



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

October 13, 2020

Department of Homeland Security, U.S. Citizenship and Immigration Services
Via electronic submission

Re: Collection and Use of Biometrics by U.S. Citizenship and Immigration Services
CIS No. 2644-19, DHS Docket No. USCIS-2019-0007, RIN 1615-AC14

The City of New York (“the City”) submits this comment in strong opposition to the Department of Homeland Security’s (“DHS”) Proposed Rule entitled “Collection and Use of Biometrics by U.S. Citizenship and Immigration Services,” which was published in the Federal Register on September 11, 2020 (“Proposed Rule”).¹

The Proposed Rule vastly expands the number of individuals required to submit biometric information without regard to citizenship status, age, and the type of biometric information that will be collected by U.S. Citizenship and Immigration Services (“USCIS”). This expansion is unjustified, intrusive, and will violate the privacy of millions of U.S. residents,² including tens of thousands of children.³ Moreover, the Proposed Rule seeks to remove protections from vulnerable children by eliminating the presumption of good moral character from applicants under the age of 14 who are applying for protection under the Violence Against Women Act (“VAWA”), and those applicants under the age of 14 who seek T-visas, an action that will make it harder for vulnerable children who are victims of crime to receive immigration relief.

For these reasons, as well as those outlined below, we call upon DHS to withdraw this Proposed Rule.

The Proposed Rule Will Harm New York City Residents without Justification

The City has an ethical and legal responsibility to serve all New Yorkers, regardless of immigration status. Moreover, the City has long recognized that working to build a truly inclusive City is not just a goal or a desired outcome; it is a mandate, given that 37 percent of New Yorkers

¹ Collection and Use of Biometrics by U.S. Citizenship and Immigration Services, 85 Fed. Reg. 56338 (proposed Sept. 11, 2020).

² DHS estimates an increase from 3.90 million people currently submitting biometrics to 6.07 million under the Proposed Rule, and, from a generalized collection rate across all forms of 46 percent currently to 71.2 percent. *Id.* at 56343.

³ DHS estimates that under the proposed rule it could annually collect biometrics from as many as 63,000 children under age of 14. *Id.*

are immigrants,⁴ and 1 million New York City residents live in mixed-status households.⁵ Accordingly, the City has worked to create inclusive programs and policies that serve all New Yorkers, and is involved in advocacy across all levels of government to promote them. The City recognizes that this work is its responsibility under the social contract it has with all its residents, and that these inclusive policies and programs have helped keep New York City the safest big city in the nation.

The City is committed to protecting survivors of human trafficking or abuse, including child survivors. Recognizing that acts of gender-based violence, including sexual abuse, human trafficking, stalking and domestic violence are public health issues that impact the safety and well-being of all New Yorkers, the City created the Mayor's Office to End Domestic and Gender-Based Violence ("ENDGBV"). Through ENDGBV and its network of Family Justice Centers, the City develops and implements policies and programs addressing gender based violence; provides training and prevention education; conducts research and evaluations; performs community outreach; and coordinates service delivery for human trafficking survivors and their families. ENDGBV collaborates with City agencies and community stakeholders to ensure access to inclusive services for survivors of domestic and gender-based violence ("GBV"), particularly immigrant survivors and vulnerable populations. The Proposed Rule threatens the investments and efforts the City has made to protect and serve survivors of abuse and trafficking by removing protections for immigrant survivors, which will make it harder for these New Yorkers to get the immigration benefits they deserve.

Privacy is a fundamental human right identified in the U.N. Declaration of Human Rights.⁶ Accordingly, the City is committed to serving all New Yorkers while vigorously safeguarding the privacy of their personal information. It has a comprehensive framework to protect individual privacy and works to advance privacy protection for all New Yorkers, regardless of citizenship or immigration status. New York City law protects the privacy of any information that could, by itself or in combination with other information, identify or locate a person. The City grounds its collections and disclosures of personal information in its privacy principles, which are set forth in the Citywide Privacy Protection Policies and Protocols of the City's Chief Privacy Officer.⁷ These principles are accountability, public trust, responsible governance and stewardship, data integrity, and security. These policies also establish protocols that govern the collection, use, and disclosure of personally identifying information, particularly sensitive identifying information such as biometric information, and strengthen how the City uses data to inform responsible and equitable policies. Finally, these policies govern citywide data-sharing practices and provide guidance on best privacy practices, which emphasize the critical importance of data minimization—meaning, only the least amount of personal information should be collected by government to meet the

