



Tell Data Brokers: Do not Help Build a Muslim Registry or Facilitate Mass Deportations

What is the Issue?

Both as a candidate and now as President, Donald Trump has championed discriminatory policies. Among the groups his policies have most frequently targeted are Muslims and immigrants.

Most starkly, President Trump's patently unlawful travel ban, enacted by Executive Order, barred entrance to the country to refugees and to all individuals from 7 Muslim-majority countries.¹ Though that ban has now been stayed by a Federal Court, portions of it may be [reinstated in other forms](#).

We do not know what the future holds, but the President's statements to date give cause for serious concern. President Trump has refused to rule out the possibility of a "Muslim registry,"² and has stated his intention to quickly deport between 2 and 3 million people. Changes in immigration policy [last week](#) may have started to make this intention real, instituting harsher policies on deportation and detention.

These policies could be a disaster for human rights, and data brokers³ and data analytics companies must not be complicit.

What do we know about “data brokers,” and why does it matter now?

Any hypothetical effort to profile or otherwise identify large numbers of people based on their religion, immigration status, national origin, or other characteristic could easily be achieved through the services of data brokers or data analytics companies.⁴

Data brokers and analytics companies collect, organize, and sell immense amounts of personal data. This can include things like credit card transactions, mobile phone geolocation data, employment histories, social security numbers, criminal records or social media information. These companies – many of which you have likely never heard of – know a tremendous amount about you. Cambridge Analytica, the big data company that worked with the Trump campaign,⁵ advertise that they collect up to 5,000 data points on over 220 million Americans.⁶

Another company offers pre-sorted lists of thousands of names, email and home addresses, for a few cents a name, organized into groups such as: “Muslim Households by State.”⁷

And it’s not just what the data literally says about you that can be revealing. Increasingly powerful tools can draw seemingly unconnected inferences about your personality or identity based on innocuous seeming “proxy data” such as your social media likes or movie preferences.⁸ Many companies do not sell personal data in its raw form *per se*, but rather offer services such as data analytics.

Data brokers are subject to minimal regulation in the USA and law enforcement agencies are making use of these services to complement their own surveillance and investigation tools.⁹

It is important to emphasize that there are uses of big data and analytics, including via data brokers, that do not violate human rights, but amassing such large amounts of personal data poses serious risks and that there are many potentially dangerous uses to which this information could be put. According to media reports, some data brokers, including Acxiom, Recorded Future, and CoreLogic, have said they would not assist in building a Muslim registry.¹⁰ Nearly 3000 tech professionals have also signed a pledge to – among other things - refuse to cooperate in building discriminatory databases.¹¹

But the data ecosystem is a large one, and if even a few companies were to agree to provide data or services that identified Muslims or immigrants, even if by proxy, and that data were misused, either by government or other private actors, the human rights consequences could be enormous.

Which Human Rights are at Stake?

We have no way of knowing what a “Muslim registry” would look like in practice. People

have speculated that this could refer to a reactivation of the discriminatory National Security Exit-Entry Registration System (NSEERS) program. One part of this program saw men from 24 Muslim-majority countries (and North Korea) summoned by the government for “Special Registration.” But a “registry” could also refer to something even more antithetical to human rights as well.

Any such registry profiling people based on religion – even if by proxy, such as by ostensibly targeting another individual identifier, such as national origin or behavioural data – would violate the right to non-discrimination.¹² If such a registry were compiled, the further abuses to which people listed on it might be subjected are impossible to know, but recent history provides reason to believe it could lead to unlawful surveillance¹³ or even discriminatory detentions.¹⁴

Trump’s immigration proposals, including to immediately deport two to three million people, would also have radically negative human rights impacts. While President Trump has not called for any sort of registry for immigrants, the task of identifying and locating such a large number of undocumented people could be facilitated through the use of the data held by data brokers, or through services such as data analytics or other means of identification by proxy.

