

## I. Introduction

Ranking Member Conyers, and the other Members of the Committee, on behalf of the National Council of La Raza (NCLR), thank you for holding this hearing on an issue that is very important to the Latino<sup>1</sup> community in the United States. NCLR is a private, nonprofit, nonpartisan organization established in 1968 to reduce poverty and discrimination and improve life opportunities for Hispanic Americans. NCLR is the largest constituency-based national Hispanic organization, serving all Hispanic nationality groups in all regions of the country through our network of 270 - plus affiliate community-based organizations and five field offices. We have supported fair and effective immigration policies for over two decades and approach this issue as a civil rights organization with an interest in both protecting the rights of our constituency and promoting the values and principles of the nation as a whole.

On September 11 our nation experienced a great tragedy. Latinos in the United States have suffered as victims of this vicious attack and have been heroic in the search, rescue, and recovery efforts. Immigrants have held vigils and donated money, time, blood, and support, demonstrating this nation's strength in unity during a challenging time. Like all Americans, we are horrified, saddened, and angered by the attacks on the World Trade Center and the Pentagon.

As advocates, we are also concerned about the immediate and long-lasting civil rights implications of efforts to hold those responsible accountable for their actions and prevent future terrorist attacks. While we are committed to supporting effective efforts to make all residents of this country safer, we also caution against moving too quickly and acting on emotion rather than implementing well thought-out and reasonable policies.

With that in mind, I would like to put forward three general principles:

1. New anti-terrorism policies must be effective and necessary, and should be narrowly tailored to respond to real security threats.
2. These policies should be carefully considered so that they do not have unintended negative outcomes that adversely affect entire communities.
3. The events of September 11 should not prevent the nation from moving forward on immigration and civil rights policies that remain in the public interest.

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<sup>1</sup> The terms "Latino" and "Hispanic" are used interchangeably to refer collectively to Mexicans, Puerto Ricans, Cubans, Central and South Americans, and others of Spanish and Latin American descent. Hispanics can be of any race.

## II. Focus on Effective and Necessary Measures

**We should ensure that anti-terrorist measures are effective and necessary; any new anti-terrorism policies must be narrowly tailored to respond to real, not imagined, security threats. We must be careful to distinguish between that which makes us only feel better and that which makes us truly safer.**

Each year there are approximately 517 million entries and exits of persons from abroad through the United States' land borders, airports, and seaports; that is roughly two times the current U.S. population. Of course, some of these are people who cross the border many times. Through our legal immigration system we admit roughly 100,000 refugees, 500,000 family-sponsored immigrants, and 140,000 employment-sponsored immigrants each year. We also admit roughly 25 million nonimmigrants each year including 20,000,000 tourists, 3,800,000 business visitors, 450,000 students, 120,000 foreign government officials and their families, and many more. In addition, between 200,000 and 300,000 undocumented immigrants enter the U.S. annually. The overwhelming majority of these persons are not terrorists and do not pose any national security threat.

We simply do not have the financial or human resources to track and surveil every single one of these individuals. Doing so would require government actions and powers contrary to the fundamental principles of freedom and liberty of this country. We need to focus on those individuals who are truly dangerous and pose a threat to our security. Given the extremely large numbers of people who enter and exit the United States each year, far-reaching immigration restrictions and border control measures will be extremely costly and burdensome, and run the risk of violating civil rights and liberties. Furthermore, the ability of these measures to reduce the risk of terrorism is unproven. Any such measures should be proven to be both necessary and effective before we invest great amounts of time and energy into them.

Clearly, there is much the nation can do to improve its security which would pose minimal threats to civil rights. Many of these policies, including tighter security at airports and other ports of entry and on common carriers, identification and "hardening" of potential terrorist targets, improved controls on money laundering and better tracking of funds relied on by terrorist groups, and increased funding for intelligence and law enforcement agencies, have been or will soon be adopted. In addition, there are prudent and effective steps the nation can take related to the entry and monitoring of foreign nationals; such measures include:

- Improving the collection and sharing of intelligence on potential terrorist threats, including the deployment of promising, relatively nonintrusive technology at ports of entry; integrated multilateral information-sharing systems, particularly with our North American neighbors, to form a "first line of defense" against terrorists

seeking to enter the U.S.; and substantially increased funding to support such systems.

- Full implementation of the airline entry/exit system, with federal funding if necessary; expansion of the current INS Student and Exchange Visitor Program prototype project to all institutions authorized to enroll foreign students, as soon as technically feasible; and periodic comparisons of student rolls with updated “watch lists” and “look out” systems.

The Border Security Act, cosponsored by Senators Kennedy, Brownback, Feinstein, and Kyl, addresses these issues and seeks to improve existing visa issuance and information exchange without unfairly punishing immigrants who come to this country to reunite with family members, work, study, and seek a better life.

As for the USA-PATRIOT Act, which became law in October, 2001, we have several concerns. First, the definitions of “terrorism,” “terrorist,” and “terrorist group” are overly broad; they include many persons who are not involved in terrorist activity, and their family members. Second, we are concerned about provisions allowing the Attorney General and the INS to indefinitely detain suspected terrorists with only limited judicial review. Notwithstanding these concerns, thanks to the bipartisan efforts of Congress, there were significant improvements to the legislation, signaling the willingness of Congress to proceed thoughtfully on new anti-terrorism measures. However, now that it is law, the USA-PATRIOT Act must be judiciously implemented and subject to careful scrutiny by those inside and outside of the government since the above-mentioned provisions pose a significant potential for abuse and accompanying civil rights violations.

