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S. HRG. 112–944

ENDING RACIAL PROFILING IN AMERICA

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION,
CIVIL RIGHTS AND HUMAN RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

APRIL 17, 2012

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ENDING RACIAL PROFILING IN AMERICA

TUESDAY, APRIL 17, 2012

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

The Subcommittee met, pursuant to notice, at 10 a.m., in Room SD–226, Dirksen Senate Office Building, Hon. Dick Durbin, Chairman of the Subcommittee, presiding.

Present: Senators Durbin, Franken, Coons, Blumenthal, and Graham.

OPENING STATEMENT OF HON. DICK DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Chairman DURBIN. Good morning. This hearing of the Subcommittee on the Constitution, Civil Rights and Human Rights will come to order.

Our hearing today will focus on a civil rights issue that goes to the heart of America's promise of equal justice under law: protecting all Americans from the scourge of racial profiling.

Racial profiling is not new. 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, confined in internment camps.

Twelve years ago—12 years ago—in March 2000, this Subcommittee held the Senate's first ever hearing on racial profiling. It was convened by then-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 "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, our former colleague Senator Russ Feingold of Wisconsin, my predecessor as Chairman of this Subcommittee, held the Senate's second, and most recent, hearing on racial profiling. I was there. There was bipartisan agreement about the need to end racial profiling.

Then came 9/11. In the national trauma that followed, 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 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. There were serious doubts if it would help us in any way to combat terrorism.

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

Next Wednesday, the Supreme Court will hear a challenge to Arizona's controversial immigration law. The law is 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 "reasonable suspicion" that the person is an undocumented immigrant. Well, 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, "application of the law requires racial profiling."

And, of course, African Americans continue to face racial profiling on the streets and sidewalks of America. The tragic, 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, the accused defendant "profiled" Trayvon Martin and "assumed Martin was a criminal." The senseless death of this innocent young man has been a wake-up call to America.

And so 11 years after the last Senate hearing on racial profiling, we return to the basic question: What can be done to end racial profiling in America?

We can start by reforming the Justice Department's racial profiling guidance issued in 2003 by Attorney General John Ashcroft. The guidance prohibits the use of profiling by Federal law enforcement in "traditional law enforcement activities," and that is a 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 nonpartisan 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 Congressman John Conyers and I are sending a letter, signed by 13 Senators and 53 Members of the House, asking Attor-

ney General Holder to close the loopholes in the Justice Department's racial profiling guidance.

Congress should also pass the End Racial Profiling Act, and I welcome the attendance of my colleague and a former Member of this Committee, Senator Cardin of Maryland, who has taken up this cause from our colleague Senator Feingold, and he is here today to testify.

Let us be clear, and I want to say this and stress it: The overwhelming majority of law enforcement officers perform their jobs admirably, honestly, and courageously. They put their lives on the line to protect us every single day. But the inappropriate actions of the few who engage in racial profiling create mistrust and suspicion that hurt all police officers. We will hear testimony to what has been done in a positive way to deal with this issue by a superintendent of police. That is why 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. As you will hear from the experts on our panel today, the evidence clearly demonstrates that racial profiling simply does not work.

I hope today's hearing can be a step toward ending racial profiling in America at long last.

Senator Graham is running a little late. Senator Leahy is out of the Senate this morning but was kind enough to allow me to convene this hearing, and I am sure he will add a statement to the record.

[The prepared statement of Chairman Dick Durbin appears as a submission for the record.]

Chairman DURBIN. I am going to open the floor to Senator Graham when he does arrive, but for the time being, because we have many colleagues here who have busy schedules of their own, I want to turn to the first panel of witnesses.

At the outset, I do want to note that I invited the Department of Justice to participate in today's hearing, but they declined.

We are honored to be joined today by our colleagues from the Senate and the House. In keeping with the practice of this Committee, first we will hear from Members of the Senate, then Members of the House, a practice which I loathed in the House, but now that we are running this show, I am afraid you are just going to have to live with it, my House colleagues.

Each witness will have 3 minutes for an opening statement. Your complete written statement will be included in the record.

The first witness is Senator Cardin—he is a former Member of this Committee—Senate sponsor of S. 1670, the End Racial Profiling Act, which I am proud to cosponsor. This is Senator Cardin's second appearance before this Subcommittee. He testified before us last year at the first ever hearing of this Committee on the civil rights of American Muslims.

Senator Cardin, we are pleased that you could join us today and please proceed.

STATEMENT OF HON. BENJAMIN L. CARDIN, A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator CARDIN. Well, Senator Durbin, first let me thank you for your leadership on this Subcommittee. The fact that we have this Subcommittee is a testament to your leadership in making clear that civil and human rights are going to be a priority of the U.S. Senate. So I thank you for your leadership and thank you very much for calling this hearing.

It is a pleasure to be here with all my colleagues, but I particularly wanted to acknowledge Congressman Conyers and his extraordinary life of leadership on behalf of civil rights and these issues. Congressman Conyers was a real mentor to me when I was in the House, and he still is, and we thank you very much for your leadership on this issue.

Senator Durbin, you pointed out that the Nation was shocked—if I could ask unanimous consent to put my entire statement in the record along with the list of the many organizations that are supporting the legislation that I filed, S. 1670.

As you pointed out, Senator Durbin, the Nation was shocked by the tragedy that took place in Sanford, Florida, the tragic death of 17-year-old Trayvon Martin, a very avoidable death. And the question I think most people are asking—and we want justice in this case, and we are pursuing that, and we have a Department of Justice investigation, and we all very much want to see that investigation carried out, not only to make sure that justice is carried forward as far as those responsible for his death, but also as to how the investigation itself was handled.

But I think the question that needs to be answered is whether race played a role in Trayvon Martin being singled out by Mr. Zimmerman, and that, of course, would be racial profiling, an area that we all believe needs to be—we need to get rid of that as far as the legitimacy of using racial profiling in law enforcement.

In October of last year, I filed the End Racial Profiling Act, and as you pointed out, carrying on from Senator Feingold's efforts on behalf of this legislation. I thank you very much for your leadership as a cosponsor. We have 12 Members of the Senate who have cosponsored this legislation, including the Majority Leader, Senator Harry Reid, is a cosponsor.

Racial profiling is un-American. It is against the values of our Nation. It is contrary to the 14th Amendment to the Constitution's "equal protection of the laws." It is counterproductive in keeping us safe. It is wasting the valuable resources that we have, and it has no place in modern law enforcement. We need a national law, and that is why I encourage the Committee to report S. 1670 to the floor.

It prohibits the use of racial profiling, that is, using race, ethnicity, national origin, or religion in selecting which individual is to be subject to a spontaneous investigation, activity such as a traffic stop, such as interviews, such as frisks, et cetera. It applies to all levels of government. It requires mandatory training, data collection by local and State law enforcement, and a way of maintaining adequate policies and procedures designated to end racial profiling. The States are mandated to do that or risk the loss of Federal funds. The Department of Justice is granted the authority

to make grants to State and local governments to advance the best practices. As I pointed out, it has the support of numerous groups, and you will be hearing from some of them today.

Let me just conclude—because my statement will give all the details of the legislation—by quoting our former colleague Senator Kennedy when he said, "Civil rights is the great unfinished business of America." I think it is time that we move forward in guaranteeing to every citizen of this country equal justice under law, and S. 1670 will move us forward in that direction.

[The prepared statement of Senator Cardin appears as a submission for the record.]

Chairman DURBIN. Thanks, Senator Cardin.

I might also add that we are at capacity in this room, and anyone unable to make it inside the room, we will have an overflow room in Dirksen G50, which is two floors below us here.

Senator Graham suggests that we proceed with the witnesses. Next up is Congressman John Conyers, the House sponsor of the End Racial Profiling Act and Ranking Member of the House Judiciary Committee. Serving in the House of Representatives since 1965, John Conyers is the second longest serving Member, I think second to another Member from Michigan, if I am not mistaken. Congressman Conyers testified at both the previous Senate hearings on racial profiling in 2000 and 2001.

Congressman Conyers, we are honored to have you here as a witness, and the floor is yours.

STATEMENT OF HON. JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Representative CONYERS. Thank you, Mr. Chairman, and to your colleague, who is another former House Member, if I remember correctly, and Senator Ben Cardin as well. All of you are working in the backdrop of a huge discussion that has been going on for quite some time.

When I came to the Congress and asked to go on the Judiciary Committee in the House and that was granted, Emanuel Celler was then the Chairman, who did such landmark work in the Civil Rights Act of 1964. And then we followed up with the Voter Rights Act of 1965. And from that time on, a group of scholars, activist organizations, civil rights people, and Americans of good will have all begun examining what brings us here today and accountable for the incredible long line that is waiting to get into this and the holding room today.

I come here proud of the fact that there is support growing in this area. Only yesterday we had a memorial service for John Payton, known by most of us here for the great work that he has done and contributed in civil rights, not just in the courts and in the law but in what I think is the purpose of our hearing here today, namely, to have honest discussions about this subject so that we can move to a conclusion of this part of our history. And so I am just so proud of all of you for coming here and continuing this discussion because it is going to turn on more than just the legislators or the Department of Justice, and I am with you in improving some of their recommendations, and I commend Eric Holder for the enormous job that he has been doing in that capacity.

But this is a subject that is a part of American history. The one thing that I wanted to contribute here is what racial profiling is not. Racial profiling does not mean we cannot refer to the race of a person if it is subject-specific or incident-specific. We are not trying to take the description of race out of law enforcement and its administration. What we are saying is that racial profiling must not be subject-specific or incident-specific. That is what we are trying to do here today.

It is a practice that is hard to root out. I join in praising the overwhelming majority of law enforcement men and women who want to improve this circumstance, but, you know, one of the greatest race riots in Detroit that occurred was because of a police incident was started. We have in Detroit right now a coalition against police brutality. Ron Scott, an activist and a law student, is working on that, has been working there for years.

And so we encourage not only this legislative discussion about an important subject, but we—and we praise our civil rights organizations that have been so good at this—the NAACP, the Legal Defense Fund of NAACP, the American Civil Liberties Union, and scores of coalitions of community and State organizations that have all been working on this, just as we have and are.

So I believe that there is going to be a time very soon when we will pass the legislation that you have worked on in the House and the Senate and that we will enjoy that day forward when we will celebrate this movement forward to take the discussion of race out of our national conversation, not because we are sick and tired of it, but because it is not needed any further.

I thank you very much for this invitation.

Chairman DURBIN. Congressman Conyers, it is an honor to have you in the Senate Judiciary Committee hearing. I thank you very much.

Our next witness is my friend and Illinois colleague Congressman Luis Gutierrez, who represents the 4th Congressional District and has done so since 1993. He chairs the Congressional Hispanic Caucus' Immigration Task Force, and he is a long-time champion for immigration reform. There are many outstanding Hispanic political leaders in America, but none more forceful and more articulate and more of a leader than my colleague Congressman Gutierrez.

Thank you for joining us.

STATEMENT OF HON. LUIS V. GUTIERREZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Representative GUTIERREZ. Thank you so much, Chairman Durbin and Ranking Member Graham, for inviting me to testify here today. One of the proudest things I am being from the State of Illinois is the senior Senator from my State. I am so happy and delighted to be here with you, Senator Durbin.

I have traveled from coast to coast to visit dozens of cities and communities and to listen to immigrants' stories. Some of my colleagues have visited their cities that are here with me today. And immigrants everywhere tell me that they are regarded with suspicion. They tell me they are frequently treated differently because of the way they look, sound, or spell their last name.

In Alabama, I met 20-year-old Martha, a young woman raised in the U.S. One late afternoon, while driving, she was pulled over. She was arrested for driving without a license and jailed so her status could be checked. Because her U.S. citizen husband was not present, their Alabama-born 2-year-old son was taken from the back seat of her car and turned over to the State welfare agency.

In South Carolina, I met Gabino, who has been in the U.S. for nearly 13 years. He is married, the father of two South Carolina-born kids; he works hard and owns his own home. Gambino was stopped because he was pulling into his mobile home community, one of three other Hispanic residents stopped that evening. Gambino was arrested for driving without a license, and he was then placed in deportation proceedings.

We can all guess why the police chose to stop Gabino and Martha. Profiling Hispanics and immigrants is the most efficient way to get someone deported. But you cannot tell if someone is undocumented by the way they look or dress or where they live.

In Chicago, a Puerto Rican constituent of mine was detained for 5 days under suspicion of being undocumented. Indeed, sadly, Senators, there are hundreds if not thousands of cases of unlawfully detained U.S. citizens and legal residents in the United States each year in violation of their constitutional rights. Some of them have even been deported and then been brought back to the United States of America. That is not an old story. That is a story of today.

The Federal Government took a step in the right direction when it legally challenged the "Show me your papers" laws in Alabama, South Carolina, and Arizona because the State laws are unconstitutional and interfere with the Federal Government's authority to set and enforce immigration policy. But it makes no sense to file suit against unconstitutional laws on the one hand and on the other hand allow those same laws to funnel people into our detention centers and deportation pipeline.

Gabino has been denied relief from deportation because he has been stopped too many times, according to the Federal Government, for driving without a license. The Government is complicit in such serial profiling because while the States cannot deport Gabino and break up his family of American citizens, the Federal Government is doing just that. And programs like 287(g) and Secure Communities end up ensnaring tens of thousands of Gabinos every year. Because of the racial profiling, the programs incentivize.

If we are serious about truly ending racial profiling, we need to back up our lawsuits with actions that protect families and citizens and children and uphold our Constitution.

I guess the gist of it is I am happy when the Federal Government says this is racial profiling, we are going to fight it, and they go into the Federal court in Arizona, in South Carolina, and in Alabama. But until we tell the local officials if you continue your serial profiling, we are not going to deport those people, they are going to continue to do it. It just incentivizes. So I hope we can have a conversation about that also.

Thank you so much for having me here this morning.

[The prepared statement of Representative Luis V. Gutierrez appears as a submission for the record.]

Chairman DURBIN. Thank you, Congressman Gutierrez.

Congressman Keith Ellison of Minnesota is serving his third term representing the 5th Congressional District in that State. He co-chairs the Congressional Progressive Caucus. Congressman Ellison enjoys a moment in history here as the first Muslim elected to the U.S. Congress. Previously he served two terms in the Minnesota House of Representatives.

Congressman Ellison, welcome. The floor is yours.

STATEMENT OF HON. KEITH ELLISON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Representative ELLISON. Thank you, Senator Durbin. Also, thank you, Senator Graham. Thank you for holding this important hearing. Also, thank you for urging Attorney General Holder to revise the Justice Department's racial profiling guidance. It is very important. As you know, that guidance has a loophole allowing law enforcement to profile American citizens based on religion and national origin.

While any profiling of Americans based on race, ethnicity, religion, or national origin is disturbing, I think it is important also to note that it is poor law enforcement. Law enforcement is a finite resource. Using law enforcement resources for profiling as opposed to relying on articulable facts based on behavior suggesting a crime is a waste of that law enforcement resource. It leaves us less safe and more at risk when we do not target based on conduct and behavior suggestive of a crime but based on other considerations informed by prejudice.

My comments today will focus on the religious profiling of American Muslims. Up to 6 million Americans know what it is like to be looked upon with suspicion in post-9/11 America, perhaps even before. Although Muslim Americans work hard and play by the rules and an infinitesimally small number do not, many even live the American dream and send their kids to college and earn a living just like everyone else. Yet many know all too well what it means to be pulled off of an airplane, pulled out of line, denied service, called names, or even physically attacked.

Like other Americans, Muslim Americans want law enforcement to uphold public safety and not be viewed as a threat, but as an ally. When the FBI, for example, shows up at the homes and offices of American Muslims who have not done anything wrong, it makes them feel targeted and under suspicion, and it diminishes the important connection between law enforcement and citizen that is necessary to protect all of us.

When Muslim Americans get pulled out of line at an airport and are questioned for hours, asked questions—and these are questions actually asked: "Where do you go to the mosque?" "Why did you give them a $200 donation?" "Do you fast?" "Do you pray?" "How often?" When questions like this are asked which have nothing to do with conduct or behavior suggestive of a crime, it erodes the important connection between law enforcement and citizen. No Americans should be forced to answer questions about how they worship.

I was particularly disturbed when I heard stories coming out of the controversy in New York about kids being spied on in colleges at Muslim Student Associations. I was very proud when my son was elected president of the Muslim Student Association at his col-

lege, but I wonder: Was my 18-year-old son subject to surveillance like the kids were at Yale, Columbia, and Penn? He is a good kid, has never done anything wrong, and I worry to think that he might be in somebody's files simply because he wanted to be active on campus.

I am a great respecter of law enforcement, and I recognize and appreciate the tough job they have to keep us safe. But I think it is very important to focus on the proper use of law enforcement resources and not to give an opening for someone's stereotype or prejudice.

As one Bush administration official once said, "religious or ethnic or racial stereotyping is simply not good policing," and it threatens the values Americans hold dear. To fix this problem once and for all, I urge the Attorney General to close the loophole in the Justice Department's racial profiling guidance, and I urge my colleagues in Congress to pass the End Racial Profiling Act.

Thank you.

[The prepared statement of Representative Keith Ellison appears as a submission for the record.]

Chairman DURBIN. Thanks, Congressman Ellison. I could have added in my opening statement comments made by President George W. Bush after 9/11, which I thought were solid statements of constitutional principle, particularly when it came to those adherents of the Muslim faith, that our war is not against this Islamic religion but against those who would corrupt it, distort it, and misuse it in the name of terrorism. And I thank you for your testimony.

Representative ELLISON. Thank you, sir.

Chairman DURBIN. Congresswoman Judy Chu represents the 32nd District in California since 2009. She was the first Chinese American woman ever elected to Congress. She chairs the Congressional Asian Pacific American Caucus. Formerly she served in the California State Assembly.

We are honored that you are here today. Please proceed.

STATEMENT OF HON. JUDY CHU, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Representative CHU. Thank you, Senator.

As 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 American interment and the post-9/11 racial profiling of Arabs, Sikhs, Muslims, and South Asian Americans. We know what it is like to be targeted by our own Government. It results in harassment, bullying, and sometimes even violence.

In the House Judiciary Committee, we really listened to the anguished testimony of Sikh Americans constantly humiliated as they were pulled out of lines at airports because of their turbans and made to wait in glass cages like animals on display. They were pulled into rooms to be interrogated for hours, and even infants were searched. This has forced Sikh Americans and Muslim Ameri-

cans to fly less frequently or remove religious attire just to accommodate these unfairly targeted practices.

And just last year, I was shocked to learn about the activities of the New York Police Department and the CIA who were secretly spying on Muslim Americans. Despite the lack of any real evidence of wrongdoing, officers were monitoring Muslim American communities and eavesdropping on families, recording everything from where they prayed to the restaurants they ate in. The NYPD entered several States in the Northeast to monitor Muslim student organizations at college campuses. These students had done nothing suspicious. The only thing they were guilt of was practicing Islam.

This type of behavior by law enforcement is a regression to some of the darkest periods of our history where we mistrusted our own citizens and spied on their daily lives, and it has 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 instead need to be partners to prevent crimes and assure the safety of all Americans.

When the civil liberties of any group are violated, we all suffer. In fact, over 60 years ago, during World War II, 120,000 Japanese Americans lost everything that they had and were relocated to isolated internment camps throughout the country because of hysteria and scapegoating. In the end, not a single case of espionage was ever proven, but there were not enough voices to speak up against this injustice.

Today there must be those voices that will speak up. We must stand up for the rights of all Americans. That is why I urge all Members of Congress to support the End Racial Profiling Act. We must protect the ideals of justice and equal protection under the law so that our country is one where no one is made to feel unsafe, unequal, or un-American because of their faith or ethnicity.

Thank you.

[The prepared statement of Representative Judy Chu appears as a submission for the record.]

Chairman DURBIN. Thank you, Congresswoman.

The next witness is Congresswoman Frederica Wilson. She represents the 17th Congressional District, which, as I understand, includes Sanford, Florida. Previously she served in the Florida House of Representatives from 1999 to 2002 and in the Florida Senate from 2003 to 2010.

Congresswoman Wilson, thank you for joining us today, and proceed.

STATEMENT OF HON. FREDERICA WILSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Representative WILSON. Thank you. I represent Miami, where Trayvon is from. He was murdered in Sanford. Thank you.

Thank you, Chairman Durbin, Ranking Member Graham, Senator Blumenthal, and other Members of the Subcommittee. 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 a store. He was unarmed and simply walking 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 of Miami. A middle-class family, but that did not 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 how 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 three grandsons, a 1-, a 3-, and a 5-year-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 you ever been racially profiled?" everyone will raise their hands—boys and girls. They have 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 do not care what color the child is. I was a school principal, a school board member, a 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 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 on the national and Federal level. Everyone should understand that our entire society is impacted. A Federal Commission on the Social Status of Black Men and Boys should be established specifically to focus on alleviating and correcting the underlying causes of higher rates of school expulsions and suspensions, homicides, increases, poverty, violence, drug abuse, as well as income, health, and educational disparities among black males.

I have spent 20 years building a mentoring and dropout prevention program for at-risk boys in Miami-Dade County public schools. It is called the Five Thousand 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 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.

[The prepared statement of Representative Frederica Wilson appears as a submission for the record.]

Chairman DURBIN. Thank you, Congresswoman.

Unless my colleagues have questions of this panel, I will allow them to return to their Senate and House duties, and thank you very, very much for being here today.

Chairman DURBIN. Now we will turn to our second panel of witnesses, and each of them will please take their place at the witness table.

Before you take your seats, I will wait until everyone is in place and ask you to please stand and be sworn. Do you affirm the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Chief DAVIS. I do.

Mr. ROMERO. I do.

Mr. GALE. I do.

Mr. CLEGG. I do.

Professor HARRIS. I do.

Chairman DURBIN. Thank you very much, and let the record reflect that the witnesses all answered in the affirmative.

The first witness is Ronald Davis, chief of police for the city of East Palo Alto, California, since 2005; before that, 19 years with the Oakland Police Department, where he rose to the rank of captain. Chief Davis served on the Federal monitoring teams overseeing police reform consent decrees between the U.S. Department of Justice, Washington, DC, and Detroit. Among other publications, he has co-authored the Justice Department monograph, "How to Correctly Collect and Analyze Racial Profiling Data: Your Reputation Depends on It." He has a bachelor's of science degree from Southern Illinois University in Carbondale. He testified at both the previous Senate hearings on racial profiling, and sorry it has been so long since we have resumed this conversation, but it is an honor to have you return a few years later to bring up to date.

At this point, Chief Davis, the floor is yours for 5 minutes.

STATEMENT OF RONALD L. DAVIS, CHIEF OF POLICE, CITY OF EAST PALO ALTO, CALIFORNIA

Chief DAVIS. Thank you, Mr. Chairman.

Good morning, Mr. Chairman and distinguished Subcommittee Members. I am Ronald Davis. I am currently the chief of police for the city of East Palo Alto, California. I am humbled to provide testimony at today's hearing. As was mentioned, I did have the honor of testifying at the last Senate hearings on racial profiling in 2001.

When asked to come before this Committee today, the first thought that came to my mind was actually a question: What has changed since my testimony in 2001 when President Bush then stated, "Racial profiling is wrong and we will end it in America"?

My testimony today is based on three diverse perspectives: first, as a racial profiling and police reform expert; second, as a police

executive with over 27 years' experience working in two of the greatest and most diverse communities in the Nation—Oakland and East Palo Alto; and, third, as a black man and a father of a teenage boy of color.

First, from my perspective as an expert, I think it is fair to say that law enforcement has made progress, albeit limited, in addressing the issue of racial profiling and bias-based policing. Over the past 10 years, the Department of Justice Civil Rights Division, through its "pattern and practice" investigations, has worked with law enforcement agencies nationwide to provide guidance on racial profiling policies and promote industry best practices. Most recently, the COPS Office, in partnership with the National Network for Safe Communities, is working on issues of racial reconciliation in communities to further strengthen these relationships and reduce crime and violence in those communities. Today there are very few police agencies in the United States that do not have some type of policy prohibiting racial profiling and bias-based policing.

This progress, however, is seriously undermined by two focal points. First, there exists no national, standardized definition for racial profiling that prohibits the use of race, national origin, and religion, except when describing a person. Consequently, many State and local policies define racial profiling as using race as the "sole" basis for a stop or any police action.

Unfortunately, this policy is misleading in that it suggests using race as a factor for anything other than a description is justified, which it is not. Simply put, Mr. Chairman, race is a descriptor not a predictor.

To use race when describing someone who just committed a crime is appropriate. However, when we deem a person to be suspicious or attach criminality to a person because of the color of their skin, the neighborhood they are walking in, or the clothing they are wearing, we are attempting to predict criminality. The problem with such predictions is that we are seldom right in our results and always wrong in our approach.

The same holds true within the immigration context as well. Because a person "looks" Latino or Mexican does not mean that that person is undocumented, and it should not mean that they are stopped or asked for their "papers." Yet, according to recent laws in Alabama and Arizona, the police are not just encouraged to make these types of discriminatory stops; they are actually expected to do so.

Most police chiefs will agree that engaging in these activities actually makes our communities less safe. This is one reason why I joined the Major Cities Police Chiefs Association and 17 current and former chief law enforcement executives in filing a brief challenging the Arizona law.

We need to pass the End Racial Profiling Act of 2011. This legislation puts forth a standard definition for racial profiling. It requires evidence-based training to curtail the practice and provides support in developing scientific-based data collection and analysis practices. We also need the U.S. Department of Justice to revise its Guidance Regarding the Use of Race by Federal Law Enforcement Agencies. This will close, as mentioned in previous testimonies, loopholes that could permit unlawful and ineffective profiling. It

makes no sense to exclude religion and national origin from the prohibition on profiling or to treat terrorism or immigration enforcement differently from other law enforcement efforts.

I also fear that without this legislation, we will continue business as usual and only respond to issues when they surface through high-profile tragedies such as the Oscar Grant case in Oakland and the Trayvon Martin case in Florida.

The second factor that undermines our progress is the dire need for us to reform the entire criminal justice system. The last top-to-bottom review of our system was conducted in 1967 through the President's Commission on Law Enforcement and Administration of Justice.

We must now examine the entire system through a new prism that protects against inequities such as racial profiling, disparate incarceration rates, and disparate sentencing laws. I strongly encourage the passage of the National Criminal Justice Commission Act of 2011.

Mr. Chairman, from my perspective as a police executive with over 27 years of experience, I know firsthand just how ineffective racial profiling is. As an example, in East Palo Alto, my community, we are more than 95 percent people of color—60 percent Latino, approximately 30 percent African American, and a rapidly growing Asian and Pacific Islander community. In 2005, the city experienced, unfortunately, the second highest murder per capita rate in California and the fifth highest in the United States.

In January 2006, with just 6 months serving as chief of police, East Palo Alto police officer Richard May was shot and killed in the line of duty by a parolee just 3 months out of prison. With this crime rate and this violence against a police officer, my community had two distinct choices: we could either declare war on parolees, we could engage in enforcement activities that would further the disparate incarceration rate of young men of color, or we could do something different. We chose to use problem-solving, we chose to strengthen our relationships, we chose not to engage in racial profiling. We started a parole reentry program, the first in California, in which we actually were contracted by the Department of Corrections to provide reentry services. Police officers now are part of treatment, and we provide cognitive life skills, we provide drug awareness and treatment programs, and together we were able to reduce the recidivism rate from over 60 percent to under 20 percent. After 5 years, the murder rate in 2011 was 47 percent lower than it was in 2005. Our incarceration rates have dropped, and I am very confident in saying that we have better police and community relations.

I think for me and my community, we recognize that racial profiling, the focus on people of color, especially young men, is more likely to occur when law enforcement uses race to start guessing. I am here to really reinforce that is a very ineffective policing practice. It is sloppy. It is counting on guess work. I think the notion that we as a community or we as a Nation must use racial profiling to make ourselves secure or to sacrifice civil liberties is not only false, it reeks of hypocrisy.

If we were truly worried about national security in the sense of compromising civil liberties, then it would make sense that we

would also ask—or those who are engaging in racial profiling would also ask for the prohibition of firearms. We have lost over 100,000 Americans to gun violence since 9/11. That is more than we have lost in terrorism and the wars in Afghanistan and Iraq combined. Yet there is not this equal call for gun laws. And I am not suggesting that there should be. I am just offering the idea of compromising civil rights for national security does not work.

What is equally troubling with the idea of using race, national origin, or religion in the national security context is that it suggests the most powerful Nation in the world, a Nation that is equipped with law enforcement and national security experts that are second to none, must rely on bias and guess work to make ourselves secure versus human intelligence, technology, experience, and the cooperation of the American people. I want to strongly emphasize this point, Senator: There is no reason to profile on the basis of race, religion, national origin, or ethnicity.

Last, and importantly, my last perspective is as a black man in America. I am still subject to increased scrutiny from the community, from my own profession, and from my country because of the color of my skin.

As I mentioned earlier, I am a father of three, but I have a 14-year-old boy named Glenn, and even though I am a police chief with over 27 years' experience, I know that when I teach my son Glenn how to drive, I must also teach him what to do when stopped by the police—a mandatory course, by the way, for young men of color in this country.

As I end my testimony today, I want to thank you, Mr. Chairman, and the rest of the Senators, for your leadership. And as much as I am honored to be here today, and as much as I was honored to be here 10 years ago or 12 years ago, I truly hope that there is no need for me to come back in another 10 years.

Thank you.

[The prepared statement of Chief Ronald L. Davis appears as a submission for the record.]

Chairman DURBIN. Thank you, Chief Davis.

Since September 7, 2001, Anthony Romero has been executive director of the American Civil Liberties Union, the Nation's oldest and largest civil liberties organization, with more than 500,000 members. He is the first Latino and openly gay man to serve in that position. He co-authored, "In Defense of Our America: The Fight for Civil Liberties in the Age of Terror." He graduated from Stanford University Law School and Princeton University's Woodrow Wilson School of Policy and International Affairs.

Mr. Romero, please proceed.

STATEMENT OF ANTHONY ROMERO, EXECUTIVE DIRECTOR, AMERICAN CIVIL LIBERTIES UNION, NEW YORK, NEW YORK

Mr. ROMERO. Good morning, Senator Durbin and Ranking Member Graham. Thank you for having me this morning. Senator Franken, Senator Blumenthal. I am delighted to testify before you today.

I am the national director of the American Civil Liberties Union. We are a nonpartisan organization with over half a million members, hundreds of thousands of additional activists and supporters,

and 53 State offices nationwide dedicated to the principles of equality and justice set forth in the U.S. Constitution and in our laws protecting individual rights.

For decades, the ACLU has been at the forefront of the fight against all forms of racial profiling. Racial profiling is policing based on crass stereotypes instead of facts, evidence, and good police work. Racial profiling fuels fear and mistrust between law enforcement and the very communities that they are supposed to protect. Racial profiling is not only ineffective, it is also unconstitutional and violates basic norms of human rights both at home and abroad.

My written testimony lays out how race, religion, and national origin are used as proxies for suspicion in three key areas of national security, of routine law enforcement, and immigration.

In the context of national security, recently released FBI documents demonstrate how the FBI targets innocent Americans based on race, ethnicity, religion, national origin, and First Amendment-protected political activities. Such counterproductive FBI practices waste law enforcement resources, damage essential relationships with those communities, and encourage racial profiling at the State and local level.

In my native New York, the New York Police Department has targeted Muslim New Yorkers for intrusive surveillance without any suspicion of criminal activity. According to a series of Associated Press articles, the New York Police Department dispatched undercover police officers into Muslim communities to monitor daily life in bookstores, cafes, night clubs, and even infiltrated Muslim student organizations in colleges and universities, such as Columbia and Yale universities. When we tolerate this type of racial profiling in the guise of promoting national security, we jeopardize public safety and undermine the basic ideals set forth in our Constitution.

In the context of routine law enforcement, policing based on stereotypes remains an entrenched practice in routine law enforcement across the country. The tragic story of Trayvon Martin has garnered national attention and raised important questions about the role of race in the criminal justice system. And while we yet do not know how this heart-breaking story will end, we do know that stereotypes played a role in this tragedy, and yet they have no place in law enforcement.

Racial profiling undermines the trust and mutual respect between police and the communities they are there to protect, which is critical to keeping communities safe. Additionally, profiling deepens racial divisions in America and conveys a larger message that some citizens do not deserve equal protection under the law.

In the context of immigration, racial profiling is exploding. State intrusion into Federal immigration authority has created a legal regimen in which people are stopped based on their race and ethnicity for inquiry into their immigration status. The Department of Justice needs to continue to expand its response to these State laws using robust civil rights protections. Additionally, Congress must defund the Department of Homeland Security 287(g) and Secure Communities programs which promote racial profiling by turning State and local law enforcement officials into immigration

agents. When police officers not trained in immigration law are asked to enforce the Nation's immigration laws, they routinely resort to racial stereotypes about who looks or sounds foreign. But you cannot tell by looking or listening to someone about whether or not they are in the U.S. lawfully.

In order to achieve comprehensive reform, Congress needs to provide law enforcement with the tools needed to engage in effective policing. We need to pass the End Racial Profiling Act, which would prohibit racial profiling once and for all. And we should urge the administration to strengthen the Department of Justice guidance using the use of race by Federal law enforcement agencies to address profiling by religion and national origin and to close loopholes for the border and national security.

In America in 2012 and beyond, policing based on stereotypes must not be a part of our national landscape. Law enforcement officers must base their decisions on facts and evidence; otherwise, Americans' rights and liberties are unnecessarily discarded and individuals are left to deal with the lifelong circumstances of such intrusion.

On behalf of the ACLU, I wish to thank each of you for your leadership on this critical issue. I also would like to thank you, Chairman Durbin, in particular for your willingness to partner with our Illinois office to address the issue of profiling. I look forward to working with you in the years ahead.

[The prepared statement of Anthony Romero appears as a submission for the record.]

Chairman DURBIN. Thanks, Mr. Romero.

Frank Gale is the national second vice president and Colorado State president of the Fraternal Order of Police. He served for 23 years in the Denver County Sheriff's Department where he had responsibility for the courts and jails. Captain Gale is currently the commander of the Training Academy and the Community Relations Unit and the public information officer. He has received numerous awards and decorations from the Fraternal Order of Police and the Denver Sheriff's Department.

Captain Gale, it is an honor to have you here today, and please proceed.

STATEMENT OF FRANK GALE, NATIONAL SECOND VICE PRESIDENT, GRAND LODGE, FRATERNAL ORDER OF POLICE, DENVER, COLORADO

Mr. GALE. Thank you. Good morning, Mr. Chairman and distinguished Members of the Senate Subcommittee on the Constitution, Civil Rights and Human Rights. My name is Frank Gale. I am a 23-year veteran of the Denver County Sheriff's Department and currently hold the rank of captain. I am the national second vice president of the Fraternal Order of Police, which is the largest law enforcement labor organization in the country, representing more than 330,000 rank-and-file law enforcement officers in every region of the country.

