



February 12, 2021

Re: Case No. 2021-001-FB-FBR

To the Oversight Board:

We are writing on behalf of the Lawyers' Committee for Civil Rights Under Law to urge you to affirm the removal of former President Donald Trump from Facebook and ensure it is a permanent ban due to the harms that occur as a result of his use of the platform. Facebook's suspension of President Trump¹ was necessary long before his incitement of violence at the Capitol on January 6, 2021. This was not the only instance in which his speech on the platform spread disinformation and engaged in racism and hate. President Trump's renewed use of Facebook would pose a clear threat to public safety, the rule of law, and the integrity of our democracy. Allowing President Trump back onto the platform could set a dangerous precedent for public leaders seeking to promote hateful violence and undermine democracy.

The Board should affirm President Trump's ban because (1) the standard of review for prominent public figures must scale to the risk of harm they pose, with the strictest rules reserved for world leaders; (2) traditional free expression values do not apply equally to world leaders; (3) President Trump has a history of engaging in hate and promoting violence on Facebook; (4) President Trump poses a threat to public safety, the rule of law, and democracy; and (5) banning President Trump will not deprive him of the ability to express himself because he has myriad other avenues for speech, many of which are unavailable to the average person.

I. Standard of Review for Prominent Public Figures

As the Board considers President Trump's case, it should use a risk of harm analysis that accounts for both the probability that his speech could lead to harm, as well as the potential magnitude of such harm were it to occur. For prominent public figures engaging in hateful, authoritarian, or violent rhetoric—especially world leaders—this calculus produces a high risk of harm, and therefore a need for stricter enforcement. The Dangerous Speech Project describes dangerous speech as “any form of expression (e.g. speech, text, or images) that can increase the risk that its audience will condone or commit violence against members of another group.”² Their five-part framework to determine the dangerousness of speech includes: the message, the speaker, the audience, the historical and social context, and the medium with which the speaker delivers the message. These elements are analyzed together to gauge harmful effects of the speech and determine where it fits along a spectrum of dangerousness. The Board should use this framework to evaluate this case.

¹ Mike Isaac and Kate Conger, *Facebook Bars Trump Through End of His Term*, New York Times, (Jan. 8, 2021), <https://www.nytimes.com/2021/01/07/technology/facebook-trump-ban.html>.

² *Dangerous Speech: A Practical Guide*, Dangerous Speech Project (Aug. 4, 2020), <https://dangerousspeech.org/guide/>.



High profile accounts—such as a celebrity, prominent public figure, or world leader—have a greater probability of causing harm when engaged in dangerous speech. Because these accounts have large numbers of followers, there is a higher chance that people will view, repeat, and interact with the speech and content on that account.

When such users engage in hate, incitement, violence, or conspiracy theories, there is a high risk that one of their many followers may take action in response and cause online or real-world harm. When a random person shouts a call to arms on a street corner, most people will not take it seriously. When it is broadcast to millions from a current or former President, many will.

Major public figures, especially world leaders, can also cause harm of greater magnitude. The magnitude of harm for the account of a world leader is greater due to the status of the speaker and the audience who interacts with the content. They can start wars, direct police actions, start a riot, endanger public health, undermine trust in a free press, incite hate crimes, and launch insurrections or coups. The identity and role of the speaker is important when considering how content is received on platforms.

A speaker like President Trump has a high probability of causing harm, because he has millions of online followers and therefore the chances someone does something harmful based on what he posts is high. The potential magnitude of harm he carries is greater because a current or former world leader can cause larger harms on a broader scale, such as insurrection. As President, Trump had a unique platform that was more public and he directly influenced his followers. Those same followers are still supporting President Trump based on the ‘Stop the Steal’ conspiracy theory because they wrongly believe that the 2020 presidential election was stolen—because he told them so. As the Board weighs President Trump’s case, it must use a dangerous speech risk analysis that accounts for, at least, the probability of harm and the magnitude of harm posed by President Trump’s use of the platform.

II. Traditional Free Expression Principles Do Not Apply to World Leaders

The traditional free expression principles enshrined in civil and human rights laws are meant to empower individuals. Free speech is vital for regular individuals to speak truth to power, give voice to the marginalized, spread new ideas, and pursue justice. The purpose of free expression is to protect the people *against* the state, not to protect the state against accountability. While Facebook is a place for free speech, the principles driving the protection of free expression do not align with the circumstances of a current or former President and other major public leaders.

The President of the United States is the most powerful human being in the world. Armies move at their command. Billions of dollars move with their pen. Most of the executive branch is oriented to serve their agenda. As discussed above, world leaders pose a higher risk of harm from their speech as well. Moreover, world leaders do not just speak for themselves. They speak for their constituents, as public servants. Treating world leaders and regular individuals equivalently under a traditional free expression analysis fundamentally fails to account for these power differences and the purpose of free expression in the first place. It inverts the purpose of free expression and risks shielding powerful leaders from accountability and oversight.

