

# **United States of America**

## **Submission to the United Nations Universal Periodic Review**

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### **The Persistence, in the United States, of Discriminatory Profiling Based on Race, Ethnicity, Religion and National Origin**

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**Endorsed by:** The Advocates for Human Rights; The Arab American Association of New York; The Arab American Family Support Center; The Arab American Institute; The Arab Community Center for Economic and Social Services; The Bill of Rights Defense Committee; The Coalition for Humane Immigrant Rights of Los Angeles; Community to Community; Desis Rising Up & Moving; The Friends Committee on National Legislation; The International Human Rights and Rule of Law Project, Seton Hall University School of Law; JoAnn Kamuf Ward, Human Rights in the U.S. Fellow, Human Rights Institute, Columbia Law School; Justice Now; LatinoJustice PRLDEF; The Leonard Peltier Defense Offense Committee; The Maine People's Alliance; Make the Road New York; The Meiklejohn Civil Liberties Institute (MCLI); Metro Atlanta Taskforce for the Homeless; Muslim Advocates; The National Economic and Social Rights Initiative; The National Immigration Forum; The National Lawyers Guild; The National Lawyers Guild, Anti-Racism Committee; The National Network for Arab American Communities; The National Network for Immigrant and Refugee Rights; The New Jersey Immigration Policy Network; The Northwest Federation of Community Organizations; Public Interest Projects; South Asian Americans Leading Together; Three Treaties Taskforce of the Social Justice Center of Marin; Tompkins County Immigrant Rights Coalition; Ute Ritz-Deutch, PhD.; World Organization for Human Rights USA; Youth Justice Coalition.

## EXECUTIVE SUMMARY

1. As a State Party to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the International Covenant on Civil and Political Rights (ICCPR), the United States (U.S.) is obligated to ensure the non-derogable right of all people under its jurisdiction to be free from discrimination. This report focuses on U.S. policies and programs that racially profile or that allow for or incentivize the use of racial profiling—resulting in U.S. failure to comply with its obligations to honor the principles of equality and non-discrimination. In this report, and unless specified otherwise, we use the phrase ‘racial profiling’ to refer to profiling based on race, ethnicity, religion and national origin.
2. The Rights Working Group (RWG) is a national coalition of over 260 organizations working at the national, state, and local/community level and, as such, has access to information pertaining to the implementation of international human rights obligations at all levels of the U.S. government. In preparing a report for the Universal Periodic Review (UPR) process, RWG conducted broad consultation with its member organizations and received significant contributions from these and other partners, including human rights institutes at U.S. law schools. The report was drafted based on submissions from these partners as well as on human rights reports released over the period of the last four years. Following the preparation of a draft report, RWG conducted a comment period during which organizations engaged in the UPR process could provide feedback on and endorse the draft.
3. Two United Nations (UN) human rights treaty bodies have called upon the U.S. government to take specific actions to end racial profiling and fulfill its treaty obligations. In paragraph 24 of its 2006 Concluding Observations of U.S. compliance with the ICCPR (CCPR/C/USA/CO/3/ Rev.1), the Human Rights Committee called upon the U.S. government to “continue and intensify its efforts to put an end to racial profiling used by federal as well as state law enforcement officials,” particularly in state police stops and searches. In paragraph 27, the Committee recommended that “agents who have received adequate training on immigration issues enforce immigration laws.” In paragraph 14 of its 2008 Concluding Observations of U.S. compliance with the ICERD (CERD/C/USA/CO/6), the Committee on the Elimination of Racial Discrimination (CERD) recommended that the U.S. “strengthen its efforts to combat racial profiling at the federal and state levels.”
4. In both 2008 and 2009, the CERD urged the U.S. to review the National Security Entry-Exit Registration System (NSEERS) and to stop this and other programs that have encouraged racial profiling of Muslims, Arabs and South Asians since September 11<sup>th</sup>, 2001. It further encouraged the U.S. to ensure that counter-terrorism measures do not discriminate on the grounds of race, color, descent, or national or ethnic group. In fact, despite the Administration’s acknowledgement that the NSEERS program has not been effective at identifying potential terrorists, the government has failed to terminate or reform the program.
5. In 2009, the CERD raised concerns about the use of racial profiling in migration policies and urged the U.S. government to reconsider its policy under the 287(g) provision of the 1996 Immigration and Nationality Act. Rather than assess the human rights violations caused by this provision, the Obama Administration in fact expanded the “287(g)” program in 2009, adding programs in new jurisdictions and bringing the total number to 66 programs in place

