

## 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 Public Accommodations Biometrics Ban (S.7135 Hoylman-Sigal/A.7625 Simone)**

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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 Public Accommodations Facial Recognition Ban (A.7625/S.7135). This bill prohibits places or providers of public accommodation from using biometrics to identify customers, whether going to the grocery store, buying clothes or school supplies for their kids, or picking up their prescriptions at the drug store. It also prohibits collection of New Yorkers' biometric data without express written consent. This bill will protect New Yorkers' privacy and prevent abusive and dangerous uses of racially discriminatory facial recognition in places of public accommodation.

Facial recognition is unreliable, discriminatory, and a threat to our everyday life. Facial recognition systems discriminate against BIPOC, Muslim, immigrant, and LGBTQ+ communities. Facial recognition is much more likely to misidentify women of color than middle-aged white men.<sup>1</sup> Developers also frequently train biometric surveillance systems without including transgender and non-binary individuals, rendering their gender identity invisible to the algorithm, and making them susceptible to misidentification and exclusion.<sup>2</sup>

New Yorkers should not be forced to accept biometric surveillance as part of simple activities like buying groceries or taking their kids to a baseball game. Yet this is the reality across New York.

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<sup>1</sup> Joy Buolamwini, Timnit Gebru, *Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification*, *Proceedings of Machine Learning Research*, vol 81, 1-15, 2018 p. 1; Jacob Snow, *Amazon's Face Recognition Falsely Matched 28 Members of Congress With Mugsbots*, ACLU, July 26, 2018, <https://www.aclu.org/news/privacy-technology/amazons-face-recognition-falsely-matched-28>; Patrick Grother, Mei Ngan, and Kayee Hanaoka, *Face Recognition Vendor Test (FRVT)*, National Institute of Standards and Technology, U.S. Department of Commerce, Dec. 2019; Mei Wang and Weihong Deng, *Deep Face Recognition: A Survey*, 215 *Neurocomputing* 429 (March 14, 2021), <https://doi.org/10.1016/j.neucom.2020.10.081>.

<sup>2</sup> Rachel Mentz, *AI Software Defines People as Male or Female. That's a Problem*, CNN BUSINESS, Nov. 21, 2019, <https://www.cnn.com/2019/11/21/tech/ai-gender-recognition-problem/index.html>.

Stores' biased facial recognition systems will exclude Black and dark-skinned people from stores due to incredibly common mismatches. The technology often struggles to identify faces when people are wearing hats, seemingly an obvious issue for venues like Citi Field<sup>3</sup> attempting to identify fans headed to a baseball game.<sup>4</sup> Facial recognition means more police called on more BIPOC New Yorkers, more wrongful arrests, and even more police violence.

When facial recognition actually works, it is ripe for abuse. Madison Square Garden's James Dolan uses facial recognition to keep out employees of law firms suing MSG. This sort of biometric retaliation sets a chilling precedent for how the rich and powerful can silence their opponent and those helping them fight for their day in court. He even ejected a mother trying to watch the Rockettes show at Radio City Music Hall with her daughter's Girl Scouts troop, even though she never directly worked on any lawsuit against MSG.<sup>5</sup>

Facial recognition expansion threatens undocumented immigrants simply because they enter a store. Immigrations and Customs Enforcement (ICE) already uses facial recognition regularly and has been documented using tactics like accessing utility records to locate individuals for detention and deportation.<sup>6</sup> Stores actively partner with law enforcement to voluntarily share data about customers, and the same customer data can easily then be acquired by ICE if the agency simply submits a subpoena request. For example, ICE accessed millions of financial records from Western Union using administrative subpoenas.<sup>7</sup> Even in so-called sanctuary jurisdictions, nothing in existing state law prevents these sorts of private-public partnerships on immigration enforcement. Allowing stores to deploy facial recognition on immigrants thus exposes them to potential harmful interactions with ICE.

