

MEMORANDUM OF SUPPORT

Date: April 1, 2024

To: All Assembly Members, New York State Assembly; All Senators, New York State Senate; Governor Kathy Hochul

From: The Surveillance Technology Oversight Project (S.T.O.P)

Re: S.T.O.P. Memorandum in Support of Law Enforcement Biometrics Ban (S.1609 Hoylman-Sigal/A.1891 Glick)

S.T.O.P. is a community-based civil rights group that litigates and advocates against discriminatory surveillance. S.T.O.P. works to abolish local governments' systems of mass surveillance. Our work highlights the discriminatory impact of surveillance on Muslim Americans, immigrants, the LGBTQ+ community, indigenous peoples, and communities of color, particularly the unique trauma of anti-Black policing. We craft policies that balance new technologies and age-old rights.

S.T.O.P. emphatically supports the Law Enforcement Biometrics Ban (A.1891/S.1609). Because of its documented biases and its replication of historically flawed police practices, facial recognition is not suitable for law enforcement use. This bill would prohibit law enforcement in New York from using biometric recognition technology. It would also convene a state Task Force to examine the issue in depth and propose a comprehensive set of standards for use of such technology in the future if it is to be allowed.

Facial recognition is biased and error prone. Facial recognition systems can be up to 99% accurate for middle-aged white men under ideal lighting in laboratory conditions but can be wrong more than 1 in 3 times for women of color, even under similar conditions.¹ Using the same exact software and the same exact hardware, Black and brown New Yorkers face dramatically different outcomes.

Facial recognition use by law enforcement is particularly dangerous because an incorrect match has the potential to have devastating consequences, including wrongful arrest and detention.² In practice, numerous people, disproportionately Black, are wrongly arrested after being misidentified through facial recognition.³ In this context, officers use pseudoscientific tactics that exacerbate the risk of error, such as running photos of celebrities who allegedly look like a suspect through a matching

¹ Joy Buolamwini, Timnit Gebru, *Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification*, *Proceeds of Machine Learning Research*, vol 81, 1-15, 2018 p. 1.

² Kashmir Hill, *Eight Months Pregnant and Arrested After False Facial Recognition Match*, N.Y. TIMES, Aug. 6, 2023, <https://www.nytimes.com/2023/08/06/business/facial-recognition-false-arrest.html>; Khari Johnson, *How Wrongful Arrests Based on AI Derailed 3 Men's Lives*, WIRED, March 7, 2022, <https://www.wired.com/story/wrongful-arrests-ai-derailed-3-mens-lives/>.

³ Kashmir Hill, *Another Arrest, and Jail Time, Due to a Bad Facial Recognition Match*, N.Y. TIMES, Dec. 29, 2020, <https://www.nytimes.com/2020/12/29/technology/facial-recognition-misidentify-jail.html>.

system.⁴ The Georgetown Law Center on Privacy and Technology documented the kinds of abuses that are “common practice” at NYPD.⁵ One of the most egregious practices is that of routinely altering photos. The report revealed that NYPD edits of images “often go well beyond minor lighting adjustments and color correction,” and in many instances “amount to fabricating completely new identity points not present in the original photo.”⁶

Police facial recognition searches are also skewed by where surveillance cameras are most prevalent. Black, brown, and low-income New Yorkers are more prone to wrongful arrest, because they are more likely to be picked up on FR-equipped cameras, given that those cameras are disproportionately placed in their neighborhoods.⁷ An analysis by Amnesty International found that “areas across all boroughs with higher incidents of stop-and-frisk are also areas with the greatest current exposure to facial recognition,” and further, “the higher the proportion of non-white residents, the higher the concentration of facial recognition compatible CCTV cameras.”⁸

When facial recognition works, it is just as dangerous as when it doesn’t. Facial recognition has been used to surveil, identify, and target protestors, chilling free speech and punishing New Yorkers for exercising their constitutional rights.⁹ This has been going on since at least 2015, when the Baltimore Police Department used facial recognition and social media images to identify individuals who were protesting the death of Freddie Gray.¹⁰ In 2020, it was reported that the NYPD used facial recognition to target Derrick Ingram for his leadership of a peaceful Black Lives Matter protest. Police later surrounded Derrick’s home with more than 50 officers as part of a retaliatory raid.¹¹

As the legislature debates this bill, people’s lives are being ruined by use and misuse of facial recognition. In Detroit, Porcha Woodruff, an innocent Black woman, was wrongfully arrested and held in jail for 11 hours—while eight months pregnant—after being misidentified by facial recognition and falsely accused of robbery and carjacking.¹² Her time in jail caused serious medical complications, including contractions and sharp pain, leading her to be hospitalized immediately upon release. There are multiple similarly heartbreaking stories of people, predominantly Black individuals, being held for

⁴ Khari Johnson, *NYPD Used Facial Recognition and Pics of Woody Harrelson to Arrest a Man*, VENTUREBEAT, May 16, 2019, <https://venturebeat.com/2019/05/16/nypd-used-facial-recognition-and-pics-of-woody-harrelson-to-arrest-a-man>.

