

# **Testimony on Racial Profiling**

**Submitted by:**

**Raul Yzaguirre, President**

**National Council of La Raza  
1111 19<sup>th</sup> Street NW, Suite 1000  
Washington, D.C. 200036**

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## **I. INTRODUCTION**

Chairman Feingold, Ranking Senator Hatch, and the other Senators of the Subcommittee, on behalf of the National Council of La Raza (NCLR), thank you for holding this hearing on an issue that is very important to the Latino<sup>1</sup> community in the United States. NCLR is the largest national Latino civil rights organization, which serves as an “umbrella organization” for more than 250 local affiliate community-based organizations (CBO’s) and 30,000 associate members. In addition to providing capacity-building assistance to our affiliates and essential information to our individual associates, NCLR serves as a voice for all Hispanic subgroups in all regions of the country.

I appreciate the opportunity to submit this statement for the record in support of a thorough revision of the law regarding racial profiling. First, this statement begins with a brief overview of Hispanic demographics in order to provide the Subcommittee with an accurate portrayal of the population about which we are speaking. Second, this statement explains our concerns regarding racial profiling as a law enforcement tactic and its effects on the Latino community. Next, it describes particular concerns with respect to reliance on racial profiling as a strategy to enforce immigration law, and emerging collaborations among federal, state, and local law enforcement. Finally, it concludes with recommendations on how we as a nation can respond at all levels – federal, state, and local – to better serve and protect all Americans from unnecessary and counterproductive harassment and intimidation by law enforcement.

## **II. HISPANICS AND RACIAL PROFILING: THE SCOPE OF THE PROBLEM**

### **A. Demographic Status of the U.S. Latino Population**

According to data from the 2000 Census, Hispanics constitute the largest minority group in the U.S.; currently, more than one in eight (12.5%) Americans is Hispanic. An increasingly large component of the nation’s population (35 million) is Hispanic. Latinos are composed of several distinct subgroups: Mexican Americans, Puerto Ricans, Cubans, and Central and South Americans. The latest data also show that the majority of Hispanics are U.S.-born, or have U.S. citizenship. According to the latest data, (39.1%) or 12.8 million Latinos were born outside of the U.S. Among Hispanic children under 18, more than four-fifths are native-born. Latinos tend to be young; for example, more than one-third of the Latino population is under 18 years old; nearly one in six (16.2%) of the K-12 student population is Hispanic.

More than three-fourths of the Hispanic American population is concentrated in seven states: California, Florida, New York, Illinois, Arizona, New Jersey, and Texas. As the Hispanic community grows, Latinos are also living in some counties within “non-traditional” states. For example there were three states where the Hispanic population

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<sup>1</sup> The terms “Latino” and “Hispanic” are used interchangeably to refer collectively to Mexicans, Puerto Ricans, Cubans, Central and South Americans, and others of Spanish and Latin American descent. Hispanics can be of any race.

more than doubled between 1990 and 2000: Georgia (increased by 299.6%), North Carolina (393.9% growth), and Tennessee (278.2% increased). Latinos are also the most urbanized of the minority populations: 91.5% of Hispanics live in major cities such as Los Angeles, Houston, New York, Chicago, and Miami. Given their share of the overall population, and the rapid growth and youthfulness of the Hispanic population, the status of Latinos is increasingly important to the future of all Americans.

This demographic snapshot provides an important context for the discussion of racial profiling, which NCLR believes is becoming more problematic in the Latino community. NCLR believes that stereotypes and misinformation have played a role in the increase of inappropriate police practices against minority groups, including Latinos, and that accurate information about the Hispanic community is critically needed. Latinos are moving into “non-traditional” cities, states, and regions in which other minority groups and/or White Americans predominantly reside. On its face, such a trend may not appear significant; however, many of these areas lack the infrastructure, organizations, and other civic participation mechanisms that allow Latinos to address increasing inter-ethnic tensions and assist in promoting integration into the American mainstream. The Latino community is struggling with these very issues in the already-established communities of Los Angeles, Houston, Chicago, and New York, and if it is difficult in those areas, one can only imagine the devastating effect law enforcement abuse and harassment has in these other areas where Hispanics are only now emerging as a major presence.

