

Seth Renkema  
Chief, Economic Impact Analysis Branch  
Office of Trade, Regulations and Rulings  
U.S. Customs and Border Protection  
Department of Homeland Security

OMB Desk Officer for Customs and Border Protection  
Office of Information and Regulatory Affairs  
Office of Management and Budget

March 25, 2022

Re: Arrival and Departure Record, Nonimmigrant Visa Waiver Arrival/Departure, Electronic System for Travel Authorization (ESTA) (OMB Control No. 1651-0111)

To Whom It May Concern:

We write to oppose the Department of Homeland Security’s (DHS) information collection request that would require the roughly 15 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 to disclose their social media identifiers to DHS.<sup>1</sup> Such disclosure is currently optional; this proposal seeks to make it mandatory.

In April of last year, the Office of Management and Budget (OMB) disapproved an identical proposal as part of a broader DHS request to collect social media handles on its travel and immigration forms.<sup>2</sup> At that time, OMB concluded that the 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 handles on these forms.<sup>3</sup> It further instructed that any “similar proposal in the future” needed to demonstrate such utility, and also that the utility must outweigh the “monetary and social” costs of the collection.<sup>4</sup>

DHS provides no such evidence here—and the department provides even less detail about its justifications for this collection than before. The basis for the utility of this collection provided in the department’s Supporting Statement is confined to one conclusory sentence: “Making social

---

<sup>1</sup> 86 Fed. Reg. 64508 (November 18, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-11-18/pdf/2021-25147.pdf>; and 87 Fed. Reg. 10223 (February 23, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-02-23/pdf/2022-03814.pdf>. This comment expresses no view regarding other parts of the information collection request.

<sup>2</sup> 85 Fed. Reg. 7573 (February 10, 2020), <https://www.reginfo.gov/public/do/DownloadDocument?objectID=102912301>; 84 Fed. Reg. 46557 (September 4, 2019), <https://www.reginfo.gov/public/do/DownloadDocument?objectID=102912401>; and Office of Management and Budget, “Notice of Office of Management and Budget Action,” April 2, 2021, <https://www.reginfo.gov/public/do/DownloadNOA?requestID=308217> (hereinafter OMB Notice of Action Re: ICR 202007-1601-001).

<sup>3</sup> OMB Notice of Action Re: ICR 202007-1601-001; 44 U.S.C. § 3508 (1995) (PRA 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.”).

<sup>4</sup> OMB Notice of Action Re: ICR 202007-1601-001.

media a mandatory field in the ESTA application will enhance our vetting processes and assist in confirming applicants' identities."<sup>5</sup>

DHS also notes that it seeks to make this collection mandatory because the State Department did so on its visa forms.<sup>6</sup> That justification has no legal or policy relevance to the question of whether its proposal should be approved. In any event, the State Department's collection was adopted pursuant to an executive order underlying President Trump's Muslim ban, which has since been rescinded—a fact OMB found relevant in rejecting the prior DHS proposal.<sup>7</sup>

As detailed below, there is no evidence that social media screening is useful for vetting travelers and immigrants, although it imposes serious costs—both financial and social. As a result, the proposal does not meet the requirements of the PRA, as OMB has previously found. With respect to social costs in particular, civil and human rights organizations have repeatedly opposed the federal government's collection and screening of social media information on a number of grounds, including the chilling of free expression and association, intrusiveness, and the disparate deployment and impact of these practices.<sup>8</sup> Our comments opposing DHS's prior proposal that

---

<sup>5</sup> Customs and Border Protection, "Supporting Statement for Arrival and Departure Record (Forms I-94, I-94W) and Electronic System for Travel Authorization (ESTA)," OMB Number 1651-0111, Department of Homeland Security (hereinafter DHS), February 23, 2022, 4-5, <https://www.reginfo.gov/public/do/DownloadDocument?objectID=118995400> (hereinafter Supporting Statement for ESTA).

<sup>6</sup> Supporting Statement for ESTA, 4-5.

<sup>7</sup> OMB Notice of Action Re: ICR 202007-1601-001.

