



Seattle
Office of Immigrant and
Refugee Affairs
Cuc Vu, Director

Submitted via www.regulations.gov

October 13, 2020

Chad Wolf Acting Secretary
U.S. Department of Homeland Security
301 7th Street, S.W.
Washington, D.C. 20528

Paul Ray, Acting Administrator
Office of Information and Regulatory Affairs Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

RE: RIN 1615-AC14; USCIS Docket No. USCIS-2019-0007, Public Comment Opposing Proposed Rules on Expansion of Collection and Use of Biometrics by U.S. Citizenship and Immigration Services

Dear Acting Secretary Wolf and Acting Administrator Ray:

The City of Seattle Office of Immigrant and Refugee Affairs submits this comment urging the Department of Homeland Security (DHS) to withdraw the proposed rule in its entirety. The Notice of Proposed Rulemaking (NPRM) claims that the proposed rule is necessary to make more efficient and routine the collection of biometrics from anyone associated with an immigration claim or benefit. Yet it does not justify the need for this expanded collection in any concrete way, and the detrimental effects on millions of immigrants nationally and tens of thousands locally drive us to submit this comment in opposition to the proposed rule.

The City of Seattle (“the City”) has made great efforts to protect our immigrant and refugee workers and residents. Such efforts include executive orders,¹ resolutions,² and ordinances³ to ensure immigrants feel welcome and safe in the city. The City has also funded social programs to help income-eligible residents with what we consider to be basic needs. Additionally, the City believes it is the responsibility of our government to assist all Seattleites, including taxpayers, residents, and workers, especially when an individual or family encounters an unforeseen crisis or catastrophic emergency. In this role, the City

¹ Executive Order 2016-08, “Executive Order reaffirming Seattle as a welcoming city.” See: http://murray.seattle.gov/wp-content/uploads/2016/11/Executive-Order-2016-08_Welcoming-City.pdf

² Resolution Number: 31193, “Resolution affirming support for comprehensive immigration reform.” See <http://clerk.seattle.gov/~scripts/nph-brs.exe?s1=&s3=&s2=&s4=Ordinance+121063&Sect4=AND&I=200&Sect2=THESON&Sect3=PLURON&Sect5=RESNY&Sect6=HITOFF&d=RESF&p=1&u=%2F~public%2Fresny.htm&r=7&f=G>

³ Ordinance Number 121063, “An ordinance concerning inquiries by Seattle City officers and employees into immigration status, and activities designed to ascertain such status; and amending Seattle Municipal Code Chapter 4.18 in connection therewith.” See <http://clerk.ci.seattle.wa.us/~scripts/nph-brs.exe?d=CBOR&s1=114436.cbn.&Sect6=HITOFF&I=20&p=1&u=~public/cbor2.htm&r=1&f=G>

manifests its core value of providing infrastructure, goods, and services for all residents, but especially for vulnerable, disabled, and marginalized people who cannot individually provide for themselves.

To this end, the City created the Office of Immigrant and Refugee Affairs (OIRA) in 2012 to improve the lives of Seattle's immigrant and refugee families. In line with the City's values of social justice and equity, OIRA works to strengthen immigrant and refugee communities by engaging them in decisions about the City's future and improving the City's programs and services to meet the needs of all constituents. We believe supporting immigrants creates a stronger future for our nation. As with prior generations, today's immigrants are tomorrow's U.S. citizens, who will be fully engaged in the economic, cultural, and civic life of our society, both locally and nationally.

The City, through OIRA, funds and coordinates two naturalization programs called the New Citizen Campaign (NCC) and the New Citizen Program (NCP). It also funds and coordinates the Expanded Legal Defense Network (ELDN) that provides removal defense to low-income residents of Seattle and King County, Washington, the county where Seattle is situated. All three of these programs, as well as ad hoc services responding to regularly changing immigration policy such as the termination of DACA and TPS, serve hundreds of Seattle residents applying for immigration benefits each year.

