May 2, 2024

Re: Sign-On Letter in Support of Facial Recognition Legislation

We, the undersigned organizations, support the Law Enforcement Biometrics Ban (S.1609 Hoylman-Sigal/A.1891 Glick), Residential Facial Recognition Ban (S.2478 Hoylman-Sigal/A.322 Walker), Public Accommodations Biometrics Ban (S.7135 Hoylman-Sigal/A.7625 Simone), and School Biometrics Ban (S.7944 Hoylman-Sigal/A.8853 Wallace), and urge the legislature to pass, and the Governor to sign, these bills.

Biometric recognition technology, including facial recognition, is invasive and biased, discriminating against Black, Latinx, and non-binary and transgender New Yorkers.[1] Facial recognition systems can be up to 99% accurate for middle-aged white men under ideal lighting in laboratory conditions but wrong more than 1 in 3 times for women of color, even under similar conditions.[2] Numerous people, disproportionately Black, are wrongly arrested after being misidentified through facial recognition.[3] Developers frequently train their systems without including transgender and non-binary individuals, rendering their gender identity invisible to the algorithm, and making them susceptible to misidentification and wrongful arrest.[4] These systems are increasingly used in ways that harm vulnerable populations, including asylum-seekers. The new, mandatory Customs and Border Protection app employs facial recognition, which has resulted in numerous migrants with dark skin being barred from even applying for asylum.[5]

Beyond concerns of bias in the technology itself, biometric surveillance in practice also disproportionately targets vulnerable communities. Police have used facial recognition to identify Black Lives Matter protestors,[6] and ICE has used it to track immigrant families.[7] Interstate abortion seekers and individuals seeking gender-affirming care are also at risk of having a match put them at risk of prosecution. Legislation is crucial because allowing police, businesses, and landlords to collect biometric information makes them an even more lucrative target for identity thieves and hackers.[8] Hackers can and do use biometric identifiers to access computer systems,[9] and since biometric

---

[1] National Institute of Standards and Technology, Facial Recognition Vendor Test Part 2 (2019), https://www.nist.gov/publications/face-recognition-vendor-test-frvt-part-2-identification.

[2] Joy Buolamwini, Timnit Gebru, *Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification, Proceeds of Machine Learning Research*, vol 81, 1-15, 2018 p. 1.

[3] Kashmir Hill, *Another Arrest, and Jail Time, Due to a Bad Facial Recognition Match*, N.Y. TIMES, Dec. 29, 2020, https://www.nytimes.com/2020/12/29/technology/facial-recognition-misidentify-jail.html.

[4] Rachel Mentz, *AI Software Defines People as Male or Female. That's a Problem*, CNN BUSINESS, Nov. 21, 2019, https://www.cnn.com/2019/11/21/tech/ai-gender-recognition-problem/index.html.

[5] Melissa Del Bosque, *Facial Recognition Bias Frustrates Black Asylum Applicants to US, Advocates Say*, the Guardian (Feb. 8, 2023), https://www.theguardian.com/us-news/2023/feb/08/us-immigration-cbp-one-app-facial-recognition-bias.

[6] Kevin Rector and Alison Knezevich, *Maryland's Use of Facial Recognition Software Questioned by Researchers, Civil Liberties Advocates*, THE BALTIMORE SUN, Oct. 18, 2016, https://www.baltimoresun.com/news/crime/bs-md-facial-recognition-20161017-story.html; George Joseph & Jake Offenhartz, *NYPD Used Facial Recognition Technology in Siege of Black Lives Matter Activist's Apartment*, GOTHAMIST, Aug. 14, 2020, https://gothamist.com/news/nypd-used-facial-recognition-unit-in-siege-of-black-lives-matter-activists-apartment.

[7] Taylor Hatmaker, Clearview AI landed a new facial recognition contract with ICE, TECH CRUNCH, (Aug. 14, 2020), https://techcrunch.com/2020/08/14/clearview-ai-ice-hsi-contract-2020/.

[8] *US Government Hack Stole Fingerprints of 5.6 Million Federal Employees*, THE GUARDIAN, Sept. 23, 2015, https://www.theguardian.com/technology/2015/sep/23/us-government-hack-stole-fingerprints. Dan Rafter, *Biometrics and Biometric Data: What Is It and Is It Secure?*, NORTON, May 6, 2022, https://us.norton.com/blog/iot/what-is-biometrics.

