



Statement of Harrison Rudolph, Senior Associate

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Before the

Maryland General Assembly

Hearing on

HB 892/SB 649

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Executive Summary

My name is Harrison Rudolph and I am a senior associate at the Center on Privacy & Technology at Georgetown Law. The Center is a think tank focused on privacy and surveillance law and policy—and the communities they affect. We have studied face recognition technology in earnest since 2015. Our four reports on face recognition, including our seminal report on the subject, *The Perpetual Line-Up: Unregulated Police Face Recognition in America*, are available at <https://www.law.georgetown.edu/privacy-technology-center/publications>.

A few key takeaways from my testimony are below:

U.S. Immigration and Customs Enforcement (ICE) has used face recognition technology to scan the face of every Maryland driver. According to Maryland officials, ICE agents have repeatedly conducted warrantless scans of the Motor Vehicle Administration's (MVA) driver's license photo database.

Warrantless ICE face scans of MVA photos—

- **create a bait-and-switch for immigrants.** Immigrants provide a photograph to the MVA in order to obtain a driver's license. It is a betrayal of immigrants' trust for the MVA, without warning, to allow ICE agents to conduct warrantless face scans on immigrants' photographs to identify people for deportation.
- **subvert state will and harm public safety.** Maryland enacted the *Maryland Highway Safety Act of 2013* to expand driver's license eligibility and promote public safety. Warrantless ICE face scans will have the opposite effect, leading to fewer licensed drivers and more dangerous roads. The Maryland General Assembly never expressly authorized ICE's use of face recognition on driver's license photos in the first place.
- **affect everyone, not just immigrants.** With face recognition, the question is not whether you are an immigrant, but whether an error-prone technology thinks you *look* like an immigrant. Research shows that everyone is at risk of misidentification and false investigation, particularly women and people of color.

Maryland should pass HB 892/SB 649 in order to protect the public from warrantless ICE face scans.

I. Access to the Maryland MVA’s face recognition system is likely the most unrestricted in the United States.

Face recognition is the automated process of comparing images of faces to determine whether they represent the same individual.ⁱ Using a driver’s license photo database, face recognition can reveal a person’s identity. The Maryland Department of Public Safety and Correctional Services (DPSCS) has housed Maryland’s face recognition system since 2011.ⁱⁱ The face recognition system has access to more than 7 million photographs in the MVA driver’s license database.ⁱⁱⁱ

Federal law enforcement has virtually unlimited access to Maryland’s face recognition system. Twenty other states allow Federal Bureau of Investigation (FBI) agents to request scans of driver’s license photographs.^{iv} From our review of documents from dozens of public records requests, Maryland, however, appears to be unique in allowing *any* law enforcement officer, anywhere in the country, to login *directly* and scan drivers’ faces so long as they hold National Crime Information Center (NCIC) credentials.^v That is an unprecedented level of access for federal agents—including ICE deportation agents.

DPSCS does not audit access to or use of its face recognition system. As of December 2017, DPSCS did not have an audit or review process for its face recognition system.^{vi} DPSCS could not even identify how many law enforcement agents had access to its system or how many times law enforcement agents had used it.^{vii} DPSCS has only stated that a “user’s search results are saved under their session and are not available to any other user.”^{viii} These minimal controls leave the door open for misuse and abuse.

Federal law enforcement can use Maryland’s face recognition system for virtually any purpose. The only limitation on use of the DPSCS system is that a user must have “certain [NCIC] credentials to access [the Maryland Image Repository System] for law enforcement investigatory purposes.”^{ix} However, DPSCS does not have any way to enforce this *de minimis* “law enforcement investigatory purpose” standard.

II. Warrantless ICE face scans create a bait-and-switch for immigrants.

Over the last two years, ICE has repeatedly conducted warrantless scans of MVA driver’s faces. DPSCS disclosed that between 2018 and 2019, ICE agents logged 56 sessions inside the MVA system.^x DPSCS did not disclose the number of face scans conducted during each of these sessions.

Vulnerable immigrants are at risk of deportation when ICE uses face recognition to scan the MVA driver’s license database. In 2013, the Maryland General Assembly passed,^{xi} and

Governor O'Malley signed into law, the *Maryland Highway Safety Act of 2013*,^{xii} extending eligibility for driver's licenses and identification cards to undocumented residents.^{xiii} At the time, the MVA projected that more than 100,000 people without documentation would receive a license under the law within one year.^{xiv} The legal status of these undocumented drivers makes them uniquely vulnerable to ICE face scans intended to identify people to deport.

Inviting immigrants to apply for a driver's license and then turning over their private data to ICE is a deeply cruel bait-and-switch. Maryland has a duty to protect immigrants' privacy at the MVA. Then-Sen. Victor Ramirez, who introduced the *Maryland Highway Safety Act of 2013*, said that Maryland would no longer "drive people underground."^{xv} That is impossible if people are unsafe coming out into the light.

III. Warrantless ICE face scans subvert the will of the people of Maryland.

The General Assembly has never expressly authorized ICE to conduct warrantless face scans of the MVA driver's license database. It is unclear whether Maryland has even considered the issue. According to DPSCS, law enforcement may use face recognition to scan driver's license photographs because Maryland law requires that the MVA "disclose personal information ... for use by a ... a law enforcement agency."^{xvi} That is not express authorization for ICE face scans of Maryland drivers' faces.

