

THREAT AND HUMILIATION

*Racial Profiling, Domestic Security,
and Human Rights in the United States*



U.S. Domestic Human Rights Program

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DEFINITION OF RACIAL PROFILING

Amnesty International USA defines racial profiling as the targeting of individuals and groups by law enforcement officials, even partially, on the basis of race, ethnicity, national origin, or religion, except where there is trustworthy information, relevant to the locality and timeframe, that links persons belonging to one of the aforementioned groups to an identified criminal incident or scheme.

EXECUTIVE SUMMARY

Racial profiling is a serious human rights problem affecting millions of people in the United States in even the most routine aspects of their daily lives. A year-long study conducted by the Domestic Human Rights Program of Amnesty International USA found that the unlawful use of race in police, immigration, and airport security procedures has expanded since the terrorist attacks of September 11, 2001. The study further found that state laws provide insufficient and inconsistent protection against profiling. Despite promises by President George W. Bush shortly after his taking office to end racial profiling, the number of American ethnic, racial, and religious groups whose members are at high risk of being subjected to this scourge has increased substantially. To address this growing national problem, Amnesty International USA (AIUSA) urges the White House and Congress to prioritize and enact the End Racial Profiling Act of 2004 and allocate sufficient funds for its vigorous enforcement.

From July 2003 to August 2004, AIUSA's Domestic Human Rights Program studied the current state of racial profiling by law enforcement agencies in the United States. The process began with the consultation of a wide range of community organizations (see Acknowledgements) and the organizing of a series of public hearings across the United States throughout the fall of 2003 (San Francisco/Oakland on September 9, Tulsa on September 30, New York City on October 2, Chicago on October 18 and 20, and Dallas on November 15). At the hearings, victims, human rights advocates, experts and law enforcement officials testified about their experiences with racial profiling. The hearings were followed by an intensive period of research that included analyzing: state laws concerning racial profiling; the

U.S. Supreme Court's interpretation of relevant protections guaranteed by the U.S. Constitution; pertinent federal policies; international treaties, covenants, and laws; recent national public opinion polls; current U.S. census data; and a wide range of literature on the subject. The major findings of this study may be summarized as follows:

KEY FINDINGS

1. A staggering number of people in the United States are subjected to racial profiling:

- Approximately thirty-two million Americans, a number equivalent to the population of Canada, report they have already been victims of racial profiling.
- Approximately eighty-seven million Americans are at a high risk of being subjected to future racial profiling during their lifetime.
- Racial profiling directly affects Native Americans, Asian Americans, Hispanic Americans, African Americans, Arab Americans, Persian Americans, American Muslims, many immigrants and visitors, and, under certain circumstances, white Americans.
- Racial profiling happens to both women and men, affects all age groups, is used against people from all socio-economic backgrounds, and occurs in rural, suburban, and urban areas.
- Racial profiling of citizens and visitors of Middle Eastern and South Asian descent, and others who appear to be from these areas or members of the Muslim and Sikh faiths, has substantially increased since September 11, 2001.

2. As the testimony cited in this report shows, racial profiling occurs in almost every context of people's lives:

■ *While driving:* A young African-American school-teacher reports being routinely pulled over in his suburban neighborhood in San Carlos, California, where only five other African-American families live (page 3). Native Americans in Oklahoma report being routinely stopped by police because of the tribal tags displayed on their cars (page 4). In Texas, a Muslim student of South Asian ancestry is pulled over and asked by police if he is carrying any dead bodies or bombs (page 5).

■ *While walking:* In Seattle, Washington, a group of Asian-American youths are detained on a street corner by police for 45 minutes on an allegation of jaywalking. While a sergeant ultimately ordered the officer in question to release them, the young people say they saw whites repeatedly crossing the same street in an illegal manner without being stopped (page 7).

■ *While traveling through airports:* An eight-year-old Muslim boy from Tulsa, Oklahoma was reportedly separated from his family while airport security officials searched him and dismantled his Boy Scout pinewood derby car. He is now routinely stopped and searched at airports (page 8).

■ *While shopping:* In New York City, an African-American woman shopping for holiday presents was stopped by security at a major department store. She showed the guards her receipts. Nonetheless, she was taken to a holding cell in the building where every other suspect she saw was a person of color. She was subjected to threats and a body search. She was allowed to leave without being charged three hours later, but was not allowed to take her purchases (page 9).

■ *While at home:* A Latino family in a Chicago suburb was reportedly awoken at 4:50 a.m. on the day after Father's Day by nine building inspectors and police officers who prohibited the family from getting dressed or moving about. The authorities reportedly proceeded to search the entire house to find evidence of overcrowding. Enforcement of the zoning ordinance, which was used to justify the search, was reportedly targeted at the rapidly-growing Latino population (page 10).

■ *While traveling to and from places of worship:* A Muslim imam from the Dallas area reports being stopped and arrested by police upon leaving a mosque after an outreach event. Officers stopped him,

searched his vehicle, arrested him for expired vehicle tags, and confiscated his computer (page 12).

3. Despite the prevalence and serious nature of the problem—including the devastating effect that it often has on victims, their families, and their communities—no jurisdiction in the U.S. has addressed the problem in a way that is both effective and comprehensive. While as of the writing of this report 29 states have passed laws concerning racial profiling, state and federal protections against this problem continue to be grossly insufficient:

■ Forty-six states do not ban racial profiling based on religion or religious appearance.

■ Thirty-five states do not ban racial profiling of pedestrians (and the majority of the fifteen states that do, use a definition of racial profiling that makes the ban virtually unenforceable in most circumstances).

■ The scope of Tennessee's current racial profiling law is so limited that it *only* pertains to the conditions under which fingerprint records are obtained.

■ In June 2003, the Department of Justice issued its *Guidance Regarding the Use of Race by Federal Law Enforcement Agencies* forbidding racial profiling by federal law enforcement officials. Yet, the guidance does not cover profiling based on religion, religious appearance, or national origin; does not apply to state or local law enforcement agencies; does not include any enforcement mechanisms; does not specify punishment for violating officers/agencies; and contains a blanket exception for "national security" and "border integrity" cases. The *Guidance* is an advisory, and hence is not legally binding.

■ On February 27, 2001, President Bush said, "racial profiling is wrong" and promised to "end it in America." Yet, almost four years later he has failed to support any federal legislative effort to eliminate racial profiling in the United States.

4. When law enforcement officials focus on what people look like, what religion they follow, or what they wear, it puts us all at risk. Several incidents in history illustrate this risk:

■ In 1901, President McKinley's assassin, a white man born in Michigan, was able to conceal the

murder weapon in a bandage wrapped around his arm, pass through security, and go undetected until he shot the president because secret service agents had decided to focus their attention on a “dark complexioned man with a moustache.”

■ In 1995, after bombing the Alfred P. Murrah federal building in Oklahoma City, Timothy McVeigh, a white male assailant later convicted of delivering the bomb alone, was able to flee while officers operated on the initial theory that ‘Arab terrorists’ had committed the attacks.

■ In 2002, two African-American male snipers were able to evade police and continue terrorizing residents of the nation’s capital and nearby areas. Police, relying on racially-based profiles of serial killers, were searching for antisocial white males.

KEY RECOMMENDATIONS

Amnesty International USA calls on U.S. federal, state, and local governments and law enforcement agencies to eliminate this extremely prevalent human rights problem. Major recommendations contained in this report include:

1. The federal government should enact the End Racial Profiling Act of 2004, or similarly comprehensive and effective anti-racial profiling legislation. Such a law would help our nation uphold its obligations under international treaties including the United Nations’ International Covenant on Civil and Political Rights (ICCPR) and International Convention on the

Elimination of All Forms of Racial Discrimination (CERD), and make it more difficult for law enforcement officers to violate Americans’ rights under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, as well as the Fourth Amendment’s guarantee to protection from unreasonable searches.

2. State and local governments should enact laws that effectively ban racial profiling. Each existing state law should be amended so that it includes the basic components necessary for such a law to be an effective tool for combating this problem. These components include (for a full list of recommended state law components see “What a Good Law Would Look Like” on page 29):

■ banning the targeting of individuals and groups by law enforcement, even partially, on the basis of race, ethnicity, national origin, or religion, except where there is trustworthy information, relevant to the locality and timeframe, that links persons belonging to one of the aforementioned groups to an identified criminal incident or scheme

■ proscribing mandatory data collection for all stops and for all searches of pedestrians and motorists

■ criminalizing violations of the ban on racial profiling and specifying penalties for officers who repeatedly engage in racial profiling

3. All law enforcement agencies should fully enforce existing local, state, and national anti-racial profiling legislation and policies.

FOREWORD

By the Hon. Timothy K. Lewis

*Chair, AIUSA National Hearings on Racial Profiling
Former Judge, United States Court of Appeals for the
Third Circuit*

*Former U.S. Attorney for Western District of Pennsylvania
Counsel to the Law Firm of Schnader Harrison Segal
& Lewis*

Under the United States Constitution, every individual has the fundamental right to equal protection under the law regardless of race, ethnicity, national origin, or religion. Racial profiling occurs when law enforcement officials—in the absence of a suspect-specific description—selectively consider these characteristics in deciding whom to investigate, arrest and prosecute. It is a practice that strikes at the root of our national principles of fairness and violates the human dignity of those victimized. The attacks of September 11, 2001 neither justify nor excuse it.

As a former state and federal prosecutor and a former federal judge, as the chair of AIUSA's national hearings on racial profiling, and as a proud citizen of this country who has personally experienced the indignity of racial profiling, I am only too aware of the urgent need for a comprehensive piece of federal anti-racial profiling legislation that would ban the practice, provide specific measures for data collection, and define procedures for bringing all law enforcement agencies in line with the Constitution and international principles of fairness and nondiscrimination.

Focusing on race, ethnicity, national origin, or religion as a proxy for criminal behavior has always failed as a means to protect society from criminal activity. In 1901, the Secret Service allowed an armed white assassin to pass through their security point at the Pan-American Exposition in New York State

without being searched, focusing instead upon an African-American former constable standing in line behind the assassin. The white assassin shot and killed President McKinley. The retired African-American constable disarmed the white assailant and held him until Secret Service agents were able to take him into custody. More recently, Washington, DC police Chief Charles Ramsey's frank admission after the arrest of serial snipers John Allen Muhammad and John Lee Malvo is also worth remembering: "We were looking for a white van with white people, and we ended up with a blue car with black people."

In the context of the current War on Terror, we need to understand that any system of racial profiling by law enforcement officers is likely to give members of the public a false sense of security while making it easier for would-be assailants to disguise their efforts. 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 may already have been successful in recruiting a diversity of sympathizers capable of eluding such



Judge Timothy K. Lewis at the AIUSA National Hearings on Racial Profiling

practices. The post-9/11 increase in profiling people who are of Arab, Muslim, South Asian, or Middle Eastern descent will not make us safer.

In 2003, I volunteered to chair a series of hearings on racial profiling for the Domestic Human Rights Program of Amnesty International USA (AIUSA). The hearings were held in San Francisco (September 9), Oakland (September 9), Tulsa (September 30), New York City (October 2), Chicago (October 18 and 20) and Dallas (November 15). The hearing panels heard testimony from law enforcement officers and academic experts, as well as community members who had been victims of racial profiling. Interestingly, some of the law enforcement officers had not only engaged in racial profiling but were themselves victims of racial profiling. Together, they outlined a phenomenon that cuts across economic and religious boundaries, affects virtually every community of color in this nation, and ultimately puts all of us at risk.

The victims of racial profiling—who often waited hours to testify—described incidents of harassment, degradation, and apparent use of excessive force that are driving a dangerous wedge between law enforcement agencies and the communities that they serve, protect and depend upon for cooperation. The stories contained in this report from Amnesty International

USA are not just isolated anecdotes. They are concrete examples of the futility of racial profiling and the harm it is doing to our nation.

There have been times in our country's history when visionaries have offered us much-needed reminders of our basic values, even as they stood with both feet planted squarely in an urgent fight for freedom and justice: American revolutionary Thomas Jefferson, in declaring that "all men are created equal," set in motion our potential for greatness as a nation and goodness as a people; Abraham Lincoln furthered that ideal at Gettysburg as he implored us, in the wake of unparalleled slaughter, to hold true to our founders' principles; Martin Luther King told us of his dream even as our country was being torn asunder by racism and bigotry.

We are faced with yet another galvanizing moment in our nation's history. The attacks of September 11, 2001 require us to revisit the depth of our country's regard for our basic freedoms. Racial profiling poses a contradiction to our fundamental values of equality, fairness and decency. Passing a federal law to eradicate the practice of racial profiling, such as the End Racial Profiling Act of 2004, would go a long way toward preserving human rights and ensuring the security of this great nation.

ACKNOWLEDGMENTS

The U.S. Domestic Human Rights Program (USDHR) of Amnesty International USA (AIUSA) is indebted to several groups and individuals for making this report possible. First and foremost, we are grateful to the men, women, and children who bravely came forward to discuss their experiences with racial profiling. These included both victims who often feared reprisal and law enforcement agents, some of whom said they feared possible political fallout.

We are also greatly indebted to the Hon. Timothy K. Lewis of Schnader Harrison Segal & Lewis. Judge Lewis, a former prosecutor and federal judge appointed by President George H.W. Bush to serve on the U.S. Court of Appeals for the Third Circuit, traveled all over the United States to chair the hearings, and his knowledge, grace, and devotion to justice were priceless assets to this research endeavor.

We are similarly appreciative to the organizations that provided advice and information during the research process. Many of these groups played a more active role by designating individuals to serve as panelists and providing witnesses and expert testimony.

On the national level these organizations include: Arab American Institute (AAI); American-Arab Anti-Discrimination Committee (ADC); American Civil Liberties Union (ACLU); Council on American-Islamic Relations (CAIR); Mexican American Legal Defense and Educational Fund (MALDEF); National Association for the Advancement of Colored People (NAACP); National Asian Pacific American Legal Consortium (NAPALC); and Sikh Mediawatch and Resource Task Force (SMART).

The Domestic Human Rights Program is also grateful to local-level organizations who put effort in ensuring community participation and representation at the events. These organizations include:

New York City: American-Arab Anti-Discrimination Committee NY (ADC-NY); Amsterdam News; Arab American Family Support Center (AAFSC); Asian American Legal Defense and Education Fund (AALDEF); Audre Lord Project; Brennan Center for Justice; Center for Constitutional Rights (CCR); Conexions Inc.; Desi Rising Up and Moving (DRUM); Drug Policy Alliance; Families for Freedom; Islamic Circle of North America (ICNA); Judson Memorial Church; Latino Workers Center; Lesbian and Gay Immigration Rights Task Force; National Coalition for Amnesty and Dignity for Undocumented Immigrants; New York Area Muslim Bar Association; New York City Commission on Human Rights; New York Civil Liberties Union (NYCLU); New York Street Vendors United Coalition (CAA AV, Street Vendors Project and Domestic Workers' Initiative of the Urban Justice Center, Esperanza del Barrio, New York Immigration Coalition, Latin American Workers Project); October 22 Coalition to Stop Police Brutality; Office of the Attorney General of New York; Office of the New York City Commissioner on Human Rights; Public Policy and Community Outreach; Repression and the Criminalization of a Generation; Restaurant Opportunities Center of NY (ROC-NY); Sista II Sista; Solidarity Action for Human Rights (SAHR); South Asian Workers Project for Human Rights.

Dallas: American Civil Liberties Union of Dallas (ACLU-Dallas); Arab American Heritage Society; Bill of Rights Committee of Greater Dallas; Catholic Charities and Community Relations Commission of Greater Dallas; Council on American-Islamic Relations DFW (CAIR-DFW); Dallas Police Department; El Centro College; League of Women Voters; Muslim Legal Fund of America; SMU Dedman

School of Law. **Chicago:** American Civil Liberties Union of Chicago (ACLU-Chicago); American Friends Service Committee; American Muslim Council; Applied Research Center (ARC); Black Network in Children's Emotional Health; Arab American Action Network; Blocks Together; Bosnian Herzegovinian American Community Center; Cambodian Association of Illinois; Campaign to End the Death Penalty; Casa Aztlan; Center for Impact Research; Centro Romero; Centro Sin Fronteras; Chicago Commission for Human Rights; Chicago Commission on Human Relations; Chicago Committee to Defend the Bill of Rights; Chinese American Service League; Chinese Mutual Aid Association; Civil Rights Bureau of the Office of the Attorney General; Coalition of African, Asian, European and Latino Immigrants of Illinois (CAAELLI); Council of Islamic Organizations of Greater Chicago; Crossroads Fund; Cry for Justice; Eighth Day Center for Justice; Erie Neighborhood House; Ethiopian Community Association of Chicago; First Defense Legal Aid; Haitian American Community Association; Heartland Alliance/Ed Centro de Educacion y Cultura; HOPE Fair Housing Center; Illinois Coalition for Immigrant and Refugee Rights; IndoAmerican Center; Inner City Muslim Action Network; Institute de Progreso Latino; Institute for Teacher Development and Research-DePaul University, School of Education; Interfaith Committee for Worker Justice - Worker's Rights Center; Japanese American Service Center; Jewish Council on Urban Affairs; Justice Coalition of Greater Chicago; Korean American Community Services; Korean American Resource and Cultural Center; Korean American Senior Center; Lao American Community Services; Latino Organization of the Southwest; Midwest Asian American Center; Midwest Immigrant and Human Rights Center; Multicultural Youth Project; Muslim Civil Rights Center; National Association for the Advancement of Colored People (NAACP-South Side); New Covenant Baptist Church; National Lawyers Guild; Rainbow Push Coalition; Sikh Media Watch and Resource Task Force; Southwest Organizing Project; Students for Social Justice; University of Chicago-Human Rights Department; Video

Machete; Vietnamese Association of Illinois. **Tulsa:** American Civil Liberties Union of Tulsa (ACLU-Tulsa); Community Services Council of Greater Tulsa; Family/Children Services; Islamic Society of Tulsa; National Association for the Advancement of Colored People of Tulsa (NAACP-Tulsa); Native American Times; North Tulsa Community Council; The Ebony Tribune; Tulsa Indian Coalition Against Racism (TICAR); Police Executive Research Forum (PERF); Tulsa Community College; Tulsa Human Rights Commission; Center for Racial Justice; Asian American Community Services. **San Francisco/Oakland:** Akhlaghi & Associates; American-Arab Anti-Discrimination Committee, San Francisco (ADC-SF); American Civil Liberties Union of Northern California (ACLU of Northern California); Applied Research Center (ARC); Asian Law Caucus; Bay Area Immigrants Rights Coalition; Bay Area Hate Crimes Investigators Coalition; Bay Area Police Watch; CLINIC of San Francisco; Community United Against Violence; Department of Ethnic Studies, University of California at Berkeley; Ella Baker Human Rights Center; Goldman School of Public Policy, University of California at Berkeley; Human Rights Advocates; Independent Press Association (IPA); La Raza Centro Legal; Lawyers Committee for Civil Rights; National Asian Pacific American Women's Leadership Institute; National Lawyers' Guild; New California Media (NCM); Oakland Police Department; Racial Justice Consortium; San Francisco Bay View Newspaper; San Francisco Office of the Attorney General; San Francisco Police Department; Siegel & Yee Law Firm; Simmons & Unger Law Offices; Refuse and Resist; San Francisco Human Rights Commission; U.S. Department of Education Office for Civil Rights; Women's Institute of Leadership Development for Human Rights.

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working group at the Leadership Conference on Civil Rights (LCCR) for their partnership in working to find an effective solution to this grave problem.

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Benjamin Todd Jealous
Director

Niaz Kasravi, Ph.D.
Researcher

INTRODUCTION

“ [R]acially biased policing is at its core a human rights issue. While some may view it as merely a public relations problem, a political issue or an administrative challenge, in the final analysis, racially biased policing is antithetical to democratic policing.”¹

—Police Executive Research Forum

“We were looking for a white van with white people, and we ended up with a blue car with black people.”²

—Washington DC Police Chief Charles Ramsey on ending the search for the “Washington Area Snipers”

Racial profiling³ is a deep-rooted problem in the United States. Despite evidence that it is ineffective and often makes us less safe, many law enforcement officials continue to rely on this blunt race-based tactic in hopes of apprehending more offenders. This type of abuse has continued and gotten worse since the attacks of September 11, 2001.

According to the most recent opinion polls and census data, there are as many racial profiling victims in the United States as there are people in Canada. At least 32 million (one out of nine) people in the United States report having been racially profiled.⁴ Additionally, on any day of the week, at least 87 million (almost one in three) people in this country are at high risk of being victimized in this way because they belong to a racial, ethnic, or religious group whose members are commonly targeted by police for unlawful stops and searches.⁵

Racial profiling is a human rights violation⁶ that can affect Americans in virtually every sphere of their daily lives and often has an impact that goes far beyond the initial incident. As the testimonies summarized in this report reveal, this seemingly ubiquitous human rights violation leaves its victims feeling humiliated,

depressed, helpless, and angry. Furthermore, racial profiling reinforces residential segregation, creates fear and mistrust, and engenders reluctance in reporting crimes and cooperating with police officers. In these times of domestic insecurity, our nation simply cannot afford to tolerate practices and policies that build walls between individuals or communities and those who are charged with the duty of protecting all of us.

From a domestic security perspective, the bottom line is that nobody knows what the next terrorist, serial killer, or smuggler will look like. In Washington DC, as this study was being designed in the offices of the U.S. Domestic Human Rights Program of AIUSA, the staff and thousands of other innocent area residents were forced to live in fear for several days as two snipers randomly killed local residents. The police, apparently operating on the standard profile of a serial killer, told the public to be on the look out for an antisocial white male, probably traveling alone. Later they suggested this individual was possibly driving a white van.⁷ They ended up arresting, and ultimately convicting, two African-American males in a blue car. Later in 2003, while the staff was reviewing multiple complaints from Arab and South Asian Americans about being profiled at airports, news stories appeared about a white college student from Maryland who was able to sneak box cutters, knives, and a substance resembling plastic explosives onto six airplanes without being detected by airport security officials.⁸ Then, as the report was being drafted and more than a year after native-born British citizen Richard Reid had been arrested for trying to ignite a shoe bomb on a trans-Atlantic airline, came reports that Federal officials were searching for “European-looking” Al Qaeda operatives.⁹ Unfortunately, a virtually simultaneous announcement that

the FBI was closely monitoring thousands of Muslims in the U.S., as well as related complaints that continue to be received by several civil rights organizations, suggest that federal authorities continue to target people of Middle Eastern and South Asian descent for scrutiny in airports and other contexts.¹⁰ While this ineffective and unfair targeting may give some the illusion of safety, it actually makes us all less safe.

The people of the United States of America continue to pay a price for the failure of their leadership and law enforcement agencies to fully learn the lesson that judgments made essentially on the basis of skin color, hair texture, gender, nation of origin, faith are an unreliable basis for determining which individuals to monitor, search, or question. Similarly, historical examples—from the assassination of President McKinley to the ongoing “War on Terror”—suggest that racial profiling diverts law enforcement’s attention away from criminal behavior in ways that ultimately put the welfare of the nation, its citizens, and its leadership at risk.

Furthermore, the United States federal and state governments have each failed to pass comprehensive enforceable legislation to effectively address the problem of racial profiling. Moreover, the Supreme Court has made it easier for police officers to engage in some forms of the practice.¹¹

These are the conclusions of a year-long study by Amnesty International USA (AIUSA) on racial profiling by law enforcement in the United States. The study included holding hearings on individual cases, local trends, and suggested remedies in each region of the country:

West: San Francisco and Oakland, California (September 9, 2003)

Midwest: Chicago, Illinois (October 18 and 20, 2003)

East: New York City, New York (October 2, 2003)

South: Tulsa, Oklahoma (September 30, 2003) and Dallas, TX (November 15, 2003)

This project also entailed an examination of: all existing state-level racial profiling legislation passed as of August 1, 2004; a review of reports on profiling by private and public agencies; cross-referencing of public

opinion data and U.S. Census information; and monitoring of reports in ethnic and mainstream media.

Together, the data suggest racial profiling is a systemic problem that targets millions of innocent Americans in an overwhelming array of contexts and has undermined U.S. federal, state, and local law enforcement agencies’ ability to detect actual domestic security threats and apprehend serial killers, assassins, and other purveyors of terror.

Fortunately, our nation’s history of successfully overcoming many manifestations of discrimination also suggests that racial profiling is a problem we can solve.

¹ Fridell, Lorie, et al., “Racially Biased Policing: A Principled Response,” *Police Executive Research Forum*, 2001, p. x. Available at <http://policeforum.mn-8.net/default.asp?link=>.

² Craig Whitlock and Josh White, “Police Checked Suspect’s Plates at Least 10 Times,” *Washington Post*, Oct. 26, 2002.

³ Amnesty International USA defines racial profiling as the targeting of individuals and groups by law enforcement even partially on the basis of race, ethnicity, national origin, or religion, except where there is trustworthy information, relevant to the locality and timeframe, that links persons belonging to one of the aforementioned groups to an identified criminal incident or scheme.

