

Department of Homeland Security, U.S. Customs and Border Protection

February 9, 2026

Re: “Agency Information Collection Activities; Revision; Arrival and Departure Record (Form I-94) and Electronic System for Travel Authorization (ESTA) [OMB Control Number 1651-0111, Docket ID USCBP-2019-0029]

To Whom It May Concern:

We write to oppose the Department of Homeland Security (DHS), U.S. Customs and Border Protection’s (CBP’s) information collection request that would require disclosure of social media identifiers from the roughly 14.5 million people per year who apply through the Electronic System for Travel Authorization (ESTA) to travel to the United States under the Visa Waiver Program (VWP) to DHS.¹ Such disclosure is currently optional; this proposal seeks to make it mandatory and to require the disclosure of additional personal information such as applicants’ personal and business telephone numbers and email addresses, as well as their family members’ telephone numbers.

CBP should abandon its proposal. In February 2022, CBP proposed a similar change to make disclosure of social media identifiers mandatory on ESTA applications. CBP abandoned that requirement in May 2023 following an OMB review of its proposal.²

Likewise, in April 2021, OMB rejected a proposal that included a similar request to collect social media identifiers as part of a broader DHS request to collect social media handles on its travel and immigration forms.³ At that time, OMB concluded that the

¹ Agency Information Collection Activities; Revision; Arrival and Departure Record (Form I-94) and Electronic System for Travel Authorization (ESTA), 90 Fed. Reg. 57208 (December 10, 2025), <https://www.federalregister.gov/documents/2025/12/10/2025-22461/agency-information-collection-activities-revision-arrival-and-departure-record-form-i-94-and> (“Collection Notice”). The Collection Notice requires ESTA applicants “to provide their social media from the last 5 years.” Given DHS’s past requests for social media identifiers, we assume that CBP is similarly requesting applicants’ social media *identifiers*, not “social media.” CBP should clarify its request.

² Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), “OIRA Conclusion - Arrival and Departure Record and Electronic System for Travel Authorization (ESTA),” February 24, 2022, https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202112-1651-004 (“OIRA review resulted in CBP removing social media identifiers as a required field; this data point is now optional and will be clearly labeled as such.”).

³ OIRA, OMB, “OIRA Conclusion - Generic Clearance for the Collection of Social Media Information on Immigration and Foreign Travel Forms,” April 2, 2021,

proposal did not meet the requirements of the Paperwork Reduction Act (PRA), in part because DHS had not shown the “practical utility” of collecting social media identifiers on these forms.⁴ It further instructed that any “similar proposal in the future” needed to demonstrate such utility, which must outweigh the “monetary and social” costs of the collection.⁵

CBP has not done so here, providing even less detail about its justifications for this collection than before. It asserts in its published notice only that collecting social media identifiers is necessary to comply with Executive Order 14161, which directs agencies to vet and screen people seeking to enter the United States “to the maximum degree possible.”⁶

As detailed below and in previous comments opposing prior DHS proposals, there is no evidence that social media screening is useful for vetting travelers and immigrants, although it imposes serious costs—both social and economic. As a result, the proposal does not meet the requirements of the PRA, as OMB has previously found. Civil and human rights organizations have repeatedly highlighted the social costs of the federal government’s collection and screening of social media information, including the chilling of free expression and association, the risks to privacy and anonymity, and the undermining of global protections for free expression and privacy.⁷ Our comments

https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202007-1601-001 (“OMB Conclusion Re: ICR 202007-1601-001”).

⁴ OMB Conclusion Re: ICR 202007-1601-001; 44 U.S.C. § 3508 (1995) (Paperwork Reduction Act provision requiring that OMB determine whether a proposed collection of information is “necessary” and has “practical utility” before approving it); and 5 C.F.R. § 1320.3(l) (1995) (“Practical utility means 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.”).

⁵ OMB Conclusion Re: ICR 202007-1601-001.

⁶ Protecting the United States From Foreign Terrorists and Other National Security and Public Safety Threats, Exec. Order No. 14161, 90 Fed. Reg. 8451 (January 20, 2025), <https://www.federalregister.gov/documents/2025/01/30/2025-02009/protecting-the-united-states-from-foreign-terrorists-and-other-national-security-and-public-safety>.