<sup>8</sup> See, e.g., 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, "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](https://www.brennancenter.org/sites/default/files/analysis/OIRA%20Letter_9.27.2018.pdf); Electronic Privacy Information Center, "Comments of the Electronic Privacy Information Center 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, "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, "ACLU Comment on Supplemental Questions for Visa Applicants," October 2, 2017, <https://www.aclu.org/letter/aclu-comment-supplemental-questions-visa-applicants>; Brennan Center for Justice et al. to Office of Management and Budget and Department of State, May 18, 2017, [https://www.brennancenter.org/sites/default/files/State%20Dept%20Information%20Collection%20Comments%20-%2051817\\_3.pdf](https://www.brennancenter.org/sites/default/files/State%20Dept%20Information%20Collection%20Comments%20-%2051817_3.pdf); and Brennan Center for Justice to 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>.

sought to require collection of the information at issue here are referenced here and incorporated.<sup>9</sup> Finally, the information collection request contravenes the Biden administration’s stated commitments to global protections for free expression and privacy.<sup>10</sup> The proposal should be rejected for these reasons.

### **I. DHS has never shown that social media screening is useful for vetting travelers and immigrants.**

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 review (PCR) of the use of social media to vet ESTA applicants and to brief OMB twice on the review’s methodology and analysis.<sup>11</sup> 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.<sup>12</sup> And indeed, it was pursuant to that process that OMB eventually exercised its oversight power last year in rejecting the DHS proposal incorporating the same collection at issue here.

Notably, the PCR, which was published in October 2017, found that DHS could not “demonstrate the value of social media information to the VWP [Visa Waiver Program] application process,” nor could it 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.<sup>13</sup> Both of these conclusions turned on the same finding: that DHS relied on a small number of anecdotes to illustrate the efficacy of social media screening in the ESTA program, 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.<sup>14</sup> One of the review’s three recommendations was that DHS set up such a process incorporating comprehensive metrics—for example, how often social media information was proven to be inaccurate or contradicted applicant-provided information—to measure the “viability and success” of social media screening.<sup>15</sup> It is unclear to what degree DHS has implemented this recommendation.<sup>16</sup> And even if it has been implemented, the department has not provided any

---

<sup>9</sup> Brennan Center for Justice et al., “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).”

<sup>10</sup> See, e.g., White House, “Fact Sheet: Announcing the Presidential Initiative for Democratic Renewal,” December 9, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/09/fact-sheet-announcing-the-presidential-initiative-for-democratic-renewal/>.

<sup>11</sup> 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#](https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201607-1651-003#) (hereinafter 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).

<sup>12</sup> OMB Notice of Action Re: ICR 201607-1651-003.

<sup>13</sup> Privacy Office, “Privacy Compliance Review of the U.S. Customs and Border Protection Electronic System for Travel Authorization,” DHS, October 27, 2017, 8, <https://www.dhs.gov/sites/default/files/publications/CBP-ESTA%20PCR%20final%20report%2020171027.pdf> (hereinafter ESTA PCR).

<sup>14</sup> ESTA PCR, 8.

<sup>15</sup> ESTA PCR, 3.

<sup>16</sup> ESTA PCR, 9 (“As of the date of this report, CBP is in the process of adding additional fields to capture more specific metrics specific to social media use for each reviewed ESTA case.” However, in the next paragraph, the

such holistic evidence of efficacy to the public, including in support of any proposal to collect social media for travel and immigration screening purposes.

In fact, DHS's own public findings regarding its pilot programs run by U.S. Citizenship and Immigration Services (USCIS)—which experimented with using social media screening to support immigration vetting—found them practically useless to “enhance...vetting processes,” as the department alleges the current proposal will do.<sup>17</sup> In a brief from late 2016 prepared for the incoming Trump administration, DHS noted that “no immigration benefits have been denied solely or primarily because of information uncovered through social media vetting,” and it stated all denials were based on non-social media information uncovered through sources such as routine security and background checks.<sup>18</sup> Only in a “small number of cases” did social media have even a “limited impact” by “developing additional lines of inquiry.”<sup>19</sup> And in three out of its four programs used to vet 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.”<sup>20</sup> DHS also found more generally 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.”<sup>21</sup> 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 vetting necessitates a labor intensive manual review,” taking people away from “the more targeted enhanced vetting they are well trained and equipped to do.”<sup>22</sup>

Further, a 2017 report by the Office of Inspector General examining a number of social media monitoring programs piloted by DHS—including those run by USCIS and Immigration and Customs Enforcement (ICE)—found that “these pilots, on which DHS plans to base future department-wide use of social media screening, lack criteria for measuring performance to ensure they meet their objectives.”<sup>23</sup> Since the Department did not methodically evaluate these programs

---

PCR notes, “CBP stated that due to process constraints and technical limitations, it does not currently have an effective means of tracking the use of social media identifiers as a factor during the adjudication of ESTA applications.”).

