




**U.S. Customs and  
Border Protection**

Commissioner

FEB 06 2014

MEMORANDUM FOR: All CBP Employees

FROM: Thomas S. Winkowski   
Acting Commissioner

SUBJECT: CBP Policy on Nondiscrimination in Law Enforcement Activities  
and all other Administered Programs

It is the policy of U.S. Customs and Border Protection (CBP) to prohibit the consideration of race or ethnicity in law enforcement, investigation, and screening activities, in all but the most exceptional circumstances. As such, I want to affirm CBP's commitment to the fair, impartial and respectful treatment of all members of the trade and traveling public.

On April 26, 2013, the Secretary of the Department of Homeland Security (DHS) issued the attached policy on "Nondiscriminatory Law Enforcement and Screening Activities." The DHS policy defines "racial profiling" as the invidious use of race or ethnicity as a criterion in conducting stops, searches, and other law enforcement, investigation, or screening activities. The policy notes "racial profiling is premised on the erroneous assumption that any particular individual of one race or ethnicity is more likely to engage in misconduct than any particular individual of another race or ethnicity."

Consistent with the DHS policy, CBP personnel may use race or ethnicity when a compelling governmental interest is present and its use is narrowly tailored to that interest. National security is *per se* a compelling interest, but use of race and ethnicity to serve compelling interest must still be narrowly tailored. Race or ethnicity-based information that is specific to particular suspects or incidents or ongoing criminal activities, schemes, or enterprises may be considered. These standards are designed to ensure that racial and ethnic stereotypes will not be used in conducting stops, searches and other law enforcement activities, but that law enforcement officers rely on specific and trustworthy information to make law enforcement decisions.

Those principles relate to the consideration of *race* or *ethnicity*, which is distinguished from the consideration of *nationality*. Using nationality for antiterrorism, customs, or immigration activities in which nationality is *expressly relevant* to the administration or enforcement of a statute, regulation, or executive order to trigger screening, inspection, or investigative steps is entirely appropriate and needs no further justification.

In addition, this policy does not in any way limit the individualized discretionary use of nationality as a screening, investigation, or enforcement factor. Therefore, the use of nationality is appropriate for the vast majority of situations encountered by front-line CBP personnel and those supporting them in their day to day operations.

In circumstances outside the context of front-line CBP operations and work in support thereof, if nationality is not expressly relevant, DHS and CBP policy is to use nationality as an investigative or screening criterion only in situations where such consideration is based on an assessment of intelligence and risk and in which alternatives do not meet security needs and only as long as necessary.

The use of race and ethnicity information in violation of this policy may subject CBP employees to discipline under the Standards of Conduct. All employees are reminded of their obligation to report misconduct, including discriminatory treatment toward members of the public in the conduct of official duties and unlawful profiling by:

- Calling the toll-free Joint Intake Center Hotline at 1-877-2INTAKE or sending a fax to (202) 344-3390;
- Sending an e-mail message to [Joint.Intake@dhs.gov](mailto:Joint.Intake@dhs.gov);
- Contacting your servicing CBP Internal Affairs (IA) Office;
- Contacting an ICE Office of Professional Responsibility (OPR);
- Writing to P.O. Box 14475, 1200 Pennsylvania Avenue, NW, Washington, DC 20044;
- Calling the Office of Inspector General at 1-800-323-8603;
- Sending an e-mail message to [DHSOIGHOTLINE@dhs.gov](mailto:DHSOIGHOTLINE@dhs.gov); or
- Writing to Department of Homeland Security, Washington, DC 20528, Attn: Office of Inspector General, Hotline.

For additional information on CBP's civil rights and civil liberties program, please visit the Privacy and Diversity Office website at [www.cbp.gov/eo](http://www.cbp.gov/eo).

Attachment