CENTER FOR
DEMOCRACY
& TECHNOLOGY

May 5, 2025

United States Citizenship and Immigration Services
Department of Homeland Security
500 12th St SW #5600
Washington, DC 20024

Re: OMB Control Number 1615-New, Docket ID USCIS-2025-0003, Collection of Social Media Identifier(s) on Immigration Forms

The Center for Democracy & Technology (CDT) respectfully submits these comments in response to the United States Citizenship and Immigration Services' (USCIS) invitation to comment on OMB Control Number 1615-New, Docket ID USCIS-2025-0003, Collection of Social Media Identifier(s) on Immigration Forms.[1] CDT is a nonpartisan, nonprofit 501(c)(3) organization that advocates to advance civil rights and civil liberties in the digital age. Among its priorities, CDT works to prevent unwarranted surveillance of online activity and ensure that people can freely express themselves and access needed information online.

USCIS proposes to modify certain forms to require the disclosure of social media identifiers from individuals seeking immigration benefits. The benefit applications to which this requirement would apply are often critically important to the person who is seeking them. They include applications for naturalization, to adjust status to that of a lawful permanent resident, and for political asylum. The ability to unite with one's family, the fear of persecution abroad, and safety needs often motivate these applications, making the stakes very high for the person seeking the benefit.

USCIS' proposal to collect social media identifiers doubles down on existing practices at the Department of State that are ineffective, privacy-invasive, and chill expression online. While the Department of State's ongoing social media handle collection applies primarily to individuals outside the U.S., USCIS' proposed collection would routinely affect people within the country - all of whom enjoy the protection of the First Amendment. Monitoring the social media of applicants for immigration benefits would be unlikely to yield information that could lawfully contribute to decisions related to immigration benefits

Instead, the proposed collection of social media handles would result in damage to the free expression rights of immigrants and U.S. citizens alike. The administration has repeatedly demonstrated its intention to expel lawfully present individuals from the United States based on their First Amendment-protected speech through a viewpoint-based immigration enforcement policy.[2] Collection

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of social media handles to support this unlawful policy will lead to additional unnecessary surveillance and censorship of immigrant communities, threatening the free expression and privacy rights of everyone, regardless of their citizenship status. Moreover, those costs would not come with countervailing benefits: social media surveillance is an ineffective tool for identifying information about whether immigration benefits should be denied. USCIS should respect citizens' and noncitizens' First Amendment rights to speak and associate online and abandon its proposed collection of social media identifiers.

I. Collection of social media handles for the purpose of viewpoint-based immigration enforcement would violate immigrants' free expression rights

On April 9, 2025, the Trump Administration announced that it would implement its viewpoint-based immigration enforcement policy in part through social media monitoring, publicizing that it would surveil immigrants' social media accounts for First Amendment-protected speech to inform benefit determinations and enforcement actions.[3] The announcement followed several instances of the administration appearing to target immigrants for visa revocation or other immigration enforcement on the basis of their lawful participation in or association with First Amendment-protected protest or speech, including but not limited to:

- Badar Khan Suri, a Georgetown University fellow who was detained in part for his statements on the social media platform X expressing opposition to Israeli attacks in Gaza;[4]
- Mahmoud Khalil, who was targeted for deportation after participating in First Amendment-protected speech;[5]

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https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-united-states-from-foreign-terrorists-and-other-national-security-and-public-safety-threats/ (stating that it is the policy of the United States to protect citizens from aliens with "hateful ideolog[ies]" and to ensure that admitted aliens do not "bear hostile attitudes toward its citizens, culture, government, institutions, or founding principles") (hereinafter Executive Order). *See also, e.g.*, A. Sarat, Marco Rubio's Mission to Root Out Students "Making a Ruckus" Causes Collateral Damage, at: https://www.salon.com/2025/03/31/marco-rubios-mission-to-root-out-students-making-a-ruckus-causes-collateral-damage/; E. Wong, Rubio Orders U.S. Diplomats to Scour Student Visa Applicants' Social Media, at: https://www.nytimes.com/2025/04/01/us/politics/student-visas-social-media.html; USCIS, DHS to Begin Screening Aliens' Social Media Activity for Antisemitism, at: https://www.uscis.gov/newsroom/news-releases/dhs-to-begin-screening-aliens-social-media-activity-for-antisemitism (hereinafter USCIS Antisemitism Screening Policy); M. Caputo, Scoop: State Dept. to Use AI to Revoke Visas of Foreign Students Who Appear "Pro-Hamas," at: https://www.axios.com/2025/03/06/state-department-ai-revoke-foreign-student-visas-hamas.

[3] USCIS Antisemitism Screening Policy, *supra* note 2.

