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William Riley, Acting Director
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BY MAIL AND E-MAIL

Dear Mr. Riley:

Pending before your agency is a request from the Rhode Island State Police (RISP) to enter into a 287(g) agreement with ICE. Our organizations are deeply concerned about the implications for the minority and immigrant communities in Rhode Island if such an agreement were to be approved, and we therefore write to urge you to reject this application.

In light of Secretary Napolitano's July 10 announcement that ICE had approved 11 new 287(g) agreements with law enforcement and corrections agencies across the country – including one involving our own state's Department of Corrections – our opposition to the RISP application is not based on the general concerns that our organizations, and similarly-situated civil rights groups nationwide, have raised for some time about the 287(g) program. Rather, we assume that you are making case-by-case determinations on the propriety of entering into 287(g) agreements with particular police departments. It is our position that compelling data specifically available about the Rhode Island State Police's discriminatory enforcement of traffic laws in the state – along with RISP's persistent refusal to acknowledge the meaning of that data – provide sufficient cause for ICE to turn down this application. In this letter, we wish to bring to your attention some of that data as well as related information that should have bearing on your consideration of this application.

Although the data we present in this letter for your consideration largely comes from the past decade, it is worth noting that concerns about racial profiling of Latinos by the R.I. State Police date back at least to 1990, when the agency first instituted a drug interdiction program on the state's highways. Shortly after that program began, a newspaper analysis showed that of the first 28 arrests made by the State Police drug interdiction squad, 22 of the arrestees – over 78% – were Hispanic.¹ At the same time, the head of a local advocacy organization for the Latino community reported something that has been repeated over and over by members of the minority

¹ Dan Barry, "Hispanic Arrests Irk ACLU," *Providence Journal*, May 12, 1990, page A-3.

community in Rhode Island in the intervening two decades. Specifically, she noted that “two clients recently complained separately that state police stopped them on Route 95, asked them for identification - including immigration papers - and searched their cars. In both cases the people were told to move on” and were not even given a speeding ticket.² Also reflecting a mantra that would be repeated throughout the years, representatives from the State Police quoted in that news story denied that these statistics were in any way a sign of possible racial profiling.³

Real public attention to the problem of racial profiling in Rhode Island – or “driving while black,” as it was then often referred to – only came to the fore in the late 1990’s. In 1999, civil rights groups in Rhode Island proposed legislation to require the State Police to collect traffic stops data in an effort to determine whether, as the community claimed, there were significant racial disparities in police stop and search practices or whether, as police officials routinely claimed, this was merely a “perception” in the community. Despite the fact that the legislation merely sought to provide a definitive answer to RISP’s oft-stated view that the community’s perceived concerns about racial disparities were inaccurate, the State Police strenuously objected to passage of the legislation. After a Senate committee nonetheless approved the legislation, the State Police reached an agreement with the Senate leadership – the bill would not be voted on, but RISP would voluntarily collect traffic stops data for a period of time.⁴

The State Police did so, and the first batch of data, released only after the *Providence Journal* obtained the information through an open records request, documented that of more than 13,000 stops that took place in March through May of 1999, 26% of the stops were of non-whites, even though non-whites made up only about 8% of the state’s population.⁵ Data from the next three months – June through August – showed an even higher disparity rate, with approximately 30% of State Police traffic stops involving non-white drivers.⁶ Once again, despite these statistics gathered by his own agency, the Superintendent of the State Police claimed that he had “not seen any evidence” that his officers engaged in racial profiling.⁷

Not surprisingly, community organizations took a different view of this statistical information. Armed with the State Police agency’s own data documenting such significant racial disparities in traffic stops, the groups reintroduced the 1999 legislation mandating data collection. It was at that point that the Superintendent of the State Police announced, somewhat shockingly, that he believed his own statistics were inaccurate and should be ignored.⁸

Nonetheless, due to a variety of circumstances, in 2000 the Rhode Island General Assembly passed a law requiring all police departments in the state, including RISP, to engage in

² Id.

³ Id.

⁴ Bruce Landis, “Bills Target Racial Profiling Alleged in Troopers’ Stops,” *Providence Journal*, January 26, 2000, page A-1.

⁵ Bruce Landis, “State Police Records Support Charges of Bias in Traffic Stops,” *Providence Journal*, September 5, 1999, page A-1.

⁶ Landis, fn. 4, supra.

⁷ Landis, fn. 5, supra.

