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ACLU Maryland

April 14, 2026

Chief George Nader
Prince George's County Police Department
8801 Police Plaza
Upper Marlboro, MD 20772
police_chief@co.pg.md.us

Via email and overnight mail

Dear Chief Nader,

We write on behalf of our client Kimberlee Sue Williams, an Oklahoma resident who had never been to Maryland when she was wrongfully arrested in Oklahoma on a Maryland warrant, transported to Maryland, and jailed for months, until charges in Prince George's and two other counties were dropped. The Prince George's County charges were predicated on a clearly inadequate investigation by Prince George's County Police Department ("PGPD") personnel. A PGPD detective sought Ms. Williams' arrest based on the thinnest of leads provided by a corporate investigator. Had the PGPD conducted any meaningful follow-up investigation, officers would have learned that the lead was based on an incorrect result from fundamentally unreliable facial recognition technology. Ms. Williams' wrongful arrest provides an important and tragic example of how a facial recognition technology search result followed only by visual comparison between the facial recognition result and the suspect is categorically insufficient to support an arrest. We write to urge PGPD to identify the failures that led to Ms. Williams' wrongful arrest, provide her with a public apology, and make changes to PGPD policy to reduce the chance of future wrongful arrests due to reliance on erroneous face recognition technology search results.

I. Background

On June 23, 2021, Ms. Williams was accompanying her daughter, a DoorDash driver, as her daughter made a food delivery to a military base in Lawton, Oklahoma. When base security at the entry checkpoint conducted a standard ID check, they discovered an outstanding Maryland arrest warrant for Ms. Williams and detained her. Ms. Williams was held in jail in Oklahoma for twenty-three days before a Maryland officer arrived and transported her to Montgomery County—her first time ever entering Maryland. She remained jailed in Maryland for over five months, until the last charges against her were dismissed in December 2021.[1]

The Prince George's County warrant authorized Ms. Williams' arrest for a fraudulent over-the-counter cash withdrawal at the Watkins Park SunTrust bank branch in Upper Marlboro,

[1] The prosecution was docketed as Prince George's County District Court Case No. 5E00713060.

Maryland, in January 2020. But Ms. Williams was not the perpetrator. The arrest was based on a misidentification by face recognition technology and a lack of follow-up investigation.

In December 2019 and January 2020, an unknown individual entered SunTrust and Truist bank branches in Montgomery, Anne Arundel, and Prince George's counties, impersonated account holders, and fraudulently withdrew thousands of dollars from those individuals' accounts. When the victim of the first fraudulent withdrawal, made at a bank branch in Montgomery County, reported the fraud to the bank, a SunTrust financial crimes investigator, Sean Adams, began investigating. Adams' investigation included obtaining images of the suspect from the bank branch's security camera footage. In a March 3, 2020, memo to Mongomery County police, Adams described what followed in his investigation: "The imposter of [the bank customer] was later identified in response to Crimedex Alert 334654 that suggested, using facial recognition software, Kimberlee Williams as the suspect. Comparison of arrest photos against bank surveillance stills resulted in the identification of Williams." Memorandum from Sean Adams, Fin. Crimes Investigations, SunTrust, to Detective Brandon Mengedoht, Montgomery Cnty. Police Dep't 1 (Mar. 3, 2020) ("Ex. A").

Ten days later, Adams wrote to PGPD Sergeant Andrea Sheehan, PGPD Detective Kevin Cruz, and a detective with the Anne Arundel Police Department about the incidents at bank branches in Anne Arundel and Prince George's counties. In his March 13, 2020, memo to them, Adams wrote that "the impostor was recognized as Kimberlee Williams, a suspect in previous Truist Bank case FRD2019122739"—i.e., the Montgomery County incident. Memorandum from Sean Adams, Fin. Crimes Investigations, SunTrust, to Sergeant Andrea Sheehan et al. 1 (Mar. 13, 2020) ("Ex. B"). Adams provided no information about the Crimedex alert that resulted in a facial recognition search, nor did he include any information on how the identification was made, such as who responded to a Crimedex alert to perform the facial recognition search, which surveillance image was used in the facial recognition search, how many other potential results were suggested by facial recognition, who conducted the comparison afterward, and what the process was for the comparison.

