mosques and Muslim organizations to prevent generalized future crimes and thus contain “threats to national security”



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inherently contrasts with possession of greater factual specificity about a past crime or reports from an established reliable source about an ongoing crime.

The 2003 Guidance states that:

“the President has made clear his concern that racial profiling is morally wrong and inconsistent with our core value and principles of fairness and justice. Even if there were overall statistical evidence of differential rates of commission of certain offenses among particular races, the affirmative use of such generalized notions by federal law enforcement officers in routine, spontaneous law enforcement activities is tantamount to stereotyping. It casts a pall of suspicion over every member of certain racial and ethnic groups without regard to the specific circumstances of a particular investigation or crime, and it offends the dignity of the individual improperly targeted. Whatever the motivation, it is patently unacceptable and thus prohibited under this guidance for Federal law enforcement officers to act on the belief that race or ethnicity signals a higher risk of criminality. This is the core of ‘racial profiling’ and it must not occur.”

Here, the President is saying that even if racial profiling was shown to be effective, it would still be wrong and must not occur. So why should the President’s statement not apply in even greater force to the First Amendment protected right to freedom of religion? Since racial and ethnic profiling is allowed in cases of threats to national security or protecting border integrity, it gives the impression that officials believe ethnicity does signal a higher risk of criminality in national security cases.



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The MLFA in its work with American Muslim groups and organizations throughout the country can also substantiate the other main reason described by Professor Harris in his 2008 testimony:

“that racial or ethnic profiling interferes with public safety (which) is that using this tactic drives a wedge between police and those they serve, and this cuts off the police officer from the most important thing the officer needs to succeed: information. .. The police and those they serve must have a real partnership, based on trust, dedicated to the common goal of suppressing crime and making the community a good place to live and work. The police have their law enforcement expertise and powers, but what the community brings to the police—information about what the real problems on the ground are, who the predators are, and what the community really wants—can only come from the public. Thus the relationship of trust between the public and the police always remains of paramount importance.

This kind of partnership is difficult to build, but it is neither utopian nor unrealistic to strive for this kind of working relationship. In other words, this is not an effort to be politically correct or sensitive to the feelings of one or another group. Thus these trust-based partnerships are essential for public safety, and therefore well worth the effort to build. When racial profiling becomes common practice in a law enforcement agency, all of this is put in jeopardy. When one group is targeted by police, this erodes the basic elements of the relationship police need to have with that group. It replaces trust with fear and suspicion. And fear and suspicion cut off the flow of communication. This is true whether the problem we face is drug dealers on the corner, or terrorism on our own soil. Information from the community is the one essential ingredient of any successful effort to get ahead of criminals or terrorists; using profiling against these communities is therefore counterproductive.



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Revelations of mosques being frequented and targeted by professional FBI informants and recent news stories about the FBI's "community outreach program" serving as a method for collecting information on Muslim attendees and participants have undoubtedly damaged the trust relationship with various Muslim communities.

Last month, one FBI informant named Craig Monteilh made a dramatic confession: "I pretended to be Muslim... There is no real hunt. It's fixed. It's all about entrapment." Monteilh says he did not balk when his FBI handlers gave him the OK to have sex with the Muslim women his undercover operation was targeting. Nor, at the time, did he shy away from recording their pillow talk. "They said, if it would enhance the intelligence, go ahead and have sex. So I did," Monteilh told *the Guardian* and other news outlets as he described his year as a confidential FBI informant sent on a secret mission to infiltrate southern Californian mosques:

It is an astonishing admission that goes to the heart of the intelligence surveillance of Muslim communities in America in the years after 9/11. While police and FBI leaders have insisted they are acting to defend America from a terrorist attack, civil liberties groups have insisted they have repeatedly gone too far and treated an entire religious group as suspicious.

Monteilh was involved in one of the most controversial tactics: the use of "confidential informants" in so-called entrapment cases. This is when suspects carry out or plot fake terrorist "attacks" at the request or under the close supervision of an FBI undercover operation using secret informants. Often those informants have serious criminal records or are supplied with a financial motivation to net suspects. (excerpt from *the Guardian*)



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Disclosures of such egregious misconduct in conducting religious, ethnic and racial profiling cannot but seriously adversely impact the willingness of Muslims to share information with law enforcement and national security officials or to testify as witnesses. If “community policing” has long been established as most effective, the government is only hurting its ability to gather the more accurate information from unbiased members of any ethnic or religious community about ongoing crimes they spot or witness as opposed to the lesser accuracy that comes from hiring professional informants, provocateurs such as Monteilh or accepting information from opposition groups with axes to grind.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. Muslim Legal Fund of America is particularly concerned about many policies and programs at the national, state and local level which encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the



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guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Racial Profiling in Our Communities

The MLFA receives constant reports from Muslims subjected to various types of ethnic and/or religious profiling. In most cases the victims have no legal redress or they are reluctant to report their experiences. These experiences of being subjected to humiliating treatment and unpleasant intensive searches, especially at airports result in mounting bitterness and feelings of unfair treatment. If the Subcommittee would like the MLFA to compile personal anecdotal information of this sort we would be happy to take this on as a project but we would need at least a few more weeks of time.

The following are some of the more publicized cases and issues of discriminatory treatment affecting Muslims of which your Committee is surely already aware. We can assure you these incidents constitute only the tip of the iceberg.

Six Imams Case

On November 20, 2006, six Muslim religious leaders were scheduled to fly on a U.S. Airways flight from Minneapolis, MN to Phoenix, AZ. Prior to boarding, four of the imams prayed in the



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airport terminal. Then, all six boarded the airplane and sat in their pre-assigned seats. One of the six imams changed seats because he was blind and needed assistance. Two of the imams asked for seatbelt extensions for their comfort.

The imams were removed from the flight and interrogated for several hours by various law enforcement and federal agents. They were asked questions about their political views.

The Six Imams' constitutional and civil rights were violated when they were humiliatingly forced off of the flight, regarded with suspicion prior to boarding their flight, and then subjected to hours of questioning by FBI and Secret Service agents for apparent non-security-related, illegitimate considerations. The Imams' degrading experience continued after being cleared by law enforcement officials as they were denied service on all subsequent U.S. Airways flights on November 20 and 21. In 2009, a lawsuit filed by the Six Imams was settled.

Abdulahman Zeitoun

Syrian-American Abdulrahman Zeitoun was the owner of a painting and contracting company in New Orleans who chose to ride out Hurricane Katrina in his Uptown home. After the storm he traveled the flooded city in a secondhand canoe rescuing neighbors, caring for abandoned pets and distributing fresh water. Soon after the storm, Zeitoun was arrested without reason or explanation at one of his rental houses by a mixed group of National Guardsmen and local



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police. He was not immediately charged with a crime but was imprisoned for 23 days without having stood trial. During that time he was accused of terrorist activity presumably because of his ethnicity, was treated inhumanely, and was refused medical attention and the use of a phone to alert his family. His wife and daughters, staying with friends far away from the city, only knew that he had seemingly disappeared from the face of the earth.

Imprisonment of Muslims in Communication Management Units (CMUs)

The first CMU experimental prison unit created to significantly limit visitation, mail and telephone privileges of “terrorism inmates” was quietly created in 2006. It is unclear who authorized the program. Initially almost all of those confined to the CMU were Muslim. Civil liberties organizations have consequently raised concerns about racial profiling involving the CMUs. As of 2011, a lawyer for the Center for Constitutional Rights estimates the Muslim population of CMUs at roughly 70 percent. There are also significant restrictions upon Muslim inmates in CMU being able to pray together.

Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color in the U.S.



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Muslim Legal Fund of America is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the "End Racial Profiling Act (S.1670)" and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of Muslim Legal Fund of America. We welcome the opportunity for further dialogue and discussion about these important issues.



National
Congress of
American
Indians

**STATEMENT OF
The NATIONAL CONGRESS OF AMERICAN INDIANS**

Hearing “End Racial Profiling in America”

SENATE COMMITTEE ON THE JUDICIARY

**SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND
HUMAN RIGHTS**

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: The National Congress of American Indians (NCAI) is honored to submit this testimony regarding today’s hearing on racial profiling. Established in 1944, NCAI is the largest and oldest national organization of American Indian and Alaska Native tribal governments and their members.

NCAI wishes to express its support for Senate bill 1670, the End Racial Profiling Act (ERPA). Along with its sister organizations – those dedicated to promoting social justice, civil rights, human rights and cultural protection – NCAI thanks the Senate Committee on the Judiciary for holding this critical hearing on ending racial profiling in America. NCAI is particularly concerned about many policies and programs at the national, state and local level which encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices are counterproductive, waste public resources, and violate the civil and human rights of persons living in the United States.

Through collaborative efforts with partner civil rights organizations and interest groups, NCAI was able to address certain tribal concerns within the initial draft of ERPA. NCAI would like to take the time to thank the various groups involved in pushing this legislation forward for their steadfast recognition of tribal concerns. In particular, NCAI and the legislative drafters were able to:

- Change the definition of Indian Tribe in Section 2 (4) of the bill to align better with the goals of the bill;
- Insert a savings clause on behalf of Indian tribes in Section 602 (2) and (3) which preserved tribal sovereign immunity; and
- Highlight funding concerns with the Data Collection regulations portion of the bill.

ERPA states that racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of

whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Racial Profiling of Tribal Members

NCAI realizes the importance of addressing discriminatory policing practices, and therefore strongly supports the goals of ERPA. American Indians and Alaska Natives have been—and still are—regular victims of racial profiling, particularly in the small towns and rural areas that border and/or surround Indian reservations.

For instance, a 2003 racial profiling study conducted in Minnesota noted that when stopped, “American Indians were subject to discretionary searches over three times as often as whites (9.6% compared to 3.1%) even though contraband was found at a lower rate in discretionary searches of American Indians (19.7%) than of whites (23.5%).”¹

A study in South Dakota, specifically targeting Indian communities, found that “[b]ecause of the much broader Federal jurisdiction applicable to crimes committed by Native Americans in Indian Country, disparate sentencing – with more severe punishment for Native Americans – may result,”² supporting the proposition that racial discrimination against tribal peoples extends beyond racial profiling and into the legal structure itself; through laws such as the Major Crimes Act.

Also, an article written by the American Civil Liberties Union (ACLU), found that in South Dakota, “widespread reports of racial profiling led to hearings before the state legislature, where Indians testified about their being stopped and searched not only based on race but also on religious articles hanging from rearview mirrors, and regional license plates that identified them as living on reservations.”³ But in most instances, it is unknown when racial profiling affects American Indians and Alaska Natives because the current policing policies do not routinely require this type of data to be collected. What is known is that racial profiling affecting American Indians, occurs off the reservation, often on the roads leading to and from Indian Country and in the border towns surrounding Indian Country.

Conclusion

The practice of racial profiling by federal, state, and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color throughout the United States.

NCAI is heartened by the Subcommittee’s leadership in holding this hearing, and we are grateful for the opportunity to present our position on the unjust, ineffective, and counterproductive

¹ Minnesota Racial Profiling Study - All Jurisdiction Report: Summary of Findings, September 24, 2003 Pp 3, Council on Crime and Justice and Institute on Race and Poverty.

² Native Americans in South Dakota: An Erosion of Confidence in the Justice System, Chapter 3, Concerns, Conclusions, and Recommendations, *available at* <http://www.usccr.gov/pubs/sac/sd0300/ch3.htm>.

³ “Racial Profiling: Definition,” November 23, 2005, *available at* <https://www.aclu.org/racial-justice/racial-profiling-definition>.

practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the “End Racial Profiling Act (S.1670)” and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of NCAI. We welcome the opportunity for further dialogue and discussion about these important issues.

National Coalition for Immigrant Women's Rights

STATEMENT OF

NATIONAL COALITION ON IMMIGRANT WOMEN'S RIGHTS

Hearing on Ending Racial Profiling in America

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: We are honored to submit this statement for the record on behalf of the National Coalition for Immigrant Women's Rights (NCIWR) regarding today's hearing on racial profiling and the End Racial Profiling Act (ERPA). NCIWR was the first national collaboration to specifically focus on gender issues in today's public discourse on immigration. We are comprised of grassroots and national advocacy organizations working together for comprehensive immigration reform, fair and non-discriminatory implementation of our immigration and enforcement policies, and reproductive and economic justice for immigrant women in the United States. We represent more than 50 organizations and millions of constituents. The National Asian Pacific American Women's Forum (NAPAWF) and the National Latina Institute for Reproductive Health (NLIRH) comprise NCIWR's Steering Committee. As organizations representing immigrant

women of color, we write today out of deep concern over the harmful impact of racial profiling on immigrant women and their families.

First, we offer our sincerest appreciation for holding this important hearing on racial profiling and ERPA. We believe in equality for all and that subjecting certain groups of people to ill treatment simply because of their race, national origin, or religion is a brazen violation of the principles this country was founded upon. NCIWR is concerned about the many federal and state policies which promote discriminatory law enforcement practices such as racial profiling. Immigrant women and their families are especially vulnerable under these policies. Considering a person's racial, ethnic, or religious appearance in determining whether she should be investigated, arrested or detained is insulting and only serves to drive wedges between the many communities that contribute to the diversity of the United States.

Furthermore, racial profiling is ineffective and even counterproductive in achieving law enforcement goals, as well as detrimental to our communities—it serves only to waste public resources and violate civil and human rights. These policies and practices cause families to live in fear, constantly bracing themselves for when a loved one might be torn away. They also encroach on our freedom, as many individuals are terrified to engage in simple activities that so many Americans take for granted, like sending their children to school or freely leaving their homes. Moreover, it prevents many people from reporting crimes and moves often limited resources away from targeted, behavior-based investigations.

The Effects of Racial Profiling on Our Communities

Racial profiling has disproportionately affected Asian American and Latino communities, who in recent years have been the targets of anti-immigrant rhetoric, mischaracterizations and false accusations. Since September 11, 2001, Asian American community members have faced increased stereotyping and scrutiny from fellow Americans, as well as law enforcement. A study by the New York City Profiling Collaborative found that 73% of South Asians were questioned about their national origin in interactions with law enforcement, and 66% were questioned about their religious affiliation.¹

Racial profiling is equally damaging for Latino families, many of whom have been living silently in the shadows for years. So-called immigration enforcement programs, such as 287(g) and Secure Communities (S-Comm), and the insulting and misleading rhetoric that accompanies them, disproportionately affects Latinos, including tens of thousands of U.S. citizens. From 2004-2009, the FBI documented a nearly 40 percent increase in hate crimes against Latinos, which the Southern Poverty Law Center attributed almost entirely to anti-immigrant rhetoric.² Similarly, 93% of individuals arrested under S-Comm have been Latinos, despite the fact that they comprise 77% of the undocumented population.³ The aforementioned studies confirm what

¹ South Asian Americans Leading Together, "Narratives of South Asian New Yorkers Affected by Racial and Religious Profiling."

<http://www.saalt.org/filestore/Reports/In%20Our%20Own%20Words%20Web%20FINAL.pdf>

² National Council of La Raza Letter to the President.

<http://www.nclr.org/images/uploads/pages/ObamaImmLatinoOrgs.pdf>

³ Kohli, Aarti, et al (The Chief Justice Earl Warren Institute of Law and Social Policy, University of California, Berkeley Law School). Secure Communities by the Numbers: An Analysis of Demographics and Due Process (2011) http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf.

our communities already know from their daily lives—that they are viewed as “suspects” and “enemies” simply because of their race, ethnicity, or religion.

The Effects of Racial Profiling on Immigrant Women

While racial profiling affects all members of our communities, women are forced to bear the burden in many ways. According to Census data, there are 17.5 million immigrant women in the United States. Women most often fulfill the role of caregiver in a family, taking responsibility for the health, wellbeing, and comfort of children. Racial profiling may lead a woman to be arrested and detained, leaving her children without care and support. When a woman’s partner is taken away as a result of racial profiling, the loss of financial and emotional support may cause her to struggle to provide for herself and her children.

The pervasiveness of these real occurrences of racial profiling also causes fear in our communities, which prevents immigrant women, children, and families from living safe, healthy, and dignified lives. Although a woman’s children may be U.S. citizens who are eligible for government services and benefits, fear of racial profiling may discourage her from accessing these programs for her children, to the detriment of their health and wellbeing. But health is not the only societal cost of racial profiling—immigrant women often pay with their personal safety, as well. An immigrant woman who experiences domestic violence is less likely to report the crime to law enforcement, out of fear that she and/or her partner will be racially profiled and have to endure the hardship of family separation. Racial profiling creates this unconscionable

situation where, forced to choose between two painful options, women continue to endure physical violence at the hands of their abusers.

Conclusion

We believe equality for immigrant women is an important part of living up to the principles of liberty and equality that this country hopes to model, and that it can only be attained when immigrant women live free from discrimination, oppression, and violence in all their forms. Racial profiling—whether used under the guise of local policing, immigration enforcement, homeland security, or any other goal—is an inappropriate and ineffective use of government resources. This practice undermines liberty and equality and serves only to harm our families and our communities. Unfortunately, the use of racial profiling is rampant and a problem of this scope and magnitude demands legislative action.

The National Coalition on Immigrant Women’s Rights is grateful for the opportunity to present our position on the unjust, ineffective, and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level. Specifically:

- Congress should pass the End Racial Profiling Act (S.1670) and institute a federal ban on profiling based on race, religion, ethnicity, and national origin at the federal, state, and local levels.

- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express our concerns related to racial profiling.



**Statement of Ali Noorani, Executive Director
National Immigration Forum**

**Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil
Rights and Human Rights
“Ending Racial Profiling in America”
United State Senate**

April 17, 2012

The National Immigration Forum hereby submits our views about the important and timely subject of this hearing, “Ending Racial Profiling in America.” We also express our gratitude to the Subcommittee for holding this hearing at a critically important moment. The Forum is grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling.

The Forum works to provide practical solutions for immigrants and for America. We advocate for the value of immigrants and immigration to the nation, building support for public policies that reunite families, recognize the importance of immigration to our economy and our communities, protect refugees, encourage newcomers to become new Americans and promote equal protection under the law.

The Forum is opposed to both state and federal measures that enable unlawful profiling. We are proud of our nation’s history as a country of immigrants. Thus, we find practices that treat immigrants, or those perceived as immigrants, with fewer rights and more suspicion offensive to America’s keystone principle of equality for all. Further, reliance on profiling makes us less safe when community members lose trust in law enforcement officials. We also reject measures that rely on profiling for a more crude reason- they are ineffective and waste taxpayer resources.

State immigration laws that require local law enforcement officers to investigate the immigration status of individuals based on “reasonable suspicion” regarding immigration status invite racial profiling and place an unnecessary burden on law enforcement officers to exercise subjective judgment. Laws that enable or require profiling based on perceived immigration status, such as Arizona’s “papers please” anti-immigrant law, SB 1070, and its ilk also hurt law enforcement’s ability to carry out their work because the threat of profiling undermines a community’s willingness to cooperate in reporting crimes or serving as witnesses. Citizens and immigrants alike are distressed by the specter of racial profiling raised by these laws. The Forum’s Board Chair, Dr. Warren Stewart, spoke about this distress by sharing his first-hand experience as a pastor and civil rights leader in a diverse and tight-knit community in Phoenix, Arizona, “I have witnessed the consequences of this misguided law. The law undermines basic civil rights because it encourages racial profiling against people just because of the way they look or speak, even if they have been American citizens all their lives. A state law that encourages discrimination is flat-out wrong.”

The Supreme Court hears oral arguments regarding SB 1070 next week. We trust the Court will embrace the notion that immigrants are entitled to equal protection of the laws and equal respect for their rights. As forty-four former state attorneys general from both sides of the aisle and all regions of the country stated in an amicus curiae brief to the Court, "SB 1070 harms the public interest, often irreparably by adversely affecting state and local law officials' efforts to fight crime, secure convictions, and make communities safer for all individuals."

Federal immigration enforcement programs are also fostering racial profiling. Last summer, the Forum was invited to participate in the Department of Homeland Security's Task Force on Secure Communities. We resigned when it became clear the Task Force was unable to make serious reforms we deem necessary. Secure Communities has faced continued criticism for many flaws, including strong concerns that it incentivizes racial profiling by local law enforcement agencies. Secure Communities operates at the point of arrest, rather than after a conviction, meaning that individuals arrested on fabricated or pretextual arrests are nonetheless swept into the immigration enforcement machinery. Anecdotes about racial profiling in active Secure Communities jurisdictions, combined with high numbers of arrests for minor traffic offenses, present a grave concern that Secure Communities is serving as a conduit for discriminatory arrests. This fear was confirmed by the Warren Institute in a 2011 report finding that Latinos were disproportionately represented in Secure Communities data, indicating that some local police find pretexts for stopping Latinos with the intention of initiating immigration checks. The Administration and Congress must acknowledge and eliminate the incentive created by Secure Communities for police to arrest individuals solely for the purpose of checking their immigration status. Further, the program must be monitored for, and consequences delivered to, jurisdictions that misuse Secure Communities.

Further, the Department of Justice can and must do better with their Guidance Regarding the Use of Race by Federal Law Enforcement Agencies. Currently, the 2003 Guidance does not apply to profiling based on national origin or religion. Additionally, the 2003 Guidance permits profiling in the context of national security or border security. The notion that profiling is somehow permissible in the name of national security or border security is deeply troubling to the Forum. These omissions tacitly condone profiling of certain individuals or for certain purposes. We need look no further than the failed National Security Entry Exist Registration System (NSEERS) program - which required males from mainly Muslim-majority countries to register with immigration officials, was a clear example of racial profiling, and was ineffective and inconvenient - to find an example of discriminatory enforcement measures undertaken in the name of national security. Sadly, examples also abound of racial profiling on or near our borders. Border Patrol agents have been witnessed employing profiling tactics when conducting sweeps on Greyhound buses and Amtrak trains in the interior of the United States in search of immigration status violations. Arab Americans report being the recipients of severe and repeated scrutiny when crossing the Canadian border; the questions asked of them suggest that religion is the main purpose of the recurring interrogations. Federal guidance that doesn't explicitly reject profiling in all contexts perpetuates discrimination and undermines legitimate law enforcement practices.

In conclusion, the heightened use of racial profiling involving immigrants or those perceived as immigrants reiterates the need for the President and the U.S. Congress to come together to fix America's broken immigration system once and for all. This can be done by crafting and passing

comprehensive immigration reform legislation that relies on systematic and targeted approaches for dealing with immigration matters rather than resorting to profiling, which is both ineffective and offensive to our national values.

We urge the Subcommittee to call upon DOJ to amend its 2003 Guidance by making it applicable to religious and national origin profiling and by closing loopholes regarding border and national security. The Guidance must also apply to state and local law enforcement agencies acting in partnership with the Federal Government or receiving federal funds, including under the 287(g) and Secure Communities programs. Finally, the Guidance must be made enforceable.

Thank you for the opportunity to explain the position and concerns of the National Immigration Forum. We look forward to continued dialogue on this issue.



STATEMENT OF

Nadia Tonova, Director

National Network for Arab American Communities

Hearing on End Racial Profiling Act (ERPA)

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of the National Network for Arab American Communities regarding today's hearing on racial profiling. NNAAC, which was established in 2004, currently has 23 members in 11 states and the District of Columbia. Our member organizations are grassroots organizations located in the most highly concentrated Arab American communities in the country. We at NNAAC believe that racial profiling by local and federal law enforcement agencies has plagued the Arab American and Muslim community, particularly since the tragic events of 9/11.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. The National Network for Arab American Communities (NNAAC) is particularly concerned about many policies and programs at the national, state and local level that encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that



these practices are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Racial Profiling in Our Communities

Most recently, NNAAC members in New York have been at the forefront of addressing and confronting the blanket surveillance of the Muslim American community by the New York Police Department revealed by the investigative reporting of the Associated Press. These reports have sent a chilling effect across the Arab and Muslim communities of the Northeast. They are experiencing a decrease in mosque attendance, decrease in student participation at Muslim Student Associations and within political action clubs at their local universities. Trust between local Arab and Muslim communities and law enforcement has been hindered and we know that in order to combat terrorism, community engagement is key to this process.



Unfortunately, racial profiling goes beyond the NYPD and local law enforcement agencies. In Michigan, ACCESS (Arab Community Center for Economic and Social Services) has documented stories of Arabs and Muslims being harassed, intimidated and interrogated when returning from Canada at the Michigan border. They are being asked questions such as “what mosque do you pray at?”, “who is your imam?”, “what sect of Islam do you identify with?”, do you pray fajr (morning) prayer at the mosque?” and in some cases guns have been drawn on entire families as an act of intimidation. This behavior by Customs and Border Patrol is unacceptable and we believe that those perceived to be Arab and Muslim are the ones being subject to this treatment.

Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color throughout the United States. Because of this, we must have more safeguards and protections in place. National Network for Arab American Communities is heartened by the Subcommittee’s leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the “End Racial Profiling Act (S.1670)” and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.



- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

We welcome the opportunity for further dialogue and discussion about these important issues.

Contact Information:

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STATEMENT OF

Sister Beatrice Haines, OLVVM, President

Our Lady of Victory Missionary Sisters

Hearing on Ending Racial Profiling in America

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of Our Lady of Victory Missionary Sisters regarding today's hearing on racial profiling. Our mission is to live and proclaim the Gospel of Jesus Christ. Respecting the dignity of every person, respecting human rights and working for justice is therefore an integral part of the Gospel and of our mission.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. Our Lady of Victory Missionary Sisters is particularly concerned about many policies and programs at the national, state and local level which encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Racial Profiling in Our Communities

- 1) Some students of color from Huntington University have experienced racial profiling at the local Walmart, where they are watched, sometimes followed in case they might be shop-lifters.
- 2) Some years ago Huntington University put out fliers that had students from diverse backgrounds on the front with the University Sign. The University received notification from one recipient that they would not send support if Huntington University was accepting “those” students.

Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color throughout the United States.

Our Lady of Victory Missionary Sisters is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the "End Racial Profiling Act (S.1670)" and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of Our Lady of Victory Missionary Sisters. We welcome the opportunity for further dialogue and discussion about these important issues.

RIGHTS working group

STATEMENT OF

**MARGARET HUANG, EXECUTIVE DIRECTOR
RIGHTS WORKING GROUP**

HEARING ON “ENDING RACIAL PROFILING IN AMERICA”

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

TEUSDAY, APRIL 17, 2012

Chairman Durbin, Ranking Member Graham, and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of Rights Working Group regarding today’s hearing on “Ending Racial Profiling in America.”

Rights Working Group (RWG) was formed in the aftermath of September 11th to promote and protect the human rights of all people in the United States. A coalition of more than 330 local, state and national organizations, RWG works collaboratively to advocate for the civil liberties and human rights of everyone regardless of race, ethnicity, religion, national origin, citizenship or immigration status. Currently, RWG leads the *Racial Profiling: Face the Truth Campaign*, which seeks to end racial and religious profiling.

RWG is deeply concerned about many current criminal justice, national security and immigration policies which encourage racial profiling. These policies are counterproductive and violate the civil and human rights of persons living in the United States. Law enforcement continues to routinely single out, stop and search people of color at significantly disproportionate rates while they are walking, driving, flying or otherwise going about their business.

RIGHTS working group

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations and toward dragnet techniques that are extremely counterproductive. ‘Hit’ rates drop when law enforcement goes after individuals based on their race.¹ In 1998, the U.S. Customs Service eliminated the use of race, ethnicity and gender in deciding which individuals to search and began focusing solely on suspect behavior. A study by Lamberth Consulting found that this policy shift led to an almost 300% increase in searches that resulted in the discovery of illegal contraband or activity.²

Racial Profiling: Law Enforcement Stop and Frisks and Traffic Stops

Racial profiling in the popularly termed “driving or walking while black or brown” contexts has long afflicted law enforcement agencies around the country. A national survey conducted in 2002 by the Department of Justice found that blacks and Hispanics were two to three times more likely to be stopped and searched than whites but were less likely to be found in possession of contraband.³ Racial minorities and indigenous peoples continue to be unfairly targeted by law enforcement based upon subjective identity-based characteristics rather than on

¹ David Harris, *Confronting Ethnic Profiling in the United States*, Justice Initiatives, Open Society Justice Initiative 69 (June 2005).

² Lamberth Consulting, “Racial Profiling Doesn’t Work,” *available at* <http://www.lamberthconsulting.com/about-racialprofiling/racial-profiling-doesnt-work.asp>.

³ U.S. Department of Justice, Bureau of Justice Statistics, *Contacts between Police and the Public: Findings from the 2002 National Survey*, *available at* <http://www.ojp.usdoj.gov/bjs/pub/pdf/cpp02.pdf>.

RIGHTS working group

identifiable behavior that makes them reasonably suspicious of criminal activity. Across the United States, traffic stops, for example, continue to be used as a pretext for determining whether African American and Latino individuals are engaged in criminal activity. These racially motivated stops and searches remain unproductive, resulting in extremely low seizure rates of contraband.

Data from across the country demonstrate that racial profiling is an ineffective crime detection tactic. In New York, for example, the Center for Constitutional Rights (CCR) lawsuit *Floyd v. City of New York*,⁴ uncovered data about the New York Police Department (NYPD) revealing that in 2011, a record 684,330 people were stopped by NYPD, 87 percent of whom were Black and Hispanic individuals—although they comprised only 25 percent and 28 percent of New York City’s total population respectively. Of those stopped, nine out of ten were not arrested nor did they receive summonses.⁵

Not only do racially-motivated law enforcement stops and frisks and traffic stops lead to lower hit rates, they also violate the 4th and 14th Amendment rights of those targeted and sow mistrust between communities of color and the law enforcement agencies sworn to protect them. A 2001 report by the Police Executive Research Forum and funded by the Department of Justice’s Community Oriented Policing Services reported, “There are grave dangers in neglecting to take the issue of biased policing seriously and respond with effective initiatives . . . If a substantial part of the population comes to view the justice system as unjust, they are less

⁴ CCR is currently involved in class-action litigation against the New York City Police Department (NYPD) challenging the stop-and-frisk practice, *Floyd, et al. v. City of New York, et al.* More information is available at <http://ccrjustice.org/ourcases/current-cases/floyd-et-al>.

⁵ Rivas, Jorge, “NYPD 2011 Data Reveals Highest Number of Stop-and-Frisks Ever,” Colorlines.com, February 14, 2012 available at http://colorlines.com/archives/2012/02/nypd_2011_data_reveals_highest_number_of_stop-and-frisks_ever.html.

RIGHTS working group

likely to be cooperative with police, withholding participation in community problem-solving and demonstrating their disaffection in a variety of ways. The loss of moral authority could do permanent injury to the legal system, and deprive all of society of the protection of the law.”⁶

Racial Profiling: Surveillance and Targeting of Arab, Middle Eastern, Muslim, Sikh and South Asian Communities

After the terrorist attacks of September 11th, members of Arab, Middle Eastern, Muslim, Sikh and South Asian communities have been increasingly and disproportionately placed under surveillance, stopped, searched, interrogated, detained and labeled “terrorism suspects.”

Members of these communities are stopped and searched more frequently in airports, more likely to be detained and questioned at the border, and increasingly subjected to intensive government surveillance.

Members of the Arab, Middle Eastern, Muslim and South Asian communities continue to be singled out for intrusive questioning, invasive searches and lengthy detentions without reasonable suspicion of criminal activity at border stops but also onboard Amtrak trains and Greyhound buses traversing through or en route to border states. Customs and Border Protection (CBP) agents question individuals about their faith, associations and political opinions.⁷ At airports, the Transportation Security Administration (TSA) has faced ongoing allegations of discriminatory enforcement since its inception. Members of the Arab, Middle Eastern, Muslim,

⁶ Lorie Fridell, Robert Lunney, Drew Diamond and Bruce Kabou, *Racially Biased Policing: A Principled Response*, Police Executive Research Forum 2001 available at <http://www.policeforum.org/library/racially-biased-policing/a-principled-response/RaciallyBiasedPolicingfull%5B1%5D.pdf>.

⁷ See Asian Law Caucus, “Returning Home: How U.S. Government Practices Undermine Civil Rights At Our Nation’s Doorstep,” April 2009, <http://www.asianlawcaucus.org/wp-content/uploads/2009/04/Returning%20Home.pdf>; and Muslim Advocates, “Unreasonable Intrusions: Investigating the Politics, Faith & Finances of Americans Returning Home,” April 2009, [http://www.muslimadvocates.org/documents/Unreasonable Intrusions 2009.pdf](http://www.muslimadvocates.org/documents/Unreasonable%20Intrusions%202009.pdf).

RIGHTS working group

Sikh and South Asian communities report being “randomly selected” for secondary screenings almost every time they go to the airport.⁸

One extremely troubling trend, post-9/11, is the use by federal government agencies of biased and false information in training materials about Muslims and Islam. For example, a 2006 Federal Bureau of Investigation (FBI) report stated that individuals who convert to Islam are on the path to becoming “homegrown Islamic extremists” if they wear traditional Muslim attire, grow facial hair, frequently attend a mosque or prayer group, travel to a Muslim country or increase their support of a pro-Muslim social group or political cause.”⁹ Many recent news reports have highlighted the FBI’s use of biased experts and training materials,¹⁰ but this troubling practice extends beyond the FBI to the U.S. Attorney’s Anti-Terrorism Advisory Councils, the U.S. Department of Homeland Security and the U.S. Army.¹¹ By tying expressions of religious faith to criminality, these agencies are essentially encouraging their agents to engage in discriminatory practices such as racial and religious profiling.

Reports have also emerged of the FBI’s use of community meetings to conduct surveillance of Muslim community members.¹² These meetings are marketed as an opportunity for FBI to build trust with community members and encourage them to cooperate in

⁸ See The Sikh Coalition, “The TSA Report Card: A Quarterly Review of Security Screenings of Sikh Travelers in U.S. Airports,” Q2 2009 (Aug. 2009), accessible at <https://salsa.wiredforchange.com/o/1607/images/2009%20Q2%20Report%20Card.pdf>.

⁹ Spencer Ackerman, *New Evidence of Anti-Islam Bias Underscores Deep Challenges for FBI’s Reform Pledge*, WIRED MAGAZINE, Sept. 23, 2011, available at <http://www.wired.com/dangerroom/2011/09/fbi-islam-domination/all/1>.

¹⁰ Pete Yost, *FBI Pulls Flawed Training Aids Related to Muslims*, Associated Press, Mar. 30, 2010 available at <http://abcnews.go.com/US/wireStory/fbi-pulls-flawed-training-aids-related-muslims-16041086#.T4MwDpmCkTY>.

¹¹ Community Letter to the Honorable John Brennan, Assistant to the President for Homeland Security and Counterterrorism and Deputy National Security Advisor, October 19, 2011, available at <http://www.muslimadvocates.org/Community%20letter%20to%20Brennan%20re%20FBI%20trainings%2C%2010-19-11%2C%20FINAL.pdf>.

¹² See Kari Huus, *ACLU: FBI ‘mosque outreach’ used to spy on Muslims*, March 29, 2012 available at <http://usnews.msnbc.msn.com/news/2012/03/29/10907668-aclu-fbi-mosque-outreach-program-used-to-spy-on-muslims>.

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investigations. By using these meetings as an avenue to conduct surveillance of the Muslim community, the FBI effectively destroyed the trust and goodwill that initially prompted community members to engage with the FBI.

Discriminatory domestic intelligence work, however, doesn't stop with the work of federal entities—it extends to local law enforcement agencies. The NYPD has aggressively relied on identity-based intelligence gathering, using census data to infiltrate ethnic communities. As discovered by a months-long investigation by the Associated Press, “[t]he department has dispatched teams of undercover officers, known as ‘rakers,’ into minority neighborhoods as part of a human mapping program . . . They’ve monitored daily life in bookstores, bars, cafes and nightclubs. Police have also used informants, known as ‘mosque crawlers,’ to monitor sermons, even when they have no evidence of wrongdoing. NYPD officials have scrutinized imams and gathered intelligence on cab drivers and food cart vendors, jobs often done by Muslims.”¹³

These tactics have alienated the affected communities and diminished cooperation with law enforcement. Community groups have reported that members of targeted ethnic communities became so afraid of having any contact with officials after post-9/11 “national security” or “counterterrorism” policies were introduced that they did not report emergency situations, such as domestic violence and other crimes, and in some cases they did not seek medical treatment.¹⁴ A 2006 study commissioned by the DOJ established that Arab Americans were significantly fearful and suspicious of federal law enforcement due to government policies. It also determined that both community members and law enforcement officers defined

¹³ Matt Apuzzo and Adam Goldman, *With CIA Help, NYPD Moves Covertly in Muslim Areas*, A.P., Aug. 24, 2011.

¹⁴ Immigration Policy Center. “Targets of Suspicion: The Impact of Post-9/11 Policies on Muslims, Arabs and South Asians in the United States”, 2004, available at http://ispu.org/reports/article_detailpb-63.html.

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diminished trust as the most important barrier to cooperation.¹⁵ These studies highlight the need for smart, targeted law enforcement policies and procedures that would eliminate racial profiling, including in data collection and law enforcement trainings.

Racial Profiling: Immigration and Border Enforcement

Latino and immigrant communities have felt the impact of racial profiling, particularly through border enforcement policies, immigration enforcement efforts such as Secure Communities and state laws that codify racial profiling by state and local law enforcement agencies.

Changes in border enforcement policies over the past ten years have made racial profiling an acute problem at our nation's borders. The large increase in the number of Border Patrol agents patrolling the interior, the proliferation of programs that engage state and local police in immigration enforcement, along with the way that CBP stops, searches and questions those entering the United States, citizens and non-citizens alike, has led to a large increase in allegations of racial profiling. The rhetoric of "securing our borders" has often been used to justify increased law enforcement presence and expanded jurisdiction.

The Secure Communities program checks fingerprints that state or local law enforcement send to the FBI against DHS civil immigration databases. Secure Communities creates an incentive for state and local law enforcement agents to arrest people for pre-textual reasons so that their immigration status can be checked during the booking process. A recent report by the Warren Institute at the University of California, Berkeley Law School which analyzed

¹⁵ Vera Institute of Justice. "Law Enforcement and Arab-American Community Relations after September 11, 2001: Engagement in a Time of Uncertainty", pp. 13, 21, 2006, *available at* <http://www.vera.org/download?file=147/Arab%2BAmerican%2Bcommunity%2Brelations.pdf>.

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connections between DHS' own data and demographic information supports this assertion, finding that Latinos are disproportionately impacted by Secure Communities.¹⁶

Police Chief Chris Burbank of the Salt Lake City Police Department, in an independent report contributed to by national and community-based groups around the country who have observed the impact of Secure Communities, said, "The Secure Communities program combined with misguided state legislation has promoted a shift in local law enforcement's mission across the country and driven a wedge between the police and the public. The resulting priority adjustment places emphasis upon civil immigration action over community policing and all criminal enforcement. Additionally, the program sets an unhealthy priority for much needed jail space. Individuals are being held for civil immigration purposes, causing criminal violators to be released. In Salt Lake County, between 700 and 900 criminal offenders are released monthly due to overcrowding. Civil detainees often supersede criminal charges. We in law enforcement must safeguard community trust. Without the support and participation of the neighborhoods in which we serve, we cannot provide adequate public safety and maintain the well being of our nation. I do not believe Secure Communities has positively contributed to the mission of local law enforcement."¹⁷

Immigration enforcement programs that implicate state and local police not only result in discriminatory policing practices, they have had the added consequence of reinforcing a message to states and localities that it is permissible for them to determine immigration policies and priorities. The 2002 Department of Justice Office of Legal Counsel "inherent authority" memo

¹⁶ Aarti Kohli, Peter L. Markowitz and Lisa Chavez, *Secure Communities by the Numbers: An Analysis of Demographics and Due Process*, The Chief Justice Earl Warren Institute on Law and Social Policy, October 2011, available at http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf.

¹⁷ Restoring Community: A National Community Advisory Report on ICE's Failed 'Secure Communities' Program, August 2011, available at <http://uncoverthetruth.org/media/restoring-community-a-national-community-advisory-report-on-ice%E2%80%99s-failed-%E2%80%9Csecure-communities%E2%80%9D-program/>.

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has also reinforced this belief.¹⁸ It reversed years of previous legal opinions by finding that state and local law enforcement had “inherent authority” to enforce civil immigration law. It has been interpreted by some state and local law enforcement as granting them the inherent power to arrest individuals they suspect of lacking legal immigration status and turn them over to ICE. This federal devolution of immigration enforcement authority to states and localities has emboldened racist and xenophobic efforts in state and local political bodies. Unsurprisingly, we have seen anti-immigrant state bills and local ordinances take root across the country that rely on this perceived “inherent authority” - most notably in Arizona’s SB 1070 and its copycats in Alabama, Georgia, Indiana, South Carolina, and Utah.

Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in immigrant communities and communities of color in the U.S. The “Contract for Policing Justice,” endorsed by the Major Cities Chiefs Association, states, “Effective law enforcement requires legitimacy. This is not simply an adage, but a social fact. Departments are better able to protect those who trust law enforcement. Agencies receive more information from communities that believe law enforcement is invested in their wellbeing. And officers elicit more compliance when suspects feel they are treated with respect.”¹⁹

RWG is encouraged by the Subcommittee’s leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. Publicly airing and investigating the harms caused

¹⁸ See Department of Justice Office of Legal Counsel, *Memorandum for the Attorney General*, April 3, 2002 available at <http://www.aclu.org/files/FilesPDFs/ACF27DA.pdf>.

¹⁹ Consortium for Police Leadership in Equity, “The Contract for Policing Justice,” available at <http://cple.psych.ucla.edu/wp-content/uploads/2009/02/cplecpcirc.pdf>.

RIGHTS working group

by racial profiling is a critical first step, but we urge the Subcommittee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the “End Racial Profiling Act” instituting a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Committee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.
- The Committee should fully investigate the use of biased and false training materials by federal law enforcement agencies as well as the improper targeting and mapping of communities based on race, religion, national origin or ethnicity.
- The Committee should investigate the devolution of immigration authority to state and local law enforcement through programs like Secure Communities and state immigration laws like Arizona’s SB 1070 and its copycats and call for the federal government to reassert full responsibility for enforcing immigration law and creating immigration policy.
- The Committee should ensure that DHS immigration enforcement policies comply with civil and human rights laws and urge DHS to create effective safeguards to prevent racial profiling and other rights violations. The Committee should ensure that these standards apply to all components of DHS, including CBP and TSA.

Thank you again for this opportunity to express the views of the Rights Working Group coalition. We welcome the opportunity for further dialogue and discussion about these important issues.



STATEMENT OF

Jasjit Singh, Associate Executive Director

Sikh American Legal Defense and Education Fund (SALDEF)

Hearing on Ending Racial Profiling in America

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of SALDEF regarding today's hearing on racial profiling. The Sikh American Legal Defense and Education Fund (SALDEF) is the oldest Sikh American civil rights advocacy and educational organization. We are deeply concerned with racial profiling as many Sikhs have been and continue to be victims of racial profiling, often singled out because of their unique identity and religiously mandated articles of faith.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. SALDEF is particularly concerned about many policies and programs at the national, state and local level which encourage or incentivize discriminatory law enforcement practices such as racial and religious profiling. We believe that these practices are counterproductive, waste public resources and violate the essential civil and human rights of persons living in the United States.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

The collective experience brought on by racial and religious profiling has created a sense of resignation among the Sikh American community that when dealing with law enforcement and the government, in certain spheres, they will be treated as criminal suspects primarily due to their Sikh identity and solely because they choose to exercise their constitutional right to practice their religion. This runs counter to and erodes the concept of “community policing.” Community policing is a central tenant of SALDEF’s Law Enforcement Partnership Program, through which we work closely with local, state, and federal law enforcement agencies, and assist personnel to ensure they maximize their already limited resources by not focusing on cultural and religious stereotypes.

Racial Profiling in Our Communities

The most prevalent example of racial and religious profiling in the Sikh American community is the unnecessary subjugation to secondary security screening measures in airports throughout the

country. Simply due to their appearance, Sikh Americans are treated differently and singled out from their fellow passengers. Not only is this practice demeaning to Sikh Americans, but it creates a perception of suspicion towards Sikh Americans in the general public. At airports around the country, the general public is continuously provided with the image of a turbaned individual pulled out of line to undergo extra measures in an effort to ensure the security of those watching. Such behavior implants fear into the minds of others and leads to incidents in which Sikh passengers are removed from airplanes due to passenger and crew suspicions¹ or a Sikh being physically attacked in an airport.² Furthermore, outside of the airport, Sikh Americans are constantly profiled by law enforcement. We have heard reports of Sikh truck drivers routinely being pulled over on the nation's highways and questioned, as well as a general unwarranted heightened level of suspicion in any interaction between a Sikh and law enforcement officers.

This image of Sikh Americans as a group to be feared and not trusted inevitably spills into all aspects of their lives. Sikh Americans all too often face employment discrimination and harassment, and Sikh American children are the victims of bullying in schools around the country.³

¹ *Sikh Religious Musicians Settle with US Airways After Wrongful Removal From Flight*, <http://www.aclu.org/religion-belief/sikh-religious-musicians-settle-us-airways-after-wrongful-removal-flight>

² *Fresno Airport Stabbing: Man Attacked, Boards Plane Anyway*, http://www.huffingtonpost.com/2011/12/05/fresno-airport-stabbing_n_1130298.html

³ Sikh American Paramedic Sues Hospital for Discrimination, <http://www.saldef.org/blog/sikh-american-paramedic-files-workplace-discrimination-suit-against-espanola-hospital/>

Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color throughout the United States.

SALDEF is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the "End Racial Profiling Act (S.1670)" and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of SALDEF. We welcome the opportunity for further dialogue and discussion about these important issues.

STATEMENT OF
The Leadership Team

Sisters of the Most Precious Blood of O'Fallon, MO

Hearing on Ending Racial Profiling in America

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of The Leadership Team of the Sisters of the Most Precious Blood of O'Fallon, Missouri regarding today's hearing on racial profiling.

Our Community's charism as Precious Blood Sisters is being Christ's Reconciling Presence in our world today. In light of this, we as Community Leadership ask that you consider all policies and legislation most carefully, so as to assure that all persons are accorded the same rights and dignity and be reconciled to one another, and we can become one family, one nation under God with liberty and justice for all.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. The Leadership Team of the Sisters of the Most Precious Blood of O'Fallon, MO is particularly concerned about many policies and programs at the national, state and local level which encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Racial Profiling in Our Communities

In August, 2011 the City Council of O'Fallon, MO unanimously voted so that the city of O'Fallon, MO is now a Rule of Law City. That idea and also the Secure Community cities always are suspect for profiling people of a color other than "white". We as sisters are working to make sure that does not happen in our city.

Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in many towns and cities throughout the United States.

The Leadership Team of the Sisters of O'Fallon, MO is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the “End Racial Profiling Act (S.1670)” and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of the Leadership Team of the Sisters of the Most Precious Blood. We welcome the opportunity for further dialogue and discussion about these important issues.

Virginia CURE

STATEMENT OF

Carla Peterson, Executive Director

Virginia CURE

Hearing on Ending Racial Profiling in America

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Virginia CURE 's mission is to ensure that justice is fairly administered and prisoners receive humane treatment that is focused on rehabilitation. As an organization representing prisoners and their families, we are strongly aware of the racial bias in all sectors of the American criminal justice system. Racial bias perpetuates the cycle of poverty, leading to crime, leading to inadequate legal representation, leading to unfair sentencing ,leading to over-incarceration of African Americans in our nation's prisons, and finally, leading to barriers to success once released. We must address this injustice else we will continue to perpetuate this "caste system" so powerfully described in Michelle Alexander's book The New Jim Crow.

We are concerned that 7.3 % of black, 2.8% of Hispanics and 1.1% of white males aged 30-34 years old are sentenced prisoners in the United States as of the end of 2010. The overall rate of incarceration of sentenced male prisoners, 30-34 years old in the United States was 2,250 per 100,000 residents. In Virginia we are concerned that 61.5 percent of Commonwealth prisoners are black. These shocking and numbing numbers suggest that over criminalization and racial bias nationwide and in Virginia are problems in what should be societal leaders in civil rights and equal opportunity.



STATEMENT OF

Joe Szakos, Executive Director

Virginia Organizing

Hearing on Ending Racial Profiling in America

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of Virginia Organizing regarding today's hearing on racial profiling. Virginia Organizing is a statewide grassroots organization dedicated to challenging injustice by empowering people in local communities to address issues that affect the quality of their lives. Our organization has worked to stop racial profiling in Virginia since 2002 with campaigns on the local, state, and national level.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. Virginia Organizing is particularly concerned about many policies and programs at the national, state and local level which encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States.



Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Racial Profiling in Our Communities

Since founding our organization in 1995, we have heard from Virginians across the Commonwealth about the negative impacts of racial profiling. Whether that was an African American former coal miner in far Southwest Virginia, college students in the Tricities, or poultry workers on the Eastern Shore, Virginians of color were dealing with racial profiling almost every single day as they went about their daily lives. In 2002 we began work to get the state government to do data collection on state police stops. In the course of that five year campaign we heard countless stories about why such data was needed and why racial profiling harmed communities of color. Our members either experience racial profiling, or hear new stories about it almost every week and believe the time is way past due for the End Racial Profiling Act.



Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color throughout the United States.

Virginia Organizing is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the "End Racial Profiling Act (S.1670)" and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of Virginia Organizing members from across the state. We welcome the opportunity for further dialogue and discussion about these important issues.



STATEMENT OF

Travis Stearns, Deputy Director

THE WASHINGTON DEFENDER ASSOCIATION

Hearing on “Ending Racial Profiling in America”

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of the Washington Defender Association regarding today’s hearing on racial profiling. The Washington Defender Association is an organization whose purpose is to ensure that all persons receive effective assistance of counsel and to stimulate efforts to remedy inadequacies or injustice in the law. Our membership is active in many state and national efforts to reduce the impact of racial disproportionality and the effect that racial profiling has on our justice system

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. The Washington Defender Association is particularly concerned about many policies and programs at the national, state and local level which encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices



are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Racial Profiling in Our Communities

In the wake of the deadly shooting of a homeless Native American woodcarver and other incidents of force used against minority suspects, the United States Department of Justice issued a report finding that the Seattle Police Department “engages in a pattern of unnecessary and excessive force” in violation of the Fourth Amendment.” According to the Justice Department report, Seattle police use force in an “unconstitutional manner nearly 20 percent of the time” and “too quickly resort to the use of impact weapons, such as batons and flashlights.” Other incidents captured on surveillance or police cruiser video include officers using an anti-Mexican epithet and stomping on a prone Latino man who was mistakenly thought to be a robbery



suspect, an officer kicking a non-resisting black youth in a convenience store; and officers tackling and kicking a black man who showed up in a police evidence room to pick up belongings after he was mistakenly released from jail.

In response to these findings Seattle Mayor Mike McGinn unveiled an initiative program aimed at implementing the reforms recommended 20 reforms that the city intended to make. These include reforming the management of public demonstrations, developing protocols to prevent low-level offenses from escalating, addressing biased policing, training officers on use of force standards, training officers in appropriate search and seizure practices, increased supervision and training, improving the review of uses of force, developing a binding, written code of ethics, recruiting officers, through systematic enforcement of professional standards, enhancing early intervention systems, implementing a data-driven approach to policing and working with major city police departments to develop best practices, engaging the public by listening and engaging with equity and dignity, launching a customer service initiative, providing better information to the public, improving transparency and accountability and by launching a community outreach initiative.

U.S. Attorney Jenny Durkan has told Seattle officials that they intend to seek a court-monitored decree to ensure that proposed Police Department reforms are “lasting and sustainable.” She said that requiring the city to enter into a formal consent decree will guarantee that the Seattle Police Department will address the use of force and biased policing issues that the Department of Justice believes exists within the Department.



We are hopeful that this work will lead to less bias within the Seattle Police Department and that the decree can be used as a model for other agencies across Washington State. We are encouraged that community leaders, along with our elected officials, are seeking to reduce the incidents of racial profiling in Washington State. We are hopeful that these reforms can be implemented and that the incidents of profiling in our community can be reduced.

Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color throughout the United States.

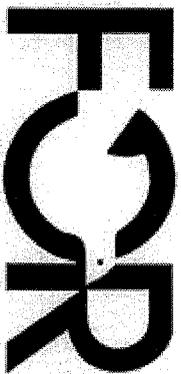
The Washington Defender Association is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the "End Racial Profiling Act (S.1670)" and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement



agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of the Washington Defender Association. We welcome the opportunity for further dialogue and discussion about these important issues.



Fellowship of Reconciliation

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STATEMENT OF

Mark C. Johnson, Executive Director

Fellowship of Reconciliation, USA

Hearing on Ending Racial Profiling in America

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

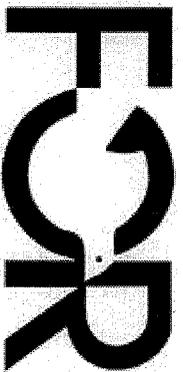
UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham, and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of the Fellowship of Reconciliation (FOR-USA) regarding today's hearing on racial profiling. For nearly a century FOR has worked passionately for racial and economic justice as the oldest interfaith peace and justice organization in the United States. We are committed to active nonviolence as a transforming way of life and as a means of radical change.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. FOR-USA is particularly concerned about many policies and programs at the national, state, and local level which encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States.

Policies of racial and religious profiling are discriminatory ways of upholding the imploding economic system that fuels class warfare, wars between religions, fascism, and the



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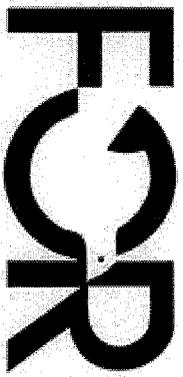
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economic whirlwind that the United States, European Union, and our allies face today. We are especially alarmed by the ways in which our members and neighbors are used as targets of hateful systemic practices and rhetoric because they are of African descent, Arab descent, South Asian, or Muslim, or simply perceived as such.

Racial and religious profiling have existed since the inception of the United States and, as former Attorney General John Ashcroft stated, using race as a proxy for potential criminal or dangerous behavior is unconstitutional. Racial profiling eviscerates the trust necessary for members of law enforcement to do their jobs. It is a violation of the Fourth and Fourteenth Amendments to the constitution and a dehumanizing practice for all parties involved.

Racial Profiling in Our Communities

Probable cause is commonly cited when people of African descent are illegally searched while walking or driving, or even while standing on their front steps. Latinos are increasingly questioned and unjustifiably detained in immigration roundups and street patrols. Muslims face consistent attacks at airports, mosques, work, and even schools. Not only does racial profiling have a severe economic impact on the targeted communities and government spending, but it also feeds into the factually inaccurate premise that certain ethnic and religious groups have a greater propensity to commit a crime. In reality, African Americans, Latinos, South Asians, and Muslims are subject to heavier policing, thereby accounting for a disproportionate rate of searches and arrests when compared to white counterparts who engage in the same level of suspected activity. The discriminatory practice of racial profiling has blinded law enforcement and hindered their ability to fulfill their sworn responsibility and ensure equal protections under the law. Racial profiling is a corrosive cycle of violence and corrupts the Constitution and the justice system.



Fellowship of Reconciliation

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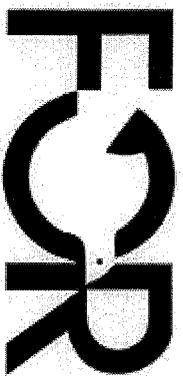
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Furthermore, the premise of racial and religious profiling has fueled racist vigilantism, as seen in the recent conflict over the establishment of a mosque near ground zero in New York as well as justification by Sheriff Arpaio in Arizona when he saw fit to arm local residents in an effort to patrol the borders. It is the same premise that allowed nearly 50 days between when George Zimmerman decided that Trayvon Martin was suspicious, followed, and murdered him, and charges being brought against Zimmerman for that violent action. Gender also plays a key role in the applications of racial and religious profiling. It is the deciding factor in the wrongful imprisonment of Chrishaun “CeCe” McDonald, a young African American transgender woman who defended herself in Minneapolis after being attacked because of her gender and race. The profiling of CeCe McDonald and the murders of Trayvon Martin, Rekia Boyd in Chicago, and more than 30 known cases of African-American victims of State-sanctioned or justified murder since January 2012 are not isolated incidences. These attacks surface a stark public display of the historic pattern and fatal results of racial profiling and the disproportionate effects on the youngest members of society.

Racial profiling fills U.S. citizens with a sense of terrorism at the same time that it seeks to protect citizens of other nations from this problem via the so-called War on Terrorism. With policies and plans such as the End Racial Profiling Act and the Durban Declaration and Plan of Action, the United States has a chance to affect foreign policy and democracy around the world by being leaders at home. Failure to end racial profiling in the United States is a blatant statement of hypocrisy and further undermines our nation’s voice in the world market.

As members of the human family and residents of the United States, we live the affects of racial profiling and understand that no one is exempt from destructive, deceptive, and unjust policies enacted on another. We maintain a revolutionary vision of a beloved community where differences are respected, conflicts are addressed nonviolently, oppressive structures are



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dismantled, and where people live in harmony with the earth, nurtured by diverse spiritual traditions that foster compassion, solidarity, and reconciliation.

Conclusion

The practice of racial profiling by federal, state, and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color throughout the United States.

The Fellowship of Reconciliation is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the "End Racial Profiling Act (S.1670)" and institute a federal ban on profiling based on race, religion, ethnicity, and national origin at the federal, state, and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of the Fellowship of Reconciliation. We welcome the opportunity for further dialogue and discussion about these important issues.

THE
Episcopal
CHURCH

**TESTIMONY ON BEHALF OF
THE EPISCOPAL CHURCH**

Ending Racial Profiling in America

APRIL 17, 2012

The Episcopal Church would like to thank Senator Durbin, Chairman of the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights, for the opportunity to submit this testimony. The Senate has not convened a hearing on the subject of racial profiling since before 9/11, and yet the need for this discussion has never been so clear. Today, this pivotal issue links some of the most salient debates in the nation, from Arizona's SB1070 immigration law, to the targeting of Muslims in anti-terrorism efforts, to the death of Trayvon Martin.

The Episcopal Church's position regarding racial profiling can be summarized in the opinion editorial below, authored by Bishop Stacy F. Sauls, Chief Operating Officer of the Episcopal Church. We note that in the weeks following its March 27 publication in the *Huffington Post*, George Zimmerman has been arrested and charged in Trayvon Martin's death. Bishop Sauls' message, however, remains clear and compelling. The discussion of Trayvon Martin and racial profiling cannot be allowed to devolve into the pitting of any one group of Americans against another. Instead, this discussion must be treated as an opportunity to strengthen our communities, strengthen our criminal-justice system, and stand united for equal justice under the law.

“Why I Am Hopeful About the Trayvon Martin Case”

By Bishop Stacy Sauls

The Huffington Post, 03/27/2012

In some ways I worry that I have no right to speak on the events of the last week in the United States, and especially in Florida, where I happen to be at the moment. I am, after all, a white person, and the victim of this unspeakable event is African American. I am also a white person who is the father of two sons who are not. I am a white Southerner who grew up in a world where segregation was the law and learned over time while I was growing up that the way things were did not in fact speak to the way things had to be because, as a matter of faith, they did not speak to the way God wanted things to be. I am a white Southerner who learned over the course of growing up that morality was a term that went beyond sex and had something to do with justice and peace. Even then, I'm not sure I have a right to speak about this event. But I am also a pastor, a minister of the Gospel. And I am a bishop who has taken a vow to "defend those who have no helper" (BCP, p. 518). I have no right to speak, and yet I must speak.

It seems to me there are four things that need to be said about the death of Trayvon Martin.

The first is that, regardless of anything else, a precious child of God has been lost. Sadly, this is not a rare phenomenon. Precious children of God are lost to violence in our country every day. It

is often related to drugs and human greed. It very frequently has to do with being in the wrong place at the wrong time. Most receive nothing like the attention of Trayvon's death. Yet, they all deserve to. It is truly an American tragedy. And Trayvon's death ought to grieve our hearts at the deepest level. They all should. Perhaps Trayvon's death will also help us remember about all the children who die senselessly in our country.

The second is that one thing Trayvon's death has brought to our attention in a forceful way is that every time an African American teenager, and indeed any minority teenager, walks out of the house, they are not as safe as a white teenager. And part of the horrible reason why has to do with prejudice, stereotypes and bigotry by people in power. This ought to be a call to action to us. It is imperative that we find a way to make this different. I do not have the prescription for correcting this blight on America, but I am convinced that America is, in fact, filled with people of good will of all racial backgrounds who can in fact find a way. It is urgent that we pledge ourselves to be part of that effort.

The third is that one of the potential tragedies of this event grows from the fact that Trayvon Martin was an African American and George Zimmerman was Latino. One of the so far (I think thankfully) unspoken themes of this event might have to do with pitting one minority group against another. Nothing would better benefit oppression than placing one group of oppressed people against another. We do not have time for that. We only have time to be united for justice. Otherwise, I guarantee, injustice will win in our day, even if not ultimately.

