

## SUPPORTING STATEMENT

### Arrival and Departure Record (Forms I-94, I-94W) and Electronic System for Travel Authorization-ESTA OMB No. 1651-0111

#### A. Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

#### Background

Passengers from visa waiver countries, traveling under the Visa Waiver Program (VWP) by air or sea, are required to receive a travel authorization through the Electronic System for Travel Authorization (ESTA) application prior to travel to the United States. ESTA is a web-based application and screening system used to determine whether certain aliens are eligible to travel to the United States under the VWP in the air and sea environments. Passengers who are not eligible to travel to the State under VWP may apply for a visa to travel to the United States through the Department of State.

ESTA was provided for by Section 711 of The Secure Travel and Counterterrorism Partnership Act of 2007 (part of the Implementing Recommendations of the 9/11 Commission Act of 2007, also known as the "9/11 Act," Public Law 110-53) which requires that the Secretary of Homeland Security, in consultation with the Secretary of State, develop and implement an electronic system which shall collect such biographical and other information as the Secretary of Homeland Security determines necessary to determine, in advance of travel, the eligibility of the alien to travel to the United States and whether such travel poses a law enforcement or security risk.

U.S. Customs and Border Protection (CBP) Forms I-94 (Arrival/Departure Record) and I-94W (Nonimmigrant Visa Waiver Arrival/Departure Record) are included in the manifest requirements imposed by Sections 231 and 235 of the Immigration and Nationality Act, and are required to be prepared by aliens while en route to the United States and presented upon arrival at a sea or air port of entry within the United States. Under the Act, it is the duty of the master or commanding officer, or authorized agent, owner, or consignee of the vessel or aircraft, having any alien on board, to deliver lists or manifests of the persons on board such vessel or aircraft to CBP officers at the port of arrival. However, CBP

now gathers I-94 data from existing automated sources such as the Advance Passenger Information System (APIS) in lieu of requiring passengers arriving by air or sea to submit a paper I-94 upon arrival. The paper I-94 is still required from travelers entering the United States at a land border. Passengers can access and print their electronic I-94 record via the website [www.cbp.gov/I94](http://www.cbp.gov/I94).

Aliens traveling under the VWP are required to present a completed and signed Nonimmigrant Visa Waiver Arrival Departure Form I-94W as a condition of admission pursuant to 8 C.F.R. § 217.2(b)(1). However, so long as these aliens are traveling in the air or sea environment and have a travel authorization obtained through ESTA, they may forgo completing the paper Form I-94W. ESTA is not required for VWP travelers at land border crossings, though it should be noted that the overwhelming majority of VWP travelers (approximately 99 percent) arrive in the United States in the air environment.

### Recent and Proposed Changes

On December 18, 2015, the President signed into law the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 (“the Act”) as part of the Consolidated Appropriations Act of 2016. To meet the requirements of this new act, the Department of Homeland Security (DHS or the Department) is strengthening the security of the VWP through enhancements to the ESTA application and to the Nonimmigrant Visa Waiver Arrival/Departure Record (Form I-94W) form. Many of the provisions of the new law became effective on the date of enactment of the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015. The Act generally makes certain nationals of VWP countries ineligible (with some exceptions) from traveling to the United States under the VWP if the applicant is also a national of or has at any time on or after March 1, 2011 been present in Iraq, Syria, a designated state sponsor of terrorism (currently Iran, Sudan, and Syria),<sup>1</sup> or any other country or area of concern as designated by the Secretary of Homeland Security (currently Yemen, Libya and Somalia).<sup>2</sup>

To assist DHS in meeting the requirements of this Act and to determine whether prospective VWP travelers are ineligible to travel under the program, DHS used the emergency Paperwork Reduction Act (PRA) process to add new data elements to the ESTA application and to Form I-94W. Passengers from visa waiver countries, traveling under the VWP by air or sea, are required to receive a

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<sup>1</sup> Countries determined by the Secretary of State to have repeatedly provided support for acts of international terrorism are generally designated pursuant to three laws: section 6(j) of the Export Administration Act of 1979 (50 U.S.C. 2405); section 40 of the Arms Export Control Act (22 U.S.C. 2780); and section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

<sup>2</sup> The Act establishes exceptions to the bar for travel to Iraq, Syria, Iran, and Sudan since March 1, 2011 for individuals determined by the Secretary of Homeland Security to have been present in one or more of these countries “(i) in order to perform military service in the armed forces of a [VWP] program country; or (ii) in order to carry out official duties as a full time employee of the government of a [VWP] program country.” 8 U.S.C. 1187(a)(12)(B).

travel authorization through the ESTA application prior to travel to the United States. DHS determined that the addition of these new data elements improves the Department's ability to screen prospective VWP travelers while more accurately and effectively identifying those who pose a security risk to the United States and facilitates adjudication of ESTA applications.

The following data elements are new questions that were approved in two recent emergency PRA submissions and have been added to the ESTA application. Some of these questions are also on Form I-94W:

Have you traveled to, or been present in, Iraq, Syria, Iran, Sudan, Yemen, Libya or Somalia on or after March 1, 2011?	Mandatory (for each instance of travel or presence.)
Which country?	Conditional (Only seen if the answer to the travel question is affirmative; in which case, this question is mandatory.)
What dates?	Conditional (Only seen if the answer to the travel question is affirmative; in which case, this question is mandatory.)
<p>If yes, what was the primary reason for the visit?</p> <ul style="list-style-type: none"> <li>• To travel as a tourist (vacation)</li> <li>• For personal travel or a family visit (including emergencies)</li> <li>• For commercial/business purposes</li> <li>• To carry out official duties as a full-time employee of the government of a Visa Waiver Program country</li> <li>• To carry out official duties on behalf of a sub-national government or body of a VWP country</li> <li>• To perform military service in the armed forces of a Visa Waiver Program country</li> <li>• To conduct work as a journalist</li> <li>• To engage in humanitarian assistance on behalf of a humanitarian or international non-governmental organization</li> <li>• To carry out official duties on behalf of an international organization or regional (multilateral or inter-governmental) organization</li> <li>• To attend an academic institution</li> <li>• To participate in a professional exchange or conference</li> <li>• To participate in a cultural exchange program</li> <li>• Other</li> </ul>	Conditional (Only seen if the answer to the travel question is affirmative; in which case, this question is mandatory.)
Have you ever been issued a passport (or national identity card for travel) by any other country?	Mandatory
If yes, which country?	Conditional (Only seen if the answer to the passport/ID Card question is affirmative; in which case, this question is mandatory.)

<p>If yes, most recent passport or national identity card's year of expiration?</p>	<p>Conditional (Only seen if the answer to the passport/ID Card question is affirmative; in which case, this question is mandatory. The applicant may enter "unknown".)</p>
<p>If yes, most recent passport/national identity card number, country of issuance and expiration year?</p>	<p>Conditional (Only seen if the answer to the passport question is affirmative; in which case, this question is mandatory.)</p>
<p>Are you now a citizen or national of any other country?</p>	<p>Mandatory (Existing "current citizenship" question, but modified to require response to the next two questions)</p>
<p>If yes, other countries of current citizenship or nationality?</p>	<p>Conditional (Only seen if the answer to the citizenship question is affirmative; in which case, this question is mandatory.)</p>
<p>If yes, how did you acquire citizenship/nationality from this country?</p> <ul style="list-style-type: none"> <li>• By Birth</li> <li>• Through Parents</li> <li>• Naturalized</li> <li>• Other</li> </ul>	<p>Conditional (Only seen if the answer to the citizenship question is affirmative; in which case, this question is mandatory.)</p>
<p>Have you ever been a citizen or national of any other country?</p>	<p>Mandatory</p>
<p>If yes, other countries of previous citizenship or nationality?</p>	<p>Conditional (Only seen if the answer to the prior question is affirmative; in which case, this question is mandatory.)</p>
<p>You have indicated that you are not a citizen or national of your country of birth. From the list below, please select ALL statements that apply with respect to your country of birth:</p> <ul style="list-style-type: none"> <li>• Did not acquire citizenship at birth or have never held citizenship in birth country</li> <li>• Renounced citizenship of birth country</li> <li>• Have not lived or resided in birth country within the past five years</li> <li>• Have not held a passport or national identity card from birth country within the past five years</li> <li>• Other</li> </ul>	<p>Conditional (Only seen by applicants who identify Iraq, Syria, Iran, or Sudan as their Country of Birth on ESTA, but who do not also identify that country under "Other countries of current citizenship"; in which case, the question is mandatory.)</p>
<p>If the applicant answers Yes to "presence in" question, identifies Iran as country, selects "For business purposes" as reason, and identifies a date of travel on or after July 14, 2015:</p> <ul style="list-style-type: none"> <li>• Please identify the company or entity on behalf of which you traveled to Iran for business purposes. [Write-in field]</li> </ul>	<p>Conditional (Only seen if the applicant answered that affirmative to travel to Iran for business after</p>

