Exhibit A



KNIGHT
FIRST AMENDMENT
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February 15, 2022

via email

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Gregory Koch
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Re: Freedom of Information Act Request
Expedited Processing Requested

To whom it may concern,

The Knight First Amendment Institute at Columbia University ("Knight Institute" or "Institute")[1] submits this request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for a copy of the report referenced in Section 3 and for other records relating to the review referenced in Section 3(d) of President Biden's Proclamation on Ending Discriminatory Bans on Entry to The United States, Proclamation No. 10141, 86 Fed. Reg. 7,005 (Jan. 20, 2021) ("Biden Proclamation").

I. Background

This is a request for records relating to the Biden administration's review of the use of social media identifiers by the U.S. Departments of State ("State Department") and Homeland Security ("DHS"), among other aspects of the visa vetting process.

Immediately after taking office, President Biden revoked former President Trump's executive orders and presidential proclamations restricting the entry of individuals from certain Muslim-majority and African countries. Biden Proclamation § 1. The revoked orders and proclamations not only imposed transparently discriminatory travel bans, but also directed the Secretary of State and other Cabinet members to implement procedures for the "enhanced" vetting of applications for visas and other immigration benefits. Executive Order 13,780, 82 Fed. Reg. 13,209, 13,215 (Mar. 9, 2017) (signed Mar. 6, 2017); *see also* Memorandum for the Secretary of State, the Attorney General, and the Secretary of Homeland Security, 82 Fed. Reg. 16,279, 16,279 (Apr. 3, 2017) (signed Mar. 6, 2017). Pursuant to former President Trump's "enhanced" vetting directive, the State Department adopted new rules requiring nearly all visa applicants to register with the government all social media identifiers they have used on at least twenty specified platforms over the preceding five years (the "Registration Requirement"). *See* 60-Day Notice of Proposed Information Collection: Application for Immigrant Visa and Alien Registration, 83 Fed. Reg. 13,806 (Mar. 30, 2018); 60-Day Notice of Proposed Information Collection: Application for Nonimmigrant Visa, 83 Fed. Reg. 13,807 (Mar. 30, 2018). Related policies provided that the State Department and DHS could retain the collected

[1] The Knight First Amendment Institute is a New York not-for-profit corporation based at Columbia University that works to preserve and expand the freedoms of speech and the press through strategic litigation, research, and public education.

information indefinitely, share it broadly among federal agencies, and disclose it, in some circumstances, to foreign governments. *See, e.g.*, U.S. Dep't of State, Privacy Impact Assessment for Consular Consolidated Database 1–2, 12–13 (Oct. 2018); U.S. Dep't of Homeland Security, DHS/CBP/PIA-006(e), Privacy Impact Assessment Update for the Automated Targeting System 1 (Jan. 13, 2017); U.S. Dep't of Homeland Security, Privacy Act of 1974; System of Records, 82 Fed. Reg. 43,556, 43,557–58, 43,562 (Sept. 18, 2017).

In the same proclamation revoking former President Trump's travel bans, President Biden directed the Secretaries of State and Homeland Security, in consultation with the Director of National Intelligence, to conduct a review of current visa vetting procedures and to complete a report of that review by May 20, 2021. *See* Biden Proclamation § 3. In particular, he ordered a "review of the current use of social media identifiers in the screening and vetting process, including an assessment of whether this use has meaningfully improved screening and vetting, and recommendations in light of this assessment." Biden Proclamation § 3(d).

Given President Biden's May 20, 2021 deadline for the report detailing the review, *id.*, the Knight Institute filed a FOIA request on June 3, 2021, seeking the report's release. One week later, the Office of the Director of National Intelligence responded to that request, informing the Knight Institute that the report in question had not yet been completed, and that the Institute was "welcome to write back to request it at a later date." Letter from Sally A. Nicholson, chief, Information Review & Release Group, Information Management Office, to Caroline DeCell, Staff Attorney, Knight First Amendment Institute at Columbia Univ. (June 10, 2021) (on file with requester).