I am here this morning to discuss our strong opposition to S. 1670, the End Racial Profiling Act. I want to begin by saying that it is clear that racism is morally and ethically wrong, and in law enforcement is not only wrong but serves no valid purpose. It is

wrong to think a person a criminal because of the color of their skin, but it is equally wrong to think that a person is a racist because they wear a uniform and a badge. This bill provides a solution to a problem that does not exist unless one believes that the problem to be solved is that our Nation's law enforcement officers are patently racist and that their universal training is based in practicing racism. This notion makes no sense, especially to anyone who truly understands the challenges we face protecting the communities we serve.

Criminals comes in all shapes, colors, and sizes, and to be effective as a law enforcement officer, it is necessary to be colorblind as you make determinations about criminal conduct or suspicious activity. There is the mistaken perception on the part of some that the ugliness of racism is part of the culture of law enforcement. I am here today not only to challenge this perception, but to refute it entirely. We can and must restore the bonds of trust between law enforcement and the minority community. To do so would require substantial effort to find real solutions. Restoring this trust is critically important because minority citizens often suffer more as victims of crime, especially violent crime.

I do not believe that S. 1670 will help to repair the bonds of trust and mutual respect between law enforcement and minority communities. In fact, I believe it will make it more difficult because it lends the appearance that all cops are racist and that we are engaged in a tactic which has no other purpose than to violate the rights of citizens. That notion or belief is inhibitive of building trust and respect and can result in a base belief by the community that law enforcement officers should not be trusted or respected.

This bill proposes to prohibit racial profiling, which it defines very broadly and is not a legitimate police practice employed by any law enforcement agency in the United States that I know of. In *Whren v. United States*, the Supreme Court made it very clear that the Constitution prohibits selective enforcement of the law based on considerations such as race. Further, as one court of appeals has explained, citizens are entitled to equal protection of the laws at all times. If law enforcement adopts a policy, employs a practice, or in a given situation takes steps to initiate an investigation of a citizen based solely upon the citizen's race without more, then a violation of the Equal Protection Clause has occurred.

The United States Constitution itself prohibits racial profiling, and yet here we have a bill that proposes to prohibit it. The very premise of the bill seems at odds with common sense in current law. The bill does not prohibit racial profiling, as the definition of racial profiling in the bill is far too broad. And, thus, it ends up prohibiting officers from the exercise of legitimate routine investigatory action aimed at determining involvement in a crime or criminal activity. The bill purports to allow exceptions to these prohibitions when there is a race description provided by a trustworthy eyewitness or other evidence of a specific suspect's race or ethnicity, but in real life this is not practical.

In the practice of routine investigatory action, law enforcement officers receive and develop information through a wide range of activities and methods that are designed to identify suspects, prevent crime, or lead to an arrest. This bill would ban many of these

types of method; therefore, a whole range of legitimate law enforcement methods would be prohibited beyond the already unconstitutional, purely race-based activities.

The legislation also threatens to penalize local and State law enforcement agencies by withholding Federal law enforcement funding unless these agencies comply with the requirements of the bill to provide all officers training on racial profiling issues, collect racial and other sociological data in accordance with Federal regulation, and establish an administrative complaint procedure or independent audit program to ensure an appropriate response to allegations of racial profiling.

The FOP has testified before you about the dire and dangerous consequences of budget cutbacks for law enforcement in the past. How can we fight the battle if we also propose to deny these funds to agencies that need them because they cannot afford new training or new personnel to document allegations of racial profiling issues? How can we achieve a colorblind society if the policies of the Federal law require the detailed recording of race when it comes to something as common as a traffic stop? And what if the officer is unable to determine the driver's race? Will police officers now be required to ask for "driver's license, registration, and proof of ethnicity, please"?

At a time when many citizens and lawmakers are concerned with protecting their personal information, be it concerns about the REAL ID Act, voter identification laws, or cyber crime, it seems at variance with common sense and sound public policy to ask yet another representative of the Government—in this case, a law enforcement officer—to collect racial or other personal data and turn that data over to the Federal Government for analysis. Why would something as simple and routine as a traffic stop require such an extraordinary imposition on a driver?

I submit to this Subcommittee that we do have a problem in our Nation today: the lack of trust and respect for our police officers. Police officers have a problem in that they have lost the trust and respect and cooperation of the minority community. This is tragic because, as we have already discussed, it is minorities in our country that are most hurt by crime and violence. This bill, however, is not the solution. It will make matters worse, not better.

For these reasons, the Fraternal Order of Police strongly opposes the bill, and I urge this Subcommittee to reject it.

Mr. Chairman, I want to thank you for the opportunity to appear before the Subcommittee.

[The prepared statement of Frank Gale appears as a submission for the record.]

Chairman DURBIN. Thank you very much, Office Gale, for being here.

Roger Clegg is the next witness, president and general counsel of the Center for Equal Opportunity. He has held a number of senior positions in the Justice Department during the Reagan and George H.W. Bush administrations, including Deputy Assistant Attorney General in the Civil Rights Division and Deputy Assistant Attorney General in the Environment and Natural Resources Division, Acting Assistant Attorney General in the Office of Legal Policy. He is a graduate of Yale University Law School.

Thank you for being here, Mr. Clegg, and please proceed. If you would turn your microphone on, it is in that box in front of you there.

STATEMENT OF ROGER CLEGG, PRESIDENT AND GENERAL COUNSEL, CENTER FOR EQUAL OPPORTUNITY, FALLS CHURCH, VIRGINIA

Mr. CLEGG. Thank you very much, Senator Durbin, for inviting me here today. I am delighted to be here. Let me just summarize briefly my written statement.

The first point I make is that care has to be taken in defining the term "racial profiling." And, in particular, I think that it is important to bear in mind that racial profiling is disparate treatment on the basis of race. Good police activities that happen to have a disparate impact on the basis of race are not racial profiling.

The second point I make is that the amount of racial profiling that occurs is frequently exaggerated and that care needs to be taken in analyzing the data in this area.

All that said, racial profiling, as I define it, is a bad policy, and I oppose it for the reasons that many of my co-panelists here are giving.

There is one possible exception that I would make, and that is in the antiterrorism context. In brief, I think that it is quite plausible to me that in the war on terror, where we are fighting an enemy that has a particular geopolitical and perverted religious agenda, it may make sense in some circumstances to look at organizations that have particular religious and geopolitical ties. I am not happy about doing that. I think it should be done as little as possible. But the stakes are so high that I am not willing to rule it out altogether.

The last point I would make is that there are problems with trying to legislate in this area in general, and I think that the End Racial Profiling Act in particular is very problematic. I do not think that this is an easy area for Congress to legislate a one-size-fits-all policy that is going to apply to all law enforcement agencies at all levels of Government at all times in all kinds of investigations. And I think it is also a bad idea to encourage heavy judicial involvement in this area. And these are things that the End Racial Profiling Act does.

Let me also say that I think that Chief Gale does a very good job of identifying some additional costs in the End Racial Profiling Act: The fact that it is insulting, that data collection is time-consuming, and that inevitably we are going to either have to guess inaccurately about people's racial and ethnic background or else train the police on how to identify people racially, which is a pretty creepy enterprise.

With respect to my other panelists' testimony, I will just say briefly that in the terrorism and border security context, as I read some of this testimony, they would equate racial profiling with taking a particular look at visitors from particular countries, at considering immigration and citizenship status, and at considering language. I do not consider any of those things to be racial profiling.

Let me make one last point. I think that this is an important point to make whenever we are talking about racial disparities. As

I said, Mr. Chairman, I am opposed to profiling, particularly to profiling in the traditional law enforcement context where frequently it is African Americans who are the victims of that profiling. I am against that.

Nonetheless, I think we have to recognize that it is going to be tempting for the police and individuals to profile so long as a disproportionate amount of street crime is committed by African Americans. And there will be a disproportionate amount of street crime committed by African Americans for so long as more than seven out of ten African Americans are being born out of wedlock. I know that this is not a popular thing to say, but I think whenever we are discussing racial disparities in the United States, that is the elephant in the room, and it has to be addressed.

So, ultimately, people like me and everyone else, I think, in this audience who do not like racial profiling are going to have to face up to this problem. Thank you.

Chairman DURBIN. I would ask those in attendance here to please maintain order.

Mr. CLEGG. Thank you, Mr. Chairman, and I think I am at the end of my 5 minutes, anyway.

[The prepared statement of Roger Clegg appears as a submission for the record.]

Chairman DURBIN. Thank you, Mr. Clegg.

David Harris is a distinguished faculty scholar and associate dean for research at the University of Pittsburgh Law School. He is one of the Nation's leading scholars on racial profiling and author of the book in 2000, "Profiles in Injustice: Why Racial Profiling Cannot Work," and in 2005, "Good Cops: The Case for Preventive Policing." Like Congressman Conyers and Chief Davis, Professor Harris appeared at both of the previous Senate hearings on racial profiling, so welcome back.

STATEMENT OF DAVID A. HARRIS, PROFESSOR OF LAW AND ASSOCIATE DEAN FOR RESEARCH, UNIVERSITY OF PITTSBURGH SCHOOL OF LAW, PITTSBURGH, PENNSYLVANIA

Professor HARRIS. Thank you very much, Senator Durbin, Members of the Subcommittee. I am grateful for the chance to talk to you today.

Senator Durbin's statement opened by recalling for us President Bush's promise that racial profiling "is wrong and we will end it in America." Sad to say that that promise remains as yet unfulfilled. Instead, we have a continuation of profiling as it existed then with a new overlapping second wave of profiling in the wake of September 11th, as other witnesses have described, directed mostly at Arab Americans and Muslims. And now we have a third overlapping wave of profiling, this one against undocumented immigrants. But the context and the mission of whatever these law enforcement actions are does not change the fundamentals. The fundamentals are these: Racial profiling does not work to create greater safety or security. Instead, racial profiling, ethnic profiling, and religious profiling all make our police and security personnel less effective and less accurate in doing their very difficult jobs.

I would define racial profiling as the use of racial, ethnic, religious, national origin, or other physical characteristics of appearance as one factor, not the sole factor but one factor, among others, used to decide who to stop, question, frisk, search, or take other routine law enforcement actions. This is very close, if you look at it, to the definition in the profiling guidance of the Justice Department, and I would note that it does not include actions based upon description—description of a known suspect, a person who has been seen by a witness. That is not profiling. That is good police work.

All of profiling falls on the same set of data—data from across the country, different law enforcement agencies, different missions—and it is all about hit rates. When we talk about effectiveness, what we are asking is: What is the rate at which police officers and security officers succeed or hit when they use race, ethnic appearance, religious appearance, as opposed to when they do not? And the evidence, the data on this question is unequivocal. It comes from all over the country.

When police use race or ethnic appearance or religious appearance this way, they do not become more accurate. In fact, they do not even just stay as accurate. They become less accurate than police officers and security agents who do not use these practices. In other words, racial profiling gets us fewer bad guys.

Why is this? Because a lot of people find this counterintuitive. There are two big reasons.

Number one, profiling is the opposite of what we need to do in order to address as yet unknown crimes by as yet unknown suspects. That is addressed most effectively through observation, careful observation of behavior. And when you introduce race even as just one factor into the mix, what happens is the observation of behavior becomes less accurate, measurably so, and police officers' efforts are damaged and wasted.

Second is that using profiling affects our ability to gather crucial intelligence and information from communities on the ground, and this is true whatever the context is in which profiling is used. Particularly in the national security context, this is absolutely critical.

If we are in danger, if there is a threat from international terrorists, and if, as some say, those international terrorists may be hiding in communities of Arab Americans and Muslims, the people we need right now as our partners, like we have never needed other partners, are people in those Arab American and Muslim communities. And I want to say that those communities have been strong, effective, continuously helpful partners to law enforcement in case after case across the country. These communities have helped. But if we put the target of profiling on these whole communities, we will damage our ability to collect intelligence from them because fear will replace trust.

In response to some of the comments made by my fellow panelists, a bill like S. 1670, which deserves support, is not insulting to law enforcement. It is all about accountability, and everybody who is in law enforcement or any other pursuit needs accountability, just like I do as a professor, just like everybody else does. Racial identification is not an issue. You will not have police officers asking people what their race or ethnic group is. In fact, that is not

what we would want at all because it is all about the perception of the officer. That is all that would have to be recorded.

And black street crime, respectfully I have to disagree, is not the issue. The issue is how we deploy our law enforcement officers in ways that are effective, fair, and carry out the most important ideals of our society. So for those reasons, I would support any efforts to pass S. 1670, the End Racial Profiling Act, and to revise the Department of Justice's profiling guidance.

I thank you very much for the opportunity to talk to you, and I look forward to the Committee's questions. Thank you.

[The prepared statement of Prof. David A. Harris appears as a submission for the record.]

Chairman DURBIN. Thank you very much, Professor Harris.

Chief Davis, you have spent your lifetime in law enforcement, and you have heard the testimony of Officer Gale that suggested in very strong and pointed language that raising this question of racial profiling really, he says, unless you believe police are racist, he suggests this is unnecessary.

So what is your answer to that? As I said at the outset, you trust, we trust, these men in uniform—women as well—who risk their lives every day for us. And the question he has raised is if we cannot trust their judgment and assume that they are going to violate the Constitution and the law, then we are suspicious of them when we should be more trusting.

Chief DAVIS. Thank you, Mr. Chairman, for the question. I completely disagree with my colleague. The idea that a police officer or a police department should not be held accountable is counter to the idea of democracy. If any group should be held accountable, it must be the police. We have awesome powers and responsibility, the power to take a life and the power to take freedom. The idea that we could not collect data to ensure that that power is used judiciously and prudently would be counter to sound managerial principles.

We collect data every day. We collect data on crime. We collect data for budget purposes. We collect data for our very justification and existence. We use it to tell you that you need to increase budgets to the State. We use crime to justify why we deploy resources. The idea of using data means that you are using intelligence, and intelligence-led policing prevents the need to do guess work or bias-based policing.

And so while I do appreciate the notion that we should respect law enforcement, as a law enforcement officer I think there is no more noble profession. But the idea that I am exempt from the Constitution or exempt from accountability is counter to why I got into the job. And I do not think it is insulting. I think what is insulting is to allow police officers to come under the perception, under the threats of accusations of racial profiling and not be in a position to counter it, not be in a position to make sure that your own policies and practices do not make them unintentionally engage in this practice. Laws are designed to set standards, to hold us accountable, and to really send a clear message. And I think that is what we're doing.

Chairman DURBIN. Before I turn to Officer Gale, I would like to also note that this celebrated case, notorious case involving

Trayvon Martin involved a person being accused who was not a law enforcement official per se. He was an individual citizen as part of a Neighborhood Watch. Forty-nine States now, my own State being the only exception, have a concealed-carry law which allows individuals under some circumstances to legally carry a firearm. In this case, I do not know if Mr. Zimmerman complied with Florida law. That will come out, I am sure, in terms of what it took to have a concealed weapon.

But it certainly raises a question that was not before us as much 10 years ago. We are not just talking about professionalizing law enforcement and holding them accountable. We are talking about a new group of Americans who are being empowered to carry deadly weapons and to make decisions on the spot about the protection of their homes and communities, which I think makes this a far more complex challenge than it was 10 years ago.

I would like your response.

Chief DAVIS. Yes, sir, I agree. The issue for California, we have the issue of open-carry, the carrying of loaded firearms, with very minimal requirements. So I think the idea that people should be held accountable, including our community, is very real.

The issue of racial profiling, why it is also important, why we need the data, is in many cases—and maybe the Trayvon Martin case may bring this out later—gets into also what role law enforcement plays with its own community's bias. And so when people call the police and say, "There is a suspicious person walking in my neighborhood," what makes that person suspicious? And the police must ask those questions. And the idea that we simply respond and stop without inquiring why the person is suspicious—is it their behavior? Is it the fact that they were basically engaged in criminal activity? Or is it because they are wearing a hoodie and because they are black? And at some point, the law enforcement must stand firm.

Now, this is where we need the justification with the law to stand firm and even tell community members, "No, I am not going to stop this person because he or she has done nothing."

So we do have to look at the idea that law enforcement not enforces the law, they also set in many ways the moral authority of its community on how to interact with each other.

Chairman DURBIN. Officer Gale, your statement was very strong, but the conclusion of it raised a question. And I do not have it in front of me, but as I recall—and tell me if I am stating this correctly—you said that many members of the law enforcement community were not trusted in the minority communities. Can you explain that?

Mr. GALE. Well, I think it is——

Chairman DURBIN. You need to turn the microphone on, please.

Mr. GALE. I apologize. I think it is pretty clear from what we have seen in media reports, especially recently. But, you know, over the course of several years, there is work to be done by law enforcement in the minority community to rebuild trust. And I say that openly. I think the FOP acknowledges that and, in fact, we are engaged in activities in which we are attempting to help law enforcement officers and agencies do just that through community work. So I think that is an important piece.

I think the professor talked about the fact that a lot of times in minority communities you have people in those communities that are a valuable resource to law enforcement. I agree with that, and the aspect of law enforcement and the professional law enforcement, it is necessary to have people in communities where crime is occurring assist you with the enforcement activities. And so I think the problem has become that we seem to want to blame the enforcers for everything that goes wrong. And the problem with that is that the enforcers show up on the scene to deal with a situation with the information that they have available to them at the time. And our job, when we show up, is to stabilize the situation.

Chairman DURBIN. But you do not quarrel with—I hope you do not quarrel with Chief Davis' premise that the law enforcement community has extraordinary power in the moment—the power to arrest, the power to detain, the power to embarrass. And holding them accountable to use that power in a responsible, legal, constitutional way, you do not quarrel with that premise, do you?

Mr. GALE. I do not think the FOP quarrels with the fact that law enforcement officers have that power, nor do we quarrel with the fact that law enforcement officers should be held accountable. In fact, we are accountable. I think my testimony illustrated situations where the court had ruled that officers had to be accountable in issues of race, and we accept that and embrace it because we believe it is proper, we believe it is appropriate.

Chairman DURBIN. Mr. Clegg, you said a number of things which caught my attention, and you said that you thought the war on terror justified some measure of profiling.

Mr. CLEGG. Well——

Chairman DURBIN. Let me come to a question, and then you can certainly explain your position. And I wrote notes as quickly as I could. "We need to look at organizations with geopolitical and political ties," I think is something that you said in the course of that.

You have heard testimony here from Congressman Ellison and others about what is happening to Muslim Americans across the board, and many of them are not affiliated with any specific organization. They are affiliated with a faith, and it appears that that has become a premise for surveillance and investigation.

I worry, as an amateur student of history, how you could distinguish what you just from what happened to Japanese Americans in World War II, where 120,000 were rounded up with no suspicion of any danger to the United States and their property taken from them, detained and confined because they happened to be part of an ethnic group which had just attacked the United States—the Japanese, I should say, attacked the United States and, therefore, they were branded as possibly being a danger in the Second World War because of some connection they might have with a geopolitical or political group.

How would you make that distinction? Or do you happen to think Japanese internment camps were justifiable?

Mr. CLEGG. No, I do not, and when I say that in some limited circumstances some consideration of individuals' or organizations' geography and religion can be justified in the war on terror, I am not saying that that means that *any* consideration under *any* circumstances of ethnic profiling and religious profiling is okay. All I

am saying is that I am unwilling to say that it can *never* be used. And I give examples in my testimony.

For instance, suppose that on 9/11 the FBI had gotten reliable information that an individual on one of the grounded airplanes, one of the grounded jetliners, had a backup plan and that he was going to fly a private plane filled with explosives into a skyscraper. Would——

Chairman DURBIN. But there is a clear distinction. There is a clear distinction, and let us make it for the record: a predictor and a descriptor.

Mr. CLEGG. No, no, no——

Chairman DURBIN. When you talk about the class of people guilty for 9/11 and say, "Why wouldn't we go after that class of people in training to fly," and so forth and so on, that is a descriptor that law enforcement can use. But when you conclude that because they were all Muslim we should take a look at all Muslims in America——

Mr. CLEGG. I did not say that.

Chairman DURBIN [continuing]. You have crossed the line.

Mr. CLEGG. Well, I did not say that. And I think that the line that you are drawing between predictor and descriptor is inevitably a gray one, and this is one reason why I think that legislation in this area is a bad idea.

Isn't it predictive when the FBI in my hypothetical says, you know, the individual who is going to fly this plane into a skyscraper is not somebody identified—it has not already been done. We are trying to predict who it is going to be, and we are going to look at the passenger lists on the grounded airplanes, and we have only limited resources and limited time—we are working against the clock here—and we are going to start by looking at individuals with Arabic names.

Now, that is racial profiling, according to your bill, but I think it would be eminently reasonable.

Chairman DURBIN. I certainly disagree, and that is why I am——

Mr. CLEGG. You do not think that that would be reasonable?

Chairman DURBIN. No, I do not. I really think that when you start going that far afield, why do you stop with Arabic names? Why wouldn't you include all of Muslim religion then? I mean, that just strikes me as the very core of the reason we are gathering today, that if we are going to say to people across America, "You have certain rights and freedoms because you live in America and we have certain values," it does create perhaps more of a challenge to law enforcement. A police state may be much more efficient in many respects. But it is not America.

Mr. CLEGG. Well, listen, in my testimony, I and my whole organization's whole focus is on the principle of "E pluribus unum." I take that very seriously, Mr. Chairman. But what I am saying is that there are going to be some circumstances where I think it would be very unwise for Congress to say that law enforcement agencies cannot give some limited consideration to an individual's or an organization's geopolitical and religious background.

Chairman DURBIN. I would like to defer now to Senator Graham, who has patiently waited for his opportunity.

Senator GRAHAM. Thank you all. Well, I guess what we are trying to highlight is how complicated this issue is.

Mr. Gale, do you think you have ever been racially profiled?

Mr. GALE. Probably.

Senator GRAHAM. I cannot say I understand, because I do not. I have never been in that situation. But the fact that you are a law enforcement officer and you probably some time in your life have been viewed with suspicion by police makes your testimony pretty persuasive to me in the sense that you are now sitting in the role of a law enforcement official trying to protect a community. And the Zimmerman case is a private individual, not a law enforcement organization. And I just really—I think I understand the problem. I just do not know where the line between good law enforcement and racial profiling ends and begins, because let me tell you one thing about Congress. We will be the first one to jump on you when you are wrong. When you get a phone call that somebody looks suspicious in a neighborhood and you ask a bunch of questions, well, that does not seem to justify us going in, and that persons winds up killing somebody or robbing or raping somebody, we will be the first ones to blame you. So you are in an untenable situation.

And when it comes to the war on terror, Mr. Clegg, I could not agree with you more. The reality of the fact is that I wish we had done more with Major Hasan and not less. There are some websites out there that I am glad we are monitoring. There are some groups within America that are saying some pretty radical things, and I hope we follow the leaders of these groups to find out what they are up to, because homegrown terrorism is on the rise. How do you fight it without fighting a religion? How do you fight homegrown terrorism without fighting people who are very loyal to America who belong to a particular faith? I do not know, but I know this: that if the law enforcement community in this country fails to find out about the Major Hasans, we are the first one to be on your case. Why didn't you follow this website? He said these things in these meetings, and why didn't the supervisor tell the wing commander you have got somebody who is really out of sorts here? And as a Air Force officer, when do you go to your wing commander and say this person said something that makes me feel uncomfortable and you do so at your own peril?

So I just do not know what the answer is. I know what the problem is. And I think in the last decade we have made some progress, Chief Davis, and maybe having legislation that makes us focus on this problem more might make some sense, quite frankly. Maybe we would look at redefining it, but just collecting information to show exactly what happens day in and day out in America so we can act logically on it.

I know you want to say something, Mr. Clegg, but when it comes to fighting the war on terror, the fact of the matter is that Great Britain and France are going through this very similar situation right now where they have groups within the country that are espousing some pretty radical ideas, and they just expelled someone, I think, from Great Britain just today or yesterday, an imam who was saying some pretty radical things.

So I do not know when national security starts and individual liberties begin. What is your thought?

Mr. CLEGG. Well, I want to endorse what some of my co-panelists have said, that it is very important in the war on terror that we have the cooperation of the overwhelming majority of individual Americans, Arab Americans and Muslim Americans, who——

Senator GRAHAM. Don't you think one of the great strengths of our country is that even though homegrown terrorism is on the rise, generally speaking American Muslims have assimilated in our society and our culture; thousands serve in the military; and that we are actually the example to the world of how you assimilate?

Mr. CLEGG. That is right, and I think that stereotyping is very dangerous in this area. You know, most Arab Americans are not Muslims, for instance. I believe they are Christian. You cannot just look at somebody's name and conclude things about them. And as my co-panelists said, it is very important to have the cooperation and the trust of Arab American communities. So I do not want to give the impression that I think that it should be open season on anyone on account of their ethnicity or their religion. I am simply saying——

Senator GRAHAM. Do you agree that——

Mr. CLEGG [continuing]. That there are going to be circumstances where——

Senator GRAHAM. Well, what we should be looking for is actions by individuals within groups, statements made that send signals that this is not where, you know, practicing religion should be taking one, it is the activity on the Internet.

Mr. CLEGG. Well, as Professor Harris has said, it is——

Senator GRAHAM. That is what you were talking about. That is what I want us to——

Mr. CLEGG [continuing]. We are looking at——

Senator GRAHAM [continuing]. And how we do that I think is very complicated because when you monitor these websites, maybe you capture some innocent conversation. So having judicial oversight I think is important. But I guess that is what I am looking for, is sort of objective indicators of, you know, this is getting out of bounds here.

Professor HARRIS. Senator Graham, you are absolutely right. It is about behavior. That is the key to everything. And making statements, whether out loud or on the Internet, that is action, that is behavior.

Senator GRAHAM. And here is the problem we have. If you are an Air Force member and you have an American Muslim in the group and they say something that alarms you, you have to think, "Well, if I say something, am I going to get myself in trouble?"

Mr. ROMERO. But, Senator, if I may interject—and it is nice to see you again, Senator. Thank you for yielding to me. I think part of the challenge we have in a country that is dedicated to free speech is how you draw that line well in a way that does not quell speech we want to protect. I know that perhaps my organization and you have different points of view on abortion, for instance, and yet I think you and I would completely coincide—from the moments I have shared with you, I know you and I would completely coincide that anyone who dares to blow up an abortion clinic is a criminal.

Senator GRAHAM. That is not speech.

Mr. ROMERO. And yet then would you feel comfortable surveilling the antiabortion websites for individuals who perhaps would be willing to blow up an abortion clinic just because they may share the points of view of the radicals who would blow up a clinic? I know you would not feel comfortable, if I could put words in your mouth.

Senator GRAHAM. I know exactly what you are saying.

Mr. ROMERO. And so the context is not that different in the context of speech that perhaps we find odious, perhaps we find difficult, but that is what America is about. Democracy is a great many things, but it should never be quiet. But we all agree that it is not the America we know and love, sir.

Senator GRAHAM. I guess here is maybe where legislation can help, and my time is up. You know, having thoughts the Government or expressing yourself in an aggressive way, you can be radically pro-choice, radically against abortion; you can feel the way you would like to feel; you can speak your mind. But there comes a point in time when the rest of us have to defend ourselves and our way of life. And what I hope we will do in this discussion is not ignore the threats that do exist. There is a lurking, looming threat against this country and against our way of life, and I hope we will not get so sensitive to this dilemma that we will basically unilaterally disarm ourselves.

And when it comes to basically, you know, the immigration issue, if there was ever a reason to fix our immigration system, this hearing highlights it. You have got millions of people here who are undocumented, illegal, and I would just be greatly offended if I were a corporal coming back from Afghanistan who happened to have a Hispanic last name and got stopped because somebody thinks I am here illegally. I could be greatly offended, but the fact of the matter is that, you know, there is a downside of illegal immigration in terms of crime, and the way to solve that problem, it is clear to me, is comprehensive immigration reform.

Thank you all. This has been a very good hearing, and we will see if we can work with Senator Cardin to find something maybe more bipartisan.

Chief DAVIS. Mr. Chairman, could I just answer one question the Senator asked? You asked Captain Gale had he ever been profiled, and I will take a shot at that. Unequivocally yes. But I think it was telling not only have I been profiled, but as a law enforcement officer, I have profiled. And I think that is the part that we bring to the table, that in many cases it may be implicit bias, it may be no malice intended; but at the end of the day, the result is that you have a disparate effect on people of color that you need most to help address some of the issues that are at the table.

So I think for us not to acknowledge that it exists, to acknowledge that implicit bias is a human behavior that no one is exempt from, for us to require that we are trained in it, that we hold ourselves accountable so that we do not have these disparate outcomes is really what we are talking about. And it is easy to focus on the small percentage. I agree with the opening statement. Only a small percentage of our profession I believe are racists. But if the issue was as simple as racism, it would be an easy problem to fix. This

is a much bigger issue, and I think we have to tackle it at that level.

Senator GRAHAM. Well said.

Chairman DURBIN. Thank you, Senator Graham. And I am going to take an extraordinary risk here and put this Committee in the hands of Senator Franken.

[Laughter.]

Chairman DURBIN. In all seriousness, we are in a roll call vote, and Senator Graham and I have to vote. Senator Franken, I am going to recognize you, and I will let you monitor your own time used and watch Senator Blumenthal proceed, and then I will return. Thank you.

Senator FRANKEN [presiding]. You may regret this.

[Laughter.]

Senator FRANKEN. I have the gavel now. In that case, I will turn it over to Senator Blumenthal.

Senator BLUMENTHAL. If I may, I have a question, Chief, to followup on the remark that you made at the close of Senator Graham's questions. Under what circumstances have you profiled? And if you could talk a little bit more about what limiting principles you think should apply to profiling when it is used legitimately, if it can be used legitimately, in your view.

Chief DAVIS. Yes, the example that stands out for me when I was a police officer in Oakland, and you would have an area that we would identify as high crime, and this area was actually—it was very accessible to the freeway, so we had customers from out of town coming in to buy narcotics, and quite often they were actually white, and so the presumption on my part and many others is that any white person in that neighborhood would then be buying narcotics.

The problem with that assessment, one, it attaches criminality to the entire neighborhood so that the only way that neighborhood could be judged is based on the actions of a few, which means you are criminalizing everyone that lives there; and, two, that also suggests that the only reason why a white person would visit someone black is to buy drugs.

So besides being ineffective, besides being insulting to the neighborhood, it was not very—it just did not work. So as we got better and moved on, we learned how to watch behaviors. So now someone leaning in a car, someone basically exchanging money, somebody yelling signals that a drug buy was about to take place or that the police officers are coming works a lot better, doing proper investigations.

The circumstances in which I think profiling could work would be probably under the category of criminal profiling when you are looking at behavioral aspects of what a person is doing. In other words, people when they are selling drugs, they engage in certain behaviors, whether it is how they drive, whether it is furtive movements in a car, something that would be specific to their actions. I cannot think of any context in which race is appropriate other than when you are describing someone who has committed a crime. And, in fact, Senator, I would say that what race ends up doing is being a huge distractor. So now we have seen this time and time again. We did Operation Pipeline in California where we targeted

so-called drug carriers, and we basically did not get what we were looking for because we were so buy looking for black or brown people driving on a freeway. And we were proven wrong time and time again, and then we lose the support of our community.

Senator BLUMENTHAL. And added to that problem is the difficulty often of using eyewitness testimony where somebody supposedly identifying a potential defendant in a lineup can be just plain wrong because of race being a factor. Would you agree to that?

Chief DAVIS. Yes, and, in fact, there is much work in science now into looking at some of the dangers of basing convictions and even arrests merely on lineups because they can be inaccurate. And if I may, I guess one of the questions that came up earlier was also about officers guessing on race. And if I can say, it is really interesting because we are supposed to assess race. And so the idea—I do not think we are suggesting that race has no place. So if something comes out on a radio that you are looking for a black male, six-foot tall, 225 pounds, and very handsome that did a robbery, then it would make sense why you would stop me. I can understand that.

[Laughter.]

Senator FRANKEN. Objection.

[Laughter.]

Chief DAVIS. But the officer has to make an assessment at the time, so there is a time and place to, just not when you are trying to predict criminal behavior.

Senator BLUMENTHAL. Mr. Gale, if I may ask you to comment on the general principle that race or other similar characteristics alone, if used for identifying or profiling individuals, can be either distracting or undermining to credibility, and really should be used in combination—if anything, in combination with other, if at all, characteristics, mainly conduct, behavior, and so forth, what would you think about that?

Mr. GALE. Conduct is what drives it all. You know, I am the commander of the training academy in my department, and we are training officers all the time. One of the things we talk about is, you know, the stop-and-frisk *Terry* stop type of situations. It is all driven by conduct. If you are going to properly teach that, you teach that it is driven by the conduct of the person and you are determining that their conduct indicates that they are involved in criminal activity. Race has no place in that. I think the distraction is that now you would have criminals who are involved in criminal activity who will now use, you know, the racial profiling as a distraction as they complain of being arrested or stopped because of their criminal conduct. And I think there is a presumption by some, and wrongly so, I believe, that, you know, no criminals ever complain against police officers and that no criminals ever, you know, do not just acknowledge that they do crime. My experience in 23 years is that it is very rare to roll up on someone engaged in criminal conduct and have them say, "Ah, you got me, copper. I am guilty." They do not do that. They look for any way they can to try to get out of that process.

Conduct is what drives all of it. The distraction is now that if you pass a bill like this, you are going to now say here is something

you can use in addition. I think the courts already addressed it. The courts have already told law enforcement agencies very clearly, "You cannot use race as the basis for how you do this." So conduct is it.

The bulk of my testimony is really that I think we are trying to fix something that does not need to be fixed because you are trying to fix it with a law as opposed to just saying, hey, there is a problem, and the problem is bad police work.

Senator BLUMENTHAL. And I am sympathetic as one who has been involved in law enforcement for actually more than 23 years, combining both Federal and State, as U.S. Attorney and then as Attorney General of my State in Connecticut, and I would be very loath to create what you have charitably called "distractions," "defenses," "impediments" to effective law enforcement. But I think that one of the roles of legislation is also to provide guidance, raise awareness, and perhaps provide direction to police or their departments who may not be as aware as you are or even other witnesses here. Mr. Romero.

Mr. ROMERO. Yes, thank you, Senator Blumenthal. Officer Gale, I guess I must take some time to visit your fair city of Denver because it does not look like any of the major cities that I visited in my 11 years' tenure as director of the ACLU. And with all due respect, you will forgive me for having to point out that your very optimistic assertion that all is well is just not borne out by the data that we already have. Let me give you data that I know quite well in New York City, the country's large police department.

From 2002 to 2011, there were more than 4.3 million street stops—4.3 million. Eighty-eight percent of those—that is nearly 3.8 million—were of innocent New Yorkers. That means they were neither arrested for a summons or—neither issued a summons or arrested.