<ul style="list-style-type: none"> <li>• What was your official position/title with the company or business entity identified?</li> <li>• If different than your current employer, please provide contact information for the company or business entity identified, including primary address and telephone number.</li> <li>• Please provide your Iranian Business Visa Number</li> <li>• Please list all companies and entities in Iran with which you had business dealings.</li> </ul>	<p>July 2015; in which case, the question is mandatory. The applicant can answer “unknown.”)</p>
<p>If the applicant answers Yes to “presence in” question, identifies Iraq as country, and selects “For business purposes” as reason:</p> <ul style="list-style-type: none"> <li>• Please identify the company or entity on behalf of which you traveled to Iraq for business purposes.</li> <li>• What was your official position/title with the company or business entity identified?</li> <li>• If different than your current employer, please provide contact information for the company or business entity identified, including primary address and telephone number.</li> <li>• Please provide your Iraqi Business Visa Number</li> <li>• Please list all companies and entities in Iraq with which you had business dealings.</li> </ul>	<p>Conditional (Only seen if the applicant answered that affirmative to travel to Iraq for business; in which case, the question is mandatory. The applicant can answer “unknown.”)</p>
<p>If the applicant answers Yes to “presence in” question and selects “Humanitarian” as reason:</p> <ul style="list-style-type: none"> <li>• Please identify the organization or entity on behalf of which you traveled to Iraq, Syria, Iran, Sudan, Yemen, Libya or Somalia for humanitarian purposes.</li> <li>• Does your organization or entity have consultative status with the United Nations Economic and Social Council?</li> <li>• What was your official position/title with the organization or entity identified?</li> <li>• If different than your current employer, please provide contact information for the organization or entity identified, including primary address and telephone number</li> <li>• Please provide your Iraqi, Syrian, Iranian, Sudanese, Yemeni, Libyan, or Somali Visa Number related to your humanitarian travel.</li> <li>• If your organization or entity has been a recipient of U.S. government funding for humanitarian assistance within the last five years, please provide the most recent grant number.</li> <li>• Please provide us information about the type of work you were doing in country during this time</li> <li>• Please include any information you are willing to share about other NGOs or international, national or state agencies with which you worked.</li> <li>• Any additional comments.</li> </ul>	<p>Conditional (Only seen if the applicant answered affirmative to travel question for humanitarian purposes; in which case, the question is mandatory. The applicant can answer “unknown.”)</p>
<p>If the applicant answers Yes to “presence in” question and selects “International or Regional” or “Sub-National” as reason:</p> <ul style="list-style-type: none"> <li>• Please identify the international (multilateral or intergovernmental) organization or regional (multilateral or intergovernmental) organization, on behalf of which you</li> </ul>	<p>Conditional (Only seen if the applicant answered affirmative to travel question for</p>

<p>traveled to Iraq, Syria, Iran, Sudan, Yemen, Libya or Somalia</p> <ul style="list-style-type: none"> <li>• Please identify the sub-national government or body of a VWP country on behalf of which you traveled to Iraq, Syria, Iran, Sudan, Yemen, Libya or Somalia.</li> <li>• What was your official position/title with the organization or government identified?</li> <li>• Please provide your Iraqi, Syrian, Iranian, Sudanese, Yemeni, Libyan or Somali Visa Number related to your official travel on behalf of an international or regional organization, or subnational government. [Write-in field]</li> <li>• Have you ever been issued a G-Visa or A-Visa by a United States Embassy or Consulate</li> <li>• If “Yes”, please provide your G-Visa or A-Visa number, if known</li> <li>• Have you ever been issued a United Nations Laissez- Passer</li> <li>• If “Yes,” please provide your Laissez-Passer number</li> </ul>	<p>international/regional/sub-national government; in which case, the question is mandatory. The applicant can answer “unknown.”)</p>
<p>If the applicant answers Yes to “presence in” question and selects “Journalism” as reason:</p> <ul style="list-style-type: none"> <li>• Please identify the company, entity, or organization on behalf of which you traveled to Iraq, Syria, Iran, Sudan, Yemen, Libya or Somalia to engage in journalism.</li> <li>• What is your official position with the company, entity, or organization identified?</li> <li>• Have you ever been issued an I-visa by a United States Embassy or Consulate?</li> <li>• If Yes- please provide your I-visa number, if known.</li> </ul>	<p>Conditional (Only seen if the applicant answered affirmative to travel question for journalism; in which case, the question is mandatory. The applicant can answer “unknown.”)</p>
<p>Are you a member of CBP Global Entry Program?</p>	<p>Mandatory</p>
<p>If Yes, Please provide your GE member number</p>	<p>Conditional (Optional. The answer can be left blank.)</p>

DHS also proposes to add an optional data field to the ESTA application and Form I94W to request social media identifiers to be used for vetting purposes, as well as applicant contact information in some cases. Social media questions/fields are optional. Many individuals now use social media accounts as legitimate forms of communication to the same extent, or in place of, phone, e-mail, text messaging, etc. Having an applicant’s social media identifier(s) will provide an additional means by which DHS can contact an applicant if needed. Should an individual choose to provide his/her social media identifier(s) and if the application is flagged through automated vetting against government holdings, DHS may use social media information during manual review. Information found in said social media will enhance the vetting process and be used to review ESTA applications to validate legitimate travel, adjudicate Visa Waiver Program ineligibility waivers, and identify potential threats. Said social media may help distinguish individuals of additional concern from those individuals whose information substantiates their eligibility for travel. DHS will not consider an applicant’s political views, race, ethnicity, religion, or sexual orientation; will not engage or interact with individuals on or through social media; will not violate individual privacy settings; and will not use social media beyond mission-specific

reviewed and approved by the CBP Office of Chief Counsel, documented by the CBP Privacy and Diversity Office, and approved by the DHS Privacy Office. This use is consistent with the use of other selectors provided on the ESTA form, and this disclaimer for vetting purposes against security and law enforcement databases is provided on the ESTA application. Adding an optional request for an ESTA applicant's social media identifier(s) will provide DHS with greater screening opportunities to inform determination of eligibility for travel to the United States under the VWP.

**2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

Information on the ESTA application helps DHS determine whether an alien is eligible to travel to the United States under the VWP. The data elements and questions included in the ESTA application help gather information necessary to ensure that someone does not need to pursue a visa through the Department of State instead of being able to travel under this program.

DHS was mandated by Congress to undertake additional national security measures by increasing the amount of information available regarding VWP travelers before such travelers embark on a carrier destined for the United States. As the rationale for mandating the implementation of ESTA, Congress noted that VWP travelers are not subject to the same degree of screening as those travelers who must first obtain a visa before departing for the United States. Therefore, the data collected via ESTA is to enhance the security of the VWP.

The data collected on CBP Forms I-94/I-94W and on the ESTA application provide information required to support DHS mission requirements as they relate to the screening of alien visitors to the United States. Specifically, the information collected is used to assess potential law enforcement and national security risks, and the timely and accurate capture of data that enables matching of alien arrival and departure records that are necessary to monitor alien compliance with U.S. law.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.**

Forms I-94 and I-94W are paper documents prepared by most aliens traveling to the United States (though now most travelers will forgo completing these forms

on conveyances). Information about these forms can be found at: <http://www.cbp.gov/travel/international-visitors/i-94-instructions/i94-rollout> and <http://www.cbp.gov/travel/international-visitors/visa-waiver-program>

ESTA is a web-based system that enables DHS to determine whether the individual is eligible to travel to the United States under the VWP. ESTA can be accessed at: <https://esta.cbp.dhs.gov>. Samples of Forms I-94 and I-94W can be found at: <http://www.cbp.gov/document/forms/form-i-94-arrivaldeparture-record> and <http://www.cbp.gov/document/forms/form-i-94w-visa-waiver-arrivaldeparture-record>.

