

Written Testimony of

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“The Department of Homeland Security
State and Local Fusion Center Program: Advancing Information Sharing
While Safeguarding Civil Liberties”

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Introduction

Chairwoman Harman, Ranking Member Reichert, and distinguished Members of the Subcommittee: Thank you for providing me the opportunity to testify today. The work undertaken in fusion centers across the country will be most successful when it is done in a way that respects America's rich Constitutional history. My colleagues in the Office for Civil Rights and Civil Liberties and I look forward to working with this Subcommittee to ensure that fusion centers reach that highest level of effectiveness.

Mission of the Office for Civil Rights and Civil Liberties

In accordance with 6 U.S.C. § 345, the mission of the Office for Civil Rights and Civil Liberties is to assist the dedicated men and women of the Department of Homeland Security to secure our country while preserving our freedoms and our way of life. We assist our colleagues in four ways:

- We provide proactive advice on a wide range of issues, helping the Department to shape policy in ways that are mindful of civil rights and civil liberties;
- We investigate and facilitate the resolution of complaints filed by the public regarding Departmental policies or actions taken by Departmental personnel;
- We provide leadership to the Department's equal employment opportunity programs, seeking to make this Department the model Federal agency; and,
- We serve as an information and communications channel with the public regarding these issues.

In essence, we provide advice to our colleagues on issues at the intersection of homeland security and civil rights and civil liberties. We therefore have the opportunity to work closely with every DHS component, both in Washington, D.C., and in many field

offices across the country. Our Office has been involved in nearly all aspects of the critical issues facing the homeland security effort – from the Hurricane Katrina recovery, to the operation of watch lists, to immigration policy, to the training of our workforce. The Office’s work has been supported by other DHS elements because we provide constructive advice that allows the men and women of the Department to fulfill their mission at the highest level of effectiveness. Our work has also been welcomed by our colleagues outside of government, as demonstrated by our frequent collaborations with leading civil rights, immigration, and community organizations. Our Office plays a unique role within DHS, and, we hope, a valuable one, and we will continue to assist our colleagues to tackle complex issues in innovative and constructive ways.

The Office for Civil Rights and Civil Liberties’ Role in Training

Because our Office is relatively small (approximately one-twentieth the size of the Department of Justice’s Civil Rights Division, for sake of comparison), we realize that we must, to use a sports analogy, “punch above our weight.” One of the ways we have expanded our influence is by creating “Civil Liberties University,” a program to provide high-quality training on a wide range of topics. Through Civil Liberties University, we have developed: a training video that emphasizes elements of the National Detention Standards, a multi-hour instructional video on how to screen people with disabilities at airports; and, training to commemorate Constitution Day in 2005 and 2006. We have also developed educational materials on how to screen those who wear religious head coverings, and how to screen those of the Sikh faith who carry a *kirpan*, or ceremonial religious dagger. We have just released an intensive training DVD for DHS personnel who interact with Arab Americans, Muslim Americans, and people from the

broader Arab and Muslim world. The training includes insights from four experts – an Assistant United States Attorney who is Muslim, a member of the National Security Council who is Muslim, a scholar of Islamic studies, and a civil rights attorney who advocates on issues of concern to Arab American and Muslim American communities. This training program has been applauded by communities who believe that they will be treated with more dignity and professionalism if front-line officers understand their cultures, traditions and values; and, by our colleagues in the Department who have expressed a desire for such training.

Another training product we have developed deals with the issue of racial or ethnic profiling. To achieve President Bush’s goal to eliminate racial profiling, the Department of Justice issued “Guidance Regarding the Use of Race By Law Enforcement Agencies” in 2003. Subsequently, then-DHS Secretary Ridge issued a memorandum underscoring DHS’s commitment to race neutrality in all law enforcement activities. In the wake of the London bombings in July 2005, and the arrests in London this past August, Secretary Chertoff reiterated DHS’s commitment to ensuring full implementation of the DOJ Guidance. To implement these commitments by the President and the Secretary, our Office has worked with the Federal Law Enforcement Training Center (FLETC) to restructure and strengthen the curriculum taught to law enforcement officers on this topic. Moreover, Civil Liberties University also has training on this topic: “Guidance Regarding the Use of Race for Law Enforcement Officers,” a tutorial on the DOJ Guidance and the DHS policy. These materials are now available to DHS law enforcement employees in CD-ROM or via on-line web-based training formats.