Now, let us break it down by race because, obviously, it is a much better place, if you are Puerto Rican like me and maybe live in Denver, but in New York it is not a very good place for people who are African American or Latino. In 2011, a record 685,000 New Yorkers were stopped by the New York City Police Department. Eighty-eight percent were totally innocent of any crime; 53 percent of those were black, 34 percent were Latino, 9 percent white. And a remarkable number of guns was found on 0.2 percent of all stops.

Now, with all due respect, Officer Gale, I must demur when you say that this is all conduct-driven, because clearly these facts beg otherwise. The fact is that there is a problem, and I would assert that the reason why—and I think one point where we agree is that the Fraternal Order of Police nationwide lacked the trust from communities of color. I think you have said as much, that you have a PR problem, if you will, with communities of color. And I would assert that the reason why you might have that difficulty with the communities of color you are there to serve is because they know these facts. They may not know them the way I know them, but they experience it. And that is precisely why the End Racial Profiling Act is essential. The data we have already tells us there is a problem. Let us collect more data, and let us put in place some remedies.

Your point about the Supreme Court and the Equal Protection Clause giving sufficient comfort to those who have been wronged by the police, that is just simply not true. The Supreme Court case, lamentably, in the case of *Whren*, which I can cite for you, basically allows police officers to make pretextual stops based on race, ethnicity, and national origin. It is the law of the land, according to our Supreme Court. At times our Supreme Court gets it wrong, which is why we exhort this Congress and this Senate to step in and to enact a law when we know that there is a problem that has yet not come to the attention of our Supreme Court.

So with all, I thank you for——

Senator BLUMENTHAL. Thank you. My time is up, but I want to thank all of the witnesses. This has been a very, very important and useful hearing, and we have some areas of disagreement which I think we need to explore further. But I want to thank particularly Mr. Gale and Chief Davis for your excellent work over the years in law enforcement, and I thank the Chairman and substituting Chairman for their tolerance and patience.

Senator FRANKEN. I think you actually call me "Chairman."

[Laughter.]

Senator FRANKEN. That is the protocol.

Senator BLUMENTHAL. You know, I think I need the advice—I have a right to remain silent.

[Laughter.]

Senator FRANKEN. Unfortunately, I do have an appointment, so I am going to ask my questions, and then you will get the gavel. Then you will be the Chairman and get every due respect being called "Chairman." Thank you, Senator Blumenthal.

Everyone here has talked about the importance of cooperation between law enforcement officers and the communities they serve, and it seems that everyone agrees that racial profiling can undermine trust in the authorities and can cause resentments among the targeted groups. Minnesota is home to a large population of Somali Americans. In my experience, no community was more upset than the Somali community when we learned that a few Somali Americans had gone back to Somalia and become involved with Al-Shabaab.

When I talked to both FBI Director Mueller and, maybe more importantly, when I went back to the Twin Cities and talked to the special agent in charge there, both said that the Somali community had been cooperative in FBI investigations, and I think it was because of actually very good police work and very good work by the FBI in making sure that they earned the trust of the Somali community there.

My questions are to Chief Davis and to Officer Gale. Both of you have served as law enforcement officers. How do you earn the trust of the diverse communities that you serve, some of whom may be initially skeptical of the police?

Chief DAVIS. Thank you, Senator. One stop at a time, 1 day at a time, one interaction at a time. I think when people—I think we have to, one, acknowledge the history that police have played, the role of law enforcement with regards to race in this country. I think we still have generations of people that remember desegregation. We have generations of people that are still here that remem-

ber when the police were the enforcement tool and the rule of law with regards to Jim Crow laws and Black Codes. And so we have to acknowledge that we may start off with this lack of trust and confidence. So it is one interaction at a time.

I think the first thing law enforcement can do is acknowledgment, to take our heads out of the sand and acknowledge that we have this horrific history. We should acknowledge that we, whether intentionally or not, still are engaging in practices that have a very disparate result with regards to people of color, whether intended or not.

We should put our defensiveness down and realize we are here to serve, not to be served. And we have to realize that we are only going to be successful if the community engages with us. And the more we engage in that, the safer we make them. And the safer we make our communities, the more they will then partner with us.

With the evidence showing time and time again in each major city and community the stronger the relationship between the police and minority communities, the greater the crime reduction is going to be. So we do it one interaction at a time, and we do it by holding officers accountable, but we also do it by acknowledging that which is in front of us. I think there is no greater insult as a minority than for someone to look me in my eyes and insult my intelligence by telling me that there is not profiling, when everything about me knows that it is. And I think that is what happens with our communities, and we need to stop doing that.

Senator FRANKEN. Officer Gale.

Mr. GALE. I think I agree with the chief that you have to do it one person at a time, but I think you have to be more global. You have to look at the community you serve and the different populations in that community, and you have to make a concerted effort to be in those communities and having dialogue with those people, and you have to listen. And it does not matter that you might not agree with the things that they say.

Years ago, I was in the military, and I went to a leadership school, and they had a manual that said, "Any problem, whether real or perceived, is still a problem." And I agree with that, and I have held to that. It does not matter if it is not the actual problem. If it is perceived to be a problem by someone or by a group of someones, then we have to listen, we have to validate it, and we have to dialogue through it. And I think we have to take agencies and train agencies to understand who these populations are that they are serving and what the concerns of those agencies are.

I agree also with Chief Davis that, you know, we have to acknowledge the history of law enforcement has not always been one of stellar conduct, and I think that that is being done in a lot of organizations. I think in the Fraternal Order of Police we talk about it very honestly and very candidly with our membership and say this is the way you need to go to improve your relations with the communities that you serve.

And so it is important to do those things, to hear what they have to say, but it is also important to explain to them what the challenges are, what we have to do if we are going to protect people, you know, what we are faced with as the challenges when we are

protecting communities. And it is important for us to illustrate that to individuals in the community because, you know, no one is perfect, but if we understand each other better and we dialogue more, I think when there are these honest misunderstandings, we can move past them.

Senator FRANKEN. Thank you.

Mr. Romero, in your written testimony on behalf of the ACLU, you wrote about recently uncovered FBI training materials that rely on bigoted stereotypes of Muslims. I think we can all agree that those materials are not acceptable. FBI Director Mueller acknowledged that those materials damaged the FBI's relationship with Muslim communities, and I commend Chairman Durbin for his recent letter to the FBI on this subject, and I am working on a letter to express my concerns as well.

Mr. Romero, what actions should the FBI take to show that it is serious about reforming its training programs?

Mr. ROMERO. Thank you for the question, Senator Franken, and, yes, what I would first point out is, of course, those memos and files and training manuals surprised us. When we use the Freedom of Information Act, we go asking for documents that we do not know exist. And so we use the Freedom of Information Act as democracy's X-ray, how to get documents that we need, questions, hunches based on conduct of what we have seen already, when the FBI has been tracking young Muslim men between the ages of 18 and 33 asking them to come in for voluntary fingerprinting and photographing, mapping out mosques, we had a hunch that they had to have some training materials that were going to be troubling and problematic. And, lamentably, our hunches were borne out.

I think, frankly, one thing that the FBI needs to do that I would encourage—and Director Mueller is a man with whom we have great disagreements. We have sued him dozens of times.

[Laughter.]

Mr. ROMERO. But, for the record, he is a man of enormous credibility. He is probably the man in the Justice Department both under the Bush and the Obama teams in whom I have the greatest personal regard and respect sine qua non. And with all that, I would encourage you to encourage him to take a much more active position on these threat assessments, which I fear are only the tip of the iceberg. The Attorney General guidelines allow now them to begin investigations on anyone they choose so long as they can claim they are doing it to gain information on criminal activities, national security, or foreign intelligence. And the amount of reporting on those threat assessments is rather limited, as we all know. Asking those tough questions, how many of these threat assessments have been opened, how many of them are going, they allow them to collect unlimited physical surveillance, we encourage the Attorney General to retire the use of these threat assessments. But at least at the very first step, you can ask the FBI to do more vigorous reporting to you, even if it is in camera.

Retraining is essential because, remember, all the folks who got that lovely little chart showing how the Arab mind is a cluster mind, and I am quoting verbatim, "is a clustered thinker, while the Western mind tends to be a linear thinker," they were trained on

this. So until we retrain them and tell them that that is not the case, was never the case, they are going to continue to do those activities.

And so I think retraining is essential, and probing into the assessments and how those assessments have been used, particularly in the Muslim context, I think would be a place of important focus.

Senator FRANKEN. Thank you, Mr. Romero. And thank you, Mr. Chairman. I noticed you are back, so I will—you already took the gavel, didn't you?

[Laughter.]

Senator FRANKEN. Thank you all.

Chairman DURBIN [presiding]. Senator Coons.

Senator COONS. Thank you, Chairman Durbin. Thank you for calling this hearing and for your long and passionate and vigilant advocacy for civil rights and for your real leadership in this area, for this legislation and for this hearing.

In my own role prior to becoming a Senator as a county executive, I worked hard in supervision of about a 380-sworn-officer department to ensure that we had effective and strong outreach, not just to traditionally subject to harassment or questioning, communities like the African American or Latino communities, but also post-9/11 making sure there was better training and outreach and relationships with our Muslim community, given some incidents that occurred with our LGBT community, and just making sure that we stayed as a policing organization engaged and accountable.

I just wanted to start, Officer Gale and Chief Davis, but thanking you for your leadership in the policing community and for your service to the public. I would appreciate your starting by just helping me understand what is the impact on a police force that practices racial profiling, where it is either part of policy or training, part of history, or part of current practice. What is the impact on professionalism, promotion advancement, and cooperation with communities? That has been touched on, but as you have noticed, because of votes a number of us have had to step in and out, and I would be interested in your response to that.

Chief DAVIS. Thank you, Senator. I think it is multiple parts, if I may. Inside the organization, which we did not talk about, an agency that does engage in systemic racial profiling usually has very low morale because now you have officers inside the organization that are opposed to it, those that are engaging in it, and it causes a conflict within itself.

Within a community I would also probably argue that the community is suffering because now you have a practice in which they are losing touch with their community, which makes them very ineffective, and, quite frankly, in today's society it makes them much more expensive because now you have the cost of crime going up, you have the cost of litigation because people are now seeking some type of redress through the court system, and you have low morale issues, which means you have increases in sick leave and workers' comp claims. So it is a very expensive venture when you engage in systemic racial profiling. And, most importantly, you have a community that is denied some of their basic rights. So as you know as a county executive, you cannot serve the community effectively if they do not trust you.

So there is some historic trust. There is always going to be some challenges and strains. But to the extent that there is a legitimate outreach, to the extent which we are trying to—and I agree with Captain Gale—listen and respond and respect, I think we have a better chance of being successful.

So the issue of racial profiling, although we are talking about race, from a chief's perspective, from an executive's perspective, is poor managerial practice. It results in loss of revenues, support, causes internal strife. It just is not an effective strategy.

Senator COONS. Thank you.

Captain Gale, would you agree? Is this bad policing? Does it have consequences internally?

Mr. GALE. Absolutely. I mean, the consequences of bad management in any agency result in these perceptions in the community that the police are not responsive and that they are victimizing citizens and that they are somehow or another a rogue force. That is where it all derives from. It all derives from the management philosophy of the organization. And the chief is right. It does result in low morale.

But it also results in low morale not just because you are going to have people in the agency that would disagree with the practice or the fact that there is no appropriate accountability for officers who are clearly operating outside the code of professional conduct. It has low morale when the community that we serve then becomes, you know, complaining about us being unprofessional or about the reputation of the agency being, you know, that of a victimizer as opposed to a protector. And the chief is absolutely right. It starts with the management. It starts with the very top person and the top-level people allowing these things to occur in individuals that they won't hold accountable.

As a captain in my agency, I believe it is my charge to hold people accountable when they conduct themselves unprofessionally, and I do so. You know, I think some people have said here that, well, you know, there seems to be some kind of great thing going on in Denver or what have you. I am just going to tell you—and I love my city, and it is a great city, and please feel free to visit anytime.

[Laughter.]

Mr. GALE. But I am just going to tell you, we hold people accountable in my agency. We hold them accountable, and that is expected. You know, we do not have to have specific rules that say you cannot do this, because we all know what bad behavior is when we see it. And if you challenge people and you hold them accountable, then there will not be a problem. But the end result is that officers will just shut down and not conduct any type of police work, and then the city does not get protected.

Chief DAVIS. Senator, if I may add one point, there is a phrase we have, especially for chiefs, and it talks about a moment of pause. And what happens is when an agency does not have the type of trust and confidence that we are alluding to, that we are discussing, in many cases you have racial powder kegs that are sitting there. And if you look at our history, there has usually been some type of incident. And it gets confusing because quite often the incident may not be—it may be a legal incident. It may be some-

thing that really by itself would not make sense to call such a response. But it reflects years of abuse and neglect; it reflects the kind of—I think one of the Congresspersons said earlier, "Enough is enough." And so when agencies are blind to this or systematically engaging in it, they are sitting on these powder kegs that an incident like a Trayvon Martin or an Oscar Grant in Oakland can ignite. And then that is when we see large demonstrations and you start having race riots, because it is not the incident by itself as much as it the buildup to that incident, the lack of acknowledgment of where we were before.

Senator COONS. And, Chief, if I have heard all the members of the panel right who have said that racial profiling is bad policy, it is not just those powder keg moments; it is also the simmering distrust, the disconnect from the community you seek to protect and to serve that can also have a negative impact on your effectiveness, on your ability to effectively police. That is something we have heard across the whole panel.

I wanted to move, if I could, Professor Harris, to a question about standards. If you look at the reasonable suspicion standard that controls the ability of law enforcement to stop and question an individual as opposed to probable cause, which covers the rest, profiling appears to me just at first blush to be a much larger problem potentially in the area of reasonable suspicion. How have you seen that play out? What do you think is important in fighting that standard? And then I am going to want to move to this bill and why it might be necessary. Professor?

Professor HARRIS. Thank you for the question, Senator. You are absolutely right. You put your finger on something very important. The reasonable suspicion standard arises in *Terry v. Ohio*, the case that allows police officers to use stop-and-frisk when there is reasonable fact-based suspicion. The problem is and where this can intertwine with profiling is that reasonable suspicion is a very low legal standard. It is lower than probable cause. When I am in class, I like to say probable cause is somewhere near my waist, reasonable suspicion is below my knees.

And you have a standard where you can use very little evidence to take significant police action, and where we see this showing up in the context of profiling, to give you one example, is in the stop-and-frisk activity in New York City over many years, and it is a good example because there is a very significant amount of data on this. We often find that even though the standard is reasonable suspicion, there is hardly anything recorded and sometimes nothing at all recorded reflecting reasonable suspicion or the idea is simply thought of as boilerplate. So with that low a standard, profiling and other ineffective approaches to law enforcement run rampant, and we have the kind of statistics that Mr. Romero cited just a minute ago.

Senator COONS. Thank you.

Mr. Romero, if I might, if racial profiling can be a violation of civil rights, as I believe it is under a whole line of cases—*Martinez*, *Forte*, *Brignoni-Ponce*, *Montero*, *Camargo*—these are not cases I am familiar with personally, but that is the line of analysis, I think, by the Supreme Court that has laid this out. Why do we not see more enforcement actions for racial profiling by the Department of

Justice? And if you would just followup on Professor Harris' comment, how do we, in the gap between the formal policies, create police entities that, as Captain Gale describes it, are accountable, are professional, and where at all levels are engaged in moving us forward toward a more just and effective policing community?

Mr. ROMERO. Thank you for the question, Senator Coons. When you look at the testimony we submitted, you will see that we detail a number of the seminal racial profiling cases, in fact, some of them brought by David Harris. What might be instructive for why this piece of legislation is essential is to track when the incident occurred and when the case was decided, because you will note that in many instances—and the one I am looking at now—you are looking at a span of several years of time between when you will get pulled over by a police officer on a highway in the case of Robert Wilkins and ultimately when that case was decided by a court. And for many minority group members, especially those in our communities and families who lack resources to hire private attorneys, it is not simple or economic to retain private counsel, even when you have been wronged. We turn away many, many cases and individuals who write to us every day simply because we lack the resources to take on every single case. We take on cases where we think we have an ability to have a high impact and change systemically at the highest levels.

The number of heart-breaking letters I send back saying, "I understand you were profiled by the police, but we have them under a consent decree and so we will throw your fact scenario into the consent decree," does not really give the individual who has often been aggrieved, even if they are willing to step forward, much comfort.

I think that is really what is at stake here. I think the burden on hundreds of thousands of New Yorkers, let us say the 400,000-plus that I cited that have been wrongfully stopped by the police, the idea that you would ask 400,000 New Yorkers who were innocent and yet stopped by the police to file all individual lawsuits, I cannot believe that any Member of this chamber would believe that would be an efficient use of our resources. This is one of the times when by the Senate taking action and putting in place a legal regime and being able to stop the type of rush to the courthouse steps you do both the economy and our civil liberties a service.

Chief DAVIS. Senator, if I may, the one area going to the question you had about the lawsuits or why people cannot file the complaint is in many cases I think the bigger challenge is that it may actually follow a legal stop. This is why the legislation is critical, why data collection is critical. I think when you think of profiling, people sometimes, unfortunately, think that the stop itself may not have legal cause. So we have a phrase in policing, "Give me a car, 2 minutes, and a vehicle code, and I will find a reason to stop you." And so the stop may be justified—cracked windshield, bald tires—you know, you will see those low discretionary stops being used quite often to get to, as the *Whren* decision talked about, a pretext for other things.

So where it makes it hard on an individual basis is a person is complaining about being stopped, but, in fact, they did have a cracked tail light, and it makes it hard for that individual case,

which then what you do is track holistically to see that that is the 10,000th cracked windshield and 90 percent of them may be all of one group of color.

Senator COONS. I see that I am well past my time, and I appreciate the concerns that have been raised by this conversation in this hearing today about the definition of racial profiling, about the importance of being narrowly targeted in a legislative response, but I am grateful, Chairman Durbin, for your crafting a bill that insists on training, on data collection, and on a narrowly crafted response to a significant problem. Thank you very much.

Chairman DURBIN. Thanks, Senator Coons. And following up on your question, I think one of the obstacles—and Mr. Romero probably can back this up—is that when you are dealing with the question of whether or not race or ethnicity or profiling was the sole cause for the stop, you run into a real obstacle. Our staff did a little research on this, and it turns out this is not the first time that Congress has talked about this. Arguing that discrimination should only be prohibited if it is based solely on race and ethnicity has an unfortunate congressional lineage. Segregation has attempted to gut the Civil Rights Act of 1964 by offering an amendment that would have limited the Act's reach to discrimination based solely on race.

Senator Clifford Case of New Jersey argued in opposition. He said, "This amendment would place upon persons attempting to prove a violation of this section, no matter how clear the violation was, an obstacle so great as to make the title completely worthless."

And Senator Warren Magnuson of Washington said limiting the Civil Rights Act to discrimination based solely on race would "negate the entire purpose of what we are trying to do."

So the courts have set a standard which makes it extremely difficult, and, Chief Davis, your examples—and it might be a cracked tail light was the reason they are being pulled over. What we found in Illinois, incidentally, to go to my own State, consent searches by the Illinois State Police between 2004 and 2010, Hispanic motorists in my State were 2 to 4 times more likely to be searched, African American motorists 2 to 3 times more likely to be subject to consent searches than white motorists. However, white motorists were 89 percent more likely than Hispanic motorists and 26 percent more like than African American motorists to have contraband in their vehicles. So it made no sense from a law enforcement viewpoint to do this, and yet it is done.

I thank you for this hearing, and I am sorry it took 10 years to get back together, and I am sorry that we need to get back together. But to put it in historic perspective, if you go back to our Nation's very beginning, our Founding Fathers started wrestling with issues of race and gender and religion, and this year's Presidential campaign wrestles with issues of race and gender and religion. It is an ongoing debate in this Nation. There have been moments of great leadership, and there have been moments of ignominious conduct.

As far as accountability is concerned, yes, this would hold law enforcement accountable. But I hope we hold every person in our Government accountable, including Members of Congress. And let

me concede I came to this job saying—remembering what Bill Clinton once said when he was being interviewed before he became President: "Is there any issue you will not compromise on?" He said, "I will never compromise on race." He said that as a man who grew up in Arkansas and saw segregation. I thought, "That is a good standard, Durbin. You saw it, too, in your hometown. Hold to that standard."

And I look back and remember in my time in the House of Representatives voting for a measure that turned out to have a dramatically negative racial impact: the establishment of the crack cocaine standard in sentencing of 100:1. Years later, I was given an opportunity on this Committee to try to make that right and bring it back to 1:1. I could not get the job done. Because of the nature of compromise, it has been reduced to 18:1—still a terrible disparity, but a dramatic improvement.

What happened as a result of that bad vote by black and white Congressmen? We lost trust in the African American community. Many people serving on juries said, "I am not going to do this. I am just not going to send that woman, that person, away for 10 or 20 years because of a crack cocaine violation." We lost their trust, Office Gale, and I could see it when the judges came and talked to us about it. We have moved back to try to establish some trust in that community by doing the right thing, but we need to be held accountable, this Senator and all of us. Whether we are in elected or appointed office in our Government, we serve. We serve the public. And that accountability has to be part of that service.

This is not going to resolve the issue. I think it is, as I mentioned earlier, more complicated today because of concealed-carry and some of the standards being established in States, more complicated today, as Mr. Clegg has said, because the war on terror raises legitimate concerns about the safety of our Nation and how far will we go to respect our national security without violating our basic values under the Constitution.

I thank you all for your testimony. It has been a very positive part of this conversation, which we need to engage in even further. There is a lot of interest in today's hearings: 225 organizations submitted testimony. Thank goodness they did not come here to speak, but we are glad to have their testimony, and we will put it in the record, without objection. It will include the Episcopal Church, the Illinois Association Chiefs of Police, the Illinois Coalition for Immigrant and Refugee Rights, the Japanese American Citizens League, the Leadership Conference for Civil and Human Rights, Muslim Advocates, NAACP, National Council of La Raza, National Integration Forum, the Rights Working Group, the Sikh Coalition, the South Asian Americans Leading Together, and the Southern Poverty Law Center. These statements will be made of the record, which will be kept open for a week for additional statements.

[The information appears as a submission for the record.]

Chairman DURBIN. It is possible someone will send you a written question. It does not happen very often, but if they do, I hope you will respond in a timely way.

Without further comment, I thank all of my witnesses for their patience and for attending this hearing, and I look forward to working with all of you.

[Whereupon, at 12:20 p.m., the Subcommittee was adjourned.]
[Additional material submitted for the record follows.]

APPENDIX

Additional Material Submitted for the Record

UPDATED Witness List

Hearing before the
Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights

On

"Ending Racial Profiling in America"

Tuesday, April 17, 2012
Dirksen Senate Office Building, Room 226
10:00 a.m.

Panel 1

The Honorable Benjamin Cardin
United States Senator
State of Maryland

The Honorable John Conyers, Jr.
United States Representative
State of Michigan

The Honorable Luis V. Gutierrez
United States Representative
State of Illinois

The Honorable Keith Ellison
United States Representative
State of Minnesota

The Honorable Judy Chu
United States Representative
State of California

The Honorable Frederica Wilson
United States Representative
State of Florida

Panel II

Ronald Davis
Chief of Police
City of East Palo Alto
East Palo Alto, CA

Anthony Romero
Executive Director
American Civil Liberties Union
New York, NY

Frank Gale
National Second Vice President
Fraternal Order of Police
Denver, CO

Roger Clegg
President and General Counsel
Center for Equal Opportunity
Falls Church, VA

David Harris
Professor of Law and Associate Dean for Research
University of Pittsburgh School of Law
Pittsburgh, PA

PREPARED STATEMENT OF SENATOR BENJAMIN CARDIN

TESTIMONY OF SENATOR BENJAMIN L. CARDIN

HEARING: "ENDING RACIAL PROFILING IN AMERICA"

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS & HUMAN RIGHTS

SENATE JUDICIARY COMMITTE

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.

PREPARED STATEMENT OF REPRESENTATIVE JUDY CHU

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.

PREPARED STATEMENT OF ROGER CLEGG

TESTIMONY OF

ROGER CLEGG,

PRESIDENT AND GENERAL COUNSEL,

CENTER FOR EQUAL OPPORTUNITY

BEFORE THE

SENATE JUDICIARY COMMITTEE'S

SUBCOMMITTEE ON THE

CONSTITUTION, CIVIL RIGHTS, AND HUMAN RIGHTS

REGARDING

"ENDING RACIAL PROFILING IN AMERICA"

April 17, 2012
226 Dirksen Senate Office Building

Introduction

Thank you, Mr. Chairman, for the opportunity to testify this morning before the Subcommittee.

My name is Roger Clegg, and I am president and general counsel of the Center for Equal Opportunity, a nonprofit research and educational organization that is based in Falls Church, Virginia. Our chairman is Linda Chavez, and our focus is on public policy issues that involve race and ethnicity, such as civil rights, bilingual education, and immigration and assimilation. I should also note that I was a deputy in the U.S. Department of Justice's Civil Rights Division for four years, from 1987 to 1991.

In my testimony today, I want to make these points: (1) care must be taken in defining the term "racial profiling"; (2) the amount of racial profiling that occurs is frequently exaggerated, and care must be taken in analyzing the data in this area; (3) with those caveats, racial profiling as I will define it is a bad policy and I oppose it, with (4) a possible exception in some antiterrorism contexts; but (5) there are problems with trying to legislate in this area in general, and the End Racial Profiling Act in particular is problematic.

Defining "Racial Profiling"

Racial profiling occurs when race is used as a criterion in deciding whom to investigate, unless there is evidence that a particular crime was committed by someone of a particular race.

So, for example, it is not racial profiling if the police focus their efforts in high-crime areas, even if the residents of those areas are disproportionately one color or another. It is not racial profiling if the police respond to citizen complaints, say, about drug sales in a neighborhood, even if those neighborhoods turn out, again, to be disproportionately one color or another.

Also, it is not racial profiling if the victim of a mugging has described the assailant as someone who is six-feet tall, weighs 200 pounds, has a beard, was wearing a red windbreaker, and is a middle-aged white male – and so the police consider all those characteristics, including race, in questioning people.

Rather, a classic instance of racial profiling would occur if the police decided to pull over cars just exceeding the speed limit on I-95 if but only if they were late-model cars driven by a male driver with one or two passengers, and only if the driver was black, because the police thought that such cars were more likely to be involved in drug trafficking.

Note, by the way, that the fact that characteristics besides race are considered – whether the car was speeding, was relatively new, and had one or two passengers – does not mean that racial profiling has not occurred. So long as race is *a* factor, it is not necessary that it be the *only* factor.

In this regard, let me note that the Center for Equal Opportunity's position is consistent when race is considered in university admissions. The fact that race is not the *only* factor considered does not mean that discrimination has not occurred, so long as it is *a* factor. I won't belabor the point today, but it is remarkable that frequently the same organizations and the same people who are outraged about racial profiling when it is done by the police are perfectly happy with it when it is done by university admission officials.

How Frequently Does Racial Profiling Occur?

Care must be taken in analyzing data in order to determine if racial profiling has occurred. There can obviously be a problem here if racial profiling is not defined rigorously in the first place, as I have already discussed. But there can be problems even if it is.

For example, suppose that 80 percent of the cars driven along a particular route that are *stopped* by the police are driven by men, but that only 50 percent of all the cars *driven* along the route are driven by men. Is this evidence that men are being singled out by the police for stops? Not if men are much more likely to exceed the speed limit than women are. By the same token, if some members of some groups are more likely than members of some other groups to attract the attention of the police for nonracial reasons (like speeding), the fact that there are racial disproportions in police stops may not be persuasive evidence – let alone proof – that discrimination has occurred. And, of course, if some groups in the aggregate commit crimes at statistically higher rates than other groups, then we would of course expect racial disproportions in investigations, arrests, and convictions, too. Again, if most street crime is committed by men, then of course a disproportionate number of investigations, arrests, and convictions will involve men. And it cannot be seriously argued that all racial and ethnic groups at all times will commit all types of crimes at the same rates.

I am not going to argue that racial profiling never occurs. With all the law-enforcement officials in this country, it would be astonishing if some of them – and of all colors, by the way – did not sometimes consider race or ethnicity consciously or unconsciously in deciding whom to investigate.

But I will say that the amount of racial profiling that takes place has frequently been exaggerated. In this regard, I would refer the committee in particular to the work of Heather Mac Donald of the Manhattan Institute in this area. [Links and cites: http://www.nytimes.com/2010/06/26/opinion/26macdonald.html ; http://www.city-journal.org/2008/18_2_criminal_justice_system.html ;"Race Wars," *The Weekly Standard*, Feb. 4, 2002, at 6-7; http://www.manhattan-institute.org/html/_national_rev-reporting.htm ; http://www.city-journal.org/html/11_2_the_myth.html ; http://www.manhattan-institute.org/html/miarticle.htm?id=4617 ; http://www.city-journal.org/html/eon_3_29_02hm.html ; see also

http://staging.weeklystandard.com/Content/Public/Articles/000/000/001/068xarof.asp ; cf. http://digitalcommons.uconn.edu/cgi/viewcontent.cgi?article=1208&context=econ_wpapers]

Racial Profiling Is Bad Policy in Traditional Law-Enforcement Contexts

To the extent that racial profiling *does* occur in traditional law-enforcement contexts, however, it is a bad policy and I oppose it.

Some would argue that racial profiling is perfectly rational and ought therefore to be unobjectionable. The argument is that a disproportionate amount of street crime is committed by people who are young, and male, and black, and if you are all three then it makes perfect sense for the police to keep an especially keen eye on you, and pull you over more often, question you more carefully, and press you more aggressively to allow a search of your car. That is, it makes perfect sense if all the police are trying to do is maximize in the short term the number of their successful searches and arrests.

But that is not the police's overarching mission. They have to think of the long-term, too, and successful policing requires the cooperation of the rest of the community. If racially biased policing is an established policy, then that cooperation will be jeopardized.

Moreover, the order which the police are charged with maintaining includes not just the prevention of crime but the racially unbiased treatment of law-abiding citizens. It is simply un-American for the government to be treating some Americans differently from other Americans because of skin color or what country their ancestors came from.

I've already drawn an analogy between racial profiling by the police and racial profiling by university admission officials. Here's another analogy: Suppose that a city agency is interested in hiring only people with a high-school diploma, and in that city the overwhelming majority of whites have a diploma and the overwhelming majority of Hispanics don't. Rather than have to go to the trouble of checking out the records of each applicant, it may be much more cost-efficient simply to hire all whites and no Hispanics. But most of us would insist that each applicant be assessed individually. (Clearly, that is what the law requires.) Cost-efficient hiring is important to the city, but not so important as to justify racial discrimination.

In sum, I think that racial profiling is inconsistent with the principle of *E pluribus unum* – that we are all Americans and none of us ought to be treated differently on the basis of skin color or national origin.

The Possible Exception in the Terrorism Context

On the other hand, if in a particular case racial profiling might save the lives of thousands of people, it should be permitted. If, for example, considering someone's national origin would make it more likely that law-enforcement officials could thwart a terrorist plot to detonate a bomb in a U.S. city, I would not oppose it.

But, having said that, let me note that I am not sure if this is generally the case in the war on terror, and I am also not sure that it would necessarily be racial profiling.

Let me explain the second point first. Earlier I made the point that, if you are mugged by a six-foot, 200-pound, middle-aged white male wearing a red windbreaker, it is not "racial profiling" for the police to be on the lookout for people who meet that description, even though one element in it is racial. The classic case of racial profiling is, instead, when the police decide to stop cars being driven by young black males, not because they have the description of a specific suspect, but because they know that statistically drugs are more likely to be smuggled by young black males than, say, old Asian females.

But there are other circumstances that fall in between these two extremes. Suppose, for instance, that you are looking for members of a particular, Berlin-based drug cartel, who are engaged in particular acts of smuggling, and you know that they will all be German nationals, but you don't have specific names or descriptions that go beyond that. Is it "racial profiling" for the police to give shorter shrift in their investigation to people who are less likely to be Germans – to, say, Asians and African Americans?

Enough hypotheticals. Suppose that you have already identified several members of a terrorist ring and want to find the rest. The ones you have identified so far meet a particular profile: Middle Eastern ties. Muslim. Several are trained pilots. Male. Young or middle-aged. Booked on transcontinental flights. What's more, the ring is avowedly Islamist and anti-Israeli. Any problem with assuming that there is a good chance that the remaining members of the ring are likely to meet this profile, too?

This is a lot closer to the "specific description" extreme of the spectrum than the "statistically speaking" end of the spectrum. Which means that this really isn't properly characterized as racial profiling at all. This doesn't mean you ignore everyone who doesn't meet the profile or shoot to kill anyone with black hair. But you look harder at those who fit the description.

And the other response is, so what if it *is* racial profiling? No one believes that the government should never, under any circumstances, consider race in its actions.

Suppose, for example, that on 9/11 the FBI had received information that a terrorist on a jetliner that had been grounded had, as an alternative plan, loaded a private plane with explosives that he now intended to crash into a skyscraper. As the FBI frantically looked over the passenger lists of the grounded planes – with limited time and resources – would anyone argue that it ought to be forbidden from focusing first on those individuals with Arabic names? More broadly, it is hard for me to believe that, if we are fighting an enemy with a particular religious/geopolitical agenda, that it won't make sense to be on the lookout for people who share those religious/geopolitical ties. [See also http://www.theatlantic.com/past/politics/nj/taylor2002-03-19.htm]

As the Supreme Court has said, the Constitution is not a suicide pact. *Kennedy v. Mendoze-Martinez*, 372 U.S. 144 (1963); *Haig v. Agee*, 453 U.S. 280 (1981). And thus one would not expect it to bar the government from doing what is necessary to defend the ordered liberty of our

society. Racial classifications are allowed if they are "narrowly tailored" to a "compelling governmental interest," according to the Supreme Court's case law. If stopping terrorism is not a compelling interest, then nothing is.

Note that the distinctions I am drawing here are reflected in the U.S. Justice Department's "Guidance Regarding the Use of Race by Federal Law Enforcement Agencies" [link: http://www.justice.gov/crt/about/spl/documents/guidance_on_race.pdf].

Let me stress, however, that even if ethnicity is used in this context, it ought to be used as sparingly as possible, for two reasons. First, it can be lazy and inefficient to use ethnicity as a proxy for behavior, as Professor Nelson Lund as argued in opposing my defense of the Justice Department's guidance. [link: http://www.fed-soc.org/doclib/20080221_CivRightsLund.pdf ; see also http://mason.gmu.edu/~nlund/Pubs/AlbanyRaciaProfiling.pdf ; cf. http://www.law.com/jsp/ca/PubArticleCA.jsp?id=900005394298&slreturn=1] This problem is exacerbated by the fact that terrorists can always recruit members of nonprofiled groups. [Link: http://www.nationalreview.com/phi-beta-cons/44770/terrorists-harder-profile And, second, the high costs of profiling that I discussed before – the abridgment of the principle of *E pluribus unum* and the risk of alienating the law-abiding people whose cooperation is essential in the war on terror – remain. If racial profiling can be avoided, if there are better ways to identify potential terrorists, then that is the better course.

