

## MISSION

OneAmerica  
advances the  
fundamental  
principles of  
democracy and  
justice at the  
local, state and  
national levels  
by building  
power within  
immigrant  
communities  
in collaboration  
with key allies.

July 12, 2021

Gregg Piermarini

Chief Information Officer, Science and Technology Directorate

Department of Homeland Security

D.C. 20529-2240

(202) 272-8377

*Submitted online through the Federal eRulemaking Portal:*

<http://www.regulations.gov>

### **RE: Public Comment in DHS Docket No. DHS-2021-0015, Agency Information Collection Activities: Public Perceptions of Emerging Technologies.**

We are writing to express our deep concern and opposition to the continued use of artificial intelligence (AI) by the Department of Homeland Security (DHS) that would increase mass surveillance of vulnerable communities and further decrease trust in government entities.<sup>1</sup> The agency proposes a solution for a problem that does not exist, but would impose substantial burdens both on DHS, immigrant communities, and U.S. citizens who would be subject to indefinite mass surveillance and breaches of privacy.

OneAmerica is the largest immigrant and refugee advocacy organization in Washington State. Since 2001, OneAmerica has built power within immigrant and refugee communities to advance democracy and justice using the tools of policy advocacy, grassroots leadership, and community organizing. OneAmerica envisions a peaceful world where every person's human rights and dignity are respected, where communities appreciate differences and stand together for justice and equality, and where each person contributes to the common good.

OneAmerica advocates for Deferred Action for Childhood Arrival (DACA) recipients, Temporary Protection Status (TPS) holders, Violence Against Women Act (VAWA) self-petitioners, T-visa holders, and people applying for lawful permanent residence (LPR) status and naturalization. One of our flagship programs, Washington New Americans (WNA), provides free citizenship screening and application preparation workshops throughout Washington State. Our staff witness firsthand the rigorous application process and vetting our clients undergo to obtain immigration benefits and U.S. citizenship.

We have opposed previous attempts by DHS to increase surveillance through expansive biometrics collection and the same reasoning applies here.<sup>2</sup> The possible

---

<sup>1</sup> Agency Information Collection Activities: Public Perceptions of Emerging Technologies, 86 Fed. Reg. 26,228 (May 12, 2021), <https://www.regulations.gov/document/DHS-2021-0015-0001>.

<sup>2</sup> Collection and Use of Biometrics by U.S. Citizenship and Immigration Services, 85 Fed. Reg. 56,338 (proposed Sept. 11, 2020), <https://www.federalregister.gov/d/2020-19145>.

MISSION  
OneAmerica  
advances the  
fundamental  
principles of  
democracy and  
justice at the  
local, state and  
national levels  
by building  
power within  
immigrant  
communities  
in collaboration  
with key allies.

benefits of increased use of artificial intelligence are outweighed by the significant privacy, civil rights, and cost burdens associated with such technology. The collection of such information is both unnecessary and burdensome on respondents. Finally, DHS must be fully transparent in its efforts to implement any AI technologies, including the in the scope of information collected and the methods the agency will use to safeguard such information.

## **I. THE INCREASED USE OF ARTIFICIAL INTELLIGENCE IS UNNECESSARY AND BURDENSOME**

DHS previously justified the need to increase biometrics collection and allocate significant funding to technology by pointing to fraud in the immigration system.<sup>3</sup> However, there is limited evidence to support allegations of fraud, rendering the need for artificial intelligence and increased technology moot.

For example, Customs and Border Patrol (CBP) claims to have identified three “impostors” in a forty-day period at Washington Dulles International Airport through a new biometric verification process.<sup>4</sup> CBP says they screen almost one million travelers a day at Dulles, meaning that in 40 days and nearly 40 million travelers screened, CBP discovered three people with potentially fraudulent passports – that equates to roughly .000000075% of all 40 million travelers.<sup>5</sup> This example underscores the lack of evidence of widespread fraud within the U.S. immigration system.

### **A. This Rule Imposes Significant Monetary and Time Costs on DHS and Respondents Without Justification**

It would be fiscally irresponsible for DHS to continue implementation of AI technologies without clarifying what technologies they seek to use, the scope of the information collected, and security measures taken to protect people’s privacy. The agency must undergo a transparent and public cost-benefit analysis. The significant costs of implementing a biometrics collection system burdens both the government and people applying for immigration benefits. The increase in surveillance could deter people from applying for legal immigration benefits, resulting in people seeking more dangerous means to cross borders outside of legal ports of entry.<sup>6</sup> DHS should reconsider its use of AI technologies, including facial recognition, not only because it is expensive monetarily, but also because it would have a significant human cost.

