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Chair,  
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Subcommittee on Counterterrorism and Intelligence  
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Representative Jackie Speier  
Ranking Member,  
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Subcommittee on Counterterrorism and Intelligence  
311 Cannon House Office Building  
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Dear Chairman Meehan and Ranking Member Speier,

Thank you for holding the hearing on "DHS Monitoring of Social Networking and Media: Enhancing Intelligence Gathering and Ensuring Privacy" on February 16, 2012 before the House Subcommittee on Counterterrorism and Intelligence. We are grateful for your continued interest in this issue.

We are writing this letter to follow up on several issues that arose during that hearing and to inform you about new documents that we received on February 16.

**I. EPIC Has Obtained New Documents That Show that, Despite DHS Testimony to the Contrary, DHS Continues to Engage in Monitoring for Dissent**

On February 16, 2012, EPIC received a previously undisclosed 39-page document from DHS, providing further details on the DHS social network and media monitoring program.<sup>1</sup> This document bears the DHS crest and is titled "Department of Homeland Security National Operations Center Media Monitoring Capability Desktop Reference Binder."<sup>2</sup> This document is dated 2011.

This document contains a bullet-pointed list of "Incidents that Warrant an IOI [Item of Interest Report]." An IOI is described as "incidents of national significance, which are usually defined as catastrophic events that result in wide-scale damage or disruption to the nation's critical infrastructure, key assets, or the Nation's health." The list of Incidents that Warrant an IOI include terrorist incidents, major natural disasters, and transportation incidents. However, the list of "Incidents that Warrant an IOI" also

<sup>1</sup> Available at: <http://epic.org/foia/epic-v-dhs-media-monitoring/Analyst-Desktop-Binder-REDACTED.pdf>

<sup>2</sup> Department of Homeland Security National Operations Center Media Monitoring Capability Desktop Reference Binder at 1.

includes "Policy directives, debates, and implementations related to DHS." This is precisely the sort of monitoring of public reaction to agency activity that the DHS said that it was not pursuing when it testified before Congress.

At the February 16, 2012 hearing Representative Cravaack and DHS witness, Mr. Chavez had the following exchange:

Rep. Cravaack: Okay. The thing I'm really having problems with, I guess, is the government proposals, reactions to government proposals, and then feeding that information to different organizations within the government. You're using a public sector source that maybe used for private individual attainment of information for other reasons that would benefit the public. That's what I'm concerned with, in how would you go about preventing this from occurring.

Mr. Chavez: That's a specific purpose of the media monitoring I have never encountered. Again, the only kind of evaluation, if you will, of the department or other government agencies is just, as I said, there's service that's being provided that's, again, there's a hold up at the airports, as Ms. Callahan said also, are those types of things. But to go out and solicit that information or the collected, I have not seen that in my tenure at DHS.

...

Rep. Cravaack: Okay. Could you give me an example of what kind of information you have been gleaning thus far regarding to government proposals?

Mr. Chavez: I am not aware of any information we have gathered on government proposals.<sup>3</sup>

In an exchange with Representative Speier, Ms. Callahan similarly indicated that DHS is not engaged in monitoring public reaction or debate surrounding DHS proposals.

Rep. Speier: I'm suggesting to you that is irrelevant, you do not need it and you should suspend that part of the contract. Now, this document also suggests that you were capturing public reaction to major government proposals. Now again, if this is in fact true, if this I part of the contract, I believe that should be suspended as well. This is not a political operation, it should not be a political operation and capturing public reactions to major government proposals is not something you should be doing.

Ms. Callahan: I completely agree with you, ma'am. I one hundred percent agree with you...<sup>4</sup>

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<sup>3</sup> Hearing on "DHS Monitoring of Social Networking and Media: Enhancing Intelligence Gathering and Ensuring Privacy," starting at 1:17:15, Feb. 16, 2012, available at <http://homeland.house.gov/hearing/subcommittee-hearing-dhs-monitoring-social-networking-and-media-enhancing-intelligence>

<sup>4</sup> Hearing on "DHS Monitoring of Social Networking and Media: Enhancing Intelligence Gathering and Ensuring Privacy," starting at 40:00, Feb. 16, 2012, available at

As indicated above the DHS witnesses told the Committee that the DHS is not monitoring for reactions to government proposals. However, the DHS Desktop Reference Binder indicates that the DHS is engaged in exactly this activity.

