

November 21, 2003

Dear Senator:

The Lawyers Committee for Human Rights (LCHR) urges you to co-sponsor the End Racial Profiling Act of 2003 (ERPA). Since 1978, our organization has worked in the United States and abroad to advance justice, human dignity and respect for the rule of law. We support human rights activists who fight for basic freedoms and peaceful change at the local level; protect refugees in flight from persecution and repression; and help build a strong international system of justice and accountability for the worst human rights violations.

The principle of non-discrimination underpins the enjoyment of all internationally-protected human rights. In 1994, the United States Senate gave its advice and consent to U.S. ratification of the Convention on the Elimination of All Forms of Racial Discrimination (CERD), an international treaty which aims to ensure that human rights are enjoyed without discrimination based on race. As a state party to the treaty, the United States is obligated to work towards ending racial profiling and other racial discrimination in our society. International law in this area was, of course, largely modeled on United States constitutional provisions designed to implement the principle that all persons should be treated equally under the law without regard to race, religion, ethnicity, or national origin. The Fourteenth Amendment to the United States Constitution states, "No State shall...deprive any person of life, liberty, or property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

Racial profiling occurs when law enforcement relies on race, ethnicity, national origin, or religion in selecting which individuals to subject to routine or spontaneous investigatory activities, except when relying on a specific suspect description. This practice violates our nation's basic commitment to equality before the law. In addition, racial profiling can undermine effective law enforcement by fueling the perception in minority communities that the criminal justice system is unfair and by undermining the trust between the police and the communities they serve.

Prior to September 11th, there was a growing consensus in the United States that racial profiling was not only in conflict with American values but was not an effective law enforcement technique. But since September 11th, many people, primarily Arabs, Muslims, Sikhs, and South Asians, have been targeted for discriminatory treatment, not because of their behavior, but because of their religion, national origin, or ethnicity.

We have no doubt that the overwhelming majority of law enforcement agents discharge their duties with honorable intentions. Nevertheless, empirical evidence from around the nation reveals that profiling by federal, state, and local law enforcement agencies is widespread. Despite the efforts by some states and local law enforcement agencies to address this ongoing practice, federal legislation is necessary to ensure uniformity of policy and practice in this area.

In addition, according to counter-terrorism experts, racial and ethnic profiling is unlikely to make us safer. In October 2001, senior U.S. intelligence officials circulated to American law enforcement agents worldwide a memorandum entitled "Assessing Behaviors," which emphasized that focusing on the racial characteristics of individuals wasted resources and might divert attention away from suspicious behavior by someone who did not fit a particular racial profile. Vincent Cannistraro, former Chief of Operations and Analysis at the CIA's Counterterrorism Center, has sharply criticized racial profiling, saying, "It is a false lead. It may be intuitive to stereotype people, but profiling is too crude to be effective. I can't think of any examples where profiling has caught a terrorist."¹

ERPA builds on the guidance issued by the Department of Justice in June 2003, which bans federal law enforcement officials from engaging in racial profiling. ERPA would apply this prohibition to state and local law enforcement, close the loopholes to its application, include a mechanism for enforcement of the new policy, require data collection to monitor the government's progress toward eliminating profiling, and provide best practice incentive grants to state and local law enforcement agencies that will enable them to use federal funds to bring their departments into compliance with the bill's requirements. The DOJ guidance was a good first step, but ERPA is needed in order to make good on President Bush's pledge to "end racial profiling in America."

This bill, which is substantially similar to the bi-partisan bill of the same name introduced in the 107th Congress, represents a balanced and comprehensive solution to a problem that strikes at the heart of our basic constitutional guarantee of equal treatment

¹ Farreed Zakaria, *Delicate Balance: The Case for "Smart Profiling" as a Weapon in the War on Terror*, Newsweek, July 8, 2002.

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under the law for all Americans. We urge your support for this critical civil rights legislation. To co-sponsor ERPA, please contact Farhana Khera in Senator Russell Feingold's office, at (202) 224-5674.

Sincerely,

Elisa Massimino
Director, Washington Office