Face the Facts: The Case for the Facial Recognition Technology Warrant Act

By David W. Helton

**Resolved: The United States federal government should substantially reform the use of Artificial Intelligence technology**

Starting in the early 2000’s, US law enforcement began using Facial Recognition Technology (FRT) to identify suspects. The trouble is that there aren’t a lot of restrictions on how federal agencies like the IRS or FBI choose to use FRT. That means that no warrants are required, and FRT systems aren’t tested for bias. The issue here is that federal agencies can use FRT to identify anyone anywhere with very little accountability, and when the FRT they’re using is biased, they can end up misidentifying individuals, which can lead to false arrests. S.2878 solves these problems by requiring warrants and NIST testing of FRT systems. The NIST has extensive experience testing FRT, and their tests are great at detecting bias. In addition, law enforcement are already familiar with the warrant process and it therefore follows they won’t have any trouble adapting to applying warrants to FRT searches.

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Face the Facts: The Case for the Facial Recognition Technology Warrant Act

Almost half of all adults in the US have their picture in some sort of government operated facial recognition database being analyzed by artificial intelligence. What could possibly go wrong? We’ll show you today as we affirm that: the United States Federal Government should substantially reform the use of Artificial Intelligence technology.

OBSERVATION 1. Definitions

Substantial

*Merriam Webster Online Dictionary copyright 2021.* [*https://www.merriam-webster.com/dictionary/substantially*](https://www.merriam-webster.com/dictionary/substantially) *(accessed 28 May 2021)*

: considerable in quantity : significantly great

Reform

*Merriam Webster Online Dictionary copyright 2021* [*https://www.merriam-webster.com/dictionary/reform*](https://www.merriam-webster.com/dictionary/reform) *(accessed 28 May 2021)*

: to put or change into an improved form or condition

Artificial Intelligence

*Merriam Webster Online Dictionary copyright 2021.* [*https://www.merriam-webster.com/dictionary/artificial%20intelligence*](https://www.merriam-webster.com/dictionary/artificial%20intelligence) *(accessed 28 May 2021)*

: the capability of a machine to imitate intelligent human behavior

Facial recognition

Jon Schuppe 2019 (journalist for NBC News. BA in journalism from Lehigh University. ) November 14, 2019 “New federal bill would restrict police use of facial recognition” <https://www.nbcnews.com/news/us-news/new-federal-bill-would-restrict-police-use-facial-recognition-n1082406> (Accessed 21 July 2021)

Facial recognition, which is driven by artificial intelligence, allows officers to compare images of people’s faces to photos in government databases — mugshots, jail booking records, driver’s licenses. Its use on still images has been embraced by dozens of police agencies, with officers using it to solve routine crimes and to quickly identify people they see as suspicious.

OBSERVATION 2. INHERENCY, or the structure of the Status Quo. 2 Key Facts:

FACT 1.  Facial Recognition Technology, or FRT

FRT is widely used by federal law enforcement

Government Accountability Office 2021 (Congressional agency that does auditing, evaluation, and investigative services) June 2021 “Facial RecognitionTechnology Federal Law Enforcement Agencies Should Better Assess Privacy and Other Risks” <https://www.gao.gov/assets/ao-21-518.pdf> (Accessed 21 August 2021)

Of the 20 federal agencies that owned or used facial recognition technology, 14 reported using the technology to support criminal investigations. For example, the FBI’s Next Generation Identification Interstate Photo System allows users to search a database of over 40 million photos. The system returns a list of potential candidates that law enforcement can use to generate investigative leads. According to the FBI, the system has been used for investigations of violent crimes, credit card and identity fraud, missing persons, and bank robberies, among others. The Department of Homeland Security’s Office of Biometric Identity Management offers a similar service to its partners (e.g., U.S. Immigration and Customs Enforcement).

FACT 2. Unwarranted use, literally

Federal facial recognition is accessed without a warrant or probable cause

Alfred Ng 2019 (privacy and surveillance reporter) November 14, 2019 “Facial recognition surveillance would require warrant under bipartisan bill” <https://www.cnet.com/news/facial-recognition-surveillance-would-require-warrant-under-bipartisan-bill/> (Accessed 17 August 2021)

The FBI has one of the largest facial recognition databases, with more than 641 million images of US citizens collected from driver's licenses and passports. This database is often accessed by law enforcement, without a warrant or any probable cause.

OBSERVATION 3. The HARMS. FRT is misused and causes 2 significant HARMS.

HARM 1. Privacy rights violation

A. The Problem. Current facial recognition policies violate privacy rights

Jake Laperrugue 2021 (Senior Counsel at The Constitution Project at Project on Government Oversight; former Law Clerk on the Senate Subcommittee on Privacy, Technology, and the Law; graduate of Harvard Law School) July 13, 2021 Statement to the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security “Correcting Misconceptions and Planning Effective Safeguards on Face Recognition Technology” <https://www.pogo.org/testimony/2021/07/correcting-misconceptions-and-planning-effective-safeguards-on-face-recognition-technology/> (Accessed 22 August 2021) (brackets in original)

Face recognition has been abused for selective targeting, with law enforcement using the technology to rapidly scan protests for individuals with active bench warrants for unrelated offenses. Several years ago, Baltimore police used face recognition amid protests to find individuals with “outstanding warrants and arrest[ed] them directly from the crowd,” in a selective effort that appeared to be aimed at disrupting, punishing, and discouraging demonstrators from protesting. Absent strong rules, these problems will continue to occur. Face recognition could be used to identify and catalog every attendee at a religious service or political rally, akin to a hyper-powered version of the “mosque crawlers” the New York Police Department deployed for its surveillance of Muslim Americans, or the plants and informants the FBI used to spy on activists as part of COINTELPRO. Face recognition could catalog who goes to a health clinic, substance abuse treatment center, or union meeting. These kinds of sensitive data about people’s lives could be stockpiled and used for an immense array of future government activities, ranging from profiling, to selective law enforcement investigations, to evaluations for civil service employment opportunities. And even absent such malicious actions, research has shown that surveillance does in fact chill participation in basic activities, especially when directed at sensitive activities and groups vulnerable to persecution.

