

LGBT Organizations Welcome U.S. Department of Justice Guidance on Police Profiling

A national coalition of LGBTQ organizations advocating on criminal justice issues including the National LGBTQ Task Force, the National Center for Transgender Equality (NCTE), National Queer Asian Pacific Islander Alliance (NQAPIA), National Coalition of Anti-Violence Programs (NCAVP), the Columbia University Center for Gender and Sexuality Law, Streetwise and Safe (SAS) and the American Civil Liberties Union welcomed yesterday's announcement of a long awaited update to the 2003 guidance banning racial profiling by federal law enforcement agencies.

The new guidance announced by Attorney General Eric Holder expands the existing ban on racial profiling by federal law enforcement agents to also bar the use of sexual orientation, gender, or gender identity, along with national origin and religion, to any degree in the initiation of law enforcement interactions.

As the nation continues to be rocked by the all too often deadly effects of profiling and discriminatory policing practices illustrated by the killings of Mike Brown, Eric Gardner, Tanesha Edwards, Aura Rosser, and so many others, LGBTQ organizations welcomed this historic move to recognize and redress police profiling of all members of communities of color, including women and LGBTQ people of color. From federal investigations in New Orleans and Puerto Rico, to research by LGBTQ organizations including Lambda Legal, the National Coalition of Anti-Violence Programs, the National Center for Transgender Equality and the National LGBTQ Task Force, to the voices of communities with whom we work on the ground, it is clear that police profiling of LGBTQ people – particularly people of color – is an everyday occurrence. The expansion of protections against profiling by federal law enforcement agencies based on sexual orientation, gender, and gender identity is both an historic and critical step toward remedying these injustices.

However, the revised guidance includes broad exceptions that dampen the effect of these important protections. The carve-outs for Customs and Border Patrol, Transportation Security Administration, and certain anti-terror investigations are simply unacceptable. Racial profiling is not an investigative technique—it is discrimination, period. We urge the Administration to expand these protections to reach all federal and federally funded law enforcement activities, including and especially those which target Muslim communities and take place at our borders, which until all too recently were closed to LGBTQ immigrants. LGBTQ migrants continue to face significant barriers to entry and profiling and discriminatory policing by CBP and TSA agents, and Muslim LGBTQ people are among those targeted by unacceptable profiling practices pursued in the name of “national security.”

Additionally, while setting an important example for law enforcement agencies across the country, the guidance is neither mandatory nor does it apply to most state and local law enforcement activities. The Guidance also doesn't include clear accountability measures beyond internal investigations, which do not allow for transparency or independent accountability. As a result, the guidance will not address the majority of profiling faced by LGBTQ people.

Accordingly, the undersigned organizations, consistent with the recommendations made in *A Roadmap for Change: Federal Policy Recommendations to Address the Criminalization of LGBT People*

and People Living with HIV, urge state and local law enforcement agencies to adopt similarly expansive profiling bans without exceptions, and law enforcement agencies at all levels to mandate and effectively enforce them.

Finally, we urge Congress to take action to pass an expanded version of the End Racial Profiling Act which includes protections from profiling based on gender, gender identity, and sexual orientation in order to ensure that the federal ban against profiling becomes the law of the land, and offer effective protections to all people affected by police profiling.

American Civil Liberties Union

Audre Lorde Project

Best Practices Policy Project

The Center for Constitutional Rights

The Equity Project

Familia: Trans Queer Liberation Movement

Immigration Equality

Lambda Legal

National Center for Transgender Equality (NCTE)

National Coalition of Anti-Violence Programs (NCAVP)

National Immigrant Justice Center

National LGBTQ Task Force

National Queer Asian Pacific Islander Alliance (NQAPIA)

Providence Youth Student Movement (PrYSM)

Southerners on New Ground (SONG)

Streetwise and Safe (SAS)

Transgender Law Center