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[via www.regulations.gov](http://www.regulations.gov)

October 13, 2020

Michael J. McDermott,
Security and Public Safety Division, Office of Policy and Strategy,
U.S. Citizenship and Immigration Services,
Department of Homeland Security,
20 Massachusetts Ave. NW,
Washington, DC 20529-2240

**RE: Comments in Response to Collection and Use of Biometrics by
U.S. Citizenship and Immigration Services; DHS Docket Number
USCIS-2019-0007; RIN 1615-AC14**

Dear Mr. McDermott:

I write on behalf of the Human Rights Initiative of North Texas in strong opposition to the U.S. Department of Citizenship and Immigration Services' proposed rule concerning the collection and use of biometrics, published in the Federal Register on September 11, 2020.

The proposed rule vastly expands the collection of biometrics, dramatically enlarging the government's surveillance of immigrants and U.S. citizens sponsoring immigration cases. The expansion has serious privacy implications, whose impacts are particularly concerning for the people we serve.

Human Rights Initiative of North Texas ("HRI") is a non-profit legal services agency that represents people fleeing humanitarian abuses from all over the world. Our clients include asylum seekers who have fled horrifying abuse in their home countries for speaking up against government corruption, for practicing their faith, and for living their authentic lives. They include children, who have been forced to flee their homes because there was no one left to care for them in their home country—or because their parents had created an abusive environment where it was unsafe to stay. They include undocumented people here in the United States who have survived serious crimes and who have come forward to protect themselves and their children from danger, to protect their friends and families, and protect their communities.

Because of the 30-day comment deadline and this Administration's barrage of regulatory attacks against those seeking humanitarian relief in the United States,

we are unable to catalog the myriad of problems posed by this rule. For the reasons discussed by our colleagues at Amnesty International, the National Immigration Project, and Alliance for Immigrant Survivors, as well as the reasons outlined below, we strongly oppose the proposed changes.

I. THE PROPOSED RULE PLACES ASYLUM SEEKERS AND OTHER SURVIVORS AT PARTICULAR RISK.

The proposed rule does not expressly indicate where DHS will store its new trove of highly personal, biometric data. However, because existing biometric data will be stored in DHS's new Homeland Advanced Recognition Technology (HART) database, we expect that new biometric data collected under this proposed rule will likely also be stored in the HART database. HART will be hosted by Amazon Web Service's GovCloud, meaning that data retention and review in HART is managed by data owners and providers, not the U.S. government.

There is a myriad of concerns with housing this highly personal data in HART in the way laid out by the proposed rule, including the lack of a privacy impact statement, the lack of redress mechanisms, and the constitutional rights implicated by this privacy invasion. However, we focus our comment on the particular ways that unmitigated information sharing could impact the survivors that we serve.

We represent asylum applicants who have fled political persecution in their home countries. Many were kidnapped, inhumanely detained, and tortured at the hands of the political party leading their country for real or perceived opposition to the party. Often after their flight, our clients' family members are menaced, threatened, or interrogated in an attempt to learn our clients' whereabouts and eliminate them as a threat to the regime. For these reasons, our laws recognize the particular confidentiality needs of asylum seekers, expressly prohibiting governmental officials from sharing information contained in an asylum application or indicating that a person has applied for asylum without a confidentiality waiver from the applicant. *See* 8 C.F.R. § 208.6.

Critically, HART allows for interoperability between U.S. databases and foreign databases. The proposed rule provides no safeguards or limitations to protect data from being shared cross-governmentally to regimes that may be looking for an asylum seeker. This glaring omission places asylum seekers at serious risk of harm.

Similarly, we represent survivors of violent crimes, including domestic violence, who are often in hiding from their abusers. Many have escaped through networks of friends or domestic violence shelters, and must be very careful to avoid resurfacing on their abusers' radar: abusers and perpetrators of crime often threaten to report survivors to the police or to the immigration authorities in order to maintain power over their victims and keep them silent. Congress created confidentiality protections for survivors codified at 8 USC § 1367, to ensure that abusers and other perpetrators cannot use the immigration system against their victims." Despite the numerous policies put in place surrounding survivor information, DHS' own reports indicate their components can do more to protect survivor information.

We are deeply concerned that the sweeping expansion of biometrics will lead to additional disclosures (either intentionally or through vulnerabilities to hacking and other breaches), which will jeopardize survivor safety. The proposed rule acknowledges there could be some unquantified impacts related to privacy concerns for risks associated with the collection and retention of biometric information, and would expand the population that could have privacy concerns. Whenever sensitive information about a victim is shared between agencies, the security of that information is compromised due to the increasing number of people authorized to access the information, and increased risks of unauthorized access and hacking. This is especially true of survivors of domestic violence, sexual assault, stalking and other crimes who may have justified concerns about what information is shared, with whom and for what purpose. For example, in cases of domestic violence or stalking where the abuser or the abuser's friends or family are in law enforcement, this raises significant security concerns regarding who may potentially have access to these biometric databases.

II. THE PROPOSED RULE WILL CREATE ADDITIONAL COST BARRIERS FOR SURVIVORS SEEKING TO ACCESS PROTECTION.

The proposed rule will allow immediately for DHS, in its discretion, to request, require, or accept DNA or DNA test results, which include a partial DNA profile, for individual benefit requests requiring proof of a genetic relationship. Phase V of their implementation plan would permit DHS to request or require DNA evidence including but not limited to:

- Asylum applicants (Form I-589);
- VAWA Self-Petitions involving abuse of children or parents (Form I-360);
- Petition for U Nonimmigrant Status Supplement A (Form I-918A);
- Petition for Qualifying Family Member of a U-1 Nonimmigrant (Form I-929).

USCIS estimates that thousands of people may be subject to these new DNA requests. As these requests are within the “discretion” of the adjudicator, this undoubtedly will lead to inconsistent treatment, adding additional costs and burdens to an already arduous adjudication process. The potential costs are staggering; DNA tests often incur a \$440 fee to test first genetic relationship and \$220 for each additional test, which are costs the applicant must pay.

HRI's clients are already struggling to pull together the resources to submit applications under the current framework (and we anticipate even more challenges if the Administration's recently finalized fee rule goes into effect following the trial court's recent injunction). The proposed rule is yet another way in which people seeking humanitarian relief are being priced out of protection. Humanitarian relief should be about who needs protection under our laws, not about who is rich enough to pay for it.

III. THE PROPOSED RULE CREATES BARRIERS FOR VAWA SELF-PETITIONERS UNDER 14.

Finally, the proposed rule removes the presumption of good moral character for VAWA self-petitioners under 14 years old, needlessly increasing the burden on survivors already subject to

steep documentary proof requirements. USCIS has the authority to get more information from applicants where warranted. This provision is unnecessary and without sufficient justification.

IV. CONCLUSION

We strongly oppose the changes laid out in the proposed rule and call on the Administration to withdraw them in their entirety.

For further information, please do not hesitate to reach us at kcohn@hrionline.org.

Respectfully,

A handwritten signature in black ink that reads "Kali Cohn". The signature is written in a cursive, flowing style with a long horizontal stroke extending to the right.

Kali Cohn
Community Education & Advocacy Director