

U.S. Customs and Border Protection
Attn: Paperwork Reduction Act Officer
Regulations and Rulings, Office of Trade
90 K Street NE 10th Floor
Washington, DC 20229-1177

22 August 2016

We the undersigned human rights and civil liberties organizations write to convey our significant concerns with the U.S. Department of Homeland Security [proposal](#)—to be implemented through U.S. Customs and Border Protection—that certain categories of visitors to the United States be asked to disclose information about their “online presence” in their visa-waiver arrival/departure records (Form I-94W) and their online application for an Electronic System for Travel Authorization (ESTA). This program would invade individual privacy and imperil freedom of expression while being ineffective and prohibitively expensive to implement and maintain.

The proposed inquiry into visa-waiver applicants’ “online presence” would solicit travelers’ usernames or other “social media identifiers” associated with a wide range of Internet-based “provider[s]/platform[s].” These terms are not clearly defined in the notice, but the proposal would appear to solicit applicants’ account names on certain popular social media platforms, and to volunteer any additional account names and platforms they may use.

This inquiry goes far beyond the customary visa-waiver application questions regarding a person’s name, address, criminal background, health status, and duration of stay. A person’s online identifiers are gateways into an enormous amount of their online expression and associations, which can reflect highly sensitive information about that person’s opinions, beliefs, identity, and community. Further, analysis of all visa-waiver applicants’ social media “activity and connections” would be a difficult and prohibitively expensive intelligence activity—costs that are not reflected in the proposal.

Online identifier collection is highly invasive. The program’s goal is described as “provid[ing] DHS greater clarity and visibility to possible nefarious activity and connections.” It is not clear how applicants’ identifiers would be used by CBP officers to determine their eligibility for a visa waiver, but it is clear that an open-ended inquiry into “online presence” would give DHS a window into applicants’ private lives. Individuals’ “online presence” could include their reading lists, political affinities, professional activities, and private diversions. Scrutiny of their sensitive or controversial online profiles would lead many visa-waiver applicants to self-censor or delete their accounts, with consequences for personal, business, and travel-related activity. Further, the meaning of content and connections on social media is idiosyncratic and context-dependent, but as a practical matter, applicants would have little or no opportunity to explain information associated with their online profiles or challenge inappropriate waiver denials.

The scale and scope of this program would lead to a significant expansion of intelligence activity. DHS collection of online identity information is an intelligence surveillance program clothed as a customs administration mechanism. All of the information

collected through ESTA is shared, in bulk, with U.S. intelligence agencies and can be used to seed more intelligence surveillance unrelated to the applicant's eligibility for a visa waiver. It is likely to be used to augment existing lists and databases for tracking persons of interest to law enforcement and intelligence agencies, with consequences for innocent individuals swept up in those programs. And it could be used to generate data requests from social media providers, including requests for users' account activity and private communications.

Online identifier collection would create disproportionate risks. The risk of discrimination based on analysis of social media content and connections is great and will fall hardest on Arab and Muslim communities, whose usernames, posts, contacts, and social networks will be exposed to intense scrutiny. Cultural and linguistic barriers increase the risk that social media activity will be misconstrued. This disparate impact will affect not only travelers from visa-waiver program countries, but also the Arab-Americans and Muslim Americans whose colleagues, family members, business associates, and others in their social networks are exposed to immediate scrutiny or ongoing surveillance, or are improperly denied a visa waiver because of their online presence. It also poses significant risks to journalists, whose profession requires confidentiality and whose social media networks may convey a profile that, taken out of context, could be misconstrued.

Online identifier collection would be ineffective for screening visa-waiver applicants. DHS indicates that collection of visa-waiver applicants' online identity information would "enhance the existing investigative process" for screening purposes. This reflects a misplaced faith in both the accuracy of information on social media and the likelihood of relevant self-disclosures. Individuals who pose a threat to the United States are highly unlikely to volunteer online identifiers tied to information that would raise questions about their admissibility to the United States. This program is far more likely to yield a flood of profiles from travelers who feel compelled to disclose information that is irrelevant to their entry. It may also prompt some travelers to create false or "dummy" profiles to shield their privacy—or to thwart CBP investigations. This program would introduce significant noise and few if any signals to the visa-waiver screening process.

Social media analysis would be prohibitively expensive. Finally, this increase in noise will lead to an escalation of costs—costs that appear to be unaccounted for in the DHS Paperwork Reduction Act statement. Generating actionable intelligence from social media data cannot be accomplished through a cursory examination of content and connections. Automated processing of this data would require sophisticated capabilities in machine learning and complex network analytics that will dwarf the Department's cost projection. But any automated processing will also increase the incidence of error and any qualitative assessment of social media will require human review by trained analysts. These costs would render the proposal prohibitively expensive, with no conclusive benefits to the mission of DHS.

While we understand the security concerns that motivate this proposal, we believe it would irresponsibly shift government resources to a costly and ineffective program while invading the privacy of not just visa-waiver applicants, but also their contacts in the U.S. The price of

a business trip or family vacation to the United States should not include a fishing expedition into one's reading lists, tastes, beliefs, and idiosyncrasies by CBP officers. Given the risk of discriminatory impact on minority communities as well as the privacy concerns set forth above, we urge CBP to withdraw this proposal.

Signed,

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Advocacy for Principled Action in Government

American Civil Liberties Union

American Immigration Lawyers Association

American-Arab Anti-Discrimination Committee

Bill of Rights Defense Committee/Defending Dissent Foundation

Center for Democracy & Technology

Committee to Protect Journalists

The Constitution Project

Consumer Action

Consumer Federation of America

Council on American-Islamic Relations

Demand Progress

Electronic Frontier Foundation

Immigrant Legal Resource Center

National Immigration Project of the National Lawyers Guild

New America's Open Technology Institute

Online Policy Group

Paradigm Initiative Nigeria

Restore The Fourth

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Woodhull Foundation