On April 20, 2020, a detective with the Montgomery County Police Department sent an email, copying Sergeant Sheehan, recognizing the insufficiency of Adams' purported identification, noting that "I am unsure how [the SunTrust investigators] – identified the suspect as possibly Williams. Will have to look in on that, and . . . have a separate verification." Email from Brandon Mengedoht to Mike Copeland & Donald Hall (Apr. 20, 2020) ("Ex. C"). The PGPD investigation was ultimately assigned to Detective Eric Southan, who, despite the scant information provided by Adams and the warning from the Montgomery County detective, appears to have made no further inquiry into the bank's purported identification, nor performed any reliable independent verification. The Application for Statement of Charges stated only that "[t]he defendant, Kimberlee Williams, was recognized from earlier ID Thefts the bank suffered." Ex. D at 2. Detective Southan's only gesture at purportedly confirmatory information was to note that "[t]he defendants prison photos matched the surveillance pictures from the bank." *Id.*

Ms. Williams, however, was nowhere near Maryland in December 2019 and January 2020. She was a resident of Oklahoma, living in Lawton with two of her daughters and their children. She remained in Lawton, celebrating Christmas and her daughter's birthday, until mid-January, after which she traveled by bus to visit a friend who was recovering from a car accident in far-western Pennsylvania. Any investigation would have confirmed that it was impossible for her to have been in Maryland during this time. We have attached some of Ms. Williams' Facebook posts, where Facebook recorded Ms. Williams' location in Oklahoma during the relevant time period. Ex. E. Additional records, such as financial transaction records and cell phone location data, would have additionally established Ms. Williams' whereabouts, had detectives sought them during the investigation. Also attached are signed declarations from Ms. Williams' daughters [redacted], [redacted], and [redacted] attesting to her whereabouts during the relevant timeframe. Decl. of [redacted] ("Ex. F"); Decl. of [redacted] ("Ex. G"); Decl. of [redacted] ("Ex. H").

Following her arrest, Ms. Williams spent more than three weeks at the Comanche County Detention Center in Lawton, Oklahoma. On July 14, 2021, a Maryland officer arrived to transfer her to the Montgomery County Correctional Facility, where she was held for three months while charges were pending in Montgomery County District Court. Prosecutors dismissed the Montgomery County case *nolle prosequi* on October 14, 2021. Docket Report at 2, *Maryland v. Williams*, No. 2D00411861 (Md. Dist. Ct. Oct. 14, 2021) ("Ex. I"). Ms. Williams was then transferred to the Prince George's County Detention Center, where she was held for over two months—first in isolation until her COVID test was clear, and then in a cell that had human feces on the wall. Ms. Williams' attorney was prepared to offer multiple alibi witnesses to testify that Ms. Williams was in Oklahoma at the time of the charged offenses in Maryland. *See* Mot. to Allow Alibi Witness to Testify Remotely at 1, *Maryland v. Williams*, No. D-07-CR-20-013281 (Md. Dist. Ct. Oct. 5, 2021) ("Ex. J"). But prosecutors in Anne Arundel County and Prince George's County dismissed those cases *nolle prosequi* on December 13 and 17, 2021. Docket Report at 3–4, *Maryland v. Williams*, No. D-07-CR-20-013281 (Md. Dist. Ct. Dec. 13, 2021) ("Ex. K"); Docket Report at 2–3, *Maryland v. Williams*, No. 5E00713060 (Md. Dist. Ct. Dec. 17, 2021) ("Ex. L").

All told, Ms. Williams spent six months in jail for crimes she had nothing to do with. Most of that time was far from her family in a state she had never previously entered.

Ms. Williams hasn't been the same since her wrongful arrest and months-long detention. Her depression and anxiety have worsened, and she developed issues with her blood pressure. Her daughters describe her as a completely different person now, less cheerful and needing more emotional support. *See* Exs. F–H. For several years following her release, she woke up in the middle of the night to intrusive thoughts about the months of incarceration. She lost her job because of the arrest, and it took her months to rebuild her job stability. Ms. Williams has found it hard to simply go back to "normal" life after the incident. She will not live alone, and she is afraid to go out into public. She now fears law enforcement, despite having family members who work in law enforcement. And she worries that she might unknowingly catch the attention of law enforcement again for a crime she had nothing to do with, causing another ordeal like this one.

