

Women of Color, LGBTQ People of Color and Racial Profiling The Case for an Inclusive End Racial Profiling Act

Black women, Indigenous women, women of color, immigrant women, lesbians, transgender women, homeless and low income women experience many of the same forms of racial profiling, police brutality, and race and poverty-based discriminatory policing practices as their male counterparts, as well as gender and sexuality-specific forms of racial profiling and police brutality.ⁱ

Women of color also experience pervasive police profiling and discriminatory treatment by law enforcement based on actual or perceived sexual orientation, gender, gender identity, or HIV status.ⁱⁱ

Passage of an inclusive End Racial Profiling Act that would, consistent with the 2014 U.S. Department of Justice Guidance on Profiling, and the Interim Report of the President’s Task Force on 21st Century Policing, **expand the ban on racial profiling to include profiling based on gender, gender identity, and sexual orientation** is essential to ensuring that the Act’s protections extend to all members of communities of color.

THE FACTS:

- Although racial profiling data reported by federal and state governments is rarely, if ever, disaggregated by race *and* sex, racial profiling studies analyzing the experiences of women of color separately from those of men of color conclude that “for both men and women there is an identical pattern of stops by race/ethnicity.”ⁱⁱⁱ
- Taking just two jurisdictions which have been in the news of late:
 - Analysis of stop and frisk data for New York City reveals that the racial disparities in stops, frisks and arrests are virtually the same for women as they are for men.^{iv}

Year	Percentage of women stopped who were Black or Latina	Percentage of women frisked who were Black or Latina	Percentage of women searched who were Black or Latina	Percentage of women issued summonses who were Black or Latina	Percentage of women arrested who were Black or Latina
2010	82.1	86.1	84.5	84.4	85.3
2011	81.6	85.2	83.5	82.1	83.8
2012	82.8	86.6	84.5	83.0	83.8
2013	82.4	85.1	83.0	84.2	83.9
2014	77.7	81.7	85.7	88.7	85.9

Preliminary analysis of NYPD UF-250 Stop and Frisk Data by Center for Constitutional Rights and New York Civil Liberties Union. Black and Hispanic. According to 2010 Census Data, Black and Latina/o people make up 51.35% of New York City’s population. Racial disparities in stops, frisks, searches, summons and arrests for men range between 80 and 88%.

- Data recently released by the Missouri Attorney General’s office shows that in Ferguson, MO, more Black women drivers are stopped more than any other group.^v
- Racial profiling of women of color has specifically been reported in the context of law enforcement practices associated with the “war on drugs” and the policing of prostitution-related offenses – including in the use of possession or presence of condoms as evidence.^{vi}
- Racial profiling of women of color – whether during traffic stops, on the streets, or in our homes – is all too often accompanied by sexual harassment, assault, and abuse, as well as unlawful, invasive and degrading searches, including strip searches and visual cavity searches.^{vii}

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THE RESPONSE:

- ✓ The U.S. Department of Justice recently issued guidance to federal law enforcement agencies which expands the federal ban on racial profiling:

Federal law enforcement officers may not use race, ethnicity, gender, national origin, religion, sexual orientation, or gender identity to any degree, except that officers may rely on the listed characteristics in a specific suspect description.^{viii}

- ✓ The U.S. Department of Justice included the following provision in the consent decree entered into with the New Orleans Police Department:

The NOPD agrees that officers shall not construe sexual orientation, gender identity or gender expression as reasonable suspicion or probable cause that an individual is or has engaged in any crime, and that officers shall not request identification from or otherwise initiate contact solely based on sexual orientation or gender identity or expression.^{ix}

- ✓ New York City recently adopted a comprehensive ban on profiling which prohibits any law enforcement action which “relies on actual or perceived race, [ethnicity, religion or] national origin, color, creed, age, alienage or citizenship status, gender, sexual orientation, disability, or housing status.”^x The law also allows for individuals to challenge law enforcement practices which have a disparate impact on the basis of any of these categories.

- ✓ The Interim Report of the President’s Task Force on 21st Century Policing states:
Law enforcement agencies should adopt and enforce policies prohibiting profiling and discrimination based on race, ethnicity, national origin, age, gender, gender identity/expression, sexual orientation, immigration status, disability, housing status, occupation, and/or language fluency.^{xi}

- ✓ The NAACP offers the following model language for racial profiling legislation across the U.S. that would prohibit “any law enforcement action against an individual by a law enforcement officer that relies, to any degree, on actual or perceived race, color, ethnicity, religion, national origin, gender identity or expression, sexual orientation, immigration or citizenship status, language, disability (including HIV status), housing status, occupation, or socioeconomic status in initiating law enforcement action against an individual, rather than any law enforcement action that relies on a specific suspect description-based notification, an individual's behavior or other trustworthy information or circumstances, relevant to the locality and timeframe, that links a person or persons to suspected unlawful activity.”

CALL FOR IMMEDIATE PASSAGE OF AN INCLUSIVE ERPA:

The civil rights community is calling for passage of the End Racial Profiling Act of 2015 (H.R. 1933 and S.1056), which, consistent with December 2014 Department of Justice Guidance on Profiling and the recommendations of the Interim Report of the President’s Task Force on 21st Century Policing, **expands the ban on racial profiling to include a ban on profiling based on gender, gender identity, and sexual orientation.**

THE SAFETY, RIGHTS, AND DIGNITY OF WOMEN OF COLOR DEPENDS ON IT.

