



Written Testimony of American Civil Liberties Union

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on behalf of the Washington Legislative Office**

**U.S. House of Representatives Democratic Forum on
“The Role of the Federal Government and Hate Crimes.”**

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I would like to thank Ranking Member John Conyers, Jr. and Congresswomen Sheila Jackson Lee, Frederica Wilson and Corrine Brown for inviting the American Civil Liberties Union (“ACLU”) to testify at today’s Democratic forum on “The Role of the Federal Government and Hate Crimes.” The ACLU is a nationwide, non-partisan organization with more than a half million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to the principles of liberty and equality embodied in our Constitution and our civil rights laws.

The urgency for today’s forum has been precipitated by the tragic shooting of 17-year-old Trayvon Martin in Sanford, Florida. The ACLU along with national political, social and media leaders have joined the Martin family in seeking justice and in speaking to and for a community reeling from the death of a young man who by all accounts had a bright future ahead of him.

As the case began to unfold a few weeks ago, the ACLU highlighted the need for an unbiased, professional, thorough outside investigation into the shooting and called on federal and state officials to initiate this type of examination of the case. Thankfully, the FBI, the Florida Department of Law Enforcement (FDLE) and the Department of Justice (DOJ) have announced that they will undertake an investigation. These agencies should investigate not only what happened to Trayvon, but also the response of local law enforcement to his killing. While we are encouraged by the commitment of state and federal agencies to investigate the circumstances surrounding Trayvon’s death, we don’t want to lose sight of the need to not only uncover what happened that tragic night, but also to review the initial local investigation. There are still troubling unanswered questions about the Sanford Police Department’s (SPD’s) response to the incident.

Furthermore, the ACLU urges the Department of Justice to investigate the Sanford Police Department’s recent record of conduct to incidents in the African American community and to conduct a thorough examination into whether Trayvon’s shooting was a federal hate crime. As for steps that Congress can take to address this case, the ACLU supports full funding for the DOJ Civil Rights Division to conduct investigations into civil rights violations by law enforcement across the nation, the passage of the End Racial Profiling Act and urging the Administration to strengthen the Department of Justice Guidance Regarding the Use of Race by Federal Law Enforcement Agencies.

Sanford Police Department’s History of Questionable Conduct

Trayvon Martin’s case is just one example of the Sanford Police Department’s (SPD) disturbing history of responses to incidents that involve African Americans. In addition to looking into the first response by police on the evening of February 26th, the Department of Justice should also consider examining the past conduct of the Sanford Police Department. Credible sources have raised questions as to whether SPD has ignored misconduct of its own law enforcement officers. The Department of Justice could conduct such an investigation under its authority to investigate whether local police departments are or have engaged in a pattern and practice of police misconduct.

Another instance of questionable conduct by the Sanford police occurred in 2006 when two private security guards, one the son of a Sanford police officer and a volunteer for the department, shot and killed a black teenager with a single gunshot to his back. Although the guards admitted to never identifying themselves, they were released without charges.

More recently in 2010, Justin Collison, the son of a Sanford Police Department lieutenant, assaulted a homeless black man outside a bar, and officers who responded to the scene released Collison without charges. After a video of the incident surfaced, Collison eventually surrendered to police. The police chief at the time was ultimately forced into retirement. The sergeant who was in charge of the Collison crime scene was also the first supervisor on the scene of Trayvon Martin's shooting death.

Is this a Hate Crime?

In addition to an investigation into the history of problematic police conduct in Sanford, the ACLU supports a thorough investigation into whether the Trayvon Martin shooting was a federal hate crime. Federal investigations and prosecutions of hate crimes serve as a significant deterrent, as well as recognition of our national consensus that it is abhorrent for people to be targeted because of their race, religion, gender, national origin, sexual orientation, gender identity, disability, or other characteristic. Since the motivation for these crimes is not always immediately evident, and state and local law enforcement do not necessarily have the requisite training, federal law enforcement serves as an important backstop to ensure that no one is denied their legal rights or harmed because of their race, religion, gender or other inalienable characteristics.

