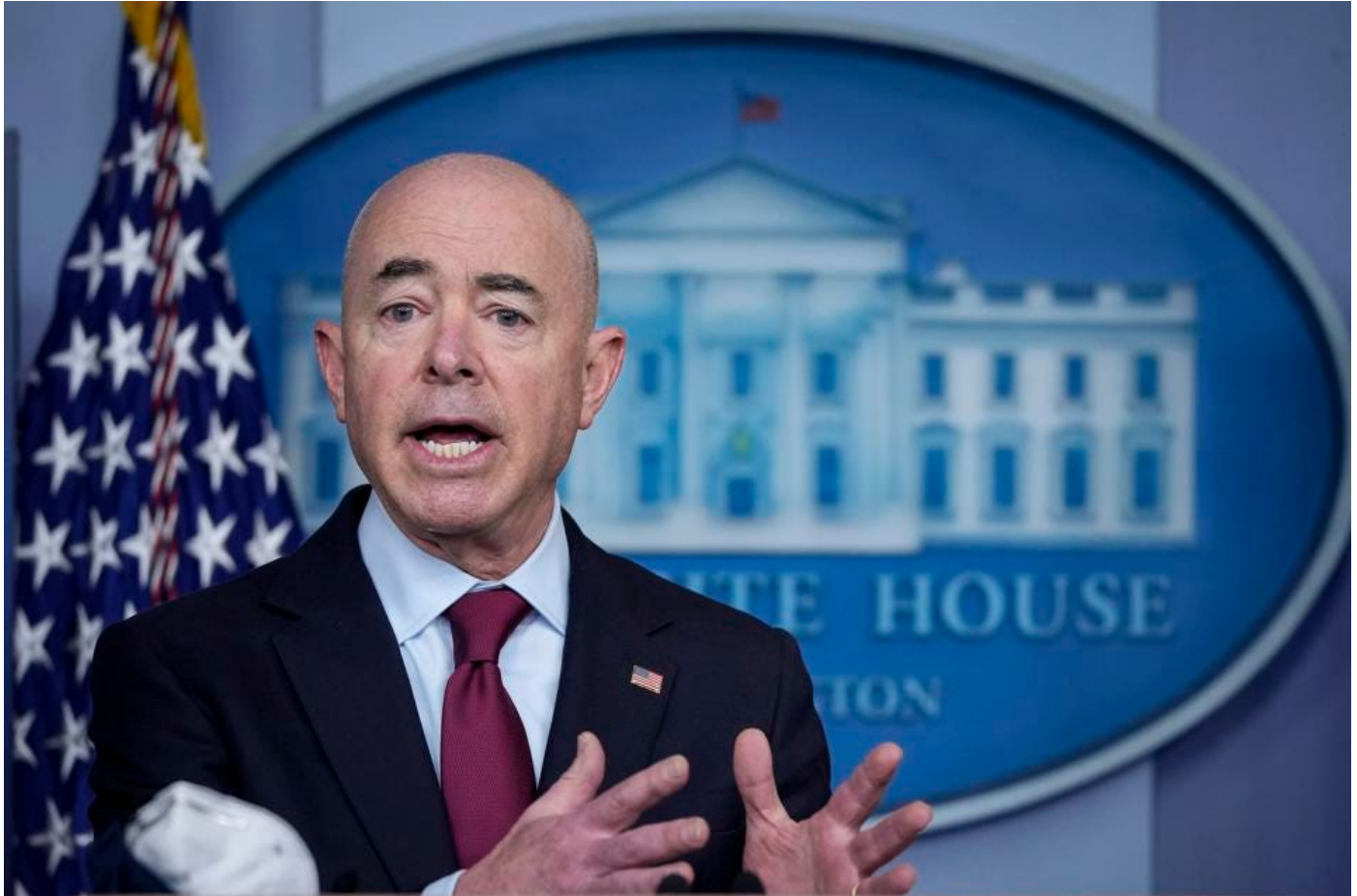


# The Disinformation Governance Board Is Dead. Here's The Right Way To Fight Disinformation.

[Jill Goldenziel](#) 04:58pm EDT





WASHINGTON, DC - MARCH 1: Secretary of Homeland Security Alejandro Mayorkas speaks during the daily ... [+]

