

November 22, 2024

Director Shalanda Young
Office of Management and Budget
Washington, DC

Dear Director Young,

The undersigned privacy, technology, civil and human rights organizations urge the White House Office of Management and Budget (OMB) to immediately halt the Department of Homeland Security's (DHS) use of non-compliant artificial intelligence (AI) systems which could be used to facilitate civil rights violations, mass detentions and deportations under the incoming administration. We are extremely concerned that DHS continues to use AI technologies to inform or determine decisions on surveillance, detention and deportation while avoiding compliance with federal AI rules and regulations that your office is responsible for upholding.

Your office holds the explicit authority to review, grant, or deny AI compliance extensions for agencies like DHS that fail to meet minimum AI risk management practices by December 1, 2024.¹ OMB must ensure that extensions are not granted to systems that *fundamentally* cannot achieve compliance within the one-year grace period allowed under the White House AI Executive Order's implementing regulations.

We urge the White House OMB to exercise its authority by December 1, 2024 to:

1. Require DHS terminate all AI systems that fail to meet federal AI guidelines by December 1, 2024.
2. Deny DHS's requests for extensions on meeting federal AI guidelines on the agency's fundamentally non-compliant systems, and make public any documentation of such extension requests.
3. Enforce DHS compliance with its own AI framework, as well as with all civil rights and liberties requirements outlined in federal guidelines.

Our specific recommendations follow:

1. **We strongly urge OMB to deny any DHS requests for extensions or waivers that will further delay the agency's ability to comply with AI federal guidelines.** In addition, we urge OMB to urge DHS not to issue waivers that will further delay the agency's ability to comply with AI federal guidelines. We believe DHS has not provided sufficient evidence that they will be able to achieve risk mitigation practices now or in the future following an extension. Therefore, OMB

¹ Under the implementation of Executive Order 14110 and the minimum risk management practices required under Office of Management and Budget (OMB) Memorandum M-24-10, OMB has explicit authority to review and grant extensions for agencies that cannot meet minimum risk management practices by December 1, 2024. This authority carries with it the responsibility to ensure that extensions are not granted to systems that fundamentally cannot achieve compliance within the one-year grace period.

should deny extension requests on DHS's AI systems such as:

- **DHS AI systems and algorithms that inform detention, surveillance or immigration adjudication decisions, such as whether to protect someone from persecution or torture or whether they should be detained:** This includes Immigration and Customs Enforcement's (ICE) "Risk Classification Assessment" (RCA) algorithm, which ICE has allegedly used to justify increasing detention and deportation.² It also includes the "Hurricane Score" algorithm, which ICE has apparently used to inform electronic surveillance monitoring decisions in the Intensive Supervision Appearance Program (ISAP).³ Finally, it includes US Citizenship and Immigration Services (USCIS) use of AI to inform decisions on immigration benefits and relief via Asylum Text Analytics and other AI systems, such as sentiment analysis.
- **DHS AI technologies for biometric data extraction and surveillance, and to build out the deadly digital border wall:**⁴ This includes, for example, Customs and Border Protection's (CBP) facial recognition CBP One app targeting asylum seekers at the border, ICE's use of facial recognition Clearview AI technology,⁵ and ICE's facial recognition SmartLINK app. It also includes CBP's hundreds of automated surveillance towers tracking migrants at the border.⁶
- **DHS AI technologies for data processing to increase deportations:** Computing at scale is one way to ramp up deportations. This includes ICE's use of AI to analyze data for immigrant targeting in its Repository for Analytics in a Virtualized Environment (RAVEN) database.⁷ It also includes ICE and CBP's use of AI social media data surveillance systems like Babel X and Giant Oak Search Technology (GOST) to inform immigration enforcement decisions or to track activists, journalists, or Muslim communities. In addition, this includes any use of AI or predictive analytics in massive datasets obtained via ICE contracts with data brokers like LexisNexis and Thomson Reuters.