The fourth relates to the specifics of this case, a danger and a note of hope. This is the hardest thing for me to say, and the one I feel most unqualified to say. I fear I say it because I cannot help but look at this horrible reality through white eyes.

What has come out so far seems to paint a relatively clear picture of what happened. That makes it very difficult to see why action has not already been taken to arrest the shooter. We cannot help but wonder if the shooter had been black, and the victim, white, would an arrest not have already been made? At least I cannot help but wonder that. And when I think about it, I find myself getting angrier.

When I get less angry, I look at it a little differently. One thing I have learned repeatedly in my life is to be suspicious of what appears to be clear particularly when there are other rational sources who are seeing it as not so clear at all. When I get less angry, I look at some other facts. One is that this killing is not only in the hands of the local police or even the State of Florida. It is also in the hands of the U.S. Department of Justice and the Federal Bureau of Investigation. That assures me there are authorities involved beyond local politics and local prejudices. In the days of the Civil Rights Movement in my native South, it was the involvement of federal authorities that was the guarantor of justice. I am hopeful that will again be true.

I am also heartened that state and local authorities are taking some important steps in the right direction. One was the voluntary stepping aside of the police chief. His leadership was compromised, and he got out of the way. That is good. Another is that a special prosecutor has been appointed. Another good sign and appropriate step.

All those things confront me with an uncomfortable reality. Local authorities seem to be acting in appropriate ways procedurally. The federal government, particularly the FBI, are involved and overseeing everything, which makes me more optimistic that justice will be done. In light of the fact that those things are true and still no arrest has been made, might it be that there are some facts about this case that I do not know? Might it be that things are not so clear after all, at least to those who know more than I do? Could it be that people of good will committed to justice, particularly those without a local connection, know things not yet shared with the public that makes an arrest, at least at this point, unwise or even unjustified? We simply do not know. The question before us, though, is whether we are going to trust the system. It is admittedly difficult, but I find myself reluctant to despair of it yet. Thinking that complex things are clear leads to tragedy. In fact, that likely has a lot to do with what led to the tragic death of Trayvon in the first place. We must not succumb to it.

There are two notes of danger here in something of a tension. One is that we will be complacent in holding the authorities to account. But another is that we will be cynically suspicious. Neither is good. I think one of the challenges for us spiritually is to be appropriately trusting and appropriately suspicious at the same time. That, I think, is most likely to lead to the truth. It is, though, a hard balance to maintain, especially when our emotions are otherwise.

And I'll tell you why, and this is a major difference from my growing up years in the segregated South. That has to do with my confidence in President Obama. The President spoke these crucially important words, the significance of which cannot be overlooked: "If I had a son, he'd look like Trayvon." Those are words that were inconceivable until quite recently, that the son of the President of the United States might look like Trayvon Martin. And they are words that change everything. What made the system so suspect to me is whether it was possible for those at the highest level of power in our country to see their own face in the face of Trayvon. At the very least, the person of at the very top now can.

That gives me something that is even more important spiritually than being confident that justice will be done. It gives me hope, hope that justice will be done, even when I cannot see clearly from my vantage point what justice looks like right now.

President Obama said one other thing that makes me hopeful. He has promised that we will get to the bottom of what happened. The fact that he can see his face in Trayvon's may be just the guarantee we need that we have not had before. For now, at least, I am inclined to trust the President and support him with prayer, as well as the people of Florida and, most especially, the family of Trayvon. For now, I think, I am inclined to wait. And I also think I have every reason to wait in hope.

God, I know, has promised that justice will roll down like mighty waters. I am hopeful. And I believe I have reason to be hopeful.

Bishop Stacy Sauls is the Chief Operating Officer of the Episcopal Church. He was formerly the bishop of the Episcopal Diocese of Lexington (KY).





April 17, 2012

**Written Testimony for the hearing on “Ending Racial Profiling in America”
U.S. Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Human Rights**

Statement of the Hip Hop Caucus

Mr. Chairman and Members of the Committee:

We are pleased to submit the following statement to U.S. Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Human Rights hearing on “Ending Racial Profiling in America”.

The Hip Hop Caucus is a civil and human rights organization for the 21st century. Our mission is to organize young people to be active in elections, policymaking and service projects. We mobilize, educate, and engage young people, ages 14 to 40, on the social, issues that directly impact their lives and communities. Our supporter base is nearly 700,000 young people across the nation, a majority of whom are young people of color. We have Leadership Committees in fourteen major cities from Miami FL, to Chicago IL, to Phoenix AZ.

Our testimony here speaks to the real experiences of young people of color in this country. We believe that ending racial profiling in America is integral to fulfilling the unalienable rights of all to life, liberty and the pursuit of happiness in the 21st century.

Currently our country is divisively debating some of the toughest issues we have faced as a nation, from health care, to climate change, to global peace and justice. These issues are no less than *life* and *death* issues for Americans and people around the globe.

The shocking and tragic case of Trayvon Martin’s death in Sanford, FL has revealed to the nation, and the world, what communities of color in the U.S. have known for a long time. Racial profiling is also a life and death issue.

Life and death is the weight of the topic that the Subcommittee on the Constitution, Civil Rights and Human Rights is discussing today. We commend Chairman Durbin and the members of the Subcommittee for holding this hearing, and we urge all members of the Subcommittee to look deeply at the set of issues that we call racial profiling from all perspectives; but, particularly from the perspective of young men and women who in this country feel endangered because of the color of their skin, in what should be perfectly safe settings.

There is no issue more urgent, more important, than ending racial profiling in America. For our children, and our children's children, and their children, we cannot leave a world where bias and fear outweigh what we all have in common, which is our humanity.

As a result of the national awareness and outrage towards delayed justice for Trayvon Martin and his family, a very dangerous set of messages is being told to our children, particularly children in our urban communities. These messages are essentially telling African American children to be careful about where they go and how they act so that they literally do not incite someone to kill them.

One of the Hip Hop Caucus' media partners, BET has been doing a tremendous job raising awareness of Trayvon Martin's case on 106 & Park, their most popular show with 14 – 20 year-old viewers. We commend them for their coverage and the dialogue they have spurred. As a part of their coverage they have encouraged their viewers to be careful about their surroundings and their actions, and promoted this discussion with a hashtag on Twitter. The Twitter hashtag is "#StayAlive".

The Hip Hop Caucus understands the reasoning behind framing the discussion and dialogue in this way. The reality is in today's society, young people of color who dress in common street clothes are often guilty until proven innocent in the eyes of others and the media. Therefore, in being deemed guilty based on appearance, one does have to be careful about how someone may perceive you should they then feel righteous in causing unjust harm to you.

The fact, however, that there is a need to raise awareness among young people of color about the reality that they are sometimes perceived as threats for simply being themselves is the problem that must be fixed.

Here is another brief example. Just recently, the President and CEO of the Hip Hop Caucus, Rev. Lennox Yearwood, Jr. was asked to speak to students at Ballou High School in Southeast, Washington, DC at a school-wide assembly on the Trayvon Martin case. Ballou High School is, candidly, in one of the roughest parts of Washington, DC, and the student body is almost all African American.

At this assembly, students were encouraged by their administrators and teachers to be careful about being loud and intimidating adults. Can you imagine the reality that a 14 or 15 year-old African American child is perceived as a threat to a 30 or 40 year-old adult? Furthermore, Ballou students were informed by their school administrators that the neighboring state of Virginia has a "Stand Your Ground" law. The students were encouraged to either not go to Virginia, or be very careful if going to Virginia, because in the words of one adult in the assembly, you "might not come back." The specific example was given that if you laugh loudly in a movie theatre, and someone does not like that, after the movie, that person could shoot you.

Again, the Hip Hop Caucus recognizes clearly why the school was telling students this – the school wanted to give the students information that they hoped would keep them alive. This school year already, the school has lost numerous students to homicide. This was also the high school attended by DeOnte Rawlings, who was killed at the age of fourteen by an off-duty police officer in 2007 because DeOnte had taken a bicycle that was not his. And despite no evidence of DeOnte having a gun (like the off-duty officer claimed), the off-duty officer was not charged.

To members of the Subcommittee, we ask you, how would you feel if at school your sons and daughters were told not to go to a state with a “Stand Your Ground” law because they might be killed? How would you feel if your children’s favorite TV and Radio shows were compelled to give advice on how to “StayAlive”? How would you feel if such advice was rooted in your children not being able to be themselves, and especially not being able to be themselves in states where there are Stand Your Ground laws?

How can we ask our children to dream an American dream, to dream their dreams, if we are telling them that who they are is in itself threat to America?

This is not right, and this must change, and policy must be at the forefront of this change. The Hip Hop Caucus has the following set of recommendations for some of the changes that must be made:

1. Passage of the H.R. 3618, the End Racial Profiling Act of 2011

Passage of this bill is needed to put an end to racial profiling by law enforcement officials and to ensure that individuals are not prejudicially stopped, investigated, arrested, or detained based on their race, ethnicity, national origin, or religion. Policies primarily designed to impact certain groups are ineffective and often result in the destruction of civil liberties for everyone.

2. Repeal of states “Stand your ground” Laws

Such laws go far beyond the “Castle Doctrine” which is people’s right to use reasonable force, sometimes including deadly force, to protect oneself *inside* one’s home. Outside of one’s home, one’s duty, as it is in numerous states, should be to retreat from an attacker or a perceived attacker. Meaning if it is possible to avoid a confrontation and you shoot someone anyway, you should be prosecuted.

3. Ongoing Congressional focus on the impacts of stereotyping of people of color in society and in the media, and how the impacts particularly play out in our institutions, from the justice system, to the education system, to our economic and banking systems.

Bias, stereotyping, structural racism in our institutions create the space for racial profiling to go unchecked and in some cases encouraged. Furthermore, we believe that racial profiling and bias, are a direct assault on the “opportunity rights” of people of color, meaning the rights to life, liberty, and the pursuit of happiness.

4. A thorough and serious review of police misconduct, and increased mechanisms for citizen oversight and accountability of police misconduct.

Communities most impacted by police misconduct have very few leverage points to hold police and the justice system accountable. We need more leverage points for citizen oversight and accountability from the very citizens who are most often victims of police misconduct.

Trayvon Martin is our generation’s Emmitt Till, in great part because of the tremendous courage of his parents and family. We have come a long way since the death of Emmitt Till, but the killing of Trayvon Martin is a chilling reminder that we have not come far enough.

The generation since the Civil Rights movement, the “Hip Hop Generation” as we call it, those born in the 1970s, 80s, and 90s, is the most diverse generation our country has ever seen. We come together across race, class, gender, sexual orientation. We have broken down barriers of past generations. But, if we do not change policy, and enforce existing policy, in much more serious ways, more children will die needlessly, and young people of color will bear the oppressive burden of being fearful of places, people and experiences that no one should have to fear.

The rapper Plies, a Florida native, wrote and released a song called “We Are Trayvon”. Plies is donating 100% of royalties from the song to the foundation set up in Trayvon’s memory by Trayvon’s family. In the second verse of the song, Plies says:

“My son supposed to burry me, but I ain posed to burry my son./ You can call me nigga all you want, but you ain't pose to treat me like one,/ Pose to be able to express myself, and be able to dress how I want./ Pose to be able to go where I please, and be able to leave when I'm done./ Should I think that you sell dope, just cause you drive a benz?/ Should I think that Zack in a gang, just cause he sag his pants?/ What's right is right, what's wrong is wrong,/ Trayvon Martin, you'll forever live on.”

Thank you, members of the Subcommittee on the Constitution, Civil Rights and Human Rights, for the opportunity to submit this statement on behalf of the Hip Hop Caucus.



STATEMENT OF

Jannell Robles, Crimmigration Committee Chair

Houston United

Hearing on Ending Racial Profiling in America

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of Houston United regarding today's hearing on racial profiling. Houston United / Houston Unido is an umbrella coalition of groups working to better the lives of immigrants through community education and various advocacy efforts. We promote respect and just treatment of immigrant communities, we believe in the right to live with dignity free from racial profiling and we believe in the need to create a viable path to citizenship that protects family unity.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. Houston United is particularly concerned about many policies and programs at the national, state and local level which encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States.



Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Racial Profiling in Our Communities

While driving home from work, Vicky, a 19 year-old U.S. Citizen young woman of Hispanic descent, was stopped without cause last November by the local police. She was asked to provide identification and after replying that she did not have her driver's license with her, the police officer took her into jail. Vicky repeatedly told the officer that she had a driver's license but the officer did not attempt to verify this by accessing their extensive database. She spent a day and a half in jail without eating due to a lack of vegetarian eating options. She also spent over a hundred dollars to get her vehicle towed and missed a day of work without pay.

In a similar case, Jaime, a twenty year-old dark complected Hispanic young man, was stopped by local police with no reason given. He was driving an old, cheap car in a more affluent part of town while on his way to take his little sister to a doctor's appointment when he was stopped by the local police. Against the local police department's regulations, the officer asked him for his



social security card, and when Jaime said he did not carry it with him, the officer took a photo of him without consent. The officer let him go and did not provide a reason for stopping him.

Jaime continued driving his little sister to the doctor's appointment and arrived late due to the unnecessary stop by the police officer. A third generation U.S. citizen, college student and monolingual English-speaker, Jaime never expected to be a victim of racial profiling.

Finally, Pedro, a middle-aged family man, was stopped by local police one weekday afternoon. Working as a construction contractor and employing 15-25 workers a week, Pedro finds himself spending many hours a day driving for his job from worksites, to picking up materials and to coordinating his projects. One afternoon he found himself driving in an affluent part of the city and forgot to put on his signal to change lanes. Immediately following, an officer stopped him and asked him for his Driver's License. Pedro could not provide one to the officer because his undocumented status deprives him of obtaining a driver's license under Texas law. Soon after, the officer took him to jail and booked him in. Shortly, Pedro was transferred to ICE and put into deportation proceedings for not having lawful permission to reside. When asked why he thinks he was stopped, he said that racial profiling was a major factor that contributed to his traffic stop. He has U.S. citizen children, a loving wife and is the breadwinner for his family. He has a good job, employs many workers and pays his taxes. Pedro's court date is set for May and it is people like him that are precisely the ones we should not be deporting.

There are a thousands of stories like Vicky, Jaime and Pedro's that go unrecorded. For these reasons, Houston United / Houston Unido recently conducted a study about perceptions of racial profiling by law enforcement officials and the participants' trust of local police and willingness



to report a crime. Over 110 persons participated in this study, predominantly immigrant Spanish-speakers from nearby churches, with racial profiling standing out as a reoccurring theme. The survey findings indicated that 69.9 percent of respondents felt that unjust treatment by local law enforcement based on racial profiling is a major problem in their community. Furthermore, 71.3 percent of individuals marked that they were worried or very worried, most in the latter category, of falling victims to unjust treatment by local law enforcement due to racial profiling.

Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color throughout the United States.

Houston United is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the "End Racial Profiling Act (S.1670)" and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement



agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of Houston United. We welcome the opportunity for further dialogue and discussion about these important issues. You may contact us at my cell phone 832.816.1620, my email jannellrobes@gmail.com, Maria Jimenez's email dignidadya@yahoo.com, or Hope Sanford at hopesnopos@gmail.com.



Illinois Association of Chiefs of Police

April 12, 2012

The Honorable Richard J. Durbin
United States Senator
711 Hart Senate Office Building
Washington, DC 20510

Re: Written Testimony for Hearing to discuss Racial Profiling

Dear Senator Durbin:

Attached herewith is documentation prepared and submitted by the Illinois Association of Chiefs of Police (ILACP) regarding the issue of Racial Profiling. As you will note from the documentation provided herewith, the ILACP opposes any form of racial profiling by law enforcement agencies.

We respect your offering us the opportunity to provide testimony on this issue. We trust that the information provided herewith shall be of value to your investigation regarding this issue.

Respectfully,

*ILACP President R.T. Finney,
Retired Chief, Champaign Police Department*

Cc: J. Kennedy, ILACP Executive Director
L. Nargelenas, ILACP Lobbyist
T. McCarthy, ILACP Legislative Committee Chair

PAPER TO SENATOR R. DURBIN FOR HEARING ON TUES., APRIL 16, 2012

The Illinois Association of Chiefs of Police (ILACP) recognizes our obligation to acknowledge and address crucial societal issues that have an impact on the law enforcement profession. One such issue is "racial profiling." Racial profiling should not be confused with criminal profiling which is a legitimate tool in the fight against crime. Criminal profiling is an investigative method in which an officer, through observation of activities and environment, identifies suspicious behavior by individuals and develops a legal basis to stop them for questioning. Racial profiling refers to the decision by the police to stop and question people randomly when the race of the person is used as an indication of suspicious activity. The ILACP rejects racial profiling as a law enforcement tactic, and we will not encourage, tolerate or condone its use by any of our members.

We recognize that a strong police presence is needed in high crime areas. Some people are distrustful of police authority and feel they are unfairly targeted by police. We understand that even proper police procedures can be intimidating and frightening to innocent citizens. We therefore realize that the appropriate use of police authority is as important as the results achieved.

The Illinois Association of Chiefs of Police recognizes the importance of community involvement in the reduction of crime, enhanced quality of life, and the safety of our officers and our residents. We recognize that our state enjoys a history rich in multiracial and multiethnic diversity, and that racial profiling is unacceptable and has no place in effective police procedures. We recognize the importance of acceptance and awareness by the community, and we strive to build strong community relationships based upon trust and understanding. We are committed to the development of training to increase officer effectiveness and officer safety.

We reject police tactics based solely upon assumptions of race or ethnicity, and remain committed to the use of sound police strategies based upon probable cause, the judicious use of police discretion and the continued development of community relationships.

The ILACP has been in the forefront when it comes to addressing this issue and has taken a position of opposing and prohibiting any law enforcement practice or tactic that involves not only racial profiling but any form of biased enforcement. A positive first step was taken when the ILACP membership unanimously approved its Resolution 2001-4 on August 23, 2001. The ILACP believes it to be in the best interest of all public safety agencies that the offensive term of "racial profiling" be replaced with "bias free policing," a new term focused on a more positive direction and goal. The ILACP also established a proposed model policy, requested samples of policies from law enforcement agencies, and requested that all police departments comply with Public Act 93-0209 and participate in the traffic stop data survey. The ILACP has also helped to sponsor and coordinate numerous training programs that have been and will continue to be conducted throughout the state to assist police departments in effectively addressing these issues.

It is the ILACP's suggestion that each police department begin a proactive analysis of the data to ascertain whether there are any statistically significant aberrations. If any are found, then the Chief of Police and other local officials must be prepared to explain these aberrations or must provide the stimulus for change and set the tone for changes in the department through definitive statements and actions, which clearly demonstrate that:

- There will be no tolerance for racial profiling.
- If anomalies appear to exist with respect to the demography of those stopped for traffic violations, appropriate corrective action will be taken on a continuum ranging from supervisory action, training, or discipline.
- The chief should inform the mayor, manager, council, and other community groups of the findings.

The Illinois Association of Chiefs of Police is dedicated to assisting its members in not only responding to the study on racial profiling, but more importantly, making certain that the professional integrity of our member agencies remains at the highest level possible. To that end, the ILACP drafted a sample pledge that we encourage our members to comment on and consider instituting. It is the goal of the ILACP to see this pledge displayed prominently in every public safety agency in the State of Illinois.

The members of the _____ Police Department and its officers and employees do hereby state their adamant opposition to the use of any discriminatory enforcement actions. We do not encourage, tolerate nor condone the use of any discriminatory enforcement actions. This department and its employees are committed to the use of sound police strategies and pledge to maintain the public trust and confidence as they carry out their law enforcement duties with the highest degree of professional demeanor.

Also attached herewith is a copy of the original Resolution adopted by the Illinois Association of Chiefs of Police on August 21, 2001 at an Executive Board meeting. At that time, the President of the Illinois Association of Chiefs of Police was Chief John J. Millner of the Elmhurst, IL Police Department. Currently Retired Chief Millner serves as Illinois State Senator to the 28th District, Illinois. ILACP Executive Director at the time of the Resolution was Mr. George F. Koertge.

Resolution
of the
Illinois Association of Chiefs of Police

EXECUTIVE BOARD MEETING
RESOLUTION 2001-4 "BIAS-BASED POLICING"
APPROVED AUGUST 21, 2001 – ROSEMONT, IL

WHEREAS, Bias-based policing is the differential treatment of individuals in the context of rendering police service based solely on a suspect classification, such as race, ethnic background, gender, gender identity, sexual orientation, religion, economic status, age or cultural background. Bias-based policing may also be defined as a police action based on an assumption or belief that any of the aforementioned classifications have a tendency to participate or engage in criminal behavior, and

WHEREAS, the Illinois Association of Chiefs of Police and its members have consistently voiced their strong opposition to the utilization of Bias-based policing based on the belief that it is unethical and illegal, and

WHEREAS, the Illinois Association of Chiefs of Police and its members have worked with the Illinois Law Enforcement Training and Standards Board "Bias Based Law Enforcement Committee" and members of the Illinois General Assembly to address this issue, and

WHEREAS, the Illinois Association of Chiefs of Police has identified that the existence of Bias-based policing, or the perception of its existence, can be eliminated or diminished through the implementation of policies and procedures within an agency that identify prohibitions, supervisory responsibility, training, the complaint process and internal review procedures as the areas relate to Bias-based policing, and

WHEREAS, the Illinois Association of Chiefs of Police has developed a model policy that its members may use as a guide to implement strategies to prevent or eliminate Bias-based policing, or the perception of its existence, within their agencies.

NOW THEREFORE BE IT RESOLVED that the Illinois Association of Chiefs of Police does hereby state its adamant opposition to the use of Bias-based policing, or the perception of it and adopts the proposed model policy on Bias Based Profiling, urging it's members to utilize it as a tool for the creation of policies and procedures within their respective agencies in order to maintain public trust and confidence as they carry out their law enforcement duties.

Distribution: IACP Membership, IL General Assembly, and Constitutional Officers



[Signature]

President

[Signature]

Executive Director

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS**

**Hearing on Ending Racial Profiling in America
APRIL 17, 2012**

**STATEMENT OF
ILLINOIS COALITION FOR IMMIGRANT AND REFUGEE RIGHTS
Fred Tsao, Policy Director**

The Illinois Coalition for Immigrant and Refugee Rights (ICIRR) thanks our own Senator Richard Durbin and the other members of this subcommittee for organizing today's hearing on racial profiling.

ICIRR is dedicated to promoting the rights of immigrants and refugees to full and equal participation in the civic, cultural, social, and political life of our diverse society. In partnership with our member organizations, the Coalition educates and organizes immigrant and refugee communities to assert their rights; promotes citizenship and civic participation; monitors, analyzes, and advocates on immigrant-related issues; and, informs the general public about the contributions of immigrants and refugees.

ICIRR believes that newcomers to our country cannot become full members of our society if they face racial profiling and other discrimination based on their race, ethnicity, religion, or national origin. We have deep concerns about any police or government practices that could intimidate immigrants or chill their participation in our civic life, or that could alienate them from those responsible for our public safety—to the detriment of our entire community.

While Illinois has a long history of welcoming immigrants and remains one of the top destination states for new arrivals, we have also witnessed law enforcement officials targeting them for harassment or worse. Until recently, the city of Waukegan was notorious for using selective building inspections and car impoundments focused on the growing Latino community. The practices ended only when Latino citizens organized to remove the incumbent mayor who had driven them. We have also seen disparities in traffic stops in several suburban Chicago counties; in McHenry County, a Chicago Tribune expose in March 2011 alleged that county sheriff's police misclassified Latino motorists as white, a practice that would conceal disparate treatment of Latinos.

Still more recently, we have seen Latino drivers arrested by suburban police departments for offenses like "weaving" and "windshield obstruction." In one case in DuPage County, a motorist was stopped and arrested for having a four-inch transparent "dream catcher" attached to his windshield. Other cases have involved drivers who had rosaries strung from their rearview mirrors. These cases have raised particular concern because of the participation of these suburban counties in the federal "Secure Communities" program. The "dream

catcher” motorist was referred to Immigration and Customs Enforcement (ICE) and removed despite having lived in the US for more than a decade and having no prior criminal record.

In Illinois we are fortunate to have several policies in place intended to combat racial profiling. In 2007 the Illinois General Assembly passed the Racial Profiling Prevention and Data Oversight Act (20 ILCS 2715/1 et seq.), which authorizes an ongoing Illinois Traffic Stop Statistical Study to require collection of racial and ethnic data on each traffic stop. That data collection has helped identify disparities and inform development of local policies to address these disparities. Indeed, the revelations regarding McHenry County grew out of the data produced under the statistical study.

In addition, Governor Quinn moved to withdraw Illinois from “Secure Communities” in May 2011 after ICIRR and other advocates noted the likelihood that this program and other local police engagement with immigration enforcement will encourage local police to target Latinos and other minorities for arrest and referral to ICE. ICE, however, has taken the position that Illinois and other states cannot withdraw from “Secure Communities.” As a result, more “dream catcher” and “windshield obstruction” cases can occur in Illinois, leading to more deportations and separated families.

Racial profiling harms families, damages communities, sows mistrust, and undermines public safety. ICIRR believes that the federal government needs to take strong action to combat racial profiling. We urge the Judiciary Committee to take two important next steps:

- Recommend passage of the End Racial Profiling Act (S.1670), which would impose a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- Urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

We again thank Senator Durbin and this subcommittee for holding this hearing and for considering this statement, and look forward to further federal action to end racial profiling.



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STATEMENT OF

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INDO-AMERICAN CENTER

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of Indo-American Center regarding today's hearing on racial profiling. The mission of the Center is to promote the well-being of South Asian immigrants through services that facilitate their adjustment, integration, and friendship with the wider society, nurture their sense of community, and foster appreciation for their culture and heritage. As the premier Agency serving the South Asian immigrants in the Chicago area, we are greatly concerned with the prevalence of racial profiling in the everyday lives of those we serve.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. Indo-American Center is particularly concerned about many policies and programs at the national, state and local level which encourage or

incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Racial Profiling in Our Communities

As is evident by recent events across the nation, racial profiling is a pervasive and harmful practice that negatively impacts both individuals and communities. Racial profiling results in a loss of trust and confidence in local, state, and federal law enforcement. Although most individuals are taught from an early age that the role of law enforcement is to fairly defend and guard communities from people who want to cause harm to others, this fundamental message is often contradicted when these same defenders are seen as unnecessarily and unjustifiably harassing innocent citizens. Criminal investigations are flawed and hindered because people and communities impacted by these stereotypes are less likely to cooperate with law enforcement agencies they have grown to mistrust. We can begin to reestablish trust in law enforcement if we act now.

Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color throughout the United States.

Indo-American Center is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the "End Racial Profiling Act (S.1670)" and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of Indo-American Center. We welcome the opportunity for further dialogue and discussion about these important issues.



**INTERFAITH
ALLIANCE**
PROTECTING FAITH AND FREEDOM

**Written Testimony of
Rev. Dr. C. Welton Gaddy, President of Interfaith Alliance
Submitted to
The Senate Committee on the Judiciary,
Subcommittee on the Constitution, Civil Rights and Human Rights
for the Hearing Record on
“Ending Racial Profiling in America.”
April 17, 2012**

As a Baptist minister, a patriotic American and the President of Interfaith Alliance, a national, non-partisan organization that celebrates religious freedom, is dedicated to protecting faith and freedom, and whose 185,000 members nationwide belong to 75 faith traditions as well as those without a faith tradition, I submit this testimony to the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights, for the record of the hearing on “Ending Racial Profiling in America.”

As the leader of an organization committed to protecting both faith and freedom for all Americans, I feel compelled to focus in particular on religious profiling. Interfaith Alliance’s work is guided by the fundamental principle that protecting religious freedom is most critical in times of crisis and controversy. Most law enforcement agents discharge their duties honorably, and do not engage in racial and/or religious profiling. Prior to 9/11, both Congress and President George W. Bush made a commitment to end the practice of racial profiling. However, the September 11th attacks caused a dramatic rise in the inappropriate profiling of Arabs, Muslims, Sikhs, and South Asians. This profiling based on religion, race, ethnicity, and national origin continues to persist today.

Numerous studies have shown that profiling is a tactic practiced on a regular basis, whether intentionally or subconsciously. Law enforcement’s singling out individuals for investigation based solely on their appearance is ineffective and dishonest. Racial and religious profiling has been shown to be an ineffective policing tool, often distracting law enforcement from the actual perpetrators of the crimes being investigated. Furthermore, racial and religious profiling ultimately destroys trust in the police and government authorities, alienates racial and religious minorities, and diminishes cooperation and effective law enforcement.

Religious profiling does not occur in a vacuum. There exists in our country a pervasive and unsettling climate of anti-Muslim fear, bigotry and rhetoric in addition to a substantial general lack of understanding of Islam. This climate has created a fertile ground for increased religion-based profiling by law enforcement officials. For example, since August 2011, the Associated Press has released several reports detailing the New York Police Department’s intelligence-gathering activities, which targeted hundreds of schools, mosques, businesses, Muslim student associations, and individuals in the Northeast (even beyond New York City), with no given evidence of wrongdoing. Additionally, just last

month, it came to light that the Federal Bureau of Investigation has gathered and recorded intelligence on American Muslims in Northern California based solely on their religion, under the pretense of community outreach programs.

Religious profiling is not only a betrayal of the trust that American Muslims put in their government, but in the trust that *all* Americans put in their government. To profile individuals simply because they belong, or appear to belong, to a particular religious community turns First Amendment-protected beliefs and activities into cause for suspicion and is an affront to the freedom of religion, paramount in our nation.

In a nation in which the freedom of religion and association are valued and central to national identity, targeting specific individuals because of their religion – or perceived religion – is unacceptable. All Americans should be able to live free from the fear of being unduly singled out by law enforcement simply because of their religious, racial, or ethnic appearance. There are few points in our nation's history when the need to direct our attentions toward ending racial and religious profiling has been greater. Today, Americans all over the U.S., representing a diversity of racial, ethnic and religious backgrounds, feel the negative impact of this practice. We must affirm our fundamental moral and democratic values of equal protection and religious liberty while making our nation safer by ending this practice now.



STATEMENT OF
Floyd Mori, National Executive Director
Japanese American Citizens League
Hearing on “Ending Racial Profiling in America”
SENATE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS
UNITED STATES SENATE
APRIL 17, 2012

Chairman Durbin, Ranking Member Graham, and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of the Japanese American Citizens League (JACL) regarding today’s hearing on racial profiling. The JACL is the oldest and largest national Asian American civil rights organization whose ongoing mission is to secure and maintain the civil rights of Japanese Americans and all others who are victimized by injustice and bigotry. Racial profiling is an issue that speaks to the core of the JACL’s mission because it has severely impacted the lives of hundreds of thousands of Japanese Americans throughout history.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. The JACL is particularly concerned about many policies and programs at the national, state, and local level that encourage or incentivize discriminatory law enforcement



practices such as racial profiling. We believe that these practices are counterproductive, waste public resources, and violate the civil and human rights of persons living in the United States.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Racial Profiling in Our Communities

In February 1942, two months after the Japanese attacked Pearl Harbor, Executive Order 9066 authorized the forced relocation of 120,000 Americans of Japanese descent living on the West Coast militarized zone. Japanese American citizens and non-citizens on the West Coast were considered to be such a threat to national security alike, they were told to pack up whatever belongings they could carry and prepare to move to their designated War Relocation Authority camp. Before they were moved in to the camps, men, women, and children were placed in assembly centers. Some families lived in the stalls of horse stables. Even orphans who had grown up in orphanages away from Japanese relatives were transferred to the prison camps.



When Japanese Americans were released at the end of World War II, many did not have homes or jobs to come back to. Some of those who were able to keep their property returned to vandalized homes with broken windows and racial epithets painted on the walls. The economic costs the community incurred were not as irreversible as the shame of being labeled as an “enemy alien,” outsider, or threat because of the way they looked. These psychological wounds have not completely healed, a burden the Japanese American community still grapples with seventy years later.

Time and time again it has been proven that the incarceration of Japanese Americans was not a military necessity, but the result of wartime hysteria and racism. In 1983, the Commission on Wartime Relocation and Internment of Civilians, a group appointed by Congress, found that the Japanese American community was not a sufficient threat to national security to justify internment and called the decision to incarcerate Japanese Americans a failure of political leadership. The United States Government has condemned its actions and paid redress to those who were affected. In November 2011, Congress bestowed the Congressional Medal of Honor to the 442nd Regimental Combat Team, the 100th Infantry Battalion, and the Military Intelligence Service. These all-Japanese American units were recognized for their courage in risking their lives for a country that did not accept them.



Post-9/11 hysteria has inspired a similar pattern of racism and discrimination towards Muslim, Sikh, Arab, and South Asian communities. Instead of learning from the mistakes of history, our country seems to perpetuate a cycle of fear and neglect for equal protection under the law that is required under the Constitution. The same flawed and racially-tinged framework used to justify Japanese American incarceration has been shifted on to a new perceived enemy. The government needs to move beyond policies that paint with broad brushstrokes and start acknowledging the nuance, complexity, and humanity of every American.

Conclusion

The practice of racial profiling by federal, state, and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color throughout the United States.

The JACL is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the "End Racial Profiling Act (S.1670)" and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling



based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of the JACL. We welcome the opportunity for further dialogue and discussion about these important issues.

Racial Profiling

“Racial Profiling” continues to be a very real concern for law enforcement and communities across the country. Nothing can be more indicative of that then the recent events in Sanford Florida that has spawned a very real and emotional debate on the issues of race, law enforcement, social justice and racial profiling.

I believe currently the parameters of “Racial Profiling” has extended beyond the interaction between law enforcement and the community to a much broader context to include how we view each other within multiple social and environmental settings.

Our world is much more diverse and multi-cultural then it has ever been. The need to flush out and speak about differences and perceptions in regards to race and ethnicity is paramount to a civil community. We must be deliberate and focused on the multiple dynamics that surround “Racial Profiling” in an effort to achieve a greater mutual understanding and beneficial outcomes for a better society.

Within Law Enforcement every effort should be made to insure that “Racial Profiling “ is not occurring within any agency and that steps and measures are put in place to adequately address and investigate such claims.

**Professionally
Chief Jeff Hadley
Kalamazoo Department of Public Safety
Kalamazoo Michigan
www.kalamazoopublicsafety.org**

STATEMENT OF

Laura Vazquez, Immigration Legislative Analyst

National Council of La Raza (NCLR)

Hearing on ENDING RACIAL PROFILING IN AMERICA

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

The National Council of La Raza (NCLR)—the largest national Hispanic¹ civil rights and advocacy organization in the United States—works to improve opportunities for Hispanic Americans. Through its network of nearly 300 affiliated community-based organizations, NCLR reaches millions of Hispanics each year in 41 states, Puerto Rico, and the District of Columbia. To achieve its mission, NCLR conducts applied research, policy analysis, and advocacy, providing a Latino perspective in five key areas—assets/investments, civil rights/immigration, education, employment and economic status, and health. In addition, it provides capacity-building assistance to its Affiliates who work at the state and local level to advance opportunities for individuals and families. Founded in 1968, NCLR is a private, nonprofit, nonpartisan, tax-exempt organization headquartered in Washington, DC, serving all Hispanic subgroups in all regions of the country. It has regional offices in Chicago, Los Angeles, New York, Phoenix, and San Antonio and state operations throughout the nation.

NCLR, our Affiliates, and our many coalition partners are committed to working with Congress to end racial profiling in America. We thank you for holding this critical and timely hearing on racial profiling and the “End Racial Profiling Act” (S.1670). NCLR is particularly concerned about many policies and programs at the national, state and local level which encourage discriminatory law enforcement practices such as racial profiling. These policies harm all Americans by reducing community safety, wasting public resources, and violating the civil rights of persons living in the United States.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in decisions about who to stop, search, or question except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin, or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Recent state immigration laws have brought to

¹ The terms "Hispanic" and "Latino" are used interchangeably by the U.S. Census Bureau and throughout this document to refer to persons of Mexican, Puerto Rican, Cuban, Central and South American, Dominican, Spanish, and other Hispanic descent; they may be of any race.

the forefront long-held concerns about racial profiling. Laws passed in Arizona, Utah, Indiana, South Carolina, Georgia, and Alabama contain provisions that encourage or even require racial profiling.

In addition to the state laws that lead to racial profiling, the federal government has established a number of programs cooperating with local law enforcement agencies that it has described as tools for apprehending and removing “criminal aliens.” Programs like Secure Communities, Criminal Alien Program, and the 287(g) agreements that allow Immigration and Customs Enforcement (ICE) officials to coordinate with local law enforcement agencies have led to the arrest and detention of U.S. citizens and legal permanent residents (LPRs), and the targeting of Latinos solely because of their ethnicity. These federal programs have been misused to arrest and detain individuals who have not been found guilty of any crime or in some cases were arrested for a minor traffic violation. Numerous studies of the programs have consistently identified a lack of policies and mechanisms to prevent racial profiling.² Moreover the Department of Justice (DOJ) guidance on racial profiling, issued in 2003, has huge loopholes and does not cover national origin; specifically allows race and ethnicity to be considered by federal personnel engaged with national and border security; and provides no mechanisms to ensure that officials are held accountable for noncompliance.³

The recent investigations by the Department of Justice into the treatment of Latino residents by the Maricopa County Sheriff’s Office (MCSO) and the East Haven Police Department (EHPD) emphasize the serious problems with racial profiling that NCLR hears about from Affiliates in many parts of the country. The findings from the investigations are stunning in the descriptions of the blatant discrimination and harassment of Latinos in these communities. In both investigations, the departments are found to have a bias against Hispanics that permeates the cultures of the departments.

In Maricopa County, the DOJ investigation found, among other things, that Latino drivers are four to nine times more likely to be pulled over than non-Latino drivers by the MCSO and that in a number of instances, immigration enforcement activities were “initiated in the community after MCSO received complaints that described no criminal activity, but rather referred, for instance, to individuals with ‘dark skin’ congregating in one area, or individuals speaking Spanish at a local business.” This bias resulted in a large number of stops and detentions of Latinos that lacked legal justification. According to the findings, “MCSO has implemented practices that treat Latinos as if they are all undocumented, regardless of whether a legitimate factual basis

² Michele Waslin, *The Secure Communities Program: Unanswered Questions and Continuing Concerns* (Washington, DC: Immigration Policy Center, November 2011), http://www.immigrationpolicy.org/sites/default/files/docs/Secure_Communities_112911_updated.pdf (accessed April 11, 2012); Aarti Kohli, Peter L. Markowitz, and Lisa Chavez, *Secure Communities by the Numbers: An Analysis of Demographics and Due Process* (Berkeley, CA: The Chief Justice Earl Warren Institute on Law and Social Policy, October 2011), http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf (accessed April 11, 2012).

³ *Full of Holes: The 2003 Department of Justice Guidance Regarding the Use of Race by Federal Law Enforcement Agencies*, Policy Brief, the Rights Working Group, undated. See: http://www.rightsworkinggroup.org/sites/default/files/DOJGuidance_IssueBrief.pdf (accessed April 13, 2012). For the Department of Justice Guidance, see *Guidance Regarding the Use of Race by Federal Law Enforcement Agencies*, United States Department of Justice Civil Rights Division, June 2003, at http://www.justice.gov/crt/about/spl/documents/guidance_on_race.pdf (accessed April 13, 2012).

exists to suspect that a person is undocumented.” In one instance described by DOJ, and reportedly one of many examples they heard, a Latino lawful resident was pulled over for allegedly failing to use his turn signal and showed the MCSO deputy his Arizona identification card, a valid work visa, a Social Security card, and a Mexican passport. Despite the lack of evidence of any wrongdoing, the deputy placed the man under arrest for “failing to provide any type of proper identification,” even though the man had provided multiple documents that are acceptable under Arizona law regarding unlicensed drivers. The man was incarcerated for 13 days before the citation was dismissed.

In East Haven, Connecticut, DOJ conducted an investigation for over two years into allegations of police bias, unconstitutional searches and seizures, and the use of excessive force. The investigation resulted in a scathing report of systematic discrimination against Latinos, “including but not limited to targeting Latinos for discriminatory traffic enforcement, treating Latino drivers more harshly than non-Latino drivers after a traffic stop, and intentionally and woefully failing to design and implement internal systems of control that would identify, track, and prevent such misconduct.”⁴ The findings go on to conclude that the discriminatory policing is “deeply rooted in the Department’s culture and substantially interferes with the ability of the East Haven Police Department (EHPD) to deliver services to the entire East Haven community.” The investigation found that EHPD officers targeted Hispanic places of business and other places where Hispanics were known to congregate. EHPD officers would then take “extreme tactics” to justify traffic stops of Latinos.

These two investigations by the DOJ highlight one of the most serious problems created by racial profiling—the heightened fear and mistrust of law enforcement in the Hispanic community. Recently, NCLR held a Latino Leadership Institute for community leaders, and a part of the training was an exercise during which participants used drawings to demonstrate a time when they felt powerless and a time when they felt powerful. As you can see, a number of the drawings depict scenes of police officers intimidating and harassing Latinos. NCLR is heartened by the Subcommittee’s leadership in holding this hearing, and we are grateful for the opportunity to present our position on the unjust, ineffective, and counterproductive practice of racial profiling. We urge the Subcommittee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state, and local level. Specifically, Congress should pass the “End Racial Profiling Act” (S.1670) and institute a federal ban on profiling based on race, religion, ethnicity, and national origin at the federal, state, and local levels. The Subcommittee should urge the DOJ to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

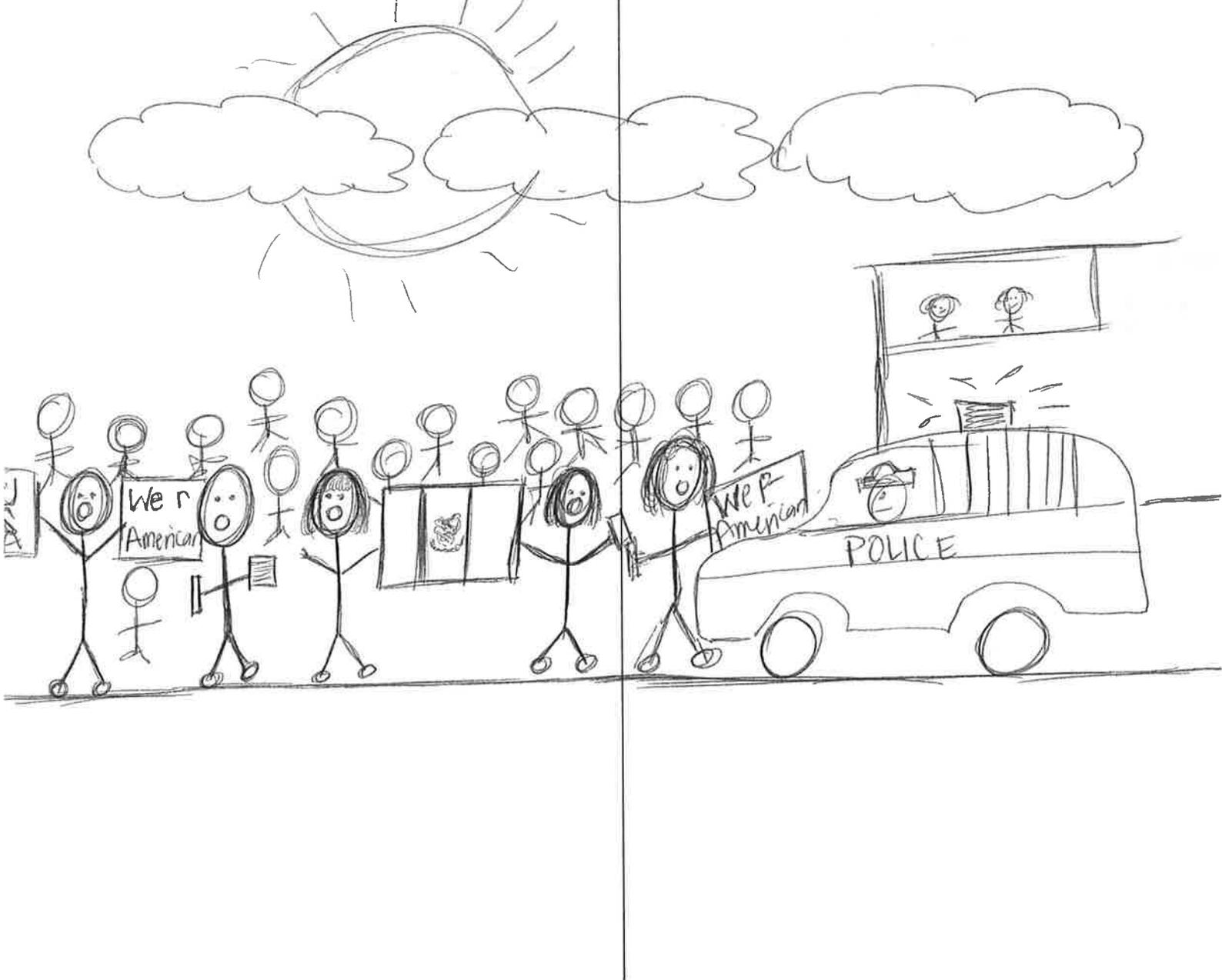
Thank you again for allowing NCLR this platform to express its views. We welcome the opportunity to continue working with the Subcommittee on these important issues.

⁴ Letter from Assistant Attorney General, Thomas E. Perez, to Joseph Maturo, Mayor of East Haven, Connecticut on December 19, 2011. See: http://www.justice.gov/crt/about/spl/documents/easthaven_findletter_12-19-11.pdf (accessed April 13, 2012).

Feeling Power and Powerlessness

This situation made me feel powerful:

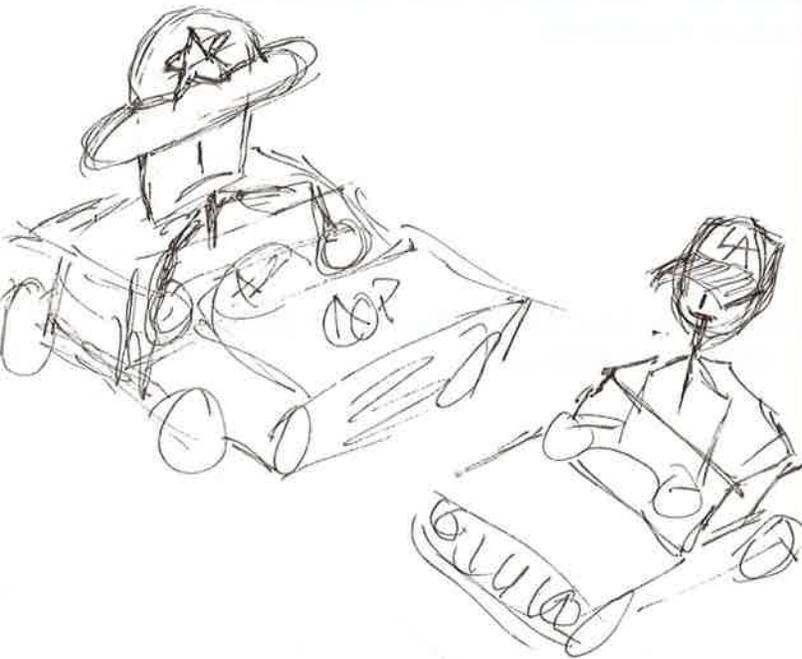
This situation made me feel powerless:



Feeling Power and Powerlessness

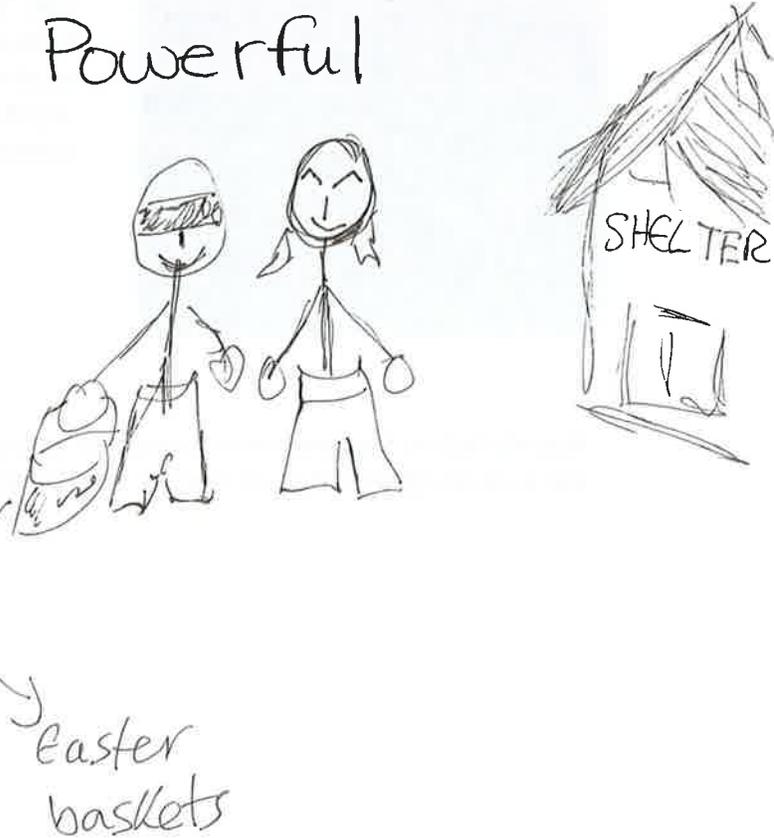
This situation made me feel ~~powerful~~:

Powerless



This situation made me feel ~~powerless~~:

Powerful



Feeling Power and Powerlessness

This situation made me feel powerful:

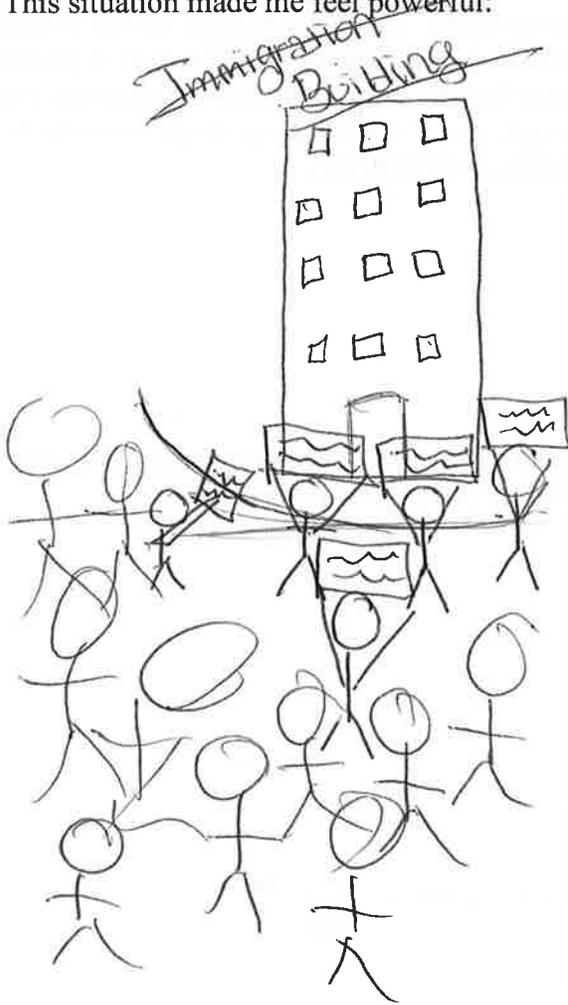


This situation made me feel powerless:



Feeling Power and Powerlessness

This situation made me feel powerful:



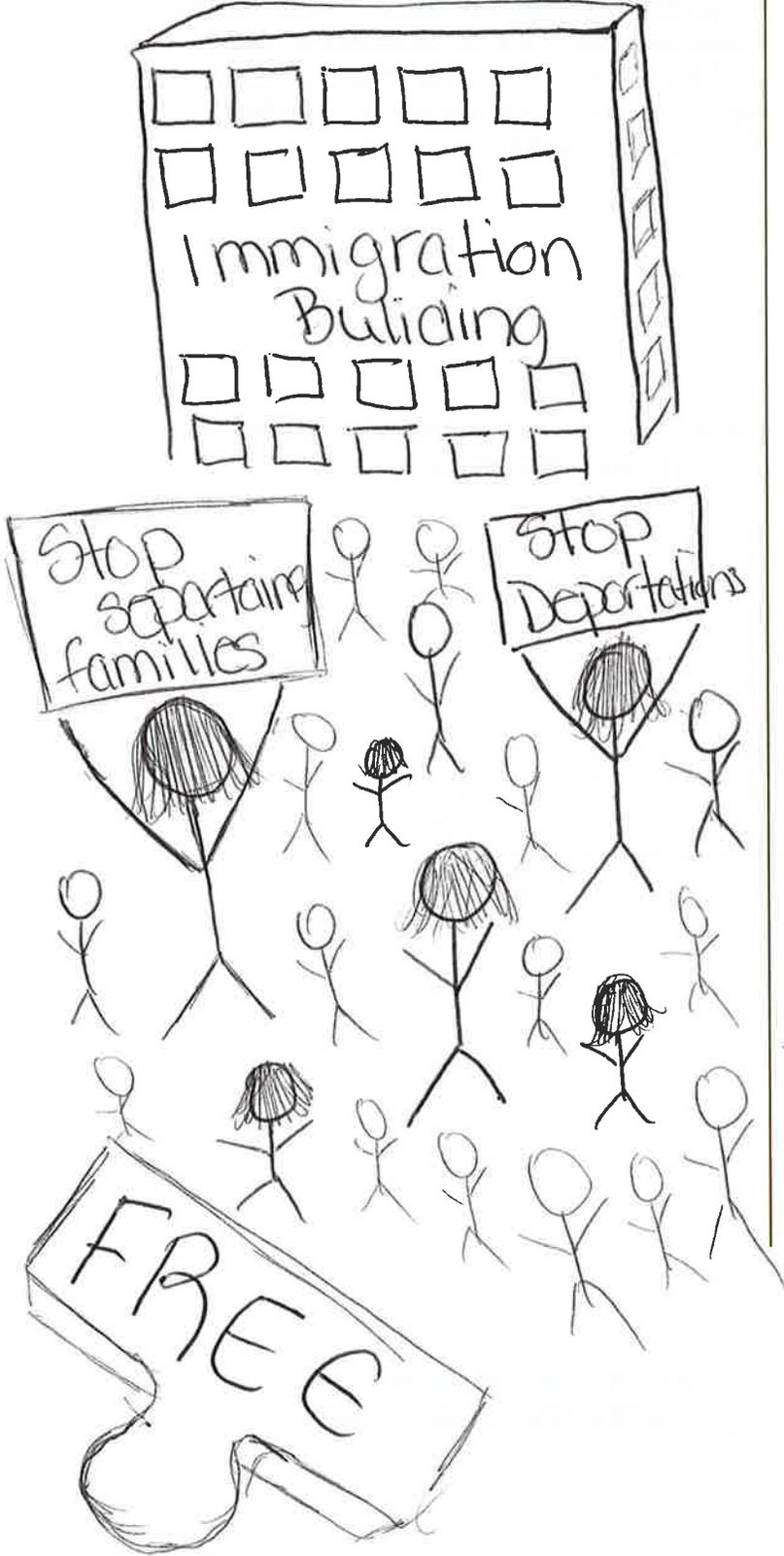
This situation made me feel powerless:



debe

Feeling Power and Powerlessness

This situation made me feel powerful:



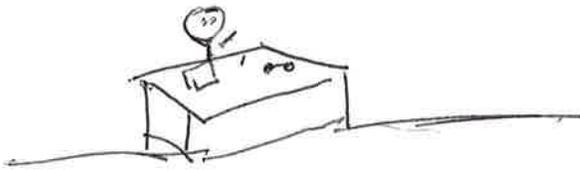
This situation made me feel powerless:



Feeling Power and Powerlessness

This situation made me feel powerful:

Frustración



HOLA - New Hope!

This situation made me feel powerless:



Feeling Power and Powerlessness

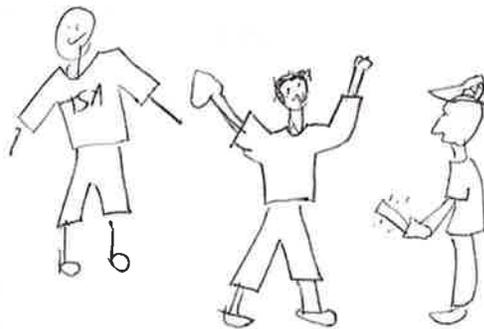
This situation made me feel powerful:

Taking control of the streets
in the AZ streets and
having people shut and shut down
Arp's office for a couple
of hours so that he wouldn't
do his tricks



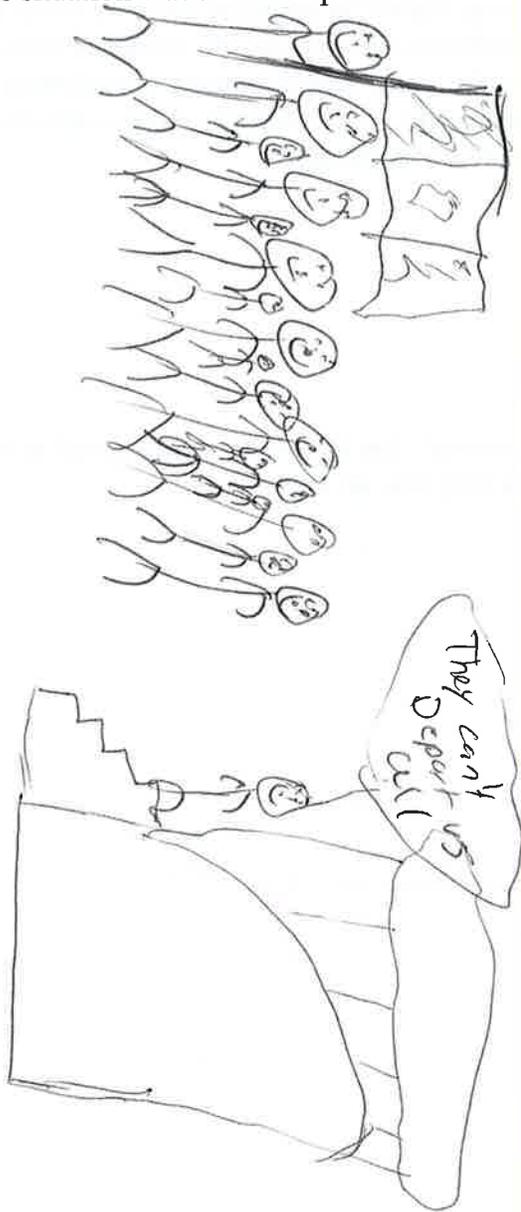
This situation made me feel powerless:

Being found out
by TSA to by ~~seen~~ searched
because I did not want to go
through the ~~XXX~~-bag

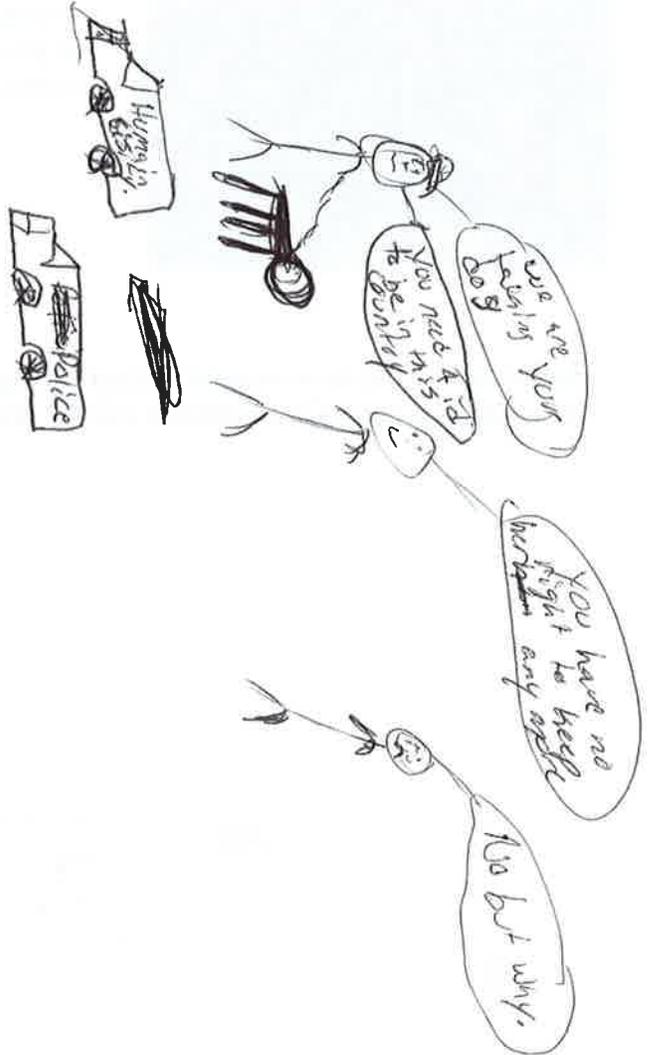


Feeling Power and Powerlessness

This situation made me feel powerful:



This situation made me feel powerless:





LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
U N D E R L A W

A nonprofit, nonpartisan legal organization formed at the request of President Kennedy in 1963

APRIL 17, 2012

TESTIMONY OF LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

TO

SENATE JUDICIARY COMMITTEE

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

Senator Durbin and all the members of the Senate Judiciary here today, thank you for holding this critical hearing today to discuss the most important issue of racial profiling in America. The Lawyers' Committee appreciates the opportunity to submit this statement for the record to highlight the continuing racial tensions that exist in our society, particularly the dangerous and discriminatory practice of racial profiling.

