

## SPEECH

### END RACIAL PROFILING

#### SPEECH BY U.S. SENATOR JON CORZINE: INTRODUCING S. 989, THE “END RACIAL PROFILING ACT”

Mr. President, I<sup>1</sup> rise on this historic day to speak about an issue that defines our health as a society – the issue of racial profiling.<sup>2</sup>

I first want to recognize two of my colleagues with whom I have been working to address this problem. Senator Russell Feingold<sup>3</sup> has been a tremendous leader on the issue. He held the first Senate

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<sup>1</sup>Senator Jon S. Corzine (D-NJ) was elected to his first term in the United States Senate in November 2000. See <http://corzine.senate.gov/bio.html> (last visited Nov. 14, 2001). Prior to his election, Senator Corzine was co-CEO and co-Chairman of Goldman Sachs & Co. *Id.* He is a member of the Joint Economic Committee, the Senate Environment and Public Works Committee, Senate Budget Committee, and Senate Banking, Housing, and Urban Affairs Committee. *Id.*

<sup>2</sup>“Profiling” in a broad sense is the use of specific reasonable inferences that a police officer is entitled to draw from the facts in light of his experience. See *Terry v. Ohio*, 392 U.S. 1 (1968). A profile is a set of circumstances, events, or behavior that, when combined with the experience of an officer, may cause heightened suspicion that affects the officer’s exercise of discretion in stop and/or arrest decisions. See Elizabeth A. Knight and William Kurnik, *Racial Profiling in Law Enforcement: The Defense Perspective on Civil Rights Litigation*, BRIEF, Summer 2001, at 16. “Racial profiling” is a law enforcement policy whereby minorities are targeted for heightened police scrutiny because of a belief that most drug offenses are committed by minorities. See David A. Harris, *Driving While Black: Racial Profiling on Our Nation’s Highways*, *American Civil Liberties Special Report* (June 1999), available at <http://www.aclu.org/profiling/report/index.html>; Gregory M. Lipper, *Recent Development - Racial Profiling*, 38 HARV. J. ON LEGIS. 551 (2001); see also R. Richard Banks, *Race-Based Suspect Selection and Colorblind Equal Protection Doctrine and Discourse*, 48 UCLA L. REV. 1075 (June 2001).

<sup>3</sup>Senator Russ Feingold (D-WI) was first elected to the United States Senate in November 1992. See <http://feingold.senate.gov/press/bio.html> (last visited Nov. 14, 2001). Prior to his election, Senator Feingold served in the Wisconsin State Senate (27th District) from 1982 to 1992. *Id.* He is a member of the Senate Foreign Relations Committee, Senate Budget Committee, Senate Judiciary Committee, and Senate’s Special Committee on Aging. *Id.*

hearings on racial profiling<sup>4</sup> and he and his staff have worked tirelessly to elevate the importance of this issue as a matter of civil rights. I also want to recognize Senator Clinton.<sup>5</sup> When we joined the Senate earlier this year, we talked about how this would be one of our top priorities, and she and her staff have worked hard to make the bill we are introducing today a reality.<sup>6</sup>

Mr. President, the practice of racial profiling is the antithesis of America's belief in fairness and equal protection under the law.<sup>7</sup> Stopping people on our highways, our streets, and at our borders because of the color of their skin tears at the very fabric of American

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<sup>4</sup> The Committee on the Judiciary's Subcommittee on Constitution, Federalism, and Property Rights conducted hearings regarding the Traffic Stops Statistics Study Act of 1999, S. 821, 106<sup>th</sup> Cong. (2000), on March 30, 2000. See <http://thomas.loc.gov/cgi-bin/bdquery/z?d106:SN00821:@@X> (last visited Nov. 14, 2001). Testimony was received from Senator Lautenberg; Representative Conyers; New Jersey State Assemblyman LeRoy J. Jones, Jr., Trenton, on behalf of the New Jersey Legislative Black and Latino Caucus; David A. Harris, University of Toledo College of Law, Toledo, Ohio, on behalf of the Center on Crime, Communities and Culture; Johnny L. Hughes, National Troopers Coalition, Annapolis, Maryland; John Welter, San Diego Police Department, San Diego, California; Rodney Watt, City of Highland Park Police Department, Highland Park, Illinois; Rossano Gerald, Ft. Hood, Texas; Robert L. Wilkins, Washington, D.C.; and Curtis V. Rodriguez, San Jose, California. See CONG. REC. DAILY DIGEST D292 (daily ed. March 30, 2000). The legislation was referred to the Committee on Judiciary but no further legislative action was taken. See <http://thomas.loc.gov/cgi-bin/bdquery/z?d106:SN00821:@@X> (last visited Nov. 14, 2001).