### **III. Unintended Consequences**

**We must work to ensure that any new anti-terrorism measures that are implemented do not result in unintended outcomes. NCLR can document many such instances of well-intended policies that have resulted in negative consequences for Latinos, immigrants, and others.**

#### **A. Racial Profiling**

In the wake of the September 11 terrorist attacks, the potential for and the incidence of racial profiling has probably increased dramatically, particularly targeting persons of or perceived to be of Middle Eastern descent. NCLR believes that this is a dangerous trend, not just for the Arab and Muslim communities, but for all Americans, including many Latinos who may be targeted in cases of mistaken identity.

This is particularly troubling because racial profiling not only violates civil rights, it also undermines the ability of law enforcement to enforce the law effectively. When an

innocent individual's ethnicity is used to establish a cause for suspicion of a crime, then that individual – along with family members, friends, and neighbors – may lose trust in the integrity of law enforcement. As a result, the public safety may be placed in jeopardy because members of these communities are likely to fear harassment and abuse by the police and are thus less likely to seek police help when they legitimately need it – to report a crime or suspicious behavior, serve as a witness or on a jury, or otherwise cooperate with law enforcement. It would be truly ironic if, at some point in the future, we experience a terrorist act because community members were deterred by racial profiling tactics from reporting suspicious or criminal behavior.

The problem of racial profiling broadly manifests itself in the Latino community and cannot be dismissed simply as a matter of a few isolated incidents of poor judgment. For example, Latinos have been systematically targeted for “dragnet” tactics by local and state law enforcement officers, and those same tactics have been applied and used, as a matter of formal policy, by some federal law enforcement agents.

NCLR often receives reports from Latino individuals who have been victimized by police and federal agents overstepping the bounds of the Constitution in the name of drug and immigration enforcement. The vast majority of cases, however, go unreported. Even fewer actually result in successful civil rights litigation or investigation by agencies responsible for enforcing civil rights. Some types of profiling experienced by Latinos, which may foreshadow the dangers that lie ahead, are described below.

## **1. Local Law Enforcement**

Local law enforcement relies on a widespread number of tactics including traffic stops, “stop and frisk” approaches, and others to enforce the law. Such tactics cross the line when they have a disproportionate or disparate impact based on race or ethnicity. Below we cite just a few of the cases of which we are aware involving racial profiling against Latinos by local law enforcement.

- In 1999, the American Civil Liberties Union (ACLU) filed a federal lawsuit on behalf of a San Jose lawyer who says the California Highway Patrol (CHP) violated his civil rights when officers stopped him and other Hispanics allegedly because of their ethnicity. According to the lawsuit, the CHP pulled over the attorney and at least five other Hispanic drivers on the Pacheco Pass portion of Highway 152 while carrying out its federally-funded drug-interdiction program, “Operation Pipeline.” According to a CHP Sergeant, the CHP canine units searched nearly 34,000 cars in 1997. Only 2% of them were carrying drugs. In other states, up to 95% of all “Operation Pipeline” searches have been found to be “dry holes.”
- In the past, the Louisiana State Police Department used a training film that explicitly exhorted officers to use traffic stops to conduct narcotics searches of “males of

foreign nationalities, mainly Cubans, Colombians, Puerto Ricans, or other swarthy outlanders.” [*United States v. Thomas*, 787 F. Supp. 663, 676 (E.D. Tex. 1992)]

- In Colorado’s Eagle County Sheriff’s Department, race, ethnicity, and out-of-state license plates were common drug-courier profile factors in criminal investigations. After the use of such a profile was determined to be unconstitutional, they have switched to using traffic enforcement stops as a means of catching drug traffickers, but have not stopped the use of racial profiles. [*United States v. Laymon*, 730 F. Supp. 332, 337 (D. Colo. 1990)]
- A December 1999 report by New York’s Attorney General on the use of “stop and frisk” tactics by the New York City Police Department revealed that between January 1998 through March 1999, 84% of the almost 175,000 people stopped by NYPD were Black or Hispanic, despite the fact that these two groups compose less than half of the city’s population.

## **2. Federal Law Enforcement**

The use of racial profiling is not limited to local law enforcement agencies. Federal agencies such as the Immigration and Naturalization Service’s (INS) Border Patrol and Inspections and Investigations divisions, the Drug Enforcement Administration (DEA), and the U.S. Customs Service have been found to use profiling tactics, including community-wide “sweeps,” searches, and seizures without proper reasonable suspicion, relying heavily on ethnic background and race as an exclusive or primary factor.

