

July 6, 2015

The Honorable Loretta E. Lynch
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

RE: Guidance Regarding Law Enforcement Response to Domestic Violence and Sexual Assault

Dear Attorney General Lynch:

We write to thank the Department of Justice for its commitment to addressing gender discrimination in policing¹ and to urge the Department to issue, without delay, much-needed guidance outlining how flawed law enforcement responses to domestic violence and sexual assault can violate federal law and constitute police misconduct. The undersigned include 88 national groups and 98 state and local organizations that are dedicated to advancing civil and human rights, eliminating gender-based violence, and advocating for survivors. In light of the ongoing attention to policing reform, we believe that issuing guidance that addresses the context of domestic violence and sexual assault— which the Report of the President’s Task Force on 21st Century Policing identified as necessitating a coordinated community and law enforcement response – will ensure that survivors are more fairly treated by the justice system.²

Over the last few years, many of us have engaged in numerous discussions with the Department about gender-biased policing and the improper, and often illegal, law enforcement responses to domestic violence and sexual assault that violate the civil rights of survivors and endanger their lives. We are heartened that, in the wake of these discussions, the Department has taken proactive steps to highlight and investigate police misconduct in cases and complaints involving domestic violence and sexual assault. This has been a critically important step.

Yet more is necessary. We believe that current criminal justice reform efforts should encompass and build upon the work the Department has already undertaken to combat gender bias and should address the fact that women, who make up the vast majority of victims of domestic violence and sexual assault, face discriminatory police practices. Providing guidance to law enforcement on constitutional and effective policing of domestic violence and sexual assault is a critical next step in reforming and improving our criminal justice system.

Domestic violence and sexual assault are two of the most prevalent forms of gender-based violence. In the US, over one million women are sexually assaulted each year,³ and more than a third of women are subjected to rape, physical violence, and/or stalking by an intimate partner in their lifetime; women of

¹ U.S. Department of Justice, Joint Statement of the Office of Community Oriented Policing Services, the Office for Victims of Crime, and the Office on Violence Against Women on Addressing Gender-Discrimination in Policing, (Jun. 2013), <http://www.justice.gov/ovw/blog/joint-statement-office-community-oriented-policing-services-office-victims-crime-and-office>.

² President’s Task Force on 21st Century Policing, U.S. Dep’t of Justice Office of Community Oriented Policing Services, *Final Report of the President’s Task Force on 21st Century Policing* 44 (May 2015), available at http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf.

³ Dean G. Kilpatrick et al., *Drug-facilitated, Incapacitated, and Forcible Rape: A National Study* 23 (2007), <https://www.ncjrs.gov/pdffiles1/nij/grants/219181.pdf>.

color are disproportionately affected.⁴ Additionally, domestic violence-related calls constitute the single largest category of calls received by police, accounting for 15 to more than 50 percent of all calls.⁵

Systemic problems in policing domestic violence and sexual assault – such as the failure to address and prevent officers’ acts of domestic violence and sexual assault and the failure to enforce laws criminalizing such violence by private individuals – can violate civil and human rights because they are often rooted in discriminatory attitudes about women, as well as about people of color, immigrants, LGBT people, people living with disabilities, those living in poverty, and other communities. Victims of these crimes may be denied equal protection under the U.S. Constitution when domestic violence or sexual assault is treated less seriously than other offenses. Due process violations may also occur when police perpetrate violence, affirmatively condone gender-based violence, or when a victim is put at greater risk as a result of police conduct.