These crimes are particularly invidious, because violence or the threat of violence against certain groups of people has historically infringed upon their fundamental rights and limited their ability to participate in the political and social life of a community. Only a few days ago, three young men pled guilty to federal hate crimes charges in connection with the racially motivated murder of James C. Anderson in Jackson, Mississippi.¹ During the investigation of this crime, the defendants admitted that they routinely drove into Jackson with racially-motivated intent to harass and assault African Americans.² As this case demonstrates, hate crimes convey a constitutionally unprotected threat against the peaceable enjoyment of public places to members of the targeted group.

However, basic due process and free speech principles must not be sacrificed during investigations and prosecutions of hate crimes. Laws that impose a penalty for committing a hate crime, as opposed to committing a crime for any other reason, should only apply when a defendant selected a victim for violence, or a threat of violence, based on discrimination. A defendant's discriminatory viewpoint, or membership or affiliation with an objectionable group, should only be taken into consideration when that viewpoint or association is directly related to the crime.

¹ Kim Severson, *Three Plead Guilty to Hate Crimes in Killing of Black Man in Mississippi*, N.Y. TIMES, Mar. 23, 2012, at A18, available at http://www.nytimes.com/2012/03/23/us/three-plead-guilty-to-hate-crimes-in-killing-of-black-man-in-mississippi.html?_r=1&src=recg.

² *Id.*

While the tragedy of Trayvon Martin's death has galvanized the nation's conscience, there continue to be unanswered questions about the circumstances of that night and the law enforcement response. Since news reports indicate that the shooter, George Zimmerman, may have uttered a racial epithet while pursuing Trayvon Martin, it is necessary to consider the possibility that a hate crime was committed.³ The ACLU supports a full, fair, and thorough investigation by the Civil Rights Division of the Department of Justice and other authorities of the events that transpired that night, as well as the response of local law enforcement – including whether their investigation deviated from standard practices.

Pass the End Racial Profiling Act and Urge the Administration to Strengthen the Department of Justice Guidance Regarding the Use of Race by Federal Law Enforcement Agencies

For more than a century black men and women traveling through predominantly white neighborhoods have been questioned for no reason – simply because police officers felt they didn't belong there. During the past decade, as international terrorism has become a subject of intense concern, those of Arab and South Asian descent have been spied upon, stopped, questioned and subjected to intensified police scrutiny based on racial characteristics rather than any evidence of wrongdoing. Most recently, local police in Alabama have been circulating in predominantly Hispanic neighborhoods, telling people to go inside their homes or possibly face arrest – because the state passed a law requiring police to verify the immigration status of people who they stop or arrest.⁴

Racial profiling - the targeting of people with humiliating and often frightening interrogations, searches, and detentions based not on evidence of criminal activity but on an individual's perceived race, ethnicity, nationality or religion not only goes against our Constitution and our country's value for equality — but it also hinders law enforcement officials from doing an effective job.

Racial profiling is fueled by racial stereotypes and erroneous assumptions about the propensity of African-American, Latino, Asian, Native American or Arab people to commit particular types of crimes. In addition to misdirecting limited resources from the efficient pursuit of individuals who actually pose a threat to public safety making us all less safe, racial profiling undermines the trust and mutual respect between the police and communities that is essential to successful police work. Racial profiling deepens racial divisions in America, by fueling the belief of many people of color that the criminal justice system and national security policies are biased and unfair. Such practices also convey a larger message that some citizens do not deserve equal protection under the law.

³ *US could bring hate crime charge in Trayvon Martin shooting if there's evidence of racial bias*, A.P., Mar. 25, 2012, available at http://www.washingtonpost.com/national/us-could-bring-hate-crime-charge-in-trayvon-martin-shooting-if-theres-evidence-of-racial-bias/2012/03/25/gIQAdevnZS_story.html?tid=pm_national_pop.

