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

****SENATE FLOOR ALERT****

AB 1215 (Ting) — Law enforcement: facial recognition and other biometric surveillance.

SUPPORT

The California Civil Liberties Advocacy (CCLA) is writing to express support for AB 1215 (Ting). AB 1215 effectively bans law enforcement agencies and officials from using, installing, or activating facial recognition and biometric scanners in body cameras.

AB 1215 is an incremental development in California's regulation of facial recognition technology as it narrowly addresses law enforcement body cameras only and does not extend to stationary surveillance cameras or mobile surveillance camera trailers, such as the "police observation devices" ("PODs") utilized in the City of Sacramento. Neither does AB 1215 extend to the use of facial recognition technology in conjunction with unmanned aircraft systems, or "drones." Nonetheless, the CCLA feels AB 1215 is a nudge in the right direction and strongly urge an "Aye" vote.

Since early 2017, members of our organization have distributed materials and met with a number of offices regarding facial recognition technology. Our own 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.ⁱ
- 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."ⁱⁱ
- 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.ⁱⁱⁱ
- According to documents provided in a California Public Records Act request, the **California Department of Justice (CADOJ) spent over \$2 million** to purchase and

"Indifference to personal liberty is but the precursor of the state's hostility to it."

— Justice Kennedy, U.S. Supreme Court

implement facial recognition technology provided by NeoFace in 2016. The CCLA was unable to locate a policy on the use of the equipment.^{iv}

- Law enforcement face recognition disproportionately affects **African Americans** and is less accurate when profiling African Americans.^v
- Facial recognition presents a threat to other minority groups, especially the **LGBTQ** community.^{vi}
- Facial recognition technology could have **chilling effects** as it can reveal political views.^{vii}
- 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.^{viii}
- It is likely that face recognition technology and corresponding photo databases will be utilized by law enforcement agencies against undocumented immigrants and their families.^{ix x}

While the language of AB 1215 does not address every single issue listed above, it provides solid, working definitions, along with a platform that will pave the way for more comprehensive legislation as society learns to adapt and live with facial recognition technology. By restricting the usage of facial recognition technology in conjunction with law enforcement body cameras, at least individuals can be secure in the knowledge that individual officers will not be profiling them when in their presence.

For all of the reasons mentioned above, the CCLA strongly urges an “Aye” vote for Assembly Bill 1215 (Ting).

ⁱ 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.)

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

ⁱⁱⁱ *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).

^{iv} 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).

^v Ctr. on Privacy & Tech., *The Perpetual Line-Up – Unregulated Police Recognition in America* (Georgetown Law 2016).

^{vi} 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).

^{vii} *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).

^{viii} 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).

^{ix} 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).

^x 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).