Established in 1963 at the request of President John F. Kennedy, the Lawyers' Committee is a nonpartisan, nonprofit organization that involves the private bar in providing legal services to address racial discrimination. We fulfill this mission by using the skills and resources of the bar to address matters of racial justice particularly the effects upon communities of color.

Racial profiling has long been an issue in this country. As defined, it is the sole use of race, ethnicity, or national origin to unfairly identify or target an individual for any reason, most commonly in the committing of a crime. Its use is widespread, ranging from traffic stops to illegal immigration sweeps. Racial profiling unfairly targets minorities who are no more likely to break the law than their white counterparts. Although efforts to end racial profiling have achieved some success with various states and localities passing anti-racial profiling statutes, most of these statutes lack real enforcement mechanisms.

Unfortunately, racial profiling continues to manifest itself in many dangerous ways in our society. While the most recent tragic death of a young black teenager, Trayvon Martin, has brought this conversation to the forefront again, racial profiling has existed in our society for years. Such profiling promotes distrust amongst communities and causes our streets to be less safe. Although we often speak about racial profiling against African-American males, this problem has grown much larger to include racial profiling against Latino Americans and immigrants, particularly immigrants in Arizona and Alabama and states attempting to pass anti-immigrant measures. Furthermore, profiling against people of Middle Eastern descent in the Muslim and Arab community exploded after 9/11. While we are dismayed that such blatant

racial discrimination continues to increase in our society, the Lawyers' Committee is confident that Congress can once again reach a consensus on the issue of racial profiling and pass effective legislation outlawing the practice. In light of the continued existence of unstated intentional policies and even explicit apparently "race neutral" policies that disproportionately impact people of color, it is ever more critical that we pass the End Racial Profiling Act (ERPA). This Act is designed to enforce the constitutional right to equal protection of the laws by eliminating racial profiling through changing the policies and procedures underlying the practice.

Racial Profiling Against African Americans

The Lawyers' Committee has long been deeply concerned about racial profiling and protection of the right of citizens of color to walk the streets peacefully without being accosted because of their race, particularly in predominately white communities. Too often African Americans and other minorities are victims of racial profiling resulting in wrongful arrests and in some cases killings by law enforcement or security forces. Just in the first three months of 2012 there were at least 29 wrongful deaths, and of these victims, 18 were unarmed and 8 had non-lethal weapons.¹ These violations of civil rights are inexcusable and must be stopped.

Recently, the killing of Trayvon Martin sparked another national debate on racial profiling and killings by not only law enforcement but laypersons alike. While the tragedy of Trayvon Martin's killing is currently part of the national discussion, tragedies like these have existed for years. For example, the following three cases are all examples of racial profiling that have led to gross injustice and civil rights violations:

- **New York** - the shooting death of 18-year old **Ramarley Graham**, by a police officer in the Bronx recently ignited focus on intersection of race and public safety. The "**stop and frisk**" policy has disproportionately targeted Black or Latino individuals.
- An analysis by the New York Civil Liberties Union revealed that more than 4 million innocent New Yorkers were subjected to police stops and street interrogations from 2004 through 2011 ... again, overwhelmingly Blacks and Hispanics/Latinos.
- **New York** – In 2006, **Sean Bell** was shot and killed by New York Police officers outside of a night club because he was racially profiled. Sadly, Bell died in the hail of 50 bullets fired by these officers outside of a New York nightclub in 2006.
- **New York** – In November 2011, **Kenneth Chamberlain**, a United States Marine veteran, accidentally set off a LifeAid alert system that he wore because of chronic heart problems. Despite informing police through his closed door that he had mistakenly set off the alert, within an hour the door was broken down and police used a stun gun on Chamberlain without warning. Bullets were fired at the 68-year-old veteran, and he died a few hours later in surgery.
- **New Orleans**– In March 2011, following a 10-month investigation, the Justice Department determined that the New Orleans Police Department engaged in racial profiling, using excessive force and arresting people without probable cause.

¹ See, <http://hiphopandpolitics.wordpress.com/2012/04/06/29-black-people-have-been-killed-by-policesecurity-since-jan-2012-16-since-trayvon/>

Officers purposefully fired their weapons at 27 African American people from Jan. 2009 to May 2010, the report stated. The report also accused officers of targeting gay residents.

The distrust of law enforcement officers in African American communities that is created by racial profiling practices contributes in many ways to the continuance of racial discrimination and inequity generally. For example, in 2000, after a series of highly publicized racial profiling incidents in New Jersey that had moved the U.S. Department of Justice to obtain a Consent Decree against racial profiling by the state troopers, the State entered a Consent Decree with the Lawyers' Committee and other attorneys for the NAACP in a case challenging the method of selecting State Troopers for the State of New Jersey.² The goal of the suit and the Consent Decree was to improve the percentage of African Americans among state troopers: in 1998 African American officers were only 8% of New Jersey state troopers whereas African American's comprise 15% of the state's population. The 8% of African Americans amongst state troopers was the lowest percentage of all the sworn law enforcement agencies in the state. Today, after more than a decade of hiring under the Consent Decree, less than 7% of New Jersey State Troopers are African American, leaving the question why has the percentage of African-American officers decreased over the last fourteen years. When asked why the Consent Decree has failed to accomplish its stated goal, James Harris, state president of the New Jersey NAACP, recently pointed to the history of racial profiling in the New Jersey State Patrol as one factor that has discouraged African American recruits from applying.³

Disparate Treatment in the Criminal Justice System due to Racial Profiling

Cases like the United States v. State of New Jersey sadly are not uncommon. Racial disparate treatment and discrimination pervade the American criminal justice system. Studies have shown that African Americans and other racial minorities are detained and searched by police officers more often than whites and that they are more likely to be prosecuted, receive harsher sentences, and be sentenced to death.⁴ At times, racial disparate treatment by authorities has placed African Americans and other racial minorities in physical danger. While the U.S.

² UNITED STATES OF AMERICA, Plaintiff, vs. STATE OF NEW JERSEY and DIVISION OF STATE POLICE of the NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY, Defendants, CIVIL NO. 99-5970(MLC), available at <http://www.state.nj.us/oag/jointapp.htm>, last accessed 4/11/2012

³ http://articles.philly.com/2012-02-07/news/31034361_1_black-troopers-white-troopers-hispanics, last accessed 4/11/2012 @ 8:40 p.m. The history of racial profiling by the state patrol in the 1990s is discussed at length in "REPORT OF THE NEW JERSEY SENATE JUDICIARY COMMITTEE'S INVESTIGATION OF RACIAL PROFILING AND THE NEW JERSEY STATE POLICE," June 11, 2001, available at <http://www.njleg.state.nj.us/racialprofiling/sjufinal.pdf>, last accessed 4/16/2012 @ 11:27 a.m.

⁴ Bureau of Justice Statistics, *Contacts Between The Police And The Public: Findings From The 2002 National Survey 2005*, available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/cpp02.pdf>; *Leadership Conf. on Civil Rights Leadership Conf. Educ. Fund, Justice on Trial: Racial Disparities in the American Criminal Justice System 17-19* (2000); Amnesty Int'l, *Abolish the Death Penalty: The Federal Death Penalty is Arbitrary and Overreaching*, <http://www.amnestyusa.org/abolish/factsheets/arbitrary.html>; Death Penalty Info. Ctr., *Racial Disparities in Federal Death Penalty Prosecutions: 1988-1994* (1994), available at <http://www.deathpenaltyinfo.org/article.php?scid=45&did=528>; Prison Activist Resource Center, *African-Americans and the Criminal Injustice System* (2003), available at <http://www.prisonactivist.org/factsheets/racism.pdf>; National Urban League, *The State of Black America: Prescriptions for Change* (2005), available at <http://www.civilrights.org/issues/affirmative/details.cfm?id=33633>.

Government has taken some steps toward eliminating racial disparate treatment and discrimination, additional and immediate measures are required to reform the criminal justice system as a whole. Specifically, the Government should keep better demographic statistics on individuals passing through the criminal justice system, more consistently investigate reported incidents of racial discrimination by law enforcement personnel, and better utilize training programs that instruct police officers and prosecutors about the dangers of racial profiling.

Racial Profiling Against Latinos and Immigrants

The problems of racial profiling are not contained to the African-American community. As it grows, the Latino community is experiencing increased racial profiling, particularly surrounding the question of immigration status. On April 23, 2010, Arizona Governor Jan Brewer signed Senate Bill 1070 into law. As originally passed, the bill authorized Arizona law enforcement to stop and question anyone reasonably suspected of lacking lawful immigration status. Individuals could have been questioned even if they were not suspected of breaking a state or local law or ordinance. The bill signed into law on April 23, 2010 essentially legalized racial profiling; under the original SB 1070 police would have had little choice but to target individuals based solely on their skin color. This would have been a giant step in the wrong direction. Perhaps in recognition of the potential constitutional challenges SB 1070 faced, the Arizona State Legislation amended SB 1070 on April 29, 2010. Currently, law enforcement officers must first demonstrate a pre-existing condition, such as the enforcement of a separate law or ordinance, before questioning someone about their immigration status. Additionally, the amendment states law enforcement is now barred from relying on race as a factor in determining whether to question a person about his or her immigration status.

The April 29, 2010 amendment did not eliminate the bill's unconstitutionality. The amendment attempted to portray SB 1070 as somehow relying on a *race-neutral* approach for determining immigration status. However, SB 1070 fails to articulate how law enforcement is to arrive at a reasonable suspicion of illegal immigration status without using race as a factor. Officers on the street will have to make decisions about the enforcement of this law, and they will almost certainly rely on factors such as skin color, accent, residence, work place, and place of worship. It is clear that, as a practical matter, SB 1070 will create a climate where racial profiling is considered acceptable and potentially even a valued part of police practice. This will surely strain law enforcement's relationship with the Latino community in Arizona.

During the past several months the Lawyers' Committee has taken steps to address the serious concerns raised by SB 1070. First, before the bill was signed into law, the Lawyers' Committee sent an opposition letter to Gov. Brewer raising several urgent constitutional concerns. Later the Lawyers' Committee signed on to a Unity Statement in partnership with the National Immigration Law Center and the New Orleans Workers' Center for Racial Justice, and other interested parties, highlighting several key concerns regarding this bill. Then, through the Leadership Conference on Civil and Human Rights the Lawyers' Committee signed onto a statement boycotting the State of Arizona. Finally, on its own accord, the Lawyers' Committee also chose to boycott the State of Arizona – in addition to the broader national boycott effort.

Additionally, the Lawyers' Committee and co-counsel Perkins Coie Brown & Bain P.A., filed an amicus brief in support of the plaintiffs' motion for preliminary injunction in *Friendly House, et al. v. Michael B. Whiting, et al.*, No. 10-cv-01061, (*D. Ariz.*), a challenge to Arizona's recently enacted law, SB 1070. SB 1070 requires state and local law enforcement officials to check an individual's immigration status if they have a reasonable suspicion that the individual is not in the country legally.⁵ We also joined a series of amicus briefs against other similar anti-immigration laws including those in South Carolina, Alabama and Utah.⁶

With the passage of the state of Arizona's immigration bill (SB 1070) in 2010 and continuing legal challenges, racial profiling once again became a national issue. SB 1070 and subsequent copycat legislation in other states essentially encourages the use of racial profiling to achieve the desired results of these new immigration laws, to locate and deport illegal immigrants. The dangers of this kind of sanctioned police practice are endless, including crimes going unreported because people are afraid that local law enforcement will be more concerned with their immigration status than their safety and much more. Racial profiling is not an effective way to police a community, instead straining relationships with residents and frequently leading to the detaining and arrest of innocent people.

School Suspensions and Racial Profiling

Unfortunately, we cannot discuss the problem of racial profiling in this country without looking inside our schools where this practice too often begins. Last month the U.S. Department of Education's Office of Civil Rights released startling new data that highlighted another disappointing gap in our nation's schools: discipline.⁷ Students in high minority population schools are subject to a range of more punitive policies than their peers in low minority population schools.⁸ Furthermore, Indiana University Bloomington's Equity Project found that it doesn't matter if the school is high or low income, urban, suburban, or rural.⁹ Where there are more African American and Latino students, there is a higher likelihood of zero tolerance policies and more out-of-school suspensions and expulsions.¹⁰

⁵ See <http://www.lawyerscommittee.org/issues/page?id=0006#AL>

⁶ On November 11, 2011 the Lawyers' Committee for Civil Rights Under Law joined an amicus brief in support of *Lowcountry Immigration Coalition, et al., v. Nikki Haley, et al.*, No. 2:11-cv-02779-RMG (D. S.C), which seeks a Preliminary Injunction against South Carolina's anti-immigration law, SB 20. The amicus was filed by Covington & Burling LLP and the Asian American Justice Center. On August 5, 2011 a coalition of civil rights groups including the Southern Poverty Law Center, the American Civil Liberties Union, the ACLU of Alabama, the National Immigration Law Center, the Asian Law Caucus, and the Asian American Justice Center, filed a class action lawsuit challenging Alabama's extreme anti-immigrant law, HB 56, as unconstitutional. The Lawyers' Committee joined the coalition in support of the lawsuit. On May 27, 2011, the Lawyers' Committee joined an amicus brief filed by the Asian American Justice Center and Dorsey & Whitney, LLP, in support of a direct challenge to Utah Illegal Immigration Enforcement Act, HB 497. The originating class action against HB 497 was filed on May 4, 2011 by the National Immigration Law Center, the American Civil Liberties Union (ACLU), the ACLU of Utah, Munger, Tolles & Olsen, and other civil rights organizations.

⁷ U.S. Department of Education Civil Rights Data Collection Summary, *available at* <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-2012-data-summary.pdf>

⁸ *Id*

⁹ See <http://www.indiana.edu/~equity/undegu.php>

¹⁰ *Id*

Two years after Secretary Duncan told the public that students with disabilities and African American students, especially males, are suspended more severely and far more often for the same misdeeds than their white counterparts, Trayvon Martin was shot and killed near his Father's home in Sanford, Florida. Trayvon Martin attended a predominately minority high school where he was suspended for 10 days because of a non-violent, minor infraction. Removing Trayvon or any student from school for 10 days for a minor infraction is a fundamentally unsound policy. Minor infractions should be handled within school walls without forcing students to miss school or fall behind on their classes. Unnecessarily suspending students only serves to provide them with additional opportunity to engage in delinquent behavior and end up in the criminal justice system. Whether outwardly apparent or not, too often the "get tough" attitude in education discipline is fueled by vicious stereotypes and biases against minority students. Zero tolerance policies disproportionately affect minority students and as a consequence too often set the stage for stereotyping and profiling amongst law enforcement. In addition, research shows that frequent suspensions and expulsions are associated with negative outcomes such as increased participation in delinquent behavior and a higher likelihood to have interactions with the criminal justice system.¹¹

International Treaty Obligations

The United States' obligation to eliminate racial profiling and other such ongoing violations against people of color extends beyond our federal Constitution. As a signatory to various treaties, including the International Convention on Civil and Political Rights ("ICCPR" or the "Covenant") ratified in 1992 and the International Convention on the Elimination of Racial Discrimination (ICERD) ratified in 1994, the United States is delinquent in its obligation to eliminate all forms of racial discrimination as required by its treaty obligations. ICCPR calls on all subjects to the treaty to ensure that all are equal before the law and prohibits discrimination because of "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status"¹². ICERD also prohibits racial discrimination and requires that state parties "undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms."¹³ In ratifying the treaty the United States committed, among other steps, to "ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation."¹⁴ The Lawyers' Committee has long monitored and filed shadow reports and recommendations regarding implementation of our international treaty obligations. Thus, while we recognize that the U.S. Government has taken some steps to eliminate *de jure* civil rights violations and has established certain remedial structures, we continue to highlight the United States' failure to

¹¹ See <http://www.tutorspot.com/article-one.asp?articleid=800741631#form>. Citing the U.S. Department of Education Civil Rights Data for 2009-1010.

¹² International convention on Civil and Political Rights, art. 26 available at <http://www2.ohchr.org/english/law/ccpr.htm#art26>.

¹³ International Convention on the Elimination of All Forms of Racial Discrimination art. 2.1, available at <http://www2.ohchr.org/english/law/cerd.htm>. Additionally, CERD prohibits racial discrimination in matters of justice, personal security, voting and political rights, movement, marriage, property, inheritance, religion, expression, assembly and association, employment, housing, health and medical care, education and cultural activities.

¹⁴ *Id.*

comply specifically with Articles 6 and 7 of the ICCPR and address and eradicate ongoing discrimination such as racial profiling and other racial disparate treatment.¹⁵

In particular, the ICCPR Concluding Observations in 2006 after review of U.S. compliance of its obligations under the treaty recommended that:

The State party should continue and intensify its efforts to put an end to racial profiling used by federal as well as state law enforcement officials. The Committee wishes to receive more detailed information about the extent to which such practices still persist, as well as statistical data on complaints, prosecutions and sentences in such matters.¹⁶

Similarly, the ICERD concluding observations recently noted that “[b]earing in mind its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party strengthen its efforts to combat racial profiling at the federal and state levels, *inter alia* by moving expeditiously towards the adoption of the End Racial Profiling Act, or similar federal legislation”¹⁷ Passing and enacting implementing legislation such as the End Racial Profiling Act would move the United States forward in its obligations to comply with both the ICCPR and ICERD.

Best Practices/Data Collection

As discussed earlier, racial profiling results in a lack of trust by individuals in communities where it is used. This results in a reluctance to report crimes and cooperate with police authorities. This reluctance is heightened through the passage of immigration laws that utilize or encourage racial profiling.¹⁸ Consequently, the trust among the community that residents will be treated equally and fairly decreases. For these reasons, training modules and best practices within local and state law enforcement units is not only advisable, but necessary to ensure that communities feel safe, protected, and confident in their law enforcement officials. Proper training, including cultural sensitivity training, role playing and professional development can effectively limit the illegal use of racial profiling amongst law enforcement officers. For example, the services provided by the Department of Justice’s Community Relations Service (CRS) are specifically designed to assist local communities and law enforcement when requested and can be an effective resource for all parties. Their Cultural Professionalism training, as recently provided in Cincinnati, Ohio, is an example of how other local law enforcement across

¹⁵ In particular, the shadow reports by: (1) the American Civil Liberties Union,¹⁵ (2) the National Association of Criminal Defense Lawyers, (3) attorney Andrea Ritchie, and (4) the Sentencing Project, Human Rights Watch, the Open Society Institute, Prison Reform International, the American Friends Service Committee and the Center for International Human Rights on general issues regarding domestic criminal justice, which will discuss racial profiling and racial disparities as they relate to the rights guaranteed by Articles 6 and 7 of the ICCPR.

¹⁶ Concluding observations of the United Nations Human Rights Committee at ¶ 24

¹⁷ Committee on the Elimination of Racial Discrimination, at ¶ 14.

¹⁸ Christopher Burbank, Testimony House Judiciary Committee Hearing, Racial Profiling and the Use of Suspect Classifications in Law Enforcement Policy”, June 17, 2010

the country can take advantage of federal resources to help them foster better community relations and eliminate stereotyping and racial profiling.¹⁹

Part of eliminating the problem of racial profiling requires an accurate assessment of the continued pervasiveness of the practice. Most current laws pertaining to racial profiling are not effective enough and only include vague calls for law enforcement and state agencies to establish policies prohibiting or combating racial profiling.²⁰ These laws lack enforcement mechanisms as well as data reporting requirements which are necessary to effectively combat racial profiling.²¹ States that have had success with effective racial profiling laws which utilize enforcement mechanisms and data reporting requirements include New Mexico²² and Minnesota.²³ The current state trend is toward increased data collection to identify how rampant racial profiling is. Currently stop and search data, which helps to identify instances of racial profiling, is now being collected by 22 states, 4000 cities, including over half of the 50 largest, and 6000 police departments.²⁴ More conformity across the country is clearly needed.

Conclusion

Racial profiling is a dangerous practice that frequently ends up taking the lives of young, innocent victims. Police officers are charged with protecting and serving the communities in which they live. In order to keep these communities safe, police officers must maintain good relationships with all members and groups in a community. If a relationship is strained because of a pattern and practice of racial profiling the entire community is at a greater risk and will suffer. The End Racial Profiling Act will assist in maintaining these critical relationships between law enforcement officers and the various communities they serve, mainly by providing:

- A prohibition on racial profiling,
- Required training on racial profiling issues as part of federal law enforcement training,
- Data collection on all routine or spontaneous investigatory activities to be submitted to the Department of Justice,
- The receipt of federal law enforcement and other funds that go to state and local governments is conditions on their adoption of effective policies that prohibit racial profiling,

¹⁹ See Department of Justice Blog, "Working Together to Solve Problems and Keep Communities Safe," posted April 6, 2012 at <http://blogs.justice.gov/main/archives/2015>

²⁰ ACLU, *The Persistence of Racial and Ethnic Profiling in the United States, A Follow-Up Report to the U.N. Committee on the Elimination of Racial Discrimination*, June 30m 2009, available at http://www.aclu.org/files/pdfs/humanrights/cerd_finalreport.pdf, 40

²¹ *Id.*

²² The New Mexico legislature took an important step in 2009, passing the Prohibition of Profiling Act. The Act prohibits profiling practices during routine or spontaneous investigatory activity, as well as profiling by race, ethnicity, color, national origin, language, gender, gender identity, sexual orientation, political affiliation, religion, physical or mental disability or serious medical condition.

²³ In 2001, as a result of advocacy by a racial profiling task force that included the ACLU of Minnesota, the Minnesota legislature passed § 626.951, providing for a statewide racial profiling study. Sixty-five jurisdictions participated in the study, and an analysis of the data by the Council on Crime and Justice and the Institute on Race and Poverty found significant evidence of racial profiling across the state. A new bill has been introduced requiring police officers to record the race of every individual stopped and for an independent expert to analyze the data for racial profiling problems. ACLU, *supra* note 1 at 56.

²⁴ ACLU Racial Profiling Alert

- The Department of Justice authorization to provide grants for the development and implementation of best policing practices, and
- The Attorney General authority to assess the nature of any ongoing discriminatory profiling practices through required periodic reports.

Furthermore, in conjunction with the passage of ERPA, we strongly urge the Department of Justice to update its 2003 guidance on racial profiling to support the necessary training of state and local law enforcement and the continued support and utilization of the Community Relations Services Department to assist communities in such training. This also requires ongoing financial support for the Civil Rights Division to ensure proper enforcement of anti-discrimination laws.

When Racial Profiling legislation was introduced over a decade ago, it had wide bipartisan support because studies show that law enforcement agents consistently use race, ethnicity and national origin when choosing which individuals need to be stopped and searched. Unfortunately, this practice not only continues to exist, but has expanded to more communities. Since its inception, the Lawyers' Committee has stood against discrimination based on race, national origin, and religion and supports the national and international movement to finally bring an end to racial profiling in the United States. As the nation continues to focus on the tragedy of Trayvon Martin and the need for justice for him and his family, we urge Congress to not let this tragedy go unaddressed. We have the opportunity to finally pass legislation that will help prevent more senseless harassment, arrests and ultimately killings. Bringing an end to racial profiling will restore the country's commitment to public safety and allow for equal treatment of all citizens.



Cosponsor the End Racial Profiling Act of 2011 S. 1670

April 16, 2012

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights, and the undersigned organizations, we urge you to cosponsor the End Racial Profiling Act of 2011 (ERPA). Passage of this bill is needed to put an end to racial profiling by law enforcement officials and to ensure that individuals are not prejudicially stopped, investigated, arrested, or detained based on their race, ethnicity, national origin, or religion. Policies primarily designed to impact certain groups are ineffective and often result in the destruction of civil liberties for everyone.

ERPA would establish a prohibition on racial profiling, enforceable by declaratory or injunctive relief. The legislation would mandate training for federal law enforcement officials on racial profiling issues. As a condition of receiving federal funding, state, local, and Indian tribal law enforcement agencies would be required to collect data on both routine and spontaneous investigatory activities. The Department of Justice would be authorized to provide grants to state and local law enforcement agencies for the development and implementation of best policing practices, such as early warning systems, technology integration, and other management protocols that discourage profiling. Lastly, this important legislation would require the Attorney General to issue periodic reports to Congress assessing the nature of any ongoing racial profiling.

Racial profiling involves the unwarranted screening of certain groups of people, assumed by the police and other law enforcement agents to be predisposed to criminal behavior. Multiple studies have proven that racial profiling results in the misallocation of law enforcement resources and therefore a failure to identify actual crimes that are planned and committed. By relying on stereotypes rather than proven investigative procedures, the lives of innocent people are needlessly harmed by law enforcement agencies and officials.

As is evident by recent events across the nation, racial profiling is a pervasive and harmful practice that negatively impacts both individuals and communities. Racial profiling results in a loss of trust and confidence in local, state, and federal law enforcement. Although most individuals are taught from an early age that the role of law enforcement is to fairly defend and guard communities from people who want to cause harm to others, this fundamental message is often contradicted when these same defenders are seen as unnecessarily and unjustifiably harassing innocent citizens. Criminal investigations are flawed and hindered because people and



communities impacted by these stereotypes are less likely to cooperate with law enforcement agencies they have grown to mistrust. We can begin to reestablish trust in law enforcement if we act now.

Current federal law enforcement guidance and state laws provide incomplete solutions to the pervasive nationwide problem of racial profiling.

Your support for the End Racial Profiling Act of 2011 is critical to its passage. We urge you to cosponsor this vital legislation, which will ensure that federal, state, and local law enforcement agencies are prohibited from impermissibly considering race, ethnicity, national origin, or religion in carrying out law enforcement activities. To become a cosponsor, please contact Bill Van Horne in Senator Cardin's office at bill_vanhorne@cardin.senate.gov or (202) 224-4524. If you have any questions, please feel free to contact Lexer Quamie at (202) 466-3648 or Nancy Zirkin at (202) 263-2880. Thank you for your valued consideration of this critical legislation.

Sincerely,

National Organizations

A. Philip Randolph Institute
African American Ministers in Action
American Civil Liberties Union
American Humanist Association
American-Arab Anti-Discrimination Committee
American Probation and Parole Association
Asian & Pacific Islander American Health Forum
Asian American Justice Center
Asian Law Caucus
Asian Pacific American Labor Alliance
Bill of Rights Defense Committee
Blacks in Law Enforcement in America
Break the Cycle
Brennan Center for Justice at New York University School of Law
Campaign for Community Change
Campaign for Youth Justice
Center for National Security Studies
Charles Hamilton Houston Institute for Race and Justice at Harvard Law School
Council on American-Islamic Relations
Council on Illicit Drugs of the National Association for Public Health Policy
Disciples Justice Action Network
Drug Policy Alliance



Equal Justice Society
Fair Immigration Reform Movement
Fellowship of Reconciliation
Human Rights Watch
Indo-American Center
Institute Justice Team, Sisters of Mercy of the Americas
Japanese American Citizens League
Jewish Labor Committee
Jewish Reconstructionist Federation
Lawyers' Committee for Civil Rights Under Law
The Leadership Conference on Civil and Human Rights
League of United Latin American Citizens
Lutheran Immigration and Refugee Service
Muslim Advocates
Muslim Legal Fund of America
Muslim Public Affairs Council
NAACP
NAACP Legal Defense and Educational Fund, Inc.
National Advocacy Center of the Sisters of the Good Shepherd
National African American Drug Policy Coalition, Inc.
National Alliance for Medication Assisted Recovery
National Alliance of Faith and Justice
National Asian American Pacific Islander Mental Health Association
National Asian Pacific American Bar Association
National Asian Pacific American Women's Forum
National Association of Criminal Defense Lawyers
National Association of Social Workers
National Black Justice Coalition
National Black Law Students Association
National Black Police Association
National Congress of American Indians
National Council of La Raza
National Education Association
National Gay and Lesbian Task Force Action Fund
National Korean American Service and Education Consortium
National Latina Institute for Reproductive Health
National Lawyers Guild Drug Policy Committee
National Legal Aid and Defender Association
National Organization of Black Women in Law Enforcement
National Organization of Sisters of Color Ending Sexual Assault
National Urban League Policy Institute
NETWORK, A National Catholic Social Justice Lobby
9to5, National Association of Working Women

North American South Asian Bar Association
Open Society Policy Center
Organization of Chinese Americans
Pax Christi USA: National Catholic Peace Movement
Prison Policy Initiative
Rights Working Group
Sentencing Project
Sikh American Legal Defense and Education Fund
Sikh Coalition
SOJOURNERS
South Asian Americans Leading Together
South Asian Network
South Asian Resource Action Center
StoptheDrugWar.org
The Real Cost of Prisons Project
Treatment Communities of America
U.S. Human Rights Network
Union for Reform Judaism
United Methodist Church, General Board of Church and Society
UNITED SIKHS
Women's Alliance for Theology, Ethics and Ritual

State and Local Organizations

A New PATH (Parents for Addiction Treatment & Healing) (California)
Adhikaar (New York)
Advocare, Inc. (Ohio)
Arab American Action Network (Illinois)
Arab-American Family Support Center (New York)
CASA de Maryland (Maryland)
Casa Esperanza (New Jersey)
CAUSA - Oregon's Immigrant Rights Organization (Oregon)
Center for NuLeadership on Urban Solutions (New York)
Counselors Helping (South) Asians/Indians, Inc. (Maryland)
Desis Rising Up and Moving (New York)
Drug Policy Forum of Hawaii (Hawaii)
Drug Policy Forum of Texas (Texas)
Florida Immigrant Coalition (Florida)
Healing Communities Prison Ministry and Reentry Project (Pennsylvania)
Korean American Resource and Cultural Center (Illinois)
Korean Resource Center (California)
Legal Services for Prisoners with Children (California)
Legal Voice (Washington)
Maryland CURE - Citizens United for the Rehabilitation of Errants (Maryland)



National Alliance for Medication Assisted Recovery, Delaware Chapter (Delaware)
9to5 Atlanta Working Women (Georgia)
9to5 Bay Area (California)
9to5 Colorado (Colorado)
9to5 Los Angeles (California)
9to5 Milwaukee (Wisconsin)
Perspectives, Inc. (Minnesota)
Pinos y Campesinos Unidos del Noroeste –
 Northwest Treeplanters and Farmworkers United (Oregon)
Public Justice Center (Maryland)
Rights for All People (Colorado)
Safe Streets Arts Foundation (Washington, DC)
Sahara of South Florida, Inc. (Florida)
Satrang (California)
Sneha, Inc. (Connecticut)
South Asian Bar Association of Northern California (California)
St. Leonard's Ministries (Illinois)



STATEMENT OF
CHARLENE CHILDS, ASSISTANT TO THE EXECUTIVE DIRECTOR
MAINE PEOPLE'S ALLIANCE
Hearing on Ending Racial Profiling in America

SENATE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS
UNITED STATES SENATE
APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of Maine People's Alliance regarding today's hearing on racial profiling. Maine People's Alliance is a 33,000 member non-profit organization in Maine focusing on issues of social, political and environmental justice.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. Maine People's Alliance is particularly concerned about many policies and programs at the national, state and local level which encourage or incentivize discriminatory law enforcement practices such as racial profiling, micro-surveillance of the public by homeland security using local law enforcement officers and the indefinite detention of American citizens without cause. We believe that these practices are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States.



Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Racial Profiling in Our Communities

Of equal concern to the practice of targeting people of color by law enforcement is the inequities they face in the workforce, education and healthcare systems. In 2011 our organization produced a Racial Justice Policy Guide, which was delivered to each member of our legislature as a tool to help them review their lawmaking decisions with a racial lens and see how certain decisions that are made affect people of color disproportionately to the rest of the Maine community.

Between 2000 and 2010 every county in the state of Maine saw a double digit increase in the number of people of color. During this same time period, the number of homeland security agents increased by approximately 300 officers.

Throughout Maine's history there has been an imbalance in reforms for worker protections that excluded the agricultural and domestic workforce, a segment largely employing people of color.



Most currently there has been a reform of healthcare legislation in Maine that has made it illegal for undocumented immigrants to purchase health insurance – even with their own money. Our Governor also proposed sweeping cuts in our state budget that disallows immigrants to apply for state healthcare benefits for their first five years of residence, negatively affecting the quality of life for immigrants that come to Maine to work and raise their families. Sadly, this is reflected in the death rate of Latinos and Native Americans in Maine whose life expectancy, on average, is fifteen years less than the average Mainer.

Our legislature, under pressure for the DHS, now requires every Mainer to prove their legal presence in the state when applying for a driver's license. This creates a number of complexities for immigrants, people of color and all people who live in Maine (as well as the BMV and law enforcement) who now must understand and interpret the validity of birth certificates and visas from various countries and rely on an incomplete database system to make determinations.

Equally affected is the quality of education for children of color in Maine. More than half of the African American fourth graders in Maine can't read at a basic level. Approximately half or more of school suspensions involve African-American students, even though they account for only 23% of the total student population.

Racial disparities of income are apparent with Asian workers bringing in 71% of the median income for white Mainers; 55% for Latinos, Native Americans and Alaskan Natives and 46% for Black/African Americans and people of two or more races. People of color in Maine face a



poverty level twice that of white Mainers with the exception of black and Native Americans who suffer from a level three times that of whites.

In a survey of restaurant workers in Maine, immigrant workers reported that almost 32% had worked “off the clock” without receiving pay, 21% reported that management had stolen a portion of their tips and almost 5% reported minimum wage violations. The Maine legislature recently voted to eliminate the collective bargaining rights for egg farm workers, who are over 90% Latino. On the job fire and safety hazards were double that of conditions faced by U.S. born workers.

Fortunately recent effort to pass bills that are focused on gang suppression and Arizona copycat laws have to date not been endorsed by the full legislature.

Maine People’s Alliance continues to work to educate consciousness in the lawmaking process in Maine, including producing and distributing to the legislature in 2011 a Racial Justice Project Policy guide for legislators. Our hope is that if we consciously consider racial equity and racial impacts in the lawmaking process, we can achieve different results: a more welcoming, equitable, and prosperous state for all of us.



Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color throughout the United States.

Maine People's Alliance is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the "End Racial Profiling Act (S.1670)" and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of Maine People's Alliance. We welcome the opportunity for further dialogue and discussion about these important issues.



**STATEMENT OF
Migrant Justice**

**Hearing on ENDING RACIAL PROFILING IN AMERICA
SENATE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS
UNITED STATES SENATE
APRIL 17, 2012**

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: We are honored to submit this testimony for the record on behalf of Migrant Justice regarding today's hearing on "Ending Racial Profiling in America." We are an organization of migrant workers in the state of Vermont who organize our community to prevent racial profiling, a discriminatory practice which has become a part of our daily reality. Living in a border state, our members have been targeted in health clinics, in stores, as passengers in vehicles, and at the dairy farms where many of us work. As part of our mission to create more equitable and just agricultural communities in Vermont, we have found it necessary to confront discrimination on the part of U.S. Border Patrol with regard to our skin color, language, and countries of birth. Although Secure Communities is not in effect in Vermont, we have also had to confront unjustified collaboration between Border Patrol and State and local police, which disproportionately affects our community.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. Migrant Justice is particularly concerned about many policies and programs at the national, state and local level which encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices are counterproductive, waste



public resources and violate the civil and human rights of persons living in the United States.

Racial Profiling in Our Communities

In Vermont, the dairy industry has long been a fundamental part of the state's economy and identity. In the last decade, the Vermont dairy industry has undergone a demographic shift: Vermont's approximately 1,000 farms are now supported by over 1,500 migrant workers, primarily from Mexico and Guatemala. We do the jobs that Vermonters are increasingly less available to perform, and we work long, hard days to produce the milk and other food products that sustain our communities here.

Despite the fact that we are contributing members of Vermont communities, we have become a target for law enforcement, particularly U.S. Border Patrol. Most of the farms where we work are within 100 miles of the Canadian Border, which grants Border Patrol authority to question and detain us at will. Border Patrol has taken advantage of this authority to repeatedly profile our community members based on our race and national origin, since we stand out as people of color in rural Vermont, which is overwhelmingly white.

At the end of last year, one of our organization's most dedicated leaders, Eliazar Martínez García, was detained by Border Patrol upon leaving a dentist clinic in Richford, Vermont, where he had just had a tooth removed. A Border Patrol car was stationed outside the clinic when he arrived, and the officers watched him leave the clinic. Border Patrol followed the car several miles down the road, before pulling it over for an illegitimate reason: Border Patrol officers said that having Florida license plates constituted "suspicious activity." The driver was Eliazar's neighbor, who grew up in Vermont and had recently moved home from Florida. Eliazar was detained and sent to prison, where he spent over a week as our community worked tirelessly to



raise bail money for him. This is a risk that we all face. For going to the dentist in Northern Vermont, we run the risk of being imprisoned because of racial profiling. Our organization made a video about this event which can be seen at the following link:

<http://migrantjustice.net/node/133>.

Because of racial profiling in Northern Vermont, the safety of our communities is jeopardized. When one of our community members tried to make an international phone call last year, in an attempt to dial - 011 the international calling code, he accidentally dialed 911. When police answered, he said that he did not speak English and hung up. This prompted an automatic response to investigate, but police stepped outside their authority by bringing Border Patrol with them, supposedly to translate. In another example of racial profiling, Border Patrol officers interrogated the caller about his immigration status because of the language he spoke and his skin color. He and a co-worker were detained and deported. Unfortunately, events like this make our community reluctant to call law enforcement for public safety purposes. We made a video about this and other cases of profiling, and about how our community has been victimized and harassed because of perceived risks from contacting law enforcement. The video can be seen here: <http://migrantjustice.net/node/125>.

In 2011, following yet another example of racial profiling in which two of our members were arrested as passengers after a routine traffic stop, five of our farmworker members met with Vermont Governor Peter Shumlin. Since it was clear we had been targeted for the color of our skin, we opened a dialogue with the Vermont State Police which inspired them to change their racial profiling policy and train officers to not question people about immigration status because of race, language, or nationality. We hope that the Subcommittee will push for similar steps to be taken at the federal level, particularly with regard to U.S. Border Patrol.



Conclusion

Migrant Justice is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the "End Racial Profiling Act (S.1670)" and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
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Thank you again for this opportunity to express our views. We at Migrant Justice welcome the opportunity for further dialogue and discussion about these important issues.



**STATEMENT OF
Migrant Justice**

**Hearing on ENDING RACIAL PROFILING IN AMERICA
SENATE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS
UNITED STATES SENATE
APRIL 17, 2012**

Chairman Leahy: We are honored to submit this testimony for the record on behalf of Migrant Justice regarding today's hearing on "Ending Racial Profiling in America." We are an organization of migrant workers in the state of Vermont who organize our community to prevent racial profiling, a discriminatory practice which has become a part of our daily reality. Living in a border state, our members have been targeted in health clinics, in stores, as passengers in vehicles, and at the dairy farms where many of us work. As part of our mission to create more equitable and just agricultural communities in Vermont, we have found it necessary to confront discrimination on the part of U.S. Border Patrol with regard to our skin color, language, and countries of birth. Although Secure Communities is not in effect in Vermont, we have also had to confront unjustified collaboration between Border Patrol and State and local police, which disproportionately affects our community.

We thank you and the members of the subcommittee for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. Migrant Justice is particularly concerned about many policies and programs at the national, state and local level which encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices are counterproductive, waste public resources and violate the civil and human



rights of persons living in the United States.

Racial Profiling in Our Communities

In Vermont, the dairy industry has long been a fundamental part of the state's economy and identity. In the last decade, the Vermont dairy industry has undergone a demographic shift: Vermont's approximately 1,000 farms are now supported by over 1,500 migrant workers, primarily from Mexico and Guatemala. We do the jobs that Vermonters are increasingly less available to perform, and we work long, hard days to produce the milk and other food products that sustain our communities here.

Despite the fact that we are contributing members of Vermont communities, we have become a target for law enforcement, particularly U.S. Border Patrol. Most of the farms where we work are within 100 miles of the Canadian Border, which grants Border Patrol authority to question and detain us at will. Border Patrol has taken advantage of this authority to repeatedly profile our community members based on our race and national origin, since we stand out as people of color in rural Vermont, which is overwhelmingly white.

At the end of last year, one of our organization's most dedicated leaders, Eliazar Martínez García, was detained by Border Patrol upon leaving a dentist clinic in Richford, Vermont, where he had just had a tooth removed. A Border Patrol car was stationed outside the clinic when he arrived, and the officers watched him leave the clinic. Border Patrol followed the car several miles down the road, before pulling it over for an illegitimate reason: Border Patrol officers said that having Florida license plates constituted "suspicious activity." The driver was Eliazar's neighbor, who grew up in Vermont and had recently moved home from Florida. Eliazar was detained and sent to prison, where he spent over a week as our community worked tirelessly to



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be taken at the federal level, particularly with regard to U.S. Border Patrol.

Conclusion

Migrant Justice is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

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**STATEMENT OF
Migrant Justice**

**Hearing on ENDING RACIAL PROFILING IN AMERICA
SENATE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS
UNITED STATES SENATE
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We thank you and the members of the subcommittee for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. Migrant Justice is particularly concerned about many policies and programs at the national, state and local level which encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices are counterproductive, waste public resources and violate the civil and human



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Thank you again for this opportunity to express our views. We at Migrant Justice welcome the opportunity for further dialogue and discussion about these important issues.

STATEMENT OF

Vanessa Crawford, Executive Director

MISSOURI IMMIGRANT AND REFUGEE ADVOCATES

Hearing on Ending Racial Profiling in America

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of Missouri Immigrant and Refugee Advocates regarding today's hearing on racial profiling. MIRA is the statewide immigrants' rights coalition in Missouri, and works to create a climate in our state where immigrants and refugees can become full and productive members of our communities. MIRA has been working with local partners to address local municipalities' police profiling behavior on the basis of race, religion, and perceived immigration status. There is no doubt that the aggressive immigration enforcement by local police and ineffective racial profiling tears at the fabric of our society and creates a hostile environment for people of color, and for immigrants in particular. In one Missouri community, over half of all traffic stops of Hispanics leads to an arrest- a rate more than seven times higher than that of white drivers. This consistent inequity needs to be corrected with improved methods of training, counseling and supervision for law enforcement officials.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. Missouri Immigrant and Refugee Advocates is particularly concerned about many policies and programs at the national, state and local level which encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Racial Profiling in Our Communities

For many long-time immigrants and refugees in Missouri, police profiling can turn a seemingly mundane traffic stop into a life-shattering situation that weakens communities and separates family members. Our office regularly hears from families looking for guidance when a family member who has committed no crime is arrested for a minor traffic offense. Mothers running to the store for milk are routinely pulled over, questioned, and arrested on minor charges, ostensibly because of their perceived race and status. Those mothers are then often swept into ICE custody

and placed in removal before families understand fully what has happened. In spite of directives from the Department of Homeland Security that immigrants like these are “low-priority” for removal, active racial profiling at the local level will continue to put these individuals into the system, placing an unnecessary burden on agencies, and placing families in danger. Constant threat to the integrity of American immigrant families de-stabilizes households, businesses, neighborhoods, and cities.

Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color throughout the United States.

MIRA is heartened by the Subcommittee’s leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the “End Racial Profiling Act (S.1670)” and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
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Thank you again for this opportunity to express the views of Missouri Immigrant and Refugee Advocates. We welcome the opportunity for further dialogue and discussion about these important issues.



STATEMENT OF

**Molly Moody
Montana Organizing Project
And
Michaelynn Hawk
Indian People's Action**

Hearing on Ending Racial Profiling in America

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of the Montana Organizing and Indian People's Action regarding today's hearing on racial profiling. Montana Organizing Project is a national network of community-based organizations dedicated to promoting economic and racial equity across our country. Racial profiling represents an affront to justice and equity, and we in Montana believe it should be eradicated in all forms.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. Montana Organizing Project and its affiliate, Indian People's Action is particularly concerned about many policies and programs at the national, state and local level that encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that

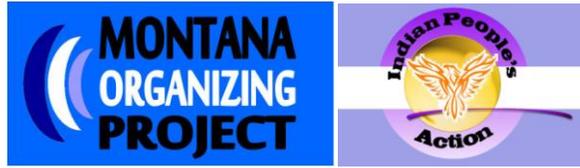


these practices are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States.

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Racial Profiling in Our Communities

Racial profiling continues to be a reality in Montana, and across the state it affects Native people, who must contend with disproportionate and punitive law enforcement measures throughout their lives. In schools, Native children receive far more than their share of punishment, a burden they carry forever. We have become used to excessive police presence and monitoring of events in our communities, from powwows to basketball tournaments, such that we feel we are constantly being surveilled and assessed. In the border towns near reservations, the jailing of Native people yields additional revenue to local governments from the tribes. We are subject to disproportionate sentencing and beatings from police. Over the course of our lives, this reality



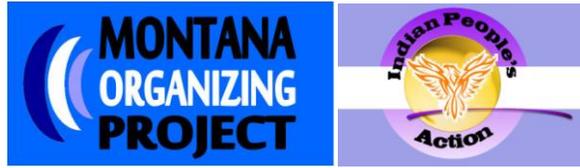
sends a message that we are less—that we don't belong—in a place that we have called home from time immemorial.

Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color throughout the United States.

Montana Organizing Project and Indian People's Action is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the “End Racial Profiling Act (S.1670)” and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.



Thank you again for this opportunity to express the views of Montana Organizing Project and Indian People's Action. We welcome the opportunity for further dialogue and discussion about these important issues.



Statement Submitted by Muslim Advocates and 27 American Muslim, Arab, Middle Eastern, and South Asian Organizations

Hearing on “Racial Profiling In America”

U.S. SENATE COMMITTEE ON THE JUDICIARY

**SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS
AND HUMAN RIGHTS**

UNITED STATES SENATE

APRIL 17, 2012

Muslim Advocates submits this statement on racial and religious profiling, which is endorsed by the undersigned American Muslim¹, Arab, Middle Eastern, and South Asian organizations, to the U.S. Senate Judiciary Committee, Subcommittee on the Constitution, Civil Rights and Human Rights. Muslim Advocates commends Chairman Durbin for holding this critical hearing, “Ending Racial Profiling in America” and urges the Committee to take steps to address rampant racial profiling at the federal, state, and local levels, which erodes our nation’s commitment to religious freedom and equal protection under the law.

Muslim Advocates (www.muslimadvocates.org) is a national legal advocacy and educational organization dedicated to promoting freedom, justice, and equality for all, regardless of faith, using the tools of legal advocacy, policy engagement, and education and by serving as a legal resource to promote the full participation of Muslims in American civic life. Muslim Advocates seeks to protect the founding values of our nation and believes that America can be safe and secure without sacrificing constitutional rights and protections.

Law enforcement has a solemn responsibility to protect the American people consistent with the rights and protections guaranteed by the Constitution to *all* Americans, regardless of race, religion, or ethnicity. And Congress must ensure that they do so.

American Muslims, who number about six million today, are an important and vital part of our nation and its history. The first Muslims arrived in America on slave ships from Africa. Over time, some Americans have converted to Islam, and other Muslims have come as immigrants. American Muslims serve our country as lawyers, teachers, police and firefighters, members of the armed forces, and even as members of Congress. Their research and innovation adds to the progress of our nation in science, medicine, business, and technology.

American Muslims have also embraced our nation’s promise of life, liberty and the pursuit of happiness. But since 9/11, these hopes and dreams have been jeopardized, and fundamental rights infringed. Today, American Muslims face government discrimination in their everyday lives – whether they enter a mosque to pray, get on a plane, cross the border, or log onto the Internet. They worry that they will be interrogated by government agents, or worse, arrested and detained, for no reason at all. Our nation has not seen such widespread abuse, discrimination and harassment by federal law enforcement since the J. Edgar Hoover era.

American Muslims are also affected by biased policing practices at the state and local levels. African-Americans and Latinos, some of whom are Muslim, are unfairly targeted for stops by law enforcement when driving or walking down the street. The New York Police Department recently released arrest data showing that stops and frisks of African-Americans and Latinos remain at disproportionate levels, reminding us that

¹ “American” includes all persons who enjoy the protections of the U.S. Constitution by being physically present or residing in the United States, regardless of citizenship status.

racial profiling remains an urgent challenge.² In 2010, the state of Arizona enacted a law that requires state and local police to demand proof of immigration status, raising fears of discriminatory policing. At the state, local, and federal levels, racial profiling is wrong and counter-productive and must end.

The need for congressional attention to racial and religious profiling has never been more urgent. This statement will describe the experiences of American Muslim, Arab, Middle Eastern, and South Asians who have been targeted by law enforcement based on their faith for questioning, searches, and surveillance. This statement will conclude with recommendations of steps Congress should take to end racial and religious profiling in America today.

I. Discriminatory Law Enforcement Practices Targeting American Muslims

A. Biased Training Materials Used by the Federal Government

Federal law enforcement agencies have used bigoted, false, and highly offensive materials to train their employees and agents. While recent news reports have highlighted the FBI's use of biased experts and training materials, this problem extends far beyond the FBI and has infected other government agencies, including the U.S. Attorney's Anti-Terrorism Advisory Councils, the U.S. Department of Homeland Security, and the U.S. Army.

One of the most disturbing revelations is that FBI training documents and materials equate traditional religious practices and beliefs with a propensity to commit violence, a disturbing demonstration of the agency's culture of suspicion directed at American Muslims. For example, a 2006 FBI intelligence report states that individuals who convert to Islam are on the path to becoming "Homegrown Islamic Extremists," if they "[wear] traditional Muslim attire . . . [grow] facial hair . . . frequent[ly] [attend] . . . a mosque or prayer group . . . [or] travel to a Muslim country."³ A January 2009 powerpoint presentation by the FBI's Law Enforcement Communications Unit, which trains new recruits, states that Islam is a religion that "transforms [a] country's culture into 7th-century Arabian ways."⁴ As recently as September 1, 2011, mandatory orientation material for all 4,400 members of the FBI's Joint Terrorism Task Force (JTTF) stated that "Sunni [Muslim] core doctrine and end state have remained the same and they continue to strive for Sunni Islamic domination of the world to prove a key Quranic assertion that no system of government or religion on earth can match the Quran's purity and effectiveness for paving the road to God."⁵

² See "New York Minorities More Likely to Be Frisked," Al Baker, *The New York Times*, May 12, 2010, available at: <http://www.nytimes.com/2010/05/13/nyregion/13frisk.html>.

³ "New Evidence of Anti-Islam Bias Underscores Deep Challenges for FBI's Reform Pledge," Spencer Ackerman, *Wired Magazine*, Sept. 23, 2011, available at: <http://www.wired.com/dangerroom/2011/09/fbi-islam-domination/all/1>.

⁴ "FBI 'Islam 101' Guide Depicted Muslims as 7th-Century Simpletons," Spencer Ackerman, *Wired Magazine*, July 27, 2011, available at: <http://www.wired.com/dangerroom/2011/07/fbi-islam-101-guide/>.

⁵ Ackerman, *supra* note 3.

The FBI has yet to address this problem directly and comprehensively. The FBI recently completed a review of its training materials regarding Islam and Muslims, where it identified more than 392 presentations containing 876 individual documents that would no longer be used by the agency to train its employees. The review of agency materials, however, did not include an assessment of intelligence products, intelligence documents owned in part by other federal agencies, or any other document not classified as a “training material.” For example, the 2006 FBI intelligence report “The Radicalization Process: From Conversion to Jihad” continues to be in circulation.⁶ The report states that individuals who convert to Islam are on the path to becoming “Homegrown Islamic Extremists,” if they exhibit any of the following behavior:⁷

- *“Wearing traditional Muslim attire”*
- *“Growing facial hair”*
- *“Frequent attendance at a mosque or a prayer group”*
- *“Travel to a Muslim country”*
- *“Increased activity in a pro-Muslim social group or political cause.”*

Given that millions of American Muslims engage in some or all of the above-mentioned activities, the report clearly frames routine religious practices as indicators of extremism. This runs contrary to the FBI’s expressed commitment to upholding constitutional values, and to refrain from equating “strong religious beliefs . . . with violent extremism.”⁸ Factual errors and bigoted views about a religious group have no place in any government document used to guide or train law enforcement officers. Any meaningful resolution to this problem must encompass a thorough review of *all* such material, regardless of whether the FBI categorizes the offensive document as a training product.

Furthermore, despite the enormous number of bigoted training materials promoted by the agency, there has been little accountability for FBI actions. To date, FBI Director Mueller has not (1) committed to retrain FBI personnel who viewed the offensive training materials; (2) formally reprimanded, demoted, or fired any employee responsible for producing the material; nor (3) committed to making public all training materials currently in circulation or produced in the future. Without these steps, the public does not have assurance that biased agents are no longer being used or cultivated by the FBI.

B. FBI Discriminatory Surveillance and Mapping

The use of bigoted trainers and materials is not only highly offensive, disparaging the faith of millions of Americans, but leads to biased policing that targets individuals

⁶ See FED. BUREAU OF INVESTIGATION, INTELLIGENCE ASSESSMENT, THE RADICALIZATION PROCESS: FROM CONVERSION TO JIHAD (May 2006).

⁷ Ackerman, *supra* note 3.

⁸ Press Release, Fed. Bureau of Investigation, Response to Media Reporting Regarding Counterterrorism Training (Sept. 15, 2011).

and communities based on religion, not evidence of wrongdoing.

Since September 11, 2001, American Muslims have been frequently approached by FBI agents for uninvited questioning at their homes and workplace and asked personal questions about their family, friends, and community acquaintances. These so-called “voluntary” interviews not only intimidate, but also cast suspicion over community members and jeopardize their personal and professional relationships. Some individuals are coerced into becoming informants in order to avoid prosecution or deprivation of immigration benefits.

In 2008, the FBI began codifying these changes in its practices. The FBI’s Domestic Investigative Operational Guidelines (“DIOG”)⁹ now authorizes massive data gathering based on troubling assumptions and stereotypes about minority and ethnic communities.¹⁰ While it bars investigative activities based “*solely* on the exercise of First Amendment rights or on the race, ethnicity, national origin, or religion”¹¹ (emphasis added), it allows investigative activities based partially on these factors.¹² The DIOG authorizes the FBI to “identify locations of concentrated ethnic communities in the Field Office’s domain, if these locations will reasonably aid in the analysis of potential threats and vulnerabilities . . . [s]imilarly, the locations of ethnically-oriented businesses and other facilities may be collected”¹³ In this way, the DIOG authorizes the collection of racial and ethnic demographic data and cultural and behavioral information about racial and ethnic communities, *not individualized suspicion of criminal activity or threats to national security*. This can only be classified as racial, ethnic, and religious profiling.

The Attorney General Guidelines (“AG Guidelines”), which were most recently modified by then-Attorney General Mukasey in 2008,¹⁴ have also expanded the FBI’s scope of domestic intelligence gathering, allowing agents to conduct “assessments” to gather information on individuals without a shred of evidence or any factual basis for suspected wrongdoing. The ease with which FBI agents can now conduct these broad assessments is compounded by the intrusive information-collecting techniques they can utilize in this phase. Agents and informants are allowed to attend meetings and events secretly; to conduct pretext interviews with people while hiding their true identity; and to engage in indefinite physical surveillance of homes, offices, and individuals.¹⁵ This means that law-abiding individuals and organizations across the country are subject to surveillance based on no more than their membership in what should be a constitutionally protected class. The AG Guidelines and DIOG, therefore, starkly illustrate the existence

⁹ U.S. Dep’t of Justice, Federal Bureau of Investigation, Domestic Investigations and Operations Guide, [hereinafter “DIOG”].

¹⁰ DIOG.

¹¹ DIOG at §§ 3, 5.1.

¹² DIOG at § 5.3; *See also* BRENNAN CENTER FOR JUSTICE, DOMESTIC INTELLIGENCE: NEW POWERS, NEW RISKS, at 27 (2011). [hereinafter BRENNAN CENTER].

¹³ DIOG § 4.3(C).

¹⁴ Michael B. Mukasey, U.S. Dep’t Of Justice, The Attorney General’s Guidelines For Domestic FBI Operations § II(B)(4)(a)(i) [hereinafter “Mukasey Guidelines”], available at <http://www.justice.gov/ag/readingroom/guidelines.pdf>.

¹⁵ *See* BRENNAN CENTER at 25.

of a federal intelligence-gathering apparatus that targets racial, ethnic, cultural, and religious behavior as an indicator of future criminal activity. The net result is the creation of a climate of fear and apprehension among the Muslim community.

Official documents obtained by Freedom of Information Act (“FOIA”) requests reveal the FBI’s problematic approach to the American Muslim community.¹⁶ One FBI field office memorandum in Detroit, for instance, sheds light on the FBI’s surveillance and information collection in that area: “because Michigan has a large Middle-Eastern and Muslim population, it is prime territory for attempted radicalization and recruitment by . . . terrorist groups.”¹⁷

The FOIA documents also uncovered a great deal about the techniques used by the FBI to surveil Muslims throughout the country. In the San Francisco Bay Area, for example, FBI agents have attended community events hosted by Muslim organizations, without invitation, interviewed employees, documented the attendees’ names, personal information, religious and political views, and racial, ethnic, and national origin.¹⁸ These activities have been conducted under the guise of “community outreach”, but documents reveal that the FBI both categorized information about Muslims as “positive intelligence” and distributed it to agencies outside the FBI.¹⁹

It is troubling that information produced through surveillance activities is being used by state law enforcement officers in the FBI’s Joint Terrorism Task Forces (“JTTF”), even though such tactics would be forbidden under local legal standards. The San Francisco Police Department (“SFPD”), for instance, is currently operating under a Memorandum of Understanding with the FBI that ensures that SFPD members participating in the JTTF are bound by federal guidelines previously discussed rather than state Constitutional standards. Consequently, San Francisco residents are subject to questioning and surveillance; mosques and organizations are subject to infiltration and physical surveillance; and community members are being pressured into acting as informants on their friends, families, and acquaintances.²⁰ These activities are occurring in the absence of any individualized suspicion or evidence of wrongdoing, but once again, are based on faith, race, ethnicity, and national origin.

Such activities are a serious threat to our nation’s commitment to religious freedom, equal protection of the law, and the right to be free from government intrusion in the absence of objective evidence to suspect illegal activity or wrongdoing.

¹⁶ See e.g., The ACLU’s Eye on the FBI, available at: <https://www.aclu.org/national-security/eye-fbi-exposing-misconduct-and-abuse-authority>

¹⁷ ACLU Eye On The FBI: “The FBI Is Engaged in Unconstitutional Racial Profiling and Racial ‘Mapping,’” available at: https://www.aclu.org/files/assets/aclu_eye_on_the_fbi_alert_-_fbi_engaged_in_unconstitutional_racial_profiling_and_racial_mapping_0.pdf

¹⁸ *Id.*

¹⁹ ACLU Eye On The FBI: “The San Francisco FBI Conducted A Years-Long Mosque outreach Program that Collected and Illegally stored Intelligence about American Muslims’ First Amendment-Protected Religious Beliefs and Practices,” available at: www.aclu.org/files/assets/aclu_eye_on_the_fbi_-_mosque_outreach_03272012_0.pdf

²⁰ See <http://www.bordc.org/letters/2011-10-03-jttf.pdf>

C. Racial & Religious Profiling at the U.S. Border

American Muslims, and those perceived to be Muslim, have also been subject to a disturbing pattern of questioning and searches by federal agents at the border when returning home from international travel. Without any suspicion of wrongdoing, U.S. Department of Homeland Security (“DHS”) Customs and Border Protection (“CBP”) officers are questioning U.S. citizens and legal residents who are Muslim, or appear to be Muslim, about their religious and political beliefs, and religious associations, practices and charitable activities protected by the First Amendment and federal law. Questions include asking persons their religion, which mosque they attend, how frequently they pray, whether they recruit people for Islam, what they think about the war in Iraq, and to which charities they contribute.²¹

While the government has a legitimate interest in verifying the identity of those entering the country and that they do not pose a security threat, questions about religious and political beliefs are irrelevant to these concerns. Targeting a religious community for these kinds of questions harms our national interest by wasting scarce government resources, generating false leads, and eroding the trust of religious and ethnic communities in law enforcement and government.²² Questions by federal law enforcement officials about religious and political ideology also send Americans the message that certain beliefs are not welcome in this country.

