



April 15, 2024

Neera Tanden  
Director, Domestic Policy Council  
Executive Office of the President  
1650 Pennsylvania Ave., NW  
Washington, DC 20504

Dear Director Tanden,

The three undersigned organizations have a longstanding, collective history of work and engagement on certain critical policy reforms necessary for civil rights and equity in this country, and we write to urge this Administration to implement these reforms as a matter of urgency. Our organizations focus on civil rights and civil liberties, and we understand that the matters we are raising are being addressed by the White House in the context of a National Strategy to Combat Islamophobia and related forms of bias and discrimination in the United States, announced on November 1, 2023. More specifically, we understand from initial White House community engagement briefings that the Strategy will address topics including: federal watchlisting, immigration and visa delays and denials, federal and local law enforcement surveillance, and biased profiling by state and local governments. Our organizations share deep concern about these topics, which incorporate policies and practices that target or unjustly and disproportionately impact Muslims and those perceived to be Muslim, but we do not purport to speak on behalf of all the impacted communities or to address all issues that the Strategy might cover.

Indeed, the fact that the White House is including these specific topics in its consideration of a Strategy to Combat Islamophobia starkly demonstrates our over-arching concern: as rights groups and impacted communities have emphasized and documented for decades, anti-Muslim animus and suspicion are uniquely embedded in federal, state, and local policies, programs, and practices. This is true of policies and practices that may appear facially neutral but are discriminatory in impact because government agencies have long wrongly viewed people who are Muslim or perceived to be Muslim through a lens of suspicion and stigma—as national security “threats” or “risks.” As a result, agencies exercise their authorities and wield technology to disproportionately and wrongly surveil and investigate, watchlist, question and detain at the border, and deny immigration benefits to Muslims. The harsh reality is that government policies and practices continue to discriminate against Muslims in America, denying their ability to participate as equals in civic life and our democracy.<sup>1</sup>

Because Muslims in America are so [diverse](#), the detrimental reach and impact of this anti-Muslim animus exacerbates other long-standing vectors of marginalization and discrimination in this country: race, ethnicity, national origin and nationality, immigration status, disability, gender, and gender identity and expression. It bears emphasis that when federal, state, and local law enforcement and security agencies discriminate against Muslims or people perceived to be Muslim, they betray the Constitution’s promise of equal protection and due process, as well as the First Amendment’s Religion Clauses and the rights to free speech and association. Moreover, as the White House has rightly [recognized](#): “For too long, Muslims in America, and those perceived to be Muslim, such as

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<sup>1</sup> Because the policies and practices this letter addresses have not ended or been adequately reined in, we now also see them spreading to other communities in the name of national security—and in particular AAPI communities, which are [bearing the domestic brunt](#) of discrimination stoked by anti-China policies and official rhetoric.

Arabs and Sikhs, have endured a disproportionate number of hate-fueled attacks and other discriminatory incidents.” It should be no surprise therefore, that “the legacy of post-9/11 counterterrorism measures” not only violates civil liberties and rights, it continues to [stoke trauma, anxiety, and depression](#) in Muslim communities, with serious health consequences.

Unless this Administration takes swift and decisive action to protect Muslims and those perceived to be Muslim against discrimination, biased policies and practices will only increase, with devastating consequences for rights, values, and lives in this country. We urge the Administration to take the following urgent actions:

## **1. Issue Meaningful Federal Law Enforcement and Homeland Security Non-Discrimination Policy**

For decades, rights and community groups have sought to end biased profiling by federal, state, and local law enforcement. We were heartened by President Biden’s [directive](#) to the Departments of Justice and Homeland Security to “assess the implementation and effects” of the Justice Department’s 2014 Guidance on Race, and to “consider whether this guidance should be updated.” Building on years of documentation of bias and its harms, we [urged](#) both Departments to explicitly prohibit profiling based on actual or perceived race, religion, national origin, sexual orientation, or gender (including gender identity and expression), without any exceptions for national and homeland security—which have become pretexts for anti-Muslim discrimination. We were sorely disappointed when, in 2023, the Justice Department (DOJ) adopted Guidance that will [perpetuate bias](#) without sufficiently constraining the use of protected characteristics like religion and race in the contexts of national and homeland security and immigration.

