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The Honorable Merrick Garland
Attorney General
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

The Honorable Alejandro Mayorkas
Secretary
Department of Homeland Security
2707 Martin Luther King Jr. Avenue, S.E.
Washington, D.C. 20528

Dear Attorney General Garland and Secretary Mayorkas:

We are writing in reference to the recent announcement that the Departments of Justice (DOJ) and Homeland Security (DHS) will be partnering with campus law enforcement to track hate-related threats as part of a new initiative to fight antisemitism on college campuses. The announcement comes amid an alarming uptick in antisemitic and Islamophobic attacks in the United States since the start of the Israel–Gaza war. It is of course entirely appropriate for the administration to dedicate resources to addressing violence and threats of violence on college campuses. Because surveillance and investigative authorities have so often been abused to target racial, religious, and political minorities in the past, it is also vital that the new initiative be subject to clear limits and strong oversight. In the absence of those limits and oversight, there is a risk that the new initiative will result in the surveillance and investigation of students' constitutionally protected speech and protest about the war.

Thus far, the administration has shared only very limited information about the new initiative. It appears that DOJ and DHS will work in collaboration with campus police to identify and respond to antisemitic threats on college campuses. But it is unclear whose speech will be monitored and how, and what, if any, guardrails on this surveillance will be put into place. A report by one news outlet that was briefed on

the initiative states only that "[s]ome of what . . . will be assess[ed] includes specific and credible threats that are flagged online," and that "[d]ozens of cybersecurity and protective security experts at DHS have been detailed to engage with schools as they navigate incredibly tense environments."[1]

The administration is right to be concerned about the safety of students. In recent weeks, there has been a string of antisemitic and Islamophobic incidents on college campuses—from the threats made to Cornell's Jewish students, to the hit-and-run of an Arab Muslim student at Stanford, to the assault of an Israeli student on Columbia University's campus, to the shooting of three college students of Palestinian descent near the University of Vermont. Federal law enforcement has a role in investigating these and similar incidents.

Federal agencies must take care, however, not to expand their mandate in a way that trenches on students' First Amendment rights. The current climate poses a particular risk of mission creep. In recent weeks, government officials have repeatedly conflated legitimate protest of the war with extremism and terrorist activity. The White House Press Secretary Karine Jean-Pierre herself fell into this trap when announcing the new initiative, stating that the purpose of the initiative was "to counter — to counter terrorism — antisemitism."[2] While the reference to terrorism here may have been a slip, when later asked whether those protesting against Israel are "extremists," Jean-Pierre conspicuously did not resist this false equation, and indeed appeared to accept it—pivoting to talk about white supremacists who marched in Charlottesville, Virginia in 2017, and stating that President Biden had also condemned those neo-Nazis.[3] Members of Congress have similarly painted with a broad brush, suggesting that the students who organized protests and vigils in opposition to Israel's actions and policies necessarily support Hamas.[4] Indeed, some have even called on DOJ to investigate pro-Palestinian student groups for material support of terrorism.[5]

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[1] Monica Alba & Peter Alexander, *Biden Administration Unveils New Actions to Combat Antisemitism on College Campuses*, NBC News (Oct. 30, 2023), https://perma.cc/Q2EN-8RYM.

[2] Press Briefing by Press Secretary Karine Jean-Pierre and NSC Coordinator for Strategic Communications John Kirby (Oct. 30, 2023), https://perma.cc/7EWT-8H9A.

[3] *Id.*

[4] *See, e.g.*, S. Res. 418, 118th Cong. (2023) (enacted); H. Res. 798, 118th Cong. (2023).

[5] Letter from Sen. Josh Hawley to Merrick Garland, Att'y Gen. of the United States (Oct. 16, 2023), https://perma.cc/8GS6-JUVL; Letter from Sen. Marco

Against this background, we are concerned about the possibility that the administration's new initiative will usher in the same kinds of surveillance abuses that occurred in the years after 9/11.[6] The rush to brand legitimate student protest as extremist has eerie resonances with the rhetoric of that era, including with former Attorney General John Ashcroft's infamous charge that those who criticized restrictions on civil liberties were "aid[ing] the terrorists." The fear that reigned in the wake of the 9/11 attacks was exploited to justify far-reaching surveillance of Americans, and especially of Muslim and Arab communities. The Federal Bureau of Investigation engaged in extensive "mapping" of Muslim communities based not on any suspicion of wrongdoing but on unfair stereotypes about which groups were most likely to support terrorism.[7] It kept tabs on Muslims' lawful speech by enlisting confidential informants and infiltrating mosques.[8] It also monitored students affiliated with Muslim student associations, echoing an effort by the New York Police Department to surveil Muslim students at schools in New York and across the northeast.[9] These law enforcement activities had and continue to have a profound chilling effect on students' exercise of their rights to free speech, association, and assembly.[10] New efforts to covertly track students' protected speech and protest activities will only deepen the atmosphere of alienation and distrust that already exists on many college campuses across the United States.

