COMMENTS OF THE

ELECTRONIC FRONTIER FOUNDATION

REGARDING GENERIC CLEARANCE FOR THE COLLECTION OF SOCIAL MEDIA IDENTIFIER(S) ON IMMIGRATION FORMS BY U.S. CITIZENSHIP AND IMMIGRATION SERVICES

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Docket No. USCIS-2025-0003

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Submitted on May 5, 2025 to the Department of Homeland Security, U.S. Citizenship and Immigration Services

The Electronic Frontier Foundation ("EFF") is the leading nonprofit organization defending civil liberties in the digital world. Founded in 1990, EFF champions user privacy, free expression, and innovation through impact litigation, policy analysis, grassroots activism, and technology development. EFF works to ensure that rights and freedoms are enhanced and protected as our use of technology grows.

EFF submits the following comments to urge the U.S. Department of Homeland Security ("DHS"), U.S. Citizenship and Immigration Services ("USCIS") to withdraw its "Generic Clearance" (hereafter, "Proposed Rule"), published at Docket ID USCIS-2025-0003. This proposal, which would drastically expand USCIS's collection of social media identifiers on routine immigration applications, threatens privacy and chills the free speech and associational rights of both U.S. citizens and noncitizens.

I. Overview and context of the Proposed Rule

The Proposed Rule collects social media identifiers on nine common immigration forms, including applications for naturalization and permanent residency, impacting over 3.5 million people annually.[1] USCIS purportedly seeks this information "for enhanced identity verification, vetting and national security screening, and inspection conducted by USCIS and required" under Executive Order 14161 to determine eligibility for immigration-related benefits.[2]

This is not the first time that the federal government has proposed the collection of social media identifiers to engage in monitoring of noncitizens. In 2019, the State

[1] 90 Fed. Reg. 11325-26 (Mar. 5, 2025).
[2] *Id.* at 11325; *see also* 90 Fed. Reg. 8451 (Jan. 20, 2025).

Department finalized and implemented a rule[3] requiring visa and visa waiver applicants to disclose social media identifiers used on 20 social media platforms within the last five years,[4] despite widespread objections from civil and human rights organizations.[5] The rule affects 14.7 million people annually.[6] That rule is currently the subject of ongoing litigation brought on behalf of U.S.-based documentary film organizations, who have argued that the rule violates their members' and partners' First Amendment rights, as well as the Administrative Procedure Act.[7]

Alarmingly, this Proposed Rule was announced amid other measures to engage in social media monitoring of noncitizens by this administration. The day after this Proposed Rule was published, senior officials at the State Department confirmed a joint program with DHS and the Department of Justice aimed at targeting student visa holders for their online speech.[8] The program—called "Catch and Revoke"—uses a dedicated task force and artificial intelligence ("AI") to review social media accounts of tens of thousands of student visa holders, purportedly for evidence of "alleged terrorist sympathies" or "antisemitic activity."[9] Later that month, a State Department cable ordered personnel to conduct social media review of new or returning student visa applicants for any purported evidence of terrorist connections or simply "conduct that bears a hostile attitude toward U.S. citizens or U.S. culture (including government,

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[3] Sandra E. Garcia, *U.S. Requiring Social Media Information From Visa Applicants*, N.Y. Times (June 2, 2019), https://www.nytimes.com/2019/06/02/us/us-visa-application-social-media.html.
[4] 83 Fed. Reg. 13806-07 (Mar. 30, 2018); *Doc Society v. Blinken*, No. 1:19-cv-03623, Compl. at ¶ 1 (D.D.C. filed Dec. 5, 2019).
[5] *See, e.g.*, Comments of the Brennan Center et al., *DS-160 and DS-156, Application for Nonimmigrant Visa, OMB Control No. 1405-0182; DS-260, Electronic Application for Immigrant Visa and Alien Registration, OMB Control No. 1405-185* (May 29, 2018), https://www.brennancenter.org/sites/default/files/analysis/Comments%20-%20Department%20of%20State%20-Visa%20Applicant%20Social%20Media%20Collections%20-%20Public%20Notices%2010260%20-%2010261.pdf; *Doc Society*, No. 1:19-cv-03623, Compl. at ¶ 26 (identifying over 10,000 comments submitted in response to the rule, the "vast majority" of which were opposed to it).
[6] *Doc Society*, No. 1:19-cv-03623, Compl. at ¶ 1.
[7] *See* Knight First Amendment Institute at Columbia University, *Doc Society v. Blinken*, https://knightcolumbia.org/cases/doc-society-v-blinken.
[8] Marc Caputo, *Scoop: State Dept. to use AI to revoke visas of foreign students who appear "pro-Hamas,"* Axios (Mar. 6, 2025), https://www.axios.com/2025/03/06/state-department-ai-revoke-foreign-student-visas-hamas.
[9] *Id.*; Julia Ainsley, *Inside the DHS task force scouring foreign students' social media*, NBC News (Apr. 9, 2025), https://www.nbcnews.com/politics/national-security/dhs-task-force-scouring-foreign-students-social-media-rcna198532.

