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MEMORANDUM

TO: Holloway Inn of Court Members

FROM: Drew Palmer

DATE: October 2, 2023

RE: Materials Related to Holloway Inn of Court Presentation, October 10/11/23

The memorandum includes an appendix consisting of the materials discussed in my presentation to the Holloway Inn of Court on October 11, 2023. Specifically, the Appendix includes:

1.   A summary of the justifications for each of the five principles in the White House Blueprint for an AI Bill of Rights.

2.   The Blueprint for an AI Bill of Rights. (October 2022)

3.   Bipartisan Framework for U.S. AI Act (September 7, 2023)

4.   Senate Bill 1993, Waiver of 230 Immunity for claims related to generative artificial intelligence. (introduced June 14, 2023)

5.   House Bill 3831, AI Disclosure Act of 2023 (introduced June 5, 1993)

6.   House Bill 5495, Political BIAS Emails Act of 2023 (introduced September 14, 2023)

7.   Senate Bill 2892 / House Bill 5628, Algorithmic Accountability Act of 2023 (introduced September 21, 2023)

8.   Senate Bill 2770, Protect Elections from Deceptive AI Act (introduced September 12, 2012)

9.   EU Draft AI Act Brief (June 2023)

EXHIBIT 1 - SUMMARY OF JUSTIFICATIONS FOR FIVE PRINCIPLES IN BLUEPRINT
FOR AND AI BILL OF RIGHTS

The Blueprint for an AI Bill of Rights document was issued by the White House Office of Science and Technology Policy. It consists of a set of five principles and associated practices to guide the design, use, and deployment of automated systems to protect the rights of the American public in the age of artificial intelligence. Developed through consultation with the American public, the principles in the blueprint are designed for building and deploying automated systems that are aligned with democratic values and protect civil rights, civil liberties, and privacy.

Each of the principles in the blueprint are listed below, along with citations to empirical research describing the scope of existing issues and problems which each principal is designed to address. This information is lifted verbatim from the Blueprint itself, which is attached as Exhibit 2, but I felt this was an easier way to see the principles and the administration's justification for them in a single glance.

I.   **Safe and Effective Systems - You should be protected from unsafe or Ineffective Systems.**

- A proprietary model was developed to predict the likelihood of sepsis in hospitalized patients and was implemented at hundreds of hospitals around the country. An independent study showed that the model predictions underperformed relative to the designer's claims while also causing 'alert fatigue' by falsely alerting likelihood of sepsis. Andrew Wong et al. *External validation of a widely implemented proprietary sepsis prediction model in hospitalized patients*. JAMA Intern Med. 2021; 181(8):1065-1070.

- On social media, Black people who quote and criticize racist messages have had their own speech silenced when a platform's automated moderation system failed to distinguish this "counter speech" (or other critique and journalism) from the original hateful messages to which such speech responded. Jessica Guynn. *Facebook while black: Users call it getting 'Zucked,' say talking about racism is censored as hate speech*. USA Today. Apr. 24, 2019. https://www.usatoday.com/story/news/2019/04/24/facebook-while-black-zucked-users-say-they-get-blocked-racism-discussion/2859593002/

- A device originally developed to help people track and find lost items has been used as a tool by stalkers to track victims' locations in violation of their privacy and safety. The device manufacturer took steps after release to protect people from unwanted tracking by alerting people on their phones when a device is found to be moving with them over time and also by having the device make an occasional noise, but not all phones are able to receive the notification and the devices remain a safety concern due to their misuse. See, e.g., Michael Levitt. AirTags are being used to track people and cars. Here's what is being done about it. NPR. Feb. 18, 2022. https://www.npr.org/2022/02/18/1080944193/apple-airtags-theft-stalking-privacy-tech; Samantha Cole. *Police Records Show Women*

Are Being Stalked With Apple AirTags Across the Country. Motherboard. Apr. 6, 2022. https://www.vice.com/en/article/y3vj3y/apple-airtags-police-reports-stalking-harassment

