



AMERICAN
IMMIGRATION
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U.S. Customs and Border Protection
Office of Trade, Regulations, and Rulings
90 K Street NE
Washington, D.C. 20229-1177

Submitted via <http://www.regulations.gov>

Re: Department of Homeland Security, U.S. Customs and Border Protection, Information Collection Request, *Collection of Advance Information From Certain Undocumented Individuals on the Land Border* (OMB Control Number 1651-0140)

Dear Mr. Renkema,

The American Immigration Council (Council) and the American Immigration Lawyers Association (AILA) submit the following comments to the above-referenced Department of Homeland Security (DHS) and U.S. Customs and Border Protection (CBP) Information Collection Request, *Collection of Advance Information From Certain Undocumented Individuals on the Land Border* (OMB Control Number 1651-0140) (hereinafter "Information Collection Request").

The Council is a non-profit organization established to increase public understanding of immigration law and policy, advocate for just and fair administration of our immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of America's immigrants. The Council litigates in the federal courts to protect the statutory, regulatory, and Constitutional rights of noncitizens, advocates on behalf of noncitizens before Congress, and has a direct interest in ensuring that those seeking protection in the United States have a meaningful opportunity to do so.

AILA, established in 1946, is a voluntary bar association of more than 16,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. AILA's mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. The collective expertise and experience of AILA members makes them particularly well-qualified to offer views that will benefit the public and the government.

I. The Council and AILA support the overall stated goal of more efficiently processing undocumented immigrants at ports of entry but remain concerned about its lack of clarity and transparency

The Council and AILA support CBP's desire to reduce processing times for individuals who present themselves at land borders. We urge the administration to continue thinking through solutions that reduce processing time while not externalizing critical government functions like border processing or using unreliable technologies like facial recognition. The proposed Information Collection Request's goal is laudable, but its lack of clarity and meaningful justification raise significant concerns for the nearly 100,000 individuals who CBP estimates will be impacted by the new process. For this reason, we cannot support the proposed request.

II. Lack of training/information about training

The Information Collection Request fails to clearly describe the method by which CBP will collect information from individuals in advance of their appearance at ports of entry (POEs), leaving intended users without meaningful instructions as to how to access this service. Because CBP One already serves as a tool to collect biographic and biometric information from individuals seeking exemptions to exclusions under Title 42, and since CBP One is briefly mentioned in the Information Collection Request as a tool to schedule appointments at POEs, the use of CBP One as the primary tool to collect the information may be inferred from the Information Collection Request and other DHS publications about the app.

The feature of the app that allows for the collection of advance information from undocumented individuals at land POEs currently is used by international organization personnel, who enter the information on behalf of individuals.¹ The Information Collection Request clarifies that at a certain point, international organizations will no longer assist individuals with CBP processing in all cases. With the phasing out of NGO support, fewer individuals will be able to access guidance in navigating this process or the technology that CBP foresees using.

CBP has failed to publish any instructional documents regarding how international organization personnel tasked with assisting individuals to enter their information into CBP One, or even CBP's own officers, use the app. The DHS Privacy Impact Statement (PIA) regarding CBP One makes no mention of technical training for either international organizations or government officials. This lack of information leaves questions unanswered about the app's accessibility to potential users, especially as it relates to whether users understand the terms and conditions of using CBP One.

As CBP contemplates the expansion of the advance collection of information from undocumented individuals "who will be processed under Title 8," CBP should make public the training materials the agency will use to inform people about how to use the app. CBP also should explain whether there will be any alternative methods for individuals to enter their biographic and biometric information in advance of

¹ U.S. Dept. of Homeland Security, Privacy Impact Assessment for the CBP One™ Mobile Application, 15–19 (Feb. 19, 2021), <https://www.dhs.gov/sites/default/files/publications/privacy-pia-cbp068-cbpmobileapplication-may2021.pdf>.

their appearance at POEs. If indeed there are additional methods or tools CBP plans for this purpose, the training materials for both potential users and government officials should be made public.

Providing these instructional materials to the public will allow advocates to weigh in on whether CBP One, or any other method CBP anticipates using, can be effectively utilized by the intended audience. Further, it would ensure oversight to ascertain that the officers at POEs are not using the advance entry of information by individuals as a prerequisite to processing those who seek entry into the country.