B. The Impact. Human rights violated.

Emmaline Soken-Huberty (Writer at Human Rights Careers. Former Office Assistant for Religious Studies/Philosophy at Macalester College. BA in English and Literature, and Human rights from Macalester College) “10 Reasons Why Privacy Rights are Important” <https://www.humanrightscareers.com/issues/reasons-why-privacy-rights-are-important/> (Accessed 28 August 2021)

The right to privacy is a enshrined in article 12 of the Universal Declaration of Human Rights (UDHR), article 17 in the legally binding International Covenant on Civil and Political Rights (ICCPR) and in article 16 of the Convention of the Rights of the Child (CRC). Many national constitutions and human rights documents mention the right to privacy. In the US Constitution, it isn’t explicitly stated, but experts infer it from several amendments, including the Fourth Amendment. It outlines that people have the right “to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” In many cases, the US Supreme Court has upheld the right to privacy. There are also many privacy laws designed to protect personal data from the government and corporations. The rise of the internet has complicated privacy laws and many believe that the law has fallen behind. In the United States, there is no central federal privacy law. The right to privacy also intersects with many other human rights such as freedom of expression, the right to seek, receive and impart information and freedom of association and assembly.

HARM 2. False arrests

A. Racial bias. Facial recognition technology has high inaccuracy rates for racial minorities

Grace Woodruff 2021 (journalist) July 02, 2021 “Maine Now Has the Toughest Facial Recognition Restrictions in the U.S.” <https://slate.com/technology/2021/07/maine-facial-recognition-government-use-law.html> (Accessed 22 August 2021)

A central worry for opponents of facial recognition technology is its racial bias. Despite boasting a classification accuracy of over 90 percent, a Harvard study notes that “these outcomes are not universal.” The technology has been found to have the poorest accuracy when analyzing images of people who are Black, female, and 18 to 30 years old. Another study performed by the National Institute of Standards and Technology found that the highest error rates came in identifying Native Americans, while Black and Asian faces were falsely identified 10-100 times more frequently than White faces.

B. False arrests. Facial recognition policing leads to false arrests

John General and Jon Sarlin 2021 (General - Associate Producer, CNN Business. MA in journalism from New York Univ. Sarlin - Producer, CNN Digital. BA in English from Kenyon College.) April 29, 2021 “A false facial recognition match sent this innocent Black man to jail” <https://www.cnn.com/2021/04/29/tech/nijeer-parks-facial-recognition-police-arrest/index.html> (Accessed 26 August 2021)

Nijeer Parks isn't the only person who's been arrested thanks to a supposed facial recognition match that wasn't. There's also Robert Williams and Michael Oliver, two Black men arrested in Detroit based in part on bad facial recognition results. Their cases were later dropped, too. Williams, joined by the ACLU, recently filed a federal suit against the City of Detroit.

C. The Impact. False arrests cause serious harm

Ronemus & Vilensky 2017 (New York law firm) 17 Nov 2017 “What To Do If You Are Falsely Arrested” <https://www.ronvil.com/falsely-arrested-2017/> (accessed 31 Aug 2021)

A false arrest goes against an American’s right against unreasonable search and seizure, as stated by the Fourth Amendment of the U.S. Constitution. Police officers must have *reasonable cause*to arrest people, though they do not always need a warrant, such as if they physically see a crime happening. This means that to prove a false arrest happened, we must show that according to the standards of a “reasonable person,” the officer did not have probable cause to make the arrest. Police overreach in any area can not and should not be tolerated. They are as bound to the Constitution as any other American citizen. False arrest is a serious issue that should be discussed. If it leads to false imprisonment, which it often can, even a short imprisonment can have a significant impact on a person’s life and reputation in their community.

OBSERVATION 4. We need our Plan, to be implemented by Congress and the President

1. Congress passes S.2878, the Facial Recognition Technology Warrant Act of 2019, a bill introduced in Congress but never enacted. It has 3 key mandates. 1) Requires a court order for law enforcement access to federal facial recognition data. 2) Sets testing procedures for FRT systems under the oversight of the National Institute of Standards & Technology (NIST). 3) Suppresses any FRT evidence obtained without a warrant from being used in court.
2. Funding through existing budgets of agencies and general federal revenues. Plan is purely legislative and establishes no new costs.
3. Enforcement through normal means and the federal courts.
4. Plan takes effect 30 days after an Affirmative ballot
5. All Affirmative speeches may clarify.

OBSERVATION 5. THE SOLUTION. Passing the Facial Recognition Technology Warrant Act requires responsible use of FRT and mandates testing for bias.

Jon Schuppe 2019 (Author and journalist who specializes in government, politics, criminal justice and urban issues. Staff writer for NBC News. BA in Journalism from Lehigh University.) November 14, 2019 “New federal bill would restrict police use of facial recognition” <https://www.nbcnews.com/news/us-news/new-federal-bill-would-restrict-police-use-facial-recognition-n1082406> (Accessed 17 August 2021)

The bill, known as the Facial Recognition Technology Warrant Act, would require federal law enforcement to explain to a judge why they want to use facial recognition to track someone in real time for longer than three days, and would limit that surveillance to 30 days. It also would require the judge to report the request to U.S. court administrators for tracking. And it would require law enforcement to work with government researchers to make sure the facial recognition systems they're using are accurate.

OBSERVATION 6. THE ADVANTAGES.

ADVANTAGE 1. Reducing bias and increasing accuracy

NIST testing and standards create a surge in accuracy that prevents bias

Myranda Westbrook 2020 (Inside Service Sales Rep at Schneider Electric. Former Student Research Fellow at Univ. of Tennessee at Chattanooga. B.S. in Business: Business Analytics, Innovation Scholar at UTC.) December 2020 “Global privacy concerns of facial recognition big data” <https://scholar.utc.edu/cgi/viewcontent.cgi?article=1299&context=honors-theses> (Accessed 28 July 2021)

The testing used by the NIST has incorporated highly complex neural networks and requires the ability of facial-recognition algorithms to detect identities even when poor quality images are employed. This allows technologist to predict a surge in accuracy as data volumes and rate of computing capacity (within the realm of machine learning and artificial intelligence) increase. This form of testing also measures the system’s ability to match an individual’s photo with a different image of the same person stored in a database that contains millions of sample images. The NIST dataset includes 26.6 million portrait photos of 12.3 million individuals that include data from webcam, photojournalism, video surveillance, and personal photo images (Kaye 2019).

ADVANTAGE 2. Protecting human rights

Court orders are the solution to protecting privacy rights in facial recognition software

Theodore Claypoole 2020 (Chair of the American Bar Association’s Cyberspace Law Committee in the Business Law Section. He is a Partner of Womble Bond Dickinson’s Intellectual Property Practice Group) June 16, 2020 “Take Video, But Secure a Warrant to Run Facial Recognition Software” <https://www.natlawreview.com/article/take-video-secure-warrant-to-run-facial-recognition-software> (Accessed 17 August 2021)

The only fix that will restrict this surveillance activity is to require warrants or other court permission – where the tech can only be used if there is at least a reasonable suspicion that a crime has been committed. This would not be a burden on police.  The ballooning population of surveillance cameras will continue to catch activity, but we need to restrict police from identifying every person they see on the footage, just because they want to do so. If there is a need, get a warrant, run the software, and identify that person holding a protest sign or walking across the street. If you can’t establish a good reason to run the identifying software, don’t do it.

