

SENATE No. 1385

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia Stone Creem

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing a moratorium on face recognition and other remote biometric surveillance systems.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | |
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| <i>Cynthia Stone Creem</i> | <i>First Middlesex and Norfolk</i> | |
| <i>Jack Patrick Lewis</i> | <i>7th Middlesex</i> | <i>1/23/2019</i> |
| <i>Maria Duaine Robinson</i> | <i>6th Middlesex</i> | <i>1/28/2019</i> |
| <i>Thomas M. Stanley</i> | <i>9th Middlesex</i> | <i>1/28/2019</i> |
| <i>Michael J. Barrett</i> | <i>Third Middlesex</i> | <i>1/29/2019</i> |
| <i>Jason M. Lewis</i> | <i>Fifth Middlesex</i> | <i>1/29/2019</i> |
| <i>Joseph A. Boncore</i> | <i>First Suffolk and Middlesex</i> | <i>1/30/2019</i> |
| <i>Mike Connolly</i> | <i>26th Middlesex</i> | <i>1/30/2019</i> |
| <i>Jennifer E. Benson</i> | <i>37th Middlesex</i> | <i>1/31/2019</i> |
| <i>Bruce E. Tarr</i> | <i>First Essex and Middlesex</i> | <i>1/31/2019</i> |
| <i>Patricia D. Jehlen</i> | <i>Second Middlesex</i> | <i>1/31/2019</i> |
| <i>Cindy F. Friedman</i> | <i>Fourth Middlesex</i> | <i>2/1/2019</i> |
| <i>David Henry Argosky LeBoeuf</i> | <i>17th Worcester</i> | <i>2/1/2019</i> |
| <i>Julian Cyr</i> | <i>Cape and Islands</i> | <i>2/1/2019</i> |
| <i>Sean Garballey</i> | <i>23rd Middlesex</i> | <i>2/1/2019</i> |
| <i>James K. Hawkins</i> | <i>2nd Bristol</i> | <i>2/7/2019</i> |
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> | <i>2/8/2019</i> |

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| <i>Patrick M. O'Connor</i> | <i>Plymouth and Norfolk</i> | <i>2/15/2019</i> |
| <i>Rebecca L. Rausch</i> | <i>Norfolk, Bristol and Middlesex</i> | <i>3/18/2019</i> |

SENATE No. 1385

By Ms. Creem, a petition (accompanied by bill, Senate, No. 1385) of Cynthia Stone Creem, Jack Patrick Lewis, Maria Duaine Robinson, Thomas M. Stanley and other members of the General Court for legislation to establish a moratorium on face recognition and other remote biometric surveillance systems. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act establishing a moratorium on face recognition and other remote biometric surveillance systems.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 WHEREAS, the Massachusetts General Court finds that government use of face
2 recognition poses unique and significant civil rights and civil liberties threats to the residents of
3 the Commonwealth of Massachusetts.

4 WHEREAS, the Massachusetts General Court finds that face recognition technology has
5 a history of being far less accurate in identifying the faces of women, young people, and dark
6 skinned people, and that such inaccuracies lead to harmful “false positive” identifications.

7 WHEREAS, the Massachusetts General Court finds that many of the databases to which
8 face recognition technology is applied are plagued by racial disparities and other biases, which
9 generate copycat biases in face recognition data.

10 WHEREAS, the Massachusetts General Court finds that the broad application of face
11 recognition in public spaces is the functional equivalent of requiring every person to carry and
12 display a personal photo identification card at all times, which constitutes an unacceptable mass
13 violation of privacy.

14 WHEREAS, the Massachusetts General Court is likewise concerned about the
15 deployment of other biometric surveillance systems, including gait and voice recognition, which
16 raise similar concerns as face recognition.

17 WHEREAS, the Massachusetts General Court finds that the public use of biometric
18 surveillance systems can chill the exercise of constitutionally protected free speech and
19 association.