⁴ Estimated totals were derived by cross-referencing current population estimates and opinion poll data. Population estimates are based on 2000 U.S. Census figures adjusted to reflect Hispanic population as separate group. Estimate provided by the Social Science Data Analysis Network through their website www.censusscope.org. Racial profiling victimization rates are based on the most recent available national polling data for each racial/ethnic category. Black, Hispanic, and White victimization rates are from “Racial Profiling in America: Racially Biased Policing: Determinants of Citizen Perceptions,” George Washington University, Department of Sociology, Washington DC, 2004 (survey conducted in Dec. 2002). Asian and multi-racial victimization rates are from “Race and Ethnicity in 2001: Attitudes, Perceptions, and Experiences.” *The Washington Post*, Kaiser Family Foundation, and Harvard University. (August 2001). No national data was available for Native American or Native Hawaiian victimization rates.

⁵ Estimates are based on 2000 U.S. Census totals for racial and ethnic groups frequently targeted by racial profiling.

⁶ For a detailed discussion of Constitutional guarantees and international standards and treaties on racial profiling please see sections 3.3 and 3.4.

⁷ Ed Vulliamy, “Police Let Sniper’s Car Go 10 Times During Spree,” *The Observer*, Oct. 27, 2002.

⁸ Fred Brown, "Neither TSA Nor Stunt Can Ensure Safety," *Denver Post, Final Edition*, Oct. 26, 2003.

⁹ Shannon McCaffrey, "U.S. Issues Alert for 7 Terror Suspects," *Star Telegram*, May 27, 2004, available at: <http://www.dfw.com/mld/dfw/news/nation/8772571.htm>

¹⁰ Shannon McCaffrey, "New FBI Sweeps for Terror Clues Worries Muslims," *Detroit Free Press*, May 27, 2004.

¹¹ In *Terry v. Ohio*, 392 U.S. 1, 27 (1968), the Supreme Court lowered the standard of constitutional protection allowing police officer to more easily detain and search individuals, leading to more police discretion and an increased likelihood of race-based stops.

CHAPTER ONE

The Human Impact of Racial Profiling

“ As I have said to my Muslim and Arab friends . . .
 ‘Welcome to the frontline.’ ”

—Rev. Charles Stovall, Southern Christian Leadership Conference, commenting on the historical experience between law enforcement and African Americans in Dallas, Texas and the expansion of racial profiling practices after the attacks of September 11, 2001

Approximately 32 million people in the U.S.— a number equivalent to the entire population of Canada—report having been victims of racial profiling (see Table 1). Furthermore, the scope of racial profiling has dramatically expanded since the attacks of September 11, 2001 (9/11).¹

Prior to 9/11, racial profiling typically entailed race-based stops of African-American, Latino, Asian-American, and Native-American motorists and pedestrians. Reports show that these pre-9/11 types of profiling have continued. In one instance two plain-clothed Chicago, Illinois police officers stopped

Mr. Donald Boyd, a sixty-two-year-old African-American professional and former corrections officer, as he walked down the street. They asked him what he had been sold in the public housing development he had just passed. He responded that he had not been sold anything, at which point the officers asked to search him. When Mr. Boyd refused, he was cuffed and searched anyway. Even though nothing was found, he was told that he was being charged with possession of a controlled substance, was arrested, and forced to spend a night in jail.²

Since the 9/11 attacks, the number of groups frequently targeted by racial profiling has expanded. It is increasingly used to target Arabs, Muslims, South Asians, and people of Middle-Eastern descent or appearance in a variety of ways.³ For example, Mr. Mohammed Ali of Denton, Texas, was pulled over by police officers because one of his car lights was brighter than the other. Officers reportedly proceeded to repeatedly ask Mr. Ali if he had any dead bodies or bombs in his car. When Mr. Ali replied that he did not have any dead bodies or bombs in his car, the police searched his vehicle without consent, found a small pocketknife in the pocket of his passenger-side door and arrested him.⁴

As the testimonies presented in this chapter and numbers presented in Table 1 illustrate, these stories are not uncommon or merely anecdotal.

Table 1
National Estimate of Racial Profiling Victims (U.S.)

| Race | Total Pop. | RP Rate | Victim Pop. |
|-------------------------|------------|---------|-------------|
| Black (Non-Hisp.) | 34 | 47% | 16 |
| Hispanic | 35 | 23% | 8 |
| Asian (Non-Hisp.) | 10 | 11% | 1 |
| Multiracial (Non-Hisp.) | 5 | 19% | 1 |
| White (Non-Hisp.) | 195 | 3% | 6 |

Estimated total racial profiling victims (in millions) 32

Sources: Population estimates: All numbers rounded to nearest million. Based on 2000 U.S. Census figures adjusted to reflect Hispanic population as separate group. Estimate provided by the Social Science Data Analysis Network through the website www.censusscope.org. Racial Profiling Victimization Rates: The most recent available national polling data was used for each category. Black, Hispanic, and White victimization rates are from “Racial Profiling in America: Racially Biased Policing: Determinants of Citizen Perceptions, George Washington University, Dept. of Sociology, Washington DC, 2004 (survey conducted in Dec. 2002). Asian and multiracial victimization rates are from “Race and Ethnicity in 2001: Attitudes, Perceptions, and Experiences.” *The Washington Post*, Kaiser Family Foundation, and Harvard University (August 2001). No national data was available for Native American or Native Hawaiian victimization rates.

1.1 WHO IS SUBJECTED TO RACIAL PROFILING

During 2003 and 2004, AIUSA received reports of racial profiling primarily being used against:

- African Americans
- Native Americans
- Hispanic/Latino Americans

- Arab Americans
- Iranian Americans
- Asian Americans, including South Asians
- Muslim Americans
- Sikh Americans
- immigrants and visitors from Africa, Asia, South America, Mexico, Central America, and the Caribbean

AIUSA also received a small number of reports from and about white Americans (who did not belong to one of the ethnic or religious groups listed above) who had been unfairly targeted because of their racial appearance. These reports included incidents that had occurred in the context of non-suspect-specific police searches for drug customers in majority-minority neighborhoods and for serial killers.

Victims mentioned in the reports include both men and women; span all age groups (from toddlers to senior citizens); and range from day workers to professionals. Individuals complained of being selected on the basis of their physical characteristics, religious appearance, last name, or a combination of these characteristics. Incidents occurred in both urban and rural settings.

1.1.1 Number of Americans at Risk

AIUSA estimates that almost one in three people in the United States—approximately 87 million individuals in a total population of approximately 281 million—is at high risk of being subjected to some form of racial profiling.

AIUSA believes this figure to be conservative because it is based solely on the number of those U.S. citizens, permanent residents, and other long-term visitors who are racially categorized by the 2000 U.S. Census as belonging to one of the frequently profiled groups listed above. These include those counted by the U.S. Census as being African American, Asian American, Native American, Native Hawaiian, Multiracial, or Other, as well as those Latino, Arab, and Persian Americans (approximately 17 million, 1 million, and 300 thousand respectively) who are categorized by the U.S. Census as “White.” Thus, these figures do not include other whites who are targeted by racial profiling for other reasons. Nor do these figures account for the widely reported

disproportionate undercounting by U.S. Census officials in various communities of color.

1.2 WHERE RACIAL PROFILING COMMONLY OCCURS (AS DESCRIBED BY VICTIMS)

Just as it is inaccurate to talk about racial profiling in the context of the “War on Drugs” as simply “Driving While Black or Brown,” it is wrong to characterize racial profiling committed in the name of the “War on Terror” as simply “Flying While Arab.”

Indeed, it seems we are now faced with a problem that can be more accurately characterized as “Driving, Flying, Walking, Worshipping, Shopping, or Staying at Home While Black, Brown, Red, Yellow, Muslim or of Middle Eastern Appearance.” According to reports received by AIUSA in 2003 and 2004, racial profiling continues to be a frequent problem for many Americans traveling on highways or through airports. However, it also commonly occurs while people are doing much more mundane activities (such as shopping, walking down the street, or sleeping in their own bed). Although the form of racial profiling employed by state and local police often vary from region to region, members of practically every racially profiled group appear to have been subjected to virtually every type of racial profiling (i.e., Native Americans complain of having been racially profiled at airports; Arab Americans report being wrongfully stopped while driving).⁵ Moreover, in relatively rare circumstances, such as searches for serial killers in which no suspect has been identified, racial profiling is used against non-ethnic whites.

In order to understand the depth of the problem of racial profiling in the United States, it is necessary to recognize that this problem is centuries older than either the “War on Terror” or the “War on Drugs.” Native Americans, even those who quickly adopted European ways, have frequently been subject to disparate treatment by law enforcement officials since the earliest days of the American colonies.⁶ Rooted in American racism and nativism, many immigrant groups—such as Irish, Italian, and Chinese communities—have complained of being systematically abused by law enforcement agencies for periods well

A Big Problem in the Bay State

In May 2004, a study by Northeastern University revealed that approximately 3 out of 4 police departments in Massachusetts engage in racial profiling. The study stated that 249 of the 340 police departments analyzed have “substantial [racial] disparities in [at least] one of the four categories of analysis used . . .” The report has prompted a mandatory six-month period of data collection for police departments across the state.

Source: Northeastern University, Institute on Race and Justice, *Massachusetts Racial and Gender Profiling Final Report*, May 4, 2004.

beyond their emergence on the continent.⁷ The racial profiling of African Americans has its roots in such arcane practices as the enforcement of fugitive slave laws and the infamous Black Codes that were later created to control the movement of African Americans after the Civil War.⁸ Moreover, the federal government has responded to virtually every major domestic security crisis in this nation’s history with forms of racial and ethnic profiling that were later deemed xenophobic and irrational abuses of individuals’ human rights.⁹

During the previous decade, mainstream media highlighted racial profiling as an issue that predominantly impacts African-American and Latino motorists. Driving this coverage were numerous studies—many of which had been mandated by judges responding to civil rights litigation brought by the Department of Justice and national civil rights and civil liberties organizations concerned about widespread discrimination in the prosecution of the “War on Drugs.” Together these studies revealed African Americans and Latinos were stopped on highways and streets much more frequently than whites (even when disparate rates of road use were accounted for). For example, a 1994 study of the New Jersey Turnpike by Lamberth Consulting revealed that between 1988 and 1991, African Americans comprised 13.5% of road users but 73.2% of those stopped, even though African-American drivers did not commit more traffic violations than their white counterparts.¹⁰ Again, in 1999, a report by the New Jersey state police found that “minority motorists have been treated differently than non-minority motorists during the course of traffic stops on the New Jersey Turnpike. . . .”

The state police have conceded “that the problem of disparate treatment is real; not imagined.”¹¹ Statistics for various Native-American¹² and Asian-American¹³ communities showed similar trends. Nonetheless, as implied by the popular shorthand for racial profiling—DWB or “Driving While Black or Brown”—its impact beyond African-American and Latino communities has often been minimized in the popular discourse about this problem. As illustrated by the reports summarized below, racial profiling in the United States is and always has been a problem whose breadth and complexity cannot be contained in a three-letter acronym.

1.2.1 While Driving

■ THE CASE OF MILTON REYNOLDS

AIUSA has received multiple reports indicating that “Driving While Black or Brown” continues to be used as a basis for criminal suspicion. Consider the case of Milton Reynolds, an African-American schoolteacher.

Mr. Reynolds says he is routinely pulled over in his neighborhood in San Carlos, California, where apparently only five other African-American families live. He describes an incident in which he was stopped in his own driveway. When he inquired why he had been stopped, the officer gave what appeared to be “a fabricated answer” and gave him a citation. Mr. Reynolds describes what happened after he informed the officer that he would challenge the matter in court,

I said, see you in court. . . . And so then in the . . . several weeks that ensued between that time and the court date, I had law enforcement officers park in front of my house, I had lights into my apartment. My neighbors had begun to ask me, “What’s going on? Why are the cops there?”

The court dismissed the case against him.

More recently, Mr. Reynolds was pulled over by undercover narcotics agents. He began to have a conversation with the officers about whether they had pulled him over because of his race. He recounts the officers’ reply,

“We do, in fact, profile here around drugs. How do you expect . . . [us to] do our jobs?”¹⁴

■ THE CASE OF LEONARD MITCHEL

AIUSA is concerned that following a stop that is even partially based on race, individuals are more likely to be physically abused, verbally abused, and otherwise mistreated. The testimony of Leonard Mitchel, an African-American man, at our hearing in Dallas illustrates such an instance.

Mr. Mitchel was pulled over by police on his way to work. When asked for his driver's license, Mr. Mitchel inquired as to why he was pulled over. Upon receiving no response from the officers, Mr. Mitchel protested about being asked to hand over his I.D. After the police threatened to spray him with mace, he relinquished his driver's license. They immediately arrested him for an outstanding seatbelt violation. The police placed Mr. Mitchel, a 500-pound man, in two sets of handcuffs and ordered him to get into the backseat of the police car. He was charged with resisting arrest because he claimed he would not fit due to his weight. After calling for backup and attempting to physically force Mr. Mitchel into the backseat, the officers finally placed him in the front seat. He describes his experience,

They holler at the car, n— [N word] get your a— [obscenity] in the car. . . . So they came out . . . threw me on the hood, said, you're going to get in this back seat. I said, sir, I don't care about going to jail . . . but I can't fit in the back seat. . . .¹⁵

Mr. Mitchel spent two days in jail and was told he was being charged with resisting arrest and failure to provide identification.

■ THE CASE OF DONATO GARCIA

Racial profiling can occur not only while driving, but also while one is merely sitting in a car. Consider the case of Donato Garcia, a Latino man from our hearings in Dallas.

According to Mr. Garcia, he was targeted as he and his six-year-old son and eight-year-old daughter waited in the car for his wife. He was approached by a police officer who requested his identification. When he questioned the need to show his I.D., the officer became angry, cursed at him, and threatened to spray

him with pepper spray. Mr. Garcia attempted to comply with the officer's orders, but as he reached for his wallet, the officer sprayed him with mace, dragged him from his truck, struck him, and then arrested him. He describes the experience as traumatizing for both himself and his children, who watched in fear from the truck as the abuse took place. The long-term effects of the trauma still linger for his children. Mr. Garcia says,

[T]here was an incident [where the police came to the house] . . . but when the police arrived it notably affected my daughter who burst into tears . . . [it is] something that continues to happen and it continues to affect me today. . . .

Furthermore, witnessing their father's harassment has caused his children to lack trust in law enforcement officials. According to Mr. Garcia,

That's not right, in part because my children who should know that they can go to the police . . . do not feel that way now. . . . [T]his is something I still agonize over and . . . still feel today.¹⁶

Following this incident, criminal charges were brought against Mr. Garcia for assaulting a police officer. A jury took only eleven minutes to acquit him of the charges.

■ THE CASE OF LOUIS GRAY

In addition to physical appearance, tribal tags displayed on the vehicles of many Native Americans have allegedly been used by police officers in Tulsa to target them for traffic stops. Louis Gray, editor of the *Native American Times* addressed this problem.

Mr. Gray was routinely pulled over when his car displayed a tribal tag. Since he removed the tag, he has not been pulled over. He says that he has received many reports about others in his and neighboring communities being subjected to racial profiling,

From my position, the threat and humiliation of racial profiling appears to be an everyday experience for the Oklahoma Indian. . . . Life for Native Americans is built on institutionalized racism.¹⁷

Testimony from the Tulsa hearings also reported the use of roadblocks to profile attendees of the Boley rodeo, an annual event held on Memorial Day in one of Oklahoma's historic African-American communities. Witnesses testified that after meetings between the NAACP and the Oklahoma Highway Patrol, officers ceased setting up checkpoints in the corporate areas surrounding the rodeo, but continued to use them on state highways and roads leading to the event location. Michael Camfield, a white man and an attorney with the ACLU of Oklahoma, attended the Boley rodeo to conduct research on the situation. He testified about his experience. Mr. Camfield describes what he observed upon returning from the Boley rodeo on local state highways,

At the junction of Highway 48 and Highway 62, I observed at least seven Highway Patrol cars operating a checkpoint in this location a few miles from Boley. I found it curious, to say the least, that I was waved through the checkpoint without so much as a look at my license or insurance verification, while African-American drivers were obviously being stopped.¹⁸

■ THE CASE OF MOHAMMED ALI

AIUSA has also received reports indicating that traffic stops of Arabs, Muslims, South Asians and others who appear Middle Eastern have increased since September 11, 2001.¹⁹ The testimony of a Muslim resident of Denton, Texas, Mohammed Ali at our hearings in Texas is an example of such profiling and the ensuing harassment.

Mr. Ali was pulled over on his way home from the video store in Sanger. The officers told him they had stopped him because one of his lights was brighter than the other. They asked him to step out of the car and Mr. Ali complied. The officers then began to ask him whether he had any dead bodies or bombs in his vehicle, to which he responded no. They continued asking him the same questions and then asked to search the vehicle. Mr. Ali protested the search. He describes the encounter,

I just stepped out of the car and [the officer asked] "Well, we were wondering if you had any dead bodies or bombs

in there, in your car, Mr. Ali?" . . . [They] walked around the car, looking in the windows, and asked me if they could do a search of the car. And my answer was no, I don't have any dead bodies or bombs in there, and you're not going to look. Then they asked me again, same question, and I proceeded to say no again. They asked me a third time, and I said no again . . . And then the officers went ahead and searched the car anyway. . . .²⁰

Unable to find what they were looking for, the officers arrested Mr. Ali for possessing a small pocket-knife that was located in the pocket of his passenger-side door. Mr. Ali's case was later dropped in court, but he did not file a complaint against the Sanger Police Department, fearing further harassment.

■ THE CASE OF 'MOHAMMED'

In Chicago we heard from Ammol Chaddha who testified on behalf of his friend, "Mohammed," a Pakistani man, who was fearful of coming forth himself. His testimony illustrates recent attempts by the federal government to require local police to enforce immigration laws.²¹

Mohammed has been a taxi driver in the city of Chicago since the early 1990's. Because his work permit had been granted, Mohammed failed to follow up on his pending asylum application. In August of 2002, while visiting a friend in Bensenville, Illinois, he parked his car on the side of the street that was marked for street cleaning that day. Mohammed went outside a few minutes after the designated street cleaning time and saw a police officer writing him a parking ticket. Upon handing him the ticket, the officer got in his car and drove away. Before reaching the end of the street however, the officer put his car in reverse and drove back to Mohammed. According to Mr. Chaddha,

He started asking him, "Where were you born? Where are you from? When did you come here? How did you come here?" And Mohammed answered all the questions truthfully.

At that point the officer called the Immigration and Naturalization Service (INS) and Mohammed was first taken to the police station and then transferred to two different immigration detention facilities. He spent

three months in detention before being allowed to post bail. Mr. Chaddha says,

*Since 9/11, the South Asian community has been gripped in fear because of these policies. And just like the African Americans and Latinos that have been racially profiled by law enforcement, since 9/11 our community has been racially profiled against as well.*²²

1.2.2 While Walking

Racial profiling also occurs on the streets when police officers “stop and frisk” pedestrians. In 1968, in order to allow officers more leeway in apprehending criminals, the Supreme Court lowered the standards for police to more freely engage in these procedures. In *Terry v. Ohio*, the Court ruled that officers could temporarily detain and search people if they had “reasonable suspicion”—not the higher standard of “probable cause”—that the

individual may be involved in criminal activity.²³ This decision allows for great police discretion and subjectivity, increasing the potential for race-based stops by permitting officers to act preemptively.²⁴

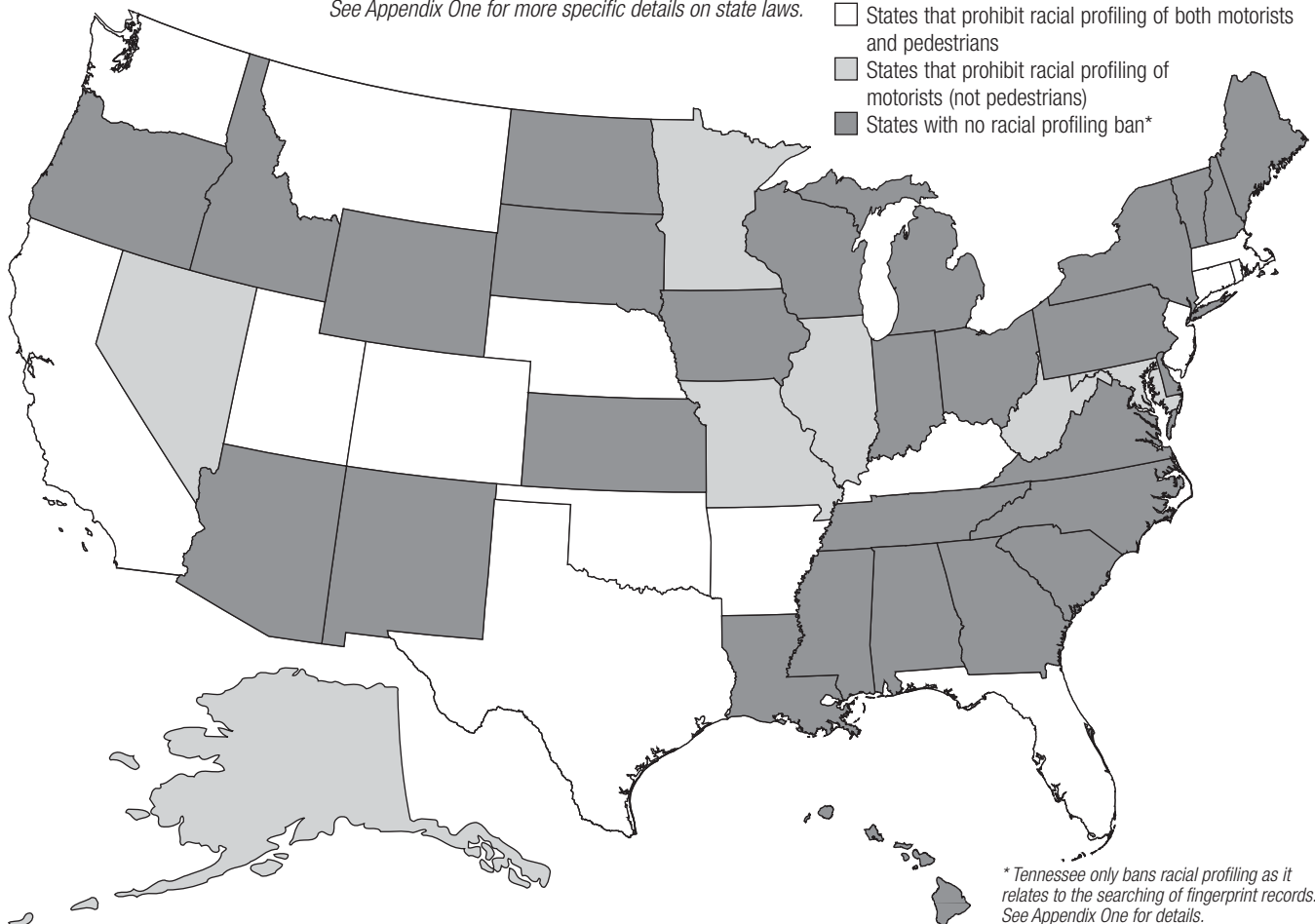
■ THE CASE OF DONALD BOYD

Such enormous discretionary power leaves room for abuse and opens the door for race-based pedestrian stops.²⁵ Consider the case of Donald Boyd of Chicago, a former corrections officer and current Regional Vice President for the U.S. Department of Housing and Development.

Mr. Boyd says he has been profiled in his neighborhood over a dozen times. In one instance two plain-clothed officers stopped Mr. Boyd, a sixty-two-year-old African American, as he walked down the street. They asked him what he had been sold in the public housing development he had just passed. He responded

Protecting the Public: Racial Profiling Bans that Protect Motorists and Pedestrians

See Appendix One for more specific details on state laws.



that he had not been sold anything, at which point the officers attempted to search him. When Mr. Boyd refused, he was cuffed and searched. Though nothing was found on his body, he was told he was being charged with possession of a controlled substance. Mr. Boyd was apparently swept up in a neighborhood roundup. He spent the night in jail and the next day appeared at a bond hearing where he was told he would have to post \$5,000 bail. Ultimately found innocent, Mr. Boyd told Amnesty International USA,

They loaded 45 people into a van that was supposed to hold 32. They were all almost black or Latino. . . . They shouted obscenities at us through the hole. . . . Several people, including myself, were assaulted by deputies for supposedly not complying with what they said. . . . I live in a community that has been destroyed with crime and drugs. . . . I am a citizen and I deserve my rights. . . . They did not give me a Miranda. They did not tell me I had rights.²⁶

■ THE CASE OF ANDREW CHO AND HIS STUDENTS

AIUSA also received written testimony based on a conversation from the National Asian Pacific American Legal Consortium (NAPALC) describing an encounter Mr. Andrew Cho had with law enforcement officers in Seattle.

Mr. Cho was a leadership program counselor for a group of about 30 high school students. The group was composed of individuals from Japanese, Chinese, Korean, Filipino and Vietnamese ancestry. In the summer of 2001, as the group walked from their lunch break to an artists' event in the Chinatown-International district, they were confronted by police. As half of the group waited for a green pedestrian light to join the rest of their party, a police officer yelled through the loudspeaker,

Do you know how to cross the street? Do you know how to speak English?

