

November 12, 2019

Regulations Docket Clerk
Office of Legal Policy
Department of Justice
950 Pennsylvania Avenue NW
Room 4234
Washington, D.C. 20530

Via Federal e-Rulemaking Portal: <http://www.regulations.gov>

Comment of the American Civil Liberties Union, Center for Democracy & Technology, Center on Privacy & Technology at Georgetown Law, Electronic Frontier Foundation, Electronic Privacy Information Center, Mijente, National Immigration Project of the National Lawyers Guild, and Project South

Re: FR Doc # 2019-22877, Docket No. OAG-164, DNA-Sample Collection from Immigration Detainees

Dear Regulations Docket Clerk:

The undersigned organizations submit this comment on the Department of Justice (the “Agency”)’s proposed rule published at 84 Fed. Reg. 56397 (proposed Oct. 22, 2019), RIN 1105–AB56, with the title “DNA-Sample Collection From Immigration Detainees” (the “Proposed Rule”).¹ The Proposed Rule should immediately be rescinded.

The Proposed Rule seeks to amend regulations enacted pursuant to the DNA Fingerprint Act of 2005, title X of Public Law 109–162, now codified at 34 U.S.C. § 40702 (the “Act”). The Act authorizes the Attorney General to direct federal agencies to mandate the collection of DNA from individuals arrested, facing charges, or convicted of a crime, or from non-United States persons detained under the authority of the United States. *See id.* § 40702(a)(1)(A); 42 U.S.C. § 14135a(a)(1)(A). Many of the undersigned organizations formally opposed the Act—which was attached as an amendment to the broadly popular Violence Against Women Act (“VAWA”) reauthorization bill and was approved by Congress absent adequate consideration—and have consistently voiced objections to any expansion of the Combined DNA Index System

¹ The 20-day notice period the Agency provided for the Proposed Rule is improper. The Administrative Procedure Act requires agencies to give at least 30 days for public comment on major new policies, 5 U.S.C. § 553(c)–(d), a requirement designed to “foster the fairness and deliberation that should underlie a pronouncement of such force.” *United States v. Mead Corp.*, 533 U.S. 218, 230 (2001). Here, the Agency unilaterally imposed a shorter notice period without even attempting to justify it.

(“CODIS”).² CODIS includes the national DNA database created and maintained by the Federal Bureau of Investigation.

The Proposed Rule seeks to strike 28 CFR § 28.12(b)(4) (the “Regulation”), which authorizes the Secretary of Homeland Security, in consultation with the Attorney General, to decline to collect DNA samples from individuals in immigration detention when such collection “is not feasible because of operational exigencies or resource limitations.”³ While the Proposed Rule states that striking the Regulation “will not preclude [such] limitation and exceptions” and will instead simply “require the approval of the Attorney General,” the ultimate aim of the Proposed Rule—as detailed at 84 Fed. Reg. 56399–401—appears to be to institute forcible collection of DNA samples from all individuals in immigration detention over the next three years who do not otherwise fall into one of the remaining exceptions, *see* 28 CFR §§ 28.12(b)(1)–(3) (the “Outlined Plan”).

By the Proposed Rule’s estimates, this would add 748,000 profiles to CODIS each year. That is more profiles per year than the entire state of New York has contributed to CODIS since the database was created more than 20 years ago.⁴ And, at that rate, the number of DNA samples collected from individuals in immigration detention in just the first five years would surpass the number of samples collected at arrest by the federal government, all 50 states, and Puerto Rico combined during the entirety of CODIS’ existence.⁵

We remain strongly opposed to the collection and permanent retention of DNA samples and analyses from any category of people, including people in immigration detention, on privacy, constitutionality, and practicality grounds. Because of the networked nature of DNA, such an expansion of DNA collection would also affect the family members of individuals in immigration detention, including American citizens and family members in other countries with

² *See, e.g., Comments of the ACLU and the ACLU of Northern California Re: RIN 1105-AB24 Proposed Rule, DNA-Sample Collection Under the DNA Fingerprint Act of 2005 and the Adam Walsh Child Protection and Safety Act of 2006*, ACLU (May 19, 2008), https://www.aclu.org/sites/default/files/field_document/asset_upload_file236_35392.pdf.