II. PGPD Failures Led to the Wrongful Arrest of Ms. Williams.

A series of failures by PGPD personnel led to Ms. Williams' wrongful arrest. As detailed above, the investigating detectives uncritically relied on an unreliable lead supplied by SunTrust's investigator and failed to conduct meaningful follow-up investigation to verify the lead, meaning that they lacked probable cause for the arrest. Had they inquired into SunTrust's lead, they would have discovered that the basis of the bank's purported identification of Ms. Williams was a lead from a face recognition technology search by an unknown entity. Face recognition technology is universally understood to be incapable of supplying a positive identification or probable cause for an arrest, and a false match from the technology can taint subsequent visual identifications by introducing an innocent face that looks like (but is not) the suspect. Had that been disclosed to the magistrate, the magistrate would or should have known that there was no probable cause. Had the detectives conducted an adequate investigation, and accurately represented the facts to the magistrate, Ms. Williams would not have been subject to wrongful arrest, prosecution, and prolonged detention.

Ms. Williams writes to seek accountability and reforms to minimize the chance of a similar travesty happening to anyone else. In furtherance of these demands, we highlight the following points:

A. Facial recognition technology results are unreliable and cannot supply a positive identification or probable cause.

Facial recognition systems are not designed to (and do not) return a single definitive match. Instead, these systems produce *potential* candidates that look similar to the image of an unknown suspect fed into the system (the "probe image"),[2] with the number of possible-match candidates returned by the system sometimes in the hundreds.[3] Naturally, only one of the many candidates can be the true suspect, if it is in the results at all. The rest will be innocent "false positives." These systems generate false positives even in controlled test conditions, but they are especially prone to error when probe-image quality is low (as is often the case in real-world conditions), or when there are differences between the probe image and the database images it is being compared against. Lighting, shadow, angle, facial expression, partial occlusion of the face, and the resolution of an image (i.e., its blurriness), all affect accuracy.[4] Rarely (if ever) will the

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[2] Eyal Press, *Does A.I. Lead Police to Ignore Contradictory Evidence*, The New Yorker (Nov. 20, 2023), https://perma.cc/V8KQ-VC8E.

[3] Expert Witness Report of Dr. Michael King ¶ 30, *Williams v. City of Detroit*, No. 2:21-cv-10827 (E.D. Mich. May 26, 2023), https://perma.cc/36E4-ADC6.

[4] *See, e.g.*, Patrick Grother et al., Nat'l Inst. of Standards & Tech., U.S. Dep't of Com., NISTIR 8271, *Face Recognition Vendor Test (FRVT) Part 2: Identification* 9–10 (2019), https://perma.cc/BR6Y-6X6D; U.S. Dep't of Homeland Sec., DHS/ICE/PIA-054, *Privacy Impact Assessment for the ICE Use of Facial Recognition Services* 26 (2020), https://perma.cc/2TMV-JMGH; Aman Bhatta et al., *Impact of Blur and Resolution on Demographic Disparities in 1-to-Many Facial Identification*, 2024 IEEE/CVF Winter Conf. on Applications of Comput. Vision Workshops (WACVW) 412, https://perma.cc/MCQ3-QV5V.

quality and orientation of a real-world probe image resemble the mugshots, drivers' license photos, or other database images against which it is being compared.

Even where probe image quality is ideal, facial recognition systems exhibit higher rates of false matches when used on people of color, women, the elderly, and young people.[5] According to testing several years ago by the National Institute of Standards and Technology, images of Asian and Black people had an increased false positive rate of up to a factor of 100.[6] Moreover, disparities in accuracy rates display intersectional effects: tests of some algorithms have shown, for example, that older Black women "were over 3,000 times more likely to have a false positive match than [younger] Eastern European men."[7] Ms. Williams, as a white woman, faced an increased risk of being incorrectly chosen as a potential candidate by a facial recognition system; for members of communities of color, the risk is even higher.

