



Department of Justice

TUESDAY, JUNE 17, 2003
WWW.USDOJ.GOV

(202) 514-2008
TDD (202) 514-1888

FACT SHEET RACIAL PROFILING

"It's 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." --President George W. Bush, Feb. 27, 2001

"This administration... has been opposed to racial profiling and has done more to indicate its opposition than ever in history. The President said it's wrong and we'll end it in America, and I subscribe to that. Using race... as a proxy for potential criminal behavior is unconstitutional, and it undermines law enforcement by undermining the confidence that people can have in law enforcement." --Attorney General John Ashcroft, Feb. 28, 2002

Defining the Problem: **Racial Profiling Is Wrong and Will Not Be Tolerated**

Racial profiling sends the dehumanizing message to our citizens that they are judged by the color of their skin and harms the criminal justice system by eviscerating the trust that is necessary if law enforcement is to effectively protect our communities.

- **America Has a Moral Obligation to Prohibit Racial Profiling.** Race-based assumptions in law enforcement perpetuate negative racial stereotypes that are harmful to our diverse democracy, and materially impair our efforts to maintain a fair and just society. As Attorney General John Ashcroft said, racial profiling creates a "lose-lose" situation because it destroys the potential for underlying trust that "should support the administration of justice as a societal objective, not just as a law enforcement objective."
- **The Overwhelming Majority of Federal Law Enforcement Officers Perform Their Jobs with Dedication, Fairness and Honor, But Any Instance of Racial Profiling by a Few Damages Our Criminal Justice System.** The vast majority of federal law enforcement officers are hard-working public servants who perform a dangerous job with dedication, fairness and honor. However, when law enforcement practices are perceived to be biased or unfair, the general public, and especially minority communities, are less willing to trust and confide in officers, report crimes, be witnesses at trials, or serve on juries.
- **Racial Profiling Is Discrimination, and It Taints the Entire Criminal Justice System.** Racial profiling rests on the erroneous assumption that any particular individual of one race or ethnicity is more likely to engage in misconduct than any particular individual of other races or ethnicities.

Taking Steps to Ban Racial Profiling:
Due to the Seriousness of Racial Profiling, the Justice Department
Has Developed Guidelines to Make Clear that It Is
Prohibited in Federal Law Enforcement

- **President Bush Has Directed that Racial Profiling Be Formally Banned.** In his February 27, 2001, Address to a Joint Session of Congress, President George W. Bush declared that racial profiling is “wrong and we will end it in America.” He directed the Attorney General to review the use by federal law enforcement authorities of race as a factor in conducting stops, searches and other law enforcement investigative procedures. The Attorney General, in turn, instructed the Civil Rights Division to develop guidance for federal officials to ensure an end to racial profiling in federal law enforcement.
- **The Bush Administration Is the First to Take Action to Ban Racial Profiling in Federal Law Enforcement.** The guidance has been sent to all federal law enforcement agencies and is effective immediately. Federal agencies will review their policies and procedures to ensure compliance.
- **The Guidance Requires More Restrictions on the Use of Race by Federal Law Enforcement than Does the Constitution.** The guidance in many cases imposes *more* restrictions on the use of race and ethnicity in federal law enforcement than the Constitution requires. This guidance prohibits racial profiling in federal law enforcement practices without hindering the important work of our nation’s public safety officials, particularly the intensified anti-terrorism efforts precipitated by the attacks of September 11, 2001.
- **Prohibiting Racial Profiling in Routine or Spontaneous Activities in Domestic Law Enforcement:** In making routine or spontaneous law enforcement decisions, such as ordinary traffic stops, federal law enforcement officers may *not* use race or ethnicity to any degree, except that officers may rely on race and ethnicity if a specific suspect description exists. This prohibition applies even where the use of race or ethnicity might otherwise be lawful.
- ✓ **Routine Patrol Duties Must Be Carried Out Without Consideration of Race.** Federal law enforcement agencies and officers sometimes engage in law enforcement activities, such as traffic and foot patrols, that generally do not involve either the ongoing investigation of specific criminal activities or the prevention of catastrophic events or harm to the national security. Rather, their activities are typified by spontaneous action in response to the activities of individuals whom they happen to encounter in the course of their patrols and about whom they have no information other than their observations. These general enforcement responsibilities should be carried out without *any* consideration of race or ethnicity.
 - *Example:* While parked by the side of the highway, a federal officer notices that nearly all vehicles on the road are exceeding the posted speed limit. Although each

such vehicle is committing an infraction that would legally justify a stop, the officer may not use race or ethnicity as a factor in deciding which motorists to pull over. Likewise, the officer may not use race or ethnicity in deciding which detained motorists to ask to consent to a search of their vehicles.