Nowhere is the need for further instructive materials more evident than in the availability of the app in other languages. Currently, CBP One is only available in English. While the lack of non-English versions of the app may not pose a problem when international organization personnel are assisting impacted individuals to enter information into the app, it certainly will be a roadblock to those who wish to provide their information in advance who may lack English proficiency. Additionally, CBP will need to provide instructions for downloading the app, creating a login.gov account (which is required for using CBP One), and using the app in other languages to make sure that individuals who may benefit from the advance collection of information will be able to do so through the app. If CBP contemplates using other tools for the collection of this information, instructions about the use of these systems in different languages will also be needed.

The lack of instructional materials extends to information about how CBP intends to publicize to intended users that they have the option of entering their biographic information in advance, especially if international organizations are no longer involved in the process. CBP has not published the agency's plans to inform individuals about how to use CBP One to enter information prior to their arrival at a POE. If CBP seeks to broaden the use of the advance collection of information, it must ensure that the public and intended users are aware that this service exists by widely publicizing its availability and providing the same information in different languages. Further, the agency also should make sure that information about the availability of tools allowing people to enter information, as well as instructions about how to access and use these tools, are available to people who may lack literacy skills or the technology skills to navigate a mobile application such as CBP One.

III. The purported voluntariness of submission

The Information Collection Request raises significant concerns about whether the use of CBP One, or other technology tools used to collect noncitizens' information, will be truly voluntary for noncitizens seeking inspection and processing under Title 8. If CBP One's use is expanded as proposed in the Information Collection Request, noncitizens—particularly asylum seekers—may feel that submitting their information in advance is the only way to ensure meaningful access to inspection and processing at a POE. Additionally, language access and other factors raise the question of whether those who provide their information in advance understand that they are not required to do so and understand the potential risks associated with using CBP One.

Though the Information Collection Request states that “[p]roviding [advance] information is not a prerequisite for processing under Title 8,”² it is unclear whether individuals who submit their information

² 86 Fed. Reg. 53668.

in advance through CBP One will be given preference for processing at POEs, and whether those who are unable to access CBP One or who choose not to will be subject to delays that could amount to an effective denial of inspection and processing. Individuals, therefore, may feel compelled to use the app.³ Asylum seekers, many of whom have already been subjected to turn-backs at a POE and the Title 42 border closure, may fear that by refusing to provide their information in advance, they could be denied access to the U.S. asylum process and forced to remain in dangerous conditions along the U.S./Mexico border.

Other migrants, like unaccompanied children, may misunderstand the process described in the Information Collection Request and mistakenly believe that they are required to submit their information in advance and obtain an appointment to be processed at a POE. There is no indication that unaccompanied children are exempt from the Information Collection Request. Because the Trafficking Victims Protection Reauthorization Act, 8 U.S.C. § 1232, contains mandatory requirements for the processing of unaccompanied children, we urge the agency to explicitly exclude them.

Because providing information in advance, including through the use of CBP One, may not feel voluntary to individuals in desperate need of accessing the asylum process via a POE, CBP should ensure that all individuals seeking to be processed at a POE can do so in a timely manner, whether the individual chooses to provide their information in advance or to present at a POE without an appointment.

We strongly support the agency's decision not to require migrants to submit their information in advance for processing at POEs under Title 8. Without necessary language access, training, or assistance, noncitizens who submit their information via CBP One may not understand what they are consenting to by using the app or the potential risks associated with using the app, such as surveillance and misidentification through facial recognition technology.⁴ In addition, because migrants, particularly unaccompanied children, may not understand that providing information in advance is voluntary, they may fail to approach the POE altogether if they are unable to make an appointment. This would prevent them from accessing protection in the United States.

The agency should ensure that the app is accessible in multiple languages and provide sufficient training and resources so that individuals who use CBP One are doing so truly voluntarily and with sufficient understanding to make an informed decision about whether to provide their information through the app.

IV. The externalization of border processing

The Information Collection Request also raises concerns regarding the externalization of CBP's mandatory duty to inspect and process asylum seekers.⁵ Though inspection and processing of noncitizens at POEs is CBP's responsibility, CBP seeks to expand the advance collection of information to

³ See *Al Otro Lado v. Mayorkas*, No. 17-cv-02366-BAS-KSC, Reply in Supp. of Pls.' Mot. for Summ. J. 10-15, ECF No. 610 (S.D. Cal. Oct. 30, 2020) (arguing that unreasonable delays in processing amount to an effective denial of processing), https://www.americanimmigrationcouncil.org/sites/default/files/litigation_documents/challenging_custom_and_border_protections_unlawful_practice_of_turning_away_asylum_seekers_reply_summary_judgment.pdf.

