

White House Office Rejects DHS Proposal to Collect Social Media Data on Travel and Immigration Forms

The Biden administration should also roll back similar measures such as the State Department's collection of social media identifiers on visa forms.

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Earlier this month, the Office of Information and Regulatory Affairs (OIRA), the White House office that reviews federal regulations, [rejected](#) the Department of Homeland Security's proposal to collect social media identifiers on travel and immigration forms. OIRA concluded that DHS did not “adequately [demonstrate] the practical utility of collecting this information” and noted that the Muslim ban, which ordered the proposal, had been repealed.

The [proposal](#), which the Brennan Center and our allies have [opposed](#) in writing, asked for authorization to require roughly 33 million people a year to register every social media handle they have used over the past five years on any of 20 platforms including Facebook, Instagram, Twitter, and YouTube. If approved, the measure would have required a wide range of individuals to turn over their social media handles to the federal government — including people eligible for short trips to the United States without a visa, those seeking asylum or refugee status, and permanent U.S. residents seeking to become citizens.

Halting the DHS collection is a big deal, and we welcome it. But it is only a first step. The Biden administration, which is now [conducting](#) a review of whether collection of social media identifiers “meaningfully improved screening and vetting,” should also end the State Department's corresponding collection from about 14 million people a year who fill out its visa applications. Like the DHS proposal, this State Department policy was underpinned by the Muslim ban and was justified with practically identical supporting documentation. As OIRA's decision signals, there is little evidence that social media screening is an effective screening tool. But we do know that facilitating dragnet surveillance of the modern public square harms free speech and privacy, imposing a disparate impact on people who have traditionally borne the brunt of government profiling in the name of national security.

It is unsurprising that DHS was unable to demonstrate the “practical utility” of its proposed collection. In fact, the agency's own internal tests have questioned the benefits of using social media to screen people coming to the United States. In a 2016 transition [brief](#) prepared for the incoming Trump administration, DHS reported that in three of the four programs it used to vet refugees, information from social media “did not yield

clear, articulable links to national security concerns,” even when an applicant was flagged as a potential threat through other channels. (The Department did not identify any derogatory information at all from the fourth pilot.) Among other observations, officials also pointed out the difficulty of understanding “with any level of certainty” the context and reliability of what they were reviewing. They concluded that “mass social media screening” was a poor use of resources, taking people away from “the more targeted enhanced vetting they are well trained and equipped to do.”

Indeed, the DHS Inspector General in 2017 [reviewed](#) the Department’s social media monitoring pilot programs and explicitly stated they could not justify scaling the practice because DHS didn’t define criteria for success against which to measure the programs. As OIRA noted, if there is any evidence that social media screening is an effective screening tool, the federal government certainly hasn’t provided it.

There is, however, evidence that social media surveillance discourages people from freely speaking and associating online. We have documented this chilling effect in our [lawsuit](#) challenging the State Department’s collection of social media identifiers on visa forms, which the Brennan Center filed in December 2019 along with the Knight First Amendment Institute and the law firm Simpson Thacher. (The lawsuit has been paused as the government reviews its screening programs, though the policy remains in effect.) For example, one member of a documentary filmmaker organization we represent “reviewed three years of social media activity and deleted posts criticizing the current U.S. administration” because of a fear that the posts would delay approval of their application. Another has “all but stopped expressing his views and interacting with others on social media” because he understands the government may review and monitor his posts.

People self-censor for a number of reasons. They reasonably fear that their speech will be misinterpreted, especially given that communication on social media is often highly context-specific and riddled with [slang](#) and [jokes](#). This includes communications in [non-verbal form](#) that do not have universally accepted meanings (for example, whether a “retweet” on Twitter signals endorsement). Such interpretive difficulties are magnified as officials try to review posts in thousands of languages that are underpinned by a diverse range of customs and cultural norms, or when they rely on automated tools for textual interpretation that have error rates of twenty to thirty percent under the best of circumstances and perform even worse when applied to non-standard English.

Online speech is also easily misattributed. Indeed, in 2019, officials [turned away](#) an incoming Palestinian student at Harvard (before eventually bowing to public pressure to let him back into the country) after finding posts on his social media timeline that were critical of the U.S. government. Notably, the posts were made not by him but by people on his friend list, and he had not interacted with those posts. This experience also highlights why people may refrain from being critical of the government online when they are subject to surveillance, since they have legitimate reason to fear being penalized for their (or others’) speech.

Finally, social media offers a flood of sensitive information about a person that would not be apparent from an immigration benefit application and is irrelevant to what they are being screened for. While State Department policy, for example, prohibits officials from considering certain attributes to deny visas (“visas may not be denied on the basis of race, religion, ethnicity, national origin, political views, gender, or sexual orientation”), officials

enjoy broad discretion to adjudicate immigration benefits and do so behind closed doors. This is a recipe for subjective bias to infect decision-making and drive discriminatory outcomes.

Worse, both the State Department policy and DHS proposal emerged from the Muslim ban and were preceded by Trump officials' statements that social media screening was [intended](#) to facilitate ideological vetting aimed at Muslims. The genesis of these policies only underscores how the dragnet collection of social media identifiers erects a digital screening infrastructure that is ripe for intentional, systematic profiling.

The Biden administration's rejection of the Trump-era DHS proposal to collect social media identifiers on its travel and immigration forms is a major victory for free expression and privacy — both values enshrined in the U.S. Constitution. The new administration should also roll back related social media surveillance programs, such as the State Department's collection program, that are grounded in the same flawed premises. Doing so would send an even stronger signal to the world that the United States remains committed to the rights of people across the globe to speak and associate free of government scrutiny.

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