

Congress of the United States

Washington, DC 20515

December 19, 2024

The Honorable Alejandro N. Mayorkas Secretary
U.S. Department of Homeland Security
301 7th Street, SW
Washington, DC 20528

Shalanda Young
Director of the Office of Management and Budget
725 Seventeenth Street, NW
Washington, DC 20503

CC: Eric Hysen
Chief Information Officer
U.S. Department of Homeland Security

Dear Secretary Mayorkas, Director Young, and Officer Hysen:

We write to express our concerns regarding the use of Artificial Intelligence (AI) technologies by the Department of Homeland Security (DHS) and its subagencies, U.S. Citizenship and Immigration Services (USCIS), Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) that do not comply with the federal requirements outlined in President Biden's Executive Order 14110 establishing new standards for AI safety and security as well as the Office of Management and Budget's "Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence" 2024 memoⁱ. We request that DHS suspend or cancel the use or advancement of AI technology until proper guidelines are set in place in accordance with federal guidelines.

According to multiple immigration advocate groups, DHS has been employing AI technologies to inform critical decisions including whether to deport, detain, and separate families, grant citizenship, and/or whether to protect someone from persecution or torture, without proper regulation or notifying the impacted individuals. For example, DHS and ICE are using advanced algorithms to help agency staff predict whether immigrants will not comply with ICE's electronic surveillance monitoring program (Hurricane Score), to help determine whether an immigrant should remain in detention (Risk Classification Assessment), and to help assess potential fraud in immigration applications (Asylum Text Analytics). As we integrate new technologies into our immigration system, we must ensure migrants fleeing violence, war, and instability are given a fair opportunity to seek refuge and apply for citizenship.

Our immigration system already results in discrimination against Black and Brown migrant communities, with significant group disparities in naturalization approvals based on applicants' race, ethnicity, gender, and religionⁱⁱ. Studies have shown AI has perpetuated or even worsened discrimination and racial biasesⁱⁱⁱ. Due to automation bias^{iv} and other factors, research shows that human oversight is insufficient to mitigate inaccuracies and bias in AI, and that people are generally inadequate at judging the accuracy or quality of algorithmic assessments^v. Researchers have noted that human oversight alone has the potential to worsen AI bias due to the misguided perception that human oversight is a sufficient protection against it^{vi}. These systems lack the social, cultural, and historical context needed to accurately give non-biased reports, analyzes, or life-impacting decisions within the immigration system. Tools created to detect fraud or plagiarism have been proven to have a clear bias against non-English speakers, consistently misclassifying non-native English writing samples as fraudulent^{vii}.

The mere implication of fraud could set back a person's immigration case, or at worst enact a life-time bar from the United States or a 10-year prison sentence. Considering the three countries with the most emigration to the U.S., Mexico, India, and China, are predominantly non-English speaking countries, millions of applicants' risk being potentially flagged as fraudulent. The use of AI must completely end until immigration agencies can implement a system where impacted groups can opt-out and safeguards are in place to continually monitor and prevent biases.

Given the importance of these life changing decisions affecting thousands of migrants it is imperative we receive answers to the following questions:

Bias Mitigation:

1. What concrete steps are being taken to combat bias in AI models utilized by immigration agencies including DHS, ICE, CBP and USCIS? What safeguards are in place to detect when biases emerge? For example, how are ICE and CBP assessing, preventing and addressing potential civil rights abuses in their use of facial recognition technology via apps such as CBP One and SmartLINK, or via the use of Clearview AI technology? How are ICE and CBP assessing the potential discriminatory impact of their use of social media surveillance technologies such as Babel X or Giant Oak Search Technology?
2. How is the data captured by immigration agencies' AI technologies stored and for how long? What database is it stored in? Is the data shared with outside agencies, including other law enforcement or immigration agencies, or with outside organizations or vendors?
3. How does the USCIS Asylum Text Analytics AI program address [language access bias](#) around analyzing narratives from non-native English speakers?
4. How does USCIS make sure that its AI programs, such as [Asylum Text Analytics](#) and any program involving sentiment analysis, pattern detection or language analysis using AI or machine learning technology, will not produce discriminatory outcomes? For example, to what extent do these programs flag immigrants from countries that USCIS adjudicators have discriminated against in the past? How will the AI treat people from countries previously flagged by USCIS data as having a high number of visa violators? Could the agency manipulate the AI algorithm to discourage immigration from certain countries due to purported "national security" or other impermissible political concerns?