In her testimony, Ms. Callahan also attempted to distance the agency from the Standish, Michigan report regarding public reaction to the possible movement of Guantanamo detainees to a Standish prison. Ms. Callahan stated:

And furthermore, it is an example of an early August 2009 example of what could be possible. We, together with the National Operations Center, agree that that's well outside the scope. And in fact, if you look at the document, it is within a very early February 2010 trainee manual as an identification of a weekly report because it's a compilation of other elements. If you look at the previous pages, you can see that they identify like this is not acceptable, this is not appropriate, redact the person's identifiable information. That Standish Michigan report is one that only appears - actually the only place it exists in the Department is in my files because of the privacy compliance review we did before launching the initiative.<sup>5</sup>

It is accurate that, in the DHS-authored document titled "Social Networking/Media Capability Analyst Handbook" the agency presented examples of good summary reports and flawed summary reports. However, contrary to Ms. Callahan's testimony, the summary report titled "Residents Voice Opposition Over Possible Plan to Bring Guantanamo Detainees to Local Prison-Standish MI"<sup>6</sup> was held up by the agency not as a flawed report, but as an exemplar. As Ms. Callahan pointed out in her testimony, elsewhere in this same document other summary reports were identified as unacceptable for various reasons. But the Standish, MI report was not among the flawed reports. The DHS identified that report, along with two other reports, of the way that social network monitoring reports can "provid[e] enhanced granularity, captur[e] public reaction, and report[] aberrations detected by local populations."<sup>7</sup>

In Desktop Reference Binder, the agency describes its "Critical Information Requirements," which include identification of "reports that reflect adversely on DHS and response activities."<sup>8</sup> Later in the document, analysts are instructed: "Reports that pertain to DHS and sub agencies – especially those that have a negative spin on DHS/Component preparation, planning, and response activities should be reported to

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<http://homeland.house.gov/hearing/subcommittee-hearing-dhs-monitoring-social-networking-and-media-enhancing-intelligence>

<sup>5</sup> Hearing on "DHS Monitoring of Social Networking and Media: Enhancing Intelligence Gathering and Ensuring Privacy," starting at 40:50, Feb. 16, 2012, available at

<http://homeland.house.gov/hearing/subcommittee-hearing-dhs-monitoring-social-networking-and-media-enhancing-intelligence>.

<sup>6</sup> EPIC, DHS Social Media Monitoring Documents at 118.

<sup>7</sup> EPIC, DHS Social Media Monitoring Documents at 118, available at: <http://epic.org/foia/epic-v-dhs-media-monitoring/EPIC-FOIA-DHS-Media-Monitoring-12-2012.pdf>.

<sup>8</sup> Department of Homeland Security National Operations Center Media Monitoring Capability Desktop Reference Binder at 5.

management before being sent to the distribution list.”<sup>9</sup> The agency instructs analysts to monitor “Reports on DHS, Components, and other Federal Agencies: includes both positive and negative reports on FEMA, CIS, CBP, ICE, etc. as well as organizations outside of DHS.”<sup>10</sup> These details contradict the statement of DHS Witness Chavez.

In the February 16, 2012 hearing, Representative Thompson asked Mr. Chavez the following question:

The other concern I have, taking off from what the Chairman was talking about, is the notion of identifying political or journalistic activities that reflect adversely on the agency or the federal government, Mr. Chavez, is your testimony that you don't do this?<sup>11</sup>

Mr. Chavez replied:

Indeed we don't do that. What we do do, again, is if there are long lines at the airports, at screening centers, those types of things, those would come up to us. We would pass that on to the appropriate DHS component for action, and again for corroboration, is this really happening, what is happening, what do we need to do to fix that.<sup>12</sup>

Ms. Callahan also stated the agency will not monitor anything that is not “within the Homeland Security mission.” Specifically, in her testimony, Ms. Callahan said: “That’s the current threshold standard that we implemented since January 2010 of making sure that it’s a Homeland Security mission and that its an event or situation.”<sup>13</sup> However, the documents that EPIC has obtained indicate that the agency is still engaging in monitoring of “reports on DHS, Components, and *other Federal Agencies*.”<sup>14</sup> Emphasis added.

