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**n a t i o n a l  
I M M I G R A T I O N  
p r o j e c t**  
of the National Lawyers Guild

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**COMMENTS ON NOTICE OF A NEW SYSTEM OF RECORDS: DEPARTMENT OF  
HOMELAND SECURITY/ALL-041 EXTERNAL BIOMETRIC RECORDS (EBR)  
SYSTEM OF RECORDS**

Docket No.: DHS-2017-0039

**SUBMITTED BY THE NATIONAL IMMIGRATION LAW CENTER AND THE  
NATIONAL IMMIGRATION PROJECT OF THE NATIONAL LAWYERS GUILD**

The National Immigration Law Center (NILC) and the National Immigration Project of the National Lawyers Guild (NIP/NLG) submit the following comments on the [Notice of a New System of Records: Department Of Homeland Security/All-041 External Biometric Records \(EBR\) System Of Records](#). These comments discuss the potentially negative implications for immigrants of EBR.

Established in 1979, the National Immigration Law Center (NILC) is one of the leading organizations in the U.S. exclusively dedicated to defending and advancing the rights and opportunities of low-income immigrants and their families. Our mission is grounded in the belief that every American—and aspiring American—should have the opportunity to fulfill their full potential, regardless of where they were born or how much money they have.

The National Immigration Project of the National Lawyers Guild (NIPNLG) is a nonprofit membership organization of immigration attorneys, legal workers, jailhouse lawyers, grassroots advocates, and others working to defend immigrants' rights and to secure a fair administration of the immigration and nationality laws. The National Immigration Project provides technical assistance to the bench and bar, litigates on behalf of noncitizens as amici curiae in the federal courts, hosts continuing legal education seminars on the rights of noncitizens, and is the author of numerous practice advisories and multiple treatises published by Thompson West.

**WHAT IS THE EBR**

According to the System of Records Notice (SORN):

- The EBR is a new system of records that “allows the DHS to receive, maintain, and disseminate biometric and associated biographic information from non-DHS entities, both foreign and domestic...pursuant to formal or informal information sharing agreements or arrangements (“external information”) or with the express approval of the entity from which the Department received biometric and association biographic information.”
- The purposes for DHS receiving and maintaining the information include a wide range of law enforcement, immigration, national security and other purposes.
- The entities from which the EBR will obtain information are other federal agencies, foreign partners, and state and local partners.
- In addition to biometric and biographic data, the EBR will also include identifiers for citizenship and nationality, derogatory information, miscellaneous officer comment information, and encounter data.
- EBR records will also include “[r]ecords related to the analysis of relationship patterns among individuals and organizations that are indicative of violations of the customs and immigration laws including possible terrorist threats from non-obvious relationships and specific leads and law enforcement intelligence for active and new investigations.”
- The SORN exempts the EBR from multiple provisions of the Privacy Act.
- In the future, the EBR SORN and a forthcoming technical SORN will replace the DHS/US-VISIT-001 DHS Automated Biometric Identification System (IDENT), at which time the IDENT SORN will be rescinded.
- EBR’s “records will be maintained in the Information Technology (IT) system, Automated Biometric Identification System (IDENT), also referred to as the Homeland Advanced Recognition Technology (HART).”

### **WHAT’S WRONG WITH EBR**

- **Creation of vast database:** EBR is part of DHS’ under-the-radar creation of a vast database called [Homeland Advanced Recognition Technology \(HART\)](#), which will replace DHS’ current biometrics database [IDENT](#). [HART](#) will centralize access to federal and international databases, provide real-time access in the field, and involve the use of “multi-modal biometrics” (e.g., facial and iris recognition, in addition to fingerprints).
- **Absence of transparency:** EBR will be a critical part of the shrouded-in-mystery system HART. Although DHS has contracted with [Northrup Grumman](#) to develop HART, little public information is available about it. HART will permit unfettered information sharing among domestic and foreign agencies, without guidelines, accountability or redress. Yet the SORN makes only a casual reference to the new system in the section regarding where EBR’s records will be stored, surreptitiously morphing IDENT into HART.
- **EBR is more than a biometrics database:** EBR won’t just include biometrics and associated biographic information. It will also include identifiers for

derogatory information, miscellaneous officer comment information, and encounter data. These items are undefined and unlimited in scope. And while EBR will also include “records related to the analysis of relationship patterns among individuals and organizations,” this capacity is only mentioned surreptitiously in the section on policies and practices for retention and disposal of records. In effect, EBR manufactures profiles of individuals, with little accountability or attention to privacy and accuracy.

- **Continuous surveillance of immigrants:** EBR and HART are elements of a larger program of continuous surveillance of immigrants that DHS initially called “extreme vetting” and more recently dubbed as [Visa Lifecycle Vetting](#). As DHS [wrote](#) in 2017 as part of an event to discuss future contracts for vetting of non-citizens, “the gaps in the current vetting model along with existing limitations in the vetting process create a compelling case for ICE to take action to develop and implement a continuous vetting strategy, framework and process.” Other DHS [notices](#) have made clear that the monitoring and surveillance will continue even when noncitizens become citizens.
- **Violation of rights to free speech and association:** EBR’s collection and dissemination of information and DHS’s program of continuous surveillance, threaten the rights of immigrants to free speech and association.
- **Inaccurate results:** DHS is likely to use sophisticated [algorithms and automation](#) to filter the quantities of information that the EBR will generate. But these are untested mechanisms of predictive policing, which are likely to produce [“inaccurate and biased”](#) conclusions.
- **Absence of accountability:** The EBR calls for the wholesale collection and dissemination of data and information from and to a wide variety of domestic and foreign government law enforcement and intelligence entities, relying on unregulated formal and informal agreements with these entities. Yet no criteria are included for the collection and dissemination of the data and information, nor is any review or auditing of collection and dissemination. And DHS has exempted the system from provisions of the Privacy Act pertaining to accuracy, relevancy, completeness, timeliness, notice, disclosure, ability to correct incorrect information, and more. As a result, redress and remedies for improper collection and dissemination of information are virtually nonexistent.
- **EBR will harm U.S. citizens:** Nothing in the EBR limits its data collection and dissemination to immigrants. All of the deficiencies described above will affect U.S. citizens too.

EBR is evidence of DHS’ plan to establish and expand big data mining and surveillance against immigrants. Given the scale and scope of EBR, it is deeply troubling that DHS remains so uninterested in transparency, accountability, redress

and the protection of privacy. This raises real concerns that EBR and its connecting system could lead to serious civil rights abuses, including racial profiling. Insulating the DHS from public accountability and oversight is the wrong path to follow.