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Cc:

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Special Rapporteur on the situation of human rights defenders

Mr. Mutuma Ruteere
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Mr. Ben Emmerson
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Ms. Rita Izsák-Ndiaye
Special Rapporteur on minority issues

Mr. François Crépeau
Special Rapporteur on the human rights of migrants

Mr. Ahmed Shaheed
Special Rapporteur on freedom of religion or belief

Mr. Joseph Cannataci
Special Rapporteur on the right to privacy

Ms. Karima Bennoune
Special Rapporteur in the field of cultural rights

Mr. Michael Addo
Mr. Surya Deva
Mr. Dante Pesce
Ms. Anita Ramasastry
Mr. Pavel Sulyandziga
Working Group on the issue of human rights and transnational corporations and other business enterprises

Mr. Sètondji Roland Jean-Baptiste Adjovi, *Chair-Rapporteur*
Mr. José Guevara, *Vice-Chair on individual complaints*
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Working Group on the issue of discrimination against women in law and practice

Snow White Smelser
Programme Officer, Border Management
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Dear Commissioner Zeid Ra'ad Al Hussein, Commissioner Filippo Grandi, Director General
Amb. William Lacy Swing, and UN Experts,

We write to urge you to investigate reports that the United States is demanding visitors provide access to their electronic devices as well as passcodes to those devices and online accounts. These practices persist in violation of the United States human rights treaty obligations and your action is needed to hold the government accountable for the protection of human rights at U.S. borders, which are not zones of exclusion or exception.

The digital devices most people carry in their pockets or bags grant access to our social media accounts and contain a dizzying array of personal information. Today, these devices multi-task as our primary means of voice and text communication, our cameras, fitness trackers, sleep monitors, banking portals, home shopping networks, and the source of the answers for any questions that may come up in casual conversation.

Despite, or possibly because of this, recent reports from media and civil society organizations detail incidents of U.S. border agents demanding access to devices and social media accounts, harassing, or even denying entrance to individuals based, presumably, on the content found on those devices. [1][2] The Council on American-Islamic Relations (CAIR) Florida filed 10 complaints with the U.S. Customs & Border Protection Agency (CBP), the Department of Homeland Security (DHS), and the Department of Justice (DOJ), "reporting the systematic targeting of American-Muslim citizens for enhanced screening by CBP," including through "increased scrutiny of American-Muslim's social media accounts and contents of their mobile phones along with invasive questions regarding their religious beliefs and political opinions about American Citizens." [3] Authorities also have the capacity to install malware or other remote access software that would allow the continual monitoring of personal content. They should provide assurances that they are not doing so without explicit and individualized judicial authorization and close oversight.

Rather than an anomaly, these reports exemplify a trend toward U.S. border enforcement without regard for human rights. In 2016, U.S. Customs and Border Protection (CBP) within the Department of Homeland Security added a field for "social media identifiers" to certain immigration documents. The field was presumptively voluntary, but there was no indication that it would be marked as such. Thousands wrote to CBP to explain that the broad collection of travelers' so-called public information, including social media posts, interferes with the human right to privacy and chills the freedoms of opinion, expression, and association. The collection went into effect despite the considerable opposition. [4]

The actions at the border and beyond under the current administration have become only more heavy handed. The Trump Administration has, in three weeks, targeted persons based on their national origin, religion, and ethnicity. For example, an Executive Order issued on January 27 and criticized by several Special Rapporteurs infamously prohibited the entry by residents of seven Muslim-majority countries and allowed for the prioritization of refugees on the basis of religion. [5] Numerous reports indicated CBP agents were demanding access to travelers' social media and electronic devices in enforcing the Executive Order. [6]

Now the threat is that these more invasive practices will be institutionalized and expanded. On Tuesday February 7, 2017, the Secretary for the U.S. Department of Homeland Security, General John Kelly, said of people seeking visas to travel to the US, "[w]e want to get on their social media, with passwords: What do you do, what do you say? If they don't want to cooperate then you don't come in." [7]

It is a violation of human rights to obtain at the border or elsewhere, by force or coercion, suspicionless access to a person's digital life, including the fundamental rights to privacy, the freedom of opinion, expression, religion, belief, movement, and association, and the right to freedom of the press. Moreover, the selective enforcement of data collection requirements to target journalists, Muslims, and migrants at the border is particularly offensive, and violates the principle of non-discrimination and right to equal protection found in many international instruments, including the 1951 Refugee Convention. [8]

States have the obligation to respect, promote and fulfill human rights wherever they exercise jurisdiction or effective control, including where they exercise authority or control extraterritorially. The UN has stated that human rights apply online as they do offline, which

holds true at borders as elsewhere. The U.S. has signed and ratified the International Covenant on Civil and Political Rights, which protects free flow of “information and ideas of all kinds, regardless of frontiers.” As the OHCHR Recommended Principles and Guidelines on Human Rights at International Borders outline, border policies should be guided by the primacy of human rights, non-discrimination, and assistance and protection from harm. Specifically, the right to privacy must be protected in border screening processes, and personal property, including mobile phones, “should only be confiscated by border authorities when duly authorized by law and in accordance with international human rights standards in clearly defined, limited circumstances.” [9] The incidents outlined in this letter indicate consistent and flagrant disregard for international norms.