### **a. INS**

The INS and other federal law enforcement agencies have significantly stepped up efforts in the last several years to enforce immigration laws along the U.S.-Mexico border, inland, and at the workplace. Efforts such as increased workplace raids, neighborhood “sweeps,” and an escalating number of armed INS agents along the border and the interior have served to undermine the physical safety and constitutional and civil rights of Latino communities throughout the United States. NCLR has noted that numerous civil rights violations and abuses have been committed in the process of enforcing immigration law. Incidents of illegal or inappropriate seizures, traffic stops based solely on ethnic appearance, arrests without cause, deprivation of food and water or medical attention, and actual physical abuse have been recorded; for example:

- According to a May 1, 2001 *New York Times* article, a review of 37 INS worksite raids in the district of New York City showed that agents frequently cited skin color, use of Spanish, foreign accents, and clothing “not typical of North America” as primary evidence that workers were likely to be undocumented. An example found in the review disclosed that an INS agent conducting a surveillance of a delicatessen between 34<sup>th</sup> and 35<sup>th</sup> Streets in New York City, reported that some workers

appeared to be of South or Central American descent. Some spoke Spanish, the agent noted, and others spoke English “with a foreign accent.” The *Times* study confirmed that the INS *explicitly* uses ethnicity to guide its enforcement efforts, a tactic the agency previously has denied using.

- On January 29, 1998 in Bethesda, Maryland, waitress Allegra Foley was preparing tables for lunch at the Thymes Square Café when plainclothes INS officers entered the restaurant. They headed directly to the kitchen, where they questioned a number of Latino employees; six were arrested. Foley was particularly upset that employees at the Café were clearly targeted for questioning based on their perceived racial appearance. In a notarized affidavit, Foley testified that “at no time did they ever question a White, Black, or Asian employee on duty at the restaurant... with sole exception of the manager... who... voluntarily provided his green card.”
- On July 9, 1997, in Portland, Oregon, INS agents in unmarked vehicles began arresting almost 50 Latino day laborers who were waiting for work on street corners along East Burnside Street. The agents did not identify themselves and arrested the majority of the people without asking questions. Most of the agents were dressed in plainclothes, although some of them later donned Border Patrol jackets when their colleagues arrived in bulletproof vests and uniforms. “I only saw one man questioned. It happened right in front of me. The INS agent came right up close to his face, leaned over him, and asked him where he was from and to show his papers. The worker didn’t answer but started to fumble in his wallet in an effort to extract a document and was arrested before he could get it out. The entire interchange took less than a minute. Only Latino men were arrested. Other people on the scene, including a light-skinned Mexican, were not even questioned,” recalled Lucy Bernard, a witness from the Workers’ Organization Committee in Portland.
- INS agents conducted a raid in Jackson Hole, Wyoming in August 1996 in which 153 suspected illegal immigrants were rounded up and detained. According to press reports, some of the suspects were picked up off the street merely because their skin was brown. It was reported that agents picked one man off his bicycle as he rode down the street; “They failed to ask him to stop, they simply ran him down, took him off his bike, put him in handcuffs, and stuffed him in the police car,” stated an eyewitness. Some of those picked up had large numbers written on their arms with black felt pen, as though they were cattle. Further press reports stated that 18 of those picked up were “hailed away in a dirty horse trailer lined with fresh manure.” In the end, 40 of the “suspects” were released after proving they were citizens or documented workers.

#### **b. Border Patrol**

The *New York Times* has reported that many residents of South Texas believe that the Border Patrol agents in airports and roving patrol units systematically stop and detain

too many innocent Hispanics. A federal judge, Filemon B. Vela, was stopped by Border Patrol when driving with three of his staff members (two of whom were also Latino) because, he was told, there were too many people in his car. The problem is pervasive enough to cause Cameron County Judge Gilberto Hinojosa to state that his community feels like “occupied territory” by the Border Patrol, that it “does not feel like we’re in the United States of America.”

Border Patrol agents on roving patrols in Arizona have also been stopping motorists without reasonable suspicion that violations of immigration law have occurred. In fact, using information gathered through the use of "I-44" forms that Border Patrol agents are advised to fill out after traffic stops, a Federal Circuit Court of Appeals in the class action *Durgin v. De La Vina* found that:

Plaintiffs produced evidence of a pattern and practice of stopping persons without proper “reasonable suspicion” in the numerous I-44s that they submitted. Many of these reports do not describe facts that give rise to reasonable suspicion, and many of the reports list similar and repetitive reasons for stopping various persons. Plaintiffs also produced evidence of other persons of Hispanic appearance whom the Border Patrol had stopped, allegedly without reasonable suspicion. The Border Patrol had stopped some of these persons on numerous occasions.

The Border Patrol's lack of clear record-keeping indicates an inclination to hide a pattern and practice of profiling. In the *Durgin* case, Border Patrol agents did not fill out I-44 forms after stopping the plaintiffs. The Court quoted an internal training memorandum that shows that Border Patrol agents are strongly advised to fill out I-44 forms after every traffic stop they conduct because:

...written descriptions of "reasonable suspicions" are important not only to win the case against the suspect, but also to prove that agents acted properly in the event of civil lawsuits... [I]f the Border Patrol and/or individual agents are sued in a civil lawsuit alleging a pattern of discriminatory vehicle stops ... [agents'] written description of "reasonable suspicion" will be critical to prove that the agents acted properly.

Agents are trained to use the forms to protect against potential frivolous allegations of civil rights abuses. Thus, any instance where an agent does not fill out an I-44 should raise a concern that ethnic and racial profiling is being relied upon instead of the reasonable suspicion standard required for a lawful stop.