A House version of the bill, the Traffic Stops Statistics Study Act of 1999, H.R. 1443, 106<sup>th</sup> Cong. (2000), was also proposed, but never came to a floor vote. See <http://thomas.loc.gov/cgi-bin/bdquery/z?d106:HR01443:@@X> (last visited Nov. 14, 2001).

<sup>5</sup> Senator Hillary Rodham Clinton (D-NY) was elected to the United States Senate in November 2000. See [http://clinton.senate.gov/about\\_hrc.html](http://clinton.senate.gov/about_hrc.html) (last visited Nov. 14, 2001). She is the first First Lady elected to the United States Senate. *Id.* Senator Clinton serves on the Senate Budget Committee, Senate Environment and Public Works Committee, and Senate Health, Education, Labor and Pensions Committee. *Id.*

<sup>6</sup> End Racial Profiling Act of 2001, S. 989, 107<sup>th</sup> Cong. (2001), introduced on June 6, 2001. Senator Feingold sponsored S. 989 with fifteen co-sponsors. See <http://thomas.loc.gov/cgi-bin/bdquery/z?d107:SN00989:@@P> (visited November 2, 2001). S. 989's companion bill introduced in the House is H.R. 2074, 107<sup>th</sup> Cong. (2001), sponsored by Rep. John Conyers, Jr. with 83 co-sponsors. See <http://thomas.loc.gov/cgi-bin/bdquery/z?d107:HR02074:@@P> (last visited November 2, 2001).

<sup>7</sup> Opponents argue racial profiling violates the Equal Protection clause of the Fourteenth Amendment because it is based upon false racial perceptions and racial biases that motivate discriminatory policies. See Peter A. Lyle, *Racial Profiling and the Fourth Amendment: Applying the Minority Victim Perspective to Ensure Equal Protection Under the Law*, 21 B.C. THIRD WORLD L.J. 243 (2001); Banks, *supra* note 2; David Rudovsky, *Symposium: Law Enforcement by the Stereotypes and Serendipity: Racial Profiling and Stops and Searches Without Cause*, 3 U. PA. J. CONST. L. 296 (2001).

society. We are a nation of laws and everyone should receive equal protection under the law. Our Constitution tolerates nothing less.<sup>8</sup> We should demand nothing less.

There is no equal protection – there is no equal justice – if law enforcement agencies engage in policies and practices that are premised on a theory that the way to stop crime is to go after black and brown people on the hunch that they are more likely to be criminals.<sup>9</sup>

Let me add, Mr. President, that not only is racial profiling wrong, it is simply not an effective law enforcement tool. There is no evidence that stopping people of color adds up to catching bad guys.<sup>10</sup> In fact, there is statistical evidence which points out that singling out black motorists or Hispanic motorists for stops and searches does not lead to a higher percentage of arrests.<sup>11</sup> Minority motorists are simply no more likely to be breaking the law than white motorists. But unfortunately Mr. President, racial profiling persists.

In the last wave of statistics from New Jersey – minority motorists accounted for 73 percent of those searched on the New Jersey Turnpike.<sup>12</sup> But even the State Attorney General admitted that state troopers were twice – I repeat twice– as likely to find drugs and other illegal items when searching vehicles driven by whites.<sup>13</sup>

Or take the example of the March 2000 Government Accounting Office report on the U.S. Customs Service.<sup>14</sup> The report found that black, Asian and

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<sup>8</sup> *Id.*

<sup>9</sup> The premise that minorities are responsible for the majority of drug crime is factually untrue. See David A. Harris, *Driving While Black: Racial Profiling on Our Nation's Highways*, *American Civil Liberties Special Report* (June 1999), available at <http://www.aclu.org/profiling/report/index.html> (last visited Nov. 14, 2001).

<sup>10</sup> *See id.*

<sup>11</sup> Symposium, *Racial Profiling: A Status Report of the Legal, Legislative, And Empirical Literature*, 3 RUTGERS RACE & L. REV. 61 (2001). The article discusses legislation, empirical literature and research on the topic. *Id.* The thesis of this article is that the racial profiling analysis should extend beyond the black/white dichotomy. *Id.*

<sup>12</sup> Rudovsky, *supra* note 7 at 300.