The last question was repeated four or five times. When one student answered, "Yes, we speak English," the officer reportedly searched her in an attempt to find weapons. Another girl from the group spoke up saying,

This would not have happened to us if we had blond hair and blue eyes.²⁷

The officer forcefully grabbed her wrist and cited her for jaywalking. When he tried to comfort the group, Mr. Cho was told by police to "Back off." The group was allowed to leave after the police sergeant arrived. The incident lasted forty-five minutes. Afterwards, the group reportedly saw a white individual crossing the street on a red light. The officers did not stop that pedestrian.

■ THE CASE OF SANTIAGO VILLANUEVA

Racial profiling can sometimes have deadly consequences. Consider the testimony of Ms. Nina Paulino of the Santiago Villanueva Justice Committee at the hearings in New York City.

Ms. Paulino told us the story of her friend Santiago Villanueva. Mr. Villanueva was from the Dominican Republic, did not speak English, and had dreadlocks; he also had epilepsy. He was in Bloomfield, New Jersey when he experienced an epileptic seizure. When police arrived on the scene they saw an African-American man with dreads seizing on the ground and assumed he was on drugs. Officers harassed Mr. Villanueva and insisted that he speak English. They threw him on the ground and one officer put his knee on Mr. Villanueva's neck while another placed a knee on his back. Mr. Villanueva stopped breathing and was given oxygen. He reportedly gained consciousness for a short while and was handcuffed in the ambulance the entire way to the hospital where he died. Ms. Paulino says,

[T]he police came and saw him and automatically said this man is on drugs, although they had over ten witnesses saying no, he's epileptic, he's having a seizure. . . . One of them put a knee on his neck, another on his back, handcuffed him, and took the last breath out of his lungs.²⁸

The officers were indicted for second-degree manslaughter. However, a judge dismissed the charges because no witness could identify which of the officers placed his knee on Mr. Villanueva's back, which was determined as the cause of his death.

1.2.3 While Traveling Through Airports

■ THE CASES OF SANDRA AND OMAR RANA

Since September 11, 2001 there has been a widely reported increase in racial profiling at airports, particularly as it applies to people who appear to be Muslim or of South Asian or Middle-Eastern descent.²⁹ In Tulsa, Dr. Sandra Rana, a member of the Tulsa Police Community Race Relations Committee told us about her family's experience at the airport.

Dr. Rana described how airport officials targeted her family, pulling her eight-year-old son from the line and taking apart the Boy Scout pinewood derby car he had built. Her son, Omar, is now routinely targeted at airports. Dr. Rana explained,

Imagine how I felt when my eight-year-old son was pulled from the line because of his name and I could not go with him. Imagine how he felt when they started to take apart his Boy Scout pinewood derby car in the Boy Scout box. . . . It is now routine for my son, for Omar Rana, to get extra security checks at the airport. He knows it's going to happen, and he expects it. . . . But how do I tell my . . . son that it's okay? He is now ten. He is learning about civil liberties and civil rights. What meaning do they have for him...?

Upon advice from law enforcement officials, Dr. Rana has stopped wearing her *hijab* to the airport (*hijab* is the traditional Muslim head covering for women),

It's not just the scarf. I tell my kids, don't speak Urdu. It's the Pakistani language. Don't speak it when you're on the plane. Don't take the Quran.³⁰ We've been advised by officials, do not carry any book that's in Arabic. . . . Don't do anything that will cause attention to yourself.³¹

■ THE CASE OF MAHMOUD EL ROSOUL

Indeed, even long-time airport employees have been targeted while traveling on family vacations. Consider the testimony of Mahmoud El Rosoul, a Muslim American citizen, from the hearings in Dallas.

Mr. El Rosoul has been working as an engineer for a major airline company for 22 years. In March 2003, on their way back from a vacation in Hawaii, Mr. El Rosoul and his family were stopped at the

checkpoint because their tickets were marked by American Airlines. They were pulled out of line and every one of them, including his nine-year-old, eight-year-old and four-year-old children, were thoroughly searched. The lengthy search caused them to miss their flight, and they were forced to spend the night in the airport at Los Angeles. Mr. El Rosoul is disheartened especially because he has spent 22 years building airplane engines for the airline that treated him so poorly. He says,

They think September 11 is our fault. We have to take responsibility for it . . . They think America is going to be a better country without us.³²

■ THE CASE OF HERB BOYD

Some people report being profiled because of multiple personal characteristics. At the hearings in New York City we heard from Mr. Herb Boyd, a reporter with *Amsterdam News*, whose testimony illustrates how the intersectionality of race and religious or ethnic appearance can often make individuals "doubly suspicious":

Mr. Boyd often wears Islamic garments. He describes his experience at airports after the attacks of September 11, 2001,

During a flight to Detroit in December 2001, I noticed that my ticket had a red dot on it. I didn't pay any attention to that until I discovered I was standing with several others, all of them identifiably Arabs or [of] Arab descent. We were all virtually stripped before entering the plane. Two of [them] . . . told me they had endured such searches every flight they took. What I was to learn in successive flights is that a black man carrying a Kufi or Arabic garments was doubly suspicious. So any perverse satisfaction I may have momentarily derived from not being the main target of racial profiling in [post-September 11, 2001] America gradually vanished.³³

■ THE CASE OF GERRI McCLELLAND

However, it is not just Arabs, Muslims, and people of Middle-Eastern descent or appearance who are profiled and scrutinized at airports since the

September 11, 2001 attacks. Other minority groups complain about being subjected to racial profiling in airports. In Tulsa, we heard from Gerri McClelland, a Native American, about her experience at an airport.

Ms. McClelland, a member of the Seneca tribe, was carrying ceremonial turtle shells with her as she traveled to the Seneca reservation in Canada. Security officials insisted that she either take apart her ceremonial objects or check them into baggage where they could be damaged. After a long discussion, the officials finally allowed Ms. McClelland to board. However, being upset, tired, and worried that the same problem may occur on the connecting or return flight, Ms. McClelland chose to forgo the trip and returned home. She describes her encounter,

They pulled me aside . . . wanted to know what was in my bag. . . . I said, you can see it. It was turtle shells with rocks in them, laced to a piece of leather. . . . These are ceremonial pieces that we use. . . . And then I got harassed. They thought that I was going to do something . . . they were going to bust my turtles to find out what was inside of them. Those are ceremonial things that you wear . . . I even shook the turtles...to show them that they were rocks.³⁴

1.2.4 While Shopping

Race is sometimes misused by security guards to target individuals for possible theft at shopping malls. Although security guards are not technically police officers, they are often seen as “peace officers” with the ability to detain and question individuals.³⁵ They are also often afforded wide discretion, which sometimes leads to racial profiling.

THE CASE OF SHARON SIMMONS-THOMAS

As a reporter with an African-American newspaper based in Harlem, Herb Boyd has covered cases of profiling at shopping centers. He testified about one such case at our hearing in New York City.

Mr. Boyd says that in the few months prior to the hearings, he reported on several stories of African Americans and Latinos who, upon entering stores, were quickly followed by security guards and often

falsely arrested, subjected to abuse and embarrassment, and finally banned from the store. This practice, he says, is merely another form of a ‘stop and frisk’ search, such as those routinely employed in many cities against African-American and Latino youth. Mr. Boyd shared the case of Sharon Simmons-Thomas, an African-American woman,

Last December...[Ms.] Simmons stopped in . . . [a major department store] to do a little quick shopping. When leaving the store, she was apprehended by two plainclothes security guards. “They wouldn’t say who they were, but they accused me of shoplifting,” she said. The guards refused to look at the receipts Simons had waved in their face. She was handcuffed, paraded in front of other customers, and then escorted to the store’s detention cells, which are just atrocious. “I’ve never been so embarrassed in my life,” she continued. In the detention cells were several other customers being held as suspect shoplifters, all of them people of color. “They ran a background check on me and discovered I didn’t have a criminal record,” she said. Three hours later, after being humiliated by a body search, threatened with physical force and attempts to coerce a false confession, she was freed but without her [purchases].³⁶

Ms. Simons has filed a lawsuit against the department store’s parent company. When this report went to press it was awaiting trial.

■ THE CASE OF KIMBERLY ‘ASMA’ AL-HAMSI

After the attacks of September 11, 2001, Arabs, Muslims, and others who are perceived to be of Middle-Eastern or Muslim descent have also been targets at shopping malls. Consider the testimony of Ms. Kimberly “Asma” Al-Hamsi from our hearings in Dallas.

Ms. Al-Hamsi, a white American Muslim of German descent, wears a *hijab*, has multiple sclerosis and walks with a crutch. Ms. Al-Hamsi was at the mall with her son, who is deaf and has cerebral palsy. While waiting for her friend, she was accosted by a man and two women who began yelling at her to go back home because she did not belong here. As Ms. Al-Hamsi was telling the group to leave her

alone, she noticed a group of men observing her. One of the men approached her and began asking where she lived and demanding to see her driver's license. Since he was not in uniform, Ms. Al-Hamsi refused, at which point the plain-clothed officer grabbed her from behind and told her she was being charged with terrorism, hate crimes, and disorderly conduct. FBI agents were called in and began to question her about the validity of her I.D., about her ethnic descent, and her views on the war with Iraq. She describes the encounter,

There were more than 20 people surrounding me. [The FBI agent] asked me—first question from his mouth after I gave him my license, he says, “Where did you get this false I.D.?” . . . He says, “You Arabs . . . don’t have things like this.” I said, I’m not an Arab. And he said, “You are not Muslim then?” I said, yes I’m Muslim, I am German American. . . . [H]e says, “What’s your view on the war in Iraq?”³⁷

The agents then separated her from her disabled son for over an hour as they took her to her car and searched the vehicle. Although nothing was found she claims that she is now routinely followed and harassed by federal officials.

1.2.5 While at Home

■ THE TESTIMONY OF FLORENTINA RENDO AND LYDIA TAYLOR

Individuals, families, and communities can become targets of racial profiling even when they stay home. This type of profiling can range from law enforcement officials engaging in apparently speculative raids of public housing developments' social events, to the targeting of minority immigrant communities for enforcement of restrictive zoning regulations that were specifically created in response to recent population demographic shifts. Consider the following testimony presented by Ms. Florentina Rendo and Ms. Lydia Taylor in Chicago.

Ms. Rendo, an outreach coordinator for Hope Fair Housing Center, reports that overly restrictive federal ordinances, such as ones prohibiting households from utilizing family rooms, dens, living

rooms, lofts, attics, or basements as sleeping quarters, were passed after census data indicated an increase of Latinos moving into the suburbs of West Chicago. City officials have used these ordinances to disproportionately target Latino families in hopes of finding evidence of overcrowding. Latino households have reportedly been the target of repeated warrant-less surveillance and sometimes raided by city officials and police. Ms. Rendo described one such raid where an overcrowding ordinance was used to raid the home of a Latino family in the city of West Chicago the morning after Father's Day in June 2002. At 4:50 a.m., nine building inspectors and police officers awoke the entire family and their guests who had stayed over after the Father's Day celebrations. They prohibited the family and their houseguests from getting dressed or moving about and then proceeded to search the entire house to find evidence of overcrowding. The raid was reportedly a result of 16 months of harassment and surveillance. The family has since lost their home. According to Ms. Rendo,

The police and inspectors took...pictures of the occupants' bank statements, telephone bills, the kids' grade school report cards and their birth certificates. And all of this was solely done on the basis of [a] general administrative search warrant . . . which authorized only that the structure and the property be inspected to determine if the premises is in compliance with the ordinance of the city. . . . They were ordered not to have any visitors even during the day, including their parents or any other family members, and they were prohibited from using the rear entrance.³⁸

A federal lawsuit has been filed against the city for harassment of Latino families, who comprise the majority of households subjected to home raids.³⁹ Ms. Rendo also noted that the majority of overcrowding actions taken by the city against Latino families were found to be groundless. She also added that the number of complaints their office receives from residents in West Chicago has dramatically increased since September 11, 2001.

Ms. Taylor of the Justice Coalition of Greater Chicago described a raid on Stateway Gardens

public housing development in February 2001. More than 40 police officers reportedly descended on a popular annual basketball tournament in the development's gymnasium. After the game ended, they ordered everyone to line up near the outer doors and submit to searches of their bodies and their belongings. According to Ms. Taylor, this was done without a search warrant or any identifiable evidence of a police emergency at hand. Ms. Taylor highlights two particular instances during this raid,

Two citizens in particular I want to tell you about. One is Brenda Williams. Ms. Williams was forced to put her one-year-old daughter down on the floor . . . to facilitate the inspection. . . . And after she submitted to the search the police proceeded to search her one-year-old daughter. Anthony Jackson was . . . to play in the second game, and the police began searching his gym bag and they carelessly threw his belongings on the floor . . . [When] police demanded that his two young sons submit to searches, Mr. Jackson objected a lot more vigorously, of course. He was handcuffed and arrested for disorderly conduct. . . . It has a demoralizing effect on all of the people present.⁴⁰

This large-scale operation in which over 250 people were profiled resulted in a lawsuit against the city. The plaintiffs in *Williams v. Brown* were able to secure a \$500,000 settlement. However, the city admitted no wrongdoing.⁴¹

■ THE CASE OF LORI PENNER

AIUSA also heard from the Native-American community in Tulsa about their experiences with home raids. Ms. Lori Penner described an incident where increasing traffic stops of her and her family, reportedly due to the tribal tags displayed on their cars, finally led to a horrific raid on their home.

Ms. Penner, a member of the Cheyenne tribe of western Oklahoma, has been stopped by police many times and yet she has rarely received a traffic citation. Members of her family have also experienced these stops. Eventually, the traffic stops got more frequent and the police began to come to their home. When Ms. Penner and others who visited her home were

stopped, they were asked whether they had any drugs in the house or if they were selling drugs, drinking, or partying. The situation escalated in a final raid of her home. She describes the incident,

[M]y door was broken down. I had eight people come into my home. They pointed their guns at us. They told us to get on the floor. . . . My six-year-old grandson was in there. . . . I . . . inquired, why are you doing this? No one would answer us. My fifteen-year-old daughter was jerked out of the shower naked, made to stand in front of three police officers. . . . No search warrant was ever shown to us. . . . My daughter was handcuffed. . . . My six-year-old grandson was made to sit there with us. We were all searched. My house was ransacked. . . . No drugs were found. . . . No one was taken to jail. The police laughed. They ridiculed us . . . they cussed. . . . One officer told my daughter she cleaned up very nicely, she looked very good for her age. It was all because we are Indian.

■ THE TESTIMONY OF JESS GHANNAM

The attacks of September 11, 2001 and the ensuing political and social climate also affect Arab, Muslim, and Middle-Eastern communities in their homes. AIUSA has received several reports of families being visited at home by federal agents. At the Oakland hearings, Dr. Jess Ghannam, President of the American-Arab Anti-Discrimination Committee of San Francisco, testified that people from his community no longer have faith in the American government and justice system as a result of mistreatment by government officials since September 11, 2001. He says that many of them came to the U.S. to escape persecution in their home countries. And yet, the very country in which they sought protection has not only turned its back on them, but has started to assault their civil liberties. According to Dr. Ghannam,

[T]he breadth and depth of depression that I'm seeing in the community is staggering. We have families . . . who have kept their kids inside the home since September 11th, refusing to let their kids out because they're worried they're going to be harassed or picked up. That's an unacceptable way to live in this country, it's an unacceptable way to live in any country. . . .⁴²

1.2.6 While Traveling to and from Places of Worship

■ THE CASE OF IMAM NABIL ELIBIARY

AIUSA has received complaints from Muslims and Sikhs whose communities have experienced an increase in racial profiling at their places of worship in the past three years, as well as Native Americans who have dealt with similar problems for a long time. In Dallas, AIUSA heard from Imam Nabil Eliabary.

Mr. Eliabary is an imam for the Muslim community in the City of Carrollton, Texas. On September 11, 2002, he was attending an outreach event at a mosque in the Islamic Institution of Richardson. Upon entering the mosque, Imam Eliabary noticed police cars parked in front of the building and assumed they were there for protection. When Imam Eliabary left the building the officers followed and stopped him because his vehicle registration tags had expired eleven days earlier. The

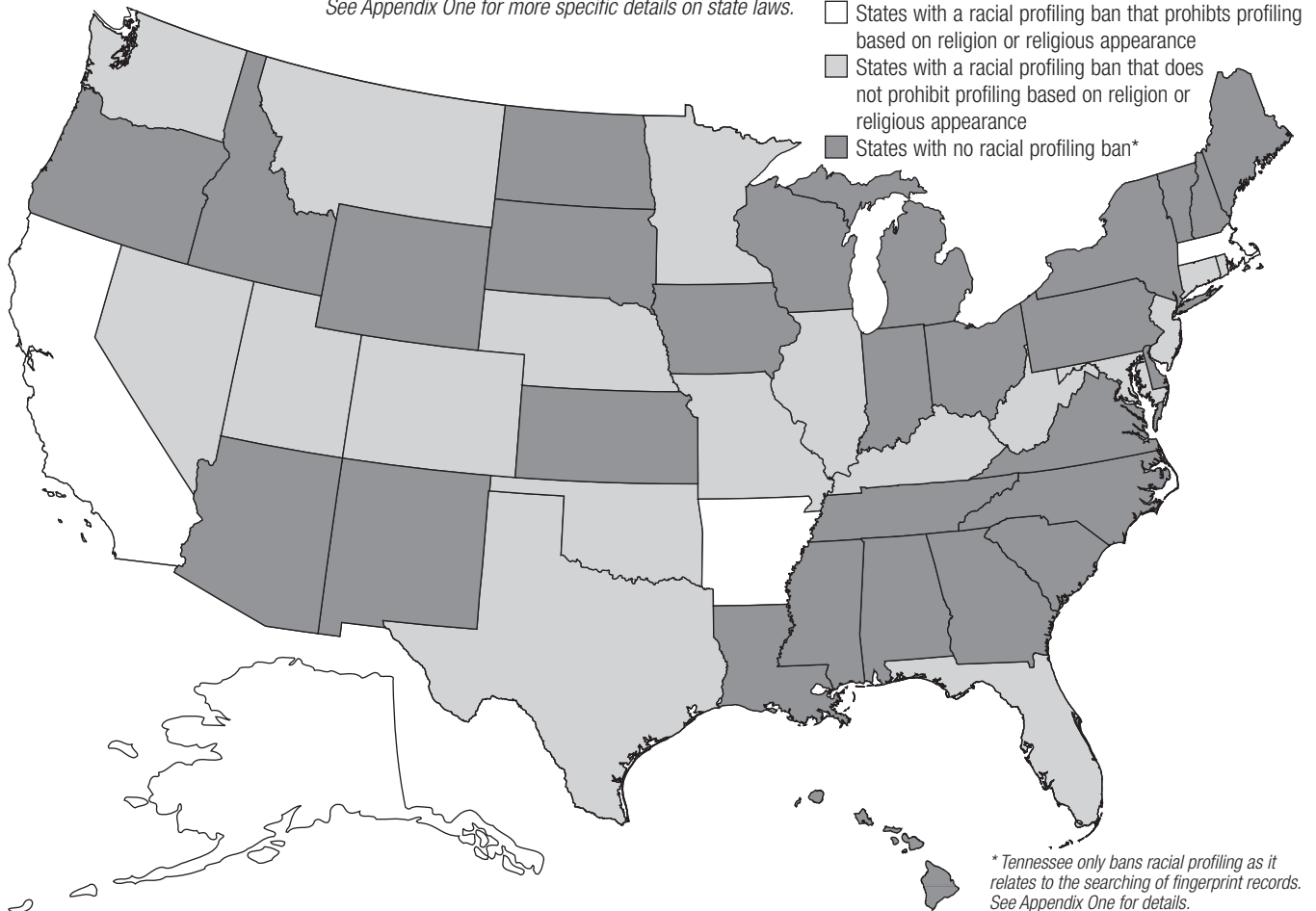
police officers called for back up and began to search Mr. Eliabary’s car. Mr. Eliabary was arrested and his computer and camcorder were confiscated. He was taken to the police department where he was questioned about his university degrees, the ethnic background of his wife, and his financial and employment status. Furthermore, officers asked for Imam Eliabary’s password to search through his personal computer. When he refused the police asked whether he had something to hide. Mr. Eliabary describes the encounter,

I said no, if I have a choice I don’t want anybody to see my personal items. [Finally] I was released after three and a half hours. And they fingerprinted me. I . . . [had] to pay . . . [bond] on my credit card so that they . . . [could] let me out.

The police kept his computer and camcorder overnight. Once the media and his attorneys began calling

Protecting the Faithful: Racial Profiling Bans that Protect Religious Minorities

See Appendix One for more specific details on state laws.



about his case, the police department offered to expunge his records if he accepted the charges for the expired tags. He was also told not to contact the media regarding his case. Imam Elibiary believes,

If I was not the spiritual leader of the community, I would not be out of jail. And if I was not contacted by the media, . . . [they would not have expunged] my records . . . I was lucky. . . .⁴³

■ THE CASE OF MARY CULLEY

Police in Tulsa, Oklahoma, reportedly profile religiously active Native Americans coming and going from grounds where traditional ceremonies are scheduled. Mary Culley came forth in Tulsa to talk about her experience with racial profiling.

Ms. Culley, a member of the Creek Seminole tribe, testified about being regularly harassed by police at roadblocks set up around tribal lands when ceremonies are scheduled. She says,

[W]hen the ceremonial ground was having . . . our dance or our green corn ceremony, which is celebrating the harvest of the new year for us, [the police] were setting up roadblocks. And it was the local police department who was clearly out of their jurisdiction setting up roadblocks on a county road. . . . [They were] flat out telling Indian people . . . we're stopping you because we know you people are dancing this weekend and we know you can't afford insurance, so we know you won't have any insurance cards on you.⁴⁴

Despite several attempts, Ms. Culley says she has found it extremely difficult to work toward a solution to this systematic harassment with her local public officials.

1.3 RACIAL PROFILING OF IMMIGRANT COMMUNITIES

As the zoning enforcement cases cited in section 1.2.5 illustrate, when police decide to target immigrants and immigrant communities for racial profiling, their actions often appear to be intentionally designed to encourage targeted immigrant communities to leave.⁴⁵ In the three years since the September 11, 2001 attacks in the United States, old patterns of harassment have

continued, and new problems have emerged. In some instances, the new problems have been the product of misguided homeland security policies; in other instances they appear to be the result of an increase in general xenophobia among some law enforcement officers. We begin with a discussion of a long-standing problem in the U.S.—the harassment of Latino immigrant day workers.

1.3.1 Day Laborers

■ CASES OF RACIAL PROFILING IN DAY LABORER COMMUNITIES

AIUSA has received reports from representatives of the immigrant day laborer communities who experience racial profiling while waiting for potential employers to drive by and pick them up. In San Francisco, Renee Saucedo of La Raza Centro Legal discussed this general problem and brought some egregious cases to our attention.

Ms. Saucedo described the day laborer community in San Francisco as “overwhelmingly Latino migrants.” She estimated a total of 10,000 to 15,000 undocumented laborers in the city, with approximately 500 to 800 standing on the street looking for employment on any given day. She says that “white” merchants or neighbors typically make general complaints to local police because they do not want day laborers standing on public sidewalks facing their businesses or homes. Other times, they have specific complaints such as people littering or urinating in front of their property. She explains,

[B]ut most of the time our experience has been that day laborers are not committing any crime. . . . [P]olice officers do not investigate particular allegations. They don't interview individuals who are suspected of committing illegalities. . . . [P]olice sweep entire groups of Latino immigrant workers off of the city's sidewalks. . . . Sometimes what happens is that, without neighbors or merchants complaining, police officers will park vans or cars on certain street corners where day laborers congregate, and they will remove any man who looks like a day laborer off the sidewalk.

Ms. Saucedo also described a number of egregious cases in which day laborers were profiled and harassed.

The following incident turned violent when five police officers first racially profiled a day laborer, then proceeded to beat him with clubs. Ms. Saucedo says,

[O]ne day laborer was walking down the sidewalk at the wrong place, at the wrong time. . . . [O]n the street corner close to him there had just broken out a physical fight between two Latino individuals. Do we know if these two other Latino individuals were day laborers or not? Absolutely not. . . . [T]he police followed him assuming he had something to do with the incident. They pushed him to the ground, without even asking him any questions, handcuffed him and proceeded to beat him with their clubs. . . . They also pepper sprayed him unnecessarily. . . . according to witnesses. . . . he did not pose any physical threat to the police. By the way, there were five police officers doing all of this to him.⁴⁶

According to Ms. Saucedo, day laborers often complain to her organization that they are treated like criminals.

