U.S. CITIZEN

Raiding the Genome

In our 2024 report, Raiding the Genome, we warned that the Department of Homeland Security (DHS) is building a massive, unconstitutional genetic surveillance database by taking DNA from people the agency "detains" in violation of the Fourth Amendment. Our report focused on the impact of this program on non-citizens, who undoubtedly are most at risk. But we also warned that there was "good reason to be concerned that DHS will erroneously take DNA from permanent residents and citizens." Our analysis of recently-released Customs and Border Protection (CBP) data shows that this prediction had already come true at the time we made it. **Between 2020 and 2024, DHS captured the DNA of approximately 2,000 U.S. citizens.** The data also shows that DHS is taking citizen DNA knowingly and, in some cases, without stating any reason for doing so. DHS sends all of the DNA it collects under this program — including that of U.S. citizens — to the FBI to be uploaded to CODIS, the national policing database.

The revelation that DHS regularly and knowingly takes DNA from U.S. citizens suggests new layers of potential illegality to a program that was already a flagrant abuse of power. Nothing in federal law gives DHS the power to take DNA from U.S. citizens who have not been arrested for, charged with, or convicted of a crime. As explained further below, if CBP's own data is correct, the federal government is exceeding its statutory authority to take DNA on a regular basis.

Equally concerning is that there does not appear to be *any* principle, legal or otherwise, governing the decisions CBP agents make about whether to take a person's DNA. If the government believes its agents are entitled to take DNA in all the cases described here, it must believe they are entitled to do so in *any* case.

In blue boxes throughout this report you will find some illustrative stories from CBP's data. They are only a small sample of the individuals' experiences represented there. (Parentheticals reference the "Unique ID" for the relevant entry)

It is important to note that the data described in this report reflects DNA collection activities carried out under the Biden administration — we have yet to receive updated data covering Trump administration activities. Given President Trump's invocation of immigration powers to deploy a masked, militarized police force against communities of color, poor people, and those he perceives as antagonistic to his agenda — with the apparent approval of a majority of the Supreme Court — we should expect future data to reveal an even broader and more reckless approach to DNA collection. Noncitizens are most at risk as a result of DHS's activities, but this program affects everyone. DNA samples can reveal information not just about an individual's most intimate personal details such as their biological sex, ancestry, health, and predisposition to disease, but also their biological relations today and across generations. Even if this program were carefully limited to collect DNA only from noncitizens (which it is not), DNA has the potential to reveal sensitive information not just about the individual whose genetic material is collected, but also about their relations — regardless of whether those relations are citizens.

What does "detained" mean?

That the law limits DHS to collecting DNA from only those who are "detained" means little. "Detention" is a vague concept in the immigration context, and does not always mean being held in a facility for an extended period of time (although that certainly would qualify). The federal government itself has said that people even "briefly held up at airports during routine processing" could be considered "detained." On September 8, 2025, as we readied this report for publication, the Supreme Court in *Noem v. Vasquez Perdomo* allowed the Trump administration to continue a pattern of mass detentions without individualized suspicion in the Los Angeles area. As Justice Sotomayor wrote in dissent, the Court's order clears the way for the administration to "seize anyone who looks Latino, speaks Spanish, and appears to work a low wage job." For further discussion of the poverty of "detention" as a limitation on DHS's DNA-collection power, see our 2024 report.

Key trends in the data:

CBP sent the DNA of approximately 2,000 U.S. citizens to the FBI. CBP documented sending the DNA of between 1,947 and 2,131 individuals the agency identified in its own records as U.S. citizens to the FBI between October 1, 2020, and December 31, 2024.[1] Approximately 95 were minors.

