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"A Black Paper"



Wade Henderson Submitted Written Testimony

STATEMENT OF WADE HENDERSON, PRESIDENT & CEO, THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS

HEARING ON "Ending Racial Profiling in America"

BEFORE THE JUDICIARY COMMITTEE SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND HUMAN RIGHTS UNITED STATES SENATE

April 17, 2012

Chairman Durbin, Ranking Member Graham, and members of the Subcommittee: I am Wade Henderson, president & CEO of The Leadership Conference on Civil and Human Rights. Thank you for the opportunity to submit testimony for the record on ending racial profiling in America. I would also like to acknowledge and thank Senator Cardin for his leadership on the End Racial Profiling Act and for his support for this hearing.

The Leadership Conference on Civil and Human Rights is a coalition charged by its diverse membership of more than 210 national organizations to promote and protect the civil and human rights of all persons in the United States.^[1] Founded in 1950 by A. Philip Randolph, Arnold Aronson, and Roy Wilkins, The Leadership Conference works in support of policies that further the goal of equality under law through legislative

advocacy and public education. While we were founded to be the legislative arm of the civil rights movement, our mission has since expanded so that today we are meeting the new challenges of the 21st century, which include guaranteeing quality education for children, ensuring economic opportunity and justice for all workers, and reforming our criminal justice system.

I applaud the Subcommittee for holding this hearing on a matter of vital importance to our coalition. Despite the strides our nation has made toward achieving racial equality, racial profiling is an area in which racial inequality persists. Racial profiling is the reliance by law enforcement on race, ethnicity, national origin, or religion in deciding whom to investigate, arrest, or detain, where these characteristics are not part of a specific subject description. The practice of using race as a criterion in law enforcement flies in the face of progress we have made toward racial equality and must be stopped. Racial profiling is a moral and social problem that threatens our shared value of humane treatment of all people under the law. The recent and avoidable shooting death of an unarmed African-American teenager, Trayvon Martin, has focused attention on the need to ensure that our communities are protected from racial profiling and hate crimes.

Racial profiling violates U.S. laws. According to the U.S. Constitution, federal laws, and guidelines, every person has the fundamental right to equal protection under the law, regardless of race, ethnicity, religion, or national origin. Racial profiling is so insidious and pervasive that it can affect people in their homes or at work, or while driving, flying, or walking. It is antithetical to the founding principle in the Declaration of Independence that “all men are created equal” and to the constitutional right to equal protection under the law. Policies primarily designed to impact certain groups are ineffective and often result in the destruction of civil liberties for everyone. Singling out African Americans, Latinos, Muslims, Arabs, or South Asians for special law enforcement scrutiny without a reasonable belief that they are involved in a crime will result in little evidence of actual criminal activity and wastes important police resources. Racial profiling makes us all less safe, by distracting law enforcement from the pursuit of individuals who pose serious threats to security.

Racial profiling also violates international standards against non-discrimination and undermines United States human rights obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the International Covenant on Civil and Political Rights. Multiple international human rights bodies, including the United Nations Committee on the Elimination of Racial Discrimination (which monitors implementation of the ICERD), have raised concerns about the persistence of racial and ethnic profiling by U.S. law enforcement. In its 2008 concluding observations to the United States, the Committee “note[d] with concern that despite the measures adopted at the federal and state levels to combat racial profiling . . . such practice continues to be widespread.”^[2] The Committee reiterated its recommendations in 2009, calling on the U.S. government to “make all efforts to pass the End Racial Profiling Act.”^[3]

In March 2011, The Leadership Conference on Civil and Human Rights released a policy report entitled “Restoring a National Consensus: The Need to End Racial Profiling in America.”^[4] The report presents quantitative and qualitative evidence to demonstrate the widespread use of racial profiling in three contexts—street-level crime, counterterrorism, and immigration law enforcement. The report also demonstrates how racial profiling in the counterterrorism and immigration contexts is encouraged by misguided federal programs that incentivize law enforcement authorities to engage in the practice. Sadly, much of the data today is consistent with what it was almost a decade ago when the End Racial Profiling Act (ERPA) was first introduced, and in many ways the need for action by our federal government is now even more necessary.