⁴ The Information Collection Request makes the submission of a photo mandatory when it was previously optional. 86 Fed. Reg. 53668.

⁵ See *Al Otro Lado, Inc. v. Mayorkas*, No. 17-CV-02366-BAS-KSC, 2021 WL 3931890, at *17 (S.D. Cal. Sept. 2, 2021).

migrants seeking processing under Title 8. This externalization of data collection via CBP One, or any other similar technology, is problematic because it shifts the responsibility of initial processing from CBP officers at POEs to Non-Governmental Organizations (NGOs) and noncitizens themselves. If the Information Collection Request goes into effect, individuals seeking to be inspected and processed at a POE would have to navigate the app on their own, connect with an NGO that can assist them with the process, or attempt to present themselves at a POE without an appointment.

The Information Collection Request unfairly puts the onus of starting POE processing on migrants and NGOs, creating significant access concerns. Migrants, particularly asylum seekers who often must flee their countries of origin with just the clothes on their backs,⁶ cannot be expected to submit their information in advance to CBP to be processed at a POE. This is especially true if the information must be submitted via a mobile application like CBP One. Asylum seekers may lack access to functioning smart phones and the internet. Additionally, dangerous conditions along the border may force migrants to present themselves at a POE without the luxury of time to first request an appointment. Those who are able to download CBP One and wait for an appointment may still need assistance from an NGO due to limited English proficiency or lack of familiarity with mobile phone apps. This may create a situation where individuals with existing connections to qualified NGOs may be prioritized for processing. Further, this potential externalization opens the possibility that unscrupulous actors at the border may seek to profit from and exploit vulnerable asylum seekers, who may not know about the app's availability or accessibility, with promises of assisting with processing. The Information Collection Request initially offshores the government's responsibility for processing migrants at POEs to NGOs and noncitizens, which could result in these and other access issues for individuals seeking to be inspected and processed.

Though CBP states that advance provision of information is not a requirement for individuals to be processed at POEs, it also states that it "reduces the amount of data entered by CBP Officers (CBPOs) and the length of time an undocumented noncitizen remains in CBP custody."⁷ Delays in processing individuals who are unable to submit their information in advance might therefore amount to an effective denial of processing, given the instability and severe risk of violence asylum seekers face in Mexican border towns. Like other forms of border externalization including turn-backs, interceptions at sea, and third-country agreements, the process described in the Information Collection Request "may prevent (and seek to prevent) migrants from ever coming under the jurisdiction of [the United States] in an attempt to limit formal legal obligations to protect migrants' rights."⁸ Placing the burden for information collection on the migrant and other groups outside of the United States will create the potential for an inequitable system where asylum seekers who have means, access to technology, or connections to NGOs will be processed under Title 8, while others may be shut out of the process entirely and thus face refoulement.

⁶ See U.N. High Comm'r for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status*, 38 P 196 (1979, rev. 1992) ("In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents.").

⁷ 86 Fed. Reg. 53668.

⁸ Jennifer Podkul & Ian Kysel, *Interdiction, Border Externalization, and the Protection of the Human Rights of Migrants* (Oct. 22, 2015), <https://www.law.georgetown.edu/human-rights-institute/wp-content/uploads/sites/7/2017/07/2015-WRC-HRI-Submission-to-IACmHR.pdf>.

V. Lack of proof regarding the stated reduction in processing times

The Information Collection Request states that the primary purpose of the advance collection of information is to “streamline the processing of undocumented noncitizens under Title 8,”⁹ and to “achieve efficiencies to process undocumented noncitizens.”¹⁰ However, CBP has not provided any specific information about the efficiencies that may be achieved. The Information Collection Request states only that the purpose of the proposed data collection is “to continue to achieve efficiencies to process undocumented noncitizens under Title 8 upon their arrival at the POE, consistent with public health protocols, space limitations, and other restrictions.”¹¹

Without any detail regarding expected efficiencies, including processing times, it is impossible for commenters to determine whether the government’s claims are justified and to provide input. Prior to moving forward with the Information Collection Request, the agency should make clear the following information:

- The current median and average processing times for noncitizens being processed under Title 8 at ports of entry in Fiscal Years 2020 and 2021, by month.
- The median and average processing times for noncitizens who have been processed with the CBP One app.
- The expected median and average processing times for noncitizens who will be processed under Title 8 following the expanded information collection.

This information would allow commenters to determine whether any potential negative consequences of use of the CBP One app are balanced by any potential positive reduction of processing time.