<sup>13</sup> *N.J. Minorities Remain Big Target of Car Searches*, NEWSDAY (New York, NY), April 4, 2001, at A20. New Jersey Attorney General John Farmer, said that blacks and Hispanics are searched much more than white drivers, but whites who are stopped are found to be carrying drugs more often than minorities. *See id.*

<sup>14</sup> United States General Accounting Office, *Better Targeting of Airline Passengers for Personal Searches Could Produce Better Results*, GAO/GGD-00-38, 87 (2000). This report summarized the search training, policies, standards, and success rates of airport searches for contraband and analyzed the results by race and gender. *See id.* Specifically, the report

Hispanic women were four to nine times more likely than white women to be subjected to X-rays after being frisked or patted down.<sup>15</sup> But on the basis of the X-ray results, black women were less than half as likely as white women to be found carrying contraband.<sup>16</sup> Mr. President, this is law enforcement by hunch. No warrants. No probable cause.

And what is the hunch based on? Race – plain and simple.

Nowhere was this more evident, Mr. President, than in my own home state three Aprils ago.<sup>17</sup> Four young men on the New Jersey Turnpike in a minivan – on their way to North Carolina, were hoping to go to school on basketball scholarships.<sup>18</sup> Two state troopers pulled them off the road, the frightened driver lost control of the van, two dozen shots rang out. Three out of the four kids were shot.<sup>19</sup> I spoke to these kids a while ago. One of them told me he was asleep when the van was pulled over. He told me, “What woke me up was a bullet.”

Mr. President, stories like this should wake us all up. The practice of racial profiling broadly undermines the confidence of the American people in the institutions that we depend on to protect and defend us. Different rules for different people do not work.

Now – we know that many law enforcement agencies, including some from my home state, have acknowledged the danger of the practice and have taken steps to combat it.<sup>20</sup> Mr. President, I commend them for their efforts.

That said, it is clear that this is a national problem that requires a federal response applicable to all.<sup>21</sup> That is why my colleagues and I have introduced legislation to end this practice.<sup>22</sup> We want to be sure

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found that passengers of certain races and gender were more likely to be subjected to intrusive searches. *See id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Lipper, *supra* note 2 at n. 6; *see also* Jeffrey Gold, *State Police Deny Race is a Factor in Pulling Over Motorists*, THE RECORD, May 2, 1998, at A4.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Abraham Abramovsky, *Pretext Stops and Racial Profiling After Whren v. United States: The New York and New Jersey Responses Compared*, 63 ALB. L. REV. 725, 726 (2000). In 1999, New Jersey State Police officers admitted to using racial profiling to stop motorists on the NJ Turnpike. *See id.*

<sup>21</sup> John McAlpin, *Lawmakers Plan To Ensure Charges In Profiling Cases*, THE RECORD, January 8, 2001 at L5. State legislators are developing a bill that would hold police officers criminally liable if they violate motorists' civil rights. *See id.*

<sup>22</sup> *See End Racial Profiling Act of 2001*, S. 989, 107th Cong. (2001).

there are no more excuses built on questions of what racial profiling means – so, we will define it clearly.<sup>23</sup> And we will ban it. No routine stops based solely on race, national origin or ethnicity.<sup>24</sup>

We will also require the collection of statistics to accurately measure whether progress is being made.<sup>25</sup> By collecting this data, Mr. President, we will get a fair picture of law enforcement at work. And we will provide law enforcement with the information they need to detect problems early on.

It is not our intention to micromanage law enforcement. Our bill does not tell law enforcement agencies what data should be collected. Instead, we direct the Attorney General to develop the standards for data collection, and he presumably would work with law enforcement in developing those standards.<sup>26</sup> Our legislation also specifically directs the Attorney General to also establish standards for setting benchmarks against which the collected data should be measured – so that no data is taken out of context, as some in law enforcement rightly fear.<sup>27</sup>

If the numbers reveal a portrait of continued racial profiling, then the Justice Department or independent third parties can seek relief in federal court ordering that remedies be put into effect to end racial profiling.<sup>28</sup>

Mr. President, our bill would also put in place procedures to

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<sup>23</sup> See S.989 §501(C)(5). Defining racial profiling as:

The term ‘racial profiling’ means the practice of a law enforcement agent relying, to any degree, on race, ethnicity, or national origin in selecting which individuals to subject to routine investigatory activities, or in deciding upon the scope and substance of law enforcement activity following the initial routine investigatory activity, except that racial profiling does not include reliance on such criteria in combination with other identifying factors when the law enforcement agent is seeking to apprehend a specific suspect whose race, ethnicity, or national origin is part of the description of the suspect.

