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April 18, 2014

The Honorable Eric H. Holder, Jr.  
Attorney General of the United States  
US Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Via electronic mail and USPS

**Re: Reported reforms to the Justice Department's racial profiling guidance**

Dear Attorney General Holder:

On behalf of Human Rights Watch I write to express concerns about the insufficiency of reforms to the Justice Department's practices related to individual and community profiling.

The *New York Times* reported on April 9th that after five years of review the Department is planning to expand its definition of prohibited profiling under its Guidance Regarding the Use of Race by Federal Law Enforcement Agencies (Guidance) to include religion and national origin. We have advocated for this more appropriate and accurate definition of prohibited profiling, and we strongly support this improvement. We also support the reported expansion of the definition of prohibited profiling to include gender and sexual orientation, as well as the news that the Department would establish a program to better track profiling complaints.

We are also encouraged to hear that the proposed reforms will end the Guidance's national security exemption. Under the current language of the Guidance, federal law enforcement can engage in profiling under two exemptions: either in cases of "threats to national security" or in cases involving "the integrity of the nation's border." Profiling under either exemption must still comport with the US Constitution and US law. The national security exemption has allowed for the profiling of people who appear to be of a certain race or ethnicity based solely on generalized threats to national security.

News reports are unclear as to the status of the latter border exemption. If the Justice Department is applying the border loophole to

investigations within a reasonable distance from the United States' external boundaries (as the Department defines<sup>1</sup> a reasonable distance), any investigations within 100 miles from the border could be covered by the border loophole. Two hundred million people in the US live within 100 miles of the United States' borders—the border loophole could in effect trump any protections from the profiling guidance for a vast majority of US residents. We therefore strongly urge you to eliminate this exemption as well.

Disappointingly, the proposed reforms appear to leave untouched the FBI's "assessments" guidelines, which allow for the FBI—without a court order—to recruit informants to attend meetings or events surreptitiously and for agents to carry out surveillance on homes, churches and meeting places. No suspicion of wrongdoing is required for these assessments to be initiated.

The proposed reforms also appear to leave intact the FBI's community mapping programs (sometimes referred to as "domain management"). Through community mapping the FBI collects information on where ethnic and religious communities are located, as well as the locations of "ethnic oriented businesses and other facilities."<sup>2</sup>

The use of assessments and community mapping are dangerously self-fulfilling. Without suspicion of wrongdoing, the FBI can create a profile of a community that by itself does little more than serve as a pretext for heightened law enforcement scrutiny of that community. The *New York Times* reported in 2006 that a high-level FBI officer reportedly put on a demonstration of domain management for other FBI agents, displaying a map of San Francisco "pocked with data showing where Iranian immigrants were clustered" where, he said "an FBI squad was 'hunting.'"<sup>3</sup>

Assessments and other forms of surveillance and infiltration into Muslim communities cause significant harm both to the individuals in affected communities as well as to the relationship between members of those communities and law enforcement agencies. In the next few months, Human Rights Watch will be releasing a report that documents some of the damage caused to Muslim communities from the FBI's use of these assessments, informants, and undercover agents.

Community mapping is mass profiling—deeply troubling not only due to its discriminatory nature, but also for being so counterproductive as it undermines trust in precisely the communities where law enforcement claims to want to build that trust. New York City appears to have reached that conclusion, announcing on April 15th that it has disbanded its own community mapping program—a program originally based on federal domain management practices. The Justice Department should follow suit.

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<sup>1</sup> 8 CFR 287.1

<sup>2</sup> Federal Bureau of Prisons, "FBI Domestic Investigations and Operations Guide (DIOG) 2011 Version," <http://vault.fbi.gov/FBI%20Domestic%20Investigations%20and%20Operations%20Guide%20%28DIOG%29/fbi-domestic-investigations-and-operations-guide-diog-2011-version> (accessed April 18, 2014), 4.3.3.2.1.

<sup>3</sup> Scott Shane and Lowell Bergman, "F.B.I. Struggling to Reinvent Itself to Fight Terror," *New York Times*, October 10, 2006.

The proposed reforms to the Department's Guidance on racial profiling are welcome, but will be ultimately ineffective in preventing discriminatory profiling so long as community profiling, in the forms of assessments and domain management, stay in place. The Department should therefore end the practice of domain management and should bar any assessments triggered by race, ethnicity, national origin, religion, gender, sexual orientation or any combination of such factors.

We thank you for your attention to our concerns and look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read 'AG', with a stylized flourish extending to the right.

Antonio Ginatta  
Advocacy Director, US Program