VI. Concerns regarding efficacy, privacy, and secondary usage

CBP’s Information Collection Request lacks details that are critical for the public to fully reflect on the potential impact of its proposed changes. Of particular concern are the lack of detail regarding the way a person’s identity is to be verified by agency personnel following the submission of biographic information and photographs, and if this information may be shared outside of CBP and for purposes other than processing at the border.

While the Information Collection Request states that the overall advance submission of biographic and biometric information is voluntary in nature, it also includes a change to the original information collection notice that will *require* the submission of photographs for all those who choose to submit advance information.¹² The Information Collection Request indicates that the submission of photographs

⁹ 86 Fed. Reg. 53667

¹⁰ *Id.* at 53668.

¹¹ *Id.*

¹² Information Collection Notice, 86 Fed. Reg. at 53668.

“will provide CBPOs with a mechanism to match a noncitizen who arrives at a POE with the photograph submitted in advance, therefore identifying those individuals, and verifying their identity.” The Information Collection Request does not specify the proposed mechanism to confirm an individual’s identity. Given recent aggressive efforts by DHS and CBP to significantly expand the use of facial recognition technology,¹³ however, it is likely that CBP will rely on this technology to verify the identity of the nearly 100,000 individuals that it estimates will be impacted by this new process, raising concerns relating to potential misidentification, as well as secondary usage and abuse.

Significant concerns remain regarding the accuracy of facial recognition, the potential disparate treatment of racial minorities, and the effect of this disparate treatment on individuals seeking humanitarian protection at our border. The National Institute of Standards and Technology (NIST) within the U.S. Department of Commerce has worked closely with the public and private sectors since the 1960s in assessing developments in biometrics technologies and has conducted comprehensive testing of facial recognition platforms for over a decade.¹⁴ According to NIST, while the overall accuracy of these systems has improved in recent years, the rate of false positives and false negatives can vary widely depending on a person’s gender, race, and age.¹⁵ NIST has found the highest false positives for people of African and Asian origin, and the lowest for people of eastern European origin.¹⁶ NIST also found the highest false negatives for people born in Africa, Asia, and the Caribbean.¹⁷ A U.S. Government Accountability Office report to Congress from September 2020 determined that false positive rates were 10 to 100 times higher for some demographics.¹⁸ And an earlier 2018 study found that the misidentification rates of three tested commercial face recognition software platforms were highest for individuals with darker skin, with the highest error rates for women with dark skin (the software failing to properly classify the pictures anywhere from 20.8% to 34.7% of the time).¹⁹ The study also found that darker-skinned men were misidentified more often than lighter-skinned men in two of the three systems tested.²⁰

Even if the overall rate of facial recognition failure is low, the potential expansion of the use of this technology in this context could lead to a significant number of people being misidentified. In 2017, the DHS Office of the Inspector General conducted an audit of a facial recognition program launched by CBP at nine airports to track air passengers’ exits from the United States, finding that facial recognition

¹³ See U.S. Department of Homeland Security Proposed Rule on the Collection and Use of Biometrics by U.S. Citizenship and Immigration Services, 85 Fed. Reg. at 56338. See also U.S. Department of Homeland Security, U.S. Customs and Border Protection, Notice of Proposed Rulemaking, Collection of Biometric Data from Aliens Upon Entry to and Departure from the United States 85 Fed. Reg. at 74163.

¹⁴ Dr. Charles Romine, Director, Information Technology Laboratory, National Institute of Standards and Technology, testimony before the U.S. House of Representatives, Committee on Homeland Security, February 6, 2020, <https://www.nist.gov/speech-testimony/facial-recognition-technology-frt-0>.

¹⁵ See National Institute of Standards and Technology, Face Recognition Vendor Test, December 2019, p. 2, <https://nvlpubs.nist.gov/nistpubs/ir/2019/NIST.IR.8280.pdf>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ U.S. Government Accountability Office, “FACIAL RECOGNITION, CBP and TSA are Taking Steps to Implement Programs, but CBP Should Address Privacy and System Performance Issues,” (September 2020), 76, <https://www.gao.gov/assets/gao-20-568.pdf>.

¹⁹ Joy Boulamwini and Timnit Gebru, “Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification,” *Proceedings of Machine Learning Research* 81, (2018): 2, <http://proceedings.mlr.press/v81/buolamwini18a/buolamwini18a.pdf>.

