

September 4, 2024

Secretary Alejandro Mayorkas
Department of Homeland Security
Washington, DC 20528, USA

Re: Cancel DHS Use of AI Technologies for Immigration Enforcement and Adjudication by December 1, 2024

Dear Secretary Mayorkas,

The undersigned immigrant rights, racial justice, government accountability, human rights and privacy organizations call on the Department of Homeland Security (DHS) to cancel or suspend the use of artificial intelligence (AI) technologies for immigration enforcement and adjudication that do not comply with federal requirements for responsible AI by December 1, 2024.¹

DHS’s use of AI appears to violate federal policies governing the responsible use of AI, particularly when it comes to AI used to make life-impacting decisions on immigration enforcement and adjudications. Federal rules and policies require DHS, among other things, 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. We have serious concerns that DHS has fast-tracked the deployment of AI technologies in contravention of these federal policies, executive orders, and agency memoranda. The Office of Management and Budget requires DHS to terminate the use of rights-impacting AI tools by December 1 if they fail to comply with these minimum requirements.²

The impact and potential harm of DHS use of artificial intelligence on U.S. communities is not theoretical. According to reports including the agency’s own AI inventory and Privacy Impact Assessments, DHS and its subagencies use AI technologies to make critical decisions – from whether to deport, detain, and separate families, whether to naturalize someone, to whether to protect someone from persecution or torture.³ We highlight a number of these concerning AI tools below. To date, the public has received little to no information about these AI tools, such as what training data or algorithm was used to create the AI tools and to what extent the agency tracks their civil rights impacts:

- **U.S. Citizenship and Immigration Services (USCIS) uses AI to make decisions on immigration benefits and relief.** For example, its “Predicted to Naturalize” AI tool helps make decisions on citizenship eligibility. Its “Asylum Text Analytics” AI tool screens and flags asylum and withholding applications as fraudulent. The FDNS Directorate also has plans to develop an AI tool to classify individuals as fraud, public safety or national security threats in the immigration adjudication process.
- **Immigration and Customs Enforcement (ICE) uses secretive AI technologies for decisions on detention, deportation and surveillance.** For example, ICE appears to use a “Hurricane Score” algorithm⁴ in assessing whether someone will “abscond” from its Intensive Supervision Appearance Program (ISAP) – an assessment that likely impacts the terms of electronic

surveillance for nearly 200,000 immigrants subjected to ISAP.⁵ ICE also uses a “Risk Classification Assessment” (RCA) algorithm tool to make detention decisions. During the Trump Administration, ICE faced lawsuits from civil rights groups alleging ICE secretly modified the RCA to increase detention and deportation.⁶

- **CBP uses AI for biometric surveillance⁷ as well as to build out the deadly digital border wall.** For example, contradicting DHS’s own statement that it would not use AI to enable “surveillance, or tracking of individuals,” CBP has rapidly expanded its network of AI-enabled surveillance towers, sensors, and systems to track migrants at the border, creating a “funnel effect” and more migrant deaths.⁸

The stakes are high – DHS’s latest AI tools impact millions of people in the U.S. Given the historical discrimination, inaccuracies, and complexities of the immigration system,⁹ we have serious concerns that DHS’s AI products could exacerbate existing biases or be abused in the future to supercharge detention and deportation.¹⁰ In consideration of federal policy and the human lives at stake, we urge DHS to cancel or suspend the use of any non-compliant AI tool by the deadline of December 1, 2024.

Signed,

Just Futures Law
Access Now
ACLU People Power - Fairfax
Afghans For A Better Tomorrow
African Communities Together
AI Now Institute
Alianza Americas
American Friends Service Committee (AFSC)
American Jewish Committee
Americans for Immigrant Justice
Amica Center for Immigrant Rights (formerly CAIR Coalition)
ANAR
Asian Americans Advancing Justice - AAJC
ASISTA Immigration Assistance
Athena Coalition
Ayuda
Border Vigil of Eagle Pass
Borderlands Resource Initiative
Boston University Immigrants' Rights and Human Trafficking Program
Bread for the World
California Immigrant Policy Center
Carolina Migrant Network
Center on Race and Digital Justice
Centreville Immigration Forum
Coalition for Humane Immigrant Rights (CHIRLA)
Coalition of Asian Pacific Americans of Virginia

