

EXCERPTS
from the
STATEMENT ON TERRORISM, IMMIGRATION, AND CIVIL RIGHTS
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presented by: Charles Kamasaki, Senior Vice President, The National Council of La Raza
to the
United States Commission on Civil Rights, Washington, D.C.

My name is Charles Kamasaki and today I represent the National Council of La Raza (NCLR), 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 250 plus affiliate community-based groups 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:

- New anti-terrorism policies must be effective and necessary, and should be narrowly tailored to respond to real security threats.
- These policies should be carefully considered so that they do not have unintended negative outcomes that adversely affect entire communities.
- 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.

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.

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, goes 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.

Local Law Enforcement

Local law enforcement relies on a widespread number of tactics including traffic stops, "stops 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 we are aware of 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.

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 this 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 6th Circuit Court 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 multi-million 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.

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, CA, "Bob's Boys," a group of "volunteers" patrolling the San Diego border, armed themselves with semi-automatic 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, CA, "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 it was stopped by a temporary restraining order. The "Posse" members wore uniforms and badges that resembled those used by Border Patrol.
- 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 over 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.

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.

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, far-sighted 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.

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 that are essential to our long-term economic prosperity.

Racial Profiling Legislation

The End Racial Profiling Act of 2001 (S.989/H.R. 2074) introduced by Senators Feingold (D-WI), Clinton (D-NY), 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.

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 1999 Hate Crimes Statistics Report, showing that the majority of hate crimes committed that year were motivated by racial and ethnic/national origin biases. In 1999, there were 7,876 bias-motivated criminal incidents reported, compared to 7,775 in 1998. Of the 7,876 total incidents, 55% were motivated by racial bias, 11% 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.

Recommendations for the Commission

The U.S. Commission on Civil Rights has a uniquely important role in ensuring the protection of basic civil rights, particularly during a time of national crisis. As an independent agency whose members are not required to run for office, the Commission is uniquely qualified to serve as a "watchdog," monitoring the activities of law enforcement and other federal and state agencies charged with protecting our national security. This role takes on added importance during emotionally-charged and challenging periods when the potential for overzealous behavior is greatest. This Commission can do much to prevent our country from doing things that we will later regret. 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.

With this experience in mind, NCLR respectfully makes the following recommendations:

- We ask that, as data become available over time, the Commission hold hearings on the civil rights implications in the aftermath of the September 11 attacks. We also suggest that you issue periodic reports, particularly wherever essential civil rights protections are endangered. One obvious place to start would be to examine the impact of the aftermath of the September 11 events on the civil rights of the Arab American community, as well as others affected due to cases of "mistaken identity."
- We encourage the Commission to take immediate steps to prepare to examine the government's response to the terrorist steps. As the imminent security threat passes, or at some other reasonable and appropriate time, we encourage the Commission to examine the actions of the government and to make determinations as to the range and frequency of civil rights violations that may have occurred. This may require the establishment of systems now to ensure the future collection of relevant agency data.
- We salute you for establishing a hotline to report hate crimes, discrimination, and other violations of civil rights. We encourage you to work with the ethnic media, community organizations, and others to publicize this hotline and other sources of information and assistance that encourage the public to report hate crimes and related incidents. National organizations such as the American Civil Liberties Union, which maintains a racial profiling hotline, and the Southern Poverty Law Center, which monitors many forms of hate violence, may be particularly helpful in this effort.

- NCLR is also concerned about the paucity of legal representation for victims of hate crimes and other acts of discrimination. Hispanics historically have suffered from a lack of adequate legal representation in civil rights cases, and we suspect that Arab Americans may be experiencing this problem today. NCLR urges you to work with public interest law firms, the American Bar Association, private philanthropy, and others to ensure that anyone whose rights have been violated has meaningful access to legal representation.
- We also encourage you to urge President Bush, Attorney General Ashcroft, and others in the Administration to take proactive, interim steps to address racial profiling. 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.
- We encourage you to help dissuade the Department of Justice from pursuing 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.
- We urge you to consider ways to improve accountability in law enforcement. In particular, the INS should establish an improved mechanism to address complaints about discrimination and abuse of authority in the enforcement of federal immigration laws, particularly as this power is expanded. An independent 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 civil rights violations. Such a panel could be a step forward in addressing the ever-increasing number of complaints filed against immigration enforcement agents.
- Finally, the Commission should aggressively assert its prerogative to submit comments to federal agencies or other government bodies issuing regulations or proposing legislation related to immigration law enforcement, to ensure that civil rights concerns are addressed.

Precisely at this difficult time, when we are faced with making important decisions regarding our national security, the cause of civil rights may be unpopular to some. This Commission has the mandate, the independence, and the authority to call attention to any measures taken by our government which may threaten fundamental civil rights. We encourage you to use this authority judiciously and thoughtfully, but to act aggressively when major civil rights violations are threatened. In the aftermath of this national security tragedy, you can help prevent a potential future civil rights tragedy.