



The American Civil Liberties Union

Written Statement  
For a Hearing on

The Freedom of Information Act  
and the Freedom of Access to Clinic Entrances Act



That ICE has allegedly not received any complaints of racial or ethnic profiling related to the program does not mean that racial or ethnic profiling is not a significant problem in § 87(2)(g) jurisdictions. Available statistical data suggests that § 87(2)(g) deputized officers are using race or Latino appearance to stop, question and arrest for immigration-related offenses. Moreover, pending litigation, news reports and other reported evidence further suggest that § 87(2)(g) agreements are leading to racial profiling. The poor administration of the § 87(2)(g) program, which lacks internal controls and fails to provide adequate supervision and training, also enhances the risk of racial and ethnic profiling.

**A The Absence of Complaints Does Not Mean The Absence of Racial Profiling**

William Riley, Acting Director of ICE's Office of State and Local Coordination testified before this Committee that ICE has not received any complaints of racial or

status with at least one parent who is a non-citizen and one child who is a citizen.<sup>3</sup> Indeed, one woman living in Johnston County, North Carolina, who is a legal permanent resident and has three citizen children, told reporters that many Hispanics feel as if law officers are looking for excuses to deport them.<sup>4</sup> Fear of profiling in the community necessarily chills victims or even witnesses of specific incidents of racial profiling from speaking out and complaining about abuses. Another reason that racial profiling in the § 1252(g) context may be underreported is that many arrested individuals are swiftly deported and have little, if any, access to immigration counsel. The U.S. Government Accountability Office (GAO) recently reported in its § 1252(g) study that almost half of those who are detained and placed in removal proceedings under the § 1252(g) program are summarily removed. We have no way of knowing how many of these individuals, like U.S. citizen Pedro Guzman, whose case is discussed below, may have been profiled and wrongly deported.

Moreover, many victims of racial or ethnic profiling may not be aware that they were singled out because of their race or ethnicity, or they may be embarrassed or even ashamed to admit the same because they do not want to feel further humiliated if their complaints go unaddressed or unresolved. As one report, quoting a victim of racial profiling, explained: "It's almost like somebody pulls your pants down around your ankles. You're standing there nude, but you've got to act like there's nothing happening." Victims of profiling are left with "psychological scar tissue" which can result in feelings of resentment, frustration, and outrage.<sup>5</sup> Rather than rushing to the same agency responsible for their mistreatment to lodge complaints, victims of profiling may question the very legitimacy of the criminal justice system and instead go out of their way to avoid it.<sup>6</sup> Victims of profiling also may believe that complaining will be futile and unlikely to result in an effective remedy.

## **B. A Recent Report Suggests that Profiling is Significant in Non-Inde- pendent**

Independent of the complaint process, ICE has an overarching statutory duty to oversee the § 1252(g) program and to ensure that state and local actors do not violate the U.S. Constitution and laws such as by engaging in racial profiling. Notwithstanding







specifically alleges that claiming authority under the 3, 7 g MOA the Sheriff and the County have implemented a racially biased policy of stopping detaining questioning



Rodriguez filed a formal complaint with the MCSO but has not yet received a formal response

The County and Sheriff's Office's pattern and practice of racial profiling is evidenced by numerous statements of Sheriff Arpaio. For example, he has claimed that physical appearance alone is sufficient to question an individual regarding her immigration status. The federal district court, however, recently denied the County's Motion to Dismiss the lawsuit, finding that Plaintiffs had sufficiently alleged claims upon which relief could be sought and recognizing that a Latino appearance is of little or no use, in determining which individuals should be stopped by law enforcement seeking illegal aliens, and that reasonable suspicion of a traffic violation does not justify questioning of drivers or passengers about immigration status.<sup>3</sup> In addition, the U.S. Department of Justice announced on March 2, 2013,



Northeastern University researchers who produced a resource guide on racial profiling data collection systems for the U.S. Department of Justice in November 2000, found that complexities of police discretion emerge more often in the high-discretion stop category, such as traffic stops. These high-discretion stops invite both intentional and unintentional abuses. Police are just as subject to the racial and ethnic stereotypes they learn from our culture as any other citizen. Unless documented, such stops create an environment that allows the use of stereotypes to go undetected. In order to get a handle on the magnitude of the problems caused by the rampant abuse of discretion and to promote some measure of accountability, state and local law enforcement agencies at a minimum must be required to collect data and be subject to regular monitoring.

**Racial Profiling, Stop and Frisk, and the Effectiveness of Other Forms of Law Enforcement**

Although the terms racial profiling and driving while black are relatively new inventions, the practice of racial discrimination by law enforcement officials has been around in some form or fashion for most of America's history.<sup>9</sup> From the Black Codes<sup>4</sup> to the Japanese-American internment camps<sup>4</sup> and beyond, some of the most shameful episodes in American history have been the products of officially sanctioned racially discriminatory law enforcement policies. The legalization of racism,<sup>42</sup> has no place in a nation founded on the principle that all men are created equal. As Justice Murphy wrote in his dissenting opinion in *Shelby County v. Holder*,<sup>43</sup>

... racial discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life. It is unattractive in any setting but it is utterly revolting among a free people who have embraced the principles set forth in the Constitution of the United States. All residents of this nation are kin in some way by blood or culture to a foreign land. Yet they are primarily and necessarily a part of the new and distinct civilization of the United States. They must be accordingly treated at all times as the heirs of the American experiment and as entitled to all the rights and freedoms guaranteed by the Constitution.<sup>44</sup>

Racial profiling is contrary to American values because it devalues the human beings who must deal with its devastating and deadly consequences. For example

<sup>1</sup> Deborah Ramirez, Jack McDevitt & Amy Farrell, *A Resource Guide on Racial Profiling Data Collection Systems for the U.S. Department of Justice*, Nov. 2000, at 9-10, available at <http://www.ncjrs.gov/pdffiles/bja/0403.pdf>.  
<sup>2</sup> David A. Harris, *Racial Profiling: A Legal Analysis*, 2000 B.C. Envtl. Aff. L.J. 101.  
<sup>3</sup> Mich. J. Race & Law 2 (2000).  
<sup>4</sup> Reginald T. Shuford, *Anybody's Color: A History of Racial Profiling*, 31 St. Louis Univ. Public Law Rev. 1 (1999).  
<sup>5</sup> Td. Code Regs. § 24-3.3 (2004); 42 U.S.C. § 14141 (2004); 2249 W.B.





violate the Constitution.<sup>3</sup> Finally, approximately one-third of state legislatures in this country have adopted laws banning the practice.<sup>4</sup>

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In the context of gang programs the apparent race or ethnicity of an individual functions poorly as a proxy for local law enforcement to determine whether or not that person is in the country legally. There were approximately 4 million Latinos residing in the United States in 2007 according to the Census Bureau.<sup>2</sup> A study by a non-partisan research group the Pew Hispanic Center estimates that the total number of unauthorized immigrants living in the United States by the middle of this decade was 3 million. Of those 6 percent were thought to have immigrated from Latin America.<sup>3</sup> Based on these numbers approximately 3 percent of the entire Latino population of the United States is in this country lawfully as U.S. citizens, lawful permanent residents, etc. Thus out of every five Latinos targeted by police for race-based immigration enforcement at least four are likely to be living





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A DHS should suspend the § 8 program pending a com



profiling of immigrant communities is not only illegal and ineffective but also anathema to closely held American values of fairness and equality Congress should act to rein in