



Weaknesses in Immigration Vetting

Passing a background check doesn't mean a clean record

By Robert Law

Introduction

Legislative proposals to amnesty illegal aliens usually require an alien to pass “national security and background checks” as part of the eligibility requirements. The ability to properly and thoroughly screen and vet aliens — whether seeking amnesty or any other immigration benefit — is necessary to ensure that U.S. Citizenship and Immigration Services (USCIS) adjudicators only approve benefits for those who are eligible.

But there is a general misunderstanding of what national security and background checks entail. To be clear, passing a background check does not mean that the alien has a clean criminal record or that derogatory information revealed by these checks will prevent all ineligible or inadmissible applicants from obtaining an immigration benefit. In fact, in the context of the amnesty proposals, an alien could be inadmissible on a criminal ground but still “pass” a background check. This *Backgrounder* examines the Department of Homeland Security (DHS) authority to conduct immigration vetting and highlights areas where disturbing gaps exist in current practice.

DHS Authority to Collect Biometrics

Current DHS regulations authorize the collection of biometrics (such as fingerprints) for administering immigration and naturalization benefits requests as well as administering and enforcing immigration laws. For example, any applicant, petitioner, sponsor, beneficiary, or individual filing a benefit request may be required to appear for biometrics collection. ([See 8 CFR 103.2\(b\)\(9\).](#)) Additionally, DHS has the authority to require the submission of biometric information to conduct background and security checks and perform functions related to administering and enforcing U.S. immigration laws. ([See 8 CFR 103.16\(a\).](#))

While DHS clearly has the authority to collect biometrics from any applicant, petitioner, sponsor, beneficiary, requestor, or individual seeking a benefit or generally enforcing the immigration and naturalization laws, the Department does not fully utilize this authority. Instead, the submission of biometrics is only mandatory for certain benefit requests and enforcement actions.

The current practice for expanding biometrics collection beyond the enumerated list of benefit types places an onerous burden on USCIS. As explained in the [USCIS biometrics proposed rule](#), for all other benefit requests, “DHS must decide, in accordance with its statutory and regulatory authorities, if the request or enforcement action justifies collection of biometrics and notify the individual where they will be collected when a collection is warranted and for what purposes they will be used.” Given these hurdles, USCIS rarely attempts to expand mandated biometric collection beyond the currently enumerated list of benefit types.

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Current Types of Background Checks USCIS Performs

Generally, there are three different types of background checks that USCIS runs, with each yielding different types of information.

1. Fingerprint to FBI

IDENT is the automated biometrics identification system used to check biometric identifiers (i.e., fingerprints/photographs) against other databases. While this system has the ability to yield useful information relevant to immigration benefits eligibility, USCIS receives incomplete or outdated details back from the FBI. Because the FBI does not consider USCIS a criminal justice agency, the information that USCIS receives from the FBI is either incomplete or inadequate compared to what is provided to ICE and CBP on the same alien. As a result, for immigration benefits the FBI is merely running a cursory search that is the equivalent of the background check run on an applicant seeking a job at a fast food restaurant. This current practice is obviously problematic because it deprives USCIS officers of the complete picture of the alien's criminal history. As a result, USCIS may treat the absence of derogatory information *available to them* as if there is no derogatory information and approve an immigration benefit for an ineligible alien.

2. FBI Name Check

The FBI name check is a name and date of birth vetting system. Currently, USCIS only uses this form of vetting for seven or eight benefit types. However, the investigative check is based on the name and date of birth *provided by* the applicant or petitioner. This “honor system” structure is inherently vulnerable to exploitation as the check does not search for all variations of the applicant's name and date of birth. Even if all provided name and dates of birth variations were run by USCIS, there is no guarantee the applicant provided all aliases and previously used identities. This form of vetting is particularly ineffective for amnesty applicants who have a history of breaking U.S. immigration laws, and possibly others, and are less likely to provide truthful and accurate information compared to aliens seeking legal immigration benefits.

3. TECS (Treasury Enforcement Communications System)

TECS also runs biographical information (name/date of birth) but, unlike the FBI name check, includes all aliases and prior names. TECS checks for warrants and the “no fly” list, but this form of vetting is largely not criminal in nature. While generally focused on fraud and national security, the downside is TECS can produce a lot of false positive results that take time for adjudicators to sort through.

Vulnerabilities in Current Immigration Vetting

Presently, the Department of Homeland Security lacks a uniform definition of “background checks” or the term “biometrics”. As USCIS flagged in the biometrics proposed rule, the vagueness surrounding DHS's approach to background checks injects substantial vulnerability into vetting. In the rule's preamble, the agency wrote:

DHS has decided that the more limited focus on background checks and document production is outdated because immigration benefit request adjudication and the enforcement and administration of immigration laws include verifying identity and determining whether or not the individual poses a risk to national security or public safety. DHS has decided that it is necessary to increase routine biometric collections to include individuals associated with immigration benefits and to perform other function related to administering and enforcing the immigration and naturalization laws. Therefore, DHS proposes in this rule that any applicant, petitioner, sponsor, beneficiary, or individual filing or associated with a certain benefit or request, including U.S. citizens and without regard to age, must appear for biometrics collection unless DHS waives or exempts the requirement.

Additionally, USCIS has historically not referred fraud findings very frequently. [As the 1986 amnesty showed](#), fraudulent applications were prevalent and a lot of ineligible illegal aliens were legalized. There is no reason to expect this practice to change under the Biden administration for fraudulent applications of any type of immigration benefit.

Conclusion

USCIS adjudicators and fraud detection officers are highly skilled but they lack all of the necessary resources to thoroughly vet all aliens seeking immigration benefits. If DHS is serious about benefits integrity, [it should promptly publish the USCIS biometrics final rule](#). This rulemaking originated under the Trump administration and cleared every Administrative Procedure Act hurdle except for publication in the Federal Register before the change in administration. If implemented, that rule would increase the biometric modalities that DHS collects, including iris image, palm print, and voice print. Each of these biometric modalities serves a useful purpose at various stages in the vetting process. As DHS stated in the USCIS biometrics proposed rule, this regulatory change will provide DHS with:

the flexibility to change its biometrics collection practices and policies to ensure that necessary adjustments can be made to meet emerging needs, enhance the use of biometrics beyond background checks and document production to include identity verification and management in the immigration lifecycle, enhance vetting to lessen the dependence on paper documents to prove identity and familial relationships, preclude imposters, and improve the consistency in biometrics terminology within DHS.

There are known and glaring weaknesses in the current immigration vetting procedures utilized by DHS. Bad actors and fraudsters will continue to exploit these loopholes and obtain immigration benefits until DHS enhances its vetting authority. The current background checks that USCIS conducts produces some useful information but key gaps exist. Passing a background check or national security check does not mean the alien has a clean record or even that the alien is admissible under the immigration laws. The tools exist to close these immigration vetting vulnerabilities if the Biden administration chooses to avail itself of them.