



UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 Pennsylvania Ave, NW • Suite 1150 • Washington, DC 20425 www.usccr.gov

December 15, 2014

The Honorable Eric Holder
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Dear Attorney General Holder:

We commend the efforts of the Department of Justice (DOJ) and other federal agencies that worked hard to update the profiling guidelines for federal law enforcement officials. We too are of the mind that “profiling by law enforcement based on a listed characteristic is morally wrong and inconsistent with our core values and principles of fairness and justice.” We also understand the need to establish a uniform standard of practice and believe that DOJ and its counterparts have taken a step in the right direction by outlining clear distinctions on when using a “listed characteristic” is appropriate. These distinctions will go a long way in reducing instances of arbitrary decision-making by those sworn to protect us against actual crimes and not perceived crimes.

The guidelines, however, should go farther. As we have previously stated, conditions which deny individuals or groups equal protection under the law, and which deny valuable opportunities for improvement, are not the American way. We believe these new guidelines leave a significant gap by excluding the Department of Homeland Security (DHS) and its components from complying with these standards. While the Commission supports the country’s priority to ensure our mutual security, such a wide swath of operating discretion may lead to instances of unwarranted targeting, surveillance and imposition of unreasonable prohibitions on a person’s ability to pursue life, liberty and happiness.

The Commission’s recent *Federal Civil Rights Engagement with Arab and Muslim American Communities Post 9/11* briefing report (http://www.usccr.gov/pubs/ARAB_MUSLIM_9-30-14.pdf) includes among its findings that while the United States government has taken important steps to work with the American Muslim community, many American Muslims still believe that their civil rights are violated through stereotyping, profiling and other forms of discrimination. Many are reluctant to report civil rights and labor violations. Examples included ethnic, religious and racial profiling, which have led to the widespread singling out of Arab-Americans and American Muslims by Customs and Border Patrol, the Transportation Safety Administration and the Federal Bureau of Investigation. The last ten years have seen a rise in anti-Muslim sentiment, anti-



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Muslim discrimination and policies that unfairly impact American Muslims and Arab-Americans. An example cited is the oftentimes-secret placement of Muslim-Americans and Arab-Americans on government watch lists.

The Commission's recommendations included that the federal government further address the continued profiling, stereotyping, hate crimes, and other kinds of discrimination against Arab and Muslim-American communities in the aftermath of 9-11, as well as the rhetoric surrounding national security issues as they relate to Arab and Muslim American communities.¹ By excluding the Transportation Security Administration and the Border Patrol from complying with the updated guidelines, Arab, Muslim, South Asian and Middle Eastern communities will continue to experience unfair treatment. The Border Patrol has extraordinary powers up to 100 miles inward from the border. Black, Latino and others in border communities will also continue to live in fear of being profiled just because of who they are.

Furthermore, the failure to extend the applicability of the guidelines to state and local law enforcement officials continues to breed uncertainty. Our minority communities interact on a regular basis with state and local law enforcement officials. The interactions with officials that led to the deaths of Michael Brown, Eric Garner and Tamir Rice are now making national headlines. Expanding the guidelines to include state and local law enforcement agencies that accept federal funding would bring renewed consistency, trust and faith to a system that was built to protect us from harm rather than cause it.

We again commend you on taking this important step in updating the guidelines, Attorney General Holder. However, we ask that you continue to work with law enforcement at the federal, state and local levels, as well as civil rights organizations and other stakeholders to ensure that all citizens are treated fairly and equally under the law in all, not just some, circumstances where profiling may arise.

Sincerely,

Handwritten signature of Martin R. Castro in black ink.

Chairman Martin R. Castro

Handwritten signature of Roberta Achtenberg in black ink.

Commissioner Roberta Achtenberg

¹ *Federal Civil Rights Engagement with Arab and Muslim American Communities Post 9/11* Briefing Report, September 2014, pgs. 41-49, http://www.usccr.gov/pubs/ARAB_MUSLIM_9-30-14.pdf, last accessed December 15, 2014.



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A handwritten signature in blue ink, appearing to read "David Kladney".

Commissioner David Kladney

A handwritten signature in black ink, appearing to read "Michael Yaki".

Commissioner Michael Yaki

A handwritten signature in black ink, appearing to read "Patricia Timmons-Goodson".

Commissioner Patricia Timmons-Goodson

*This letter is signed by the majority of Commissioners serving on the Commission as of December 12, 2014.