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October 17, 2017

Mr. Jonathan R. Cantor
Acting Chief Privacy Officer
Privacy Office
Department of Homeland Security
Washington, DC 20528-0655

Delivered Online and by Post

RE: Comment on Proposed Modification DHS-2017-0038-0001

Dear Mr. Cantor:

On behalf of the Greater Boston Latino Network, we respectfully submit these comments raising legal objections and discrimination concerns surrounding the proposed modifications to the U.S. Department of Homeland Security (DHS) System of Records DHS-2017-0038-0001, which purports to authorize DHS to track the social media accounts of racial and ethnic minorities, including U.S. citizens and lawful permanent residents (LPRs). The Greater Boston Latino Network is a collective of 9 Latino community organizations in Boston and has great interest in the discriminatory impact the proposed rule change would have on its constituents. Surveillance procedures that target foreign-born and naturalized U.S. citizens – that are not imposed on U.S.-born citizens – are a textbook example of citizenship-status and national origin discrimination, and run afoul of the First and Fourteenth Amendments. We therefore urge you not to adopt the proposed modifications that pertain to social media monitoring.

1) The Proposed Modifications Would Result in Unprecedented Citizenship-Status Discrimination

Each year, U.S. Citizenship and Immigration Services (USCIS) "welcomes approximately 680,000 citizens during naturalization ceremonies," and during the last decade USCIS has "welcomed more than 6.6 million naturalized citizens into the fabric of our nation." USCIS, *Naturalization Fact Sheet*, https://www.uscis.gov/archive/archive-news/naturalization-fact-sheet (last visited October 16, 2017).

Becoming a U.S. citizen is one of the most important milestones in an immigrant's life. Applicants must fulfill stringent eligibility requirements set forth in the Immigration and Nationality Act (INA), including demonstrating "good moral character," and a "commitment to the unifying principles that bind us as Americans," including pledging allegiance to the United States. *Id.* In return, naturalized citizens enjoy the rights and privileges that are fundamental to U.S. citizenship.

DHS' proposed modifications create distinctions between U.S.-born and foreign-born citizens. These distinctions – rooted in national origin and place of birth – threaten the legal equality

that currently exists among U.S. citizens. DHS is proposing to establish two classes of citizens in America: those who are free to speak, and those who, as a result of having a foreign birth place, will have their speech heavily monitored and chilled. In tracking the social media accounts only of a subset of the citizen population, the modifications explicitly discriminate on the basis of naturalization status and national origin. Mere association with immigration would open up a wide swath of people to social media tracking, and the only people who will not be tracked are U.S.-born citizens. In short, there will be a class of citizens who can exercise their rights freely and another class of people comprised of immigrants and their families who cannot. Well-settled legal principles confirm that such discrimination is repugnant to the Constitution and an invalid basis for rule- and policy-making. See, e.g., Espinoza v. Farah Mfg. Co., 414 U.S. 86 (1973).

As there is no rational relationship between the goals of the rule modification and the proposed changes, the only discernable purpose of the social media provision is to monitor those attempting to avail themselves of immigration processes.

2) The Proposed Modifications Would Result in Sweeping Discrimination Against LPRs

An estimated 13.2 million LPRs lived in the United States on January 1, 2014, and 8.9 million of them were eligible to naturalize. James Lee and Bryan Baker, Department of Homeland Security Office of Immigration Statistics, *Estimates of the Lawful Permanent Resident Population in the United States: January 2014* (2017), https://www.dhs.gov/sites/default/files/publications/LPR%20Population%20Estimates%20January%202014.pdf. Mexicans account for approximately 25% of the LPR population – and over 30% of those eligible for naturalization. Id. In light of the Trump Administration's repeated negative comments concerning Mexicans, creating social media monitoring programs targeted at an LPR population that is overwhelmingly Mexican will raises serious discriminatory and retaliation concerns. Int'l Refugee Assistance Project v. Trump, 857 F.3d 554, 591 (4th Cir.), as amended (May 31, 2017), as amended (June 15, 2017), cert. granted, 137 S. Ct. 2080 (2017), and vacated and remanded, 2017 WL 4518553 (U.S. Oct. 10, 2017).

3) The Proposed Modifications Would Run Afoul of the First Amendment

As the U.S. Supreme Court has recognized, no space is more important for the communication of ideas than "the vast democratic forums of the Internet in general, and social media in particular." Packingham v. North Carolina, 137 S. Ct. at 1735 (U.S. 2017) (internal quotations omitted). Social media platforms are particularly important to marginalized communities who may not have easy access to other forums for communication. In fact, courts have recognized that the internet "provides relatively unlimited, low-cost capacity for communication of all kinds." Reno v. Am. Civil Liberties Union, 521 U.S. 844, 870 (1997). The proposed changes would impoverish online forums and severely chill access to social media platforms for people of color and immigrants.

Surveillance procedures like these, that target foreign-born and naturalized U.S. citizens – that are not imposed on U.S.-born citizens – are a classic example of citizenship-status and national origin discrimination, and run afoul of the First and Fourteenth Amendments. Therefore, in order to steer clear of Constitutional violations, and to avoid chilling the expression of immigrants in the United States, the proposed rule changes should not be adopted.

Respectfully Submitted,

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