CBP captures Form I-94 data for passengers arriving by air or sea from APIS in lieu of passengers submitting a paper Form I-94. Passengers can access and print their electronic Form I-94 via [www.cbp.gov/i94](http://www.cbp.gov/i94). This supplements the existing process whereby passengers who want a copy of their Form I-94 would need to file a Form I-102. Passengers may still file a Form I-102 for this purpose if desired.

#### Enhanced Form I-94 Land Border Process

In addition to the automation of the Form I-94 at air and sea ports of entry, on September 29, 2016, CBP modified the process by which a traveler arriving at the land border can provide Form I-94 information and pay the related fee by adding an electronic option. Specifically, CBP enhanced the I-94 website to enable travelers arriving at a land port of entry to submit the Form I-94 information to CBP and pay the required fee prior to arrival. CBP expects that these enhancements will result in time savings for travelers who choose this option.

Before September 29, 2016, when a traveler requiring a Form I-94 arrived at the land border, he/she provided the I-94 information to a CBP officer who inputted the data into a CBP computer system. After determining the traveler's admissibility, the CBP officer printed a Form I-94 for the traveler and referred him/her to the cashier to pay the \$6 fee.

Under the new process, a traveler who requires an I-94 and intends to enter the United States at a land port of entry will have the option to either follow the above process or to apply for an I-94 and pay the \$6 fee up to seven days in advance of arrival. Using the I-94 website, the traveler enters all of the necessary data for I-94 processing that would be collected by CBP at the port of entry. Upon paying the fee, the traveler will receive a "provisional I-94". This "provisional I-94" will become effective after the traveler presents it to a CBP officer at a land port of entry and completes the issuance process with a CBP officer. If the "provisional I-94" is not processed within 7 days of submitting the application, it will expire and the fee will be forfeited.

The I-94 website will instruct the traveler to appear at the land port of entry for an interview and biometric collection. When the traveler arrives at the port of entry, he/she completes the issuance process with a CBP officer. The CBP officer will locate the traveler's information by swiping the traveler's passport or other travel document in CBP's database. This will verify that the fee was paid and pre-populate the data fields from the document swipe and the information provided by the traveler in the website. If the CBP officer determines that the traveler is admissible, the CBP officer will print out a Form I-94 to give to the traveler.

**4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

This information is not duplicated in any other place or any other form.

**5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

This information collection does not have an impact on small businesses or other small entities.

**6. Describe consequences to Federal program or policy activities if the collection is not conducted or is conducted less frequently.**

The new elements enhance the information previously collected from travelers and allow DHS to better identify those who may seek to exploit the VWP to do harm to the United States. Extensive research by DHS and our interagency partners has determined that these additional data elements will increase the ability to stop these travelers before they attempt to travel to the United States.

**7. Explain any special circumstances.**

This information is collected in a manner consistent with the guidelines of 5 CFR 1320.6.

**8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

Public comments were solicited through two Federal Register notices including a 60-day notice published on June 23, 2016 (Volume 81, Page 40892) on which

793 comments were received and a 30-day notice published on August 31, 2016 (Volume 81, Page 60014) on which 3198 comments were received.

1. Comment: How will DHS define “online presence” and “social media”?

Submitted by: David Kaye (UN Special Rapporteur), Center for Democracy and Technology, Internet Association, ACLU et al, Ken Wasch (Software & Information Industry Association), Electronic Frontier Foundation, Brennan Center for Justice at NYU School of Law, and 6 additional people

Overview of Comment: The public expressed concern about how DHS will define “online presence” and “social media.” Is it limited to Facebook, LinkedIn, or Twitter? Will it also include Amazon, email, texting accounts, online banking, eBay, blogs, newspapers, iTunes, etc., where comments or reviews are posted?

**CBP response:** A social media identifier is any name, or “handle”, used by the individual on one or more of a variety of platforms. The optional social media question on the Electronic System for Travel Authorization (ESTA) application will include a drop down menu of options for selection that lists the following platforms: ASKfm, Facebook, Flickr, GitHub, Google+, Instagram, JustPaste.it, LinkedIn, Tumblr, Twitter, Vine, VKontakte (VK), and YouTube. It will also include the option for the applicant to specify a platform not otherwise on the drop down menu. Applicants are able to volunteer up to 10 identifiers.

2. Comment: Retention, use, and storage

Submitted by: David Kaye (UN Special Rapporteur), Jose Magana-Salgado (Immigrant Legal Resource Center), Ken Wasch (Software & Information Industry Association), Electronic Frontier Foundation, Jeramie Scott (Electronic Privacy Information Center), and 10 additional people

Overview of comment: The public expressed concern on how the data will be retained, used, and stored.

**CBP Response:** DHS will retain, use, and store the new information in the same manner as other information collected through Electronic System for Travel Authorization (ESTA) and has documented these procedures in the newly-updated ESTA System of Records Notice (SORN) and Privacy Impact Assessment (PIA), available on the DHS website ([www.dhs.gov/privacy](http://www.dhs.gov/privacy)). If an applicant chooses to answer the optional social media question and an initial vetting by CBP indicates possible information of concern or a need to further validate information, a highly trained CBP officer will have timely visibility of the publicly available information on the platforms associated with the social media identifier(s) voluntarily provided by the applicant, along with other information and tools CBP officers regularly use in the performance of their duties. The officers will review the platforms in a manner consistent with the privacy settings the

applicant has chosen to adopt for those platforms. Information found in said social media will enhance the vetting process and be used to review ESTA applications to validate legitimate travel, adjudicate Visa Waiver Program ineligibility waivers, and identify potential threats. For example, said social media may be used to support or corroborate a traveler's application information, which will help facilitate legitimate travel by providing an additional means to adjudicate issues related to relevant questions about identity, occupation, previous travel, and other factors. It may also be used to identify potential deception or fraud. Said social media may help distinguish individuals of additional concern from those individuals whose information substantiates their eligibility for travel.

3. Comment: The proposed collection of social media identifiers will negatively impact applicants who fail to provide, do not possess, or are untruthful or inaccurate about their social media identifiers

Submitted by: Jose Magana-Salgado (Immigrant Legal Resource Center), Ken Wasch (Software & Information Industry Association), Electronic Frontier Foundation, Center for Democracy & Technology, World Privacy Forum, and 32 additional people

Overview of Comment: The public expressed concern that many individuals will fail to provide or simply do not possess accounts, or will be untruthful in the accounts they provide in regards to their social media identifiers. Companies have found that offline representations of account ownership are ripe with typographical errors and/or fraud.

**CBP response:** CBP has a layered approach to security and any social media identifiers collected via the Electronic System for Travel Authorization (ESTA) application would be only one component. While there may be the potential for an applicant to provide false or inaccurate information, CBP verifies identity through a variety of mechanisms. If an applicant chooses not to answer the optional question regarding social media, the ESTA application can still be submitted without a negative interpretation or inference. No ESTA application is guaranteed approval, and applications can be denied for a variety of reasons.

4. Comment: Declination to answer the optional question may result in denial of application

Submitted by: David Kaye (UN Special Rapporteur), Center for Democracy and Technology, Ken Wasch (Software & Information Industry Association), Jeramie Scott (Electronic Privacy Information Center), and 2104 additional people

Overview of Comment: The public expressed concern that declining to answer the optional social media question will result in the denial of an Electronic System for Travel Authorization (ESTA) application or a visa application.

**CBP Response:** Not answering the optional question will not result in an automatic denial. CBP is aware that some individuals simply may not have social media accounts or may choose not to provide them. Providing this information is voluntary. If an applicant chooses not to answer the optional question regarding social media, the ESTA application can still be submitted without a negative interpretation or inference. No ESTA application is guaranteed approval, and applications can be denied for a variety of reasons. The ESTA application will clearly mark the social media question as optional.

