

1300 Pennsylvania Avenue, NW
Washington, DC 20229



**U.S. Customs and
Border Protection**

October 14, 2022

TO: Dominic Mancini, Deputy Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget

THROUGH: Eric Hysen
Chief Information Officer
Department of Homeland Security

FROM: Matthew S. Davies
Executive Director, Admissibility & Passenger Programs
U.S. Customs and Border Protection

SUBJECT: Emergency Approval Request for Advance Travel Authorization Capability under
the Paperwork Reduction Act

This memorandum requests an emergency approval to implement a new collection of information under the Paperwork Reduction Act (PRA) for U.S. Customs and Border Protection's (CBP) Advance Travel Authorization (ATA) capability to collect certain information, including photographs, in advance of travel. CBP currently collects photographs of individuals as part of the inspection process at the time of encounter.

The Department of Homeland Security (DHS) is working with its interagency partners to allow certain noncitizens from Venezuela, and their qualifying immediate family members¹, who lack United States entry documents to submit information through the newly developed CBP ATA capability within the CBP One™ application as part of the process to request an advance authorization to travel to the United States to seek parole. Implementation of ATA will require the collection of a facial photograph via CBP One™. Participation will be limited to those individuals who meet certain DHS established criteria, including possession of a valid, unexpired passport, as well as having an approved U.S.-based supporter. Pending Office of Management and Budget (OMB) approval, this functionality may launch as early as October 12, 2022.

¹ Immediate family members include spouse and unmarried children under the age of 21. Eligible family members must travel with the principal noncitizen to be processed under an ATA program upon arrival in the United States. Unaccompanied children are not eligible for this process.

The United States is currently encountering a large number of undocumented noncitizens at the Southwest Border (SWB) of the United States where, despite surging resources and personnel, CBP is facing significant and unprecedented challenges processing such individuals in a timely manner.

The most recent rise in the numbers of encounters at the border have been driven in significant part by a surge in migration of Venezuelan nationals. Unique encounters of Venezuelan nationals increased throughout fiscal year (FY) 2021, totaling 47,328. They increased again by almost four-fold in FY 2022, to an estimated 186,000 unique encounters—comprising 11 percent of all unique encounters in FY 2022. Average monthly unique encounters of Venezuelan nationals at the land border totaled 15,494 in FY 2022, compared to a monthly average of 127 unique encounters from FY 2014–2019.² Of note, unique encounters of Venezuelan nationals rose 293 percent between FY 2021 and FY 2022, while unique encounters of all other nationalities combined increased 45 percent.

In recent months, this surge in irregular migration of Venezuelan nationals has been accelerating. Nationals from Venezuela accounted for 25,130 unique encounters in August 2022, and the Office of Immigration Statistics (OIS) estimates that there were 33,500 unique encounters in September, more than Mexico and more than all three Northern Central American countries combined.³

There are significant limits in DHS's ability to expel or return Venezuelans who enter the United States without authorization in between POEs. DHS is currently under a court-ordered obligation to implement the Centers for Disease Control and Prevention's (CDC) Title 42 public health Order, under which covered noncitizens may be prevented entry or expelled to prevent the spread of communicable disease.⁴ But Venezuela does not allow repatriations via charter flights, which significantly limits DHS's ability to return those subject to the Title 42 Order or who are ordered removed. To date, other countries, including Mexico, have generally failed to accept Venezuelans as well. As a result, DHS was only able to repatriate 22 Venezuelan nationals to Venezuela in FY 2022.

CBP's Office of Field Operations (OFO) is developing the ATA capability, a new functionality in CBP One™, which will collect a facial photograph and biographic information from a noncitizen who is submitting information to request an advance authorization to travel to the United States to seek a discretionary grant of parole on a case-by-case basis. This information will be provided to CBP.

The facial photograph collected from the noncitizens will be linked to biographic information provided by the individual to U.S. Citizenship and Immigration Services (USCIS). CBP will

² OIS analysis of OIS Persist Dataset based on data through August 31, 2022 and OIS analysis of U.S. Customs and Border Protection (CBP) data from Unified Immigration Portal (UIP) as of October 6, 2022. Unique encounters include encounters of persons at the Southwest Border who were not previously encountered in the prior 12 months. Throughout this memo unique encounter data are defined to also include OFO parolees and other OFO administrative encounters.

³ OIS Persist Dataset based on data through August 31, 2022 and OIS analysis of CBP UIP data as of October 6, 2022.