and 7 additional agreements in negotiation. Despite a series of congressional hearings about abuses caused by the 287(g) program and a Department of Homeland Security (DHS) Office of Inspector General's report identifying serious problems in the implementation of the program, DHS continues to tout it as an important component of immigration enforcement efforts.

6. Beyond 287(g), DHS has also expanded other programs intended to engage state and local criminal justice systems in the enforcement of federal civil immigration laws. Programs such as the Criminal Alien Program and the Secure Communities Initiative have been criticized by advocates as violating the human rights of both non-citizens and citizens, yet these programs have also expanded in the last year and are anticipated to grow in 2010 and 2011.
7. In 2009, the CERD additionally urged the U.S. to eliminate loopholes in the 2003 Department of Justice (DOJ) *Guidance Regarding the Use of Race by Federal Law Enforcement Agencies*. The Obama Administration has thus far failed to complete an adequate review of this guidance, which has the effect of perpetuating discrimination.
8. The UN Special Rapporteur on Racism in his 2009 report on his country visit to the U.S. also called attention to the serious problem of racial profiling by law enforcement. He criticized the persistent use of racial profiling by law enforcement officials, particularly in stops and searches of members of the African American and Hispanic communities. He also noted concerns with profiling practices that target people of Arab, Muslim, South Asian or Middle-Eastern descent, particularly in air travel and border control, and condemned the NSEERS program for its ethnic and religious discrimination. The Special Rapporteur urged the U.S. government to adopt federal legislation prohibiting racial profiling and he called for action by state governments to do the same. Despite this recommendation, also urged by the CERD in its follow up letter to the U.S. government in 2009 and its 2008 Concluding Observations of U.S. compliance with the ICERD, the U.S. Congress has not introduced such legislation during this current legislative session, and the Administration has not urged Congress to act.
9. In his January 2007 report, the Special Rapporteur on the Promotion and Protection of Human Rights While Countering Terrorism noted that U.S. policies designed to counter terrorism singled out immigrants from Arab and/or Muslim populations and expressed grave concern with the use of terrorist profiles based on race, ethnicity, religion or national origin.
10. We recommend the swift implementation of the following reforms by the U.S. government to combat racial profiling at the federal and state levels and bring the U.S. into compliance with its human rights obligations (these recommendations are further described on page 10):
  - a. The President should issue an executive order prohibiting racial profiling.
  - b. The Department of Justice should revise its 2003 guidance on racial profiling.
  - c. The Obama Administration should urge Congress to introduce and pass meaningful federal legislation prohibiting racial profiling.
  - d. The Department of Homeland Security should terminate federal immigration enforcement programs that rely on state and local criminal justice systems.
  - e. The 2002 DOJ Office of Legal Counsel (OLC) "inherent authority" memo that reversed historical trends to keep state and local law enforcement out of federal

civil immigration work should be rescinded and OLC should issue a new memo clarifying that state and local law enforcement agents may not enforce federal immigration laws absent formal, federal authority.

- f. The Department of Homeland Security should terminate the NSEERS program, repeal related regulations, and provide relief to unfairly impacted individuals.