Because of these and other sources of unreliability and error in the facial recognition search process, it has long been widely agreed—including at the time PGPD personnel received a lead based on the facial recognition result in this investigation—that the results of a facial recognition search do not constitute a positive identification of a suspect, and that additional reliable investigation is needed to develop probable cause to arrest.[8] Although at the time of the investigation leading to Ms. Williams' arrest PGPD had no policy governing use of face recognition technology in investigations, current PGPD policy and Maryland state law make clear that facial recognition technology cannot produce a positive identification and cannot generate probable cause for an arrest. *See* 1 Prince George's County, General Orders Manual ch. 5, at 11 (2025); Md. Code Ann. Crim. Proc. § 2-502(b)(2).

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[5] *See, e.g.*, Nat'l Acads. of Scis., Eng'g, & Med., *Facial Recognition Technology: Current Capabilities, Future Prospects, and Governance* 55–57 (2024), https://perma.cc/BPA2-TYBL; Patrick Grother et al., Nat'l Inst. of Standards & Tech., U.S. Dep't of Com., NISTIR 8280, *Face Recognition Vendor Test (FRVT) Part 3: Demographic Effects* 7–8 (2019), https://perma.cc/7L99-A2QJ; K.S. Krishnapriya et al., *Issues Related to Face Recognition Accuracy Varying Based on Race and Skin Tone*, 1 IEEE Transactions on Tech. & Soc'y 8, 8–20 (2020), https://perma.cc/Z3VG-A7MR.

[6] Grother et al., *supra* note 5, at 2.

[7] U.S. Comm'n on Civil Rights, *The Civil Rights Implications of the Federal Use of Facial Recognition Technology* 29 (2024), https://perma.cc/D4VS-5866.

[8] *See, e.g.*, Bureau of Just. Assistance, U.S. Dep't of Just., *Face Recognition Policy Development Template* 22 (2017), https://bja.ojp.gov/doc/face-recognition-policy-development-template.pdf ("candidate images do not provide positive identification of any subject, are considered advisory in nature as an investigative lead only, and do not establish probable cause, without further investigation, to obtain an arrest warrant without further investigation"); Law Enf't Imaging Tech. Task Force, IJIS Inst. & Int'l Assoc. of Chiefs of Police, *Law Enforcement Facial Recognition Use Case Catalog* 3 (2019), https://perma.cc/3VFM-YMK2 (a FRT search result is "a strong clue, and nothing more, which must then be corroborated against other facts and investigative findings before a person can be determined to be the subject whose identity is being sought").

B. The visual comparison of the facial recognition result and the suspect photo was unreliable, and thus officers lacked probable cause for Ms. Williams' arrest.

The investigation after SunTrust's investigator provided Ms. Williams as a lead from the facial recognition search was grossly deficient. The investigating detectives lacked probable cause for an arrest, and failed to take basic investigative steps that would have made all the more clear that Ms. Williams could not have committed the crime under investigation.

In the absence of real investigation, the only thing that Detective Southan could "confirm" was that Ms. Williams looked similar to the perpetrator. There was no effort made to understand how SunTrust's investigator had identified Ms. Williams as a possible suspect. And the detective's visual comparison of the suspect photo and the image of Ms. Williams after she was misidentified by facial recognition technology confirmed only that the technology did what it is designed to do, find *similar*-looking faces. The technology is prone to returning innocent lookalikes, and that visual similarity causes people to mistakenly believe there is a match to the suspect, when there is not. As a result, this kind of purported "confirmation" does not constitute the reliable investigation needed to develop probable cause to arrest.

