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President and CEO
Maya Wiley

February 8, 2023

National Institute of Standards and Technology
100 Bureau Drive, MS 1000
Gaithersburg, MD 20899

Submitted via naiac@nist.gov

Dear NAIAC Liaison Officer,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 230 national organizations to promote and protect the rights of all persons in the United States, we write in response to the National Institute of Standards and Technology, Department of Commerce (NIST) notice of an open meeting of the National Artificial Intelligence Advisory Committee (NAIAC),[1] which invites public comments and suggestions in advance of the meeting. The Leadership Conference was encouraged by Congress' creation of the NAIAC and its mandate to make recommendations about the use of artificial intelligence (AI). We offer the below recommendations to help ensure that the NAIAC's work complements NIST's AI Risk Management Framework (RMF) and the administration's Blueprint for an AI Bill of Rights and its implementation.

Technological progress must promote equity and justice as it enhances safety, economic opportunity, and convenience for everyone. Technology has the potential to expand economic equality and to identify and mitigate instances of bias and discrimination. But far too often, people subject to historical and ongoing discrimination face disproportionate surveillance and bear the brunt of harms amplified by new technologies. Addressing AI risks, including bias, is a critical aspect of the nation's global leadership role in AI, as other countries are currently ahead of the United States in implementing rules of the road for AI development and deployment.[2]

We believe that the potential benefits of technology will only be realized when appropriate safeguards, including legal protections, are put in place. To be successful, the NAIAC must address the significant risks and impacts to vulnerable populations across the country in the following ways:

Build upon and complement the AI Bill of Rights, NIST's Risk Management Framework, and Civil Rights Principles for the Era of Big Data

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[1] National Institute of Standards and Technology, Department of Commerce, Notice of Open Meeting, 88 FR 1053, Jan. 6, 2023.
[2] Proposal for a Regulation of the European Parliament and Of The Council Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) and Amending Certain Union Legislative Acts, COM/2021/206 final, April 21, 2021, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0206 ("Proposed AI regulation").

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The NAIAC should build upon a growing body of existing work related to AI, including the Civil Rights Principles for the Era of Big Data, the AI Bill of Rights, and NIST's AI Risk Management Framework, which can all serve as roadmaps.

In 2014, a coalition of civil rights and justice organizations worked to develop "Civil Rights Principles for the Era of Big Data."[3] Those principles, which were updated in 2020, called on government and businesses to respect and promote equal opportunity and equal justice in the development and use of date-driven technologies like AI. The principles, along with the Obama White House's subsequent reports on big data[4], highlighted the need for rules of the road for private and public institutions whose decisions and actions can protect or deny civil and human rights.

Last year, the White House issued a blueprint for an "AI Bill of Rights,"[5] which calls for AI systems to be safe and effective, to not be biased or discriminatory, and to provide notice and explanation, human alternatives to technology, and recourse mechanisms. The AI Bill of Rights also recognizes that, in some instances, just because technology is available doesn't mean it should be used. More recently, the NIST published a Risk Management Framework for AI (RMF)[6]. The RMF provides a framework for how those designing and using AI can determine whether the system is fit for purpose, assess potential outcomes, test and monitor, and other measures, including ensuring that the system does not result in biased or discriminatory outcomes. The NAIAC should further advance and build upon this work.

Establish the Subcommittee on Artificial Intelligence and Law Enforcement

While the overall objecive of the NAIAC is broad, Congress specifically directed the NAIAC to establish a subcommittee to consider matters related to the use of AI by law enforcement:

> *"(e) SUBCOMMITTEE ON ARTIFICIAL INTELLIGENCE AND LAW ENFORCEMENT.—*
>
> > *(1) ESTABLISHMENT.—The Chairperson of the Advisory Committee shall establish a subcommittee on matters relating to the development of artificial intelligence relating to law enforcement matters."*

This mandate was restated in the NAIAC's charter. Congress provided further instructions on the work of the subcommittee in the enacting legislation, directing the NAIAC to provide advice on how law enforcement should address bias, data security related to the use of AI, and to suggest legal standards to ensure that AI use is consistent with privacy rights, civil rights and civil liberties, and disability rights.