#### CURRENT NORMATIVE AND INSTITUTIONAL FRAMEWORK FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS RELATED TO RACIAL PROFILING

11. In June 2003, the U.S. Department of Justice (DOJ) issued administrative guidance on the use of race by federal law enforcement agencies. While the guidance bans the use of race or ethnicity in routine or spontaneous law enforcement decisions made by federal officers, the guidance suffers from several problematic loopholes. First, it makes an exception with respect to “activities and other efforts to defend and safeguard against threats to national security or the integrity of the Nation's borders,” an exception that is so broad and ill-defined that it eviscerates much of the purpose of the guidance. Further, the prohibition on racial profiling is weakened because there is no parallel prohibition of profiling on the basis of religion and national origin. The guidance also has limited reach because it does not consistently apply to state or local law enforcement agencies working in cooperation with federal agencies or receiving federal funds. Finally, the guidance has limited effect as it is unenforceable in a court of law.
12. Federal legislative efforts to prohibit racial profiling and overcome the flaws in the existing DOJ guidance have so far not come to fruition. As early as 2001 and again in 2004, 2007 and 2009, Congress has tried to pass the End Racial Profiling Act (ERPA). The latest efforts to introduce ERPA are ongoing, but currently, there is no federal legislation prohibiting the use of racial profiling by law enforcement authorities.

#### INFORMATION ON THE IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS PERTAINING TO RACIAL PROFILING

##### **Racial Profiling by Law Enforcement in Stops, Frisks, Searches and Seizures**

13. Racial minorities and indigenous peoples continue to be unfairly targeted by law enforcement based upon subjective identity-based characteristics rather than on identifiable behavior that makes them reasonably suspicious of criminal activity. Across the United States, traffic stops are often used as a pretext for determining whether these individuals are engaged in criminal activity. These racially motivated searches are not productive, resulting in extremely low seizure rates of contraband.
14. A national survey conducted in 2002 by the DOJ found that blacks and Hispanics were two to three times more likely to be stopped and searched than whites but were less likely to be found in possession of contraband.<sup>ii</sup>
15. In Arizona, analysis of data related to highway stops made between July 1, 2006 and June 30, 2007 found that Native Americans were more than 3 times as likely to be searched as whites by officers of the Arizona Department of Public Safety. African Americans and Hispanics

were 2.5 times more likely to be searched than whites. Whites, however, were found to be more likely to be carrying contraband than Native Americans or Hispanics; seizure rates of drugs, weapons or other illegal materials for whites and African Americans were similar.<sup>iii</sup>

16. In Maryland, data from 2008 shows that 70% of individuals searched by Maryland State Police (MSP) on Interstate 95 were people of color (defined in a related report as African American, Hispanic and other non-white individuals). This is a finding very similar to that revealed by data from 2002, the year prior to a consent decree where MSP agreed to improve procedures for motorists to file complaints of racial profiling and where MSP agreed to investigate all such complaints. When the American Civil Liberties Union and the National Association for the Advancement of Colored People filed a public information request for investigative records related to complaints of racial profiling after 2003, MSP refused to turn over these documents and then appealed the ruling of a judge who stated that the documents should be disclosed.
17. In Los Angeles, analysis of data by Yale University<sup>iv</sup> gathered between July 2003 and June 2004 found that the stop rate of blacks and Hispanics, respectively, is 3,400 times and 360 times higher than the stop rate for whites. Compared to stopped whites, stopped blacks and Hispanics are, respectively, 127% and 43% more likely to be frisked. Compared to stopped whites, stopped blacks and Hispanics are, respectively, 76% and 16% more likely to be searched. Simultaneously, the analysis found that these frisks and searches were systematically less productive when conducted on blacks and Hispanics than when conducted on whites. Frisked blacks and Hispanics, respectively, are 42.3% and 31.8% less likely to be found with a weapon than frisked non-Hispanic whites.
18. In New York, the Center for Constitutional Rights (CCR) alleged that the New York Police Department (NYPD) engaged in a policy and practice of illegal racial profiling. In CCR's lawsuit *Floyd v. City of New York*,<sup>v</sup> a court ruling during the discovery period of this case ordered the NYPD to release all of its 'stop-and-frisk' data from 1998 through the beginning of 2008 to CCR. This data revealed that in 2009, a record 575,304 people were stopped, 87 percent of whom were Black and Hispanic individuals—although they comprise approximately 25 percent and 28 percent of New York City's total population respectively. Of the cumulative number of stops made since 2005, only 2.6 percent resulted in the discovery of a weapon or contraband. Though rates of contraband yield were minute across racial groups, stops made of Whites prove to be slightly more likely to yield contraband.<sup>vi</sup>
19. Data from across the country demonstrate that racial profiling is an ineffective crime detection tactic. Racial profiling is also unconstitutional and in violation of human rights obligations. It contributes to mistrust and fear of police by members of minority communities who become less likely to report crimes or serve as witnesses.

