



ATTORNEY GENERAL OF MISSOURI
ERIC SCHMITT

December 20, 2021

The Honorable Pete Buttigieg
Secretary, U.S. Dept. of Transportation
1200 New Jersey Ave. SE
Washington, DC 20590-0001

Re: Comment on the USDOT's Notice of Creation of the "Employee Accommodations Files" Religious Database - Docket OST-2021-0135

Dear Secretary Buttigieg,

This week millions of Americans are gathering with their families to celebrate Christmas. In a free society such as ours, each person may celebrate the season as they see fit or even choose to not celebrate at all. For some it is a chance to spend time with loved ones and to enjoy cherished traditions, and for others it is a sacred time with deep religious significance.

On special occasions like Christmas, it is worth taking a moment to appreciate the privilege we have to live in a nation where all citizens, religious and secular, and of all political persuasions enjoy the gift of liberty. Where, if we choose, we may worship God according to the dictates of our own conscience without the interference of government. It is this foundational principle that is woven into the very fabric of our history and is prominently enshrined in our Constitution.

But securing the blessings of liberty for all Americans was never inevitable. In fact, as the summer of 1789 turned to autumn and the fledgling Republic was just beginning to spread her wings, the issue was still in doubt. The Constitution had lately been ratified by a sufficient number of states to become effective and the Congress, in a bid to secure additional state support and bolster the stability of the new government, had proposed a number of amendments to it, what we now know as the Bill of Rights. Contained in this Bill of Rights was the iron-clad guarantee that citizens of the new nation would be free from the fear of government interference in

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the free exercise of their religion.¹

In October of that same year, the newly elected leader of the nation, President George Washington, issued a Proclamation inviting his fellow citizens to set aside a day of thanks. In his Proclamation, Washington deliberately singled out the free exercise of faith as one of the nation's most foundational virtues, calling for "sincere and humble thanks... for the peaceable and rational manner, in which we have been enabled to establish constitutions of government for our safety and happiness, and particularly the national One now lately instituted—for the civil and religious liberty with which we are blessed;"² (emphasis added).

Given the history of our nation and the tremendous cost at which liberty (including the freedom of religion) has been purchased by previous generations of American patriots, citizens are rightly alarmed when threats to this precious liberty arise. With that in mind, I am writing this letter because I, too, am very troubled that the federal government (praised by Washington as being "lately instituted" to protect the rights of all to freely practice their faith), should choose the holiday season to quietly implement its Orwellian plans to track citizens who engage in the free exercise of their religion. Indeed while millions of Americans are busy making plans and gathering with their loved ones to celebrate the blessings of a free people, a coordinated effort to catalogue and monitor those who self-identify as "religious" has been put into place.

I therefore write this letter to respond to the federal government's misguided policy. There is no freedom under our Constitution more sacred than the freedom of religious expression and practice. The Biden Administration must immediately dismantle its Orwellian Database.

I am concerned about the creation of this new database due to a series of recent events. On November 18, at the direction of the Biden Administration, four federal agencies simultaneously announced that those who exercise their legal right to seek a health or religious waiver from a vaccine mandate would be tracked in federal databases.³ Rather than give the public ample time to weigh in on the advisability or legality of collecting such personal information, the Department of Transportation's database in particular became effective on the day it was published (citizens were given until December 20th to belatedly comment but this "after the fact" offer makes a mockery of any guise of actually listening to their

¹ <https://constitutioncenter.org/interactive-constitution/blog/the-day-the-constitution-was-ratified>

² "Thanksgiving Proclamation, 3 October 1789," Founders Online, National Archives, <https://founders.archives.gov/documents/Washington/05-04-02-0091>. [Original source: The Papers of George Washington, Presidential Series, vol. 4, 8 September 1789–15 January 1790, ed. Dorothy Twohig. Charlottesville: University Press of Virginia, 1993, pp. 131–132.]

³ Three of the four agencies who announced this new policy on November 18 credited President Biden's Executive Order 14043, "Executive Order on Requiring Coronavirus Disease 2019 Vaccination for Federal Employees", issued September 9, 2021.

concerns).⁴ The Administration's dystopian-sounding data systems go by such names as the "Employee Accommodations Files",⁵ "Reasonable Accommodations Records, OSHRC-9",⁶ and the "Personal Health and Religious Information",⁷ databases.⁸

The chilling effect on a citizens' exercise of religion due to the creation of this Database is alarming. First, the federal government decrees that a citizen who seeks a medical exemption or a waiver based on a sincerely held religious belief has automatically consented to being entered in the Database.⁹ To put it plainly, invoking the legal right to exercise one's religious faith risks simultaneously waiving that same legal right.