2A Evidence: Facial Recognition Technology Warrant Act

DEFINITIONS / TOPICALITY

Text of the bill

<https://www.congress.gov/bill/116th-congress/senate-bill/2878/text>

Text of the bill is at this link. Print out and bring with you to the debate round.

Summary of the bill

Senator Chris Coons 2019 (U.S. Senator from Delaware) 14 Nov 2019 “FACIAL RECOGNITION TECH: Sens. Coons, Lee bill requires court orders for law enforcement use of facial recognition technology” <https://www.coons.senate.gov/news/press-releases/facial-recognition-tech-sens-coons-lee-bill-requires-court-orders-for-law-enforcement-use-of-facial-recognition-technology> (Accessed 17 Aug 2021)

The Facial Recognition Technology Warrant Act would:

* Require federal law enforcement to obtain a warrant based upon a showing of a probable cause of criminal activity in order to utilize facial recognition technology for the purpose of ongoing public surveillance of an individual.
* Limit the warrant’s allowance of ongoing surveillance to a maximum of 30 days and require the use of the facial recognition technology to be conducted in such a way as to minimize the acquisition, retention, and dissemination of information regarding individuals outside the warrant’s purview.
* Permit law enforcement to use facial recognition technology for ongoing surveillance without a court order in exigent circumstances.
* Require the judge issuing or denying the warrant application to report the outcome of the warrant application to the Administrative Office of the United States Courts which must catalogue the data and submit a summarized report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

INHERENCY

Federal use of FRT

Government Accountability Office 2021 (congressional agency that provides auditing, evaluation, and investigative services) June 2021 “Facial RecognitionTechnology Federal Law Enforcement Agencies Should Better Assess Privacy and Other Risks” <https://www.gao.gov/assets/gao-21-518.pdf> (Accessed 21 August 2021)

Fourteen federal agencies reported using systems owned by state, local, tribal, and territorial entities. For example, FBI’s Facial Analysis, Comparison, and Evaluation Services had memorandums of understanding with certain state agencies, allowing it to leverage the state-owned systems for facial recognition searches. According to the FBI, these state-owned systems include driver’s license photos, mugshots, or corrections photos.

Federal agencies use private FRT

Dave Gershgorn 2021 (Senior Reporter at Insider, Inc. He has also worked as an Artificial Intelligence Reporter at Quartz and a Assistant Technology Editor at Popular Science. MA in Journalism from Craig Newmark Graduate School of Journalism at CUNY. June 29, 2021 “Federal agencies use facial recognition from private companies, but almost nobody is keeping track” <https://www.theverge.com/2021/6/29/22556068/federal-agencies-facial-recognition-report-privacy-security-oversight> (Accessed 22 August 2021)

Of the 14 federal agencies that said they used privately built facial recognition for criminal investigations, only Immigration and Customs Enforcement was in the process of implementing a list of approved facial recognition vendors and a log sheet for the technology’s use. The rest of the agencies, including Customs and Border Protection, the Federal Bureau of Investigation, and the Drug Enforcement Administration, had no process in place to track the use of private facial recognition.

Roughly 50% of US adults have their picture in facial recognition databases

 Deseret News Service 2018 (founded in 1850. The Deseret News is a subsidiary of the [Deseret Management Corporation](http://www.deseretmanagement.com/), which is owned by The Church of Jesus Christ of Latter-day Saints) September 4, 2018 “How police are using face recognition to catch criminals; experts say that's bad for free speech” <https://www.newschannel5.com/news/national/how-police-are-using-face-recognition-to-catch-criminals-experts-say-thats-bad-for-free-speech> (Accessed 29 August 2021)

Roughly 50 percent of American adults have their photos searched this way — meaning that 117 million adults are included in law enforcement face recognition networks, according to the [report](https://urldefense.proofpoint.com/v2/url?u=https-3A__mandrillapp.com_track_click_30210687_www.perpetuallineup.org-3Fp-3DeyJzIjoiNEljZkhtNzdrSDFXRnhCRURJaTBTQTczdVQwIiwidiI6MSwicCI6IntcInVcIjozMDIxMDY4NyxcInZcIjoxLFwidXJsXCI6XCJodHRwczpcXFwvXFxcL3d3dy5wZXJwZXR1YWxsaW5ldXAub3JnXFxcL3NpdGVzXFxcL2RlZmF1bHRcXFwvZmlsZXNcXFwvMjAxNi0xMlxcXC9UaGUlMjBQZXJwZXR1YWwlMjBMaW5lLVVwJTIwLSUyMENlbnRlciUyMG9uJTIwUHJpdmFjeSUyMGFuZCUyMFRlY2hub2xvZ3klMjBhdCUyMEdlb3JnZXRvd24lMjBMYXclMjAtJTIwMTIxNjE2LnBkZlwiLFwiaWRcIjpcIjllYmM5N2MyMjNkMTQwZGViMWFmMmZjZjI3NWJiNzIyXCIsXCJ1cmxfaWRzXCI6W1wiZmRmMzRkN2Q3ZGU1ZWJiMjM1ZTA2MGZlMGU1NTQ5MmQ0NjFhZjBkZVwiXX0ifQ&d=DwMFaQ&c=aLv4kG3eFBuAUFgZFQ07JQ&r=sAtNbPbrG0OtLCnkniOeq2rpmSoL533vd-FxAk44h0g&m=fMZ5poKNfbgG134enBkJgKn8o_2b-j6yXGwcqiFminM&s=gOri5Twzkwpkvee8YBAa13kdk-Kj42QF0rbqFXILgEs&e=).

A/T “Agencies have safeguards” – Agencies are lying or incompetent. They say they’re not even using it when they are

Tate Ryan-Mosley 2021 (journalist) 24 Aug 2021 “US government agencies plan to increase their use of facial recognition technology” <https://www.technologyreview.com/2021/08/24/1032967/us-government-agencies-plan-to-increase-their-use-of-facial-recognition-technology/> (accessed 29 Aug 2021)

In June, the GAO released [a report](https://www.gao.gov/products/gao-21-518) on the facial recognition capabilities of 42 federal agencies that employ law enforcement officers. It showed that several [law enforcement](https://www.cnn.com/2021/06/30/tech/government-facial-recognition-use-gao-report/index.html) agencies used facial recognition in the aftermath of the racial justice protests last summer and the January attack on the US Capitol. The report also showed that 13 of the 42 agencies do not fully understand their own use of the technology. Reporting from BuzzFeed News shows that [the GAO report was likely](https://www.buzzfeednews.com/article/carolinehaskins1/gao-facial-recognition-report-clearview-federal-agencies) incomplete, with five federal agencies saying that they had not used Clearview AI’s system when they had.

