NATIONAL IMMIGRATION PROJECT

Lawyers for the Movement

Submitted via www.regulations.gov

May 5, 2025

Jerry L. Rigdon,
Acting Chief, Regulatory Coordination Division,
Office of Policy and Strategy,
U.S. Citizenship and Immigration Services,
Department of Homeland Security

Re: Agency Information Collection Activities; New Collection: Generic Clearance for the Collection of Social Media Identifier(s) on Immigration Forms; Office of Management and Budget (OMB) Control Number 1615-NEW; United States Citizenship and Immigration Services, Docket ID USCIS-2025-0003

Dear Acting Chief Rigdon:

The National Immigration Project of the National Lawyers Guild (National Immigration Project)[1] submits the following comment in response to the U.S. Citizenship and Immigration Services (USCIS) request for comment on the Agency Information Collection Activities; New Collection: Generic Clearance for the Collection of Social Media Identifier(s) on Immigration Forms; Office of Management and Budget (OMB) Control Number 1615-NEW; United States Citizenship and Immigration Services, Docket ID USCIS-2025-0003.

The National Immigration Project strongly opposes this intrusive rule (hereinafter "Social Media Surveillance Rule") which would allow USCIS to search applicants' social media and presumably allow the agency to deny applications for benefits or protection based on social media posts. This intrusion into communications intended only for individuals' friends or followers is unlawful. Moreover, trying to draw inferences about people's actions or associations based on social media posts often leads to inaccurate conclusions and irreparable harm to them. The Notice of Proposed Rulemaking (NPRM) incorrectly claims there is no cost associated with this new regulation when collecting this data will clearly increase the time it takes to complete forms and for USCIS to process them. Finally, it is arbitrary and capricious for USCIS to publish two overlapping NPRMs, each of which increases the data the agency collects on multiple forms, without either NPRM acknowledging the existence of the other NPRM, or discussing how the two proposed changes will interact with one another.

The National Immigration Project is a national nonprofit membership organization that provides support, referrals, and legal and technical assistance to attorneys, community organizations, families, and advocates seeking to advance the rights of noncitizens. The National Immigration

[1] The author of this comment is National Immigration Project supervising attorney, Victoria Neilson.

Project focuses especially on the immigration consequences of criminal convictions, and its mission is to fight for justice and fairness for noncitizens who have contact with the criminal legal system. Additionally, we fight for fairness and transparency in immigration adjudication systems and believe that all noncitizens should be afforded the right to fair adjudications of their claims to remain in the United States. The National Immigration Project strongly opposes USCIS's increased surveillance into private and irrelevant areas of noncitizens' lives and urges USCIS to rescind the proposed rule in its entirety.

The NPRM seeks the answer to four questions. This comment will address each of those questions in turn as well as provide additional comments.

1. **The Social Media Surveillance Rule is not only unnecessary for the proper performance of the functions of the agency, it is unlawful because it violates the "practical utility" standard set forth at 5 CFR § 1320.3.**

This NPRM claims that the U.S. government is required to collect social media "for the enhanced identity verification, vetting and national security screening, and inspection conducted by USCIS" and purportedly "required"[2] under Executive Order 14161, "Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats."[3] Other than referring to this executive order, there is no explanation for why USCIS must collect social media information, how USCIS has previously been unable to verify identity, or how social media information will be used in establishing eligibility for benefits.

One of the many problems with this NPRM is that it seeks comment on vastly expanded data information collection on multiple forms simultaneously, rather than seeking a comment on changes to each form. Specifically, the NPRM will add data collection to forms: : Form N–400, Application for Naturalization; Form I–131, Application for Travel Document; Form I–192, Application for Advance Permission to Enter as a Nonimmigrant; Form I–485, Application to Register Permanent Residence or Adjust status; Form I–589, Application for Asylum and for Withholding of Removal; Form I–590, Registration for Classification as Refugee; Form I–730, Refugee/Asylee Relative Petition; Form I–751, Petition to Remove Conditions on Residence; and Form I–829, Petition by Entrepreneur to Remove Conditions on Permanent Resident Status.[4] The purpose of each of these forms is so different that it is difficult to comment about to which of these forms, if any, the data being collected may bear any relevance.

