




Homeland Security

May 25, 2023

Policy Statement 500-02

MEMORANDUM FOR: DHS Agency and Office Leaders

FROM: Alejandro N. Mayorkas
Secretary 

SUBJECT: **Reaffirming the Commitment to Nondiscrimination in Department of Homeland Security Activities**

The Department of Homeland Security (DHS) works to ensure that the United States is a safe, secure, and resilient place. Individual rights and equality are core American values, which the Department upholds through its commitment to nondiscrimination and equal treatment. Profiling on the basis of protected individual characteristics undermines these values and furthermore is arbitrary, costly, and ineffective. Aligning DHS policy and practice with this fundamental truth is both a solemn duty and a top priority.

The Department has a long history of adopting standards for our unique missions and operating environments that reflects our commitment to prohibit discrimination on the basis of protected individual characteristics. In 2004, former Secretary Tom Ridge expressly adopted the Department of Justice's (DOJ) *Guidance on the Use of Race by Federal Law Enforcement Agencies*.¹ In 2013, former Secretary Janet Napolitano affirmed that commitment and gave further guidance on the use of nationality and place of birth in our law enforcement and screening activities.² In 2014, DOJ issued updated guidance covering more individual characteristics and articulating key limitations on the use of these characteristics in law enforcement activities, including a significant portion of DHS activities.³

DOJ has issued new superseding guidance that “builds upon and expands the framework of the 2014 Guidance, reaffirms the federal government’s deep commitment to ensuring that its law enforcement agencies gather and depend on information that is reliable and trustworthy, and

¹ Memorandum from Secretary Tom Ridge, *The Department of Homeland Security's Commitment to Race Neutrality in Law Enforcement Activities* (June 1, 2004).

² Memorandum from Secretary Janet Napolitano to Component Heads, *The Department of Homeland Security's Commitment to Nondiscriminatory Law Enforcement and Screening Activities* (Apr. 26, 2013) (“2013 DHS policy”).

³ Department of Justice, *Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity* (Dec. 2014) (“2014 DOJ Guidance”).

promotes unbiased conduct during federal law enforcement and intelligence activities.”⁴ DHS collaborated with DOJ on the development of this guidance. Its adoption—with limited exclusions for certain environments that present unique considerations—is essential to the execution of our law enforcement activities in a manner that protects civil rights and civil liberties while also ensuring our officers and agents have the tools, training, and support they need.

The 2023 DOJ Guidance is the policy of the Department as it applies to Federal law enforcement personnel and Federal non-law enforcement personnel engaged in or supporting Federal law enforcement activity and intelligence activity conducted by Federal law enforcement agencies, except as described in this Policy Statement.⁵ Consideration of race, ethnicity, gender, national origin, religion, sexual orientation, gender identity, and disability in the Department’s covered law enforcement activities shall occur only in strict accordance with the Standard and Application sections of the 2023 DOJ Guidance.

The 2013 DHS policy remains otherwise in effect for: (1) interdiction activities at the border or its functional equivalent (such as airports, seaports, and other ports of entry) and related traveler and cargo vetting activities, as well as protective and inspection activities⁶; (2) non-law enforcement screening activities; and (3) all activities that use country of birth or nationality as a security screening, enforcement, or investigative criterion. Reliance on generalized stereotypes involving any individual characteristic in any of the Department’s activities is prohibited.⁷

I am directing the Officer for Civil Rights and Civil Liberties to lead an effort in collaboration with relevant Department agencies and offices to assess and propose updates before the close of the fiscal year to the Department’s nondiscrimination policies for external activities, including the 2013 DHS policy and this Policy Statement. This work will ensure the continued application of the requirements of the 2023 DOJ Guidance to all covered DHS law enforcement activity, as well as consistent standards and requirements for law enforcement activities excluded from or not governed by the 2023 DOJ Guidance, and other DHS activities as appropriate.

⁴ Department of Justice, *Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, Gender Identity, and Disability* (May 2023) (“2023 DOJ Guidance”).

⁵ *Id.* at nn.1 & 5.

⁶ *Id.*

⁷ This Policy Statement is intended only to improve the internal management of the Department of Homeland Security. It is not intended to, and does not, create any right, benefit, trust, or responsibility, whether substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities, entities, officers, employees, or agents, or any person, nor does it create any right of review in an administrative, judicial, or any other proceeding.

In the meantime, and until a new DHS policy is approved, the following additional requirements apply:

1. **Training.** Within six months, DHS agencies and offices that employ law enforcement personnel must administer training on the 2023 DOJ Guidance for all personnel engaged in covered activities to which the 2023 DOJ Guidance applies. This includes all state, local, territorial, and Tribal law enforcement officers participating in DHS law enforcement task forces and joint operations.
2. **Accountability.** DHS agencies and offices will treat allegations of profiling, civil rights violations, or violations of nondiscrimination policies or guidance referenced herein like other allegations of misconduct, refer them to the appropriate DHS agency office(s) that handle such allegations, and inform the Office for Civil Rights and Civil Liberties. All substantiated violations will be reported at least on a quarterly basis beginning with FY 2023 Q4 to the head of the relevant DHS agency or office.