⁴ New York City Mayor's Office of Immigrant Affairs, *State of our Immigrant City: Mayor's Office of Immigrant Affairs (MOIA) Annual Report for Calendar Year 2019 12*, available at <https://www1.nyc.gov/assets/immigrants/downloads/pdf/MOIA-Annual-Report-for-2019.pdf>.

⁵ *Id.* at 17. Mixed-status household is defined as households where at least one undocumented person lives with other people who have legal status.

⁶ Universal Declaration of Human Rights, Art. 12, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

⁷ NYC Mayor's Office of Information Privacy, *Citywide Privacy Protection Policies and Protocols* (2019), available at <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7B5F15AC83-687F-4C89-B143-D2FF25F988F4%7D>.

purpose for which the collection of the information is authorized and necessary. Should the Proposed Rule go into effect, it will severely affect the privacy of all New Yorkers, in direct conflict with the careful balance the City has struck on this issue.

City Opposes the Proposed Expansion of Biometrics Collection as Contravening City Law and Policies That Protect All New Yorkers' Privacy

The City's core privacy principle is public trust: the public needs to have confidence that the government is operating in good faith, and that it is collecting and using their information ethically and responsibly, and in accordance with all applicable laws and City policies. As such, the City requires each proposed collection, use, and disclosure of personally identifying information to be examined by the relevant agency's privacy officer to determine whether the collection or disclosure is required by law or furthers the purpose or mission of the agency, emphasizing both a "minimum necessary" standard in the scope of information that is collected or disclosed, and underscoring that just because such information could be lawfully disclosed, doesn't mean it *should* be. This principled policy and practice strikes an important balance between public safety and the rights of the individual.

By contrast, the Proposed Rule seeks to drastically expand the type and scope of information it is collecting. DHS claims that the broad language of the Immigration and Nationality Act ("INA"), which provides authority for DHS to collect information in relation to enforcement of the immigration law, generally authorizes them to collect any type of information they deem relevant.⁸ The City questions whether such an extreme interpretation is necessary or even reasonable, especially given the dramatic increase in the amount of information DHS can collect and store indefinitely under this Proposed Rule.⁹ Moreover, in relation to the collection of biometric information from individuals younger than 14 years of age, DHS's reading contradicts the language of 8 U.S.C. § 1302(a), which explicitly states that fingerprinting of noncitizens is only required of those persons who are 14 or older.

But even if DHS has the authority to expand the collection of biometric information as it is envisioning, the Proposed Rule represents an unprecedented invasion of privacy through the breadth of the collection and use of that information it would allow. The City is alarmed that DHS is nakedly proposing a continuous surveillance system for "identity management" purposes.¹⁰ USCIS—a benefits granting agency—should not be acting as a surveillance arm of the federal government. Its expansion into prolonged monitoring and information collection will destroy faith in the federal government and create distrust between immigrants, their families, as well as local and state governments more generally. DHS asserts that such a dystopian surveillance regime is meant to address threats to national security, public safety, and help combat trafficking.¹¹ By its own admission, the proposed expansion of authority and information collection will sweep up U.S. citizens, children (including those under 14), and any individual applying for immigration benefits. Collection and review of this type of information, however, is more likely to result in the capture

⁸ 85 Fed. Reg. 56347.

⁹ Even the broad language in 8 U.S.C. § 1357(b) is cabined by a requirement that evidence collected concern entry, reentry, or residence, or be "material or relevant" to the enforcement of the immigration laws.

¹⁰ 85 Fed. Reg. 56351-52.

