

April 27, 2024

Chair Maria Cantwell
United States Senate
511 Hart Senate Office Building
Washington, D.C. 20515

Chair Gary Peters
United States Senate
724 Hart Senate Office Building
Washington, D.C. 20515

Ranking Member Ted Cruz
United States Senate
167 Russell Senate Office Building
Washington, D.C. 20515

Ranking Member Rand Paul
United States Senate
295 Russell Senate Office Building
Washington, D.C. 20515



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Dear Chair Cantwell, Ranking Member Cruz, Chair Peters, and Ranking Member Paul:

We write in support of Sen. Merkley and Sen. Kennedy's *Traveler Privacy Protection Act*. The bill would be a significant step forward in halting the rapid expansion of invasive facial recognition technology by the Transportation Security Administration, which has been deployed with little oversight or transparency. The ACLU is pleased to participate **in a briefing for Senate staff** on this important issue via Teams on **Monday, April 29, at 2:00 pm Eastern**; you and your staff may register [here](#).

Halting and rolling back this technology's explosive growth is crucial for protecting civil rights and civil liberties. Numerous studies – including those conducted by the TSA and the Department of Homeland Security – have shown that facial recognition technology is less accurate for people of color and other marginalized groups.¹ Even a seemingly small difference in accuracy multiplied across millions of daily travelers² can result in tens of thousands of people – and particularly people of color – being incorrectly flagged.

Moreover, facial recognition technology is a particularly salient threat to civil liberties. Facial recognition technology is capable of surveilling individuals at a distance, may take advantage of already ubiquitous existing camera infrastructure, and may be built on countless databases of our images, often mined without our consent for biometrics.

TSA purports to protect against these harms through safeguards such as limiting deployment to verifying identity documents and deleting data within 180 days. However, these protections are not guaranteed by law, but only by

¹ [NIST Study Evaluates Effects of Race, Age, Sex on Face Recognition Software](#) (2019).

² [TSA Checkpoint Travel Numbers](#) (2024).



grace of TSA policy. Those protections may be altered quickly through changes to internal TSA policy or the agency's Privacy Impact Assessments. In addition, without meaningful oversight by independent auditors, the Inspector General, or the Government Accountability Office, there is no way to know that TSA's promises are being reflected in practice.

The fleeting nature of those protections is demonstrated by TSA's oft-repeated vision that identity verification is only one step in its wider plan for biometrics. TSA has expressly stated that biometrics will play a role in a "curb to-gate or even reservation-to-destination" experience.³ Biometrics may also not remain optional; in a March 2023 session at SXSW, TSA Administrator David Pekoske stated that "eventually we will get to the point where we will require biometrics across the board."⁴

Talking points in favor of TSA's use of facial recognition technology do not address core concerns with the technology:

- **TSA's facial recognition technology may still show significant bias and inaccuracies.** TSA and proponents for facial recognition technology often claim that the technology is 98% accurate. However, the study that produced that figure was not conducted by an independent audit, and it reported that the median system failed to meet the accuracy threshold for individuals with darker skin tones – with some systems having an accuracy differential of 10% based on skin tone.⁵ Moreover, as noted above, even a seemingly small differential can affect tens of thousands of passengers every day.
- **TSA has provided no evidence that facial recognition makes travel safer or more efficient.** Proponents of facial recognition technology often laud its purported benefits for safety and efficiency. TSA, however, has not provided any evidence that facial recognition has made the airport experience safer or more seamless, despite the fact that it has been piloting the technology since 2018.⁶ Common experience would lead to the opposite conclusion: the bottleneck lies in the luggage screening process, and replacing a manual ID check with facial recognition technology will not alleviate that bottleneck.
- **There is no guarantee that facial recognition will be limited to checking identity documents.** As noted above, TSA in fact intends to expand its reliance on biometrics across the travel experience.
- **An "opt-out" mechanism is ineffective in protecting traveler choice.** Proponents of facial recognition technology claim that facial

³ [TSA Biometrics Strategy](#) (2018).

⁴ SXSW, [Accelerating Aviation Security: Innovative New Technology Keeping the Skies Safe](#) (2023).

⁵ Science & Technology Directorate, [Assessing Variation in Human Skin Tone to Inform Face Recognition System Design](#) (2022).

⁶ TSA, [PIA-46: Travel Document Checker Automation Using Facial Recognition](#) (2018).

images are processed only with permission. In reality, “permission” has been only theoretical, with reports describing signage that is often obscured or missing or security officers who are unfamiliar with how to process opt-out requests. Moreover, travelers are often under time pressures and may be reluctant to exercise their opt-out rights, given the authority of security officers over their travel experience.

Given the above concerns, Congress should ensure that TSA’s use of facial recognition technology is halted and rolled back. We urge you to consider supporting the *Traveler Privacy Protection Act*. Please do not hesitate to contact us at cvenzke@aclu.org.



Sincerely,

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Director, Democracy & Technology

Cody Venzke
Senior Policy Counsel

cc: Senate staff