## **B. The Effects of Racial Profiling on the Latino Community**

The use of racial profiling tactics not only violates civil rights, but also undermines the ability of law enforcement to effectively enforce the law. Specifically, when an individual’s ethnicity is used to establish a cause for suspicion of a crime, then that individual – along with family members, friends, and neighbors – loses trust in the integrity of law enforcement. As a result, public safety is placed in jeopardy because members of these communities fear harassment and abuse by the police and therefore are unlikely to seek police help when they legitimately need it, i.e., to report a crime, serve as a witness or on a jury, or otherwise cooperate with law enforcement.

The problem of racial profiling broadly manifests itself in the Latino community and cannot be dismissed simply as a matter of a few isolated incidents of poor judgment. For example, Latinos have been systematically targeted for “dragnet” tactics by local and state law enforcement officers, and those same tactics have been applied and used, as a matter of formal policy, by some federal law enforcement agents.

NCLR often receives reports from Latino individuals who have been victimized by police and federal agents overstepping the bounds of the Constitution in the name of drug and immigration enforcement. The vast majority of cases, however, goes unreported. Even fewer actually result in successful civil rights litigation or investigation by agencies responsible for enforcing civil rights.

## 1. Local Law Enforcement

Local law enforcement relies on a widespread number of tactics including traffic stops, “stops and frisk” approaches, and others to enforce the law. Such tactics cross the line when they have a disproportionate or disparate impact based on race or ethnicity. Below we cite just a few of the cases we are aware of involving racial profiling against Latinos by local law enforcement.

- In 1999, the American Civil Liberties Union (ACLU) filed a federal lawsuit on behalf of a San Jose lawyer who says the California Highway Patrol (CHP) violated his civil rights when officers stopped him and other Hispanics allegedly because of their ethnicity. According to the lawsuit, the CHP pulled over the attorney and at least five other Hispanic drivers on the Pacheco Pass portion of Highway 152 while carrying out its federally-funded drug-interdiction program, “Operation Pipeline.” According to a CHP Sergeant, the CHP canine units searched nearly 34,000 cars in 1997. Only 2% of them were carrying drugs. In other states, up to 95% of all “Operation Pipeline” searches have been found to be “dry holes.”
- Early this year, charges were brought before the U.S. Department of Justice against New Jersey State Troopers for routinely stopping Black and Hispanic drivers on state highways solely because of their skin color. Several state troopers were also found guilty of falsifying in their reports the race and ethnicity of drivers stopped. The troopers admitted that they did this so as not to give the appearance that they were only pulling over Black and Hispanic drivers.
- In 1992, an *Orlando Sentinel* investigation into stops on an interstate highway found that 5% of the drivers on that highway were dark-skinned, yet nearly 70% of those stopped were Black or Hispanic. The stops of Black and Hispanic drivers also lasted, on average, twice as long as stops of White drivers. Only nine out of the 1,000 stops resulted in a traffic ticket.
- In the past, the Louisiana State Police Department used a training film that explicitly exhorted officers to use traffic stops to conduct narcotics searches of “males of foreign nationalities, mainly Cubans, Colombians, Puerto Ricans, or other swarthy outlanders.” [*United States v. Thomas*, 787 F. Supp. 663, 676 (E.D. Tex. 1992)]
- In Colorado’s Eagle County Sheriff’s Department, race, ethnicity, and out-of-state license plates were common drug-courier profile factors in criminal investigations. After the use of such a profile was determined to be unconstitutional, they have switched to using traffic enforcement stops as a means of catching drug traffickers, but have not stopped the use of racial profiles. [*United States v. Laymon*, 730 F. Supp. 332, 337 (D. Colo. 1990)]
- A December 1999 report by New York’s Attorney General on the use of “stop and frisk” tactics by the New York City Police Department revealed that between January 1998 through March 1999, 84% of the almost 175,000 people stopped by NYPD were

Black or Hispanic, despite the fact that these two groups compose less than half of the city's population.

- The New York Attorney General's report on NYPD stop and frisk tactics revealed that stops of minorities were less likely to lead to arrests than stops of White New Yorkers – the NYPD arrested one white New Yorker for every eight stops, one Hispanic New Yorker for every nine stops, and one black New Yorker for every 9.5 stops.