For example, a noncitizen applying to naturalize (form N-400) is by definition a lawful permanent resident and as such is not subject to grounds of inadmissibility to which, for example, an applicant for lawful permanent residence (form I-485) would be subject. This NPRM does not even seek to distinguish between possible grounds of inadmissibility or

[2] 90 Federal Register 11324, 11325 (Mar. 5, 2025) https://www.federalregister.gov/documents/2025/03/05/2025-03492/agency-information-collection-activities-new-collection-generic-clearance-for-the-collection-of

[3] White House, Executive Order 14161, "Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats," (Jan. 20, 2025) https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-united-states-from-foreign-terrorists-and-othernational-security-and-public-safety-threats/.

[4] 90 Fed. Reg. at 11325-26.

deportability that a noncitizen's social media post could implicate. Instead, it relies wholly on the vague need for "vetting" set forth in the Executive Order.

5 CFR § 1320.3(*l*) defines "practical utility" as follows:

> the actual, not merely the theoretical or potential, usefulness of information to or for an agency, taking into account its accuracy, validity, adequacy, and reliability, and the agency's ability to process the information it collects (or a person's ability to receive and process that which is disclosed, in the case of a third-party or public disclosure) in a useful and timely fashion. In determining whether information will have "practical utility," OMB will take into account whether the agency demonstrates actual timely use for the information either to carry out its functions or make it available to third-parties or the public, either directly or by means of a third-party or public posting, notification, labeling, or similar disclosure requirement, for the use of persons who have an interest in entities or transactions over which the agency has jurisdiction. In the case of recordkeeping requirements or general purpose statistics (see § 1320.3(c)(3)), "practical utility" means that actual uses can be demonstrated.

The information USCIS would collect through this Social Media Surveillance rule clearly fails the "practical utility" test. The Social Media Surveillance rule would require applicants to disclose to the U.S. government social media information which will be largely irrelevant to the adjudication of their applications. The NPRM does not even attempt to provide a practical utility justification for the use of this information other than vague references to identity checks and to the executive order. Since there is no discussion of how practical utility can be demonstrated, the NPRM is inadequate to justify this intrusive new data collection. USCIS cannot rely on an Executive Order, which is merely a policy statement issued by the president, to supersede existing regulations and the Social Media Surveillance rule directly conflicts with existing practical utility regulations.

2. **The Social Media Surveillance Rule will create a substantial burden on noncitizens, their counsel, and the agency, and the estimate in this NPRM is grossly undercalculated.**

The Social Media Surveillance will create a substantial burden on noncitizens, their counsel, and USCIS. For example, the instructions for form N-400 state:

> **Item Number 13. Social Media Identifiers(s) Over Past Five (5) Years/Platform.** Provide all social media handles, identifiers, or usernames used on social media over the past five years. For each handle/identifier/username, provide the associated social media platform. Social media platforms include Facebook, X, Instagram, etc. If the social media platform does not use a handle, provide the relevant associated identifiable information used to access the platform (for example, email, phone number).

> **NOTE:** USCIS will not use social media handle information to communicate with the applicant. USCIS will not "friend" or "follow" any applicants on social media. [Color changed from original red to black for ease of reading].[5]

While some noncitizens may not use social media, others may have multiple accounts and may have changed their usernames and associated phone numbers multiple times over the course of the past five years. Many noncitizens lose their smart phones or have them confiscated during travel to the United States. In any of these circumstances, determining what "handle" was used on a social media account which may no longer be accurate, dating back five years, imposes a substantial burden on noncitizens and on their counsel who is seeking to assist them to ascertain this information.