[4] P. Inglima, M. Fagan, E. Steele, On Social Media, Khan Suri Opposed Israeli Action, Did Not Advocate Breaking Law, at: https://thehoya.com/news/on-social-media-khan-suri-opposed-israeli-action-did-not-advocate-breaking-law/.

[5] ACLU, Khalil v. Trump, at: https://www.aclu.org/cases/khalil-v-trump.

- Ranjani Srinivasan, an Indian national and Fulbright Scholar who was targeted for immigration enforcement after being associated, apparently wrongfully, with protests that occurred at Columbia University;[6]
- Rumeysa Ozturk, who was targeted for immigration enforcement after authoring an op-ed accusing the Israeli government of genocide despite the State Department reportedly finding no evidence linking her to antisemitism or terrorism;[7]
- Aditya Harsano, whose participation in racial justice protests following the murder of George Floyd were cited by arresting Immigration and Customs Enforcement agents after his visa was revoked;[8]
- Momodou Taal, whose student visa was revoked after facing temporary disciplinary action due to his participation in pro-Palestine protests;[9]
- Yunseo Chung, a legal permanent resident who has lived in the United States since she was 7 years old and was pursued by immigration enforcement after participating in pro-Palestinian demonstrations;[10] and
- Mohsen Mahdawi, former Palestinian refugee and green card holder, who was arrested at a citizenship interview following his criticism of Israel.[11]

USCIS' collection of social media handles for social media surveillance would lead to similar violations of the First Amendment and free expression rights of those targeted, potentially at an even greater scale. Many of the immigration benefits implicated by the collection are requested by individuals who have been long-time residents of the United States. Although the federal government has at times argued that noncitizens facing immigration-related proceedings either do not have or have limited First Amendment rights,[12] individuals within the U.S., regardless of their immigration status, are generally shielded by the First Amendment and its protections for freedom of speech, association, and the press,

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[6] G. Pazmino, Another Columbia student targeted by ICE says she wasn't involved in protests on the night of her arrest, at: https://amp.cnn.com/cnn/2025/03/16/us/ranjani-srinivasan-columbia-university.

[7] K. McCormack, Tufts Student from Turkey Details Arrest, Crowded Detention Conditions in New Court Filing, at: https://apnews.com/article/rumeysa-ozturk-deportation-tufts-massachusetts-student-9f629b0e2a3d660d7a42fa2428aa0a93; J. Hudson, No Evidence Linking Tufts Student to Antisemitism or Terrorism, State Dept. Office Found, at: https://www.washingtonpost.com/national-security/2025/04/13/tufts-student-rumeysa-ozturk-rubio-trump/.

[8] JP Lawrence, Marshall Man's Student Visa Revocation, Detention Might be Linked to George Floyd Protest, at: https://www.startribune.com/marshall-mans-student-visa-revocation-detention-might-be-linked-to-george-floyd-protest/601328785.

[9] G. Pazmino, Visa of Cornell University Student Fighting Deportation is Revoked by the State Department, at: https://www.cnn.com/2025/03/25/us/cornell-unversity-student-visa-revoked/index.html.

[10] J.E. Bromwich & H. Aleaziz, Columbia Student Hunted by ICE Sues to Prevent Deportation, at: https://www.nytimes.com/2025/03/24/nyregion/columbia-student-ice-suit-yunseo-chung.html.

[11] A. Lacy, Palestinian Student Leader Was Called In for Citizenship Interview — Then Arrested by ICE, at: https://theintercept.com/2025/04/14/ice-columbia-student-mohsen-mahdawi-citizenship-interview/; Mohsen Mahdawi v. Trump, Writ for Habeas Corpus, at: https://www.documentcloud.org/documents/25896887-mahdawi-habeas-as-filed/.

[12] A. Das, Protecting Immigrant Activists From U.S. Government Retaliation: Lessons From First Amendment Litigation, at: https://knightcolumbia.org/content/protecting-immigrant-activists-from-us-government-retaliation-lessons-from-first-amendment-litigation.

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which extend not just to physical protest and verbal speech, but also to expression online.[13] Any other result would permit the federal government to control the speech of millions of people located within the country without judicial review. It would undermine the ability of those most affected by immigration policy to speak about their experiences within the immigration system and on other topics of their choosing. Noncitizens have a right to object to an administration's policies, and should not be made to suffer adverse immigration consequences for doing so.

The prior Administration previously issued guidance that "[a] noncitizen's exercise of their First Amendment rights . . . should never be a factor in deciding to take enforcement action."[14] This administration, with its avowed commitment to free speech,[15] should be looking to expand these protections – or at least not undermine them – but instead has chosen to engage in viewpoint-based immigration enforcement enabled by social media handle collection. USCIS' collection of social media handles, and the subsequent surveillance this collection is intended to empower, must comply with the First Amendment's protections for expression and association rights of those targeted and otherwise affected by USCIS' surveillance.