## **2. Federal Law Enforcement**

The use of racial profiling is not limited to local law enforcement agencies. Federal agencies such as the Immigration and Naturalization Service's (INS) Border Patrol, Inspections and Investigations divisions, Drug Enforcement Administration (DEA), and the U.S. Customs Service have been found to conduct community-wide "sweeps," searches, and seizures without proper reasonable suspicion, relying heavily on ethnic background and race as an exclusive or primary factor. The use of racial profiling has been justified by some due to the inaccurate perception that Blacks, Latinos, and other minorities are more likely to commit crimes – especially immigration and drug-related offences – than Whites.

### **a. INS**

- According to a May 1, 2001 *New York Times* article, a review of 37 INS work site raids in the district of New York City showed that agents frequently cited skin color, use of Spanish, foreign accents, and clothing "not typical of North America" as primary evidence that workers were likely to be undocumented. An example found in the review disclosed that an INS agent conducting a surveillance of delicatessens, between 34<sup>th</sup> and 35<sup>th</sup> Streets in New York City, reported that some workers appeared to be of South or Central American descent. Some spoke Spanish, the agent noted, and others spoke English "with a foreign accent." The *Times* study confirmed that the INS explicitly uses ethnicity to guide its enforcement efforts, a tactic the agency has denied using.
- On January 29, 1998 in Bethesda, Maryland, waitress Allegra Foley was preparing tables for lunch at the Thymes Square Café when plainclothes INS officers entered the restaurant. They headed directly to the kitchen, where they questioned a number of Latino employees; six were arrested. Foley was particularly upset that employees at the Café were clearly targeted for questioning based on their perceived racial appearance. In a notarized affidavit, Foley testified that "at no time did they ever question a white, black, or Asian employee on duty at the restaurant . . . with sole exception of the manager . . . who . . . voluntarily provided his green card."
- On July 9, 1997, in Portland Oregon, INS agents in unmarked vehicles began arresting almost 50 Latino day laborers who were waiting for work on street corners along East Burnside Street. The agents did not identify themselves and arrested the

majority of people without asking questions. Most of the agents were dressed in plainclothes, although some of them later donned Border Patrol jackets when their colleagues arrived in bulletproof vests and uniforms. "I only saw one man questioned. It happened right in front of me. The INS agent came right up close to his face, leaned over him, and asked him where he was from and to show his papers. The worker didn't answer but started to fumble in his wallet in an effort to extract a document and was arrested before he could get it out. The entire interchange took less than a minute. Only Latino men were arrested. Other people on the scene, including a light-skinned Mexican, were not even questioned," recalled Lucy Bernard, a witness from the Workers' Organization Committee in Portland.

- INS agents conducted a raid in Jackson Hole, Wyoming in August 1996, in which 153 suspected illegal immigrants were rounded up and detained. According to press reports, some of the suspects were picked up off the street merely because their skin was brown. It was reported that agents picked one man off his bicycle as he rode down the street; "They failed to ask him to stop, they simply ran him down, took him off his bike, put him in handcuffs, and stuffed him in the police car," stated an eyewitness. Some of those picked up had large numbers written on their arms with black felt pen, as though they were cattle. Further press reports stated that 18 of those picked up were "hauled away in a dirty horse trailer lined with fresh manure." In the end, 40 of the "suspects" were released after proving they were citizens or documented workers.

#### **b. Border Patrol**

The *New York Times* reported that many residents of South Texas believe that the Border Patrol agents in airports and roving patrol units systematically stop and detain too many blameless Hispanics. A federal judge, Filemon B. Vela, was stopped by Border Patrol when driving with three of his staff members (two of whom were also Latino) because, he was told, there were too many people in his car. The problem is pervasive enough to cause Cameron County Judge Gilberto Hinojosa to state that his community feels like "occupied territory" by the Border Patrol, that it "does not feel like we're in the United States of America."