Border controls unleashed without adherence to the rule of law restrict freedom of movement and further imperil marginalized and vulnerable communities seeking safety, family reunification, and economic opportunity. Exposing individuals’ electronic devices and online accounts -- containing their contact lists, sensitive communications, financial and health data, location histories, photos, prayers, and more -- threatens not only individuals and families but entire communities, and deters travelers and migrants from enjoying the benefits of science and technology.

We ask that you raise the issues communicated in this letter with the U.S. government, in particular that it is failing to conform with its commitments to protect human rights by demanding access to electronic devices and social media accounts as a prerequisite to entry into the country. We also request that you conduct an inquiry to more comprehensively investigate these alarming incidents and policies. Finally we urge you to request a country visit to the U.S. to observe and monitor the procedures at the border controls to serve as the basis for the inquiry. These outrageous and invasive controls must not become the norm.

Yours sincerely,

Access Now

Advocacy for Principled Action in Government

American Civil Liberties Union

The American Society of Journalists and Authors

Asian Americans Advancing Justice | AAJC

Asian Americans Advancing Justice - Asian Law Caucus

Asian Americans Advancing Justice - LA

Association for Progressive Communications

Bill of Rights Defense Committee/ Defending Dissent Foundation

Brennan Center for Justice at NYU School of Law

CAIR-MN

Center for Constitutional Rights

The Constitution Project

Council on American-Islamic Relations (CAIR)

Cyber Privacy Project

Free Speech Coalition

Muslim Justice League
National Hispanic Media Coalition
National Coalition to Protect Civil Freedoms
National Immigration Law Center
National Immigration Project of the NLG
National Iranian American Council
National Network for Arab American Communities
New America's Open Technology Institute [added 17 February]
PEN America
Restore The Fourth
T'ruah: The Rabbinic Call for Human Rights

Endnotes

- [1] Canadian woman turned away from U.S. border after questions about religion, Trump (CBC News, 8 February 2017)
<<http://www.cbc.ca/news/canada/montreal/canadian-woman-turned-away-from-u-s-border-after-questions-about-religion-trump-1.3972019>> accessed 15 February 2017.
- [2] Trump's executive order spurs Facebook and Twitter checks at the border (The Verge, 30 January 2017)
<<http://www.theverge.com/2017/1/30/14438280/trump-border-agents-search-social-media-instagram>> accessed 15 February 2017.
- [3] CAIR-FL Files 10 complaints with CBP after the agency targeted and questioned American-Muslims about religious and political views (CAIR-FL, 1 January 2017)
<<https://www.cairflorida.org/newsroom/press-releases/720-cair-fl-files-10-complaints-with-cbp-after-the-agency-targeted-and-questioned-american-muslims-about-religious-and-political-views.html>> accessed 15 February 2017.
- [4] Thousands object to U.S. plan to collect social media info at border (Access Now, 22 August 2016)
<<https://www.accessnow.org/thousands-object-u-s-government-plan-collect-social-media-information-border/>> accessed 15 February 2017.
- [5] US travel ban: "New policy breaches washington's human rights obligations" – UN experts (OHCHR, 1 February 2017)
<http://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21136&LangID=E>
accessed 15 February 2017.
- [6] See e.g. Trump's executive order spurs Facebook and Twitter checks at the border (The Verge, 30 January 2017)
<<http://www.theverge.com/2017/1/30/14438280/trump-border-agents-search-social-media-instagram>> accessed 15 February 2017.
- [7] U.S. visitors may have to hand over social media passwords: DHS (NBC News, 8 February 2017)

<<http://www.nbcnews.com/news/us-news/us-visitors-may-have-hand-over-social-media-passwords-kelly-n718216>> accessed 15 February 2017.

[8] Convention Relating to the Status of Refugees

<<http://www.unhcr.org/en-us/1951-refugee-convention.html>> accessed 15 February 2017.

[9] Recommended Principles and Guidelines on Human Rights at International Borders

<http://www.ohchr.org/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf> accessed 15 February 2017.