ACLU

March 6, 2025

The Honorable Russell Vought
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

RE: Executive Order 14179 of January 23, 2025, and Memorandum M-24-10

Dear Director Vought:

The below-signed researchers and civil rights, civil liberties, and public interest groups urge the Office of Management and Budget to maintain the transparency and safety protections of Memorandum M-24-10[1] as it implements President Trump's Executive Order 14179, "Removing Barriers to American Leadership in Artificial Intelligence."[2] Two sets of provisions of Memorandum M-24-10 provide crucial safeguards to ensure American leadership in both AI innovation and AI effectiveness, trustworthiness, and safety: the AI use case inventories[3] and related transparency provisions and the minimum practices for rights- and safety-impacting AI.[4]

These two sets of provisions should be maintained for three critical reasons:

- **AI is already reshaping American life**, including the federal government. Just as with any other governmental operation, transparency into the government's decisions about our lives is crucial for curbing abuses of free speech, civil liberties, and civil rights. The minimum practices ensure that federal agencies are analyzing — and mitigating — the potential risks posed by AI, relative to their benefits.
- **These provisions are mandated by federal law**. The Advancing American AI Act mandates that each agency "prepare and maintain an inventory of the artificial intelligence use cases of the agency."[5] Similarly, the AI in Government Act of 2020 required OMB to provide guidance on identifying "best practices for identifying, assessing, and mitigating any discriminatory impact or bias on the basis of any

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[1] Memorandum for the Heads of Executive Offices and Agencies, "Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence," M-24-10 (Mar. 28, 2024) [hereinafter M-24-10]. OMB's related Memorandum M-24-18 codifies many of the practices described in this letter, which should also be preserved in revisions directed by President Trump.
[2] 90 Fed. Reg. 8741 (Jan. 31, 2025).
[3] M-24-10, sec. 3(a)(iv).
[4] M-24-10, sec. 5(c).
[5] Advancing American AI Act, Pub. L. No. 117-347, div. G, tit. LXXII, subtit. B, sec. 7225, 136 Stat. 2395, 3672 (2022), here.

classification protected under Federal nondiscrimination laws, or any unintended consequence of the use of artificial intelligence."[6]

- **President Trump established the predecessors to these components of M-24-10**, which OMB carried out in related memoranda. During his first term, President Trump directed that "[a]gencies must therefore design, develop, acquire, and use AI in a manner that fosters public trust and confidence while protecting privacy, civil rights, civil liberties, and American values."[7] OMB expounded on those principles to direct agencies to "consider in a transparent manner the impacts that AI applications may have on discrimination."[8] In the same memorandum, OMB recognized that "transparency and disclosure can increase public trust and confidence in AI applications" and that disclosures "should be written in a format that is easy for the public to understand and may include identifying when AI is in use."[9]

Given the importance of these provisions in protecting fundamental American values, OMB should ensure they are maintained in its revisions of M-24-10.

The AI Use Case Inventory and Other Transparency Mechanisms Provide Crucial Safeguards Against Harmful Governmental Uses of AI

Transparency around federal uses of AI was foundational for AI policy during the first Trump administration. OMB's 2020 Memorandum on AI emphasized that "the continued adoption and acceptance of AI will depend significantly on public trust and validation," and consequently urged agencies to prioritize public participation and to provide information to the public on agencies' uses of AI.[10] Similarly, President Trump's 2020 Executive Order on artificial intelligence established the first framework for AI use-case inventories,[11] a requirement that was later incorporated into the Advancing American AI Act.[12] As Justice Brandeis observed, "Sunshine is the best disinfectant," and transparency is a key pillar for ensuring that tax payer dollars are spent responsibly — a top priority of President Trump and his administration.

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[6] AI in Government Act of 2020, Pub. L. No. 116-260, div. U, tit. I, sec. 104(a)(3), 134 Stat. 1182, 2287 (2020), here.

[7] Executive Order 13960 of December 3, 2020, "Promoting the Use of Trustworthy Artificial Intelligence in the Federal Government," 85 Fed. Reg. 78939 (Dec. 8, 2020); *see also.* Executive Order 13859 of February 11, 2019, "Maintaining American Leadership in Artificial Intelligence," 84 Fed. Reg. 3967 (Feb. 14, 2019) (recognizing that federal uses of AI mut protect "economic and national security, civil liberties, privacy, and American values").

[8] Memorandum for the Heads of Executive Offices and Agencies, "Guidance for Regulation of Artificial Intelligence Applications," M-21-06, sec. 7 (Nov. 17, 2020) [hereinafter M-21-06].

[9] *Id.*, sec. 8.

[10] M-21-06, secs. 1-2.

[11] Executive Order 13960, sec. 5.