The Executive Order with which this information collection is intended to comply sets out viewpoint-based immigration enforcement as the policy of the United States in direct violation of the First Amendment.[16] By making clear that the administration intends to enforce immigration law based in part on the "ideology" and "attitudes" of immigrants, the administration states plainly its intention to police their thoughts and protected speech. Viewpoint-based immigration enforcement is a particularly virulent and disfavored form of content-based punishment of immigrants' speech. Viewpoint-based restrictions on speech are presumptively unconstitutional.[17] Apart from being unlawful, this viewpoint-based immigration policy has created a repressive climate among immigrant and U.S. citizen communities alike, with significant implications for their expressive and associational rights.[18] Just as the administration's viewpoint-based immigration policy has caused noncitizen students and faculty to refrain from lawful expression and association on campuses,[19] USCIS' collection of social

[13] Bridges v. Wixon, 326 U.S. 135 (1945), Packingham v. North Carolina, 582 U.S. 98 (2017).

[14] Memorandum From Alejandro N. Mayorkas, Sec'y, U.S. Dep't of Homeland Sec., to Tae D. Johnson, Acting Dir., U.S. Immigr. & Customs Enf't 5, at: https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf.

[15] *See* Executive Order 14149, Restoring Freedom of Speech and Ending Federal Censorship, at: https://www.whitehouse.gov/presidential-actions/2025/01/restoring-freedom-of-speech-and-ending-federal-censorship/. *But see* K. Ruane, When it Comes to Free Speech, the Trump Administration Should Follow Its Own Order, at: https://cdt.org/insights/when-it-comes-to-free-speech-the-trump-administration-should-follow-its-own-order/.

[16] Executive Order, *supra* note 2.

[17] Rosenberg v. Rector and Visitors of the Univ. of Virginia, 515 U.S. 819,829 (1995) ("When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant. Viewpoint discrimination is thus an egregious form of content discrimination. The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction." (citations omitted)). Reed v. Town of Gilbert, 576 U.S. 155, 163 (2015).

[18] *See* American Association of University Professors v. Rubio, Complaint for Declaratory and Injunctive Relief, at: https://knightcolumbia.org/documents/dcda33nik6.

[19] *Id.*

media identifiers to surveil immigrants' speech would perpetuate that same climate of fear online and among an even broader group of people. This would lead immigrants and those that associate with them to silence themselves out of fear of government reprisal.[20]

Surveillance demonstrably hinders the speech of those who are surveilled.[21] For example, after Edward Snowden revealed the National Security Agency's widespread monitoring of online activities, one study found that visits to certain Wikipedia pages dropped by nearly 30 percent.[22] Other studies have demonstrated that once people are made aware of government surveillance, they are less likely to write certain posts, share certain content, and engage the same way with social media.[23] CDT's own research demonstrates that six in ten students reported that they did not feel comfortable expressing their true thoughts and feelings online if they knew that they were being surveilled.[24] In response to increased social media surveillance and the requirement to disclose social media identifiers, it is reasonable to expect that immigrants would modify how they express themselves online, creating chilling effects that would violate immigrants' rights to free expression and deprive listeners and readers of immigrants' perspectives and ideas.[25]

The mandatory collection of social media identifiers would also deny applicants within the United States their right to anonymous speech. The Supreme Court has long recognized that the First

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[20] *See, e.g.*, X. Martinez, Fearing Trump's Visa Crackdown, College Students Race to Scrub Op-Eds, at:
https://www.wsj.com/us-news/education/trump-student-visas-newspaper-op-eds-61595294.

[21] A. Matthews & C.E. Tucker, The Impact of Online Surveillance on Behavior, at:
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3167473; E. Stoycheff, Under Surveillance: Examining Facebook's Spiral of Silence Effects in the Wake of NSA Internet Monitoring, at:
https://www.datascienceassn.org/sites/default/files/Under%20Surveillance%20-%20Examining%20Facebook%E2%80%99s%20Spiral%20of%20Silence%20Effects%20in%20the%20Wake%20of%20NSA%20Internet%20Monitoring.pdf; J. Penney, Internet Surveillance, Regulation, and Chilling Effects Online: A Comparative Case Study, at:
https://policyreview.info/articles/analysis/internet-surveillance-regulation-and-chilling-effects-online-comparative-case; Brief of Amici Curiae Center for Democracy & Technology, Committee for Justice, Electronic Frontier Foundation, Media Alliance, and Public Participation Project in Glassdoor v. United States, at:
https://cdt.org/wp-content/uploads/2017/11/CDT-Glassdoor-Amicus-Brief-07.18.17-v2.pdf.

[22] Newsweek, Wikipedia Terrorism Entries Traffic Fell After Snowden's NSA Reveal, at:
http://www.newsweek.com/wikipedia-terrorismentries-traffic-edward-snowden-nsa-reveal-453124.