⁴ Ed Pilkington, *The grim reality of life under Alabama's brutal immigration law*, THE GUARDIAN, October 11, 2011, <http://www.guardian.co.uk/world/2011/oct/14/alabama-immigration-law-families-trapped?newsfeed=true>.

Racial profiling also violates international standards against non-discrimination and undermines United States human rights obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), ratified by the U.S. in 1994, and the International Covenant on Civil and Political Rights (ICCPR), ratified by the United States in 1992. Multiple international human rights bodies, including the United Nations Committee on the Elimination of Racial Discrimination (which monitors implementation of the ICERD), have raised concerns about the persistence of racial and ethnic profiling by U.S. law enforcement. In its 2008 concluding observations to the United States, the Committee “note[d] with concern that despite the measures adopted at the federal and state levels to combat racial profiling...such practice continues to be widespread.”⁵ The Committee reiterated its recommendations in 2009, calling on the U.S. government to “make all efforts to pass the End Racial Profiling Act.”⁶

For years, many of our political leaders have vowed to put an end to racial profiling. Attorney General Eric Holder has made it clear that ending the practice of racial profiling is a “priority” for the Obama administration. Senator Ben Cardin (D-MD) and Congressman John Conyers (D-MI) have echoed that sentiment, by introducing, S. 1670 and H.R. 3618, the End Racial Profiling Act which would ban the use of racial profiling and provide law enforcement officers with the tools they need to develop more effective practices. In addition to passing the End Racial Profiling Act, Congress should also urge the Administration to strengthen the Department of Justice Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to address profiling by religion and national origin, close loopholes for the border and national security, and make the guidance enforceable.

While the alleged conduct of private citizens like George Zimmerman is beyond the scope of the End Racial Profiling Act and the Department of Justice Guidance Regarding the Use of Race by Federal Law Enforcement Agencies- the actions of the police and other government officials in response to that shooting is not. The killing of Trayvon Martin has once again laid bare the reality that, too often in our nation’s history, police actions have been motivated by racial bias and that crimes with an undeniable racial motive have too often been overlooked or swept under the rug. In addition to investigating to what degree race was a factor in the law enforcement response to Trayvon’s death, Congress should pass the End Racial Profiling Act which among other things provides training to help police avoid responses based on stereotypes and false assumptions about minorities and urge the administration to strengthen the Department of Justice Guidance Regarding the Use of Race by Federal Law Enforcement Agencies. By following these recommendations, Congress can help law enforcement to direct its resources where they are truly necessary, ensure that our communities are safe, and reaffirm the core principles of the Constitution.

⁵ U.N. Committee on the Elimination of Racial Discrimination [CERD], Consideration of Reports submitted by States Parties Under Article 9 of the Convention: Concluding observations of the Committee on the Elimination of Racial Discrimination: United States of America, ¶ 14, U.N. Doc. CERD/C/USA/CO/6 (May 2008).

⁶ Letter from Chairperson of the Committee on the Elimination of Racial Discrimination to the United States (Sept. 28, 2009), available at http://www.aclu.org/files/pdfs/humanrights/uncerdresponse_racialdiscrimination.pdf

Increase Funding for the Department of Justice's Civil Rights Division

Finally, the ACLU urges full funding for the Civil Rights Division of DOJ. During the past few years, the funding for the Civil Rights Division has remained stagnant⁷ while the Division's workload has increased and broadened in scope. In recent years, the Civil Rights Division filed a record number of criminal civil rights cases, primarily against law enforcement for allegations of violating individuals' constitutional or legal rights "under color of law."⁸ The Division has also been engaged in the largest number of "pattern or practice" investigations into police and sheriff department misconduct in its 55-year history.⁹ In the past year alone, the Civil Rights Division conducted or concluded investigations into local law enforcement in Harvey, Illinois, East Haven, Connecticut, Seattle, Washington, Maricopa County, Arizona, Suffolk County, New York, Puerto Rico, and New Orleans, Louisiana.¹⁰ Several of these investigations uncovered serious and entrenched patterns of civil rights violations, which resulted in much-needed reform and accountability at the local level.