⁸ Landis, fn. 4, supra.

traffic stop data collection for two full years. The legislation also established a process for the data to be analyzed by an independent agency.⁹

In 2003, the thoroughly documented results of that two-year study, conducted by Northeastern University, confirmed what many members of the minority community had long believed: minority drivers were far more likely than white drivers to be pulled over by police. In the same vein, the study also found that blacks and Hispanics, once pulled over, were searched at a much higher rate than whites even though white drivers who were searched were more likely to be found carrying contraband.¹⁰ These statistical disparities were also specifically applicable to the data regarding Rhode Island State Police stops and searches: the study showed that State Police were not only more likely to stop non-white drivers, but were also almost twice as likely to search them once stopped.¹¹

The Rhode Island General Assembly responded in 2004 by enacting a comprehensive law to formally ban racial profiling in the state. The Racial Profiling Prevention Act of 2004 made it illegal for law enforcement officers to target individuals on the basis of race or ethnicity; prohibited so-called “consent searches” without probable cause; and created civil remedies for violations. The law also included a provision authorizing another one-year traffic stop data study that again was conducted by Northeastern University.¹²

In May 2005, after Northeastern University’s release of the first quarter of traffic stop data for the 2004-2005 study, the Rhode Island ACLU (ACLU) issued the first in a series of reports analyzing the continued racial disparities reflected in the statistics and offering recommendations for reducing them.¹³ Additional ACLU reports analyzing the second and third quarter statistics, and reaffirming the persistence of the problem, followed.

Focusing specifically on searches, one ACLU report found after nine months of the year-long study that State Police were more than twice as likely to search non-white drivers, a figure slightly worse than what was found in the original 2001-2002 Northeastern University study. At the same time, the report once again found, as before, that although blacks and Hispanics continued to be disproportionately stopped and searched by State Police, they remained less likely to be found with contraband.¹⁴

After the completion of the second Northeastern University study, the then-Superintendent of the State Police, Steven Pare, ordered his department to continue collecting

⁹ Bruce Landis, “Almond Signs Bill to Ban Racial Profiling,” *Providence Journal*, July 26, 2000, page B-1.

¹⁰ Northeastern University’s executive summary of the report can be accessed on-line at http://www.racialprofilinganalysis.neu.edu/IRJ_docs/RIFinalReportExecSummary.pdf. See also Bruce Landis, “Profiling Study Confirms Drivers Treated Differently,” *Providence Journal*, July 1, 2003, page A-1.

¹¹ *Id.*

¹² P.L. 04-331.

¹³ “The Persistence of Racial Profiling in Rhode Island: An Analysis and Recommendations,” May 2005, was the first ACLU report and is available online, along with the two follow-up reports issued in response to release of second quarter and third quarter data, at <http://www.riaclu.org/publications.html>.

¹⁴ “The Persistence of Racial Profiling in Rhode Island: A Nine Month Review,” November 2005. Of the six State Police barracks, only one (Portsmouth) had a 1:1 search disparity ratio. Even there, though, the searches that were conducted uncovered contraband in the white drivers at more than four times the rate of minority drivers.

traffic stops data on a voluntary basis through 2006. The data were independently reviewed, this time by consultants at the University of Rhode Island. The conclusions were not surprising to the minority community: the analysis once again showed a pattern of different and adverse treatment of racial minorities in traffic stops and searches.¹⁵

Specifically, the report concluded:

* *“There continues to be racial and ethnic disparity in the stops made by Rhode Island State Police in 2006.”*

* *“A driver’s race and ethnicity clearly influences the reason for which he or she is stopped.”*

* *There is “substantial evidence of racial and ethnic disparity in discretionary searches by the Rhode Island State Police in 2006.”*

* *“Searches of blacks and Hispanics are found to be no more – and in the case of Hispanics perhaps less – productive of contraband than are searches of non-Hispanic whites. This again, suggests, that such searches of blacks and Hispanics may be initiated with less cause.”*

* *After adjusting for all other factors, “stops of black and Hispanic drivers were more likely than stops of non-Hispanic white drivers to last longer than 30 minutes.”¹⁶*

By the time this report was issued, a new Superintendent of State Police, Brendan Doherty, had been appointed. Despite the clear conclusions drawn by the URI researchers, Col. Doherty responded in a way with which the minority community has become all too accustomed: he rejected the findings.¹⁷

That unrepentant attitude remains to this day. Last September, the Rhode Island Advisory Committee to the U.S. Commission on Civil Rights held a public hearing on the problem of racial profiling in the state. Civil rights advocates came out in force to decry the persistent nature of the problem. At least one former police chief acknowledged the problem. However, when specifically asked by a committee member whether he believed that racial profiling exists, Col. Doherty unhesitatingly said it did not.¹⁸

Under all these circumstances, it should not be difficult to understand why our organizations, and the communities we represent, are so concerned about the prospect of giving the R.I. State Police 287(g) authority, an authority that can easily be used to engage in racial profiling. Frankly, it is impossible to prevent a police agency from misusing such power for improper purposes when the agency adamantly refuses to believe that the problem even exists, no matter how much evidence to the contrary is collected.

