

Via Electronic Transmission

The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

November 19, 2019

Dear Acting Secretary Wolf:

We are a group of 40 privacy, civil rights, civil liberties, human rights and immigrants' rights organizations. We write to express our deep concern that the US Department of Homeland Security (DHS) is trampling on the fundamental human¹ and constitutional rights of freedom of speech and association. Specifically, we refer to reports that Customs and Border Protection is penalizing individuals for others' online speech and may be using social media content as a basis for denying student and other visas.² We fear that this kind of monitoring by the government is not—and will not be—isolated to a few incidents, because of policies adopted by DHS. In fact, DHS announced its intent to greatly expand the collection of social media identifiers from immigrants and visitors to the U.S., which will have a significant impact on immigrants, citizens, and others.³

Despite opposition from civil society and expert technologists,⁴ many entities within DHS and across the federal government have adopted the practice of screening social media activity to aid highly consequential decisions about who receives an immigration benefit or a visa, who may enter the country, and even who may stay in the country. Just this summer, the State Department

¹ Universal Declaration of Human Rights, Art. 19, <https://www.un.org/en/universal-declaration-human-rights/>;
International Covenant on Civil and Political Rights, Art. 19,
<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

² Karen Zraick and Mihir Zaveri, *Harvard Student Says He Was Barred From U.S. Over His Friends' Social Media Posts*, N.Y. Times (Aug. 27, 2019), <https://www.nytimes.com/2019/08/27/us/harvard-student-ismail-ajjawi.html>.

³ See Dep't of Homeland Sec., Notice for Request for Public Comment on Agency Information Collection Activities: Generic Clearance for the Collection of Social Media Information on Immigration and Foreign Travel Forms, (Federal Register Number 2019-19021), Regulations.gov (Sept. 4, 2019), <https://www.regulations.gov/document?D=DHS-2019-0044-0001>; U.S. Dep't of Homeland Sec., U.S. Citizenship and Immigration Services, DHS/USCIS/PIA-013-01(a), Privacy Impact Assessment Update for the Fraud Detection and National Security Directorate (July 26, 2019), https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-013-01-fdns-july2019_0.pdf.

⁴ See, e.g., Comments of the Brennan Center, DS-160 and DS-156, Application for Nonimmigrant Visa, OMB Control No. 1405-0182; DS-260, (May 29, 2018), <https://www.brennancenter.org/sites/default/files/analysis/Comments%20-%20Department%20of%20State%20-%20Visa%20Applicant%20Social%20Media%20Collections%20-%20Public%20Notices%2010260%20-%2010261.pdf>; Civil Society Letter to Hon. Elaine Duke, Sec'y of Homeland Security (Nov. 16, 2017), <https://www.brennancenter.org/sites/default/files/Coalition%20Letter%20to%20DHS%20Opposing%20the%20Extreme%20Vetting%20Initiative%20-%202011.15.17.pdf>; Letter from 54 Technology Experts to Hon. Elaine Duke, Sec'y of Homeland Security (Nov. 16, 2017), <https://www.brennancenter.org/sites/default/files/Technology%20Experts%20Letter%20to%20DHS%20Opposing%20the%20Extreme%20Vetting%20Initiative%20-%202011.15.17.pdf>.

implemented a new extreme vetting policy that requires visa applicants to share their own social media and account information.⁵

As we have previously warned, these overbroad screening approaches chill freedom of speech and association, and often leave individuals vulnerable to racial profiling, religious and other discrimination, pretextual denials, and mistaken inferences.⁶ Moreover, as you are aware, online “friends” are frequently little more than acquaintances; users may have no personal relationship with many of the people with whom they are connected online, and may not even have chosen to be connected with them.⁷

If DHS policy authorizes procedures along the lines of what some students at the border have faced,⁸ then visiting scholars, artists, journalists, and other travelers may begin to think twice before posting on social media out of concern that their messages may be viewed as critical of American policies and thus subject them to some form of reprisal from the U.S. government. These practices can run the risk of harming academic freedom by allowing CBP and DHS to effectively decide which foreign academics' views are not permitted at U.S. campuses. Immigrants and visitors to the U.S. may very well disconnect from social media or even the Internet altogether. This would cut off some from their online networks while making it harder for others to access a wide range of perspectives, significantly burdening freedom of expression and association.

