



# Federation *of* American Scientists

Public comment of the Federation of American Scientists on  
the Department of Homeland Security's Proposed Rule:

*Collection and Use of Biometrics by U.S. Citizenship and Immigration Services*

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Doug Rand  
Senior Fellow

Lindsay Milliken  
Research Assistant

Federation of American Scientists  
1112 16th Street NW  
Suite 400  
Washington, DC 20036

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The Federation of American Scientists (FAS) is submitting this public comment to oppose the Department of Homeland Security (DHS) and United States Citizenship and Immigration Services' (USCIS) proposed rule (USCIS Docket No.: USCIS-2019-0007) to expand biometrics collection for prospective and current U.S. citizens. For the reasons outlined below, we request that this rule be withdrawn in its entirety.

### **I. The proposed rule would deter highly talented individuals from immigrating to the United States, impairing economic competitiveness and national security.**

The United States is a leader in scientific research and innovation and has been so for decades. One major reason this country has been so successful and competitive is because it is able to attract highly skilled workers and scientists from all over the world. In fact, the National Science Foundation (NSF) [found](#) in 2018 that 30 percent of individuals who work in science and engineering in the United States were born outside of the country. In addition, these talented individuals have created thousands of jobs. According to a 2016 [study](#) by the National Foundation for American Policy, over half of U.S. startup companies valued at \$1 billion or more (44 out of 87) were started by immigrants. Just these companies alone have created tens of thousands of jobs and are collectively valued at \$168 billion.

Global talent is also essential for the United States to maintain national security in the decades ahead, as many nations compete for predominance in artificial intelligence (AI) and other emerging technologies. As documented by the [Center for a New American Security](#), foreign nationals comprise more than half of America's top AI talent base, and AI innovations will have a transformative impact on U.S. national security. Robert Work, former Deputy Secretary of Defense, emphasized that "U.S. leadership in setting global AI norms, standards, and measurement is essential to promote AI ethics, safety, security, and transparency in accordance with U.S. interests."

Over the past four years, USCIS has significantly increased the difficulty of obtaining immigration status and U.S. citizenship, by implementing a host of rigid and lengthy bureaucratic procedures—so much so that the agency is on the brink of bankruptcy (see Section II). Between fiscal year (FY) 2016 and FY 2018, the number of immigrants who obtained lawful permanent residency, excluding refugees, [declined](#) by almost 12 percent. The number of denials also [rose](#) 34 percent between FY 2017 and FY 2018, likely in part due to the more stringent (and largely unnecessary) adjudication procedures already being imposed.

Dramatically expanding the collection of biometric data would add another major hurdle—and therefore another major disincentive—to navigating the U.S. immigration process. The United States has sustained its leadership in science and technology because of its stellar international reputation for cutting-edge research programs and growth opportunities for technology companies. If USCIS puts these opportunities out of reach, however, such talented researchers and innovators will go elsewhere.

## **II. The cost of the proposed rule would place a significant burden on USCIS, which is not adequately modeled by the agency.**

The dramatic expansion of biometrics collections, which would apply to millions of foreign nationals and U.S. citizens, would be extremely costly to the U.S. government in terms of infrastructure, payroll, and other resources. USCIS [announced](#) in May that it expected to go bankrupt by the end of fiscal year (FY) 2020 without a \$1.2 billion congressional bailout, and threatened to furlough 13,000 of its employees, or almost 70 percent of its entire workforce.

Though the agency was quick to blame reduced demand during the COVID-19 pandemic for causing it to burn through its cash reserves, there is strong evidence to the contrary. FAS found through an [investigation](#) of USCIS' publicly available budget and regulatory documents that its fiscal problems were due to agency leadership's short-sighted spending and management decisions, which long pre-dated the COVID-19 pandemic.

Specifically, in November 2019, USCIS predicted that it would have a deficit of \$250 million, which would grow to over \$1.5 billion in FY 2020. Most of this cost likely came from a significant increase in USCIS staff over the last four years. The agency employed over 15,000 people in 2016. This number swelled to over 18,000 in 2020, while the efficiency of application adjudications has worsened. Even as more staff were hired, USCIS made it more difficult for users to successfully obtain green cards, work permits, and other immigration services. For example, the agency added mandatory (and unnecessary) interviews for hundreds of thousands of green card applicants and required adjudicators to review hundreds of thousands of skilled worker status renewal applications regardless if there were any changes since their initial adjudications.

The addition of dramatically more expansive biometric collection and screening procedures would further burden an already struggling agency. USCIS would not only expand the scope and frequency of biometric collections, but it would demand such information from *any individual* associated with a petition or application, including close relatives and employers of U.S. citizens. This represents an extremely costly and highly intrusive new policy with little or no hard evidence of benefit to the agency or the public.

If USCIS cannot support the resource-intensive measures it has already implemented, so much so that it is flirting with insolvency, how is the agency going to finance this new biometrics policy? The proposed rule contains no legitimate cost/benefit analysis to address this concern.

On the cost side of the ledger, USCIS only attempts to quantify the direct cost to individuals newly required to submit biometrics. This is a massive underestimate of the true costs of the proposed rule, as USCIS has failed to quantify or even meaningfully address (a) the many indirect costs to individuals and businesses newly compelled to submit biometrics, (b) the many indirect costs to all USCIS users given the likely slowdown of all USCIS services as a result of

this new policy, (c) the direct cost to the agency of implementing the proposed rule, and (d) the economic cost of deterring immigrants (see Section I above).

The proposed rule states, “DHS does not know what the costs of expanding biometrics collection to the government in terms of assets and equipment; it is possible that costs could be incurred for the new equipment and information technologies and typologies needed to collect, process, store, and utilize biometrics, including software updates; cameras that are able to collect iris and facial images; devices used to record a voice print; and other equipment.” Surely these costs would be considerable. The onus is on USCIS to provide the public with a defensible and transparent accounting for such costs—especially given the agency’s recent troubles with near-insolvency and a proposed taxpayer-financed bailout.

As for benefits, the USCIS states that “The proposed rule would provide benefits that are not possible to quantify.” This is an extraordinary abdication of the basic requirements of agency rulemaking. Surely it is *possible* to quantify some of the proposed rule’s alleged benefits, even if such estimates are inexact. More likely, USCIS is rushing this proposed rule through the rulemaking process, and simply cannot be bothered to attempt a legitimate cost/benefit analysis.

### **III. The proposed rule goes against democratic principles.**

FAS, along with thousands of other scientists, is committed to upholding democratic principles, including the fair treatment of all people. We partnered with the Union of Concerned Scientists to issue a [statement](#) about the need to protect the integrity our democracy, which reads in part: “As scientists committed to democratic principles, we observe troubling developments in the public affairs of the United States: the undermining of democratic checks and balances; threats to the electoral process; subversion of the rule of law; vilification of people of color, of other minorities, and of immigrants; the fomenting of hate, division, misogyny, and violence; attacks on the free press; propagation of disinformation; and sidelining of science as input to public policy. We must counter these trends that are moving the nation away from its roots in democratic self-governance towards authoritarianism.”

The invasive nature of DHS’ new expansion of biometric collections would allow the federal government an unreasonable ability to surveil prospective and current U.S. citizens. It would also introduce significant security and privacy risks. Mismanagement of this data, which includes individuals’ most sensitive and private information, could have devastating effects on the lives of both immigrants and citizens, as well as further eroding the public’s trust in the federal government.