Federal regulation on FRT is sparse

The Regulatory Review 2021 (Brianna Rauenzahn - Research and Teaching Assistant at the University of Pennsylvania Carey Law School. BA in Secondary Education and social Sciences from Penn State University. She is pursuing a Master's degree in Social Policy from Univ of Pennsylvania School of Social Policy and Practice. Jamison Chung - Research and Teaching Assistant at Univ of Penn. MA in bioethics and medical ethics from Univ of Penn. School of Medicine. Aaron Kaufman - Judicial Intern in the U.S. District Court. A Paralegal at the Federal Trade Commission. MA in History from Univ of Chicago. Certificate in Management from the Wharton School.) March 20, 2021 “Facing Bias in Facial Recognition Technology” <https://www.theregreview.org/2021/03/20/saturday-seminar-facing-bias-in-facial-recognition-technology/> (Accessed 22 July 2021)

A few U.S. cities have already banned law enforcement and other government entities from using facial recognition technology. But only three states have passed privacy laws pertaining to facial recognition technology. Currently, no federal law governs the use of facial recognition technology. In 2019, members of the U.S. Congress introduced the Algorithmic Accountability Act. If passed, it would direct the Federal Trade Commission (FTC) to regulate the industry and require companies to assess their technology continually for fairness, bias, and privacy issues. As of now, the FTC only regulates facial recognition companies under general consumer protection laws and has issued recommendations for industry self-regulation.

Current laws are insufficient to deal with FRT

Chris Burt 2020 (editor of Biometric Update. BaH in English and Philosophy from Queen’s University. ) November 19, 2020 “Facial recognition critics consider the options in OBVIA webinar” <https://www.biometricupdate.com/202011/facial-recognition-critics-consider-the-options-in-obvia-webinar> (Accessed 9 August 9 2021)

The current legal landscape throughout North America and Europe is inadequate to deal with the risks to public rights created by increasing facial recognition use, according to panelists in a webinar hosted by Laval University’s International Observatory on the Societal Impacts of AI and Digital Technology (OBVIA).

Regulation is lagging behind the use of FRT

Mariko Hirose 2017 (attorney; Director Of Litigation at International Refugee Assistance Project; lawyer for the New York Civil Liberties Union; adjunct professor at the Fordham University School of Law. JD from Stanford Law School.) Sept 2017 “Privacy in Public Spaces: The Reasonable Expectation of Privacy Against the Dragnet Use of Facial Recognition Technology” <https://opencommons.uconn.edu/cgi/viewcontent.cgi?article=1376&context=law_review> (Accessed 18 August 2021)

 Our society is steadily marching towards a world in which cameras equipped with facial recognition technology could be used to conduct constant and dragnet surveillance on people as they walk down the street. The law, as is usual in the field of privacy and emerging technologies, is lagging behind—no clear set of constitutional rules constrains law enforcement’s use of this powerful technology, especially because the prevailing axiom has been that there is no right to privacy in public spaces. This Article challenges the axiom and argues that the dragnet, realtime uses of facial recognition technology violates reasonable expectations of privacy.

A/T “Companies have stopped selling FRT to police” - Plenty of companies still do

Theodore Claypoole 2020 (attorney; Chair of the American Bar Association’s Cyberspace Law Committee in the Business Law Section. Partner of Womble Bond Dickinson’s Intellectual Property Practice Group.) August 03, 2020 “A Clear Solution to Police Surveillance Creep: Warrants Needed for Biometric Analysis” <https://www.americanbar.org/groups/business_law/publications/blt/2020/08/police-surveillance/> (Accessed 16 August 2021)

Although Amazon, IBM, and Microsoft have all at least temporarily limited supplying U.S. law enforcement with the tools to identify anyone captured on video, companies like Clearview AI, Japanese tech giant NEC, iOmnicient, Hert Security LLC, and Idemia are happy to sell facial recognition systems to the police. If we are concerned about allowing law enforcement to properly use this tool in the right circumstance and still protect the Constitutional rights of Americans, we cannot rely on the private sector for solutions.

FRT: the scary reality

Mike Dunbar 2021 (The Citizens Count Content Editor. BA with honors in English and Music from the College of the Holy Cross in Worcester, Mass.) March 18, 2021 “Should there be limits on facial recognition technology in New Hampshire?”<https://www.nhbr.com/should-there-be-limits-on-facial-recognition-technology-in-new-hampshire/> (Accessed 17 August 2021)

It sounds like the plot of some futuristic sci-fi thriller: The government keeps a database of images of citizens’ faces, and that database can be used for surveillance of individuals. For better or worse, this is no longer science fiction. The same technology that allows you to open your phone simply by looking at it can be used by governments to track people as they go about their lives in public.

COUNTERPLAN RESPONSES

A/T “We should just ban it” - FRT has legitimate uses, but we must make sure it is used correctly

Sen. Chris Coons & Sen. Mike Lee 2019 (Coons - U.S. Senator from Delaware.. Lee - U.S. Senator from Utah) “FACIAL RECOGNITION TECHNOLOGY WARRANT ACT OF 2019” <https://www.coons.senate.gov/imo/media/doc/FRTWA%20One-Pager%20FinalFinal.pdf> (Accessed 17 August 2021) (article is undated but was written in or after 2019 when the bill was introduced)

Congress should establish appropriate guardrails around the use of facial recognition technology to ensure that the American people are kept safe without infringing on their civil liberties.

• Facial recognition technology is a valuable tool for law enforcement, but particular use cases have the potential to invade the privacy of everyday Americans.

• Some state and local jurisdictions have begun to implement moratoria on the use of facial recognition technology entirely.

• Given the legitimate law enforcement use cases, an outright ban may make Americans less safe and discourage innovation.

• Congress should take steps to balance appropriately the security benefits and privacy concerns that come with this new technology.

