

Aug. 30, 2018

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RE:

1. Comments on Notice of a New System of Records (SORN): Department of Homeland Security/ US Citizenship and Immigration Services-018 Immigration Biometric and Background Check System of Records¹
2. Comments on Notice of Privacy Act Exemptions: Department of Homeland Security/ US Citizenship and Immigration Services-018 Immigration Biometric and Background Check System of Records²

Introduction

Last month, the United States Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (DHS) published a new Systems of Records Notice (SORN) announcing new, proposed rules to create massive new databases and procedures that will collect and store biometric and biographic information of any noncitizen applying for any immigration benefit and anyone, including any US citizen, who has a connection to the applicant. In addition, the USCIS excluded this system from many provisions in the Privacy Act, shrouding the new system in secrecy. The information gathered about immigrants and U.S. citizens will be shared across federal and local law enforcement agencies.

These new rules are one more building block in the Department of Homeland Security's plans³ to roll out big data mining and surveillance systems against immigrants and anyone who has a "rational" connection to them.⁴ They will exacerbate long-standing profiling and over-policing problems in the United States and will further criminalize black and brown communities.

The listed organizations submit these comments in opposition to the above referenced SORN and Privacy Act exemption notice.

Background

Currently, USCIS maintains a database system and collection protocols to coordinate background checks on people applying for immigration benefits.⁵ These systems focused on

¹ <https://www.gpo.gov/fdsys/pkg/FR-2018-07-31/pdf/2018-16138.pdf>

² <https://www.gpo.gov/fdsys/pkg/FR-2018-07-31/pdf/2018-16137.pdf>

³ 2016 Data Mining Report to Congress, Department of Homeland Security April 2017, <https://www.dhs.gov/sites/default/files/publications/2016%20Data%20Mining%20Report%20FINAL.pdf>; https://www.thecipherbrief.com/column_article/dhs-big-data-integration-challenge

⁴ "ICE Rebrands its AI-Enhanced Extreme Vetting Plan as 'Visa Lifecycle Vetting,'" <https://gizmodo.com/ice-rebrands-its-ai-enhanced-extreme-vetting-plan-as-vi-1820686047>

⁵ DHS USCIS currently uses two existing DHS/USCIS Privacy Act SORNs for the maintenance of USCIS biometric and background check records: "DHS/USCIS 002 Background Check Service," 72 FR 31082 (June 5, 2007), and "DHS/USCIS-003 Biometric Storage System," 72 FR 17172 (April 6, 2007).

background checks of applicants and beneficiaries of people applying for immigration benefits, namely through a combination of limited but thorough identity checks. These systems will now be replaced, in the manner described in the SORN.

These new rules and systems constitute a sharp departure from what currently exists. They establish radical new protocols in collection, storage and information sharing and creates massive new databases to house them. For example, the new system will store more than just fingerprints and photographs, but iris scans and voice samples, and photographs. It is unclear whether this information may also come from commercial data-aggregators (companies that collect law enforcement and personal information for purchase.) Unlike the current system, DHS asserts that a new purpose of the system is to support data-sharing amongst federal, state, and local systems. Remarkably, USCIS intends that these systems remain out of the public eye, even though the potential for abuse and error is nearly certain.

What will the new changes do?

Under the new rules, USCIS will consolidate the old systems into one new system that will do the following:

- For any immigration benefit, collect and store biographic and biometric information about the applicant, anyone named in any application for an immigration benefit, anyone with a “rational connection to the applicant,” including family, friends, associates, employers and attorneys.
 - This means it applies to people living inside and outside the United States, including U.S. citizens.
 - Any immigration benefit can include, but is not limited to: marriage visas, work permits or visas, naturalization applications, refugee processing, asylum - anything where a noncitizen might be applying to USCIS.
- USCIS will store a wide range of biographic and biometric information – everything from immigration history, travel information, any encounter with law enforcement, to your eye color to a retina scan or a voice sample – in ONE place.
 - In essence, USCIS will create and feed information to a secret profile. We don’t know who else has access to this information and for what purpose.
- The information is being collected to be shared. USCIS plans to share and vet information they acquire with other federal agencies (e.g. Department of Defense, Department of State, any component of DHS, etc.), state governments, local, tribal and foreign governments. There are multiple uses for this kind of information. Below are some examples:
 - It can be used to deny a marriage visa or stop a parent from reuniting with their child;
 - It can be used in to prepare a criminal investigation for worksite enforcement or surveil immigrants protesting a detention center; or
 - It may be used as a back-end door to get around sanctuary city policies that were put in place to deal with over-policing and targeting of immigrants and their communities.
- The information cannot be challenged; it can be stored for 100 years, and there is virtually no way to fix mistakes or get off.

