January 27, 2020

PCLOB Members:

We write to you regarding the rapid deployment of facial recognition systems directed toward Americans within the United States by federal agencies. On behalf of leading consumer, privacy, and civil liberties organizations, we urge the Privacy and Civil Liberties Board ("PCLOB") to recommend to the President and the Secretary of Homeland Security the suspension of facial recognition systems, pending further review.

The PCLOB was established "to protect privacy and civil liberties; and (2) ensure that liberty concerns are appropriately considered in the development and implementation of laws, regulations, and policies . . ."[1] The Congress specifically found that new surveillance powers "calls for an enhanced system of checks and balances to protect the precious liberties that are vital to our way of life and to ensure that the Government uses its powers for the purposes for which the powers were given."[2]

According to an article in *The New York Times*, federal and state law enforcement agencies are now using a technology that allows police to identify individuals in public spaces who have engaged in no criminal conduct or demonstrated any suspicious activity.[3] According to the Times article, "without public scrutiny, more than 600 law enforcement agencies have started using Clearview in the past year, according to the company, which declined to provide a list."

As you must certainly be aware, there is a growing movement across the United States to ban the use of facial recognition.[4] Many local governments are taking steps to protect their residents against the use of facial recognition for mass surveillance. Many of these local surveillance systems have come about as a consequence of funding by the Department of Homeland Security for programs that failed to satisfy even the DHS's own privacy guidelines.[5]

There is also the recent study from the National Institute of Science and Technology on Face Recognition Software which found that false positives are up to 100 times more likely for Asian and African American faces when compared to White faces.[6] NIST examined 189 software

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[1] 42 USC 2000ee(c) ("Privacy and Civil Liberties Oversight Board – Purpose").
[2] 42 USC 2000ee(b) ("Privacy and Civil Liberties Oversight Board – Findings").
[3] Kashmir Hill, *The Secretive Company That Might End Privacy as We Know It,* N.Y. Times, Jan. 18, 2020, https://www.nytimes.com/2020/01/18/technology/clearview-privacy-facial-recognition.html.
[4] See, e.g. Kate Conger, Richard Fausset and Serge F. Kovaleski, *San Francisco Bans Facial Recognition Technology,* N.Y. Times, May 14, 2019, https://www.nytimes.com/2019/05/14/us/facial-recognition-ban-san-francisco.html. *Ban Facial Recognition* ("Facial recognition surveillance technology is unreliable, biased, and a threat to basic rights and safety."), https://www.banfacialrecognition.com.
[5] EPIC, *Spotlight on Surveillance: D.C.'s Camera System Should Focus on Emergencies, Not Daily Life* (Dec. 2005), https://epic.org/privacy/surveillance/spotlight/1205/default.html.
[6] National Institute of Standards and Technology, *Face Recognition Vendor Test (FRVT) Part 3: Demographic Effects* (Dec. 2019), https://nvlpubs.nist.gov/nistpubs/ir/2019/NIST.IR.8280.pdf.

algorithms from 99 developers, a "majority of the industry," according to the federal agency. The highest rates of false positives were found for African American females — which NIST says is "particularly important because the consequences could include false accusations."

While we do not believe that that improved accuracy of facial recognition would justify further deployment, we do believe that the obvious problems with bias and discrimination in the systems that are currently in use is an additional reason to recommend a blanket moratorium.

We are aware that the PCLOB announced in July 2019 that "Facial Recognition and Other Biometric Technologies in Aviation Security" is one of the Board's "Active Oversight Projects,"[7] but we believe the PCLOB should examine the more significant public concerns about the use of facial recognition in public spaces. We therefore urge you to move forward this work and specifically assess the dangers of facial recognition in public spaces. [8]

There is also growing concern that facial recognition techniques used by authoritarian governments to control minority populations and limit dissent could spread quickly to democratic societies.[9] The European Union is moving forward a proposal to ban the use of facial recognition in public spaces, "for up to five years until safeguards to mitigate the technology's risks are in place."[10]

The PCLOB has a unique responsibility, set out in statute, to assess technologies and polices that impact the privacy of Americans after 9-11 and to make recommendations to the President and executive branch.[11] The rapid and unregulated deployment of facial recognition poses a direct threat to "the precious liberties that are vital to our way of life."[12]

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[7] PCLOB, "Privacy and Civil Liberties Oversight Board Releases Inventory of Active Oversight Projects and Other Initiatives" (July 9, 2019, https://www.pclob.gov/newsroom/20190708.html.

