

## Questions and Answers About Racial Profiling

### **Q: What is Racial Profiling?**

**A:** According to Professor David Harris of the University of Toledo College of Law, a leading expert on racial profiling, criminal profiles are a set of personal and behavioral characteristics associated with particular offenses that police use to predict who may commit crimes in the future, or identify what type of person may have committed a particular crime for which no credible suspect has been identified or eye-witness description provided. Criminal profiling becomes racial profiling when these characteristics include race, ethnicity, nationality, or religion.

### **Q: Why is Amnesty International concerned about racial profiling by law enforcement?**

**A:** In line with many of Amnesty International's concerns about discrimination by U.S. law enforcement presented in the 1998 *Rights for All* campaign against human rights violations in the US, and the 2001 global report on *Racism and the Administration of Justice*, AIUSA sees a need to illuminate the problem of racial profiling in the U.S. from an international human rights perspective, and to reiterate the call on governments to abide by international human rights standards of prohibiting discrimination. The increase in racial profiling practices, along with the rise in hate crimes and social and economic discrimination directed at Arabs, Muslim, and other Middle-Eastern communities in the U.S. since the attacks of September 11<sup>th</sup>, present additional urgency for Amnesty International to address this growing national problem.

### **Q: Why should people in my community be concerned about racial profiling?**

**A:** When police use race as a proxy for criminal suspicion, it puts all of us at risk. In October 2002, a group of senior international anti-terrorism law enforcement officials released a memo entitled *Assessing Behaviors*, asserting that the only effective method of identifying potential terrorists is to focus on suspicious behavior, not race. When law enforcement officials focus on race they cast too wide a net, making it more likely that a criminal who does not "fit the profile" will go unnoticed.

### **Q: Doesn't it sometimes make sense to use race in order to increase our security?**

**A:** Time and again history has proven that race-based policies do not make us safer. In fact, not only do such practices waste limited resources, they make us less safe. Here are some examples:

*President McKinley's Assassination* – In September of 1901 President McKinley was murdered by Leon Czolgosz (pronounced "Cholgosh"). George Foster, a secret service agent during McKinley's term in office, admitted to overlooking Czolgosz because he was focused on a "dark complexioned man". Ironically, it was the African-American former constable who's complexion aroused so much suspicion, Jim Parker, who saved President McKinley from a third bullet and apprehended Czolgosz. This act of heroism was widely credited with extending the President's life for several days.

*Japanese Internment* – Following the attack on Pearl Harbor, the U.S. lashed out against U.S. citizens and resident aliens of Japanese ancestry. Signed by President Roosevelt in February of 1942, Executive order 9066 allowed for the removal of Japanese and Americans of Japanese ancestry from Western coastal regions to guarded internment camps. Located across the U.S., these permanent detention camps lasted until 1946, imprisoning over 110,000 people. Throughout the entire course of the war, 10 people were convicted of spying for Japan, none of them were of Japanese or Asian descent.

*The Oklahoma City bombing* – After bombing a federal building in Oklahoma City in 1995, the two white male assailants were able to flee while officers reportedly operated on the initial theory that 'Arab terrorists' had committed the attacks.

*Post-9/11 cases* – In the course of the government's war on terror, the arrests of John Walker Lindh (a white, middle-class male), Jose Padilla (an alleged Chicano gang member) and Richard Reid (a British

citizen of West Indian and European ancestry) suggest that al Qaeda has already been successful in recruiting a diversity of sympathizers who by their nature could not be identified through racial profiling. Moreover, in 2003, reportedly as an act of civil disobedience, a white college student from Maryland smuggled box cutters, bleach, matches, and an item with the same consistency of plastic explosives onto six airplanes. Later, he said that he was able to pass through airport security multiple times because he did not “fit the profile”.

*Washington DC-area Sniper attacks* – During the 2003 sniper attacks in the D.C. area, the police were looking for a white man acting alone (the standard profile of a serial killer). Meanwhile, the African-American man and boy who were ultimately accused, tried, and convicted for the crimes were able to pass through multiple roadblocks with the alleged murder weapon in their possession.

Indeed, when the government has chosen to eliminate the use of race in selecting which individuals to target, their hit rates – the rate at which law enforcement officials find evidence of criminal activity – have dramatically increased. For example, in the late 1990’s, spurred by numerous discrimination lawsuits, U.S. customs eliminated the use of race in deciding which individuals to stop and search. According to a study of U.S. Customs by Lamberth Consulting, the rate of productive searches increased by more than 300% when race-neutral policies were adopted.

