



OFFICE OF THE MAYOR
THE CITY OF NEW YORK

Department of Homeland Security
Via Electronic Submission

RE: *Agency Information Collection Activities: Generic Clearance for the Collection of Social Media Information on Immigration and Foreign Travel Forms*
Docket Number DHS-2019-0044

The City of New York (“the City”) submits this comment in opposition to the Department of Homeland Security’s (“DHS”) proposed new collection of social media information on immigration and foreign travel forms. The City is grateful for the opportunity to offer our thoughts on the risks to civil liberties and individual privacy arising from the collection, storage, use, and sharing of social media information in this proposed effort.

The City is committed to upholding privacy protections for New Yorkers irrespective of their citizenship or immigration status. The City is responsible for protecting the health, safety, and general welfare of its millions of residents and visitors, while also facilitating equitable access to necessary services. Both the City and its populace benefit when individuals can engage directly with government, seek and access important services and benefits, and communicate and engage in daily activities with confidence that their personal information will be appropriately and responsibly protected.

DHS states that collection of social media information is necessary to meet the intent of Section 5 of the Executive Order 13780 to establish screening and vetting standards to assess a person’s eligibility to travel to or be admitted to the United States, or to receive an immigration-related benefit from DHS. According to DHS, this information will be used to validate an applicant’s identity information to determine whether entry to the U.S. or an immigration benefit for an individual poses a law enforcement or national security risk to the United States.

We recognize and understand the vital need to monitor and protect against threats to national security. We do not believe, however, that this needs to come at the expense of an individual’s privacy. It is important to support both of these goals with policies that both keep us safe and uphold our laws and values.

We urge DHS to reconsider this proposal, as we believe this expansive approach to the collection of social media information has the potential to adversely impact the New Yorkers whose information will be collected, including those in our city seeking to receive a green card, those noncitizens returning from an international trip, and others.

DHS's proposed collection of social media information requires any and all applicants for a range of immigration-related benefits to disclose all social media user identifications and associated publicly available social media platforms used by the applicant over the past five years. DHS contends that this collection is "important for identity verification, immigration and national security vetting." However, this collection of social media information, even if the information is publicly available, threatens to sweep up immense volumes of personal information well beyond the metes and bounds of the EO. In fact, collection and review of this type of information is more likely than not to result in the disclosure of countless personal and sensitive data irrelevant to identity verification, immigration, and national security vetting (e.g. medical status, religion, intimate relationships). Although DHS notes that a person's race, color, age, sexual orientation, religion, sex, national origin, or disability may not be considered and reiterates general customer service policy goals, DHS has not established any specific guidelines, rubric or criteria regarding what social media information may be considered during subjective readings, interpretations, and evaluations of social media posts. Thus, this information collection may subject applicants to scrutiny without reasonable, transparent or well-defined standards, which can impact eligibility and due process. Furthermore, the proposed collection fails to explain how social media information will be stored, if it will be shared among other agencies, or if there will be a validation and authentication process. Without addressing these necessary considerations, the proposed collection cannot be justified as an "appropriate means" to evaluate inadmissibility and grounds of denial of immigration benefits.

Importantly, social media information could be misinterpreted by adjudicators or used as a pretext for discriminatory or arbitrary and capricious decision making. DHS contends that the collection of this information is necessary to improve the efficiency of its identity verification, fraud detection, and national security vetting of applicants, but must address the considerations weighing against mandating this collection. Such considerations may include the risk that this information could be misinterpreted by adjudicators; the integrity of the information received and reviewed given the reality that many social media users publish content that is not intended to be taken literally. These posts may make use of subculture signifiers and tropes that are unfamiliar to DHS adjudicators. Additionally, social media posts may contain political or other messages that would, in the context of DHS adjudication, pose a risk of prompting an inappropriate decision on the basis of an applicant's opinions or ideas, among others.

This sweeping collection of individuals' personal information may also chill free speech. DHS has not explained how social media information in excess of what is necessary to validate identity - for example the identity of family members or associates; extracurricular or political groups - will be interpreted evaluated, or shared among agencies during determinations for the provision of immigration-related benefits. Collecting information in this way would infringe on individual's freedom of speech, and likely have a chilling effect on their freedom of expression on social media platforms.

DHS has not provided sufficient justification to dramatically increase the mandatory disclosure of and government use and reliance upon personal information in such a broad context of immigration entry and benefits access. Moreover, DHS must consider that this type of personal information collection could lead to arbitrary and biased decisions regarding eligibility to travel,

admission to the United States, or the provision of an immigration-related benefit, and significantly burden residents' and applicants' privacy interests.

For the foregoing reasons, the City opposes mandating in all cases the collection of social media information as part of the adjudication of applications for entry into the United States or for immigration benefits. We urge DHS to develop and implement any standards or procedures necessary to comply with Section 5 of the Executive Order 13780 with continued stakeholder engagement.

Thank you for your consideration of this comment.

The City's Chief Privacy Officer and the New York City Mayor's Office of Immigrant Affairs have contributed to this comment. Nothing in these comments constitutes a waiver of any arguments that the City may assert in any other forum.