Congress of the United States

Washington, DC 20515

October 11, 2023

The Honorable Joseph R. Biden Jr.
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear President Biden,

With the era of artificial intelligence (AI) promising new innovations, but posing many risks, your forthcoming AI executive order[1] is an important opportunity to establish an ethical framework for the federal government's role in AI. The moment calls for the adoption of strong safeguards on algorithmic discrimination, data privacy, and other fundamental rights. In particular, the Blueprint for an AI Bill of Rights — which the White House's Office of Science and Technology Policy (OSTP) released in October 2022[2] — would serve as a strong foundation for the executive order, a position echoed by more than 60 civil society, technology, labor, and human rights organizations.[3] Given your Administration's farsighted leadership in developing the AI Bill of Rights, we urge you to implement vital near-term safeguards on the use of AI by incorporating the AI Bill of Rights into the forthcoming AI executive order, or subsequent executive orders.

Although AI systems can bring great benefits to society, they also can create new risks and exacerbate existing biases. In fact, AI-powered algorithms are already causing serious harms to disadvantaged communities. Facial recognition tools, for example, continue to show biases[4] — with serious consequences. In February, a Black woman who was eight months pregnant was

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[1] *FACT SHEET: Biden-Harris Administration Secures Voluntary Commitments from Eight Additional Artificial Intelligence Companies to Manage the Risks Posed by AI*, The White House (Sep. 12 2023), https://www.whitehouse.gov/briefing-room/statements-releases/2023/09/12/fact-sheet-biden-harris-administration-secures-voluntary-commitments-from-eight-additional-artificial-intelligence-companies-to-manage-the-risks-posed-by-ai/

[2] *Blueprint for an AI Bill of Rights*, The White House (Oct. 5, 2022), https://www.whitehouse.gov/ostp/ai-bill-of-rights/.

[3] Letter from the Center for American Progress et al. to The White House (Sept. 5 2023), https://www.americanprogress.org/wp-content/uploads/sites/2/2023/09/Letter-to-WH-on-AI-Exec-Order_9-6.pdf.

[4] Joy Buolamwini & Timnit Gebru, *Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification,* Proceedings of Machine Learning Research, 81, 1-15, (2018), https://proceedings.mlr.press/v81/buolamwini18a/buolamwini18a.pdf; *Face Recognition Technology Evaluation: Demographic Effects in Face Recognition,* National Institutes of Standards and Technology (last updated Aug. 7, 2023), https://pages.nist.gov/frvt/html/frvt_demographics.html; Paresh Dave, *AI Algorithms Are Biased Against Skin With Yellow Hues,* Wired (Oct. 3, 2023), https://www.wired.com/story/ai-algorithms-are-biased-against-skin-with-yellow-hues/.

wrongfully arrested for robbery and carjacking due to a false facial recognition match.[5] This incident was the sixth known case in the United States of the wrongful arrest of a Black person based on a facial recognition error.[6] On other occasions, algorithms have incorrectly flagged benefits claimants for financial fraud,[7] resulting in the withdrawal of desperately needed government assistance. Studies have shown that credit scoring algorithms are less accurate for low-income and minority borrowers,[8] and gender bias persists in hiring algorithms.[9] The long list of systemic, ongoing, and discriminatory harms from AI technology cries out for regulation. We cannot allow the increasing use of AI to erode fundamental rights.

Fortunately, in the AI Bill of Rights, your Administration has already released a forward-looking framework to protect fundamental rights, drafted after a year-long consultation with industry, academia, civil society, and the broader public. The AI Bill of Rights outlines five principles that should guide the design, use, and deployment of "automated systems that have the potential to meaningfully impact the public's rights, opportunities, or access to critical resources or services."[10] These principles are:

- Safe and effective systems: AI systems should be developed in consultation with diverse communities to identify and mitigate risks and ensure the systems work as intended;

- Algorithmic discrimination protections: AI systems should be equitably designed and used, with proactive and continuous measures taken to protect against biased results;

- Data privacy: AI systems should include protections to prevent abusive data practices, limit data collection to what is necessary to accomplish a specific purpose, and respect user decisions regarding data processing;

- Notice and explanation: AI systems should be plainly identified and clearly describe how they work and reach particular decisions; and

- Human alternatives, consideration, and fallback: Individuals should be able to opt out of using AI systems and have access to a human to address any issues.