*Id.* See also *supra* note 2 and accompanying discussion.

<sup>24</sup> See *id.* §101.

<sup>25</sup> See *id.* §401. Requiring the Attorney General to submit a report on federal, state and local law enforcement racial profiling activities two-years after the enactment of S. 989. *Id.*

<sup>26</sup> See *id.* §302. Section 302 provides the Attorney General the ability to award grants to: “States, law enforcement agencies and other governmental units, Indian tribal governments or other public and private entities to develop and implement best practice devices and systems to ensure the racially neutral administration of justice.”

*Id.*

<sup>27</sup> *Id.*

<sup>28</sup> See *id.* §102(a). Providing the United States or an individual citizen a private right of action to seek civil damages or declaratory or injunctive relief in either state or federal

receive and investigate complaints alleging racial profiling.<sup>29</sup> It would require procedures to discipline law enforcement officers engaging in racial profiling.<sup>30</sup> Finally, Mr. President – we will encourage a climate of cultural change in law enforcement with a carrot and a stick.

First, the carrot: we recognize that law enforcement shouldn't be expected to do this alone. So we are saying that if you do the job right – fairly and equitably – you can be eligible to receive a best practices development grant – to help pay for programs dealing with advanced training<sup>31</sup> and to help pay for the computer technology that is necessary to collect the data and statistics we have demanded. We'll help pay for video cameras and recorders for your patrol cars. We'll help pay for establishing or improving systems for handling complaints alleging ethnic or racial profiling. We'll help to establish management systems to ensure that supervisors are held accountable for the conduct of subordinates.<sup>32</sup>

But if you don't do the job right, there is the stick. If state and local law enforcement agencies refuse to implement procedures to end and prevent profiling, they will be subject to a loss of federal law enforcement funds.<sup>33</sup>

Let me be clear, Mr. President – this bill is not about blaming law enforcement, and it is not designed to prevent law enforcement from doing its job. In fact, we believe

that it will help our officers maintain the public trust they need to do their jobs. If race is a part of a description of a specific suspect involved in an investigation, this law does not prevent that information from being distributed.<sup>34</sup> But stopping people on a random or race-

court. *Id.*

<sup>29</sup> See *id.* §§ 201(b)(2), (3); § 301(b)(2). Section 201(b)(2) requires that Federal law enforcement agencies collect “data on routine investigatory activities sufficient to determine if law enforcement agents are engaging in racial profiling. . . .” *Id.* §201(b)(2). Section 301(b)(2) requires a state or governmental unit or entity receiving a grant under this Act to begin to collect data similar to that required in §201(b)(2). *Id.* §301(b)(2).

<sup>30</sup> See *id.* §102(b). Allowing: “In any action brought pursuant to this title, relief may be obtained against: any governmental unit that employed any law enforcement agent who engaged in racial profiling; any agent of such unit who engaged in racial profiling; and any person with supervisory authority over such agent.”

*Id.*

<sup>31</sup> See *supra* note 27 and accompanying discussion.

<sup>32</sup> See *supra* note 31 and accompanying discussion.

<sup>33</sup> See S. 989 §301(c).

<sup>34</sup> See *id.* § 402.

based hunch will be outlawed.

Mr. President, race has been a never-ending battle in this country. You know it began with our Constitution, when the Founding Fathers argued over the rights of southern slaves.<sup>35</sup> And then we fought a war over race,<sup>36</sup> a war that ripped our country apart.<sup>37</sup> Our country emerged whole, but discrimination continued for decades – discrimination sanctioned in part by our own Supreme Court.<sup>38</sup>

But our country's history has always been about change, about growth, about recognizing those things that weaken us from within. A generation ago, we began to fight another war – a war founded in peaceful principles, but a war that killed our heroes, burned our cities, and shook us once again to the very core. But we advanced, with important civil rights initiatives like the Voting Rights Act,<sup>39</sup> and like the Public Accommodations Law.<sup>40</sup> We demanded and gained laws to fight discrimination in employment<sup>41</sup>, in housing<sup>42</sup>, in education.<sup>43</sup>

Today, Mr. President, it is time for us to take another step.

