

Re: Collection and Use of Biometrics by US Citizenship and Immigration Services

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Collection and Use of Biometrics by US Citizenship and Immigration Services

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I write as a senior research fellow at the Mercatus Center at George Mason University, where I conduct economic research and educate students across academic disciplines. I have published peer-reviewed scholarly research on immigration policy, border security, national security, government surveillance, civil liberties, and the ways institutions make populations legible.¹ This research provides insights relevant to the costs and benefits of expanding the use of biometrics in immigration cases. I argue that the Department of Homeland Security's (DHS's) current assessment of the costs and benefits of the proposed rule has overlooked some crucial costs. A better understanding of these costs suggests ways that the proposed rule could be modified.

As DHS acknowledges, "E.O. 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits." I argue that the proposed rule does not maximize net benefits, and that the agency must consider neglected costs and modify the proposal accordingly to successfully comply with E.O. 12866 and 13563.

DHS's cost-benefit analysis of the proposed rule is flawed in the following ways:

1. DHS neglects the possibility that immigrants will be deterred or prevented from entering the US legally and diverted toward unlawful immigration pathways because of the new rule. It therefore does not weigh the costs of this outcome.

¹ For a list of these scholarly articles, see <https://www.mercatus.org/hayekprogram/scholars/nathan-goodman>.

2. It understates the severity of the privacy and liberty costs faced by United States citizens who will now be required to submit biometric data.
3. Surveillance has chilling effects on freedom of speech, and biometric data collection is no exception. DHS has not analyzed these chilling effects in its assessment of the costs of the proposed rules.
4. The analysis also neglects the possibility that Violence Against Women Act (VAWA) self-petitioners and T nonimmigrant visa self-petitioners may be deterred or prevented from filing their self-petitions. As a result, the analysis does not consider the costs of additional domestic violence or sexual abuse that could result.

To reduce these costs, DHS should consider the following rule changes. One is to allow more flexibility for rescheduling biometrics appointments and interviews. Another is to allow the use of biometric data as one way that self-petitioners can demonstrate good moral character, rather than making it mandatory for all self-petitioners.

The Proposed Rule May Unintentionally Encourage Illegal Immigration

One striking feature of the proposed rule is that applicants will be sharply limited in their ability to reschedule US Citizenship and Immigration Services (USCIS) interviews and biometric services appointments. If applicants fail to appear, their request or application will be denied. Their only hope is convincing USCIS that “extraordinary circumstances” justify rescheduling the appointment. Functionally, this means that missing an appointment could close off an applicant’s only legal immigration pathway.

Being prohibited from legally immigrating does not necessarily mean leaving the country, however. People might enter or remain in the country without legal status. When the cost of immigrating legally rises, some prospective immigrants will likely substitute legal immigration with illegal immigration.

Empirical research backs up these concerns. Economist Michael Clemens has found that expanding legal pathways to cross the border reduces unlawful crossings on net.² Economists have likewise found evidence that temporary work permits can reduce the number of people attempting to enter illegally with the help of smugglers.³

To the extent that the proposed rule closes off legal immigration pathways, it is likely to encourage some immigrants to pursue illegal means of entering or remaining in the country. DHS does not consider the costs of this illegal immigration in its assessment of the costs and benefits of the proposed rule. What costs might Customs and Border Protection (CBP) or Immigration and Customs Enforcement (ICE) incur in enforcement actions against these unauthorized immigrants, for example? What costs might arise because of the immigrants’ efforts to evade immigration enforcement? DHS should make some efforts to estimate these costs.

To reduce these costs, DHS should consider allowing more flexibility for rescheduling biometrics appointments and USCIS interviews.

² Michael A. Clemens, “The Effect of Lawful Crossing on Unlawful Crossing at the US Southwest Border,” Working Paper No. 24-10 (Peterson Institute for International Economics, April 2024), <https://www.piie.com/publications/working-papers/2024/effect-lawful-crossing-unlawful-crossing-us-southwest-border>.

³ Emmanuelle Auriol, Alice Mesnard, and Tiffanie Perrault, “Temporary Foreign Work Permits: Honing the Tools to Defeat Human Smuggling,” *European Economic Review* 160 (2023): 104614.

Accessible legal pathways to immigrate are a critical part of maintaining a well-managed immigration system. Rule changes that render lawful immigration infeasible for some immigrants will encourage them to substitute toward illegal immigration.