### **Racial Profiling in the Enforcement of Federal Immigration Laws by State/Local Police**

20. In the last decade, the U.S. government has increasingly encouraged the involvement of state and local police in the enforcement of federal immigration laws. Formal and informal partnerships between state/local law enforcement and the federal government incentivize

racial profiling by using the state criminal justice system to target perceived foreigners and to channel them into the immigration enforcement system.

21. The 287(g) program is a voluntary partnership initiative authorized by the U.S. Immigration and Nationality Act (INA) of 1996 that allows the Department of Homeland Security's (DHS's) Immigration and Customs Enforcement (ICE) agency to enter into agreements with state and local law enforcement agencies. These agreements delegate specified immigration enforcement duties to state and local law enforcement officers. Implementation of the 287(g) program has not prioritized areas of the country most affected by violent and serious crimes by deportable immigrants. Instead, the jurisdictions that have elected to participate have simply seen a recent influx of immigrants, not an increase in crime: 87% of the jurisdictions, as of February 2009, had shown increases in the Latino population demographic that is higher than the national average.<sup>vii</sup> The Department of Homeland Security's Office of Inspector General, the Government Accountability Office (GAO), and numerous advocacy groups have found that the 287(g) program has not been consistently implemented, that it lacks effective training, communications, and oversight, and that it is missing protections against racial profiling and other civil rights abuses.<sup>viii</sup> Reports by universities, think tanks and advocacy groups have documented allegations of racial profiling and have also found that several jurisdictions have mostly employed their 287(g) authority to process individuals for minor offenses like speeding. ICE-deputized officers in Gaston, North Carolina, for example, reported that 95% of state charges resulting from 287(g) arrests were for misdemeanors; 83% of individuals were charged for traffic violations.<sup>ix</sup>
22. Although ICE announced a new standardized memorandum of agreement (MOA) for the 287(g) program in July 2009, claiming to have created greater oversight and control, state and local law enforcement deputized into the program still only receive a very limited 4-week training session, only some portion of which is spent on the scope of complicated U.S. immigration and constitutional laws. The program also lacks a mechanism to determine whether racial profiling may have led to the arrest. Finally, the new MOA contains a provision preventing local jurisdictions from sharing information about the program with the public, making the program less transparent.
23. The Criminal Alien Program (CAP) is an immigration screening process within federal, state and local correctional facilities designed to allow ICE to identify and place immigration holds or "detainers" on incarcerated individuals perceived to be deportable immigrants and to process them for possible removal before they are released from custody. A recent study by the University of California, Berkeley School of Law examining the CAP program in Irving, Texas strongly suggests that the program incentivized local police officers to racially profile individuals and conduct pre-textual arrests on minor charges including driving offenses, as they knew that federal officers would check immigration status through CAP. The report found that felony charges accounted for only 2% of the ICE detainers issued, while 98% of ICE detainers were issued for misdemeanor offenses. Further, the report found an upward trend in arrests of Latino individuals and referrals to ICE and a downward trend in issued detainers, indicating that after implementation of CAP, the majority of Latino arrests were for misdemeanor offenses of lawful residents.<sup>x</sup>