[23] J. Penney, Whose Speech is Chilled by Surveillance?
http://www.slate.com/articles/technology/future_tense/2017/07/women_young_people_experience_the_chilling_effects_of_surveillance_at_higher.html.

[24] H. Quay-de la Vallee, The Chilling Effect of Student Monitoring: Disproportionate Impacts and Mental Health Risks, at:
https://cdt.org/insights/the-chilling-effect-of-student-monitoring-disproportionate-impacts-and-mental-health-risks/.

[25] P. Gross, How Immigrants Navigate Their Digital Footprints in a Charged Political Climate, at:
https://coloradonewsline.com/2024/09/16/immigrants-navigate-digital-footprints/; A. Alrawi, Immigrants are not Felons: A Legal Analysis of Immigrants' Civil Rights Chilling Effects Caused by ICE's SmartLINK App Surveillance, at:
https://scholarlypublishingcollective.org/psup/information-policy/article/doi/10.5325/jinfopoli.13.2023.0007/382259/Immigrants-are-not-Felons-A-Legal-Analysis-of; S. Anstis & R. Deibert, Silenced by Surveillance: The Impacts of Digital Transnational Repression on Journalists, Human Rights Defenders, and Dissidents in Exile, at:
https://knightcolumbia.org/content/silenced-by-surveillance-the-impacts-of-digital-transnational-repression.

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Amendment protects anonymous speech.[26] These protections extend to anonymous online speech.[27] People lawfully communicate online anonymously for a variety of reasons, including to protect their safety, avoid negative economic consequences from their speech, engage in parody and satire, maintain their privacy, and to have greater liberty to express controversial opinions. Anonymous speech regarding matters of public concern has a rich tradition in the United States, dating back to the *Federalist Papers* themselves, which were published pseudonymously.[28] USCIS' proposed collection would require applicants to disclose all social media handles, including those that are anonymous, thereby stripping applicants of their anonymity and denying future applicants the ability to speak anonymously online.

While the impacts of viewpoint-based social media monitoring may be most acutely felt by those directly surveilled, the interpersonal nature of social media necessarily means that surveillance of immigrants' speech will damage the privacy and free expression interests of all people using social media in the United States. Social media posts of an applicant for benefits are inherently linked to those with whom the applicant interacts online. By surveilling and chilling the speech of applicants for immigration benefits, the government will therefore inevitably surveil and chill the speech of all those with whom the applicant interacts.

Moreover, the First Amendment protects not just the right of people in the United States to speak freely, but also to receive the information of their choice from the sources of their choice - a principle affirmed in the 1965 case *Lamont v. Postmaster General*.[29] *Lamont* and other Supreme Court precedent makes clear that government intrusions that restrict access to information run afoul of the First Amendment, and that the government cannot, "consistent[] with the spirit of the First Amendment, contract the spectrum of available knowledge."[30] Like the communist propaganda the government sought to suppress in the law at issue in *Lamont*, the administration is again seeking to suppress lawful speech it has deemed subversive and to limit the kinds of information and ideas shared with and available to the public through its viewpoint-based immigration policy, ongoing social media monitoring activities, and proposed social media identifier collection. Also like the law at issue in *Lamont*, these government intrusions will violate the free expression rights of all people in the United States to receive the lawful information of their choosing by censoring and chilling the speech of immigrants.

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[26] *See, e.g.*, Talley v. California, 362 U.S. 60 (1960), McIntyre v. Ohio Elections Commission, 514 U.S. 334 (1995), Buckley v. American Constitutional Law Foundation, 525 U.S. 182 (1999), Watchtower Bible and Tract Society of New York v. Village of Stratton, 536 U.S. 150 (2002).

[27] J. Kosseff, The United States of Anonymous: How the First Amendment Shaped Online Speech (2022).

[28] E. Barendt, Anonymous Speech: Literature, Law and Politics (2016).

[29] Lamont v. Postmaster General, 381 U.S. 301 (1965). *See also*, X. Wang, Listeners' Rights in the Time of Propaganda: The Story of Lamont v. Postmaster General, at: https://knightcolumbia.org/content/listeners-rights-in-the-time-of-propaganda-the-story-of-lamont-v-postmaster-general.

[30] Griswold v. Connecticut, 381 U.S. 479, 482 (1965).