[12] Pub. L. No. 117-347, div. G, tit. LXXII, subtit. B, sec. 7225, 136 Stat. 2395, 3672 (2022), here.

OMB should continue to build on these foundational efforts and maintain the transparency provisions of Memorandum M-24-10. The Memorandum includes procedures for providing notice of federal agencies' use of AI through two means: "plain language documentation" in the AI use case inventories and notice to "negatively affected individuals."[13] These serve important purposes in protecting civil liberties and civil rights:

- The inventory, for example, must be in plain language and accessible while still being detailed enough to provide notice to users and the general public.[14] The inventory must also be located "[w]here people interact with a service relying on the AI and are likely to be impacted by the AI."[15] This allows government watchdogs, researchers, and journalists to have reliable access to the government's use of AI to make decisions about our lives. Moreover, OMB's 2024 guidance on reporting AI use cases ensures that inventories are sufficiently specific and comprehensive,[16] and OMB should continue building on that guidance in the future. The Trump administration could also consider requiring agencies' inventories to be machine readable to increase transparency and utility of the inventories.

- Similarly, "agencies must notify individuals when use of the AI results in an adverse decision or action that specifically concerns them, such as the denial of benefits or deeming a transaction fraudulent."[17] The notice must be timely, provide relevant information regarding appeals, and any legally mandated explanations of the decision.

As President Trump emphasized during his first administration, the success of American AI depends on public trust, and public trust in turn depends on robust, meaningful transparency.

The transparency provisions of the Memorandum comport with the foundational principles of due process: that the government may not deprive an individual of life, liberty, or property without first providing notice and an opportunity to contest that deprivation. These basic standards of notice and transparency are important restraints on the government's use of AI, ensuring that the basic tenets of the Constitution and federal law are respected.

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[13] M-24-10, secs. 5(c)(iv)(I), 5(c)(v)(D).

[14] M-24-10, sec. 5(c)(iv)(I).

[15] *Id.*

[16] OMG, Guidance for 2024 Agency Artificial Intelligence Reporting per EO 14110 (Aug. 14, 2024), https://www.cio.gov/assets/resources/2024-Guidance-for-AI-Use-Case-Inventories.pdf.

[17] *Id.*, sec. 5(c)(v)(D).

The Minimum Practices for Rights- and Safety-Impacting AI Are Integral to America's AI Leadership

AI that harms rights and safety is not effective AI and risks wasting governmental resources and taxpayer dollars. The minimum practices for rights- and safety-impacting AI in Memorandum M-24-10 seek to curb that waste and are commensurate with AI's rapid growth across the federal government. AI is permeating all levels of government in numerous ways, and President Trump's 2020 Executive Order recognized the breadth of AI's impact in the federal government, stating:[18]

> Agencies are already leading the way in the use of AI by applying it to accelerate regulatory reform; review Federal solicitations for regulatory compliance; combat fraud, waste, and abuse committed against taxpayers; identify information security threats and assess trends in related illicit activities; enhance the security and interoperability of Federal Government information systems; facilitate review of large datasets; streamline processes for grant applications; model weather patterns; facilitate predictive maintenance; and much more."

AI has quickly been integrated into key services affecting everyday Americans.

Given AI's rapid growth in the federal government, managing the risks posed by AI to rights and safety was a cornerstone of AI policy during President Trump's first administration. President Trump's 2020 Executive Order stated, for example, "Agencies shall seek opportunities for designing, developing, acquiring, and using AI, *where the benefits of doing so significantly outweigh the risks, and the risks can be assessed and managed.*"[19] OMB's 2020 guidance to agencies similarly recognized that "a risk-based approach should be used to determine which risks are acceptable and which risks present the possibility of unacceptable harm, or harm that has expected costs greater than expected benefits."[20] Congress has concurred in that approach, directing OMB to "identify best practices for identifying, assessing, and mitigating any discriminatory impact or bias on the basis of any classification protected under Federal nondiscrimination laws, or any unintended consequence of the use of artificial intelligence."[21]

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[18] Executive Order 13960 of December 3, 2020, "Promoting the Use of Trustworthy Artificial Intelligence in the Federal Government," sec. 1, 85 Fed. Reg. 78939 (Dec. 8, 2020).

[19] Executive Order 13960 of December 3, 2020, "Promoting the Use of Trustworthy Artificial Intelligence in the Federal Government," sec. 3(b), 85 Fed. Reg. 78939 (Dec. 8, 2020).

[20] Memorandum for the Heads of Executive Offices and Agencies, "Guidance for Regulation of Artificial Intelligence Applications," M-21-06, sec. 7 (Nov. 17, 2020).

[21] AI in Government Act of 2020, Pub. L. No. 116-260, div. U, tit. I, sec. 104(a)(3), 134 Stat. 1182, 2287 (2020), here.