⁷ See, e.g., Brennan Center for Justice and Electronic Privacy Information Center (EPIC) to CBP and OIRA, Re: Arrival and Departure Record, Nonimmigrant Visa Waiver Arrival/Departure, Electronic System for Travel Authorization (ESTA) (OMB Control No. 1651-0111), March 25, 2022, <https://www.brennancenter.org/media/9268/download/Comments%20Re%20Social%20Media%20Collection%20on%20on%20ESTA%20--%20OMB%20No.%201651-0111.pdf?inline=1>; Brennan Center for Justice and Knight First Amendment Institute at Columbia University to USCIS, Re: “Agency Information Collection Activities; New Collection: Generic Clearance for the Collection of Social Media Identifier(s) on Immigration Forms [OMB Control Number 1615-NEW, Docket ID USCIS-2025-0003],” May 5, 2025, <https://www.brennancenter.org/media/13951/download/05.05.25-bcj-uscis-smm-comments.pdf?inline=1>; Brennan Center for Justice and Knight First Amendment Institute at Columbia University to OMB, Re:

opposing DHS's prior proposals that sought to require collection of the information at issue here are referenced and incorporated in this comment.⁸

This proposal comes amid the Trump administration's efforts to target foreign visitors, students, and residents for their speech and political views.⁹ Executive Order 14161, the ostensible justification for the proposal, establishes a policy of screening

"Agency Information Collection Activities; New Collection: Generic Clearance for the Collection of Social Media Identifier(s) on Immigration Forms [OMB Control Number 1615-NEW, Docket ID USCIS-2025-0003]", October 16, 2025, <https://www.brennancenter.org/media/14558/download/10.16.25-bcj-kfai-uscis-smm-comments.pdf?inline=1>; Brennan Center for Justice et al. to DHS, 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), November 4, 2019, <https://www.brennancenter.org/sites/default/files/2019-11/DHS%20SMM%20comments%20-%20FINAL.pdf>; Brennan Center for Justice et al. to Department of State, Re: 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>; Brennan Center for Justice to OIRA, Re: 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, September 27, 2018, https://www.brennancenter.org/sites/default/files/analysis/OIRA%20Letter_9.27.2018.pdf; EPIC to Department of State, "Comments of the EPIC to Department of State on Supplemental Questions for Visa Applicants," December 27, 2017, <https://epic.org/EPIC-DOS-Visas-SocialMediaID-Dec2017.pdf>; Center for Democracy & Technology et. al. to Jonathan R. Cantor, Acting Chief Privacy Officer for DHS, October 18, 2017, <https://cdt.org/insight/coalition-letter-opposing-dhs-social-media-retention/>; Brennan Center for Justice et al. to OIRA and Department of State, Re: 82 Fed. Reg. 36180, OMB Control No. 1405-0226; Supplemental Questions for Visa Applicants, October 2, 2017, <https://www.brennancenter.org/sites/default/files/StateDeptcomments-10.2.2017.pdf>; American Civil Liberties Union to OIRA and Department of State, Re: Supplemental Questions for Visa Applicants, OMB Control Number 1405-0026, DS-5535 Docket Number: DOS-2017-0032, October 2, 2017, <https://www.aclu.org/letter/aclu-comment-supplemental-questions-visa-applicants>; Brennan Center for Justice et al. to OIRA and Department of State, May 18, 2017, https://www.brennancenter.org/sites/default/files/State%20Dept%20Information%20Collection%20Comments%20-%2051817_3.pdf; and Brennan Center for Justice to U.S. Customs and Border Protection, August 22, 2016, <https://www.brennancenter.org/our-work/research-reports/brennan-center-submits-comments-dhs-plan-collect-social-media-information>.

⁸ Brennan Center for Justice and Knight First Amendment Institute at Columbia University to USCIS, May 5, 2025; Brennan Center for Justice and Knight First Amendment Institute at Columbia University to OMB, October 16, 2025; and Brennan Center for Justice et al. to DHS, November 4, 2019.

⁹ See Protecting the United States From Foreign Terrorists and Other National Security and Public Safety Threats, Exec. Order No. 14161, 90 Fed. Reg. 8451 (January 20, 2025), <https://www.federalregister.gov/documents/2025/01/30/2025-02009/protecting-the-united-states-from-foreign-terrorists-and-other-national-security-and-public-safety>; and Memorandum from Marco Rubio, Secretary of State, to All Diplomatic and Consular Posts Collective, Re "(U) Action Request: Enhanced Screening and Social Media Vetting for Visa Applicants," (March 25, 2025), available at <https://bsky.app/profile/marisakabas.bsky.social/post/3llcno2ducc2m>.

people already in the United States for “hostile attitudes” and “hateful ideology,”¹⁰ undefined phrases that have been used to label and punish protected speech.¹¹ CBP’s published notice comes after policy announcements and other efforts that demonstrate how DHS plans to use the identifiers it will collect if this proposal is approved. In April 2025, DHS released statements indicating it would look for “antisemitic activity on social media” and indications of “anti-Americanism” as grounds for denying immigration and visa applications, while providing no concrete guidance as to what those terms encompass, allowing for broad and indiscriminate targeting of protected expression.¹² DHS’s U.S. Citizenship and Immigration Services (USCIS) updated its policy manual in August 2025 to further direct officers to categorize support for “anti-American” and “antisemitic ideologies” as “an overwhelmingly negative factor” in discretionary analyses of immigration benefits applications, which are filed largely by individuals present within the United States.¹³ DHS announced it would turn to social

¹⁰ Protecting the United States From Foreign Terrorists and Other National Security and Public Safety Threats, Exec. Order No. 14161, 90 Fed. Reg. 8451 (January 20, 2025), <https://www.federalregister.gov/documents/2025/01/30/2025-02009/protecting-the-united-states-from-foreign-terrorists-and-other-national-security-and-public-safety>.