**Q: Is there evidence that racial profiling still occurs?**

**A:** Racial profiling in the U.S. has roots that date back to the systematic mistreatment of free Blacks by local patrols during the time of slavery. Contemporary racial profiling gained national attention in the 1990’s when numerous studies indicated the disproportionate targeting of African Americans, Latinos and other minorities by law enforcement. Here are some examples:

- In 1996, a study of the New Jersey Turnpike by Lamberth Consulting revealed that African Americans did not make more traffic violations than white Americans, yet they comprised 73.2% of those stopped and only 13.5% of road users.
- Data from the New Jersey State Police in 2000 regarding highway stops on the turnpike revealed that despite the fact that African-Americans and Latinos account for 78% of those searched, troops found evidence in the searches of whites 25% of the time, of blacks 13% of the time, and of Latinos only 5% of the time.
- A study by the General Accounting Office in 2000 revealed that African American women were subject to intrusive searches by U.S. Customs more than any other group. They were 9 times more likely than white women to be x-ray searched after a pat down.
- In the fall of 2003, Amnesty International USA held a series of hearings across the U.S. where over 100 victims, advocates, and law enforcement agents came forth to testify about their experience with racial profiling. These hearings revealed both the great breadth of the discriminatory use of race by law enforcement and also the disruptive and devastating impact on the lives of ordinary individuals, families, and communities.

**Q: Have U.S. post -9/11 policies endorsed racial profiling?**

**A:** Yes. Here are some examples:

- A reported 1,200 people of Middle-Eastern descent were rounded up in a sweep for suspects immediately following the attacks of September 11, 2001. Many were detained and in June 2003, a report by the Office of the Inspector General found significant problems in the way the detainees were treated. These included: untimely access to the phone, to legal counsel, to family; prolonged detention based on unclear and under-funded FBI clearance policy; and physical and verbal abuse by prison officials.

- In 2002 the government introduced the National Security Entry/Exit Registration System (NSEERS), requiring men age 16 and over from 24 Muslim and Middle-Eastern countries and N. Korea to report for registration and interrogation at their local INS. As a result, over 13,000 men have been placed in deportation proceedings, mostly on account of minor immigration violations or due to their immigration case being caught in INS backlogs. Although the government initially stated that this policy would eventually expand to all visitors to the U.S., their position has now been reversed. NSEERS will not expand to visitors from other countries.
- During the buildup to the war with Iraq, the U.S. government compiled a list of 50,000 Iraqi nationals in the United States and targeted them for “voluntary interviews” based solely on their national origin.

**Q: Has the government done anything to combat racial profiling?**

**A:** In June 2003, in order to meet his campaign promise to end racial profiling in the U.S., President Bush issued guidelines banning racial profiling by federal law enforcement agents. Although the directive is a positive first step toward addressing the problem, it allows for the use of race in all investigations concerning “national security,” leaving the definition of these terms broad and open to discretion by federal officials. Furthermore, the guidelines also lack any enforcement mechanisms, requirement for data collection, and provision for remedies. Finally, the ban does not apply to law enforcement officials at the state and local levels where a large part of the problem lies.

**Q: Is racial discrimination prohibited under international human rights agreements?**

**A:** Yes. The two most important international conventions prohibiting racial discrimination are the International Convention to Eliminate All Forms of Racial Discrimination and The International Convention on Civil and Political Rights:

- **International Convention on the Elimination of All Forms of Racial Discrimination (CERD)**

Adopted by the General Assembly in December of 1965; entered into force in January 1969; ratified by the U.S. in 1994 as a non self-executing treaty to prevent filing of domestic lawsuits by individuals.

*Part I, Article 1:* In this convention, the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

*Part I, Article 2:* States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races....

- **International Covenant on Civil and Political Rights (ICCPR)**

Adopted by General Assembly in December 1966; entered into force in March 1976; Ratified by the U.S. in 1992.

*Part II, Article 2:* Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political, or other opinion, national or social origin, property, birth or other status.

*Part II, Article 4:* In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, *provided that such measures are not inconsistent with their other obligations under*

*international law and do not involve discrimination solely on the grounds of race, color, sex, language, religion, or social origin.*