Consequently, when the Board is evaluating President Trump's case, which consists predominantly of statements made while he was President of the United States, it should not afford him the level of free expression deference traditionally afforded to other speakers.

III. President Trump Has a Long History of Hateful and Violent Speech on Facebook

President Trump, before and during his presidency, used Facebook to post disinformation, engage in racist acts, and sanction hate and violence. Facebook almost never enforced its Community Standards against him. When his conduct did fly directly in the face of established policy, Facebook executives arbitrarily created excuses, new policies, or new policy interpretations to avoid taking any disciplinary action. The examples are legion but we will discuss just a few here.

In 2015, Mr. Trump posted a hateful statement calling for a ban on Muslim immigration to the United States. He called for “a total and complete shutdown of Muslims entering the United States until our country’s representatives can figure out what is going on.”³ This post received over 300,000 interactions and 34,000 comments, and was shared over 14,000 times. Facebook did not take any disciplinary action on this post, despite the fact that it is clearly and explicitly calling for the exclusion of a group of people on the basis of their religion. Calls for exclusion on the basis of a protected characteristic qualify as Tier 3 hate speech under Facebook’s Community Standards. At the time, Facebook CEO Mark Zuckerberg “acknowledged that Mr. Trump’s call for a ban did qualify as hate speech, but said the implications of removing them were too drastic.”⁴

In 2018, President Trump ran a political advertisement video prior to the midterm elections to urge Americans to vote to “stop thousands of immigrants from crossing the U.S. border.”⁵ This video was, in essence, a modern iteration on the infamous Willie Horton ad.⁶ The video was racist, xenophobic, and misleading towards Latinx people and immigrants. In the video, sensational images of Honduran, Guatemalan, Salvadoran, and other Central American migrants were juxtaposed with clips of a Mexican drug cartel gang member who was convicted of killing law enforcement officers, with the clear comparison and implication that all Latinx immigrants were violent criminals. The unmistakable aim was to associate Latinx immigrants, and Latinx

³ Donald Trump (Donald J. Trump), Facebook (Dec. 7, 2015, 5:33 PM) <https://www.facebook.com/DonaldTrump/posts/statement-on-preventing-muslim-immigration/10156386906600725/>; Deepa Seetharaman, *Facebook Employees Pushed to Remove Trump’s Posts as Hate Speech*, Wall St. J. (Oct. 21, 2016), <https://www.wsj.com/articles/facebook-employees-pushed-to-remove-trump-posts-as-hate-speech-1477075392>.

⁴ Seetharaman.

⁵ Salvador Rodriguez, *Facebook Takes Down ‘Sensational’ Trump Caravan Election Ad that has Been Condemned as ‘Racist’*, CNBC, (Nov. 5, 2018), <https://www.cnbc.com/2018/11/05/facebook-rejects-sensational-trump-caravan-election-ad.html>

⁶ Doug Criss, *This is the 30-year-old Willie Horton ad everybody is talking about today*, CNN (Nov. 1, 2018), <https://www.cnn.com/2018/11/01/politics/willie-horton-ad-1988-explainer-trnd/index.html>.



people overall, with criminality—as if it were an immutable characteristic inextricably linked to race and ethnicity. News outlets outright refused to be paid to run the ad because it was racist.⁷ The video violated Facebook’s Community Standards as Tier 1 hate speech (dehumanizing a protected category with comparisons to violent criminals) and Tier 3 hate speech (calls for exclusion or segregation). Facebook deemed the ad to be in violation of its advertising policy and did not allow it to run as paid content. Yet, the platform refused to remove it as an organic post from President Trump’s page because, even though Facebook agreed that it was “implicitly” racist, the company arbitrarily decided the post was not sufficiently “explicit” in its racism to violate Community Standards. There is no language in the Community Standards requiring hate to be explicit to qualify as hate speech. As evidence of the arbitrary nature of the decision, Facebook staff did not provide this explanation until several months later, after the midterm election, and after sustained inquiries from the Lawyers’ Committee.⁸ Facebook continued to allow users to access and interact with the post including, commenting and sharing.

President Trump also used Facebook to post hateful statements threatening violence against Black Americans. Following the protests that erupted after the killing of George Floyd in May 2020, President Trump used an infamous 1967 phrase from Sheriff Walter Headley, a white supremacist and segregationist, that “...when the looting starts, the shooting starts.”⁹ During a time of racial tension and mostly peaceful protests, President Trump offered threats of violence against protesters,¹⁰ in violation of the Community Standards. In turn, his followers clung to this rhetoric and continued to amplify it. As Facebook’s own civil rights auditors reported:

The civil rights community and the Auditors were deeply troubled by Facebook’s decision, believing that it ignores how such statements, especially when made by those in power and targeted toward an identifiable, minority community, condone vigilantism and legitimize violence against that community. . . . The idea that those in positions of authority could wield that power and use language widely interpreted by the public to be threatening violence against specific groups (thereby legitimizing targeted attacks against them) seemed plainly contrary to the letter and spirit of the Violence and Incitement Policy.¹¹

These are just a few high-profile examples of past instances in which Facebook failed to adequately enforce its policies prohibiting hate on the platform. President Trump has a well-

⁷ CNN Communications (@CNNPR), Twitter (Nov. 3, 2018 at 10:58 AM) <https://twitter.com/CNNPR/status/1058735152963182592>.