¹⁵ Bruce Landis, “Troopers Continue to Profile, Study Says,” *Providence Journal*, May 4, 2008, page A-1.

¹⁶ Leo Carroll, Ph.D. and M. Liliana Gonzales, Ph.D., “Racial and Ethnic Disparity in Traffic Stops, Discretionary Searches and Outcomes in 2006: Prepared for the Rhode Island State Police,” June 2007.

¹⁷ Landis, fn. 14, supra.

¹⁸ Bruce Landis, “Panel Told Police Fail to End Racial Profiling,” *Providence Journal*, September 20, 2008.

It is not just the consistent nature of the data that has led our organizations to this concern. In line with the quote from the 1990 news story, we all have experience hearing from members in the community who allege they were victims of racial profiling. One highly-publicized incident involving the State Police that took place in 2007 is particularly worth examining in detail, for it highlights on a concrete level the severity of the problem – particularly in the context of the 287(g) debate – and the denial of the problem that persists within RISP.

In July 2007, R.I. State Police troopers detained and transported to immigration officials fourteen people, all Guatemalans, who were stopped in a van after the driver failed to use a turn signal. The lengthy detention of these travelers occurred even though the driver’s license and registration were in order, and there was never any allegation whatsoever that either he or any of the passengers were suspected of criminal activity.

Responding to a formal complaint that the Rhode Island ACLU filed on behalf of the driver and ten of the passengers, State Police Superintendent Steven Pare nonetheless concluded that the trooper involved in the stop “acted professionally and appropriately.”¹⁹

However, the response failed to adequately address a number of basic questions raised by the stop and detention. For example:

- Even though the investigation rejected out-of-hand any allegations of racial profiling, the State Police response did not explain at all why the trooper, who was on speed radar patrol, chose to leave his post to pull over the driver of this particular vehicle, whose only infraction was failing to use a turn signal, not speeding.
- Even though the passengers had no obligation to carry or present identification to the police when stopped, and there was no suspicion of criminal activity, the state trooper demanded identification from them at least three times, and then took action against them when they failed to provide “adequate” documentation.
- The passengers were detained for an hour or so, even though the trooper had observed no illegal conduct among the passengers, and the driver had presented a valid driver’s license and registration. No explanation for this conduct was provided.²⁰
- Even though the superintendent of the State Police claimed that the passengers were never asked for immigration documents, the report submitted by the trooper himself specifically stated that he demanded immigration credentials proving their U.S. citizenship.

¹⁹ Karen Lee Ziner, “State Police Probe Clears Trooper in Traffic Stop of Van,” *Providence Journal*, September 9, 2001, page A-1.

²⁰ The detention also appeared to be in conflict with the state’s Racial Profiling Prevention Act, which explicitly provides that “[u]nless there exists reasonable suspicion or probable cause of criminal activity, no motor vehicle stopped for a traffic violation shall be detained beyond the time needed to address the violation.” R.I.G.L. §31-21.2-5(a). This was not addressed by the State Police either.

- The state police agency's support of the trooper's allegedly "appropriate" actions in calling immigration officials to check on the passengers' immigration status came less than a month after a RISP representative misleadingly told a large community forum that the State Police did not seek to enforce immigration laws.²¹
- The police cruiser's videotape of the stop ran out after only the first five minutes of the lengthy stop, even though R.I. State Police policy governing cruiser video recordings requires that tapes be replaced when only fifteen minutes of tape is left for recording. No explanation for this apparent policy violation was provided.
- Although a few selected individuals were allowed to view it, State Police officials refused to provide to the community a copy of the videotape made by the trooper of the first five minutes of the traffic stop. The State Police also refused to release copies of the agency's general traffic stop enforcement policies in order to allow for an independent evaluation as to whether the trooper in fact acted "appropriately" and in accordance with RISP protocols. The ACLU was forced to file an open records lawsuit to obtain these materials.²²

Since the driver's license and registration papers were valid and the police officer made no claims of suspicion of criminal activity, the trooper's actions in detaining the van were clearly based on one element: the ethnic appearance of the driver and passengers. This is the essence of racial profiling. That State Police officials unequivocally supported the trooper's actions, notwithstanding the many disturbing questions and issues cited above, only serves to reaffirm our concerns that a grant of 287(g) authority will only encourage the significant racial disparities governing RISP traffic stops that have been documented beyond dispute over the course of a decade.²³

