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March 8, 2018

The Honorable Kirstjen Nielsen  
U.S. Secretary of Homeland Security  
Department of Homeland Security  
Washington, DC 20528

Dear Secretary Nielsen:

On behalf of the Congressional Black Caucus, we write to express serious concerns over Immigration and Customs Enforcement's (ICE) "Extreme Vetting Initiative," recently rebranded as "Visa Lifecycle Vetting." We have good reason to believe this program would unfairly target the minority communities we represent, and respectfully request that you suspend all activities related to this potentially discriminatory effort.

Leading technologists and prominent civil rights and civil society organizations have raised a litany of concerns. Their objections were detailed in a pair of letters delivered to your office on November 16, 2017. We agree with these experts and organizations: if implemented, this program will likely be inaccurate and biased, and will pose a real threat to the civil rights and civil liberties of all people living in or visiting the United States.

As defined by ICE, the Extreme Vetting Initiative would continuously monitor individuals abroad *and inside the U.S.* Specifically, it would use automated social media monitoring technology to measure an individual's ability to be a "positively contributing member of society" or "contribute to the national interests." This technology would also be used to determine whether that individual intended to commit a criminal or terrorist act.<sup>1</sup> On that basis, the system would automatically flag a *minimum* of 10,000 people a year for deportation investigations or visa denials - a dangerous incentive to generate false leads and engage in questionable surveillance tactics.<sup>2</sup>

<sup>1</sup> U.S. Immigration & Customs Enforcement, "Extreme Vetting Initiative: STATEMENT OF OBJECTIVES,"

June 12, 2017, *available at*

<https://www.fbo.gov/utills/view?id=533b20bf028d2289633d786dc45822f1>.

<sup>2</sup> U.S. Immigration & Customs Enforcement, "Background," June 12, 2017, *available at*

<https://www.fbo.gov/utills/view?id=3a1078ca9739319d84f05424dd05ef6a> ("Task 2: Lead Generation").

Last November, over 50 computer scientists, engineers, mathematicians, and other machine learning experts wrote the Acting U.S. Secretary of Homeland Security in opposition to the proposed system, warning that it would likely produce “inaccurate and biased” results.<sup>3</sup> “Simply put,” they wrote, “no computational methods can provide reliable or objective assessments of the traits that ICE seeks to measure.” The technologists emphasized that expert analyses, including a Department of Defense report, have concluded that it is impossible to accurately predict terrorist attacks, and that any attempt to do so would falsely place a number of innocent individuals under suspicion.<sup>4</sup> Research also shows that automated social media analysis, which would inevitably rely on imprecise and biased proxies to assess an individual’s contributions, often fails at basic tasks - and struggles, in particular, when analyzing expressions used by certain minority groups.<sup>5</sup>

The Extreme Vetting Initiative also raises serious constitutional concerns. As with other social media surveillance practices, the proposed system will chill free speech, expression, and association because individuals censor themselves when they know the government is monitoring them. In the course of scanning “Twitter, Facebook, LinkedIn,” “academic websites,” and the rest of the Internet,<sup>6</sup> ICE will inevitably collect data from others living in the United States, such as family members and associates – including U.S. citizens – and may undercut their First Amendment rights as well. However, ICE has failed to disclose how it plans to handle, store, or share that information across government and law enforcement agencies.

Tellingly, the traits being vetted for – regarding both positive contributions to society and an “inten[t] to commit criminal or terrorist attacks” – are lifted directly from the White House’s ill-fated Muslim ban executive orders, one version of which was found by a federal appeals court to “drip[] with religious intolerance, animus, and discrimination.”<sup>7</sup> Additionally, President Trump has repeatedly called for “extreme vetting” and “ideological certification” in relation to Muslims or Islam,<sup>8</sup> indicating the intended target of these actions. Moreover, there is no definition in federal immigration law for what it means to be a “positively contributing member of society.”<sup>9</sup> It would appear that, driven by a discriminatory agenda, ICE is trying to give itself maximal latitude to monitor and deport whomever it wants, whenever it wants.

