

# **BAD** for our health? **B**iometrics **A**nd **D**ataveillance Practice and Policies

ASLME | 2026.06.05 | Atlanta, GA

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PennState

LAW, POLICY, AND  
ENGINEERING

# Disclosures and Disclaimers

- **I have financial interests.**
  - I am a licensed attorney with a part-time private law practice (PA Atty ID #206275).
  - This presentation was supported in part by seed funding from the Social Science Research Institute at Penn State University and informed by collaborative discussions with Dr. Lindsay Fernández Rhodes.
- **I am an attorney, but I am not your attorney.**
  - This presentation does not create an attorney-client relationship.
- **The content of this presentation is not legal advice.**
  - The information presented is intended exclusively for general educational purposes. If you have specific questions, it is appropriate to consult a licensed attorney in your jurisdiction with relevant subject-matter expertise.
- **The information is provided “as is.”**
  - Laws vary across jurisdictions and change over time. There are no guarantees or warranties that the content is complete, accurate, up-to-date, etc.
- **The views expressed are my own.**
  - The content of this presentation is solely my responsibility and might not represent the official views of my current or former funding sources, employers, clients, or any other person or entity.
  - I am committed to principles of diversity, equity, and inclusion and the advancement of human rights.

**How can efforts intended to  
improve inclusion and health equity**

**deepen surveillance, data harms,  
and human rights violations?**

# Trajectory #1: Inclusion in Precision Health Initiatives



**882,000+**

Participants



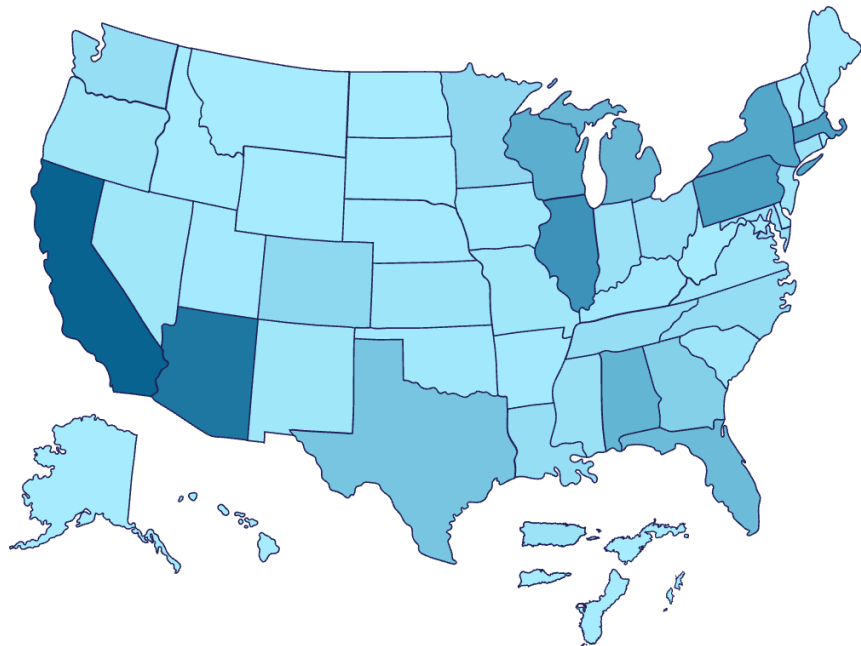
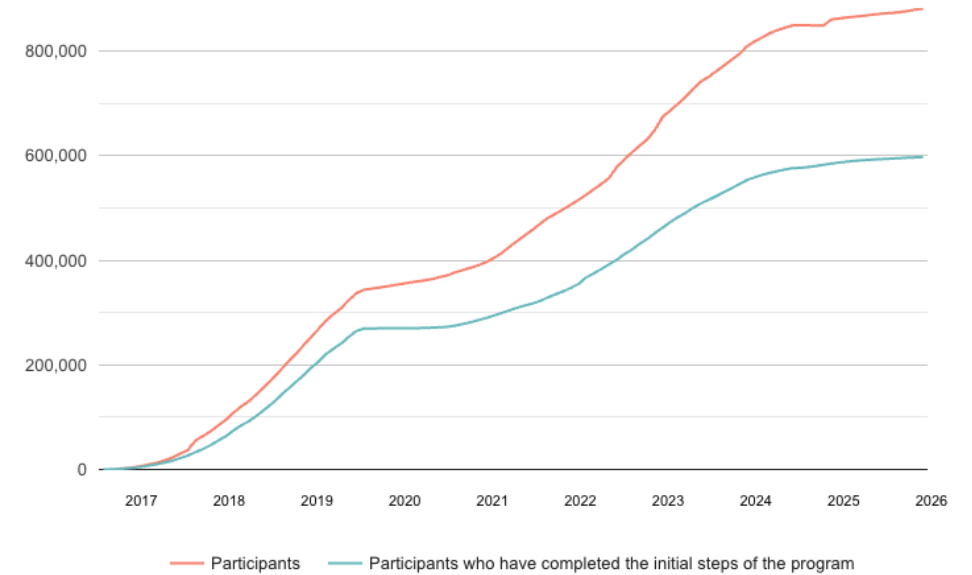
**500,000+**

