



February 24, 2015

President Barack Obama  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

Re: Concerns with the U.S. Department of Justice Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity

Dear Mr. President,

On behalf of The Leadership Conference on Civil and Human Rights and the 80 undersigned organizations, we are writing to share our serious concerns regarding the Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity (“the new Guidance”), issued in December of 2014 by the Department of Justice (“DOJ”). While the new Guidance included much-needed improvements to the 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies (“the 2003 Guidance”), many issues regarding the new Guidance remain. In particular, the new Guidance preserves loopholes from the 2003 Guidance and fails to address critical matters regarding its implementation, ultimately impeding Attorney General Eric Holder’s stated goal of eliminating discriminatory policing and profiling “once and for all.” We urge you to make addressing these concerns a priority so that your administration’s final policy and legacy truly upholds fair and equal treatment for all.

Crafted under President George W. Bush and former Attorney General John Ashcroft, the 2003 Guidance was an important step forward in clarifying the Department of Justice’s (“DOJ” or “the Department”) position on racial profiling in law enforcement. Following the tragic events of September 11, 2001 and the initiation of our military campaigns in Iraq and Afghanistan, President Bush and Attorney General Ashcroft recognized that a federal directive was necessary in order to combat discriminatory law enforcement practices at home. Unfortunately, the 2003 Guidance that resulted from their efforts failed to accomplish this goal fully. Specifically, the Guidance failed to proscribe profiling on the basis of national origin or religion; included loopholes allowing law enforcement to profile on national security and border integrity grounds; did not expand the proscription on profiling to law enforcement surveillance activities; did not apply to state and local law enforcement agencies that work with federal law enforcement or receive federal funding; and failed to include enforcement mechanisms.

Considering the events of this past year, now, more than ever, it is vitally important for these shortcomings to be addressed. The shooting deaths of Michael Brown in Ferguson, Missouri and Tamir Rice in Cleveland, Ohio, and the death of Eric Garner in Staten Island, New York, all at the hands of local police officers, along with the troubling pattern of unresolved cases of excessive use of force perpetuated by Customs and Border Protection agents along the southern border, have spurred a national movement calling for an end to discriminatory policing practices. The use of lethal force by police in Ferguson and New York City are extreme examples of the type of racial profiling that has occurred in those cities during traffic and pedestrian stops.<sup>1</sup> Both you and Attorney General Holder have spoken candidly about

your own personal experiences with racial profiling. With the proliferation of new technologies and surveillance capabilities, state laws that target specific communities, and federal programs that involve state and local law enforcement in civil immigration enforcement, we are at a critical juncture in our nation's history.

We had hoped the new Guidance would make clear once and for all that our government would not tolerate discriminatory policing practices. But, unfortunately, there are still serious flaws with the new Guidance, as indicated below:

1. The new Guidance preserves the loopholes that allow for profiling at the airports and in vast border regions by excluding Customs and Border Protection (“CBP”) and the Transportation Security Administration (“TSA”) from its requirements. These loopholes allow federal agents to target and search travelers solely because of their race, ethnicity, gender, national origin, religion, sexual orientation or gender identity. The new Guidance also fails to prohibit the pervasive practice of singling out and stopping individuals on suspected immigration violations for no reason other than baseless stereotypes.
2. The new Guidance effectively allows the Federal Bureau of Investigation (“FBI”) to continue its extensive data-gathering and “mapping” of racial, ethnic, and religious communities, a technique FBI Director James Comey recently admitted that the FBI uses.<sup>2</sup> Racial and ethnic mapping involves collecting data on “racial and ethnic oriented” neighborhoods, businesses, and places of worship to “map” and investigate those communities. The FBI has conducted mapping programs in the Muslim, Latino, African-American, Russian, and Chinese communities throughout the United States. This practice of gathering data on communities based on race, ethnicity, religion, or any other protected category for law enforcement and intelligence activities should be immediately discontinued. Justice also demands transparency for affected communities, as well as further information about how the FBI's racial and ethnic mapping operation has been developed and deployed.<sup>3</sup> We request that DOJ publicly disclose the maps that the FBI produced, and explain how the FBI uses these maps in carrying out its law enforcement and intelligence activities.
3. The new Guidance allows law enforcement to continue directing sources and informants to spy on particular communities based solely upon their protected characteristics—e.g., race, ethnicity or religion—regardless of any connection to criminal activity. This coercive practice allows for the continued and discriminatory infiltration of First Amendment protected spaces such as mosques or other houses of worship, and community organizations or events by FBI agents or informants so that they may observe, take notes and collect information, all without evidence of criminal activity. Allowing these practices to continue subjects entire racial, ethnic and religious communities to potential surveillance by law enforcement, the chilling effect of which cannot be overstated. For example, because of the New York Police Department's (NYPD) Muslim spying program, many Muslims are afraid to attend mosques for fear of being targeted by law enforcement informants and officers. DOJ should announce a policy clarifying that this law enforcement practice violates the stated goals of the Guidance and end this discriminatory practice.

