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July 30, 2021

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

Commission To Study Facial Recognition Technology And Its Use By Law

Enforcement Officers

**NAACP, New England Area Conference, Written Comment --**

**Governmental Use of Face Surveillance Technology**

I am writing on behalf of the New England Area Conference (NEAC) of the NAACP to respectfully ask that the Commission recommend that the legislature strengthen existing facial recognition law by passing H.135 and S.47.

The NAACP is the largest, oldest and most pre-eminent civil rights organization in the nation. The NAACP network includes over 2,200 Units across the nation, along with well over 2 million activists. Its mission is to secure the political, educational, social, and economic equality of rights to eliminate race-based discrimination and ensure the health and well-being of all persons. NEAC is the governing and coordinating entity for NAACP Branches in the states of Rhode Island, Massachusetts, New Hampshire, Maine and Vermont. This comment is presented on behalf of the 14 Branches in Massachusetts.

**Police use of unregulated face surveillance technology**

**threatens Black and Brown people**

The use of biometric recognition technologies, especially facial recognition, directly undermines racial justice. The government should not be allowed to use technology that disproportionately harms Black communities that already suffer from over-policing.

First, rigorous, academic peer-reviewed research from Joy Buolamwini, a scholar from the Massachusetts Institute of Technology (“MIT”), demonstrates facial surveillance technology exhibits gender and racial bias. Specifically, some facial recognition algorithms have high failure rates when evaluating the faces of Black women, erring in up to 1 in 3 cases.[1]

Second, a federal government study published in December 2019 found that face recognition algorithms were more likely to fail when attempting to identify the faces of people of color, children, the elderly, and women.[2]

Third, face surveillance systems in use by law enforcement frequently compare images against mugshot databases. Numerous studies, including those examining trends in Massachusetts, have shown that Black and Latino people are many times more likely to face arrest for a variety of crimes than White people, even when Whites commit those crimes at the same rates.[3] Making matters worse, an arrest does not equal guilt. Using mugshot databases for face surveillance searches exacerbates historical inequities by recycling that bias through new technology, and unfairly scrutinizing people who have long been targets of disproportionate police attention.

Finally, even if face surveillance systems were perfectly accurate, and even if the police did not use mugshot databases for facial recognition searches, history suggests these technologies will be disparately deployed in low-income and communities of color, and against immigrants. This has the impact not only of subjecting traditionally oppressed groups of people to yet more surveillance and tracking but also of making other, less policed communities even more invisible to law enforcement.

The existing law fails to protect Black and Brown people from this dangerous form of surveillance, which left poorly regulated will facilitate digital racial profiling and even wrongful arrests.

Legislation filed this session in Massachusetts would address many of the current law’s shortcomings. H.135 and S.47 strike the right balance between police investigative needs in serious criminal investigations and the privacy and racial justice interests of the people of Massachusetts. NEAC are particularly supportive of the following elements of the legislation:

1. The warrant requirement for police facial recognition searches.
2. The prohibition on the government’s use of facial recognition to perform public surveillance.
3. The general prohibition on most government agencies’ use of facial recognition and other remote biometric monitoring technologies.
4. The requirement that law enforcement notify criminal defendants when facial recognition was used in the investigation that led to their arrest and prosecution.

Additionally, NEAC supports the framework created by H.135 and S.47 that requires all police searches to be performed by the State Police, instead of allowing every agency across the state to run their own searches. Centralizing the use of the technology will make it possible for civil rights organizations like the NAACP to hold the government accountable for its use of this dangerous technology.

Further, NEAC has three recommendations to strengthen H.135 and S.47. First, the law should explicitly state that the results of a facial recognition search do not constitute probable cause for arrest or search. Doing so will protect against wrongful arrests. Second, the law should clearly stipulate that law enforcement may only conduct a search after demonstrating to a judge that they have probable cause to believe the unknown person in an image to be identified has committed a serious crime. The language in the statute is not clear on this point. Finally, the law should provide a private right of action for enforcement, so people harmed by violations of the statute can enforce their own rights.

NEAC asserts that the Commonwealth should not wait for the federal government to step in to properly regulate technology that is already used by police in the Commonwealth, and we should not allow tech companies or other self-interested parties to dictate citizen’s rights. We must strengthen the law to protect the public.

Over the past year, the country and the Commonwealth have been engaged in a national reckoning regarding gross police misconduct and violence, particularly against Black citizens and systemic racism. NEAC encourages you to recommend that the legislature pass H.135 and S.47 to ensure that face surveillance technology cannot be used to harm Blacks and all citizens in the Commonwealth.

Sincerely,

**Juan M. Cofield**

Juan M. Cofield

President

[1] Joy Buolamwini et al, Gender Shades, MIT Media Lab.<https://www.media.mit.edu/projects/gender-shades/overview/>

[2] See National Institute of Standards and Technology, Face Recognition Vendor Test (FRVT) Part 3: Demographic Effects, Patrick Grother, Mei Ngan, Kayee Hanaoka, December 2019.<https://nvlpubs.nist.gov/nistpubs/ir/2019/NIST.IR.8280.pdf>

[3] See Shira Schoenberg, Study Tracks Racial Disparities In Massachusetts Marijuana Arrests, MassLive, available at<https://www.masslive.com/news/2019/04/study-tracks-racial-disparities-in-massachusetts-marijuana-arrests.html> and Massachusetts Cannabis Control Commission, A Baseline Review and Assessment of Cannabis Use and Public Safety, April 2019, available at<https://mass-cannabis-control.com/wp-content/uploads/2019/04/1.-RR2-94C-Violations-FINAL.pdf>. See also ACLU of Massachusetts, Ending Racist Stop And Frisk, available at<https://www.aclum.org/en/ending-racist-stop-and-frisk>.