Electronic Health Records

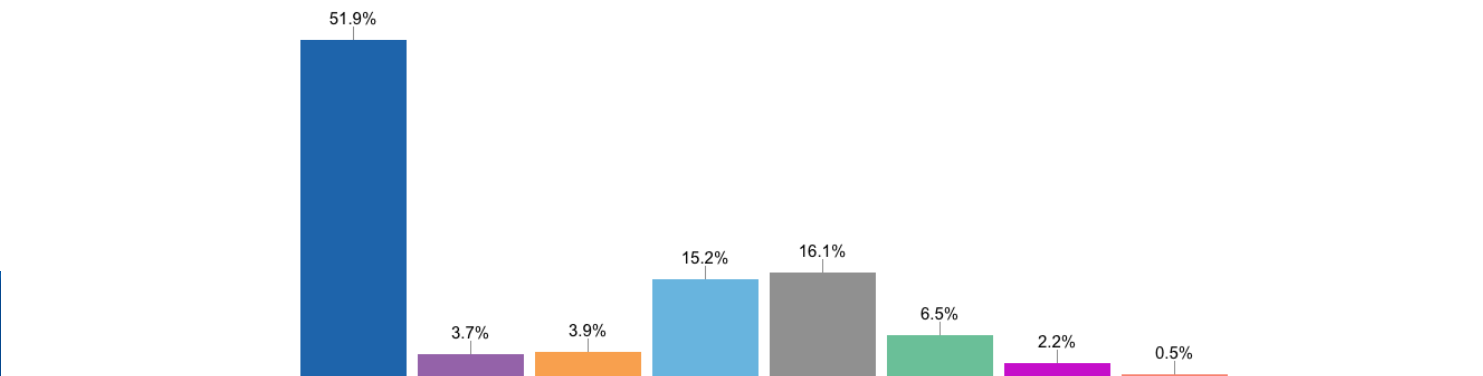


**617,000+**

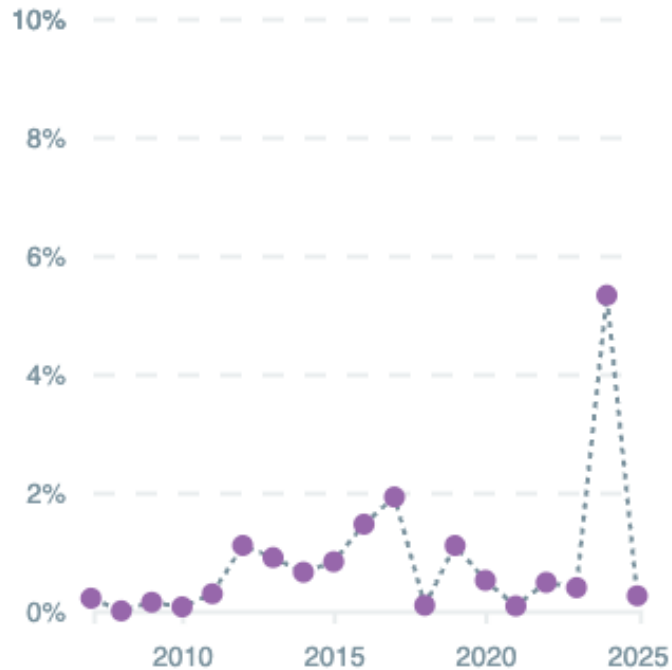
Biosamples Received



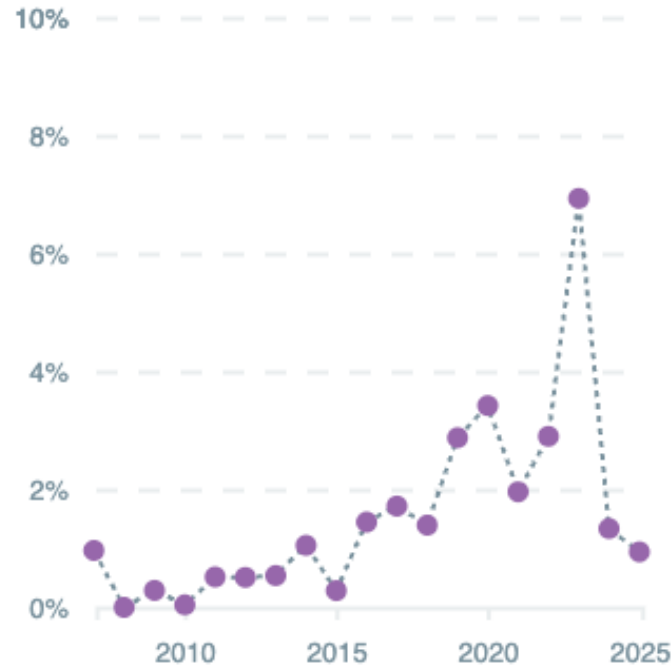
White American Indian or Alaska Native Asian Black, African American or African Hispanic Latino or Spanish More than one category Other  
Prefer not to say



# Hispanic or Latin American Participation Over Time



Discovery Stage

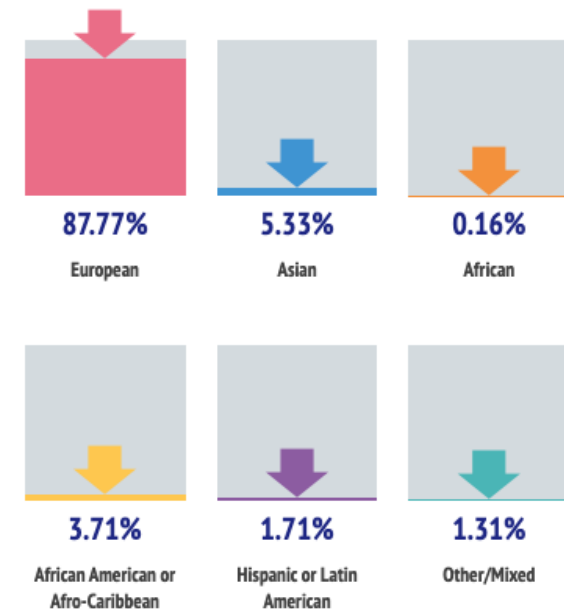


Replication Stage

● Hispanic or Latin American

## Total GWAS participants diversity

Version 1.0.0. Last check for data: 2025-09-05 00:34:26 .



Source: Mills MC and Rahal C. The GWAS Diversity Monitor Tracks diversity by disease in real time. Nature Genetics. 2020; 52: 242-243. doi: 10.1038/s41588-020-0580-y; <https://gwasdiversitymonitor.com/>

# NASEM 2023 Report

available at <http://nap.nationalacademies.org/26902>

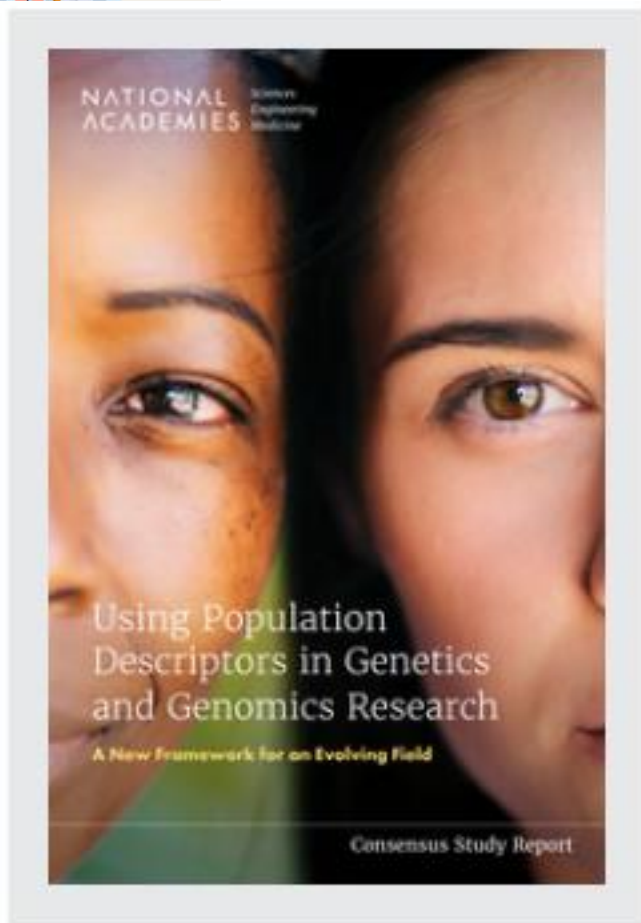
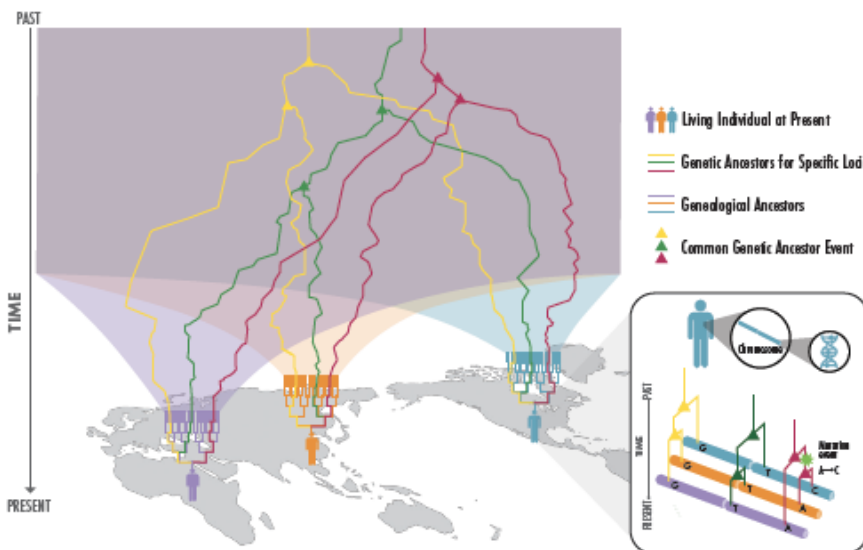
## Committee on Use of Race, Ethnicity, and Ancestry as Population Descriptors in Genomics Research (Meeting 2 and Public Workshop)

SHARE f t in



- About
  - Video Playlist
  - FACA Info
  - Meeting Materials
- The second meeting of the *Committee on Use of Race, Ethnicity, and Ancestry as Population Descriptors in Genomics Research* was held on April 4 and April 7, 2022. The public workshop was held on April 4 between 11AM and 5PM (ET) via webinar.

As part of this workshop, the committee request public comment on the current use of population



### BOX 2-1 Key Terminology and Definitions

**Ancestral recombination graph:** for a set of individuals, the graph depicting the genetic ancestry lines (or paths) that trace back to their common genetic ancestors at every position in the genome.

**Ancestry:** a person's origin or descent, lineage, "roots," or heritage, including kinship. Examples of ancestry group labels include clan names or patronyms, but geographic, ethnicity, or racial labels are often used to denote groups whose members are presumed to share common ancestry.