Racial profiling has bred humiliation, anger, resentment and cynicism throughout this country. It has weakened respect for the law – by everyone, not just those offended. Simply put – it is wrong and we must end it. Today we pledge to do just that – to define it, to ban it, and to enforce that ban.

Thank you, Mr. President.<sup>44</sup>

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<sup>35</sup> See Andrew E. Taslitz, *Hate Crimes, Free Speech, and the Contract of Mutual Indifference*, 80 B.U.L. REV. 1283, 1304-1308 (2000)(discussing pre-Revolutionary War American thought on slavery).

<sup>36</sup> See JAMES M. MCPHERSON, *BATTLE CRY OF FREEDOM: THE CIVIL WAR ERA* (Ballantine books, 1989).

<sup>37</sup> *Id.*

<sup>38</sup> See *Plessy v. Ferguson*, 163 U.S. 537, 550-51 (1896) (upholding Louisiana law providing for “separate but equal” facilities for African-Americans).

<sup>39</sup> See 42 U.S.C. § 1971, *et seq.* (2001).

<sup>40</sup> See Civil Rights Act of 1964, 42 U.S.C. § 1981, *et seq.* (2001).

<sup>41</sup> See Equal Employment Opportunities Act, 42 U.S.C. § 2000e, *et seq.* (2001); *see also* Age Discrimination in Employment Act of 1967, *as amended*, 29 U.S.C. § 621, *et seq.* (2001).

<sup>42</sup> See Fair Housing Amendments Act, 42 U.S.C. 3601, *et seq.* (2001).

<sup>43</sup> 42 U.S.C. § 2000e, *et seq.*

<sup>44</sup> The author would like to thank the members of the Seton Hall Legislative Bureau for their assistance researching the footnotes.

S 989 IS

107th CONGRESS

1st Session

S. 989

To prohibit racial profiling.

**IN THE SENATE OF THE UNITED STATES****June 6, 2001**

Mr. FEINGOLD (for himself, Mr. CORZINE, Mrs. CLINTON, Mr. KENNEDY, Mr. TORRICELLI, Mr. SCHUMER, Mr. DURBIN, Ms. STABENOW, and Mr. REID) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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**A BILL**

To prohibit racial profiling.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE- This Act may be cited as the 'End Racial Profiling Act of 2001'.

(b) TABLE OF CONTENTS- The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purposes.



**TITLE I—PROHIBITION OF RACIAL PROFILING**

Sec. 101. Prohibition.

Sec. 102. Enforcement.

**TITLE II—PROGRAMS TO ELIMINATE RACIAL PROFILING  
BY FEDERAL LAW ENFORCEMENT AGENCIES**

Sec. 201. Policies to eliminate racial profiling.

**TITLE III—PROGRAMS TO ELIMINATE RACIAL  
PROFILING BY STATE AND LOCAL LAW ENFORCEMENT  
AGENCIES**

Sec. 301. Policies required for grants.

Sec. 302. Best practices development grants.

**TITLE IV—DEPARTMENT OF JUSTICE REPORT ON RACIAL  
PROFILING IN THE UNITED STATES**

Sec. 401. Attorney General to issue report on racial profiling in the United States.

Sec. 402. Limitation on use of data.

**TITLE V—DEFINITIONS AND MISCELLANEOUS  
PROVISIONS**

Sec. 501. Definitions.

Sec. 502. Severability.

Sec. 503. Savings clause.

Sec. 504. Effective dates.

**SEC. 2. FINDINGS AND PURPOSES.****(a) FINDINGS-** Congress makes the following findings:

(1) The vast majority of law enforcement agents nationwide discharge their duties professionally, without bias, and protect the safety of their communities.

(2) The use by police officers of race, ethnicity, or national origin in deciding which persons should be subject to traffic stops, stops and frisks, questioning, searches, and seizures is a problematic law enforcement tactic. Statistical evidence from across the country demonstrates that such racial profiling is a real and measurable phenomenon.