²⁰ *Ibid.*

technology— even when used correctly—²¹misidentified two percent of travelers.²² If CBP plans to use facial recognition technology as part of this Information Collection Request, and if these figures remain consistent, thousands of individuals seeking humanitarian protection at our border could be misidentified annually with potentially dire consequences. As Sophia Cope, a senior attorney at the Electronic Frontier Foundation, said in addressing the importance of accurate identification of asylum seekers:²² “If people’s lives depend on an algorithm determining whether or not they are who they say they are, and it’s an imperfect algorithm, people may have to go back to the country they’re trying to flee because they can’t be verified.”²³ Potentially expanding the use of this technology and subjecting tens of thousands of vulnerable individuals to its use is improper given the lack of transparency in this Information Collection Request, the noted limitations of the software, and the potential consequences for tens of thousands of people seeking humanitarian protection annually.

CBP’s Information Collection Request also raises concerns regarding secondary usage and privacy. As indicated previously, the request fails to provide details regarding data retention (where the information collected will be stored, for how long, etc.), or if the information will be shared with other agencies or governments. This lack of specificity raises significant concerns given the scale of the proposed information collection, the likelihood of significant future expansion, and the potential for secondary uses and potential abuse.

CBP’s separate PIA for its CBP One™ Mobile Application, which the Council and AILA believe is the likeliest mechanism for the collection of information described in this request, states that “CBP may share information collected through CBP One both inside and outside of DHS.”²³ If the same standard is applied here, CBP would have the ability to share the biographic and biometric data (including photographs) of tens of thousands of asylum seekers with other federal and state agencies, and foreign governments that may lack policies limiting the usage of this data. This raises significant privacy concerns given that facial recognition technology can be used as a form of general surveillance —passively and without the knowledge or consent of the parties impacted—when combined with public video cameras. When integrated with data from other governments and other government agencies, the collection practices proposed in this Information Collection Request could allow DHS, other law enforcement agencies, and other governments to track people in public places without their knowledge. Despite these concerns, the Information Collection Request does not provide any meaningful information regarding safeguards to prevent secondary uses and potential abuses of information. Accordingly, this type of information sharing presents a risk that data could be used for surveillance and law enforcement purposes that CBP has failed to address.

The Council and AILA believe that facial recognition technology’s reduced efficacy when it comes to accurately identifying minorities, the potentially dire consequences for people seeking humanitarian protection, and the fact that it is highly susceptible to secondary uses and abuse, make it unsuitable for a rapid expansion in this manner. CBP can and should verify a person’s identity through other means in implementing this Information Collection Request.

²¹ Office of Inspector General, “Progress Made, but CBP Faces Challenges Implementing a Biometric Capability to Track Air Passenger Departures Nationwide,” September 21, 2018, 6, <https://www.oig.dhs.gov/sites/default/files/assets/2018-09/OIG-18-80-Sep18.pdf>.

²² Molly O’Toole, “Biden has quietly deployed an app for asylum seekers. Privacy experts are worried.”

²³ DHS, “Privacy Impact Statement for the CBP One™ Mobile Application,” 9.

VII. Lack of clarity regarding data retention and use by CBP

The Information Collection Request implies CBP will collect increasingly large amounts of data through the CBP One app, or other similar tools implemented by CBP, as the advance collection of information is expanded to all individuals arriving at POEs under Title 8.²⁴ Though the CBP One PIA states that CBP has been open and transparent regarding the app's use, there is very little discussion in the PIA or the Information Collection Request about the countless ways the government could use the data collected through CBP One as well as the potential misuse of data. The Information Collection Request states only that, after the information is submitted to CBP "on a voluntary basis," it will be used to "facilitate[] and implement[] CBP's mission" in a manner that is "consistent with DHS' and CBP's authorities, including under 6 U.S.C. 202 and 211(c)."²⁵ In essence, though CBP One largely has been described as a method to facilitate entry to the United States, data collected through CBP One could support any DHS or CBP function.

To date, the agency has provided only vague assurances about how it will provide notice regarding potential future uses of information, and its messaging about how it plans to roll out future app functions has been cryptic. The PIA indicates that the "broad and disparate functions contemplated for CBP One™" will require CBP to "conduct standalone, function-specific PIAs for each function as necessary."²⁶ Specific to data retention, the PIA states that CBP will issue "standalone, function-specific PIAs" to minimize the amount of data collected and minimize privacy risks.²⁷ The PIA provides only two clear examples of how certain information will be stored and how long it will be retained.²⁸ With the announcement—through the issuance of the Information Collection Request—that CBP plans to expand the app's use beyond the original categories of users to any migrant entering the United States under Title 8, the agency should issue additional specific PIAs and records disposition schedules that clearly indicate how data obtained from migrants will be stored and for how long.