■ THE DALLAS ‘SHEETROCK’ CASE

The immigration status of many Latino day laborers often compounds their vulnerability to abuse by law enforcement officials, making them susceptible not only to harassment, but gross miscarriages of justice. These vulnerabilities have recently been spotlighted by the revelations surrounding Dallas’s biggest police misconduct scandal. In 2002, evidence revealed that two undercover narcotics officers and a paid informant used powdered gypsum, a substance found in sheetrock, to frame a large number of innocent people, all of them Hispanic, many of them day laborers, and many not fluent in English.⁴⁷ The informant located innocent individuals within the Hispanic community as targets. The officers then placed cocaine mixed with large amounts of gypsum powder in plastic bags and planted them on those they arrested. According to the *Dallas Observer*, many targeted individuals, “were undocumented or recent immigrants who had no criminal record, no money, no English proficiency, and whose fears of deportation might make them less likely to protest too loudly.”⁴⁸ Many experts and former law enforcement officials

largely attribute this scandal to the constant intense pressure placed on narcotics officers to produce arrests. In fact, roughly half of the cocaine seized by Dallas police in 2001 was later discovered to be powdered sheetrock.⁴⁹ Will Harrell of the ACLU of Texas shed some light on this larger problem within the Dallas Police department. According to Mr. Harrell,

[The] Dallas Police department has shown to be disproportionately policing people . . . [of] color, particularly Hispanics, and the sheetrock story bears witness to that. . . . But the numbers . . . reported . . . indicate a much more systematic problem than just what you read and have heard about the Dallas sheetrock story.⁵⁰

So far, over 80 sheetrock cases have been dismissed.⁵¹ In November 2003, a federal jury acquitted Mark DeLaPaz, the supervising officer responsible for the scandal, of violating the civil rights of the defendants in the dismissed cases.⁵²

1.3.2 Street Vendors

Street vending has a long and proud tradition in New York City. . . . Unfortunately, police abuse and brutality, wrongful arrests and confiscation of merchandise, arbitrary tickets and fines, racial profiling, and criminalization are daily parts of their experience as vendors.

—Testimony of Julia Villegas, staff attorney at Esperanza de Barrio, with New York City Street Vendors Coalition; New York City, October 2, 2003

According to testimony presented at the New York City hearings, police harassment and profiling of local immigrant and minority street vendors has intensified since September 11, 2001. The Street Vendors United Coalition in New York City reports that there are approximately 10,000 street vendors in the city; they come from a range of different backgrounds including African Americans, Latinos and immigrants from China, Bangladesh, Senegal, Malaysia, Somalia, Egypt, and Russia. Members of virtually all of these groups have reported increased problems with the police since the 9/11 attacks on the World Trade Center. Street vendors and advocates say that the treatment after the attacks of 9/11 has been particularly racist in nature and does not appear to be part

of a general crackdown on street vendors as occurred in New York in the mid to late 1990s. As Veronica Garcia, a Latina street vendor, said, the targeting of minority street vendors has “increased after September 11, 2001. . . . The police see us and because of the way we look, they don’t even ask us anything, they assume we are doing something illegal.”⁵³ Judi Mukarhida, a former street vendor who now works for the Street Vendors Project, testified that, “[The] reason I stopped vending [was] because after September 11th [things were] getting...worse.”⁵⁴

■ THE CASE OF VERONICA GARCIA

The following testimony illustrates the hostile relations with local police that many street vendors have faced in New York City since that date.

Veronica Garcia, a Latina street vendor in Harlem, has reportedly been arrested twice for selling food on the street. In her last encounter, police threw away her utensils and did not list them in their police report. Despite the fact that Veronica is a minor, she was not allowed to see her mother until her attorney arrived at the police precinct. She describes the situation,

*Most of the street vendors in the barrio, we are women, we are immigrants, and we are mothers, and we are victims of abuse and . . . harassment on behalf of the police. The police mistreat us physically and verbally. They tell us that we are illegal, that we have to go back to Mexico, and that we don’t have any rights. They also threaten . . . to take our children away. Other vendors have reported that they have their pockets searched without justification, they have used excessive force, that they throw away their food and merchandise.*⁵⁵

■ THE CASE OF MOHAMMED ANWAR HUSSAIN

Mohammed Anwar Hussain is a licensed food vendor and a U.S. citizen of Bangladeshi descent. Mr. Hussain has sold hot dogs and pretzels on the corner of Broadway and Canal Street for several years. Although his stand is on a legal location and he has been in that location for the past 12 years, he did not begin to receive tickets from police officers in any significant numbers until after September 11, 2001. He has received more than 50 tickets in the last year alone.⁵⁶

All but six of the tickets have been thrown out. He describes a typical encounter with the police,

*Today, I was vending in my spot and [the] police officer came by and give me [a] ticket. And when I told him I’m on the legal spot, he said “Go back to your country, make a legal spot over there.” They kept saying that to me . . . and to other Bangladeshi vendors. . . . They have also said to me, “Don’t sell this s— [obscenity] here.” But my products are not s— [obscenity], they are always absolutely good food.*⁵⁷

1.3.3 Selectively Chosen Deportees and Their Families

Following the attacks of September 11, 2001, the U.S. Government immediately enacted policies and took actions directed at Arabs, Muslims, and people of Middle-Eastern and South-Asian descent. These practices—often carried out through selective enforcement of immigration laws—have led to the deportation of thousands of men and boys from these communities, the disruption of family and community life, and the economic devastation of thousands of otherwise law-abiding citizens and immigrants.

In the immediate aftermath of the attacks, immigration and law enforcement officials targeted immigrants from predominantly Arab and Muslim countries for selective enforcement of immigration laws as part of a nationwide attempt to find possible terrorism suspects. More than 1,200 non-U.S. nationals were detained as a result.⁵⁸ None have been publicly charged with terrorism.⁵⁹ In June 2003, a report released by the Department of Justice’s Office of the Inspector General (hereafter OIG report), confirmed Amnesty International’s prior reports that hundreds of men detained in the roundup were deprived of many of their rights and experienced physical and mental abuse at the hands of prison guards in the detention center.⁶⁰

In 2002, the introduction of the National Security Entry-Exit Registration System (NSEERS or “Special Registration”) for visiting males ages 16 and over from 24 predominantly Muslim countries (and North Korea)⁶¹ literally spurred thousands of long-term visitors to the United States to seek asylum in

Canada and other nations. The program, which called for visitors already in the U.S. to be registered and interrogated, appeared to use nationality as a proxy for their religion and ethnicity.⁶² While we are no longer faced with the visible spectacle of thousands of terrified men and boys lining up at immigration offices around the country trying to meet their group's call-in date, the program continues to have a powerful impact on the communities and families of the more than 13,000 men and boys who have been already deported or are still in deportation proceedings due to having been discriminatorily chosen for enforcement of immigration laws.⁶³ Many of these individuals with minor immigration violations had applications pending to regularize their status, but were stuck in long backlogs with the U.S. immigration service.⁶⁴ Moreover, while initially Department of Justice officials said that this program would be extended to visitors from every country, it was canceled once visitors from these 25 countries had been called in.

Shortly after NSEERS was enacted, affected communities around the U.S. lost large portions of their male population, resulting in the rapid impoverishment and destabilization of many families. To avoid "Special Registration" and the possibility of its ensuing negative consequences, many individuals from targeted immigrant communities fled with their families to the Canadian border. According to Suhail Muzaffar, president of the Federation of Associations of Pakistani Americans, new immigration policies created a panic within Pakistani-American communities, causing some to close their businesses and flee to Canada to seek refuge from what they believed to be "religious persecution."⁶⁵ Mr. Muzaffar also said that many Pakistanis were depressed, confused and did not show up to register.⁶⁶

In addition to disrupting immigrants' lives, NSEERS policy targeted many law-abiding and productive members of U.S. society and, in some cases, caused them to leave the country. Nabil K. has a Masters in Business Administration from an Ivy League university and worked on New York's Wall Street for over five years. After the NSEERS policy was announced, Nabil moved back to Karachi, Pakistan "for the sake of dignity."⁶⁷

NSEERS and other post-9/11 immigration policies have indeed had a negative impact on the U.S. economy. Secretary of State Colin Powell and head of the Department of Homeland Security Tom Ridge both have recently admitted that post-September 11, 2001 immigration policies have hurt the economy by leading to a 30 percent decline in overseas visits to the U.S. Additionally, the number of foreign students in universities is also down, as are visits by businessmen, scientists, and other scholars.⁶⁸

■ THE CASE OF NAVILA ALI

Victims of the NSEERS policy came forth in every city where our hearings were held to testify about their experience with "Special Registration". We heard numerous accounts detailing how families, homes, and communities were torn apart as a result of NSEERS. Consider the testimony of Navila Ali in New York City.

Eighteen-year-old Navila is the eldest of three children in her family. She has been in the country since childhood and both of her younger siblings are American citizens. She describes how her father has been detained since April when he went to register at the local INS office. She and her family are under great financial and emotional stress because the only breadwinner of the household can no longer provide for them. Fighting her tears, she told us,

[A]nd then it was only me and my Mom. . . . [S]he doesn't speak any English so I have to do all the running around.



Navila Ali testifying at the AIUSA National Hearings on Racial Profiling in New York City, Oct. 2, 2003.

[M]y Dad was the breadwinner of our house. Not having him, it's a very, very difficult task. . . . We don't have any other family members here so it's very hard for me to cope with this. And (pause) I just want my Dad back home.

Navila goes on to describe the frustration she feels because she considers herself an American, yet after September 11 and her father's arrest she questions the nature of American values. She says,

After September 11th . . . after my dad was detained, I was afraid to walk on the streets. I felt . . . am I not . . . American . . . like the other people around me? Growing up here, America is . . . my country. I like the culture here. I believe this is my culture. . . . I like my freedom here. . . . Now everything is kind of different.⁶⁹

■ THE CASE OF NAVEED NAZAR

In Chicago, we heard from Najma Haq who testified on behalf of Naveed Nazar.

Mr. Nazar, came to the United States seeking political asylum, but because he missed his asylum hearing he was later detained through the Special Registration program. To abide by the new requirements of NSEERS, Mr. Nazar reported to his local INS office, but never returned home. His wife and six children who were all born in the U.S. were left in confusion and panic until Mr. Nazar made a collect phone call from the detention center. Even though he is a kidney patient, Mr. Nazar was denied medical care. After three months in detention Mr. Nazar was deported back to Pakistan, Mr. Haq told us about the impact of this situation on Mr. Nazar's family,

The nine-year-old . . . he says, "I want to commit suicide." The teacher called . . . [his] mother, and the mother was . . . [also] depressed, she wanted to go back home along with her husband. . . . They are in a very desperate situation.⁷⁰

■ THE TESTIMONY OF BANAFSHEH AKHLAGHI

Banafsheh Akhlaghi, an Iranian-American attorney based in San Francisco and a former constitutional law professor also testified about NSEERS.

Ms. Akhlaghi challenged the Department of Justice's initial claims that male immigrants to the

U.S. from all countries would eventually be required to register pursuant to NSEERS and that Muslim countries were simply the first ones prioritized. In fact, the specific NSEERS requirements were suspended in 2003 after men from Afghanistan, Algeria, Bahrain, Bangladesh, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, North Korea, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen had registered. Ms. Akhlaghi says,

[John Ashcroft originally] said . . . that every individual, every non-immigrant who's in the United States will be registered until the year 2005. April of [2003], registration was halted after the last Muslim Middle-Eastern country was named and all the men from those countries were registered. It's a very big question[:]. . . . Why? If we're not racially profiling, then why did we stop registration? If it was wrong to register these individuals from these named targeted countries, then why did we have them implemented to begin with back in December [2002]?

Ms. Akhlaghi also described the hardship experienced by some of her clients who were targeted by the NSEERS policy. Nineteen-year-old Hassan and eighteen-year-old Ahmad Amin are brothers who moved to the U.S. from Pakistan in their early teens. Both brothers, who had pending green card applications and were in the process of legalization, were required to show up for call-in registration under NSEERS. Upon reporting to their local INS office, Hassan was detained and taken to Yuba County Detention Center for a day and a half. Ahmad, who was 17 at the time, was released on his own recognition. Ms. Akhlaghi describes a conversation she had with Ahmad two days before he turned 18,

I said, "Congratulations. You're turning 18." And he said, "This is the most horrible day of my life. I don't want to turn 18." "Why? Every kid in America wants to turn 18. It's liberation. What do you mean you don't want to turn 18?" And he said, "I just keep praying they don't come and take me because, now that I'm 18, can they take me to prison? I don't want to turn 18."

The Amin brothers, who were scheduled to testify at the hearings in San Francisco, were unable to do so due to the severe heart palpitations their mother was experiencing. She has reportedly been experiencing high blood pressure triggered by the fear of her sons being deported back to Pakistan.

Ms. Akhlaghi also described the way that the discriminatory registration dehumanizes immigrants,

I have a client that said to me, "If they deport me back to Iran, I will commit suicide."

And I said, "Why would you do that?"

And he said, "Better to die here than to go there and be tortured and then killed." That's what we are doing in America.⁷¹

¹ See *Unpatriotic Acts: The Status of Muslim Civil Rights in the United States: 2004*, Council on American-Islamic Relations, 2004. Also see *Report on Hate Crimes & Discrimination Against Arab Americans: The Post-September 11 Backlash 2001-2002*, ADC Research Institute, 2003. Also see *Wrong Then, Wrong Now: Racial Profiling Before & After September 11, 2001*, Leadership Conference on Civil Rights Education Fund, 2003.

² See section 1.2.2 for Mr. Boyd's story.

³ Although these groups were targets of racial profiling prior to the attacks of 9/11, the targeting of Arabs, Muslims, South Asians, and people of Middle-Eastern descent and appearance has drastically increased since.

⁴ See section 1.2.1 for more details on Mr. Ali's story.

⁵ See testimony of Gerri McClelland in section 1.2.3 and Mohamed Ali in section 1.2.1.

⁶ Edmund Morgan, *American Slavery, American Freedom*, W.W. Norton & Company: New York, 1975, p. 232-234.

⁷ David Cole, *Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terrorism*, The New York Press: New York, 2003, p. 90.

⁸ Kenneth Meeks, *Driving While Black: What to Do if You Are a Victim of Racial Profiling*, Broadway Books: New York, 2000, p. xi-xii.

⁹ David Cole and James X. Dempsey, *Terrorism and the Constitution: Sacrificing Civil Liberties in the Name of National Security*, The New York Press: New York, 2002, p. 150-151.

¹⁰ John Lamberth, "Revised Statistical Analysis of the Incidence of Police Stops and Arrests of Black Drivers/Travelers on the New Jersey Turnpike Between Interchanges 1 and 3 from the Years 1988 through 1991," Nov. 11, 1994.

¹¹ Peter Verniero and Paul Zoubek, Interim Report of the State Police Review Team Regarding Allegations of Racial Profiling, New Jersey Attorney General's Office, April 20, 1999, p. 4.

¹² Tom Robertson, "Bemidji Police Officials Dispute Racial Profiling Study," Minnesota Public Radio, Oct. 23, 2003. The study revealed that police stopped and searched American Indian drivers at a rate that was three times higher than white drivers.

¹³ Howard Chua-Eoan, "Profiles in Outrage," *Time Magazine*, Sept. 25, 2000, citing Committee Against Anti-Asian Violence, survey taken in Sept. 2000. Available at: <http://lib-proxy.calvin.edu:2053/images/WSPL/wsppdf1/HTML/00360/P06VI/7SU.HTM>.

¹⁴ Milton Reynolds testifying at the AIUSA National Hearings on Racial Profiling in San Francisco, CA on Sept. 9, 2003.

¹⁵ Leonard Mitchel testifying at the AIUSA National Hearings on Racial Profiling in Dallas, TX on Nov. 15, 2003.

¹⁶ Donato Garcia testifying at the AIUSA National Hearings on Racial Profiling in Dallas, TX on Nov. 15, 2003.

¹⁷ Louis Gray testifying at the AIUSA National Hearings on Racial Profiling in Tulsa, OK on Sept. 30, 2003.

¹⁸ Michael Camfield testifying at the AIUSA National Hearings on Racial Profiling in Tulsa, OK on Sept. 30, 2003.

¹⁹ Several other sources have also reported an increase in racial profiling of motorists who are or appear to be Arab, Muslim, or of Middle-Eastern descent. See *Report on Hate Crimes & Discrimination Against Arab Americans: The Post-September 11 Backlash 2002-2003*, ADC Research Institute, 2003, p. 43-46. Also see *Wrong Then, Wrong Now: Racial Profiling Before & After September 11, 2001*, Leadership Conference on Civil Rights Education Fund, 2003, p. 22 for more information on "Driving While Arab."

²⁰ Mohammed Ali testifying at the AIUSA National Hearings on Racial Profiling in Dallas, TX on Nov. 15, 2003.

²¹ The Clear Law Enforcement and Alien Removal Act of 2003 (CLEAR Act) encourages police officers to enforce civilian immigration laws. It may result in increased racial and ethnic profiling and is likely to further disenfranchise already vulnerable immigrants. For a list of AIUSA concerns regarding this act please visit: <http://takeaction.amnestyusa.org/action/index.asp?step=2&item=10419>.

²² Ammol Chaddha testifying on behalf of Mohammed at the AIUSA National Hearings on Racial Profiling in Chicago, IL on Oct. 18, 2003.

²³ *Terry v. Ohio*, 392 U.S. 1, 27 (1968).

²⁴ David A. Harris, *Profiles in Injustice: Why Racial Profiling Cannot Work*, The New York Press: New York, 2002, p. 45-46.

²⁵ On Sept. 18, 2003 a historic settlement was reached on a federal class-action lawsuit which charged the NYPD with engaging in racial profiling during stop and frisk procedures. The

settlement includes a ban on racial profiling, as well as enhanced reporting and monitoring of stop and frisk encounters with the police. For more information visit <http://www.ccr-ny.org/v2/reports/report.asp?ObjID=vhgVPn94km&Content=292>

- 26 Donald Boyd testifying at the AIUSA National Hearings on Racial Profiling in Chicago, IL on Oct. 18, 2003.
- 27 Testimony of Andrew Cho was submitted to AIUSA by the National Asian Pacific American Legal Consortium.
- 28 Nina Paulino testifying at the AIUSA National Hearings on Racial Profiling in New York City, NY on Oct. 2, 2003.
- 29 Testimony of Monica Tarazi, New York Director for the American-Arab Anti Discrimination Committee (ADC) at the racial profiling hearings in New York City, Oct. 2, 2003. Statement of Dr. Jess Ghannam, President of the American-Arab Anti Discrimination Committee, San Francisco chapter (ADC-SF) at the racial profiling hearings in Oakland, CA on Sept. 9, 2003. Testimony of Mr. Ali Khan, executive president of the American Muslim Council in Chicago at the racial profiling hearings in Chicago, IL, Oct. 20, 2003. For further evidence see *Profiles in Injustice: Why Racial Profiling Cannot Work*, New York: The New York Press, 2003, p. 139 -144. In addition, in June 2004, the American Civil Liberties Union (ACLU) filed a lawsuit against four major airlines challenging the removal of five “brown men” from their flights, which lends further support to the claim that this type of racial profiling has increased since the attacks of 9/11/01. See [http://www.aclu.org/Racial Equality/RacialEquality.cfm?ID=10422&c=133](http://www.aclu.org/Racial%20Equality/RacialEquality.cfm?ID=10422&c=133) for details of this lawsuit.
- 30 The *Quran* is the Muslim holy book.
- 31 Dr. Sandra Rana testifying at the AIUSA National Hearings on Racial Profiling in Tulsa, OK on Sept. 30, 2003.
- 32 Mahmoud El Rosoul testifying at the AIUSA National Hearings on Racial Profiling in Dallas, TX on Nov. 15, 2003.
- 33 Herb Boyd testifying at the AIUSA National Hearings on Racial Profiling in New York City, NY on Oct. 2, 2003.
- 34 Gerrie McClelland testifying at the AIUSA National Hearings on Racial Profiling in Tulsa, OK on Sept. 30, 2003.
- 35 Kenneth Meeks, *Driving While Black: What To Do If You Are a Victim of Racial Profiling*, Broadway Books: New York, 2000, p. 83.
- 36 Herb Boyd testifying at the AIUSA National Hearings on Racial Profiling in New York City, NY on Oct. 2, 2003.
- 37 Kimberly “Asma” Al-Hamsi testifying at the AIUSA National Hearings on Racial Profiling in Dallas, TX on Nov. 15, 2003.
- 38 Florentina Rendo testifying at the AIUSA National Hearings on Racial Profiling in Chicago, IL on Oct. 20, 2003.
- 39 The lawsuit claims that the raid was directly related to the City’s discriminatory policy of selectively enforcing overcrowding rules against Hispanics in response to demographic shifts. Furthermore, between 2001 and 2002, virtually all of the overcrowding actions taken by the city were against Hispanic families, despite the fact that over half of the single-family home owners in West Chicago are not Hispanic. See “NFHAO—8 Hispanic Homeowners File Civil Rights Case Against the City of West Chicago after a Pre-Dawn Raid to Check for Overcrowding, National Fair Housing Advocate” Online, Feb. 27, 2003, available at: http://www.fairhousing.com/index.cfm?method=page.display&pagename=releases_hope02-27-03
- 40 Lydia Taylor testifying at the AIUSA National Hearings on Racial Profiling in Chicago, IL on Oct. 20, 2003.
- 41 Peter Schuler, *Law Professors Successfully Argue Case to Protect Local Citizens’ Constitutional Right*, The University of Chicago Chronicle, Jan. 22, 2004, vol. 23, no. 8.
- 42 Dr. Jesse Ghannam testifying at the AIUSA National Hearings on Racial Profiling in Oakland, CA on Sept. 9, 2003.
- 43 Imam Nabil Elibiary testifying at the AIUSA National Hearings on Racial Profiling in Dallas, TX on Nov. 15, 2003.
- 44 Mary Culley testifying at the AIUSA National Hearings on Racial Profiling in Tulsa, OK on Sept. 30, 2003.
- 45 Florentina Rendo from Hope Fair Housing Center in Chicago said at the hearings that the new restrictive housing ordinances were, “[Just] another way of trying to keep away minorities from the western suburbs . . . [and make the community safe by] in my opinion . . . getting rid of the minorities in this particular town.” AIUSA National Hearings on Racial Profiling at Chicago, IL, on Oct. 20, 2003.
- 46 Renee Saucedo testifying at the AIUSA National Hearings on Racial Profiling in San Francisco, CA on Sept. 9, 2003.
- 47 Mark Donald, “Dirty or Duped? Who’s to Blame for Fake-Drug Scandal Rocking Dallas Police? Virtually Everyone,” *Dallas Observer*, May 2, 2002.
- 48 *Ibid.*
- 49 “Tests Show Fake Drugs Seized in Dallas Made of Sheetrock, Gypsum,” Associated Press State and Local Wire, Jan. 6, 2002.
- 50 Will Harrell testifying at the AIUSA National Hearings on Racial Profiling in Dallas, TX on Nov. 15, 2003.
- 51 Editorial, “Dallas Incident Creates Problems for Police,” *San Antonio Express-News*, March 3, 2002.
- 52 CBS11, “Fake Drug Scandal Leads to More Indictments,” Apr. 16, 2004. Available at http://cbs11tv.com/localstories/local_story_107124150.html.
- 53 Veronica Garcia testifying at the AIUSA National Hearings on Racial Profiling in New York City, NY, on Oct. 2, 2003.
- 54 Judi Mukarhida testifying at the AIUSA National Hearings on Racial Profiling in New York City, NY, on Oct. 2, 2003.
- 55 Veronica Garcia testifying at the AIUSA National Hearings on Racial Profiling in New York City, NY, on Oct. 2, 2003.

⁵⁶ Mr. Hussain shares his vending spot with his wife and his mother. AIUSA contacted Mr. Hussain in April 2004 and he reported that he and his family had received 50 tickets between April 2003–2004.

⁵⁷ Muhammad Anwar Hussain testifying at the AIUSA National Hearings on Racial Profiling in New York City, NY on Oct. 2, 2003.

⁵⁸ Amnesty International, *United States of America: Amnesty International's Concerns Regarding Post-September 11 Detentions in the USA*, March 2002. AI Index: AMR 51/044/2002.

⁵⁹ The American Civil Liberties Union, *Sanctioned Bias: Racial Profiling Since September 11, 2001*, Feb. 2004, p.5. Available at: <http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=15102&c=207>.

⁶⁰ United States Department of Justice Office of the Inspector General, *Report on Treatment of Aliens Held on Immigration Charges in Connection with the Investigation on the September 11 Terrorist Attacks*, Washington D.C., June 2, 2003.

⁶¹ Visitors from the following countries were called in for “Special Registration”: Afghanistan, Algeria, Bahrain, Bangladesh, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Libya, Lebanon, Morocco, North Korea, Oman, Pakistan, Qatar, Somalia, Saudi Arabia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen.

⁶² Although the Department of Justice initially claimed that this policy would eventually expand to all visitors to the U.S., their position has now been reversed.

⁶³ Rachel L. Swarns, “Thousands of Arabs and Muslims Could Be Deported, Officials Say,” *New York Times*, June 7, 2003.

⁶⁴ Michael Powell, “Groups Decry Immigration Rule,” *Washington Post*, Nov. 12, 2003.

