ACLU Northern California

July 16, 2019

Councilmember Rebecca Kaplan, Council President
Councilmember Dan Kalb
Councilmember Nikki Fortunato Bas
Councilmember Lynette Gibson McElhaney
Councilmember Sheng Thao
Councilmember Noel Gallo
Councilmember Loren Taylor
Councilmember Larry Reid
Oakland City Council
1 Frank H. Ogawa Plaza
Oakland, CA 94612

Re: Proposed Ordinance to Prohibit Oakland from Acquiring and/or Using Face Recognition Technology

Dear Councilmembers,

The ACLU of Northern California writes to express strong support for Council President Kaplan's proposed prohibition on the City's acquisition and use of face recognition technology being considered as Item 7.7 at the July 16, 2019 City Council Meeting. The legislation will safeguard Oaklanders against dangerous, invasive, and biased systems that endanger their civil rights and safety. We urge you to adopt the ordinance and position Oakland at the cutting-edge of municipal technology oversight, joining the ranks of San Francisco and Somerville, Massachusetts in ensuring decisions about advanced surveillance technology are firmly under democratic control. This letter explains several reasons the Council should adopt the prohibition.

1. **Face recognition technology grants City departments unprecedented power to identify and continuously monitor Oaklanders, amplifying bias in law enforcement.**

Face recognition technology enables the government to automatically track residents' identities, whereabouts, associations, and even facial expressions. Using existing video cameras and officer-worn body cameras promised as officer accountability tools, government agencies can create unfettered citywide networks that place Oaklanders under continuous surveillance. The powerful and automated nature of face recognition incentivizes the needless expansion of surveillance in Oakland communities. People should not have to fear having their movements and private lives logged in a database simply for walking down the street. Face surveillance will make Oaklanders less free. It will also lead to new violations of civil rights.

The harms from face recognition will disproportionately impact communities of color and immigrants. This is because face recognition systems connect to existing surveillance infrastructure and amplify biased policing and enforcement practices already present in these

communities. Everyone should be free to go about their daily lives without the government automatically knowing whether they marched at a political rally, visited an abortion clinic, or attended a religious service. Face recognition systems risk further criminalizing the lives of people of color and immigrants subject to their surveillance.

Face recognition databases also place the personal information of residents at risk. In the absence of a prohibition, implementing a face recognition system in Oakland would require the creation of a sensitive database featuring the face prints of local residents, all without their consent. Databases containing the face prints of Oaklanders may prove an attractive target for exploitation efforts and demands from agencies like ICE, which has already begun mining state databases using this technology.[1] These sensitive biometric databases are vulnerable not only to misuse, but also to data breaches.[2] Yet unlike a password or a credit card number, an Oakland resident cannot "reset" their face if it is compromised due to a breach of a City database.

2. Face recognition technology's demonstrated inaccuracies and biases threaten the civil rights and safety of Oaklanders—especially immigrant communities, communities of color, and women.

According to a peer-reviewed study by researchers at MIT, face recognition technology products perform poorly for people with darker skin and women.[3] When ACLU ran photos of members of Congress through Amazon's "Rekognition" product last year, we found that 28 members of Congress incorrectly "matched" with mugshot booking photos of arrestees. Of the false matches, 39 percent were people of color, even though people of color make up only 20 percent of lawmakers in Congress. False identifications can give rise to unnecessary altercations that result in civil rights violations and serious harms. This is a technology that risks pouring fuel on the fire of biased policing practices.

Even if the face recognition algorithms were perfectly accurate, bias would continue to pervade the databases that underlie these systems. For example, since face recognition systems often use mugshot photos for matching purposes—and mugshot databases reflect the historical over-policing of communities of color—the matching databases used by these systems will likely overrepresent people of color. Communities of color may be unfairly targeted by the gaze of these systems simply because they appeared in a database and were arrested or subject to discriminatory policing in the past.

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[1] Catie Edmonson, *ICE Used Facial Recognition to Mine State Driver's License Databases*, N.Y. TIMES (July 7, 2019), https://www.nytimes.com/2019/07/07/us/politics/ice-drivers-licenses-facial-recognition.html.

[2] Drew Harwell & Geoffrey A. Fowler, *U.S. Customs and Border Protection Says Photos of Travelers Were Taken in a Data Breach*, WASH. POST (Jun. 10, 2019), https://www.washingtonpost.com/technology/2019/06/10/us-customs-border-protection-says-photos-travelers-into-out-country-were-recently-taken-data-breach.

[3] Joy Buolamwini & Timnit Gebru, *Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification*, 81 PROC. MACHINE LEARNING RES. 1 (2018), http://proceedings.mlr.press/v81/buolamwini18a/buolamwini18a.pdf; Natasha Singer, *Amazon Is Pushing Facial Technology That a Study Says Could Be Biased*, N.Y. TIMES (Jan. 24, 2019), https://www.nytimes.com/2019/01/24/technology/amazon-facial-technology-study.html.

3. Local voters overwhelmingly oppose government surveillance based on biometrics.

The proposed prohibition aligns with the will of local constituents. In a recent poll of likely 2020 California voters, 79 percent of Bay Area respondents opposed the government being able to monitor and track a person using biometric information.[4] This view is held widely across generations, ethnic groups, and political parties, according to this poll.

4. Conclusion

Face recognition fails the basic test at the heart of Oakland's Surveillance Technology Ordinance: here, the costs of this technology to both civil rights and civil liberties substantially and categorically outweigh its theoretical benefits. In summary, we recommend the Council adopt Council President Kaplan's proposed legislation to protect Oaklanders from a technology that is ripe for abuse regardless of its technological accuracy or limitations on use. Please let me know if you would like to discuss this legislation or if you have any questions we can help answer.

Sincerely,

Matt Cagle
Technology and Civil Liberties Attorney
ACLU of Northern California

[4] DAVID BINDER RESEARCH, CALIFORNIA STATEWIDE SURVEY RE: POLL RESULTS OF LIKELY 2020 VOTERS (2019), https://www.aclunc.org/docs/DBR_Polling_Data_On_Surveillance.pdf.