¹¹ See, e.g., Darlene Superville, “Trump Executive Order on Smithsonian Targets Funding for Programs with ‘Improper Ideology’,” Associated Press, March 27, 2025, <https://apnews.com/article/trump-smithsonian-executive-order-improper-ideology-558ebfab722f603e94e02a1a4b06ed4d>; and Josh Gruenbaum (commissioner, Federal Acquisition Service, General Services Administration) et al., to Dr. Alan M. Garber (president, Harvard University), April 11, 2025, <https://www.harvard.edu/research-funding/wp-content/uploads/sites/16/2025/04/Letter-Sent-to-Harvard-2025-04-11.pdf> (employing undefined phrases of “hateful ideology” to impose ideological admissions, hiring, and programmatic requirements on educational and cultural institutions). See also *Aditya W. H. v. Trump*, No. 25-CV-1976 (KMM/JFD), 2025 WL 1420131, at *11 (D. Minn. May 14, 2025) (Menendez, J.) (“Executive Order 14161 demonstrates the government’s intent to focus on the vaguely defined category of noncitizens within the United States who purportedly bear ‘hostile attitudes’ toward Americans or U.S. culture and institutions.”).

¹² USCIS, “First 100 Days: USCIS Delivering on Making America Safe Again,” DHS, press release, April 29, 2025, <https://www.uscis.gov/newsroom/news-releases/first-100-days-uscis-delivering-on-making-america-safe-again>; USCIS, “DHS to Begin Screening Aliens’ Social Media Activity for Antisemitism,” DHS, Press Release, April 9, 2025, <https://www.uscis.gov/newsroom/news-releases/dhs-to-begin-screening-aliens-social-media-activity-for-antisemitism>; and Memorandum from Marco Rubio, Secretary of State, to All Diplomatic and Consular Posts Collective, “(U) Action Request: Enhanced Screening and Social Media Vetting for Visa Applicants,” (March 25, 2025), available at <https://bsky.app/profile/marisakabas.bsky.social/post/3llcno2ducc2m>. See also Nasser Eledroos and Rachel Levinson-Waldman, “‘Continuous Vetting’ of All Visa Holders Is Impossible, but the Threat Alone Chills Free Speech,” Brennan Center for Justice, September 25, 2025, <https://www.brennancenter.org/our-work/research-reports/continuous-vetting-all-visa-holders-impossible-threat-alone-chills-free>.

¹³ USCIS, “Policy Alert: Clarifying Discretionary Factors in Certain Immigration Benefit Requests,” DHS, August 19, 2025, <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250819-DiscretionaryFactors.pdf>.

media data to make these determinations.¹⁴ The State Department has similarly directed consular officers to screen visa applicants' online presence for "antisemitic" activities and "hostile attitudes," and the extensive information-sharing between DHS and the Department of State indicate that the identifiers collected by CBP could further facilitate that screening.¹⁵

Furthermore, DHS's proposal marks a significant increase in the government's data collection and monitoring of citizens of our close allies. The VWP is a "comprehensive security partnership with many of America's closest allies," under which visitors from participating countries may enter the United States without a visa for up to 90 days.¹⁶ These countries already meet stringent security standards, including sharing criminal and terrorism information with the U.S. and undergoing repeated intelligence and risk assessments by DHS.¹⁷ Demanding that travelers from countries deemed "close allies" by the State Department share sensitive personal information for additional screening and vetting is unnecessarily burdensome and would frustrate the purpose of the VWP while undermining our relationships with our closest allies and inviting them to institute the same requirements for U.S. citizens traveling abroad.

For all these reasons, CBP should abandon the proposal.

I. DHS has failed to produce any evidence that the collection of social media identifiers to facilitate social media monitoring is an effective tool for screening and vetting immigrants, and it therefore lacks "practical utility."

OMB's initial approval of the "optional" social media field as part of the ESTA application in 2016 was conditional: it required DHS to conduct a privacy compliance

¹⁴ USCIS, "USCIS to Consider Anti-Americanism in Immigrant Benefit Requests," DHS, Press Release, August 19, 2025, <https://www.uscis.gov/newsroom/news-releases/uscis-to-consider-anti-americanism-in-immigrant-benefit-requests>.