4. Finally, the new Guidance does not take any steps to prohibit profiling by state and local law enforcement agencies, except while such agencies are participating in a “federal law enforcement task force.” Yet, as described above, state and local law enforcement agencies like the NYPD, the Ferguson Police Department, and the Cleveland Police Department have encounters with community members every day that raise serious concerns about discriminatory policing.<sup>4</sup> State and local law enforcement intelligence fusion centers also collect substantial amounts of personal data about individuals with little oversight, though they often utilize federal funds and involve collaboration with federal agents and analysts. The new Guidance does not mandate that fusion centers take steps to eliminate policing practices that target people based on race, ethnicity, national origin, religion, or other protected categories. DOJ should announce a policy of greater accountability for police agencies that receive federal funds:
  - a. DOJ should condition federal funds to state and local law enforcement agencies on whether the agency has adopted a policy prohibiting the use of race, color, religion, national origin, sex, sexual orientation, and gender identity as a factor in its law enforcement activities, absent suspect-specific information that includes a racial, ethnic, religious or other protected category identifier. DOJ has authority to impose these requirements under Title VI of the Civil Rights Act of 1964, the Omnibus Crime Control and Safe Streets Act of 1968 (“the Safe Streets Act”), and the Violence Against Women Act of 1994 (“VAWA”) as amended. Independent of these statutes, DOJ has additional authority under the authorizing statutes for DOJ-funded programs to adopt reasonable conditions to ensure federal funds are used in a manner that is not arbitrary and is consistent with statutory program goals. DOJ should use this authority to codify protection from discrimination based on sex, sexual orientation, and gender identity in program regulations where not already covered by applicable statute. If the agency fails to adopt such a policy, and disparities based on race, religion, national origin, sex, sexual orientation, or gender identity are found within their policing policies and practices, then DOJ should use its existing authority under Title VI of the Civil Rights Act of 1964, the Safe Streets Act of 1968, VAWA, and the DOJ program authorities to demand compliance or initiate termination proceedings.
  - b. DOJ should engage in compliance reviews of select state and local law enforcement agencies and expand these reviews to all local law enforcement agencies that receive funding, either directly or indirectly from DOJ, to determine whether they are complying with the above requirements in all of their law enforcement activities.
  - c. DOJ should announce that going forward, in order for a state/local agency to be able to “attest” to its Title VI, Safe Streets Act, and VAWA compliance, and compliance with any additional program nondiscrimination regulations, the agency must have a policy prohibiting profiling based on the above factors, publicize the policy, and provide training to their officers on how to comply with the policy.
  - d. DOJ should enhance its training programs for law enforcement agencies on how to comply with all applicable nondiscrimination laws and regulations. The Office of Justice Programs and the Civil Rights Division are doing some of this now, but not in a very systematic way.

- e. As part of this new policy, DOJ should commit to providing materials in furtherance of the above requirements to all police agencies that receive federal funds, including model policies, model training materials, etc.
- f. DOJ should require all state and local law enforcement agencies that receive federal funds to collect data on the use of race, ethnicity, gender, national origin, or religion in their law enforcement activities.