**Environment:** the complex of physical, social, cultural, chemical, and biotic factors that act upon a person.

**Ethnicity:** a sociopolitically constructed system for classifying human beings according to claims of shared heritage often based on perceived cultural similarities (e.g., language, religion, beliefs); the system varies globally.

**Genealogical ancestors:** the set of biological ancestors in an individual's family tree or pedigree, including parents, grandparents, great-grandparents, etc. Not all of an individual's genealogical ancestors are their genetic ancestors, that is, those who have contributed DNA to that individual; in fact, most did not.

**Genetic ancestry:** the paths through an individual's family tree by which they have inherited DNA from specific ancestors. Genetic ancestry can be thought of in terms of lines extending upwards in a family tree from an individual through their genetic ancestors (see Figure 2-1). Shared genetic ancestry arises from having genetic ancestors in common (that is, overlapping lines of ancestry). For a set of individuals, a fundamental representation of genetic ancestry is a structure called an ancestral recombination graph. In practice, shared genetic ancestry is typically inferred by some measure(s) of genetic similarity.

**Genetic ancestry group:** a set of individuals who share more similar genetic ancestries. In practice a genetic ancestry group is constituted based on some measure(s) of genetic similarity. Once a set is designated as a genetic ancestry group, its members are often assigned a geographic, ethnic, or other nongenetic label that is common among its members.

**Genetic similarity:** quantitative measure of the genetic resemblance between individuals that reflects the extent of shared genetic ancestry.

**Population:** a group of characteristic (or set of) individuals; this definition does not require homogeneity.

**Population descriptor:** people into groups (or "bins") based on a dimension of interest. A feature, although this is a non-ex

### BOX 2-1 Continued

**Race:** a sociopolitically constructed system for classifying and ranking human beings according to subjective beliefs about shared ancestry based on perceived innate biological similarities; the system varies globally.

See Appendix B for further comments, definitions, and citations.

# Trajectory #2: Inclusion in Law Enforcement Actions

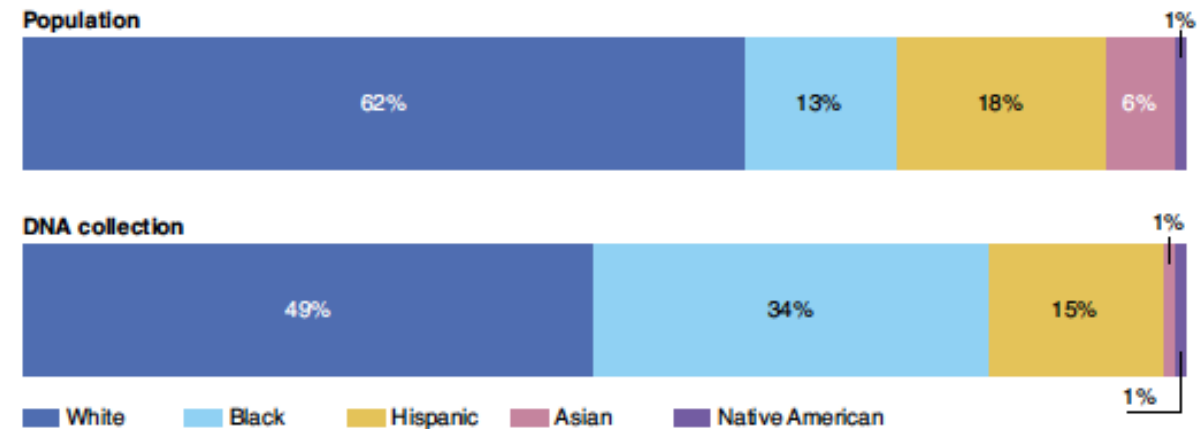
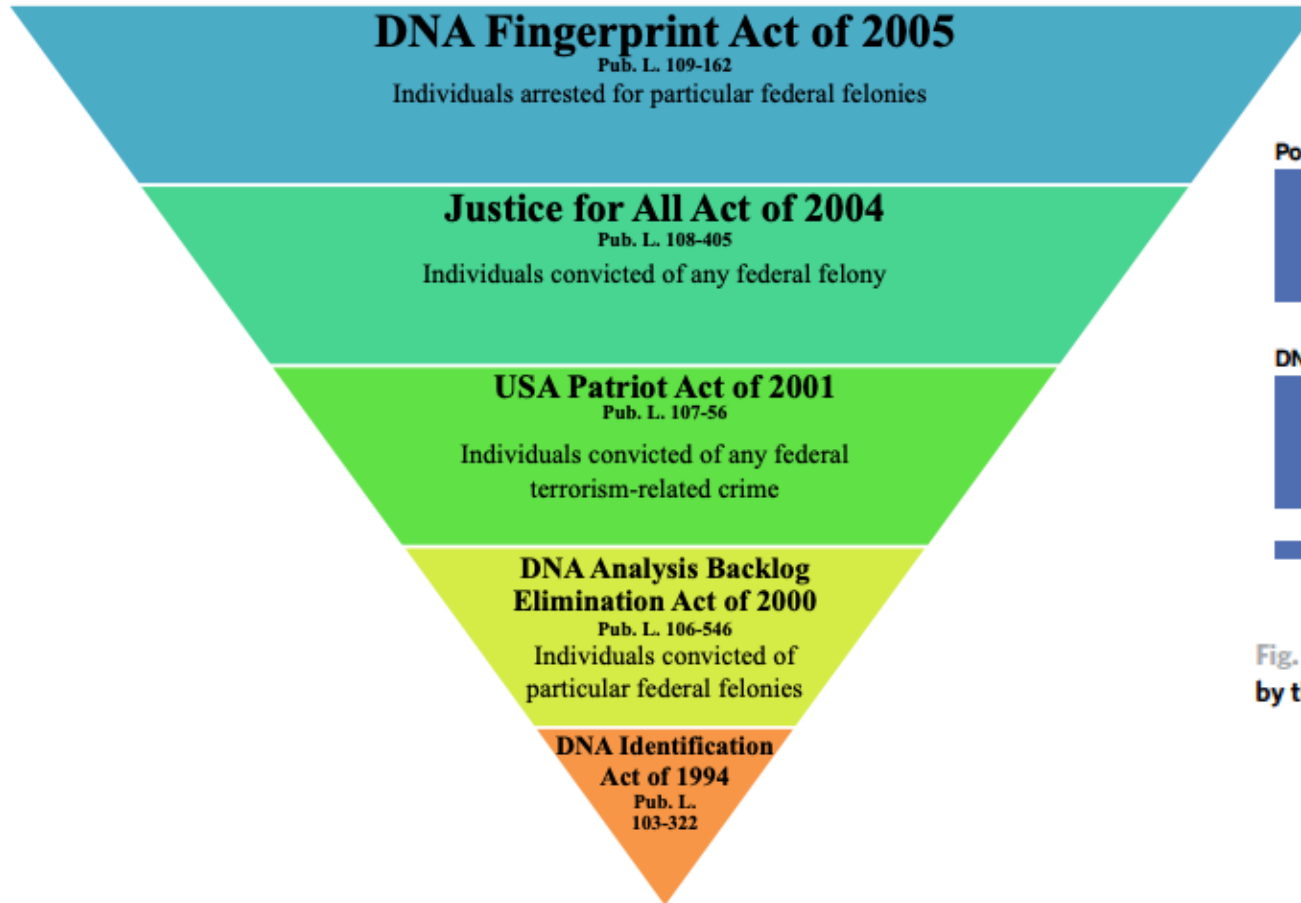
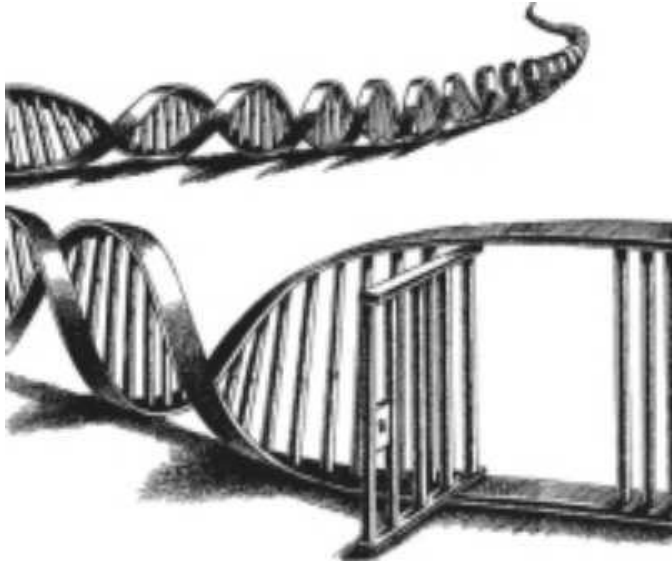


Fig. 1 | Comparison of US population with DNA collection for NDIS deposition, categorized as defined by the US Census. Data from ref. <sup>3</sup>.