24. During the booking process, Secure Communities, an immigration enforcement initiative launched by ICE in March 2008, allows the fingerprints of arrestees to be automatically checked against DHS' civil immigration databases in addition to the Federal Bureau of Investigation's (FBI's) criminal databases. Like CAP, Secure Communities has been criticized for creating an incentive for police to arrest people based on racial or ethnic profiling and for pre-textual reasons so that immigration status can be checked. Between inception of the program in October 2008 and the time of a joint announcement by the Secretary of the Department of Homeland Security and the Assistant Secretary for ICE in November 2009, Secure Communities had identified only 11,000 individuals charged with or convicted of Level 1 crimes while more than 100,000 individuals were charged with or convicted of lesser Level 2 and Level 3 crimes.<sup>xi</sup> The "criminal aliens" included in ICE's numbers even included U.S. citizens, since naturalized U.S. citizens have records in immigration databases.
25. These immigration enforcement programs have been implemented absent meaningful transparency and accountability measures and DHS has made it challenging for the public to gain access to information about them. As such, non governmental organizations including the American Civil Liberties Union, the National Immigration Law Center, and the Center for Constitutional Rights have had to resort to making requests for information on the nature, scope and impact of the 287(g) and Secure Communities programs under the Freedom of Information Act. The 287(g) program, the Criminal Alien Program and the Secure Communities program also lack effective complaint procedures. Unable to guarantee confidentiality and reliant on internet access and 1-800 numbers, which may not be accessible by an arrestee from his jail cell and which require proficiency in English, the complaint procedures attached to these programs do not provide an adequate avenue for redress to individuals who may have legitimate complaints regarding violations of their human rights.
26. In some localities, state and local police are enforcing federal immigration laws without any formal authority granted to them by the federal government. Many such agents are operating on what they believe is their "inherent authority" to enforce immigration law, an "authority" advanced through a 2002 Department of Justice (DOJ) Office of Legal Counsel (OLC) memo. Some state and local law enforcement agents have interpreted this memo as granting them the ability to arrest individuals they suspect of lacking legal immigration status and then to turn them over to ICE. State and local agents exercising "inherent authority" act without oversight or training in immigration law enforcement and potential human rights violations.
27. The participation of local police in these programs also undermines community trust in law enforcement. Many independent reports document that immigrant victims and witnesses of crime are reluctant to contact local police for fear of immigration consequences in areas where these programs are in operation.

### **Racial Profiling in "National Security" or "Counterterrorism" Measures**

28. Following the tragic events of September 11, 2001, the U.S. government implemented counterterrorism programs and policies that profiled mostly Muslim, Arab and South Asian

men based on their perceived race, ethnicity, religion or national origin. The government also began aggressively using civil immigration laws, criminal laws and criminal procedures in a sweeping and discriminatory manner to target members of these communities.

29. Muslims, Arabs and South Asians have been profiled at border stops and airports where individuals are singled out for intrusive questions, invasive searches and lengthy detentions without reasonable suspicion of criminal activity. Customs and Border Patrol (CBP) agents question individuals about their faith, associations and political opinions. Travelers have had their personal documents, books and electronic devices seized and many of these travelers believe that the information contained therein has been copied by CBP agents. This unjust treatment is due partly to poor CBP guidance released in 2008 that allows officers to “review and analyze information transported by any individual attempting to enter, reenter, depart, pass through, or reside in the United States” absent individualized suspicion.
30. In August 2007, the Transportation Security Administration (TSA) released new guidelines to serve as standard operating procedures for airport security screening. Sikh turbans and Muslim head coverings were singled out for screening with higher scrutiny, despite a lack of evidence that these religious head coverings were being employed to hide dangerous items. Widespread profiling of Sikhs occurred as a result, and the Sikh Coalition, an advocacy group, found that with turban-wearing men facing additional scrutiny absent reasonable suspicion at rates so disproportionate as to suggest that nearly all turban-wearing Sikh men were being subjected to additional screening.<sup>xii</sup> In late 2007, a set of options for screening Sikhs that allow, for example, greater privacy, was negotiated by the TSA and Sikh organizations in coordination with the release of TSA’s October 2007 “bulky clothing” policy. The policy was implemented with questionable success, with great variance and inconsistency between airports. TSA’s broad “bulky clothing” policy through which “passengers could be subjected to additional screening to further evaluate any item that could hide explosives or their components” has resulted in de facto racial profiling, capturing a majority of Sikhs who wear non-form fitting headwear, flowing clothing, or other secular and religious clothing.
31. The Bush Administration released the Attorney General’s Guidelines for Domestic FBI Operations (hereinafter “FBI Guidelines”) that went into effect on December 1, 2008. They allow for racial profiling by permitting the FBI to open “assessments” and thus investigate anyone without any requirement that there be a factual connection between the agent’s authorizing purpose and the conduct of the individual under investigation. Additionally, while the 2003 DOJ Guidance Regarding the Use of Race by Federal Law Enforcement Agencies prohibits the use of race or ethnicity as *a factor* leading to investigations, the FBI Guidelines prohibit only investigative activities *based solely* on the use of race or ethnicity, essentially eviscerating the purpose of the DOJ Guidance. The FBI Guidelines have been used by the U.S. government to disproportionately target Arabs, Muslims and South Asians and the Obama Administration has not yet repealed these Guidelines.
32. The National Security Entry-Exit Registration System (NSEERS) employed immigration law as a counterterrorism tool. This program required non-immigrant males aged 16-45 from 25 countries (all but one were predominantly Muslim countries, the anomaly was North Korea) to register themselves at ports of entry and local immigration offices for fingerprinting,