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II.   Collecting and analyzing social media data will be privacy-invasive and ineffective at identifying information for which immigration benefits can lawfully be denied

While the free expression consequences of USCIS' collection of social media identifiers and the administration's viewpoint-based immigration policy should be enough for USCIS to abandon its plan to collect such data, USCIS should also refrain from collecting social media handles because doing so is unlikely to assist USCIS with its lawful operations. The collection of social media handles for vetting has been widely discredited as an effective method to screen or vet immigrants.[31] In a 2021 review, the Office of General Counsel for the Department of Homeland Security (DHS) found that the broad collection of social media information had yielded only "information of limited value."[32] Similarly, the Office of the Director of National Intelligence has described social media handle collection as "useless" to the immigration screening process.[33] Despite this, USCIS seeks to expand the collection of social media identifiers to "enable and help inform identity verification, national security and public safety screening, and vetting,"[34] claiming it is required by Executive Order 14161 ("Protecting the United States From Foreign Terrorists and Other National Security and Public Safety Threats"), which sets out the administration's unlawful and censorious viewpoint-based immigration enforcement policy.[35] There remains little evidence, however, that collecting social media handles would actually serve any lawful purpose under the Executive Order.

First, even if the administration could use social media monitoring in a manner consistent with the First Amendment and the free expression rights of those targeted, there is scant evidence that social media monitoring of individuals seeking immigration benefits would improve national security or public safety.[36] When a similar policy was proposed in 2018, analysis conducted by the CATO Institute determined emphatically that "the evidence indicates the U.S. vetting system is already 'extreme' enough to handle the challenge of foreign terrorist infiltration" without enhanced measures.[37] Likewise, the effectiveness of social media screening for identity verification is highly questionable.[38] As

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[31] S. Miller, Monitoring Migrants in the Digital Age: Using Twitter to Analyze Social Media Surveillance, at: https://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=1107&context=ctlj ; F. Patel et al., Social Media Monitoring: How the Department of Homeland Security Uses Digital Data in the Name of National Security, at: https://www.brennancenter.org/our-work/research-reports/social-media-monitoring.

[32] F. Patel & J. Melendi, Advances in AI increase Risks of Government Social Media Monitoring, at: https://www.justsecurity.org/90879/advances-in-ai-increase-risks-of-government-social-media-monitoring/

[33] V. Nambiar, Watching and Waiting: Modern Social Media Surveillance of Immigrants and Fourth Amendment Implications, at: http://www.fclj.org/wp-content/uploads/2025/02/77.2.4_Watching-and-Waiting.pdf

[34] 90 Fed. Reg. 11324 (2025), https://www.federalregister.gov/d/2025-03492/p-3.

[35] Executive Order, *supra* note 2.

[36] H. Handeyside, We're Demanding the Government Come Clean on Surveillance of Social Media, (stating: "there's no evidence that social media surveillance improves our security") at: https://www.aclu.org/news/privacy-technology/were-demanding-government-come-clean-surveillance-social.

[37] D. Bier, Extreme Vetting of Immigrants: Estimating Terrorism Vetting Failures, at: https://www.cato.org/policy-analysis/extreme-vetting-immigrants-estimating-terrorism-vetting-failures

[38] *See* J. Huang et al., A Literature Review of Online Identity Reconstruction, at: https://doi.org/10.3389/fpsyg.2021.696552 (suggesting that online identities often differ significantly from real world identity and viewpoints); C. Robertson et al., Inside The Funhouse Mirror Factory: How Social Media Distorts Perceptions Of Norms, at: https://doi.org/10.1016/j.copsy

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the Brennan Center and the Electronic Privacy Information Center (EPIC) have extensively documented, "DHS has never shown that social media screening is useful for vetting travelers and immigrants."[39] In April of 2021, OMB disapproved a similar request from DHS to collect social media handle information, stating that the denial was in part "because the agency has not adequately demonstrated the practical utility of collecting this information," and stating "in the future, it [DHS] must demonstrate the practical utility of collecting it [the information] and demonstrate that such utility outweighs the costs - both monetary and social - of doing so."[40] Now, as then, no evidence has been provided that the utility, if any, of collecting social media handles outweighs its significant monetary and societal costs.

The State Department's nearly identical program requiring visa applicants to register their social media handles has likewise yielded disappointing results. The National Counterterrorism Center found that social media identifiers resulted in "very little impact" on improving screening accuracy for immigration purposes, yet the program continues to collect this information from millions of visa applicants annually.[41]

DHS's own internal evaluations of past social media collection pilot programs confirm this ineffectiveness. When evaluating a 2016 social media vetting pilot program, DHS acknowledged that "no immigration benefits have been denied solely or primarily because of information uncovered through social media vetting," with all denials instead based on standard security and background checks unrelated to social media content.[42] Similarly, across pilot programs using social media 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".[43] To the extent that USCIS' collection of social media identifiers combined with its viewpoint-based immigration policy actually would be used to deny benefits on the basis of disfavored expression, that result would be entirely inconsistent with the First Amendment.

Given the evidence that the use of social media collection is ineffective for lawful immigration screening, such collection could not justify its significant harm to the privacy and rights of individuals. Without adequate safeguards, the collection and retention of social media handles has the potential to

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C.2024.101918 (suggesting social media profiles project exaggerated or idealized personas that are not reflective of individuals' identities).