Source: Syndercombe (2021) (citing Murphy & Tong 2020)

Source: Wagner unpublished

# Expansion of Biometrics under Trump Admin. 2.0



Federal Register / Vol. 90, No. 19 / Thursday, January 30, 2025 / Presidential Documents 8467

**Presidential Documents**

**Executive Order 14165 of January 20, 2025**

**Securing Our Borders**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, and section 301 of title 3, United States Code, it is hereby ordered:

**Section 1. Purpose.** Over the last 4 years, the United States has endured a large-scale invasion at an unprecedented level. Millions of illegal aliens from nations and regions all around the world successfully entered the United States where they are now residing, including potential terrorists, foreign spies, members of cartels, gangs, and violent transnational criminal organizations, and other hostile actors with malicious intent.

Deadly narcotics and other illicit materials have flowed across the border while agents and officers spend their limited resources processing illegal aliens for release into the United States. These catch-and-release policies undermine the rule of law and our sovereignty, create substantial risks to public safety and security, and divert critical resources away from stopping the entry of contraband and fugitives into the United States.

We have limited information on the precise whereabouts of a great number of these illegal aliens who have entered the United States over the last 4 years.

This cannot stand. A nation without borders is not a nation, and the Federal Government must act with urgency and strength to end the threats posed by an unsecured border.

One of my most important obligations is to protect the American people from the disastrous effects of unlawful mass migration and resettlement. My Administration will marshal all available resources and authorities to stop this unprecedented flood of illegal aliens into the United States.

**Sec. 2. Policy.** It is the policy of the United States to take all appropriate action to secure the borders of our Nation through the following means:

- (a) Establishing a physical wall and other barriers monitored and supported by adequate personnel and technology;
- (b) Deterring and preventing the entry of illegal aliens into the United States;
- (c) Detaining, to the maximum extent authorized by law, aliens apprehended on suspicion of violating Federal or State law, until such time as they are removed from the United States;
- (d) Removing promptly all aliens who enter or remain in violation of Federal law;
- (e) Pursuing criminal charges against illegal aliens who violate the immigration laws, and against those who facilitate their unlawful presence in the United States;
- (f) Cooperating fully with State and local law enforcement officials in enacting Federal-State partnerships to enforce Federal immigration priorities; and
- (g) Obtaining complete operational control of the borders of the United States.

E.O. 14165 (Jan. 20, 2025)  
“Securing Our Borders”

Federal Register / Vol. 90, No. 210 / Monday, November 3, 2025 / Proposed Rules 49062

**DEPARTMENT OF HOMELAND SECURITY**

**8 CFR Parts 1, 103, 204, 207, 208, 209, 210, 212, 214, 215, 216, 235, 236, 240, 244, 245, 245a, 264, 287, 333 and 335 [CIS No. 2814-25; DHS Docket No. USCIS-2025-0205]**

**RIN 1615-AC99**

**Collection and Use of Biometrics by U.S. Citizenship and Immigration Services**

**AGENCY:** U.S. Citizenship and Immigration Services, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The U.S. Department of Homeland Security (DHS) proposes to amend its regulations governing biometrics use and collection. DHS proposes to require submission of biometrics by any individual, regardless of age, filing or associated with an immigration benefit request, other request, or collection of information, unless exempted; expand biometrics collection authority upon alien arrest; define “biometrics,” codify reuse requirements; codify and expand DNA testing, use and storage; establish an “extraordinary circumstances” standard to excuse a failure to appear at a biometric services appointment; modify how VAWA self-petitioners and T nonimmigrant status applicants demonstrate good moral character; and clarify biometrics collection purposes.

**DATES: Submission of Public Comments:** Written comments on the proposed rule must be submitted on or before January 2, 2026. Comments on the information collection described in the Paperwork Reduction Act section of this proposed rule must be received on or before January 2, 2026. The electronic Federal Docket Management System will accept comments prior to midnight eastern time at the end of that day.

**ADDRESSES:** You may submit comments on the entirety of this proposed rulemaking package, identified by DHS Docket No. USCIS-2025-0205, through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the website instructions for submitting comments.

Comments must be submitted in English, or an English translation must be provided. Comments that will provide the most assistance to USCIS will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. Comments submitted in a manner other than the one listed above, including emails or letters sent to DHS or USCIS officials, will not be considered comments on the proposed rule and may not receive a response from DHS. Please note that DHS and USCIS will not accept or consider any comments that are hand-delivered, couriered, or sent by mail. In addition, USCIS cannot accept comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives. If you cannot submit your comment by using <http://www.regulations.gov>, please contact the Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by telephone at (240) 721-3000 for alternate instructions.

**FOR FURTHER INFORMATION CONTACT:** Security and Public Safety Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone (240) 721-3000.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

- I. Public Participation
- II. Executive Summary
  - A. Purpose and Summary of the Regulatory Action
  - B. Summary of Costs and Benefits
- III. Background and Purpose
  - A. Legal Authority and Guidance for DHS Collection and Use of Biometrics
  - B. Background Checks
  - C. Security Document Production
  - D. Biometric Collection From U.S. Citizens, U.S. Nationals, and Lawful Permanent Residents
  - E. Required Biometric Collections
  - F. Administrative Guidance
  - G. The Use of Biometrics by DHS
- IV. Discussion of Proposed Changes
  - I. Identify Management
  - II. Enhanced and Continuous Vetting
  - III. Verify Identity, Familial Relationships, and Exclude Imposters
  - IV. Use of DNA Evidence
    1. Special Treatment of DNA Evidence
    2. Identify Management
  - V. Flexibility in Biometrics Requirements
  - VI. Additional Modalities
  - VII. Amended Related Regulations To Align With the Purposes of This Proposed Rule and To Facilitate Electronic Filing
  - VIII. Biometrics Requirement for U.S. Citizens, U.S. Nationals, and Lawful Permanent Residents
    1. The Adam Walsh Child Protection and Safety Act of 2006
    2. The International Marriage Broker Regulation Act (IMBRA)
    3. Certain Family-Based Petitioners
    4. Violence Against Women Act (VAWA) Self-Petitioners
  - IX. T Nonimmigrant Adjustment of Status Applicants
  - X. Interviews for Benefits
  - XI. Interviews for Alien Spouses
  - XII. Proposed Implementation
  - XIII. Phased-In Additional Biometrics Collection
  - XIV. Collection of the Biometric Services Fee
  - XV. Evidence of Age and Birth Penalties for an Adopted Child
  - XVI. Statutory and Regulatory Requirements
    - A. Executive Order 12866 (Regulatory Planning and Review), 13503 (Improving Regulation and Regulatory Review), and 14192 (Unleashing Prosperity Through Deregulation)
    - B. Summary
    - C. Background and Purpose of the Proposed Rule
    - D. Population
    - E. Costs and Benefits of the Proposed Rule
    - F. Regulatory Flexibility Act
    - G. Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act)
    - H. Unfunded Mandates Reform Act of 1995
    - I. Executive Order 13132 (Federalism)
    - J. Executive Order 12988 (Civil Justice Reform)
    - K. Paperwork Reduction Act
    - L. Family Assessment
    - M. National Environmental Policy Act
    - N. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)
    - O. National Technology Transfer and Advancement Act
    - P. Executive Order 12630 (Governmental Actions and Interference With Constitutionally Protected Property Rights)
    - Q. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)
    - R. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)
  - XVII. Table of Abbreviations