The DHS witnesses stated several times during the hearing that the DHS is not monitoring, reviewing or collecting First Amendment Protected speech.<sup>15</sup> However, the documents that EPIC has obtained indicate that the agency is, indeed, monitoring for reports - positive and negative - and specifically for reports that “reflect adversely.” This would certainly involve monitoring First Amendment protected activity.

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<sup>9</sup> Department of Homeland Security National Operations Center Media Monitoring Capability Desktop Reference Binder at 10.

<sup>10</sup> Department of Homeland Security National Operations Center Media Monitoring Capability Desktop Reference Binder at 13.

<sup>11</sup> Hearing on “DHS Monitoring of Social Networking and Media: Enhancing Intelligence Gathering and Ensuring Privacy,” starting at 1:10:00, Feb. 16, 2012, available at <http://homeland.house.gov/hearing/subcommittee-hearing-dhs-monitoring-social-networking-and-media-enhancing-intelligence>.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 1:00:50.

<sup>14</sup> Department of Homeland Security National Operations Center Media Monitoring Capability Desktop Reference Binder at 13.

<sup>15</sup> *Id.* at 51:10, 1:00:30.

The DHS's broad search terms would also implicate First Amendment protected activity. Though Ms. Callahan indicated several times that the search terms are narrow, stating "in the Privacy Impact Assessment, we have a list of the representative keywords. The Privacy Office reviews that list every six months and makes sure we stay within it. The list is disaster. It is, you know, flood, tornado and things like that."<sup>16</sup> However, Desktop Reference Binder includes a 2011 list of search terms, many of which are broad, vague, and ambiguous including: "exercise," "cops", "response," "recovery," "initiative," "police," "cloud," "wave," "pork," sick," "organization," "ice," "watch," and "relief."<sup>17</sup> The search terms are in no way limited to weather disasters or terrorism related threats as DHS indicated they are.<sup>18</sup> The terms that DHS has chosen to monitor sweep in vast amounts of First Amendment protected speech that is entirely unrelated to the Department of Homeland Security's mission to protect the public against terrorism and disasters.

The documents also instruct analysts to copy/paste social media postings into summary reports. Despite DHS' denial that it collects Personally Identifiable Information ("PII") this practice would allow social media posters to be easily reidentified.

While the DHS witnesses stated that PII has rarely been collected, as a factual matter, the contracts and statements of work authored by DHS allow for broader collection. For instance, PII of on-scene reporters who "use traditional and/or social media."<sup>19</sup>

## **II. DHS Has Still Failed to Show Any Legal Basis for this Program**

When asked directly by Representative Long during the hearing, DHS witness Mr. Chavez stated that Section 515 of the Homeland Security Act provides the legal authority for DHS to conduct this social network and media monitoring program.<sup>20</sup> Section 515 provides no such authority.<sup>21</sup>

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<sup>16</sup> Hearing on "DHS Monitoring of Social Networking and Media: Enhancing Intelligence Gathering and Ensuring Privacy," starting at 34:40, Feb. 16, 2012, available at <http://homeland.house.gov/hearing/subcommittee-hearing-dhs-monitoring-social-networking-and-media-enhancing-intelligence>

<sup>17</sup> Department of Homeland Security National Operations Center Media Monitoring Capability Desktop Reference Binder at 21, 23.

<sup>18</sup> See e.g. hearing on "DHS Monitoring of Social Networking and Media: Enhancing Intelligence Gathering and Ensuring Privacy," starting at 1:04:20, Feb. 16, 2012, available at <http://homeland.house.gov/hearing/subcommittee-hearing-dhs-monitoring-social-networking-and-media-enhancing-intelligence>

<sup>19</sup> Department of Homeland Security National Operations Center Media Monitoring Capability Desktop Reference Binder at 25.