[39] Brennan Center for Justice & Electronic Privacy Information Center, Re: Arrival and Departure Record, Nonimmigrant Visa Waiver Arrival/Departure, Electronic System for Travel Authorization, at: https://epic.org/wp-content/uploads/2022/03/EPIC-BC-Comments-Social-Media-Collection-ESTA-March2022-.pdf.

[40] Office of Management and Budget, Notice of Office of Management and Budget Action at: https://www.reginfo.gov/public/do/DownloadNOA?requestID=308217.

[41] N. Kitch, State Department Rule Requiring Visa Applicants To Register Their Social Media Handles Is Ineffective, New Documents Say, at: https://knightcolumbia.org/content/state-department-rule-requiring-visa-applicants-to-register-Their-social-media-handles-is-ineffective-new-documents-say.

[42] USCIS, "Social Media," in *U.S. Citizenship and Immigration Services Briefing Book*, at: https://www.dhs.gov/sites/default/files/publications/USCIS%20Presidential%20Transition%20Records.pdf.

[43] Brennan Center for Justice & Electronic Privacy Information Center, *supra* note 39.

fundamentally transform the relationship between USCIS and those seeking benefits from a discrete, point-in-time interaction into a continuous system of monitoring that could follow immigrants throughout their lives in the United States.[44] The scope of surveillance also could expand dramatically beyond the individual applicant, providing the government with resources to develop profiles not just of the individual but of their entire network based on associations due to followers, friends, or location information.[45] Every interaction, every followed account, and every online community could become potential intelligence not just about the applicant, but about everyone connected to them. This could create a surveillance dragnet that captured U.S. citizens, permanent residents, and others whom the government has no lawful reason to monitor. This form of collection would extend well beyond its traditional context– scrutiny of an individual often prior to entry or at the border– to a system where even permanent residents and citizens may face continuous monitoring.[46]

Second, social media surveillance fundamentally undermines users' expectations about how their expression will be received and utilized. Even when social media content is public, the poster would not reasonably anticipate government agencies using it to track their speech, networks, and associations.[47] This is doubly true when the information is posted anonymously or within a private group that may be infiltrated by fake accounts posing as legitimate users—a known DHS practice.[48] As social media platforms have evolved into essential venues both for public and private connection, our framework for protecting these digital interactions must similarly advance to safeguard the freedom to speak and associate without reprisal.[49] People should be able to use social media for personal expression, community building, and maintaining relationships, without fear that immigration authorities will weaponize their lawful expression against them in immigration enforcement.[50]

Third, USCIS' proposed collection also would not occur in a vacuum. Rather, it would be in a context where DHS has established relationships with commercial data brokers and surveillance vendors.[51] DHS components have documented purchasing significant amounts of location and other personal data from commercial data brokers,[52] the same entities selling tools for social media exploitation and

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[44] S. Miller, Monitoring Migrants in the Digital Age: Using Twitter to Analyze Social Media Surveillance, at: https://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=1107&context=ctlj.

[45] *Id.*

[46] *Id.*

[47] Handeyside, *supra* note 36.

[48] J. Bhuiyan & S. Levin, Revealed: How U.S. Immigration Uses Fake Social Media Profiles Across Investigations, at: https://www.theguardian.com/us-news/2023/sep/05/us-immigration-homeland-security-social-media-fake-profiles.

[49] Handeyside, *supra* note 36.

[50] A. Shahbaz & A. Funk, Freedom on the Net 2019 Key Finding: Governments harness big data for social media surveillance, at: https://freedomhouse.org/report/freedom-on-the-net/2019/the-crisis-of-social-media/social-media-surveillance.

[51] National Association of Criminal Defense Lawyers, The Data Broker Loophole is Being Exploited to Target Immigrant Communities, at: https://www.nacdl.org/getattachment/567b4c71-b702-47d7-a59c-1e42f39b065a/immigration-and-data-purchases.pdf; Georgetown Law Center on Privacy & Technology, American Dragnet: Data-Driven Deportation in the 21st Century, at: https://americandragnet.org/.

[52] C. Shenkman et al., Legal Loopholes and Data for Dollars, at: https://cdt.org/insights/report-legal-loopholes-and-data-for-dollars-how-law-enforcement-and-intelligence-agencies-are-bu

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drafting articles claiming social media collection improves national security.[53] It is also concerning that the proposed collection provides no information about how USCIS would store, secure, or limit access to the collected social media identifiers, raising concerns that this information could be shared with commercial data brokers intentionally or inadvertently or incorporated into algorithmic monitoring tools.