¹⁵ Memorandum from Marco Rubio, Secretary of State to All Diplomatic and Consular Posts Collective, "Enhanced vetting for All Nonimmigrant Visa Applicants Traveling to Harvard University," (May 30, 2025), available at https://iptp-production.s3.amazonaws.com/media/documents/2025.05.30_Dept_of_State_25_STATE_52014_-_ACTION_REQUEST_Enhanced_vetting_for_Qj2s63u.pdf; and Memorandum from Marco Rubio, Secretary of State to All Diplomatic and Consular Posts Collective, "Expanding Screening and Vetting for FMJ Applicants," (June 18, 2025), available at <https://aboutblaw.com/biDF>. See also Rachel Levinson-Waldman and Naz Balkam, "The Government's Growing Trove of Social Media Data," Brennan Center for Justice, July 21, 2025, <https://www.brennancenter.org/our-work/research-reports/governments-growing-trove-social-media-data>. Notably, the Immigration and Nationality Act prohibits exclusion of non-citizens on the basis of their beliefs, statements, or associations in most circumstances, which this policy appears to run afoul of. See generally 8 U.S.C. § 1182(a), (a)(3)(C).

¹⁶ DHS, "U.S. Visa Waiver Program," May 2, 2025, <https://www.dhs.gov/visa-waiver-program>.

¹⁷ DHS, "U.S. Visa Waiver Program."

review (PCR) of the use of social media to vet ESTA applicants and to brief OMB twice on the review’s methodology and analysis.¹⁸ Recognizing the sensitivity of the collection, OMB specified that “any expansion of the social media element of this collection” would need to go through the PRA’s full notice and comment process.¹⁹ And indeed, it was pursuant to that process that OMB eventually exercised its oversight power in 2021 in rejecting the DHS proposal incorporating the same collection at issue here.

The PCR, which was published in October 2017, found that DHS had not developed an adequate system to collect data that would “demonstrate the value of social media information to the VWP [Visa Waiver Program] application process,” including with respect to determining a traveler’s eligibility to enter the United States and evaluating whether the traveler posed a security risk.²⁰ Nor could DHS demonstrate that the collection of social media handles minimized the burdens on ESTA applicants by “collect[ing] the minimum PII [personally identifiable information] necessary” to vet them.²¹

These conclusions turned on the same finding: that DHS relied on a small number of anecdotes to illustrate the efficacy of social media screening, which did “not constitute a reliable, effective system for the tracking and analysis of qualitative data” that would be needed to support claims of efficacy.²² One of the review’s three recommendations was that DHS set up a process incorporating comprehensive metrics—for example, how often social media information was proven to be inaccurate or contradicted information provided by the applicant—to measure the viability and success of social media screening.²³ It is unclear to what degree DHS has implemented this recommendation or to what extent it would apply it to the proposed collection. Even if it has been implemented, DHS has not provided any such holistic evidence of efficacy to the public,

¹⁸ Office of Management and Budget, “Notice of Office of Management and Budget Action,” December 19, 2016, https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201607-1651-003# (OMB Notice of Action Re: ICR 201607-1651-003). DHS’s privacy compliance reviews (PCR) are conducted by its Privacy Office and, in general, assess programs’ fidelity to privacy rules, including assurances made in Privacy Impact Assessments, System of Records Notices, and information-sharing agreements. 6 U.S.C. § 142 (2007).

¹⁹ OMB Notice of Action Re: ICR 201607-1651-003.

²⁰ Privacy Office, DHS, *Privacy Compliance Review of the U.S. Customs and Border Protection Electronic System for Travel Authorization*, October 27, 2017, 8, <https://www.dhs.gov/sites/default/files/publications/CBP-ESTA%20PCR%20final%20report%2020171027.pdf>. Eligible people apply for visa-free travel to the United States using the Electronic System for Travel Authorization.

²¹ Privacy Office, *Privacy Compliance Review*, 8.

²² Privacy Office, *Privacy Compliance Review*, 8.

²³ Privacy Office, *Privacy Compliance Review*, 3.

including in support of any proposal to collect social media information for travel and immigration screening purposes.

Indeed, over a decade, DHS has repeatedly failed to produce any evidence that the collection of social media identifiers to conduct social media monitoring facilitates better “vetting and national security screening” of immigrants.²⁴ Reviews of DHS’s social media screening have repeatedly and overtly called into question the practical utility, as well as the accuracy, validity and reliability, of information found on social media, and also described DHS’s inability to process social media data in a useful and timely fashion, as required by the Paperwork Reduction Act.