[9] A. Dellinger, *Hackers Defeat Vein Authentication by Making a Fake Hand*, ENGADGET, Dec. 28, 2018, https://www.engadget.com/2018-12-28-hackers-defeat-vein-authentication-by-making-a-fake-hand.html.

identifiers are static and are almost impossible to change, having biometric data stolen puts individuals at risk for identity theft for the rest of their lives.[10]

Law Enforcement Biometrics Ban (S.1609 Hoylman-Sigal/A.1891 Glick)

This bill would prohibit law enforcement in New York from using biometric recognition technology and convene a state Task Force to examine the issue in depth and propose a comprehensive set of standards for use of such technology in the future if it is to be allowed. The issues of bias and inaccuracy of facial recognition are of particular concern when it comes to law enforcement use, where an incorrect match has the potential to have devastating consequences, including wrongful arrest and detention, and in fact, facial recognition has already led to numerous wrongful arrests, almost exclusively of Black Americans.[11] Beyond the technology's inherent limitations, officers currently use pseudoscientific tactics that exacerbate the risk of error and searches are also skewed by where surveillance cameras are most prevalent. Black, brown, and low-income New Yorkers are more prone to wrongful arrest, because they are more likely to be picked up on facial recognition-equipped cameras, given that those cameras are disproportionately placed in their neighborhoods.[12] Facial recognition is also used to surveil, identify, and target protestors, chilling free speech.[13] Because of its documented biases and its replication of historically flawed police practices, facial recognition should stay out of the hands of police. Banning police use of facial recognition is necessary to protect New Yorkers from wrongful arrest and over-policing.

Residential Facial Recognition Ban (S.2478 Hoylman-Sigal/A.322 Walker)

This bill would prohibit any landlord from obtaining, retaining, accessing, or using, on any residential premises, any facial recognition system or information obtained from or by the use of such a system, and includes a provision establishing Attorney General enforcement and a private right of action for those unlawfully subjected to facial recognition. Facial recognition has no place in our homes. This technology opens tenants and their guests to harassment and discriminatory eviction or exclusion from their homes, and it compromises their privacy. Without legal intervention, collection of biometric data can be forced upon not just all residents, but any guests they have over as well, with Black, brown, Asian, and gender non-conforming guests barred from visiting their friends due to facial recognition mismatches. In New York City public housing, facial recognition use has already led to residents being evicted for minor violations of policy, contributing to the massive eviction crisis.[14] Banning facial recognition in residences is essential to safeguard New Yorkers from losing their homes or their ability to fully enjoy their rights as tenants.

[10] Anthony Ortega, *Do Biometrics Protect Your Data or Put Your Identity at Risk?*, SPICEWORKS, Oct. 8, 2018, https://www.spiceworks.com/it-security/data-security/articles/do-biometrics-protect-your-data-or-put-your-identity-at-risk/; *Is Your Identity at Risk from Biometric Data Collection?*, BEYONDTRUST, March 21, 2019, https://www.beyondtrust.com/blog/entry/is-your-identity-at-risk-from-biometric-data-collection.

[11] Kashmir Hill, *Eight Months Pregnant and Arrested After False Facial Recognition Match*, N.Y. TIMES, Aug. 6, 2023, https://www.nytimes.com/2023/08/06/business/facial-recognition-false-arrest.html; Khari Johnson, *How Wrongful Arrests Based on AI Derailed 3 Men's Lives*, WIRED, March 7, 2022, https://www.wired.com/story/wrongful-arrests-ai-derailed-3-mens-lives/.

[12] Eleni Manis et al., *Scan City: A Decade of NYPD Facial Recognition Abuse* (Surveillance Technology Oversight Project, July 8, 2018).

[13] George Joseph & Jake Offenhartz, *NYPD Used Facial Recognition Technology in Siege of Black Lives Matter Activist's Apartment*, GOTHAMIST, Aug. 14, 2020, https://gothamist.com/news/nypd-used-facial-recognition-unit-in-siege-of-black-lives-matter-activists-apartment.

[14] Douglas MacMillan, *Eyes on the Poor: Cameras, Facial Recognition Watch Over Public Housing*, WASH. POST, May 16, 2023, https://www.washingtonpost.com/business/2023/05/16/surveillance-cameras-public-housing.

Public Accommodations Biometrics Ban (S.7135 Hoylman-Sigal/A.7625 Simone)

This bill prohibits using biometrics to identify individuals in places of public accommodation and restricts collection of biometric data absent written consent. New Yorkers should not be forced to accept constant tracking as part of simple activities like buying groceries or taking their kids to a baseball game. Stores' biased facial recognition systems will exclude Black and dark-skinned people due to incredibly common mismatches. Police will be called on innocent people, which will result in dangerous encounters and potentially unnecessary racialized violence. Facial recognition expansion threatens interstate abortion-seekers, people seeking gender-affirming care, and undocumented immigrants, simply because they enter a store. Yet facial recognition use in public spaces is on the rise across New York. James Dolan, the owner of Madison Square Garden Entertainment Corporation (MSG), started using facial recognition at MSG venues[15] specifically to punish anyone who displeases him, keeping out employees of law firms suing MSG. In one case, this meant ejecting a mother trying to watch the Rockettes show at Radio City Music Hall with her daughter's Girl Scouts troop.[16] Banning facial recognition in places of public accommodation is necessary to ensure New Yorkers are able to access public spaces without fear of being tracked or wrongly excluded from daily life.

