



**Written Statement of  
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**Submitted to the Senate Committee on the Judiciary**

**Subcommittee on the Constitution, Civil Rights and Human  
Rights**

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

Racial profiling in routine law enforcement is fueled by the assumpti

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- 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.<sup>14</sup>

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 enfo

Council Member and aide, and refused to acknowledge the public office 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.<sup>17</sup>

- 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 a "crawle" 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.
- Lizzy Dann, a third-year law student and the Outreach Chair for NYU Law School 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 individual police singling out Muslims for unfair treatment make

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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 A

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Review), the U.S. government formally

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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."<sup>30</sup> In 2011, the Warren Institute released a study estimating that 3,600 U.S. citizens have been apprehended under Secure Communities.<sup>31</sup>

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.<sup>32</sup> 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 findings of biased policing. In this context, it

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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 b

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287(g) officers were arrested for misdemeanors, primarily accused of traffic offenses.<sup>45</sup> Earlier investigations by the ACLU of Georgia in Cobb<sup>46</sup> and Gwinnett<sup>47</sup> counties, and by the A

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indefinitely. They will see the colour of my skin. <sup>54</sup> Race-based apprehensions under HB 56 have marred the law from its first days, when Eto

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residents to cover their windows and stay inside,<sup>63</sup> while in New Mexico two CBP agents were suspended for exposing CBP practice of “shotgunning traffic” by making unjustified stops.<sup>64</sup>

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, alleg

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information or allegations 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),<sup>67</sup> 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 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 demographic data about racial and ethnic behavior, 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 re

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purpose of performing intelligence analysis.<sup>68</sup> 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 a For example:

- A Detroit FBI memorandum entitled Detroit Domain Manage 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.<sup>69</sup> 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

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classified a secret marked a sensitive intelligence and disseminated outside of the FBI.<sup>74</sup>  
The retention of such information violates the federal Privacy Act which prohibits maintenance of records about individuals First Amendment-protected activities.

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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.<sup>78</sup> While FBI officials have attempted to characterize these biased trainings as isolated incidents, similar problemat

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

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