Comments about visa applications, as distinct from ESTA applications, were deemed outside the scope of the Information Collection Request, as visa applications are a responsibility of the Department of State.

5. Comment: People not in possession of any social media accounts or “handles”

Submitted by: Peter Kjeldsen, Jeramie Scott (Electronic Privacy Information Center), and 8 additional people

Overview of Comment: The public expressed concern that people who are not in possession of social media accounts or “handles” will be singled out for special attention for not answering the question.

**CBP response:** CBP is aware that some individuals simply may not have social media accounts or may choose not to provide them. If an applicant does not answer the optional question or simply does not hold such an account, the Electronic System for Travel Authorization (ESTA) application can still be submitted. If an applicant chooses not to answer the optional question regarding social media, the ESTA application can still be submitted without a negative interpretation or inference. No ESTA application is guaranteed approval, and applications can be denied for a variety of reasons.

6. Comment: Changing the question from optional to mandatory

Submitted by: Center for Democracy and Technology, Electronic Frontier Foundation, Jose Magana-Salgado (Immigrant Legal Resource Center), Brennan Center for Justice at NYU School of Law, and 14 additional people

Overview of comment: The public expressed concern that DHS will eventually change the question from an optional field to mandatory. The public may feel compelled to respond even if the information is optional.

**CBP Response:** The proposed collection is voluntary, as some people may not have a social media account or may choose not to provide this information. The Electronic System for Travel Authorization (ESTA) application will clearly mark the social media question as optional. As this collection is governed by the

Paperwork Reduction Act, a proposal to change the question from optional to mandatory would first go through a public notice and comment process – ensuring transparency and allowing the public the opportunity to be heard as part of the decision-making process.

7. Comment: Invasion of privacy in case law

Submitted by: Immigrant Legal Resource Center and 3 additional people

Overview of Comment: The public has expressed concerns that courts have consistently ruled that acts of government, even when they do not have a direct prohibition on speech, are unconstitutional.

**CBP response:** Federal laws, including the Immigration and Nationality Act (INA) and Homeland Security Act of 2002, provide authority for this information collection. For example, section 217 of the INA, 8 U.S.C. § 1187, and 8 CFR 217.5 authorize CBP to collect data elements in conjunction with an Electronic System for Travel Authorization (ESTA) and Form I-94W applications. These authorities apply to the collection of social media identifiers.

To the extent this comment suggests that the proposed collection may implicate the right to free speech, the United States respects every individual's right to maintain an opinion without interference and to seek, receive, and impart information and ideas of all kinds. The proposal is entirely consistent with this commitment. Providing social media identifiers is optional, and only that information which the account holder has allowed to be shared publicly will be viewable by the CBP officer. The collection of social media identifiers and subsequent review of publicly available social media information will not be used to prevent travel based on an applicant's political views, race, ethnicity, religion, or sexual orientation. These factors are not relevant in determining eligibility to travel under the Visa Waiver Program. DHS will handle voluntarily-provided social media identifiers in the same manner as other information collected through ESTA and has documented these procedures in the newly-updated ESTA System of Records Notice (SORN) and Privacy Impact Assessment (PIA), available on the DHS website ([www.dhs.gov/privacy](http://www.dhs.gov/privacy)).

8. Comment: Invasion of privacy

Submitted by: David Kaye (UN Special Rapporteur), ACLU et al, Electronic Frontier Foundation, Center for Democracy & Technology, Ken Wasch (Software & Information Industry Association), Brennan Center for Justice at NYU School of Law, Jeramie Scott (Electronic Privacy Information Center), Nathan White (Access Now), and 2441 additional people

Overview of comment: The government has no authority to collect online identities via social media platforms and accessing this information is an invasion of privacy, resulting in the excessive use of government authority.

**CBP response:** Federal laws, including the Immigration and Nationality Act (INA) and Homeland Security Act of 2002, provide authority for this information collection. For example, section 217 of the INA, 8 U.S.C. § 1187, and 8 CFR 217.5 authorize CBP to collect data elements in conjunction with an Electronic System for Travel Authorization (ESTA) or Form I-94W application. In addition to checking against government information, CBP officers may use sources of publicly available information, including social media information, as part of the existing vetting process to screen the information submitted. If an applicant chooses to answer the social media identifier question and an initial screening by CBP indicates possible information of concern or a need to further validate information, a highly trained CBP officer will have timely visibility of the publicly available information on the platforms associated with the social media identifier(s) voluntarily provided by the applicant, along with other information and tools CBP officers regularly use in the performance of their duties. The officer will review said platforms in a manner consistent with the privacy settings the applicant has chosen to adopt for those platforms. The information from said social media is not the only information CBP may use to make a decision. The ESTA and I-94W applications instruct applicants that the social media identifier question is optional. If an applicant chooses not to answer the optional question regarding social media, the ESTA application can still be submitted without a negative interpretation or inference. No ESTA application is guaranteed approval, and applications can be denied for a variety of reasons. In either case, CBP will neither ask for nor collect applicant password information.

#### 9. Comment: Access to information collected

Submitted by: William Colwell 3<sup>rd</sup> and 6 additional people

Overview of Comment: Since the government is regularly augmenting its security practice with private contractors, this information will also be available to those contractors, who may attempt to monetize information on private citizens as well, without explicit consent.

**CBP response:** CBP contractors, as is the case with CBP officers, with access to Personally Identifiable Information (PII) are required to sign nondisclosure agreements, Privacy Act Agreements, and other legally-binding documents that safeguard applicants' information. For CBP to grant a contractor access to sensitive information or law enforcement databases, the contractor must have job duties that justify this access and complete annual training and certification in the privacy rules and procedures that govern the use of these systems. CBP contractors must also pass rigorous background investigations and be found suitable to hold a Public Trust position.

10. Comment: Privacy settings on social media

Submitted by: David Kaye (UN Special Rapporteur), Software & Information Industry Association, Electronic Frontier Foundation, Brennan Center for Justice at NYU School, Jeramie Scott (Electronic Privacy Information Center), and 16 additional people

Overview of Comment: The public expressed concerns that there are numerous social media platforms with varying degrees of privacy settings and accessing such information would force the hosting provider to violate these settings.

**CBP Response:** If an applicant chooses to answer this question, DHS will have timely visibility only of the publicly available information on the platforms associated with the voluntarily-provided social media identifier(s). The officer will review these platforms in a manner consistent with the privacy settings the applicant has chosen to adopt for those platforms. In addition, the hosting provider will not be asked to violate any privacy settings or policies. The DHS Privacy Office will initiate a Privacy Compliance Review (PCR) of the CBP collection and use of social media information for ESTA applicant vetting six months after CBP begins collecting social media information.

11. Comment: Increases the risk of identity theft and vulnerability to “hacking” one’s personal information

Submitted by: Rebecca Janzen, Jeramie Scott (Electronic Privacy Information Center), and 2103 additional people

Overview of Comment: The public expressed concerns stating that collecting social media identifiers is an unnecessary invasion of privacy and may increase the risk of identity theft and vulnerability to “hacking” one’s personal information.

**CBP Response:** DHS takes the protection and security of all Personally Identifiable Information (PII) very seriously and strictly adheres to Federal privacy laws and guidance and Departmental policies and procedures for protecting PII. CBP takes precautions to maintain the security, confidentiality, and integrity of the information collected. Safeguards include access controls that limit access of the information to only authorized users. These safeguards employ advanced security technologies to protect the information stored on our systems from unauthorized access. The data collected under the Electronic System for Travel Authorization (ESTA) will be safeguarded and stored in accordance with the newly-updated ESTA System of Records Notice (SORN), see 81 FR 60713 (Sept. 2, 2016), which describes CBP collection of social media information.

12. Comment: The social media data violates freedom of speech/expression

Submitted by: David Kaye (UN Special Rapporteur), Electronic Frontier Foundation, World Privacy Forum, Center for Democracy & Technology, Brennan Center for Justice at NYU School of Law, Nathan White (Access Now), Jeramie Scott (Electronic Privacy Information Center), and 2148 additional people

Overview: The public has expressed concern that the inclusion of the optional social media question will violate their freedom of speech/expression and may express biases towards individuals who hold different opinions than the majority of the population.