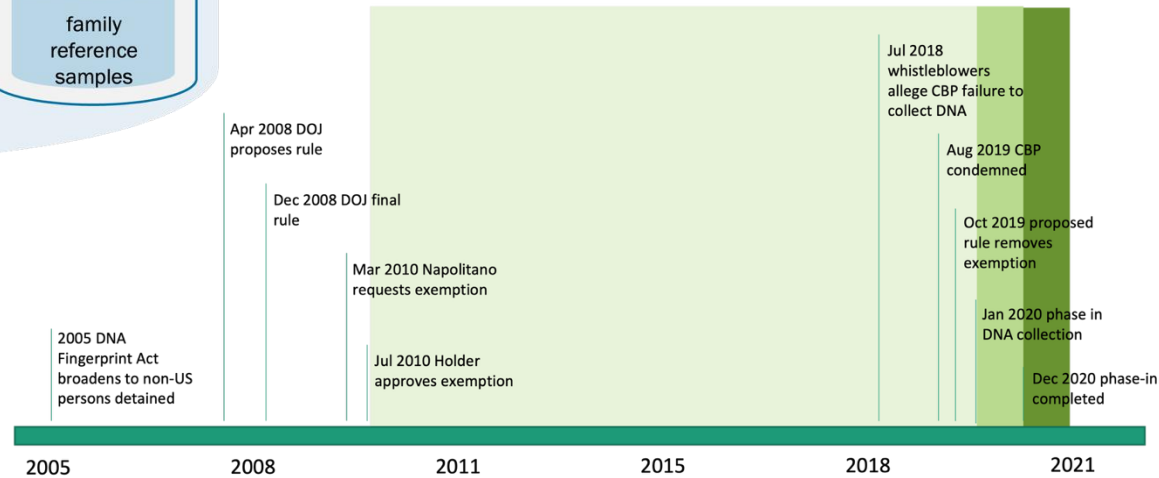
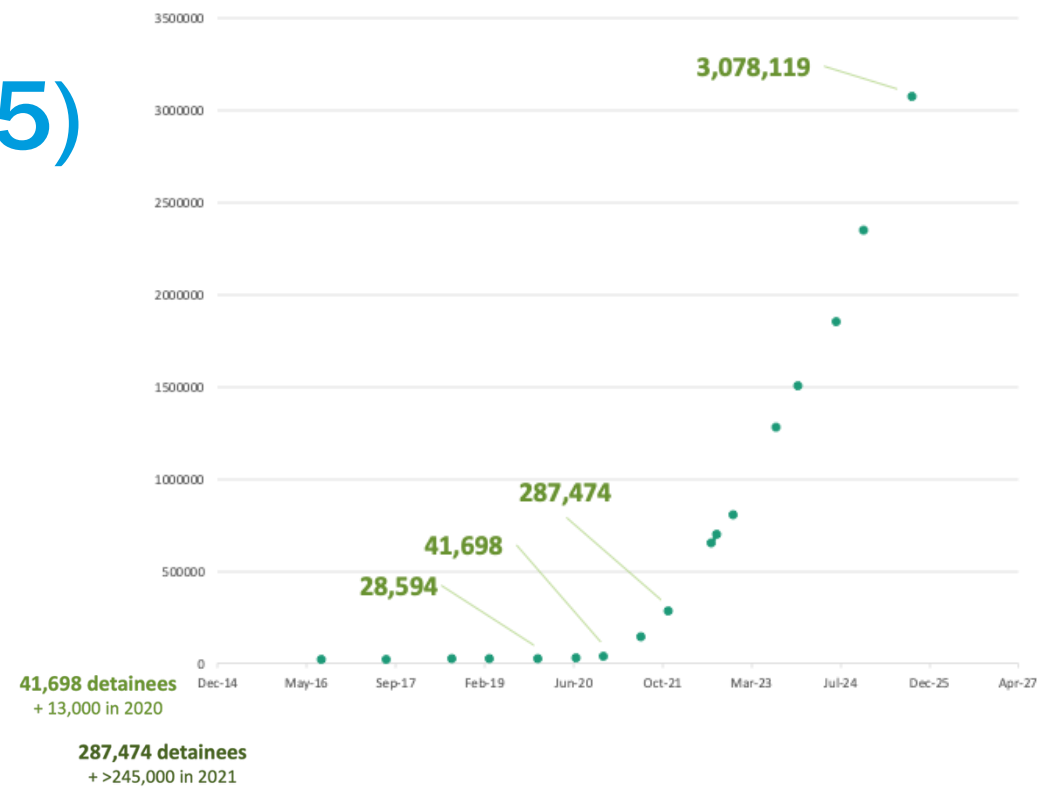
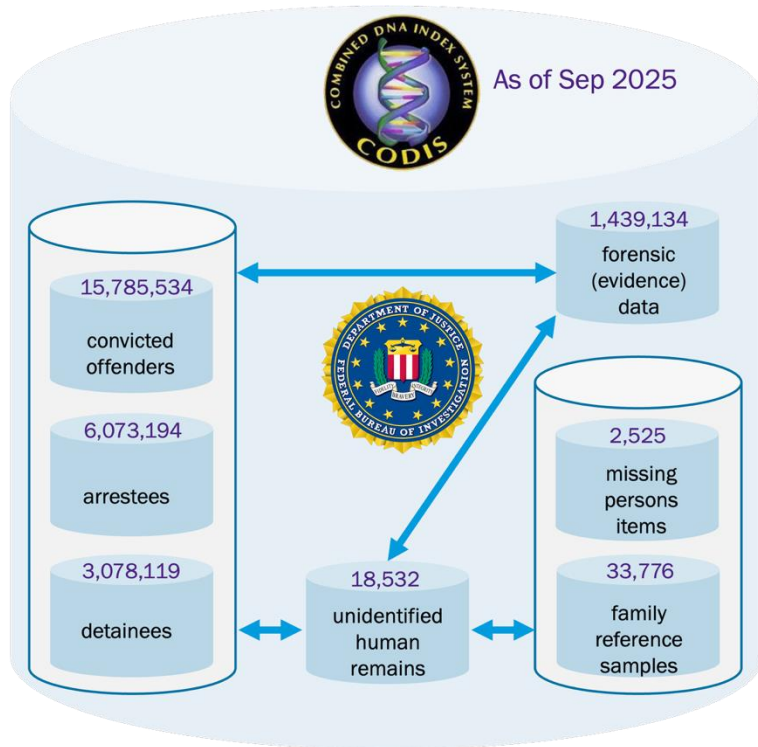
DHS NPRM (Nov. 3, 2025)  
“Collection and Use of Biometrics by U.S. Citizenship and Immigration Services

Image from <http://bayarea.indymedia.org/newsitems/2006/10/26/18323702.php>

# *Noem v. Vasquez Perdomo*, 606 U.S. \_\_\_\_ (2025)

- Shadow docket decision temporarily allows “Kavanaugh Stops”
  - “Reasonable suspicion” for an immigration-related stop-and-frisk- (and DNA profiling?) by ICE based on an officer’s reliance on only these four factors:
    - Apparent race or ethnicity
    - Speaking Spanish or English with an accent
    - Presence at a particular location
    - Type of work that one does

# By the numbers (as of Sept 2025)



Slide components  
courtesy of Sara Huston

# Emerging State Dataveillance

ENROLLED 2023 Legislature	CS for CS for SB 1718
	20231718er
1	
2	An act relating to immigration; creating ss. 125.0156
3	and 166.246, F.S.; prohibiting counties and
4	municipalities, respectively, from providing funds to
5	any person, entity, or organization to issue
6	identification documents to an individual who does not
7	provide proof of lawful presence in the United States;
8	creating s. 322.033, F.S.; specifying that certain
9	driver licenses and permits issued by other states
10	exclusively to unauthorized immigrants are not valid
11	in this state; requiring law enforcement officers and
12	authorized representatives of the Department of
13	Highway Safety and Motor Vehicles to cite a person
14	driving with a specified invalid license; requiring
15	the department to maintain a list on its website of
16	out-of-state classes of driver licenses that are
17	invalid in this state; amending s. 322.04, F.S.;
18	revising the circumstances under which certain persons
19	are exempt from obtaining a driver license; creating
20	s. 395.3027, F.S.; requiring certain hospitals to
21	collect patient immigration status data information on
22	admission or registration forms; requiring hospitals
23	to submit quarterly reports to the Agency for Health
24	Care Administration containing specified information;
25	requiring the agency to submit an annual report to the
26	Governor and the Legislature containing specified
27	information; authorizing the agency to adopt rules;
28	prohibiting rules requiring the disclosure of certain
29	information; amending s. 448.09, F.S.; requiring the

