

107TH CONGRESS
1ST SESSION

S. 799

To prohibit the use of racial and other discriminatory profiling in connection with searches and detentions of individuals by the United States Customs Service personnel, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 30, 2001

Mr. DURBIN (for himself, Mr. VOINOVICH, Mr. CLELAND, Mr. KERRY, Mr. REID, Mr. FEINGOLD, and Ms. MIKULSKI) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To prohibit the use of racial and other discriminatory profiling in connection with searches and detentions of individuals by the United States Customs Service personnel, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Reasonable Search
5 Standards Act”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) During fiscal years 1997 and 1998 approxi-
2 mately 140,000,000 people entered the United
3 States on international flights.

4 (2) Customs Service personnel selected about
5 102,000 passengers for further inspection.

6 (3) Of the 102,000 passengers, 95 percent were
7 searched by Customs Service personnel for contra-
8 band or hidden weapons by patting the passenger's
9 clothed body, 4 percent were strip searched, and 1
10 percent were subjected to an x-ray examination.

11 (4) Generally, passengers of particular races
12 and gender were more likely than other passengers
13 to be subjected to more intrusive types of personal
14 searches.

15 (5) However, in some cases the types of pas-
16 sengers who were more likely to be subjected to
17 more intrusive personal searches were not as likely
18 to be found carrying contraband.

19 (6) African-American women were nearly 3
20 times as likely as African-American men to be strip-
21 searched, even though they were only half as likely
22 to be found carrying contraband.

23 (7) African-American men and women were
24 nearly 9 times as likely, and Hispanic men and
25 women were nearly 4 times as likely, as white Amer-

1 ican men and women to be x-rayed, even though
2 they were no more likely to be found carrying con-
3 traband.

4 **SEC. 3. DEFINITIONS.**

5 In this Act:

6 (1) CUSTOMS SERVICE PERSONNEL.—The term
7 “Customs Service personnel” means employees of
8 the United States Customs Service who are respon-
9 sible for inspecting, searching, interviewing, or ex-
10 amining people entering the United States.

11 (2) INTRUSIVE NONROUTINE SEARCH.—The
12 term “intrusive nonroutine search” means any of the
13 following actions taken to detect or remove contra-
14 band from a person:

15 (A) A search involving the removal of some
16 of a person’s clothing to search for merchandise
17 hidden on a person’s body, but not including re-
18 moval of a person’s coat, shoes, belt, or pocket
19 contents (commonly referred to as a “strip
20 search”).

21 (B) A search involving use of a medical x-
22 ray to determine the presence of merchandise
23 within the body, or of other x-ray technology to
24 determine the presence of merchandise on the
25 body, including a body scan search (commonly

1 referred to as an “x-ray search” or a “body
2 scan search”).

3 (C) Any visual or physical intrusion into
4 the rectal or vaginal cavity (commonly referred
5 to as a “body cavity search”).

6 (D) Any action to require the individual to
7 take a laxative or other similar drug.

8 (E) A monitored bowel movement.

9 (F) A surgical procedure.

10 (G) Any action similar or related to an ac-
11 tion described in any of subparagraphs (A)
12 through (F).

13 (3) PAT DOWN SEARCH.—The term “pat down
14 search” means a search that involves physical con-
15 tact with a person’s body or clothing to detect or re-
16 move contraband from the individual, but does not
17 include any of the actions described in subpara-
18 graphs (A) through (F) of paragraph (1).

19 (4) PROFILING.—The term “profiling” means
20 identifying persons entering the United States for
21 inspection, search (including intrusive nonroutine
22 searches and pat down searches), interview, or ex-
23 amination in whole or in part on the basis of actual
24 or perceived race, religion, gender, national origin,
25 or sexual orientation.

1 **SEC. 4. PROHIBITION ON RACIAL OR OTHER DISCRIMINA-**
2 **TORY PROFILING BY CUSTOMS SERVICE PER-**
3 **SONNEL.**

4 Customs Service personnel shall not subject travelers
5 to detention, pat down searches, intrusive nonroutine
6 searches, or similar investigative actions, based in whole
7 or in part on the actual or perceived race, religion, gender,
8 national origin, or sexual orientation, except when Cus-
9 toms Service personnel are acting upon specific informa-
10 tion that a particular traveler suspected of engaging in
11 specific illegal activity is described by 1 or more of such
12 characteristics.

13 **SEC. 5. OTHER REQUIREMENTS RELATING TO SEARCHES.**

14 Before subjecting an individual to a pat down search
15 or an intrusive nonroutine search, Customs Service per-
16 sonnel shall document reasons to support the belief that
17 the individual may be carrying contraband in violation of
18 Federal law. The preceding requirement shall not apply
19 to a situation in which Customs Service personnel suspect
20 the individual is carrying a weapon.

21 **SEC. 6. PERIODIC TRAINING OF CUSTOMS SERVICE PER-**
22 **SONNEL.**

23 The Commissioner of Customs shall require all Cus-
24 toms Service personnel to undergo, on a periodic basis,
25 training on the procedures for identifying, detaining, and
26 searching passengers, with particular emphasis on the pro-

1 hibition on profiling. The training shall include a review
2 of the reasons identified by Customs Service personnel for
3 certain searches under section 5, the results of the
4 searches conducted, and the effectiveness of the criteria
5 used by Customs Service personnel.

6 **SEC. 7. ANNUAL STUDY AND REPORT ON DETENTIONS AND**
7 **SEARCHES OF INDIVIDUALS BY CUSTOMS**
8 **SERVICE PERSONNEL.**

9 (a) **STUDY.**—The Commissioner of Customs shall
10 conduct a study on detentions and searches of persons by
11 Customs Service personnel during the preceding calendar
12 year. The study shall include the number of searches con-
13 ducted by Customs Service personnel, the race, gender,
14 and citizenship of the travelers subject to the searches,
15 the type of searches conducted (including pat down
16 searches and intrusive nonroutine searches) and the re-
17 sults of the searches.

18 (b) **REPORT.**—Not later than March 31 of each year,
19 the Commissioner of Customs shall submit to Congress
20 an annual report containing the results of the study con-
21 ducted under subsection (a) for the preceding calendar
22 year.

1 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) IN GENERAL.—There are authorized to be appro-
3 priated for fiscal year 2002 and each fiscal year thereafter
4 such sums as may be necessary to carry out this Act.

5 (b) AVAILABILITY.—Amounts appropriated pursuant
6 to subsection (a) shall remain available until expended.

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