<sup>3</sup> *Id.*

<sup>4</sup> *Dulles CBP’s New Biometric Verification Technology Catches Third Imposter in 40 Days*, U.S. Customs & Border Protection (Oct. 2, 2018), <https://www.cbp.gov/newsroom/national-media-release/dulles-cbp-s-new-biometric-verification-technology-catches-third>.

<sup>5</sup> Collection and Use of Biometrics, 85 Fed. Reg. at 56,356.

<sup>6</sup> Samuel N. Chambers et al., *Mortality, Surveillance and the Tertiary “Funnel Effect” on the U.S.-Mexico Border: A Geospatial Modeling of the Geography of Deterrence*, 36 J. Borderlands Studies 3, 443-468 (Jan. 31, 2019), <https://doi.org/10.1080/08865655.2019.1570861>.

MISSION  
OneAmerica  
advances the  
fundamental  
principles of  
democracy and  
justice at the  
local, state and  
national levels  
by building  
power within  
immigrant  
communities  
in collaboration  
with key allies.

## II. THE GOVERNMENTAL USE OF ARTIFICIAL INTELLIGENCE RAISES DUE PROCESS AND CIVIL LIBERTIES CONCERNS

Artificial intelligence technologies, including facial recognition, can pose a risk to the civil liberties and due process rights of U.S. citizens and violate the human rights of immigrants and visitors. The danger is heightened when there is no transparency as to what type of technology is being used. Even this Information Collection Request (ICR) does not define artificial intelligence, other than specifically naming facial recognition as an example. There is no uniformly agreed upon definition, increasing the need for clarity and specificity in government use of such technologies.<sup>7</sup> AI-based technologies are increasingly used to make decisions, recommendations, or predictions that impact the lives of U.S. residents, all without transparency regarding the method and scope of data being collected.<sup>8</sup>

### A. Facial Recognition Technologies Can Perpetuate Racial Discrimination

Facial recognition is a pervasive technology that can reach into intimate aspects of a person's life, from their Facebook profile and physical address to their monetary transactions via Venmo.<sup>9</sup> It opens up a new frontier of limitless surveillance, breaches of privacy, and the possibility of false matches. Studies show that facial recognition technologies result in false positives, particularly for people from West and East Africa, East Asia, and in women and children.<sup>10</sup> More than half of all immigrants to the United States are female, 27 percent are Asian, and ten percent are African.<sup>11</sup> Iris image scans<sup>12</sup> and voice prints<sup>13</sup> also have alarmingly high rates of false positives, not to mention raise significant privacy and surveillance concerns. These technologies are

<sup>7</sup> Darrell M. West, *What Is Artificial Intelligence?*, Brookings Institute (Oct. 4, 2018), <https://www.brookings.edu/research/what-is-artificial-intelligence/>.

<sup>8</sup> See, e.g., Mila Jasper, *Lawmakers, Experts, Industry Highlight Need for Ethics After Defense Commission Releases Final AI Report*, Nextgov (Mar. 16, 2021), <https://www.nextgov.com/emerging-tech/2021/03/lawmakers-experts-industry-highlight-need-ethics-after-defense-commission-releases-final-ai-report/172704/>; Tom Simonite, *What's This? A Bipartisan Plan for AI and National Security*, Wired (July 30, 2020), <https://www.wired.com/story/bipartisan-plan-ai-national-security/>; *Game Changers: Artificial Intelligence (Parts I, II & III)*, Hearing Before the Subcomm. on Information Technology of the H. Comm. on Oversight and Government Reform, 115th Cong. (2018).

<sup>9</sup> Kashmir Hill, *The Secretive company That Might end Privacy as We Know It*, NYTimes (last updated Mar 18, 2021), <https://www.nytimes.com/2020/01/18/technology/clearview-privacy-facial-recognition.html>.

<sup>10</sup> Patrick Grother et al., *Face Recognition Vendor Test (FRVT) Part 3: Demographic Effects*, U.S. Dep't. of Com., Nat'l Inst. Of Standards & Tech. (Dec. 2019), <https://nvlpubs.nist.gov/nistpubs/ir/2019/NIST.IR.8280.pdf>.

<sup>11</sup> Jeanne Batalova et al., *Frequently Requested Statistics on Immigrants and Immigration in the United States*, Migration Policy Institute (Feb. 24, 2020), <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states#Demographic,%20Educational,%20and%20Linguistic%20Characteristics>.

<sup>12</sup> Allen Slater, *Policing Project Five-Minute Primers: Iris Recognition*, Policing Project (Sept. 20, 2019), <https://www.policingproject.org/news-main/2019/9/20/policing-project-five-minute-primers-iris-recognition>.

<sup>13</sup> Joan Palmiter Bajorek, *Voice Recognition Still Has Significant Race and Gender Biases*, Harvard Business Review (May 10, 2019), <https://hbr.org/2019/05/voice-recognition-still-has-significant-race-and-gender-biases>.