Along with these principles, OSTP identified numerous best practices for their implementation, drawn from best practices in industry and academia.[11] For example, under the safe and effective systems principle, the best practices include consultation, testing, risk

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[5] Kashmir Hill, *Eight Months Pregnant and Arrested After False Facial Recognition Match,* N.Y. Times (Aug. 6 2023), https://www.nytimes.com/2023/08/06/business/facial-recognition-false-arrest.html.
[6] *Id*.
[7] Matt Burgess *et al. This Algorithm Could Ruin Your Life*, Wired (Mar. 6 2023), https://www.wired.com/story/welfare-algorithms-discrimination/; Robert N. Charette, *Michigan's MiDAS Unemployment System: Algorithm Alchemy Created Lead, Not Gold*, IEEE Spectrum (Jan. 24 2018), https://spectrum.ieee.org/michigans-midas-unemployment-system-algorithm-alchemy-that-created-lead-not-gold.
[8] Edmund L. Andrews, *How Flawed Data Aggravates Inequality in Credit,* Stanford University Institute for Human-Centered Artificial Intelligence (Aug. 6 2021), https://hai.stanford.edu/news/how-flawed-data-aggravates-inequality-credit.
[9] Myra Cheng *et al*., *Social Norm Bias: Residual Harms of Fairness-Aware Algorithms,* Data Mining and Knowledge Discovery, 37, 1858-1884 (2023), https://link.springer.com/article/10.1007/s10618-022-00910-8.
[10] *Blueprint for an AI Bill of Rights*, *supra* note 2.
[11] *From Principles to Practice: A Technical Companion to the Blueprint for an AI Bill of Rights*, The White House (Oct. 5, 2022), https://www.whitehouse.gov/wp-content/uploads/2022/10/Blueprint-for-an-AI-Bill-of-Rights.pdf.

identification and mitigation, ongoing monitoring, and clear organizational oversight — best practices that are designed to protect against AI systems that fail in both predictable and unexpected ways. Similarly, the algorithmic discrimination principle has practices including: assessment of equity in design, ensuring representative and robust training data, guarding against the use of proxies in algorithmic decision making (for example, attributes correlated with race, gender, or other protected classes), and disparity assessment and mitigation. Although the principles and practices remain non-binding, they provide a robust framework to protect against the risks that AI system pose.

Your Administration has the opportunity to establish these protections as government-wide policy by incorporating the AI Bill of Rights into your upcoming executive order on AI, or subsequent executive orders. In particular, these principles should apply when a federal agency develops, deploys, purchases, funds, or regulates the use of automated systems that could meaningfully impact the public's rights.[12] For example, if an agency creates an algorithm for internal use, it would need to undergo an algorithmic impact assessment by an independent assessor. Similarly, an agency seeking to purchase a service involving an algorithm would need to require vendors to complete a pre-purchase independent algorithmic impact assessment. Agencies should also be required to adopt other best practices from the AI Bill of Rights, including equity and bias assessments, ongoing monitoring, data minimization practices, public consultation around the development and deployment of AI systems, and public disclosures about the implementation of these principles. Moreover, although the AI Bill of Rights did not apply in the law enforcement or national security contexts, the AI executive order should clarify that, wherever possible, these principles should apply across the federal government. All these requirements should also apply to any entity taking federal dollars, including state and local governments.

By turning the AI Bill of Rights from a non-binding statement of principles into federal policy, your Administration would send a clear message to both private actors and federal regulators: AI systems must be developed with guardrails. Doing so would also strengthen your Administration's efforts to advance racial equity and support underserved communities, building on important work from previous executive orders.[13] As a substantial purchaser, user, and regulator of AI tools, as well as a significant funder of state-level programs, the federal government's commitment to the AI Bill of Rights would show that fundamental rights will not take a back seat in the AI era. Finally, implementing these principles will not only protect communities harmed by these technologies, it will also help inform ongoing policy conversations in Congress and show clear leadership on the global stage.
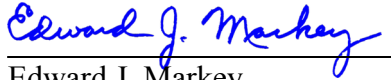
Thank you for your attention to this essential issue. We look forward to working collaboratively to advance the responsible, ethical, and safe development and deployment of AI.

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[12] Suresh Venkatasubramanian, *The White House Already Knows How to Make AI Safer*, Wired (Jul. 25, 2023), https://www.wired.com/story/the-white-house-already-knows-how-to-make-ai-safer/.

[13] Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 86 Fed. Reg. 7009 (Jan. 20, 2021), https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government; Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 88 Fed. Reg. 10825 (Feb. 16 2023), https://www.federalregister.gov/documents/2023/02/22/2023-03779/further-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal.

Sincerely,

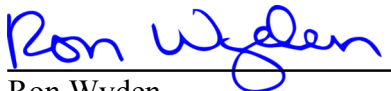Edward J. Markey
United States Senator

Pramila Jayapal
Member of Congress

Chris Van Hollen
United States Senator

Jamaal Bowman, Ed.D.
Member of Congress

Ron Wyden
United States Senator
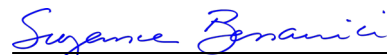
Lori Trahan
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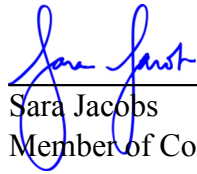
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