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## DHS Considers Collecting DNA From Kids; DEA and US Marshals Already Do

Documents just released by [US Immigration & Customs Enforcement \(ICE\)](#) in response to one of EFF's Freedom of Information Act requests show that [DHS](#) is considering collecting DNA from kids ages 14 and up—and is exploring expanding its regulations to allow collection from kids younger than that.

The proposal appears to be working its way through DHS in the wake of [regulations from the Department of Justice](#) that [require](#) all federal agencies—including DHS and its components such as ICE—to collect DNA from individuals arrested for federal crimes as well as “from non-United States persons who are detained under the authority of the United States,” whether or not they have been involved in criminal activity. While the law specifically exempts a few classes of “aliens,” the documents we received show DHS may start DNA collection from anyone it fingerprints. Currently, that’s any child over 14 who’s detained, but we also found records that show ICE could lower that age even more.

DHS estimates that as many as [1 million people](#) who are subject to administrative detention or arrest annually could now be subject to DNA collection. But it’s important to note that many of these people are not involved in criminal activity. Collecting DNA from anyone detained by the government for any number of non-criminal reasons—especially juveniles—

seems to be yet another step on the slippery slope to collecting DNA from everyone in the United States, no matter their status.

ICE is the first component within DHS to collect DNA under the new DOJ regulations. [ICE's Homeland Security Investigations](#) (HSI) offices in San Diego, St. Paul, and San Juan, Puerto Rico are part of a 6-month pilot program to test out the new procedures and were set to [start collecting DNA around July 2010](#). After the pilot program, the rest of HSI's offices (more than 200 throughout the US and abroad) will start collecting DNA and presumably all other DHS components will follow suit shortly thereafter.

When the DOJ expanded its DNA collection regulations in 2009, it specifically required agencies to collect DNA from all populations they fingerprint. [DHS regulations](#) allow the agency to collect biometrics from aliens coming into the US who are 14 and older, so [DHS can currently collect DNA from kids this age as well](#). However, the agency may also be considering collecting biometrics from kids younger than 14. A slide presentation from March 2011, titled "[Working Group on Expanding the Biometric Age Range](#)" notes that some DHS programs are already collecting biometrics from kids younger than 14 and proposes expanding the age range for more DHS entities ([including ICE](#)). Because of the DOJ regulations, this would mean that DHS could collect DNA even from very young kids.

It turns out that DHS is not the first federal or even state agency to collect DNA from juveniles. The records ICE released show that the [US Marshals are required to collect DNA](#) from juveniles whenever the Marshals collect fingerprints. And the [Drug Enforcement Agency's \(DEA\) internal regulations](#) make clear that "Both adults and juveniles who are fingerprinted are subject to DNA sample collection." Its agents may also collect DNA from non-United States persons who are merely detained (not formally arrested). And according to the [Council for Responsible Genetics](#), twenty-eight states already collect DNA from juvenile offenders, as well.

However, a DNA collection program run by DHS feels very different because it could affect so many people who have no involvement with the criminal justice system. EFF has strongly criticized warrantless DNA collection in criminal contexts, as we've discussed [here](#), [here](#) and [here](#). The [DOJ argues](#) that collecting DNA from all people arrested and non-US persons detained will allow it to find and identify more criminals, solve more crimes, and "prevent and deter subsequent criminal conduct." but it is hard to see how that argument couldn't be extended to apply with equal force to mandated DNA collection from everyone.

DNA reveals an extraordinary amount of private information about you, including family background, medical history, predisposition for disease, and possibly even behavioral tendencies and sexual orientation. Once the federal

government collects a DNA sample—no matter which agency does the collection—the sample is sent to the FBI for storage, and the extracted profile is incorporated into the FBI’s massive CODIS database, which already contains [over 10.5 million “offender” profiles](#). It is next to impossible to have your DNA expunged from the database once it’s already in there, and once it’s in CODIS it is subject to repeated warrantless searches from all levels of state and federal law enforcement.

For the short term, DHS’s DNA collection program may be quite limited. ICE has redacted most concrete information about the [timetable for implementation](#), but it is not clear that DHS has begun collecting any DNA. The documents ICE released indicate some [agency infighting between the DOJ](#) (which requires the DNA collection) [and DHS](#) (which considers this requirement to be an [expensive unfunded mandate](#)), and it is not clear if the two agencies have yet worked this out.

DHS also appears to recognize the political costs of collecting DNA from people outside the criminal justice system. In a [March 22, 2010 letter](#) from DHS Secretary Napolitano to Attorney General Holder, Napolitano sought an exemption to DNA collection from juveniles under 18. [Hidden text within one of the documents<sup>1</sup>](#) recognizes that collecting DNA from juveniles could increase “ICE’s exposure to criticism” and notes:

[t]here is a high likelihood that ICE would face litigation and other opposition from community and nongovernmental organizations (NGOs) if ICE were to sample all juvenile detainees.

Further, it appears DHS is trying to avoid publicizing the roll out. Hidden text on another page of the documents notes that “OCR and OPA [ICE’s Office of Congressional Relations and Office of Public Affairs] intend to respond to inquiries, rather than making announcements of the DNA sampling pilot program.”

DHS’s stalling is good for privacy in the short run. However, given the hard line the DOJ has taken in past court cases challenging DNA collection, the expansion of DNA collection from an ever-broader array of Americans and immigrants appears imminent.

Follow these links to view all the documents we received from ICE:

- [ICE DNA Collection Documents – pages 1–92](#)
- [ICE DNA Collection Documents – pages 93–201](#)

- [ICE DNA Collection Documents - pages 202-297](#).

- [ICE DNA Collection Documents - pages 298-353](#).

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1. While the second and third pages of this document look blank, there is actually text hidden within the blank sections. If you download the pdf file and open it in Acrobat or another pdf reader, you should be able to select the text and then copy and paste it into a new document to view it.

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