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October 13, 2020

Chad Wolf
Acting Secretary
U.S. Department of Homeland Security
301 7th Street, S.W.
Washington, D.C. 20528

Michael J. McDermott
Acting Division Chief
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

**Re: 85 FR 56338; EOIR Docket No. 19-0007, CIS No. 2644-19; RIN 1615-AC14;
Comment in Opposition to Proposed Rulemaking: Collection and Use of Biometrics
by U.S. Citizenship and Immigration Services**

Dear Acting Secretary Wolf and Acting Division Chief McDermott,

On behalf of ADL (the Anti-Defamation League), we are writing to oppose in the strongest terms the above-referenced Proposed Rule governing the collection and use of biometrics published in the Federal Register on September 11, 2020. We urge that this Proposed Rule be immediately withdrawn.

ADL is a leading anti-hate organization founded in 1913 to stop the defamation of the Jewish people and to secure justice and fair treatment to all. We are rooted in a community that has experienced the plight of living as refugees throughout its history. ADL has advocated for fair and humane immigration policy since our founding and has been a leader in exposing anti-immigrant and anti-refugee hate that has poisoned our nation's debate.

In light of our mission, ADL opposes the Proposed Rule as drafted and calls on the Department of Homeland Security to immediately withdraw it, including terminating any proceedings currently pending pursuant to the Proposed Rule.

As a procedural matter, DHS has not allowed the public sufficient opportunity to comment on this rule. Typically, the administration should allow a comment period of at least 60 days following publication of the proposed rulemaking to provide the public a

meaningful opportunity to comment.¹ Here, despite the sweep and complexity of this new rule, DHS has afforded the public only 30 days to comment.

The rule, nearly 90 pages long, significantly expands the scope of who will be subjected to biometrics collection, how long and how frequently the government could demand their information, and what type of information the government can collect about them. If implemented, the rule will have a seismic impact on the lives of millions of immigrants and their U.S. citizen and lawful permanent resident relatives. It will power the mass collection and storage of all manner of biometric information into a new database described by experts as “the largest database of biometric and biographic data on citizens and foreigners in the United States.”² The ramifications of the rule, if implemented, will be breathtaking.

The Proposed Rule will increase the already-rising levels of discrimination and xenophobia in our country. Permitting the U.S. government to circumvent the privacy rights of both immigrants and U.S. citizens on the pretense of increasing immigration security will only fuel the harmful rhetoric which pretends that it is acceptable to discriminate against immigrants and to treat them as “others.” Immigration is baked into American history and an invaluable part of America’s present. ADL condemns in the strongest terms any effort to marginalize, pathologize, or dehumanize immigrants, refugees, and asylum seekers.

Further, the motivations behind parts of this rule are clearly drawn from President Trump’s disastrous Muslim bans, which also used immigration security excuses to explicitly discriminate against a specific group of people.³ The portion of the proposed rule permitting continuous data collection even cites the second Muslim ban as justification.

In 2018, ADL filed an amicus brief opposing the Muslim bans in *Trump v. Hawaii* because of the bans’ outrageous discrimination against Muslims; indeed, the bans were based on the very same discriminatory principles upon which the *Korematsu* case was based, as noted by Justice Sotomayor’s dissenting opinion.⁴ Just as *Korematsu* was a grave miscarriage of justice, so too were the Muslim bans, and so too is this Proposed Rule which follows from those bans.

Additionally, the Proposed Rule will have a disproportionate impact on already marginalized communities. The types of technology described in this Proposed Rule, such as facial recognition technology, have been shown to be discriminatory, particularly against women and people of color.⁵ Using this technology to track people throughout the “immigration lifecycle” will just reinforce and escalate the already-existing biases in immigration enforcement systems.

¹ See, e.g., Executive Order 12866 (Oct. 4, 1993) (requiring that the public generally be given 60 days to comment on a proposed rule); Executive Order 13563 (Jan. 18, 2011) (to provide the public an opportunity to participate in the regulatory process, comment period shall be at least 60 days).

² Jennifer Lynch, “HART: Homeland Security’s Massive New Database Will Include Face Recognition, DNA, and Peoples’ ‘Non-Obvious Relationships’,” <https://www.eff.org/deeplinks/2018/06/hart-homeland-securitys-massive-new-database-will-include-face-recognition-dna-and>.

³ Panduranga, Harsha, and Faiza Patel. “Extreme Vetting and the Muslim Ban.” Brennan Center for Justice, 2017. <https://www.brennancenter.org/our-work/research-reports/extreme-vetting-and-muslim-ban>.

⁴ *Trump v. Hawaii*, 138 S. Ct. 2392, 201 L.Ed.2d 775 (2018).

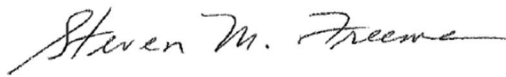
⁵ Glaubitz, Alina. “Bots and Biometrics.” Yale Human Rights Journal, May 31, 2020.

As a whole, the proposed rule changes would force both immigrants and their U.S. citizen relatives – disproportionately people of color – to be held under continuous surveillance, with the government collecting sweeping levels of sensitive, personally-identifiable information about them, with no regard as to whether that information is actually necessary to establish identity or eligibility for immigration status. This incredibly personal, vast collection of information would be stored in a database shared across law enforcement agencies. These agencies, already notorious for disproportionately arresting and charging people of color, would then have an unprecedented amount of data about these individuals, which law enforcement could easily exploit. The information can even be shared with foreign governments, meaning that communities already more likely to be policed and scapegoated could now be easily surveilled and even falsely identified in connection with crimes.

The Proposed Rule demonstrates a clear lack of adherence to procedure, an unacceptable increase in discrimination, and it will likely have a disparate impact on marginalized members of society. In light of these concerns, ADL strongly urges the Department of Homeland Security to withdraw this Proposed Rule and instead dedicate its efforts to advancing policies that respect the rights and dignity of immigrants, asylum seekers, and refugees.

Please do not hesitate to contact us with questions or for further information.

Sincerely,



Steven M. Freeman
Vice President
Civil Rights



Karen Levit
National Civil Rights Counsel



Max Sevilla
Vice President
Government
Relations, Advocacy, and
Community Engagement