A/T “We should just ban it” - Banning is counterproductive

Alexander Schiller 2021 (Master of Advanced Studies in International Affairs student at UCSD’s School of Global Policy and Strategy. He graduated from Appalachian State Univ. with a dual BA in International Economics and Spanish; served as a Surface Warfare Officer in the US Navy.) January 2021 “Facial Recognition Technology: Is a Ban on Federal Agency Use Feasible?” <https://www.columbiapublicpolicyreview.org/2021/01/facial-recognition-technology-is-a-ban-on-federal-agency-use-feasible/> (Accessed 18 August 2021)

Despite some political support, banning the technology would not be feasible for the United States Government to pursue as a policy. Based on court precedence, commercial vendor availability, and the thousands of law enforcement agencies that could still use the technology, the federal government would be able to find a workaround of the ban in some fashion that could satisfy court challenges. Absent Congress passing a new law, the Department of Justice should require warrants for facial data use in ongoing surveillance and in searching for potential identities in their database. Warrants are a step towards controlling the use of facial recognition technology and protecting the rights of Americans from improper surveillance. It’s a limit law enforcement is used to operating under, and one the public will accept. With the widespread use of facial recognition, warrants will ensure the trust of the people in their law enforcement to use it properly remains well into the future.

SOLVENCY/ADVOCACY

NIST testing is the “gold standard” for FRT

Myranda Westbrook 2020 (Inside Service Sales Rep at Schneider Electric. Former Student Research Fellow at Univ. of Tennessee at Chattanooga. B.S. in Business: Business Analytics, Innovation Scholar at UTC.) December 2020 “Global privacy concerns of facial recognition big data” <https://scholar.utc.edu/cgi/viewcontent.cgi?article=1299&context=honors-theses> (Accessed 28 July 2021)

Joy Buolamwini, MIT researcher and founder of the Algorithmic Justice League, called the NIST benchmarks “gold standards for the industry”. The NIST testing has been viewed as a gold standard of current testing protocol that provides data results that can have a significant impact on policy decisions. The Chinese technology firm, Yitu, confirmed the importance of the U.S. agency testing by stating “The benchmark results of NIST are well-recognized as the golden standards of global industry for its strictness” (Kaye 2019). This form of testing may be important in the future policy implementation of facial recognition due to the standard of accuracy it may require for U.S. companies to undergo before being used on the public to reduce unfair bias.

The NIST has experience testing facial recognition

Sophie Bushwick 2019 (Associate editor covering technology at Scientific American. Former Senior Editor at Popular Science. BA from Clarendon College.) December 27, 2019 “How NIST Tested Facial Recognition Algorithms for Racial Bias” <https://www.scientificamerican.com/article/how-nist-tested-facial-recognition-algorithms-for-racial-bias/> (Accessed 11 August 2021)

This report is the third part of the latest assessment to come out of a NIST program called the Face Recognition Vendor Test (FRVT), which assesses the capabilities of different face-recognition algorithms. “We intend for this to be able to inform meaningful discussions and to provide empirical data to decision makers, policy makers and end users to know the accuracy, usefulness, capabilities [and] limitations of the technology,” says Craig Watson, an Image Group manager at NIST. “We want the end users and policy decision makers to see those results and decide for themselves.” Scientific American spoke with Watson about how his team conducted these evaluations.

Details on NIST testing

Sophie Bushwick 2019 (Associate editor at Scientific American. Former Senior Editor at Popular Science. BA from Clarendon College.) December 27, 2019 “How NIST Tested Facial Recognition Algorithms for Racial Bias” <https://www.scientificamerican.com/article/how-nist-tested-facial-recognition-algorithms-for-racial-bias/> (Accessed 11 August 2021) (brackets in original)

It’s a core algorithm test of face-recognition capabilities. Part one looked at one-to-one verification accuracy: How well can algorithms take two images and tell you if they are the same person or not? An application would be like your phone: When you go to open your phone, if you’re using face recognition, you present your face to the phone. It says, “Are you the person that can access this phone or not?” Then part two looked at one-to-many identification. That’s searching against a gallery of unknown images. And if there is a match in the gallery, can the algorithm return that accurately? One-to-many searches, you can do to access control to a facility: Ideally, someone would walk in, present their biometric. It would be compared to those that are allowed access, and then they would automatically be granted access. It’s also used by law enforcement—searching, potentially, a criminal database to find out if someone’s in that database or not. What I would point out with that one is that everything that comes back to that, from the algorithm, typically goes to a human review. And then this part three is looking at demographic differentials for both one-to-one and one-to-many applications [to see if] the algorithms perform differently across different demographics in the data set.

Warrants should be required before applying AI to facial recognition for law enforcement – to uphold civil rights

Theodore Claypoole 2020 (attorney; Chair of the American Bar Association’s Cyberspace Law Committee in the Business Law Section. Partner of Womble Bond Dickinson’s Intellectual Property Practice Group.) August 03, 2020 “A Clear Solution to Police Surveillance Creep: Warrants Needed for Biometric Analysis” <https://www.americanbar.org/groups/business_law/publications/blt/2020/08/police-surveillance/> (Accessed 16 August 2021)

Lawmakers should require police to secure a warrant before applying biometric AI systems to identify people in pictures and videos. Requiring such a warrant is a reasonable solution for law enforcement and protects the Constitutional rights of U.S. citizens. It is also within the U.S. Supreme Court’s current application of the Fourth Amendment to technological change. The surveillance society is upon us. Cameras are now everywhere in the public sphere. Business Insider reports that in two years the world may have 45 billion cameras, and the video-surveillance industry is likely to be worth $64 billion. More insidious than capturing video of all activities in cities and towns all the time, however, is the facial recognition technology used to apply a name to nearly every person found by these cameras. Activating artificial intelligence (AI) for identification in crowds threatens our civil rights, and very few lawmakers have tried to address this concern.

Warrants are the bare minimum that should be required under the Fourth Amendment

Matthew Doktor 2021 (Judicial Clerk at First District Court of Appeals. Former Legal Fellow at the Ohio Innocence Project. Master of Education from Rutgers, The State University of New Jersey-New Brunswick. Bachelor of Arts in History, also from Rutgers.) February 2021 “Facial Recognition and the Fourth Amendment in the Wake of Carpenter v. United States” <https://scholarship.law.uc.edu/cgi/viewcontent.cgi?article=1391&context=uclr> (Accessed 18 August 2021)

Electronic privacy rights advocates urge a complete prohibition on the technology. As it stands, there is not a single viable basis for monitoring unconstitutional biometric searches of individuals through facial recognition technology. As a matter of policy, concrete mechanisms protecting the constitutional right to privacy must deter abuse of this technology. At a minimum, before running a facial recognition search against a biometric database like Clearview AI’s, law enforcement should follow the basic the Fourth Amendment directive: get a warrant.