⁸ Lawyers’ Committee initially reported the video to Facebook as hate speech in a detailed and contemporaneous report when the content was first posted. Had we not continued to push for an answer to our report, it is likely Facebook would never have explained why it chose to allow this video to persist.

⁹ Donald Trump (Donald J. Trump), Facebook (May 29, 2020 at 1:10 AM) <https://www.facebook.com/153080620724/posts/10164767134275725>.

¹⁰ Sam Shead, *Facebook Staff Angry with Zuckerberg for Leaving up Trump’s ‘looting...shooting’ Post*, CNBC, (Jun. 1, 2020). <https://www.cnbc.com/2020/06/01/facebook-staff-angry--zuckerberg.html>.

¹¹ Facebook’s Civil Rights Audit—Final Report, at 54 (Jul. 8, 2020), <https://about.fb.com/wp-content/uploads/2020/07/Civil-Rights-Audit-Final-Report.pdf>.



documented history of racist and violence-promoting conduct on Facebook and there is no reason he would behave any differently if allowed back on the platform.

IV. President Trump Poses a Threat to Public Safety, the Rule of Law, and Democracy

President Trump should never be allowed back on Facebook because he poses a clear threat to public safety, to the rule of law, and to democracy. President Trump's constant authoritarian rhetoric of violence, threats, and racism pose an immediate danger to anyone who disagrees with him, from racial justice activists to Members of Congress. He championed a false conspiracy theory seeking to overturn a fair election in order to try to disenfranchise millions of voters and illegally hold onto power. That lie included, as a central component, racist dog whistle attacks on the right to vote of Black Americans in cities such as Philadelphia, Atlanta, and Detroit. He has repeatedly praised and supported extrajudicial violence against whomever he perceives to be his opponent. His pattern of racist, lying, and hateful speech will only continue if he is allowed back on to the platform.

Facebook's own civil rights auditors raised alarms when President Trump's speech went unchecked and said his statements posed a threat to public safety in the months leading up to the election, facilitated by Facebook's prior failures to act:

Specifically, we have grave concerns that the combination of the company's decision to exempt politicians from fact-checking and the precedents set by its recent decisions on President Trump's posts, leaves the door open for the platform to be used by other politicians to interfere with voting. If politicians are free to mislead people about official voting methods ... and are allowed to use not-so-subtle dog whistles with impunity to incite violence against groups advocating for racial justice, this does not bode well for the hostile voting environment that can be facilitated by Facebook in the United States. We are concerned that politicians, and any other user for that matter, will capitalize on the policy gaps made apparent by the president's posts and target particular communities to suppress the votes of groups based on their race or other characteristics. With only months left before a major election, this is deeply troublesome as misinformation, sowing racial division and calls for violence near elections can do great damage to our democracy."¹²

This report, coming months ahead of the election, expressed deep concerns with President Trump's behavior. Still, Facebook took no significant actions against President Trump until after the violent attack on the U.S. Capitol took place. After Facebook algorithmically amplified his misinformation, the corollary hate, and harmful threats for years, President Trump's supporters acted on his words. Lifting the suspension on his Facebook page would mean opening the floodgates for President Trump to engage in further threats, incitement, and hate.

¹² Facebook's Civil Rights Audit—Final Report, at 10 (Jul. 8, 2020), <https://about.fb.com/wp-content/uploads/2020/07/Civil-Rights-Audit-Final-Report.pdf>.



V. President Trump has Other Avenues of Speech

Banning President Trump from Facebook does not silence him. He still has plenty of conventional megaphones available to him, far greater than the average person. It does not eliminate all possibility and opportunity he has to speak freely and openly about whatever he would like. He was a United States President and before that a prominent television celebrity and businessman, known internationally. His removal from Facebook does not vitiate his ability to freely express himself; instead it would require him to simply use another channel or avenue. He has his own website where he can post any content he likes; he also has the leverage to contact media outlets, issue press releases, sit down for an interview, or write an op-ed to discuss his thoughts and opinions. His prominence guarantees someone will cover his statements.

Allowing President Donald Trump to return to Facebook ensures that continued harm will flow from his speech on the platform. He has the same high-profile status that he had prior to and during his Presidency, which will guarantee that his audience is expansive. The risk of harm is too great to overlook at a time when the country is confronting many important issues and cannot expect to heal if his hate is still given the amplification of a frequently used and popular platform such as Facebook.