

Via email

Sept. 16, 2020

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

Paul Ray, Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

RE: Request for 60-Day Comment Period for DHS Proposed Rule on the Expansion of Biometrics/ USCIS Docket No.: USCIS-2019-0007

Dear Acting Secretary Wolf and Acting Administrator Ray:

We, the 105 undersigned organizations, write to respectfully request that the Department of Homeland Security (DHS) extend the public comment period for the above-referenced Notice of Public Rulemaking (NPRM) from 30 days to a minimum of 60 days. We make this request due to the length and complexity of the 328-page rule, in order to provide the public with a meaningful opportunity to comment while we continue navigating the challenges presented by a global pandemic.

On September 1, 2020, DHS announced the imminent release of a proposed rule that would expand biometrics collection in connection with the administration of immigration law. An advance copy of the NPRM was distributed on September 4, 2020. In summary, the NPRM proposes sweeping changes to the amount of private information DHS and its component agencies collect, including but not limited to:

1. Expanding the collection of biometrics to require any individual filing or associated with an immigration benefit or request - over six million people annually - to appear for biometrics collection without regard to age, including U.S. citizens;
2. Increasing the biometric modalities that it uses to collect biometrics information for benefits adjudication and law enforcement purposes to include palm prints, facial and iris image, and voice prints, as well as permit the indefinite retention of biometrics and allow the agency to share biometrics with law enforcement;

3. Authorizing DHS to require, request, or accept the submission of DNA or DNA test results, which include a partial DNA profile, to verify the existence of a claimed genetic relationship for benefits adjudication and law enforcement purposes;
4. Removing the age restrictions for biometrics collection in the context of Notice to Appear issuance for the same reasons (i.e., identity verification, criminal history background checks, etc.).
5. Modifying how VAWA self-petitioners and applicants for T nonimmigrant status demonstrate good moral character, as well as remove the presumption of good moral character for children under the age of 14.

I. A Minimum of 60 Days is Required for Meaningful Public Comment on the NPRM

A. The NPRM is Extremely Lengthy and Complex with Significant Financial and Time Investments that Require Careful Analysis

In total, the NPRM consists of more than 325 pages of proposed changes, regulatory justification, and analysis. The changes made by the rule would apply to over six million people at a cost of nearly \$300 million each year, require the collection of data on millions of American citizens and immigrants, and represent one of the most significant changes to the legal immigration process in generations. Yet despite the enormity of the proposal, the NPRM provides only 30 days for public comment. We are writing to respectfully request a minimum 60-day comment period, in keeping with common and past practices, particularly for rules that would have a significant impact on the public.

Executive Order 12866 states that agencies should allow “not less than 60 days” for public comment in most cases, in order to “afford the public a meaningful opportunity to comment on any proposed regulation.” Executive Order 13563 states that “[t]o the extent feasible and permitted by law, each agency shall afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally be at least 60 days.”

Since March of this year, the United States has had to deal with the COVID-19 global pandemic. Members of the House and Senate have previously requested that the Administration freeze the formal federal rulemaking process and administrative actions unrelated to the COVID-19 pandemic response, and extend public comment periods for a reasonable period after the crisis has lifted.¹ As fourteen House Committee Chairs correctly noted, “The right of the American people to meet with federal agencies and comment on proposed actions is invariably affected by the ongoing pandemic.” This is uniquely true in the context of immigration law as procedures

¹ Letter from Representatives to Office of Management and Budget (April 1, 2020), *available at* (<https://edlabor.house.gov/imo/media/doc/Committee%20Chairs%20Letter%20re%20Comment%20Period%20Extension.pdf>), (requesting that OMB direct federal agencies to extend public comment periods by at least 45 days beyond the end of the declared national emergency); See also Letter from Senators to Office of Management and Budget (April 8, 2020), *available at* (<https://www.tomudall.senate.gov/imo/media/doc/4.8.20%20United%20States%20Senate%20Letter%20to%20OMB%20Acting%20Director%20Vought%20FINAL%5b1%5d.pdf>).

shifted, and continue to shift, to accommodate the new circumstances. Practitioners have had to remain up to date and readily inform clients of the ever-changing legal landscape. Those working remotely have more limited and inconsistent access to physical documents, clients, information, and technology needed to fully analyze and comment on proposed rules, with minimal advance warning. Stakeholders are struggling to perform their jobs, in many instances doing so while simultaneously providing childcare and/or assisting children with remote learning - particularly now at the start of a new school year. Normal business operations have been dramatically disrupted, including those of your and other federal agencies.

A rule that would have such far-reaching impacts including revision of over 50 United States Citizenship and Immigration Services (USCIS) forms, many additional hours of work to obtain and process this information, as well as the significant economic impact, should be given ample time for review. Other federal agencies have recognized that the COVID-19 pandemic justifies the extension of comment periods.² DHS should do the same.