Muslims who are questioned about their First Amendment-protected beliefs, activities, practices, and associations at the border understandably fear that their responses will be used to target them unjustly for future law enforcement attention. Consequently, American Muslims feel chilled from exercising the rights guaranteed to all Americans by the Constitution: the freedom to pray, express oneself, associate with others, and travel, free of government scrutiny.

Unfortunately, CBP’s official policy on the issue of overbroad interviews targeting religious and political beliefs is unclear. The agency has not publicly released any information about the authorized scope of questioning and whether internal constraints and accountability mechanisms exist to prevent First Amendment infringements. In response to hundreds of complaints about profiling at the border, DHS’ Office of Civil Rights and Civil Liberties (“CRCL”) began conducting an investigation. Meanwhile, the detention, harassment, and interrogation of American Muslims based on their faith, ethnicity, race, and national origin continues unabated.

American Muslims are also targeted at the border for invasive searches of their person and belongings, including electronic devices, without any individualized suspicion of wrongdoing. CBP agents look through pictures on digital cameras, documents on computers, and contacts and information in cell phones, Blackberries and iPhones. CBP

²¹ See MUSLIM ADVOCATES, UNREASONABLE INTRUSIONS: INVESTIGATING THE POLITICS, FAITH, & FINANCES OF AMERICANS RETURNING HOME 6-7 (2009) [hereinafter MUSLIM ADVOCATES].

²² *Id.* at 7-8.

asserts that they have the authority to seize these devices, including the data contained within the devices, without probable cause. The invasive nature of these searches – and the ability of the government to target individuals without actual suspicion of wrongdoing – highlights the broad, abusive power being asserted by CBP agents.

Despite repeated requests to DHS by Muslim Advocates and other civil rights organizations to disclose CBP’s policies for selecting individuals for secondary searches, DHS has not made public policies or procedures that could shed light on the extent to which individuals are being targeted based on their race, religion, ethnicity or national origin.

D. Discriminatory Policing by Local Law Enforcement: The New York Police Department

Using methods chillingly similar to those of the FBI, the New York Police Department’s (“NYPD”) blanket surveillance of Muslim community members and organizations throughout the northeast – based on race, ethnicity and religious beliefs, not based on individualized suspicion of wrongdoing – is well-documented.

In August 2011, the Associated Press (“AP”) began releasing a series of investigative reports about the NYPD’s intelligence gathering program specifically targeting the Muslim community, and the CIA’s involvement in that effort.²³ The NYPD was exposed as targeting the entire Muslim community – and approximately 250 mosques, schools, and businesses – without any evidence of wrongdoing.²⁴ As part of ethnic mapping programs throughout the city, the NYPD targets Muslim neighborhoods, maintains a list of “ancestries of interest,” and receives daily reports from informants who visit cafes and clubs to collect information about Muslim patrons.²⁵

The NYPD’s improper targeting of innocent Muslims is compounded by its use during officer trainings of *The Third Jihad*, a film containing offensive, inflammatory and inaccurate depictions of Muslims as violent and seeking world domination.²⁶ Though the NYPD assured the public that the film had only been shown “a few times” to some officers,²⁷ that claim was later revealed to be false when documents proved that it was played for three months, viewed by almost 1,500 officers, and its producers conducted a ninety-minute interview with NYPD Chief Commissioner Ray Kelly.²⁸

²³ “What’s the CIA Doing At NYPD? Depends Whom You Ask,” Apuzzo & Goldman, *Associated Press*, Oct 17, 2011, available at: http://www.ap.org/pages/about/whatsnew/wn_101711a.html

²⁴ Associated Press’ reporting on NYPD Intelligence Operations, available at: <http://www.ap.org/nypd/>

²⁵ “Inside the Spy Unit That Doesn’t Exist,” Apuzzo & Goldman, *Associated Press*, Aug 31, 2011, available at: http://www.ap.org/FOI/foi_083111c.htm

²⁶ “New York NYPD Cops’ Training Included an Anti-Muslim Horror Flick,” Tom Robbins, *Village Voice* Jan 19, 2011, available at: <http://www.villagevoice.com/content/printVersion/2337684/>

²⁷ “In Shift, Police Say Leader Helped with Anti-Islam Film and Now Regrets It,” Michael Powell, *The New York Times*, Jan 24, 2012, available at: <http://www.nytimes.com/2012/01/25/nyregion/police-commissioner-kelly-helped-with-anti-islam-film-and-regrets-it.html?scp=1&sq=kelly%20third%20jihad&st=cse>

²⁸ *Id.*

The enormity of the NYPD's baseless and blanket surveillance operations, which cast suspicion on an entire faith community, and Commissioner Kelly's own participation in an interview for an offensive and hateful film about Muslims, paint a disturbing picture of NYPD attitudes regarding Muslims. Such measures are merely the latest in the well-documented history of NYPD's targeting communities of color through discriminatory policing practices, which are a threat to the rights of all Americans. Allowing this surveillance to continue sends the message that law enforcement is not accountable for upholding the right of all Americans to be free from unwarranted police scrutiny.

Attempts at seeking public accountability for the NYPD have been unsuccessful. With Governor Andrew Cuomo's support,²⁹ New York State Attorney General Eric Schneiderman recently declined to pursue an investigation,³⁰ and Mayor Michael Bloomberg has repeatedly defended the NYPD's monitoring of Muslims as legal and constitutional.³¹ In contrast, U.S. Representative Rush Holt (D-NJ)³², thirty-four other Members of the House,³³ and Senator Robert Menendez requested a U.S. Department of Justice investigation of the NYPD.³⁴ In addition, a coalition of over 115 civil rights, faith, community, and civic groups sent a joint letter to the Attorney General asking for the same.³⁵ Despite these requests, the Civil Rights Division has not announced an investigation.

II. Conclusion & Recommendations

Racial, ethnic and religious profiling is a rampant problem in America today. As a result, vulnerable communities live in constant fear of being targeted, stopped, questioned, harassed, and monitored by state and federal law enforcement on the basis of their faith, race, ethnicity, and national origin. To combat this problem, Muslim Advocates makes the following recommendations:

- 1) Muslim Advocates urges Congress to enact the End Racial Profiling Act (S. 1670 /H.R. 3618) introduced by Congressman Conyers and Senator Cardin. ERPA would:

²⁹ "Governor Cuomo Refuses to 'Second Guess' NYPD or Schneiderman," Glenn Blain, *New York Daily News*, Feb 27, 2012, available at: <http://www.nydailynews.com/blogs/dailypolitics/2012/02/cuomo-refuses-to-second-guess-nypd-or-schneiderman>

³⁰ "Bloomberg: NYPD Muslim Monitoring Was Legal," *NBC New York*, Feb 24, 2012, available at: <http://www.nbcnewyork.com/news/local/Mayor-Bloomberg-NYPD-Muslim-Spy-Surveillance-140293933.html>

³¹ *Id.*

³² Representative Rush Holt Letter to Attorney General Eric Holder, Sept. 13, 2011, available on request.

³³ Letter to Attorney General Eric Holder, Dec. 20, 2011, available at: <http://capac.chu.house.gov/media/Letter%20to%20DOJ%20on%20NYPD.pdf>

³⁴ "Menendez Calls on Holder, Petraeus To Investigate Reports of NYPD Monitoring Muslim Communities, Students," Feb 23, 2012, available at:

<http://menendez.senate.gov/newsroom/press/release/?id=51c09404-5242-492f-a403-1c01ec03b537>

³⁵ Coalition Letter, available at:

<http://www.muslimadvocates.org/Letter%20to%20Holder%20re%20%20NYPD%20FINAL.pdf>

- Ban racial, ethnic, religious and national origin profiling by federal, state and local law enforcement;
 - Require training of federal, state and local law enforcement, to ensure that discriminatory policing does not take place;
 - Establish an effective redress mechanism for those aggrieved, to ensure accountability;
 - Require federal, state and local law enforcement to collect data on stops, interviews and all investigatory activities to allow the agency and the public to monitor whether racial, ethnic and religious profiling is taking place; and
 - Require the Attorney General to report to Congress on the implementation of such a law.
- 2) Muslim Advocates urges members of Congress to ask U.S. Attorney General Holder to fulfill his commitment to reforming the *Guidance Banning Racial Profiling by Federal Law Enforcement Agencies* of 2003. The Guidance should be modified to:
- Include religion and national origin as protected classes;
 - Remove the national security and border integrity exceptions, since there are no such exceptions to the application of the Equal Protection and Free Exercise Clauses of the U.S. Constitution;
 - Explicitly state that the ban on racial, ethnic, religious and national origin profiling applies to intelligence activities carried out by law enforcement agencies subject to the Guidance;
 - Ensure that it is enforceable and that law enforcement agencies are held accountable for any violations; and
 - Apply to state or local law enforcement agencies working in cooperation with federal agencies or receiving federal financial assistance, including grants, training, use of equipment, donations of surplus property, and other assistance.
- 3) Muslim Advocates urges Congress to conduct oversight and enact legislation, such as the Travelers Privacy Protection Act, that includes:
- Suspicion standards to limit arbitrary scrutiny by CBP (e.g., requiring reasonable suspicion before allowing a search or intelligence-gathering interrogation; probable cause before seizing an electronic device or copying data from it);
 - Subject matter limits on interrogations, making clear that questions about religious beliefs, political views and associations with lawful persons and organizations are neither legitimate subjects for scrutiny, nor related to security concerns; and
 - Measures to stop, monitor and prevent potential future profiling according to race, religion, ethnicity or national origin, such as demographic data about individuals selected for scrutiny, reporting requirements, a mandated

audit and public report, and a private right of action based on a disparate impact standard.

This Statement is Endorsed by the Following American Muslim, Arab, Middle Eastern and South Asian Organizations:

Asian American Legal Defense and Education Fund (AALDEF)
Association of Muslim American Lawyers (AMAL)
Council of Islamic Organizations of Greater Chicago (CIOGC)
Council of Islamic Organizations of Michigan (CIOM)
Council on American-Islamic Relations (CAIR)
EMERGE-USA
Florida Muslim Bar Association (FMBA)
Georgia Association of Muslim Lawyers (GAML)
Houston Shifa Services Foundation, Inc.
Imam Hussain Islamic Center (IHIC)
Independent Viewpoints
Indian Muslim Relief & Charities
Islamic Center of Greater Cincinnati
Islamic Center of Zahra-SA
Islamic Circle of North America (ICNA)
Muslim Bar Association of Chicago
Muslim Bar Association of New York
Muslim Consultative Network (MCN)
Muslim Peace Coalition USA
Muslims for Peace, Inc.
National Muslim Law Students Association (NMLSA)
National Network for Arab American Communities
Pakistani American Leadership Center (PAL-C)
Pakistan American Public Affairs Committee
South Asian Americans Leading Together (SAALT)
USPAK Foundation
Women in Islam Inc.



STATEMENT OF

Salam Al-Marayati, President

MUSLIM PUBLIC AFFAIRS COUNCIL

Hearing on Ending Racial Profiling in America

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of the Muslim Public Affairs Council (MPAC) regarding today's hearing on racial profiling. We commend the members of the Subcommittee for holding today's hearing, "Ending Racial Profiling in America."

MPAC is a faith based American institution working for the integration of Muslims into American pluralism. To that end, we actively strive to affect policy reforms that uphold core American values and preserve Constitutionally protected freedoms of all Americans. We have done extensive work on ending racial profiling in America. Our position has always been and will continue to be that we are against any and all forms of racial profiling. Any aspect of racial profiling or singling out of minority communities, such as the American Muslim community for scrutiny, is a violation of the Department of Justice's 2003 Guidelines on Racial Profiling. Racial profiling drastically undermines any trust between law enforcement and local communities.



We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. MPAC is particularly concerned about many policies and programs at the national, state and local level which encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Racial Profiling in Our Communities

American Muslims are neither villains nor victims with respect to our political circumstances. They are like any other American group, reaffirming America as home, committed to defending our country against any policy that seeks to weaken the pillars of equality that founded our nation. Like other citizens and organizations, MPAC is concerned with policies that utilize racial profiling as a means to address national security issues. One such piece of legislation is SB 1070 in Arizona which allows local and state law enforcement officers to enforce administrative



immigration law in a blatantly discriminatory way by having officers assess and determine the immigration status of people based simply on suspicion.

American Muslims can certainly sympathize with Latino Americans that are affected by this racially motivated bill. Under the pretext of national security and immigration, American Muslims have already been subject to widespread ethnic and religious profiling. During the 2004 Presidential electoral race, the Department of Homeland Security (DHS) and the Federal Bureau of Investigation (FBI) initiated *Operation Front Line*, where over 2,000 people from Muslim-majority countries were arrested. No one was ever convicted on national security violation or terrorism charges.

More recently, reports of the New York Police Department's (NYPD) counterterrorism efforts were released highlighting their surveillance into American Muslim communities simply based on their faith. Muslim students and their organizations were also spied on by the NYPD in a gross violation and abuse of power. Colleges and universities in the northeast region of the country were affected by the NYPD's surveillance programs on American Muslims.

In fact, policies that target specific communities based on race, ethnicity or religion do more harm than good. In a report released by South Asian Americans Leading Together (SAALT), 73% respondents of Americans of South Asian descent living in New York reported being questioned about their national origin and 66% reported being questioned about their religious affiliation in their interactions with law enforcement. Such suspicion only leads to a lack of trust between minority and law enforcement communities.



Evidence has proven that when communities work as partners with law enforcement, positive results happen. For example, according to MPAC's *Post 9/11 Terrorism Database*, Muslim communities have helped U.S. security officials to prevent nearly 2 out of every 5 al-Qaeda related plots threatening our nation since September 11, 2001. Rather than profiling the American Muslim community simply based on ethnicity or religion, building partnerships based on trust has proven to be beneficial for our nation.

Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color throughout the United States.

MPAC is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the "End Racial Profiling Act (S.1670)" and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.



Thank you again for this opportunity to express the views of the Muslim Public Affairs Council.

We welcome the opportunity for further dialogue and discussion about these important issues.



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TESTIMONY SUBMITTED BY
HILARY O. SHELTON
DIRECTOR, NAACP WASHINGTON BUREAU &
SENIOR VICE PRESIDENT
FOR ADVOCACY AND POLICY

to the

SENATE JUDICIARY COMMITTEE
SUBCOMMITTEE ON THE CONSTITUTION,
CIVIL RIGHTS AND HUMAN RIGHTS

on

“RACIAL PROFILING IN THE UNITED STATES”

April 17, 2012



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on

“RACIAL PROFILING IN THE UNITED STATES”

April 17, 2012

Good morning Chairman Durbin, Senator Cardin, and esteemed Members of the Senate Judiciary Subcommittee. Thank you so much for calling this important hearing and for your consistent and inspiring leadership in the struggle to end racial profiling.

I am submitting this testimony on behalf of the National Association for the Advancement of Colored People, the NAACP. The NAACP currently has more than 2,200 membership units in every state in the country, and I would wager that every NAACP unit has received dozens of complaints of racial profiling in any given year. In fact, many NAACP units report receiving hundreds, if not thousands, of complaints of racial profiling each year. Racial profiling is unconstitutional, socially corrupting and counter-productive to smart and effective law enforcement.

As the Director of the NAACP Washington Bureau, the federal policy and national legislative arm of the NAACP, and the Senior Vice President for Advocacy and Policy, it has been my pleasure to work with the NAACP for almost 17 years, and I can honestly say that ending racial profiling has long been a top NAACP priority for decades.

For the record and to avoid confusion, the operational definition of the term `racial profiling' means the practice of a law enforcement agent or agency relying, to any degree, on race, ethnicity, national origin, or religion in selecting which individual to subject to routine or spontaneous investigatory activities or in deciding upon the scope and substance of law enforcement activity following the initial investigatory procedure, except when there is trustworthy information, relevant to the locality and timeframe, that links a person of a particular race, ethnicity, national origin, or religion to an identified criminal incident or scheme. In other words, racial profiling occurs when any law enforcement representative uses one of the pretextual characteristics stated above

when determining who they will investigate, arrest, question or detain without acceptable cause.

Sadly, racial profiling is being used, even today, at all levels of law enforcement: local, state and federal agents have all been shown to use racial profiling as a damaging and unnecessary means and tool of policing. As a matter of fact, it has been determined that even some community based citizens' watch groups associated with official law enforcement agencies have resorted to the practice. The fact that racial profiling is still a common tactic among so many law enforcement agencies is, frankly, startling, given that it has been proven to be an inefficient, offensive, counter-productive and illegal law enforcement tool.

To add further concern, the use of racial profiling is increasing as more and more states take stands against illegal immigrants and as local, state and federal authorities contend with the post-September 11 world. Racial profiling against people who appear to be of Hispanic heritage, as well as against Arabs, Muslims, and South Asians has multiplied and been exacerbated by a lack of responsive policy, guidance and education about the damage it causes.

Even at the most global level, the United Nations' Committee on the Elimination of Racial Discrimination highlighted the importance of combating racial profiling in its General Comment on combating racism in the administration of the criminal justice system from August, 2005.¹ Domestically, the continued use of racial profiling has, sadly and unfortunately, undercut our communities' trust and faith in the integrity of the American judicial system.

The racially discriminatory practice of racial profiling must be challenged when we find that Americans cannot drive down an interstate, walk down the street, work, pray, shop, travel or even enter into our own homes without being detained for questioning by law enforcement agents merely because of suspicion generated by the color of our skin and other physical characteristics. Racial profiling leads to entire communities losing confidence and trust in the very men and women who are meant to be protecting and serving them. As a result of racial profiling practices, it becomes much harder for law enforcement, even those who do not engage in racial profiling, to do their jobs to prevent, investigate, prosecute or solve crimes.

Evidence to support the prevalence of racial profiling by law enforcement officials is as voluminous as it is varied: According to a 2004 report by Amnesty International USA, approximately thirty-two million Americans, a number equivalent to the population of Canada, report they have already been victims of racial profiling².

Furthermore, prominent people speaking out against racial profiling include former Presidents Bill Clinton, who called racial profiling "morally indefensible, deeply

¹ CERD Gen. Rec. No. XXXI, §III(A)¶20, 71st sess., U.N. Doc. A/60/18 (Aug. 17, 2005)

² Amnesty International USA, "Threat and Humiliation: Racial Profiling, National Security, and Human Rights in the United States" October, 2004, available at http://www.amnestyusa.org/racial_profiling/report/rp_report.pdf

corrosive practice” and further stated that “racial profiling is in fact the opposite of good police work, where actions are based on hard facts, not stereotypes. It is wrong, it is destructive, and it must stop.”³ and George W. Bush, who on February 27, 2001, said that racial profiling is ...”wrong, and we will end it in America. In so doing, we will not hinder the work of our nation's brave police officers. They protect us every day -- often at great risk. But by stopping the abuses of a few, we will add to the public confidence our police officers earn and deserve.”⁴

It has become frustratingly clear that all too often, elected officials at the local, state and federal level are willing to “talk the talk” about the numerous ills of racial profiling, but shamefully only a few are actually demonstrating the courage to do something about it.

At the federal level, effective anti-racial profiling legislation has been introduced in the House and the Senate since 1997, and numerous hearings have been held, but to date no action has been taken. The response of state legislatures to evidence of racial profiling by law enforcement agencies has been, according to the American Civil Liberties Union, “with a few exceptions, inaction and a series of half measures.”⁵

It is clear that more can and must be done to eliminate racial profiling. The NAACP strongly supports S. 1670 / H.R. 3618, the *End Racial Profiling Act*. This legislation provides us with a data-based approach to tackle what is still a pervasive problem.

First, the *End Racial Profiling Act* provides us with a clear and effective definition of what is racial profiling as well as an unambiguous and unequivocal ban on its use by all law enforcement officials.

Second, the *End Racial Profiling Act* requires the collection of the data we need to truly assess the extent of the problem. In simple terms, “in order to fix it, you must first measure it”. The only way to move the discussion about racial profiling from rhetoric and accusation to a more insightful and rational dialogue and appropriate with enforcement strategies is to collect the information that will either allay community concerns about the activities of the police or help communities ascertain the scope and magnitude of the problem. Furthermore, implementing a data collection system also sends a clear message to the entire police community, as well as to the larger community, that racial profiling is inconsistent with effective policing and equal protection.

If it is done right, data collection will also lead to the third element of an effective anti-racial profiling agenda, an element that would be mandated by the *End Racial Profiling Act*: training. Law enforcement officials at all levels, from the unit commander to the

³ *Attorney General's Conference on Strengthening Police-Community Relationships, Report on the Proceedings*, Washington, DC: U.S. Department of Justice, June 9–10, 1999, at 22–23.

⁴ Address to a Joint Session of Congress, February 27, 2001, President George W. Bush

⁵ “*The Persistence of Racial and Ethnic Profiling in the United States, A Follow-Up Report to the U.N. Committee on the Elimination of Racial Discrimination*,” published by the American Civil Liberties Union and the Rights Working Group, August 2009, page 40.

desk sergeant to the cop-on-the beat and of all jurisdictions, from federal agents to state and local police, should all be required to be able to not only identify racial profiling, but also to know of its shortcomings and be able to put an end to it while increasing their effectiveness in protecting our communities and our Nation.

Fourth, and last, the *End Racial Profiling Act* would enable citizens and the government alike to hold law enforcement agencies that continue to use racial profiling accountable. In order for anti-racial profiling actions to be effective, and rebuild the trust between law enforcement and the communities they are charged with protecting, people must know that we are serious about eliminating the scourge of racial profiling.

We are all aware that the Constitution of the United States guarantees to all people equal protection under the law and the right to pursue life, liberty and happiness. Implicit in this guarantee is the ability to walk down the street, to drive one's car down the road, or to enter into our own homes without fear of arrest or interference.

The majority of law enforcement officers are hard working men and women, whose concern for the safety of those they are charged with protecting is often paramount, even when their own safety is on the line. However, if and when even one of their colleagues engages in racial profiling, whether it be conscious or subconscious, the trust of the entire community can be, and will be, lost. Law enforcement agents should not endorse or act upon stereotypes, attitudes, or beliefs that a person's race, ethnicity, appearance or national origin increases that person's general propensity to act unlawfully.

Not only is racial profiling morally wrong, and ineffective, but it is also a misuse of government resources and detrimental to effective policing. The concept that we must somehow choose between public safety and the protection of our civil rights is misguided, at best not to mention grossly and woefully unconstitutional. There is no tradeoff between effective law enforcement and protection of the civil rights of all Americans; we can and must have both.

Thank you again, Chairman Durbin for holding this important hearing and for soliciting the thoughts of the NAACP and for your continued leadership in this area.



*National Action Network
Reverend Al Sharpton, President and Founder
Reverend Dr. W. Franklyn Richardson, Chairman
Tamika Mallory, National Executive Director*

Testimony in Support of S. 1670 / H.R. 3618, the End Racial Profiling Act

Submitted by National Action Network

The National Action Network (“NAN”), a leading civil rights organization that fights for one standard of justice, decency and equal opportunities for all people regardless of race, religion, national origin, and gender, supports the hearing and the proposed legislation that will make it illegal for law enforcement agencies to target an individual based solely on race or religion.

We applaud Senator Dick Durbin and members of the Senate Judiciary Subcommittee on Constitution, Civil Rights and Human Rights for hosting this hearing on racial profiling. We hope that everyone takes note of this hearing and realize how prevalent racial profiling is in minority communities. Racial profiling has once again become a national topic with state immigration laws passed in Alabama and Arizona, and most recently, the tragic death of Trayvon Martin, where an overzealous neighborhood watchman shot and killed a young black male after he racially profiled the victim. We are pleased that the United States Congress is taking a serious look at racial profiling surrounding state immigration laws and law enforcement targeting African-Americans. The “End Racial Profiling Act of 2011” which is co-sponsored by Senator Durbin, is an important piece of legislation that could help eliminate racial profiling. The proposed legislation will prohibit law enforcement agencies from engaging in racial profiling. If passed the legislation will allow individuals injured by racial profiling the ability to bring a civil action seeking declaratory or injunctive relief in State or Federal court. Additionally, the legislation will create training programs to prevent racial profiling, revoke existing policies and practices that promote racial profiling, and create procedures on receiving and responding to allegations of racial profiling. Some states have enacted legislation which prohibits racial profiling by their law enforcement officials; however there should be federal oversight to a matter that is rampant across the country.



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The fight to end racial profiling by law enforcement officials has long been a top priority for NAN. In 1998, NAN along with Attorney Johnnie L. Cochran, Jr., helped make racial profiling a national issue. NAN's action of fighting against the state of New Jersey, where four African American basketball players were racially targeted and shot by two New Jersey state troopers, successfully led to the implementation of racial profiling laws. Throughout the years we have continued to fight against racial profiling in cases such as Amadou Diallo and Sean Bell. In March, we marched in Alabama to fight the state's immigration laws. Racial profiling is still common practice in minority communities and continues to be a problem across the United States as shown by the unwarranted practice of "stop and frisk" without appropriate reasonable suspicion which occurs to our black youths in New York City. NAN is tired of seeing minorities victimized by racial profiling and we need to make sure that this issue is not swept under the rug and continue to fight for equal justice for all.

The practice of racial profiling infringes on individuals' personal rights and freedoms. Racial profiling completely undermines the United States Constitution guaranteeing equal rights for all, as well as, the legal principle that this country stands on, "innocent until proven guilty". The fact that law enforcement officers can use a person's race to harass an individual is deplorable. Racial profiling is a vile tactic used by law enforcement to determine who they will spontaneously stop, question, and frisk in regards to criminal activity, and disproportionately is used against the African American community. This behavior ultimately has led to the inherent distrust that our community has with law enforcement. This lack of trust not only hurts African American communities, it hurts the entire criminal justice system. It is unfortunate that in 2012, people fear that they cannot leave their homes and walk or drive down the street without being a victim of racial profiling. Additionally, the behavior of certain law enforcement officials to racially profile affects those officers who do not profile. We have no idea who to trust, which leads us to be suspicious and less trusting of all law enforcement. Recently, other minority communities have been targeted. New laws in states like Arizona and Alabama give law enforcement legal grounds



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to openly discriminate against Latino populations. Having the ability to stop a person who is Latino and/or looks like an immigrant and ask to see their “papers” is a condemning practice that is unacceptable. This cannot continue!

Thank you Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights for holding this hearing and allowing the National Action Network to submit this testimony.

STATEMENT OF

Tina Matsuoka, Executive Director

National Asian Pacific American Bar Association

Hearing on “Ending Racial Profiling in America”

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham, and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of the National Asian Pacific American Bar Association (NAPABA), regarding today’s hearing entitled “Ending Racial Profiling in America.”

NAPABA is the national association of Asian Pacific American attorneys, judges, law professors, and law students. NAPABA represents the interests of over 40,000 attorneys and more than 60 local Asian Pacific American bar associations, whose members work variously in solo practices, large firms, corporations, legal services organizations, non-profit organizations, law schools, and government agencies. Since its inception in 1988, NAPABA has served as the national voice for Asian Pacific Americans in the legal profession and has promoted justice, equity, and opportunity for Asian Pacific Americans. NAPABA opposes racial and religious profiling because it is an ineffective law enforcement practice that profoundly affects Asian Pacific Americans and other minority communities throughout our nation.

First, I would like to thank the Subcommittee on the Constitution on the Constitution, Civil Rights and Human Rights for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act (ERPA), and thank Chairman Durbin for his leadership on this issue.

My organization is concerned about the many policies and programs at the national, state, and local levels that encourage or incentivize racial profiling by law enforcement. We believe that these practices are not only ineffective in achieving their goals, but are also counterproductive and wasteful of public resources, and that such practices actually undermine public safety and erode trust in law enforcement officials. Moreover, racial profiling violates constitutional guarantees of freedom against unreasonable searches and seizures, the right to due process, and the right to equal protection. NAPABA does not believe that anyone in our country should be subjected to heightened police scrutiny or be burdened with a presumption of illegality on the basis of their perceived “foreignness” in appearance or name.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest, or detain, except where these characteristics are a legitimate part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin, or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of national security, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong.

Unfortunately, the Asian Pacific American community is all too familiar with the horrendous damage racial profiling causes. Throughout American history, the Asian Pacific American community has been subjected to racial profiling, most notoriously during World War II with the internment of Japanese Americans. Asian Pacific Americans have been targeted for heightened

scrutiny by the government based on the perceived “otherness” of members of our community, including because of the race, religion, ethnicity, national origin, and nationality of different members of our community. After 9/11, members of the Asian Pacific American were once again subjected to racial profiling. This iteration of racial profiling against the Asian Pacific American community has included additional searches of travelers, targeted detention and deportation, and surveillance of Arab, Muslim, Sikh, and South Asian Americans by federal, state, and local law enforcement. Local immigration enforcement initiatives, including state laws such as Arizona’s SB1070, Georgia’s HB87, and Alabama’s HB56, have also resulted in racial profiling of Asian Pacific Americans.

The practice of racial profiling by federal, state, and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color throughout the United States. Racial and religious profiling is a pervasive practice that tarnishes the great idea that is America—the land of opportunity—every time that members of racial and religious minority groups are targeted simply because of the color of their skin or the sound of their names.

NAPABA is heartened by the Subcommittee’s leadership in holding this hearing today and we urge the Committee to quickly take concrete actions to prohibit racial profiling at the federal, state, and local levels by:

- Urging Congress to pass the “End Racial Profiling Act (S.1670)” and institute a federal ban on profiling based on race, religion, ethnicity, and national origin at the federal, state, and local levels; and
- Urging the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in

partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of NAPABA. We welcome the opportunity for further dialogue and discussion about these important issues.

Hearing on

"Ending Racial Profiling in America"

Testimony of:

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End Racial Profiling in America

Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

US Senator Richard Durbin (D-IL), Chairman

Chairman Durbin, Ranking Member Graham and members of the Committee, My name is Melvin Wilson. I am a professional social worker and I serve as the Manager of the department of Social Justice and Human Rights at the National Association of Social Workers (NASW) in Washington, DC. I would like to thank you for the opportunity to submit testimony for the record regarding the problem of racial profiling in the United States.

NASW is a professional association that has a current membership of over 145,000 social workers with 56 chapters in all 50 states, as well as New York City, Washington, DC, Puerto Rico, Guam, the Virgin Islands, and internationally. Established in 1955, NASW works to enhance the professional growth and development of its members, to create and maintain professional standards, and to advance sound social policies. NASW, its chapters and individual members are guided by a set of values that include advocating for social justice and human rights for all Americans, especially those who are socially, economically, medically and emotionally vulnerable. For that reason, NASW has consistently taken strong stances on many issues that have an actual or potential negative impact on millions of Americans. Therefore, NASW applauds the Committee for holding this Racial Profiling hearing which is a matter of vital importance to our membership and their social justice focus. While our nation has made significant advances in achieving racial equality, racial profiling is an area where inequality continues.

According to the American Civil Liberties Union, "Racial Profiling" refers to the discriminatory practice by law enforcement officials of targeting individuals for suspicion of crime based on the individual's race, ethnicity, religion or national origin in deciding whom to investigate, arrest, or detain. Criminal profiling, generally, as practiced by police, is the reliance on a group of

characteristics they believe to be associated with crime..(ACLU, <http://www.aclu.org/racial-justice/racial-profiling-definition>) .

Many of you are aware of the controversial “stop and frisk” community policing policies that are in place in New York City. Originally seen as a tool to reduce drug-related street crime, it quickly became apparent that “stop and frisk” disproportionately impacts young African American and Latino males. According to the ACLU, in 2011 685,724 New Yorkers were stopped by the police. Of these, 605,328 were found to be innocent (88 percent); 350,743 were black (53 percent); 223,740 were Latino (34 percent); 61,805 were white (9 percent); and 341,581 were aged 14-24 (51 percent). Of those arrested under this policy, a vast majority was for low-level crimes such as simple possession of marijuana. Based on the disproportionate number of ethnic minorities targeted by “stop and frisk”, it seems clear that young African Americans and Latinos are being racially profiled in cities such as New York City.

Though racial profiling is practiced in many jurisdictions nationwide, it is actually in violation of U.S. laws. For example, the Federal Bureau of Investigation recently arrested several policemen in East Haven, Connecticut for violating U.S. racial profiling laws for targeting Hispanics in that community. Additionally, the U.S. Department of Justice has recently filed suit against Sheriff Joe Arpaio of Maricopa County, Arizona for a pattern of racially profiling Mexican Americans. The U.S. Department of Justice is closely looking at complaints of racial profiling and is willing to use federal anti-racial profiling laws to send a message to states and local jurisdictions that racial profiling will not be tolerated.

It must be pointed out that the individuals who are targets of racial profiling go beyond African Americans and Latinos. After the September 11, 2001 terrorist attacks in the United States, many South Asians, Muslims, Arabs, and Sikhs, as well as other immigrants, were treated with generalized suspicion based on their physical appearance without reliable information linking them to terrorist conduct or affiliation with a terrorist group.

The use of racial profiling, as a tool in law enforcement, is the antithesis of the progress our country has made toward racial equality. While it did not directly involve law enforcement officers, the tragic events that lead to the shooting death of 17 year old Trayvon Martin reinforce the insidious nature of this practice. It is NASW’s position that the practice of racial profiling must end. We believe that each citizen has the basic right to equal protection under the law, regardless of race, ethnicity, religion, or national origin.

In closing, NASW thanks the committee and social workers stand ready to actively work with you on this important issue. Thank you.



Written Statement of the
National Black Caucus of State Legislators

LaKimba B. DeSadier
Executive Director

Hearing on Ending Racial Profiling in America

Senate Committee on the Judiciary, Subcommittee on the
Constitution, Civil Rights, and Human Rights
United States Senate

April 17, 2012



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Chairman Durbin, Ranking Member Graham, and Members of the Subcommittee:

The National Black Caucus of State Legislators (NBCSL) appreciates Chairman Durbin for holding this hearing, and all of the Members of the Subcommittee for participating in the examination of and discussion on racial profiling in America.

NBCSL is a membership association representing over 600 African American legislators from 45 states, the District of Columbia, and the U.S. Virgin Islands. NBCSL members represent more than 50 million Americans from various racial backgrounds. NBCSL monitors federal and state legislation and initiatives and provides this information to its members. Each year, NBCSL members pass policy resolutions that directly impact federal and state policy. The organization focuses on U.S. domestic policy and is committed to policies that positively affect all Americans.

Since 2000, NBCSL has denounced racial profiling by law enforcement officials and expressed extreme concern about the disproportionate number of African Americans and other minorities victimized by this practice. NBCSL policy resolutions ratified by the full body have supported legislative efforts to require peace officer training in order to prevent racial profiling.

In 2002, in the wake of the 9/11 terrorist attacks, NBCSL supported the ACLU of Pennsylvania's definition of terrorism and agreed that any definition of terrorism should neither be too broad nor over-inclusive.¹ In effect, police powers directed at stopping and punishing terrorism should not become vehicles for silencing or punishing legitimate political dissent. NBCSL also encouraged members to propose legislation in their respective state legislatures to devise a legally sound and understandable definition of terrorism that protects the basic civil rights and liberties of all Americans.

Deploying multiple strategies over the past decade, NBCSL members across the country have passed legislation addressing racial profiling. Some states, such as Colorado, require law

enforcement agencies to keep records either temporarily or permanently and publicly report on a variety of community-police encounters in order to determine if there is a problem and monitor any progress.² Other states, like California, mandate cultural sensitivity training for peace officers and/or require officers to provide business cards to those pulled over but not cited or arrested.³ States like Florida, however, explicitly prohibit racial profiling and require some combination of the previous strategies—particularly data collection.⁴

What NBCSL has learned after more than a decade of legislative activism on this issue—in the thousands of conversations our members have shared with humiliated and traumatized constituents attested to by a vast body of evidence of the widespread practice of racial profiling—is that a piecemeal, state-by-state approach is not working. It goes neither far enough nor deep enough to attack this national scourge. For this reason, NBCSL’s recommendations are national in scope, and aim to eradicate racial profiling at its very core.

One of the greatest barriers to eliminating racial profiling is the lack of agreement on what it is. A multitude of definitions exist, which makes it difficult for law enforcement agencies to pinpoint inappropriate assumptions and behavior on the part of their officers; establish baseline metrics; and measure the outcomes of any plan of attack. Here are just a few examples:

- The Department of Justice defines racial profiling as “any police-initiated action that **relies on** the race, ethnicity, or national origin rather than the behavior of an individual or information that leads the police to a particular individual who has been identified as being or having been, engaged in criminal activity.”⁵
- The Government Accountability Office defines racial profiling as “using race as a **key factor** in deciding whether to make a traffic stop.”⁶
- The ACLU defines racial profiling as “the discriminatory practice by law enforcement officials of targeting individuals for suspicion of crime **based on** the individual’s race, ethnicity, religion, or national origin.”⁷

The key to all of the aforementioned definitions is the link to law enforcement officers engaging in adverse actions based on appearance. However, the creation of, and adherence to, a single definition matters. It matters whether an officer believes he has the legal right to use race as a factor *to some degree* in determining whether or not a pedestrian or motorist is suspicious, versus understanding that he cannot use race *to any extent* in determining reasonable suspicion, probable cause, or in making the decision to engage in some law enforcement activity with that individual (outside of fitting the description of a particular suspect). The importance of having clarity on this issue of “the extent to which race can be

used” cannot be overstated. By characterizing racial profiling as using race as a “key factor” or “main factor,” some definitions communicate to officers it is acceptable to use race as a predictive factor, when it is unacceptable to use race at all (again, outside of the specific description of a suspect). Instead, officers must understand how to analyze behavior in deciding whether and how to engage the public.

History of Racial Discrimination in America

Racial profiling in the United States has continued, unabated, for four hundred years. Native Americans, African Americans, Asian Americans, Hispanic Americans, and Muslim Americans (and non-Anglo Saxon Europeans until gaining acceptance as white Americans) have all endured persistent discrimination over the past four centuries. This race-based discrimination could not have been effectively carried out without the official and unofficial assistance of local, state, and federal law enforcement agencies.

According to the U.S. Human Rights Network, a membership organization of several U.S. civil rights and human rights organizations, “Discrimination permeates all aspects of life in the United States, and extends to all communities of color.”⁸ Understanding the historical context of racial profiling will help illuminate its insidious nature.

Historically, Native Americans have suffered grave injustices. Through invasion, massacres, forced displacement, and the imposition of treaties, land was seized and numerous hardships were imposed. Until the 1960s, the U.S. government engaged in policies of forced removal of Native American children from their families and communities into boarding schools run by approved white organizations with the aim of eliminating Native cultures and practices.⁹ Indeed, the widespread abuses in these government-sanctioned schools, including sexual abuse, have been well-documented.¹⁰ A once thriving and numerous people, Native Americans now comprise 2.9 million or 0.9% of the U.S. population.¹¹

Perhaps the most cited display of racial discrimination began with the institution of slavery, during which Africans were enslaved and treated as property. Although President Lincoln issued the Emancipation Proclamation, in which slaves in only the areas of the Confederate States of America that were not under direct control of the U.S. government were declared free, technically, slavery was not abolished throughout the country until the passage of the 13th Amendment in 1865. Discriminatory practices have continued with the existence of Jim Crow laws, systematic acts of terror and violence, voting intimidation and suppression, de jure and de facto segregation, and discrimination in every facet of life, from lending to education.

Asian Americans have suffered racism through several immigration laws. Legal discrimination of Asian minorities began at the outset of nation's founding with the Naturalization Act (1790), which stated that only "free white persons" could become U.S. citizens.¹² During the mid-1800s, the California legislature enacted the Commutation Tax law to discourage Chinese immigration.¹³ In 1853, in *People v. Hall*, the U.S. Supreme Court extended to Chinese people a ban already in place prohibiting blacks and Native Americans from testifying for or against white people.¹⁴ In 1882, Congress passed the Chinese Exclusion Act which later extended to other Asians until 1943. This Act banned the entrance of Asian immigrants into the United States and barred all others from acquiring citizenship.¹⁵ During the Korean War, Asian Americans had their phones tapped and were stopped on the street and questioned.¹⁶ During World War II, the United States forced thousands of law-abiding Japanese families from their homes and into newly established internment camps where many died from poor and unsanitary conditions.¹⁷ Throughout American history, Asians were evicted from their land, barred from attending public school or unfairly expelled from school, banned from owning or inheriting property, had property confiscated, forced to work in unsafe conditions, barred from owning real estate or business licenses, and even whipped and murdered.

Hispanic Americans have also endured hundreds of years of racism. After the Mexican-American War, the U.S. annexed approximately 55% of Mexico in what is currently the West and Southwest (CA, NV, UT, NM, AZ, TX and parts of CO, WY, OK, and KS). Not only were the Mexicans-turned U.S. citizens' land claims dismissed in violation of the Treaty of Hidalgo, these new citizens faced great discrimination and violence.¹⁸ Mexican Americans were lynched at a rate of 27.4 per 100,000 of the population 1880-1930, and, 1848-1879, Mexican Americans were lynched at an unprecedented rate of 473 per 100,000 of the population.¹⁹ Fully three generations later, during the Great Depression, the government sponsored a Mexican Repatriation program, which encouraged Mexican Americans to move back to Mexico; although during this time, many were deported against their will.²⁰ Operation Wetback began in California and Arizona in 1954 and coordinated 1,075 Border Patrol agents, along with state and local police agencies. The agents used broad brush criteria for interrogating potential aliens. Tactics included going house to house in Mexican American neighborhoods and conducting citizenship checks during standard traffic stops. They also adopted the practice of stopping "Mexican-looking" citizens on the street and asking for identification. In some cases, illegal immigrants were deported along with their American-born children, who were, by law, U.S. citizens.²¹

This collective history shows us that color has played a paramount role in legislation, law enforcement, and violence. Throughout history, legislation and court decisions have reinforced discriminatory conduct on the basis of race, while simultaneously trying to remedy acts of racism and discrimination.

Actions by the Federal Government to Remedy Acts of Racism and Discrimination

The 14th Amendment greatly expanded the protection of civil rights to all Americans and is cited in more litigation than any other amendment. The 14th Amendment to the Constitution, ratified July 9, 1868, granted citizenship to “all persons born or naturalized in the United States. In addition, the Amendment forbids states from denying any person “life, liberty, or property without due process of the law” or to “deny to any person within its jurisdiction the equal protection of the laws.”

In regards to race-based legislation, the modern era of hate-crime legislation began in 1968 with the passage of the Civil Rights Act, which made it illegal to “by force or by threat of force, injure, intimidate, or interfere with anyone who is engaged in six specified protected activities, by reason of their race, color, religion, or national origin.”²² Federal laws and some state laws have extended the law to protect sex, disability, sexual orientation, age, and marital status.

At the federal level, promising anti-racial profiling legislation has been introduced in the House and Senate since 1997, and hearings have been held, but to date no action has been taken. This can and must change.

Recent Acts of Racial Discrimination

One of the core principles of the Fourth Amendment is that the police cannot stop and detain an individual without probable cause, or at least reasonable suspicion. Relatively recent U.S. Supreme Court decisions, however, allow police to use traffic stops as a pretext in order to “fish” for evidence of criminal activity.²³ Both anecdotal and quantitative data show that, nationally, the police have exercised this discretionary power primarily against African Americans, Latinos, and Muslims.^{24,25}

Examples of Disparate Treatment for Police Stops

In a 2008 report released by the ACLU of Arizona analyzing the first year of Arizona traffic stop data, the data confirmed the prevalence of racial profiling in the state, revealing that black and Latino drivers were 2.5 times more likely than white drivers to be searched after being stopped by the highway patrol, and Native American drivers were 3.25 times more likely to be searched, even though they were less likely to be found with contraband.²⁶

Minority groups, including African Americans, Latinos, and Middle Easterners, were consistently stopped for longer periods of time than whites.²⁷

In 2008, the ACLU of Southern California released analysis prepared by Professor Ian Ayres, of the data collected from the Los Angeles Police Department (LAPD). The analysis found statistically significant disparities in the rates at which blacks and Latinos in Los Angeles were stopped, frisked, searched and arrested, and found that these disparities were not justified by local crime rates or by any other legitimate policing rationale evident from LAPD's extensive data.²⁸

In 2008, the ACLU reached a settlement with the Maryland State Police for racial profiling on Highway I-95. Data from 2008 shows that 70% of those searched on I-95 were people of color (45% African American, 15% Hispanic, and 9% other) and 30% were white.²⁹

Lastly, in New York, the 2006 stop-and-frisk data from the New York Police Department (NYPD) revealed that police were stopping an increasing number of people on city streets, the vast majority of whom were African American and Latino, and that an overwhelming number of those stopped—as many as 90%—were neither arrested nor issued subpoenas.³⁰

Immigration Legislation Demonstrates Racial Profiling Tactics

In 2010, the State of Arizona passed a law requiring police officers in Arizona to ask people for documentation of legal residence in the U.S. based on an undefined "reasonable suspicion" they are in the country unlawfully. Five additional states enacted similar laws in 2011: Alabama, Georgia, Indiana, South Carolina, and Utah. Further, there have been an unprecedented number of raids of immigrant (particularly Latino) communities and workplaces by local law enforcement in cooperation with federal agencies.³¹

Discriminatory Law Enforcement Post 9/11

In the hours and days immediately following 9/11, the U.S. Department of Justice launched what amounted to an extensive program of preventive detention. It was the first large-scale detention of a group of people based on country of origin or ancestry since the internment of Japanese Americans during World War II. Within hours of the terrorist attacks, federal agents swept through Arab, Muslim, and South Asian neighborhoods throughout the country, snatching men from sidewalks, as well as their homes, workplaces, and mosques. Since the 9/11 terrorist attacks, it has been the official policy of the United States government to stop, interrogate, and detain individuals without criminal charge—often for long periods of time on the basis of their national origin, ethnicity, and religion.³²

Policy Recommendations for Ending Racial Profiling

The National Black Caucus of State Legislators has proposed a list of policy recommendations for ending racial profiling, which have also been supported by the NAACP, ACLU, and other prominent civil rights organizations.

1. **Establish a clear definition of racial profiling-** The first recommendation is to establish a single, easily-understood definition of racial profiling. It must be clear that any reliance upon actual or perceived race, color, or national origin in engaging in law enforcement activities—beyond using these factors among other characteristics to identify a particular suspect—is unacceptable and will not be tolerated. A clear-cut definition will eliminate ambiguity and better enable citizens and the government to hold accountable law enforcement agencies that continue to racially profile. Garnering trust from community members will be difficult if law enforcement agencies continue to endorse or act upon stereotypes, attitudes, or beliefs that a person’s race, ethnicity, appearance, or national origin increases that person’s general propensity to act unlawfully.³³

2. **Expressly prohibit the practice of racial profiling with meaningful accountability-** NBCSL urges Congress to pass federal legislation that prohibits racial profiling, establishes preventive measures, and outlines penalties for violations. Such legislation should include the following:
 - a. A mandate for law enforcement to receive academy and continuing education training on biased policing;
 - i. Strategies should help law enforcement agencies develop tools to address the general practice of unconscious disparate treatment as well as tools to help officers identify their own unconscious biases and how those biases manifest
 - ii. The biased policing education training should systematically incorporate community input and feedback. This means departments should develop a systematic way of gauging community perceptions of racial bias
 - iii. Biased policing training should also explain how race affects interpersonal relationships, educate officers on race relations in the U.S. beginning with history and ending with the present, and it should emphasize providing good “customer service” to the public.
 - b. A mandate for law enforcement to collect data on all routine and spontaneous investigatory activities. Establishing a data collection system to help understand the scope and magnitude of the problem is critical. A statistical

database in each state can help target where the problem truly exists, and allow policymakers to better institute legislation.³⁴

- c. Appropriate funding for the Department of Justice, through technical assistant grants or other means, to help law enforcement agencies develop and implement best policing practices. ³⁵
3. **Strengthen the Department of Justice Guidance regarding the use of race by federal law enforcement agencies (Guidance Act)**- The Guidance Act provides training to police officers to help them avoid responses based on stereotypes and false assumptions about minorities. Strengthening and reforming the Act will eliminate existing loopholes that undermine its sole purpose of ending racial profiling by law enforcement. Current loopholes allow for profiling in the name of national and border security, do not prohibit profiling on the basis of religion or national origin, do not cover profiling in the context of law enforcement surveillance activities, do not apply to state and local law enforcement agencies receiving federal funding or acting in partnership with federal agencies, and have no accountability measures. ³⁶ Following through with these recommendations will ensure law enforcement officers are doing an effective job while conveying that all citizens have equal protection under the law.
4. **Provide adequate funding for effective enforcement by the Department of Justice Civil Rights Division**- Recently, the Civil Rights Division filed a large number of criminal civil rights cases, mostly against law enforcement agencies for allegations of violating individuals' constitutional or legal rights "under color of law." ³⁷ Within the past year, the Civil Rights Division conducted numerous investigations about local law enforcement, which uncovered serious patterns of civil rights violations. Certainly, a new federal law on racial profiling will have a significant impact on the resources of the Division to engage in outreach and education, prevention, technical assistance/partnerships, and enforcement with regard to law enforcement agencies across the country.

Conclusion

Again, we thank Chairman Durbin, Ranking Member Grassley and Members of the Committee for holding such a critical hearing on ending racial profiling in America. In conclusion, the National Black Caucus of State Legislators urges Congress to pass federal legislation that clearly and accurately defines racial profiling, and prohibits the usage of race as a predictive characteristic. NBCSL also urges Congress to pass legislation that mandates

cultural sensitivity training, data collection efforts as well as an allocation of sufficient funding for the Civil Rights Division of the Department of Justice to effectively enforce this new legislation. NBCSL also urges the Administration to strengthen the Guidance Act to ensure the elimination of any existing loopholes which allow for racial discrimination to take place.

We welcome the opportunity for dialogue and thank you for your consideration.

¹ *nbcsl.org*. National Black Caucus of State Legislators. Web. <<http://www.nbcsl.org/public-policy/resolutions.html>>.

² Colo. Rev. Stat. § 24-31-309

³ Cal. Pen. Code § 13519.4

⁴ Fla. Stat. § 943.1758

⁵ Ramirez, Deborah A., Jack McDevitt, and Amy Farrell. "A Resource Guide on Racial Profiling Data Collection Systems." *www.ncjrs.gov*. U.S. Department of Justice, Nov. 2000. Web. 13 Apr. 2012. <<https://www.ncjrs.gov/pdffiles1/bja/184768.pdf>>.

⁶ "Racial Profiling: Limited Data Available on Motorist Stops." *www.gao.gov*. United States General Accounting Office, Mar. 2000. Web. 13 Apr. 2012. <<http://www.gao.gov/new.items/gg00041.pdf>>.

⁷ "Racial Profiling: Definition." *www.aclu.org*. American Civil Liberties Union, 23 Nov. 2005. Web. 13 Apr. 2012. <<https://www.aclu.org/racial-justice/racial-profiling-definition>>.

⁸ US Human Rights Network (2010-08). "The United States of America: Summary Submission to the UN Universal Periodic Review". *Universal Periodic Review Joint Reports: United States of America*. p. 8.

⁹ Marr, Carolyn J. "Assimilation through Education: Indian Boarding Schools in the Northwest" <http://www.lib.washington.edu/>. University of Washington Libraries. Web. 13 Apr. 2012.

¹⁰ American Eagle 1994 "Goodbye BIA, Hello New Federalism." *American Eagle* 2: 19.

¹¹ U.S. Census Bureau State & County QuickFacts, available at <http://quickfacts.census.gov/qfd/states/00000.html>

¹² Naturalization Act of 1790 (1 Stat. 103)

¹³ Keith, Zak. "Anti-Chinese USA—Racism & Discrimination from the Onset." [Http://www.zakkeith.com/](http://www.zakkeith.com/). University of Washington Libraries, 2009. Web. 13 Apr. 2012. <<http://www.zakkeith.com/articles,blogs,forums/anti-Chinese-persecution-in-the-USA-history-timeline.htm>>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ David M. Pletcher, "Treaty of Guadalupe Hidalgo," *Handbook of Texas Online* (<http://www.tshaonline.org/handbook/online/articles/nbt01>), accessed April 17, 2012. Published by the Texas State Historical Association.

¹⁹ Carrigan, William D and Clive Webb. "The Lynching of Persons of Mexican Origin or Descent in the United States, 1848-1928." *Journal of Social History* 37, No. 2 (2003): 411-438.

²⁰ Johnson, Kevin R., "The Forgotten "Repatriation" of Persons of Mexican Ancestry and Lessons for the "War on Terror"" (2005). *Pace Law Review*. Paper 39. Available at: <http://digitalcommons.pace.edu/lawrev/39>

²¹ "Operation Wetback", available at <http://www.pbs.org/kpbs/theborder/history/timeline/20.html>

²² Civil Rights Act of 1968, (Pub.L. 90-284, 82 Stat. 73, enacted April 11, 1968)

²³ Harris, David. "Driving While Black: Racial Profiling On Our Nation's Highways." *Www.aclu.org*. American Civil Liberties Union, June 1999. Web. 13 Apr. 2012. <<http://www.aclu.org/racial-justice/driving-while-black-racial-profiling-our-nations-highways>>.

²⁴ Kennedy, Randall. 1998. *Race, the Police and Reasonable Suspicion*. (NCJ Publication No 168967). Washington DC: Department of Justice.

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- ²⁵ David A. Harris, "Driving While Black" and All Other Traffic Offenses: The Supreme Court and Pretextual Traffic Stops, 87 J. CRIM. L. & CRIMINOLOGY 544 (1997).
- ²⁶ "Driving While Black or Brown an Analysis of Racial Profiling in Arizona." *www.acluaz.org*. The American Civil Liberties Union of Arizona, Apr. 2008. Web. 13 Apr. 2012. <<http://acluaz.org/sites/default/files/documents/DrivingWhileBlackorBrown.pdf>>.
- ²⁷ *Id.*
- ²⁸ Ayres, Ian, and Johnathan Borowsky. "Racial Profiling & The LAPD: A Study of Racially Disparate Outcomes in the Los Angeles Police Department." *www.aclu-sc.org*. The American Civil Liberties Union of Southern California, Oct. 2008. Web. 13 Apr. 2012. <<http://www.aclu-sc.org/documents/view/47>>.
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- ³⁰ Ridgeway, Greg. "Analysis of Racial Disparities in the New York Police Department's Stop, Question, and Frisk Practices." *www.rand.org*. RAND Corporation, 2007. Web. 13 Apr. 2012. <<http://www.aclu-sc.org/documents/view/47>>.
- ³¹ "The Persistence of Racial and Ethnic Profiling in the United States." *www.aclu.org*. American Civil Liberties Union and the Rights Working Group, 30 June 2009. Web. 13 Apr. 2012. <http://www.aclu.org/pdfs/humanrights/cerd_finalreport.pdf>.
- ³² "Sanctioned Bias: Racial Profiling Since 9/11." *Www.aclu.org*. American Civil Liberties Union, Feb. 2004. Web. 13 Apr. 2012. <<http://www.aclu.org/FilesPDFs/racial%20profiling%20report.pdf>>.
- ³³ U.S. House of Representatives Democratic Forum on "The Role of the Federal Government and Hate Crimes." (Date: March 27, 2012). Text from: American Civil Liberties Union <http://www.aclu.org/files/assets/aclu_testimony_for_trayvon_martin_forum_2.pdf>
- ³⁴ Hillary O. Shelton (National Association for the Advancement of Colored People). "Testimony on 21st Century Law Enforcement: How Smart Policing Targets Criminal Behavior before the House Judiciary Committee Subcommittee on Crime, Terrorism, and Homeland Security." (Date: November 4, 2011). Available from: <http://judiciary.house.gov/hearings/pdf/Shelton%2011042011.pdf>
- ³⁵ Dennis Parker (American Civil Liberties Union). "Testimony on the Role of the Federal Government and Hate Crimes before the U.S. House of Representatives Democratic Forum." (Date: March 27, 2012). Available from: <http://democrats.judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/Parker120327F.pdf>
- ³⁶ Action Alert: Contact Congress to Put an End to Racial Profiling. Available at: <http://rightsworkinggroup.e-actionmax.com/showalert.asp?aaaid=1265>
- ³⁷ Dennis Parker (American Civil Liberties Union). "Testimony on the Role of the Federal Government and Hate Crimes before the U.S. House of Representatives Democratic Forum." (Date: March 27, 2012). Available from: <http://democrats.judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/Parker120327F.pdf>

STATEMENT OF

NATIONAL COALITION ON IMMIGRANT WOMEN'S RIGHTS

Hearing on Ending Racial Profiling in America

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: We are honored to submit this statement for the record on behalf of the National Coalition for Immigrant Women's Rights (NCIWR) regarding today's hearing on racial profiling and the End Racial Profiling Act (ERPA). NCIWR was the first national collaboration to specifically focus on gender issues in today's public discourse on immigration. We are comprised of grassroots and national advocacy organizations working together for comprehensive immigration reform, fair and non-discriminatory implementation of our immigration and enforcement policies, and reproductive and economic justice for immigrant women in the United States. We represent more than 50 organizations and millions of constituents. The National Asian Pacific American Women's Forum (NAPAWF) and the National Latina Institute for Reproductive Health (NLIRH) comprise NCIWR's Steering Committee. As organizations representing immigrant women of color, we write today out of deep concern over the harmful impact of racial profiling on immigrant women and their families.

First, we offer our sincerest appreciation for holding this important hearing on racial profiling and ERPA. We believe in equality for all and that subjecting certain groups of people to ill treatment simply because of their race, national origin, or religion is a brazen violation of the principles this country was founded upon. NCIWR is concerned about the many federal and state policies which promote discriminatory law enforcement practices such as racial profiling. Immigrant women and their families are especially vulnerable under these policies. Considering a person's racial, ethnic, or religious appearance in determining whether she should be investigated, arrested or detained is insulting and only serves to drive wedges between the many communities that contribute to the diversity of the United States.

Furthermore, racial profiling is ineffective and even counterproductive in achieving law enforcement goals, as well as detrimental to our communities—it serves only to waste public resources and violate civil and human rights. These policies and practices cause families to live in fear, constantly bracing themselves for when a loved one might be torn away. They also encroach on our freedom, as many individuals are terrified to engage in simple activities that so many Americans take for granted, like sending their children to school or freely leaving their homes. Moreover, it prevents many people from reporting crimes and moves often limited resources away from targeted, behavior-based investigations.

The Effects of Racial Profiling on Our Communities

Racial profiling has disproportionately affected Asian American and Latino communities, who in recent years have been the targets of anti-immigrant rhetoric, mischaracterizations and false accusations. Since September 11, 2001, Asian American community members have faced

increased stereotyping and scrutiny from fellow Americans, as well as law enforcement. A study by the New York City Profiling Collaborative found that 73% of South Asians were questioned about their national origin in interactions with law enforcement, and 66% were questioned about their religious affiliation.¹

Racial profiling is equally damaging for Latino families, many of whom have been living silently in the shadows for years. So-called immigration enforcement programs, such as 287(g) and Secure Communities (S-Comm), and the insulting and misleading rhetoric that accompanies them, disproportionately affects Latinos, including tens of thousands of U.S. citizens. From 2004-2009, the FBI documented a nearly 40 percent increase in hate crimes against Latinos, which the Southern Poverty Law Center attributed almost entirely to anti-immigrant rhetoric.² Similarly, 93% of individuals arrested under S-Comm have been Latinos, despite the fact that they comprise 77% of the undocumented population.³ The aforementioned studies confirm what our communities already know from their daily lives—that they are viewed as “suspects” and “enemies” simply because of their race, ethnicity, or religion.

The Effects of Racial Profiling on Immigrant Women

While racial profiling affects all members of our communities, women are forced to bear the burden in many ways. According to Census data, there are 17.5 million immigrant women in the United States. Women most often fulfill the role of caregiver in a family, taking responsibility

¹ South Asian Americans Leading Together, “Narratives of South Asian New Yorkers Affected by Racial and Religious Profiling.”

<http://www.saalt.org/filestore/Reports/In%20Our%20Own%20Words%20Web%20FINAL.pdf>

² National Council of La Raza Letter to the President.

<http://www.nclr.org/images/uploads/pages/ObamaImmLatinoOrgs.pdf>

³ Kohli, Aarti, et al (The Chief Justice Earl Warren Institute of Law and Social Policy, University of California, Berkeley Law School). Secure Communities by the Numbers: An Analysis of Demographics and Due Process (2011) http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf.

for the health, wellbeing, and comfort of children. Racial profiling may lead a woman to be arrested and detained, leaving her children without care and support. When a woman's partner is taken away as a result of racial profiling, the loss of financial and emotional support may cause her to struggle to provide for herself and her children.

The pervasiveness of these real occurrences of racial profiling also causes fear in our communities, which prevents immigrant women, children, and families from living safe, healthy, and dignified lives. Although a woman's children may be U.S. citizens who are eligible for government services and benefits, fear of racial profiling may discourage her from accessing these programs for her children, to the detriment of their health and wellbeing. But health is not the only societal cost of racial profiling—immigrant women often pay with their personal safety, as well. An immigrant woman who experiences domestic violence is less likely to report the crime to law enforcement, out of fear that she and/or her partner will be racially profiled and have to endure the hardship of family separation. Racial profiling creates this unconscionable situation where, forced to choose between two painful options, women continue to endure physical violence at the hands of their abusers.