Additionally, since 2010, King County has experienced the third biggest increase in foreign-born residents (121,648 new immigrant residents) among all U.S. counties, with a number of those being asylees and refugees.⁴ Lastly, from 2010 to 2016, Washington State received a total of 16,504 refugees from 46 countries, ranking our state in the top 10 of all states in number of refugees received.⁵ These individuals have contributed greatly to the resilient economy and vibrant culture of Seattle and other municipalities across the state. They also apply for the full array of immigration benefits to be affected by this proposed rule. **It is with these applicants in mind that we submit this comment in opposition to this proposed change.**

I. The 30-Day Comment Period for this NPRM is Insufficient.

The proposed rule is lengthy, complex and broad-sweeping, justifying a full 60-day comment period. The NPRM published on September 11, 2020 comprises 328 pages. Within these pages, the Department of Homeland Security (DHS) proposes to greatly expand the depth and breadth of collection of private information from applicants, including but not limited to expanding:

- The collection of biometrics data from all individuals associated with an application, including U.S. citizens;
- The collection of palm prints, facial and iris images, voice prints, and DNA;
- And the ability to permanently retain biometrics data and share it with law enforcement.

A 30-day comment period does not provide a meaningful opportunity for the public to respond to such far-reaching and drastic changes.

Perhaps more important to the limited comment period is the present state of our nation, currently in the throes of a global pandemic. Since March of this year, practitioners have had to remain up to date

⁴ <https://www.seattletimes.com/seattle-news/data/new-milestone-in-king-county-immigrant-population-tops-500000/>

⁵ <http://archive.kuow.org/post/where-seattles-refugees-come-and-other-things-you-should-know>

and ready to inform clients of the ever-changing legal landscape while toiling through the constraints created by the COVID-19 pandemic, such as working remotely without easy access to physical documents, clients, colleagues, and technology. Stakeholders struggle to perform their jobs while caring for children and sick family members, navigating financial strain, preparing for a contentious election, and responding to other recent policy changes such as the new U.S. Citizenship and Immigration Services (USCIS) fee schedule that was set to be implemented on October 2, 2020 (and recently put on hold by the courts). DHS and other federal agencies have themselves experienced significant disruptions, which continues to put into jeopardy such crucial business as naturalization oath ceremonies for applicants who were approved for citizenship months ago. With such constraints, the public cannot be expected to respond meaningfully to the proposed rule within an absurdly limited comment period.

The COVID-19 emergency has been disruptive enough to inspire federal lawmakers to request that the federal administration freeze the formal federal rulemaking process and administrative actions unrelated to the COVID-19 pandemic response and extend public comment periods “by at least 45 days beyond the end of the declared emergency.”⁶ Moreover, other federal agencies have recognized that the COVID-19 pandemic justifies the extension of comment periods.⁷ The refusal by DHS to expand the normal 60-day comment period, and their decision to instead shorten the period to 30 days is counter to the realities of our national emergency and in opposition to the requests and actions of federal lawmakers and agencies, rendering this process insufficient.

II. The Proposed Rule Will Have Sweeping and Devastating Consequences.

The proposed changes will have grave consequences for anyone submitting an application with USCIS, as well as those interacting with Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE). This expansion of biometrics could impact anyone – including U.S. citizens if they are petitioning for someone. The NPRM proposes extensive changes to the amount of private information DHS and its component agencies collect. It would expand the collection of biometrics to require any individual filing or associated with an immigration benefit or request to appear for biometrics collection without regard to age, including U.S. citizens. DHS estimates this would expand the number of biometrics collections by 2.17 million annually from 3.9 million to 6.07 million. This is a 56 percent increase in submissions. Additionally, the rule proposes a process of ongoing vetting while the person remains present in the U.S. until they are granted U.S. citizenship, expanding the number and types of immigration processes for which biometrics are collected. In this way, the rule proposes to increase by millions the number of individuals subject to mandatory biometrics collection, and to collect biometrics more often from each immigrant.

