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California Civil Liberties Advocacy
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Tuesday, June 4, 2019

Submitted Electronically

Assemblymember Phil Ting
State Capitol
Room 6026
Sacramento, CA 95814

RE: **AB 1215 (Ting) — SUPPORT WITH AMENDMENTS**

Dear Assemblymember Ting:

I am writing on behalf of the California Civil Liberties Advocacy (CCLA) to express some concerns we have regarding face recognition technology raised by the introduction of AB 1215. Since early 2017, advocates from our organization, including myself, have distributed materials and met with a number of offices regarding our concerns of face recognition technology being adopted by our state's Department of Justice (DOJ). It is simply amazing that this issue is only being scrutinized as it relates to police officer body cameras, because according to California Public Records Act (DOJ) requests made by the investigative journalism outlet MuckRock, DOJ spent over \$2 million purchasing the NeoFace system from NEC,ⁱ which is capable of over 1.5 million searches per day.ⁱ (Cf. attached documents from CPRA request.) Further research also supports the following conclusions:

- California state and local law enforcement use a shared database known as “Cal-Photo” to search for arrest records, sex offender registration, and DMV profiles.ⁱⁱ
- Though not adopted due to public outcry, the California Law Enforcement Telecommunications System (CLETS) Advisory Committee (CAC) considered the expansion of “Cal-Photo’s capability to share photos on a **national basis**; and, deploy facial recognition as an investigative tool.”ⁱⁱⁱ
- The United States Government Accountability Office found that the FBI failed to adhere to privacy laws and policies and had not even taken any action to ensure the accuracy of their face recognition technology.^{iv}
- According to documents provided in a California Public Records Act request, the California Department of Justice (CADOJ) spent over \$2 million to purchase and implement facial recognition technology provided by NeoFace in 2016. The CCLA was

“Indifference to personal liberty is but the precursor of the state’s hostility to it.”

— Justice Kennedy, U.S. Supreme Court

unable to locate a policy on the use of the equipment.^v

- Law enforcement face recognition will disproportionately affect African Americans and will be less accurate when profiling African Americans.^{vi}
- Facial recognition presents a threat to other minority groups, especially the **LGBTQ** community.^{vii}
- Facial recognition technology has the potential to reveal political views.^{viii}
- Surveillance cameras used by law enforcement, in conjunction with facial recognition, could chill activities protected by the First Amendment, such as the right to peacefully assemble and protest.^{ix}
- It is likely that face recognition technology and corresponding photo databases will be utilized by law enforcement agencies against undocumented immigrants and their families.^{x xi}

While AB 1215 appears to be a good start, the narrow application to body cameras worn by law enforcement merely represents a marginal improvement on California's currently nonexistent policy on the regulation of face recognition technology. As such, we feel this bill is little more than a nonstarter more akin to "feel good" legislation that appears to regulate more than it actually does. Prohibiting face recognition software from use in conjunction with body cameras represents a very small subset of the problems posed by the ubiquity of this technology as a whole, and utterly fails to address even the issues in the fact sheet provided by your office, in that face recognition technology "subject[s] law-abiding citizens to perpetual police line-ups, tracking their movements without their consent, and creating new databases susceptible to exploitation . . ." When this technology is incorporated into Police Observation Devices (PODs), such as those seen in major California cities, including Sacramento,^{xii} then the idea of prohibiting the use of the technology in conjunction with body cameras seems almost superficial; that is, if the technology has not already been implemented in that way, as it has in Chicago.^{xiii}

We recommend this bill be strengthened to include a time limit on data retention, such as the CHP's 60-day limit on automated license plate readers, with exceptions for data linked to an ongoing criminal investigation. More importantly, we propose requirements that law enforcement first obtain a warrant to use, search, or access the data. In 2012, the United States Supreme Court ruled that the warrantless placement of a GPS tracking device on the undercarriage of an individual's vehicle in order to track the person's movements on public streets constitutes an unlawful search in violation of the Fourth Amendment.^{xiv} It stands to reason that if tracking an individual's movements without a warrant by use of a GPS tracking device constitutes a Fourth Amendment search, then face recognition technology should be subject to the same warrant requirements because it produces the same effect. In fact, face recognition technology is arguably more pervasive because it requires no physical interaction with the person

or their property. Face recognition software needs only to be linked to a network of surveillance cameras to track all persons indiscriminately.