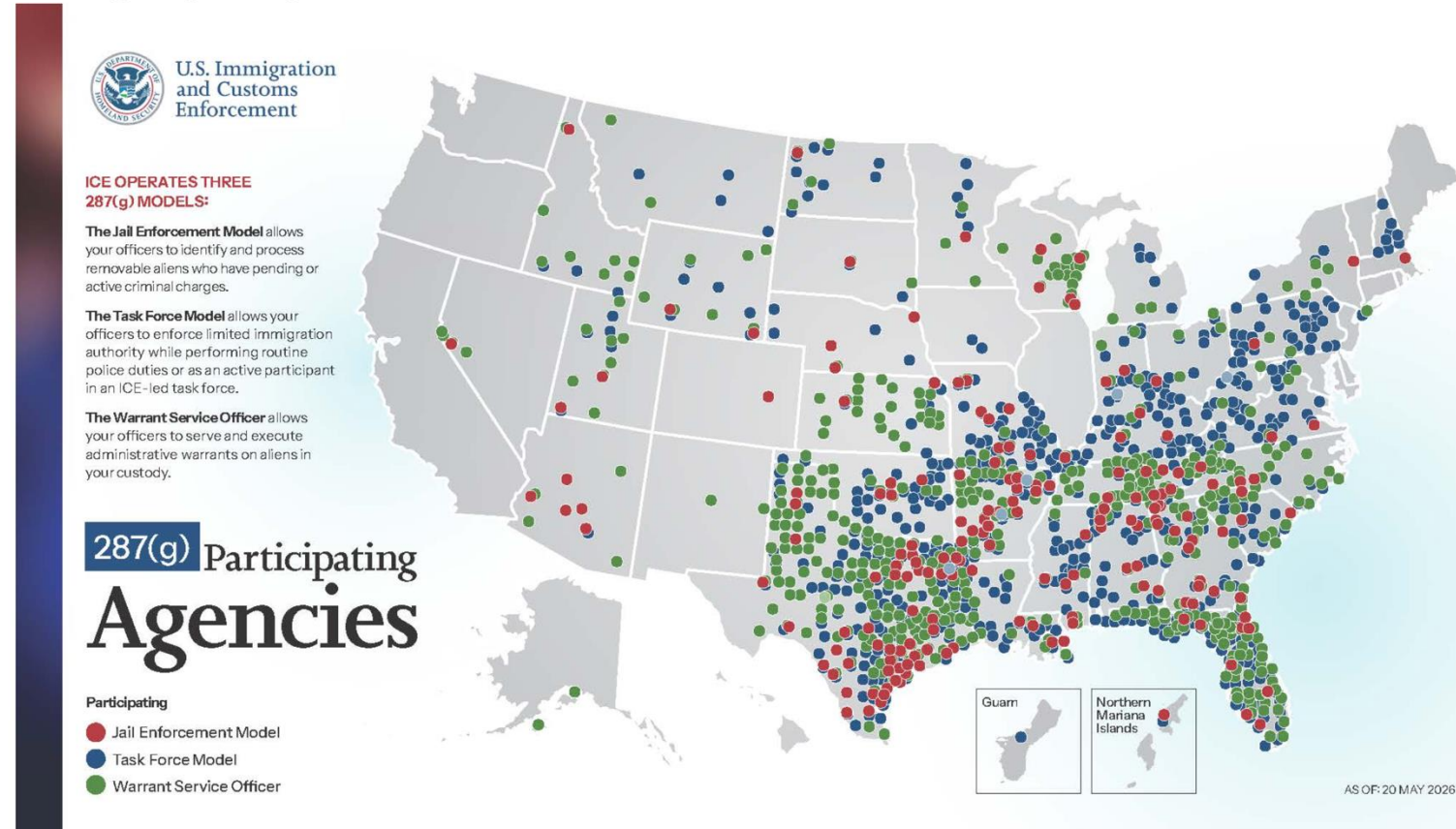
Florida S.B. 1718  
(eff. 7/1/23)

Texas E.O. GA-46  
(eff. 11/1/24)

Executive Order
BY THE GOVERNOR OF THE STATE OF TEXAS
Executive Department Austin, Texas August 8, 2024
EXECUTIVE ORDER GA 46
<i>Relating to the collection of information by the Health and Human Services Commission to assess costs to the Texas public hospital system imposed by the federal government's open-border policies.</i>
WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on May 31, 2021, certifying under Section 418.014 of the Texas Government Code that the surge of individuals unlawfully crossing the Texas-Mexico border posed an ongoing and imminent threat of disaster for a number of Texas counties and for all state agencies affected by this disaster; and
WHEREAS, the surge of individuals crossing the southern border has continued, resulting in more than 11 million people—a number larger than the population of 40 different States—entering this country illegally in less than four years under the Biden-Harris Administration; and
WHEREAS, the Biden-Harris Administration has consistently adopted open-border policies that invite this mass illegal entry into Texas and other States, including by ignoring federal laws that require the federal government to secure the border, construct barrier infrastructure, detain illegal immigrants, vet would-be entrants, and swiftly remove aliens pressing frivolous asylum claims; and
WHEREAS, the Biden-Harris Administration has also taken steps to prevent States from addressing this crisis caused and aggravated by the federal government's abdication, including by destroying state barrier infrastructure and suing state officials rather than the thousands of individuals daily entering this country in violation of federal criminal laws; and
WHEREAS, federal law contributes to the growth of uncompensated medical costs by requiring that any individual must be allowed to obtain emergency medical treatment regardless of that individual's immigration status, or willingness or ability to pay for such treatment; and
WHEREAS, the State of Texas absorbs a large percentage of the costs associated with medical care for individuals who are not lawfully present in the United States; and
WHEREAS, Texans ultimately bear the costs associated with public financial support for medical care for individuals who are not lawfully present in the United States, in the form of higher taxes; and
WHEREAS, as used in this executive order, the term "Hospitals" includes acute care hospitals enrolled in Medicaid or the Children's Health Insurance Program, and any additional providers identified by the Health and Human Services Commission; and
FILED IN THE OFFICE OF THE SECRETARY OF STATE 7:30 PM 08/08/2024 AUG 08 2024

# Dataveillance in Your Neighborhood: 287(g) State and Local Partnerships with ICE

ICE 287(g) Program Map



Source: <https://www.ice.gov/identify-and-arrest/287g>


**More data can simultaneously produce  
more visibility and more vulnerability**

**Minorities can experience both  
hyposurveillance and hypersurveillance  
simultaneously**

# De-Siloing Federal Data (out in the open)

Policy Number: 11066.2

Office of the Director  
U.S. Department of Homeland Security  
599 12th Street, SW  
Washington, D.C. 20536



**U.S. Immigration and Customs Enforcement**

October 27, 2025

MEMORANDUM FOR: Madison Sheahan  
Deputy Director

Marcos D. Charles  
Acting Executive Associate Director  
Enforcement and Removal Operations

Derek W. Gordon  
Acting Executive Associate Director  
Homeland Security Investigations

Charles Wall  
Principal Legal Advisor

FROM: Todd M. Lyons  
Acting Director

SUBJECT: Use of HHS Information and Rescission of ICE Policy Memorandum 11066.1, *Clarification of Existing Practices Related to Certain Health Care Information* (Oct. 25, 2013).

**Purpose**

This memorandum governing the agency submitted by the or other sources new and ongoing Memorandum 11066.1, *Clarification of Existing Practices Related to Certain Health Care Information* (Oct. 25, 2013).