Finally, it is worth noting the genesis of the State Police request for 287(g) authority from ICE. The application was filed pursuant to an executive order on immigration issued by Governor Donald Carcieri in March 2008.²⁴ That order explicitly provided that: "The Rhode Island State Police, pursuant to the authority set forth in Section 287(g) of IIRAIRA and INA, shall work to secure a MOA with ICE to receive training necessary to enable them to assist ICE personnel in the enforcement of federal immigration laws." Among other things, the executive order additionally encouraged all local police departments to "take steps to support the enforcement of federal immigration laws by investigating and determining the immigration status of all non-citizens taken into custody, incarcerated, or under investigation for any crime." Not surprisingly, the order was roundly condemned by members of the civil rights and minority

²¹ Andrea L. Stape, "Traffic Stops Debated at Forum," *Providence Journal*, August 29, 2006.

²² A lawsuit challenging the constitutionality of the police stop in this case is pending in the federal courts. *Estrada v. R.I. State Police* (U.S. Court of Appeals, 09-1149).

²³ It is also worth noting that, in 2006, the R.I. Supreme Court, in a rare rebuke to the police, ruled that a criminal defendant's constitutional rights were violated when he was unlawfully detained by R.I. State Police troopers after they engaged in what they acknowledged to be a pretext stop of his car. It is perhaps not coincidental that the stop involved a Hispanic defendant suspected of criminal drug activity. *State v. Casas*, 900 A.2d 1120 (2006).

²⁴ The executive order can be found online at http://www.projo.com/news/pdf/2008/0327_immigrationorder.pdf

communities, who expressed concern that it would both exacerbate racial profiling and heighten the vitriol that had been increasingly leveled at minority communities in the state.²⁵

Partly in response to those concerns, the Governor appointed an advisory panel to monitor the “unintended consequences” flowing from issuance and implementation of the executive order.²⁶ Things got off to a bad start when, unbeknownst to panel members, immigration raids of state courthouses took place, with the formal knowledge and support of state officials, at the very same time the panel was holding its first meeting.²⁷ In response to continuing concerns about the effect of the Governor’s executive order in the immigrant community, eight members of the Governor’s Hispanic Advisory Commission resigned in protest a short time later.²⁸

Newspaper stories continue to report on the “climate of fear” that the Governor’s executive order, which includes the mandate that the State Police seek approval for a 287(g) agreement, has created in Rhode Island.²⁹ In January 2009, the Governor’s own advisory panel on the executive order confirmed those concerns. A draft report acknowledged that “actions taken by law enforcement agencies after the issuance of the EO, have served to create some apprehension, and have also significantly reinforced an environment charged with fear.”³⁰ The report, referring to community meetings that were organized by the panel and held throughout the state, added:

“It is difficult to come up with a true measure of the feeling of FEAR that was projected by a great many immigrants to the listening group but one can hear in the voices and see on the faces that the element of fear significantly affects the lives of these immigrants. Some of those projecting this fear are likely to be undocumented and understandably afraid of being deported. However, there are others who are documented and who are also fearful.”

As one panel member noted: “There are people living in basements in fear, afraid to go out to the grocery store. That’s the reality.”³¹

It is with this background and in this climate that ICE is considering whether to grant 287(g) authority to the Rhode Island State Police. In light of the detailed information contained herein – documenting beyond dispute, we believe, evidence indicating widespread racial disparities in traffic stop enforcement by the State Police; the agency’s repeated and on-going failure to acknowledge the existence of such profiling; and the fear within the immigrant community that has been generated by the executive order leading to this 287(g) request – we respectfully urge your agency to reject this application.

²⁵ See, e.g., Karen Lee Ziner, “Carcieri Order is Lambasted,” *Providence Journal*, April 1, 2008.

²⁶ Karen Lee Ziner, “Governor Appoints Panel on Immigration,” *Providence Journal*, June 7, 2008.

²⁷ Karen Lee Ziner, “Governor’s Panel on Immigration Order Meets Tomorrow,” *Providence Journal*, July 31, 2008.

²⁸ Cynthia Needham, “8 Make Resignations Official,” *Providence Journal*, August 16, 2008.

²⁹ Tom Mooney, Jennifer Jordan and Karen Ziner, “Hispanics Deplore Climate of Fear,” *Providence Journal*, August 31, 2008.

³⁰ The report can be found at http://www.projo.com/news/2009/pdf/immigration_panel_draft_report.pdf.

³¹ Randal Edgar, “Immigration Panel: Order Created Fear,” *Providence Journal*, January 14, 2009.

Thank you in advance for your consideration of our views. If you have any questions or would like more information, please feel free to contact Steven Brown at the RI ACLU.

Sincerely,

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