

Racial Profiling and the Need for Data Collection What DHS Should Collect and Monitor

The Need: Identifying and Addressing Racial Profiling

While advocates and organizers may know that racial profiling is occurring or has the potential to occur in any given jurisdiction (based on anecdotes or the introduction into the community of immigration enforcement programs that implicate local police, for example), we need more concrete information about where and how it's happening in order to effectively address the problem. When we are armed with evidence on the existence, pervasiveness and nature of racial profiling in any particular area, we can develop effective strategies for winning reforms.

Part of the Solution: Effective Data Collection and Monitoring

Effective data collection and monitoring can help us develop a concrete understanding of how racial profiling is playing out in any particular jurisdiction. Data collection is so critical to determining the occurrence of racial profiling so that we can fight it, it is one of Rights Working Group's primary recommendations for reform. We're pushing for the Department of Homeland Security (DHS) to implement mechanisms for collecting, monitoring and making public racial profiling-related data for any state or local jurisdiction participating in a federal immigration enforcement program. We're also demanding that DHS mandate data collection by state and local law enforcement related to possible racial profiling as a condition or requirement for participating in federal immigration enforcement programs, including the 287(g), Criminal Alien or Secure Communities programs. The bullets below outline the data points that we recommend DHS take responsibility for collecting, monitoring and making public regularly.

Detainers and DHS Data Collection

DHS' Immigration and Customs Enforcement (ICE) is increasingly relying on local law enforcement agencies to provide them with information on the immigration status or national origin of people they have taken into custody, regardless of the reason for the stop, arrest or outcome of the person's criminal case. With this information, ICE issues immigration detainers to hold people who may be deportable and already in state or local jails. An immigration detainer is a formal request from ICE to the state or local law enforcement agency to hold the individual for an additional 48 hours after they would otherwise be released while ICE makes arrangements to take custody and investigates whether or not to deport the individual. Understanding how detainers are being implemented is critical to determining the presence or racial profiling and other due process violations (such as a law enforcement agency holding someone beyond the DHS-requested 48 hours which would constitute an unlawful detention). Rights Working Group recommends that DHS collect and make public data regarding federal immigration detainers placed on individuals, including information such as:

- The perceived race, ethnicity, religion, national origin and immigration status of all individuals stopped or searched,
- Through which immigration enforcement program an individual is identified, if any (e.g. 287g, Secure Communities or the Criminal Alien Program);

- Whether the individual is a victim of or witness to a crime;
- The criminal charge for which the individual was arrested or convicted;
- The ultimate disposition of criminal case against the individual;
- The perceived race, ethnicity, religion, national origin and immigration status of all individuals against whom a detainer is issued;
- The date on which the detainer was issued, the date on which the detainer was removed, the date on which the individual was released (if applicable) and the date on which DHS took custody of the individual;
- The basis for the issuance of the detainer;
- The ultimate disposition of the individual's immigration case, including whether the individual was determined to be a United States citizen or lawful permanent resident;
- The grounds for deportation of that individual and any charges brought by DHS;
- On a quarterly basis DHS should collect and make public the number of detainees issued, broken out by specific offense categories (homicide, sex offenses, etc., in addition to DHS level categorization);
- On a quarterly basis DHS should collect and make public the number of violations of the 48-hour detainer rule;
- On a quarterly basis DHS should collect and make public the number of individuals deported after DHS took custody but while any criminal matter was pending; and
- On a quarterly basis the number of identified individuals criminally prosecuted in court.

What About Privacy?

Although data collection and monitoring efforts are critical to determining the presence of and addressing racial profiling and other due process violations, it is critical to protect individuals' privacy in this effort. Fortunately, it is possible to collect, store and analyze such data while protecting individuals' privacy. Data collected on individuals stopped, searched, arrested or detained should not include personally identifiable information. Access to the data collected should be limited to those federal, state, local, tribal or contract employees or agents who require such access in order to determine whether racial profiling is occurring. Adequate security measures to prevent unauthorized access to the data collected should also be put into place. The name or identifying information of any individual involved in any activity for which data is collected or compiled, including law enforcement officers, should not be released to the public or disclosed to any person except for in cases where that information is released to the person to whom it pertains or where it is required by litigation.

Data Collected, Now What?

Once this data is collected, DHS should conduct its own analysis and make related changes where required in policy and practice. In addition, DHS should also report this data to an independent and legitimate agency for monitoring and analysis, such as the Department of Justice Bureau of Justice Statistics, to identify significant disparities which may indicate problems related to these issues of concern. DHS must collect this data on an ongoing basis to regularly determine whether racial profiling is occurring under federal immigration enforcement programs, whether detainees continue to be improperly lodged and whether federal immigration enforcement priorities are being met.

For more information, contact Aadika Singh, Policy Associate, or Sian Miranda Singh OFaolain, Field Organizer, Rights Working Group, (202) 591-3300.

The Rights Working Group's Racial Profiling: Face the Truth Campaign to counter racial profiling is endorsed by a coalition of over 100 national, state and local civil liberties, human rights, civil rights, immigrants' rights and racial justice organizations.