The NPRM estimates the burden of providing this information at just .08 hours for each form—or 4.8 minutes.[6] But many noncitizens will not have this information readily available. They may need to attend multiple appointments to complete a form with counsel as they potentially search old devices for outdated social media information or have to contact family members or friends to try to locate social media accounts which they may have closed. Furthermore, noncitizens commonly complete some of these forms, such as the asylum application (I-589) and the application for naturalization (N-400), in group, legal clinic settings. As the need for legal representation has outpaced the supply of free or low-cost legal service providers, it has become more common for legal advocates to provide assistance in group settings. Moreover, by statute asylum seekers cannot obtain employment authorization until their I-589 has been pending for over 180 days,[7] making it particularly difficult for asylum seekers to pay for counsel before they have filed their I-589 form. The addition of these Social Media Surveillance questions will add another hurdle for legal service providers' ability to assist with application completion in clinics because many noncitizens seeking to answer these questions will not have the information readily available. They would then have to make a follow up appointment to complete the forms in the future, or try to navigate the form on their own, undermining the purpose of the clinic and the noncitizen's right to counsel. This burden on the public clearly violates 5 CFR § 1320.9(c) which requires agencies to "[r]educ[e] to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency."

Even though the hours stated in the NPRM are a gross under-estimation of the hours it will actually take noncitizens to complete these answers, the NPRM states that the additional data collection will add a total of 285,999 hours to the public burden.[8] Incredibly, even while USCIS acknowledges that the additional questions will add more than a quarter million hours of time to the public burden, it estimates the economic cost of the added questions and the time it takes to complete them at $0. As described above, the additional questions will add significant time for many noncitizens to complete each form. As a result, these additional questions unequivocally will cost the public money. Noncitizens who are able to afford counsel will have to pay for additional time with their representative. Noncitizens will lose time from work that they will

[5] *See,* N400-021-INS-TOC-SocialMedia-FOReview-03052025 available at https://www.regulations.gov/document/USCIS-2025-0003-0036.
[6] 90 Fed. Reg. at 11325-26.
[7] INA § 208(d)(2).
[8] 90 Fed. Reg. at 11326.

have to spend on the forms. And pro bono counsel will be forced to devote time to ensuring every component of the form is completed accurately prior to submission.

Moreover, if noncitizens are providing social media information to USCIS, clearly its officers intend to devote time to combing through noncitizens' social medial accounts. That added time will mean either that USCIS would have to hire more officers or that the USCIS application backlogs will grow. Since USCIS is primarily a fee-funded agency, the more time each officer spends on a form, the more money the agency may seek to charge for the form. On the other hand, if USCIS does not add more officers to its workforce, the added time it will take to adjudicate each form will lead to longer backlogs. If the USCIS officer is unable to locate the social media account that the noncitizen reports, it is likely that USCIS will have to issue more Requests for Evidence (RFEs) which will result in further delays. These delays will further burden the public as noncitizens wait additional time for their applications to be approved, U.S. citizens wait for family members to be granted lawful status, and noncitizens and their loved ones must fear the possibility of deportation as they wait longer and longer to legalize their status.

Furthermore, many of the additional questions appear designed for the Fraud Detection and National Security Directorate (FDNS) to investigate both the noncitizen and any contacts they may find by surveilling their social media accounts. These investigations also will add more time to the adjudication of the applications and will add to the costs of the adjudication. In short the cost of searching applicants' social media accounts will be substantial and the NPRM should be rescinded based on its utter failure to attempt to calculate those costs.

3. **There is no reason to "enhance the quality, utility, and clarity of the information to be collected" when there is no justification to invade the privacy of noncitizens and surveil their private social media accounts at all.**

As described at length above, there is no justification for USCIS to surveil the social media of applicants, particularly social media that goes back five years in time, long before they filed an application with USCIS. Furthermore, searching the social media of an applicant who makes their social media pages available to USCIS, means that family members, friends, and even strangers who follow the applicants' social media accounts, will have their posts and commentary scrutinized by USCIS without their consent. While the form instructions indicate that USCIS will not seek to "friend" or "follow" the noncitizen, since many social media accounts are private and can only be viewed by friends or followers, it seems likely that the federal government is able to penetrate private social media accounts to see the applicants' posts, raising further privacy concerns for all citizens as well as noncitizen applicants for immigration benefits.