³ The Proposed Rule states that “subsequent developments have resulted in fundamental changes in the cost and ease of DNA-sample collection” and notes that “it is now carried out as a routine booking measure . . . by Federal agencies on a government-wide basis.” However, DHS is not currently one of those agencies and, as the Proposed Rule recognizes, the actual ability of DHS “to implement DNA-sample collection from non-U.S. person detainees as required by the regulation” must be reviewed before the reasonableness, cost, and feasibility of such a plan are clear. 84 Fed. Reg. 56398–99. Therefore, at a minimum, the Proposed Rule is premature.

⁴ *See CODIS – NDIS Statistics*, FBI, <https://www.fbi.gov/services/laboratory/biometric-analysis/codis/ndis-statistics> (last visited Nov. 12, 2019) (New York has contributed 661,292 offender and no arrestee profiles to CODIS).

⁵ The Agency adding 748,000 profiles each year for five years would result in 3,740,000 new profiles uploaded to CODIS. Currently, the FBI’s national DNA database contains 3,721,360 arrestee profiles. *See CODIS – NDIS Statistics, supra* note 4.

no connection to the United States. And the forcible collection and retention of DNA from hundreds of thousands of individuals each year would constitute a large and unjustifiable step toward full population surveillance, subverting foundational American concepts of freedom, autonomy, and presumed innocence. The undersigned organizations submit these comments to oppose enactment of the Outlined Plan even if the Regulation is repealed, and to highlight the restrictions that, at a minimum, are necessary if some version of the Outlined Plan nevertheless proceeds.

I. Forcible DNA collection from people in immigration detention will inflict privacy harms on them and their family members.

The collection and retention of DNA from individuals in immigration detention is an unacceptable and unnecessary privacy intrusion. Contrary to the Proposed Rule’s contention that “[t]he DNA profiles the government derives from arrestee or detainee samples amount to sanitized ‘genetic fingerprints,’” the Outlined Plan would give the government access to far more information than a fingerprint would.

In contrast to a fingerprint, the STR profiles maintained in CODIS can reveal more than identity.⁶ The CODIS profiles can expose familial relationships and ancestry. One recent study—conducted when CODIS relied on 13 loci, rather than the 20 loci it now includes—found that the STR profiles in CODIS can identify information about individuals’ ancestry, which may in turn be used to reveal information about their phenotypic traits (i.e., physical appearance) based on assumptions about race and ethnicity.⁷ Another recent study suggested that the profiles maintained in CODIS, which are often characterized as “junk DNA,” can now be matched to single-nucleotide polymorphism (SNP) profiles, which include intimate details like “precise ancestry estimates, health and identification information.”⁸ SNP profiles are typically used for

⁶ The forensic profiles in CODIS reflect Short Tandem Repeats (“STRs”) at twenty different places, or “loci,” on an individual’s genome. *See Combined DNA Index System (CODIS)*, FBI, <https://www.fbi.gov/services/laboratory/biometric-analysis/codis>. STR typing “looks to particular regions of the genome where certain known sequences of the four DNA base pairs (GATC) repeat themselves, and then measures how many times those repeats occur.” Erin Murphy, *The Art in the Science of DNA: A Layperson’s Guide to the Subjectivity Inherent in Forensic DNA Typing*, 58 Emory L.J. 489, 495 (2008). The resulting profile “is a list of numbers corresponding to the genetic markers one has at certain locations in regions of so-called junk DNA.” Andrea Roth, “*Spit and Acquit*”: *Prosecutors As Surveillance Entrepreneurs*, 107 Calif. L. Rev. 405, 414 (2019). As discussed above, research has repeatedly cast doubt on the “junk” characterization. *See, e.g., id.*; Natalie Ram, *Fortuity and Forensic Familial Identification*, 63 Stan. L. Rev. 751, 759 (2011); Simon A. Cole, *Is the “Junk” DNA Designation Bunk?*, 102 Nw. U.L. Rev. Colloquy 54 (2007).

⁷ Bridget F.B. Algee-Hewitt *et al.*, *Individual Identifiability Predicts Population Identifiability in Forensic Microsatellite Markers*, 26 Current Biology 935 (2016), <https://doi.org/10.1016/j.cub.2016.01.065>.