There is a strong suggestion through the information provided in the PIA and the Information Collection Request that the role of the app is limited to facilitating processing at POEs. But because the description of the planned uses of the app is vague, the public and intended users deserve greater assurances about how CBP plans to use and share information collected through the app. Apart from the expansion of CBP One described in the Information Collection Request, there has been no clear and substantive description

²⁴ 86 Fed. Reg. 53668.

²⁵ 86 Fed. Reg. 53668.

²⁶ U.S. Dept. of Homeland Security, Privacy Impact Assessment for the CBP One™ Mobile Application, 4 (Feb. 19, 2021) ("CBP One™ will continue to expand to become the unified mobile portal for public transactions with CBP."), <https://www.dhs.gov/sites/default/files/publications/privacy-pia-cbp068-cbpmobileapplication-may2021.pdf>

²⁷ *Id.* at 9.

²⁸ *Id.* at 8 ("For example, information provided by brokers/carriers/forwarders to schedule inspections is stored in a database within the Automated Commercial Environment for 1 year in accordance with the Import Information System SORN. Whereas information used to report a traveler's exit from the United States may be stored in ADIS for 75 years.").

of CBP’s intended uses for the app. CBP provided general statements when it launched the app, stating that “[a]dditional services” would be “rolled out over the next year” with the added detail that “[e]ventually aircraft operators, bus operators, seaplane pilots, commercial truck drivers, and commercial vessel operators will be able to use CBP One.”²⁹

With the recent description in the Information Collection Request of CBP One’s much larger role in processing migrants at POEs, however, the role of the app in gathering data suddenly has grown exponentially. This has happened without any clear accompanying information about how CBP plans to use the data it collects. Studies have shown that U.S. citizens do not have a strong understanding of the ways the government analyzes and uses data collected about them.³⁰ Where migrants arriving at POEs do not have even basic information as to the various ways the government intends to use data collected about them beyond facilitating processing at the POE, there will be a similar lack of understanding. To the extent CBP intends to use the information collected through CBP One for reasons other than creating efficiencies at POEs—such as immigration enforcement—this should be explicitly stated in publicly available information about the app to help inform migrants’ decision to use it.

There has been widespread criticism of the reliance on incomplete data collected in government databases for enforcement purposes because it is unreliable.³¹ CBP’s assurances that “[u]sers have an incentive to provide CBP with accurate information because they have chosen to voluntarily interact with CBP through CBP One™ and are seeking some form of service from CBP,”³² and that the data is therefore reliable, do not take into account potential errors on the part of CBP in collecting and storing the data. Nor do CBP’s assurances take into account the accuracy of data entered by individuals that changes over time.

VIII. Conclusion

The Council and AILA urge the administration to address the privacy, transparency, and accessibility issues created by this proposed Information Collection Request. CBP should continue to work to reduce processing times for individuals who present themselves at our land borders, but efficiencies should not

²⁹ U.S. Customs and Border Protection, *CBP One™ Mobile Application* (last updated August 2, 2021), <https://www.cbp.gov/about/mobile-apps-directory/cbpone>.

³⁰ A 2019 study showed that 78% of U.S. adults state that they “understand very little or nothing about what the government does with the data it collects,” only 4% stated “they know a great deal about what the government does with the data.” Brooke Auxier, Lee Rainie, Monica Anderson, Andrew Perrin, Madhu Kumar and Erica Turner, *Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over Their Personal Information*, Pew Research Center (Nov. 15, 2021), <https://www.pewresearch.org/internet/2019/11/15/americans-and-privacy-concerned-confused-and-feeling-lack-of-control-over-their-personal-information/>.

³¹ In case examining the use of ICE databases to issue detainers, organizations submitted evidence that reliance on ICE databases caused hundreds of detainers to be improperly issued to noncitizens not subject to removal. *Gonzalez v. Immigration & Customs Enft*, 416 F. Supp. 3d 995 (C.D. Cal. 2019).

³² U.S. Dept. of Homeland Security, Privacy Impact Assessment for the CBP One™ Mobile Application, 10 (Feb. 19, 2021) <https://www.dhs.gov/sites/default/files/publications/privacy-pia-cbp068-cbpmobileapplication-may2021.pdf>.

be implemented without proper training and transparency, at the expense of providing access to humanitarian protections, and without addressing the serious privacy and efficacy considerations referenced above.

Sincerely,

American Immigration Council

American Immigration Lawyers Association