⁶⁵ Awais Ibrahim, “Registration Fears Closes Businesses,” *Global News Wire*, Jan. 18, 2003.

⁶⁶ Confusion about the NSEERS policy and its requirements was prevalent in all affected communities due to failure on the part of the U.S. Government to efficiently and effectively reach out to targeted groups and inform them about Special Registration requirements.

⁶⁷ Hassan Zaidi, “Pakistan: Hostile Mentor,” *India Today*, Feb. 24, 2003.

⁶⁸ Associated Press, “Officials Say U.S. Entry Rules Discourage Visits,” *Los Angeles Times*, Apr. 22, 2004.

⁶⁹ Navila Ali testifying at the AIUSA National Hearings on Racial Profiling in New York City, NY on Oct. 2, 2003.

⁷⁰ Najma Haq testifying on behalf of Naveed Nazar at the AIUSA National Hearings on Racial Profiling in Chicago, IL on Oct. 18, 2003.

⁷¹ Banafsheh Akhlaghi testifying at the AIUSA National Hearings on Racial Profiling in San Francisco, CA on Sept. 9, 2003.

CHAPTER TWO

Lessons—Past and Present

“Racial profiling . . . is one of the most ineffective strategies, and I call it nothing less than lazy, sloppy police work. It’s basically saying you don’t want to learn about your community, you don’t want to learn about people’s behavior, you don’t want to do your job, and don’t want to investigate, you just want to stop a lot of people and see if you can come up with some statistical number at the end of the evening. . . .”

—Testimony of Captain Ron Davis, Oakland Police Department, National Organization of Black Law Enforcement Executives (NOBLE), Oakland, CA, Sept. 9, 2003

“A black sniper? That was the last thing I was thinking.”

—Former FBI Agent Candace DeLong on the Washington DC-area sniper suspects in 2003¹

Protecting individuals’ human rights is about respecting the ideals of universal human freedom and dignity. It is also about creating and maintaining an environment in which good government, including effective law enforcement, is possible. Thus, when analyzing the cost of any human rights abuse, it is not only important to explore its impact on the affected individual, but also its effect on their community and the nation as a whole.

The social cost of racial profiling can be generally grouped into three broad categories:

- distressed individuals
- disconnected communities
- diminished domestic security capabilities

2.1 DISTRESSED INDIVIDUALS

As many of the cases reported to AIUSA illustrate, there is a significant amount of empirical data suggesting a strong correlation between racial profiling and excessive use of force.² However, even

when excessive force is not involved, incidents of racial profiling often have a long-lasting impact on their victims. Individuals who reported such incidents to AIUSA during the last 12 months frequently cited:

- feelings of humiliation, depression, helplessness, anger, and fear³
- diminished trust in law enforcement⁴
- reluctance to turn to law enforcement for help⁵

People who witnessed such incidents, especially those that involved excessive force, frequently said they had been affected in similar ways.⁶ One man, whose young daughter witnessed him being pepper sprayed by a police officer during a profiling incident,



Margarita Rosari of the New York Committee of the October 22nd Coalition to Stop Police Brutality, and founder of Parents Against Police Brutality testifying at the AIUSA National Hearings on Racial Profiling in New York City, Oct. 2, 2003. Ms. Rosario testified about the lasting impact of police misconduct and police brutality on her and her family.

said that she now frequently cries when she sees a police officer.⁷

2.2 DISENFRANCHISED COMMUNITIES

Indeed, the social costs of racial profiling ultimately affect entire communities. The community-level costs of racial profiling include:

■ **Fear and mistrust of police, leading to a lack of cooperation with officers and a reluctance to report crimes.**⁸

Example: In New York City, Monami Maulik of Desi Rising Up and Moving (DRUM) discussed the widespread fear among affected communities. In particular, after the attacks of 9/11, Ms. Maulik says that Arab, Muslim, South Asian, and Middle-Eastern youth stopped by police are often asked about their country of origin and immigration status. This has reportedly produced widespread fear within these communities. She says, “[There is fear] . . . not just about detention or deportation for people affected by that, but to do simple things like going to the emergency room or calling 911 or calling the fire department. . . .”⁹

■ **Alienation of minority communities from police.**¹⁰

Example: Dr . Jesse Ghannam, President of the San Francisco American-Arab Anti-Discrimination Committee (ADC-SF) testified, “. . . the community that I speak to every day is so fearful right now when they see the badge, when they see the blue uniform . . . [S]o when you’re asking me, is there room for any dialogue...with the law enforcement community, I’d have to say the time is not right.”¹¹

■ **Reinforcement of segregation of minority communities.**¹² *Example:* Florentina Rendo of Hope Fair Housing Center highlighted the city of West Chicago’s recent passage of restrictive housing ordinances. Once passed, these ordinances are reportedly carried out in a discriminatory fashion against Latino immigrants with the help of the police. She said, “That’s just another way of trying to keep away minorities from western suburbs.”¹³

■ **Emotional and psychological distress for victims.**¹⁴

Example: John Burris, a nationally known civil rights attorney and author testified about the impact of racial profiling on victims. He says, “. . . the pain was as great for those people who had been beaten as it was for those who had been stopped [based on race]. . . .”¹⁵

■ **Poor police performance.**¹⁶ *Example:* According to Capitan Ron Davis of the Oakland Police Department, racial profiling is “. . . one of the most ineffective strategies, and I call it nothing less than lazy, sloppy police work.”¹⁷ Because all communities depend upon the police for their safety and security, any police strategy that undermines their performance undermines the quality of life for local residents.

■ **Disproportionate incarceration of racial and ethnic minorities**¹⁸ (see Table 2 below). The disproportionately large increase in incarceration rates for African Americans and Latinos has been tied to the use of racial profiling in the “War on Drugs.” In one instance, in the small town of Tulia, Texas, nearly 10 percent of the African-American population was arrested and convicted on trumped up drug charges in 1999,¹⁹ with

Table 2
Drug Use v. Drug Arrests

| Race | CRACK COCAINE | | POWDER COCAINE | |
|-----------|------------------|--------------------|------------------|--------------------|
| | Percent of Users | Percent of Arrests | Percent of Users | Percent of Arrests |
| Whites | 71.30% | 5.70% | 81.00% | 18.20% |
| Blacks | 17.70% | 84.20% | 7.70% | 30.30% |
| Hispanics | 7.90% | 9.00% | 8.50% | 50.50% |

Sources: Statistics on drug use are from the National Household Survey on Drug Abuse (Substance Abuse and Mental Health Services Administration, 2000). Statistics on arrests for drug possession are from the Sourcebook of Federal Sentencing Statistics (U.S. Sentencing Commission, 2000).

sentences “ranging up to 341 years.”²⁰ In 2003, the court found that the convictions were secured based solely on the testimony of a corrupt police officer with a shady history of police work and the defendants were subsequently released.²¹

“Drug War” racial profiling, at its core, appears to be a self-fulfilling prophecy by law enforcement officers and agencies who ultimately fail to fully acknowledge the complex nature of the drug problem in America. In 1999, defending racial profiling tactics, Carl Williams, the then superintendent of the New Jersey state police said, “The drug problem is mostly cocaine and marijuana. It is most likely a minority group that’s involved with that.”²² While Mr. Williams was fired for his remarks, several studies have suggested that racially biased policing is a systemic problem in the nation’s battle to stop the drug trade.²³ Indeed, as visible in Table 2, the disparate treatment of racial minorities in this context becomes apparent when one merely cross-references arrest statistics and self-report data for national drug use. For example, according to federal surveys from the year 2000, whites were 71.3 percent of crack users in America, yet they only comprised 5.7 percent of those arrested for crack possession. African Americans however, were 17.7 percent of crack users, but 84.2 percent of those arrested.²⁴

At the heart of the phenomena, civil rights lawyers say, are federal policies and state programs that increase local agencies’ funds based on the number of drug-related arrests and convictions. Such programs and policies have effectively provided an incentive to make the historical phenomenon of racial profiling worse. People from impoverished ethnic communities are both less likely to hire private lawyers and more likely to be viewed as inherently suspect by judges and jurors. Thus, they become the primary targets for opportunistic officers because they are easier to convict.²⁵

After reviewing reports such as those highlighted in Chapter One, it is easy for many Americans to understand how racial profiling may negatively impact targeted individuals, their communities, and the relationship between those communities and the police. Similarly, many can see that when communi-

ties become estranged from their police forces, it becomes easier for crime to go unreported in those communities and criminal activity to flourish in ways that may ultimately harm the quality of life for neighboring communities as well. What is often harder for people to appreciate is the way in which racial profiling directly threatens the security of the nation as a whole.

2.3 DOMESTIC SECURITY IMPACT OF OVER-GENERALIZED SUSPICION

Racial profiling is a liability in the effort to make our nation safer. Race-based policing practices have frequently distracted law enforcement officials and made them blind to dangerous behaviors and real threats. Moreover, this is a lesson that law enforcement should have internalized a long time ago. To help illustrate the grave cost of racial profiling as an intended guard against acts of international and domestic terror, we offer two historical examples. The first is from the opening of the twentieth century; the second is from the opening of the twenty-first:

■ **President McKinley’s Assassination:** In September 1901, President McKinley was murdered by Leon Czolgosz,²⁶ an American-born native of Michigan, who concealed a pistol in a bandage that was wrapped around his arm and hand so it looked like it covered a wound or broken bone.²⁷ Secret Service agent George Foster was assigned to search individuals coming to the area where President McKinley would be greeting members of the public. He later admitted to having chosen not to search Czolgosz because he was focused on a “dark complexioned man with a black moustache” who was behind Czolgosz in the line of people coming through Foster’s checkpoint.²⁸ Agent Forester tried to explain his actions by telling investigators that the “colored man” made him feel suspicious. When asked “Why?” he replied, “I didn’t like his general appearance.” Ironically, it was later revealed that the man whose complexion had so captivated the agent’s attention was the same person who saved President McKinley from a third bullet and apprehended the assassin—Jim Parker, an African-American former

constable who attended the event as a spectator. Mr. Parker's act of heroism was widely credited with extending the President's life for several days.²⁹ As a result of reliance on racial stereotypes, the agent on duty overlooked Czolgosz, who despite his foreign-sounding last name—not to mention his avowed allegiance to the anarchist cause³⁰—looked like “a mechanic out for the day to the Exposition.”³¹

■ **Washington DC-Area Sniper Attacks:** During the 2002 sniper attacks in the DC area, police officers were looking for a disaffected white man acting alone or with a single accomplice (the standard profile of a serial killer). After several subsequent reports, they focused their search on white males driving white vans. Police officers conducting surveillance and searches throughout the metropolitan area—including those at each of the multiple roadblocks that were quickly put up after most of the shootings—used this general description of the suspect and the suspect's vehicle. At one point, due to mistaken leads about Middle-Eastern terrorists, the FBI began planning to question Al-Qaeda prisoners held at Guantanamo Bay, Cuba for possible information on the snipers.³² Meanwhile, police came in contact with the African-American man and boy—who were ultimately accused, tried, and convicted for the crimes—at least ten times and did not apprehend them³³ because, according to DC homicide detective Tony Patterson, “everybody just got tunnel vision.”³⁴ The suspects' blue Chevrolet Caprice was spotted near one of the shooting scenes, and was stopped several times by police,³⁵ yet the snipers were able to escape every time with the alleged murder weapons in their possession. Officials were so focused on race that they failed to notice that one of the snipers, John Allen Muhammad, possessed many of the other characteristics often associated with serial killers (i.e., military background, angry, divorced, lost custody of children, etc.).³⁶ As former FBI Agent Candace DeLong put it, “A black sniper? That was the last thing I was thinking.”³⁷

In each case, the United States paid a clear price for law enforcement officers thinking that they knew what an otherwise unidentified threat looked like. In

the first instance, the U.S. president was assassinated, in part, because his Secret Service agents were apparently relying on stereotypes of what an “international anarchist” looked like. In the second, millions of residents of the Washington, DC metropolitan area were terrorized for several days as the serial killers repeatedly evaded police, in part because officers were relying upon scientifically-supported profiles that speculated the assailants were white. As DC Police Chief Charles Ramsey pointed out, “We were looking for a white van with white people, and we ended up with a blue car with black people.”³⁸ In each instance, officers' ability to focus on and detect dangerous behaviors (a pistol in the bandaged hand of a white male passing through a Secret Service checkpoint; a rifle in the trunk of the car of two African-American males who repeatedly came in contact with police engaged in the search for a serial sniper) was apparently compromised by the distraction of the assailants' race.

These are not the only available examples of such failures. Throughout the last century, reliance on racial profiling has repeatedly led to national security tragedies:

■ **Japanese Internment During World War II:** Signed by President Roosevelt in February 1942, Executive Order 9066 called 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 even Asian descent.³⁹

■ **The Oklahoma City Bombing:** After bombing the Alfred P. Murrah federal building in Oklahoma City in April 1995, the white male assailant, Timothy McVeigh, was able to flee while law enforcement officers reportedly operated on the initial theory that ‘Arab terrorists’ had committed the attack.⁴⁰

■ **Southwest Airlines Infiltration Case:** In October 2003, Nathaniel Heatwole, a white college student from North Carolina, was charged with a felony for

smuggling knives, box cutters, bleach, and items with the same consistency as plastic explosives onto six Southwest Airlines' flights. These items were not discovered for over a month, despite the fact that Mr. Heatwole sent numerous e-mail messages to the Transportation and Security Administration informing them of his actions. After they were discovered on two planes, Heatwole told authorities he had actually successfully smuggled such items onto those two and four more. Heatwole claimed that this was an act of civil disobedience intended to improve security measures for airline travelers.⁴¹ He was released on bail and is awaiting trial; the charges against Heatwole have since been reduced to a misdemeanor.⁴²

Fortunately, our nation's history also shows that law enforcement officials are capable of learning about the ineffectiveness of profiling based on inherent physical traits and changing their behavior accordingly. In the 1970's, the U.S. Secret Service relied upon a presidential assassin profile that said assailants would be males. After the arrest of Sara Jane Moore for taking a shot at President Ford, the gender limitation was removed from the profile.⁴³ The value of changing the profile was verified in 1992 when a young woman was arrested for threatening to kill President George H.W. Bush after bringing a rifle to a rally where he was scheduled to speak.⁴⁴

However, the implications of this lesson seem to have been largely ignored with regard to race-based profiling. As summarized earlier in the report, several of the United States' domestic "War on Terror" strategies (such as the post-9/11 attack round ups of Muslim and Arab men in New York City and the National Security Entry/Exit Registration Program) appear to have been conceived without appreciation for past mistakes. Moreover, incidents described earlier in this report suggest a general failure of many American law enforcement agencies and officers to learn sufficiently from our country's historical mistakes. They also suggest a failure to internalize the complexity of our nation's current domestic security situation. While a wide range of "post-September 11, 2001" policies and practices seem to be informed by the fact that all of the 19 hijackers

on the day of the attacks were Middle-Eastern males, U.S. law enforcement seems often to have acted in ways that ignore the facts that: (a) the overwhelming majority of people who belong to Arab-American, Muslim-American, and South-Asian-American communities are innocent and law abiding, and (b) many of the Al Qaeda sympathizers detained since have come from a wide range of other ethnic groups and nationalities (such as Chicano American Jose Padilla, white American Taliban combatant John Walker Lindh, and the British "shoe-bomber" Richard Reid).

What is more, the decision to focus, even partially, on racial characteristics instead of on behaviors runs counter to a significant lesson learned from one of the most relevant changes in U.S. airport security policy in the last ten years. In the 1990s, spurred by discrimination lawsuits, the U.S. Customs Service eliminated the use of race in deciding which individuals to stop and search and instead began relying on a list of suspect behaviors. According to a study of U.S. Customs by Lamberth Consulting, the policy shift to color-blind profiling techniques increased the rate of productive searches—searches that led to discovery of illegal contraband or activity—by more than 300 percent.⁴⁵

If history is any judge, the impact of this failure to forgo the distraction of race-based strategies means that all Americans will continue to be at risk of attacks by individuals whose physical appearance or ethnicity defies popular stereotypes about terrorist conspirators. Meanwhile, law enforcement resources will continue to be squandered on over-scrutinizing millions of American citizens and visitors, ultimately because of how they look, where they or their ancestors are from, or what they wear.

¹ Jeffrey Gettleman, "The Hunt for a Sniper: The Profiling: A Frenzy of Speculation Was Wide of the Mark," *New York Times*, Oct. 25, 2003.

² Testimony of Renee Saucedo at the AIUSA National Hearings on Racial Profiling in San Francisco, CA on Sept. 9, 2003 about harassment of day laborers; Testimony of Nina Paulino at the AIUSA National Hearings on Racial Profiling in New York City, NY on Oct. 2, 2003 on behalf of Santiago also supports this claim.

- ³ Testimony of Susie McAllister at the AIUSA National Hearings on Racial Profiling in San Francisco, CA on Sept. 9, 2003 supports this claim; testimony of Margarita Rosario at the AIUSA National Hearings on Racial Profiling in New York City, NY on Oct. 2, 2003 also supports this claim. Also see Jessica L. Hart. Ph. D., et al., “Racial Profiling at What Price?” *Journal of Forensic Psychology Practice*, Vol. 3(2) 2003, p. 79-88. Also see David A. Harris, *Profiles in Injustice: Why Racial Profiling Cannot Work*, The New York Press: New York, 2003, p. 91-98.
- ⁴ Testimony of Dr. Jesse Ghannam, President of the American-Arab Anti Discrimination Committee, San Francisco chapter (ADC-SF) at AIUSA National Hearings on Racial Profiling in Oakland, CA on Sept. 9, 2003 about his community’s current lack of trust and unwillingness to cooperate with law enforcement; testimony of Deborah Forge at the AIUSA National Hearings on Racial Profiling in Dallas, TX on Nov. 15, 2003 also supports this claim. Also see Jessica L. Hart. Ph. D., et al., “Racial Profiling at What Price?” *Journal of Forensic Psychology Practice*, Vol. 3(2) 2003, p. 79-88. Also see David A. Harris, *Profiles in Injustice: Why Racial Profiling Cannot Work* New York Press: New York, 2003, p. 107-114.
- ⁵ Testimony of Omar Mohamedi, a civil rights attorney, at the AIUSA National Hearings on Racial Profiling in New York City, NY on Oct. 2, 2003 about people who are afraid to report crimes because they fear that they might be targeted by law enforcement. He testified about a family who died as a result of a fire that they were afraid to report; testimony of Monica Tarazi, Director of the American-Arab Anti-Discrimination Committee, NY chapter (ADC-NY) at the AIUSA National Hearings on Racial Profiling in New York City, NY on Oct. 2, 2003 also supports this claim.
- ⁶ Testimony of Steve Yip, Yuanita Young, and Margarita Rosario of the October 22nd Coalition to Stop Police Brutality at the AIUSA National Hearings on Racial Profiling in New York City, NY on Nov. 2, 2003.
- ⁷ Testimony of Donato Garcia at the AIUSA National Hearings on Racial Profiling in Dallas, TX on Nov. 15, 2003; Testimony of John Burris, a civil rights attorney at the AIUSA National Hearings on Racial Profiling in Oakland, CA on Sept. 9, 2003. According to John Burris, “The greatest psychological impact . . . is [on] . . . the children . . . [it] may erode their ability to be respectful [of] the police for years to come.”
- ⁸ David A. Harris, *Profiles in Injustice: Why Racial Profiling Cannot Work*, The New York Press: New York, 2003, p. 126-128
- ⁹ Monami Maulik testifying at the AIUSA National Hearings on Racial Profiling in New York City, NY on Oct. 2, 2003. The testimony of Oscar Paredes at the AIUSA National Hearings on Racial Profiling in New York City, NY on Oct. 2, 2003 also supports this claim.
- ¹⁰ David A. Harris, *Profiles in Injustice: Why Racial Profiling Cannot Work*, The New York Press: New York, 2003, p. 231.
- ¹¹ Dr. Jesse Ghannam testifying at the AIUSA National Hearings on Racial Profiling in Oakland, CA on Sept. 9, 2003. The testimony of Monica Tarazi, Director of the New York American-Arab Anti-Discrimination Committee (ADC-NY) at the AIUSA National Hearings on Racial Profiling, New York City, NY on Oct. 2, 2003 also supports this claim.
- ¹² David A. Harris, *Profiles in Injustice: Why Racial Profiling Cannot Work*, The New York Press: New York, 2003, p. 102-106.
- ¹³ Florentina Rendo testifying at the AIUSA National Hearings on Racial Profiling in Chicago, IL on Oct. 20, 2003.
- ¹⁴ David A. Harris, *Profiles in Injustice: Why Racial Profiling Cannot Work*, The New York Press: New York, 2003, p. 94-99.
- ¹⁵ John Burris testifying at the AIUSA National Hearings on Racial Profiling in Oakland, CA on Sept. 9, 2003.
- ¹⁶ David A. Harris, *Profiles in Injustice: Why Racial Profiling Cannot Work*, The New York Press: New York, 2003, p. 106-107.
- ¹⁷ Testimony of Captain Ron Davis at the AIUSA National Hearings on Racial Profiling in Oakland, CA on Sept. 9, 2003.
- ¹⁸ David A. Harris, *Profiles in Injustice: Why Racial Profiling Cannot Work*, The New York Press: New York, 2003, p. 124-126.
- ¹⁹ NAACP Legal Defense and Education Fund, *Bad Times In Tulia: An African American Community In Texas Is Victimized in the “War on Drugs,”* 2003. Available at http://www.naacpldf.org/whatsnew/wn_doc_ldf_badtimes_tulia.html.
- ²⁰ NAACP Legal Defense and Education Fund, “Former Tulia Defendants Celebrate Pardons; Civil Rights Law Suit Filed Against Drug Sting Officials,” Aug. 22, 2003. Available at http://www.naacpldf.org/whatsnew/wn_doc_ldf_tulia_celebrate_pardons.html.
- ²¹ Lee Hockstader, “Texas to Toss Drug Convictions Against 38 People: Prosecutor Concedes “Travesty of Justice,”” *Washington Post*, Apr. 2, 2003.
- ²² Joe Donohue, “Trooper Boss: Race Plays a Role in Drug Crimes,” *Newark Star-Ledger*, Feb. 28, 1999.
- ²³ Michael Coyle, “Race and Class Penalties in Crack Cocaine Sentencing,” The Sentencing Project, 2002, available at: <http://www.sentencingproject.org/pdfs/5077.pdf>. Also see: “Does the Punishment Fit the Crime? Drug Users and Drunk Drivers, Questions of Race and Class,” The Sentencing Project, 1993, available at: <http://www.sentencingproject.org/pdfs/9040smy.pdf>.
- ²⁴ The statistics for drug use were obtained from the National Household Survey on Drug Abuse, 2000 by Substance Abuse and Mental Health Services Administration at: <http://www.samhsa.gov>. The numbers for drug arrest were obtained from the U.S. Sentencing Commission 2000 Sourcebook on Federal Sentencing statistics at: <http://www.ussc.gov/ANNRPT/2000/SBT0C00.htm>.
- ²⁵ Statement of Vanita Gupta of the NAACP Legal Defense and Education Fund at presentation, “Tulia, Texas: The Lawyers’ Perspective,” Feb. 26, 2004, Washington D.C.

- 26 Pronounced “Cholgosh.”
- 27 Eric Rauchway, *Murdering McKinley: The Making of Theodore Roosevelt's America*, Hill and Wang: New York, 2003, p. 3, 18.
- 28 Eric Rauchway. *Ibid.*, p. 61–62.
- 29 Jim B. Parker, or “Big Jim”, became a hero overnight. However, he was to find that racism still prevailed in the North, just as it did in the South. Agent Foster later reversed his position and denied Parker’s role in the incident, claiming that an Irish-American soldier, Private Francis O’Brien, was the first to subdue Czolgosz. Another agent who had initially reported on Parker’s heroism did not testify at Czolgosz’s trial. See Eric Rauchway, *Ibid.*, p. 74–75.
- 30 The international network of anarchists were among the most feared terrorists of the time who openly proclaimed their support for terrorist activity and claimed to be determined to wage war on modern civilization. Moreover, in the decade preceding President McKinley’s assassination, they had succeeded in assassinating numerous European officials and heads of state.
- 31 Eric Rauchway, *Ibid.*, p. 16.
- 32 Ken Dermota, “Sniper Hunt Targets Al Qaeda,” *The Daily Telegraph*, Oct. 19, 2002.
- 33 Ed Vulliamy, “Police Let Sniper’s Car Go 10 Times During Spree,” *The Observer*, Oct. 27, 2002.
- 34 Kevin Mrida, “After The Van: One Lesson From the Sniper Probe: What You See Determines What You Get,” *Washington Post*, Nov. 24, 2002.
- 35 Ed Vulliamy, “Police Let Sniper’s Car Go 10 Times During Spree,” *The Observer*, Oct. 27, 2002.
- 36 Mary Leonard, “Arrest in Sniper Case: Sniper Suspect Defies Profile,” *Boston Globe*, Oct. 27, 2002.
- 37 Jeffrey Gettleman, “The Hunt for a Sniper: The Profiling: A Frenzy of Speculation Was Wide of the Mark,” *New York Times*, Oct. 25, 2002.
- 38 Craig Whitlock and Josh White, “Police Checked Suspect’s Plates at Least 10 Times,” *Washington Post*, Oct. 26, 2002.
- 39 The Hon. Robert Matsui of California, “Redress for Japanese Internment,” remarks to the 99th Congress, Jan. 3, 1985. 131 Cong. Rec. E 54.
- 40 Mary Abowd, “Arab-Americans Suffer Hatred After Bombing,” *Chicago Sun Times*, May 13, 1995.
- 41 Mike Brooks, Carla Crosswhite, Kevin Bohn, “Student Charged in Airline Box Cutter Scare,” CNN.com/Law Center, Oct. 21, 2002. Available at <http://www.cnn.com/2003/LAW/10/20/airline.scare/>.
- 42 Associated Press, “Charges Reduced Against Student Who Hid Box Cutters on Planes,” *USA Today*, April 13, 2004. Available at http://www.usatoday.com/travel/news/2004-04-12-boxcutter-case_x.htm.
- 43 Gender and race are often linked in profiling by law enforcement. As with racial profiling, gender profiling wrongfully relies on immutable characteristics rather than on behavior.
- 44 Bill Dedham, “Fighting Terror/Words of Caution on Airport Security: Memo Warns Against Use of Profiling as a Defense,” *Boston Globe*, Oct. 12, 2001.
- 45 Lamberth Consulting, “Racial Profiling Doesn’t Work.” Available at http://lamberthconsulting.com/research_work.asp.