Accountability:

1. What is your response to Just Futures Law and Mijente's reporting^{viii} on DHS adding, deleting, and modifying AI programs listed on their website in November 2023? Why did the agency add programs that were removed from the website and gave no further explanation as to why the programs were removed from the website?
2. Will DHS publish and disclose a full inventory of its existing and planned AI systems and if so, by when? Will DHS publish a justification or rationale in any instances where it does not disclose or publish information about an AI tool? For example, will DHS disclose its use of waivers and/or its request for extensions that enable the agency to withhold information from the public about its AI systems?
3. Across DHS and its sub-agencies, how often do immigration agents' determinations differ from, or reject, the assessment, analysis or recommendation produced by an AI machine? How would DHS know if the use of AI systems to inform immigration agents' decision-making increased discriminatory outcomes?
4. Under what circumstances does DHS terminate the use of an AI system or technology? Will DHS disclose information to the public about its decision to terminate or shutter an AI program if it fails to meet the criteria for responsible AI use as outlined in federal policies and/or DHS' own policies and frameworks?
5. How is DHS measuring how AI technologies are affecting, informing or changing agencies' decision-making impacting immigrant communities and migrants? How is DHS planning to notify people impacted by AI products, whether or not it results in a determination?

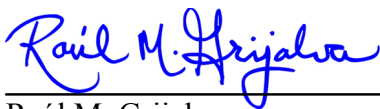
Technology Information:

1. Are the model weights of intelligent systems employed by DHS modified in any way and if so, how? Will immigration agencies release the weights used in AI systems?
2. How is DHS classifying systems as AI or LLM?

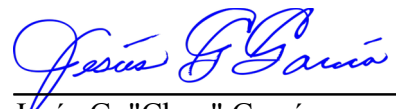
3. How and when will the individuals impacted by AI-generated assessments or analysis be notified of the use of this technology? What recourse will they have to request a review by a live person without the use of AI, or to opt-out of a process that includes any use of AI?
4. What data does USCIS use to train its AI to identify patterns or indicators of fraud or to identify potential patterns or indicators of national security or public safety threats in immigration applications? What patterns or anomalies in immigration applications constitute "fraud" according to USCIS?

Thank you again for your attention to this critical matter. We look forward to receiving your responses to our questions outlined above by December 30, 2024.

Sincerely,



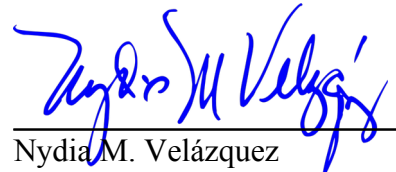
Raúl M. Grijalva
Member of Congress



Jesús G. "Chuy" García
Member of Congress



Eleanor Holmes Norton
Member of Congress



Nydia M. Velázquez
Member of Congress



Delia C. Ramirez
Member of Congress



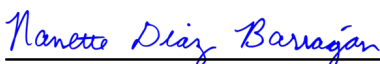
Rashida Tlaib
Member of Congress



Ilhan Omar
Member of Congress



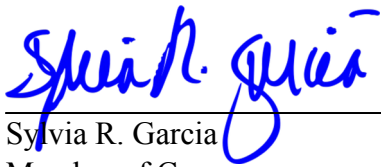
James P. McGovern
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Nanette Diaz Barragán
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Sylvia R. Garcia
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Greg Casar
Member of Congress



Valerie P. Foushee
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- i <https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/30/fact-sheet-president-biden-issues-executive-order-on-safe-secure-and-trustworthy-artificial-intelligence/#%3A~%3Atext%3DThe%20Executive%20Order%20establishes%20new>
- ii <https://www.pnas.org/doi/10.1073/pnas.2114430119>
- iii <https://www.npr.org/2023/07/19/1188739764/how-ai-could-perpetuate-racism-sexism-and-other-biases-in-society%3B>
- iv <https://scholar.lib.vt.edu/ejournals/JOTS/v32/v32n1/pdf/cummings.pdf>
- v https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3921216
- vi <https://slate.com/technology/2021/06/human-oversight-artificial-intelligence-laws.html>
- vii <https://themarkup.org/machine-learning/2023/08/14/ai-detection-tools-falsely-accuse-international-students-of-cheating>
- viii <https://mijente.net/wp-content/uploads/2024/06/Automating-Deportation.pdf>