(3) As of November 15, 2000, the Department of Justice had 14 publicly noticed, ongoing, pattern or practice investigations involving allegations of racial profiling and had filed five pattern and practice lawsuits involving allegations of racial profiling, with four of those cases resolved through consent decrees.

(4) A large majority of individuals subjected to stops and other enforcement activities based on race, ethnicity, or national origin are found to be law-abiding and therefore racial profiling is not an effective means to uncover criminal activity.

(5) A 2001 Department of Justice report on citizen-police contacts in 1999 found that, although African-Americans and Hispanics were more likely to be stopped and searched, they were less likely to be in possession of contraband. On average, searches and seizures of African-American drivers yielded evidence only eight percent of the time, searches and seizures of Hispanic drivers yielded evidence only 10 percent of the time, and searches and seizures of white drivers yielded evidence 17 percent of the time.

(6) A 2000 General Accounting Office report on the activities of the United States Customs Service during fiscal year 1998 found that black women who were United States citizens were 9 times more likely than white women who were United States citizens to be X-rayed after being frisked or patted down and, on the basis of X-ray results, black women who were United States citizens were less than half as likely as white women who were United States citizens to be found carrying contraband. In general, the report found that the patterns used to select

passengers for more intrusive searches resulted in women and minorities being selected at rates that were not consistent with the rates of finding contraband.

(7) Current local law enforcement practices, such as ticket and arrest quotas, and similar management practices, may have the unintended effect of encouraging law enforcement agents to engage in racial profiling.

(8) Racial profiling harms individuals subjected to it because they experience fear, anxiety, humiliation, anger, resentment, and cynicism when they are unjustifiably treated as criminal suspects. By discouraging individuals from traveling freely, racial profiling impairs both interstate and intrastate commerce.

(9) Racial profiling damages law enforcement and the criminal justice system as a whole by undermining public confidence and trust in the police, the courts, and the criminal law.

(10) Racial profiling violates the Equal Protection Clause of the Constitution. Using race, ethnicity, or national origin as a proxy for criminal suspicion violates the constitutional requirement that police and other government officials accord to all citizens the equal protection of the law. *Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252 (1977).

(11) Racial profiling is not adequately addressed through suppression motions in criminal cases for two reasons. First, the Supreme Court held, in *Whren v. United States*, 517 U.S. 806 (1996), that the racially discriminatory motive of a police officer in making an otherwise valid traffic stop does not warrant the suppression of evidence. Second, since most stops do not result in the discovery of contraband, there is no criminal prosecution and no evidence to suppress.

(12) Current efforts by State and local governments to eradicate racial profiling and redress the harms it causes, while laudable, have been limited in scope and insufficient to address this national problem.

(b) PURPOSES- The independent purposes of this Act are—

(1) to enforce the constitutional right to equal protection of the laws, pursuant to the Fifth Amendment and section 5 of the 14th Amendment to the Constitution of the United States;

(2) to enforce the constitutional right to protection against

unreasonable searches and seizures, pursuant to the Fourth Amendment to the Constitution of the United States;

(3) to enforce the constitutional right to interstate travel, pursuant to section 2 of article IV of the Constitution of the United States; and

(4) to regulate interstate commerce, pursuant to clause 3 of section 8 of article I of the Constitution of the United States.

## **TITLE I—PROHIBITION OF RACIAL PROFILING**

### **SEC. 101. PROHIBITION.**

No law enforcement agent or law enforcement agency shall engage in racial profiling.

### **SEC. 102. ENFORCEMENT.**

(a) REMEDY- The United States, or an individual injured by racial profiling, may enforce this title in a civil action for declaratory or injunctive relief, filed either in a State court of general jurisdiction or in a District Court of the United States.

(b) PARTIES- In any action brought pursuant to this title, relief may be obtained against: any governmental unit that employed any law enforcement agent who engaged in racial profiling; any agent of such unit who engaged in racial profiling; and any person with supervisory authority over such agent.

(c) NATURE OF PROOF- Proof that the routine investigatory activities of law enforcement agents in a jurisdiction have had a disparate impact on racial or ethnic minorities shall constitute prima facie evidence of a violation of this title.

(d) ATTORNEYS' FEES- In any action or proceeding to enforce this title against any governmental unit, the court may allow a prevailing plaintiff, other than the United States, reasonable attorneys' fees as part of the costs, and may include expert fees as part of the attorney's fee.