⁸ Michael D. Edge *et al.*, *Linkage disequilibrium matches forensic genetic records to disjoint genomic marker sets*, 114 Proceedings of the Nat’l Acad. of Sciences 561, 565 (2017),

medical research, clinical tests, and direct-to-consumer genomic products—and not, for good reason, for forensic analysis.⁹

Notably, government entities already turn to CODIS to investigate more than identity. At least 10 states use CODIS to investigate individuals' biological relationships.¹⁰ These states, and apparently others,¹¹ have used CODIS to identify partial matches to crime scene samples—that is, individuals who are demonstrably innocent of the crime but who may share some of the genetic markers of a suspect—in the hopes of identifying the family members of the actual perpetrator. And the federal government has demonstrated its interest in using immigrants' DNA to study information beyond their identities, including their family relationships.¹²

Thus, the Outlined Plan would expose not only, as a fingerprint would, the identity of people in immigration detention, but also information about their family relationships, ancestry, and possibly more. In addition, it would affect not only their privacy, but also that of their family members, including American citizens and individuals who have never stepped foot in the United States, who may come under increased law enforcement scrutiny simply by dint of having family members' DNA in CODIS.

Over time, these privacy intrusions are only likely to worsen. As science and technology develop, the potential for CODIS profiles to reveal sensitive information about individuals and their family members will likely increase, as it has in the past. In addition, the government's continued expansion of CODIS may require it to collect increasingly invasive profiles in service of accuracy; one of the government's justifications for the recent jump in genetic markers maintained in CODIS was the need to increase the information collected in order to decrease the chance of false matches.¹³

<https://doi.org/10.1073/pnas.1619944114> (finding that the STR profiles maintained in CODIS can be matched to SNP profiles).

⁹ *Id.*

¹⁰ See *Combined DNA Index System (CODIS)*, *supra* note 6 (“[T]he following states currently perform familial searching at the state level: Arkansas, California, Colorado, Florida, Michigan, Texas, Utah, Virginia, Wisconsin, and Wyoming.”).

¹¹ Natalie Ram, *Fortuity and Forensic Familial Identification*, 63 *Stan L. Rev.* 751, 767–71 (Apr. 2011) (noting that, as of 2010, 19 states had approved or reported the use of a partial match in an effort to associate a crime-scene profile with the family member of a person whose profile is in CODIS though 15 of those states ostensibly prohibited the practice at the time).

¹² *ICE awards new contract for rapid DNA testing at southwest border, expands pilot program*, U.S. Immigration and Customs Enforcement (June 18, 2019), <https://www.ice.gov/news/releases/ice-awards-new-contract-rapid-dna-testing-southwest-border-expands-pilot-program>.

¹³ See *Planned Process and Timeline for Implementation of Additional CODIS Core Loci*, FBI, <https://www.fbi.gov/services/laboratory/biometric-analysis/codis>; see also Douglas R. Hares, *Expanding the CODIS core loci in the United States*, 6 *Forensic Sci. Int. Genet.* e52 (2012)

Perhaps most concerning, the Proposed Rule’s fingerprint analogy is misleading because the Outlined Plan involves not only creating DNA profiles, but also obtaining DNA samples that are then stored indefinitely by forensic laboratories. There is no doubt that the samples themselves—which are individuals’ full genetic blueprints—can provide insights into deeply private and personal information, including a person’s propensity for certain medical conditions, ancestry, and biological familial relationships. Repeated claims that sexual orientation and human behaviors such as aggression, addiction, and criminal tendency can be explained by genetics render government databases especially prone to abuse.

Such concerns are warranted by this country’s history. As Congress has recognized, government actors throughout American history have forcibly sterilized people based on perceived genetic “defects,” including “mental disease, epilepsy, blindness, and hearing loss,” and have discriminated against Black people in everything from marriage to employment because of perceptions about their DNA.¹⁴ More recently, in the immigration context, the government has sought to consider immigrants’ health information to assess their likelihood to need certain forms of assistance.¹⁵ As such, the public has reason to be gravely concerned about the future ways in which an expanded CODIS database could be used by government entities.

II. Forcible DNA collection from individuals in immigration detention will only exacerbate harms to communities of color and will not make us safer.

The Proposed Rule argues that DNA collection and analysis from people in immigration detention would help federal officials process and identify people, calculate risks for facility staff and others in detention, inform decisions concerning an individual’s continued detention or release, and solve past crimes.

As an initial matter, this framing seeks to miscast the hundreds of thousands of individuals in immigration detention as violent criminals who pose a danger to our society—individuals who, according to the Proposed Rule, must be identified not simply by name, but instead also by past criminal history. The Proposed Rule suggests that immigrants are likely to have violent pasts and that tracking them will make our society safer. But that assertion is unfounded. Immigration detention is not a proxy for dangerousness; to the contrary, immigration detention is civil in nature, not criminal or punitive. Indeed, the vast majority of individuals in immigration detention have no criminal record; among those with a criminal conviction, the most

(describing the Scientific Working Group on DNA Analysis Method’s determination that “reduc[ing] the likelihood of adventitious matches as the number of profiles stored at [the National DNA Index System] continues to increase each year” was a major reason for “expanding the CODIS core loci”).

