

**Opening Statement of Senator Dick Durbin**  
**Hearing on “Ending Racial Profiling in America”**  
**Subcommittee on the Constitution, Civil Rights, and Human Rights**

**Tuesday, April 16, 2012**

**As Prepared for Delivery**

Today’s hearing will focus on a civil rights issue that goes to the heart of our nation’s promise of equal justice under law – protecting all Americans from the scourge of racial profiling.

Racial profiling is not a new phenomenon. At the dawn of our Republic, roving bands of white men known as “slave patrols” subjected African American freedmen and slaves to searches, detentions, and brutal violence. During the Great Depression, many American citizens of Hispanic descent were forcibly deported to Mexico under the so-called Mexican Repatriation. And during World War II, tens of thousands of innocent Japanese Americans were rounded up and held in internment camps.

Twelve years ago, in March 2000, this Subcommittee held the Senate’s first-ever hearing on racial profiling. The hearing was convened by Senator John Ashcroft, who would later be appointed Attorney General by President George W. Bush.

In February 2001, in his first Joint Address to Congress, President Bush said that racial profiling is, quote, “wrong and we will end it in America.” We take the title of today’s hearing from the promise President Bush made that night 11 years ago.

In June 2001, Senator Russ Feingold, my predecessor as Chairman of this Subcommittee, held the Senate’s second, and most recent, hearing on racial profiling. I was there that day, and there was bipartisan agreement about the need to end racial profiling.

Then, terror struck. In the national trauma caused by 9/11, civil liberties came face to face with national security.

Arab-Americans, American Muslims, and South-Asian Americans faced national origin and religious profiling. To take just one example, the Special Registration program targeted Arab and Muslim visitors, requiring them to promptly register with the INS or face deportation. At the time, I called for the program to be terminated because there were serious doubts it would help combat terrorism.

Terrorism experts have since concluded that Special Registration wasted homeland security resources and alienated Arab Americans and American Muslims. More than 80,000 people registered, and more than 13,000 were placed in deportation proceedings. Even today, many innocent Arabs and Muslims face deportation because of Special Registration. How many terrorists were identified by Special Registration? None.

Next Wednesday, the Supreme Court will hear a challenge to Arizona’s controversial immigration law. The law is just one example of a spate of federal, state, and local measures in recent years that, under the guise of combating illegal immigration, have subjected Hispanic Americans to an increase in racial profiling.

Arizona’s law requires police officers to check the immigration status of any individual if they have, quote, “reasonable suspicion” that the person is an undocumented immigrant. What is the basis for reasonable suspicion? Arizona’s guidance on the law tells police officers to consider factors such as how someone is dressed and their ability to communicate in English. Two former Arizona Attorneys

General, joined by 42 other former state Attorneys General, filed an amicus brief in the Arizona case, in which they said, quote, “application of the law requires racial profiling.”

And, of course, African Americans continue to face racial profiling on the streets and sidewalks of American cities. The tragic killing of Trayvon Martin is now in the hands of the criminal justice system, but I note that, according to an affidavit filed by investigators last week, George Zimmerman, quote, “profiled” Trayvon Martin and, quote, “assumed Martin was a criminal.” The senseless death of this innocent young man should be a wake-up call.

And so, eleven years after the last Senate hearing on racial profiling, we return to the question: What can be done to end racial profiling in America?

We can start by reforming the Justice Department’s racial profiling guidance, which was issued in June 2003 by Attorney General John Ashcroft. This guidance prohibits the use of profiling by federal law enforcement in “traditional law enforcement activities,” which is an important step forward.

However, this ban does not apply to profiling based on religion and national origin. And it does not apply to national security and border security investigations. In essence, these exceptions are a license to profile American Muslims and Hispanic Americans. As the non-partisan Congressional Research Service concluded, the guidance’s “numerous exceptions” may “invite broad circumvention” for “individuals of ... Middle Eastern origin” and “profiling of Latinos ... would apparently be permitted.”

Today, I am sending a letter, signed by 14 Senators and 53 members of the House of Representatives, asking Attorney General Holder to close the loopholes in the Justice Department’s racial profiling guidance.

And Congress should pass the End Racial Profiling Act, which would prohibit racial profiling by federal, state and local law enforcement, and require law-enforcement training and data collection to track profiling.

Let’s be clear. The vast majority of law enforcement officers perform their jobs honorably and courageously, putting their lives at risk to protect the communities they serve. But the inappropriate actions of the few who engage in racial profiling create mistrust and suspicion that hurt all police officers. That’s why, as we’ll hear today, so many law enforcement leaders strongly oppose racial profiling.

Racial profiling undermines the rule of law and strikes at the core of our nation’s commitment to equal protection for all. And, as you’ll hear from the experts on or panel today, the evidence clearly demonstrates that racial profiling simply does not work.

I hope that today’s hearing can be a step towards ending racial profiling in America, at long last.