CBP invoked its immigration enforcement powers to detain and take DNA from hundreds of U.S. citizens. CBP's data includes a column labelled "qualifying reason," in which it appears CBP agents are supposed to record their legal justification for taking a person's DNA. Every entry contained one of two designations in the "qualifying reason" column: "detainee," or "arrestee/facing charges." These two terms track the two provisions of 34 U.S.C. § 40702(a)(1)(A), permitting DNA collection from (1) "individuals who are arrested, facing charges, or convicted" or (2) "non-United States persons who are detained under the authority of the United States." For more than 525 U.S. citizens, including at least 40 minors, CBP listed "detainee" as the "qualifying reason" for DNA collection. According to CBP's own directives, "CBP agents/officers may never document" U.S. citizens and legal permanent residents as "detainees." Yet CBP did so on more than 500 occasions.[2]

> On July 17, 2021, a 15-year-old U.S. citizen encountered border agents at Laredo, Texas. CBP claims this person was in possession of a controlled substance. What substance is unclear. In the "charge" field, CBP listed a statute that covers the importation of Schedule I drugs through Schedule V drugs, meaning this child could have been carrying anything from cocaine, marijuana, or oxycodone to ambien or cough medicine. The AUSA to whom the case was presented declined prosecution, and the young person was turned over to local Harlingen, Texas, police. CBP took this child's DNA and sent it to the FBI. (278523-24)

[1] *See* About the Data for an explanation of how we arrived at this range.

[2] Only some field offices reported collecting DNA from U.S. citizen "detainees." The vast majority of these are at the Southern Border. Involved offices, and the approximate number of U.S. citizen "detainees" affected, are as follows: Chicago (1), Detroit (1), San Juan (1), El Paso (24), San Diego (77), Laredo (198), and Tucson (223).

CBP agents' justifications for taking U.S. citizens' DNA were often legally questionable, nonsensical, or altogether absent — but none are subject to independent review.

- **CBP did not even attempt to justify taking DNA from approximately 40 individuals.** CBP's data also includes a "charge" column in which CBP agents appear to have listed statutory violation(s) of which the CBP agent suspected the "detainee" or "arrestee" in each case. For approximately 40 U.S. citizens whose DNA the agency captured and sent to the FBI, CBP wrote nothing at all in the "charge" column. Six of these individuals were minors. The youngest was 14. Yet, despite noting no justification either for detaining these individuals or for subjecting them to a cheek swab, CBP agents still took their DNA and sent it to the FBI.

> On March 11, 2021, a 25-year-old U.S. citizen encountered border agents at Chicago's Midway International Airport — one of the busiest airports in the nation, located on the Southwest side of Chicago. CBP did not record any statute in the "charge" field, never presented them to an AUSA, admitted them to the U.S., and released them into the country. Nevertheless, CBP took this person's DNA and sent it to the FBI. (251966)

- **There is no process for ensuring a CBP agent's recorded justification for detaining someone and taking their DNA is legitimate.**
    - ***CBP did list statutes in the "charge" column in many cases, but CBP does not make charging decisions:*** If CBP suspects someone of having committed a crime, the agency generally must present the case to a government lawyer from the local U.S. Attorney's Office (an AUSA) or the Department of Justice for a charging decision.[3] If that lawyer determines felony charges are warranted, they must put the case to a grand jury to secure an indictment. If that lawyer determines misdemeanor charges are warranted, they may file formal charges with a court. As a result, the fact that CBP has listed a statute in the "charge" column of its spreadsheet means only that: that a CBP official wrote down that statute. Indeed, CBP did not even attempt to present hundreds of the individuals whose DNA

[3] *See, e.g.*, 28 U.S.C. §§ 516, 547.

the agency took to an AUSA to be evaluated for prosecution. Some that the agency did present, the AUSA declined to pursue.

- ***CBP unlawfully relied on civil — not criminal — statutes to take DNA from some U.S. citizens.*** CBP listed statutes in the "charge" column as to some U.S. citizens that are in fact civil offenses, not crimes. These include statutes like 19 U.S.C. § 1497 ("Failure to Declare"), 19 U.S.C. § 1436B ("Civil Penalty"), and 19 U.S.C. § 1627 ("Regulations; Violations; Penalties"), as well as provisions that don't appear to be violations at all, like 8 U.S.C. § 1225 ("Inspection by Immigration Officer").
- ***No one is checking.*** There is no structural check in the system that would weed out cases, like those described above, in which CBP has insufficient or no reason to collect an individual's DNA. When it comes to the decision to swab an individual, the power lies wholly in the hands of the agent on the ground. We sent a FOIA request to the FBI to find out whether the agency has a system to halt processing of U.S. citizens' DNA taken without proper justification. The agency was "unable to identify" any relevant records.