## **TITLE II—PROGRAMS TO ELIMINATE RACIAL PROFILING BY FEDERAL LAW ENFORCEMENT AGENCIES**

**SEC. 201. POLICIES TO ELIMINATE RACIAL PROFILING.**

- (a) IN GENERAL- Federal law enforcement agencies shall—
- (1) maintain adequate policies and procedures designed to eliminate racial profiling; and
  - (2) cease existing practices that encourage racial profiling.
- (b) POLICIES- The policies and procedures described in subsection (a)(1) shall include the following:
- (1) A prohibition on racial profiling.
  - (2) The collection of data on routine investigatory activities sufficient to determine if law enforcement agents are engaged in racial profiling and submission of that data to the Attorney General.
  - (3) Independent procedures for receiving, investigating, and responding meaningfully to complaints alleging racial profiling by law enforcement agents of the agency.
  - (4) Procedures to discipline law enforcement agents who engage in racial profiling.
  - (5) Such other policies or procedures that the Attorney General deems necessary to eliminate racial profiling.

**TITLE III—PROGRAMS TO ELIMINATE RACIAL PROFILING BY STATE AND LOCAL LAW ENFORCEMENT AGENCIES****SEC. 301. POLICIES REQUIRED FOR GRANTS.**

- (a) IN GENERAL- An application by a State or governmental unit for funding under a covered program shall include a certification that such unit and any agency to which it is redistributing program funds—
- (1) maintains adequate policies and procedures designed to eliminate racial profiling; and
  - (2) has ceased existing practices that encourage racial profiling.
- (b) POLICIES- The policies and procedures described in subsection (a) shall include the following:
- (1) A prohibition on racial profiling.
  - (2) The collection of data on routine investigatory activities

sufficient to determine if law enforcement agents are engaged in racial profiling and submission of that data to the Attorney General.

(3) Independent procedures for receiving, investigating, and responding meaningfully to complaints alleging racial profiling by law enforcement agents.

(4) Procedures to discipline law enforcement agents who engage in racial profiling.

(5) Such other policies or procedures that the Attorney General deems necessary to eliminate racial profiling.

(c) **NONCOMPLIANCE-** If the Attorney General determines that a grantee is not in compliance with conditions established pursuant to this title, the Attorney General shall withhold the grant, in whole or in part, until the grantee establishes compliance. The Attorney General shall provide notice regarding State grants and opportunities for private parties to present evidence to the Attorney General that a grantee is not in compliance with conditions established pursuant to this title.

### **SEC. 302. BEST PRACTICES DEVELOPMENT GRANTS.**

(a) **GRANT AUTHORIZATION-** The Attorney General may make grants to States, law enforcement agencies and other governmental units, Indian tribal governments, or other public and private entities to develop and implement best practice devices and systems to ensure the racially neutral administration of justice.

(b) **USES-** The funds provided pursuant to subsection (a) may be used to support the following activities:

(1) Development and implementation of training to prevent racial profiling and to encourage more respectful interaction with the public.

(2) Acquisition and use of technology to facilitate the collection of data regarding routine investigatory activities in order to determine if law enforcement agents are engaged in racial profiling.

(3) Acquisition and use of technology to verify the accuracy of data collection, including in-car video cameras and portable computer systems.

(4) Development and acquisition of early warning systems and other feedback systems that help identify officers or units of

officers engaged in or at risk of racial profiling or other misconduct, including the technology to support such systems.

(5) Establishment or improvement of systems and procedures for receiving, investigating, and responding meaningfully to complaints alleging racial or ethnic bias by law enforcement agents.

(6) Establishment or improvement of management systems to ensure that supervisors are held accountable for the conduct of their subordinates.

(c) **EQUITABLE DISTRIBUTION-** The Attorney General shall ensure that grants under this section are awarded in a manner that reserves an equitable share of funding for small and rural law enforcement agencies.

(d) **AUTHORIZATION OF APPROPRIATIONS-** The Attorney General shall make available such sums as are necessary to carry out this section from amounts appropriated for programs administered by the Attorney General.

#### **TITLE IV—DEPARTMENT OF JUSTICE REPORTS ON RACIAL PROFILING IN THE UNITED STATES**

### **SEC. 401. ATTORNEY GENERAL TO ISSUE REPORTS ON RACIAL PROFILING IN THE UNITED STATES.**

#### **(a) REPORTS-**

(1) **IN GENERAL-** Not later than two years after the enactment of this Act, and each year thereafter, the Attorney General shall submit to Congress a report on racial profiling by Federal, State, and local law enforcement agencies in the United States.