Conclusion

We believe equality for immigrant women is an important part of living up to the principles of liberty and equality that this country hopes to model, and that it can only be attained when immigrant women live free from discrimination, oppression, and violence in all their forms. Racial profiling—whether used under the guise of local policing, immigration enforcement, homeland security, or any other goal—is an inappropriate and ineffective use of government

resources. This practice undermines liberty and equality and serves only to harm our families and our communities. Unfortunately, the use of racial profiling is rampant and a problem of this scope and magnitude demands legislative action.

The National Coalition on Immigrant Women's Rights is grateful for the opportunity to present our position on the unjust, ineffective, and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level. Specifically:

- Congress should pass the End Racial Profiling Act (S.1670) and institute a federal ban on profiling based on race, religion, ethnicity, and national origin at the federal, state, and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express our concerns related to racial profiling.

NATIONAL GAY AND LESBIAN TASK FORCE ACTION FUND

Testimony

Senate Judiciary Committee, Subcommittee on the Constitution, Civil Rights, and Human Rights
Hearing on Ending Racial Profiling in America

Rea Carey, Executive Director, National Gay and Lesbian Task Force Action Fund

April 17, 2012

Testimony of Rea Carey
Executive Director, National Gay and Lesbian Task Force Action Fund
Before the Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights, and Human Rights
April 17, 2012

“Ending Racial Profiling In America”

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit testimony for the record on behalf of the National Gay and Lesbian Task Force Action Fund regarding the Subcommittee’s hearing on racial profiling and S. 1670, the End Racial Profiling Act (ERPA). The National Gay and Lesbian Task Force Action Fund is the oldest national organization advocating for the rights of lesbian, gay, bisexual and transgender (LGBT) people. The National Gay and Lesbian Task Force Action Fund and its sister organization the National Gay and Lesbian Task Force work to end all forms of discrimination in the United States, including discriminatory law enforcement policies that disparately impact racial minorities.

We thank you for holding this hearing on this critical issue. As research and data have shown, lesbian, gay, bisexual and transgender people come from every walk of life – we are a geographically, economically, religiously and racially diverse community. We are also a community that faces many hurdles in life, including discriminatory treatment at the hands of law enforcement. Our recent study, [*Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*](#), sheds light on shocking treatment of transgender people by law enforcement. The most extreme of this discriminatory treatment falls on transgender people of color.

While many transgender people, regardless of their race, suffer disrespectful and harmful treatment by law enforcement, the evidence shows that transgender people of color are impacted

much more than their white counterparts regardless of their race. Forty-seven percent of black and Latino/a transgender people reported being treated disrespectfully by police. The disproportionate treatment impacts all racial minorities though; 44 percent of Asian transgender people; 35 percent of American Indian transgender people; and 42 percent of multiracial transgender people reported disrespectful treatment at the hands of law enforcement. These figures compare to 25 percent of white transgender people. Similar trends for disproportionate representation in police mistreatment of transgender people of color are also found in physical and sexual assaults. Shockingly, 41 percent of black and 21 percent of Latino/a transgender people report being detained in a prison or jail cell because they are transgender compared to 4 percent of white transgender people.¹

While we are outraged by the treatment of our transgender family and friends by law enforcement and the disproportionate impact on transgender people of color we are equally concerned about racial profiling in general in the United States. The very concept of racial profiling goes against the founding principles of our country and the basis of criminal law that each individual is innocent until proven otherwise. It is racial profiling whenever a law enforcement department or individual arbitrarily uses race, religion, ethnicity, or national origin as a factor in deciding who should be questioned or investigated. These are characteristics only relevant as part of a specific suspect description. Any law enforcement system focusing on characteristics to identify wrongdoers is both misguided and a waste of precious resources. Law enforcement should focus on policing techniques that identify potential wrongdoers using actions and behaviors instead of demographic characteristics.

¹ Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.

The lesbian, gay, bisexual and transgender community has a long history of heightened fear of law enforcement. Racial profiling compounds that problem for our community and causes communities of color to fear federal, state and local law enforcement instead of feeling safe to work with them to make all of our communities safer.

The National Gay and Lesbian Task Force Action Fund is encouraged by the Subcommittee's leadership in holding a hearing on ending racial profiling. To be sure, this is not an easy conversation, but it is one that must be had to end misguided practices utilized by law enforcement departments across the country. We are grateful for the opportunity to submit our position on the unjust and ineffective practice of racial profiling in law enforcement. We urge the Subcommittee to move quickly to take concrete actions that will help put an end to these counterproductive practices.

- Pass the "End Racial Profiling Act" (S. 1670) out of Subcommittee and work towards its passage by Congress to institute a federal ban on profiling based on race, religion, ethnicity, and national origin at the federal, state, and local levels;
- Urge the Department of Justice to amend the 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to prohibit profiling based on religion and national origin, to remove national and border security loopholes, to cover law enforcement surveillance activities, to apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Again, thank you for this opportunity to express our views on racial profiling by law enforcement. The National Gay and Lesbian Task Force Action Fund welcomes this and future opportunities to further the dialogue and bring an end to discriminatory racial profiling practices.



**Statement by Alex Nogales, President and CEO of National Hispanic Media Coalition
Senate Judiciary Subcommittee on the Constitution, Civil and Human Rights
Hearing on Ending Racial Profiling in the United States
April 17, 2012**

The National Hispanic Media Coalition (NHMC) is a non-partisan, non-profit, media advocacy and civil rights organization. NHMC's mission is to educate and influence media corporations on the importance of including U.S. Latinos at all levels of employment, to challenge media that carelessly exploit negative Latino stereotypes, and to scrutinize and opine on media and telecommunications policy issues before the Federal Communications Commission (FCC) and in Congress.

In today's media – print, broadcast, cable and internet alike – we are bombarded with prejudicial and discriminatory images and ideas. Hating on “the other” is big business, generating huge revenues for media conglomerates that put their bottom lines before their duties to educate and inform the American public. People of color are daily targets, especially over radio.¹ We are the focus of crime features, falsely portrayed as the prime source of crime in our nation. Similarly, victims of criminal acts who are people of color are rarely featured, while white victims are prominently held up in the media. This faulty depiction of crime and offenders has led to the perpetuation of prejudicial beliefs in our country, furthering biases and stereotypes and reinforcing false constructed social realities. The media is creating an atmosphere of hate, prejudice and misinformation that lends itself to racial profiling.

Extensive research reveals that the media influences individuals' behaviors and perceptions. Television is pervasive in American culture and has a profound effect on the American public.² As one scholar has noted, “[t]he millions spent by advertisers attests to the belief that the media affect personal attitudes toward products and services. It is unlikely that the media have no similar effect on racial and ethnic perceptions.”³ Indeed one study has shown that “bias can be exacerbated or mitigated by the information environments we inhabit,”⁴ and that “consuming negative images can exacerbate implicit bias.”⁵

Recent history, too, demonstrates that the media can be harnessed to create an atmosphere of hate that legitimizes mistreatment of “the others.” Prior to the Rwandan genocide in 1994, radio proved a powerful tool to validate the killings. In language strikingly similar to that used by modern day American shock jocks, Rwandan perpetrators were able to validate their message to the masses.⁶ References on Rwandan radio to the Tutsis as *iyenzi* (cockroaches); to the inherent

¹ NHMC Report, *American Hate Radio: How A Powerful Outlet for Democratic Discourse Has Deteriorated Into Hate, Racism and Extremism*, Jan. 2012, http://nhmc.org/american_hate_radio_nhmc.pdf.

² *Power in Your Hand*, ECONOMIST, Apr. 13, 2002, at 3.

³ Michael J. Polelle, *Racial and Ethnic Group Defamation: A Speech-Friendly Proposal*, 23 B.C. THIRD WORLD L.J. 213, 220 (2003).

⁴ Jerry Kang, *Trojan Horses of Race*, 118 HARV. L.REV. 1489, 1557 (2005).

⁵ *Id.* at 1561.

⁶ Alison Desforges, Human Rights Watch, *Leave None to Tell the Story: Genocide in Rwanda* (1999).



differences between Hutu and Tutsi; to the cleverness of the Tutsi in infiltration, their cruelty, and their cohesiveness; and to the Tutsi intention of restoring past repression, may be compared to the language used in United States against immigrants today: encouraging people to turn in their cockroach immigrant neighbors (Operation Cuca Gotcha – promoted by Craig Carton and Ray Rossi on New Jersey’s 101.5 WKXW-FM);⁷ warning that a Mexican army will take over the country (nationally-syndicated radio host, Michael Savage); comparing immigrants to biological weapons because they bring tuberculosis, syphilis, and leprosy (caller on nationally-syndicated *O’Reilly Radio Show*); and suggesting we give each immigrant nuclear waste to carry back to Mexico with them to heat tortillas (nationally-syndicated radio host, Neal Boortz).

In fostering this atmosphere of hate and misinformation, the media has not only legitimized hate crimes against “the others,” it has paved the way for discriminatory laws that enable and encourage racial profiling. Anti-immigrant sentiment in this country has risen to a dangerous level as states across the country try to address the federal government’s inaction on immigration reform through piecemeal state legislation. Arizona’s SB 1070 and Alabama’s HB 56 are only two examples of state legislation that requires state and local law enforcement – and even educators – to racial profile. There is no way to distinguish a brown U.S. citizen from a brown undocumented immigrant absent racial profiling.

As we look to causes of and ways to prevent racial profiling, this Committee should encourage examination of the relationship between hate speech in media and mistreatment of people of color and other groups that are often the targets of such speech. And a vehicle already exists through which this Committee may move this process forward.

On January 28, 2009, out of concern about the dramatic FBI-documented 40% rise in hate crimes against Latinos that coincided with increased anti-Latino hate speech in media, NHMC filed a Petition for Inquiry on Hate Speech in Media with the Federal Communications Commission, requesting that the FCC

invite public comment on hate speech in media, inquire into the extent and nature of hate speech, examine the effects of hate speech, including the relationship between hate speech in the media and hate crimes, and explore [non-regulatory, non-legislative] options for counteracting or reducing the negative effects of such speech.⁸

The Petition illustrates the pervasive nature of hate speech in media, with numerous examples of hate speech that occurs across a range of media, including broadcast radio, cable television and the Internet.⁹ The Petition introduces a groundbreaking pilot study by the UCLA Chicano Studies Research Center, which develops a scientific methodology to categorize and examine

⁷ Fairness and Accuracy in Reporting, http://www.fair.org/index.php?page=228media_view_id=8554.

⁸ NHMC Petition for Inquiry, <http://www.nhmc.org/sites/default/files/Pet%20for%20Inquiry%20-%20Hate%20Speech.pdf> (“Petition”).

⁹ *Id.* at 8-11.



hate speech in media.¹⁰ The Petition cites reports and studies, establishing that hate speech influences society's behaviors and perceptions,¹¹ questions the correlation between the increase in hate speech and the increase in violent hate crimes against Latinos and other groups,¹² and demonstrates that hate speech has invoked psychological harm on its recipients,¹³ especially teens and children.¹⁴

Support for the Petition has been widespread. In July 2009, after six months of FCC inaction on NHMC's Petition, dozens of civil rights, consumer advocacy and public interest organizations sent letters to the FCC, urging Chairman Genachowski to open a docket on hate speech in media.¹⁵ The Petition has also been endorsed by letters from numerous U.S. Senators and Representatives, and, notably, by the Congressional Hispanic Caucus, which sent a letter on April 1, 2010, urging FCC Chairman Genachowski to grant NHMC's requests.¹⁶ On April 21, 2010, the Congressional Hispanic Caucus sent a similar letter to the National Telecommunications and Information Administration ("NTIA"), urging it to update its 1993 report, *The Role of Telecommunications in Hate Crimes*. NTIA's Assistant Secretary, Lawrence Strickling, promptly responded to the Caucus, expressing that he shares the "concern about the potential for electronic media to encourage hate crimes," and noting that technological advances that have occurred since 1993 have "created opportunities for those who traffic in hate and division."¹⁷

This inquiry could well be broadened to also address the role of the media in racial profiling. I highly recommend that your Committee support such a review as it will provide valuable information that you may utilize as you continue to examine the serious problem of racial profiling in the United States. Thank you.

¹⁰ The Pilot Report is attached to the Petition in Addendum I. The complete study is available at <http://www.chicano.ucla.edu/research/documents/WPQuantifyingHateSpeech.pdf>.

¹¹ Petition at 14-15.

¹² *Id.* at 15-18.

¹³ *Id.* at 18-19.

¹⁴ *Id.* at 19-21.

¹⁵ One letter was sent by a group of national Latino organizations, including Cuban American National Council, Inc. (CNC), Labor Council For Latin American Advancement (LCLAA), League of United Latin American Citizens (LULAC), National Association of Hispanic Federal Executives (NAHFE), National Association of Latino Independent Producers (NALIP), the Committee for Hispanic Children & Families, Inc. and the United States Hispanic Leadership Institute (USHLI). Attached as Addendum II. The other was sent by a diverse collection of organizations, including the Asian American Justice Center (AAJC), Catholics in Alliance for the Common Good, CeaseSPIN, Inc. (CeaseSPIN.org), Center for Media Justice, Center on Latino and Latina Rights and Equality of the City University of New York School of Law, Common Cause, Fairness & Accuracy In Reporting, Florida Public Interest Research Group, Free Press, Georgia Association of Latino Elected Officials (GALEO), Hispanic/Latinos Anti-Defamation Coalition, SF, Industry Ears, Main Street Project, Media Action Grassroots Network, Media Alliance, Media Mobilizing Project (MMP), Mexican American Legal Defense & Educational Fund (MALDEF), Minnesotano Media Empowerment Project, Department of Chicano Studies, University of Minnesota, National Association of Latino Independent Producers (NALIP), National Organization for Women (NOW), Oregon Alliance to Reform Media, Prometheus Radio Project, Public Interest Pictures and Broadcast Blues, Rainbow PUSH Coalition, Reclaim the Media, Texas Media Empowerment Project, The Benton Foundation, The Center for Rural Strategies, The New Mexico Media Literacy Project, The Praxis Project, United Church of Christ, Office of Communication, Inc. (UCC), UNITY: Journalists of Color, Inc., and U.S. Public Interest Research Group. Attached as Addendum III.

¹⁶ Letter from the Honorable Nydia Velázquez, Chairwoman, Congressional Hispanic Caucus, to the Honorable Julius Genachowski, Chairman, Federal Communications Commission (Apr. 1, 2010). Attached as Addendum IV.

¹⁷ Letter from the Honorable Lawrence E. Strickling, Assistant Secretary, National Telecommunications and Information Administration, to the Honorable Nydia Velázquez, Chairwoman, Congressional Hispanic Caucus (Apr. 26, 2010).



National Immigrant Justice Center

Testimony Submitted for Hearing ENDING RACIAL PROFILING IN AMERICA

**Testimony by Mary Meg McCarthy,
Executive Director, Heartland Alliance's National Immigrant Justice Center
Submitted to the Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights
United States Senate**

April 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: Thank you for providing the opportunity to submit this testimony for the record on behalf of Heartland Alliance's National Immigrant Justice Center (NIJC) concerning today's hearing on racial profiling.

NIJC, based in Chicago, promotes human rights and access to justice for impoverished immigrants, refugees, and asylum seekers through direct legal representation, impact litigation, policy reform, public education and alliance-building. NIJC provides legal services to more than 10,000 individuals each year.

Dire Consequences of Racial Profiling on Immigrant Families

A large number of NIJC clients are swept up in the immigration system because of harsh federal enforcement programs, such as Secure Communities, or routine traffic stops and are then trapped in that system, often indefinitely. The federal government's enforcement programs rely heavily on untrained local law enforcement agents to conduct its immigration work.

This expanding approach to immigration enforcement, whereby the federal government out sources its authority and function to local police and county officers, significantly increases the risk that racial profiling will occur without the necessary oversight in place.

Next year, nationwide, the federal government intends to activate Secure Communities, an immigration enforcement program that allows local officers to share the finger prints they obtain through a routine traffic stop, with federal immigration databases. The sharing of fingerprints occurs at the booking stage (even when charges are ultimately dropped by the local police department), although the individual already faces immigration consequences if he or she is detected on the federal database.

The Secure Communities Task Force – established by the federal government to investigate the program after persistent racial profiling complaints were reported from across the country – recommended that federal immigration authorities withhold enforcement action based solely on minor traffic offenses (as well as other minor offenses) because this would “reduce the risk of racial profiling and other distortions of standard arrest practices...”¹

Racial Profiling in Illinois

The focus of this testimony is on the human rights violations emerging in the Midwest and specifically in Illinois. For example, recent police records from Elgin, a city northwest of Chicago, highlighted that those arrested for driving without a license accounted for **40 percent** of individuals screened against immigration databases.² These numbers are consistent with the high volume of individuals NIJC counsels whose removal proceedings were initiated by minor traffic violations.

Further, as highlighted by the *Chicago Tribune* in March 2011,

According to the McHenry County [IL] sheriff's official records of traffic stops, Pedro Lopez is not Hispanic. Neither is Jose Salas. Or Pablo Toxqui-Zavala.

That's despite jail records that the three had brown skin, spoke Spanish and were

¹ Homeland Security Advisory Council, Task Force on Secure Communities Recommendations and Findings, September 2011, <http://www.dhs.gov/xlibrary/assets/hsac-task-force-on-secure-communities-findings-and-recommendations-report.pdf>

² Fernando Diaz, “Driving While Latino,” *The Chicago Reporter*, March 2, 2009, <http://www.chicagoreporter.com/news/2009/03/driving-while-latino>

from Mexico. The three were mislabeled by deputies as white, a practice that has become a focal point in a lawsuit alleging deputies targeted Hispanics and the department covered it up.³

In 2002, Illinois began an effort to identify racial bias in police traffic stops. Illinois requires law enforcement agencies to provide annual data relating to traffic stops conducted in their communities. An analysis of the 2008 Illinois Department of Transportation report on race and traffic stops showed that police were much more likely to ask minority drivers to consent to searches without probable cause, but that minority drivers were much less likely to be found in possession of contraband.⁴ Further, the Village of Stickney, recorded that 52 percent of all traffic stops in 2008 were made against Latinos and yet Latinos made up only 19 percent of its driving-age population over that period.⁵

The problem has grown worse every year in Illinois. By 2009, the statistical analysis proved that one in three Hispanics cited by deputies were likely mislabeled as white or not included in department data reported to the state.⁶ One whistleblower and former deputy at the McHenry County Police Department indicated that in 2006, the Department began posting monthly lists praising deputies who issued high volumes of traffic tickets. At the time, a deputy told the whistleblower that it was easy to make traffic arrests in predominantly Hispanic neighborhoods to increase his arrest totals.⁷

Recommendations to the Senate Committee on the Judiciary

Increasingly, racial profiling presents a major human rights crisis in our immigrant communities. This is particularly the case where its victims are overwhelmingly low

³ Joe Mahr and Robert McCoppin, "Study Suggest Racial Mislabeled Skews McHenry County Sheriff Data," Chicago Tribune, March 26, 2011, http://articles.chicagotribune.com/2011-03-26/news/ct-met-mchenry-profiling-20110326_1_hispanics-mislabeled-deputies

⁴ Illinois Department of Transportation, Traffic Stop Statistical Data, 2008, <http://www.dot.il.gov/travelstats/ITSS%202008%20Statewide%20and%20Agency%20Reports.pdf>

⁵ See footnote 2.

⁶ See footnote 4.

⁷ *Id.*

priority, hard-working women and men, often mothers and fathers who are fast tracked into deportation proceedings.

The practice of racial profiling diverts limited law enforcement resources away from effective and targeted investigations, and undermines community safety because minority groups fear reporting crimes if immigration consequences may ensue.

Moreover, racial profiling erodes long-standing human rights principles that ensure due process protections, non-discrimination, and equal treatment before the law. In 2009, the United Nations Human Rights Committee upheld that police identity checks that are motivated by race or ethnicity run counter to the international human right to non-discrimination.⁸

The Senate Committee on the Judiciary can take immediate steps to reduce the practice of racial profiling by urging:

1. Congress to pass the “End Racial Profiling Act” (S.1670) and institute a federal ban on profiling based on race, religion, ethnicity and national origin;
2. The Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to ensure that the guidance is enforceable and applies to:
 - a. Profiling based on religion and national origin; and
 - b. Local law enforcement agencies acting in partnership with federal agencies or receiving federal funds; and
3. The Department of Homeland Security to investigate local law enforcement agencies where racial profiling is reported and end cooperative arrangements where the practice is identified.

Thank you again for the opportunity to make this submission on behalf of NIJC.

⁸ Human Rights Committee, *Rosalind Williams Lecraft v. Spain*, Communication No. 1493/2006 (CCPR/C/96/D/1493/2006).

STATEMENT OF
THE NATIONAL IMMIGRATION LAW CENTER
HEARING ON “ENDING RACIAL PROFILING IN AMERICA”
SENATE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS
UNITED STATES SENATE
APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: we are honored to submit this testimony for the record on behalf of the National Immigration Law Center regarding today’s hearing on “Ending Racial Profiling in America.” The National Immigration Law Center (NILC) is a nonpartisan, national legal advocacy organization that works to protect and promote the rights of low-income immigrants and their family members. Since its inception in 1979, NILC has earned a national reputation as a leading advocate for the civil and human rights of low-income immigrants. Over the past two years, NILC has challenged state laws in Alabama, Arizona, Georgia, Indiana, South Carolina, and Utah that promote racial profiling by mandating local law enforcement officials to investigate and enforce the immigration laws during the course of their law enforcement duties.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. We submit this testimony to focus on the serious racial profiling concerns that we have observed following the implementation of part of Alabama’s notorious anti-immigrant law, HB 56. Alabama’s law is the only state law mandating law enforcement officers to investigate immigration status whenever they have “reasonable suspicion” that an individual is undocumented that has been allowed to take effect. As a result, Alabama provides a striking

example of how these state laws create an unlawful environment of racial profiling. NILC is particularly concerned about policies and programs at the national, state, and local level that encourage or incentivize racial profiling by law enforcement officials. We believe that these practices are counterproductive, waste public resources, and violate the civil and human rights of persons living in the United States.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, perceived national origin or citizenship or immigration status is in direct breach of core Constitutional principles. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Examples of how State Anti-Immigrant Laws Promote Racial Profiling of Latinos and other who Appear or Sound “Foreign”

On April 23, 2010, Governor Jan Brewer of Arizona kicked off a wave of noxious anti-immigrant state legislation by signing into law Arizona’s racial profiling law, SB 1070. Among other provisions, SB 1070 required all law enforcement officials to investigate the immigration status of any individuals they had “reasonable suspicion” to believe was in the country without lawful status—and to detain the individual during the course of that investigation. Notably this requirement was not limited to instances in which individuals were being arrested or cited for a crime, but it also applied to investigations of violations of any municipal ordinance including such things as violations for playing loud music. And, in order to ensure maximum enforcement of this provision, Arizona’s SB 1070 also contained a separate provision allowing local residents to bring civil lawsuits against law enforcement officers or agencies who failed to enforce the law to the fullest extent. Law enforcement officials, experts, and organizations across the country

have strongly criticized these provisions stating that they would inevitably create an environment of rampant racial profiling by law enforcement officials, where police detain individuals simply based on what they look or sound like.¹ The critical problem with laws like Arizona's SB 1070 is that it is impossible to tell whether someone has legal status in the country by looking at them, or by listening to them speak. Instead, it creates a suspect class of people based on skin color alone.

Since the passage of Arizona's SB 1070, five other states have passed similar laws: Utah, Indiana, Georgia, Alabama, and South Carolina. NILC, along with other civil rights organizations, has filed lawsuits challenging each of these laws. Fortunately, most of the egregious provisions of these laws have been blocked by the courts before they were ever allowed to take effect—with the notable exception of the Alabama law. On September 28, 2011, a federal district court in Alabama allowed the provision in Alabama's law mandating that officers investigate the immigration status of anyone they have "reasonable suspicion" to believe is in the county without lawful status to take effect. At the same time, a separate provision requiring immigration status investigation and detention of individuals arrested for driving without a license was allowed to take effect. This provision also required the transportation of those arrested for driving without a license to the nearest magistrate and their continued detention until they are prosecuted or turned over to federal immigration authorities. Finally, the court allowed a separate provision subjecting law enforcement officers and entities to civil lawsuits if they failed to enforce HB 56 to the fullest extent allowed by law. The implementation of these provisions created precisely the climate of racial profiling that law enforcement experts feared.

¹ See Amicus Brief filed by Law Enforcement Officials and Organizations in the *Arizona v. U.S.* case at the U.S. Supreme Court, at: <http://www.nilc.org/document.html?id=647>; see also "Why Police Chiefs Oppose Arizona's SB 1070," at: <http://www.nilc.org/police-chiefs-oppose-sb1070.html>.

The day after HB 56 went into effect, the Southern Poverty Law Center established a state-wide hotline to monitor violations from the law. The hotline is jointly staffed by the legal organizations that challenged HB 56, including NILC. The following are short summaries of calls received through this hotline that illustrate how the implementation of HB 56 has created a damaging and unconstitutional environment of racial profiling by law enforcement officials.²

The hotline has received scores of calls from Latinos living in Alabama who believe they have been subjected to pretextual police stops since the law was implemented based merely on their racial appearance and for the sole purpose of being questioned about their immigration status. These callers report that they were either stopped for a bogus reason (e.g., the officer claimed they were speeding when they were not or that their windows were inappropriately tinted) or that they were approached for questioning when they were sitting in their parked cars on private property. Numerous callers reported that they or their loved ones were stopped by law enforcement solely for the crime of driving without a license—an offense that cannot be observed before a stop is made. In each of these situations, the callers reported that they believed the sole basis for the stop was due to their Latino appearance. Callers are a mix of U.S. citizens, immigrants in lawful status, and undocumented immigrants. The single unifying characteristics are their ethnic appearance and presence in Alabama.

Saida—One caller described being repeatedly stopped by law enforcement since the law took effect. Saida is a long-term Alabama resident who is originally from Honduras and has been granted Temporary Protected Status by the federal government due to conditions in her home country. This means that she has lawful, though temporary, immigration status in the United States. She also has a valid out-of-state driver's license. Nonetheless, in the months

² Names of the callers have been changed to protect their identities, though all callers expressed a willingness to share their stories publically.

since the law has been in place she has been stopped multiple times by police and asked about her immigration status and subjected to prolonged roadside detention. She believes the reason for all of these stops, and resulting detentions, is her Latina appearance.

Ana—Another Latina caller described the following pretextual stop after the implementation of HB 56. Ana noticed that a police car had been following her for a mile or so. Eventually, the officer stopped her car and asked her if she was “hurrying.” The only justification the officer provided for the stop was that Ana had her high beams on, which the officer did not claim was a violation of any law. The officer then began asking Ana immigration questions, including how long she had been living “here.” When Ana said she did not understand the question, the officer got angry and said “You do understand,” in a loud voice. Ana felt intimidated and that the only reason she was stopped was due to her Latina appearance and the officer’s suspicion that she was not in the country lawfully.

Roberto—Another caller described an encounter with law enforcement when he was walking home from work with two colleagues. All three of the men are Latino. The police stopped all three individuals and asked them for their immigration “papers.” No reason was given for the stop. Roberto told the police they were simply walking from work, and offered to have the officers call their work manager to verify this fact. One of the stopped individuals produced a North Carolina driver’s license, which the police indicated they thought was fraudulent. The police said that next time they saw this individual they would arrest him and “send him back to Mexico.”

Luis—On December 7, 2011, Luis was parked in his car with one of his children while his wife entered a Wal-Mart store with their other child, outside of Decatur, Alabama. Because it was very cold, when his wife left the store she called Luis to pick them up in front of the store.

Luis momentarily parked in the fire access lane to load his family into the car. Luis saw a police car in the parking lot. The police officer followed Luis's car and stopped him about half a mile after Luis and his family entered the road from the parking lot. The officer asked for Luis's license and insurance. He showed both to the officer; the officer verified the information through his computer and returned Luis's documents. The officer told Luis that he had observed Luis stopped in the no-parking zone in front of the Wal-Mart store. Luis explained that he was only there for a minute to load his family into the car. Luis asked the officer why he had not been stopped in the Wal-Mart store parking lot. The officer asked Luis whether he wanted a ticket, and Luis asked the officer what he had done to merit a ticket. Ultimately, the officer let Luis and his family go without a ticket. Luis called the hotline because he was upset and believes that the police stop anybody in Alabama who looks Latino.

Conclusion

The practice of racial profiling by state and local law enforcement officials in Alabama has created a pervasive feeling of fear in Latino and other communities of color in Alabama. People are afraid to conduct basic, daily life activities out of fear that they will be tracked and targeted by the police as a rouse for engaging in immigration verification. The result is that Latino residents do not trust the police, which undermines the safety of the entire community.

The National Immigration Law Center applauds the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective, and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level, including the following:

- Congress should pass the “End Racial Profiling Act (S.1670)” and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.
- The Committee should investigate the problem of racial profiling of Latinos and others deemed to look or sound foreign by law enforcement officers in Alabama, or other states where laws like Alabama’s HB 56 are allowed to take effect. At a minimum, the Department of Homeland Security must carefully scrutinize all referrals for immigration enforcement from Alabama to ensure that the Department does not become a conduit for racial profiling.

Thank you again for this opportunity to express the views of the National Immigration Law Center. We hope this is the beginning of a sustained discussion on these important issues.



STATEMENT OF

Morna Ha, Executive Director

National Korean American Service & Education Consortium

Hearing: Ending Racial Profiling in America

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of the National Korean American Service & Education Consortium (NAKASEC) regarding today's hearing on racial profiling.

NAKASEC is a grassroots based organization founded in 1994 to advance a progressive voice and promote the full participation of Korean Americans within a diverse, national social justice movement. Key political events during the 1990s including the 1992 Los Angeles Civil Unrest and the passage of state and federal anti-immigrant legislation prompted local community centers to come together to form NAKASEC. We are based in Washington D.C. and Los Angeles and have affiliates in Chicago (Korean American Resource & Cultural Center) and in Los Angeles (Korean Resource Center).

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. NAKASEC is particularly concerned about many policies and programs at the national, state and local level which encourage or incentivize discriminatory law enforcement



practices such as racial profiling. We believe that these practices are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Racial Profiling in Our Communities

There are three characteristics that define who we are as a Korean American community and also our experience with regard to immigration policies and laws. For one, Korean Americans are predominantly immigrant with a significant percentage of those that are undocumented. They are also limited English proficient and face language barriers day to day. Finally, they are a minority population, subject to discrimination and racial profiling.

Looking more broadly historically and in recent times, Asian Americans and Pacific Islanders have been targeted for heightened scrutiny by the government based on their race, religion, ethnicity, national origin, or nationality. Examples include the internment of Japanese Americans



during World War II; additional searches of travelers, targeted detention and deportation, and surveillance of Arab, Muslim, Sikh, and South Asian Americans by federal, state, and local law enforcement following September 11; and federal and local immigration enforcement initiatives, including Secure Communities and state laws such as Arizona’s SB1070, Georgia’s HB87, and Alabama’s HB56, resulting in racial profiling.

Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color throughout the United States.

NAKASEC is heartened by the Subcommittee’s leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the “End Racial Profiling Act (S.1670)” and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.



Thank you again for this opportunity to express the views of NAKASEC. We welcome the opportunity for further dialogue and discussion about these important issues.

April 17, 2012

Hearing on “***Ending Racial Profiling in America***”

U.S. Senate Committee on the Judiciary

Subcommittee on the Constitution, Civil Rights, and Human Rights

Location:

Senate Judiciary Committee Hearing Room

Dirksen Senate Office Building Room 226

Re: Opposition to Racial Profiling

Chairman Durbin and Members of the Committee:

Thank you for this opportunity to testify in opposition to racial profiling in law enforcement activities, including Secure Communities.

NETWORK, a National Catholic Social Justice Lobby, offers this testimony today to publicly decry and provide witness to the injustice of racial profiling that is inflicted upon people of color and to amplify the voices of the vulnerable people who are most impacted by this practice.

NETWORK is a national movement of people who are challenged by the Gospel, Catholic Social Teaching, and Earth principles. We act for justice and peace in solidarity with the global community. Through lobbying and legislative advocacy, we strive to close the gap between rich and poor and to dismantle policies rooted in racism, greed and violence. Since our founding in 1971 by 47 Catholic sisters, NETWORK has been faithfully answering the Gospel call to act for justice. It is because of the continued involvement of hundreds of congregations of women religious and thousands of individual Sisters, as well as that of parishes, small faith communities, religious congregations of brothers and priests, and thousands of individual activists that NETWORK continues to be effective and faithful to its mission of lobbying, organizing and educating for a nation and world rooted in justice

Racial profiling disproportionately targets people of color for arrest, investigation and strict enforcement of otherwise racially neutral laws. This denigrating practice exercised independently or as a result of a Secured Community mandate eradicates the noble functions and purposes of established federal laws; minimizes trust between law enforcement and the communities it serves; and wastes valuable police resources in the pursuit of certain skin colors instead of behaviors that are consistent with criminal activity.

Racial profiling creates distrust of the police which serves to countermand federal legislation. The fractured relationship between law enforcement and the community thwarts the purpose and impedes proper implementation of the Violence Against Women Act (VAWA) and U Visa (8 U.S.C. § 1101(a)(15)(U)) programs. In passing these laws, Congress intentionally chose to protect all victims of abuse and to promote the reporting and conviction of felonious criminals. However, the intended benefits of these laws dissipate when the people who are charged with the responsibility of protecting the vulnerable from the abusers cause more fear than the abusers.

Sr. Phyllis Nolan, Daughter of Charity and member of NETWORK, has worked with more than 500 detainees and asylum seekers as an intake specialist with Las Americas Legal Clinic in El Paso, Texas. In her practice, she repeatedly witnesses the effects of the round ups and random police stops for 'papers' that are suffered by the Latino community. Repeatedly, she reports, young Latino women who are waiting for the bus are approached by police officers who demand to see their papers. Unaware of their rights, these women offer whatever documents they have in their possession. The inspection of the documents on the street typically leads to a determination that the documents are insufficient to prove one's status. Next, they are arrested and detained while local police find means by which to hold them longer. Ironically, Texas does not have a "papers please" state law. When the spouses of abusive citizens learn of these anti-immigrant occurrences in their communities, they cannot trust the promises of VAWA. Instead, they become more dependent upon the abusers and criminals who threaten them with detention and deportation. Consequently, they remain in their situation and silently endure the next beating or criminal activity at the hands of a real criminal. Racial profiling should be abolished to protect the noble and practical intentions of the VAWA and the U Visa programs as Congress righteously intended.

Since the Secure Communities Program is at its core sanctioned racial profiling, it results in the undercutting of the same federal programs. Police officers working in areas that have Secure Communities in their local system have an incentive, or at least the ability, to make arrests based on race or ethnicity. Secure Communities support arrests of persons on the mere suspicion of a violation of immigration laws. Once arrested, the police can run the arrestee's name through immigration databases. A study recently released by the University of California, Berkeley Law School and the Benjamin N. Cardozo School of Law, validates this concern. A random sample was provided by Immigration and Customs Enforcement of 375 deportation cases under the program. The study found 93 percent of those arrested are Latino while Latinos only account for only 77 percent of the entire undocumented population.

The empirical data demonstrates that the S-Com program leads to violations of the rights of citizens and non-citizens, creates mistrust in communities and does not serve its stated goals. The Department of Homeland Security should cease implementation of the Secured Communities Program until the government addresses the issues that have been identified. This is particularly true for the wrongful U.S. citizen arrests, potential racial profiling, and lack of due process in the immigration legal process. Furthermore, any aspects of the S-Com program which result in outcomes that run counter to the U Visa and VAWA protections and goals should be immediately abolished.

Racial profiling does not enhance the success rate of arrests for drug possession and it can result in deplorably outrageous and sad outcomes. On February 26, 2012, George Zimmerman fatally shot Trayvon Martin while the 17-year-old African American was walking back from a convenience store in Sanford, Fla., where he purchased a pack of Skittles candy and iced tea. Although the shooter claims to have shot the child in a scuffle, he had been following the boy only because he looked 'suspicious'. The only fact we know is that he looked black.

Sr. Phyllis of El Paso also serves young Latino men who wash cars or work in lumberyards. Repeatedly, they have been randomly stopped and required to "show papers." If no "papers" are produced, the man is arrested and searched. Then he is put in detention, separated from his family and typically deported.

This unjust practice of racial profiling prevents an effective working relationship between the community and law enforcement. In Montgomery, Alabama, Detective Phillip Moultrie received 40 years for targeting Latinos and pulling them over for allegedly running a red light in the middle of the night. He asked them to get out of the car and then robbed them of their money before he allowed them to leave his custody. The "red light" does not even turn red during the night time hours. His sentence was subsequently reduced to 10 years. According to Janie Drake, friend and translator for one victim, three of the four victims said that they were afraid to report Moultrie because they feared police reprisal and believed that no action would be initiated by the police on their behalf. Ms. Drake further stated that the three victims were subsequently denied U- Visas despite wearing listening devices and testifying against the convicted law officer. Racial profiling alienates immigrant communities and African Americans from law enforcement. Optimal law enforcement is obstructed in these communities because the people no longer trust the law enforcement personnel.

Finally, racial profiling is a waste of financial and human resources which would be better spent on improved behavior analysis. The Department of Justice has adopted policy which prohibits the use of this practice in Justice Department activities because it causes harm to the communities and has no benefit. Fundamentally, believing that you can achieve safety by looking at characteristics instead of behaviors is silly. If your goal is preventing attacks...you want your eyes and ears looking for pre-attack behaviors, not characteristics." Bill Dedham, "Fighting Terror/Words of Caution on Airport Security: Memo warns against use of profiling as a defense," The Boston Globe, Oct. 12, 2001.

NETWORK strongly supports legislation which is aimed at reducing or eradicating racial profiling.

NETWORK stands in opposition to any application of racial profiling in the detection, investigation and/or prosecution of criminal behavior.

Respectfully submitted,

Sr. Mary Ellen Lacy DC

NETWORK, A National Catholic Social Justice Lobby

STATEMENT OF
SHANNON ERWIN, PRESIDENT
NEW ENGLAND MUSLIM BAR ASSOCIATION
HEARING ON ENDING RACIAL PROFILING IN AMERICA

SENATE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS
UNITED STATES SENATE

APRIL 23, 2012

Chairman Durbin, Ranking Member Graham and Members of the Subcommittee:

Thank you for the opportunity to submit testimony for the record on behalf of the New England Muslim Bar Association regarding the April 17 hearing on Ending Racial Profiling in America. The New England Muslim Bar Association (NEMBA) is an organization of Muslim attorneys and law students residing and studying law or practicing law in the New England region. Our mission is to serve the educational and professional needs of Muslim lawyers, legal professionals and law students; to serve as a legal resource for Muslim communities and others in our society; and to educate and advocate for Muslims' and others' constitutional, civil and human rights.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. NEMBA is particularly concerned about many policies and programs at the national, state and local level which encourage, incentivize or direct discriminatory law enforcement practices such as racial profiling. We believe that these practices are

counterproductive, waste public resources, violate the civil and human rights of persons living in the United States and can alienate communities from the very law enforcement authorities who need their cooperation in pursuing policies which intelligently promote community safety.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country and diverts resources away from effective, targeted, behavior-based investigations.

Racial Profiling of Muslims

NEMBA opposes racial profiling of any group. Given our Muslim constituency and role as a resource and advocate for Muslim communities, we wish to highlight some policies and practices of particular concern to Muslim communities and those whose nation of origin is a Muslim-majority country.

First, NEMBA is deeply concerned about policies of the NYPD which have received increased press attention in recent months, targeting Muslims for surveillance on the basis of their religion, and/or persons from Muslim majority countries on the basis of their nationality.¹ The NYPD's practices of monitoring Muslim Student Associations without any basis for suspicion, for example, extended well beyond New York City, including to Connecticut. An NYPD policy

¹ See, e.g., "Highlights of AP's Pulitzer Prize-winning probe into NYPD intelligence operations." Available at: <http://www.ap.org/media-center/nypd/investigation>

adopted in 2006² explicitly directed police to target Shia communities for surveillance, ostensibly because of their possible ties to Iranian terrorist organizations. Casting blanket suspicion on communities because of their religion or national origin is ineffective as a law enforcement tool and particularly dangerous when perpetrated by law enforcement agencies charged with protecting the general public. These policies of the NYPD, which as mentioned have extended far beyond their geographic jurisdiction, have damaged Muslim communities' trust in their government and may make it increasingly difficult for government officials to secure and maintain the trust of Muslim communities in future.

In the context of our participation in community outreach activities, NEMBA also hears repeated complaints from Muslim community leaders that individuals, including those of Arab, Somali or South Asian background, are often subjected to repeated, prolonged and offensive questioning by U.S. Customs and Border Protection when returning to the U.S. from trips abroad. These incidents appear to be based on nothing other than the target's national origin or apparent Muslim identity and often include questions about religious practices or tribal affiliation. Individuals have filed complaints with DHS Office for Civil Rights and Civil Liberties, but the pattern of incidents unfortunately has continued. The End Racial Profiling Act, by bringing about guidance and policy changes that would end these discriminatory questioning practices, holds promise to solve this problem systematically, and to alleviate the frustration of individuals who feel their complaints have gone unaddressed.

² NYPD Secret, Intelligence Strategy Report, "US-Iran Conflict: The Threat to New York City," 15 May 2006. Available at: <http://www.documentcloud.org/documents/288719-nypd-iranian-intel.html?key=9a9ba0d2ea8a33e7dce6>

The aforementioned policies and practices threaten to reinforce a perception among Muslims that certain law enforcement agencies consider religion and national origin to be legitimate indicators of our likelihood of committing crime. Indeed, the NYPD's extensive use of the training video "The Third Jihad," which explicitly portrays Islam as a national security threat,³ makes this perception nearly inescapable. When minorities are repeatedly subjected to discriminatory government policies that target them on the basis of immutable characteristics such as religion or national origin, rather than individual wrongdoing, they may lose hope for improved relations with law enforcement and retreat from civic engagement. Congress must act swiftly to prevent that result.

Conclusion

The need for strong and unequivocal federal action to end racial profiling is urgent and essential to national security, immigrant integration, and harmonious community relations. NEMBA applauds the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to share our views on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Senate Committee on the Judiciary to swiftly take the following actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the "End Racial Profiling Act" (S.1670) and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.

³ See e.g., In Shift, Police Say Leader Helped with Anti-Islam Film and Now Regrets It," Michael Powell, *The New York Times*, Jan 24, 2012, available at <http://www.nytimes.com/2012/01/25/nyregion/police-commissioner-kelly-helped-with-anti-islam-film-and-regrets-it.html>.

- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of the New England Muslim Bar Association. We welcome the opportunity for further dialogue and discussion about these important issues.

Respectfully Submitted,

Shannon Erwin, President

New England Muslim Bar Association



STATEMENT OF
JOLSNA JOHN, PRESIDENT
NORTH AMERICAN SOUTH ASIAN BAR ASSOCIATION (NASABA)
Hearing on “Ending Racial Profiling in America”
SENATE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS
UNITED STATES SENATE
APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of the North American South Asian Bar Association (“NASABA”). NASABA is the leading voice for legal issues in the South Asian community. NASABA has over 6,000 members in 27 chapters, serving local South Asian communities across the United States and Canada. It is NASABA’s goal to provide a vital link between South Asian lawyers and the South Asian community, and we are convinced that a strong South Asian bar in North America is essential to protecting the rights and liberties of South Asians across the continent. We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act and for allowing us to submit the enclosed testimony.



As you are aware, End Racial Profiling Acts have been introduced into Congress in 2001, 2004, 2005, 2007, 2009, and 2010, each time failing to achieve passage. Given the increased instances of profiling faced by members of the South Asian community over the past decade, it is past time to implement the necessary provisions of the End Racial Profiling Act. NASABA stands firmly behind the End Racial Profiling Act, and we encourage its immediate passage without delay.

NASABA is particularly concerned about many policies and programs at the national, state and local level which encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.



Racial Profiling in Our Communities

Since September 11, 2001, South Asian, Muslim, Sikh and Arab communities living in the United States have been targeted for heightened scrutiny by law enforcement based on their religion, national origin, nationality, or ethnicity. Examples include increased scrutiny on a discriminatory basis by airport security and border inspection officers, mandatory registration of certain male nationals from predominantly Muslim-majority countries, including Pakistan and Bangladesh, under the National Security Entry Exit Registration System (NSEERS) program, and targeted surveillance and infiltration of South Asian and Muslim communities by federal, state, and local law enforcement, such as the NYPD and the FBI.

Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color throughout the United States.

NASABA is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:



- Congress should pass the “End Racial Profiling Act (S.1670)” and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of NASABA. We welcome the opportunity for further dialogue and discussion about these important issues.



www.oregonaction.org

STATEMENT OF

Ron Williams, Executive Director

Oregon Action

Hearing on Ending Racial Profiling in America

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of Oregon Action regarding today's hearing on racial profiling. Oregon Action is a statewide, non-partisan network of people and organizations dedicated to racial, social and economic justice through individual and group empowerment.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. Oregon Action is particularly concerned about many policies and programs at the national, state and local level which encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these



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characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Racial Profiling in Our Communities

Currently the US Justice Department is conducting an investigation of the Portland Police Bureau as result multiple high profile deadly force incidents over the past 5 years. Recent study of police stops clearly demonstrate a pattern of disproportionate stops, questioning in the form of “walk and talks”, unwarranted searched and detaining of African-Americans and Latinos in all communities throughout Portland. This study led to the Portland City Council action of requiring the Portland Police Bureau to produce and plan to address racial profiling and create a permanent Human Rights Commission with a Community Police Relations Committee whose responsibility is to implement plan to address racial profiling. Recently there was a great outcry in the people of color community Portland following the reinstatement through binding arbitration a Portland Police Officer whose had been fired by the Police Chief for shooting a grieving unarmed African-American in the back three times, killing him instantly.

Conclusion



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The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color throughout the United States.

Oregon Action is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the "End Racial Profiling Act (S.1670)" and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of Oregon Action. We welcome the opportunity for further dialogue and discussion about these important issues.

TESTIMONY ON RACIAL PROFILING

BY PAX CHRISTI USA

FRIDAY, April 13, 2012

Pax Christi USA's mission to create a world that reflects the Peace of Christ by exploring, articulating, and witnessing to the call of Christian nonviolence. Pax Christi USA is committed to establishing strong, honest, caring relationships—both personal and institutional—across racial lines in order that together, with the whole Body of Christ, we can transform structures and cultures of violence and domination.

As U.S. Catholics, the right to be judged by the content of one's character rather than the color of one's skin is a sacrosanct value, and essential to the virtues of freedom and liberty which stand at the heart of our national and religious traditions. Actions which threaten to undermine this value, like racial profiling, cannot be accepted or tolerated if we are to be true to who it is that we say we are as a nation.

Racial profiling is a symptom of the persistent and destructive systemic racism that perpetuates violation of rights and violence against humanity. We believe it to be a manifestation of a deep spiritual and social brokenness which must be named and transformed.

Catholicism in the United States reflects the diversity of our nation. Many individuals within our Catholic communities of color have experienced racial profiling firsthand. We have brothers and sisters who have been victimized by a law enforcement tactic based on connecting individuals to crimes based on certain characteristics which are unrelated to criminal conduct.

Whether it has been the experience of Mexicans, Guatemalans, Dominicans or Haitians being racially profiled by immigration officials, or African Americans being racially profiled by local law enforcement, or Arabs, Sikhs and South Asians experiencing racial profiling by personnel charged with "homeland security," the practice is widespread and endemic to many communities. And we must put an end to it.

In our organizational newsletter of June-July 2009, we published a report by our partner organization SAALT, South Asian Americans Leading Together, which documented specific incidences of racial and religious profiling since 9/11 within the South Asian community. The report includes incidents like these:

- Arabs, Muslims, Sikhs, and South Asians being singled out for extensive searches when boarding a plane
- FBI background check delays for immigration applications
- Certain male nationals from predominantly Muslim and Arab countries, including Bangladesh and Pakistan, were required to register with the Department of Justice through a program known as "special registration" in the wake of 9/11. (As a result of this initiative, nearly 14,000 men were placed in detention and deportation proceedings, primarily for minor immigration violations.)
- Georgia law enforcement, along with the Drug Enforcement Administration, ran "Operation Meth Merchant," targeting South Asian convenience storeowners accused of selling everyday ingredients that could be used to make the drug methamphetamine

Such tactics are not new—they have long been practiced by law enforcement and others in authority against African American, Latino/a, Native American, and other communities of color. Pax Christi USA, rooted in the teachings of the Gospels, calls upon members of Congress from both sides of the aisle, as well as law enforcement agencies and prosecutors to once and for all end the policies and practices that have the intent or impact of racial profiling.

STATEMENT OF
Chanravy Proeung, Executive Director
Providence Youth Student Movement
SENATE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS
UNITED STATES SENATE
APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of Providence Youth Student Movement regarding today's hearing on racial profiling. We are a local youth organization in Providence, Rhode Island. Our focus is to fight for justice and change for our communities. We do so by educating young people on issues within communities of color through race, gender, class, and historical analysis.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. The Providence Youth Student Movement (PrYSM) is particularly concerned about many policies and programs at the national, state and local level which encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these

characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Racial Profiling in Our Communities

Dear Committee,

My name is Chansino Eang, and I currently attend Hope High School as an Information Technology Student. **I am writing to ask you to support and help prevent racial profiling in Rhode Island.**

I am a youth leader at the Providence Youth Student movement, and do you know what I learned during this racial profiling campaign? I learned that this is a chance to speak up about how I really feel about those cops who decide to discriminate against me and my friends and my community. Why am I always getting targeted? When will there be a day when I can talk to a cop like they're my neighbor? I really don't want to hate cops, but the tension that they give me with the searches? I don't like it one bit. Last time I checked, all cops are supposed to be leaders in the community and be role models to the youth. The bad impressions they give and the searches that haven't been required are not good ways to express the badges that they are holding.

I remember one day when a cop pulled over and was asking my uncle and me some questions . We cooperated and replied back with our information. Most of the time, cops ask some questions and drive off but, the cops that asked me questions that day jumped out the car and, while searching, they asked me, “ Do you have anything guns on you? What gang do you roll with?” I told them I'm not in a gang—I'm fifteen, and I'm sure I don't have any guns. I know as a youth I have the right to say this is wrong because I didn't give the cops the consent to search me, and I wasn't doing anything wrong. But the power that they possessed scared the words out of my mouth, and I was stuck. The cops took advantage of that and discriminated against me by searching me anyways.

This needs to stop now. The gang unit criminalizes youth in every way. For instance, my little brother was badly hurt recently-- why did the gang unit show up first instead the of the ambulance? We asked for an ambulance specifically. We need to built a bridge between the cops

and the community, and that's all I have to say. I hope my message got through, and thank you very much for hearing me out.

Sincerely,
Chansino Eang

Dear Committee,

My name is Charlie Chhum. I go to Hope High school and I'm 16 years old. I live on the South Side of Providence. **I am writing to ask you to support and help prevent racial profiling in Rhode Island.**

It was one average summer day. My father and I went off to go pick up my brother from summer school. We picked him up and arrived at home. We then suddenly spotted a police car right behind us in our driveway. We didn't know what was happening. They came to us while we were in the car; they first start asking us if the car we were in if it was ours. Then they went off accusing us of stealing the car that we were in. After questioning us about our car, they asked my father, my brother and me if I we had our licenses. I wondering, 'Why do I need to show any identification? I'm just sitting and waiting in the back.'

Soon after, my mom stepped out of the house, shocked to see the police. They police went to her and started asking if she knew us and if we lived here. My mom said in an angry tone, "Yes, that's my husband and kids." They then told us we didn't hit the signal light back at the stop sign. I was thinking to myself, 'If we didn't hit it back over there, then why didn't they stop us right back at the stop sign? Why at our house?' They left after giving us a warning.

We were all angry. We felt disrespected. My father was just speechless. The same question goes through my mind: "Why at our house—a place where I feel safe?"

Sincerely,
Charlie Chhum

Dear Committee,

My name is Channy Neou and I am a volunteer coordinator for the Providence Youth Student Movement. **I am writing to ask you to support H-7256 and help prevent racial profiling in Rhode Island.**

Our organization works with Southeast Asian youth from all over the state, and sadly many of my friends and peers face racial profiling on a daily basis. But today I'm only going to speak about my experience. My friends and my associates were throwing an event with the Institute for the Study and Practice of Non Violence. We were holding it at our local recreation center, hanging out, getting things off our chest-- our thoughts, our feelings. Things we all had wanted to say from the beginning. As we sat there all huddled up, sharing and enjoying each other's company, a police car came. I had no worries; I thought, "they are our friends, why be afraid?" But then they got out and told my friends to line up on the wall so they can take their pictures. One by one, they lined up and had their pictures taken. And as I stood there and watched, I couldn't help but have a stir of questions come up: "What's going on?" "Why are their pictures being taken?" "These guys are my age, I'm 16, and do they have the right to do this?"

As I sat there and pondered, I heard "Hey, you." I looked up and saw the officer pointing at me. He told me to get up and stand there so he can take my picture. With all of these questions buzzing in my head I simply asked "Why?" He just proceeded and said just get up here. I'm thinking "Oh, he must mistake me for a gang member. I'll just tell him what is going on here and have the facilitator's support my story and that should clear things up." As soon I went through that he still told me to get up so he can take my picture. Frustrated with all of these questions in my head, and the lack of answers provided by the G-Unit, I told him, "I may know these people, but I am not in any other way affiliated with their gang. Why must MY picture be taken?" I guess he saw my frustration and proceeded to threaten me, saying he will find something and arrest me for it.

Baffled by the response, and in fear of getting in trouble with not only the police, but also my parents and older siblings, I had to swallow my pride and give in to the officer's demands. After the whole ordeal, I walked away angry and defeated. Like I was literally beaten down. My good name was ripped away; I was labeled as something I'm not. He judged me before he even knew me, and his judgment was wrong.

I don't know about anyone else but I personally don't enjoy being blamed for something I didn't do, have total strangers embarrass me in front of my peers, rip me of my pride and label me something that I'm not. This was my first encounter with the G-Unit or any officer for that matter that ended up negatively. And I truly wish that I could say that it was the last. I guess for every good officer out there, there's always a bad one. The only problem is we can't tell the difference. Its experiences like these that give the image to not only kids but to many people in the "ghetto" that a man with a badge is not really our friend, just a bully with authority.

We need to pass this law because we need better relations between the police and the community. We need good police and that means we have to have good laws to hold the police accountable. We live in a great city-- why accept anything less? We are human beings, and this is the United States, so shouldn't we have some basic level of human rights?

Sincerely,
Channy Neou

Dear Committee,

I am 29 year old Native American woman who would prefer to remain anonymous. I have experienced racial profiling, and **I am writing to ask you to help prevent racial profiling in Rhode Island.**

The incident occurred around the spring of 2007 on Laban St. in Providence. I turned my vehicle onto Laban St., and an officer was parked in front of me. He immediately turned around and pulled me over. I asked why and got no response. He asked for my license, registration, and proof of insurance. I had purchased the car less than 24 hrs previous. I had put insurance on it and had a notarized bill of sale dated for the previous day. I had my own valid registration for the plate on the car, from my other vehicle. Still, the officer had my vehicle towed and left me and my three children on the side of the road without a phone. I explained to the officer I had just purchased the car, and if he towed it I wouldn't have the money to get it out. The officer pulled off taking my license, registration papers, and proof of insurance. When I did manage to get the money to get it out, all my papers were left in the vehicle along with 6 tickets for various offenses. If I hadn't gotten the vehicle out, my license would have probably been suspended by the time I knew of the tickets. When I went to court for the tickets they were all dismissed.

The officer searched my vehicle without asking if he could or not. He threatened to arrest me in front of my children. I was embarrassed. My children were scared of cops. I made a complaint to NAACP, the Urban League, and PERA.

Sincerely,
Anonymous

Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color in the U.S.

The Providence Youth Student Movement is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the "End Racial Profiling Act (S.1670)" and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of the Providence Youth Student Movement. We welcome the opportunity for further dialogue and discussion about these important issues.

April 17, 2012

The Honorable Richard J. Durbin
Chairman
Subcommittee on the Constitution, Civil Rights
and Human Rights
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Lindsey Graham
Ranking Member
Subcommittee on the Constitution, Civil Rights
and Human Rights
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Graham:

Thank you for holding today's hearing, Ending Racial Profiling in America, on the different faces of racial profiling, exploring the harms of law enforcement using real or perceived race, ethnicity, nationality, or religion as a factor that creates suspicion.

As organizations that advocate for the freedom of religion and belief for all, we write to highlight our objections to religious profiling, which may sometimes also be used as a proxy for race, ethnicity, or national origin.

The freedom of religion and belief is one of our most treasured liberties, a fundamental and defining feature of our national character. Our Constitution guarantees that we are free to hold any religious belief, or none at all, and we are free to join together in communities to exercise those beliefs if we so choose. As a result, the United States is among the most religious, and religiously diverse, nations in the world. Our diversity of faiths and beliefs is a great strength.

We appreciate that most law enforcement officials discharge their duties honorably. Yet, when law enforcement profiles individuals and communities based solely on their real or perceived religion, religious appearance, religious observance, or religious practices, it undermines Americans' trust in those sworn to protect them and our nation's commitment to religious liberty and equal protection of the law. Furthermore, such actions not only have the effect of discriminating against religion generally and religious minorities in particular, but also fuel divisiveness by casting suspicion over an entire religious community.

Thank you again for drawing attention to this matter. We look forward to working on this issue and finding ways to protect religious freedom and civil rights for all.

Sincerely,

African American Ministers in Action
American Civil Liberties Union
American Humanist Association
Americans United for Separation of Church and State
Anti-Defamation League
Arab American Institute
Baptist Joint Committee for Religious Liberty
Catholics for Choice
Center for Inquiry

Christian Church (Disciples of Christ)
Council for Secular Humanism
Faith in Public Life
Foundation for Ethnic Understanding
Friends Committee on National Legislation
Institute for Science and Human Values
Interfaith Alliance
Islamic Society of North America
Jewish Council for Public Affairs
Lawyers' Committee for Civil Rights Under Law
Muslim Advocates
NAACP
National Council of Jewish Women
National Religious Campaign Against Torture
New Evangelical Partnership for the Common Good
People For the American Way
Rabbis for Human Rights-North America
Reconstructionist Rabbinical College
Sikh American Legal Defense and Education Fund
Sikh Council on Religion and Education
Sojourners
The Episcopal Church
The Sikh Coalition
Union for Reform Judaism
Unitarian Universalist Association of Congregations
United Church of Christ
United Methodist Church, General Board of Church and Society

STATEMENT OF LUIS V. GUTIERREZ
MEMBER OF CONGRESS
BEFORE THE UNITED STATES SENATE COMMITTEE ON THE JUDICIARY
Subcommittee on the Constitution, Civil Rights and Human Rights
Hearing on “Ending Racial Profiling in America”
April 17, 2012, 10:00 AM, Dirksen 226

Thank you Chairman Durbin and Ranking Member Graham and Members of the Subcommittee on the Constitution for inviting me to testify on the issue of racial profiling in Latino and immigrant communities. Before I begin, I would like to mention that I am a proud original cosponsor of the End Racial Profiling Act and strongly support Senator Durbin and Congressman Conyers in their appeal to the Department of Justice (DOJ) to close the religious and national origin loopholes in its guidance on racial profiling to all agencies, including those, like the Department of Homeland Security (DHS), who conduct national security and border security investigations. Passage of the bill and strengthening the DOJ guidance would be positive steps toward addressing some of the concerns I raise today.

In 2003, the Department of Justice (DOJ) under President George W. Bush issued the most robust guidance in the history of the United States against racial profiling.

When the guidance was issued, President Bush said that profiling is "...wrong, and we will end it in America." This is a laudable goal that we have not yet met.

The tragic shooting death of Trayvon Martin is a painful reminder of that. In many circumstances, when it comes to minorities and immigrants, I fear we have taken a few steps back.

Throughout my time in Congress, I have defended immigrants, citizens or not, and have worked tirelessly—alongside many of my colleagues in the House and Senate—for an immigration system that upholds the rule of law and honors our identity as a nation of immigrants. I have traveled from coast to coast to visit dozens of cities and communities. I've listened to immigrants' stories, I've marched and rallied with them, I've prayed with them.

The overwhelming sentiment expressed to me is that Latinos and immigrants feel they are regarded with suspicion, especially by law enforcement.

I think that a lot of Latinos and immigrants feel the same way that former Secretary of State Condoleezza Rice felt when she said last week to a crowd at Duke University: "I don't know when immigrants became the enemy."