20 WHEREAS, the Massachusetts General Court finds that the benefits of using biometric
21 surveillance systems, which are few and speculative, are greatly outweighed by their harms,
22 which are substantial.

23 THEREFORE, be it enacted by the Senate and House of Representatives in General
24 Court assembled, and by the authority of the same, as follows:

25 SECTION 1. Chapter 4 of the General Laws is hereby amended by inserting at the end of
26 section 13, as appearing in the 2016 Official Edition, the following:-

27 Section 14.

28 (a) Definitions. As used in this section, the following words shall have the following
29 meanings:

30 “Face recognition”, an automated or semi-automated process that assists in identifying an
31 individual or capturing information about an individual based on the physical characteristics of
32 an individual’s face, or that logs characteristics of an individual’s face, head, or body to infer
33 emotion, associations, activities, or the location of an individual.

34 “Other remote biometric recognition”, an automated or semi-automated process that
35 assists in identifying an individual or capturing information about an individual based on the
36 characteristics of an individual’s gait, voice, or other immutable characteristic ascertained from a
37 distance, or that logs such characteristics to infer emotion, associations, activities, or the location
38 of an individual; provided, however, that other remote biometric recognition shall not include
39 recognition based on DNA, fingerprints, or palm prints.

40 “Biometric surveillance system,” any computer software that performs face recognition
41 or other remote biometric recognition.

42 “Commonwealth of Massachusetts”, any agency, executive office, department, board,
43 commission, bureau, division or authority of the commonwealth, or of any political subdivision
44 thereof, or of any authority established by the general court to serve a public purpose.

45 “Massachusetts government official”, any officer, employee, agent, contractor, or
46 subcontractor of any agency, executive office, department, board, commission, bureau, division
47 or authority of the commonwealth, or of any political subdivision thereof, or of any authority
48 established by the general court to serve a public purpose.

49 (b) Moratorium on government use of biometric surveillance.

50 Absent express statutory authorization, it shall be unlawful for the Commonwealth of
51 Massachusetts or any Massachusetts government official to acquire, possess, access, or use any
52 biometric surveillance system, or acquire, possess, access, or use information derived from a
53 biometric surveillance system operated by another entity.

54 Statutory authorization for government use of a biometric surveillance system shall
55 describe with particularity:

56 (i) the entities permitted to use the biometric surveillance system, the purposes for such
57 use, and prohibited uses;

58 (ii) standards for use and management of information derived from the biometric
59 surveillance system, including but not limited to data retention, sharing, access, and audit trails;

60 (iii) auditing requirements to ensure the accuracy of biometric surveillance system
61 technologies, standards for minimum accuracy rates, and accuracy rates by gender, skin color,
62 and age;

63 (iv) rigorous protections for due process, privacy, free speech and association, and racial,
64 gender, and religious equity; and

65 (v) mechanisms to ensure compliance.

66 (c) Until such time as the General Court enacts an authorizing statute in accordance with
67 subsection (b), the following provisions shall be in force:

68 (i) Admissibility. Except in a judicial proceeding alleging a violation of this section, no
69 information obtained in violation of this section shall be admissible by the government in any
70 criminal, civil, administrative or other proceeding.

71 (ii) Cause of Action. Any violation of this Act constitutes an injury and any person may
72 institute proceedings against the Commonwealth of Massachusetts for injunctive relief,
73 declaratory relief, or writ of mandamus in any court of competent jurisdiction to enforce this Act,
74 and shall be entitled to recover actual damages and additional damages of an amount equal to
75 \$100 for each violation, or \$1,000, whichever is greater. A court shall award costs and
76 reasonable attorneys' fees to a plaintiff who is the prevailing party in an action brought under this
77 section.

78 (iii) Training. Violations of this Act by any Massachusetts government official shall
79 result in consequences that may include retraining, suspension, or termination, subject to due
80 process requirements.