Warrantless ICE face scans will deter immigrants from getting a driver's license. That will subvert the legislature's intent and harm public safety. Maryland decided to offer driver's licenses to undocumented people for strong public policy reasons. For example, the MVA itself supported the *Maryland Highway Safety Act of 2013* because licensed drivers can purchase insurance and tend to get into fewer car accidents.^{xvii} Revelations that ICE is using face recognition to scan undocumented drivers' faces without a warrant will have a predictable chilling effect on immigrants applying for licenses. That will subvert the legislature's intent and harm public safety.

IV. Warrantless ICE face scans affect everyone, not just immigrants.

Face recognition technology can falsely identify Maryland citizens as deportable people. That could lead to false investigations. When face recognition fails to identify a person, it may actually misidentify *another* person. For example, Sri Lankan authorities relying on face recognition technology mistook an innocent Marylander for a woman suspected of participating in the 2019 Sri Lanka Easter bombings.^{xviii} Similarly, Maryland's face recognition system provides ICE agents with a measurement of the "highest probability that the uploaded image may" be a match to an MVA image within the database.^{xix} That could mean false investigations of U.S. citizens.

Face recognition technology tends to make more errors—more misidentifications—on women and people of color. The degree of bias varies based on image quality. A recent study conducted by ICE’s parent agency, the Department of Homeland Security (DHS), found that face recognition “performance is strongly affected by demographic factors, notably skin [color],” and that image “differences can strongly affect (magnify or eliminate)” bias issues.^{xx} ICE face scans likely suffer from the bias amplifying effects of image quality differences; some older immigration photographs were “photographed at an angle,” and photos from prior encounters with ICE, for example, might be “obscured by hats or scarves.”^{xxi} That could be a recipe for misidentifications of women and people of color.

V. Conclusion

Maryland should pass HB 892/SB 649 in order to protect the public from warrantless ICE face scans. Vulnerable Marylanders deserve to feel safe getting a driver’s license at the MVA. Until the General Assembly acts to protect Marylanders from the threats posed by warrantless ICE face scans, many Marylanders may instead feel put at risk.

ⁱ For a more complete discussion of this, see Clare Garvie, Alvaro Bedoya, and Jonathan Frankle, *The Perpetual Line-Up: Unregulated Police Face Recognition in America*, 28 (2016), available at <https://www.perpetuallineup.org/report> (hereinafter “The Perpetual Line-Up”).

ⁱⁱ See The Perpetual-Lineup, Maryland Backgrounder, available at <https://www.perpetuallineup.org/jurisdiction/maryland>.

ⁱⁱⁱ *Id.*

^{iv} These states include Alabama, Arizona, Arkansas, Colorado, Delaware, District of Columbia, Florida, Illinois, Indiana, Iowa, Kentucky, Michigan, Nebraska, New Mexico, North Carolina, North Dakota, Pennsylvania, South Carolina, Tennessee, Texas, and Utah.

^v *Supra*, note ii.

^{vi} See DPSCS Letter to Chairman Kasemeyer and Chairman McIntosh, December 1, 2017, available at <https://www.mylaw.org/uploads/1/7/7/6/17760533/md-image-repository-system.pdf>.

^{vii} *Id.* (“DPSCS/ITCD does not have this information.”)

^{viii} *Id.*

^{ix} *Id.*

^x See DPSCS Letter to Senators Lee and Lam and Delegates Stein and Pena-Melnyk, November 21, 2019.

^{xi} The Maryland Highway Safety Act of 2013 passed 29 to 18 in the Senate and 82 to 55 in the House of Delegates.

^{xii} Legiscan, *Maryland Senate Bill 715 (Prior Session Legislation)*, available at <https://legiscan.com/MD/bill/SB715/2013>.

^{xiii} See Horace Holmes, *Thousands of immigrants apply for driver’s licenses in Maryland*, WJLA, January 2, 2014, available at <https://wjla.com/news/local/thousands-of-immigrants-apply-for-driver-s-licenses-in-maryland-98779>.

^{xiv} *Id.*

^{xv} See Erin Cox, *Two-tier Maryland licenses approved for illegal immigrants*, The Baltimore Sun, April 5, 2013, available at <https://www.baltimoresun.com/politics/bs-md-drivers-license-illegal-immigrant-20130405-story.html>.

^{xvi} MD GEN PROVIS § 4-320.

^{xvii} *Supra* note xv.

^{xviii} See Jeremy C. Fox, *Brown University Student Mistakenly Identified as Sri Lanka Bombing Suspect*, Boston Globe, April 28, 2019, <https://www.bostonglobe.com/metro/2019/04/28/brown-student-mistaken-identified-sri-lanka-bombings-suspect/0hP2YwyYi4qrCEdxKZCpZM/story.html>.

^{xix} *Supra* note vi.

^{xx} C. M. Cook, J. J. Howard, Y. B. Sirotin, J. L. Tipton and A. R. Vemury, *Demographic Effects in Facial Recognition and Their Dependence on Image Acquisition: An Evaluation of Eleven Commercial Systems*, IEEE Transactions on Biometrics, Behavior, and Identity Science, vol. 1, no. 1, pp. 32-41, January 2019.

^{xxi} DHS Office of Inspector General, *Progress Made, but CBP Faces Challenges Implementing a Biometric Capability to Track Air Passenger Departures Nationwide*, September 21, 2018, available at <https://www.oig.dhs.gov/sites/default/files/assets/2018-09/OIG-18-80-Sep18.pdf>.