

**PROTECTING THE PUBLIC:
Customs Policies, Procedures, And Training For Racial And
Ethnic Profiling – A Comparative Review**



OIG-CA-03-008

February 24, 2003



Office of Inspector General

The Department of the Treasury

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Abbreviations

AIM	Assessment, Implementation, and Monitoring
ATF	Bureau of Alcohol, Tobacco and Firearms
Customs	U.S. Customs Service
FLETC	Federal Law Enforcement Training Center
Justice	Department of Justice
Treasury	Department of the Treasury
Secret Service	U.S. Secret Service

*The Department of the Treasury
Office of Inspector General*

Robert C. Bonner
Commissioner
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This report presents the results of our review on policies, procedures, and training for racial and ethnic profiling by law enforcement officers. The objectives of the review were to determine whether law enforcement bureaus: (1) published written policies and procedures that which set out the bureau's position on racial and ethnic profiling for inspectors and agents; (2) distributed the policy; (3) provided related training to inspectors and agents; and, (4) periodically reviewed practices and any citizen complaints to ensure compliance. We conducted our review between January 2002 and July 2002.

To accomplish our objectives, we met with officials from the Bureau of Alcohol, Tobacco and Firearms (ATF), U.S. Customs Service (Customs), and U.S. Secret Service (Secret Service) in Washington, D.C., to obtain information on racial and ethnic profiling policies, procedures, and training. We learned the Administration requested that the Department of Justice (Justice) study the policies and practices of Federal law enforcement agencies regarding the use of race as a factor in law enforcement decision making. Therefore, we obtained the bureaus' response to the study, and reviewed the policies, procedures, and general training information provided. We provide a more detailed description of our review approach in Appendix 1.

We noted inconsistencies in the three bureaus' approaches to prohibiting racial and ethnic profiling. However, we are making no recommendations to the Department of the Treasury (Treasury) management in this report as the bureaus will be

divested in whole or in part from Treasury pursuant to the *Homeland Security Act of 2002*.¹

Background

Recent media attention has focused on racial and ethnic profiling to the extent that various law enforcement agencies began investigating racial and ethnic profiling by law enforcement officers and implementing policies to discourage such actions by law enforcement officers. In 2001, the Administration requested Justice to compile profiling data on Federal law enforcement authorities use of race as a factor in conducting stops, searches, and other investigative procedures. Subsequently, Justice requested Treasury's assistance with a racial profiling study, which asked for seven types of information:

- (1) A description of the law enforcement mission of each agency.
- (2) A description of the nature and type, by category, of all contact that regularly occurs between each agency's law enforcement personnel and the public, including but not limited to, arrests, traffic or pedestrian stops and searches. For each category of such contacts, a general estimate was to be provided for the number of such contacts that occurred in calendar year 2000, along with the methodology by which such estimate was reached.
- (3) A description of the policies in place that address the use of race and ethnicity in the performance of law enforcement duties.
- (4) A description of the training currently in place that addresses the use of race or ethnicity in the performance of law enforcement duties.

¹ On November 25, 2002, President Bush signed the *Homeland Security Act of 2002* creating the new Department of Homeland Security. Customs and Secret Service will be transferred to the new department in March 2003. Although ATF is not a part of the new department, a portion of the legislation split the responsibilities of ATF into two separate entities. On January 24, 2003, part of ATF moved from Treasury to Justice. The bureau now residing in Justice oversees firearms, explosives and arson programs, and Federal criminal laws concerning alcohol and tobacco smuggling and diversion. A new bureau within Treasury, known as the Tax and Trade Bureau, handles the regulatory and taxation aspects of the alcohol and tobacco industries that was formerly a function of ATF.

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- (5) A description of the disciplinary or professional responsibility rules in place that address the inappropriate use of race or ethnicity in the performance of law enforcement duties along with a statement of the number of relevant disciplinary or professional responsibility cases which originated, were adjudicated, or were resolved for calendar year 2000, and the number of such cases that are currently pending.
 - (6) A description of any internal or external studies conducted with respect to each Department or any of its law enforcement agencies to determine the potential use of racial profiling.
 - (7) A description of any legal actions brought against each agency related to allegations of misuse of race or ethnicity in the execution of law enforcement duties.

The data request was reissued in January 2002. Justice required each agency to update the data requested in 2001. Each of the three law enforcement bureaus responded to the Acting Under Secretary for Enforcement, Treasury.

Synopsis

To accomplish our objectives, we reviewed ATF's, Customs' and Secret Services' responses to the racial profiling study performed by Justice. The responses provided the following information:



Bureau of Alcohol, Tobacco and Firearms

ATF's mission is involved in a variety of roles today ranging from chemical and document analysis to forensic, arson, and explosive analysis as well as a variety of criminal evidence examinations. ATF has been charged with oversight of some of the most controversial issues but the bureau strives to maintain professional neutrality.

