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TESTIMONY SUBMITTED BY
HILARY O. SHELTON
DIRECTOR, NAACP WASHINGTON BUREAU &
SENIOR VICE PRESIDENT
FOR ADVOCACY AND POLICY

to the

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

on

“RACIAL PROFILING IN THE UNITED STATES”

April 17, 2012



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Good morning Chairman Durbin, Senator Cardin, and esteemed Members of the Senate Judiciary Subcommittee. Thank you so much for calling this important hearing and for your consistent and inspiring leadership in the struggle to end racial profiling.

I am submitting this testimony on behalf of the National Association for the Advancement of Colored People, the NAACP. The NAACP currently has more than 2,200 membership units in every state in the country, and I would wager that every NAACP unit has received dozens of complaints of racial profiling in any given year. In fact, many NAACP units report receiving hundreds, if not thousands, of complaints of racial profiling each year. Racial profiling is unconstitutional, socially corrupting and counter-productive to smart and effective law enforcement.

As the Director of the NAACP Washington Bureau, the federal policy and national legislative arm of the NAACP, and the Senior Vice President for Advocacy and Policy, it has been my pleasure to work with the NAACP for almost 17 years, and I can honestly say that ending racial profiling has long been a top NAACP priority for decades.

For the record and to avoid confusion, the operational definition of the term `racial profiling' means the practice of a law enforcement agent or agency relying, to any degree, on race, ethnicity, national origin, or religion in selecting which individual to subject to routine or spontaneous investigatory activities or in deciding upon the scope and substance of law enforcement activity following the initial investigatory procedure, except when there is trustworthy information, relevant to the locality and timeframe, that links a person of a particular race, ethnicity, national origin, or religion to an identified criminal incident or scheme. In other words, racial profiling occurs when any law enforcement representative uses one of the pretextual characteristics stated above

when determining who they will investigate, arrest, question or detain without acceptable cause.

Sadly, racial profiling is being used, even today, at all levels of law enforcement: local, state and federal agents have all been shown to use racial profiling as a damaging and unnecessary means and tool of policing. As a matter of fact, it has been determined that even some community based citizens' watch groups associated with official law enforcement agencies have resorted to the practice. The fact that racial profiling is still a common tactic among so many law enforcement agencies is, frankly, startling, given that it has been proven to be an inefficient, offensive, counter-productive and illegal law enforcement tool.

To add further concern, the use of racial profiling is increasing as more and more states take stands against illegal immigrants and as local, state and federal authorities contend with the post-September 11 world. Racial profiling against people who appear to be of Hispanic heritage, as well as against Arabs, Muslims, and South Asians has multiplied and been exacerbated by a lack of responsive policy, guidance and education about the damage it causes.

Even at the most global level, the United Nations' Committee on the Elimination of Racial Discrimination highlighted the importance of combating racial profiling in its General Comment on combating racism in the administration of the criminal justice system from August, 2005.¹ Domestically, the continued use of racial profiling has, sadly and unfortunately, undercut our communities' trust and faith in the integrity of the American judicial system.

The racially discriminatory practice of racial profiling must be challenged when we find that Americans cannot drive down an interstate, walk down the street, work, pray, shop, travel or even enter into our own homes without being detained for questioning by law enforcement agents merely because of suspicion generated by the color of our skin and other physical characteristics. Racial profiling leads to entire communities losing confidence and trust in the very men and women who are meant to be protecting and serving them. As a result of racial profiling practices, it becomes much harder for law enforcement, even those who do not engage in racial profiling, to do their jobs to prevent, investigate, prosecute or solve crimes.

Evidence to support the prevalence of racial profiling by law enforcement officials is as voluminous as it is varied: According to a 2004 report by Amnesty International USA, approximately thirty-two million Americans, a number equivalent to the population of Canada, report they have already been victims of racial profiling².

