

Legislative Fact Sheet

Close the Department of Justice's Loophole On Religious Profiling

May 20, 2013

The Issue

- Since September 11, 2001, thousands of innocent Americans have been wrongfully targeted by federal law enforcement officials because of their race, religion and national origin. They have been searched, investigated, and detained without cause in the name of national security.
- In 2003, the U.S. Department of Justice (DOJ) made a partial attempt to put a stop to racial profiling by issuing a policy guidance that banned federal law enforcement officials from engaging in such activities.
- **However, the guidance remains ineffective because it includes open-ended loopholes that allow federal law enforcement agencies to profile at U.S. borders and for reasons of national security.**
- The guidance also remains incomplete and ineffective because it:
 - Is only guidance - not official policy - and does not prohibit profiling by religion or national origin.
 - U.S. Immigration Customs and Border Enforcement (ICE) and U.S. Customs and Border Protection (CBP) continue to use ethnicity as a "relevant factor" in decisions to make immigration stops.
 - Has no enforcement mechanism, and is not applicable to state and local law enforcement agencies working in cooperation with federal agencies or receiving federal funds.

What is Being Asked of Members of Congress?

Members should support a letter to the DOJ that requests the department to revise its 2003 policy guidance on racial profiling to:

- Include measures that prevent profiling based on religion and national origin by requiring:
 - Federal law enforcement agencies to maintain policies and procedures that eliminate profiling and any pre-existing practices of profiling.
 - States and local governments working in cooperation with federal law enforcement agencies or seeking federal grants to certify that they maintain policies and practices to eliminate profiling. They must also establish procedures and programs for addressing complaints of profiling.
- Eliminate loopholes that permit profiling at U.S. borders and for reasons of national security.
- Ensure that the guidance is enforceable.

Reasons to Support

- **There is bi-partisan support for banning racial, religious and ethnic profiling. Many law enforcement and government agencies also do not support it.**
 - In 2009, President Obama pledged to ban racial profiling by federal law enforcement agencies and provide incentives to state and local law enforcement agencies to prohibit the practice
 - In 2001, President George W. Bush proclaimed in his State of the Union address, "[Racial profiling is] wrong, and we will end it in America."
 - In a 2006 report, the International Association of Chiefs of Police recommended that all law enforcement agencies put an end to racial profiling.
- **Profiling is unconstitutional** and violates the First, Fourth, and Fourteenth Amendments.
- **Profiling hinders anti-terrorism efforts.** Profiling is not effective law enforcement. Timothy McVeigh (Oklahoma City Bombing, 1995), John Bedell (Pentagon Shooting, 2010), and Joseph Stack (IRS - Austin, TX Suicide Bombing, 2010) would not have been identified.
- **Profiling diverts precious law enforcement resources** away from investigations of individuals who have been linked to terrorist activity by specific and credible evidence.