



# Talking Points

## The Problem:

**Definition:** Racial profiling as defined by the "End Racial Profiling Act" (ERPA) is "the practice of a law enforcement agent or agency relying, to any degree, on race, ethnicity, national origin, or religion in selecting which individual to subject to routine or spontaneous investigatory activities or in deciding upon the scope and substance of law enforcement activity following the initial investigatory procedure, except when there is trustworthy information, relevant to the locality and timeframe, that links a person of a particular race, ethnicity, national origin, or religion to an identified criminal incident or scheme."

Racial and religious profiling is a pervasive problem that affects many communities across the country. While traditionally thought of as targeting African Americans, profiling affects a broad range of people in the U.S., including Native Americans, African Americans, Latinos, Arabs, Muslims and South Asians. Not only is racial and religious profiling humiliating and degrading for the people subjected to it, it is unconstitutional and violates fundamental human rights, it is an ineffective law enforcement practice, and it damages community security.

**Talking Point:** Racial profiling continues to be a real problem.

- Studies have shown that members of African American, Native American and Latino/Hispanic communities are stopped and searched more often than whites.
- After September 11, 2001, members of Arab, Muslim, and South Asian communities have increasingly been searched, questioned and detained in the name of "national security", often times labeled "terrorism suspects" when in reality many were only charged with misdemeanors or minor immigration violations, if they were charged at all.
- In recent years, law enforcement has used programs whose stated purpose is to target and remove dangerous criminals who pose a threat to their communities. However, these programs have instead been used to disproportionately harass, question, and detain individuals perceived to be Latino or Hispanic, including U.S. citizens or lawful permanent residents.

**Talking Point:** Racial profiling does not work.

- By focusing on factors unrelated to criminal activity rather than on specific indicators of criminal behavior, law enforcement may increase the number of people brought through the criminal justice system, but they decrease the hit rate on catching actual criminals. In 1998, the U.S. Customs Service eliminated the use of race, ethnicity and gender in deciding which individuals to search and began focusing solely on suspect behavior. A study by Lamberth Consulting found that this policy shift led to an almost 300% increase in searches that resulted in the discovery of illegal contraband or activity.

**Talking Point:** Racial profiling distracts law enforcement time and resources away from the efficient, targeted pursuit of individuals who actually pose a threat to public safety.

- When law enforcement relies on racial profiling, it takes them away from proven, effective policing techniques using reasonable suspicion based on credible evidence.

**Talking Point:** Racial profiling has damaging effects on the community.

- By focusing on race, ethnicity, religion or national origin rather than specific indicators of criminal behavior or specific information about a criminal suspect, law enforcement agents decrease the hit rate on catching criminals.
- Communities that have encountered racial profiling lose trust in law enforcement agencies because they perceive them to be biased or unjust. As a result, members of these communities become less likely to assist with criminal investigations or seek protection from police when they themselves are victimized, which makes everyone less safe.

**Talking Point:** Racial profiling violates constitutional protections and human rights.

- The Constitution guarantees that every person present in the United States has the fundamental right to due process, equal protection under the law, and the right to be free from unreasonable searches and seizures.
- The international law considers the principle of nondiscrimination to be a 'non-derogable' right, meaning that it must always be respected, even in times of crisis, including terrorist threats. By failing to adequately address and eradicate the pervasive problem of racial profiling, the United States is in violation of its obligations under international human rights treaties that it has signed and ratified—including the International Convention on the Elimination of Racial Discrimination and the International Convention on Civil and Political Rights—that prohibit discrimination on the basis of race, ethnicity, religion and national origin.

## The Solution:

Build alliances amongst directly-affected communities, coordinate advocacy efforts and field activities, and educate and mobilize broad support for legislative and policy reforms.

### 2003 DOJ Guidance Regarding the Use of Race by Federal Law Enforcement Agencies

**Talking Point:** The Department of Justice issued guidance prohibiting the use of race by federal law enforcement agencies in 2003. This guidance is not enforceable, it does not address profiling based on religion or national origin, and it leaves a gaping loophole that allows racial profiling for "national security" purposes and at U.S. borders.

