



<http://www.caliberties.org/>

California Civil Liberties Advocacy
1017 L Street, No. 791
Sacramento, CA 95814
(916) 426-9338

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}

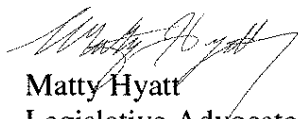
While AB 1215 appears to be a good start, the narrow application to body cameras worn by law enforcement merely represents a marginal improvement on California's currently nonexistent policy on the regulation of face recognition technology. As such, we feel this bill is little more than a nonstarter 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,



Matty Hyatt
Legislative Advocate
(916) 426-9338, ext. 502
m.hyatt@caliberty.net

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

¹ 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).

² 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.)

³ Cal. Law Enforcement Telecommunications Sys. (CLETS) Advisory Comm. (CAC), Meeting Minutes 1-6 (November 21, 2013).

⁴ *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).



Invoice

NEC FEIN # 20-0665337 GST# 83396 2277 RT0001

10/15/16

Ship-to Address (C242007479)
 BUREAU OF FORENSIC SERVICES
 Attn: LATENT PRINT PROGRAMS
 4949 BROADWAY, ROOM F-163
 SACRAMENTO CA 95820 US

NEC Contact Name:
NEC Contact Phone No:

Invoice Number: 91027608
Invoice Date: 09/30/2016

Bill-to Address (C240000250)
 DEPARTMENT OF JUSTICE AFIS
 ATTN: NANCY MAR
 4949 BROADWAY
 SACRAMENTO CA 95820 US

Purchase Ord Number: 14IT-0551
Purchase Ord Date: 04/26/2016
Sales Ord Number: 229990
Sales Ord Date: 06/17/2016
Project Number:
Project Name:
Tax Cert ID:
NEC Delivery#: Multiple

Carrier:
Weight: 0.000
Payment Terms: Net 45 Days

Airway Bill:
Number of packages:
Delivery Terms: CUO, COLLECT/CUST ACCT-FOB ORIGIN

Item	Material	Description / Location	Qty	UOM	Price	Amount
10	Q24-DN000000109127	NEC NeoFace Facial Recognition Matching	1	EA	650,000.00	650,000.00
	Q24-DN000000109127			0506729401		
	B-100003.001 - PRJ0004578-DPMT JUSTI/DOJ/BFS					
	Billing Period: 09/30/2016					

fy: 14115
cc: 751
cc: 4352

APPROVED FOR PAYMENT

OK to Pay Per Pandora Theeston and 10/16/16

Diane Brown 7514352 CWS/OCMS

[Sold to Customer: DEPARTMENT OF JUSTICE AFIS , SACRAMENTO , CA , 95820 , US]

Please reference: C240000250 / 91027608
Wire Payment: ABA# 021000021 SWIFT# CHASUS33 Acct# 1074160
 JP Morgan Chase
Remit Check To: NEC Corporation of America
 Lockbox#22529
 22529 Network Place
 Chicago, IL 60673-1225

Sales:	650,000.00
Freight:	0.00
Tax:	0.00
Total Amount(USD):	650,000.00

Terms and Conditions: This document is governed by the terms and conditions for sale found on the NEC Internet site when not superseded by an existing agreement. Please visit <http://www.necus.com> for more information.

PURCHASING AUTHORITY PURCHASE ORDER

FD-65 (REV. 7/2003)

CONTRACT REGISTRATION NUMBER 201396381	AGENCY ORDER NUMBER 141T-0551	AMENDMENT NO.
SUPPLIER: The numbers identified above MUST be shown on Invoice & Packing Slip.	DATE 01/15/2015	PAGE OF PAGE 1 OF 2

Department of Justice
Electronic download to:
ITPR@dof.ca.gov
and reference PO # 141T-0551

Department of Justice
4949 Broadway, Rm. D-232
Sacramento, CA 95820
Attn: Invoice Clerk, 916-227-7455, 916-227-3842
ITInvoiceClerk@dof.ca.gov

AGENCY BILLING CODE 043751
PURCHASING AUTHORITY NUMBER 91-0115-DOJ-HQ1
LEVERAGED PROCUREMENT AGREEMENT NO.