## MISSION

OneAmerica  
advances the  
fundamental  
principles of  
democracy and  
justice at the  
local, state and  
national levels  
by building  
power within  
immigrant  
communities  
in collaboration  
with key allies.

inaccurate and perpetuate racial discrimination which would disproportionately impact immigrant communities.

Some local governments already demonstrated their concerns about the discriminatory impacts of facial recognition technology and passed bans on its public and private use.<sup>14</sup> Cities like Portland, Boston, and San Francisco recognize that facial recognition threatens everyone's privacy and civil liberties and reflect growing public concern about the harmful impacts of facial surveillance.<sup>15</sup> Their usage in the immigration system could have severe impacts on marginalized communities, including Violence Against Women Act (VAWA) self-petitioners and applicants for and recipients of T and U visas.

Increased mass surveillance impacts U.S. citizens as well. For example, CBP agents joined federal forces in quelling Black Lives Matter protests in the summer of 2020.<sup>16</sup> They also contributed ground and aerial surveillance technology, including drones.<sup>17</sup> The surveillance footage can be stored for up to five years, and may chill protestors concerned about interactions with law or immigration enforcement.<sup>18</sup> This use of technology by CBP further emphasizes advocate concerns around blurred lines between law enforcement and immigration agencies. This level of collaboration also increases fear in immigrant communities and taints their interactions with immigration agencies, from ICE to USCIS.<sup>19</sup>

<sup>14</sup> See e.g. Portland, Oregon Municipal Code § 34.10.

[https://cdn.voxcdn.com/uploads/chorus\\_asset/file/21868277/704\\_Sep\\_9\\_2TC\\_W\\_Ord\\_BPS\\_2\\_1.pdf](https://cdn.voxcdn.com/uploads/chorus_asset/file/21868277/704_Sep_9_2TC_W_Ord_BPS_2_1.pdf).

Press Release, City of Portland, City Council approves ordinances banning use of facial recognition technologies by City of Portland bureaus and by private entities in public spaces (Sept. 9, 2020), <https://www.portland.gov/bps/news/2020/9/9/city-council-approves-ordinances-banning-use-facialrecognition-technologies-city>; Boston, Massachusetts Municipal Code § 16-62, <https://www.documentcloud.org/documents/6956465-Boston-City-Council-face-surveillance-ban.html>; San Francisco, California Administrative Code - Acquisition of Surveillance Technology <https://www.eff.org/document/stop-secret-surveillance-ordinance-05062019>.

<sup>15</sup> Brooke Auxier et al., *Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over Their Personal Information*, Pew Research Center (Nov. 2019), <https://www.pewresearch.org/internet/2019/11/15/americans-and-privacy-concerned-confused-and-feeling-lack-of-control-over-their-personal-information/>.

<sup>16</sup> Ed Pilkington, 'These Are His People': Inside the Elite Border Patrol Unit Trump Sent to Portland, *Guardian* (July 27, 2020), <https://www.theguardian.com/us-news/2020/jul/27/trump-border-patrol-troops-portland-bortac>.

<sup>17</sup> Zolan Kanno-Youngs, *U.S. Watched George Floyd Protests in 15 Cities Using Aerial Surveillance*, *NYTimes* (June 19, 2020), <https://www.nytimes.com/2020/06/19/us/politics/george-floyd-protests-surveillance.html>.

<sup>18</sup> *Id.*

<sup>19</sup> Danyelle Solomon, Tom Jawetz, & Sanam Malik, *The Negative Consequences of Entangling Local Policing and Immigration Enforcement*, Ctr. for Am. Progress (Mar. 21, 2017), <https://www.americanprogress.org/issues/immigration/reports/2017/03/21/428776/negative-consequences-entangling-local-policing-immigration-enforcement/>.

MISSION  
OneAmerica  
advances the  
fundamental  
principles of  
democracy and  
justice at the  
local, state and  
national levels  
by building  
power within  
immigrant  
communities  
in collaboration  
with key allies.

ICE and DHS already use cell site location information, purchased through third-party data providers, to track immigrants on the southern U.S. border.<sup>20</sup> If DHS continues expanding its use of AI technologies without transparency or clarifying scope, the agency would have access to the data of millions of people, regardless of citizenship or documentation status. Mass surveillance of marginalized communities increases distrust in government and decreases access to necessary government programs.