¹⁴ Genetic Information Nondiscrimination Act of 2008, Pub. L. No. 110–233, § 2, 122 Stat. 881 (2008), *as amended* Pub. L. No. 111–256, § 2(j) (2010).

¹⁵ Michael D. Shear & Eileen Sullivan, *Trump Favors Wealthier Immigrants for Green Cards*, N.Y. Times (Aug. 12, 2019), <https://www.nytimes.com/2019/08/12/us/politics/trump-immigration-policy.html>.

frequent crime is illegal entry (a misdemeanor).¹⁶ Moreover, studies have shown that immigration, including by people without legal authorization, does not correlate with an increase in violent crime.¹⁷

Indeed, thousands of the individuals who would be subjected to forcible DNA collection under the Outlined Plan are themselves victims of violence who have fled to the United States for safety. Perversely, because the FBI makes CODIS available to international law enforcement partners, the Outlined Plan could place asylum seekers in greater danger by exposing their DNA to the very foreign government persecutors they have sought to escape.¹⁸

In addition, the Outlined Plan is likely to increase the troubling racial disparities already present in CODIS. Due to the racial disparities that run through every stage of the U.S. criminal legal system—from who gets arrested to who is convicted to who sits in prison—people of color are overrepresented in the database.¹⁹ This not only reflects our society’s unjust and unfounded racial biases, but it also perpetuates them, since those represented in the database, and their family members, are more likely than others to be implicated in future crimes. Collecting DNA from individuals in immigration detention will only exacerbate this problem, and lead to increased law enforcement scrutiny, surveillance, and investigation of people and communities of color.

While these harms should suffice to stop further steps toward the Outlined Plan, it is worth noting that the collection of DNA is also not necessary to accomplish any of the government’s stated purposes. The biometric collection that DHS already engages in—fingerprint collection—is less intrusive and far cheaper, and it accomplishes the government’s

¹⁶ See, e.g., *Immigration and Customs Enforcement Detainees: ICE Data Snapshots, up to December 2018*, TRAC Immigration (Dec. 2018), <https://trac.syr.edu/phptools/immigration/detention/>; *Profiling Who ICE Detains – Few Committed Any Crime*, TRAC Immigration (Oct. 2018), <https://trac.syr.edu/immigration/reports/530/>.

¹⁷ See, e.g., Michael Light and Ty Miller, *Does Undocumented Immigration Increase Violent Crime?*, 56 *Criminology* 2 (2018), <https://doi.org/10.1111/1745-9125.12175>.

¹⁸ *Diplomacy and the War on Terrorism: Hearing Before the Comm. on Foreign Relations, United States Senate, 108th Cong. 2* (2003) (statement of John S. Pistole, Deputy Assistant Dir., Counterterrorism Div., FBI), <https://www.foreign.senate.gov/imo/media/doc/Pistole%20Testimony030318.pdf> (“The FBI Laboratory also has been engaged . . . to ensure that numerous international law enforcement partners are aware of the availability of the FBI’s [CODIS] for assisting in the identification through DNA data of terrorists subjects and other criminal suspects.”).

¹⁹ See, e.g., Jason Silverstein, *The Dark Side of DNA Evidence*, *Nation* (Mar. 27, 2013), <https://www.thenation.com/article/dark-side-dna-evidence/>; Michael T. Risher, *Racial Disparities in Databanking of DNA Profiles*, in *Race and the Genetic Revolution: Science, Myth, and Culture* 47, 50–51 (Sheldon Krimsky & Kathleen Sloan eds., 2011); Daniel J. Grimm, *The Demographics of Genetic Surveillance: Familial DNA Testing and the Hispanic Community*, 107 *Colum. L. Rev.* 1164, 1165 (2007).

stated goals. A fingerprint can positively identify an individual whose fingerprints are already enrolled in a database.

In addition, it is far from clear that expanding the government's DNA database would in fact help to solve crimes. As noted above, there is no reason to suspect immigrants of criminal activity. The Proposed Rule's crime-solving justification could equally be used to support the creation of a database of DNA from *all* individuals who live in or come through the United States. But such a database would be unreasonably overinclusive and would subvert our basic notions of freedom, autonomy, and presumed innocence, instead casting every person as an object of suspicion meriting government surveillance. Just as that collection would be unacceptable, the Outlined Plan is unacceptable; there is no justification for singling immigrants out as dangerous.