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<sup>3</sup> See Brennan Center for Justice, “Technology Experts Letter to DHS Opposing the Extreme Vetting Initiative,” November 16, 2017, available at <https://www.brennancenter.org/sites/default/files/Technology%20Experts%20Letter%20to%20DHS%20Opposing%20the%20Extreme%20Vetting%20Initiative%20-%202011.15.17.pdf>.

<sup>4</sup> See, e.g., The MITRE Corporation, JASON Program Office, *Rare Events*, Oct. 2009; National Research Council of the National Academies of Science, *Protecting Individual Privacy in the Struggle Against Terrorists: A Framework for Program Assessment*, 2008.

<sup>5</sup> See Ahmed Abbasi, Ammar Hassan & Milan Dhar, *Benchmarking Twitter Sentiment Analysis Tools*, Proceedings of the 9th Language Resources and Evaluation Conference (2014); Su Lin Blodgett & Brendan O’Connor, *Racial Disparity in Natural Language Processing: A Case Study of Social Media African-American English*, Proceedings of the 2017 Fairness, Accountability, and Transparency in Machine Learning Conference (2017); Center for Democracy and Technology, *Mixed Messages? The Limits of Automated Social Media Content Analysis*, Nov. 2017, available at <https://cdt.org/files/2017/11/Mixed-Messages-Paper.pdf>.

<sup>6</sup> U.S. Immigration & Customs Enforcement, “Background,” June 12, 2017, available at <https://www.fbo.gov/utills/view?id=3a1078ca9739319d84f05424dd05ef6a> (“Task 3: Social Media Exploitation”).

<sup>7</sup> See Exec. Order 13,769 (Jan. 27, 2017) at sec. 4; Ann E. Marimow & Robert Barnes, “Federal appeals court maintains freeze of Trump’s travel ban. Attorney general vows Supreme Court appeal.” *Washington Post*, May 25, 2017. The order’s successor, Executive Order 13780, omitted the “positively contributing member of society” language, but still called for “a mechanism to assess whether applicants may commit, aid, or support any kind of violent, criminal, or terrorist acts after entering the United States.” See Exec. Order 13,780 (March 16, 2017) at sec. 5.

<sup>8</sup> See “Transcript: Donald Trump’s Full Immigration Speech,” *Los Angeles Times* (Aug. 31, 2017); Rebecca Shabad, “Donald Trump Calls for ‘Extreme’ Ideological Screening Test for New Immigrants,” *CBS News* (Aug. 15, 2016).

<sup>9</sup> See David A. Martin, “Trump’s ‘refugee ban’ - annotated by a former top Department of Homeland Security lawyer,” *Vox*, Jan. 30, 2017 (referring to these requirements as “remarkably vague criteria that will be very hard to turn into operational guidance”).

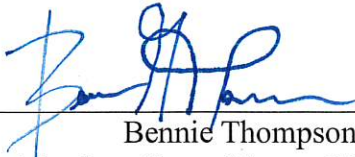
We agree with the 56 civil rights and other civil society organizations that wrote DHS in November: this system is tailor-made for discrimination.<sup>10</sup> We urge you to publicly and immediately end all work on this inaccurate and biased program.

Sincerely,



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Cedric Richmond  
Chair, Congressional Black Caucus



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Bennie Thompson  
Ranking Member, Committee on Homeland Security



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Yvette Clarke  
Chair, Immigration Working Group

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<sup>10</sup> See Brennan Center for Justice, "Coalition Letter to DHS Opposing the Extreme Vetting Initiative," November 16, 2017, available at <https://www.brennancenter.org/sites/default/files/Coalition%20Letter%20to%20DHS%20Opposing%20the%20Extreme%20Vetting%20Initiative%20-%202011.15.17.pdf>.