School Biometrics Ban (S.7944 Hoylman-Sigal/A.8853 Wallace)

This bill codifies the existing regulatory ban on biometrics in schools. Specifically, it forbids public, private, and charter elementary and secondary schools in New York from purchasing or utilizing biometric identifying technology, except for fingerprint identification for prospective employees where written consent is given. Wasting valuable resources on biased and faulty technology will only make schools a harsher, more dangerous environment for students, particularly students of color, LGBTQ+ students, immigrant students, and students with disabilities. The New York State Office of Information Technology Services (ITS) conducted an extensive study on use of biometric identifying technology in schools and ultimately concluded that "the risks of the use of [facial recognition] in an educational setting may outweigh the benefits."[17] The study noted that there is no evidence that facial recognition has ever prevented violence in a school environment.[18] In fact, since the majority of school shootings are committed by current students or alumni of the school in question, facial recognition systems would likely not flag these faces as suspicious and therefore would be useless in protecting students.[19] The Commissioner of Education responded to the ITS report by creating regulations that banned the use of facial recognition and other biometrics in schools. The legislature should act to codify this ban.

---

[15] Courtney Gross, *Albany Takes on Attorney Ban at Madison Square Garden*, SPECTRUM NEWS NY1, Jan. 24, 2023, https://www.ny1.com/nyc/all-boroughs/politics/2023/01/25/albany-takes-on-attorney-ban-at-madison-square-garden; Andrea Vittorio, *Madison Square Garden Pressed by NY AG James Over Face Scans*, BLOOMBERG LAW, Jan. 25, 2023, https://news.bloomberglaw.com/privacy-and-data-security/madison-square-garden-pressed-by-ny-ag-james-over-face-scans.

[16] Sarah Wallace, *Face Recognition Tech Gets Girl Scout Mom Booted From Rockettes Show — Due to Where She Works*, NBC N.Y., Dec. 19, 2022, https://www.nbcnewyork.com/investigations/face-recognition-tech-gets-girl-scout-mom-booted-from-rockettes-show-due-to-her-employer/4004677/

[17] *Biometric Identifying Technology in Schools*, NEW YORK STATE OFFICE OF INFORMATION TECHNOLOGY SERVICES, Aug. 7, 2023, https://its.ny.gov/system/files/documents/2023/08/biometrics-report-final-2023.pdf.

[18] *Id.* at 17.

[19] Ava Kofman, *Face Recognition Is Now Being Used in Schools, But It Won't Stop Mass Shootings*, INTERCEPT, May 30, 2018, https://theintercept.com/2018/05/30/face-recognition-schools-school-shootings.

Sign-On Letter in Support of Facial Recognition Legislation
May 2, 2024

New Yorkers should be able to move freely through their lives without having their faces scanned and their activities tracked. These bills are urgently needed to protect our state from a dystopian future in which people are labeled as criminals and treated as such just because the facial recognition systems say so. This technology is unjust, discriminatory, and a threat to our privacy and our democracy. We need to ban its use by law enforcement, in residential and business settings, and in schools to protect vulnerable communities in particular. In failing to ban facial recognition technology, New York falls further and further behind other states and cities, including Maine, Vermont, New Hampshire, San Francisco, Boston, and Baltimore, which have all banned the most harmful forms of facial recognition.[20] We urge the Senate and Assembly immediately to pass these bills.

Sincerely,

Surveillance Technology Oversight Project (S.T.O.P.)
New York Civil Liberties Union (NYCLU)
Fight for the Future
Center on Race, Inequality, and the Law at NYU School of Law
The Legal Aid Society
Amnesty International
Surveillance Resistance Lab
CFA - Consumer Federation of America
Freedom To Thrive
May First Movement Technology
No Ethics In Big Tech
NYLS Privacy Law Association
Secure Justice
Restore the Fourth
Electronic Privacy Information Center (EPIC)
Rights/Tech
The Project on Government Oversight
TakeRoot Justice
Neighborhood Defender Service of Harlem
Equality for Flatbush (E4F)
Jim Owles Liberal Democratic Club

---

[20] ME LD 1585, HP 1174, 130th Legislature, 1st Special Session, https://legislature.maine.gov/legis/bills/display_ps.asp?LD=1585&snum=130; N.H. Rev. Stat. § 105-D:2, https://casetext.com/statute/new-hampshire-revised-statutes/title-7-sheriffs-constables-and-police-officers/chapter-105-d-body-worn-cameras/section-105-d2-use-of-body-worn-cameras; VT S.124 (2020), https://legislature.vermont.gov/Documents/2020/Docs/BILLS/S-0124/S-0124%20As%20Passed%20by%20Both%20House%20and%20Senate%20Unofficial.pdf.