Such mass deportations would be a human rights crisis, and indeed, last week’s changes to immigration policy raise numerous human rights concerns. The new memoranda¹⁵ introduce harsher policies on detention of migrants (which will lead to arbitrary detention)¹⁶ and deportations (which can split up families and violate people’s right to family life.)¹⁷ The changes also reintroduce programs that allow local or state law enforcement to enforce immigration rules, which can lead to discriminatory profiling and drive migrants away from using necessary services such as health, education or even police protection.¹⁸ The changes also expand the use of “expedited removal”, which could violate due process rights and potentially lead to violations of the principle of non-refoulement, sending people back to places where their lives or safety could be at risk.¹⁹

Human Rights Responsibilities of data brokers and data analytics companies

While we cannot predict the future actions of the Trump administration, given Trump’s statements about building a registry in the past, we must conclude that the risks to human rights are enormous. This raises questions of data ethics and especially of international human rights responsibilities. Data brokers and data analytics companies – like all businesses – have a responsibility to respect human rights, which means they must make sure they do not cause or contribute to human rights abuses.

The United Nations Guiding Principles on Business and Human Rights (UNGPR) make clear that businesses’ responsibility to respect human rights, “exists independently of States’ abilities and/or willingness to fulfill their own human rights obligations, and does not

diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.”²⁰

This responsibility applies to all business activities and relationships, including via subsidiary companies, whether with state or non-state actors. It requires that companies undertake human rights due diligence to identify, prevent, and mitigate adverse human rights impacts linked to their activities or relationships.²¹

In other words, companies must make sure that they do not help governments, or other private actors, violate fundamental human rights. This means that data brokers, data analytics companies or others in the industry were to provide data or services that could be used to construct a “Muslim registry” or carry out mass deportations, they would be in breach of their human rights responsibilities.

Demand that Data Brokers Pledge to Respect Human Rights!

Today, because of the risks that big data could be exploited to violate human rights of Muslims, migrants or others in the United States, the undersigned 16 organizations are sending letters to nearly 50 data brokers in the United States.

We are calling on them to disclose whether they have refused requests to share data with the government, what steps they take to make sure their activities do not lead to human rights abuses, and to take the following pledge:

- We will not allow our data, or services, to be purchased or otherwise used in ways that could lead to violations of the human rights of Muslims or immigrants in the United States. If we cannot guarantee that our data, or services, will not ultimately be used for such purposes, we will refuse to provide them.

Signed:

1. Center for Democracy & Technology
2. Center for Media Justice
3. Alvaro M. Bedoya, Executive Director, Center on Privacy & Technology at Georgetown Law
4. Color of Change
5. Media Mobilizing Project
6. DRUM (Desis Rising Up & Moving)
7. Brian Hofer, Member, Oakland Privacy; Chair, City of Oakland Privacy Advisory

Commission

8. Electronic Frontier Foundation
9. Amnesty International
10. 18 Million Rising
11. CREDO Action
12. The Greenlining Institute
13. Columbia Law School Human Rights Clinic
14. Open Technology Institute at New America
15. Black Alliance for Just Immigration (BAJI)
16. World Privacy Forum

¹ UN Office of the High Commissioner for Human Rights, “US Travel Ban: ‘New policy breaches Washington’s human rights obligations’ – UN experts,” 1 February 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21136&LangID=E#sthash.Olo8ukb4.dpu>; Jamil Dakwar, “All International Laws Trump’s Muslim Ban is Breaking,” Al Jazeera, 2 February 2017, <http://www.aljazeera.com/indepth/opinion/2017/02/international-laws-trump-muslim-ban-breaking-170202135132664.html>

² The Guardian, “Trump and a Muslim registry: does he want one – and is it even possible?,” 27 November 2016, <https://www.theguardian.com/us-news/2016/nov/27/donald-trump-muslim-registry-policy-possibility>

³ We use the term “data broker” as an umbrella term to denote companies that collect consumers’ personal information and analyse, assess, resell or share that information with others, although many companies that provide these services describe themselves in other terms, including but not limited to “data analytics” or risk or credit assessment or scoring.