photographs, and lengthy interrogations. Many individuals were deported through secret proceedings that took place without due process of law. More than 80,000 men underwent registration and thousands were subjected to lengthy interrogations and detention. Though certain registration requirements have been suspended, individuals who did not comply with NSEERS registration requirements, due to factors including inadequate government notice of the requirements and individuals' fear of potential interrogations, detention and deportation, are still subject to severe penalties which have included the prevention of naturalization or the deportation of individuals. An investigation by the National Commission on Terrorist Attacks upon the United States determined that programs like NSEERS did not demonstrate clear counterterrorism benefits.<sup>xiii</sup>

33. "Operation Frontline," a DHS program initiated after September 11<sup>th</sup> and designed to "detect, deter and disrupt terrorist operations" utilized the NSEERS database to identify targets. Data from DHS revealed that 79% of individuals investigated were from Muslim-majority countries.<sup>xiv</sup> Data also demonstrated that foreign nationals from Muslim-majority countries were 1,280 times more likely to be targeted than similarly situated individuals from other countries.<sup>xv</sup> Similarly to NSEERS, Operation Frontline was ineffective in producing a single terrorism-related conviction from the interviews conducted under the program.
34. A 2006 study commissioned by the DOJ found that Arab Americans were significantly fearful and suspicious of federal law enforcement due to government policies. It also found that both community members and law enforcement officers determined that diminished trust was the most important barrier to cooperation.<sup>xvi</sup> Community groups have also reported that members of these targeted communities became so afraid of having any contact with officials after post-9/11 "national security" or "counterterrorism" policies were introduced that they did not report domestic violence or other crimes, did not ask for assistance in emergency situations, and, in some cases, did not seek medical treatment<sup>xvii</sup>.

#### ACHIEVEMENTS AND BEST PRACTICES

35. Following the attempted bomb attack on board a flight bound for Detroit, Michigan on Christmas Day 2009, the Transportation Security Administration (TSA) issued new screening standards. Encouraging profiling based on national origin, this guidance mandated that enhanced security measures be applied indiscriminately to individuals who hold passports "issued by or [are] traveling from or through nations that are state sponsors of terrorism or other countries of interest" and, in early 2010, TSA began subjecting airline passengers originating from or passing through these countries to heavy screening including pat-down searches and physical inspections of carry-on items absent any individualized suspicion. The list of countries consisted of predominantly Arab and Muslim nations with the exception of Nigeria—the country of origin of the Christmas Day bomb suspect—and Cuba—a country sending extremely limited numbers of flights to the United States. In early April 2010, the Obama Administration rescinded this policy and stated that it would instead select passengers for screening based on "real-time, threat-based" intelligence information. It is commendable that the Administration took this action in response to pressure from advocates and affected communities who highlighted the discriminatory nature of this policy. However, the risk of ongoing, de facto profiling by border agents given broad discretion to

search and question without individualized suspicion remains a concern for human rights advocates.