Supplier: NEC Corporation of America
Address: 10850 Gold Center Drive, Suite 200
Rancho Cordova, CA 95670

INFORMATION TECHNOLOGY PROJECT IDENTIFICATION NUMBER FSR 820-153 / NCIIP YR 8 CalPhoto	
AGENCY OR BUYER INFORMATION	AGENCY TRACKING/REQUISITION NUMBER (Optional) ITPRF-0412
AGENCY NAME Justice	CONTACT NAME Laura Margowski
CONTACT EMAIL ADDRESS laura.margowski@dof.ca.gov	
CONTACT PHONE NUMBER (916) 227-7432	CONTACT FAX NUMBER (916) 227-2707

SUPPLIER CONTACT NAME Kelly Gallagher	SUPPLIER PHONE NUMBER (916) 463-7003	SUPPLIER FAX NUMBER	SUPPLIER E-MAIL ADDRESS kelly.gallagher@necam.com
PAYMENT TERMS Net 45	CERTIFICATION NUMBER	<input type="checkbox"/> Certified Small Business <input type="checkbox"/> Certified Microbusiness	EXPIRATION DATE

REQUIRED DELIVERY DATE	SHIPPING INSTRUCTIONS	<input checked="" type="checkbox"/> F.O.B. Destination FRT. PPD	<input type="checkbox"/> F.O.B. Destination FRT. PPD/ADD Freight not to exceed cost stated on P.O.	<input type="checkbox"/> FOB ORIGIN	CITY OF ORIGIN	STATE	ZIP CODE
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ITEM NUMBER	QUANTITY	UNIT	COMMODITY CODE or PRODUCT CODE or SERVICES ID NUMBER	RECYCLED PRODUCT	PRODUCT OR SERVICES DESCRIPTION	UNIT PRICE	EXTENSION TOTAL
	1	EA			NEC NeoFace Facial Recognition Matching Application	650,000.00	650,000.00
					Software Support		0.00
					Term Date through 6/30/15		0.00
					Vendor's response to RFQ 14-110 is hereby incorporated by reference.		0.00
					Exempt per SCM Volume 3, Chapter 5, Section 5.5.0		0.00
							0.00
							0.00

A.1 <input checked="" type="checkbox"/> General Provisions are incorporated herein by reference to: <input type="checkbox"/> Form GSPD - 401 Non-IT Commodities (revision date _____) OR <input checked="" type="checkbox"/> Form GSPD - 401 IT (revision date 9/5/14)	TAXABLE SUBTOTAL
TERMS AND CONDITIONS A.2 <input type="checkbox"/> This order is issued under a Department of General Services (DGS) Leveraged Procurement Agreement (LPA). Terms and Conditions set forth in that agreement (LPA number referenced in the block titled Leveraged Procurement Agreement No.) are incorporated herein by reference as if set forth in full text. B <input type="checkbox"/> Agency Special Provisions are attached and titled: _____ C <input type="checkbox"/> Any other attachments, such as specifications, Statement of Work, or Information Technology Model Language Modules, are identified in the product or services description area or on continuation pages.	TAX RATE 0.000% SALES TAX 0.00

PROCUREMENT METHOD <input type="checkbox"/> LEVERAGED <input type="checkbox"/> DVBE / SMALL BUSINESS (GC 14836.5(a)) <input type="checkbox"/> NON-COMPETITIVELY BID <input checked="" type="checkbox"/> EXEMPT	COMPETITIVE Solicitation Number (if applicable) RFQ 14-110	* NOTE: If there are variable charges for Installation, Shipping or Freight, or Other Non-Taxable Services, detail per line item and enter total here.	* INSTALLATION
PROGRAM / CATEGORY (Code and Title) 820-001-0001	FUND TITLE General	VERIFIED NO STATE SUPPLIES AVAILABLE <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/>	* SHIPPING/FREIGHT
PAID BY CAL CARD <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	GRAND TOTAL	650,000.00	