In connection with a lawsuit challenging the Registration Requirement and related policies, on October 18, 2021, the government informed the Court that the review was still ongoing, and that it would "notify the Court when the policy review is complete." Joint Status Rep., Doc Society v. Blinken, No. 19 Civ. 3632 (D.D.C. Oct. 18, 2021), ECF No. 54. On February 11, 2022, the government notified the Court that, after "several months reviewing certain policies related to the collection and use of social media identifiers in screening and vetting visa applicants," the Biden administration had decided to keep the Registration Requirement in place. *See* Defendants' Notice Regarding Policy

Review and Response to Plaintiffs' Notice of Supplemental Authority at 1, Doc Society v. Blinken, No. 19 Civ. 3632 (D.D.C. Feb. 11, 2022), ECF No. 58 ("Defendants do not anticipate any imminent changes to the Department of State policy at issue in this litigation.").

II. Records requested

The Knight Institute requests the following records:

1. A copy of the report ordered in Section 3 of the Biden Proclamation, as well as any cover letter, transmittal email, or document attached thereto; and

2. All records relating to the review ordered in Section 3(d) of the Biden Proclamation.

We ask that you disclose all segregable portions of otherwise exempt records. *See* 5 U.S.C. § 552(b). We also ask that you provide responsive electronic records in their native file format. *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, please provide the records electronically in a text-searchable, static-image format (e.g., PDF), in the best image quality in the agency's possession, and in separate, Bates-stamped files.

III. Application for expedited processing

The Knight Institute requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E). There is a "compelling need" for the document sought because the information it contains is "urgent[ly]" needed by an organization primarily engaged in disseminating information "to inform the public about actual or alleged Federal Government activity." 5 U.S.C. § 552(a)(6)(E)(v)(II).

A. The Knight Institute is primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.

The Knight Institute is "primarily engaged in disseminating information" within the meaning of FOIA. 5 U.S.C. § 552(a)(6)(E)(v)(II).

The Knight First Amendment Institute was established at Columbia University to defend and strengthen the freedoms of speech and the press in the digital age. Research and public

education are essential to the Institute's mission.[2] Obtaining information about government activity, analyzing that information, and publishing and disseminating it to the press and public are among the core activities the Institute performs. *See ACLU v. DOJ*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience" to be "primarily engaged in disseminating information" (quoting *Elec. Privacy Info. Ctr. v. DOD*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003))).[3]

For example, the Institute disseminates information about government activity—including information obtained through FOIA—through a variety of means, including its website,[4] Twitter account,[5] press releases,[6] blog posts,[7] op-eds,[8] and regular engagement with the press.[9] The Institute also publishes records

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[2] *See About the Knight Institute*, Knight First Amendment Inst., https://perma.cc/8UYT-RUUZ.

[3] *See id.* (explaining that a priority of the Knight Institute's work is "ensuring access to information necessary for self-government").

[4] *See* Knight First Amendment Inst., https://knightcolumbia.org.

[5] *See* Knight First Amendment Inst. (@knightcolumbia), Twitter, https://twitter.com/knightcolumbia (Knight Institute account with over 13,000 followers).

[6] *See, e.g.*, *Knight Institute Calls on DOJ's Executive Office for Immigration Review to Suspend Policy Silencing Immigration Judges*, (Jan. 6, 2020), https://perma.cc/GT69-A8SC (describing an agency policy obtained through FOIA).

[7] *See, e.g.*, Anna Diakun, *Redactions in CDC Communications Policies Leave Key Questions Unanswered*, Knight First Amendment Inst. (June 12, 2020), https://perma.cc/GQX3-WKCN; Stephanie Krent, *Recently Released OLC Opinions from 1974 Shed Light on Current Legal Debates*, Knight First Amendment Inst. (May 18, 2020), https://perma.cc/34N2-UAQ3.

[8] *See, e.g.*, Anna Diakun & Trevor Timm, *For the Biden Administration, Who Counts as News Media?*, Colum. Journalism Rev. (June 9, 2021), https://perma.cc/PR7T-75FQ; Jameel Jaffer & Ramya Krishnan, *We May Never See John Bolton's Book*, N.Y. Times (Jan. 30, 2020), https://perma.cc/HGY9-638T.