CHAPTER THREE

Ending Racial Profiling in the United States

“ I’m an American citizen and I’m not going to restrict myself to certain areas in the United States . . . [I]f I find a job in another state, am I going to think, ‘Oh, is it safe to move to this . . . state?’ ”

—Tarek Elyadi discussing racial profiling in the U.S. Mr. Elyadi talked about profiling and harassment of Muslims after September 11, 2001. San Francisco, California, Sept. 9, 2003

There is a pressing need for a comprehensive federal anti-racial profiling statute. Such a law would help uphold the promise the U.S. has made to its own people, as well as the international community, that it will ensure all people in this country are not mistreated because of their religious beliefs, race, national origin, or ethnicity. To this day, no state law has dealt effectively with racial profiling by law enforcement officers, and more than half of the states do not have laws banning this common human rights violation. Moreover, the U.S. Supreme Court has failed to uphold protections from such abuse—guaranteed to Americans by the Fourth and Fourteenth Amendments to the Constitution, as well as by international human rights treaties that the U.S. has ratified. Such federal legislation must not only ban racial profiling at all levels of law enforcement, it must also provide mechanisms by which to measure whether agencies and officers are engaging in the practice, and contain effective provisions to deal with violations of the statute.

3.1 STATE LAWS ON RACIAL PROFILING

The state of current anti-racial profiling laws provides no reason for anyone of color, nor anyone of Muslim or Sikh faiths to drive or fly with confidence that their Fourth Amendment right to protection against unreasonable searches and seizures or their Fourteenth

Amendment right to equal protection under the law will be respected.

A thorough review of all existing state anti-racial profiling laws by AIUSA found each of them to be deficient in significant ways. When taken together they offer little reason for Americans or visitors to expect that their human and civil rights will be similarly protected wherever they go in the U.S. Common flaws include: laws whose definitions are so restrictive as to make them virtually unenforceable; acts that are irrelevant to common forms of racial profiling; statutes that are silent on the problem of religious discrimination by law enforcement officers; and enacted legislation that is void of any permanent ongoing monitoring of the problem.

As of August 2004, bills addressing racial profiling had been introduced in 41 states and passed in 29 states—with only 23 of these states actually banning the practice. While these laws collectively contain all of the components that the nation needs to combat this problem, each individual state’s law falls short in significant ways. Consider the following facts about the current status of state racial profiling laws:

- 27 states have no law explicitly prohibiting racial profiling.¹
- Only 11 (of the 23 states with bans) use a definition of racial profiling that can be effectively enforced. The 12 other states only prohibit racial profiling “*solely*” based on race. Thus, they may allow officers to use race in conjunction with other criteria such as location or style of dress.²
- 46 states do not explicitly ban racial profiling based on religion or religious appearance.³
- 35 states have no laws explicitly banning the use of profiling during pedestrian stops. In urban areas,

racial profiling of pedestrians is often as significant as that of motorists.⁴

■ Only 6 of the 15 states that ban racial profiling of pedestrians use a definition of racial profiling that can be effectively enforced.⁵

■ Only 2 states ban the use of pretextual traffic stops.⁶ In such stops officers use minor violations (such as failure to utilize a seat belt) as the official reason to stop a driver whose car they intend to search for illegal items on an otherwise unsubstantiated hunch.

■ Only 2 states criminalize violation of their racial profiling ban.⁷

■ Only 2 states enable individuals to seek court orders to stop individual departments from continuing to engage in racial profiling.⁸

What a Good Law Would Look Like

After reviewing all existing and proposed state legislation addressing racial profiling (as of June 1, 2004), AIUSA determined that in order to effectively combat the most common forms of racial profiling a statute should:

- **Include** a comprehensive effective ban on racial profiling. Such a ban would prohibit the profiling of individuals and groups by law enforcement agencies even partially on the basis of race, ethnicity, national origin, or religion, except when there is trustworthy information, relevant to the locality and time-frame, that links persons belonging to one of the aforementioned groups to an identified criminal incident or scheme
- **Ban** pretextual stops (those instances in which police use minor/common traffic violations to inquire about drugs, guns, or other breaches of the law) of pedestrians and motorists
- **Criminalize** violations of the racial profiling ban and specify penalties for officers who repeatedly engage in racial profiling
- **Require** mandatory data collection for all stops and all searches (traffic and pedestrian) in all circumstances (citations and warnings given). Such data would include perceived race, perceived gender, perceived age and whether immigration status was inquired about during the stop
- **Require** data analysis and publication of the data collected
- **Create** an independent commission to review and respond to complaints of racial profiling and regularly publish results of racial profiling investigations
- **Allow** for individuals to seek court orders to stop individual departments from continuing to engage in racial profiling
- **Provide** funds for periodically retraining officers and installing in-car video cameras for monitoring traffic stops

At bottom, virtually every state's racial profiling law is so flawed as to make it irrelevant for many groups of racial profiling victims and thus in urgent need of reform. For example, consider the cases of Utah and Tennessee.

Utah's racial profiling law has been praised because:

■ It requires data to be collected and recorded by every state and local officer in every stop, including pedestrian stops.

■ The data is recorded by the Department of Motor Vehicles (DMV) and is subsequently reviewed by the Commission on Criminal and Juvenile Justice.

■ The race and gender of the officer is recorded as well as an identification number for use in analyzing the rates at which particular officers stop minorities.

However, the law is based on a definition that only covers cases of profiling *solely* based on race, and it does not provide a means for aggrieved individuals to seek relief from the courts or an independent commission. Thus it does not impact the great majority of racial profiling cases in which race was used as one of a group of factors to determine which individuals to target (such as race, gender, age, and location). Moreover, it does not provide an efficient avenue for racial profiling victims to seek reform.

Tennessee's existing racial profiling law also has several positive characteristics, including at least one that Utah's law lacks. Specifically, Tennessee's current law:

■ contains a provision for data collection (while it was voluntary and expired in 2001, many state laws have no data collection provision at all)

■ allows aggrieved individuals to seek relief in the courts

However, the law *only* applies to fingerprints "obtained for the purpose of racial profiling."

Together, these two laws provide a powerful example of the flawed nature of existing state laws and the need for uniform anti-racial profiling laws across the states. They also reveal that existing laws are generally unlikely to bring the United States into compliance with the international human rights treaties against racism that the country has ratified.

3.2 RECENT FEDERAL EFFORTS

3.2.1 A Good Bill

AIUSA, together with a diverse coalition of law enforcement, civil rights, human rights, and religious organizations, fully supports the newly introduced End Racial Profiling Act of 2004 (ERPA), which bans racial profiling at all levels of government and provides systematic monitoring and enforcement mechanisms for law enforcement agencies. On February 26, 2004, Congressmen John Conyers, Jr. (D-MI) and Christopher Shays (R-CT), with the expressed support of 107 of their fellow U.S. Representatives, introduced ERPA. Senator Russell Feingold and 14 colleagues simultaneously introduced an identical bill in the U.S. Senate. Specifically ERPA would:

- define and ban all forms of racial profiling based on race, religion, national origin, or ethnicity
- financially penalize any state that refuses to comply with ERPA, which includes: implementing policies that ban racial profiling; collecting data on the perceived race of all individuals stopped by local, state, and federal police; implementing procedures for receiving, investigating and responding to complaints; and employing procedures to discipline law enforcement agents
- allow for courts to respond to individual complaints by ordering specific police departments to stop engaging in racial profiling
- provide funding for training and new technology for data collection, such as in-car cameras, portable computer systems, and early warning systems

ERPA is the only piece of proposed federal legislation introduced in either the U.S. House or Senate as of the publishing of this report that offers a real opportunity for ending racial profiling in the United States.

3.2.2 Another President Fails to Follow Through

Despite repeated promises by President Bush and Attorney General John Ashcroft to do so, the Bush administration has failed to enact—or even explicitly support—federal legislation that would comprehensively

address the issue of racial profiling in the United States. Such a law would close the gaps in existing state and local laws against racial profiling, protect Americans' basic constitutional rights to equal protection and personal security, and bring the nation in to greater compliance with international human rights standards. It would also help the President keep a promise to the American people that has gone unfulfilled for almost four years.

On February 27, 2001, while addressing a joint session of Congress, President George W. Bush promised to end racial profiling in America. His message was straightforward,

Earlier today I asked John Ashcroft, the Attorney General, to develop specific recommendations to end racial profiling. It's wrong, and we will end it in America.⁹

He repeated the promise later that year during his appearance at the annual convention of the National Association for the Advancement of Colored People (NAACP),

Finally, my agenda is based on the principle of equal opportunity and equal justice. Yet, for too long, too many African-Americans have been subjected to the unfairness of racial profiling. That's why, earlier this year, I asked Attorney General John Ashcroft to develop specific recommendations to end racial profiling. It's wrong, and it must be ended in America.¹⁰

The President's message was extremely well received by Americans who had grown impatient with former President Bill Clinton's reluctance to take definitive action to end the problem.¹¹ Nonetheless, it took more than two years for the Bush administration to take new action against racial profiling.

On June 17, 2003 the Department of Justice issued a *Guidance Regarding the Use of Race by Federal Law Enforcement Agencies*. The document¹² clearly stated that it was intended to fulfill the President's promise. While the guidance contained a definition that is modeled after one endorsed by human and civil rights organizations, including Amnesty International USA, the guidance fell short of the President's goal of

ending racial profiling in America in a number of ways. Specifically, the guidance:

- does not cover profiling based on religion, religious appearance, or national origin
- does not apply to state or local law enforcement agencies
- does not include any enforcement mechanism (e.g., private right of action, or cutting of funds)
- does not require data collection
- does not specify any punishment for federal officers who disregard it
- contains a blanket exception for cases of “threat to national security and other catastrophic events” and “in enforcing laws protecting the integrity of the Nation’s borders”¹³

3.2.3 A Resolute Public

President Bush’s apparent reluctance to support national legislation on this issue has little to do with the general state of public opinion about racial profiling. With the exception of a momentary shift in the wake of the September 11, 2001 attacks, public opinion on this issue has been relatively constant for more than a decade.¹⁴ In 2001, when President Bush initially promised to end racial profiling in America, 81% of the public opposed racial profiling.¹⁵ Today, public opinion against racial profiling is as strong as ever. According to the most recent poll available, 73% of whites, 91% of African Americans, and 77% of Hispanics oppose the use of race-based police practices. What is more, the level of consensus against racial profiling does not appear to be significantly affected by whether a person lives in the North or the South.¹⁶

3.3 WEAKENED CONSTITUTIONAL GUARANTEES AGAINST RACIAL PROFILING

On its face, the United States Constitution guarantees protection against racial profiling. The text of both the Fourth and Fourteenth Amendment would seem to ban the practice.

The Fourth Amendment of the United States Constitution says that:

*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause. . . .*¹⁷

However, the U.S. Supreme Court has lowered that threshold. In its place the court has established a sliding scale that weighs the deprivation of an individual’s liberty against the basis of the police inquiry. Police, for example, are permitted to stop, question and sometimes frisk a person based solely on “reasonable suspicion”¹⁸—a standard which requires significantly less than a preponderance of the evidence that a crime has been or is about to be committed and that the suspect is the person who committed or is planning to commit the offense.¹⁹ This reasonable suspicion threshold is not nearly as stringent as the “probable cause” standard required for an arrest which, in simple terms, requires at least a 50 percent probability that a crime has been or is about to be committed and a 50 percent probability that the person to be arrested committed or is about to commit that crime.²⁰

This lower threshold makes a Fourth Amendment challenge to a race-based stop by law enforcement extremely difficult,²¹ as it allows more leeway for an unscrupulous officer to abuse his or her power. And once a stop has been made the law allows officers to make an arrest for even the most minor offense.²² Furthermore, an officer making a stop can search the passenger compartment of the targeted driver’s vehicle.²³ The discretion of a police officer acting on reasonable suspicion may go largely unchecked under the Fourth Amendment—sometimes permitting the leeway necessary for an officer to effectively enforce the law, but often allowing systematic racial profiling to pass muster under the weakened Fourth Amendment.

The Supreme Court has set further barriers to the legal fight against racial profiling in response to a Fourth Amendment challenge of a stop. In *Whren v. U.S.* the Court ruled that while selective law enforcement based on race does indeed violate the Constitution, the appropriate constitutional basis for objecting

to such discriminatory practices is the Equal Protection Clause of the Fourteenth, not the Fourth Amendment.²⁴

Finding little solace in the Fourth Amendment, victims of racial profiling are left with the Fourteenth Amendment on which to base a claim. The Equal Protection Clause of the Fourteenth Amendment of the United States Constitution states that:

*[No] state shall . . . deny to any person within its jurisdiction the equal protection of the laws.*²⁵

However, to establish a violation of the Equal Protection Clause based on discriminatory law enforcement, the plaintiff must show either intentional discrimination²⁶ or an adverse effect driven by some form of discriminatory animus²⁷ on the part of law enforcement officials. In other words, the plaintiff would have to show that the police conduct took place “not in spite of” but “because it would have [an adverse] effect” on the target.²⁸ Given the difficulty in establishing intentional motives in individual cases, this standard is of little use in challenging all but the most egregious acts of racial profiling.

Hence, while there are Constitutional protections against racial profiling, there remain many significant barriers to launching a successful legal challenge against this widespread practice.

3.4 INTERNATIONAL HUMAN RIGHTS TREATIES PROHIBITING RACIAL PROFILING

Ultimately, by failing to effectively address the problem of racial profiling, the United States is violating its obligations under several international human rights agreements to which the nation is a party.

Of the major international human rights treaties, covenants, and declarations that the United States has ratified, the United Nations Charter,²⁹ the Universal Declaration of Human Rights (UNDHR),³⁰ the International Covenant on Civil and Political Rights (ICCPR),³¹ and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD),³² all explicitly prohibit racial discrimination.

The texts of ICCPR and CERD, both of which have been ratified by the U.S.,³³ most directly apply to the

practice of racial profiling by law enforcement officers. Article 1 of CERD defines “racial discrimination” as:

[A]ny distinction, exclusion, restriction, or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect³⁴ 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.

Article 2 of the same Convention goes on to declare that,

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. . . .

The ICCPR also places emphasis on the non-discrimination obligations for all states parties. Even during times of emergency, where states may derogate from certain other rights specified in the Covenant, the prohibition on discrimination remains intact.³⁵ Article 4 of this Covenant goes further to declare,

*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, colour, sex, language, religion, and social origin.***³⁶

As a party to both of these agreements, the United States is obliged to adhere to the aforementioned standards. However, the U.S. has often done all it can to avoid the obligations under such treaties. For example, during the respective ratification processes the U.S. attached a non-self-executing provision to both documents. This provision effectively seeks to deny citizens the right to use these treaties as a legal basis for seeking protection in U.S. courts of rights

enumerated in these documents. Regardless, the U.S. has acknowledged that the non-self-executing nature of the treaties does not change the country's obligation to protect its citizens from incursion against the rights provided in these treaties.³⁷ Nonetheless, there is virtually no way for that to happen without passage of domestic laws providing the same protection (or Supreme Court decisions that have a similar effect).

In fact, in its initial report to the United Nations Committee on CERD in 2001, the U.S. acknowledged the persistence of racial discrimination in the country. At a press conference Harold Koh, then Assistant Secretary of State for Democracy, Human Rights, and Labor stated, "As our report chronicles, the American struggle to secure racial equality remains incomplete. . . ."³⁸ The U.N. Committee on CERD further acknowledged the continuing problem of racial discrimination in the U.S. by noting that "the persistence of discriminatory effects of the legacy of the practice of slavery and segregation, and destructive policies with regard to Native Americans,"³⁹ remains a factor that impedes implementation of the Convention in that country.

In summary, until comprehensive anti-profiling legislation is in effect in every state, many Americans will continue to worry that their fundamental right to live without fear of racial, ethnic, or religious discrimination may be violated at any time by the very people who are charged to protect them. Given the discussion earlier in this chapter about the nature of existing state anti-racial profiling laws, it would seem that only national legislation could bring this about.

¹ 23 states explicitly ban racial profiling: AK, AR, CA, CO, CT, FL, IL, KY, MD, MA, MN, MO, MT, NE, NV, NJ, OK, RI, TN, TX, UT, WA, WV.

² 12 states whose definition of racial profiling is far too restrictive to be effective include: CO, CT, FL, IL, KY, MD, MT, NE, OK, TN, TX, UT. It is important to note that the criteria that are allowed under these laws do not need to be related to an actual incident or report of a crime. Furthermore, the Police Executive Research Forum (PERF) also rejects the restrictive definition (i.e., the *sole* use of race) of racial profiling. See: Fridell, Lorie, et al. *Racially Biased Policing: A Principled Response*, Police Executive Research Forum, 2001, p. 3, available at <http://policeforum.mn-8.net/default.asp?link=>.

³ 4 states that ban racial profiling based on religion or religious appearance include: AK, AR, CA, MA.

⁴ 15 States that extend their ban to pedestrian stops include: AR, CA, CO, CT, FL, KY, MA, MT, NE, NJ, OK, RI, TX, UT, WA.

⁵ 6 states that ban pedestrian stops and define racial profiling in a way that is effective for enforcement (i.e. a non-suspect-specific profile that may include race as one of several factors) include: AR, CA, MA, NJ, RI, WA.

⁶ 2 states that ban the use of pretextual stops include: MO, WV.

⁷ 2 states that criminalize the violation of the racial profiling ban, include: NJ, OK .

⁸ 2 states whose laws enable individuals to seek court orders to stop individual departments from continuing to engage in racial profiling include: RI, TN.

⁹ The United States Congress, Office of the Press Secretary, "Address of the President to the Joint Session of Congress," Feb. 27, 2001. Available at: <http://www.whitehouse.gov/news/releases/2001/02/20010228.html>

¹⁰ The White House, Office of the Press Secretary, "Videotaped Remarks of the President to NAACP National Convention," July 9, 2001. Available at: <http://www.whitehouse.gov/news/releases/2001/07/20010709-8.html>

¹¹ Despite encouragement by members of his administration to outlaw racial profiling, Bill Clinton called only for data collection measures. See David Maraniss and Ellen Nakashima, "13 Ways of Looking at Al Gore and Race," *Washington Post*, April 23, 2000. Only in his last week in office did President Clinton recommend that Congress take measures to outlaw racial profiling. See Steven A. Holmes, "In His Final Week, Clinton Issues Proposal on Race," *New York Times*, Jan. 15, 2001.

¹² Available at http://www.usdoj.gov/crt/split/documents/guidance_on_race.htm

¹³ These exceptions have caused domestic civil rights organizations to fear that such language will be used to continue widespread racial profiling against Arab, South-Asian and Latino Americans and immigrants in the U.S. See "Racial Profiling Guidance 'Useful First Step' on the Road to Enacting Comprehensive Federal Legislation; Concerns about Broad Loopholes: Urges Congress to Act," June 18, 2003, available at: <http://www.civilrights.org/issues/cj/details.cfm?id=13990>. Also see "New Justice Department Racial Profiling Policy Does Not Go Far Enough to End the Practice Says MALDEF," Mexican American Legal Defense and Educational Fund, June 18, 2003, available at: <http://www.maldef.org/news/press.cfm?ID=165>. Also see "Statement of Raul Yzaguirre on the Department of Justice Racial Profiling Guidance," National Council of La Raza, June 19, 2003, available at: <http://www.nclr.org/content/news/detail/2353/>.

¹⁴ Conversation with Professor of Sociology Ronald Weitzer, George Washington University, Mar. 2, 2004.

¹⁵ Available at <http://www.aclunc.org/aclunews/news12000/dwb-poll.html/>. The poll did not indicate differences in opinion between racial minority groups.

¹⁶ Ronald Weitzer and Steven Tuch, *Racially Biased Policing: Determinants of Citizen Perceptions*, George Washington University, Department of Sociology, Washington DC, 2004.

¹⁷ U.S. Constitution, 4th Amend.

¹⁸ *Terry v. Ohio*, 392, U.S. 1, 27 (1968).

¹⁹ *U.S. v. Sokolow*, 490 U.S. 1 (1989).

²⁰ *Wong Sun v. U.S.*, 431 U.S. 174 (1963).

²¹ Anthony Thompson, “Stopping the Usual Suspects: Race and the Fourth Amendment,” 74 *N.Y.U.L.Rev.* 956, 973 (1999).

²² *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001).

²³ *New York v. Belton*, 453 U.S. 454, 460 (1981).

²⁴ *Whren v. U.S.*, 806, 813 (1969).

²⁵ U.S. Constitution, 14th Amend.

²⁶ *Brown v. Oneonta*, 221 F.3d 329, 337 (2d Cir. 1999) (citing *Yick Wo v. Hopkins*, 118 U.S. 356, 373–74 (1886)).

²⁷ *Brown v. Oneonta*, 221 F.3d 329, 337 (2d Cir. 1999) (citing *Vill. Of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264–65 (1977)).

²⁸ *Johnson v. Wing*, 178 F.3d 611, 615 (2d Cir. 1999). (Emphasis in original.)

²⁹ U.N. Charter, art. 1, para. 3.

³⁰ Universal Declaration of Human Rights, G.A. Res. 217 A (III), U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1984), art.2.

³¹ International Covenant on Civil and Political Rights, adopted by the General Assembly Dec. 19, 1966, entered into force Mar. 23, 1976, ratified by the United States in 1992, art. 2(1), 999 U.N.T.S. 171.

³² International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the General Assembly Dec. 21, 1965, entered into force Jan. 4, 1969, ratified by the United States in 1994 art. 2, 660 U.N.T.S. 195 (1966).

³³ The United States ratified the ICCPR in 1992 and CERD in 1994 as a non-self-executing treaty to prevent domestic lawsuits by private parties.

³⁴ Emphasis added.

³⁵ See Human Rights Committee, *General Comment 29, State of Emergency* (Article 4), U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001). In this document, the Human Rights Committee emphasizes that “elements...of the right to non-discrimination . . . cannot be derogated from in any circumstances.”

³⁶ Emphasis added.

³⁷ Initial Reports of State Parties due in 1993: United States of America, U.N. GAOR, Hum. Rts. Comm., para. 4, U.N. Doc. CCPR/C/81/Add.4 (1994).

³⁸ David Pitts, “Koh Discusses U.S. Report to the UN on Discrimination,” available at: <http://japan.usembassy.gov/e/p/tp-r064.html>.

³⁹ “Committee on Elimination of Racial Discrimination Adopts Conclusions of Report on the United States,” Aug. 13, 2001, available at: <http://www.unhchr.ch/hurricane/hurricane.nsf/0/03AA115870A311B1C1256AA80029233B?opendocument>.

CHAPTER FOUR

Conclusions and Recommendations

The scope of racial profiling in the United States has expanded since September 11, 2001. While some law enforcement officers apparently believe that it is effective for apprehending criminals, recent and historical examples suggest the practice actually makes us less safe.

Amnesty International USA is also concerned about the damaging impact of racial profiling on individuals, families and communities throughout the country. This report highlights the breadth and depth of racial profiling, the devastation experienced by victims of racial profiling, and the lack of comprehensive legislation to combat the problem at all levels of government.

We see an urgent need for passage of legislation to effectively eliminate the practice. At the very least, such legislation must include a clear definition of racial profiling, specific means of determining the existence and depth of the practice in all law enforcement agencies, and provide measures to bring abusive officers and agencies into greater compliance with the law.