¹¹ *Ibid.*

of a great deal of personal information that is entirely irrelevant to the stated purposes. In fact, the Proposed Rule explicitly extends the broad biometric collection to all immigration applications, as well as petitions by U.S. citizens—which shows a lack of thought as to whether collection is necessary in any given situation.¹²

USCIS provides no valid justification as to why it needs to keep monitoring individuals who have already received immigration benefits. Instead, the Proposed Rule simply concludes that continuous vetting is necessary “to ensure [admitted individuals] continue to present no risk of causing harm subsequent to their entry.”¹³ This claim is yet another instance of this federal administration imputing criminality on immigrants with no valid justification.¹⁴ In fact, as DHS is well aware, the vast majority of studies have found that there is no correlation between immigrants and crime.¹⁵ Moreover, DHS’s purported justification for this overreach of authority—that any risk of criminality is sufficient justification for continuous monitoring—can be extended to allow for continuous monitoring of every single person in the United States, jeopardizing and undermining the privacy rights of all.

DHS has also failed to provide clear information about how this sensitive information will be protected from inappropriate sharing or breach. In fact, DHS baldly states that it will share biometric information, including DNA information, “with other agencies” within the vague and overbroad parameters of “where there are national security, public safety, fraud, or other investigative needs.”¹⁶ Without explicit protocols for the collection, storage, disclosure and use of this extraneous personal biometric data, the Proposed Rule creates an unnecessary risk of accidental exposure and breach for New York City residents as well as an unreasonable threat to their privacy and risk of other harms, such as identity theft. This is especially worrisome with DHS, as it has already shown a disregard for the need to adequately protect biometric information.¹⁷

The collection of DNA for purposes of family verifications poses even graver concerns. Many experts have recognized the uniquely intrusive nature of DNA use in identification. As one example, the United Nations Children’s Fund (“UNICEF”) explicitly did not recommend the use of DNA in programs serving children and supported through UNICEF as “the inherent ethical concerns” with using DNA, including the risk that the information stored in DNA will be used to discriminate against people seeking services, cannot be adequately managed.¹⁸ This is especially

¹² *Id.* at 56340.

¹³ *Id.* at 56352.

¹⁴ The President has continued to claim—contrary to evidence—that immigrants pose a threat to public safety. *See, e.g.,* Salvador Rizzo, *Trump’s Claim that Immigrants Bring ‘Tremendous Crime’ Is Still Wrong*, THE WASHINGTON POST, Jan. 18, 2018, <https://www.washingtonpost.com/news/fact-checker/wp/2018/01/18/trumps-claim-that-immigrants-bring-tremendous-crime-is-still-wrong/>.

¹⁵ *See, e.g.,* Michael Light and TY Miller, *Does Undocumented Immigration Increase Violent Crime?*, 56 J. Criminology 556 (2018) (finding that undocumented immigration does not increase violence, and that there is evidence that it actually reduces violent crime).

¹⁶ *Id.* at 56357.

¹⁷ *See* Daniel Wilson, *Watchdog Says Lax CBP Security Aided Facial Data Theft*, LAW360, Sep. 23, 2020, <https://www.law360.com/immigration/articles/1313146/watchdog-says-lax-cbp-security-aided-facial-data-theft>.

¹⁸ UNICEF, *Faces, Fingerprints & Feet: Guidance on assessing the value of including biometric technologies in UNICEF-supported programs* 7 (2019).

true where the DNA can be linked with other databases. A study has found that the DNA collected in the Combined DNA Index System (“CODIS”) can be used in conjunction with other databases to produce “precise ancestry estimates, health and identification information.”¹⁹

In addition to these concerns, DHS has failed to adequately articulate the purpose for this collection. DHS claims that DNA collection and testing will allow DHS to combat human trafficking by identifying “fraudulent families.”²⁰ But DNA collection is, at best, a poor proxy for determining whether a family is “fraudulent,” and an even poorer proxy for determining whether trafficking has occurred. As has been publicly reported, the idea of “fraudulent families” leading to trafficking has no evidence even in DHS’s own data.²¹ Fraudulent claims of familial relationships make up a tiny fraction of the total number of families apprehended at the southwestern border: 0.06 percent of nearly 76,000 families in the 2017 fiscal year and 0.6 percent of 31,000 families apprehended in the first five months of the 2018 fiscal year.²² Even in those limited cases, government officials admitted that there was no indication those individuals were engaged in trafficking.²³ Further, parents have been known to engage in trafficking of their own children,²⁴ and it is obvious that families can exist even without biological parentage (adoption is an obvious example). As such, DHS’s justification for DNA collection in these instances cannot be justified.