In summary, AB 1215, while well-intentioned, addresses only a miniscule portion of the gargantuan threat to civil liberties posed by face recognition technology. We strongly urge the adoption of amendments to limit the storage and retention to 60 days or less, with exceptions for ongoing criminal investigations, and that law enforcement be required to obtain a warrant based on probable cause in order to use the technology and/or access data produced during the 60-day retention period. Our organization would be happy to work with your office and other stakeholders in crafting workable language to that effect.

Very truly yours,



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Cc: Senate Public Safety Committee (*Faxed to 916-445-4688*)
Senator Nancy Skinner (Chair)
Senator John Moorlach (Vice Chair)
Senator Steven Bradford
Senator Hannah-Beth Jackson
Senator Holly Mitchell
Senator Mike Morrell
Senator Scott Wiener

Encl. CPRA Request Documents

ⁱ Waltman, California Department of Justice Spent Nearly Two Million Dollars on Controversial Facial Recognition Software, 2017 MuckRock, Apr. 27, 2017 at (2017), <https://www.muckrock.com/news/archives/2017/apr/27/california-doj-facial-recognition/> (last visited June 3, 2019).

ⁱⁱ Office of the Attorney General, News Release, *Attorney General Bill Lockyey, Orange County Sheriff Michael Carona and Agency Secretary Maria Contreras-Sweet Demonstrate Fast, New Photo Database* (2002), http://ag.ca.gov/newsalerts/print_release.php?id=766 (last visited Nov. 2, 2017.)

ⁱⁱⁱ Cal. Law Enforcement Telecommunications Sys. (CLETS) Advisory Comm. (CAC), Meeting Minutes 1-6 (November 21, 2013).

^{iv} *FACE RECOGNITION TECHNOLOGY: DOJ and FBI Need to Take Additional Actions to Ensure Privacy and Accuracy*

(Mar 22, 2017), <https://www.gao.gov/products/GAO-17-489T> (last visited Nov. 2, 2017).

- ^v Curtis Waltman, *California Department of Justice Spent Nearly Two Million Dollars on Controversial Facial Recognition Software*, 2017 MuckRock, Apr. 27, 2017 at (2017), <https://www.muckrock.com/news/archives/2017/apr/27/california-doj-facial-recognition/> (last visited Nov. 2, 2017).
- ^{vi} Ctr. on Privacy & Tech., *The Perpetual Line-Up – Unregulated Police Recognition in America* (Georgetown Law 2016).
- ^{vii} SAM BRAKE GUIA, *Facial Recognition Presents Threat to LGBT Community*, 2017 The Sociable, Sept. 21, 2017 at (2017), <https://sociable.co/technology/facial-recognition-lgbt/> (last visited Nov. 2, 2017).
- ^{viii} *Face-Reading AI Will Detect Politics and IQ, Expert Says*, 2017 CIO Today, Oct. 13, 2017 at (2017), https://www.cio-today.com/article/index.php?story_id=106079 (last visited Nov. 2, 2017).
- ^{ix} Jodie Gil & Vern Williams, *How New Technology Like AI, Drones and Big Data Can Limit the First Amendment*, 2017, Oct. 11, 2017 at (2017), <http://mediashift.org/2017/10/6-new-media-first-amendment-issues-horizon/> (last visited Nov. 2, 2017).
- ^x Libby Watson, *Jason Chaffetz Wants to Use Facial Recognition to Track Immigrants*, 2017 Gizmodo, Mar. 22, 2017 at (2017), <https://gizmodo.com/noted-shithead-jason-chaffetz-wants-to-use-facial-recog-1793520036> (last visited Nov. 2, 2017).
- ^{xi} Ron Nixon, *Border Agents Test Facial Scans to Track Those Overstaying Visas*, 2017, Aug. 1, 2017 at (2017), <https://www.nytimes.com/2017/08/01/us/politics/federal-border-agents-biometric-scanning-system-undocumented-immigrants.html> (last visited Nov. 2, 2017).
- ^{xii} Heise, *So What Exactly Do Those Sacramento Police PODs Do?*, 2017 Hearst Television Inc. on Behalf of KCRA-TV, June 24, 2017 at (2017), <https://www.kcra.com/article/so-what-exactly-do-those-sacramento-police-pods-do/10217039> (last visited Jun. 3, 2019.)
- ^{xiii} Helsby, *Police Surveillance in Chicago*, 2016 Lucy Parsons Labs, Jan. 19, 2016 at (2016), <https://redshiftzero.github.io/policesurveillance/> (last visited June 3, 2019).
- ^{xiv} *United States v. Jones* (2012) 565 U.S. 400 (2012).