Border Patrol agents on roving patrols in Arizona have also been stopping motorists without reasonable suspicion that violations of immigration law have occurred. In fact, using information gathered through the use of "I-44" forms that Border Patrol agents are advised to fill out after traffic stops, a Federal Circuit Court of Appeals in the class action *Durgin v. De La Vina* found that:

Plaintiffs produced evidence of a pattern and practice of stopping persons without proper "reasonable suspicion" in the numerous I-44s that they submitted. Many of these reports do not describe facts that give rise to reasonable suspicion, and many of the reports list similar and repetitive reasons for stopping various persons. Plaintiffs also produced evidence of other persons of Hispanic appearance whom the Border Patrol had

stopped, allegedly without reasonable suspicion. The Border Patrol had stopped some of these persons on numerous occasions.

The Border Patrol's lack of clear record keeping indicates an inclination to hide a pattern and practice of profiling. In the *Durgin* case, Border Patrol agents did not fill I-44 forms after stopping the plaintiffs. The Court quoted an internal training memorandum that shows that Border Patrol agents are strongly advised to fill out I-44 forms after every traffic stop they conduct because:

...written descriptions of "reasonable suspicions" are important not only to win the case against the suspect, but also to prove that agents acted properly in the event of civil lawsuits... [I]f the Border Patrol and/or individual agents are sued in a civil lawsuit alleging a pattern of discriminatory vehicle stops ... [agents'] written description of "reasonable suspicion" will be critical to prove that the agents acted properly.

Agents are trained to use the forms to protect against potential frivolous allegations of civil rights abuses. Thus, any instance where an agent does not fill out an I-44 should raise a concern that ethnic and racial profiling is being relied upon instead of the reasonable suspicion standard required for a lawful stop.

#### **c. Customs Service**

- A March 2000 GAO report on the U.S. Customs Service found that Black, Asian, and Hispanic female U.S. citizens were four to nine times more likely than hite female U.S. citizens to be subjected to X-rays after being frisked or patted down.
- In reported cases regarding federal bus and train sweeps, overwhelmingly the defendants are Black or Hispanic. From January 1, 1993 to August 22, 1995, of 55 cases in which the defendant's race could be identified, Hispanics were 20% of those stopped and searched. According to the courts, if no "seizure" takes place, law enforcement agents do not need to explain *how* they select their targets. A federal court upheld the case allowing the stop and search of a "roughly dressed black male." [*United States v. Weaver*, 966 F.2d 391, 396 (8<sup>th</sup> Circuit 1992)]

#### **C. Collaboration between Federal and Local/State Law Enforcement**

The INS and other federal law enforcement agencies have significantly stepped up efforts in the last several years to enforce immigration laws along the U.S./Mexico border, inland, and at the workplace. Efforts such as increased workplace raids, an escalating number of armed INS agents along the border and the interior, and more joint operations between INS and other state/local law enforcement agencies have served to undermine the physical safety and constitutional and civil rights of Latino communities throughout the United States. NCLR has noted that numerous civil rights violations and abuses have been committed in the process of enforcing immigration law. Incidents of illegal or inappropriate seizures, traffic stops based solely on ethnic appearance, arrests without

cause, deprivation of food and water or medical attention, and actual physical abuse have been recorded. Immigration enforcement by local police, even under the guise of enforcement of separate criminal statutes, compromises and detracts from the true mission of local police of ensuring public safety, and worst of all, it undermines public trust and confidence. Many victims of abuse and mistreatment by immigration authorities are U.S. citizens or legal permanent residents. Examples of joint collaboration between federal and local/state law enforcement agencies follow:

- The Mexican American Legal Defense and Educational Fund, (MALDEF)<sup>2</sup> has filed litigation in connection with allegations of widespread civil rights violations by local police involved in immigration enforcement in northwest Arkansas. According to one of the plaintiffs, the Rogers Police department has been turning over “suspects” to the INS for immigration investigation. One of the claims is that of a woman who, after calling the police for protection from her abusive husband, was investigated as to her immigration status, arrested, and turned over to the INS.
- After a federal judge in Ohio ordered the INS’ Border Patrol to stop making discriminatory traffic stops (*Ramirez v. Webb*, later affirmed by the 6<sup>th</sup> Circuit Court of Appeals), the INS requested officials in the Ohio Highway Patrol to conduct the stops instead. Consequently, a federal court ordered the Highway Patrol to stop illegally confiscating green cards from legal migrant workers during profile-based traffic stops [*Farm Labor Organizing Committee vs. Ohio State Highway Patrol*].
- In Chandler, Arizona in 1997, local police collaborated with Border Patrol agents in illegal traffic stops to find undocumented immigrants. What they found instead was a multimillion dollar lawsuit on behalf of U.S. citizens and permanent residents who were repeatedly harassed and detained by local police officers – without probable cause by their own admission – because they “looked Mexican.” Arizona Attorney General Grant Woods concluded “without a doubt that residents of Chandler, Arizona were stopped, detained, and interrogated by officers...purely because of the color of their skin.” Some of the plaintiffs have settled the case while other claims are still pending.
- On January 29, 1997, in Crescent City, Florida, INS agents, Putnam County Sheriff’s deputies, and Crescent City police officers conducted a nighttime joint operation in search of undocumented immigrants. They set up a highway checkpoint and conducted a sweep of a trailer park and public housing facility largely inhabited by Hispanic residents. Although the police explained to the press that they were searching for drugs, there were no drug arrests made, nor were any drug searches conducted. An eyewitness, a worker at the Farmworkers’ Association of Florida, lives in the neighborhood between two White families whose homes were not raided. His home was approached twice. His wife was home but did not respond to the knock on the door. Approximately 50 other homes with Hispanic residents were raided. The police and Border Patrol would knock, announce “Police!” and barge in

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<sup>2</sup> NCLR is grateful for the assistance of the Mexican American Legal Defense and Educational Fund (MALDEF) in providing the latest information on the litigation.

after the door was opened, without consent and without cause. The officers also stopped Hispanics in the street and requested immigration documents without cause. A 12-year-old U.S. citizen was arrested in the street and taken miles from home for not having “papers.” When police realized their “mistake” they let him go and told him where he could catch the bus home. Border Patrol agents were involved, but one of them told local newspapers that he would never again participate in such a horrible operation.

- Currently, in the Chicago Metropolitan Area, suburban police officers are increasingly detaining and questioning Hispanic Americans for immigration purposes. The local police in Summit, a southwestern Chicago suburb, detained a young U.S. citizen for several hours because he had a thick Spanish accent and could not prove he was a U.S. citizen. Another young Mexican American U.S. citizen was actually turned over to the INS detention facility by a suburban police officer, but was released by federal agents after a few questions. “The arrest followed a pattern of routine traffic stops, generally of Hispanic men in their 20s, followed by questioning and detention because, as one suburban police chief put it ‘they look illegal’,” according to the *Chicago Tribune*.
- On May 27, 1998 in Minneapolis Minnesota, just after 7:00 p.m., five police cars arrived at southeast Minneapolis’ Holmes Park – a popular hangout for some of the city’s Latino community – and drove over street curbs and grass until they had surrounded the volleyball courts. Dozens of Latinos in the park were subjected to more than an hour of degrading interrogation; many were searched and frisked, with legs spread and hands placed against squad cars. According to Curtis Aljets, INS District Director for Minnesota and the Dakotas, the raid was a joint operation between police and the INS to find the “twenty most egregious aggravated felons” from a computer-generated list of immigrants. Following the arrests, 14 people were deported; only one of the detainees had a criminal record.
- Courts have condemned INS and local police departments in several other similar cases, including *Velazquez v. Ackerman* (Director of INS, San Jose, CA.); *de Haro v. City of St. Helena*; *Mendoza v. U.S. City of Farmersville*; and *Cedillo-Perez v. Adams* (Chief of Police of Katy, TX)).

In 1996 Congress established a formal Memorandum of Understanding (MOU) process between the Department of Justice and state or local government to guide such INS-state/local collaborations. However, none of the programs cited above were conducted under the auspices of an MOU, which would have assumed review by DOJ’s Civil Rights Division and training in immigration law for state/local offices.<sup>3</sup> Thus, these collaborations are taking place informally, without any formal review or guidance from the Department of Justice.