**CBP Response:** The United States respects every individual's right to maintain an opinion without interference and to seek, receive, and impart information and ideas of all kinds. The proposal is consistent with this commitment. Providing social media identifiers is optional, and only that information which the account holder has allowed to be shared publicly will be viewable by the CBP officer. The collection of social media identifiers and subsequent review of publicly available social media information will not be used to prevent travel based on an applicant's political views, race, ethnicity, religion, or sexual orientation. These factors are not relevant in determining eligibility to travel under the Visa Waiver Program. DHS will handle voluntarily- provided social media identifiers in the same manner as other information collected through the Electronic System for Travel Authorization (ESTA) and has documented these procedures in the newly-updated ESTA System of Records Notice (SORN) and Privacy Impact Assessment (PIA), available on the DHS website ([www.dhs.gov/privacy](http://www.dhs.gov/privacy)).

To ensure compliance with these policies, CBP officers must complete annual training and certification in privacy rules and procedures; all manual denials of ESTA applications require supervisory review and approval before adjudication; and CBP conducts a quarterly review of denials which could identify any practices inconsistent with CBP's privacy, civil rights, and civil liberties policies. The DHS Privacy Office will initiate a Privacy Compliance Review (PCR) of the CBP collection and use of social media information for ESTA applicant vetting six months after CBP begins collecting social media information.

13. Comment: The Fourth Amendment should apply and unreasonable search and seizures should not be acceptable. Others have further stated a signed warrant must apply.

Submitted by: Electronic Frontier Foundation and 364 additional people

Overview: The public has expressed concern that the Fourth Amendment should apply and probable cause is needed. Others have further stated a signed warrant must apply in order for CBP to obtain the social media information from applicants.

**CBP Response:** U.S. Customs and Border Protection (CBP) has authority derived from federal statutes and regulations, including section 217 of the Immigration and Nationality Act (INA), 8 U.S.C. § 1187, and 8 CFR 217.5, to collect information from prospective VWP travelers in advance of travel. This authority is consistent with Supreme Court rulings related to Fourth Amendment protections to the extent such protections are applicable in this context. CBP personnel will only review publicly available social media information, and as the Supreme Court has explained, “What a person knowingly exposes to the public . . . is not a subject of Fourth Amendment protection.” Katz v. United States, 389 U.S. 347, 351 (1967); see also, e.g., Palmieri v. United States, 72 F. Supp. 3d 191, 210 (D.D.C. 2014); United States v. Meregildo, 883 F. Supp. 2d 523, 525 (S.D.N.Y. 2012).

14. Comment: Cost of implementing question

Submitted by: Center for Democracy and Technology, ACLU et al, Internet Association, Brennan Center for Justice at NYU School of Law, and 57 additional people

Overview of comment: The public expressed concerns on the excessive amount it would cost the United States to implement this question.

**CBP response:** CBP has taken into account the costs involved in collecting this information and has found it reasonable and justified given the security benefits from this collection. CBP estimates that it will need to hire an additional 15 full time employees as a result of all the additional Electronic System for Travel Authorization (ESTA) questions, including the social media question. CBP believes that the security benefits generated by adding this question exceed the costs and notes that the cost will be covered by user fees. There is no change in the monetary cost to the public – the fee is remaining unchanged.

15. Comment: The proposed collection of social media identifiers will be ineffective for its stated purpose and will gather no useful data

Submitted by: David Kaye (UN Special Rapporteur), ACLU, Internet Association, Electronic Frontier Foundation, Ken Wasch (Software & Information Industry Association), World Privacy Forum, Center for Democracy & Technology, Brennan Center for Justice at NYU School of Law, Nathan White (Access Now), and 101 additional people

Overview of comment: The public expressed concern that the proposed collection of social media identifiers will be ineffective for its stated purpose, will gather no useful data, and is unlikely to be a helpful tool for finding any nefarious activity.

**CBP response:** As stated by Secretary of Homeland Security Jeh Johnson, “Social media can provide the Department with critical information related to the execution of our mission.” Social media is a prominent component of modern society, and DHS’s efforts to protect the homeland must evolve as society evolves. Given the nature of DHS’s mission, it is important for DHS to ask for and review this information. All information provided by the applicant on an Electronic System for Travel Authorization (ESTA) application may be used to vet the applicant. In addition to checking against government information, CBP officers may use sources of publicly available information, including social media information, as part of the *existing* vetting process to screen the information submitted. If an applicant chooses to answer this question and an initial vetting by CBP indicates possible information of concern or a need to further validate information, the collection of this information as part of the ESTA application will provide a highly trained CBP officer timely visibility of the publicly available information on the platforms associated with the social media identifier(s) voluntarily provided by the applicant, along with other information and tools CBP officers regularly use in the performance of their duties. The officer will review said platforms in a manner consistent with the privacy settings the applicant has chosen to adopt for those platforms. Social media may be used to support or corroborate a traveler’s application information, which will help facilitate legitimate travel by providing an additional means to adjudicate issues related to relevant questions about identity, occupation, previous travel, and other factors. It may also be used to identify potential deception or fraud. Further, it may help detect potential threats because experience has shown that criminals and terrorists, whether intentionally or not, have provided previously unavailable information via social media that identified their true intentions. Social media may therefore help distinguish individuals of additional concern from those individuals whose information substantiates their eligibility for travel.

16. Comment: The proposed collection of social media identifiers will subject U.S. citizen-travelers to retaliation and reciprocity rules

Submitted by: Internet Association, World Privacy Forum, Electronic Frontier Foundation, Center for Democracy & Technology, and 10 additional people

Overview of comment: The public expressed concern that implementing this optional question will subject U.S. citizen-travelers to retaliation from other Visa Waiver countries, such as additional rules and regulations to abide by prior to traveling to their countries

**CBP Response:** All sovereign countries have inherent authority to impose travel regulations and entry requirements. DHS does not dictate the rules and regulations of other countries. DHS has added additional fields to the Electronic System for Travel Authorization (ESTA) application over the last two years and has not seen other countries reciprocate in the questions that they ask of U.S. visitors.

17. Comment: Supportive comment

Submitted by: Bin Li and 17 additional people

Overview of Comment: The individuals expressed the opinion that implementation of the question is a good idea, and they do not see any issues with adding an additional data point to the ESTA process for individuals who wish to travel visa-free to the United States.

**CBP Response:** CBP appreciates the positive feedback and comments.

18. Comment: Potential to create unnecessary lists, exploit innocent people, and be invasive

Submitted by: Center for Democracy and Technology, ACLU et al, Brennan Center for Justice at NYU School of Law, Jeramie Scott (Electronic Privacy Information Center), and 2116 additional people

Overview of Comment: The public expressed concerns that a pool of data may be built and retained for additional screening uses. This pool may include United States citizen friends and family members of VWP travelers. Social media posts may be taken out of context. These factors may lead to unnecessary lists of 'persons of interest' that need to be vetted or are erroneously placed on watchlists.

**CBP response:** CBP only collects information relevant to the adjudication of the Electronic System for Travel Authorization (ESTA) application. DHS will handle voluntarily-provided social media identifiers in the same manner as other information collected through ESTA and has documented these procedures in the newly-updated ESTA System of Records Notice (SORN) and Privacy Impact Assessment (PIA), available on the DHS website ([www.dhs.gov/privacy](http://www.dhs.gov/privacy)). DHS will not use this information to create unnecessary lists of persons. Social media information is one data point for vetting travelers and is intended to complement other information, including other application data provided by applicants. Highly trained CBP personnel will review the publicly available social media information associated with the social media identifier(s) voluntarily provided by applicants and will be able to recognize factors such as context. CBP will make case-by-case determinations based on the totality of the circumstances.

19. Comment: The proposed collection of social media identifiers will make CBP officers biased

Submitted by: David Kaye (UN Special Rapporteur), Center for Democracy & Technology, Jose Magana-Salgado (Immigrant Legal Resource Center), Nathan

White (Access Now), Jeramie Scott (Electronic Privacy Information Center), and 2103 additional people

Overview of Comment: The public expressed concern that answering the question could result in bias on the part of CBP officers; such as if the officer finds that the person traveling works tirelessly to raise money for breast cancer research or the person could be penalized for their personal views on subjects like politics, race, religion, or sexual orientation.

