

United States Senate

WASHINGTON, DC 20510

May 11, 2018

The Honorable Kirstjen Nielson
Secretary
Department of Homeland Security
245 Murray Lane SW
Washington, DC 20528

Dear Secretary Nielson:

We write to thank the Department of Homeland Security (DHS) for its response to our December 2017 letter requesting information about the Department's biometric exit program. We also appreciate you making your staff available to answer our questions.

Based on the responses we received from your staff, DHS has indicated that it intends to begin a formal rulemaking later this calendar year that would outline DHS' process for implementing the biometric exit program.

We write now to urge DHS to initiate and complete this formal rulemaking before the end of this calendar year and before further expanding the biometric exit program. We believe this formal rulemaking will provide DHS with an opportunity to address the concerns previously raised by us as well as other stakeholders, including airlines, airports, and privacy advocates. It will also ensure a full vetting of this potentially sweeping program that could impact every American leaving the country by airport.

We thus request a timeline from DHS indicating when it intends to publish a notice of proposed rulemaking and an estimate on when a final rule will be adopted. Further we request that DHS use this formal rulemaking to address the following public questions and concerns:

1. What is the extent of visa overstay travel fraud and how could a biometric exit program correct this problem? DHS has previously stated that a biometric exit program improves border security and accuracy in detecting fraud. Within the rule, please include statistics indicating the number of imposter travelers detected by the biometric exit program.
2. What is the biometric exit program's accuracy in identifying innocent and fraudulent travelers? We request that DHS not only include the "match rates," indicating how often facial scans "match" photos contained in a database, but also the "true reject" rate—the rate at which travelers using fraudulent credentials are accurately rejected.
3. How, specifically, will the biometric exit program allow American citizens to opt-out? DHS has stated that it currently provides travelers with notice of the opt-out process through tear sheets, signage, and gate announcements, but this process has not been formalized. We request that DHS' rule include specific details on the opt-out process for American citizens

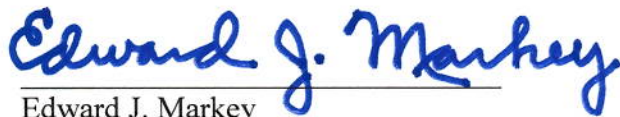
and the procedures that DHS would follow should an American choose to opt-out.

4. What efforts will DHS take to prevent the biometric exit program from placing undue burdens on travelers, and how does the agency intend to mitigate potential burdens and biases disproportionately affecting certain races and genders as the program is expanded?
5. DHS should formalize its process and procedures for the collection of passenger data. Within this process formalization, we request that DHS include a description of which data is collected, which agencies have access to the collected data, how long agencies will possess such data, and specific actions that DHS (and other relevant agencies) will take to safeguard this data. Further, we request that DHS set a short-term goal for the immediate deletion of American citizen data after such data is used to verify the American's identity.

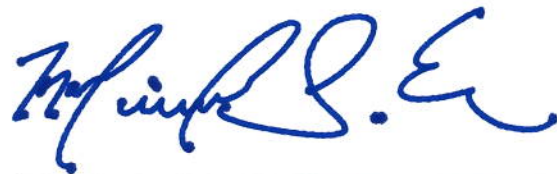
We urge DHS to complete this rulemaking process promptly before the Department further expands the biometric exit program.

Thank you to all the men and women at DHS who work every day to protect our nation. We believe that through this rulemaking process we can strike an appropriate balance between the security of our nation and the protection of Americans' data and privacy. We look forward to your response, which we hope will contain our requested timeline for rulemaking and a commitment to addressing the five questions and concerns.

Sincerely,



Edward J. Markey
United States Senator



Mike Lee
United States Senator