### **c. Customs Service**

While the Customs Service has implemented a series of widely-praised reforms after substantial criticism of its previously race- and ethnicity-based profiles, the magnitude of disparities in past policies is noteworthy; for example:

- A March 2000 GAO report on the U.S. Customs Service found that Black, Asian, and Hispanic female U.S. citizens were four to nine times more likely than White female U.S. citizens to be subjected to X-rays after being frisked or patted down.
- In reported cases regarding federal (including Customs Service) bus and train sweeps, overwhelmingly those targeted for enforcement are Black or Hispanic. From January 1, 1993 to August 22, 1995, of 55 cases in which the defendant's race could be identified, Hispanics were 20% of those stopped and searched. According to some courts, if no "seizure" takes place, law enforcement agents do not need to explain *how* they select their targets. One federal court upheld the case allowing the stop and search of a "roughly dressed black male." [*United States v. Weaver*, 966 F.2d 391, 396 (8<sup>th</sup> Circuit 1992)]

### **B. Collaboration between Federal and Local/State Law Enforcement**

Immigration enforcement by local and state law enforcement agencies, even under the guise of enforcement of separate criminal statutes, compromises and detracts from the true mission of local police of ensuring public safety, and worst of all, it undermines public trust and confidence. Many victims of abuse and mistreatment by joint immigration enforcement actions are U.S. citizens or legal permanent residents. A few examples of the discriminatory impact of joint collaborations between federal and local/state law enforcement agencies follow:

- Earlier last year, the Mexican American Legal Defense and Educational Fund, (MALDEF)\* filed litigation in connection with allegations of widespread civil rights violations by local police involved in immigration enforcement in northwest Arkansas. According to one of the plaintiffs, the Rogers Police Department has routinely targeted Hispanics for traffic stops, turning over "suspects" to the INS for immigration investigation. One of the plaintiffs is a woman who, after calling the police for protection from her abusive husband, was investigated as to her immigration status, arrested, and turned over to the INS. (*López, et al. v. City of Rogers, Arkansas, et al.*, USDC No. 01-5061, Western District of Arkansas, Fayetteville Division).
- After a federal judge in Ohio ordered the INS' Border Patrol to stop making discriminatory traffic stops (*Ramirez v. Webb*, later affirmed by the 6<sup>th</sup> Circuit Court

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\* NCLR is grateful for the assistance of the Mexican American Legal Defense and Educational Fund (MALDEF) in providing the latest information on the litigation.

of Appeals), the INS requested officials in the Ohio Highway Patrol to conduct the stops instead. Consequently, a federal court ordered the Highway Patrol to stop illegally confiscating green cards from legal migrant workers during profile-based traffic stops [*Farm Labor Organizing Committee vs. Ohio State Highway Patrol*].

- In Chandler, Arizona in 1997, local police collaborated with Border Patrol agents in illegal traffic stops and neighborhood “sweeps,” purportedly to find undocumented immigrants. What they found instead was a multimillion dollar lawsuit on behalf of U.S. citizens and permanent residents who were repeatedly harassed and detained by local police officers – without probable cause by their own admission – because they “looked Mexican.” A report by Arizona Attorney General Grant Woods concluded “without a doubt that residents of Chandler, Arizona were stopped, detained, and interrogated by officers...purely because of the color of their skin.” Some of the plaintiffs have settled the case while other claims are still pending.
- On January 29, 1997, in Crescent City, Florida, INS agents, Putnam County Sheriff’s deputies, and Crescent City police officers conducted a nighttime joint operation in search of undocumented immigrants. They set up a highway checkpoint and conducted a sweep of a trailer park and public housing facility largely inhabited by Hispanic residents. Although the police explained to the press that they were searching for drugs, there were no drug arrests made, nor were any drug searches conducted. One eyewitness, a worker at the Farmworkers’ Association of Florida, lives in the neighborhood between two White families whose homes were not raided. His home was approached twice. His wife was home but did not respond to the knock on the door. Approximately 50 other homes with Hispanic residents were raided. The police and Border Patrol would knock, announce “Police!”, and barge in after the door was opened, without consent and without cause. The officers also stopped Hispanics in the street and requested immigration documents without cause. A 12-year-old U.S. citizen was arrested in the street and taken miles from home for not having “papers.” When police realized their “mistake” they let him go and told him where he could catch the bus home. Border Patrol agents were involved, but one of them told local newspapers that he would never again participate in such a horrible operation.
- Courts have condemned INS and local police departments in several other similar cases, including *Velazquez v. Ackerman* (Director of INS, San Jose, CA); *de Haro v. City of St. Helena*; *Mendoza v. U.S. City of Farmersville*; and *Cedillo-Perez v. Adams* (Chief of Police of Katy, TX).

In 1996 Congress established a formal Memorandum of Understanding (MOU) process between the Department of Justice and state or local government to guide such INS-state/local collaborations. However, *none* of the programs cited above were conducted under the auspices of an MOU, which would have assumed review by DOJ’s Civil

Rights Division and training in immigration law for state/local offices.\* Thus, these collaborations apparently are taking place informally, without any formal review or guidance from the Department of Justice.

In the aftermath of the terrorist attacks of September 11, some states are seeking to expand local law enforcement authority to enforce immigration law. For example, the Attorney General of South Carolina has announced that he is seeking an agreement with INS to create an “elite force to enforce federal immigration law.” (*Press Release from South Carolina Attorney General Charlie Condon, October 8, 2001*).

In light of the troubled history described above, NCLR believes that such collaborations should not proceed, particularly since their proponents cannot demonstrate anything except a rhetorical connection to actual or potential terrorist threats.