Rubio et al. to Alejandro Mayorkas, Sec'y of Homeland Sec. (Oct. 19, 2023), https://perma.cc/5MYK-METZ.

[6] Spencer Ackerman, *The ADL Is Defaming Palestinian Students as Terrorist Supporters*, The Nation (Oct. 31, 2023), https://perma.cc/3V5N-V9V7.

[7] Am. C.L. Union, *ACLU Eye on the FBI: The FBI is Engaged in Unconstitutional Racial Profiling and Racial "Mapping"* (Oct. 20, 2011), https://perma.cc/JJ2M-P36A; Spencer Ackerman, *FBI Crime Maps Now "Pinpoint" Average Muslims*, WIRED (Oct. 24, 2011), https://perma.cc/92GL-VSFV.

[8] Am. C.L. Union, *ACLU Eye on the FBI: Mosque Outreach for Intelligence Gathering* (Mar. 27, 2012), https://perma.cc/WAW7-PKQK.

[9] Sabrina Alimahomed-Wilson, *When the FBI Knocks: Racialized State Surveillance of Muslims*, 45 Critical Socio. 871 (2019), https://perma.cc/ALL8-MVCQ; Chris Hawley, *NYPD Monitored Muslim Students All Over The Northeast*, Associated Press (Feb. 18, 2012), https://perma.cc/3THT-9NK6; *see also* Cora Currier, *The FBI Wanted To Target Yemenis Through Student Groups and Mosques*, The Intercept (Sept. 29, 2016), https://perma.cc/D5W4-ZD25.

[10] Creating L. Enf't Accountability & Resp. Project et al., *Mapping Muslims: NYPD Spying and its Impact on American Muslims* (2013), https://perma.cc/7X9H-CXZ5; Cora Currier, *Muslim Students Speak Out Against FBI Informant Plan Exposed by The Intercept*, The Intercept (Oct. 17, 2016), https://perma.cc/BL4W-DT3C.

In light of these serious concerns, we respectfully ask that you address the following questions:

- In what circumstances, and in what ways, will DOJ and DHS be involved in monitoring and investigating students' on- and off-campus activities, including their activities on social media? On which authorities will DOJ and DHS rely?
- Are DOJ and DHS tasked under the initiative with tracking discrete threats or with continuous and systematic surveillance of student activities? What standards or criteria will apply to the agencies' investigative actions?
- What safeguards are in place to ensure that students are not monitored or investigated on the basis of their First Amendment-protected speech and protest activities? What safeguards are in place to ensure that even legitimate investigations and surveillance will not chill protected speech and association?
- To what extent will the surveillance and investigative activities authorized by the initiative be contingent on the consent of the universities and schools whose students will be subject to those activities?
- In what circumstances will information collected pursuant to these monitoring and investigative efforts be retained in government databases, shared with agencies beyond DOJ and DHS, or disseminated to local, state, or foreign governments? Is the retention or dissemination of this information subject to any limits? If so, what limits?
- Were any federal agencies' civil rights, civil liberties, or privacy offices involved in the conception of the initiative, or consulted on the potential impact of the initiative on activity protected by the First Amendment? What role did those offices play in the development and approval of the initiative?
- Which offices or officials within DOJ and DHS have been tasked with oversight of this initiative?
- Are DOJ and DHS partnering with, or sourcing information and leads from, non-governmental organizations to monitor and flag potential hate-related threats under the initiative? If so, which organizations?
- Have DOJ and DHS communicated with social media companies or other communications platforms in connection with their monitoring of hate-related threats under the initiative? If so, which platforms, and in what circumstances?

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Thank you for your attention to this important matter, and thank you in advance for your response to our questions.

/s/ Ramya Krishnan
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Xiangnong Wang
Jameel Jaffer