Aggregating social media handles with commercial data could bypass account and privacy restrictions, giving investigators another means to access data that users intended to be private, as well as data the compelled disclosure of which would require legal process, such as a warrant, court order or subpoena.[54] This capability could transform what may appear to be a limited collection of data into a potentially unlimited surveillance authority, allowing agencies to monitor applicants and their contacts with granularity beyond a normal understanding of open-source information for an indefinite period, well beyond any legitimate adjudicatory need.[55] For example, even when a traveler's social media accounts and group memberships are set to private, the digital advertising ecosystem continuously tracks their engagement patterns across these hidden spaces, creating commercial datasets that can be leveraged using social media handles and groups to reverse-engineer sensitive affiliations—revealing someone's membership in a particular religious community, political movement, or diaspora group without ever accessing the private content directly.[56] Such monitoring could create a system of viewpoint-based surveillance that undermines core democratic values while yielding no demonstrable security benefit, given the "vanishingly small number of vetting failures that have permitted foreign-born persons to commit terrorist attacks on U.S. soil."[57] At its core, these relationships threaten the privacy of noncitizens and citizens alike, enabling the government to bypass traditional privacy protections by purchasing data they would otherwise need a warrant to obtain and using the collected social media handles to connect that data to identified individuals.[58]

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ying-your-data-from-brokers/; J. Cox, Homeland Security Uses AI Tool to Analyze Social Media of U.S. Citizens and Refugees, at: https://www.vice.com/en/article/dhs-uses-ai-tool-babel-x-babel-street-social-media-citizens-refugees/.

[53] Babel Street, Social Media Threat Monitoring Improves National Security, at: https://www.babelstreet.com/blog/social-media-threat-monitoring-improves-national-security.

[54] Help Net Security, Consumer Privacy Risks of Data Aggregation: What Should Organizations Do? at: https://www.helpnetsecurity.com/2024/11/07/data-privacy-risks/; IEEE Digital Privacy, Privacy Risks And Social Media, at: https://digitalprivacy.ieee.org/publications/topics/privacy-risks-and-social-media; Social Media Today, Pii, Anonymized Data, And Big Data Privacy, at: https://www.socialmediatoday.com/technology-data/2015-02-11/pii-anonymized-data-and-big-data-privacy.

[55] S. Miller, Monitoring Migrants in the Digital Age: Using Twitter to Analyze Social Media Surveillance, at: https://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=1107&context=ctlj.

[56] A. Lange, How Does the Internet Know Your Race? at: https://cdt.org/insights/how-does-the-internet-know-your-race/; Digital One, How AdTech is Spying on You—And How Your Data Ends Up in Government Hands, at: https://digitaloneagency.com.au/how-adtech-is-spying-on-you-and-how-your-data-ends-up-in-government-hands/.

[57] Brennan Center for Justice, Brennan Center Urges Rejection of State Department Proposal to Collect Social Media and Other Data from Visa Applicants, at: https://www.brennancenter.org/our-work/research-reports/brennan-center-urges-rejection-state-department-proposal-collect-social.

[58] Shenkman et al., *supra* note 52.

III.   Analysis of social media data would require the use of imprecise automated tools and exacerbate constitutional and procedural concerns, chilling speech

The collection of social media identifiers would likely be effectuated through automated tools that are fundamentally at odds with immigrants' free expression rights and USCIS' obligation to administer immigration benefits in an unbiased and lawful manner. The use of these error-prone tools would exacerbate the free expression and privacy harms of social media monitoring, irrevocably chilling the expression of noncitizens out of fear of scrutiny, detention, and deportation, with few channels for remedy.

The automated tools used for social media surveillance and to prioritize applicants for further investigation are likely to be based on keyword filters and machine learning models, including newer large language models.[59] Social media monitoring systems are typically trained on data found easily on the web and on selected keywords that fit the domain of use.[60] One vendor offering social media monitoring tools to USCIS, Fivecast, says it uses advanced data collection and AI to look for "risky keywords and phrases."[61] This data will then be used to train the model and inform the model's worldview and remit. Should the training data over-represent a particular set of views or designations of "foreign terrorists," the model may over-flag speech by some individuals more than others.[62] As CDT noted in its analysis of social media monitoring, the administration's viewpoint-based immigration policy may be weaponized through the selective training of these social media monitoring models.[63] This could subject to greater scrutiny anyone who has engaged in speech with which the administration disagrees on topics such as Israel-Palestine or campus protests related to military actions against Gaza, even where the speech is protected by the First Amendment.

Additionally, these tools are unable to parse context or conduct predictive analysis. While keyword filters and machine learning models may be able to identify words or phrases they've been tasked to detect, they are unable to reliably parse the context in which the term is used, including instances where an individual has shared a news article or engaged in sarcasm or satire. CDT and others have written previously about how the use of automated content analysis tools by Facebook to enforce its

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[59] N. Duarte & E. Llansó, Mixed Messages? The Limits of Automated Social Media Content Analysis, at: https://cdt.org/wp-content/uploads/2017/11/Mixed-Messages-Paper.pdf; F. Patel, et al., *supra* note 31; G. Kumaran Ramalingam, Automation of USCIS Application Processing through AI, at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4907291.