The Department of Homeland Security (DHS) has adopted the 2023 DOJ Guidance on Race as described in Secretary Mayorkas’s [Policy Statement 500-02](#), while it considers further updates. By virtue of its far-reaching mandate and numerous components, DHS is the face of federal law enforcement and security power for vastly more people than DOJ. Its policies permit bias-based profiling in the national security context, at the border, and in protective, inspection, or screening activities. They further facilitate abusive approaches across a range of Department policies, programs, and subcomponents. We urge DHS to adopt guidance that:

- (i) Explicitly prohibits discrimination based on actual or perceived race, ethnicity, religion, national origin and nationality, sexual orientation, gender (including gender identity and expression), without any loopholes for national and homeland security;
- (ii) Ensures that a person’s nationality and national origin are not used as a proxy to discriminate against them based on their religion, race, or ethnicity;
- (iii) Applies these safeguards to state and local agencies that participate in joint operations or partnerships with DHS; and
- (iv) Requires a rigorous and systematic audit of DHS programs and operations for bias based on the use of protected characteristics.

## **2. End Discriminatory, Unfair, and Secretive Watchlisting**

As this Administration knows, rights and community groups have documented and raised grave concerns about the discriminatory, unfair, and secretive U.S. watchlisting system for two decades. Yet the system continues to be a black box and has now ballooned dramatically to [2 million people](#). Watchlisting has stigmatizing and devastating personal and professional consequences. These

consequences flow from the fact that the government shares watchlisting records with at least sixty foreign governments and numerous private entities;<sup>2</sup> government agencies that perform screening functions (such as the TSA, CBP, and USCIS); and tens of thousands of state, local, and tribal law enforcement agencies nationwide.<sup>3</sup> For U.S. persons, this can mean detention and questioning by other governments while abroad; potentially unlawful searches, seizures, and surveillance;<sup>4</sup> inability to open or maintain bank accounts; denial of government licenses or employment; and indefinite delays or denials of immigration benefits.

American Muslims and those of Arab, Middle Eastern, or South Asian descent are [disproportionately watchlisted](#) and suffer the brunt of these consequences. Indeed, a rough approximation of disproportionate impact is clear from the government’s acknowledgement that as of February 2024, over one third of watchlisted people are named Mohammed, Ahmed, Mahmoud, Abed, or Abdullah, or some spelling permutation of those common male Muslim names.<sup>5</sup> Unsurprisingly, a Congressional report [recently noted](#) that American Muslim community leaders “have shared concerns” that continued “nontransparency” and “the inability to seek real redress has broken trust between their communities and the federal government.”

The executive branch exercises virtually unfettered discretion in deciding whom to watchlist, using vague and overbroad criteria and a low bar for placement. Its redress process is a due process nightmare: There are no time limits for the government to act on or respond to redress applications; people seeking removal from watchlists may never receive notice of the full—or even any—reasons for their placement; the government never provides evidence supporting—or undermining—any such reason; and redress applicants never receive a live hearing before a neutral decision-maker in which they may fully and fairly present their case. These deficiencies make it virtually impossible for U.S. persons challenging wrongful placement on any watchlist to respond meaningfully to the government’s suspicions or allegations against them. To begin to address this unconstitutional travesty of a system, the executive branch must:

- (i) Disclose watchlisting status to all U.S. persons, and not only to U.S. persons on the No Fly List.
- (ii) Disclose to U.S. persons the specific criteria or criterion under which they are watchlisted; all reasons that in the government’s view meet those criteria; and all material inculpatory and exculpatory evidence. Disclosures must be consistent with due process and to the extent legitimately classified information is a basis for determination, the government should apply standards under 8 C.F.R. § 103.2(b)(16).
- (iii) Establish prompt and public time limits for responding to redress applicants at each stage of the process.

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<sup>2</sup> Declaration of Timothy P. Groh, TSC Deputy Director of Operations (“Groh Decl.”), *Elhady v. Kable*, No. 16-cv-375 (E.D. Va. Mar. 12, 2019), ECF No. 308–24 ¶ 38.