Businesses using facial recognition also become lucrative targets for identity thieves and hackers,<sup>8</sup> who can, and do, use biometric identifiers to break into computer systems.<sup>9</sup> More dangerous than other personal identifiers like a social security number, biometric identifiers are static and are

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<sup>3</sup> Sam Van Doran and David Siffert, *The Mets Should Steal Bases, Not Faces*, N.Y. DAILY NEWS, Sept. 15, 2022, <https://www.nydailynews.com/opinion/ny-oped-bases-not-faces-mets-20220915-cuuul25jjnh5rbzbbsvmrbwauy-story.html>.

<sup>4</sup> Andrew Cohen, *The New Face of Baseball: Mets to Roll Out Facial Recognition Ticketing at Citi Field*, SPORTS BUSINESS JOURNAL, April 1, 2022, <https://www.sportstechie.com/the-new-face-of-baseball-mets-to-roll-out-facial-recognition-ticketing-at-citi-field>.

<sup>5</sup> Sarah Wallace, *Face Recognition Tech Gets Girl Scout Mom Booted From Rockettes Show — Due to Where She Works*, NBC N.Y., Dec. 19, 2022, <https://www.nbcnewyork.com/investigations/face-recognition-tech-gets-girl-scout-mom-booted-from-rockettes-show-due-to-her-employer/4004677/>

<sup>6</sup> Nina Wang, Allison McDonald, Daniel Bateyko & Emily Tucker, *American Dragnet: Data-Driven Deportation in the 21st Century*, CENTER ON PRIVACY & TECHNOLOGY AT GEORGETOWN LAW, May 10, 2022, <https://www.americandragnet.org>.

<sup>7</sup> Matthew Guariglia, *Here's How ICE Illegally Obtained Bulk Financial Records from Western Union*, ELECTRONIC FRONTIER FOUNDATION, March 10, 2022, <https://www.eff.org/deeplinks/2022/03/heres-how-ice-illegally-obtained-bulk-financial-records-western-union>.

<sup>8</sup> *US Government Hack Stole Fingerprints of 5.6 Million Federal Employees*, THE GUARDIAN, Sept. 23, 2015, <https://www.theguardian.com/technology/2015/sep/23/us-government-hack-stole-fingerprints>. Dan Rafter, *Biometrics and Biometric Data: What Is It and Is It Secure?*, NORTON, May 6, 2022, <https://us.norton.com/blog/iot/what-is-biometrics>.

<sup>9</sup> A. Dellinger, *Hackers Defeat Vein Authentication by Making a Fake Hand*, ENGADGET, Dec. 28, 2018, <https://www.engadget.com/2018-12-28-hackers-defeat-vein-authentication-by-making-a-fake-hand.html>.

almost impossible to change.<sup>10</sup> When a hacker acquires another person's biometric data, it puts them at risk for identity theft for the rest of their lives.<sup>11</sup> The Federal Trade Commission has recognized how dangerous it is when stores use this technology irresponsibly, and it recently banned Rite Aid from using facial recognition largely because of the company's unfair data security practices.<sup>12</sup>

Banning facial recognition in places of public accommodation is necessary to ensure New Yorkers are able to access public spaces without fear of being tracked or wrongly excluded from daily life. We urge the legislature to pass, and the Governor to sign, the Public Accommodations Facial Recognition Ban (A.7625/S.7135).

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<sup>10</sup> Anthony Ortega, *Do Biometrics Protect Your Data or Put Your Identity at Risk?*, SPICEWORKS, Oct. 8, 2018, <https://www.spiceworks.com/it-security/data-security/articles/do-biometrics-protect-your-data-or-put-your-identity-at-risk/>.

<sup>11</sup> *Is Your Identity at Risk from Biometric Data Collection?*, BeyondTrust (last accessed Oct. 6, 2022), <https://www.beyondtrust.com/blog/entry/is-your-identity-at-risk-from-biometric-data-collection>.

<sup>12</sup> Press Release, Federal Trade Commission, *Rite Aid Banned from Using AI Facial Recognition After FTC Says Retailer Deployed Technology without Reasonable Safeguards*, Dec. 19, 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/12/rite-aid-banned-using-ai-facial-recognition-after-ftc-says-retailer-deployed-technology-without>.