[9] *See, e.g.*, Mia Armstrong, *Prisons Are Increasingly Banning Physical Mail*, Slate (Aug. 9, 2021), https://perma.cc/5GXW-PF9Q (describing a FOIA lawsuit filed by the Knight Institute against the BOP); Tim Cushing, *Federal Court Says Office Of Legal Counsel Must Proactively Release Opinions Covering Interagency Disputes*, Tech Dirt (Sept. 18, 2020), https://perma.cc/X3GU-KTY6 (describing successful FOIA lawsuits filed by the Knight Institute against the OLC); Jessica Jerreat, *CDC Media Guidance Blacklists VOA Interview*

obtained through FOIA in "Reading Rooms" on the Institute's website, which allow the public to search, filter, and view the records.[10]

Through its research program, the Institute has published multiple influential essay series, including one focused on reimagining the First Amendment in the digital age, one addressing the technology giants' power to shape public discourse, and another on the relationship between big data and self-government.[11] In addition, the Institute has convened four research symposia—drawing practitioners, lawyers, academics, and journalists—to debate, discuss, and reflect on key issues in First Amendment doctrine and free speech theory. The first, "A First Amendment for All? Free Expression in an Age of Inequality," was held in March 2018;[12] the second, "The Tech Giants, Monopoly Power, and Public Discourse," was held in November 2019;[13] the third, "Data and Democracy," was held virtually in October 2020;[14] and the fourth, "Reimagine the Internet," was held virtually in May 2021.[15]

Requests, VOA News (June 14, 2020), https://perma.cc/2KVX-WGYR (reporting on CDC email obtained by the Knight Institute under FOIA); Ellen Nakashima, *U.S. Spy Agencies Sued for Records on Whether They Warned Khashoggi of Impending Threat of Harm*, Wash. Post (Nov. 20, 2018, 8:57 PM), https://perma.cc/C6CW-TSDA (describing FOIA lawsuits); Cora Currier, *Government Can Spy on Journalists in the U.S. Using Invasive Foreign Intelligence Process*, Intercept (Sept. 17, 2018), https://perma.cc/YQ7F-NZ5R (reporting on DOJ rules obtained by the Knight Institute under FOIA); Charlie Savage, *U.S. Government Went Through These People's Phones at the Border. Read Their Stories.*, N.Y. Times (Dec. 22, 2017), https://perma.cc/H7P2-RK2T (describing and publishing several hundred complaints obtained by the Knight Institute about warrantless searches of electronic devices at the border).

[10] *See, e.g.*, *The OLC's Opinions*, Knight First Amendment Inst., https://perma.cc/YFT2-EQ9D.

[11] *See Research*, Knight First Amendment Inst., https://perma.cc/TVD9-39RK.

[12] *A First Amendment for All? Free Expression in an Age of Inequality*, Knight First Amendment Inst. (Mar. 23, 2018, 8:30 AM); https://perma.cc/DM59-74KG.

[13] *Leading Legal Scholars, Economists, and Technologists to Headline Fall Symposium*, Knight First Amendment Inst. (Jan. 8, 2020), https://perma.cc./86DE-TPQS.

[14] *Data and Democracy*, Knight First Amendment Inst., https://perma.cc/2ARV-CUTY.

[15] *Reimagine the Internet*, Knight First Amendment Inst., https://perma.cc/7CNP-5F2S.

B. The records sought are urgently needed to inform the public about actual or alleged government activity.

The records sought are urgently needed to inform the public about actual or alleged government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II). Specifically, the requested records relate to the government's mass collection, indefinite retention, and broad dissemination of visa applicants' social media information. Moreover, they bear on ongoing litigation challenging those policies on constitutional and procedural grounds.