The racial profiling of Latinos and immigrants, like all minorities, occurs everywhere in a variety of contexts. Today, I will specifically address racial profiling in the immigration enforcement context and its consequences for all Americans.

In my travels, I have met fathers traveling within the U.S. on trains or buses who have been singled out and detained by border patrol agents simply because they look Latino or "foreign" or speak with an accent.

I have met young people detained by border agents while sitting in their cars to pick up a friend from work because their clothes looked "dusty," or detained by Immigration and Customs Enforcement (ICE) agents while watching a soccer game in the local park.

I've talked to little kids living in Latino neighborhoods who open their doors to a knock by "police" who turn out to be ICE agents who then interrogate them about the origins or whereabouts of their parents.

In states that have passed or are pursuing "show me your papers" laws, entire communities live in hiding and under siege. Arizona's SB 1070 is the mother of such laws and because of the serious constitutional questions it raises, it will be the subject of a Supreme Court hearing next week. The face of racial profiling in America is Arizona's own Maricopa County Sheriff Joe Arpaio, of tent city, chain gang and pink underwear fame. After a lengthy 3-year investigation by the DOJ that will likely result in a lawsuit, DOJ accused Arpaio of engaging in "unconstitutional policing" by unfairly targeting Latinos for detention and arrest and setting the worst example of racial profiling in U.S. history.

Unfortunately, Arpaio-like profiling happens all over the country. Last November I organized a trip of ten Members of Congress to travel to Alabama for an ad-hoc field hearing on HB 56, an uglier version of Arizona's law, SB 1070. We received testimony from a city mayor, a county sheriff, civil rights leaders, advocates, teachers, parents and youth. While such laws aim to funnel undocumented immigrants into jail and then ICE's removal pipeline or drive them out of the state, what we have learned is that such laws hurt everybody—citizens and non-citizens, those with papers and those without, the old and the young, businesses and communities. The stories we heard took our breath away.

A public school student born and raised in Alabama came home from school crying to her father after other students told her she did not belong there and needed to "go back to Mexico"—a country she had never visited. Teachers talked about large numbers of students not coming to school out of fear of harassment of themselves or their families.

We heard of water authorities posting signs telling water customers to produce identification documents proving immigration status in order to maintain water service, or sending cut-off notices to all customers with Spanish sounding surnames.

We heard from a tomato farmer planning to significantly scale back production and letting U.S. citizen workers go in the process because so many of her Hispanic workers fled the state in fear. The farmer said she didn't have sufficient labor to work the land, pick the crops, or get them to market.

Birmingham officials informed us that after passage of HB 56, a Spanish Bank, BBVA Group, cancelled its plans to headquarter its U.S. operations in Alabama, killing potential U.S. jobs and future deposits in city coffers.

With such widespread social and economic damage, Alabama is working to amend their state law and other states are reconsidering their own SB 1070 copycat bills.

A draconian state law, however, is not required to conduct systematic discrimination of Latinos nearly everywhere. Most experience racial profiling through simple traffic stops by local police—profiling that continues to grow and goes unchecked by ICE enforcement programs such as 287(g) and Secure Communities. Under the pretext of a traffic stop, individuals who look or sound "foreign" are routinely booked into local jails so their legal status can be checked.

Gabino Sanchez in South Carolina is one such case. He is a young father who came here as a youngster, works hard, is active in his church and now is married and has two South Carolina-born kids of his own. Mr. Sanchez was stopped last November as he was pulling into his rural mobile home community, one of three other Hispanic residents stopped that same evening as they arrived home from work. Throughout the country, but especially in the South, police park their cruisers outside communities like this South Carolina trailer community and just wait for the slightest pretext to stop someone.

Not surprisingly, Mr. Sanchez was driving without a driver's license and the local police then referred him to ICE. Mr. Sanchez is an ideal candidate for prosecutorial discretion under ICE Director Morton's June 2011 memo, but he was denied a reprieve from removal proceedings because he has accumulated too many charges of driving without a license. As an undocumented immigrant, he is not allowed to obtain a permit under state law. So now, this father is treated as a criminal and a top priority for deportation, just like a habitual drunk driver, a drug dealer or a rapist. And the federal government is complicit in this case of serial racial profiling because, while the State of South Carolina cannot deport Mr. Sanchez and break up his family of American citizens, the federal government is doing just that.

In Alabama, I met 20 year old Martha, a young mother raised in the U.S. since the age of 11. One late afternoon she was driving her car and she was pulled over under the pretense of not turning her headlights on. She was arrested immediately for driving without a license and booked into jail so her status could be checked. Because her U.S. citizen husband was not present, their two year old, Alabama-born son was taken from the back seat of her car and turned over to the state welfare agency.

These stories happen every day. But this is not just about immigrants who are out of status. This is about all of us.

A couple years back, I intervened on behalf of a constituent, a Puerto Rican like me who was raised in Chicago. He was held by local police under the suspicion of being undocumented until ICE could come and take custody of him and begin the deportation process. Despite my intervention and faxing authorities his birth certificate, he was detained for nearly five days before he was released.

Other citizens have far more tragic experiences. There are hundreds, if not thousands, of cases of unlawfully detained U.S. citizens and legal residents in the United States each year. These are people who follow the rules and the process, and have legal status—but who have been unlawfully detained in violation of their Constitutional rights.

Some American citizens have been detained for months before their citizenship was established. Our fellow citizens have even been deported to countries they do not know. They are detained and sometimes wrongfully removed simply because of what they look like or sound like.

You cannot tell if an individual is illegally in the country by their appearance, their skin color, the shoes they wear, the car they drive or where they live. You cannot identify U.S. citizens by those measures, either. And yet, people make that judgment call every day and our laws, including our federal laws, condone it.

And it permeates society beyond the law enforcement context. Just ask Kansas State point guard Angel Rodriguez, a Puerto Rican from Miami. He was met with taunts of “Where’s your green card?” by Southern Mississippi students while he was getting ready to shoot a free throw during last month’s NCAA tournament. The students have been disciplined and are remorseful, and that is a satisfactory outcome, but the real issue here is why people think it is acceptable to profile or treat Latinos as second-class or suspects in the first place.

Rampant racial profiling of Latinos and other immigrants who are suspected to be illegally in the country simply because of their appearance has caused a civil rights crisis in my community and our nation. The protections guaranteed under our Constitution are meant for all of us, not just for some of us.

The legalization of racial profiling, as we are seeing in places like Alabama and Arizona, undermines strong families and the education of our children, is costly to implement and litigate, and drives away workers and investors who contribute to local economies.

Racial profiling also undermines public safety. While the overwhelming majority of law enforcement officers risk their lives on a daily basis to protect and serve all of us without bias, the practice of racial profiling by a few damages our criminal justice system. As Attorney General Ashcroft said in 2002, “Using race... as a proxy for potential criminal behavior is unconstitutional, and it undermines law enforcement by undermining the confidence that people can have in law enforcement.” The distrust many Latinos have of police and law enforcement is magnified when they become loosely deputized agents of federal immigration authorities and are seen as deportation officers, not defenders. This undermines the safety of everyone and limits our ability to successfully fight crime in our neighborhoods and protect our nation from serious threats.

Senator Durbin and Senator Graham, you and I and others here today have spent countless hours discussing our country’s need for immigration reform. The proliferation of state and local laws predicated on racial profiling are just more evidence that we need to roll up our sleeves and get back to work. The law enforcement and criminal justice resources this country wastes because

we have not enacted immigration reform are a tragedy partly of our making because we have failed to come to an agreement. Families are being lost, thousands of U.S. children are being placed in foster care because of a deported parent and jails are filling up with our hardworking neighbors and friends. These are costs the nation incurs because Congress fails to act.

We need to create an immigration system where people can come legally within a controlled and orderly process so that the American people have trust and confidence in the integrity of the system and our sovereign borders. We need to get the millions of immigrants who are living and raising families here and whose roots and contributions go deep into our communities into the system and on-the-books. We need to reestablish integrity and legality in our immigration system so that America's young people look at people like Gabino Sanchez and see a father and church member. So that people look at Puerto Rican basketball player Angel Rodriguez and see a talented player and student. So that people look at mothers like Martha and say what a fine young American family she is raising. This is an urgent challenge to us as leaders.

Thank you again for the opportunity to testify. I welcome any questions Members of the Subcommittee may have.

Statement of the Honorable Frederica Wilson
Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights and Human
Rights
Hearing: "Ending Racial Profiling in America"
April 17, 2012

Chairman Durbin, Ranking Member Graham, and Senator Blumenthal, I thank you for inviting me to testify today on the issue of racial profiling.

Last week, after 45 days, an arrest was finally made in the shooting death of my constituent Trayvon Martin.

Trayvon was a 17 year old boy walking home from the store. He was unarmed and walking simply with skittles and iced tea. He went skiing in the winter and horseback riding in the summer. His brother and best friend is a senior at Florida International University in Miami. A middle class family, that didn't matter, He was still profiled / followed / chased and murdered. This case has captured international attention and will go down in history as a textbook example of racial profiling.

His murder affected me personally and it broke my heart again. I have buried so many young Black boys – it is extremely traumatizing for me.

When my own son who is now a school principal learned to drive, I bought him a cell phone because I knew he would be profiled and he was.

He is still fearful of law enforcement and what they might do when he is driving.

I have 3 grandsons, 1, 3, and 5 years-old. I hope we can solve this issue before they receive a driver's license.

I PRAY for them, even now.

There is a real tension between black boys and the police. Not perceived, but real.

If you walk into any inner-city school and ask the students, "Have any of you ever been racially profiled?"

Everyone will raise their hands.

Boys and girls.

They've been followed as they shop in stores. They have been stopped by the police for no apparent reason.

And they know at a young age that they will be profiled.

I am a staunch child advocate, I don't care what color the child. As a school principal, school board member, state legislator, and now in Congress, I desperately care about the welfare of all children. They are my passion.

But I have learned from my experiences that Black boys, in particular, are at risk.

Years of economic and legal disenfranchisement, the legacy of slavery and Jim Crow, have led to serious social, economic and criminal justice disparities and fueled prejudice against black boys and men.

Trayvon Martin was a victim of this legacy. This legacy that has led to fear. This legacy that has led to the isolation of Black males. This legacy that has led to racial profiling.

Trayvon was murdered by someone who thought he looked suspicious.

I established the Council on the Social Status of Black Men and Boys in the State of Florida when I was in the State Senate.

I believe we need a Council or Commission like this at the national, federal level. Everyone should understand that our entire society is impacted.

A federal Commission on the Social Status of Black and Boys and Men should be established specifically to focus on alleviating and correcting the underlying causes of higher rates of school expulsions and suspensions, homicides, incarceration, poverty, violence, drug abuse, as well as income, health and educational disparities among Black males.

I have spent twenty years building a mentoring and drop-out prevention program for at-risk boys in Miami-Dade County Public Schools. It's called the 5,000 Role Models of Excellence Project. Boys are taught not only how to be productive members of society by emulating mentors who are role models in the community, they are also taught how to respond to racial profiling. It serves 8,000 young black boys and must be expanded. It is a sad reality that we have to teach boys these things just to survive in their own communities. But we do.

We need to have a national conversation about racial profiling now, not later.

The time is now to stand up and address these issues and fight injustice that exists throughout our nation.

Enough is enough.

Thank you Mr. Chairman.

Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights hearing on
“Ending Racial Profiling in America”
April 17, 2012
10:00 A.M. Dirksen 226

As the Chair of the Congressional Asian Pacific American Caucus, I am grateful for the opportunity to speak here today about ending racial profiling in America. Asian Americans and Pacific Islanders, like other minority communities, have felt the significant effects of racial profiling throughout American history. From the Chinese Exclusion Act to the Japanese Internment to post 9/11 racial profiling of Arabs, Sikhs, Muslims and South Asians, we know what it is like to be targeted. It results in harassment, bullying, and even violence.

Arab, Sikh, Muslim and South Asian communities continue to be profiled and harassed. In the House Judiciary Committee, we listened to the anguished testimony of Sikh Americans who were pulled out of lines at airports just because they were wearing a turban. Where they were made to wait in a glass cage on display like some animal. Where they were pulled into rooms to be interrogated for hours. Where even their babies were searched. This has forced Sikh Americans and Muslim Americans to change their traveling habits either by flying less frequently or removing religious attire before traveling.

And just last year, I was shocked to learn that the New York Police Department and the CIA were secretly spying on Muslims. Without evidence of wrongdoing since 2002, officers were monitoring Muslim communities, eavesdropping on people; recording everything from where they prayed to the restaurants they ate in. The NYPD entered several states in the northeast to monitor Muslim Student Associations at college campuses. These students had done nothing except claim that they were practicing Islam and somehow they were guilty because of the faith that they practice. This is a regression to some of the darkest periods of our history when we mistrusted our own citizens and spied on their daily lives. And it should have no place in our modern society.

When law enforcement uses racial profiling against a group, it replaces trust with fear and hurts communication. The community and law enforcement need to be partners to prevent crimes and ensure the safety of all Americans.

Profiling has extended itself to immigration status profiling. Under Arizona SB1070 and Alabama HB56, law enforcement is encouraged to profile minorities by asking the individual to pull out their “immigration papers.” In Alabama, minorities are disproportionately asked for proof of citizenship by the government when they renew their driver’s license, library card, or try to open up a utility account. One man was unable to get running water because he did not present ID when he paid his bill. The utility accepted his passport and turned on his water only after he and his three young children had to suffer for 40 days without having running water. Because a high number of Asian Americans and Pacific Islanders come from an immigrant background they are disproportionately affected by these laws as are Hispanic Americans.

When the civil liberties of any group is violated, we all suffer. I know what happens when we don't speak out. Over 60 years ago, 120,000 Japanese Americans were taken to camps around the country, based on hysteria and scapegoating about espionage amongst them. They lost everything they had. In the end, there was not a single case of espionage proven. But there were not enough voices to speak up against this injustice. We must stand up for the rights of all Americans.

I am here today to speak up against racial profiling, against anyone, wherever and whenever it occurs. Law enforcement has a duty to protect the rights of all Americans and I urge all Member of Congress to support the End Racial Profiling Act. Because we must ensure that there is equality and justice for everybody in this country. So that we will have a country that will be inclusive of all people, where every resident can have access to the American Dream, and where no one feels unsafe, unequal, or un-American because of their faith or ethnicity.

Thank you for having this important hearing and thank you for allowing me to testify.

KEITH ELLISON
5TH DISTRICT, MINNESOTA

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FINANCIAL SERVICES COMMITTEE
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SUBCOMMITTEE ON CAPITAL MARKETS AND
GOVERNMENT SPONSORED ENTERPRISES

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES

April 17, 2012

U.S. Senator Richard Durbin
711 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Durbin:

Thank you for holding today's hearing of the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights, "Ending Racial Profiling in America."

In addition to my oral statement, I would like to submit the following reports for the record:

1. "Unreasonable Intrusions: Investigating the Politics, Faith and Finances of Americans Returning Home," a 2009 report by Muslim Advocates:
http://www.muslimadvocates.org/documents/Unreasonable_Intrusions_2009.pdf
2. "Engaging American Muslims: Political Trends and Attitudes," a 2012 report by the Institute for Social Policy and Understanding:
http://ispu.org/pdfs/ISPU%20Report_Political%20Participation_Senzai_WEB.pdf
3. "Muslim Americans: No Signs of Growth in Alienation or Support for Extremism," a 2011 survey by the Pew Research Center:
<http://www.people-press.org/files/legacy-pdf/Muslim-American-Report.pdf>
4. "Muslim-American Terrorism in the Decade Since 9/11," a 2012 study by the Triangle Center on Terrorism and Homeland Security:
http://sanford.duke.edu/centers/tcths/documents/Kurzman_Muslim-American_Terrorism_in_the_Decade_Since_9_11.pdf

Thanks to you and your colleagues on the committee for considering these reports.

Sincerely,

A handwritten signature in blue ink that reads "Keith Ellison".

Keith Ellison
Member of Congress



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STATEMENT OF

Deepa Iyer, Executive Director

South Asian Americans Leading Together (SAALT)

“Ending Racial Profiling in America” Hearing

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of South Asian Americans Leading Together (SAALT) regarding today’s hearing on racial profiling. SAALT is a national, nonpartisan, non-profit organization that elevates the voices and perspectives of South Asian individuals and organizations to build a more just and inclusive society in the United States. SAALT works with a base of individual members and advocates and is the coordinating entity of the National Coalition of South Asian Organizations (NCSO), a network of 40 organizations in 13 geographic regions that provide direct services to, organize, and advocate on behalf of the South Asians in the United States.

SAALT denounces the use of profiling based on race, religion, ethnicity, national origin, nationality, and immigration status. Especially since September 11th, South Asians, Sikhs, Muslims, and Arab Americans have been subjected to policies that are based in profiling by federal, state, and local law enforcement agencies. SAALT works closely with partner organizations to identify the impact of profiling tactics and advocate against their utilization. SAALT strongly urges the passage of federal legislation, such as the *End Racial Profiling Act*, that eliminates profiling in all its forms, including those resulting from post-September 11th policies and practices.

We thank you for holding this critical and timely hearing on racial profiling and the *End Racial Profiling Act*. SAALT is particularly concerned about many policies and programs at the national, state and local level which encourage or incentivize discriminatory law enforcement practices such as racial and religious profiling. We believe that these practices are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States.

RACIAL AND RELIGIOUS PROFILING AND ITS CONSEQUENCES

Profiling is a law enforcement tactic that connects individuals to crimes based on characteristics unrelated to criminal conduct, such as race, religion, ethnicity, national origin, and perceived immigration status. Federal, state, and local law enforcement officials often use these factors as predictors of criminal activity. Historical and contemporary examples include the use of racial profiling

Strengthening South Asian Communities in America

when stopping African-American motorists, interrogating Latino travelers, and questioning and searching South Asian, Muslim, Sikh, and Arab individuals. Despite its widespread use, often in the name of national security as it relates to the South Asian community, profiling does not work and often leads to ineffective law enforcement. It diverts limited law enforcement resources; in many cases, law enforcement agents miss actual criminal activity by focusing on racial or religious characteristics. It undermines trust between targeted communities and the government; individuals from these communities can end up feeling disempowered and marginalized resulting in many becoming hesitant to reach out to law enforcement. It threatens community safety as individuals become wary about reporting criminal activity or cooperating in investigations. And it perpetuates public misperceptions and stereotypes of targeted communities as government endorsement of prejudices and preconceptions can entrench these views among the general population.

RACIAL AND RELIGIOUS PROFILING AND THE SOUTH ASIAN EXPERIENCE

Since September 11th, South Asian community members continue to encounter government scrutiny based on their race, national origin, and religion in various arenas. For example, premised on the faulty presumption that these communities are more prone to “radicalization” leading to homegrown terrorism, interrogations of community members and infiltration of places of worship by local law enforcement and the Federal Bureau of Investigation (FBI) has become routine. Most recently, a series of Associated Press reports came to light regarding the NYPD’s focus on Muslim communities through infiltration of Muslim student groups throughout universities in the Northeast; monitoring of Shia mosques; continuous and widespread screenings during police trainings of the film, *The Third Jihad*, which proclaimed that Muslims want to “infiltrate and dominate” the United States; and, with the help of the Central Intelligence Agency (CIA), spying and demographic mapping of Muslims in the city. In addition, for South Asian, Muslim, Sikh, and Arab travelers, various changes in security procedures since September 11th, carried out by U.S. Customs and Border Protection (CBP) and the Transportation Security Administration (TSA) within DHS, have resulted in additional screening of community members because of religious attire or being asked personal questions related to faith and political beliefs. Moreover, the merger between national security and immigration laws, including increasingly punitive immigration enforcement and deportation policies targeting particular communities, has led to the families being torn apart. Perhaps the most telling example of how South Asian communities have been profiled as a result of post-September 11th immigration policies is the National Security Entry-Exit Registration System (NSEERS) program, where non-citizen, non-immigrant, men and boys above the age of 16 from 25 Muslim-majority nations, including Bangladesh and Pakistan, as well as North Korea, were required to report to local immigration offices between November 2002 and April 2003; while the program has been modified in recent years, its framework nevertheless remains on the books and community members are still affected by its negative immigration consequences.

In order to capture the ongoing effects of profiling on the daily lives of South Asians, seven organizations, DRUM - Desis Rising Up and Moving, The Sikh Coalition, UNITED SIKHS, South Asian Youth Action (SAYA!), Coney Island Avenue Project (CIAP), Council of Peoples Organization (COPO), and SAALT recently released a report, *In Our Own Words: Narratives of South Asian New Yorkers Affected by Racial and Religious Profiling*¹, that documented the experiences of over 600 South Asian community members in New York City through questionnaires, focus groups, and interviews. While the report focused on New York City, our organization knows that South Asian community members in other parts of the country often endure similar experiences and their consequences. What the experiences of

¹ Report is available at <http://www.saalt.org/filestore/Reports/In%20Our%20Own%20Words%20Web%20FINAL.pdf>.

community members show is that profiling has affected virtually every facet of the individuals' daily lives – from how to dress, how to travel, how to practice one's faith, how to express one's identity, and how to interact with family members, neighbors, and the government.

The following findings and community testimonials from the *In Our Own Words* report illustrate the harsh consequences of racial and religious profiling; how they have wreaked havoc on community members' lives; and the need for robust anti-profiling policies.

Profiling results in South Asians being frequently questioned about their faith or national origin by government officials. Community members conveyed that they were being singled out by government agencies because of their faith, ethnic background, or country origin. For example, among the subset of questionnaire respondents who provided details on interactions with law enforcement, 73% reported being questioned about their national origin and 66% reported being questioned about their religious affiliation. Similarly, among questionnaire respondents who reported being subjected to additional screening at ports-of-entry, 41% indicated that airport CBP agents inquired about their religious or political beliefs.

The following testimonials underscore how law abiding community members endured scrutiny as a result of racial and religious profiling:

I recall when FBI and Department of Homeland Security agents had surrounded our neighborhood in Brooklyn. They would wait for the restaurant workers to show up at work. My colleagues in the restaurant kitchen were often questioned by [these] agencies. They were asked about their religion and their affiliation with terrorist organizations that we never heard [of] before. They also asked about immigration status, ethnicity, and so on.

– 68-year-old South Asian restaurant worker in New York City

I was stopped by an FBI agent while I was coming back from work in the evening. He asked me to show my ID. He asked me questions like which masjid [mosque] I go to pray and [if] I know any terrorists in my neighborhood. I said to him, "No, I don't."

– South Asian construction worker in New York City

In mid-March 2008, a 23-year-old Muslim woman was traveling with her 2-year-old son from Canada to New York at La Guardia airport. She went through the regular screening with her son, but, then, was asked to step aside for further security purposes. She was the only one asked to step aside [from those in] line. She was wearing a hijab and was questioned about what was underneath it. The immigration officers led her and her child to a different room where she and her son were both patted down. Her luggage was also opened and checked. After the officer found nothing, the woman was told to wait for another officer to call her because she had to be questioned. The other officer rudely asked her questions like, "Where are you originally from? Why are you traveling with a child and whose child is he? Why didn't you change your maiden name after marriage? Why do you travel so much? Where is your husband? What does he do? What is his status? Has he ever been arrested?"

– South Asian community member in New York City

Profiling results in South Asians being questioned by government officials about their immigration status which is used to pressure individuals to spy on fellow community members. Often, individuals who are stopped and questioned by law enforcement are then asked by the very same agents to spy on their own communities in order to obtain supposed counterterrorism intelligence. At times, community

members are promised immigration benefits if they comply or else face adverse immigration consequences if they do not. In fact, among the subset of questionnaire respondents who provided details on interactions with law enforcement, 85% reported being questioned about their immigration status and 42% of those interactions involved entities other than immigration officials.

The following testimonials reveal how exactly this plays out for community members in their interactions with law enforcement and the sense of insecurity they feel as a result of being immigrants:

In 2002, I was arrested when I came back from work by FBI and ICE. I went through hell with five nights of questioning. They asked me about my [religious] affiliation or knowledge of terrorism. They asked me if I [had] any knowledge of [the] planning [for] the September 11th attacks. I had no clue why they were asking me these questions. When I refused to spy on my community and falsely trap them, I was locked up in a detention center for six months.

– 60-year-old Pakistani restaurant worker

[An FBI agent] offered me immigration benefits such as a green card and asked me to cooperate with him. I was trembling with fear and could not speak well. He let me go by saying that he will come back again and that I should think about it.

– South Asian construction worker

Profiling results in South Asians feeling viewed as “suspects” by the general public, within their community, and even within their families. Whether as a result of profiling by airport officials, immigration authorities, or police and FBI agents, many community members report fearing nearby witnesses would subsequently view them with suspicion. Community members end up feeling humiliated, viewed as suspects by the general public, and recognizing that they are treated differently from other Americans. In some instances, relationships with friends, colleagues, and family members became strained following baseless questioning. The effect of such monitoring and questioning has also sowed mistrust of law enforcement and caused them to lose faith in turning to police for assistance during times of need.

The following testimonials illustrate the profound impact of profiling on South Asians sense of identity and its negative consequences in their daily lives:

I felt like I was being threatened more than just being questioned. While it was happening, I was just always scared of the outcome, like, would I go with them and sit in [the] back of the car in handcuffs? For whatever reason, that would also be a scare for me. It would go up on my record and I’m trying to get a job. They are gonna see my record and then they are gonna be, like, you have been arrested for what reason? And, also, socially, find out, like – hey, yeah, my son got arrested this many nights. It’s not really a proud thing for your parents to tell other people, so it has affected my family and my education as well.

– 18-year-old Bangladeshi Buddhist high school student, Jackson Heights, Queens

I was arrested by a School Safety Agent in Flushing, Queens, in 2009. I was searched ... [and] questioned. My friend was present with me from school. The tone of the conversation was aggressive and hostile. I was scared ... and I thought, I am gonna get arrested. [A]ll of [this] affected my school work, family life, and relationship with my friend. So, now, whenever I get stopped by cops, they’ll notice [the arrest] after they run my name. Also, my friend and family don’t talk to me anymore. My family thinks I am a criminal. I told my family members about this incident, but they take the

[government's] word over mine, so they don't believe or trust me. It [also] impacted my school life because I failed that marking period.

– 18-year-old Indian Hindu male high school student, Jackson Heights, Queens

The most humiliating aspect was being put in a clear glass chamber in the middle of the security section [while] waiting for the TSA agent. I saw people looking at me as they walked past – no one was pulled aside except me. In the minds of most people, even if I saw it happen to someone else, I would wonder why the person was pulled aside. I would assume there was a reason and, hence, raise my suspicions of the individual.

– 32-year-old male Sikh software manager, JFK Airport

Profiling results in South Asians altering their behavior and how they express their faith in an attempt to avoid additional scrutiny. For some community members, profiling has become so routine that they have even changed their religious practices and everyday activities. For example, among the subset of questionnaire respondents who indicated the frequency at which they are subjected to secondary security screening by TSA agents, 25% stated being selected more than half the time they traveled. As a result, many respondents reported changing their activities, such as flying less frequently or removing religious attire prior to travel.

The following testimonials demonstrate the chilling effect of protected First Amendment rights resulting from profiling for South Asian community members:

After [being subjected to questioning about my personal life and my husband after traveling while wearing a hijab], the next time [I] traveled, [I] did not wear the hijab. [I] was not asked for further screening or questioning. [I] was approached very politely. [I] had mixed feelings; [I] didn't know whether to feel happy or sad. It felt nice to be treated like everyone else, but, then again, it was upsetting to feel [I] was mistreated just because [I] wore a hijab.

– Muslim community member in New York City

I went through a stage where I couldn't control my anger. So, I stopped wearing a turban through the airports for a long time. [I] would just wear a hat and take it off when going through. [I] calmed down eventually [and] decided [I was] going to wear a turban again, [but it] kept happening. It has me thinking twice, and I shouldn't have to think twice.

– Sikh community member in New York City

I took off my kara [religious steel bangle worn by Sikhs] to avoid a secondary check. It's not something I like doing but, to avoid being profiled, it's something I do.

– 32-year-old male Sikh software manager, JFK Airport

Profiling results in South Asians losing faith in the government's ability to protect them in times of need. Particularly among individuals who had experienced questioning or arrests by the local police or the FBI, community members who reported to bias or discrimination in the private sphere to law enforcement have felt that their requests for help can go unheeded.

My son was arrested in August 2004. Since then, we have been getting these calls and anti-Muslim hate letters [at] my husband's store. I did complain to the police about this, and I still do have the

complaint number, but nothing was done about this. After all this happened with my son, I was so worried, paranoid, and stressed. I didn't know why it was happening to my family and [me].

– Pakistani Muslim female homemaker, Jackson Heights, Queens

At a movie theater in Kew Gardens, my friends and I went to see Iron Man 2 on a Friday evening. There was a couple who started calling us names referring to my turban, like "Osama bin Laden – I wouldn't want to mess with you. God knows what you be hiding in that s—t." The staff of that cinema not only noted what he said but contacted the NYPD and said there was a possible terror alert. We were escorted out and detained by 12 cops and three undercover detectives.

– 23-year-old Sikh security agent, South Ozone Park, Queens

As illustrated through these testimonials, the effect of racial and religious profiling on South Asian community members, both personally and collectively, has included impermissible inquiries about individuals' faith and background; being viewed as suspects by the broader community; and becoming hesitant to reach out to law enforcement for assistance. Perhaps even more concerning is that profiling has affected "everyday people" as they go about their daily lives and undermined their sense of self-worth and identity in the process. This underscores the need for policies that prohibit the practice of profiling.

CONCLUSION

SAALT is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the "End Racial Profiling Act (S.1670)" and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

For further information about the impact of profiling on the South Asian community, contact Priya Murthy, SAALT's Policy Director, at priya@saalt.org or (301) 270-1855.



STATEMENT OF

Marilyn Lorenz-Weinkauff, Program Coordinator

SAINT LOUIS INTER-FAITH COMMITTEE ON LATIN AMERICA

Hearing on Ending Racial Profiling in America

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of St Louis Inter-Faith Committee on Latin America (IFCLA) regarding today's hearing on racial profiling. The mission of IFCLA is to accompany the people of Latin America in their struggles for Human Rights and Social Justice and to educate and advocate in the U.S. We have been standing with immigrants since 1976 and experience with them numerous examples of racial profiling and bias which has made integration into U.S. life difficult and painful.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. The St. Louis Inter-Faith Committee on Latin America is particularly concerned about many policies and programs at the national, state and local level which encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that

these practices are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Racial Profiling in Our Communities

For that last five years or so, the Missouri General Assembly has passed and attempted to pass legislation (HB 1549 and now proposed SB590) which has codified racial profiling along the lines of SB1070 in Arizona, etc. It is a risk to travel on roads through municipalities, if one gives the appearance of difference from a “white standard,” one will be stopped and arrested for an air freshener hanging from the rear view mirror, or followed home from the day care center, or stopped and searched without probable cause. The police feel that they need to be ICE officers without training or authorization.

Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color throughout the United States.

The St Louis Inter-Faith Committee on Latin America is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the "End Racial Profiling Act (S.1670)" and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of the St Louis Inter-Faith Committee on Latin America. We welcome the opportunity for further dialogue and discussion about these important issues.



United States Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Hearing on "Ending Racial Profiling in America"
April 17, 2012

Statement of San Francisco District Attorney George Gascón

I make these comments in the context of my three decades of experience in law enforcement. From my beginnings as an officer in the Los Angeles Police Department, to serving as Chief of Police in Mesa, Arizona, Chief of Police for San Francisco, and now as San Francisco's elected District Attorney, I have seen first-hand how race-based enforcement practices drive a wedge between police and impacted communities. These practices undermine legitimate law enforcement and the entire criminal justice system.

At the local level, sustainable public safety strategies require active community participation in problem-solving efforts. For this level of community engagement to flourish, the public simply must trust the police. And the police must earn and preserve that trust.

It is nearly impossible to gain the required trust to make community policing a reality in places where the community fears the police will help deport them, or deport a neighbor, friend or relative. And it is impossible to gain trust of a community that feels that its own members are automatically distrusted because of the color of their skin. As a result, crimes go unsolved, justice is denied for victims of crime, and communities do not become safer.

During my tenure as Police Chief of Mesa, Arizona, I testified at a 2009 Joint Hearing of the Committee on the Judiciary Subcommittee on the Constitution, Civil Rights and Civil Liberties and the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. The subject of the hearing was "Public Safety and Civil Rights Implications of State and Local Law Enforcement of Federal Immigration Laws."

In those comments, I talked about the constitutional concerns created by 287(g) - ICE's delegation of federal immigration authority to state and local law enforcement agencies under section 287(g) of the Immigration and Nationality Act. I stated then – and I believe now – that this law sets the police profession back to the 1950s and 60s, when police officers were some times viewed in minority communities as the enemy. In fact, 287(g) has had an unintended reverse impact on public safety: immigrants who fear that the police will help to

deport them rely less on the local authorities and cede control of their neighborhoods to thugs.

I personally have seen first-hand the negative impacts of racial profiling – and I also have seen the incredible impacts of healthy partnerships between law enforcement and the community it serves. When I became Police Chief of Mesa, Arizona, I faced an anti-immigrant climate ready to blame Arizona’s crime problems on undocumented immigrants. I challenged Maricopa County Sheriff Joe Arpaio and anti-immigrant groups by using data to prove that immigrants weren’t to blame for Mesa’s crime problems. By the end of my three year tenure, serious crime in Mesa dropped by 30 percent and the Latino community and others had a strong working relationship with the Police Department.

Now serving as San Francisco District Attorney, I have broadened my work to address disproportionate minority contact throughout the criminal justice system, from arrest through sentencing and offender reentry. To this end, I have spearheaded the creation of the San Francisco Sentencing Commission, which will analyze sentencing patterns and outcomes to develop sentencing reforms that advance public safety, reduce recidivism and improve justice for both victims and offenders. I also support the National Criminal Justice Commission Act of 2011, which will take this kind of work to the national level for the first time in half a century.

Law enforcement – federal, state, and local – must commit to work together to provide our country with the safety and security that defines a civilized society. Racial profiling has no place in this society, or in our law enforcement organizations.



Cosponsor the End Racial Profiling Act of 2011 S. 1670

April 16, 2012

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights, and the undersigned organizations, we urge you to cosponsor the End Racial Profiling Act of 2011 (ERPA). Passage of this bill is needed to put an end to racial profiling by law enforcement officials and to ensure that individuals are not prejudicially stopped, investigated, arrested, or detained based on their race, ethnicity, national origin, or religion. Policies primarily designed to impact certain groups are ineffective and often result in the destruction of civil liberties for everyone.

ERPA would establish a prohibition on racial profiling, enforceable by declaratory or injunctive relief. The legislation would mandate training for federal law enforcement officials on racial profiling issues. As a condition of receiving federal funding, state, local, and Indian tribal law enforcement agencies would be required to collect data on both routine and spontaneous investigatory activities. The Department of Justice would be authorized to provide grants to state and local law enforcement agencies for the development and implementation of best policing practices, such as early warning systems, technology integration, and other management protocols that discourage profiling. Lastly, this important legislation would require the Attorney General to issue periodic reports to Congress assessing the nature of any ongoing racial profiling.

Racial profiling involves the unwarranted screening of certain groups of people, assumed by the police and other law enforcement agents to be predisposed to criminal behavior. Multiple studies have proven that racial profiling results in the misallocation of law enforcement resources and therefore a failure to identify actual crimes that are planned and committed. By relying on stereotypes rather than proven investigative procedures, the lives of innocent people are needlessly harmed by law enforcement agencies and officials.

As is evident by recent events across the nation, racial profiling is a pervasive and harmful practice that negatively impacts both individuals and communities. Racial profiling results in a loss of trust and confidence in local, state, and federal law enforcement. Although most individuals are taught from an early age that the role of law enforcement is to fairly defend and guard communities from people who want to cause harm to others, this fundamental message is often contradicted when these same defenders are seen as unnecessarily and unjustifiably harassing innocent citizens. Criminal investigations are flawed and hindered because people and



communities impacted by these stereotypes are less likely to cooperate with law enforcement agencies they have grown to mistrust. We can begin to reestablish trust in law enforcement if we act now.

Current federal law enforcement guidance and state laws provide incomplete solutions to the pervasive nationwide problem of racial profiling.

Your support for the End Racial Profiling Act of 2011 is critical to its passage. We urge you to cosponsor this vital legislation, which will ensure that federal, state, and local law enforcement agencies are prohibited from impermissibly considering race, ethnicity, national origin, or religion in carrying out law enforcement activities. To become a cosponsor, please contact Bill Van Horne in Senator Cardin's office at bill_vanhorne@cardin.senate.gov or (202) 224-4524. If you have any questions, please feel free to contact Lexer Quamie at (202) 466-3648 or Nancy Zirkin at (202) 263-2880. Thank you for your valued consideration of this critical legislation.

Sincerely,

National Organizations

A. Philip Randolph Institute
African American Ministers in Action
American Civil Liberties Union
American Humanist Association
American-Arab Anti-Discrimination Committee
American Probation and Parole Association
Asian & Pacific Islander American Health Forum
Asian American Justice Center
Asian Law Caucus
Asian Pacific American Labor Alliance
Bill of Rights Defense Committee
Blacks in Law Enforcement in America
Break the Cycle
Brennan Center for Justice at New York University School of Law
Campaign for Community Change
Campaign for Youth Justice
Center for National Security Studies
Charles Hamilton Houston Institute for Race and Justice at Harvard Law School
Council on American-Islamic Relations
Council on Illicit Drugs of the National Association for Public Health Policy
Disciples Justice Action Network
Drug Policy Alliance



Equal Justice Society
Fair Immigration Reform Movement
Fellowship of Reconciliation
Human Rights Watch
Indo-American Center
Institute Justice Team, Sisters of Mercy of the Americas
Japanese American Citizens League
Jewish Labor Committee
Jewish Reconstructionist Federation
Lawyers' Committee for Civil Rights Under Law
The Leadership Conference on Civil and Human Rights
League of United Latin American Citizens
Lutheran Immigration and Refugee Service
Muslim Advocates
Muslim Legal Fund of America
Muslim Public Affairs Council
NAACP
NAACP Legal Defense and Educational Fund, Inc.
National Advocacy Center of the Sisters of the Good Shepherd
National African American Drug Policy Coalition, Inc.
National Alliance for Medication Assisted Recovery
National Alliance of Faith and Justice
National Asian American Pacific Islander Mental Health Association
National Asian Pacific American Bar Association
National Asian Pacific American Women's Forum
National Association of Criminal Defense Lawyers
National Association of Social Workers
National Black Justice Coalition
National Black Law Students Association
National Black Police Association
National Congress of American Indians
National Council of La Raza
National Education Association
National Gay and Lesbian Task Force Action Fund
National Korean American Service and Education Consortium
National Latina Institute for Reproductive Health
National Lawyers Guild Drug Policy Committee
National Legal Aid and Defender Association
National Organization of Black Women in Law Enforcement
National Organization of Sisters of Color Ending Sexual Assault
National Urban League Policy Institute
NETWORK, A National Catholic Social Justice Lobby
9to5, National Association of Working Women

North American South Asian Bar Association
Open Society Policy Center
Organization of Chinese Americans
Pax Christi USA: National Catholic Peace Movement
Prison Policy Initiative
Rights Working Group
Sentencing Project
Sikh American Legal Defense and Education Fund
Sikh Coalition
SOJOURNERS
South Asian Americans Leading Together
South Asian Network
South Asian Resource Action Center
StoptheDrugWar.org
The Real Cost of Prisons Project
Treatment Communities of America
U.S. Human Rights Network
Union for Reform Judaism
United Methodist Church, General Board of Church and Society
UNITED SIKHS
Women's Alliance for Theology, Ethics and Ritual

State and Local Organizations

A New PATH (Parents for Addiction Treatment & Healing) (California)
Adhikaar (New York)
Advocare, Inc. (Ohio)
Arab American Action Network (Illinois)
Arab-American Family Support Center (New York)
CASA de Maryland (Maryland)
Casa Esperanza (New Jersey)
CAUSA - Oregon's Immigrant Rights Organization (Oregon)
Center for NuLeadership on Urban Solutions (New York)
Counselors Helping (South) Asians/Indians, Inc. (Maryland)
Desis Rising Up and Moving (New York)
Drug Policy Forum of Hawaii (Hawaii)
Drug Policy Forum of Texas (Texas)
Florida Immigrant Coalition (Florida)
Healing Communities Prison Ministry and Reentry Project (Pennsylvania)
Korean American Resource and Cultural Center (Illinois)
Korean Resource Center (California)
Legal Services for Prisoners with Children (California)
Legal Voice (Washington)
Maryland CURE - Citizens United for the Rehabilitation of Errants (Maryland)



National Alliance for Medication Assisted Recovery, Delaware Chapter (Delaware)
9to5 Atlanta Working Women (Georgia)
9to5 Bay Area (California)
9to5 Colorado (Colorado)
9to5 Los Angeles (California)
9to5 Milwaukee (Wisconsin)
Perspectives, Inc. (Minnesota)
Pinos y Campesinos Unidos del Noroeste –
 Northwest Treeplanters and Farmworkers United (Oregon)
Public Justice Center (Maryland)
Rights for All People (Colorado)
Safe Streets Arts Foundation (Washington, DC)
Sahara of South Florida, Inc. (Florida)
Satrang (California)
Sneha, Inc. (Connecticut)
South Asian Bar Association of Northern California (California)
St. Leonard's Ministries (Illinois)

TESTIMONY OF SENATOR BENJAMIN L. CARDIN
HEARING: “ENDING RACIAL PROFILING IN AMERICA”
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS & HUMAN RIGHTS
SENATE JUDICIARY COMMITTEE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham, let me begin by thanking you for holding this hearing today. And I thank you for the opportunity to testify before the Judiciary Committee on the topic of ending racial profiling in America. I also want to join in welcoming my former colleagues in the House, Representatives Gutierrez, Ellison, and Chu, to the Senate.

Over the past few months the nation’s attention has been riveted to the tragic, avoidable death of Trayvon Martin in Florida. A few weeks ago I spoke about this issue at the Center for Urban Families in Baltimore.

Joining me were representatives from various faith and civil rights groups in Baltimore, as well as graduates from the Center’s program. I heard there first-hand accounts of typical American families that were victims of racial profiling. One young woman recounted going to a basketball game with her father, only to have her dad detained by police for no apparent reason other than the color of his skin.

That’s why I am pleased that the Justice Department, under the supervision of Attorney General Eric Holder, has announced an investigation into the shooting death of Trayvon Martin on February 26, 2012. As we all know from the news, an unarmed Martin, 17, was shot in Sanford, FL on his way home from a convenience store by Mr. George Zimmerman.

I join all Americans in wanting a full and complete investigation into the shooting death of Trayvon Martin to ensure that justice is served. There are many questions that we need the Justice Department to answer.

Was Trayvon targeted by Mr. Zimmerman because he was black? The state of Florida has already charged Zimmerman with second-degree murder, and Zimmerman will be given a jury trial of his peers to determine whether he is guilty.

A key question is whether Trayvon was a victim of racial profiling by the police. Was Trayvon treated differently by local law enforcement in their shooting investigation because he was black and the aggressor was white?

Trayvon's tragic death leads to a discussion of the broader issue of racial profiling. I have called for putting an end to racial profiling, a practice that singles out individuals based on race or other protected categories. In October 2011, I introduced legislation, *End Racial Profiling Act* (ERPA), S. 1670, which would protect minority communities by prohibiting the use of racial profiling by law enforcement officials.

First, the bill prohibits the use of racial profiling – using a standard definition – that includes race, ethnicity, national origin, or religion. All law enforcement agencies would be prohibited from using racial profiling in criminal or routine law enforcement investigations, immigration enforcement, and national security cases.

The bill also prohibits the use of race in “deciding upon the scope and substance of law enforcement activity following the initial investigatory procedure.”

Second, the bill would mandate training on racial profiling issues, and requires data collection by local and state law enforcement agencies.

Third, this bill would condition the receipt of federal funds by state and local law enforcement on two grounds. First, under this bill, state and local law enforcement would have to “maintain adequate policies and procedures designed to eliminate racial profiling.” Second, they must “eliminate any existing practices that permit or encourage racial profiling.”

Fourth, the bill would authorize the Justice Department to provide grants to state and local government to develop and implement best policing practices that would discourage racial profiling.

Finally, the bill would require the Attorney General to provide periodic reports to assess the nature of any ongoing discriminatory profiling practices.

The bill would also provide remedies for individuals who were harmed by racial profiling.

The legislation I introduced is supported by the NAACP, ACLU, the Rights Working Group, and the Leadership Conference on Civil and Human Rights, and numerous other organizations.

I thank these groups and many others for their efforts in putting a human face on the issue of racial profiling, and for the numerous reports they have issued on the different faces of racial profiling, which I encourage Senators to review. I strongly support their advocacy efforts on Capitol Hill this week to raise awareness of this issue and build co-sponsors for this legislation. I ask unanimous consent to include a letter in the record from numerous civil rights and human rights organizations endorsing this legislation.

Let me also thank Chairman Durbin for leading the effort in the Senate on a letter to Attorney General Holder asking him to revise the Department of Justice's racial profiling guidance.

Racial profiling is bad policy, but given the state of our budgets, it also diverts scarce resources from real law enforcement. Law enforcement officials nationwide already have tight budgets. The more resources spent investigating individuals solely because of their race or religion, the fewer resources directed at suspects who are actually demonstrating illegal behavior.

Racial profiling has no place in modern law enforcement. The vast majority of our law enforcement officials who put their lives on the line every day handle their jobs with professionalism, diligence, and fidelity to the rule of law. However, Congress and the Justice Department can and should still take steps to prohibit racial profiling and finally root out its use.

The Fourteenth Amendment to the U.S. Constitution guarantees the "equal protection of the laws" to all Americans. Racial profiling is abhorrent to that principle, and should be ended once and for all.

As the late Senator Kennedy often said, “Civil Rights is the great unfinished business of America.” Let’s continue the fight here to make sure that we truly have equal justice under law for all Americans.

STATEMENT OF
THE SIKH COALITION
Hearing: End Racial Profiling in America
SENATE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS
UNITED STATES SENATE
APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: The Sikh Coalition respectfully submits this testimony for the record in connection with today's hearing on racial profiling.

The Sikh Coalition is the largest and most-staffed Sikh American civil rights organization in the United States. Followers of the Sikh religion—the fifth largest world religion—are distinguished by turbans and uncut hair and have experienced widespread discrimination in the post-9/11 environment on account of their appearance, including racial profiling.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Apart from being morally repugnant and demeaning to its victims, racial profiling diverts precious law enforcement resources and taxpayer dollars away from smart, targeted, behavior-based investigations.

The Impact of Racial Profiling on Our Communities

Racial profiling is not a theoretical concern. This year, the Sikh Coalition co-authored a report about the impact of racial and religious profiling on people of South Asian origin in New York City. Sadly, 73% of respondents surveyed were questioned by law enforcement about their national origin; 66% reported being questioned about their religious affiliations; and 85% reported being questioned about their immigration status.¹ Last year, the Sikh Coalition led a coalition of 38 civil rights organizations demanding an independent audit of the Transportation Security Administration (TSA) to determine whether the agency engages in racial profiling at our nation's airports.² Our demand was a response to reports that TSA officers targeted Mexican and Dominican travelers for extra scrutiny at airports in Hawaii and New Jersey.

In June 2010, the Sikh Coalition testified before the House Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties to discuss racial and religious profiling in the context of air travel.³ According to TSA, air travelers who wear religious headcoverings, including Sikh turbans, are subject to the "possibility" of additional screening, relative to other travelers. In practice, however, Sikh travelers experience additional screening 100 percent of the time at some American airports. We are therefore concerned that TSA officials are subjecting members of our community to racial and religious profiling.

¹ See *In Our Own Words: Narratives of South Asian New Yorkers Affected by Racial and Religious Profiling* (2012), available at <http://www.saalt.org/filestore/Reports/In%20Our%20Own%20Words%20Web%20FINAL.pdf>.

² Letter to Secretary Janet Napolitano and Acting Inspector General Charles Edwards, Department of Homeland Security (Dec. 1, 2011), available at <http://tinyurl.com/7xxh84c>.

³ See *Racial Profiling and the Use of Suspect Classifications in Law Enforcement Policy: Hearing Before the House Subcommittee on the Constitution, Civil Rights, and Civil Liberties of the House Committee On the Judiciary*, 111th Cong. (2010) (statement of Amardeep Singh, Director of Programs, Sikh Coalition), available at http://judiciary.house.gov/hearings/printers/111th/111-131_56956.PDF and <http://judiciary.house.gov/hearings/pdf/Singh100617.pdf>.

Conclusion

Racial profiling is immoral and counterproductive. Accordingly, we urge Congress to take swift and concrete actions to prohibit racial profiling at the federal, state and local levels:

- Congress should immediately pass the “End Racial Profiling Act (S.1670)” and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

The Sikh Coalition appreciates the opportunity to express its views. We welcome the opportunity for further dialogue and discussion about these important issues.



Written Testimony of Sojourners

Lisa Sharon Harper,
Director of Mobilizing
On behalf of Sojourners

**Senate Hearing on “Ending Racial Profiling in America”
U.S. Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Human Rights**

April 13, 2012

Sojourners
3333 14th Street NW, Ste 200
Washington DC 20010
www.sojo.net

I would like to thank Chairman Senator Dick Durbin and the members of the Senate Judiciary Committee's Subcommittee on the Constitution, Civil Rights, and Human Rights for inviting Sojourners to submit testimony at today's hearing on "Ending Racial Profiling in America." The mission of Sojourners is to articulate the biblical call to social justice, inspiring hope and building a movement to transform individuals, communities, the church, and the world.

I was asleep. Body sprawled across the back seat of my brother's car, I was asleep and grateful for my older brother's extraordinary act of kindness. My 25-year-old brother, Ernie Harper III, had offered to drive his 21-year-old sister back to college after Christmas break in January of 1990. The drive from Cape May, New Jersey to Rutgers University in New Brunswick, New Jersey would be a two-hour-and-thirty-minute trek one way and another two hours and thirty minutes back, all in the same night. With the long drive ahead, we decided our younger brother, Keith, would come along to keep Ernie awake on the way back.

Somewhere between Cape May County, the southern tip of New Jersey, and a dark stretch of the New Jersey Turnpike, I laid my head on the back seat and moved between waking and sleeping to pass the hours. My brothers talked and listened to music in the front seat. After a while, I looked up to see what time it was. It's been 25 years, so I don't remember the time, but as I looked at the clock, I also saw the speedometer and never forgot what speed my brother was going. The speedometer read 55 miles per hour, the New Jersey Turnpike speed limit in 1990. I'm not sure why I never forgot that random detail, except that I remember laying my head back down on the seat and thinking: "Ernie's a good driver."

Moments after I lay down, flashing lights and a police siren penetrated our haven. I sat up and wondered what was happening. Ernie was going the speed limit. Why would the police stop us? The officer approached the car with two young black men in the front seats. He flashed his flashlight through our front left window and demanded my brother's license and registration. My brother handed the officer both documents and waited with his hands visible on the steering wheel. The officer demanded my brother step out of the car.

Ernie unbuckled his seat belt and got out of his car. He was told to spread his hands and legs while the officer frisked him. Nineteen-year-old Keith and I were silent, waiting for this intrusion to finish. Then the officer commanded both of us to get out of the car. We did.

The officer frisked us both, then searched the car. Three siblings stood on the side of this dark New Jersey Turnpike road, under a concrete overpass, as a flashlight moved inside our car, scanning our peaceful haven for evidence of wrongdoing. The officer opened the trunk and pulled out a baseball bat.

He shoved the bat in Ernie's face and yelled, "What is this?!" Ernie explained, "It's a baseball bat." The officer yelled in his face again, "This is a weapon." My brother explained, "I just played baseball yesterday."

The officer swung the bat back and hurled it into the night. Something in me snapped.

I demanded: "What are you doing?"

"What?!" the officer got in my face and yelled.

I stood my ground: "I demand to know why we were stopped. I know my rights."

"Oh, you know your rights. Do you?" the officer bore down on me.

"Yes," I countered. "We were going the speed limit. There was no reason for you to stop us. Why did you stop us?"

"Who do you think you are?!" he demanded.

"I know who I am," I answered. "I am Lisa Sharon Harper. I am a senior at Rutgers College and I demand to know why you stopped us."

The officer didn't answer my question. Rather, he focused back on the car. He searched some more. He threw a few more things into the brush and finally came back to Ernie and asked: "Is there anything wrong with your car?"

Ernie stumbled over his words, "Ah ... ah ... I have a tail light out."

The officer wrote a ticket for a broken tail light, handed it to Ernie, and told us to get going. We got back into the car. Ernie reached beneath the steering wheel and disconnected a few circuits, and we drove away without any lights at all.

A little while later Ernie dropped me off at my dorm on the campus of Rutgers University in New Brunswick. Then he got back into the car and drove back into the night. I prayed he would make it home again that night. He did.

That was my first encounter with racial profiling by law enforcement. I thought it was a unique experience until 1996, when Judge Robert E. Francis of the New Jersey Superior Court ruled that New Jersey state police were de facto targeting blacks, in violation of their rights under the U.S. and New Jersey constitutions. A groundbreaking study by professional statistician John Lamberth tracked stop and

arrest patterns along Interstate 95 in New Jersey, also known as the New Jersey Turnpike. The study found that blacks made up 13.5 percent of the Turnpike's "population" and 15 percent of its speeders, but blacks represented 35 percent of police stops on the Turnpike. Blacks were 4.85 times more likely to be pulled over on the New Jersey Turnpike than other drivers.¹

Lest we believe the issue of racial profiling by law enforcement is a unique situation experienced by isolated states or confined to the decades of the 1990s, a 2007 report by the Department of Justice revealed a deep disparity in the rate at which motorists are searched by local law enforcement across the nation. Dennis Parker, Director of the ACLU's Racial Justice Project, explained: "The report found that blacks and Hispanics were roughly three times as likely to be searched during a traffic stop, blacks were twice as likely to be arrested and blacks were nearly four times as likely to experience the threat or use of force during interactions with the police."²

Since the early 1990s the incidents and nature of racial profiling have expanded to match the increasing diversity of our nation's multi-ethnic, international, and multi-religious reality. In 1991 a typical racial profiling incident looked like the shooting of 15-year-old Latasha Harlins, shot to death by Korean store owner Soon Ja Du who assumed Harlins was trying to steal a carton of orange juice. The jury found Du guilty of manslaughter, with a possible 11-year sentence. Yet the presiding judge reduced the sentence to five years of probation, four hundred hours of community service, and a \$500 fine.

Today international terrorism has become a key driver of immigration, policing, and labor policy on every level of government: federal, state, and local. Terrorism was a leading pretext for the Secure Communities program partners local law enforcement with Immigrations and Customs Enforcement and fast-tracks deportation processes for individuals arrested and detained through the program. As of October 2011, 3,600 individuals had been detained by ICE through the Secure Communities program. According to a study conducted by researchers at the University of California Berkeley Law School, Latinos comprise 93% of people arrested through the Secure Communities program, though they only comprise 77% of the total undocumented population in the United States.³

Most recently, the February 26, 2012 shooting death of 17-year-old Trayvon Martin by 28-year-old George Zimmerman in Sanford, Florida has reminded Americans that the roots of our nation's history of racial profiling are still present. It is not clear, yet, whether Zimmerman's pursuit of Martin was

¹ John Lamberth, "Driving While Black: A Statistician Proves that Prejudice Still Rules the Road," *Washington Post*, August 16, 1998, C01.

² ACLU Media Release, "ACLU Calls on Department of Justice to Explain Omissions in Report," ACLU website.

³ By Aarti Kohli, Peter L. Markowitz and Lisa Chavez, "Secure Communities by the Numbers: An Analysis of Demographics and Due Process," University of California-Berkeley Law School Research Report, October 2011, p. 2.

motivated by race. Nor is it clear whether or not racial profiling contributed to the local Sanford police department's initial finding that Zimmerman's actions were not worthy of an arrest. What is clear is that though a black boy is dead and he had nothing but Skittles in his pocket and an iced tea in his hand, the institution of Florida's "Stand your Ground" law led local police to declare that Trayvon Martin's slaying was justified.

As a Christian organization, Sojourners is compelled to consider the pattern and institution of racial profiling practices abhorrent and a direct threat to the maintenance and cultivation of the inherent dignity of every human being living and working within the boundaries of the United States. We believe every human being is made in the image of God and therefore equally worthy of protection of human and civil rights under the law. Racial profiling not only threatens the psychological and emotional well-being of targeted communities. As demonstrated above, the practice can lead to death.

In our holy scriptures we find a story of racial profiling that touched the life of our Lord Jesus Christ. In the book of Matthew, chapter 2, the writer records an incident where the governor of the land, King Herod, issued an edict commanding the elimination of all Jewish boys 2 years old or under. Mary and Joseph fled and hid in Egypt. But the writer records the following account of the devastation in the land: "A voice was heard in Ra'mah, wailing and loud lamentation, Rachel weeping for her children; she refused to be consoled, because they were no more" (Matthew 2:18).

When the tapes of the 911 calls about the Martin-Zimmerman incident were released on CNN, they revealed the last moments of Trayvon Martin's life. America heard Trayvon's desperate and horrified cries for help. Like Emmett Till's brutal murder in 1955, Martin's death triggered a national outcry, and wailing and loud lamentations rose and transformed into marches across America.

Conclusion

It is clear that the weeds of racism and racial profiling have not been pulled from our nation's soil. It is also clear that the repercussions of these practices hold deep spiritual and moral significance in the life of our nation. Thus, in response to the persistent and pervasive use of racial profiling and the emotional, spiritual, and physical hazards the practice presents to targeted populations, Sojourners urges passage of the 2011 End Racial Profiling Act. As well, we urge Congress to fully fund the Civil Rights Division of the Department of Justice, increasing the department's capacity to levy enforcement and to prosecute racial profiling acts across the nation.



STATEMENT OF
SOUTH ASIAN BAR ASSOCIATION OF NORTHERN CALIFORNIA
Hearing On Racial Profiling
SENATE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS
UNITED STATES SENATE
APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of the South Asian Bar Association of Northern California regarding today's hearing on racial profiling. Part of the mission of the South Asian Bar Association of Northern California is to advocate for the South Asian community in Northern California. Racial profiling has affected the South Asian community in Northern California and it is therefore one of our top advocacy priorities.

The South Asian Bar Association of Northern California is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the "End Racial Profiling Act (S.1670)" and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.



- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of the South Asian Bar Association of Northern California. We welcome the opportunity for further dialogue and discussion about these important issues.

Sincerely,

Minal J. Belani, Esq.
Civil Rights Co-Chair
South Asian Bar Association of Northern California



SOUTH ASIAN BAR ASSOCIATION OF NEW YORK

www.sabany.org

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Manisha Sheth

Tito Sinha

Paresh Trivedi

STATEMENT OF

NEHA DEWAN, PRESIDENT

SOUTH ASIAN BAR ASSOCIATION OF NEW YORK (SABANY)

Hearing on “Ending Racial Profiling in America”

SENATE COMMITTEE ON THE JUDICIARY

**SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND
HUMAN RIGHTS**

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee:

I am honored to submit this testimony for the record on behalf of SABANY regarding today’s hearing on racial profiling. Founded in 1996, SABANY is dedicated to ensuring the civil liberties of the South Asian community in New York by acting as a conduit between the South Asian community and legal services/educational programs in the area. It is the goal of SABANY to educate South Asian Americans about the legal system, advocate on behalf of legal issues affecting the South Asian Community, and to encourage more participation by the South Asian community in the legal profession. SABANY is the largest South Asian bar association in the country.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. SABANY is particularly concerned about many policies and programs at the national, state and local level which encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States.



Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Racial Profiling in Our Communities

Since September 11th, South Asian, Muslim, Sikh and Arab communities living in the United States have been targeted for heightened scrutiny by law enforcement based on their religion, national origin, or nationality. Examples include frequent searches by airport security and border inspection officers, mandatory registration of certain male nationals from predominantly Muslim-majority countries, including Pakistan and Bangladesh, under the National Security Entry Exit Registration System (NSEERS) program, and targeted surveillance and infiltration of South Asian and Muslim communities by federal, state, and local law enforcement, such as the NYPD and the FBI.

Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color throughout the United States.

SABANY is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the "End Racial Profiling Act (S.1670)" and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of SABANY. We welcome the opportunity for further dialogue and discussion about these important issues.



Please feel free to contact us should you have any questions.

/s/ Neha Dewan
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**Comments of Mary Bauer before the
Senate Judiciary Subcommittee
on the Constitution, Civil Rights and Human Rights
April 17, 2012**

“Racial Profiling in America”

Thank you for the opportunity to comment about racial profiling and about how draconian anti-immigrant laws, such as Alabama’s HB 56 and Arizona’s SB1070, have exacerbated the problem of racial profiling. These anti-immigrant laws have particularly devastated Latino Americans and immigrants across those states.

