Non-Decisional Statement by the National AI Advisory Committee (NAIAC)
Working Group on Rights-Respecting AI
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Proposal: Implementing the NIST AI RMF With a Rights-Respecting Approach

Findings discussed during the September 12, 2023, National Artificial Intelligence Advisory Committee Meeting (NAIAC).

I. The NAIAC Year 1 Report recommends the adoption of NIST's AI RMF by the federal government.

In its Year 1 Report, NAIAC recommended that the White House, in order to "operationalize trustworthy AI governance," "[s]upport public and private adoption of the NIST AI Risk Management Framework."[1] The Year 1 Report specifically recommended that the Biden-Harris administration "issue an executive order creating a pilot program directing at least three agencies to implement the AI RMF."[2]

II. NIST's AI RMF calls for AI actors to define risk tolerance and the federal government will need to do so.

The NIST AI RMF is designed to do several things—encourage flexibility to manage AI risk as the technology evolves, establish an organizational culture of risk management—but it flatly "does not prescribe risk tolerance."[3] Instead, the RMF acknowledges that risk tolerance is "highly contextual and application and use-case specific" and will vary by organization, policies, and norms.[4] "Where established guidelines do not exist, organizations should define reasonable risk tolerance."[5]

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[1] National Artificial Intelligence Advisory Committee. 2023. National Artificial Intelligence Advisory Committee Year One Report. https://www.ai.gov/wp-content/uploads/2023/05/NAIAC-Report-Year1.pdf. (p.17)

[2] Ibid. (p.16)

[3] Tabassi, E. (2023), Artificial Intelligence Risk Management Framework (AI RMF 1.0), NIST Trustworthy and Responsible AI, National Institute of Standards and Technology, Gaithersburg, MD, [online], https://doi.org/10.6028/NIST.AI.100-1, https://tsapps.nist.gov/publication/get_pdf.cfm?pub_id=936225. (p.7)

[4] Ibid.

[5] Ibid.

The NIST AI RMF further states that, "[i]n cases where an AI system presents unacceptable negative risk levels - such as where significant negative impacts are imminent, severe harms are actually occurring, or catastrophic risks are present - development and deployment should cease in a safe manner until risks can be sufficiently managed."[6]

Therefore, to the extent that the federal government plans to implement the NIST AI RMF, the government will need to define its risk tolerance level, just as a private company deploying an AI technology would, under the AI RMF, need to set its own risk tolerance. If a government AI system presents "unacceptable negative risk levels," the RMF recommends that the government suspend use of the system until and if risks can be sufficiently managed.

III.   **Civil rights are fundamental to U.S. citizenship and the federal government must ensure the protection of Americans' civil rights as it implements the NIST AI RMF.**

The United States government has a long history of establishing and protecting civil rights. That commitment cannot waver as the federal government implements the AI RMF, sets its "tolerance" of AI risk, and defines what constitutes "unacceptable negative risk levels."

"Civil rights" are not simply a statutory right of a person to be free from discrimination. Since the Civil Rights Act of 1866—which, for the first time, formally introduced the concept of "civil rights" to U.S. democracy—civil rights have been a core, constitutive feature of *national citizenship itself*.[7] The successive history of civil rights—from a constitutional amendment that guarantees equal protection and due process under the law to all U.S. citizens,[8] to subsequent legislation strengthening the federal government's enforcement role[9] and enshrining new political rights[10]—confirms the federal government's obligation to uphold and protect people's civil rights.

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[6] Ibid. (p.8)

[7] Eugene Gressman, The *Unhappy History of Civil Rights Legislation*, 50 Mich. L. Rev. 1323, 1332 (1952) (describing the constitutional history of the Civil Rights Acts of 1866-75 and the Fourteenth Amendment and noting that "Civil rights were conceived of as *inherent ingredients of national citizenship* and as such were entitled to federal protection. And that protection was to be accorded in an affirmative fashion") (emphasis added).

[8] Fourteenth Amendment to the U.S. Constitution (providing the constitutional basis for and in effect superseding, in part, the Civil Rights Act of 1866 and defining national citizenship: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are *citizens of the United States* and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of *citizens of the United States*; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.") (emphasis added).

[9] *See*, *e.g.*, Civil Rights Act of 1964; Americans with Disabilities Act of 1990.

[10] *See*, *e.g.*, Civil Rights Act of 1964; Voting Rights Act of 1965.