

Congress of the United States
Washington, DC 20515

November 1, 2019

The Honorable Kevin K. McAleenan
Acting Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Acting Secretary McAleenan:

We write to express our concerns and objections to the news that the Department of Homeland Security (DHS) is planning to expand its existing DNA collection practices to every detainee in DHS custody across the country, and the unjustified uploading of their DNA profiles to the Federal Bureau of Investigation's (FBI) Combined DNA Index System (CODIS) database. On October 22, the Department of Justice issued a notice of proposed rulemaking that would provide the Attorney General with unilateral authority to direct DHS to collect DNA samples from non-US citizens it detains and remove the DHS Secretary's discretion to work with DOJ when determining whether collection of samples is feasible due to operational exigencies or resource limitations. Based on this, it appears that the Administration is contemplating mass forcible collection of DNA information from the hundreds of thousands of individuals that DHS detains every year; irrespective of DHS's ability to carry out such activities and justify its necessity.

All non-citizens must already provide fingerprints and photographs for identification purposes and it is unnecessary to also collect DNA samples given the already operational exigencies and resource limitations of DHS. In addition, the FBI describes CODIS as "a tool for linking violent crimes to known offenders," yet the DNA DHS will collect is primarily of individuals who are entering the U.S. for the first time and there is no reason to suspect that the vast majority have committed a crime on U.S. soil. Under this Administration's prejudicial lens, DHS opens the possibility of criminalizing any non-citizen who enters our country and capturing their data in a far-reaching criminal record system. This is a blatantly xenophobic measure, and a manifestation of the Administration's drive to miscast immigrants as inherently dangerous.

The Administration has tried to characterize this as an effort to identify people in immigration detention as the perpetrators of past, unsolved violent crimes. This crime-solving justification attempt miscasts people seeking refuge as dangerous and could easily be used to support the creation of a database of DNA from every individual who lives in or comes through the United States. Such a database would subvert basic notions of freedom, autonomy, and presumed

innocence, and instead cast everyone as objects of suspicion meriting government surveillance. For the same reason, immigrants should not be subjected to this invasive treatment, because there is no justification for depicting them as dangerous people. Moreover, if DNA is to be collected solely for that purpose, running the profiles against CODIS - without storing them in said database - would be enough to achieve this purpose. If a match is not found, we see no reason for the permanent inclusion of immigrants' DNA profiles into CODIS or any other database.

As DHS considers a more comprehensive DNA collection effort for detainees and works to determine how to properly collect and process the DNA of detainees, we want to ensure that their privacy and dignity is preserved, and that the U.S. government diligently protects this sensitive information.

We respectfully request answers to the following questions as they pertain to the proposed rule.

- 1) Who will be subject to DNA collection under the proposed plan?
- 2) Will the collection of DNA samples apply to asylum seekers currently being detained by DHS?
- 3) Will the collection of DNA also apply to legal U.S. residents, not encountered at ports of entry, such as VISA holders, green card holders or refugees, whose fingerprints are often collected by DHS when applications are filed or renewed?
- 4) Will children under the age of 14 and the elderly be exempt, as promulgated by the Immigration and Naturalization Act (8 U.S.C. § 1229a)?
- 5) In their proposed rule, DOJ calculates the need for DHS to collect approximately 743,000 detainee samples per year – does DHS agree with this estimate? If so, how was that number determined? If not, what is the true estimated number of samples DHS will need to collect per year?
- 6) Currently, DHS has collected DNA from families under their Double Helix 2.0 program, which inherently requires the collecting of children's DNA. Will DNA profiles generated under the Double Helix program be uploaded to CODIS or some other database after the rule is final and include that of the children?
- 7) Will CBP and ICE agents be responsible for DNA collection at detention facilities?
 - a. If so, what type of training will they receive to ensure the proper handling and filing of this information?
 - b. If someone other than CBP will be responsible, who will it be and how will the proper collection of DNA and protection of materials and data be assured?
- 8) Given that DNA samples must be sent to the FBI for analysis, what effect will this have on the detention times of detainees?

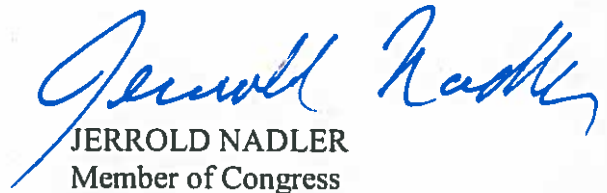
- 9) What type of DNA collection method will be used and how many samples will be taken? Who will process and upload the samples to the DNA database?
- 10) Will any remaining DNA samples be stored or destroyed? If stored, what will be the purpose and for how long?
- 11) What restrictions will attach to the use, sharing, storage, and retention of any DNA samples and any DNA profiles? Will the use of any DNA profiles collected from immigrants in detention be restricted to identification only? Will there be limits on sharing the DNA profile information of immigrants with other federal, state, or local authorities? Will the DNA profiles of immigrants be deleted from CODIS after a certain time period?
- 12) Once a detainee is processed by DHS, and either granted relief from deportation or deported to another country, will the individual be permitted to secure the expungement of their DNA profile from CODIS and/or any other database?
- 13) Will DNA profiles of asylum seekers be shared with foreign law enforcement agencies? How will they be secured to ensure the protection of persecuted individuals from foreign governments or non-state actors such as gangs?

As DHS expands its DNA collection operations to detention centers across the country, it is important that Congress and the public understand how this will be carried out. We respectfully request that DHS submit responses to the questions in this letter by November 22, 2019.

Sincerely,



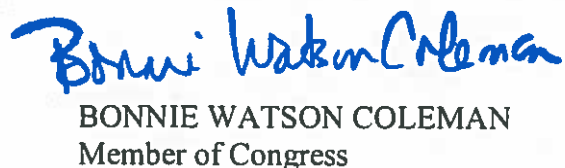
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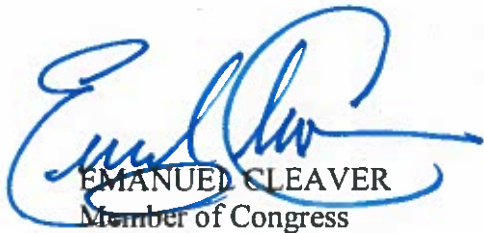
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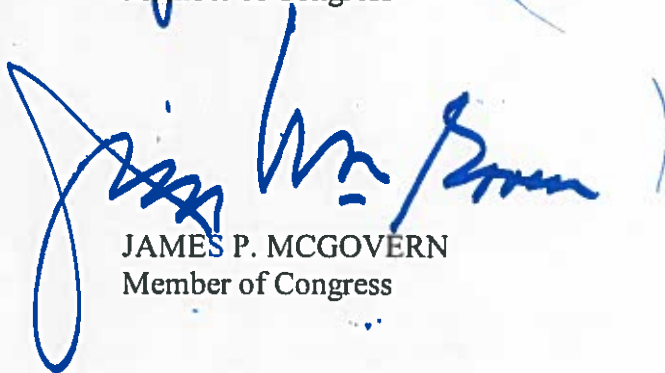
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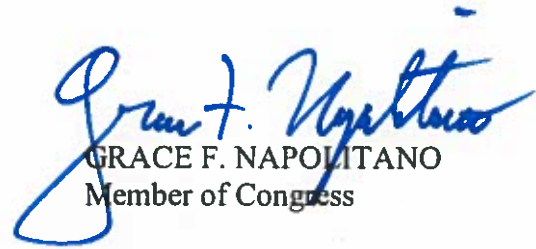


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