**Policy**

It is ICE policy information that to pursue as a matter HHS Centers for

**Use of HHS Information and Rescission of ICE Policy Memorandum 11066.1, Clarification of Existing Practices Related to Certain Health Care Information (Oct. 25, 2013).**

ATIA Doc. No. 25121510. (Posted 12/15/25)

53324 Federal Register / Vol. 90, No. 225 / Tuesday, November 25, 2025 / Notices

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
**Centers for Medicare & Medicaid Services**  
**[CMS-9163-N]**

**Notice of Medicaid Information Sharing Between the Centers for Medicare & Medicaid Services and the Department of Homeland Security**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).  
**ACTION:** Notice.

**SUMMARY:** This notice announces that the Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS), will share certain information with the U.S. Department of Homeland Security (DHS), and its component agency, U.S. Immigration and Customs Enforcement consistent with federal laws requiring the provision of information to DHS.

**DATES:** This notice is applicable immediately.

**FOR FURTHER INFORMATION CONTACT:** The Center for Medicaid and CHIP Services at [CMCS@cms.hhs.gov](mailto:CMCS@cms.hhs.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

This notice provides information regarding the provision of certain information collected by the Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS), with U.S. Department of Homeland Security (DHS) and its component agency, U.S. Immigration and Customs Enforcement (ICE). CMS will share certain information with DHS and ICE regarding individuals for a program to share information with its component agency, U.S. Immigration and Customs Enforcement (ICE). This information is relevant to DHS and ICE, for example, to determine if an individual is a resident or otherwise permanently residing in the United States under color of law.<sup>1</sup> Section 1903(v)(1) of the Social Security Act (the Act) (42 U.S.C. 1396b(v)(1)). The exception to this prohibition is that FFP can be paid if the care and services are "necessary for the treatment of an emergency medical condition of the alien," the alien otherwise meets the eligibility requirements for Medicaid, and the care and services are not related to an organ transplant procedure. Section 1903(v)(2) of the Act (42 U.S.C. 1396b(v)(2)). Federal laws govern the collection, use, and disclosure of CMS information. Depending on the type of information, applicable laws may include the Privacy Act of 1974 (5 U.S.C. 552a), section 1106(a) of the Act (42 U.S.C. 1306(a)(1)) and CMS implementing regulations at 42 CFR part 401, subpart H, and other federal laws. In addition, CMS has established a robust privacy and security program (<https://www.cms.gov/about-cms/information-systems/privacy>). CMS has previously stated on its website that the information regarding individuals that it collects will only be used for administration of its programs. See, e.g., CMS, CMS Privacy Home Page, <https://www.cms.gov/about-cms/information-systems/privacy> ("To protect your privacy, we'll tell you before we collect any personal information we need to run our health care programs, and only use it for that purpose."). CMS also has stated on its website that it will not use immigration status for immigration enforcement purposes. See CMS, More information for immigrant households, <https://www.healthcare.gov/immigrants-immigrant-families/> ("We won't use any immigration status you share with us for immigration enforcement purposes."). This policy statement was made in the context of and in reliance on a 2013 ICE policy that stated that ICE would not use CMS data or information provided by individuals to obtain coverage for certain benefits under CMS programs as the basis for pursuing a civil immigration enforcement action. ICE has rescinded this policy.<sup>1</sup> See ICE Policy Memorandum 11066.2, *Use of HHS Information and Rescission of ICE Policy Memorandum 11066.1, Clarification of Existing Practices Related to Certain Health Care Information* (October 25, 2013, 2013 Policy Memorandum), (Oct. 27, 2025, ICE Policy Memorandum 11066.2).

**II. Legal Authority**

Several federal laws authorize CMS to make certain information available to DHS and ICE for immigration enforcement purposes. Section 1903(v)(1) of the Social Security Act (the Act) (42 U.S.C. 1396b(v)(1)). The exception to this prohibition is that FFP can be paid if the care and services are "necessary for the treatment of an emergency medical condition of the alien," the alien otherwise meets the eligibility requirements for Medicaid, and the care and services are not related to an organ transplant procedure. Section 1903(v)(2) of the Act (42 U.S.C. 1396b(v)(2)). Federal laws govern the collection, use, and disclosure of CMS information. Depending on the type of information, applicable laws may include the Privacy Act of 1974 (5 U.S.C. 552a), section 1106(a) of the Act (42 U.S.C. 1306(a)(1)) and CMS implementing regulations at 42 CFR part 401, subpart H, and other federal laws. In addition, CMS has established a robust privacy and security program (<https://www.cms.gov/about-cms/information-systems/privacy>). CMS has previously stated on its website that the information regarding individuals that it collects will only be used for administration of its programs. See, e.g., CMS, CMS Privacy Home Page, <https://www.cms.gov/about-cms/information-systems/privacy> ("To protect your privacy, we'll tell you before we collect any personal information we need to run our health care programs, and only use it for that purpose."). CMS also has stated on its website that it will not use immigration status for immigration enforcement purposes. See CMS, More information for immigrant households, <https://www.healthcare.gov/immigrants-immigrant-families/> ("We won't use any immigration status you share with us for immigration enforcement purposes."). This policy statement was made in the context of and in reliance on a 2013 ICE policy that stated that ICE would not use CMS data or information provided by individuals to obtain coverage for certain benefits under CMS programs as the basis for pursuing a civil immigration enforcement action. ICE has rescinded this policy.<sup>1</sup> See ICE Policy Memorandum 11066.2, *Use of HHS Information and Rescission of ICE Policy Memorandum 11066.1, Clarification of Existing Practices Related to Certain Health Care Information* (October 25, 2013, 2013 Policy Memorandum), (Oct. 27, 2025, ICE Policy Memorandum 11066.2).

**III. ICE notes that it is currently precluded from using this information due to a Preliminary Injunction and it will proceed with this policy when the Preliminary Injunction is lifted. See ICE Policy Memorandum 11066.2, see also *California v. DHS*, No. 25-cv-05536 (N.D. Cal., filed July 1, 2025). Under that same Preliminary Injunction, CMS is currently precluded from sharing certain Medicaid data with ICE for immigration enforcement purposes. Similarly, CMS will proceed with this policy when the Preliminary Injunction is lifted.**

any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before January 28, 2026. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicole Oengele, FCC, via email [PRA@fcc.gov](mailto:PRA@fcc.gov) and to [nicole.oengele@fcc.gov](mailto:nicole.oengele@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Nicole Oengele, (202) 418-2991.

**SUPPLEMENTARY INFORMATION:**

**OMB Control Number:** 3060-1230.  
**Title:** Enterprise Service and Public Safety Interference Complaint Intake Form.  
**Form Number:** FCC-5624.  
**Type of Review:** Extension of a currently approved collection.  
**Respondents:** Business or other for-profit entities, Not-for-profit institutions, Federal government, and State, Local, or Tribal government.  
**Number of Respondents and Responses:** 400 respondents; 400 responses.  
**Estimated Time per Response:** 0.5 hours (30 minutes).  
**Frequency of Response:** On occasion reporting requirement.  
**Obligation to Respond:** Voluntary

and/or enforcement action, as appropriate.  
Federal Communications Commission.  
Marlene Dertch,  
Secretary, Office of the Secretary.  
(PR Doc. 2025-20936 Filed 11-24-25; 8:45 am)  
BILLING CODE 6712-01-P

Case 3:25-cv-05536-VC Document 148 Filed 12/29/25 Page 1 of 7

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, et al.,  
Plaintiffs,  
v.  
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al.,  
Defendants.