In addition to our concerns about the language of the new Guidance, we also have several questions regarding implementation of the new Guidance that must be addressed.

1. The U.S. Department of Homeland Security (“DHS”) must answer the following questions:
  - a. How are “the vicinity of the border” and “protective, inspection, or screening activities” (the new Guidance, p. 2) defined?
  - b. In general, what are the specific CBP activities covered by the new Guidance?
  - c. What are the scope, nature and timeline for the “[a]dditional review” that will be undertaken by DHS, TSA and CBP of “activities not directly covered by the new guidance” (DHS Fact Sheet: U.S. Department of Justice Racial Profiling Guidance, p. 2)?
  - d. What, specifically, is the “further action” DHS intends to undertake to ensure personnel “properly implement and comply with this policy” (*id.*) and what is its timeline?
  - e. What is the scope, nature, timeline and role for key DHS stakeholders in developing “implementation guidance, compliance assessment, enhanced training, and enhanced statistical collection” (*id.*)?
  - f. What accountability measures will DHS implement to address its practices that are exempted from the new Guidance?
2. While we are pleased to see a commitment to data collection and the inclusion of a broader class of protected categories in the new Guidance, we have several concerns regarding data collection. It is not clear from the new Guidance
  - a. what data will be collected;
  - b. by which individuals;
  - c. using what method;
  - d. how it will be analyzed;
  - e. what data, analyses and reports will be made public;
  - f. how the data analysts and researchers will be selected;
  - g. what the timeline for providing data and conducting the analysis will be;
  - h. what the role for key stakeholders will be in these processes;
  - i. what training will be given to law enforcement personnel who conduct the data collection;
  - j. how complaints will be gathered, reviewed, and addressed and how community members will be informed about the complaint mechanisms; and
  - k. what oversight mechanism will be implemented to ensure compliance with the new Guidance and hold violators accountable.

3. We believe that training programs for law enforcement officials under the new Guidance should be thoughtfully constructed and developed in collaboration with key stakeholders, and further, that all training materials be made public. This process needs to be transparent, with an eye toward rebuilding trust with communities. A strong ban on racial and discriminatory profiling is central to achieving this goal. Revelations about the use of bigoted training materials by the FBI and local law enforcement are reminders of the importance of a transparent process that assures communities that law enforcement training programs are professional, effective, and free of bias.
4. Finally, as it relates to state and local law enforcement agencies, the new Guidance applies to those working on “Federal law enforcement task forces” (the new Guidance, p. 1).
  - a. How are “Federal law enforcement task forces” defined?
  - b. How prevalent are they?
  - c. What accountability mechanisms are in place to ensure that state and local law enforcement agencies participating in Federal law enforcement task forces are complying with the new Guidance?

We support this administration’s commitment to equal protection and due process under the law. To that end, we look forward to working with you to ensure that profiling is eliminated in all forms of law enforcement activity. By addressing the loopholes in the new Guidance and its implementation issues, we believe our shared goal of eliminating discriminatory policing and profiling will be achieved—once and for all.

If you have any questions, please contact Nancy Zirkin at (202) 466-3311 or [zirkin@civilrights.org](mailto:zirkin@civilrights.org) or Sakira Cook at (202) 263-2894 or [cook@civilrights.org](mailto:cook@civilrights.org). Thank you for your consideration. We look forward to hearing from you.

