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Guest Post by Hunter Knapp: DHS Proposed Rule on Collection of Biometrics

By Immigration Prof



On October 13th, the comment period closes for a proposed rule by the Department of Homeland Security (DHS) that would radically change the collection and use of "biometrics" by U.S. Citizenship and Immigration Services (USCIS). This sweeping proposal would allow DHS to collect extremely personal data like DNA, increase the burden on an already strained USCIS adjudication system, and transform the application process for victims of domestic violence and human trafficking. So far only 262 comments have been submitted in response to this rule, as compared to the over 14,000 comments submitted in response to the proposal to impose fixed end dates on student visas.

Changes to "Biometrics"

DHS proposes to define the term "biometrics" to include a much wider information than the fingerprints, signatures, and photographs typically collected under the current system. If finalized, the rule would allow DHS to start collecting palm prints, iris scans and DNA samples in addition to the current information. When collected, an individual's DNA would then be either tested locally by an automated Rapid DNA machine or mailed to a traditional AABB-accredited laboratory for testing. As the Department explicitly acknowledges, "DHS does not know what the costs of expanding biometrics collection to the DHS in terms of assets and equipment; it is possible that costs could be incurred for the new equipment and information technologies and typologies needed to collect, process, store, and utilize biometrics, including software updates; cameras that are able to collect iris and facial images; devices used to record a voice print; and other equipment." Nevertheless, DHS fails to recognize the practical challenges this rule would create for an agency already subject to furloughs and aggressive spending reduction measures.

Changes to the frequency of collection

The burden on USCIS would grow even larger when compounded with the proposed increases in the frequency of "biometrics" collection. The rule proposes to "flip the current construct from one where biometrics may be collected based on past practices, regulations, or the form instructions for a particular benefit, to a system under which biometrics are required for any immigration benefit request unless DHS determines that biometrics are unnecessary." Even more egregious, the proposed rule would allow DHS to require individuals to submit additional biometric information "unless and until they are granted U.S. citizenship." However, that does not mean U.S. citizens are exempt from the new, expansive biometric submission requirements if they previously filed an application which "is relevant to an application, petition, or benefit request currently pending with USCIS." The rule also proposes to remove all age limitations or restrictions on the collection of information. If an applicant or beneficiary were to miss a scheduled interview at which biometrics were to be taken, they could face immediate termination of their permanent resident status. Aggressively requiring individuals to submit to invasive information collection throughout their lives can create serious burdens for immigrant communities and deter the filing of immigration benefit applications.

Changes to VAWA and T-Visas

Throughout the proposed rule, DHS claims the authority to institute changes based on the need to eliminate fraud in the immigration benefit system without providing any quantifiable benefits to that effect. Rather than attempting to reduce fraud, the proposed rule seems designed to intimidate applicants from applying and increase the burden if they decide to do so. This invidious motivation can be seen more clearly in the proposed rule's seemingly random attempt to change the framework for assessing the Good Moral Character of VAWA and T-visa applicants. Instead of presumptions and letters from respected law enforcement officers, these petitioners would be subject to DNA collection and associated background checks in a determination of their Good Moral Character. These changes are particularly troubling because the VAWA and T-visa programs are designed for victims of domestic violence and "severe forms of human trafficking," who may have criminal records that they incurred while trapped in cycles of abuse and exploitation.

Comments can be submitted through the Federal Register portal until October 13th. Please make your voice heard regarding this important issue.

Hunter Knapp is a postdoctoral fellow at the University of Colorado Law School.

<https://lawprofessors.typepad.com/immigration/2020/09/guest-post-by-hunter-knapp-dhs-proposed-rule-on-collection-of-biometrics.html>