⁶ Letter from 14 House Committee Chairpersons

<https://edlabor.house.gov/imo/media/doc/Committee%20Chairs%20Letter%20re%20Comment%20Period%20Extension.pdf>

Letter from Senate Democrats Urging Administration to Indefinitely Extend Public Comment Periods:

<https://www.tomudall.senate.gov/news/press-releases/udall-leads-senate-democrats-in-urging-trump-administration-to-indefinitely-extend-public-comment-periods-and-pause-unrelated-federal-rulemakings-during-covid-19-pandemic-emergency->

⁷ See Bureau of Consumer Financial Protection, Debt Collection Practices (Regulation F); Extension of Comment Period, 85 Fed. Reg. 30890 (May 21, 2020) (agreeing that “the pandemic makes it difficult to respond to the SNPRM thoroughly” and providing an additional 90 days to comment on a proposal “in light of the challenges posed by the COVID-19 pandemic”).

As discussed above, DHS proposes to expand the meaning of the term “biometrics” to include, facial recognition, iris scans, palm prints, voice scans, and DNA. This combined with the explicit intention of retaining biometrics data indefinitely, and sharing it with law enforcement, would create an immense DNA database the likes of which this nation has never seen. The DNA collection from immigrants and refugees, along with our increasing reliance on immigrant enforcement and detention, echoes the well documented People's Republic of China practices to collect DNA from the ethnic Uighur population, a group that is also subject to detention in “reeducation” camps.⁸ In July, the Administration issued sanctions against China for its human rights abuses against Uighur people,⁹ only to release this proposed rule that would emulate similar abuses among immigrants and their family members in the U.S.

More disturbing is the intention to maintain biometrics data in perpetuity and to share it with other law enforcement agencies. The collection of DNA en masse is quite contentious and indicative of an ever-expanding surveillance state, with efforts to-date within the U.S. justified as intending to solve crime.¹⁰ The proposal by DHS creates a class of people within the U.S. who would forego their right to privacy or the autonomy to willingly consent to partake in DNA databases that will be shared freely among law enforcement throughout the country. The use of facial recognition software is similarly contentious in its inaccuracies and racial bias, which could lead to harm to immigrants of color and individuals who happen to look like them.¹¹

DHS proposes to “collect biometrics, including DNA, regardless of a minor's age.” The justification provided in the proposed rule is to sniff out instances where the family relationship claimed at the U.S.-Mexico border is false. This would mean that minors who DHS purports are not in the custody of their parent or legal guardian would be compelled to provide their DNA. Minors are typically unable to make legal decisions on their own without the consent of a parent or guardian. Here the government proposes to oblige minors to hand over their DNA without legal consent to do so, even before and without connection to the filing of any immigration applications. This is a ridiculous denial of civil liberties for individuals who are unable to assert their own rights and will likely expose the federal government to litigation, should this rule move forward.

Moreover, DHS proposes to remove the age limitations on the collection of biometrics to include anyone “entering or exiting the United States;” this could ostensibly include visitor and U.S. citizen children. That minors would be subject to dragnet tactics of collecting private information to be stored and shared for all time before they are legally competent to provide consent is incredibly distressing. DNA collection has ramifications for these children’s relatives and future generations. DNA has been used in the past to rate disease vulnerabilities, exclude insurance coverage, and for discrimination by employers. Even more egregious, DHS admits in the rule that it cannot assure that people’s privacy would be protected since their own data has been breached several times.

DHS demonstrates an abhorrent assumption of criminality among children and victims of crime throughout this proposal. This is evinced most clearly in the proposed changes to the presumption of

⁸ <https://www.nytimes.com/2019/02/21/business/china-xinjiang-uighur-dna-thermo-fisher.html?login=email&auth=login-email>

⁹ https://www.washingtonpost.com/opinions/trump-will-continue-to-punish-china-for-its-horrifying-anti-uighur-campaign/2020/07/12/cfa5870a-c2f9-11ea-9fdd-b7ac6b051dc8_story.html

¹⁰ <https://www.ny1.com/nyc/all-boroughs/news/2020/07/02/nypd-dna-database-continues-to-grow-legal-aid-society-says>

¹¹ <https://www.scientificamerican.com/article/how-nist-tested-facial-recognition-algorithms-for-racial-bias/>

good moral character for VAWA (Violence Against Women Act) self-petitioners and T visa applicants. The rule modifies the definition of good moral character (GMC) for VAWA and T applicants by relying upon biometrics information and associated background checks to prove GMC, even if the applicant is the victim of a crime. DHS further proposes to remove the automatic presumption of good moral character for VAWA self-petitioners and T visa applicants under 14 years of age. Self-petitioners under 14 would submit biometrics like any other VAWA self-petitioner. These visa categories were created to encourage immigrants to help law enforcement fight crime. Instead, it will deter them from assisting law enforcement, as this information collected may be used to take action against survivors of abuse, under this proposed rule.