<sup>3</sup> HSGAC MAJORITY STAFF, MISLABELED AS A THREAT: HOW THE TERRORIST WATCHLIST & GOVERNMENT SCREENING PRACTICES IMPACT AMERICANS 31–32 (Dec. 2023), [https://www.hsgac.senate.gov/wp-content/uploads/Mislabeled-as-a-Threat\\_Public\\_Report-2.pdf](https://www.hsgac.senate.gov/wp-content/uploads/Mislabeled-as-a-Threat_Public_Report-2.pdf)

<sup>4</sup> Groh Decl. ¶¶ 46–48; see also Decl. of Amir Meshal, *Latif v. Lynch*, No. 10-cv-00750 (D. Or. Aug. 7, 2015), ECF No. 270, at 4–8; *Meshal v. Wright*, 651 F. Supp. 3d 1273 (S.D. Ga. 2022).

<sup>5</sup> See Declaration of Steven L. McQueen, *Jardaneh v. Garland*, No. 18-cv-2415 (D. Md. Mar. 5, 2024), ECF No. 247-1 (describing recent watchlisting data). According to a Council of American Islamic Relations [analysis](#) of a 2019 version of the watchlist, Muslim names comprise over 98% of the total entries.

- (iv) Provide a live hearing before a neutral decision-maker in which a watchlisted U.S. person may fully and fairly present their case.

### **3. End the Controlled Application Review and Resolution Program (CARRP)**

DHS must end CARRP, an extreme vetting policy that severely and disproportionately harms law-abiding people from Muslim-majority countries who apply for naturalization, green cards, and other immigration benefits.

Under CARRP, U.S. Citizenship and Immigration Services (USCIS) uses a set of vague, secretive, and subjective criteria to unfairly brand some applications as “national security concerns.” When an application is processed under CARRP, USCIS officers can hunt for a reason to deny it—even an innocent error in paperwork. CARRP processing causes extraordinary delays, leaving applicants in limbo, sometimes for years, without explanation or recourse. And when an application in CARRP is finally adjudicated, it is [more than twice](#) as likely to be denied than a non-CARRP application.

CARRP has been especially harmful to applicants from Muslim-majority countries. For instance: Between 2013 and 2019, green card applicants from Muslim-majority countries were subjected to CARRP at [10 times](#) the rate of applicants from non-Muslim-majority countries. During the same period, naturalization applicants from Muslim-majority countries were subjected to CARRP at [12 times](#) the rate of applicants from non-Muslim-majority countries.

CARRP is unconstitutional, and it targets and disproportionately impacts Muslims or those perceived to be Muslim. DHS must:

- (i) Rescind CARRP; require USCIS to review and adjudicate all applications for immigration benefits solely on the basis of the Immigration and Naturalization Act (INA) and applicable regulations; and prohibit USCIS from labeling, demarcating, or segregating any applications for immigration benefits for more stringent review than is applied to other applications.
- (ii) When USCIS denies an application for immigration benefits, require USCIS to inform the applicant of all reasons for the denial, consistent with due process and 8 C.F.R. § 103.2(b)(16).
- (iii) Instruct USCIS to promptly adjudicate all pending applications currently subject to CARRP, without considering those applications’ referral to CARRP or any derogatory information obtained through CARRP processing.
- (iv) Prohibit USCIS from considering prior referral to CARRP or denial pursuant to CARRP in adjudicating future applications for immigration benefits.
- (v) Upon applicants’ request, re-open and re-adjudicate applications that were denied pursuant to CARRP, based on the circumstances in which the applications were originally submitted, without considering the applications’ referral to CARRP or derogatory information obtained through CARRP, and without penalizing applicants for leaving or remaining in the United States following the denial of their applications.