Equally alarming is the sheer size and scope of what will be tracked in this federal Database. Here is a non-exhaustive list of what information could end up being collected:

Records include the name of the individual seeking accommodations, nature of the accommodation sought, including but not limited for religious accommodations, *how complying with such a requirement would burden religious exercise, how long the belief has been held* and the reason for seeking exemption.

...

PII elements: Name, title, email address, phone number, operating administration, pay grade or band, supervisor information, other information collected from requesters to make a determination regarding a specific medical and/or religious accommodation request.¹⁰ (emphasis added).

As if this list were not extensive enough, the "Personal Health and Religious Information" database maintained by the Corporation for National and Community Service (AmeriCorps) will collect the following information:

General personal information including, but not limited to, the name, address, social security number, *maiden name, place of birth, financial information, alias, gender, telephone number, military service, age,*

⁴ <https://www.govinfo.gov/content/pkg/FR-2021-11-18/pdf/2021-25153.pdf> 86 Fed. Reg. 64597 (Nov. 18, 2021).

⁵ Id.

⁶ <https://www.govinfo.gov/content/pkg/FR-2021-11-18/pdf/2021-25166.pdf> 86 Fed. Reg. 64532 (Nov. 18, 2021).

⁷ <https://www.govinfo.gov/content/pkg/FR-2021-11-18/pdf/2021-24868.pdf> 86 Fed. Reg. 64458 (Nov. 18, 2021).

⁸ The federal agencies discussed above admit that the information collected is shareable, with few procedural safeguards, therefore, this comment will discuss the four databases as a unified entity simply referred to as "the Database".

⁹ 86 Fed. Reg. 64597.

¹⁰ 86 Fed. Reg. 64460. The related database maintained by the United States Department of Labor, Occupational Safety and Health Review Commission, also collects "information concerning religious beliefs, practices and observances." 86 Fed. Reg. 64533.

email address, physical characteristics, race/ethnicity, education, other contact information...

...information concerning religious affiliation, the nature of the sincerely held religious belief, practice, or observance, and the need for accommodation, including any appropriate documentation; details of the accommodation requests, such as: Type of accommodation requested, how the requested accommodation would assist the individual in the performance of their job, essential duties of the position, information relating to an individual's capability to satisfactorily perform the duties of the position currently held...

These records may also contain work-related data, including but not limited to service information, occupation, telephone number, salary, job title, email address, work history, work address, *business associates*, and/ or program office to which the employee is assigned. (emphasis added).

The effort to collect such a staggering amount of information on self-identified religious practitioners would be unacceptable even if it were closely held by a particular federal agency, but the policies announced by the Biden Administration leave little doubt that this information could be widely shared. In fact, the government is open about the willingness to share this information with "Federal, State, local or foreign" jurisdictions, assuming certain (limited) criteria are met.¹¹ No effort is made to explain why sharing information on the religious beliefs or practices of American citizens should be shared with foreign governments but the question is one of several that begs an immediate answer.

Much more could be said about this disastrous policy but perhaps its most insidious feature is the attempt by the Biden Administration to justify it on the basis of protecting citizens of this country from a virus – for their own good. But after nearly two years of endless news reports, mask mandates, lockdowns and school closures (not to mention incessant attempts by cultural elites to publicly shame those who refuse to live their lives in fear), it should be self-evident that the American people are well-informed of the potential risks and should be free to take the precautions they believe are warranted.

We should not forget that tyrants throughout history often justify the taking of liberty under the guise of safety. The current attempt by the federal government

¹¹ "Department General Routine Uses 1. In the event that a system of records maintained by DOT to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto." 86 Fed. Reg. 64,598.

to collect, maintain and share information on its own citizens concerning their most personal and deeply-held religious beliefs under the guise of promoting health and safety is wrong and, given our history of religious liberty and tolerance, is decidedly un-American. As the chief legal official for the citizens of the State of Missouri, I object to the creation of this Database in the strongest possible terms and demand that you rescind this dystopian mandate immediately.

Very Truly Yours,

A handwritten signature in blue ink that reads "Eric S. Schmitt". The signature is fluid and cursive, with the first name "Eric" and last name "Schmitt" clearly legible.

Eric Schmitt

Attorney General of Missouri