Moreover, as the CODIS database continues to expand to include people convicted of minor offenses, or those simply arrested or detained but never convicted, the chances that any given profile in the database will help resolve a future crime diminish.²⁰ This has been well documented in the United Kingdom, where the expansion of the forensic DNA database to anyone arrested for a recordable offense did not coincide with a significant increase in "cold [case] hits."²¹ Therefore, an increase in CODIS profiles of this magnitude from people in immigration detention—with the attendant significant costs of collection—cannot be justified.

III. The Agency must explain which categories of people in immigration detention it intends to collect DNA samples from.

The Proposed Rule does not specify which categories of people who are in immigration detention would be subject to mandatory DNA collection if the Regulation were repealed. The Proposed Rule states that "[a]pproximately 743,000 people fell into the category implicated by 28 CFR 28.12(b)(4) over the past 12 months" and estimates that this number would result in 748,000 annual samples being collected. It is not clear to which categories of people in immigration detention this annual figure corresponds.

The Proposed Rule's estimate of 743,000 people diverges both from ICE's 2018 detention population (396,448 people)²² and CBP's 2019 apprehension population (851,508

²⁰ See, e.g., Ram, *supra* note 11 (explaining problem of false matches as size of database increases).

²¹ See *DNA bank solves only one crime for every 800 new entries despite massive investment*, Daily Mail UK (May 5, 2008), <https://www.dailymail.co.uk/news/article-564051/DNA-bank-solves-crime-800-new-entries-despite-massive-investment.html>.

²² U.S. Immigration and Customs Enforcement, *Fiscal Year 2018 ICE Enforcement and Removal Operations Report*, at 8 (2018), <https://www.ice.gov/doclib/about/offices/ero/pdf/eroFY2018Report.pdf>.

people),²³ raising questions about the basis for the estimate. It is unclear whether the Proposed Rule’s estimate includes collection from Lawful Permanent Residents, which would not be permitted by the Act.²⁴ Nor is it clear whether the Proposed Rule’s estimate includes individuals who are apprehended by CBP but are then released, rather than transferred to ICE custody. The Agency must explain why it has estimated that 743,000 people would have been subject to DNA collection in the past year had the Regulation not been in place. It should specify exactly which categories of immigrants in detention would be subject to DNA collection per its estimate, and whether this figure includes children and the elderly.

In addition, federal government agencies are required to conduct a Privacy Impact Assessment (“PIA”) before initiating a new collection of personally identifiable information.²⁵ If the Regulation is repealed and the Agency moves to collect DNA from people in immigration detention, such a move would be a new category of information collection triggering the requirement of a PIA. Hence, the agency must conduct and publish a PIA *before* initiating an expanded collection of DNA from those in immigration detention.

IV. Should the Agency proceed to collect DNA from people in immigration detention after repealing the Regulation, it must mandate limits on use, access, disclosure, and retention of DNA information and create procedures for expungement.

If the Agency proceeds with the Outlined Plan after repealing the Regulation despite the unwarranted privacy invasions and other harms occasioned by forcibly collecting DNA from people in immigration detention, it must, at a minimum, mandate limits on the use, disclosure, and retention of DNA information, and create procedures for expungement.

The best and only way to mitigate the concerns outlined above about biological samples being used for purposes other than identification is to destroy the biological samples after an STR profile is generated, a reform measure long advocated by the ACLU and also encouraged by

²³ U.S. Customs and Border Protection, *CBP Releases Fiscal Year 2019 Southwest Border Migration Stats* (Oct. 29, 2019), <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-fiscal-year-2019-southwest-border-migration-stats-0>.

²⁴ As the Proposed Rule acknowledges, the “DNA Fingerprint Act of 2005 . . . authorizes the Attorney General to collect DNA samples from . . . non-United States persons who are detained under the authority of the United States. *See* 34 U.S.C. § 40702(a)(1)(A).” The statute therefore does not authorize collecting DNA from lawful permanent residents solely because they are in immigration detention. *See also* 28 CFR § 28.12(b) (“For purposes of this paragraph, ‘non-United States person’ means persons . . . who are not lawfully admitted for permanent residence[.]”).

