



Electronic Frontier Foundation  
815 Eddy Street  
San Francisco, CA 94109

July 17, 2020

The Honorable Rep. Aaron Michlewitz  
Chair, House Committee on Ways and Means

The Honorable Rep. Claire D. Cronin  
Chair, Joint Committee on the Judiciary

**Testimony in Support of H. 1538  
Moratorium on Government Use of Face Surveillance Technologies**

Dear Chairs Michlewitz and Cronin,

The Electronic Frontier Foundation (EFF) strongly supports legislation that bans government agencies and employees from using face surveillance technology or information derived from such technology. EFF has been in support of H. 1538 since its introduction, and urges you to please include this critical legislation in your police reform bill. Face surveillance technology is a pressing menace to privacy, free speech, and racial justice.

EFF works to ensure that technology supports freedom, justice, and innovation for all the people of the world. We are a non-profit advocacy group with more than 30,000 members that advances the interests of tech users in legislative bodies throughout the country.

Face surveillance is profoundly dangerous for many reasons.<sup>1</sup> First, it invades our privacy, by tracking a unique marker we show everywhere we go and cannot change: our own faces. Surveillance cameras in public spaces are proliferating, operated by myriad government and private entities. These cameras are increasingly networked into unified systems. Face surveillance technologies are growing increasingly powerful. In combination, these technologies can track everyone who lives and works in public. We must not build an infrastructure that empowers government to easily track where everyone is going, what they are doing, and who they are with.

Second, government use of face surveillance technology in public places will chill people from engaging in protests. Courts have long recognized that government surveillance of First Amendment activity has a “deterrent effect.” *See, e.g., Lamont v. Postmaster*, 381 U.S. 301 (1965). Empirical research confirms this problem. *See, e.g., Stoycheff*,

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<sup>1</sup> <https://www.eff.org/pages/face-recognition>.

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“Facebook’s spiral of silence effects in the wake of NSA Internet monitoring” (2016); Penney, “Online surveillance and Wikipedia use” (2016).<sup>2</sup>

Third, surveillance technologies have an unfair disparate impact against people of color, immigrants, and other vulnerable populations. Governments have, for example, used them to spy on advocates for racial justice.<sup>3</sup> Surveillance technologies often criminalize entire neighborhoods.<sup>4</sup> For example, watch lists are often over-inclusive and error-riddled, and cameras often are over-deployed in minority areas.<sup>5</sup> And these spying tools increasingly are being used in conjunction with powerful mathematical algorithms, which often amplify bias.<sup>6</sup>

Fourth, once government builds a face surveillance infrastructure, there is the inherent risk that thieves will steal its sensitive data, employees will misuse it, and policy makers will redeploy it in new unforeseen manners.<sup>7</sup>

Thus, face surveillance is so dangerous that governments must not use it at all. At least five cities in Massachusetts, including Boston, have already banned government use of this technology.<sup>8</sup> So have at least three cities in California.<sup>9</sup> EFF is working with advocacy groups across the country to enact similar bans, through a campaign we call “About Face.”<sup>10</sup> Now it is the state legislature’s turn to take a leadership role in this growing movement.

Governments should immediately stop use of face surveillance in our communities, given what researchers at MIT’s Media Lab and others have said about its high error rates—

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<sup>2</sup> <https://journals.sagepub.com/doi/pdf/10.1177/1077699016630255>;  
<https://scholarship.law.berkeley.edu/btlj/vol31/iss1/5/>.

<sup>3</sup> <https://www.theguardian.com/technology/2016/oct/11/aclu-geofeedia-facebook-twitter-instagram-black-lives-matter>; [https://www.washingtonpost.com/news/morning-mix/wp/2018/08/23/memphis-police-used-fake-facebook-account-to-monitor-black-lives-matter-trial-reveals/?utm\\_term=.13db56fe4bb8](https://www.washingtonpost.com/news/morning-mix/wp/2018/08/23/memphis-police-used-fake-facebook-account-to-monitor-black-lives-matter-trial-reveals/?utm_term=.13db56fe4bb8).

<sup>4</sup> <https://www.law.cuny.edu/wp-content/uploads/page-assets/academics/clinics/immigration/clear/Mapping-Muslims.pdf>

<sup>5</sup> <https://www.eff.org/deeplinks/2017/04/next-steps-toward-reforming-californias-unfair-gang-databases>;  
<https://www.eff.org/deeplinks/2015/01/what-we-learned-oakland-raw-alpr-data>.

<sup>6</sup> <https://www.newscientist.com/article/2166207-discriminating-algorithms-5-times-ai-showed-prejudice/>.

<sup>7</sup> <https://www.washingtonpost.com/technology/2019/06/10/us-customs-border-protection-says-photos-travelers-into-out-country-were-recently-taken-data-breach/>.

<sup>8</sup> <https://www.eff.org/document/somerville-face-surveillance-ban>; <https://www.eff.org/document/article-839-ban-town-use-face-surveillance>; <https://www.eff.org/document/19176-ordinance-prohibiting-use-face-surveillance-systems>; <https://www.eff.org/document/amend-chapter-2128-surveillance-technology-ordinance-adding-2128020-definitions-new>; <https://www.eff.org/deeplinks/2020/06/victory-boston-bans-government-use-face-surveillance>

<sup>9</sup> <https://www.eff.org/document/stop-secret-surveillance-ordinance-05062019>;  
<https://www.eff.org/document/oakland-face-surveillance-ban>; <https://www.eff.org/document/berkeley-face-surveillance-ban>.

<sup>10</sup> <https://www.eff.org/aboutface>.

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particularly for women and people of color<sup>11</sup>. But even if manufacturers someday mitigate these risks, government use of face recognition technology will threaten safety and privacy, amplify discrimination in our criminal justice system, and chill every resident's free speech.

We respectfully request that you include this critical measure in the police reform bill, and go farther than the Senate did in S.2820. Massachusetts needs a permanent moratorium on government use of this technology until the threat that biometric surveillance presents to privacy, free speech, racial and religious equity has been meaningfully addressed and responsibly mitigated. The harms from this technology will not disappear on December 31, 2021, when the Senate's proposed moratorium would expire.

Thank you for your attention and your work on this critical issue.

Sincerely,



Hayley Tsukayama  
Legislative Activist  
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<sup>11</sup> <http://proceedings.mlr.press/v81/buolamwini18a/buolamwini18a.pdf>.