B. The NPRM Will Have Devastating Human Consequences if Implemented

The proposed changes will have grave consequences for anyone submitting an application with USCIS or the Executive Office for Immigration Review (EOIR). This expansion of biometrics could impact anyone - including U.S. citizens if they are petitioning for someone. Increased collection of very personal data needs to be closely examined and rationalized. Sufficient time has to be given to assess what is the perceived gap in the data that is currently obtained, and if these costly proposed amendments would be the only alternative. Further, this proposal has significant implications on access to due process and justice, since there would be various new forms of information gathering included in biometrics and it would be extended to all petitioners, including U.S. citizens and children (even those under the age of 14). DHS is also proposing to be the gatekeepers of what constitutes a family by conducting DNA tests to ensure that the relationship between two given individuals is what they describe. Despite immigration forms requiring evidence of the relationship already, DHS wants to extend this. Given these significant consequences, the undersigned do not see a justification for deviating from the 60-day minimum standard for comment periods, as designated in EO 12866 and EO 13563.

In its proposed rule, DHS provides no concrete data regarding the background information that is not captured under the current system. We request this extension of the comment period in order to allow our organizations and the public adequate time to review the proposed changes and provide meaningful feedback. A continuous and minimum 60-day comment period would allow more organizations and affected groups to carefully examine the changes and weigh-in, in turn providing the DHS with more meaningful information to better address and consider the scope of related issues, assess unintended consequences, and prevent potential waste of resources.

² See Bureau of Consumer Financial Protection, *Debt Collection Practices (Regulation F); Extension of Comment Period*, 85 Fed. Reg. 30890 (May 21, 2020) (agreeing that “the pandemic makes it difficult to respond to the SNPRM thoroughly” and providing an additional 90 days to comment on a proposal “in light of the challenges posed by the COVID-19 pandemic”).

Given the nature of the proposals and populations involved, we believe that these unique and expansive changes warrant additional time for review and comment. We thank you for your consideration of our request. Please contact Jill Marie Bussey, Director for the Catholic Legal Immigration Network, Inc. at jbusssey@cliniclegal.org for any questions or concerns.

Sincerely,

American Immigration Lawyers Association
ACCESS
Advocates for Immigrant Rights
Advocating Opportunity
Alianza Americas
Alianza Nacional de Campesinas
Alliance for Immigrant Neighbors
American Gateways
American Immigration Council
Amnesty International USA
Ascend Justice
Asian Pacific Institute on Gender-Based Violence
Asian Resources, Inc.
ASISTA
Ayuda
Boundless Immigration Inc.
Bueno Law
California Immigrant Policy Center
California Partnership to End Domestic Violence
Casa de Esperanza: National Latin@ Network for Healthy Families and Communities
Catholic Charities Hawaii
Catholic Charities of Santa Clara County
Catholic Legal Immigration Network, Inc.
Catholic Migration Services
Center for Gender & Refugee Studies
Center for Law and Social Policy (CLASP)
Centro Romero
Children's Defense Fund - Texas
Church World Service
Coalition for Humane Immigrant Rights (CHIRLA)
Coalition to Abolish Slavery & Trafficking
Colaborativa La Milpa
Ct Institute for Refugees and Immigrants
Demand Progress Education Fund
End Domestic Abuse Wisconsin
Equality California
Erie Neighborhood House
Franciscan Action Network

Franciscans for Justice
Freedom Network USA
FRIDA KAHLO COMMUNITY ORGANIZATION
Her Justice
Idaho Coalition Against Sexual & Domestic Violence
Illinois Coalition Against Domestic Violence
Immigrant Law Center of Minnesota
Immigrant Legal Resource Center (ILRC)
Immigration Center for Women and Children
Intercommunity Justice and Peace Center
International Refugee Assistance Project
Jefferson County Immigration Rights Advocates
Jesuit Refugee Service/USA
Jewish Family Service of San Diego
Kids in Need of Defense (KIND)
La Alianza Comunitaria Transnacional
Law Office of Matthew J Olsman, APC
Los Angeles Center for Law and Justice
LUCHA Ministries, Inc.
Lutheran Social Services of New York Immigration Legal Program
Maryknoll Office for Global Concerns
Massachusetts Immigrant and Refugee Advocacy Coalition
Meadow
Mexican American Opportunity Foundation
Michigan Immigrant Rights Center
Montana Coalition Against Domestic and Sexual Violence
NALEO Educational Fund
National Council of Asian Pacific Americans (NCAPA)
National Health Law Program
National Immigrant Justice Center
National Immigration Forum
National Justice for Our Neighbors
National Network for Immigrant & Refugee Rights
Nebraska Coalition to End Sexual and Domestic Violence
New Sanctuary Coalition
New York Immigration Coalition (NYIC)
New York Legal Assistance Group
New York State Coalition Against Domestic Violence
North Suburban Legal Aid Clinic
OCA-Asian Pacific American Advocates
Ohio Immigrant Alliance
Oxfam America
Polish American Association
Safe Horizon
Sanctuary for Families
Save the Children
Save the Children Action Network
Services, Immigrant Rights, and Education Network (SIREN)
Silver State Equality-Nevada
South Carolina Appleseed Legal Justice Center
Southeast Asia Resource Action Center

Southwestern Law School Immigration Clinic
Tahirih Justice Center
The Episcopal Network for Economic Justice
The Law Offices of Marcelo Rivas
The Legal Project
The Right to Immigration Institute
The Women's Law Center of Maryland
The Workers Circle
UnidosUS
UNITED SIKHS
United We Dream Network
Violence Free Colorado
Virginia Coalition for Immigrant Rights
Wind of the Spirit Immigrant Resource Center
Young Center for Immigrant Children's Rights