Colorado Immigrant Rights Coalition
Comunidad Maya Pixan Ixim: Reinforcing our Roots, Living our Maya Heritage (CMPI)
Comunidad Sol
Congregation Action Network
Connecticut Shoreline Indivisible
Cornerstone
CRECEN
Detention Watch Network
Domestic Workers Alliance
Dorothy Day Catholic Worker, Washington DC
Dream Project
Dreamers Mothers In Action (DMIA)
Edu Futuro
Electronic Frontier Foundation
Electronic Privacy Information Center (EPIC)
EMGAGE - Muslim Leaders
Envision Freedom Fund
Estrella del Paso (Formerly Diocesan Migrant and Refugee Services Inc)
Familias Unidas en Acción
Families For Freedom
Fight for the Future
First Friends of New Jersey & New York
Florence Immigrant & Refugee Rights Project
Florida Legal Services, Inc.
Free Press Action
FREE! Families Rally for Emancipation and Empowerment
Freedom Network USA
Fuego Coalition
GALEO Impact Fund
Georgia Latino Alliance for Human Rights
Government Information Watch
Grassroots Leadership.org
Haitian Bridge Alliance
Hamkae Korean Community Center
Hispanic Federation
Hispanic Organization of Leadership and Action
Hope Border Institute
Illinois Coalition for Immigrant and Refugee Rights
Immigrant Defenders Law Center
Immigrant Defense Project
Immigrant Justice Network
Immigrant Legal Advocacy Project
Immigrant Legal Resource Center
Jewish Activists for Immigration Justice of Western MA

Jewish Community Relations Council
Just Neighbors
Justice and Advocacy Ministries at Disciples Home Missions
Kino Border Initiative
Korean American Association of Northern Virginia
Las Americas Immigrant Advocacy Center
Latina Institute for Reproductive Justice-Virginia
League of United Latin America Citizens - National
Legal Aid Justice Center
Louisiana Advocates for Immigrants in Detention
MALDEF (Mexican American Legal Defense and Educational Fund)
Maryknoll Office for Global Concerns
MediaJustice
Midwest Immigration Bond Fund
Mijente
Multicultural Community Center
Muslim Advocates
National Immigrant Justice Center
National Immigration Project
National Network for Immigrant and Refugee Rights (NNIRR)
Neighbor's Keeper
Never Again Action
New Jersey Alliance for Immigrant Justice
New Virginia Majority Education Fund
Northern Virginia Affordable Housing Alliance (NVAHA)
NoVA Labor
Orale: Organizing Rooted in Abolition, Liberation, and Empowerment
Pennsylvania Immigration & Citizenship Coalition
People's Tech Project
Progress Virginia
Project On Government Oversight
Quixote Center
Refugee Support Services, RSN
Restore The Fourth
Robert F. Kennedy Human Rights
Rocky Mountain Immigrant Advocacy Network
Sacred Heart Catholic Community Center
Secure Justice
SEIU 512
SEIU32BJ
Service Employees International Union (SEIU)
Shirlington Employment and Education Center
Sin Barreras
Society of the flora, fauna & friend

Southeast Asia Resource Action Center (SEARAC)
Surveillance Resistance Lab
Surveillance Technology Oversight Project
Tenants and Workers United
The Advocates for Human Rights
The Commonwealth Institute for Fiscal Analysis
The United Methodist Church - General Board of Church and Society
Tsuru for Solidarity
UndocuBlack Network
Unitarian Universalist for Social Justice
United Food and Commercial Workers Local 400
United We Dream
Upturn
Vecindarios901
Virginia Civic Engagement Table
Virginia Coalition for Immigrant Rights
Virginia Coalition of Latino Organizations
Virginia Immigration Intercollegiate Alliance
Virginia Interfaith Center for Public Policy
Virginia League of Planned Parenthood
Virginia League of Women Voters
Virginia Organizing
Virginia Poverty Law Center
Voces Unidas RGV
Voices for Virginia's Children
Washington Defender Association
We Are All America
Wind of the Spirit Immigrant Resource Center

CC:

DHS Chief Artificial Intelligence Officer and Chief Information Officer Eric Hysen
DHS Officer for Civil Rights and Civil Liberties Shoba Sivaprasad Wadhia
DHS Chief Privacy Officer Mason Clutter
DHS Senior Director for Artificial Intelligence, Office of Partnership & Engagement Jennifer Atala

