

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

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August 25, 2023

The Honorable Alejandro Mayorkas
Secretary
Department of Homeland Security
301 7th Street, SW
Washington, DC 20528

Dear Secretary Mayorkas:

We write regarding your July 26, 2023, testimony before the Committee at a hearing on Oversight of the Department of Homeland Security. Your testimony at the hearing contained a number of assertions about the Department's censorship activities that are inconsistent with the findings of a federal court and information in the Committee's possession. Accordingly, we write to provide you with an opportunity to correct your testimony to ensure it is accurate and complete.

During the hearing, in response to a question from Representative Johnson, you testified unequivocally that "the Cybersecurity and Infrastructure Security Agency [CISA] does not censor speech."¹ Your assertion, however, is contradicted by the findings of a federal court in *Missouri v. Biden*, a case concerning government-induced censorship on social media platforms. As the court found in its motion granting a preliminary injunction, "the evidence shows that the CISA Defendants met with social-media companies to both inform and pressure them to censor content protected by the First Amendment. They also apparently encouraged and pressured social-media companies to change their content-moderation policies and flag disfavored content."² CISA's actions were part of a censorship-by-proxy apparatus employed by the executive branch to remove disfavored content online.

In seeking to justify CISA's censorship activities, you testified during the hearing that "what we do at CISA . . . is identify the tactics that adverse nation[-]states use to weaponize disinformation."³ However, as Representative Johnson explained to you, ample evidence exists

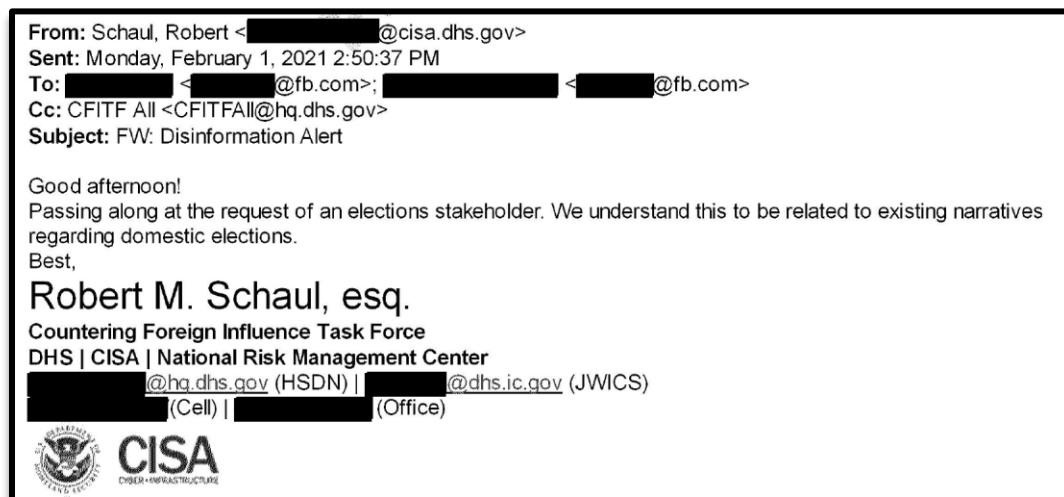
¹ *Oversight of the U.S. Department of Homeland Security: Hearing Before the H. Comm. on the Judiciary*, 118th Cong. (July 26, 2023), at 56.

² *Missouri v. Biden*, No. 3:22-cv-01213 (W.D. La. Jul. 4, 2023), ECF No. 293, at 110 (memorandum ruling granting preliminary injunction).

³ *Oversight of the U.S. Department of Homeland Security*, *supra* note 1, at 60.

that CISA was not focused on only foreign disinformation, but rather indiscriminately flagged so-called “misinformation”—including domestic speech protected by the First Amendment—to various social media platforms.⁴ For example, the *Missouri* court found that “CISA did not do an analysis to determine what percentage of misinformation was ‘foreign derived.’ Therefore, CISA forward[ed] reports of information to social-media platforms without determining whether they originated from foreign or domestic sources.”⁵ The Committee has also independently obtained a significant volume of evidence, including documents produced by CISA, demonstrating that CISA flagged alleged “misinformation,” including protected political speech of domestic origin,⁶ and even social media posts in 2020 by President Donald Trump.⁷