- This system is linked to other new vetting systems that DHS is building, but it is hard to know how it will work. DHS has exempted it from many protections under the Privacy Act, meaning that DHS intends to have it operate from the shadows.

What is wrong with these rules?

These types of systems support the massive, fast-growing industry of data policing and surveillance. DHS is already the largest federal enforcement agency in the United States and operates with little to no accountability. It is deeply troubling that DHS is constructing a massive surveillance and data mining system on immigrants and U.S. citizens at a record pace while, at the same time, shielding themselves from oversight and transparency. These systems will justify the creation of more policing and profiling programs, such as predictive policing programs or “alternative” monitoring programs, that will fuel criminalization and detention of immigrant communities and those who associate with them.

1. These new systems and procedures collect and store vast amounts of information about a noncitizen and anyone potentially associated with that person, including U.S. citizens. Incorrect or flawed information cannot be corrected. There are no specific redress measures (for inaccuracies or mistakes) identified nor any auditing or review criteria mentioned. Moreover, this information can stay in the database forever.
2. USCIS will share information it collects and stores with foreign, state, and local governments. Not only does this endanger families and loved ones in other countries but it violates privacy rights of immigrants and US residents. Although USCIS and DHS claims they will follow applicable laws, there is no way to verify that they are following any laws at all since the systems are exempt from provisions of the Privacy Act.
3. This new system is an important link in a chain of DHS systems aimed at creating a massive surveillance system on immigrants and their loved ones, friends, neighbors, employers and attorneys. While there is no information about who plans to build these massive new systems, it will likely be built by corporations specializing in security databases who have already won huge contracts from DHS – companies like Palantir or Microsoft.⁶ Corporations can expect to reap huge benefits from the building of these systems, at the cost of violating the rights of millions of immigrants and the U.S. citizens that surround them.

Organizations opposed to the proposed rules:

National

Mijente

National Immigration Project of the NLG

Open the Government

Immigrant Defense Project

⁶ “Tech companies quietly wok with ICE as border crisis persists,” NBC News, June 20, 2018; https://www.nbcnews.com/tech/tech-news/tech-companies-quietly-work-ice-border-crisis-continues-n885176?cid=sm_npd_nn_tw_ma

Detention Watch Network
Center for Media Justice
American-Arab Anti-Discrimination Committee
National LGBTQ Task Force
Government Information Watch
National Immigration Law Center
National Immigrant Justice Center
PEN America
Advancing Justice - Asian Law Caucus
National Justice for Our Neighbors
Transgender Law Center
Asian Americans Advancing Justice | AAJC
Immigrant Legal Resource Center
Project On Government Oversight
NETWORK Lobby for Catholic Social Justice
National Advocacy Center of the Sisters of the Good Shepherd
Franciscan Action Network
Defending Rights & Dissent
GMHC Inc.
Sisters of Mercy of the Americas - Institute Justice Team
Emgage Action
South Asian Americans Leading Together (SAALT)
CREDO
Congregation of Our Lady of the Good Shepherd, US Provinces
Asian American Legal Defense and Education Fund (AALDEF)
National Council of Jewish Women
Freedom Network USA
URGE: Unite for Reproductive & Gender Equity
Sister of St. Francis of Philadelphia
Free Press

Regional and State

Refugee and Immigrant Center for Education and Legal Services (RAICES)
Juntos
Legal Aid Justice Center
Families for Freedom
New York Immigration Coalition
Arab American Legal Services

New Voice Immigration Assistance Services
Public Counsel
South Bay People Power
Instituto de Educacion Popular del Sur de California (IDEPSCA)
Chula Vista Partners in Courage
Equality North Carolina
Community Legal Services in East Palo Alto
Muslim Justice League
Asian Americans Advancing Justice|Los Angeles
Adhikaar
KIWA
Immigrant Rights Clinic at NYU School of Law
Immigrant Legal Advocacy Project
Community Development Project, Urban Justice Center
Phoenix Legal Action Network
The Legal Aid Society
Central American Legal Assistance
Dolores Street Community Services