

Date: February 16, 2021

To: U.S. Department of State

From: The undersigned arts organizations

Re: 30 Day Notice of Proposed Information Collection: Supplemental Questions for Visa Applicants (86 FR 8475, 2/5/21)

We submit these comments in response to Department of State's "30 Day Notice of Proposed Information Collection: Supplemental Questions for Visa Applicants (86 FR 8475, 2/5/21)," as part of DOS's efforts to report on current screening and vetting procedures pursuant to Section 3 of the President's January 20, 2021 *Proclamation on Ending Discriminatory Bans on Entry to the United*.

We strongly object to the form DS-5535 in its entirety, as well as to the supplementary questions that have been incorporated from the DS-5355 into the DS-160 (requiring applicants to provide all social media handles, phone numbers, and email addresses used during the last five years), because:

The "extreme vetting" questions on the DS-5535 exacerbate an artist visa process that is already unpredictable, arbitrary, unnecessarily burdensome, and an impediment to U.S. culture and commerce, especially with respect to its impact on U.S. arts organizations working with artists from Muslim-majority countries and the Global South.

The U.S. artist visa process has become so complex and unpredictable that obtaining O and P visas is a major impediment to the presentation of international culture in the U.S. The DS-5535 adds an untenable layer of unpredictability to the process. Protocols for when consular staff should require the form are vague and subjective; once requested, not even congressional intervention has proven successful in expediting the processing. When the DS-5535 form is required, the processing time of a visa application often increases from approximately one week to more than six months. The arbitrary and capricious use of the DS-5535 further hobbles U.S. arts presenters in their efforts to compete on the world market for international artists and undermines the critical work of U.S. cultural diplomacy and exchange. In 2019, DS-5535 processing delays impacted, cancelled, or delayed tours for numerous world-renowned artists, including Malian singer Hawa Kassé Mady Diabaté, Malian band Songhoy Blues, Nigerien band Tal National, Mauritanian band Noura Mint Seymali, and Somalian singer Farxiya Fisk—among many others.

The "discretionary" use of the form is prone to discriminatory abuse.

In practice, the form is predominantly used by non-immigrant visa units at U.S. consulates in Africa and the Middle East, where its use rarely correlates to legitimate security concerns. Instead it is apparently being used in situations when, prior to the DS-5535, consular officers would have issued a 221(g) temporary refusal. In these situations, the use of the DS-5535 effectively shuts down any time-sensitive visa process, rendering a *de facto* denial without the procedural burden of a denial.

The DS-5535 and amended DS-160 forms' questions have a chilling effect on artistic expression and free speech.

Performing artists are public figures, their social media is often voluminous, and the content is largely beyond the control of the artists themselves. The forms' required disclosure of social media handles is seen internationally as excessively invasive. Many artists have declined to tour in the U.S., rather than subject themselves these invasive questions. The impact of the questions is to chill international freedom of expression, and limit U.S. audiences' access to the artistic expression of international artists.

There is no public evidence that these intrusive and burdensome questions serve or have served to protect national security or otherwise further national interests. Moreover, the Department of State has failed to institute procedures that protect against the misuse of the information collected through these supplementary questions. Accordingly, we object to the "extreme vetting" questions in the DS-5535 and the supplementary questions (5 years of social media handles, phone numbers, and email addresses) that have been incorporated from the DS-5535 into the DS-160, on the grounds that they impede international cultural exchange, damage commerce, chill free speech, and facilitate discrimination against non-immigrant artists, especially those from from Muslim-majority countries and the Global South.

Signed:

U.S. ORGANIZATIONS

APAP/Association of Performing Arts Professionals
Arab American National Museum
Arts Midwest
Boston University Arts Initiative
BRIC Celebrate Brooklyn! Festival
CEC ArtsLink
Dan McDaniel Management
Dance Managers Collective
Elsie Management
Folk Alliance International
High Concept Labs
KMP Artists
Kristopher McDowell Productions
League of American Orchestras
Martinez Arts Consulting, ALC
McKnight International Choreographer Program
NAPAMA/Association of North American Performing Agents and Managers
National Sawdust
New Music USA
New York City Center
PEN America - Artists at Risk Connection
People of Rhythm Productions
Ping Pong Productions
Rhizome Arts Consulting
San Francisco International Arts Festival
The Society for the Preservation and Advancement of the Harmonica/SPAH
SummerStage - City Parks Foundation
Tamizdat
Theatre Communications Group
Western Arts Alliance
World Music Institute

INTERNATIONAL ORGANIZATIONS

alba KULTUR, Germany
Ars Nova, Denmark
Arts and Theatre Institute, Czech Republic
British Musicians' Union, United Kingdom
Canadian Arts Presenting Association (CAPACOA)
Canadian Association of Stand-up Comedians, Canada
Canadian Live Music Association, Canada
Creo forbundet for kunst or kultur, Norway
Dutch Music Export, Netherlands
Incorporated Society of Musicians, United Kingdom
International Arts Rights Advisors, Italy
International Theatre Institute, Germany
LIVE, United Kingdom
MobiCulture, France
Muziekpublique, Belgium
On The Move, The Cultural Mobility Information Network, Belgium
Pearle* Live Performance Europe, Belgium
PRS Foundation, United Kingdom
Sounds Australia, Australia
Sound Diplomacy, United Kingdom
Taklit Artist & Concert Management, France