

Congress of the United States
Washington, DC 20515

July 17, 2020

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
H-232, U.S. Capitol
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
H-204, U.S. Capitol
Washington, DC 20515

Dear Speaker Pelosi and Leader McCarthy:

As the House prepares to take up the FY2021 appropriations bills, we write you on a matter of national significance. As you know, our country is finally addressing long-overdue injustices that have plagued communities of color throughout the United States. One of the factors that has begun to receive attention is law enforcement’s use of facial recognition software.

Though this technology is becoming more prevalent in society, it remains severely error-prone and particularly so when used to analyze people of color. Notably in July 2018, the American Civil Liberties Union (ACLU) tested Amazon’s facial recognition software by comparing Members of Congress against publicly available arrest photos and found 28 Members were erroneously identified as those in the arrest database. While the ACLU tested all sitting Members of Congress, the results of their investigation found that “the false matches were disproportionately of people of color, including six members of the Congressional Black Caucus.”¹

While the ACLU study was an experiment, we have seen the real-world implications of the use of facial recognition software. On June 24, 2020, *The New York Times* reported on the case of Robert Julian-Borchak Williams of Michigan, who was arrested by Detroit Police because he was misidentified by facial recognition software.² Furthermore, as reported by *Vice*, Detroit Police Chief James Craig estimates that the software misidentifies individuals 96 percent of the time.³ This, coupled with the fact that thus far in 2020, the Detroit Police Department, by its own admission, has used facial recognition technology “almost exclusively against Black people”⁴ is alarming and raises concerns that the technology is simply supercharging existing biases in policing, disproportionately effecting communities of color and other overpoliced communities.

This situation isn’t limited to Detroit or to the specific vendor used there. As a study by the Massachusetts Institute of Technology (MIT) found, “when the person in the photo is a white man,

¹ Jacob Snow, “Amazon’s Face Recognition Falsely Matched 28 Members of Congress With Mugshots,” American Civil Liberties Union, August 12, 2019, <https://www.aclu.org/blog/privacy-technology/surveillance-technologies/amazons-face-recognition-falsely-matched-28>.

² Kashmir Hill, “Wrongfully Accused by an Algorithm,” *The New York Times* (The New York Times, June 24, 2020), <https://www.nytimes.com/2020/06/24/technology/facial-recognition-arrest.html>.

³ Jason Koebler, “Detroit Police Chief: Facial Recognition Software Misidentifies 96% of the Time,” *VICE*, June 29, 2020, https://www.vice.com/en_us/article/dyzykz/detroit-police-chief-facial-recognition-software-misidentifies-96-of-the-time.

⁴ *Ibid.*

the software is right 99 percent of the time.”⁵ That, however, is not the case for other racial groups or for women. In fact, the MIT study found that the error rate is as high as nearly 35 percent for darker skinned women.⁶ This study is not unique in its outcome. In its own study, the National Institute of Standards and Technology found that facial recognition software “falsely identified African-American and Asian faces 10 times to 100 times more than Caucasian faces.”⁷

Even if facial recognition technology were accurate, there are still broad concerns with its use. Police surveillance cameras are disproportionately installed in communities of color, and these same communities already suffer disparities at every stage of the criminal justice system. Communities of color are more likely to be arrested, have improper force used against them, receive longer prison sentences, and be subject to harsh confinement conditions. Facial recognition risks making these problems worse, by arming law enforcement with a flawed tool that is most likely to be targeted at communities of color. The aforementioned statistics released by the Detroit Police Department simply confirm this fact.

Additionally, facial recognition provides unprecedented power for the government to track and monitor people, whether attending a protest, place of worship, hospital, or social event, raising a host of constitutional concerns. For example, in Baltimore, Maryland, police reportedly used facial recognition on photos posted to social media to identify and arrest individuals who attended a Freddie Grey protest, raising serious First Amendment concerns.⁸ We have already seen how this technology can be further abused in examples from abroad, where foreign governments have used facial recognition to repress critics and religious minorities.⁹

The fact that such a powerful tool has been deployed largely in secret, without explicit Congressional authorization, is alarming. What we do know, though, confirms that its current use is not consistent with the United States Constitution. The Department of Justice reportedly has access to over 640 million photos for face recognition matching and has used the technology hundreds of thousands of times. Despite this, based on testimony in front of the House Oversight and Reform Committee, the Department does not appear to be complying with its constitutional notice obligations; does not track basic statistics, including the number of false identifications; and does not even require probable cause or a warrant before running a facial recognition search.¹⁰

⁵ Steve Lohr, “Facial Recognition Is Accurate, If You’re a White Guy,” *The New York Times* (The New York Times, February 9, 2018), <https://www.nytimes.com/2018/02/09/technology/facial-recognition-race-artificial-intelligence.html>.

⁶ *Ibid.*

⁷ Natasha Singer and Cade Metz, “Many Facial-Recognition Systems Are Biased, Says U.S. Study,” *The New York Times* (The New York Times, December 19, 2019), <https://www.nytimes.com/2019/12/19/technology/facial-recognition-bias.html>.

⁸ https://www.aclunc.org/docs/20161011_geofeedia_baltimore_case_study.pdf

⁹ Paul Mozur, “One Month, 500,000 Face Scans: How China Is Using A.I. to Profile a Minority,” *The New York Times* (The New York Times, April 14, 2019), <https://www.nytimes.com/2019/04/14/technology/china-surveillance-artificial-intelligence-racial-profiling.html>.

¹⁰ Neema Singh Guliani, “The FBI Has Access to Over 640 Million Photos of Us Through Its Facial Recognition Database,” *American Civil Liberties Union* (American Civil Liberties Union, June 10, 2019), <https://www.aclu.org/blog/privacy-technology/surveillance-technologies/fbi-has-access-over-640-million-photos-us-through>.

It is clear that facial recognition technology is not reliable, and even if it were, would still raise a range of serious concerns. Recognizing the fundamental dangers this technology poses, several major companies, including Google, IBM, Amazon, and Microsoft, have already indicated they will halt the sale of this technology to police. What is not clear, however, is how this corporate decision will apply to federal agencies. Moreover, while these companies are well known to the general public, they are not the major players in law enforcement facial recognition.

We firmly believe that the United States should not be using technology that is likely to mislabel a significant portion of its population as criminals simply because of the color of their skin, and which poses broader threats to civil liberties. For these reasons, we ask that the FY2021 appropriations bills include a prohibition on expending any federal funds, including grants to states and localities, to purchase or use facial recognition software or contract for any similar services.

Thank you for your consideration of this request. If you or your staff have any questions, please do not hesitate to contact us.

Sincerely,



Bobby L. Rush
Member of Congress



Rashida Tlaib
Member of Congress

/s/
Anna G. Eshoo
Member of Congress

/s/
Robert C. "Bobby" Scott
Member of Congress

/s/
Bennie G. Thompson
Member of Congress

/s/
Danny K. Davis
Member of Congress

/s/
Barbara Lee
Member of Congress

/s/
Grace F. Napolitano
Member of Congress

/s/
Jan Schakowsky
Member of Congress

/s/
Wm. Lacy Clay
Member of Congress

/s/
Stephen F. Lynch
Member of Congress

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Raúl M. Grijalva
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/s/
Yvette D. Clarke
Member of Congress

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Jerry McNerney
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André Carson
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Marcia L. Fudge
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Judy Chu
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Karen Bass
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Tony Cárdenas
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Susan Wild
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Jesús G. “Chuy” García
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Ayanna Pressley
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Eleanor Holmes Norton
Member of Congress

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David N. Cicilline
Member of Congress