### **C. Private Citizen Vigilantes**

As Latinos become an increasingly more visible segment of American society, they have become likely targets of harassment that often borders on hate violence. One apparent effect of the increasing anti-immigrant sentiment in the nation has been a surge in incidents of vigilantism; that is, undue, and often illegal, enforcement of existing laws by ordinary citizens. Americans are taking law into their own hands to try to stem the perceived “flood” of illegal immigrants into the country. Often armed and working in groups, many of the vigilantes commit apparent acts of discrimination and actual violent confrontations. In addition, private individuals have also deliberately preyed on or abused Latinos by exploiting their immigration status. For example:

- In May 1997, in San Diego, California, “Bob’s Boys,” a group of “volunteers” patrolling the San Diego border, armed themselves with semiautomatic rifles, seismic sensors, attack dogs, and camouflage outfits, ready to hold “illegals” at gunpoint until Border Patrol agents arrive to arrest them and return them across the border. They use zip ties for handcuffs on those who try to “cause trouble” and use their dogs to chase those who try to run away. They are one band of many organized and working along the U.S.-Mexico border region today.
- In May 1996, in San Diego, California, “Roger’s Airport Posse,” a local vigilante organization, patrolled the airport, “scouting” for and verbally abusing and intimidating persons “suspected” to be undocumented, until the group was stopped by a temporary restraining order. The “Posse” members wore uniforms and badges that resembled those used by Border Patrol.

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\* One proposed MOU between DOJ and Salt Lake City was rejected by the City Council after extensive protest from Latino community leaders and other civil rights organizations.

- California's Proposition 187 shows the extent to which citizen "enforcement" of immigrant eligibility laws can harm individuals. Proposition 187, a ballot initiative approved by California voters in 1994, would deny undocumented immigrants access to public programs such as schooling, and would require certain public workers to turn in "suspected" undocumented immigrants to the INS. Despite the fact that implementation of Proposition 187 was prevented by the courts, some California residents engaged in their own "enforcement" mechanisms. Immediately after the passage of Proposition 187, there were many reports of "foreign-looking" and "foreign-sounding" individuals being asked to show documentation and/or being denied services in fast food restaurants, on buses, in hotels, and in hospitals.

In the aftermath of the terrorist attacks of September 11, incidents like these targeting persons of, or perceived to be of, Middle Eastern descent have become all too common. Some of the perpetrators of these acts have irrationally lashed out at innocent people because of their appearance; in many of these cases, existing and proposed hate crimes laws may provide an appropriate remedy. However, in cases that do not involve acts or threats of violence – passengers refusing to fly with Arab Americans or denials of public services and accommodations to Muslims – other approaches are required. Clearly, all Americans should be vigilant about terrorist threats to our physical security. At the same time, we must vigorously resist the temptation to cross the line into vigilantism, which poses an equally dangerous threat to our fundamental values.

#### **D. Identification Cards/Driver's Licenses (DLs)**

In the wake of the September 11, 2001 terrorist attacks, there have been calls for anti-terrorist measures including a national identification system, either in the form of an ID card or a national computer registry system. While President Bush has stated that he is not considering a national ID card, it is likely that these proposals will continue to receive attention. NCLR vigorously opposes the creation of a national ID card, whether the card is an actual card or a "virtual card" with a computerized database system, primarily because such are likely to be ineffective and to lead to widespread abuses and violations of rights.

After learning that several of the September 11 terrorists had state-issued driver's licenses, some state officials have linked the denial of driver licenses to undocumented immigrants to efforts to combat terrorism, claiming that since several of the terrorists had U.S. state-issued driver's licenses, they were able to board airplanes, rent cars, blend into society, and perform other activities more easily. Proponents of stricter regulations believe that denying driver's licenses to foreigners will inhibit terrorists' ability to carry out terrorist activity.

Driver's licenses have also come to play a key role in the debate over national ID cards. Because a national ID card received significant opposition from across the political spectrum, state-issued DLs are appearing as a politically feasible compromise. The American Association of Motor Vehicle Administrators (AAMVA) recently announced

that it supports uniform standards for DLs across all 50 states, and is now working with computer security experts to create a national system to link all state DL databases to high-tech DL cards with computer chips, bar codes, and biometric identifiers such as thumbprints. Senator Durbin (D-IL) has announced his intention to introduce legislation to create uniform standards for driver's licenses in all 50 states. If implemented, uniform driver's licenses would result in a *de facto* national ID card.

Since September 11, several states have already taken steps to tighten the rules regarding driver's license eligibility and to restrict immigrant access further to driver's licenses. In Florida, for example, all non citizens applying for driver's licenses now receive 30-day temporary permits while police examine copies of their identification documents; if they are cleared, they will receive licenses that expire on the same day as their visas. North Carolina and Virginia now require proof of state residency. Politicians in Michigan, home to one of the nation's largest Arab American populations, plan to introduce legislation explicitly barring undocumented immigrants from receiving licenses. Some states have limited the number of acceptable documents used as proof of residency, while other states no longer allow drivers to wear head coverings or to refuse a photo for religious reasons. Still other states are investigating the use of biometric identifiers such as fingerprints on driver's licenses.