We recognize, and applaud, significant improvements in the last few decades to how law enforcement responds to domestic violence and sexual assault in many communities. Yet, reports regularly surface of law enforcement agencies failing to investigate or adequately respond to domestic violence and sexual assault perpetrated by private individuals or officers. Indeed, the Department’s Civil Rights Division has examined and documented discriminatory law enforcement responses to domestic violence and sexual assault in police misconduct investigations undertaken by its Special Litigation Section in Puerto Rico, New Orleans, Maricopa County, AZ, and Missoula, MT.⁶

These issues surfaced again, most recently, in *Ferguson, Missouri*, where a woman who called the police to report a domestic disturbance was instead arrested and jailed for a permit violation because her boyfriend was not listed on the home’s occupancy permit,⁷ as well as in *Detroit*, where researchers documented how stereotyping of sexual assault victims led to poor criminal investigations and failure by police to submit thousands of sexual assault kits for testing.⁸

⁴ Michele C. Black, et al., National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, *The National Intimate Partner and Sexual Violence Survey: 2010 Summary Report 2*, 39 (Nov. 2011), http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf (documenting that African-American, American Indian, Alaskan Native, and multiracial women are subjected to intimate partner violence at higher rates); Mieko Yoshihama et al., Asian & Pacific Islander Institute on Domestic Violence, *Facts & Stats Report: Domestic Violence in Asian & Pacific Islander Homes 2* (2015), <http://www.apiidv.org/files/Facts.Stats-APIIDV-2015.pdf> (21-55% of Asian women report experiencing intimate physical and/or sexual violence during their lifetime). Men also are victimized by these forms of violence. *See id.*

⁵ Andrew R. Klein, U.S. DOJ National Institute of Justice, Office of Justice Programs, *Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges 1* (June 2009), <https://www.ncjrs.gov/pdffiles1/nij/225722.pdf>.

⁶ U.S. Dep’t of Justice, Civ. Rts. Div., *Investigation of the New Orleans Police Department* xi (Mar. 2011), available at http://www.justice.gov/crt/about/spl/nopd_report.pdf; U.S. Dep’t of Justice, Civ. Rts. Div., *Investigation of the Puerto Rico Police Department* (Sept. 2011), http://www.justice.gov/crt/about/spl/documents/prpd_letter.pdf; U.S. Dep’t of Justice, Civ. Rts. Div., *Findings Letter from Thomas E. Perez, Assistant Attorney General for the Civil Rights Division to Bill Montgomery, County Attorney, Maricopa County, Arizona on United States’ Investigation of the Maricopa County Sheriff’s Office* (Dec. 2011), <http://www.justice.gov/crt/about/spl/mcso.php>. *See also* Statement of Thomas E. Perez, Assistant Attorney General for the Civil Rights Division at Missoula, Montana Press Conference (May 1, 2012), <http://www.justice.gov/crt/opa/pr/speeches/2012/crt-speech-1205011.html>. *See also* U.S. Dep’t of Justice, Civ. Rts. Div., *Investigation of the Ferguson Police Department* 81 (Mar. 2015), http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report_1.pdf.

⁷ *Investigation of the Ferguson Police Department*, *supra* note 6, at 81; *see also* at 89 n.61 (noting that the Ferguson Police tolerated sexual harassment by male officers and responded inadequately to allegations of sexual harassment made by female officers).

⁸ Rebecca Campbell et al., *The Detroit Sexual Assault Kit (SAK) Action Research Project (ARP), Final Report* 109-118 (Mar. 2015), <https://www.ncjrs.gov/pdffiles1/nij/grants/248680.pdf>.

Other examples abound of law enforcement failures in the realm of domestic violence and sexual assault: in *Puerto Rico*, where the police department systematically underreported rape crimes and rarely took action when their own officers committed domestic violence, allowing 84 officers who had been arrested two or more times for domestic violence to remain active;⁹ in *New Orleans*, where the department regularly diverted complaints of possible sexual assault from being fully investigated by classifying them as non-criminal “Signal 21,” including an instance where the investigator did so because “the victim staying out at night knowing she has a live in boyfriend of 14 years, and the victim not really concern with the rape only the morning after pill;”¹⁰ in *Norristown, PA*, where an African-American domestic violence victim faced eviction because police concluded that she had violated the 3-strike nuisance ordinance – with each strike consisting of an act of domestic violence perpetrated against her, including a stabbing that required her to be taken by helicopter to a trauma center;¹¹ in *Philadelphia, St. Louis, Baltimore, New York, Cleveland, Milwaukee, and Washington, D.C.*, where the repeated mishandling of rape and other sex crimes were well documented.¹²

These types of discriminatory police practices – ignoring abuses committed by officers, refusing to enforce established laws, misclassifying or dismissing domestic violence or sexual assault complaints, inadequate training and supervision – often stem from stereotypes and misapprehensions about domestic violence and sexual assault. This type of gender-biased policing is deeply harmful because it undermines efforts to end domestic violence and sexual assault, reduces confidence in the criminal justice system, and furthers the perpetuation of violence by discouraging victims from coming forward and allowing abusers to continue to commit crimes with impunity.