**CBP Response:** DHS is steadfastly committed to the highest standards of conduct across the Department, especially when it comes to the fair, unbiased, and transparent enforcement of our laws. Consistent with DHS's mission to secure the Nation from threats and facilitate legitimate trade and travel, this collection of social media identifiers that have been voluntarily provided will not be used to prevent travel based on applicant's political views, race, ethnicity, religion, or sexual orientation. These factors are not relevant in determining eligibility to travel under the Visa Waiver Program. CBP trains its officers in the appropriate method for reviewing traveler data for Electronic System for Travel Authorization applicants.

20. Comment: Social media data gathering will result in the inappropriate targeting of certain populations to include, but not limited to, Muslims and/or Arabs.

Submitted by: Center for Democracy and Technology, ACLU et al., Center for Democracy & Technology, Jose Magana-Salgado (Immigrant Legal Resource Center), Ken Wasch (Software & Information Industry Association), Jeramie Scott (Electronic Privacy Information Center), and 3 additional people

**CBP Response:** DHS is steadfastly committed to the highest standards of conduct across the Department, especially when it comes to the fair, unbiased, and transparent enforcement of our laws. Consistent with DHS's mission to secure the Nation from threats and facilitate legitimate trade and travel, the collection of social media identifiers that have been voluntarily provided will not be used to prevent Visa Waiver Program travel based on the applicant's political views, race, ethnicity, religion, or sexual orientation. These factors are not relevant in determining eligibility to travel under the Visa Waiver Program. DHS will handle voluntarily-provided social media identifiers in the same manner as other information collected through ESTA and has documented these procedures in the newly-updated ESTA System of Records Notice (SORN) and Privacy Impact Assessment (PIA), available on the DHS website ([www.dhs.gov/privacy](http://www.dhs.gov/privacy)).

21. Comment: The proposed collection of social media identifiers will lead to a complete police state and excessive government oversight or are the actions of a military dictatorship or a totalitarianism state

Submitted by: Jeff Caslake and 47 additional people

Overview of comment: The public expressed concern this proposed collection of social media identifiers is a deliberate step towards a complete police state in this country and excessive government oversight.

**CBP Response:** DHS's proposal is respectful of individual privacy and strictly adheres to Federal privacy laws and guidance and Departmental privacy policies and procedures. The hosting provider will not be asked to violate any privacy settings or policies. Prior to the inclusion of an optional data field for social media identifiers on the Electronic System for Travel Authorization (ESTA) application, DHS has posted an updated Privacy Impact Assessment (PIA) and System of Record Notice (SORN) for ESTA on the DHS website ([www.dhs.gov/privacy](http://www.dhs.gov/privacy)) to provide notice and assess the privacy risks associated with enhancements to the ESTA application questionnaire, including the addition of an optional field for social media usernames or identifiers for all ESTA applicants. The SORN has also been published in the Federal Register, see 81 FR 60713 (Sept. 2, 2016). Moreover, it is important to note concerning this program that CBP only collects information relevant to the adjudication of the ESTA application.

To ensure compliance with these policies, CBP officers must complete annual training and certification in privacy rules and procedures; all manual denials of ESTA applications require supervisory review and approval before adjudication; and CBP conducts a quarterly review of denials which could identify any practices inconsistent with CBP's privacy, civil rights, and civil liberties policies. The DHS Privacy Office will initiate a Privacy Compliance Review (PCR) of the CBP collection and use of social media information for ESTA applicant vetting six months after CBP begins collecting social media information.

22. Comment: Impact on time needed to fill out the Electronic System for Travel Authorization (ESTA) application

Submitted by: Jose Magana-Salgado (Immigrant Legal Resource Center), World Privacy Forum, Immigrant Legal Resource Center, and 30 additional people

Overview of comment: The public expressed concern the addition of the optional social media question will increase the time to complete the current ESTA application, approximately an additional 23 minutes. One subject stated, "...we have a bureaucratic data collection idea that will be a waste of time and taxpayers' money."

**CBP response:** Adding the proposed social media question to the ESTA application and Form I-94W will have a negligible impact on the total time it takes a respondent to complete these applications. Twenty-three minutes is the total time CBP estimates for the completion of the entire ESTA application – not just

the proposed social media question. Together with the questions that were added to the ESTA application and to Form I-94W in two recent emergency submissions under the Paperwork Reduction Act (that request information from applicants about countries they have visited since March 1, 2011; countries of which they are citizens; countries for which they hold passports; and Global Entry Numbers), the proposed social media question will increase the total ESTA application and Form I-94W time burdens by an average of three minutes. With these new questions, the average time burden to complete the ESTA application will increase from 20 minutes to 23 minutes (an increase of 3 minutes) and the average time burden to complete the Form I-94W will increase from 13 minutes to 16 minutes (an increase of 3 minutes). There is no change in the monetary cost to the public – the fee is remaining unchanged.

23. Comment: Requiring written comment on this proposal, rather than electronic submission

Submitted by: Robert Peterson

Overview of comment: The subject stated, "...requiring written comment on this proposal, rather than providing for electronic submission of public comment, places a burden on interested members of the public...it is also ironic that public comment must be addressed in writing, to the Paperwork Reduction Act Officer."

**CBP response:** Public comments on this notice were accepted electronically through regulations.gov and by email to OMB.

24. Comment: Unsupportive, unrelated or insubstantial comments

Submitted by: Keeping Identities Safe, Jonathan Corbett, and 160 additional people

Overview of comments: The public submitted numerous responses that did not address the collection or were unsupportive of the proposal to add the optional social media question but did not provide substantial commentary.

**CBP Response:** Comments were deemed outside the scope of the Information Collection Request.

25. Comment: Increased intelligence gathering

Submitted by: David Kaye (UN Special Rapporteur), ACLU et al, Center for Democracy and Technology, Jose Magana-Salgado (Immigrant Legal Resource Center), Center for Democracy & Technology, Nathan White (Access Now), Jeramie Scott (Electronic Privacy Information Center), and 2 additional persons

Overview of comment: The collection of social media identifiers is essentially an expansion of intelligence gathering. As such, the information will be shared with other agencies.

**CBP Response:** Social media use has created a myriad of new opportunities for national security adversaries, including terrorists, to communicate, recruit, inspire lone wolf attacks, and plan operations. Experience has shown that criminals and terrorists, whether intentionally or not, have provided previously unavailable information via social media that identified their true intentions, to include support for terrorist organizations. The information accessed by highly trained CBP officers via the voluntarily-provided social media identifier(s) would supplement other available information, including other application data provided by the traveler and that identified in security and law enforcement databases. Said social media may be used to support or corroborate a traveler's application information, which will help facilitate legitimate travel by providing an additional means to adjudicate issues related to relevant questions about identity, occupation, previous travel, and other factors. It may also be used to identify potential deception or fraud. Said social media may help distinguish individuals of additional concern from those individuals whose information substantiates their eligibility for travel.

Social media identifiers voluntarily submitted by applicants through the Electronic System for Travel Authorization (ESTA) website will continue to be subject to the same strict privacy provisions including use limitations, and access controls that are currently in place for ESTA and that are consistent with the protections for similar traveler screening programs.

ESTA information may be shared within DHS where there is a need to know the information to carry out national security, law enforcement, immigration, or other homeland security functions and with other agencies pursuant to appropriate routine uses consistent with the Privacy Act and published in the ESTA SORN. This sharing is conducted pursuant to the ESTA System of Record Notice (SORN). Information sharing with agencies outside DHS will abide by existing memoranda of understanding between the agencies which detail retention and auditing requirements for use of DHS information and will be consistent with applicable statutory and regulatory requirements.

DHS takes the protection and security of all Personally Identifiable Information (PII) very seriously and strictly adheres to Federal privacy laws and guidance and Departmental policies and procedures for protecting PII. DHS sharing agreements also include safeguards to protect all ESTA PII provided to other Federal agencies, such as routine oversight and training regarding the appropriate use of personally identifiable information.

