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July 30, 2021

Facial Recognition Commission  
Mass. State House, Room 136  
Boston, MA 02133

RE: **Public Comment – Government use of facial recognition technology**

Dear Sen. Eldridge, Rep. Day, and Members of the Commission:

Please accept these comments from the Council on American-Islamic Relations – Massachusetts (CAIR-MA) concerning the need to strengthen the existing facial recognition law to protect the privacy and safety of all the Commonwealth’s residents. The Muslim community knows all too well how seemingly neutral policies and technologies have been weaponized to target them. The harm caused goes beyond “just” the invasion of privacy as innocent people go about their daily lives in public places: it can wreak havoc on the lives of those falsely or unfairly seen as representing a threat to public safety due to nothing more than their religion, race, or national origin.

The built-in bias of facial recognition technology is well-documented, with certain groups – most notably, women of color – more likely to be misidentified.<sup>1</sup> But even if the technology was 100% accurate, it still significantly amplifies government agencies’ ability to track our movements. The stark reality is that American Muslims are already subject to extreme surveillance. For example, in 2016 the NYC police department found that even though Muslims made up only 3% of NYC’s population, *they were a staggering 95% of the targets of surveillance by NYPD officers.*<sup>2</sup>

Muslims in Massachusetts are also subject to intense surveillance, using professedly neutral technology or algorithms, which too often results in harassment, humiliation, and fear of law enforcement – without any accusation of wrong-doing. Here are examples of what Massachusetts Muslims have reported experiencing in analogous situations:

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<sup>1</sup> For a summary of the research as of 2020, see Harvard University Graduate School of Arts and Sciences “[Racial Discrimination in Facial Recognition Technology](#),” (Oct. 24, 2020).

<sup>2</sup> Office of the Inspector General for the NYPD “[An Investigation of NYPD’s Compliance with Rules Governing Investigations of Political Activity](#),” (2016). The tools then in use were “stingray” cell phone surveillance, using a device that imitates a cell tower; mobile x-ray vans, military-grade tools that produce high-resolution images of the interior of homes, without a search warrant; and social media monitoring, including the impersonation of fictitious users. See also, the CAIR-New York Anti-Surveillance Project, “[Are You Being Watched?](#)” (2019).

**Aggressive and humiliating searches by the federal Transportation Security Administration (TSA) at Logan Airport.** At airports, TSA uses various types of body scanners, chemical swabs, and hand-held metal detector wands to screen travelers for security risks. We have no reason to believe that these tools, in and of themselves, are not neutral tools. Yet Muslim travelers frequently describe how they are disproportionately forced to endure lengthy searches of their bags, in full view of other travelers, and invasive bodily searches<sup>3</sup> – even as TSA workers insist they were “randomly selected.” Some Muslim travelers are then taken to private rooms for further searches, or – assuming they haven’t missed their flight – even required to be escorted to their gate. One client, a pregnant woman, was so distraught by her abusive treatment that she suffered an asthma attack that required emergency room admittance.

**Lengthy delays, interrogations, detentions, and seizures of property by Customs and Border Protection (CBP).** CBP abuses in airports and at border crossings can be even worse than the TSA gauntlet. Our clients describe:

- Being taken away for “secondary screening” interviews that can delay them for four or more hours, as CBP agents grill them about their religious views, mosque attendance, reading materials, academics, and family members and associates;
- Missing their connecting flights;
- Searches of their phones and laptops and downloading of their files;
- Seizure of their electronics, even when they cooperated by providing passwords and consented to a search, for up to a year or more;
- Infants flagged as security risks;
- At the border, being taken from their car in handcuffs;
- Enduring such abuses for years, sometimes for a decade or more. As one client put it, “I worry that this nightmare will continue for the rest of my life.”

To the best of our knowledge, there is no technology involved in the targeting of Muslims by CBP. Instead, the abuse results from governmental policies presumably intended to protect public safety, but which use Muslims’ faith as a proxy for an actual threat. These policies also embolden

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<sup>3</sup> Boston Globe, “[Complaint says TSA search of Muslim woman at Logan ‘bordered on sexual assault,’](#)” (Sept. 12, 2018).

those CBP employees who feel the need to humiliate or abuse Muslims, without even pretending there is a security issue – and with no worry about accountability.<sup>4</sup>

In terms of privacy issues, perhaps the most dangerous governmental policy is the maintenance of its secret anti-terrorism watchlist, which lacks any pretense of fairness or due process. Selectees have no way to confirm they are on the list (although they may have a good idea, based on how they are treated), let alone any way to challenge their inclusion. After years of denial, in 2019 the federal government admitted that its watchlist database is disseminated to *at least 700 private entities*, and perhaps as many as 1,400,<sup>5</sup> as well as *over 60 foreign countries*.<sup>6</sup>

Real harm results, beyond harassment at the hands of government agencies. Selectees may find themselves held at gunpoint when pulled over for a traffic infraction. Their bank accounts suddenly may be closed, with no explanation or recourse. They may be rejected for a license needed for their occupation, a gun permit, or even renting a car. When overseas, their physical safety and freedom may even be compromised.

The ability to share facial recognition data makes a bad situation worse. Given the current lack of adequate regulation, public and private entities alike can intensify their surveillance of Muslims which, in turn, surely leads to increased harm.

The proverbial horse is already out of the barn when it comes to surveillance and facial recognition technology. However, legislation is currently pending which would better limit and regulate how facial recognition technology is used by Massachusetts agencies. CAIR-MA supports H. 135/S.47, *An Act to Regulate Face Surveillance*.

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<sup>4</sup> A Massachusetts Muslim couple was humiliated in front on their young children when a visibly hostile CBP officer questioned the validity of their U.S. passports, rummaged through their suitcases, and left their belongings strewn about. A supervisor shrugged off their complaints. On another occasion, when a Muslim couple from Massachusetts were crossing the border by car, the husband was ordered from the car and taken away in handcuffs as his shocked wife looked on. A supervisor claimed that this was routine when a traveler's name or date of birth matched "the list," yet asked for no further information to confirm our client's identity. Instead, the supervisor complimented our client on his car and smirked that it had been "fun to drive."

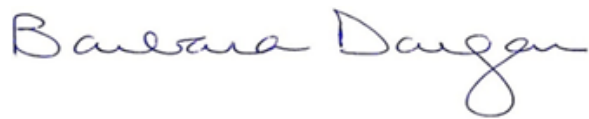
<sup>5</sup> Associated Press, "[Judge orders feds to list private groups receiving watchlist](#)," (Feb. 22, 2019).

<sup>6</sup> Press Release, "[Rep. Ilhan Omar, Members of Congress send a letter to Secretary Mike Pompeo to Protect American Citizens from Human Rights Abuses Abroad](#)," (June 28, 2019). The letter was signed by two members of Massachusetts' congressional delegation, Rep. Ayanna Pressley and Rep. James McGovern.

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Thank you for your attention.

Sincerely,

A handwritten signature in blue ink that reads "Barbara Dougan". The signature is written in a cursive style with a large, looping "D" at the end.

Barbara J. Dougan, Esq.  
Civil Rights Director