Expanding Biometric Data Collection Undermines the Liberty and Privacy of Citizens

The proposed rule mandates biometric data collection from “any applicant, petitioner, sponsor, supporter, derivative, dependent, beneficiary, or individual filing or associated with a benefit request or other request or collection of information, **including U.S. citizens, U.S. nationals and lawful permanent residents**, and without regard to age” (emphasis added).

This application of the proposed rule to US citizens and nationals illustrates a broader trend, in which immigration restrictions and enforcement erode the civil liberties of not just immigrants, but citizens as well. This erosion of civil liberties has been documented as a feature of immigration restrictions in general,⁴ of the use of surveillance technology at the borders,⁵ and of militarized border security practices.⁶

As in those cases, we here see the exercise of coercive power in a manner that impinges on the privacy of US citizens. To its credit, DHS acknowledges in its cost-benefit analysis that “there could be costs associated with privacy risks to individuals related to biometrics submissions.” More elaboration on the nature of these costs, however, illuminates issues that DHS has neglected in its analysis.

For instance, biometrics data collection presents some unique issues. Because the data involve intimate information about one’s body, such data collection is particularly invasive.⁷ Indeed, it has been compared to “giving up a piece of yourself.”⁸ Studies of public perceptions of biometrics technologies find that many respondents express serious discomfort with the privacy issues the technologies pose.⁹

Privacy costs, however, are not the only significant costs for citizens’ civil liberties. Freedom of association is also implicated. Functionally, the proposed rule punishes US citizens for their association with immigrants. It may deter citizens from exercising their legal rights to act as sponsors or supporters of petitioners. It could also limit US citizens’ ability to reunite with members of their family or to hire talented workers. These limitations on voluntary association impose various social and economic costs on US citizens. These costs are not mentioned in DHS’s analysis.

Another neglected cost of biometric surveillance strikes at the very heart of what it means to be a citizen. Being a citizen in a liberal democracy means having the right to participate in the governance of your political community. Biometric surveillance threatens to undermine this type of political participation. As political theorist Kristen Collins explains, “Contemporary scholarship documents how degrading experiences of surveillance discourage individuals from numerous forms of political

⁴ Chandran Kukathas, *Immigration and Freedom* (Princeton University Press, 2021).

⁵ Christopher J. Coyne and Nathan P. Goodman, “The Political Economy of the Virtual Wall,” *Peace Review* 32, no. 2 (2020): 172–80.

⁶ Nathan P. Goodman, “Border Militarization and Domestic Institutions,” *Constitutional Political Economy* (2024), <https://doi.org/10.1007/s10602-024-09440-5>.

⁷ Andrea North-Samardzic, “Biometric Technology and Ethics: Beyond Security Applications,” *Journal of Business Ethics* 167 (2020): 433–50.

⁸ Anton Alterman, “‘A Piece of Yourself’: Ethical Issues in Biometric Identification,” *Ethics and Information Technology* 5 (2003): 139–50.

⁹ Aletta Norval and Elpida Prasopoulou, “Seeing Like a Citizen: Exploring Public Views of Biometrics,” *Political Studies* 67, no. 2 (2018): 367–87.

participation because it communicates to them that they are members of a class of citizens that the government is likely to ignore, rendering participation futile.”¹⁰

Surveillance can also deter citizen participation by raising the expected costs of that participation. If citizens fear that they will be punished for their political engagement, they are likely to do less of it. I discuss this cost more in the next section.

Biometric Surveillance Undermines Free Speech

One significant cost of surveillance is its chilling effect on the exercise of free speech. People are more willing and able to exercise their autonomy when they have privacy. It gives them room to experiment and express themselves free from the watchful eyes of the state. Surveillance can limit that private sphere, thereby chilling expressive activity.¹¹

Fear of social, administrative, or legal sanctions can lead people to self-censor. For example, research on the experiences of conservatives in academia finds that many of them conceal their beliefs for fear of professional and social backlash.¹² This fear undermines scholarship, as liberal and progressive assumptions may go unchallenged and unexamined.¹³

Government surveillance creates similar fear and chilling effects that are harmful not just for those silenced, but for those who disagree with the silenced viewpoints. People learn from disagreement and contestation. Progressive academics cannot learn as much when conservative academics feel pressured to conceal their views. Likewise, if government surveillance pushes adherents of some views into silence, those who disagree with these views are robbed of opportunities to learn.¹⁴