Some states have proposed to link driver's licenses to law enforcement, Social Security Administration, and INS databases so that DL applicants could be checked against other databases to verify identity, legal residency, and record of criminal activity. In Florida, the state DL agency has already purchased computer imaging equipment so copies of documents presented to the DL agency can be shared with other state and federal agencies.

While increasing our national security is critical, restricting driver's licenses is an inefficient way to enforce immigration laws and prevent terrorism. In fact, denying driver's licenses to large segments of the population makes everyone in the community less safe. Sophisticated terrorists with substantial financial resources are likely to have the ability to obtain driver's licenses and other documents when they find them necessary. Furthermore, press accounts since September 11 have called attention to the fact that the hijackers had obtained driver's licenses when, in fact, the terrorists did not need U.S. -issued driver's licenses to board planes on September 11; they had foreign passports that allowed them to board airplanes. Because of the large number of tourists and other visitors who travel in the U.S., foreign passports are likely to continue to be acceptable forms of identification to board airplanes.

Furthermore, restricting driver's licenses erodes community trust. Rather than increasing security, DL restrictions result in a situation in which immigrants fear discrimination and being reported to the INS and therefore avoid contact with law enforcement; immigrants are unwilling to report crimes and assist local law enforcement fight criminal and terrorist activity. This decreases community trust and infringes upon

efforts to fight crime and save lives. In most states, law enforcement officials are opposed to restrictions on driver's licenses, citing public safety, fraud prevention, battling corruption, and crime prevention.

Information-sharing with the INS and SSA does not increase public safety. Linking driver's license databases to the INS or the Social Security Administration to verify documents is likely to have harmful consequences. First, the accuracy and reliability of the databases are problematic. INS and SSA databases have been shown to have error rates approaching 20 %. The INS database is not updated quickly enough to contain current immigration status for all persons. Finally, innocent mistakes, such as the misspelling of "unusual" names, transposing given names and surnames, inconsistent entry of multiple surnames, and the like, have a disproportionate impact on ethnic minorities. If verification against INS data is used by DL agencies, it is inevitable that eligible persons will be denied driver's licenses because of inaccuracies in the databases. Sharing information with the INS and SSA does not lead to increased public safety. If immigrants do not apply for driver's licenses because they fear discrimination or that they will be reported to the INS or other law enforcement agencies, it results in greater numbers of unlicensed and uninsured drivers and less contact between the community and the authorities. As a result, the entire community is less safe.

History has shown that laws which require individuals to show proof of legal status or citizenship result in increased discrimination based on national origin and/or appearance. For example, in 1986 Congress passed the Immigration Reform and Control Act (IRCA), which implemented a national worker verification system and sanctions for employers who knowingly hired undocumented workers. Every honest observer agrees that employer sanctions have been an utter failure – by any measurement, the number of undocumented workers entering or remaining in the U.S. has not been reduced since 1986. Furthermore, one result of employer sanctions and worker verification has been increased discrimination against persons who look or sound "foreign" or have a "foreign" surname. Some employers demand that certain workers show additional or "better" documents, while other employers implement unlawful "citizen only" policies. A Congressionally-mandated GAO report found a "widespread pattern of discrimination" resulting "solely from the implementation of IRCA." GAO reported that 10% of employers discriminated on the basis of foreign accent or appearance, and 9% discriminated by preferring certain authorized workers over others.

Cases of discrimination and racial profiling have already come to light as advocates in several states have reported that persons who appear to be "foreign" have been asked for additional documentation, have had their documents scrutinized and rejected, and have had their driver's licenses confiscated by driver's license agencies and local law enforcement officers. Furthermore, law enforcement officers have reportedly confiscated the driver's licenses of immigrants during routine traffic stops. In several reported cases, people have been asked to produce additional documentation such as

a green card. Refugees, naturalized citizens, and Puerto Ricans have been scrutinized, and their driver's licenses have been confiscated – clear racial profiling and civil rights violations. If driver's licenses are further linked to immigration status, or if they are even perceived to be a proof of legal status, additional civil rights violations are probable.

In the current law enforcement context, the failure to carry an ID card would likely provide a pretext to disproportionately search, detain, or arrest African Americans, Arab Americans, Latinos, and Asians, and these and other ethnic minorities would be subject to new levels of government discrimination and harassment. In the private sector, minorities would likely be the targets of identity checks by banks, landlords, health care workers, and others.

The bottom line is that national ID systems don't work and inevitably violate basic civil rights and liberties. The right to act and travel freely without required identity papers sets the United States apart from Nazi Germany, the former Soviet Union, apartheid-era South Africa, and Castro's Cuba, among others. This is a distinction that our country should be proud to keep.

## **E. Border Enforcement**

In the aftermath of the September 11 events, additional enforcement along the northern and southern borders has been proposed and implemented. Again, while preventing future terrorist attacks is of the utmost importance, few can articulate specific, achievable policy proposals that would be effective in deterring terrorism without causing major, unacceptable, negative effects.

Moreover, such enforcement has had enormous human consequences in the past including racial profiling and increased border deaths. Operation Gatekeeper was launched seven years ago. Unfortunately, it has resulted in the appearance of a border under control by "redirecting" the undocumented foot traffic out of the San Diego/Tijuana area and into the Imperial Desert. The results have been just as deadly and ineffective in other parts of the Southwest border where variants of Gatekeeper have been implemented. By the Mexican Government's count, more than 1,800 migrants have died along the entire Southwest border since Oct. 1, 1994 – roughly one migrant death for each mile of border. At the California border with Mexico, migrant deaths have jumped by 500% from pre-Gatekeeper years. In Arizona and Texas, they have increased by 1,000%. Despite a much-touted border safety initiative and a drop in apprehensions, the two deadliest Border Patrol sectors, El Centro and Tucson, recorded more migrant deaths during fiscal year 2001 than the year before, according to immigration scholars.