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[3] 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.
[4] Exec. Office of the President, Big Data: A Report on Algorithmic Systems, Opportunity, and Civil Rights (May, 2016), https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/2016_0504_data_discrimination.pdf.
[5] Blueprint for an AI Bill of Rights | OSTP | The White House.
[6] National Institute of Standards and Technology, Artificial Intelligence Risk Management Framework (AI RMF 1.0), January, 2023, https://nvlpubs.nist.gov/nistpubs/ai/NIST.AI.100-1.PDF.

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The NAIAC should move forward with creating the Subcommittee on Artificial Intelligence and Law Enforcement so it can begin its important work.

In addition to the clear congressional mandate, there is another compelling reason for the NAIAC to act expeditiously. Law enforcement is already using AI systems, including:

- data from Alexa smart speakers;
- data from Fitbit fitness trackers;
- partnerships with video doorbell manufacturer Ring to access data captured from their devices;
- an array of microphones (referred to as "Shotspotter") that detect the sound of gunfire; and,
- facial recognition technology.

There is also an increasing trend by law enforcement to embrace other emerging technologies, from predictive technology to robotics. It is unclear whether and how the potential consequences from the use of these technologies are assessed and addressed, as well as how decisions are made related to using the technology.

Use of AI by law enforcement can have serious consequences. Biased data sets lead to biased outcomes. Increased use of data may lead to wrong assumptions. For example, use of technology might result in overpolicing in areas where the technology is deployed. In some cases, law enforcement's use of facial recognition technology has led to wrongful arrests when the system falsely identified innocent individuals as suspects. And too often it is communities of color who face the serious consequences resulting from systems that are misused, not fit for purpose, untested, used without a proper assessment, or should have never been deployed.

The NAIAC has the opportunity to address these challenges and complexities by identifying bias and identifying solutions to mitigate harms. It can also help in creating a framework to make the threshold decision about whether a system should be deployed in the first place and, if a system is used, how to ensure accountability throughout its lifecycle — from the system design and development, to its acquisition and use in the field. Drawing from the AI Bill of Rights and the recent NIST Risk Management Framework, those processes and procedures should include assessment, testing, monitoring, field testing, mitigations, oversight, and measurement.

We urge the NAIAC to move forward and stand up the Subcommittee on Artificial Intelligence and Law Enforcement so it can begin the critical work of addressing law enforcement's use of technology.

The Need for Robust Community Engagement

As the NAIAC works to identify and address systemic harms of AI, we urge it to proactively and purposefully engage with civil rights and civil liberties experts. The NAIAC has the opportunity to set an example for meaningful and purposeful engagement with the communities that may be impacted by the use of AI systems. "Community engagement" is a consistent aspect of the array of "AI Principles" that companies and governments have adopted. Yet, it is unclear whether organizations know how to engage

with communities effectively. Given the broad representation of entities on the NAIAC, it is well poised to develop a framework that can help companies and others have constructive and meaningful engagements.
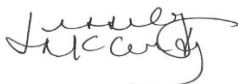
NIST should ensure that the NAIAC is fully resourced.

To meet its important mandate, the NAIAC needs the appropriate level of staff support and other resources. Those resources are necessary for the experts on the NAIAC to focus on the work at hand and to meet the timeframes for issuing reports set by Congress. The work of the NAIAC should also be complemented by investments in research and development of AI technologies that include support for research on anti-discrimination measures.

Conclusion

If fully resourced, the NAIAC has a unique role to play in addressing threats posed by new technology through the committee's broad mandate, focus on law enforcement, and the opportunities presented by the AI Bill of Rights and the AI Risk Management Framework. Thank you for considering our views. If you have any questions about the issues raised in these comments, please contact Anita Banerji, senior director of the media & tech program, at banerji@civilrights.org; Jonathan Walter, policy counsel, at walter@civilrights.org; or Frank Torres, civil rights technology fellow, at torres@civilrights.org.

Sincerely,

Jesselyn McCurdy
  Executive Vice President of Government Affairs