

Wednesday, July 23, 2008

### **Mukasey and racial profiling.**

Â Bill of Rights.Â (From the public domain.)Â The websites at suchÂ kindred organizations as the American Civil Liberties Union and the Alliance for Justice decry the United States Justice Department's purportedly proposed inclusion of racial considerations in investigating terrorism. However, other than news articles briefly addressing the matter, I have not found any details from Justice Department sources, includingÂ theÂ department's website. Â Â An article in the July 9, 2008, USA Today reports the following: Â "[Attorney General] Mukasey said he is considering changes so FBI agents have 'clear and consistent rules for conducting investigations while maintaining vital civil liberties protections.' The proposed policy, first reported last week by the Associated Press, would let FBI agents open preliminary terrorism investigations after mining public records and intelligence to build a profile of traits that, taken together, were deemed suspicious. Factors that could make a U.S. citizen or resident the subject of an investigation include travel to regions of the world known for terrorist activity, access to weapons or military training and someone's race or ethnicity.Â "When questioned about whether or not someone's ethnicity is enough to put them under investigation, Mukasey gave an emphatic 'no.' However, when asked whether a U.S. citizen from Pakistan, whom [sic] makes frequent trips to Pakistan, would be subject to investigation, Mukasey said he was not prepared to discuss hypothetical questions. He added that 'this is part of an ongoing process.' Mukasey's tone often remained careful and sometimes ambivalent during his exchanges. Â "When pressed by Sen. Russ Feingold, D-Wis., on whether people might be investigated based on their ethnicity, travel habits and whether they own a gun, Mukasey declined to answer directly. He said, 'the nature of evidence gathered and the way that it's gathered will be subject to review.'"Â The following excerpt comes from a July 2, 2008, Associated Press article on the matter: Â "The Justice Department is considering letting the FBI investigate Americans without any evidence of wrongdoing, relying instead on a terrorist profile that could single out Muslims, Arabs or other racial and ethnic groups. Law enforcement officials say the proposed policy would help them do exactly what Congress demanded after the Sept. 11, 2001, attacks: root out terrorists before they strike. Although President Bush has disavowed targeting suspects based on their race or ethnicity, the new rules would allow the FBI to consider those factors among a number of traits that could trigger a national security investigation.Â "Currently, FBI agents need specific reasons â€” like evidence or allegations that a law probably has been violated â€” to investigate U.S. citizens and legal residents. The new policy, law enforcement officials told The Associated Press, would let agents open preliminary terrorism investigations after mining public records and intelligence to build a profile of traits that, taken together, were deemed suspicious. Among the factors that could make someone subject of an investigation is travel to regions of the world known for terrorist activity, access to weapons or military training, along with the person's race or ethnicity."Â Fox News's July 2 articleÂ claims to add additional information to the foregoing Associated Press article. Â Do any of you know where I can find primary sources on such "changes" being considered by Attorney General Mukasey? I have not found such informationÂ through searching the Federal Register. Nor have I found such information through a general Google search, nor through a search of the Justice Department's website, nor through reviewing some of the webpages discussing the issue.Â Jon Katz.

Posted by Jon Katz in Constitutional Law at 00:00