Chilling effects from government surveillance are well documented. One study examined how the New York Police Department surveilled Muslim communities. It found that this targeted surveillance created a chilling effect on speech, association, and the exercise of religious freedom within those communities.¹⁵

Immigrants have recently had their visas abruptly revoked and have faced detention and deportation in retaliation for writing op-eds,¹⁶ participating in protests,¹⁷ and writing comments on social media.¹⁸ If DHS possesses biometric data on immigrants, the immigrants may fear that these data will be used to identify them when they engage in expressive activities that current political leaders dislike. Biometrics are therefore likely to contribute to a chilling effect, especially in an environment

¹⁰ Kristen R. Collins, “Observed Without Sympathy: Adam Smith on Inequality and Spectatorship,” *American Journal of Political Science* 64, no. 4 (2020): 1034–46.

¹¹ Coyne and Goodman, “The Political Economy of the Virtual Wall.”

¹² Jon A. Shields and Joshua M. Dunn Sr., *Passing on the Right: Conservative Professors in the Progressive University* (Oxford University Press, 2016).

¹³ José L. Duarte, Jarret T. Crawford, Charlotta Stern, Jonathan Haidt, Lee Jussim, and Philip E. Tetlock, “Political Diversity Will Improve Social Psychological Science,” *Behavioral and Brain Sciences* 38 (2015).

¹⁴ John Stuart Mill, *On Liberty* (Cambridge University Press, 2012 [1859]).

¹⁵ Muslim American Civil Liberties Coalition, Creating Law Enforcement Accountability & Responsibility, and Asian American Legal Defense and Education Fund, *Mapping Muslims: NYPD Spying and Its Impact on American Muslims* (2013), <https://www.law.cuny.edu/wp-content/uploads/page-assets/academics/clinics/immigration/clear/Mapping-Muslims.pdf>.

¹⁶ Adrian Florido, “Tufts Student Rümeyza Öztürk Freed from Immigration Detention,” *NPR*, May 9, 2025, <https://www.npr.org/2025/05/09/nx-s1-5393055/tufts-student-rumeyza-ozturk-ordered-freed-from-immigration-detention>.

¹⁷ Phil McCausland, “Who Is Mahmoud Khalil, Palestinian Student Activist Facing US Deportation?,” *BBC*, June 20, 2025, <https://www.bbc.com/news/articles/cgj5nlxz44yo>.

¹⁸ Robert Mackey, “US Revokes Six Foreigners’ Visas over Social Media Comments Criticizing Charlie Kirk,” *The Guardian*, October 14, 2025, <https://www.theguardian.com/us-news/2025/oct/14/us-foreign-visas-charlie-kirk-social-media>.

where the federal government has already engaged in high-profile retaliation against immigrants for their speech.

And this chilling effect will not be limited to immigrants. As already noted, US citizens will also be required to submit biometric data to USCIS. What guarantees do citizens have that these biometric data will not be used to surveil them at protests or other political activities? Surveillance powers granted to DHS for border security purposes have already been used to surveil citizens at protests. For example, CBP has lent drones to law enforcement to surveil protests, as well as to surveil the homes of political activists.¹⁹

Despite the serious risk that biometric surveillance will chill speech, the risks to free expression are not mentioned at all in DHS's cost-benefit analysis. The current administration has directed federal agencies to respect and protect freedom of speech for US citizens.²⁰ To comply with this directive, DHS should seriously consider the costs that biometric surveillance presents for free expression and should revise their proposed rule accordingly.

Articulating clearer and more explicit limits on the sharing of biometric data with law enforcement agencies may help to reduce these chilling effects. Clear safeguards should be implemented to ensure that biometric data are not used to retaliate against immigrants or citizens for their speech.

During previous rulemaking processes, civil liberties groups have raised concerns about the First Amendment implications of biometric data collection.²¹ To preserve a free society, these concerns should be heeded and taken seriously.

The Proposed Rule May Exacerbate or Contribute to Domestic Violence and Sexual Abuse

Under VAWA, victims of domestic violence and abuse may self-petition for immigration benefits, rather than relying on their abuser as a sponsor. Similarly, T nonimmigrant status enables victims of human trafficking, as well as some of their family members, to remain in the country temporarily. These immigration benefits are important tools for combating abuse.