The Registration Requirement and related policies are the subject of a legal challenge filed on December 5, 2019. Doc Society v. Blinken, No. 19 Civ. 3632 (D.D.C. filed Dec. 5, 2019). In that case, Plaintiffs argue that the collection, retention, and dissemination of visa applicants' social media information chills their online speech and deters them from coming to the United States, thereby depriving U.S. residents of opportunities to hear from and engage with those individuals, in violation of the First Amendment. Plaintiffs also argue that the Registration Requirement exceeds the State Department's statutory authority and are arbitrary and capricious, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2).

President Biden ordered a "review of the current use of social media identifiers in the screening and vetting process"—including the Registration Requirement—the day he took office. Biden Proclamation § 3(d). More than a year later, however, the administration has affirmed its intent to retain the Registration Requirement and related policies providing for dragnet social media surveillance of millions of visa applicants each year. *See* Defendants' Notice Regarding Policy Review and Response to Plaintiffs' Notice of Supplemental Authority at 1, Doc Society v. Blinken, No. 19 Civ. 3632 (D.D.C. Feb. 11, 2022). Given the significant First Amendment concerns surrounding those policies, the public has a right to know how the State Department and DHS are using social media identifiers in the visa vetting process and whether this use has "meaningfully improved" that process. Biden Proclamation § 3(d). The requested records are urgently needed to understand the government's justification, if any exists, for the continued collection and use of that information, notwithstanding President Biden's revocation of the executive order upon which they are premised.

For these reasons, the Knight Institute is entitled to expedited processing.

IV. Application for waiver or limitation of fees

The Knight Institute requests a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested record is in the public interest and that disclosure is "likely to contribute significantly to the public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii).

For the reasons explained above, disclosure of the record would be in the public interest. Moreover, disclosure would not further the Knight Institute's commercial interest. The Institute will make any information disclosed available to the public at no cost. Thus, a fee waiver would fulfill Congress's legislative intent in amending FOIA to ensure "that it be liberally construed in favor of waivers for noncommercial requesters." *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003).

The Knight Institute also requests a waiver of search and review fees on the grounds that it qualifies as an "educational . . . institution" whose purposes include "scholarly . . . research" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). The Institute has a substantial educational mission. Situated within a prominent academic research university, the Institute performs scholarly research on the application of the First Amendment in the digital era. The Institute's research program brings together academics and practitioners of different disciplines to study contemporary First Amendment issues and offer informed, non-partisan commentary and solutions. It publishes that commentary in many forms, including in scholarly publications and in short-form essays.

The Knight Institute also requests a waiver of search and review fees on the grounds that it is a "representative[] of the news media" within the meaning of FOIA and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

The Institute meets the statutory definition of a "representative of the news media" because it is an "entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C.

§ 552(a)(4)(A)(ii); *see also Nat'l Sec. Archive v. DOD*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information, exercises editorial discretion in selecting and organizing documents, "devises indices and finding aids," and "distributes the resulting work to the public" is a "representative of the news media" for purposes of the FOIA); *accord Serv. Women's Action Network v. DOD*, 888 F. Supp. 2d 282 (D. Conn. 2012); *ACLU of Wash. V. DOJ*, No. C09-0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011); *ACLU*, 321 F. Supp. 2d at 30 n.5. Courts have found other non-profit organizations, whose mission of research and public education is similar to that of the Knight Institute, to be "representatives of the news media." *See, e.g., Cause of Action v. IRS*, No. 13-0920, 2015 WL 5120863 (D.C. Cir. Aug. 28, 2015); *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 10–15 (finding non-profit group that disseminated an electronic newsletter and published books was a "representative of the news media" for purposes of the FOIA); *Nat'l Sec. Archive*, 880 F.2d at 1387; *Judicial Watch, Inc. v. DOJ*, 133 F. Supp. 2d 52, 53–54 (D.D.C. 2000) (finding Judicial Watch, self-described as a "public interest law firm," a news media requester).

For these reasons, the Knight Institute is entitled to a fee waiver.

* * *

Thank you for your attention to our request. We would be happy to discuss its terms with you over the phone or via email to clarify any aspect of it.

/s/ *Carrie DeCell*

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