ATF has unique responsibilities and is dedicated to reducing crime and protecting the public. ATF enforces Federal laws and regulations relating to alcohol, tobacco, firearms, explosives and arson by working directly and in cooperation with others to:

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- Suppress and prevent crime and violence through enforcement regulations and community outreach;
 - Support and assist federal, state, local, and international law enforcement; and
 - Provide innovative training programs in support of criminal and regulatory enforcement functions.

ATF's contact with the public is through other law enforcement personnel, arrests, and traffic or pedestrian stops and searches. Arrests by ATF law enforcement personnel occur as a result of investigative activity, generally by a search or arrest warrant. ATF's law enforcement personnel do not conduct random traffic or pedestrian stops. Searches and arrests are not based on the race or ethnicity of defendants.

ATF's policies prohibit the use of race or ethnicity in the performance of its mission. All ATF employees are bound by the guidelines stated in the Principles of Ethical Conduct for Government Officers and Employees, Standards of Ethical Conduct for Employees of the Executive Branch, Conduct and Accountability, Standard Operating Procedures and Policies Criminal Law Enforcement Information. Additionally, employees are required to abide by Employee Responsibilities and Conduct issued by the Office of Personnel Management and the Employee Rules of Conduct under Title 31 of the Code of Federal Regulations, which specifically states that employees shall not discriminate against or harass any person on the basis of race, color, religion, national origin, sex, sexual orientation, age, or disability. Ethics, integrity, and accountability to the American people are woven into many training programs.

Along with the previously stated mission, ATF conducts investigations, regulates industries, and assists other law enforcement agencies in order to reduce violent crime. All new ATF Special Agents and Inspectors attend New Professional Training at the Federal Law Enforcement Training Center (FLETC). ATF employees also receive training on core

competencies, ethics, integrity, teamwork, and the Standards of Conduct. This training is designed to acquaint new employees with ATF's organization and functions. All employees are required to participate in ethics refresher training each year.



U.S. Customs Service

As a major border enforcement agency, Customs enforces the provisions of the Tariff Act of 1930, as amended, in addition to some 400 laws and regulations for 40 other agencies governing international tariff and trade. Customs performs a variety of functions for these agencies in safeguarding U.S. agriculture, business, health, and security due to its presence at all U.S. ports of entry. Customs' primary missions are to:

- Deter terrorist activities, and prohibit the importation of weapons of mass destruction;
- Locate and dismantle terrorists financing entities;
- Assess and collect revenues in the form of duties, taxes, and fees on imported merchandise;
- Regulate the movement of persons, carriers, and merchandise or commodities between the United States and other nations;
- Prevent the smuggling of narcotics and other illegal contraband; and,
- Enforce certain provisions of the export control laws of the United States.

Customs has the most day-to-day contact with the public at international airports, seaports, and land border crossings. Customs implemented new personal search guidelines, enhanced training, increased legal oversight of the personal search process and required supervisory approval for all personal searches, and introduced new technology to ensure personal searches are less intrusive. Customs contends that it

has implemented several safeguards designed to prevent racial and ethnic profiling. The implemented procedures have made it possible to ensure management oversight of the entire Customs personal search process.

Customs has stated in its policies that a person's race, color, religion, or ethnic background are never to be used as a determining factor in selecting a person for further examination.

Since October 1999, all Customs law enforcement personnel graduating from FLETC have received several hours of formal training relating to the personal search process and received a copy of the Personal Search Handbook. Currently, Customs law enforcement personnel are required to take an annual Personal Search Computer- Based Training refresher course in addition to a 16-hour course, "Inspection and Interaction Skills Enhancement Workshop." The workshop provides refresher training on both inspection and traveler interaction techniques. Additionally, Customs created the Customer Satisfaction Unit to respond to passengers concerns and the issuance of comment cards for passengers to provide feedback on their experience with Customs.

In April 1999, prior to the issuance of the President's Directive on Fairness in Law Enforcement, Customs formed a third-party Personal Search Review Commission and a Customs Independent Advisor to examine Customs personal search policies and procedures to ensure that reforms and results continue to be effective and to review the Commission's recommendations. Customs also implemented Assessment, Implementation and Monitoring (AIM) procedures for a permanent Customs working group. AIM's purpose is to determine how Customs can improve its policies and procedures to better safeguard civil rights, while preserving Customs ability to intercept contraband at the Nation's borders.

