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September 29, 2017

The Honorable Elaine Duke  
Acting Secretary  
U.S. Department of Homeland Security  
301 7th Street SW, Mail Stop 0501  
Washington, D.C. 20528-0150

Dear Acting Secretary Duke:

As a naturalized citizen, I write with deep concern regarding the Department of Homeland Security's (DHS) newly-proposed rule, published on September 18 in the Federal Register and set to take effect October 18. This rule updates the electronic immigration system to include information collected from social media accounts of all immigrants, including lawful permanent residents (LPR) and naturalized citizens. I request that you not go forward with this rule, which has massive privacy and constitutional implications, until more details are provided to Congress.

On September 18, DHS published a notice to update DHS' Alien File, Index, and National File Tracking System of Records. It is my understanding that DHS uses the system of records to store information on immigrants that is used to inform immigrant benefit adjudications. To date, Alien-File (A-File) information, which ranges from personal identifiers to travel and criminal history, is clearly needed to identify a person and determine their eligibility for immigration benefits.

I am concerned that this does not hold for social media account information. Specifically, the proposal states that, "social media handles and aliases, associated identifiable information, and search results" ("social media information") will be included in an individual's A-File. DHS's own Inspector General, however, has questioned the efficacy of social media screening pilot programs. In a February 2017 report, the Inspector General wrote, "these pilots... lack criteria for measuring performance to ensure they meet their objectives." I believe any information used to inform benefit adjudications, including that obtained from social media, must be demonstrably effective.

I am also deeply concerned your rule will apply to U.S. citizens such as myself. I have lived in the United States for over four decades. Am I subject to your program? I believe your proposed rule must not discriminate against U.S. citizens or LPRs.

As such, I seek more information on the proposed rule. Please respond to the following questions:

- Does your proposed rule apply to me? Does DHS collect and store the “social media information” of all naturalized citizens and/or lawful permanent residents? If not all, what criteria do you use to differentiate among naturalized citizens and LPRs?
- What oversight mechanisms exist to ensure that the “social media information” of naturalized citizens and lawful permanent residents is not used to discriminate against them in adjudication proceedings?
- How often do you update an individual’s A-File? Do you continue to update such files after an immigrant obtains citizenship through naturalization?
- Under what authority does DHS collect and retain “social media information”?
- Given the insufficient performance criteria of the pilot programs outlined in your February 2017 report, what evidence do you have to suggest that monitoring social media accounts is effective? What specific steps have you taken to address the inadequacies in the pilot programs?
- In the proposed rule, what does “search results” information include?
- Do you attempt to access content that is not publicly available on those accounts?
- How will “social media information” be used in the adjudication process? What precautionary steps will you take to ensure that an individual’s political views found in the “social media information” do not impact the adjudication of their immigration benefits?

Thank you for your attention to this matter. Please respond by October 16. I look forward to your response.

Sincerely,



Ted W. Lieu  
Member of Congress