36. It is important to note that the U.S. government has taken some critical first steps in response to concerns about racial profiling by instigating a number of investigations into particular programs or law enforcement agencies. For example, in March 2009, the U.S. Department of Justice announced an investigation into the Maricopa County (Arizona) Sheriff's Office to determine whether law enforcement officials have engaged in "patterns or practices of discriminatory police practices and unconstitutional searches and seizures." Sheriff Joe Arpaio has been the subject of a number of complaints, including some from local city mayors and members of the U.S. Congress. Additionally, in September 2009, the Department of Justice initiated another investigation of the police department of East Haven, Connecticut, considering "discriminatory police practices, unlawful searches and seizures, and excessive use of force" after receiving a complaint from advocates and a faith-based group who documented allegations of racial profiling from January 2008. Although these investigations have not yet concluded, it is significant that the U.S. government has undertaken investigations in response to complaints from stakeholders about racial profiling.
37. Another positive step taken by the government was the announcement of an internal review of the 2003 Department of Justice Guidance Regarding the Use of Race by Federal Law Enforcement Agencies. Attorney General Holder promised to review this Guidance after taking office in February 2009, with an eye to making it more effective. Unfortunately, the internal review has not been completed, and federal government agents continue to rely on the Guidance with its substantial loopholes.
38. The Department of Homeland Security (DHS) Office of Inspector General (OIG) initiated an investigation of the 287(g) program in 2009. This investigation followed an independent review in January 2009 by the Government Accountability Office (GAO) which strongly criticized DHS and the 287(g) program for lacking internal controls. The OIG review found that the 287(g) program lacks effective training and oversight mechanisms and that it is missing protections necessary to prevent racial profiling and other civil rights abuses. This review has the potential to spur further reforms and increase accountability for protecting human rights under the program.
39. Finally, various law enforcement executives and associations have collectively and publicly denounced the comingling of civil immigration enforcement and community policing activities, acknowledging that enforcement of federal immigration laws by state and local police negatively impacts public safety.

## RECOMMENDATIONS

40. The President should issue an executive order prohibiting racial profiling by federal officers and banning law enforcement practices that disproportionately target people for investigation and enforcement based on race, ethnicity, religion or national origin.
41. The Department of Justice should revise its June 2003 guidance on racial profiling to eliminate the loopholes created for national security and border searches, to include religion

and national origin as protected classes, to apply the guidance to state and local law enforcement agencies, and to make it enforceable in a court of law.

42. The 2002 DOJ Office of Legal Counsel (OLC) “inherent authority” memo that reversed historical trends to keep state and local law enforcement out of federal civil immigration work should be rescinded and OLC should issue a new memo clarifying that state and local law enforcement agents may not enforce federal immigration laws absent formal authority granted to them by the federal government.
43. The Department of Homeland Security should terminate the 287(g) program and all other federal immigration enforcement programs that rely on state and local criminal justice systems, including the Secure Communities Initiative and the Criminal Alien Program.
44. The federal government should terminate the NSEERS program and repeal related regulations. Individuals who did not comply with NSEERS due to lack of knowledge or fear should not lose eligibility for, or be denied, a specific relief or benefit. Similarly, the federal government should provide relief to individuals who were deported for lack of compliance with NSEERS but otherwise had an avenue for relief.
45. The Obama Administration should urge Congress to introduce and pass meaningful federal legislation prohibiting racial profiling.

## ANNEX

For additional information on the programs, policies and cases referred to in this document, please consult the 2009 Follow-up Report to the U.N. CERD Committee, jointly sent by the Rights Working Group and the American Civil Liberties Union, and available at [http://www.aclu.org/human-rights\\_racial-justice/persistence-racial-and-ethnic-profiling-united-states](http://www.aclu.org/human-rights_racial-justice/persistence-racial-and-ethnic-profiling-united-states).