Civil Liberties and Fusion Center Information Sharing

With a better understanding of the role of our Office and our training program, let me address the topic of fusion centers and information sharing. Just one week ago today, Secretary Chertoff told the National Fusion Center Conference that the protection of civil liberties must be a priority. He further outlined his vision for the Department's involvement in fusion centers including the need to develop thoughtful tools and measures to safeguard privacy and civil liberties.

The Office for Civil Rights and Civil Liberties has been involved in shaping the work of the fusion centers already in existence. Just last week, our Office made available its training module on Arab and Muslim cultures to nearly 600 fusion center directors and local, state, tribal, and federal law enforcement officers within intelligence units attending the National Fusion Center Conference in Florida. Last year, our Office reviewed and concurred with the DHS Support Implementation Plan for State and Local Fusion Centers, which included an acknowledgement of DHS's express role in providing training and exercises for fusion centers through its Office of Intelligence and Analysis.

Our office also plays a role in monitoring information management processes within DHS. In a recent memo to all DHS components, Secretary Chertoff assigned the Office for Civil Rights and Civil Liberties, the Office of General Counsel and the Privacy Office to work with DHS's new Information Sharing Governance Board to ensure that privacy, civil rights and civil liberties are fully protected in the Department's information-management processes.

Fusion centers have been provided with some guidance on the protection of civil rights, civil liberties and, specifically, privacy rights. These guidelines have included

policy templates for justice information systems, with important references to the Privacy Act, the Federal Retention Act, Executive Order 12333, and 28 CFR 23, that States can supplement with their own statutes. Going forward, DHS is working with other Federal agencies, on the Privacy Guidelines Committee, to establish a process for ensuring that the policies developed by fusion centers provide protections that are at least as comprehensive as those provided by the recently-issued and Presidentially approved Privacy Guidelines for the Information Sharing Environment.

Nevertheless, fusion centers will continue to face a number of issues with regard to protection of civil rights and civil liberties. These issues include:

- Many fusion centers support all-crimes missions and share information related to concerns such as fraud, racketeering, computer hacking, all hazards, disaster recovery and other issues, not just terrorism information. The more types of information shared, the greater the task for fusion centers to ensure civil liberties and privacy rights are upheld.
- Likewise, the increasing demand for more actionable information to be delivered to non-federal partners has the potential to compound civil liberties concerns. Increased discretionary authority may follow on the heels of demands for such increased actionable information, thereby confusing all parties as to who is responsible to preserve civil liberties and what statutes – Federal, State and local – apply to the information and actions taken.
- If sunset provisions for retention of information by a fusion center are absent, this can, depending upon what the information is used for and what security or updating procedures apply to it, become a privacy and civil liberties concern as

ever more information is captured, shared and stored. Where provisions and rules for retention are in place, there is still risk that these provisions will not travel with the systems and people who use the data.

- As partnership with Federal authorities and non-federal fusion center participants increases, there is increasing risk that the balance between Federal and state governments is disturbed. The Constitution creates a delicate balance between Federal and state governments, which helps to prevent the accumulation of excessive power in either the States or our central government. As the Supreme Court has explained, “The Constitutionally mandated balance of power between the States and the Federal Government was adopted by the Framers to ensure the protection of our fundamental liberties.” Atascadero State Hospital v. Scanlon, 473 U.S. 234, 242 (1985).
- Finally, the accumulation of data leads to a substantial problem of misidentifications. We have observed this problem clearly in the context of travel screening, as many Americans have faced obstacles to flying as a result of misidentifications with names on watch lists. The Department of Homeland Security has acknowledged the issue from the beginning, and worked aggressively to solve it. Most recently, the Department has established an entirely new system to bring redress to travelers, known as DHS TRIP. Without such redress mechanisms, there are serious and unintended consequences to the collection of data.

Fusion Center Training and Monitoring

The Office for Civil Rights and Civil Liberties, within available resources, stands poised to work with fusion centers to address these and other challenges. While considering our success in training and our track record of close cooperation with every DHS component, we will build upon the framework established by the ISE Privacy Guidelines, and work with DHS's Privacy Office and I&A to protect and preserve privacy and civil liberties in the information sharing environment. Besides assisting these offices and the Department of Justice in monitoring fusion center utilization of Fair Information Practices, we plan to supplement I&A orientation training for DHS participants with civil rights and civil liberties instruction.

Conclusion

I thank you for inviting me to share our thoughts on fusion centers today and I look forward to working with this Subcommittee to address these issues.