The Proposed Rule Will Hurt Victims of Crime and Traumatize Children Victims

DHS seeks to remove the automatic presumption of good moral character for children under the age of 14 seeking protection under VAWA or seeking T nonimmigrant adjustment of status. This will make it more difficult for these children, who are survivors of abuse and trafficking, to receive the immigration benefits to which they are entitled. The rationale for this change verges on the tautological, with DHS asserting their “belief” that the change is not “a significant departure from the existing regulatory scheme” and that it will not burden self-petitioners under 14 years of age because the Proposed Rule would not require these children to submit evidence of good moral character “apart from biometrics.”²⁵ This is an absurd argument bordering on the maliciously ignorant that is refuted by the text of the Proposed Rule itself.

First, DHS notes that USCIS can currently rebut the existing presumption and request evidence of “good moral character” if it has “reason to believe the self-petitioning child lacks moral

¹⁹ Michael D. Edge et al., *Linkage disequilibrium matches forensic genetic records to disjoint genomic marker sets*, 114 *Proceedings of the Nat’l Acad. of Sciences* 561, 565 (2017), <https://doi.org/10.1073/pnas.1619944114>.

²⁰ 85 Fed. Reg. 56352.

²¹ After public reports about the disparity between DHS’s talking points and CBP data, CBP subsequently removed public links to the data in question.

²² Linda Qiu, *Kirstjen Nielsen Justifies Family Separation by Pointing to Increase in Fraud. But the Data Is Very Limited.*, N.Y. TIMES, Jun. 18, 2018, <https://www.nytimes.com/2018/06/18/us/politics/nielsen-family-separation-factcheck.html>.

²³ Tim Stelloh, *Experts cast doubt on DHS claim that traffickers are posing as families at the border*, N.B.C. NEWS, Jun. 21, 2018, <https://www.nbcnews.com/storyline/immigration-border-crisis/experts-cast-doubt-dhs-claim-traffickers-are-posing-families-border-n885241>.

²⁴ E.g., Ginny Sprang & Jennifer Cole, *Familial Sex Trafficking of Minors: Trafficking Conditions, Clinical Presentation, and System Involvement*, 33 *J. Fam. Violence* 185 (2018).

²⁵ 85 Fed. Reg. 56360-61. DHS uses the same language in justifying this change as to the presumption of good moral character from VAWA self-petitioners and those applying for T nonimmigrant status who are under 14.

character.”²⁶ DHS does not indicate how often such a request could reasonably be made as to a child who is a VAWA self-petitioner or applicant for T nonimmigrant status.²⁷ But putting that aside, it is impossible to rationalize how moving between two distinct standards of proof could possibly represent an insignificant change to the “existing regulatory scheme.” By definition, a presumption of good moral character places the burden of proof on USCIS to establish facts that would contradict that presumption. Removing the presumption affirmatively heightens and shifts the burden of proof onto the applicant, requiring a child to prove their good moral character. The change in evidentiary standard is self-evident, and exposes the changes for what they are: an unjustified harm to children who have been abused and trafficked.

Second, DHS attempts to suggest that there is no significant change to the existing regulatory scheme because children still do not have to provide evidence of good moral character except for biometrics.²⁸ The argument seems to be that collection of biometrics is not a significant additional burden on these children. But as discussed above, overcollection of biometrics is an invasion of privacy, especially the collection of DNA. Moreover, for children who have survived abuse (especially sexual abuse), and have been trafficked, the collection of fingerprint, palm print, photograph (including of physical or anatomical features such as scars, skin marks, and tattoos), signature, voice print, iris image, and DNA, may be retraumatizing.²⁹