Amnesty International USA urges the U.S. government to end racial profiling and abide by the principle of nondiscrimination, which is enshrined in the U.S. Constitution and numerous international treaties that the country has ratified. AIUSA also makes the following recommendations, which represent the minimum guarantees to ensure fair treatment and basic human rights to all citizens, residents, and visitors to the United States.

4.1 RECOMMENDATIONS TO THE U.S. GOVERNMENT

4.1.1 Take Affirmative Steps to End Racial Profiling and Related Forms of Discrimination

■ The U.S. federal government should pass the End Racial Profiling Act of 2004.

■ The U.S. federal government should ensure that national laws prohibit all forms of discrimination and provide effective protection against racism.

4.1.2 Provide Resources and Technical Assistance

■ The federal government should provide resources and technical assistance to state and local law enforcement agencies to improve their complaint procedures, internal discipline, and training programs.

4.1.3 Provide Information and Education on New Policies

■ The government should provide information to and educate affected communities about new domestic security policies.

4.1.4 Ratify and Comply with International Standards

■ The U.S. government should withdraw reservations to already ratified international human rights treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination, and cooperate fully with relevant international monitoring bodies on the implementation of measures taken against racism.

■ The U.S. government should withdraw its reservations to the International Covenant on Civil and Political Rights and the Convention Against Torture, in particular those that restrict the implementation of Articles 6 and 7 of the International Covenant on Civil and Political Rights and Articles 1, 3 and 16 of the Convention Against Torture. It should also withdraw reservations that restrict the USA's fulfillment of international obligations in its domestic law.

■ The U.S. government should ratify, without reservations, human rights treaties that it has not yet ratified, in particular the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women, the International Covenant on Economic, Social and Cultural Rights, the Convention relating to the status of refugees, the American Convention on Human rights and other Inter-American human rights treaties.

■ The U.S. government should provide effective protection against racial profiling and other forms of discrimination and recognize the competence of the Inter-American Court of Human Rights.

■ The U.S. government should ratify the (first) Optional Protocol to the International Covenant on Civil and Political Rights (allowing the right of individual petition to the Human Rights Committee) and recognize the competence of the Committee against Torture to receive and act on individual cases.

4.2 RECOMMENDATIONS TO STATE AND LOCAL GOVERNMENTS

4.2.1 Pass Comprehensive Anti-Racial Profiling Legislation

■ Federal, state, and local governments should enact new legislation or amend existing legislation to effectively ban racial profiling. Such a law should:

- ban the targeting of individuals and groups by law enforcement, even partially, on the basis of race, ethnicity, national origin, or religion, except where there is trustworthy information, relevant to the locality and timeframe, that links persons belonging to one of the aforementioned groups to an identified criminal incident or scheme;
- ban pretextual stops of pedestrians and motorists;
- criminalize violations of the ban on racial profiling and specify penalties for officers who engage in racial profiling;
- proscribe mandatory data collection for all stops and all searches of pedestrians and motorists;
- require analysis and publication of the data collected;
- create an independent commission to review and respond to complaints of racial profiling and regularly publish results of racial profiling investigations;
- allow for indi-

viduals to seek court orders to stop individual departments from continuing to engage in racial profiling;

- provide funds for periodically retraining officers and installing in-car video cameras for monitoring traffic stops.

4.3 RECOMMENDATIONS TO FEDERAL, STATE AND LOCAL GOVERNMENTS

4.3.1 Initiate and Support Public Campaigns Against Racism

■ Federal, state and local authorities should initiate and support campaigns aimed at mobilizing national public opinion against racism through effective programs in the mass media, publishing activities and research projects. Curricula and teaching methods should be reviewed in order to eliminate prejudices and racist attitudes, and negative stereotyping.

■ Federal, state and local authorities should initiate programs to celebrate and promote cultural and racial diversity.

4.3.2 Respond to Racist Attacks and Publicize the Results of Disciplinary Hearings

■ Federal, state and local authorities should offer protection against racist attacks and practices in society, such as by ensuring that law enforcement agencies act promptly and decisively to prevent and respond to all forms of racist attacks, and by bringing anyone responsible for racist abuses to justice.

■ Allegations of racist abuses by law enforcement officials should be effectively investigated, the complainants given protection against any form of intimidation, and any perpetrator brought to justice. Victims should receive full reparation.

■ The outcome of criminal, disciplinary, and administrative investigations into alleged police ill treatment, disputed killings and deaths in custody should be made public promptly after completion of an investigation, unless doing so would jeopardize any ongoing criminal proceedings.

■ Governments should undertake strong disciplinary measures and where appropriate, criminal prosecutions

for the abusive use of force and firearms should be followed in accordance with international standards.

- Governments should ensure that abuses, including torture, brutality, and other excessive force by police officers will not be tolerated; that officers will be held accountable for their action; and that those responsible for abuses will be brought to justice.

4.3.3 Record and Maintain Data on Police Misconduct

- Governments should collect data about the incidents of police abuse at the federal, state, and local levels, monitor patterns for the purpose of directing federal resources toward redressing these patterns of abuse.

4.3.4 Establish Independent Bodies to Monitor Law Enforcement

- Federal, state and local authorities should establish independent and effective oversight bodies for their respective police agencies. In particular, these bodies should: have the authority to investigate or review complaints by the public of human rights violations by the public against the police; be able to conduct regular audits of the police internal complaints and disciplinary process and, where necessary, conduct their own investigations; have the power to require witnesses to appear and to insist on cooperation from police departments and individual officers; require police agencies to provide information on action taken in individual cases, with reason for inaction; have the authority to review and make recommendations on policy and training; provide detailed public reports, at least annually, giving relevant data, including the type of complaint and the race and gender of the complainant and the accused officer; publicize the complaints procedure within the community and ensure that it is accessible to the public; information about complaints procedures should be prominently displayed in all police stations.

4.3.5 Implement Effective Diversity Recruitment Policies

- The federal, state and local authorities should introduce recruitment policies and practices of state

agencies that aim to reflect the diversity of their societies at all organizational levels.

- Federal, state and local government authorities should identify and eliminate all forms of institutionalized racism that is racism, which resides overtly or covertly in policies, procedures, practices and culture of private or public institutions.

4.3.6 Review Policies and Practices for Possible Discriminatory Impact

- Policing operations at federal, state and local levels should be reviewed to ensure that they are not targeted in a discriminatory fashion.

- Federal, state and local government authorities should ensure that justice is equally available to all those living within their national borders irrespective of their ethnic origin or the remoteness of the areas in which they live.

4.3.7 Provide Required Funding

- The Administration should seek, and Congress provide, adequate funding to allow the Justice Department to fulfill its mandate under the Police Accountability Act provisions of the Violent Crime Control and Law Enforcement Act of 1994 to compile, publish, and regularly analyze national data on police use of excessive force (including all fatal shootings and deaths in custody). Adequate resources should also be provided to allow the Justice Department to continue to pursue “pattern and practice” lawsuits against police department engaging in widespread or systematic abuses.

- Governments should use the federal spending power to insist on adequate accountability procedures at the state and local level to ensure compliance with the ICCPR. These procedures should include the creation of “early warning systems” to identify abusive police officers and provide them with the proper discipline and training; the existence of adequate civilian complaint procedures and internal discipline systems; adequate training programs; and the collection of data concerning civilian complaints and incidents of abuse.

- Funding should be provided to enable U.S. Attorneys in jurisdictions throughout the USA to increase investigation and prosecutions of police officers suspected of violating federal criminal civil rights violations.

4.3.8 Withhold Funding from Rogue Departments

- Funding should be contingent upon agencies, which engage in discriminatory practices, taking effective steps to eliminate them.

4.4 RECOMMENDATIONS TO FEDERAL, STATE AND LOCAL LAW ENFORCEMENT

4.4.1 Enforce Existing Anti-Racial Profiling Legislation

- All law enforcement agencies should fully enforce existing local, state, and national anti-racial profiling legislation and policies.

4.4.2 Train the Law Enforcement Officers Adequately

- All police departments should ensure that training on human rights is a permanent component of police training programs provided to all ranks and that commitment to human rights training is reflected in police plans and budgets.

- Special instruction and training should be provided to public officials to recognize the specific protection needs of indigenous peoples. Authorities at all levels should ensure that any private bodies, such as commercial enterprises and international corporations, fully respect the rights of indigenous peoples, in particular by ensuring that they are not victims of discrimination.

- Programs for the selection, training and monitoring of justice officials involved in the administration of justice should include specific measures to ensure that in the performance of their duties their conduct is not in any way racist or discriminatory, either directly or indirectly. For this purpose cross-cultural awareness and anti-racism programs should be essential elements in the training of justice officials.

- Police departments and other law enforcement agencies should encourage contact between police officers and the communities they serve.

4.4.3 Set Effective Standards for Mistreatment

- International human rights standards on the use of force and firearms, and on the prohibition of torture and ill treatment and discriminatory treatment, should be fully incorporated into police codes of conduct and training and strictly enforced.

- Police leadership and other responsible authorities should make it clear that torture and other cruel, inhuman or degrading treatment will not be tolerated and that their own guidelines on use of force as well as international standards must be adhered to in all cases.

- Anti-racial profiling laws should define racial profiling as the targeting of individuals and groups by law enforcement *even partially* on the basis of race, ethnicity, national origin, or religion, except where there is trustworthy information, relevant to the locality and timeframe, that links persons belonging to one of the aforementioned groups to an identified criminal incident or scheme. Such laws should not define racial profiling as being *solely based* on race (or any of the other aforementioned group types) because in most documented racial profiling scenarios the profile has also included gender, age, or other basic human characteristics.

4.4.4 Collect, Keep Data and Report Abuses

- Police officers, immigration officials, and other law enforcement officials should be required to collect data on the perceived race/ethnicity, national origin, religion, and gender of all motor vehicle and pedestrian stops, regardless of the outcome of the stop. Data collection must include recording of data on designated forms, compilation of data into computerized databases, and periodic expert analysis of data collected.

- City and county authorities should be required to forward information on civil lawsuits alleging police misconduct to the police department and to relevant oversight bodies. They should regularly make public information on the number of lawsuits filed, and judgments and settlements.

- Police departments should issue clear guidelines requiring officers to report abuses, and officers with chain-of-command control should be held responsible

for enforcing those guidelines and strictly enforcing penalties for failing to report, or covering up, abuses.

- Police departments should be required to keep detailed records on the use of force and to report publicly at regular intervals, providing statistical data on shooting and other use of force, in custody deaths and injuries. They should also provide data on the number and type of complaints filed, and on their disposition and outcome.
- Video cameras should be installed in all police cars and interrogation rooms.
- Police departments and other law enforcement agencies should eliminate the quota system that provides incentives to officers based on arrest rates. The quality, not quantity, of law enforcement activities and arrests should be rewarded.

4.4.5 Monitor, Investigate and Punish Police Misconduct

- All police departments should have effective early warning systems to identify and deal with officers involved in human rights violations or other abuses. They should establish clear reporting systems and keep detailed records in order to identify and take remedial action in respect of any patterns of abuse, including racial bias or discriminatory treatment.

- All allegations of human rights violations and other police misconduct should be fully and impartially investigated, in line with best practice for such investigations. All offices responsible for abuse should be adequately disciplined, and, where appropriate, prosecuted.

- There should be greater transparency in the investigation of complaints of racial profiling and other human rights violations, in order to ensure public accountability and confidence in the process. Complaints should be kept of the progress of these investigations.

- Police departments should provide information on the internal disciplinary process by publishing regular statistical data on the type and outcome of complaints and disciplinary action. They should also publish regular statistics on the number of people shot and killed or injured by police officers and other deaths in custody.

4.4.6 Ensure Fair Treatment of Immigrants and Visitors

- All law enforcement officials must treat all individuals, regardless of their immigration status, the same.
- Individuals' citizenship status should be protected from the police and other local emergency officers.
- During the course of all law enforcement proceedings, professional interpreters must be provided for those who do not speak English.

APPENDIX ONE

Survey of Racial Profiling Laws by State

Together the following spreadsheets summarize the results of a survey of existing laws that deal with racial profiling. They are each current as of August 1, 2004. The first spreadsheet summarizes state laws (or related groups thereof) banning at least one form of racial profiling. The second summarizes other state laws that deal with racial profiling but do not ban the practice. Each is divided into the following six sections and subsections, including:

- 1. State/Action:** the statute number (if the bill has become a law and if one has been assigned yet) and bill number (if the action is still pending or has not been chaptered)
- 2. Definition:** the terminology used by the state to determine whether an action can be classified as racial profiling
 - a. Effective Definition:** a ‘Yes’ in this category means that the law bans profiling that is even partially based on race, ethnicity, or national origin; a ‘No’ in this column means that the law only bans profiling that is solely based on such practices and thus potentially allows racial profiling so long as the profile includes other characteristics such as gender, age or general location
 - b. Covers Religion:** a ‘Yes’ in this column means the law extends to profiling based on religion as well
- 3. Contexts Covered:** the types of common racial profiling scenarios addressed by the law
 - a. Traffic Stops:** a “Yes” in this column means that the law covers racial profiling of motorists
 - b. Pedestrian Stops:** a “Yes” in this column means that the law covers racial profiling of people on foot

in inner cities, such stops comprise a large portion of police contacts

- 4. Data Collection:** whether the law includes data collection along with any restrictions placed on collection (such as limiting it to certain agencies or types of stops)
 - a. Types and Contexts:** a “Required for” in this column means that the law makes provision for data collection; other notes in this column refer to specifications that affect how or in what circumstances data is collected
 - b. Expiration:** when the data collection mechanism expires, if at all
- 5. Accountability:** whether there are measures in place to hold officers accountable for their actions
 - a. Complaint Review:** a “Yes” in this column means complaints of racial profiling are reviewed by a designated civilian body
 - b. Complaint Disclosure:** a “Yes” in this column means that statistics on complaints are made available to the public
 - c. Criminalized:** a “Yes” in this column means violation of the ban on racial profiling is either a misdemeanor or felony
 - d. Civil PCA:** a “Yes” in this column means that the law makes provision for citizens to seek court orders to stop agencies from engaging in racial profiling
 - e. In-car Video:** a “Yes” on this column means the law provides for in-car video cameras to record traffic stops
- 6. Other:** unique or significant specifications to a state’s particular racial profiling statutes that are not included in the preceding headings/subheadings

State Laws Banning at Least One Form of Racial Profiling

| STATE/ACTION | DEFINITION | | CONTEXTS COVERED | | | DATA COLLECTION | | ACCOUNTABILITY MEASURES | | | | | OTHER |
|--|------------|--------------------------|------------------|------------------|--|------------------------------------|---|---|--------------|-----------|--|--|-------|
| | Effective | Bans Religious Profiling | Traffic Stops | Pedestrian Stops | Type & Contexts | Expiration Date (if any) | Complaint Review | Complaint Disclosure | Criminalized | Civil PCA | In-car Video | | |
| Alaska HJR22 (2003) | Yes | Yes | Yes | No | None | | No | No | No | No | No | | |
| Arkansas §12-12-1401, §12-12-1402, §12-12-1403, §12-12-1404, (2003) | Yes | Yes | Yes | Yes | None | No | | No | No | No | No | | |
| California §13519.4 (2000) | Yes | Yes | Yes | Yes | Voluntary, CHP by consent decree | | No | No | No | No | No | | |
| Colorado §24-31-309 (6/5/01), §42-4-115 (6/5/01) | No | No | Yes | Yes | Required for state police and city/county of Denver only | Data collection Expired 01/01/2004 | No | No | No | No | No | | |
| Connecticut §54-11 (1999), §54-1m (2003), | No | No | Yes | Yes | Required for all traffic stops | | Yes—Complaint report forwarded to Attorney General and African-American Affairs Commission (AAAC) | Yes—Annual report given to governor and legislature | No | No | No | | |
| Florida §30.15 (2001), §166.0493 (6/19/01), §943.1758 (6/1/97) | No | No | Yes | Yes | Required for traffic stops—description of person OR vehicle shall be logged | | Yes—Internal Affairs | Yes—Annual public disclosure | No | No | Yes—If they have the capability, it must be on throughout the stop | | |
| Illinois 625 ILCS 5/11-212 (7/18/03) | No | No | Yes | No | Required for all traffic stops | Data Collection Expires 12/31/2007 | No | No | No | No | No | | |
| Kentucky §15A.195 (6/21/01), Exec. Order 2000-475 | No | No | Yes | Yes | Required for state police and all other agencies that receive Kentucky Law Enforcement Foundation funds (by executive order) | | No | No | No | No | No | | |
| Maryland §25-113 (6/1/01) | No | No | Yes | No | Required for traffic stops—radar, laser, and Vascar stops exempted | Data Collection Expires 08/31/2007 | No | No | No | No | No | | |

State Laws Banning at Least One Form of Racial Profiling (continued)

| STATE/ACTION | DEFINITION | | CONTEXTS COVERED | | DATA COLLECTION | | ACCOUNTABILITY MEASURES | | | | | OTHER |
|---|------------|--------------------------|------------------|------------------|--|---|--|---|-----------------|---|---|---|
| | Effective | Bans Religious Profiling | Traffic Stops | Pedestrian Stops | Type & Contexts | Expiration Date (if any) | Complaint Review | Complaint Disclosure | Criminalized | Civil PCA | In-car Video | |
| Massachusetts Ch. 228 of the Acts of 2000 (8/10/00) | Yes | Yes | Yes | Yes | Required for all traffic stops | Expired 3/31/02 | Yes—By Executive Office of Public Safety | No | No | No | No | |
| Minnesota §626.8471 (6/1/01), §626.951 (6/1/01), §626.9513 (6/1/01), §626.9514 (6/1/01), §626.9517 (6/1/01) | Yes | No | Yes | No | Required for traffic stops—only agencies that receive state money for video cameras must participate | Data collection Expired 12/31/2002 | Yes—Attorney General forwards complaints to the Peace Officer Standards and Training Board | No | No | No | Yes—Provides for funds to be used for acquisition and operation of cameras | |
| Missouri, §304.670 (1999), §590.050 (2001), §590.650 (2000), §590.653 (2000) | Yes | No | Yes | No | Required for all traffic stops | | Yes—City may set up civilian review board to receive and investigate complaints | No | No | No | Yes—if they have the capability, it must be on throughout the stop, allocates funding for video cameras | Prohibition of pretextual traffic stops |
| Montana §44-2-117 (4/14/03) | No | No | Yes | Yes | None | | No | No | No | No | No | |
| Nebraska §20-501 (2004), §20-502 (2004), §20-503 (2004), §20-504 (2004), §20-505 (2004) | No | No | Yes | Yes | Required for all traffic stops | Data collection Expires 1/01/2006 | Yes—Complaints filed with the Nebraska Commission on Law Enforcement and Criminal Justice | No | No | No | No | Created the Racial Profiling Advisory Committee |
| Nevada §289.82 (2001) | Yes | No | Yes | No | Required for state agencies, and cities with 100,000 or more pop. | Data collection Expired 2/1/2003 | Yes—State Attorney General | Yes—Annual report given to legislature | No | No | No | Inquiry of immigration is tracked in data |
| New Jersey 2C:30-5, (3/14/03) | Yes | No | Yes | Yes | None | | No | No | Yes—Felony | No | No | |
| Oklahoma 22§34.3 (6/1/00), 22§34.4 (6/1/00), 22§34.5 (6/1/00) | No | No | Yes | Yes | None | | Yes—Filed with the OK Human Rights Commission, inter-department investigation | Yes—Annual report given to governor and legislature | Yes—Misdemeanor | No | No | |
| Rhode Island §31-21.1-2 (2003), §31-21.1-3 (2000), §31-21.1-4 (2003), §31-21.1-5 (2003), §31-21.1-6 (2000), §31-21.1-7 (2000) | Yes | No | Yes | Yes | Required for all traffic stops | Data collection Expired 1/15/2003 | Yes—Complaints are forwarded to Attorney General with no officer ID | Yes—Annual public disclosure | No | Yes—Only to compel compliance with reporting procedures | No | Data is not prima facie evidence |

| | | | | | | | | | | | | | | |
|---|-----|-----|-----|-----|-----|-----|---|--|----|--|---|--|---|---|
| Tennessee \$45-6-209 (2001), \$45-6-222 (2001), \$45-6-223 (2001), \$45-6-224 (2001), Ch. No. 910 (2000) | No | No | No | No | No | No | Data collection Expired 12/31/2001 | No | No | No | Yes—Applies only to pawn shop records abuses | No | Profiling currently banned for pawnshop subpoenas only | |
| Texas C.C.P. Arts. 2.131 (9/1/01), 2.132 (9/1/01), 2.133 (9/1/01), 2.134, 2.135 (9/1/01), 3.05 (9/1/01), Ed. Code §96.641 (9/1/01), 11.003 (9/1/01) | No | Yes | Yes | Yes | Yes | Yes | Required for all traffic and pedestrian stops, unless video capability | Yes— Complaints and dispositions are forwarded to the Commission on Law Enforcement Officer Standards and Education | No | Yes—Annual reports to local government | No | Yes—Agencies are exempt from data collection if all patrol vehicles have video/audio capabilities | Data is not prima facie evidence | |
| Utah §17-22-2 (2002), §53-1-106 (2002), §53-3-205 (2002), §53-3-804 (2002), §53-8-104 (2002) | No | Yes | Yes | Yes | Yes | Yes | Required for all pedestrian and traffic stops | No | No | No | No | No | No | No |
| Washington §43.43.480 (3/24/00), §43.43.490 (3/24/00), §43.101.410 (2002), §43.101.415 (2002) | Yes | Yes | Yes | Yes | Yes | Yes | Required for state police only | Yes—Citizen complaint review | No | No | No | No | No | No |
| West Virginia §30-29-10 (2002), 17G-1-1 (2004), 17G-1-2 (2004), 17G-1-3 (2004), 17G-2-1 (2004), 17G-2-2 (2004), 17G-2-3 (2004) | Yes | Yes | Yes | Yes | No | No | Required for all traffic stops | Yes— Independent committee and disciplinary action | No | No | No | No | No | Prohibition of pretextual traffic stops |

Other State Laws Dealing with Racial Profiling

| STATE/ACTION | DEFINITION | | CONTEXTS COVERED | | DATA COLLECTION | | ACCOUNTABILITY MEASURES | | | | | OTHER |
|---|------------|--------------------------|------------------|------------------|---|--------------------------|-------------------------|----------------------|--------------|-----------|--------------|--|
| | Effective | Bans Religious Profiling | Traffic Stops | Pedestrian Stops | Type & Contexts | Expiration Date (if any) | Complaint Review | Complaint Disclosure | Criminalized | Civil PCA | In-car Video | |
| Alabama §32-6-7.2 (2002), §32-6-7.3 (2002), §32-5B-4 (1991), §32-5B-8 (1991) | No | No | Yes | No | Required when minorities are stopped for age-restricted license and seat belt violations only | | No | No | No | No | No | |
| Kansas §22-4604 (2000) | No | No | No | No | None | | No | No | No | No | No | Requires governor to request proposals for a system to collect racial profiling data |
| Louisiana §32-398.10 (2001) | No | No | Yes | No | Required for agencies that do not have a written policy against racial profiling | | No | No | No | No | No | |
| Oregon Chapter 687 of Oregon laws of 2001 | No | No | No | No | None | | No | No | No | No | No | Law encourages agencies to collect data |
| South Carolina §23-6-145 (2000) | No | No | Yes | Yes | None | | No | No | No | No | No | Officer must have reasonable belief that a violation is occurring to stop a car |
| Virginia §9.1-102 (2002) | No | No | No | No | None | | No | No | No | No | No | Requires increased cultural awareness training |

APPENDIX TWO

Estimated Racial Profiling Victim Totals by State

The following spreadsheet contains estimates of the number of racial profiling victims in each state. By their nature, these estimates are neither definitive nor precise. Based on a combination of national opinion poll data and US Census information, these estimates are intended only to provide advocates, public servants, and the general public with an approximation of the number of people in their state who have been directly impacted by this problem at any point in their lifetime. Moreover, these estimates have at least two significant structural limitations. First, national opinion polls tend to treat Hispanics essentially as a racial category, while the U.S. Census classifies them as an ethnic group whose members can belong to any race. Second, the charts in this appendix contain no national statistic for the rate at which Native Americans experience racial profiling, because no such statistic is available. Finally, it should also be noted that these charts do include an estimate for the relatively small percentage of white Americans who believe they have been targeted by law enforcement at least once during their lifetime because of their race.

The estimates in this appendix for racial profiling victims have been derived by cross-referencing national opinion poll results about the rates at which different racial and ethnic groups report being racially profiled with state population estimates based on the 2000 U.S. Census. The most recent available national polling data was used for each category. Black, Hispanic, and White victimization rates are from “Racially Biased Policing: Determinants of Citizen Perceptions,” by Ronald Weitzer and Steven Tuch, George Washington University, Washington DC, 2004 (survey conducted December 2002). Because the Weitzer and Tuch study only contained the aforementioned three social categories, Asian and Multi-

Racial victimization rates are taken from the next most recent study: “Race and Ethnicity in 2001: Attitudes, Perceptions, and Experiences,” by *The Washington Post*, Kaiser Family Foundation, and Harvard University, 2001 (survey conducted March 2001). The general margin of sampling error for each poll was ± 2 and ± 5 respectively. The margin of error for individual racial categories in the Weitzer and Tuch study was ± 4 ; the margin of error for individual racial categories in *The Washington Post* study went as high as ± 9 . These racial profiling rates were similar to those identified by previous polls, including one by Gallup in 1999, and tended not to be statistically impacted by whether a person lives in a northern or southern state.