More than a dozen other wrongful arrests across the country are attributable to false matches from facial recognition technology tainting subsequent human visual identifications.[9] In many of these cases, police placed a photo of the person identified by facial recognition technology as a possible suspect into a six-pack photo array and presented it to a witness, who then believed that person to be the suspect. That is what happened, for example, to Robert Williams, Michael Oliver, and Porcha Woodruff, three Detroit-area residents who were wrongfully arrested in unrelated investigations by Detroit police.[10] As a court explained it in one of those cases, "[b]ecause facial recognition searches present matches that, by their very design, look the closest to the true suspect, having a false match in a photo array is likely to cause the false match to be selected." *Woodruff v. Oliver*, No. 23-11886, 2025 WL 2231045, at *13 (E.D. Mich. Aug. 5, 2025) (citation omitted).

In other cases, as in this case, law enforcement officers conducted their own visual comparisons between the facial recognition lead and an image of the suspect and incorrectly concluded that they were a match. That is what happened, for example, in the recent case of Angela Lipps, a Tennessee grandmother who had never been to North Dakota before being arrested at her Tennessee home on a North Dakota warrant after facial recognition technology suggested her as a lead in a bank fraud investigation, and a Fargo detective decided he believed a photo of her looked

[9] *See, e.g.*, Douglas MacMillan, David Ovalle & Aaron Schaffer, *Arrested by AI: Police Ignore Standards After Facial Recognition Matches*, Wash. Post (Jan. 13, 2025), https://perma.cc/2M7P-ALNL.

[10] Kashmir Hill, *Wrongfully Accused by an Algorithm*, N.Y. Times (June 25, 2020), https://perma.cc/W9WE-4G9L; Elisha Anderson, *Controversial Detroit Facial Recognition Got Him Arrested for a Crime He Didn't Commit*, Detroit Free Press (July 11, 2020), https://perma.cc/YUX7-VJEK; Kashmir Hill, *Eight Months Pregnant and Arrested After False Facial Recognition Match*, N.Y. Times (Aug. 6, 2023), https://perma.cc/RC5V-4KP7.

like security camera footage of the suspect.[11] Similar failures have led to wrongful arrests in New Jersey,[12] Louisiana,[13] and Nevada.[14] In Maryland, Ms. Williams' ordeal is preceded by that of Alonzo Sawyer, who was wrongfully arrested in 2022 after Maryland Transit Administration Police asked his probation officer (from an unrelated conviction) to confirm the result of a facial recognition search.[15] Though the officer later retracted his purported identification, it was too late to prevent Mr. Sawyer's wrongful arrest and prosecution.

In Ms. Williams' case, the arrest was predicated on exactly this series of failures: facial recognition technology produced a false match to someone (Ms. Williams), who looked similar to the suspect, and an officer relied on that false-match doppelganger to conclude that there was a match when in fact there was none. Far from taking reasonable investigative steps to "assemble individualized facts that link the suspect to the crime," *Smith v. Munday*, 848 F.3d 248, 254 (4th Cir. 2017), Detective Southan cut off the investigation and sought an arrest warrant for an innocent woman. Basic investigation would have avoided this result, even despite not seeking more information from SunTrust's investigator. For example, the investigating detectives never checked whether Ms. Williams could have been at the Watkins Park SunTrust branch in January 2020. There was no evidence of any tie to Maryland, and every indication that she lived far away. The arrest records in the detectives' possession showed that Ms. Williams had previous arrests in Ohio and Oklahoma, but no prior contact with Maryland. *See* Kimberlee Sue Williams Arrest Records 1–2 ("Ex. M"). During the relevant period, Ms. Williams was in fact in Oklahoma, a fact that would have been corroborated easily by Ms. Williams' public social media activity, *see* Ex. E. The SunTrust investigator's memo additionally revealed that in one of those incidents there was a fraudulent check made payable to a name not associated with the impacted bank accounts, yet there appears to be no record of any investigation into that name, which would have been an obvious lead. Ex. B at 1.

C. Detective Southan's investigation was grossly deficient.

Detective Southan failed to conduct a proper investigation. As discussed above, despite SunTrust providing no information as to how the investigative lead was developed, Detective Southan made no apparent effort to follow up. In describing how Ms. Williams was identified, Detective Southan simply wrote that "[t]he defendant, Kimberlee Williams, was recognized from earlier ID Thefts the bank suffered." Ex. D at 2. In doing so, he mischaracterized SunTrust's

[11] Michael Levenson, *Woman Spent Five Months in Jail After A.I. Linked Her to Bank Fraud Case*, N.Y. Times (Mar. 30, 2026), https://perma.cc/A34E-54AL.