Moreover, by implementing this practice for those seeking entry to the United States, DHS is clearing the way for other countries to exclude Americans based on what their friends and even acquaintances say online.

Accordingly, DHS must do more to explicitly protect the freedom of speech and association of all those entering the US—whether it is students, professionals such as journalists, artists, or academics coming to share their expertise, or tourists visiting our great cities. To that end, we request answers to the following questions:

First, CBP documents have referenced mandatory personnel trainings on the operational use of social media, including on the use of “tools, platforms, and methodologies in the identification of

⁵ U.S. Government’s New “Extreme Vetting” Policy for Visa Applicants May Curtail Free Expression Online (June 4, 2019), <https://pen.org/press-release/visa-policy-vetting/>.

⁶ See, e.g., Center for Democracy & Technology, Coalition Letter Opposing DHS Social Media Retention (Oct. 19, 2017), <https://cdt.org/insight/coalition-letter-opposing-dhs-social-media-retention>; Brennan Center for Justice, Coalition Letter Re: 82 Fed. Reg. 6180, OMB Control No. 1405-0226; Supplemental Questions for Visa Applicants (Oct. 2, 2017), <https://www.brennancenter.org/sites/default/files/StateDeptcomments-10.2.2017.pdf>; Faiza Patel et al., Social Media Monitoring, Brennan Center for Justice, (May 22, 2019), <https://www.brennancenter.org/publication/social-media-monitoring>.

⁷ See, e.g., Amit Chowdry, *Most Of Your Facebook Friends Are Not Your Real Friends, Says Study*, Forbes (Jan. 30, 2016), <https://www.forbes.com/sites/amitchowdhry/2016/01/30/most-facebook-friends-are-not-your-real-friends-says-study/#219eaa1a5757>.

⁸ Anemona Hartocollis, *International Students Face Hurdles Under Trump Administration Policy*, N.Y. Times (Aug. 28, 2019), <https://www.nytimes.com/2019/08/28/us/international-students-visa.html>.

social media information that is relevant to the screening and vetting process.”⁹ Are questions posed at the border by government officials about online connections or content sanctioned by these trainings or other CBP or DHS policies? We request that DHS release all these training materials as well as any other trainings, curricula, and other policies and materials that are relevant to CBP’s assessments of travelers’ social media activity.

Second, what relative weight does information about an individual’s online connections carry when making an admissibility determination? Is this weighting judgment spelled out in a policy or other written guidance? Are DHS personnel provided guidance on the ambiguous nature of online connections on social media networks?

Third, we request that DHS disclose what, if any, safeguards are in place to ensure the preservation of fundamental rights, when personnel scrutinize social media activity. For example, we understand that on May 17, 2019, the former Acting Secretary of DHS, Kevin McAleenan, issued a memorandum to all DHS personnel regarding the importance of respecting First Amendment protected speech and activity.¹⁰ In that memorandum, he tasked the DHS Privacy and Civil Rights and Civil Liberties offices with reviewing existing guidance and, where appropriate, with developing new materials to ensure compliance with the memorandum. We would appreciate an update from the Privacy and CRCL offices regarding their progress in undertaking this process.

Finally, we note that while we appreciate the initiation of the review directed in the May 2019 memorandum, we are concerned that the guidance is too permissive and includes gaps in protection that would allow for the type of harms we have detailed herein, harms which disproportionately impact communities of color, particularly Arabs, Muslims and other historically marginalized populations. We urge you to close these gaps in protection. We respectfully request a meeting with you and your designees to discuss this important issue and those outlined above.