- An algorithm used to deploy police was found to repeatedly send police to neighborhoods they regularly visit, even if those neighborhoods were not the ones with the highest crime rates. These incorrect crime predictions were the result of a feedback loop generated from the reuse of data from previous arrests and algorithm predictions. Kristian Lum and William Isaac. *To Predict and Serve?* Significance. Vol. 13, No. 5, p. 14-19. Oct. 7, 2016. https://rss.onlinelibrary.wiley.com/doi/full/10.1111/j.1740-9713.2016.00960.x; Aaron Sankin, Dhruv Mehrotra, Surya Mattu, and Annie Gilbertson. C*rime Prediction Software Promised to Be Free of Biases. New Data Shows It Perpetuates Them*. The Markup and Gizmodo. Dec. 2, 2021. https://themarkup.org/prediction-bias/2021/12/02/crime-prediction-software-promised-to-be-free-of-biases-new-data-shows-it-perpetuates-them

II. Algorithmic Discrimination Protections - You should not face discrimination by algorithms and systems should be used and designed in an equitable way

- An automated system using nontraditional factors such as educational attainment and employment history as part of its loan underwriting and pricing model was found to be much more likely to charge an applicant who attended a Historically Black College or University (HBCU) higher loan prices for refinancing a student loan than an applicant who did not attend an HBCU. This was found to be true even when controlling for other credit-related factors. Student Borrower Protection Center. *Educational Redlining. Student Borrower Protection Center Report.* Feb. 2020. https://protectborrowers.org/wp-content/uploads/2020/02/Education-Redlining-Report.pdf

- A hiring tool that learned the features of a company's employees (predominantly men) rejected women applicants for spurious and discriminatory reasons; resumes with the word "women's," such as "women's chess club captain," were penalized in the candidate ranking. Jeffrey Dastin. *Amazon scraps secret AI recruiting tool that showed bias against women*. Reuters. Oct. 10, 2018. https://www.reuters.com/article/us-amazon-com-jobs-automation-insight/amazon-scraps-secret-ai-recruiting-tool-that-showed-bias-against-women-idUSKCN1MK08G

- A predictive model marketed as being able to predict whether students are likely to drop out of school was used by more than 500 universities across the country. The model was found to use race directly as a predictor, and also shown to have large disparities by race; Black students were as many as four times as likely as their otherwise similar white peers to be deemed at high risk of dropping out. These risk scores are used by advisors to guide students towards or away from majors, and some worry that they are being used to guide Black students away

from math and science subjects. Todd Feathers. *Major Universities Are Using Race as a "High Impact Predictor" of Student Success: Students, professors, and education experts worry that that's pushing Black students in particular out of math and science.* The Markup. Mar. 2, 2021. https://themarkup.org/machine-learning/2021/03/02/major-universities-are-using-race-as-a-high-impact-predictor-of-student-success

- A risk assessment tool designed to predict the risk of recidivism for individuals in federal custody showed evidence of disparity in prediction. The tool overpredicts the risk of recidivism for some groups of color on the general recidivism tools, and underpredicts the risk of recidivism for some groups of color on some of the violent recidivism tools. The Department of Justice is working to reduce these disparities and has publicly released a report detailing its review of the tool. Carrie Johnson. *Flaws plague a tool meant to help low-risk federal prisoners win early release.* NPR. Jan. 26, 2022. https://www.npr.org/2022/01/26/1075509175/flaws-plague-a-tool-meant-to-help-low-risk-federal-prisoners-win-early-release.; Carrie Johnson. J*ustice Department works to curb racial bias in deciding who's released from prison.* NPR. Apr. 19, 2022. https://www.npr.org/2022/04/19/1093538706/justice-department-works-to-curb-racial-bias-in-deciding-whos-released-from-pris; National Institute of Justice. 2021 *Review and Revalidation of the First Step Act Risk Assessment Tool.* National Institute of Justice NCJ 303859. Dec., 2021. https://www.ojp.gov/pdffiles1/nij/303859.pdf