Warrants keep police responsible

Theodore Claypoole 2020 (attorney; Chair of the American Bar Association’s Cyberspace Law Committee in the Business Law Section. Partner of Womble Bond Dickinson’s Intellectual Property Practice Group.) August 03, 2020 “A Clear Solution to Police Surveillance Creep: Warrants Needed for Biometric Analysis” <https://www.americanbar.org/groups/business_law/publications/blt/2020/08/police-surveillance/> (Accessed 16 August 2021)

This keeps our police force from searching everyone and everything hoping to find something for which to arrest someone. That is why the protection was written into the Constitution by our nation’s founders. It is supposed to slow the process down so that someone can think about whether the one group in society with a legal monopoly on violence should be pushing down your front door and rifling through your underwear drawer.

Warrants prevent irresponsible use

Jake Laperrugue 2021 (Senior Counsel at The Constitution Project at Project on Government Oversight; former Law Clerk on the Senate Subcommittee on Privacy, Technology, and the Law; graduate of Harvard Law School) July 13, 2021 Statement to the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security “Correcting Misconceptions and Planning Effective Safeguards on Face Recognition Technology” <https://www.pogo.org/testimony/2021/07/correcting-misconceptions-and-planning-effective-safeguards-on-face-recognition-technology/> (Accessed 22 August 2021)

If Congress does not pursue a full moratorium, there are still safeguards that can limit the dangers face recognition surveillance poses. Preventing irresponsible use of face recognition and reliance on misidentifications necessitates transparency requirements, testing and accuracy standards, rules for training and use, limits on how much weight investigators place on matches, and disclosure to defendants. Guarding against abuse and dragnet collection of sensitive information requires meaningful rules for independent authorization—such as a warrant requirement—and limiting use to investigating serious offenses. The Constitution Project’s task force report on face recognition examines many of these policies in detail.

Advocacy - Microsoft

Senator Chris Coons 2019 (U.S. Senator from Delaware. He serves on the Senate Appropriations, Foreign Relations, Judiciary, Small Business and Entrepreneurship, and Ethics committees. He is the chair of the Ethics Committee and the senior Democrat on two subcommittees: The Senate Judiciary Subcommittee on Privacy, Technology, and Law and the Senate Appropriations Subcommittee on State and Foreign Operations (SFOPS). Shortly after receiving his law degree and clerking on the U.S. Court of Appeals for the Third Circuit.) November 14, 2019 “FACIAL RECOGNITION TECH: Sens. Coons, Lee bill requires court orders for law enforcement use of facial recognition technology” <https://www.coons.senate.gov/news/press-releases/facial-recognition-tech-sens-coons-lee-bill-requires-court-orders-for-law-enforcement-use-of-facial-recognition-technology> (Accessed 17 August 2021)

“We support the bipartisan leadership of Senators Coons and Lee to introduce meaningful reform of law enforcement’s use of facial recognition technology,” said Fred Humphries, corporate vice president of U.S. Government Affairs at Microsoft. “The bill provides clarity for law enforcement to be transparent about its use of facial recognition technology, both for human review when facial recognition is in use and testing for accuracy. The bill also ensures that law enforcement will seek a warrant before it can use this technology for ongoing surveillance, except in certain emergency circumstances.  We’re grateful for the Senators’ leadership and are encouraged to see introduction of a new legal framework. Microsoft is committed to working with all stakeholders as the legislation advances in Congress.”

Advocacy: Need the plan to protect US citizens’ privacy

Theodore Claypoole 2020 (attorney; Chair of the American Bar Association’s Cyberspace Law Committee in the Business Law Section. Partner of Womble Bond Dickinson’s Intellectual Property Practice Group.) August 03, 2020 “A Clear Solution to Police Surveillance Creep: Warrants Needed for Biometric Analysis” <https://www.americanbar.org/groups/business_law/publications/blt/2020/08/police-surveillance/> (Accessed 16 August 2021)

In November of last year, U.S. Senators Coons and Lee introduced bi-partisan legislation requiring federal law enforcement to obtain a court order before using facial recognition technology. This act provided a logical framework for protecting Americans from a powerful, new state-operated technology that has grown unchecked as a tool for intruding on citizens’ privacy.

Advocacy - R Street Institute

Ann Phelan 2019 (editorial and communications specialist for the R Street Institute, a non-profit public policy research organization; bachelor’s in history and anthropology from Franciscan Univ of Steubenville) 11 Dec 2019 “R Street Applauds Introduction of the Facial Recognition Technology Warrant Act of 2019” <https://www.rstreet.org/2019/12/11/r-street-applauds-introduction-of-the-facial-recognition-technology-warrant-act-of-2019/> (Accessed 22 August 2021)

WASHINGTON (Dec. 11, 2019) – The R Street Institute applauds the introduction of the Facial Recognition Technology Warrant Act of 2019, introduced last month by Senators Mike Lee, R-Utah, and Chris Coons, D-Del. The bill would issue much-needed guidance on federal use of facial recognition technology—a type of surveillance that is insufficiently addressed by federal law.

A/T “Not the best way to solve misuse of FRT” - Reasonable solution, doesn’t require changes to constitution

Theodore Claypoole 2020 (attorney; Chair of the American Bar Association’s Cyberspace Law Committee in the Business Law Section. Partner of Womble Bond Dickinson’s Intellectual Property Practice Group.) August 03, 2020 “A Clear Solution to Police Surveillance Creep: Warrants Needed for Biometric Analysis” <https://www.americanbar.org/groups/business_law/publications/blt/2020/08/police-surveillance/> (Accessed 16 August 2021)

The best way to address this problem is to require police to secure a warrant before applying biometric AI systems to identify people in pictures and videos. Requiring a warrant in this circumstance is a reasonable solution for law enforcement, protects the Constitutional rights of U.S. citizens, and is within the U.S. Supreme Court’s current application of the Fourth Amendment to technological change.

A/T “The bill isn’t detailed enough” - The bill provides specific requirements

Ann Phelan 2019 (editorial and communications specialist for the R Street Institute, a non-profit public policy research organization; bachelor’s in history and anthropology from Franciscan Univ of Steubenville) 11 Dec 2019 “R Street Applauds Introduction of the Facial Recognition Technology Warrant Act of 2019” <https://www.rstreet.org/2019/12/11/r-street-applauds-introduction-of-the-facial-recognition-technology-warrant-act-of-2019/> (Accessed 22 August 2021)

In particular, the bill outlines a detailed and transparent reporting process, which would require a robust annual report on the federal use of facial recognition technology, including information on applications for warrants to surveil a suspect and data on misidentifications. Given the developing nature of facial recognition technology, publicly available and transparent information on misidentifications is important to avoid unintended bias and even outright discrimination.