Please direct your response to this letter, and any questions you may have about it, to Policy Counsel Mana Azarmi (mazarmi@cdt.org; 202.407.8828) at the Center for Democracy & Technology; Senior Staff Attorney, Iman Boukadoum (iman@adc.org; 202.244.2990) at the American-Arab Anti-Discrimination Committee (ADC); and Senior Counsel Rachel Levinson-Waldman (levinsonr@brennan.law.nyu.edu; 202.249.7193) at the Brennan Center for Justice.

⁹ Privacy Compliance Review of the U.S. Customs and Border Protection Electronic System for Travel Authorization, Dep’t of Homeland Sec., 4 (Oct. 27, 2017), <https://www.dhs.gov/sites/default/files/publications/CBP-ESTA%20PCR%20final%20report%2020171027.pdf>; See also U.S. Dep’t of Homeland Sec., Customs and Border Protection, DHS/CBP/PIA-058, Privacy Impact Assessment for the Publicly Available Social Media Monitoring and Situational Awareness Initiative, 4 (March 25, 2019), <https://www.dhs.gov/sites/default/files/publications/privacy-pia-cbp58-socialmedia-march2019.pdf> (“CBP personnel receive social media training from the Office of Chief Counsel and the CBP Privacy and Diversity office on how to identify First Amendment activity and determine if social media posts discuss protected activities, such as protests, or if they are credible threats for which CBP personnel should take action.”).

¹⁰ Memorandum from Kevin K. McAleenan, Acting Sec’y, Dep’t of Homeland Sec., to All DHS employees, *Information Regarding First Amendment Protected Activities*, (May 17, 2019), https://www.dhs.gov/sites/default/files/publications/info_regarding_first_amendment_protected_activities_asl_signed_05.17.2019.pdf.

Sincerely,

Access Now
The Albuquerque Center for Peace and
Justice (ACPJ)
American Civil Liberties Union
American Muslim Empowerment Network
American-Arab Anti-Discrimination
Committee
Arab American Institute
Asian Americans Advancing Justice | AAJC
Brennan Center for Justice at NYU School
of Law
Center for Democracy & Technology
Center for Security, Race and Rights
Center on Privacy & Technology at
Georgetown Law
Consumer Action
Council on American-Islamic Relations
Defending Rights & Dissent
Electronic Frontier Foundation
Fight for the Future
Foundation for Individual Rights in
Education
Government Accountability Project
Human Rights Watch
Islamophobia Studies Center

Knight First Amendment Institute at
Columbia University
MediaJustice
Muslim Advocates
Muslim Justice League
National Center for Transgender Equality
National Coalition Against Censorship
National Immigration Law Center
National Immigration Project of the
National Lawyers Guild
National Iranian American Council
National Workrights Institute
New America's Open Technology Institute
Open the Government
Palestine Legal
People For the American Way
Project On Government Oversight
Project South
Restore The Fourth
S.T.O.P. - Surveillance Technology
Oversight Project
Sikh American Legal Defense and
Education Fund (SALDEF)
TechFreedom

cc:

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The Honorable Bennie Thompson
Chairman, U.S. House Committee on Homeland Security

The Honorable Mike Rogers
Ranking Member, U.S. House Committee on Homeland Security

The Honorable Ron Johnson

Chairman, U.S. Senate Committee on Homeland Security and Governmental Affairs

The Honorable Gary C. Peters

Ranking Member, U.S. Senate Committee on Homeland Security and Governmental Affairs

The Honorable Jerry Nadler

Chairman, U.S. House Committee on the Judiciary

The Honorable Doug Collins

Ranking Member, U.S. House Committee on the Judiciary

The Honorable Lindsey Graham

Chairman, U.S. Senate Committee on the Judiciary

The Honorable Dianne Feinstein

Ranking Member, U.S. Senate Committee on the Judiciary