<sup>20</sup> Hearing on "DHS Monitoring of Social Networking and Media: Enhancing Intelligence Gathering and Ensuring Privacy," starting at 54:10, Feb. 16, 2012, available at <http://homeland.house.gov/hearing/subcommittee-hearing-dhs-monitoring-social-networking-and-media-enhancing-intelligence>.

<sup>21</sup> 6 U.S.C.A. § 321d.

Section 515 states:

**(b) Establishment** The National Operations Center is the principal operations center for the Department and shall--

- (1) provide situational awareness and a common operating picture for the entire Federal Government, and for State, local, and tribal governments as appropriate, in the event of a natural disaster, act of terrorism, or other man-made disaster; and
- (2) ensure that critical terrorism and disaster-related information reaches government decision-makers.

Section 515 in no way authorizes the agency to monitor for dissent, for reports that “reflect adversely,” for “both positive and negative reports on FEMA, CIS, CBP, ICE, etc. as well as organizations outside of DHS,” or for “policy directives, debates, and implementations related to DHS.” The practice of monitoring criticism and public reaction to government policy proposals does not forward the goal of “provide[ing] situational awareness and a common operating picture...in the event of a natural disaster, act of terrorism, or other man-made disaster.” Nor does it help to “ensure that critical terrorism and disaster-related information reaches government decision makers.”

The DHS testimony,<sup>22</sup> as well as the documents obtained by EPIC,<sup>23</sup> indicate that the agency is monitoring constantly, under very broad search terms, and is not limiting that monitoring to events or activities related to natural disasters, acts of terrorism, or manmade disasters. The monitoring is designed to be over broad and sweeps in large amounts of First Amendment activity. The DHS has no legal authority to engage in this monitoring.<sup>24</sup>

### III. EPIC’s Recommendations

We reiterate our recommendations from our earlier statement. Specifically EPIC recommend that the Subcommittee:

- Require that the DHS immediately and permanently cease the practice of monitoring and collecting information on reports that “reflect adversely” on the agency or government.

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<sup>22</sup> See e.g. hearing on “DHS Monitoring of Social Networking and Media: Enhancing Intelligence Gathering and Ensuring Privacy,” starting at 1:04:10, Feb. 16, 2012, available at <http://homeland.house.gov/hearing/subcommittee-hearing-dhs-monitoring-social-networking-and-media-enhancing-intelligence>

<sup>23</sup> DHS Social Media Monitoring Documents at 38, 43, 50.

<sup>24</sup> As even Mr. Chavez indicated when pressed, this sort of monitoring is “not under our authority. It’s illegal to do that.” Hearing on “DHS Monitoring of Social Networking and Media: Enhancing Intelligence Gathering and Ensuring Privacy,” starting at 1:08:00, Feb. 16, 2012, available at <http://homeland.house.gov/hearing/subcommittee-hearing-dhs-monitoring-social-networking-and-media-enhancing-intelligence>.

- Require that the DHS suspend the remainder of its social network and media monitoring program until safeguards are put into place which will ensure oversight, including annual reporting requirements.
- Require that other agencies, including the Federal Bureau of Investigation, which have developed or are in the process of developing similar social network and media monitoring programs submit to Congressional oversight and commit to annual reporting.

In addition, we recommend that the Subcommittee:

- Require that the DHS eliminate overbroad search terms and annually submit its list of search terms to oversight by Congress, so that independent reviewers can evaluate the list for overbreadth.
- Require the agency to amend its contract with General Dynamics (and any other media monitoring companies it may employ) to eliminate all language instructing the company to monitor for First Amendment protected speech, including, but not limited to monitoring of reports that “reflect adversely;” collection of “both positive and negative reports on FEMA, CIS, CBP, ICE, etc. as well as organizations outside of DHS;” and monitoring to “capture public reaction to major government proposals.”

Thank you for your consideration of our views. We will provide additional information to the Committee as it becomes available.

Sincerely,

Ginger P. McCall  
Director, EPIC Open Government Project

Marc Rotenberg  
EPIC Executive Director

cc: Representative Bennie Thompson  
Representative Chip Cravaack  
Representative Billy Long