⁵ Clare Garvie, “Garbage In, Garbage Out: Face Recognition on Flawed Data,” Georgetown Law Center on Privacy and Technology, May 16, 2019, <https://www.flawedfacedata.com>.

⁶ *Id.*

⁷ Eleni Manis et al., *Scan City: A Decade of NYPD Facial Recognition Abuse* (Surveillance Technology Oversight Project, July 8, 2018).

⁸ *Inside the NYPD’s Surveillance Machine*, AMNESTY INTERNATIONAL, <https://banthescan.amnesty.org/decode>.

⁹ George Joseph & Jake Offenhartz, *NYPD Used Facial Recognition Technology in Siege of Black Lives Matter Activist’s Apartment*, GOTHAMIST, Aug. 14, 2020, <https://gothamist.com/news/nypd-used-facial-recognition-unit-in-siege-of-black-lives-matter-activists-apartment>.

¹⁰ Kevin Rector and Alison Knezevich, *Maryland’s Use of Facial Recognition Software Questioned by Researchers, Civil Liberties Advocates*, THE BALTIMORE SUN, Oct. 18, 2016, <https://www.baltimoresun.com/news/crime/bs-md-facial-recognition-20161017-story.html>.

¹¹ George Joseph & Jake Offenhartz, *NYPD Used Facial Recognition Technology in Siege of Black Lives Matter Activist’s Apartment*, GOTHAMIST, Aug. 14, 2020, <https://gothamist.com/news/nypd-used-facial-recognition-unit-in-siege-of-black-lives-matter-activists-apartment>.

¹² Kashmir Hill, *Eight Months Pregnant and Arrested After False Facial Recognition Match*, N.Y. TIMES, Aug. 6, 2023, <https://www.nytimes.com/2023/08/06/business/facial-recognition-false-arrest.html>.

crimes they did not commit simply because of a facial recognition match. Three Black fathers, two also in Detroit and one in New Jersey, were wrongfully arrested and jailed following faulty facial recognition matches, and these cases each had devastating lasting consequences.¹³ In one particularly worrisome case, a black man was wrongfully arrested in Georgia for a crime committed in Louisiana and spent six days in jail, despite the fact that he had never been to Louisiana.¹⁴

In failing to ban police use of facial recognition technology, New York falls further and further behind other states that have already passed bans, including Maine, Vermont, and New Hampshire.¹⁵ Over fifteen cities have also recognized the severity of the threat the technology poses in the hands of law enforcement, including San Francisco, Boston, and Baltimore.¹⁶ Passing this legislation would simply put New York State on par with its peers.

Banning police use of facial recognition is necessary to protect New Yorkers from wrongful arrest and over-policing, and to protect New Yorkers' right to protest and exercise their constitutional rights. We urge the legislature to pass, and the Governor to sign, the Law Enforcement Biometrics Ban (A.1891/S.1609).

¹³ Khari Johnson, *How Wrongful Arrests Based on AI Derailed 3 Men's Lives*, WIRED, March 7, 2022, <https://www.wired.com/story/wrongful-arrests-ai-derailed-3-mens-lives/>.

¹⁴ Sudhin Thanawala, *Facial Recognition Technology Jailed a Man for Days. His Lawsuit Joins Others from Black Plaintiffs*, AP NEWS, Sep. 25, 2023, <https://apnews.com/article/mistaken-arrests-facial-recognition-technology-lawsuits-b613161c56472459df683f54320d08a7>.

¹⁵ ME LD 1585, HP 1174, 130th Legislature, 1st Special Session, https://legislature.maine.gov/legis/bills/display_ps.asp?LD=1585&snum=130; N.H. Rev. Stat. § 105-D:2, <https://casetext.com/statute/new-hampshire-revised-statutes/title-7-sheriffs-constables-and-police-officers/chapter-105-d-body-worn-cameras/section-105-d2-use-of-body-worn-cameras>; VT S.124 (2020), <https://legislature.vermont.gov/Documents/2020/Docs/BILLS/S-0124/S-0124%20As%20Passed%20by%20Both%20House%20and%20Senate%20Unofficial.pdf>.

¹⁶ S.F. Admin. Code 19B (2019), <https://sfgov.legistar.com/View.ashx?M=F&ID=7206781&GUID=38D37061-4D87-4A94-9AB3-CB113656159A>; Boston Admin. Code 16-62, https://codelibrary.amlegal.com/codes/boston/latest/boston_ma/0-0-0-18988; Baltimore Council Bill 21-0001 (2021), <https://baltimore.legistar.com/LegislationDetail.aspx?ID=4749282&GUID=3605654F-5629-41A1-BD96-89946A2C32FB&Options=&Search=&FullText=1>