September 13, 2023

City Council Members
New York City Council
250 Broadway
N.Y., N.Y. 10007

Re: Memorandum of Support for Intros 1014-2023 and 1024-2023

We, the undersigned organizations, urge the Council to pass Intro 1014-2023, prohibiting any place or provider of public accommodation from using biometric recognition technology, and Intro 1024-2023, prohibiting landlords from using such technology. Biometric recognition technology, including facial recognition technology (FRT), is biased, error-prone, and harmful to marginalized communities. It has no place in businesses and residences in New York City.

FRT discriminates against Black, Latinx, and non-binary or transgender New Yorkers.[1] Human bias infects A.I. systems. Many FRT algorithms are up to 100-times more error-prone when deployed against young Black women compared to middle-aged white males.[2] FRT developers also frequently train their systems without including transgender and non-binary individuals, rendering their gender identity invisible to the algorithm, and making them susceptible to misidentification and wrongful arrest.[3] Immigrants suffer as well. A biometric scanning feature on a Customs and Border Protection (CBP) app failed to accept photos of dark-skinned African and Haitian migrants applying for asylum.[4]

Additionally, allowing businesses and landlords to collect biometric information makes them an even more lucrative target for identity thieves and hackers.[5] Biometric identifiers are frequently used for ID verification and allocating public benefits; this makes an individual's biometric information an attractive target for fraudsters, as hackers can, and do use biometric identifiers to access computer

[1] National Institute of Standards and Technology, Facial Recognition Vendor Test Part 2 (2019), https://www.nist.gov/publications/face-recognition-vendor-test-frvt-part-2-identification.

[2] 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; National Institute of Standards and Technology, *NIST Study Evaluates Effects of Race, Age, Sex on Face Recognition Software* (2019), https://www.nist.gov/news-events/news/2019/12/nist-study-evaluates-effects- race-age-sex-face-recognition-software; Joy Buolamwini and Timnit Gebru, *Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification*, 81 Proceedings in Machine Learning Research 1, Conference on Fairness, Accountability and Transparency (2018), https://dam-prod.media.mit.edu/x/2018/02/06/Gender%20Shades%20Intersectional%20Accuracy%20Disparities.pdf; Inioluwa Deborah Raji and Joy Buolamwini, *Actionable Auditing: Investigating the Impact of Publicly Naming Biased Performance Results of Commercial AI Products,* MIT*,* (2019), https://dspace.mit.edu/handle/1721.1/123456.

[3] 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.

[4] Melissa del Bosque, *Facial Recognition Bias Frustrates Black Asylum Applicants to US, Advocates Say*, THE GUARDIAN, Feb. 8, 2023, https://www.theguardian.com/us-news/2023/feb/08/us-immigration-cbp-one-app-facial-recognition-bias.

[5] *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.

systems.[6] More dangerous than other personal identifiers like a social security number, biometric identifiers are static and are almost impossible to change.[7] When a hacker acquires another person's biometric data, it puts them at risk for identity theft for the rest of their lives.[8]

<u>Intro 1014-2023</u>

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 in our city, and it will continue to be until the Council passes this important legislation. Last year, the Mets implemented a facial recognition ticketing system at Citi Field in partnership with Wicket.[9] The Mets have touted this system as a new high-tech amenity. But FRT is not an amenity, it is discriminatory surveillance. And it is far from high-tech, as it often struggles to identify faces when people are wearing hats, seemingly an obvious issue for fans headed to a baseball game.[10]

Business use of FRT has faced increased scrutiny since James Dolan, the owner of Madison Square Garden Entertainment Corporation (MSG), started using the tech at MSG venues.[11] Dolan uses FRT to block access to ticketholders affiliated with law firms involved in pending lawsuits against MSG, which meant in one case ejecting a mother trying to watch the Rockettes show at Radio City Music Hall with her daughter's Girl Scouts troop.[12] Business owners, especially wealthy, celebrity business owners, should not be allowed to use such dangerous tech to punish anyone who displeases them.

While Dolan's antics are troubling, the harm caused by business use of FRT will be much more severe than stopping people from enjoying sports games and performances. Business use will reintroduce segregated stores and venues by excluding Black and dark-skinned people from stores due to incredibly common FR mismatches. Police will be called on innocent people, which will result in dangerous encounters and potentially unnecessary racialized violence.

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[6] 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.

[7] 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/.

[8] *Is Your Identity at Risk from Biometric Data Collection?*, BEYONDTRUST, March 21, 2019, https://www.beyondtrust.com/blog/entry/is-your-identity-at-risk-from-biometric-data-collection.

[9] 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.sporttechie.com/the-new-face-of-baseball-mets-to-roll-out-facial-recognition-ticketing-at-citi-field.

[10] 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.

[11] Courtney Gross, *Albany Takes on Attorney Ban at Madison Square Garden*, SPECTRUM NEWS NY1, Jan. 24, 2023, https://www.ny1.com/nyc/all-boroughs/politics/2023/01/25/albany-takes-on-attorney-ban-at-madison-square-garden; Andrea Vittorio, *Madison Square Garden Pressed by NY AG James Over Face Scans*, BLOOMBERG LAW, Jan. 25, 2023, https://news.bloomberglaw.com/privacy-and-data-security/madison-square-garden-pressed-by-ny-ag-james-over-face-scans.