For example, in 2021, government officials reviewing the use of social media to screen and vet people seeking entry into the United States acknowledged that it “add[ed] no value” to the process, and found that it had “very little impact on improving the screening accuracy of relevant systems.”²⁵ This sentiment echoes a 2016 transition brief prepared for the first Trump administration by DHS, which reported that in three out of its four social media screening pilots for refugees “the information in [social media] accounts did not yield clear, articulable links to national security concerns, even for those applicants who were found to pose a potential national security threat based on other security screening results.”²⁶ DHS did not identify any “derogatory information” on people screened pursuant to the fourth refugee pilot.²⁷ DHS also noted that it was difficult to discern the “authenticity, veracity, [and] social context” of social media content, as well as “whether the content evidences indicators of fraud, public safety, or national security concern.”²⁸

It is unsurprising, then, that DHS officials concluded that “mass social media screening” was a poor use of resources: “[t]he process of social media screening and

²⁴ See Collection Notice.

²⁵ Charlie Savage, “Visa Applicants’ Social Media Data Doesn’t Help Screen for Terrorism, Documents Show,” *New York Times*, October 5, 2023, <https://www.nytimes.com/2023/10/05/us/social-media-screening-visa-terrorism.html> (citing documents obtained by The New York Times via Freedom of Information Act requests in which officials acknowledge that “there is little value” in collecting social media identifiers).

²⁶ The proposed collection includes changes to the I-590 form, which is filled out by those applying for refugee status. The new form would direct those applying to be refugees to submit their social media identifiers from the past five years. USCIS, USCIS-2025-0003-1239, DHS, September 17, 2025, <https://www.regulations.gov/document/USCIS-2025-0003-1239> (the proposed I-590 form); and USCIS, “USCIS Presidential Transition Records,” DHS, December 12, 2016, 198–199, <https://www.dhs.gov/sites/default/files/publications/USCIS%20Presidential%20Transition%20Records.pdf> (“USCIS Transition Records”).

²⁷ USCIS Transition Records, 199.

²⁸ USCIS Transition Records, 201.

vetting necessitates a labor intensive manual review,” taking people away from “the more targeted enhanced vetting they are well trained and equipped to do.”²⁹

Other internal DHS documents from 2016 and 2017 also indicate that pilot programs within USCIS were flawed. According to these documents, USCIS social media vetting provided little by way of actionable information.³⁰ By contrast, DHS concluded that such screening was “time and labor intensive”; that officers did not have clear guidance on what information was “potentially derogatory and worth further investigation”; and that “derogatory information found in other government systems can provide a more complete picture of the applicant’s background and risk profile” than social media.³¹

Nonetheless, DHS has sought to increase its collection and use of social media data. Indeed, emails obtained through public records requests reflect DHS’s hypothesis that collecting social media data may be helpful for the government’s future use, even if there is no value in the use of social media identifiers for screening and vetting.³² But the potential for future use of social media data does not warrant the significant social costs of mandatory social media collection—and our legal system does not give the government authority to collect and retain substantial amounts of personal and sensitive information “just in case.”

As OMB correctly concluded in 2021, neither the regulatory nor the broader public record contains evidence that social media screening for travel and immigration purposes has “practical utility,” as the PRA requires. DHS has not met the PRA’s criteria here. Most notably, the collection is certainly not “the least burdensome necessary” to achieve DHS’s vetting goals, and it is “duplicative of information otherwise accessible to the agency” that is relevant for that purpose.³³ As mentioned above, available public documents show that DHS has almost exclusively relied on standard security checks and information unrelated to social media to effectuate its travel and immigration screening apparatus. And from a security standpoint, the system has an extremely low rate of

²⁹ USCIS Transition Records, 201–202.

³⁰ Manar Waheed, “New Documents Underscore Problems of ‘Social Media Vetting’ of Immigrants,” American Civil Liberties Union, January 3, 2018, <https://www.aclu.org/blog/privacy-technology/internet-privacy/new-documents-underscore-problems-social-media-vetting>.

³¹ Fraud Detection and National Security Directorate, USCIS, *Review of the Defense Advanced Research Projects Agency 2.0 Social Media Pilot*, DHS, June 2, 2016, 33–34, 46, available at <https://s3.documentcloud.org/documents/4341532/COW2017000400-FOIA-Response.pdf>.

³² Email from Group of Identity Resolution and Screening at National Counterterrorism Center to Director of the ICSE and Biometrics, Re: PP10141- b(3) Use, April 9, 2021, <https://int.nyt.com/data/documenttools/kfai-foia-odni-nctc-social-media-identifier-vetting/5c04c4c7006140f8/full.pdf>.