Furthermore, prominent people speaking out against racial profiling include former Presidents Bill Clinton, who called racial profiling "morally indefensible, deeply

¹ CERD Gen. Rec. No. XXXI, §III(A)¶20, 71st sess., U.N. Doc. A/60/18 (Aug. 17, 2005)

² Amnesty International USA, "Threat and Humiliation: Racial Profiling, National Security, and Human Rights in the United States" October, 2004, available at http://www.amnestyusa.org/racial_profiling/report/rp_report.pdf

corrosive practice” and further stated that “racial profiling is in fact the opposite of good police work, where actions are based on hard facts, not stereotypes. It is wrong, it is destructive, and it must stop.”³ and George W. Bush, who on February 27, 2001, said that racial profiling is ...”wrong, and we will end it in America. In so doing, we will not hinder the work of our nation's brave police officers. They protect us every day -- often at great risk. But by stopping the abuses of a few, we will add to the public confidence our police officers earn and deserve.”⁴

It has become frustratingly clear that all too often, elected officials at the local, state and federal level are willing to “talk the talk” about the numerous ills of racial profiling, but shamefully only a few are actually demonstrating the courage to do something about it.

At the federal level, effective anti-racial profiling legislation has been introduced in the House and the Senate since 1997, and numerous hearings have been held, but to date no action has been taken. The response of state legislatures to evidence of racial profiling by law enforcement agencies has been, according to the American Civil Liberties Union, “with a few exceptions, inaction and a series of half measures.”⁵

It is clear that more can and must be done to eliminate racial profiling. The NAACP strongly supports S. 1670 / H.R. 3618, the *End Racial Profiling Act*. This legislation provides us with a data-based approach to tackle what is still a pervasive problem.

First, the *End Racial Profiling Act* provides us with a clear and effective definition of what is racial profiling as well as an unambiguous and unequivocal ban on its use by all law enforcement officials.

Second, the *End Racial Profiling Act* requires the collection of the data we need to truly assess the extent of the problem. In simple terms, “in order to fix it, you must first measure it”. The only way to move the discussion about racial profiling from rhetoric and accusation to a more insightful and rational dialogue and appropriate with enforcement strategies is to collect the information that will either allay community concerns about the activities of the police or help communities ascertain the scope and magnitude of the problem. Furthermore, implementing a data collection system also sends a clear message to the entire police community, as well as to the larger community, that racial profiling is inconsistent with effective policing and equal protection.

If it is done right, data collection will also lead to the third element of an effective anti-racial profiling agenda, an element that would be mandated by the *End Racial Profiling Act*: training. Law enforcement officials at all levels, from the unit commander to the

³ *Attorney General's Conference on Strengthening Police-Community Relationships, Report on the Proceedings*, Washington, DC: U.S. Department of Justice, June 9–10, 1999, at 22–23.

⁴ Address to a Joint Session of Congress, February 27, 2001, President George W. Bush

⁵ “*The Persistence of Racial and Ethnic Profiling in the United States, A Follow-Up Report to the U.N. Committee on the Elimination of Racial Discrimination*,” published by the American Civil Liberties Union and the Rights Working Group, August 2009, page 40.

desk sergeant to the cop-on-the beat and of all jurisdictions, from federal agents to state and local police, should all be required to be able to not only identify racial profiling, but also to know of its shortcomings and be able to put an end to it while increasing their effectiveness in protecting our communities and our Nation.

Fourth, and last, the *End Racial Profiling Act* would enable citizens and the government alike to hold law enforcement agencies that continue to use racial profiling accountable. In order for anti-racial profiling actions to be effective, and rebuild the trust between law enforcement and the communities they are charged with protecting, people must know that we are serious about eliminating the scourge of racial profiling.

We are all aware that the Constitution of the United States guarantees to all people equal protection under the law and the right to pursue life, liberty and happiness. Implicit in this guarantee is the ability to walk down the street, to drive one's car down the road, or to enter into our own homes without fear of arrest or interference.

The majority of law enforcement officers are hard working men and women, whose concern for the safety of those they are charged with protecting is often paramount, even when their own safety is on the line. However, if and when even one of their colleagues engages in racial profiling, whether it be conscious or subconscious, the trust of the entire community can be, and will be, lost. Law enforcement agents should not endorse or act upon stereotypes, attitudes, or beliefs that a person's race, ethnicity, appearance or national origin increases that person's general propensity to act unlawfully.

Not only is racial profiling morally wrong, and ineffective, but it is also a misuse of government resources and detrimental to effective policing. The concept that we must somehow choose between public safety and the protection of our civil rights is misguided, at best not to mention grossly and woefully unconstitutional. There is no tradeoff between effective law enforcement and protection of the civil rights of all Americans; we can and must have both.

Thank you again, Chairman Durbin for holding this important hearing and for soliciting the thoughts of the NAACP and for your continued leadership in this area.