Collecting social media information and allowing the U.S. government to comb the accounts of noncitizens, and find information about their contacts who are completely unconnected to their benefit application with USCIS, directly violates the Privacy Act of 1974, codified at 5 U.S.C. § 552a, which prohibits the U.S. government from collecting and maintaining certain personal information on individuals. Many of the friends and followers of a noncitizen applicant will likely be in foreign countries and have no reason to believe that the U.S. federal government is

searching their personal data or creating files on them. The NPRM says that this data will be used "for the enhanced identity verification, vetting and national security screening and, inspection conducted by USCIS"[9] but does not describe in any detail how it will use this information, how it will store the data it collects, or even who will collect it. The Expanded Family Information Collection NPRM,[10] issued just two days before the Social Media Surveillance Rule NPRM, explicitly states that it will screen the expanded family data "internally and with screening partners."[11] The Expanded Family Information Collection provides no information about who those screening partners may be, raising the likelihood that the information sharing will violate the Privacy Act. Moreover, for asylum seekers, if those "screening partners" are in the country of origin, inquiries made by the U.S. government may put the family members in harm's way or increase the harm to asylum seekers if they are ordered removed. It seems likely that USCIS would also use "screening partners" to analyze social media data, but the Social Media Surveillance Rule does not even alert the public to the possibility that the social media data USCIS applicants share could be viewed by unidentified "screening partners."

USCIS's plan to engage in "vetting" based on social media accounts is especially troubling at this moment in time when the owner of X, Elon Musk, has assumed an unprecedented role in the federal government for an individual who was neither elected to office nor holding a position created by statute of any kind. There is simply no reason to believe that social media owners will not use the tools at their disposal to conduct searches even beyond those authorized by this rule.

This unprecedented expansion of data collection is truly Orwellian. Many individuals use the anonymity of the internet to explore areas online that they would not otherwise explore in their non-online lives. Social media users may intentionally create anonymous accounts to discuss extremely private issues, like sexual abuse or mental illness. This rule would leave them with the difficult decision to disclose their most private thoughts to the U.S. government or face the fear of having a benefit denied or revoked in the future for failing to fully respond to a question on a USCIS application form.

Already, separate and apart from this rulemaking, DHS has announced its intention to screen noncitizens' "social media activity for antisemitism."[12] This announcement states that USCIS is now required to screen, not only for any potential proof of violence or terrorist ties, but also states that it will consider "other antisemitic activity as a negative factor in any USCIS discretionary analysis when adjudicating immigration benefit requests."[13] The press release does not define "other antisemitic activity," leaving open the possibility that anyone who espouses a negative opinion about how Israel has carried out the war in Gaza could have an application denied on discretionary grounds. It is not hard to imagine the reach of the Social Media Surveillance Rule similarly leading to discretionary denials. USCIS could use this rule to gut

[9] *Id.* at 11325.
[10] 90 Federal Register 11054, 11055 (Mar. 3, 2025) https://www.govinfo.gov/content/pkg/FR-2025-03-03/pdf/2025-03436.pdf.
[11] *Id.* at 11055.
[12] 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.
[13] *Id.*

unpopular speech on social media and punish those whose opinions differ from the administration or for those who are critical of the administration. What if a noncitizen discusses their transgender identity on social media? Would their application be denied as a matter of discretion for opposing the ideology espoused in an executive order?[14]

Indeed, neither the Social Media Surveillance NPRM, nor the instructions on the affected forms even define the term "social media." The NPRM includes no definition whatsoever of what platforms constitute "social media,"[15] while the form instructions state, "Social media platforms include Facebook, X, Instagram, etc."[16] This lack of explanation means that noncitizens have to determine what platforms other than the three listed even are included in the scope of "social media." In an evolving field where platforms start up and fail frequently and where boundaries between posting, messaging, and meeting other people are often blurred, forcing USCIS applicants to guess at what is included in such an ambiguous term is arbitrary and capricious.

The NPRM does not explain what it plans to do with the data it collects, how it plans to store it, how long it plans to store it, or under what circumstances the data will be disclosed through Freedom of Information Act requests. The only justifications given in the Social Media Surveillance NPRM for the new rule are that the information might help confirm the applicant's identity and, as discussed above, will allow for vetting. This vast expansion into the minds and contacts of USCIS applicants cannot be justified by a mere Executive Order and the NPRM must be rescinded.

