



Department of State's Extreme Vetting is a Backdoor Muslim Ban

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The Department of State (DOS) will make permanent the collection of social media information from a subset of visa applicants, likely to be predominately Muslim, as part of the new “extreme vetting” procedures that President Donald Trump called for in a memorandum earlier this year. In May, DOS issued an emergency collection regulation to gather certain visa applicants’ social media platforms and identifiers used during the last five years; travel history during the last fifteen years, including the source of funding for travel; address history during the last fifteen years; employment history during the last fifteen years; and phone numbers and email addresses used during the last five years. CDT joined a coalition of human rights and civil liberties organizations opposing this abhorrent proposal.

In August, DOS issued a follow up regulation seeking to make this practice permanent. This week CDT and over 40 other civil liberties and immigrants’ rights groups reiterated their opposition and urged the State Department to reconsider this invasive proposal.

The criticism was centered on the below key points:

The request for fifteen years of travel, address, and employment history is overly burdensome. While DOS estimated that the time it would take for a visa applicant to respond to this request would be only 60 minutes, this request could undoubtedly require weeks’ worth of time for applicants to track down accommodation and transportation providers.

DOS’s social media request is ambiguous and broad. Social media platforms include general platforms like Facebook, but also possibly online presences like blogging. If applicants are not as forthcoming as DOS determines is necessary, a failure to include a type of platform could be cause for rejecting their applications. Further, applicants may contribute to social media profiles, raising the risk that they be held accountable for content that they do not control.

Social media collection will also capture information that is difficult to interpret, will chill free expression, and will affect third parties. Online communications are incredibly contextual and prone to interpretive mistakes. Coupled with the fact that consular officers have great discretion when it comes to assessing an applicant's suitability to enter the country, this collection will chill online speech as visa applicants will attempt to sanitize their internet presence to ensure that nothing is left to interpretive chance. This collection will also adversely impact third parties' associational rights because consular staff will review the applicant's network, in the effort to determine whether the applicant should be denied entry into the country.

DOS's information collection will primarily burden applicants based on national origin and religion. The September 24 Presidential Proclamation explicitly calls for the additional vetting of nationals of Iraq, Iran, and Somalia, and past Executive Orders have halted immigration for nationals of Muslim-majority countries. There is good reason to believe that even though DOS has not explicitly stated it, this vetting will predominantly target Muslims, and target individuals purely due to their national origin. Aside from being discriminatory, this plan is likely to yield little national security benefit as there is no evidence to suggest that nationality is a good indicator of security risk.

This DOS regulation may facilitate bulk data mining and algorithmic analysis efforts, which would amplify privacy and discrimination concerns. DOS will likely share this information with DHS, which is developing an Extreme Vetting Initiative. This initiative reportedly seeks to establish a "vetting [system] that automates, centralizes, and streamlines the current manual vetting process," with the goal of predicting whether those entering the U.S. intend to commit a crime. Predictive algorithms have proven to be a poor tool in other contexts, and in the immigration realm they could facilitate religious and ideological vetting.

There is no evidence to suggest that a foreign visitor poses a significant threat to the United States. According to the CATO Institute, Americans have a 1 in 3.6 million chance of being murdered by a terrorist attack on U.S. soil that is committed by a foreigner (including the attacks of September 11), and a 1 in 3.64 billion chance of being killed in a terrorist attack committed by a refugee.

In practice, this extreme vetting is a backdoor Muslim ban because it will be applied primarily to Muslims, discourage visa applicants from applying, and because a review of the information provided could be pretext for visa rejection.

This DOS regulation is part of a disturbing trend to further scrutinize immigrant populations through invasive social media collection. In 2016 CDT opposed a Department of Homeland Security (DHS) proposal to collect social media identifiers from Visa Waiver Program travelers. DHS recently issued a System of Records Notice (SORN) stating it will include social media information in Alien Files, which further amplifies the concerns laid out above.