institutions, or founding principles)."[10] Recently, USCIS also announced it would look for "antisemitic activity" on social media as grounds for denying immigration benefit requests among people applying for permanent residency, foreign students, and noncitizens affiliated with educational institutions—which appears to be related to this Proposed Rule, although not expressly *included* in it.[11]

II. The Proposed Rule invades privacy and can reveal personal information that far exceeds what may be captured by questions on an immigration benefits application.

As an initial matter, USCIS should clarify that it will only review *publicly available* social media content, as the Proposed Rule is silent on this point. Importantly, the government would need a warrant to access private social media content.[12]

Even if the Proposed Rule, like the existing rule on disclosure of social media identifiers on visa and visa waiver applications, only targets publicly available social media profiles, the government can still glean vast amounts of personal information from viewing such profiles, invading privacy and implicating legal rights.

Social media profiles host massive amounts of data because of their unlimited storage capacity. This may include far more information than can even be contained on a device such as a cell phone.[13] As the Supreme Court has recognized, "[t]he sum of an individual's private life can be reconstructed through a thousand photographs labeled with dates, locations, and descriptions"—all of which and more are often publicly available on social media platforms.[14]

Social media profiles also contain vast amounts of personal information that can reveal, directly and inferentially, details about a person's "familial, political, professional, religious, and sexual associations."[15] This may allow the government to derive personal information that it may not otherwise have access to via the nine immigration applications the Proposed Rule covers. For example, Form I-485 rightfully does not ask

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[10] Marisa Kabas, *State Dept. demands 'enhanced' social media vetting of student visa applicants*, The Handbasket (Mar. 26, 2025), https://www.thehandbasket.co/p/state-dept-enhanced-social-media-vetting-student-visa-applicants.
[11] USCIS, *DHS to Begin Screening Aliens' Social Media Activity for Antisemitism* (Apr. 9, 2025), https://www.uscis.gov/newsroom/news-releases/dhs-to-begin-screening-aliens-social-media-activity-for-antisemitism.
[12] *United States v. Warshak*, 631 F.3d 266, 288 (6th Cir. 2010).
[13] *See, e.g.*, *Riley v. California*, 573 U.S. 373, 394 (2014).
[14] *Id.*
[15] *See United States v. Jones*, 565 U.S. 400, 415 (2012) (Sotomayor, J., concurring).

applicants for permanent residency about their political beliefs.[16] Yet political beliefs may be easily ascertainable from public social media content.

The interconnected nature of social media also can paint an alarmingly detailed picture of the personal lives of applicants, as well as that of their social media connections. Social media can reveal information about an applicant in two ways: (1) by the applicant themselves through, for example, biographical information, text-based posts, photos, videos, and group memberships; and (2) by their social media associates via tagging, commenting, and following. Furthermore, social media can also reveal information about people in an applicant's network, including U.S. citizens. For instance, an applicant (or a third-party) could tag another user in a post or photo that appears on the applicant's profile. And public "friends" lists of applicants could also draw the government's attention to a connection's profile. Importantly, the Proposed Rule does not state that the government will avoid reviewing the social media content of individuals in an applicant's networks.