To meet its objective of eliminating racial profiling in law enforcement, the Department of Justice must amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to:

- Cover profiling based on religion and national origin;
- Remove the large loopholes that allow for the use of racial profiling in the name of national security and border security;
- Apply anywhere federal agents act in partnership with state or local law enforcement agents and to any agency that receives federal funds; and
- Make the guidance enforceable.

**Goal:** Revise the June 2003 Department of Justice Federal Guidance on Racial Profiling to eliminate the border and national security loophole, to include profiling based on religion and ethnic origin, and to ensure that the guidance is enforceable.

### **Inappropriate Local Enforcement of Federal Immigration Laws**

**Talking Point:** Formal programs like 287(g), CAP, Secure Communities, and other ICE ACCESS programs that utilize state and local criminal justice systems to enforce federal civil immigration law, along with informal local enforcement of federal immigration laws, have resulted in unlawful detentions and pre-textual arrests of people who the police perceive to be “foreign,” including citizens and lawful permanent residents, in order to check immigration status.

**Goal:** Eliminate Department of Homeland Security programs that result in racial profiling in immigration enforcement.

### **The “End Racial Profiling Act”**

**Talking Point:** Racial profiling is an ineffective law enforcement tool, harms community security and is profoundly unjust. Banning the practice requires comprehensive federal legislation. The “End Racial Profiling Act” prohibits profiling based on race, ethnicity, religion and national origin by federal, state and local law enforcement agents. The bill would:

- Prohibit the use of profiling based on race, religion, ethnicity or national origin;
- Institute programs to eliminate racial profiling in local, state and federal law enforcement that require: a general prohibition on the practice; training on racial profiling issues for agents; data collection and monitoring; and create meaningful procedures for receiving, investigating and responding to complaints;
- Create a private right of action for victims of profiling;

- Allow the Attorney General to provide grants to law enforcement agencies to encourage the development and implementation of best policing practices and to withhold grants from law enforcement agencies not complying with the Act; and
- Mandate that the Attorney General submit periodic reports to Congress on any ongoing discriminatory policing practices by federal, state and local law enforcement.

**Goal:** Secure passage of federal legislation to ban racial profiling - the "End Racial Profiling Act."

### **Additional Resources:**

- Press Release, *Secretary Napolitano Announces New Agreement for State and Local Immigration Enforcement Partnerships and Adds 11 New Agreements*, July 10, 2009, available at <http://www.ice.gov/pi/nr/0907/090710washington.htm>.
- American Civil Liberties Union of Arizona, *Driving While Black or Brown*, April 2008, available at <http://www.acluaz.org/DrivingWhileBlackorBrown.pdf>
- Lamberth Consulting, *Racial Profiling Doesn't Work*, available at <http://www.lamberthconsulting.com/about-racial-profiling/racial-profiling-doesnt-work.asp>
- Government Accountability Office, *Report to Congressional Requesters, Immigration Enforcement: Better Controls Needed Over Program Authorizing State and Local Enforcement of Federal Immigration Laws*, January 2009, available at <http://www.gao.gov/new.items/d09109.pdf>.
- Clint Bolick, Goldwater Institute, *Mission Unaccomplished: The Misplaced Priorities of The Maricopa County Sheriff's Office*, December 2008, available at <http://www.goldwaterinstitute.org/Common/Img/Mission%20Unaccomplished.pdf>.
- Sam Quinones, *Disabled Man Found After 89-day Ordeal*, Los Angeles Times, August 8, 2007, available at <http://articles.latimes.com/2007/aug/08/local/me-found8>.
- Trevor Gardner II and Aarti Kohli, The Chief Justice Earl Warren Institute on Race, Ethnicity & Diversity at the University of California, Berkeley Law School, *The C.A.P. Effect: Racial Profiling in the ICE Criminal Alien Program*, September 2009, available at [http://www.law.berkeley.edu/files/policybrief\\_irving\\_FINAL.pdf](http://www.law.berkeley.edu/files/policybrief_irving_FINAL.pdf).
- United States Department of Justice Civil Rights Division, *Guidance Regarding the Use of Race by Federal Law Enforcement Agencies*, June 2003, available at [http://www.usdoj.gov/crt/split/documents/guidance\\_on\\_race.php](http://www.usdoj.gov/crt/split/documents/guidance_on_race.php).