



**Written Statement of the
Council on American-Islamic Relations**

On

“Ending Racial Profiling in America”

Submitted to the

**U.S. Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights**

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Chairman Durbin, Ranking Member Graham and other esteemed members of the Subcommittee: The Council on American-Islamic Relations (CAIR) thanks you for holding this vital hearing on ending racial profiling in America and respectfully submits this written testimony for your consideration.

Introduction

CAIR is America's largest Muslim civil liberties and advocacy organization. Its mission is to enhance the understanding of Islam, encourage dialogue, protect civil liberties, empower American Muslims, and build coalitions that promote justice and mutual understanding. CAIR is committed to protecting the civil rights of all Americans, regardless of faith. CAIR supports domestic policies that promote civil rights, diversity and freedom of religion. CAIR opposes domestic policies that limit civil rights, permit racial, ethnic or religious profiling, infringe on due process, or that prevent Muslims and others from participating fully in American civic life.

CAIR, like numerous other civil rights and advocacy organizations, recognizes the critical need for Congress to take action and put an end to racial and religious profiling by federal and state law enforcement agencies. The U.S. Constitution requires that federal and state law enforcement agencies respect the rights and freedoms of "all persons," regardless of race, religion, ethnicity, or national origin. For reasons that will be outlined in this testimony, CAIR respectfully requests that Congress enact the End Racial Profiling Act (S.1670/H.R. 3618) introduced by Senator Cardin and Representative Conyers, and revise the U.S. Department of Justice (DOJ) Civil Rights Division's Guidance Regarding the Use of Race by Federal Law Enforcement Agencies.

Background

Since the tragic events of September 11, 2001, CAIR has received hundreds of reports from innocent Americans who have been wrongfully targeted by federal, state and local law enforcement officials because of their race, religion or national origin. They have been searched, investigated and detained without reasonable suspicion. Since then, the American Muslim community has become the unfair target of numerous federal and state counterterrorism initiatives and surveillance programs.

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 2003, the DOJ Civil Rights Division made a partial attempt to put a stop to racial profiling by issuing the Guidance Regarding the Use of Race by Federal Law Enforcement Agencies. The DOJ guidance forbids federal law enforcement agencies from engaging in racial profiling.

However the DOJ guidance remains ineffective because it does not prohibit profiling based on religion or national origin, it includes open-ended loopholes that allow federal law enforcement to profile at U.S. borders and for reasons of national security, it is not applicable to state and local law enforcement agencies that work in cooperation with federal agencies or receive

federal funds, and it lacks any enforcement mechanisms because it does not carry the same authority as official policy. In addition, the DOJ guidance permits the U.S. Immigration Customs and Border Enforcement (ICE) and U.S. Customs and Border Protection (CBP) to continue to use ethnicity as a “relevant factor” in decisions to make immigration stops.

The repeated detention and questioning of Muslims about their religious beliefs and practices by federal agents at and inside the United States-Canada border led the Michigan chapter of CAIR to file a federal lawsuit against the Federal Bureau of Investigation (FBI) and CBP. The lawsuit asserts that such questioning violated the plaintiffs’ First Amendment rights.

Additional acts of racial and religious profiling by the nation’s federal and state law enforcement agencies recently highlighted in the national press include the American Civil Liberties Union revealing that FBI agents had gathered intelligence on constitutionally-protected activities at mosques during community outreach events; the FBI infiltrating mainstream mosques in Southern California with an agent provocateur to target Muslims for surveillance solely because of their religion; and the *Associated Press* revealing that the New York City Police Department, under the direction of individuals linked to the Central Intelligence Agency, has been spying on Muslim communities and houses of worship, leaders and student groups not suspected of committing any crimes.

In 2009, President Obama pledged to “ban racial profiling by federal law enforcement agencies and provide federal incentives to state and local police departments to prohibit the practice.” While the DOJ has not yet revised the guidance on racial profiling, CAIR, along with congressional leaders and civil rights groups, continues to urge the president and attorney general to put a stop to racial profiling and revise the DOJ guidance.

CAIR believes that racial and religious profiling is not effective law enforcement and narrowly focuses the nation’s law enforcement resources away from following actual leads and preventing illegal and violent acts. Profiling violates the basic constitutional protections of the First, Fourth and Fourteenth Amendments. Profiling also hinders counterterrorism efforts against antigovernment extremists. For example, 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 by racial or religious profiling.

Recommendations

There are two important steps Congress can take to support comprehensive reform of the nation’s law enforcement policies and practices dealing with racial and religious profiling. To safeguard our communities’ constitutional rights and freedoms, CAIR offers the following recommendations.

Congress should enact the End Racial Profiling Act of 2011. If signed into law, the act would require that:

- Federal law enforcement agencies maintain policies and procedures eliminating racial and religious profiling and any preexisting practices of profiling.
- State and local governments applying for federal law enforcement assistance grants certify that they maintain similar policies and practices to eliminate racial profiling.
- State and local governments establish procedures and programs for addressing complaints of racial profiling.
- The attorney general collect data on hit rates for stops and searches by law enforcement agents. He or she must also create grants to develop and implement best practice devices and systems to eliminate racial profiling.

Congress should request the DOJ Civil Rights Division to revise the Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to:

- Include measures that prevent profiling based on religion and national origin.
- Require federal law enforcement agencies to maintain policies and procedures that eliminate profiling and any preexisting practices of profiling.
- Require 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.
- Require state and local governments to 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 DOJ guidance is enforceable.

Conclusion

CAIR believes that it is the civic duty of every American to work with law enforcement to protect our nation. Equally important, it is the responsibility of our nation's law enforcement to protect the nation while respecting the rights of individuals. Likewise, it is the responsibility of the nation's elected officials to develop clear and concise laws, policies and practices for law enforcement agencies to adhere to while balancing the need for security and the rights enshrined in the U.S. Constitution.