2. **The OMB must ensure that DHS immediately terminates its use of AI technologies that fail to comply with federal AI guidelines and policies due to their potential impact on the rights**

² Adi Robertson, *ICE rigged its algorithms to keep immigrants in jail, claims lawsuit*, The Verge, Mar. 3, 2020, <https://www.theverge.com/2020/3/3/21163013/ice-new-york-risk-assessment-algorithm-rigged-lawsuit-nyclu-jose-v-elsesaca>.

³ *Automating Deportation: The Artificial Intelligence Behind the Department of Homeland Security's Immigration Enforcement Regime*, Mijente and Just Futures Law (June 2024), <https://mijente.net/wp-content/uploads/2024/06/Automating-Deportation.pdf>.

⁴ Samuel Norton Chambers, et al., *Mortality, Surveillance and the Tertiary "Funnel Effect" on the U.S.-Mexico Border: A Geospatial Modeling of the Geography of Deterrence*, *Journal of Borderland Studies*, Vol. 36 (Jan. 31, 2019), https://www.researchgate.net/publication/330786155_Mortality_Surveillance_and_the_Tertiary_Funnel_Effect_on_the_US-Mexico_Border_A_Geospatial_Modeling_of_the_Geography_of_Deterrence.

⁵ Irina Ivanova, *Immigrant rights groups sue facial recognition company Clearview AI*, CBS News, Mar. 9, 2021, <https://www.cbsnews.com/news/clearview-ai-facial-recognition-sued-mijente-norcal-resist/>.

⁶ Daniel Boguslaw, *U.S. Government Seeks "Unified Vision of Unauthorized Movement,"* The Intercept, Mar. 12, 2024, <https://theintercept.com/2024/03/12/dhs-border-towers-ai/>.

⁷ Chris Cornillie, *DHS Plans \$300 Million Law Enforcement Data Analytics Platform*, Bloomberg Government, Apr. 20, 2021, <https://about.bgov.com/insights/news/dhs-plans-300-million-law-enforcement-data-analytics-platform/>.

and safety of millions.⁸ DHS has not released to the public any evidence identifying AI use in its existing suite of technologies that meet federal AI risk management practices, outside of stating that DHS Civil Rights and Civil Liberties and the Privacy Office are assisting them with identifying if the AI use is safety or rights-impacting.⁹ These same DHS AI systems can serve as critical infrastructure for carrying out deportations and other life-impacting decisions. Allowing DHS rights-impacting AI tools to be used and abused to carry out surveillance, detention and deportation targeting Black, brown and immigrant families and communities is a violation of DHS' own policy and directives and a failure to implement the White House's own core deliverables involving AI. Moreover, [any plans for procuring AI with a new vendor](#) for any of these programs should not be considered appropriate remediation for these use-cases.

3. **In addition to denying such AI compliance extension requests, OMB should make public all DHS extension requests and their rationales by December 1, 2024.** Specifically, OMB should publish any documentation submitted to OMB by DHS describing why the agency cannot achieve compliance for the use of AI in question, what practices the agency has in place to mitigate the risks from noncompliance, and a plan for how the agency will come to implement the full set of required minimum AI compliance practices.
4. **Lastly, it is the OMB's responsibility to enforce compliance with civil rights and civil liberties requirements as outlined in federal AI guidelines, and within DHS's own AI frameworks.**¹⁰ The upcoming December 1 deadline represents a critical opportunity for the OMB to exercise its authority to halt the use of non-compliant DHS AI systems that could violate the civil rights of millions and enable mass surveillance, detention and deportations.

We request an immediate response detailing how OMB will handle DHS extension requests and ensure DHS compliance with existing minimum AI risk management practices.

Sincerely,

Just Futures Law
Mijente
215 People's Alliance
Access Now
Afghans For A Better Tomorrow
AI Now Institute
Alianza Americas
Alianza Nacional de Campesinas

⁸ Under EO 14110, the White House should terminate use cases that have no safety and rights impacting risk management practices in place before December 1, 2024.