- **CBP's DNA collection program violates the Fourth Amendment.** The fact that DHS is capturing the DNA of U.S. citizens — apparently knowingly — has always been a predictable consequence of the absence of meaningful checks on DHS's power. That lack of checks not only facilitates this blatant statutory violation, but also renders the program unconstitutional. In all, CBP took the DNA of approximately 865 U.S. citizens as to whom no formal federal charges ever were filed: either CBP never had a basis to suspect them of a legal violation in the first place, declined to present them to an AUSA, or the AUSA declined to pursue charges. In each of these cases, the individual never had the opportunity to go before an independent arbiter, like a judge. That means no one outside the Executive Branch ever even had the opportunity to review whether CBP's

On August 17, 2022, a 14-year-old U.S. citizen encountered border agents in San Diego. Officials listed "aiding and abetting" in the "charge" field. Aiding and abetting what is unclear: it could be as little as "aiding and abetting" someone else in "encouraging or inducing" an "alien" to enter the country. CBP never presented the case to an AUSA. Border agents sent this child to an undisclosed "federal agency" or "location." CBP took this child's DNA and sent it to the FBI. (1207058)

decision to arrest or detain that individual and take their DNA was justified. That fact matters a great deal in assessing the constitutionality of this program under the Fourth Amendment. The Fourth Amendment protects people from unreasonable government searches and seizures. Compelled DNA collection unquestionably qualifies. In *Maryland v. King*, the controlling Supreme Court precedent on compelled DNA collection, the Court held that "taking and analyzing a cheek swab" of an arrestee's DNA is reasonable under the Fourth Amendment "[w]hen officers make an arrest supported by probable cause to hold [the individual] for a serious offense."[4] Central to the Court's ruling is the idea that there are meaningful checks on officers making criminal arrests based on probable cause: they must go before judges and justify their actions. As we described further in our 2024 report, it cannot be understood to sanction the kind of unchecked DNA collection in which this data shows CBP engaging today.

What can be done

Regardless of the citizenship status of the people from whom DHS takes DNA, this program must be understood as a leap toward universal genetic surveillance, in the guise of immigration enforcement. It will not be possible to cure the injustices of the program by treating its impact on citizens as separate from its impact on everyone else. While there are some shorter-term measures that may mitigate the program's harms, it's clear that a fundamental reconsideration of our frameworks for protecting genetic information will ultimately be required. Congress can and should repeal the federal statute that authorizes DHS to take DNA (34 U.S.C. § 40702), and pass new legislation comprehensively regulating the collection, creation, storage and sharing of genetic data by both public and private actors.

Oversight committees in the House and Senate should compel DHS to disclose all information about its DNA collection

On July 27, 2021, a 20-year-old U.S. citizen encountered border agents at Laredo, Texas. In the "charge" field, the agents listed "aiding unlawful importation" and failing to "declare" some item. The penalty for these charges is "forfeiture" (giving up the item) and a monetary fine. Neither is a criminal offense. CBP did not so much as present the case to an AUSA, and the individual was released. CBP took this person's DNA and sent it to the FBI. (279073-74)

[4] *Maryland v. King*, 569 U.S. 435, 465-66 (2013).

practices, including any information indicating how the federal government intends to use DNA in the future, and any information related to the development or procurement of new DNA analysis technologies. An individual with standing could bring a suit seeking injunctive relief for constitutional violations, violations of the Administrative Procedures Act (5 U.S.C. §§ 551–559), and ultra vires agency action. A broader effort is needed to raise public awareness about the risks and abuses of this program, and to continue to uncover new information about its operation and impact. Journalists and civil society organizations can support that effort through research, reporting and advocacy. The Privacy Center will continue to use FOIA to build our collective understanding of how this program functions under the Trump administration.

