

Date: November 4, 2019  
To: U.S. Department of Homeland Security  
From: The undersigned arts organizations  
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

We submit these comments in response to DHS's 60-Day "Agency Information Collection Activities: Generic Clearance for the Collection of Social Media Information on Immigration and Foreign Travel Forms" (September 4, 2019), which proposes collecting new social media information from applicants for immigration benefits, including adjustment of status, naturalization, and asylum status, as well as from Visa Waiver Program applicants, and by way of the I-94W Nonimmigrant Visa Waiver Arrival/Departure Record.

We object to the proposed information collection requiring applicants to provide their social media platforms and identifiers. An estimated 33 million people will be impacted annually by these changes to the ESTA, Form I-94W, and EVUS programs and forms, which suggests that the proposed information collection will provide a staggering amount of personal information detailing not only the private lives of foreign nationals, but also the private lives of the United States citizens with whom these foreign nationals associate. The Department of Homeland Security's guidance regarding how the program will be implemented and what the Department intends to do with the information has been insufficient, and the Department has failed to provide any guidance regarding how an applicant's visa process will be impacted should the applicant fail to answer completely, correctly, or satisfactorily. Moreover, the Department has not shown that these intrusive and burdensome questions would serve to protect national security. Other organizations have submitted comments that detail concerns that we share regarding the impact the proposed information collection will have on the general public. We limit our comments here to our concerns about how the proposed information collection will impact American culture and international cultural mobility.

First, the already costly, burdensome, and invasive procedures that are currently required to obtain O and P visas significantly limit the American people's access to international culture. In the last 25 years, artist visa costs have increased more than 2,000%. In the last two years, the Travel Ban and "extreme vetting" have further contributed to an artist visa process that is less predictable and more arbitrary, especially for artists from the Global South. The impact is that presenting foreign artists has become massively more expensive when the process works, and when it doesn't work, it is financially catastrophic. The situation has become so bad that now even renowned artists from Western Europe frequently encounter tour delays and cancellations because of unprecedented issues with the U.S. artist visa system. The proposed information collection will exacerbate the current bureaucratic burden, delay, and cost associated with the nonimmigrant visa process for artists.

Second, because performing artists are public figures, their social media is often voluminous, and the content is largely beyond the control of the artists themselves. Out of concern for how their social media might impact their admissibility to the United States, foreign artists may choose not to come to the United States. Because many artists' presence in the United States is both culturally and commercially important, the proposed information collection will have the effect of chilling international cultural exchange and damaging U.S. commercial interests.

Third, United States artists might fear that exercising their own right to free speech would—through their association with foreign artists—both endanger their foreign associates and bring government scrutiny to their own work. Accordingly, the proposed information collection will have the effect of chilling the free speech of U.S. artists.

Fourth, the Department of Homeland Security's proposal sets a new low bar for government intervention into the private lives of individuals, creating a risk that other countries will deem similar measures appropriate and impose them reciprocally on U.S. artists. In this way, the proposed information collection may have the effect of chilling the free speech of U.S. artists who work globally.

Finally, the new requirements create the risk of discriminatory conduct by government officials. In the absence of clear guidelines regarding how the disclosed information may be used, government officials might target the social media accounts of nonimmigrant visa, benefits, and ESTA applicants belonging to particular demographic groups. There is a real risk that the proposed information collection would facilitate discrimination against nonimmigrants from Muslim-majority countries.

Already many international artists are reluctant to come to the U.S. because they perceive it as a hostile environment. U.S. arts presenters and professionals are reluctant to bring foreign artists to U.S. audiences due to the ever-increasing costs and unpredictabilities in the artist visa process. Although the proposed information collection will further impede international cultural exchange, damage commerce, chill free speech, and facilitate discrimination against nonimmigrant artists from Muslim-majority countries, the Department of Homeland Security has failed to show that the collection of this data will be effective in furthering national interests, and it has failed to outline any measures that would protect against the misuse of the information collected. As such, we object to these proposed changes to the application benefits, I-94W, and ESTA forms.

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