[12] 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/

Expansion of FR into private businesses also threatens the safety of interstate abortion-seekers, people seeking gender-affirming care, and immigrants, simply because they try to buy groceries. This technology is already being weaponized in New York City grocery stores.[13] Stores like Brooklyn Fare and Westside Market may be scanning the face of every single customer walking through their stores and storing that sensitive personal data indefinitely.

Intro 1014-2023 would prohibit any place or provider of public accommodation from using any biometric recognition technology to verify or identify a customer, prohibit businesses from barring entry to customers based on FRT, and prohibit companies from selling customers' biometric data. It would also require express written consent from customers before collecting their biometric data, even if that data is not used on-site for identification purposes. This would be a crucial step towards protecting New Yorkers and preventing the types of abuses of the technology that we are seeing in places of public accommodation like MSG.

Intro 1024-2023

Use of FRT and other biometric surveillance technologies in residential settings opens tenants and their guests to harassment and discriminatory eviction, and it compromises their privacy. New Yorkers do not want this invasive technology used in their homes, the most intimate of spaces. In 2019, the tenants of Atlantic Plaza Towers in Brooklyn organized in response to their landlord's attempted installation of FRT and successfully prevented the plan from proceeding.[14] Their organizing highlighted the disproportionate impact of the use of these biometric security systems in low-income communities of color.[15]

The racial bias of FRT will inevitably impede residents from accessing their home, locking them out due to erroneous matches, and may even put them in danger by eliciting an unwarranted law enforcement response. Collection of biometric data will be forced upon not just all residents, but any guests they have over as well, with Black, brown, Asian, and gender non-conforming guests barred from visiting their friends due to FR mismatches, and potentially having law enforcement involved unnecessarily.

Landlords will abuse this tech to justify evicting tenants from rent-stabilized units because the FRT system determines they were not at home often enough.[16] In fact, vendors have already begun to advertise this technology.[17] In public housing, its use has led to residents being evicted for minor

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[13] Lisa Fickenscher, *Retailers Busting Thieves with Facial-Recognition Tech Used by MSG's James Dolan*, N.Y. POST, Feb. 12, 2023, https://nypost.com/2023/02/12/retailers-busting-thieves-with-facial-recognition-tech-used-at-msg.

[14] Yasmin Gagne, *How We Fought Our Landlord's Secretive Plan for Facial Recognition—and Won*, Nov. 22, 2019, FAST COMPANY, https://www.fastcompany.com/90431686/our-landlord-wants-to-install-facial-recognition-in-our-homes-but-were-fighting-back.

[15] *Id.*

[16] *Ask Sam: What Are the Rules for Evicting Rent-Stabilized Tenants in NYC?*, HIMMELSTEIN MCCONNELL GRIBBEN & JOSEPH LLP, Dec. 8, 2021, https://www.brickunderground.com/rent/rules-for-evicting-rent-stabilized-tenant-nyc#:~:text=The%20rent%20stabilization%20code%20requires,she%20can%20begin%20eviction%20proceedings.

[17] Maggie Harrison, *Facial Recognition Used to Evict Single Mother for Taking Night Classes*, FUTURISM, May 17, 2023, https://futurism.com/facial-recognition-housing-projects.

violations of policy.[18] One single mother was targeted after she started night classes and asked her ex-husband to spend more time at her home watching their children, causing her to be flagged for potentially violating the housing authority's visitor policy.[19]

Furthermore, New York City landlords have been accused of sharing tenants' most sensitive information—phone numbers, photos, and even Social Security numbers—with immigration officials.[20] To protect immigrant communities in our city, we cannot let landlords have access to residents' biometric data.

Intro 1024-2023 would prohibit any owner of a multiple dwelling from installing, activating, or using any biometric recognition technology that identifies tenants or the guest of a tenant. The bill should be strengthened through amendments creating a strong private right of action applicable to all provisions, not just sale, with statutory damages and punitive damages, but its passage is critically important to make New Yorkers safer in their homes.

We look forward to your support on these bills.

Sincerely,

Surveillance Technology Oversight Project (S.T.O.P.)
National Action Network
New York Civil Liberties Union (NYCLU)
Neighborhood Defender Service of Harlem
The Bronx Defenders
The Legal Aid Society
Center on Race, Inequality, and the Law at NYU School of Law
Fight for the Future
Amnesty International
CFA - Consumer Federation of America
American Friends Service Committee - Healing Justice NY
Empire State Indivisible
Access Now
Algorithmic Justice League
Athena Coalition
Equality for Flatbush (E4F)
Freedom to Thrive
Jews For Racial & Economic Justice (JFREJ)
Jim Owles Liberal Democratic Club
Justice Strategies
May First Movement Technology
No Ethics In Big Tech

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[18] Douglas MacMillan, *Eyes on the Poor: Cameras, Facial Recognition Watch Over Public Housing*, WASH. POST, May 16, 2023, https://www.washingtonpost.com/business/2023/05/16/surveillance-cameras-public-housing.

[19] *Id.*

[20] *See, e.g.*, Lauren Cook, *Queens Landlord Gave Tenant Information to ICE After Discrimination Complaint, Commission Says*, N.Y. DAILY NEWS, July 19, 2017, https://www.amny.com/news/queens-landlord-gave-tenant-information-to-ice-after-discrimination-complaint-commission-says-1.13810387.

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September 13, 2023

NYC DSA Tech Action
NYLS Privacy Law Association
Policing and Social Justice Project
Progressive Technology Project
Secure Justice
SWOP Brooklyn
Open MIC
Oakland Privacy
PDX Privacy
EFF-Austin