With the increase in anti-terrorism activity along the U.S. borders, it is especially important that the effects on civil rights and human lives be closely monitored.

In summary, history has shown us that sometimes seemingly reasonable policies can have unintended, harmful consequences. Policies that are intended to increase national security can easily result in racial profiling, vigilantism, increased discrimination, and other violations of civil rights. We should learn from the past and do everything possible to ensure that we do not repeat past mistakes, particularly since many proposed policies are likely to be of dubious effectiveness, and in some cases would undermine effective law enforcement, including deterring terrorism.

#### **IV. Pursue Sound Policies**

**The events of September 11 and any subsequent policies enacted to prevent future terrorist acts should not preclude us from moving forward on proposals and policies that were already deemed to be in the public interest.**

It is understandable that much of the nation's business has been put "on hold" as the Administration and Congress deal with the immediate issues associated with the September 11 terrorist attacks. However, just as the nation's leaders have urged us to resume our normal activities, so too should the government proceed in due course with consideration of policies that otherwise make sense for the country. I would like to highlight several immigration and civil rights policies that NCLR believes should continue to move forward in due course.

##### **A. Legalization**

Immediately prior to September 11, the United States was engaged in high-level negotiations with the Government of Mexico over a proposed "earned legalization" for many undocumented immigrants currently in the U.S. It was expected that this proposal eventually would be expanded to include similarly-situated immigrants from other countries. Legalization is an effective first step toward reshaping our nation's immigration policies to respond to current economic and social realities.

Now, in the post-September 11 atmosphere, NCLR believes a legalization policy is even more critical as we search for ways to make our immigration policy more orderly and effective. A generous legalization would bring millions of undocumented workers out from the shadows, reducing the need for false documentation, border crossings without inspection, and other behavior that limits our ability to screen immigrants entering and residing in the U.S. Furthermore, perhaps the most important lesson that we can learn from recent events is the critical nature of hemispheric, and indeed global, relations and collaboration. Rather than pushing U.S.-Mexico negotiations to the back burner indefinitely, policy-makers should continue to see this as an historic opportunity to shift fundamentally the immigration debate and pass rational, farsighted solutions that recognize today's global and regional realities. Western Hemispheric relations have taken on new importance as we begin our global campaign against terrorism and

develop comprehensive ways to identify and stop terrorist threats before they enter our country. Just as a joint effort is needed to control undocumented migration, we need to work even more closely with our neighbors, share intelligence, and coordinate our efforts to stop global terrorism. These efforts would be substantially enhanced, both substantively and politically, by a broad legalization program.

## **B. Increases in Legal Immigration**

We must be careful to distinguish between immigrants and terrorists. Immigrants continue to come to this country seeking employment, to reunite with their families, and to flee persecution. Following the terrorist attacks, some have called for dramatic decreases in immigration levels, or even complete moratoriums on legal immigration. These knee-jerk proposals do not aid in the war against terrorism and are not in the best interest of the country. On the contrary, in times of economic uncertainty, immigrants can contribute to economic growth. In 1997, the prestigious National Academy of Sciences found that immigrants contribute approximately \$10 billion to the nation's economy per year and pay more in taxes than they use in services.

In Congressional testimony presented in July of 2001, Federal Reserve Board Chairman Alan Greenspan said, "I've always argued that this country has benefited immensely from the fact that we draw people from all over the world. And the average immigrant comes from a less benign environment, and indeed that's the reason they've come here. And I think they appreciate the benefits of this country more than those of us who were born here. And it shows in their entrepreneurship, their enterprise, and their willingness to do the types of work that make this economy function." We should not permit the events of September 11 to indefinitely sidetrack increases in legal immigration which are essential to our long-term economic prosperity.

## **C. Racial Profiling Legislation**

**The End Racial Profiling Act of 2001** (S.989/H.R. 2074) introduced by Senators Feingold (D-WI), Clinton (D-NY), and Corzine (D-NJ), and Representatives Conyers (D-MI), Morella (R-MD), Ferguson (R-NJ), Greenwood (R-PA), and Johnson (R-IL) would ban the practice of racial profiling by federal law enforcement agencies and provide incentives to state and local law enforcement agencies to eliminate this practice. Additionally, it requires the collection of data on routine investigatory activities; establishes procedures for receiving, investigating, and responding to claims of racial profiling; and requires training of law enforcement agents and holding them accountable for engaging in racial profiling. In addition, the Act offers incentive grants that encourage compliance, development, and implementation of practices such as the acquisition of technology to facilitate data collection, training to prevent racial profiling, and a fostering mechanism that would make the interaction between law enforcement and the community more respectful.

After the September 11 attacks the need to develop more sophisticated methods to detect and preclude acts of terrorism is more apparent than ever. However, such methods need not and should not include any form of racial profiling. NCLR will therefore continue to press for timely passage of this important legislation.