⁴ Aaron Sankin, “Trump could build registry of 1.4 million Muslims for under \$20,000,” January 4, 2017, <https://www.revealnews.org/article/trump-could-build-registry-of-1-4-million-muslims-for-under-20000/>

⁵ Hannes Grassegger and Mikael Krogerus, Motherboard, “The Data that Turned the World Upside Down,” https://motherboard.vice.com/en_us/article/how-our-likes-helped-trump-win

⁶ <https://cambridgeanalytica.org/about>

⁷ <https://www.exactdata.com/mailling-lists/muslim-households-by-state-mailling-list.html>

⁸ Paul Ohm and Scott Peppet, “What if Everything Reveals Everything?” in *Big Data is not a Monolith*, Sugimoto, ed. (2016).

⁹ European Parliament, The US Legal System on Data Protection in the Field of Law Enforcement. Safeguards, Rights and Remedies for EU Citizens, Study for the LIBE Committee,

[http://www.europarl.europa.eu/RegData/etudes/STUD/2015/519215/IPOL_STU\(2015\)519215_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/519215/IPOL_STU(2015)519215_EN.pdf); Meghan Koushik, Brennan Center for Justice, “Data Brokers Know a Lot About You, But What Do You Know About Them?” 31 October 2014, <https://www.brennancenter.org/blog/data-brokers-know-lot-about-you-what-do-you-know-about-them>; Bruce Schneier, “Data and Goliath: The Hidden battles to Collect Your Data and Control Your World,” 2015, p. 62; Institute for Human Rights and Business, “Data Brokers and Human Rights: Big Data, Big

Business,” November 2016,

https://www.ihrb.org/uploads/reports/IHRB%2C_Data_Brokers_and_Human_Rights%2C_Nov_2016.pdf.

¹⁰ Selena Larson, “Will data brokers help build a Muslim registry?” December 20, 2016,

<http://money.cnn.com/2016/12/20/technology/data-brokers-muslim-registry/>

¹¹ <http://neveragain.tech/>

¹² NSEERS was criticized by the United Nations Committee on the Elimination of Racial Discrimination in 2008, UNCERD, Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America, CERD/C/USA/CO/6, May 8, 2008, para. 14.

¹³ <https://www.aclu.org/other/factsheet-nypd-muslim-surveillance-program>

¹⁴ <https://ccrjustice.org/ziglar-v-abbasi>

¹⁵ <https://assets.documentcloud.org/documents/3469363/Trump-Immigration-Enforcement-Policies.pdf>

¹⁶ Amnesty International USA, “Jailed Without Justice: Immigration Detention in the USA,”

<https://www.amnestyusa.org/pdfs/JailedWithoutJustice.pdf>;

¹⁷ See UN Human Rights Committee, *Winata v. Australia*, Communication No. 30/2000, U.N. Doc.

CCPR/C/72/D/930/2000 (2001), <http://hrlibrary.umn.edu/undocs/930-2000.html>; Human Rights Watch,

“Forced Apart: Families Separated and Immigrants Harmed by United States Deportation Policy,” July 16, 2007, <https://www.hrw.org/report/2007/07/16/forced-apart/families-separated-and-immigrants-harmed-united-states-deportation>.

¹⁸ Amnesty International USA, “In Hostile Terrain: Human Rights Violations in Immigration Enforcement in the US Southwest,” AMR 51/018/2012,

http://www.amnestyusa.org/sites/default/files/ai_inhostileterrain_final031412.pdf; Human Rights Watch, “US:

Immigrants ‘Afraid to Call 911’: States Should Reject Corrosive ‘Secure Communities’ Program,” May 14, 2014, <https://www.hrw.org/news/2014/05/14/us-immigrants-afraid-call-911>

¹⁹ Human Rights Watch, “You Don’t Have Rights Here: US Border Screening and Returns of Central Americans to Risks of Serious Harm,” October 16, 2014, <https://www.hrw.org/report/2014/10/16/you-dont-have-rights-here/us-border-screening-and-returns-central-americans-risk>

²⁰ UN Guiding Principles on Business and Human Rights, Principle 11 and commentary,

http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

²¹ UN Guiding Principles on Business and Human Rights, Principles 13 and 17 and commentary,

http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.