DHS’s arguments boil down to an inference that somehow the presumption of good moral character made it too easy for children to defraud the system. But DHS relies on the arguments above because the additional burden on children who have been abused and trafficked is morally inexcusable. Holding children to the same standard as adults is inconsistent with domestic and international precedent. The U.N. Convention on the Rights of the Child—to which the United States is a signatory—requires countries to take special steps in protecting children from sexual exploitation and other abuse.³⁰ Federal law also recognizes the vulnerabilities faced by abused immigrant children in particular, which is why the presumption of good moral character exists. Immigrants are particularly vulnerable to human trafficking, as the Victims of Trafficking and Violence Protection Act of 2000 recognized.³¹

DHS’s proposal to hold minors to the same standards as adults is also inconsistent with steps that New York State has taken to reduce the liability of children.³² Furthermore, DHS’s proposal to subject youth to criminal background checks and biometric data collection undermines New York’s interest in the privacy and protection of its youth. By statute, in New York, individuals adjudicated as juvenile delinquents are “not criminally responsible for such conduct by reason of

²⁶ *Id.*

²⁷ *Id.* Tellingly, DHS also frames this argument as a “belief.”

²⁸ *Id.*

²⁹ The federal government itself has noted that doctors should take particular care to recognize the unique vulnerabilities of children when conducting forensic examinations. See U.S. Department of Justice Office on Violence Against Women, *A National Protocol for Sexual Abuse Medical Forensic Examinations* 23 (2016) (noting that the exam process can be traumatic), available at <https://www.ncjrs.gov/pdffiles1/ovw/249871.pdf>.

³⁰ United Nations Convention on the Rights of the Child, opened for signature Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990).

³¹ Victims of Trafficking and Violence Protection Act of 2000, Public L. No. 106–386, 114 Stat. 1464, 1468 (2000).

³² See, e.g., N.Y. Crim. Pro. L. § 722.00 *et seq.* (raising the age of criminal responsibility in New York to 18 years old).

infancy.”³³ Moreover, New York State’s “Raise the Age” legislation, which raised the age of criminal responsibility to 18 years old, demonstrates New York’s recognition that young people are different from adults and ought to be treated differently.³⁴ Given these critical measures in place to protect children, it is concerning to the City that DHS seeks to use biometrics to make determinations of children’s “moral character.” The suggestion of the Proposed Rule seems to be that DHS would use records of juvenile behavior—which in many cases would be sealed in recognition of the lack of culpability—as a way to reject applications from children who have survived violence and/or trafficking.

By removing these protections for children, the Proposed Rule undermines the City’s efforts to reduce children’s involvement with law enforcement.³⁵ From 2013 to 2018, juvenile arrests of persons ages 15 and under in NYC dropped by 55%. Over that same time period, adolescent arrests (defined as arrests of 16- and 17-year-olds) decreased by 60%.³⁶ These efforts were bolstered by New York State’s Raise-the-Age legislation, which went beyond simply changing how young people were being handled by the courts, to also providing age-appropriate services and facilities that would promote an environment focused on wellbeing for young people. The law went into effect in October 2018 requiring the City to move all 16- and 17-year-olds out of jails on Rikers Island and into more age-appropriate facilities specialized for juveniles and adolescents. Under the new system, most misdemeanors are now handled through Family Court and a new Youth Part was created in the state Supreme Court. During the first year with just 16-year-olds, nearly 80% arraigned in Youth Part were removed to Family Court.

The Proposed Rule Will Dilute Our Immigration Legal Services Investment

The City has invested millions of dollars into immigration legal services, including for adjustment of status and naturalization cases as well as for removal defense. These investments reflect the fact that immigration benefits New York City and the country generally. As just one example, naturalization increases individual annual earnings and increases tax revenues for federal, state, and city governments.³⁷ By contrast, DHS has taken steps to make it harder for individuals to receive immigration benefits, including in cases where someone is clearly eligible for those benefits.³⁸ These changes, including the changes contemplated by the Proposed Rule,

³³ N.Y. Fam. Ct. Act § 301.2.