The Department’s ground-breaking investigations have shed new light on the scope of these problems and practices and, again, we encourage the Department to continue this important work. But now is the moment to issue guidance that describes the federal constitutional and statutory prohibitions on discriminatory policing of domestic violence and sexual assault, identifies the types of law enforcement misconduct that may violate the law, and lays out the fundamental components of appropriate policing. The guidance should also provide resources that law enforcement officials can reference in developing policies, protocols, and trainings, and in ensuring that existing practices comply with the law and incorporate current, evidence-based research on effective policing. Doing so would help ensure that law enforcement policies and practices are free of gender stereotypes and gender bias. Such guidance would also give due—and much needed—recognition to the civil and human rights of survivors of domestic violence and sexual assault. It would have a positive, preventive impact on policies and practices and

⁹ *Investigation of the Puerto Rico Police Department*, *supra* note 6, at 17.

¹⁰ *Investigation of the New Orleans Police Department*, *supra* note 6, at 46.

¹¹ American Civil Liberties Union, *Briggs v. Borough of Norristown et al.*, ACLU Blog (accessed Dec. 2014), available at <https://www.aclu.org/womens-rights/briggs-v-borough-norristown-et-al>; American Civil Liberties Union, *I Am Not a Nuisance: Local Ordinances Punish Victims of Crime*, ACLU Blog (accessed Dec. 2014), available at www.aclu.org/notanuisance (a deeply troubling and widespread example of discriminatory policing is the biased enforcement of local “nuisance ordinances,” which frequently authorize law enforcement to punish or penalize tenants or landlords based on requests for police assistance and which are too often enforced against victims of domestic violence and sexual assault, with devastating consequences).

¹² Women’s Law Project, Statement of Carol E. Tracy, Senate Judiciary Committee, Subcommittee on Crime and Drugs, hearing on Rape in the United States: The Chronic Failure to Report and Investigate Rape Cases (Sept. 14, 2010), http://www.womenslawproject.org/testimony/UCR_Rape_Testimony091410.pdf; Human Rights Watch, *Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia* (2013), http://www.hrw.org/sites/default/files/reports/us0113ForUpload_2.pdf.

would respond to a need, expressed by some law enforcement officials and others in the criminal justice system, for additional guidance and guidelines from the Department on policing matters.¹³

We thank the Department for its current efforts to combat gender-biased policing and deeply appreciate its continuing commitment to ending violence against women and girls. We would welcome the opportunity to meet with you to discuss these important issues and will contact your office to schedule a meeting. Please don't hesitate to contact Vania Leveille at vleveille@aclu.org or 202-715-0806 or Sandra Park at spark@aclu.org or 212-519-7871 if you have questions or would like additional information.

Sincerely yours,

National Organizations:

9to5, National Association of Working Women

A Call to Men

African American Health Alliance

Alabaster

ALAS, the National Latina Alliance Against Sexual Violence

A Long Walk Home

American Association of University Women

American Civil Liberties Union

American Psychological Association

Amnesty International USA

Asian American Legal Defense and Education Fund

Asian Pacific Institute on Gender-Based Violence

Bend the Arc Jewish Action

Black Women's Roundtable of the National Coalition of Black Civic Participation

Cave Institute

Center for Family Policy and Practice

Center for Health and Gender Equity

CenterLink: The Community of LGBT Centers

Coalition of Labor Union Women

Coalition on Human Needs

End Violence Against Women International

Equal Justice Society

Equality Federation

Family Equality Council

FedCURE

Feminist Majority Foundation

Free Marissa Now Mobilization Campaign II

¹³ See U.S. Department of Justice, *Taking Stock: Report from the 2010 Roundtable on the State and Local Law Enforcement Police Pattern or Practice Program (42 USC § 14141)* 10 (Sept. 2011), <https://www.ncjrs.gov/pdffiles1/nij/234458.pdf> ("A recurring theme in the roundtable discussions was the need for DOJ to provide a proactive program of education for law enforcement officials and others involved in the local criminal justice systems on issues related to § 14141 litigation, evidence-based policies and practices, and other technical assistance to prevent police misconduct.").

Futures Without Violence
Global Gender Justice Clinic, Cornell Law School
Global Justice Center
Hadassah, The Women's Zionist Organization of America
Hollaback!
Human Rights Campaign
Human Rights Watch
Institute for Science and Human Values
Institute on Domestic Violence in the African American Community
Just Detention International
Lambda Legal
LatinoJustice PRLDEF
The Leadership Conference on Civil and Human Rights
League of United Latin American Citizens
Legal Momentum
Marriage Equality USA
NAACP
National Alliance to End Sexual Violence
National Association of Social Workers
National Center for Lesbian Rights
National Center for Transgender Equality
National Center for Victims of Crime
National Clearinghouse for the Defense of Battered Women
National Coalition Against Domestic Violence
National Congress of American Indians
National Council of Jewish Women
National Council on Independent Living
National Crime Victim Law Institute
National Domestic Violence Hotline
National Housing Law Project
National Immigrant Justice Center
National Immigrant Solidarity Network
National Law Center on Homelessness and Poverty
National LGBTQ Task Force Action Fund
National Network to End Domestic Violence
National Organization for Women
National Organization of Asians and Pacific Islanders Ending Sexual Violence
National Partnership for Women and Families
National Resource Center on Domestic Violence
National Women's Law Center
Native Women's Coalition
OWL – The Voice of Women 40+
PFLAG National

Racial and Ethnic Health Disparities Coalition
Robert F. Kennedy Human Rights
Sargent Shriver National Center on Poverty Law
Tahirih Justice Center
T'ruah: The Rabbinic Call for Human Rights
Union for Reform Judaism
US Human Rights Network
US Women and Cuba Collaboration
The Voices and Faces Project
Wider Opportunities for Women
Women Enabled International
Women Graduates-USA
Women of Color Network
Women Who Never Give Up
Women's Intercultural Network
Women's Law Project
World Without Genocide at William Mitchell College of Law
YWCA USA

State and Local Organizations:

The Advocates (Idaho)
Advocates Against Family Violence (Idaho)
Advocates of Lake County (Leadville, CO)
Arab American Association of New York
Arizona Coalition to End Sexual and Domestic Violence
Asian/Pacific Islander Domestic Violence Resource Project (DC-VA-MD)
Brevard National Organization for Women (Florida)
California Partnership to End Domestic Violence
Center Against Abuse and Sexual Assault (Spencer, IA)
Center for Advocacy for the Rights and Interests of the Elderly (Philadelphia, PA)
The Cocoon Supporting Survivors of Domestic and Sexual Violence (Ohio)
Colorado Coalition Against Domestic Violence
Colorado Coalition Against Sexual Assault
Community Against Violence (Taos, NM)
DC Rape Crisis Center (Washington, DC)
Democratic Women's Club of Central Pinellas County (Florida)
Democratic Women's Club of East Polk/Ridge (Florida)
Democratic Women's Club of Florida
DOVE (Domestic Violence Ended) (Quincy, MA)
Elmore County Domestic Violence Council (Idaho)
Family and Community Resources (Brockton, MA)
Family Resources (Illinois and Iowa)