⁴ *Louisiana v. CDC*, -- F. Supp. 3d --, 2022 WL 1604901 (W.D. La. May 20, 2022).

conduct vetting of noncitizens using the biographic information provided to CBP by USCIS and the facial photograph collected by CBP via CBP One™. This information collection will facilitate the vetting of noncitizens seeking to obtain advance authorization to travel and give air carriers that participate in CBP's document validation program the ability to validate an approved travel authorization, facilitating generation of a noncitizen's boarding pass without having to use other manual validation processes.

CBP One™ allows the user to capture their image and confirm submission after viewing the captured image. If the user is not satisfied with the image captured, the user can retake the image. A user can retake the image up to three times. If after three attempts CBP One™ cannot successfully capture the user's image, CBP One™ will provide the user an error message notifying them that their submission was unable to be completed and that they can access the capability and try again. If the user continues to experience technical difficulties, the CBP One™ application provides a help desk email to provide assistance. In the event that the user is not authorized to travel under this process, they may still seek entry through another process, including by filing a request for consideration of parole with USCIS or applying with the Department of State (DOS) to obtain a visa.

Once submitted, CBP will vet available biographic information and the facial photograph against selected security and law enforcement databases at DHS and other federal agencies, for national security, border security, public health, and safety. DHS will limit use and sharing of the photograph to what is strictly necessary to perform this vetting. Any potential travel authorization denials resulting from facial photograph matches against these databases or mismatches to confirm identity will be verified by a CBP officer before the travel authorization is denied. DHS will retain the facial photograph for the duration of the travel authorization validity but no more than 180 days and ensure that it is deleted from all DHS and other agency databases after that time unless the photograph matches against national security or law enforcement databases, as verified by CBP personnel. CBP conducts this vetting to determine whether the individual poses a security risk to the United States, and to determine whether the individual is eligible to receive advance authorization to travel to the United States to seek parole. If the travel authorization is denied, the individual will not be authorized to travel to the United States to seek parole under this process. If approved, the approval establishes that the individual has obtained advance authorization to travel to the United States to seek parole, consistent with 8 C.F.R. 212.5(f), but does not guarantee boarding or a specific processing disposition at a POE. Upon arrival to a United States POE, the traveler will be subject to inspection by a CBP officer, who will make a case-by-case processing disposition determination.

DHS requests an emergency approval to implement new data collection in CBP One™ to allow CBP to collect a facial photograph in advance to permit individuals to obtain advance authorization to travel to the United States to seek a discretionary grant of parole. The information will allow DHS to vet noncitizens who may otherwise present themselves for inspection at a southwest land border POE, or enter the United States between POEs, without any prior vetting. The advance vetting affords the noncitizen the opportunity to book international travel to arrive near their intended United States destination address and, as a result, is expected to reduce the strain on CBP resources at the southwest land border. Data will be collected on the efficacy of this process in achieving the desired outcomes, to include reduction

in southwest land border encounters, identifying derogatory information before individuals travel, increased arrivals to final destination and grants of parole, and access to employment authorization as well as assessment of the efficacy of automated facial matching, including by demographic group, in order to assess whether this emergency measure has been effective.

Development and deployment of this ATA capability has been expedited to facilitate DHS' ability to respond to the current U.S. Government (USG) resource strain along the SWB, and to enable certain individuals, based on urgent humanitarian reasons or significant public benefit, to travel to the United States to seek a discretionary grant of parole at the POE. This process may also ease the burden on certain locations outside the United States that are unable to continue to support the influx of these migrants because of already overburdened humanitarian relief mechanisms.

DHS is requesting an emergency information collection under 5 CFR 1320.13, with the intention of carrying out all the regular requirements for publication and review after implementation. This collection of information is needed prior to the expiration of time periods established under the normal PRA notice and comment process and is essential to the mission of the agency. Further, the agency cannot reasonably comply with the normal clearance procedures under this part because delayed implementation and awareness of DHS' intent would likely have unpredictable impact on the movement and may further raise pressure on U.S. border operations and the migration management conducted by our foreign partners and could jeopardize our relations with foreign partners.

After implementation of the new data element collection, CBP will undergo the normal PRA renewal process. After publication of the two Federal Register Notices (FRNs) required under the PRA, DHS will address comments and concerns as necessary under the PRA and submit the ICR to OMB for renewal within the required timeframe.

Thank you for your consideration of this Emergency Request.