

June 3, 2019

The Honorable Elijah Cummings
Chairman
U.S. House Oversight and Reform
Committee
2157 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Jim Jordan
Ranking Member
U.S. House Oversight and Reform
Committee
2105 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Cummings and Ranking Member Jordan:

The undersigned privacy, civil liberties, civil rights, and investor and faith groups write to urge you to put in place a federal moratorium on face recognition for law enforcement and immigration enforcement purposes until Congress fully debates what, if any, uses should be permitted. This moratorium should also apply to the provision of federal grants and assistance to states and localities who seek to deploy this technology for law enforcement or immigration purposes. Given the substantial concerns, which representatives on both sides of the aisle recognized at a recent hearing,ⁱ prompt action is necessary to protect people from harm.

Face recognition gives government agencies the unprecedented power to track who we are, where we go, and who we know. Companies marketing this technology to the government boast that it can be used to track people in real-time, reconstruct past movements from video footage, or identify a hundred individuals from a single photo. This capability threatens to create a world where people are watched and identified as they attend a protest, congregate outside a place of worship, visit a medical provider, or simply go about their daily lives.

The fact that this technology, which can be readily abused, has been deployed by federal agencies largely in secret should give us all pause. Neither Congress nor a single state legislature has passed a law explicitly authorizing face recognition for law enforcement use that clearly dictates what safeguards must be in place. Yet, federal agencies, including the FBI, have continued to expand the use of face recognition without safeguards. The FBI has access to over 400 million photos for face matching, including the driver's license databases of over fifteen states and passport application photos,ⁱⁱ has performed hundreds of thousands of face recognition searches, and is now reportedly piloting new uses of the technology.

A moratorium is also warranted because the harms associated with this technology will disproportionately fall on vulnerable communities, including communities of color. Numerous studies have found that face recognition is less accurate on certain groups, including women and people with darker skin. For example, a study examining leading face recognition algorithms found that they were 30 percent inaccurate on women of color. Despite these studies, the FBI has not fully tested the accuracy of its own systems and disavows any responsibility to test the accuracy of external agency systems that it uses. Even if the technology were perfectly accurate, it is being deployed in an imperfect world. Thus, it would still risk exacerbating existing

disparities in the criminal justice system because the technology is more likely to be used on communities that are already disproportionately policed, arrested, and likely to have force improperly used against them. In the U.S., the technology has already been used to identify people protesting police brutality; abroad, it has been deployed to systematically control a religious minority group.

Such risks are further compounded given that federal agencies' use of face recognition does not appear to fully comport with the Constitution. Though the Supreme Court has ruled that the government must get a warrant when collecting or demanding certain location information, the FBI does not have public policy requiring the agency to obtain a warrant or any independent judicial approval prior to using face recognition. Moreover, the minuscule number of court cases referencing face recognition suggests that the FBI may not be fully complying with its constitutional obligation to provide disclosure or notice to criminal defendants, including in cases where face recognition may constitute exculpatory evidence.ⁱⁱⁱ

Congress should put in place a moratorium on federal use or provision of assistance for the deployment of face recognition for immigration and law enforcement purposes until there can be a full debate about what, if any, uses should be permitted. We should not move forward with the deployment of this technology until and unless our rights can be fully safeguarded.

Sincerely,

Advocacy for Principled Action in
Government
Algorithmic Justice League
American Civil Liberties Union
American-Arab Anti-Discrimination
Committee (ADC)
Arab American Institute
Asian Americans Advancing Justice | AAJC
Campaign for a Commercial-Free Childhood
Center for Democracy & Technology
Center for Digital Democracy
Center for Popular Democracy
Center on Privacy and Technology at
Georgetown Law
CenterLink: The Community of LGBT
Centers
Charles Hamilton Houston Institute for Race
and Justice
Congregation of Sisters of St. Agnes
Constitutional Alliance
Council on American-Islamic Relations
(CAIR)
Data for Black Lives

DC-MD Justice For Our Neighbors
Defending Rights & Dissent
Dominican Sisters ~ Grand Rapids
Electronic Frontier Foundation
Equality North Carolina
Fight for the Future
Free Press Action
FreedomWorks
Government Accountability Project
Government Information Watch
Harrington Investments, Inc.
Interfaith Center on Corporate
Responsibility
Jewish Voice for Peace-Boston
Justice For Muslims Collective
The Leadership Conference on Civil and
Human Rights
LGBT Technology Partnership
Library Freedom Project
Massachusetts Law Reform Institute
Million Hoodies Movement for Justice
Montgomery County (MD) Civil Rights
Coalition

Muslim Justice League
Muslim Public Affairs Council
NAACP
National Association of Criminal Defense
Lawyers
National Center for Transgender Equality
National Immigration Law Center
National LGBTQ Task Force Action Fund
National Workrights Institute
NETWORK Lobby for Catholic Social
Justice
New America's Open Technology Institute
Open MIC (Open Media and Information
Companies Initiative)
PFLAG National
Project on Government Oversight
Racine Dominicans SRI Committee
The Real Cost of Prisons Project

Region VI Coalition for Responsible
Investment
Restore The Fourth
School Sisters of Notre Dame Cooperative
Investment Fund
Sisters of Charity of New York
Sisters of the Humility of Mary
Sisters of St. Dominic of Caldwell NJ
Sisters of St. Francis of Philadelphia
Sisters of St. Joseph of Brentwood
Southern Border Communities Coalition
Southside Worker Center
T'ruah: The Rabbinic Call for Human Rights
TechFreedom
TRANScending Barriers
Tri-State Coalition for Responsible
Investment
Ursuline Sisters of Louisville

ⁱ *Facial Recognition Technology (Part 1): Its Impact on our Civil Rights and Liberties Before the House Oversight and Reform Comm.*, 116th Cong. (2019).

ⁱⁱ U.S. Gov't Accountability Office, GAO-16-267, FACE RECOGNITION TECHNOLOGY: FBI Should Better Ensure Privacy and Accuracy (May 2016), available at <https://www.gao.gov/assets/680/677098.pdf>.

ⁱⁱⁱ See Georgetown Law Center on Privacy & Technology, The Perpetual Line-Up, (Oct. 18, 2018), available at <https://www.perpetuallineup.org>.