My name is Mary Bauer. I am the legal director for the Southern Poverty Law Center ("SPLC"). Founded in 1971, the Southern Poverty Law Center is a civil rights organization dedicated to advancing and protecting the rights of minorities, the poor, and victims of injustice in significant civil rights and social justice matters. Our Immigrant Justice Project represents low-income immigrant workers in litigation across the Southeast.

In 2010, Arizona lawmakers passed the first of soon-to-be-many anti-immigrant laws, SB 1070. Shortly thereafter, the law’s constitutionality was challenged, and next week, the U.S. Supreme Court will decide its fate.

In the absence of a federal solution, other states followed the path of Arizona. Alabama, Georgia, Indiana, Utah and South Carolina passed their own immigration laws. These misguided state laws are designed to punish undocumented immigrants and those who provide any sort of aid to them. However, citizens and immigrants, regardless of status, are frequently caught in crosshairs of these laws.

The Southern Poverty Law Center is part of a coalition of civil rights groups challenging these laws in Alabama, Georgia and South Carolina. Frustration with Congress’ failure to reform the nation’s immigration policy is not sufficient reason for states to create a patchwork of policies that throw lives into disarray and sow fear, bigotry and confusion in communities.

Alabama’s HB 56 is the most extreme of these law. HB56 law runs counter to our fundamental principles of fairness and returns Alabama to its bleakest past of racial hatred and division.

Every day we see first-hand the chaos and devastation this clearly unconstitutional law has created across Alabama. Although several provisions of the law have been enjoined, the provisions that have taken effect have wreaked havoc across the state.

As promised by the law’s main proponents, they’ve made life hell for immigrants – and, really, all Latinos – across the state. Images from the 1960s, such as Bull Connor’s unleashing of vicious dogs and powerful water hoses on African Americans in the streets

of Birmingham, should be a stark enough reminder of the destruction caused when laws are guided by racist intent. Unfortunately, while Jim Crow may be long gone, “Juan” Crow is alive and well.

In Alabama, it is simply open season on Latinos. A federal judge has even noted that the law appeared to have been adopted with racially discriminatory intent. A sponsor of HB56 has equated all Latinos in Alabama with the undocumented. This lawmaker used figures showing the increase in Alabama’s entire Latino population to illustrate the growth of the state’s undocumented population. Meanwhile, a co-sponsor of the law told colleagues they needed to “empty the clip” to deal with immigrants.

After HB56 went into effect, SPLC and the other groups representing plaintiffs in *HICA v. Bentley*, the lawsuit challenging HB56, started a telephone hotline to field calls about the law. In the first weekend, we received close to 1,000 calls. We have now received over 5,600 calls through the hotline, and we’ve received many other complaints through other means. The breadth of the problems—created directly and indirectly by the law—is breathtaking.

These calls and the desperation in the callers’ voices demonstrate that racial profiling takes many forms. It is perpetrated by law enforcement, school officials, government officials, and ordinary people emboldened by the anti-immigrant messages the law sends.

EDUCATION

- By the first Monday after HB56 was allowed to take effect, 2,285 Latino students were absent from schools across Alabama—7 percent of the total Latino school population. Since then, the Attorney General and the state have refused to share enrollment and absentee data to anyone, including the United States Department of Justice.
- A public school in Montgomery asked already-enrolled Latino students questions about their immigration status and that of their parents. As a result, some parents have kept their children out of school.
- A mother in northern Alabama was told she could not attend a book fair at her daughter’s school without an Alabama state ID or driver’s license.
- A father called to report that his U.S. citizen daughter came home from school weeping after other students told her she did not belong there and needed to go back to Mexico—a country she had never visited.

GOVERNMENT

- A judge advised a lawyer that the lawyer had an obligation to report her own client to ICE as undocumented. The same judge stated that he might have to report to ICE any person who asked for an interpreter, as such a request would be a “red flag.”

- A victim of domestic violence went to court to obtain a protective order. The clerk told her that she'd be reported to ICE if she proceeded.
- A local bar association has advised its lawyers that if they are asked to report information about their undocumented clients to law enforcement, the requirements of HB56 will override legal obligations to preserve a client's confidences.
- In Allgood, the water authority posted a sign indicating that water customers would have to produce identification documents proving immigration status in order to maintain water service.
- In Northport, the water authority provided notices to Latino customers that their services would be shut off if they didn't provide proof of immigration status immediately.
- In Madison County and in Decatur, the public utilities have announced that they will not provide water, gas, or sewage service to people who cannot prove their status.
- Numerous probate offices, including the Montgomery Probate Office and the Houston County Probate Office, have published notices indicating that they will not provide any services to anyone without proof of immigration status. As a result, many immigrants cannot request birth or death certificates.
- Legal immigrants, including those with temporary protected status, have been told that they cannot obtain drivers' licenses in the state.
- A mother spoke to the local office of the Department of Human Resources about her U.S. citizen children's eligibility for food stamps. The social worker told the mother that she would be reporting the mother to the federal government for deportation. The family went into hiding.
- A Latino man was arrested and detained. While in jail, he was told that he could not use the telephone to call his attorney because the use of the phone would be a "business transaction" prohibited by HB56.

BUSINESS

- An apartment complex manager in Hoover told residents they would not be able to renew their leases without proof of immigration status.
- A worker called to say that his employer refused to pay him, citing HB56, and stated that the worker had no rights under this law to be paid.
- Latino workers on a construction job site were threatened by a group of men with guns, who told them to go back to Mexico and threatened to kill them if they were

at the site the following day. They declined to report the crime to law enforcement because of fears of what would happen to them if they did.

- A clerk at a store in Bessemer told a Latino man (lawfully in the United States) from Ohio that he could not make a purchase with his bank card because he did not have an Alabama state-issued identification or driver's license.
- A private utility company told a family that they would not be able to have their electricity reconnected without providing proof of immigration status. That family left the state.

HEALTH

- A husband called us to report that his wife, nine months pregnant, was too afraid to go to a hospital in Alabama to give birth, and that he was trying to decide whether to have her give birth at home or somehow to try to get to Florida.
- A mother took her teenage daughter with a high fever to a clinic. The clinic refused to treat the girl, claiming it could no longer treat undocumented immigrants under HB56. A few days later the teen had to be rushed to a hospital emergency room and needed emergency surgery for an abdominal abscess – which likely could have been prevented had the girl been treated days earlier.

In short, Alabama is struggling with a humanitarian crisis. And HB56 is to blame. Alabama has worked hard to overcome its sordid past of racial hatred. Unfortunately, with one stroke of his pen, Gov. Robert Bentley has set our state back decades by signing a law that does nothing more than target people for the way they look.

Although the suffering will not stop and the stain on Alabama won't be removed until that law is repealed, the federal government holds the power to reform immigration – with a comprehensive approach. It can provide relief to those who are suffering rather than perpetuating the problems created by laws like HB56.

The SPLC has been heartened by the response of the federal government to HB56, particularly that of the Department of Justice, which has challenged the law in federal court. However, another federal agency, the Department of Homeland Security, has played a deeply troubling role in enabling HB56 to funnel Alabama's immigrants into deportation proceedings.

Though Homeland Security Secretary Janet Napolitano has stated that her agency will not help Alabama implement HB56, we have yet to hear specifics about what that means. Immigration and Customs Enforcement (ICE) has conducted raids and other enforcement actions in Alabama that have terrorized immigrant communities and threatened to trample their civil rights. ICE also continues to detain and deport people as a result of HB56 – even though the Department of Justice has decried the law as unconstitutional.

The result is a contradictory message from the federal government that has pledged to protect the civil rights of the immigrant community but at the same time engages in activities that threaten to violate those same rights. These enforcement actions by ICE must cease.

We cannot allow, in this country, a certain class of people to be assaulted, cheated, abused, harassed and racially profiled with impunity. Every person, regardless of race, ethnicity or even immigration status, must be afforded basic human rights and due process.

We hope this discussion leads to a rational, fact-based debate, free of the fear-mongering myths about Latino immigrants peddled by racist individuals and organizations. The defining hallmarks of the debate over immigration so far have been misinformation and bigotry. We can come together as a country to resolve these problems only if we're honest about the root cause of anti-immigration sentiment and the consequences of the actions we take to address it.

Thank you.



**STATEMENT OF
WADE HENDERSON, PRESIDENT & CEO,
THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS**

**HEARING ON
“ENDING RACIAL PROFILING IN AMERICA”**

**BEFORE THE JUDICIARY COMMITTEE
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND HUMAN
RIGHTS
UNITED STATES SENATE**

April 17, 2012

Chairman Durbin, Ranking Member Graham, and members of the Subcommittee: I am Wade Henderson, president & CEO of The Leadership Conference on Civil and Human Rights. Thank you for the opportunity to submit testimony for the record on ending racial profiling in America. I would also like to acknowledge and thank Senator Cardin for his leadership on the End Racial Profiling Act and for his support for this hearing.

The Leadership Conference on Civil and Human Rights is a coalition charged by its diverse membership of more than 210 national organizations to promote and protect the civil and human rights of all persons in the United States.¹ Founded in 1950 by A. Philip Randolph, Arnold Aronson, and Roy Wilkins, The Leadership Conference works in support of policies that further the goal of equality under law through legislative advocacy and public education. While we were founded to be the legislative arm of the civil rights movement, our mission has since expanded so that today we are meeting the new challenges of the 21st century, which include guaranteeing quality education for children, ensuring economic opportunity and justice for all workers, and reforming our criminal justice system.

I applaud the Subcommittee for holding this hearing on a matter of vital importance to our coalition. Despite the strides our nation has made toward achieving racial equality, racial profiling is an area in which racial inequality persists. Racial profiling is the reliance by law enforcement on race, ethnicity, national origin, or religion in deciding whom to investigate, arrest, or detain, where these characteristics are not part of a specific subject description. The practice of using race as a criterion in law enforcement flies in the face of progress we have

¹ More than 120 national, state, and local coalition members and allied organizations have signed a letter calling for cosponsorship and passage of the End Racial Profiling Act of 2011. We submit this letter to the Subcommittee and ask that it be included as part of the record.



made toward racial equality and must be stopped. Racial profiling is a moral and social problem that threatens our shared value of humane treatment of all people under the law. The recent and avoidable shooting death of an unarmed African-American teenager, Trayvon Martin, has focused attention on the need to ensure that our communities are protected from racial profiling and hate crimes.

Racial profiling violates U.S. laws. According to the U.S. Constitution, federal laws, and guidelines, every person has the fundamental right to equal protection under the law, regardless of race, ethnicity, religion, or national origin. Racial profiling is so insidious and pervasive that it can affect people in their homes or at work, or while driving, flying, or walking. It is antithetical to the founding principle in the Declaration of Independence that “all men are created equal” and to the constitutional right to equal protection under the law. Policies primarily designed to impact certain groups are ineffective and often result in the destruction of civil liberties for everyone. Singling out African Americans, Latinos, Muslims, Arabs, or South Asians for special law enforcement scrutiny without a reasonable belief that they are involved in a crime will result in little evidence of actual criminal activity and wastes important police resources. Racial profiling makes us all less safe, by distracting law enforcement from the pursuit of individuals who pose serious threats to security.

Racial profiling also violates international standards against non-discrimination and undermines United States human rights obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the International Covenant on Civil and Political Rights. Multiple international human rights bodies, including the United Nations Committee on the Elimination of Racial Discrimination (which monitors implementation of the ICERD), have raised concerns about the persistence of racial and ethnic profiling by U.S. law enforcement. In its 2008 concluding observations to the United States, the Committee “note[d] with concern that despite the measures adopted at the federal and state levels to combat racial profiling . . . such practice continues to be widespread.”² The Committee reiterated its recommendations in 2009, calling on the U.S. government to “make all efforts to pass the End Racial Profiling Act.”³

In March 2011, The Leadership Conference on Civil and Human Rights released a policy report entitled “[Restoring a National Consensus: The Need to End Racial Profiling in America](#).”⁴ The report presents quantitative and qualitative evidence to demonstrate the widespread use of racial profiling in three contexts—street-level crime, counterterrorism, and immigration law

² U.N. Committee on the Elimination of Racial Discrimination (CERD), Consideration of Reports submitted by States Parties Under Article 9 of the Convention: Concluding observations of the Committee on the Elimination of Racial Discrimination: United States of America, ¶ 14, U.N. Doc. CERD/C/USA/CO/6 (May 2008).

³ Letter from Chairperson of the Committee on the Elimination of Racial Discrimination to the United States (Sept. 28, 2009), available at http://www.aclu.org/files/pdfs/humanrights/uncerdresponse_racialdiscrimination.pdf

⁴ <http://www.civilrights.org/publications/reports/racial-profiling2011>. The report is attached to this testimony to be included with the hearing record.

enforcement. The report also demonstrates how racial profiling in the counterterrorism and immigration contexts is encouraged by misguided federal programs that incentivize law enforcement authorities to engage in the practice. Sadly, much of the data today is consistent with what it was almost a decade ago when the End Racial Profiling Act (ERPA) was first introduced, and in many ways the need for action by our federal government is now even more necessary.

Racial profiling leads to individual indignity and suffering, increases the likelihood that actual criminal behavior will go uncaught and unpunished, undermines the integrity of our criminal justice system, and instills fear and distrust among members of targeted communities. Racial minorities continue to be targeted at disproportionate rates by law enforcement, and the targeting is not and never will be effective. Recent data on stops and frisks in New York City showed the racially driven use of stops and frisks against minorities yields little achievements in fighting crime. According to the data, in 2009, even though Blacks and Latinos comprised 26 and 27 percent of New York City's population respectively, they comprised 84 percent of the individuals that were stopped. White individuals were 47 percent of the NYC population and 9 percent of the stops.⁵ White individuals stopped during the first half of 2009 and 2010 yielded slightly more contraband than stops of Blacks and Latinos.⁶

Recent state and local legislation masked as immigration enforcement programs effectively mandate profiling based on perceived race or national origin. For example, Arizona's S.B. 1070 requires law enforcement officers to question the immigration status of someone who is stopped, detained, or arrested if there is "reasonable suspicion" that they are in the country illegally. The law is currently being challenged in the U.S. Supreme Court, with oral arguments scheduled for April 25, 2012. The Leadership Conference and the Southern Poverty Law Center, joined by 105 national and local civil rights and faith groups, filed a friend of the court brief with the Court arguing that S.B. 1070 and copycat laws passed in other states, fundamentally conflict with federal law and would have an unprecedented negative impact on the lives of lawful permanent residents and American citizens.⁷ The fate of S.B. 1070 and the copycat laws in other states, including Utah, Indiana, Georgia, Alabama, and South Carolina, will ultimately be determined by the Court's decision.

Racial profiling—in all of its forms—is not only morally wrong and ineffective, it undermines the integrity of our criminal justice system, and instills distrust among targeted communities. ERPA will help lead to the elimination of profiling based on characteristics such as race,

⁵ The Center for Constitutional Rights, NYPD Stop-and-Frisk Statistics 2009 and 2010 at http://ccrjustice.org/files/CCR_Stop_and_Frisk_Fact_Sheet.pdf

⁶ *Id.*

⁷ See Brief for The Leadership Conference on Civil and Human Rights, Southern Poverty Law Center, League of United Latin American Citizens, et al. as Amici Curiae in Support of Respondent, March 26, 2012 available at <http://www.civilrightsdocs.info/pdf/briefs/11-182-brief-az-the-leadershipconference.pdf>



religion, ethnicity, and national origin by law enforcement at all levels of government. Congress should pass ERPA, which would:

- apply a prohibition on racial profiling to state and local law enforcement;
- include a complaint mechanism for enforcement;
- require data collection to monitor the government's progress toward eliminating profiling;
- establish a private right of action for victims of profiling; and
- provide best-practice development grants to state and local law enforcement agencies that will enable agencies to use federal funds to bring their departments into compliance with the requirements of the bill.

Congress should also urge the Department of Justice to revise its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies. The guidance prohibits federal agents, during the course of traditional law enforcement activities, from using race or ethnicity in any way, except in a specific suspect description. The guidance should be revised to:

- prohibit profiling based on religion and national origin;
- remove national and border security loopholes;
- apply to law enforcement surveillance activities;
- apply to state and local law enforcement agencies acting in partnership with federal agencies; and
- include enforceable accountability mechanisms.

It is time for this Congress to lead the way to an America where the principles of “all men are created equal” and “equal protection under the law” apply to everyone. In the case of Trayvon Martin, the alleged conduct of his shooter may be beyond the scope of ERPA, but the actions of the police and other government officials in response to that shooting are not. By allowing racial and religious bias to dictate the scope of law enforcement's investigation or who is detained by law enforcement or, we betray the fundamental promise of equal protection under the law. Congress can help law enforcement to direct its resources where they are truly necessary, ensure that our communities are safe, and reaffirm the core principles of the Constitution.

Again, thank you for convening this hearing and for the opportunity for The Leadership Conference to express its views on racial profiling in America.

Attachments



Cosponsor the End Racial Profiling Act of 2011 S. 1670

April 16, 2012

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights, and the undersigned organizations, we urge you to cosponsor the End Racial Profiling Act of 2011 (ERPA). Passage of this bill is needed to put an end to racial profiling by law enforcement officials and to ensure that individuals are not prejudicially stopped, investigated, arrested, or detained based on their race, ethnicity, national origin, or religion. Policies primarily designed to impact certain groups are ineffective and often result in the destruction of civil liberties for everyone.

ERPA would establish a prohibition on racial profiling, enforceable by declaratory or injunctive relief. The legislation would mandate training for federal law enforcement officials on racial profiling issues. As a condition of receiving federal funding, state, local, and Indian tribal law enforcement agencies would be required to collect data on both routine and spontaneous investigatory activities. The Department of Justice would be authorized to provide grants to state and local law enforcement agencies for the development and implementation of best policing practices, such as early warning systems, technology integration, and other management protocols that discourage profiling. Lastly, this important legislation would require the Attorney General to issue periodic reports to Congress assessing the nature of any ongoing racial profiling.

Racial profiling involves the unwarranted screening of certain groups of people, assumed by the police and other law enforcement agents to be predisposed to criminal behavior. Multiple studies have proven that racial profiling results in the misallocation of law enforcement resources and therefore a failure to identify actual crimes that are planned and committed. By relying on stereotypes rather than proven investigative procedures, the lives of innocent people are needlessly harmed by law enforcement agencies and officials.

As is evident by recent events across the nation, racial profiling is a pervasive and harmful practice that negatively impacts both individuals and communities. Racial profiling results in a loss of trust and confidence in local, state, and federal law enforcement. Although most individuals are taught from an early age that the role of law enforcement is to fairly defend and guard communities from people who want to cause harm to others, this fundamental message is often contradicted when these same defenders are seen as unnecessarily and unjustifiably harassing innocent citizens. Criminal investigations are flawed and hindered because people and



communities impacted by these stereotypes are less likely to cooperate with law enforcement agencies they have grown to mistrust. We can begin to reestablish trust in law enforcement if we act now.

Current federal law enforcement guidance and state laws provide incomplete solutions to the pervasive nationwide problem of racial profiling.

Your support for the End Racial Profiling Act of 2011 is critical to its passage. We urge you to cosponsor this vital legislation, which will ensure that federal, state, and local law enforcement agencies are prohibited from impermissibly considering race, ethnicity, national origin, or religion in carrying out law enforcement activities. To become a cosponsor, please contact Bill Van Horne in Senator Cardin's office at bill_vanhorne@cardin.senate.gov or (202) 224-4524. If you have any questions, please feel free to contact Lexer Quamie at (202) 466-3648 or Nancy Zirkin at (202) 263-2880. Thank you for your valued consideration of this critical legislation.

Sincerely,

National Organizations

A. Philip Randolph Institute
African American Ministers in Action
American Civil Liberties Union
American Humanist Association
American-Arab Anti-Discrimination Committee
American Probation and Parole Association
Asian & Pacific Islander American Health Forum
Asian American Justice Center
Asian Law Caucus
Asian Pacific American Labor Alliance
Bill of Rights Defense Committee
Blacks in Law Enforcement in America
Break the Cycle
Brennan Center for Justice at New York University School of Law
Campaign for Community Change
Campaign for Youth Justice
Center for National Security Studies
Council on American-Islamic Relations
Council on Illicit Drugs of the National Association for Public Health Policy
Disciples Justice Action Network
Drug Policy Alliance
Equal Justice Society



Fair Immigration Reform Movement
Human Rights Watch
Indo-American Center
Institute Justice Team, Sisters of Mercy of the Americas
Japanese American Citizens League
Jewish Labor Committee
Jewish Reconstructionist Federation
Lawyers' Committee for Civil Rights Under Law
The Leadership Conference on Civil and Human Rights
League of United Latin American Citizens
Lutheran Immigration and Refugee Service
Muslim Advocates
Muslim Legal Fund of America
Muslim Public Affairs Council
NAACP
NAACP Legal Defense and Educational Fund, Inc.
National Advocacy Center of the Sisters of the Good Shepherd
National African American Drug Policy Coalition, Inc.
National Alliance for Medication Assisted Recovery
National Alliance of Faith and Justice
National Asian American Pacific Islander Mental Health Association
National Asian Pacific American Bar Association
National Asian Pacific American Women's Forum
National Association of Criminal Defense Lawyers
National Association of Social Workers
National Black Justice Coalition
National Black Law Students Association
National Black Police Association
National Congress of American Indians
National Council of La Raza
National Education Association
National Gay and Lesbian Task Force Action Fund
National Korean American Service and Education Consortium
National Latina Institute for Reproductive Health
National Legal Aid and Defender Association
National Organization of Black Women in Law Enforcement
National Organization of Sisters of Color Ending Sexual Assault
National Urban League Policy Institute
NETWORK, A National Catholic Social Justice Lobby
9to5, National Association of Working Women
North American South Asian Bar Association
Open Society Policy Center
Organization of Chinese Americans

Pax Christi USA: National Catholic Peace Movement
Prison Policy Initiative
Rights Working Group
Sentencing Project
Sikh American Legal Defense and Education Fund
Sikh Coalition
Sojourners
South Asian Americans Leading Together
South Asian Network
South Asian Resource Action Center
StoptheDrugWar.org
The Real Cost of Prisons Project
Treatment Communities of America
U.S. Human Rights Network
Union for Reform Judaism
United Methodist Church, General Board of Church and Society
UNITED SIKHS
Women's Alliance for Theology, Ethics and Ritual

State and Local Organizations

9to5 Atlanta Working Women (Georgia)
9to5 Bay Area (California)
9to5 Colorado (Colorado)
9to5 Los Angeles (California)
9to5 Milwaukee (Wisconsin)
A New PATH (Parents for Addiction Treatment & Healing) (California)
Adhikaar (New York)
Advocare, Inc. (Ohio)
Arab American Action Network (Illinois)
Arab-American Family Support Center (New York)
CASA de Maryland (Maryland)
Casa Esperanza (New Jersey)
CAUSA - Oregon's Immigrant Rights Organization (Oregon)
Center for NuLeadership on Urban Solutions (New York)
Counselors Helping (South) Asians/Indians, Inc. (Maryland)
Desis Rising Up and Moving (New York)
Drug Policy Forum of Hawaii (Hawaii)
Drug Policy Forum of Texas (Texas)
Florida Immigrant Coalition (Florida)
Healing Communities Prison Ministry and Reentry Project (Pennsylvania)
Korean American Resource and Cultural Center (Illinois)
Korean Resource Center (California)
Legal Services for Prisoners with Children (California)



Legal Voice (Washington)
Maryland CURE - Citizens United for the Rehabilitation of Errants (Maryland)
National Alliance for Medication Assisted Recovery, Delaware Chapter (Delaware)
Northwest Treeplanters and Farmworkers United (Oregon)
Perspectives, Inc. (Minnesota)
Public Justice Center (Maryland)
Rights for All People (Colorado)
Safe Streets Arts Foundation (Washington, DC)
Sahara of South Florida, Inc. (Florida)
Satrang (California)
Sneha, Inc. (Connecticut)
South Asian Bar Association of Northern California (California)
St. Leonard's Ministries (Illinois)

Restoring a National Consensus: The Need to End Racial Profiling in America

MARCH 2011



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This report is an update of our 2003 report, “Wrong Then, Wrong Now: Racial Profiling Before and After September 11, 2001.” Sadly, 10 years after 9/11, the problem of racial profiling continues to be a significant national concern that demands priority attention. In releasing this report, our goals are to examine the use of racial profiling in the street-level context in which it originally arose, in the newer context of counterterrorism, and in the most recent context of immigration; and to re-establish a national consensus against racial profiling in all its forms. The substance and recommendations of the work are dedicated to the countless advocates for criminal justice reform.

The authors and publisher are solely responsible for the accuracy of statements and interpretations contained in this publication.



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The Leadership Conference on Civil and Human Rights



Karen McGill Lawson, Executive Vice President and COO,
The Leadership Conference on Civil and Human Rights

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Executive Summary

Racial profiling—which occurs when law enforcement authorities target particular individuals based not on their behavior, but rather on the basis of personal characteristics, such as their race, ethnicity, national origin, or religion—is an unjust and ineffective method of law enforcement that makes us less, not more, safe and secure. The practice is nonetheless pervasive and used by law enforcement authorities at the federal, state, and local levels.

By way of example, a U.S. Congressman tells the Department of Homeland Security that Muslims should be profiled at airports. A county sheriff conducts a sweep of an Arizona Hispanic community that involves more than 100 deputies, a volunteer posse, and a helicopter. A prominent African-American professor charges he was a victim of racial profiling after he was arrested in his Massachusetts home.

In the months preceding September 11, 2001, a national consensus had developed on the need to end “racial profiling.” The enactment of a comprehensive federal statute banning the practice seemed imminent. However, on 9/11, everything changed. In the aftermath of the terrorist attacks, the federal government focused massive investigatory resources on Arabs and Muslims, singling them out for questioning, detention, and other law enforcement activities. Many of these counterterrorism initiatives involved racial profiling.

In the 10 years since the terrorist attacks, the anti-racial profiling consensus that had developed prior to 9/11 evaporated and the use of racial profiling has expanded, not only in the counterterrorism context, but also in the context in which it originally arose—the fight against drug trafficking and other “street-level” crimes—as well as in the effort to enforce immigration laws.

Now is the time to re-establish a national anti-racial profiling consensus and take the steps necessary to end the practice in all contexts at the federal, state, and local levels. The purpose of this report is to assist in that effort.

In this report, we present quantitative and qualitative evidence to demonstrate the widespread use of racial profiling in each of the three contexts referenced above—*i.e.*, street-level crime, counterterrorism, and immigration law enforcement. We also present evidence to show how racial profiling in the counterterrorism and immigration contexts is encouraged by misguided federal programs that incentivize law enforcement authorities to engage in the practice.

In the counterterrorism context, these problematic federal programs include the National Security Entry-Exit Registration System (which requires certain individuals from Muslim countries to register with the federal government, as well as to be fingerprinted, photographed, and interrogated) and Operation Front Line (which allows federal law enforcement authorities to target immigrants and foreign nationals for investigation in order to “detect, deter, and disrupt terrorist operations”). The federal government claims that these programs do not involve racial profiling, but the actions taken—from the singling out of Arabs and Muslims in the United States for questioning and detention to the selective application of immigration laws to nationals of Arab and Muslim countries—belie this claim.

In the immigration law enforcement context, the federal government has shifted significant responsibility for the enforcement of civil immigration laws to state and local law enforcement authorities through Agreements

of Cooperation in Communities to Enhance Safety and Security (known as ICE ACCESS programs). The most notable of these programs is the 287(g) program, the stated purpose of which is to enable state and local law enforcement authorities to identify suspected undocumented immigrants “who pose a threat to public safety.” In point of fact, the 287(g) program has been widely misused by state and local law enforcement authorities to stop, detain, question, and otherwise treat as suspected undocumented immigrants vast numbers of persons—primarily Hispanics—most of whom are U.S. citizens or legal residents.

Although perhaps the most well-known, the 287(g) program is not the only ICE ACCESS program that raises concerns about racial profiling. Other such programs include the Criminal Alien Program (which involves an immigration screening process within federal, state, and local correctional facilities to identify undocumented immigrants “who pose a threat to public safety”) and the Secure Communities program (which allows local law enforcement authorities to run fingerprint checks against Department of Homeland Security databases, not just FBI databases).

Federal inaction on comprehensive immigration reform has prompted a flurry of activity by state lawmakers seeking to fill the void left by Congress. The most sweeping and controversial of these state laws is Arizona’s S.B. 1070, which is widely seen as encouraging racial profiling.

This report makes the case against racial profiling by showing that the assumptions underlying racial profiling—*i.e.*, that certain crimes are more likely to be committed by members of a particular racial, ethnic, national origin, or religious group, and that members of that group are more likely than non-members to be involved in that type of criminal activity—are false. We also demonstrate the devastating impact that racial profiling has on individuals, families, and communities that are subject to the practice; and explain why racial profiling is in all contexts a flawed law enforcement method that diverts and misuses precious law enforcement resources and destroys the relationship between local law enforcement authorities and the people that they must rely on in carrying out their law enforcement activities.

The End Racial Profiling Act of 2010 (ERPA 2010) was introduced into the House of Representatives during the 111th Congress. The 111th Congress took no action on ERPA 2010, and it died with the adjournment of that

Congress on December 22, 2010. However, ERPA 2010 warrants continued attention because it provides an appropriate model for an anti-racial profiling statute in the 112th Congress, addressed the major concerns about racial profiling expressed in this report, and would have gone a long way toward ending the practice.

Finally, we offer recommendations that are designed to end racial profiling. The key point of each of these recommendations—which are addressed to Congress, the president, Executive Branch agencies, and civil and human rights organizations—is summarized below:

Congress

- The 112th Congress should enact an anti-racial profiling statute modeled on ERPA 2010.

The President

- The president should urge the 112th Congress to enact an anti-racial profiling statute modeled on ERPA 2010, and make enactment of such a statute one of his administration’s highest legislative priorities.
- Pending enactment by Congress of an anti-racial profiling statute, the president should issue an executive order that prohibits federal law enforcement authorities from engaging in racial profiling or sanctioning the use of the practice by state and local law enforcement authorities in connection with any federal program.

Executive Branch Agencies

- The U.S. Department of Justice (DOJ) should revise its June 2003 guidance on racial profiling to clarify ambiguities, close loopholes, and eliminate provisions that allow for any form of racial profiling.
- The DOJ Office of Legal Counsel should issue an opinion stating that the federal government has exclusive jurisdiction to enforce federal immigration laws, and should rescind its 2002 “inherent authority” opinion, which takes a contrary position.
- The DOJ Civil Rights Division should make the remediation of racial profiling a priority.
- The U.S. Department of Homeland Security (DHS) should terminate the 287(g) program.
- DHS should suspend operation of the Criminal Alien Program, the Secure Communities Program, and other federal programs pursuant to which authority to engage in the enforcement of federal immigration laws has been delegated to state and local law enforcement

authorities, until a panel of independent experts has reviewed the programs to ensure that they do not involve racial profiling.

- DHS should terminate the National Security Entry-Exit Registration System.
- Other federal counterterrorism programs, including Operation Front Line, should be reviewed by a panel of independent experts to ensure that they do not involve racial profiling.

Civil and Human Rights Organizations

- Civil and human rights organizations should urge the 112th Congress to enact an anti-racial profiling statute modeled on ERPA 2010, and provide the American public with accurate information about racial profiling.

I. Introduction and Background

During a February 2011 hearing of the U.S. House of Representatives Homeland Security Committee, Rep. Paul Broun, R. Ga., told U.S. Department of Homeland Security (DHS) Secretary Janet Napolitano that he recently went through screening at an airport in front of a man that was of “Arabian, or Middle Eastern descent.” According to Broun, neither the man nor Broun was patted down; but behind the man was an elderly woman with a small child, both of whom were patted down. “This administration and your department seems to be very adverse to focusing on those entities that want to do us harm,” Broun stated. “And the people who want to harm us are not grandmas and it’s not little children. It’s the Islamic extremists...I encourage you to maybe take a step back and see how we can focus on those people who want to harm us. And we’ve got to profile these fellas.”¹

Sheriff Joe Arpaio of Maricopa County, Arizona, has received widespread attention for his stops of Hispanic drivers and sweeps of Hispanic communities in an attempt to identify undocumented immigrants. In April 2008, in the most notorious of his neighborhood sweeps, more than 100 deputies, a volunteer posse, and a helicopter descended upon and terrorized a community of approximately 6,000 Yaqui Indians and Hispanics, in an attempt to identify undocumented immigrants. By the end of the two-day operation, only nine undocumented immigrants were arrested. In addition to his profiling of drivers and neighborhoods, Arpaio has also led raids on area businesses that employ Hispanics.²

On July 16, 2009, James Crowley, an 11-year police department veteran responded to a 911 call reporting a possible break-in at a home on Ware Street in Cambridge, Massachusetts. The address, Crowley would

later learn, was the home of Harvard professor Henry Louis Gates, Jr., one of the most prominent African-American scholars in the United States. Within a few minutes of Crowley and Gates’ encounter, Crowley had arrested Gates for disorderly conduct and placed him in handcuffs at his own home. Gates charged that he was a victim of “racial profiling,” claiming that the actions of the police were dictated by the fact that he was African American, and that they would have behaved differently if he were White. The Cambridge Police Department denied the charge, asserting that its actions were prompted by Gates’ confrontational behavior.³

Because of Gates’ prominence, this particular incident captured the attention of the media and sparked a much-needed national dialogue about racial profiling in America. Though the national dialogue may not have resolved the narrow question of whether Gates was or was not a victim of racial profiling, it provided ample support for the broader proposition that racial profiling is pervasive and used by law enforcement authorities at the federal, state, and local levels. As President Obama put it during a nationally televised press conference on July 24, 2009, “What I think we know—separate and apart from [the Gates] incident—is that there is a long history in this country of African Americans and Latinos being stopped by law enforcement disproportionately, and that’s just a fact.”⁴ Lt. Charles Wilson, chairman of the National Association of Black Law Enforcement Officers and a 38-year veteran of law enforcement, stated that “[t]his is an issue that occurs in every single place in this country.”⁵ The factors that account for this troubling reality provide a framework for the analysis in this report and are summarized below.

For years, African Americans, Hispanics,⁶ and other minorities complained that they received unwarranted

police scrutiny in their cars and on the streets, yet their complaints were routinely ignored. By early 2001, this had changed. Rigorous empirical evidence developed in civil rights lawsuits and studies of law enforcement practices revealed that the so-called “Driving While Black or Brown” phenomenon was more than anecdotal. Minority drivers were in fact stopped and searched more than similarly situated White drivers. The data also showed that minority pedestrians were stopped and frisked⁷ at a disproportionate rate, and that, in general, federal, state and local law enforcement authorities frequently used race, ethnicity, and national origin as a basis for determining who to investigate for drug trafficking, gang involvement, and other “street-level” crimes.⁸

Polls showed that Americans of all races, ethnicities, and national origins considered racial profiling widespread and unacceptable.⁹ Government actions and words mirrored the public’s concern about the practice. In the mid-1990s, the Civil Rights Division of the U.S. Department of Justice entered into far-reaching settlement agreements in response to racial profiling by certain state and local law enforcement agencies, including the New Jersey State Police and the Los Angeles Police Department.¹⁰ Many states and localities instituted data collection and other requirements to address disparities in law enforcement based upon race and other personal characteristics.¹¹ And, in 1996, the U.S. Supreme Court held that the Equal Protection Clause of the Constitution “prohibits selective enforcement of the law based on considerations such as race.”¹²

By early 2001, concerns about racial profiling were voiced at the highest levels of the federal government. Then-Attorney General John Ashcroft publicly condemned racial profiling,¹³ and on February 27, 2001, President Bush told a joint session of Congress that the practice was “wrong and we will end it in America.”¹⁴

Backed by a strong national consensus to end racial profiling, on June 6, 2001, Sen. Russell Feingold, D. Wisc., and Rep. John Conyers, D. Mich. introduced the bipartisan End Racial Profiling Act of 2001¹⁵, and the enactment of a comprehensive federal anti-racial profiling statute seemed imminent.

However, on September 11, 2001, everything changed. The 19 men who hijacked airplanes to carry out the attacks on the World Trade Center and the Pentagon were Arabs from Muslim countries. The federal government immediately focused massive investigative

resources and law enforcement attention on Arabs and Muslims—and in some cases on individuals who were perceived to be, but in fact were not, Arabs or Muslims, such as Sikhs and other South Asians. In the years that followed, the federal government undertook various initiatives in an effort to protect the nation against terrorism. The federal government claimed that these counterterrorism initiatives did not constitute racial profiling, but the actions taken—from the singling out of Arabs and Muslims in the United States for questioning and detention to the selective application of immigration laws to nationals of Arab and Muslim countries—belied this claim.

More recent initiatives by federal, state, and local law enforcement authorities to enforce immigration laws have further encouraged racial profiling. Immigration and Customs Enforcement (ICE) within DHS has shifted significant responsibility for the enforcement of civil immigration laws to state and local law enforcement authorities. And many state and local law enforcement authorities misuse these programs—particularly the Delegation of Immigration Authority, known as the 287(g) program—to stop, detain, question, and otherwise target Hispanics and other minorities as suspected undocumented immigrants, although most of them are U.S. citizens or legal residents. Federal inaction on comprehensive immigration reform has prompted some states to undertake initiatives of their own—including most notably Arizona’s S.B. 1070, which is widely seen as encouraging racial profiling.

The short of the matter is this: The anti-racial profiling consensus that had developed prior to 9/11 evaporated in the aftermath of the terrorist attacks, and the use of racial profiling—in the street-level context in which it originally arose, and in the new contexts of counterterrorism and immigration law enforcement—has expanded in the intervening years.

During the 2008 presidential campaign, candidate Barack Obama promised that, if elected, “Obama and [vice presidential running mate Joe] Biden will ban racial profiling by federal law enforcement agencies and provide federal incentives to state and local police departments to prohibit the practice.”¹⁶ During his 2009 confirmation hearing, Attorney General Eric Holder similarly declared that racial profiling was “simply not good law enforcement,” and that ending the practice was a “priority” for the Obama administration.¹⁷ Now is the time for the Obama administration to make good on these promises and take the steps necessary to end racial profiling in all contexts at the federal, state, and

local levels.

The purpose of this report is to assist in the effort to end racial profiling. In the chapters that follow, we explain what does and does not constitute racial profiling (Chapter II); examine quantitative and qualitative evidence regarding the use of racial profiling in the street-level crime, counterterrorism, and immigration law enforcement contexts (Chapter III); debunk the assumptions that are advanced in an effort to justify racial profiling, and discuss the devastating consequences of racial profiling for persons and communities that are subject to the practice and its adverse impact on effective law enforcement (Chapter IV); review the End Racial Profiling Act of 2010, which was introduced in the House of Representatives during the 111th Congress and died with the adjournment of that Congress on December 22, 2010, but which provides an appropriate model for an anti-racial profiling statute in the 112th Congress (Chapter V); and conclude with recommendations designed to end racial profiling in America (Chapter VI).

II. *What is Racial Profiling?*

“Racial profiling” refers to the targeting of particular individuals by law enforcement authorities based not on their behavior, but rather their personal characteristics. It is generally used to encompass more than simply an individual’s race. As used in this report, it encompasses race, ethnicity, national origin, and religion—and means the impermissible use by law enforcement authorities of these personal characteristics, to any degree, in determining which individuals to stop, detain, question, or subject to other law enforcement activities. Two points should be emphasized in connection with this definition.

As the qualifying term “impermissible use” indicates, the definition does not prohibit reliance by law enforcement authorities on race, ethnicity, national origin, or religion in all circumstances. Rather, it is aimed at law enforcement activities that are premised on the erroneous assumption that individuals of a particular race, ethnicity, national origin, or religion are more likely to engage in certain types of unlawful conduct than are individuals of another race, ethnicity, national origin, or religion. Thus, it is *not* racial profiling when law enforcement authorities rely on these personal characteristics as part of a subject description or in connection with an investigation if there is reliable information that links a person of a particular race, ethnicity, national origin, or religion to a specific incident, scheme, or organization.

It also should be noted that under this definition, race¹⁸ need not be the *sole* factor used by law enforcement authorities in deciding who to subject to investigative procedures. Even if individuals are not targeted by law enforcement authorities solely because of their race, race is often a factor—and, indeed, the decisive factor—

in guiding law enforcement decisions about who to stop, detain, question, or subject to other investigative procedures. Selective law enforcement based in part on race is no less pernicious or offensive to the principle of equal justice than is enforcement based solely on race.

In order to demonstrate how the foregoing definition would apply in practice, we set forth below several hypothetical examples to illustrate what would and would not constitute racial profiling under that definition:

1. A police officer who is parked on the side of a highway notices that nearly all vehicles are exceeding the posted speed limit. Since the driver of each such vehicle is committing a traffic violation that would legally justify a stop, the officer may not use the race of the driver as a factor in deciding who to pull over or subject to further investigative procedures. If, however, a police officer receives an “all points bulletin” to be on the look-out for a fleeing robbery suspect, who is described as a man of a particular race in his thirties driving a certain model automobile, the officer may use this description—including the suspect’s race—in deciding which drivers to pull over.

2. While investigating a drug trafficking operation, law enforcement authorities receive reliable information that the distribution ring plans to pick up shipments of illegal drugs at a railroad station, and that elderly couples of a particular race are being used as couriers. Law enforcement authorities may properly target elderly couples of that race at the railroad station in connection with this investigation. Assume, however, that the information provided to law enforcement authorities indicates that elderly couples are being used as couriers, but there is no reference to race. Law enforcement

authorities may properly target elderly couples, but may not selectively investigate elderly couples of a particular race.

3. In connection with an initiative to prevent terrorist activity, law enforcement authorities may not target members of any particular race or religion as suspects based on a generalized assumption that members of that race or religion are more likely than non-members to be involved in such activity. On the other hand, if law enforcement authorities receive a reliable tip that persons of a particular race or religion living in a specific apartment building are plotting terrorist acts, they may focus their investigation on persons of that race or religion who live in the building.

4. In an effort to identify undocumented immigrants, border agents may not—even in areas near the Mexican border in which a substantial part of the population is Hispanic—take Hispanic origin into account in deciding which individuals to stop, detain, and question. Border agents may take Hispanic origin into account, however, in attempting to identify undocumented immigrants at a particular worksite if they have reliable information that undocumented immigrants of Hispanic origin are employed at that worksite.

III. The Reality of Racial Profiling

The U.S. Supreme Court has held that racial profiling violates the constitutional requirement that all persons be accorded equal protection of the law.¹⁹ The “Guidance Regarding the Use of Race By Federal Law Enforcement Agencies” that was issued by the U.S. Department of Justice in 2003 states:

“Racial profiling” at its core concerns the invidious use of race or ethnicity as a criterion in conducting stops, searches and other law enforcement investigative procedures. It is premised on the erroneous assumption that any particular individual of one race or ethnicity is more likely to engage in misconduct than any particular individual of another race or ethnicity.

Racial profiling in law enforcement is not merely wrong, but also ineffective. Race-based assumptions in law enforcement perpetuate negative racial stereotypes that are harmful to our rich and diverse democracy, and materially impair our efforts to maintain a fair and just society.²⁰

Notwithstanding the fact that racial profiling is unconstitutional, and despite the emphatic declaration from the federal government that the practice is “invidious,” “wrong,” “ineffective,” and “harmful to our rich and diverse democracy,” quantitative and qualitative evidence collected at the federal, state, and local levels confirms that racial profiling persists. Moreover, as the evidence also shows, racial profiling is often encouraged by misguided federal programs and policies that incentivize law enforcement authorities to engage in the practice.

In this section of the report, we consider the use of racial profiling in each of the three contexts referenced

above, *i.e.*, street-level crime, counterterrorism, and immigration law enforcement. To be sure, this breakdown is to some extent artificial, and there are obvious points of overlap among the contexts—as, for example, when Hispanics who are targeted by law enforcement authorities for engaging in drug trafficking or other street-level crimes are also profiled as suspected undocumented immigrants, or when Arabs or Muslims who are targeted as potential terrorists are also questioned about whether they are in the country without authorization. Despite these and other points of overlap, it is helpful to discuss racial profiling in each of the three contexts separately inasmuch as this allows for a more context-specific analysis.

A. Street-Level Crime

Empirical evidence confirms the existence of racial profiling on America’s roadways. At the national level, the U.S. Department of Labor’s Bureau of Justice Statistics reports that for the year 2005, the most recent data available, “[p]olice actions taken during a traffic stop were not uniform across racial and ethnic categories.” “Black drivers (4.5%) were twice as likely as White drivers (2.1%) to be arrested during a traffic stop, while Hispanic drivers (65%) were more likely than White (56.2%) or Black (55.8%) drivers to receive a ticket. In addition, Whites (9.7%) were more likely than Hispanics (5.9%) to receive a written warning, while Whites (18.6%) were more likely than Blacks (13.7%) to be verbally warned by police.” When it came to searching minority motorists after a traffic stop, “Black (9.5%) and Hispanic (8.8%) motorists stopped by police were searched at higher rates than Whites (3.6%). The “likelihood of experiencing a search did not change for Whites, Blacks, or Hispanics from 2002 to 2005.”²¹

Quantitative evidence reported in several states confirms this nationwide data:

- A study in Arizona shows that during 2006-2007, the state highway patrol was significantly more likely to stop African Americans and Hispanics than Whites on all the highways studied, while Native Americans and persons of Middle Eastern descent were more likely to be stopped on nearly all the highways studied. The highway patrol was 3.5 times more likely to search a stopped Native American than a White, and 2.5 times more likely to search a stopped African American or Hispanic.²²

The Arizona study also shows that racial profiling is counterproductive and a misallocation of scarce law enforcement resources. Although Native Americans, Hispanics, Middle Easterners, and Asians were far more likely to be stopped and searched than Whites on Arizona's highways, Whites who were searched were more likely to be transporting drugs, guns, or other contraband. While African Americans were twice as likely as Whites to be stopped and searched, the rates of contraband seizures for the two groups were comparable.²³

- A February 2009 study of traffic stops and searches in West Virginia found a similar pattern of racial profiling. The data reveal that African-American motorists were 1.64 times more likely to be stopped than White drivers. Hispanics were 1.48 times more likely to be stopped. After the traffic stop, non-Whites were more likely to be arrested, yet police in West Virginia obtained a significantly higher contraband hit rate for White drivers than minorities.²⁴
- In Minnesota, a statewide study of racial profiling during 2002 found that African-American, Hispanic, and Native American drivers were all stopped and searched more often than Whites, yet contraband was found more frequently in searches of White drivers' cars. Had all drivers been stopped at the same rates in the 65 local jurisdictions reporting data, 22,500 more Whites would have been stopped, while 18,800 fewer African Americans and 5,800 fewer Hispanics would have been stopped.²⁵
- In Illinois, data collected after the 2003 passage of the Illinois Traffic Stops Statistics Act, sponsored by then-Illinois State Senator Barack Obama, shows similar patterns of racial profiling by law enforcement authorities. The number of consent searches after traffic stops of African-American and Hispanic motorists was more than double that of Whites. The

consent searches found White motorists were twice as likely to have contraband.²⁶

- A 2005 study analyzing data gathered statewide in Texas reveals disproportionate traffic stops and searches of African Americans and Hispanics, even though law enforcement authorities were more likely to find contraband on Whites.²⁷

At the local level, studies of data collected in Sacramento County, California,²⁸ and DuPage County, Illinois,²⁹ also report disproportionate traffic stops and searches of African Americans and Hispanics.

Although the foregoing studies confirm the reality of the "Driving While Black or Brown" phenomenon, statistical analysis does not reflect the human cost of racial profiling. For that purpose, we offer the following examples:

- In Newark, New Jersey, on the night of June 14, 2008, two youths aged 15 and 13 were riding in a car driven by their football coach, Kelvin Lamar James. All were African American. Newark police officers stopped their car in the rain, pulled the three out, and held them at gunpoint while the car was searched. James stated that the search violated his rights. One officer replied in abusive language that the three African Americans didn't have rights and that the police "had no rules." The search of the car found no contraband, only football equipment.³⁰
- In May 2009, in Hinds County, Mississippi, Hiran Medina, a Hispanic, was pulled over for crossing the center line of the highway, one of several potentially subjective pretexts for "Driving While Black or Brown" traffic stops. Medina consented to the county deputy's request to search the vehicle. Upon discovering \$5,000 in cash in the car, the deputy handcuffed Medina, seized the money, and issued Medina a forfeiture notice that would require Medina to sue the county for the return of the money within 30 days or forfeit the cash to the Sheriff's Department. Eventually, after much laughter on the scene among the gathered deputies, Medina was released but his cash was kept because, they claimed, it smelled of marijuana, even though no drugs were found in Medina's vehicle. Only after Medina retained the American Civil Liberties Union, which threatened a lawsuit, did he get his money back.³¹

Just as minority *motorists* are subject to racial profiling, so too are minority *pedestrians*. This is especially true following the adoption of community-based

policing strategies that often provide street-level law enforcement authorities with wide discretion to “clean up” the communities they patrol. Professor Angela Davis has noted, “[t]he practical effect of this deference [to law enforcement discretion] is the assimilation of police officers’ subjective beliefs, biases, hunches, and prejudices into law.”³² As is the case in the “Driving while Black or Brown” motorist context, such discretion in the pedestrian context is often exercised to racially profile minorities who are perceived to pose a threat to public safety even if they have done nothing wrong. Harvard Law School Professor Charles Ogletree, who is African American, has stated, “If I’m dressed in a knit cap and hooded jacket, I’m probable cause.”³³ These anecdotal assessments are supported by statistical analysis.

In 2008, as the result of a discovery request in *Floyd v. City of New York*, a lawsuit filed against the New York City Police Department (“NYPD”) alleging racial profiling and suspicion-less stops-and-frisks against law-abiding New York City residents,³⁴ the Center for Constitutional Rights received and analyzed data collected by the NYPD for the years 2005 to mid-2008. The Center found that:

- In 2005, the NYPD made fewer than 400,000 stops in comparison to a projected more than 500,000 stops in 2008. Over a period of three and one half years, the NYPD has initiated nearly 1.6 million stops of New Yorkers.
- From 2005 to mid-2008, approximately 80 percent of total stops made were of Blacks and Latinos, who comprise 25 percent and 28 percent of New York City’s total population, respectively. During this same time period, only about 10 percent of stops were of Whites, who comprise 44 percent of the city’s population.
- From 2005 to mid-2008, Whites comprised 8 percent and Blacks comprised 85 percent of all individuals frisked by the NYPD. In addition, 34 percent of Whites stopped during this time period were frisked, while 50 percent of Blacks and Latinos stopped were frisked.
- A significant number of stops resulted in the use of physical force by the NYPD. Of those stops, a disproportionate number of Blacks and Latinos had physical force used against them. Between 2005 and mid-2008, 17 percent of Whites, compared to 24 percent of Blacks and Latinos, had physical force used against them during NYPD-initiated encounters.

- Of the cumulative number of stops made during the three and one-half year period, only 2.6 percent resulted in the discovery of a weapon or contraband. Although rates of contraband yield were minute across all racial groups, stops made of Whites proved to be slightly more likely to yield contraband.
- Arrest and summons rates for persons stopped between 2005 and mid-2008 were low for all racial groups, with between 4 and 6 percent of all NYPD-initiated stops resulting in arrests and 6 and 7 percent resulting in summons being issued during this period.³⁵

The Center concluded that “data provided by the NYPD plainly demonstrate that Black and Latino New Yorkers have a greater likelihood of being stopped-and-frisked by NYPD officers at a rate significantly disproportionate to that of White New Yorkers. That NYPD officers use physical force during stops of Blacks and Latinos at an exceedingly disproportionate rate compared to Whites who are stopped, and that this disparity exists despite corresponding rates of arrest and weapons or contraband yield across racial lines, further supports claims that the NYPD is engaged in racially biased stop-and-frisk practices.”³⁶

Empirical evidence from Los Angeles obtained as the result of a 2001 federal consent decree between the U.S. Department of Justice and the Los Angeles Police Department (“LAPD”) that sought to remedy past racial profiling and other discriminatory practices against minorities tells a similar story. During the period from July 2003 to June 2004, “after controlling for violent and property crime rates in specific LAPD reporting districts, as well as a range of other variables,” the researchers found that:

- Per 10,000 residents, the Black stop rate was 3,400 stops higher than the White stop rate, and the Hispanic stop rate was almost 360 stops higher.
- Relative to stopped Whites, stopped Blacks were 127 percent more likely and stopped Hispanics were 43 percent more likely to be frisked.
- Relative to stopped Whites, stopped Blacks were 76 percent more likely and stopped Hispanics were 16 percent more likely to be searched.
- Relative to stopped Whites, stopped Blacks were 29 percent more likely and stopped Hispanics were 32 percent more likely to be arrested.
- Frisked Blacks were 42.3 percent less likely to be

found with a weapon than frisked Whites, and frisked Hispanics were 31.8 percent less likely to have a weapon than frisked Whites.

- Consensual searches of Blacks were 37 percent less likely to uncover weapons, 23.7 percent less likely to uncover drugs, and 25.4 percent less likely to uncover any other type of contraband than consensual searches of Whites.
- Consensual searches of Hispanics were 32.8 percent less likely to uncover weapons, 34.3 percent less likely to uncover drugs, and 12.3 percent less likely to uncover any other type of contraband than consensual searches of Whites.³⁷

The researchers concluded:

It is implausible that higher frisk and search rates are justified by higher minority criminality, when these frisks and searches are substantially less likely to uncover weapons, drugs or other types of contraband. We also find that the black arrest disparity was 9 percentage points lower when the stopping officer was black than when the stopping officer was not black. Similarly, the Hispanic arrest disparity was 7 percentage points lower when the stopping officer was Hispanic than when the stopping officer was a non-Hispanic white. Taken as a whole, these results justify further investigation and corrective action.³⁸

Despite this evidence of continued racial profiling by the LAPD—and the researchers’ conclusion that “these results justify further investigation and corrective action”—a federal court in July 2009 lifted the consent decree over the LAPD.³⁹

Another example of racial profiling in the stop-and-frisk context is provided by Jackson, Tennessee. In Jackson, police conduct what they term “field interviews” in which they stop, interview, and may photograph pedestrians and bystanders when an officer has “reasonable suspicion to believe a crime has occurred [or] is about to occur or is investigating a crime.” A review of “field cards” generated by the field interviews indicates that 70 percent were for African Americans. The population of Jackson is only 42 percent African American. One African-American college student reported that police in Jackson stopped him on the street while he was walking to his grandmother’s house. They then followed him onto the porch of her home where they conducted field interviews of him and five other African-American visitors, and threatened to arrest them if they did not cooperate.⁴⁰

The use of racial profiling in connection with entry into the U.S. in the counterterrorism and immigration contexts is discussed later in this report, but the practice has long been commonplace in the war on drugs at the nation’s border crossings and airports. For example, drug courier profiles used by the U.S. Customs Service regularly include race as a factor in guiding law enforcement discretion.⁴¹ The case of Curtis Blackwell, a long haul trucker, who tried to cross from Mexico into the U.S. at a border crossing in Lordsburg, New Mexico, is illustrative.

On August 15, 2008, Blackwell, an African American, was driving his truck across the border when he was stopped and searched by officers of the New Mexico State Police. The officers accused Blackwell of being under the influence of alcohol or narcotics, despite the fact that he passed every sobriety and drug test administered. His truck was impounded for 24 hours until it was allowed entry into the U.S. Evidence suggests other African-American truckers entering the U.S. from Mexico at this point of entry have also been detained without reasonable suspicion.⁴²

In October 2003, in another case involving an African American who may have “fit” the drug courier profile, state police troopers at Boston’s Logan Airport stopped attorney King Downing as he talked on his cell phone. According to Downing, police demanded to see his identification and travel documents. Downing knew he was under no obligation to provide the documents and declined to do so. Police first ordered him to leave the airport, but then stopped him from leaving, surrounded him with officers, and placed him under arrest. At that point, Downing agreed to provide his identification and travel documents. After a 40-minute detention, he was released. Four years later, in a lawsuit brought by Downing, a jury found the police had unlawfully detained him without reasonable suspicion.⁴³

B. Counterterrorism

The 9/11 terrorist attacks on the World Trade Center and the Pentagon were carried out by Arabs from Muslim countries. In response to the attacks, the federal government immediately engaged in a sweeping counterterrorism campaign focused on Arabs and Muslims, and in some cases on persons who were perceived to be, but in fact were not, Arabs or Muslims, such as Sikhs and other South Asians. That focus continues to this day. The federal government claims that its anti-terrorism efforts do not amount to racial profiling, but the singling out for questioning and detention of Arabs and Muslims in the United States, as

well as selective application of the immigration laws to nationals of Arab and Muslim countries, belie this claim.

A prime example of a federal program that encourages racial profiling is the National Security Entry-Exit Registration System (NSEERS), implemented in 2002.⁴⁴ NSEERS requires certain individuals from predominantly Muslim countries to register with the federal government, as well as to be fingerprinted, photographed, and interrogated. A report issued in 2009 by the American Civil Liberties Union (ACLU) and the Rights Working Group had this to say about NSEERS:

More than seven years after its implementation, NSEERS continues to impact the lives of those individuals and communities subjected to it. It has led to the prevention of naturalization and to the deportation of individuals who failed to register, either because they were unaware of the registration requirement or because they were afraid to register after hearing stories of interrogations, detentions and deportations of friends, family and community members. As a result, well-intentioned individuals who failed to comply with NSEERS due to a lack of knowledge or fear have been denied “adjustment of status” (green cards), and in some cases have been placed in removal proceedings for willfully failing to register.⁴⁵

Despite NSEERS’ near explicit profiling based on religion and national origin, federal courts have held that the program does not violate the Equal Protection Clause of the Constitution, and that those forced to participate in the program have not suffered violations of their rights under the Fourth or Fifth Amendments to the U.S. Constitution, which protect against unreasonable search and seizure and guarantee due process, respectively.⁴⁶

Another example of a federal program that involves racial profiling is Operation Front Line (OFL). The stated purpose of OFL,⁴⁷ which was instituted just prior to the November 2004 presidential election, is to “detect, deter, and disrupt terror operations.”⁴⁸ OFL is a covert program, the existence of which was discovered through a Freedom of Information Act lawsuit filed by the American-Arab Anti-Discrimination Committee and the Yale Law School National Litigation Project.⁴⁹

According to the 2009 ACLU/Rights Working Group report, data regarding OFL obtained from the Department of Homeland Security show that:

an astounding seventy-nine percent of the targets investigated were immigrants from Muslim

majority countries. Moreover, foreign nationals from Muslim-majority countries were 1,280 times more likely to be targeted than similarly situated individuals from other countries. Incredibly, not even one terrorism-related conviction resulted from the interviews conducted under this program. What did result, however, was an intense chilling effect on the free speech and association rights of the Muslim, Arab and South Asian communities targeted in advance of an already contentious presidential election.⁵⁰

Lists of individuals who registered under NSEERS were apparently used to select candidates for investigation in OFL.⁵¹ Inasmuch as the overwhelming majority of those selected were Muslims, OFL is a clear example of a federal program that involves racial profiling. Moreover, because OFL has resulted in no terror-related convictions, the program is also a clear example of how racial profiling uses up valuable law enforcement resources yet fails to make our nation safer.⁵²

Although Arabs and Muslims, and those presumed to be Arabs or Muslims based on their appearance, have since 9/11 been targeted by law enforcement authorities in their homes, at work, and while driving or walking,⁵³ airports and border crossings have become especially daunting. One reason for this is a wide-ranging and intrusive Customs and Border Patrol (CBP) guidance issued in July 2008 that states, “in the course of a border search, and *absent individualized suspicion*, officers can review and analyze the information transported by any individual attempting to enter . . . the United States.” (Emphasis added)⁵⁴ In addition, the standard to copy documents belonging to a person seeking to enter the U.S. was lowered from a “probable cause” to a “reasonable suspicion” standard.⁵⁵ Operating under such a broad and subjective guidance, border agents frequently stop Muslims, Arabs, and South Asians for extensive questioning about their families, faith, political opinions, and other private matters, and subject them to intrusive searches. Often, their cell phones, laptops, personal papers and books are taken and reviewed.

The FBI’s Terrorist Screening Center (TSC) maintains a list of every person who, according to the U.S. government, has “any nexus” to terrorism.⁵⁶ Because of misidentification (*i.e.*, mistaking non-listed persons for listed persons) and over-classification (*i.e.*, assigning listed persons a classification that makes them appear dangerous when they are not), this defective “watch-list” causes many problems for Muslims, Arabs, and South Asians seeking to enter the United States, including those who are U.S. citizens.