Moreover, because privacy settings can be difficult to navigate within and across social media platforms, much of the publicly available information about an applicant may not be made public *voluntarily* or may be made public by one of their social media contacts without their consent.[17] Although younger people are more likely to take advantage of available settings than adults over 50,[18] studies show that many people do not change default settings.[19] On some social media platforms, it can be difficult to discern exactly what information is public by default.[20] Particularly worrisome, some platforms change privacy settings without warning.[21]

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[16] USCIS Form I-485, *Application to Register Permanent Residence or Adjust Status*, https://www.uscis.gov/sites/default/files/document/forms/i-485.pdf.
[17] *See, e.g.*, *Who can tag you and how to know if someone tags you on Facebook*, Facebook Help Ctr., https://www.facebook.com/help/226296694047060/ ("You can be tagged in posts and photos by Friends and friends of friends … Remember, posts you choose not to allow on your timeline may appear in Feed and elsewhere on Facebook.").
[18] Mary Madden & Aaron Smith, *Reputation Management and Social Media*, Pew Research Center (May 26, 2010), https://www.pewresearch.org/internet/2010/05/26/reputation-management-and-social-media.
[19] *See* Jon M. Jachimowicz et al., *When and why defaults influence decisions: a meta-analysis of default effects*, Behavioral Pub. Pol'y 3:2 (2019), https://doi.org/10.1017/bpp.2018.43.
[20] *See, e.g., Add and Edit Your Profile Info*, Facebook Help Ctr., https://www.facebook.com/help/1017657581651994 (explaining how to change various settings without consistently explaining what information is public by default).
[21] Will Oremus, *Facebook Changed 14 Million People's Privacy Settings to "Public"*

Sometimes, social media may reveal a user's personal information without *any* party affirmatively sharing it. Studies have found, for example, that even when a user does not explicitly indicate the nature of their relationships on social media, their romantic relationships[22] and sexual orientation[23] can often be inferred. Again, USCIS officials would not be able to discern these sensitive details from existing questions on immigration benefits forms.

All of this implicates legal rights, including under the Fourth Amendment. The Supreme Court has repeatedly held that the government's collection and aggregation of publicly available personal information—particularly when enhanced by technology—can implicate privacy interests.[24] Social media aggregates personal information in one place—and often makes it easily searchable and savable—including some of the most intimate details of users' lives. And as explained above, even people who choose not to post much personal information on social media can still be exposed by links to other users. The government can thus obtain personal information it otherwise would not have access to or that would be difficult to find across disparate locations.

III. The Proposed Rule chills free speech and association under the First Amendment.

What distinguishes this Proposed Rule from the State Department's existing program collecting social media identifiers on visa and visa waiver applications is that most, if not all, of the noncitizens who would be affected currently legally reside in the United States. As the Supreme Court has held, "[f]reedom of speech and of press is accorded aliens residing in this country."[25]

A. *First Amendment-protected political speech*

The Proposed Rule reflects an overbroad approach that is constitutionally problematic because the government inevitably collects—and may consider—core First Amendment-protected political speech in the administration of immigration benefits. As

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Without Warning, Slate (June 7, 2018), https://slate.com/technology/2018/06/facebook-changed-14-million-peoples-privacy-settings-to-public-without-warning-due-to-a-bug.html.

[22] Brady Robards & Siân Lincoln, *Making It "Facebook Official": Reflecting on Romantic Relationships Through Sustained Facebook Use*, Soc. Media + Soc'y (Oct. 12, 2016), https://journals.sagepub.com/doi/10.1177/2056305116672890.

[23] Carter Jernigan & Behram F.T. Mistree, *Gaydar: Facebook friendships expose sexual orientation*, First Monday (Sept. 25, 2009), https://firstmonday.org/ojs/index.php/fm/article/view/2611.

[24] *See, e.g.*, *Jones*, 565 U.S. at 400; *Carpenter v. United States*, 585 U.S. 296 (2018); *U.S. Dep't of Just. v. Reps. Comm. for Freedom of the Press*, 489 U.S. 749 (1989).

[25] *Bridges v. Wixon*, 326 U.S. 135, 148 (1945).

the Supreme Court stated, a core purpose of the First Amendment is "to protect the free discussion of governmental affairs," which includes "structures and forms of government, the manner in which government is operated or should be operated, and all such matters relating to political processes."[26]

There are several categories of speech that do not enjoy First Amendment protection, including true threats of violence,[27] inciting imminent violence,[28] and providing material support for terrorism.[29] However, short of rising to that level, any social media speech—even controversial or offensive speech, including "antisemitic" speech[30]—is protected by the First Amendment. But the timing of this Proposed Rule amid other measures to police the online speech of noncitizens indicates that USCIS is considering First Amendment-protected speech in making its immigration benefit determinations. *See supra* Section I.