If it's an easy and more fool-proof procedure to send everyone through the metal detector rather than to pick and choose whom to send through, then send everyone through. That's a small price to pay to avoid government use of racial classifications. Conversely, if closer searches are required for some and ethnicity is one element in that decision, then *that* is a small price to be paid to minimize the risk of getting blown up, and the people being searched should show some patience. It's *their* safety that is being ensured, too, after all.

Problems with Legislating in This Area

While I am no fan of racial profiling, I am skeptical about whether it makes sense for a legislature to try to codify appropriate behavior in this area. As I hope my testimony so far has shown, there are a lot of nuances here that are difficult to write into a one-size-fits-all law that is supposed to apply permanently to all law-enforcement agencies at every level of all governments. For example, it would be hard to articulate where the line is to be drawn between ordinary criminal activity and the extraordinary threats posed by extremist groups, and there is also a gray area in situations where not every individual in a criminal enterprise has been racially identified but the enterprise itself nonetheless has a racial (or ethnic or religious) identity of sorts. I'm also skeptical about the courts playing an efficacious role in this area (the End Racial Profiling Act is designed to encourage litigation, by providing for attorney and expert fees and making it easy to make out a prima facie case).

This is not to say that this is a matter where there is no role for anyone except the police themselves. I think that oversight hearings – with accompanying political and community

pressure – can make sense if done responsibly, as well as of course self-policing and, in extreme cases, investigations by the U.S. Department of Justice's civil rights division.

I hasten to add that all of this ought to be done with a lot of sympathy and support for the tough and dangerous job that the police have to do, and with recognition of the fact that racial disparities do not equal racial discrimination. If the police are hamstrung, those who will be hurt the most will be law-abiding people in high-crime areas – people who are themselves likely to be poor and African American.

And, finally, while I am no fan of racial profiling, I am also no fan of the "disparate impact" approach to civil-rights enforcement and therefore no fan of this part of the End Racial Profiling Act in particular. [Link: http://www.aei.org/files/2001/12/01/Briefly-Disparate-Impact.pdf]

It is critically important that legitimate, nondiscriminatory police strategies that nonetheless have a disproportionate impact on one group or another not be discouraged. Alas, this bill does that in two ways. First, it mandates data collection by beat cops, which would inevitably pressure them to stop (or not stop) people in such a way that they "get their numbers right." [Links: http://old.nationalreview.com/dunphy/dunphy122101.shtml Second, it explicitly declares that "a disparate impact on racial, ethnic, or religious minorities shall constitute prima facie evidence of a violation of this title." Note also that this provision, ironically, makes the bill itself of dubious constitutionality, since it explicitly accepts law-enforcement activities that have a disparate impact on some racial, ethnic, and religious groups, but not those that have a disparate impact on others. The End Racial Profiling Act, in other words, literally denies the equal protection of the laws and uses racial profiling.

Conclusion

Thank you again for the opportunity to testify today. I would be happy to try to answer any questions that the committee might have.

Appendix

Here are links and cites to some of what I've written in this area:

http://www.fed-soc.org/publications/detail/racial-profiling-equal-protection-and-the-war-against-terrorism (Federalist Society paper)

http://www.nationalreview.com/clegg/clegg111502.asp ("Profiling vs. profiling vs. profiling")

http://old.nationalreview.com/contributors/clegg020801.shtml ("No to profiling")

http://old.nationalreview.com/clegg/clegg061002.asp ("Fingerprints and profiles")

http://old.nationalreview.com/contributors/cleggprint091801.html ("Profiling terrorists")

http://old.nationalreview.com/contributors/cleggprint090601.html ("Two bad bills")

http://www.nationalreview.com/articles/207259/perfect-profile/roger-clegg ("Perfect profile")

http://www.nationalreview.com/contributors/clegg101001.shtml ("E pluribus unum")

"Race and Crime," *Legal Times*, July 17, 2000, at 62.

"Profiling by Any Other Name," *Legal Times*, June 28, 1999, at 15.

"Conservatives against racial profiling," *Washington Times*, March 22, 2001, at A18.

PREPARED STATEMENT OF CHIEF RONALD L. DAVIS

Statement of Mr. Ronald L. Davis
Chief of Police
City of East Palo Alto, California

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

Introduction

Good Morning Mr. Chairman and distinguished Subcommittee members. I am Ronald Davis, Chief of Police, for the City of East Palo Alto, California. I am both honored and humbled to provide testimony at today's hearing on "Ending Racial Profiling in America." I also had the honor of testifying at the last Senate hearings on racial profiling in 2001. When asked to come before this Subcommittee today, the first thought that came to mind was actually a question: what has changed since 2001 when then-President George W. Bush stated, "Racial profiling is wrong and we will end it in America"? My testimony today, which I hope will provide some answers to this question, is based on three diverse perspectives: 1) as a nationally recognized racial profiling and police-reform expert; 2) as a police executive with over 27 years experience working in two of the greatest and most diverse communities in the nation – the cities of Oakland and East Palo Alto; and 3) as a Black man and father.

First, from my perspective as a racial profiling expert, I think it is fair to say that law enforcement has made some progress, albeit limited, in addressing racial profiling and bias-based policing. Over the past ten years, the United States Department of Justice, Civil Rights Division, through its "pattern and practice" investigations, has worked with law enforcement agencies nationwide to provide guidance on racial profiling policies and promote industry best-practices such as stop-data collection, training, use of force, and other critical aspects of police operations that impact fair and constitutional policing. Recent efforts by the COPS Office and the National Network for Safe Communities to promote racial reconciliation between the police and communities of color have led to improved police and community relations and achieved dramatic crime and violence reductions in these communities. Today, there are very few police agencies in the United States that do not have some type of policy prohibiting racial profiling and bias-based policing.

This progress, however, is seriously undermined by two focal facts. First, there exists no national, standardized definition for racial profiling that prohibits all uses of race, national origin, and religion, except when describing a person. Consequently, many state and local policies define racial profiling as using race as the "sole" basis for a stop or any police action.

This definition is misleading in that it suggests using race as a factor for anything other than a description is justified, which it is not. Simply put, race is a descriptor not a predictor.

To use race along with other salient descriptors when describing someone who just committed a crime is appropriate. However, when we deem a person to be suspicious or attach criminality to a person because of the color of his or her skin, the neighborhood they are walking in, or the clothing they are wearing, we are attempting to predict criminality. The problem with such predictions is that we are seldom right in our results and always wrong in our approach. The same holds true within the immigration context. Because a person "looks" Latino or Mexican does not mean that person is undocumented nor should it result in that person being detained and asked for his or her "papers." Yet, according to recent laws in Alabama and Arizona, the police are not just encouraged to make these types of discriminatory stops; they are expected to do so. Most police chiefs will agree that engaging in these activities are counter to positive community relations and will ultimately make our communities less safe. That is one reason why I joined the Major Cities Chiefs of Police Association, the Police Executive Research Forum, the National Latino Peace Officers Association, and 17 current and former chief law enforcement officers in filing a brief challenging the constitutionality of SB 1070, the Arizona immigration law.

In order to truly curtail the destructive practice of racial profiling, we need passage of the "End Racial Profiling Act of 2011." This legislation puts forth a standard definition for racial profiling, requires evidence-based training to curtail the practice, and provides support in developing scientific-based data collection and analysis practices. We also need the U.S. Department of Justice to revise its "Guidance Regarding the Use of Race by Federal Law Enforcement Agencies" to close several loopholes that could permit unlawful and ineffective profiling. Specifically, the Guidance's prohibition on profiling for "traditional law enforcement activities" does not apply to profiling on the basis of national origin and religion and it does not apply to national security and border security investigations. It makes no sense to exclude religion and national origin from the prohibition on profiling or to treat anti-terrorism and immigration enforcement differently from other law-enforcement efforts.

Without this legislation and revisions to the Justice Department's racial profiling guidance, I fear the challenges associated with racial profiling cannot be effectively addressed, as evidenced by our limited progress over the past ten years.

For example, in 2001, I authored a report: "*A NOBLE Perspective: Racial Profiling – A Symptom for Bias-Based Policing*" on behalf of the National Organization of Black Law Enforcement Executives (NOBLE). This report, which I have provided to the Subcommittee, describes the issues surrounding racial profiling and bias-based policing and provides recommendations for effective racial profiling legislation. Although it has been over ten years since its publication, the issues outlined in the report still exists and the recommendations, such as defining racial profiling and mandating data collection and training for law enforcement agencies, remain relevant and applicable today. In many ways, this report serves as prima facie evidence of just how little has changed since 2001 and underscores the need for legislation.

I also fear that without this legislation and updated Department of Justice guidance we will continue business as usual and only respond to this issue when it surfaces through high-profile tragedies such as the Oscar Grant case in Oakland, California, and the Trayvon Martin case in Sanford, Florida. Both cases strike at the heart of our country and my thoughts and prayers are with their families and communities.

The second factor that undermines our progress is the dire need to reform the entire criminal justice system. The last top-to-bottom review of our system was conducted in 1967 through the President's Commission on Law Enforcement and Administration of Justice. Although society has changed drastically over the past 45 years, many aspects of the criminal justice system have not. We must examine the entire system through a new prism that protects against inequities such as racial profiling, disparate incarceration rates, and disparate sentencing laws. If the criminal justice system is to be accepted, it must be viewed as fair, legitimate and effective. I strongly encourage passage of the National Criminal Justice Commission Act of 2011 to achieve this goal.

According to Senator Jim Webb, the bill's author, this legislation "establishes a national criminal justice commission to bring together the best minds in America to examine our broken and frequently dysfunctional criminal justice system, and to make recommendations as to how we can make it more effective, more fair and more cost-efficient." Congress took an important first step in this direction when it passed the bipartisan Fair Sentencing Act, which reduced the sentencing disparity between crack and powder cocaine, but more must be done.

From my perspective as a police executive with over 27 years of experience, I know first-hand just how ineffective racial profiling is and how it actually serves as a barrier to enhancing public safety. As an example, East Palo Alto is a community with more than 95 percent people of color, including 60 percent Latino, approximately 30 percent African American, and a rapidly growing Asian and Pacific Islander population. Like many communities in the United States, East Palo Alto faces a scourge of gangs and violence while enduring dramatic reductions in law enforcement staffing and resources. In 2005, the city experienced the second highest murder per-capita rate in California and the fifth highest rate in the United States. Instead of responding to this violence with strategies that resulted in disparate treatment of minorities, such as racial profiling, we focused on establishing strong police and community relations; we used these relationships to implement effective problem-solving programs.

For example, in January 2006, East Palo Alto police officer Richard May was shot and killed in the line of duty by a parolee just a few months out of prison. The city responded to this tragedy by creating a parole reentry program in partnership with the California Department of Corrections and Rehabilitation (CDCR) and numerous community and faith-based organizations. This program provided rehabilitation and support services to parolees including cognitive life skills training, drug awareness and education classes, financial management, and a job preparation, training and placement program with the California Department of Transportation. The city's efforts were unique in that it was the only state-funded program operated by a local police department. For many in both the program and community the image of the police department changed from an organization that was primarily responsible for the disparate incarceration rate of young men of color to an organization now working stop these inequities. The effort was supported by the family of Officer May.

It should also be noted that during the 3 year program, the city's recidivism rate – the rate at which parolees return to prison – dropped from over 60% to less than 20%.

The overall results of the city's efforts in this program and many others designed to strengthen police and community relations are compelling: murders in 2011 dropped 47% when compared to 2005; overall crime dropped by over 20% during the same period. I am confident in saying police and community relations have dramatically improved during this same period.

As a community, we recognize that the more people of color, especially young men, are profiled and unfairly incarcerated, the more likely it is that their communities will lose trust and confidence in the criminal justice system, and the less likely those communities will partner with the police to fight crime. One of the core principles of policing attributed to Sir Robert Peel, the founder of modern-day policing, is that "the ability of the police to perform their duties is dependent upon public approval of police actions." Communities are not likely to give the police that approval—even for police actions that are legal—if they do not trust that the justice system is fair and unbiased. These very same principles apply to our efforts to fight terrorism and stem illegal immigration as well.

The notion that we, as a nation, must sacrifice civil liberties to achieve a false sense of security is not just wrong; it is unsafe and reeks of hypocrisy. If national security truly outweighed our constitutional rights, which it does not, there would be an equally loud call from the supporters of racial profiling to restrict gun ownership, especially considering well over 100,000 Americans have been killed by gun violence in this country since 2001 – a rate 10 times greater than the number of Americans killed by terrorism and the wars in Afghanistan and Iraq combined.

Are we suggesting that the 2nd Amendment of the Constitution is more important than our security, but the 4th Amendment, protecting against unlawful searches and seizures, and the 14th Amendment which ensures equal protection and due process of the law, are not? President Abraham Lincoln answered these questions when he stated: "Those who are ready to sacrifice freedom for security ultimately will lose both.

What is equally troubling and unsettling with the idea of using race, national origin or religion in the "national security" context is that it suggests the most powerful nation in the world equipped with law enforcement and national security experts second-to-none must rely on bias and sloppy guess-work to secure the nation, rather than rely on human intelligence, evidence-based strategies, science, technology, and industry expertise. I want to strongly emphasize this point: there is no reason to profile on the basis of race, religion, national origin, or ethnicity, whether it is justified as an effort to protect our communities from terrorism, illegal immigration, or violent crime. It is an ineffective tactic, it wastes scarce law-enforcement resources, and it harms our relations with communities whose cooperation we need.

Lastly, and probably most importantly, I am a Black man who is subject to increased scrutiny from my community, my profession, and my country because of the color of my skin. I am extremely proud to be a police officer and believe there is no more noble profession in our society. I have the utmost respect and admiration for my esteemed colleagues who place their lives on the line everyday in our service.

However, as a Black man with a 14-year old son, Glenn, I know that when I teach him how to drive a car I must also teach him what to do when stopped by the police – a mandatory course for young men of color. I must also prepare him for the bias he is likely to face and the reality that, despite the strength of his character or his contributions to society, there will be those who will attach criminality to him simply because of the color of his skin, and do so under the veil of national security.

As I end my testimony I want to thank you, Mr. Chairman, and this Subcommittee, for your leadership. I only ask that this Subcommittee, Congress and the Executive Branch take action to achieve the important goal of ending racial profiling as a systemic problem in America. As much as I am honored to be here today, I'd prefer if there was no need for me to testify in another ten years.

Thank you.

PREPARED STATEMENT OF REPRESENTATIVE KEITH ELLISON

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CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES

FINANCIAL SERVICES COMMITTEE
SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS
SUBCOMMITTEE ON CAPITAL MARKETS AND
GOVERNMENT SPONSORED ENTERPRISES

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,

Keith Ellison
Member of Congress

PRINTED ON RECYCLED PAPER

PREPARED STATEMENT OF FRANK GALE

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TESTIMONY

of

Frank Gale

National Second Vice President,

Grand Lodge, Fraternal Order of Police

on

"Ending Racial Profiling in America"

before the
Subcommittee on the Constitution, Civil Rights and Human Rights
Committee on the Judiciary
United States Senate

17 APRIL 2012

—BUILDING ON A PROUD TRADITION—

Good afternoon, Mr. Chairman and distinguished members of the Senate Subcommittee on the Constitution, Civil Rights and Human Rights. My name is Frank Gale, I am a twenty-three year veteran of the Denver County Sheriff's Department and currently hold the rank of Captain. I am the National Second Vice President of the Fraternal Order of Police, which is the nation's largest law enforcement labor organization, representing more than 330,000 rank-and-file law enforcement officers in every region of the country. I am here this morning to discuss our strong opposition to S. 1670, the "End Racial Profiling Act," introduced by Senator Benjamin L. Cardin of Maryland.

I want to begin by saying very clearly that racism is wrong. It is wrong to think a person a criminal because of the color of his skin. But it is equally wrong to think a person a racist because of the color of his uniform. This bill provides a "solution" to a problem that does not exist, unless one believes that the problem to be solved is that our nation's law enforcement officers are racist and that our nation's law enforcement agencies, helmed by chiefs and sheriffs, are training their officers in racists policies. I do not believe this is true and do not believe that Senator Cardin or any of the cosponsors of this bill hold this view. Nonetheless, this bill, from start to finish, provides a solution to the problem of racist police officers and, speaking for the membership of the FOP, we find the bill highly offensive. The very title of the bill presumes that unlawful racial profiling is the norm in policing and Section 101 of Title I would outlaw this practice. I ask, is there anyone in this room that honestly believes there are agencies out there training their officers or allowing their officers to engage in racial profiling as a matter of policy or procedure?

The so-called practice of "racial profiling," hyped by activists, the media and others with political agendas, is one of the greatest sources of stress between law enforcement and the minority community in our nation today. The so-called practice of "racial profiling" is, in fact, only part of the larger issue. That larger issue is a mistaken perception on the part of some that the ugliness of racism is part of the culture of law enforcement. I am here today not only to challenge this perception, but refute it entirely.

We can and must restore the bonds of trust between law enforcement and minorities; to do so requires substantial effort to find real solutions. It requires that we resist our inclination to engage in meaningless "feel good" measures that fail to address the substance of our problem. It requires that we resist using hyperbole and rhetorical excess to place blame. This legislation does both of these things and we strongly oppose it. Open and honest communication builds trust--snappy sound bites and legislative proposals with the premise that law enforcement officers are racist do not.

I do not believe that S. 1670, the "End Racial Profiling Act," will help to repair the bonds of trust and mutual respect between law enforcement and minority communities. Quite the opposite--I believe it will widen them because it was written with the presumption that racist tactics are common tools of our nation's police departments. This is wrong and is a great disservice to the brave men and women who put themselves in harm's way every day and night to keep our streets safe.

Let me explain by addressing some of the bill's specifics.

First of all, we believe the legislation unnecessarily defines and bans "racial profiling." "Racial profiling" is not a legitimate police practice employed by any law enforcement agency in the United States. The United States Supreme Court has already made it very clear that "the Constitution

prohibits selective enforcement of the law based on considerations such as race," and that "the constitutional basis for objecting to intentionally discriminatory application of the laws is the Equal Protection Clause." (*Whren v. United States*, 517 U.S. 806, 813 (1996)). Further, as one Court of Appeals has explained, "citizens are entitled to equal protection of the laws at all times. If law enforcement adopts a policy, employs a practice, or in a given situation, takes steps to initiate an investigation of a citizen based solely upon that citizen's race, without more, then a violation of the Equal Protection Clause has occurred." (*United States v. Avery*, 137 F.3d 343, 355 (6th Circuit 1997)).

The United States Constitution itself prohibits "racial profiling," making Federal legislation defining or prohibiting such activity unnecessary. I am sure that there is no one on this Subcommittee or in the United States Senate who would disagree that our Constitution prohibits the practice of "racial profiling." And yet, here we have a bill that proposes to prohibit a practice that the highest court in the land has already ruled to be unconstitutional and which specifically calls for the "elimination" of the practice at the Federal level. The very premise of the bill seems at odds with common sense.

Further, the FOP contends that the legislation's definition of "racial profiling" is far too broad. The bill prohibits the use of race "to any degree" in selecting individuals to be subject to even the most routine investigatory action, excepting only those situations in which race is used "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."

This means we might as well disband the Behavioral Science Unit within the Federal Bureau of Investigation (FBI), whose work includes conducting high-impact research and presenting a variety of cutting edge courses on topics such as Applied Criminal Psychology, Clinical Forensic Psychology, Crime Analysis, Death Investigation, and Gangs and Gang Behavior. The unit's personnel are primarily Supervisory Special Agents and experienced veteran police officers with advanced degrees in the behavioral science disciplines who focus on developing new and innovative investigative approaches and techniques to the solution of crime by studying the offender and his/her behavior and motivation. Sometimes, their profile of a suspect contains racial information, because race can and does have an impact on our psychology. In some cases, it may be the only physical description law enforcement has to go on. The profile provided by this unit in its work on the Unabomber case, for example, suggested that the suspect was a white male. Generally speaking, serial killers are much more likely to be white males than any other race or gender and investigations into serial killings generally begin with this presumption despite the fact that such a presumption is not "relevant to the locality and timeframe" of the crime.

Under this legislation, we would be unable to use information of this kind absent a "trustworthy" eyewitness or other description or evidence of a specific suspect's race or ethnicity. This bill is very specific on this point: law enforcement officers can *never* use race as a factor--even if it would help them to pursue an investigation, identify a suspect, prevent a crime or lead to an arrest. The proposed legislation would therefor ban a whole range of activities beyond the already unconstitutional, purely race-based activity. The legislation would also apply to Customs and immigration-related enforcement activities, as well as criminal law enforcement efforts.

What does this mean to the officer on the beat? That no one will be stopped, searched or questioned no matter how suspicious the activity without a specific eyewitness account? How can good policing, pro-active policing, that deters and prevents crime occur under such a severe restriction? Perhaps you will recall the wave of national criticism following the enactment of Arizona Senate Bill 1070, the Support Our Law Enforcement and Safe Neighborhoods Act. Our members in Arizona were justifiably offended with some of the assumptions made by the media, pundits, and even elected officials who insinuated or stated outright that these professional law enforcement officers will use the law as a pretext to engage in unlawful racial profiling. Honest policy differences are both healthy and expected in the public forum, but some critics are making a real habit of crossing the line. We need to stop and think about how very insulting it is to assume that law enforcement officers will engage in biased policing, as if they do not understand the concept of reasonable suspicion or probable cause. Law enforcement officers are trained in the police academy to recognize reasonable suspicion and probable cause, not to identify and harass specific racial or ethnic groups.

I also want to question this legislation's proposal to use statistical data against law enforcement officers and agencies in court. This is a terrible precedent to set. This bill assumes that "racial profiling" has occurred solely on the basis of a statistical disparity. Section 102(c) of the bill provides that demonstrating that law enforcement activities disparately impact racial or ethnic minorities constitutes *prima facie* evidence of illegal activity. The effect of this presumption is not expressly spelled out in the legislation, but it is very clear to law enforcement. The resulting litigation burden on law enforcement agencies will be dramatic--after all, once a "disparate impact" is demonstrated, it will be up to the law enforcement agency to somehow prove itself innocent of engaging in the unlawful use of race, ethnicity or religion in its procedures and practices.

I have some data that I would like to share about "disparate impacts."

Statistics show that between 1976 and 2005, blacks, who comprise 12.6% of the population according to the last census, committed 52.2% of all homicides in the United States. Black Americans committed murder at about 7.33 times the rate of whites and Hispanics combined. According to the Bureau of Justice statistics, 10,285 blacks committed murders, and the vast majority of the 52.2% of U.S. murders committed by blacks are the work of the roughly 2% of the population who are black males between the ages of 15 and 25. In addition, most violent crime is intraracial--either white-on-white or black-on-black crimes. Given this, how can we adopt a measure that would prevent its use in solving homicides if we cannot consider the race of the suspect unless there is an eyewitness description?

These are astounding and sobering statistics. They are even more alarming when examining these trends through the lens of officer safety. As you can see from the chart included in my testimony, between 1980 and 2010, 44% of the felons that murdered a law enforcement officer were black. In 2010, 58% of cop-killers were black. If we exclude females, the very young and the elderly of all racial groups, the disparity is simply staggering.

A University of South Carolina study links the motivations for murders committed by black Americans as derivative of a sense of injustice, even if the crime was not political or conscious. The risk of being the victim of a homicide is statistically higher in cities where blacks have less political

and economic power. Others have argued that homicides are merely a by-product of ordinary criminal violence and crime and violence is higher in black communities.

Yet, I have not seen any Federal legislation which would tackle the huge problem of crime and violence among black Americans. The majority of homicides in this country are perpetrated by blacks against other blacks, yet there has been no serious legislative proposal to address this issue. I am not even sure what such a bill would look like, but as a black law enforcement officer, I sure would like to see a serious approach to the epidemic levels of violence that exist in far too many of our black communities. It certainly would be better than presuming law enforcement officers are racist and forcing them to collect sociological and racial data.

Consider this: in response to demands from the black community to step up enforcement against drug dealers in minority neighborhoods the local law enforcement agency institutes aggressive motor-vehicle checks, deploys "jump out" squads and cracks down on quality-of-life and property offenses in an effort to make dealers uncomfortable in the neighborhood. I am sure that any of you could cite, in your own home States, an agency which could have employed such strategy. After all, good policing means going after criminals and patrolling areas where crimes are committed. This is good police work--not racism.

Such strategies usually result in a quick, sharp decline of the targeted criminal behavior, earning the police deserved praise from the community as a whole. But this kind of policing strategy, which was devised in response to the disproportionate victimization of minorities by minorities, could generate a lot of data showing "disproportionate" minority arrests. If this bill were adopted, any of the minority criminals arrested and prosecuted could bring legal action against the local government, the department or the arresting officer. The criminal would be able to point to the "disparate impact" on the minority community and have evidence--*prima facie* evidence, mind you--in support of any action brought pursuant to Title 1 of S. 1670.

To use statistical data without an adequately sophisticated benchmark for analysis is bad policy. The law should not consider individual enforcement incidents or specifically targeted enforcement programs as racially motivated by using flawed data and reckless analyses establishing a "disparity."

I also want to say a word about the police practice of criminal profiling. This is a legitimate and effective law enforcement tool which I believe is being unfairly maligned in the media and here on Capitol Hill because it is now associated with race. Race can be a factor in a criminal profile, but it is never the only factor, nor is it the most significant factor. It is simply one of many.

No one ought to be stopped solely on the basis of their race; this practice is wrong and does not serve the law enforcement mission. But to contend that the successful practice of profiling--*which does **not** consider race exclusively*--be abandoned when it has proved to be a successful tool to prevent crime and catch criminals is not the answer. If this practice is misused or misunderstood, then it must be corrected. To be very, very clear: Racism is ***never*** a legitimate law enforcement tool.

When any employer is considering applicants, they have an idea of not only the skills and abilities that the job requires, but also what kind of person would make the best fit--a "profile," if you will. Character matters, which is why law enforcement managers conduct--or ought to conduct--extensive background checks to ensure that the person who will carry the badge is of the highest caliber.

I ask the Subcommittee to also consider the practice of crime-mapping, which, for all intents and purposes, can also be referred to as geographic profiling. This, too, is proving to be an extremely useful crime-fighting and crime-prevention tool. It has evolved far beyond push pins on a wall map to become sophisticated computer models that allow law enforcement to "predict" crimes and establish more effective patrols to enhance public safety.

According to the National Institute of Justice, the research, development and evaluation arm of the U.S. Department of Justice, crime-mapping is allowing us to analyze crime data in a new way. The description of the 11th Crime Mapping Research Conference explained it like this:

> *Place-based initiatives are becoming a prominent approach to solving problems of crime and the delivery of criminal justice services at all levels of government. The focus on place seeks to simultaneously address the interconnected relationship between people and their environments to which multiple social ills are connected. These relationships and connections form real problems in specific places. Place-based initiatives can be more effective in the delivery and leveraging of services when attention is more specifically directed to the particular context in which people live. Specific benefits delivered to a particular area often have diffusion affects to adjacent neighborhoods, compounding their positive effects.*

Crime mapping data can and does use such demographic factors such as population density, race and poverty levels. Crime is human activity and therefore has spatial relationships and characteristics that can be geographically plotted. The same profiling is also useful in crime prevention and crime fighting when applied to crime victims. Racial data is important here, too. If a crime map shows a preponderance of homicides occuring in minority-dominated neighborhoods, is this racial profiling?

What is also offensive to me as an American is that the legislation focuses on protecting racial, ethnic, and religious minorities, rather than protecting all individuals from discrimination on the basis of race and ethnicity. Unlike all other Federal antidiscrimination statutes, which generally protect *all* individuals from discrimination on the basis of race, portions of this legislation are geared to protecting *only* racial and ethnic minorities. For example, the "disparate impact" provisions found in section 102(c) of the bill are available only to racial and ethnic minorities. Any legislation that specifically targets only members of certain races, while excluding members of other races, presents very real equal protection problems.

To use Washington, D.C. as an example, the unfairness of the bill is plainly demonstrated. According to the most recent census, 38% of this city's population is white and 51% is black. If this bill were to become law, if 38% of all persons arrested in Washington were white, this "disparity" would not be evidence under Title I of the bill. However, if 52% of all persons arrested were black, this would be a "disparate impact" and could be used in any legal action taken against the Metropolitan Police Department. How does this help ease racial tensions in this city or across the country?

The legislation also threatens to penalize local and State law enforcement agencies by withholding Federal law enforcement funding unless these agencies prohibit racial profiling, provide all officers "training on racial profiling issues", collect racial and other sociological data in accordance with Federal regulation, and establish an "administrative complaint procedure or independent audit program" to ensure "an appropriate response to allegations of racial profiling by law enforcement agents or agencies."

Mr. Chairman, how do you eliminate a practice that the highest court in the land has deemed to be unconstitutional and is not used or condoned by any legitimate law enforcement agency in this country?

Further, at a time when local and State law enforcement agencies are so badly in need of operational funds, how can we justify adding an entirely new training regimen on "racial profiling issues" when the practice is unconstitutional and not used or condoned by any legitimate law enforcement agency in this country?

And then ask these same State and local governments to create another bureaucracy to handle "allegations" of racial profiling when the practice is unconstitutional and not used or condoned by any legitimate law enforcement agency in this country?

Mr. Chairman, the Fraternal Order of Police has fought at your side in the budgetary battles with the other body over Federal funding of law enforcement. We are deeply grateful for your leadership and tenacity on these issues. You know this, as do the other Members of this Subcommittee, because the FOP has testified before you about the dire and dangerous consequences of budget cutbacks for State and local law enforcement. We have communities in which law enforcement agencies cannot respond to every call for service and others who will no longer investigate "minor" crimes. This is a tragedy and I know we will have more battles ahead, but I must ask–how can we fight that battle if we are also going to deny these funds to agencies that need them because they cannot adequately train their officers or document allegations of "racial profiling issues?"

This makes absolutely no sense. And yet, the bill mandates that *all* State and local governments collect data, pursuant to Federally established standards, to determine whether "racial profiling" is taking place as a condition of receiving Federal monies--even if there is no evidence or complaint that a particular agency has engaged in such activity. Noncompliance with this mandate is punishable by the withholding of Federal funds. These provisions may even violate the constitutional limits of the ability of Congress to regulate State and local governments as a condition of Federal funding. On a number of occasions, the Supreme Court has expressed a narrow view with respect to Federal power to regulate State and local governments pursuant to Section 5 of the Fourteenth Amendment, absent substantial evidence that constitutional rights are being violated.

Mandatory data collection is also not sound policy from a public safety perspective, because it would require law enforcement officers to engage in the collection of sociological data. When you add to the list of things that police officers have to do, you are necessarily subtracting from the law enforcement mission. Police officers are supposed to prevent crime and catch crooks, not collect data for Federal studies.

How can we achieve a color-blind society if policies at the Federal level require the detailed recording of race when it comes to something as common as a traffic stop? Should the

passenger's race be recorded? Why not? Some traffic stops do result in the arrest of the passenger. What about the officer's race? Should that be recorded so that officers can be assigned to beats based on their ethnic background? And what if the officer is unable to determine the driver's race? Will police officers now be required to ask for "Driver's license, registration and proof of ethnicity, please?"

I submit to this Subcommittee that we do have a problem in our nation today--the lack of trust and respect for our police officers. Police officers also have a problem in that they have lost the trust, respect and cooperation of the minority community. This is tragic because, as we have already discussed, it is minorities in our country that are most hurt by crime and violence. This bill, however, is not the solution. It will make matters worse, not better.

Professor Jack Levin of Northeastern University once suggested a way to end racially-charged confrontations between police and minority communities. He said, "White police officers should never knowingly confront black suspects" (*USA Today,* 28 October 1996). This suggestion is as ludicrous as it is offensive. Professor Levin seems to think that individuals of different racial and ethnic backgrounds are simply unable to interact with one another without violence.

I reject that premise, Mr. Chairman. All of us should. And I submit that the premise of S. 1670 is similarly flawed.

Racial tensions here in Washington, D.C. are not atypical of any other urban area. Sixty-eight percent of the officers of the Washington D.C. Metropolitan Police Department are black in a city where the black population is only 51% black. Does this mean that 68% of the Metropolitan police officers should never confront white, Hispanic or Asian suspects? How does this make our streets safer? How is this good police work?

Law enforcement agencies should reflect the communities they patrol. As a profession, law enforcement has made great strides in achieving diversity. The FOP, in fact, has a national committee dedicated to diversity. To be effective, law enforcement officers should be part of the community–not occupiers.

Legislation like S. 1670 *emphasizes* racial differences. It will, in fact, make police officers much more aware of race when our objective should be to de-emphasize the race of the suspect. Consider this scenario: A police officer stops four drivers, all of whom are black. How is that officer to respond to allegations by the fifth driver--who may be white, Asian or Latino--that they were only stopped to inoculate the officer against charges of racism. Can a case be made that the officer's decision is racially motivated? This is the exact opposite of our intent.

This bill will actually *increase* the unfounded allegations of racism when drivers and officers are of a different race. Racial tensions will increase, not decrease, if this bill's measures are given the force of law. Supreme Court Justice Antonin Scalia reminded us, "To pursue the concept of racial entitlement--even for the most admirable and benign of purposes--is to reinforce and preserve for future mischief the way of thinking that produced race slavery, race

privilege and race hatred. In the eyes of government, we are just one race here. It is American." Instead of officers looking at someone as a human being, this bill would require them to make racial and cultural distinctions between the communities they serve because they know their choices will be scrutinized from that perspective by political leaders, police managers, and the Federal government.

A police officer who makes a stop or an arrest--no matter what that officer's racial background--must balance the constitutional rights of the suspect with their duty to guard the public safety and preserve the peace. At a time when many citizens and lawmakers are concerned with protecting their privacy and personal information, be it concerns about the REAL ID Act, voter identification laws, or cybercrime, it seems at variance with common sense and sound public policy to ask yet another representative of government, in this case, a law enforcement officer, to collect racial or other personal data and turn that data over to the Federal government for analysis. Why something as simple and routine as a traffic stop require such an extraordinary imposition on a driver?

I also want to emphasize that no one seems to have considered that the officer is as much a citizen entitled to his or her rights as any suspect from any allegation. Unlike most professions, many rank-and-file police officers are not, particularly in employment and disciplinary matters, guaranteed their constitutional due process protections in this country. Too often, their rights are discounted. The United States Congress has actively considered legislation similar to S. 1670 for more than a decade. The last time that legislation protecting the due process rights of police officers was debated on the Senate floor? 1991.