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- ⁱ Andrea J. Ritchie, *Law Enforcement Violence Against Women of Color*, in *Color of Violence: The INCITE! Anthology* (South End Press 2006); Rod K. Brunson and Jody Miller, “Gender, Race and Urban Policing: The Experiences of African American Youth,” *Gender & Soc’y* 20: 531 (2006); Visher, C. A., Gender, police arrest decisions, and notions of chivalry, *Criminology* 21:5-28 (1983); see also Joey L. Mogul, Andrea J. Ritchie, and Kay Whitlock, *Queer (In)Justice: The Criminalization of LGBT People in the United States* (Boston: Beacon Press, 2011); Kathryn E. W. Himmelstein and Hannah Brückner, “Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study,” *Pediatrics* 127 (1) (2011): 49-57; Brett G. Stoudt, Michelle Fine, and Madeline Fox, *Growing Up Policed in the Age of Aggressive Policing Policies*, 56 N.Y.L. Sch. L. Rev. 1331 (2011); Amnesty International, *Stonewalled: Police Abuse and Misconduct Against LGBT People in the United States* (Washington: Amnesty International, 2005), available at <http://www.amnesty.org/en/library/asset/AMR51/122/2005/en/2200113d-d4bd-11dd-8a23-d58a49c0d652/amr511222005en.pdf>.
- ⁱⁱ See Joey L. Mogul, Andrea J. Ritchie, and Kay Whitlock, *Queer (In)Justice: The Criminalization of LGBT People in the United States* (Boston: Beacon Press, 2011); “Stonewalled: Police Abuse and Misconduct Against LGBT People in the United States” AMR51/122/2005 (Washington: Amnesty International, 2005).
- ⁱⁱⁱ R. Lundman and R. Kaufman, *Driving While Black: Effects of Race, Ethnicity and Gender on Citizen Reports of Traffic Stops and Police Action*, *Criminology* 41(1) 195-220 (2003).
- ^{iv} New York Civil Liberties Union, *Women Demand End to Discriminatory NYPD Stop-and-Frisk*, Press Release, April 3, 2013; Women of Color Policy Network, *Women of Color: Two-Thirds of all Women in New York City Still Invisible in Policy - The 2nd Annual Report on The Status of Women of Color in NYC*, Wagner Institute for Public Policy at New York University (2003).
- ^v Missouri Attorney General (2013), available at: <http://ago.mo.gov/docs/default-source/public-safety/2013agencyreports.pdf?sfvrsn=2>.
- ^{vi} See e.g., Shana Judge and Mariah Wood, *Racial Disparities in Enforcement of Prostitution Laws*, available at: <https://appam.confex.com/appam/2014/webprogram/Paper11163.html>; Noah Berlatsky, *Black Women Profiled as Prostitutes in New York City*, Reason, October 1, 2014, available at: <http://reason.com/archives/2014/10/01/nypd-profiles-sex-workers-too>; ACLU, Break the Chains and the Brennan Center at NYU, *Caught in the Net: The Impact of Drug Policies on Women and Families* (2005), available at: https://www.aclu.org/files/images/asset_upload_file431_23513.pdf; Women of Color Policy Network, *supra* note ii; U.S. General Accounting Office, *Better Targeting of Passengers for Personal Searches Could Produce Better Results* (Washington D.C.: U.S. General Accounting Office 2000).
- ^{vii} Stinson, Philip M.; Liederbach, John; Brewer, Steven L.; and Mathna, Brooke E., *Police sexual misconduct: A national scale study of arrested officers* (2014), Criminal Justice Faculty Publications. Paper 30, available at: http://scholarworks.bgsu.edu/crim_just_pub/30; International Association of Chiefs of Police, *Addressing Sexual Offenses and Misconduct by Law Enforcement Officers: An Executive Guide* (Virginia: International Association of Chiefs of Police, 2011), available at: <http://www.theiacp.org/Portals/0/pdfs/AddressingSexualOffensesandMisconductbyLawEnforcementExecutiveGuide.pdf>; Cato Institute, *National Police Misconduct Reporting Project Annual Report (2010)*, available at: <http://www.policemisconduct.net/statistics/2010-annual-report>; Irlbeck, Dawn and Samuel Walker. “Police Sexual Abuse of Teenage Girls: A 2003 Update on ‘Driving While Female’” University of Nebraska at Omaha, Department of Criminal Justice, Police Professionalism Initiative (June 2003), available at: <http://samuelwalker.net/wp-content/uploads/2010/06/dwf2003.pdf>; Timothy Maher, *Police Sexual Misconduct: Officers’ Perceptions of its Extent and Causality*, *Crim. Just. Rev.* 28(2):355 (2003); Fine, M., N. Freudenberg, Y. Payne, T. Perkins, K. Smith, and K. Wanzer, “Anything can happen with police around”: Urban youth evaluate strategies of surveillance in public places. *Journal of Social Issues* 59:141-58 (2003); Samuel Walker and Dawn Irlbeck, *Driving While Female*, Police Professionalism Initiative, University of Omaha (2002), available at: <http://samuelwalker.net/wp-content/uploads/2010/06/dwf2002.pdf>; ; Kraska, P. B., and V. E. Kappeler, “To serve and pursue: Exploring police sexual violence against women.” *Justice Quarterly* 12:85-112 (1995).
- ^{viii} 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*, December 2014.
- ^{ix} *United States of America v. City of New Orleans*, 12 cv. 1924, Consent Decree Regarding the New Orleans Police Department at ¶186 (E.D.La July 24, 2012)
- ^x Local Law 71 of New York City (2013).
- ^{xi} President’s Task Force on 21st Century Policing. 2015. Interim Report of the President’s Task Force on 21st Century Policing. Washington, DC: Office of Community Oriented Policing Services, Recommendation 2:12, available at: http://www.cops.usdoj.gov/pdf/taskforce/Interim_TF_Report.pdf.