

Congress of the United States
Washington, DC 20510

September 12, 2019

The Honorable Kevin K. McAleenan
Acting Secretary
U.S. Department of Homeland Security
245 Murray Lane, SW
Washington, DC 20528

The Honorable Christopher Wray
Director
Federal Bureau of Investigations
935 Pennsylvania Avenue, NW
Washington, DC 20535

Dear Acting Secretary McAleenan and Director Wray:

Immigration and Customs Enforcement (ICE) and the Federal Bureau of Investigations (FBI) have accessed millions of Americans' photographs without their knowledge or consent through state driver's license databases. We understand that ICE and FBI database searches are done for the purpose of supporting federal criminal investigations. However, almost all of the photographs maintained in these databases and reviewed by ICE or the FBI are individuals not suspected of or charged with criminal activity. We write to request information about how ICE and the FBI use those databases, and specifically how those agencies use facial recognition technology, to scan individuals' photographs and personal information for criminal investigative purposes.

Recent investigative reports have disclosed how ICE and FBI agents use state driver's license databases to search photographs using facial recognition technology.¹ In three states, Washington, Utah, and Vermont, ICE and the FBI were able to conduct facial recognition searches of databases containing millions of U.S. citizens' state driver's license or photo

¹ Drew Harwell, *FBI, ICE find state driver's license photos are a gold mine for facial-recognition searches*, THE WASHINGTON POST (July 7, 2019), https://www.washingtonpost.com/technology/2019/07/07/fbi-ice-find-state-drivers-license-photos-are-gold-mine-facial-recognition-searches/?utm_term=.a8e9573a953f; Frank Bajak, *Activists worry about potential abuse of face scans for ICE*, ASSOCIATED PRESS (July 9, 2019), <https://www.apnews.com/b289e8fea1564295be99a13a13d6962f>; Bill Chappell, *ICE Uses Facial Recognition to Sift State Driver's License Records, Researchers Say*, NPR (July 8, 2019), <https://www.npr.org/2019/07/08/739491857/ice-uses-facial-recognition-to-sift-state-drivers-license-records-researchers-sa>.

identification records.² In Utah alone, over 5 million driver's licenses and state photo identification cards were reportedly available for search.³ Public reporting also revealed that Vermont state Department of Motor Vehicles officials — potentially in violation of a Vermont state law banning the use of facial recognition technology — continued to conduct searches using biometric identifiers.⁴

Currently, the FBI has access to and conducts searches in databases from 21 states and the District of Columbia, and it is negotiating access in 11 other states.⁵ In sum, the FBI has access to local, state, and federal databases containing more than 641 million photographs, and it has invested over \$1 billion in its Next Generation Identification system (NGI) database.⁶ NGI contains over 30 million photos available for facial recognition searches by state and local law enforcement agencies.⁷ The Department of Homeland Security (DHS), in turn, has built a repository of biometric data on more than 200 million individuals and is in the process of migrating this data to a new Homeland Advance Recognition Technology (HART) system.⁸

We are conducting oversight regarding ICE's and the FBI's increased reliance on facial recognition technology as a key investigative tool without the express consent of the individuals, state legislatures, and Congress. Specifically, we are concerned that ICE and the FBI are entering into agreements with state executives to share these databases without instituting proper privacy restrictions and safeguards, assessments of accuracy of systems, and adequate standards governing the performance of these technologies.⁹

To better understand and assess the policies and processes in place to govern how ICE and the FBI are using facial recognition technology to search state and local databases containing records of U.S. citizens, we request your separate responses to the following questions by September 27, 2019:

² Drew Harwell, *FBI, ICE find state driver's license photos are a gold mine for facial-recognition searches*, THE WASHINGTON POST (July 7, 2019) https://www.washingtonpost.com/technology/2019/07/07/fbi-ice-find-state-drivers-license-photos-are-gold-mine-facial-recognition-searches/?utm_term=.a8e9573a953f.

³ *Id.*

⁴ *Id.*

⁵ GAO, *FACE RECOGNITION TECHNOLOGY: DOJ and FBI Have Taken Some Actions in Response to GAO Recommendations to Ensure Privacy and Accuracy, But Additional Work Remains*, GAO-19-579T (June 4, 2019), <https://www.gao.gov/assets/700/699489.pdf>; Jose Pagliery, *FBI launches a face recognition system*, CNN BUSINESS (September 16, 2014), <https://money.cnn.com/2014/09/16/technology/security/fbi-facial-recognition/index.html>.

⁶ *Id.*

⁷ Federal Bureau of Investigations, *Next Generation Identification (NGI)*, <https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics/ngi> (accessed Sept. 12, 2019).