4. The Social Media Surveillance Rule cannot be made less burdensome through technological approaches.

The fourth question posed in the NPRM appears to be asking whether making each affected form available online would make the Social Media Surveillance less burdensome. As discussed above, the most burdensome aspect of completing these forms is not the physical act of putting pen to paper, it is gathering information that may not be readily available about social media accounts that may no longer be active or for which an applicant may have changed their user information. There are no technological approaches that could salvage this unlawful proposed rule.

If USCIS is posing this question to determine whether USCIS should employ artificial intelligence or other technology to make it easier for the agency to analyze applicants' social media, the answer is a clear no. Already this administration has used artificial intelligence to an unprecedented extent and with unprecedented errors as a result. It was likely artificial intelligence that led to the removal of the aircraft name Enola Gay from Department of Defense

[14] White House, Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government (Jan. 20, 2025) https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/.
[15] 90 Fed. Reg. at 11324-26.
[16] *See,* N400-021-INS-TOC-SocialMedia-FOReview-03052025 available at https://www.regulations.gov/document/USCIS-2025-0003-0036.

websites is almost laughable[17] and it was likely the so-called Department of Government Efficiency (DOGE) that led to the improper emailing of termination notices to immigration attorneys—informing them to leave the country immediately.[18] If USCIS intends to rely on DOGE or otherwise use technology such as artificial intelligence, it is likely to draw erroneous conclusions and deny noncitizens' applications based on improper use of the technology.

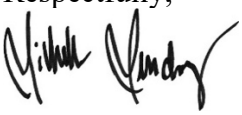
5. **In addition to the questions raised in the NPRM, USCIS should not have issued two overlapping data collection NPRMs simultaneously without taking into account the cumulative burden imposed by the two NPRMS**

In addition to the extraordinary reach into people's private lives authorized by the Social Media Surveillance Rule, USCIS has simultaneously published another NPRM titled "Information Collection Activities; New Collection: Generic Clearance for the Collection of Certain Information on Immigration Forms (Expanded Information Collection) Notice of Proposed Rulemaking."[19] That NPRM addresses the exact same forms as those addressed in this NPRM and requires noncitizens to submit significant biographical information about extended family members, including their street addresses and phone numbers going back five years. Neither that NPRM nor the Social Media Surveillance rule, which is the subject of this comment, acknowledges the existence of the other NPRM or how the burden of the two rulemakings will intersect with one another. This simultaneous rulemaking where neither rule takes the other rule into account violates 5 CFR § 1320.9(c) which requires the agency to calculate the increased burden on the noncitizen completing the forms as well as the cost to the public but does not adequately do so by failing to acknowledge the simultaneous rulemaking.

Conclusion

In closing, the National Immigration Project strongly opposes this proposed rule and urges USCIS to rescind it in its entirety. Please contact Michelle N. Méndez at michelle@nipnlg.org if you have any questions or need any further information. Thank you for your consideration.

Respectfully,



Michelle N. Méndez, Director of Legal Resources and Training
National Immigration Project
1763 Columbia Road NW Suite 175 #896645
Washington, DC 20009
(540) 907-1761

[17] Conor Murray, Enola Gay Aircraft—And Other Historic Items—Inaccurately Targeted Under Pentagon's Anti-DEI Purge, FORBES MAGAZINE, Mar. 7, 2025, https://www.forbes.com/sites/conormurray/2025/03/07/enola-gay-aircraft-and-other-historic-items-inaccurately-targeted-under-pentagons-anti-dei-purge/.

[18] Dara Lind, The Government Is Mass-Emailing People Telling Them To 'Leave the United States' Within 7 Days. It's A Mess, And It Might Be DOGE's Fault, Immigration Impact, Apr. 17, 2025, https://immigrationimpact.com/2025/04/17/trump-email-migrants-leave-seven-days/.

[19] 90 Federal Register 11054 (Mar. 3, 2025) https://www.govinfo.gov/content/pkg/FR-2025-03-03/pdf/2025-03436.pdf.