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<sup>i</sup> **The Rights Working Group (RWG)** is a national coalition of immigrant rights, human rights, civil liberties and national security organizations that formed after September 11<sup>th</sup>, 2001 and committed to guaranteeing human rights protections for all people in the United States. **The American-Arab Anti-Discrimination Committee (ADC)** is a civil rights organization committed to defending the rights of people of Arab descent. **The Asian American Justice Center (AAJC)** works to advance the human and civil rights of Asian Americans, and build and promote a fair and equitable society for all. **The Center for Constitutional Rights (CCR)** is dedicated to advancing and protecting the rights guaranteed by the U.S. Constitution and the Universal Declaration of Human Rights. **The National Immigration Law Center (NILC)** is dedicated to protecting and promoting the rights of low-income immigrants and their family members. **The UNC School of Law Immigration and Human Rights Policy Clinic** is a law school academic/clinical program devoted to representing individuals seeking a pathway to lawful status in the United States. Students and faculty also work on legal projects addressing human rights initiatives.

<sup>ii</sup> U.S. Department of Justice, Bureau of Justice Statistics, Contacts between Police and the Public: Findings from the 2002 National Survey, *available at* <http://www.ojp.usdoj.gov/bjs/pub/pdf/cpp02.pdf>.

<sup>iii</sup> ACLU of Arizona, Driving While Black or Brown: An Analysis of Racial Profiling in Arizona (April 2008) *available at* <http://www.acluaz.org/DrivingWhileBlackorBrown.pdf>.

<sup>iv</sup> Ayres, Ian and Jonathan Borwsky, Yale Law School, A Study of Racially Disparate Outcomes in the Los Angeles Police Department (October 2008), *available at* <http://www.aclu-sc.org/contents/view/3>.

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<sup>v</sup> CCR is currently involved in class-action litigation against the New York City Police Department (NYPD) challenging the stop-and-frisk practice, *Floyd, et al. v. City of New York, et al.* More information is *available at* <http://ccrjustice.org/ourcases/current-cases/floyd-et-al>.

<sup>vi</sup> The Center for Constitutional Rights, Racial Disparity in NYPD Stops-and-Frisks: The Center for Constitutional Rights Preliminary Report on UF-250 Data from 2008 through June 2008 (January 15, 2009) *available at* [http://ccrjustice.org/files/Report\\_CCR\\_NYPD\\_Stop\\_and\\_Frisk\\_0.pdf](http://ccrjustice.org/files/Report_CCR_NYPD_Stop_and_Frisk_0.pdf).

<sup>vii</sup> Aarti Shahani and Judith Greene, Justice Strategies, Local Democracy on ICE: Why State and Local Governments Have No Business in Federal Immigration Enforcement (February 2009), *available at* <http://www.justicestrategies.org/sites/default/files/JS-Democracy-On-Ice.pdf>.

<sup>viii</sup> American Civil Liberties Union of Georgia, Terror and Isolation in Cobb: How Unchecked Police Power under 287(g) Has Torn Families Apart and Threatened Public Safety (Oct. 2009), <http://www.acluga.org/287gReport.pdf>; Government Accountability Office, Immigration Enforcement: Better Controls Needed over Program Authorizing State and Local Enforcement of Federal Immigration Laws (Jan. 2009), *available at* [www.gao.gov/new.items/d09109.pdf](http://www.gao.gov/new.items/d09109.pdf); University of North Carolina Immigration and Human Rights Policy Clinic and the American Civil Liberties Union of North Carolina Foundation, The Policies and Politics of Local Immigration Enforcement Laws (Feb. 2009); American Civil Liberties Union of Georgia, The Persistence of Racial Profiling in Gwinnett: Time for Transparency, Accountability, and an End to 287(g) (March 2010), *available at* [www.acluga.org/GwinnettRacialReportFinal.pdf](http://www.acluga.org/GwinnettRacialReportFinal.pdf); Mai Thi Nguyen and Hannah Gill, The 287(g) Program: The Costs and Consequences of Local Immigration Enforcement in North Carolina Communities (The University of North Carolina at Chapel Hill, Feb. 2010) *available at* [http://isa.unc.edu/migration/287g\\_report\\_final.pdf](http://isa.unc.edu/migration/287g_report_final.pdf) (last visited April 5, 2010).

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