Memorandum M-24-10 builds on these precedents, presenting a functional, effective compromise to address potential abuses of and harms from federal uses of AI. The protections established by M-24-10 avoid miring federal uses of AI in needless litigation or spending federal funds on AI that will cause more harm than good. M-24-10's minimum risk mitigation practices encompass uses of AI that affect Americans' fundamental rights, including:[22]

- blocking, removing, hiding, or limiting the reach of protected speech;
- using risk assessments and facial recognition in law enforcement;
- detecting or measuring emotions, thought, impairment, or deception in humans;
- replicating a person's likeness or voice without express consent;
- surveilling children while in school;
- screening applicants for mortgages or apartments;
- determining the terms of employment; and,
- making recommendations or decisions about child welfare or child custody.

The lists of use cases that are presumed to be rights- or safety-impacting closely parallel rights long safeguarded by the Constitution, civil rights law, and more. Americans should not be surveilled, policed, or targeted for speaking their minds or because of their race or other protected classes — and AI should not change that fundamental constitutional precept.

As with AI policy during the first Trump administration, Memorandum M-24-10 underscores that an AI system should be deployed for a particular use case only if its harms are outweighed by its benefits and the harms have been appropriately mitigated.[23] This represents a basic assumption of how our federal government should work: it should use its administrative and regulatory authority to create more good than harm — a proposition that has been embodied in key reforms of the administrative state.[24]

Several key components of the minimum risk management practices underscore this commitment to discontinuing — or not deploying — harmful AI and should be maintained:

- The Memorandum instructs that AI impact assessments should assess the "potential risks of using AI, as well as what, if any, additional mitigation measures, beyond these minimum practices, the agency will take to help reduce these risks."[25] The Memorandum emphasizes, "The expected benefits of the AI functionality should be considered against

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[22] M-24-10, app'x I, sec. 2.
[23] M-24-10, sec. 5(c)(iv)(F).
[24] *E.g.*, Executive Order 12866 of September 30, 1993, "Regulatory Planning and Review," 58 Fed. Reg. 51565, 51735 (Oct. 4, 1993).
[25] M-24-10, sec. 5(c)(iv)(A)(2).

its potential risks, and if the benefits do not meaningfully outweigh the risks, agencies should not use the AI."[26]

- Agencies are also required to test AI in its "real-world context," which must "mirror as closely as possible the conditions in which the AI will be deployed" and consider both the technology itself and feedback from likely operators.[27] Through these results, agencies should demonstrate that the AI will "achieve its expected benefits and that associated risks will be sufficiently mitigated, or else the agency should not use the AI."[28] Real-world testing must be accompanied by an independent review.[29]

- Ongoing monitoring should continue to assess risks to rights and safety, including in a real-world context, and develop new mitigation techniques to reduce those risks. Again: "Where the AI's risks to rights or safety exceed an acceptable level and where mitigation strategies do not sufficiently reduce risk, agencies must stop using the AI as soon as is practicable."[30]

- Additional measures included in M-24-10 for rights-impacting AI, such as opt out, seeking feedback from the public and impacted individuals, and human review can provide additional safeguards to ensure that AI is an effective use of federal resources.[31]

The Memorandum's emphasis on real-world, independent evaluation of the risks and benefits of AI — and discontinuing, decommissioning, or not deploying AI with excessive risks — is appropriate and should be maintained in the revised memorandum. Experience has demonstrated that real-world testing environments are necessary to identify harms from human-AI interaction, which may arise from the data used to train the model, the model's use in unintended or unanticipated environments, incorrect interpretation of its output by operators, or other factors.

OMB should maintain this commitment to assessing AI harms and discontinuing harmful AI throughout its revision process.

Conclusion

Memorandum M-24-10 has been an important development in federal AI policy, building on foundational principles formulated by President Trump during his first term. OMB should maintain its crucial transparency and risk mitigation measures as it revises the Memorandum. If

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[26] *Id.*
[27] M-24-10, sec. 5(c)(iv)(B).
[28] *Id.*
[29] M-24-10, sec. 5(c)(iv)(C).
[30] M-24-10, sec. 5(c)(iv)(D), (F).
[31] *Id.*, sec. 4(c)(v)(F), (B), (E).

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you have any questions about these comments, please do not hesitate to contact Cody Venzke, Senior Policy Counsel, at cvenzke@aclu.org.

Sincerely,

Access Now

American Civil Liberties Union

AWN

Center for AI and Digital Policy (CAIDP)

Data & Society

Electronic Frontier Foundation

The Electronic Privacy Information Center (EPIC)

The Leadership Conference on Civil and Human Rights

National Fair Housing Alliance

National Urban League

NETWORK Lobby for Catholic Social Justice

New America's Open Technology Institute

United Church of Christ Media Justice Ministry