In response to a question from Representative Bishop about CISA’s practice of flagging “misinformation” and “disinformation”—known internally as “switchboarding”—you testified that CISA engaged in “switchboarding” in 2018 and 2020 but that it is “no longer employed by CISA.”⁸ However, the Committee has obtained communications from February 2021, well after the 2020 election, between CISA and social media companies in which CISA officials flagged so-called disinformation “related to existing narratives regarding domestic elections” for Facebook “at the request of an elections stakeholder.”⁹



Moreover, during a July 26, 2022, meeting of an advisory subcommittee to CISA, CISA’s then-Senior Advisor of Election Security, Kim Wyman, stated that CISA is “currently transferring this work”—referring to CISA’s “switchboard function”—to the “Information Sharing and Analysis Centers (ISACs),”¹⁰ which are operated by the CISA-funded Center for

⁴ *Id.* at 61.

⁵ *Id.* at 73.

⁶ *See, e.g.*, e-mail from Brian Scully to Twitter employees (Oct. 29, 2020, 7:31 PM) (on file with the Comm.).

⁷ E-mail from Brian Scully to Twitter employees (Oct. 27, 2020, 4:09 PM) (on file with the Comm.).

⁸ *Oversight of the U.S. Department of Homeland Security*, *supra* note 1, at 114.

⁹ E-mail from Robert Schaul to Facebook employees (Feb. 1, 2021, 12:39 PM) (on file with the Comm.).

¹⁰ CISA CYBERSECURITY ADVISORY COMM., PROTECTING CRITICAL INFRASTRUCTURE FROM MISINFORMATION & DISINFORMATION SUBCOMMITTEE MEETING JULY 26, 2022, at 1 (on file with the Comm.).

Internet Security (CIS).¹¹ Wyman admitted that CISA moved the “switchboard function” from CISA to a CISA-funded third-party organization in order to evade the ongoing *Missouri* litigation.¹² This evidence indicates that CISA has outsourced its switchboarding to a CISA-funded entity.

Finally, in response to Representative Massie’s question asking you to define “malinformation,” you stated that “we’re dealing with false information that is used for a particular purpose.”¹³ However, CISA defines so-called “malinformation” as information that is “based on fact, but used out of context to mislead, harm, or manipulate.”¹⁴ Therefore, your definition of “malinformation” as “false information” is inconsistent with your own department’s definition of the term. Such an elastic and Orwellian definition of the term—especially when used as the basis of censorship activities—presents serious issues for American civil liberties.

Your sworn testimony before Congress is contradicted not only by the findings of the *Missouri* court, but by documents obtained through the Committee’s oversight. The Department of Homeland Security, and especially CISA, are central to the Biden Administration’s censorship efforts and the censorship-industrial complex writ large. Your testimony to the Committee was either intentionally deceptive and misleading, or the result of an unacceptable ignorance on your part regarding the activities of your own department. Accordingly, to ensure the record of your testimony is complete and accurate with respect to the Department’s censorship activities, we invite you to amend your testimony. Please do so by September 8, 2023.


Sincerely,



Jim Jordan
Chairman



Mike Johnson
Chairman
Subcommittee on the Constitution
and Limited Government



Thomas Massie
Chairman
Subcommittee on the
Administrative State,
Regulatory Reform, and Antitrust



Dan Bishop
Member of Congress

¹¹ DEP’T OF HOMELAND SEC., DEPARTMENT OF HOMELAND SECURITY CYBERSECURITY AND INFRASTRUCTURE SECURITY AGENCY BUDGET OVERVIEW FISCAL YEAR 2024 CONGRESSIONAL JUSTIFICATION, at 37 (2023).

¹² CISA CYBERSECURITY ADVISORY COMM., *supra* note 7 at 1.

¹³ *Oversight of the U.S. Department of Homeland Security*, *supra* note 1, at 92–93.

¹⁴ *Foreign Influence Operations and Disinformation*, CYBERSECURITY AND INFRASTRUCTURE SEC. AGENCY, <https://www.cisa.gov/topics/election-security/foreign-influence-operations-and-disinformation> (last visited Aug. 11, 2023).

The Honorable Alejandro Mayorkas

August 25, 2023

Page 4

cc: The Honorable Jerrold L. Nadler, Ranking Member
The Honorable Mary Gay Scanlon, Ranking Member, Subcommittee on the Constitution
and Limited Government
The Honorable Lou Correa, Ranking Member, Subcommittee on the Administrative
State, Regulatory Reform, and Antitrust