As discussed in OIG report *TRADE AND PASSENGER PROCESSING: Customs Personal Search Policies, Procedures, and Training Appear Reasonable*, (OIG-CA-02-003, dated

April 12, 2002), Customs recognizes the need to be able to track race and ethnic background for all arriving travelers to help analyze the race, gender, and ethnicity of those searched. Customs is working with the Immigration and Naturalization Service to collect racial and ethnic information voluntarily for all passengers so it can gauge its success in ensuring that individuals are not selected for personal search based on race and ethnicity. Customs current policies and procedures, if properly implemented throughout the agency, should help to ensure that travelers are not selected for additional scrutiny based on race or ethnicity. Training provided by Customs to its staff has influenced changes in attitude, interpersonal relations, and cultural diversity.



United States Secret Service

For nearly 137 years, the Secret Service has been empowered to suppress counterfeit currency and to detect persons perpetuating frauds against the government. The Secret Service has both Special Agents and Uniformed Officers. Secret Services' mission is to:

- Provide protection to the President, Vice President, and visiting foreign heads of state;
- Provide security operations at special events determined by the President;
- Patrol residences and office complexes of the President, Vice President, and foreign diplomatic missions. Uniformed Officers have police and arrest powers similar to those of the District of Columbia Metropolitan Police;
- Enforce laws relating to counterfeiting of obligations and securities of the U.S.; and,
- Investigate financial crimes of fraud, financial identity theft, cyber attacks against our nation's financial, banking, and telecommunications infrastructure.

Secret Service Uniformed Officers and Special Agents come into frequent contact with the general public because of threats or alleged threats to those under Secret Service protection, requiring a large percentage of individuals to be searched or questioned. The Secret Service uses investigative techniques such as geographical links and pattern analysis to identify developing trends and patterns in criminal activity.

Secret Service officials advised our evaluators that the bureau does not have specific policies in place to address the use of race and ethnicity in the performance of law enforcement duties. In addition, the Secret Service does not conduct specific training to address the use of race or ethnicity in the performance of law enforcement duties. The Secret Service officials told us that their rules, covered in the Secret Service Administrative Manual, EEO Policy and Uniformed Division Manual, address policies concerning equal treatment of minority groups and women, and prohibit racial and ethnic profiling.

Conclusion

As shown in the following table, the law enforcement bureaus published written policies and procedures and distributed these requirements to its law enforcement officers.

Responsibility	Law Enforcement Bureaus		
	ATF	Customs	Secret Service
Published written policies and procedures on racial and ethnic profiling for inspectors and agents. (Date policies and procedures published).	Yes (11/99)	Yes (3/00)	Reported that no specific policies and procedures were published
Distributed policy on racial and ethnic profiling.	Yes	Yes	Same as above
Provided training to inspectors and agents.	Yes	Yes	No
Conducted periodic reviews of practices and any citizen complaints to ensure compliance.	Yes	Yes	Yes

As a general observation, we would have expected the three bureaus to have similar policies and training to prohibit racial and ethnic profiling in their law enforcement activities. While ATF and Customs had specific policies and training addressing racial and ethnic profiling, the Secret Service considered its more general policies and training on EEO and ethical conduct sufficient to prohibit racial and ethnic profiling. In accordance with the *Homeland Security Act of 2002*, which was enacted after our field work, these enforcement bureaus will be divested from the Department in whole or in part during Fiscal Year 2003. We are not making any recommendations to Treasury management in this report to address the inconsistencies in the bureaus' approaches. However, we feel the information in this report is valid and beneficial to the law enforcement bureaus in conducting their duties. Racial profiling is still perceived as being a significant social problem, and further, is inconsistent with effective law enforcement policing and equal protection of citizens.

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We appreciate the cooperation and courtesies extended to our staff. If you have any questions, please contact me at (202) 927-5171. Major contributors to this report are listed in Appendix 2.

Marj P. Leaming
Marj P. Leaming
Director, Office of Evaluations

Appendix 1 Objective, Scope, and Methodology

The objectives of our review were to determine if law enforcement bureaus: (1) published written directives clearly stating the bureau's position on profiling; (2) distributed and discussed the policy with law enforcement officers; (3) provided related training; and, (4) periodically reviewed the practices and any citizen complaints to ensure policy compliance.

To accomplish our objectives, we met with officials from ATF, Customs, and Secret Service in Washington, D.C., to obtain information on racial and ethnic profiling policies, procedures, and training. We discovered that in a mandate by the Administration, Justice had undertaken a study of the policies and practices of Federal law enforcement's agencies regarding the use of race in law enforcement decision making. Therefore, we obtained the bureaus' responses to the study, and reviewed the policies, procedures, and general training information provided.

We conducted our review between January 2002 and July 2002 in accordance with the President's Council on Integrity and Efficiency *Quality Standards for Inspections*.

Appendix 2
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Appendix 3
Report Distribution

U.S. Customs Service

Commissioner
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