



ACLU EYE on the FBI:

The FBI Is Engaged In Unconstitutional Racial Profiling and Racial “Mapping”



Documents obtained by the ACLU and its affiliates in response to Freedom of Information Act (FOIA) requests show that FBI field offices are engaged in unconstitutional and widespread stereotyping, attributing certain types of crimes to entire racial and ethnic communities. Targeted communities, as revealed in documents the ACLU has obtained so far, include Arab Americans in Michigan, African-Americans in Georgia, Chinese and Russian-Americans in California, and broad swaths of Latino-American communities in multiple states. The FBI has also engaged in religious profiling of Muslim American communities in Michigan. Based on false stereotypes ascribing criminal propensity to minority communities, the FBI is collecting demographic data to map where people from these communities live.

THE ACLU DOCUMENTS:

- A 2009 Detroit FBI [field office memorandum](#) references State Department-designated terrorist groups originating in the Middle East and Southeast Asia and asserts that “because Michigan has a large Middle-Eastern and Muslim population, it is prime territory for attempted radicalization and recruitment by these terrorist groups.” Without any evidence of actual wrongdoing and based on a generalized and entirely unsubstantiated threat assertion, the Detroit FBI sought to collect information about Middle-Eastern and Muslim communities in Michigan.
- A 2009 Atlanta FBI [Intelligence Note](#) purports to identify potential threats from “Black Separatist” groups (identified as including the New Black Panther Party and the Nation of Islam) and documents population increases among “black/African-American populations in Georgia” from 2000 to 2007. While significant portions of this document are redacted, other portions reveal the FBI is focusing improperly on First Amendment-protected activity by members of Georgia’s African-American community, such as non-violent community protests after police shootings, and the New Black Panther Party’s reported support of a congressional candidate.
- Two 2009 San Francisco [FBI memoranda](#) state that the “San Francisco domain is home to one of the oldest Chinatowns in North America and one of the largest ethnic Chinese populations outside mainland China,” and justify the opening of an investigation involving racial and national origin mapping because “[w]ithin this community there has been organized crime for generations.” The memoranda similarly justify mapping of the “sizable Russian population” in the region by referencing the existence of “Russian criminal enterprises” in San Francisco.
- Several documents from FBI offices in [Alabama](#), [New Jersey](#), and [Georgia](#) show that the FBI is using the threat posed by the criminal gang Mara Salvatrucha (MS-13), which was originally started by Salvadoran immigrants, to justify broad investigations targeting a wide variety of Latino-American communities. A September 2008 Intelligence Note by the Newark, New Jersey FBI office claims “MS-13 is comprised of members from Central American countries,” yet the office collected population data for individuals from other Spanish-speaking countries, including Mexico, Cuba, the Dominican Republic and Colombia, and from the U.S. territory of Puerto Rico. The Mobile, Alabama FBI’s Intelligence Note (which states that MS-13’s “primary criminal activity” in Mobile is “graffiti”) contradicts the Newark FBI’s assessment of the gang’s ethnic composition, stating that while “MS-13 members are typically Salvadorans, Guatemalans, and Honduran nationals or first-generation descendants . . . MS-13 has been known to admit Mexicans, Dominicans, and non-Hispanic individuals” (emphasis added). Yet the Mobile FBI office singled out and mapped demographic data for immigrants born in Central America.

THE PROBLEM:

In its [2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies](#), the Department of Justice prohibited race from being used “to any degree” in law enforcement investigations (unless describing a specific suspect), but it carved out a loophole permitting racial and ethnic profiling in national security and border integrity investigations. Exploiting this loophole, in 2008, the FBI issued its [Domestic Investigation and Operations Guide](#) (DIOG), which permits FBI agents to conduct Domain Management assessments, which include the authority to collect, analyze and “map” racial and ethnic demographic information and the location of ethnic-oriented business and facilities. The DIOG also allows the FBI to collect and track “behavioral characteristics reasonably associated with a particular criminal or terrorist element of an ethnic community.” This Domain Management authority is not limited to national security and border integrity investigations.

In 2010, 34 ACLU affiliates filed coordinated FOIA requests with their local FBI field offices to uncover records showing how the FBI has used its racial and ethnic profiling authority under the Guidance on Race and the DIOG.

Unfortunately, but predictably, documents obtained by the ACLU show that the Justice Department’s unconstitutional loophole permitting racial profiling in the national security context is today becoming an unconstitutional norm. Although often heavily redacted, the documents make clear that the FBI is engaged in racial, ethnic, national origin, and religious profiling of entire communities in both purported national security *and* ordinary law enforcement investigations.

As decades of American experience show, however, racial, ethnic, national origin, or religious profiling as a tool to address crime and national security threats is not only unconstitutional, it is ineffective, inefficient and counter-productive. Targeting entire communities for investigation based on erroneous stereotypes produces flawed intelligence. Empirical data show that terrorists and criminals do not fit neat racial, ethnic, national-origin or religious stereotypes, and using such flawed profiles is a recipe for failure. Moreover, law enforcement action that unfairly targets minority communities for suspicion only serves to alienate these communities from their government. It also sends the message that our government views prejudice as acceptable. And racial and other profiling permitted in one context (e.g., national security) will inevitably bleed into others. The FBI should focus on actual criminal suspects and national security threats, not on targeting entire communities based on race, ethnicity, national origin, or religion.

THE SOLUTION:

The ACLU calls on the Attorney General to:

- Enforce the Guidance on Race’s prohibition against the use of race to “any degree” in law enforcement investigations.
- Amend the Guidance on Race to prohibit racial and ethnic profiling without any exceptions, and to add religion and national origin to the barred profiling criteria.
- Ensure the FBI amends the DIOG to incorporate existing prohibitions on the use of race and ethnicity in FBI investigations, and to incorporate the above amendments to the Guidance on Race.

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To learn more about the ACLU’s “Mapping the FBI” initiative, please visit www.aclu.org/mapping-FBI