The Proposed Rule would also sweep up anonymous or pseudonymous speech. The State Department's existing social media identifier collection program explicitly requires disclosure of social media accounts run anonymously or pseudonymously and the Proposed Rule does not say anything to the contrary.[31] As the Supreme Court has repeatedly held, anonymous or pseudonymous speech is also entitled to full First Amendment protections.[32]

B. *Chilling effect*

The Proposed Rule's required disclosure of social media identifiers on the nine immigration forms and its subsequent social media review will chill the free speech of the individuals who may seek to obtain immigration benefits.

The Supreme Court has held that a government policy that causes individuals "to feel some inhibition" in freely expressing themselves "is at war with the 'uninhibited,

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[26] *Mills v. Alabama*, 384 U.S. 214, 218-19 (1966).
[27] *See generally* Free Speech Center, *True Threats*, https://firstamendment.mtsu.edu/article/true-threats/.
[28] *Brandenburg v. Ohio*, 395 U.S. 444 (1969).
[29] *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010).
[30] *See supra* note 11.
[31] *Doc Society*, Case No. 1:19-cv-03623, Compl. at ¶ 1 (The State Department's existing rule compels visa applicants to "disclose on their application forms all social media identifiers, including pseudonymous ones, they have used on any of twenty social media platforms during the preceding five years.").
[32] *See, e.g.*, *Talley v. California*, 362 U.S. 60, 64 (1960) ("Persecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not at all."); *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 357 (1995) ("Anonymity is a shield from the tyranny of the majority.").

robust, and wide-open' debate and discussion that are contemplated by the First Amendment."[33] More recently, Supreme Court Justice Sotomayor, in a landmark opinion, wrote, "[a]wareness that the government may be watching chills associational and expressive freedoms" guaranteed by the First Amendment.[34]

That is, noncitizens in the United States who intend to apply for certain immigration benefits will be more likely to engage in self-censorship and refrain from expressing dissenting or controversial political views on social media. Or they may choose to disengage from social media entirely, to avoid the risk that even seemingly benign posts will affect their applications. Either action would frustrate the entire purpose of applicants who run anonymous or pseudonymous social media accounts. *See* Section III.A.

They may also limit whom they connect with on social media, particularly if they fear those connections will have political views the current administration does not like. As mentioned above, the Proposed Rule does *not* state that the government will limit its social media review only to the posts of applicants, and thus there is concern that it may also look at posts made by those in the applicants' networks. This, too, undermines the First Amendment. The freedom to associate and express political views as a group—"particularly controversial ones"—is a fundamental aspect of freedom of speech.[35]

Additionally, the Proposed Rule does not include a definition of "social media." At minimum, USCIS should clarify what it considers to be "social media." The definition should be narrow and should avoid sweeping in platforms that may have a social component but are not traditional social media, for example, sites and apps related to e-commerce, reviews, dating, and payment processing. Otherwise, a broad definition would exacerbate the Proposed Rule's chilling effect.

IV. Social media monitoring is prone to errors and misinterpretation.

USCIS's stated purpose for this Proposed Rule is that it will assist in vetting and national security screening. *See supra* Section I. But there is little evidence to show that review of social media information serves these functions. In fact, by the government's own assessment in the context of evaluating the admissibility of visa *applicants*, social media surveillance has not proven effective at assessing security threats.[36]

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[33] *Lamont v. Postmaster General*, 381 U.S. 301, 307 (1965) (quoting *N.Y Times v. Sullivan*, 376 U.S. 254, 270 (1964)).
[34] *Jones*, 565 U.S. at 416 (Sotomayor, J., concurring).
[35] *NAACP v. Alabama*, 357 U.S. 449, 460 (1958).
[36] Charlie Savage, *Visa Applicants' Social Media Data Doesn't Help Screen for Terrorism, Documents Show*, N.Y. Times (Oct. 5, 2023), https://www.nytimes.com/2023/10/05/us/social-media-screening-visa-terrorism.html.