<sup>17</sup> Supporting Statement for ESTA, 5.

<sup>18</sup> U.S. Citizenship and Immigration Services, “Social Media,” in *U.S. Citizenship and Immigration Services Briefing Book*, 183,

<https://www.dhs.gov/sites/default/files/publications/USCIS%20Presidential%20Transition%20Records.pdf> (hereinafter USCIS Briefing Book).

<sup>19</sup> USCIS Briefing Book, 183.

<sup>20</sup> USCIS Briefing Book, 181.

<sup>21</sup> USCIS Briefing Book, 183.

<sup>22</sup> USCIS Briefing Book, 183-184. Other documents from 2016 and 2017 indicated that the DHS pilots within USCIS produced similar results, providing little by way of actionable information. Aliya Sternstein, “Obama Team Did Some ‘Extreme Vetting’ of Muslims before Trump, New Documents Show,” *Daily Beast*, January 2, 2018, <https://www.thedailybeast.com/obama-team-did-some-extreme-vetting-of-muslims-before-trump-new-documents-show>; and 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>.

<sup>23</sup> Office of the Inspector General, *DHS’ Pilots for Social Media Screening Need Increased Rigor to Ensure Scalability and Long-Term Success (Redacted)*, DHS, February 27, 2017, 2, <https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-40-Feb17.pdf>.

to determine whether they performed well or poorly, the Inspector General concluded that they could not serve as a foundation to scale social media monitoring on a DHS-wide basis.

Neither the regulatory nor the broader public record contains any evidence that social media screening for travel and immigration purposes has “practical utility,” as the PRA requires and indeed, OMB correctly concluded last year that the record was devoid of such evidence. It follows that DHS has not met the PRA’s tailoring criteria either. 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.<sup>24</sup> 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 failure: Cato Institute has calculated that one in 379 million people that obtained permission to enter the country between 2002 and 2016 were deadly terrorists.<sup>25</sup> 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 prior proposal that also sought the mandatory collection of social media identifiers through ESTA, OMB noted that DHS would need to demonstrate (as the PRA requires) not only its “practical utility” but also that “such utility outweighs the costs – both monetary and social” to gain approval in the future. In connection with the current proposal, DHS does not even mention social costs, and it does not meaningfully account for monetary costs, both of which are likely to be substantial.

Our objections to social media screening on civil rights and liberties grounds (i.e., social costs), which DHS does not address here, are further detailed in our comment opposing the department’s 2019 proposal.<sup>26</sup> We also note that DHS’s existing practice of broadly sharing information that it collects, including social media handles, exacerbates these concerns, as expounded in our prior comment.<sup>27</sup> Briefly:

- **Free Expression and Association.** Social media monitoring, like other forms of surveillance, impacts what people say, what they hear, and with whom they interact online.<sup>28</sup> The proposed collection, if approved, will pressure applicants to engage in self-

---

<sup>24</sup> 5 C.F.R. § 1320.5(d).

<sup>25</sup> David J. Bier, *Extreme Vetting of Immigrants: Estimating Terrorism Vetting Failures*, Cato Institute, April 17, 2018, 1, <https://www.cato.org/policy-analysis/extreme-vetting-immigrants-estimating-terrorism-vetting-failures>.

<sup>26</sup> Brennan Center for Justice et al., “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).”

<sup>27</sup> Brennan Center for Justice et al., “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),” 10-12.

<sup>28</sup> 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., “Privacy and the

ensorship by, for example, deleting their accounts, disassociating from online connections, limiting their social media postings, or sanitizing their internet presence for fear of misinterpretation or adverse consequences. These impacts will be felt by the Americans with whom the applicants communicate, all of whom benefit from the free exchange of information. 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.<sup>29</sup> It shows how the collection of social media identifiers on visa forms led a number of international filmmakers to stop talking about politics and promoting their work on social media. That is, they self-censored because they were concerned that what they said online could be misinterpreted or reflect controversial viewpoints in ways that would prevent them from getting a U.S. visa or be used to retaliate against them.