⁸ Department of Homeland Security, *Office of Biometric Identity Management, Home Page*, www.dhs.gov/biometrics (accessed Sept. 12, 2019).

⁹ Rudolph, Harrison, Moy Laura M, Bedoya M. Alvaro, *Not Ready for Takeoff, Face Scans at Airport Departure Gates*, GEORGETOWN LAW CENTER ON PRIVACY & TECHNOLOGY (December 21, 2017), <https://www.airportfacescans.com/>.

1. Legal basis
 - a. Please describe the legal basis relied on by FBI and/or ICE for conducting facial recognition searches. Please indicate if 18 U.S.C. § 2721(b)(1)'s exception to the prohibition of disclosure of highly restricted personal information without consent is the only legal basis relied on by the FBI and/or ICE.
2. Scope
 - a. In how many state or local databases do the FBI and/or ICE run facial recognition searches?
 - b. For each database identified in (a) above, please identify the state or locality; the database; the state or local official or office granting approval; and the agreement and/or method of approval.
3. Agreements
 - a. Please provide any memoranda of understanding or alternative agreements that the FBI and/or ICE has or has had with each state to conduct facial recognition searches.
 - b. For each agreement identified in (a) above, please identify the office or entity that the FBI and/or ICE negotiated with in each state to reach such an agreement.
 - c. Please provide all documents and information that govern the policies and procedures for use of and access to facial recognition technology and biometric data once obtained by the FBI and/or ICE.
4. Methodology
 - a. Please describe the purpose of and frequency of the FBI and/or ICE facial recognition searches.
 - b. Please describe your approval process required for requesting or conducting facial recognition searches.
 - c. On average, how many potential matches do you encounter when running a facial recognition search on a state database?
 - d. Please describe the process you use to review and determine potential matches after completing a facial recognition search on a state database.
 - e. Please describe your processes for maintaining, using, sharing, and destroying any information received as a result of a search.
 - f. Please describe your procedures for complying with applicable data privacy and security laws.
5. Accuracy
 - a. Does the FBI and/or ICE require that state facial recognition technology meet any accuracy or performance metrics before contracting with a state to conduct facial recognition searches on behalf of the agency? If so, what are those standards, do they account for a range of quality of photographs, and are they the same for each state that the agency contracts with?
 - b. Does the FBI and/or ICE collect accuracy or performance statistics of the facial recognition software run on internal FBI and/or ICE (or DHS) databases, such as NGI and HART? If so, please provide those statistics and explain how they were calculated.

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate “the efficiency, economy, and effectiveness of all agencies and departments of the Government.”¹⁰ Additionally, Senate Resolution 70 (116th Congress) authorizes the Committee to investigate “the efficiency and economy of operations of all branches of the Government.”¹¹ The Committee on Homeland Security, under House Rule X, has jurisdiction of overall homeland security policy and the organization, administration, and general management of the Department of Homeland Security.¹² The Committee on the Judiciary has jurisdiction under House Rule X over all immigration policy and non-border enforcement.¹³

Thank you for your prompt attention to this request. If you have any questions about this request, please have your staff contact (202) 224-4751 for Chairman Johnson’s staff, (202) 224-2627 for Ranking Member Peters’ staff, (202) 226-2616 for Chairman Thompson’s staff, (202) 225-3951 for Chairman Nadler’s staff, or (202) 224-5042 for Senator Coons’ staff. Thank you for your attention to this matter.



Ron Johnson
Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate

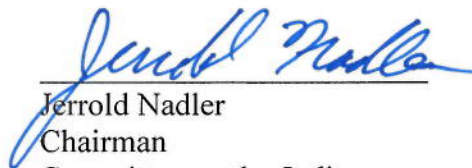
Sincerely,



Gary C. Peters
Ranking Member
Committee on Homeland Security
and Governmental Affairs
United States Senate



Bennie G. Thompson
Chairman
Committee on Homeland Security
United States House of Representatives



Jerrold Nadler
Chairman
Committee on the Judiciary
United States House of Representatives

¹⁰ S. Rule XXV(k)(2) (B); *see also* S. Res. 445, 108th Cong (2004).

¹¹ S. Res. 70, 116th Cong. §12(e)(1)(A) (2019) (enacted).

¹² House Rule X, clause 1(j).

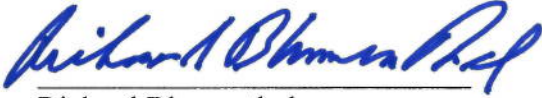
¹³ House Rule X, clause 1(l).



Christopher A. Coons
Committee on the Judiciary
United States Senate



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