I do not know if, let alone how, we as a nation can solve the problems of racism. But I do know what will and will not work in the profession of law enforcement. There is a mistaken perception that the ugliness of racism is part of the culture of law enforcement. It is incumbent on all of us to correct that perception. This bill was written with this mistaken perception in mind--and it reinforces it. This legislation is not good public safety policy and will not result in good policing. It will not help to rebuild the trust between law enforcement and the minority community. For these reasons, the Fraternal Order of Police strongly opposes the bill and I urge this Subcommittee to reject it.

Mr. Chairman, I want to thank you for the opportunity to appear before the Subcommittee today.

PREPARED STATEMENT OF REPRESENTATIVE LUIS V. GUTIERREZ

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.

PREPARED STATEMENT OF PROF. DAVID A. HARRIS

UNITED STATES SENATE JUDICIARY COMMITTEE

SENATOR PATRICK LEAHY, CHAIR

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

SENATOR RICHARD DURBIN, CHAIR

HEARING ON "ENDING RACIAL PROFILING IN AMERICA"

TESTIMONY OF

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Room 226 Dirksen Senate Office Building

Washington, D.C.

My thanks to Senator Durbin, Chair, Ranking Member Senator Graham, and all of the members of this Subcommittee for the opportunity to address the issue of racial profiling in America. This is the first Senate hearing on the issue since 2001, and in the intervening years,

much has changed in our political and national security landscape. But one thing remains the same. In 2001, in his first State of the Union address, President George W. Bush said that racial profiling "is wrong, and we will end it in America."[1] President Bush's assertion that profiling was wrong is just as true today, despite the fact that our country faces additional security challenges. Unfortunately, the eleven years since Mr. Bush spoke have not brought the end of profiling; rather, this tactic has surfaced in new law enforcement and security contexts – most importantly anti-terrorism and immigration. These new settings, however, do not change the fundamental facts we have known for years. Whatever the context, racial profiling is ineffective, indeed counterproductive, when it is used as part of a law enforcement or security system. Rooting this practice out is fundamental, because failing to do so makes all Americans less safe and secure.

Racial Profiling: Definition

I define racial profiling as law enforcement's use of racial, ethnic, or religious appearance as one factor, among others, to decide who to stop, question, search, or otherwise investigate. Note that racial, ethnic, or religious appearance need not be the only factor; few if any law enforcement or security decisions are based on a single reason. Rather, appearance need only be one of the factors involved in attempting to predict who is most likely to be involved in wrongdoing. Description-based police actions – stops or other enforcement actions based on a reasonable description, provided by the public or other police officers – do not constitute profiling. Rather, description-based actions are ways of identifying the right person seen by

[1] President George W. Bush, Address to a Joint Session of Congress, February 27, 2001, Washington, D.C., accessed at http://www.gwu.edu/~action/2004/bush/bush022701spt.html.

someone. Using race as part of a reasonably detailed description is a well-accepted and legitimate part of the standard law enforcement arsenal. Racial profiling, on the other hand, aims to *predict* which unknown persons might be involved in an unknown crime. The idea behind profiling is to increase the odds that police action will net the right people based not on what a witness has seen or reported, but rather because of some physical characteristic the person shares with others.

The Three Waves of Profiling

Since the emergence of racial profiling in the early 1990s, the public has witnessed three waves of profiling. The first wave had its roots in the 1980s and the War on Drugs. During the 1980s, federal law enforcement authorities concluded that efforts aimed at drug interdiction on commercial aircraft had caused traffickers to begin transporting more of their product in cars and trucks, primarily on interstate highways.[2] To meet this challenge, the federal government began Operation Pipeline, a national law enforcement campaign that trained thousands of state and local police officers in drug interdiction methods for use against vehicles.[3] By the early 1990s, drug interdiction units had become common in state, county, and municipal police departments all over the country. Among the best known of these interdiction efforts were the actions of the New Jersey State Police, which targeted blacks and Latinos on the New Jersey Turnpike,[4] and the Maryland State Police's targeting of blacks on Interstate 95.[5] Both of these efforts resulted in

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[2] See David A. Harris, PROFILES IN INJUSTICE: WHY RACIAL PROFILING CANNOT WORK 20-23 (The New Press, 2002).

[3] Id. at 23, 48.

[4] State v. Pedro Soto, 734 A. 2d 350 (N.J. Super. Ct. Law Div. 1996).

[5] Wilkins v. Maryland State Police, et al., Civ. No. MJG 93-468 (D. Md. 1996).

legal action; both cases resulted in pioneering data-gathering efforts[6] that proved, for the first time, that racial profiling was "real—not imagined."[7] By the end of 1999, polling data indicated that 81 percent of all Americans, white, black, and Latino, understood what racial profiling was, and wanted it stopped.[8]

The second wave of profiling began after the terrorist attacks of September 11, 2001. After those events, polling data showed another emerging consensus: nearly sixty percent of all Americans, including blacks and Latinos, now agreed that some degree of profiling should take place – with people who appeared to be Arabs or Muslims in airports on the receiving end.[9] The nineteen suicide hijackers of September 11 were all Muslim men from Middle Eastern countries (with fifteen coming from just one country, Saudi Arabia), and the terrorist group responsible, Al Qaeda, espoused a twisted philosophy that they claimed came from Islam. Thus, to most Americans, profiling of Middle Easterners and Muslims just made sense; "they" were the source of the threat. For example, Stanley Crouch, the well-known writer, cultural critic, and recipient of the MacArthur "genius" award, wrote a nationally syndicated column for the New York Daily

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[6] E.g., Report of Dr. John Lamberth (plaintiff's expert), in Wilkins v. Maryland State Police, et. al., Civ. No. MJG 93-468 (D. Md. 1996).

[7] Peter Verniero and Paul Zoubek, Interim Report of the State Police Review Team Regarding Allegations of Racial Profiling, April 29, 1999, at 4, accessed at http://www.state.nj.us/lps/intm_419.pdf.

[8] Frank Newport, "Racial Profiling Seen as Widespread, Particularly Among Young Black Men, Gallup Poll, December 9, 1999, accessed at http://www.gallup.com/poll/3421/racial-profiling-seen-widespread-particularly-among-young-black-men.aspx.

[9] Jeffrey M. Jones, "Americans Felt Uneasy Toward Arabs Even Before September 11," Gallup Poll Monthly, Sept. 28, 2001 ("Nearly six in 10 Americans interviewed in a September 14-15 Gallup poll favored requiring people of Arab descent to undergo special, more intensive security checks when flying on American airplanes."), accessed at http://www.gallup.com/poll/4939/americans-felt-uneasy-toward-arabs-even-before-september.aspx.

News that carried the headline "Wake Up: Arabs Should Be Profiled."[10] According to Crouch, people of Arab ancestry in the U.S. simply had to put up with increased negative scrutiny even though they had done nothing to deserve it; this was necessary because of the actions of the September 11 hijackers. "So if pressure has to be kept on innocent Arabs until those Arabs who are intent on committing mass murder are flushed out, that is just the unfortunate cost they must pay to reside in this nation," Crouch said. Crouch's comments – by a prominent public intellectual, and disseminated nationwide – captured the sentiment of many people in this country, in law enforcement and outside it.

The third wave of profiling began in the mid 2000s, as illegal immigration became a hotly contested political issue. Illegal immigration had, of course, been a genuine issue in the recent past, but mostly took the form of arguments about demographic changes in society or labor economics. After the September 11 terrorist attacks, however, a concerted effort began to "re-brand" the issue: illegal immigration was portrayed as a national security threat.[11] The argument was that if uneducated agricultural workers from rural Mexico and Central America could make their way into the U.S. by the millions, so too could a few determined terrorists. Therefore, the allegedly porous borders of the U.S. were said to represent the gravest sort of threat. Concerted efforts began to coerce state and local police departments into joining immigration enforcement as "force multipliers" for overmatched federal agencies. For example,

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[10] Stanley Crouch, "Wake Up: Arabs Should Be Profiled," St. Louis Post-Dispatch, March 19, 2002. Crouch's column was nationally syndicated and originated in the New York Daily News.

[11] 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, 19-20 (2006), accessed at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1008927##.

the proposed CLEAR Act[12] and its Senate counterpart, the Homeland Security Enhancement Act,[13] threatened state and local governments with the loss of federal funds if they did not join the immigration enforcement effort. Then came the recent wave of state laws that legally obligated state and local law enforcement agencies to participate in immigration enforcement, whether or not agency leaders or local governments considered this a priority or a desirable law enforcement policy. Arizona's S.B. 1070 was the first of these; it obligated police officers in every law enforcement agency in the state to make inquiries about immigration status whenever encountering a person about whom there was a "reasonable suspicion" of some immigration irregularity.[14] Alabama's new immigration statute[15] is in many ways even more far reaching than the one in Arizona. (The Supreme Court will hear a legal challenge to the constitutionality of Arizona's law just eight days after this hearing.)

The important thing to note about all three waves of profiling is that, even though the stated purpose and context of each wave differs from the others, all three make use of the same tactic: using racial, ethnic, or religious appearance as a factor in enforcement efforts. The idea, in each wave, is that we know what the people who are the source of the problem look like, and it therefore makes sense to use appearance as one factor in deciding when to take action. Stated another way, the hypothesis behind profiling is that by using racial, ethnic or religious

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[12] H. R. 2671, The Clear Law Enforcement for Criminal Alien Removal Act of 2003 ("the CLEAR Act"), 106th Cong., accessed at http://www.govtrack.us/congress/bills/108/hr2671/text.

[13] S. 1906, The Homeland Security Enhancement Act of 2003, 106th Cong., accessed at http://www.govtrack.us/congress/bills/108/s1906/text.

[14] Arizona S.B. 1070, Forty-ninth Legislature, Second Regular Session, 2010, accessed at http://www.azleg.gov/legtext/49leg/2r/bills/sb1070s.pdf.

[15] Hammon-Beason Alabama Taxpayer and Citizen Protection Act, H.B. 56, 2012, accessed at http://alisondb.legislature.state.al.us/acas/searchableinstruments/2011rs/bills/hb56.htm.

appearance as an additional clue, we'll get better results on a per-stop basis. For every one hundred stops, searches, frisks, or the like we do, we'll find more drugs or guns (first wave), we'll be more likely to detect terrorists (second wave), or we'll be more likely to find more undocumented immigrants (third wave). But the unfortunate truth is there is no evidence for this; in fact, the evidence is all to the contrary. Using racial, ethnic, or religious characteristics does not sharpen law enforcement's accuracy. It makes law enforcement less accurate, and therefore all of us are less safe when profiling is in use than when it is not.

Why Racial Profiling Does Not Help Law Enforcement

For those who believe that using racial or ethnic appearance as one factor would obviously make law enforcement more targeted, and therefore more successful and efficient, the assertion that it does just the opposite seems counterintuitive. This makes it important to understand what the research says about how successful profiling *actually* is (as opposed to how successful people *think* it is), and what accounts for this.

In the late 1990s, data on police practices such as traffic stops and stop and frisk practices began to become available for the first time. These data often became public as a result of legal actions (such as law suits against the New Jersey State Police and the Maryland State Police) or government inquiries (e.g., the New York State Attorney General's probe of stop and frisk practices[16] following the shooting of Amadou Diallo by four New York Police Department officers). The data allowed researchers to answer two related questions. First, did the police

[16] Attorney General of the State of New York, "The New York Police Department's 'Stop & Frisk' Practices: A Report to the People of the State of New York," December 1, 1999, accessed at http://nysl.nysed.gov/uhtbin/cgisirsi/20120414131910/SIRSI/0/518/0/43937374/Content/1?new_gateway_db=ILINK.

departments in question use race or ethnic appearance as one factor to target suspects? Second, if the department was engaged in racial or ethnic targeting, did using this tactic increase the "hit rate" – the rate at which officers found drugs or guns, or made arrests? The data showed that, for the police departments studied, blacks and Latinos were, indeed, targeted using race or ethnic appearance as one factor. The data simply did not support any other possible explanation (e.g., witnesses reporting more minority perpetrators, or heavy police deployment in high-crime minority neighborhoods). As for hit rates, when the data were disaggregated to show the hit rates police attained when targeting blacks and Latinos, as opposed to when they stopped, searched, and arrested whites, hit rates for the minority groups were not higher than hit rates for whites; they were not the same as the hit rates for whites. The hit rates for blacks and Latinos were actually lower – *measurably lower, by a statistically significant amount* – than the hit rates for whites. Using racial or ethnic appearance made police not more accurate and efficient, but less. In the years since these first studies, we have seen these results repeated over and over. In many contexts, in many types of police agencies, the results all fall in the same direction: when racial or ethnic profiling is used, police are less likely, not more likely, to catch the bad guys.

There are several important reasons for these results. The first and most important is that detection of unknown crimes involving unknown suspects involves, first and foremost the close, careful observation of behavior by highly focused and well trained investigators. To know whether a particular vehicle traveling down an interstate highway might be carrying a load of illegal drugs, the most important thing a police officer can do is to observe the behavior of the driver and any passengers. Behavior can be used to successfully predict other behavior; appearance does not predict behavior, except in the most misleading ways. When police attention is focused on the racial or ethnic appearance of the driver, instead of how the driver is

behaving, this distracts the observer from seeing the all-important behavior that might actually give the observer valuable clues. To use the old baseball cliché, using racial or ethnic appearance as a factor in deciding who to stop or search takes one's eyes off the ball. The observing officer who takes racial or ethnic appearance into account may still pay attention to behavior to some degree; race may not totally divert all of the observer's attention. But the hit rate studies prove that even a partial reduction in attention to behavior makes police action less accurate. For example, in the data from New York City on stop and frisks, the use of racial and ethnic appearance caused a marked drop in hit rates. For whites, where no racial characteristics were used, the hit rate was 12.6 percent. The hit rate for Latinos, on the other hand was 11.5 percent – a difference of roughly ten percent. The hit rate for blacks was lower still: 10.6 percent, a difference of about twenty percent from the hit rate for whites.[17]

There is no data, anywhere, that tends to show that using racial, ethnic, or religious appearance as part of a profile to spot potential terrorists (second wave profiling) or undocumented immigrants (third wave profiling) brings about any different results. The hit rates are likely to be just as poor when used in these contexts as they have been in the War on Drugs. Moreover, those who wish to profile persons who look like Muslims as potential terrorism suspects would be hard pressed to make such a profile work at even the simplest level. According to some estimates, there are now approximately 1.6 billion Muslims in the world, and they are scattered across almost every country and continent.[18] There are Muslims who appear

[17] Id.

[18] This estimate, from 2010, comes from the Pew Research Center. Pew Forum on Religion and Public Life, "The Future of the Global Muslim Population," accessed at http://features.pewforum.org/muslim-population-graphic/. Other estimates are higher, at roughly two billion. World Muslim Population, "The Muslim population in 2012 is 2013.62 million," accessed at http://muslimpopulation.com/World/.

Asian, hailing from countries like Indonesia (the world's most populous Muslim country). Muslims include people from South Asia, from countries such as Pakistan. Others are African, coming from Nigeria, Somalia, Sudan, Kenya, and many other nations. There are, of course, hundreds of millions of Muslims from Middle Eastern countries. And there are millions of Muslims in the U.S.: a mixture of immigrants from around the world and native born American citizens. The possibilities for both false positives (persons who appear Muslim, but are not) and false negatives (persons who do not appear to be Muslim, but are) are literally limitless. Thus the potential for confusion and for obscuring important behavioral clues is very great indeed.

The critical question, however, remains having the right focus: behavior. And in one instance that came to public attention, professionals in the intelligence and counterterrorism community cautioned against profiling for precisely this reason: using racial, ethnic, or religious appearance as a factor distracts from observation of behavior. In an internal government memorandum, reported on by the Boston Globe in October of 2001, counterterrorism agents from both the Central Intelligence Agency and the FBI warned against ethnic and religious profiling.[19] Using this tactic, they said, would damage, not advance, our counterterrorism efforts. The only way to succeed was careful observation of suspicious behavior and intelligence gathering. As one of the drafters of the memorandum told the newspaper, "fundamentally, believing that you can achieve safety by looking at characteristics instead of behavior is silly. If your goal is preventing attacks…you want your eyes and ears looking for pre-attack behaviors, not [physical] characteristics."

[19] Bill Dedman, "Airport Security: Memo Warns Against Use of Profiling as Defense," The Boston Globe, Oct. 12, 2001.

The problem is just as difficult with third wave profiling, which seeks undocumented immigrants. Assuming that persons of Mexican or Central American heritage share a particular ethnic appearance, the first difficulty is that millions of U.S. citizens, all over the country, share these very same characteristics. This is, of course, especially true in the southwestern border states, such as Arizona. Thus using Latino appearance as a way of helping to spot illegal immigrants is widely over-inclusive. Even more important, being an illegal immigrant is not something that shows up in behavior. Rather, being an illegal immigrant means having a particular status vis-à-vis immigration law. For example, a person legally present on a student visa can become illegal by failing to carry the minimum number of required education credits, or by overstaying the visa by one day; the person's behavior does not change, but his or her status does. Thus there is no behavior for police to observe when operating under laws like those in Arizona or Alabama; they are inevitably forced into relying on ethnic appearance and accent. Thus these laws force the police to become ethnic profilers, whether officers want this role or not.

The Special Importance of Avoiding Profiling in Anti-terrorism Work

Beyond distracting law enforcement and anti-terrorism agents from observation of behavior, there is another important reason to avoid profiling of Arabs and Muslims. As the counterterrorism agents quoted in the Boston Globe article cited above said, counterterrorism that can succeed relies on two things: observation of pre-attack behavior, and – even more importantly – the gathering of intelligence that can lead us to potential attackers before they strike. The goal is not to respond after a terrorist attack or even to detect one and prevent it at the airport or train station or other public place; it is to prevent it well before it poses any danger.

Only successful and sustained intelligence gathering allows this to happen; only the gathering of useful information can put us in a position to head off catastrophe beforehand. Having information that points our security agents toward what will happen is the only way to keep ahead of potential terrorists. Thus we need intelligence now like we have never needed it before.

If there is a danger of international terrorists striking us on our own soil, and if (as some allege) the most likely suspects would be persons who either come from, or hide among, communities of Arabs or Muslims in the U.S., there is only one real source for the critical intelligence we need to keep ourselves safe: Arab-American and American-Muslim communities themselves. The people in those communities are the ones who know the language and understand the cultural cues; they are the ones who know who in their midst is new and might pose a danger. In short, if we need intelligence now more than ever, the people in our Arab and Muslim communities are the partners we need – indeed, that we must have.

Arab-American and American-Muslim communities have, in fact, turned out to be indispensible and reliable partners. For example, the first terrorist cell detected and broken inside the U.S. after September 11, 2001 – the case of the so-called Lackawanna Six, in a small town outside Buffalo, New York – resulted in the dismantling of the cell and the incarceration of all of its members, who had received terrorist training in al Qaeda camps.[20] That case was broken not by CIA spying or NSA wiretaps, and not through informants placed by the FBI or the NYPD. Rather, the breakthrough came because the American-Muslim community in Lackawanna, made up mostly of people of Yemeni ancestry, shared information about the young men with their own

[20] Dina Temple-Raston, THE JIHAD NEXT DOOR: THE LACKAWANNA SIX AND ROUGH JUSTICE IN THE AGE OF TERROR (PublicAffairs, 2007).

community police officer, and with the FBI.[21] Before that, law enforcement was unaware of the group. That information led directly to the investigation, and to the avoidance of any danger that may have been posed by the cell. There have since been many other similar examples of Muslim communities sharing critical information with law enforcement and security services to keep the country safe from terrorism.

Using an anti-terrorism profile that includes Arab or Muslim appearance puts all of this at risk. When any group feels targeted because of who they are, the reaction is predictable: fear, resentment, anger, and alienation from the authorities. We need Arab and Muslim citizens to come to law enforcement when they have critical information, and many have. But introducing fear into the situation through profiling of the whole community will inevitably discourage this. When the government targets one's own community, the government becomes not a protector, but a threat; this is simple human nature. This will result, inevitably, in some diminution of the flow of information and intelligence to law enforcement, when we can least afford it. This is a real, though hidden, cost of profiling, and it is a cost that we can avoid if we are smart enough to appreciate our own self-interest.

The Current State of Constitutional Law Does Not Limit These Practices

In its current state, the law does not do much to limit the use of racial or ethnic profiling. In fact, it is not a stretch to say that the Fourth Amendment has been interpreted by the U.S. Supreme Court in ways that give these practices at least tacit approval.

[21] David A. Harris, GOOD COPS: THE CASE FOR PREVENTIVE POLICING (The New Press, 2005).

The law concerning when police can order people they encounter to stop, and perhaps subject them to search, is governed by the Fourth Amendment to the United States Constitution. The Fourth Amendment protects all people against unreasonable searches and seizures. Until 1968, this meant that police had to have probable cause to make a seizure, i.e., an arrest. With the decision in *Terry v. Ohio*, 392 U.S. 1 (1968), the Supreme Court changed this. The Court said that when a police officer had reasonable suspicion that a crime was afoot and that a particular person was suspected of involvement therein, a police officer could stop the person – i.e., temporarily detain the person, against his or her will – for investigation. If the crime suspected involved a weapon, or if some clue indicated the presence of a weapon, e.g., a bulge in the person's outer clothing that could be a weapon, the officer could perform a search in the form of a pat down. All of this did not require probable cause; rather, only reasonable suspicion – a lesser quantum of evidence – was needed. The *Terry* case remains the law for stops and frisks, and allows police officers to temporarily detain and cursorily search uncounted people every year based on very little evidence. Stops and frisks are a legal and necessary police tactic, to be sure, but the evidence suggests that the wide discretion that *Terry* gives law enforcement has been used in some police departments with great intensity and leads to a worsening of police/community relations, without a payoff in crime fighting. For example, in New York City, the Police Department has gone from performing roughly 160,000 frisks a year in 2003 to 575,000 in 2009,[22] and 684, 000 in 2011.[23] In Philadelphia, a city with a smaller population, police use stops and frisks with even greater intensity than police in New York.[24]

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[22] Delores Jones-Brown, et al., Stop Question & Frisk Policing Practices in New York City: A Primer 4 (2010), accessed at http://www.jjay.cuny.edu/web_images/PRIMER_electronic_version.pdf.

The Supreme Court has also opened the door wide to stops and searches of drivers and vehicles. In 1996, the Court decided that the police could use any traffic infraction officers witnessed, however trivial, as probable cause to stop a driver, even when they did so only as a pretext to investigate other crimes for which no evidence at all existed. The real reasons for the stop did not matter, the Court said, as long as the officer on the scene had witnessed some traffic offense. *Whren v. U.S.*, 517 U.S. 806 (1996) While a traffic stop does not confer on officers the authority to do a search of the vehicle, officers are free to "ask" drivers for "voluntary consent" to search, *Ohio v. Robinette,* 519 U.S. 33 (1996), or even to get a drug-sniffing dog to search the car, *Illinois v. Caballes,* 543 U.S. 405 (2005), without probable cause or even minimal reasonable suspicion.

In actions related to border enforcement, the Court has relaxed the rules even more. In *U.S. v. Martinez-Fuerte*, 428 U.S. 543 (1976), the Court ruled that, at border-related checkpoints in the Southwest, border agents could select vehicles and refer them for so-called secondary screening based on the ethnic appearance of the occupants of the car. According to the Court, "it is constitutional to refer motorists selectively to the secondary inspection area...Thus, even if it be assumed that such referrals are made largely on the basis of apparent Mexican ancestry, we perceive no constitutional violation." 428 U.S. at 563. This statement is a stark reminder that, in cases involving the border and immigration, the Fourth Amendment provides almost no

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[23] "NY AG's Office Reviewing Stop and Frisk," Wall Street Journal, April 11, 2012, accessed at http://online.wsj.com/article/AP7c560e15c6df4c83b078efe1f11d7fc3.html.

[24] Draft, "Stop and Frisk Practices in the U.S.: Where Are We Now?", John Jay College of Criminal Justice, August 10 and 11, 2011, p. 25, accessed at http://www.jjay.cuny.edu/US_Harris_Stop_and_frisk_in_the_US.pdf ("[S]top and frisk activity has actually been more intense in Philadelphia than in New York: in 2009, police stopped 575,000 people [in] a city of roughly 8.175 million, a ratio of about one in fourteen. In Philadelphia in the same period, police stopped 250,000 in a city of 1.526 million – a ratio of one in six.").

protection against racial and ethnic profiling at traditional checkpoints. With such inspection checkpoints in place now in every airport and in countless other settings, it becomes obvious that the Constitution and the law do very little or nothing to temper the use of racial or ethnic profiling.

Action: Pass the End Racial Profiling Act

One concrete recommendation for addressing this problem is passage of S. 1670, the End Racial Profiling Act of 2011 (ERPA).[25] This proposed legislation takes a multi-faceted approach to attacking the problem of racial profiling. First, ERPA provides a concrete prohibition on racial profiling, enforceable by declaratory or injunctive relief. Second, ERPA requires training on racial profiling as part of all federal law enforcement training, and also mandates the standardized collection of data on all routine investigatory activities. This data would be submitted to the U.S. Department of Justice. Third, police and security agencies at the state and local level could receive federal funding only by undertaking to adopt effective policies that prohibit racial profiling. ERPA would also authorize the Department of Justice to provide grants for the development of best policing practices that discourage racial profiling. Last, the law would require the Attorney General to report periodically on these efforts.

ERPA would represent a great step forward in the direction of eradicating the dangerous and destructive practice of racial profiling. If it became law, ERPA would put the government's commitment to eliminating racial profiling front and center, both within its own agencies and within state and local agencies receiving federal funds. The amount of money that the federal

[25] The End Racial Profiling Act of 2011, S. 1670, accessed at http://www.jjay.cuny.edu/web_images/PRIMER_electronic_version.pdf.

government channels into state and local law enforcement agencies tops several billion dollars a year. If we recognize that racial profiling is a practice that does not improve police and national security efforts but instead harms them, the least that can be done is for federal largess to serve as a lever to move police agencies away from profiling, and toward measures that are more effective. Particularly in the current fiscal climate, we should insist that the federal government ensure that our tax dollars are being used wisely and not subsidizing the counterproductive and wasteful practice of racial profiling.

Action: Correct the June 2003 U.S. Department of Justice Policy Guidance

The second thing that could have an immediate impact on the problem of racial profiling is to revise the U.S. Department of Justice's June 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies[26] ("Profiling Guidance"). The Profiling Guidance, issued under then-Attorney General John Ashcroft, took some positive steps to confront the profiling issue, but also contains some loopholes that could be used to permit, or even justify, racial, ethnic, or religious profiling. The time to address these problems has come.

On the positive side, the Profiling Guidance defines racial profiling in a comprehensive, strong way. As a starting point, the Profiling Guidance says that in routine enforcement, federal law enforcement "may not use race or ethnicity to any degree" except as part of a "specific suspect description." And even within a specific investigation, federal law enforcement "may consider race or ethnicity only to the extent that there is trustworthy information, relevant to the locality or time frame, that links persons of a particular race or ethnicity to an identified criminal

[26] U.S. Department of Justice, "Guidance Regarding the Use of Race by Federal Law Enforcement Agencies," June 2003, accessed at http://www.justice.gov/crt/about/spl/documents/guidance_on_race.pdf.

incident, scheme, or organization." This represents a strong response to the issue of racial and ethnic profiling, one that would go a long way toward addressing the problem.

But other aspects of the Profiling Guidance weaken the document. First, the guidance says that when investigating or preventing national security events, or in enforcing the laws that protect the national borders, federal law enforcement "may not consider race or ethnicity except to the extent permitted by the Constitution and laws of the United States." This reads, at first blush, like an extension of the prohibition against profiling, but it is actually just the opposite. As explained above, neither the Constitution nor the laws of the U.S. actually prohibit racial or ethnic profiling. In fact, cases such as *Whren v. U.S.* and *U.S. v. Martinez-Fuerte* encourage and even permit the use of racial and ethnic characteristics in law enforcement, especially in the immigration context. Thus there is no protection against the use of profiling in the two areas in which the federal authorities are most likely to engage in this activity: national security and immigration.

Second, while the Profiling Guidance prohibits profiling based on race or ethnicity, it does not prohibit profiling based on national origin or religion. This only reinforces the ability of federal officers to use this failed tactic in investigations touching on national security, in which Muslims are often the focus, and in immigration, in which Mexicans and people from Central American countries come under scrutiny. The omission of religious profiling from the Profiling Guidance could not be a clearer sign of what type of profiling is permitted or even encouraged. The omission of national origin from the Profiling Guidance calls to mind the now-defunct NSEERS (National Security Entry-Exit Registration System) reporting program, in

which people from twenty-five countries were obligated to report to immigration authorities,[27] often with negative consequences for these individuals.[28] Twenty-four of the twenty-five countries were nations with predominantly Muslim populations (the last was North Korea). Thus Muslims were targeted by using a convenient proxy characteristic: national origin.

Conclusion

Racial, ethnic, and religious profiling raise important moral questions about the legitimacy of targeting an entire population who share immutable physical characteristics, because of the actions of an infinitesimally small number of people from that group. Profiling also raises profound questions about the social cost of singling out persons for law enforcement scrutiny based on race and similar characteristics, and the long-term effects this has on the cohesiveness of our nation. Leaving these extremely important concerns aside, we can answer the claim that profiling leads to greater safety. The evidence is clear: using these types of profiling does not make us safer; it makes us *less safe*. It takes law enforcement's eyes off of behavior, upon which our agents need to have a laser-like focus. It wastes our resources. And it damages our intelligence capabilities by undermining the partnerships we must have with Arab and Muslim communities. Thus the costs of using profiling in the currency of safety and security are overwhelming. It is high time that these practices end.

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[27] NSEERS – National Security Entry Exit Registration System, Special Registration Procedures, accessed at http://www.uslaw.com/bulletin/nseers-national-security-entry-exit-registration-system.php?p=50.

[28] Leslie Berestein Rojas, "NSEERS and Special Registration Are Gone, but Long-Term Effects Continue," Multi-American, Southern California Public Radio, accessed at http://multiamerican.scpr.org/2012/01/nseers-and-special-registration-are-gone-but-long-term-effects-continue/.

PREPARED STATEMENT OF ANTHONY ROMERO

Written Statement of
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Submitted to the 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

The American Civil Liberties Union (ACLU) is a non-partisan advocacy organization with over a half million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to the principles of equality and justice set forth in the U. S. Constitution and in our laws protecting individual rights. We appreciate the opportunity to submit testimony regarding the pervasive problem of racial profiling in its traditional as well as in its newer yet just as pernicious forms. Most importantly, this hearing can highlight the solutions to racial profiling that are within our grasp. Congress can pass the End Racial Profiling Act and the administration can take other concrete steps outlined in this statement that will help put an end to the practice of racial profiling in all its forms. We stand in strong support of these initiatives.

Every year, thousands of people are stopped while driving, flying, or even walking simply because of their actual or perceived race, ethnicity, national origin, immigration or citizenship status, or religion. They are not stopped because they have committed a crime, but because law enforcement authorities wrongly assume that they are more likely to be involved in criminal activity because of their physical appearance. A 2004 report by Amnesty International estimates that one in nine Americans has been victimized by racial profiling—a total of 32 million people nationwide.[1]

Racial profiling occurs when law enforcement authorities impose humiliating and often frightening interrogations, searches, detentions and surveillance on people targeted not because of evidence of criminal activity but because of the individual's perceived race, ethnicity, nationality or religion. Racial profiling is policing based on crass stereotypes and assumptions instead of on facts, evidence and good solid police work. In addition to being ineffective, unfair and destroying community trust in law enforcement, racial profiling violates the U.S. Constitution by betraying the fundamental American promise of equal protection under the law and by infringing on the Fourth Amendment guarantee that all people be free from unreasonable searches and seizures.

For years, the ACLU has been at the forefront of the fight against all forms of racial profiling through both advocacy and litigation. In a groundbreaking report published in 1999,[1] we highlighted some of the most harrowing cases of racial profiling and offered solutions to address this issue. We have also litigated many cases on behalf of victims of racial profiling.

For example:

- On Lincoln's Birthday, 1993, the ACLU of Maryland filed a federal class action lawsuit, *Robert L. Wilkins, et al. v. Maryland State Police, et al.*, on behalf of the Wilkins family and all other African-American motorists traveling Maryland roadways. A year earlier Robert Wilkins and his family were traveling on Maryland Interstate 68 when a Maryland State Trooper stopped the car for speeding and asked the driver to consent to a search. Wilkins, a public defender, explained that there was no reasonable basis for the search and refused to consent, but the Trooper ordered Wilkins and his family to get out of the car and to stand in the rain while the dog sniffed through the car in a fruitless search for

[1] David A. Harris, *Driving While Black: Racial Profiling On Our Nation's Highways* (American Civil Liberties Union) (1999) available at *http://www.aclu.org/racial-justice/driving-while-black-racial-profiling-our- nations-highways.*

drugs. Despite all of his efforts to lead a good life, despite his Harvard law degree, his career in public service, church and community involvement, Wilkins's skin color was all the trooper could see. The case helped bring national attention to the practice of racial profiling and helped popularize the term "driving while black." As a result of the settlement agreement, Maryland was required to maintain records of all traffic stops that resulted in vehicle search requests. In May 2010, President Obama nominated Robert Wilkins for a federal judgeship in the District of Columbia; he was confirmed unanimously by the Senate on December 23, 2010.

- In 2009 the ACLU reached a settlement agreement with Transportation Security Administration (TSA) and JetBlue Airways after filing suit on behalf of Raed Jarrar, an Iraqi-born U.S. resident who was barred from a flight until he covered his T-shirt, which read in "We Will Not Be Silent" in English and Arabic. On August 12, 2006, Jarrar was waiting to board a JetBlue flight when he was approached by two TSA officials. One of them told Jarrar that he needed to remove his shirt because it made other passengers uncomfortable, telling him that wearing a shirt with Arabic writing on it to an airport was like "wearing a t-shirt at a bank stating, 'I am a robber.'" Jarrar asserted his First Amendment right to wear the shirt, but eventually relented to the pressure from the TSA officials and two JetBlue officials who surrounded Jarrar in the gate area and made it clear to him that he would not be able to get on the plane until he covered it up. Terrified about what they would do to him, Jarrar reluctantly put on a new t-shirt purchased for him by JetBlue. The lawsuit later revealed that JetBlue and the TSA officials did not consider Jarrar to be a security threat. Nevertheless, even after he put the new shirt on, Jarrar was allowed to board the plane only after JetBlue changed his seat from the front of the plane to the very back.

- The ACLU is currently litigating a class action suit brought with allied organizations on behalf of Jim Shee and other plaintiffs against S.B. 1070, Arizona's racial profiling law. Shee is an elderly resident of Litchfield Park, Arizona, a U.S. citizen of Spanish and Chinese descent who has lived in Arizona his entire life. In April 2010, Shee was stopped twice by Arizona police and asked to produce identification documents, with no resulting citations. In the lawsuit, Shee expressed his fear that S.B. 1070 would lead to his detention because he is unable to prove that he is a U.S. citizen without carrying his passport around.