ITEM 820-001-0001	CHAPTER 25	STATUTE 2014	FISCAL YEAR 1415	OBJECT OF EXPENDITURE (CODE AND TITLE) 751-4352	<input checked="" type="checkbox"/> O.E. <input type="checkbox"/> EQ.
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CERTIFICATION AND APPROVAL OF EXECUTIVE OFFICER		UNENCUMBERED REMAINDER AFTER POSTING THIS ORDER TO ALLOTMENT EXPENDITURE LEDGER
I HEREBY CERTIFY, on personal knowledge, that this order for purchasing the items specified above is issued in accordance with the procedure prescribed by law governing the purchase of such items for the State of California, and that all such legal requirements have been fully complied with.		ADJUSTMENT INCREASING ENCUMBRANCES
AUTHORIZING NAME (Print or Type) Nancy Mar	TITLE Manager, ITCPU	ADJUSTMENT DECREASING ENCUMBRANCES
AUTHORIZING SIGNATURE 		CERTIFIED CORRECT (SIGNATURE)

ENCUMBRANCE MAINTENANCE (po100)

FUNCTION (ADD, CHG, INQ, DEL, END)

POSTING-DATE:

1. ENCUMBRANCE NO. 14IT-0551 2. FISCAL YEAR 2014 3. DOCUMENT TYPE 65
 4. EFFECTIVE DATE 1/15/2015
 5. VENDOR NUMBER 000052357
 6. VENDOR NAME NEC CORP OF AMERICA
 7. VENDOR ADDRESS LOCKBOX 22529
 8. VENDOR ADDRESS 22529 NETWORK PLACE
 9. VENDOR CITY CHICAGO
 0. VENDOR STATE/ZIP IL / 60673 - 1225
 1. FEDERAL ID OR SSN

2. LINE ITEM 0001
 3. ACCOUNT 7510 4352
 4. DESCRIPTION NEC CORP OF AMERICA
 5. ORIG ENCUMBRANCE 650,000.00 16. ENCUMBRANCE ADJ.
 7. EXPENDITURES
 8. PEND AMOUNT 19. PEND ADJUSTMENTS
 0. PEND EXPENDITURES
 1. DOCUMENT STATUS 22. ERGO NEW ENC BALANCE 650,000.00

ATA OK? (YES, PGE, 12)

Click Session|Print Screen to print this screen

Olivia Corona

From: Diane Brown
Sent: Thursday, October 06, 2016 4:54 PM
To: Olivia Corona
Cc: Sandra Thuston
Subject: RE: NEC INVOICE# 91027608 PO 14IT-0551 INVOICE REQUEST FOR APPROVAL DUE 10/13/16

Approved

From: Olivia Corona
Sent: Thursday, October 06, 2016 3:59 PM
To: Diane Brown
Cc: Sandra Thuston
Subject: NEC INVOICE# 91027608 PO 14IT-0551 INVOICE REQUEST FOR APPROVAL DUE 10/13/16

Hello

Hope this finds you well.

The attached invoice(s) has been received for Contract/PO# 14IT-0551.

Please take a moment to review the attached invoice(s) and if you agree, please respond with your approval for payment.

According to the Contract/PO, the cost code and object code breakdown for this purchase are CC: 751 and OC: 4352. Please confirm this is still correct.

Due to the prompt payment act additional late fees can be incurred. The invoice approval must be received no later than 10/13/16.

If you are not the person who has authority to approve this invoice, please provide the name of the person who has that authority.

Thank you,

Olivia λ

*Olivia D. Corona
Department of Justice
DTSB/BSS/COMMODITY INVOICE
(916) 227-7455 Office
olivia.corona@doj.ca.gov*

Olivia Corona

From: Sandra Thuston
Sent: Friday, October 07, 2016 9:02 AM
To: Diane Brown; Olivia Corona
Subject: RE: NEC INVOICE# 91027608 PO 14IT-0551 INVOICE REQUEST FOR APPROVAL DUE 10/13/16

Approved for payment. Thanks Olivia!

Best regards,



Sandra Thuston, Manager
Division of Law Enforcement Systems Branch
Criminal Justice Information Technology Services Bureau
Department of Justice
4949 Broadway, Sacramento, CA 95820
Desk: 916.210.5047
Cell: 916.708.9015

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Thank you,