> On August 20, 2024, a 19-year-old U.S. citizen encountered border agents in San Diego, California. The agents listed 8 U.S.C. § 1304E in the "charge" field: failing to personally possess an "alien reg[istration] doc[ument]." One problem: that statute requires only that "aliens" over the age of 18 carry documents. It does not apply to U.S. citizens, which, according to CBP's own records, this person was. CBP did present this case to an AUSA, who declined to pursue charges. Nevertheless, CBP took this person's DNA and sent it to the FBI. (2404611 & 2211352)

States can also take steps to mitigate the harms of DHS's programs by tightening their own statutory protections for genetic data, and limiting the ability of local law enforcement agencies to rely on DNA — like that DHS has added to CODIS — taken without minimum constitutional safeguards and the protections required by the laws of that state.

About us: Stevie Glaberson, Emerald Tse, and Emily Tucker co-authored this report. Lam Ho provided research assistance and Lucia Valderrabano did the visual design. As with all our publications, this report would not have been possible without the substantial contributions of Katie Evans. The Center on Privacy & Technology at Georgetown Law is a research center dedicated to exposing and opposing government and corporate surveillance. We focus on understanding the impact of mass surveillance on historically marginalized people. While we are housed at Georgetown Law, the university does not fund our programmatic work. Support our work.

About the Data

In late 2024, in collaboration with Amica Center for Immigrant Rights and Americans for Immigrant Justice, we submitted FOIA requests to DHS entities CBP and ICE seeking further information about DHS's DNA collection program. The requests largely went unanswered, but on February 6, 2025, CBP posted a series of spreadsheets to the agency's online document library in partial response to two of our requests.

The spreadsheets appear to show each individual as to whom CBP collected DNA and filled out a "DOJ Request for National DNA Database Entry Form" (DOJ Form FD-936) — the form federal agents must use to send genetic information to the FBI for inclusion in CODIS.[5] The sheets appeared to include multiple entries for some individuals, but CBP's redactions made it difficult to discern which rows pertained to one individual.

With the help of technologists John Brescia and Kyle Tudor, and Georgetown Law student and Privacy Center Research Assistant Lam Ho, we attempted various methods to de-duplicate the data, each of which yielded different results as to the total number of U.S. citizens contained in CBP's data set.

One approach involved using a standard method in the Python Pandas library to compare a row with the rows immediately following it, then condensing consecutive matching entries into a single row by keeping the first instance and discarding subsequent ones. This method yielded a count of 2,131 U.S. citizens.

Another approach involved first cleaning the data to excise typos (for example, instances where "(b)(7)(E)" was written as "(b)(7)(E)" and thus risked erroneously being counted as separate individuals), and then using Python and Stata to code a basic grouping method based on columns showing the individual's age, port name, date, custody status (essentially everything except the charge-related columns) to identify whether multiple entries belonged to the same person. This method resulted in a count of 1,947 U.S. citizens, and is represented by the column labelled "Individual ID" in the spreadsheet labelled "Deduplication Methods 2 & 3."

A final approach was attempted after a researcher noticed that some people have precisely the same characteristics but appear to be different individuals (because, for example, all data matched but CBP listed the same charge(s) multiple times on the same occasion). This led to two possibilities: either we were seeing a data duplication error, or the data represented distinct individuals with identical characteristics. To account for this, the second method treats rows with the same characteristics but also the same charge(s) on the same occasion as separate individuals. This approach results in a count of 1,957 U.S. citizens, and is represented by the column labelled "Individual-Charge ID" in the spreadsheet labelled "Deduplication Methods 2 & 3."

View the various spreadsheets here.

[5] For information on the data fields the FD-936 must contain, see DHS's 2024 Privacy Impact Assessment Update: DHS/CBP/PIA-012(d) CBP Portal (e3) to EID/IDENT at 15.