The Matthew Shepard-James Byrd, Jr. Hate Crimes Prevent Act of 2009 expanded federal jurisdiction to hate crimes targeted at individuals because of their actual or perceived gender, sexual orientation, gender identity, or disability. This law also removed the barrier that federal jurisdiction only applied when the victim was engaged in a federally-protected activity – like voting.¹¹ Since 2009, when the act became law, the Civil Rights Division has opened over 161 matters.¹² In addition to devoting more resources to the investigation and prosecution of hate crimes, the Division is still fulfilling its obligation under the Emmett Till Unsolved Civil Rights Crime Act to investigate and prosecute 100 unsolved civil rights era homicides.¹³ Further, re-districting and changes to voting laws in many states during the past few years have placed much greater demands on the staff resources of the Division.¹⁴

Expansion of the Civil Rights Division's jurisdictional authority and caseload is occurring while the Division is still in a re-building period, after under-enforcement of traditional civil rights laws resulted in the loss of 70 percent of the Division lawyers from 2003 to 2007.¹⁵ After he assumed leadership of a "decimated"¹⁶ Civil Rights Division, Assistant Attorney

⁷ U.S. DEP'T OF JUSTICE, CIV. RTS. DIV., FY 2013 PERFORMANCE BUDGET 41 (2012).

⁸ Thomas E. Perez, *The Civil Rights Division Two Years into My Tenure*, 21 CIV. RTS. MONITOR 10, 10 (2012), available at <http://www.justice.gov/jmd/2012summary/pdf/fy12-bud-summary-request-performance.pdf>; see also Jerry Markon, *Justice Dept. is policing the police*, WASH. POST, Sept. 18, 2011, at A3.

⁹ Markon, *supra*, note 2.

¹⁰ U.S. Dep't of Justice, Civ. Rts. Div., Special Litigation Section Cases & Matters, <http://www.justice.gov/crt/about/spl/findsettle.php> (last visited Mar. 25, 2012).

¹¹ Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, Pub. L. No. 111-84, 18, U.S.C. § 249 (2009).

¹² U.S. DEP'T OF JUSTICE, CIV. RTS. DIV., *supra*, note 1, at 20.

¹³ *Id.* at 3-4.

¹⁴ *Id.* at 4-5.

¹⁵ Jerry Markon, *Justice Dept. steps up civil rights enforcement; Division reshapes itself after employee exodus during Bush era*, WASH. POST, June 4, 2010, at A16.

¹⁶ *Id.* ("The division has been decimated, and as someone who spent more than 20 years there, I was very saddened to see the state of affairs," said Gerry Hebert, a former senior official in the division's voting section.).

General Thomas E. Perez, said “[w]e had to restore the partnership between the career staff and the political leadership. And, frankly, certain civil rights laws were not being enforced.”¹⁷

Despite progress in returning the Civil Rights Division to its traditional role as the nation’s civil rights enforcer, the Division described the budgetary challenges in stark terms in its 2013 budget request: “The substantial restoration and reinvigoration progress achieved through the enactment of CRT’s FY 2010 program increases has been reversed because full funding of these program areas was not provided. Absent this request, there will be only one new CRT position in the last three years.”¹⁸

Conclusion

The ACLU is pleased that so many on the federal level are pulling out the stops to undertake a full examination of the relevant facts surrounding this tragedy. It is critically important for the Department of Justice to conduct a full, fair and thorough investigation into the Trayvon Martin case and recent actions taken by the Sanford Police Department in incidents involving African Americans. Beyond the immediate needs associated with the Trayvon Martin case, we urge Congress to fund the Civil Rights Division of DOJ fully as well as to pass the End Racial Profiling Act and urge the administration to strengthen the Department of Justice Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to help minimize the number of such events in the future.

¹⁷ *Id.*

¹⁸ U.S. DEP’T OF JUSTICE, CIV. RTS. DIV., *supra*, note 1, at 39.