The case of Zabarria Reed, a U.S. citizen, Gulf War veteran, 20-year member of the National Guard, and firefighter, illustrates the problem. Trying to reenter the U.S. from Canada where he travels to visit family, Reed is frequently detained, searched, and interrogated about his friends, politics, and reasons for converting to Islam. Officials have handcuffed Reed in front of his children, pointed weapons at him, and denied him counsel.⁵⁷

In 2005, a lawsuit—*Rahman v. Chertoff*—was filed in federal district court in Illinois by nine U.S. citizens and one lawful permanent resident, none of whom had any connection to terrorist activity.⁵⁸ The plaintiffs—all of whom are of South Asian or Middle Eastern descent—alleged that they were repeatedly detained, interrogated, and humiliated when attempting to re-enter the U.S. because their names were wrongly on the watch-list, despite the fact that they were law abiding citizens who were always cleared for re-entry into the U.S. after these recurring and punitive detentions.⁵⁹

In May 2010, the court dismissed the case, finding that almost all of the disputed detentions were “routine,” meaning that border guards needed no suspicion at all to undertake various intrusions such as pat-down frisks and handcuffing for a brief time.⁶⁰ Further, the court held that where the stops were not routine, the detentions, frisks, and handcuffings were justified by the placement of the individuals on the TSC’s database—even when the listing may have been a mistake.⁶¹

Notwithstanding the adverse decision in the *Rahman* case, and the continuation of these practices on a national level, it is important to note that there have been certain positive changes in government policy since 2005. Specifically, a standard of “reasonable suspicion” is now used before a name can be added to the TSC’s database, which marks a sharp departure from the essentially “standardless” policy previously in effect.⁶²

Individuals wearing Sikh turbans or Muslim head coverings are also profiled for higher scrutiny at airports. In response to criticism from Sikh organizations, the Transportation Security Administration (TSA) recently revised its operating procedure for screening head coverings at airports. The current procedure provides that:

All members of the traveling public are permitted to wear head coverings (whether religious or not) through the security checkpoints. The new standard procedures subject all persons wearing head coverings to the possibility of additional security screening, which may include a pat-down search of the head covering. Individuals

*may be referred for additional screening if the security officer cannot reasonably determine that the head area is free of a detectable threat item. If the issue cannot be resolved through a pat-down search, the individual will be offered the opportunity to remove the head covering in a private screening area.*⁶³

Despite this new procedure, and TSA’s assurance that in implementing it “TSA does not conduct ethnic or religious profiling, and employs multiple checks and balances to ensure profiling does not happen,”⁶⁴ Sikh travelers report that they continue to be profiled and subject to abuse at airports.⁶⁵

Amardeep Singh, director of programs for the Sikh Coalition and a second-generation American, recounted the following experience in his June 2010 testimony before the Subcommittee on the Constitution, Civil Rights, and Civil Liberties of the House Judiciary Committee:

*Two months ago, my family and I were coming back to the United States from a family vacation in Playa Del Carmen, Mexico. At Fort Lauderdale Airport, not only was I subjected to extra screening, but so was [my 18 month-old son Azaad]. I was sadly forced to take my son, Azaad, into the infamous glass box so that he could [be] patted down. He cried while I held him. He did not know who that stranger was who was patting him down. His bag was also thoroughly searched. His Elmo book number one was searched. His Elmo book number two was searched. His mini-mail truck was searched. The time spent waiting for me to grab him was wasted time. The time spent going through his baby books was wasted time. I am not sure what I am going to tell him when he is old enough and asks why his father and grandfather and soon him—Americans all three—are constantly stopped by the TSA 100% of the time at some airports.*⁶⁶

C. Immigration Law Enforcement

1. 287(g) and Other Federal Programs

The federal government has shifted significant responsibility for the enforcement of civil immigration laws to state and local law enforcement authorities. The Immigration and Customs Enforcement agency (ICE) in the U.S. Department of Homeland Security (DHS), which is the agency responsible for enforcing federal immigration laws, has done this through Agreements of Cooperation in Communities to Enhance Safety and

Security (known as ICE ACCESS programs). Most notable among these programs is the 287(g) program, so named for its statutory source, Chapter 287(g) of the Immigration and Nationality Act.⁶⁷

The 287(g) program allows state and local law enforcement authorities to enter into a Memorandum of Agreement (MOA) with DHS that enables them to perform limited immigration enforcement activities, provided there is supervision and training by ICE.⁶⁸ The MOAs allow ICE to suspend or revoke the delegated authority at any time.⁶⁹ As of June 2009, a total of 66 287(g) MOAs had been signed in 23 states.⁷⁰ Funding for the 287(g) program has increased significantly on an annual basis since fiscal year 2006, when \$5 million was allocated for the program, to \$68 million in fiscal year 2010.⁷¹

Chapter 287(g) was added to the Immigration and Nationality Act in 1996, at a time when the U.S. Department of Justice (DOJ) recognized no inherent authority for state and local law enforcement authorities to enforce federal immigration laws.⁷² A 2002 opinion from the DOJ Office of Legal Counsel (OLC), however, reversed that earlier position, and concluded that state and local law enforcement authorities do have such inherent authority.⁷³

The stated purpose of the 287(g) program is to pursue undocumented immigrants suspected of committing serious crimes, “giving [state and local] law enforcement the tools to identify and remove dangerous criminal aliens.”⁷⁴ A 2007 ICE factsheet describing the 287(g) program states that it is

*not designed to allow state and local agencies to perform random street operations. It is not designed to impact issues such as excessive occupancy and day laborer activities ... it is designed to identify individuals for potential removal, who pose a threat to public safety, as a result of an arrest and/or conviction for state crimes. It does not impact traffic offenses such as driving without a license unless the offense leads to an arrest ... Officers can only use their 287(g) authority when dealing with persons suspected of committing state crimes and whose identity is in question or are suspected of being an illegal alien.*⁷⁵

Unfortunately, these clear statements of intent have not guided the operation of the 287(g) program. Combined with the 2002 OLC “inherent authority” opinion, the program has been used by state and local

law enforcement authorities to stop, detain, question, and otherwise target individual Hispanics and entire Hispanic communities in a broad way to enforce federal immigration laws, thus racially profiling vast numbers of Hispanics—most of whom are U.S. citizens or legal residents—as suspected undocumented immigrants.

In New Jersey, a wide-ranging study found that despite a 2007 directive issued by the state attorney general that limited police to questioning about immigration status only those individuals arrested for indictable offenses or driving while intoxicated, officers routinely ignored these limitations, stopping and questioning tens of thousands of Hispanic motorists, pedestrians, passengers, and others who had committed no crime. During the six-month period following issuance of the directive, police referred 10,000 individuals who they believed were undocumented to ICE. Some of those turned over to ICE were crime victims. Others were jailed for days without charges. Many of those referred to ICE turned out to be legal residents or U.S. citizens. Only 1,417 individuals were charged with immigration offenses by the federal government. “The data suggest a disturbing trend towards racial profiling by the New Jersey police,” said Bassina Farenblum, a lawyer for the Center for Social Justice at Seton Hall University Law School, which conducted the study.⁷⁶

A familiar and troubling pattern has emerged in some jurisdictions operating under 287(g) MOAs pursuant to which local police make traffic stops of Hispanic drivers for minor infractions, if any, and then arrest the driver rather than issue the customary citation. Once an arrest is made, a federal background check can be conducted to determine if the driver is an undocumented immigrant.

The case of Juanna Villegas provides an example. In Nashville, Tennessee, on July 3, 2008, Villegas was pulled over for what the local police termed “careless driving,” another potentially subjective pretext for “Driving While Black or Brown” traffic stops. Villegas, who was nine months pregnant, did not have a driver’s license. Instead of receiving a citation, as is customary in Tennessee in such cases, she was arrested and taken to jail. The arrest of Villegas then enabled a federal immigration officer, operating under a 287(g) MOA with local authorities, to conduct a background check on her. He determined that Villegas was an undocumented immigrant who had previously been deported in 1996, but had no other criminal record. The county authorities then declared Mrs. Villegas a medium security prisoner and jailed her. Upon going into labor, she was handcuffed and transported to a hospital, where her leg

was cuffed to the hospital bed until her labor reached the final stages and she gave birth. She was not permitted to see or speak to her husband, who came to pick up the baby from the hospital as his wife was returned to jail. Hospital personnel offered Villegas a breast pump, but she was not permitted to take it back to her cell. Villegas's breasts then became infected and her newborn son developed jaundice. Five days after her arrest, she pleaded guilty to driving without a license and was sentenced to time served. Villegas was then transferred to the jurisdiction of ICE, which began deportation proceedings, but immediately released her in accord with its policy against separating babies from their nursing mothers.⁷⁷

Local law enforcement authorities now profile entire communities as they assume duties of immigration enforcement under 287(g) MOAs. Nowhere is there a clearer illustration of the abuses inherent in such community-wide policing actions than in Maricopa County, Arizona, where Sheriff Joe Arpaio has received national attention for his aggressive "Driving While Brown" profiling of Hispanic drivers, as well as his sweeps of Hispanic communities. In the most notorious of these neighborhood sweeps, Arpaio sent more than 100 deputies, a volunteer posse, and a helicopter into a community of approximately 6,000 Yaqui Indians and Hispanics outside Phoenix. For two days, this outsized police presence stopped residents on the street, chased them into their homes, and generally terrorized community members so completely that many will not come out of their homes if they see a sheriff's patrol car. By the time the operation had ended, a total of only nine undocumented immigrants had been arrested.⁷⁸

Arpaio has also led raids on area businesses that employ Hispanics, causing a substantial number of U.S. citizens and lawful residents to be stopped, detained, and questioned. As a result, employers are reluctant to hire U.S. citizens or lawful residents who happen to be Hispanic because of the risk of disruption to their businesses that the sheriff's raids may cause.⁷⁹

Responding to outcries about such abuses, the Obama administration revised its 287(g) MOA with the Maricopa County Sheriff's Office (MCSO) to restrict it to conducting background checks only of prisoners in local jails. Perversely, such an arrangement could lead to more arrests of Hispanics for traffic violations that customarily merit only a summons. Perhaps previewing his adoption of this tactic after his 287(g) authority had been restricted, Arpaio commented, "[t]hey took away my authority on the streets. That doesn't matter because I will still pursue illegals on the streets of Maricopa

utilizing the authority I have as the elected official."⁸⁰

Like Arpaio, Sheriff Tom Helder of Washington County, Arkansas, seemed unconcerned about racial profiling and the potential for U.S. citizens and lawful residents to be caught up in his 287(g) dragnets. "There's going to be collateral damage," said Helder. "If there's 19 people in there who could or could not be here illegally, they are going to be checked. Although those people might not be conducting criminal activity, they are going to get slammed up in the middle of an investigation."⁸¹

In North Carolina, Alamance County Sheriff's Office personnel assured Hispanic residents that the county's 287(g) authority would only be used to deport undocumented immigrants who committed violent crimes. Instead, of 170 roadblocks set up to spot-check licenses, 30 were established outside Buckhorn market on a Saturday or Sunday morning, the customary time when Hispanic residents shop there by the hundreds. Police have also arrested Hispanics at schools, libraries, and sporting events. Five immigrants were arrested for fishing without a license, rarely an offense resulting in an arrest, and then deported. Perhaps this profiling of entire communities should not be surprising in a county where Sheriff Terry Johnson declared about Mexicans, "[t]heir values are a lot different—their morals—than what we have here. In Mexico, there's nothing wrong with having sex with a 12, 13 year-old girl ... They do a lot of drinking down in Mexico."⁸²

Although the ICE factsheet provides that 287(g) programs are not intended to be used to impact "day laborer activities" or "traffic offenses," that prohibition is not observed. A 2009 report by Justice Strategies found that 287(g) MOAs were being used in Maricopa County, Arizona, to do "crime suppression sweeps" of day laborer sites.⁸³ And in a study of the implementation of 287(g) MOAs in North Carolina, the state ACLU and the University of North Carolina Immigration and Human Rights Policy Clinic found that a majority of arrests in several counties came as a result of traffic stops, not criminal acts.⁸⁴

Enforcement of federal immigration laws by local law enforcement authorities under 287(g) MOAs is inherently problematic. As the ACLU explained in 2009 testimony before Congress:

Because a person is not visibly identifiable as being undocumented, the basic problem with local police enforcing immigration law is that police officers who are often not adequately

trained, and in some cases not trained at all, in federal immigration enforcement will improperly rely on race or ethnicity as a proxy for undocumented status. In 287(g) jurisdictions, for example, state or local police with minimal training in immigration law are put on the street with a mandate to arrest “illegal aliens.” The predictable and inevitable result is that any person who looks or sounds “foreign” is more likely to be stopped by police, and more likely to be arrested (rather than warned or cited or simply let go) when stopped.⁸⁵

As indicated, the stated purpose of the 287(g) program is to give state and local law enforcement authorities the tools to bring in undocumented immigrants who have engaged in serious criminal offenses, and supporters of the program will misleadingly cite cases of dangerous or violent criminals who are also in this country without authorization. Sheriff Charles Jenkins of Frederick County, Maryland, made this point in written testimony that he submitted to the House Homeland Security Committee in March 2009: “Some of the most serious offenses in which criminal aliens have been arrested as offenders and identified include: Attempted 2nd Degree Murder, 2nd Degree Rape, Armed Robbery, 1st Degree Assault, Child Abuse, Burglary, and Possessing Counterfeit U.S. Currency.”⁸⁶ But these comments fail to mention that state and local law enforcement authorities can already arrest anyone suspected of committing these offenses without 287(g) authority from ICE, since the authority to arrest is based on the act and not the actor’s immigration status. Giving police the ability to inquire into a person’s immigration status in no way enhances their ability to meet the goals of law enforcement.

In March 2010, the Department of Homeland Security (DHS) Office of Inspector General issued a comprehensive 87-page report assessing the 287(g) program (OIG report).⁸⁷ This Report is highly critical of the operation of the program:

We observed instances in which Immigration and Customs Enforcement and participating law enforcement agencies were not operating in compliance with the terms of the agreements. We also noted several areas in which Immigration and Customs Enforcement had not instituted controls to promote effective program operations and address related risks. Immigration and Customs Enforcement needs to (1) establish appropriate performance measures and targets to determine whether program results are aligned with program goals; (2) develop guidance for

supervising 287(g) officers and activities; (3) enhance overall 287(g) program oversight; (4) strengthen the review and selection process for law enforcement agencies requesting to participate in the program; (5) establish data collection and reporting requirements to address civil rights and civil liberties concerns; (6) improve 287(g) training programs; (7) increase access to and accuracy of 287(g) program information provided to the public; and (8) standardize 287(g) officers’ access to Department of Homeland Security information systems.⁸⁸

With regard to civil rights violations generally, and racial profiling specifically, the OIG report notes that those critical of the 287(g) program “have charged that ICE entered into agreements with [law enforcement authorities] that have checkered civil rights records, and that by doing so, ICE has increased the likelihood of racial profiling and other civil rights violations.”⁸⁹ Crediting these criticisms, the OIG report concludes that “ICE needs to direct increased attention to the civil rights and civil liberties records of current and prospective 287(g) jurisdictions,” and “must include consideration of civil rights and civil liberties factors in the site selection and MOA review process.”⁹⁰

Although perhaps the most well-known, the 287(g) program is not the only ICE-state/local law enforcement authority collaboration program that raises concerns about racial profiling. As the ACLU noted in its 2009 Congressional testimony:

The problem of racial profiling, however, is not limited to 287(g) field modelsthe federal government uses an array of other agreements to encourage local police to enforce immigration law. Racial profiling concerns therefore are equally present under jail-model MOUs or other jail-screening programs. Officers, for example, may selectively screen in the jails only those arrestees who appear to be Latino or have Spanish surnames. Police officers may also be motivated to target Latinos for selective or pretextual arrests in order to run them through the booking process and attempt to identify undocumented immigrants among them.⁹¹

Included among the problematic “other jail-screening programs” is the Criminal Alien Program (CAP), which involves an immigration screening process within federal, state, and local correctional facilities to identify and place immigration holds on “criminal aliens to

process them for removal before they are released to the general public.”⁹² Although CAP is intended to target “illegal aliens with criminal records who pose a threat to public safety,”⁹³ a recent study by the Earl Warren Institute on Race, Ethnicity and Diversity at the University of California, Berkeley School of Law, indicates that the program is not effective in prioritizing the arrest and removal of individuals who commit dangerous or violent crimes. The study, which examined the CAP program in Irving, Texas, found that felony charges accounted for only two percent of the immigration holds, while 98 percent were issued for misdemeanor offenses.⁹⁴

Another ICE-state/local law enforcement authority collaboration program that raises concerns about racial profiling is the Secure Communities program. This ICE program, which was launched in 2008, allows local authorities to run fingerprint checks of arrestees during the booking process against DHS databases, not just FBI databases. According to ICE, “[t]he technology enables local Law Enforcement Agencies (LEAs) to initiate an integrated records check of criminal history and immigration status for individuals in their custody ... when there is a fingerprint match in both systems, ICE and the LEA that encountered the individual are automatically notified, in parallel.”⁹⁵ Local LEAs can apparently run fingerprint checks of any person in their custody, thus making the Secure Communities program ripe for abuse. With the program in place, police may have a strong incentive “to arrest people based on racial or ethnic profiling or for pretextual reasons so that immigration status can be checked.”⁹⁶

2. State Initiatives: Arizona’s S.B. 1070

In addition to federal programs such as those discussed above that incentivize state and local law enforcement authorities to engage in racial profiling, federal inaction on comprehensive immigration reform has prompted state lawmakers to undertake initiatives of their own. Many of these state initiatives have further encouraged racial profiling.

During the first half of 2010, 314 laws and resolutions were enacted across the country, representing a 21 percent increase over the same period in 2009, as states tightened restrictions on hiring undocumented immigrants, instituted stringent ID requirements to receive public benefits, and increased their participation in programs aimed at removing persons who are in the country without authorization.⁹⁷ But no state law has been as sweeping or controversial as Arizona’s S.B. 1070—the “Support our Law Enforcement

and Safe Neighborhoods Act.” The stated purpose of S.B. 1070, which was passed in April 2010, is to “discourage and deter” the presence of unauthorized immigrants in Arizona.⁹⁸ S.B. 1070 turns mere civil infractions of federal immigration law, such as not carrying immigration registration papers, into state crimes, and requires police to inquire about the legal status of individuals if “reasonable suspicion” exists during arrests or even traffic stops. The law also gives private citizens the right to sue Arizona law enforcement authorities if they believe that the law is not being fully enforced. S.B. 1070 has provided a template for other states, and within a few months of its enactment, clone bills were being considered in more than 20 states around the country.⁹⁹

Opponents of S.B. 1070 contend that the law will lead to more racial profiling, increase community mistrust of the police, and strain already limited law enforcement resources. The Arizona Association of Chiefs of Police has opposed the law, stating that it will “negatively affect the ability of law enforcement agencies across the state to fulfill their many responsibilities in a timely manner.”¹⁰⁰ And President Obama has criticized the law, calling it a “misguided” effort to deal with a national problem.¹⁰¹

In May 2010, a group of civil rights organizations filed a class action lawsuit in federal district court in Arizona challenging the constitutionality of S.B. 1070 on the ground that it is “preempted” by federal law.¹⁰² The U.S. Department of Justice (DOJ) filed a similar lawsuit in July.¹⁰³

On July 28, one day before S.B. 1070 was scheduled to go into effect, the court issued a preliminary injunction in the DOJ’s lawsuit, enjoining implementation of certain key provisions of the law, including those that raised the most significant concerns regarding racial profiling.¹⁰⁴ The state appealed the preliminary injunction to the U.S. Court of Appeals for the Ninth Circuit, and, as of the date of this publication, the Ninth Circuit had not issued its decision.¹⁰⁵

D. The Department of Justice’s 2003 Guidance

As evidence of its bona fides in attempting to eliminate racial profiling by federal law enforcement authorities, the Bush administration relied heavily on the DOJ’s June 2003 “Guidance Regarding the Use by Federal Law Enforcement Agencies” (2003 Guidance), which was developed in response to a directive from then-Attorney-General John Ashcroft “to develop guidance for Federal officials to ensure an end to racial profiling

in law enforcement.”¹⁰⁶ But this reliance on the 2003 Guidance was misplaced.

At the time of its issuance, The Leadership Conference on Civil and Human Rights—reflecting the views of the broader civil and human rights community—referred to the 2003 Guidance as a “useful first step,” but emphasized that “it falls far short of what is needed to fulfill the president’s promise [in his February 27, 2001, address to Congress] to end racial profiling in America.”¹⁰⁷ As Wade Henderson, then-executive director (and currently president and CEO) of The Leadership Conference explained:

The guidance falls far short of what is needed in four important ways. First, it does not apply to state and local police, who are more likely than federal agents to engage in routine law enforcement activities, such as traffic and pedestrian stops. Second, the guidance includes no mechanism for enforcement of the new policy, leaving victims of profiling without a remedy. Third, there is no requirement of data collection

*to monitor the government’s progress toward eliminating profiling. And finally, the guidance includes broad and vaguely worded ‘national security’ and ‘border’ exemptions that could swallow the rule. Many in the Latino, Arab, Muslim, African, and South Asian communities will remain targets of unjustified law enforcement action based on race or ethnicity.*¹⁰⁸

Despite these and other criticisms made by The Leadership Conference and its allies—including the failure of the 2003 Guidance to prohibit profiling on the basis of national origin or religion—the 2003 Guidance has to date remained unchanged. In his November 18, 2009, appearance before the Senate Committee on the Judiciary, Attorney General Eric Holder stated that “[i]n the area of racial profiling, the Department’s [June 2003 Guidance] has been the subject of some criticism,” and announced that he had “initiated an internal review to evaluate the 2003 Guidance and to recommend any changes that may be warranted.”¹⁰⁹ That review is presently ongoing.

IV. The Case Against Racial Profiling

A. The Assumptions Underlying Racial Profiling

Defenders of racial profiling argue that it is a rational response to patterns of criminal behavior.

In the context of street-level crime, this argument rests on the assumption that minorities—used in this context to refer to African Americans and Hispanics—commit most drug-related and other street-level crimes, and that many, or most, street-level criminals are in turn African Americans and Hispanics. Thus, the argument continues, it is a sensible use of law enforcement resources to target African Americans and Hispanics in this context. This assumption is false.

The empirical data presented in Chapter III (A) of this report reveal that “hit rates” (*i.e.*, the discovery of contraband or evidence of other illegal conduct) among African Americans and Hispanics stopped and searched by the police—whether driving or walking—are lower than or similar to hit rates for Whites who are stopped and searched. These hit rate statistics render implausible any defense of racial profiling on the ground that African Americans and Hispanics commit more drug-related or other street-level crimes than Whites.¹¹⁰

The basic assumption underlying racial profiling in the counterterrorism context, predominantly at airports and border crossings, is the same as that underlying the practice in the street-level crime context—*i.e.*, that a particular crime (in this context, terrorism) is most likely to be committed by members of a particular racial, ethnic or religious group (in this context, Arabs and Muslims), and that members of that group are, in general, more likely than non-members to be involved in that type of criminal activity. As in the street-level crime context, this assumption is false.

While all the men involved in the 9/11 hijackings were Arab nationals from Muslim countries, terrorist acts are not necessarily perpetrated by Arabs or Muslims. Richard Reid, who on December 22, 2001, tried to ignite an explosive device on a trans-Atlantic flight, was a British citizen of Jamaican ancestry. Prior to 9/11, the bloodiest act of terrorism on U.S. soil was perpetrated by Timothy McVeigh, a White American citizen. And non-Arabs such as John Walker Lindh can be found in the ranks of the Taliban, al Qaeda, and other terrorist organizations. As former U.S. Department of Homeland Security (DHS) Secretary Michael Chertoff explained following the December 2001 bomb attempt by Richard Reid:

Well, the problem is that the profile many people think they have of what a terrorist is doesn't fit the reality. Actually, this individual probably does not fit the profile that most people assume is the terrorist who comes from either South Asia or an Arab country. Richard Reid didn't fit that profile. Some of the bombers or would-be bombers in the plots that were foiled in Great Britain don't fit the profile. And in fact, one of the things the enemy does is to deliberately recruit people who are Western in background or in appearance, so that they can slip by people who might be stereotyping.¹¹¹

The assumption that underlies the use of racial profiling in the effort to enforce immigration laws is the same as that which underlies its use in the street-level crime and counterterrorism contexts—*i.e.*, that most of the people who are in this country without authorization are members of a particular racial or ethnic group, and that members of that particular racial or ethnic

group are therefore more likely to be in this country without documentation than are non-members. Although, since 9/11, Arabs and Muslims have been subjected to selective and unfair enforcement of the immigration laws, racial profiling in the immigration context traditionally has been, and remains today, aimed primarily at Hispanics.

Although the Supreme Court has held that race, ethnicity, and national origin cannot be the *sole* factors giving rise to a law enforcement stop for suspected immigration law violations,¹¹² the Court has indicated that there may be certain situations in which it is constitutional for a law enforcement stop to be *partially* based on such considerations. Specifically, in *United States v. Martinez-Fuente* (1976), which involved fixed inspection checkpoints near the Mexican border, the Court concluded that the population demographics were such as to allow law enforcement stops to be partially based on race.¹¹³

Because racial profiling in the immigration context may be constitutionally permissible under certain limited circumstances does not in any way justify its use. Even if the population demographics in a particular community make it likely that most undocumented immigrants are Hispanic, it does not follow that many, or most, Hispanics in that community are undocumented immigrants. To the contrary, the overwhelming majority of Hispanics in the United States are U.S. citizens or legal residents.¹¹⁴ And the adverse consequences of the use of racial profiling for the individuals who are subject to it, and for effective law enforcement—consequences that are discussed below—argue forcefully against the use of any form of racial profiling in any context.

B. The Consequences of Racial Profiling

Racial profiling forces individuals who have engaged in no wrongdoing to endure the burdens of law enforcement in order to prove their innocence. For each criminal, terrorist, or undocumented immigrant apprehended through racial profiling, many more law-abiding minorities are treated through profiling as if they are criminals, terrorists, or undocumented immigrants.

The 2009 experience of Elvis Ware, a 36 year-old African-American veteran of Operation Desert Storm, is illustrative of the humiliation and stress experienced by a person who has been a victim of racial profiling. In 2009, police in Detroit, Michigan, conducted a stop-and-frisk of Ware. While in a public parking lot, one officer “shoved his bare hand down Ware’s pants and squeezed his genitals and then attempted to stick a bare finger into Ware’s anus.” Other young men of African

descent report that the same two officers who stopped Ware conducted similar outrageous and inappropriate searches on them without warrants, probable cause, or reasonable suspicion. In accepting a settlement from the city of Detroit that included monetary damages, Ware said, “I not only wanted justice for myself, but I wanted it for others who were treated this way.... If, by coming forward, I prevent just one person from having to go through this, I have succeeded.”¹¹⁵

Ware’s humiliation is not unique. Texas State Judge Gillberto Hinajosa, the subject of immigration-related profiling on many occasions, has stated that Southern Texas “feels like occupied territory ... It does not feel like we’re in the United States of America.”¹¹⁶ Such alienation is a common consequence of being profiled.

Exposure to racial profiling has behavioral as well as emotional consequences. Many minorities who are entirely innocent of any wrongdoing choose to drive in certain automobiles and on certain routes, or to dress in certain clothes, to avoid drawing the attention of police who might otherwise profile and stop them.¹¹⁷ Or they choose to live in areas where they will not stand out as much, thereby reinforcing patterns of residential segregation.¹¹⁸

An example of behavioral changes in an effort to avoid racial profiling in the counterterrorism context is provided by Khaled Saffuri. Saffuri, a Lebanese man living in Great Falls, Virginia, has said that he shaves closely and wears a suit when he flies, then remains silent during flights and avoids using the aircraft’s bathroom. Sometimes he avoids flying altogether in favor of long drives to his destination.¹¹⁹

Defenders of racial profiling argue that profiling is necessary and useful in the effort by law enforcement authorities to fight street-crime, combat terrorism, and enforce the nation’s immigration laws. The opposite is true: racial profiling is in all contexts a flawed law enforcement tactic that may increase the number of people who are brought through the legal system, but that actually decreases the hit rate for catching criminals, terrorists, or undocumented immigrants. There are two primary reasons for this.

To begin with, racial profiling is a tactic that diverts and misuses precious law enforcement resources. This became clear in 1998 when the U.S. Customs Service responded to a series of discrimination complaints by eliminating the use of race in its investigations and focusing solely on suspect behavior. A study found that

this policy shift led to an almost 300 percent increase in the discovery of contraband or illegal activity.¹²⁰

Consider the inefficient allocation of scarce police resources in New Jersey when, as described in Chapter III (C) of this report local law enforcement authorities stopped tens of thousands of Hispanic motorists, pedestrians, passengers, and others in a six-month period. Just 1,417 of the tens of thousands stopped were ultimately charged with immigration offenses by the federal government.¹²¹

Or, consider the April 2008 assault by more than 100 Maricopa County, Arizona deputies, a volunteer posse, and a helicopter on a small town of 6,000 Yaqui Indians and Hispanics outside of Phoenix, as described in Chapter III (C) above. After terrorizing the residents for two days, stopping residents and chasing them into their homes to conduct background checks, Sheriff Joe Arpaio's operation resulted in the arrest of just nine undocumented immigrants.¹²²

Turning to the counterterrorism context, the use of racial profiling—and the focus on the many Arabs, Muslims, Sikhs, and other South Asians who pose no threat to national security—diverts law enforcement resources away from investigations of individuals who have been linked to terrorist activity by specific and credible evidence.

A memorandum circulated to U.S. law enforcement agents worldwide by a group of senior law enforcement officials in October 2002 makes clear that race is an ineffective measure of an individual's terrorist intentions. The memorandum, entitled "Assessing Behaviors," emphasized that focusing on the racial characteristics of individuals was a waste of law enforcement resources and might cause law enforcement officials to ignore suspicious behavior, past or present, by someone who did not fit a racial profile.¹²³ One of the authors of the report noted: "Fundamentally, believing that you can achieve safety by looking at characteristics instead of behaviors is silly. If your goal is preventing attacks ... you want your eyes and ears looking for pre-attack behaviors, not characteristics."¹²⁴

In sum, ending racial profiling will result in the more efficient deployment of law enforcement resources. As David Harris, a professor of law at the University of Pittsburgh Law School and a recognized expert on racial profiling, explained in his June 2010 testimony before the Subcommittee on the Constitution, Civil Rights, and Civil Liberties of the U.S. House of Representatives Judiciary Committee:

From those who advocate racial profiling, one frequently hears what we may call the profiling hypothesis: we know who the criminals are and what they look like, because we know what societal groups they come from; therefore using racial or ethnic appearance will allow police to better target their enforcement efforts; and when police target those efforts, they will be more effective, because they will get higher rates of "hits"—finding guns, drugs, criminals—than when they do not use racial targeting ... [T]he data do not support the profiling hypothesis; the data contradict it. It is not, in fact, an effective crime-fighting strategy.

The reasons for these results originate with what profiling is supposed to be: a predictive tool that increases the odds of police finding the "right" people to stop, question, or search. Using race or ethnic appearance as part of a description of a person seen by a witness is absolutely fine, because that kind of information helps police identify a particular individual. On the other hand, using race as a predictor of criminal behavior, in situations in which we do not yet know about the criminal conduct—for example, when we wonder which of the thousands of vehicles on a busy highway is loaded with drugs, or which passenger among tens of thousands in an airport may be trying to smuggle a weapon onto an airplane—throws police work off. That is because using race or ethnic appearance as a short cut takes the eye of law enforcement off of what really counts. And what really matters in finding as-yet-unknown criminal conduct is the close observation of behavior. Paying attention to race as a way to more easily figure out who is worthy of extra police attention takes police attention off of behavior and focuses it on appearance, which predicts nothing.¹²⁵

An additional reason why racial profiling is not an effective law enforcement tactic is that it destroys the relationship between local law enforcement authorities and the communities that they serve. This is particularly true with regard to the enforcement of federal immigration laws by local police under the 287(g) program and other ICE ACCESS programs.

When local police function as rogue immigration agents, fear—as opposed to trust—is created in Hispanic and other immigrant communities. U.S. born children with parents who are either U.S. citizens or lawful residents

may avoid coming in contact with police or other public officials (including school officials) out of concern that they, their parents, or family members will be targeted by local law enforcement authorities for a check of their immigration status. Victims of domestic violence who are immigrants may fear interacting with the police because of their immigration status, or the status of their families, or even their abusers, and the consequences of that fear can leave them in dangerous and violent situations. Respect and trust between law enforcement authorities and immigrant communities are essential to successful police work.

Racial profiling has a destructive impact on minority communities. How many community members will step up to be “Good Samaritans” and report crimes or accidents, or offer help to a victim until the police arrive, if the risk of doing the good deed is an interaction with a police officer that may result in a background check or challenge to immigration status? Perversely, the ultimate result of racial profiling in minority communities is precisely the opposite of the goal of effective local law enforcement. It is for this reason that many police executives and police organizations have expressed concern that the enforcement of the immigration laws by local law enforcement authorities has a “negative overall impact on public safety.”¹²⁶

The use of racial profiling in the counterterrorism context—as in the immigration context—alienates the very people that federal authorities have deemed instrumental in the anti-terrorism fight. Arab and Muslim communities may yield useful information to those fighting terrorism. Arabs and Arab Americans also offer the government an important source of Arabic speakers and translators. The singling out of Arabs and Muslims for investigation regardless of whether any credible evidence links them to terrorism simply alienates these individuals and compromises the anti-terrorism effort. In particular, to the extent that federal authorities use the anti-terrorism effort as a pretext for detaining or deporting immigration law violators, individuals who might have information that is useful in the fight against terrorism may be reluctant to come forward. For a special registration program such as NSEERS, those individuals will choose not to register, thereby defeating the very purpose of the program.¹²⁷

Professor Harris made this point in his June 2010 congressional testimony, when he stated that racial profiling “drives a wedge between police and those they serve, and this cuts off the police officer from

the most important thing the officer needs to succeed: information.”¹²⁸ As he explained:

For more than two decades, the mantra of successful local law enforcement has been community policing. One hears about community policing efforts in every state. The phrase means different things in different police agencies. But wherever community policing really takes root, it comes down to one central principle: the police and the community must work together to create and maintain real and lasting gains in public safety. Neither the police nor the public can make the streets safe by themselves; police work without public support will not do the whole job. The police and those they serve must have a real partnership, based on trust, dedicated to the common goal of suppressing crime and making the community a good place to live and work. The police have their law enforcement expertise and powers, but what the community brings to the police—information about what the real problems on the ground are, who the predators are, and what the community really wants—can only come from the public. Thus the relationship of trust between the public and the police always remains of paramount importance. This kind of partnership is difficult to build, but it is neither utopian nor unrealistic to strive for this kind of working relationship. In other words, this is not an effort to be politically correct or sensitive to the feelings of one or another group. Thus these trust-based partnerships are essential for public safety, and therefore well worth the effort to build.

When racial profiling becomes common practice in a law enforcement agency, all of this is put in jeopardy. When one group is targeted by police, this erodes the basic elements of the relationship police need to have with that group. It replaces trust with fear and suspicion. And fear and suspicion cut off the flow of communication. This is true whether the problem we face is drug dealers on the corner, or terrorism on our own soil. Information from the community is the one essential ingredient of any successful effort to get ahead of criminals or terrorists; using profiling against these communities is therefore counterproductive.¹²⁹

Because racial profiling diverts precious law enforcement resources and destroys the relationship between local law enforcement authorities and the

communities they serve, it is a flawed method of law enforcement in any context. But it is particularly ineffective in the counterterrorism context for two additional reasons.

First, even if one accepts the false assumption that terrorists are likely to be Arabs or Muslims, the application of the profile is fraught with error. The profile of a terrorist as an Arab or Muslim has been applied to individuals who are neither Arab nor Muslim (*e.g.*, Sikhs and other South Asians). Profiling of Arabs and Muslims amounts to selective enforcement of the law against anyone with a certain type of “swarthy” foreign-looking appearance even if they do not in fact fit the terrorist profile. The profile is then useless in fighting terrorism, as well as offensive to an ever-broadening category of persons.

Second, using racial profiling in the counterterrorism context is a classic example of refighting the last war. Al Qaeda and other terrorist organizations are pan-ethnic:

they include Asians, Anglos, and ethnic Europeans. They are also adaptive organizations that will learn how to use non-Arabs such as Richard Reid to carry out terrorists attacks, or to smuggle explosive devices onto planes in the luggage of innocent people. Chertoff, the former DHS secretary made this point when, in his statement following the bomb attempt by Reid, he observed that “one of the things the enemy does is to deliberately recruit people who are Western in background or in appearance so that they can slip by people who might be stereotyping.”¹³⁰ In short, the fact that the 9/11 hijackers were Arabs means little in predicting who the next terrorists will be. In a situation analogous to the one facing Arabs and Muslims today, the 10 individuals found to be spying for Japan during World War II were not Japanese or Asian, but Caucasian. They clearly did not fit the profile that caused America to order the internment of thousands of Japanese Americans.¹³¹ Racial profiling in any case is a crude mechanism; against an enemy like al Qaeda, it is virtually useless.

V. The End Racial Profiling Act of 2010

Before 9/11, polls showed that Americans of all races, ethnicities, and national origins considered racial profiling a widespread and unacceptable practice.¹³² On June 6, 2001, Sen. Russell Feingold, D. Wis., and Rep. John Conyers, D. Mich., introduced the End Racial Profiling Act of 2001 (ERPA 2001) into the 107th Congress.¹³³ The bill had bipartisan support, and the enactment of a comprehensive federal anti-racial profiling statute seemed imminent. On 9/11, the consensus evaporated, and the Bush administration took no action to encourage Congress to pass ERPA 2001. The suggestion—which, as this report indicates, is fundamentally wrong—that racial profiling could not be addressed without compromising the counterterrorism effort, prevented any rational discussion of ending the practice, not only in that context, but in the street-level crime and immigration contexts as well. End Racial Profiling Acts were introduced into Congress in 2004, 2005, 2007, and 2009,¹³⁴ but Congress failed to enact legislation to ban the practice.

Looking toward the introduction of another End Racial Profiling Act, the Subcommittee on the Constitution, Civil Rights and Civil Liberties of the U.S. House of Representatives Committee on the Judiciary held a hearing in June 2010 on “Ending Racial Profiling: Necessary for Public Safety and the Protection of Civil Rights.” Shortly thereafter, on July 15, Conyers, chair of the Judiciary Committee, introduced into the 111th Congress H.R. 5748—the End Racial Profiling Act of 2010 (ERPA 2010).¹³⁵ The 111th Congress took no action on ERPA 2010, and it died with the adjournment of that Congress on December 22, 2010. But ERPA 2010 warrants continued attention because it contained all of the elements that are necessary for an effective federal anti-racial profiling statute and provides a template for action by the 112th Congress.

Those who advocate for a federal statute to end racial profiling agree that the centerpiece of any such statute should be an explicit and unqualified prohibition against use of the practice in all contexts, including the street-level crime, counterterrorism, and immigration law enforcement context. They further agree that, for purposes of this prohibition, the term “racial profiling” should be broadly defined to encompass at least race, ethnicity, national origin, and religion, and that law enforcement authorities should be prohibited from relying on these factors, to any extent, in deciding which individuals to investigate or subject to other law enforcement activities. There is agreement, moreover, that the prohibition should apply to law enforcement activities at the federal, state, and local levels, and that there should be a “private cause of action,” which would allow those who have been the victims of racial profiling to file a lawsuit to enforce the prohibition. The centerpiece of ERPA 2010 was a prohibition against racial profiling that met all of these criteria.

The first section of Title I of ERPA 2010 (PROHIBITION) provided as follows:

No law enforcement agent or law enforcement agency shall engage in racial profiling.

The statutory definitions of the terms used in the foregoing provision confirmed the broad reach of the prohibition. Thus, “law enforcement agency” meant

any federal, state, local, or Indian tribal public agency engaged in the prevention, detection, or investigation of violations of criminal, immigration, or customs laws.

And the definition of “racial profiling” was essentially

the same as that used in this report. The term was defined to mean:

[T]he practice of a law enforcement agent or agency relying, to any degree, on race, ethnicity, national origin, or religion in selecting which individual to subject to routine or spontaneous investigatory activities or in deciding upon the scope and substance of law enforcement activity following the initial investigatory procedure, except when there is trustworthy information, relevant to the locality and timeframe, that links a person of a particular race, ethnicity, national origin, or religion to an identified criminal incident or scheme.¹³⁶

With regard to remedy, ERPA 2010 provided that the United States or “an individual injured by racial profiling” may enforce the prohibition by filing an action “for declaratory or injunctive relief” in state or federal court against “any governmental body that employed any law enforcement agent” who engaged in racial profiling, the law enforcement agent in question, and anyone with supervisory authority over the agent. An individual plaintiff who prevailed in such a lawsuit could recover reasonable attorneys’ fees.¹³⁷

Although the relief available to an individual plaintiff under ERPA 2010 did not include monetary damages, the limitation to declaratory or injunctive relief must be read in conjunction with the bill’s Savings Clause.¹³⁸ This provision preserved for plaintiffs all “legal or administrative remedies,” including damages, which they may have under Section 1983, Title VI of the Civil Rights Act of 1964, and certain other federal statutes.

In addition to its broad and unqualified prohibition against all forms of racial profiling, ERPA 2010 was responsive to other recommendations made by proponents of a federal statute, both at the June 2010 hearing before the subcommittee of the House Judiciary Committee and in other forums. Thus, for example, in his June 2010 testimony, Hilary O. Shelton, director of the NAACP’s Washington Bureau and senior vice president for advocacy and policy, outlined the provisions that he believed should be included in a federal anti-racial profiling statute. Emphasizing first and foremost the “need for a clear definition of what is racial profiling as well as an unambiguous and unequivocal ban on its use by all law enforcement officials,” Shelton continued as follows:

Second, we need data collection to truly assess the extent of the problem. In simple terms, “in order to fix it, you must first measure it.” The only

way to move the discussion about racial profiling from rhetoric and accusation to a more rational dialogue and appropriate enforcement strategies is to collect the information that will either allay community concerns about the activities of the police or help communities ascertain the scope and magnitude of the problem. Furthermore, implementing a data collection system also sends a clear message to the entire police community, as well as to the larger community, that racial profiling is inconsistent with effective policing and equal protection.

If it is done right, data collection will also lead to the third element of an effective anti-racial profiling agenda: training. Law enforcement officials at all levels, from the unit commander to the desk sergeant to the cop-on-the-beat and of all jurisdictions, from federal agents to state and local police, should all be required to be able to not only identify racial profiling, but also to know of its short-comings and be able to put an end to it while increasing their effectiveness in protecting our communities and our Nation.¹³⁹

Shelton is not, of course, alone in recommending that a federal statute provide for data collection and training of law enforcement authorities at all levels. Similar recommendations were made by others who testified at the June 2010 hearing;¹⁴⁰ are included in a 2003 report by The Leadership Conference Education Fund and the 2009 report by the ACLU/Rights Working Group;¹⁴¹ and provisions dealing with these matters were included in predecessor versions of ERPA 2010 tracing back to 2001.¹⁴²

ERPA 2010 required federal law enforcement agencies to “include ... training on racial profiling issues as part of federal law enforcement training,” and provided for the “collection of data in accordance with the regulations issued by the Attorney General under [a later section of the bill].”¹⁴³ Similar requirements were imposed on state, local, and Indian tribal law enforcement authorities as a condition for receiving federal funding under specified federal criminal justice programs, and of eligibility for competitive law enforcement grants or contracts.¹⁴⁴

Another recommendation that has consistently been put forth by proponents of a federal statute to end racial profiling is that the statute require law enforcement authorities to establish administrative complaint procedures for victims of racial profiling.¹⁴⁵ ERPA 2010 also responded to this recommendation: it required

federal law enforcement authorities to establish “procedures for receiving, investigating, and responding meaningfully to complaints alleging racial profiling by [federal] law enforcement agents,”¹⁴⁶ and imposed a similar requirement on state, local, and Indian tribal law enforcement agencies as a condition for receiving specified federal program and grant funding.¹⁴⁷

In sum, ERPA 2010 addressed the major concerns about racial profiling expressed in this report, and would have gone a long way toward ending the practice. Accordingly, ERPA 2010 provides an appropriate model for an anti-racial profiling act in the 112th Congress.

VI. Conclusion and Recommendations

As this report demonstrates, racial profiling is a pervasive nationwide practice: federal, state, and local law enforcement authorities repeatedly stop, detain, question, and otherwise target individuals based on their race, ethnicity, national origin, or religion. As this report also demonstrates, racial profiling is in all contexts an unjust and ineffective method of law enforcement.

In early 2001, a consensus had emerged on the need to end racial profiling in America, but in the aftermath of the 9/11 terrorist attacks many people, both in and out of government, re-evaluated their views, and the consensus evaporated. It is now time to establish a new national anti-racial profiling consensus, and do what is necessary to stop the use of the practice. Toward that end, we offer the following recommendations, addressed to Congress, the president, Executive Branch agencies, and civil and human rights organizations.

Congress

- The 112th Congress should enact an anti-racial profiling statute modeled after ERPA 2010. Such a statute would address the major concerns about racial profiling expressed in this report, and go a long way toward ending the practice at the federal, state, and local levels.

The President

- President Obama should urge Congress to enact an anti-racial profiling statute modeled after ERPA 2010. Consistent with his campaign promises, the president should publicly support such a statute, and make its enactment one of his administration's highest legislative priorities.
- Pending enactment by Congress of an anti-racial profiling statute, the president should issue an

executive order that prohibits federal law enforcement authorities from engaging in racial profiling or sanctioning the use of the practice by state or local law enforcement authorities in connection with any federal program. For purposes of this prohibition, the executive order should use the definition of "racial profiling" in Sec. 2(6) of ERPA 2010 (and in this report), and incorporate the provisions of Title II, Section 201, of ERPA 2010 regarding the training of federal law enforcement authorities, the collection of data, and the procedures for receiving, investigating, and responding to complaints alleging racial profiling.

Executive Branch Agencies

- The U.S. Department of Justice (DOJ) should revise its June 2003 "Guidance Regarding the Use of Race by Federal Law Enforcement Agencies" to clarify ambiguities, close loopholes, and eliminate provisions that allow for any form of racial profiling. Specifically, the revised guidance should add national origin and religion as prohibited bases for profiling; eliminate the national and border security exceptions; explicitly state that the ban on profiling applies to intelligence activities carried out by law enforcement authorities subject to the guidance; establish enforceable standards that include accountability mechanisms for noncompliance; and be made applicable to all state and local law enforcement authorities as a condition for the receipt of appropriate federal funding.
- DOJ should take the position that it has exclusive jurisdiction to enforce federal immigration laws. Consistent with that position, DOJ's Office of Legal Counsel should immediately rescind its 2002 opinion that state and local law enforcement authorities have "inherent authority" to enforce federal immigration laws, and issue a new opinion declaring that state

and local law enforcement authorities may enforce federal immigration laws only if the authority to do so has been expressly delegated to them by the federal government.

- The Civil Rights Division of DOJ should make the remediation of racial profiling a priority. The activities of the Civil Rights Division in the 1990s were critical to exposing the widespread existence of racial profiling. The division's continued involvement will be critical to ending the practice—both pursuant to Sec. 14141 of the Violent Crime Control and Law Enforcement Act of 1994 and other federal laws prior to the enactment of a federal anti-racial profiling statute, and in ensuring that any federal anti-racial profiling statute that is enacted by Congress is properly implemented.
- The U.S. Department of Homeland Security (DHS) should terminate the 287(g) program (and Congress should repeal the statutory basis for the program—*i.e.*, Section 287(g) of the Immigration and Nationality Act).
- DHS should suspend operation of the Criminal Alien Program, the Secure Communities program, and other federal programs pursuant to which authority to engage in the enforcement of federal immigration laws has been delegated to state and local law enforcement authorities until a panel of independent experts reviews their operation and makes such recommendations as it deems appropriate to ensure that the programs do not involve racial profiling. Unless the president directs otherwise, the programs in question should remain suspended until the panel determines that its recommendations have been properly implemented.

- DHS should terminate the National Security Entry-Exit Registration System, and provide appropriate retroactive relief to individuals who were unjustly harmed by the operation of the program.
- Operation Front Line and other federal counterterrorism programs should be reviewed by a panel of independent experts. The panel should be charged with the task of making such recommendations as it deems appropriate to ensure that the programs do not involve racial profiling. Unless the president directs otherwise, DHS should implement any such recommendations as expeditiously as possible.

Civil and Human Rights Organizations

- Civil and human rights organizations should take the lead in calling for prompt introduction into the 112th Congress of an anti-racial profiling statute modeled after ERPA 2010, and should push for its enactment.
- As indicated in this report, racial profiling is often predicated on the mistaken belief that the practice will make us safer and more secure. Civil and human rights organizations should undertake a public education campaign to refute the erroneous assumptions underlying racial profiling; demonstrate the devastating impact that racial profiling has on individuals, families, and entire communities that are subject to the practice; and explain why racial profiling is in all contexts an ineffective and counterproductive method of law enforcement that makes us all not more, but less safe and secure.

Endnotes

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- www.justice.gov/crt/split/documents/jerseysa.php; see also New Jersey State Police Consent Decree Status/Progress Reports <http://www.state.nj.us/lps/progress.htm>.
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116. Jim Yardley, “Some Texans Say Border Patrol Singles Out Too Many Blameless Hispanics,” *New York Times*, January 26, 2000 (quoting Judge Hinojosa), <http://www.nytimes.com/2000/01/26/us/some-texans-say-border-patrol-singles-out-too-many-blameless-hispanics.html>.
117. David A. Harris, *Profiles in Injustice*, 98–99 (2003).
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119. “Arab Travelers Alter Habits While Flying,” *Associated Press*, Sept. 11, 2002.
120. Lamberth Consulting, “Racial Profiling Doesn’t Work,” <http://www.lamberthconsulting.com/about-racial-profiling/racial-profiling-doesn-t-work.asp>.
121. *See* “Study Says Police Misuse Immigration-Inquiry Rule,” *supra* note 76.
122. *See* “The Persistence of Racial and Ethnic Profiling in the United States,” *supra* note 95.
123. Bill Dedman, “Words of Caution Airport Security: Memo Warns Against Use of Profiling as Defense,” *Boston Globe*, Oct. 12, 2001.
124. *Id.*
125. Professor David Harris, testimony before the House Judiciary Committee Subcommittee on the Constitution, Civil Rights and Civil Liberties, “Ending Racial Profiling: Necessary for Public Safety and the Protection of Civil Rights,” June 17, 2010, <http://judiciary.house.gov/hearings/pdf/Harris100617.pdf> (hereinafter Harris testimony).
126. Anita Khashu, Police Foundation, “The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties XII” (2009), <http://policefoundation.org/indexStriking.html>; *see also* Press Release, ACLU of Florida, “Lake County Sheriff’s Office Investigation of Immigrant Mother’s Unlawful Arrest and Detention a Whitewash, Says ACLU” (April 2, 2009) (describing a case in Florida where local police, responding to an emergency call reporting domestic violence, assumed the authority to enforce immigration laws and did not follow Florida’s statutory requirements for dealing with domestic violence resulting in fear among victims and witnesses to domestic violence and other crimes in the community), http://www.acluf.org/news_events/?action=viewRelease&emailAlertID=3725.
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127. As one commentator has suggested, the federal government could easily allay the fears of Arab immigrants who are here without authorization, by promising to use the information gathered through the registration process only to fight terrorism and not to enforce the immigration laws. *See* Sadiq Reza, “A Trap for Middle Eastern Visitors,” *Washington Post*, Jan. 10, 2003, <http://old.nyls.edu/pages/744.asp>.
128. *See* Harris testimony *supra* note 125, at 2.
129. *Id.* at 2–3.
130. *See* “Investigating the Christmas Day Terror Attack,” *supra* note 111.
131. Editorial, “Hindsight and Foresight,” *Fort Worth Star Telegram*, Sept. 20, 2001 (citing historians Debra LaFountaine and Pei P. Wang).
132. *See supra* note 9 and accompanying text.
133. ERPA 2001 – End Racial Profiling Act, HR2074/S.989/ (107th Congress, 1st Session) <http://www.gpo.gov/fdsys/pkg/BILLS-107s989is/pdf/BILLS-107s989is.pdf>.
134. Then-Senator Obama was a co-sponsor of ERPA in 2005 and again in 2007.
135. H.R. 5748, *available at* http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h5748ih.txt.pdf.
136. *Id.* at 4. §2(6).
137. *Id.* at 8. §102(a)(b).
138. *Id.* at 19–20 § 602.
139. Hilary O. Shelton, testimony before the House Judiciary Committee Subcommittee on the Constitution, Civil Rights and Civil Liberties, at 3, June 17, 2010, *available at* <http://judiciary.house.gov/hearings/pdf/Shelton100617.pdf>.
140. *See e.g.*, testimony of Deborah Ramirez before the House Judiciary Committee Subcommittee on the Constitution, Civil Rights and Civil Liberties, June 17, 2010, <http://judiciary.house.gov/hearings/pdf/Ramirez100617.pdf>; testimony of Amardeep Singh before the House Judiciary Committee Subcommittee on the Constitution, Civil Rights and Civil Liberties, June 17, 2010, <http://judiciary.house.gov/hearings/pdf/Singh100617.pdf>.
141. “Wrong Then, Wrong Now: Racial Profiling Before and After September 11, 2001,” The Leadership Conference on Civil Rights Education Fund, at 34, http://www.civilrights.org/publications/wrong-then/racial_profiling_report.pdf; ACLU and Rights Working Group, “The Persistence of Racial and Ethnic Profiling in the United States,” Aug. 2009, at 69.
142. H.R. 2074/S. 989, 107th Congress, 1st Session, June 6, 2001, §§ 201 and 302.
143. H.R. 5748, http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h5748ih.txt.pdf, at 8, §201(b)(2)(3).
144. *Id.* at 9, §301(b)(2)(3).
145. *See, e.g.*, H.R. 2074/S. 989, 107th Congress, 1st Session, June 6, 2001, § 201; S.2138, 109th Congress, 1st Session Dec. 16, 2005, § 302; H.R. 4611, 110th Congress, 1st Session, Dec. 13, 2007, § 302.
146. H.R. 5748, http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h5748ih.txt.pdf, at 9, §201(b)(4).
147. *Id.*

Notes

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STATEMENT OF

Yanil Terón, Executive Director

Center for Latino Progress - CPRF

Hearing on Ending Racial Profiling in America

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of *Center for Latino Progress - CPRF* (the Center) regarding today's hearing on racial profiling. The Center's mission is to advance the socio-economic conditions of the community at large, with emphasis on Hispanics, through education, training, supportive services, leadership development, and advocacy. We are opposed to racial profiling because it is an ineffective way to curtail real threats. It does create mistrust among communities, fear of government, and it has been used by unscrupulous individuals as a tool to oppress the most vulnerable people.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. *Center for Latino Progress - CPRF* is particularly concerned about many policies and programs at the national, state and local level which encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices are

counterproductive, waste public resources and violate the civil and human rights of persons living in the United States.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Racial Profiling in Our Communities

Racial profiling by Connecticut police has been felt for years by our communities of color and such facts has been illustrated by local media and national news. A recent newspaper article, “Unequal Enforcement: Black, Hispanic Drivers Faced Tougher Treatment from Police” published by The Hartford Courant, verified that racial profiling in Connecticut is real. They showed, through statistics collected from police departments, that there exist widespread disparities in how ethnic and racial minorities are treated.

This widespread problem was further highlighted by the results of a federal investigation regarding the East Haven police's targeting of Hispanics. These findings show that of 40% percent of the motorists stopped in East Haven were Hispanic, even though less than 9% of the residents are Latinos. Assistant U.S. Attorney General Thomas E. Perez wrote "Based on our

review, we find that the EHPD engages in a pattern or practice of systematically discriminating against Latinos" . "The pattern or practice of discriminatory policing that we observed is deeply rooted in the Department's culture and substantially interferes with the ability of EHPD to deliver services to the entire East Haven community."

Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color throughout the United States.

Center for Latino Progress - CPRF is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the "End Racial Profiling Act (S.1670)" and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of *Center for Latino Progress – CPRF*.

We welcome the opportunity for further dialogue and discussion about these important issues.



STATEMENT OF

Jill Reese and Rachel Berkson, Co-Executive Directors

Washington Community Action Network

Hearing on Ending Racial Profiling in America

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of Washington Community Action Network regarding today's hearing on racial profiling. Washington Community Action Network is a statewide, grassroots organization of over 35,000 Washingtonians. We are dedicated to promoting economic and racial equity across our state and across the country. Racial profiling represents an affront to justice and equity, and Washington Community Action Network believes it should be eradicated in all forms.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. Washington Community Action Network is particularly concerned about many policies and programs at the national, state and local level which encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices

are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Racial Profiling in Our Communities

Racial profiling and racially disparate law enforcement persists across the country and in Washington State. The following are just a few examples:

- Police pulled over and arrested two young black men at gunpoint in February. A local news channel broke the story, and there's video evidence of racial profiling. The police officers were recorded saying that they're going to put them in jail for robbery and that they're going "to make stuff up." <http://www.komonews.com/news/local/Officer-threatens-to-make-up-evidence-after-arrest-of-innocent-men-139266773.html?tab=video&c=y>. The police claimed they were responding to a 911 call of an assault by two black men, but in the 911 call, the witness who described the attackers said they "were both wearing jeans," and in police booking photos Lawson is

wearing white sweat pants. The officer never questioned either man about the assault, just drew his gun, arrested them, and used excessive force. The irony is that the two men were out celebrating because one of them had just graduated from an aerospace program. The other works at a bank. Days after the story aired, the same two men were stopped (this time with other folks in the car) by 10-12 police at gunpoint. They handcuffed all 5 of the people and held them for more than an hour. The police finally released them without citing any tickets. No charges stemmed from the

incident: <http://www.komonews.com/news/local/Coincidence-or-retaliation-Seattle-police-stop-Lawson-franklin-NAACP-at-gunpoint-again-146746125.html?tab=video&c=y>.

- Racial profiling along the Northern border of Washington by the Border Patrol targeting immigrants and people of color has led to tragedy. On February 28, 2011, a father in Lynden, Washington, spoke Spanish when calling 911 to request medical attention for his son, Alex. A simple call for help turned disastrous when local law enforcement brought Border Patrol along to “translate.” Alex Martinez, a U.S. Citizen and a father himself, was shot 13 times. It seems that Border Patrol never even used Spanish that day. His tragic death has yet to receive a just and independent investigation. Instead, Border Patrol has denied responsibility and impeded a thorough review of their involvement.
- Seattle, Washington, has one of the highest rates of racial disparity in drug arrests in the country. Because this disparity does not match the reality of drug markets in the city, it indicates racially discriminatory practices in law enforcement. (Seattle has also seen numerous incidents of police violence against civilians, including the murder of John

Williams, who was gunned down while walking along the sidewalk. The SPD is now under investigation by the U.S. Department of Justice.)

Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color throughout the United States.

Washington Community Action Network is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the "End Racial Profiling Act (S.1670)" and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of Washington Community Action Network. We welcome the opportunity for further dialogue and discussion about these important issues.

STATEMENT OF

Alice Serrano

Women's Voices Raised for Social Justice

Hearing on Ending Racial Profiling in America

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

APRIL 17, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee:

I am honored to submit this testimony for the record on behalf of Women's Voices Raised for Social Justice regarding today's hearing on racial profiling. Women's Voices Raised for Social Justice is an Advocacy Group of Women whose efforts include issues related to: Immigration, Education, Voting Rights, Health, Racial Justice, GLBT Rights, Reproductive Choice, Stem Cell Research.

We thank you for holding this critical and timely hearing on racial profiling and the End Racial Profiling Act. Women's Voices Raised for Social Justice is particularly concerned about many policies and programs at the national, state and local level which encourage or incentivize discriminatory law enforcement practices such as racial profiling. We believe that these practices are counterproductive, waste public resources and violate the civil and human rights of persons living in the United States.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest or detain, except where these characteristics are part of a specific suspect description. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of the founding principles of this country. Regardless of whether it takes place under the guise of the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is always wrong. Moreover, the practice diverts precious law enforcement resources away from smart, targeted, behavior-based investigations.

Racial Profiling in Our Communities

Missouri State Law and Laws originating from various municipalities in the Greater St. Louis Metropolitan Area have encouraged the act of racial profiling, especially through the use of traffic stops to intimidate and harass members of the Latino and Black Communities. Data collected by the State of Missouri indicates a much greater rate of stops are occurring in these cases than with the non-minority population.

Conclusion

The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color throughout the United States.

. Women's Voices Raised for Social Justice is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust,

ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state and local level:

- Congress should pass the “End Racial Profiling Act (S.1670)” and institute a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.
- The Subcommittee should urge the Department of Justice to amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.

Thank you again for this opportunity to express the views of Women’s Voices Raised for Social Justice. We welcome the opportunity for further dialogue and discussion about these important issues.