- An automated sentiment analyzer, a tool often used by technology platforms to determine whether a statement posted online expresses a positive or negative sentiment, was found to be biased against Jews and gay people. For example, the analyzer marked the statement "I'm a Jew" as representing a negative sentiment, while "I'm a Christian" was identified as expressing a positive sentiment. Andrew Thompson. *Google's Sentiment Analyzer Thinks Being Gay Is Bad.* Vice. Oct. 25, 2017. https://www.vice.com/en/article/j5jmj8/google-artificial-intelligence-bias. This could lead to the preemptive blocking of social media comments such as: "I'm gay." A related company with this bias concern has made their data public to encourage researchers to help address the issue, (Kaggle. *Jigsaw Unintended Bias in Toxicity Classification: Detect toxicity across a diverse range of conversations.* 2019. https://www.kaggle.com/c/jigsaw-unintended-bias-in-toxicity-classification) and has released reports identifying and measuring this problem as well as detailing attempts to address it. Lucas Dixon, John Li, Jeffrey Sorensen, Nithum Thain, and Lucy Vasserman. *Measuring and Mitigating Unintended Bias in Text Classification.* Proceedings of AAAI/ACM Conference on AI, Ethics, and Society. Feb. 2-3, 2018. https://dl.acm.org/doi/pdf/10.1145/3278721.3278729

- Searches for "Black girls," "Asian girls," or "Latina girls" return predominantly (Paresh Dave. *Google cuts racy results by 30% for searches like 'Latina teenager'.* Reuters. Mar. 30,2022. https://www.reuters.com/technology/google-cuts-racy-results-by-30-searches-like-latina-teenager-2022-03-30/)sexualized

content, rather than role models, toys, or activities. Safiya Umoja Noble. *Algorithms of Oppression: How Search Engines Reinforce Racism*. NYU Press. Feb. 2018. https://nyupress.org/9781479837243/algorithms-of-oppression/ Some search engines have been working to reduce the prevalence of these results, but the problem remains. Paresh Dave. *Google cuts racy results by 30% for searches like 'Latina teenager'.* Reuters. Mar. 30, 2022. https://www.reuters.com/technology/google-cuts-racy-results-by-30-searches-like-latina-teenager-2022-03-30/

- Advertisement delivery systems that predict who is most likely to click on a job advertisement end up delivering ads in ways that reinforce racial and gender stereotypes, such as overwhelmingly directing supermarket cashier ads to women and jobs with taxi companies to primarily Black people. Miranda Bogen. *All the Ways Hiring Algorithms Can Introduce Bias*. Harvard Business Review. May 6, 2019. https://hbr.org/2019/05/all-the-ways-hiring-algorithms-can-introduce-bias

- Body scanners, used by TSA at airport checkpoints, require the operator to select a "male" or "female" scanning setting based on the passenger's sex, but the setting is chosen based on the operator's perception of the passenger's gender identity. These scanners are more likely to flag transgender travelers as requiring extra screening done by a person. Transgender travelers have described degrading experiences associated with these extra screenings. Arli Christian. *Four Ways the TSA Is Making Flying Easier for Transgender People*. American Civil Liberties Union. Apr. 5, 2022. https://www.aclu.org/news/lgbtq-rights/four-ways-the-tsa-is-making-flying-easier-for-transgender-people. TSA has recently announced plans to implement a gender-neutral algorithm. U.S. Transportation Security Administration. Transgender/ Non Binary / Gender Nonconforming Passengers. TSA. Accessed Apr. 21, 2022. https://www.tsa.gov/transgender-passengers while simultaneously enhancing the security effectiveness capabilities of the existing technology.

- The National Disabled Law Students Association expressed concerns that individuals with disabilities were more likely to be flagged as potentially suspicious by remote proctoring AI systems because of their disability-specific access needs such as needing longer breaks or using screen readers or dictation software. See, e.g., *National Disabled Law Students Association. Report on Concerns Regarding Online Administration of Bar Exams*. Jul. 29, 2020. https://ndlsa.org/wp-content/uploads/2020/08/NDLSA_Online-Exam-Concerns-Report1.pdf; Lydia X. Z. Brown. *How Automated Test Proctoring Software Discriminates Against Disabled Students. Center for Democracy and Technology*. Nov. 16, 2020. https://cdt.org/insights/how-automated-test-proctoring-software-discriminates-against-disabled-students/

- An algorithm designed to identify patients with high needs for healthcare systematically assigned lower scores (indicating that they were not as high need) to Black patients than to those of white patients, even when those patients had

similar numbers of chronic conditions and other markers of health. Ziad Obermeyer, et al., *Dissecting racial bias in an algorithm used to manage the health of populations*, 366 Science (2019), https://www.science.org/doi/10.1126/science.aax2342. In addition, healthcare clinical algorithms that are used by physicians to guide clinical decisions may include sociodemographic variables that adjust or "correct" the algorithm's output on the basis of a patient's race or ethnicity, which can lead to race-based health inequities. Darshali A. Vyas et al., *Hidden in Plain Sight – Reconsidering the Use of Race Correction in Clinical Algorithms*, 383 N. Engl. J. Med.874, 876-78 (Aug. 27, 2020), https://www.nejm.org/doi/full/10.1056/NEJMms2004740.