In addition to litigation, the ACLU has also worked with Congress to build support for legislative remedies, such as the End Racial Profiling Act (ERPA)[2] – recently introduced by Senator Benjamin L. Cardin (D-MD) – which prohibits racial profiling by federal law enforcement officers and conditions receipt of certain federal criminal justice funding on states adopting similar prohibitions. While passage of End Racial Profiling Act and strengthening of the Department of Justice Guidance Regarding the Use of Race by Federal Law Enforcement Agencies are critical to ending the practice of racial profiling, there are also interim steps that Congress can take to reduce racial profiling such as defunding immigration enforcement initiatives that foster racial profiling of Latinos and other people of color - including the 287(g) and Secure Communities programs.

[2] End Racial Profiling Act of 2011, S.1670, 112th Cong. (2011).

The ACLU is not alone in calling for an end to racial profiling. In February 2001, President George W. Bush said of racial profiling: "It's 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."[3] President Barack Obama, in response to the arrest of Harvard Professor Henry Louis Gates, said,

> There's a long history in this country of African- Americans and Latinos being stopped by law enforcement disproportionately. That's just a fact...And even when there are honest misunderstandings, the fact that blacks and Hispanics are picked up more frequently and oftentime for no cause casts suspicion even when there is good cause. And that's why I think the more that we're working with local law enforcement to improve policing techniques so that we're eliminating potential bias, the safer everybody is going to be."[4]

Unfortunately, such expressions of opposition to the concept of racial profiling have failed to generate results in practice and, instead, we face new and more insidious examples of profiling taking root. We must come together now to end this unlawful blight on our society.

The Three Faces of Racial Profiling

For more than a century, black men and women traveling through predominantly white neighborhoods have been stopped and questioned for no reason — simply because police officers felt they didn't belong there. During the past decade, as international terrorism has become a subject of intense concern, those of Arab and South Asian descent have been spied upon, stopped, questioned, and subjected to intensified police scrutiny based on perceived race, religion, and national origin rather than any evidence of wrongdoing. Most recently, as anti-immigrant sentiment has flourished in many parts of the country, local police in Alabama have been circulating in predominantly Hispanic neighborhoods, telling individuals to go inside their homes or possibly face arrest – because the state passed a law requiring police to be immigration agents.[5]

While Americans tend to think about racial profiling in strictly traditional terms of police stops based on skin color, the common thread tying such actions to the unwarranted detention of an Arab American for national security investigation or the unjustified arrest of a Latino individual for an immigration check is unmistakable. All of it is plain and simple discrimination. As an organization that represents clients impacted by the full spectrum of racial profiling, the ACLU's testimony will provide an in-depth look at each of the three "faces" of racial profiling - routine law enforcement, immigration and border control, and national security policy. Every form of racial profiling is ineffective, and it always erodes the bond that effective law enforcement officials try to build with the communities they protect. Such actions violate the Constitution. Racial profiling – in whatever form – has no place in American life.

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[3] Department of Justice, *Fact Sheet: Racial Profiling* (2003), available at: http://www.justice.gov/opa/pr/2003/June/racial_profiling_fact_sheet.pdf.

[4] Press Release, The White house Office of the Press Secretary, News Conference By The President (July 22, 2009), available at http://www.whitehouse.gov/the_press_office/News-Conference-by-the-President-July-22-2009.

[5] Ed Pilkington, "The grim reality of life under Alabama's brutal immigration law," *The Guardian*, October 11, 2011, http://www.guardian.co.uk/world/2011/oct/14/alabama-immigration-law-families-trapped?newsfeed=true.

Reclaim Justice: Racial Profiling in Routine Law Enforcement

Despite claims that we have entered a "post-racial" era, racial profiling remains a troubling nationwide problem. Recent data documents the persistence of racial profiling in communities throughout the country. For example:

- A 2008 report by the ACLU of Arizona found that Native Americans were 3.25 times more likely, and African Americans and Hispanics were each 2.5 times more likely, to be searched during traffic stops than whites. It also found that whites were more likely to be carrying contraband than Native Americans, Middle Easterners, Hispanics and Asians on all major Arizona highways.[6]

- A 2008 report by Yale Law School researchers (commissioned by the ACLU of Southern California) found that black and Hispanic residents were stopped, frisked, searched and arrested by Los Angeles Police Department officers far more frequently than white residents, and that these disparities were not justified by local crime rates or by any other legitimate policing rationale evident from LAPD's extensive data.[7]

- A 2009 report by the ACLU and the Rights Working Group documented racial and ethnic profiling in 22 states and under a variety of federal programs.[8]

- A 2012 analysis by the New York Civil Liberties Union found that between October and November 2011 about 94 percent of students arrested by the New York City Police Department were black or Latino, and that black students were almost nine times more likely to be arrested than white students. Students in New York City have been arrested for offenses like writing on a desk, cursing, and pushing or shoving.[9]

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[6] ACLU of Arizona, *Driving While Black or Brown* 3 (2008), available at http://www.acluaz.org/DrivingWhileBlackorBrown.pdf.

[7] ACLU of Southern California, *Racial Profiling & The LAPD: A Study of Racially Disparate Outcomes in the Los Angeles Police Department* 1 (2008), available at http://www.aclu-sc.org/documents/view/47.

[8] ACLU and Rights Working Group, *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* (2009), available at http://www.aclu.org/pdfs/humanrights/cerd_finalreport.pdf.

[9] New York Civil Liberties Union, *New NYPD Data Shows Racial Disparities in NYC School Arrests*, February 22, 2012, available at http://www.nyclu.org/news/new-nypd-data-shows-racial-disparities-nyc-school-arrests.

Racial profiling is based on false assumptions and results in ineffective law enforcement.

Racial profiling in routine law enforcement is fueled by the assumption that minorities commit more of the types of crimes that profiling is used to detect, such as drug crimes. However, this assumption has been widely denounced and disproven through data analysis. In 2002, former Attorney General John Ashcroft said,

> this administration...has been opposed to racial profiling and has done more to indicate its opposition than ever in history. The President said it's wrong and we'll end it in America, and I subscribe to that. 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.[10]

However, reports detailing the results of traffic stops and searches for contraband show that people of color, including African Americans and Latinos, are no more likely, and often less likely, to have illegal drugs and other contraband than whites. Contrary to popular perception, black people use illegal drugs in roughly the same proportion as people of other races and ethnicities.[11] Black people are no more likely to speed, drive recklessly, or forget to replace broken headlights than drivers of other ethnicities. Notwithstanding such facts, black people are more likely to be pulled over, and much more likely to be searched.

- An analysis by the New York Civil Liberties Union found that from 2002 to 2011 the NYPD conducted more than 4.3 million street stops. About 88 percent of those stops – nearly 3.8 million – were of innocent New Yorkers, meaning they were neither arrested nor issued a summons. Black and Latino residents comprised about 87 percent of people stopped.[12] Police used physical force more often on black and Latino people than during stops of white people. No guns were found in 99.8 percent of stops. Thus, while the routine use of such discriminatory practices did little to improve public safety, such practices did succeed in alienating communities of color and making them increasingly reluctant to cooperate with the police in conducting criminal investigations.

- A 2001 Department of Justice report found that, although blacks and Latinos were *more* likely to be stopped and searched by police, they were *less* likely to be in possession of contraband. On average, searches and seizures of white drivers yielded evidence 17 percent of the time, compared to only 8 percent of the time for black drivers and only 10 percent of the time for Latino drivers.[13]

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[10] Department of Justice, *Fact Sheet: Racial Profiling* (2003), available at http://www.justice.gov/opa/pr/2003/June/racial_profiling_fact_sheet.pdf.

[11] The 2007 National Survey on Drug Use and Health showed that 9.5% of African Americans, 8.2% of whites, 6.6% of Hispanics and 4.2% of Asians. Substance Abuse and Mental Health Services Administration, *Results from the 2007 National Survey on Drug Use and Health: National Findings* 25 (2008), available at http://oas.samhsa.gov/nsduh/2k7nsduh/2k7Results.cfm. The National Institute of Health found that African American youth use illegal drugs and alcohol and smoke cigarettes at substantially lower rates than white youth. National Institute on Drug Abuse, *Monitoring the Future national results on adolescent drug use: Overview of key findings, 2006* (2007), available at http://monitoringthefuture.org/pubs/monographs/overview2006.pdf.

[12] New York Civil Liberties Union, "NYCLU Analysis Reveals NYPD Street Stops Soar 600% Over Course of Bloomberg Administration." February 14, 2012, available at http://www.nyclu.org/news/nyclu-analysis-reveals-nypd- street-stops-soar-600-over-course-of-bloomberg-administration

[13] Patrick A. Langan, Lawrence A. Greenfeld, Steven K. Smith, Matthew R. Durose, and David J. Levin. Contacts between Police and the Public: Findings from the 1999 National Survey, Bureau of Justice Statistics February 2001.

- A 2000 GAO report on the activities of the U.S. Customs Service found that, among U.S. citizens, black women were nine times more likely than white women to be x-rayed after being frisked or patted down. In keeping with the 2001 DOJ finding, and contrary to what such practices would suggest, researchers found that black women were less than half as likely as white women to be found carrying contraband. [14]

These reports are representative of others that have produced similar findings. Racial profiling is based on false assumptions about crime and people of color. It diverts limited law enforcement resources away from more effective strategies. Racial profiling also causes resentment in targeted communities and makes people in those communities less likely to cooperate in investigations. When individuals and communities fear the police, they are less likely to call law enforcement when they are the victims of crime or in emergencies. Creating a climate of fear compromises public safety.

Racial profiling is not a victimless crime

Not only is racial profiling an ineffective law enforcement strategy, it also incites feelings of helplessness, frustration, anxiety and anger for innocent victims of the practice.

- In 2010, ABC News produced a piece entitled, "Shopping While Black" to illustrate the problem of racial profiling in stores. The network actually went so far as to plant actors to pretend to shop in high-end New York boutiques, while cameras filmed the actions of sales people and security officers as African-American teens shopped. What they found was that the teenagers were routinely harassed and made objects of suspicion, regardless of their conduct.[15]

- An ACLU report from 2009 highlighted the story of Yawu Miller, a black reporter from the Bay State Banner. Miller decided to test just how quickly he would be pulled over while driving through Brookline, MA, a predominantly white and wealthy town adjacent to Boston. Within minutes, not one, but *three* police cruisers appeared behind him, lights flashing. "Are you lost?" one officer asked. When Miller replied no, another officer quickly followed up, saying, "You're from Roxbury. Any reason why you're driving around in circles?"[16]

- Last year, Brooklyn Councilman Jumaane Williams and an aide to the New York City Public Advocate, Kirsten John Foy, were handcuffed and arrested at a city parade in New York after a dispute over whether they should be admitted to a blocked off area reserved for public officials. After they entered the area, police officers angrily confronted the

[14] U.S. General Accounting Office. *Testimony Before the Subcommittee on Government Management, Information and Technology, Committee on Government Reform and House of Representatives,* April 2001, available at http://www.gao.gov/archive/2000/g100150t.pdf.
[15] Smawley, Michelle and Mary Healy, "What Would You Do? Shopping While Black," ABC NEWS, May 5, 2010, available at http://abcnews.go.com/WhatWouldYouDo/shopping-black-racial-profiling-store/story?id=10416960.
[16] Harris, *supra* note 1.

Council Member and aide, and refused to acknowledge the public officials' credentials. An officer shoved Williams after the council member attempted to communicate with a supervising officer, and Foy was thrown forcefully to the ground and handcuffed. Williams was grabbed by the arm and also handcuffed. The public officials were then detained for about an hour before being released. Williams suggests that his arrest was representative of a larger problem of the NYPD targeting "young, black, with locks and earrings."[17]

- The New York City Police Department has also targeted Muslim New Yorkers for intrusive surveillance (including the compilation of dossiers) without suspicion of any criminal activity. According to a series of Associated Press articles that began in August 2011, the NYPD had been dispatching undercover officers into Muslim neighborhoods to monitor daily life in bookstores, cafes and nightclubs, and has even infiltrated Muslim student organizations in colleges and universities. The NYPD has been using informants, known as "mosque crawlers" to monitor religious services, even when there is no evidence of wrongdoing. The NYPD has also engaged in pretextual stops of Muslim residents. According to the Associated Press, the NYPD sent police officers to Pakistani neighborhoods in New York City to stop cars in order to provide the NYPD with an opportunity to search the National Crime Information Center database and to look for suspicious behavior.[18]

- Lizzy Dann, a third-year law student and the Outreach Chair for NYU Law School's Muslim Law Students Association (MLSA) described to the ACLU how the NYPD's suspicionless surveillance has affected Muslim students: "I and other community members feel betrayed by our own police force, and the fact that it's the police singling out Muslims for unfair treatment makes us all deeply concerned that other parts of society see us as suspect, too, even though we've done nothing wrong. . . My fellow students describe censoring themselves in classes to avoid saying anything that might be taken as controversial or out of the mainstream on contemporary political issues even where they should be most free – in academia. They are afraid that if they are seen as "too Muslim" in their views, non-Muslim students and professors will see them as suspect, like the NYPD has. Muslim students' growing silence impoverishes our intellectual community; we are less able to learn from one another when we do not share our candid thoughts and ideas."

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[17] Fernanda Santos and Michael Wilson, "Police Detain Brooklyn Councilman at West Indian Parade," *N.Y.Times*, Sep. 6, 2011, at A20. *See also* New York Civil Liberties Union, "Jumaane Williams, Kirsten John Foy and NYCLU Welcome NYPD Discipline, Demand Greater Police Accountability," November 10, 2011, available at http://www.nyclu.org/news/jumaane-williams-kirsten-john-foy-and-nyclu-welcome-nypd-discipline-demand-greater-police-accou. In November 2011, the NYPD's disciplined three officers involved in the wrongful arrests of Council Member Jumaane D. Williams and Public Advocate aide Kirsten John Foy. Id.

[18] For a listing of the Associated Press series on this issue, *see* Associated Press, *Highlights of AP's probe into NYPD intelligence operations*, available at http://www.ap.org/media-center/nypd/investigation. *See also* New York Civil Liberties Union, "NYCLU Urges City Council to Investigate NYPD Spying on Muslim New Yorkers," October 6, 2011, available at http://www.nyclu.org/news/nyclu-urges-city-council-investigate-nypd-spying-muslim-new- yorkers; New York Civil Liberties Union, "NYCLU and ACLU Call For Investigation into NYPD Profiling of Muslims and Ethnic Groups," February 22. 2012, available at http://www.nyclu.org/news/nyclu-and-aclu-call-investigation-nypd-profiling-of-muslims-and-ethnic-groups.

As these stories suggest, racial profiling is an all too common occurrence, affecting the lives of responsible, productive citizens as they dine, drive, or shop. Not only is this not a victimless crime, but the victims are all around us. They include not just those who are detained, but those who fear being detained and restrict their activities as a consequence of that fear. As the stories illustrate, these interactions hurt and humiliate individuals while doing irreparable damage to relationships between law enforcement and the community.

Racial profiling violates human rights standards

Additionally, racial profiling 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), ratified by the U.S. in 1994, and the International Covenant on Civil and Political Rights (ICCPR), ratified by the U.S. in 1992.

Under the ICERD, the United States accepted the obligation to refrain from engaging in racially discriminatory acts and practices. Article 2 of the ICERD obligates the United States to "take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations, which have the effect of creating or perpetuating racial discrimination."[19]

Similarly, under the ICCPR, the United States must not only cease all racial profiling on a national level, it must also actively monitor the policing activities of law enforcement agencies at all levels in order to locate and eliminate any racial profiling practices. Both the ICCPR and ICERD require its state parties to refrain from committing discrimination and to undertake affirmative steps to prevent and put an end to existing discrimination.

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."[20] The Committee reiterated its recommendations in 2009, calling on the U.S. government to "make all efforts to pass the End Racial Profiling Act."[21]

In spring 2009, before the United States officially joined the U.N. Human Rights Council, the U.S. government publicly acknowledged that it needed to improve its domestic compliance with its obligations under international human rights treaties.[22] In March 2011, during the council's evaluation of U.S. domestic human rights performance (known as the Universal Periodic

[19] International Convention on the Elimination of All Forms of Racial Discrimination art. 2, Dec. 21, 1965, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969).
[20] 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).
[21] Letter from Chairperson of the Committee on the Elimination of Racial Discrimination to the Unites States (Sept. 28, 2009), available at http://www.aclu.org/files/pdfs/humanrights/uncerdresponse_racialdiscrimination.pdf
[22] United States Department of State, *United States Human Rights Commitments and Pledges* (April 2009), available at http://www.state.gov/documents/organization/121976.pdf.

Review), the U.S. government formally committed to take a number of concrete steps to improve U.S. human rights performance at home including committing to "[p]rohibit and punish the use of racial profiling in all programs that enable local authorities with the enforcement of immigration legislation and provide effective and accessible recourse to remedy human rights violations occurred under these programs."[23] The extent to which the United States lives up to its public commitments on human rights will substantiallyimpact our country's reputation around the world.[24]

Racial profiling is a violation of our fundamental principles of justice, tainting everything it touches. The persistent use of perceived race, ethnicity, religion or national origin as the basis for questioning and arrest not only weakens the legitimacy of law enforcement in the eyes of the citizens whom they are supposed to protect, but also damages our collective image in the eyes of the world. For these reasons, we urge Congress to move toward reclaiming justice by passing the End Racial Profiling Act, which prohibits law enforcement from subjecting a person to heightened scrutiny based on race, ethnicity, religion or national origin, 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 addition to defining and explicitly prohibiting racial profiling, ERPA would also mandate training to help police avoid responses based on stereotypes and false assumptions about minorities. ERPA would also mandate data collection, authorize grants for the development and implementation of best policing practices and would require periodic reports from the attorney general on any continuing discriminatory practices. ERPA is the one legislative proposal that offers hope for a comprehensive response to this intractable problem.

Reclaim Due Process: Racial Profiling in Immigration and Border Enforcement

Immigration and border enforcement practices continue to promote racial profiling of those who look or sound foreign. In one example, the ACLU and its Tennessee affiliate recently filed a lawsuit challenging Immigration and Customs Enforcement's ("ICE's") conduct of a raid in Nashville. In the raid, authorities allegedly detained and interrogated, among others, a U.S. citizen child simply because of the color of his skin.[25] Racial profiling reform must include scrutiny of ICE's Secure Communities and 287(g) programs, as well as Customs and Border Protection ("CBP") enforcement activities at international borders and in the U.S. interior.

The Secure Communities program creates an incentive for state and local police to make minor or pretextual arrests based on racial profiling because even if someone is later cleared of wrongdoing S-Comm can still lead to deportation

[23] Humanrights.gov, *Accepted UPR Recommendations* (March 2012) ¶ 108, http://www.humanrights.gov/wp-content/uploads/2012/03/USAcceptedRecommendations-2010UPR.pdf.
[24] American Civil Liberties Union, *Unfinished Business: Turning the Obama Administration's Human Rights Promises Into Policy*, available at https://www.aclu.org/files/assets/unfinished_business_aclu_final.pdf.
[25] Lindsay Kee, ACLU of Tennessee, "'We Don't Need a Warrant, We're ICE'" (Oct. 21, 2011), available at http://www.aclu.org/blog/immigrants-rights/we-dont-need-warrant-were-ice

The Obama administration's central immigration enforcement initiative is Secure Communities. Under this program, any time an individual is arrested and booked into a local jail, his or her fingerprints are electronically run through ICE's databases. After a similar ICE jail screening program (the Criminal Alien Program or CAP) was initiated in Irving, Texas, the Warren Institute at the University of California, Berkeley, found strong evidence that police engaged in racial profiling. The report concluded that there was a "marked rise in low-level arrests of Hispanics."[26] Apparently, ICE ignored the evidence of racial profiling in the Irving, Texas program because a recent newspaper analysis of Secure Communities in Travis County, Texas, revealed that "more than 1,000 people have been flagged for deportation in Travis County in the past three years after arrests for minor infractions such as traffic tickets or public intoxication."[27] Secure Communities creates an incentive for state and local police to target immigrants for arrest for minor offenses or even pretextually. Police understand that even if the arrest is baseless or the person is later cleared of wrongdoing, Secure Communities will bring that person to ICE's attention for potential deportation.

Secure Communities has been aggressively deployed by ICE over the last four years to 2,590 jurisdictions, despite vehement objections by three state governors (Illinois, New York, and Massachusetts) and many local leaders across the country. Massachusetts Governor Deval Patrick explained his opposition to Secure Communities: while "[n]either the greater risk of ethnic profiling nor the overbreadth in impact will concern anyone who sees the immigration debate in abstract terms . . . [for] someone who has been exposed to racial profiling or has comforted the citizen child of an undocumented mother coping with the fear of family separation, it is hard to be quite so detached."[28]

Despite Department of Homeland Security (DHS) Secretary Napolitano's assertion that Secure Communities is "track[ing] down criminals and gang members on our streets,"[29] ICE's own data shows this is grossly misleading. Nationwide, more than 56 percent of people deported under Secure Communities had either no convictions or only misdemeanor convictions. By processing non-criminals, misdemeanants, and persons arrested but not convicted, Secure Communities sends a message to local police that ICE will turn a blind eye to how arrestees came to be fingerprinted. And by focusing on those who pose no threat to society, ICE's actions contribute nothing to public safety; the agency's claim to focus on serious felons reveals itself to be deliberately misleading hyperbole.

Secure Communities has had consequences for lawful residents, such as U.S. citizen Antonio Montejano. Montejano, a Latino, was subjected to four days of unlawful detention after having his immigration status questioned based on an arrest stemming from his children's handling of store merchandise. The incident resulted in his pleading guilty to an infraction, an offense lesser than a misdemeanor. Montejano remained in custody despite repeatedly proclaiming his U.S.

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[26] Trevor Gardner II and Aarti Kohli, The Chief Justice Earl Warren Institute on Race, Ethnicity & Diversity, *The C.A.P. Effect: Racial Profiling in the ICE Criminal Alien Program*, September 2009, 1, 5, 8, available at http://www.law.berkeley.edu/files/policybrief_irving_FINAL.pdf

[27] Dave Harmon, "Undocumented immigrants in jail: Who gets deported?" AUSTIN AMERICAN-STATESMAN (Mar. 18, 2012), available at http://www.statesman.com/news/statesman-investigates/undocumented-immigrants-in-jail-who-gets-deported-2244677.html?viewAsSinglePage=true

[28] Letter from Gov. Deval Patrick to Bristol County Sheriff Thomas M. Hodgson (June 9, 2011).

[29] Secretary Napolitano's Remarks on Smart Effective Border Security and Immigration Enforcement (Oct. 5, 2011).

citizenship. Upon his release, he says his 8-year-old son asked him, "'Dad, can this happen to me too because I look like you?' I feel so sad when I heard him say this. But he is right. Even though he is an American citizen – just like me – he too could be detained for immigration purposes because of the color of his skin – just like me."[30] In 2011, the Warren Institute released a study estimating that 3,600 U.S. citizens have been apprehended under Secure Communities.[31]

DHS has deployed Secure Communities in jurisdictions where local law enforcement agencies have been or are being investigated by the Department of Justice ("DOJ") Civil Rights Division for discriminatory policing targeting Latinos or other immigrants. For example, DHS continues to operate Secure Communities in the New Orleans area even though DOJ earlier this year concluded that the New Orleans Police Department ("NOPD") has engaged in patterns of misconduct that violate the Constitution and federal statutes. DOJ documented multiple instances of NOPD officers stopping Latinos for unknown reasons and then questioning them about immigration status. Members of the New Orleans Latino community told DOJ that Latino drivers are pulled over at a higher rate than others for minor traffic violations.[32] DOJ cites several incidents when Latino workers called police after being victimized by crime, but were then questioned about immigration status and offered no support in pursuing a criminal case. DHS has continued to operate Secure Communities in New Orleans, despite DOJ's findings of biased policing. In this context, it is unsurprising that in Orleans Parish, Secure Communities' deportations are composed of 59% non-criminals and 20% misdemeanants.[33] This combined rate of 79% far exceeds the national average and makes New Orleans one of the worst-performing jurisdictions when measured against Secure Communities' congressionally mandated focus on the most dangerous and violent convicted criminals.

Similarly, in 2011 DHS chose to activate Secure Communities in Suffolk County, New York, even though DOJ was investigating the Suffolk County Police Department ("SCPD"). Many Latino crime victims in Suffolk County described how SCPD demands to know their immigration status. In September 2011, DOJ informed SCPD that its policy governing the collection and use of information about immigration status of witnesses, victims, and suspects is subject to abuse. DOJ also recommended that SCPD revise its use of roadblocks in Latino communities and prohibit identity checks and requests for citizenship documentation.[34]

Other jurisdictions with records of discriminatory policing where DHS continues to operate Secure Communities include Maricopa County, Arizona (sued by DOJ); Alamance County,

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[30] Statement of Antonio Montejano (Nov. 30, 2011), available at http://www.aclu.org/files/assets/antonios_statement.pdf

[31] Aarti Kohli, Peter Markowitz, and Lisa Chavez, *Secure Communities by the Numbers: An Analysis of Demographics and Due Process*. 5-6 (2011), available at http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf; *see also* Sandra Baltazar Martinez, "Santa Fe Man One of thousands of Legal Citizens Incarcerated by ICE." *Sante Fe New Mexican* (Nov. 20, 2011), available at http://www.santafenewmexican.com/Local%20News/Citizens-rounded-up

[32] United States Department of Justice, *Investigation of the New Orleans Police Department,* Mar. 16, 2011, 63, available at http://www.justice.gov/crt/about/spl/nopd_report.pdf

[33] U.S. Immigration and Customs Enforcement, Secure Communities: IDENT/IAFIS Interoperability Monthly Statistics through Feb. 29, 2012, available at http://www.ice.gov/doclib/foia/sc-stats/nationwide_interoperability_stats-fy2012-to-date.pdf

[34] See Suffolk County Police Department Technical Assistance Letter (Sept. 13, 2011), available at http://www.justice.gov/crt/about/spl/documents/suffolkPD_TA_9-13-11.pdf

North Carolina (under DOJ investigation); Puerto Rico (adverse DOJ findings released in September 2011); East Haven, Connecticut (DOJ report finding "biased policing, unconstitutional searches and seizures, and the use of excessive force" for Hispanic residents, followed by a federal indictment of four officers); and Alabama (sued by DOJ for passing HB 56 which, inter alia, mandates verification of immigration status by Alabama law enforcement).

Racial profiling in Secure Communities jurisdictions manifests itself in many forms. For example, a former Sheriff's deputy in McHenry County, Illinois, recounted that "[i]n 2006, the department began posting monthly lists praising deputies with high ticket and arrest totals . . . prompting younger deputies to compete. Seipler said he was told in 2007 by one deputy that a place to make easy traffic arrests was a predominantly Hispanic apartment complex where, presumably, some residents were illegal immigrants who couldn't get driver's licenses . . . . In those officers' zeal to snag unlicensed drivers, Seipler said, he feared they were violating the rights of licensed, law-abiding Hispanic citizens."[35] Similarly, in Milwaukee, a statistical analysis determined that police pulled over Hispanic city motorists nearly five times as often as white drivers, and that "Black and Hispanic drivers were arrested at twice the rate of whites after getting stopped."[36]

In West Virginia, two months after Secure Communities was activated, early on a Sunday morning, eleven people in three vehicles left Lobos, a popular Latin dance club in Inwood, a farming region. All are of Hispanic heritage and departed with designated drivers. One is the young mother of two U.S. citizen children (then ages 5 months and 2 years). The vehicles, traveling separately, were stopped by the West Virginia State Police (WVSP) a mile from Lobos, purportedly for the following infractions: failure to stop at stop sign, crossing the centerline, and "side registration light" out. No drivers were issued traffic citations, but all eleven were held on ICE detainers. The children were left for a month without their parents, who could not even contact them for three days. These arrests took place in a context where WVSP's Martinsburg detachment, which made the stops, has been documented to be twice as likely to stop Hispanic drivers as white drivers.[37] When the ACLU affiliates of West Virginia and Pennsylvania visited the Lobos arrest site six months later, they saw no stop sign where a state trooper said that infraction took place. The trooper then changed his statement to say there was failure to stop at an intersection.

ICE Director John Morton has testified to Congress that "I totally recognize the concern on racial profiling. We are instituting a whole series of analytical steps working with [DOJ's] Civil Rights Division, the [Office for Civil Rights and Civil Liberties (CRCL)] at DHS, inviting them to literally be part of the analysis with us so that we can root out and identify any jurisdictions that

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[35] Joe Mahr and Robert McCoppin, "Study suggests racial mislabeling skews McHenry County sheriff data Tribune analysis suggests sheriff's deputies underreported Hispanics in traffic stops." *Chicago Tribune* (Mar. 26, 2011).

[36] 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

[37] *See* West Virginia Division of Justice and Community Services, WV Traffic Stop Study: 2009 Final Report, *Search Disparity Indices and Ratios for State Police Detachments*, available at http://www.djcs.wv.gov/SAC/Documents/WVSAC_Traffic_statestopratios09.pdf

are misusing Secure Communities."[38] ICE subsequently announced that "[f]our times a year, beginning in June 2011, CRCL and ICE will examine Secure Communities data to identify law enforcement agencies that might be engaged in improper police practices."[39] No such data review has yet been released, leaving it to nongovernmental analysts to find and disclose the troubling figure that "Latinos comprise 93% of individuals arrested through Secure Communities though they only comprise 77% of the undocumented population in the United States."[40] Even if DHS data review does occur in every Secure Communities jurisdiction (2,590 and counting), however, CRCL has no authority to investigate a state or local law enforcement agency's (LEA's) racial profiling. In addition, despite Director Morton's statement, there has been no involvement by DOJ in Secure Communities oversight, a surprising gap given the FBI's central role in transmitting fingerprints to ICE. ICE's promised oversight is illusory nearly a year after its announcement, while Secure Communities' damage to community policing and trust in law enforcement continues.

ICE continues to partner with "bad actor" state and local law enforcement agencies that engage in racial profiling, creating a culture of impunity in the 287(g) program

287(g) refers to ICE's delegation of federal immigration authority to state and local LEAs under section 287(g) of the Immigration and Nationality Act. There are two types of delegation: task forces, with roaming arrest authority, and jail-based agreements allowing state and local officers to act as immigration agents. The Inter-American Commission on Human Rights has emphasized that "[a]s in the case of the CAP and Secure Communities Programs, the 287(g) agreements open up the possibility of racial profiling . . . ICE has failed to develop an oversight and accountability system to ensure that these local partners do not enforce immigration law in a discriminatory manner by resorting to racial profiling . . . ."[41] 87% of jurisdictions with 287(g) agreements had a Latino population growth rate higher than the national average.[42]

Many domestic reports have also concluded that 287(g) is a failed program. The DHS Office of Inspector General (OIG) produced 3 comprehensive reports criticizing ICE's oversight.[43] ICE continues to partner with "bad actor" state and local LEAs, creating a culture of impunity in the 287(g) program, as in Secure Communities. 287(g) data in Tennessee from 2010 shows that the top five charges immigrants faced as a gateway to deportation continued to be traffic or minor crimes.[44] In the first nine months of FY 2010, 20,000, or half, of the immigrants encountered by

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[38] John Morton, Testimony to the House Appropriations Committee's Subcommittee on Homeland Security (Mar. 13, 2011).

[39] OCRCL, "Overview of CRCL/ICE Quarterly Statistical Monitoring of Secure Communities," available at http://www.ice.gov/doclib/secure-communities/pdf/statisticalmonitoring.pdf

[40] Kohli, Markowitz, and Chavez, *Secure Communities by the Numbers*, supra.

[41] *See* Inter-American Commission on Human Rights, *Report on Immigration in the United States: Detention and Due Process*. (Dec. 30, 2010), 66, 144, available at http://cidh.org/pdf%20files/ReportOnImmigrationInTheUnited%20States-DetentionAndDueProcess.pdf

[42] See Justice Strategies, *Local Democracy on ICE: Why State and Local Governments Have No Business in Federal Immigration Law Enforcement*. (Feb. 2009), 16, available at http://www.justicestrategies.org/sites/default/files/publications/JS-Democracy-On-Ice-print.pdf

[43] DHS, Office of Inspector General, *The Performance of 287(g) Agreements*. (Mar. 2010), available at http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_10-63_Mar10.pdf (updates in Sept. 2010 and Sept. 2011).

[44] Brian Haas, "Fewer deportations put 287(g) immigration program at risk." *The Tennessean* (Nashville), May 26, 2011.

287(g) officers were arrested for misdemeanors, primarily accused of traffic offenses.[45] Earlier investigations by the ACLU of Georgia in Cobb[46] and Gwinnett[47] counties, and by the ACLU of North Carolina[48] detailed pretextual, race-based encounters under 287(g). While ICE's fiscal year 2013 budget request commendably includes a phasing-out of task force agreements, the agency will continue existing state and local jail-based agreements which allow deputized officers to act as immigration agents in assessing their colleagues' arrests.

State laws like Arizona's S.B. 1070 and Alabama's HB 56 have harmed all communities of color in those states – U.S. citizens and immigrants alike

There is no safety net of state laws on which to rely against racial profiling. Most states do not have laws prohibiting racial profiling by law enforcement. 29 states mention racial profiling in statutes, but only 19 require law enforcement to collect data on traffic stops, and there is no standardization of this data. Further, five of the states that prohibit racial profiling only ban the use of race as the *sole* determinant for initiating a stop.[49] Indeed, there has been a recent proliferation of state laws that effectively require law enforcement agencies to engage in racial profiling in the name of immigration enforcement. Beginning with Arizona's passage of state law S.B. 1070 in April 2010, some states have required their law enforcement agencies to detain and investigate the immigration status of anyone suspected of being an undocumented immigrant. The originally enacted version of S.B.1070 explicitly permitted racial profiling as a component of law enforcement stops, before the law's backers hurriedly amended it. Although most of these state immigration laws pay lip service to racial profiling by including prohibitions on the illegal practice "except to the extent permitted by the United States or [state] Constitution," numerous police chiefs and sheriffs in these states have stated publicly that there is no way to enforce the laws' "show me your papers" provisions without engaging in stereotypes based on race and ethnicity. S.B. 1070 and its imitators in Utah, Indiana, Georgia, Alabama, and South Carolina (where ICE intends to expand its 287(g) presence), have created a legal regime in which state and local police must stop people based on their race or ethnicity for purposes of inquiring into immigration status.

