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**STATEMENT OF  
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**BEFORE THE  
COMMITTEE ON GOVERNMENT OPERATIONS  
BOSTON CITY COUNCIL**

**FOR A HEARING CONCERNING  
DOCKET #0683, AN ORDINANCE BANNING FACIAL RECOGNITION  
TECHNOLOGY IN BOSTON**

**PRESENTED  
JUNE 9, 2020**

Good afternoon, my name is Will 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 Chairperson Edwards for holding this hearing today, and thank you Councilors Michelle Wu and Ricardo Arroyo for proposing this crucial reform; I am grateful for the opportunity to discuss the privacy implications of facial recognition in Boston.

In January, Cambridge joined Somerville and Brookline to become the third area locality to ban government facial recognition.<sup>1</sup> We applaud these communities for barring this dangerous technology, and we hope the City of Boston will do the same. Facial recognition is biased, broken, and (when it works) antithetical to a democratic society. Without this 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> In 2019, the ACLU-MA found the same technology inaccurately linked the faces of 27 professional athletes to a mugshot database.<sup>6</sup>

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<sup>1</sup> Ryan Johnston, Facial-recognition ban in Cambridge Mass., marks a trend, Statescoop, Jan 15, 2020, <https://statescoop.com/facial-recognition-ban-in-cambridge-mass-marks-a-trend/>.

<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>.

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

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

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

<sup>6</sup> 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/>

But beyond the bias built into these machines, there is also the bias in how they are deployed in the real world. In other cities that rely on facial recognition, the technology has only compounded racial profiling and the worst forms of police bias.

In New York, the NYPD will routinely Photoshop images before conducting facial recognition comparisons, a practice with absolutely no peer-reviewed scientific support. When one crime scene image was too low resolution for facial recognition to work, officers decided the suspect resembled an unnamed New York Knicks player and ran the Knicks player's image through the database. This type of search has led to the arrest of people whose only crime was being a celebrity lookalike.<sup>7</sup>

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 Bostonians. While less crucial, banning facial recognition also removes a potent source of potential liability for the city.

Even if facial recognition worked without errors, even if it had no bias, the technology would still remain antithetical to everything this city 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, Bostonians 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 city 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. BriefCam, the software powering Boston's surveillance camera network, has released a new version of their software that would easily integrate invasive facial recognition tools.<sup>8</sup> Without a comprehensive ban now, there's no way to know how this technology could infiltrate other city agencies.

A shift is happening both locally and around the world. Here, in Massachusetts, 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.<sup>9</sup> While D.C. lawmakers have been slow to address the threat, France declared it illegal, nationwide, to use facial recognition in high schools,<sup>10</sup> and other countries are poised to follow.

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<sup>7</sup> Claire Garvie, "Garbage In, Garbage Out: Face Recognition on Flawed Data" Georgetown Law Center on Privacy and Technology, May 16, 2019, [https://www.flawedfacedata.com/#footnote5\\_zra6fu8](https://www.flawedfacedata.com/#footnote5_zra6fu8).

<sup>8</sup>Boston Introduces Municipal Ban on Face Surveillance Technology, ACLY Massachusetts, May 6, 2020 <https://www.aclum.org/en/news/boston-introduces-municipal-ban-face-surveillance-technology>.

<sup>9</sup> 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>.

<sup>10</sup> "CNIL Bans High Schools' Facial-Recognition Programs," IAPP, October 29, 2019, <https://iapp.org/news/a/cnil-bans-high-school-facial-recognition-programs/>.

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 the area, 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 Council 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 Council to respond to their constituents' demands for police reform by immediately banning the use of this harmful technology in Boston.

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