III. Data Privacy - You should be protected from abusive data practices via built-in protections and you should have agency over how data about you is used.

- An insurer might collect data from a person's social media presence as part of deciding what life insurance rates they should be offered.Angela Chen. *Why the Future of Life Insurance May Depend on Your Online Presence.* The Verge. Feb., 2019. https://www.theverge.com/2019/2/7/18211890/social-media-life-insurance-new-york-algorithms-big-data-discrimination-online-records

- A data broker harvested large amounts of personal data and then suffered a breach, exposing hundreds of thousands of people to potential identity theft. See, e.g., Scott Ikeda. *Major Data Broker Exposes 235 Million Social Media Profiles in Data Lead: Info Appears to Have Been Scraped Without Permission*. CPO Magazine. Aug. 28, 2020. https://www.cpomagazine.com/cyber-security/major-data-broker-exposes-235-million-social-media-profiles-in-data-leak/; Lily Hay Newman. 1.2 Billion Records Found Exposed Online in a Single Server. WIRED, Nov. 22, 2019. https://www.wired.com/story/billion-records-exposed-online/

- A local public housing authority installed a facial recognition system at the entrance to housing complexes to assist law enforcement with identifying individuals viewed via camera when police reports are filed, leading the community, both those living in the housing complex and not, to have videos of them sent to the local police department and made available for scanning by its facial recognition software. Lola Fadulu. *Facial Recognition Technology in Public Housing Prompts Backlash*. New York Times. Sept. 24, 2019. https://www.nytimes.com/2019/09/24/us/politics/facial-recognition-technology-housing.html

- Companies use surveillance software to track employee discussions about union activity and use the resulting data to surveil individual employees and surreptitiously intervene in discussions. Jo Constantz. '*They Were Spying On Us': Amazon, Walmart, Use Surveillance Technology to Bust Unions*. Newsweek. Dec. 13, 2021. https://www.newsweek.com/they-were-spying-us-amazon-walmart-use-surveillance-technology-bust-unions-1658603

IV.   Notice and Explanation - You should know that an automated system is being used, and understand how and why it contributes to outcomes that impact you.

- A lawyer representing an older client with disabilities who had been cut off from Medicaid-funded home health-care assistance couldn't determine why, especially since the decision went against historical access practices. In a court hearing, the lawyer learned from a witness that the state in which the older client lived had recently adopted a new algorithm to determine eligibility. Karen Hao. *The coming war on the hidden algorithms that trap people in poverty.* MIT Tech Review. Dec. 4, 2020. https://www.technologyreview.com/2020/12/04/1013068/algorithms-create-a-poverty-trap-lawyers-fight-back/ The lack of a timely explanation made it harder to understand and contest the decision.

- A formal child welfare investigation is opened against a parent based on an algorithm and without the parent ever being notified that data was being collected and used as part of an algorithmic child maltreatment risk assessment. Anjana Samant, Aaron Horowitz, Kath Xu, and Sophie Beiers. Family Surveillance by Algorithm. ACLU. Accessed May 2, 2022. https://www.aclu.org/fact-sheet/family-surveillance-algorithm The lack of notice or an explanation makes it harder for those performing child maltreatment assessments to validate the risk assessment and denies parents knowledge that could help them contest a decision.

- A predictive policing system claimed to identify individuals at greatest risk to commit or become the victim of gun violence (based on automated analysis of social ties to gang members, criminal histories, previous experiences of gun violence, and other factors) and led to individuals being placed on a watch list with no explanation or public transparency regarding how the system came to its conclusions. 85. Mick Dumke and Frank Main. *A look inside the watch list Chicago police fought to keep secret.* The Chicago Sun Times. May 18, 2017. https://chicago.suntimes.com/2017/5/18/18386116/a-look-inside-the-watch-list-chicago-police-fought-to-keep-secret. Both police and the public deserve to understand why and how such a system is making these determinations.