³³ 5 C.F.R. § 1320.5(d).

failure: Cato Institute has calculated that one in 13.9 *billion* travelers from VWP between 2002 and 2024 was a deadly terrorist.³⁴ Given the lack of evidence supporting its necessity, the current proposal should be rejected as a threshold matter. In addition, we discuss below the severe burdens the collection would impose on travelers to the U.S. and on the country itself.

II. DHS fails to account for the social and monetary costs of mandatory social media collection.

In rejecting DHS’s past proposal requiring the disclosure of social media handles through ESTA, OMB explained that DHS must demonstrate that the practical utility of collecting social media handles “outweighs the costs—both monetary and social.” In its current proposal, DHS fails even to mention the social and monetary costs of social media collection.

The proposed collection, however, would impose severe social and monetary costs. We have detailed the civil rights and civil liberties risks extensively in comments opposing the department’s past proposals to expand collection of social media handles.³⁵ We also note—as we have previously explained—that DHS’s retention and data sharing practices exacerbate these concerns.³⁶ We briefly reiterate those risks here:

- **Risk of Self-Censorship.** Social media platforms are crucial gathering places for public discourse. As the U.S. Supreme Court observed nearly a decade ago, platforms like Facebook are for many “the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge.”³⁷ Like other forms of surveillance, social media monitoring impacts what people say, what they hear, and with whom they interact online.³⁸ Faced with

³⁴ Alex Nowrasteh, *Terrorism and Immigration: 50 Years of Foreign-Born Terrorism on US Soil, 1975–2024*, Cato Institute, March 10, 2025, <https://www.cato.org/policy-analysis/terrorism-immigration-50-years-foreign-born-terrorism-us-soil-1975-2024#>.

³⁵ See, e.g., Brennan Center for Justice and Knight First Amendment Institute at Columbia University to USCIS, May 5, 2025; and Brennan Center for Justice and Knight First Amendment Institute at Columbia University to OMB, October 16, 2025; and Brennan Center for Justice et al. to DHS, November 4, 2019. See also Brennan Center for Justice and EPIC to CBP and OIRA, March 25, 2022.

³⁶ See, e.g., Brennan Center for Justice and Knight First Amendment Institute at Columbia University to USCIS, May 5, 2025; Brennan Center for Justice and Knight First Amendment Institute at Columbia University to OMB, October 16, 2025; and Brennan Center for Justice et al. to DHS, November 4, 2019.

³⁷ *Packingham v. North Carolina*, 137 S. Ct. 1730, 1732 (2017).

³⁸ For example, one study found that fear of government surveillance of the internet had a substantial chilling effect among both U.S. Muslims and broader samples of Internet users. Elizabeth Stoycheff et al.,

the threat that their online views could be scrutinized, misinterpreted, or taken out of context to justify their exclusion, ESTA applicants will engage in self-censorship by deleting their accounts, disassociating from online connections, limiting their social media postings, or sanitizing their internet presence—or they may choose not to come at all. These impacts will be felt by the Americans and U.S. residents with whom the applicants communicate or would interact, all of whom benefit from the free exchange of information. The disclosure requirement will also impact the country’s standing as a center for academic and scientific exchange. Scholars and scientists seeking to attend and present at U.S. conferences or conduct lectures through the VWP may choose not to come, taking their research elsewhere.³⁹ Scientific research and innovation will suffer, and Americans and U.S. residents will lose the opportunity to hear and learn from diverse viewpoints.⁴⁰

- **Chilling Associational Activity.** Whomever the proposal overtly targets, social media is inherently interactive. A person’s social media profile doesn’t just depict their own activity; it reveals who has shared, liked, commented on, or responded to their activity. The proposed collection also threatens to chill these associational activities, as people may choose to stop interacting with potential VWP applicants out of fear that their activities will be collected, viewed, or monitored as well. And given the networked nature of social media, the proposed collection risks chilling the activities of U.S. persons, including citizens, legal permanent residents, and others physically present in the country, who would have shared, liked,

“Privacy and the Panopticon: Online Mass Surveillance’s Deterrence and Chilling Effects,” *New Media & Society* 21, no. 3 (October 2018); and Dawinder S. Sidhu, “The Chilling Effect of Government Surveillance Programs on the Use of the Internet by Muslim-Americans,” *University of Maryland Law Journal of Race, Religion, Gender & Class*, 7, no. 2 (September 2007). Even people who said they had nothing to hide were highly likely to self-censor online when they knew the government was watching. See Elizabeth Stoycheff, “Under Surveillance: Examining Facebook’s Spiral of Silence Effects in the Wake of NSA Internet Monitoring,” *Journalism & Mass Communication Quarterly*, 93 no. 2 (June 2016): 307–8.