- **Privacy.** A person’s social media presence — their posts, comments, photos, likes, group memberships, and so on — can collectively reveal their ethnicity, political views, religious practices, gender identity, sexual orientation, personality traits, and vices, far beyond what may be required to adjudicate an ESTA application.<sup>30</sup> Further, social media can reveal more about a person than they intend to reveal. Platforms’ privacy settings frequently change and can be difficult to navigate, resulting in the inadvertent disclosure of information meant to be private. Given the networked nature of social media, such privacy risks will also impact the Americans with whom ESTA applicants interact. DHS has recognized this privacy risk, categorizing social media handles as “Sensitive PII” whose disclosure could “result in substantial harm, embarrassment, inconvenience, or unfairness to an individual.”<sup>31</sup>
- **Disparate Targeting and Impacts.** Muslim, Arab, Middle Eastern, and South Asian communities have often been particular targets of the U.S. government’s discriminatory travel and immigration screening practices, including social media screening. The State Department’s collection of social media identifiers on visa forms, for instance, came out of President Trump’s Muslim ban,<sup>32</sup> while earlier social media monitoring and collection

---

Panopticon: Online Mass Surveillance’s Deterrence and Chilling Effects,” *New Media & Society* 21 (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 (2007). Even people who said they had nothing to hide were highly likely to self-censor online when they knew the government was watching. Elizabeth Stoycheff, “Under Surveillance: Examining Facebook’s Spiral of Silence Effects in the Wake of NSA Internet Monitoring,” *Journalism & Mass Communication Quarterly* 93 (2016): 307-8.

<sup>29</sup> Complaint, *Doc Society v. Pompeo*, No. 1:19-cv-03632-TJK (D.D.C. December 5, 2019).

<sup>30</sup> Sophia Cope & 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>.

<sup>31</sup> 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>; and Privacy Office, “Privacy Threshold Analysis (PTA) 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.”).

<sup>32</sup> Charlie Savage, “Trump Administration Sued over Social Media Screening for Visa Applicants,” *New York Times*, December 5, 2019, <https://www.nytimes.com/2019/12/05/us/politics/visa-applications-social-media.html>.

programs focused disproportionately on people from predominantly Muslim countries as well as Arabic speakers.<sup>33</sup>

Regarding monetary costs, the Supporting Statement contains boilerplate calculations based on the value of time spent filling out the online form, which do not fully capture the financial costs of the proposal, including its deterrent effects on travel to the United States. The Brennan Center and Knight First Amendment Institute’s lawsuit against the State Department and DHS, for example, documents how people have forgone applying for U.S. visas due to the same social media disclosure requirement on those forms.<sup>34</sup> DHS has previously touted the economic benefits generated by the Visa Waiver Program as one of its primary benefits,<sup>35</sup> with the U.S. travel and tourism industry group estimating that it generated roughly \$190 billion in economic activity and supported nearly a million U.S. jobs in 2017.<sup>36</sup> Imposing this requirement will likely diminish those substantial benefits.<sup>37</sup>

In sum, the law requires—and OMB previously instructed—DHS to account for the costs of mandatory social media collection in future information collection requests. It fails to do so here.

### **III. The DHS proposal contravenes the Biden administration’s stated commitments to global free expression and privacy.**

Finally, President Biden’s goal of re-asserting U.S. leadership regarding democratic values and principles on the international stage will be undermined by this proposed collection.<sup>38</sup>

First, the proposal may increase the risk that other countries will implement similar social media identifier collection programs and bolster the perception that U.S. policy endorses such surveillance.<sup>39</sup> Reciprocal measures would, of course, harm American travelers’ free expression and privacy just as this policy harms ESTA applicants. More broadly, the U.S. government should be leading the way on free speech by setting an example. Instead, policies and proposals like this

---

<sup>33</sup> Faiza Patel et al., *Social Media Monitoring*, Brennan Center for Justice, updated March 11, 2020, 30–31, <https://www.brennancenter.org/our-work/research-reports/social-media-monitoring>.

<sup>34</sup> Complaint, *Doc Society v. Pompeo*, No. 1:19-cv-03632-TJK.

<sup>35</sup> “U.S. Visa Waiver Program,” DHS, accessed March 5, 2022, <https://www.dhs.gov/visa-waiver-program>; and *Terrorism and the Visa Waiver Program: Hearing Before the H. Subcomm. on National Security and the Subcomm. on Health Care, Benefits, and Administrative Rules, Comm. on Oversight and Government Reform*, 114th Cong. 4 (2015).