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<sup>3</sup> One proposed MOU between DOJ and Salt Lake City was rejected by the City Council after extensive protest from Latino community leaders and other civil rights organizations.

### III. OVERVIEW AND RECOMMENDATIONS

#### A. Overview

As this brief review shows, the Latino community is disproportionately targeted by law enforcement. The use of racial profiling tactics not only violates civil rights, but undermines trust between the Latino community and the police. Racial profiling disparately impacts the Latino community significantly because it is not only targeted by local and state law enforcement agencies, but also by federal agencies including the INS and Customs Service. Joint operations between local/state and federal law enforcement agencies are becoming a routine method of law enforcement resulting in wholesale civil rights violations.

Racial profiling unfortunately is not a new problem. The Latino community has been struggling with racial profiling and law enforcement abuse for too long. Legislation was introduced without avail in the past two Congresses to study, address, and put an end to racial profiling. However, never before has the political climate been more favorable for enacting racial profiling legislation. President Bush acknowledged during his inaugural address that racial profiling was a national problem, and he indicated his firm commitment to the elimination of this discriminatory practice. Later, Attorney General Ashcroft pledged to work with Congress to take the necessary measures to address racial profiling.

In that spirit, the National Council of La Raza strongly supports the **End Racial Profiling Act of 2001** because it strives to eliminate racial profiling comprehensively, including racial profiling by federal agencies, such as the Immigration and Naturalization Service (INS), Drug Enforcement Administration (DEA), and Customs Service, and joint federal-state/local operations. It is crucial that federal law enforcement be held to the same high standards as state and local law enforcement, so that all communities, including the Latino community, can rely on law enforcement to provide protection and safety for everyone.

#### B. Recommendations

To address the growing problem of racial profiling, NCLR:

- **Urges Congress to pass and the Administration to sign the End Racial Profiling Act of 2001.** The Act, introduced by Senators Feingold (D-WI), Clinton (D-NY), Corzine (D-NJ), and Representatives Conyers (D-MI), Morella (R-MD), Ferguson (R-NJ), Greenwood (R-PA), and Johnson (R-IL) would ban the practice of racial profiling by federal law enforcement agencies, and provide incentives to state and local law enforcement agencies to eliminate this practice. Additionally, it requires the collection of data on routine investigatory activities; establishes procedures for receiving, investigating, and responding to claims of racial profiling; and requires training of law enforcement agents and holding them accountable for engaging in racial profiling. In addition, the Act offers incentive grants that encourage

compliance, development, and implementation of practices such as the acquisition of technology to facilitate data collection, training to prevent racial profiling, and a fostering mechanism that would make the interaction between law enforcement and the community more respectful.

- **Urges President Bush and Attorney General Ashcroft to take proactive, interim steps to address racial profiling.** We urge them to reaffirm their commitment to the eradication of this social problem by declaring and enforcing a ban on racial profiling by all federal agencies. Further, we recommend the Administration to require collection of data relevant by all federal law enforcement agencies.
- **Encourages Congress and the Administration to provide adequate resources to the Department of Justice's Special Litigation Section to enable it to fulfill its task of pursuing "pattern and practice" lawsuits against police agencies nationwide which commit widespread abuse.** While many in Congress and the White House have said that they want to ensure the prosecutors have all the resources they need to enforce U.S. laws in these cases, funding of the Civil Rights Division's work in this areas remains inadequate.
- **Calls on the Department of Justice to end collaboration between INS and other law enforcement agencies in conducting enforcement operations.** Any existing cooperation agreement between the INS and local/state law enforcement should be terminated, and the Attorney General should decline to pursue additional agreements.
- **Urges the INS to establish an improved mechanism to address complaints about abuse of authority in the enforcement of federal immigration laws.** The federal government has the authority and obligations to ensure that enforcing the nation's immigration laws do not result in abuse. A body, such as a "civilian review panel" with the ability and resources to accept and investigate complaints of federal law enforcement abuse and to make recommendations for remedial action, should be established to help ensure government accountability and deter further civil rights violations. Such a panel could be a step forward in addressing the ever-increasing number of complaints filed against immigration enforcement agents.

I thank Chairman Feingold for his leadership and vision on this issue that deeply affects the Latino community.