³⁴ N.Y. Crim. Pro. L. § 722.00 *et seq.*

³⁵ NYC Office of the Mayor (2019, Oct. 1), *One Year After Raise the Age, de Blasio Administration sees 61 Percent Decline in Misdemeanor Arrests of 16-Year-Olds*, [Press Release], retrieved from <https://www1.nyc.gov/office-of-the-mayor/news/452-19/one-year-after-raise-age-de-blasio-administration-sees-61-percent-decline-misdemeanor>.

³⁶ NYC Mayor’s Office of Criminal Justice, *Raise the Age in New York City: Trends over the past five years and the first nine months of Raise the Age implementation 4* (2019), available at http://criminaljustice.cityofnewyork.us/wp-content/uploads/2019/11/Raise-the-Age-in-New-York-City_.pdf.

³⁷ María E. Enchautegui & Linda Giannarelli, *The Economic Impact of Naturalization on Immigrants and Cities* vi (2015), available at <https://www.urban.org/sites/default/files/publication/76241/2000549-The-Economic-Impact-of-Naturalization-on-Immigrants-and-Cities.pdf>.

³⁸ This includes attacks on asylum-seekers, an increase in fees for those seeking to naturalize, among many other changes. *See, e.g.*, U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 85 Fed. Reg. 46,788 (Aug. 3, 2020); Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 Fed. Reg. 36264 (Jun. 15, 2020); Asylum Application, Interview, and Employment Authorization for Applicants, 84 Fed. Reg. 62374 (Nov. 14, 2019).

dilute the City's investment in immigration legal services and will impose unnecessary barriers on those who are eligible for immigration benefits and their families.

The rule itself notes that the proposed changes will create significant costs for those required to provide biometrics. DHS estimates that the cost to submit biometrics—including opportunity costs of time and the traveling costs—will total \$73.23 without the service fee (for those individuals that can obtain a waiver) and \$158.23 otherwise.³⁹ This makes applications for immigration benefits inaccessible to many City residents, especially for the most vulnerable applicants. An \$85 biometric services fee is a substantial barrier for adults who are being trafficked, partners in GBV situations, and child victims of human trafficking, all of whom are often denied access to resources as part of their abuse or coercion.

DHS estimates that the total cost of this Proposed Rule would be \$297,296,479.⁴⁰ However, this estimate does not fully capture the burden of the proposed changes, because it fails to take into account the additional work that legal service providers will now have to do to help those who would not be required to submit biometrics except for the Proposed Rule. This additional work was not contemplated in the original allocation of funding for legal services, which means that the value of our investment will be diminished. This Proposed Rule thus cuts against the City's interest in seeing those eligible for immigration benefits receive those benefits. The processing delays this rule will cause for USCIS will further exacerbate the already massive backlog. Also, USCIS has been threatening furloughs of most of its employees and continues to maintain that it needs to make significant cuts to remain solvent. This very costly rule will place an even bigger financial burden on the agency, threatening the efficient, timely adjudication of applications.

In addition, the increased breadth of the biometric collection and the increase in the number of applications that the Proposed Rule would require biometrics collection for will deter some individuals from applying for immigration benefits. This is also directly counter to the City's interest, as it will chill the uptake of important immigration benefits that would otherwise flow to our residents and to the City as a whole. More specifically, the proposed changes remove incentives to cooperate with law enforcement on human trafficking cases. Increasing the time reviewed for good moral character beyond the 3-year filing period for VAWA and T-visa applicants makes it less likely that applicants will receive these protections. Making it harder for these populations to receive that relief will in turn make it harder for law enforcement entities to use that protection as an incentive for cooperation in a criminal case, which already carry risks for survivors of crimes.

These changes undermine the City's investments in preventing human trafficking and protecting victims of trafficking.⁴¹ The City has invested millions of dollars into this work. For example, the New York County District Attorney has invested \$2 million in a Youth Sex Trafficking Program, which provides targeted support through a combination of survivor

³⁹ 85 Fed. Reg. 56381.