- ✓ **Stereotyping Certain Races as Having a Greater Propensity to Commit Crimes Is Absolutely Prohibited.** Some have argued that overall discrepancies in crime rates among racial groups could justify using race as a factor in general traffic enforcement activities and would produce a greater number of arrests for non-traffic offenses (*e.g.*, narcotics trafficking). We emphatically reject this view. It is patently unacceptable and thus prohibited under this guidance for federal law enforcement officers to engage in racial profiling.

- ✓ **Acting on Specific Suspect Identification Does Not Constitute Impermissible Stereotyping.** The situation is different when a federal officer acts on the personal identifying characteristics of potential suspects, including age, sex, ethnicity or race. Common sense dictates that when a victim or witness describes the assailant as being of a particular race, authorities may properly limit their search for suspects to persons of that race. In such circumstances, the federal officer is not acting based on a generalized assumption about persons of different races; rather, the officer is helping locate a specific individual previously identified as involved in crime.
 - *Example:* While parked by the side of the highway, a federal officer receives an “All Points Bulletin” to be on the look-out for a fleeing bank robbery suspect, a man of a particular race and particular hair color in his 30s driving a blue automobile. The officer may use this description, including the race of the particular suspect, in deciding which speeding motorists to pull over.

- **Prohibiting Racial Profiling in Federal Law Enforcement Activities Related to Specific Investigations:** In conducting activities in connection with a specific investigation, federal law enforcement officers may consider race and ethnicity only to the extent that there is trustworthy information, relevant to the locality or time frame, that links persons of a particular race or ethnicity to an identified criminal incident, scheme, or organization. This standard applies even where the use of race or ethnicity might otherwise be lawful.

- ✓ **Acting on Specific Information Does Not Constitute Impermissible Stereotyping.** Often federal officers have specific information, based on trustworthy sources, to “be on the lookout” for specific individuals identified at least in part by race or ethnicity. In such circumstances, the officer is not acting based on a generalized assumption about persons of different races; rather, the officer is helping locate specific individuals previously identified as involved in crime.
 - *Example:* In connection with a new initiative to increase drug arrests, federal authorities begin aggressively enforcing speeding, traffic, and other public area laws

in a neighborhood predominantly occupied by people of a single race. The choice of neighborhood was not based on the number of 911 calls, number of arrests, or other pertinent reporting data specific to that area, but only on the general assumption that more drug-related crime occurs in that neighborhood because of its racial composition. This effort would be *improper* because it is based on generalized stereotypes.

- *Example:* The victim of an assault at a local university describes her assailant as a young male of a particular race with a cut on his right hand. The investigation focuses on whether any students at the university fit the victim's description. Here investigators are properly relying on a description given by the victim, part of which included the assailant's race. Although the ensuing investigation affects students of a particular race, that investigation is not undertaken with a discriminatory purpose. Thus use of race as a factor in the investigation, in this instance, is permissible.

✓ **Reliance Upon Generalized Stereotypes Continues to Be Absolutely Forbidden.** Use of race or ethnicity is permitted only when the federal officer is pursuing a specific lead concerning the identifying characteristics of persons involved in an *identified* criminal activity. The rationale underlying this concept carefully limits its reach. In order to qualify as a legitimate investigative lead, the following must be true:

- The information must be relevant to the locality or time frame of the criminal activity;
- The information must be trustworthy; and,
- The information concerning identifying characteristics must be tied to a particular criminal incident, a particular criminal scheme, or a particular criminal organization.
- *Example:* The FBI is investigating the murder of a known gang member and has information that the shooter is a member of a rival gang. The FBI knows that the members of the rival gang are exclusively members of a certain ethnicity. This information, however, is not suspect-specific because there is no description of the particular assailant. But because authorities have reliable, locally relevant information linking a rival group with a distinctive ethnic character to the murder, federal law enforcement officers could properly consider ethnicity in conjunction with other appropriate factors in the course of conducting their investigation. Agents could properly decide to focus on persons dressed in a manner consistent with gang activity, but ignore persons dressed in that manner who do not appear to be members of that particular ethnicity.
- *Example:* While investigating a car theft ring that dismantles cars and ships the parts for sale in other states, the FBI is informed by local authorities that it is common knowledge locally that most car thefts in that area are committed by individuals of a

particular race. In this example, although the source (local police) is trustworthy, and the information potentially verifiable with reference to arrest statistics, there is no particular incident- or scheme- specific information linking individuals of that race to the particular interstate ring the FBI is investigating. Thus, agents could not use ethnicity as a factor in making law enforcement decisions in this investigation.

Taking Steps to Balance National Security Concerns:

The Justice Department's Policy Guidance Ensures that Federal Law Enforcement Continues to Have the Tools Needed to Identify Terrorist Threats and Stop Potential Catastrophic Attacks

- **Federal Law Enforcement Will Continue Terrorist Identification.** Since the terrorist attacks on September 11, 2001, the President has emphasized that federal law enforcement personnel must use every legitimate tool to prevent future attacks, protect our nation's borders, and deter those who would cause devastating harm to our country and its people through the use of biological or chemical weapons, other weapons of mass destruction, suicide hijackings, or any other means.
 - ✓ Therefore, the racial profiling guidance recognizes that race and ethnicity may be used in terrorist identification, but only to the extent permitted by the nation's laws and the Constitution. The policy guidance emphasizes that, even in the national security context, the constitutional restriction on use of generalized stereotypes remains.
- **Federal Law Enforcement Must Adhere to Limitations Imposed by the Constitution.** In investigating or preventing threats to national security or other catastrophic events (including the performance of duties related to air transportation security), or in enforcing laws protecting the integrity of the nation's borders, federal law enforcement officers may not consider race or ethnicity except to the extent permitted by the Constitution and laws of the United States.
 - ✓ **The Constitution Prohibits Consideration of Race or Ethnicity in Law Enforcement Decisions in All But the Most Exceptional Instances.** Given the incalculably high stakes involved in such investigations, federal law enforcement officers who are protecting national security or preventing catastrophic events (as well as airport security screeners) may consider race, ethnicity, alienage, and other relevant factors. Constitutional provisions limiting government action on the basis of race are wide-ranging and provide substantial protections at every step of the investigative and judicial process. Accordingly, this policy will honor the rule of law and promote vigorous protection of our national security.
 - ✓ **Federal Law Enforcement Must Guard Against Uncertain Threats of Terrorism.** Because terrorist organizations might aim to engage in unexpected acts of catastrophic violence in any available part of the country (indeed, in multiple places simultaneously, if possible), there can be no expectation that the information must be specific to a particular locale or even to a particular identified scheme.

- **Even in the National Security Context, Reliance Upon Generalized Stereotypes Is Restricted by the Constitution.** For example, at the security entrance to a federal courthouse, a man who appears to be of a particular ethnicity properly submits his briefcase for x-ray screening and passes through the metal detector. The inspection of the briefcase reveals nothing amiss. The man does not activate the metal detector, and there is nothing suspicious about his activities or appearance. Absent any threat warning or other particular reason to suspect that those of the man's apparent ethnicity pose a heightened danger to the courthouse, the federal security screener may not order the man to undergo a further inspection solely because of his apparent ethnicity.
 - ✓ *Example:* U.S. intelligence sources report that Middle Eastern terrorists are planning to use commercial jetliners as weapons by hijacking them at an airport in California during the next week. Before allowing men appearing to be of Middle Eastern origin to board commercial airplanes in California airports during the next week, Transportation Security Administration personnel, and other federal and state authorities, may subject them to heightened scrutiny.
 - ✓ *Example:* The FBI receives reliable information that persons affiliated with a foreign ethnic insurgent group intend to use suicide bombers to assassinate that country's president and his entire entourage during an official visit to the United States. Federal law enforcement may appropriately focus investigative attention on identifying members of that ethnic insurgent group who may be present and active in the United States and who, based on other available information, might conceivably be involved in planning some such attack during the state visit.