July 30, 2021

Commission on Facial Recognition
Senator Jamie Eldridge and Representative Michael S. Day, Co-Chairs

Re: Public Comment on Government Use of Facial Recognition Technology

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

I am writing on behalf of LivableStreets Alliance about the use of facial recognition technology in Massachusetts. **We respectfully ask that the Commission on Facial Recognition recommend the legislature strengthen existing facial recognition law** to ensure Massachusetts residents and visitors are shielded from discriminatory surveillance and other harms.

For over 15 years, LivableStreets Alliance has advocated for streets that connect people to the places where they live, work, and play. Our current programs include advocating for:

- **Safe Streets:** a "safe systems" approach to traffic safety rooted in prevention, not policing and punishment
- **Essential Transit:** a transit system that is equitable, affordable, convenient, comfortable, and accessible
- **Great Neighborhoods:** transforming the way people work together to achieve better housing and development outcomes
- **Emerald Network:** our vision for a 200-mile system of greenways in Greater Boston

As facial recognition technology is prone to abuse and racial profiling, it is important to us to ensure strong regulations on this technology. Through our safe streets advocacy, we support legislation enabling automated traffic enforcement, a vital tool to curtail dangerous driving while reducing violent or otherwise harmful interactions between individuals and police officers. While we support the use of speed, red light, and bus lane cameras, we must ensure that this technology has appropriate privacy regulations, respects civil liberties, and does not further harm people of color or immigrants, which is why strengthening the existing facial recognition law is so important.

Additionally, the use of facial recognition technology in public spaces like streets, parks, and public transportation can turn them into spaces of surveillance. It is imperative that this technology is properly regulated so as not to restrict the use of, and mobility through, these spaces.

In December 2020, Governor Baker signed into law "An Act Relative To Justice, Equity And Accountability In Law Enforcement In The Commonwealth," an omnibus police reform legislation. The law, codified in Chapter 253 of the Acts of 2020, contains several provisions pertaining to government agencies' use of facial recognition technology.

While we support some of those provisions, namely the creation of this Commission, the regulations governing police use of facial recognition fall far short of what we need.

Our main concerns with the existing law are that it:

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

2. does not prohibit or regulate the use of facial recognition technologies for purposes of surveillance of public spaces like streets and parks.

3. does not restrict which public agencies can or cannot acquire and possess a facial recognition system. The law merely mentions the Registrar of Motor Vehicles ("R.M.V.") and the State Police ("M.S.P.") as possessing F.R.T. systems but does not explicitly restrict other agencies from buying or leasing their own systems.

Fortunately, lawmakers have addressed these 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 problems outlined above.

H.135 and S.47:

1. prohibit all public entities, including public schools, the department of transportation, and other public agencies in the Commonwealth, from using and possessing this technology. The only agencies allowed to use and possess this technology are the Registrar of Motor Vehicles and the State Police, subject to strict limitations and civil rights protections.

2. prohibit the use of facial recognition for surveillance of public spaces. As a result, government agencies would be forbidden from using our biometric characteristics to track our activities and locations in the park, at the library, at school, or on public transit.

3. clearly establish that only the R.M.V. would be allowed to acquire and possess the technology and use it to verify an individual's identity when issuing licenses, permits, or other documents. The bills also make a special caveat for the M.S.P. so that its officers can only access the R.M.V. system in three limited cases, i.e., to execute a warrant issued under probable cause, in case of an emergency involving immediate danger of death or serious physical injury, and to identify a deceased person.

I 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 this technology does not 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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