Although laws have been enjoined in Arizona and other states, the Arizona experience demonstrates that racial profiling does, in fact, follow from such law enforcement practices. In a case recorded by the ACLU of Arizona, Saul Razcon, a Latino man driving on a Tucson-area freeway was stopped by the Arizona Highway Patrol in August 2010, allegedly for a broken window. He was asked for his driver's license and the officer also requested his passenger's

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[45] OIG, Sept. 2010 report, 24, available at http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_10-124_Sep10.pdf

[46] American Civil Liberties Union of Georgia Legal Foundation, *Terror and Isolation in Cobb: How Unchecked Police Power Under 287(g) Has Torn Families Apart and Threatened Public Safety.* (Oct. 2009), available at http://www.acluga.org/racial%20profiling%20Cobb.pdf

[47] American Civil Liberties Union of Georgia Legal Foundation, *The Persistence of Racial Profiling in Gwinnett: Time for Accountability, Transparency, and an End to 287(g).* (Mar. 2010), available at http://www.acluga.org/gwinnettracialreportfinal.pdf

[48] American Civil Liberties Union of North Carolina Legal Foundation and Immigration & Human Rights Policy Clinic, University of North Carolina at Chapel Hill, *The Policies and Politics of Local Immigration Enforcement Laws: 287(g) Program in North Carolina.* (Feb. 2009), available at http://www.acluofnorthcarolina.org/files/287gpolicyreview_0.pdf

[49] Rights Working Group, *Faces of Racial Profiling: A Report from Communities Across America* (2010), 10, available at http://rightsworkinggroup.org/sites/default/files/ReportText.pdf

license, before questioning whether the three young girls in the back – aged 11, 13 and 17 – had "papers." One of the girls admitted that she didn't. ICE officers arrived and a parent raced to the scene in order to prevent his documented stepdaughter from being taken away. He recalled: "Saul was stopped for next to nothing. The officer told me that he didn't know if they were 'terrorists or criminals.' This greatly offended me and made me think that this man was racist and shouldn't be working as a police officer."[50] The other two girls, sisters, were deported to Mexico.

To put these stops in larger perspective, the Arizona Department of Public Safety makes more than 500,000 stops per year, only 2% of which result in an arrest.[51] S.B. 1070 would introduce racial profiling into every one of these stops by making "suspicion" based on stereotypes of what undocumented immigrants look or sound like a major part of day-to-day law enforcement.

The ACLU and its allies are also litigating a certified class action against the Maricopa County (Arizona) Sheriff's Office (MCSO) for a pattern and practice of racial profiling of Latinos and illegal stops and seizures. Under S.B. 1070, profiling would be legitimized for agencies like MCSO, which DOJ recently concluded "engaged in a widespread pattern or practice of law enforcement and jail activities that discriminate against Latinos. This discrimination flows directly from a culture of bias and institutional deficiencies that result in the discriminatory treatment of Latinos." DOJ's statistical expert opined that "this case involves the most egregious racial profiling in the United States that he has ever personally seen in the course of his work, observed in litigation, or reviewed in professional literature."[52]

Racial profiling arises from state and local efforts to enforce immigration laws not just in Arizona, but in other states that have adopted such policies and laws. In Alabama, provisions of state law HB 56 have gone into effect, which encourage racial profiling through "show me your papers" requirements. Jose Contreras, a grocery store owner in Albertville, which has a sizable Latino population, noted that the police checkpoints have been "a nuisance to our community for the last two years, but since HB 56, I've heard of many more incidents of police detaining and sometimes deporting immigrants, about three to four accounts a week."[53] In the summer of 2011, a Latino man reported that he was pulled over by police while driving under the speed limit. He alleged that the officer stayed in his car until a tow truck arrived. The officer then approached and said the man's car would be towed. The driver asked why and was told that he was stopped because he had no papers or driver's license. Upon being shown both a valid driver's license and title to the car, the officer said the driver would have to pay for the tow truck. The driver refused and was released.

HB 56 has caused many Latinos to fear leaving their homes. According to Birmingham resident Isobel Gomez, "[i]f [police] see me they will think I'm suspicious and then they will detain me

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[50] Andrew Kennis, "Latinos Continue To Be (Illegally) Told, 'Show Me Your Papers!'" *Alternet* (Sept. 27, 2011).
[51] Univ. of Cincinnati Policing Inst., *Traffic Stop Data Analysis Study: Year 3 Final Report Prepared for the Arizona Department of Public Safety*. 17 (2009).
[52] U.S. DOJ, Civil Rights Division, Letter from Assistant Attorney General Thomas E. Perez to Maricopa County Attorney Bill Montgomery (Dec. 15, 2011), available at http://www.justice.gov/crt/about/spl/documents/mcso_findletter_12-15-11.pdf
[53] Kennis, supra.

indefinitely. They will see the colour of my skin."[54] Race-based apprehensions under HB 56 have marred the law from its first days, when Etowah County's Sheriff touted the apprehension of a Yemeni man as the first state immigration arrest. After a weekend of detention, the man was determined to be in the U.S. lawfully and released.[55] All people of color are vulnerable to "show me your papers" checks that disproportionately fall on them: the first 11 people arrested by the Tuscaloosa police for failing to have drivers' licenses after HB 56 went into effect were "two black females, four black males, one white female and four Hispanic males."[56]

The ACLU is aware of numerous reported cases of racial profiling under HB 56's auspices. For example, in February 2012 a Latino man alleged that he was standing and talking to an acquaintance at a gas station when two local police officers approached. The officers asked the men if they had Alabama identification. When one answered that he had his passport, the officer asked if he had a green card, adding that "police have the right to ask." When the men said they did not, they were arrested. No immigration charges were brought by ICE against the complainant, who paid $400 to get his car out of impound. He does not know what happened to his acquaintance. Arrests for driving without a license are also frequently a pretext for racial profiling. The Alabama experience bears this out: In November 2011, a Latino man was pulled over by a police officer, allegedly because of broken windshield wipers, even though it wasn't raining. Earlier this year, another Latino man was pulled over, allegedly because of a defective headlight. Each was arrested for driving without a license. In the headlight case, the complainant's U.S. citizen partner said that when she collected his vehicle both headlights worked fine.

The evidence is clear. When police officers are tasked with enforcing immigration laws, they necessarily resort to racial stereotypes about who "looks foreign." Yet there is no way to tell by looking at a person or listening to a person whether he or she is in the U.S. without lawful status. State laws like Arizona's S.B. 1070 and Alabama's HB 56 target undocumented immigrants, but they have harmed all communities of color in those states – U.S. citizens and immigrants alike. While DHS has suspended additional deployment of Secure Communities in Alabama, it continues to operate the program in a majority of Alabama jurisdictions and in all other states which have passed racial profiling laws like Arizona's, as well as to partner with law enforcement agencies in 287(g) agreements in five of these states. DHS must immediately end all federal participation in immigration enforcement programs that involve state and local law enforcement agencies from these states.

Customs and Border Protection (CBP) has engaged in racial profiling at the borders and far beyond, including frequent interrogations of people of color

A 2011 report by the New York Civil Liberties Union and its partners found that Border Patrol agents are using aggressive policing tactics far from the border in upstate New York to increase

[54] Ed Pilkington, "The grim reality of life under Alabama's brutal immigration law." *The Guardian* (Oct. 14, 2011).
[55] "First alleged violator of Ala. immigration law is legal." *Associated Press* (Oct. 4, 2011).
[56] Ben Flanagan, "Tuscaloosa police: Not all charged for 'license not on person' since immigration law passed are foreign born." *Al.com* (Oct. 12, 2011).

arrest rates with little regard for constitutional rights.[57] Agents claim they have authority to question people about immigration status anywhere within 100 miles of an international boundary. Two-thirds of the United States population lives in areas where CBP believes relevant constitutional protections are inapplicable, locations where everyone is subject to questioning and detention that offends the Fourth Amendment.

For many years, armed Border Patrol agents boarded domestic Amtrak trains and Greyhound buses at stops in western New York, waking up slumbering passengers to demand papers and detaining those carrying no proof of legal status.[58] The report found that from 2006 to 2009, there were 2,743 transportation raid arrests in western New York. Despite the Border Patrol's mission, less than 1 percent of these arrests were made at entry, seriously undermining claims that such raids are aimed at border traffic. Indeed, the vast majority of individuals arrested, 76 percent, had been in the United States for more than one year. The raids led to arrests mostly of Latinos, men, and individuals with a "medium" or "black" complexion.[59] A pending Freedom of Information Act (FOIA) lawsuit alleges that Border Patrol agents use racial profiling in these encounters, conducting checks with no warrants or reasonable suspicion of illegal entry.[60] The transportation raids, which have also occurred on the southern border,[61] have had a chilling effect on the ability of people of color – including authorized visitors, students, and documented immigrants – to travel.

In the town of Forks, Washington, which is 60 miles from the nearest ferry-crossing into Canada and 200 miles from the nearest land crossing, Latinos report being stopped and asked for papers at gas stations, grocery stores, farmers' markets, on bicycles, and while paying bills at City Hall. Border Patrol agents stop individuals based on their appearance and accent, and are often called in by local police to act as interpreters in traffic stops and minor investigations, thereby allowing them to check the immigration status of those involved (such interpretation "assistance" is also frequent at the southern border).[62] Similarly, in upstate New York, Latino farmworkers report being asked for papers outside churches, stores, and on the steps of their homes, causing

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[57] New York Civil Liberties Union, NYU Law School Immigrant Rights Clinic, and Families for Freedom, "Justice Derailed: What Raids on New York Trains and Buses Reveal about Border Patrol's Interior Enforcement Practices" (Nov. 2011), available at http://www.nyclu.org/news/report-reveals-troubling-border-patrol-tactics-upstate-new- york.

[58] *See, e.g.*, Nina Bernstein, "Immigrants on Trains Near Northern Border Detained." *N.Y. Times* (Aug. 29, 2010), available at http://www.nytimes.com/2010/08/30/nyregion/30border.html?_r=1&hpw; Adam Klasfeld, "Border Police Must Release Arrest Statistics from New York Area." *Courthouse News* (June 21, 2011), available at http://www.courthousenews.com/2011/06/21/37563.htm

[59] *Justice Derailed*, supra, at 16.

[60] Complaint, *Families for Freedom v. CBP* (S.D.N.Y. 2010) (No. 10 CV 2705), 3-4, available at http://www.courthousenews.com/2011/06/21/Border%20Police%20FOIA%20complaint.pdf

[61] *See, e.g.*, ACLU of New Mexico, "Border Patrol Agents "Ask For Papers" in Bus Station and Fail To Return Belongings to Individuals Deported to Mexico." (Dec. 7, 2011), available at http://aclu-nm.org/border-patrol-agents-%E2%80%9Cask-for-papers%E2%80%9D-in-bus-station-and-fail-to-return-belongings-to-individuals-deported-to-mexico/2011/12/

[62] Nina Shapiro, "Nowhere-Near-the-Border Patrol in Forks." *Seattle Weekly* (July 27, 2011), available at http://www.seattleweekly.com/2011-07-27/news/nowhere-near-the-border-patrol-in-forks/; *see also* "Border Patrol arrest at farmers market stuns bystanders." *Peninsula Daily News* (Sept. 4, 2011), available at http://www.peninsuladailynews.com/article/20110904/NEWS/309049990

residents to cover their windows and stay inside,[63] while in New Mexico two CBP agents were suspended for exposing CBP practice of "shotgunning traffic" by making unjustified stops.[64]

Two cases encountered by the ACLU of Michigan exemplify the prevalence of racial profiling that harms trust of law enforcement in border communities. Last Thanksgiving, two Latino farmworkers were arrested by a Michigan Sheriff's department after reporting a stolen bicycle and tools. The officer who responded allegedly demanded to see identity papers after arriving during the family's holiday meal, detained both men, and alerted ICE to assume their custody. In February 2011, Tiburcio Briceno, a naturalized U.S. citizen, was stopped by a Michigan State Police officer for a traffic violation while driving in a registered company van. Rather than issue him a ticket, the officer interrogated Briceno about his immigration status based, allegedly, on Briceno's Mexican national origin and limited English. Dissatisfied with Briceno's valid Michigan chauffeur's license, the officer called CBP. Briceno's car was impounded and the officer told him he would be deported. Briceno says he reiterated again and again that he was a U.S. citizen, and offered to show his social security card. The officer refused to look.

Briceno was released after CBP officers arrived and confirmed that he was telling the truth. "Becoming a U.S. citizen was a proud moment for me," Briceno has since reflected. "When I took the oath to this country, I felt that I was part of something bigger than myself; I felt that I was a part of a community and that I was finally equal to every other American. Although I still believe in the promise of equality, I know that I have to speak out to make sure it's a reality for me, my family and my community. No American should be made to feel like a criminal simply because of the color of their skin or language abilities."[65]

At the border as elsewhere, racial profiling is ineffective and wasteful law enforcement that regularly deprives people of their freedom without due process. In addition to passing ERPA, Congress should also in the interim defund the Department of Homeland Security's Secure Communities and 287(g) programs, both of which foster racial profiling, and conduct oversight of border security to ensure that it is grounded in effective law enforcement techniques. Moreover, we have seen the racial profiling that results from state and local officers enforcing immigration law, whether due to state laws or federal cooperation programs. And the Department of Justice needs to respond with more robust civil rights protections.

Reclaim Equality: FBI Racial Profiling & Racial Mapping

Racial profiling extends beyond community enforcement and into the nationwide intelligence and law enforcement policies and practices of the Federal Bureau of Investigation (FBI). The FBI's own documents demonstrate how the Bureau systematically targets innocent Americans for profiling based on race, ethnicity, religion, national origin and political activities protected by the First Amendment. Many communities throughout the country have been singled out,

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63 *Justice Derailed*, supra.

64 ACLU of New Mexico, "ACLU Defends Border Patrol Agents for Exposing Practice of 'Shotgunning.'" (May 11, 2010), available at http://aclu-nm.org/aclu-defends-border-patrol-agents-for-exposing-practice-of-%E2%80%98shotgunning%E2%80%99/2010/05/

65 ACLU of Michigan, "ACLU Urges State Police to Investigate Racial Profiling Incident." (Mar. 21, 2012), available at http://www.aclumich.org/issues/racial-justice/2012-03/1685

including: Chinese and Russian communities in California; Middle-East and Muslim communities in Michigan; African Americans in Georgia; and Latinos in Alabama, New Jersey and other states.

The FBI also uses the guise of "community outreach" to collect and store intelligence information from community groups and religious institutions, and has provided its agents with inaccurate, biased training materials. Such counterproductive, discriminatory FBI practices waste law enforcement resources, damage valuable relationships with communities and encourage racial profiling at the state and local level.

Flawed DOJ and FBI Policies

FBI racial profiling practices stem, in large part, from fundamentally flawed Department of Justice (DOJ) and FBI policies. In its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies (Guidance on Race), DOJ prohibited race from being used "to any degree" in law enforcement investigations (unless describing a specific suspect), but it carved out a loophole permitting racial and ethnic profiling in national security and border integrity investigations.

Attorney General's Guidelines

In December 2008, in the Bush Administration's final month in office, then-Attorney General Michael Mukasey instituted new guidelines (AG Guidelines) that authorized the FBI to conduct investigations called "assessments" without requiring any factual predicate suggesting the target of the investigation is involved in illegal activity or poses a threat to national security. The AG Guidelines allow the FBI to use a number of intrusive investigative techniques during these assessments, including physical surveillance, retrieving data from commercial databases, recruiting and tasking informants to attend meetings under false pretenses, and conducting both overt FBI interviews and "pretext" interviews in which FBI agents misrepresent their identities in order to elicit information.

A 2009 FBI Counterterrorism Division "Baseline Collection Plan", acquired by the ACLU through the Freedom of Information Act, reveals the types of information the FBI gathers during assessments, including identifying information (date of birth, social security number, driver's license and passport numbers), telephone and e-mail addresses, current and previous addresses, current employer and job title, recent travel history, criminal history, whether the person lives with other adults, possesses special licenses or permits, or received specialized training, and whether the person has purchased firearms or explosives.[66] *The New York Times* reported that the FBI conducted 82,325 assessments on individuals and groups from March 2009 to March 2011. This is particularly troubling because the FBI retains indefinitely all data collected during assessments, regardless of whether any criminal violation or threat to national security is identified. And of those assessments, only 3,315 developed information sufficient to justify opening more intrusive predicated investigations, which is remarkable given the low

[66] FBI Electronic Communication from Counterterrorism Division to All Field Offices (9/24/2009) (on file with the ACLU).

"information or allegation" threshold for opening a preliminary investigation under the AG Guidelines.

Nothing in the 2008 AG Guidelines protects innocent Americans from being thoroughly investigated by the FBI for no good reason. To the contrary, these Guidelines allow groups to be investigated based on their First Amendment-protected activity so long as it is not the sole basis for such investigation, and they do not clearly prohibit using race, religion, or national origin as important, even leading factors in initiating assessments.

The FBI Domestic Investigations and Operations Guide

A 2008 internal FBI guide to implementing the AG Guidelines, called the Domestic Investigations and Operations Guide (DIOG),[67] makes clear that the FBI interprets the AG Guidelines to provide it with expansive authority to use race and ethnicity in conducting assessments and investigations. Although DOJ's Guidance on Race states that race cannot be used "to *any* degree" absent a specific subject description (albeit with a carve-out for national security and border integrity investigations), the DIOG contains a more permissive standard: that investigating and intelligence collection activities must not be based "*solely* on race." (emphases added.) Under the DIOG, the FBI is permitted to "identify locations of concentrated ethnic communities" and "Collect and analyze racial and ethnic community demographics," data about racial and ethnic "behaviors," "cultural traditions," and "life style characteristics" in local communities.

Together, the Guidance on Race, the AG Guidelines, and the DIOG permit the FBI to engage in racial, religious, and national origin profiling without any basis to believe that the communities and individuals being targeted for investigation are engaged in any kind of wrongdoing.

Flawed FBI Policies in Practice

The ACLU has filed Freedom of Information Act (FOIA) requests in 34 states, and related lawsuits in four states, seeking to uncover how FBI and DOJ policies on racial profiling are being implemented across the country. The documents we have obtained thus far reveal widespread FBI mapping of ethnic and racial communities, exploitation of "community outreach" efforts to gather intelligence, and use of biased and inaccurate training materials that foster biased law enforcement.

FBI Racial Mapping

The FBI practice of "geo-mapping" allows FBI agents to collect and analyze racial and ethnic demographic information to identify racial and ethnic communities, including the location of businesses and community centers/organizations, "if these locations will reasonably aid in the analysis of potential threats and vulnerabilities, and, overall, assist domain awareness of the

[67] U.S. Department of Justice, Office of Inspector Gen., *A Review of the FBI's Investigations of Certain Domestic Advocacy Groups* (2010), available at: http://www.justice.gov/oig/special/s1009r.pdf.

purpose of performing intelligence analysis."[68] Based on the data the ACLU has collected from the FBI, it is apparent the FBI is making crass racial stereotypes about which ethnic groups commit which types of crimes. Then, the FBI uses the racial and ethnic demographic information it collected to map communities where people fitting that profile might live. Locating and mapping such communities will undoubtedly lead to disparate treatment in FBI investigative activity (and may already have done so), based on the racial and ethnic stereotypes used in conducting the "assessments." For example:

- A Detroit FBI memorandum entitled "Detroit Domain Management," notes there are more than 40 groups designated as terrorist organizations by the U.S. State Department, many of which originate in the Middle East and Southeast Asia.[69] It states that "because Michigan has a large Middle-Eastern and Muslim population, it is prime territory for attempted radicalization and recruitment by these terrorist groups," the Detroit FBI seeks to open a "Domain Assessment for the purpose of collecting information and evaluating the threat posed by international terrorist groups conducting recruitment, radicalization, fundraising, or even violent terrorist acts within the state of Michigan." Collecting information about the entire Middle-Eastern and Muslim community in Michigan, and treating them all as suspect, is unjust and an affront to religious freedom.

- A 2009 Atlanta FBI "Intelligence Note from Domain Management," purporting to identify potential threats from "Black Separatist" groups, documents population increases among "black/African American populations in Georgia" from 2000 to 2007. While significant portions of this document are redacted, it seems to focus improperly on First Amendment activity, such as non-violent protests after a police shooting and appearances in support of a congressional candidate.

- A 2009 San Francisco FBI memorandum stated that "San Francisco domain is home to one of the oldest Chinatowns in North America and one of the largest ethnic Chinese populations outside mainland China," and justified the opening of a "Domain Management – Criminal" assessment because "[w]ithin this community there has been organized crime for generations."[70] The memorandum also references evidence of the existence of "Russian criminal enterprises" in San Francisco to justify a Domain Management assessment of the "sizable Russian population" in the San Francisco region.

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[68] Federal Bureau of Investigation Domestic Investigations and Operations Guide, (Dec. 16, 2008), available at http://www.muslimadvocates.org/cgi-bin/mt/mt-search.cgi?IncludeBlogs=1&search=investigative.

[69] Memorandum from Detroit Domain Management Federal Bureau of Investigation (July 6, 2009) (on file with ACLU), available at http://www.aclu.org/files/fbimappingfoia/20111019/ACLURM011609.pdf.

[70] Federal Bureau of Investigation, Intelligence Note from Domain Management: Intelligence Related to Mara Salvatrucha Threat, Jan. 21, 2009, available at http://www.aclu.org/files/fbimappingfoia/20111019/ACLURM009170.pdf; Federal Bureau of Investigation, Intelligence Note from Domain Management: Intelligence Related to MS-13Threat, Dec. 15, 2008, available at http://www.aclu.org/files/fbimappingfoia/20111019/ACLURM011388.pdf; Federal Bureau of Investigation, Intelligence Note from Domain Management: Intelligence Related to MS-13 Locations, Sept. 22, 2008, available at http://www.aclu.org/files/fbimappingfoia/20111019/ACLURM008040.pdf; Federal Bureau of Investigation, Intelligence Note from Domain Management: Intelligence Related to Mara Salvatrucha (MS-13), Sept. 4, 2008, available at http://www.aclu.org/files/fbimappingfoia/20111019/ACLURM007857.pdf; Federal Bureau of Investigation, Intelligence Note from Domain Management: Intelligence Related to Mara Salvatrucha Threat, Jan. 21, 2009, available at http://www.aclu.org/files/fbimappingfoia/20111019/ACLURM009170.pdf.

- Several documents from FBI offices in Alabama, New Jersey, Georgia and California indicate the FBI is conducting Domain Management assessments to examine threats posed by the criminal gang Mara Salvatrucha (MS-13).[71] While MS-13 represents a criminal threat that law enforcement needs to understand, the FBI uses the fact that MS-13 was originally started by Salvadorian immigrants to justify broad Domain Management assessments targeting several different Hispanic communities. A September 2008 Intelligence Note produced by the Newark FBI office claims "MS-13 is comprised of members from Central American countries," yet the "Domain Team" collected population data for other individuals from other Spanish-speaking countries, including Mexico, Cuba, the Dominican Republic and Colombia, as well as the U.S. Territory of Puerto Rico. It also identified the five New Jersey counties with the highest Hispanic populations. Whether this data would be useful in finding locating MS-13 members is doubtful, particularly because the Mobile FBI's Intelligence Note points out that while "MS-13 members are typically Salvadorans, Guatemalans, and Honduran nationals or first-generation descendants...MS-13 has been known to admit Mexicans, Dominicans, *and non-Hispanic individuals*" (emphasis added).[72]

Targeting entire communities for investigation based on erroneous racial, religious, or national origin stereotypes as described above is inefficient, ineffective and produces flawed intelligence. The FBI should focus on criminal suspects and actual security threats, not entire communities. The FBI's offensive and exploitative use of race, religion and national origin in the racial mapping program is evidence that the existing Guidance on Race fails to protect the constitutional rights of minority communities in the United States, and must be amended. We urge Congress to compel the Obama administration to correct the misguided policies currently in effect.

FBI Exploiting Community Outreach for Intelligence

Documents obtained by the ACLU demonstrate that the FBI is not only mapping ethnic and racial communities, but it is also using community outreach programs to collect, store, and disseminate information about Americans' First Amendment-protected activities. FBI agents attending community events under the guise of community outreach are recording the content of presentations given at the events; the names, identifying information, and opinions of attendees; and information about the community groups, the names and positions of leaders, and the racial, ethnic and national origin of members.[73] The San Francisco FBI field office also conducted a years-long "Mosque Outreach" program that collected and illegally stored intelligence about American Muslims' religious beliefs and practices. FBI agents recorded information including the content of sermons and religious materials, information about congregants' religious activities and the names and contact information of religious leaders. This information was

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[71] Federal Bureau of Investigation, Intelligence Note from Domain Management: Intelligence Related to MS-13 Locations, Sept. 22, 2008, available at http://www.aclu.org/files/fbimappingfoia/20111019/ACLURM008040.pdf.

[72] Federal Bureau of Investigation, Intelligence Note from Domain Management: Intelligence Related to Mara Salvatrucha Threat, Jan. 21, 2009, available at http://www.aclu.org/files/fbimappingfoia/20111019/ACLURM009170.pdf.

[73] ACLU Eye on the FBI Alert, Dec. 1, 2011 available at http://www.aclu.org/files/assets/aclu_eye_on_the_fbi_alert community_outreach_as_intelligence_gathering_0.pdf.

classified as "secret," marked as "positive intelligence" and disseminated outside of the FBI.[74] The retention of such information violates the federal Privacy Act which prohibits maintenance of records about individuals' First Amendment-protected activities.

Community outreach programs are a crucial mechanism for establishing communication, mutual understanding and trust between government agencies and the public they serve. Exploiting these programs to gather intelligence secretly betrays the trust that is essential to enforcing the law effectively in a democratic society. The Mosque Outreach program is an affront to religious liberty. Religious freedom is a fundamental and defining feature of our national character. At the core of religious freedom is a guarantee that we can gather as religious communities and worship free of government scrutiny and surveillance.

FBI Biased Training

The FBI has further contributed to racial and religious profiling across the country by providing religiously biased training, not only to FBI agents but also to certain state and local officials collaborating with the FBI. The ACLU and investigative reporters have uncovered numerous FBI counterterrorism training materials that falsely and inappropriately portray Arab and Muslim communities as monolithic, alien, backward, violent and supporters of terrorism. These documents show that the FBI used these biased materials between at least 2003 to 2011, and they were an integral part of FBI training programs. For example, a 2003 FBI memorandum from San Francisco shows that the FBI sought to renew a contract with a trainer and "expert" advisor to FBI agents, whose draft lesson plan asserted racist and derogatory assertions about Arabs and Islam. These lesson plans asserted:

> "the Arab mind is a Cluster Thinker, while the Western mind tends to be a linear thinker," and "although Islam was not able to change the cluster Arab mind thinking into a linear one…it alleviated some of the weakness that inflicted the Arab mind in general."[75]

Another training slide asserted that the FBI can evade the law, stating that "[u]nder certain circumstances, the FBI has the ability to bend or suspend the law and impinge on freedoms of others."[76] Yet another FBI training included the below graph that shows devout Muslims as consistently violent over a 1300-year span, while graphing devout Judaism and Christianity as inexplicitly ascending directly to non-violence from 1400 BC to 2010 AD.[77]

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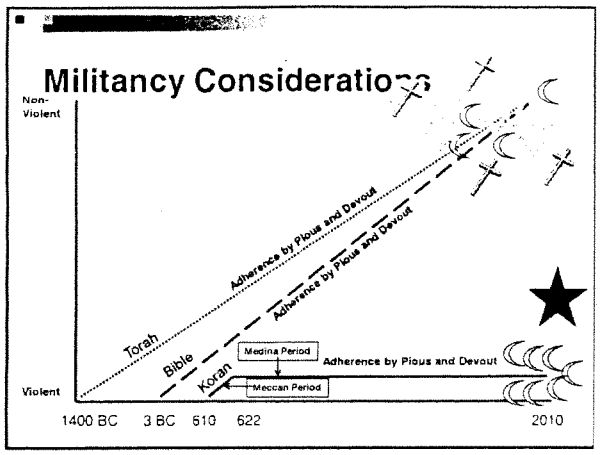
[74] ACLU Eye on the FBI Alert, March 27, 2012 available at http://www.aclu.org/blog/religion-belief-national-security/fbi- foia-docs-show-use-mosque-outreach-illegal-intel.

[75] Memorandum from San Francisco Division of the Federal Bureau of Investigation, Nov. 3, 2003 available at http://www.aclu.org/files/fbimappingfoia/20111019/ACLURM013039.pdf.

[76] Spencer Ackerman and Noah Shachtman, "FBI Memo: Agents Can 'Suspend the Law'," wired.com, March 28, 2012 available at http://www.wired.com/dangerroom/2012/03/fbi-memo-bend-suspend-law/.

[77] Spencer Ackerman, "FBI Teaches Agents: 'Mainstream' Muslims Are 'Violent, Radical,'" wired.com, Sept. 14, 2011 available at http://www.wired.com/dangerroom/2011/09/fbi-muslims-radical/.



In response to public outcry over such blatantly biased materials, the FBI launched a welcomed comprehensive review of its training materials in September 2011, which reportedly led to the removal of 876 offensive or inaccurate pages used in 392 presentations.[78] While FBI officials have attempted to characterize these biased trainings as isolated incidents, similar problematic biases can be found in official intelligence products. A 2006 FBI Intelligence Assessment, "The Radicalization Process: From Conversion to Jihad," identifies religious practice—including frequent attendance at a mosque or a prayer group, growing a beard, and proselytizing—as indicators that a person is on a path to becoming a violent extremist. The ACLU and 27 other organizations have called on the FBI to revoke such flawed products, but the FBI has so far refused.[79]

Last month, as a result of the FBI training material review, the FBI issued vague three-page Guiding Principles and DOJ issued an equally unspecific two page memorandum with which future FBI training must comply.[80] While there is certainly value in reiterating basic, common sense principles and confirming that training must comply with the Constitution, these documents are wholly inadequate to prevent future biased training because they do not provide specific guidance on standards for training or expertise requirements for trainers. There is also no indication that those responsible for biased trainings have been held accountable. To truly remedy its mistakes, the FBI must counter the biased influence of past trainings by retraining inappropriately trained FBI agents; hold those who provided inappropriate training accountable;

[78] Letter from Senator Richard Durbin to Robert Mueller, Director of the FBI, March 27, 2012 available at http://www.documentcloud.org/documents/328740-fbi-training-letter.html.
[79] Letter to Robert Mueller, Director of the FBI, Oct. 4, 2011 available at http://www.aclu.org/files/assets/sign_on_letter_to_dir_mueller_re_radicalization_report_10.4.11.pdf.
[80] The FBI's Guiding Principles, Touchstone Document on Training 2012 available at http://www.fbi.gov/about- us/training/guiding-principles; Memorandum from James Cole, Deputy Attorney General, Training Guiding Principles, March 20, 2012 available at http://www.justice.gov/dag/training-guiding-principles.pdf.

and take concrete measures to ensure that future training is aimed at real crime and security problems and based on sound research.

Our Constitution guarantees that we are free to hold any religious belief. But, biased trainings that contain false information about religious beliefs and practice undermine trust in law enforcement and our nation's commitment to religious liberty and equal protection of the law. These trainings have the effect of discriminating against a particular religion and fuel divisiveness by casting suspicion over an entire religious community.

And biased training inevitably results in biased policing. That is why eliminating federally funded training that promotes racial, religious and national origin bias is an essential part of tackling America's racial profiling blight.

We urge Congress to take action to restore equal protection by passing the End Racial Profiling Act and compelling the Obama administration to take steps to correct the misguided policies currently in effect. Congress should demand the Attorney General revise the DOJ Guidance on Race to close the national security and border integrity loopholes, prohibit profiling based on religion and national origin, and include enforceability mechanisms. Further, the Guidance should make explicit its application to intelligence activities, and should be expanded to cover state and local law enforcement agencies that work on federal task forces or receive federal funding.

While the End Racial Profiling Act and revision of the DOJ Guidance comprise the overarching solutions, as in the previous sections on routine law enforcement and immigration, there are a few key interim measures that would partially address issues of profiling in the context of national security. Congress should demand the Attorney General modify the AG Guidelines to eliminate the FBI's authority to engage in suspicion-less "assessments," and prohibit racial and ethnic mapping. Congress should also compel the DOJ Inspector General to investigate the apparent Privacy Act violations within the FBI's San Francisco and Sacramento Divisions and initiate a broader audit of FBI practices nationwide to determine the scope of the problem.

Conclusion

I understand as well as anyone the pervasive sense of fear that gripped New York City and the entire country following the horrific attacks on September 11, 2001. I actually began my tenure at the ACLU – in our national headquarters just blocks from ground zero – four days before 9/11. Still, targeting entire communities for investigation based on erroneous racial, religious, or national origin stereotypes is inefficient, ineffective and produces flawed intelligence. When we tolerate
this type of profiling in the guise of promoting national security, we actually jeopardize public safety and undermine the ideals set forth in the Constitution.

In America in 2012 and beyond, policing based on stereotypes instead of facts and evidence must not remain a fixture in our national landscape. By and large, Americans today do not consider themselves prone to racial profiling, but research confirms that we are all influenced by implicit bias. Implicit bias includes stereotypes and attitudes of which a person is unaware, that a person does not consciously intend, and that a person might reject after conscious self-reflection. For

law enforcement officers, the consequences of decisions influenced by implicit bias are generally greater than they are for ordinary citizens harboring such bias. Fortunately, clear evidence confirms that when law enforcement officers are trained about implicit bias, they do better at policing and can override their unconscious preconceptions. Training on implicit bias is a critical part of ending the pervasiveness of racial profiling in America.

The tragic story of Trayvon Martin, a seventeen-year-old, who died from a fatal gunshot wound two months ago in Sanford, Fla. has garnered national attention, bringing to light valuable questions about the role of race and stereotypes in law enforcement practices. It is unclear whether race played a role in the police response, but we have a duty to ensure that it did not. In addition to bringing a diverse call for accountability, the Trayvon Martin case has also reignited the charge against racial profiling – not only because it represents ineffective policing – but because it allows law enforcement to use stereotypes when making critical decisions about people's freedoms. Law enforcement officers – whether they are local police, TSA officials or Border Patrol agents – must base their decisions on facts. Otherwise, American's rights and liberties are unnecessarily discarded, and individuals are left to deal with the lifelong consequences.

We've seen the racial profiling that results from state and local officers enforcing immigration law, whether it's because of state laws or federal cooperation programs. And the Department of Justice needs to respond with robust civil rights protections. Further, in addition to taking interim steps like - defunding and ending immigration enforcement initiatives that foster racial profiling of Latinos and other people of color, including the 287(g) and Secure Communities programs, urging the administration to strengthen the Department of Justice Guidance Regarding the Use of Race by Federal Law Enforcement Agencies, compelling the DOJ Inspector General to investigate FBI Privacy Act violations in retaining records on First Amendment protected activity, Congress should also pass the End Racial Profiling Act. ERPA would address the problem of racial profiling comprehensively by banning the use of racial profiling and provide training to help police avoid responses based on stereotypes and unreliable assumptions about minorities.

By following these recommendations, Congress can help law enforcement to direct its resources where they are truly necessary, ensure that our communities are safe, and reaffirm the core equal protection and due process principles of the Constitution.

