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**STATEMENT OF
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**BEFORE THE
MASSACHUSETTS HOUSE OF REPRESENTATIVES**

**IN SUPPORT OF H. 1538
MORATORIUM ON GOVERNMENT USE OF FACE SURVEILLANCE
TECHNOLOGIES**

**PRESENTED
JULY 17, 2020**

My name is William Luckman, and I serve as an organizer with the Surveillance Technology Oversight Project (“S.T.O.P.”). S.T.O.P. advocates and litigates to fight discriminatory surveillance. Thank you Representatives Michlewitz and Cronin for the opportunity to discuss the need for a moratorium on facial recognition technology in the Commonwealth of Massachusetts.

In June, the Boston City Council voted to follow the lead of Cambridge, Somerville, Brookline, and Northampton to become the fifth Massachusetts locality to ban government facial recognition.¹ But it can’t be left up to individual municipalities to combat facial recognition use piecemeal. This dangerous technology is already deployed by numerous local and state agencies, requiring a state-level response to properly address the threat it poses. Facial recognition is biased, broken, and (when it works) antithetical to a democratic society. Without a ban, more people of color will be wrongly stopped by the police at a moment when the dangers of police encounters have never been clearer.

The technology that drives facial recognition is far more subjective than many realize. Artificial intelligence (“A.I.”) is the aggregation of countless human decisions, codified into algorithms. But as a result, human bias can infect A.I. systems, including those that supposedly “recognize” faces, in countless ways. For example, if facial recognition software is programmed to only recognize two genders, we can leave transgender and non-binary individuals invisible.² If a security camera learns who is “suspicious looking” using pictures of inmates, the photos will just teach the A.I. to replicate the mass incarceration of African American men.

In this way, A.I. can learn to be just like us, exacerbating structural discrimination against marginalized communities.³ In the case of facial recognition, this leads to systems that are over 99% accurate for white men, but which can be wrong more than 1 in 3 times for some women of color.⁴ The same exact software, the same exact hardware—but dramatically different outcomes for Black and Latin/X Massachusetts residents.

In 2018, the American Civil Liberties Union worked with the University of California at Berkeley to study Amazon’s face recognition product, Rekognition. Researchers used Rekognition to scan the 535 members of Congress against a database of 25,000 arrestees. Shockingly, Rekognition mistook 28 members of the Congress for arrestees, including civil rights leader John Lewis and many other members of the Congressional Black Caucus.⁵ In 2019, the ACLU-MA found the same technology inaccurately linked the faces of 27 professional athletes to a mugshot database.⁶

¹ Nik DeCosta-Klipa, Boston City Council passes ban on facial recognition technology, Boston.com, June 24, 2020, <https://www.boston.com/news/local-news/2020/06/24/boston-face-recognition-technology-ban>

² 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>.

³ S. Myers West, M. Whittaker, K. Crawford, ‘Discriminating Systems: Gender Race and Power in AI’, AI Now Institute, p 6.

⁴ J. Buolamwini, T. Gebru, ‘Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification’, Proceedings of Machine Learning Research, vol 81, 1-15, 2018 p. 1.

⁵ M. Whittaker, K. Crawford, ‘AI Now Report 2018’, AI Now Institute, p. 16.

⁶ Kate Gill, ‘Amazon Facial Recognition Falsely Links 27 Athletes to Mugshots in ACLU Study’ Hyperallergic, October 28, 2019 <https://hyperallergic.com/525209/amazon-facial-recognition-aclu/>

In these ways, facial recognition is ripe for the same types of abuses and mistakes that have plagued Massachusetts' forensic crime labs in past year years. Banning facial recognition helps to prevent another wrongful conviction crisis, stopping both the faulty technology and faulty police practices that could easily lead to the wrongful arrests of thousands of Massachusetts residents.

Even if facial recognition worked without errors, even if it had no bias, the technology would still remain antithetical to everything the Commonwealth believes in. Facial recognition manufacturers are trying to create the tool of perfect control, a system that allows everyone to be tracked at every moment, in perpetuity. Got to a protest? The system knows. Go to a health facility? It keeps a record. Suddenly, residents lose the freedom of movement that is essential to an open society. Suddenly, we are forced to second guess every action, worrying how it might be viewed by the surveillance state.

If the state fails to act soon, it will only become harder to enact reforms. Companies are pressuring local, state, and federal agencies to adopt facial recognition tools. Facial recognition use already extends to state and local agencies beyond police departments, and the implications include more than false arrests. We have heard anecdotal reports that faulty facial recognition has been used by the Massachusetts Registry of Motor Vehicles to wrongly suspend driver licenses, restricting the freedom of mobility and ability to work of those misidentified.

But a shift is happening both locally and around the world. Here, in Massachusetts, Boston, Somerville, Brookline, Cambridge, and Northampton have all banned facial recognition technology. San Francisco, Oakland, and Seattle, where much of this technology is born, have done the same.⁷ While D.C. lawmakers have been slow to address the threat, France declared it illegal, nationwide, to use facial recognition in high schools,⁸ and other countries are poised to follow.

I will conclude on a personal note. I live and work in New York City, but I was born in Boston and raised in Brookline. It pains me to see the current wave of protests roiling Massachusetts, because it demonstrates the biased and unequal law enforcement practices I remember from my youth have yet to be addressed. I know that the people of the Commonwealth want to see a change, and I believe the Legislature is on their side. In practice—inaccuracies aside—facial recognition systems lead to increased stops for people of color. Increased stops mean an increase in opportunities for police violence and abuse. We must recognize that Black lives matter, and to do so, we must realize that technology doesn't operate in a neutral vacuum—instead it takes on the character of those building and deploying it. I encourage the House of Representatives to respond to their constituents' demands for police reform by immediately including H.1538 in the police reform bill, banning the use of facial recognition technology indefinitely, and further suggest extending this de facto ban on facial recognition use to all state agencies.

7 Rachel Metz, "Beyond San Francisco, More Cities Are Saying No to Facial Recognition," CNN Business, July 17, 2019, <https://www.cnn.com/2019/07/17/tech/cities-ban-facial-recognition/index.html>.

8 "CNIL Bans High Schools' Facial-Recognition Programs," IAPP, October 29, 2019, <https://iapp.org/news/a/cnil-bans-high-school-facial-recognition-programs/>

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Thank you for your thoughtful deliberation and action on this matter,

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