Endnotes

1. Similarly, we urge the DHS Secretary and the Chief AI Officer not to issue waivers of noncompliance for AI tools used to make critical, rights-impacting decisions on immigration. Under the OMB guidance, DHS may invoke waivers to exempt themselves from these requirements. Shalanda D. Young, *Memorandum for the Heads of Executive Departments and Agencies: Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence*, Office of Management and Budget (Mar. 28, 2024), at 15, <https://www.whitehouse.gov/wp-content/uploads/2024/03/M-24-10-Advancing-Governance-Innovation-and-Risk-Management-for-Agency-Use-of-Artificial-Intelligence.pdf>.
2. This includes the Advancing American AI Act, Pub. L. No. 117-263, div. G, title LXXII, subtitle B, §§ 7224(a), 7224(d)(1)(B), and 7225 (codified at 40 U.S.C. 11301 note), <https://www.congress.gov/117/plaws/publ263/PLAW-117publ263.pdf>; *Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence*, Exec. Office of the President (Oct. 30, 2023), <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/>. Moreover, DHS's own 2023 memo on the acquisition and use of AI includes strong language on civil rights and privacy protections to limit surveillance and targeting. See Alejandro N. Mayorkas, *Acquisition and Use of Artificial Intelligence and Machine Learning Technologies by DHS Components*, U.S. Dep't of Homeland Sec. (Aug. 8, 2023), https://www.dhs.gov/sites/default/files/2023-09/23_0913_mgmt_139-06-acquisition-use-ai-technologies-dhs-components.pdf.
3. Avi Asher-Schapiro, *Trump, armed with tech, could supercharge deportations*, Context, Jul. 22, 2024, <https://www.context.news/ai/trump-armed-with-tech-could-supercharge-deportations>; Monique O. Madan, *The Future of Border Patrol: AI Is Always Watching*, The Markup, Mar. 22, 2024, <https://themarkup.org/news/2024/03/22/the-future-of-border-patrol-ai-is-always-watching>; *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>; *Artificial Intelligence Use Case Inventory*, U.S. Dep't of Homeland Sec., https://www.dhs.gov/data/AI_inventory (last accessed July 25, 2024).
4. Mijente and Just Futures Law, *supra* note 3.
5. *Alternatives to Detention (ATD)*, Transactional Records Access Clearinghouse (May 4, 2024), https://trac.syr.edu/immigration/detentionstats/atd_pop_table.html.
6. 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-velesaca>.
7. *United States of America: Mandatory Use of CBP One Application Violates the Right to Seek Asylum*, Amnesty International (May 7, 2023), <https://www.amnesty.org/en/documents/amr51/6754/2023/en/>.
8. Mayorkas, *supra* note 2, at 3; 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.
9. Evidence shows that USCIS disproportionately denied citizenship to Black, Latinx and Muslim immigrants for years. See e.g. Emily Ryo, Reed Humphrey, *The importance of race, gender, and religion in naturalization adjudication in the United States*, PNAS Vol. 119 No. 4 (Feb. 22, 2022), <https://www.pnas.org/doi/10.1073/pnas.2114430119>. USCIS also has discriminated against Arab, Middle Eastern, Muslim, and South Asian communities in designating them as "national security concerns" in the past. See e.g. *Muslims Need Not Apply: How USCIS Secretly Mandates the Discriminatory Delay and Denial of Citizenship and Immigration Benefits to Aspiring Americans*, ACLU SoCal (August 2013), <https://www.aclusocal.org/sites/default/files/carrp-muslims-need-not-apply-aclu-socal-report.pdf>.
10. Far from being more objective and accurate, AI machine learning tools often worsen the existing discriminatory practices of a decision maker. See e.g. Ben Green, *The Flaws of Policies Requiring Human Oversight of Government Algorithms*, *Comput. Law & Sec. Review*, Vol. 45 (2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3921216; Lauren Leffer, *Humans absorb bias from AI—and keep it after they stop using the algorithm*, *Scientific American*, Oct. 2023, <https://www.scientificamerican.com/article/humans-absorb-bias-from-ai-and-keep-it-after-they-stop-using-the-algorithm>

thm/; *There's More to AI Bias Than Biased Data, NIST Report Highlights*, Nat. Inst. of Standards and Tech., U.S. Dep't of Commerce (Mar. 16, 2022), <https://www.nist.gov/news-events/news/2022/03/theres-more-ai-bias-biased-data-nist-report-highlights>; Aaron Sankin, Dhruv Mehrotra, Surya Mattu, Annie Gilbertson, *Crime Prediction Software Promised to Be Free of Biases. New Data Shows It Perpetuates Them*, The Markup and Gizmodo, Dec. 2, 2021, <https://themarkup.org/prediction-bias/2021/12/02/crime-prediction-software-promised-to-be-free-of-biases-new-data-shows-it-perpetuates-them>.