As the Brennan Center for Justice at NYU Law has extensively detailed, information contained in social media profiles and communications on platforms can easily be misconstrued because of slang, sarcasm, humor, or exaggeration.[37] For example, in 2012, an Irish national was denied entry into the United States after he tweeted out that he was going to "destroy America" (a reference to partying) and "dig up the grave of Marilyn Monroe" (a joke).[38] Mistakes like this can be further compounded if online speech is in a language other than English[39] or contain cultural or other contextual references.[40]

Moreover, because of the interconnected nature of social media, *see supra* Section II, USCIS may not only analyze an applicant's online speech, but also that of anyone in their network, including U.S. citizens. This runs the risk of officials conflating a social media associate's opinion or belief with that of the applicant. For example, in 2019, DHS subcomponent Customs and Border Protection revoked the visa of an international student of Palestinian descent after searching his cell phone and laptop at the border and confronting him about political posts that a social media connection had made on social media.[41] These concerns are even more heightened today, after several pronouncements by various government agencies—including USCIS—that they will scrutinize the social media of noncitizens to seek evidence of "terrorist sympathies" or "antisemitic" sentiment. *See supra* Section I.

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[37] Comments of the Brennan Center et al., *Agency Information Collection Activities: Generic Clearance for the Collection of Social Media Information on Immigration and Foreign Travel Forms (Docket Number DHS-2019-0044)* (Nov. 4, 2019), https://www.brennancenter.org/sites/default/files/2019-11/DHS%20SMM%20comments%20-%20FINAL.pdf.

[38] J. David Goodman, *Travelers Say They Were Denied Entry to U.S. for Twitter Jokes*, N.Y. Times The Lede (Jan. 30, 2012), https://archive.nytimes.com/thelede.blogs.nytimes.com/2012/01/30/travelers-say-they-were-denied-entry-to-u-s-for-twitter-jokes/.

[39] *See, e.g.*, Jillian C. York, Paige Collings, & David Greene, *Meta's New Content Policy Will Harm Vulnerable Users. If It Really Valued Free Speech, It Would Make These Changes*, EFF Deeplinks Blog (Jan. 9, 2025), https://www.eff.org/deeplinks/2025/01/metas-new-content-policy-will-harm-vulnerable-users-if-it-really-valued-free.

[40] *See, e.g.*, Paige Collings, *We Called on the Oversight Board to Stop Censoring "From the River to the Sea" — And They Listened*, EFF Deeplinks Blog (Sept. 12, 2024), https://www.eff.org/deeplinks/2024/09/we-called-oversight-board-stop-censoring-river-sea-and-they-listened.

[41] Saira Hussain & Sophia Cope, *Harvard Student's Deportation Raises Concerns About Border Device Searches and Social Media Surveillance*, EFF Deeplinks Blog (Aug. 30, 2019), https://www.eff.org/deeplinks/2019/08/harvard-students-deportation-raises-concerns-about-border-device-searches-and.

The risk of immigration benefits denial is even greater if USCIS uses AI or other automated tools to assist with the vetting of social media identifiers disclosed under the Proposed Rule. Automated tools have difficulty understanding the nuances of language, as well as the broader context in which a statement was made.[42] These algorithms are also designed to replicate patterns in existing datasets, but if the data is biased, the technology simply reinforces those biases.[43] As such, automated tools are similarly prone to mistakes and misinterpretations. At a minimum, USCIS should disclose how it intends to engage in social media review of immigration benefits applicants and whether that will include any automated tools.

V. Conclusion

For the reasons above, EFF urges USCIS to withdraw the Proposed Rule. If you have any questions, please do not hesitate to contact Saira Hussain (saira@eff.org) or Sophia Cope (sophia@eff.org).

Sincerely,

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[42] *See* Jillian C. York & Corynne McSherry, *Automated Moderation Must Be Temporary, Transparent and Easily Appealable*, EFF Deeplinks Blog (Apr. 2, 2020), https://www.eff.org/deeplinks/2020/04/automated-moderation-must-be-temporary-transparent-and-easily-appealable.

[43] *See, e.g.*, Aaron Sankin et al., *Crime Prediction Software Promised to Be Free of Biases. New Data Shows It Perpetuates Them*, Gizmodo (Dec. 2, 2021), https://gizmodo.com/crime-prediction-software-promised-to-be-free-of-biases-1848138977; Abubakir Abid et al., *Persistent Anti-Muslim Bias in Large Language Models*, In Proceedings of the 2021 AAAI/ACM Conference on AI, Ethics, and Society (AIES '21) (July 30, 2021), https://doi.org/10.1145/3461702.3462624.