⁹ For example, federal rules and policies require DHS to consult with impacted communities before using AI tools; monitor AI tools for errors and civil rights violations on an ongoing basis; provide notification, redress, and an opt-out process for those impacted by AI tools; produce a comprehensive public inventory of DHS AI tools and conduct AI Impact Assessments prior to the rollout of these tools. See Mijente and Just Futures Law, *supra* note 3.

¹⁰ Eric Hysen, *Advancing Governance, Innovation, and Risk Management for the Use of Artificial Intelligence (AI) at the Department of Homeland Security (DHS)*, U.S. Dep't of Homeland Sec. (September 2024), https://www.dhs.gov/sites/default/files/2024-09/2024_0923_cio_dhs_compliance_plan_omb_memoranda.pdf.

American Friends Service Committee (AFSC)
Americans for Immigrant Justice
Amica Center for Immigrant Rights
Asian Americans Advancing Justice | AAJC
Asian Americans Advancing Justice Southern California (AJSOCAL)
Asian Americans United
AVAN Immigrant Services
Ayuda
Bhutanese Community Association of Pittsburgh
Boston University School of Law Immigrants' Rights and Human Trafficking Clinic
Brennan Center for Justice at NYU School of Law
California Immigrant Policy Center
Casa de la Cultura
Casa San Jose
Center on Race and Digital Justice
Coalition for Humane Immigrant Rights (CHIRLA)
Colorado Immigrant Rights Coalition
Data & Society
Distributed AI Research Institute
Electronic Privacy Information Center (EPIC)
Electronic Frontier Foundation
Envision Freedom Fund
Estrella del Paso (Formerly Diocesan Migrant and Refugee Services Inc)
Faith In Texas
Familias Unidas En Accion
Families For Freedom
Fight for the Future
First Friends of New Jersey & New York
Florence Immigrant & Refugee Rights Project
Florida Student Power Network
Free Migration Project
Freedom Network USA
Freedom for Immigrants
GALEO Impact Fund
Georgia Latino Alliance for Human Rights
Grupo de Apoyo e Integración Hispanoamericano
Haitian Bridge Alliance
H-CAN Immigration & Refugees group
HIAS Pennsylvania
Hope Border Institute
Illinois Coalition for Immigrant and Refugee Rights
Immigrant Defenders Law Center
Immigrant Defense Project
Immigrant Justice Network

Immigrant Legal Resource Center
Immigrant Rights Action
Immigrants Act Now
Immigration Equality
Jewish Activists for Immigration Justice
Juntos
Latinx Therapists Action Network
Louisiana Advocates for Immigrants in Detention
Make The Road CT
Make the Road NY
Make the Road Pennsylvania
MediaJustice
Miami Valley Immigration Coalition (Dayton, OH)
Midwest Immigration Bond Fund
Minnesota Freedom Fund
Muslim Advocates
Mutual Aid Immigration Network
NAKASEC
National Employment Law Project
National Immigration Law Center
National Immigration Project
National Network for Immigrant and Refugee Rights (NNIRR)
NOTICE Coalition: No Tech Criminalization in Education
OneAmerica
Orale
Orange County Justice Fund
Organized Communities Against Deportations
Oxfam America
Pennsylvania Immigration Coalition
People's Tech Project
Philly Black Worker Project
Pittsburgh LCLAA
Project On Government Oversight
Refugee Support Network
Refugees International
Restore The Fourth
Robert F. Kennedy Human Rights
Safety Net Project - Urban Justice Center
Secure Justice
Society of the flora, fauna & friend
Southeast Asia Resource Action Center (SEARAC)
Southeast Asian Freedom Network
Sunrise Movement Philly
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The Advocates for Human Rights
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Wind of the Spirit Immigrant Resource Center
Woori Center
Young Center for Immigrant Children's Rights

And individuals:

Suresh Venkatasubramanian, former White House AI advisor

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