[12] Kashmir Hill, *Another Arrest, and Jail Time, Due to a Bad Facial Recognition Match*, N.Y. Times (Jan. 6, 2021), https://perma.cc/DDY8-NWCK.

[13] Kashmir Hill & Ryan Mac, *'Thousands of Dollars for Something I Didn't Do,'* N.Y. Times (Mar. 31, 2023), https://perma.cc/92Y9-7P4Q.

[14] Mark Robison, *Reno Officer Used Casino's Facial ID to Arrest Wrong Man: What We Know*, Reno Gazette J. (Mar. 27, 2026), https://perma.cc/VZ82-2DD4.

[15] Press, *supra* note 2.

investigative lead. Even without knowledge of the underlying reliance on facial recognition technology, Detective Southan should have known that there was no probable cause based on an unexplained lead and a visual comparison.

Detective Southan's documentation of exculpatory evidence was also deficient, in apparent violation of Department policies. *See* 1 General Order Manual ch. 32, at 3 (requiring all exculpatory evidence to be disclosed). The records in his possession showed that Ms. Williams had prior arrests in Ohio and Oklahoma, but there were no ties to Maryland, or even any neighboring states. Detective Southan should have disclosed that, based on the records in his possession, Ms. Williams had no ties to Maryland.

III. Redress and Policy Changes

PGPD's reliance on an erroneous facial recognition result and failure to adequately investigate led to the wrongful arrest that has dramatically impacted Ms. Williams' life. We write on her behalf to request an apology and other appropriate redress, and changes to PGPD's facial recognition technology policy to minimize the chance of other people suffering the same harms.

A. Apology

Ms. Williams seeks a public statement of apology from PGPD for her wrongful arrest. Although an apology cannot give Ms. Williams back the time she spent in jail for a crime she did not commit, and cannot address the significant damages she suffered as a result, it would be a meaningful step toward recognizing the degree of harm she suffered.

B. Policy Changes

Nobody should have to go through the ordeal that Ms. Williams suffered. While PGPD now has a policy governing use of facial recognition technology in investigations, key aspects of that policy should be strengthened to more effectively mitigate the chances of another wrongful arrest. PGPD's current policy reflects amendments made in light of Maryland's 2024 facial recognition technology statute, Md. Code Ann. Crim. Proc. § 2-501–510. Although that law provides some important protections, the ACLU of Maryland and the ACLU raised concerns about key deficiencies to lawmakers when the legislature was considering the legislation, and to the Maryland State Police when it was developing its model statewide facial recognition policy as required by the 2024 law.[16] Unfortunately, PGPD's current policy lacks important safeguards, leaving Prince George's County residents and others vulnerable to misidentifications and wrongful arrests. Simple updates to the policy can substantially mitigate these problems.

[16] *See* Letter from Nathan Freed Wessler, ACLU, & Yanet Amanuel, ACLU of Md., to Luke Clippinger & J. Sandy Bartlett, House Judiciary Comm. (Mar. 12, 2024) ("Ex. N"); Letter from Nathan Freed Wessler, ACLU, & Yanet Amanuel, ACLU of Md., to Phillip M. Pickus, Md. State Police (June 25, 2024), https://perma.cc/WM68-HUSF.

1. Prohibit reliance on facial recognition technology searches conducted by outside entities

PGPD's facial recognition technology policy attempts to erect guardrails around facial recognition searches conducted by PGPD personnel, but is silent on how to treat results of facial recognition technology searches conducted and provided by outside entities or other unauthorized personnel. Outside entities may conduct facial recognition technology searches in ways inconsistent with PGPD policy, including by running a search for a prohibited purpose, by failing to require adequate training, and by failing to ensure independent verification by a trained individual. 1 General Order Manual ch. 5, at 11–12. Additionally, as this case demonstrates, outside entities may not provide sufficient information for PGPD personnel to assess the reliability of a search or its compliance with PGPD policies.