### **4. End DHS’s Targeted Violence and Prevention Program**

The Administration must end DHS’s Targeted Violence and Terrorism Prevention (TVTP) grants program and the office that administers it, the Center for Prevention Programs and Partnerships (CP3). As a candidate, President Biden [promised](#) the Arab American community that he would end these programs, which have long targeted American Muslims. The groups granted TVTP funding

typically rely on a [discredited](#) “radicalization” theory—the false idea that there are reliable predictive “risk indicators” demonstrating that someone is on a path to violence. Government-identified [behavioral indicators](#) have included: communicating that one is in distress; deviating from one’s routine; isolation; economic stress; paying off debts; or being preoccupied with a person, place, belief, or cause. Indicators are often commonplace, innocuous, or otherwise easily explained, yet 79% of 2022 TVTP grants rely on them. Unsurprisingly then, DHS [failed to provide](#) basic information required by Congress to explain the program and validate its empirical basis.

DHS justifies the program as a key tool to address white supremacist violence. But its spending shows that less than a quarter of 2022’s 43 grants even mention white supremacy in passing and only two engage with the issue meaningfully—and in a way far removed from violence prevention. And calling a program run by DHS a “public health” initiative is hardly convincing, especially when over 50% of 2022 grants involve law enforcement. A [recent study](#) by the Brennan Center shows the latest DHS grantees are based on the same ineffective, biased methods of prior years.

## **5. End Discriminatory and Ineffective Collection and Monitoring of Social Media Information**

Broadscale DHS and FBI social media monitoring programs are of particular concern to Muslim communities.

The collection of social media identifiers from visa applicants seeking leave to enter the United States gives the government sweeping access into visa applicants’ online lives, as well as the lives of people in the U.S. with whom they interact. This poses [acute risks](#) for people from Muslim countries and their American family, friends, and colleagues. More broadly, social media monitoring programs easily allow the targeting of the political and religious beliefs of American Muslims as subjects of suspicion. This fear is particularly pronounced in the current environment when Muslims—like other Americans—take to social media and the streets to protest the war in Gaza. Indeed, since October 7, 2023, there have been reports of CBP asking Palestinians about their social media posts and of U.S. residents being [contacted by](#) federal agents asking about their social media posts, perhaps at the request of the social media companies. Social media is notoriously difficult to interpret<sup>6</sup> and we have repeatedly seen that [common words](#) or phrases used by Muslims are interpreted as threatening, and their political and religious views are [wrongly assumed](#) to be connected with violence.

The government does not derive significant benefits from social media vetting. Since 2016, government officials and entities have [raised questions](#) about whether this type of screening helps weed out genuine security concerns.<sup>7</sup> A 2021 analysis of social media collection by the Office of the Director of National Intelligence said the collection of identifiers added “no value” to the accuracy

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<sup>6</sup> The numerous comments submitted by the Brennan Center and other civil society organizations in response to requests for notice and comment from the Departments of State and Homeland Security regarding collection and use of social media have detailed these concerns and others. See *Timeline of Social Media Monitoring for Vetting by the Department of Homeland Security and the State Department*, Brennan Center for Justice, <https://perma.cc/YY4G-589N> (last updated Dec. 21, 2023).

<sup>7</sup> U.S. Citizenship and Immigr. Servs., *Social Media*, in U.S. CITIZENSHIP AND IMMIGRATION SERVICES BRIEFING BOOK 181 (2016), <https://www.dhs.gov/sites/default/files/publications/USCIS%20Presidential%20Transition%20Records.pdf> (noting that the Fraud Detection and National Security Directorate within USCIS “encountered a number of challenges, limitations, and inefficiencies” while testing a social media screening tool and “concluded that [the tool] did not meet USCIS needs for social media screening”); and Off. of Inspector Gen., DHS’ Pilots for Social Media Screening Need Increased Rigor to Ensure Scalability and Long-term Success (Redacted), Dep’t of Homeland Sec. (2017), <https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-40-Feb17.pdf>.

of immigration screening and vetting programs, with a senior Administration official [confirming](#) that “collecting social media data had yet to identify terrorists among visa applicants.” In fact, [rejecting](#) a DHS proposal to expand dramatically its collection of social media identifiers on travel and immigration forms, the Office of Information and Regulatory Affairs [ruled that](#) the Department had not “adequately demonstrated the practical utility of collecting this information.”