Advocacy: FRT warrant requirement is needed because it holds police accountable and protects civil rights

Ann Phelan 2019 (editorial and communications specialist for the R Street Institute, a non-profit public policy research organization; bachelor’s in history and anthropology from Franciscan Univ of Steubenville) 11 Dec 2019 “R Street Applauds Introduction of the Facial Recognition Technology Warrant Act of 2019” <https://www.rstreet.org/2019/12/11/r-street-applauds-introduction-of-the-facial-recognition-technology-warrant-act-of-2019/> (Accessed 22 August 2021) (“Lee” and “Coons” are the Congressional authors of the bill enacted in this plan)

Jesse Kelley, Criminal Justice & Civil Liberties Manager, adds “the warrant requirement within the Lee/Coons facial recognition bill helps to protect American citizens from potentially undue or unlawful privacy violations. This piece of legislation can begin to bridge the gap between technology and law enforcement tools, all the while preserving public safety.”

HARMS / SIGNIFICANCE

Facial recognition is used in important areas

Kajal Mishra 2020 (Senior Marketing Executive at PathPartner Technology. She holds an MBA From the Symbiosis Institute of Business Management, Bengaluru, India. ) August 18, 2020 “Challenges Faced by Facial Recognition System” <https://www.pathpartnertech.com/challenges-faced-by-facial-recognition-system/> (Accessed 28 July 2021)

Face Recognition has always been one of the most fascinating and intriguing technologies as it deals with human faces. Covid-19 outbreak has propelled the world to move towards touchless facial recognition technology. It is gaining huge traction worldwide owing to its contactless biometric features. Companies are getting rid of traditional fingerprinting scanners and creating massive business opportunities by adopting AI-based facial recognition technology. Some of the applications where its usage has become crucial are security & surveillance, authentication/access control systems, digital healthcare, photo retrieval, etc.

As said, opportunities and challenges go hand in hand. Growing commercial interest for face recognition is encouraging, but it also turns out to be a challenging endeavour when it comes to problems associated which have played continuously with its quality of delivery. These challenges arise when the situations are non-cooperative and causes the varied facial appearance/expressions.

FRT reliability depends on uncontrollable factors

Jake Laperrugue 2021 (Senior Counsel at The Constitution Project at Project on Government Oversight; former Law Clerk on the Senate Subcommittee on Privacy, Technology, and the Law; graduate of Harvard Law School) July 13, 2021 Statement to the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security “Correcting Misconceptions and Planning Effective Safeguards on Face Recognition Technology” <https://www.pogo.org/testimony/2021/07/correcting-misconceptions-and-planning-effective-safeguards-on-face-recognition-technology/> (Accessed 22 August 2021)

Image quality can also significantly impact accuracy of matches. Sets of reference images —databases containing previously identified faces—in face recognition systems are typically high-resolution photos of a person directly facing a camera at close range, such as for a mug shot photo. But probe images—from which law enforcement seeks to identify individuals—are derived from a wide range of situations, which creates the potential for low image quality and erroneous results. Bad lighting, indirect angles, distance, poor camera quality, and low image resolution all make misidentifications more likely. These poor image conditions are more common when photos and videos are taken in public, such as with a CCTV camera. But these low-quality images often serve as probe images for face recognition scans, without due consideration for their diminished utility.

FRT has specific misuse issues

Theodore Claypoole 2020 (attorney; Chair of the American Bar Association’s Cyberspace Law Committee in the Business Law Section. Partner of Womble Bond Dickinson’s Intellectual Property Practice Group.) August 03, 2020 “A Clear Solution to Police Surveillance Creep: Warrants Needed for Biometric Analysis” <https://www.americanbar.org/groups/business_law/publications/blt/2020/08/police-surveillance/> (Accessed 16 August 2021)

Requiring a warrant for police to run facial recognition software will protect our Constitutional rights. Assume that a crowd was lawfully demonstrating against the police force itself—perhaps because the police are enforcing restrictive gun laws or because the police have misbehaved in some way. Every color of the political spectrum is affected by this concern. Would demonstrators feel violated if law enforcement used its multiple surveillance cameras to capture their activity? Maybe, but they are likely to expect to be seen by cameras. Would they feel violated if police ran an AI program over the camera footage to take down the names of all people who demonstrated against them? You bet.

A/T “People aren’t convicted by FRT” - Using unreliable evidence is still bad

Jake Laperrugue 2021 (Senior Counsel at The Constitution Project at Project On Government Oversight.  Former Law Clerk on the Senate Subcommittee on Privacy, Technology, and the Law. Graduate of Harvard Law School) July 13, 2021 Statement to the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security. “Correcting Misconceptions and Planning Effective Safeguards on Face Recognition Technology” <https://www.pogo.org/testimony/2021/07/correcting-misconceptions-and-planning-effective-safeguards-on-face-recognition-technology/> (Accessed 22 August 2021)

The simple fact is, unreliable investigative tools and techniques—even if just used for leads and taken alongside other potentially exonerating evidence—can lead to the arrest of innocent individuals, a problem we have seen again and again with flawed technologies ranging from outdated forensics to unreliable polygraph tests. If standard law enforcement policy was to base investigations on smudged fingerprints or contaminated DNA samples, it would be of little comfort that this tainted evidence was just used for leads.

A/T “FRT evidence isn’t used in court” - It shouldn’t be used to investigate people before they get to court either.

Jake Laperrugue 2021 (Senior Counsel at The Constitution Project at Project On Government Oversight.  Former Law Clerk on the Senate Subcommittee on Privacy, Technology, and the Law. Graduate of Harvard Law School) July 13, 2021 Statement to the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security. “Correcting Misconceptions and Planning Effective Safeguards on Face Recognition Technology” <https://www.pogo.org/testimony/2021/07/correcting-misconceptions-and-planning-effective-safeguards-on-face-recognition-technology/> (Accessed 22 August 2021)

It is important to resist the temptation to shrug off the risks of misidentification based on law enforcement claims that face recognition is just used for leads, rather than as the backbone of a prosecution. Using untrustworthy information as the foundation of investigations is always dangerous, regardless of whether that information is introduced in court.