²⁵ E-Government Act of 2002, § 208(b)(1)(A), 44 U.S.C. § 3501 (2008).

the National Academy of Sciences.²⁶ There is no valid justification for indefinite retention of people’s DNA, whether they are individuals in the criminal legal system or in immigration detention. If DNA is to be collected for any of the government’s stated purposes, running the collected profiles against CODIS—without storing them in the national database or retaining the biological samples—would suffice. Furthermore, if a match is not found, the permanent inclusion of immigrants’ DNA profiles into CODIS would also be unnecessary and unjustified.

If the Agency nevertheless retains the DNA profiles, it must at a minimum impose mandatory and enforceable limitations on use, collection, access, and disclosure, all of which must be explicitly stated. Allowing multiple agencies—including, as here, the FBI and DHS—to collect, store, process, and analyze DNA samples is a recipe for error and abuse. Those risks are only exacerbated by the fact that access to CODIS is not strictly limited, as all law enforcement agencies in the country, at the federal, state, and local levels, have access to CODIS for purposes of DNA matching.

In addition, security concerns caution against collecting DNA from people in immigration detention and, at a minimum, require the implementation of certain security controls to protect sensitive information. Collecting and storing more DNA information than necessary creates a security risk. Personally identifying information compiled by government agencies is subject to hacking and data breaches.²⁷ Breaches of DNA information are particularly harmful since that information cannot be changed—and victims of such breaches can therefore take no steps to change or limit the use of the hacked information.

Finally, the Agency must create procedures for expungement of DNA collected from people in immigration detention. The DNA Fingerprint Act of 2005 mandates expungement of the DNA analysis of a person contained within CODIS under certain circumstances. These circumstances include cases where DNA was collected pursuant to a conviction that was overturned or a charge that was dismissed or resulted in an acquittal. *See* 34 U.S.C. § 12592(d)(1)(A). The FBI, in describing expungement pursuant to this provision, notes that it is “the complete removal of a DNA profile from the National DNA Index System and the destruction of the associated DNA sample(s).”²⁸

No provision exists to allow for expungement of DNA information acquired from someone in immigration detention; this means that any people who are ever processed into

²⁶ *See* Comm. on DNA Tech. in Forensic Science of the Nat’l Acad. of Science, *DNA Technology in Forensic Science* 122 (1992) (“In principle, retention of DNA samples creates an opportunity for misuses—i.e., for later testing to determine personal information. In general, the committee discourages the retention of DNA samples.”).

²⁷ *See, e.g.,* David E. Sanger, *Hackers Took Fingerprints of 5.6 Million U.S. Workers, Government Says*, N.Y. Times (Sept. 23, 2015), <https://www.nytimes.com/2015/09/24/world/asia/hackers-took-fingerprints-of-5-6-million-us-workers-government-says.html>.

²⁸ *Combined DNA Index System (CODIS)*, *supra* note 6.

immigration detention will have their sensitive DNA information remain in a U.S. government database indefinitely, with no ability to have it removed. Those who are deported to another country, or who voluntarily leave the United States, will have no recourse to expunge their DNA information from CODIS, which will remain subject to use and dissemination among federal, state, and local law enforcement in the United States and may be searched by foreign governments. If they are included in the Outlined Plan, people seeking asylum in the United States may be especially vulnerable, given the potential that their indefinitely-retained DNA could be shared with the foreign governments from which they face persecution.

The lack of any limits on retention and any provision for expungement of DNA collected from people in immigration detention compounds the privacy harms for them and their relatives. The expansion of the CODIS database to contain the DNA of an additional hundreds of thousands of people on an annual basis, with no limits on how long that information can be retained, will have grave consequences for the privacy rights of immigrants and their family members.

* * *

We therefore urge the Agency to rescind the Proposed Rule and not to adopt the Outlined Plan. At a minimum, before initiating the forcible collection of DNA from people in immigration detention, the Agency should identify which categories of people in immigration detention would be subject to DNA collection; conduct a Privacy Impact Assessment; require that DNA samples be destroyed after a profile is run through CODIS; mandate limitations on the use of, disclosure of, and access to any DNA profiles that are retained; implement appropriate security controls; and create procedures for expungement of DNA collected from people in immigration detention.

Sincerely,

American Civil Liberties Union

Center for Democracy & Technology

Center on Privacy & Technology at Georgetown Law

Electronic Frontier Foundation

Electronic Privacy Information Center

Mijente

National Immigration Project of the National Lawyers Guild

Project South