Case No. 25-cv-05536-VC

**ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR PRELIMINARY INJUNCTION**

Re: Dkt. No. 134

As explained in an order granting the States' prior motion for a preliminary injunction, Dkt. No. 98, DHS and HHS needed to engage in a reasoned decisionmaking process to explain their abrupt departure from their past policies of not sharing or using Medicaid data for immigration enforcement purposes. DHS and HHS have since released documents explaining their new proposed data-sharing policies. Dkt. Nos. 131-1 (ICE Memo), 131-2 (CMS Notice). The States challenge those new policies in a renewed motion for a preliminary injunction. The motion is denied as to the data that is the primary focus of the new policies—basic biographical, location, and contact information—because the sharing of such information is clearly authorized by law and the agencies have adequately explained their decisions. But the motion is granted to the extent the new policies authorize the sharing of information beyond these categories because the new policies are totally unclear about what that information would be, why it would be needed for immigration enforcement purposes, and what the risks of sharing it with DHS would be. This ruling assumes the reader's familiarity with the facts, the applicable legal standards, and

ICE Memo, 10/27/2025

CMS Notice, 90 FR 53324, 11/25/2025

Calif. V. DHHS, 3:25-CV-05536-VC, 12/29/25



PennState

LAW, POLICY, AND ENGINEERING

Jennifer K. Wagner, JD, PhD  
jkw131@psu.edu

# De-Siloing Federal Data (in the shadows)

## The U.S. Government Is a Palantir Regular

Financial obligations from the U.S. government to Palantir Technologies Inc. (in million U.S. dollars)



\* Data accessed on Jul. 21, 2025. Data lag possible and only publicly reportable data shown  
Source: usaspending.gov



Source: <https://www.statista.com/chart/34847/financial-obligations-from-the-us-government-to-palantir/>

NIH/NCATS	DHS/ICE	VA
<b>N3C Data Enclave</b>	<b>ELITE &amp; ImmigrationOS</b>	<b>NCVAS Platform</b>
Data from ~90 institutions pertaining to ~14 million people including... Electronic health records (EHRs), demographics, diagnoses, medications, laboratory results, procedures, vital signs, outcomes, mortality information; some projects incorporate linked claims, imaging, pathology, viral sequencing, and other biomedical datasets	ELITE has names, photographs, alien-registration numbers, addresses, location information, criminal-history indicators, enforcement records, geospatial data, and address-confidence scoring. ImmigrationOS has Immigration case records, enforcement and removal data, visa-overstay information, biometric and identity-related records, case-management data, and operational tracking information.	Veteran demographic data, military service characteristics, disability and benefits information, utilization of VA programs, survey data, population projections, and linked administrative records used for planning and analysis
IDIQ contract ceiling raised ~\$23million to \$91,504,928 on 9/9/25	\$29.9 million task order awarded by DHS on 9/25/25	\$385 million awarded by VA on 10/9/25

# Notable Other Considerations

§ 1627.4(b)'s notice requirement for the Basic Field Grant program. Only current or prospective recipients of LSC Basic Field Grants may apply for approval to subgrant these funds.

Applications for approval to make subgrants of 2024 mid-year and calendar year 2025 Basic Field Grant funds will be available on or around April 15, 2024. An applicant must apply to make a mid-year subgrant of LSC Basic Field Grant funds through GrantEase at least 45 days before the subgrant's proposed effective date. 45 CFR 1627.4(b)(2). An applicant must apply to make calendar year subgrants of 2025 Basic Field Grant funds through GrantEase in conjunction with its application(s) for 2025 Basic Field Grant funding. 45 CFR 1627.4(b)(1). The deadline for 2025 Basic Field Grant funding application submissions is June 3, 2024.

All applicants must provide answers to the application questions in GrantEase and upload the following documents:

- A draft subgrant agreement (with the required terms provided in LSC's Subgrant Agreement Template); and
- A subgrant budget (using LSC's Subgrant Budget Template).

Applicants seeking to subgrant to a new subrecipient that is not a current LSC grantee, or to renew a subgrant with an organization that is not a current LSC grantee in a year in which the applicant is required to submit a full funding application, must also upload:

- The subrecipient's accounting manual;
- The subrecipient's most recent audited financial statements;
- The subrecipient's current cost allocation policy (if not in the accounting manual); and
- The recipient's 45 CFR part 1627 policy (required under 45 CFR 1627.7).

A list of subgrant application questions, the Subgrant Agreement Template, and the Subgrant Budget Template are available on LSC's website at <http://www.lsc.gov/grants-grantee-resources/grantee-guidance/how-apply-subgrant>.

LSC encourages applicants to use LSC's Subgrant Agreement Template as a model subgrant agreement. If the applicant does not use LSC's Template, the proposed agreement must include, at a minimum, the substance of the provisions of the Template.

Once submitted, LSC will evaluate the application and provide applicants with instructions on any needed modifications to the submitted documents or Draft Agreement provided with the application. The applicant must then upload a final and signed

subgrant agreement through GrantEase by the date requested.

As required by 45 CFR 1627.4(b)(3), LSC will inform applicants of its decision to disapprove or approve an application for a 2024 mid-year subgrant no later than the subgrant's proposed effective date. As required by 45 CFR 1627.4(b)(1)(ii), LSC will inform applicants of its decision to disapprove or approve a 2025 calendar-year subgrant no later than the date LSC informs applicants of LSC's 2025 Basic Field Grant funding decisions.

(Authority: 42 U.S.C. 2996g(e))

Dated: March 26, 2024.

Stefanie Davis,

Deputy General Counsel, Legal Services Corporation.

(FR Doc. 2024-06711 Filed 3-28-24; 8:45 am)

BILLING CODE: 7560-01-P

## OFFICE OF MANAGEMENT AND BUDGET

### Revisions to OMB's Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity

**AGENCY:** Office of Information and Regulatory Affairs, Office of Management and Budget, Executive Office of the President.

**ACTION:** Notice of decision.

**SUMMARY:** By this Notice, the Office of Management and Budget (OMB) is announcing revisions to Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity (SPD 15). The revised SPD 15 is presented at the end of this Notice; it replaces and supersedes OMB's 1997 *Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity*. OMB is taking this action to meet its responsibilities to develop and oversee the implementation of Government-wide principles, policies, standards, and guidelines concerning the development, presentation, and dissemination of statistical information. These revisions to SPD 15 are intended to result in more accurate and useful race and ethnicity data across the Federal government.

**DATES:** The provisions of these standards are effective March 28, 2024 for all new record keeping or reporting requirements that include racial or ethnic information. All existing record keeping or reporting requirements should be made consistent with these standards through a non-substantive

change request to the Office of Information and Regulatory Affairs (OIRA), or at any time a collection of information is submitted to OIRA for approval of either a revision or extension under the Paperwork Reduction Act of 1995 (PRA), as soon as possible, but not later than March 28, 2024.

**ADDRESSES:** Please send correspondence about OMB's decisions to: Dr. Karin Orvis, U.S. Chief Statistician, Office of Information and Regulatory Affairs, Office of Management and Budget, 17th St. NW, V

email address: [omb.eop.gov](mailto:omb.eop.gov).

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**SUPPLEMENTAR**

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## OFFICE OF MANAGEMENT AND BUDGET

### Revisions to OMB's Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity

**AGENCY:** Office of Information and Regulatory Affairs, Office of Management and Budget, Executive Office of the President.

**ACTION:** Notice of decision.

(89 FR 22183-22196)

“NIH Policy and Guidelines on the Inclusion of Women and Members of Racial and/or Ethnic Minority Groups in Clinical Research”

NOT-OD-25-131 (Released July 17, 2025), <https://grants.nih.gov/grants/guide/notice-files/NOT-OD-25-131.html>

Update issued “to align with Executive Order 14168”

Department of Government Efficiency (DOGE) Access to Sensitive Governmental Data

- Privacy Act of 1974
- Access by DOGE = “disclosure”
- Without legitimate “need to know”



# Legal Epidemiology (and Other Legal) Research is Needed

## CHILLING EFFECT



Avoidance of Health Care →

Bias in EHR Data →

Obstruction of Precision Health Research  
and Innovation for All

- E.O. 14165 Securing Our Borders
- DNA Fingerprint Act of 2005
- “Kavanaugh Stops”
- TX GA-46, FL SB 1718, 287(g) MOUs

AI-generated image

# Discussion & Questions

**Jennifer K. Wagner, JD, PhD**

Assistant Professor of Law, Policy, and Engineering and Anthropology

[jkw131@psu.edu](mailto:jkw131@psu.edu)

On social media via [@DNAlawyer](#)



**PennState**

**LAW, POLICY, AND  
ENGINEERING**