

July 13, 2021

Dr. Eric S. Lander

Director, White House Office of Science & Technology Policy

Executive Office of the President

Dr. Lynne Parker

Director, National Artificial Intelligence Initiative Office

Executive Office of the President

Dr. Alondra Nelson

Deputy Director, White House Office of Science & Technology Policy

Executive Office of the President

*Via email*

**RE: Centering Civil Rights in Artificial Intelligence and Technology Policy**

Dear Dr. Lander, Dr. Parker, and Dr. Nelson,

We, the undersigned civil rights, civil liberties, human rights, technology policy, and research organizations, write to urge the White House Office of Science & Technology Policy (OSTP) to fully incorporate the Biden administration’s commitment to “pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality,”[[1]](#footnote-0) into its artificial intelligence (AI) and technology priorities.

We applaud the progress we’ve seen elsewhere in the Administration; however, to date, the administration’s technology priorities, particularly those led by OSTP, have lacked the necessary focus on equity for people of color and others who have been subject to historical and ongoing discrimination. As a first step, we urge OSTP to work actively to identify and address the systemic harms of these technologies, and ensure that it consults deeply with civil rights and civil liberties experts.

Over many years, our organizations have been pushing to advance equity and justice in how technology shapes the core interests and opportunities of vulnerable Americans. In 2014, many of us worked to develop the Civil Rights Principles for the Era of Big Data.[[2]](#footnote-1) The Obama White House cited the Principles in its landmark big data report, concluding that “big data analytics have the potential to eclipse longstanding civil rights protections in how personal information is used in housing, credit, employment, health, education, and the marketplace.”[[3]](#footnote-2) Although today’s terminology has shifted from “big data” to “AI,” the issues remain the same and have only increased in urgency.

The Trump administration made a commitment to foster the development and expansion of AI, but did not devote sufficient attention to technology’s harms and protections for civil rights and civil liberties. Indeed, an Executive Order in 2019 called on various parts of the federal government to reduce barriers to AI development.[[4]](#footnote-3) Then, in 2020, the Office of Management and Budget (OMB) issued final guidance on AI policy considerations that emphasized a regulatory approach focused on “encouraging innovation and growth in AI” over the adoption of strong guardrails to protect against bias and discriminatory outcomes.[[5]](#footnote-4) Although the guidance notes that agencies should consider issues of fairness and discrimination in AI when weighing regulatory or non-regulatory action, it does not acknowledge the full extent of the dangers that AI poses to civil rights and civil liberties, nor does it prioritize the need to address them. This approach is unacceptable because it fails to address the significant risks and impacts to vulnerable populations across many potential uses of AI. We are concerned that this guidance, particularly as interpreted by the Office of Information and Regulatory Affairs (OIRA) and its limited staff, will slow much-needed new rules and policies.

Since assuming office, this administration has not pursued a public and proactive agenda on the civil rights implications of AI. In fact, the Trump administration’s executive orders and regulatory guidance on AI remain in force, which constrains agencies across the federal government in setting policy priorities. The recent National Security Commission on Artificial Intelligence (NSCAI) report — drafted by a commission composed mostly of technologists, business leaders, and academic experts with notably few civil rights advocates or representatives of impacted communities — acknowledged civil rights concerns and included certain recommendations to address them. Yet the report failed to insist that the adoption of critical civil rights safeguards must be a threshold condition for the government’s development and use of AI.[[6]](#footnote-5) Now, the OSTP, in coordination with the National Science Foundation, has formed the National AI Research Resource Task Force (the “Task Force”) which once again lacks any civil rights representation notwithstanding the enormous implications of its work on civil rights and civil liberties. Not a single representative was chosen for the Task Force whose work has focused on algorithmic bias, civil rights and liberties, or accountability in the development and deployment of AI.

OSTP must help this Administration bring civil rights and racial justice to the forefront of AI policy across the board in areas beyond national security — in housing, in employment, in criminal legal issues, and more. Otherwise, we risk entrenching existing inequities in AI development and use that will continue to leave our most vulnerable communities behind. We urge OSTP to:

1. Prioritize and support the Domestic Policy Council, OMB, and the federal agencies in assessing how government policies and actions (and inaction) regarding the use of AI and other technologies “perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups,” consistent with Executive Order 13985.[[7]](#footnote-6) OSTP must play a key role in identifying how technology can drive racial inequities, and helping agencies devise new policies, regulations, enforcement activities, and guidance that address these barriers. We have attached concrete recommendations that some of the signatories to this letter are submitting to a range of federal agencies on addressing technology’s role in discrimination in the domains of hiring, housing, and financial services.[[8]](#footnote-7) We would welcome the opportunity to discuss these priorities and others with you in the near future;
2. Engage with a diverse range of stakeholders including civil rights organizations, consumer advocates, and members of impacted communities, not only through public comment periods but also through inclusion in commissions, task forces, advisory boards, and other formal bodies, like the National AI Advisory Committee; and
3. Ensure that federal investment in research and development of AI technologies includes significant and immediate investment in research on anti-discrimination measures and ways that AI systems can be used to advance equity, as well as investment in strategies to increase equity, diversity and inclusion in the tech industry.