#### **D. Hate Crimes Legislation**

**The Local Law Enforcement Enhancement Act of 2001 (LLEEA)** sponsored by Senators Kennedy (D-MA), Specter (R-PA), and others would amend current federal law to include real or perceived sexual orientation, gender, and disability. The amendment would enable the FBI to investigate and prosecute violent hate crimes against gays, lesbians, and bisexuals. Current law already allows investigation and prosecution only on the basis of race, religion, national origin, and color. In addition, the bill would provide other reforms strengthening our ability to punish perpetrators of all hate crimes.

The FBI recently released the *2000 Hate Crimes Statistics Report*, showing that the majority of hate crimes committed that year were motivated by racial and ethnic/national origin biases. In 2000, there were 8,063 bias-motivated criminal incidents reported, compared to 7,876 in 1999. Of the 8,063 total incidents, 53.7% were motivated by racial bias, 11.3% by ethnicity/national origin, and less than one-half of 1% by disability and multiple biases. On October 1, 2001, a new Justice Department report was released revealing that only 20% of hate crimes result in an arrest.

Even before the apparent massive increase in hate crimes resulting from the September 11 events, these and other data demonstrated a compelling need to take additional steps to address hate crimes. Now, more than ever, we should swiftly enact the hate crimes bill.

#### **V. Recommendations**

The history of our nation is punctuated with unfortunate and regrettable incidents stemming from fear, bigotry, hatred, and xenophobia. The Palmer Raids, the internment of Japanese Americans, and the phenomenon known as "McCarthyism" immediately come to mind.

More recently, the 1996 Anti-Terrorism and Effective Death Penalty Act (AEDPA), passed in the aftermath of the first World Trade Center bombing, the Oklahoma City tragedy, and the terrorist attacks on our embassies in Tanzania and Kenya, had far-reaching and devastating effects on innocent people who had nothing to do with terrorism. For example, the AEDPA made §212(c) relief from deportation unavailable to aliens convicted of almost all crimes including minor, first-time offenses committed decades earlier. As a result, legal immigrants convicted of crimes that were not remotely related to terrorism were deported. Many young adults who had come to the

U.S. as children were deported after first-time convictions on drug possession charges or other relatively minor offenses. Often, such immigrants were deported to countries that they had no memory of and whose language they could not speak. Families were forced to make difficult decisions as they faced indefinite separation from loved ones; U.S. citizen children were separated from immigrant parents; primary breadwinners were separated from their spouses and other dependents. We note that this provision was enacted well after it was well-established that no legal immigrants in the U.S. were in any way even remotely involved in any of these incidents.

These are challenging times, and preventing future terrorist attacks is of the utmost importance. However, steps must be taken to ensure that any actions taken effectively address the issue of terrorism and truly make us safer. We must avoid the impulse to embark on activities that make us feel better without concretely addressing the terrorist threat. We must also make sure that our actions are thoughtful and will not result in harmful, unintended consequences with far-reaching effects on immigrant and ethnic communities, and on the entire population of the United States.

To address the growing problems that endanger the civil rights of all Americans, NCLR:

- **Urges Congress to re-prioritize the negotiations with the Mexican government and enact a legalization program.** We know that our nation requires their work, and must take steps to ensure that they no longer live clandestine lives. Now, more than ever, it is critical that we know who is residing in our country. Legalizing long-term, undocumented residents is the right thing to do and will result in greater security for all Americans.
- **Urges Congress to resist any attempts to create a national ID card.** Such systems do not effectively prevent terrorism and inevitably result in civil rights and privacy violations.
- **Urges Congress and the Administration not to pursue any proposed collaborations between INS and other law enforcement agencies in conducting immigration law enforcement operations.** NCLR believes any existing cooperation agreements between the INS and local/state law enforcement should be terminated, and the Attorney General should decline to pursue additional agreements.
- **Urges the INS to establish an improved mechanism to address complaints about abuse of authority in the enforcement of federal immigration laws.** The federal government has the authority and obligation to ensure that enforcing the nation's immigration laws does not result in abuse. A body, such as a "civilian review panel" with the ability and resources to accept and investigate complaints of federal law enforcement abuse and to make recommendations for remedial action, should be established to help ensure government accountability and deter further

civil rights violations. Such a panel could be a step forward in addressing the ever-increasing number of complaints filed against immigration enforcement agents.

- **Urges Congress to pass and the Administration to sign the End Racial Profiling Act of 2001.** In the short-term, this may involve working with the Administration to help shape guidelines for law enforcement and other agencies involved in anti-terrorism activities. Eventually, we believe the President and the Attorney General should reaffirm their public commitments to the eradication of this social problem by declaring and enforcing a ban on racial profiling by all federal agencies.
- **Urges Congress to pass and the Administration to sign the Local Law Enforcement Enhancement Act of 2001 (LLEEA),** legislation that would allow the FBI to investigate and prosecute all hate crimes.
- **Encourages Congress and the Administration to provide adequate resources to the Department of Justice’s Special Litigation Section to enable it to fulfill its task of pursuing “pattern and practice” lawsuits against police agencies nationwide which commit widespread abuse.** While many in Congress and the White House have said that they want to ensure that prosecutors have all the resources they need to enforce U.S. laws in these cases, funding of the Civil Rights Division’s work in this area remains inadequate.

I thank the committee, and especially Ranking Member Conyers, for the opportunity to present our views on these issues.