Given the known risks of these programs, the lack of evidence of utility, and their disparate use and impact, the Administration should end them and purge all information that they have generated unless it is relevant to an ongoing criminal investigation. At the very least, it should impose an immediate moratorium on them to evaluate their effects while the Administration develops a robust policy to protect First Amendment protected activity. The Administration should also release the review of the use of social media identifiers conducted by the Secretaries of State and Homeland Security and the DNI, which has [been completed](#) but has not been publicly released.

## **6. Close National and Homeland Security Loopholes in Artificial Intelligence (AI) Standards**

Civil rights and community groups have long warned that federal agencies’ use of AI can amplify surveillance and discriminatory policing and contribute to each of the foregoing discriminatory policies and programs. In 2021, Stanford University researchers found that queries about Muslims on GPT-3, an older version of a popular large language model developed by OpenAI, [returned responses that disproportionately associated](#) Muslims with terrorism and violence. Although it is unclear how OpenAI has specifically addressed this problem, DHS [recently announced](#) it will be [running a pilot](#) to integrate the company’s large language model and associated tools into its intelligence and law enforcement operations.

Safeguards to mitigate religious, racial, and other bias in AI systems are set out in a memorandum [published](#) by the Office of Management and Budget’s (OMB). But the memorandum exempts from these baseline standards the national security systems that are often the mechanisms for targeting American Muslims or those perceived to be Muslim—these systems will be covered in a separate National Security Memorandum. Loopholes within the OMB memo also mean that agencies like DHS and the FBI will easily be able to avoid its requirements: they can, for example, exempt themselves from publicly disclosing how they use AI on the grounds that the entire use case is sensitive law enforcement and national security information, and can even waive compliance with the safeguards altogether by claiming that they are an impediment to critical operational needs. Agency decisions to grant such waivers can themselves be hidden on the basis that they are sensitive information.

The White House must ensure that the standards articulated by OMB serve as a baseline for systems covered by the forthcoming National Security Memorandum with no loopholes for national and homeland security. And it must make clear to agencies that they should limit waivers from OMB safeguards to the most exceptional situations and the minimum time period feasible. These waivers should be documented in writing and publicly disclosed.

## **7. Require DHS to Map Its Databases**

As former DHS officials have asserted, the Department’s collection and use of information about citizens and people traveling to or living in this country raise such significant concerns that “the privacy and due process concerns resulting from other homeland security operations, such as information collection by the National Security Agency, pale by comparison.”<sup>8</sup> Again, DHS’s

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<sup>8</sup> CHAPPELL LAWSON & ALAN DOUGLAS BERSIN, BEYOND 9/11: HOMELAND SECURITY FOR THE TWENTY-FIRST

policies and programs raise concerns for all Americans and are particularly acute for Muslims, Black and Brown people. Yet there is almost total opacity about what information DHS collects and how it is used. Privacy impact assessments are important, but not enough, as they can be program-specific, or concern only parts or phases of programs. As a result, both congressional oversight and public accountability are extremely difficult if not impossible. We therefore urge the White House to order DHS to map and make public:

- (i) the various kinds of information collected by the Department;
- (ii) the legal authority for collection and retention;
- (iii) the purposes for which it is used;
- (iv) how it flows within the Department and to other agencies and foreign governments; and
- (v) the impact of that collection, retention, and sharing on civil rights and liberties.

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We would appreciate an opportunity to meet with you and your staff in the next month to discuss the concerns and recommendations outlined in this letter. Please do not hesitate to contact us with any questions.

*/s/Hina Shamsi*

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CENTURY 303 (Chappell Lawson et al., eds., 2020) (“[DHS] is the only government entity that, as part of its regular operations, conducts invasive physical searches of millions of Americans and their belongings each week without any predicate. It is also one of the only government agencies that retains huge amounts of data on individuals, using only ‘implied consent’ for justification. In addition, it draws inferences based on data in ways that are totally opaque to citizens, and takes actions that may be to their individual detriment (being selected for search and interrogation, being delayed or severely inconvenienced in their travel, etc.)”).