(2) **SCOPE-** The reports issued pursuant to paragraph (1) shall include—

(A) a summary of data collected pursuant to sections 201(b)(2) and 301(b)(2) and any other reliable source of information regarding racial profiling in the United States;

(B) the status of the adoption and implementation of policies and procedures by Federal law enforcement agencies pursuant to section 201;

(C) the status of the adoption and implementation of policies and procedures by State and local law enforcement

agencies pursuant to sections 301 and 302; and

(D) a description of any other policies and procedures that the Attorney General believes would facilitate the elimination of racial profiling.

(b) DATA COLLECTION- Not later than six months after the enactment of this Act, the Attorney General shall by regulation establish standards for the collection of data pursuant to sections 201(b)(2) and 301(b)(2), including standards for setting benchmarks against which collected data shall be measured. Such standards shall result in the collection of data, including data with respect to stops, searches, seizures, and arrests, that is sufficiently detailed to determine whether law enforcement agencies are engaged in racial profiling and to monitor the effectiveness of policies and procedures designed to eliminate racial profiling.

(c) PUBLIC ACCESS- Data collected pursuant to section 201(b)(2) and 301(b)(2) shall be available to the public.

## **SEC. 402. LIMITATION ON USE OF DATA.**

Information released pursuant to section 401 shall not reveal the identity of any individual who is detained or any law enforcement officer involved in a detention.

## **TITLE V—DEFINITIONS AND MISCELLANEOUS PROVISIONS**

### **SEC. 501. DEFINITIONS.**

In this Act:

(1) COVERED PROGRAM- The term ‘covered program’ means any program or activity funded in whole or in part with funds made available under any of the following:

(A) The Edward Byrne Memorial State and Local Law Enforcement Assistance Programs (part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.)).

(B) The ‘Cops on the Beat’ program under part Q of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42



U.S.C. 3796dd et seq.), but not including any program, project, or other activity specified in section 1701(d)(8) of that Act (42 U.S.C. 3796dd(d)(8)).

(C) The Local Law Enforcement Block Grant program of the Department of Justice, as described in appropriations Acts.

(2) GOVERNMENTAL UNIT- The term ‘governmental unit’ means any department, agency, special purpose district, or other instrumentality of Federal, State, local, or Indian tribal government.

(3) LAW ENFORCEMENT AGENCY- The term ‘law enforcement agency’ means a Federal, State, local, or Indian tribal public agency engaged in the prevention, detection, or investigation of violations of criminal, immigration, or customs laws.

(4) LAW ENFORCEMENT AGENT- The term ‘law enforcement agent’ means any Federal, State, local, or Indian tribal official responsible for enforcing criminal, immigration, or customs laws, including police officers and other agents of Federal, State, and local law enforcement agencies.

(5) RACIAL PROFILING- The term ‘racial profiling’ means the practice of a law enforcement agent relying, to any degree, on race, ethnicity, or national origin in selecting which individuals to subject to routine investigatory activities, or in deciding upon the scope and substance of law enforcement activity following the initial routine investigatory activity, except that racial profiling does not include reliance on such criteria in combination with other identifying factors when the law enforcement agent is seeking to apprehend a specific suspect whose race, ethnicity, or national origin is part of the description of the suspect.

(6) ROUTINE INVESTIGATORY ACTIVITIES- The term ‘routine investigatory activities’ includes the following activities by law enforcement agents: traffic stops; pedestrian stops; frisks and other types of body searches; consensual or nonconsensual searches of the persons or possessions (including vehicles) of motorists or pedestrians; inspections and interviews of entrants into the United States that are more extensive than those customarily carried out; and immigration-related workplace investigations.

## **SEC. 502. SEVERABILITY.**

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or

circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

### **SEC. 503. SAVINGS CLAUSE.**

Nothing in this Act shall be construed to limit legal or administrative remedies under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983), section 210401 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14141), the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3701 et seq.), and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

### **SEC. 504. EFFECTIVE DATES.**

(a) IN GENERAL- Except as provided in subsection (b), the provisions of this Act shall take effect on the date of the enactment of this Act.

(b) CONDITIONS ON FUNDING- Section 301 shall take effect 1 year after the date of enactment of this Act.