³⁹ The administration’s policy of punishing free speech and association has already led students and researchers to pursue their education in other countries. See, e.g., Vivian Wang, “As Trump Tightens Visas, China Woos World’s Science Graduates,” *New York Times*, September 26, 2025, <https://www.nytimes.com/2025/09/26/world/asia/china-tech-workers-visas-us-h1b.html>; and Sylvia Hui, “College Applications Rise Outside U.S. as Trump Cracks Down on International Students,” *Associated Press*, August 6, 2025, <https://apnews.com/article/international-students-visas-trump-uk-dubai-6fd432398ce4c87f49a89c9c39421dec>. Conferences are also moving abroad. See, e.g., Miryam Naddaf, “Scientific Conferences Are Leaving the U.S. Amid Border Fears,” *Nature*, May 22, 2025, <https://www.nature.com/articles/d41586-025-01636-5>.

⁴⁰ Letter from Former State Department Officials to Marco Rubio (Secretary of State, Department of State) and Christopher Landau (Deputy Secretary of State, Department of State), November 19, 2025, <https://www.aau.edu/sites/default/files/Letter%20to%20Rubio%20-%2011.17.2025.pdf>.

commented on, or responded to the social media of VWP travelers, but may also refrain from doing so out of caution.

- **Undermining Anonymity and Private Association.** By compelling applicants to disclose any identifiers they have used on social media platforms during the preceding five years—including pseudonymous identifiers—the proposed collection unquestionably burdens the principle of anonymous speech.⁴¹ Many people use anonymous or pseudonymous social media accounts to speak about sensitive or controversial issues, and to shield themselves, their families, or their associates from retaliation by state or private actors. The proposed collection of social media handles would directly injure ESTA applicants' interests in maintaining anonymity and pseudonymity online.⁴² So too would the proposal's request for email addresses used in the last ten years.
- **Privacy.** A person's social media presence—especially across platforms and over time—can reveal intimate details about them, including their ethnicity, political views, religious practices, gender identity, sexual orientation, personality traits, and vices.⁴³ Indeed, DHS itself has categorized social media handles as “Sensitive

⁴¹ See, e.g., *Watchtower Bible & Tract Soc'y of New York, Inc. v. Vill. of Stratton*, 536 U.S. 150, 153, 166 (2002); *Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 200 (1999); *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 357 (1995) (Stevens, J.) (“Anonymity is a shield from the tyranny of the majority... It thus exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation—and their ideas from suppression—at the hand of an intolerant society.”); *Talley v. California*, 362 U.S. 60 (1960); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958); *Sweezy v. New Hampshire*, 354 U.S. 234 (1957); and Electronic Frontier Foundation, “Anonymity,” accessed October 16, 2025, <https://www.eff.org/issues/anonymity>.

⁴² These injuries are not theoretical. A lawsuit filed by the Brennan Center and the Knight First Amendment Institute against the State Department and DHS documents these impacts in a nearly identical context. Complaint, *Doc Society v. Pompeo*, No. 1:19-cv-03632-TJK (D.D.C. December 5, 2019). It shows how the collection of social media identifiers on visa forms deprived a number of international filmmakers of their online anonymity and associational privacy. Those filmmakers had no choice but to identify themselves and their pseudonymous social media identifiers. In an amicus brief filed by Twitter (now X), Reddit, and the Internet Association (a lobbying group for internet companies) in support of the lawsuit, platforms emphasized the importance of anonymity online—extensively documenting the reasons for which people may create anonymous accounts and explaining how forcing applicants to disclose anonymous handles chills global conversation and negatively impacts the utility and value of their platforms. *Amicus Curiae* Brief of Twitter, Inc., Reddit, Inc., and Internet Association in Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss at 11–14, *Doc Society* (D.D.C. May 28, 2020), <https://knightcolumbia.org/documents/4b2d5c21ad>.

⁴³ See Sophia Cope and Saira Hussain, “EFF to Court: Social Media Users Have Privacy and Free Speech Interests in Their Public Information,” Electronic Frontier Foundation, June 30, 2020, <https://www.eff.org/deeplinks/2020/06/eff-court-social-media-users-have-privacy-and-free-speech-interests-their-public>. See also Brief of *Amicus Curiae* Electronic Frontier Foundation at 10, *Doc Society* (D.D.C. May 29, 2020) (quoting *United States v. Jones*, 565 U.S. 400 (2012) (Sotomayor, J., concurring)).

PII” whose disclosure could “result in substantial harm, embarrassment, inconvenience, or unfairness to an individual.”⁴⁴ The information being requested is far more capacious, detailed, and sensitive than what is required to adjudicate an ESTA application, particularly given the heightened security standards maintained by VWP countries, which DHS has already deemed adequate. Even if DHS officials do not intentionally look for this information, the fact that they have it easily accessible increases the risk of bias in the adjudication of a given application as well as the risk that it will be misappropriated for purposes beyond the screening for immigration benefits envisioned in the original collection. Moreover, many of the ESTA travelers are likely to have business associates, family, and friends in the U.S., with whom they will communicate over social media. Given the networked nature of social media, this privacy risk will also impact those Americans and U.S. residents, revealing intimate details about their associations, beliefs, religious and political leanings, and preferences.