DHS has not grappled with the inaccuracy of these technologies, nor the potentially racist implications of a mass surveillance system. Additionally, the agency has not previously provided sufficient evidence of fraud in the immigration system that would merit this level of invasiveness. The lack of efficacy coupled with the invasive nature of artificial intelligence technologies, including facial recognition, would increase the stigmatization of immigrant communities and chill participation in the legal immigration system.<sup>21</sup> Use of AI technologies would create a mass surveillance system that continuously tracks communities of color and shares information with law enforcement, further exacerbating issues around discriminatory policing.<sup>22</sup>

### **B. Mass Surveillance Implicates Serious Privacy Concerns**

Mass surveillance, including the collection of biometrics, increases the risk of catastrophic security breaches.<sup>23</sup> DHS must account for how the agency intends to address privacy concerns, including the scope of information captured, where it will be stored, and how long it will be stored.

DHS databases are insecure, putting at risk information of millions of people who go through ports of entry and interact with the immigration system. For example, in June 2019 DHS records were hacked, exposing tens of thousands of photos of drivers and license plates taken at border entry points.<sup>24</sup> CBP, which has implemented facial recognition technology at certain airports, is not following best practices for protecting travelers' private information.<sup>25</sup> An evaluation of DHS' information

<sup>20</sup> Rani Molla, *Law Enforcement Is Now Buying Cellphone Location Data from Marketers*, Vox (Feb. 7, 2020), <https://www.vox.com/recode/2020/2/7/21127911/ice-border-cellphone-data-tracking-department-homeland-security-immigration>.

<sup>21</sup> Rachel Treisman, *Trump Administration Seeking to Expand Collection of Biometric Data From Immigrants*, NPR (Sept. 1, 2020), <https://www.npr.org/2020/09/01/908599539/trump-administration-seeking-to-expand-collection-of-biometric-data-from-immigrants>.

<sup>22</sup> Will Douglas Heaven, *Predictive Policing Algorithms Are Racist. They Need To Be Dismantled*, MIT Tech. Rev. (July 2020), <https://www.technologyreview.com/2020/07/17/1005396/predictive-policing-algorithms-racist-dismantled-machine-learning-bias-criminal-justice/>.

<sup>23</sup> *Biometrics*, Electronic Frontier Foundation (last accessed Oct. 7, 2020), <https://www.eff.org/issues/biometrics>.

<sup>24</sup> Geneva Sands, *Border Agency Did 'Not Adequately Safeguard' Facial Recognition Data, Watchdog Says*, CNN (Sept. 23, 2020), <https://www.cnn.com/2020/09/23/politics/customs-border-protection-data-breach-watchdog-report/index.html>.

<sup>25</sup> *Facial Recognition: CBP and TSA Are Taking Steps to Implement Programs, but CBP Should Address Privacy System Performance Issues*, GAO-20-568, U.S. Government Accountability Office (Sept. 2020), <https://www.gao.gov/assets/710/709107.pdf>.

MISSION  
OneAmerica  
advances the  
fundamental  
principles of  
democracy and  
justice at the  
local, state and  
national levels  
by building  
power within  
immigrant  
communities  
in collaboration  
with key allies.

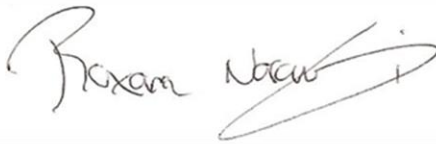
security program in FY 19 by the Office of the Inspector General found that the agency's cybersecurity program was ineffective.<sup>26</sup> These evaluations reveal a troubling portrait of an agency ill-equipped to handle the increased data security and privacy needs necessary in a system of mass surveillance.

### III. CONCLUSION

We urge DHS to strongly reconsider its use of AI technologies, including facial recognition. OneAmerica's mission is to promote justice, fairness, and due process and this secret, often obscured use of technology would violate all three principles. Unchecked usage of AI technologies would create a system of mass surveillance of anyone applying for immigration benefits, from victims of human trafficking to U.S. citizens applying for documented status for their loved ones. DHS has already started implementing an expensive security system without providing evidence as to its need nor analyzing its impact on people applying for immigration benefits. This rule will chill legal immigration and subject immigrant communities to further surveillance, regardless of citizenship and documentation status.

We appreciate the opportunity to comment on this ICR. If you require any additional information about the issues raised in this letter, please contact Alizeh Bhojani, Immigration Policy Manager, at [alizeh@weareoneamerica.org](mailto:alizeh@weareoneamerica.org).

Sincerely,



Roxana Norouzi, Executive Director  
OneAmerica  
1225 S. Weller St, Suite 430  
Seattle, WA 98144  
[www.weareoneamerica.org](http://www.weareoneamerica.org)

---

<sup>26</sup> *Evaluation of DHS' Information Security Program for Fiscal Year 2019 (REDACTED)*, OIG-20-77, Office of Inspector General (Sept. 30, 2020), <https://www.oig.dhs.gov/sites/default/files/assets/2020-10/OIG-20-77-Sep20.pdf>.