While statistics about the experiences of people belonging to the social categories listed in the attached charts (Black, Asian, Hispanic, Multiracial, and White) are commonly compared and contrasted, such comparisons are inherently more problematic than is usually acknowledged in the mainstream national discourse on social issues. National opinion polls commonly include statistics for Hispanics alongside those for groups like Whites, Blacks, and Asians. However, as defined by the U.S. Census, Hispanics are a social group whose members may include people of any race. To bridge this gap, the group population estimates that appear in this chart are based on adjusted U.S. Census data that is intended to allow totals for Hispanic and for non-Hispanic White, Black, Asian, and Multiracial people in the U.S. to be run side by side and compared. These group population estimates were provided by the Social Science Data Analysis Network through their website [www.censuscope.org](http://www.censusscope.org).

Unfortunately, no national data was available for Native American or Native Hawaiian victimization

rates. Based on reports received at our hearing in Tulsa, Oklahoma and related research on issues of discrimination facing these communities, it is likely that this deficit in the national research on racial profiling has generally depressed the national estimate in Table 1. Moreover, it is likely to have had an especially significant impact on the estimates in this appendix for individual states such as Alaska, Hawaii, and Utah where Native Americans or Native Hawaiians make up a sizeable portion of the non-white population.

Finally, we have chosen to include the racial profiling statistic for white Americans because as discussed in the report, while relatively rare, it does happen. Generally speaking, the racial profiling of white Americans can be divided into two categories. The first are the experiences of ethnic whites who are (or appear to some law enforcement officers to be) members of frequently profiled ethnic or religious minorities, such as Arab and Persian Americans, and American Muslim and Sikh converts. The second are the experiences of ethnic and non-ethnic white Americans who are profiled when the police are attempting to generate a suspect for a crime that criminal profilers tend to associate with whites. This second type is often most visible during hunts for a serial killer in which no suspect has been formally identified. However, reports suggest this type of profiling most frequently occurs when police are looking to arrest drug and prostitution customers and decide to target whites driving in majority minority urban neighborhoods.

| State | Population | Nat'l Rate | Est.Victims |
|---|------------|------------|----------------|
| ALABAMA | | | |
| Black* | 1,150,076 | 47% | 540,536 |
| Hispanic | 75,830 | 23% | 17,441 |
| Multiracial* | 39,086 | 19% | 7,426 |
| Asian* | 30,989 | 11% | 3,409 |
| White* | 3,125,819 | 3% | 93,775 |
| Estimated total racial profiling victims | | | 662,587 |
| ALASKA | | | |
| Black* | 21,073 | 47% | 9,904 |
| Hispanic | 25,852 | 23% | 5,946 |
| Multiracial* | 30,454 | 19% | 5,786 |
| Asian* | 24,741 | 11% | 2,722 |
| White* | 423,788 | 3% | 12,714 |
| Estimated total racial profiling victims | | | 37,072 |

| State | Population | Nat'l Rate | Est.Victims |
|---|------------|------------|------------------|
| ARIZONA | | | |
| Black* | 149,941 | 47% | 70,472 |
| Hispanic | 1,295,617 | 23% | 297,992 |
| Multiracial* | 76,372 | 19% | 14,511 |
| Asian* | 89,315 | 11% | 9,825 |
| White* | 3,274,258 | 3% | 98,228 |
| Estimated total racial profiling victims | | | 491,028 |
| ARKANSAS | | | |
| Black* | 416,615 | 47% | 195,809 |
| Hispanic | 86,866 | 23% | 19,979 |
| Multiracial* | 30,364 | 19% | 5,769 |
| Asian* | 19,892 | 11% | 2,188 |
| White* | 2,100,135 | 3% | 63,004 |
| Estimated total racial profiling victims | | | 286,749 |
| CALIFORNIA | | | |
| Black* | 2,181,926 | 47% | 1,025,505 |
| Hispanic | 10,966,556 | 23% | 2,522,308 |
| Multiracial* | 903,115 | 19% | 171,592 |
| Asian* | 178,984 | 11% | 19,688 |
| White* | 15,816,790 | 3% | 474,504 |
| Estimated total racial profiling victims | | | 4,213,597 |
| COLORADO | | | |
| Black* | 158,443 | 47% | 74,468 |
| Hispanic | 735,601 | 23% | 169,188 |
| Multiracial* | 72,721 | 19% | 13,817 |
| Asian* | 93,277 | 11% | 10,260 |
| White* | 3,202,880 | 3% | 96,086 |
| Estimated total racial profiling victims | | | 363,819 |
| CONNECTICUT | | | |
| Black* | 295,571 | 47% | 138,918 |
| Hispanic | 320,323 | 23% | 73,674 |
| Multiracial* | 52,896 | 19% | 10,050 |
| Asian* | 81,564 | 11% | 8,972 |
| White* | 2,638,845 | 3% | 79,165 |
| Estimated total racial profiling victims | | | 310,779 |
| DELAWARE | | | |
| Black* | 148,435 | 47% | 69,764 |
| Hispanic | 37,277 | 23% | 8,574 |
| Multiracial* | 10,222 | 19% | 1,942 |
| Asian* | 16,110 | 11% | 1,772 |
| White* | 567,973 | 3% | 17,039 |
| Estimated total racial profiling victims | | | 99,091 |
| DC | | | |
| Black* | 340,088 | 47% | 159,841 |
| Hispanic | 44,953 | 23% | 10,339 |
| Multiracial* | 9,584 | 19% | 1,821 |
| Asian* | 15,039 | 11% | 1,654 |
| White* | 159,178 | 3% | 4,775 |
| Estimated total racial profiling victims | | | 178,430 |

| State | Population | Nat'l Rate | Est.Victims |
|---|------------|------------|------------------|
| FLORIDA | | | |
| Black* | 2,264,268 | 47% | 1,064,206 |
| Hispanic | 2,682,715 | 23% | 617,024 |
| Multiracial* | 236,954 | 19% | 45,021 |
| Asian* | 261,693 | 11% | 28,786 |
| White* | 10,458,509 | 3% | 313,755 |
| Estimated total racial profiling victims | | | 2,068,792 |
| GEORGIA | | | |
| Black* | 2,331,465 | 47% | 1,095,789 |
| Hispanic | 435,227 | 23% | 100,102 |
| Multiracial* | 87,364 | 19% | 16,599 |
| Asian* | 171,513 | 11% | 18,866 |
| White* | 5,128,661 | 3% | 153,860 |
| Estimated total racial profiling victims | | | 1,385,216 |
| HAWAII | | | |
| Black* | 20,829 | 47% | 9,790 |
| Hispanic | 87,699 | 23% | 20,171 |
| Multiracial* | 218,700 | 19% | 41,553 |
| Asian* | 108,441 | 11% | 11,929 |
| White* | 277,091 | 3% | 8,313 |
| Estimated total racial profiling victims | | | 91,756 |
| ILLINOIS | | | |
| Black* | 1,856,152 | 47% | 872,391 |
| Hispanic | 1,530,262 | 23% | 351,960 |
| Multiracial* | 153,996 | 19% | 29,259 |
| Asian* | 419,916 | 11% | 46,191 |
| White* | 8,424,140 | 3% | 252,724 |
| Estimated total racial profiling victims | | | 1,552,525 |
| IDAHO | | | |
| Black* | 4,889 | 47% | 2,298 |
| Hispanic | 101,690 | 23% | 23,389 |
| Multiracial* | 18,261 | 19% | 3,470 |
| Asian* | 11,641 | 11% | 1,281 |
| White* | 1,139,291 | 3% | 34,179 |
| Estimated total racial profiling victims | | | 64,617 |
| INDIANA | | | |
| Black* | 505,462 | 47% | 237,567 |
| Hispanic | 214,536 | 23% | 49,343 |
| Multiracial* | 61,115 | 19% | 11,612 |
| Asian* | 58,424 | 11% | 6,427 |
| White* | 5,219,373 | 3% | 156,581 |
| Estimated total racial profiling victims | | | 461,530 |
| IOWA | | | |
| Black* | 60,744 | 47% | 28,550 |
| Hispanic | 82,473 | 23% | 18,969 |
| Multiracial* | 25,472 | 19% | 4,840 |
| Asian* | 36,345 | 11% | 3,998 |
| White* | 2,710,344 | 3% | 81,310 |
| Estimated total racial profiling victims | | | 137,667 |

| State | Population | Nat'l Rate | Est.Victims |
|---|------------|------------|------------------|
| KANSAS | | | |
| Black* | 151,407 | 47% | 71,161 |
| Hispanic | 188,252 | 23% | 43,298 |
| Multiracial* | 42,508 | 19% | 8,077 |
| Asian* | 46,301 | 11% | 5,093 |
| White* | 2,233,997 | 3% | 67,020 |
| Estimated total racial profiling victims | | | 194,649 |
| KENTUCKY | | | |
| Black* | 293,639 | 47% | 138,010 |
| Hispanic | 59,939 | 23% | 13,786 |
| Multiracial* | 37,750 | 19% | 7,173 |
| Asian* | 29,368 | 11% | 3,230 |
| White* | 3,608,013 | 3% | 108,240 |
| Estimated total racial profiling victims | | | 270,439 |
| LOUISIANA | | | |
| Black* | 1,443,390 | 47% | 678,393 |
| Hispanic | 107,738 | 23% | 24,780 |
| Multiracial* | 39,260 | 19% | 7,459 |
| Asian* | 54,256 | 11% | 5,968 |
| White* | 2,794,391 | 3% | 83,832 |
| Estimated total racial profiling victims | | | 800,432 |
| MAINE | | | |
| Black* | 6,440 | 47% | 3,027 |
| Hispanic | 9,360 | 23% | 2,153 |
| Multiracial* | 11,731 | 19% | 2,229 |
| Asian* | 9,014 | 11% | 992 |
| White* | 1,230,297 | 3% | 36,909 |
| Estimated total racial profiling victims | | | 45,310 |
| MARYLAND | | | |
| Black* | 1,464,735 | 47% | 688,425 |
| Hispanic | 227,916 | 23% | 52,421 |
| Multiracial* | 82,946 | 19% | 15,760 |
| Asian* | 209,738 | 11% | 23,071 |
| White* | 3,286,547 | 3% | 98,596 |
| Estimated total racial profiling victims | | | 878,273 |
| MASSACHUSETTS | | | |
| Black* | 318,329 | 47% | 149,615 |
| Hispanic | 428,729 | 23% | 98,608 |
| Multiracial* | 110,338 | 19% | 20,964 |
| Asian* | 236,786 | 11% | 26,046 |
| White* | 5,198,359 | 3% | 155,951 |
| Estimated total racial profiling victims | | | 451,184 |
| MICHIGAN | | | |
| Black* | 1,402,047 | 47% | 658,962 |
| Hispanic | 323,877 | 23% | 74,492 |
| Multiracial* | 163,487 | 19% | 31,063 |
| Asian* | 175,311 | 11% | 19,284 |
| White* | 7,806,691 | 3% | 234,201 |
| Estimated total racial profiling victims | | | 1,018,002 |

| State | Population | Nat'l Rate | Est.Victims |
|---|------------|------------|----------------|
| MINNESOTA | | | |
| Black* | 168,813 | 47% | 79,342 |
| Hispanic | 143,382 | 23% | 32,978 |
| Multiracial* | 70,304 | 19% | 13,358 |
| Asian* | 141,083 | 11% | 15,519 |
| White* | 4,337,143 | 3% | 130,114 |
| Estimated total racial profiling victims | | | 271,311 |
| MISSISSIPPI | | | |
| Black* | 1,028,473 | 47% | 483,382 |
| Hispanic | 39,569 | 23% | 9,101 |
| Multiracial* | 17,272 | 19% | 3,282 |
| Asian* | 18,349 | 11% | 2,018 |
| White* | 1,727,908 | 3% | 51,837 |
| Estimated total racial profiling victims | | | 549,620 |
| MISSOURI | | | |
| Black* | 625,667 | 47% | 294,063 |
| Hispanic | 118,592 | 23% | 27,276 |
| Multiracial* | 71,905 | 19% | 13,662 |
| Asian* | 61,041 | 11% | 6,715 |
| White* | 4,686,474 | 3% | 140,594 |
| Estimated total racial profiling victims | | | 482,310 |
| MONTANA | | | |
| Black* | 2,534 | 47% | 1,191 |
| Hispanic | 18,081 | 23% | 4,159 |
| Multiracial* | 13,768 | 19% | 2,616 |
| Asian* | 4,569 | 11% | 503 |
| White* | 807,823 | 3% | 24,235 |
| Estimated total racial profiling victims | | | 32,704 |
| NEBRASKA | | | |
| Black* | 67,537 | 47% | 31,742 |
| Hispanic | 94,425 | 23% | 21,718 |
| Multiracial* | 17,696 | 19% | 3,362 |
| Asian* | 21,677 | 11% | 2,384 |
| White* | 1,494,494 | 3% | 44,835 |
| Estimated total racial profiling victims | | | 104,041 |
| NEVADA | | | |
| Black* | 131,509 | 47% | 61,809 |
| Hispanic | 393,970 | 23% | 90,613 |
| Multiracial* | 49,231 | 19% | 9,354 |
| Asian* | 88,593 | 11% | 9,745 |
| White* | 1,303,001 | 3% | 39,090 |
| Estimated total racial profiling victims | | | 210,611 |
| NEW HAMPSHIRE | | | |
| Black* | 8,354 | 47% | 3,926 |
| Hispanic | 20,489 | 23% | 4,712 |
| Multiracial* | 11,606 | 19% | 2,205 |
| Asian* | 15,803 | 11% | 1,738 |
| White* | 1,175,252 | 3% | 35,258 |
| Estimated total racial profiling victims | | | 47,839 |

| State | Population | Nat'l Rate | Est.Victims |
|---|------------|------------|------------------|
| NEW JERSEY | | | |
| Black* | 1,096,171 | 47% | 515,200 |
| Hispanic | 1,117,191 | 23% | 256,954 |
| Multiracial* | 133,689 | 19% | 25,401 |
| Asian* | 477,012 | 11% | 52,471 |
| White* | 5,557,209 | 3% | 166,716 |
| Estimated total racial profiling victims | | | 1,016,742 |
| NEW MEXICO | | | |
| Black* | 30,654 | 47% | 14,407 |
| Hispanic | 765,386 | 23% | 176,039 |
| Multiracial* | 25,793 | 19% | 4,901 |
| Asian* | 18,257 | 11% | 2,008 |
| White* | 813,495 | 3% | 24,405 |
| Estimated total racial profiling victims | | | 221,760 |
| NEW YORK | | | |
| Black* | 2,812,623 | 47% | 1,321,933 |
| Hispanic | 2,867,583 | 23% | 659,544 |
| Multiracial* | 366,116 | 19% | 69,562 |
| Asian* | 1,035,926 | 11% | 113,952 |
| White* | 11,760,981 | 3% | 352,829 |
| Estimated total racial profiling victims | | | 2,517,820 |
| NORTH CAROLINA | | | |
| Black* | 1,723,301 | 47% | 809,951 |
| Hispanic | 378,963 | 23% | 87,161 |
| Multiracial* | 79,965 | 19% | 15,193 |
| Asian* | 112,416 | 11% | 12,366 |
| White* | 5,647,155 | 3% | 169,415 |
| Estimated total racial profiling victims | | | 1,094,086 |
| NORTH DAKOTA | | | |
| Black* | 3,761 | 47% | 1,768 |
| Hispanic | 7,786 | 23% | 1,791 |
| Multiracial* | 6,666 | 19% | 1,267 |
| Asian* | 3,566 | 11% | 392 |
| White* | 589,149 | 3% | 17,674 |
| Estimated total racial profiling victims | | | 22,892 |
| OHIO | | | |
| Black* | 1,290,662 | 47% | 606,611 |
| Hispanic | 217,123 | 23% | 49,938 |
| Multiracial* | 137,770 | 19% | 26,176 |
| Asian* | 131,670 | 11% | 14,484 |
| White* | 9,538,111 | 3% | 286,143 |
| Estimated total racial profiling victims | | | 983,352 |
| OKLAHOMA | | | |
| Black* | 257,981 | 47% | 121,251 |
| Hispanic | 179,304 | 23% | 41,240 |
| White* | 2,556,368 | 3% | 76,691 |
| Asian* | 46,172 | 11% | 5,079 |
| Multiracial* | 140,249 | 19% | 26,647 |
| Estimated total racial profiling victims | | | 270,908 |

| State | Population | Nat'l Rate | Est.Victims |
|---|------------|------------|------------------|
| OREGON | | | |
| Black* | 53,325 | 47% | 25,063 |
| Hispanic | 275,314 | 23% | 63,322 |
| Multiracial* | 82,733 | 19% | 15,719 |
| Asian* | 100,333 | 11% | 11,037 |
| White* | 2,857,616 | 3% | 85,728 |
| Estimated total racial profiling victims | | | 200,869 |
| PENNSYLVANIA | | | |
| Black* | 1,202,437 | 47% | 565,145 |
| Hispanic | 394,088 | 23% | 90,640 |
| Multiracial* | 113,097 | 19% | 21,488 |
| Asian* | 218,296 | 11% | 24,013 |
| White* | 10,322,455 | 3% | 309,674 |
| Estimated total racial profiling victims | | | 1,010,960 |
| RHODE ISLAND | | | |
| Black* | 41,922 | 47% | 19,703 |
| Hispanic | 90,820 | 23% | 20,889 |
| Multiracial* | 20,816 | 19% | 3,955 |
| Asian* | 23,416 | 11% | 2,576 |
| White* | 858,433 | 3% | 25,753 |
| Estimated total racial profiling victims | | | 72,876 |
| SOUTH CAROLINA | | | |
| Black* | 1,178,486 | 47% | 553,888 |
| Hispanic | 95,076 | 23% | 21,867 |
| Multiracial* | 33,290 | 19% | 6,325 |
| Asian* | 35,568 | 11% | 3,912 |
| White* | 2,652,291 | 3% | 79,569 |
| Estimated total racial profiling victims | | | 665,561 |
| SOUTH DAKOTA | | | |
| Black* | 4,563 | 47% | 2,145 |
| Hispanic | 10,903 | 23% | 2,508 |
| Multiracial* | 8,960 | 19% | 1,702 |
| Asian* | 4,316 | 11% | 475 |
| White* | 664,585 | 3% | 19,938 |
| Estimated total racial profiling victims | | | 26,768 |
| TENNESSEE | | | |
| Black* | 928,204 | 47% | 436,256 |
| Hispanic | 123,838 | 23% | 28,483 |
| Multiracial* | 54,824 | 19% | 10,417 |
| Asian* | 56,077 | 11% | 6,168 |
| White* | 4,505,930 | 3% | 135,178 |
| Estimated total racial profiling victims | | | 616,502 |
| TEXAS | | | |
| Black* | 2,364,255 | 47% | 1,111,200 |
| Hispanic | 6,669,666 | 23% | 1,534,023 |
| Multiracial* | 230,567 | 19% | 43,808 |
| Asian* | 554,445 | 11% | 60,989 |
| White* | 10,933,313 | 3% | 135,178 |
| Estimated total racial profiling victims | | | 2,885,198 |

| State | Population | Nat'l Rate | Est.Victims |
|---|------------|------------|----------------|
| UTAH | | | |
| Black* | 16,137 | 47% | 7,584 |
| Hispanic | 201,559 | 23% | 46,359 |
| Multiracial* | 31,308 | 19% | 5,949 |
| Asian* | 36,483 | 11% | 4,013 |
| White* | 1,904,265 | 3% | 57,128 |
| Estimated total racial profiling victims | | | 121,033 |
| VERMONT | | | |
| Black* | 2,921 | 47% | 1,373 |
| Hispanic | 5,504 | 23% | 1,266 |
| Multiracial* | 6,809 | 19% | 1,294 |
| Asian* | 5,160 | 11% | 568 |
| White* | 585,431 | 3% | 17,563 |
| Estimated total racial profiling victims | | | 22,064 |
| VIRGINIA | | | |
| Black* | 1,376,378 | 47% | 646,898 |
| Hispanic | 329,540 | 23% | 75,794 |
| Multiracial* | 114,022 | 19% | 21,664 |
| Asian* | 259,277 | 11% | 28,520 |
| White* | 4,965,637 | 3% | 148,969 |
| Estimated total racial profiling victims | | | 921,845 |
| WASHINGTON | | | |
| Black* | 184,631 | 47% | 86,777 |
| Hispanic | 319,401 | 23% | 73,462 |
| Multiracial* | 175,926 | 19% | 33,426 |
| Asian* | 319,401 | 11% | 35,134 |
| White* | 4,652,490 | 3% | 139,575 |
| Estimated total racial profiling victims | | | 368,374 |
| WEST VIRGINIA | | | |
| Black* | 56,825 | 47% | 26,708 |
| Hispanic | 12,279 | 23% | 2,824 |
| Multiracial* | 14,983 | 19% | 2,847 |
| Asian* | 9,356 | 11% | 1,029 |
| White* | 1,709,966 | 3% | 51,299 |
| Estimated total racial profiling victims | | | 84,707 |
| WISCONSIN | | | |
| Black* | 300,245 | 47% | 141,115 |
| Hispanic | 192,921 | 23% | 44,371 |
| Multiracial* | 51,921 | 19% | 9,864 |
| Asian* | 87,995 | 11% | 9,679 |
| White* | 4,681,630 | 3% | 140,448 |
| Estimated total racial profiling victims | | | 345,477 |
| WYOMING | | | |
| Black* | 3,504 | 47% | 1,646 |
| Hispanic | 31,669 | 23% | 7,283 |
| Multiracial* | 6,164 | 19% | 1,171 |
| Asian* | 2,670 | 11% | 293 |
| White* | 438,799 | 3% | 13,163 |
| Estimated total racial profiling victims | | | 23,556 |

APPENDIX THREE

Scope and Sources of Research

For twelve months, from September 2003 to August 2004, the Domestic Human Rights Program of Amnesty International USA studied racial profiling as it is practiced by federal, state and local law enforcement agencies in the United States and experienced by a wide range of communities throughout the country. At the heart of this process were a series of public hearings held in six cities across the country, including: Tulsa, New York City, Chicago, San Francisco, Oakland, and Dallas. Held for the purpose of determining the depth and breadth of racial profiling by law enforcement and soliciting possible solutions, each hearing was chaired by the Hon. Timothy K. Lewis—a former prosecutor and federal judge whom former President George H.W. Bush nominated to serve on the U.S. Court of Appeals for the Third Circuit.

In each city, Judge Lewis was joined by a panel of local and national experts that included retired law enforcement officials, victim advocates, academics and policy makers. Together, they received oral and written testimony from a range of victims, advocates, academic experts, and law enforcement agents. Altogether, more than 100 people testified during the hearings. Victim witnesses included: African Americans, Native Americans, Hispanic Americans, Arab Americans, South Asian Americans, Asian Americans, Iranian Americans, Muslim Americans, and other Americans and visitors who believed that they had been unfairly targeted because of their racial appearance.

Because law enforcement is at the center of this issue, AIUSA took special care to ensure that their representatives were invited to testify at each event. In each location, invitations were sent to the major federal, state, and local law enforcement agencies in each city at least several weeks before the hearing. Written invitations were followed up by telephone calls. Law enforcement agencies who accepted the

invitation include: San Francisco Police Department (Chief Alex Fagan); New York State Attorney General's Office (Dennis Parker, Bureau Chief for Civil Rights); U.S. Attorney's Office, Northern District of California (First Assistant U.S. Attorney Don Clay); Oakland Police Department (Captain Ronald Davis).

While many of those law enforcement agencies that declined to testify cited scheduling conflicts, it is worth noting that after initially accepting the invitation, several Federal Bureau of Investigation regional offices sent letters of regret stating that they could no longer confirm their participation and referring AIUSA staff to a staff person in the FBI's Office of the General Counsel. While the staff person in this office said she would provide one representative to testify, she ultimately failed to do so and stopped returning calls. Similarly, the Tulsa police department refused to appear and reportedly told local media that they were following the advice of their legal department.

In addition to conducting hearings, AIUSA solicited incident reports through our website and regional offices; reviewed studies by government agencies, advocacy groups, and academics; cataloged and analyzed all related federal and state laws; analyzed public opinion surveys; monitored media coverage in mainstream and ethnic media; and reviewed the most recent census data for the groups identified as frequent targets of racial profiling and the nation as a whole.

Racial profiling is explicitly connected to other manifestations of racially biased policing, such as racially motivated verbal harassment, excessive use of force, and racially disparate incarceration rates. While those issues are mentioned in this report, they are beyond the scope of this project, and our exploration of them is limited to the discussion of specific racial profiling reports in which they were mentioned as a factor.