Moreover, complying with the proposed collection will not be straightforward. None of the materials accompanying the proposal defines “social media.” The lack of clear guidance to applicants makes it likely that they will be denied for inadvertent failure to provide a long-forgotten identifier or confusion over what should be disclosed. It will also make it easier for the government to find pretextual reasons to reject applicants on arbitrary or discriminatory grounds. We are also concerned that a failure to comply with the proposed collection, even inadvertently, may be used as a reason to deny people admission or immigration status down the road.

In addition to the social costs outlined above, the proposed collection engenders significant monetary costs. DHS will force people from VWP countries to submit to sweeping surveillance, simply because those travelers want to visit family in the United States, conduct business with U.S.-based companies, or attend global events such as the upcoming World Cup. Faced with relinquishing their privacy and rights to free speech, association, and anonymity, VWP visitors may forego their visits.⁴⁵ DHS has previously touted the economic benefits generated by the VWP as one of its primary benefits, noting

⁴⁴ See, e.g., Privacy Office, *Privacy Threshold Analysis Version Number: 04-26*, DHS, March 14, 2017, 8, <https://www.brennancenter.org/sites/default/files/2022-03/PTA%202017%20SM%20as%20SPII.pdf> (noting that social media handles constitute “stand-alone Sensitive Personally Identifiable Information”); and Privacy Office, *Privacy Threshold Analysis Version Number: 01-2014*, DHS, January 2014, 4n2, <https://www.brennancenter.org/sites/default/files/2022-02/PTA%20for%20OI%20and%20OPR.pdf>.

⁴⁵ In a survey of nearly 5,000 international residents who travel regularly, the World Travel & Tourism Council found one-third of respondents would be less likely to visit the U.S. if required to disclose social media handles. Jeanne Bonner, “Millions of Travelers Could Skip Visiting the US if Proposed Social Media Policy is Implemented, Industry Experts Warn,” CNN, January 28, 2026, <https://www.cnn.com/2026/01/28/travel/social-media-esta-proposal-world-travel>.

that in FY 2023 “VWP travelers injected nearly \$231 million a day into local economies across the country.”⁴⁶ Those economic benefits are set to significantly increase with upcoming global events like the World Cup: a socioeconomic impact analysis conducted jointly by the World Trade Organization, FIFA, and OpenEconomics estimates that the World Cup will bring 185,000 jobs and \$30.5 billion in economic impact to the United States, including \$5.16 billion from tourism alone.⁴⁷ Imposing the social media disclosure requirement will likely diminish those substantial benefits.⁴⁸ Estimates from the global travel industry’s World Travel & Tourism Council warn that the potential decline in travelers due to the social media disclosure requirement could cost the U.S. an estimated \$15.7 billion in lost visitor spending and 150,000 in lost jobs.⁴⁹ In sum, the law requires—and OMB has repeatedly instructed—DHS to account for the costs of mandatory social media collection. DHS has failed to do so here, and as set forth above and in prior comments, the costs greatly outweigh the minimal value of collecting social media handles.

III. Conclusion

For the above reasons, we urge the Department of Homeland Security to abandon this proposed collection. If we can provide any further information regarding our concerns, please do not hesitate to reach out to Emile Ayoub, Senior Counsel, Liberty and National Security Program, Brennan Center for Justice, at ayoub@brennan.law.nyu.edu, Carrie DeCell, Senior Staff Attorney & Legislative Advisor, Knight First Amendment Institute, at carrie.decell@knightcolumbia.org, or Jeramie Scott, Senior Counsel & Director, Electronic Privacy Information Center, at jscott@epic.org.

Sincerely,

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Electronic Privacy Information Center (EPIC)

⁴⁶ DHS, “U.S. Visa Waiver Program.”

⁴⁷ FIFA, “FIFA World Cup 2026: Socioeconomic Impact Analysis,” March 2025, <https://digitalhub.fifa.com/m/152f754a8e1b3727/original/FIFA-World-Cup-2026-Socioeconomic-impact-analysis.pdf>.

⁴⁸ See e.g., Stewart Verdery, “A Proposed Homeland Security Rule Could Empty U.S. Stadium Seats,” *The Washington Post*, January 20, 2026, <https://www.washingtonpost.com/opinions/2026/01/20/homeland-security-world-cup-tourism-social-media/>.

⁴⁹ Bonner, “Millions of Travelers.”