[60] S. Baack & Mozilla Insights, Training Data for the Price of a Sandwich, at: https://foundation.mozilla.org/en/research/library/generative-ai-training-data/common-crawl/; F. Patel et al., *supra* note 31.

[61] J. Cox, The AI Tools CBP Is Using to Scan Social Media, at: https://www.404media.co/the-ai-tools-cbp-is-using-to-scan-social-media/.

[62] R. Levinson-Waldman & J.G. Gutiérrez, Oversight Board's Watchlist Report Underscores Need for Major Overhaul, https://www.justsecurity.org/108032/oversight-boards-watchlist-report-need-major-overhaul/.

[63] CDT, Automated Tools for Social Media Monitoring of Millions of Noncitizens Irrevocably Chills the Expression of Noncitizens, at: https://cdt.org/insights/automated-tools-for-social-media-monitoring-irrevocably-chill-millions-of-noncitizens-expression/.

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Dangerous Organization & Individuals' policy erroneously flagged and took down all posts containing the word "shaheed" (which means "martyr" in Arabic), even when an individual was named Shaheed or in contexts where individuals were not using the term in a way that glorified or approved of violence.[64] Already, noncitizen journalists have been advised to exercise caution when covering certain topics including federal policy at large.[65] Scanning their online activity may fundamentally limit their ability to both do their job and stay in the country. Furthermore, models will be unable to analyze content they have not been trained on or seen past their "knowledge cutoff" date, i.e., the date the model's training data was assembled.[66] Already, social media data may have erroneously led to accusations of gang affiliation in at least one case.[67]

Finally, the systems will be especially error-prone in multilingual settings. New multilingual language technologies purport to work better in more languages, yet are still trained primarily on English-language data and some machine-translated non-English data, both imperfect proxies for how individuals speak their languages online.[68] The little data that is available to train non-English language models is sourced from overly formal and unrepresentative sources such as government documents and religious sources.[69] Digital translation technologies have already been used by U.S. immigration enforcement agencies in problematic ways that have prevented individuals from accessing a fair process and even safety. In one instance, they mischaracterized the reason why an individual was seeking asylum and in another, a mistranslation of where an individual had lived resulted in their wrongful imprisonment for six months.[70]

Promises of automated predictive analysis rest on untested and discriminatory assumptions that will burden the fundamental rights of all individuals swept up by these social media monitoring tools. USCIS threatens to infringe on the rights of millions of noncitizens and citizens with the widespread use of social media data monitoring and irrevocably undermine the protections of the First Amendment. Given that USCIS' collection of social media identifiers and subsequent surveillance would violate the expression and association rights of immigrants, serve no lawful purpose for determining immigration

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[64] A. Bhatia & M. Elswah, Context Before Code: Meta's Oversight Board Policy Advisory Opinion on the Word "Shaheed" Calls for Language and Cultural Nuance in Content Moderation, at: https://cdt.org/insights/context-before-code-metas-oversight-board-policy-advisory-opinion-on-the-word-shaheed-calls-for-language-and-cultural-nuance-in-content-moderation/.

[65] A. Rosenfeld, 'Nobody Can Protect You,' Columbia Dean Warns Foreign Students After Mahmoud Khalil's Arrest, at: https://forward.com/news/704218/mahmoud-khalil-columbia-journalism-warning/.

[66] J. Cheng et. al, Dated Data: Tracing Knowledge Cutoffs in Large Language Models, at: https://arxiv.org/html/2403.12958v1.

[67] L. Fadel & M. Al-Waheidi, Deported Over a Tattoo? Lawyer Claims Client is Not a Gang Member, at: https://www.npr.org/2025/03/27/nx-s1-5341544/ice-el-salvador-jerce-reyes-barrios.

[68] G. Nicholas & A. Bhatia, Lost in Translation: Large Language Models in Non-English Content Analysis, at: https://cdt.org/insights/lost-in-translation-large-language-models-in-non-english-content-analysis/.

[69] P. Joshi, et. al, The State and Fate of Linguistic Diversity and Inclusion in the NLP World, at: https://aclanthology.org/2020.acl-main.560/.

[70] Incident 72: Facebook Translates 'Good Morning' into 'Attack Them', Leading to Arrest, at: https://incidentdatabase.ai/cite/72/.

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benefits, and require the use of error-prone and discriminatory tools, USCIS should abandon its planned collection of social media identifiers.

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Thank you for your consideration. For more information on this submission, please contact Becca Branum, Deputy Director of CDT's Free Expression Project, at bbranum@cdt.org.

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