Family Tree, Inc. (Wheat Ridge, CO)
Florida National Organization for Women
Florida Council Against Sexual Violence
Friends of Broward Detainees (Broward, FL)
Georgia Coalition Against Domestic Violence
Girls for Gender Equity (New York)
Greater Boston Legal Services, Inc.
HelpLine of Delaware and Morrow Counties (Ohio)
HIAS Pennsylvania
Idaho Coalition Against Sexual and Domestic Violence
Idaho Federation of Families for Children's Mental Health
Illinois Coalition Against Domestic Violence
Immigration Center for Women and Children (California)
International Institute of Buffalo (Buffalo, NY)
Iowa Coalition Against Domestic Violence
Iowa Coalition Against Sexual Assault
Jane Doe Inc., the Massachusetts Coalition Against Sexual Assault and Domestic Violence
Legal Voice (Pacific Northwest)
Maryland Coalition Against Sexual Assault
Michigan Coalition to End Domestic and Sexual Violence
Mini-Cassia Shelter (Idaho)
Minnesota Coalition Against Sexual Assault
Monsoon United Asian Women of Iowa
Montana Coalition Against Domestic and Sexual Violence
Montana NOW
NARAL Pro-Choice North Carolina
Native Alliance Against Violence (Oklahoma)
Nebraska Coalition to End Sexual and Domestic Violence
Nevada Network Against Domestic Violence
New Hampshire Coalition Against Domestic and Sexual Violence
New Mexico Coalition Against Domestic Violence
New Mexico Coalition of Sexual Assault Programs
New York State Coalition Against Sexual Assault
North Carolina Coalition Against Domestic Violence
North Carolina Coalition Against Sexual Assault
North Idaho Violence Prevention Center
Ohio Alliance to End Sexual Violence
Ohio Domestic Violence Network
OneAmerica (Washington)
Oregon Abuse Advocates and Survivors in Service
Oregon Coalition Against Domestic & Sexual Violence
The Organization for Black Struggle (St. Louis, MO)
Pace Women's Justice Center, Pace University School of Law (White Plains, NY)

Pennsylvania Coalition Against Rape
Priest River Ministries Advocates for Women (Idaho)
Project Safeguard (Denver, CO)
Project Woman (Ohio)
Rape Victim Advocates (Chicago, IL)
Response (Aspen, CO)
Riverview Center (Illinois and Iowa)
SAAFE Center, Wood County (Bowling Green, OH)
Safe Passage (DeKalb, IL)
Safe Shelter of St. Vrain Valley (Longmont, CO)
Saheli Support and Friendship for South Asian Women (Massachusetts)
Sanctuary for Families (New York)
SeniorLAW Center (Pennsylvania)
Southwest Women's Law Center
Student Law Office Civil Litigation Clinic, University of Denver Sturm College of Law
Texas Association Against Sexual Assault
Uniting Three Fires Against Domestic Violence (Michigan)
United Nations Association of the USA, Southern New York State Division
Virginia Coalition of Latino Organizations
Western Illinois Regional Council – Community Action Agency Victim Services
West Virginia Coalition Against Domestic Violence
Wisconsin Coalition Against Sexual Assault
Women Against Abuse (Philadelphia, PA)
Women in Transition (Philadelphia, PA)
Women of Color Alliance (Idaho)
Women NC (Cary, NC)
Women Organized Against Rape (Philadelphia, PA)
Women's Center of Jacksonville (Jacksonville, FL)
Women's Outreach Program & Later in Life Project, Nez Perce Tribe (Idaho)
Wyoming Coalition Against Domestic Violence and Sexual Assault
YWCA Central Massachusetts
YWCA Dayton (Dayton, OH)
YWCA McLean County (Illinois)

cc: Roy Austin, Jr., Deputy Assistant to the President for Urban Affairs, Justice, and Opportunity,
Domestic Policy Council
Caroline Bettinger-Lopez, White House Advisor on Violence Against Women
Ronald Davis, Director, Office of Community Oriented Policing Services, Department of Justice
Vanita Gupta, Principal Deputy Assistant Attorney General, Civil Rights Division, Department of
Justice
Bea Hanson, Principal Deputy Director, Office on Violence Against Women, Department of Justice
Aaron Schuham, Chief, Policy and Strategy Section, Civil Rights Division, Department of Justice