In light of these demonstrated risks, PGPD policy should prohibit reliance on facial recognition technology results from outside entities.

2. Prohibit arrests based on facial recognition results followed by human identification

PGPD's current policy provides that facial recognition technology search results "are considered investigative leads and must not be treated as positive identification without further verification." 1 General Order Manual ch. 5, at 11. The policy further provides that "FRT cannot be the sole basis for probable cause." *Id.* It is critical that the policy clarify what constitutes adequate "further verification" in this context. Specifically, the policy should make clear that a visual identification, including a single-photo comparison (as in this case) or a photographic lineup or other identification procedure following a facial recognition search does not constitute independent evidence, because a false facial recognition match will often bias subsequent human identifications, rendering them unreliable and lacking in independence.

Warnings that facial recognition results may not serve as the sole basis to establish probable cause or positive identification have long been standard in police department facial recognition policies and on facial recognition investigative lead reports provided to police. But without clarification, those warnings are not effective in preventing wrongful arrests. In most of the known cases of wrongful arrests due to police reliance on incorrect results from the technology, police received such warning but arrested innocent people nonetheless.[17]

A major source of the problem comes when police move directly from a facial recognition lead to a visual identification procedure, such as a photographic lineup presented to a witness or a visual comparison made by an investigating officer. That is because a false facial recognition match taints the subsequent identification procedure by introducing an image that looks very similar to

[17] *See* Nathan Freed Wessler, *Police Say a Simple Warning Will Prevent Face Recognition Wrongful Arrests. That's Just Not True.*, ACLU (Apr. 30, 2024), https://perma.cc/2SYF-GJLJ; MacMillan et al., *supra* note 9.

the suspect, but is not the suspect.[18] Without further guidance, officers are likely to believe that such witness identifications constitute sufficient confirmatory evidence, but in fact they lack reliability and independence.

Model policy language for mitigating this risk can be found in the Detroit Police Department's ("DPD") 2024 policies regarding facial recognition technology, which were adopted pursuant to a negotiated settlement agreement in the wrongful arrest lawsuit brought by Robert Williams.[19] Using the DPD policies as a model, PGPD's policy should specify that:

- A request for an arrest warrant, or an arrest, shall not be made solely on the basis of an investigative lead developed through facial recognition technology in combination with a lineup or other human identification. A visual identification following a facial recognition technology search does not constitute an independent basis for probable cause under the policy.[20]

- Prior to conducting a photographic line-up or other human identification, including an identification by an investigating officer, a supervisor shall ensure that there is an independent basis supported by reliable evidence that the suspect committed the crime. An investigative lead generated by a search using facial recognition technology does not alone constitute an independent basis that the person selected as the lead committed the crime.[21]

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Thank you for your time and attention to this matter. We hope to hear from you soon.

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[18] As the Detroit Chief of Police put it after the third wrongful arrest due to Detroit officers' reliance on incorrect facial recognition results became public, "it is possible to taint the photo lineup [or other identification procedure] by presenting a person who looks most like the suspect" but is not in fact the suspect. City of Det. Gov't, *WATCH LIVE: Chief White Will Provide Updated Comments on a Lawsuit Filed Last Week*, at 07:17–23 (Facebook, Aug. 9, 2023) (transcript available as Ex. O).

[19] Settlement Agreement, *Williams*, No. 21-cv-10827 ("Ex. P"), *also available at* https://perma.cc/E563-FEX4.

[20] *See* Det. Police Dep't, Manual Directive No. 307.5, *Facial Recognition* § 5.3 (2019), *available as* Attachment A to Ex. P, *supra* note 19.

[21] *See* Det. Police Dep't, Manual Directive No. 203.11, *Eyewitness Identification and Lineups* § 4.2(3) (2023), *available as* Attachment C to Ex. P, *supra* note 19; *see also* Ind. Code § 35-33-4.5-8 ("If facial recognition technology is used to identify a suspect, a law enforcement agency, or an employee of a law enforcement agency, may not conduct a lineup unless there is other evidence, in addition to the use of facial recognition technology, to support a belief that the suspect committed the crime under investigation.").

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Sincerely,

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