Sincerely,

**National Organizations**

The Leadership Conference on Civil and Human Rights

9to5, National Association of Working Women

AAPD

Advancement Project

African American Public Policy Forum

American Civil Liberties Union

American Friends Service Committee

Amnesty International USA

Arab American Institute

Asian Americans Advancing Justice | AAJC

Brennan Center for Justice

Center for Community Change

Center for Women Policy Studies

Council on American-Islamic Relations

Defending Dissent Foundation

Drug Policy Alliance  
Families for Justice as Healing  
Fellowship of Reconciliation  
Gamaliel  
Hip Hop Caucus  
Human Rights Campaign  
International Center for Advocates Against Discrimination (ICAAD)  
Japanese American Citizens League  
Lawyers' Committee for Civil Rights Under Law  
Muslim Advocates  
NAACP  
NAACP Legal Defense and Educational Fund  
National Association of Criminal Defense Lawyers (NACDL)  
National Association of Human Rights Workers  
National Association of Social Workers  
National Black Justice Coalition  
National Center for Transgender Equality  
National Employment Law Project  
National Fair Housing Alliance  
National Immigration Law Center  
National Korean American Service and Education Consortium  
National LGBTQ Task Force  
National Network for Arab American Communities (NNAAC)  
National Partnership for Women & Families  
National Queer Asian Pacific Islander Alliance (NQAPIA)  
National Urban League  
OCA - Asian Pacific American Advocates  
Prison Policy Initiative  
Rights Working Group  
SAALT  
Sikh American Legal Defense and Education Fund (SALDEF)  
The Sikh Coalition  
South Asian Americans Leading Together (SAALT)  
Southern Border Communities Coalition  
StoptheDrugWar.org  
UNITED SIKHS  
YWCA USA

**State and Local Organizations**

Alliance San Diego (San Diego, California)  
Arab American Association of New York (New York, New York)  
Asociacion de Liderazgo Comunitario (San Diego, California)  
Black on Black (Cleveland, Ohio)

Border Action Network (Tucson, Arizona)  
Border Encuentro (San Diego, California)  
CAIR - Ohio  
Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA) (Los Angeles, California)  
Community to Community Development (C2C) (Bellingham, Washington)  
Council on American-Islamic Relations (Ohio)  
Dignity and Power Now (Los Angeles, California)  
El Centro de la Raza (Seattle, Washington)  
Employee Rights Center (San Diego, California)  
Empowerment Movement (Baltimore, Maryland)  
Friends of Friendship Park (San Diego, California)  
Greater Cleveland Civil and Human Rights Coalition (Cleveland, Ohio)  
Greater Cleveland Immigrant Support Network (Cleveland, Ohio)  
Gulf Coast Center for Law & Policy (New Orleans, Louisiana)  
Illinois Coalition for Immigrant and Refugee Rights (Illinois)  
Kitsap Immigrant Assistance Center (Bremerton, Washington)  
LA Community Legal Center and Educational (Los Angeles, California)  
Massachusetts Immigrant and Refugee Advocacy Coalition (Boston, Massachusetts)  
Montgomery County Civil Rights Coalition (Montgomery County, Maryland)  
Movement in Black (Cleveland, Ohio)  
New Sanctuary Coalition (New York City, New York)  
OneAmerica (Seattle, Washington)  
Skagit Immigrant Rights Council (Skagit County, Washington)  
Southern Poverty Law Center (Montgomery, Alabama)  
Urban Educational Justice League (Cleveland, Ohio)  
Virginia Organizing (Charlottesville, Virginia)  
Voices for Freedom (New York City, New York)

cc: Attorney General Eric Holder, Department of Justice  
cc: Secretary Jeh Johnson, Department of Homeland Security

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<sup>1</sup> See <http://ago.mo.gov/VehicleStops/2013/> and

[http://www.democracynow.org/2013/8/13/judge\\_rules\\_nypd\\_stop\\_and\\_frisk](http://www.democracynow.org/2013/8/13/judge_rules_nypd_stop_and_frisk)

<sup>2</sup> See <http://www.latimes.com/nation/la-na-fbi-comey-profiling-20141209-story.html>

<sup>3</sup> See <https://www.aclu.org/blog/criminal-law-reform-racial-justice-national-security/shhhh-what-fbi-doesnt-want-you-know-about>; <https://www.aclu.org/blog/criminal-law-reform-national-security-racial-justice/court-today-continuing-challenge-fbi>

<sup>4</sup> Given that most profiling of individuals on the basis their actual or perceived sexual orientation or gender identity (e.g., profiling of transgender women as sex workers) occurs by state and local law enforcement agencies, this aspect is of particular importance to the LGBT community.