⁴⁰ *Id.*

⁴¹ In 2016, for example, the City's Administration for Children's Services ("ACS"), Department of Youth & Community Development ("DYCD"), and Safe Harbour providers served a total of 2,480 youth referred as, self-reported as, or determined to be sexually exploited. NYC ACS and DYCD, *Local Law 23 of 2013: 2016 Annual Report 2* (2016), available at https://www1.nyc.gov/assets/acs/pdf/child_welfare/ct/2016/2016SafeHarbourLocalLaw23Report.pdf.

mentorship, intensive case management, and the provision of emergency and wraparound services.⁴² Other offices have also invested in prosecution of trafficking and in victim services. This is in addition to undermining funding that city agencies and community organizations get through federal grants to combat human trafficking.⁴³

The Proposed Rule Will Chill Engagement With Government Services More Generally

As discussed above, the City holds its agencies accountable for the collection and use of personal information, and limits that collection to the extent that it is required by law or furthers the mission or purpose of the specific agency. This policy provides the basis of the City's engagement with residents who would otherwise be unwilling to engage with the City for the services they deserve and need. But the Proposed Rule threatens to chill access to other benefits that are crucial for our immigrant population, by confusing the role of government and its use of data collection. As further discussed above, as a practical matter, the City and its populace benefit when residents trust in government to seek services and engage with our agencies without fear (e.g., in seeking medical attention and seeking assistance when in dangerous situations). Protections for their private information encourage residents and visitors to take these critical steps because they can trust that the City will appropriately and responsibly protect their information. As has been laid bare during the COVID-19 pandemic, when test and trace reporting has been essential to protecting the public health, this trust in government benefits everyone.

The City has already seen the ways in which an overbroad, ill-considered, and anti-immigrant regulatory change can negatively affect our residents. The changes to the definition of "public charge" has created widespread fear and confusion among our residents, even among people who would not be affected by the change. Similarly, the Proposed Rule, will confuse and discourage immigrants from engaging not only with the federal government but with City programs as well. In general, we know that immigrant survivors of GBV, including human trafficking, face significant barriers to accessing safety and supportive services. This proposed rule will work against the efforts of city agencies and community partners to break down those barriers and enhance immigrant survivor service engagement. The proposed expansion of biometric data collection ultimately will have a chilling effect on many vulnerable residents' ability to access the necessary health, safety and other services they need, without fear that their personal information may be used for purposes that may bring harm to themselves and their loved ones.

As one example, ACS currently fingerprints families under certain circumstances,⁴⁴ and in many cases this includes the fingerprinting of foster youth who are over 18 years old. ACS has already heard concern from immigrants about whether this fingerprinting could have negative consequences for their immigration cases. If the Proposed Rule goes into effect and expands biometric gathering to include facial recognition, eye scans, voice prints, and DNA samples, it is

⁴² New York County District Attorney's Office, *D.A. Vance Invests \$2M to Create Youth Sex Trafficking Intervention Program*, Press Release, Feb. 13, 2020, available at <https://www.manhattanda.org/d-a-vance-invests-2m-to-create-youth-sex-trafficking-intervention-program/>.

⁴³ See U.S. Dep't of Justice, Bureau of Justice Assistance, *The Brooklyn Human Trafficking Taskforce, Award Information*, available at <https://bja.ojp.gov/funding/awards/2018-vt-bx-k083>.

⁴⁴ 18 NYCRR § 443.8.

very likely that more immigrant families will hesitate to become guardians or foster parents, leaving more of our already vulnerable children even more so. Many immigrant families may also withdraw from preventive services or other child welfare intervention for fear of being caught up in this new biometric process, especially where this collection is compelled in exchange for a benefit.

Conclusion

These proposed changes would institute a new surveillance regime for immigrants, child survivors of violence, and their families, violate their privacy, and make it harder for all applicants to receive immigration benefits that they would otherwise be entitled to. In its attempts to justify such an unwarranted and intrusive change, DHS relies on declaratory statements, irrational arguments, and obfuscation. This flimsy veneer cannot paper over DHS's true desire to bring the immigration system to a grinding halt.

As a City that has found success in working with and for our immigrant residents, including by developing and implementing robust laws, citywide policies, and best practices to protect New Yorkers' privacy, we urge DHS to rescind this Proposed Rule and halt its attempts to dismantle an immigration system that has built America into the country it is today.