Public Comment: Government Use of Facial Surveillance Technology

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Commission on Facial Recognition

Senator Jamie Eldridge and Representative Michael S. Day, Co-Chairs

Public Comment
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Dear Senator Eldridge, Representative Day, and members of the commission,

We are writing to provide some comments about the use of facial recognition technology in Massachusetts.We respectfully ask that the Commission recommend the legislature strengthen existing facial recognition law to ensure Massachusetts residents and visitors are shielded from discriminatory, dragnet surveillance, and other harms.

We are appreciative of the work that the Legislature did last session in passing police accountability legislation that created better standards for police professionalization as well as stronger limitations on the use of force. But there is more work to be done.

The law, codified in Chapter 253 of the Acts of 2020, contains several provisions pertaining to government agencies' use of facial recognition technology. These regulations fall far short of what they need in the following ways:

1.   They only regulate facial recognition technology as used by law enforcement agencies, neither prohibiting nor regulating when this technology can or cannot be used by public agencies of different nature, for example schools or local parks departments.

 2.   They do not establish any limitation regarding who can directly use and operate a facial recognition system and impose very weak standards governing police requests, court orders, and the use of the technology in criminal investigations.

3.   They fail to provide any due process protections for defendants who have been subject to the use of facial recognition systems.

4.   They lack any enforcement mechanism to ensure that public officials comply with the law.

Thankfully, lawmakers have addressed these and other concerns in legislation filed this session. H.135, An Act To Regulate Face Surveillance, sponsored by Representatives Rogers and Ramos, and S.47, An Act To Regulate Face Surveillance, sponsored by Senator Creem, provide for some useful policy solutions to the ones outlined above.

H.135 and S.47 would, among other steps, prohibit all public entities, including public schools, the department of transportation, and other public agencies in the Commonwealth, from using and possessing this technology; create a notice-and-disclosure framework that will let

persons know when facial recognition was used to identify them; and establish an exclusionary rule that would apply when law enforcement uses facial recognition in a manner that does not conform with the law.

We encourage you to consider bills H.135 and S.47 when you decide on further regulations of the use of biometric surveillance technology by government entities. We need strong regulations to ensure it doesn't infringe on our civil rights and civil liberties, and this legislation provides an excellent model.

Thank you for your attention and consideration.

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