<sup>36</sup> Congressional Research Service, *Adding Countries to the Visa Waiver Program: Effects on National Security and Tourism*, April 1, 2020, Summary, <https://sgp.fas.org/crs/homesec/R46300.pdf>.

<sup>37</sup> For example, a number of major U.S. business organizations, including the Chamber of Commerce and U.S. Travel Association, made this argument in a comment opposing the State Department’s collection of social media identifiers on visa forms. American Hotel & Lodging Association et al. to the Department of State, “Business Community Comments on DOS-2018-0002, Application for Nonimmigrant Visa,” May 29, 2018, <https://www.regulations.gov/comment/DOS-2018-0002-0456>.

<sup>38</sup> White House, “Remarks by President Biden at the Summit for Democracy Opening Session,” December 9, 2021, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/12/09/remarks-by-president-biden-at-the-summit-for-democracy-opening-session/>.

<sup>39</sup> See, e.g., Taylor Moore, “DHS Misses the Mark in Attempts to Quell Public Concerns on the Gathering of Social Media Handles,” Center for Democracy and Technology, September 30, 2016, <https://cdt.org/insights/dhs-misses-the-mark-in-attempts-to-quell-public-concerns-on-the-gathering-of-social-media-handles/>.

one corrode the legitimacy of its advocacy against social media monitoring and surveillance measures in other countries.<sup>40</sup>

Second, the proposal undermines universally accepted human rights that protect privacy and oppose surveillance, such as the International Covenant on Civil and Political Rights. This risks weakening the Administration’s commitment to strengthening the U.S. role in international institutions and “reclaiming our credibility and moral authority,” a goal President Biden announced in the first weeks of his presidency.<sup>41</sup> Notably, implementation of this program may also make it more difficult to negotiate a data sharing agreement with the European Union (EU), which is critical to U.S. businesses and especially the technology sector, in light of the *Schrems II* decision. That decision invalidated the European Commission’s Privacy Shield Decision, which permitted the sharing of data between the EU and the U.S. under certain circumstances, because the breadth of U.S. surveillance programs undermined privacy in violation of the EU’s General Data Protection Regulation (GDPR) law.<sup>42</sup> The implementation of this proposed rule, which exacerbates the breadth of U.S. surveillance programs, may therefore make it more difficult for the U.S. to negotiate a data-sharing law with the EU.

#### IV. Conclusion

For the above reasons, we oppose this information collection request and urge DHS to withdraw it or, failing that, OMB to reject it. Please do not hesitate to let us know if we can provide any further information regarding our concerns. We may be reached at [pandurangah@brennan.law.nyu.edu](mailto:pandurangah@brennan.law.nyu.edu) (Harsha Panduranga) or [levinsonr@brennan.law.nyu.edu](mailto:levinsonr@brennan.law.nyu.edu) (Rachel Levinson-Waldman).

Sincerely,

Brennan Center for Justice at NYU School of Law  
Electronic Privacy Information Center (EPIC)

---

<sup>40</sup> See, e.g., *Hearing Before the Subcomm. on Middle East, North Africa and Global Counterterrorism of the H. Comm. on Foreign Affairs*, 117th Cong. (2021).

<sup>41</sup> The International Covenant on Civil and Political Rights (ICCPR) guarantees “the right to freedom of expression,” including the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” United Nations, *International Covenant on Civil and Political Rights*, December 16, 1966, 10, [https://treaties.un.org/doc/Treaties/1976/03/19760323%2006-17%20AM/Ch\\_IV\\_04.pdf](https://treaties.un.org/doc/Treaties/1976/03/19760323%2006-17%20AM/Ch_IV_04.pdf); 138 Cong. Rec. S4781-01 (1992) (the US ratified the ICCPR in 1992); and President Joe Biden, “Remarks on United States Foreign Policy at the Department of State,” (speech, Washington DC, February 4, 2021), <https://www.govinfo.gov/content/pkg/DCPD-202100118/pdf/DCPD-202100118.pdf>.

<sup>42</sup> See generally Case C-113/18, *Data Prot. Comm’r v. Facebook Ir., Ltd.*, Maximillian Schrems, 2020 E.C.R. 559; and Congressional Research Service, “EU Data Transfer Requirements and U.S. Intelligence Laws: Understanding *Schrems II* and Its Impact on the EU-U.S. Privacy Shield,” March 17, 2021, <https://crsreports.congress.gov/product/pdf/R/R46724>.