



July 9, 2008

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

The Honorable John Conyers
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Lamar Smith
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

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OFFICERS AND DIRECTORS
NADINE STROSSEN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

RICHARD ZACKS
TREASURER

Re: ACLU urges an inquiry into reports that the Department of Justice will allow the FBI to use racial profiling to investigate Americans

Dear Chairman Leahy, Ranking Member Specter, Chairman Conyers, and Ranking Member Smith:

On behalf of the American Civil Liberties Union, its hundreds of thousands of members and 53 affiliates nation-wide, we write to express concern about recent reports that the Justice Department will issue new Attorney General Guidelines authorizing the Federal Bureau of Investigation (FBI) to use racial profiling to open and conduct investigations on Americans, and we urge you to vigorously investigate these reports.

The Associated Press recently reported that the Justice Department is considering allowing the FBI to investigate Americans using terrorist profiles based on perhaps as little as someone's race, ethnicity, or religion, without any evidence of criminal activity.¹ Racial profiling is both unconstitutional and ineffective. The ACLU has long denounced racial profiling, and the Bush Administration has echoed that condemnation. In February 2001, President Bush declared that racial profiling was wrong and pledged to end the practice in America.² Attorney General John Ashcroft later declared that "using race...as a proxy for potential criminal behavior is unconstitutional, and it undermines law enforcement by undermining the confidence people can have in law enforcement."³ FBI Director Robert Mueller testified similarly during his confirmation hearing:

"...I acknowledge that racial profiling is abhorrent to the Constitution, it is abhorrent in any way, shape or form. And I would make certain that from the first day an FBI agent sets foot in the academy in Quantico that that refrain is repeated as part of the training, and as one goes through the ranks, continuous retraining, and focus on the fact that the FBI, in order to be the preeminent law enforcement organization in the county if not in the world, has

to have a unblemished record with regard to addressing and strongly attacking any indication of racial profiling.”⁴

Giving the FBI the power to use race or ethnicity to collect large amounts of private information about American citizens with no evidence of criminal activity will not make us safer. The Administration should heed its own warnings that racial profiling is unconstitutional, ineffective, and undermines the credibility of legitimate law enforcement activities. We urge the Judiciary Committees to hold hearings to investigate changes to the Attorney General Guidelines and demand an explanation about how the Administration intends to reconcile its previous position that racial profiling is “abhorrent to the Constitution” with potential new guidelines that allow the FBI to use an American’s race or ethnicity as a basis for opening an investigation.

Sincerely,



Caroline Fredrickson
Director, Washington Legislative Office



Michael German
Policy Counsel

cc: Members of the Senate Committee on the Judiciary
Members of the House Committee on the Judiciary

¹ Lara Jakes Jordan, *US Considers Using Racial Profiling in Terror Cases*, Associated Press, July 3, 2008, available at <http://www.thenewstribune.com/news/nationworld/story/403827.html>.

² Press Release, U.S. Department of Justice, Justice Department Issues Policy Guidance to Ban Racial Profiling (June 17, 2003) (on file with author), available at http://www.usdoj.gov/opa/pr/2003/June/03_crt_355.htm.

³ Fact Sheet, Racial Profiling, U.S. Department of Justice (June 17, 2003), http://www.justice.gov/opa/pr/2003/June/racial_profiling_fact_sheet.pdf.

⁴ *Confirmation Hearing on the Nomination of Robert S. Mueller, III to be the Director of the Federal Bureau of Investigation: Hearing Before the Senate Committee on the Judiciary*, 107th Cong. 122-23 (2001) (Testimony of Robert S. Mueller), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_senate_hearings&docid=f:80335.pdf