Technological progress must promote equity and justice as it enhances safety, economic opportunity, and convenience for everyone. But far too often, people subject to historical and ongoing discrimination face disproportionate surveillance and bear the brunt of harms amplified by new technologies. To fully realize its commitment to civil rights and racial equity, the administration must act swiftly to address these threats.

Thank you for your attention to these matters. For any questions or further discussion, please contact Olga Akselrod (Senior Staff Attorney, Racial Justice Program, ACLU) at 212-549-2659 or oakselrod@aclu.org; or Harlan Yu (Executive Director, Upturn) at 202-677-2359 or harlan@upturn.org.

Cc:

Ambassador Susan Rice, Director, Domestic Policy Council

The Honorable Shalanda Young, Acting Director, Office of Management and Budget

Tarun Chhabra, Special Assistant to the President, Senior Director for Technology and National Security

Erika Moritsugu, Deputy Assistant to the President and Asian American and Pacific Islander Senior Liaison

Sincerely,

American Civil Liberties Union

The Leadership Conference on Civil and Human Rights

Upturn

Anti-Defamation League

Asian Americans Advancing Justice | AAJC

Center for Democracy & Technology

Center on Privacy & Technology at Georgetown Law

Color Of Change

Data & Society Research Institute

Demand Progress

Electronic Frontier Foundation

Filipina Women’s Network

Free Press Action

Lawyers’ Committee for Civil Rights Under Law

MediaJustice

Movement Alliance Project

National Association of Criminal Defense Lawyers

National Council of Asian Pacific Americans

National Fair Housing Alliance

New America's Open Technology Institute

OCA-Asian Pacific American Advocates

Open MIC (Open Media and Information Companies Initiative)

Public Knowledge

Ranking Digital Rights

UnidosUS

United Church of Christ, OC Inc.

Working Families Party

1. Exec. Order No. 13985, 86 Fed. Reg. 7009, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021), https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government. [↑](#footnote-ref-0)
2. Civil Rights Principles for the Era of Big Data (Feb. 27, 2014), https://civilrights.org/2014/02/27/civil-rights-principles-era-big-data. *See also* the 2020 update to the Principles, https://www.civilrightstable.org/principles. [↑](#footnote-ref-1)
3. Exec. Office of the President, *Big Data: Seizing Opportunities, Preserving Values* (May 2014), https://obamawhitehouse.archives.gov/sites/default/files/docs/big\_data\_privacy\_report\_may\_1\_2014.pdf. [↑](#footnote-ref-2)
4. Exec. Order No. 13859, 84 Fed. Reg. 3967, Maintaining American Leadership in Artificial Intelligence (Feb. 11, 2019), https://www.federalregister.gov/documents/2019/02/14/2019-02544/maintaining-american-leadership-in-artificial-intelligence. [↑](#footnote-ref-3)
5. Office of Mgmt. & Budget, Exec. Office of the President, OMB Memorandum No. M-21-06, Guidance for Regulation on Artificial Intelligence Applications (Nov. 17, 2020), https://www.whitehouse.gov/wp-content/uploads/2020/11/M-21-06.pdf. In addition, Executive Order 13960, regarding the use of AI by federal government agencies, articulates a commitment to privacy, civil rights, and civil liberties, but there has been no public follow-up on these efforts, nor is it clear if the agency inventory or OMB guidance mandated by the Order will appropriately underscore concerns of fairness, equity, and preventing discriminatory outcomes. [↑](#footnote-ref-4)
6. National Security Commission on Artificial Intelligence, Final Report (Mar. 1, 2021), https://www.nscai.gov/wp-content/uploads/2021/03/Full-Report-Digital-1.pdf. [↑](#footnote-ref-5)
7. Exec. Order No. 13985, *supra* note 1. [↑](#footnote-ref-6)
8. Please note that not all signatories to this letter have endorsed all of the specific agency recommendations. [↑](#footnote-ref-7)