Racial profiling leads to individual indignity and suffering, increases the likelihood that actual criminal behavior will go uncaught and unpunished, undermines the integrity of our criminal justice system, and instills fear and distrust among members of targeted communities. Racial minorities continue to be targeted at disproportionate rates by law enforcement, and the targeting is not and never will be effective. Recent data on stops and frisks in New York City showed the racially driven use of stops and frisks against minorities yields little achievements in fighting crime. According to the data, in 2009, even though Blacks and Latinos comprised 26 and 27 percent of New York City’s population respectively, they comprised 84 percent of the individuals that were stopped. White individuals were 47 percent of the NYC population and 9 percent of the stops.^[5] White individuals stopped during the first half of 2009 and 2010 yielded slightly more contraband than stops of Blacks and Latinos.^[6]

Recent state and local legislation masked as immigration enforcement programs effectively mandate profiling based on perceived race or national origin. For example, Arizona’s S.B. 1070 requires law enforcement officers to question the immigration status of someone who is stopped, detained, or arrested if there is “reasonable suspicion” that they are in the country illegally. The law is currently being challenged in the U.S. Supreme Court, with oral arguments scheduled for April 25, 2012. The Leadership Conference and the Southern Poverty Law Center, joined by 105 national and local civil rights and faith groups, filed a friend of the court brief with the Court arguing that S.B. 1070 and copycat laws passed in other states, fundamentally conflict with federal law and would have an unprecedented negative impact on the lives of lawful permanent residents and American citizens.^[7] The fate of S.B. 1070 and the copycat laws in other states, including Utah, Indiana, Georgia, Alabama, and South Carolina, will ultimately be determined by the Court’s decision.

Racial profiling—in all of its forms—is not only morally wrong and ineffective, it undermines the integrity of our criminal justice system, and instills distrust among targeted communities. ERPA will help lead to the elimination of profiling based on characteristics such as race, religion, ethnicity, and national origin by law enforcement at all levels of government. Congress should pass ERPA, which would:

- apply a prohibition on racial profiling to state and local law enforcement;
- include a complaint mechanism for enforcement;

- require data collection to monitor the government’s progress toward eliminating profiling;
 - establish a private right of action for victims of profiling; and
 - provide best-practice development grants to state and local law enforcement agencies that will enable agencies to use federal funds to bring their departments into compliance with the requirements of the bill.

Congress should also urge the Department of Justice to revise its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies. The guidance prohibits federal agents, during the course of traditional law enforcement activities, from using race or ethnicity in any way, except in a specific suspect description. The guidance should be revised to:

- prohibit profiling based on religion and national origin;
- remove national and border security loopholes;
- apply to law enforcement surveillance activities;
- apply to state and local law enforcement agencies acting in partnership with federal agencies; and
- include enforceable accountability mechanisms.

It is time for this Congress to lead the way to an America where the principles of “all men are created equal” and “equal protection under the law” apply to everyone. In the case of Trayvon Martin, the alleged conduct of his shooter may be beyond the scope of ERPA, but the actions of the police and other government officials in response to that shooting are not. By allowing racial and religious bias to dictate the scope of law enforcement’s investigation or who is detained by law enforcement or, we betray the fundamental promise of equal protection under the law. Congress can help law enforcement to direct its resources where they are truly necessary, ensure that our communities are safe, and reaffirm the core principles of the Constitution.

Again, thank you for convening this hearing and for the opportunity for The Leadership Conference to express its views on racial profiling in America.

[1] More than 120 national, state, and local coalition members and allied organizations have signed a letter calling for cosponsorship and passage of the End Racial Profiling Act of 2011. We submit this letter to the Subcommittee and ask that it be included as part of the record.

[2] U.N. Committee on the Elimination of Racial Discrimination (CERD), Consideration of Reports submitted by States Parties Under Article 9 of the Convention: Concluding observations of the Committee on the Elimination of Racial Discrimination: United States of America, ¶ 14, U.N. Doc. CERD/C/USA/CO/6 (May 2008).

[3] Letter from Chairperson of the Committee on the Elimination of Racial Discrimination to the United States (Sept. 28, 2009), available at http://www.aclu.org/files/pdfs/humanrights/uncerdresponse_racialdiscrimination.pdf

[4] <http://www.civilrights.org/publications/reports/racial-profiling2011>. The report is attached to this testimony to be included with the hearing record.

[5] The Center for Constitutional Rights, NYPD Stop-and-Frisk Statistics 2009 and 2010 at http://ccrjustice.org/files/CCR_Stop_and_Frisk_Fact_Sheet.pdf

[6] *Id.*

[7] See Brief for The Leadership Conference on Civil and Human Rights, Southern Poverty Law Center, League of United Latin American Citizens, et al. as Amici Curiae in Support of Respondent, March 26, 2012 available at <http://www.civilrightsdocs.info/pdf/briefs/11-182-brief-az-the-leadershipconference.pdf>

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*This Testimony is also on the Prison Reform lane on the Black Information Highway and The Mid-South Tribune ONLINE at www.blackinformationhighway.com. Subscribe FREE to the BIHMST Channel on YouTube. For more information on racial profiling, travel to www.civilrights.org or call 202-466-2061. Welcome, Travelers!