[8] We also note that the PCLOB has failed to submit timely reports to Congress and the public as required by law. 42 USC 2000ee(e)(1)(B) ("Privacy and Civil Liberties Oversight Board - Reports") (requiring the publication of not less than two reports each year to Congress and the public). According to the PCLOB website, the last three reports were issued on July 1, 2019, December 1, 2018, and January 1, 2017. PCLOB, *Semiannual Reports*, https://www.pclob.gov/semiannual-reports/. There are now three outstanding reports. The PCLOB should promptly submit these overdue reports and specifically recommend the suspension of facial recognition programs across the federal government.

[9] Marc Rotenberg and Len Kennedy, *Surveillance in China: Implications for Americans*, N.Y. Times, Dec. 19, 2019 ("China also dominates the standards-setting process for techniques like facial recognition. And these surveillance systems are being deployed against democratic protesters in Hong Kong.").

[10] "Structure of the White Paper on artificial intelligence – a European approach" ("Draft as of 12/12"), https://www.epic.org/banfacesurveillance/EU-AI-white-paper.pdf. *See also* MIT Review, The EU might ban facial recognition in public for five years, Jan. 17, 2019, ("**Is a temporary ban a good idea?** Yes, especially given the breakneck pace at which the technology is being deployed in Europe, by everyone from police forces to supermarkets.") https://www.technologyreview.com/f/615068/facial-recognition-european-union-temporary-ban-privacy-ethics-regulation/.

[11] 42 USC 2000ee(b) ("Privacy and Civil Liberties Oversight Board – Functions").

[12] 42 USC 2000ee(b) ("Privacy and Civil Liberties Oversight Board – Findings").

We urge the PLCOB to act now to safeguard the privacy rights of Americans.

Sincerely,

Alianza Naciónal de Campesinas
Algorithmic Justice League
American-Arab Anti-Discrimination Committee (ADC)
American Friends Service Committee
Black and Brown Activism Defense Collective
Campaign for a Commercial-Free Childhood
Center for Digital Democracy
Coalition for Humane Immigrant Rights – CHIRLA
Color of Change
Constitutional Alliance
Consumer Action
Consumer Federation of America
Council on American-Islamic Relations (CAIR)
Cyber Privacy Project
Defending Rights & Dissent
Demand Progress
Electronic Frontier Foundation
Electronic Privacy Information Center (EPIC)
Fight for the Future
Freedom of the Press Foundation
Free Press Action
Media Alliance
MediaJustice
National Center for Transgender Equality
National Hispanic Media Coalition
National LGBTQ Task Force
National Workrights Institute
Oklahoma Black Historical Research Project, Inc.O
Open MIC (Open Media and Information Companies Initiative)
Patient Privacy Rights
Popular Resistance
Privacy Times
Project on Government Oversight
Restore the Fourth
Rural Coalition, Washington, DC
Rural Advancement Fund of the National Sharecroppers Fund, Orangeburg, SC
Surveillance Technology Oversight Project (S.T.O.P.)
Woodhull Freedom Foundation
World Farmers (Lancaster, MA)
X-Lab

Cc: Chairman Lindsey Graham, Senate Judiciary Committee
Ranking Member Dianne Feinstein, Senate Judiciary Committee

Chairman Jerold Nadler, House Judiciary Committee
Ranking Member Doug Collins, House Judiciary Committee

Chairman Ron Johnson, Senate Homeland Security and Governmental Affairs Committee
Ranking Member Gary C. Peters, Senate Homeland Security and Governmental Affairs Committee

Chairman Bennie Thompson, House Homeland Security Committee
Ranking Member Mike Rogers, House Homeland Security Committee