26. Comment: A computer system should not have the authority to detain or refuse entry to the United States for an individual.

Submitted by: David Kaye (UN Special Rapporteur), Nathan White (Access Now), and 8 additional people

Overview of comment: The public expressed concern that a computer system will be the main reason an applicant will be detained or refused, hence creating an unfair process for admission into the United States.

**CBP Response:** Determinations, related to social media, not to grant an Electronic System for Travel Authorization (ESTA) will be made by a trained CBP officer and not by a “computer system.” Highly trained CBP personnel may review publicly available social media information accessed via the social media identifier(s) voluntarily provided by applicants as additional data points to assist in its vetting of an ESTA application. Applicants will be independently reviewed, and a case-by-case determination will be made based on the totality of the circumstances.

27. Comment: Personal views or “friends” list may cause denial of entry into the United States

Submitted by: Electronic Frontier Foundation, Center for Democracy & Technology, Brennan Center for Justice at NYU School of Law, Jeramie Scott (Electronic Privacy Information Center), and 6 additional people

Overview of Comment: Individuals have expressed concern that their personal views or subjects on their “friends” list will be the ultimate reason why a subject is denied entry into the United States.

**CBP Response:** CBP trains its officers in the appropriate method for reviewing traveler data for Electronic System for Travel Authorization (ESTA) applicants. Information found in social media via the social media identifier(s) voluntarily provided by applicants will enhance the vetting process and be used to review ESTA applications to validate legitimate travel, adjudicate Visa Waiver Program ineligibility waivers, and identify potential threats. Social media information is one data point for vetting travelers and is intended to complement other information, including other data provided on the ESTA application. Applicants will be independently reviewed, and case-by-case determinations will be made based on the totality of the circumstances.

28. Comment: The question may be applied – either now or in the future – to United States persons returning to the United States

Submitted by: Electronic Frontier Foundation, Jeramie Scott (Electronic Privacy Information Center), and 9 additional people

Overview of Comment: The public expressed concern that the optional question will be required for United States citizens and lawful permanent residents, consequently will lose their freedom.

**CBP Response:** United States citizens and lawful permanent residents do not use the Electronic System for Travel Authorization (ESTA). ESTA is only required of nationals of Visa Waiver Program (VWP) member countries who wish to travel to the United States under the VWP.

29. Comment: Notification and appeal of denials

Submitted by: Jennifer Foster

Overview of comment: The public has asked when the notification will be sent to an applicant after a denial of an Electronic System for Travel Authorization (ESTA) application and how long the process for an appeal will take after the decision has been made.

**CBP Response:** An applicant is notified of how to check on the status of their application. There is no appeal of an ESTA denial, but that does not mean a person is prohibited from traveling to the United States. If a traveler wishes to travel to the United States and their ESTA was denied, they must apply for a nonimmigrant visa at a U.S. Embassy or Consulate.

30. Comment: Asking for passwords

Submitted by: J Crim and World Privacy Forum

Overview of comment: The public has expressed concern of asking for passwords along with their social media handles.

**CBP Response:** CBP will not ask for any password information and will not use it even if provided. If an applicant chooses to provide social media handles, CBP will only have visibility of publicly available information on those platforms. The hosting provider will not be asked to violate any privacy settings or policies.

31. Comment: Impact on wait time in screening and customs inspections upon travel

Submitted by: Patricia Greenough and 2 additional people

Overview of comment: The public has expressed concern that the addition of the question will cause delays in screening passengers upon travel.

**CBP Response:** The inclusion of the optional social media question will not increase wait times at the port of entry, as Electronic System for Travel Authorization (ESTA) applications are adjudicated *prior* to the applicant's travel.

32. Comment: Impact on airline or cruise personnel

Submitted by: Sherry Halbrook

Overview of comment: The public expressed concern that airline or cruise personnel's social media accounts will be subject to constant review as they travel regularly to the United States.

**CBP response:** The implementation of this optional question will only be for applicants applying for entry to the United States under the Visa Waiver Program. Airline and cruise personnel must have the proper nonimmigrant visa obtained from the Department of State to enter the United States (classified as a C1/D visa).

33. Comment: Role of U.S. Customs and Border Protection

Submitted by: Jeffrey Austin

Overview of comment: The public expressed the opinion that other agencies should be sifting through social media for bad actors and not CBP.

**CBP response:** CBP's role in reviewing social media information accessed via the social media identifier(s) voluntarily provided by applicants is appropriate given that CBP is responsible for determining the admissibility of individuals seeking to enter the United States at Ports of Entry and for preventing the entry of inadmissible aliens, including criminals and terrorists. CBP is also the responsible agency to adjudicate Electronic Systems for Travel Authorization (ESTA) applications and determine eligibility to travel under the Visa Waiver Program.

CBP officers question visitors and examine their documents to determine admissibility based on the requirements of U.S. immigration law. ESTA is part of CBP's comprehensive process for ensuring compliance with customs, immigration, and other Federal laws at the border. CBP officers use ESTA to determine the eligibility of visitors to travel to the United States under the Visa Waiver Program and whether such travel poses any law enforcement or security risk.

Information found in social media via the voluntary provision of social media identifier(s) by ESTA applicants will enhance the vetting process and be used to review ESTA applications to validate legitimate travel, adjudicate Visa Waiver Program ineligibility waivers, and identify potential threats. For example, social

media may be used to support or corroborate a traveler's application information, which will help facilitate legitimate travel by providing an additional means to adjudicate issues related to relevant questions about identity, occupation, previous travel, and other factors. It may also be used to identify potential deception or fraud. Social media may help distinguish individuals of additional concern from those individuals whose information substantiates their eligibility for travel.

#### 34. Comment: Burden Estimate

Submitted by: World Privacy Forum

Overview of comment: The public questioned whether the Burden Estimate captures the effort involved in regards to researching applicant's social media, suggesting it could take at least twenty hours merely to find all potentially qualifying social media platforms that the applicant has ever utilized. The public suggested only asking applicants to provide social media identifiers that have been used within the last two years.

**CBP Response:** CBP is confident in the accuracy of the Burden Estimate. If an applicant chooses to answer this voluntary question, the applicant is able to volunteer up to 10 identifiers and select which identifier (or identifiers) to provide. Limiting a response to identifiers used within the last two years is unnecessarily restrictive. 'Older' social media platforms provided by the applicant may include useful information that could facilitate a decision, to include eligibility for a waiver, on an application. CBP prefers to provide the applicant with flexibility in responding to this question.

#### 35. Comment: Potential duplication of other ESTA questions

Submitted by: World Privacy Forum

Overview of comment: The public questioned whether this question will be duplicative of the ESTA question asking if applicants seek "to engage in terrorist activity."

**CBP Response:** Implementing the voluntary social media question will not be duplicative of the "to engage in terrorist activity" question as it solicits different information and has a variety of applications beyond helping to identify terrorists. For example, responses to the social media question may be used to adjudicate Visa Waiver Program ineligibility waivers.

### 9. **Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

There is no offer of a monetary or material value for this information collection.