This rule is an expansion of the surveillance state and wholly dehumanizing. The rule furthers anti-immigration rhetoric and fosters racist tropes by furthering the assumption that all immigrants are dangerous criminals deserving of an inhumane detention and surveillance system. The rule would have broad reach and a chilling effect on applicants for all kinds of benefits, which leads us to assume its intention in proposing this rule relates to the government's theme of closing the doors to legal immigration. It will discourage applicants from applying.

III. This Proposed Rule is Rash and Unjustified.

In its proposed rule, DHS provides no concrete data regarding the background information that is not captured under the current system that would justify this change. The rule does not discuss that there is a legitimate problem with current biometrics collection or that there is a problem with fraud that cannot be dealt with from existing biometrics or other investigative techniques. It provides no evidence to show that more biometrics collection is needed to catch criminals or security threats who cannot be caught from existing methods, nor that additional biometrics will improve national security. Increased collection of personal identifiable information data needs to be closely examined and rationalized. Sufficient time must be given to assess what is the perceived gap in the data that is currently obtained, and if these costly proposed amendments would be the only alternative. It appears that even DHS in proposing this rule did not have sufficient time to make this analysis.

Furthermore, the incredible 56 percent expansion of individuals from which DHS would collect biometrics, along with the 250 percent expansion of the types of biometrics datapoints to be collected (from only fingerprints and photos to now include palm prints, iris, voice and facial scans, and DNA) would require a huge increase in DHS capacity to collect, verify, store, and share this data. The agencies within DHS quite frequently lose files for an individual case, simply through the process of applications passing through service centers before entering local field offices or other adjudicating offices. Case status changes for online form filings are not kept up to date for changes as crucial as interview dates. A full four months since most USCIS field offices reopened after COVID-19 closures, tens of thousands of applicants have yet to be rescheduled for biometrics appointments that were cancelled in March and April of 2020.

Still DHS assures us they have "internal procedural safeguards to ensure technology used to collect, assess, and store the differing modalities is accurate, reliable, and valid," but offers no explanation as to how the agency will update all of its systems to do this. Furthermore, the agency proposes through the regular collection and sharing of private biometrics data to create a "person-centric model" that would follow an applicant through their entire time in the United States, a scope that is much broader than the proposed rule and outside their analysis of the justification and cost.

Meanwhile the agency provides only the cost of increased biometrics collection (\$3.2 to \$5 trillion from 2021 to 2030) based on the current \$85 cost of biometrics while having recently published a final rule updating the final USCIS fee schedule that would reduce biometrics fees to \$30 for most applicants. This rule does not provide an indication of the cost of such expansive updates to DHS systems to create a biometrics profile that would follow an individual throughout their life in the U.S. As it is an economically significant rule, it adds new self-imposed costs to the agency for law enforcement rather than adjudications. The rule lacks sufficient quantitative analysis or explanation of how the agency plans to pay for it. And the rule ironically proposes to spend millions of dollars right when DHS claimed insolvency and the agency asked Congress for a bailout.

The huge scope of this rule, the glaring inconsistencies both within the proposal and in relation to other recent rules, and the utter lack of detail as to why and how the agency should expand biometrics collection in a manner that is not entirely disregarding of applicants' privacy, civil rights and personal safety, point to a rash effort to sneak in sweeping changes while the American public is distracted and worn, and before a potential administration change.

Based on the above stated arguments, the City of Seattle and OIRA call upon the Department of Homeland Security to withdraw this proposed rule in its entirety.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Cuc Vu', with a horizontal line extending to the right.

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