To apply for these benefits, victims must demonstrate “good moral character.” Under the proposed rule change, they will be required to do so by submitting biometrics, which will then be used to conduct a background check. While DHS concedes that this data collection may entail “costs associated with privacy risks to aliens related to biometrics submissions,” it argues that those costs will generally be less onerous than current means of proving good moral character.

Some would-be immigrants may perceive the costs differently, however. Offering victims an additional way to prove good moral character is good, as it offers them more options and enables them to choose the least costly option for them. But requiring applicants to use that specific option may deter some self-petitioners.

The proposed rule neglects this possibility, stating that “DHS assumes that the demand for immigration benefits is inelastic and that the additional burden (cost) associated with submitting biometrics will not have a negative impact on the willingness of an individual to submit an application.” There are some reasons to think that demand is inelastic in aggregate. As one legal scholar writes,

¹⁹ Goodman, “Border Militarization and Domestic Institutions.”

²⁰ The White House, “Restoring Freedom of Speech and Ending Federal Censorship,” January 20, 2025, <https://www.whitehouse.gov/presidential-actions/2025/01/restoring-freedom-of-speech-and-ending-federal-censorship/>.

²¹ Electronic Frontier Foundation, “EFF Comments on DHS Proposed Rule on Collection and Use of Biometrics - October 2020,” <https://www.eff.org/document/eff-comments-dhs-proposed-rule-collection-and-use-biometrics-october-2020>.

“Petitions for LPR [lawful permanent resident] status have steadily risen since the 1980s, despite large fee increases in 1998 and 2007, thus demonstrating that there is an inelastic demand for immigration, which makes it insensitive to price variation.”²²

Note, however, that this is an appeal to the aggregate data. Even if the overall demand curve for the general population of prospective immigrants is inelastic, that does not mean no individuals are deterred. Moreover, this argument neglects possible confounding variables. Perhaps the increase in price reflects not movement along an inelastic demand curve, but a shift in the demand curve. If demand to travel to the United States increased at all prices, that could reflect a shift of the demand curve outward without showing that the demand curve itself is inelastic.

There are good reasons to think that, for some self-petitioners, biometrics appointments may be perceived as prohibitively costly to attend. Recent high-profile stories of ICE agents detaining people at USCIS appointments may make showing up at biometric appointments far more intimidating than submitting paperwork and letters.²³

Even if the biometrics appointments do not deter self-petitioners, the stringent proposed rule about missing an appointment may lead to their benefit requests being denied. This may result in VAWA applicants staying with their abusers and being subjected to further abuse. DHS does not consider the costs of this abuse in its analysis. The agency should revise its analysis to incorporate assessments of the social cost of domestic abuse that its stringent rules are likely to perpetuate.²⁴

To reduce these costs, DHS should consider the following rule changes:

1. Allow more flexibility in biometrics appointments and interviews so that self-petitioners can reschedule when necessary.
2. Allow the use of biometric data as an option for demonstrating good moral character, rather than making it mandatory for all self-petitioners.

Conclusion

Making biometrics mandatory for participants in all benefit requests is onerous and overly broad. The proposed policy undermines the civil liberties of US citizens, including their rights to privacy, political participation, and free expression. As part of the proposal, USCIS seeks to deny applications simply for missing biometrics appointments. The proposed rule is inflexible, and as a result it could remove legal pathways for immigrants. This could have serious unintended consequences, including increasing illegal immigration and domestic abuse. Moreover, making biometric data collection mandatory is unnecessary given the broad powers of biometric data collection that DHS already has. Rather than making biometric data collection mandatory, USCIS should offer biometrics as an option, especially where this would enable vetting in a manner that is less onerous for petitioners and applicants.

²² Daimeon Shanks, “Entrance Fees: Self-Funded Agencies and the Economization of Immigration,” *University of Colorado Law Review* 93 (2022): 431.

²³ Daniella Silva, “Green Card Applicants Married to US Citizens Face New Uncertainty amid Arrests,” *NBC News*, December 12, 2025, <https://www.nbcnews.com/news/us-news/green-card-applicants-married-us-citizens-arrests-uncertainty-rcna247265>.

²⁴ Rhys Oliver, Barnaby Alexander, Stephen Roe, and Miriam Wlasny, *The Economic and Social Costs of Domestic Abuse* (UK Home Office Research Report 107, January 2019), <https://assets.publishing.service.gov.uk/media/5f637b8f8fa8f5106d15642a/horr107.pdf>.