- A system awarding benefits changed its criteria invisibly. Individuals were denied benefits due to data entry errors and other system flaws. These flaws were only revealed when an explanation of the system was demanded and produced. Jay Stanley. *Pitfalls of Artificial Intelligence Decision making Highlighted In Idaho ACLU Case.* ACLU. Jun. 2, 2017. https://www.aclu.org/blog/privacy-technology/pitfalls-artificial-intelligence-decisionmaking-highlighted-idaho-aclu-case. The lack of an explanation made it harder for errors to be corrected in a timely manner.

V.   Human Alternatives, Consideration and Fallback - You should be able to opt out, where appropriate, and have access to a person who can quickly consider and remedy problems you encounter.

- An automated signature matching system is used as part of the voting process in many parts of the country to determine whether the signature on a mail-in ballot matches the signature on file. These signature matching systems are less likely to work correctly for some voters, including voters with mental or physical disabilities, voters with shorter or hyphenated names, and voters who have changed their name. Kyle Wiggers. *Automatic signature verification software threatens to disenfranchise U.S. voters*. VentureBeat. Oct. 25, 2020. https://venturebeat.com/2020/10/25/automatic-signature-verification-software-threatens-to-disenfranchise-u-s-voters/. *A human curing process*, (Ballotpedia. *Cure period for absentee and mail-in ballots.* Article retrieved Apr 18, 2022. https://ballotpedia.org/Cure_period_for_absentee_and_mail-in_ballots) which helps voters to confirm their signatures and correct other voting mistakes, is important to ensure all votes are counted, (Larry Buchanan and Alicia Parlapiano. *Two of these Mail Ballot Signatures are by the Same Person. Which Ones?* New York Times. Oct. 7, 2020. https://www.nytimes.com/interactive/2020/10/07/upshot/mail-voting-ballots-signature-matching.html) and it is already standard practice in much of the country for both an election official and the voter to have the opportunity to review and correct any such issues. Rachel Orey and Owen Bacskai. *The Low Down on Ballot Curing*. Nov. 04, 2020. https://bipartisanpolicy.org/blog/the-low-down-on-ballot-curing/

- An unemployment benefits system in Colorado required, as a condition of accessing benefits, that applicants hav a smartphone in order to verify their identity. No alternative human option was readily available, which denied many people access to benefits. Andrew Kenney. '*I'm shocked that they need to have a smartphone': System for unemployment benefits exposes digital divide.* USA Today. May 2, 2021. https://www.usatoday.com/story/tech/news/2021/05/02/unemployment-benefits-system-leaving-people-behind/4915248001/

- A fraud detection system for unemployment insurance distribution incorrectly flagged entries as fraudulent, leading to people with slight discrepancies or complexities in their files having their wages withheld and tax returns seized without any chance to explain themselves or receive a review by a person. Allie Gross. *UIA lawsuit shows how the state criminalizes the unemployed*. Detroit Metro-Times. Sep. 18, 2015. https://www.metrotimes.com/news/uia-lawsuit-shows-how-the-state-criminalizes-the-unemployed-2369412

- A patient was wrongly denied access to pain medication when the hospital's software confused her medication history with that of her dog's. Even after she tracked down an explanation for the problem, doctors were afraid to override the system, and she was forced to go without pain relief due to the system's error. Maia Szalavitz. *The Pain Was Unbearable. So Why Did Doctors Turn Her Away?*

Wired. Aug. 11, 2021. https://www.wired.com/story/opioid-drug-addiction-algorithm-chronic-pain/

- A large corporation automated performance evaluation and other HR functions, leading to workers being fired by an automated system without the possibility of human review, appeal or other form of recourse. Spencer Soper. *Fired by Bot at Amazon: "It's You Against the Machine"*. Bloomberg, Jun. 28, 2021. https://www.bloomberg.com/news/features/2021-06-28/fired-by-bot-amazon-turns-to-machine-managers-and-workers-are-losing-out