A/T “*Miller* and *Smith* Supreme court cases” - Not applicable any more, times have changed

Mariko Hirose 2017 (attorney; Director Of Litigation at International Refugee Assistance Project; lawyer for the New York Civil Liberties Union; adjunct professor at Fordham Univ School of Law. JD from Stanford) Sept 2017 “Privacy in Public Spaces: The Reasonable Expectation of Privacy Against the Dragnet Use of Facial Recognition Technology” <https://opencommons.uconn.edu/cgi/viewcontent.cgi?article=1376&context=law_review> (Accessed 18 August 2021)

Finally, Miller and Smith were decided in such a different technological reality that it may no longer make sense to apply the third-party doctrine to today’s world, as Justice Sotomayor posited in her Jones concurrence. The information that could be accumulated and analyzed about a person in the 1970s, whether through bank records or through telephone dialing records, was limited by technology and storage costs. By comparison, today the speed at which society produces data has accelerated—according to one announcement, 90% of the data in the world has been generated in two years. The Supreme Court already recognized in the 1970s that the “accumulation of vast amounts of personal information in computerized data banks or other massive government files” raises significant privacy concerns, especially when not accompanied by adequate protections against unwarranted disclosure. The massive databases that are possible today, and that are readily accessible by facial recognition technology, render the third-party doctrine of Miller and Smith anachronistic to the privacy threats that exist today.

DISADVANTAGE RESPONSES

A/T “Police need to use FRT” - Bill still allows, requires warrants

Theodore Claypoole 2020 (attorney; Chair of the American Bar Association’s Cyberspace Law Committee in the Business Law Section. Partner of Womble Bond Dickinson’s Intellectual Property Practice Group.) August 03, 2020 “A Clear Solution to Police Surveillance Creep: Warrants Needed for Biometric Analysis” <https://www.americanbar.org/groups/business_law/publications/blt/2020/08/police-surveillance/> (Accessed 16 August 2021)

When we apply this thinking to facial recognition technology, we can require a warrant be issued to seek the identity of obvious wrongdoers. Thus, if you are caught on camera throwing a Molotov cocktail through the plate-glass window of a local business, the police can clearly and easily use a facial recognition program to find you and bring you to justice. If you are simply walking in a peaceful political demonstration, however, the police would not be allowed to run facial recognition software to place you in the crowd at that time. With no warrant requirement, law enforcement can run the identification program under no limitations.

A/T “Police need to use FRT” - Bill still allows, with improvements

Ann Phelan 2019 (editorial and communications specialist for the R Street Institute, a non-profit public policy research organization; bachelor’s in history and anthropology from Franciscan Univ of Steubenville) 11 Dec 2019 “R Street Applauds Introduction of the Facial Recognition Technology Warrant Act of 2019” <https://www.rstreet.org/2019/12/11/r-street-applauds-introduction-of-the-facial-recognition-technology-warrant-act-of-2019/> (Accessed 22 August 2021)

Facial recognition technology is an important tool that helps law enforcement agencies identify and track criminals, but when abused it can also violate privacy and open the door for potential discrimination. The Facial Recognition Technology Warrant Act is a crucial first step in addressing concerns over the use of facial recognition technology by law enforcement.

A/T “Police need to use FRT” - Historical precedent

Matthew Doktor 2021 (Judicial Clerk at First District Court of Appeals. Former Legal Fellow at the Ohio Innocence Project. Master of Education from Rutgers) February 2021 “Facial Recognition and the Fourth Amendment in the Wake of Carpenter v. United States” <https://scholarship.law.uc.edu/cgi/viewcontent.cgi?article=1391&context=uclr> (Accessed 18 August 2021)

Proponents of facial recognition technology defend its use as a research tool to identify perpetrators and victims of crimes, and argue that police should be able to use “every tool available” to find suspects and bring them to justice. Yet even the most efficacious law enforcement practices are subject to constitutional scrutiny—"the enshrinement of constitutional rights necessarily takes certain policy choices off the table." While the United States Supreme Court has disfavored brightline rules, it has refused to leave reasonable expectations of privacy at the mercy of advancing police technology that would allow police to discern all human activity. In those cases, it has drawn firm and bright lines that require a warrant for the use of particular surveillance methods.

A/T “Increased burden on police” - Process already exists. The “extra time” is completely justified by civil rights protection

Theodore Claypoole 2020 (attorney; Chair of the American Bar Association’s Cyberspace Law Committee in the Business Law Section. Partner of Womble Bond Dickinson’s Intellectual Property Practice Group.) August 03, 2020 “A Clear Solution to Police Surveillance Creep: Warrants Needed for Biometric Analysis” <https://www.americanbar.org/groups/business_law/publications/blt/2020/08/police-surveillance/> (Accessed 16 August 2021)

Police already have the right forms to fill out. They know how the process works. Judges are addressing these matters all the time. In other words, the only extra time required will be the extra time that police are supposed to take when they intrude on a person’s privacy.

A/T “Increased burden on police” - Warrants are practical

Theodore Claypoole 2020 (attorney; Chair of the American Bar Association’s Cyberspace Law Committee in the Business Law Section. Partner of Womble Bond Dickinson’s Intellectual Property Practice Group.) August 03, 2020 “A Clear Solution to Police Surveillance Creep: Warrants Needed for Biometric Analysis” <https://www.americanbar.org/groups/business_law/publications/blt/2020/08/police-surveillance/> (Accessed 16 August 2021)

Obtaining a warrant is practical for law enforcement. This is the system all of our policing agencies use when they want to go somewhere or do something that might otherwise intrude on the Fourth Amendment right to be secure in our persons, homes, and papers. The officer simply must show that he or she reasonably suspects that a person has committed a crime, and then the officer is issued a warrant that allows intrusion on private spaces and information.

A/T “Increased burden on police” - Requiring a warrant is nothing new

Sen. Chris Coons and Sen. Mike Lee 2019 (Coons - U.S. Senator from Delaware. He serves on the Senate Appropriations, Foreign Relations, Judiciary, Small Business and Entrepreneurship, and Ethics committees. Lee - U.S. Senator from Utah ) Post 2019 “FACIAL RECOGNITION TECHNOLOGY WARRANT ACT OF 2019” <https://www.coons.senate.gov/imo/media/doc/FRTWA%20One-Pager%20FinalFinal.pdf> (Accessed 17 August 2021)

The persistent and targeted use of facial recognition technology should be subject to similar procedural guidelines as other investigative techniques that raise comparable privacy concerns.
• Face recognition can be used to aid criminal investigations and is a valuable investigatory tool; however, given the potential for widespread and continuous surveillance, the government should not be able to track anybody they choose without probable cause to suspect an individual of criminal activity.
• Currently, government agencies can use facial recognition technology to surveil a person without any unified federal law, regulation, or oversight.
 • Conversely, law enforcement must obtain a court order before conducting other forms of intrusive searches and surveillance, such as searching cellphones, conducting a wiretap, collecting cellphone location information, or installing a location tracking device.
• Federal law can close the gap and create important safeguards to protect the American public from inappropriate surveillance by requiring similar procedural constraints on the use of facial recognition technology