PREPARED STATEMENT OF REPRESENTATIVE FREDERICA WILSON

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.

PREPARED STATEMENT OF CHAIRMAN DICK DURBIN

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

Tuesday, April 17, 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 "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 "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 "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 "profiled" Trayvon Martin and "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 13 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.

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 disproportionally 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

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 Andelusia, 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 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

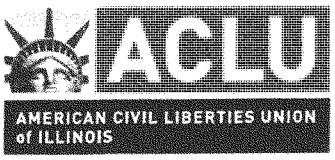
The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color throughout the United States.

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.



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.

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

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.

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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 profiling[1]—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.

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[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

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[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 Policy 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.

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[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 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

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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

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 finding 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.

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[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.

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 decent 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 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

ANTI-DEFAMATION LEAGUE, 605 THIRD AVENUE, NEW YORK, NY 10158-3560 212-885-7700 FAX: 212-867-0779 WWW.ADL.ORG

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.

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.

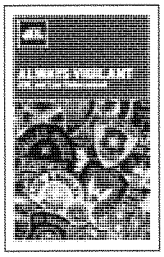
Sincerely,

Deborah M. Lauter	Michael Lieberman	Stacy Burdett
Director, Civil Rights	Washington Counsel	Washington Director

10,000
Law enforcement personnel trained at ADL's regional and national trainings each year

10,000
Extremist-related assists to law enforcement (averaging over 700 per year)

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



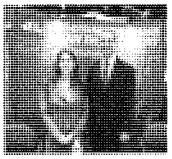
9 Million
Visits to ADL's online guide to hate symbols

460,000
Visits to ADL's webpages on terrorism since 2010

33,000
Subscribers to ADL's *Terrorism Update* e-newsletter

70,000
Law enforcement personnel trained by *Law Enforcement and Society: Lessons of the Holocaust*, in partnership with the U.S. Holocaust Memorial Museum

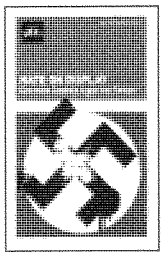
16,000
Subscribers to ADL's regional *Law Enforcement Intelligence Bulletins*



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

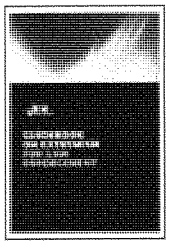


100
Extremist events monitored per year

775
Extremist groups and/or group chapters in ADL's database

7,000
Individual extremists in ADL's database

7,000
Copies of *Guidebook on Extremism for Law Enforcement* distributed



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

130
American law enforcement executives brought to Israel for ADL's *National Counter-Terrorism Seminar*

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

[THE ARAB AMERICAN INSTITUTE]

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.

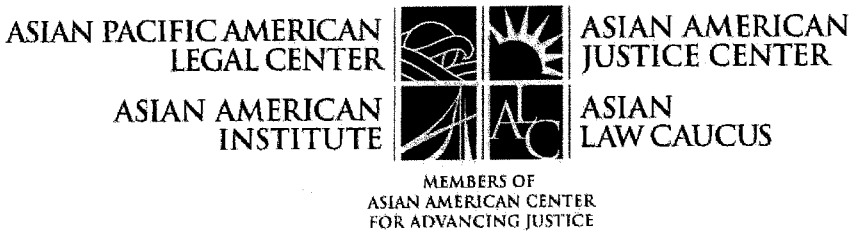
The Arab American Institute is heartened by the Subcommittee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the unjust, ineffective and counterproductive practice of racial profiling. We urge the Committee to move swiftly and take concrete actions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



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."

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[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 York[6], 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.

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[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.

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*
161 Avenue of the Americas | 12th Floor | New York, New York | 10013
http://www.brennancenter.org

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]

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[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 polices 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.

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[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. DEP'T 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 documents[13] 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 City[20] 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

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[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

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[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

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[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

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[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]

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[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_profling_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]

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[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.ihssnc.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= a3pojgfokvmdfalbl6odqdtng2; *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

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[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. Kleinfield, *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 Shaira 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.

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[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 CONSITUTIONAL 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 along, 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

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[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 counterterror 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 Sherrif'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 Updats '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%98stop-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:

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[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.

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.

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."

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

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17 April 2012

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 missions 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 sheriffs 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

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

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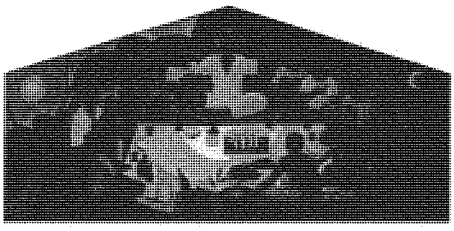
[i] "LAPD officer profiled Latinos in traffic stops, internal probe concludes", 27 March 2012, Los Angeles Times, http://articles.latimes.com/2012/mar/27/local/la-me-lapd-racial-profile-20120326

[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. Aguilasocho, D. Rodwin, S. Ashar Immigrant Rights Clinic University of California, Irvine School of Law, January 2012
http://www.law.uci.edu/pdf/MisplacedPriorities_aguilasocho-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

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.

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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

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[1] George W. Bush, Address at Islamic Center of Washington (Sept. 17, 2001), available at http://www.americanrhetoric.com/speeches/gwbush911islamispeace.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

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[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]

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[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.

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[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 starring 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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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

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.

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 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 predicating 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 predicating 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 photographs[4]; paying in cash[4]; expressing 'extreme' religious

or political views[4]; using an apartment as a house of worship[4]; traveling abroad[4]; speaking out against the government[5]; converting to Islam and growing facial hair[6]. 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 report[8] 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 Activites*, 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

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

Cynthia M. A. Butler-McIntyre *National President* | Dr. Paulette Walker *National First Vice President* | Chelsea C. Hayes *National Second Vice President* | Beverly E. Smith *National Secretary* | Terri R. Prunty *National Treasurer* | Roseline McKinney *Executive Director*

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 witb 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.

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 heir 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.

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

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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 polices, 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

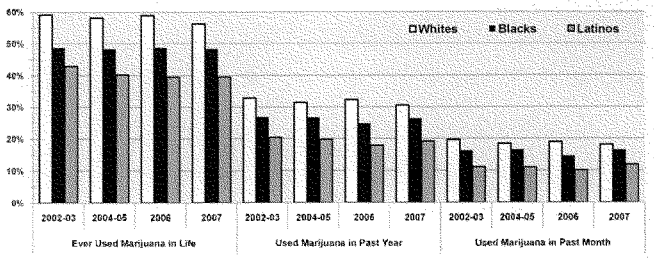
More than 850,000 people were arrested for marijuana related offenses in 2010 – almost 90 percent of those arrests were for simple possession. As of 2002, the estimated criminal justice costs of marijuana arrests for state and local governments were as much as $7.6 billion: $3.7 billion for police costs, $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/2K5NSDUHTabs/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/2K7NSDUHTabs/Sect1peTabs1to46.htm#Tab1.26B

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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 disproportionally 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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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).

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 where 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

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[3] Joe Mahr and Robert McCoppin, "Study Suggest Racial Mislabeling 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-mislabeling-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.

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[8] Human Rights Committee, *Rosalind Williams Lecraft v. Spain*, Communication No. 1493/2006 (CCPR/C/96/D/1493/2006).

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

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.

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 jannellrobles@gmail.com, Maria Jimenez's email dignidadya@yahoo.com, or Hope Sanford at hopesnopes@gmail.com.

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.

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[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

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[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.

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[5] Jason Grant, "FBI says Muslims' trust is broken by NYPD spying," *Washington* Post, March 7, 2012.

[6] Ibid.

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

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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.

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

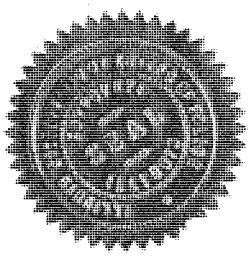
WHEREAS, the Illinois Association of Chiefs of Police and its members have consistently voiced their strong opposition to the utilization of Bias-based policing based on the belief that it is unethical and illegal, and

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.



President

Executive Director

Distribution: IACP Membership, IL General Assembly, and Constitutional Officers

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

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.

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STATEMENT OF

Jay Luthra, Executive Director

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

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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.

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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.

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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

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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.

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 AMERCA

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

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, primarily[1] 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.

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 discrimination[4]). 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 examples[5] 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.

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[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.

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).

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 intimated 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) Gurvinder 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.

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

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[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).

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

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.

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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 ageneies 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
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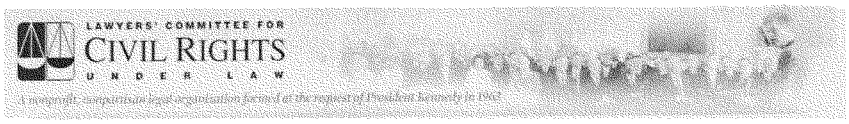

APRIL 17, 2012

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 then 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.

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[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.

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[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 iit 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]

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[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/undequ.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

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[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

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[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 Mexico[22] 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,

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[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 date 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.

The Leadership Conference
on Civil and Human Rights

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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)
Pineros 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 in 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

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
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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.

METRO ATLANTA TASK FORCE FOR THE HOMELESS
477 PEACHTREE STREET, ATLANTA, GEORGIA 30308
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.

METRO ATLANTA **TASK FORCE FOR THE HOMELESS**
477 PEACHTREE STREET, ATLANTA, GEORGIA 30308
404-230-5000 WWW.HOMELESSTASKFORCE.ORG

Conclusion

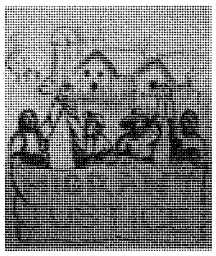
The practice of racial profiling by federal, state and local law enforcement has resulted in a heightened fear of law enforcement in our community, as in many other communities of color throughout the United States.

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

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

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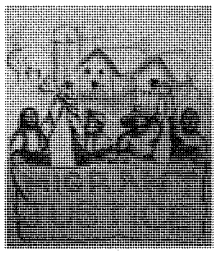


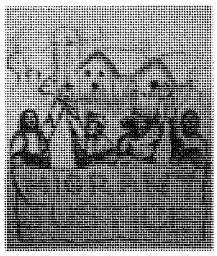
public resources and violate the civil and human rights of persons living in the United States.

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.

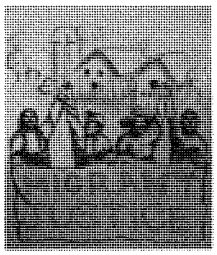
At the end of last year, one of our organization's most dedicated leaders, Eliazar Martínez García, was detained by Border Patrol upon leaving a dentist clinic in Richford, Vermont, where he had just had a tooth removed. A Border Patrol car was stationed outside the clinic when he arrived, and the officers 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.

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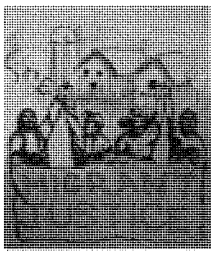

STATEMENT OF

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

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

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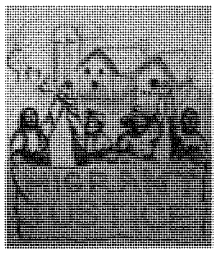

rights of persons living in the United States.

Racial Profiling in Our Communities

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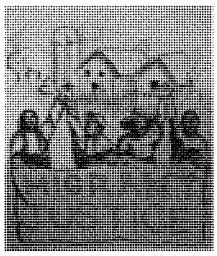
Despite the fact that we are contributing members of Vermont communities, we have become a target for law enforcement, particularly U.S. Border Patrol. Most of the farms where we work are within 100 miles of the Canadian Border, which grants Border Patrol authority to question and detain us at will. 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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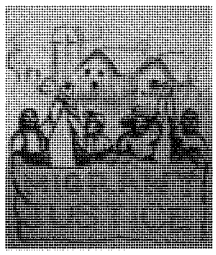
In 2011, following yet another example of racial profiling in which two of our members were arrested as passengers after a routine traffic stop, five of our farmworker members met with Vermont Governor Peter Shumlin. Since it was clear we had been targeted for the color of our skin, we opened a dialogue 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 Committee on the Judiciary and the Subcommittee on the Constitution, Civil Rights and Human Rights 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.
- 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. We at Migrant Justice welcome the opportunity for further dialogue and discussion about these important issues.

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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 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.

- 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 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.

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 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:

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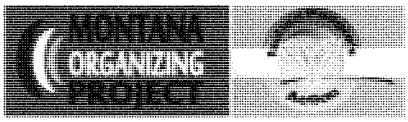


Thank you again for this opportunity to express the views of Montana Organizing Project and Indian People's Action. We welcome the opportunity for further dialogue and discussion about these important issues.

STATEMENT 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.

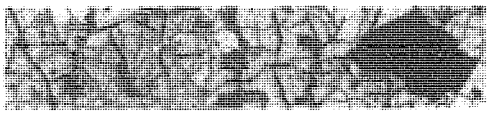
Racial Profiling in Montgomery County

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]

[1]Montgomery 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.

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- 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.

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 Muslim[1], 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]

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[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

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[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

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[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.

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[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 Conduced 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.

Americans 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

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[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]

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[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:

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[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-a403-1c01cc03b537

[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

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.

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.

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

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

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

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

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

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.

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"

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.

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 faceis 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.

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*)

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

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

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.

Abdulrahman 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

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.

Muslim Legal Fund of America

FIGHTING FOR LEGAL JUSTICE SINCE 2001

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.

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:

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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

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FOR ADVOCACY AND POLICY

to the

SENATE JUDICIARY COMMITTEE

SUBCOMMITTEE ON THE CONSTITUTION,

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on

"RACIAL PROFILING IN THE UNITED STATES"

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"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 profiling[2].

Furthermore, prominent people speaking out against racial profiling include former Presidents Bill Clinton, who called racial profiling ""morally indefensible, deeply

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[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

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[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.

Natianal 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.

National Action Network
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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 victimizes by racial profiling and we need to makes 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 principal 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 disproportionally 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:

Melvin H. Wilson, Manager- Department of Social Justice and Human Rights

National Association of Social Workers (NASW)

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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) .

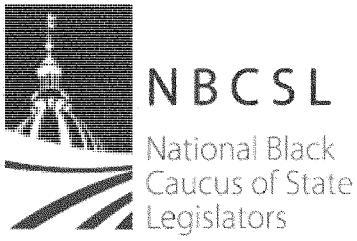
Many of you are aware of the controversial "stop and frisk" community policing policies that are in place in New York City. Originally seen as a tool to reduce drug-related street crime, it quickly became apparent that "stop and frisk" disproportionately impacts young African American and Latino males. 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 Sherriff 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

National Black Caucus of State Legislators
444 North Capitol St., N.W.
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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 exits, 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.

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[3] Cal. Pen. Code § 13519.4
[4] Fla. Stat. § 943.1758
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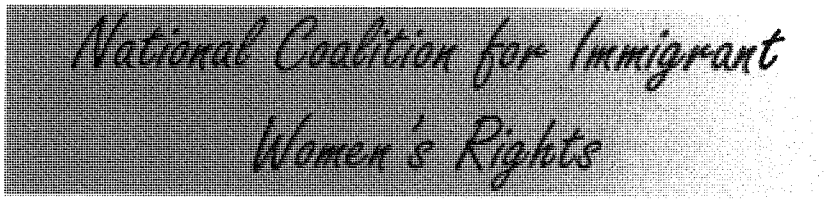

STATEMENT OF

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.

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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.

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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

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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.

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- 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.

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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

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[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.

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 Hispanic[1] 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

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[2] Michele Waslin, *The Secure Communities Program: Unanswered Questions and Continuing Concerns* (Washington, DC: Immigration Policy Center, November 2011), http://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.

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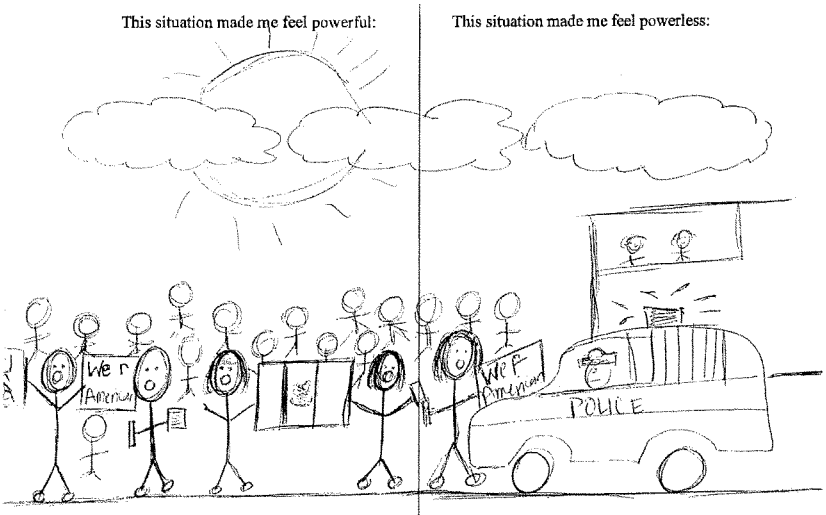
[4] Letter from Assistant Attorney General, Thomas E. Perez, to Joseph Maturo, Mayor of East Haven, Connecticut on December 19, 2011. See: http://www.justice.gov/crt/about/spl/documents/easthaven_findletter_12-19-11.pdf (accessed April 13, 2012).

Feeling Power and Powerlessness

This situation made me feel powerful:

This situation made me feel powerless:



NCLR LATINO LEADERSHIP INSTITUTE

Feeling Power and Powerlessness

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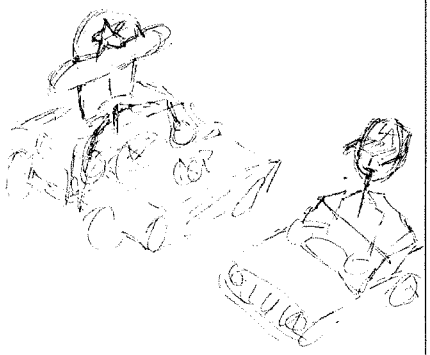

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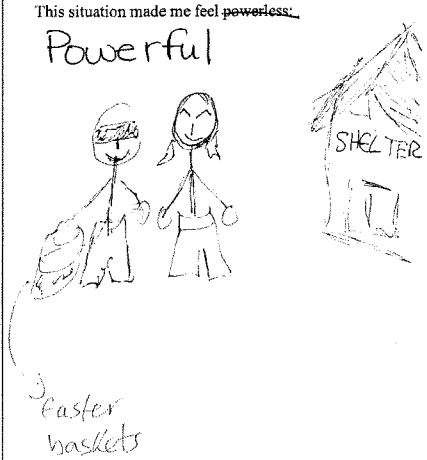

Feeling Power and Powerlessness

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NCLR NCLR LATINO LEADERSHIP INSTITUTE

Feeling Power and Powerlessness

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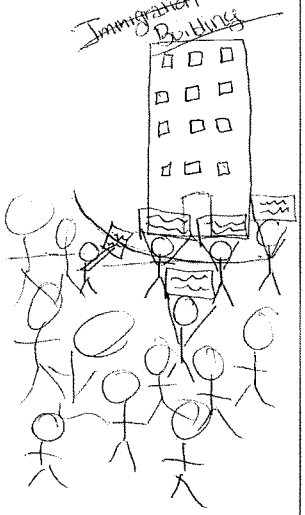

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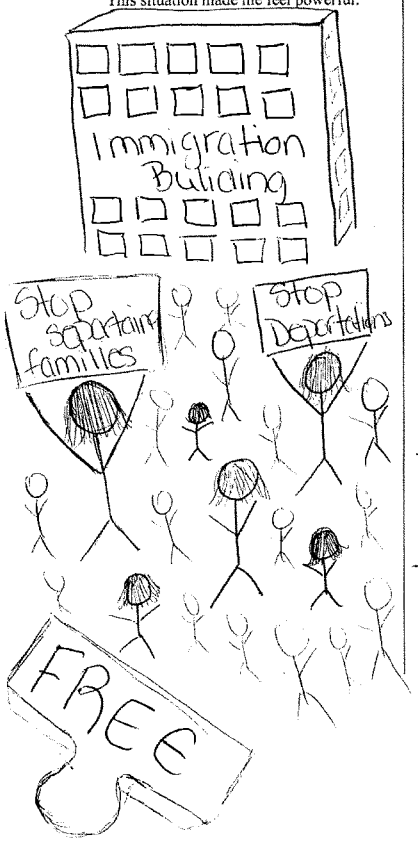


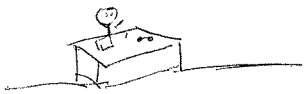
This situation made me feel powerless:

NCLR NCLR LATINO LEADERSHIP INSTITUTE
Building Women Leadership and Power

Feeling Power and Powerlessness

This situation made me feel powerful:

frustración



Hola - New Hope!

This situation made me feel powerless:

The Walk Course

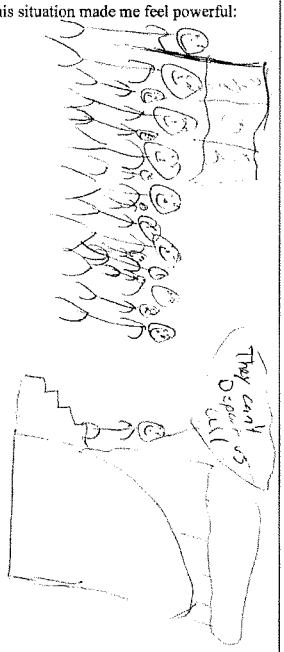
NCLR NCLR LATINO LEADERSHIP INSTITUTE

Feeling Power and Powerlessness

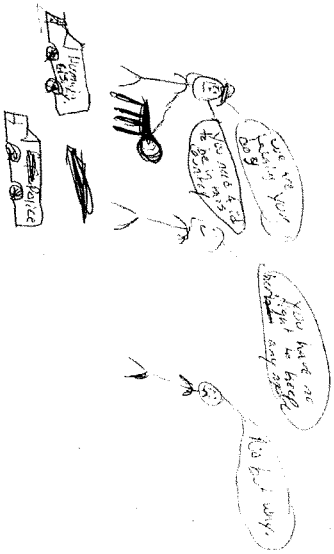
This situation made me feel powerful:	This situation made me feel powerless:
Taking control of the streets in the AZ streets and [illegible] people shut and shut down traffic [illegible] for a length of time so that he would do the walk	Being forced out by TSA to fly [illegible] because I did not want to go through the [illegible] X-ray

Feeling Power and Powerlessness

This situation made me feel powerful:



This situation made me feel powerless:



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 Natianal 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 Wateh, *Leave None to Tell the Story: Genocide in Rwanda* (1999).

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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-synidcated *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.

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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.

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[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).

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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."

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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

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.

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[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.

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:

Nadia Tonova, Director of NNAAC – ntonova@accesscommunity.org

Linda Sarsour, National Advocacy Director – lsarsour@accesscommunity.org

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 2006[2] 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 done 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.

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

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

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.

STATEMENT OF

Sister Beatrice Haines, OLVM, 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.

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.

[INSERT ORGANIZATIONAL LOGO]

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

[INSERT ORGANIZATIONAL LOGO]

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.

[INSERT ORGANIZATIONAL LOGO]

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

[INSERT ORGANIZATIONAL LOGO]

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

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 lead 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.lambertheonsulting.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.

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.

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,

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[6] Lorie Fridell, Robert Lunney, Drew Diamond and Bruce Kabou, *Racially Biased Policing: A Principled Response*, Police Executive Research Forumm 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.

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

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[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.

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/articledetailpb-63.html.

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.

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 detainers 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/.

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

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[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/cplecpjcirc.pdf.

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

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.

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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.

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 suspicions[1] 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]

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[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 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.

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[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.

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 that "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.

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

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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

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[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.

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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

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: Norratives 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 an the South Asian community, contact Priya Murthy, SAALT's Policy Director, at priya@saalt.org or (301) 270-1855.

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.

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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

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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.

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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 abcess – 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 Unites 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,

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[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

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on Civil and Human Rights

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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)

The Leadership Conference

Restoring a National Consensus: The Need to End Racial Profiling in America

MARCH 2011

Acknowledgements

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Kyoko Tanaka-Mori

Kyoko Tanaka-Mori, Professor and Chair, Department of Classics, Hellenic Studies, and Ancient Philosophy, University of Ashwood, Eastern Campus, 1994–2001.

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The Leadership Conference

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 frisked[7] 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 2001[15], 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— belie 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, race[18] 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 Zabaria 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 sueh 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 llegal 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 lawenforcement agencies requesting to participate in the program; (5) establish datacollection 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 models ...,the 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 ofcommunication. 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. Wisc., 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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3. Megan O'Toole, "Academic's Arrest Renews Race Debate" *National Post*, July 22, 2009, at A2.

4. "Obama Remarks on Gates' Arrest Angers Corps," *Associated Press*, July 24, 2009, http://www.msnbc.msn.com/id/32113088/ns/politics-white_house//.

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8. *See generally* "Wrong Then, Wrong Now: Racial Profiling Before & After September 11, 2001," The Leadership Conference on Civil Rights Education Fund, 2003 http://www.civilrights.org/publications/wrong-then/racial_profiling_report.pdf

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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.

11. A state-by-state list of jurisdictions that have been collecting data, either voluntarily or through legislation, consent decrees, or settlements is compiled by the Data Collection Resource Center. http://www.racialprofilinganalysis.neu.edu/background/jurisdictions.php.

12. *Whren v. United States*, 517 U.S. 806, 813 (1996).

13. Eric Ferkenhoff and Noah Isackson, "Ashcroft Calls on Police to End Racial Profiling," *Chicago Tribute*, April 7, 2001.

14. Presidential Address Before a Joint Session of the Congress on Administration Goals, February 27, 2001, Weekly Compilation of Presidential Documents, Vol. 37, no. 9 (March 5, 2001) at 354.

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19. *Whren v. United States*, 517 U.S. at 813.

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96. *Id.*

97. National Conference of State Legislatures, Immigrant Policy Project, 2010 Immigration-Related Laws and Resolutions in the States (January–June 2010), http://www.ncsl.org/default.aspx?tabid=20881.

98. Arizona, S.B. 1070, Section 1 – Intent, *available at* http://www.azleg.gov/legtext/49leg/2r/bills/sb1070s.pdf.

99. *See* VotoLatino http://www.votolatino.org/sb-1070-copy-cat-legislation. (last visited Feb. 24, 2011).

100. The Arizona Association of Chiefs of Police Statement on Senate Bill 1070, http://www.leei.us/main/media/AACOP_STATEMENT_ON_SENATE_BILL_1070.pdf.

101. Nicholas Riccardi, "Arizona's Immigration Law May Spur a Showdown" *Los Angelest Times*, April 23, 2010, http://articles.latimes.com/2010/apr/23/nation/la-na-obama-immigration-20100424.

102. Press Release, ACLU and Civil Rights Groups File Legal Challenge to Arizona Racial Profiling Law, May 17, 2010, http://www.aclu.org/immigrants-rights-racial-justice/aclu-and-civil-rights-groups-file-legal-challenge-arizona-racial-pr.

103. Press Release, Department of Justice, Citing Conflict with Federal Law, Department of Justice Challenges Arizona Immigration Law," http://www.justice.gov/opa/pr/2010/July/10-opa-776.html.

104. *U.S. v. State of Arizona*, 10-CV-1413, Order preliminarily enjoining the State of Arizona and Governor Brewer from enforcing sections of Senate Bill 1070, http://www.azcentral.com/ic/pdf/0729sb1070-bolton-ruling.pdf. To date, no other state has passed a law replicating S.B. 1070, and several states that were moving that direction are reassessing their position. Confronted with budgetary problems, these states are, among other things, concerned with the cost of implementing such a statute, as well as the potential for legal challenges. *See* Lois Romano, "Arizona Inspired Immigration Bills Lose Momentum in Other States," *Washington Post*, Jan. 29, 2011.

105. Dylan Smith, "Brewer Files SB 1070 Appeal," *Tucson Sentinel*, July 29, 2010, http://www.tucsonsentinel.com/local/report/072910_brewer_1070_appeal.

106. Civil Rights Division, U.S. Dep't of Justice, Guidance Regarding the Use of Race by Federal Law Enforcement Agencies (2003), at 1, http://www.usdoj.gov/crt/split/documents/guidance_on_race.php.

107. Press Release, Racial Profiling Guidance: "Useful First Step" on the Road to Enacting Compreshensive Federal Legislation, June 18, 2003, *available at* http://www.civilrights.org/press/2003/racial-profiling-guidance-useful-first-step-on-the-road-to-enacting-comprehensive-federal-legislation.html.

108. *Id.*

109. Hearing entitled "Oversight of the Department of Justice," Before the Committee on the Judiciary United States Sentate, Statement of Eric H. Holder, Jr. Attorney General, Nov. 18, 2009, at10, www.justice.gov/olp.sjc-oversight.pdf.

110. The argument made by some defenders of racial profiling that minorities commit more violent crimes than Whites ignores the nature of racial profiling, which has nothing to do with violent crime. In the violent crime context, racial profiling is rare because it is unnecessary. Such crimes typically feature a complaining victim who provides police with a specific suspect description. In contrast, profiling is used to address offenses without complaining witnesses—in particular drug-related crimes. And, while there is clearly a connection between certain acts of criminal violence and the drug trade, the incidence of violent crime is less a function of who uses or sells drugs than of who lives in poor and dangerous neighborhoods.

111. Campbell Brown, "Investigating the Christmas Day Terror Attack: Obama Administration Downplaying War on Terror?" CNN, Dec. 30, 2009, http://transcripts.cnn.com/TRANSCRIPTS/0912/30/ec.01.html.

112. *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975).

113. Congressional Research Service, "State Efforts to Deter Unauthorized Aliens: Legal Analysis of Arizona's S.B. 1070," May 3, 2010, at p. 23. The Court indicated, however, that a different conclusion might be reached at locations further removed from the U.S.-Mexican border with different population demographics. *Id.* In 2000, the Ninth Circuit ruled that the border patrol could not take Hispanic origin into account when making stops in southern California, concluding that in areas "in which the majority—or even a substantial part of the population—is Hispanic," as was the case in southern California, the probability that any given Hispanic person "is an alien, let alone an illegal alien, is not high enough to make Hispanic appearance a relevant factor in the reasonable suspicion calculus." *Id.* This ruling would seem to preclude Arizona law enforcement authorities from using Hispanic origin as a relevant factor in the "reasonable suspicion" test under S.B. 1070, at least in areas with population demographics similar to those in southern California. The Ninth Circuit's ruling goes further than the position taken by Arizona Governor Jan Brewer in an executive order issued on the same day that she signed S.B. 1070 into law, which stated that "an individual's race, color or national origin *alone* cannot be grounds for reasonable suspicion to believe that any law has been violated." (*emphasis added*) Arizona State Executive Order 2010-09, Establishing Law Enforcement Training for Immigration Laws, Apr. 23, 2010, *available at* http://www.azgovernor.gov/dms/upload/EO_201009.pdf.

114. Aaron Terrazas & Jeanne Batalova, Migration Policy Institute, "U.S. in Focus: The most up-to-date frequently requested statistics on Immigrants in the United States, 2008," http://www.migrationinformation.org/USFocus/display.cfm?ID=714#8.

115. "Army Veteran Subjected to Intrusive Body Search By Detroit Police Settles Case," ACLU of Michigan Newsletter, Spring 2009, at 1, http://www.aclumich.org/sites/default/files/file/newsletters/spring2009newsletter.pdf.

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).

118. *Id.* at 102–06.

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.

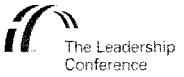
122. *See* "The Persistence of Racial and Ethnic Profiling in the United States," *supra* note 95.

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.aclufl.org/news_events/?action=viewRelease&emailAlertID=3725.



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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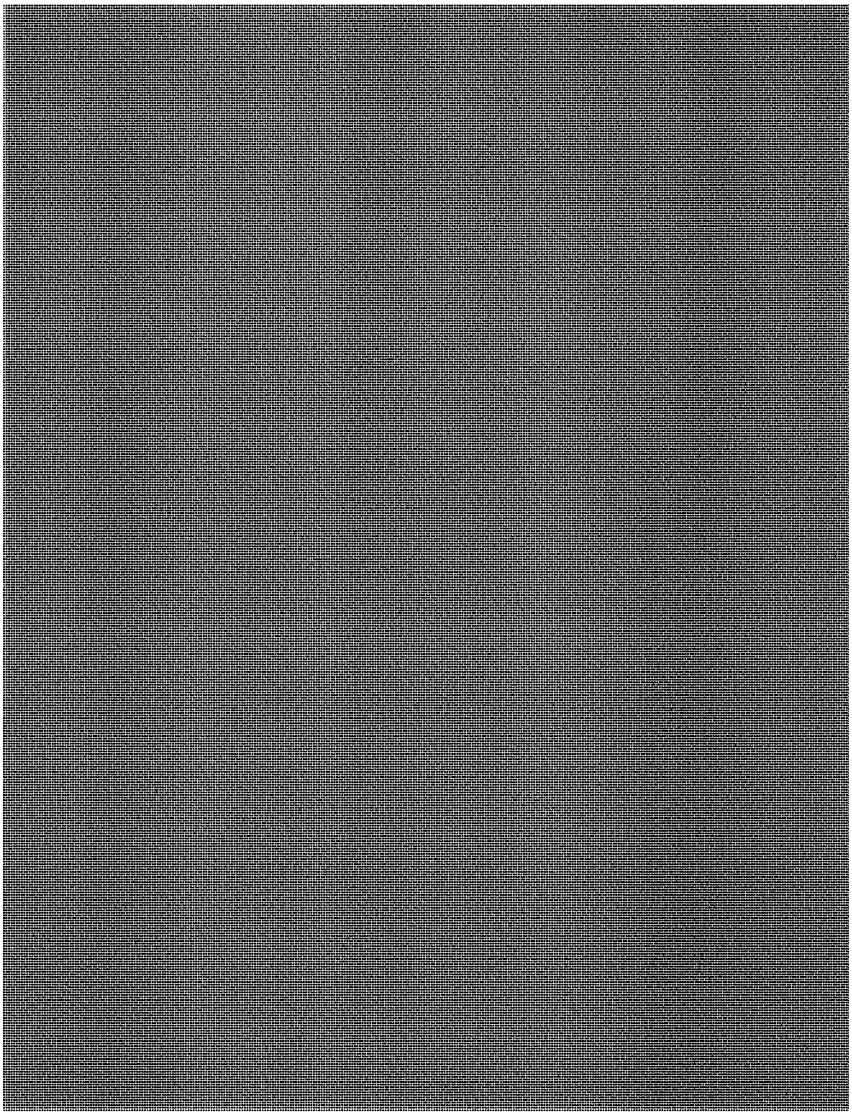

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STATEMENT OF

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

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

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.

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.