**10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.**

While information will be protected according to all relevant statutes and guidelines, there is no assurance of confidentiality provided to the respondents. A Privacy Impact Assessment (PIA) entitled "Electronic System for Travel Authorization" (September 1, 2016); a SORN entitled "Electronic System for Travel Authorization" (September 2, 2016, 81 FR 60713); and a SORN entitled "Non-Immigrant Information System" (March 13, 2015, 80 FR 13398) are included in this information collection request. The PIA and SORN for ESTA have been revised to include the new questions. ESTA information may be shared within DHS where there is a need to know the information to carry out national security, law enforcement, immigration, or other homeland security functions and with other agencies pursuant to appropriate routine uses consistent with the Privacy Act and published in the ESTA SORN. This sharing is conducted pursuant to the ESTA SORN and existing memoranda of understanding between DHS and those agencies.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, and the explanation to be given to persons from whom the information is requested.**

As a result of Executive Order No. 13674, which was issued on July 31, 2014 (79 FR 45671), revising the list of quarantinable communicable diseases issued pursuant to section 361(b) of the Public Health Service Act, 42 U.S.C. 264(b), CBP proposes to change question #1 on the yes/no questions of the ESTA application and the Form I-94W to:

Do you have a physical or mental disorder; or are you a drug abuser or addict; or do you currently have any of the following diseases (communicable diseases are specified pursuant to section 361(b) of the Public Health Service Act, 42 U.S.C. 264(b)):

- Cholera
- Diphtheria
- Tuberculosis, infectious
- Plague
- Smallpox
- Yellow Fever
- Viral Hemorrhagic Fevers, including Ebola, Lassa, Marburg, Crimean-Congo
- Severe acute respiratory illnesses capable of transmission to other persons and likely to cause mortality

In addition, the optional social media question could indirectly result in the disclosure of sensitive information. Consistent with DHS's mission to secure the Nation from threats and facilitate legitimate trade and travel, this collection of voluntarily-provided social media identifiers will not be used to prevent travel based on applicant's political views, race, ethnicity, religion, or sexual orientation. These factors are not relevant in determining eligibility to travel under the Visa Waiver Program.

**12. Provide estimates of the hour burden of the collection of information.**

<b>Form/Collection</b>	<b>Number of Respondents</b>	<b>Total Annual Responses</b>	<b>Time Per Respondent (in hours)</b>	<b>Annual Reporting Burden Hours</b>
I-94	4,387,550	4,387,550	0.133 (8 mins)	583,544
I-94 Website	3,858,782	3,858,782	0.066 (4 mins)	254,679
I-94W	941,291	941,291	0.267 (16 mins)	251,325
ESTA burden	23,010,000	23,010,000	0.383 (23 mins)	8,812,830
ESTA fee* (subset of total ESTA respondents)	18,930,000 (subset of 23.01m above)	18,930,000 (subset of 23.01m above)	0.00 (already included in ESTA burden above)	0.00 (already included in ESTA burden above)
<b>TOTAL</b>	<b>32,197,623</b>	<b>32,197,623</b>		<b>9,495,206</b>

\*Note: The 18.93 million respondents paying the \$14.00 fee (\$10 Travel Promotion Act charge plus \$4 ESTA fee) are a subset of the total 23.01 million ESTA respondents. They should not be added to the total respondents (or else they would be double counted).

**Public Cost:**

The estimated annual public cost is **\$708,420,298** and is calculated as follows:

Form/ Collection	Number of Respondents	Annual Reporting Burden Hours	Value of time*	Fee charge (\$6.00 per respondent)	ESTA fee (\$14.00 per respondent)	Total public cost
I-94	4,387,550	583,544	\$11,373,275	\$26,325,300	\$0	\$37,698,575
I-94 Website	3,858,782	254,679	\$11,608,269	\$0	\$0	\$11,608,269
I-94W	941,291	251,325	\$4,898,324	\$5,647,746	\$0	\$10,546,070
ESTA burden	23,010,000	8,812,830	\$401,688,791	\$0	\$0	\$401,688,791
ESTA fee	18,930,000		\$0	\$0	\$265,020,000	\$265,020,000
<b>TOTAL</b>			<b>\$429,568,659</b>	<b>\$31,973,046</b>	<b>\$265,020,000</b>	<b>\$726,561,705</b>

\* Recall from the previous table that the burden for Form I-94 is 8 minutes; the burden for the I-94 website is 4 minutes (0.066 hours); the burden for Form I-94W is 16 minutes (0.267 hours); and the burden for ESTA is 23 minutes (0.383 hours). We use the Department of Transportation’s guidance on value of travel time for value of time estimates [http://www.dot.gov/sites/dot.dev/files/docs/vot\\_guidance\\_092811c.pdf](http://www.dot.gov/sites/dot.dev/files/docs/vot_guidance_092811c.pdf) \$19.49 for travel by land (this applies to I-94 and I-94W) and \$45.58 for travel by air and sea (this applies to ESTA and I-94 website).

DHS is adding one optional question about social media handles to ESTA and the Form I-94W, however DHS does not believe the average time per response will increase.

There are no changes to Form I-94. CBP enhanced the I-94 website to enable travelers arriving at a land port of entry to submit the Form I-94 information to CBP and pay the required fee prior to arrival. There is no change in the time burden associated with this option.

**13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information.**

There are no record keeping, capital, start-up or maintenance costs associated with this information collection. The fee charges related to this ICR are described in item #12 above.

**14. Provide estimates of annualized cost to the Federal Government.**

Providing and administering the ESTA system costs the Federal government approximately \$4 per application. These costs are offset by the ESTA user fee,

which constitutes a transfer from the ESTA applicant to the government.<sup>3</sup> The estimated collections for the \$4 dollar fee CBP retains for 18,930,000 respondents are \$75,720,000. Any excess collections over the cost to the Federal government represent a transfer from the applicant to the government and are recorded as a cost to the public. CBP does not intend to change the ESTA user fee at this time.

Under the new law, the Secretary of Homeland Security may waive the travel eligibility restrictions if he determines that such a waiver is in the law enforcement or national security interests of the United States. DHS will establish a CBP-led interagency cell to adjudicate these waivers, on a case-by-case basis, by reviewing and validating the information provided by the applicant through the ESTA system. This review and adjudication process will increase the costs to the government. In order to meet operational demands, 15 full-time CBP employees will be needed to review and adjudicate possible waivers during multiple shifts seven days a week. These 15 additional full-time CBP employees will cost \$1,720,368 per year. This is calculated by multiplying (x) the number of employees (15) times the number of estimated annual hours (2,080) = 31,200 hours multiplied (x) by the estimated average loaded rate of a CBP officer (\$55.14) = \$1,146,912. Other agencies will be consulted during the waiver adjudication process, but no specific costs have been identified for agencies other than DHS.

Note: \$10.00 of the \$14.00 ESTA fee is a Travel Promotion Act fee that is not related to the costs of ESTA. In fact, this fee is deposited into an account where it is not available to CBP/DHS. CBP is required to collect this fee, alongside the \$4 ESTA fee, by the Travel Promotion Act, as amended. The \$10 fee is a transfer from the traveler to the government and is counted as a cost to the public for the purpose of this collection.

Forms I-94 and I-94W cost the Government \$6.00 to process multiplied (x) by the number of applications filed (5,328,841) for a total of \$31,973,046. These costs are offset by the Forms I-94 and I-94W application fees.<sup>4</sup>

CBP estimates that the optional process for land border travelers to file and pay the I-94 fee online is estimated will save CBP officers 10 minutes per instance. In the economic analysis for the final rule titled, "Definition of Form I-94 to Include Electronic Format," CBP estimates that, in total, this option will save CBP officers 58,333 hours and \$4,985,750 each year.

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<sup>3</sup> The ESTA user fee is the sum of \$10.00 per application credited to the Travel Promotion Fund and \$4.00 per application available to CBP to recover the costs of administering and providing the system. See 8 U.S.C. 1187(h)(3).

<sup>4</sup> Federal statute requires CBP to deposit these two fee collections into the Land Border Inspection Fee Account, where they are then available only for certain statutorily-enumerated purposes. See 8 U.S.C. 1356(q)(2)-(3).

**15. Explain the reasons for any program changes or adjustments reported in Items 12 or 13 of this Statement.**

CBP proposes to add one optional question about social media handles to ESTA and the Form I-94W; however, this addition will not increase the average times per response. There are no changes to Form I-94.

CBP also has added the ability for land border travelers to submit the Form I-94 information to CBP and pay the required fee via the I-94 website. There is no change in time burden associated with this option.

**16. For collection of information whose results will be published, outline plans for tabulation, and publication.**

This information collection will not be published.

**17. If seeking approval to not display the expiration date, explain the reasons that displaying the expiration date would be inappropriate**

CBP requests not to display the expiration date on these two paper forms because large quantities are stocked at CBP ports and by airlines in 17 languages. However, the expiration date is displayed on the ESTA website and on the I-94 website.

**18. “Certification for Paperwork Reduction Act Submissions.”**

CBP does not request an exception to the certification of this information collection.

**B. Collection of Information Employing Statistical Methods**

No statistical methods were employed.