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The Department of Homeland Security's Disinformation Governance Board [has been paused](#), only three weeks after it was announced. Reports have variously announced that partisan fights and right-wing [attacks on the Board's leader](#), Nina Jankowicz, led to its demise. However, the Board was doomed from the moment it was named. The name itself suggests illegal government activity that the American people would never tolerate, regardless of their partisan affiliation. Legally, it is rarely permissible for the U.S. government to be the arbiter of truth. The name suggested that it would do just that—despite DHS officials' protests that it was designed to protect free speech.

Meanwhile, the Internet burns while partisans fiddle. The interagency must

act to combat adversary disinformation. The Board must be replaced with an interagency body with a clear and transparent mission to fight information warfare by U.S. adversaries, while protecting the First Amendment freedoms that Americans hold dear.

The First Amendment is among the most prized of American values. The American people have historically been deeply suspicious of government attempts to regulate their speech. For example, the Privacy Act of 1974 was passed at the height of public concern over the abuse of government surveillance, following Watergate. It restricts the government's collection, maintenance, use, and dissemination of U.S. Persons' (citizens and Legal Permanent Residents, or green-card holders) personally identifiable information and personal data related to the exercise of First Amendment Rights. It restricts which government agencies are allowed to collect and access Americans' personal data, and for what purposes. It also provides for high procedural safeguards against unauthorized access of that data. To cite a more recent example, beginning in 2013, Americans were outraged when they discovered that the National Security Agency was engaging in bulk collection of cellphone data as part of its "haystack" program to hunt down terrorists. President Obama ordered the program shut down due to public outcry, even though a court held the program to be legal, eventually leading to a revision of the program through the Freedom Act of 2015, and eventually, a full program [shutdown](#).

Given this history, it is no surprise that the American public would not support a "Disinformation Governance Board." Indeed, "governing disinformation" itself may have been illegal. U.S. law permits few circumstances where the government is permitted to be the arbiter of what is true and what is false. Most falsehoods are protected under U.S. law. Americans have made this freedom part of their national identity. Americans pride themselves as being able to live in a marketplace of ideas and make



decisions for themselves about truthfulness.



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The U.S.'s robust freedom of speech is at the core of what makes America great, and at the essence of what it means to be American. It also makes

information warfare by U.S. adversaries [hard to combat](#). U.S. adversaries have no similar restrictions on accessing the data of U.S. citizens and weaponizing it. U.S. adversaries can root out those who are susceptible to disinformation and use their data to target them with disinformation. And Congress has had a hard time stopping them. Since Russia's attacks on the 2016 elections, Congress has done little to combat information warfare by U.S. adversaries, especially as related to elections. Bills to enhance U.S. government efforts to combat disinformation have stalled in Congress, in part due to their lack of adequate procedural and constitutional safeguards.

Meanwhile, U.S. adversaries continue to weaponize First Amendment freedoms. The interagency must act where Congress has not. However, an effective approach to fighting disinformation would involve far more than a poorly-named DHS [DHS +0.5%+0.5%](#) board with no clear mission. Attacking the threat of disinformation requires a whole-of-government approach, involving the Departments of State, Defense, and Justice, the military, the intelligence community, and other civilian agencies. The work of these agencies is governed by a patchwork of laws that needs to be reformed, synthesized, and harmonized with the U.S.'s commitments to free speech and civil liberties. New, [creative thinking on First Amendment doctrine, privacy, and the role of the Internet and social media in society](#) will be necessary to combat information warfare. All efforts must conform to Constitutional principles and the transparency that the American public demands.

Combatting disinformation is necessary. Governing it might be illegal. A [whole-of-government approach](#) can and must do better than the Disinformation Governance Board. Congress and administrative agencies must carefully avoid unduly restricting First Amendment freedoms in the name of national security. Doing so would let the enemy win.